

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Inquiry into the provisions of the Net Zero Economy Authority Bill 2024 and the Net Zero Economy Authority (Transitional Provisions) Bill 2024

Department/Agency: Department of the Prime Minister and Cabinet

Outcome/Program Group: Net Zero Economy Agency

Topic: Legislative drafting - technical concerns

Senator: Louise Pratt

Type of question: Written

Date set by the committee for the return of answer: 1 May 2024

Number of pages: 2

Question:

The ACTU and the submissions of other unions such as the Mining and Energy Union, identified certain possible drafting issues in the NZEA Bill, relative to equivalent provisions in the Fair Work Act.

These technical issues are in recommendations 2, 3, 4, and 5 of the ACTU submission. Are you able to comment on whether there is any validity to these concerns and provide a more considered response to the Committee?

Answer:

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

Participation of receiving employers will be voluntary and clause 16(1)(c) of Net Zero Economy Authority Bill 2024 (the Bill) allows the Authority to ‘support workers in emissions-intensive industries [...] including through the provisions of funding or grants to those workers or to employers of those workers’.

Providing funding or grants as incentives to receiving employers is a decision for Government, and would be undertaken through the normal Budget process.

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

The drafting of the definitions of closing and dependent employers are intended to capture the many corporate structures of employers to ensure the workers that show up on-site every day are supported by the Plan.

Under the definition of dependent employer at clause 6(4), the following workers could be included:

- Workers at a coal mine employed by a company with a commercial relationship with the operator of a coal mine – this could include a labour hire arrangement, or a service contract
- Workers at a coal mine that are employed by an associated entity of the operator of a coal mine

Under the current framing of the legislation, workers at a coal mine employed by a company with a commercial relationship with an associated entity of the owner or operator of a relevant coal mine would not be captured.

Amendments to the Bill giving effect to the ACTU's recommendations are a matter for Government.

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

The intent of clauses 60(5)(d) and 61(5)(d) is to ensure that employers and unions are able to resolve disputes in the way that is most appropriate in their circumstances. In some cases, this may be the Fair Work Commission's dispute resolution processes.

Amendments to the Bill giving effect to the ACTU's recommendations are a matter for Government.

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

The civil penalty provisions in the Bill are enforceable under Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014* (see s. 67(1) of the Bill).

The Bill does not currently explicitly provide for:

- Compensation orders
- Cost arrangements
- Injunctions
- Pecuniary penalties to be payable other than to the Commonwealth.

Further consideration would be required to determine the full impacts of these recommendations.

Amendments to the Bill giving effect to the ACTU's recommendations are a matter for Government.