



Net Zero Economy Authority Act 2024

No. 85, 2024

**An Act to establish the Net Zero Economy
Authority, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
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Net Zero Economy Authority Act 2024

No. 85, 2024

An Act to establish the Net Zero Economy Authority, and for related purposes

[Assented to 17 September 2024]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *Net Zero Economy Authority Act 2024*.

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the first day of the first calendar month to start after the end of that period.	11 December 2024 (F2024N01129)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Object

The object of this Act is to:

- (a) promote orderly and positive economic transformation as the world decarbonises; and
- (b) facilitate the achievement of Australia's greenhouse gas emissions reduction targets; and
- (c) ensure 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.

4 Simplified outline of this Act

This Act establishes the Net Zero Economy Authority.

The Authority's functions are directed at promoting orderly and positive economic transformation as Australia transitions to a net zero emissions economy. These functions include:

- (a) consulting and cooperating with persons, organisations and governments to support Australia's transition to a net zero emissions economy; and
- (b) facilitating participation and investment in net zero transformation initiatives; and
- (c) supporting workers in emissions-intensive industries to access new employment or improve their employment prospects.

The Board is the accountable authority of the Net Zero Economy Authority and is responsible for determining the objectives, strategies and policies to be followed by the Authority and the CEO. The Minister may give general directions to the Board about the performance of the functions of the Authority and the Board. The Board members are appointed by the Minister and must have experience or expertise in particular fields.

The CEO is responsible for the day-to-day administration of the Authority, and is to assist the Board in the performance of the Board's functions. The CEO is also responsible for the administration of Part 5 (Energy industry jobs plan).

If a notice is given in relation to the closure of the whole, or a part, of a coal-fired power station or a gas-fired power station:

- (a) the CEO must undertake a community of interest process to identify closing employers, dependent employers and receiving employers; and
- (b) the CEO may apply to the Fair Work Commission for a community of interest determination by the Commission; and

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- (c) closing employers and dependent employers specified in the determination are subject to obligations that are connected with facilitating transition employees of the employers to find other employment.

The staff of the Authority must be persons engaged under the *Public Service Act 1999*.

The Board must establish a Stakeholder Panel with representatives from a range of fields to provide non-binding advice and information to the Board. The Board may also engage consultants, and make arrangements for the Authority to be assisted by certain other persons.

This Act also deals with miscellaneous matters, including information sharing, delegations, review of this Act and the power to make rules.

5 Definitions

In this Act:

associated entity has the meaning given by section 50AAA of the *Corporations Act 2001*.

Australia, when used in a geographical sense, includes the external Territories.

Australia's greenhouse gas emissions reduction targets means:

(a) if:

- (i) Australia's current nationally determined contribution was communicated in accordance with Article 4 of the Paris Agreement in June 2022; and
- (ii) that nationally determined contribution has not been adjusted in accordance with paragraph 11 of Article 4 of the Paris Agreement;

the greenhouse gas emissions reduction targets set out in paragraphs 10(1)(a) and (b) of the *Climate Change Act 2022*;
or

- (b) in any other case—the greenhouse gas emissions reduction targets included in:
- (i) Australia’s current nationally determined contribution communicated in accordance with Article 4 of the Paris Agreement; or
 - (ii) if that nationally determined contribution has been adjusted in accordance with paragraph 11 of Article 4 of the Paris Agreement—that nationally determined contribution, as adjusted and in force from time to time.

Authority means the Net Zero Economy Authority.

Board means the Board of the Authority.

Board member means a member of the Board, and includes the Chair.

CEO means the Chief Executive Officer of the Authority.

Chair means the Chair of the Board.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

Climate Change Convention means the United Nations Framework Convention on Climate Change done at New York on 9 May 1992, as amended and in force for Australia from time to time.

Note: The Convention is in Australian Treaty Series 1994 No. 2 ([1994] ATS 2) and could in 2024 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

closing employer has the meaning given by section 6.

Commonwealth company has the same meaning as in the PGPA Act.

Commonwealth entity has the same meaning as in the PGPA Act.

community of interest determination means a determination made under subsection 57(2) (including as varied).

community of interest process: see section 55.

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constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

Covenant on Economic, Social and Cultural Rights means the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966, as amended and in force for Australia from time to time.

Note: The Covenant is in Australian Treaty Series 1976 No. 5 ([1976] ATS 5) and could in 2024 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

dependent employer has the meaning given by section 6.

employee organisation has the same meaning as in the *Fair Work Act 2009*.

employer organisation has the same meaning as in the *Fair Work Act 2009*.

Energy Industry Worker Redeployment Advisory Group means the Energy Industry Worker Redeployment Advisory Group established under section 63.

enterprise agreement has the same meaning as in the *Fair Work Act 2009*.

entrusted entity means:

- (a) a government entity (within the meaning of *A New Tax System (Australian Business Number) Act 1999*); or
- (b) a Commonwealth entity; or
- (c) the Australian Energy Market Operator Limited (ACN 072 010 327).

Finance Minister means the Minister administering the PGPA Act.

gas-fired power station means a power station that generates electricity from natural gas.

geographic area means an area specified in an instrument under section 8.

ILO means the International Labour Organization.

ILO Convention (No. 122) means the ILO Convention (No. 122) concerning Employment Policy done at Geneva on 9 July 1964, as amended and in force for Australia from time to time.

Note: The Convention is in Australian Treaty Series 1970 No. 17 ([1970] ATS 17) and could in 2024 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

ILO Convention (No. 142) means ILO Convention (No. 142) concerning Vocational Guidance and Vocational Training in the Development of Human Resources done at Geneva on 23 June 1975, as amended and in force for Australia from time to time.

Note: The Convention is in Australian Treaty Series 1986 No. 2 ([1986] ATS 2) and could in 2024 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Indigenous person means:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

Kyoto Protocol means the Kyoto Protocol to the United Nations Framework Convention on Climate Change done at Kyoto on 11 December 1997, as amended and in force for Australia from time to time.

Note: The Protocol is in Australian Treaty Series 2008 No. 2 ([2008] ATS 2) and could in 2024 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

likely to prejudice national security: something is likely to prejudice national security if there is a real, and not merely a remote, possibility that it will prejudice national security.

National Electricity Rules means:

- (a) the National Electricity Rules, as in force from time to time, made under the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA); or
- (b) the Rules referred to in paragraph (a) as they apply as a law of another State; or

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- (c) the Rules referred to in paragraph (a) as they apply as a law of a Territory; or
- (d) the Rules referred to in paragraph (a) as they apply as a law of the Commonwealth.

national security has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

natural gas means a substance that:

- (a) is in a gaseous state at standard temperature and pressure; and
- (b) consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane; and
- (c) is suitable for consumption.

national security information means information the publication of which is likely to prejudice national security.

net zero transformation initiative means a project or initiative that will, or is reasonably likely to, facilitate, directly or indirectly, the achievement of Australia's greenhouse gas emissions reduction targets.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

Paris Agreement means the Paris Agreement done at Paris on 12 December 2015, as amended and in force for Australia from time to time.

Note: The Agreement is in Australian Treaty Series 2016 No. 24 ([2016] ATS 24) and could in 2024 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

participating employees, of a closing employer or a dependent employer, means those transition employees of the employer who have given an expression of interest to the employer in finding other employment.

personal information has the same meaning as in the *Privacy Act 1988*.

PGPA Act means the *Public Governance, Performance and Accountability Act 2013*.

receiving employer has the meaning given by section 6.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

rules means rules made under section 81.

sensitive financial intelligence information means:

- (a) information given in compliance with subsection 41(2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; or
- (b) information given in compliance with a notice under subsection 49(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

staff of the Authority means the persons referred to in subsection 51(1).

Stakeholder Panel means the panel established by the Board under subsection 70(1).

Statistical Area level 2 means a statistical area level 2 recognised by the Australian Bureau of Statistics.

this Act includes the rules.

transition employee, of a closing employer or a dependent employer, has the meaning given by section 7.

trigger notice means the following:

- (a) a kind of notice specified in an instrument under subsection 9(1);
- (b) a particular notice specified in an instrument under subsection 9(2).

trigger situation has the meaning given by section 55.

6 Closing employers, dependent employers and receiving employers

Closing employer

- (1) An employer is a ***closing employer*** if the employer:
 - (a) is a constitutional corporation; and
 - (b) owns (whether alone or jointly) or operates (whether alone or jointly) one or more parts of a coal-fired power station, or a gas-fired power station, that is the subject of a trigger notice that has been given;
whether or not the employer employs employees to perform work at the power station.
- (2) An employer is also a ***closing employer*** if:
 - (a) the employer is a constitutional corporation; and
 - (b) the employer is an associated entity of another constitutional corporation that owns (whether alone or jointly) or operates (whether alone or jointly) one or more parts of:
 - (i) a coal-fired power station that is the subject of a trigger notice that has been given; or
 - (ii) a gas-fired power station that is the subject of a trigger notice that has been given; and
 - (c) either or both of the following apply:
 - (i) the employer employs employees to perform work at the coal-fired power station or gas-fired power station;
 - (ii) if subparagraph (b)(i) applies and the employer operates (whether alone or jointly) a coal mine where the coal is being, or is to be, supplied for use in generating electricity at the coal-fired power station—the employer employs employees to perform work at the coal mine.

Dependent employer

- (3) An employer is a ***dependent employer*** if the employer (the ***relevant employer***):
 - (a) is a constitutional corporation; and
 - (b) has a commercial relationship with:

- (i) a closing employer within the meaning of subsection (1); or
 - (ii) a closing employer within the meaning of subsection (2) where the closing employer employs employees to perform work at the power station concerned; and
 - (c) will, or will be likely to, cease a substantial part of the business operations carried on by the relevant employer at the power station concerned, or in the same geographic area in which the power station concerned is located, as a direct result of the eventual closure of that power station.
- (4) An employer is also a **dependent employer** if:
- (a) the employer (the **relevant employer**) is a constitutional corporation; and
 - (b) the relevant employer:
 - (i) has a commercial relationship with another constitutional corporation that operates (whether alone or jointly) a coal mine; or
 - (ii) has a commercial relationship with an associated entity of another constitutional corporation, where the other constitutional corporation operates (whether alone or jointly) a coal mine; or
 - (iii) is an associated entity of another constitutional corporation, where the other constitutional corporation operates (whether alone or jointly) a coal mine;
- where:
- (iv) the coal from the coal mine is being, or is to be, supplied to a closing employer for use in generating electricity at the coal-fired power station concerned; and
 - (v) the other constitutional corporation will, or will be likely to, cease a substantial part of the business operations carried on by the other constitutional corporation in the same geographic area in which the coal-fired power station concerned is located as a direct result of the eventual closure of that power station; and
 - (c) the relevant employer employs employees to perform work in the business operations carried on at the coal mine.

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Receiving employer

- (5) An employer is a **receiving employer** if the employer:
 - (a) is a constitutional corporation; and
 - (b) has given an expression of interest to the CEO as mentioned in paragraph 55(1)(c) and has not withdrawn that expression of interest; and
 - (c) is specified in a determination under subsection (6).
- (6) The CEO may, by written determination, specify one or more employers for the purposes of paragraph (5)(c).
- (7) The CEO must cause a copy of the determination (including as varied) to be published on the Authority's website.
- (8) A determination under subsection (6) is not a legislative instrument.
- (9) In deciding which employers to specify in a determination under subsection (6), the CEO must have regard to any guidelines made under subsection (10).
- (10) The CEO may, by notifiable instrument, make guidelines for the purposes of subsection (9).

7 Transition employees of closing employers or dependent employers

Transition employees of closing employer

- (1) A **transition employee**, of a closing employer within the meaning of subsection 6(1), is the following:
 - (a) an employee of the closing employer who is employed to perform work at the coal-fired power station or gas-fired power station concerned;
 - (b) if the closing employer also operates (whether alone or jointly) a coal mine where the coal is being, or is to be, supplied for use in generating electricity at the coal-fired power station concerned—an employee of the closing employer who is employed to perform work at the coal mine.

- (2) A **transition employee**, of a closing employer within the meaning of subsection 6(2), is the following:
- (a) an employee of the closing employer who is employed to perform work at the coal-fired power station or gas-fired power station concerned;
 - (b) an employee of the closing employer who is employed to perform work at the coal mine mentioned in subparagraph 6(2)(c)(ii).

Transition employees of dependent employer

- (3) A **transition employee**, of a dependent employer within the meaning of subsection 6(3), is an employee of the dependent employer who is employed to perform work in the business operations that will, or will be likely to, cease as mentioned in paragraph 6(3)(c).
- (4) A **transition employee**, of a dependent employer within the meaning of subsection 6(4), is an employee of the dependent employer who is employed to perform work in the business operations carried on at the coal mine mentioned in paragraph 6(4)(c).

8 Geographic area

- (1) The CEO may, by notifiable instrument, specify one or more areas for the purposes of the definition of **geographic area** in section 5.
- (2) Without limiting subsection (1), an area specified by the CEO may consist of:
- (a) a single Statistical Area level 2; or
 - (b) 2 or more Statistical Areas level 2.
- (3) A reference in an instrument under this section to a Statistical Area level 2 is a reference to the Statistical Area level 2 as in effect from time to time.

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9 Trigger notice

- (1) The CEO may, by notifiable instrument, specify a kind of notice for the purposes of paragraph (a) of the definition of *trigger notice* in section 5. The CEO must be satisfied that the kind of notice relates to the closure of the whole, or a part, of a coal-fired power station or a gas-fired power station.
- (2) The CEO may, by notifiable instrument, specify a particular notice for the purposes of paragraph (b) of the definition of *trigger notice* in section 5. The CEO must be satisfied that the particular notice relates to the closure of the whole, or a part, of a coal-fired power station or a gas-fired power station.
- (3) Without limiting subsection (1) or (2), a kind of notice specified under subsection (1), or a particular notice specified under subsection (2), may be:
 - (a) a notice given under a provision of the National Electricity Rules; or
 - (b) a notice given under a provision of a law of Western Australia.
- (4) A kind of notice specified under subsection (1), or a particular notice specified under subsection (2), does not need to be a notice under a law of the Commonwealth, a State or a Territory.

10 Extension to external Territories

This Act extends to the external Territories.

11 Extension to exclusive economic zone and continental shelf

This Act extends to a matter relating to the exercise of Australia's sovereign rights in the exclusive economic zone or the continental shelf.

12 Application of this Act outside Australia

This Act applies both within and outside Australia.

Part 2—Net Zero Economy Authority

Division 1—Preliminary

13 Simplified outline of this Part

This Part establishes the Net Zero Economy Authority.

The Authority consists of the Board, the CEO and the staff of the Authority.

The Authority's functions include:

- (a) consulting and cooperating with persons, organisations and governments to support Australia's transition to a net zero emissions economy; and
- (b) facilitating public and private sector participation and investment in net zero transformation initiatives, including referring matters to specialist investment vehicles and other entities; and
- (c) supporting workers in emissions-intensive industries to access new employment or improve their employment prospects; and
- (d) supporting and delivering educational and promotional initiatives to promote an understanding of, and encourage participation in, Australia's transition to a net zero emissions economy.

The Authority may perform its functions within and outside Australia.

Division 2—Establishment and functions of the Authority

14 Establishment of the Authority

- (1) The Net Zero Economy Authority is established by this section.

Note: The Authority does not have a legal identity separate from the Commonwealth.

- (2) For the purposes of the finance law (within the meaning of the PGPA Act):

- (a) the Authority is a listed entity; and
- (b) the Board is the accountable authority of the Authority; and
- (c) the following persons are officials of the Authority:
 - (i) the Board members;
 - (ii) the CEO;
 - (iii) the staff of the Authority;
 - (iv) persons whose services are made available to the Authority under subsection 52(1); and
- (d) the purposes of the Authority include:
 - (i) the functions of the Authority referred to in section 16; and
 - (ii) the functions of the Board referred to in section 19; and
 - (iii) the functions of the CEO referred to in section 40.

15 Constitution of the Authority

The Authority consists of:

- (a) the Board; and
- (b) the CEO; and
- (c) the staff of the Authority.

16 Functions of the Authority

- (1) The Authority has the following functions:

- (a) to:

- (i) promote coordination and consistency in the design and implementation of Australian government policies, programs and plans; and
- (ii) consult and cooperate with other persons, organisations and governments; and
- (iii) provide reports, advice and recommendations to the Minister;
to facilitate the achievement of Australia's greenhouse gas emissions reduction targets and support Australia's transition to a net zero emissions economy;
- (b) to facilitate public and private sector participation and investment in greenhouse gas emissions reduction and net zero transformation initiatives in Australia, including, but not limited to, referring matters to one or more of the entities mentioned in subsection (3);
- (c) to support workers in emissions-intensive industries who are, or will be, affected by Australia's transition to a net zero emissions economy:
 - (i) to access new employment or other opportunities; or
 - (ii) to acquire skills to improve their employment prospects;including through the provision of funding or grants to those workers or to employers of those workers;
- (d) to support Indigenous persons to participate in, and benefit from, Australia's transition to a net zero emissions economy;
- (e) to encourage, support, develop and deliver educational and promotional initiatives for the purpose of promoting an understanding of, and enabling participation in, Australia's transition to a net zero emissions economy;
- (f) any other functions conferred on the Authority by this Act or any other law of the Commonwealth;
- (g) to do anything incidental or conducive to the performance of the above functions.

Note 1: Paragraphs (a), (b) and (e) are subject to subsection (4), and paragraph (c) is subject to subsection (5).

Note 2: The CEO administers Part 5 (Energy industry jobs plan). Any objectives, strategies or policies determined by the Board in respect of Part 5 must be of a general nature only (see subsection 19(3)). The

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Board must not give a direction to the CEO in respect of Part 5 (see subsection 41(2)).

- (2) In performing the Authority's functions, the Authority should prioritise communities, regions, industries and workers that are, or will be, significantly affected by Australia's transition to a net zero emissions economy.
- (3) For the purposes of paragraph (1)(b), the entities are the following:
- (a) the Clean Energy Finance Corporation;
 - (b) the Northern Australia Infrastructure Facility;
 - (c) the Regional Investment Corporation;
 - (d) the National Reconstruction Fund Corporation;
 - (e) the Export Finance and Insurance Corporation;
 - (f) the Australian Renewable Energy Agency;
 - (g) Housing Australia.

Constitutional basis

- (4) The Authority may perform the Authority's functions under paragraphs (1)(a), (b) and (e) only:
- (a) with respect to the executive power of the Commonwealth;
or
 - (b) to give effect to Australia's obligations under the following:
 - (i) paragraphs (b) and (c) of Article 4.1, and paragraph (a) of Article 4.2, of the Climate Change Convention;
 - (ii) paragraphs (b) and (c) of Article 10 of the Kyoto Protocol;
 - (iii) Articles 4.2 and 10.2 of the Paris Agreement.
- (5) The Authority may perform the Authority's function under paragraph (1)(c) only:
- (a) to give effect to Australia's obligations under the following:
 - (i) Articles 1 and 2 of ILO Convention (No. 122);
 - (ii) Articles 1, 2 and 4 of ILO Convention (No. 142);
 - (iii) Article 6(2) of the Covenant on Economic, Social and Cultural Rights; and
 - (b) with respect to the provision of unemployment benefits.

Other matters

- (6) The Authority has power to do all things necessary or convenient to be done for or in connection with the performance of the Authority's functions.
- (7) The Authority may perform the Authority's functions both within and outside Australia.
- (8) The Authority is to act in accordance with the objectives, strategies and policies determined by the Board.

Part 3—Board of the Authority

Division 1—Preliminary

17 Simplified outline of this Part

This Part establishes the Board of the Authority.

The Board's functions include determining objectives, strategies and policies to be followed by the Authority and the CEO. An objective, strategy or policy in respect of Part 5 (Energy industry jobs plan) must be of a general nature only.

The Board consists of the Chair and up to 8 other members.

Board members, including the Chair, are to be appointed by the Minister and must have experience or expertise in particular fields.

The Minister may give directions to the Board.

This Part also deals with the terms and conditions of appointment of Board members, and meetings of the Board.

Division 2—Establishment and functions of the Board

18 Establishment of the Board

The Board of the Net Zero Economy Authority is established by this section.

19 Functions of the Board

- (1) The functions of the Board are:
 - (a) to ensure the proper, efficient and effective performance of the functions of the Authority and the CEO; and
 - (b) subject to subsection (3), to determine the objectives, strategies and policies to be followed by the Authority and the CEO in the performance of their respective functions; and
 - (c) to ensure the CEO complies with requests made by the Minister under section 72; and
 - (d) any other functions conferred on the Board by this Act or any other law of the Commonwealth; and
 - (e) to do anything incidental or conducive to the performance of any of the above functions.

Note: For the purposes of paragraph (d), an example of a function conferred on the Board under this Act is the function of recommending a person to be appointed as CEO (see paragraph 42(1)(b)).

- (2) The Board has power to do all things necessary or convenient to be done for or in connection with the performance of the Board's functions.
- (3) Any objective, strategy or policy determined by the Board under paragraph (1)(b) in respect of Part 5 (Energy industry jobs plan) must be of a general nature only.
- (4) If an objective, strategy or policy mentioned in paragraph (1)(b) is in writing, it is not a legislative instrument.

20 Minister may give directions to the Board

- (1) The Minister may, by legislative instrument, give written directions to the Board about:
-

Part 3 Board of the Authority

Division 2 Establishment and functions of the Board

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- (a) the performance of the Board's functions, or the exercise of the Board's powers; or
- (b) the performance of the Authority's functions, or the exercise of the Authority's powers.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) A direction under subsection (1) must be of a general nature only.
- (3) The Board must comply with a direction under subsection (1).
- (4) Subsection (3) does not apply to the extent that a direction relates to the Board's performance of functions, or exercise of powers, under the PGPA Act in relation to the Authority.

Division 3—Board members

21 Membership

- (1) The Board consists of the following members:
 - (a) a Chair;
 - (b) at least 6, and not more than 8, other members.
- (2) The performance of the functions or the exercise of the powers of the Board is not affected by reason only of the number of members falling below 7 for a period of not more than 3 months.

22 Appointment of Board members

- (1) The Board members are to be appointed by the Minister by written instrument.

Note: The Chair is a Board member (see the definition of *Board member* in section 5).

- (2) The Board members are to be appointed on a part-time basis.
- (3) A Board member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: Board members may be reappointed (see section 33AA of the *Acts Interpretation Act 1901*).

23 Eligibility for appointment as Board member

- (1) A person must not be appointed as a Board member under section 22 unless the Minister is satisfied that the appointment of the person would ensure that:
 - (a) the requirements relating to the composition of the Board set out in subsection (2) of this section are satisfied; and
 - (b) the Board members collectively have an appropriate balance of:
 - (i) expertise or experience; and
 - (ii) professional credibility and significant standing; in the fields mentioned in subsection (3) of this section.

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- (2) The Board must be comprised of:
- (a) as Chair—a person with expertise or experience, professional credibility and significant standing in any of the fields mentioned in subsection (3); and
 - (b) 2 other Board members with expertise or experience, professional credibility and significant standing in the field mentioned in paragraph (3)(a); and
 - (c) 2 other Board members with expertise or experience, professional credibility and significant standing in the field mentioned in paragraph (3)(b); and
 - (d) 1 other Board member with expertise or experience, professional credibility and significant standing in the field mentioned in paragraph (3)(h); and
 - (da) 1 other Board member with expertise or experience, professional credibility and significant standing in any of the fields mentioned in paragraph (3)(i); and
 - (e) up to 2 other Board members with expertise or experience, professional credibility and significant standing in any of the fields mentioned in subsection (3).

Paragraphs (b), (c), (d) and (da) do not by implication limit paragraph (a) or (e).

Note: The maximum number of Board members, including the Chair, is 9 (see subsection 21(1)).

- (3) For the purposes of paragraph (1)(b) and subsection (2), the fields are the following:
- (a) trade union movement;
 - (b) business, industry, finance or investment;
 - (c) industrial relations or labour market adjustment;
 - (d) economics;
 - (e) greenhouse gas emissions reduction pathways, technologies or policy;
 - (f) climate change policy;
 - (g) energy markets;
 - (h) regional development;
 - (i) Indigenous advocacy or community leadership;
 - (j) public or corporate governance;

(k) law.

Note: For the purposes of paragraph (i), Indigenous community leadership includes being an Elder.

- (4) The following persons are not eligible for appointment as a Board member:
- (a) an employee of the Commonwealth;
 - (b) the holder of a full-time office under a law of the Commonwealth.

Note: This means the CEO is not eligible to be appointed as a Board member.

- (5) The performance of the functions and the exercise of the powers of the Board are not affected merely because its membership is not as required by subsection (2), unless a continuous period of 3 months has elapsed since its membership ceased to be as so required.

24 Appointment of acting Chair or Board member

- (1) The Minister may, by written instrument, appoint a person to act as the Chair:
- (a) during a vacancy in the office of the Chair, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office of the Chair.

Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules that apply to acting appointments.

- (2) The Minister may, by written instrument, appoint a person to act as a Board member (other than the Chair):
- (a) during a vacancy in the office of a Board member (other than the Chair), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when a Board member (other than the Chair):
 - (i) is absent from duty or from Australia; or

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(ii) is, for any reason, unable to perform the duties of the office of a Board member.

Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules that apply to acting appointments.

(3) A person must not be appointed to act as:

(a) the Chair; or

(b) a Board member (other than the Chair);

unless the Minister is satisfied that the matters in subsection 23(1) are satisfied in relation to the appointment to act.

Note: Subsection 23(1) sets out requirements in relation to the experience or expertise of Board members and the overall composition of the Board.

25 Remuneration of Board members

(1) A Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Board member is to be paid the remuneration that is prescribed by the rules.

(2) A Board member is to be paid the allowances that are prescribed by the rules.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

26 Disclosure of interests by Board members

(1) A disclosure by a Board member under section 29 of the PGPA Act (which deals with the duty to disclose interests) must be made to the Minister.

(2) Subsection (1) applies in addition to any rules made for the purposes of that section.

(3) For the purposes of this Act and the PGPA Act, a Board member is taken not to have complied with section 29 of the PGPA Act if the Board member does not comply with subsection (1) of this section.

27 Leave of absence of Board members

The Chair

- (1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.

Other Board members

- (2) The Chair may grant leave of absence to any other Board member on the terms and conditions that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants a Board member leave of absence for a period that exceeds 3 months.

28 Other terms and conditions of Board members

A Board member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

29 Resignation of Board members

- (1) A Board member may resign the Board member's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

30 Termination of appointment of Board members

- (1) The Minister may terminate the appointment of a Board member:
 - (a) for misbehaviour; or
 - (b) if the Board member is unable to perform the duties of the Board member's office because of physical or mental incapacity.
 - (2) The Minister may terminate the appointment of a Board member if:
 - (a) the Board member:
 - (i) becomes bankrupt; or
-

Part 3 Board of the Authority

Division 3 Board members

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- (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the Board member's creditors; or
 - (iv) makes an assignment of the Board member's remuneration for the benefit of the Board member's creditors; or
- (b) the Board member is absent, except on leave of absence, from 2 consecutive meetings of the Board; or
- (c) the Board member fails, without reasonable excuse, to comply with section 29 of the PGPA Act (which deals with the duty to disclose interests) or rules made for the purposes of that section; or
- (d) a majority of the Board members recommend that the Minister terminate the appointment.

Division 4—Meetings of the Board

31 Convening meetings

- (1) The Board must hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chair:
 - (a) may convene a meeting at any time; and
 - (b) must convene at least 6 meetings each calendar year; and
 - (c) must convene a meeting within 30 days after receiving a written request to do so from another Board member.

32 Presiding at meetings

- (1) The Chair must preside at all meetings at which the Chair is present.
- (2) If the Chair is not present at a meeting, the other Board members present must appoint one of themselves to preside.

33 Quorum

- (1) At a meeting of the Board, a quorum is constituted by a majority of Board members.
- (2) However, if:
 - (a) a Board member is required by rules made for the purposes of section 29 of the PGPA Act not to be present during the deliberations, or not to take part in any decision, of the Board with respect to a particular matter; and
 - (b) when the Board member leaves the meeting concerned, there is no longer a quorum present;then the remaining Board members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

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34 Voting at meetings

- (1) A question arising at a meeting of the Board is to be determined by a majority of the votes of the Board members present and voting.
- (2) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, a casting vote.

35 Conduct of meetings

The Board may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

36 Minutes

The Board must keep minutes of its meetings.

37 Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the Board members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
 - (c) all the Board members were informed of the proposed decision, or reasonable efforts were made to inform all the Board members of the proposed decision.
- (2) Subsection (1) applies only if the Board:
 - (a) has determined that it may make decisions of that kind without meeting; and
 - (b) has determined the method by which Board members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a Board member is not entitled to vote on a proposed decision if the Board member would

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not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.

- (4) The Board must keep a record of decisions made in accordance with this section.

Part 4—Chief Executive Officer and staff etc. of the Authority

Division 1—Preliminary

38 Simplified outline of this Part

There is to be a Chief Executive Officer of the Authority.

The CEO is responsible for the day-to-day administration of the Authority, and is to assist the Board in the performance of the Board's functions.

The CEO is responsible for the administration of Part 5 (Energy industry jobs plan).

The CEO is subject to direction by the Board, except in relation to Part 5 (Energy industry jobs plan).

This Part deals with the terms and conditions of appointment of the CEO and also makes provision for staff of the Authority, who must be persons engaged under the *Public Service Act 1999*.

The Authority may be assisted by certain other persons, and the Board may engage consultants to assist in the performance of the Authority's functions.

Division 2—Chief Executive Officer

39 The Chief Executive Officer

There is to be a Chief Executive Officer of the Net Zero Economy Authority.

40 CEO's functions

- (1) The CEO is responsible for the day-to-day administration of the Authority.
- (2) The CEO also has the following functions:
 - (a) to assist the Board in the performance of the Board's functions;
 - (b) to administer Part 5 (Energy industry jobs plan);
 - (c) any other functions conferred on the CEO by this Act or any other law of the Commonwealth;
 - (d) to do anything incidental or conducive to the performance of any of the above functions.
- (3) The CEO is to act in accordance with the objectives, strategies and policies determined by the Board under paragraph 19(1)(b).

Note: Objectives, strategies and policies determined by the Board in relation to Part 5 (Energy industry jobs plan) must be of a general nature only (see subsection 19(3)).

- (4) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of the CEO's functions.

41 CEO to act in accordance with directions of the Board

- (1) Subject to subsection (2), the Board may give written directions to the CEO about:
 - (a) the performance of the CEO's functions or the exercise of the CEO's powers; or
 - (b) the performance of the Authority's functions or the exercise of the Authority's powers.

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- (2) The Board must not give a direction under subsection (1) in respect of Part 5 (Energy industry jobs plan).
- (3) The CEO must comply with a direction under subsection (1).
- (4) Subsection (3) does not apply to the extent that the direction relates to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to the Authority.
- (5) A direction under subsection (1) is not a legislative instrument.

42 Appointment of CEO

- (1) The CEO is to be appointed:
 - (a) by the Minister; and
 - (b) on the recommendation of the Board.
- (2) The CEO is to be appointed:
 - (a) by written instrument; and
 - (b) on a full-time basis.
- (3) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The CEO may be reappointed (see section 33AA of the *Acts Interpretation Act 1901*).

- (4) A Board member is not eligible to be appointed as the CEO.

43 Appointment of acting CEO

- (1) The Minister may, by written instrument, appoint a person to act as the CEO:
 - (a) during a vacancy in the office of the CEO, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules that apply to acting appointments.

- (2) A Board member is not eligible to be appointed to act as the CEO.

44 Remuneration of CEO

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the rules.
- (2) The CEO is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

45 Other paid work of CEO

The CEO must not engage in paid work outside the duties of the CEO without the Minister's approval.

46 Disclosure of interests by CEO

- (1) A disclosure by the CEO under section 29 of the PGPA Act (which deals with the duty to disclose interests) must be made to the Minister.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the PGPA Act, the CEO is taken not to have complied with section 29 of the PGPA Act if the CEO does not comply with subsection (1) of this section.

47 Leave of absence of CEO

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

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48 Other terms and conditions of CEO

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

49 Resignation of CEO

- (1) The CEO may resign the CEO's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

50 Termination of appointment of CEO

- (1) The Minister may terminate the appointment of the CEO:
 - (a) for misbehaviour; or
 - (b) if the CEO is unable to perform the duties of the CEO's office because of physical or mental incapacity.
- (2) Before the Minister terminates the appointment of the CEO under subsection (1), the Minister must consult the Board.
- (3) The Minister may terminate the appointment of the CEO if:
 - (a) the CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the CEO's creditors; or
 - (iv) makes an assignment of the CEO's remuneration for the benefit of the CEO's creditors; or
 - (b) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the CEO engages, except with the Minister's approval, in paid work outside the duties of the CEO's office (see section 45); or

- (d) the CEO fails, without reasonable excuse, to comply with section 29 of the PGPA Act (which deals with the duty to disclose interests) or rules made for the purposes of that section; or
- (e) a majority of the Board members recommend that the Minister terminate the appointment.

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Division 3—Staff etc. of the Authority

51 Staff

- (1) The staff of the Authority must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the CEO and the APS employees assisting the CEO together constitute a Statutory Agency; and
 - (b) the CEO is the Head of that Statutory Agency.

52 Persons assisting the Authority

- (1) The Authority may be assisted by:
 - (a) officers or employees of another Commonwealth entity, or a Commonwealth company, whose services are made available to the Authority in connection with the performance of the Authority's functions; and
 - (b) persons whose services are made available under arrangements made under subsection (2).
- (2) The Board may, on behalf of the Commonwealth, make an arrangement with the appropriate authority or officer of:
 - (a) a State or Territory government; or
 - (b) a State or Territory government authority;under which the government or authority makes officers or employees available to the Authority to perform services in connection with the performance of any of the Authority's functions.
- (3) An arrangement under subsection (2) may provide for the Commonwealth to reimburse a State or Territory with respect to the services of a person to whom the arrangement relates.
- (4) When performing services for the Authority under this section, a person is subject to the directions of the Board.

53 Consultants

- (1) The Board may, on behalf of the Commonwealth, engage as consultants persons having suitable qualifications and experience to assist in the performance of the Authority's functions or the exercise of the Authority's powers.
- (2) The engagement of a consultant must be by written agreement.
- (3) The terms and conditions of engagement are those that the Board determines in writing.

Part 5—Energy industry jobs plan

Division 1—Preliminary

54 Simplified outline of this Part

A notice given in relation to the closure of the whole, or a part, of a coal-fired power station or a gas-fired power station triggers the operation of this Part.

For the purposes of being able to make an application to the Fair Work Commission, the CEO must undertake a community of interest process to identify:

- (a) closing employers, dependent employers and receiving employers; and
- (b) the number of transition employees of the closing employers or dependent employers and the kind of jobs performed by those employees; and
- (c) an estimate of the number of those transition employees who are, or who will become, participating employees of the closing employers or dependent employers.

If the CEO makes an application to the Fair Work Commission, the Commission must make a community of interest determination that specifies closing employers and dependent employers.

A closing employer or dependent employer specified in the determination is subject to obligations of a certain kind that are connected with facilitating transition employees of the employer to find other employment.

If:

- (a) employee organisations and a closing employer or dependent employer jointly agree on the specific actions to be taken by the employer and they make a joint application to the Fair Work Commission; or

- (b) employee organisations and a closing employer or dependent employer cannot agree on the specific actions to be taken by the employer and any of those organisations or the employer makes an application to the Fair Work Commission;

the Commission may make a determination setting out the specific actions to be taken by the employer.

The Energy Industry Worker Redeployment Advisory Group is established, which has a right to be heard in relation to various applications made to the Fair Work Commission.

Various persons may apply to the Fair Work Commission for an order by the Commission in relation to the actions to be taken by a closing employer or dependent employer.

There are certain civil penalty provisions that apply to a closing employer or dependent employer. If an employer contravenes a civil penalty provision, a court may order the payment of a civil penalty under the Regulatory Powers Act and may order the awarding of compensation for loss that a person has suffered because of the contravention.

A court can grant an injunction restraining a person from contravening a provision of this Part or requiring a person to comply with a provision of this Part.

Division 2—Community of interest process and community of interest determinations

55 CEO to undertake community of interest process after giving of trigger notice

- (1) For the purpose of being able to make an application under section 56, the CEO must, if a trigger situation exists, undertake a process (a *community of interest process*) of:
 - (a) identifying employers as closing employers; and
 - (b) identifying employers as dependent employers; and
 - (c) seeking expressions of interest from employers that are constitutional corporations in being employers that may be able to offer employment to transition employees of a closing employer or dependent employer; and
 - (d) identifying the number of transition employees of the closing employers or dependent employers and the kind of jobs performed by those employees and obtaining details relating to the employment of those employees; and
 - (e) identifying an estimate of the number of those transition employees who are, or who will become, participating employees of the closing employers or dependent employers.
- (2) A *trigger situation* exists if:
 - (a) the CEO becomes aware of the giving of a kind of notice covered by paragraph (a) of the definition of *trigger notice* in section 5; or
 - (b) the CEO, under subsection 9(2), specifies a particular notice for the purposes of paragraph (b) of the definition of *trigger notice* in section 5.

Note: A trigger notice is a notice in relation to the closure of the whole, or a part, of a coal-fired power station or a gas-fired power station.

Consultation

- (3) As part of the community of interest process, the CEO must seek information from employers mentioned in paragraph (1)(c) about the number, nature and location of jobs, and skills required for the

jobs, that those employers may be able to offer to transition employees of the closing employers or dependent employers.

- (4) As part of the community of interest process, the CEO must consult each employee organisation that is entitled to represent the industrial interests of one or more of the transition employees referred to in paragraph (1)(d).
- (5) As part of the community of interest process, the CEO must consult:
 - (a) employers covered by paragraph (1)(a); and
 - (b) employers covered by paragraph (1)(b); and
 - (c) each employer organisation that is entitled to represent the industrial interests of an employer covered by paragraph (1)(a) or (b).
- (6) As part of the community of interest process, the CEO must undertake such community consultation as the CEO considers appropriate.
- (7) Subsections (3) to (6) do not limit subsection (1).

56 CEO may apply to Fair Work Commission for a community of interest determination

- (1) After completing the community of interest process, the CEO may apply, in writing, to the Fair Work Commission for a determination by the Commission under section 57.

Timing of application

- (2) The CEO must make any application:
 - (a) if the trigger notice is given at least 42 months before the scheduled closure of the whole, or a part, of the coal-fired power station or gas-fired power station concerned—at least 2 years before that scheduled closure; or
 - (b) otherwise—as soon as practicable after completing the community of interest process.

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Contents of application

- (3) The CEO must specify in the application:
- (a) in relation to each closing employer identified by the CEO—the name of that employer if the CEO is satisfied that it is reasonable in the circumstances to do so; and
 - (b) in relation to each dependent employer identified by the CEO—the name of that employer if the CEO is satisfied that it is reasonable in the circumstances to do so; and
 - (c) for each closing employer or dependent employer specified under paragraph (a) or (b)—details of the total number of transition employees of the employer and the total number of each kind of job of those employees; and
 - (d) for each closing employer or dependent employer specified under paragraph (a) or (b)—the estimate of the number of those transition employees who are, or who will become, participating employees of the employer; and
 - (e) details of the community of interest process undertaken by the CEO; and
 - (f) details of the basis on which the CEO specified a closing employer under paragraph (a) or a dependent employer under paragraph (b).

Matters to which the CEO must have regard

- (4) In considering whether to make an application under subsection (1) or to specify an employer under paragraph (3)(a) or (b), the CEO must have regard to the following:
- (a) the object of this Act;
 - (b) the existing supports that are available to facilitate transition employees of closing employers or dependent employers to find other employment, including supports provided under relevant enterprise agreements or other industrial instruments;
 - (c) the number of transition employees of those employers;
 - (d) the estimate of the number of those transition employees who are, or who will become, participating employees of those employers;

- (e) the capacity of those employers to redeploy those transition employees in other business operations of those employers or in business operations of associated entities of those employers;
 - (f) the capacity of other employers in the same geographic area in which the power station concerned is located to offer employment to those transition employees.
- (5) Subsection (4) does not limit the matters to which the CEO may have regard.

CEO to notify employers

- (6) As soon as practicable after making the application, the CEO must inform each employer specified in the application of the following:
- (a) the making of the application;
 - (b) the fact the employer is so specified.

Application of Fair Work Act 2009

- (7) Division 3 of Part 5-1 of the *Fair Work Act 2009* applies in relation to an application under this section in a corresponding way to the way in which it applies in relation to an application under that Act.

Note: Subsection (7) has the effect, for example, that an application under this section could be dismissed under section 587 of that Act.

- (8) Subsection (7) does not, by implication, limit the application of any other provision of the *Fair Work Act 2009* in relation to this Part.

57 Fair Work Commission to make community of interest determination

Opportunity to be heard

- (1) The Fair Work Commission must ensure that the following have an adequate opportunity to be heard in relation to an application under section 56:
- (a) the CEO or an SES employee or acting SES employee of the Authority nominated by the CEO;
 - (b) the Energy Industry Worker Redeployment Advisory Group;

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- (c) each employer named in the application;
- (d) each employee organisation that is entitled to represent the industrial interests of one or more of the transition employees of an employer named in the application;
- (e) if such an employee organisation nominates one or more other employers as potential closing employers or dependent employers—each such employer;
- (f) each employer organisation that is entitled to represent the industrial interests of an employer covered by paragraph (c) or (e);
- (g) a transition employee of an employer covered by paragraph (c) or (e) if the transition employee has notified the Commission in writing that the transition employee wishes to be heard in relation to the application.

Community of interest determination

- (2) The Fair Work Commission must make a written determination (a ***community of interest determination***):
 - (a) if the Commission is satisfied:
 - (i) that one or more employers specified under paragraph 56(3)(a) or nominated under paragraph (1)(e) of this section are closing employers; and
 - (ii) that it is reasonable in the circumstances to specify one or more of those employers in the determination;
specifying one or more of those employers in the determination as closing employers; and
 - (b) if the Commission is satisfied:
 - (i) that one or more employers specified under paragraph 56(3)(b) or nominated under paragraph (1)(e) of this section are dependent employers; and
 - (ii) that it is reasonable in the circumstances to specify one or more of those employers in the determination;
specifying one or more of those employers in the determination as dependent employers.

Matters to which the Fair Work Commission must have regard

- (3) In considering whether to specify an employer under paragraph (2)(a) or (b), the Fair Work Commission must have regard to the following:
- (a) the object of this Act;
 - (b) the existing supports that are available to facilitate transition employees of the employer to find other employment, including supports provided under relevant enterprise agreements or other industrial instruments;
 - (c) the number of transition employees of the employer;
 - (d) an estimate of the number of those transition employees who are, or who will become, participating employees of the employer;
 - (e) 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;
 - (f) the capacity of other employers in the same geographic area in which the power station concerned is located to offer employment to those transition employees.
- (4) Subsection (3) does not limit the matters to which the Fair Work Commission may have regard.
- (5) For the purposes of making a determination under subsection (2), the Fair Work Commission must have regard to the following:
- (a) information contained in the application under section 56;
 - (b) information obtained in accordance with subsection (1) of this section.

When determination comes into force

- (6) A determination under subsection (2):
- (a) comes into force on the day it is made; and
 - (b) must be expressed to remain in force until the end of the period of 6 months beginning on the day of the closure of the whole, or a part, of the power station concerned (as the case requires).

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CEO to notify employers

- (7) As soon as practicable after a determination under subsection (2) is made, the CEO must inform each employer specified in the determination of the following:
- (a) the making of the determination;
 - (b) the fact the employer is so specified.

Application of Fair Work Act 2009

- (8) Subject to this section, section 578 and Division 3 of Part 5-1 of the *Fair Work Act 2009* apply in relation to the making of a determination, and to a determination made, under this section in a corresponding way to the way in which they apply in relation to the making of a decision, and to a decision made, under that Act.

Note: Subsection (8) has the effect, for example, that:

- (a) the matters under section 578 of that Act must be taken into account in making a determination under this section; and
 - (b) publication requirements under section 601 of that Act apply to a determination made under this section; and
 - (c) under section 603 of that Act, the Fair Work Commission may vary or revoke a determination made under this section; and
 - (d) under section 604 of that Act, a person may appeal a determination made under this section.
- (9) Subsections (1) and (5) do not limit section 590 of the *Fair Work Act 2009* (about powers of the Fair Work Commission to inform itself).
- (10) Without limiting section 603 of the *Fair Work Act 2009*, to the extent that it applies in relation to a determination under subsection (2) of this section, the CEO is taken to be a person covered by subparagraph 603(2)(b)(i) of that Act.
- (11) Subsection (8) does not, by implication, limit the application of any provision of the *Fair Work Act 2009*, not referred to in that subsection, in relation to this Part.

Division 3—Employer obligations

58 General obligations of closing employers and dependent employers

- (1) A closing employer or dependent employer specified in a community of interest determination that is in force must:
 - (a) seek expressions of interest from each transition employee of the employer in finding other employment; and
 - (b) provide information to each transition employee of the employer about the employer's obligations under section 59; and
 - (ba) inform each transition employee of the employer that, if the employee becomes a participating employee of the employer, personal information about the employee may be given to the CEO under section 64 or disclosed by the CEO under section 66; and
 - (c) cooperate with the CEO and the staff of the Authority in the administration of this Part (including by complying with section 64).

Note: Australian Privacy Principle 6 in Schedule 1 to the *Privacy Act 1988* has the effect that, if a closing employer or dependent employer is an APP entity (within the meaning of that Act) and holds personal information about a transition employee that was collected for a particular purpose, the employer must not use or disclose the information for another purpose unless:

- (a) the employee has consented to the use or disclosure of the information; or
- (b) the use or disclosure of the information is required or authorised by or under an Australian law or a court/tribunal order; or
- (c) that use or disclosure is otherwise authorised by that Principle.

- (2) Paragraphs (1)(a), (b) and (ba) do not apply to a closing employer or dependent employer at a time when there are no transition employees of the employer.

59 Other obligations of closing employers and dependent employers

- (1) Subject to sections 60 and 61, a closing employer or dependent employer specified in a community of interest determination that is
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in force must take the actions set out in this section except to the extent that taking those actions would be unreasonable, having regard to the following:

- (a) the operational requirements of the closing employer or dependent employer;
 - (b) the need for transition employees of the closing employer or dependent employer to be provided with supports to facilitate those employees to find other employment;
 - (c) relevant enterprise agreements or other industrial instruments, including supports provided under those agreements or instruments.
- (2) This section does not apply to a closing employer or dependent employer at a time when there are no transition employees of the employer.

Transition employees—career planning advice or financial advice

- (3) An action is, on request of transition employees of the closing employer or dependent employer:
- (a) arranging (at the employer's cost) for those employees to be provided with career planning advice and financial advice; or
 - (b) allowing those employees time off work, or access to flexible working arrangements, to receive career planning advice or financial advice arranged by those employees;
- in connection with their current employment and possible future employment.
- (4) An action is making a financial contribution towards the costs of the advice referred to in paragraph (3)(b).

Transition employees—engagement with employee organisations

- (5) An action is permitting transition employees of the closing employer or dependent employer to receive advice and support, in relation to the operation of this Part, from any employee organisation that is entitled to represent the industrial interests of those transition employees.

Participating employees—training

- (6) An action is, on request of participating employees of the closing employer or dependent employer, allowing those employees time off work, or access to flexible working arrangements, to undertake training to assist those employees to find other employment.
- (7) An action is making a financial contribution towards the costs of the training referred to in subsection (6).

Participating employees—engagement with receiving employers

- (8) An action is engaging with receiving employers in connection with facilitating participating employees of the closing employer or dependent employer to obtain employment with receiving employers, including when a receiving employer has made an offer of employment to one or more of those participating employees.

Attending recruitment-related activities

- (9) An action is, on request of participating employees of the closing employer or dependent employer, allowing those employees time off work, or access to flexible working arrangements, to attend activities relating to the recruitment of those participating employees.

Reasonable notice for time off work or access to flexible working arrangements

- (9A) In any request of a transition employee of a closing employer or dependent employer for time off work, or access to flexible working arrangements, to receive career planning advice or financial advice arranged by the employee, the employee must give the employer reasonable notice of wanting that time off work or that access to flexible working arrangements.
- (9B) In any request of a participating employee of a closing employer or dependent employer for time off work, or access to flexible working arrangements, to:
 - (a) undertake training to assist the employee to find other employment; or

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(b) attend activities relating to the recruitment of the employee; the employee must give the employer reasonable notice of wanting that time off work or that access to flexible working arrangements.

Evidence

- (9C) If a closing employer or dependent employer has allowed a transition employee of the employer time off work, or access to flexible working arrangements, to receive career planning advice or financial advice arranged by the employee, the employee must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the employee used the time off work or flexible working arrangements to receive that advice.
- (9D) Before a closing employer or dependent employer makes a financial contribution towards the costs of career planning advice or financial advice arranged by a transition employee of the employer, the employee must, if required by the employer, give the employer evidence that would satisfy a reasonable person of the total cost of the advice.
- (9E) If a closing employer or dependent employer has allowed a participating employee of the employer time off work, or access to flexible working arrangements, to:
- (a) undertake training to assist the employee to find other employment; or
 - (b) attend activities relating to the recruitment of the employee; the employee must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the employee used the time off work or flexible working arrangements to undertake the training or to attend the activities.
- (9F) Before a closing employer or dependent employer makes a financial contribution towards the costs of training to assist a participating employee of the employer to find other employment, the employee must, if required by the employer, give the employer evidence that would satisfy a reasonable person of the total cost of the training.

Paid time off work

- (10) Any time that a transition employee of a closing employer or dependent employer is given off work to receive the advice referred to in subsection (3) must be with the pay that the employee would otherwise be entitled to receive for performing the employee's normal duties during that period.
- (11) Any time that a participating employee of a closing employer or dependent employer is given off work to undertake the training referred to in subsection (6), or to attend the activities referred to in subsection (9), must be with the pay that the employee would otherwise be entitled to receive for performing the employee's normal duties during that period.

**60 Fair Work Commission determination about section 59—
agreement between employer and employee organisations**

Application to Fair Work Commission

- (1) If:
 - (a) a closing employer or dependent employer specified in a community of interest determination that is in force; and
 - (b) each employee organisation that is entitled to represent the industrial interests of one or more of the transition employees of the closing employer or dependent employer;agree on the actions to be taken by the employer in relation to the operation of section 59, then each such organisation and the employer may jointly apply, in writing, to the Fair Work Commission for a determination under this section.
- (2) The application must:
 - (a) specify those actions; and
 - (b) specify a procedure for settling disputes about any matters that arise under any determination made under this section in response to the application.
- (3) Division 3 of Part 5-1 of the *Fair Work Act 2009* applies in relation to an application under this section in a corresponding way to the way in which it applies in relation to an application under that Act.

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Opportunity to be heard

- (4) The Fair Work Commission must ensure that the following have an adequate opportunity to be heard in relation to an application under subsection (1):
- (a) the Energy Industry Worker Redeployment Advisory Group;
 - (b) the closing employer or dependent employer;
 - (c) each employee organisation that is entitled to represent the industrial interests of one or more of the transition employees of the closing employer or dependent employer;
 - (d) each employer organisation that is entitled to represent the industrial interests of the closing employer or dependent employer;
 - (e) a transition employee of the closing employer or dependent employer if the transition employee has notified the Commission in writing that the transition employee wishes to be heard in relation to the application.

Making of determination

- (5) The Fair Work Commission may, in writing, make a determination that:
- (a) specifies the community of interest determination; and
 - (b) specifies the actions to be taken by the closing employer or dependent employer in relation to the operation of section 59; and
 - (c) requires the closing employer or dependent employer to take those actions; and
 - (d) includes a term that provides a procedure for settling disputes about any matters arising under the determination.

Note: See section 61A for the dealing with disputes.

When determination comes into force

- (6) The determination comes into force on the day specified in the determination (which must not be earlier than the day on which the determination is made).

Breach of determination

- (7) An employer contravenes this subsection if:
- (a) the employer is subject to a determination under subsection (5); and
 - (b) the employer breaches the determination.

Civil penalty: 600 penalty units.

Application of Fair Work Act 2009

- (8) Subject to this section, section 578 and Division 3 of Part 5-1 of the *Fair Work Act 2009* apply in relation to the making of a determination, and to a determination made, under this section in a corresponding way to the way in which they apply in relation to the making of a decision, and to a decision made, under that Act.

Note: Subsection (8) has the effect, for example, that:

- (a) the matters under section 578 of that Act must be taken into account in making a determination under this section; and
 - (b) publication requirements under section 601 of that Act apply to a determination made under this section; and
 - (c) under section 603 of that Act, the Fair Work Commission may vary or revoke a determination made under this section; and
 - (d) under section 604 of that Act, a person may appeal a determination made under this section.
- (9) Subsection (4) does not limit section 590 of the *Fair Work Act 2009* (about powers of the Fair Work Commission to inform itself).
- (10) Subsection (8) does not, by implication, limit the application of any provision of the *Fair Work Act 2009*, not referred to in that subsection, in relation to this Part.

Relationship with section 62

- (11) Section 62, to the extent that it relates to section 59, does not apply to a closing employer or dependent employer in relation to a community of interest determination while a determination under subsection (5) of this section is in force in relation to the employer and the community of interest determination.

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61 Fair Work Commission determination about section 59—no agreement between employer and employee organisations

Application to Fair Work Commission

- (1) If:
- (a) both of the following:
 - (i) a closing employer or dependent employer specified in a community of interest determination that is in force;
 - (ii) one or more of the employee organisations that are entitled to represent the industrial interests of one or more of the transition employees of the closing employer or dependent employer;do not agree on the actions to be taken by the employer in relation to the operation of section 59; and
 - (b) those organisations and the employer have been attempting to reach agreement for a period of at least 3 months;
- then any of those organisations, or the employer, may apply, in writing, to the Fair Work Commission for a determination under this section.
- (2) The application must specify:
- (a) the actions the applicant considers the closing employer or dependent employer should take in relation to the operation of section 59; and
 - (b) the period covered by paragraph (1)(b); and
 - (c) a procedure for settling disputes about any matters that arise under any determination made under this section in response to the application.
- (3) Division 3 of Part 5-1 of the *Fair Work Act 2009* applies in relation to an application under this section in a corresponding way to the way in which it applies in relation to an application under that Act.

Note: Subsection (3) has the effect, for example, that an application under this section could be dismissed under section 587 of that Act.

Opportunity to be heard

- (4) The Fair Work Commission must ensure that the following have an adequate opportunity to be heard in relation to an application under subsection (1):
- (a) the Energy Industry Worker Redeployment Advisory Group;
 - (b) the closing employer or dependent employer;
 - (c) each employee organisation that is entitled to represent the industrial interests of one or more of the transition employees of the closing employer or dependent employer;
 - (d) each employer organisation that is entitled to represent the industrial interests of the closing employer or dependent employer;
 - (e) a transition employee of the closing employer or dependent employer if the transition employee has notified the Commission in writing that the transition employee wishes to be heard in relation to the application.

Making of determination

- (5) The Fair Work Commission may, in writing, make a determination that:
- (a) specifies the community of interest determination; and
 - (b) specifies the actions to be taken by the closing employer or dependent employer in relation to the operation of section 59; and
 - (c) requires the closing employer or dependent employer to take those actions; and
 - (d) includes a term that provides a procedure for settling disputes about any matters arising under the determination.

Note: See section 61A for the dealing with disputes.

Matters to which the Fair Work Commission must have regard

- (6) In considering whether to make a determination, the Fair Work Commission must have regard to:
- (a) the object of this Act; and

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- (b) the following conduct, including conduct to comply with obligations under relevant enterprise agreements or other industrial instruments, to the extent that the conduct relates to the matters covered by section 59:
 - (i) conduct engaged in by the closing employer or dependent employer on or after the day the community of interest determination came into force;
 - (ii) conduct engaged in by the closing employer or dependent employer before the day that determination came into force;
 - (iii) a pattern of conduct engaged in by the closing employer or dependent employer that started before the day that determination came into force and that continued after that day.
- (7) Subsection (6) does not limit the matters to which the Fair Work Commission may have regard.

When determination comes into force

- (8) A determination under subsection (5) comes into force on the day specified in the determination (which must not be earlier than the day on which the determination is made).

Breach of determination

- (9) An employer contravenes this subsection if:
 - (a) the employer is subject to a determination under subsection (5); and
 - (b) the employer breaches the determination.

Civil penalty: 600 penalty units.

Application of Fair Work Act 2009

- (10) Subject to this section, section 578 and Division 3 of Part 5-1 of the *Fair Work Act 2009* apply in relation to the making of a determination, and to a determination made, under this section in a corresponding way to the way in which they apply in relation to the making of a decision, and to a decision made, under that Act.

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- Note: Subsection (10) has the effect, for example, that:
- (a) the matters under section 578 of that Act must be taken into account in making a determination under this section; and
 - (b) publication requirements under section 601 of that Act apply to a determination under made this section; and
 - (c) under section 603 of that Act, the Fair Work Commission may vary or revoke a determination made under this section; and
 - (d) under section 604 of that Act, a person may appeal a determination made under this section.

- (11) Subsection (4) does not limit section 590 of the *Fair Work Act 2009* (about powers of the Fair Work Commission to inform itself).
- (12) Subsection (10) does not, by implication, limit the application of any provision of the *Fair Work Act 2009*, not referred to in that subsection, in relation to this Part.

Relationship with section 62

- (13) Section 62, to the extent that it relates to section 59, does not apply to a closing employer or dependent employer in relation to a community of interest determination while a determination under subsection (5) of this section is in force in relation to the employer and the community of interest determination.

61A Dealing with disputes

Disputes dealt with by the Fair Work Commission

- (1) If:
 - (a) a term referred to in paragraph 60(5)(d) or 61(5)(d) requires or allows the Fair Work Commission to deal with a dispute about any matter arising under a determination under subsection 60(5) or 61(5); and
 - (b) such a dispute arises; and
 - (c) a party to the dispute applies to the Fair Work Commission to deal with the dispute;the Fair Work Commission may deal with the dispute.
- (2) In dealing with the dispute, the Fair Work Commission must not exercise any powers limited by the term referred to in paragraph 60(5)(d) or 61(5)(d) (as the case requires).

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- (3) If, in accordance with that term, the parties to the dispute have agreed that the Fair Work Commission may arbitrate (however described) the dispute, the Fair Work Commission may do so.
- (4) Division 3 of Part 5-1 of the *Fair Work Act 2009* applies in relation to the Fair Work Commission dealing with the dispute in a corresponding way to the way in which that Division applies in relation to the dealing with a dispute covered by subsection 595(1) of that Act.

Disputes dealt with by persons other than the Fair Work Commission

- (5) If a term referred to in paragraph 60(5)(d) or 61(5)(d) requires or allows a person other than the Fair Work Commission to deal with a dispute about any matter arising under a determination under subsection 60(5) or 61(5):
 - (a) the person, in dealing with the dispute, must not exercise any powers limited by the term; and
 - (b) if, in accordance with the term, the parties to the dispute have agreed that the person may arbitrate (however described) the dispute—the person may do so.

62 Fair Work Commission order about a community of interest determination

Application for order

- (1) A person covered by subsection (2) may apply, in writing, to the Fair Work Commission for an order by the Commission under this section in relation to the actions to be taken under section 58 or 59 by a closing employer or dependent employer specified in a community of interest determination that is in force.
- (2) The following persons are covered by this subsection:
 - (a) the CEO;
 - (b) a person that is an employee organisation that is entitled to represent the industrial interests of one or more of the transition employees of the closing employer or dependent employer;

- (c) a transition employee of the closing employer or dependent employer.
- (3) Division 3 of Part 5-1 of the *Fair Work Act 2009* applies in relation to an application under this section in a corresponding way to the way in which it applies in relation to an application under that Act.

Note: Subsection (3) has the effect, for example, that an application under this section could be dismissed under section 587 of that Act.

Opportunity to be heard

- (4) The Fair Work Commission must ensure that the following have an adequate opportunity to be heard in relation to an application under subsection (1):
- (a) the CEO or an SES employee or acting SES employee of the Authority nominated by the CEO;
 - (b) the Energy Industry Worker Redeployment Advisory Group;
 - (c) the closing employer or dependent employer;
 - (d) each employee organisation that is entitled to represent the industrial interests of one or more of the transition employees of the closing employer or dependent employer;
 - (e) each employer organisation that is entitled to represent the industrial interests of the closing employer or dependent employer;
 - (f) a transition employee of the closing employer or dependent employer if the transition employee has notified the Commission in writing that the transition employee wishes to be heard in relation to the application.

Making of order

- (5) The Fair Work Commission may make an order setting out the actions to be taken by the closing employer or dependent employer under section 58 or 59 if the Commission is satisfied that it is reasonable and fair in the circumstances to make the order.

Matters to which the Fair Work Commission must have regard

- (6) In considering whether to make an order, the Fair Work Commission must have regard to:
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- (a) the object of this Act; and
 - (b) the following conduct, including conduct to comply with obligations under relevant enterprise agreements or other industrial instruments, to the extent that the conduct relates to the matters covered by section 58 or 59:
 - (i) conduct engaged in by the closing employer or dependent employer on or after the day the community of interest determination came into force;
 - (ii) conduct engaged in by the closing employer or dependent employer before the day that determination came into force;
 - (iii) a pattern of conduct engaged in by the closing employer or dependent employer that started before the day that determination came into force and that continued after that day.
- (7) Subsection (6) does not limit the matters to which the Fair Work Commission may have regard.

When order comes into force

- (8) An order under subsection (5) comes into force on the day specified in the order (which must not be earlier than the day on which the order is made).

Breach of order

- (9) An employer contravenes this subsection if:
- (a) the employer is subject to an order under subsection (5); and
 - (b) the employer breaches the order.

Civil penalty: 600 penalty units.

Application of Fair Work Act 2009

- (10) Subject to this section, section 578 and Division 3 of Part 5-1 of the *Fair Work Act 2009* apply in relation to the making of an order, and to an order made, under this section in a corresponding way to the way in which they apply in relation to the making of a decision, and to a decision made, under that Act.

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- Note: Subsection (10) has the effect, for example, that:
- (a) the matters under section 578 of that Act must be taken into account in making an order under this section; and
 - (b) publication requirements under section 601 of that Act apply to an order made under this section; and
 - (c) under section 603 of that Act, the Fair Work Commission may vary or revoke an order made under this section; and
 - (d) under section 604 of that Act, a person may appeal an order made under this section.
- (11) Subsection (4) does not limit section 590 of the *Fair Work Act 2009* (about powers of the Fair Work Commission to inform itself).
- (12) Without limiting section 603 of the *Fair Work Act 2009*, to the extent that it applies in relation to an order under subsection (5) of this section, the CEO is taken to be a person covered by subparagraph 603(2)(b)(i) of that Act.
- (13) Subsection (10) does not, by implication, limit the application of any provision of the *Fair Work Act 2009*, not referred to in that subsection, in relation to this Part.

Division 4—Energy Industry Worker Redeployment Advisory Group

63 Energy Industry Worker Redeployment Advisory Group

- (1) The Energy Industry Worker Redeployment Advisory Group is established by this section.

Role of group

- (2) The group may give information to the Fair Work Commission in response to being given an adequate opportunity to be heard in relation to the following:
- (a) an application under section 56, as mentioned in subsection 57(1);
 - (b) an application under subsection 60(1), as mentioned in subsection 60(4);
 - (c) an application under subsection 61(1), as mentioned in subsection 61(4);
 - (d) an application under subsection 62(1), as mentioned in subsection 62(4).

Membership

- (3) The group consists of such members as the Minister from time to time appoints.
- (4) The Minister must ensure that:
- (a) one of the members is a person who is a member of, or who is nominated by, an employee organisation that would be entitled to represent the industrial interests of one or more employees if those employees became transition employees of a closing employer; and
 - (b) one of the members is a person who is a member of, or who is nominated by, an employee organisation that would be entitled to represent the industrial interests of one or more employees if those employees became transition employees of a dependent employer; and

- (c) one of the members is a person who is a member of, or who is nominated by, an employer organisation that would be entitled to represent the industrial interests of an employer if the employer became a closing employer; and
 - (d) one of the members is a person who is a member of, or who is nominated by, an employer organisation that would be entitled to represent the industrial interests of an employer if the employer became a dependent employer.
- (5) A member of the group holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.
- Note: A member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.
- (6) The Minister may revoke a member's appointment to the group.
- (7) The Minister may appoint one of the members of the group as the Chair.

No remuneration

- (8) A member of the group is not to be paid any remuneration.
- (9) The office of a member of the group is not a public office within the meaning of the *Remuneration Tribunal Act 1973*.

Operation of group

- (10) The group may operate in the way it determines.

Division 5—Information management

64 CEO may require information or documents

- (1) The CEO may, by notice in writing given to a closing employer or dependent employer, require the employer to give the CEO any information (including personal information), or produce to the CEO any documents, specified in the notice that are relevant to the operation of this Part.
- (2) Without limiting subsection (1), the following kinds of information may be specified in a notice under that subsection:
 - (a) the names of participating employees of the closing employer or dependent employer;
 - (b) the occupations, qualifications and skills sets of those employees;
 - (c) contact details for those employees;
 - (d) information relating to the employer's compliance with section 58, 59, 60 or 61.
- (3) The employer must give the information or produce the documents:
 - (a) in the manner specified in the notice under subsection (1); and
 - (b) before the end of the following period:
 - (i) the period specified in the notice (which must end at least 14 days after the day the notice is given), unless subparagraph (ii) applies;
 - (ii) if the CEO allows a longer period—that longer period.
- (4) A notice under subsection (1) must set out the effect of the following provisions:
 - (a) subsection (5) (a civil penalty for failing to comply with the notice);
 - (b) section 137.1 of the *Criminal Code* (about an offence for giving false or misleading information);
 - (c) section 137.2 of the *Criminal Code* (about an offence for producing false or misleading documents).

Civil penalty

- (5) An employer contravenes this subsection if:
- (a) the employer is given a notice under subsection (1); and
 - (b) the employer fails to give the information or produce the documents in accordance with this section.

Civil penalty: 60 penalty units.

65 Inspection and retention of documents and provision of certified copies of documents

CEO may inspect and copy documents

- (1) The CEO may:
- (a) inspect a document produced under subsection 64(1); and
 - (b) make and retain copies of the whole or a part of the document.

CEO may retain documents

- (2) The CEO may take possession of a document produced under subsection 64(1), and retain it for as long as is reasonably necessary.

Certified copies of documents

- (3) The person otherwise entitled to possession of a document produced under subsection 64(1) is entitled to be supplied, as soon as practicable, with a copy certified by the CEO to be a true copy.
- (4) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (5) Until a certified copy is supplied, the CEO must provide the person otherwise entitled to possession of the document, or a person authorised by that person, reasonable access to the document for the purposes of inspecting and making copies of the document.

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66 CEO may provide information to employers

- (1) The CEO may disclose information (including personal information) obtained by the CEO in connection with the operation of this Part to a closing employer, dependent employer or receiving employer.
- (2) Without limiting subsection (1), the information that may be disclosed to a receiving employer may be one or more of the following:
 - (a) the names of participating employees of a closing employer or dependent employer;
 - (b) the occupations, qualifications and skills sets of those employees;
 - (c) contact details for those employees.

Division 6—Enforcement of civil penalty provisions

67 Enforcement of civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the CEO is an authorised applicant in relation to the civil penalty provisions of this Act.
- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following is also an authorised applicant in relation to subsection 60(7), 61(9) or 62(9):
 - (a) a person that is an employee organisation that is entitled to represent the industrial interests of one or more of the transition employees of the closing employer or dependent employer that is alleged to have contravened that subsection;
 - (b) a transition employee of that closing employer or dependent employer.

Relevant court

- (4) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
 - (a) the Federal Court of Australia;
 - (b) the Federal Circuit and Family Court of Australia (Division 2);
 - (c) a court of a State or Territory that has jurisdiction in relation to the matter.

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Pecuniary penalty orders

- (5) Subsection 82(1) of the Regulatory Powers Act, to the extent that Part 4 of that Act relates to this Part, has effect as if an application made under that subsection were an application for an order that a person, who is alleged to have contravened a civil penalty provision, pay a pecuniary penalty.
- (6) In relation to an application under subsection 82(1) of the Regulatory Powers Act, to the extent that Part 4 of that Act relates to this Part, if a court is satisfied that a person has contravened a civil penalty provision of this Act, then, despite subsection 82(3) of that Act, the court is empowered under subsection 82(3) of that Act to make an order:
 - (a) that the person pay a pecuniary penalty; and
 - (b) that the pecuniary penalty, or a part of the pecuniary penalty, be paid to the Commonwealth, a particular organisation (within the meaning of the *Fair Work Act 2009*) or a particular person.
- (7) To the extent that the court orders that the pecuniary penalty, or a part of the pecuniary penalty, be paid to the Commonwealth, section 83 of the Regulatory Powers Act applies to the pecuniary penalty or the part of the pecuniary penalty.
- (8) To the extent that the court orders that the pecuniary penalty, or a part of the pecuniary penalty, be paid to a particular organisation (within the meaning of the *Fair Work Act 2009*) or a particular person, the pecuniary penalty, or the part of the pecuniary penalty, may be recovered as a debt due to the organisation or person.

67A Compensation orders

In addition to the powers that a court has under Part 4 of the Regulatory Powers Act, to the extent that Part relates to this Part, the court may, if it is satisfied that a person has contravened a civil penalty provision of this Act, make an order under this section awarding compensation for loss that a person has suffered because of the contravention.

Division 6A—Injunctions

67B Injunctions

Enforceable provisions

- (1) The provisions of this Part are enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person

- (2) For the purposes of Part 7 of the Regulatory Powers Act, the CEO is an authorised person in relation to the provisions mentioned in subsection (1).
- (3) For the purposes of Part 7 of the Regulatory Powers Act, each of the following is also an authorised person in relation to subsection 60(7), 61(9) or 62(9):
- (a) a person that is an employee organisation that is entitled to represent the industrial interests of one or more of the transition employees of the closing employer or dependent employer that is alleged to have contravened that subsection;
 - (b) a transition employee of that closing employer or dependent employer.

Relevant court

- (4) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit and Family Court of Australia (Division 2);
 - (c) a court of a State or Territory that has jurisdiction in relation to the matter.

Division 6B—Costs

67C Costs

- (1) A person (the *first person*) must bear the person's own costs in relation to:
 - (a) an application under subsection 82(1) of the Regulatory Powers Act, to the extent that Part 4 of that Act relates to this Part; or
 - (b) an application under subsection 121(1) or (2) of the Regulatory Powers Act, to the extent that Part 7 of that Act relates to this Part.
- (2) However, the court hearing that application may make an order under this subsection that the first person bear some or all of the costs of another person in relation to the application if:
 - (a) the court is satisfied that the first person made the application, or the first person responded to the application, vexatiously or without reasonable cause; or
 - (b) the court is satisfied that the first person's unreasonable act or omission caused the other person to incur the costs; or
 - (c) the court is satisfied that it should have been reasonably apparent to the first person that the first person's application, or the first person's response to the application, had no reasonable prospect of success.

Division 7—Additional functions of CEO

68 Additional functions of CEO

Promoting compliance with this Part

- (1) The CEO must promote compliance with this Part, including by providing education, assistance, advice and information to closing employers, dependent employers, receiving employers and employees of those employers, including information relating to the following:
 - (a) the CEO's power to make an application of the kind referred to in subsection 62(1);
 - (b) the CEO's power to make an application under Part 4 of the Regulatory Powers Act to the extent that Act relates to this Part.

Monitoring compliance with this Part

- (2) The CEO must monitor compliance with this Part.

Review of operation of this Part

- (3) The CEO must conduct, or cause to be conducted, a review into the operation of this Part, including consideration of whether any amendments to this Part are desirable.
- (4) The CEO must ensure that the review is completed before the end of the period of 12 months beginning on the day on which this section commences.
- (5) If the CEO conducts the review, the CEO must give the Minister a written report of the review.
- (6) If the CEO does not conduct the review, the person or persons conducting the review must give the CEO and the Minister a written report of the review.
- (7) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

Part 6—Miscellaneous

Division 1—Preliminary

69 Simplified outline of this Part

This Part contains miscellaneous provisions relating to the establishment and operation of the Authority, including indemnity from liability, information sharing and reporting requirements.

The Board is to establish a Stakeholder Panel to provide information and non-binding advice to the Board.

The Board and the CEO may delegate certain functions and powers under this Act.

There are to be reviews of the operation of this Act.

The Minister may make rules for the purposes of this Act.

Division 2—Miscellaneous

70 Stakeholder Panel

- (1) The Board must establish, in writing, a Stakeholder Panel.
- (2) The Stakeholder Panel's function is to, at the direction of the Board, give advice and information to the Board.
- (3) The Stakeholder Panel consists of such persons as the Board from time to time appoints under subsection (4). In appointing members to the Stakeholder Panel, the Board is to have regard to ensuring an appropriate balance of skills, knowledge or expertise in fields related to the functions of the Authority.
- (4) Each member of the Stakeholder Panel is to be appointed by the Board by written instrument, and holds office for the period specified in the instrument.

Note 1: A member may be reappointed (see section 33AA of the *Acts Interpretation Act 1901*).

Note 2: An appointment may be revoked (see subsection 33(3) of the *Acts Interpretation Act 1901*).
- (5) An appointment to the Stakeholder Panel is not a public office within the meaning of the *Remuneration Tribunal Act 1973*.
- (6) The Board must determine, in writing, the terms and conditions of appointment of the members of the Stakeholder Panel.
- (7) The Board must, in writing, determine:
 - (a) the Stakeholder Panel's terms of reference; and
 - (b) the procedures to be followed by the Stakeholder Panel; and
 - (c) after consulting the Stakeholder Panel, particular matters in relation to which advice or information is to be given to the Board as mentioned in subsection (2).
- (8) In providing advice or information to the Board, the Stakeholder Panel must have regard to the object of this Act.
- (9) The Board is not obliged to accept, or act on, any advice or information given to the Board by the Stakeholder Panel.

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71 Liability for damages

None of the following is liable to an action or other proceeding for damages for, or in relation to, an act or matter in good faith done, or omitted to be done, in the performance or purported performance of any function, or in the exercise or purported exercise of any power, conferred by this Act:

- (a) a Board member;
- (b) the CEO;
- (c) a person who is a member of the staff of the Authority;
- (d) a person whose services are made available to the Authority under section 52.

72 Minister may request reports and advice

- (1) The Minister may request the following:
 - (a) that the CEO provide to the Minister a report or advice on a matter relating to any of:
 - (i) the CEO's functions, powers or duties; or
 - (ii) the Authority's functions, powers or duties;
 - (b) that the Board provide to the Minister a report or advice on a matter relating to any of the Board's functions, powers or duties.
- (2) A request under subsection (1) must be in writing. The Minister may include in such a request terms of reference (including time frames) for the report or advice.
- (3) The CEO or the Board (as applicable) must comply with such a request.

Note: The Board is responsible for ensuring the CEO complies with a request made under this section (see subsection 19(1)).
- (4) A request is not a legislative instrument.
- (5) The Minister may withdraw or amend such a request at any time before the relevant report or advice is given to the Minister.

73 Consulting on corporate plan

In preparing a corporate plan under section 35 of the PGPA Act, the Board must consult the Minister.

74 Annual report

The annual report prepared by the Board and given to the Minister under section 46 of the PGPA Act for a period must include:

- (a) particulars of any directions given to the Board by the Minister under section 20 of this Act during the period to which the report relates; and
- (b) a report on the operation of the Act in the period, including in response to the needs and circumstances of communities, regions, industries and workers that are, or will be, significantly affected by Australia's transition to a net zero emissions economy.

75 Publication of reports etc.

- (1) The Minister may publish, on the internet or in any other way the Minister considers appropriate, a report, document or information given to the Minister or the Finance Minister under paragraph 19(1)(b) of the PGPA Act.
- (2) The Minister must omit from the published report, document or information any information that the Board is satisfied in accordance with subsection (3) is commercial-in-confidence.
- (3) The Board may be satisfied that information is commercial-in-confidence if a person demonstrates to the Board that:
 - (a) release of the information would cause competitive detriment to the person; and
 - (b) the information is not in the public domain; and
 - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
 - (d) the information is not readily discoverable.

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- (4) The Minister must omit from the published report, document or information any national security information or sensitive financial intelligence information.

76 Disclosure of information—government related entities and individuals

Disclosures by the Board or the CEO

- (1) Subject to subsections (6) to (9), the Board may disclose information (not including personal information) to:
- (a) an entrusted entity; or
 - (b) an individual who holds any office or appointment under a law of the Commonwealth or of a State or Territory;
- if the disclosure is reasonably necessary to:
- (c) assist the Board or the Authority to perform any of their functions or duties, or to exercise any of their powers; or
 - (d) assist the entity or individual to perform any of their functions or duties, or to exercise any of their powers.

Note 1: For limitations in relation to paragraph (d), see subsection (8).

Note 2: Section 16 sets out the functions of the Authority and section 19 sets out the functions of the Board.

Note 3: The Board may delegate the Board's functions and powers under this section (see subsection 79(2)).

- (2) Subject to subsections (6) to (9), the CEO may disclose information (not including personal information) to:
- (a) an entrusted entity; or
 - (b) an individual who holds any office or appointment under a law of the Commonwealth or of a State or Territory;
- if the disclosure is reasonably necessary to:
- (c) assist the CEO or the Authority to perform any of their functions or duties, or to exercise any of their powers; or
 - (d) assist the entity or individual to perform any of their functions or duties, or to exercise any of their powers.

Note 1: For limitations in relation to paragraph (d), see subsection (8).

- Note 2: Section 16 sets out the functions of the Authority and section 40 sets out the functions of the CEO.
- Note 3: The CEO may delegate the CEO's functions and powers under this section (see subsection 80(3)).
- Note 4: The CEO may disclose information (including personal information) to employers in connect with the operation of Part 5 (see section 66 and subsection (7) of this section)).

Disclosures to the Board or the CEO

- (3) An entrusted entity, or an individual who holds any office or appointment under a law of the Commonwealth or of a State or Territory, may disclose information (not including personal information) to the Board if the disclosure is reasonably necessary to assist the Board or the Authority to perform any of their functions or duties, or to exercise any of their powers.
- (4) An entrusted entity, or an individual who holds any office or appointment under a law of the Commonwealth or of a State or Territory, may disclose information (not including personal information) to the CEO if the disclosure is reasonably necessary to assist the CEO or the Authority to perform any of their functions or duties, or to exercise any of their powers.
- (5) Information may be disclosed under any of subsections (1) to (4) on the initiative, or at the request, of the Board, CEO, entrusted entity or individual.

Limitations relating to disclosure of information

- (6) Subsections (1) and (2) do not apply to a disclosure of information if the information was given in compliance with a notice issued under subsection 64(1) (CEO may require information or documents).
- (7) Subsection (2) does not apply in relation to a disclosure by the CEO under subsection 66(1) (CEO may provide information to employers).
- (8) Paragraphs (1)(d) and (2)(d) do not apply in relation to the disclosure of information to:

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- (a) an individual, if the office or appointment of the individual is under a law of a State or Territory; or
- (b) an entrusted entity, if the entity is covered by paragraph (d) or (e) of the definition of **government entity** in the *A New Tax System (Australian Business Number) Act 1999*.

Note 1: The effect of this subsection is that this section does not authorise the disclosure of information to certain entities or individuals to assist such entities or individuals in performing any of their functions or duties, or to exercise any of their powers.

Note 2: For the purposes of paragraph (b), see the definition of **entrusted entity** in subsection 5(1) of this Act.

- (9) Subsections (1) to (4) do not apply to a disclosure of information if:
- (a) the disclosure would, apart from this section, constitute an offence against a law of the Commonwealth; and
 - (b) that law does not contain an exception or defence for a disclosure authorised by a law of the Commonwealth.

Note: This section constitutes an authorisation for the purposes of other laws.

77 Use of information—government related entities and individuals

- (1) Information disclosed to the Board under subsection 76(3) may be used by the Board for the purposes of performing any functions or duties, or exercising any powers, of the Board or the Authority.

Note: The Board may delegate the Board's power under this subsection (see subsection 79(2)).

- (2) Information disclosed to the CEO under subsection 76(4) may be used by the CEO for the purposes of performing any functions or duties, or exercising any powers, of the CEO or the Authority.

Note: The CEO may delegate the CEO's power under this subsection (see subsection 80(3)).

- (3) Information disclosed to an entrusted entity or individual in accordance with section 76 may be used by the entity or individual:
- (a) for purposes directly or indirectly related to the performance of any functions or duties, or the exercise of any powers, of the Board, the CEO or the Authority; or

- (b) for the purposes of performing any of the functions or duties, or exercising any of the powers, of the entity or individual.

Note 1: This section constitutes an authorisation for the purposes of other laws.

Note 2: Subsection 76(8) limits the purposes for which information may be disclosed to certain entrusted entities or individuals who hold an office or appointment under a law of a State or Territory (see also paragraphs 76(1)(d) and (2)(d)).

78 Disclosure and use of information—other entities

- (1) The Board or the CEO may disclose information (not including personal information) to an entity covered by subsection (2) only if:
 - (a) the Board or the CEO (as applicable) is satisfied that the disclosure is reasonably necessary to assist the Authority to perform a function mentioned in paragraph 16(1)(a) or (b); and
 - (b) an arrangement between the Board and the entity is in force under subsection (4) of this section; and
 - (c) the arrangement permits the disclosure of the information to the entity.
- (2) The following entities are covered by this subsection if the entity is not an entrusted entity or an individual who holds an office or appointment under a law of the Commonwealth or of a State or Territory:
 - (a) an individual;
 - (b) a body corporate;
 - (c) a trust;
 - (d) a corporation sole;
 - (e) a body politic;
 - (f) a local governing body.
- (3) Information disclosed to an entity in accordance with subsection (1) may be used by the entity only if:
 - (a) the use is for the purposes of assisting the Authority to perform a function mentioned in paragraph 16(1)(a) or (b); and

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- (b) an arrangement between the Board and the entity is in force under subsection (4) of this section; and
 - (c) the arrangement permits the use of the information by the entity.
- (4) For the purposes of subsections (1) and (3), the Board may make an arrangement, in writing, with an entity relating to the disclosure of information to, and the use of information by, the entity.
- Note: Subsection (1) does not authorise the disclosure of information, and subsection (3) does not authorise the use of that information, unless an arrangement is in force under this subsection authorising the disclosure and use of the information (see paragraphs (1)(b) and (3)(b)).
- (5) Before making an arrangement with an entity under subsection (4), the Board must have regard to the following:
- (a) the purposes for which the entity will or may use the information;
 - (b) whether the entity has appropriate arrangements in place relating to the access to, and storage of, information that may be disclosed to the entity by the Board or the CEO;
 - (c) whether the disclosure of information to the entity (whether generally or in specified circumstances) would be likely to result in harm to a person to whom the information relates;
 - (d) if disclosure would be likely to result in harm as mentioned in paragraph (c)—whether provision could be included in the arrangement to appropriately manage that risk of harm.
- (6) Without limiting subsection (4), an arrangement made under that subsection must make provision for the confidentiality of information disclosed in accordance with the arrangement.
- (7) The Board must publish, on the internet or in any other way the Board considers appropriate, the following in relation to each arrangement that is in force under subsection (4):
- (a) the name of the entity who is a party to the arrangement;
 - (b) a summary of the arrangement, including the purposes for which information may be disclosed or used in accordance with the arrangement;
 - (c) such other information as the Board considers appropriate.
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- (8) An arrangement made under subsection (4) is not a legislative instrument.

Note: This section constitutes an authorisation for the purposes of other laws.

79 Delegation by the Board

- (1) The Board may, in writing, delegate the Board's functions or powers under the following provisions to the CEO:
- (a) subsections 52(2) and (4) (arrangements for, and directions to, persons assisting the Authority);
 - (b) subsection 53(1) and (3) (engaging consultants);
 - (c) section 70 (Stakeholder Panel);
 - (d) subsection 75(3) (determining information is commercial-in-confidence);
 - (e) subsections 78(4) to (7) (arrangements for sharing and use of information).

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) The Board may, in writing, delegate the Board's functions or powers under section 76 or 77 (disclosure and use of information) to any of the following:
- (a) a member of the staff of the Authority;
 - (b) a person whose services are made available to the Authority under subsection 52(1);
 - (c) a person engaged as a consultant under subsection 53(1).
- (3) The Board must not delegate a function or power to a person under subsection (2) unless the Board is satisfied that the person has suitable qualifications, training or experience to properly perform the function or exercise the power.
- (4) If the Board delegates a function or power under subsection (1) of this section to the CEO, other than the function mentioned in paragraph (1)(e), the CEO may, in writing, subdelegate the function or power to a member of the staff of the Authority who is an SES employee or an acting SES employee.

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Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (5) In exercising any powers or performing any functions under a delegation or subdelegation, the delegate or subdelegate must comply with any directions of the Board.
- (6) Sections 34AA to 34A of the *Acts Interpretation Act 1901* apply in relation to a subdelegation in a corresponding way to the way in which they apply in relation to a delegation.
- (7) A delegation by the Board continues in force despite a change in the membership of the Board.
- (8) A delegation may be varied or revoked by the Board (whether or not there has been a change in the membership of the Board).

80 Delegation by the CEO

- (1) The CEO may, in writing, delegate all or any of the CEO's functions, powers or duties under this Act to a member of the staff of the Authority who is an SES employee or an acting SES employee.

Note 1: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

Note 2: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (2) However, subsection (1) does not apply in relation to the following:
 - (a) subsection 6(10) (making of guidelines);
 - (b) section 9 (specification of trigger notice);
 - (c) subsections 56(1), (3) and (4) (application for community of interest determination);
 - (d) subsection 62(1) (application for Fair Work Commission order);
 - (e) subsections 68(3) and (5) (review of operation of Part 5).
- (3) The CEO may, in writing, delegate the CEO's functions or powers under section 76 or 77 (disclosure and use of information) to any of the following:

- (a) a member of the staff of the Authority;
 - (b) a person whose services are made available to the Authority under subsection 52(1);
 - (c) a person engaged as a consultant under subsection 53(1).
- (4) The CEO must not delegate a function or power to a person under subsection (3) unless the CEO is satisfied that the person has suitable qualifications, training or experience to properly perform the function or exercise the power.
- (5) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the CEO.

80A Reviews of the operation of this Act

- (1) The Minister must cause an independent review to be conducted of the operation of this Act:
- (a) on a recommendation of the Board under subsection (3); or
 - (b) if no recommendation is made by the Board within the period of 9 years after the commencement of this Act—before the end of the period of 10 years after the commencement of this Act; or
 - (c) if no recommendation is made by the Board within the period of 9 years after the completion of a previous review under this subsection—before the end of the period of 10 years after the completion of the previous review.
- (2) The Minister must specify:
- (a) terms of reference for the review, which must include a review of the operation of Part 5 of the Act; and
 - (b) how the review is to be conducted; and
 - (c) the timing of the review.

Board's recommendation

- (3) The Board may, in writing, recommend to the Minister that a review be conducted of the operation of this Act. The Board must set out the reasons for the recommendation.

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- (4) The Board may include in a recommendation made under subsection (3) advice on the matters mentioned in subsection (2).
- (5) Before making a recommendation under subsection (3), the Board must consider the changing needs or circumstances of communities, regions, industries and workers that are, or will be, significantly affected by Australia's transition to a net zero emissions economy.
- (6) The Board must cause a copy of the recommendation to be published on the Authority's website.

Public consultation

- (7) A review under subsection (1) must make provision for public consultation.

Report

- (8) The person or persons who conduct the review must give the Minister a written report of the review.
- (9) The Minister must cause a copy of:
 - (a) the terms of reference for the review; and
 - (b) a report under subsection (8) in relation to the review;to be tabled in each House of the Parliament within 15 sitting days of that House after the review is completed.

When review is completed

- (10) For the purposes of this section, a review is completed when the report of the review is given to the Minister under subsection (8).

Government response to recommendations

- (11) If a report of a review sets out one or more recommendations to the Commonwealth Government:
 - (a) as soon as practicable after receiving the report, the Minister must cause to be prepared a statement setting out:
 - (i) the Commonwealth Government's response to each of those recommendations; and

- (ii) if the Commonwealth Government has not accepted a recommendation—the reasons for not accepting the recommendation; and
- (b) within 6 months after receiving the report, the Minister must cause copies of the statement to be tabled in each House of the Parliament.

81 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (3) Despite subsection 14(2) of the *Legislation Act 2003*, an instrument under this Act may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

*[Minister's second reading speech made in—
House of Representatives on 27 March 2024
Senate on 24 June 2024]*

(43/24)
