



# Australia's Workplace Relations System and The Australian Minerals Industry

## Overview...

Two decades of industrial relations reform, spanning the three governments of Hawke, Keating and Howard, have transformed Australia's workplace relations system to emphasise the individual worker, the individual enterprise and productivity [Summary at Attachment 1]. These reforms provided the framework for the Australian minerals industry to remove outdated, restrictive work practices, providing flexibility and choice in workplace arrangements and transforming pay and conditions and workplace culture, delivering significant tangible dividends.

The Australian minerals industry has transformed its workplaces from a culture of confrontation and divisiveness where workplaces were battlegrounds of a "them and us" conflict to a workplace culture of collaboration and direct relationships. These relationships are founded in individual enterprise and personal accountability, recognition of contribution and performance, a shared commitment to skills and personal development, and a culture of mutual dependency and prosperity. This transformation started long before the "current boom". Indeed, change was founded in the initial stages of workplace reforms and at a time when the Australian minerals industry was struggling, barely recovering the cost of its investment capital.

Choice and flexibility in workplace arrangements are necessary to provide the range of employment options to cater for the employment diversity of vastly different operational requirements and operating parameters, within and between companies, across the minerals industry.

- ❖ The Australian minerals industry uses the full range of employment instruments – including statutory individual contracts (Australian Workplace Agreements – AWAs), union and non-union collective agreements, and common law contracts underpinned by Awards where they exist. Many companies offer multiple options across business units. Some operate under a single employment arrangement; and
- ❖ Individual contracts are increasingly a feature of employment in the minerals industry – over 50 percent of all minerals industry workers are on AWA individual contracts; in the metal ore sector nearly two thirds of all miners are on AWAs; in Western Australia 85 percent of all metal ore miners are on AWAs and even in the relatively unionised coal industry, 11 percent of all coal miners are on AWAs.

The minerals industry considers that direct employer-employee relationships have provided the foundation for improved safety and health performance, improved productivity and business performance, greater job satisfaction, increased wages and salaries and greater benefits to the communities (particularly those in which the industry operates), through employment opportunity and prosperity.

- ❖ in the decade since the 1996 workplace relations reforms, employees in the minerals industry earned over 50 percent more than the Australian all-industry average, multifactor productivity on average was 11 percent per annum higher in mining than the all industry average, occupational health and safety improved dramatically, though it fell short of the industry's goal of zero harm, with a 77 percent reduction in lost time injury frequency rates and a 50 percent decrease in fatalities per year, and the days lost to industrial dispute were the lowest on record.
- ❖ investment in new projects skyrocketed by 38 percent or \$5 billion per year and is currently at record levels underpinned by confidence in our workplace arrangements and international competitiveness and in continuing strong demand for the industry's products in global markets.

The transformation to a workplace culture characterised by collaborative, direct relationships is fundamental to the industry's commitment to corporate social responsibility – the wellbeing of its workforce and surrounding communities – this is the foundation for a continuing social licence to operate.

The Australian minerals industry is committed to an industry free of fatalities, injuries and diseases. The industry can have no greater stewardship responsibility than the safety and health of its people.

The industry considers that employment agreements do not compromise safety and health. Indeed, the contrary is the case to the extent that workplace arrangements facilitate a closer relationship between management and the workforce, so fundamental to effective risk management promoting a shared responsibility for culture, systems and behaviours.

The minerals industry considers that any "backsliding" on flexible workplace arrangements that would re-create the artificial dichotomy between worker and management and restrict the range of employment instruments available to both employers and employees would represent a retrograde departure from the progressive reforms of the past two decades.

If the Australian minerals industry is to continue to grow and fully capitalise on the strongest global market growth in a generation, to the benefit of all Australians, the industry must:

- ❖ have continued access to the full range of employment instruments, including statutory individual contracts (AWAs), underpinned by an effective safety net;
- ❖ have the freedom to determine whether or not to collectively bargain and the freedom to determine, by mutual agreement, the nature of the terms and conditions of employment;
- ❖ have freedom of association – the right to belong and the right not to belong to a union and the right to choose or to refuse to be represented in any negotiations;
- ❖ have the right to determine who has entry to businesses; and
- ❖ be a reliable supplier and therefore must have certainty in what is and is not lawful industrial action, with effective controls in place to deal with unlawful industrial action.

Above all, a national workplace relations system must enable the industry to continue to engender a culture of collaboration, of individual enterprise and personal accountability, of commitment to the inviolability of safety and health, and of increasing productivity and mutual prosperity

August 2007

**Minerals Council  
of Australia  
Policy....**

**The business case  
for flexibility and  
choice....**

**The dividends  
from flexible  
workplace  
arrangements....**

**Two decades  
of industrial  
relations  
reform....**

**Minerals Council of Australia Policy....**

The Minerals Council of Australia (MCA) is committed to a national workplace relations system that provides choice and flexibility in the full range of employment instruments, underpinned by an effective safety net, that promotes rather than impedes direct relationships between employers and employees to cater for employment options, operational diversity, gender and cultural diversity, skills development, trust and mutual regard.

The MCA supports a national system of workplace relations that provides for:

- ❖ matters affecting the employment relationship to rest primarily with employers and employees at the enterprise or workplace level – for mutually beneficial direct relationships between employers and employees;
- ❖ flexibility and choice in the full range of employment instruments that allow employers and employees to choose the most appropriate form of agreement for their particular circumstances:
  - ❖ statutory individual agreements (AWAs); union certified and employer collective agreements; common law contracts underpinned by Awards (where Awards exist);
- ❖ an economically and socially sustainable safety net through:
  - ❖ minimum conditions – applicable to all types of agreements that are enshrined in legislation;
  - ❖ application of a global “no disadvantage test” to apply to statutory individual agreements;
  - ❖ an independent body to protect minimum and Award classification wages;
- ❖ a simplified agreement making and lodgement process;
- ❖ freedom of association, ie. the right to belong or not to belong to a organisation or association, and the right to choose or to refuse to be represented in any negotiations;
- ❖ the freedom to determine whether to, or not to, collectively bargain and the freedom to determine, by mutual agreement, the nature of the terms and conditions of employment;
- ❖ a prohibition on industrial action during the life of an agreement
- ❖ unfair dismissal laws that discourage vexatious claims and prevent and eliminate unlawful discrimination;
- ❖ recognition of the legal standing of independent contractors;
- ❖ reduced prescription and complexity in Awards;
- ❖ flexible mechanisms for the voluntary settlement of disputes;
- ❖ appropriate sanctions to deal with illegitimate and unprotected industrial action;
- ❖ promotion of Australia’s obligations in relation to international labour standards; aoutlawing of secondary boycotts via the Trade Practices Act.

**Any proposal to replace statutory individual agreements with common law agreements must:**

- ❖ recognise the direct relationship between the employee and the employer and not be subject to the mandated involvement, either directly or indirectly, of external parties;
- ❖ be capable of regulating terms and conditions to the exclusion of other industrial instruments such as Awards or agreements; ie. capable of statutory recognition or an equivalent so as to remove potential limitations associated with other industrial instruments;
- ❖ meet or be equivalent overall to the applicable minimum standards;
- ❖ prohibit the taking of industrial action [over the life of the agreement];
- ❖ prevent a role for uninvited third parties and expansion of union rights of entry;
- ❖ be restricted to matters pertaining to employment relationship (e.g no union deductions, preference to trade unions, restrictions on casuals, labour hire, trade union training leave etc); and
- ❖ not allow the Commission, under the guise of “good faith bargaining”, to impose agreements on employers unless significant damage to economy would occur (eg. strike in essential service).

**The MCA is opposed to:**

- ❖ restrictions to the range of employment instruments available to employers and employees, including the abolition of AWAs without satisfactory replacement;
- ❖ mandated external third party involvement in the workplace and/or workplace agreement negotiations (unions, IR Commissions, NGOs or employer groups);
  - ❖ this includes automatic extrapolation of union membership to a union’s right of entry to the workplace or the union insisting it be the employees bargaining agent in any negotiations with the employer;
- ❖ mandated collective bargaining and collective agreements - to bargain collectively is a matter of free choice, but a collective agreement should only be determined if both parties agree – it cannot be mandated that they agree:
  - ❖ employees should know their entitlements and be able to choose to bargain collectively;
  - ❖ neither the employees nor the employer should be compelled to reach a collective agreement;
  - ❖ employees who choose to stand aside from any collective bargaining should not be forced to be part of a collective agreement, even if the majority of the workforce choose to do so; and
- ❖ mandated terms and conditions prescribed in other industrial instruments, such as Awards or collective agreements, though the industry accepts a range of minimum standards comprising a “safety net”.

August 2007

**Minerals Council of Australia Policy....**

**The business case for flexibility and choice....**

**The dividends from flexible workplace arrangements....**

**Two decades of industrial relations reform....**

**The business case for flexibility and choice....**

Choice and flexibility in workplace arrangements are necessary to provide the range of employment options needed to cater for operational diversity across the minerals industry, in:

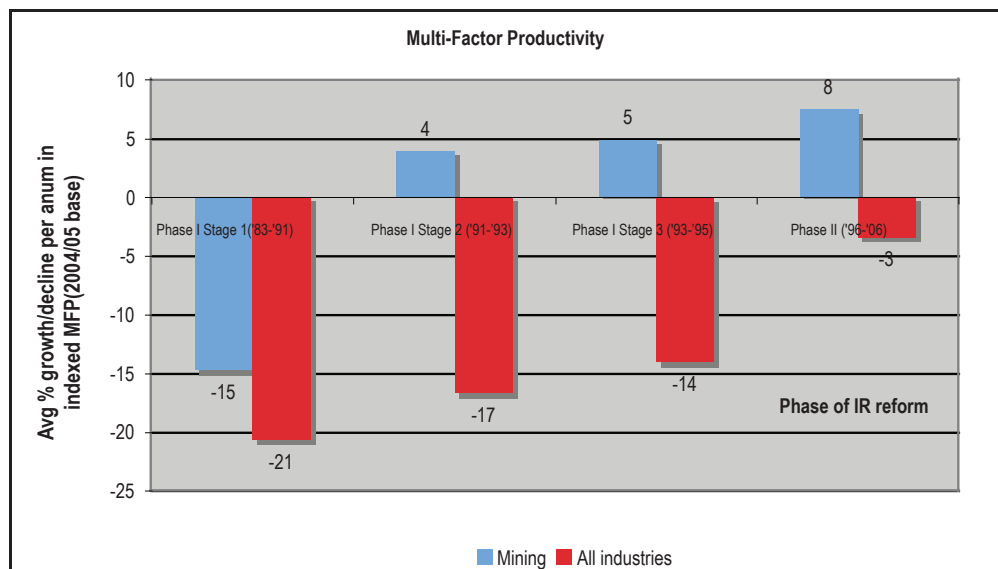
- ❖ employing skilled professional and tradespeople from diverse backgrounds in a wide range of occupations;
- ❖ operating in dramatically different workplace environments – from head offices in capital cities, to remote locations hundreds of kilometres from the nearest town or community, within small regional communities near provincial population centres to small hamlets adjoining traditional Indigenous communities;
- ❖ vastly different operational requirements and operating parameters within and between enterprises as a result of diverse geography, geomorphology (differing ore bodies), prevailing local circumstances and operational function (exploration, mining, processing, closure);
- ❖ an inherently hazardous industry which requires absolute and unconditional commitment to the safety and health of its workforce;
- ❖ a highly competitive globally integrated industry, Australia must be internationally competitive to be positioned as a strategic location for investment and production within converging global supply chains; and
- ❖ providing flexible working arrangements to address structural and cultural barriers that have limited the participation of women and Indigenous people in the industry.

**The dividends from flexible workplace arrangements....**

The dividends of flexible workplace arrangements are not simply measured in output, but also in a new modern progressive workplace culture, which is safer, more harmonious and more productive, and more conducive to the needs and expectations of the workforce, the business and the communities in which the minerals industry operates. Jobs, wages and salaries, productivity and investment have all grown strongly, occupational health and safety has improved, and industrial disputes are at record lows.

In the decade since the 1996 workplace relations reforms (1996-2006):

- ❖ **employees in the minerals industry earned over 50% more than the all industry average:**
- ❖ annual average full time adult ordinary time earnings (in real terms) in the minerals industry were \$1,101 per week compared with the all industry average of \$719 per week;
- ❖ ordinary full time earnings of males in the minerals industry grew by an average 2% per annum during the decade 1996-2006 compared with the all industry average of 1.5% per annum.
- ❖ **multifactor productivity (MFP) increased significantly in the minerals industry outstripping the all industry average:**
- ❖ on average, mining MFP was 11% per annum higher each year than the Australian all industry MFP average;
- ❖ the increase was particularly pronounced in the 5 year period after the 1996 reforms notwithstanding that this was a period of “disinvestment” in an industry struggling to recover the cost of its investment capital. On average, mining MFP was 16% higher per annum compared to the Australian all industry MFP average during this period; and
- ❖ despite the lag phase production effects of a significant increase in capital investment and employment since 2001, mining MFP continues at 3% per annum compared with the all Australian industry MFP average of negative 0.4% per annum.



- ❖ in the last decade coal mining labour productivity has increased at a higher rate than metalliferous, but:
  - ❖ off a very low base in the mid-1990s when the industry was heavily closeted;
  - ❖ labour productivity is a very poor proxy for real productivity – multifactor productivity

August 2007

**Minerals Council of Australia Policy....**

**The business case for flexibility and choice....**

**The dividends from flexible workplace arrangements....**

**Two decades of industrial relations reform....**

### Case Study

In 1997, concerned about the performance of its own open cut coal mines and that productivity shortfalls existed in many other Australian open cut coal operations, Rio Tinto Limited commissioned Tasman Asia Pacific to compare the productivity of Australian open cut black coal mines against international counterparts and against domestic hard rock mines.

Based on an analysis of 27 major coal mine operations in Australia, the US and Asia, the study analysed the performance of truck and shovel operations and dragline operations in calendar year 1996. It found:

- ❖ NSW black coal mines needed to increase productivity by 48 and 37 per cent on average to match performance achieved in Australian hard rock mines and US black coal mines, respectively;
- ❖ Queensland coal mines needed to increase productivity by 34 and 24 per cent on average to match Australian hard rock mines and US black coal mines respectively;
- ❖ labour productivity needed to increase by around 80 and 70 per cent on average in NSW coal mines to match the performance of domestic hard rock mines and US coal mines respectively. Queensland mines need corresponding 40 and 30 per cent increases;
- ❖ poor labour productivity performance had caused over-capitalisation with NSW coal mines needing to improve truck productivity by 37 and 55 per cent to match the performance of Australian hard rock and US coal mines respectively. Queensland mines needed corresponding 11 and 25 per cent increases; and
- ❖ poor performance resulted in high cost – poor productivity and high unit labour input costs combined to raise the cost of operating NSW and Queensland black coal mines far in excess of US and Asian competitors and domestic metalliferous mines:
  - ❖ NSW and Queensland black coal producers were, on average, more than 60 and 40 per cent higher cost than both US and Asian coal producers respectively;
  - ❖ most of the additional labour cost stemmed from short ordinary time hours (35 hour week), high overtime premiums, bonuses and additional leave taken
- ❖ **occupational safety and health performance improved dramatically, EVEN THOUGH IT FELL SHORT OF THE INDUSTRY'S GOAL OF ZERO HARM** – compared with the preceding decade to 1995. In the Australian minerals industry, on an annualised average basis, there has been:
  - ❖ a 77% reduction in lost time injury frequency rate or LTIFR (lost time injuries per million hours worked) - from 48 to 11;
  - ❖ a 50% decrease in fatalities per annum - from 28 to 14;
  - ❖ no significant difference between coal mining and metalliferous in fatal injury frequency rate (number of fatal injuries/million hours worked) and lost time injury frequency rate;
  - ❖ an increasing emphasis on safety and health performance indicators in performance bonuses – safety and health performance criteria typically comprise between 10% and 30% of total performance bonuses, which do not differentiate between employees on the basis of their employment agreements.
- ❖ **real net capital expenditure on production and infrastructure related projects increased significantly and is currently at record levels:**
  - ❖ compared with the preceding decade to 1995, average annual expenditure increased by 38% to \$5 billion per annum (\$3.6 billion per annum in the preceding decade);
  - ❖ current projections are in the order of 300 projects either completed, advanced or under consideration, representing an estimated \$160 billion of new capital investment.
- ❖ working days lost to industrial disputation are at the lowest level in the industry's recorded history:
- ❖ compared to the preceding decade to 1995, the reduction in working days lost per 1000 employees per annum decreased in the coal sector by 76% (1,725 to 398) and in the all other mining sector by 89% (175 to 19).

August 2007

**Minerals Council  
of Australia  
Policy....**

**The business case  
for flexibility and  
choice....**

**The dividends  
from flexible  
workplace  
arrangements....**

**Two decades  
of industrial  
relations  
reform....**

### Minerals Council of Australia

August 2007

## ATTACHMENT 1

### Two decades of industrial relations reform....

Industrial relations reform has spanned two decades, three phases of reform, and both Labor and Coalition Governments, emphasising:

- ❖ the steady decentralisation and reorientation of Australia's industrial relations system to the individual worker and individual enterprise;
- ❖ support for the fundamental principle that arrangements between employers and employees are best negotiated in the workplace of the individual enterprise;
- ❖ that the primary responsibility for determining matters affecting the relations between employers and employees rests with the employer and employees at the workplace or enterprise level;
- ❖ a move away from compulsory arbitration and towards agreement making at the workplace level;

In summary:

- ❖ the 1983-1991 Hawke Government reforms established the accords linking wage rises to CPI and subsequently productivity offsets; and significant broader economic reforms – floated the exchange rate, deregulated the financial sector, significantly reduced tariff protection, promoted international trade liberalisation, and introduced compulsory saving (superannuation);
- ❖ the 1991-1993 Hawke/Keating Government reforms were the start of enterprise bargaining/agreements and a move to a more decentralised method of wage determination – wages were linked to the agreement which was linked to productivity;
- ❖ the 1993 Keating Government reforms took enterprise bargaining/enterprise agreements at the enterprise/workplace level further establishing two streams of agreement making – certified agreements and enterprise flexible agreements – EFAs enabled employers to override the Awards system reaching agreement with a group of employees but with the obligation that all relevant unions had to be notified and that the Commission had to approve the agreement;
- ❖ the 1996 Howard Government (Minister Reith) reforms (Workplace Relations Act) introduced statutory individual agreements subject to a global no disadvantage test and observance of current collective agreements; reduced the scope for third parties to intervene; Awards were simplified; prevention of unlawful industrial action; and reinstatement of secondary boycotts [those secondary to the business affected by industrial action seeking damages on account of that action];
- ❖ the 2006 Howard Government (Minister Andrews) reforms – WorkChoices – simplified agreement making process with AWA's not subordinate to other industrial instruments, also:
- ❖ the no-disadvantage test was replaced by a test against the statutory Australian Fair Pay and Conditions Standard;
- ❖ the standard comprises five legislated minimum conditions: basic periodic rate of pay and casual loadings; maximum hours of work; annual leave; personal leave and parental leave;
- ❖ employees who have the benefit of protected award conditions retain that benefit; and
- ❖ the Fairness Test was implemented April 2007 to assess whether employees (less than \$75,000 pa) are fairly compensated where their workplace agreement, individual or collective, modifies or removes any or all of the protected award conditions.

August 2007

**Minerals Council  
of Australia  
Policy....**

**The business case  
for flexibility and  
choice....**

**The dividends  
from flexible  
workplace  
arrangements....**

**Two decades  
of industrial  
relations  
reform....**