



# Net Zero Economy Authority Bill (2024) ACTU Submission

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## About the ACTU

Throughout our country's history, Australian Unions have always been at the forefront of the struggle for the fair go.

The Australian Council of Trade Unions is the peak body for Australian unions, made up of 38 affiliated unions who together represent over 1.7 million workers. We provide a single representative voice for working people.

Since its creation in 1927, the ACTU has spearheaded some of the most fundamental workplace and social struggles in Australia's history. The workplace improvements are many: decades of wage increases through the award system and campaigns in the field, safer workplaces, greater equality for women, improvements in working hours, entitlements to paid holidays and better employment conditions, the establishment of a universal superannuation system, paid parental leave and paid family and domestic violence leave. The ACTU has played a role in all of these achievements. Every worker in Australia has benefited from the victories of the union movement.

For nearly a decade, the ACTU has been working with its affiliates—in particular those representing workers in high-carbon industries—to advocate for policies that would guarantee a just transition to a net zero economy. The concept of a 'just transition' was codified by the International Labour Organisation (ILO) to describe a transition in which the risks and rewards are distributed equitably across society, and in which no workers and communities are left behind.

## Introduction

The ACTU welcomes the opportunity to make a submission to this Senate Inquiry on the Net Zero Economy Authority Bill 2024 (hereafter, 'the Bill')

The Bill establishes a new, national, independent Net Zero Economy Authority (NZEA) tasked with promoting an orderly, positive, and just transition to a net zero economy and energy system. Its work will focus on maximising the benefits and minimising the risks of decarbonisation for workers, communities, and industries. The Bill represents a critical step forward in ensuring all workers and communities benefit from the transition to a net zero economy, and that no one is left behind.

The NZEA's mandate will include the following functions set down in the Bill:

1. Supporting workers in emissions-intensive industries who are, or will be, affected by Australia's transition to a net zero emissions economy to access new employment, training, skills acquisition, and other supports including funding or grants.
2. Supporting investors and companies to engage with opportunities in the net zero transformation and facilitating public and private sector investment in decarbonisation projects, particularly in industrial regions and where there is a clear role for government.

3. Coordinating across the Australian government to promote consistency and organisation in the design and implementation of net-zero related policies, programs, and plans.
4. Developing and delivering educational and promotional initiatives for the purpose of promoting public understanding of, and enabling participation in, Australia's transition to a net zero emissions economy.
5. Supporting First Nations persons and communities to participate in, and benefit from, Australia's transition to a net zero emissions economy.

The Bill sets down the key functions requiring legislation, with details of the full mandate to be fleshed out through subsequent consultation and regulation.

### Summary of Recommendations

Given the urgency of the just transition challenge, and the critical importance of the mandate outlined above, the ACTU recommends that the Net Zero Economy Authority Bill 2024 is passed as soon as possible. This submission also provides a number of suggested amendments to the Bill to better help it achieve its policy intent, which we encourage the Committee to consider and support. The recommendations are summarised below and covered in full in the final section of this submission:

**Recommendation 1:** Past the Net Zero Economy Authority Bill (2004) as soon as possible.

**Recommendation 2:** Ensure that incentives are available to secure the participation of enough receiving employers in the pooled redeployment scheme.

**Recommendation 3:** Amend s.6(4)(b) to ensure that it also covers a dependent employer with a commercial relationship with an associated entity of a company that owns or operates a relevant mine.

**Recommendation 4:** Amend the NZEA Bill to ensure that the FWC has the power to deal with disputes under a Determination made under ss.60 or 61 of the Bill.

**Recommendation 5:** Amend the Bill to bring the remedies for breach of a determination in line with the well-established approach under the *Fair Work Act*.

**Recommendation 6:** Amend the Bill to enable a relevant employer, potential employer or relevant union to apply to the FWC seeking a review of the CEO's decision not to make an application for a Community of Interest Determination.

### Why the Bill is necessary

**The establishment of the NZEA is essential for ensuring a just, orderly transition that benefits workers and regions.**

Australian workers and communities have witnessed first-hand how—in the absence of dedicated just transition policy—unjust, disorderly transitions of high-carbon facilities have caused

significant social and economic damage. Research shows that Australian coal-fired power workers made redundant due to plant closures over the last decade have experienced intense economic fallout. One year after they lost their job, those workers had experienced an average 69% drop in earnings, and four years out still earned less than 50% of what they had previously. This is significantly worse than the average for worker earnings post-redundancy, with workers in other industries experiencing a 43% drop in earnings the year following redundancy, and only a 29% drop four years out. This sudden and widespread drop in employment, earnings, job security, and job quality has rippled through the surrounding communities and regions, causing lasting economic damage and social dislocation.<sup>1</sup> For example, the 2017 closure of the Hazelwood Power Plant precipitated mass forced redundancies and collateral damage across the Latrobe Valley community, which continues to face serious social challenges including high rates of substance abuse, mental health, underemployment and unemployment.

International case studies provide cautionary examples of what could lie ahead for Australia's energy regions if this trend is allowed to continue. West Virginia, a traditional coal mining state in the United States, has for decades experienced a steady and predictable decline in the industry, due to changing energy markets and growing efforts to limit emissions. Conservative politicians consistently blocked any just transition policies from providing support to coal workers and communities, denying against all evidence that the transition was happening. The results have been devastating: with no bridge to a clean energy future, West Virginia has been thrown into a spiral of generational poverty and social upheaval. It is now the second poorest state in the country. The high rates of unemployment, poor health, and depression have proved fertile ground for the opioid epidemic, which is now dragging down the average American lifespan to levels not seen in 25 years. With no just transition policy in place, the bottom fell out of the state's economy, and what might have been a renaissance quickly turned into a tragedy.

Australia has at least five coal-fired power stations and at least four natural gas-fired power stations slated to close before 2030, which currently employ thousands of workers and contractors.<sup>2</sup> The number of coal plant closures in the next five years is likely to increase as closure dates get moved up, and this number does not include the dependent facilities (such as coal mines that exclusively supply a power plant) that will also close in that time period. The passage of the Bill and subsequent establishment of the NZEA is urgently needed by 1 July 2024

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<sup>1</sup> Dan Andrews, Elyse Dwyer, and Lachlan Vass. "At the coalface: What happens to workers displaced by decarbonisation." E61 Institute. October 2023.

<sup>2</sup> "Generating unit expected closure years". Australian Energy Market Operator. February 2024.

to ensure that the workers and communities currently reliant on these facilities for employment and economic activity are given the support they need, with enough lead-time to transition as the economy decarbonises. It is also necessary to ensure that the regions that have been powering Australia for generations can continue to thrive, avoiding the lasting socio-economic fallout of an unjust transition.

**Without the NZEA, Australia would be uniquely at risk of experiencing an unjust, disorderly transition.**

Transitioning to a net zero economy by 2050 is a non-negotiable, society-wide priority, critical to preserving a secure, sustainable, equitable, and prosperous Australia. With some of the best sun, wind, and mineral resources on the planet, Australia has a unique and enormous opportunity to benefit from the transition and lead in the world in the race to net zero. But without the establishment of the NZEA, Australia is also uniquely at risk of economic and social dislocation precipitated by the transition. This disproportionate risk factor relative to other countries is caused by at least three factors:

- Australia’s low economic complexity, which currently ranks 93<sup>rd</sup> in the world.
- The location and economic structure of Australia’s energy regions, many of which are located far from major population centres and lack diverse employment opportunities.
- Australia’s current high reliance—especially relative to other developed countries—on fossil fuels for energy and exports. While coal power is dropping rapidly as a proportion of Australia’s energy mix, it still contributed 47% of electricity generation in 2022.<sup>3</sup>

In addition, there are at least four reasons why displaced coal-fired power workers find it so much harder to find work with similar pay, than the average displaced worker.<sup>4</sup> First, coal-fired power stations are often a major source of local employment in energy communities, and when they close the overall regional unemployment rate increases, making it even harder for displaced workers to find a new job.<sup>5</sup> Second, many of these workers possess highly job-specific skills that are not always easily transferable to other jobs in the same location. Third, many of these workers derive good wages from strong union representation, meaning they are likely to earn significantly less if they switch to less unionised sectors. Fourth, workers aged 40 and over do

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<sup>3</sup> “Australian electricity generation – fuel mix.” Department of Climate Change, Energy, the Environment and Water. Australian Energy Statistics. September 2023.

<sup>4</sup> Dan Andrews, Elyse Dwyer, and Lachlan Vass. “At the coalface: What happens to workers displaced by decarbonisation.” E61 Institute. October 2023.

<sup>5</sup> Paul Burke, Rohan Best, Frank Jotzo. “Closures of coal-fired power stations in Australia: local unemployment effects.” The Australian Journal of Agricultural and Resource Economics. January 2019.



much worse after redundancies than younger workers, and coal-fired power workers tend to be significantly older than the average worker.

All of these factors contribute to the unique vulnerability of the coal-fired power workforce.

Given its unique vulnerabilities and opportunities, Australia should be leading the world in implementing just transition policies on the ground, and the establishment of the NZEA represents a critical step toward doing exactly that.

**The NZEA's cross-government planning and coordination function is key to a successful net zero transition.**

Other countries with large fossil fuel sectors have facilitated orderly and positive energy transitions through the establishment of dedicated transition authorities. Germany's long-standing "Coal Commission" has so far succeeded in phasing down the country's large coal mining and power sectors without a single forced redundancy.<sup>6</sup> Spain's legislated National Just Transition Strategy has put in place mechanisms for worker support and regional economic diversification and investment across all 15 of its coal-intensive regions.<sup>7</sup>

Key to both approaches was national governments leading in coordinating, facilitating, and driving net zero transition policies to ensure consistency and complementarity, with explicit goals to deliver for workers and communities.

The urgency, complexity and ubiquity of the net zero transition in Australia similarly requires a strong and durable role for government. Leaving this society-wide project to the whims of the market will result in a disorderly and unjust transition that erodes social license and impedes urgently needed progress on decarbonisation. The passage of the Bill and the establishment of the NZEA will give the Australian government the tools it needs to help guide a positive transition for all Australians.

**The NZEA is critical for building the net zero economy we're transitioning to.**

Australia's transition to net zero emissions, and its emergence as a "renewable superpower", will require a historic level of public and private investment, on par with that mobilised in post-WWII reconstruction or, more recently, during the COVID-19 pandemic. Estimates suggest that decarbonising our domestic economy will require investments in the order of \$20 billion annually

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<sup>6</sup> Campbell, Eric. "Germany is shutting down its coal industry for good, so far without sacking a single worker. ABC News. 18 February 2020.

<sup>7</sup> "Spain, 4 years towards a just energy transition." Spanish Ministry for Ecological Transition and Demographic Challenge. May 2023.

through 2050, while decarbonising our domestic economy *and* emerging as a world-leader in clean exports will require anywhere between \$50-200 billion annually.<sup>8</sup>

The NZEA's investment facilitation function will play an important role in helping mobilise the necessary level of investment by driving growth and innovation in key renewable industries and diversifying regional economies, particularly those historically reliant on carbon-intensive industries. That means the workers and regions that have powered Australia for generations will be able to continue doing so, leading the charge toward a net zero future. The NZEA will play an important role in providing recommendations and guidance to the Government's Special Investment Vehicles such as the Clean Energy Finance Corporation (CEFC) and the National Reconstruction Fund (NRF), on the necessary investments to unlock transformational projects, especially in transitioning energy regions. The "bird's eye view" provided by its cross-government facilitation role will help position the NZEA to play this role effectively.

Simultaneously, the NZEA's educational and promotional initiatives will improve public understanding of the transition and help Australians from every walk of life participate in and benefit from the national drive to net zero, including by accessing well-paid, safe and secure jobs in critical clean energy occupations.

Delivering tangible investments and clean economy projects in regions and communities while delivering public education that makes clear the importance and the benefits of those investments are both essential for creating and maintaining strong social license, a critical ingredient for building a thriving net zero economy.

**Recommendation 1:** Pass the Net Zero Economy Authority Bill 2024 as soon as possible.

## Overview of the Bill

**Establishing the Net Zero Economy Authority:** The Bill sets up the Net Zero Economy Authority with the above-mentioned primary functions as a non-corporate Commonwealth entity, with a Board, CEO, and staff.

**Energy Industry Jobs Plan and Worker Support:** The bill sets up an Energy Industry Jobs Plan (EIJP) which is activated once a notice is given about the closure of the whole, or a part, of a coal-fired or a gas-fired power station, to the NZEA. The EIJP will enable the use of pooled

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<sup>8</sup> Barker, Andrew. "Economic and Policy Outlook 2024." The Committee for Economic Development of Australia (CEDA). Feb 2024.



redeployment schemes by participating power stations and can help provide greater certainty about workers' future employment prospects. Pooled redeployment schemes will facilitate workers at closing employers accessing new jobs with receiving employers, while providing receiving employers with an established and skilled workforce from which to hire.

The EIJP details the process, obligations, and actions to be followed by closing/dependent employers to provide transition support to employees. To achieve this, the plan details:

**Community of interest process and determinations:** The Bill defines a community of interest process, which is the starting point for the implementation of the Plan in the context of a coal-fired or gas-fired power station closure.<sup>9</sup> Under the Bill, the NZEA CEO must undertake this process to identify:

- Closing employers, dependent employers, and receiving employers
- Number of transition employees involved, and the kind of jobs performed by them: and
- An estimate of the number of those employees who are or who will become participating employees/would continue working for those employers.

After completion of the process, the CEO can make an application to the Fair Work Commission (FWC) for a Community of Interest Determination which would outline the employers and employees covered.<sup>10</sup> The Bill requires the CEO to make an application at least two years ahead of the scheduled closure of the coal-fired or gas-fired power station. After ensuring relevant employers and employees have an opportunity to be heard with regard to the application, the FWC must make a written determination which comes into force on the day it is made and remains in force until six months after the closure of the whole, or a part, of the power station in question.<sup>11</sup>

**Closing and Dependent Employer Obligations:** The Bill specifies the obligations that a closing/dependent employer has once the FWC has made a Community of Interest Determination.<sup>12</sup> These obligations include:

- Provision of career planning advice and financial advice, along with time off work or flexible working arrangements to access such advice.

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<sup>9</sup> S.55 of the Bill

<sup>10</sup> S.56 of the Bill

<sup>11</sup> S. 57 of the Bill

<sup>12</sup> Ss.58 & 59 of the Bill

- Receiving advice and support from trade unions (called “employee organisations” in the Bill) to help with transition.
- Time off work or flexible working arrangements to undertake training.
- Making a financial contribution towards such training.
- Engaging with receiving employers for help their employees find new work.
- Allowing employees time off work or flexible work arrangements to attend recruitment-related activities and
- Paid time off work for advice or for training

The Bill also requires all closing and dependent employers to provide information to each transition employee about the obligations they have under the legislation.

These are general obligations on closing and dependent employers that they must meet, subject to the extent that they are not unreasonable having regard to the operational requirements of the employer and the need to ensure a just transition.

Employers and Unions also have the opportunity to negotiate and agree more precise obligations to support the transition process as follows:

**Agreement on employer obligations:** If the closing/dependent employers and each union representing the workers agree on the actions to be taken by the employer to support workers and protect their rights through the facility closure, they can jointly make an application to the FWC to make a determination on the agreed actions.<sup>13</sup> In the absence of such an agreement, the relevant union (or employer) can apply to the FWC to make the determination.<sup>14</sup>

The operation of the Energy Industries Jobs Plan requires the involvement of receiving employers to employ participating employees of a closing employer or dependent employer. According to the Government, the participation of receiving employers in the Plan would be wholly voluntary.

**Energy Industry Worker Redeployment Advisory Group (EIWRAG):** The Bill also sets up the EIWRAG of employers and union representatives to provide information to the FWC in response to applications for determinations. The group’s function is to inform and advise the FWC in

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<sup>13</sup> S.60

<sup>14</sup> S.61 of the Bill.

making sure that transition employees/unions that represent these employees have had adequate opportunity to raise their concerns in the rollout of the energy industry jobs plan.

## Further Recommendations to strengthen the Bill

### Ensuring enough receiving employers participate in the pooled redeployment schemes

Participation of receiving employers in the redeployment scheme will be secured by funding incentives. This runs the risk of low participation. As pointed out in the policy impact analysis in the Bill's Explanatory Memorandum<sup>15</sup>, as labour market conditions fluctuate, it may be difficult to secure sufficient receiving employer participation under a voluntary model, particularly for closure events in regions with low economic diversification. Accordingly, there should be incentives available to secure enough participation of receiving employers.

The incentives for receiving employers must be tangible and attractive enough to secure their widespread participation. This has been a successful approach under Spain's national Just Transition Strategy. There, "job banks" have been set up for transitioning coal-workers in each of the country's 15 designated just transition regions. The Strategy provides incentives for local business and clean projects in those regions to drive economic diversification. Those projects that hire coal workers registered at the job banks receive higher subsidies and/or higher scores on their project bids.<sup>16</sup>

**Recommendation 2:** Ensure that incentives are available to secure the participation of enough receiving employers in the pooled redeployment scheme.

### Fix a technical issue with the definition of "dependent employer"

The Bill seeks to capture coal or gas fired power plants, their associated entities and dependent suppliers at s.6. However, as currently drafted, it will not capture a dependent employer where its commercial relationship is with an associated entity of a constitutional corporation that owns or operates a mine supplying a coal-fired power station. This appears just to be a drafting error.

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<sup>15</sup> Net Zero Economy Authority Bill 2024. Explanatory Memorandum. Circulated by authority of the Prime Minister, the Hon Anthony Albanese MP. The Parliament of the Commonwealth of Australia – House of Representatives.

<sup>16</sup> "Spain, 4 years towards a just energy transition." Spanish Ministry for Ecological Transition and Demographic Challenge. May 2023.

**Recommendation 3:** Amend s.6(4)(b) to ensure that it also covers a dependent employer with a commercial relationship with an associated entity of a company that owns or operates a relevant mine.

#### **Engage the Fair Work Commission in dispute resolution**

The Bill requires any determination made by the FWC under ss.60 or 61 to include a procedure for settling disputes between the closing/dependent employer and the relevant unions. This is positive, however, as drafted, the FWC itself would not be able to resolve the dispute, as the *Fair Work Act* does not explicitly include determinations made under the NZEA Bill as per s.738. The FWC is a quick, affordable and effective way to settle disputes that should be utilised.

This could be addressed by amending the *Fair Work Act* to include determinations made under the NZEA Bill, or by amending the NZEA Bill itself to make clear its determinations are should be treated as enterprise agreements under the *Fair Work Act* for the purposes of dispute resolution.

**Recommendation 4:** Amend the NZEA Bill to ensure that the FWC has the power to deal with disputes under a Determination made under ss.60 or 61 of the Bill.

#### **Ensure effective remedies for a breach of Determinations.**

The NZEA Bill states that a breach of a Determination under ss.60 or 61 attracts a civil penalty provision. While such a penalty can be sought from the courts, in the event a determination is breached, this approach has three major weaknesses, all of which are inconsistent with the approach of the *Fair Work Act*:

- An application to the courts would be in a costs jurisdiction unlike the *Fair Work Act*. This is a significant deterrent to bringing an application and inconsistent with the approach under the *Fair Work Act*;
- The court's powers do not include issuing an injunction, ordering compensation, or an order requiring an employer to take certain steps to comply with their obligations. Again, such limited powers are unlike the powers given to the Court with respect to an application under the *Fair Work Act* and would limit the Court's ability to effectively resolve a matter;
- Penalties can only be paid to the Commonwealth rather than to the applicant to help defray the legal costs in bringing the application.

**Recommendation 5:** Amend the Bill to bring the remedies for breach of a determination in line with the well-established approach under the *Fair Work Act*.

### Allow for review of CEO discretion to apply for a Community of Interest Determination

As drafted, the NZEA Bill provides the Authority CEO with the power to decide whether or not to make an application to the FWC to cover closing and dependent employers with a Community of Interest Determination. However there is no way for a relevant party to review this decision within the proposed legislation. It would likely have to file for judicial review which is a costly and time-consuming process.

**Recommendation 6:** Amend the Bill to enable a relevant employer, potential employer or relevant union to apply to the FWC seeking a review of the CEO's decision not to make an application for a Community of Interest Determination.

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