

A MEGA BOOST FOR THE MEGA PROJECTS OF THE FUTURE

16 May 2019 | Australia

Legal Briefings - By **Anthony Longland**

At a business breakfast in Perth on Wednesday 15 May, Bill Shorten announced an important policy the ALP will pursue if it achieves Government after this weekend's election. The initiative will enable greenfield enterprise agreements to be struck for a period which covers the whole of the construction of what he described as "mega projects".

This could be the most (and some might say only) obviously 'pro-business' component of the ALP's industrial relations policy. It has the potential to add certainty for project proponents and their financiers when establishing major new projects in Australia.

The issue is addressed can be simply stated as follows:

- Greenfield enterprise agreements can be entered before any work commences on a new project, and before any employees who will be performing that work are even engaged.
- This enables the proponents to know in advance what the labour costs and other arrangements will be - and to plan appropriately.
- But the maximum nominal term for these agreements is currently 4 years. Consider that major projects typically involve some 5 to 10 years of planning, and construction activities in the range of another 5 to 7 years.
- So the initial agreement will expire, perhaps before the construction activities even commence, but certainly before they are completed.
- The renegotiation occurs after the capital has been committed and when vast supply chains are established and thousands of workers are engaged. The prospect of protected

industrial action is highly damaging. Quite some time ago, the FWC decided in connection with the Pluto project, that it had no power to intervene.

- Accordingly, unions have extreme leverage, which can be used to fundamentally alter working arrangements and significantly increase cost. That cannot be sensibly budgeted for years in advance.

There is nothing theoretical about the above – it actually happens. And when it does, the world takes notice.

Mr Shorten's speech included the following:

So what I mean specifically is that if I'm elected Prime Minister I would work with all involved.

The big companies, the constructors, the unions to consider amendments to the Fair Work Act which would allow companies undertaking major resource construction projects – so beyond three to four years, but longer, project life.

We would look at companies undertaking these mega projects and the multiple billions of dollars, we will be competing with the rest of the world for that investment.

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.

The underlined words are very significant. Whilst on one level the promise is nothing more than one to 'work with' certain parties to 'consider amendments' in this area, the objective is crystal clear. If amendments of this kind can be achieved, Australia's prospects of securing mega projects in the future, with the tremendous economic benefit they bring for our economy, will be enhanced.

Such amendments would enable the whole construction of these major projects to occur in an environment which is free of legally protected industrial action, whatever their duration.

There have been difficult experiences in some recent major projects, particularly in the oil and gas sector. We have seen instances of significant industrial pressure being applied to the proponents of those projects to significantly increase benefits provided to employees during the life of the project, even though those benefits may not have been budgeted for or known at the time the project commenced. The vast and complex supply chains and the sheer number of persons engaged on such projects (which can be up to 10,000) has the potential for costs of the project to blow out significantly.

The benefits might extend across the mining & resources sector to infrastructure and energy sectors. This is a good news for the economy.

This issue has been a source of some considerable discussion and concern, even before the Fair Work Act was passed in 2009. Successive inquiries have considered various proposals to add certainty into the manner in which terms and conditions of employment are set so that significant financial decisions can be made by the project proponents with some clarity.

In 2015 amendments were made which permitted employers to have greenfields enterprise agreements approved at the start of a project, even if relevant unions did not agree with them, provided that the FWC was satisfied that such agreements *'considered on an overall basis provide for paying conditions that are consistent with the prevailing paying conditions within the relevant industry for equivalent of work'*.

These provisions set an outer limit of 6 months for negotiations and were directed to achieving greater certainty.

Unfortunately, they have not been utilised and have not had the impact intended.

Whilst today's announcement was light on detail, and promised only that a future Labour Government would "consider" these changes, there can be no mistake about the object of which they were directed.

This is one area of the ALP reforms which has not been touched upon by the ACTU, and does not feature at all in the 'change the rules' campaign. It will be really interesting to see how the proposal is implemented and what impact it has on these major projects.

[Please click here to return to the Australian Federal Election Reforms Hub](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



ROHAN DOYLE
PARTNER,
MELBOURNE
+61 3 9288 1099
Rohan.Doyle@hsf.com



ANTHONY WOOD
PARTNER,
MELBOURNE
+61 3 9288 1544
Anthony.Wood@hsf.com



NATALIE GASPAR
PARTNER,
MELBOURNE
+61 3 9288 1091
Natalie.Gaspar@hsf.com



SHIVCHAND JHINKU
PARTNER, SYDNEY
+61 2 9225 5228
Shivchand.Jhinku@hsf.com



WENDY FAUVEL
PARTNER, BRISBANE
+61 7 3258 6388
wendy.fauvel@hsf.com

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2022

SUBSCRIBE TO STAY UP-TO-DATE WITH INSIGHTS, LEGAL UPDATES, EVENTS, AND

MORE

Close