

VICTORIA : The desalination plant, Wonthaggi. Is this the way to do business?

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This paper discusses the decision to build a desal plant, the agreement between Theiss (TD-JV) and the unions, the exceptional conditions provided for the workers and the seeming failure of the Brumby Labor government to assess the cost of the agreement which in percentage terms is 34 per cent higher than the 2008 2.5 billion Eastlink project. This appears to be all 'legal' under the new Fair Work Act environment. The Australian Building and Construction Commission is only able to commence civil penalty litigation in relation to contraventions of Commonwealth workplace laws. This project is currently under construction on the Bass Coast near Wonthaggi in southern Victoria. It is scheduled to be completed by the end of this year. When completed it is anticipated the plant will be an integral part of Victoria's water system, supplying water via a series of existing and proposed pipelines.

The desalination plant was promoted through the late 2000s in response to water restrictions and population growth as being part of the Victorian Government's "Our Water, Our Future" water plan. Reserves in the State's water storage dams had been decreasing since 1998, to around a third of maximum capacity. No plans were ever made to construct dams or other alternatives implemented before the shortages occurred and there was a total failure to assess historical changes to rainfall. The project was opposed by many organizations and citizens including community groups local residents and the Australian Greens.

A two-headed marine structure extending 2 km off shore will be constructed. It is estimated the plant will take in 480 million litres of sea water and pump back 280 million litres of saline concentration every year.

Associated infrastructure includes tunnels connecting the plant to marine intake and discharge structures, an 85 km pipeline to connect the plant to Melbourne's existing distribution network at Berwick, and a power supply infrastructure for the plant. Water will enter the City water supply system through the Cardinia Reservoir.

A wind farm at Glenthompson in Western Victoria is proposed to be built to offset electricity used by the plant. The capacity of the wind farm will fall far short of meeting the desalination plant's power demands.

The capital cost of the project was initially estimated to be \$2.9 billion, later revised to \$3.1 billion, then \$3.5 billion and after the winning bidder was announced \$4 billion. In March this year figures compiled by Price Waterhouse Coopers for the Coalition government show the plant will cost as much as \$23.9 billion in nominal terms over the next 30 years if the maximum amount of 150 gegalitres is bought by the States water authority every year.

The Auditor General has calculated the Net Present Value of the 28-year financial commitment by the government to be \$6.4 billion. He says it is a 'leased asset and liability of the State'. The massive cost burden will be paid for by Melbourne households. Mr Baillieu, the Premier, has said water bills would at least double over the next five years as a result.

Mr Baillieu said the only way the State could save money was not to buy any water from the plant. However, it is noteworthy nothing concrete has been said about preventing this sort of situation happening on future government projects. Unions have been imposing industrial loadings on construction projects both public and private for many years. This is the issue I wish to emphasise needs urgent resolution.

The consortium AquaSure made up of Degremont, Macquarie Capital and Thiess was the winning bidder with construction of the desalination plant to commence in late 2009. John Holland was the losing short-listed bidder. There were six other tenderers. John Holland's price was lower than TD-JV.

I have been asked to estimate the gross pay of workers at the plant. I know of one worker who receives \$3,200 per week in cash. This includes the \$700 LAFHA (living away from home allowance) which is tax free but is after pay-tax and before super and other add on's which would probably bring the package to about \$250,000 per annum. So my best estimate is that most workers at the plant would receive between \$200,000 and \$300,000 per annum by the time they receive their redundancy payments.

There is provision for overtime at the rate of time and a half for the first two hours and double time thereafter. Supervisors on site are now being paid in excess of \$1,500 per day. Union delegates are paid at the top pay rates by TD-JV plus the LAFHA but are not required to do any work.

I have tried to divide this paper in to sections following the US former Secretary of Defense, Donald Rumsfeld briefing methods; firstly known knowns which are facts I know with certainty; secondly known unknowns which have gaps in my knowledge, but they are gaps that I know exist and thirdly; unknown unknowns which are gaps I don't know exist.

Of the known knowns there is the mammoth ""Theiss Degremont and AMWU, AWU, CEPU and CFMEU Victorian Desalination Project Greenfields Agreement 2009"" 191 pages of detailed terms and conditions for employees on the site. Clause 2.2 states ""The parties are committed to working together in a collaborative and cooperative partnership to ensure a smooth delivery of the Victorian desalination Project"" and 2.3 ""The parties recognize the bona fides and positive relationships already established between the parties, which augur well for a cooperative and successful delivery of the Project to the Victorian community."" The Agreement was signed by Greg Miller, Thiess Degremont Joint Venture Project Director, Dean Mighell, Earl Setches, Bill Oliver, Gary Robb and Cesar Melham on behalf of the unions.

But, by early February 2009, Bruce Townsend , a professional labour hire consultant was in discussions with Greg Miller with a view to putting in place an alternative work force because the T/D – JV were expecting trouble on the site to come from the union particularly in the last six months when the ETU had the biggest presence on site for the commissioning of the equipment. Union activity was expected to become a key issue in the last six months. This proposal became known as ""The Pluto Project"". I will come back to this later in the paper.

Townsend was told they knew when a stop work meeting would be taking place as the workers brought their boats on the back of trailers to work that day. So much for the 'bona fides and positive relationships between the parties.

What's in the "Agreement" ? There's the usual list of 26 rostered days off, 12 public holidays, a picnic day, fixed long week ends to coincide with the RDO's , and super, long service leave, 17.5% holiday loading, annual leave etc. Then there's termination pay an extra couple of weeks, redundancy allowance \$5.44 per hour, clothing allowance, spectacle allowance, 6 monthly pay increases which add up to about \$200 per week . About the best one is the LAFHA – living away from home allowance of \$700 per week or \$36,400 annually – tax free.

In other remote areas of Australia such as the Pilbara the going rate is \$400 per week. A form has to be filled in saying they live outside a 60 kilometer radius of the plant. I know of a least one person who lives within the 60 kilometer zone and still receives the living away from home allowance. The LAFHA as regarded as an expected perk and not related to the actual residence of the recipient. Sources have stated up to 95 per cent of the work force are receiving the LAFHA. This makes a mockery of the TD-JV commitment to give locals preference for employment and enforces the reports that the Union are pressurising the recruitment personnel. Workers moved or gave an address out of the area so they could get the LAFHA.

The T/D-JV deal has set a new standard for greenfields agreements which is reverberating throughout the construction industry.

These rates of pay and benefits are for a 36 hour week, but with all the time off provisions such as 26 RDO's they would not be averaging much more than 4 days work a week. It is expected that many workers will earn double time as the plant nears completion. There has been a newspaper report about a TD-JV supervisor, who is selling jobs for \$2,000 with a accomplice who was a union delegate. T/D J-V was to have investigated this matter but nothing has been heard since the newspaper report. Rumors on site are that the Union revealed the rort but then had to kill it when they found out it involved one of their own. . Mr . Kevin Andrews, Federal Member for Menzies at the House of Representatives Main Committee in November last year suggested the Labor government was trying to wash its hands of the problems at the plant , saying either that management practices have nothing to do with them or that Theiss has a fixed price contract and that it will be their problem if the construction is not finished on time. He said Mr Brumby desperately wanted to avoid accountability for the fact that his government was involved up to its armpits in ensuring that the CFMEU rather than the AWU got coverage of the desalination project.

It seems the involvement of the previous Victorian government minister Martin Pakula (Minister for Industrial Relations), a former Victorian secretary of the Nation Union of Workers, in directing traffic to the Victorian Trades Hall Council and former BLF official Brian Boyd to negotiate industrial agreements for the desalination plant is Victoria's worst kept secret. The story is that the interests of the Victorian taxpayers were ransomed as part of an internal ALP deal to satisfy a bizarre political alliance between the CFMEU, the National Union of Workers and the Shop Assistants Union. Observers do not think it a coincidence that Martin Pakula announced the desalination plant tender within days of the finalization of pre-selections within the Labor Party. I agree with Kevin Andrews comments, that labor used

taxpayers' money to pay off the CFMEU by ensuring they got the work at the desalination plant and Victorians are paying and will continue to pay a huge price for this tawdry deal.

It is normal practice for developers undertaking building construction to employ expert specialist assessors to cost out every aspect of any development. The Brumby government must have been aware that the excessive wages and allowances to be paid to workers at Victorian taxpayers expense were provided for in the contract with the TD-JV. Therefore contrary to Labor Party claims the tax payers of Victoria are paying for the rorts and perks on the site.

The former Brumby Labor government should therefore be held culpable for allowing this scandalous situation to occur.

The Sunday- Herald Sun, 28 February 2010 quoted, "Luke Enright, a spokesman for Water Minister Tim Holding, said how much workers earned was a matter for the developer. The Government has a fixed price contract with Aquasure, so Victorian taxpayers will not pay one extra cent because of agreements reached between Aquasure and its workers."

The Herald –Sun also quoted a building industry source as saying the pay rates on the desal were much higher than for workers on previous greenfields government projects. "It's a jump of 20 per cent from what people were paid on Eastlink," he said. Why has the Victorian taxpayer been ransomed, as Kevin Andrews has said?

A 17 page report summarizing a financial comparison between the TD-JV 2009 and the Eastlink freeway development from Mitcham to Frankston in 2008 said that the IR landscape had considerably changed with the introduction of the Fair Work Act. It said in the blue collar dominated industries that contractors and clients are conceding to unsustainable union demands for overly generous terms and conditions of employment as well as 'union friendly' provisions that severely restrict managerial prerogative and flexibility.

It said the Victorian desalination Agreement has set a new benchmark for union claims which will significantly effect the profitability of the construction industry, not only in the Victorian market, but Australia wide.

It concluded "The average difference across the classifications in the Productive Hourly Loaded Rate between the Vic Desal Agreement and the Eastlink Agreement is an incredible \$24.95 per hour for day shift and \$49.93 per hour for night shift. Extrapolated over the man hours required for completion of the Vic Desal project the difference would run into many millions of dollars. For example the average PHLR difference between the Eastlink rates and the Vic Desal Agreement rates - \$35.44 across 1 million man hours equates to 35 million dollars in additional labour costs. This amount does not take into account the 'lock down' RDO calendars and significant restrictions on the engagement of subcontractors and the rate subcontractors are required to pay their workers.

An associate of mine stated that the conditions and benefits were as good as a Tattsлото win, to union members. The union are publicising the exorbitant amounts of money to recruit new members. Amounts of money that left the construction industry stunned. Recently, the Victorian Ombudsman, George Brouwer reported to Parliament on an organization called, 'The Brotherhood' operating in Victoria and it's former Victorian police officer founder, Jon

Moncrieff. He found “The Brotherhood was established to serve the interests of its founder Jon Moncrieff.”Herald-Sun 03/03/11.

The Ombudsman’s report alleged improper behavior by Brotherhood members, including that Mr. Moncrieff’s staff sent emails to Brotherhood members seeking high level contacts within public sector bodies that were to deal with prospective tenders.

Mr Moncrieff’s role with the Victoria Police was as liaison for the film and television industry. He left to start a traffic management company using contacts he had made whilst in the force and using the same strategy, he moved into the security industry.

Mr Moncrieff’s security company Monjon obtained the security contract for the desalination plant without having to negotiate a rate. Moncrieff’s associates allegedly include underworld identity Mick Gatto. Wikipedia says of Mick Gatto “an Italian-Australian organized crime figure, who once was a contender for the Australian Heavyweight title. He is better known for his involvement in the Melbourne underworld. He is a professional mediator within the building industry. He runs a company “Arbitrations and Mediation Pty Ltd” and has an interest in crane company “Elite Cranes” Gatto has been linked to “Prestige Cranes’ and other failed companies in the construction industry including TJF Scaffolding which went bankrupt owing millions to the ANZ Bank. In 2004 Mick Gatto was charged with the murder of suspected underworld hitman Andrew (Benji) Ventamin. He was found not guilty as he acted in self defence. After Ventamin pulled out a .38 during the struggle he was able to turn the gun around on Ventamin and fire one shot in his neck and another shot into his eye.

Gatto became a household name through the TV series “Underbelly”.

While there are 47 cranes on the desalination plant site, sources on the site state only 12 appear to be working at any one time. The industry source said if all cranes were working at the site they would certainly be in each others way. Not surprisingly ‘Elite Cranes’ is one of the many companies that has cranes on the site. It is also rumored the CFMEU has an interest in cranes on the project. Some of the known unknowns include the following: report the rebels motorbike gang are starting to have a presence on the job and they are getting a number of their mates on the site Outlaw bike group, the Outcasts has also established a presence in Wonthaggi. They were linked to the CFMEU and the militant West Gate bridge union activity.

There was an incident on Friday 4 March 2011. Personnel at the desal site were parking cars in front of access/exits etc. They were given notes on their windscreens asking them not to. The stickers said: ‘ 3 stickers and you will be towed’.

A scaffolder received a sticker 3 days in a row. The head of security and a manager approached the offender to ask him not to park car in the way of other car park users. The scaffolder went to the union delegate and claimed intimidation, verbal and physical abuse. The manager stated that the police should be called. The union dropped the issue immediately but the scaffolders still went on strike. It is rumored, the catering company, “Hard Hats Catering Service” is union controlled as is also the cleaning service “Sheehans”

The union owned the training company dominates the training. It charges \$1,200 for a 5 day first aid course. The industry standard for that course is 2 days and costs \$150.

Apparently at the leadership group lately there has been a lot of supervisors and superintendents complaining about the upcoming recruitment of the electricians, they were supplied with a list of the applicants and they went through them and crossed off names that were known trouble-makers the list was sent back to recruitment and they were all hired anyway. This indicates the level of union control over the recruitment process.

Union members attempted to coerce TD-JV into employing Craig Johnston, they refused but did in fact employ his close associates, Steve Mansour and Mark Cowan. These people were all linked with the events at the Johnson tiles raid. A source claims Craig Johnston has been appointed a union representative on the Desal site. He has been convicted and jailed for riot, affray, criminal damage and aggravated burglary. Note: Steve Mansour has multiple convictions from prosecutions by the ABCC going back several years.

Initial negotiations between TD-JV re the Greenfields Agreement stalled because the union refused to allow ID cards to have both the name and photo displayed. There has been \$10,000 worth of security camera's sitting in a box at security gate 1 since March 2010 as the unions said they were not to be installed

On 11 March this year the World Socialist Web Site reported that 1,200 construction workers had walked off the job last Saturdayonly to immediately be faced with massive fines under the Gillard government's anti-strike laws. It further said: "The day-long strike was the latest in a series of conflicts between the site's workers and project management following revelations last November that the company had paid a notorious scab labour force organizer \$500,000 to spy on them and prepare a strike breaking workforce." It said, "Theiss Degremont absurdly claimed that senior management had known nothing about the strike-breaking operation....and at a further mass meeting where workers voted to return to work, the unions declared that the company had agreed to sack rather than suspend the human resources manager."

However, there is a lot more to this than most people know about. Bruce Townsend's story is that Greg Miller (the Project Manager) and Marcus Carroll (IR Manager) expected trouble to come probably in the last six months when the ETU had the biggest presence on site.

Townsend's occupation is well known, he was engaged to prepare as much as possible for every contingency that may slow or disrupt work on the site, put assets and procedures in place and when required supply a replacement work force.

Substantial penalties would be applied to TD-JV if the project didn't finish on time and TD-JV and John Holland were paid \$15 million each prior to the project being awarded as the two short-listed tenderers to commence preliminary work as the lead up time was very short and short. Work had to commence immediately after the tender was awarded. This money was paid on the proviso if the tenderer did not finish on time, the funds were to be repaid.

A source has stated "I believethat Theiss had a 'special' arrangement with the unions on site, except the ETU, that is why it was emphasized that they would be the problem union." They said, trouble could come at any time as the unions were unpredictable and had a history of not keeping to an agreement or deal.

Townsend has stated publically, “we don’t break strikes, employee, employers, unions and lawyers break strikes, we just maintain the status quo till they reach an agreement or the project is completed.”

He is well known for preparing and implementing plans usually involving the placement of specialist personnel to work in aggressive environments.

In May 2010 the Pluto Project was terminated when the media reported its details. It ended in May because TD/JV were afraid they couldn’t keep it confidential. The press ran the story In October 2010.

On 22 November last year the Chairman of the H R Nicholls Society, Adam Bisits, wrote to ABCC Commissioner suggesting union power was being used for corrupt ends and the complicity of some other party able to pass on the costs to the Victorian government and requesting the ABCC extend it’s investigations into the desalination plant.

The Commissioner, Leigh Johns, replied saying, “In relation to the recent dispute at the Victorian desalination plant the ABCC is investigating the matter within the scope of our legislative power.” That dispute was in November last year, but we have heard nothing since from the ABCC. My personal experience with the building industry is contractors undertaking projects of only very moderate size are obliged to add on the charges for unionization of their work force which normally adds up to 20 percent or more of the cost. ABCC appears to have no legislative powers to prevent this happening and even if they did it would be difficult to enforce because if a contractor complained that he was forced to pay a union loading, he would suffer industrial action on his site and would be unable to successfully tender in the future.

In the case of the desalination plant it appears that the contractor is obliged to pay severe penalties for failing to finish by the end of December 2011 - \$15 million for one day late and possibly as much as \$5 million per week thereafter. It has been estimated that if there is a strike it costs between \$5 and \$15 million per day whilst the site is idle. This provided the incentive for TD-JV to pay excessive benefits to the workers on the site and additionally is setting benchmarks for wages and benefits for future construction contracts.

The plant development has been severely delayed by wet weather. If the project is late finishing it may happen that the Victorian government will recover some of the cost through penalty payments?

In 1999 at the H R Nicholls Conference, Ross Dalglish, the former Director of Operations in the Gyles Royal Commission into NSW Building and Construction Industry presented a paper, “Union Power in Context: Industrial Relations in the Building Industry”. Dalglish became Director of the Building Industry Task Force established in 1993 to implement the Royal Commission’s recommendations. The Carr government abolished the task force in 1995 and halted a recommendation to deregister the CFMEU. Dalglish reported that Royal Commissioner Gyles was firmly of the view that the most effective way of dealing with illegalities in the industry was by means of a co-ordinated use of civil and criminal prosecutions. The NSW government in 1992 introduced a Code of Practice and a Code of Tendering for the Construction Industry in NSW. The Construction Policy Steering Committee, consisting of representatives of major NSW Government construction authorities was responsible for the implementation and enforcement of these Codes. Dalglish was of the

view that the system adopted in NSW was very effective. He claimed that the unions in the building industry find it administratively easier to deal with the head contractor and then get the head contractor to compel its sub contractors to fall into line on a whole range of issues – such as compulsory unionism, over award payments, site allowances. Here contractors, not employing many workers themselves, have no particular interest in resisting union demands. Their concern is to avoid delay caused by industry disputes. In the end, the clients pay whatever industry standards are added on to the labour cost.

It is hard to believe that legislation provides penalties for the failure of businesses to comply with competition regulations, but the building and construction is apparently immune from these. For example Cl 6.1 says TD-JV can only engage contractors who apply wages and conditions no less favourable than the wages and conditions provided for in the agreement for similar or equivalent work. Isn't this anti-competitive?

I strongly recommend that the Victorian government should hold an enquiry and look into the successful NSW Gyles Royal Commission findings with a view to implementing competitive standards for tendering.

(I wish to acknowledge the assistance given to me in preparing this
paper by Des Moore)

**APPENDIX: COMPARISON OF WAGE RATES BETWEEN VIC-
DESAL (2009) - \$4BN AND EASTLINK(2008) \$2.5Bn
CONSTRUCTION PROJECTS**

CW SHIFT PRODUCTIVE LOADED HOURLY RATE (PLHR)

VIC DESAL DAY SHIFT CW4	EASTL DAY SHIFT CW4 VIC
\$99.60	\$75.15
VIC DESAL NIGHT SHIFT	EASTL NIGHT SHIFT
\$141.89	\$92.97

PLHR includes all on costs but is not limited to superannuation, redundancy, payroll tax, income protection premiums etc. The PLHR was modeled using a 4 week roster averaging 53 working hours Monday to Saturday with RDOs accruing at 0.8 per day (2 RDOs in a 4 week cycle)