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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN RENEWABLE ENERGY AGENCY BILL 2011

EXPLANATORY MEMORANDUM

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

AUSTRALIAN RENEWABLE ENERGY AGENCY BILL 2011

GENERAL OUTLINE

This Bill creates a statutory authority, the Australian Renewable Energy Agency (ARENA) under the *Commonwealth Authorities and Companies Act 1997*, creates the statutory position of Chief Executive Officer (CEO) of ARENA and sets out ARENA's governance and financial arrangements. ARENA will independently administer Australian Government funding to improve the competitiveness of renewable energy and related technologies and to increase the supply of renewable energy, with responsibility for:

- providing financial assistance for the research, development, demonstration and commercialisation of renewable energy and related technologies;
- developing skills in the renewable energy industry;
- sharing of non-confidential knowledge and information from the projects it funds; and
- promoting collaboration on renewable energy technology innovation with state and territory governments and other institutions, including international governments and institutions.

The Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Bill 2011 will provide for ARENA to take over responsibility for funding and administration of existing renewable energy and related technology innovation projects that are currently administered by the Department of Resources, Energy and Tourism (RET) and the Australian Solar Institute Limited (ASI Limited).

The Australian Renewable Energy Agency Bill 2011 establishes ARENA's reporting structure and the offices of the ARENA board and the ARENA CEO. The Bill ensures office holders have a mix of skills and expertise, to deliver balanced decisions in terms of project viability and the choice of technology funded. The Bill also provides for RET staff to undertake ARENA's operational and administrative support.

The Bill sets out ARENA's governance arrangements, determining how ARENA, its Board and its CEO will operate. These arrangements balance the advantages of independent and centralised management of renewable energy technology innovation funding with efficient, appropriate and accountable use of Australian Government funds. Arrangements include developing a general funding strategy, work plans and where required, program administrative guidelines to allocate uncommitted funds.

The Bill also establishes ARENA's funding arrangements, which provides long term funding certainty to ARENA and to the renewable energy industry, through prescribing the minimum Australian Government funding that ARENA is to receive each year. This is expected to be the main source of ARENA's funding, although ARENA's funding arrangements allow for additional funding to be provided, to meet ongoing funding needs.

ARENA will be required to select projects using merit based principles from a finite pool of money. It is therefore not considered appropriate that ARENA's decisions about the provision of financial assistance be subject to any process of merits review.

FINANCIAL IMPACT STATEMENT

Neutral impact on the Australian Government budget.

ABBREVIATIONS

ARENA	Australian Renewable Energy Agency
ASI Limited	Australian Solar Institute Limited (ACN 138 300 688)
Board	Board of ARENA, established by clause AR4 of the Bill
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CEO	Chief Executive Officer of ARENA, established by clause CE1 of the Bill
CFO	Chief Financial Officer of ARENA, employed under clause CE12 of the Bill
Climate Change Convention	United Nations Framework Convention on Climate Change done at New York on 9 May 1992, as amended and in force for Australia from time to time
C&T Bill	Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Bill 2011
FMA Act	<i>Financial Management and Accountability Act 1997</i>
LI Act	<i>Legislative Instruments Act 2003</i>
RET	Department of Resources, Energy and Tourism

NOTES ON CLAUSES

Part 1—Preliminary

Clause 1: Short title

This clause would provide that the Bill, when enacted, may be cited as the *Australian Renewable Energy Agency Act 2011*.

Clause 2: Commencement

This clause would provide that the Bill commences on 1 July 2012.

Clause 3: Object

The main object of the Bill is to improve the competitiveness of renewable energy technologies and increase the supply of renewable energy in Australia by providing financial assistance for renewable energy technologies.

Clause 4: Definitions

This clause defines key terms used in the Bill. Some of the more significant definitions are discussed below.

The term ‘appointed member’ is defined to mean a Board member appointed under clause 30. The Board consists of up to 6 appointed members and the Secretary. References in the Act to an ‘appointed member’ do not include the Secretary in his or her capacity as a Board member.

The term ‘financial assistance’ is defined to mean grants, or any other kinds of assistance specified by the Minister by legislative instrument.

Renewable energy technologies include technologies that use, or enable the use of, one or more renewable energy sources, where a renewable energy source is one that is generated from natural resources that can be constantly replenished. These include geothermal and biomass energy sources.

The term ‘renewable energy technologies’ is defined to include hybrid technologies and technologies (including enabling technologies) that are related to renewable energy technologies. Technologies that are related to renewable energy technologies include, for example, technologies that store energy generated using renewable energy, technologies that predict renewable energy supply or technologies that assist in the delivery of energy generated using renewable energy technologies to energy consumers.

A hybrid technology is one that integrates a renewable energy generation technology with other energy generation systems. An example of a hybrid technology would be a power plant which combines solar-based thermal energy with thermal energy from gas or other renewable energy sources, to provide a combined energy flow that drives the power generation from the plant.

The inclusion of hybrid technologies, by improving the economics of renewable energy projects, can allow ARENA to support more renewable energy projects than would be possible without hybridisation.

Likewise, ARENA will be managing a number of existing projects that include hybridisation as well as programs that include hybrid technologies as eligible technologies.

Clause 5: Extension to external Territories

This clause would ensure that the Act applies in external Territories. This would mean, for example, that ARENA could fund projects in the external Territories.

Clause 6: Extra-territorial application

This clause would ensure that the operation of the Act extends outside Australia. It is ARENA's intention to support Australian projects, however this clause would mean, for example, that projects that included an overseas element would not automatically be excluded from consideration of funding by ARENA.

Part 2—Australian Renewable Energy Agency

Clause 7: Establishment

This clause would establish ARENA as a body corporate. It must have a corporate seal, and may sue and be sued. ARENA would be a 'Commonwealth authority' for the purposes of the CAC Act.

Clause 8: ARENA's functions

This clause sets out the functions of ARENA. Its main function would be to provide financial assistance for research into renewable energy technologies or the development, demonstration, commercialisation or deployment of renewable energy technologies. 'Financial assistance' includes grants and other forms of financial assistance as determined by the Minister - see clause 4. 'Renewable energy technologies' includes hybrid technologies and technologies that are related to renewable energy technologies - see clause 4.

ARENA's other functions would include:

- to collect, analyse, interpret and disseminate information relating to renewable energy technologies;
- to provide advice to the Minister relating to renewable energy technologies; and
- to liaise with State and Territory governments and other authorities for the purpose of facilitating renewable energy projects for which ARENA is providing or proposing to provide financial assistance.

It will also be possible for regulations to be made conferring additional functions on ARENA.

Clause 9: General rules about performance of functions

This clause provides that, in performing its functions, ARENA must:

- act properly, efficiently and effectively;
- ensure that decisions about the provision of financial assistance are based on merit;
- if appropriate, act collaboratively with other persons, organisations and governments (including international organisations and foreign governments); and
- if appropriate, promote the sharing of information about renewable energy technologies.

The need for ARENA to apply merit based principles applies whether or not guidelines are developed for a program. Where guidelines are developed, those guidelines should include merit criteria, and applications are to be assessed against those criteria.

Clause 10: Provision of financial assistance to be in accordance with general funding strategy

This clause provides that ARENA must not enter into an agreement for the provision of financial assistance unless the financial assistance provided for is in accordance with the general funding strategy that is in force at the time under Subdivision A of Division 2 of Part 3 of the Bill.

Clause 11: Minister may request ARENA to consider funding for specified projects

This clause would require ARENA to consider any written request made by the Minister that ARENA consider providing financial assistance for a particular project. Where a project is referred to ARENA for consideration, it will be a matter for ARENA to decide whether financial assistance should be provided. As the Minister has a very limited power of direction, the Minister could not direct that the particular project receive financial assistance.

Clause 12: Ministerial approval where grants exceed \$50 million

This clause would require ARENA to obtain the written approval of the Minister if ARENA wishes to make grants totalling more than \$50 million for a single project.

Clause 13: Minister may direct ARENA to provide advice

The Minister would be able to direct ARENA, in writing, to provide advice in relation renewable energy technologies, including the things specifically mentioned in paragraph 8(d).

A direction given by the Minister to ARENA under this clause would not be a legislative instrument by virtue of item 5 of the table in section 7 of the LI Act.

Clause 14: Constitutional limits

This clause ensures that ARENA will only be able to perform its functions within the limits on Commonwealth power imposed by the Constitution. Generally speaking, ARENA would be likely to exercise its power to provide financial assistance in

relation to either the corporations power (that is, it would provide financial assistance to or otherwise for the benefit of a foreign, trading or financial corporation), or in order to give effect to Australia's obligations under the Climate Change Convention (that is, it would provide financial assistance in a way which will assist Australia to meet its obligations under the Climate Change Convention).

Specific mention is made in paragraph 14(g) of the provision of financial assistance to the Commonwealth. This recognises that ARENA may on occasion fund a Commonwealth agency in relation to an activity or project consistent with ARENA's functions.

Clause 15: ARENA's powers

This clause would give ARENA the power to do all things necessary or convenient to be done for or in connection with the performance of its functions. This includes the power to enter into contracts, the power to acquire, hold and dispose of real and personal property and the power to accept, otherwise than on trust, gifts, devises, bequests or other payments of money. ARENA will not have the power to be a trustee.

Clause 16: ARENA does not have privileges and immunities of the Crown

This clause would make clear that ARENA does not enjoy the privileges and immunities of the Crown in right of the Commonwealth, other than those provided by legislation or the Constitution.

Part 3—Board of ARENA

Division 1—Establishment and functions

Clause 17: Establishment

This clause would establish the Board of ARENA.

Clause 18: Functions of the Board

Sub-clause 18(1) sets out the functions of the Board. These are:

- the functions of the Board under Division 2 of Part 3 of the Bill, relating to making general funding strategies, guidelines and work plans;
- to decide the other strategies, objectives and policies to be followed by ARENA; and
- to ensure that ARENA complies with the Bill.

Sub-clause 18(2) would give the Board the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Sub-clause 18(3) would provide that anything done in the name of, or on behalf of, ARENA by the Board, or with the authority of the Board, is taken to have been done by ARENA.

Division 2—General funding strategy, guidelines and work plans

Subdivision A—General funding strategy

Clause 19: General funding strategy

This clause would require the Board to develop a general funding strategy for each financial year starting with 2012-13. The general funding strategy must state ARENA's principal objectives and priorities for the provision of financial assistance during the financial year for which it is developed, and for the next 2 financial years. In other words, each year there will be a new general funding strategy, which will relate to a 3 year period ahead.

The general funding strategy must not require ARENA to give financial assistance to a particular person or for a particular project.

As an example, the funding strategy could describe how ARENA will allocate and prioritise the provision of funding assistance for the support of research, development, demonstration and commercialisation of renewable energy technologies to achieve its aims and objectives. Such a description might include information on:

- the challenges and barriers that financial assistance is intended to overcome and a strategic overview of how financial assistance will assist in overcoming those challenges and barriers;
- the broad principles to be adopted in selecting projects and providing assistance to support renewable energy and related technology innovation; and
- an overview of renewable energy sectors and the proposed priorities for activity within each sector.

Clause 20: Approval of general funding strategy

General funding strategies developed by the Board would require approval by the Minister.

This clause would require the Board to give a copy of a general funding strategy to the Minister for approval. Sub-clause 20(2) would provide that the strategy is a legislative instrument made by the Minister on the day on which it is approved by the Minister, but it would exempt the strategy from the operation of section 42 of the LI Act, relating to disallowance. It is considered that the requirement for each strategy to be approved by the Minister will ensure sufficient accountability in the preparation of these instruments. The exemption is consistent with the position of Ministerial directions to a CAC Act body, which are not legislative instruments by virtue of item 5 of the table in s 7 of the LI Act.

Clause 21: When a general funding strategy for a year is in force

This clause would provide that a general funding strategy for a financial year comes into force at the later of two possible times, being either the start of the financial year (if the Minister approved the strategy before the end of the previous financial year), or the time when the Minister approves the strategy (if the Minister approved the strategy after the beginning of the new financial year).

A general funding strategy would cease to be in force when the strategy for the next financial year comes into force. That is, although general funding strategies would each cover a three year period, they would be replaced every year.

Clause 22: Variation of general funding strategy

The Board would have the power to vary the general funding strategy that is currently in force. However, any such variation would require approval by the Minister.

Sub-clause 22(1) would require the Board regularly to review the general funding strategy that is currently in force and consider if any variations should be made to it. Sub-clause 22(6) would provide that a variation of a general funding strategy is a legislative instrument made by the Minister on the day on which it is approved by the Minister, but it would be exempt the variation from the operation of section 42 of the LI Act, relating to disallowance. This exemption is included for the same reasons given in relation to ARENA's general funding strategies (see the discussion of clause 20, above).

Clause 23: General funding strategy to be published on ARENA's website

This clause would require the Board to ensure that the general funding strategy that is in force from time to time is published on ARENA's website.

Subdivision B—Guidelines

Clause 24: Guidelines

The Board would have the power to develop written guidelines in relation to the provision of financial assistance by ARENA, and to vary or revoke such guidelines. Guidelines would be required for a grant program if, under the program, the total of all grants for a particular project could exceed \$15 million.

In some cases, guidelines or a variation or revocation of guidelines would require approval by the Minister under clause 25.

Sub-clause 24(5) would provide that guidelines developed by the Board, and any variation or revocation of such guidelines, are not legislative instruments. This provision is included to assist readers. Guidelines, variations and revocations would not be legislative instruments as they are not legislative in character, and therefore not within the meaning of section 5 of the LI Act.

Clause 25: Approval of guidelines for financial assistance in excess of \$15 million

Guidelines developed by the Board will require approval by the Minister if the guidelines are for a grant program under which individual grants, or multiple grants for the same project, could exceed \$15 million.

Sub-clause 25(1) would require the Board to give such guidelines to the Minister, for his or her approval. This requirement would also apply to any variation of such guidelines, (unless the variation is of a minor nature) and would apply to any revocation of such guidelines. If a grant program which is not subject to this clause

were to be varied so that it became a program to which subclause 24(2) applies, then ARENA would be required to develop guidelines for the program.

Sub-clause 25(2) would require the Board to inform the Minister of any variation of such guidelines that is of a minor nature.

Subclause 25(3) specifies the commencement time for guidelines, variations and revocations.

Clause 26: Guidelines to be published on ARENA's website

This clause would require the Board to ensure that any guidelines that are in force from time to time are published on ARENA's website.

Subdivision C—Work plans

Clause 27: Work plan

This clause would require the Board to develop a work plan for each financial year, setting out details of:

- how ARENA's general funding strategy for the financial year is proposed to be implemented during the year; and
- the main activities proposed to be undertaken by ARENA and the Board during the year and how they are proposed to be undertaken.

The Board may vary a work plan in writing.

A work plan or variation of a work plan will not require the Minister's approval, but the Board will be required to give the Minister a draft of each work plan or variation, and have regard to any comments or requests made by the Minister in relation to the draft (sub-clause 27(5)). The Board will also be required to give a copy of each finalised work plan to the Minister (sub-clause 27(1)).

Sub-clause 27(7) would provide that a work plan developed by the Board is not a legislative instrument. This provision is included to assist readers. A work plan 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.

Clause 28: Work plan to be taken into account

This clause would require the Board and the CEO, when performing functions and exercising powers in a financial year, to take into account the work plan for the financial year.

Division 3—Board Members

Clause 29: Membership

The Board would consist of up to 6 appointed members and the Secretary of RET.

Clause 30: Appointment of Board members

This clause would provide that Board members (other than the Secretary) are to be appointed by the Minister by written instrument, on a part-time basis.

A person would not be eligible for appointment as a Board member unless the Minister was satisfied that the person has experience or knowledge in at least one of a list of fields. This is intended to ensure that Board members are drawn from a pool of appropriately qualified specialists. If legislation is enacted establishing the Clean Energy Finance Corporation, it is possible that a person could be a member of the board of ARENA and a director (however described) of the Clean Energy Finance Corporation.

Clause 31: Chair

This clause would require the Minister to appoint one Board member to be the Chair of the Board.

Clause 32: Term of appointment

This clause would limit the maximum term of appointment of each Board member appointed under clause 30 to a period of 2 years, and the maximum continuous period for which each may hold office to 6 years.

Clause 33: Acting appointments

This clause deals with acting appointments of Board members and of the Chair of the Board.

Clause 34: Remuneration

This clause deals with the remuneration of Board members who are appointed under clause 30. It would have effect subject to the *Remuneration Tribunal Act 1973*.

Sub-clause 34(1) would provide that Board members appointed under clause 30 are to be paid the remuneration that is determined by the Remuneration Tribunal, provided that there is an applicable determination in operation. Otherwise, such Board members are to be paid the remuneration that is prescribed by the regulations.

Clause 35: Leave of absence

This clause deals with the granting of leave of absence to Board members who are appointed under clause 30.

Clause 36: Disclosure of interests to the Minister

This clause would require Board members to give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or may conflict with the proper performance of the member's functions.

Clause 37: Resignation of appointed members

This clause is self-explanatory.

Clause 38: Termination of appointment of appointed members

This clause would give the Minister the power to terminate the appointment of an appointed Board member on various grounds.

Clause 39: Other terms and conditions of appointed members

This clause would provide for the Minister to determine any other terms and conditions, not covered by the Bill, on which appointed members are to hold office.

Division 4—Meetings of the Board

Clause 40: Convening meetings

This clause would require the Board to hold the meetings that are necessary for the efficient performance of its functions, and provides for the meetings to be held at the times and places that the Board determines.

The Chair would be required to convene at least 6 meetings of the Board in each calendar year, and would be required to convene a meeting if requested in writing by 3 or more other Board members or the Minister.

Clause 41: Secretary may nominate alternate to attend Board meetings

This clause would permit the Secretary to nominate a Senior Executive Service (SES) employee or acting SES employee in RET to attend a particular meeting, or all meetings of the Board at which the Secretary is not present. The person concerned would be taken to be a Board member at those meetings.

Clause 42: Presiding at meetings

This clause is self-explanatory.

Clause 43: Quorum

This clause would provide that a quorum at a meeting of the Board is generally constituted by a majority of the current Board members, but would provide an exception in a case where a Board member is required to excuse themselves from the meeting because the Board member has a material personal interest in the matter that is being considered at the meeting.

Clause 44: Voting at meetings

This clause would provide that questions arising at Board meetings are to be determined by a majority of Board members present and voting. In the event of an equality of votes, the person presiding at the meeting would have both a deliberative vote and a casting vote.

Clause 45: Conduct of meetings

This clause is self-explanatory.

Clause 46: Minutes

This clause is self-explanatory.

Clause 47: Decisions without meetings

This clause would provide for the Board to determine and implement methods for making decisions otherwise than at Board meetings.

Division 5—Committees

Clause 48: Committees

This clause would provide for the Board to establish committees to advise or assist in the performance of ARENA's functions or the Board's functions. Such committees may be constituted by Board members and/or other persons.

The Board would have the power to determine the terms of reference of each committee, the procedures to be followed by each committee and the terms and conditions of appointment of committee members.

Clause 49: Remuneration and allowances

This clause deals with the remuneration of members of committee established by the Board under clause 48. It would have effect subject to the *Remuneration Tribunal Act 1973*.

Sub-clause 49(2) would provide that committee members are to be paid the remuneration that is determined by the Remuneration Tribunal, provided that there is an applicable determination in operation. Otherwise, committee members are to be paid the remuneration that is prescribed by the regulations.

Sub-clause 49(3) would provide that committee members are to be paid the allowances that are prescribed by the regulations.

Part 4—Chief Executive Officer, staff and consultants

Division 1—Chief Executive Officer of ARENA

Clause 50: Establishment

This clause would establish the office of CEO of ARENA.

Clause 51: Role

The CEO would be responsible for the day-to-day administration of ARENA, and would have the power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.

The CEO would be required to act in accordance with any policies and written directions given by the Board in relation to the performance of the CEO's responsibilities.

Sub-clause 51(6) would make clear that a direction given by the Board under sub-clause 51(4) is not a legislative instrument. This provision is included to assist readers. Such a direction would not be a legislative instrument as it is not considered legislative in character and therefore not within the meaning of section 5 of the LI Act.

Clause 52: Appointment

Clause 52 provides for how the CEO is to be appointed. The CEO would be appointed by the Minister on the recommendation of the Board. The appointment is to be in writing and the CEO will hold office on a full-time basis.

The period of the CEO's appointment will be as specified in the instrument of appointment. While each appointment must not exceed 3 years, the note to sub-clause 52(3) would make clear that the Minister is able to reappoint the CEO at the end of each term.

Sub-clause 52(4) would prevent the Minister appointing a Board member (whether an appointed member or the Secretary of RET) as the CEO.

Item 29 of Schedule 2 to the C&T Bill provides for how the first CEO of ARENA is to be appointed. A special provision for the appointment of the first CEO is required so that the CEO can be appointed in time to take up his or her office on the day when ARENA is established.

Clause 53: Acting appointments

This clause would provide that the Minister may appoint an acting CEO during a vacancy in the office of CEO, or while the CEO is absent or unavailable.

This clause would make clear that the Minister may appoint a Board member (other than the Secretary) as acting CEO. However, if the Minister appoints a Board member to act as CEO, it must be on a part-time basis.

The note to this clause refers readers to the rules about acting appointments set out in ss 33AB and 33A of the *Acts Interpretation Act 1901*.

Clause 54: Outside employment

This clause would provide that the CEO must not engage in paid employment outside the duties of the CEO's office without the Minister's approval.

Clause 55: Remuneration

This clause sets out the remuneration arrangements for the office of CEO.

Sub-clause 55(1) would provide that the CEO is to be paid such remuneration as is determined by the Remuneration Tribunal or, if no determination of that remuneration is in operation, the CEO is to be paid such remuneration as is prescribed in the regulations.

Sub-clause 55(2) would provide that the CEO is to be paid such allowances as are prescribed in the regulations.

Sub-clause 55(3) would make clear that clause 55 is intended to have effect subject to the *Remuneration Tribunal Act 1973*.

Clause 56: Leave

This clause would provide for the leave entitlements of the CEO.

Sub-clause 56(1) would provide that the recreation leave entitlements for the CEO would be as determined by the Remuneration Tribunal. The *Remuneration Tribunal Act 1973* provides for the Remuneration Tribunal to conduct inquiries into and to determine the recreation leave entitlements of certain full-time office holders.

Sub-clause 56(2) would provide for the Minister to grant the CEO other forms of leave of absence (that is, other than recreation leave) on such terms and conditions as to remuneration or otherwise as the Minister determines.

Clause 57: Disclosure of interests

This clause would require the CEO to give written notice to the Minister of all material personal interests that the CEO has or acquires and that conflict or could conflict with the proper performance of the CEO's duties.

Clause 58: Resignation

This clause would provide that the CEO may resign by giving written notice to the Minister. The resignation would take effect on the day the notice is received by the Minister, or on a later day specified in the notice.

Clause 59: Termination of appointment

Clause 59 would provide for when and how the appointment of the CEO may be terminated.

Sub-clauses 59(1) and (2) would provide that the Minister may terminate the CEO's appointment for misbehaviour or physical or mental incapacity only after the Minister has consulted the Board.

Sub-clause 59(3) sets out other circumstances where the Minister may terminate the CEO's appointment. Consultation with the Board would not be required in these circumstances. However, it would be open to the Minister to consult the Board if the Minister wished.

Clause 60: Other terms and conditions

This clause would provide for the Minister to determine other terms and conditions for the office of CEO in relation to matters not covered by the Bill.

Division 2—Staff and consultants

Clause 61: Chief Financial Officer

This clause would provide for the employment of a person to perform chief financial officer functions in ARENA (a CFO). The terms and conditions of employment for the CFO will be as determined by ARENA.

Clause 62: Other staff

Aside from the CEO and CFO, ARENA would not be able to engage or employ staff of its own (sub-clause 62(2)). Rather, the operational and administrative support for ARENA would be provided by APS employees who are employed in RET (sub-clause 62(1)). The Secretary of RET would be required to make such staff available to assist ARENA (sub-clause 62(3)).

The intention is that the Secretary would delegate relevant employer powers under the *Public Service Act 1999* to the CEO to enable the CEO to effectively manage those Departmental staff who are performing work for the CEO and ARENA. It is also intended that the Secretary would direct those staff who are made available to assist ARENA under this clause to comply with any reasonable directions given by the CEO.

The Secretary would also delegate relevant powers under the FMA Act to the CEO to enable the CEO to effectively manage the departmental money and resources required for the performance of ARENA functions by RET staff.

While performing work for ARENA, staff would remain APS employees so would continue to be fully bound by the APS Values and Code of Conduct set out in the *Public Service Act 1999*. The CEO and CFO would also be bound by the Code of Conduct as ‘statutory office holders’ in relation to the exercise of their direct or indirect supervisory duties in relation to APS employees performing work for ARENA (see section 14 of the *Public Service Act 1999* and regulation 2.2 of the *Public Service Regulations 1999*).

Clause 63: Consultants

This clause would permit ARENA to engage consultants to provide technical and specialist advisory services. However, ARENA will not be able to engage consultants to perform operational or administrative duties of a kind that are performed, or are capable of being performed, by staff of RET who are made available to ARENA under clause 62.

The intention is that ARENA should not be able to engage consultants to perform work that could be done by staff of RET. However, where particular work calls for technical or specialist skills, ARENA may engaged consultants to perform that work.

The terms and conditions for persons engaged as consultants will be as determined by ARENA.

Part 5—Finance

This Part deals with the provision of funding for ARENA.

ARENA's main function would involve the payment of financial assistance. However, it is not appropriate that ARENA, as a body outside the Commonwealth, hold large amounts of money which is provided by the Commonwealth, until it needs that money to meet its obligations under agreements to pay financial assistance.

At the same time, it is important that ARENA is able to enter into agreements to make payments of financial assistance confident in the knowledge that the money to make those payments will be available to it when needed.

To achieve these objectives, Part 5 of the Bill would guarantee that a minimum amount of funding will be available to ARENA, should it require it to meet its obligations, in each financial year from 2012-13 to 2019-20. If the funding is not used in a particular financial year, it will roll over to the following year, and so on.

ARENA will be able to request payments from the Commonwealth up to the amount for the year concerned (including amounts rolled over from previous years) where it has obligations to meet, and the Commonwealth will be obliged to pay the money to ARENA, up to the amount specified.

Clause 64: Amounts available for payment to ARENA

Sub-clause 64(1) sets out the amounts which would be available for payment by the Commonwealth to ARENA in each financial year from 2012-13 to 2019-20. Unless Parliament amends this clause, these amounts would be available for payment to ARENA in the year concerned. Sub-clause 64(2) would provide that if an amount is not paid to ARENA in the year concerned, it will be rolled over so as to be available in a subsequent year. Parliament could at any time amend sub-clause 64(1) to increase amounts to be available for payment to ARENA in any of the years specified, or for future years beyond 2019-2020.

Sub-clauses 64(3) and (4) relate to amounts which are presently credited to the Clean Energy Initiative Special Account. Part of the amounts credited to that Special Account are to be made available to ARENA, but the exact amount will not be known until some time after 1 July 2012. When the exact amount is known, the Finance Minister would be able to determine an amount which will be debited from the Clean Energy Initiative Special Account. The same amount will be added to the amount specified in the table in sub-clause 64(1) for financial year 2012-13. The amount determined by the Finance Minister may not exceed the balance of the Special Account as at the date of the determination, and is likely to be somewhat less than the balance of the Special Account at that date. The determination of the Finance Minister would be a legislative instrument.

If the amount added under this mechanism is not paid to ARENA in 2012-13, it will be rolled over so that it is available to ARENA in future years.

Sub-clauses 64(5) and (6) relate to amounts of money that are held by ASI Limited at the time when the assets and liabilities of ASI Limited are transferred to the Commonwealth and ARENA (as relevant) by the C&T Bill. The C&T Bill would provide that moneys held by ASI Limited are transferred to the Commonwealth at that time (which will be on or before 1 January 2013).

Sub-clause 64(5) would provide that an amount of money equal to the amounts transferred from ASI Limited to the Commonwealth would be added to the amount in the table in sub-clause 64(1) at the time when the transfer from ASI Limited occurs. This has the effect that the money will become available to be paid to ARENA by the Commonwealth. If the amount is not paid to ARENA in 2012-2013 it will roll over to be available in future years.

Clause 65: Payment of up to balance of specified amounts on request by ARENA

Under this clause, ARENA would be able to request payments from the Commonwealth to meet liabilities of ARENA. This will include liabilities that are already due for payment, or that are expected to become due for payment in the financial year concerned.

The timing and frequency of requests, and how they are to be made, will be dealt with in an agreement between ARENA and the Minister. Generally speaking, it is expected that ARENA will only request amounts from the Commonwealth shortly in advance of needing the money to meet a liability.

ARENA's liabilities may include liabilities it has under an agreement for the provision of services entered into with the Commonwealth.

Clause 66: Appropriation

This clause is a standing appropriation of the amounts payable to ARENA under clause 65.

A standing appropriation is necessary so that the Commonwealth may pay to ARENA the amounts which it is required to pay ARENA.

Clause 67: Application of ARENA's money

Subsection (1) notes that ARENA's money consists of money received from the Commonwealth under clause 65 as well as other money received by ARENA. Such other money might include dividends paid to ARENA by the Clean Energy Finance Corporation (if it is established at some time in the future and if its legislation provides for dividends to be paid to ARENA).

Sub-clause (2) would provide that ARENA may only spend money, whether received from the Commonwealth or another person, for purposes which are within its functions, and to pay remuneration and allowances to its officers and the CEO and CFO. ARENA would be able to spend money, for example, to cover the meeting costs of the Board, and costs associated with the performance of the functions of the CEO and CFO.

However, sub-clause 67(3) would make clear that ARENA may not spend its money to pay the salaries, allowances and other costs associated with the staff made available to ARENA by RET. Those costs are to be met from the annual appropriation to RET, and not by ARENA. Other costs associated with the RET staff made available to ARENA include their travel costs, costs of and associated with accommodation, and costs of equipment and material.

Clause 68: ARENA's money not public money

This clause would ensure that ARENA's money is not public money for the purposes of the FMA Act. This will be the case even though officials of RET will be engaged in the commitment, spending, management or control of that money. It is possible, in the absence of this clause, that the operation of the FMA Act and Financial Management and Accountability Regulations would otherwise have had the effect of making ARENA's money public money.

Clause 69: Taxation

This clause would ensure that ARENA is not subject to taxation under a law of the Commonwealth or of a State or Territory.

Part 6—Miscellaneous

Clause 70: Extra matters to be included in annual report

Because ARENA would be a Commonwealth authority for the purposes of the CAC Act, the Board members would be required by section 9 of the CAC Act to prepare annual reports and give them to the Minister for presentation to Parliament.

Clause 70 of the Bill would set out matters that must be included in these annual reports, in addition to the matters set out in Schedule 1 to the CAC Act.

Clause 71: Delegation by ARENA

This clause would provide for delegation by the ARENA of its powers or functions under the Bill.

With a view to ensuring that ARENA operates efficiently, ARENA would be able to delegate all or any of its powers or functions under the Bill to a member of the Board or the CEO.

Such a delegation must be made in writing and under ARENA's corporate seal.

Sub-clause 71(2) would provide that a delegate must comply with any directions of ARENA when exercising any power or performing any function under a delegation.

Clause 72: Delegation by Board

This clause provides for delegation by the Board of the Board's powers or functions under the Bill.

Sub-clause 72(1) would provide that the Board is able to delegate its powers or functions under the Bill to a member of the Board or the CEO, except the Board's powers or functions under Subdivision A of Division 2 of Part 3 of the Bill, which relates to development of the general funding strategy.

A delegation by the Board must be in writing.

Sub-clause 72(2) would provide that a delegate must comply with any directions of the Board when exercising any power or performing any function under a delegation.

Sub-clause 72(3) would make clear that a delegation by the Board continues in force despite a change in the membership of the Board (unless or until the delegation is revoked). Similarly, a change in the membership of the Board would not affect the Board's capacity to revoke a delegation.

Clause 73: Subdelegation by CEO

This clause would provide that the CEO may subdelegate a power or function that has been delegated to the CEO by ARENA or the Board under sub-clause 71(1) or 72(1).

The CEO may only subdelegate a power or function to the CFO, or to a substantive or acting SES employee, or a substantive or acting Executive Level 2 employee (or equivalent) in RET (subclause 73(1)).

A subdelegation by the CEO must be in writing.

Sub-clause 73(2) would provide that a subdelegate must comply with any directions of the CEO when exercising any power or performing any function under a subdelegation.

Sub-clause 73(3) would provide for the rules about delegations set out in ss 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* to apply to subdelegations made under this clause.

Clause 74: Regulations

This clause is self-explanatory.