



23 October 2019

Senate Economics Legislation Committee
Parliament House
Canberra ACT 2600

Dear Committee,

Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019

I write with respect to your current inquiry into this Bill.

CFMEU Mining and Energy Division is part of the Construction, Forestry, Maritime, Mining and Energy Union, the major trade union in the industries of its title. The Division represents approximately 20,000 workers in mining – especially coal mining – and in power generation – especially coal power generation.

This union supports the submission made to the Committee by the Electrical Trades Union with respect to:

- The need for the Bill to avoid being a means to force the whole or partial privatisation of government-owned energy assets.
- The need for the Bill to guarantee the employment security of workers caught up in a divestiture order, and to preserve the terms and conditions of employment of such workers that exist under an industrial instrument.

This brief submission raises a further specific and major issue with respect to the Liddell power station owned and operated by AGL Energy Ltd.

The union has been concerned about the employment impacts of the likely closure of coal-fired power stations in coming years and decades and has lobbied and worked with numerous other parties to look after the interests of those

workers. (See, for example, the union submission to the Senate Select Committee Inquiry into Jobs for the Future in Regional Areas.)

One of the results of this work has been the commitment made by AGL Energy Ltd to “no forced retrenchments” with respect to the retirement of the Liddell power station. This means the company will, *inter alia*, rely on employee retirements, voluntary redundancies, redeployment to the nearby Bayswater power station and redeployment to other activities at the Liddell site.

This commitment by AGL has been made in correspondence from the Chief Executives of the company dated 26 September 2017 and 29 August 2018.

It does NOT exist in any industrial instrument or contract of employment.

The situation therefore arises that, if a forced divestiture was made with respect to Liddell, the existing commitment by AGL to its Liddell workforce would NOT transfer to whatever business took over the power station, and the employment rights of the workforce would be considerably diminished. The prospect arises of workers being compulsorily terminated by an incoming new owner while, if the ownership remained with AGL, no worker would be retrenched against their will.

This means that, apart from the overall considerable uncertainty that the Bill creates about the future of the Liddell power station and other energy assets – which in itself is a loss to the workforces involved – it is certain that the Liddell workers will lose existing protections that they enjoy.

While it appears that an intention of the Bill is to enable longer life for some energy assets, the unintended consequence if the proposed law ever resulted in the forced divestiture of Liddell is that Liddell workers would be unquestionably worse off.

How to resolve this unintended consequence is difficult.

Consideration could be given to an amendment, to either this Bill or other related legislation, that requires a new owner to comply with agreements made in relation to employment between the corporate entity about which an order is made, employees of that entity and/or a registered organisation that represents the industrial interests of the employees.

Further, it would be important to define such agreements. They would include a workplace instrument as defined by the Fair Work Act 2009, contract of employment or other written agreement.

Resolving this major issue will not be straightforward. But it is critical to ensuring that the Bill does not operate to downgrade or terminate measures being undertaken in good faith by energy industry employers and unions to look after the interests of workers in the industry. In the case of Liddell, there is a good written commitment in place that no worker will be rendered unemployed against their will due to the power station's closure.

The loss of this important gain for Liddell workers, and with respect to others who might find themselves in a similar situation with likely coal power plant closures, must be avoided.

Yours sincerely,

A solid black rectangular box redacting the signature of Tony Maher.

Tony Maher
National President, CFMMEU