

# Article

## EMPLOYMENT LAW

# Coalition Obtains First Substantial Changes to Fair Work Act

By Ben Duggan

In November the Coalition's *Fair Work Amendment Bill 2014* (FWA Bill) which was introduced to Federal Parliament on 27 February 2014 was finally passed by the Senate.

The FWA Bill in its original form sought to introduce a raft of business-friendly changes to the *Fair Work Act* (Cth) 2009.

A limited number of changes in three key areas were able to obtain Senate cross-bench support.

The most significant area of reform brought about by the FWA Bill relates to greenfields agreements which is the focus of this article.

Greenfields agreements make up less than 10% of all agreements though they are prevalent in the highly important construction and mining industries.

A requirement of a greenfields agreement under Fair Work is that it must be made with one (or more) unions that are entitled to represent the industrial interests of a majority of the employees who are to perform work under the agreement.

Large employer groups had long complained about the form of the provisions enabling greenfields agreements taking up the opportunity of the earlier Fair Work review<sup>1</sup> to make the case for reform.

A focus of employer group submissions to the Fair Work review was criticism of the role played by unions:

- MBA complained that unions are using their position of power to seek leverage over matters "not related to the project."
- VECCL that unions "hijack" the agreement making process.<sup>2</sup>

The Institute of Public Affairs also submitted that requiring negotiations with unions was inconsistent with other agreements and "jeopardises projects."<sup>3</sup>

In its report the Fair Work review panel found that the current Fair Work provisions enabled unions:

<sup>1</sup> Towards more productive and equitable workplaces, An evaluation of the Fair Work legislation, June 2012.  
<sup>2</sup> *Ibid*, page 169.  
<sup>3</sup> *Ibid*, page 169.

*"to frustrate the making of an appropriate Greenfields agreement at all or at least in a timely way."*<sup>4</sup>

The Fair Work review panel further found that the current Fair Work bargaining framework had the potential to threaten investment in major projects in Australia.

In response the Coalition's FWA Bill sought to make two significant alterations to the process of negotiating greenfields agreements:

1. The introduction of good faith bargaining obligations to the negotiation process.
2. The ability for any employer to apply for approval of the agreement by the Fair Work Commission (FWC) 3 months after the commencement of the negotiation process.

The Senate agreed to the introduction of good faith bargaining obligations to the bargaining process for greenfield agreements.

<sup>4</sup> *Ibid*, page 171.



Senate cross benches considered a 3 month deadlock triggering the ability of an employer to seek approval from the FWC of a greenfield agreement too short.

The Senate's compromise doubled the period of time required to at least 6 months for a deadlock in negotiations with a union before an employer was able to seek approval from the FWC.

In practice though employers will have preferred the original form of the proposed changes to the greenfield agreement provisions to have passed the Senate those made are at least a positive for those who are considering new large construction and mining projects.

### Future

Federal Parliament has determined that it is appropriate to review the changes to the bargaining process for greenfields agreement that commenced last week in two years time.

The review will provide an opportunity for employers to agitate to make further improvements to the bargaining process.

In the meantime the Coalition still has its *Fair Work (Bargaining Processes) Bill 2014* (FWBP Bill) before Federal Parliament.

The FWBP Bill would insert a new section 187(1A) which would require the FWC, before approving an enterprise agreement, to be satisfied that improvements to productivity at the workplace were discussed during bargaining for the agreement. Progress of the FWBP Bill through Federal Parliament has as expected been slow because of a hostile Senate.

We will keep you informed of the progress of the FWBP Bill.



#### MORE INFO

**Ben Duggan** Director

p: +61 8 8124 1881

[ben.duggan@dwfoxtucker.com.au](mailto:ben.duggan@dwfoxtucker.com.au)

### DW Fox Tucker Lawyers

L14, 100 King William Street, Adelaide, SA 5000

p: +61 8 8124 1811 e: [info@dwfoxtucker.com.au](mailto:info@dwfoxtucker.com.au) [dwfoxtucker.com.au](http://dwfoxtucker.com.au)

COMMERCIAL | CORPORATE | DISPUTES | INSOLVENCY | TAX | IP | EMPLOYMENT | WORKERS COMPENSATION | SELF INSURANCE | PROPERTY

*Disclaimer: The information contained in this communication does not constitute advice and should not be relied upon as such. Professional advice should be sought prior to any action being taken in reliance on any of the information.*