**Commonwealth of Australia**

*Australian Renewable Energy Agency (Consequential Amendments and*

 *Transitional Provisions) Act 201**1*

**Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Determination 2012**

**Explanatory Statement**

Issued by the authority of the Minister for Resources and Energy

MARTIN FERGUSON

Date of approval: 18 June 2012

**AUSTRALIAN RENEWABLE ENERGY AGENCY (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) DETERMINATION 2012**

**General Outline**

Paragraph (2)(a) of item 2 in Division 1 of Part 2 of Schedule 2 (Paragraph (2)(a))of the *Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Act 2011* (**the Act**) grants the Minister the power, by legislative instrument, to specify programs or initiatives for the purpose of subparagraph (1)(a)(vii) in item 2 of Division 1 of Part 2 of Schedule 2 of the Act.

**Specification of a program or initiative**

As a transitional provision, paragraph (1) of item 2 in Division 1 of Part 2 of Schedule 2 of the Actprovides for the transfer of certain funding agreements to which the Commonwealth was a party before the first transition time, namely 1 July 2012, to the Australian Renewable Energy Agency (**ARENA**), the agency created by the *Australian Renewable Energy Agency Act 2011* (**the ARENA Act**). ARENA is a Commonwealth authority for the purposes of the *Commonwealth Authorities and Companies Act 1997*.

Paragraph (1) in item 2 of Division 1 of Part 2 of Schedule 2 identifies a number of programs under which the Commonwealth is a party to various funding agreements and which are to be transferred to ARENA.

Subparagraph (1)(a)(vii) in item 2 of Division 1 of Part 2 of Schedule 2 recognises that the Commonwealth may become a party to additional funding agreements for programs and initiatives which must be transferred to ARENA before the first transition time. Such agreements could be entered into under a program that did not exist at the date when the Act received Royal Assent or may be entered into under a pre-existing program under which no funding agreements had been agreed at the date when the Act received Royal Assent, 4 December 2011.

The Support for Advanced Biofuels Initiative includes the $15 million competitive merit-based Advanced Biofuels Investment Readiness (**ABIR**) Program and the $5 million Foundation Grant to James Cook University for the High Energy Fuels Project. This Determination ensures that the ABIR Program and James Cook funding agreement will be transferred to ARENA with effect from 1 July 2012.

This Determination was made in accordance with the *Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Act 2011.*

**Specification of an agreement**

As a transitional provision, paragraph (1) of item 2 in Division 1 of Part 2 of Schedule 2 of Schedule 2 of the Actprovides for the transfer of certain funding agreements to which the Commonwealth was a party before the first transition time, namely 1 July 2012, to the Australian Renewable Energy Agency (**ARENA**), the agency created by the *Australian Renewable Energy Agency Act 2011* (**the ARENA Act**). ARENA is a Commonwealth authority for the purposes of the *Commonwealth Authorities and Companies Act 1997*.

Paragraph (1) in item 2 of Division 1 of Part 2 of Schedule 2 identifies a number of programs under which the Commonwealth is a party to various funding agreements and which are to be transferred to ARENA.

Paragraph (1)(d) in item 2 of Division 1 of Part 2 of Schedule 2recognises that the Commonwealth may be a party to additional funding agreements which must be transferred to ARENA before the first transition time.

The funding agreement between the Commonwealth of Australia and the Australian Solar Institute Ltd (**ASI**), was executed on 24 August 2009 and last varied on 1 December 2011. This Determination ensures that the head funding agreement with the ASI will be transferred to ARENA with effect from 1 July 2012. Any funding agreements that the ASI has entered into are transferred pursuant to item 7 in Division 2 of Part 2 of Schedule 2 of the Act.

This Determination was made in accordance with the *Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Act 2011.*

**Legislative Authority**

Paragraph (2)(a) of item 2 in Division 1 of Part 2 of Schedule 2 of the Act, allows the Minister, by legislative instrument, to specify programs or initiatives for the purpose of subparagraph (1)(a)(vii) in item 2 of Division 1 of Part 2 of Schedule 2 of the Act.

Paragraph (2)(b) of item 2 in Division 1 of Part 2 of Schedule 2 of the Act, allows the Minister for Resources and Energy, by legislative instrument, to specify a funding agreement for the purpose of paragraph (1)(d) in item 2 of Division 1 of Part 2 of Schedule 2 of the Act.

The Act may be found at:

<http://www.comlaw.gov.au/Details/C2011A00152>.

Once the Determination has been placed on the Federal Register of Legislative Instruments it can be found at:

[http://www.frli.gov.au/ComLaw/legislation/legislativeinstrument1.nsf/sh/browse&CATEGORY=legislativeinstrument](http://www.frli.gov.au/ComLaw/legislation/legislativeinstrument1.nsf/sh/browse%26CATEGORY%3Dlegislativeinstrument)

**Consultation**

There is normally a requirement under section 17 of the *Legislative Instruments Act 2003* (**the LI Act**) for the rule-maker to be satisfied that any consultation that is considered by the rule-maker to be appropriate, and that it is reasonably practicable to undertake, has been undertaken.

Despite section 17, the nature of an instrument may be such that consultation may be unnecessary or inappropriate. In accordance with paragraph 18(2)(a) of the LI Act the rule-maker may be satisfied that consultation is unnecessary or inappropriate because the Determination is an instrument that is of a minor or machinery nature and that it does not substantially alter existing arrangements.

The Minister is satisfied in this case that paragraph 18(2)(a) is applicable as the Determination does not alter or affect existing arrangements. As of 1 July 2012 ARENA will administer the agreements, program or initiatives that were previously administered by the Commonwealth. The same employees of the Department of Resources, Energy and Tourism who currently administer the agreements, programs or initiatives will be made available to do the same work for ARENA.

**Statement of Compatibility with Human Rights**

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

This Legislative Instrument 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 Legislative Instrument

Item 2 of Division 1 of Part 2 of Schedule 2 of the Act identifies existing agreements of the Commonwealth, the administration of which are to be taken over by ARENA. The agreements in question provide for financial assistance, and are generally identified by reference to the Commonwealth program from which the relevant funding is drawn. There is also provision for the Minister, by legislative instrument, to specify additional programs in relation to which agreements can be transferred to ARENA, or agreements that are to be transferred to ARENA. This is to enable agreements entered into between the time of the introduction of the Bill for the Act and the Bill for the ARENA Act and the first transition time to be transferred to ARENA.

The initiative specified in clause 4 of the Determination is the Support for Advanced Biofuels Initiative including the Advanced Biofuels Investment Readiness Program and the Foundation Grant to James Cook University for the High Energy Algal Fuels Project. The agreement referred to in clause 5 of the Determination relates to the funding agreement between the Commonwealth of Australia and the Australian Solar Institute Ltd executed on 24 August 2009 and last varied on 1 December 2011.

Human Rights Implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Financial Implications**

There are no financial implications.

**Date of Effect**

The Determination will commence on 1 July 2012.

**Notes on Provisions**

**Clause 1 – Name of Guidelines**

This prescribes the name of the Determination as the *Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Determination 2012.*

**Clause 2 - Commencement**

Clause 2 provides for the Determination to commence on 1 July 2012.

**Clause 3 - Definition**

Clause 3, for the purpose of this Determination, provides a definition of the Act authorising the making of the Determination. That is the *Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Act 2011*.

**Clause 4 – Specification of program or initiative**

Clause 4 specifies that the Support for Advanced Biofuels Initiative is an initiative in respect of which associated funding agreements are to be transferred to ARENA with effect from 1 July 2012.

**Clause 5 – Specification of an agreement**

Clause 5 specifies that the head funding agreement between the Commonwealth of Australia and the ASI will be transferred to ARENA with effect from 1 July 2012.