

# Terms of Reference

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## Terms of Reference – Statutory Review of Part 5 of the *Net Zero Economy Authority Act 2024*

### Context

The *Net Zero Economy Authority Act 2024* (the Act) commenced in December 2024, establishing the Net Zero Economy Authority (Authority) and the Energy Industry Jobs Plan (EIJP). The objects of the Act include ensuring that Australia's regions, communities and workers are supported to manage the impacts, and share in the benefits, of Australia's transition to a net zero emissions economy.

Most of Australia's coal-fired power stations, and some gas-fired power stations, have announced expected closure dates over the coming decades. The retirement of ageing energy assets will cause significant economic and workforce changes, particularly in Australia's industrial regions. Accordingly, the EIJP was designed to promote a coordinated response to these changes by ensuring that workers directly impacted by power station closures and workers in some dependent businesses in their supply chains (such as coal mines) have the right supports, skills and opportunities to access new employment. The intent is to provide these supports well ahead of facility closures to give people more time to prepare for new employment and to avoid the adverse impacts experienced by communities from previous unplanned closures.

### Legislative scope and framework

The EIJP provisions are set out in Part 5 of the Act. The implementation of this Part realises Parliament's intention to build a world-leading and consistent approach to worker support in the context of the energy transition while recognising the individual circumstances of each business. The legislative framework targets the EIJP to closures where it is most needed.<sup>1</sup> The model "reflects the outcomes of detailed consultations with employee and employer groups. [It is] about supporting workers on the front line of the energy transition."<sup>2</sup>

Parliament intended for this framework to operate within the existing workplace relations framework. Likewise, the intent is not to set up separate reporting obligations to announce closure dates, but rather to link to existing obligations and reporting methods (such as under electricity rules or notices to the Australian Stock Exchange).<sup>3</sup>

The EIJP framework enables the Authority to identify, and the Fair Work Commission (FWC) to determine, which employers and workers would benefit from the application of the EIJP provisions. Part 5 of the Act is administered by the CEO of the Authority. Under this Part, the CEO may undertake a process (i.e. the community of interest process set out in section 55) to assess whether the EIJP is needed for an upcoming closure (i.e. through an application for a community of interest determination under section 56). The process includes consultation with key stakeholders including employers, employee organisations, employer organisations and community groups. After completing the process, the CEO may apply to the FWC to make a determination (i.e. under section 57 of the Act). In this application, the CEO must have regard to various matters, including factors that could impact the employment outcomes of workers, and the impact on the broader community, after the closure. The CEO of the Authority and FWC are required to consider existing

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<sup>1</sup> Revised Explanatory Memorandum, *Net Zero Economy Authority Act 2024*, p.42

<sup>2</sup> Second Reading Speech, delivered by the Hon Patrick Gorman MP, Assistant Minister to the Prime Minister, on Wednesday, 27 March 2024

<sup>3</sup> Revised Explanatory Memorandum, *Net Zero Economy Authority Act 2024*, p. 19

industrial arrangements and supports, among other things, when deciding how the legislative framework applies to a particular power station closure.

Where the CEO decides to apply to the FWC for a community of interest determination, and the FWC makes a determination, closing power stations and dependent employers specified in that determination will have legislated obligations under Part 5 of the Act to support their employees to seek and obtain new employment, including access to training, career planning and financial advice. The legislative framework specifies the types of support that participating employers must provide to their employees and establishes pathways for employers and unions to clarify what actions the employer must take for employers to meet their obligations.

Since the Act commenced on 11 December 2024, the Authority has applied Part 5 of the Act in three separate instances:

- On 19 December 2024, the Authority's CEO exercised statutory discretion to not undertake a community of interest process under Part 5 for the closure of Muja C Unit 6 in Collie, Western Australia. This decision was informed by significant consultation and took into account that the closure of the unit would not result in any involuntary redundancies in the broader Muja Power Station or within its supply chain.
- On 13 January 2025, the CEO announced a community of interest process under Part 5 of the Act for Torrens Island B Power Station in Adelaide, South Australia, which is scheduled to close in June 2026.
- On 27 May 2025, the CEO announced a community of interest process under Part 5 of the Act for Eraring Power Station in Lake Macquarie, New South Wales, which is scheduled to close in August 2027.

In relation to Torrens Island B and Eraring power stations, the community of interest processes will support the CEO to decide whether to make an application to the FWC for a community of interest determination for either closure. The Authority will announce the outcome of these processes as soon as practicable.

Upcoming closures where the EIJP provisions in Part 5 of the Act may apply include Collie Power Station in Western Australia scheduled to close in October 2027 and Yallourn Power Station in Victoria scheduled to close in June 2028.

## **Legislative basis for the Review**

Subsection 68(3) of the Act states that the CEO must conduct, or cause to be conducted, a review into the operation of Part 5, including consideration of whether any amendments to that Part are desirable. Subsection 68(4) provides that the CEO must ensure that the review is completed within 12 months of the day on which section 68 commenced (i.e. the review must be completed by the end of 10 December 2025).

Subsections 68(5) and 68(6) of the Act state that the responsible Minister must be provided with a written report of the review. Under subsection 68(7), the Minister must then table a copy of the report in each House of Parliament within 15 sitting days of that House after the report is given to the Minister.

## **Matters to be considered by the Review**

The review will seek to identify the effectiveness (including the likely effectiveness) of Part 5 and include consideration of whether any amendments to this Part are desirable (because, for example, there are unintended consequences of the legislative framework).

Noting some provisions in Part 5 may not have been used due to the timing of the review, this will necessarily limit the assessment of their practical operation.

1. The review will assess whether the following aspects of Part 5 are operating, or are expected to operate, as the Parliament intended:

- 1.1. The definitions of employers (closing, dependent and receiving) and transition employees, and how trigger notices and geographic areas are specified (sections 6-9 of the Act).<sup>4</sup>
  - 1.2. The community of interest process outlined in section 55 of the Act, including the expression of interest for employers who may offer impacted workers new employment, the application process for a community of interest determination outlined in section 56, and the process in section 57, which provides for the FWC to make a community of interest determination.
  - 1.3. Obligations applying to closing and dependent employers specified in a community of interest determination, as outlined in sections 58 and 59 of the Act.
  - 1.4. Processes available to employers, employee organisations, workers and the CEO of the Authority for the FWC to determine actions that closing or dependent employers must take to meet their obligations, as outlined in sections 60, 61 and 62 of the Act, and the dispute resolution process in section 61A.
  - 1.5. The Energy Industry Worker Redeployment Advisory Group established under section 63, and whether the group is undertaking its role as set out in the Act.
  - 1.6. Information management provisions under sections 64, 65 and 66, including whether these provisions have worked as intended where the CEO has relied on them to require or inspect information or documents, or to provide information to employers.
  - 1.7. Enforcement, compensation, injunction and costs provisions under sections 67, 67A, 67B, 67C.
  - 1.8. The CEO's promotion of compliance with Part 5 under section 68, including through the provision of education, assistance, advice and information to closing, dependent and receiving employers and employees of those employers, and whether the CEO has monitored compliance with Part 5.
2. The review will also assess the merit and timing of future reviews of the operation of Part 5 and associated redeployment supports provided by the Authority.

## Out of scope

The review will not consider changes to or make recommendations on:

- Parts of the Act outside of Part 5 and not directly related to the operation of Part 5
- The operation of the *Fair Work Act 2009*
- The broader operation of the Fair Work Commission
- Other Commonwealth legislation (e.g. relating to energy, resources or industrial facilities)
- The administered funding appropriated to the Authority to establish redeployment pools.

## Process and timing

The Authority CEO has appointed Emeritus Professor Roy Green AM (the Reviewer) to undertake the Review. The Reviewer will be supported by staff from the Authority.

The Review will commence in July 2025. The Review will involve a period of public consultation, commencing with a call for public submissions. Consultation must be conducted with relevant stakeholders, including but not limited to employee organisations, employer organisations, designated closing and dependent employers, non-governmental organisations, relevant communities, and other interested groups and individuals.

Once the Review is complete, the Reviewer must give the CEO and the Minister a written report of the Review.

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<sup>4</sup> These definitions are not located in Part 5 of the Act but are relevant to how Part 5 operates.