

# Sustainable Energy Development Act 1995

As at 12 January 2000

## Long Title

An Act to establish the Sustainable Energy Development Authority and to define its functions; and for other purposes.

## Part 1 - Preliminary

### 1 Name of Act

This Act is the *Sustainable Energy Development Act 1995* .

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

In this Act:

**Authority** means the Sustainable Energy Development Authority referred to in section 5.

**Council** means the Sustainable Energy Advisory Council referred to in section 21.

**energy development assistance** means information, education, training, financial accommodation and other assistance in connection with the development, commercialisation, promotion and use of sustainable energy technology.

**Executive Director** means the Executive Director of the Authority appointed under section 14.

**exercise** a function includes perform a duty.

**financial accommodation** includes loans, grants, subsidies and financial guarantees.

**financial guarantee** means a guarantee of the due performance of any covenants, promises, obligations or liabilities (including the repayment of loans, bank overdrafts or other financial accommodation and the payment of interest) undertaken by or imposed on the person in respect of whom the guarantee is given.

**function** includes a power, authority or duty.

**Fund** means the Sustainable Energy Fund referred to in section 23.

**subsidiary company** means a private company in which the Authority has a controlling interest.

**sustainable energy technology** means products, processes, practices and designs:

- (a) to improve efficiency in the use of energy, or
- (b) to facilitate the production of energy from renewable energy reserves, or
- (c) to facilitate the production of energy in ways that minimise levels of greenhouse gas

emissions and other adverse environmental impacts, or  
(d) to enable energy-using activities to use forms of energy that minimise levels of greenhouse gas emissions and other adverse environmental impacts.

#### **4 Objects of Act**

(1) The objects of this Act are:

- (a) to bring about a reduction in the levels of greenhouse gas emissions and other adverse by-products of the production and use of energy, and
- (b) to encourage the development, commercialisation, promotion and use of sustainable energy technology,

in accordance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991* .

(2) These objects are achieved by means of the establishment of:

- (a) a Sustainable Energy Development Authority, to exercise functions in relation to the development, commercialisation, promotion and use of sustainable energy technology, and
- (b) a Sustainable Energy Advisory Council, to advise the Minister on the provision of energy development assistance to persons engaged in the development, commercialisation, promotion and use of sustainable energy technology, and
- (c) a Sustainable Energy Fund, to provide financial assistance to persons engaged in the development, commercialisation, promotion and use of sustainable energy technology.

## **Part 2 - The Sustainable Energy Development Authority**

### **Division 1 - Constitution and functions**

#### **5 Constitution**

(1) There is constituted by this Act a body corporate with the corporate name of the Sustainable Energy Development Authority.

(2) The Authority is a statutory body representing the Crown.

#### **6 Objectives**

The principal objectives of the Authority are:

- (a) to bring about a reduction in the levels of greenhouse gas emissions and other adverse by-products of the production and use of energy, and
- (b) to facilitate the development, commercialisation, promotion and use of sustainable energy technology, particularly in those areas (other than fundamental research) where the development, commercialisation, promotion and use of that technology is impeded by lack of appropriate information or finance or by other barriers,

in accordance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991* .

#### **7 Functions**

(1) The Authority has the following functions:

- (a) to investigate matters relating to the development, commercialisation, promotion and use of sustainable energy technology,
- (b) to engage in the development, commercialisation and promotion of sustainable energy technology,
- (c) to provide energy development assistance to persons engaged in the development, commercialisation, promotion and use of sustainable energy technology, and
- (d) to advise other persons on matters relating to the development,

commercialisation, promotion and use of sustainable energy technology.

(2) The Authority has such other functions as are conferred or imposed on it by or under this or any other Act.

(3) The Authority may do all such things as are supplemental or incidental to the exercise of its functions.

(4) In exercising its functions, the Authority should have primary regard to products, processes, practices and designs that are already commercialised or on a development and demonstration path that leads to commercialisation.

## **8 Ministerial control**

In exercising its functions, the Authority is subject to the control and direction of the Minister.

## **9 Corporate plans**

(1) The Authority is required to prepare and deliver to the Minister, at least 3 months before the beginning of each 3-year period of the Authority, a draft corporate plan for that period.

(2) The Authority:

(a) must consider any comments on the draft corporate plan that are made by the Minister within 2 months after the plan is delivered to the Minister, and

(b) must deliver the completed corporate plan to the Minister before the beginning of the 3-year period concerned.

(3) The Authority must ensure that copies of its current corporate plan are available at each of its offices for purchase and inspection by members of the public.

(4) As far as practicable, the Authority is to exercise its functions in accordance with the relevant corporate plan.

(5) A corporate plan must specify:

(a) the objectives of the activities of the Authority for the 3-year period concerned, and

(b) the strategies, policies, programs and budgets for achieving those objectives, and

(c) targets and criteria for assessing the performance of the Authority in its pursuit of those objectives, and

(d) the current level and status of sustainable energy technology in New South Wales, the level and status of sustainable energy technology in New South Wales that is likely to be achieved if those objectives are achieved and the effects of the Authority's previous activities in relation to those objectives, and

(e) such other matters as may be prescribed by the regulations.

(6) This section is subject to the requirements of any other law, including the requirements of a direction of the Minister under this Act.

(7) In this section, **3-year period** means the period of 3 years commencing on 1 January 1997 and each subsequent period of 3 years.

## **10 Public consultation on draft corporate plans**

(1) At least 6 months before delivering a draft corporate plan to the Minister, the Authority must cause notice of the draft plan to be published in the Gazette and in a daily newspaper circulating throughout the State.

(2) The notice must indicate:

(a) where copies of the draft corporate plan may be obtained, and

(b) where submissions on the draft corporate plan should be lodged, and

(c) the time (being not less than 40 days from the date on which the notice is published) within which any such submissions should be lodged, and

(d) such other matters as may be prescribed by the regulations.

(3) In preparing a draft corporate plan, the Authority must consult with appropriate representatives of electricity consumers, relevant interest groups and any relevant sector

of industry or commerce.

(4) The Authority must give due consideration to matters arising from any submissions and consultations under this clause.

### **11 Formation of private companies**

(1) The Authority:

(a) may form, or participate in the formation of, private companies, and

(b) may acquire interests in private companies, and

(c) may sell or otherwise dispose of interests in private companies.

(2) Except with the approval of the Minister, the Authority:

(a) may not form, or participate in the formation of, a subsidiary company, and

(b) may not acquire an interest in a private company so that, as a result of the acquisition, the company becomes a subsidiary company, and

(c) may not sell or otherwise dispose of any interest in a subsidiary company so that, as a result of the sale or disposal, it ceases to be a subsidiary company.

(3) The Minister must not give an approval under this section except with the concurrence of the Treasurer.

(4) A subsidiary company is not, and does not represent, the Crown.

### **12 Subsidiary companies, joint ventures, partnerships and other associations**

(1) The functions of the Authority under this Act may be exercised by the Authority or, with the approval of the Minister:

(a) by a subsidiary company, or

(b) by the Authority or a subsidiary company, or both, in a joint venture, partnership or other association with other bodies and persons.

(2) The Minister must not give an approval under this section except with the concurrence of the Treasurer.

### **13 Financial guarantees**

(1) With the approval of the Minister, the Authority may enter into financial guarantees.

(2) The Minister must not give an approval under this section except with the concurrence of the Treasurer.

## **Division 2 - Staff**

### **14 Executive Director**

(1) The Governor may appoint an Executive Director of the Authority.

(2) The employment of the Executive Director is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.

### **15 Acting Executive Director**

(1) The Minister may, from time to time, appoint a person to act in the office of the Executive Director during the illness or absence of the Executive Director.

(2) The Minister may remove a person from office as acting Executive Director, at any time, for any or no reason and without notice.

(3) A person, while acting in the office of Executive Director:

(a) has all the functions of the Executive Director and is taken to be the Executive Director, and

(b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may determine.

(4) For the purposes of this section, a vacancy in the office of Executive Director is regarded as an absence from office.

### **16 Functions of Executive Director**

(1) The affairs of the Authority are to be managed and controlled by the Executive Director.

(2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the Executive Director is taken to have been done by the Authority.

## **17 Staff of Authority**

- (1) The Authority may employ such staff as it requires to exercise its functions.
- (2) The Authority may fix the salaries, wages and conditions of its staff in so far as they are not fixed by or under any other Act or law.
- (3) The regulations may make provision for or with respect to the employment of the staff of the Authority, including the conditions of employment and the discipline of any such staff.
- (4) Any such regulations relating to the conditions of employment or the discipline of staff:
  - (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement or enterprise agreement to which the Authority is a party, and
  - (b) have effect despite any determination of the Authority under subsection (2).
- (5) The Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government agency or any other public or local authority.
- (6) Any staff of whose services the Authority makes use is taken to be the staff of the Authority for the purposes of this Act and any other Act that confers functions on the Authority.
- (7) The Authority may engage consultants.

## **18 Delegation by Executive Director**

The Executive Director may delegate to a member of staff of the Authority any of the Executive Director's functions, other than this power of delegation.

## **Division 3 - Miscellaneous**

### **19 Seal of Authority**

The seal of the Authority is to be kept by the Executive Director and may be affixed to a document only:

- (a) in the presence of the Executive Director or a member of the staff of the Authority authorised in that behalf by the Executive Director, and
- (b) with an attestation by the signature of the Executive Director or that member of the fact of the affixing of the seal.

### **20 Service of documents**

- (1) A document may be served on the Authority by leaving it at, or by sending it by post to:
  - (a) the office of the Authority, or
  - (b) if the Authority has more than one office, any one of its offices.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Authority in any other manner.

## **Part 3 - The Sustainable Energy Advisory Council**

### **21 Constitution**

- (1) There is to be a Sustainable Energy Advisory Council.
- (2) The Council is to comprise the Executive Director and at least 2, but not more than 6, members appointed by the Minister.
- (3) Each appointed member is to be a person who, in the Minister's opinion, has appropriate qualifications or experience in relation to one or more of the following:
  - (a) sustainable energy or sustainable energy related services,
  - (b) consumer or community interests,
  - (c) environmental protection,
  - (d) financial management.

- (4) The Minister must ensure that the appointed members have, between them, appropriate qualifications or experience in relation to each of the matters referred to in subsection (3).
- (5) The Minister is to appoint one of the appointed members as Chairperson of the Council and another as Deputy Chairperson of the Council.
- (6) Schedule 1 has effect in relation to the constitution and procedure of the Council.

## **22 Functions**

- (1) The principal functions of the Council are to advise the Minister and the Authority on the following matters:
  - (a) the development, commercialisation, promotion and use of sustainable energy technology, and
  - (b) the provision of energy development assistance to persons engaged in the development, commercialisation, promotion and use of sustainable energy technology, and
  - (c) the draft corporate plans prepared by the Authority,
  - (d) such other matters concerning sustainable energy technology as the Minister may refer to the Council for advice.
- (2) The Council has such other functions as are conferred or imposed on it by or under this or any other Act.

## **Part 4 - The Sustainable Energy Fund**

### **23 Sustainable Energy Fund**

- (1) There is established a fund to be called the Sustainable Energy Fund.
- (2) The Fund is to be administered by the Authority.

### **24 Payments into the Fund**

- (1) There is payable into the Fund:
  - (a) all money received by the Authority, and
  - (b) all interest received in respect of the investment of money belonging to the Fund, and
  - (c) all money appropriated by Parliament for the purposes of the Authority, and
  - (d) all money directed to be paid into the Fund by or under this or any other Act.
- (2) All money payable into the Fund is to be paid into one or more banks, building societies or credit unions in New South Wales.

### **25 Payments from the Fund**

There is payable from the Fund:

- (a) all payments made on account of the Authority or otherwise required to meet the expenditure incurred in relation to the functions of the Authority, and
- (b) the remuneration (including allowances) of the members of the Council and the Executive Director and other staff of the Authority, and
- (c) all money directed to be paid from the Fund by or under this or any other Act.

### **26 Investment**

The Authority may invest money in the Fund:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Authority to invest money, in accordance with the *Trustee Act 1925* or in any other manner approved by the Minister with the concurrence of the Treasurer.

### **27 Financial year**

- (1) The financial year of the Authority is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

## **Part 5 - Miscellaneous**

### **28 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### **29 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **30 (Repealed)**

### **31 Review of Act**

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Constitution and procedure of the Council**

(Section 21)

## **Part 1 - Constitution**

### **1 Terms of office of members**

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **2 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **3 Deputies**

(1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.

(2) In the absence of a member, the member's deputy may, if available, act in the place of the member.

(3) While acting in the place of a member, a person:

(a) has all the functions of the member and is taken to be a member, and

(b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

### **4 Vacancy in office of member**

(1) The office of a member becomes vacant if the member:

(a) dies, or

- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause, or
- (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may at any time remove a member from office.

### **5 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

### **6 Chairperson and Deputy Chairperson**

(1) In the absence of the Chairperson, the Deputy Chairperson may, if available, act in the place of the Chairperson.

(2) While acting in the place of the Chairperson, the Deputy Chairperson has all the functions of the Chairperson and is taken to be the Chairperson.

(3) The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if the person:

- (a) is removed from office by the Minister under this clause, or
- (b) ceases to be a member.

(4) The Minister may at any time remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson.

### **7 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Council, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure by a member at a meeting of the Council that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Council.

(4) After a member has disclosed the nature of an interest in any matter, the member must

not, unless the Minister or the Council otherwise determines:

- (a) be present during any deliberation of the Council with respect to the matter, or
- (b) take part in any decision of the Council with respect to the matter.

(5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Council for the purpose of making the determination, or
- (b) take part in the making by the Council of the determination.

(6) A contravention of this clause does not invalidate any decision of the Council.

## **8 Effect of certain other Acts**

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **Part 2 - Procedure**

### **9 Quorum**

The quorum for a meeting of the Council is a majority of its members, of whom one must be the Chairperson or Deputy Chairperson.

### **10 Presiding member**

(1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson) is to preside at a meeting of the Council.

(2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **11 Voting**

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

### **12 Transaction of business outside meetings or by telephone**

(1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Council.

(2) The Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

- (a) the approval of a resolution under subclause (1), or
- (b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Council.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be

recorded in the minutes of the meetings of the Council.

(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

### **13 First meeting**

The Minister may call the first meeting of the Council in such manner as the Minister thinks fit.

## **Schedule 2 (Repealed)**

### **Historical notes**

Table of Acts *Sustainable Energy Development Act 1995 No 96* . Assented to 21.12.1995. Date of commencement, 9.2.1996, sec 2 and GG No 17 of 9.2.1996, p 569. This Act has been amended as follows:

*Local Institutions (Miscellaneous Amendments) Act 1996* . Assented to 21.6.1996. Date of commencement, 12.7.1996, sec 2 and GG No 84 of 12.7.1996, p 3984.

*Law (Miscellaneous Provisions) Act (No 2) 1999* . Assented to 3.12.1999. Date of commencement of Sch 4, assent, sec 2 (1).

*Legislation Amendment (Sentencing) Act 1999* . Assented to 8.12.1999. Date of commencement of sec 7 and Sch 5, 1.1.2000, sec 2 (1) and GG No 144 of 24.12.1999, p 12184.

### Table of amendments

96 No 24, Sch 1.

99 No 85, Sch 4.

99 No 94, sec 7 (2) and Sch 5, Part 2.

99 No 85, Sch 4.