

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: Fair Work Commission - interest of employers

Senator: Louise Pratt

Type of question: Proof Hansard page 72, 23 April 2024

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

Number of pages: 2

Question:

CHAIR: The submissions of the Ai Group suggested that the Fair Work Commission could ride roughshod over the interests of employers as contained in enterprise agreements and other legal instruments in making community-of-interest determinations. Can you, on notice, outline the understanding of how the commission would approach its task under the bill and, in particular, whether the commission has to have regard to the existing instruments, and how so?

Answer:

The Net Zero Economy Authority Bill 2024 (the Bill) includes obligations on closing and dependent employers in order to ensure appropriate supports are provided to transition employees, and to complement existing industrial arrangements.

The Bill does not propose any amendments to the *Fair Work Act 2009*. The Bill is designed to operate within the existing workplace relations framework and in several clauses provides for the consideration of existing industrial arrangements.

The Bill provides that, when deciding whether to make an application for a community of interest determination, or include a specific employer in an application, the CEO must have regard to a non-exhaustive list of factors (s. 56(4)). These include the existing supports that are available to facilitate transition employees of the employer to find other employment, and the capacity of the employer to redeploy those transition employees in other business operations of the employer or in business operations of associated entities of the employer, among other criteria. If employers have comprehensive transition support packages and/or a 'jobs guarantee' to redeploy employees, the CEO may choose not apply to the Fair Work Commission for a community of interest determination or specify a particular employer.

If the CEO does make an application, the Fair Work Commission must have regard to a non-exhaustive list of factors (s. 57(3)) which mirror the factors to which the CEO must have regard. This allows employers to draw the Fair Work Commission's attention to any existing

supports in an applicable industrial instrument (such as a modern award or enterprise agreement) before a community of interest determination may be made.

If a community of interest determination is made, a closing or dependent employer must take certain actions to support transition employees (ss. 58-59). However, an employer is not required to take certain actions if doing so would be unreasonable, having regard to operational requirements, the need for transition employees to be provided with supports to find other employment, and relevant enterprise agreements or other industrial instruments (s. 59(1)(a-c)). The Bill takes a principles-based approach to framing these actions, having regard to the diverse circumstances of closing and dependent employers. The Bill also empowers the Fair Work Commission to set out the particular actions an employer must take, in a determination made where there is agreement between the parties (s. 60) or where there is no agreement between the parties (s. 61). These determinations may clarify that the supports an employer is already providing (e.g. under the terms of an enterprise agreement or other industrial instrument) also serve to meet their obligations under sections 58 and 59.

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Department/Agency: Department of the Prime Minister and Cabinet

Outcome/Program Group: Net Zero Economy Agency

Topic: Mines and power stations by region

Senator: Penny Allman-Payne

Type of question: Proof Hansard page 74, 23 April 2024

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

Number of pages: 2

Question:

Senator ALLMAN-PAYNE: ...My last question is going to be one that I'm happy for you to take on notice. What current mines and power stations are contemplated by this transition authority? Could you provide on notice a list of all those that are included and excluded, and could you break this up by region please.

Ms Martin: We can provide a list that considers the coal-fired power stations that are closing, but, because there is a decision-making process for the CEO, we can't anticipate what decisions the CEO will make. But we can provide a list with that information.

Senator ALLMAN-PAYNE: That would be great, and, as said, if you could break it up by region that would be super helpful. Thank you.

Answer:

Part 5 of the Net Zero Economy Authority Bill 2024 (the Bill) sets out the process by which coal- and gas-fired power stations and dependent employers, such as coal mines, will be determined to be included in the Energy Industry Jobs Plan.

The CEO of the Authority will decide whether to apply to the Fair Work Commission for a community of interest determination, and as part of that application, which specific employers that fit the definition under the Bill of a 'closing' or 'dependent employer' are to be included. The CEO will determine those questions following consultation and consideration of the criteria in the Act, including:

- the object of the Act;
- the existing supports that are available to facilitate transition employees of closing employers or dependent employers to find other employment;
- the number of transition employees of those employers;
- the estimate of the number of those transition employees who are, or who will become, participating employees of those employers; and
- the capacity of those employers to redeploy those transition employees in other business operations.

Table 1 sets out major power stations and their expected closure dates as reported by the Australian Energy Market Operator.

Table 1: List of major power stations, regions and expected closure dates

FACILITY	REGION	EXPECTED CLOSURE YEAR
Muja Power Station C	Collie, WA	Apr-2025
Eraring Power Station	Hunter Valley, NSW	Aug-2025
Torrens Island B*	Adelaide, SA	2026
Collie Power Station	Collie, WA	Oct-2027
Callide Power Station B	Central QLD	2028
Yallourn Power Station	Latrobe Valley, VIC	2028
Muja Power Station D	Collie, WA	Oct-2029
Bayswater Power Station	Hunter Valley, NSW	2033
Vales Point Power Station	Hunter Valley, NSW	2033
Gladstone Power Station	Gladstone, QLD	2035
Loy Yang Power Station A	Latrobe Valley, VIC	2035
Tarong Power Station	South Burnett, QLD	2036
Tarong North	South Burnett, QLD	2037
Mount Piper Power Station	Lithgow, NSW	2040
Kogan Creek Power Station	Darling Downs, QLD	2042
Stanwell Power Station	Central QLD	2043-46
Loy Yang Power Station B	Latrobe Valley, VIC	2047
Millmerran Power Station	Darling Downs, QLD	2051
Callide Power Station C	Central QLD	Not provided
Bluewaters Power Station	Collie, WA	Not provided

Source: Australian Energy Market Operator, (Jul. 2023), [Generation information](#); Government of Western Australia (2023), [Collie Community Fact Sheet](#).

*Gas-fired power station

The Net Zero Economy Agency does not have visibility over specific coal supply contracts. Based on consultations, media reporting and public statements, Table 2 sets out mines with known supplier relationships with coal-fired power stations that could be impacted by generator closures in the next 10-12 years. We are aware of other mines that likely have supply contracts with generators which have not been included in the table, some of which may have options to divert coal supply to the export market. The future outlook for those mines will rely on business decisions of those companies.

Table 2: List of coal mines with known supplier relationships

FACILITY	REGION
Myuna mine	Hunter Valley, NSW
Premier mine	Collie, WA
Yallourn mine	Latrobe Valley, VIC
Chain Valley mine	Hunter Valley, NSW
Meandu Mine	South Burnett, QLD
Loy Yang mine	Latrobe Valley, VIC

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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: Non-compliance - penalties

Senator: Penny Allman-Payne

Type of question: Proof Hansard page 74, 23 April 2024

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

Number of pages: 2

Question:

Senator ALLMAN-PAYNE: What penalties, if any, are available against a non-compliant employer, including in instances where short notice periods are provided?

Ms Martin: I don't believe that there's a penalty for short notice periods, because that's looked after in another framework.

Mr Richardson: With short notice—as in, they close with short notice—the National Electricity Rules have specific requirements that they must notify the market operator within 3½ years or that they have to seek an exemption from the Australian Energy Regulator.

Senator ALLMAN-PAYNE: And if they don't do that, what happens?

Mr Richardson: There are penalties attached to the National Electricity Rules for non-compliance.

Senator ALLMAN-PAYNE: And are they significant penalties? Is it, like, just the cost of doing business?

Mr Richardson: For something like that, because of its impact on the market, I think they're the highest civil penalty, but I'd have to take it on notice.

Senator ALLMAN-PAYNE: Yes, do, if you wouldn't mind. I'm just interested to know because we know that some big corporations just like to factor that into the cost of doing things.

Answer:

Under clause 2.10.1 in the National Electricity Rules, a Scheduled Generator or Semi-Scheduled Generator in the National Electricity Market must notify the Australian Energy Market Operator (AEMO) if it is closing a generating unit, with the first notified closure date no earlier than 42 months from its closure date, except where the relevant Generator has applied for, and is granted an exemption by the Australian Energy Regulator.

Non-compliance is classified as a tier 1 civil penalty provision under the National Electricity (South Australia) Regulations. Tier 1 civil penalties, which a court must consider, carry maximum penalties for corporations of \$11,060,000, or if greater, three times the benefit obtained from the breach if this can be determined, or if not, 10 per cent of annual turnover. These amounts are indexed every three years to ensure their deterrent value is maintained.

The Western Australian Electricity Market has similar rules. Rule 4.4A1 of their Wholesale Electricity Market Rules requires companies to inform AEMO of an expected generator closure date no less than three years before closure.

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Department/Agency: Department of the Prime Minister and Cabinet

Outcome/Program Group: Net Zero Economy Agency

Topic: Stakeholder consultation - small businesses

Senator: the Hon Richard Colbeck

Type of question: Proof Hansard page 76, 23 April 2024

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

Number of pages: 2

Question:

Senator COLBECK: What consultation have you had with small business and industry to date in preparing this legislation that is going to have these impacts on businesses?

Ms Martin: We have had consultation with closing employers, yes, in preparing the legislation and since the legislation has been introduced into the parliament. We have had roundtables and bilateral conversations with employers. Mostly, that has included the large electricity gentailers, energy network and distribution companies and other industry peak bodies is at this point.

Senator COLBECK: Have you spoken to COSBOA?

Ms Martin: I would have to take that on notice because I'm not sure who was included in all of our roundtables. We also had COIL process, which is the Committee on Industrial Legislation process. We have done a lot of consultation. I can't remember all of the—

Mr Richardson: We have talked to ACCI, who have a lot of small business—

Senator COLBECK: Could you provide us on notice a list of who you have consulted with?

Answer:

The Net Zero Economy Agency conducted targeted consultations between late 2023 and April 2024 with key stakeholders in the energy sector, employers, employer organisations and unions on the design of a pooled redeployment program under the Net Zero Economy Authority's function of 'supporting workers in emissions-intensive industries to access new employment or improve their employment prospects'. This included one-on-one consultations and group meetings with industry bodies and their memberships:

- AGL Energy
- Alinta Energy
- APA Group
- AusGrid
- Ausnet Services
- Australian Chamber of Commerce and Industry
- Australian Council of Trade Unions
- Australian Energy Council and its members
- Australian Gas Infrastructure Group
- Australian Industry Group

- Australian Manufacturing Workers Union
- Australian Pipelines and Gas Association
- Australian Resources & Energy Employer Association
- Australian Services Union
- Australian Workers Union
- BHP
- Business Council of Australia
- Clean Energy Council
- Collieries' Staff and Officials Association
- Committee for Gippsland and its members
- Committee for Hunter and its members
- Community and Public Sector Union
- CS Energy Queensland
- Delta Electricity
- ElectraNet
- Electrical Trades Union
- Energy Networks Australia and its members
- Energy Users Association of Australia and its members
- EnergyAustralia
- Essential Energy
- Horizon Power
- Hydro Tasmania
- Jemena
- Maritime Union of Australia
- Mining and Energy Union
- Orica
- Origin Energy
- SnowyHydro
- Stanwell Corporation Limited
- TasNetworks
- Transgrid

Prior to the introduction of the Net Zero Economy Authority Bill 2024, Part 5 on the Energy Industry Jobs Plan was provided and discussed with the following stakeholders through the Committee on Industrial Legislation (CoIL) on Tuesday 19 March 2024:

- Australian Chamber of Commerce & Industry
- Australian Council of Trade Unions
- Australian Industry Group
- Australian Resources & Energy Employer Association
- Australian Services Union
- Australian Workers Union
- Business Council of Australia
- Council of Small Business Organisations Australia (represented by Pharmacy Guild of Australia)
- Housing Industry Association
- Master Builders Australia
- Minerals Council of Australia
- Mining and Energy Union