

2019-2020-2021

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Australian Local Power Agency Bill 2021

EXPLANATORY MEMORANDUM

and

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Circulated by authority of Dr Helen Haines MP Member for Indi

Australian Local Power Agency Bill 2021

OUTLINE

This Bill establishes a new corporate Commonwealth entity, the Australian Local Power Agency (ALPA), which is responsible for driving investment into community energy projects, and for ensuring that regional communities share in the benefits of renewable energy.

ALPA has three primary functions: to provide financial assistance for the development of community energy projects; to provide technical support to organisations developing community energy projects; and to invest in community energy projects.

In addition, ALPA has supplementary functions including the collection and dissemination of research and information regarding community energy projects, and providing advice to the Minister.

The Bill sets out a definition of community energy projects, which are renewable energy projects (including energy storage and energy efficiency) mainly carried out by the local community, whose main purpose is to benefit the community, and in which the community has a significant role in decision-making.

The Bill establishes ALPA as a sister-body to ARENA and the CEFC. The Bill establishes the ALPA Board and the offices of the ALPA CEO and CFO. The Bill ensures that the Board has requisite knowledge of community energy, renewable energy, regional development, Indigenous community development and natural resource management to properly execute its functions.

Operationally, ALPA's financial and technical support functions will be guided by a general strategy. The Board is responsible for developing the general strategy and the Minister for approving it. ALPA's investment function will be guided by an Investment Mandate. The Minister will be responsible for developing the Investment Mandate, and the Board must be consulted in its development. These arrangements mirror the operational design of ARENA's general financial strategy, and the CEFC's Investment Mandate.

In addition, this Bill establishes a new requirement for large renewable energy projects to offer the rights to at least 20% of the profits of a project to local individuals living within 30 kilometres of that project. From 1 July 2023, renewable energy projects above 10MW will be required to receive approval from the Minister. That approval may only be granted if the Minister is satisfied, on the advice of ALPA, that locals have been offered a reasonable opportunity to invest the project. If the relevant individuals opt not to invest in a project, once it receives approval from the Minister (on advice of ALPA) it may proceed as usual and seek other investors.

RATIONALE

ARENA and the CEFC were established around a decade ago in order to develop and commercialise renewable energy technologies. Under successive Governments, they have proven remarkably successful and Australia now enjoys a high rate of deployment of renewable energy technologies. Under current policy settings, the Government's official projections indicate this trend of significant investment in renewables in regional Australia will continue.

However the benefits of this investment are not always apparent in regional communities. As we position the nation for the next decade in the renewable energy transition, we must do more to capture the benefits of renewables, ensuring they become a genuine driver of enduring prosperity.

ALPA empowers regional Australia to capture the benefits of this boom, through more local jobs, new income streams, more local decision-making and a genuine stake in this booming industry.

FINANCIAL IMPACT

This bill complies with the financial initiative rules for private members bills.

ALPA would only be able to begin operating if an appropriation from the Consolidated Revenue Fund is made under an Act for payment for the purposes of the Australian Local Power Agency.

The Parliamentary Budget Office published an official costing for the Australian Local Power Agency for the 2019-20 Budget.

The total departmental expenses for the forward estimates from the 2019-20 Budget would decrease the underlying cash balance by \$10.3 million. The total administered expenses would decrease the underlying cash balance by \$220.8 million over the forward estimates.

The official costing is available [here](#).

NOTES ON CLAUSES

Part 1 – Preliminary

Clause 1: Short Title

This clause specifies that the Act may be cited as the *Australian Local Power Agency Bill 2021*.

Clause 2: Commencement

This clause provides for the commencement of the Act on the day it receives Royal Assent.

Clause 3: Objects of this Act

This clause sets out the objects of the Bill, which are to support the development of community energy projects in Australia, to increase the competitiveness of renewable energy supplied by community energy projects and to ensure that regional communities share in the benefits of renewable energy.

The objects specify that the aim of the Bill is to support community energy as defined in the Act, and also to promote broader sharing of the benefits of the renewable energy industry in regional Australia.

Clause 4: Definitions

This clause defines key terms used in the Bill.

Clause 5: Meaning of a community energy project

This clause defines a community energy project for the purpose of the Bill. It stipulates that a project is a community energy project if it satisfies four criteria:

- The main activity of the project is generating renewable energy, storing energy or increasing energy efficiency;
- The project is carried out mainly by the community or by community organisations;
- The main purpose of the project is to benefit the community or community organisations;
- The community has a significant role in decision-making on the project.

The clause stipulates that the ALPA Board must make guidelines setting out the circumstances, conditions or other matters to which it will have regard in satisfying itself that a project is a community energy project, according to the four criteria outlined above.

The meaning of “benefit” is intended to refer to both economic benefits in terms of local employment, skills, income sources, investment opportunities, and social benefits in terms of community development, social cohesion, energy security, and local empowerment.

The meaning of “community” is intended to refer to a group of people living in the same place or region and sharing a common characteristic or sense of identity.

Clause 6: Financial Assistance

This clause specifies that the Minister may, by legislative instrument, designate any type of assistance as financial assistance for the purposes of the Act.

Part 2 – Australian Local Power Agency

Division 1 – Establishment, functions, powers, etc

Clause 7: Establishment

This clause would establish ALPA as a body corporate. It must have a corporate seal, and may sue and be sued. ALPA would be a ‘Commonwealth authority’ for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

Clause 8: ALPA’s functions

This clause sets out the functions of ALPA. ALPA has three primary functions:

- Its financial assistance function, which is to provide financial assistance for research into community energy projects; the development, commercialisation or deployment of community energy projects; or the storage and sharing of information or knowledge about community energy projects (as detailed in Division 2, Clause 15)
- Its investment function, which is to invest, directly and indirectly, in community energy projects (as detailed in Division 3, Clause 20)
- Its technical expertise function, which is to provide technical expertise (including to governments, community organisations and the public) for the purposes of developing community energy projects. Such technical expertise refers to, inter alia, engineering, financial, legal, policy, stakeholder engagement and other types of expertise relevant to community energy projects.

In addition to its primary functions, ALPA has a number of additional functions, including:

- to enter into agreements for the purpose of performing its financial assistance function and to administer such agreements;
- to collect, analyse, interpret and disseminate information and knowledge relating to community energy projects;
- to provide advice to the Minister relating to community energy projects;
- to liaise with relevant persons and bodies, including the Australian Renewable Energy Agency, the Clean Energy Finance Corporation, the Clean Energy Regulator, other Commonwealth agencies and State and Territory governments;

- any other functions that are prescribed by the regulations;
- any other functions conferred on ALPA by this Act or any other Commonwealth law;
- to do anything incidental to, or conducive to, the performance of the above functions.

Clause 9: General rules about performance of functions

This clause provides that, in performing its functions, ALPA must act in a proper, efficient and effective manner and if appropriate to act collaboratively with other agencies and to promote the sharing of information and knowledge about community energy projects.

Clause 10: Minister may direct ALPA to provide advice

This clause specifies that the Minister would be able to direct ALPA to provide, in writing, advice in relation to community energy projects, including the things specifically mentioned in clause 8(g), those being:

- increasing the number of community energy projects in Australia;
- increasing the competitiveness of renewable energy supplied by community energy projects in Australia;
- ensuring that regional communities share in the benefits of renewable energy.

Clause 11: Constitutional limits

This clause ensures that ALPA will only be able to perform its functions within the limits on Commonwealth power imposed by the Constitution of Australia.

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

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

Clause 12: Powers

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

Clause 13: ALPA does not have privileges and immunities of the Crown

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

Clause 14: Taxation

This clause specifies that ALPA is not subject to taxation under a law of the Commonwealth or a State or Territory.

Clause 15: ALPA's financial assistance function

This clause outlines the purposes for which ALPA can provide financial assistance under its financial assistance functions. These are:

- research into community energy projects;
- the development, commercialisation or deployment of community energy projects;
- the storage and sharing of information and knowledge about community energy projects.

Clause 16: General rule about performance of financial assistance function

This clause stipulates that in performing its financial assistance function, ALPA must ensure that decisions about the provision of financial assistance are based on merit.

Clause 17: Provision of financial assistance to be in accordance with general strategy

This clause stipulates that ALPA can only provide financial assistance in accordance with the general strategy that is in force under Subdivision A of Division 2 of Part 3 at the time when the agreement is entered into.

Clause 18: Minister may request ALPA to consider funding for specified projects

This clause stipulates that the Minister may request ALPA to consider providing financial assistance for a particular project, and that ALPA must consider that request.

Clause 19: Ministerial approval where grants exceed \$50 million

This clause stipulates that ALPA can only make grants totalling more than \$50 million for a particular project with the written approval of the Minister. The purpose of this clause is to provide an additional layer of oversight for the administration of grants involving significant sums of money. This mirrors a similar provision in the ARENA Act.

Division 3 – ALPA's investment function

Subdivision A – ALPA's investment function

Clause 20: Investment function

This clause describes ALPA's investment function. It stipulates that ALPA's investment function is to invest, directly and indirectly, in community energy projects.

Subclause 20(2) stipulates that ALPA may invest in businesses or projects for the development or commercialisation of community energy projects, or in businesses that supply goods or services needed to develop or commercialise community energy projects.

Clause 21: Complying investments

This clause stipulates that ALPA may only make investments that are complying investments, and defines complying investments as:

- in community energy projects, as per the definition in section 5 of the Bill;
- solely or mainly Australian based, as per the definition in section 22 of the Bill;
- not in a prohibited technology, as per the definition in section 23 of the Bill.

Subclauses 21(3-7) outlines the steps the Board must take if it becomes aware than an investment made under the investment function is not a complying investment, and subsequently the steps the Minister must take if informed by the Board of an investment that is not a complying investment.

Clause 22: Australia-based investments

This clause stipulates that the Board must set out guidelines outlining the circumstances in which it will regard an investment as Australia-based, and stipulates an investment is considered to be Australia-based if the Board is satisfied it meets those guidelines.

Clause 23: Prohibited technology

This clause stipulates that an investment made under the investment function is in a prohibited technology if it is an investment in a project involving:

- carbon capture and storage;
- nuclear technology;
- nuclear power;
- coal or gas power.

The purpose of ALPA is to drive investment in community energy projects utilising renewable energy, storage technologies or energy efficiency. Clause 23 makes clear that ALPA cannot be used to drive investment in fossil fuel or nuclear technologies.

This clause is intended to prohibit investments in projects utilising carbon capture and storage indirectly, including blue hydrogen projects employing processes including, but not limited to, coal gasification or steam methane reforming.

Subdivision B – Performance of investment function

Clause 24: Financial assets

This clause stipulates that ALPA and its subsidiaries may only make investments through the acquisition of financial assets.

Subclause 24(2) outlines that a financial asset is defined as either:

- an asset that in accordance with GFS Australia is treated as a financial asset for the purpose of the GFS system; or.
- an asset specified in regulations made for the purpose of the ALPA Bill.

GFS refers to Government Finance Statistics, an accrual financial measurement and reporting system designed to support economic analysis of the public sector. It can be accessed on the Department of Finance website.

Clause 25: Investment Mandate

This clause stipulates that the Minister may give the Board an Investment Mandate which sets out the policies to be pursued by ALPA in regard to, among other factors:

- matters of risk and return;
- technologies, projects and businesses that are eligible for investment;
- the allocation of investments between various classes of community energy projects.

The Investment Mandate is a legislative instrument. The Minister is required to give at least one such direction to the Board.

Clause 26: Limits on Investment Mandate

This clause stipulates that the Minister must not give a direction under section 25(1) that is either inconsistent with this Act, or which may require the Board to make or not make a particular investment.

Clause 27: Board to be consulted on Investment Mandate

This clause requires that before giving the Board a direction under section 25(1), the Minister must send a draft of the direction to the Board, invite the Board to make a submission on the draft direction within a reasonable time limit, and consider that submission from the Board.

Subclause 27(2) stipulates that if the Board makes a submission to the responsible Ministers on the draft direction within the specified time limit, then the submission must be tabled in each House of Parliament with the direction.

Clause 28: Compliance with Investment Mandate

This clause stipulates that the Board must take all reasonable steps to ensure that ALPA and its subsidiaries comply with the Investment Mandate, and outlines the steps it must take if it becomes aware that either ALPA or one of its subsidiaries has failed to comply with the Investment Mandate.

Clause 29: Derivatives

This clause stipulates that ALPA may only acquire a derivative under certain conditions.

Division 4 – Community investment in large renewable energy projects

Clause 30: Community investment in large renewable energy projects

This clause stipulates that from 1 July 2023, any new large renewable energy project will require approval from the Minister, and sets out the conditions in which that approval may be granted.

Subclause 30(1a) stipulates that such a scheme must cover projects involving the construction, modification or expansion of a large renewable energy facility in Australia.

Subclause 30(1b) stipulates that such approval must be granted if, and only if, the Minister is satisfied that on the basis of advice given to the Minister by ALPA, that all individuals living within 30 kilometres of the facility have been given a reasonable opportunity to invest in the project in accordance with subclause 30(3).

Subclause 30(2) stipulates that a large renewable energy project is defined as a renewable energy generation facility that has a maximum capacity of 10 MW or more.

Subclause 30(3) stipulates that, for the purposes of the subclause 30(1b), the opportunity to invest must involve rights to at least 20% of the profits of the project being offered to locals. That opportunity must afford locals reasonable opportunity to consider and respond to the offer, which must be made in regard to the market value of the rights, and must be structured in such a way that it is intended to ensure the rights are acquired by a large number of locals, rather than just a few individuals.

Subclause 30(4) outlines that once the rights mentioned in subclause 30(3) have been offered and that offer then closes, those rights may be offered to anyone else, to the extent that the locals do not accept the offer. This means that once the community investment opportunity has been completed, the project may seek other investors as normal.

Subclause 30(5) outlines matters on which additional regulations may be made:

- the matters that ALPA must take into account in giving advice to the Minister on whether a community has been given reasonable opportunity to invest in a large renewable energy project;
- delegation of the Minister’s power to approve a project;
- review of the decision not to approve a project;

- penalties, not exceeding 1000 penalty units, for offences against regulations made for the purposes of subclause 30(1);
- pecuniary penalties, not exceeding 10,000 penalty units, for contravening civil penalty provisions in regulations made for the purpose of subclause 30(1).

This subclause allows the Government to impose penalties for failing to offer a community investment opportunity in accordance with the provisions of this section.

1000 penalty units is currently the equivalent of \$222,000. 10,000 penalty units is the equivalent of \$2,220,000.

Subclause 30(6) stipulates that this section – and therefore the requirement to offer a community investment opportunity – applies to a project if the project starts to be carried out on or after 1 July 2023. This means the requirement will not be retrospective, and will only apply to new projects that begin on or after 1 July 2023.

Subclause 30(7) stipulates that the first regulations establishing a scheme for the purpose of subclause 30(1) must be made on or before 1 July 2022.

This timeframe allows more than two years for the Government to fully design and implement a scheme that gives effect to this section, with a requirement to begin at least one year before the scheme comes into effect.

Part 3 – Board of ALPA

Division 1 – Establishment and functions

Clause 32: Establishment

This clause establishes the Board of ALPA.

Clause 33: Functions of the Board

This clause outlines the functions of the ALPA Board. These functions are:

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

Sub-clause 33(2) stipulates that 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.

Sub-clause 33(3) would provide that anything done in the name of, or on behalf of, ALPA by the Board, or with the authority of the Board, is taken to have been done by ALPA.

Division 2 – General strategy, guidelines and work plans

Subdivision A – General strategy

Clause 34: General strategy

This clause would require the Board to develop a general strategy for each financial year starting with 2021-22. The general strategy must state ALPA's principal objectives and priorities for:

- the provision of financial assistance (Clause 8A)
- the collection, analysis, interpretation and dissemination of information and knowledge relating to community energy projects by ALPA (Clause 8F)
- the provision of technical expertise (Clause 8D)
- anything else prescribed the regulations (Clause 8I)

The general strategy must cover the period of the financial year for which it is developed, and for the next two financial years. In other words, each year there will be a new general strategy, which will relate to a three-year period ahead.

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

As an example, the general strategy could describe how ALPA will allocate and prioritise the provision of financial and technical assistance for the support of research, development, demonstration and commercialisation of community energy projects to achieve its aims and objectives. Such a description might include information on:

- the challenges and barriers that financial and technical assistance is intended to overcome and a strategic overview of how this assistance will assist in overcoming those challenges and barriers;
- the broad principles to be adopted in selecting projects and providing assistance to support community energy;
- the model through which ALPA proposes to provide technical assistance, for instance through local hubs in regional cities and towns.

Clause 35: Approval of general strategy

This clause stipulates that the general strategy requires the approval of the Minister. The Board must, as soon as practicable after developing a general strategy, provide a copy of the strategy to the Minister for approval.

Sub-clause 35(2) stipulates that the general strategy is a legislative instrument made by the Minister on the day on which it is approved by the Minister, but it would exempt the strategy from the operation of section 42 of the *Legislation Act 2003*, relating to disallowance. That is, it would not be a disallowable instrument.

It is considered that the requirement for each general strategy to be approved by the

Minister will ensure sufficient accountability in the preparation of these instruments. The exemption is consistent with the position of Ministerial directions to any person or body, which are legislative instruments not subject to disallowance by virtue of item 2 of the table in Section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

This exemption is also consistent with the *ARENA Act* which stipulates that general funding strategies approved under that Act are legislative instruments exempt from disallowance.

Clause 36: When a general strategy for a year is in force

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

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

Clause 37: Variation of a general strategy

This clause stipulates that Board must regularly review the general strategy during a financial year, and that Board has the power to vary a general strategy that is in force. However, any such variation would require approval by the Minister.

Sub-clause 37(6) provides that a variation of a general strategy is a legislative instrument made by the Minister on the day on which it is approved by the Minister, but it would be exempt the variation from the operation of section 42 of the *Legislation Act 2003*, relating to disallowance.

This exemption is included for the same reasons given in relation to ALPA's general strategies (see the discussion of clause 35, above).

Clause 38: General strategy to be published on ALPA's website

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

Subdivision B – Guidelines

Clause 39: Guidelines

This clause stipulates that the Board has the power to develop written guidelines in relation to the provision of financial assistance under this Bill, and to vary or revoke such guidelines.

This clause mirrors a similar provision in the *ARENA Act*.

Guidelines would be required for a grant program if, under the program, the total of all grants for a particular project could exceed \$15 million. However, it is the intent of the Bill that ALPA develops guidelines for all grant programs.

In some cases, guidelines or a variation or revocation of guidelines would require approval by the Minister under clause 40.

Sub-clause 39(5) would provide that guidelines developed by the Board, and any variation or revocation of such guidelines, are not legislative instruments. This provision is included to assist readers. Guidelines, variations and revocations would not be legislative instruments as they are not legislative in character, and therefore not within the meaning of Section 8 of the *Legislation Act 2003*.

Clause 40: Approval of guidelines for financial assistance in excess of \$15 million

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

Sub-clause 40(1) would require the Board to give such guidelines to the Minister, for his or her approval. This requirement would also apply to any variation of such guidelines, (unless the variation is of a minor nature) and would apply to any revocation of such guidelines.

If a grant program which is not subject to this clause were to be varied so that it became a program to which subclause 39(2) applies, then ALPA would be required to develop guidelines for the program.

Sub-clause 40(2) would require the Board to inform the Minister of any variation of such guidelines that is of a minor nature. Subclause 40(3) specifies the commencement time for guidelines, variations and revocations.

Clause 41: Guidelines to be published on ALPA's website

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

Subdivision C – Work plans

Clause 42: Work plan

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

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

The Board may vary a work plan in writing.

Sub-clause 42(4) stipulates that the work plan must not deal with carrying out ALPA's investment function. This is because the investment function will be guided by the Investment Mandate (Clause 25).

A work plan or variation of a work plan will not require the Minister's approval, but the Board will be required to give the Minister a draft of each work plan or variation, and have regard to any comments or requests made by the Minister in relation to the draft (sub-clause 42(6)). The Board will also be required to give a copy of each finalised work plan to the Minister (sub-clause 42(1)).

Sub-clause 42(8) would provide that a work plan developed by the Board is not a legislative instrument. This provision is included to assist readers. A work plan would not be a legislative instrument as it is not legislative in character, and therefore not within the meaning of section 8 of the *Legislation Act 2003*.

Clause 43: Work plan to be taken into account

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

However, subclause 43(2) stipulates that this requirement does not apply for ALPA's investment function. This is because the investment function is guided by the Investment Mandate (Clause 25). This clause is included for clarity.

Clause 44: Investment policies

This clause stipulates that the Board must formulate written policies in relation to ALPA's investment strategy, benchmarks and standards for assessing the performance of ALPA's investments, and risk management.

Subclause 44(2) stipulates that the Board must ensure that the investment policies are consistent with the Investment Mandate.

The Board must ensure that the investment policies are published on the ALPA website, and that the first policies should be published as soon as practicable and no later than 1 July 2022.

If there is a change in the Investment Mandate, the Board must review any affected policies. The Board must also conduct periodic reviews of the policies.

Subclause 44(9) stipulates that policy formulated under this clause is not a legislative instrument as it is not legislative in character, and therefore not within the meaning of Section 8 of the *Legislation Act 2003*.

Division 3 – Board members

Clause 45: Membership

This clause stipulates that the Board will consist of up to 6 appointed members and the Secretary of the Department.

Clause 46: Appointment of Board members

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

Subclause 46(2) stipulates that in appointing the Board members, the Minister must ensure that the Board, taken as a whole, has experience or knowledge of the following:

- community energy projects;
- regional development;
- Indigenous community development;
- development or commercialisation of renewable energy businesses;
- environmental and natural resource management.

This is intended to ensure that the Board, as a whole, has the requisite experience and knowledge to effectively execute its full range of functions.

Clause 47: Chair

This clause would require the Minister to appoint one Board member to be the Chair of the Board, by written instrument.

Clause 48: Term of appointment

This clause would limit the maximum term of appointment of each Board member appointed under clause 46 to a period of 2 years, and the maximum continuous period for which each may hold office to 6 years.

Clause 49: Acting appointments

This clause outlines the provisions for the appointment of acting Board members.

Clause 50: Remuneration

This clause details the system for the remuneration of Board members appointed under Clause 46. It would have effect subject to the *Remuneration Tribunal Act 1973*.

Sub-clause 50(1) stipulates that Board members appointed under clause 46 are to be paid the remuneration that is determined by the Remuneration Tribunal, provided that there is

an applicable determination in operation. Otherwise, such Board members are to be paid the remuneration that is prescribed by the regulations.

Clause 51: Leave of absence

This clause deals with the granting of leave of absence to Board members who are appointed under Clause 46.

Clause 52: Disclosure of interests to the Minister

This clause stipulates that Board members must give written notice to the Minister under the *Public Governance, Performance and Accountability Act 2013*. If a Board member does not make relevant disclosures to Minister under Clause 52(1), they are taken not to have complied with section 29 of the *Public Governance, Performance and Accountability Act 2013*.

Clause 53: Resignation of appointed members

This clause deals with the resignation of appointed Board members.

Clause 54: Termination of appointment of appointed members

This clause outlines circumstances under which the Minister may terminate the appointment of an appointed Board member.

Clause 55: Other terms and conditions of appointed members

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

Division 4 – Meetings of the Board

Clause 56: Convening meetings

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

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

Clause 57: Secretary may nominate alternate to attend Board meetings

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

be taken to be a Board member at those meetings.

Clause 58: Presiding at meetings

This clause stipulates that the Chair must preside at all meetings at which he or she is present, and if the Chair is not present, Board members must appoint one of themselves to preside.

Clause 59: Quorum

This clause stipulates that a quorum at a meeting of the Board is generally constituted by a majority of the current Board members.

Subclause 59(2) stipulates that if a Board member has to recuse themselves from a decision under rules made for the purposes of the *Public Governance, Performance and Accountability Act 2013*, and if when the member leaves the meeting for that purpose there is no longer a quorum present, then the remaining members will be considered to constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

Clause 60: Voting at meetings

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

Clause 61: Conduct of meetings

This clause stipulates that the Board may regulate proceedings at its meetings as it considers appropriate.

Clause 62: Minutes

This clause stipulates that the Board must keep minutes of its meetings.

Clause 63: Decisions without meetings

This clause outlines circumstances in which the Board may make decisions without meeting.

Division 5 – Committees

Clause 64: Committees

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

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

Clause 65: Remuneration

This clause deals with the remuneration of members of committee established by the Board under clause 64. It would have effect subject to the *Remuneration Tribunal Act 1973*.

Sub-clause 64(2) would provide that committee members are to be paid the remuneration that is determined by the Remuneration Tribunal, provided that there is an applicable determination in operation. Otherwise, committee members are to be paid the remuneration that is prescribed by the regulations.

Sub-clause 64(3) would provide that committee members are to be paid the allowances that are prescribed by the regulations.

Part 4 – Chief Executive Officer, staff and consultants

Division 1 – Chief Executive Officer of ALPA

Clause 66: Establishment

This clause establishes the office of the CEO of ALPA.

Clause 67: Role

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

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

Sub-clause 67(6) would make clear that a direction given by the Board under sub-clause 67(4) is not a legislative instrument. This provision is included to assist readers. Such a direction would not be a legislative instrument as it is not considered legislative in character and therefore not within the meaning of Section 8 of the *Legislation Act 2003*.

Clause 68: Appointment

This clause outlines the process for the appointment of the CEO.

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

The period of the CEO's appointment will be as specified in the instrument of appointment.

While each appointment must not exceed three years, the note to sub-clause 68(3) would make clear that the Minister is able to reappoint the CEO at the end of each term.

Sub-clause 68(4) would prevent the Minister appointing a Board member (whether an appointed member or the Secretary) as the CEO.

Clause 69: Acting appointments

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

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

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

Clause 70: Outside employment

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

Clause 71: Remuneration

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

Sub-clause 71(1) would provide that the CEO is to be paid such remuneration as is determined by the Remuneration Tribunal or, if no determination of that remuneration is in operation, the CEO is to be paid such remuneration as is prescribed in the regulations.

Sub-clause 71(2) would provide that the CEO is to be paid such allowances as are prescribed in the regulations.

Sub-clause 71(3) would make clear that clause 55 is intended to have effect subject to the *Remuneration Tribunal Act 1973*.

Clause 72: Leave

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

Sub-clause 72(1) would provide that the recreation leave entitlements for the CEO would be as determined by the Remuneration Tribunal. The *Remuneration Tribunal Act 1973* provides for the Remuneration Tribunal to conduct inquiries into and to determine the recreation leave entitlements of certain full-time office holders.

Sub-clause 72(2) would provide for the Minister to grant the CEO other forms of leave of

absence (that is, other than recreation leave) on such terms and conditions as to remuneration or otherwise as the Minister determines.

Clause 73: Disclosure of interests to the Minister

This clause stipulates that the CEO must give written notice to the Minister under the *Public Governance, Performance and Accountability Act 2013*. If the CEO does not make relevant disclosures to Minister under Clause 52(1), they are taken not to have complied with Section 29 of the *Public Governance, Performance and Accountability Act 2013*.

Clause 74: Resignation

This clause stipulates that the CEO may resign by giving written notice to the Minister.

The resignation would take effect on the day the notice is received by the Minister, or on a later day specified in the notice.

Clause 75: Termination of appointment

This clause outlines the circumstances in which, and the process through which, the appointment of the CEO may be terminated.

Sub-clauses 75(1) and (2) would provide that the Minister may terminate the CEO's appointment for misbehaviour or physical or mental incapacity only after the Minister has consulted the Board.

Sub-clause 75(3) sets out other circumstances where the Minister may terminate the CEO's appointment. Consultation with the Board would not be required in these circumstances. However, it would be open to the Minister to consult the Board if the Minister wished.

Clause 76: Other terms and conditions

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

Division 2 – Staff and consultants

Clause 77: Chief Financial Officer

This clause would provide for the employment of a person to perform Chief Financial Officer functions in ALPA (a CFO). The terms and conditions of employment for the CFO will be as determined by ALPA.

Clause 78: Other staff

This clause stipulates that other than the CEO and the CFO, ALPA may not directly employ staff of its own. Instead, other staff necessary to assist ALPA are to be engaged under the

Public Service Act 1999 as employees of the Department, and made available to ALPA by the Secretary.

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

The Secretary would also delegate relevant powers under the *Financial Management and Accountability Act 1997* to the CEO to enable the CEO to effectively manage the department money and resources required for the performance of ALPA functions by Department staff.

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

This model follows the precedent established by ARENA in the *ARENA Act 2011*.

Clause 79: Consultants

This clause would permit ALPA to engage consultants to provide technical and specialist advisory services. However, ALPA will not be able to engage consultants to perform operational or administrative duties of a kind that are performed, or are capable of being performed, by Departmental staff who are made available to ALPA under clause 78.

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

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

Part 5 - Miscellaneous

Clause 80: Matters relating to subsidiaries

This clause stipulates that ALPA must not incorporate or otherwise form a subsidiary except for the purpose of its investment function. It must not form a subsidiary in a place other than Australia.

Subclause 80(2) stipulates that a subsidiary of ALPA must only make complying investments, take all reasonable steps to comply with the Investment Mandate, comply with investment policies formulated by the Board under section 44 and only acquire derivatives for a purpose for which ALPA may do so under section 29.

The purpose of this clause is to ensure, to the extent practicable, that subsidiaries of ALPA are bound by the same requirements and functions as ALPA itself.

Clause 81: Publication of investment reports

This clause outlines the requirements for ALPA to publish investment reports at the end of each quarter.

Clause 82: Publication of reports etc.

This clause stipulates that responsible Ministers may publish reports given to them, and the conditions under which those reports may be published.

Clause 83: Extra matters to be included in annual report

This clause outlines matters that must be included in annual reports prepared by the Board and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013*.

Clause 84: Delegation by ALPA

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

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

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

Sub-clause 84(2) would provide that a delegate must comply with any directions of ALPA when exercising any power or performing any function under a delegation.

Clause 85: Delegation by Board

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

Sub-clause 85(1) stipulates that the Board is able to delegate its powers or functions under the Bill to a member of the Board or the CEO, except the Board's powers or functions under Subdivision A of Division 2 of Part 3 of the Bill, which relates to development of the general strategy.

A delegation by the Board must be in writing, and may be revoked by the Board.

Clause 86: Subdelegation by CEO

This clause would provide that the CEO may subdelegate a power or function that has been

delegated to the CEO by ALPA or the Board under sub-clause 84(1) or 85(1).

The CEO may only subdelegate a power or function to the CFO, or to a substantive or acting SES employee, or a substantive or acting Executive Level 2 employee (or equivalent) in the Department (subclause 84(1)).

A subdelegation by the CEO must be in writing.

Sub-clause 86(2) would provide that a subdelegate must comply with any directions of the CEO when exercising any power or performing any function under a subdelegation.

Sub-clause 86(3) would provide for the rules about delegations set out in sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* to apply to subdelegations made under this clause.

Clause 87: Disclosure of information to Australian Renewable Energy Agency or Clean Energy Finance Corporation

This clause stipulates that ALPA may disclose information to ARENA or the CEFC if the disclosure will enable or assist ARENA or the CEFC to perform or exercise any of its functions or powers.

Clause 88: Review of operation of Act

This clause stipulates that the Minister must arrange for an independent review of the operation of the Act to be undertaken as soon as practicable after 1 July 2025.

The independent review must:

- include a review of the effectiveness of ALPA in facilitating increased flows of finance into the community energy sector;
- be conducted by an appropriately qualified person or persons; and,
- make provision for public consultation.

The review must be provided to the Minister in written form, and be tabled in each House of the Parliament within 15 sitting days of the day the report is given to the nominated Minister.

Clause 89: Regulations

This clause outlines a provision for additional regulations to be made in relation to the Bill.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

This *Australian Local Power Agency Bill 2021* is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the bill

The bill will establish the Australian Local Power Agency to provide support for community energy projects and ensure that regional communities share in the benefits of renewable energy. ALPA will have three primary functions: to provide financial support to, to provide technical support to, and to invest in community energy projects.

Human rights implications

This Bill engages the following rights:

- the right to an adequate standard of living in Article 11(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR) and Article 27(1) of the Convention on the Rights of the Child (CRC);
- the right to enjoy the highest attainable standard of physical and mental health in Article 12(2) of the ICESCR and Article 24(1) of the CRC;
- the right to self-determination in Article 1(1) of the International Covenant on Economic, Social and Cultural Rights.

Right to an adequate standard of living

Article 11(1) of the International Covenant on Economic Social and Cultural Rights provides that everyone is entitled to an adequate standard of living and the continuous improvement of living conditions. The Australian Government Attorney-General's Department notes that policy-makers must consider the right an adequate standard of living when working on legislation, policies and programs that deal with economic and resource issues that could have an impact on the realisation of the right to an adequate standard of living.

The supply of accessible, reliable, low-cost electricity is critical to the realisation of an adequate standard of living. Currently, isolated communities in bushfire-prone locations are particularly vulnerable to electricity insecurity due to a reliance on centralised fossil fuel electricity generation, as was demonstrated in the Black Summer fires in locations such as Corryong and Mallacoota.

The Australian Energy Market Operator has persuasively demonstrated that renewable electricity is the lowest-cost form of electricity in Australia. By promoting greater access to locally-situated, renewable electricity and storage, this Bill promotes energy security and energy access, which is essential to the realisation of the right to an adequate standard of living.

Right to the highest attainable standard of physical and mental health

Article 12(2) of the International Covenant on Economic Social and Cultural Rights and Article 24(1) of the Convention on the Rights of the Child provide that everyone is entitled to the right to enjoy the highest attainable standard of physical and mental health. The Australian Government Attorney-General's Department notes that the right must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the individual to realise his or her highest attainable standard of health.

The generation of electricity through fossil fuels, and the combustion of fossil fuels for energy more generally, are empirically-demonstrated harms to human health both directly through toxic air pollution, and indirectly through the many harms to human health associated with a disrupted climate. These indirect climate-related harms include but are not limited to: heat-related morbidity and mortality, increased air pollution from bushfires, increased geographical spread of zoonotic diseases, and mental health impacts of natural disasters including drought, bushfires, floods and extreme weather events.

By supporting the greater rollout of renewable electricity, this Bill contributes to the lessening of both the direct and the indirect harms of fossil fuel combustion. Greater reliance on renewable electricity directly reduces the emissions of gases known to be deleterious to human health, and mitigates the extent of dangerous climatic disruption and its associated harms to health through natural disasters and changed weather patterns. In promoting locally-owned renewable electricity, this Bill therefore contributes to the progressive realisation of the highest attainable standard of physical and mental health.

Right to self-determination

Article 1(1) of the International Covenant on Economic, Social and Cultural Rights and article 1(1) of the International Covenant on Civil and Political Rights provide that all peoples have the right of self-determination and that by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

It is generally understood that the right to self-determination accrues to 'peoples', not individuals. The Australian Government Attorney-General's Department notes that the Australian Government believes that individuals and groups, particularly Aboriginal and Torres Strait Islander peoples, should be consulted about decisions likely to impact on them. This includes ensuring that they have the opportunity to participate in the making of such decisions through the processes of democratic government, and are able to exercise meaningful control over their affairs.

This Bill promotes self-determination for Australians in general and Indigenous Australians in particular by promoting and supporting models of energy generation and storage that privilege local ownership and local decision-making. Currently, communities in Australia are largely not active participants in the energy system. This Bill aims to promote self-determination by creating the conditions for communities to develop their own energy systems, participate in the decisions that affect their supply of energy, and in some circumstances achieve local energy independence.