



Australian Renewable Energy Agency Act 2011

Act No. 151, 2011

Compilation No. 3

| | |
|-----------------------------------|-------------------|
| Compilation date: | 5 March 2016 |
| Includes amendments up to: | Act No. 126, 2015 |
| Registered: | 18 April 2016 |

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Australian Renewable Energy Agency Act 2011* that shows the text of the law as amended and in force on 5 March 2016 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

| | |
|---|----|
| Part 1—Preliminary | 1 |
| 1 Short title | 1 |
| 2 Commencement | 1 |
| 3 Object | 1 |
| 4 Definitions | 1 |
| 5 Extension to external Territories | 3 |
| 6 Extra-territorial application | 3 |
| Part 2—Australian Renewable Energy Agency | 4 |
| 7 Establishment | 4 |
| 8 ARENA’s functions | 4 |
| 9 General rules about performance of functions | 5 |
| 10 Provision of financial assistance to be in accordance with general funding strategy | 6 |
| 11 Minister may request ARENA to consider funding for specified projects | 6 |
| 12 Ministerial approval where grants exceed \$50 million | 6 |
| 13 Minister may direct ARENA to provide advice | 6 |
| 14 Constitutional limits | 6 |
| 15 ARENA’s powers | 8 |
| 16 ARENA does not have privileges and immunities of the Crown | 8 |
| Part 3—Board of ARENA | 9 |
| Division 1—Establishment and functions | 9 |
| 17 Establishment | 9 |
| 18 Functions of the Board | 9 |
| Division 2—General funding strategy, guidelines and work plans | 10 |
| Subdivision A—General funding strategy | 10 |
| 19 General funding strategy | 10 |
| 20 Approval of general funding strategy | 10 |
| 21 When a general funding strategy for a year is in force | 11 |
| 22 Variation of general funding strategy | 11 |
| 23 General funding strategy to be published on ARENA’s website | 12 |
| Subdivision B—Guidelines | 12 |
| 24 Guidelines | 12 |

| | | |
|--|---|----|
| 25 | Approval of guidelines for financial assistance in excess of \$15 million | 12 |
| 26 | Guidelines to be published on ARENA's website | 13 |
| Subdivision C—Work plans | | 13 |
| 27 | Work plan | 13 |
| 28 | Work plan to be taken into account | 14 |
| Division 3—Board Members | | 15 |
| 29 | Membership | 15 |
| 30 | Appointment of Board members | 15 |
| 31 | Chair | 15 |
| 32 | Term of appointment | 15 |
| 33 | Acting appointments | 16 |
| 34 | Remuneration | 17 |
| 35 | Leave of absence | 17 |
| 36 | Disclosure of interests to the Minister | 17 |
| 37 | Resignation of appointed members | 17 |
| 38 | Termination of appointment of appointed members | 18 |
| 39 | Other terms and conditions of appointed members | 18 |
| Division 4—Meetings of the Board | | 19 |
| 40 | Convening meetings | 19 |
| 41 | Secretary may nominate alternate to attend Board meetings | 19 |
| 42 | Presiding at meetings | 19 |
| 43 | Quorum | 20 |
| 44 | Voting at meetings | 20 |
| 45 | Conduct of meetings | 20 |
| 46 | Minutes | 20 |
| 47 | Decisions without meetings | 20 |
| Division 5—Committees | | 22 |
| 48 | Committees | 22 |
| 49 | Remuneration and allowances | 22 |
| Part 4—Chief Executive Officer, staff and consultants | | 23 |
| Division 1—Chief Executive Officer of ARENA | | 23 |
| 50 | Establishment | 23 |
| 51 | Role | 23 |
| 52 | Appointment | 23 |
| 53 | Acting appointments | 24 |
| 54 | Outside employment | 24 |

| | | |
|---|--|-----------|
| 55 | Remuneration | 24 |
| 56 | Leave | 25 |
| 57 | Disclosure of interests | 25 |
| 58 | Resignation | 25 |
| 59 | Termination of appointment | 25 |
| 60 | Other terms and conditions | 26 |
| Division 2—Staff and consultants | | 27 |
| 61 | Chief Financial Officer | 27 |
| 62 | Other staff | 27 |
| 63 | Consultants | 27 |
| Part 5—Finance | | 28 |
| 64 | Amounts available for payment to ARENA | 28 |
| 65 | Payment of up to balance of specified amounts on request by ARENA | 29 |
| 66 | Appropriation | 30 |
| 67 | Application of ARENA’s money | 30 |
| 68 | ARENA’s money not public money | 30 |
| 69 | Taxation | 31 |
| Part 6—Miscellaneous | | 32 |
| 70 | Extra matters to be included in annual report | 32 |
| 71 | Delegation by ARENA | 32 |
| 72 | Delegation by Board | 33 |
| 73 | Subdelegation by CEO | 33 |
| 73A | Disclosure of information to Clean Energy Finance Corporation | 34 |
| 74 | Regulations | 34 |
| Endnotes | | 35 |
| Endnote 1—About the endnotes | | 35 |
| Endnote 2—Abbreviation key | | 37 |
| Endnote 3—Legislation history | | 38 |
| Endnote 4—Amendment history | | 39 |

An Act to establish the Australian Renewable Energy Agency, and for related purposes

Part 1—Preliminary

1 Short title

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

2 Commencement

This Act commences on 1 July 2012.

3 Object

The main object of this Act is to:

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

4 Definitions

In this Act:

agreement includes a contract or deed.

appointed member means a Board member appointed under section 30.

ARENA: see *Australian Renewable Energy Agency*.

ARENA's money: see section 67.

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

Section 4

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

Board means the Board of ARENA.

Board member means a member of the Board.

CEO means the Chief Executive Officer of ARENA.

Chair means the Chair of the Board.

Chief Financial Officer means the person employed under section 61.

Climate Change Convention means the 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.

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

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

financial assistance means:

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

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

renewable energy technologies includes:

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

Secretary means the Secretary of the Department.

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

5 Extension to external Territories

This Act extends to every external Territory.

6 Extra-territorial application

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

Part 2—Australian Renewable Energy Agency

7 Establishment

- (1) The Australian Renewable Energy Agency (*ARENA*) is established by this section.
- (2) ARENA:
 - (a) is a body corporate; and
 - (b) must have a seal; and
 - (c) may sue and be sued.

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

- (3) ARENA's seal is to be kept in such custody as the Board directs and must not be used except as authorised by the Board.
- (4) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the seal of ARENA appearing on a document; and
 - (b) presume that the document was duly sealed.

8 ARENA's functions

ARENA has the following functions:

- (a) to provide financial assistance for:
 - (i) research into renewable energy technologies; or
 - (ii) the development, demonstration, commercialisation or deployment of renewable energy technologies; or
 - (iii) the storage and sharing of information and knowledge about renewable energy technologies;
- (b) to enter into agreements for the purpose of providing financial assistance as mentioned in paragraph (a) and to administer such agreements;

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

9 General rules about performance of functions

In performing its functions, ARENA must:

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

Section 10

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

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 under Subdivision A of Division 2 of Part 3 at the time when the agreement is entered into.

11 Minister may request ARENA to consider funding for specified projects

- (1) The Minister may, in writing, request ARENA to consider providing financial assistance for a particular project specified in the request.
- (2) ARENA must consider the request.

12 Ministerial approval where grants exceed \$50 million

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

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

13 Minister may direct ARENA to provide advice

- (1) The Minister may, in writing, direct ARENA to provide advice to the Minister in relation to a matter mentioned in paragraph 8(d).
- (2) ARENA must comply with the direction.

14 Constitutional limits

ARENA may perform its functions only:

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

- (b) for purposes related to external affairs, including:
 - (i) giving effect to the Climate Change Convention, including by performing functions in relation to renewable energy technologies that could reasonably be expected to control, reduce or prevent anthropogenic emissions of greenhouse gases; or
 - (ii) giving effect to another international agreement to which Australia is a party; or
 - (iii) addressing matters of international concern; or
 - (iv) by way of the performance of its functions in a place outside Australia; or
- (c) for purposes relating to the collection of statistics; or
- (d) for purposes relating to trade and commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
- (e) by way of the use of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
- (f) by way of the provision of service, or financial assistance, to:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; orfor a purpose of the Commonwealth; or
- (g) for purposes relating to the granting of financial assistance to a State; or
- (h) in, or for purposes relating to, a Territory; or
- (i) in or with respect to a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
- (j) for purposes relating to the implied power of the Parliament to make laws with respect to nationhood; or
- (k) for purposes relating to the executive power of the Commonwealth; or

Section 15

- (l) for purposes relating to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

15 ARENA's powers

- (1) In addition to any other powers conferred on it by this Act, ARENA has, subject to this Act, power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting the generality of subsection (1), the powers include, subject to this Act, power:
 - (a) to enter into contracts; and
 - (b) to acquire, hold and dispose of real and personal property; and
 - (c) to accept, otherwise than on trust, gifts, devises, bequests or other payments of money.

16 ARENA does not have privileges and immunities of the Crown

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

Part 3—Board of ARENA

Division 1—Establishment and functions

17 Establishment

There is to be a Board of ARENA.

18 Functions of the Board

- (1) The functions of the Board are:
 - (a) the functions the Board has under Division 2 relating to general funding strategies, guidelines and work plans; and
 - (b) to decide the other strategies, objectives and policies to be followed by ARENA; and
 - (c) to ensure that ARENA complies with this Act.
- (2) The Board has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (3) 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

19 General funding strategy

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

20 Approval of general funding strategy

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

(disallowance) of the *Legislation Act 2003* does not apply to a general funding strategy.

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

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

22 Variation of general funding strategy

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

Section 23

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

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

Subdivision B—Guidelines

24 Guidelines

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

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

- (1) The Board must give to the Minister, for his or her approval:
 - (a) guidelines for a grant program referred to in subsection 24(2); and

- (b) any variation of such guidelines, unless the variation is of a minor nature (a *minor variation*); and
- (c) any revocation of such guidelines.

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

- (2) If the Board makes a minor variation, the Board must inform the Minister of the variation.
- (3) Guidelines, or a variation or revocation, referred to in subsection (1) come into force at the later of the following times:
 - (a) the time when the Minister approves the guidelines, or the variation or revocation (unless the variation is a minor variation);
 - (b) the commencement time specified in the instrument making, varying or revoking the guidelines (not being a time before the instrument is made).

26 Guidelines to be published on ARENA's website

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

Subdivision C—Work plans

27 Work plan

- (1) The Board must, for the 2012-2013 financial year and each later financial year, develop a work plan and give it to the Minister.
- (2) The work plan for the 2012-2013 financial year must be developed as soon as practicable after the start of that year. A work plan for a later financial year must be developed during the previous financial year.
- (3) A work plan for a financial year must set out details of:

Section 28

- (a) how the general funding strategy in force under Subdivision A of this Division for the year is proposed to be implemented during the year; and
 - (b) without limiting paragraph (a)—the main activities proposed to be undertaken by ARENA and the Board during the year, and how they are proposed to be undertaken.
- (4) The Board may, in writing, vary a work plan.
- (5) Before finalising a work plan, or a variation of a work plan, the Board must:
- (a) prepare a draft of the plan or variation and give it to the Minister; and
 - (b) have regard to any comments or requests made by the Minister in relation to the draft.
- (6) A work plan, or a variation of a work plan, comes into force at the commencement time specified in the instrument making or varying the work plan (not being a time before the instrument is made).
- (7) A work plan is not a legislative instrument.

28 Work plan to be taken into account

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

Division 3—Board Members

29 Membership

The Board consists of:

- (a) up to 6 appointed members; and
- (b) the Secretary.

30 Appointment of Board members

- (1) Board members (other than the Secretary) are to be appointed:
 - (a) by the Minister by written instrument; and
 - (b) on a part-time basis.
- (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:
 - (a) renewable energy technology;
 - (b) commercialisation;
 - (c) business investment;
 - (d) corporate governance.

31 Chair

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

32 Term of appointment

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

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

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

Section 33

33 Acting appointments

- (1) The Minister may, by written instrument, appoint a Board member to act as the Chair:
- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) The Minister may, by written instrument, appoint a person to act as an appointed member:
- (a) during a vacancy in the office of an appointed member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when an appointed member:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules that apply to acting appointments.
- (3) A person is not eligible for appointment to act as an appointed member unless the person is eligible for appointment as a Board member under subsection 30(2).
- (4) For the purposes of a reference in:
- (a) this Act to a **vacancy** in the office of appointed member; or
 - (b) the *Acts Interpretation Act 1901* to a **vacancy** in the membership of a body;
- there are taken to be 6 offices of appointed member.

34 Remuneration

- (1) An appointed member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.
- (2) An appointed member is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

35 Leave of absence

Chair

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

Other appointed members

- (2) The Chair may grant leave of absence to any other appointed member on the terms and conditions that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants an appointed member leave of absence for a period that exceeds 3 months.

36 Disclosure of interests to the Minister

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

37 Resignation of appointed members

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

Section 38

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

38 Termination of appointment of appointed members

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

39 Other terms and conditions of appointed members

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

Division 4—Meetings of the Board

40 Convening meetings

- (1) The Board must hold the meetings that are necessary for the efficient performance of its functions.
- (2) Meetings are to be held at the times and places that the Board determines.

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

- (3) The Chair:
 - (a) may convene a meeting; and
 - (b) must convene at least 6 meetings each calendar year; and
 - (c) must convene a meeting if requested in writing by:
 - (i) 3 or more other Board members; or
 - (ii) the Minister.

41 Secretary may nominate alternate to attend Board meetings

- (1) The Secretary may, by writing, nominate a specified person who is an SES employee or acting SES employee in the Department to attend a particular meeting, or all meetings, of the Board at which the Secretary is not present.
- (2) A person so nominated may attend a meeting to which the nomination applies and, if the person does so, he or she is taken to be a Board member.

42 Presiding at meetings

- (1) The Chair must preside at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting, the other Board members present must appoint one of themselves to preside.

Section 43

43 Quorum

- (1) At a meeting of the Board, a quorum is constituted by a majority of the current Board members.
- (2) However, if:
 - (a) a Board member is required by section 27J of the *Commonwealth Authorities and Companies Act 1997* not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and
 - (b) when the member leaves the meeting concerned there is no longer a quorum present;the remaining members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

44 Voting at meetings

- (1) A question arising at a meeting is to be determined by a majority of the votes of the Board members present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

45 Conduct of meetings

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

46 Minutes

The Board must keep minutes of its meetings.

47 Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the Board members entitled to vote on the proposed decision indicate agreement with the decision; and

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

Division 5—Committees

48 Committees

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

49 Remuneration and allowances

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

Part 4—Chief Executive Officer, staff and consultants

Division 1—Chief Executive Officer of ARENA

50 Establishment

There is to be a Chief Executive Officer of ARENA.

51 Role

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

52 Appointment

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

Section 53

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

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

53 Acting appointments

- (1) The Minister may, by written instrument, appoint a person (including an appointed member) to act as the CEO:
- (a) during a vacancy in the office of the CEO (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

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

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

54 Outside employment

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

55 Remuneration

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.
- (2) The CEO is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

56 Leave

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

57 Disclosure of interests

The CEO must 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.

58 Resignation

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

59 Termination of appointment

- (1) The Minister may terminate the appointment of the CEO for misbehaviour or physical or mental incapacity.
- (2) Before the Minister terminates the appointment of the CEO under subsection (1) the Minister must consult the Board.
- (3) The Minister may terminate the appointment of the CEO if:
 - (a) the CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or

Section 60

- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (c) the CEO fails, without reasonable excuse, to comply with section 57; or
- (d) the CEO engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see section 54).

60 Other terms and conditions

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

Division 2—Staff and consultants

61 Chief Financial Officer

- (1) ARENA may employ a person to perform chief financial officer functions in ARENA.
- (2) The person is to be employed on the terms and conditions that ARENA determines.

62 Other staff

- (1) The other staff necessary to assist ARENA are to be persons engaged under the *Public Service Act 1999* who are:
 - (a) employed in the Department; and
 - (b) made available for the purpose by the Secretary.
- (2) ARENA must not otherwise engage or employ such staff.
- (3) The Secretary must make available persons employed in the Department to assist ARENA.

63 Consultants

- (1) ARENA may engage consultants to provide technical and specialist advisory services to assist ARENA in the performance of its functions.
- (2) The consultants are to be engaged on the terms and conditions that ARENA determines.
- (3) A person must not be engaged as a consultant to perform operational or administrative duties of a kind that are performed, or are capable of being performed, by the staff referred to in section 62.

Part 5—Finance

64 Amounts available for payment to ARENA

- (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.

| Yearly maximum payments to ARENA | | |
|----------------------------------|----------------|---------------------------|
| Item | Financial year | Amount for financial year |
| 1 | 2013-2014 | \$581,276,000.00 |
| 2 | 2014-2015 | \$194,340,000.00 |
| 3 | 2015-2016 | \$89,991,000.00 |
| 4 | 2016-2017 | \$56,950,000.00 |
| 5 | 2017-2018 | \$499,893,000.00 |
| 6 | 2018-2019 | \$237,000,000.00 |
| 7 | 2019-2020 | \$468,340,000.00 |
| 8 | 2020-2021 | \$135,000,000.00 |
| 9 | 2021-2022 | \$135,000,000.00 |

Carry over of unspent money from one year to next

- (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.

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

- (1) Subject to this section, ARENA may, during a financial year specified in the table in section 64, request payments from the Commonwealth to meet liabilities of ARENA:
 - (a) that are already due for payment; or
 - (b) that will, or are expected to, become due for payment during the year.
- (2) A request must:
 - (a) be made to meet liabilities of ARENA:
 - (i) that are already due for payment; or
 - (ii) that will, or are expected to, become due for payment during a period specified in the request; and
 - (b) specify the amount of the payment requested.
- (3) The following matters are to be as agreed between ARENA and the Minister:
 - (a) how requests are to be made, including:
 - (i) the form in which a request is to be made; and
 - (ii) the person to whom a request is to be given;
 - (b) the frequency with which ARENA may make requests;
 - (c) the period that may be specified in a request as mentioned in subparagraph (2)(a)(ii).
- (4) ARENA cannot make requests during a financial year that exceed in total the amount specified for the year in the table in section 64.

Note: The amounts specified in the table may be affected by subsection 64(2).
- (5) If ARENA makes a request for payment in accordance with this section (and in accordance with an agreement referred to in subsection (3)), the Commonwealth must, as soon as practicable, pay ARENA the amount requested.

Section 66

66 Appropriation

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

67 Application of ARENA's money

- (1) *ARENA's money* consists of:
 - (a) money paid to ARENA under section 65; and
 - (b) any other money received by ARENA.
- (2) ARENA's money is to be applied only:
 - (a) in providing financial assistance in accordance with this Act; and
 - (b) in payment of remuneration and allowances payable under this Act; and
 - (c) in payment or discharge of any other expenses, charges, obligations and liabilities incurred or undertaken by ARENA in the performance of its functions and the exercise of its powers.
- (3) ARENA's money must not be applied in payment of the salaries and allowances of, or other costs associated with, the staff referred to in section 62.
- (4) Subsection (2) does not prevent investment of surplus money of ARENA under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

68 ARENA's money not public money

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

69 Taxation

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

Part 6—Miscellaneous

70 Extra matters to be included in annual report

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

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

71 Delegation by ARENA

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

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

72 Delegation by Board

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

73 Subdelegation by CEO

- (1) If ARENA or the Board delegates a power or function under subsection 71(1) or 72(1) to the CEO, the CEO may, in writing, subdelegate the power or function to:
- (a) the Chief Financial Officer; or
 - (b) a member of staff referred to in section 62 who:
 - (i) is an SES employee or acting SES employee in the Department; or
 - (ii) holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.
- (2) In exercising any powers or performing any functions under the subdelegation, the subdelegate must comply with any directions of the CEO.

Section 73A

- (3) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to the subdelegation in a corresponding way to the way in which they apply in relation to a delegation.

73A Disclosure of information to Clean Energy Finance Corporation

ARENA may disclose information to the Clean Energy Finance Corporation if the disclosure will enable or assist the Clean Energy Finance Corporation to perform or exercise any of its functions or powers.

74 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnotes

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

| | |
|--|--|
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) /sub-subparagraph(s) |
| C[x] = Compilation No. x | pres = present |
| Ch = Chapter(s) | prev = previous |
| def = definition(s) | (prev...) = previously |
| Dict = Dictionary | Pt = Part(s) |
| disallowed = disallowed by Parliament | r = regulation(s)/rule(s) |
| Div = Division(s) | reloc = relocated |
| ed = editorial change | renum = renumbered |
| exp = expires/expired or ceases/ceased to have effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = <i>Legislation Act 2003</i> | Sch = Schedule(s) |
| LIA = <i>Legislative Instruments Act 2003</i> | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given effect | SLI = Select Legislative Instrument |
| (md not incorp) = misdescribed amendment cannot be given effect | SR = Statutory Rules |
| mod = modified/modification | Sub-Ch = Sub-Chapter(s) |
| No. = Number(s) | SubPt = Subpart(s) |
| | <u>underlining</u> = whole or part not commenced or to be commenced |

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|------------------------|---------------|---|--|
| Australian Renewable Energy Agency Act 2011 | 151, 2011 | 4 Dec 2011 | 1 July 2012 (s 2) | |
| Clean Energy Legislation Amendment Act 2012 | 84, 2012 | 28 June 2012 | Sch 5 (item 1): 3 Aug 2012 (s. 2(1) item 5) | — |
| Clean Energy Legislation (Carbon Tax Repeal) Act 2014 | 83, 2014 | 17 July 2014 | Sch 5: 17 July 2014 (s 2(1) item 9) | Sch 5 (item 4) |
| Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015 | 126, 2015 | 10 Sept 2015 | Sch 1 (item 57): 5 Mar 2016 (s 2(1) item 2) | — |

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---------------------|
| Part 3 | |
| Division 2 | |
| Subdivision A | |
| s 20 | am No 126, 2015 |
| s 22 | am No 126, 2015 |
| Part 5 | |
| s 64 | am No 83, 2014 |
| s 65 | am No 83, 2014 |
| Part 6 | |
| s 73A | ad No 84, 2012 |