



BILLS DIGEST

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Net Zero Economy Authority Bill 2024 [and] Net Zero Economy Authority (Transitional Provisions) Bill 2024

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Key points

- The NZEA Bill will establish the Net Zero Economy Authority (NZEA), which will provide advice, education, and coordination relating to Australia's transition to a net zero emissions economy.
- The Bill does not include any power to order the closure of coal- or gas-fired power stations.
- The Bills' most substantive provision is the Energy Industry Jobs Plan (the Plan) in Part 5, which is a structural adjustment framework for the workforce transition that occurs after an owner/operator announces their intention to close a coal-fired or gas-fired power station. The Plan also covers the workforce of 'dependent employers' such as coal mines (if they provide coal to generate electricity at a coal-fired power station that is closing), and other suppliers.
- The NZEA's CEO and the Fair Work Commission (FWC) have pre-eminent roles in the Plan.
- The mechanisms for the Plan will include:
 - consultations with relevant employers, employees and employee organisations
 - carrots and sticks (grants, and FWC determinations and orders) and
 - advice at various junctures from a Stakeholder Panel and an Energy Industry Worker Redeployment Advisory Group (EIWRAG).
- The Explanatory Memorandum indicates that costs associated with the Plan have not been fully identified at this stage.
 - The Explanatory Memorandum provides information about the NZEA's likely running costs but also notes that 'departmental and administered costs associated with the Plan's implementation and operation' are not available at this stage. The NZEA Bill foreshadows the provision of funding or grants to workers and/or their employers, but the Bill and Explanatory Memorandum are silent on specific mechanisms and likely costs.
 - The NZEA Bill will give the FWC additional responsibilities in relation to the Plan but will not make any changes to the *Fair Work Act 2009* as the Plan is intended to work within the existing industrial relations framework. However, the Explanatory Memorandum is silent on funding implications for the FWC of these additional responsibilities.



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Date introduced: 27 March 2024

House: House of Representatives

Portfolio: Prime Minister and Cabinet

Commencement: A date to be fixed by Proclamation.

Links: The links to the [Net Zero Economy Authority Bill 2024](#) and the [Net Zero Economy Authority \(Transitional Provisions\) Bill 2024](#), their Explanatory Memorandums and second reading speeches can be found on the Bills’ home pages, or through the [Australian Parliament website](#).

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the [Federal Register of Legislation website](#).

All hyperlinks in this Bills Digest are correct as at May 2024.

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Purpose of the Bills

The [Net Zero Economy Authority Bill 2024](#) (the NZEA Bill) will establish the Net Zero Economy Authority (NZEa) as a Statutory Agency with a Board, a Chief Executive Officer (CEO), and staff engaged under the [Public Service Act 1999](#) (PS Act).¹ Its most significant function will be:

to support workers in emissions intensive industries who are, or will be, affected by Australia's transition to a net zero emissions economy:

- (i) to access new employment or other opportunities; or
- (ii) to acquire skills to improve their employment prospects;

including through the provision of funding or grants to those workers or to employers of those workers.²

The CEO is responsible for the administration of the Energy Industry Jobs Plan (the Plan), a structural adjustment framework intended to 'support employees impacted by the closure of some coal-fired and gas-fired power stations [and] support some affected employees to access new employment.'³ The NZEA Bill does not amend the [Fair Work Act 2009](#) (FW Act) but does confer additional responsibilities so as to give the Fair Work Commission (FWC) a central role in the Plan:

A closing employer or dependent employer specified in [a FWC] determination is subject to obligations of a certain kind that are connected with facilitating transition employees of the employer to find other employment ... the [FWC] may make a determination setting out the specific actions to be taken by the employer.⁴

The [Net Zero Economy Authority \(Transitional Provisions\) Bill 2024](#) (TP Bill) will facilitate the transition of the NZEA from its current status as an Executive Agency within the Department of the Prime Minister and Cabinet (PM&C) to a standalone statutory authority. TP Bill provisions relate to the appointment of the first CEO, meeting requirements in the Board's first calendar year, and the continuing applicability of the PM&C Enterprise Agreement to the NZEA's employees.

The TP Bill also provides that the Minister may, by legislative instrument, make rules, including transitional rules that relate to the enactment of the NZEA Bill and the PM&C Enterprise Agreement.⁵ The rules cannot create an offence, impose a tax, or directly amend the TPs.⁶

Structure of the Bills

The NZEA Bill comprises 6 Parts and each part commences with a simplified outline. This Digest's discussion of key provisions and issues assumes the reader is familiar with the high-level scope of each part as summarised below.

- **Part 1** includes introductory material, including definitions
- **Part 2** Establishment and functions of the Authority
- **Part 3** Board of the Authority
- **Part 4** Chief Executive Officer and staff of the Authority
- **Part 5** Energy Industry Jobs Plan

1. NZEA Bill, **clauses 14, 15, 51.**

2. NZEA Bill, **paragraph 16(1)(c).**

3. Net Zero Economy Authority Bill 2024 and Net Zero Economy Authority (Transitional Provisions) Bill 2024, [Explanatory Memorandum](#), 5.

4. NZEA Bill, **clause 54.**

5. [Net Zero Economy Authority \(Transitional Provisions\) Bill 2024](#) (TP Bill), **clauses 1 and 2.**

6. TP Bill, **clause 3.**

- **Part 6** Miscellaneous.

The NZEA TP Bill comprises 1 Schedule with 3 Parts:

- **Part 1** Preliminary
- **Part 2** Application and transition provisions
- **Part 3** provides that the Minister may, by legislative instrument, make rules, including transitional rules.

Background

Net zero transition

Consistent with international agreements and the initiatives of overseas jurisdictions, the [Climate Change Act 2022](#) sets out Australia's commitment to 'reducing net greenhouse gas emissions to 43 per cent below 2005 levels by 2030 and to zero by 2050'. Australian state and territory governments have also committed to achieving net zero emissions by 2050.⁷

The transition to net zero emissions will include the closure and/or replacement of energy assets that rely on fossil fuels such as coal and gas. Such closures have the potential to significantly disrupt employment arrangements and opportunities, with other flow-on negative consequences for the (frequently regional) communities in which the assets are located.⁸

'Just' transition

In April 2016 Australia signed the [Paris Agreement](#) and, at the United Nations Climate Change Conference (COP27), endorsed the United Nations' [Just Transition Declaration](#).⁹

A central principle of the 2015 [Paris Agreement](#) is that governments ensure the transition to a clean energy future is a 'just transition'.¹⁰ The [International Labour Organization](#) defines the just transition as '[g]reening the economy in a way that is as fair and inclusive as possible to everyone concerned, creating decent work opportunities and leaving no one behind'.¹¹

Transition authorities

To effectively manage the energy transition, and consequent workforce and community impacts, many governments have established a 'transition authority'.¹² A recent report by an academic for the Queensland Government identifies several significant functions typically performed by a transition authority:

The **main** role of a transition authority is to work with all affected communities and other key stakeholders to **coordinate activities to strengthen and diversify regional economies** as fossil fuels are phased out and renewable energy expands. While the scope of responsibilities for transition authorities in other parts of Australia and the world varies, a review of the literature and interviews with transition experts suggests that they fulfil three main functions. The **first** responsibility of a transition authority is

7. [Explanatory Memorandum](#), 8, 9.

8. [Explanatory Memorandum](#), 8.

9. Department of Climate Change, Energy, the Environment and Water (DCCEEW), [Annual Climate Change Statement 2022](#), (Canberra: DCCEEW, 2022), 27.

10. [Paris Agreement](#), opened for signature 22 April 2016, [2016] ATS 24, (entered into force for Australia, 9 December 2016), 2.

11. See also: United Nations, Committee for Development Policy, [Just Transition. CDP input on the 2023 ECOSOC theme](#), (2023).

12. 'National transition authorities have proven crucial in managing the impacts of a changing energy sector in Germany, Canada and Spain, with new initiatives and funds more recently developed in the United Kingdom and United States ... In Australia, the Latrobe Valley Authority, which was established after the announcement of the closure of the Hazelwood Power Station in Victoria, is the most well-known example. Similar approaches to transition planning have also been adopted by the Western Australian Government with the formation of the Collie Delivery Unit and the newly established Expert Panels which will oversee the distribution of the Royalties for Rejuvenation program across the Hunter Valley, Illawarra, Wollongong and Lithgow Regions in New South Wales.' A. Cahill, [Transforming Queensland: the Case for a New Transition Authority: Report on Consultation Results](#), ([Brisbane]: Next Economy, 2022), 8.

to **facilitate long-term regional planning and coordination** to reduce the negative impacts associated with the phase out of fossil fuels and to facilitate new economic opportunities.

The **second** main role of a transition authority is to ensure that **all stakeholders can meaningfully participate** in decision making processes and in the design of new plans and programs to decarbonise the economy, and that they remain informed and able to participate as change unfolds over time.

With a strong regional presence and working relationships across different sectors and levels of government, the **third** responsibility of the transition authority is to be across all aspects of the energy transition to **enable the flow of information and resources** to enable effective, timely and regionally appropriate investment and action.¹³ [emphasis added]

Structural adjustment

The Explanatory Memorandum includes as an attachment an *Impact Analysis* produced by the Net Zero Economy Agency, which analyses possible structural adjustment measures to support workers in the transition, including:

- legislated pooled redeployment arrangements
- aid to individuals in adapting to new economic conditions caused by structural change and
- conditional monetary payments and in-kind support, such as retraining.¹⁴

This overview provides a context for provisions in the NZEA Bill, particularly for the Energy Industry Jobs Plan, the structural adjustment framework provided for in **Part 5** of the Bill.

Steps toward a Net Zero Economy Authority

The Net Zero Economy Taskforce was established in 2022 to advise on how to help workers and regional communities transition to a net zero economy.¹⁵ In September 2022 Senator Allman-Payne introduced a private senator's Bill, the [National Energy Transition Authority Bill 2022](#) (NETA Bill). At the time of writing, the NETA Bill had not been passed by the Senate. The NETA Bill was referred to the Senate Economics Legislation Committee for [inquiry](#) and a [report](#) was published in March 2023. The report noted the views of the Taskforce:

The Taskforce emphasised the role the Commonwealth should play in energy transition, particularly coordination:

The Commonwealth has a role to play in helping to bring different levels of government together, industry, unions and communities around a concrete and effective plan for regional communities ...

Additionally, the Taskforce explained that a consistent theme in feedback received was the need for a **local-up** version of an authority being preferential to a **top-down** version ... The Taskforce also commented on the ability of the Commonwealth to serve as a **single-point of access** to government services and programs that relate to energy transition broadly. [T]he Taskforce is likely to recommend an option that **works with existing bodies** but **fills the gap** to improve the coordination and delivery of government services and support for communities impacted by the transition.¹⁶ [emphasis added]

In April 2023 the [2023–24 Report to the Australian Government](#) by the interim [Economic Inclusion Advisory Committee](#) recommended that:

The Government establish an independent and properly resourced National Energy Transition Authority to manage an orderly and fair transition process for workers in emission intensive industries and

13. Cahill, [Transforming Queensland](#), 8–9.

14. [Explanatory Memorandum](#), 100–101, 103–107, 132–133.

15. Australian Government, [Budget 2023–24: Building a Clean Energy Future](#), 9 May 2023.

16. Senate Economics Legislation Committee, [National Energy Transition Authority Bill 2022](#), (Canberra: The Senate, March 2023), 19–20.

impacted communities to support economic and social inclusion – that has governance of governments, industry, community and unions.¹⁷

In May 2023 the Government announced the establishment of an interim Executive Agency in PM&C from 1 July 2023, noting that the Agency will ‘consult across government and stakeholders to refine the functions and powers of the authority before legislation is developed’.¹⁸ Also, in May 2023, the Budget for 2023–24 noted:

The Government will provide \$83.2 million over 4 years from 2023–24 to establish a national Net Zero Authority ... to promote orderly and positive economic transformation associated with decarbonisation and energy system change in regional areas, including support for impacted workers.¹⁹

On 1 July 2023 the interim Net Zero Economy Agency replaced the Taskforce. Former Minister for Climate Change and Energy Efficiency, [Greg Combet](#), was appointed as Chair, along with an [Advisory Board](#). The Advisory Board’s [Terms of Reference](#) included ‘advice on organisational development, including in relation to the evolution of the Agency into a statutory Authority’. In November 2023, [Minister Bowen noted](#) that:

The Net Zero Economy Agency has started its important work with the regions most affected by change. We are improving consultation with communities facing changes to employment, landscapes and natural environments.²⁰

Arising from Supplementary Budget Estimates hearings in October 2023, the answer to a [Question on Notice](#) stated:

Between 1 July 2023 and 31 October 2023, staff of the Net Zero Economy Agency have visited Bunbury, Cessnock, Collie, Gladstone, Lake Macquarie, Morwell, Muswellbrook, Newcastle, Rockhampton, Sale, and Singleton.

Following the consultations and processes outlined above, the NZEA Bill and TP Bill were introduced in the House of Representatives on 27 March 2024.

Committee consideration

Senate Finance and Public Administration Legislation Committee

The Bills were [referred](#) to the Senate Finance and Public Administration Legislation Committee. A [public hearing](#) was conducted on 23 April 2024.²¹ A report was [tabled](#) on 13 May 2024.

Senate Standing Committee for the Scrutiny of Bills

At the time of writing the Senate Standing Committee for the Scrutiny of Bills Committee had not considered the Bill.

Policy position of non-government parties/independents

In May 2023 independent Senator for the ACT David Pocock welcomed the new authority:

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17. Interim Economic Inclusion Advisory Committee, [2023–24 Report to the Australian Government](#), (Canberra: Treasury, 2023), 10.
 18. Department of the Prime Minister and Cabinet (PM&C), [‘A New National Net Zero Authority’](#), media release, 5 May 2023.
 19. Australian Government, [Budget paper no. 2: 2023–24](#), 192.
 20. DCCEEW, [Annual Climate Change Statement 2023](#), (Canberra: DCCEEW, 2023), 3.
 21. Senate Finance and Public Administration Legislation Committee, Net Zero Economy Authority (Transitional Provisions) Bill 2024; Net Zero Economy Authority Bill 2024, [Official Committee Hansard](#), 23 April 2024.

Communities in these regions need to be heard. This new authority needs to ensure that no community misses out on the benefits of transformative change as we decarbonise, build an economy for the future and grapple with the increasing effects of climate change.²²

In the same media report, an Opposition spokesperson indicated that the Coalition would ‘look at the proposed authority carefully’:

"The issues this new body intends to address vary region to region, and so this can't be another layer of Canberra bureaucracy, staffed by public servants who think they know what is best for regional areas," the shadow minister for climate change and energy Ted O'Brien said in a statement.

"The Coalition always supports our regions, traditional industries and its workers. We will take our time to consider Labor's proposal once they have provided further detail."²³

Position of major interest groups

In May 2023 Michele O'Neil, the president of the Australian Council of Trade Unions (ACTU), welcomed the announcement of the intended new authority.²⁴ Submissions to the Committee inquiry from industry peak bodies such as the Australian Industry Group (Ai Group) and the Business Council of Australia (BCA) were also generally supportive.²⁵

In addition to unions and peak bodies, other interest groups that made submissions or gave evidence at the Committee inquiry included think tanks; organisations representing local government, regional communities and investors; and groups advocating in relation to climate change, the energy industry, and the energy transition more generally. Although supporting the Bills overall, submissions and witnesses were inclined to have concerns that the scope of the NZEA's role and of the Plan are too narrowly defined, or that aspects of the operation of the Plan are ambiguous or problematic.²⁶

Recommendations and views expressed in submissions and evidence are discussed below in relation to the relevant provisions.

Funding of the NZEA and Plan

Several submissions and evidence at the hearing (particularly in response to questions from Senator Allman-Payne) observed that the NZEA must have ongoing and secure funding for it to fully achieve its objectives.²⁷ This theme was expressed most comprehensively in the Grattan Institute's submission:

To maximise the Authority's chances of success, part of its budget should be legislated for 10 years. This could be limited to sufficient departmental funding to cover a minimum number of staff, and a small amount of administered funding ... It does not need to be a large budget, because the Authority does

22. K. Barlow, 'ACTU boss Michelle [sic] O'Neil says new net zero agency will give transitioning workers confidence', *Canberra Times*, 5 May 2023.

23. Barlow, 'ACTU boss Michelle [sic] O'Neil'.

24. Barlow, 'ACTU boss Michelle [sic] O'Neil'.

25. Ai Group (AiG), [Submission](#) to Senate Finance and Public Administration Legislation Committee, *Inquiry into the Net Zero Economy Authority Bill 2024 and the Net Zero Economy Authority (Transitional Provisions) Bill 2024 [Provisions]*, [Submission no. 45], 19 April 2024, 2–4; Business Council of Australia (BCA), [Submission](#) no. 44], April 2024, 3–4.

26. For example: Environment Institute of Australia and New Zealand (EIANZ), [Submission](#) no. 33], 19 April 2024, 1–2; Electrical Trades Union, [Submission](#) no. 4], 18 April 2024, 1; Hunter Jobs Alliance, [Submission](#) no. 6], 19 April 2024, 1, 3; Grattan Institute, [Submission](#) no. 12], 19 April 2024, 10–14; Local Government Association of Queensland (LGAQ), [Submission](#) no. 17], 19 April 2024, 6, 10–12; Professor R. Eckersley (Melbourne Climate Futures), [Submission](#) no. 28], 19 April 2024, 1–3; The Next Economy, [Submission](#) no. 26], 19 April 2024, 2; AiG, [Submission](#) no. 45], 19 April 2024, 2–4; BCA, [Submission](#) no. 44], April 2024, 3–4.

27. Clean Energy Investor Group, [Submission](#), 3; Grattan Institute, [Submission](#), 15; The Next Economy, [Submission](#), 4–5; CPSU, [Submission](#), 2; EIANZ, [Submission](#), 3; [Evidence to Senate Finance and Public Administration Legislation Committee, Inquiry into the Net Zero Economy Authority Bill 2024 and the Net Zero Economy Authority \(Transitional Provisions\) Bill 2024 \[Provisions\]](#), 23 April 2024, 14, 35–36, 47, 55.

not have investment functions. Additional funding could be subject to ordinary budget processes and rules.

A legislated budget is not unprecedented. The Australian Renewable Energy Agency (ARENA), the Clean Energy Finance Corporation, and the National Reconstruction Fund all have legislated budgets, which allows them to operate effectively over time-frames that match the private sector's [and a] legislated budget would not bind future governments: the budgets can be changed by passing legislation (as was done for the ARENA budget in 2016).²⁸

At the hearing, the Centre for Future Work categorised likely areas of expenditure:

[I]t's useful to distinguish between **the administrative infrastructure of the authority**, which, as our colleague from the Grattan Institute just noted, is **not going to be large**. A budget for \$20 million to \$25 million would cover the scale of administration ... Obviously, that is going to be refined and evolve over time ...

I think **the bigger call on resources** is going to be for the broader **undertakings that the authority is meant to be helping to facilitate**. Once that community of interest has been identified and the authority is going out to potential receiving employers—the places that are going to be trying to open up opportunities to allow for transition from workers from the closing facilities—the authority is going to want to be well armed with resources and incentives to provide things like support for **early retirement incentives**, for example, to encourage senior workers at the receiving employer to voluntarily leave and thus create spaces for displaced workers.

Similarly, the task of supporting **investments in sustainable undertakings** in the same regions could involve more significant sums as well; although, that could come from some of the **specialist investment vehicles** that the authority plans to work with. Finally, another potentially significant call on resources would come from ... **skills and training initiatives related to expanding activities in those sustainable receiving employers**. That wouldn't necessarily come from the authority's budget itself. It would come from streams of activity through existing training mechanisms, at both the federal and state level.²⁹ [emphasis added]

Financial implications

The Explanatory Memorandum notes that:

The establishment and operationalisation of the Authority is estimated to have a negative impact on the underlying cash balance of \$189.3 million from 2023–24 to 2026–27, with funding for the operation being ongoing and indexed from 2027–28.³⁰

Reproduced from the Explanatory Memorandum, Table 1 shows the impact of NZEA funding on the Budget's underlying cash balance from 2023–24 to 2026–27.

Table 1: Impact of NZEA funding on underlying cash balance 2023–24 to 2026–27

All figures represent amounts in \$m.

Year	2023–24	2024–25	2025–26	2026–27
Appropriation (\$m)	-25.7	-57.5	-54.1	-52.0

Source: [Explanatory Memorandum](#), 6.

At the Senate Committee hearing PM&C advised that '\$52 million per year ... will support the ongoing operations of the authority at around 150 full-time equivalent employees'.³¹ The Explanatory Memorandum notes that the above expenses exclude costs associated with the Plan

28. Grattan Institute, [Submission](#), 15.

29. J. Stanford (Director, Centre for Future Work), [Evidence](#), 36.

30. [Explanatory Memorandum](#), 6.

31. T. Power (Acting CEO, Net Zero Economy Agency), [Evidence](#), 70.

in **Part 5** of the NZEA Bill, the costs for which ‘will be finalised after the publication of this Explanatory Memorandum, including departmental and administered costs associated with the Plan’s implementation and operation’.³²

For the purposes of Budget appropriations and the funding of Commonwealth entities, the category of [administered costs](#) includes grants, subsidies and benefit payments. The functions of the NZEA include, at **paragraph 16(1)(c)**, ‘the provision of funding or grants to those workers or to employers of those workers in emissions intensive industries who are, or will be, affected by Australia’s transition to a net zero emissions economy’. Although listed as a function, the circumstances in which ‘the provision of funding or grants’ could occur are not identified in specific clauses. **Subclauses 59(3) and (4)** may represent provisions under which funding or grant facilities could be established (discussed below in relation to the Plan). However, as indicated above, administered costs (which would include funding or grants) were not available at the time the Explanatory Memorandum was published.

The NZEA Bill will give the FWC additional responsibilities to those under the *FW Act*, but the Explanatory Memorandum is silent on funding implications for the FWC. At the Senate Committee hearing Senator Allman-Payne asked, ‘will resourcing be provided to the Fair Work Commission to accommodate its interaction with the NZEA?’ to which PM&C responded, ‘that would be a decision for government’.³³

Statement of Compatibility with Human Rights

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the NZEA Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the NZEA Bill is compatible.³⁴

Parliamentary Joint Committee on Human Rights

In its [Report 3 of 2024](#) the Parliamentary Joint Committee on Human Rights recorded ‘no comment’ in relation to both the NZEA Bill and the NZEA TP Bill.³⁵

Key issues and provisions: Net Zero Economy Authority

Structural and accountability arrangements for the NZEA are outlined, followed by an outline of the functions of the various entities identified in the NZEA Bill.

The FWC and the EIWRAG are organisationally not part of the NZEA. As discussed below, the NZEA’s CEO and the FWC have responsibility for the Plan in **Part 5** of the NZEA Bill.

32. [Explanatory Memorandum](#), 6.

33. E. Martin (Acting First Assistant Secretary, Regions and Workers Division, Net Zero Economy Agency), [Evidence](#), 73.

34. The Statement of Compatibility with Human Rights can be found at page 67 of the Explanatory Memorandum to the Bills.

35. Parliamentary Joint Committee on Human Rights, [Human Rights Scrutiny Report](#), 3, 2024, 17 April 2024: 5.

Establishment: organisational arrangements

The current interim Net Zero Economy Agency is an [Executive Agency](#) within PM&C.³⁶ **Clause 14** would establish the NZEA as a statutory [non-corporate Commonwealth entity](#) (NCE).³⁷

Subclause 51(1) will require that NZEA staff must be engaged under the PS Act, and **paragraph 51(2)(b)** designates the CEO as the [Agency Head](#) for the purposes of the PS Act (currently the Chair is the Agency Head). **Subclause 14(2)** would designate the NZEA as a [listed entity](#) for the purposes of the [Public Governance, Performance and Accountability Act 2013](#) (PGPA Act). In contrast, the interim Agency does not appear to be a [listed entity](#), and appears to comprise a collection of divisions within a Group in PM&C.³⁸

The structural and accountability arrangements proposed by the NZEA Bill and outlined above are similar to those in place for a wide range of entities that perform specialist or technical advisory or regulatory roles,³⁹ except in relation to the role of [accountable authority](#). For most structurally similar entities, one person or officeholder (usually the Chair or the CEO) is designated as the accountable authority. In contrast, **paragraph 14(2)(b)** designates the NZEA Board as the accountable authority, an arrangement that is less common.⁴⁰ The Explanatory Memorandum observes:

Given the complexity and breadth of the issues associated with the transition to net zero, the Authority will be governed by a Board ... Having a multi-member accountable authority with membership that is reflective of this variety of fields will assist the Board to effectively govern the Authority and discharge the duties of an accountable authority under the PGPA Act.⁴¹

Functions of the Authority

The primary function of the NZEA is to, in effect, administer the operation of the Plan.

Paragraph 16(1)(c) provides that the NZEA will:

support workers in emissions intensive industries who are, or will be, affected by Australia's transition to a net zero emissions economy:

- (i) to access new employment or other opportunities; or
- (ii) to acquire skills to improve their employment prospects;

including through the provision of funding or grants to those workers or to employers of those workers.

This function underpins the arrangements for the Plan in **Part 5** of the NZEA Bill and is the focus of this Digest.

36. An [Executive Agency](#) 'is an agency designated, in an executive order made by the Governor-General-in-Council, as separate from a department, for staffing and accountability and reporting purposes, under section 65 of the *Public Service Act 1999*'. The current interim Net Zero Economy Agency was established by the [Order to Establish the Net Zero Economy Agency as an Executive Agency](#). Following passage of the Bills, the conversion of the Net Zero Economy Agency into the Net Zero Economy Authority would be facilitated by an order to abolish the Agency, as was the case when, for example, the [National Faster Rail Agency](#) was replaced by the statutory [High Speed Rail Authority](#).

37. [Non-corporate Commonwealth entities](#) (NCEs) 'are legally and financially part of the Commonwealth. Examples of NCEs include departments of state, parliamentary departments or [listed entities](#)'. 'NCEs form part of the executive government and are accountable to the Parliament. NCEs are subject to the PGPA Act, which further clarifies the financial and corporate governance arrangements of these bodies'.

38. [PM&C Organisation Chart](#), 6 May 2024.

39. Department of Finance, [List of Commonwealth entities and companies under the Public Governance, Performance and Accountability Act 2013 \(PGPA Act\)](#), 1 March 2024.

40. Other statutory listed entities that have a board as the accountable authority include the [National Capital Authority](#) and the [Tertiary Education Quality and Standards Agency](#).

41. [Explanatory Memorandum](#), 5.

Other functions of the Authority

In addition to functions directly related to the Plan (**paragraph 16(1)(c)**), the NZEA Bill provides for a range of other functions for the NZEA, including:

- education (**paragraph 16(1)(e)**)
- coordination and advice (**paragraph 16(1)(a)**)
- enabling support for Indigenous persons to participate in and benefit from Australia's transition to a net zero emissions economy (**paragraph 16(1)(d)**)
- facilitating public and private sector participation and investment in greenhouse emissions reduction and net zero transformation initiatives in Australia, including but not limited to referring matters to [specialist investment vehicles](#) (**paragraph 16(1)(b)**).

In relation to supporting Indigenous persons to participate in and benefit from Australia's transition to a net zero emissions economy (**paragraph 16(1)(d)**), the Explanatory Memorandum states that 'the Authority will work in partnership with Indigenous people as land rights holders, business leaders, community representatives and employees' but does not contain any additional level of detail about objectives, methodologies or outcomes.⁴²

In relation to **paragraph 16(1)(b)**, facilitating public and private sector participation and investment in greenhouse emissions reduction and net zero transformation initiatives in Australia, **subclause 16(3)** lists the Clean Energy Finance Corporation; the Northern Australia Infrastructure Facility; the Regional Investment Corporation; the National Reconstruction Fund Corporation; the Export Finance and Insurance Corporation; the Australian Renewable Energy Agency; and Housing Australia. The Explanatory Memorandum states that the list is 'not intended to be exhaustive and will not limit the Authority's ability to refer matters to other relevant entities or future specialist investment vehicles'.⁴³ The NZEA Bill and the Explanatory Memorandum are silent about criteria or a mechanism for referrals to specialist investment vehicles.⁴⁴

Subclause 16(2) provides that, in performing its functions, the NZEA 'should prioritise communities, regions, industries and workers that are, or will be, significantly affected by Australia's transition to a net zero emissions economy'. The NZEA's functions include roles that focus on coordination and advice (**paragraph 16(1)(a)**) and education (**paragraph 16(1)(e)**):

Promoting coordination and consistency in the design and implementation of Australian government policies, programs and plans; consulting and cooperating with other persons, organisations and governments (whether in Australia or outside Australia); and providing reports, advice and recommendations to the Minister in order to facilitate the achievement of Australia's greenhouse gas emissions reduction targets and support Australia's transition to a net zero emission economy.⁴⁵

[E]ncourage, support, develop and deliver educational and promotional initiatives for the purpose of promoting an understanding of, and enabling participation in, Australia's transition to a net zero emissions economy.⁴⁶

All of these functions were canvassed at the Committee hearing and in various submissions. Although differing in relation to some details, common themes expressed were the level of overall support for the NZEA Bill and the expectation and hope that the NZEA will perform a valuable coordination role. As expressed by the Committee Chair, 'the role of this agency in connecting

42. [Explanatory Memorandum](#), 24.

43. [Explanatory Memorandum](#), 25.

44. A [Department of Finance webpage](#) provides information about special investment vehicles.

45. [Explanatory Memorandum](#), 17.

46. NZEA Bill, **paragraph 16(1)(e)**.

workers to new industries will also overlay with the work that intersects with a wide variety of government agencies, the private sector, unions and communities'.⁴⁷

Board and CEO

The following provisions indicate that arrangements for the Board and the CEO are consistent with usual practice.

Clauses 18 and 21 establish that the Board will consist of 6 to 9 members including the Chair. The Minister will appoint the members (**clause 22**) after being satisfied that the Board members will collectively have an appropriate balance of expertise, experience, professional credibility and 'significant standing' in relation to 11 criteria (**clause 23**). Under **clause 42** the Minister, on the recommendation of the Board, will appoint the CEO on a full-time basis for a period not exceeding 5 years. A Board member is not eligible to be appointed as the CEO (**subclause 42(4)**).

Functions of the Board

As set out in **subclause 19(1)** the main functions of the Board include:

- ensuring the proper, efficient and effective performance of the functions of the Authority and the CEO
- determining the objectives, strategies and policies to be followed by the Authority and the CEO in the performance of their respective functions
- ensuring the CEO complies with requests made by the Minister for reports and advice.⁴⁸

Notably, as observed by the Explanatory Memorandum, the Board is specifically precluded from close involvement in the Plan:

Paragraph 19(1)(b) limits the scope of the Board's functions with respect to Part 5. In respect of Part 5, under **subclause 19(3)**, the Board will only be able to develop objectives, strategies and policies of a general nature. The Board can provide advice to the CEO on the general implementation of Part 5, but does not have explicit tasks under Part 5 ... While the Board is the key decision maker for the Authority, this limitation applies to strike a balance between ensuring the Board can set the strategic direction in relation to all functions of the Authority, while also ensuring the CEO has the necessary independence from the Board to effectively discharge their statutory decision-making responsibilities under the Plan.⁴⁹

Stakeholder view on appointees to the Board

Several submissions suggested amendments to include, on the Board or on advisory bodies, mandatory appointments or reserved seats. For example:

- a local government representative⁵⁰
- a First Nations representative⁵¹
- a representative from the social services sector⁵²
- and technical experts, for example in the fields of climate science and engineering.⁵³

47. L. Pratt (Senator, WA), [Evidence](#), 23.

48. [Explanatory Memorandum](#), 26.

49. [Explanatory Memorandum](#), 26–27.

50. LGAQ, [Submission](#), 6, 8–9; Isaac Regional Council, [[Submission](#) no. 9], 17 April 2024, 4, 6.

51. Environmental Defenders Office (EDO), [[Submission](#) no. 25], 19 April 2024, 4–5, 7; Melbourne Climate Futures, [[Submission](#) no. 28], 19 April 2024, 3–4.

52. Professor R. Eckersley (Melbourne Climate Futures), [[Submission](#) no. 28], 3–4.

53. Rewiring Australia [[submission](#) no. 34], 2, noting this may 'require changing s21(1)(b) to provide for at least seven members and adding "climate science" and "engineering" under s23(3)'.⁵³

Responding to these observations, the CEO of the Net Zero Economy Agency advised the Committee hearing:

Consistent with good governance practice, **the board will be expertise based**. The bill specifies the fields of expertise that board members must have and requires a balance across those fields. **Clause 23** of the bill sets out that up to four members of the board will need to have experience in the areas listed, including regional development and Indigenous engagement and leadership. The members of the board will be appointed by the minister on a part-time basis for up to five years. Added to this, the bill requires that the board establish a **stakeholder panel** comprising people with knowledge and expertise in fields relevant to the work of the authority, and the authority has the discretion to establish **other advisory and engagement structures** that will be useful for its work.⁵⁴ [emphasis added]

Functions of the CEO

Under **clause 40** the functions of the CEO include assisting the Board in the performance of the Board's functions; any other functions conferred on the CEO by this Act or any other law of the Commonwealth; and anything incidental or conducive to the performance of their functions.

The CEO's most substantial functions are to oversee the administration of the NZEA and the Plan in **Part 5** of the NZEA Bill (**paragraph 40(2)(b)**). In doing so, the CEO will liaise closely with the FWC.

In addition, under **clause 68**, the CEO must monitor and promote compliance with **Part 5** of the NZEA Bill by providing education, assistance, advice and information to the **closing employers, dependent employers, receiving employers** and employees of those employers.

The CEO must conduct or commission a review into the operation of **Part 5** to assess the effectiveness of the Plan and whether it is operating as intended.⁵⁵ **Subclause 68(4)** provides that the CEO must ensure that the review is completed within 12 months of the commencement of the NZEA Bill. The Explanatory Memorandum states 'it is expected' that at least one **trigger notice** will have been received before the review is conducted.⁵⁶ With this timing, outcomes from the first relevant power station closure may contribute to the future direction of the Plan.⁵⁷

However, as the NZEA Bill simply imposes a requirement that the CEO conducts the review within the 12-month timeframe noted above, it is possible that there will be no instances of the Plan's operation to evaluate.

Stakeholder Panel

Under **clause 70** the Board must establish a Stakeholder Panel which will 'at the direction of the Board, give advice and information to the Board' (**subclause 70(2)**). However, **subclause 70(9)** provides that the Board is not obliged to accept, or act on, any advice or information given to the Board by the Stakeholder Panel.

The number of members is not specified, but 'in appointing members to the Stakeholder Panel, the Board is to have regard to ensuring an appropriate balance of skills, knowledge or expertise in fields related to the functions of the Authority' (**subclause 70(3)**).

Subclause 70(5) provides that appointment to the Stakeholder Panel is not a public office for the purposes of the *Remuneration Tribunal Act 1973*. The Explanatory Memorandum notes that members are not eligible for remuneration above reimbursement for travel costs.⁵⁸

54. Power, [Evidence](#), 70.

55. **Subclause 68(3)**.

56. **Subclause 68(4)**.

57. [Explanatory Memorandum](#), 55.

58. [Explanatory Memorandum](#), 56.

Minister

As noted above, the Minister appoints the CEO, members of the Board, and the EIWRAG (**clauses 42, 22 and 63**). The EIWRAG is discussed below in relation to **Part 5** of the NZEA Bill.

Under **clause 20** the Minister may give written directions to the Board about the performance of the Board's or Authority's functions or the exercise of their powers. The Explanatory Memorandum further observes:

A direction by the Minister may only be of a general nature ... A Ministerial direction would have the status of a legislative instrument ... The note following **subclause 20(1)** clarifies that, in line with the usual provisions for Ministerial directions (under subsection 44(2) of the Legislation Act), directions will not be disallowable. It is appropriate for directions under this clause to be exempt from disallowance. The net zero transition is a significant economic shift and it is necessary to minimise barriers to the Authority functioning effectively and efficiently. [A]n annual report prepared by the Board must include the particulars of any directions given to the Board by the Minister under clause 20 during the period to which the report relates.⁵⁹

Subclause 81(1) provides that the Minister may, by legislative instrument, make rules prescribing matters 'required or permitted by this Act to be prescribed necessary' or 'convenient to be prescribed for carrying out or giving effect to this Act'.

Clause 8 of the TP Bill provides that the Minister may, by legislative instrument, make rules either required or permitted by the TP Bill to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the NZEA Bill. As explained by the Explanatory Memorandum:

This item enables the Minister to prescribe rules, such as those of a transitional nature relating to the enactment of the NZEA Bill, or the application of the Department of the Prime Minister and Cabinet Enterprise Agreement. To that end, the item also makes it clear that the rules may not do certain things such as create an offence, impose a tax, or directly amend the text of the Transitional Provisions.⁶⁰

Clause 72 allows for the Minister to request in writing that the CEO or Board, as appropriate, provide the Minister with a report or advice on a matter relating to any of their functions or powers or duties.

Transitional provisions

Amendments in **parts 1 and 2** of Schedule 1 of the TP Bill will facilitate the structural and governance transition of the entity by:

- authorising the Minister to appoint the first CEO without a recommendation of the Board (**item 3**)
- not requiring the Chair to convene at least six meetings in the first calendar year of the NZEA Board (**item 4**)
- supporting the transfer of relevant documents to the NZEA (**item 5**)
- ensuring the ongoing operation of the PM&C Enterprise Agreement, which would continue to apply to APS employees within the NZEA once established (**item 6**).

Key issues and provisions: Energy Industry Jobs Plan

The Plan is the key mechanism for managing the redeployment of workers following the closure of a coal-fired or gas-fired power station (power station).

59. [Explanatory Memorandum](#), 27, 57.

60. [Explanatory Memorandum](#), 66.

The NZEA Bill, in particular **Part 5**, provides a legislative framework for the operation of the Plan: a structural adjustment framework intended to support employees impacted by the closure of some coal-fired and gas-fired power stations to access new employment.⁶¹

The Plan does not specify or anticipate the types of employment that workers may transition into. Hypothetical examples in the Explanatory Memorandum point to employees finishing existing apprenticeships with other employees (see example 1.20) or having requests to change fields turned down due to the impacts on the employer, for example, operational requirements, costs compared to training, and supports accessed by other **transition employees** at the same employer (see example 1.19). Thus, the limitations on new employment appear to relate to geographical location, availability, and time and monetary costs to the employer rather than the type of employment itself.

Similarly, no linkages have been drawn with the Plan and other Budget announcements such as the [New Energy Apprenticeships program](#) or the [Clean Energy Capacity study](#) that evaluated future workforce needs for the Net Zero economy.

Key definitions

The NZEA Bill uses a number of key terms to define the scope and operation of the Plan, including:

- **closing employers**
- **dependent employers**
- **geographic area**
- **receiving employers**
- various types of employees: **participating employees**, **transition employees of closing employers**, and **transition employees of dependent employers**.

To assist readers, the meaning of these terms is summarised below.

Relevant employers

The Plan will apply to **closing**, **dependent** and **receiving** employers.

The NZEA Bill specifies that, in order to be in scope for the categories of **closing employer**, **dependent employer** and **receiving employer** (all defined in **clause 6**), an entity must be a [constitutional corporation](#), meaning a corporation to which paragraph 51(xx) of the *Australian Constitution* applies (**clause 5**). Whilst not explicitly stated, this appears to reflect the limitations of the Commonwealth's power under the *Constitution* to regulate non-corporate entities engaged solely in intrastate trade and commerce.

Closing employers

A **closing employer** is a **constitutional corporation** that:

- owns or operates one or more parts of a coal or gas-fired power station that has given a trigger notice, regardless of whether they have employees at the power station (**subclause 6(1)**) or
- is an associated entity of the above and either or both of the following apply:
 - they employ employees working at the power station
 - they are an associated entity of the owner or operator of a relevant coal-fired power station, they operate (alone or jointly) a coal mine where the coal is, or will be, supplied for the purpose of generating electricity at the coal-fired power station, and they employ employees at the coal mine (**subclause 6(2)**).

61. [Explanatory Memorandum](#), 5.

The Explanatory Memorandum notes that ‘power stations and coal mines may be owned and operated by a single entity or a collection of entities, including associated or separate entities and joint ventures’. In this context, the NZEA Bill includes definitions that ensure ‘all transition employees employed by the ‘owner’ (as commonly understood by the public) or ‘operator’ of the relevant power station are captured, regardless of the corporate or labour supply chain structures’.⁶²

Dependent employers

Two definitions for **dependent employer** are provided by **clause 6**:

- constitutional corporations that supply goods or services to a closing power station through a commercial arrangement, and whose business operations in the same **geographic area** will be substantially affected by the closure of the power station (**subclause 6(3)**)
- employers that have a commercial relationship with a coal mine that will be substantially impacted by the closure of a relevant coal-fired power station and employs employees to work on-site at the coal mine (**subclause 6(4)**).⁶³

Receiving employers

Subclauses 6(5) to (8) note a **receiving employer** is a **constitutional corporation** that has expressed an interest to the CEO to offer employment to **transition employees** of a **closing** or **dependent employer**. The CEO determines whether they are a **receiving employer**; if so, the CEO must publish the determination on the NZEA’s website. The CEO’s determination is not a legislative instrument.

Issue: only employers that are constitutional corporations are covered

In its submission EnergyAustralia recommended that, in **subclause 6(3)**:

The dependent employer definition should exclude small businesses, as these organisations are unlikely to have the resources or capacity to administer the services outlined in the Bill. Consistent with the approach to Small Business under legislation including the Fair Work Act, this should be defined as businesses with less than 15 employees. Rather, employees of small businesses should be supported by the relevant government agencies.⁶⁴

In addition, small business was discussed at the Committee hearing, with PM&C advising that the NZEA Bill does not capture entities that are sole traders and family partnerships, two common structures for small businesses.⁶⁵ As noted above, this is because the NZEA Bill specifies that, in order to be in scope for the categories of **closing employer**, **dependent employer** and **receiving employer** (all defined in **clause 6**), an entity must be a [constitutional corporation](#), meaning a corporation to which paragraph 51(xx) of the *Constitution* applies (**clause 5**).

Geographic area

Clause 8 provides that the CEO may, by [notifiable instrument](#), specify one or more areas for the purposes of defining a **geographic area**. An area specified by the CEO may consist of a single [Statistical Area level 2](#), or two or more Statistical Areas level 2.

The Explanatory Memorandum outlines how the definition of **geographic area** is intended to exclude certain circumstances from the definition of a ‘dependent employer’:

62. [Explanatory Memorandum](#), 15.

63. [Explanatory Memorandum](#), 16.

64. EnergyAustralia, [Submission](#), 3.

65. Martin, [Evidence](#), 76–78.

The definitions of ‘dependent employer’ are not intended to capture businesses that will not be substantially impacted by the closure of the relevant power station or have the ability to redeploy people within their other regional operations, or other businesses **in the same geographic area that will be indirectly impacted by the closure of the power station** ... By constraining the definition to constitutional corporations, it is also not intended to capture individual contractors or family partnerships as a dependent employer. These businesses will have access to other supports provided by Government.⁶⁶ [emphasis added]

Examples 1.3, 1.4, and 1.5 in the Explanatory Memorandum illustrate the intended scope of the definitions.

Relevant employees

Clause 7 provides definitions of *transition employees of closing employers* and *transition employees of dependent employers*.

Transition employee of a closing employer

A *transition employee of a closing employer* is an employee of the *closing employer* who works at the coal- or gas-fired power station, or the *closing employer’s* coal mine where the coal is being used to generate electricity at the coal-fired power station (**subclauses 7(1) and (2)**).

Transition employee of a dependant employer

A *transition employee of a dependant employer* is an employee whose employment will cease because:

[their employer’s] business operations [are] in the same geographic area [and] will be substantially affected by the closure of the power station [(**subclause 6(3)**)], or their employer has a commercial relationship with a coal mine that will be substantially impacted by the closure of a relevant coal-fired power station, and employs employees to work on-site at the coal mine [(**subclause 6(4)**)].⁶⁷

Participating employees

Clause 5 defines *participating employees* as those *transition employees of a closing or dependent employer* ‘who have given an expression of interest to the employer in finding other employment’.

Issue: casual employees

The submission from the Ai Group recommended ‘amending the definition of ‘transition employee’ to ensure that only permanent employees of closing or dependent employers are captured (not casual employees)’.⁶⁸ At the Committee hearing, AiG explained that:

the idea that employers of casuals will have to provide extended periods of paid leave for training and so forth [is] not consistent with the inherent nature of casual employment ... [W]here people are training workers so that they have the skills needed they pay for that ... because it's for their business. [I]t's different when you're looking at training a casual to work somewhere else.⁶⁹

Scope of the Plan

The Plan is based around the closure of coal- or gas-fired power stations and the impact of such closures on the employees of the businesses that operate those power stations or are otherwise

66. [Explanatory Memorandum](#), 17.

67. [Explanatory Memorandum](#), 16.

68. AiG, [Submission](#), 4; B. Ferguson (Head, Workplace Relations Policy, AiG), [Evidence](#), 18–19.

69. Ferguson, [Evidence](#), 19.

dependent on them (for example, by providing services to the operator of the power stations that is closing).

In this regard, many stakeholders suggested the scope of the NZEA's role and the Plan were too narrowly defined.⁷⁰

Export-oriented coal mines not in scope

Raised by many stakeholders,⁷¹ this issue was summarised by the Hunter Jobs Alliance:

The government's Net Zero Economy Authority Bill establishes a strong process to protect workers at power stations, the mines that supply them and the businesses that support them but leaves workers in export oriented coal mines, the vast majority of coal miners in the Hunter region, exposed to sudden market changes with no protections. Amending the bill to include these workers and ensure that the broader community is consulted in the community-of-interest process will make the bill fairer and ensure it achieves its objectives.⁷²

The Grattan Institute highlighted a likely consequence:

[T]he current legislation as written creates two classes of workers, and, within regions, we think that might actually start to tear at their social fabric a little bit and affect the cohesiveness and sense of community within those regions. To give you an example, a coalminer in the Hunter Valley who works in a coalmine that is associated with a power station will be eligible for assistance if that power station shuts under the energy industry jobs plan. A coalminer who works for a coalmine that is focused on exports will not be eligible for any assistance if that mine closes. But those two people do the same job. They're potentially facing the same fate, and they potentially live right next door to each other.⁷³

Responding to these points, PM&C observed that:

[S]ome of the other industries, like export coal industries, are cyclical; they do operate on the whim of international markets. That's not the case for domestic power stations. The closure dates for the power stations, particularly in the near term, are well-known. We have had examples, as you know, in the country where those transitions haven't gone as well as we wanted. I think the government's intention, particularly through that regulatory scheme, is to make sure that those obvious, well-marked, acute transitions are done much better in this transition.⁷⁴

In a similar vein, the Mining and Energy Union observed that:

This bill deals with the immediate and the known, and that's facilities that have got closure dates slapped on them, which is the whole of the coal-fired power sector. It doesn't deal with export coalmining, for example, or gas. The truth is: export coalmining is still booming. There's a labour shortage. The governments in the customer countries haven't turned things around yet. They will; we just don't know when. My view is that we should deal with the immediate and the known, and if we can deal with that successfully through this bill, then you make a compelling case to extend it to other parts of the economy if necessary. We just don't know what the trajectory is.⁷⁵

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70. EIANZ, [Submission](#), 1–2; Electrical Trades Union, [Submission](#), 1; Hunter Jobs Alliance, [Submission](#), 1,3; Grattan Institute, [Submission](#), 10–14; Local Government Association of Queensland (LGAQ), [Submission](#), 6, 10–12; Eckersley, [Submission](#), 1–3, The Next Economy, [Submission](#), 2; and [Evidence](#), 5–6, 14, 36, 47–48, 62, 69, 72–73.
71. Australia Institute, [[Submission](#) no. 24], April 2024, 11–15; Hunter Jobs Alliance, [Submission](#), 1–4; and [Evidence](#), 5–6, 14, 31–32, 47–48, 58–59, 61, 63, 71–73.
72. J. Page (Coordinator, Hunter Jobs Alliance), [Evidence](#), 59.
73. A. Reeve (Deputy Program Director, Energy and Climate Change Program, Grattan Institute), [Evidence](#), 31–32.
74. Power, [Evidence](#), 73.
75. T. Maher (General President, Mining and Energy Union), [Evidence](#), 5.

PM&C also observed that although ‘there are elements relating to the [Plan] that relate to particular power stations in the bill ... the authority's scope and activities can be much broader than that in regions and for workers in other areas’.⁷⁶

Non-power station occupations impacted by transition

The Grattan Institute highlighted that:

There are lots of industrial jobs and electricity-sector jobs which are geographically concentrated, but there's also a cohort of workers who are not geographically concentrated whose jobs will be affected by the transition to net zero. These are people like gasfitters, mechanics for internal combustion engine vehicles and so on. There's one or two of those in every town in Australia ... We need to give the authority the flexibility to work with those cohorts of workers as well, because they are going to be facing changes to do with the energy transition as we move away from the widespread use of gas in the economy and towards an electrified transport fleet.⁷⁷

On this issue Senator Allman-Payne asked the Electrical Trades Union (ETU) and the ACTU to comment on whether ‘as a matter of principle, we think this should extend to other workers who will ultimately be impacted by the transition’. The ETU⁷⁸ and the ACTU emphasised ‘mak[ing] sure this model works, but with a view to reviewing and considering potentially expanding’.⁷⁹

Initiation of the Plan

Oversight of the operation of (and compliance with) the Plan is shared between the CEO and the FWC, as discussed below.

Under the NZEA Bill, the initial steps toward the Plan commence when:

- a **trigger situation** arises: an owner or operator of a coal-fired or gas-fired power station decides to close the facility
- in response to the **trigger situation**, the CEO makes a determination of a **trigger notice**
- the CEO undertakes the **community of interest process**: identifying relevant employers and employees and conducting relevant consultations
- the CEO may then apply to the FWC for a **community of interest determination**
- in response to an application from the CEO, the FWC may make a **community of interest determination** under **clause 57**.

Following this, various obligations are imposed on **closing** and **dependent** employers aimed at supporting impacted employees to find new employment, as well as facilitating a transition to clean energy economy.

Figure 1 below outlines the basic steps in the development of the Plan. Dispute resolution and civil penalty provisions have been omitted. Information for this has been compiled from Parliamentary Library analysis of the NZEA Bill and Explanatory Memorandum.

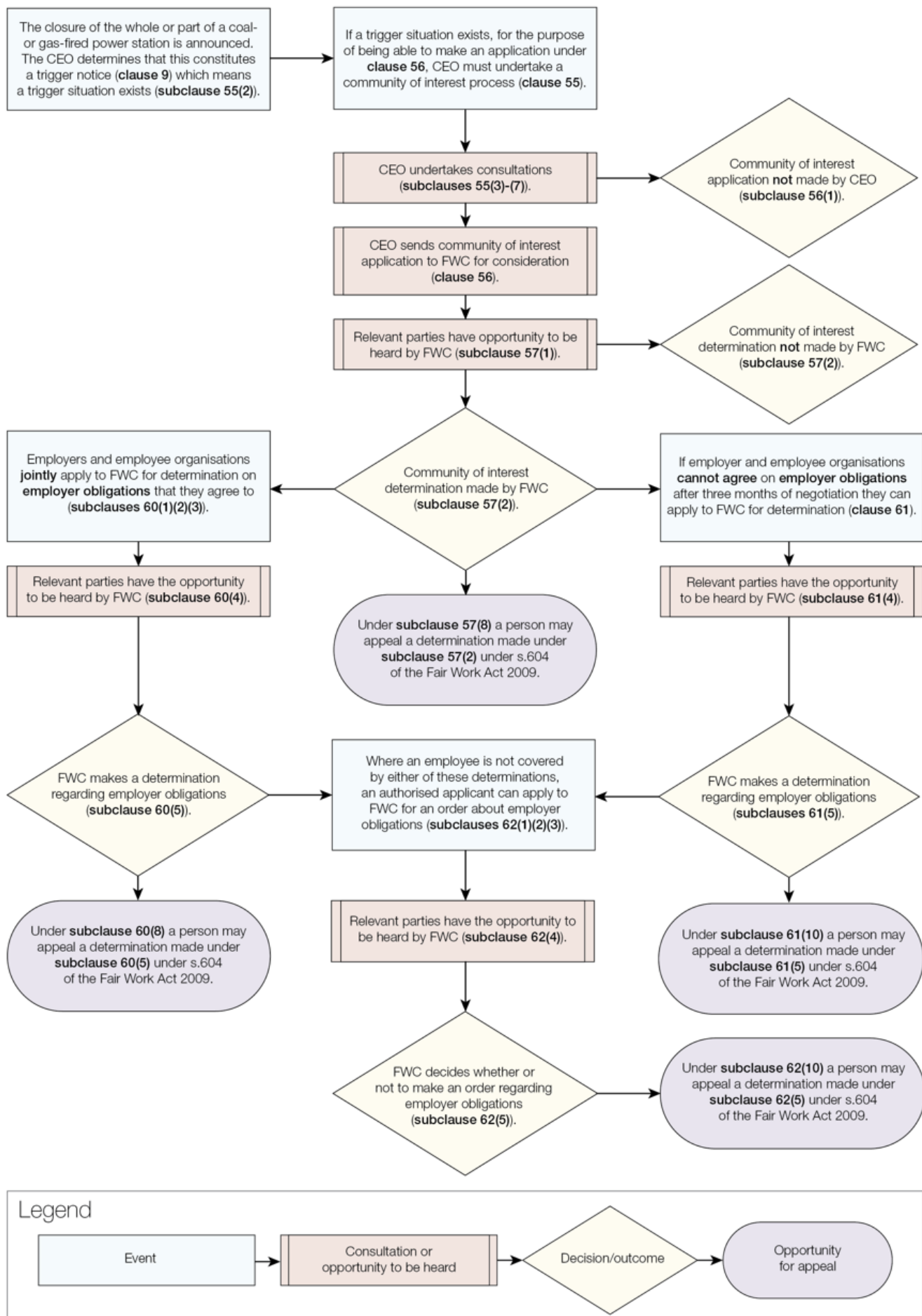
76. Power, [Evidence](#), 69.

77. Reeve, [Evidence](#), 36.

78. M. Wright (National Secretary, Electrical Trades Union of Australia), [Evidence](#), 14.

79. B. Moxham (Legal and Policy Director, Australian Council of Trade Unions), [Evidence](#), 15.

Figure 1: Flow chart of basic steps in the development of the Energy Industry Jobs Plan



Determination of a trigger notice

The first step toward the Plan being initiated is the CEO determining that a notice of a ***trigger situation*** is a ***trigger notice***.⁸⁰ Broadly speaking, a ***trigger situation*** will exist when the CEO becomes aware that a coal-fired or gas-fired power station will close down.⁸¹ These may be, but are not limited to, a notice provided under the National Electricity Rules (**paragraph 9(3)(a)**) or under a law of Western Australia (**paragraph 9(3)(b)**). The Explanatory Memorandum notes:

The intention is not to set up separate reporting obligations on power stations, [the intention is to] link to existing obligations in the National Electricity Market and Western Australian Wholesale Energy Market, and other announcements a power station might make to the Australian Stock Exchange or media release.

This clause also allows the operation of the Plan to not be compromised by any future changes to the way that coal-fired and gas-fired power stations provide notifications of their closure.⁸²

Where a power station has given at least 42 months notice of its closure, a ***trigger situation*** exists and the CEO may make an application to the FWC for a ***community of interest determination***. If the ***trigger notice*** is given at least 42 months before the scheduled closure date, the CEO's application must be at least two years in advance of the scheduled closure date (**paragraph 56(2)(a)**). If the notice of a ***trigger situation*** is less than 42 months, the CEO's application must be as soon as practicable after completing the community of interest process (**paragraph 56(2)(b)**). However, the expectation is that most applications would be made well in advance, with the two-year timeframe being the minimum. This is to ensure the FWC has adequate time to consider the application and for ***transition employees*** to receive meaningful support before the power station's closure.⁸³

Issue: scope of trigger to initiate the plan

Some stakeholders and senators questioned whether circumstances other than the closure of a coal-fired or gas-fired power station could or should be a 'trigger' for particular action by the NZEA, for example, the imminent closure of a mine that is for export purposes.⁸⁴

PM&C's response explained that, although the formal Plan will be initiated by the imminent closure of coal-fired or gas-fired power stations, 'the authority's scope and activities can be much broader than that in regions and for workers in other areas' and a formal 'trigger' would not be needed for the NZEA to exercise its broader suite of capabilities in particular regions.⁸⁵

Contrasting with other submissions, the submission from the BCA noted its members' preference for a narrower, more specific definition of a ***trigger notice*** to ensure that:

the Jobs Plan obligations are limited to trigger events connected to relevant power station closures that arise **because of measures to meet Australia's greenhouse gas emissions reduction targets**. This could be achieved by an amendment to clarify that a trigger situation in s 55(2) of the Bill must be connected to a trigger notice issued **as part of measures to meet Australia's emission reduction targets**.⁸⁶
[emphasis added]

80. Clause 9, subclause 55(2).

81. [Explanatory Memorandum](#), 19.

82. Clause 9; [Explanatory Memorandum](#), 19.

83. [Explanatory Memorandum](#), 42.

84. Hunter Jobs Alliance, [Submission](#), 1–4; and [Evidence](#), 48, 71–72.

85. Power, [Evidence](#), 69, 72.

86. BCA, [Submission](#), 4.

Community interest process

Clause 55 provides that, if a ***trigger situation*** exists, the CEO **must** undertake a ***community of interest process***⁸⁷ for the purpose of being able to make an application to the FWC under clause 56 for a ***community interest declaration*** (which effectively sets up a transitional process under the Plan). The ***community of interest process*** effectively has 2 parts:

- identifying relevant employers and employees
- conducting relevant consultations.

Identifying relevant employers

Through the ***community of interest determination*** process, the CEO must identify:

- ***closing*** and ***dependent employers*** (employers) (paragraphs 55(1)(a) and (b))
- gather information about their employees, including the number of ***transition employees*** and their roles (paragraph 55(1)(d))
- an estimate of the number of ***transition employees*** that might become ***participating employees*** (paragraph 55(1)(e)).

In addition, under paragraph 55(1)(c), the CEO conducts a voluntary expression of interest process to identify employers that would be willing to employ ***transition employees (receiving employers)***. The CEO can ask ***receiving employers*** to provide information on the types of jobs available, the skills needed, and the location and quantity of roles they may be able to offer to ***transition employees*** (subclause 55(3)).

Consultation process

Under clause 55, as part of the ***community of interest process***, the CEO must:

- consult employees and potential ***receiving employers***
- consult with employee organisations (subclause 55(4)) and employer organisations such as unions (subclause 55(5))
- undertake other consultations ‘as the CEO considers appropriate’ (subclause 55(6)).

Issue: stakeholders to be consulted

Submissions recommended expanding the mandatory consultation process to include a requirement for the CEO to consult with community members and other stakeholders.⁸⁸ The BCA and EnergyAustralia submissions recommended that the CEO should consult all employer organisations nominated by a closing or dependent employer (rather than just those that the CEO considers appropriate under subclause 55(5)).⁸⁹

Applying for a community of interest determinations

At the conclusion of the ***community interest process***, the CEO must consider whether to make a written application to the FWC for a ***community of interest determination***, using the information gathered through the two parts of the ***community interest process*** discussed above (subclause 56(1)).

In making this decision, the CEO must consider a range of factors outlined in subclause 56(4), including employee supports, the number of ***transition employees***, whether their current

87. [Explanatory Memorandum](#), 40.

88. Hunter Jobs Alliance, [Submission](#), 3; Isaac Regional Council, [Submission](#), 6.

89. BCA, [Submission](#), 5; EnergyAustralia, [Submission](#), 3.

employer could redeploy these employees elsewhere in their business, and the capacity of other employers in the same geographical area to offer employment opportunities.

An application to the FWC must provide the names of the **closing or dependent employers** (if the CEO felt this was reasonable), the number of impacted **transition employees** and **participating employees**, and the number of jobs becoming redundant (**subclause 56(3)**). The CEO would need to inform the employers of the application as soon as possible (**clause 56(6)**), although employers should already be aware through the **community of interest** consultation process.⁹⁰

Issue: discretion of CEO

Subclause 56(1) provides that ‘after completing the community of interest process, the CEO **may** apply, in writing, to the Fair Work Commission for a determination by the Commission under section 57’.

The use of ‘may’ suggests that the CEO could choose not to make an application to the FWC. For example, in a circumstance where there is a small number of **transition employees**, redeployment measures already exist, or where the local labour market can absorb the **transition employees** without additional intervention, an assessment could result in the CEO deciding against making an application to the FWC, given that reasonable measures to manage the workforce transition are already in place.⁹¹ This approach would ensure the Plan is directed to areas of need.

Issue: appeal decision not to make an application for a community interest determination

The ACTU’s submission recommended amending the NZEA 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’.⁹² PM&C advised the Committee hearing that judicial review would be available if the CEO does not make a decision to make an application to the FWC.⁹³

Key issues and provisions: role and function of the Fair Work Commission

The NZEA Bill confers additional responsibilities to give the FWC a central role in the operation and oversight of the Plan. The FWC’s responsibilities commence with its consideration of whether, upon application by the CEO, to make a **community of interest determination** under **clause 57**.

The Explanatory Memorandum states that ‘Part 5’s operation does not require any changes to the *Fair Work Act 2009*. It is designed to operate within the existing industrial relations framework’.⁹⁴ However, the NZEA Bill and the Explanatory Memorandum do not indicate whether the FWC will be appropriated more funding for these additional responsibilities.

Making a community of interest determination

Clause 57 empowers the FWC to make a determination of the **closing employers** and **dependent employers** that would be included in a **community of interest determination**. The intention of these categorisations is to ensure all affected employees are covered by the arrangements that flow from the determination.⁹⁵

90. [Explanatory Memorandum](#), 43.

91. [Explanatory Memorandum](#), 42.

92. ACTU, [Submission](#), 2.

93. Martin, [Evidence](#), 74.

94. [Explanatory Memorandum](#), 40.

95. [Explanatory Memorandum](#), 15.

Information to be considered by the Fair Work Commission

Upon application by the CEO for a **community of interest determination** the FWC must consider the information provided in the application and whether specified employers should be included in a **community of interest determination** (subclause 57(2)).

In doing so the FWC would need to consider, at minimum, the following factors:

- the object of the Act
- existing supports for **transition employees** to find other employment
- the number of **transition employees** and the estimated number of **transition employees** that would become **participating employees**
- the capacity of the employer to redeploy **transition employees** to other business operations internally and
- the capacity of other employers in the same **geographic area** to provide employment to **transition employees** (subclause 57(3)).

Subclause 57(5) notes the FWC must also consider the information contained in the **community of interest application** under clause 56 and, under subclause 57(1), must ensure that the following parties have ‘an adequate opportunity to be heard’:

- the CEO, or an SES employee, or SES employee of the NZEA nominated by the CEO
- each employer named in the application
- the Energy Industry Worker Redeployment Advisory Group (EIWRAG) (discussed below under the heading ‘Role of the Energy Industry Worker Redeployment Advisory Group’)
- employee organisations representing the industrial interests of **transition employees**
- employer organisations representing the industrial interests of employers named in the application
- **closing** or **dependent employers** nominated by an employee organisation
- **transition employees** of involved employers if they have notified the FWC in writing that they wish to be heard in relation to the application.

When must the Fair Work Commission make a **community of interest determination**?

The FWC **must** make a **community of interest determination** if it is satisfied that ‘it is reasonable in the circumstances’ to specify one or more employers identified by the CEO in its application in the **community of interest determination**.

Importantly, however, the use of the phrase ‘one or more of those employers’ in subclause 57(2) means the FWC can decide to specify some, but not all, of the employers listed by the CEO in its application in a **community of interest determination**. This also means the FWC must **not** make a **community of interest determination** where it is not satisfied that it was reasonable to specify **any** of the employers listed by the CEO in the application.

A **community of interest determination** comes into force on the same day it is made and would need to remain in force for a period of 6 months. This 6 month period begins the day a power station closes in part or whole (subclause 57(6)). As per the application process, the CEO would need to notify included employers as soon as practicable about a determination being made (subclause 57(7)).

Operation of a **community of interest determination**

A **community of interest determination** operates by imposing various general obligations on the employers specified in it, as well as allowing employers, employee organisations and certain other persons to apply for determinations imposing more specific obligations on specified employers.

The purpose of those obligations is to fulfill the purposes of the Plan, namely to provide a structural adjustment framework to support employees impacted by the closure of the coal-fired or gas-fired power station in the relevant geographic area to access new employment.⁹⁶

General employer obligations

Once an employer has been identified in a **community of interest determination** they have certain general obligations. General employer obligations (**subclause 58(1)**) involve:

- giving employees the opportunity to express their interest in finding new employment and accessing available supports for this transition to occur
- informing employees about employer obligations
- cooperating with the NZEA in implementing the Plan.

Other employer obligations must be undertaken by the employer where reasonable, including:

- the provision of career planning and financial advice (the advice must be related to their current or future employment and cannot be general in nature) (**subclauses 59(3) and (4)**)
 - the employer can either provide career planning and financial advice to all employees or require employees to arrange advice on an individual basis
 - where the employer provides the advice to all employees, they are responsible for covering the costs
 - where an employee individually arranges advice, they would be able to access time off, or another flexible working arrangement, with the employer providing a financial contribution to the cost of receiving the advice
- allowing employees to receive advice from employer organisations, such as unions (**subclause 59(5)**)
- providing **participating employees** with time off, or flexible working arrangements to access relevant training (**subclause 59(6)**). The employer would provide a financial contribution to the training (**subclause 59(7)**)
- facilitating engagement with **receiving employers**, for example, providing **participating employees** with time off to participate in such things as recruitment processes or negotiating start dates (**subclauses 59(8) and (9)**)
- ensuring paid time off work to access the above supports (**subclauses 59(10) and (11)**).

Subclause 59(8) is of particular relevance to the intended operation of the Plan. It provides that **closing** and **dependent employers** specified in a **community of interest determination** must engage with **receiving employers** to facilitate **participating employees** to obtain employment. This reflects a key goal of the Plan, namely supporting employees impacted by the closure of some coal-fired and gas-fired power stations to access new employment.⁹⁷

In determining whether the above actions are reasonable, employers may consider the impact on operational requirements, what employee supports are needed, and any other requirements under relevant enterprise agreements or other industrial instruments (**subclause 59(1)**). This clause does not apply to employers who do not have **transitional employees** at the time, for example, where one company owns the power station, but another company employs its workers (**subclauses 58(2) and 59(2)**).

In relation to career planning and financial advice under **subclauses 59(3) and (4)**, the NZEA Bill does not provide guidance on what an appropriate financial contribution would be. Determining a reasonable contribution will play an important role in ensuring equitable access to the relevant

96. [Explanatory Memorandum](#), 5.

97. [Explanatory Memorandum](#), 5.

supports needed by an employee to successfully redeploy into new employment following the closure of a power station.

Specific employer obligations

As well as imposing the above general obligations on employers specified in a **community of interest determination**, the NZEA Bill allows the FWC to make determinations setting out specified employer obligations.

Agreed specific obligations

Where the employer and employee organisations agree on specific actions the employer will undertake as part of their obligations arising from being specified in a **community of interest determination**, they can jointly apply to the FWC for a determination (**subclause 60(1)**). The application would need to specify what actions are to be undertaken (**subclause 60(2)**).

The FWC would consult with the EIWRAG, employers, employee and employer organisations, and a **transition employee** that has requested in writing to be heard in making its decision (**subclause 60(4)**). If a determination of employer obligations is made, it would need to identify the **community of interest determination** it applies to and the specific actions an employer must undertake.

The determination of employer obligations would come into force on the day specified in the determination, with the requirement that it cannot be earlier than the day on which the determination is made (**subclause 60(6)**).

Disputed specific employer obligations

Where employers and employee organisations cannot reach agreement on specific employer obligations after three months of negotiation, either party can apply to the FWC for a determination of employer obligations arising from being specified in a **community of interest determination** (**subclause 61(1)**).

The application would need to specify the actions the applicant thinks the employer should take and the period covered by **paragraph 61(1)(b)**. This would also involve the FWC undertaking a consultative process with the EIWRAG, the employers, employee and employer organisations, and a transition employee that has notified the FWC in writing that they wish to be heard in relation to the application (**subclause 61(4)**).

Additional matters the FWC would need to consider, but are not limited to, in making this determination include the overall purpose of the NZEA Bill, the conduct of the employer before and after the **community of interest determination** was made, as well as any relevant patterns of behaviour (**subclauses 61(6)** and **(7)**). The determination would come into force on the day specified in the determination with the requirement that it cannot be earlier than the day on which the determination was made (**subclause 61(8)**).

FWC order to comply with general employer obligations

Clause 62 operates as a fall-back mechanism to ensure compliance with general employer obligations imposed by **clauses 58** and **59** (see example 1.20 in the Explanatory Memorandum for an example of the intended operation of **clause 62**).

In addition, **clause 62** operates so that, where a determination of employer specific obligations has not been made under **clauses 60** or **61**, the FWC can make an order outlining actions to be undertaken by the employer (**clause 62(1)**). This provides a fall-back option for employees not covered by determinations under **clauses 60** and **61** to ensure compliance with the general

obligations imposed under **clause 58** and **59**.⁹⁸ The CEO, a **transition employee** or an employee organisation can apply to the FWC for an order (**subclause 62(2)**).

Under **subclause 62(4)**, the FWC must consult with the same groups in **subclause 61(4)** and consider the overall purpose of the NZEA Bill and the employer's conduct in making its decision (**subclause 62(6)**).

Appeals, variations, and dismissals

Throughout the process for **Part 5**, certain parts of the *FW Act* are specified as applying to the determinations that can or have been made. For example, there are opportunities for a person to appeal a determination that has been made or for the FWC to vary or revoke a determination, if appropriate (**subclauses 57(8), 60(8), 61(10), and 62(10)**).

Other provisions relate to the conduct of matters before the FWC and apply to **subclauses 56(7), 60(3), 61(3) and 62(3)**. Under these subclauses, the FWC can: accept corrections, amendments and requests to discontinue applications; make procedural and interim decisions regarding how, when, and where matters are dealt with; and dismiss an application on certain grounds.

Civil penalty provisions

There are avenues for civil penalties to be administered in the case of non-compliance with the obligations under a determination or order made in **clauses 60, 61 or 62**. Where an employer breaches the determination or order that they are subject to, the civil penalty is 600 penalty units⁹⁹ (**subclauses 60(7), 61(9), and 62(9)**).

Employers may also face civil penalties (**subclause 64(5)**) if they fail to comply with a notice from the CEO requesting information or documents needed to undertake the community of interest process (**subclause 64(1)**) or to determine the employer's compliance with **clauses 58, 59, 60 or 61 (paragraph 64(2)(d))**. Where an employer does not comply with the requirements of the notice the civil penalty is 60 penalty units.

In the notice, the CEO must provide details of the civil penalty for employers not providing information as per the notice, as well as the relevant criminal codes for offences around providing false or misleading information and documents (**subclause 64(4)**). The CEO must not require the information or documents requested to be provided in less than 14 days (**subclause 64(3)**). This is to ensure that 'employers have sufficient time to identify, collate, produce and transmit the requested information'.¹⁰⁰

These civil penalties can be enforced through the *Regulatory Powers (Standard Provisions) Act 2014 (clause 67)*. The CEO, relevant employee organisation, or transition employee can apply for an order for civil penalties to the Federal Court of Australia or the Federal Circuit and Family Court of Australia (**subclauses 67(3) and (4)**). This enforcement mechanism ensures effective operation of the compliance regime and is consistent with the standing provided to non-government entities to seek civil penalties for non-compliance under the *FW Act*.¹⁰¹

Issue: civil penalty provisions

The BCA's submission observed that 'the quantum of civil penalties applicable to breaches of [Community of Interest Determinations] CIDs and FWC Orders about CIDs under s62 of the Bill is

98. [Explanatory Memorandum](#), 50.

99. Under the [Crimes \(Amount of Penalty Unit\) Instrument 2023](#) (made under subsection 4AA(1A) of the [Crimes Act 1914](#) (Cth)) the value of a Commonwealth penalty unit is \$313.

100. [Explanatory Memorandum](#), 53.

101. [Explanatory Memorandum](#), 54.

too high and out of proportion to analogous breaches under the FW Act'.¹⁰² On the other hand, submissions from the ACTU and unions (ETU and Mining and Energy Union) recommended that the civil penalty provisions need to be 'strengthened'.¹⁰³

Issue: interaction with existing industrial relations framework

Several submissions observed overlap between the Plan's **community of interest determination** making process and existing industrial arrangements.¹⁰⁴ The BCA compared several of the NZEA Bill's clauses with existing provisions in the FW Act and asserted 'the Jobs Plan lacks clarity as to how these inconsistencies and areas of overlap can be resolved. This could lead to perverse and unintended consequences'.¹⁰⁵ Senator Colbeck explored this issue in his questions at the Committee hearing.¹⁰⁶

Role of the Energy Industry Worker Redeployment Advisory Group (EIWRAG)

Subclause 63(1) establishes the EIWRAG. Under **subclause 63(2)** the role of the EIWRAG is to provide information to the FWC during certain decision-making processes under the Plan, namely:

- applications by the CEO for a **community interest declaration** (subclause 57(1))
- joint applications by employee organisations and employers for determinations related to agreements between a **closing employer** or **dependent employer** specified in a **community interest declaration** with relevant employee organisations about certain actions to be taken by the employers (**subclause 60(4)**)
- applications by employee organisations or employers for determinations related to what actions must to be taken by a **closing employer** or **dependent employer** specified in a **community interest declaration** (**subclause 61(4)**)
- applications by the CEO, an employee organisation or **transitional employee** for determinations related to what actions must to be taken by a **closing employer** or **dependent employer** specified in a **community interest declaration** (**subclause 62(4)**).

EIWRAG members are appointed by the Minister (**subclause 63(3)**). As noted by the Explanatory Memorandum:

Subclause 63(4) provides that the Minister must ensure that one of the advisory group members is:

a member of, or who is nominated by, an employee organisation that could represent the interests of one or more **transition employees for a closing employer**; and

a member of, or who is nominated by, an employee organisation that could represent the interests of one or more **transition employees for a dependent employer**; and

a member of, or who is nominated by, an organisation that would be entitled to represent the industrial interests of an employer if the employer became a **closing employer**; and

a member of, or who is nominated by, an organisation that would be entitled to represent the industrial interests of an employer if the employer became a **dependent employer**.¹⁰⁷ [emphasis added]

Periods of appointments must not exceed 3 years (**subclause 63(5)**) and the Minister may revoke an appointment (**subclause 63(6)**). Members are not to be paid remuneration (**subclause 63(8)**). **Subclause 63(10)** provides that the EIWRAG may operate 'in the way it determines'. The

102. BCA, [Submission](#), 5.

103. ACTU, [Submission](#), 10; Electrical Trades Union, [Submission](#), 1; Mining and Energy Union, [Submission](#), 7.

104. Origin Energy, [Submission](#), 2–4; BCA, [Submission](#), 4; AiG, [Submission](#), 4.

105. BCA, [Submission](#), 4–5.

106. R. Colbeck (Senator, Tasmania), [Evidence](#), 18, 21, 74–76.

107. [Explanatory Memorandum](#), 51–52.

Explanatory Memorandum notes this would be within the scope of agreed terms of reference, but there is no guidance on how these terms would be negotiated and agreed upon.¹⁰⁸

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108. [Explanatory Memorandum](#), 52.