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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Australian Renewable Energy Agency  
Bill 2011**

**No.     , 2011**

*(Resources and Energy)*

**A Bill for an Act to establish the Australian  
Renewable Energy Agency, and for related  
purposes**



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1     **A Bill for an Act to establish the Australian**  
2     **Renewable Energy Agency, and for related**  
3     **purposes**

4     The Parliament of Australia enacts:

5     **Part 1—Preliminary**  
6

7     **1 Short title**

8                     This Act may be cited as the *Australian Renewable Energy Agency*  
9                     *Act 2011*.

Section 2

---

1     **2 Commencement**

2                     This Act commences on 1 July 2012.

3     **3 Object**

4                     The main object of this Act is to:

- 5                         (a) improve the competitiveness of renewable energy  
6                                     technologies; and  
7                         (b) increase the supply of renewable energy in Australia.

8     **4 Definitions**

9                     In this Act:

10                    *agreement* includes a contract or deed.

11                    *appointed member* means a Board member appointed under  
12                    section 30.

13                    *ARENA*: see *Australian Renewable Energy Agency*.

14                    *ARENA's money*: see section 67.

15                    *Australia*, when used in a geographical sense, includes the external  
16                    Territories.

17                    *Australian Renewable Energy Agency* or *ARENA* means the body  
18                    established by section 7.

19                    *Board* means the Board of ARENA.

20                    *Board member* means a member of the Board.

21                    *CEO* means the Chief Executive Officer of ARENA.

22                    *Chair* means the Chair of the Board.

23                    *Chief Financial Officer* means the person employed under  
24                    section 61.

25                    *Climate Change Convention* means the United Nations  
26                    Framework Convention on Climate Change done at New York on



1 9 May 1992, as amended and in force for Australia from time to  
2 time.

3 Note: The text of the Convention is set out in Australian Treaty Series 1994  
4 No. 2 ([1994] ATS 2). In 2011, the text of a Convention in the  
5 Australian Treaty Series was accessible through the Australian  
6 Treaties Library on the AustLII website (www.austlii.edu.au).

7 ***Finance Minister*** means the Minister who administers the  
8 *Financial Management and Accountability Act 1997*.

9 ***financial assistance*** means:

- 10 (a) grants; or  
11 (b) any other kinds of assistance specified by the Minister by  
12 legislative instrument for the purpose of this paragraph.

13 ***non-Commonwealth money*** means money that ARENA receives  
14 from a person other than the Commonwealth.

15 ***renewable energy technologies*** includes:

- 16 (a) hybrid technologies; and  
17 (b) technologies (including enabling technologies) that are  
18 related to renewable energy technologies.

19 ***Secretary*** means the Secretary of the Department.

20 ***vacancy***, in relation to the office of an appointed member, has a  
21 meaning affected by subsection 33(4).

## 22 **5 Extension to external Territories**

23 This Act extends to every external Territory.

## 24 **6 Extra-territorial application**

25 This Act extends to acts, omissions, matters and things outside  
26 Australia.  
27

Section 7

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1

2 **Part 2—Australian Renewable Energy Agency**

3

4 **7 Establishment**

5 (1) The Australian Renewable Energy Agency (*ARENA*) is  
6 established by this section.

7 (2) ARENA:

8 (a) is a body corporate; and

9 (b) must have a seal; and

10 (c) may sue and be sued.

11 Note: The *Commonwealth Authorities and Companies Act 1997* applies to  
12 ARENA. That Act deals with matters relating to Commonwealth  
13 authorities, including reporting and accountability, banking and  
14 investment, and conduct of officers.

15 (3) ARENA's seal is to be kept in such custody as the Board directs  
16 and must not be used except as authorised by the Board.

17 (4) All courts, judges and persons acting judicially must:

18 (a) take judicial notice of the imprint of the seal of ARENA  
19 appearing on a document; and

20 (b) presume that the document was duly sealed.

21 **8 ARENA's functions**

22 ARENA has the following functions:

23 (a) to provide financial assistance for:

24 (i) research into renewable energy technologies; or

25 (ii) the development, demonstration, commercialisation or  
26 deployment of renewable energy technologies; or

27 (iii) the storage and sharing of information and knowledge  
28 about renewable energy technologies;

29 (b) to enter into agreements for the purpose of providing  
30 financial assistance as mentioned in paragraph (a) and to  
31 administer such agreements;

- 1 (c) to collect, analyse, interpret and disseminate information and  
2 knowledge relating to renewable energy technologies and  
3 projects;
- 4 (d) to provide advice to the Minister relating to renewable energy  
5 technologies, including advice about the following:
- 6 (i) improving the competitiveness of renewable energy  
7 technologies;
- 8 (ii) increasing the supply of renewable energy in Australia;
- 9 (iii) improving the development of skills in the renewable  
10 energy technology sector;
- 11 (iv) increasing the use of renewable energy technologies;
- 12 (e) to liaise with State and Territory governments and other  
13 authorities for the purpose of facilitating renewable energy  
14 projects for which financial assistance is, or is proposed to  
15 be, provided as mentioned in paragraph (a);
- 16 (f) any other functions that are prescribed by the regulations;
- 17 (g) any other functions conferred on ARENA by this Act or any  
18 other Commonwealth law;
- 19 (h) to do anything incidental to, or conducive to, the performance  
20 of the above functions.

## 21 **9 General rules about performance of functions**

22 In performing its functions, ARENA must:

- 23 (a) act in a proper, efficient and effective manner; and
- 24 (b) ensure that decisions about the provision of financial  
25 assistance are based on merit; and
- 26 (c) if appropriate:
- 27 (i) act collaboratively with other persons, organisations and  
28 governments (including international organisations and  
29 foreign governments); and
- 30 (ii) promote the sharing of information and knowledge  
31 about renewable energy technologies.

Section 10

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1 **10 Provision of financial assistance to be in accordance with general**  
2 **funding strategy**

3 ARENA must not enter into an agreement for the provision of  
4 financial assistance unless the financial assistance provided for is  
5 in accordance with the general funding strategy that is in force  
6 under Subdivision A of Division 2 of Part 3 at the time when the  
7 agreement is entered into.

8 **11 Minister may request ARENA to consider funding for specified**  
9 **projects**

10 (1) The Minister may, in writing, request ARENA to consider  
11 providing financial assistance for a particular project specified in  
12 the request.

13 (2) ARENA must consider the request.

14 **12 Ministerial approval where grants exceed \$50 million**

15 ARENA must not, without the written approval of the Minister,  
16 make grants totalling more than \$50 million for a particular  
17 project.

18 Note: Guidelines for grant programs enabling grants exceeding \$15 million  
19 for a particular project must be approved by the Minister under  
20 section 25.

21 **13 Minister may direct ARENA to provide advice**

22 (1) The Minister may, in writing, direct ARENA to provide advice to  
23 the Minister in relation to a matter mentioned in paragraph 8(d).

24 (2) ARENA must comply with the direction.

25 **14 Constitutional limits**

26 ARENA may perform its functions only:

27 (a) for purposes relating to a corporation to which paragraph  
28 51(xx) of the Constitution applies; or

29 (b) for purposes related to external affairs, including:

- 
- 1 (i) giving effect to the Climate Change Convention,  
2 including by performing functions in relation to  
3 renewable energy technologies that could reasonably be  
4 expected to control, reduce or prevent anthropogenic  
5 emissions of greenhouse gases; or  
6 (ii) giving effect to another international agreement to  
7 which Australia is a party; or  
8 (iii) addressing matters of international concern; or  
9 (iv) by way of the performance of its functions in a place  
10 outside Australia; or  
11 (c) for purposes relating to the collection of statistics; or  
12 (d) for purposes relating to trade and commerce:  
13 (i) between Australia and places outside Australia; or  
14 (ii) among the States; or  
15 (iii) within a Territory, between a State and a Territory or  
16 between 2 Territories; or  
17 (e) by way of the use of a postal, telegraphic, telephonic or other  
18 like service within the meaning of paragraph 51(v) of the  
19 Constitution; or  
20 (f) by way of the provision of service, or financial assistance, to:  
21 (i) the Commonwealth; or  
22 (ii) an authority of the Commonwealth;  
23 for a purpose of the Commonwealth; or  
24 (g) for purposes relating to the granting of financial assistance to  
25 a State; or  
26 (h) in, or for purposes relating to, a Territory; or  
27 (i) in or with respect to a Commonwealth place (within the  
28 meaning of the *Commonwealth Places (Application of Laws)*  
29 *Act 1970*); or  
30 (j) for purposes relating to the implied power of the Parliament  
31 to make laws with respect to nationhood; or  
32 (k) for purposes relating to the executive power of the  
33 Commonwealth; or  
34 (l) for purposes relating to matters incidental to the execution of  
35 any of the legislative powers of the Parliament or the  
36 executive power of the Commonwealth.
-

Section 15

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1 **15 ARENA's powers**

2 (1) In addition to any other powers conferred on it by this Act,  
3 ARENA has, subject to this Act, power to do all things necessary  
4 or convenient to be done for or in connection with the performance  
5 of its functions.

6 (2) Without limiting the generality of subsection (1), the powers  
7 include, subject to this Act, power:

8 (a) to enter into contracts; and

9 (b) to acquire, hold and dispose of real and personal property;  
10 and

11 (c) to accept, otherwise than on trust, gifts, devises, bequests or  
12 other payments of money.

13 **16 ARENA does not have privileges and immunities of the Crown**

14 ARENA does not have the privileges and immunities of the Crown  
15 in right of the Commonwealth.  
16

1

2 **Part 3—Board of ARENA**

2

3 **Division 1—Establishment and functions**

3

4 **17 Establishment**

4

5 There is to be a Board of ARENA.

5

6 **18 Functions of the Board**

6

7 (1) The functions of the Board are:

7

8 (a) the functions the Board has under Division 2 relating to  
9 general funding strategies, guidelines and work plans; and

8

10 (b) to decide the other strategies, objectives and policies to be  
11 followed by ARENA; and

10

12 (c) to ensure that ARENA complies with this Act.

11

13 (2) The Board has the power to do all things necessary or convenient  
14 to be done for or in connection with the performance of its  
15 functions.

13

14

15

16 (3) Anything done in the name of, or on behalf of, ARENA by the  
17 Board, or with the authority of the Board, is taken to have been  
18 done by ARENA.

16

17

18

19

1

2 **Division 2—General funding strategy, guidelines and work**  
3 **plans**

4 **Subdivision A—General funding strategy**

5 **19 General funding strategy**

- 6 (1) The Board must, for the 2012-2013 financial year and each later  
7 financial year, develop a general funding strategy for the provision  
8 of financial assistance under this Act.
- 9 (2) The general funding strategy for the 2012-2013 financial year must  
10 be developed as soon as practicable after the start of that year. A  
11 general funding strategy for a later financial year must be  
12 developed during the previous financial year.
- 13 (3) A general funding strategy must:  
14 (a) be in writing; and  
15 (b) be expressed to relate to the financial year for which the  
16 strategy is developed and the next 2 financial years; and  
17 (c) state ARENA's principal objectives and priorities for the  
18 provision of financial assistance under this Act during the  
19 financial year for which the strategy is developed and the  
20 next 2 financial years.
- 21 (4) A general funding strategy must not require financial assistance to  
22 be provided to a particular person, or for a particular project.

23 **20 Approval of general funding strategy**

- 24 (1) As soon as practicable after developing a general funding strategy  
25 for a financial year, the Board must give a copy of the strategy to  
26 the Minister for approval.
- 27 (2) A general funding strategy developed by the Board and approved  
28 by the Minister is a legislative instrument made by the Minister on  
29 the day on which the strategy is approved, but section 42



1 (disallowance) of the *Legislative Instruments Act 2003* does not  
2 apply to a general funding strategy.

3 **21 When a general funding strategy for a year is in force**

- 4 (1) A general funding strategy for a financial year comes into force at  
5 the later of the following times:  
6 (a) the time when the Minister approves the strategy;  
7 (b) the start of the financial year.
- 8 (2) A general funding strategy for a financial year ceases to be in force  
9 when the general funding strategy for the next financial year comes  
10 into force.

11 **22 Variation of general funding strategy**

- 12 (1) The Board must, during a financial year, regularly review the  
13 general funding strategy that is in force for the year and consider if  
14 any variations should be made to the strategy.
- 15 (2) The Board may vary a general funding strategy.
- 16 (3) A variation must be in writing.
- 17 (4) As soon as practicable after developing a variation, the Board must  
18 give a copy of the variation to the Minister for approval.
- 19 (5) A variation comes into force at the later of the following times:  
20 (a) the time when the Minister approves the variation;  
21 (b) the commencement time specified in the instrument of  
22 variation (not being a time before the instrument is made).
- 23 (6) A variation developed by the Board and approved by the Minister  
24 is a legislative instrument made by the Minister on the day on  
25 which the variation is approved, but section 42 (disallowance) of  
26 the *Legislative Instruments Act 2003* does not apply to a variation.

Section 23

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1       **23 General funding strategy to be published on ARENA’s website**

2                       The Board must ensure that the general funding strategy that is in  
3                       force from time-to-time under this Subdivision is published on  
4                       ARENA’s website.

5       **Subdivision B—Guidelines**

6       **24 Guidelines**

- 7                       (1) Subject to subsection (2), the Board may:
- 8                               (a) develop guidelines for the provision of financial assistance  
9                               under this Act; and
- 10                              (b) vary or revoke such guidelines.
- 11                       (2) The Board must develop guidelines for a grant program if, under  
12                       the program, the total of all grants for a particular project could  
13                       exceed \$15 million.
- 14                       (3) Guidelines, or a variation or revocation of guidelines, must be in  
15                       writing.
- 16                       (4) Unless section 25 applies, guidelines, or a variation or revocation  
17                       of guidelines, come into force at the commencement time specified  
18                       in the instrument making, varying or revoking the guidelines (not  
19                       being a time before the instrument is made).
- 20                       (5) None of the following are legislative instruments:
- 21                               (a) guidelines;
- 22                               (b) a variation or revocation of guidelines.

23       **25 Approval of guidelines for financial assistance in excess of \$15**  
24       **million**

- 25                       (1) The Board must give to the Minister, for his or her approval:
- 26                               (a) guidelines for a grant program referred to in subsection  
27                               24(2); and
- 28                               (b) any variation of such guidelines, unless the variation is of a  
29                               minor nature (a *minor variation*); and
- 30                               (c) any revocation of such guidelines.

1 Note: Grants totalling more than \$50 million for a particular project must be  
2 approved by the Minister under section 12.

3 (2) If the Board makes a minor variation, the Board must inform the  
4 Minister of the variation.

5 (3) Guidelines, or a variation or revocation, referred to in  
6 subsection (1) come into force at the later of the following times:

7 (a) the time when the Minister approves the guidelines, or the  
8 variation or revocation (unless the variation is a minor  
9 variation);

10 (b) the commencement time specified in the instrument making,  
11 varying or revoking the guidelines (not being a time before  
12 the instrument is made).

## 13 **26 Guidelines to be published on ARENA's website**

14 The Board must ensure that guidelines that are in force from  
15 time-to-time under this Subdivision are published on ARENA's  
16 website.

## 17 **Subdivision C—Work plans**

### 18 **27 Work plan**

19 (1) The Board must, for the 2012-2013 financial year and each later  
20 financial year, develop a work plan and give it to the Minister.

21 (2) The work plan for the 2012-2013 financial year must be developed  
22 as soon as practicable after the start of that year. A work plan for a  
23 later financial year must be developed during the previous financial  
24 year.

25 (3) A work plan for a financial year must set out details of:

26 (a) how the general funding strategy in force under Subdivision  
27 A of this Division for the year is proposed to be implemented  
28 during the year; and

29 (b) without limiting paragraph (a)—the main activities proposed  
30 to be undertaken by ARENA and the Board during the year,  
31 and how they are proposed to be undertaken.

**Part 3** Board of ARENA

**Division 2** General funding strategy, guidelines and work plans

**Section 28**

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- 1                   (4) The Board may, in writing, vary a work plan.
- 2                   (5) Before finalising a work plan, or a variation of a work plan, the  
3                   Board must:
- 4                   (a) prepare a draft of the plan or variation and give it to the  
5                   Minister; and
- 6                   (b) have regard to any comments or requests made by the  
7                   Minister in relation to the draft.
- 8                   (6) A work plan, or a variation of a work plan, comes into force at the  
9                   commencement time specified in the instrument making or varying  
10                  the work plan (not being a time before the instrument is made).
- 11                  (7) A work plan is not a legislative instrument.

12                  **28 Work plan to be taken into account**

13                               When performing functions and exercising powers in a financial  
14                               year, ARENA, the Board and the CEO must take into account the  
15                               work plan for that financial year.  
16

1

2 **Division 3—Board Members**

3 **29 Membership**

4

The Board consists of:

5

(a) up to 6 appointed members; and

6

(b) the Secretary.

7

**30 Appointment of Board members**

8

(1) Board members (other than the Secretary) are to be appointed:

9

(a) by the Minister by written instrument; and

10

(b) on a part-time basis.

11

(2) A person is not eligible for appointment as a Board member unless the Minister is satisfied that the person has experience or knowledge in at least one of the following fields:

12

13

14

(a) renewable energy technology;

15

(b) commercialisation;

16

(c) business investment;

17

(d) corporate governance.

18

**31 Chair**

19

The Minister must appoint one Board member to be the Chair.

20

**32 Term of appointment**

21

(1) An appointed member holds office for the period specified in the instrument of appointment. The period must not exceed 2 years.

22

23

Note: An appointed member is eligible for reappointment: see section 33AA of the *Acts Interpretation Act 1901*.

24

25

(2) A person must not hold office as an appointed member for a continuous period of more than 6 years.

26

Section 33

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1       **33 Acting appointments**

2               (1) The Minister may, by written instrument, appoint a Board member  
3               to act as the Chair:

- 4                     (a) during a vacancy in the office of Chair (whether or not an  
5                     appointment has previously been made to the office); or  
6                     (b) during any period, or during all periods, when the Chair:  
7                         (i) is absent from duty or from Australia; or  
8                         (ii) is, for any reason, unable to perform the duties of the  
9                         office.

10              (2) The Minister may, by written instrument, appoint a person to act as  
11              an appointed member:

- 12                     (a) during a vacancy in the office of an appointed member  
13                     (whether or not an appointment has previously been made to  
14                     the office); or  
15                     (b) during any period, or during all periods, when an appointed  
16                     member:  
17                         (i) is absent from duty or from Australia; or  
18                         (ii) is, for any reason, unable to perform the duties of the  
19                         office.

20              Note:       Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules  
21              that apply to acting appointments.

22              (3) A person is not eligible for appointment to act as an appointed  
23              member unless the person is eligible for appointment as a Board  
24              member under subsection 30(2).

25              (4) For the purposes of a reference in:

- 26                     (a) this Act to a **vacancy** in the office of appointed member; or  
27                     (b) the *Acts Interpretation Act 1901* to a **vacancy** in the  
28                     membership of a body;

29              there are taken to be 6 offices of appointed member.

30       **34 Remuneration**

31              (1) An appointed member is to be paid the remuneration that is  
32              determined by the Remuneration Tribunal. If no determination of

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

3                   (2) An appointed member is to be paid the allowances that are  
4                   prescribed by the regulations.

5                   (3) This section has effect subject to the *Remuneration Tribunal Act*  
6                   1973.

### 7                   **35 Leave of absence**

#### 8                   *Chair*

9                   (1) If the Chair is an appointed member, the Minister may grant leave  
10                  of absence to the Chair on the terms and conditions that the  
11                  Minister determines.

#### 12                  *Other appointed members*

13                  (2) The Chair may grant leave of absence to any other appointed  
14                  member on the terms and conditions that the Chair determines.

15                  (3) The Chair must notify the Minister if the Chair grants an appointed  
16                  member leave of absence for a period that exceeds 3 months.

### 17                  **36 Disclosure of interests to the Minister**

18                                 A Board member must give written notice to the Minister of all  
19                                 interests, pecuniary or otherwise, that the member has or acquires  
20                                 and that conflict or could conflict with the proper performance of  
21                                 the member's functions.

### 22                  **37 Resignation of appointed members**

23                   (1) An appointed member may resign his or her appointment by giving  
24                   the Minister a written resignation.

25                   (2) The resignation takes effect on the day it is received by the  
26                   Minister or, if a later day is specified in the resignation, on that  
27                   later day.

Section 38

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1       **38 Termination of appointment of appointed members**

- 2               (1) The Minister may terminate the appointment of an appointed  
3               member for misbehaviour or physical or mental incapacity.
- 4               (2) The Minister may terminate the appointment of an appointed  
5               member if:
- 6                     (a) the member:
- 7                             (i) becomes bankrupt; or
- 8                             (ii) applies to take the benefit of any law for the relief of  
9                             bankrupt or insolvent debtors; or
- 10                            (iii) compounds with his or her creditors; or
- 11                            (iv) makes an assignment of his or her remuneration for the  
12                            benefit of his or her creditors; or
- 13                     (b) the member is absent, except on leave of absence, from 3  
14                     consecutive meetings of the Board; or
- 15                     (c) the member fails, without reasonable excuse, to comply with  
16                     section 36; or
- 17                     (d) the member fails, without reasonable excuse, to comply with  
18                     an obligation imposed on him or her by section 27F or 27J of  
19                     the *Commonwealth Authorities and Companies Act 1997*.

20       **39 Other terms and conditions of appointed members**

21               An appointed member holds office on the terms and conditions (if  
22               any) in relation to matters not covered by this Act that are  
23               determined by the Minister.  
24



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2 **Division 4—Meetings of the Board**

3 **40 Convening meetings**

4 (1) The Board must hold the meetings that are necessary for the  
5 efficient performance of its functions.

6 (2) Meetings are to be held at the times and places that the Board  
7 determines.

8 Note: See also section 33B of the *Acts Interpretation Act 1901*, which  
9 contains extra rules about meetings by telephone etc.

10 (3) The Chair:

11 (a) may convene a meeting; and

12 (b) must convene at least 6 meetings each calendar year; and

13 (c) must convene a meeting if requested in writing by:

14 (i) 3 or more other Board members; or

15 (ii) the Minister.

16 **41 Secretary may nominate alternate to attend Board meetings**

17 (1) The Secretary may, by writing, nominate a specified person who is  
18 an SES employee or acting SES employee in the Department to  
19 attend a particular meeting, or all meetings, of the Board at which  
20 the Secretary is not present.

21 (2) A person so nominated may attend a meeting to which the  
22 nomination applies and, if the person does so, he or she is taken to  
23 be a Board member.

24 **42 Presiding at meetings**

25 (1) The Chair must preside at all meetings at which he or she is  
26 present.

27 (2) If the Chair is not present at a meeting, the other Board members  
28 present must appoint one of themselves to preside.

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1       **43 Quorum**

2               (1) At a meeting of the Board, a quorum is constituted by a majority of  
3               the current Board members.

4               (2) However, if:

5                     (a) a Board member is required by section 27J of the  
6                     *Commonwealth Authorities and Companies Act 1997* not to  
7                     be present during the deliberations, or to take part in any  
8                     decision, of the Board with respect to a particular matter; and

9                     (b) when the member leaves the meeting concerned there is no  
10                    longer a quorum present;  
11               the remaining members at the meeting constitute a quorum for the  
12               purpose of any deliberation or decision at that meeting with respect  
13               to that matter.

14       **44 Voting at meetings**

15               (1) A question arising at a meeting is to be determined by a majority of  
16               the votes of the Board members present and voting.

17               (2) The person presiding at a meeting has a deliberative vote and, in  
18               the event of an equality of votes, a casting vote.

19       **45 Conduct of meetings**

20               The Board may regulate proceedings at its meetings as it considers  
21               appropriate.

22       **46 Minutes**

23               The Board must keep minutes of its meetings.

24       **47 Decisions without meetings**

25               (1) The Board is taken to have made a decision at a meeting if:

26                     (a) without meeting, a majority of the Board members entitled to  
27                     vote on the proposed decision indicate agreement with the  
28                     decision; and

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- 1 (b) that agreement is indicated in accordance with the method  
2 determined by the Board under subsection (2); and  
3 (c) all the Board members were informed of the proposed  
4 decision, or reasonable efforts were made to inform all the  
5 members of the proposed decision.
- 6 (2) Subsection (1) applies only if the Board:  
7 (a) has determined that it may make decisions of that kind  
8 without meeting; and  
9 (b) has determined the method by which Board members are to  
10 indicate agreement with proposed decisions.
- 11 (3) For the purposes of paragraph (1)(a), a Board member is not  
12 entitled to vote on a proposed decision if the member would not  
13 have been entitled to vote on that proposal if the matter had been  
14 considered at a meeting of the Board.
- 15 (4) The Board must keep a record of decisions made in accordance  
16 with this section.  
17

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2 **Division 5—Committees**

3 **48 Committees**

- 4 (1) The Board may establish committees to advise or assist in the  
5 performance of ARENA's functions or the Board's functions.
- 6 (2) A committee may be constituted:  
7 (a) wholly by Board members; or  
8 (b) wholly by persons who are not Board members; or  
9 (c) partly by Board members and partly by other persons.
- 10 (3) The Board may determine, in relation to a committee established  
11 under this section:  
12 (a) the committee's terms of reference; and  
13 (b) the terms and conditions of appointment of the members of  
14 the committee; and  
15 (c) the procedures to be followed by the committee.

16 **49 Remuneration and allowances**

- 17 (1) This section applies if a committee is established under section 48.
- 18 (2) A committee member is to be paid the remuneration that is  
19 determined by the Remuneration Tribunal. If no determination of  
20 that remuneration by the Tribunal is in operation, the member is to  
21 be paid the remuneration that is prescribed by the regulations.
- 22 (3) A committee member is to be paid the allowances that are  
23 prescribed by the regulations.
- 24 (4) This section has effect subject to the *Remuneration Tribunal Act*  
25 *1973*.  
26

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2 **Part 4—Chief Executive Officer, staff and**  
3 **consultants**

4 **Division 1—Chief Executive Officer of ARENA**

5 **50 Establishment**

6 There is to be a Chief Executive Officer of ARENA.

7 **51 Role**

- 8 (1) The CEO is responsible for the day-to-day administration of  
9 ARENA.
- 10 (2) The CEO has power to do all things necessary or convenient to be  
11 done for or in connection with the performance of his or her duties.
- 12 (3) The CEO is to act in accordance with policies determined by the  
13 Board.
- 14 (4) The Board may give written directions to the CEO about the  
15 performance of the CEO's responsibilities.
- 16 (5) The CEO must comply with a direction under subsection (4).
- 17 (6) A direction under subsection (4) is not a legislative instrument.

18 **52 Appointment**

- 19 (1) The CEO is to be appointed by the Minister on the  
20 recommendation of the Board.
- 21 (2) The CEO is to be appointed:  
22 (a) by written instrument; and  
23 (b) on a full-time basis.
- 24 (3) The CEO holds office for the period specified in the instrument of  
25 appointment. The period must not exceed 3 years.

**Section 53**

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1 Note: A CEO is eligible for re-appointment: see section 33AA of the *Acts*  
2 *Interpretation Act 1901*.

3 (4) The Minister must not appoint a Board member as the CEO.

4 **53 Acting appointments**

5 (1) The Minister may, by written instrument, appoint a person  
6 (including an appointed member) to act as the CEO:

7 (a) during a vacancy in the office of the CEO (whether or not an  
8 appointment has previously been made to the office); or

9 (b) during any period, or during all periods, when the CEO:  
10 (i) is absent from duty or from Australia; or  
11 (ii) is, for any reason, unable to perform the duties of the  
12 office.

13 (2) If the Minister appoints an appointed member to act as the CEO,  
14 the member is to be appointed to act on a part-time basis.

15 Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules  
16 that apply to acting appointments.

17 **54 Outside employment**

18 The CEO must not engage in paid employment outside the duties  
19 of his or her office without the Minister's approval.

20 **55 Remuneration**

21 (1) The CEO is to be paid the remuneration that is determined by the  
22 Remuneration Tribunal. If no determination of that remuneration  
23 by the Tribunal is in operation, the CEO is to be paid the  
24 remuneration that is prescribed by the regulations.

25 (2) The CEO is to be paid the allowances that are prescribed by the  
26 regulations.

27 (3) This section has effect subject to the *Remuneration Tribunal Act*  
28 *1973*.

1     **56 Leave**

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

7     **57 Disclosure of interests**

8             The CEO must give written notice to the Minister of all material  
9             personal interests that the CEO has or acquires and that conflict or  
10            could conflict with the proper performance of the CEO's duties.

11    **58 Resignation**

- 12            (1) The CEO may resign his or her appointment by giving the Minister  
13            a written resignation.
- 14            (2) The resignation takes effect on the day it is received by the  
15            Minister or, if a later day is specified in the resignation, on that  
16            later day.

17    **59 Termination of appointment**

- 18            (1) The Minister may terminate the appointment of the CEO for  
19            misbehaviour or physical or mental incapacity.
- 20            (2) Before the Minister terminates the appointment of the CEO under  
21            subsection (1) the Minister must consult the Board.
- 22            (3) The Minister may terminate the appointment of the CEO if:  
23            (a) the CEO:  
24            (i) becomes bankrupt; or  
25            (ii) applies to take the benefit of any law for the relief of  
26            bankrupt or insolvent debtors; or  
27            (iii) compounds with his or her creditors; or  
28            (iv) makes an assignment of his or her remuneration for the  
29            benefit of his or her creditors; or

**Part 4** Chief Executive Officer, staff and consultants

**Division 1** Chief Executive Officer of ARENA

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- 1 (b) the CEO is absent, except on leave of absence, for 14  
2 consecutive days or for 28 days in any 12 months; or  
3 (c) the CEO fails, without reasonable excuse, to comply with  
4 section 57; or  
5 (d) the CEO engages, except with the Minister's approval, in  
6 paid employment outside the duties of his or her office (see  
7 section 54).

8 **60 Other terms and conditions**

9 The CEO holds office on the terms and conditions (if any) in  
10 relation to matters not covered by this Act that are determined by  
11 the Minister.  
12



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2 **Division 2—Staff and consultants**

3 **61 Chief Financial Officer**

4 (1) ARENA may employ a person to perform chief financial officer  
5 functions in ARENA.

6 (2) The person is to be employed on the terms and conditions that  
7 ARENA determines.

8 **62 Other staff**

9 (1) The other staff necessary to assist ARENA are to be persons  
10 engaged under the *Public Service Act 1999* who are:

11 (a) employed in the Department; and

12 (b) made available for the purpose by the Secretary.

13 (2) ARENA must not otherwise engage or employ such staff.

14 (3) The Secretary must make available persons employed in the  
15 Department to assist ARENA.

16 **63 Consultants**

17 (1) ARENA may engage consultants to provide technical and  
18 specialist advisory services to assist ARENA in the performance of  
19 its functions.

20 (2) The consultants are to be engaged on the terms and conditions that  
21 ARENA determines.

22 (3) A person must not be engaged as a consultant to perform  
23 operational or administrative duties of a kind that are performed, or  
24 are capable of being performed, by the staff referred to in  
25 section 62.  
26

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## Part 5—Finance

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### 64 Amounts available for payment to ARENA

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- (1) Subject to section 65, the Commonwealth will, for each financial year specified in the following table, make payments to ARENA up to the amount specified for that year.

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Yearly maximum payments to ARENA		
Item	Financial year	Amount for financial year
1	2012-2013	\$292,565,000.00
2	2013-2014	\$344,904,000.00
3	2014-2015	\$436,640,000.00
4	2015-2016	\$321,810,000.00
5	2016-2017	\$299,550,000.00
6	2017-2018	\$221,000,000.00
7	2018-2019	\$237,000,000.00
8	2019-2020	\$368,340,000.00

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9

*Carry over of unspent money from one year to next*

10

- (2) If the amount specified in the table in subsection (1) for a financial year exceeds the amount paid to ARENA under section 65 in respect of requests made during that year, the table has effect as if the amount specified in the table for the next financial year were increased by the excess.

11

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*Additional money from Clean Energy Initiative Special Account*

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- (3) The Finance Minister may, in the 2012-2013 financial year, determine by legislative instrument an amount (the **transferred amount**), not exceeding the balance standing to the credit of the Clean Energy Initiative Special Account when the determination is made.

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- 1 (4) If the Finance Minister makes a determination under  
 2 subsection (3):  
 3 (a) the transferred amount is debited from the Clean Energy  
 4 Initiative Special Account; and  
 5 (b) the table in subsection (1) has effect as if the amount  
 6 specified in the table for the 2012-2013 financial year were  
 7 increased (or further increased) by the transferred amount.

8 *Additional money from ASI Limited*

- 9 (5) If, because of Schedule 2 to the *Australian Renewable Energy*  
 10 *Agency (Consequential Amendments and Transitional Provisions)*  
 11 *Act 2011*, an amount of money of ASI Limited becomes money of  
 12 the Commonwealth at the second transition time, the table in  
 13 subsection (1) of this section has effect as if the amount specified  
 14 in the table for the 2012-2013 financial year were increased (or  
 15 further increased) by that amount of money.
- 16 (6) In subsection (5), expressions have the same meanings as they  
 17 have in Schedule 2 to the *Australian Renewable Energy Agency*  
 18 *(Consequential Amendments and Transitional Provisions) Act*  
 19 *2011*.

20 **65 Payment of up to balance of specified amounts on request by**  
 21 **ARENA**

- 22 (1) Subject to this section, ARENA may, during a financial year  
 23 specified in the table in section 64, request payments from the  
 24 Commonwealth to meet liabilities of ARENA:  
 25 (a) that are already due for payment; or  
 26 (b) that will, or are expected to, become due for payment during  
 27 the year.
- 28 (2) A request must:  
 29 (a) be made to meet liabilities of ARENA:  
 30 (i) that are already due for payment; or  
 31 (ii) that will, or are expected to, become due for payment  
 32 during a period specified in the request; and  
 33 (b) specify the amount of the payment requested.

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- 1 (3) The following matters are to be as agreed between ARENA and the  
2 Minister:  
3 (a) how requests are to be made, including:  
4 (i) the form in which a request is to be made; and  
5 (ii) the person to whom a request is to be given;  
6 (b) the frequency with which ARENA may make requests;  
7 (c) the period that may be specified in a request as mentioned in  
8 subparagraph (2)(a)(ii).
- 9 (4) ARENA cannot make requests during a financial year that exceed  
10 in total the amount specified for the year in the table in section 64.
- 11 Note: The amounts specified in the table may be affected by subsections  
12 64(2) to (6).
- 13 (5) If ARENA makes a request for payment in accordance with this  
14 section (and in accordance with an agreement referred to in  
15 subsection (3)), the Commonwealth must, as soon as practicable,  
16 pay ARENA the amount requested.

17 **66 Appropriation**

18 Amounts payable to ARENA under section 65 are to be paid out of  
19 the Consolidated Revenue Fund, which is appropriated  
20 accordingly.

21 **67 Application of ARENA's money**

- 22 (1) *ARENA's money* consists of:  
23 (a) money paid to ARENA under section 65; and  
24 (b) any other money received by ARENA.
- 25 (2) ARENA's money is to be applied only:  
26 (a) in providing financial assistance in accordance with this Act;  
27 and  
28 (b) in payment of remuneration and allowances payable under  
29 this Act; and  
30 (c) in payment or discharge of any other expenses, charges,  
31 obligations and liabilities incurred or undertaken by ARENA

1                                   in the performance of its functions and the exercise of its  
2                                   powers.

3                   (3) ARENA's money must not be applied in payment of the salaries  
4                   and allowances of, or other costs associated with, the staff referred  
5                   to in section 62.

6                   (4) Subsection (2) does not prevent investment of surplus money of  
7                   ARENA under section 18 of the *Commonwealth Authorities and*  
8                   *Companies Act 1997*.

9                   **68 ARENA's money not public money**

10                                   ARENA's money is not public money for the purposes of the  
11                                   *Financial Management and Accountability Act 1997*, even if the  
12                                   money is in the custody or under the control of the CEO, the Chief  
13                                   Financial Officer or a member of the staff referred to in section 62.

14                   **69 Taxation**

15                                   ARENA is not subject to taxation under a law of the  
16                                   Commonwealth or of a State or Territory.  
17

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2 **Part 6—Miscellaneous**

3

4 **70 Extra matters to be included in annual report**

5 Each annual report on ARENA under section 9 of the  
6 *Commonwealth Authorities and Companies Act 1997* must include  
7 the following:

- 8 (a) particulars of each request given to ARENA by the Minister  
9 under section 11, during the financial year covered by the  
10 report;
- 11 (b) particulars of each direction given to ARENA by the Minister  
12 under section 13, during the year;
- 13 (c) for each person to whom financial assistance has been  
14 provided, or committed, under an agreement during the year,  
15 particulars of:
- 16 (i) the name of the person; and  
17 (ii) the nature and amount of the financial assistance  
18 provided or committed; and  
19 (iii) the renewable energy technology or technologies to  
20 which the assistance relates (if the assistance relates to  
21 one or more particular renewable energy technologies);
- 22 (d) an assessment of the extent to which agreements for the  
23 provision of financial assistance entered into during the year  
24 have progressed, or are expected to progress, the principal  
25 objectives and priorities as stated in the general funding  
26 strategy in force under Subdivision A of Division 2 of Part 3  
27 for the year.

28 **71 Delegation by ARENA**

- 29 (1) ARENA may, in writing under its seal, delegate all or any of its  
30 powers or functions under this Act to:
- 31 (a) a Board member; or  
32 (b) the CEO.

- 1 (2) In exercising any powers or performing any functions under the  
2 delegation, the delegate must comply with any directions of  
3 ARENA.

#### 4 **72 Delegation by Board**

- 5 (1) The Board may, in writing, delegate to a Board member or the  
6 CEO any of its powers or functions under this Act, other than  
7 Subdivision A of Division 2 of Part 3 (general funding strategy).
- 8 (2) In exercising any powers or performing any functions under the  
9 delegation, the delegate must comply with any directions of the  
10 Board.
- 11 (3) A delegation under this section:
- 12 (a) may be revoked by the Board (whether or not constituted by  
13 the Board members who constituted the Board when the  
14 power was delegated); and
- 15 (b) continues in force even if the membership of the Board  
16 changes.

#### 17 **73 Subdelegation by CEO**

- 18 (1) If ARENA or the Board delegates a power or function under  
19 subsection 71(1) or 72(1) to the CEO, the CEO may, in writing,  
20 subdelegate the power or function to:
- 21 (a) the Chief Financial Officer; or
- 22 (b) a member of staff referred to in section 62 who:
- 23 (i) is an SES employee or acting SES employee in the  
24 Department; or
- 25 (ii) holds, or is acting in, an Executive Level 2, or  
26 equivalent, position in the Department.
- 27 (2) In exercising any powers or performing any functions under the  
28 subdelegation, the subdelegate must comply with any directions of  
29 the CEO.
- 30 (3) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901*  
31 apply in relation to the subdelegation in a corresponding way to the  
32 way in which they apply in relation to a delegation.

Section 74

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1 **74 Regulations**

2 The Governor-General may make regulations prescribing matters:

3 (a) required or permitted by this Act to be prescribed; or

4 (b) necessary or convenient to be prescribed for carrying out or  
5 giving effect to this Act.