

c2024-094C
GRNS--The Greens

LEGISLATIVE COUNCIL

Energy Security Corporation Bill 2024

First print

Proposed amendments

No. 1 Objects of Energy Security Corporation

Page 3, clause 6. Insert after line 17—

- (b1) to create high-quality, safe and secure local jobs,
- (b2) to provide broad social and economic benefits for the communities in which the Corporation invests, including, for example, the procurement of local jobs and content,

No. 2 Membership of Board

Page 5, clause 13. Insert after line 25—

- (5A) At least 1 Board member must be a worker representative nominated by Unions NSW.

No. 3 Eligibility for appointment to Board

Page 6, clause 14. Insert after line 2—

- (2) Subsection (1) does not apply to the Board member nominated by Unions NSW under section 13(5A).

No. 4 Committees

Page 7, clause 17. Insert after line 1—

- (4) Despite subsections (1)–(3), the Board must establish a committee to advise the Board on the development and enforcement of best practice labour principles for projects in which the Corporation makes, or proposes to make, an investment, including, but not limited to, best practice principles relating to the following—
 - (a) industrial relations,
 - (b) work health and safety,
 - (c) trainee and apprenticeship numbers,
 - (d) local content and procurement.

No. 5 Content of Investment Mandate

Page 9, clause 26(1). Insert after line 11—

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- (a1) must have regard to best practice labour principles, including, but not limited to, best practice principles relating to the following—
 - (i) the promotion of secure work,
 - (ii) gender equality,
 - (iii) collective bargaining,
 - (iv) work health and safety,
 - (iv) First Nations participation, and

No. 6 **Content of Investment Mandate**

Page 9, clause 26(2). Insert after line 18—

- (c1) the types of equity interests the Corporation may acquire,
- (c2) the types of entities in which the Corporation may acquire equity interests,

No. 7 **Board to prepare investment and risk policies**

Page 10, clause 29(1). Insert after line 29—

- (c1) the impact of the Corporation's investments on First Nations peoples,
- (c2) environmental, labour, social and governance matters the Corporation must consider in relation to the Corporation's investment functions,

No. 8 **Compliance with investment and risk policies**

Page 10, clause 31. Insert after line 38—

- (3) The Corporation must take active measures to ensure—
 - (a) the Corporation complies with the Investment Mandate and investment and risk policies in relation to all of its investments, and
 - (b) the ongoing compliance by each investment entity with best practice labour principles.
- (4) For subsection (3), **active measures** may include the following—
 - (a) requiring periodic written declarations from a relevant entity attesting to its compliance,
 - (b) entering into a memorandum of understanding with the regulator to provide additional resources to ensure the active inspection and investigation of reported breaches,
 - (c) other matters the Board considers necessary to ensure ongoing compliance with best practice labour principles by relevant entities.
- (5) The Corporation must make available a publicly accessible form for submitting to the Corporation allegations of non-compliance with best practice labour principles by an investment entity.
- (6) If the Corporation receives an allegation of non-compliance with best practice labour principles by an investment entity, the Corporation must—
 - (a) if the allegation is made by a health and safety representative for a worker at the investment entity—investigate the allegation and, if appropriate, secure assurances and a commitment from the entity that the alleged breach has been resolved, or
 - (b) if the allegation is made by a member of the public—provide a response to the allegation, including a statement of how the Corporation has resolved or otherwise dealt with the allegation and the reasons for the response.
- (7) In this section—
health and safety representative has the same meaning as in the *Work Health and Safety Act 2011*.

investment entity—

- (a) means an entity in relation to which the Corporation exercises its investment function (the *primary entity*), and
 - (b) includes—
 - (i) a subsidiary of the primary entity, and
 - (ii) a labour entity contracted or subcontracted by the primary entity.
- regulator* has the same meaning as in the *Work Health and Safety Act 2011*.

No. 9 **Investment function**

Page 11, clause 33. Insert after line 16—

- (4) In exercising its investment function, the Corporation will preference investments that result in the Corporation—
 - (a) holding a majority financial stake in a project, or
 - (b) having equity in a project, and

No. 10 **Complying investments**

Page 12, clause 34

(8). Insert after line 8—

- (b1) in projects that deliver broad social and economic benefits for the communities in which the investments occur, and
- (b2) in businesses that comply with best practice labour principles,

No. 11 **Prohibited technologies**

Page 12, clause 37. Insert after line 38—

- (2A) An investment by the Corporation must not directly finance—
 - (a) the extraction of coal or natural gas, or
 - (b) the construction of pipeline infrastructure primarily for the extraction or transport of natural gas, or
 - (c) the logging of native forests.

No. 12 **Requests for payments from ESC Fund into Operational Fund**

Page 14, clause 41. Insert after line 11—

- (5) If, in the Corporation's opinion, the uncommitted balance of the ESC Fund is not sufficient to achieve the Corporation's objects during a particular period, the Corporation may, by written notice, ask the Treasurer to pay an additional amount of money, in accordance with section 39, into the ESC Fund in advance of the Corporation making a request for the amount under subsection (1).

No. 13 **Corporation must realise equity interests in particular circumstances**

Page 16. Insert after line 15—

52 Corporation must realise equity interests in certain circumstances

- (1) This section applies if—
 - (a) the Corporation holds one or more equity interests in an entity, and
 - (b) the Corporation becomes aware of the fact that—
 - (i) because of one or more of the activities being carried out by the entity, the investment in the entity is not longer a complying investment, or
 - (ii) one or more of the activities of the entity are being carried out in breach of work health and safety laws, or

- (iii) one or more of the activities of the entity are being carried out in breach of best practice labour principles, including principles set out in any of the following or as prescribed by the regulations—
 - (A) the Investment Mandate, or
 - (B) the Corporation’s investment strategy, or
 - (C) guidelines issued by the Board.

- (2) The Corporation must, as soon as practicable after becoming aware of that fact, realise the Corporation’s equity interests in the entity.

No. 14 **Complying investments**

Page 22, proposed Schedule 1, clause 9(1)(b), line 39. Omit “a conflict”. Insert instead “an actual or perceived conflict”.

No. 15 **Best practice labour principles**

Page 26. Insert after line 6—

Schedule 3A Best practice labour principles

Schedule 3, definition of “best practice labour principles”

Best practice principle	Example subject areas related to best practice
Work health and safety (WHS) systems and standards	<p>A demonstrated history of, and commitment to, compliance with work health and safety laws, considering, for example—</p> <ul style="list-style-type: none"> (a) the organisation’s history of adverse findings, penalty infringement notices, warnings, infringements and penalties under the <i>Work Health and Safety Act 2011</i> and other related legislation, over the past 10 years, and (b) the organisation’s history and registration of workers compensation, including policy number, and (c) the organisation’s processes and procedures governing workforce consultation on WHS matters, and (d) the levels of knowledge and experience in the use of digital engineering to reduce WHS risks relevant for the project, and (e) work health and safety management plans in place that specifically focus on managing risks rather than the consequences of risks, and (f) the organisation’s management of sites and site establishment, including, for example— <ul style="list-style-type: none"> (i) preparatory works, including security, site clearances, comprehensive WHS site inductions for workers and site amenities, and (ii) access to, and egress from, sites and labour movement on sites.

Best practice principle	Example subject areas related to best practice
Industrial relations	<p data-bbox="772 315 1347 371">A demonstrated history of, and commitment to, positive industrial relations, considering, for example—</p> <ul style="list-style-type: none"> <li data-bbox="772 376 1414 432">(a) the organisation’s plan for the management of industrial relations for the project, and <li data-bbox="772 436 1414 517">(b) the organisation’s adoption or provision of best practice industrial relations for employees and contractors in the workplace, including, for example— <ul style="list-style-type: none"> <li data-bbox="842 521 1414 629">(i) administration—how the organisational structure for the project affects labour productivity, including the identification of staff and reporting lines, and <li data-bbox="842 633 1414 714">(ii) risk assessment—how industrial relations risks the project may face are identified and how those risks will be managed, and <li data-bbox="842 719 1414 848">(iii) subcontractor management—how the organisation manages subcontractors and subcontractor’s employees, including the selection and mobilisation of subcontractors, trade packages, labour hire and apprentices, and <li data-bbox="842 853 1414 909">(iv) conditions of employment—how terms and conditions of employment are established, and <li data-bbox="842 913 1414 1093">(v) recruitment of direct labour—how direct labour will be attracted, recruited and retained depending on the size, scope and location of the project, and how issues relating to skills shortages, interstate and off-shore sourcing of labour, training and competency assurance will be addressed, and <li data-bbox="842 1097 1414 1153">(vi) performance metrics—how labour performance is measured to ensure projects are on track, and <li data-bbox="842 1158 1414 1265">(vii) employee participation—how employee issues are heard, addressed and resolved in accordance with the relevant industrial instruments or policies, and <li data-bbox="772 1270 1414 1350">(c) any history of declarations or non-compliance under the <i>Fair Work Act 2009</i> of the Commonwealth in the last 5 years, including— <ul style="list-style-type: none"> <li data-bbox="842 1355 1209 1384">(i) convictions for offences, and <li data-bbox="842 1388 1222 1417">(ii) enforceable undertakings, and <li data-bbox="842 1422 1129 1451">(iii) infringement notices.
Commitment to apprentices and trainees	<p data-bbox="772 1458 1347 1538">A demonstrated history of, and commitment to, training, including the engagement of apprentices and trainees, considering, for example—</p> <ul style="list-style-type: none"> <li data-bbox="772 1543 1382 1599">(a) the organisation’s compliance with the Infrastructure Skills Legacy Program, and <li data-bbox="772 1603 1414 1659">(b) the number of apprentices and trainees to be employed as part of the project, and <li data-bbox="772 1664 1382 1720">(c) specific training and development plans that will be provided in relation to the work, and <li data-bbox="772 1724 1414 1805">(d) the organisation’s history of supporting the delivery of nationally endorsed building and construction competencies, and <li data-bbox="772 1809 1414 1897">(e) other practices or programs used by the organisation to improve opportunities for apprentices and trainees, including training and advancement.

No. 16 **Best practice labour principles**

Page 27, proposed Schedule 3. Insert after line 6—

best practice labour principles means the best practice principles set out in Schedule 3A.