



Electrical Trades Union

Submission to the Senate Economics Legislation Committee on the Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019

08 October 2019

Introduction

1. The Electrical Trades Union of Australia (“the ETU”) is the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents over 60,000 electrical and electronic workers around the country and the CEPU as a whole represents over 100,000 workers nationally.
2. The ETU welcomes the opportunity to make a submission on the Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019
3. Australia’s current state of energy policy paralysis is being exploited by private energy companies with ever increasing profits coupled with ever decreasing service levels. A recent report by the Australia Institute, *The Costs of Market Experiments: Electricity Consumers Pay the Price for Competition, Privatisation, Corporatisation and Marketization*¹ shows just how wasteful the artificial structure of private competition that has been imposed on the electricity sector is.
4. The report clearly articulates the costs drivers;
 - Real output per employees in the electricity sector has fallen by 37% between 2000 and 2018, due to the excessive allocation of ultimately unproductive labour to advertising, sales, contract administration and other activities associated with privatisation.
 - Productivity growth has been worse than for any other industry in Australia, completely contrary to the assumption that privatisation enhances efficiency.
 - The number of sales-staff employed by electricity companies has grown almost 400% since the industry began to be privatised in the mid-1990s and the number of managers has grown over 200%.
 - Over the same period, the number of electrical tradespeople and other workers involved in actual production has grown just 21%.
 - Electricity sector now spends more on finance and banking costs than the actual fossil fuels that power electricity generation.
5. The proposed Bill does not address these issues.
6. Fully re-nationalising the electricity industry is the only sensible solution to drive down costs and eradicate energy market misconduct.

The Answer to Exploitative Privatisation is not more Privatisation

7. The Bill in effect will create a mechanism which provides powers to the Federal Treasurer to seek court orders to further privatise the electricity industry and will further reduce the competitiveness of those States that have retained public ownership of their essential electricity assets.
8. It is noted that the forced divestiture arrangements have exempted privatisation of wholly public owned assets (ie an authority of the Commonwealth, a State or Territory) but the same protection has not been extended to partially owned assets (such as Ausgrid or Endeavour Energy).
9. With respect to divestiture of authorities, the Bill requires divestiture to another authority that “is genuinely in competition in relation to electricity markets”. No provision is made for circumstances where there is no such competing authority.

1. ¹ [The Costs of Market Experiments](#)

10. The forced divestiture arrangements will have one of two effects. Either they will require partially public owned assets to be divested to private enterprise or they will force one public owned asset to be transferred into another public owned entity.
11. In the former case, what we see is the creation of a boutique regulatory power, which doesn't exist in any other industry, that will force a State or Territory Government to divest its partially public owned assets to a private provider. The legislation is completely opaque in detailing which overseas owned private corporation will then get its hands on our monopoly assets, if it will pay for it and if so how much, who it will pay and what arrangements are made for the employees associated with the divestment. Indeed, there is no requirement whatsoever for the acquirer to accept any transfer of employees as a result of the divestiture.
12. In its current form, forced divestiture will simply encourage concentration of market share within the State-owned system, removing the limited benefits currently derived in States with multiple authorities, assuming divestiture even leads to transfer of assets to another State-owned entity.

Failure to consider employees

13. Many bodies corporate within the electricity industry, writ large, are significant employers. Tens of thousands of employees rely on these companies for good, stable, secure jobs.
14. Nowhere does this Bill consider the impact of forced divestiture upon the affected workforce. Nowhere does this Bill provide any guarantee for ongoing security of employment, nor does it provide for ongoing continuity of employees' terms and conditions of employment.
15. Instead, reliance is (presumably) placed upon the transfer of business provisions in the *Fair Work Act 2009*, provisions drafted over a decade ago which:
 - a. did not and could not have envisaged the complexities arising from divestiture orders; and
 - b. can in no way be relied upon to ensure ongoing security of employment.
16. The Bill should be amended to:
 - a. guarantee employment for employees caught up in a divestiture order; and
 - b. expressly preserve the terms and conditions of employment under an industrial instrument for those employees

Cost of Red Tape will be Borne by Consumers

17. The new regulatory environment imposed by the proposed Bill will undoubtably come at the expense of consumers. Firstly, the additional compliance and monitoring teams required to be employed to provide advice and guidance to energy entities in how to comply with such poorly drafted legislation will be an immediate overhead added to every day electricity bills. When considered in the context of the Australia Institute report findings, the Bill will simply continue the trajectory within the power industry of a continual decline in productivity through a further increase in unproductive labour engagement.
18. Further, any action brought on by Government or the regulator associated with this Bill will be highly litigious, will require extensive legal resources and is likely to cost hundreds of thousands of dollars in associated legal costs. These events are not explicitly excluded from a potential cost pass through application by the relevant entity.
19. At the end of the day, consumers will be left paying not only their electricity bill but also for the teams of lawyers engaged to defend the misconduct which is alleged to have occurred.