**EXPLANATORY STATEMENT**

Issued by authority of the Minister for Climate Change and Energy

*Australian Renewable Energy Agency Act 2011*

*Australian Renewable Energy Agency Regulations 2025*

**Authority**

The *Australian Renewable Energy Agency Act 2011* (the Act) established the Australian Renewable Energy Agency (ARENA) as an independent statutory authority to, among other things, provide financial assistance for:

1. research into renewable energy, electrification and energy efficiency technologies.
2. the development, manufacture, demonstration, commercialisation or deployment of renewable energy technologies, electrification technologies and energy efficiency technologies; or
3. the storage and sharing of information and knowledge about renewable energy technologies, electrification technologies and energy efficiency technologies.

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.

**Purpose**

The Regulations are made under section 74 of the Act and expand 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.

Additionally, the Regulations prescribe (in accordance with section 64 of the Act) amounts up to which the Commonwealth will make payments to ARENA for each financial year. Funds prescribed for financial years 2026-2027 to 2036-2037 are amounts additional to those already prescribed in the Act; and funds for the 2037-2038 financial year is the full amount available to ARENA for that year.

**Context / background**

The Act has four objectives of:

1. improving the competitiveness of renewable energy technologies; and
2. increasing the supply of renewable energy in Australia; and
3. facilitating the achievement of Australia’s greenhouse gas emissions reduction targets; and
4. contributing to the reduction of global greenhouse gas emissions in accordance with the Paris Agreement.

The Act, which also provides for specific funding arrangements between the Commonwealth and ARENA, was recently amended by the *Future Made in Australia (Omnibus Amendments No. 1) Act 2024* (FMA Omnibus Act). Schedule 2 to the FMA Omnibus Act made certain amendments to the Act, which included repealing and substituting section 64. This enabled the Governor-General to make regulations that prescribe amounts that increase the maximum amount of payments the Commonwealth may provide to ARENA in a given financial year.

The objective of prescribing additional statutory funds to ARENA is to provide investment certainty for the Government’s commitments and deliver on the net zero transformation. It will also give increased certainty to industry and investors that ARENA is sufficiently funded over the coming years to deliver the Hydrogen Headstart program.

Section 64 of the Act provides that the Commonwealth will make payments to ARENA, up to the amount specified in the table, for each financial year specified. The money specified in the table in section 64 does not limit the total amount of money ARENA may be able to access in a financial year. Rather, under subsection 67(1), ‘ARENA’s money’ consists of both moneys paid to ARENA under section 65 of the Act (up to the limits prescribed for each financial year in section 64), and any other money received by ARENA. This could include money which is appropriated for ARENA in subsequent annual Federal Budget processes, and which is not included in the funding amounts prescribed in the table in section 64.

Subsection 64(1) of the Act provides a table of maximum payments of the legislated funding that the Commonwealth can make to ARENA for the 2024-2025 to 2038-2039 financial years, apportioning different amounts for each financial year. Items 1, 14 and 15 of the table under subsection 64(1) provide for a regulation to prescribe an amount for the maximum payments of the legislated funding that the Commonwealth may make to ARENA for the 2024-2025, 2037-2038 and 2038-2039 financial years.

Subsection 64(2) of the Act provides the amount specified in the table in subsection 64(1) for each of the financial years (that is, financial years 2025-2026 to 2036-2037) may be increased by an additional amount prescribed for that year by a regulation made for those purposes.

Subsection 64(3) limits the amounts that may be prescribed by regulation to a total amount of $3,980,000,000. This cap on the ability to increase ARENA’s funding by regulation provides an important control, ensuring that a regulation cannot increase ARENA’s funding by an unlimited amount.

The Regulations prescribe:

* for the purposes of subsection 64(1), the amount up to which the Commonwealth will make payments to ARENA for the 2037-2038 financial year is $50,000,000
* for the purposes of subsection 64(2), the additional amount that increases the amount up to which the Commonwealth will make payments to ARENA for each financial year between 2026-2027 to 2036-2037, as set out in the table below.

| **Financial Year** | **Additional amounts** |
| --- | --- |
| 2026-2027 | $100,000,000 |
| 2027-2028 | $150,000,000 |
| 2028-2029 | $190,000,000 |
| 2029-2030 | $200,000,000 |
| 2030-2031 | $200,000,000 |
| 2031-2032 | $200,000,000 |
| 2032-2033 | $200,000,000 |
| 2033-2034 | $200,000,000 |
| 2034-2035 | $200,000,000 |
| 2035-2036 | $190,000,000 |
| 2036-2037 | $100,000,000 |

The Department of Climate Change, Energy, the Environment and Water (DCCEEW) consulted with internal portfolio areas and externally with the Department of Finance and the Office of Impact Analysis (OIA25-08903), who advised an impact analysis was not required for the Regulations. The Government also consulted with peak industry groups on the regulations.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after the instrument is registered.

Details of the Regulations are outlined in Attachment A.

The Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

**Attachment A**

**Details of the *Australian Renewable Energy Agency Regulations 2025***

Part 1—Preliminary

Regulation 1 - Name

Regulation 1 provides that the title of the Regulations is the *Australian Renewable Energy Agency Regulations 2025* (the Regulations).

Regulation 2 - Commencement

Regulation 2 provides that the Regulations commence on the day after the instrument is registered.

Regulation 3 - Authority

Regulation 3 provides that the Regulations are made under the *Australian Renewable Energy Agency Act 2011* (the Act).

Regulation 4 - Schedules

Regulation 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument have effect according to its terms.

Regulation 5 - Definitions

Regulation 5 provides a note which states that a number of expressions used in the Instrument (including, ‘ARENA’, ‘Climate Change Convention’, and ‘financial assistance’) are defined in the Act.

Regulation 5 also provides a definition for the terms ‘Act’, Clean Energy Innovation Fund’, and ‘clean energy technologies’.

Part 2—Australian Renewable Energy Agency

Regulation 6 - ARENA's prescribed functions—Clean Energy Innovation Fund

Paragraph 6(a) permits ARENA to assist the Clean Energy Finance Corporation in the governance, management and administration of the Clean Energy Innovation Fund. This function relates to clean energy technologies (as defined in the Regulations) (i.e. energy efficiency, low-emission and renewable energy technologies).

The aim of this paragraph is to provide a broad basis for ARENA to be involved in all aspects of the Clean Energy Innovation Fund. This includes assisting with the development and implementation of, and the strategising associated with, the Clean Energy Innovation Fund. A memorandum of understanding has been developed between ARENA and the Clean Energy Finance Corporation 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 also include the function under Regulation 6.

Paragraph 6(b) expands on paragraph 6(a) to make it clear that ARENA’s expanded legislated function is to:

1. provide assistance to persons developing project proposals for financing from the Clean Energy Innovation Fund; and
2. provide assistance to the Clean Energy Finance Corporation in relation to Clean Energy Innovation Fund project proposals.

Regulation 7 - Amounts available for payment to ARENA

Subsection 7(1) prescribes, for the purposes of item 14 of the table in subsection 64(1) of the Act, that the Commonwealth will (subject to the Regulations) make a maximum amount of $50,000,000 available to ARENA for the 2037-2038 financial year. This subsection has the effect of setting a limit on the amounts of payments that the Commonwealth can make to ARENA for those financial years under section 64 of the Act.

Subsection 7(2) prescribes, for the purposes of subsection 64(2) of the Act, additional amounts up to which the Commonwealth will make payments to ARENA for each financial year from 2026-2027 to 2036-2037. This has the effect of increasing the limit (as set out in the table under subsection 64(1) of the Act) on the amounts of payments the Commonwealth may make to ARENA in the respective financial year under section 64 of the Act. The additional amounts in the Regulations are associated with the allocation of funding for the purposes of the Hydrogen Headstart program. As the amounts to be paid to ARENA for that program were not settled at the time section 64 of the Act commenced, the Regulations include this initial provision of additional amounts of payments to ARENA for the Hydrogen Headstart Program. This program aims to support large-scale renewable hydrogen projects through competitive hydrogen production contracts. Details of the program are available at: https://arena.gov.au/funding/hydrogen-headstart/ and https://arena.gov.au/funding/hydrogen-headstart-round2/ with this initial provision related to the allocation for round 1.

For any payments to ARENA, consistent with the payment amount provided for by the Regulations, ARENA’s expenditure of the amount is limited by statutory functions and the constitutional limits set out in section 14 of the Act.

Subsection 14(2) of the Act sets out that the main constitutional basis of ARENA’s functions is the external affairs power (section 51 (xxix) of the Constitution). Subsection 14(3) of the Act provides other constitutional bases for ARENA to perform its functions, including with respect to providing financial assistance for:

1. research into renewable energy technologies, electrification technologies or energy efficiency technologies undertaken by constitutional corporations; or
2. the development, manufacture, demonstration, commercialisation or deployment of renewable energy technologies, electrification technologies or energy efficiency technologies by constitutional corporations.

Section 67(2) of the Act limits the application of ARENA’s moneys (which includes money paid under section 65 and any other money received by ARENA) to:

1. in providing financial assistance in accordance with the Act; and
2. in payment of remuneration and allowances payable under the Act; and
3. 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.

ARENA’s expenditure is guided by the General Funding Strategy developed by the Board under section 19 of the Act having regard to the most recent statement of expectations for ARENA issued by the Minister and Finance Minister jointly, approval by the Minister under section 20 of the Act (subject to disallowance) and published on ARENA’s website under section 23 of the Act.

The current Australian Renewable Energy Agency (General Funding Strategy) Approval 2024 sets out that the Australian Government has provided funding to target priority sectors including renewable hydrogen, green metals, low-carbon liquid fuels, processing and refining of critical minerals and clean energy manufacturing. This relates to the following targeted programs: the Future Made in Australia Innovation Fund, the Battery Breakthrough Initiative, the Solar Sunshot program, the Industrial Transformation Stream as part of the Powering the Regions Fund, Hydrogen Headstart, and First Nations Community Microgrids stream as part of the Regional Microgrids Program.

As a corporate Commonwealth entity, ARENA is accountable for its expenditure under the Public Governance, Performance and Accountability Act 2013, which (among other things) requires the accountable authority of the entity (in this case, the Board) to prepare and give an annual report on ARENA’s activities to the Minister, for presentation to the Parliament. Section 70 of the Act requires extra matters to be included in the annual report, including certain particulars for each person to whom financial assistance has been provided, or committed during the relevant period.

Schedule 1—Repeals

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

**Item 1 - The whole of the instrument.**

Item 1 repeals the entirety of the *Australian Renewable Energy Agency Regulation 2016*. This is possible as the power to make regulations in section 74 of the Act includes the power to repeal or vary regulations already in force.

**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 2025***

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 2025* (the Regulations) expands the legislated functions of the Australian Renewable Energy Agency (ARENA) to enable it to work with the Clean Energy Finance Corporation on administering the Clean Energy Innovation Fund.

The Regulations also prescribe amounts up to which the Commonwealth may make payment to ARENA further to those set out in the table in section 64(1) of the *Australian Renewable Energy Agency Act 2011*.

**Human rights implication**

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 Chris Bowen MP**

**Minister for Climate Change and Energy**