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**STRONGER
TOGETHER**

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

Submissions of
THE AUSTRALIAN WORKERS' UNION

1 NOVEMBER 2019

About the Australian Workers' Union

The Australian Workers' Union (**AWU**) is the nation's oldest union, and also one of its largest. The AWU has broad constitutional coverage in a wide variety of industries including construction, steel, manufacturing, mining, agriculture, pastoral, horticulture, aviation, and oil and gas.

Standing to make submissions

As apparent from the list of industries above, the AWU has broad coverage of employees in industries in which greenfields agreements are widely used. As a consequence, the AWU is and has been involved in the bargaining for a vast number of these agreements, especially in relation to major infrastructure, resources and energy projects.

Accordingly, the AWU is a key stakeholder in any consultation process for proposed amendments to the application and use of greenfields agreements.

Submissions of the Australian Council of Trade Unions

The AWU has had the opportunity to read the Australian Council of Trade Unions' (**ACTU**) submission to this inquiry. The AWU supports those submissions, and the submissions made by the AWU below are made in addition to those of the ACTU.

Summary of AWU position

The AWU strongly opposes any proposal to increase the maximum nominal term of greenfields agreements. The reasons for this are many and varied.

Firstly and very importantly, there is no proven requirement for the proposed amendment: the discussion paper relies solely on bare assertions of job creation, offers no examples where the current framework is impeding job or wage growth, and fails to illustrate any tangible link between extending the maximum nominal term of greenfields agreements and job and wage growth. A key interest of the discussion paper is the suppression of industrial action. Such a goal only benefits employers, and this benefit is clearly at the expense of employees.

Secondly, should the implementation of life of project greenfields agreements be considered beneficial to any stakeholder (out of unions, employees and employers),

it is solely beneficial to employers. The implementation of such agreements will further empower employers and erode the rights of employees.

Thirdly, the current requirements of the *Fair Work Act 2009 (Act)* are not suited to the introduction of life of project greenfields agreements. The introduction of life of project greenfields agreements will permit s.182(4) of the Act to be further weaponised by employers, will potentially render s.187(6) impossible to apply, and will erode even further the protection that s.193 provides for agreement-covered employees.

Fourthly, the implementation of life of project greenfields agreements creates a significant uncertainty as the expiry of these agreements are necessarily tied to the completion of the project. Projects are not always completed on time and significant delays could ensure an agreement remains in force despite falling behind industry standards or even the terms and conditions of the modern award that underpins it. This too could be weaponised by employers to drive down wage growth.

Finally, life of project greenfields agreements will ensure that the workers employed on these projects have a guarantee that they will have no say in the terms and conditions that apply to their employment for an indeterminate period. This is a significant restriction and one that is entirely unjustified.

The Discussion Paper

The discussion paper released by the Attorney-General's Department dated September 2019¹ (**Discussion Paper**) is biased, does not rise above bare assertion for most of the significant claims it makes, and despite various claims being made about job growth, the Discussion Paper's clear intention in proposing life of project greenfields agreements is to suppress industrial action and therefore erode the rights of workers. As a result, the assertions made in the Discussion Paper are at best unreliable and should be treated as such.

In terms of bias, the AWU firstly notes the 'discussion questions' found in the Discussion Paper² appear to have been drafted to elicit responses that support a proposal for life of project greenfields agreements.

¹ <https://www.ag.gov.au/Consultations/Documents/industrial-relations/project-life-greenfields-agreements-discussion-paper.pdf>

² Ibid, p5

Secondly, the Discussion Paper uses jobs and monetary figures based on the *estimates* of large employers – such as from Chevron and Woodside³ – and industrial disputation figures from campaigning material of an employer group – such as the Master Builders Australia’s analysis in support of the retention of the Australian Building and Construction Commission⁴ – rather than using known, impartial data for such claims. Additionally, when the Discussion Paper refers to potential opposition to the proposal of life of project greenfields agreements, it is again solely from the perspective of employers;⁵ the views of employees are not considered.

Thirdly, the Discussion Paper references industrial action or disputation several times, and although the Discussion Paper attempts to draw a clear and unambiguous distinction between such action and the outcomes for *employers* – such as the *potential* for costs to increase,⁶ the *possibility* of delays in completion,⁷ and references to lost working days⁸ – no commentary is offered about why industrial action is undertaken by employees (the pursuit of superior terms and conditions of employment) and what the effect of such action can have for employees (the securing of superior terms and conditions of employment, which importantly includes wage increases). The absence in the Discussion Paper of this aspect of industrial action and its importance in the pursuit of improved working conditions for the working men and women of Australia is notable.

In terms of the Discussion Paper’s preference to make bare assertions over the use of actual impartial data, the AWU notes the following claims made by the Discussion Paper that are presented entirely unsupported:

- Future investment in infrastructure in Australia primarily depends on Australia as a country being able to demonstrate certainty of labour costs;⁹
- The ‘construction industry’ has reported that the expiry of greenfields agreements prior to project completion can increase costs;¹⁰
- Industrial uncertainty and industrial action can add significant costs and delay to major infrastructure projects;¹¹ and
- Potential benefits of a life of project greenfields agreement include:

³ Ibid, p3

⁴ Ibid, p4

⁵ Ibid, p5

⁶ Ibid, p4

⁷ Ibid.

⁸ Ibid.

⁹ Ibid, p3

¹⁰ Ibid, p4

¹¹ Ibid.

- ‘better wages and conditions for employees’;¹²
- ‘improved engagement with enterprise bargaining generally’;¹³ and
- a ‘supercharging’ of Australia’s job growth.¹⁴

For the importance of the above claims in advancing the proposal of introducing life of project greenfields agreements, the Discussion Paper is embarrassingly devoid of references that support them. The Discussion Paper is likewise devoid of any attempt at creating a tangible connection between things that it claims are connected, such as life of project greenfields agreements and better wages and conditions for employees (which in itself is a baffling claim).

Just as the claim that life of project greenfields agreements could potentially result in better wages and conditions for employees is baffling, so too is the claim that life of project greenfields agreements may result in *improved* engagement with enterprise bargaining generally. The AWU suggests that it would clearly be the opposite: by installing an agreement for the duration of a project there will necessarily be a *reduced* engagement with enterprise bargaining as the agreement will not be renegotiated throughout the life of the project.

The Discussion Paper is entirely informed by the interests of select employers and completely fails to consider the impact that life of project greenfields agreements will have on employees in any meaningful way. The claims made throughout the Discussion Paper are largely without any basis whatsoever and do not rise above bare assertion. The Discussion paper is biased and inaccurate.

The Impact of Industrial Action on Major Projects: A Concocted Issue

The Discussion Paper attempts to establish what the AWU believes to be an entirely concocted issue: the impact of industrial action on the completion of major projects and the attraction of further investment in large projects. Industrial disputation in Australia is currently at extremely low levels, with days lost due to industrial disputes in the current decade being less than half of those in the previous decade and less than three percent of days lost due to industrial disputes in the 1970s.¹⁵

¹² Ibid

¹³ Ibid, p5

¹⁴ Ibid.

¹⁵ Stanford, J (2018) *Briefing Note: Historical Data on the Decline in Australian Industrial Disputes*, p3

At the same time, Australia is also experiencing a significant slowing in wage growth.¹⁶ The Discussion Paper's proposal for life of project greenfields agreements is clearly predicated on the suppression of industrial action. Industrial action is a legitimate tactic engaged in by workers to pressure employers to improve wages and conditions.

Despite this, the Discussion Paper attempts to draw a link between suppressing industrial action on major projects and *superior* wage outcomes for the employees whose right to take industrial action would be removed from them entirely. This link does not exist; the mere suggestion is a fallacy.

The proposal being advanced by the Discussion Paper will far more likely result in inferior wage outcomes for employees in a time of sluggish and entrenched low wage growth in Australia. This alone should be enough for the proposal to be abandoned. A claim that the removal of the possibility of industrial action will result in superior wage outcomes for employees is outrageous.

The Fair Work Act

The introduction of life of project greenfields agreements will further entrench employer power in the Act through the erosion of employee protections.

Firstly, the erosion of representation. Section 182(4) of the Act permits an employer to create a unilateral greenfields agreement, that is, without the involvement of a relevant union party. The only requirement for the employer to effectively remove a union's involvement in the making of a greenfields agreement is the provision of notice to the union and a period of six months. Should life of project greenfields agreements be introduced, the incentive for employers to follow the regime in s.182(4) is increased – the employer can lock in wages and conditions for the entire life of a project without having to meaningfully bargain with a union.

In the experience of the AWU, employers are already weaponising s.182(4) to apply pressure to unions in greenfields agreement negotiations. We believe that the introduction of life of project greenfields agreements will result in a swift uptake in this strategy and effectively sideline the legitimate voices of workers in the making of

¹⁶ Parliamentary Library Research Paper (2019), *The Extent and Causes of the Wage Growth Slowdown in Australia*

agreements that can cover hundreds if not thousands of workers. This is unacceptable and increases the risk of employee exploitation and wage stagnation.

Secondly, the erosion of industry standards. An enterprise agreement that is in term for the life of a project necessarily prohibits workers from pursuing superior wages and conditions throughout the life of that project. A prohibition on future bargaining throughout the life of the project is far more likely to have a negative impact on wages and conditions of workers engaged at the project than to have any other effect.

Also relevant to the erosion of industry standards is the requirement at s.187(6) of the Act and its proposed application. Section 187(6) is only enlivened when employers attempt to make unilateral greenfields agreements (i.e. without the involvement of a union). Consistent with our earlier submissions, the AWU believes that employer uptake on the scheme that permits the making of unilateral greenfields agreements will increase should life of project greenfields agreements be implemented.

Currently, the term of enterprise agreements is determined by an absolute measure: time. If the term of an agreement is instead determined by the length of a project, this introduces uncertainty not only regarding the actual length of the agreement (which is unacceptable in itself), but also in the application of s.187(6). It is not possible for the Fair Work Commission to accurately determine if a unilateral employer greenfields agreement will reflect prevailing pay and conditions in the industry if the agreement is to apply for an indeterminate period of time, or even for several years.

Thirdly, the erosion of wage protection. Section 193 of the Act ensures that an enterprise agreement offers terms and conditions to employees covered that are better off overall when compared to the relevant modern award. Notably, s.193 only requires the agreement to offer superior terms and conditions in comparison to the relevant award at a single point in time: the time the test is applied for the purposes of assessing the agreement for approval. Accordingly, the longer the term of the agreement, the less effective protection s.193 provides for employees.

Finally, the proposal is arguably in conflict with the objects of the Act as it will further entrench provisions that are unfair to working people¹⁷ and will discourage collective bargaining.¹⁸

Uncertainty

An enterprise agreement that has its term determined by the length of a project is inherently uncertain. Projects may be delayed by a range of factors, both internal and external. What may result from this is greenfields agreements applying to a workforce for a number of years beyond the initial estimated length of the project.

A relevant example is during the construction phase of the Yarwun 2 expansion to Rio Tinto's alumina refinery near Gladstone in Queensland, where Rio Tinto retrenched 570 contractors.¹⁹ As a result, the project took far longer to complete than initially estimated. Had a life of project agreement applied to this project, the term of the agreement would have automatically been extended, which may introduce a range of issues for the workers to which the agreement applied.

In the Yarwun case, Rio Tinto attributed the retrenchments to the global financial crisis. However, if an agreement's term is tied to the duration of a project, a delay to the project's completion will necessarily ensure an extension of the agreement's term. Such delays may take any form, including intentional decisions made by employers should the extension of the agreement be advantageous to the employer. This is, again, power granted to the employer at the expense of the employee.

Conclusion

The proposal for life of project greenfields agreements should be unequivocally abandoned. The effects of the implementation of such a proposal are inherently and significantly negative for the working men and women of Australia.

The only effect that life of project greenfields agreements will have on wages is stagnation. There is no evidence that the proposed regime will support job growth.

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¹⁷ This is inconsistent with s.3(a) of the Act.

¹⁸ This is inconsistent with s.3(f) of the Act.

¹⁹ <https://www.couriermail.com.au/news/rio-tinto-cuts-700-workers-as-5000-mining-jobs-lost/news-story/9bd704be2421c054ea7240532e2eabda?sv=855aa12d74514fe4831a0c0a5b7c2018>