

Senate Economics References Committee Inquiry into the Australian Manufacturing Industry

ACTU answers to questions on notice, 17 December 2021.

The ACTU provides the following answers to Questions on Notice asked during and the in follow-up to our appearance on 8 December 2021.

Your submission has called for a \$1 billion “Superpower Investment Fund” to undertake co-investment in clean manufacturing. You’ve suggested that this be targeted at supporting new investment and employment opportunities in regions of Australia with high concentrations of fossil fuel extraction-activity.

Q. Could you share a little bit more about how you see this Superpower Investment Fund working, and if possible, provide some examples of the types of projects that you would expect to see funded through this program?

Since the ACTU filed this submission, we published *Sunshot: Australia’s opportunity to create 395,000 clean export jobs* – a strong blueprint for a national clean exports strategy written by Accenture and developed and commission along with the BCA, ACF and WWF. We include a copy of the report with this communication.

By looking at our natural, capital and labour endowments, the report identifies six clean energy opportunities – renewable hydrogen and ammonia, green metals, critical minerals, batteries, education and training and engineering, ICT and consulting services – that together could deliver 395,000 jobs and \$89 billion in GVA by 2040.

Many of these opportunities are in regions that already power Australia, because of their proximity to key mineral resources, including critical minerals, and appropriate infrastructure, including manufacturing and transport facilities as well as workers with

To realise these opportunities the report calls for, inter alia, the following:

- Coordinated investment in 7 clean export precincts: By coordinating investment in clean energy and export industries, governments can link Australia’s low-cost renewable energy resources to clean exports at precincts around the country.
- \$10 billion co-investment in new industries: By co-investing using grants, debt, equity or carbon contracts for difference (CCfDs), governments can directly support flagship projects to accelerate the scale-up of Australia’s clean export industries. This could include co-investments in hydrogen production, green metals processing and battery manufacturing.
- \$5 billion fund for workers and regions delivered by a new energy transition authority: A new fund overseen by a dedicated authority with representatives from government, industry and unions will help manage the disruptive impacts of the transition on workers and regions with carbon-intensive industries.

Your submission has argued that domestic production reduces a raft of potentially negative outcomes in overseas countries, including the use of slave labour. You've called for Anti-Slavery laws to be strengthened, moving from a voluntary company reporting scheme to a mandatory system with independent oversight and penalties for non-compliance.

Q. Could you share your thoughts on the flaws within existing Anti-Slavery laws, and what you think the Australian Government needs to change in order to ensure that we are not procuring goods from sellers who have slavery in their supply chains.

Modern slavery is rife in global supply chains. Modern slavery practices include forced labour, human trafficking, forced marriage, child labour, and other slavery-like practices. More than 40 million people globally are living and working in slave-like conditions according to the ILO, and the Global Slavery Index 2018 estimates that 15,000 people in Australia are living in conditions of modern slavery. Modern slavery occurs on a continuum of abuses of workers' rights that can begin with violations such as wage theft and excessive recruitment fees paid to labour hire companies.

Some of the drivers of modern slavery include a lack of workers' rights, complex global supply chains, opaque employment relationships, such as outsourcing and labour hire, and migration – including precarious and temporary migration, and visas that bond the worker to the employer. The disruptions caused to supply chains by COVID-19, and the economic and social impacts of the virus have led to increasing precariousness, exploitation, poverty, and an increased risk of modern slavery.

Regulation of global supply chains is needed to promote workers' rights and eradicate modern slavery. The *Modern Slavery Act 2018 (Cth)* is a modest step towards improving transparency in supply chains.

The Act seeks to create transparency about the supply chains of Australian companies by requiring entities with a consolidated revenue of at least \$100 million over an annual accounting period to make annual modern slavery statements describing the risks of modern slavery in their operations and supply chains, and actions taken to address those risks.

However, the Act as it currently stands is not sufficient to tackle the problem of modern slavery. It does not contain penalties for companies failing to report or take action on modern slavery, does not have independent oversight (such as a commissioner) to ensure companies comply, and only deals with criminal offences, whilst labour exploitation often falls in the grey area between crime and breaches of civil law. The premise of the Act is that companies who do the right thing will be celebrated, while those who do not report or take action on modern slavery will be 'named and shamed'. This effectively outsources the compliance and enforcement to unions, civil society, consumers and shareholders to pressure companies to do the right thing, instead of the Australian Government enforcing compliance through penalties and strict oversight. Finally, as it does not contain any requirement for companies to engage with workers in their supply chains, the Act is likely to be viewed as a risk-management exercise to be carried out by auditors, rather than as a vehicle to improve the conditions of workers in their supply chains and operations.

The ACTU believes the Australian Government must strengthen the *Modern Slavery Act 2018* by:

- Introducing appropriate penalties for companies that fail to report, provide false, incomplete or insufficiently detailed reports, or fail to act on modern slavery in their supply chains;

- Withholding or terminating Commonwealth procurement contracts from companies who have failed to report, or provided false, incomplete or insufficiently detailed reports, or failed to act on modern slavery in their supply chains;
- Introducing independent oversight of the Act in the form of an Anti-Slavery Commissioner with inspection powers to promote compliance;
- Making available on a public register a list of companies required to report under the Act;
- Lowering the annual turnover threshold to capture all large Australian businesses;
- Covering public procurement by requiring all Government Departments and levels of Government to report under the Act;
- Requiring companies to show they have genuinely engaged with unions in their operations and supply chains regarding improving workers' rights and tackling modern slavery;
- Introducing due diligence requirements for companies ensuring they identify risks of modern slavery, put in place a system to prevent them, and provide an effective remedy when they occur;
- Introducing import bans on products made or suspected to be made using forced labour;
- Amending the *Criminal Code Act 1995*, which is the legal source for defining forced labour in the *Modern Slavery Act 2018*, to adequately capture and prohibit forced labour, including forced labour in shipping, fishing, textile, food production, domestic work, and other high-risk sectors;
- Strengthening the *Commonwealth Modern Slavery Act 2018 Guidance for Reporting Entities* so that reporting entities include in their Modern Slavery Statements actions taken to mitigate modern slavery risks in the shipping components of their domestic and global supply chains, and in particular that reporting entities demonstrate how the shipping components of their supply chains are:
 - Conforming with the International Maritime Organisation (IMO) *Framework of Protocols for Ensuring Safe Ship Crew Changes and Travel During the Coronavirus (COVID-19) pandemic*, and
 - Conforming with *The Neptune Declaration on Seafarer Wellbeing and Crew Change*.

Ending modern slavery requires reforms in a number of other policy areas, including:

- strengthening industrial laws, including union right of entry to inspect workplaces for breaches of labour law and signs of modern slavery;
- introducing a robust national labour hire licensing scheme;
- reforming the migration system to shift the emphasis to permanent, independent migration and allow exploited workers to remain in Australia to pursue legal action against offending employers;
- ensuring trade agreements Australia is party to have enforceable workers' rights protections; and
- introducing a Mandatory Human Rights Due Diligence law that would place a binding obligation on Australian companies to identify, mitigate and remediate violations of human rights – including workers' rights – in their business activities, relationships and supply chains, wherever they operate.

“As part of a suite of policies directed at accelerated the transition to a low-emissions economy, one of your recommendations has been to provide an accelerated depreciation bonus for large gas and electricity

users that are converting to clean energy use and low emissions processes. This recommendation strikes me as particularly critical for our existing base of manufacturers.

Q. Could you share with the Committee more detail on your proposal for the accelerated depreciation bonus, including any eligibility requirements that you envisage as accompanying this proposal?

An accelerated depreciation bonus (at 150% of qualifying capital costs) for large gas and electricity users to upgrade or electrify equipment as part of energy conservation plans which offer audited energy cost paybacks within three years or less.

Such a program would reduce energy bills, increase the competitiveness of Australian manufacturers, create jobs in both equipment manufacturing and installation and refurbishments, and enhance energy security.

The ACTU also took the following questions on notice during our appearance of 8 December 2021:

Senator PRATT: We heard evidence arguing that Europe has looked at actually including a profit margin rather than a zero profit margin, in order to properly assess damage. What's the ACTU's current assessment of the principle that's embedded in what was argued about actually putting in a small profit margin, and what's your understanding of—and I'll have to ask the department this—where the rules and regulations are that set the thresholds that our Anti-Dumping Commissioner will use to determine damage from unfair trade?

Ms O'Neil: Sorry, I didn't quite understand the first part of that question. Were you talking about somebody else's evidence about the profit margin there?

Senator PRATT: Yes. It was someone else's evidence. They've said that the Anti-Dumping Commissioner currently sees anything that takes your past a zero profit margin as damage, whereas I think perhaps the Steel Institute said that anything that precludes you from making a profit is actually damage and that that profit margin is now set in Europe at six per cent.

We generally support the approach of by the European Commission.

When calculating whether or not dumping is taking place, an assessment is made of the selling price that Australian industry could reasonably achieve in the market in the absence of dumped or subsidised imports. This Unsuppressed Selling Price (USP) does not redress the effects of other causes of injury including fair import competition or competition from other domestic producers.

However it can be very difficult to assess the USP, especially where dumping may already be distorting prices, especially in the context of global oversupply of commodities and Australia's highly liberalised trade regime. The Anti-Dumping Commission can apply a range of methods to addressing this challenge but many of them still suffer from being unable to control for the impact of dumping itself.

The European Commission, when addressing the same issue for determining what a reasonable level of profit was for industry unaffected by dumping, established a minimum level of 6% profit based on industry surveys, recognising that some industries are able to achieve higher

levels of profit which are considered on a case-by-case basis. We would support this approach in Australia so that Australian manufacturers can compete on a level and fair playing field.

Senator KITCHING: I would go to the exemptions, but I might put a question in on notice on the exemptions under appendix A of the Commonwealth Procurement Rules. What would you add to that to enable the ACTU's ideas to be implemented?

The ACTU believes that the Commonwealth Procurement Rules (CPR) need to be reviewed and amended to better support Australian manufacturing. For example, the definition of "value for money" in subclauses 4.4 and 4.5 is overly restrictive.

Subclause 4.7 of the CPR does require decision makers to consider the impact of a procurement decision on the broader Australian economy. This is welcome however Appendix A has the effect of exempting a wide range of goods and services from this requirement. This is particularly problematic in the area of research and development services (Item 6 in Appendix A). As the ACTU submission outlines, research and development spending needs to be better tailored to support all parts of the manufacturing supply and distribution chains, especially if we are to pursue ambitious clean energy export manufacturing opportunities. Finally, the rationale for a range of other items being listed in appendix A should also be reviewed e.g. procurement of government advertising services.