



5 February 2021

## **Senate Education and Employment Legislation Committee**

### **Inquiry into the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020* [Provisions]**

#### **Schedule 4 – Greenfields Agreements**

This joint submission is made by the Australian Industry Group (**Ai Group**) and the Australian Constructors Association (**ACA**) in respect of Schedule 4 – Greenfields Agreements of the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (the Bill)*.

The introduction of the Bill into Parliament follows meetings of five working groups that met over a 10-week period up to September 2020 to discuss what reforms should be implemented to industrial relations laws to drive employment growth and investment, and to assist the recovery from the pandemic.

The ACA was a member of the Greenfields Agreement Working Group and Ai Group also participated in the meetings of the Working Group as an adviser to the ACA.

Ai Group has a large membership in the construction industry including both major builders and large and small subcontractors. The ACA is a national industry association which represents Australia's major construction contractors.

#### **Summary of the key provisions in Schedule 4**

The Bill would amend the *Fair Work Act 2009 (FW Act)* to enable greenfields agreements to continue for the life of the construction work on a 'major project' (with a maximum of eight years from the date the agreement comes into operation).

For the purposes of the new provisions, a project would be a 'major project' if:

- The total expenditure of a capital nature that has been incurred, or is reasonably likely to be incurred, in carrying out the project is at least \$500 million; or
- A declaration is made by the responsible Minister that a project with capital expenditure of at least \$250 million is a 'major project' given the national or regional significance of the project and the contribution that the project is expected to make to job creation.

If a major project greenfields agreements has a nominal expiry date that is more than four years after the date of approval, the agreement must include a term that provides for at least an annual increase of the base rate of pay for the employees covered by the agreement.

### **The need for reform to the laws regulating greenfields agreements on major projects**

Currently, under s.186(5) of the FW Act an enterprise agreement cannot have a nominal term of more than four years.

It is illogical to prevent contractors and unions from negotiating a greenfields agreement with a nominal life of more than four years, if the agreement will apply to a major construction project that will continue for more than four years.

To make matters worse, the current maximum four-year term commences from the date that the agreement is approved by the Fair Work Commission (**FWC**), which often prevents agreements being negotiated and approved by the FWC during the planning stages of a project.

The expiry of a greenfields agreement at a critical stage during the construction of a major project is disruptive, risky and costly due to:

- The extensive amount of time and other resources that are typically required to negotiate greenfields agreements for major projects; and
- The risk of industrial action leading to project delays.

Industrial action on major projects impose many direct and indirect costs, including:

- Liquidated damages where the project is not completed on time;
- Program acceleration expenses, e.g. extra overtime;
- Increased costs for the hire of rented equipment, such as cranes, mobile plant, sheds, offices and other equipment, due to project delays;
- Damage to the contractor's reputation resulting in the loss of future business; and
- Lost wages for employees who take industrial action and those stood down as a result of the industrial action of other employees.

One area of great concern to contractors is the additional stresses that arise when accelerated 'catch-up' programs need to be implemented due to delays caused by industrial disputes on major projects. These programs can have a negative impact on safety and quality, and result in significant additional costs.

All of the above risks and potential costs are taken into account by:

- Contractors when submitting tender bids, resulting in increased project costs for Governments and other clients; and
- Private sector clients when deciding whether to invest in major projects in Australia.

During the life of a major project, the resources of all parties are best devoted to ensuring the delivery of the project on time and within budget, and that high standards of safety and quality are maintained. It is not in anyone’s interests for resources to be devoted to negotiating a new agreement at a critical stage during the construction of the project.

The existing illogical and unnecessary restrictions on the nominal term of greenfields agreements applicable to major projects are a barrier to investment, jobs and the recovery from the pandemic. Removing the restrictions will boost investment and jobs, and aid the recovery.

We note that in the lead-up to the last Federal Election, the then Opposition Leader, the Hon Bill Shorten MP, publicly expressed support for project life greenfields agreements. At a business address in Perth on 15 May 2019, Mr Shorten said:<sup>1</sup>

"We want to look at the ability for companies to negotiate with unions for extended greenfields agreements, project life, you can go to the global investors who will back it."

"They’ll be good paying jobs. You get the certainty of the arrangement, the union gets the certainty of the arrangement, the workforce get the certainty of the arrangement."

#### **Our views on the provisions of Schedule 4**

We strongly support the provisions of Schedule 4, as set out in the following table.

<b><i>Provisions in the Bill</i></b>	<b><i>Ai Group / ACA’s position</i></b>	<b><i>Comments</i></b>
Item 2 Section 23B – Meaning of <i>major project</i>	Supported	The proposed \$500 million and \$250 million thresholds in the Bill are appropriate.  There are many major projects and planned major projects with capital expenditure of between \$250 million and \$500 million that have continued for more than four years or can be expected to continue for more than four years, particularly in the mining industry.  Any higher threshold would deter investment because a project that falls below the threshold would be exposed to

<sup>1</sup> *Australian Financial Review*, Phillip Coorey and Andrew Tillett, ‘Shorten reaches out to miners’, 15 May 2019.

<b>Provisions in the Bill</b>	<b>Ai Group / ACA's position</b>	<b>Comments</b>
		<p>increased risks and costs as discussed above, if the project continues for more than four years.</p> <p>The ability for the responsible Minister to declare that a project with capital expenditure of between \$250 million and \$500 million is a major project is important because, for example, a regional project with this value could be extremely important for jobs and economic growth in the relevant region.</p>
<p>Item 3 Paragraph 186(5)(b) – Maximum term for a greenfields agreement</p>	<p>Supported, but an amendment is proposed to improve the operation of the provisions</p>	<p>The maximum 8-year term in the Bill is appropriate. The construction phase of most major projects are completed within 8 years.</p> <p>Importantly, the 8-year timeframe commences from ‘the day the agreement will come into operation’. This approach gives contractors and unions the ability to negotiate a greenfields agreement at the planning stage of a project, with the agreement only commencing to operate when work commences on the project (see s.186(5)(b)(i)).</p> <p>For similar reasons, the following amendment should be made to s.186(5)(b)(ii) to allow agreements that apply to other construction projects to operate from a prospective date, without reducing the maximum 4-year term:</p> <p><i>(ii) otherwise—4 years after the day on which <del>the FWC approves the agreement</del> <u>the agreement will come into operation.</u></i></p>
<p>Item 4 Subsection 187(7) – requirement for annual wage increases</p>	<p>Supported</p>	<p>It is reasonable for a greenfields agreements that has a nominal term greater than four years to include a term that provides for at least an annual increase in the base rate of pay. Approaches that could be taken to this issue within a greenfields agreement would include:</p> <ul style="list-style-type: none"> <li>• Including a schedule of annual wage increases in the agreement;</li> <li>• Including a term that provides for an annual wage increase in line with movements in the CPI or the Wage Cost Index;</li> <li>• Including a term that provides for annual wage increases equivalent to the CPI + x%.</li> </ul>

<b>Provisions in the Bill</b>	<b>Ai Group / ACA's position</b>	<b>Comments</b>
Item 5 Paragraph 211(1)(b) – Maximum term for a varied greenfields agreement	Supported, but an amendment proposed to improve the operation of the provisions	The maximum 8-year term in the Bill is appropriate for the reasons outlined above regarding Item 3 in Schedule 4 of the Bill.  For similar reasons to those outlined above, the following amendment should be made to s.211(1)(b)(ii):  <i>(ii) otherwise—4 years after the day on which <del>the FWC approves the agreement</del> <u>the agreement will come into operation.</u></i>

We urge the Committee to recommend that the legislative amendments in the Bill are passed without delay.

**Contacts for this submission:**

**Ai Group:** Stephen Smith, Head of National Workplace Relations Policy, Ai Group, Ph. 0418 461183, Email: [stephen.smith@aigroup.com.au](mailto:stephen.smith@aigroup.com.au)

**ACA:** Jon Davies, Chief Executive Officer, ACA; Ph: 0419 091 894; Email: [jon.davies@constructors.com.au](mailto:jon.davies@constructors.com.au)