# EXPLANATORY STATEMENT

## Issued by authority of the Minister for the Environment

*Australian Renewable Energy Agency Act 2011*

*Australian Renewable Energy Agency Regulation 2016*

The Australian Renewable Energy Agency (“ARENA”), as established by the *Australian Renewable Energy Agency Act 2011* (the “Act”), has the dual objectives of improving the competitiveness of renewable energy technologies and increasing the supply of renewable energy in Australia. Its legislated functions, as outlined in section 8 of the Act, are primarily to provide financial assistance (currently limited to the form of grants) for research into, development and deployment of renewable energy technologies, and to engage in knowledge sharing in relation to the same. Paragraph 8(f) further provides that these functions may be expanded through regulations.

Section 74 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. There have not previously been any regulations made under the Act.

The *Australian Renewable Energy Agency Regulation 2016* (the “Regulation”), made under section 74 of the Act, expands ARENA’s legislated functions for the purposes of paragraph 8(f) of the Act to enable it to work with the Clean Energy Finance Corporation (the “CEFC”) on the Clean Energy Innovation Fund (the “CEIF”).

An exposure draft of the Regulation was circulated to members of ARENA’s independent Expert Advisory Panel for consultation in April 2016. Comments received were taken into account in finalising the Regulation.

Details of the Regulation are outlined in Attachment A.

A statement of the Regulation’s compatibility with human rights is set out in Attachment B.

The Office of Best Practice Regulation (OBPR) agreed that the proposed refocusing of ARENA’s role had a nil regulatory impact, as set out in a Cabinet-in-Confidence short-form Regulation Impact Statement. The OBPR reference number for this matter is 19886.

There are no statutory pre-conditions that need to be satisfied before the power to make the Regulation may be exercised.

**ATTACHMENT A**

**Details of the *Australian Renewable Energy Agency Regulation 2016***

Regulation 1 – Name

Regulation 1 provides that the title of the Regulation is the *Australian Renewable Energy Agency Regulation 2016*.

Regulation 2 – Commencement

Regulation 2 provides that the Regulation commences the day after it is registered on the Federal Register of Legislation.

Regulation 3 – Authority

Regulation 3 provides that the Regulation is made under the Act.

Regulation 4 – Definitions

Regulation 4 provides definitions for the terms “Act” and “Clean Energy Innovation Fund”.

Regulation 5 – ARENA’s prescribed functions

Regulation 5 expands ARENA’s legislated functions under paragraph 8(f) of the Act to enable it to work with the CEFC on the new CEIF.

Specifically, paragraph (1)(a) permits ARENA to assist the CEFC in the governance, management and administration of the CEIF in relation to clean energy technologies within the meaning of section 60 of the Act (i.e. energy efficiency, low-emission and renewable energy technologies).

Paragraph (1)(b) further expands upon paragraph (1)(a) to make it clear that ARENA’s new legislated function includes:

* assisting prospective CEIF project proponents to develop project proposals; and
* providing technical analysis and advice to the CEFC in relation to CEIF project proposals.

Sub-regulation 5(1) as a whole is intended to provide a broad basis for ARENA’s involvement in all aspects of the CEIF. This would include assisting with the development and implementation of, and the strategising associated with, the CEIF. It would also include contractual and financial management functions. It is expected that a memorandum of understanding will be developed between ARENA and the CEFC in relation to this role. ARENA, through paragraph 8(h) of the Act, also has the power to do anything incidental to, or conducive to the performance of, its legislated functions – which include its new function under the Regulation.

Sub-regulation 5(2) further clarifies that the CEIF is the fund of the same name identified in the CEFC’s Investment Mandate.[[1]](#footnote-1) Investments in the CEIF will be made by the CEFC in accordance with the Act and relevant Investment Mandate*.*

Regulation 5 is necessary to clearly provide ARENA with the legislated function identified above, which extends its advisory role beyond renewable energy but does not expand its own investment portfolio[[2]](#footnote-2) or scope to offer financial assistance as provided under the Act.[[3]](#footnote-3)

Regulation 5 is appropriately made within the scope of the power provided in paragraph 8(f) of the Act. In particular, the wording of paragraph 8(f) of the Act is not limited to renewable energy and the broader concept of clean energy technologies are another important policy measure that is appropriate and adapted to implementing Australia’s international emission reduction obligations under the United Nations Framework Convention on Climate Change and related climate change agreements.

**ATTACHMENT B**

### Statement of Compatibility with Human Rights

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

***Australian Renewable Energy Agency Regulation 2016***

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

The *Australian Renewable Energy Agency Regulation 2016* expands the legislated functions of the Australian Renewable Energy Agency to enable it to work with the Clean Energy Finance Corporation on administering the Clean Energy Innovation Fund.

#### Human rights implications

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

#### Conclusion

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

**The Hon Greg Hunt MP**

**Minister for the Environment**

1. As made under sub-section 64(1) of the *Clean Energy Finance Corporation Act 2012*. [↑](#footnote-ref-1)
2. Which is limited to renewable energy under paragraphs (a)-(e) and (g)-(h) of the Act. [↑](#footnote-ref-2)
3. Section 4 of the Act currently limits ARENA to the provision of financial assistance through grants alone. [↑](#footnote-ref-3)