

The introduction of good faith bargaining in Western Australia: Policy origins and implications for collective bargaining

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ABSTRACT

The Australian Industrial Relations Commission ruled in 2003 that there was no legal duty on parties to bargain in 'good faith'. In Western Australia, the Gallop Labor Government has introduced good faith bargaining provisions as a redress available when a party is considered to be negotiating in 'bad faith'. What does this rhetoric mean? The aim of this paper is to unravel what is meant by 'good faith bargaining' and to consider how this provision has been used within Western Australian industrial relations thus far.

Introduction

The decentralisation of the Australian industrial relations system during the 1990s was characterised by a historic shift towards enterprise level bargaining (Deery *et al.* 2001: 247-253). The consequences of enterprise bargaining in terms of efficiency and equity outcomes have been widely discussed and analysed (Burgess and Macdonald, 2003). However, the implications of decentralised bargaining for negotiation processes and the strategic response of relevant actors have been comparatively under-explored (Fells, 1998a). In particular, the expansion of direct negotiations between parties at workplace level over wages and conditions of employment have led to concerns over bargaining "asymmetry" between actors (Fells, 1998b) and the possibility that bargaining relationships can be re-oriented or terminated through a process of excluding unions or shifting towards individualised arrangements (Australian Workplace Agreements) under the federal Workplace Relations Act (1996) (McCallum, 2002; Peetz 2002). In relation to these concerns and with a view to the future role of collective bargaining in the overall agreement making regime, the Australian Labor Party and sections of the trade union movement have explored and promoted the idea of "good faith bargaining" as a necessary adaptation (rather than a rejection) of enterprise level bargaining. The notion of facilitating "good faith" in negotiations and in employment relations also matches with the general ideological sway of 'third way' perspectives for centre left parties that now embrace key aspects of neo-liberal agendas for promoting labour market flexibility and enterprise competitiveness while, at the same time, promoting a commitment to cooperative 'social partnership' relationships (Howell, 2004).

This paper provides an overview of the principle of 'good faith bargaining' (GFB) and notes its international origins within North America's relatively decentralised model of industrial relations and its recent emergence as a policy innovation in New Zealand. In Australia, GFB has been a recurrent, if marginalised, feature of industrial relations and the paper firstly outlines the history of the principle within the federal arena. It then focuses on the recent introduction of the "good faith" principle in Western Australia as a central component of the industrial relations reform agenda of the Gallop Labor government. As the first state to introduce "good faith" provisions that are widely applicable (Toten, 2002) and in light of federal Labor's support for similar provisions (Skulley, 2003), the West Australian 'case' provides for a preliminary examination of the implications of such measures and the response of employer organisations and unions to this policy innovation. It is argued, however, that to date the 'good faith' provisions in Western Australia have not been widely utilised and where they have been brought into effect, their scope has been relatively circumscribed.

Good faith bargaining: Definition and its significance in labour relations in the United States and New Zealand

Herman (1998: 527) defines GFB as “negotiations in which two parties meet and confer at reasonable times, minds open to persuasion, with a view to reaching agreement on new contract terms. GFB does not imply that either party is required to make concessions or reach agreement on any proposal.” In essence, GFB attempts to establish a normative framework for bargaining processes and relationships. In doing so, its proponents typically represent GFB as contributing to a shift in collective bargaining processes and relationships towards less adversarial “interest based” negotiations (McAndrew and Penn, 2003).

GFB is an established principle within North American industrial relations (Bagchi, 2003; Davenport, 2003; Forrest, 1986). In the United States, the GFB principle works in conjunction with formal processes for recognising a union as a legitimate bargaining agent at enterprise level, typically through secret ballot elections overseen and certified by the National Labor Relations Board (NLRB). In this environment GFB has been used most typically in ‘first contract’ negotiations as a means of bringing otherwise reluctant parties to the bargaining table. A party that believes that their counterpart is failing to bargain in “good faith” can then seek a remedy through the courts, although the difficulties of gaining a decisive determination are often evident given considerable interpretive scope as to what constitutes a breach of the duty to bargain in good faith (Dannin, 2001).

In the Southern hemisphere GFB has been a notable recent innovation in employment relations in New Zealand (Davenport, 1999; Annakin, 2003; Hughes, 2001; McAndrew and Penn, 2003). Treanor and Rasmussen (2003) have noted that while GFB in New Zealand has sought to promote a “new spirit” of more cooperative bargaining relationships and outcomes, GFB is defined loosely in the relevant legislation which “leaves the practical application to codes of Good Faith and legal precedent” and which has created “considerable uncertainty”. In comparison to the United States, the New Zealand legislation also adopts a different approach to union recognition and the requirement to bargain in “good faith” (McCallum, 2002). Ultimately, as Dannin (2001) has noted in relation to the migration of GFB from North America to New Zealand, each IR environment is “unique and is coloured by its context” which means that the implications of innovations such as GFB “will have to be worked out in local terms”. GFB, therefore, is now present in several IR systems, however, the significance and impact of this general principle is mediated by specific collective bargaining conventions and IR institutions in these countries. In this regard, the specific composition of GFB and its implications for IR actors vary significantly between different labour regimes, variations that necessitate empirical investigation of each GFB ‘case’.

Good faith bargaining in the federal system

In Australia, amendments relating to GFB were introduced for the first time in industrial law under provision s170QK of the Industrial Relations Act 1988. Under s 170QK, the AIRC could make orders for the purpose of ensuring that the parties negotiating an agreement do so in good faith. The term ‘good faith’ was not defined in the Act. However, section 170QK (3 and 4) gave some guidance as to the term’s meaning as it directed the AIRC to consider the conduct of the parties, in particular, their agreeing to meet at reasonable times, attending agreed meetings, complying with agreed procedures, capriciously adding or withdrawing items for negotiation, disclosing relevant information as appropriate for the purposes of negotiation, refusing or failing to refuse with one or more of the parties, or refusing or failing to negotiate with employee representatives (Bartlett and Sheehan: 1996; ALAEA Newsletter: 2000). Whilst there was no official recognition of enterprise-based bargaining as yet, the 1988 Act was struck at a time when national wage case bargaining was linked to productivity improvements and structural efficiencies at the workplace level. Thus as Naughton suggests (as quoted in Arsovska and van Barneveld: 2001), the 1988 amendments were introduced to ensure that this ‘enterprise’ bargaining process between the parties was a ‘genuine one’.

Arsovska and van Barneveld (2001) suggest that the concept of GFB was strengthened in the subsequent Industrial Relations Reform Act 1993. Under this, the Bargaining Division was established in the AIRC to facilitate the development of enterprise agreements. Amongst its

varied responsibilities, the Division was bestowed with the power to ensure that bargaining was done in good faith. Again, while not defining good faith, the Bargaining Division could intervene on its own motion or at the request of any of the parties to conciliate. Subsequently, the Commission could make an order if either party was unwilling to negotiate (ACTU: 1994).

However, while appearing expansive, subsequent jurisprudence acted to limit the scope of the GFB provision, in particular the *Asahi* and *ABC* cases. In the *Asahi* case, *Asahi Diamond Industrial Australia Pty Ltd* did not employ any members of the Amalgamated Metal Workers Union (AMWU) and used this to refuse to meet with the AMWU to negotiate a collective agreement. The union sought and obtained bargaining orders from Commissioner Hodder requiring *Asahi* to meet and negotiate with the AMWU. However, the Full Bench of the AIRC overturned this decision and determined that it would not make orders obliging the parties to bargain in good faith. An alternative form of order would be made instead specifying what the person is to do to meet the 'good faith' obligation, for example, regarding meeting times (Naughton as quoted in Arsovska and van Barneveld: 2001); ACTU: 1995). This judgement clarified that no legal mechanism existed mandating employers to bargain with trade unions (McCallum: 2002).

In the *ABC* case or rather *Public Sector, Professional Scientific, Research Technical, Communication, Aviation and Broadcasting Union v Australian Broadcasting Commission*, the Full Bench of the AIRC for the first time more clearly stipulated what was meant to 'negotiate in good faith' when stating: (as quoted in Bartlett and Sheehan: 1996):

"The determination of whether or not a negotiating party is 'negotiating in good faith' may depend on the conduct of the party when considered as a whole. For example, if a party is only participating in negotiations in a formal sense, but not bargaining as such, then they may not be 'negotiating in good faith'. Negotiating in good faith would generally involve approaching negotiations with an open mind and a genuine desire to reach an agreement as opposed to simply adopting a rigid, pre-determined position and not demonstrating any preparedness to shift."

Nonetheless the Commissioner's orders under s170QK of the 1993 Act again limited intervention to procedural aspects of the negotiating process rather than seeking to force the parties to bargain in 'good faith' (Naughton as quoted in Arsovska and van Barneveld: 2001).

Any reference to GFB along the lines of the 1988 and 1993 Acts was subsequently eliminated from the Workplace Relations Act of 1996. Under section 170N of the Act the Commission cannot arbitrate or make orders for negotiating in good faith. It can only use its conciliation powers or rely on the goodwill of the parties to be satisfied that GFB has occurred. That the Commission's role was limited to this scope was most recently confirmed in the *CPSU vs Sensis* case. Quoting statements from then Minister for Workplace Relations Peter Reith on why the GFB provision was removed from the WRA 1996, Commissioner Smith's initial interpretation of Minister Reith's statements was that 'while the Commission cannot order parties to negotiate, it can ensure that negotiations occur in good faith and issue orders for that purpose' (PR927827: 14). However, upon appeal to the AIRC Full Bench, it was found that Commissioner Smith had ruled 'incorrectly' and there was no legal duty to bargain in good faith. Instead, the Bench re-affirmed the limited role of the AIRC in these matters: "But because the Commissioner has indicated an intention to consider the merit arguments in the context of a duty to bargain in good faith it is necessary to ensure that does not occur and that the discretion is exercised having regard to the relevant statutory considerations." (PR939704: 36); thus, relegating the GFB provision to the *Asahi* and *ABC* interpretations.

The Australian Labor Party (ALP) identified GFB provisions as one of six core principles supporting new industrial relations legislation if it was elected to government in the 2001 federal election. Then leader Kim Beazley introduced a private members' bill into the federal Parliament in 2000 proposing the insertion of a general obligation to bargain in good faith in the WRA 1996. The proposals in this bill replicated section 170QK of the IRA 1988 legislation (Forsyth: 2001). Again, in March 2004, Opposition spokesperson for Labor Relations, Dr Craig Emerson, introduced a Workplace Relations Amendment (Good Faith Bargaining) Bill into the House of Representatives and the ALP included a provision for GFB in its industrial relations policy platform for the 2004 Federal election (ABC Online: 2004).

At state level, the election of Labor governments has seen renewed interest in exploring GFB provisions. In Queensland, Section 146 of the Industrial Relations Act 1999 'requires' the parties to negotiate in good faith. It refers to examples of good faith as being agreeing to meet at reasonable times and disclosing relevant information for the negotiation (McGowan: 1999). However, in practice, it appears that GFB has only been enshrined in the public sector, where a Protocol for GFB jointly developed between trade unions and the Queensland government came into effect in December 2002. Again, this lists matters such as an agreed bargaining process, meetings, bargaining behaviour, breach of good faith, timeframes and reporting processes, a provision for conciliation and arbitration and a review process as indicative of 'good faith'. In South Australia, a proposed 'Industrial Law Reform (Fair Work) Bill 2004' is pending and may include provisions for 'best endeavours' bargaining. As the state commission is empowered to ensure that parties conform to a 'best endeavours' approach, the proposed reforms in South Australia appear to be broadly similar to the GFB model introduced in Western Australia in 2002 (DEWR, 2004).

The introduction of good faith bargaining in Western Australia: The Labour Relations Reform Act 2002

Following the election of the Gallop Labor government in Western Australia in 2001, there was a re-orientation of state industrial relations through the Labour Relations Reform Act (LRRRA 2002) which aimed to restore the interventionist powers of the West Australian Industrial Relations Commission (WAIRC) and the primacy of collective bargaining. A key aspect of the Act was the abolition of the former government's individual employment instruments and their replacement with more regulated 'Employer-Employee Agreements' (Todd, Caspersz & Sutherland, 2004). Another central component of this re-orientation were measures designed to promote GFB in negotiating employment agreements. The primary intention of the reform bill was to restore collective bargaining to the heart of the WA IR system. In line, however, with the general 'third way' political orientation of the state government, these changes were framed in terms of allowing for the possible exploration of interest based, mutual gains bargaining to occur. The GFB provisions included in the act were cited by the government as evidence of a practical commitment to fostering 'positive' employment relationships, which would be furthered by the overseeing and independent role played by the state Commission in bargaining processes (Kobelke, 2003).

According to an explanatory memorandum on the introduction of LRRRA 2002, the GFB provisions were intended to "encourage parties to negotiate openly and honestly. It is intended that this will lead to more successful resolution of negotiated outcomes." In terms of actual bargaining processes and behaviours, this encompassed an expectation that all parties must state their position on matters at issue, and explain that position; meet at reasonable times, intervals and places for the purpose conducting face-to-face bargaining; disclose relevant and necessary information for bargaining; act honestly and openly, which includes not capriciously adding or withdrawing items for bargaining; recognise legitimate bargaining agents; provide reasonable facilities to employee representatives necessary for them to carry out their functions; bargain genuinely and dedicate sufficient resources to ensure this occurs; adhere to agreed outcomes and commitments made by the parties (DOCEP, 2002)

Under the legislation, GFB can apply once a party initiates the bargaining process by informing another party or parties of an intention to commence bargaining. When bargaining for a replacement agreement, the Act allows for a bargaining period to be initiated up to 90 days prior to the expiry of the current enterprise bargaining agreement to allow time for the relevant parties to settle before the agreement's expiry date. Notably, where there is no existing enterprise bargaining agreement the GFB obligations are open-ended and can be initiated 'at any time'. Relevant parties can also be requested to bargain as a group, thus allowing for unions to bargain and access the GFB provisions on a multi-employer basis, however, there are also provisions for parties to request that the state Commission allow them to bargain separately rather than as part of a group.

After a formal notice to initiate bargaining is issued, the receiving party must respond within 21 days. A positive response means that bargaining begins and all parties are obliged to abide

by GFB obligations during the course of the negotiation process. If, however, a party fails to respond within the 21-day timeframe then the initiating party may apply to the Commission for an enterprise order (an arbitrated outcome). The Act clearly indicates that parties operating under the GFB provisions are in no way obliged to reach an agreement, nor does the state Commission have interventionist powers to compel acceptance to a particular proposed settlement. The state Commission is provided with powers, however, to direct and guide parties by developing a general ‘code of good faith bargaining’ and via the ability to issue orders to ensure GFB throughout the process, including rulings that parties desist from using particular tactics incompatible with GFB. Notably, industrial action during the bargaining period does not necessarily equate to parties acting in bad faith. However, industrial action may be relevant in so far as the Commission is directed to examine the totality of the parties conduct in determining whether actions and strategies are consistent with GFB.

Employer and union response to the introduction of good faith bargaining in Western Australia

These interventionist powers to ensure that all parties are acting in good faith are the most contentious aspect of the introduction of GFB in Western Australia. Clearly, the measures are an attempt to deal with power imbalances, in particular in relation to fair access to information and avoidance of collective bargaining altogether under the current enterprise bargaining regime. Employer groups, however, have directed public criticism towards the empowerment of the WAIRC through the GFB provisions and the associated ability to issue a binding ‘enterprise order’ on non-compliant parties. As these measures allow for a degree of coercion in directing the process and bringing parties to the negotiation table, employer organisations with a strong preference for individualised arrangements or the removal of ‘third party’ (union or Commission) intervention have continued to argue that they represent an impediment to the emergence of “genuine” bargaining (CCI, 2004: 2).

In a presentation to the H.R. Nicholls Society, a representative of the Chamber of Commerce and Industry of WA (CCCI) argued that the 2002 legislative changes in Western Australia had led to the state moving from the ‘best’ industrial relations in Australia to the ‘worst.’ The reforms were depicted as a return to an ‘old’ system of inflexible and unproductive workplace relations ‘dominated by adversarial relationships and with the involvement of third parties unconnected to the workplace’ (Williams, 2003). Specifically on the issue of GFB, the CCI complains that GFB could apply to multiple employers and thus that the measure would stimulate a series of pattern bargaining claims (Williams, 2003). The formal response of the CCI to the GFB measures was outlined in the Chamber’s submission to a 2004 review of the LRA 2002. In particular, the CCI submission centred on complaints that the central intention underlying GFB was to ‘coerce’ employers into collective bargaining with unions. According to the submission:

“The effect of these provisions has been to coerce employers into collective bargaining through the threat of arbitrated enterprise orders rather than promoting genuine bargaining based on good will. These provisions call into question the notion of genuine agreement making as being a process in which both parties voluntarily reach agreement on industrial matters” (CCI, 2004: 2)

The submission also raised a specific concern on the alleged tactic of unions (unnamed) simultaneously utilising both the federal and the state act to allow for both protected industrial action (under the federal jurisdiction) and the possibility of compulsory arbitration (an enterprise order through the state commission), tactics which the CCI complained that both commissions had failed to prevent. However, while the CCI suggested that the creation of dual bargaining periods under state and federal jurisdictions was an unfair means maximising bargaining leverage, as previously noted, industrial action is not automatically incompatible with the principles of GFB.

Understandably, unions supported the introduction of the GFB provisions. In the months surrounding the election of the Gallop government, GFB was a component, along with the abolition of individual agreements, right of entry issues, and improved protective provisions for casuals, of the UnionsWA agenda for repealing and replacing Court government legislation enacted during the 1990s (‘Gallop Govt cops flack over IR delays’, 2001).

However, the strategic objectives of UnionsWA in regard to the reform bill of 2002 were not realised in their entirety, as the Act did include a new form of state based individual agreement mechanism (Employer-Employee Agreements). While unions expressed a degree of discontent as to the limitations of the 'rollback' of the Court government's industrial relations policies, GFB was welcomed as a necessary regulatory improvement in a framework where enterprise level (collective) bargaining was envisaged as a central plank of the state industrial relations environment. Nonetheless, there is Union concern about the fact that LRRRA individual agreements in the form of employer-employee agreements can, in fact, be offered during the period of GFB. Given this confusion, it is thus not surprising that there is relatively little evidence that Unions WA or individual trade unions have taken a proactive stance and utilised the provisions in a widespread or coordinated manner.

Therefore, who uses GFB? A review of relevant documents and WAIRC determinations and hearings after the introduction of the measures in 2002 reveals relatively few cases where GFB provisions have been cited or utilised by parties to a dispute. As the following review of these cases illustrates, the GFB provisions appear to have been utilised infrequently by unions, and where GFB has come into effect, it has been relevant as a necessary component of union efforts to gain enterprise orders from the Commission. Alternately, it is notable that in two cases the GFB provisions were cited or utilised by employers in dispute with unions.

CPSU/CSA and the West Australian Government

In mid 2003 the Government of Western Australia and the CPSU/CSA (Community and Public Sector Union/Civil Service Association WA) began negotiating public sector replacement agreements due to expire by the end of the year. The union launched an industrial campaign to mobilise members in support of its claim 'CPSU/CSA Valuing Working Life 2003', which aimed for salary increases of 6% or sixty dollars per week. The CSA then rejected as unacceptable four Government offers between October and the end of the year. There was also ongoing disagreement over two issues that the Government pursued through the negotiations. Firstly, the Government sought to gain the ability to negotiate directly with certain employees to allow for the creation of a commuted allowance in place of overtime and shift work benefits provided for by the relevant award. Secondly, the Government sought the ability to allow individual employees to cash out up to half of accrued annual leave.

In an apparent attempt to change the dynamic of the negotiation the Government accused the CSA of failing to bargain in 'good faith' and on 6 January 2004 the CSA was presented with an official notification that the GFB provisions under Section 42(1) of the Act were applicable to the negotiations. The CSA agreed to observe the GFB provisions for future negotiations over the replacement agreements. Several weeks later, the CSA rejected a prior recommendation from the WAIRC for an initial increase of 3.4% and of 3.5% for the second year of the agreement. However, there was progress in reaching agreement on the commencement dates for various aspects of the replacement agreements, with the parties agreeing to separate these matters from unresolved disputes over pay increases, cashing out of annual leave, and commuted allowances. After failing to reach agreement both parties jointly invited the WAIRC to arbitrate these matters. In late July 2004 the WAIRC determined pay increases of 3.8% and 3.6% for each year of the agreement; denied the Government the ability to negotiate directly with employees over commuted allowances while at the same time obliging the union to begin discussions over these issues (even with non-unionised employees); and, finally, rejected the proposal of allowing for the partial cashing out of annual leave.

CFMEU versus Hanssen Pty Ltd project management 2003

In 2003, the CFMEU sought to negotiate an enterprise bargaining agreement with Hanssen Pty Ltd, an employer with a strong preference for excluding unions from its construction worksites. After forwarding to Hanssen a proposal outlining in detail the conditions and matters it wished to include in the agreement, the CFMEU, in accordance with the legislative amendments introduced in 2002, gave formal notice that the employer had 21 days to respond to the intention to commence bargaining. Hanssen failed to issue a formal response to this notice and otherwise flatly refused to negotiate with the union. The CFMEU was then in a position to apply to the WAIRC for

a declaration that bargaining in respect of the claim had ended and that an Enterprise Order should now be issued in light of the non-negotiation stance adopted by Hanssen.

The commissioner, in accordance with the Act, granted the application for an enterprise order that was to be based on the draft enterprise agreement and to apply for a one year period. Hanssen successfully appealed the decision before a Full Bench of the WAIRC, which overturned the original decision largely on a procedural technicality in that the ‘Commission, having relied upon information not put before it in proceedings, did not bring that information to the attention of the parties and allow them to be heard in respect of it’ (2004 WAIRC 12606). A subsequent attempt to have an enterprise order issued was defeated after the WAIRC accepted the argument that an enterprise order was incompatible with the federal WRA in that all of Hanssen’s employees were covered by AWAs.

Ultimately, the GFB provisions were relevant to the dispute in a very limited yet strategically significant sense in that an applicant seeking an enterprise order must be seen to have sought to bargain according to the GFB provisions outlined in the Act. In a different case which resulted in the making of an enterprise order (Sealanes Pty Limited) the GFB requirements of parties were likewise cited with respect to the fact that union applicants had previously bargained in good faith before seeking a formal notice from the Commission that bargaining had ended and that an enterprise order should be issued.

Burswood Resort (Management) Ltd versus Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australia

In 2002, the union applied to the WAIRC for an award to substitute a 2001 collective agreement with the Burswood casino/resort. The essence of the dispute was the desire of the union to ensure that employees covered by union negotiated collective agreements were provided with equivalent terms and conditions as employees within the enterprise who had signed Australian Workplace Agreements after management began offering these to employees from 1999 onwards. The union submitted to the WAIRC that Burswood management was discriminating against employees covered by union negotiated agreements and both parties agreed that in October 2002 management informed employees on AWAs that they were to receive a 3.2% pay rise. Subsequently, the WAIRC granted the new award to the union to allow for equivalent pay for employees covered by the 2001 collective agreement, noting in their finding that management tactics were inconsistent with the intention of the 2002 legislation to restore the primacy of collective bargaining. Interestingly, Burswood management argued before the WAIRC that the union should not have sought to have the commission make a new award and that rather the union should have indicated a formal intention to proceed with negotiations under the GFB provisions of the Act before possibly proceeding to seeking an enterprise order. However, the WAIRC rejected these arguments finding that “the provisions relating to good faith bargaining and enterprise orders are capable of independent existence under the Act” and suggesting that it was clear the Act did not intend that “where enterprise bargaining fails the only path that a Union can take is to seek the making of an enterprise order rather than the making of a new award.”

Conclusion

While “good faith” principles have occasionally surfaced in the federal arena, GFB has emerged recently as a distinctive feature of industrial relations in several state jurisdictions. In Western Australia, the Labor government’s labour relations reform legislation of 2002 represented perhaps the most wide-ranging attempt thus far to incorporate GFB principles within state level industrial relations. However, the utilisation of these GFB measures in Western Australia appears to have been relatively limited, which may reflect the short period of time since their introduction and the absence of comparable provisions in previous legislative frameworks. As a result, all relevant parties considering the provisions are gradually “learning through doing” as to their character and strategic implications.

More significantly, a review of specific cases also reveals that rather than necessarily transforming the traditional adversarial culture of industrial relations, GFB represents a tactical and strategic option within the negotiation process available to both unions and employers. The preliminary assessment provided in this paper suggests that GFB provisions may be most relevant when one party refuses to negotiate with or recognise another party, in particular, in situations where unions confront employers demonstrating a conscious preference for “union avoidance”. At present, the main strategic option exercised by such employers has been to shift to the federal sphere thus accounting for the rapid increase in AWA approvals from WA after the introduction of the LRRRA 2002 (Todd, Caspersz & Sutherland, 2004). In the event of right of entry provisions beginning to take effect and an alignment between the state and federal jurisdictions (in terms of the primacy of collective bargaining over individual contracts), it is possible that the GFB measures could become more widely utilised as a means of compelling anti-collectivist employers to negotiate with unions in ‘good faith’. Alternately, in the absence of this alignment or a far wider utilisation of the measures, GFB may only be ‘lightly’ embedded in Western Australia and this, in turn, would facilitate the abolition of the provisions under a conservative state government.

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