

The Hon. Anthony Albanese MP
Leader of the Opposition
PO Box 6022
Parliament House
CANBERRA ACT 2600

The Hon. Tony Burke MP
Shadow Minister for Industrial Relations
PO Box 6022
Parliament House
CANBERRA ACT 2600

Dear Mr Albanese and Mr Burke,

Industrial relations reforms to create high-paying jobs

The Australian Resources and Energy Employer Association (AREEA) writes seeking commitment of the Australian Labor Party (ALP) to important industrial relations (IR) reforms that would support the creation of thousands of high-paying jobs in Australia's resources and energy industry.

While your party has campaigned on various IR positions within your 'Secure Australian Jobs Plan', it is less than one week from the 2022 Federal Election and resources and energy employers are yet to see any policies from the ALP to support increased investment in major projects and greater cooperation between employers and employees, leading to strong productivity and wages outcomes.

Specifically, AREEA seeks commitment of the ALP in relation to two critical IR reforms:

1. 'Project Life Greenfields Agreements', meaning agreement terms of up to six years that apply to the construction phase of new major resources and energy projects; and
2. A series of relatively minor procedural improvements to the enterprise agreement making and approvals process, that will see bargaining between employers, employees and their union representatives once again become attractive at the enterprise level.

Project Life Greenfields Agreements

AREEA has advocated for the national IR system to facilitate Project Life Greenfields Agreements since the *Fair Work Act 2009* (FW Act) first came into effect. Practically speaking, this term simply means extending the maximum duration for greenfields agreements from the current four years to six years, when applied to resources, energy and other construction projects that meet certain eligibility (e.g. a minimum capital value of \$500 million).

Facilitating Project Life Greenfields Agreements is a critical and urgent reform that would significantly improve Australia's ability to attract global investment into new major resources and energy projects.

Such projects deliver overwhelmingly positive benefits to the nation:

- The previous 'investment boom' in Australian resources and energy projects saw almost \$400 billion of capital injected into the nation between 2003 and 2012.
- This directly created 161,000 new resources jobs, saw the sector support 1.1 million jobs throughout the economy, increased real wages by 6 per cent and raised household disposable income by 13 per cent¹.

The contribution of the resources and energy industry is now at record levels due largely to the projects completed during the previous investment phase. Australia's resources and energy export earnings are forecast to reach a record high \$425 billion for 2021-22².

¹ Raynor, V. and Bishop, J. 2013 [Industry Dimensions of the Resource Boom: An Input-Output Analysis](#), RBA Research

² *Resource and Energy Quarterly*, Office of the Chief Economist, March 2022



The industry also contributed an estimated \$44.65 billion in royalty and company tax payments during the 2019-2020 financial year.³

Australia has a significant opportunity to secure the next wave of major resources and energy project investment. The Commonwealth Department of Industry lists 352 new major resources and energy projects, worth approximately **\$420 billion**, across various stages of feasibility within Australia's investment pipeline. Including both construction and operating phases, the estimated employment impact of these prospective projects exceeds **165,000** new jobs by 2027.

If we are to realise even a portion of this potential, Australia must present the most globally competitive regulatory framework possible.

There is an enormous body of evidence suggesting Australia's IR framework for building new major projects is a particular area for improvement. With major resources projects taking an average of six years to build and commission, an especially uncompetitive aspect of Australia's current IR system is the inability to secure employment terms and conditions beyond four years.

By allowing terms of up to six years, subject to agreement between employers and unions and approval of the Fair Work Commission (FWC), Project Life Greenfields Agreements would deliver greater confidence to major project investors and significantly increase the prospects of new projects receiving final approval.

The merit of facilitating Project Life Greenfields Agreements has been identified through multiple reviews into the competitiveness and operation of the FW Act:

- In 2015, the Productivity Commission found that "(existing) bargaining arrangements for greenfields agreements pose risks for large capital-intensive projects with urgent timelines" and recommended amending the FW Act to allow for enterprise agreements to match the duration of a greenfields project.
- In 2012, the former Labor Government's review of the FW Act found "a significant risk that some bargaining practices and outcomes associated with greenfields agreements potentially threaten future investment in major projects in Australia".

Project Life Greenfields Agreements again became a focus during the 2019 Federal Election campaign, with then-Opposition Leader the Hon. Bill Shorten MP committing to the reform:

*"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, (so they) can go to the global investors who will back it."*⁴

Given the economic headwinds that face whichever party is in government during the next parliamentary term, and the significant opportunities on offer from prospective resources and energy project investment, it is both prudent and appropriate for the ALP to support the concept of Project Life Greenfields Agreements.

The ALP's support for Project Life Greenfields agreements during the 47th Term of Parliament, be it from either government or opposition, would be overwhelmingly in the national interest and the interests of Australian workers, who are set to benefit greatest from the large-scale creation of high-paid resources and construction jobs.

³ Minerals contribution via *Estimates of royalties and company tax paid by the minerals sector*, 11 May 2021, DAE for the MCA; petroleum contribution via APPEA Federal Budget 2022/2023 Submission

⁴ Shorten, B (15 May 2019), [Address To The Western Australian Leadership Matters Breakfast](#), Perth



Enterprise Agreement Making

Reforming the FW Act's agreement making framework is another longstanding policy priority for the resources and energy industry; critical to facilitating more productive and cooperative workplaces in Australia, supporting sustainable businesses and the creation and retention of jobs.

Around half of AREEA's project operator members utilise enterprise agreements – often covering thousands of on-site employees. Having an in-term EA is also an important strategy for contractors throughout the supply chain in offering industrial stability when tendering for contracts.

The overwhelming experience of resource sector employers is that enterprise bargaining has become far too complicated and costly, offering few, if any, opportunities for productivity gains.

Such concerns and frustrations are far from isolated to the resources and energy sector. As you would be well aware, frustration with enterprise bargaining is an economy-wide problem. This has led to a drastic move away from enterprise bargaining as reflected in agreement making data:

1. Currently, the Attorney-General's Department records about 10,000 in-term enterprise agreements covering 1.65 million employees. In 2010, there were around 25,000 in-term enterprise agreements covering some 2.6 million employees. This is a collapse in coverage considering Australia's labour force has increased by 2 million people during that time.⁵
2. The latest three-yearly FWC General Manager's report further confirms enterprise agreement approvals has roughly halved over the past decade. The FWC approved 21,988 agreements across the three-year period of 2009-2012, and only 12,307 from May 2018 to May 2021.⁶

The specific frustrations of AREEA members in relation to the enterprise agreement framework are very similar to those of employers in all other areas of the economy. They include:

- The overly pedantic assessment of whether employees who voted up an agreement 'genuinely agreed' to the proposed agreement;
- The application of the 'better off overall test' (BOOT). Note: AREEA fully supports the inclusion of the BOOT and is not advocating its removal. Rather, the BOOT should be applied practically by the FWC to representative groups of the covered employees, not applied to a wide range of hypothetical and often highly unlikely scenarios.
- The unreasonable number of undertakings required by the FWC before an agreement is approved (many of which are entirely irrelevant to the actual business practices); and
- The excessive number of technical steps, and overall protracted timeframe, involved in commencing and negotiating agreements and having them approved by the FWC.

Addressing these areas of concern would not unfairly favour either employers or employees, but rather fix technical, largely administrative issues with the legislation and its application by the FWC.

AREEA's policy, supported by other business groups, is that the Objects of the FW Act should include a provision that the FWC will, as far as reasonably practical, assess and approve all enterprise agreements that meet the required statutory tests within 21 days of lodgement.

Without a more practical and efficient framework employers will continue to find alternative methods to engage and manage their employees, and enterprise bargaining will continue to wither on the vine before ultimately becoming a relic of the past.

⁵ *Trends in Federal Enterprise Bargaining, December 2021 Quarter*, 18 March 2022, Department of the Attorney-General

⁶ *General Manager's report into developments in making enterprise agreements under the Fair Work Act 2009 (Cth)*, November 2021, Fair Work Commission



Concluding Comments

As you are well aware, the above detailed IR reforms were key features of the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020*, which the Morrison Government introduced into Parliament in December 2020 following months of consultation with employer groups and unions.

AREEA (under the Association's former brand 'AMMA'), was heavily involved in the IR Working Groups convened by the Attorney-General at the time, in relation to the above two reforms. These working groups involved robust and at-times quite productive discussions about the necessity of reform and how they could be enacted.

It was extremely disappointing to see the results of that work descend into a political point-scoring exercise that ultimately left key parts of the IR system no better off for either employers or employees.

It is AREEA's understanding that the union representatives involved in the Project Life Greenfields Agreements working group would be amenable to supporting extended greenfields agreement terms if concerns about wages, rosters and employee wellbeing were addressed.

Given that securing major resources and energy project investment is overwhelmingly in the national interest, in our view there must surely be a way forward on this reform area that could be supported by all.

In relation to enterprise agreement making, AREEA notes the ALP's commitment to support the lifting wages above cost of living increases should it be elected to government on 21 May 2022.

It is well accepted that on average, enterprise agreement wage outcomes far exceed annual minimum wage and award increases provided by the FWC. As such, the most effective and responsible mechanism for a future Albanese Labor Government to support real wage increases is by restoring the practicality and attractiveness of enterprise agreement making.

This can only be achieved through reducing the complexity, cost and time involved in agreement making, and refocusing both the Act and the FWC on the practical intent of the parties. It may also involve the ALP taking a leadership position with the trade union movement and encourage the abandonment of unpalatable concepts such as industry-wide bargaining or preferencing of union agreements through the FWC to the detriment of non-union agreements.

In conclusion, irrespective of the outcome of the forthcoming 2022 Federal Election, AREEA looks forward to working with the ALP in pursuit of an IR framework that supports the interests of our nation and all its citizens.

Best regards,



Steve Knott AM
Chief Executive, Australian Resources and Energy Employer Association (AREEA)

cc: The Hon. Richard Marles MP, Deputy Leader of the Australian Labor Party

