

## SUBMISSION TO ATTORNEY GENERAL'S DEPARTMENT ON PROJECT LIFE AGREEMENTS

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

I am a fellow of the Australian Human Resources Institute (AHRI) and long serving member of the Industrial Relations Society of Australia, however of more relevance to the issues highlighted in the Attorney- General's September 2019 discussion paper, is my extensive experience advising and representing employers within the Australian IR system.

Whilst I hold significant career experience within registered employer associations, during my corporate career I was the senior executive responsible for the development, negotiation, drafting, finalisation and submission for approval in FWC of numerous enterprise agreements (EA's) as defined in Part 2-4 of the Fair Work Act 2009 , including greenfields and project based agreements. At the apex of my career activity, I was responsible for the implementation, operation and renegotiation of 23 such agreements across nine (9) operational sites in three (3) States of Australia, within an organisation which employed over 5,000 people. Currently, I consult to clients in a range of industries including, aviation, agriculture, retailing, manufacturing and transport.

So at the risk of being categorised as boastful, I hold sufficient direct experience in managing the EBA processes to enable me to competently suggest future remedy of the problems associated with the current legislature, insofar as it deals with the life of EA's. And I contend the appropriate remedy lies not within tinkering with provisions relative only to specific finite life construction projects, but rather making what I regard are relatively minor and simple changes to the generic provisions applying to all EA's.

The problem issues which arise from EA's passing their nominal expiry date, in circumstances where an EA or multiple EA's are operating to regulate work on construction projects which are not yet complete, are well identified in the discussion paper. However, my experience suggests the difficulties presented by current legislative provisions are not confined to greenfields, finite project based EA's.

The following five (5) initiatives, which I contend are not substantial or complex, should be sufficient to achieve an appropriate level of effective reform. Neither should they be significantly contentious and with good faith, hold the potential of being achieved via consensus between the peak registered organisations who operate in the system, a situation I assume would be significantly preferable to Government when compared to a bitterly contested attempt at legislative amendment

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1. All EA's to automatically expire 12 months after their nominal expiry date (NED), unless an extension of the NED is granted under whatever terms and conditions FWC determines (*this will require amendment to S186 (5), S225 to 227 inclusive of the Act*).
2. FWC to correspond with the parties to each agreement (*and Unions if one or more is covered pursuant to S183 of the Act*) alerting them to the imminence of the NED and asking the parties of their intention as to the future of the agreement following the NED.
3. Depending on the substance of any responses (*or lack of response*) to the FWC inquiry, FWC may convene a conference and eventually a hearing if it determines there is sufficient public interest to do so, in order to inform itself and, if necessary determine the fate of the relevant EA.

4. Furthermore, FWC may receive and deal with applications from-
- *any party to the EA, or*
  - *any employee organisation covered by the EA pursuant to S183 of the act, or*
  - *any person or organisation which FWC determines has sufficient collateral interest to be heard, such as an apex client of a construction project or a collective of sub-contractors engaged on the project*

to extend the NED of a relevant EA on a consent basis or, in the absence of agreement, as determined by FWC having regard to the circumstances relevant to the agreement.

5. If FWC must determine any aspect of an application to extend any NED, because there is no consensus amongst the relevant parties, its discretion to extend the NED should be limited and influenced by-
- *In the case of agreements relevant to finite specific projects, the general desirability of such agreements being extended to cover the life of projects, and*
  - *The maximum period of extension of any NED would be two (2) years from the original NED, notwithstanding that any application for extension may be made after the original NED has passed but before the automatic final expiry date (FED) (this will require amendment to S186 (5) of the Act), and*
  - *Whilst no new BOOT assessment of any agreement need occur, where any NED is extended by FWC determination, it must result in at the least, a % increase to base rates of pay contained within the agreement, commensurate with and payable from the date of any % increase applicable to minimum rates of pay contained in the Award against which the original BOOT assessment of the agreement was applied (this will require amendment to S206 of the Act), and*
  - *Any further extension of any NED beyond a first extension could only occur via terms and conditions agreed by the parties, FWC being unable to hear and determine any opposed application for another extension. (this will require a minor addition to S437 (2) of the Act).*
6. Unless and until any determination of an NED extension is finalised by FWC, no application may be made by any bargaining representative for a secret ballot order to authorise protected industrial action *(this will require a minor addition to S437 (2) of the Act).*
7. Some transitional provisions may have to be developed including for example a requirement for FWC to immediately identify and deal with EA's which have passed their NED's by three (3) years or more and still operate either actually or notionally and any greenfields EA's which have an imminent NED.

**John A Salter** Director



Peace of mind, advice and representation.

1 Nov 2019

