

On January 31 Queenslanders not only voted for change, they made history.  
~~st, Queenslanders made history and voted for change.~~

They ~~They did that by voted~~ ing-out a government with the largest political majority in our nation's history after just one term in office.

But more importantly they ~~They~~ voted to create jobs, not slash them. They voted to keep our public assets, not sell them. They also voted for accountable and transparent government and to restore frontline services.

There is no doubt that the Not4Sale campaign and the campaigning of many ETU members in the election over the 12 twelve months leading up to the election had a significant impact on the result. Well done to Stewie, Lara and everyone who got involved.

I'm proud to be part of Anastacia Palaszczuk's' new Labor Government in Queensland — as  
~~as the new Member for Yeerongpilly and the new Minister for Energy — and — and~~ I look forward to working with you for a fairer, more just Queensland.

Unlike the ousted Newman LNP Government, we'll be keeping our election promises, — which  
~~means no sell off of our energy generators, CS Energy and Stanwell, and no sell off of our~~ electricity network distributors and transmission companies, — Ergon, Energex and Powerlink.

Labor's policy is to merge the ~~for mergers of the two~~ generators into one new government-owned corporation and to amalgamate the ~~amalgamation of the three~~ transmission and distribution businesses into one merged network government-owned corporation.

There will be no forced redundancies. We will manage the ~~by managing the~~ staffing transition through natural attrition and a voluntary separation process.

The government's first priority has been preparing for and responding to Category 5 Cyclone Marcia's devastating impact on Central Queensland and in particular Rockhampton, Yeppoon, Biloela, Jambin and Monto.

Fortunately the ~~While the cyclone took~~ fortunately has taken no lives. But it, — it ~~has been~~ devastating for thousands of central Queenslanders, with more than ~~over~~ 600 houses made uninhabitable and 63700 homes and businesses left with out power.

Yet, in less than a week, the ~~939~~ power workers from Ergon and Energex who have  
~~converged on CQ~~ have and reconnected 62500 premises (97%) within a week — 97 per cent  
of all those who lost their power.

It has been a herculean effort from power crews and support staff from as far as the Gold Coast, Cairns, Ipswich and Mareeba who have selflessly traveled far and worked long hours to help the people of Central Queensland.

Please accept my sincere and heartfelt thank you to every worker who has helped in the CQ recovery. You have made a difference. It was an honour to meet power workers and say a few words of thanks on behalf of the Palaszczuk Labor Government at the Saturday Rockhampton morning muster recently.

I look forward to working in partnership with you to make our state once again a fair, inclusive and prosperous state that treats people with respect and listens to their concerns and feedback.

Warmest wishes,

Mark Bailey  
Minister for Main Roads, Road Ssafety and Ports  
Minister for Energy and water Supply



# MinterEllison

16 April 2015

Charles Massy  
Hall Payne Lawyers  
Locked Bag 2013  
SOUTH BRISBANE Q 4101

Dear Mr Massy

## **WITHOUT PREJUDICE**

### **CEPU v Stanwell Corporation Ltd (QUD53/2014)**

Thank you for your letter dated 15 April 2015 and the draft Deed of Settlement.

Our client is strongly committed to constructive consultation with its employees and their representatives regarding any material workplace change.

Our client is unaware of any material residual employee concerns stemming from the changes at the Swanbank and Tarong Power Stations which are the subject of these proceedings.

Accordingly, our client remains committed to the early and amicable resolution of these proceedings as there seems little likelihood of any practical outcome which would benefit its employees.

However, it would not be advisable, or proper, for it to do so on the terms proposed. The reasons for this are as follows.

#### *Proposal not reflective of merit*

Your draft Deed proposes terms of settlement which do not reflect either the substance or the merit of your clients' application.

In our client's view, the proceedings have little prospect of success. It believes that it duly consulted with its employees as it was required to, and would have done as a matter of course in any event absent any statutory obligation.

It should be noted that your clients' application for injunctive relief failed, and significant parts of their first statement of claim were struck out by the Court following an application by our client.

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*Subject matter of Deed not related to the subject matter of the proceedings*

Your clients' proceedings relate exclusively to asserted breaches of the consultation obligations in our client's Enterprise Agreements. In contrast, the draft Deed deals with issues including the provision of information concerning our client's business operations and the business operations of its contractors and sub-contractors as well as provision for the negotiation of an agreement in respect of staffing levels and the use of contractors.

In relation to these matters:

- (a) They are unrelated to the subject matter of the proceedings.
- (b) They contemplate that our client would be required to provide your clients with confidential information relating to its business and the businesses of its contractors and their sub-contractors, which would also raise privacy considerations.
- (c) They deal with matters which, to the extent legitimate, should properly be the subject of enterprise agreement negotiations where the interests of all relevant stakeholders can be properly considered as required by the *Fair Work Act 2009* (Cth) (**FW Act**) bargaining provisions.
- (d) In some respects they propose arrangements which potentially breach other laws.

The latter two concerns are discussed in more detail below.

*Appropriate forum for discussion*

Our client's existing Enterprise Agreements deal explicitly and adequately with contractor usage and security of employment. Those Enterprise Agreements were negotiated transparently under the good faith bargaining framework in the FW Act and the relevant provisions are of very long standing within the current and all previous agreements. Any alteration to those terms and conditions requires not only the agreement of Stanwell, but also the agreement of a majority of its employees concerned, and the approval of the Fair Work Commission following a process of good faith bargaining.

Stanwell does not believe it is appropriate for it to reach agreement with your clients in relation to these matters outside of the normal statutory enterprise bargaining processes. To do so would undermine collective bargaining in a way that is inconsistent with its statutory good faith bargaining obligations, and it would also disenfranchise the employees affected by proposals in respect of these matters (not all of whom are members of your clients).

*Potential unlawful conduct*

Clause 3.1 has the apparent purpose of:

- (a) preventing or hindering our client from acquiring goods and services from contractors from whom it is accustomed to acquire such goods and service; or
- (b) placing conditions on the terms by which our client can acquire goods and services from contractors.

Accordingly, any agreement by our client to the proposed clauses might breach s 45E of the *Competition and Consumer Act 2010* (**C&C Act**). This is so notwithstanding that the

restrictions on contractor usage do not name specific contractors.<sup>1</sup> In no circumstances would our client risk breaching the mandatory provisions of the Commonwealth C&C Act.

*Consistency and enforceability*

Issues of consistency between the agreement and the terms of the enterprise agreements and enforceability would also arise.<sup>2</sup>

*GOC Wages Policy*

Additionally, issues relating to consultation, employment security and the use of contractors are now dealt with in detail in the *Government Owned Corporations – Wages and Industrial Relations Policy (2015) (Wages Policy)*. It would be inappropriate for Stanwell to agree to any outcome which might be inconsistent with the principles in the Wages Policy.

Any comfort sought by your clients in the draft Deed is unnecessary in light of the new Wages Policy.

*Summary*

In summary, the terms proposed by Stanwell in our correspondence of 15 April 2015 (discontinuance of the proceedings with no order as to costs) is an appropriate basis for the matter to be resolved.

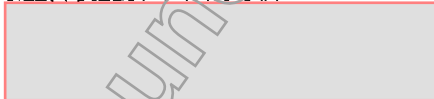
We enclose a revised version of your proposed Deed which reflects the terms our client is prepared to accept.

*Further consultation*

Our client has asked us to specifically reiterate its strong commitment to constructive consultation with its employees and their representatives regarding any material workplace concern either at a corporate or site level.

If there remains any material residual employee concerns stemming from the recent changes at the Swanbank and Tarong Power Stations or regarding consultation, employment security or the use of contractors generally, our client would welcome the opportunity to address the specifics of those concerns with its employees and their representatives in any relevant forum.

Yours faithfully  
**MINTER ELLISON**



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F: +61 7 3119 1340 daniel.williams@minterellison.com  
OUR REF: 1097145 YOUR REF: CM:4140186

<sup>1</sup> *CEPU v ACCC* (2007) 162 FCR 466, at [202]-[207].

<sup>2</sup> *Ryan v Textile Clothing and Footwear Union* [1996] 2 VR 235.

# DEED OF SETTLEMENT

BETWEEN:

COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING AND  
ALLIED SERVICES UNION  
AND

AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION

AND

QUEENSLAND SERVICES, INDUSTRIAL UNION OF EMPLOYEES

AND

CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION

AND

STANWELL CORPORATION LTD

DEED OF SETTLEMENT

This Deed of Settlement is made on the day of 2015.

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BETWEEN: Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of 41 Peel Street, South Brisbane in the State of Queensland

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of 366 Upper Roma Street, Brisbane in the State of Queensland

Queensland Services, Industrial Union of Employees of 32 Peel Street, South Brisbane in the State of Queensland

Construction, Forestry, Mining and Energy Union of Level 2 , 61 Bowen Street, Spring Hill in the State of Queensland

(Collectively the "Unions")

AND: Stanwell Corporation Limited of Level 13, 42-60 Albert Street Brisbane in the State of Queensland

("Employer")

Recitals

A. The Employer operates the Swanbank Power Station and the Tarong Power Station in Queensland.

B. The Unions are able to represent the industrial interests of the Employer's employees employed in operational, maintenance and administrative roles at these power stations.

Deleted: .

C. In 2014 the Employer decided to:

- i. close the Swanbank Power Station; and
ii. increase the electrical generation capacity at the Tarong Power Station.

D. The Unions subsequently commenced proceedings in the Federal Court of Australia (matter QUD53/2014) alleging that the Employer had contravened Swanbank Power Station Enterprise Agreement 2011 and the Tarong Power Station Enterprise Agreement 2012 by failing to consult over the proposed changes.

E. The parties are desirous of establishing a harmonious and mutually beneficial relationship and as such wish to enter into an agreement in the terms set out in this Deed to resolve matter QUD53/2014.

Deleted: <#>In addition to the matters in issue in matter QUD53/2014, the Unions have concerns about the Employer's use of contractors and its commitment to permanent employment and job security for its employees.¶

Terms

1. Interpretation

1.1 In this Deed, unless the context indicates the contrary intention:

- (a) a reference to this Deed or other instrument includes any variation or replacement of any of them;
(b) the singular includes the plural and vice versa;

- (c) the word "person" includes a body corporate, an unincorporated association or an authority;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including without limitation, persons taking by novation) and assigns;
- (e) a clause or a schedule is a reference to a clause or a schedule of this Deed;
- (f) "Application" means matter QUD53/2014;
- (g) "Parties" means the Unions and the Employer;
- (h) "Employer" means Stanwell Corporation Ltd;
- (i) "Unions" means Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services union, Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, Queensland Services, Industrial Union of Employees and Construction, Forestry, Mining and Energy Union; and
- (j) headings shall not form part of the clauses and shall not be an aid to interpreting the Deed

**2. Discontinuance**

2.1 The Unions agree to discontinue the Application within 7 days of the date the Employer signs this Deed on the basis that each party bears their own costs to the Application.

**3. Costs**

3.1 Each party will pay its own legal costs of and incidental to the preparation of this Deed.

**4. Enforcement of Deed**

4.1 The parties intend by the making of this Deed to create legally enforceable terms and conditions.

4.2 The parties agree that this Deed will be, and is intended to be, legally enforceable at the suit of either of the parties.

4.3 The parties agree, that in the event of any breach of this Deed, damages are an inadequate remedy in respect of the obligations which arise under this Deed, apart from those duties and obligations which require the payment of money to the Employee, and in any action for enforcement of this Deed (other than an action for the repayment of money) neither party will object to orders being made in the nature of injunctions and/or orders for specific performance of the duties and obligations under this Deed.

**5. General**

5.1 If a court decides that part of this Deed is invalid or unenforceable, that part of the Deed will be severed, and the rest of the Deed will continue to operate.

5.2 A single or partial exercise of right under this Deed does not prevent any other exercise of that right. Further, a waiver of a right under this Deed does not prevent the exercise of any other right.

5.3 This Deed is governed by the law in force in Queensland.

**Deleted:** <#>Provision of information¶  
<#>Within fourteen days of the date of this Deed being signed by the Unions, the Employer will provide the Unions with the following information in writing;¶

<#>The number of permanent full time employees employed at the Swanbank Power Station;¶

<#>The number of permanent part time employees employed at the Swanbank Power Station;¶

<#>The number of casual employees usually employed at the Swanbank Power Station;¶

<#>The number of permanent full time employees employed at the Tarong Power Station;¶

<#>The number of permanent part time employees employed at the Tarong Power Station;¶

<#>The number of casual employees usually employed at the Swanbank Power Station;¶

<#>The identities of any and all contractors engaged by the Employer to perform work at the Swanbank Power Station;¶

<#>The identities of any and all sub contractors engaged by a contractor engaged by the Employer to perform work at the Swanbank Power Station;¶

<#>The identities of any and all contractors engaged by the Employer to perform work at the Tarong Power Station;¶

<#>The identities of any and all sub contractors engaged by a contractor engaged by the Employer to perform work at the Tarong Power Station;¶

<#>The number of employees employed by contractors or sub-contractors who perform work at the Swanbank Power Station;¶

<#>The number of employees employed by contractors or sub-contractors who perform work at the Tarong Power Station;¶

<#>The duration of any contracts entered into with the contractors and sub contractors referred to above;¶

<#>Any proposal of the Employer to enter into further or additional contracts with either existing or new contractors to perform work at the Swanbank Power Station; and¶

<#>Any proposal of the Employer to enter into further or additional contracts with either existing or new contractors to perform work at the Swanbank Power Station.¶

**Deleted:** In consideration for the Employer's assumption of the obligations in clause 2 and 3, t

**Deleted:** 14

**Deleted:** <#>The Parties agree that notwithstanding any other rights the Unions may have, should no agreement be reached as to the matters set out in clause 3.1, the Unions shall be at liberty to commence fresh proceedings about the subject matter of the Application.¶



5.4 In any proceedings in connection with this Deed, each party submits to the exclusive jurisdiction of the courts of Queensland and waives any right it might have to claim that those courts are an inconvenient forum.

5.5 This Deed is the whole agreement between the parties concerning the subject matter. It replaces any prior Deed, Agreement, Arrangement, explanation, representation or Understanding concerning the matters.

5.6 This Deed may be executed in counterpart.

EXECUTED as a Deed.

SIGNED, SEALED and DELIVERED by

**Communications, Electrical, Electronic,  
Energy, Information, Postal, Plumbing and  
Allied Services Union** in the presence of:

\_\_\_\_\_  
Signature of party

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

SIGNED, SEALED and DELIVERED by

**Automotive, Food, Metals, Engineering,  
Printing and Kindred Industries Union** in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

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SIGNED, SEALED and DELIVERED by

**Queensland Services, Industrial Union of  
Employees** in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

SIGNED, SEALED and DELIVERED by

**Construction, Forestry, Mining and Energy  
Union** in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

**SIGNED, SEALED AND DELIVERED on behalf of the Stanwell Corporation Ltd:**

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

Released under Administrative Access - DTMR