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Executive Summary

Overall, and on the basis of the various clauses reviewed within the Enterprise Bargaining Agreement’s (EBA) listed in Part 3 below, we do not believe that an assertion that the labour practices with in the three Network NSW Distribution Network Service Providers (DNSP) are more restrictive than similar labour practices in the other DNSPs in different jurisdictions can be sustained. Based on an overall assessment of the clauses we have reviewed, it appears that the EBAs impose similar requirements on the various DNSPs and contain similar benefits. This is not surprising as the unions are generally the same, that is the CEPU. The electricity industry in Australia is highly unionised whether the employer is privately or publicly owned. The majority of the DNSPs that are the subject of comparison are privately owned companies.

Each of the DNSPs analysed for this report are highly regulated. With the exception of the Western Power and CEPU Enterprise Agreement 2013, each EBA is comprehensive and detailed. The Western Power and CEPU Enterprise Agreement 2013 is also comprehensive but lacks the detail of the other EBAs. Each EBA has had union involvement in the negotiation process and the unions play a significant role in a number of the clauses reviewed. An overall comparison of the 14 topics set out in Part 3 below shows that whilst there are some more restrictive practices in some parts of the relevant EBAs of the NSW Network DNSPs these are generally limited. Similarly, the EBA’s of the other DNSPs also contain some more restrictive practices not seen in the Network NSW DNSPs.

There are some areas where the Networks NSW EBAs are more restrictive than the EBAs of the other NDSPs. For example, the limitation on no forced or involuntary redundancies does impose specific restrictions on the manner in which those organisations can be restructured, and the manner in which the size of the workforce can be reduced or altered. Ongoing redeployment practices without limitation are also likely to have a restrictive impact on labour practices. However these issues are not restricted to the Networks NSW EBA’s. Other EBAs contain similar provisions particularly in respect of redeployment.

Almost all the EBAs reviewed require consultation with employees and unions prior to engaging contractors to perform work. The information that is required to be shared is detailed. This requirement for consultation could have the practical impact of limiting the ability of DNSPs from adopting more flexible labour practices. However, this provision is not limited to the Networks NSW and appears in all jurisdictions. The suggestion that this somehow imposes greater restrictions on the Networks NSW DNSPs cannot be sustained. It is to be noted that Networks NSW has been able to utilise significant contractor resources under current arrangements. This has created a decreased demand for overtime.

In general, labour practices that could be interpreted as restricting workplace flexibility are also relatively common amongst the EBAs reviewed. For example, the majority of the EBAs required a minimum of 10 consecutive hours break following overtime. The minimum break is 8 hours, where only 3 hours of overtime has been worked. The requirement for a reasonable break between the conclusion of overtime and the commencement of an ordinary time shift is not unusual in this industry or in many other industries. More specifically, the term is common to the various DNSPs, and are no more restrictive in the Networks NSW EBA’s.

In some instances, the provisions of the Networks NSW EBA’s are more favourable than the other EBAs. For example, the Networks NSW EBAs provide that shift roster can be changed with either 2 or 5 days notice (depending on the EBA). The EBAs of the other NSDPs require longer notice periods prior to a change in roster of between 4 weeks and 3 months’ notice. Some also require consultation with the union prior to the roster change. These provisions across various jurisdictions impose greater restrictions on labour flexibility than contained in the Networks NSW EBA’s.

Each EBA contains a range of provisions that may have the practical effect of impacting workforce flexibility. These provisions are not limited to the Networks NSW EBAs. Such provisions include...
3. Enterprise Bargaining Agreements

K&L Gates has also been asked to:

1. Compare the EBA's for the Networks NSW DNSPs with those for other DNSPs in Victoria, South Australia, Tasmania, the ACT and Queensland and analyse whether the conditions in the Networks NSW DNSPs' EBAs are 'out of step' with other jurisdictions, including but not limited to provisions that restrict workplace flexibility (including provisions that affect both total employee levels, such as involuntary redundancy provisions, labour allocation, such as required breaks between shifts).

2. Prepare a report documenting the findings of the above analysis that will be provided to the AER in January 2015.
It was agreed that K&L Gates would focus on clauses that required the exercise of management discretion. It was also agreed that clauses dealing with the following general matters would be reviewed:

(a) Consultation;
(b) Outsourcing / Contracting Out;
(c) Change of Roster;
(d) Overtime, specifically rest periods following overtime;
(e) Standing By (not just Call Back);
(f) Labour Hire / Agency;
(g) Fixed Term Employment;
(h) Flexibility;
(i) Job Sharing;
(j) Casual / Temporary Conversion;
(k) Casual Employment;
(l) Acting Higher Grade or Higher Duties;
(m) Phased Retirement;
(n) Redundancy: voluntary and involuntary;

within the following EBAs:

3. Networks NSW DNSP:
   (a) Ausgrid Agreement 2012;
   (b) Essential Energy Enterprise Agreement 2013; and
   (c) Endeavour Energy Enterprise Agreement 2012;

4. Other DNSPs:
   (a) ActewAGL and Combined Unions Enterprise Agreement 2014;
   (b) Aurora Energy Agreement 2011;
   (c) Energex Union Collective Agreement 2011;
   (d) Ergon Energy Union Collective Agreement 2011;
   (e) Jemena Asset Management – ETU Victorian Electricity Enterprise Agreement 2013;
   (f) Powercor Australia / CitiPower Pty and CEPU Enterprise Agreement 2013–2016;

1 Email from Mark Allen to Lucy Shanahan dated 22 December 2014 at 3.22pm
4. **Methodology**

Our comparison and analysis comprised a review of the terms in the Networks NSW EBAs and the identification of any significant differences between those terms. We then reviewed the relevant clauses in each of the EBAs listed above; identifying any significant or relevant differences between the various clauses in each of the EBA's and the similar clauses in the Networks NSW EBA's. We assessed those clauses and the provisions they contained to determine whether the provisions in the Networks NSW EBAs were out of step with similar terms and conditions in other jurisdictions, or imposed greater restrictions on the Networks NSW DNSP's than existed in other jurisdictions.

Working documents have been prepared summarising the differences identified. Our conclusions have been based on our review of the clauses within the EBA's listed above only.

5. **Summary of Comparison**

5.1 **Consultation**

The *Fair Work Act 2009 (Cth)* (*FW Act*) requires as a matter of law that all EBAs contain a term that requires the employer to consult with the employees about major changes which will have a significant effect on employees and roster changes. The clause must enable employees to have a representative attend and participate in the consultation process. The FW Act also requires certain information to be provided to employees. Each of the EBA's reviewed for this report either contains the model consultation clause or a clause that is modelled very closely on the model consultation clause that is set out in the FW Act.

In addition, each EBA, with the exception of the SA Power Networks: Utilities Management 2014-2015 Enterprise Bargaining Agreement, the Western Power and CEPU Enterprise Agreement 2013 and the Aurora Energy Agreement 2011 contains a requirement for the creation of a consultative committee or forum which includes union involvement. In each EBA where this provision exists, the purpose of the committee or forum is to facilitate discussion between the employer, the employees and their representatives about various issues including continuous improvement and major changes. It is apparent given the jurisdictions in which this provision exists, that the inclusion of these provisions in the Networks NSW EBA's are not out of step with those in other jurisdictions and this is not a practice limited to the Networks NSW DNSP's.

5.2 **Outsourcing/Contracting Out**

With the exception of the Western Power and CEPU Enterprise Agreement 2013 and the Aurora Energy Agreement 2011 which do not refer to outsourcing or contracting out, each of the EBAs set out the basis on which contractors can be used; usually to address deficiencies in labour resources or when specific expertise is required. The EBAs also provide that prior to the engagement of contractors, information be provided to effected employees and in many cases their representatives. This practice is consistent with the approach taken by other EBA writers in other jurisdictions. See clause 10, ActewAGL and Combined Unions Enterprise Agreement 2014, clause 2.3 in the Energex Union Collective Agreement 2011, clause 13.2 in the Ergon Energy Union Collective Agreement 2011, clause 2.2 in the Jemena Asset Management – ETU Victorian Electricity Enterprise Agreement 2013, clause 4 of the UAM Pty Ltd & ETU Powerline Enterprise Agreement 2013–2016, clause 13 in the Powercor Australa Ltd/CitiPower Pty & CEPU Enterprise Agreement 2013–2016 and clause 3.4 in the SA Power Networks: Utilities Management 2014–2016 Enterprise Bargaining Agreement.
representatives, about the scope and type of work involved, the name of the contractor proposed, the number of people proposed to be appointed and the duration of the engagement.

Similarly the Networks NSW EBAs provide that contractors can be used when peak workloads cannot be met by the relevant workforce or where specific expertise is required. The Network NSW EBA’s also require consultation but not negotiation with the union, prior to the appointment of external contractors. Both the Endeavour Energy Enterprise Agreement 2012 and the Essential Energy Enterprise Agreement 2013 requires the creation of a Contracting Consultation Committee to serve as a forum for the employer to consult with the union and their members on all contracting and outsourcing proposals. The Networks NSW EBA’s do not give the unions a right of veto in respect of the appointment of contractors. Once the relevant Networks NSW DNSP has consulted with the union it is able to appoint contractors as required.

Whilst the creation of a committee is an additional administrative process, its purpose is to facilitate the consultation referred to by the EBAs. As such it is arguable that the creation of the committee does not result in any additional burden nor create greater regulation when considering the appointment of contractors, particularly in circumstances where all but 2 of the EBAs reviewed require such consultation to occur.

The limits on the use of contractors are common across the jurisdictions. Whilst the requirement to consult may result in a delay in appointing contractors, or may hinder the use of contractors generally, these restrictions are not limited to the Networks NSW DNSP’s. Any practical impact felt by these requirements should be relevant to all the DNSPs subject to the same or similar provisions.

5.3 Change of Roster

From 1 January 2014, the FW Act as a matter of law has required that changes to rosters only occur following a consultation process whereby the employer provides the employee with all relevant information about the roster change and invites the employees to give their views on the impact of the change. The employer is required to give prompt and genuine consideration to matters raised by the employees. Each EBA is required to include this provision.

The Network NSW EBA’s contain notice provisions allowing for the change in a roster that are significantly less restrictive than similar provisions contained in the other DNSP EBA’s. Clause 14.4 of the Ausgrid Agreement 2012 and clause 9.3 of the Endeavour Energy Enterprise Agreement 2012 provides that a roster can be changed with 5 days notice. Where this is not possible the employee will be paid double time for the first shift after the roster change. Clause 2.2.9 of the Essential Enterprise Agreement provides that an employee is not entitled to payment of double time for the first shift worked if the employee receives 2 days notice of the change to the roster.

Generally the EBA’s of the other DNSPs’ require greater periods of notice to be provided of a shift change and impose greater administrative requirements. For example, the Jemena Asset Management – ETU Victorian Electricity Enterprise Agreement 2013 requires that a change to a roster occur in accordance with the provisions set out in clauses 4.3 Introduction to Change, and clause 4.4, Trial Process. This means that in addition to changes only occurring after consultation as is required by the FW Act, this Agreement provides that a change may also be trialled. The trial must be discussed with employees and their representatives.


4 see clause 27.3 of the Endeavour Energy Enterprise Agreement 2012

5 see clause 6.1.4 of the Essential Energy Enterprise Agreement 2013
Similarly, other agreements also contain significantly longer notice periods. The SPI Powernet and SPI Electricity – ETU Enterprise Agreement 2013 provides that rosters for shift workers may only be changed with 4 weeks notice. The Western Power and CEPU Enterprise Agreement 2013 provides that work patterns can be changed with no less than one month's notice following engagement and discussion with the employees involved and their representatives. Factors for consideration include current patterns of work, current personnel coverage, hours of work and employee earnings as well as social/lifestyle impacts, OHS and fatigue management standard. Where a significant change to a work pattern is suggested (for example changing a 5 day pattern to a 7 day pattern), 3 months notice will be provided and a trial period of 6 months may be used.

The PowerCor Australia Ltd / Citipower Pty & CEPU Enterprise Agreement 2013 – 2016 only allows shift work to occur at the Richmond Depot. If the employer seeks a shift work roster at other locations, the process set out in the Agreement must be followed. The first step requires that a majority of all employees and the union must agree that the depot in question can have a shift roster introduced.

It is clear that the provisions contained in the Network NSW EBAs are far less restrictive than those contained in other DNSP EBAs and therefore allow for greater labour flexibility than the other EBAs considered.

### 5.4 Overtime, specifically rest periods following overtime

The provisions that deal with rest breaks after overtime are fairly uniform. The majority of the EBAs provide that an employee is entitled to 10 hours consecutive hours of rest following a period of overtime. The only difference arose in two EBAs where a slightly shorter rest break was provided; in the Energex Union Collective Agreement 2011, an employee is entitled to 9 consecutive hours off duty and the SPI Powernet and SPI Electricity – ETU Enterprise Agreement 2013 contains a clause which increases the period of consecutive hours off following overtime (from 8 hours to 10 hours) depending on the number of overtime hours worked.

There is no real difference between any of the EBAs in respect of rest after overtime such as to suggest that the Networks NSW EBAs are out of step with those EBAs in other jurisdictions or that the provisions in the Networks NSW EBAs are restrictive. It is also apparent that the terms in the Networks NSW EBAs do not impose a greater restriction on rest periods after overtime.

### 5.5 Standing By (not just Call Back)

Provisions that refer to Standing By are limited to only 3 EBAs in addition to the Networks NSW EBAs. Each of the Networks NSW EBAs as well as each of the SA Power Networks: Utilities Management 2014 – 2016 Enterprise Bargaining Agreement, the SPI Powernet and SPI Electricity – ETU Enterprise Agreement 2013 provides a payment to an employee who is required to be on call or stand by. Those agreements not referred to either contain no provisions relating to Standing By or only refer to Call Back.

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6 see clause 14.3(b) of the SPI Powernet & SPI Electricty – ETU Enterprise Agreement 2013.

7 see clause 11 of the Western Power and CEPU Enterprise Agreement 2013.

8 see clause 28 of the PowerCor Australia Ltd / Citipower Pty & CEPU Enterprise Agreement 2013 – 2016.

9 see clause 8.2.

10 see clause 10.6 of the SPI Powernet & SPI Electricity – ETU Enterprise Agreement 2013.


12 See clause 10.9 of the SPI Powernet and SPI Electricity – ETU Enterprise Agreement 2013.

13 see clause 27.11 of the PowerCor Australia Ltd/CitiPower Pty & CEPU Enterprise Agreement 2013 – 2016.
There is no real difference between any of the provisions that deal with Standing By in the relevant EBAs.

5.6 Labour Hire / Agency

The Networks NSW EBA's are the only EBAs to contain detailed provisions dealing with the circumstances in which labour hire or agency workers can be engaged. None of the other EBAs appear to deal separately with labour hire, preferring, it appears, to manage the engagement of external persons to perform work through the relevant contractor and/or consultation clause.

Each of the Networks NSW EBAs requires consultation prior to the engagement of labour hire or agency personnel. In addition, each agreement defines 'short term'. In the Ausgrid Agreement 2012 and the Endeavour Energy Enterprise Agreement 2012 short term is defined as 6 months. The Essential Energy Enterprise Agreement defines short term as 12 months. The Endeavour Energy Enterprise Agreement also requires meetings with the unions every 6 months to discuss labour requirements.

It is important to note that these EBAs only require consultation prior to the engagement of labour hire personnel. There is no requirement for the union to consent or otherwise agree to the engagement of labour hire personnel. This additional provision could be said to impose a requirement that is more restrictive on the Networks NSW DNSP's than the other jurisdictions, however, the other DNSP's would still be required to consult about the use of labour hire or agency workers under their consultation provisions. In our view, these clauses do not impede the appointment or use of labour hire or agency personnel by the Networks NSW DNSP's.

5.7 Fixed Term Employment

The provisions contained in each of the Network NSW EBA's and the other DNSP's vary slightly, however, generally each contains a requirement for the term to either be less than a specified period or of a clearly defined period and each requires consultation at some level. The provisions contained in Networks NSW EBA's impose on the whole less rigorous requirements than many of the other EBAs.

Each of the Ausgrid Agreement 2012, the Endeavour Energy Enterprise Agreement 2012 and Essential Energy Enterprise Agreement 2013 provide that fixed term appointments may be made for a period of up to 12 months, and generally require consultation and review by the parties at the expiration of the term. Similarly the Aurora Energy Agreement 2011 provides that an employee may be engaged on a full time or part time basis for a specific period of time or for a specific task. Temporary employment is limited to a period of 12 months. There is no requirement for consultation with the union however a temporary employee may be represented by the union in any negotiations regarding an extension to the temporary position. The UAM Pty Ltd & ETU Powerline Enterprise Agreement 2013–2016 provides for fixed term employment that does not exceed 12 months duration, and where the work the fixed term employee is being engaged to do is a smart meter roll out or other similarly unique work.

Of the remaining EBAs, the SA Power Networks: Utilities Management 2014–2016 Enterprise Bargaining Agreement contains the term 'defined term'. Defined term employment may only be...
There are no limitations on the period, though the period must be defined with specificity and there is no requirement for consultation with the union.
terms of the EBA, leaving the employees in a less favourable position. Any variation to the EBA can only be in accordance with the FW Act. That is, can only be via an Individual Flexibility Agreement (IFA) that complies with the FW Act.

These clauses, referred to above, are being disposed of through the current bargaining process which would result in flexibility being addressed only through IFAs in accordance with the FW Act. The Networks NSW EBA's currently contain provisions for IFAs, as required by the FW Act. However, these provisions are generally less favourable than similar provisions contained in the EBAs of the other DNSPs. This issue is being addressed through the current bargaining process.

One difficulty being encountered is the position taken by the union that they will only agree to collective arrangements, as they do not want individuals to be able to trade off those benefits available under the EBA through an IFA.

We note that during 2014 at Ausgrid every LWFA was been terminated and therefore no longer apply such as to restrict labour practices. The majority of the other EBAs reviewed contain flexibility provisions that comply with the FW Act. It is worth noting that IFAs provide flexibility to a point. Currently, an IFA must satisfy the better off overall test, and is terminable on 28 days notice. The IFAs arise from the revocation of the former provisions dealing with Australian Workplace Agreement. They provide some flexibility but not a significant amount as the IFAs may be temporary in nature given the right to terminate.

A majority of the EBAs also provide for other flexible practices including flexitime, a 19 day month and a 9 day fortnight, job sharing, working from home, part time study leave, transition to retirement arrangements, flexibility on commencement and end times of standard hours to facilitate employee work life balance and participation in the 48/52 flexible work scheme which gives access to an additional 20 days of leave. Generally agreements for flexible practices must be in writing and require agreement between the parties.

There are restrictions on flexibility in the current EBAs. These issues are being addressed through the current bargaining process and have been addressed in that current Ausgrid LWFA have been terminated. On balance however, the restrictions on flexibility suggest that the Networks NSW EBA's are currently more restrictive than the EBAs of the other DNSPs. The restrictions relate to the circumscribed IFA provisions that currently exist in the Networks NSW EBAs. As noted above, this is being addressed in the current bargaining process.

5.9 Job Sharing

Of the three Networks NSW DNSP's, the Ausgrid Agreement 2012 is the only one which contains detailed provisions about job-sharing. The terms include the manner in which the arrangements will be managed including entitlements etc. The Essential Energy Enterprise Agreement 2013 only refers to job sharing as part of a phased retirement. There are no terms dealing with job sharing in the Endeavour Energy Enterprise Agreement 2012. Both the Ergon Energy Union Collective Agreement 2011 and the SA Power Networks: Utilities Management 2014–2016 Enterprise Bargaining Agreement contain detailed provisions regarding job sharing. The Energex Union Collective Agreement 2011 also deals with job sharing.
sharing arrangements in accordance with the part time work provisions. Under these provisions, job share employees must agree in writing the pattern of work required, the days on which the work is to be performed and the usual daily starting and finishing times. These arrangements can be varied by mutual agreement.

Not every EBA reviewed provides a formal structure for the implementation of job share arrangements. However it is not an uncommon practice within the industry on the basis of the EBAs reviewed and cannot be said to impose unreasonable burdens on the Networks NSW DNSP's. In our view the ability to use job share arrangements is likely to assist with flexibility and productivity.

5.10 Casual / Temporary Conversion

The Ausgrid Agreement 2012, the Endeavour Energy Enterprise Agreement 2012, and the Essential Energy Enterprise Agreement 2013 each contain very similar provisions which provide for the conversion of a casual employee to either full time or part time employment after a period of 6 months of systematic and regular engagement. Each employer is to provide the employee with written notice of their right to convert within 4 weeks of the employee having attained 6 months engagement. Alternatively an employee may provide written notice of their intention to elect to convert.

Similarly both the Ergon Energy Union Collective Agreement and the Energex Union Collective Agreement provides for casual conversion where a casual employee has in the case of the Ergon agreement 12 months’ continuous service, and in the case of the Energex Union Collective Agreement 2011 6 months continuous employment on a regular basis. Energex is required to advise a casual employee of their right to apply for conversion to permanent employment prior to the completion of 12 months regular and systematic employment.

The UAM Pty Ltd & ETU Powerline Enterprise Agreement 2013-2016 provides that an employee can only be engaged as a casual employee for a maximum cumulative period of 8 weeks in a 6 month period. If the employee is rehired within this period such that the cumulative engagement exceeds 8 weeks duration they shall then be employed as a full time or part time employee by agreement with the employee.

The provisions dealing with Casual Conversion are not unusual or unique to the Networks NSW EBA’s.

5.11 Casual Employment

Casual employment is not unique to the electricity distribution industry. What is unique is that in certain circumstances some of the DNSPs are required to consult with the union prior to appointing casual employees.

Clause 20 of the Ausgrid Agreement 2012 provides that casual employment will not be introduced into any new area of Ausgrid’s operations without prior consultation (not agreement) with the relevant unions. Neither the Essential Energy Agreement nor the Endeavour Energy Agreement contains a similar provision.

34 see clause 20.3.1 of the Ausgrid Agreement 2012
35 see clause 25.2 of the Endeavour Energy Enterprise Agreement 2012
36 see clause 1.22.2 of the Essential Energy Enterprise Agreement 2013
37 see clause 3.4.1 of the Ergon Energy Union Collective Agreement 2011
38 see clause 4.1.7.1 of the Energex Union Collective Agreement 2011
39 see clause 11.1.3(a) of the UAM Pty Ltd & Etu Powerline Enterprise Agreement 2013-2016
Similarly, the SPI Powernet and SPI Electricity–ETU Enterprise Agreement 2013 requires that the unions be notified prior to the engagement of casual employees. The SA Power Networks: Utilities Management 2014–2016 Enterprise Bargaining Agreement requires local employees to be advised whenever casual employees are to be used, and requires consultation where there is a change to current practice before casuals are engaged.

The other EBAs do not contain provisions which require consultation prior to the appointment of casual employees. Despite the Ausgrid Agreement 2012 requiring consultation, it is not the only DNSP required to do so. We do not believe that this requirement is overly onerous, nor likely to impact on flexibility.

5.12 Acting Higher Grade or Higher Duties

With the exception of the UAM Pty Ltd & ETU Powerline Enterprise Agreement, each of the DNSP EBAs, including the 3 Networks NSW EBA's contain provisions that deal with higher duties. Conditions vary slightly; however, all provide that an employee who is directed to work in a classification higher than their usual classification is entitled to some additional payment for the period of the appointment. The EBAs provide that to be eligible for the higher rate or allowance the employees must work for between 1 hour and 1 week in the different role. The higher rate will generally apply to any leave taken during the relevant period.

There is no restriction on who may act in higher grades, or the reasons required for such acting opportunities to be provided. Rather the EBAs provide for the facilitation of such arrangements across numerous jurisdictions.

5.13 Phased Retirement

The only Networks NSW EBA that deals with phased retirement is the Essential Energy Enterprise Agreement 2013 which contains a provision designed to enable employees to better manage the transition to retirement. It includes the right to access a range of flexible work and leave arrangements including part time work, leave without pay, annual leave at half pay, job sharing, and variations to roster and job redesign. All agreements must be in writing and may be varied to suite the needs of Essential Energy and the employee. Neither the Ausgrid Agreement, nor the Endeavour Energy Agreement contains similar clauses. A number, but not all, of the other DNSP EBAs contain similar provisions to assist employees with the transition to retirement. For example, clause 11.9 of the Ergon Energy Union Collective Agreement 2011 enables employees to utilise accrued leave to maintain their full time status whilst working part time, working agreed blocks or work and using accrued leave, RDOs, TOIL etc, or working from home on a full time or part time basis. Similarly, the Energex Union Collective Agreement 2011 enables employees who are eligible to retire within 5 years to access their long service leave to reduce the number of days worked per fortnight, as well as providing access to comprehensive information to assist the transition to retirement.

Other EBAs which contain similar provisions include the PowerCor Australia Ltd/Citipower Pty & CEPU Enterprise Agreement 2013–2016 which enables employees to request flexible work arrangements as part of a transition to retirement plan. The SA Power Networks: Utilities Management 2014–2016 Enterprise Bargaining Agreement also provides that flexible work arrangements can be offered to mature age employees to better facilitate work life balance and:

40 see clause 8.3(e) of the SPI Powernet & SPI Electricity–ETU Enterprise Agreement 2013
41 see clause 2.3.4.2(b) of the SA Power Networks: Utilities Management 2014–2016 Enterprise Bargaining Agreement
42 see clause 6.9 of the Essential Energy Enterprise Agreement 2013
43 see clause 4.1.4 of the Energex Union Collective Agreement 2011
44 see clause 47.2 of the PowerCor Australia Ltd/Citipower Pty & CEPU Enterprise Agreement 2013–2016
45 see clause 5.5 of the SA Power Networks: Utilities Management 2014–2016 Enterprise Bargaining Agreement
address matters relating to an ageing workforce and ongoing skills retention. Phased Retirement Agreements can be reached to accommodate changes in job design, hours of work, responsibility etc. It can be for a maximum of 5 years and has a 6 monthly review.

Both the ActweAGL and Combined Unions Enterprise Agreement 2014 and the Western Power and CEPU Enterprise Agreement 2013 provide similar provisions.

Assisting employees to retirement is not unique to the Networks NSW EBA's. All the EBAs that contain these provisions do so to enable the transition of knowledge and experience within the workforce to ensure that knowledge is not lost. In fact two of the Networks NSW EBA's do not contain any provisions to facilitate the transition to retirement. Whilst not all EBAs contain provisions, these provisions do exist more broadly than the Networks NSW EBA's within the industry.

5.14 Redundancy: voluntary and involuntary

A significant feature of the Networks NSW EBA's is their incorporation of relevant redundancy policies as a term of the EBAs. None of the Network NSW policies provide for involuntary redundancy. A reduction in workforce through restructuring can only be achieved through voluntary redundancies or normal attrition with departing workers not being replaced. Whilst the majority of the other DNSP EBA's provide for involuntary redundancy, both the PowerCor Australia Ltd/Citipower Pty & CEPU Enterprise Agreement 2013–2016 and the SPI Powernet & SPI Electricity – ETU Enterprise Agreement 2013 contain terms that provide that there will be no forced or involuntary redundancy. Whilst the other EBAs do allow for involuntary redundancy they all contain detailed provisions for the selection of redundant employees, and in many cases, impose comprehensive requirements for redeployment.

The fact that there can be no forced redundancy is a restriction that is fairly limited amongst the EBAs reviewed (including the Networks NSW EBAs), and creates a restriction in practice on workforce management.

6. Conclusion

It appears on the basis of the EBAs reviewed that the DNSPs across the various jurisdictions operate in a highly regulated and highly unionised environment. Whilst there are some small differences between the terms and conditions contained in the various EBA's, the terms and conditions contained in the EBA's are generally common. The differences that do exist are generally unique to a specific jurisdiction, and likely to be the result of historical industrial relations including transition from public service, the impact of relevant State regulation and a heritage of generous terms and conditions.

We do not believe that it is correct to state that the terms and conditions set by the Networks NSW EBA's are out of step or more restrictive than EBAs for DNSPs in other jurisdictions. We acknowledge that the Networks NSW EBA's do contain some more restrictive provisions however, there are also more favourable provisions as well. On balance, we believe that the terms and conditions are generally on par with the terms and conditions in other jurisdictions.
This report has been prepared by K&L Gates (and not a person), and as such cannot meet the requirements set out in the Federal Court of Australia's Practice Note CM7, Expert Witnesses in proceedings in the Federal Court of Australia. We confirm that we have significant hands on experience in the electricity industry and act on behalf of the Networks NSW DNSPs. We have assisted in the negotiation of the EBAs. We have the expertise to provide the information requested as though we were an expert witness. We confirm that we have made all inquiries that we believe are desirable and appropriate, and no matters of significance that we regard as relevant have to our knowledge been withheld.

Gerard Phillips
K&L Gates

See Annexure 1
Annexure 1.

Knowledge of the needs of public trading enterprises and issues management.

K&L Gates has a long history of acting for public trading enterprises in relation to all aspects of their operations, and for governments in respect of their creation and disposal. Our work for state owned corporations in the electricity industry is at the core of our energy practice. We have acted for all of the state owned corporations in the NSW electricity industry, and acted in secondment roles at a number of them. Our role has included (among other things) advising on their governance arrangements and dealings with their government shareholders, in addition to their relationships with customers and suppliers. Through this experience we have developed a particular expertise in understanding the complex and sensitive issues that the Participants need to carefully balance as NSW Government owned energy service corporations.

Through our experience we have developed a unique expertise in:

- understanding the many complex, sensitive issues Networks NSW needs to carefully keep in balance for the Participants as NSW Government owned energy services corporations. We deeply understand the public challenges of meeting increased energy demands (in an increasingly carbon constrained regulatory environment) as well as keeping energy price rises either at or below CPI.
- providing legal advice which sensitively helps energy services corporations like the Participants to balance and meet these (at times) competing demands.

We are therefore ideally placed to assist Networks NSW with the careful handling and management of the sensitive issues it faces.

We have a long history in acting for both the NSW public sector and state owned corporations in employment related legal services. We acted for Endeavour Energy when it was still part of the NSW industrial relations system and advised and assisted in taking that distributor from the State system into the Fair Work system. We have recently performed the same task at Ausgrid. We have an extensive and deep understanding of not only the industrial arrangements at the distributors, having been heavily involved in the drafting and negotiating at the last Endeavour Energy and Ausgrid Agreements, but also the industrial relations environment in which the distributors currently operate. Our advice in this regard has not only been of a technical legal nature, it has involved a high level strategic element.

We have a deep and intimate awareness of how the public sector operates particularly with respect to probity issues and the necessity for due process to be followed at all times. We will work closely with your in-house teams with respect to strategic planning as well as handling day-to-day issues as and when they arise.

Endeavour Energy Enterprise Agreement 2012

We were instructed to provide both legal and strategic advice in relation to the negotiation of the Endeavour Energy Enterprise Agreement 2012 (EA). This involved conferring with Endeavour Energy prior to the commencement of bargaining as well as discerning which of the distributors ought proceed first in time with its EA renegotiation. We were involved in:

- the drafting of the new EA
- discussions regarding the strategy to take in negotiations
- filing proceedings in the Fair Work Commission to enlist the assistance of a Fair Work Member in progressing the EA negotiations. This involved appearances before SDP Hambserg in consultation with his Honour and the unions regarding the interest based bargaining processes which were then implemented.

We are extensively involved in the further drafting of the agreement arising from these processes including further appearances in Fair Work. We were involved in direct meetings with the union...
parties regarding certain aspects of the negotiation and ultimately we assisted in the conduct of the ballot and had full carriage of the approval process. The agreement ultimately negotiated by the Endeavour Energy team produced an historically low wage outcome.

Ausgrid 2012 Enterprise Agreement

We worked closely with the Ausgrid senior management and negotiating team with respect to the 2012 EA. We produced a number of discussion drafts of the new EA and were deeply involved in the negotiating strategy embarked upon. As with the Endeavour matter above, we notified a dispute to the Fair Work Commission regarding bargaining, enlisting the assistance of a Member to assist the bargaining representatives. In this matter we are involved in some of the actual bargaining sessions chaired by the Judge and his bargaining assistants. We were present at meetings with the union secretaries and ultimately produced the final draft EA which was put to the Ausgrid workforce. We conducted the ballot and had full carriage of the approval process.