

AUGUST 2005

Policy Statement – Key Principles

The MCA is committed to mutually beneficial partnerships between employer and employee founded in flexible workplace arrangements that cater for employment options, gender and cultural diversity, skills development, trust and mutual regard.

To this end, the MCA supports the introduction of a national system of workplace relations that embraces cooperative and flexible employment arrangements that simplify the agreement making process at the workplace.

The Federal Government's proposed changes to industrial relations regulation reflect the MCA's reform advocacy.

In particular, the MCA supports the following changes:

- Simplifying the agreement making process at the workplace
- Extending the length of certified agreements to five years and limiting periods of protected legal action
- Limiting the arbitral powers of the Industrial Relations Commission to a reduced number of allowable matters (20 to 16)
- Amending the unfair dismissal laws
- Tightening the right of entry provisions under State laws
- Recognising the legal standing of independent contractors
- Establishing the Fair Pay Commission to protect minimum and award classification wages
- Enshrining minimum conditions in legislation
- Providing award protection for those not covered by agreements.

The MCA believes these changes will emphasise the importance of engagement at the enterprise level with individual employees for mutually beneficial relationships

Fact Sheet – Industrial Relations Reform

What is the driving force behind the current industrial relations reforms?

The changes to industrial relations proposed by the Federal Government 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 further jobs and to meet the increased flexibility demanded by workers in the 21st century. The changes proposed by the Prime Minister John Howard on 26 May, 2005 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. 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 dispute 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



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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.

Why is the development of flexible workplace-based agreements so important to the minerals sector?

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

- > employing skilled professional and tradespeople from diverse backgrounds in a wide range of occupations;
- > operating 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;
- > as a result of diverse geography, geomorphology (differing ore bodies), function and prevailing local circumstances, enterprises often have vastly different operational requirements and operating parameters within and between enterprises;
- > given the inherent hazards of the industry, the industry places an absolute and unconditional priority on safety and health considerations which are not subordinate to productivity; and
- > in a highly competitive global industry, Australia must position itself as a strategic location within converging global supply chains.

For these reasons, the minerals sector 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 skill 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. Approximately 50 per cent of the industry works under AWAs, and close to 80 per cent of metalliferous mining workers are covered by AWAs.

Why is further reform necessary?

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.

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What are the key elements of the proposed reforms?

The Workplace Relations reforms proposed by the Federal Government provide a further critical step in emphasising responsibility for terms and conditions of employment at the level of the enterprise and the individual employer and employee. The proposed reforms will further decentralise, disaggregate and differentiate conditions of employment in favour of individual relationships for determining better safety, productivity and performance. These three factors are critically dependent on an honest, direct and mutually beneficial relationship between employer and employee

The key elements of these changes are consistent with the MCA's reform advocacy, in particular:

- > introduction of a national system of workplace relations;
- > simplify the agreement making process at the workplace;
- > simplifying processes for legal recognition, extending period for certified agreements to 5 years, limiting and controlling period of protected industrial action;
- > limiting the arbitral powers of the Australian Industrial Relations Commission (AIRC) to a reduced number of allowable matters (20 to 16);
- > amend the unfair dismissal laws;
- > tightening right of entry provisions under State laws;
- > recognising legal standing of independent contractors;
- > establishment of the Fair Pay Commission to protect minimum and award classification wages;
- > enshrine minimum conditions in legislation for the first time;
- > provide award protection for those not covered by agreements.

These changes will increase the industry's flexibility and productivity, and emphasise the importance of engagement at the enterprise level with individual employees for mutually beneficial relationships.

Why is a national system of workplace relations necessary if the industrial environment has improved so rapidly under the existing mix of state and federal arrangements?

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 our 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.

Why does the industry favour 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 our business 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, we believe that the agreement making provisions of the Workplace Relations Act (WRA) should reflect this.

We would like to see removal of barriers to individual rather than collective employment so that an individual employee can commence their employment on an individual contract or AWA and an existing employee can – at any time during their employment – opt for an AWA over a collective agreement that may be applicable.

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Why do existing arrangements for workplace agreements need more changes?

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 to have these effective immediately rather than after a statutory waiting period. Under the proposed reforms, the agreement will become effective when it is struck, 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 Government has also agreed to a 5 year term for agreements. 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 term. 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 'relevancy' 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 would eliminate the significant 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.

Why is it necessary to reduce the number of 'allowable matters' in awards?

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 we would hope that it results in a more comprehensive rationalisation of permissible award contents.

What is the rationale for new arrangements for setting minimum wages and conditions?

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 availability 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.

What independent backing is there for the minerals sector's support for further reform?

Independent bodies, including the Organisation for Economic Co-operation and Development (OECD) and the International Monetary Fund 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."