Electrical Trades Union

Submission in response to the Attorney General's Discussion Paper – Attracting major infrastructure, resources and energy projects to increase employment-Project life Greenfields agreements

5 November 2019

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Preliminary Summary

A. The ETU does absolutely rejects the Proposed Reforms.

B. The ETU supports the Australian Council of Trade Unions (ACTU) submission in response.

C. In particular, the ETU decries:

    a. the unilateral and unbalanced nature of the proposed Greenfields agreements;

    b. the piecemeal, impractical and biased turn to a form of centralised wage fixation; and

    c. the stripping of employees' right to bargain for the terms and conditions governing their working lives.

D. The Proposed Reforms would do nothing to assist Australians in combatting wage stagnation and other pressing issues, and would instead serve to further undermine the rights and entitlements of employees

E. The Proposed Reforms should be rejected.

Introduction

1. The Electrical Trades Union of Australia ("the ETU") is the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents approximately 65,000 electrical and electronic workers around the country and the CEPU as a whole represents over 100,000 workers nationally.

2. The ETU welcomes the opportunity to make a submission in response to the Attorney General's reforms proposed (the "Proposed Reforms") in the Discussion Paper on attracting major infrastructure, resources and energy projects to increase employment – Project life Greenfields agreements ("the Discussion Paper").

3. This Proposed Reforms are misguided, unfair and will ultimately lead to a diminution in the rights and entitlements of affected employees.

4. The ETU has had the opportunity to review a draft of the ACTU's submissions. The ETU wholly endorses those submissions.

The Premise of Bargaining

5. Since the early 1990s onwards, enterprise bargaining has been the central pillar on which industrial relations has been based. The very premise of enterprise bargaining has been to *facilitate* the cooperation of employers and employees to work together to create mutually beneficial arrangements.

6. Certain core principles have been fundamental to enterprise bargaining throughout the reforms of the past three decades:

    a. that there are parties to agreement;
    b. that the agreements are voluntary, and largely not compelled by the State; and
    c. that the agreements are to be tailored to the industrial realities of the work covered.

7. The reforms contemplated by the Discussion Paper are inconsistent with each of these principles. Instead, the reforms would:

    d. create a class of unilateral industrial instruments;
    e. return a section of the workforce to centralised wage fixation; and
    f. foreclose the capacity of agreements to evolve over time.

8. Each issue is dealt with in turn.

Unilateral agreement making

9. The proposed reforms continue a trend towards disenfranchising employees from bargaining.

10. To an extent such a trend is inherent in greenfield agreement making. A balance must necessarily be struck between the obvious commercial benefit of industrial certainty at the outset of a project, and the rights of employees and employers to bargain. Historically, this balance has been struck with mechanisms such as:

    g. Contracted agreement duration;
    h. Agreement with relevant trade unions; and
    i. Heightened oversight by the Fair Work Commission.

11. These mechanisms were all, necessarily, imperfect, but instead tried to mediate the two competing demands.

12. The proposed reforms effectively end the attempt to strike a balance. Instead, a workforce will instead be (functionally) forever shut out from bargaining. Whether a Greenfields agreement is capped at nine years or left completely uncapped, employees under those agreements will never have a right to bargain for the conditions governing their working lives.

13. The attempted safeguards to protect the interests of employees are insufficient and, in any event, begs the question: why is trust not being placed in the employees to productively bargain with their employer?

14. Ultimately, the proper way to protect the interests of employees is to empower them at the bargaining table.

A return to centralised wage fixation

15. Australia's path away from centralised wage was long and checkered, with mixed results across different sections of the economy.

16. Historically, it has been a key tenet of Australian conservative thought that employers and employees be free to bargain without compulsion from State agencies. It is passing strange that the proposed reforms seek to undo thirty years of settled industrial arrangements and instead grant the Fair Work Commission the power to arbitrate what will be, in effect, enterprise awards.

17. Whatever the merits of centralised wage fixation, the piecemeal approach envisaged by the proposed reforms is manifestly inadequate. Further, the Commission is no longer geared towards wage arbitration (outside of the minimum wage case). Reinvesting this power into an industrial tribunal will require far greater legislative and cultural change than that contemplated in the Paper.

18. Further, the grounds on which wages and conditions are to be set are of great concern. Far greater specificity is required to ensure that the employees' rights are not undermined or stripped away.

19. Of particular concern, when coupled with the unilateral and stochastic nature of the proposed system, is the complete absence of guidance for how future issues – outside the contemplation of the employer – are encountered. Is the Commission to build in variation procedures for periods of increased inflation? Are work practices to be set so loosely as to permit any future patterns of work required on-site? These and a host of similar questions plague the proposed reform, no of which have good answers.

Permanent Agreements

20. Whether capped at nine years or left uncapped, the Greenfields agreements envisaged would – for all intents – be permanent. Most worksites currently covered by Greenfields agreements simply will not exist in nine years.

21. However, over the course of nine years the conditions obtaining to both the employer and employees can vary drastically. For Fly-In-Fly-Out workers in Western Australia, the change to rosters achieved over the last five years have led to staggering improvements in quality of life.

22. Turning to wages, it is simply not possible to predict what rates will be appropriate over a nine year window – let alone indefinitely. Nor is it possible to predict what patterns of work will be necessary.

23. Instead, Greenfields agreements will instead:

    j. have conditions set to some external standard (e.g. CPI, WPI), which then deprives the employer of any certainty; or
    k. will be cast in such broad terms as to be meaningless.

24. Neither outcome meets any reasonable criteria for change.

Fixing what problem – an already broken bargaining system

25. As has become increasing obvious, there are real issues with the state of enterprise bargaining in Australia. It has proven ineffective at combatting headline issues such as wage stagnation or equal pay. Further, the most recent ABS statistics show the continued decline in private sector agreement coverage, implying that it is a system that no longer works for employees or employers.

26. The failings of the current system are manifold, from artificial agreement scope provisions, to constriction around agreement content, to inequitable bargaining rules, the regime is simply failing.

27. A key issue facing the ETU has been the rise of "baseline" agreements. That is, agreements negotiated with an artificial small and unrepresentative group of employees *prior* to the engagement of the workforce proper. These agreements typically prescribe rates of pay well below the *actual* rates paid to employees.

28. In the last 12 months alone, the ETU has been faced with dozens of such agreements, particularly in the resources sector. At root, the issue is that these are "negotiated" on a purely defensive basis to foreclose employees having a say in the terms and conditions which govern their working lives. The sole intent of the agreements is to prevent actual bargaining.

29. However, nothing in the proposed reforms goes any way to dealing with these underlying issues. Rather, they would serve to pour petrol on the fire, directly undermining bargaining in the few industries where it persists.

30. What goes unsaid in the Paper is the true objective, that is, certain lobby groups wish for Greenfields agreements to be a shield *against* bargaining. The proposed reforms would allow large firms to unilateral dictate terms and conditions indefinitely.

31. Nothing in the Proposed Reforms will assist employees. Rather, the reforms would

    l. do nothing to address the problems with enterprise bargaining;
    m. do nothing to address the decline in enterprise bargaining; and
    n. directly lead to decreases in wages and conditions.

32. The Proposed Reforms should be rejected.