Fair Work Amendment Bill 2014

(Amendments to be moved by Senator Cameron, on behalf of the Opposition, in committee of the whole)

(1) Schedule 1, page 11 (after line 6), after item 20, insert:

20A Section 12

Insert:

*greenfields workplace determination*: see subsection 271B(2).

(2) Schedule 1, page 11 (after line 10), after item 21, insert:

21A Section 12 (paragraph (c) of the definition of workplace determination)

Omit “determination.”, substitute “determination; or”.

21B Section 12 (definition of workplace determination)

At the end of the definition, add:

(d) a greenfields workplace determination.

21C At the end of section 171

Add:

Note: A greenfields workplace determination may be made in specified circumstances under Division 4A of Part 2-5 if the bargaining representatives for a proposed enterprise agreement that is a greenfields agreement are unable to reach agreement.

(3) Schedule 1, item 27, page 12 (line 31), omit “3 months”, substitute “6 months”.

(4) Schedule 1, item 28, page 13 (lines 11 to 32), **to be opposed**.

(5) Schedule 1, items 30 to 39, page 14 (line 1) to page 15 (line 18), **to be opposed**.
(6) Schedule 1, page 16 (after line 15), after item 48, insert:

48A After subsection 240(3)

Insert:

FWC may deal with greenfields agreement dispute

(3A) The FWC may deal with a dispute about a proposed single-enterprise agreement that is a greenfields agreement on its own initiative if the FWC is satisfied that it is in the public interest to do so.

48B Before subsection 240(4)

Insert:

Bargaining representatives may agree that FWC can arbitrate

FWC may deal with dispute on own initiative

(7) Schedule 1, item 50, page 17 (lines 5 to 14), omit paragraph 255A(1)(d), substitute:

(d) the following provisions do not apply in relation to the agreement at any time after the end of the notified negotiation period:

(i) sections 229 and 230 (which deal with bargaining orders);
(ii) sections 234 and 235 (which deal with serious breach declarations); and

limitations relating to greenfields amendments

(8) Schedule 1, page 17 (after line 18), after item 50, insert:

50A Section 258

After:

(b) after the end of the post-declaration negotiating period, the bargaining representatives for the agreement have not settled the matters that were at issue during bargaining for the agreement.

Insert:

Division 4A deals with greenfields workplace determinations. Bargaining representatives for a proposed single-enterprise agreement that is a greenfields agreement may apply to the FWC for such a determination if they are unable to reach agreement on the terms that should be included in the agreement.

workplace determinations

(9) Schedule 1, Part 5, page 17 (after line 33), at the end of the Part, add:

52A After Division 4 of Part 2-5

Insert:
Division 4A—Greenfields workplace determinations

271B Applications for greenfields workplace determination

Application of this section

(1) This section applies if:
   
   (a) a proposed single-enterprise agreement is a greenfields agreement; and
   (b) there has been a notified negotiation period for the agreement; and
   (c) the notified negotiation period ends; and
   (d) one or more of the bargaining representatives for the agreement are unable to reach agreement on the terms that should be included in the agreement.

Bargaining representative may apply for greenfields workplace determination

(2) A bargaining representative for the agreement may apply to the FWC for a determination (a greenfields workplace determination).

(3) An application for a greenfields workplace determination must specify the following:

   (a) the terms that the bargaining representatives concerned have, at the time of the application, agreed should be included in the agreement;
   (b) the matters at issue at the time of the application;
   (c) the employers that will be covered by the determination;
   (d) the employees who will be covered by the determination;
   (e) each employee organisation that is a bargaining representative of those employees.

271C When the FWC must make a greenfields workplace determination

(1) If:

   (a) an application for a greenfields workplace determination has been made; and
   (b) the FWC is satisfied that:

      (i) the bargaining representatives for the proposed agreement are genuinely unable to reach agreement on the terms that should be included in the agreement; and
      (ii) there is no reasonable prospect of agreement being reached; and
      (iii) the bargaining representative who made the application has met, or is meeting, the good faith bargaining requirements; and
      (iv) the bargaining representatives that are employee organisations that (taken as a group) are entitled to represent the industrial interests of a majority of the employees who will be covered by the agreement, in relation to work to be performed under the agreement; and
      (v) the bargaining representative who made the application has exhausted all other reasonable alternatives to reach agreement on the terms that should be included in the agreement; and
      (vi) it is in the public interest to make the determination;

   the FWC must make a greenfields workplace determination as quickly as possible.

Note: The FWC must be constituted by a Full Bench to make a greenfields workplace determination (see subsection 616(4)).

(2) In deciding whether or not the bargaining representatives have exhausted all other reasonable alternatives to reach agreement on the terms that should be included in the
agreement, the FWC may take into account any matter the FWC considers relevant, including whether the FWC has provided assistance under section 240 in relation to the agreement.

271D Terms etc. of a greenfields workplace determination

Basic rule

(1) A greenfields workplace determination must comply with subsection (4) and include:
   (a) the terms set out in subsections (2) and (3); and
   (b) the core terms set out in section 272; and
   (c) the mandatory terms set out in section 273.

Note: For the factors that the FWC must take into account in deciding the terms of the determination, see section 275.

Agreed terms

(2) The determination must include the agreed terms (see subsection 274(4)) for the determination.

Terms dealing with the matters at issue

(3) The determination must include the terms that the FWC considers deal with the matters that were still at issue at the end of the notified negotiation period.

Coverage

(4) The determination must be expressed to cover:
   (a) each employer that would have been covered by the proposed single-enterprise agreement that is a greenfields agreement; and
   (b) the employees who would have been covered by that agreement; and
   (c) each employee organisation (if any) that was a bargaining representative of those employees.

271E No other terms

A greenfields workplace determination must not include any terms other than those required by subsection 271D(1).

52B Subsection 272(2)

Repeal the subsection, substitute:

(2) The determination must include a term specifying a date as the determination’s nominal expiry date, which must not be more than:
   (a) for a greenfields workplace determination—2 years after the date on which the determination comes into operation; or
   (b) for a workplace determination other than a greenfields workplace determination—4 years after the date on which the determination comes into operation.

52C At the end of section 274

Add:
Agreed term for a greenfields workplace determination

(4) An agreed term for a greenfields workplace determination is a term that the bargaining representatives for the proposed single-enterprise agreement that is a greenfields agreement had, at the end of the notified negotiation period, agreed should be included in the agreement.

Note: The determination must include an agreed term (see subsection 271D(2)).

52D Paragraph 275(b)
After “low-paid workplace determination”, insert “or a greenfields workplace determination”.

52E Paragraph 275(c)
Omit “other than a low-paid workplace determination”, substitute “other than a determination covered by paragraph (b)”.

52F After paragraph 275(c)
Insert:

(ca) for a greenfields workplace determination—whether the determination, on an overall basis, provides for pay and conditions that are consistent with the prevailing pay and conditions within the relevant industry for equivalent work;

52G Paragraph 275(e)
Repeal the paragraph, substitute:

(e) for a greenfields workplace determination—how productivity might be maximised in the enterprise concerned;

(ea) for a workplace determination other than a greenfields workplace determination—how productivity might be improved in the enterprise or enterprises concerned;

[workplace determinations]