



SUBMISSION TO SENATE INQUIRY INTO THE
WORKPLACE RELATIONS AMENDMENT (WORK
CHOICES) BILL 2005
BUILDING WELLBEING IN THE WORKPLACE

The Minerals Industry Experience and Policy Imperatives

NOVEMBER 2005

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EXECUTIVE SUMMARY

The changes to industrial relations set out in the WorkChoices legislative package continue a program of reform that commenced nearly two decades ago during the Hawke and Keating administrations. The Workplace Relations Act passed in 1996 in the first term of the Howard Government continued that reform effort. Significant benefits have accrued to workers and employers since 1996, but further reforms are required to create more jobs and to meet the increased flexibility demanded by workers in the 21st century. The changes contained in the WorkChoices package are a natural progression down this path.

The common theme of the three phases of reform – the early 1990s, 1996 and 2005 – has been the steady decentralisation and reorientation to the individual worker and individual enterprise in Australia's industrial relations system. They are reforms designed to support one fundamental principle – that arrangements between employers and employees are best negotiated in the workplace of the individual enterprise.

The changes made to date have produced a significant and tangible dividend, including in the minerals sector. It is a dividend not simply measured in output, but rather one that is characterised by more flexible, safer, more productive and harmonious workplaces. Jobs, wages and salaries have grown strongly, industrial disputation remains low, and the overall economy has enjoyed robust expansion.

But the reforms are incomplete. The Australian economy, and the minerals sector in particular, is still weighed down by the remnants of an industrial relations system designed for an earlier era and a different purpose. Despite operating in a global sector, the minerals sector must accommodate both state and federal jurisdictions covering different groups of employees within the one workplace, and deal with a multiplicity of tribunals, dictating different working arrangements with inconsistent regulation. There are costly and unnecessary delays to the striking of agreements between employers and their employees.

To compete and prosper, the Australian minerals sector needs to be adaptable, technologically advanced, and safe. This requires, among other things, mutually beneficial partnerships between employers and employees founded in flexible workplace arrangements that cater for employment options, gender and cultural diversity, skills development, trust and mutual regard. This can only be achieved in an industrial relations environment that

provides for ingenuity and individual enterprise, inclusiveness and engagement of employees in determining workplace arrangements and practices, and capacity to differentiate rewards for performance, in itself a product of both productivity and regard for the welfare of fellow workers and social cohesion.

The key element of the Government's industrial relations reforms is their emphasis on promoting direct relationships between employers and their employees based on mutual respect and regard.

The Federal Government's Work Choices – A New Workplace Relations System will strengthen capacity for direct relationships by promoting a more credible system that is simpler, fairer, more accommodating in its flexibility, and in the legal protection it provides fundamental employee entitlements.

The minerals industry's workplace performance is testament to the importance of direct relationships between employers and employees. They are foundation to modern workplace relations – in understanding and delivering on the needs and expectations of each, improving the wellbeing of the employee, the productivity and performance of the business, and the economic and social welfare of all Australians.

The Minerals Council of Australia supports the critical reforms:

- > creating a single national industrial relations system – critical for an industry which operates in all states and territories and increasingly structured and operating along global lines.
- > extending the length of Australian Workplace Agreements (AWAs) from 3 to 5 years.
- > better defining protected industrial action, and removing impediments to common law tort remedies for unprotected industrial action.
- > simplifying the agreement making process by reducing number of allowable matters from 20 to 16, streamlining the number of standard conditions that must be included in AWAs, and simplifying the processes for legal recognition of AWAs.

The MCA supports the Work Choices package and urges its speedy passage.

INTRODUCTION

The motion for referral to the Senate Employment, Workplace Relations and Education Legislation Committee is as follows:

That:

- (1) *Upon the introduction of the Workplace Relations Amendment (Work Choices) Bill 2005 in the House of Representatives, the provisions of the bill be referred to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report by 22 November 2005.*
- (2) *The inquiry not consider those elements of the bill which reflect government bills previously referred to, examined and reported on by the committee; namely those elements which relate to secret ballots, suspension/termination of a bargaining period; pattern bargaining; cooling off periods; remedies for unprotected industrial action; removal of section 166A of the Workplace Relations Act 1996 (the WR Act); strike pay; reform of unfair dismissal arrangements; right of entry; award simplification; freedom of association; amendments to section 299 of the WR Act; and civil penalties for officers of organisations regarding breaches.*

The Minerals Council of Australia (MCA)

The Minerals Council of Australia represents Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. MCA is an industry funded association operating as an incorporated company limited by guarantee. MCA member companies produce more than 85% of Australia's mineral output. The core business of the MCA is to :

- > advocate pre-competitive public policy
- > promote leading operational principles and practices, and capacity building
- > engage opinion leaders and other stakeholders to build public presence.

The Australian minerals sector has contributed 8.5 per cent of GDP (2003-04) – \$500 billion directly to Australia's wealth over the past 20 years. The industry accounted for:

- > exports of around \$55 billion - 40% total merchandise and 30% total goods and services (2004-05)
- > exports of mining technology, equipment and services of approximately \$2 billion (2002-03) (60% of mining software used globally is Australian)
- > directly and indirectly employ some 321,000 Australians – particularly in remote and regional areas.
- > total government revenue payments (taxes and royalties) of \$A4.6 billion (2003-04)
- > significance as a global supplier – 3rd largest minerals sector by value of production of any country (after the US and South Africa)
 - a 'top 5' producer of most of the world's key minerals commodities

1. THE CASE FOR CHANGE

The Federal Government's Work Choices – A New Workplace Relations System will strengthen the capacity for direct relationships in the workplace by promoting a more credible system that is simpler, fairer, more accommodating in its flexibility, and in the legal protection it provides fundamental employee entitlements.

In particular, the Minerals Council of Australia (MCA) supports the following critical reforms:

- > **creating a single national industrial relations system – critical for an industry which operates in all states and territories and increasingly structured and operating along global lines.**
- > **extending the length of Australian Workplace Agreements (AWAs) from 3 to 5 years.**
- > **better defining protected industrial action, and removing impediments to common law tort remedies for unprotected industrial action.**
- > **simplifying the agreement making process by reducing number of allowable matters from 20 to 16, streamlining the number of standard conditions that must be included in AWAs, and simplifying the processes for legal recognition of AWAs.**

These reforms come at a time when the Australian minerals industry is growing strongly, and is seeking to further improve the wellbeing of its employees and businesses by building on a platform of profound industrial relations changes over the past decade.

The minerals industry's workplace performance is testament to the importance of direct relationships between employers and employees. They are fundamental to modern workplace relations – in understanding and delivering on the needs and expectations of each, improving the wellbeing of the employee, the productivity and performance of the business, and the economic and social welfare of all Australians.

The proposed changes are not radical, but rather the logical continuation of reforms initiated by the previous Labor Government, built on by the Howard Government, and keenly embraced by the minerals industry. **Four out of every five employees in the metalliferous sector are now covered by an Australian Workplace Agreement, along with one of every two employees in the minerals sector as a whole.** In contrast, federal registered union agreements (18 500 employees) now cover only 16 per cent of the minerals industry.

It should not be under-estimated that respected independent bodies, including the Organisation for Economic Co-operation and Development (OECD) and the International Monetary Fund (IMF) have stressed the importance of further reforms. In its *Economic Survey of Australia 2004*, the OECD said:

“To further encourage participation and favour employment, the industrial relations system also needs to be reformed so as to increase the flexibility of the labour market, reduce employment transactions costs and achieve a closer link between wages and productivity.

The OECD continued:

“Regulatory requirements for collective and for individual agreements should be eased so that they can replace awards. A major step in this direction would be another reduction of the number of allowable award matters, and the tightening of their definitions and specifications.”

In similar vein, the IMF noted in its Article IV review of the Australian economy in late 2004 that “... just as structural reforms boosted the Australian economy out of the economic doldrums of the 1970s and 1980s, it is necessary in a world of rapid technological change and globalization to continue the reform process to maintain growth in the future.”

Indeed, the IMF added, “there is no reason why Australia should not aspire to even higher growth to close the productivity gap with the most advanced economies.”

The IMF said:

“However, the wage bargaining system needs further simplification, including a reduction in the overlap of the federal and state award systems and a diminished role of the award system in setting the minimum wage, which has contributed to a relatively high unemployment rate for low-skilled workers.”

2. FLEXIBLE WORKPLACE ARRANGEMENTS ARE IMPORTANT IN THE MINERALS SECTOR

The Minerals Sector and Industrial Relations Reform

The transformation of the minerals sector over the last decade, aided by only partial reform, represents a compelling case for the completion of the industrial relations reform agenda. **The shift in work practices, improved terms and conditions, rewards for performance and productivity in the minerals industry over the last 10 years have been nothing short of remarkable:**

- > the industry has transformed from one of the worst industrial safety records in Australia to one of the best, yet the industry remains frustrated that it falls short of its goal of an industry free of fatalities, injuries and diseases;
- > labour productivity has outstripped the performance of any other sector in Australia, and the economy more generally, when measured by gross product per hours worked – at 5.1 per cent compared with the all industry's average of 2.4 per cent, it is more than twice the national average;
- > remuneration for minerals industry employees has remained well above that in other sectors. Full-time adult ordinary-time earnings in the minerals industry since the early 1990s have increasingly outpaced those of other industries;
- > shift patterns are stable with around two-thirds of existing shift patterns the result of collective determination – in 8 out of 10 cases, workers protest any changes to shift arrangements;
- > though there are strong economic and business reasons for determining shift arrangements/workplace rosters, safety is the key consideration of any change to existing arrangements;
- > there are some 350 plus different combinations of roster arrangements among surveyed companies indicative of the highly variable nature of individual business and the specific interests of their respective workforces.

A diverse sector which relies on flexibility and mutual respect

The Australian minerals sector has a number of features that make flexibility, mutual respect and trust in the workplace vital to its continued success. The industry:

- > places an absolute and unconditional priority on safety and health considerations which are not subordinate to productivity;
- > employs skilled professional and tradespeople from diverse backgrounds in a wide range of occupations;
- > operates in dramatically different workplace environments – from head offices in capital cities, to remote locations hundreds of kilometres from the nearest town or community, within small regional communities near provincial population centres to small hamlets adjoining traditional Indigenous communities;
- > confronts vastly different operational requirements as a result of diverse geography, differing ore bodies, function and prevailing local circumstances; and
- > must position itself as a strategic location within converging global supply chains.

For these reasons, **the minerals industry needs an industrial relations system that promotes rather than impedes the development of mutually beneficial relationships in the workplace.**

Previous reforms have fostered a more direct relationship between employees and employers at the workplace level and instilled a stronger sense of parties' rights and responsibilities. As noted, these changes have been accompanied by major improvements in safety, employee earnings, employee skills development, productivity and profitability with almost no time lost due to industrial action. The majority of the minerals sector now has the terms and conditions of its workforce set by direct non-union industrial regulation. Nearly 60 per cent of the workers in the minerals industry's on Federal Awards, and close to 80 per cent of metalliferous mining workers are covered by AWAs.

A preference for individual agreements or AWAs over collective bargaining

The minerals sector wants to build on past successes so that all stakeholders – including our shareholders and employees – can share the benefits of business success. This means aligning our employees with the goals of the business and engendering a mutual sense of ownership in the outcome.

Put simply, the minerals sector considers it is essential that its employees feel that their daily contribution to the businesses in which they work really makes a difference and that they will be recognized and rewarded for their individual contribution. This requires a direct and honest relationship between all levels of management and the workforce. An important element of such an open relationship must necessarily be the fact that we deal directly with each other – not through a third party who shares none of the consequences of our business's performance.

This means honest and open communication to ensure that management is alive to the needs of their employees and is committed to facilitating a genuine work/life balance for their employees, and for employees to feel the confidence that their supervisor is there to assist them with their workplace queries or requests and to provide them with the leadership to make their working day a worthwhile and enjoyable experience.

In this model, third party 'intermediaries' are simply not needed. Hence, the MCA considers that the agreement making provisions of the Workplace Relations Act (WRA) should reflect this.

The MCA seeks the removal of barriers that limit the capacity of an individual employee to commence employment on an individual contract or AWA and an existing employee, at any time during their employment, opt for an AWA over a collective agreement that may be applicable.

3. SPECIFIC ISSUES

The importance of a National Industrial Relations System

The argument “if it ain’t broke, don’t fix it” fails to pay regard to the inefficiency and economic impact of overlapping state and federal jurisdictions that cause unnecessary complexity, confusion and cost for both employers and employees. Despite operating in a global sector, the minerals sector must accommodate both state and federal jurisdictions covering different groups of employees within the one workplace, and deal with a multiplicity of tribunals dictating different working arrangements with inconsistent regulation.

This is not the best model for a modern Australia with dynamic and expanded enterprises competing vigorously in a globalised economy.

The MCA supports a single national statutory system to govern workplace relations and calls upon the state governments to refer their workplace relations powers to the Commonwealth in order to create a national workplace relations system.

The cases for changes to the existing AWA system

Under existing procedures, agreements made between employers and employees do not become official until they are certified by the Australian Industrial Relations Commission. This is an unnecessarily time-consuming and bureaucratic requirement. Employees converting to individual contracts prefer these be effective immediately rather than after a statutory waiting period. Under the proposed reforms, the agreement will become effective when it is lodged, rather than when it is officially certified by authorities. This is a common sense reform for modern dynamic enterprises seeking to remove the shackles of bureaucratic red tape.

The Minerals Council supports the extension of the duration of AWA’s from 3 to 5 year terms. This is a welcome reform. Under current 3-year arrangements, the first year is focused on the achievement of the flexibilities and productivity gains negotiated in the agreement as well as auditing compliance with its terms. By the second year, companies are commencing the necessary strategic planning for the next generation of agreement in line with the business’s overall strategy and plans, while the final year sees the employer finalising the company’s agenda and starting the process of renegotiation.

Such a ‘cycle’ means that a business can never escape the agreement merry-go-round, which – in the case of union negotiated agreements - enshrines the relevance of third parties in the minds of the workforce. It allows third parties to exploit the ‘big event’ of negotiations for a new agreement. **An extension of the maximum life of an agreement to 5 years would significantly reduce the time-consuming distraction that management unavoidably experiences during the agreement’s negotiation and implementation phases, and enable management to align their workplace strategy with their business planning cycle.**

The streamlining of allowable matters

While the minerals industry favours the primacy of agreements over awards, there is considerable potential for awards to be further refined. Rather than continuing as highly detailed, prescriptive and, on many occasions, interpretatively challenging documents, **awards should constitute a simple safety net covering a minimum number of key matters, necessary to protect the interests of those employees who may still rely upon their terms to govern their employment.**

The minerals sector notes the intention to remove jury service, notice of termination, long service leave and superannuation from the present “allowable award matters”. However, this does not go far enough to address the issue of unnecessary complexity. The minerals sector welcomes the proposed review of the existing award wage and classification structures and hopes that it results in a more comprehensive rationalisation of permissible award contents.

The introduction of an Australian Fair Pay Commission

Under the proposed reforms, minimum award conditions will be set by the Australian Fair Pay Commission. The reforms also include the introduction of an Australian Fair Pay and Conditions Standard (AFPCS) aimed at significantly reducing the complexity surrounding the existing “no disadvantage” test. The current test makes the necessary assessment of an agreement’s ability to satisfy the ‘no reduction in the overall terms and conditions of employment’ against the prevailing award a difficult, and potentially subjective, exercise and produces an inconsistent minimum standard that different agreements are required to meet.

The AFPCS, which includes the minimum award classification wages set by the new body – the Australian Fair Pay Commission – and the guaranteed minimum conditions of employment to be established in legislation, will provide a uniform test which will make it considerably easier for employers and employees to compare their agreement against the new safety net standard.

The MCA supports the introduction of the Australian Fair Pay Commission as an independent mechanism for establishing a new safety net standard to protect the rights of employers for lower paid workers.

MORE INFORMATION

Further details on the MCA position on industrial relations reform can be found at the MCA's website www.minerals.org.au. This includes a fact sheet setting out the MCA's position as well as a number of press statements which spell out the MCA policy stance.