

ARENA

FUNDING AGREEMENT VARIATION POLICY

LAST UPDATED: JUNE 2021



Australian Government
**Australian Renewable
Energy Agency**

1.0 OVERVIEW

For the purposes of this Variations Policy, a variation is a change to the terms and conditions of an agreement under which ARENA provides financial assistance to a recipient (**funding agreement**). Unless the context otherwise requires, capitalised terms used in this Variations Policy that are defined in ARENA's Funding Agreements have the same meaning.

Financial assistance is awarded by ARENA following rigorous due diligence and technical review of an application. In some cases, financial assistance is awarded following a competitive process.

Under the standard terms of ARENA's Funding Agreements, funds may only be used for the purposes for which they were provided and, accordingly, any proposed changes to a Funding Agreement need to consider that original decision. Variations will not be approved unless ARENA is satisfied that the Project continues to meet the merit criteria for the relevant program, represents value for money and will not give rise to any other probity issues.

A request for a variation from a Recipient must be submitted in a timely manner and, in any event, as soon as practicable before the proposed date of effect. A variation request from a Recipient should comply with the requirements of, and be requested in accordance with, the relevant Funding Agreement. As a minimum, variation requests must be in writing and contain sufficient detail to allow assessment of the variation request to be made by ARENA.

Each variation request will be considered based on its individual circumstances having regard to the principles outlined in this Variations Policy. As part of making any decisions with respect to variation requests, ARENA will take into consideration any previous variations and any other matters of which it is aware that are considered by ARENA as relevant to a Project.

	Funding Agreement Variations Policy
VERSION	3
APPROVED BY	ARENA Chief Executive Officer
FIRST APPROVAL DATE	8 February 2018
LAST AMENDED	21 June 2021
DATE OF NEXT REVIEW	June 2022

2.0 PRINCIPLES TO BE APPLIED IN CONSIDERING VARIATIONS

2.1 VARIATIONS THAT WILL NOT GENERALLY BE CONSIDERED

Except in exceptional circumstances as determined by ARENA in its sole discretion, ARENA will generally not consider requests for variation that:

- (a) give effect to a proposed secondary or additional stage of a Project where such additional stage was not contemplated at the outset by the parties;
- (b) otherwise extend or expand the scope of a program of work beyond the agreed Outcomes of the Project;
- (c) have retrospective effect; or
- (d) seek further ARENA Funding.

If exceptional circumstances are found and ARENA has decided to consider a variation request of the type listed above, ARENA will treat the variation request as a Material Variation for the purposes of this Variations Policy.

If ARENA has decided not to consider a variation request of the type listed above, Recipients should discuss with ARENA whether it is appropriate to submit a new proposal through an appropriate ARENA program, including any open competitive rounds where appropriate.

2.2 NON-MATERIAL VARIATIONS

A Non-Material Variation is a variation that ARENA considers is unlikely to impact the overall merit or value for money of the Project and is unlikely to give rise to probity issues.

Provided that the proposed change is not likely to, or will not materially affect, the Project or Outcomes, or the extent of the Recipient's obligations or costs in undertaking the Project, a Non-Material Variation will generally include the following:

- (a) variations to the dates specified in the Project Details or Schedule 1, provided the change is not greater than 6 months;¹
- (b) variations to the Specified Personnel listed in the Project Details;
- (c) variations to the Knowledge Sharing Plan; and
- (d) limited changes to the elements of the Project as described in items 1.1 - 1.3 of Schedule 1, particularly if the proposed changes result from:
 - (i) improvements to the research techniques used to achieve the Outcomes of a Project (e.g., new, cheaper or more accurate technique or technology becomes available);
 - (ii) reasonable adaptation to changing market conditions; or
 - (iii) Budget changes that do not increase the overall ARENA Funding amount.

Where ARENA considers that a variation request is a Non-Material Variation, ARENA will consider the variation request on its individual circumstances and may seek further information or advice regarding the variation request as required.

¹ The overall duration of the Project needs to be considered when assessing a Non-Material Variation involving extensions of time (EoT). For example, ARENA may consider that it is not appropriate to categorise a 6 month EoT to a Project of less than 6 months' duration as a Non-Material Variation.

2.3 MATERIAL VARIATIONS

A Material Variation is a variation that ARENA considers may impact the overall merit or value for money of the Project or could give rise to probity issues.

The following variations may be treated as a Material Variation:

- (a) any amendments to the Project Details or Schedule 1 not covered by Non-Material Variations (including variations to dates exceeding 6 months);
- (b) any material changes to the Outcomes of a Project;
- (c) any material changes in a research plan;
- (d) any material changes to Project design, construction and/or its commissioning plan;
- (e) any change in the delivery of the Project, including the physical location of delivery;
- (f) any material reductions in cash or in-kind Contributions from the Recipient or Project Participants; or
- (g) any loss or change of a Project Participant or subcontractors approved for Major Subcontract Work.

Where ARENA considers that the Recipient's variation request could impact the overall merit assessment or value for money of the project in a detrimental way, or raise probity concerns, and is consistent with one or more of the above mentioned criteria, ARENA may, acting in its sole discretion:

- (a) refer the variation to the ARENA Advisory Panel, a technical due diligence adviser, probity adviser, or any other appropriate adviser for further consideration and advice;
- (b) seek approval for the variation from the original approver of the Project (either the ARENA Board or the ARENA Chief Executive Officer);
- (c) treat the Recipient's variation as a new project and request the Recipient to submit a new funding application under an appropriate ARENA program; or
- (d) refuse the variation request and reserve the right to exercise any rights it may have under the Funding Agreement if the Recipient is found to be subsequently in breach of its obligations under the Funding Agreement.

Further information is available at
arena.gov.au

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Engage with us

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