

**Submission
No 2**

**INQUIRY INTO INQUIRY INTO THE LEASING OF
ELECTRICITY INFRASTRUCTURE**

Name: Mr Colin Brann

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Parliament House
Macquarie Street
Sydney NSW 2000

Attention: Reverend the Hon. (Fred) Frederick John Nile, ED LTh MLC

PAST NSW GOVERNMENT'S FAILURES TO PROTECT ELECTRICITY WORKERS ACCUMULATED EMPLOYMENT ENTITLEMENTS

Dear Sir

I wish to point out to you how the following past NSW Government guarantees have failed to preserve my and other fellow electricity workers employment entitlements in relation to the full acceptance of my previous continuous service for all purposes and the virtual loss of approximately three hundred and fifty four (354) days of accrued sick leave.

You will recall past NSW Governments have carried out major reforms to the electricity industry commencing with the 1995 restructure of Pacific Power (previously the Electricity Commission of NSW) and in 2003 the complete dissolution of Pacific Power via the *Pacific Power (Dissolution) Act 2003 No 17* which transferred all remaining Pacific Power employees into a new transitional Corporation called the Residual Business Management Corporation (RBMC). This corporation was the custodian via which these employees would be transferred to other government owned areas. With all of these reforms the then NSW Government committed itself and any future Government to protecting all of these effected employees current and future employment entitlements.

The following demonstrates how these Government commitments have been perverted and the effected long-term employees have been subjected to unjust restriction placed upon their supposedly guaranteed employment entitlements.

- a) The then NSW Government's 1995 guarantee to Pacific Power employees that there would be no forced redundancies, no forced transfers and no reduction of entitlements (refer to Attachment 1 on page 7). Ausgrid's (my current employer) response (refer to Attachment 2 on page 11) is that the Government's guarantee does not define "entitlements" and hence assumedly has no merit thus Ausgrid will not honour its intentions.
- b) The *Pacific Power (Dissolution) Act 2003 No 17* -
 - i.e. Part 3 - Section 10 - Transfer of staff of Corporation (refer to Attachment 3 on pages 13 & 14)
 - "(1) The Minister **may** direct, by order in writing, that any specified staff members of the Corporation be transferred to a public sector service, or a State owned corporation, specified in the order.
 - (2)
 - (3) A member of staff transferred to a State owned corporation under this section is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the staff member had the staff member not been transferred but remained a staff member of the Corporation."

For some mysterious reason, known only to the then Treasurer there was no written order(s) provided for the transfer of any staff of the RBMC to a State owned corporation in accordance with Part 3 - Section 10 (1) of this Act. A possible reason for this is mostly due to the fact the wording in Section 10 (1) of the Act used the word "**may**" instead of "**will**" and the Minister apparently chose

not to issue orders in relation to this matter. Also it should be noted that no other provision has been made under any Act or law which deprives me of the right of having my previous continuous service with the RBMC recognised for use for all purposes.

During this period in order to obtain meaningful employment I sought and obtained a six (6) month secondment with Energy Australia (now Ausgrid). During this secondment the RBMC sent me a letter (*refer to Attachment 4 on page 15*) which stated that:

"This secondment will not be viewed as a redeployment position in relation to Attachment 2 – item 7 of the MoU. However, if a permanent position is offered and the salary and duties are within your comparable level of skill, then non-acceptance will be viewed as a rejection of a matched redeployment position as per Attachment 6 of the MoU."

During my secondment with Energy Australia I had several discussions with senior managers about obtaining a permanent position. They were all very happy with my work and vast in-depth knowledge of their part of the electricity network. I had previously completed my indentured apprenticeship with them (then known as The Sydney County Council) in the 1970's and during the 1980's I was working with the Electricity Commission of NSW (Pacific Power) as an electrical engineer maintaining its Sydney sub-transmission electricity network based at its Homebush Depot. Ironically some two (2) decades further on I am still working at the very same Homebush depot which is now under the custodianship of Ausgrid. During these above-mentioned discussions with Energy Australia they told me they were struggling with how they could offer me a position without me being severely disadvantaged by the loss of the above-mentioned accumulated RBMC sick leave. From my perception at that time the issue with which they were struggling with was a virtual fear of upsetting the then Treasurer. As a result of the above my initial six (6) months secondment period was extended for an indefinite time period. I was a virtual Energy Australia employee being paid via the RBMC.

Hence the *Pacific Power (Dissolution) Act 2003 No 17* failed to protect my entitlements and I, with several other of my fellow RBMC employees, were effectively transferred to Ausgrid (then Energy Australia) without the protection of the issue of a NSW Government Ministerial written order. In hindsight one must now question the true agenda in relation to the then Treasurer not issuing any ministerial order(s) in relation to the transfer of RBMC employees to State owned corporation as was his moral duty in accordance with the *Pacific Power (Dissolution) Act 2003 No 17*. After being subjected to this unjust treatment it would be understandable to have the view that someone in a position of power was intent on inflicting this unjust treatment. It is most likely these employees were subjected to this unjust treatment, a virtual form of revenge, due to their choosing not to accept offered employment with the private company who purchased Pacific Power International (i.e. someone claimed their pound of flesh).

Shortly following my transfer to Energy Australia I requested them to formally recognise for all purposes my accumulated continuous service with the RBMC. I was advised there would be no issue with this provided my taking up of duties was within a three (3) month period from transferring from the RBMC. For all of the affected then RBMC employees there was no discontinuity of their employment (i.e. they commenced working for Energy Australia on the very next working day). In their letter to me dated 18 October 2004 (*refer to Attachment 5 on page 16*) they formally provided the following:-

- An unconditional acceptance of my previous continuous service with the RBMC and
- Formal advisement that on 5 January 2005 I would achieve 35 years of service.

The above-mentioned date of the 5 January is related to the date on which I first commenced my working life with them as an indentured apprentice on 5 January 1970, now totalling some forty five (45) years of continuous service.

Ausgrid's response (refer to Attachment 2 on page 12) is this letter now does not, in Ausgrid's opinion, form part of my contract of employment and they will now not be recognising my previous continuous service with the RBMC for calculating any possible forthcoming voluntary redundancy package.

Ausgrid in their email dated 12 November 2013 (refer to Attachment 6 on page 17) advised that in the past Ausgrid had in place other arrangements that went beyond what they are currently intending with now not recognising previously recognised continuous service for all purposes.

What Ausgrid is attempting to do is in fact a breach of the *Fair Work Act 2009* as outlined by the Fair Work Ombudsman in his fact sheet - *Notice of termination and redundancy pay and the National Employment Standards* (refer to Attachment 7 on page 20) which states the following:

"Is redundancy pay payable on a transfer of employment?"

The 'transfer of employment' provisions under the Fair Work Act 2009 apply when an employee moves from one employer (the old employer) to another employer (the new employer) within three months, and there is a transfer of business involved. This may occur through a number of connections between the two employers, including a transfer of assets, outsourcing and insourcing, or where the two employers are associated entities. If these conditions are satisfied, the period of service with the old employer will generally count as service with the new employer for the purposes of entitlements under the Fair Work Act 2009. If this applies, an employee is not entitled to redundancy pay under the NES in relation to termination of their employment with the old employer.

However, there are exceptions to this general principle. A new employer that is not an associated entity of the old employer has the option to not recognise a transferring employee's previous service for the purpose of NES entitlements to redundancy pay.

If the new employer does not recognise an employee's service in relation to redundancy pay, the old employer will be required to pay out the employee's redundancy pay."

The above-mentioned *Fair Work Act 2009* also links the new employer as being an "associated entity" if both the old employer and new employer are controlled by a "third entity" (e.g. an individual, body corporate, partnership, an unincorporated body). In this case both the old employer and new employer are controlled by an individual by the name of Mike Baird via NSW Treasury who according to The Treasury 2013-14 Annual Reports still administer the RBMC and I expect will administer the forthcoming new legislation in relation to the part leasing of the Poles and Wires. This will reinforce the fact the NSW Treasury is a "third entity" connection between the RBMC and Ausgrid.

Even if the RBMC and Ausgrid are deemed to be not associated entities then the Fair Work Ombudsman states the older employer (i.e. RBMC) will be required to pay out their part of the employee's redundancy pay. For some unknown reason it is apparent Augrid is intent upon not looking after the full employment entitlements of their employees who stem from the RBMC.

- c) The loss of three hundred and fifty four (354) days of accumulated RBMC sick leave.

Instead of my RBMC three hundred and ninety (390) days of sick leave (refer to Attachment 8 on page 22- copy of my then RBMC pay slip dated 23 July 2004) I was only provided with some mere thirty six (36) days of sick leave when I was redeployed / transferred to Energy Australia (now Ausgrid). As can be seen from the following letters several unions unsuccessfully attempted to address this lost sick leave issue.

The provision of only a mere thirty six (36) days of sick leave is contained in Energy Australia's letter dated 27 April 2005 (refer to Attachment 9 on page 23). Within this letter Energy Australia freely admit the RBMC situation is a unique situation but still treated the matter very poorly.

Energy Australia in their letter dated 5 May 2005 (*refer to Attachment 10 on page 24*) gave a written concession in relation to my accumulated RBMC sick leave by stating at that time this already accumulated RBMC sick leave (390 days) will only be taken into account if, in the future, I am severely sick and will be considered only on an individual by individual basis. From Ausgrid's above-mentioned changed viewpoint with the now non acceptance of my previous continuous service with the RBMC for all purposes it would be extremely silly to rely upon any letters from the then Energy Australia.

- d) It should also be noted all of the above applies to only six (6) employees who stem from the RBMC all with similar circumstances. Yet Ausgrid has decided to ignore any NSW Government past actions which was directed at protecting the then already accumulated RBMC employment entitlements.

The above-mentioned past ten (10) years of history demonstrates that even with a written NSW Government guarantee and an Act of State Parliament in place the current Ausgrid employees who stem from the RBMC have been deprived of very significant employee entitlements in relation to accumulated continuous service and accumulated sick leave. Most likely this stems from changing individual management viewpoints which are continually changing to suit their own particular self-interests, regardless of the unfairness of their every self-serving changing view.

I find it extremely concerning this matter has come to such a poor state of affairs and that the following must be said.

In relation to the above-mentioned matters Ausgrid's conduct is in fact "*Unethical Behaviour*" as it demonstrates the rejection of common morals e.g.

- Telling the truth i.e.
 - a) Ausgrid falsely state Energy Australia's letter to me dated 18 October 2004 does not form part of my employment contract (*refer to Attachment 2 on page 12*). If this was true it would not have been provided in the form of a formal written and signed letter on an Energy Australia letterhead and
 - b) Energy Australia's letter to me dated 18 October 2004 falsely advising full recognition of my previous continuous service with the RBMC and in addition falsely advising that in 2005 I would achieve 35 years of service (*refer to Attachment 5 on page 16*);
- A willingness to fairly and swiftly resolve our grievance i.e.
 - a) This matter is well over a year old i.e. Ausgrid's letter dated 13 November 2013 (*refer to reference in Attachment 11 on page 25*) &
 - b) Ausgrid's email dated 12 November 2013 (*refer to Attachment 6 on page 17*) shamelessly advised that in the past Ausgrid had in place other arrangements that went beyond what they are now intend doing by not recognised previous RBMC continuous service and
- Failing to do what is morally correct (i.e. honour previous NSW Government's guarantee in relation to no loss of entitlements and honour the intent of the *Pacific Power (Dissolution) Act 2003 No 17* where it was intended that no employee originating from the RBMC would ever be subjected to any reduction of their accumulated entitlements).

The above-mentioned behaviour is also fundamentally "*Corrupt*" as it will result with an unjust financial benefit for Ausgrid at a very great financial detriment to these employees. The only reason being these particular employees stem from the RBMC. Consequently Ausgrid have compromised their integrity.

In reality this unfair financial benefit for Ausgrid is a very insignificant one in comparison with the acknowledged \$20 Billion profit to be obtained from the part leasing of the Poles and Wires. Again in reality the full recognition of previous service should be an insignificant matter for Ausgrid, where in contrast it is a very major matter for the six (6) ex. RBMC employees. In my case it would result with any offer for a

redundancy based on only ten (10) years instead of forty five (45) years of continuous service. For my other fellow colleagues it would result with an offer based on only ten (10) years instead of typically thirty (30) years of continuous service. This will result in a very major unfair financial penalty inflicted upon long-term serving employees.

Hopefully armed with the above-mentioned details of the extremely poor treatment which has been in the past inflicted upon electricity worker employees during and following times of industry restructure you will gain a better understanding of how to ensure no other electricity worker employees are subjected to such harsh and unfair treatment by any NSW Government Organisations.

Fortunately due to current circumstances I understand you may now be in a position to swiftly correct this obvious and appalling injustice associated with the above-mentioned matters and I request that you

1. Request the NSW Premier or the NSW Treasurer on his behalf (as the RBMC still exists and is administered by the NSW Treasury according to the NSW Treasury's 2013-14 Crown Entity - Related Entities' Annual Report) to issue a written order to formally transfer all of the six (6) remaining Ausgrid employees, who stem from the RBMC. The deemed redeployed and or transferred date being the date they took up duty with Ausgrid (then Energy Australia). This belated order should be issued in accordance with "*The Pacific Power (Dissolution) Act 2003 No 17*", with the intention to guarantee these employees are not disadvantaged in any way by the loss of any accrued RBMC employment entitlements. This missing formal Ministerial order(s) is Ausgrid's main unjust ploy as stated in their letter dated 21 January 2015 (*refer to Attachment 2 on page 11*) with denying full recognition of our accumulated RBMC employment entitlements. The details of the affected employees are contained within Professionals Australia and CEPU joint letter to Ausgrid dated 31 October 2014 (*refer to Attachment 11 on page 25*) and
2. In order to ensure no employee is put under unreasonable pressure, and as a result is financially disadvantaged, I request any voluntary redundancy (VR) offers in relation to all Ausgrid employees be put on hold until this matter is adequately addressed. I understand Ausgrid are currently assessing expression of interest for VR offers which are to come out in May 2015 and in the past they have pushed very hard to have the employee accept the offer within a very short time period, typically one (1) week.

Yours sincerely

(Mr Colin Brann)

List of Attachments:

1. The then NSW Government's 1995 (memorandum) guarantee to Pacific Power employees – [two (2) pages]
2. Ausgrid's letter to Professionals Australia dated 21 January 2015– [five (5) pages]
3. Extract from the Pacific Power (Dissolution) Act 2003 No 17 – [two (2) page]
4. Residual Business Management Corporation (RBMC) letter dated 31 October 2003 – [one (1) page]
5. Energy Australia's (now Ausgrid) letter to me dated 18 October 2004 – [one (1) page]
6. Ausgrid's email to Professionals Australia dated 12 November 2013 – [one (1) page]
7. Fair Work Act 2009 as outlined by the Fair Work Ombudsman – Fair Work Act 2009 – Fact Sheet - Notice of termination and redundancy pay and the National Employment Standards – [four (4) pages]
8. My Residual Business Management Corporation (RBMC) Pay Slip dated 23 July 2004 detailing my accrued RBMC sick leave at the time I was redeployed / transferred to Energy Australia (now Ausgrid) – [one (1) page].
9. Energy Australia's (now Ausgrid) letter to APESMA (now Professionals Australia) dated 27 April 2005 – [one (1) page]
10. Energy Australia's (now Ausgrid) letter to the United Services Union dated 5 May 2005 – [one (1) page].
11. Professionals Australia and CEPU joint letter to Ausgrid dated 31 October 2014 – [five (5) pages].