



13 March 2015

Workplace Relations Inquiry
Productivity Commission
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Dear Chairman

Origin Energy (Origin) appreciates the opportunity to comment on the Productivity Commission's Workplace Relations Inquiry. With over 5,000 employees within Australia, we bring an operational perspective to this review and draw attention to practical workplace relations issues impacting energy and resource sectors.

The key point that we make is the importance of workplace flexibility. Safeguarding the rights of all parties is an essential aspect of workplace relations framework, but purported safeguards should not be stretched to the point that they impede the right to reach an agreement best suited to circumstances of a particular enterprise and the unanimous preference of relevant participants. Where this occurs there is a danger that vested interests will trump the interests of directly affected employees. Specifically:

1. Greenfields agreements should not have mandated union or other third party representation;
2. Post-agreement joining should not be permitted; and
3. Reforms should be targeted and incremental.

1. Greenfields agreement negotiations

The current framework provides for greenfields agreements where there is a genuine new enterprise being established. These agreements are important as they are often associated with major projects that contribute to jobs and economic development and operate in highly competitive international markets. In order to maximise their effectiveness, greenfields agreements should match the particular characteristics of the project that is subject to the agreement. Specifically they should match the construction period of the project, even if this period is greater the currently prescribed 4 year maximum term. Other project and site specific characteristics also need to be considered, and in the energy and resource development context these may include remote work locations (including offshore) and the sorts of organisational structures and worker schedules that are required to bring extremely large projects to fruition.

As noted in Issues Paper 3, greenfields agreements are currently required to be negotiated with one or more specified employee representatives, and in most cases these representatives are unions. The Issues Paper implies that this requirement mitigates the power of employers to unilaterally determine terms and conditions governing employees of new worksites.

However, the Issues Paper also discusses concerns around bargaining practices whereby unions may seek to impose certain terms and conditions (which may not be reasonable in the circumstances) on the basis that such terms and conditions have been provided for other union members elsewhere. In doing so, the union may be effectively seeking standard terms and conditions for its members across various industries, irrespective of their relevance for each particular industry. In Origin's experience, such bargaining practices are a real problem that can impede the collective agreement process to the detriment of employees as well as businesses. As the Issues Paper identifies, the legislative provisions intended to discourage these bargaining practices are readily circumvented, and the prevalence of these practices is a cause for concern as they fly in the face of a central goal of the workplace relations system to develop agreements that reflect the particular circumstances of the enterprise and its employees.

Origin deals with a wide range of unions spanning various sectors, as well as a variety of ad hoc employee representatives. Taking account of our diverse suite of collective negotiations, we cannot see any inherent benefit in mandated union participation for greenfields agreement negotiations. Unions will be appropriate negotiating parties where employees seek their representation, but in many circumstances this is simply not the case. In particular, it is unlikely to be the case where a relatively small group of employees has access to effective site-specific representation (such as an employee representative) and seeks to reach agreement directly with the employer.

Origin considers that, in circumventing most immediate and direct employee representation for new worksites, current greenfields agreement requirements can actually undermine employee interests in certain circumstances. This may occur where mandated union representatives engage in bargaining tactics that are likely to delay the negotiating process, such as the pursuit of the union's 'national agenda items'. So much so that mandated union representation can challenge the very notion of a greenfields agreement; to the extent that union representatives frame negotiations around prior agreements or non-site specific agendas, they are effectively transforming a nominal greenfields agreement into a brownfield agreement. This is surely not the way the workplace relations framework was intended to operate.

2. Post agreement joining

Under the current framework, it is possible for unions to apply to be joined to collective agreements that have already been finalised between employer-employee parties and lodged with the Fair Work Commission. For example, if a union can identify one of its members among the group of employee parties, it may argue that it ought to be party to the agreement in order to protect the relevant member's interests. This may occur in the absence of any request on the part of that member and may well be contrary to the member's preference in the circumstances.

Origin considers the workplace relations framework ought to safeguard employee rights to representation and acknowledges that there may be tension between smoothing the path to representation and ensuring that employees that prefer to reach agreement directly with employers are able to do so. On balance, and based on the full extent of our experience, we consider that permitting unions to join agreements that they have had no role in negotiating undermines the rights of the employees to the agreement in a manner that outweighs any posited reinforcement of rights to representation.

The current framework comprehensively protects the right to representation and this right would not be undermined by ensuring that concluded agreements remain covenants between the negotiating parties. Such an approach is preferable from the perspective of basic contractual certainty and in order to mitigate tactics (discussed above) that are intended to promote agendas extraneous to the relevant enterprise.

3. Approach to reform

Australia has one of the most complex workplace relations systems in the world, with a plethora of different arrangements to govern the employment relationship and procedural framework to guide the development and management of each of these arrangements. What was world-leading system around the time of federation has arguably, through haphazard reform processes, become an unwieldy regime that is difficult for labour market participants to navigate. The awkwardness of the current regime can be heightened in the context of major resource projects because the scope for excessive labour costs and delay disadvantages these business relative to those of foreign markets.

However, while Origin would be keen to see streamlined processes for specific industries and project types that enhance industrial flexibility and international competitiveness, we caution against an overly aggressive approach to workplace relations reform. We encourage targeted and well-considered incremental changes, such as those outlined above, as the best way to achieve a more competitive workplace relations framework over time.

If you have any queries with our submission, please do not hesitate to contact Sarah Paparo

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