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## Australian Centre for Renewable Energy Bill 2009

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## Australian Centre for Renewable Energy Bill 2009

**Date introduced:** 18 November 2009

**House:** House of Representatives

**Portfolio:** Resources, Energy and Tourism

**Commencement:** Royal Assent

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

To establish the Australian Centre for Renewable Energy (ACRE) Board and the position of Chief Executive Officer. It also provides for the appointment of members, their remuneration and terms of appointment. ACRE will be a new body under the Minister for Resources, Energy and Tourism.

### Background

The Clean Energy Initiative (CEI) represents part of the government's efforts in providing a comprehensive response to the challenge of reducing greenhouse gases.

The government's efforts to develop these new low emissions energy technologies are directed towards a few broad areas: energy efficiency, low-emissions coal and renewable energy sources.<sup>1</sup>

The aim of the CEI is to 'promote the development, commercialisation and deployment of renewable energy and enabling technologies'.<sup>2</sup>

ACRE is a component of the Government's \$4.5 billion CEI which was announced in the May 2009 budget and is designed to dovetail with the Carbon Pollution Reduction Scheme

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1. Martin Ferguson, Minister for Energy, Resources and Tourism, 'Second Reading Speech: Australian Centre for Renewable Energy Bill 2009', House of Representatives, *Hansard*, 18 November 2009, p. 11990.
  2. Department of Energy, Resources and Tourism, 'Australian Centre for Renewable Energy', <http://www.ret.gov.au/energy/energy%20programs/cei/acre/Pages/default.aspx>, 20 February 2010.

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(CPRS) and expanded renewable energy target (RET). The RET is expected to provide 20 per cent renewable energy generation by 2020. While the expanded RET is meant to act as an incentive to hasten the uptake of renewable energy sources, the development of the industry itself remains hamstrung by commercial and technical issues. Developing renewable energy and enabling technology to a stage where they promise to be competitive with existing energy technologies, will require financial support to assist with the development and commercialisation of emerging renewable and enabling energy technologies. As the national renewable energy technology body, ACRE's role will be to provide this necessary injection of funding for such activities to happen in a coordinated and coherent manner.<sup>3</sup> The role of the ACRE's Board in facilitating these outcomes is outlined in Part 2, Division 1, clause 5 of the Bill.

## Financial implications

The Explanatory Memorandum states that the Bill will have no financial impact.<sup>4</sup>

## Main provisions

### Part 2—The Australian Centre for Renewable Energy Board

#### Division 1—Establishment and functions of the Board

**Clause 5** provides that the functions of the Board are:

- (1) to provide advice to the Minister in relation to energy technologies, which includes advice in relation to the following:
  - strategies to fund and promote the development, commercialisation and use of renewable energy technologies
  - the funding of renewable energy technology projects and measures
  - the management of renewable energy technology programs
  - improving existing program delivery
  - the provision of venture capital funding
  - priority areas for government support

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3. Martin Ferguson, 'Second Reading Speech: Australian Centre for Renewable Energy Bill 2009', House of Representatives, *Debates*, 18 November 2009, p. 11990.

4. Explanatory Memorandum, Australian Centre for Renewable Energy Bill 2009, p. 5.

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- establishing links with state and territory government agencies and the private sector with a view to developing strategies for stimulating investment in renewable energy technologies, and
- (2) to assess renewable energy technology projects and measures so to be able to provide advice on the funding of renewable energy technology projects and measures, and
- (3) any other functions that the Minister, by writing, directs the Board to perform. Such a direction is not however, a legislative instrument.

**Clause 6** clarifies and circumscribes the power of the Minister to give directions to the Board. The directions must only be a general nature and cannot relate to the content of any advice that may be given by the Board, so as to maintain the independence and integrity of the advice of the Board. The Board must comply with a direction given by the Minister.

## **Division 2—Members of the Board**

**Clause 7** provides that the Board shall be composed of the Chair, up to 6 appointed members and the CEO.

**Clause 8** provides that members of the Board (other than the CEO) are to be appointed by the Minister in writing and on a part-time basis, and for a period that does not exceed 2 years (**clause 9**). In deciding these appointments, the criteria that must inform the Minister's decision are:

- that the Minister is satisfied that each member has knowledge of, or experience in, a field relevant to the Board's functions, and
- to the extent possible, that the members of the Board have, between them, experience in the following areas:
  - finance, economics, law and project management
  - the energy industry and energy markets
  - technical development, science or engineering
  - administration and program management.

**Clause 10** provides that the Minister may appoint a member to act as the Chair in the event of the Chair becoming unavailable. This is to ensure that the functions of the Board are not held up in the Chair's absence.

In the event of a temporary or permanent vacancy, the Minister may appoint a person to act as an appointed member.

**Clause 11** provides that the **remuneration** and allowances of an appointed member is to be determined by the Remuneration Tribunal. Where no such determination is in operation, then the remuneration of the member is to be that prescribed by the regulations.

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**Clause 12** outlines the **leave of absence provisions** for the Chair and members of the Board.

**Clause 13** deals with the **disclosure of the interests** of a member. A member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

**Clause 14** provides that a member who has a member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Board must disclose the nature of the interest to a meeting of the Board.

The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge and must be recorded in the minutes of the meeting of the Board.

Further, unless the Board otherwise determines, the member:

- must not be present during any deliberation by the Board on the matter; and
- must not take part in any decision of the Board with respect to the matter.

**Clause 17** deals with the **termination of appointment** of a Board member. The Minister may terminate an appointment of a member for misbehaviour or physical or mental incapacity. And the Minister may also terminate an appointment in circumstances where:

- the member becomes bankrupt; or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or makes an assignment of their remuneration for the benefit of his or her creditors, or
- the member is absent (except for leave of absence) from 3 consecutive meetings of the Board, or
- the member fails, without reasonable excuse, to disclose interests in compliance with section 13 or 14.
- the member's performance has been unsatisfactory for a significant period of time.

It is arguable that rather than requiring unsatisfactory performance for a significant period of time, before termination is considered, that thought should be given for termination where there have been even a few, yet very outstanding examples of poor performance. The reason for this is that if it is more than one member who is performing badly, then over a significant period of time, the impact of a generally poor Board performance may be unrecoverable and unable to be buffered by a minority performing well.

### **Division 3—Meetings of the Board**

**Clause 18** provides that meetings must be held as is necessary for the Board to efficiently perform its functions. At least four meetings must be held each calendar year and the

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Chair must convene a meeting if requested in writing by 3 or more members or the Minister.

**Clause 20** provides the conditions for a quorum and **clause 21** outlines the determination of voting at a meeting.

**Clause 23** provides that the Board must keep minutes of its meetings.

**Clause 24** allows the Board to make decisions out of session, where it is deemed necessary and this clause provides rules for out of session decision taking.

#### **Division 4 —Reports**

**Clause 25** provides that the Board must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on its operations during that year. In its annual report, the Board must include details of any written directions given to it by the Minister.

#### **Part 3 – Chief Executive Officer, staff and consultants**

**Clause 26** provides that the Secretary of the Department of Energy, Resources and Tourism must, by writing, designate a position in the Department as the Chief Executive Officer of ACRE, a position to be occupied by an SES employee<sup>5</sup>.

**Clause 27** provides that staff may be engaged under the *Public Service Act 1999*, to assist the Board. Consultants and other persons may also be engaged to assist the Board.

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5. An SES employee is a senior executive service employee as defined in section 34 of the *Australian Public Service Act 1999*.

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