



Environmental
Defenders Office

Submission to the inquiry on the National Energy Transition Authority Bill 2022

25 November 2022

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

Submitted to:

By email: economics.sen@aph.gov.au

Uploaded at: [Senate Standing Committees on Economics Inquiry into the National Energy Transition Authority Bill 2022](#)

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A Note on Language

EDO acknowledges that there is a legacy of writing about First Nations peoples without seeking guidance about terminology. In this submission, we have chosen to use the term "First Nations" to refer to Aboriginal and Torres Strait Islander peoples across Australia. We acknowledge that not all Aboriginal people may identify with these terms and that they may instead identify using other terms.

Acknowledgement of Country

The EDO recognises First Nations peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

Introduction

To meet Australia's legislated emissions reduction targets, and ultimately the Paris Agreement Goal of limiting global temperature rise to 1.5 degrees Celsius, there needs to be a large-scale energy transition from fossil fuels to renewable energy. This is imperative. The necessary energy transition policy must leave no sector or community behind – Government must lead genuine transition planning for affected coal communities, workers in high emissions intensity industries and sectors, and highly impacted communities. A range of opportunities need to be consulted upon, including reskilling workers to emerging industries, and identifying opportunities for impacted communities, First Nations and rural landholders to benefit from the renewable energy transition.

The EDO [Roadmap for Climate Reform](#) sets out a suite of comprehensive reforms to shape Australia's response to climate change over the current Parliamentary term. Of particular relevance to this inquiry are recommendations that the Australian Government coordinate and implement a rapid and just transition by:

Recommendation 47. Establishing a statutory body to coordinate transition planning and implementation, with transition costs funded in part by the redirection of current fossil fuel subsidies.

Recommendation 48. Consulting on and establishing a plan for a rapid and just transition for effected communities and workers, leaving no sector or community behind and involving genuine transition planning for affected and highly impacted communities. This should be done in the context of an environmental justice framework.

Recommendation 49. Ensuring First Nations Peoples and our neighbours in the Pacific region are included in the design and delivery of energy transition policies, as they see fit, and First Nations communities are empowered to manage and protect Country.

In this context, we welcome the National Energy Transition Authority Bill 2022 (**the Bill**) and the opportunity to provide comment.

The proposed Bill establishes the National Energy Transition Authority (**the Authority**), a statutory authority tasked with planning, coordinating and providing advice on Australia's transition to renewable energy. The Authority will focus on the facilitation of new economic opportunities for workers and communities who are currently involved in fossil fuel production and associated industries.

The Explanatory Memorandum states: 'the Bill identifies a clear policy gap in national planning, coordination and funding [relating to the energy transition] and seeks to address this through the creation of a national statutory authority.' EDO agrees that Australia is in a state of energy transition and that failure to plan and coordinate this transition will continue to create significant detrimental impacts on those communities which rely on fossil fuel generation, transmission and distribution for employment.

As such EDO supports the Bill. However, this submission makes several recommendations to improve the function and operation of the proposed new statutory body.

Recommendation Summary

- 1. The objects, functions and composition of the Authority should provide for environmental justice considerations with a particular focus on First Nations communities.**
- 2. The Bill should ensure the Minister considers and responds to Authority law reform recommendations.**
- 3. Ministerial directions to the Authority should be published.**
- 4. The Bill should have clear and transparent Board member appointment processes.**
- 5. The Bill should stipulate clear conflict-of-interest requirements.**
- 6. The Authority should be funded in part by the redirection of current fossil fuel subsidies.**

Scope of the Bill

EDO considers that transition planning should be done in the context of an environmental justice framework, which specifically acknowledges the implications for, and role of, First Nations communities.

Environmental management and decision-making must recognise and respect the self-determination of First Nations and be underpinned by the principle of free, prior and informed consent, and this includes planning for the renewable energy transition. First Nations Peoples should be included in the design and delivery of energy transition policies, as they see fit. This should include empowering First Nations communities to manage and protect Country.

The Bill as drafted does not make specific provision for inclusion of First Nations communities in the design and delivery of energy transition policies. The objects (s 3) and Authority functions (s 9) should be amended to include First Nations consultation and involvement as a priority.

Additionally, the Bill should specify that the Authority's governing Board must have at least one First Nations member.

Recommendation 1: The objects, functions and composition of the Authority should provide for environmental justice considerations with a particular focus on First Nations communities.

Functions of the Authority

The Bill establishes the National Energy Transition Authority as an independent statutory authority which has the core functions of:

- supporting communities and workers affected by the closure of coal-fired power stations and coal mines to adapt, including by helping to attract new public and private investment in job-creating industries and social infrastructure to affected areas, and ensuring ongoing equivalent employment or social services are provided;
- working with employers in relevant industries to encourage workforce pooling, to enable workers to shift between employers where skills and broadly transferable; and,

- planning with workers and relevant agencies to assist workers nearing retirement age to transition to a voluntary, financially secure retirement.

These functions are operationalised through the Authority's law reform and advice functions. In performing its law reform function the Authority may review and consult on Commonwealth, State and Territory laws relating to mining resources, industry policy, industrial relations, electricity generation and related matters, and propose changes to those laws. Law reform proposals will be recommended to the Minister and published online, and must include draft legislation to implement the changes.

As the Bill is currently drafted, the Minister is not required to respond, progress, or take into account the Authority's law reform recommendations. To improve the transparency of Ministerial decision making and encourage best practice policy development, the Bill should be amended to provide for a Ministerial response to the Authority's recommendations, which must be published within a legislated timeframe.¹ These measures safeguard the continued efficacy of the Authority in providing recommendations to the Minister and ensure the Minister takes that advice into account.

Recommendation 2: Ensure the Minister considers and responds to Authority law reform recommendations.

Independence of the Authority

The Bill provides that the Minister may give written directions of a general nature to the Authority about the performance of its functions (s 13). This direction is not a legislative instrument and therefore not subject to disallowance by the Parliament. The Authority must comply with a Ministerial direction. While such clauses are common for Commonwealth statutory bodies, to improve transparency and independent operation of the Authority, this clause should be amended to require Ministerial directions be published online or in annual reports.²

Recommendation 3: Ministerial directions to the Authority should be published.

Governance

The Authority is to be governed by a Board, with Board members appointed by the Minister by written instrument (s 22). EDO supports the establishment of a Board as best practice for ensuring the independence of statutory authorities.

Robust Board member selection processes protect against politicisation of statutory boards and ensure community trust in the advice provided by the organisation.³ The Bill should provide greater clarity as to appointment processes for Board members. Board nominations should be announced publicly and statutory timeframes should allow for public awareness and scrutiny of

¹ See e.g. *Climate Change Act 2022* (Cth) s 14(6), (7); s 15(7).

² See e.g., *Australian Communications and Media Authority Act 2005* (Cth) s 67; *Australian Renewable Energy Agency Act 2011* (Cth) s 70(b).

³ See for example alleged politicisation of the Climate Change Authority Board:

<https://www.sbs.com.au/news/article/the-government-has-appointed-a-former-energy-executive-to-lead-the-climate-change-authority/hw7n45d8d>

the procedure. As discussed above, this section should specify that at least one Board position is reserved for a First Nations person.

Recommendation 4: The Bill should have clear and transparent Board member appointment processes.

The Bill does not currently provide for a conflict-of-interest policy. Amendments should be incorporated which protect against real and perceived conflicts of interest. For example, where a Board member would gain financially from a decision made by the Authority, or, where perception of a conflict would undermine public trust in the operation of the Authority and its advice. The Bill should make clear that Board Members (and the CEO per s 46) give written notice to the Minister of all interests that conflict or could conflict with the operation of the Authority.⁴

Recommendation 5: The Bill should stipulate clear conflict-of-interest requirements.

Funding

In the 2021/22 budget year, an estimated \$11.6 billion was spent by Australian governments on measures that wholly, primarily or partly assisted the fossil fuel industry.⁵ EDO has consistently advocated for policy measures which redirect this public money away from high emissions activities and instead fund energy transition planning and implementation.

As currently designed, the Authority will receive general funding from the Consolidated Revenue Fund as appropriated by Parliament. Instead, EDO recommends fossil fuel subsidy reform be earmarked as a specific revenue source for the Authority, as a means of ensuring redirected subsidies are used to assist those communities directly affected by renewable energy transition. The Authority must have secure and sufficient resources to enable it to operate effectively as the energy transition accelerates, and redirection of fossil fuel subsidies provides this revenue stream.

Recommendation 6: The Authority should be funded in part by the redirection of current fossil fuel subsidies.

Conclusion

EDO supports the National Energy Transition Authority Bill 2022 and recommends it be passed with the above amendments which will strengthen the operation of the Authority.

Please do not hesitate to contact our office for further information.

⁴ Per *Public Governance, Performance and Accountability Act 2013* (Cth) s 29.

⁵ [The Australia Institute, 'Fossil fuel subsidies in Australia,' March 2022](#)