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Enable life of project greenfields agreements

Future resources and energy investment is being impacted by unnecessary limitations in Australia's industrial relations system which leave multi-billion dollar projects exposed to strike action in the middle of the construction period. With nation-building resources and energy projects taking on average seven years to build, enabling greenfields agreements to cover the life-of-project construction would provide certainty around cost and timing and assist in securing the next wave of major project investment.

This reform was recommended by the Productivity Commission in its 2015 review of Australia's workplace relations system. It has also been suggested more recently that this reform could have bipartisan support.

PRODUCTIVITY COMMISSION RECOMMENDATION 20.4

The Australian Government should amend s. 186(5) of the Fair Work Act 2009 (Cth) to allow an enterprise agreement to specify a nominal expiry date that... matches the life of a greenfields project.

The case for 'life-of-project agreements' has been argued by employers since before the FW Act commenced in 2009. Industry foresaw that the ability for protected industrial action to be taken mid-construction would present significant risk and uncertainty around project costs and timeframes. This concern came to fruition, with several major resources and energy projects being exposed to threats of protected industrial action only 12 months or less from expected construction completion.

THE EMPLOYER EXPERIENCE — DISRUPTIONS TO LARGE SCALE PROJECTS

The Chevron-operated Gorgon LNG Project was subject to a number of concerted union campaigns leveraging an imbalanced industrial relations system to delay and frustrate project completion. In November 2014, with construction 87% completed, negotiations with three unions for a new enterprise agreement broke down and industrial action was threatened, but eventually averted. In August 2015, almost 2000 workers threatened to strike unless its roster demands were met. Again this was ultimately avoided but not before significant delays and cost impacts to the project.

A similar scenario was narrowly avoided at another multi-billion dollar LNG project. Again, with less than 12 months until construction was to be completed, the project was threatened with industrial action by unions seeking to reduce the roster of the construction workforce, which would increase the costs and draw out the timeline for project completion. Multiple Protected Action Ballot Orders (PABOs) were issued in the final phase of construction, with strikes narrowly avoided.

Not only does the threat or actual occurrence of industrial action impact individual projects, but it ultimately diminishes Australia's reputation as a stable and attractive place to build world-class resources and energy projects. Fixing this unnecessary risk is critical to securing the next wave of major project investment.

If the milestone dates of a project extend beyond the nominal expiry date of the project agreement, there should be an option for the parties to apply to the FWC to arbitrate for an extension of the project agreement, during which the protection from industrial action would remain.

Recommendations

- » The Australian Government should amend s. 186(5) of the Fair Work Act 2009 (Cth) to allow an enterprise agreement to specify a nominal expiry date that matches the life of a greenfields project.