



AUSTRALIAN  
SENATE

**Senate Standing Committee for the  
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600  
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[www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc)

12 August 2021

The Hon Angus Taylor MP  
Minister for Energy and Emissions Reduction  
Parliament House  
CANBERRA ACT 2600

Via email: [DLOTaylor@environment.gov.au](mailto:DLOTaylor@environment.gov.au)  
CC: [legislation@environment.gov.au](mailto:legislation@environment.gov.au)

Dear Minister,

**Australian Renewable Energy Agency Amendment (2020-21 Budget Programs) Regulations 2021 [F2021L00590] (first ARENA instrument)**

**Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043] (second ARENA instrument)**

Thank you for your response of 3 August 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instrument.

The committee considered your response at its private meeting on 11 August 2021. Whilst noting your advice, the committee remains concerned that the above instruments raise significant scrutiny concerns that should be brought to the attention of the Senate.

The committee's concerns are detailed in full in Chapter 1 of its *Delegated Legislation Monitor 12 of 2021*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

As set out in the Monitor, the committee remains concerned that the second ARENA instrument is expanding the remit of the ARENA beyond what was envisaged by Parliament. Given the scope and impact of the measures, the committee also retains its position that the measures in the instrument appear more appropriate for parliamentary enactment.

In addition, the committee notes that section 48 of the *Legislation Act 2003* provides that a legislative instrument that is the same in substance as a legislative instrument that has been disallowed must not be made within six months after the day of disallowance. It is unclear to the committee whether the second ARENA instrument may be considered to be the 'same in substance' as the first ARENA instrument and therefore invalid. Your response of 3 August 2021 stated that the advice set out in that letter is relevant to both the first and second ARENA instruments, which implies similarity between the instruments.

The committee therefore requests your advice as to:

- whether there is any additional evidence, beyond that already provided to the committee, that Parliament intended that functions not relating to renewable energy could be conferred on the ARENA; and
- why the second ARENA instrument should not be considered to be the 'same in substance' as the first ARENA instrument.

Please note that the committee's expectation is to receive a response in time for it to consider and report on the second ARENA instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters outlined in *Delegated Legislation Monitor 12 of 2021*, the committee would appreciate your response by **26 August 2021**.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email at [sdlc.sen@aph.gov.au](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

**Senator the Hon Concetta Fierravanti-Wells**  
**Chair**  
**Senate Standing Committee for the Scrutiny of Delegated Legislation**