

Commonwealth of Australia

Australian Renewable Energy Agency Act 2011

AUSTRALIAN RENEWABLE ENERGY AGENCY DETERMINATION 2012

Explanatory Statement

Issued by the authority of the Minister for Resources and Energy

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Date of approval: 2 July 2012

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General Outline

Section 7 of the *Australian Renewable Energy Act 2011* (**the Act**) establishes the Australian Renewable Energy Agency (**ARENA**). Section 17 of the Act establishes the Board of the Australian Renewable Energy Agency (**the Board**).

Section 20 of the Act provides that a general funding strategy must be developed by the Board and approved by the Minister for Resources and Energy (**the Minister**). Subsection 19(1) of the Act provides that the Board must, for the 2012-13 financial year and each later financial year, develop a general funding strategy for the provision of financial assistance under the Act.

The general funding strategy for the 2012-2013 must be developed as soon as practicable after the start of that year (s.19(2) of the Act).

A general funding strategy is required to be in writing and be expressed to relate to the financial year for which the strategy is developed and the next two financial years. It must also state ARENA's principal objectives and priorities for the provision of financial assistance under the Act during the three year period.

Subsection 19(4) of the Act provides that a general funding strategy must not require financial assistance to be provided to a particular person, or for a particular project. Section 10 of the Act requires that ARENA must not enter into an agreement for the provision of financial assistance unless the financial assistance provided for is in accordance with the general funding strategy approved by the Minister pursuant to subsection 20(2) of the Act.

The *Australian Renewable Energy Agency Determination 2012* (**the Determination**) was made in accordance with the *Australian Renewable Energy Agency Act 2011*.

Determination of the interim funding strategy

The interim funding strategy attached to the *Australian Renewable Energy Determination 2012* has been developed by the Board and approved by the Minister and is determined to be the general funding strategy for the purposes of subsection 20(2) of the Act.

The interim general funding strategy will allow the ARENA Board to maintain industry momentum for renewable energy technology development and make initial funding decisions prior to the release of its 2012-13 general funding strategy later in the 2012-13 financial year. These activities will incorporate activities which have transferred to ARENA, which ARENA will continue to administer.

Legislative Authority

Subsection 20(2) of the Act provides that 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 *Legislative Instruments Act 2003* does not apply to a general funding strategy.

Subsection 21(1) of the Act provides that a general funding strategy for a financial year comes into force at a time later of the following times:

- (a) the time when the Minister approves the strategy;
- (b) the start of the financial year.

Subsection 21(2) of the Act provides that 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.

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>

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. The effect of the interim funding agreement will be to allow the continuation of transferring programs and the administration of novating funding agreements.

Statement of Compatibility with Human Rights

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*.

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 2 July 2012.

Notes on Provisions

Clause 1 – Name of Guidelines

This prescribes the name of the Determination as the *Australian Renewable Energy Agency Determination 2012*.

Clause 2 - Commencement

Clause 2 provides for the Determination to commence on 2 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 Act 2011*. It also provides a definition for the Board and ARENA.

Clause 4 – Approval of interim funding strategy

Clause 4 specifies that the general funding strategy developed by the Board, approved by the Minister and published on ARENA's website, is the general funding strategy for the purposes of subsection 20(2) of the Act.