



Senate Finance and Public Administration Legislation Committee

Inquiry into the Net Zero Economy Authority Bills 2024

The Mining and Energy Union (MEU) welcomes the opportunity to provide a submission to the Committee on the *Net Zero Economy Authority Bill 2024*.

The MEU represents more than 22,000 members working across Australia's mining and energy industries, including in underground and open cut coal and metals mining, coal-fired power generation, coal ports, and iron ore mining and transportation.

Australia's energy transition is profoundly impacting the regions which have powered our nation, and underpinned our economic prosperity, for generations.

All of Australia's coal-fired power stations have closure dates mapped out by their private and public sector owners and there are no investors proposing to build new coal-fired power stations in Australia.

Workers in coal power stations, and the mines that supply coal for domestic power generation, are increasingly seeing closure dates for their worksites accelerated – without concerted government action to support workers and communities, this will have potentially devastating socioeconomic impacts on our energy regions.

The MEU has been a longstanding and leading advocate for the establishment of a national statutory authority tasked with supporting workers affected by coal power station closures into new jobs and diversifying the economies of coal power regions.

This is because our members know that the world is changing and, if left solely to the private sector, it is their futures and their communities that will bear all the costs and see few of the benefits of that change.

In 2016, our submission to the Senate Inquiry into the retirement of coal fired power stations called for a statutory authority.¹

In 2018, we commissioned research from the Industrial Relations Research Centre at UNSW, which reviewed international examples of structural economic change and identified the support of a national policy framework as a key component of best practice approaches.²

In 2023, the MEU National Meeting of Energy Delegates issued a renewed call for the establishment of an Authority and power station delegates joined lobbying efforts in Canberra and the regions.

¹ CFMEU Mining & Energy. 2016. Submission to the Senate Environment and Communications Reference Committee Inquiry on Retirement of coal power stations.

² Sheldon, P., Junankar, R., and De Rosa Pontello, A. 2018. *The Ruhr or Appalachia: Deciding the future of Australia's coal power workers and communities*. UNSW.

The Net Zero Economy Authority established by the Bills is a welcome and long overdue development. Support for the workers who are most imminently and profoundly affected by decarbonisation is the critical missing element in Australia's climate policy, and the Authority will fill this gap.

The Authority will provide a strong foundation for multi-stakeholder work that must continue for a generation. With coal power communities across the country already experiencing huge upheaval and uncertainty about the future, the work of the Authority must begin as a matter of urgency.

We strongly support the Bill, and call for it to be passed as soon as possible.

There are three minor amendments that should be made to the Bill. These amendments are explained in greater detail below. The amendments are technical in nature, and align with the clear intent of the Bill.

Coal power station closures

The transition away from coal-fired generation in Australia is already underway – but it has so far been a largely disorderly transition driven by the private-sector companies who own coal power assets. The past decade has seen a succession of closures of major coal power stations, including Hazelwood in Victoria, Northern and Playford in South Australia, and Wallerawang and Liddell in New South Wales.

These closures have had significant, ongoing, impacts on affected workers, with research finding that Australian coal power station workers made redundant after a closure earned 69% less in the year after redundancy (compared to 43% less for all other redundant workers), and 50% less after four years (compared to 29% less for all other redundant workers).³

Coal power station closures impact entire communities. In places like Lithgow, Collie, Biloela, and the Latrobe Valley, the domestic coal industry is the main employer in town, directly and indirectly supporting almost the entirety of the community's industry and economy. And not only is the coal power station the primary employer, it is typically also the highest paying, employing workers for the long-term in the kinds of secure jobs that support families. Thus the socioeconomic impacts of a mass redundancy of hundreds of the best-paid workers in a small regional town should not be understated. MEU members in Lithgow and the Latrobe Valley have already seen vibrant main street shopfronts replaced largely by social services.

On current trajectories, Australia's remaining coal power stations are likely to all close before 2040.⁴ These closures are as much a result of the changing economics of energy generation and the profit-motivated decisions of private-sector energy companies, as they are of state and federal emissions reduction targets. Many coal power stations are ageing and there are no investors proposing to construct new ones. Consequently, the choice faced by the Government is not whether the energy transition should occur, but whether to act so that the energy transition is orderly and workers and communities are not left behind.

³ Andrews, D., Dwyer, E. and Vass, L. 2023. 'At the Coalface: What Happens to Workers Displaced by Decarbonisation?', e61 Micro Note 11, 23 October.

⁴ AEMO. 2024. Draft 2024 Integrated System Plan, p. 9.

We are heartened that the Albanese Government, in introducing these bills which establish the Net Zero Economy Authority, has chosen to act.

The case for Commonwealth Government action

Across Australia, a patchwork of public and private ownership in the coal power sector has led to an uneven policy approach to closures. States that have retained public ownership of their energy generation assets, like Queensland and Western Australia, have a distinct advantage when it comes to supporting workers through the transition. For example, the Job Security Guarantee within the Queensland Energy Workers Charter is designed to ensure that all workers at the state's publicly-owned coal power stations are guaranteed an ongoing job within the government-owned energy sector, even as power stations phase to closure. Meanwhile, in Western Australia, planning to support the workforce at Muja Power Station began as early as 2018, long before Muja's scheduled 2029 retirement was even announced. Power station closures will still be challenging for workers and communities, but public ownership has enabled more orderly transition planning and the establishment of strong standards to govern support for the affected workforce.

The fate of workers at privately-owned power stations has, by contrast, been at the mercy of the market. In very select cases, companies have acted with foresight. AGL gave seven years' notice of the closure of Liddell Power Station and committed to a principle of 'no forced redundancies', with workers transferred to nearby Bayswater Power Station upon closure. However, company goodwill (and the geographic fortune of a sister power station over the road in Liddell's case) is an unreliable source of sound public policy – especially when company-led initiatives so often exclude contractor employees and workers at dependent mines. Affected workers and communities deserve better.

The 2017 closure of Hazelwood with just five-months' notice, affecting around 750 workers in the Latrobe Valley, is an exemplar of disorderly transition. Engie, as owner of the power station, accepted no responsibility for the future of its employees beyond minimum legal requirements. With the federal government uninterested in intervening, it was left to the Victorian Government and local unions to piece together a policy response.

With the financial backing of the Victorian Government, the Hazelwood Worker Transfer Scheme was established through an agreement between unions, other power station employers in the region, and the state government. Inspired by international best practice examples of pooled redeployment, the scheme sought to redeploy displaced Hazelwood workers to other power stations in the region, filling vacancies created through offering generous early retirement packages to older workers.

However, without the regulatory force and policy backing of the Commonwealth, the Hazelwood Worker Transfer Scheme fell short of its modest target of 150 redeployments. Without a Commonwealth-imposed incentive or requirement to follow through on commitments made, the power station employers made limited efforts towards facilitating redeployment. Despite around 230 older workers expressing interest in taking early retirement packages, only 90 were accepted, restricting the number of vacancies filled by Hazelwood workers enrolled in the Scheme. The Hazelwood Worker Transfer Scheme was a decent first attempt at a redeployment scheme for power station workers, but its full potential was not fulfilled.

The energy transition is a major structural economic change for Australia and its regions, and it demands a coordinated national policy response from the Commonwealth. It is clear that the response to the sudden closure of Hazelwood Power Station, and its associated mine, was hamstrung by the conspicuous absence of the Commonwealth Government at that time. Similarly, the closure of Northern Power Station in 2016 occurred without a plan to support the community and attracted no financial support from state or federal government for more than six months.⁵ The impacts of the closure of Wallerawang Power Station in 2014 are still felt keenly in the community of Lithgow ten years on.

A nationally-led approach to transitioning workers and regions also emulates what are widely considered international best practice approaches, such as that of the German Coal Commission or Spain's Institute for Just Transition.⁶ The Net Zero Economy Authority, with the functions set out in Section 16 of the Bill, is well-placed to provide the policy leadership and national coordination that has, to date, been sorely lacking. The Authority will set baseline standards for the treatment of transitioning workers. With a further five coal power station closures slated to occur before 2030, its prompt establishment is imperative.⁷

The importance of the Energy Industry Jobs Plan

The most important policy objective for supporting workers displaced by the energy transition is the creation of a tangible pathway to a new – and decent – job. Programs to support retraining (for example) and investment in the development of new industries in affected regions are both essential, but insufficient without a clear framework to facilitate worker redeployment.

The Energy Industry Jobs Plan, set out in Part 5 of the Bill, provides this framework. It details a 'Community of Interest' process triggered by a closure notice for all or part of a coal or gas power station. The 'Community of Interest' process involves identification of affected employers, including those employers dependent on the 'closing employer' such as a dependent coal mines, and prospective 'receiving employers.' There are requirements for the Authority to consult with community, unions, and employer organisations through this process. Genuine tripartite consultation should be seen as integral to all elements of the Plan – workers must be empowered to shape their own futures.

The Plan sets out various obligations for closing and dependent employers to support workers affected by the closure, including provision of career planning advice, training, engagement with receiving employers for future employment, and paid time off work for career progression or finding new employment, as detailed in Section 59 of the Bill. Importantly, the provisions of the Bill facilitate the establishment of pooled redeployment schemes, with the participation of receiving employers who can offer suitable jobs to workers affected by closures. Such schemes provide a direct pathway between jobs, giving certainty to workers while also delivering a valuable skilled workforce to the receiving employer.

⁵ Sheldon, P., Junankar, R., and De Rosa Pontello, A. 2018. *The Ruhr or Appalachia: Deciding the future of Australia's coal power workers and communities*. UNSW.

⁶ German Commission on Growth Structural Change and Employment, Final Report, 2019; Institute for Just Transition. 2023. *Spain, 4 years towards a just energy transition*.

⁷ On latest information, closures before 2030 are expected to be Eraring (2025), Collie (2027), Yallourn (2028), Callide B (2028), Muja (2029).

Pooled redeployment schemes are a proven feature of successful structural adjustment policies, and the MEU started advocating for the establishment of such schemes for Australia's coal power sector as early as 2016. The decades-long decline and closure of the black coal industry in the Ruhr Valley, Germany, occurred without a single forced redundancy. Affected employees were relocated to other still-producing mines in the region, with closure dates staggered and slowed to ensure 'socially acceptable staff reduction.' Combined with generous early-retirement schemes for workers of an appropriate age, pooled redeployment in the Ruhr Valley enabled the ongoing utilisation of workers' skills as the industry progressively shrunk in size and spared thousands of workers the indignity of unemployment.⁸

More recently, the tripartite German Coal Commission endorsed the merits of such an approach for the country's brown coal industry, which continues to be economically competitive, and remaining black coal power industry. The German Coal Commission's report refers to both 'internal recruitment', where workers affected by a closure are moved to continuing operations within the coal industry, and 'external recruitment', where affected workers are moved to work in other suitable industries with a period of earnings maintenance.⁹ These programs have been implemented through collective agreements that fulfil certain standards, including requirements for 'no operational layoffs.' Employers must have these agreements in place to be eligible for German Government compensation for closing.

With the obligations created by the Bill's provisions and the tools of the Commonwealth at hand, including the ability to incentivise the participation of receiving employers, the Net Zero Economy Authority is well-placed to set-up effective pooled redeployment schemes for the coal power sector.

Building a sustainable future for coal power regions

MEU members belong to tight-knit regional communities. The long-term future of their communities is frequently a source of greater anxiety than members' own individual employment prospects. The Authority's investment coordination function is critical to building future industries to support the economies and social wellbeing of coal communities, and preventing the devastating social consequences of sending these regions into deep economic depression.

Furthermore, for the worker redeployment measures envisaged in the Bill to be effective, there must be jobs to go to. We also hear from our members that retraining support is welcome but of limited utility when workers don't know what new industry they should be retraining for. New jobs spurred by the Authority's investment functions need to provide a similar quality of work, including in terms of pay, conditions, and job security. That work needs to be ongoing, not just short-term construction work. Coal regions possess skilled workforces and infrastructure well-suited to heavy industry, and we particularly encourage the development of new manufacturing industries.

Development of new industries for transitioning regions is a matter of urgency, and we are pleased that the work of the Authority has been kickstarted by the interim Net Zero Economy Agency currently located in the Department of Prime Minister and Cabinet.

⁸ Sheldon, P., Junankar, R., and De Rosa Pontello, A. 2018. *The Ruhr or Appalachia: Deciding the future of Australia's coal power workers and communities*. UNSW.

⁹ German Commission on Growth Structural Change and Employment, Final Report, 2019, p. 99.

Amendments to the Bill

The MEU considers that three amendments are necessary to the Bill. These amendments are explained below.

Amendment 1:

It appears that a technical drafting error has been made with respect to the definition of a 'dependent employer'.

The Explanatory Memorandum to the Bill explains that "*Subclauses 6(3) and 6(4) contain two definitions of 'dependent employer'*".¹⁰

The Explanatory Memorandum explains that "*The definition in subclause 6(3) is intended to capture constitutional corporations that supply goods and 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'*".¹¹

The Explanatory Memorandum further explains that "*The definition in subclause 6(4) is intended to capture 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'*".

The MEU supports a 'dependent employer' being defined consistent with those explanations in the Explanatory Memorandum.

As is evident from the above, the s.6(4) definition is focused upon the commercial relationship between the 'dependent employer' and the 'captured' coal mine. The placement of the words 'or is an associated entity of' in s.6(4)(b) is clearly a drafting error. Section 6(4) is not intended to define an associated entity of the coal mine operator as a 'dependent employer'. Section 6(4) is plainly intended to define a constitutional corporation as a 'dependent employer' by reference to its commercial relationship with the coal mine operator, or an associated entity of the coal mine operator. As much is evident from the Explanatory Memorandum, which recognises that "diverse corporate structures and labour supply chain arrangements are present across the electricity and mining industries. 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. The intent of these definitions is to ensure that 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".¹²

This drafting error should be corrected at s.6(4)(b) by moving the words "or is an associated entity of" to immediately after the words "a coal mine".

¹⁰ Paragraph 1.91, page 16.

¹¹ Paragraph 1.91, page 16.

¹² Paragraphs 1.85 – 1.86, page 15.

Amendment 2:

The Bill provides for the making of a determination under either s.60 or s.61. Those determinations are made by the Fair Work Commission (FWC), and concern the actions required to be taken pursuant to s.59 of the Bill.

The FWC must include in either determination, a term that provides a procedure for settling disputes about any matters arising under the determination.¹³

The MEU supports it being mandatory for either determination to include a procedure for the settlement of disputes. The FWC – being a specialist industrial tribunal operating under a legislated direction to exercise its functions and powers in a manner that is fair and just; quick, informal and avoids unnecessary technicalities; in an open and transparent manner; and by promoting harmonious and cooperative workplace relations¹⁴ - is the most appropriate forum to settle such disputes.

However, the FWC needs to be conferred with the jurisdiction to resolve such disputes. Unless such jurisdiction is conferred, the FWC will be unable to settle such disputes.

An example where such a dispute settlement function has been conferred upon the FWC can be found at s.39D of the *Coal Mining Industry (Long Service Leave) Administration Act 1992 (Cth)*.

The MEU recommends that jurisdiction be conferred upon the FWC to settle disputes about any matters arising under a determination made under s.60 and s.61 of the Bill.

Amendment 3:

The Bill provides that a breach of a determination made under s.60 or s.61 of the Bill is a civil remedy provision.¹⁵

The MEU supports breach of either determination being a civil remedy provision. That is because being able to enforce compliance with the terms of either determination is necessary to ensure the objectives of the Bill are met. However, the enforcement of civil penalty provisions in Division 6 of the Bill are unsatisfactory, at odds with the approach taken by the *Fair Work Act 2009 (FW Act)* and should be enhanced in three important respects:

- An application to the Court for breach of such a determination would expose the losing party to a costs order. This is inconsistent with the approach taken by the FW Act.¹⁶ The potential for a costs order would act as a serious deterrent for many parties, including most obviously a transition employee¹⁷, from bringing a claim for breach of a determination.

¹³ Section 60(5)(d), section 61(5)(d).

¹⁴ Section 577 of the *Fair Work Act 2009 (Cth)*.

¹⁵ Section 60(7), section 61(9).

¹⁶ Section 570 of the FW Act.

¹⁷ Section 67(3)(b) of the Bill.

- The powers of the Court are limited to the imposition of a penalty. Confining the Court to the payment of penalty creates the problem that the horse may have already bolted by the time the Court – usually after a lengthy legal proceeding – makes an order for the payment of penalty. As is the case under the FW Act,¹⁸ the Court should be equipped with the usual tools, such as the ability to order injunctive relief, compensation and to compel performance with legislated obligations, to ensure that the terms of the determinations can be properly enforced.
- The Court is confined under the Bill to ordering that any such penalty must only be paid to the Commonwealth.¹⁹ That is an odd outcome to any proceedings commenced by an ‘authorised applicant’ other than the CEO, such as a transition employee. It produces the absurd result that the transition employee is successful in legal proceedings that they have commenced, however, the penalty is paid to the Commonwealth. It is also inconsistent with the FW Act, which provides the Court with discretion as to the person to which penalty is to be paid.²⁰ In practical terms, that discretion typically results in the penalty being paid to a worker to cover the legal costs incurred in running the application in Court.

Conclusion

The *Net Zero Economy Authority Bill 2024* is the missing piece in Australia’s national climate policy response. It creates a structure for supporting the workers and regions that have powered Australia for generations and promote an orderly energy transition.

We have recommended minor technical amendments aligned with the Bill’s clear intent. The Bill should be passed as soon as possible to enable the Authority to commence work on 1 July.

¹⁸ Section 545(1) of the FW Act.

¹⁹ Section 82 of the *Regulatory Powers Act 2014* (Cth).

²⁰ Section 546(3) of the FW Act.