Greenfields Agreements Review

Background paper


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The document must be attributed as the Greenfields Agreements Review Background Paper.

Contents

A review of greenfield agreements after November 2015

This paper sets out the background to the independent review of the operation of Part 5 of Schedule 1 of the *Fair Work Amendment Act 2015* (Amendment Act) and the changes made to greenfield enterprise agreement making under the *Fair Work Act 2009* (Fair Work Act) made by the Amendment Act.

On 3 October 2017, Matthew O'Callaghan, a former Senior Deputy President of the Fair Work Commission was engaged by the Government to undertake the independent review. Mr O'Callaghan's background is summarised at Attachment A.

The review is to be complete by the end of November 2017 and will take into account the publicly available information and any submissions which may be made. Written submissions are to be provided by 25 October 2017.

Submissions are to be forwarded to greenfieldsreview@employment.gov.au. Unless requested otherwise, all submissions will be made publicly available at: https://www.employment.gov.au/greenfields-agreements-review.

Scope of this review

The review is a statutory requirement of the Amendment Act. The Amendment Act provides that the Minister must cause an independent review of Part 5 of Schedule 1 of the Amendment Act to be undertaken and completed within two years of its commencement on 27 November 2015.

The full scope of the review is to consider and evaluate the first two years of the operation of the two changes made to greenfields enterprise agreement making under the Fair Work Act, made by the Amendment Act. These changes were:

- Introduction of an optional six month notified negotiation period for proposed single-enterprise agreements, where the agreement is a greenfields agreement. If an agreement cannot be reached with a union or unions within the six-month period, the employer can take the agreement to the Fair Work Commission for approval.
- Extending good faith bargaining rules to greenfields enterprise bargaining negotiations.

The review may also evaluate other matters relevant to the operation of greenfields agreements, including, but not limited to the:

- length of greenfields agreements;
- the average timeframe for concluding a greenfields enterprise agreement prior to the commencement of the Amendment Act and what impact the provisions of the Amendment Act may have had since;
- the views of stakeholders regarding behaviours and practical effects of the greenfields provisions of the Amendment Act; and
- whether the provisions are appropriate to Australia's current investment climate.

The results from this review will be used to report to the Parliament on the effects of the provisions on the workplace relations system in Australia.

Any recommendations for further reform to greenfields enterprise agreement making will be provided to the Government for future consideration.

Greenfields agreement provisions and the Fair Work Act

The capacity for employers and their employees to enter into enforceable enterprise agreements is a significant element of the Australian workplace relations system. Part 2-4 of the Fair Work Act deals with the effect and the operation of enterprise agreements, and the processes to be followed in order to reach an enterprise agreement and have it approved by the Fair Work Commission.

Greenfields agreements represent an exception to the general principle that enterprise agreements are reached between employers and their employees.

The Fair Work Act (section 172) provides that a greenfields agreement can be made between an employer(s) and relevant unions if that agreement relates to a genuine new enterprise that is being established or is proposed to be established.

Because a greenfields agreement is made between an employer(s) and union(s), rather than employees, the agreement making process is quite different. Section 182 (3) of the Fair Work Act simply confirms that a greenfields agreement is made when it has been signed by each employer and relevant employee organisation that it is expressed to cover. This need not be all of the relevant employee organisations for that agreement.

Central to this review are specific sections of the Fair Work Act. Section 182 (4) states:

> If:
>
> > (a) a proposed single-enterprise agreement is a greenfields agreement that has not been made under subsection (3); and
> >
> > (b) there has been a notified negotiation period for the agreement; and
> >
> > (c) the notified negotiation period has ended; and
> >
> > (d) the employer or employers that were bargaining representatives for the agreement (the ***relevant employer or employers***) gave each of the employee organisations that were bargaining representatives for the agreement a reasonable opportunity to sign the agreement; and
> >
> > (e) the relevant employer or employers apply to the FWC for approval of the agreement;
>
> the agreement is taken to have been ***made***:
>
> > (f) by the relevant employer or employers with each of the employee organisations that were bargaining representatives for the agreement; and
> >
> > (g) when the application is made to the FWC for approval of the agreement.
>
> Note: See also section 185A (material that must accompany an application).

The notion of a notified negotiation period is addressed in section 178B of Fair Work Act in the following terms:

178B Notified negotiation period for a proposed single-enterprise agreement that is a greenfields agreement

(1) If a proposed single-enterprise agreement is a greenfields agreement, an employer that is a bargaining representative for the agreement may give written notice:

(a) to each employee organisation that is a bargaining representative for the agreement; and

(b) stating that the period of 6 months beginning on a specified day is the ***notified negotiation period*** for the agreement.

(2) The specified day must be later than:

(a) if only one employee organisation is a bargaining representative for the agreement—the day on which the employer gave the notice to the organisation; or

(b) if 2 or more employee organisations are bargaining representatives for the agreement—the last day on which the employer gave the notice to any of those organisations.

Multiple employers—agreement to giving of notice

(3) If 2 or more employers are bargaining representatives for the agreement, the notice has no effect unless the other employer or employers agree to the giving of the notice.

Further, section 185A states:

An application under subsection 182(4) for approval of an agreement must be accompanied by:

(a) a copy of the agreement; and

(b) any declarations that are required by the procedural rules to accompany the application.

For completeness, the relevant Fair Work Commission Rules[1] are accessible here.

The review will also consider the application of good faith bargaining rules to greenfields agreement making. The Amendment Act inserted section 177, which states:

The following paragraphs set out the persons who are bargaining representatives for a proposed single-enterprise agreement that is a greenfields agreement:

(a) an employer that will be covered by the agreement;

(b) an employee organisation:

[1] Refer to Rule 24(5B) and 24(5C) Sch 1 *Fair Work Commission Rules 2013.*

(i) that is entitled to represent the industrial interests of one or more of the employees who will be covered by the agreement, in relation to work to be performed under the agreement; and

(ii) with which the employer agrees to bargain for the agreement;

(c) a person who is a bargaining representative of an employer that will be covered by the agreement if the employer appoints, in writing, the person as his or her bargaining representative for the agreement.

As designated bargaining representatives, the parties to greenfields agreement making are required to adhere to the Fair Work Act proscribed good faith bargaining requirements set out in section 228:

(1) The following are the good faith bargaining requirements that a bargaining representative for a proposed enterprise agreement must meet:

(a) attending, and participating in, meetings at reasonable times;

(b) disclosing relevant information (other than confidential or commercially sensitive information) in a timely manner;

(c) responding to proposals made by other bargaining representatives for the agreement in a timely manner;

(d) giving genuine consideration to the proposals of other bargaining representatives for the agreement, and giving reasons for the bargaining representative's responses to those proposals;

(e) refraining from capricious or unfair conduct that undermines freedom of association or collective bargaining;

(f) recognising and bargaining with the other bargaining representatives for the agreement.

Note: See also section 255A (limitations relating to greenfields agreements).

(2) The good faith bargaining requirements do not require:

(a) a bargaining representative to make concessions during bargaining for the agreement; or

(b) a bargaining representative to reach agreement on the terms that are to be included in the agreement.

This review is directed at considering the operation and the effect of these provisions.

Specifically, it will consider whether these provisions have been supporting more effective greenfields agreement negotiations and whether these provisions have had any effect on the behaviours of parties negotiating greenfield agreements. The review will consider whether any

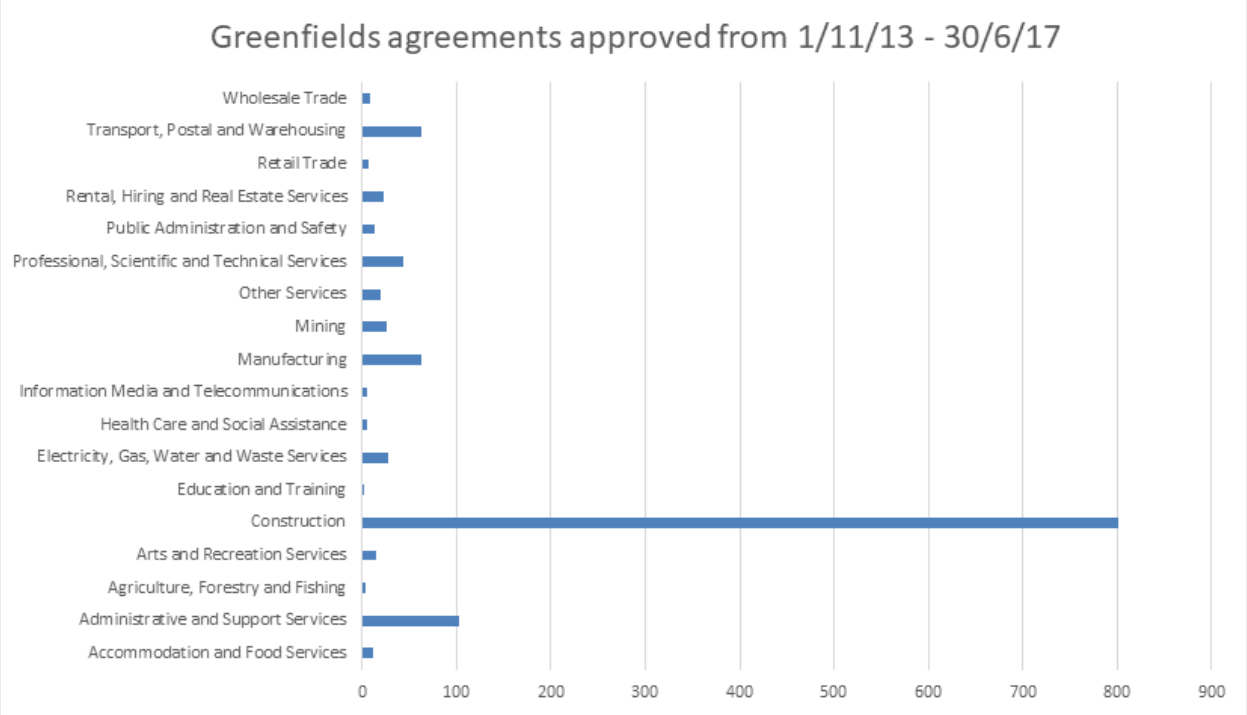
further amendments should be enacted so as to improve the effective access to greenfields agreements.

Coverage of greenfields agreements

Whilst greenfields agreements can cover employers and employees across a broad cross-section of industries, the Workplace Agreements Database from the Department of Employment indicates that greenfields agreements are significantly more common in the construction sector. It is likely that this construction sector category includes mining and resource development work.

The industries where greenfields agreements have been approved since 1 November 2013 to 30 June 2017 are summarised in the graph below. The industries are based on the employer's self-identified Australian and New Zealand Standard Industry Classification (ANZSIC).

Figure 1 – Greenfield agreements approved by sector[2]



Agreements covering construction that occurs on mining projects are largely grouped under Construction, but occasionally this type of agreement is allocated to Professional, Scientific and Technical Services, Administrative and Support Services, or other ANZSIC codes. This will depend on the primary activity of the employer, which is the guide when allocating agreements to ANZSICs.

The 2012 report *Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation* (2012 Fair Work Act Review), noted that in the first two years of the Fair Work Act's operation, over two-thirds of greenfields agreements occurred in construction, with a further 5.2 percent in the mining industry.

The content and the duration of greenfields agreements varies substantially, although some similarities can be observed between agreements applicable on the same construction site.

[2] Source: Department of Employment's Workplace Agreement Database.

A brief history of the provisions subject to this review

2012 Fair Work Act Review

The 2012 Fair Work Act Review noted evidence provided by the Business Council of Australia which went to concerns about the potential for delays and uncertainty effecting major capital projects as a consequence of difficulties in reaching greenfields agreements[3]. Submissions to that review, made by a number of employer associations including the Master Builders Association[4] and AiGroup and Australian Constructors Association[5] asserted concerns over the extent to which some unions had made excessive wage claims and had sought to delay the commencement of major capital projects, thereby putting those projects at risk.[6]

The Australian Council of Trade Unions highlighted the historical background against which the Fair Work Act should be considered, noting that in its view preceding workplace relations legislation encouraged employers to use employment arrangements including greenfields agreements to unilaterally determine, with very few limitations, the terms and conditions of employment of their workforce.[7]

The proposal by some employers that the Fair Work Act should provide for the making of greenfields agreements with a union eligible to represent a single employee to be employed under the agreement, thereby increasing the employer's options as to whom it reaches agreement with,[8] was opposed by unions. They argued that it would allow an employer to bypass unions who are the legitimate representatives of people to be employed.[9]

The Australian Workers Union supported good faith bargaining principles applying to greenfields agreement negotiations. [10]

The Review Panel made the following observations with respect to greenfields agreements:

> "Written and oral submissions to the Panel argued that the requirement for unions to be involved when a greenfields agreement is made is a major impediment of the FW Act compared to the immediately preceding legislation, which permitted the employer to unilaterally propose pay and conditions under which future employees would work. These unilateral 'agreements', which could cover employees and also deny recourse to protected action, were explicitly rejected in Labor's industrial relations reforms proposed for the 2007 federal election.
>
> The Panel accepts that the Work Choices framework conferred greater freedom on employers to unilaterally determine wages and conditions. It is less clear that the economically relevant outcomes are very different. For example, the Panel was not

[3] Business Council of Australia submission to the 2012 Fair Work Act Review, pg 22
[4] See for example Master Builders Association supplementary submission to the 2012 Fair Work Act Review, paragraph 4.1, pp 5-6
[5] AiGroup and Australian Constructors Association submission to the 2012 Fair Work Act Review, pg 3
[6] The Minerals Council of Australia submitted to the 2012 Fair Work Act Review that negotiations with unions are 'lengthy, tortuous and onerous' (MCA, p22).
[7] ACTU submission to the 2012 Fair Work Act Review, pp2-3 & p6
[8] MBA supplementary, p. 6; Ai Group pp. 16, 64–65; CCIWA, pp. 9, 42–44; Ai Group/Australian Constructors Association, p. 4.
[9] AMWU supplementary submission to the 2012 Fair Work Act Review, pp. 3–4; CFMEU supplementary submission to the 2012 Fair Work Act Review, pp. 5–6.
10 AWU submission to the 2012 Fair Work Act Review, pp5-6.

presented with evidence that any significant project had not proceeded for want of an agreement. There is evidence that the gap between wage outcomes under greenfields agreements and the average wage in all agreements has widened, though the average wage increase under greenfields agreements remains under 5 per cent.[11] The somewhat wider gap may reflect the increasing number of remote minerals and energy construction projects in recent years. From the beginning of 2009 to the end of 2011 the volume of engineering construction completions rose by over 40 per cent. Over the same period the value of engineering construction work yet to be done by the private sector rose two and a half times. These were much greater increases than in previous years.

The Panel is concerned, however, that the existing provisions confer on a union (or unions) with coverage of the majority of prospective workers a significant capacity to frustrate the making of an appropriate greenfields agreement at all or at least in a timely way. While the Panel was not presented with evidence that this power is abused, it concluded that the potential risk to projects of national significance should be mitigated [12].

The Review Panel Report concluded:

> "the existing provisions effectively confer on a union (or unions) with coverage of a majority of prospective workers a significant capacity to frustrate the making of an appropriate greenfields agreement at all or at least in a timely way. Unions in this position are able to withhold agreement and effectively prevent the determination of terms and conditions in advance of a project commencing. In light of the evidence we were presented about the need for certainty over the labour costs associated with major projects, we are concerned at the risk of delays in greenfields agreement making that this entails. We have considered a range of mechanisms to address these concerns. We do not consider that a return to employer greenfields agreements is appropriate. A central object of the FW Act in addressing the problem with Work Choices was to ensure greenfields agreements were 'true agreements negotiated between the relevant bargaining representatives and made by more than one party'.[13] Further, we consider that changes to greenfields agreements can be made within the scope of this objective.
>
> It appears to us that a very straightforward way of addressing the claims made about the capricious bargaining conduct of unions during greenfields negotiations is to extend the application of the good faith bargaining provisions to negotiations for greenfields agreements. We are unable to discern a cogent policy basis for the creation of an exception for greenfields agreements in this respect. We note that the Fair Work Bill originally made provision to this effect, and in doing so provides a potential model for doing so.

[11] In 2004–05, under the WR Act, the greenfields average annualised wage increase (AAWI) was 4.5 per cent, compared to 4.4 per cent for all agreements. They made up 5.4 per cent of all agreements. In the period 2006–08, 57 per cent of greenfields agreements were employer greenfields agreements and 43 per cent were union greenfields agreements. The AAWI for non-union greenfields agreements was 4.1 per cent and for union greenfields was 4 per cent, compared with all agreements, which were 4.1 per cent and 3.8 per cent union/non-union respectively. Greenfields made up 9.2 per cent of all agreements. In 2009–11, under the FW Act, greenfields AAWI was 4.7 per cent compared to 3.9 per cent of all agreements and 4.0 per cent for all agreements that cover a union. They made up 6.4 per cent of all agreements. Source: DEEWR Workplace Agreements Database.

[12] 2012 Fair Work Act Review, paragraph 4.6.6, pg 82

[13] DEEWR submission to the FW Bill inquiry, p. 21.

Recommendation 27: The Panel recommends that the FW Act be amended to apply the good faith bargaining obligations in s. 228 to the negotiation of an s. 172(2)(b) greenfields agreement, with any necessary modifications.

Consistent with enlivening the obligations to bargain in good faith, it will be necessary to provide a mechanism for taking all reasonable steps to notify relevant unions—namely those with eligibility to represent the future employees to be covered by the proposed agreement—of an employer's intention to bargain. Again, the Fair Work Bill provides a model for such an obligation. The rationale for this notification obligation, as it was in the Bill, is to 'make sure that unions with relevant coverage are aware that bargaining is going on' and to require the employer to bargain in good faith with 'all relevant unions who seek to bargain'.[14]

Recommendation 28: The Panel recommends that the FW Act be amended to require employers intending to negotiate a s. 172(2)(b) greenfields agreement to take all reasonable steps to notify all unions with eligibility to represent relevant employees.

In conjunction with the extension of good faith bargaining provisions, we consider that the powers of FWA under s. 240 of the FW Act, along with our proposed 'own motion' dispute resolution power, should extend to disputes over greenfields agreement negotiations. This presently does not occur in light of the requirement that an applicant under s. 240 be a bargaining representative for an agreement, a term that does not apply to greenfields negotiations.

Recommendation 29: The Panel recommends that the FW Act be amended so that s. 240 (as with our Recommendation 22) applies to the negotiation of a s. 172(2)(b) greenfields agreement.

As summarised above, there are a range of views on the appropriateness of arbitration for resolving impasses in greenfields bargaining. After much thought and deliberation, the Panel is of the view that, where an impasse in negotiations is not resolved within a specified time and where conciliation by FWA has failed, FWA should have the power, either on its own motion or via a request from one of the parties, to resolve the impasse by a limited form of arbitration. While the Panel does not possess hard and fast views, FWA could be empowered to resolve the remaining outstanding issues between the parties by a process of arbitration, which is colloquially known as 'last offer' arbitration. In other words, FWA would examine the positions taken by the parties on the remaining outstanding issues and would be empowered to choose the position either of the employer or of the trade union or trade unions. It is the Panel's expectation that the ultimate availability of this type of final offer arbitration will ensure that the parties adopt realistic approaches to issues in their

[14] DEEWR submission to the FW Bill inquiry, p. 22.

negotiations with one another."[15]

Recommendation 30: The Panel recommends that the FW Act be amended to provide that, when negotiations for a s. 172(2)(b) greenfields agreement have reached an impasse, a specified time period has expired and FWA conciliation has failed, FWA may, on its own motion or on application by a party, conduct a limited form of arbitration, including 'last offer' arbitration, to determine the content of the agreement.

Fair Work Amendment Bill 2014

The Government committed to a range of amendments to the Fair Work Act at the 2013 election, including proposed amendments relating to greenfields agreements, and subsequently introduced the Fair Work Amendment Bill 2014 in the Parliament on 27 February 2014. The Explanatory Memorandum to the Bill noted the importance of certainty in wage costs in decisions about the commencement of some major capital projects as justification for the amendments. Additionally, the Explanatory Memorandum noted the cost implications of protected industrial action early in the life of a new enterprise, when a greenfields agreement had not been achieved before employees were engaged. The Government placed particular significance on considerations relevant to major resource development projects which require working arrangements not comprehensively addressed in modern awards. The full Explanatory Memorandum can be found on the Parliament of Australia website.

The Fair Work Amendment Bill 2014 initially proposed a three-month negotiating period for enterprise agreements, but this was amended to a six-month period in the course of negotiations with the Senate cross bench. The commitment to undertake this independent review into these changes to the greenfields agreement arrangements also reflected discussions between the government and the Senate cross bench.

The Fair Work Amendment Bill 2014 as amended was ultimately passed by the Parliament, on 11 November 2015, becoming the Amendment Act.

While the Parliament was considering the Bill, the Productivity Commission was in the course of conducting its inquiry into Australia's Workplace Relations Framework.

Productivity Commission inquiry into the Workplace Relations Framework

As part of its Draft Report into Australia's Workplace Relations Framework published in August 2015, the Productivity Commission considered a number of specific issues with respect to greenfields agreements. It particularly addressed allegations that unions were using their bargaining power to delay reaching agreement either to impose excessive conditions or to impose standard terms and conditions on an industry-wide basis. The Productivity Commission found that "*bargaining arrangements for greenfields agreements pose risks for large capital-intensive projects with urgent timelines. A limited menu of bargaining options would address the worst deficiencies, while taking account of the different nature of greenfield projects"*[16]. The Productivity Commission also noted the

[15] 2012 Fair Work Act Review, pp 171-173
[16] Productivity Commission Inquiry Report, *Overview and recommendations* (30 November 2015), pg 3

importance of greenfields agreements in the construction industry.[17] It recommended legislative change in the following terms:

> **DRAFT RECOMMENDATION 15.6**
>
> The Australian Government should amend the rules around greenfields agreements in the Fair Work Act 2009 (Cth) so that bargaining representatives for greenfields agreements are subject to the good faith bargaining requirements.

After considering submissions from unions and employers on the relative role of unions in greenfields agreements, the Productivity Commission concluded that it does not support a return to the unilateral greenfields agreement making arrangements which existed before the Fair Work Act. However, the Productivity Commission considered the following options at some length[18]:

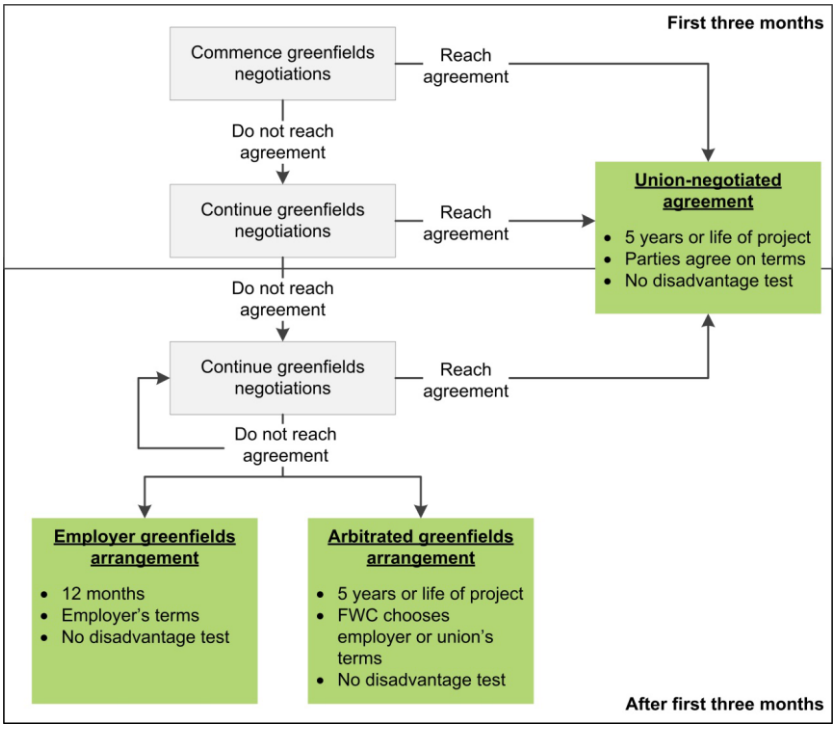
- arbitration by the Fair Work Commission,
- adoption of the employer agreement proposal after a three-month good faith bargaining period, subject to the "better off overall test" and an industrywide benchmark test, and
- the application of an agreement for a shorter (12 month) period where negotiations reach a stalemate.

The Productivity Commission suggested these options were not mutually exclusive and could represent choices available to an employer who was unable to negotiate a greenfields agreement.

In its August 2015 Draft Report, the Productivity Commission summarised its suggestions in following diagram:

[17] Productivity Commission Draft Report, *Chapter 15 – Enterprise Bargaining* (4 August 2015), pg 580
[18] Productivity Commission Draft Report, *Chapter 15 – Enterprise Bargaining* (4 August 2015), pp711-721

Figure 2 Greenfields agreement-making process[19]



In its Draft Report, the Productivity Commission made the following recommendation:

> **DRAFT RECOMMENDATION 15.7**[20]
>
> The Australian Government should amend the *Fair Work Act 2009* (Cth) so that if an employer and union have not reached a negotiated outcome for a greenfields agreement after three months, the employer may (as illustrated in figure 15.5):
>
> - continue negotiating with the union
> - request that the Fair Work Commission undertake 'last offer' arbitration of an outcome by choosing between the last offers made by the employer and the union
> - submit the employer's proposed greenfields arrangement for approval with a 12 month nominal expiry date.
>
> Regardless of the agreement-making process chosen by the employer, the ensuing greenfields arrangement must pass the proposed no-disadvantage test.

The final Productivity Commission Report into Australia's Workplace Relations System was provided to Government on 30 November 2015 and published on 21 December 2015, shortly after the Amendment Act provisions commenced. The Productivity Commission noted the amendments to the Fair Work Act but proceeded to make the following recommendation:

> **RECOMMENDATION 21.1 (SECTION 21.2)**[21]

[19] Productivity Commission Draft Report, *Chapter 15 – Enterprise Bargaining* (4 August 2015), pg55

[20] Productivity Commission Draft Report, *Chapter 15 – Enterprise Bargaining* (4 August 2015), pg55

[21] Productivity Commission Inquiry Report, *Overview and recommendations* (30 November 2015), pg 60

The Australian Government should amend the *Fair Work Act 2009* (Cwth) so that if an employer and union have not reached a negotiated outcome for a greenfields agreement after three months, the employer may:

- continue negotiating with the union
- request that the Fair Work Commission undertake 'last offer' arbitration by choosing between the last offers made by the employer and the union
- submit the employer's proposed greenfields arrangement for approval with a 12 month nominal expiry date.

Regardless of the agreement-making process chosen by the employer, the ensuing greenfields arrangement must pass the no-disadvantage test specified in recommendation 20.5.

The final Productivity Commission Report also noted in recommendation 21.2 a case for the establishment of project proponent greenfields agreements, and laid out recommendations for how amendments to the Fair Work Act might be made to accommodate these.

Issues subsequent to the greenfields agreement amendments of 2015

On the information available to the Department of Employment, no application has been made for approval of a greenfields agreement in accordance with s. 182 (4) of the Fair Work Act.

There has been a significant reduction in the numbers of greenfields agreements proposed for approval by the Fair Work Commission since 2015. This reduction is proportionally greater than the reduction in the overall numbers of enterprise agreements being proposed for approval. This data is shown in the table below.

Table 1 – Enterprise agreement lodgements and approvals[22]

Type of application	Lodged				Approved			
	2015 –16	**2014 –15**	**2013 –14**	**2012 –13**	**2015 –16**	**2014 –15**	**2013 –14**	**2012 –13**
s.185 — Single-enterprise	5,238	5,449	5,945	6,333	4,523	5,027	5,602	6,051
s.185 — Greenfield	258	407	749	712	252	399	745	685
s.185 — Multi-enterprise	33	66	60	42	26	55	56	36
Total	**5,529**	**5,922**	**6,754**	**7,087**	**4,801**	**5,481**	**6,403**	**6,772**

The significant reduction in greenfields agreement applications appears to correspond with the reduction in investment in the mining industry in Australia, which peaked in 2013 and has been in decline since[23]. The end of the current mining boom will likely have affected both the number of construction related agreements and the number of greenfields agreements which relate to ancillary work and functions.

A further issue which has the potential to be regarded as relevant, goes to the time taken for approval of a greenfields agreement by the Fair Work Commission. Data available on time taken to approve enterprise agreements is shown in the table below.[24]

[22] Fair Work Commission Annual Report 2015-16, Major application types: Enterprise agreements.

[23] *Resources and Energy Quarterly*, Office of the Chief Economist, Australian Government Department of Industry, Innovation and Science, June 2014, p13.

[24] The previously published version of the background paper incorrectly noted an increase in the time taken to approve a greenfields enterprise agreement since 2015. This paragraph has been corrected to remove this reference.

Table 2 – Enterprise agreements – timeliness, lodgement to finalisation (median days) [25]

Type of application	KPI	Percentage of matters							
		50%				90%			
		2015–16	2014–15	2013–14	2012–13	2015–16	2014–15	2013–14	2012–13
s.185-Single-enterprise — lodgement to finalisation (days)	32 days	18	21	17	16	49	56	50	54
s.185-Greenfields — lodgement to finalisation (days)	32 days	12	14	14	14	35	46	41	38
s.185-Multi-enterprise — lodgement to finalisation (days)	32 days	28	34	26	22	85	90	54	64

From 2015-16 the Fair Work Commission altered its approach to consideration of applications for approval of agreements and adopted a largely administratively based consideration of the various approval tests[26]. That administrative system is the subject of oversight by various nominated members of the Fair Work Commission.

[25] Fair Work Commission Annual Report 2015-16, Major application types: Enterprise agreements.
[26] Fair Work Commission Annual Report 2015-16, Major application types: Enterprise agreements.

Issues on which specific comment is invited

Observations about the experience of parties to greenfields agreements made since November 2015 are invited. Those observations may address the effects of the specific amendments on negotiations directed at making greenfields agreements. Without in any way seeking to limit the submissions which may be provided, the following issues have been identified.

Submissions are invited to address:

- The extent to which the 2015 greenfields agreement amendments have altered bargaining behavior on the part of either employers or unions.
- Any concerns relating to the effect of the 2015 greenfields agreement amendments on bargaining outcomes and bargaining behaviour.
- The extent to which there may be a relationship between these amendments and the number of applications for approval of greenfields agreements.
- The extent to which there may be systemic issues or impediments to the making of greenfields agreements.
- Recommendations of the Productivity Commission relating to greenfields agreements.
- The anticipated effects of returning to the legislative arrangements which applied to greenfields agreement making prior to November 2015.
- The impact of the reduction in the number and scale of capital development projects on greenfields agreement making since 2015.
- Any other matter relating to the negotiation of, and the approval process for greenfields agreements.

Attachment A – Biography of Matthew O'Callaghan

Matthew O'Callaghan was appointed as a Senior Deputy President with the Australian Industrial Relations Commission in January 2001. He continued in this role with Fair Work Australia, then the Fair Work Commission until April 2017, when he retired. Over that time, he undertook Commission functions across the entire spectrum of industry, with an emphasis on work in South Australia and Western Australia.

Since his retirement. Mr O'Callaghan has undertaken a range of consulting work.

Prior to 2001, Mr O'Callaghan held senior and chief executive positions within the South Australian public sector.

Mr O'Callaghan was the Chief Executive of the South Australian Employers' Federation until 1993 and has a long background in construction workplace relations issues. He commenced his workplace relations career at the BHP Whyalla steel-works.