



Australian Government

Attorney-General's Department

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Attracting major infrastructure, resources and energy projects to increase employment - Project life greenfields agreements

Industrial relations can play an important role in contributing to the strength of the Australian economy. Potential reform to, or changes within, the Australian industrial relations system should be measured against three criteria; driving jobs and wages growth, boosting productivity and strengthening the economy, while ensuring protection of employees' rights.

Importantly, an effective industrial relations system should strive to achieve the best overall balance, having regard to the needs of both employees and employers, including those engaged in small business.

As recently announced, the Prime Minister has asked the Attorney-General in his capacity as Minister for Industrial Relations, to take a fresh look at the industrial relations system to identify how it is operating and where there are impediments to shared gains for employers and employees.

Request for public submissions

This paper provides background information on the greenfields enterprise agreement provisions in the *Fair Work Act 2009* (Fair Work Act) and seeks views (by way of written submissions) on whether and how enterprise agreements might be applied for the life of greenfields projects. While this paper directs submissions to specific questions below, submissions may provide any information and make suggestions relevant to the topic of this paper.

Submissions can be made to IRconsultation@ag.gov.au

The closing date for submissions is 1 November 2019.

Submissions will be made public (by being published on the Attorney-General's Department website) unless an express statement is included in the submission requesting confidentiality. If you request that your submission remain confidential, you are encouraged to consider whether the whole submission is confidential or whether some parts of the submission may be made public.

Background

Under the *Fair Work Act 2009* (Fair Work Act), a greenfields agreement is an agreement that relates to a new business, activity, project or undertaking prior to the employment of employees.¹

At present, a greenfields agreement may be made between an employer (or employers) and a union (or unions) able to represent the industrial interests of a majority of employees who will be covered by the agreement. In such cases, the parties must sign the agreement before submitting it for approval to the Fair Work Commission.

A single-enterprise greenfields agreement may also be made where bargaining representatives for the employer or employers have given union bargaining representatives a reasonable opportunity to sign the agreement and the six month notified negotiation period has passed² without agreement being reached. In this circumstance, the employer or employers may submit the agreement to the Fair Work Commission for approval. The agreement is required to satisfy the usual agreement approval tests under the Fair Work Act and an additional requirement that the agreement, considered on an overall basis, provides for pay and conditions that are consistent with the prevailing pay and conditions within that industry for equivalent work. In applying the prevailing pay and conditions test, the Fair Work Commission may have regard to the prevailing pay and conditions in the relevant geographical area.³

Critical to the issue upon which submissions are sought by this paper, all agreements made under the Fair Work Act (including greenfields agreements) must include a nominal expiry date that is not more than four years after the day the Fair Work Commission approves the agreement. While all enterprise agreements must include a nominal expiry date, the Fair Work Act provides that enterprise agreements continue in place unless terminated or replaced. In practice, many large greenfields projects will extend beyond the nominal expiry date of their enterprise agreement. Where an agreement has passed its nominal expiry date, employees can access protected industrial action, if bargaining has commenced for a new agreement and the action is authorised by a protected action ballot.

As at 31 March 2019, 51 per cent of all current greenfields enterprise agreements were in the building and construction industry, a critical contributor to the Australian economy. The building and construction industry has approximately \$713.8 billion invested in current and planned projects, with over \$97 billion invested by the Commonwealth in current and upcoming projects. The Gross Value Add (GVA) of the building and construction industry is \$138.3 billion per year and the industry is the third largest contributor to Gross Domestic Product (GDP) at 7.5 per cent.⁴

Further, greenfields agreements in the mining industry represent 5.2 per cent of all current greenfields enterprise agreements. The GVA of the mining industry is \$144.6 billion per year and it is the second largest

¹ See footnote at s.172(2), Fair Work Act.

² See s.182(4), Fair Work Act.

³ See s.187(6), Fair Work Act.

⁴ ABS (2019) Australian National Accounts: National Income, Expenditure and Product, Mar 2019, released 5 Jun 2019 (ABS Cat.5206.0)

contributor to GDP at 7.8 per cent.⁵ Chevron Australia estimates for example, that the Gorgon and Wheatstone natural gas projects in Western Australia together contribute \$60 billion to the Australian economy.

The contribution of these large construction and resource projects to job creation is immense. Over the life of the Wheatstone project (2009-40) for instance, Chevron estimates that 30,000 direct and indirect jobs will be created, at a rate of 1000 a year adding over \$180 billion to GDP⁶ and contributing significant amounts to state and federal revenues.

Similarly, Woodside's Burrup Hub natural gas project is estimated to support the creation of an average of 4,000 full-time equivalent jobs per annum nationally over a 40-year timeframe (about half those jobs will be located in northern Western Australia). The Burrup Hub project is further estimated to have significant long-term flow on effects to the Australian economy by boosting Australia's GDP by \$414 billion between the present and 2063 and contributing significant amounts to state and federal revenues.

Industries with the highest use of greenfields agreements, after the Construction industry (51 per cent), are the:

- Transport, Postal and Warehousing industry (12.7 per cent),
- Administrative and Support Services industry (12.4 per cent),
- Mining industry (5.2 per cent) and
- Manufacturing industry (5.2 per cent).⁷

Collectively, these five industries represent around 28.8 per cent of annual GDP.⁸

The incidence of greenfields agreements as a proportion of all current enterprise agreements has declined significantly over the past five years, from 8.35 per cent in 2014 to 3.12 per cent as at March 2019. The average duration of greenfields agreements has remained constant and in line with other agreements, at 3.23 years.

Issue

Businesses, communities and governments require infrastructure projects to be delivered on time and on budget. These projects often cover the construction of much-needed public infrastructure, such as hospitals, roads and schools, and require complex long-term planning and future investment in these projects will depend, in large part, on Australia being able to demonstrate an ability and track record of being able to deliver such projects without uncertainty about costs (including labour costs) and project delays. In this sense, the ability to predict the budget of the projects and deliver the project within a reasonable budget is the key to attracting investment and so create jobs.

⁵ ABS (2019) Australian National Accounts: National Income, Expenditure and Product, Mar 2019 (ABS Cat.5206.0) – Table 6, Mining (B), seasonally adjusted data.

⁶ Economic forecasts are based on the period 2009 – 2040. Source: ACIL Allen Consulting independent research report October 2015.

⁷ Workplace Agreements Database, Attorney-General's Department, March 2019.

⁸ ABS (2019) Australian National Accounts: National Income, Expenditure and Product, Mar 2019 (ABS Cat.5206.0).

In 2015, the Productivity Commission acknowledged this, finding that ‘large capital-intensive projects require some certainty about the start date of the project to secure finance, to plan the project [...] and to [...] manage risk’⁹ and acknowledged that ‘[s]ecuring a greenfields agreement can be important for negotiating finance and securing investment’ necessary for undertaking a project.¹⁰

Importantly, greenfields agreements can substantially assist in providing greater certainty about overall project costs and timeframes. They are often an essential step in securing finance and other project approvals, and reduce the possibility of project delays through a moratorium on industrial action until the agreement expires.

When project delays do occur, for example due to industrial action, businesses are likely to continue to have financial obligations for projects, plant and equipment hire. The construction industry has reported that the expiry of greenfields agreements before the end of a project can increase construction costs.

In particular, the Master Builders Australia’s analysis of the building and construction industry and the working days lost to industrial disputation found that union activity can increase project costs by ‘up to 30 per cent’.¹¹

Overall, industrial uncertainty and the impact of industrial action can add significant costs and delay to major infrastructure projects, many of which are, at least in part, funded by the taxpayer. The Productivity Commission stated that any weaknesses in bargaining for a greenfields agreement can have ‘potentially large impacts on major project investment in Australia’ and that current arrangements ‘pose risks for large capital-intensive projects with urgent timeframes’.¹² This, in turn, poses significant risks to job creation in Australia.

Reform option

The Productivity Commission and some industry stakeholders have indicated there may be merit in allowing the nominal expiry date of a greenfields enterprise agreement to better align with the life of longer-term building and construction projects or similar types of major projects. In fact, the Productivity Commission estimated that extending the nominal expiry date of a greenfields agreement would capture the full length of an additional 9 per cent of construction projects.¹³ Prior to the last election, the Labor Opposition indicated that it was open-minded to reform of this type.¹⁴

Potential benefits of longer project agreements include the following:

- industrial certainty for employers and investors,
- better wages and conditions for employees, and

⁹ Productivity Commission Inquiry into the Workplace Relations Framework, 2015 Volume 1, page 36.

¹⁰ Productivity Commission Inquiry into the Workplace Relations Framework, 2015 Volume 2, page 713.

¹¹ <https://www.masterbuilders.com.au/Newsroom/Construction-Strikes-Double---The-ABCC-Must-Be-Ret.>

¹² Productivity Commission Inquiry into the Workplace Relations Framework, 2015 Volume 1, page 3.

¹³ Productivity Commission Inquiry into the Workplace Relations Framework, 2015 Volume 2, pages 689-690.

¹⁴ <https://www.billshorten.com.au/address-to-the-western-australian-leadership-matters-breakfast-perth-wednesday15-may-2019.>

- to the extent it encourages the making of greenfields agreements, improved engagement with enterprise bargaining generally, consistent with Fair Work Act objectives and the opportunity to generate higher rates of involvement in these types of projects and so supercharge Australia's job growth.

Conversely, some parties have expressed concern that permitting a longer nominal expiry date for a greenfields agreement, decreases flexibility over the long term, and prevents the parties' ability to adapt to changed economic and market conditions and other unforeseen events.

Discussion Questions

1. Are there examples or case studies where projects have been delayed or deferred because a greenfields agreement has reached its nominal expiry date, and there is difficulty in negotiating a new agreement?
2. What are the implications of this occurring?
3. Does the current 4 year maximum term for a greenfields enterprise agreement represent a significant problem for employers, workers and proponents of, or investors in, greenfields projects?
4. Should there need to be a maximum length to a greenfields enterprise agreement at all, and if so what should it be and why?
5. What benefits are likely to arise for employers, workers and the community if length of project greenfields agreements were possible?
6. Are there any known risks that might arise for employers, employees, promoters of, and investors in, greenfields projects if greenfields agreements were allowed to operate for a project's length, and how might any risks be mitigated?
7. Should longer project agreements be required to allow some form of escalation in wage rates over the period of the agreement?
8. Should there be a mechanism to extend, or to shorten, an existing greenfields enterprise agreement? If so, how might this work?