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GREENFIELDS AGREEMENTS

**Attorney-General's
Department**

1 November 2019



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Chamber of Commerce
and Industry**

WORKING FOR BUSINESS.

WORKING FOR AUSTRALIA

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1 INTRODUCTION

1. The Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to make a submission in response to discussion paper: *Attracting major infrastructure, resources and energy projects to increase employment – Project life greenfields agreements*.
2. ACCI and its member organisations have long engaged with the Parliament and other reviewers to champion the need for effective greenfields agreement making options under the *Fair Work Act 2009* (Fair Work Act) and its predecessors, and to ensure greenfields agreements are able to be finalised in a timely and reliable manner, and subsequently operate in a way that advances rather than places at risk incentives to invest and create jobs in Australia.
3. ACCI considers proposed reforms to establish life of project agreements will deliver benefits against each of the criteria the Government intends to measure any industrial relations reforms against. With the right parameters in place, changes will ensure major projects are not unduly delayed or disrupted, while at the same time protecting the interests of employees covered by such agreements. ACCI is of the view that the ability for agreements used on major greenfields projects¹ to match the duration of the project should be available for all agreements in use on that project. This recognises that project specific agreements can be made under both streams.
4. While the benefits will be outlined in detail throughout this submission, providing certainty for the life of major projects is a key factor that would assist in improving Australia's competitiveness and attractiveness as a place to invest, which will in turn support job creation, as well as economic growth and raised living standards. It is appropriate to emphasise upfront that work on major projects is overwhelmingly very well remunerated. The options canvassed in this submission are well removed from any conception of the lower paid / vulnerable workers.
5. Other input will come from ACCI network members with direct experience negotiating greenfields agreements and dealing with the negative consequences that occur when an agreement reaches its nominal expiry date while the project remains in the construction phase.

¹ Noting that major projects could be defined as projects in excess of \$50 million in line with the eligibility criteria used by the Federal Government in determining Major Project Status.

2 DISCUSSION QUESTIONS

2.1 Case study

6. Question 1 of the Discussion Paper is as follows:

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?

7. Many of the direct examples will come from ACCI's members, in particular those with members in the construction industry and the resources and energy industry who pursue greenfields agreements and are involved in major projects. We do however, wish to highlight a high profile case study, which brings to light the difficulties faced by parties when an agreement reaches its nominal expiry date when the construction phase of a project is still ongoing, and the resulting delays and cost implications of such an occurrence under the current agreement arrangements.

Case Study: Gorgon LNG Project – Significant delays and cost implications

The Chevron-operated Gorgon LNG Project is an example of a major project which was unduly disrupted because its numerous greenfields agreements reached their nominal expiry dates prior to the project completion, and it subsequently being subject to a number of union campaigns to delay and frustrate project completion.

Most of Gorgon's original enterprise agreements were registered in 2010, with some carrying three year terms and some four year terms. All of those original greenfields agreements expired prior to the project completing (and at the time taken was a function of the sheer scale of the project).

In August 2015, with construction 90% complete, a number of unions launched a six-figure advertising blitz to encourage more than 2,500 workers to vote in favour of potential industrial action, including stoppages of up to 24 hours, and bans on administrative work. Some unions, representing workers being paid in excess of \$200,000 per year, were pushing to frustrate the project in order to 'improve upon' what were already some of the industry's most attractive work rosters, increasing time off by about a third.

The escalation of the dispute came at a critical time for the Gorgon project, which at around the time of the proposed industrial action was running \$US17 billion over budget and more than a year late, with proposed industrial action putting the schedule for first exports at risk. This precarious situation was well known to unions in timing their claims.

While industrial action was ultimately avoided, this was not before the project suffered significant delays and cost implications.

Commentary at the time regarding the delays observed “IR is the black art in there... Labour is a big swing factor. I mean, wasting six months on union buggery every time one of these enterprise agreements expires certainly does not help meet planned schedules or budget”.²

Others described the period following the expiration of a greenfields agreement as “the free-kick time”, noting that the workers “have locked in a high-income lifestyle and likely the debt that comes with it. But when this project ends they will be back doing jobs that pay half as much. So, we have a structure that delivers the unions and their people the opportunity to hold capital projects hostage as those projects reach maturity.”³

8. This case study demonstrates that when the construction phase of a massive project like Gorgon extends beyond the term of its agreements, the project developer is exposed to risk that cannot be reasonably anticipated. This is an additional and unnecessary risk that companies have to factor in to their investment decisions, that brings with it a number of implications as detailed in Part 2.2, below.

2.2 Implications

9. Questions 2 and 3 of the Discussion Paper are as follows:

What are the implications of this occurring?

Does the current 4 year maximum term for a greenfields agreement represent a significant problem for employers, workers and proponents of, or investors in, greenfield projects?

10. The Gorgon LNG project example, above, which highlights that programs of work for major projects can extend beyond the four year maximum period of agreements, and the possibility of renegotiation and threats of industrial action occurring as project finalisation is becoming urgent and as the cost of days lost to disruption are greatest, is unfortunately not an isolated one.
11. Major projects generally involve years of planning, with the construction phase often extending beyond four years. This means that agreements, which currently have a maximum term of four years, will frequently pass their nominal expiry date while project construction is still underway.
12. This leads to a situation where negotiations occur for some form of replacement agreement, and the ability to take protected industrial action is enlivened, after capital has been deeply and inextricably committed and when workers and supply chains are engaged. The prospect of protected industrial action, or even threatened industrial action, part-way through the construction phase of billion dollar, nationally-significant projects, can be extremely damaging.
13. Disruption, or potential disruption of works during final or mature phases of project construction can lead to delays and significant economic damage, including as a result of scheduling and cost blowouts due to downtime during industrial action, preparing for industrial action (whether the action

² *Australian Financial Review*, ‘Gorgon illuminates monster problem’, 21 July 2015 <<https://www.afr.com/companies/energy/gorgon-illuminates-monster-problem-20150720-gigid0>>

³ *Australian Financial Review*, ‘Gorgon illuminates monster problem’, 21 July 2015 <<https://www.afr.com/companies/energy/gorgon-illuminates-monster-problem-20150720-gigid0>>

is ultimately taken or not), and penalties contractors incur for delays in the delivery of projects. Such industrial action is a cause for concern for investors and parent organisations, with markets closely monitoring major project completion.

14. The case law indicates that the Fair Work Commission has very limited power to intervene to stop such industrial action when it does occur or is threatened/pending. For example, in *CFMEU v Woodside Burrup Pty Ltd*⁴ the Full Bench quashed a decision suspending a period of protected industrial action being taken by employees of Mammot Australia Pty Ltd, a contractor engaged by Woodside to carry out critical work on its \$9 billion Pluto project. The Full Bench found the industrial action did not satisfy the requirements of causing “significant harm to third party.” This is despite the evidence showing that the industrial action had the following impacts:
 - a. An increase in the number of days it would take to complete the project, resulting in costs to Woodside of \$3.5 million per day to run the project and site-based services (that is, excluding payments to the contractors undertaking the actual construction work on the Project).
 - b. Delay in the commencement of the revenue stream from LNG sales, estimated to be in the order of further millions of dollars per day.
 - c. Costs of additional resources brought in to finish the work within the allocated contract dates.
15. This industrial action was taken following the expiry of the initial greenfields agreement and with only four to six weeks left of the project.
16. Further, as the Productivity Commission has observed:

*“Even if employees do not actually use this leverage [taking industrial action], the ex-ante risk of it raises investor risk and may add to project cost”.*⁵
17. This in turn creates a huge imbalance in bargaining power. With unions having extreme leverage and knowing that the employer is at a distinct and damaging disadvantage, the ability to insist on wages and conditions that are exorbitant and beyond industry standards is strengthened to unreasonable levels. There is evidence of instances of significant industrial pressure being applied to the proponents of projects to significantly increase benefits provided to employees during the life of the project, even though these benefits may not have been budgeted for or could not have sensibly been anticipated at the time the project commenced. Again, this applies to very high earning employees earning well in excess of award wage rates.
18. Invariably major projects require many companies and businesses to work together, with the supply chain for major projects being a cascading series of contracting and sub-contracting relationships. The large and complex supply chains and number of individuals engaged on such projects means disruption causes maximum impact and has the potential for costs of the project to blow out significantly.
19. The uncertainty around cost and timing that occurs when major projects are disrupted and delayed threatens to cause significant damage to Australia’s reputation and attractiveness as an investment destination for new major projects, and impacts greatly on our ability to bring further billion dollar,

⁴ [2010] FWAFB 6021.

⁵ Productivity Commission, *Review of the Workplace Relations Framework*, Final Report, p.689.

job-creating projects to our country. The wider community is also negatively impacted due to the delayed or lost opportunities for royalty payments, which are utilised by governments to fund critical public infrastructure and services.

20. While not all greenfields projects extend beyond four years, for those that do, the evidence points to the current four year maximum term for an agreement representing a significant burden. Any agreement with a life less than the expected duration of the construction of a particular project exposes the business to substantial risks, and risks the negative implications for investment, job creation and the community, outlined above. These negative implications can easily be avoided through the greater certainty that would be provided for by length of project agreements.

2.3 Maximum length of greenfields agreement

21. Question 4 of the Discussion Paper is as follows:

Should there need to be a maximum length to a greenfields enterprise agreement at all, and if so what should it be and why?

22. ACCI considers the nominal expiry date of an agreement should extend to the life of the major project, and that there is no prevailing reason why some other maximum length should apply. Increasing the expiry date to some other specified maximum number may simply create the same problem that arises under the current system, albeit later down the track, for those projects that extend beyond the specified nominal expiry date. Australia has the potential to attract some massive projects in future years.
23. This amendment could potentially be achieved through an amendment to section 186 of the Fair Work Act, relating to the nominal expiry date of agreements. Given the difficulties in determining a specific date that work will be completed on a major project, the nominal expiry date could suitably be triggered by the completion of work in connection with that project, rather than specifying an actual date.
24. Any risks for employers, employees and investors associated with longer greenfields agreements for major projects can be appropriately mitigated, through mechanisms already available under the current Fair Work Act, including applying to the Fair Work Commission to vary an agreement or to terminate an agreement.
25. Further, if the parties do not consider it appropriate or suitable in the circumstances to make an agreement for the length of the project, it is of course open to them to pursue an agreement with a shorter nominal expiry date.

2.4 Benefits for employers, workers and the community

26. Question 5 of the Discussion Paper is as follows:

What benefits are likely to arise for employers, workers and the community if length of project greenfields agreements were possible?

27. Future waves of resource investment will be made globally, and new project opportunities will be available to Australia, but we are competing with the rest of the world for that investment. We know that the costs and risks of doing business in Australia, including workplace relations risks, impact on investment decision making.
28. Australia's success in attracting future job creating investment, new projects and project expansions will depend on a range of factors that include our cost competitiveness and relative investment certainty. This in turn includes ensuring risks of disruptive industrial action are minimised, and there is greater certainty and confidence that budget and schedule commitments can be met.
29. Practical, useable capacity to make project agreements that limit uncertainty and industrial unrest during the construction phase of major projects is critical to securing future investment. If length of project agreements were possible, Australia's prospects of securing major projects in the future, with the significant benefit they bring for workers, employers, the economy and the community, will be greatly enhanced.
30. This is a live opportunity. A recent report of the Office of the Chief Economic shows that there are 57 major resources projects worth \$41 billion which are either 'committed' or considered 'likely' to proceed, and another 153 are earmarked as possible and awaiting final investment decision.⁶ Further, as noted in the Discussion Paper, 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. With potential investors continually reviewing risks associated with major projects globally, positive changes improving Australia's attractiveness as a place to invest and do business can only increase the likelihood of these projects going ahead, and the benefits that flow from that.
31. Increasing Australia's competitiveness and attracting investment to secure major projects would likely bring forward another wave of jobs. Two examples which demonstrate the sheer number of jobs created include the Wheatstone project, which is estimated to create over 30,000 direct and indirect jobs over the life of the project, at a rate of 1,000 per year. It is also estimated that Woodside's Burrup Hub natural gas project will support the creation of an average of 4,000 full time equivalent jobs per annum nationally over a 40 year period.
32. In addition to the significant amount of jobs that are created by these major projects, the additional benefits for workers were neatly summed up by former Opposition Leader Bill Shorten in a speech he made to the Western Australian leadership matters breakfast earlier this year:⁷

"They'll be good paying jobs. You get the certainty of the arrangement, the union gets the certainty of the arrangement, the workforce gets the certainty of the arrangement."
33. While some parties have expressed concern about workers not being able to negotiate for a further pay rise during the life of the agreement, the workers these projects attract are already some of the nation's most highly paid, and will typically be already receiving an increase in pay on a regular basis under the terms of their agreement. These workers are typically highly skilled, many are in high demand, and easily poached between projects, so it is an employer's interest to offer attractive wages and conditions to ensure they retain their employees. It is more likely that life of project

⁶ Office of the Chief Economist, Resources and Energy Quarterly, December 2018.

⁷ <https://www.billshorten.com.au/address-to-the-western-australian-leadership-matters-breakfast-perth-wednesday-15-may-2019>

agreements will, as the former Opposition Leader Bill Shorten's comments above highlight, have a positive impact on wages and certainty for employees.

34. There are obvious benefits to employers in that they are able to focus on supporting harmonious workplace relations without the added disruption caused by industrial action, and delivering the project satisfactorily, with a key factor contributing to cost and scheduling blowouts being significantly reduced.
35. There are also enormous benefits for the economy, and flowing on from that, the community at large. The industries with the highest usage of greenfields agreements represent approximately 28.8% of annual gross domestic product (GDP).⁸ In terms of the major projects themselves, it is estimated that the Wheatstone project mentioned above will add over \$180 billion to Australia's GDP over the life of the project (2009-40), and the Burrup Hub project will boost Australia's GDP by \$414 billion between now and 2063.
36. With annualised GDP growth currently below the long-term trend, a boost in GDP aided by the right policy settings, including those relating to project agreements, could result in nation-wide benefits, in particular as GDP growth is generally linked to higher living standards.
37. Lastly, major projects also contribute significant amounts to state and federal revenues. In 2016 for example, it was reported that in the years ahead to 2040, the LNG projects in Western Australia alone – Wheatstone, Pluto, Gorgon and North West Shelf – were expected to contribute to a further \$160 billion in taxes and royalties.⁹ These taxes contribute to the construction of critical public infrastructure such as schools, hospitals and roads, that benefit the community every day.

2.5 Potential risks of life of project agreements

38. Question 6 of the Discussion Paper is as follows:

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?

39. As with any negotiation for any enterprise agreement, there are risks associated with securing an agreement that has a nominal expiry date that is some years out. However, these risks are largely manageable with the right parameters in place.
40. The Productivity Commission considered these risks in its Review of the Workplace Relations Framework, and reached the recommendation that enterprise agreements, including greenfields agreements, should be able to be subject to a longer nominal expiry date.¹⁰
41. For example, there may be a concern that a longer duration may lead to parties working under wages or conditions that are no longer appropriate in the industry/market, either due to an upswing or a downturn.

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

⁹ The Hon Josh Frydenberg MP, ['The Resilience of Australia's Energy and Resources Sectors in Challenging Times'](#), 16 February 2016.

¹⁰ Productivity Commission, [Review of the Workplace Relations Framework](#), Final Report, p.690.

42. No interest can ever know the future with certainty. However, employers, particularly those working on major projects, are used to and skilled in assessing and managing any number of risks, of which this would simply be an additional element, so they should rightly be provided the opportunity to make this assessment. Before a project is entered into of the type that will extend beyond four years, a significant amount of planning will have taken place, including consideration of market forecasts etc. If, after due consideration, a party believes that it is not able to accurately manage the risk of establishing a rate of pay that may not be aligned to the labour market, or that the benefits to a life of project agreement outweigh the risks more generally, it is not compelled to make an agreement with a longer nominal expiry date. We recall again that we are talking about very high paid employment, well in excess of award wage rates.
43. Where economic circumstances drastically change and unforeseen risks occur during the life of the agreement, there are options for parties to manage that risk, including agreeing to vary the agreement.¹¹ Further, as the Productivity Commission's Final Report highlighted, the decision in *Toyota Motor Corporation Australia v Marmara*¹² which clarified that even 'no extra claims' clauses cannot prevent mutually agreed variations to an enterprise agreement, has further addressed some of the risk that extended agreement lives might reduce the capacity of the parties to adapt to adverse economic shocks.¹³
44. In the almost inconceivable scenario in which the market or inflation exceeded rates in a project agreement, or overtook them, an employer would need to increase rates or risk losing staff to higher paying employers. Nothing in the canvassed changes would stop employers acting on any such concern.
45. The Productivity Commission also considered the risks posed by some agreements with wages and conditions close to the award level, which could lead to a gulf between award and agreement wages. However, as expanded on in Part 2.6 below, the risk of this occurring is low, given that the types of enterprises that are likely to have a need for and pursue project agreements with a nominal expiry date of more than four years are likely to be paying well above the award.
46. In ACCI's view, the substantial risks associated with continuing to operate under the current system, which allows for the threat of calculated mid-project industrial action and the resulting negative implications, far outweigh the largely theoretical risks of allowing the option of life of project agreements.

2.6 Wage Escalation

47. Question 7 of the Discussion Paper is as follows:

Should longer project agreements be required to allow some form of escalation in wage rates over the period of the agreement?

48. In order to approve a greenfields agreement the Fair Work Commission must first be satisfied that the agreement passes the better off overall test (BOOT). A greenfields agreement passes the BOOT if the Fair Work Commission is satisfied, as at test time, that each prospective award covered

¹¹ See *Fair Work Act 2009*, s.207, which applies to a greenfields agreement if one or more of the persons who will be necessary for the normal conduct of the enterprise concerned and are covered by the agreement have been employed.

¹² (2014) FCAFC 84.

¹³ Productivity Commission, *Review of the Workplace Relations Framework*, Final Report, p.690.

employee for the agreement would be better off overall if the agreement applied to the employees than if the relevant modern award applied to the employee.¹⁴ In addition, the Fair Work Commission must also be satisfied that it is in the public interest to approve the greenfields agreement.¹⁵ In making this assessment the Fair Work Commission has considered (amongst other factors) whether the agreement provides equal or better terms and conditions than the relevant award and whether wages are significantly higher than the relevant modern award.¹⁶

49. ACCI does not consider that longer project agreements, whether with nominal expiry dates or for life of project, should require any additional approval requirements beyond those already set out above, which are already contained in the Fair Work Act. Imposing additional requirements for life of project agreements such as a specific escalation of pay rates will only place unnecessary and overly onerous red tape on those trying to reach agreement and will serve to detract from the current value and purpose of those agreements.

50. As the Fair Work Commission has already found:

“The simple fact that an agreement that provides for remuneration benefits which may be inevitably be overtaken by a relevant modern award does not represent an essential impediment for approval. This is the inherent nature of the application of the “better off overall test” and its application at the test time.”¹⁷

51. Further, any attempt to make a comparative assessment against an agreement and future changes to an award would require such speculation that it would almost certainly make the task in any instance an impossible one.¹⁸

52. In addition to the impediments in existing case law and legislation, prescribing any form of wage rate escalation over the life of an agreement is unnecessary for a number of key reasons.

53. Firstly, it is important to consider the test employed by the Fair Work Commission highlighted above. When considering whether a greenfields agreement passes the public interest test, the Fair Work Commission will consider whether the wages provided are significantly higher than the relevant modern award. Employers are already paying a wage premium to enter into a greenfields agreement in order to have industrial certainty during the bargaining process and often for the remoteness and specialisation of work. Including a form of mandated wage escalation will only serve to create a higher starting floor, forcing wages, which are already well in excess of market and award rates, even higher thereby creating an unnecessary disincentive to invest and enter into a greenfields agreement.

54. As the Productivity Commission Report into the Workplace Relations System also acknowledged, there is very limited risk that longer agreements could lead to any gulf between award and agreement wages and conditions, as agreements that are close to their relevant award are not the norm.¹⁹ Practically this is reflected in the fact that employees engaged on major project subject to an agreement are overwhelmingly highly paid, skilled workers who are paid significantly above award rates. Meaning that any assessment against the BOOT even many years into a project agreement

¹⁴ Section 193(3) and 193(6).

¹⁵ Section 187(5)(b).

¹⁶ *Abigroup Contractors Pty Ltd* [2012] FWA 3745 at [67]; *Theiss Pty Ltd & Ors* [2011] FWA 6904 at [31].

¹⁷ *ENM Group Pty Ltd* [2013] FWC 3035 at [22].

¹⁸ Loaded Rates Agreement [2018] FWCFB 3610.

¹⁹ Productivity Commission Report Volume 2, page 691.

will never see workers earning even close to below minimum rates in relevant awards. This is in part due to the fact that competition for employees on large projects is so competitive that businesses will pay significantly higher rates to attract labour to often remote and specialised projects. The nature of construction work also often requires highly skilled and sought after workers who are offered competitive terms and conditions by employers in order to attract them to such projects. Alternatives in commercial or civil construction dictate a high floor for project agreements.

55. Secondly, it is already common industry practice in negotiating an enterprise agreement for parties to agree to a mechanism for wage rates to be amended, reviewed or increased over the life of an agreement. These mechanisms vary based upon a range of important factors such as the industry the agreement is operating in, the manner in which wages will be assessed/increased and the factors which drive the change in wages. For example some agreements contain levelling up or rate guarantee clauses which ensure that an agreement never drops below the relevant award rate at any point in time. Others include terms which set percentage increases based upon certain outcomes, whilst others link changes in remuneration to the achievement of productivity targets.
56. It is important to remember as the Productivity Commission Report into the Workplace Relations system acknowledges:

“In part, negotiated arrangements are inevitably a reflection of the conditions of the market as seen at the time, and this is one of the risks in any negotiation.”
57. Under the current framework employers and unions are able to agree on a suitable mechanism for wage rates which is appropriate to the particular circumstances, market conditions and project considerations. In particular, projects that are likely to continue beyond four years are unlikely to prescribe set wage increase, instead relying on a mechanism for wages variations which are based on a review mechanism which can take into consideration prevailing market and economic conditions. Mandating a specific generic form of wage escalation which works for all industries, economic circumstances and project lengths creates a huge risk that employers and employees will be unable to adapt to the economic circumstances, including economic downturns. Meaning such an approach would be impractical as well as unnecessary.
58. Finally, it is important to remember that very few employees will be engaged for the entire length of a project, with the majority engaged to perform specific aspects/tasks at a specific point in time on a project. As a result, only a very small number of employees are ever engaged for the full duration of any project, and if projects get even longer this is even less likely.

2.7 Existing greenfield agreements

59. Question 8 of Discussion Paper is as follows:

Should there be a mechanism to extend, or to shorten, an existing greenfields enterprise agreement? If so, how might this work?

2.7.1 Shortening existing greenfield agreements

60. Shortening the duration of an existing greenfields agreement currently in operation is already possible under the Fair Work Act, which permits the Fair Work Commission to terminate or vary an

agreement where the employer(s) and majority of employees covered by the agreement jointly agree to terminate/vary the enterprise agreement.²⁰

61. In the case of a greenfields agreement there is the additional requirement that at least one employee necessary for the normal conduct of the enterprise concerned has been employed and is covered by the agreement if an application for termination/variation is to be made.²¹
62. ACCI does not see any valid reason to depart from these established rules for the termination/variation of greenfield agreements, which have not yet passed their nominal expiry date, as they sensibly require consent of both parties covered by an enterprise agreement before such an application for termination or variation can be made.
63. The key benefit to employers of entering into an agreement is the elimination of exposure to industrial action during the period of the agreement, thereby providing industrial certainty and stability to project proponents, which enables them to forecast costs and completion times and secure investment. ACCI is therefore extremely wary of any proposed changes to these arrangements, which would enable a unilateral application to be made to terminate or vary an agreement, which has not yet passed its nominal expiry date. Such a change would all but eliminate any benefits that arise from entering into a project agreement thereby creating an unnecessary disincentive to not only enter into project agreements but to providing investment and funding for projects subject to such arrangements. Risks could become prohibitive to investing in Australia.

2.7.2 Extending existing greenfield agreements

64. Under the current framework, enterprise agreements, including greenfields agreements, have a maximum duration of four years following approval by the Fair Work Commission.
65. ACCI does not believe that it is necessary to introduce any new mechanism to extend existing agreements, as there are already mechanisms in place in the Fair Work Act which enables parties to an agreement to apply to vary an existing agreement, as highlighted above.
66. With appropriate amendments to section 186 of the Fair Work Act, relating to nominal expiry dates of agreements, which should see a nominal expiry date triggered at the completion of work in connection with a project, parties will be able to utilise the existing variation provisions of the Act where necessary with respect to existing agreements in order to make the necessary extensions to meet project timelines.

²⁰ Part 2-4, Division 7, Subdivision A & C, *Fair Work Act 2009*.

²¹ Section 291(3) & Section 207(4), *Fair Work Act 2009*.

3 ADDITIONAL CONSIDERATIONS

67. It is noted in the Discussion Paper that in addition to addressing the specific questions, submissions may also make suggestions relevant to topic of the paper. In addition to the proposed reforms to establish life of project agreements, impediments to making greenfields agreements in the first place also needs to be addressed, to ensure the level of certainty about labour costs of the project and surety that protected industrial action will not occur, prior to mobilisation.
68. While the changes made by the *Fair Work Amendment Act 2015* were welcomed by employers, there are further, additional improvements to the greenfields agreement making process that would improve outcomes for employers, employees and the community.
69. In particular, ACCI is of the view that scope to “circuit break” stalled bargaining should be available after three months rather than six months. This would be consistent with both the Productivity Commission’s recommendation²² and the recommendation of the more recent Greenfields Agreements Review.²³
70. Notably, the Greenfields Agreement Review found:²⁴

The review is satisfied that a capacity to resolve protracted disagreements about greenfields agreements is necessary and that the six-month period is too long to be a satisfactory circuit breaker. This concern is exacerbated when the period before a notification and after an application to the Fair Work Commission are taken into account. It represents an unreasonable period of uncertainty which has the real potential to stop or disrupt a major resource development proposal from proceeding or to severely disrupt and delay these projects or businesses that wish to participate in them.

71. In addition, as detailed in previous submissions, ACCI is also concerned that the “prevailing pay and conditions”²⁵ test threatens to entrench preceding generations of wages and conditions outcomes that may be inflated and no longer relevant to today’s labour market circumstances (e.g. those formed during the mining investment boom), thereby reducing Australia’s competitiveness and capacity to attract investment. ACCI is of the view that the test should be re-examined.

²² Recommendation 21.1.

²³ Recommendation 7.

²⁴ Greenfields Agreement Review (2017), p.36.

²⁵ *Fair Work Act 2009*, s.187(6).

ABOUT THE AUSTRALIAN CHAMBER

The Australian Chamber is Australia's largest and most representative business network.

Our vision is to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

Our purpose is to mobilise the ideas, influence and passion of people in business to achieve policy outcomes in the national interest.

Our membership includes all state and territory chambers of commerce and over 70 industry associations. Together we represent hundreds of thousands of businesses in every state and territory and across all industries.

Ranging from small and medium enterprises to the largest companies, our network employs millions of people.

We focus on issues that impact on business, including economic reform, industry policy, trade and investment, workplace relations, work health and safety, and employment, migration, education and training.

We give Australian businesses a platform to advocate for free trade and open markets and influence policy decisions affecting business in national and global forums.