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An agreement applying to three John Holland Pty Ltd employees in WA would have undermined collective bargaining if allowed to take effect, a FWA full bench has found.

Senior Deputy President Justice Alan Boulton, Deputy President Reg Hamilton and Commissioner Danny Cloghan also agreed with the CFMEU's argument that Deputy President Brendan McCarthy was wrong in [ruling](#) that the group of employees to be covered by the *Western Region Agreement Western Australia 2012-2016* was "fairly chosen".



The full bench said the agreement's coverage provisions and exclusions meant that it was impossible to definitively establish who could ultimately be covered by the agreement.

According to the agreement, coverage would extend to all John Holland employees engaged in building or civil construction work in Western Australia, except those who were covered by any "project or site specific agreement" applying to the company's employees.

The full bench said that the broad exclusion provision meant that a definitive finding about the group of employees to be covered could not be made unless it was known how many building and civil construction employees were covered by such agreements now, or would be in the future.

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"At most the group to be covered by the Agreement may be described as comprising some of John Holland's employees working on some building and civil construction sites at some locations in Western Australia."

This also meant that it was not possible to support Deputy President McCarthy's finding that the group to be covered was "geographically, operationally or organisationally distinct".

The bench also said that it could not approve an agreement that had been made with three employees but could ultimately limit the bargaining capacity of an unknown number of employees.

"In this case three employees on one site have bargained and agreed on an agreement with potentially very wide application to other employees who have not engaged in bargaining under [Part 2-4](#) of the Act and will not be given the opportunity to bargain."

The bench said that employees at a new site who fell within the terms of the agreement would not be able to take protected action in relation to bargaining for a site- or project-specific agreement, which was contrary to the bargaining scheme of the Fair Work Act, which allows for protected action to be taken if necessary.



[Construction, Forestry, Mining and Energy Union v John Holland Pty Ltd \[2012\] FWA 7866 \(13 September 2012\)](#)

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