



Submission

to

Submission to the Award Review Taskforce

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AMMA and Resources Sector Profile

1. AMMA is the national employer association for the mining, hydrocarbons and associated processing and service industries. It is the sole national employer association representing the employee relations and human resource management interests of Australia's onshore and offshore resources sector and associated industries.
2. AMMA member companies operate in the following industry categories:
 - Exploration for minerals and hydrocarbons
 - Metalliferous mining, refining and smelting
 - Non-metallic mining and processing
 - Hydrocarbons production (liquid and gaseous)
 - Associated services such as:
 - Construction and maintenance
 - Diving
 - Transport
 - Support and Seismic Vessels
 - General Aviation (Helicopters)
 - Catering
 - Bulk Handling of Shipping Cargo
3. AMMA represents all major minerals and hydrocarbons producers as well as significant numbers of construction and maintenance companies in the resources sector. AMMA is in a unique position in that it is able to articulate a view on the workplace relations legislative reform needs of the resources sector.

4. The Australian resources sector makes a significant contribution to Australia's wealth and prosperity, underpinning critical supply and demand relationships with the Australian manufacturing, construction, banking and financial, process engineering, property and transport sectors.
5. The resources sector has contributed:
 - minerals and energy exports in the order of \$67.1 billion in 2004-2005.¹ This represents approximately 67 per cent of Australia's total commodity export earnings in 2004-2005.² This equates to 32 per cent of Australia's overall export earnings during this period.³ In 2005-6 export earnings are expected to increase to \$87 billion⁴;
 - exports of mining technology, equipment and services of approximately \$2 billion (2003-4)⁵;
 - new capital expenditure in the mining industry was around \$9.3 billion in 2003-2004⁶ which is approximately 24 per cent of private new capital expenditure in Australia (2003-4)⁷;
 - total government revenue payments of \$4.6 billion (2003-4)⁸;and

¹ ABARE, *Australian Commodities-Forecasts and issues*, Vol. 12 No. 1, March quarter 2005 at 19-21

² ABARE, *Australian Commodities*, Vol. 1 No. 1, March 2005 at 19

³ RBA, *Statement On Monetary Policy*, February 2005 at 43

⁴ ABARE, *Australian Commodities*, Vol. 12 No. 3, September quarter 2005

⁵ Minerals Council of Australia, *Annual Report 2004*

⁶ ABS, 'Private New Capital Expenditure and Expected Expenditure', Catalogue 5625.0, June 2004 at 12

⁷ Ibid.

⁸ Ibid.

- o infrastructure development including the construction of towns, ports and additional port bulk handling infrastructure at many existing ports, airfields and over 2,000 kms of railway line.⁹
6. The continued growth of minerals and energy exports experienced in Australia over the past decade has been achieved through large capital expenditure programs, both on the expansion/upgrading of existing projects, and development of new projects.
 7. As at October 2004, ABARE reported 74 projects either committed or under construction with an expected capital expenditure totalling \$22.6 billion.¹⁰ In addition to this there is well in excess of AUD\$40 billion in new projects under active consideration.
 8. These statistics highlight the enormous significance of the resources sector, both in terms of export revenue and domestic capital investment.

Workplace Arrangements

9. The mining industry directly employs 115,000 employees.¹¹ Many more employees are indirectly employed as a result of activity in the mining sector.
10. There has been a steady decline in union membership in Australian workplaces since the 1980s. Private sector union membership has plummeted from a high point of 57 per cent in 1985 to 17 per cent (22.7 per cent of the total workforce) in 2004.¹² More than four out of five Australians working in the private sector choose not to be a

⁹ Ibid.

¹⁰ ABARE, *Australian Commodities*, Vol. 12 No. 2, June quarter 2005 at 398

¹¹ ABS, Labour Force, Australia, Detailed - Electronic Delivery, (cat. no. 6291.0.55.001).

¹² ABS: Employee Earnings, Benefits and Trade Union Membership, Cat No 6310.0, March 2005

member of a union. Numerically union membership in the mining sector has halved.¹³

11. This has been accompanied by a marked change in regulation of employment arrangements in many sectors of the economy, none more so than the resources sector. In the metalliferous mining sector a high proportion of employees are now covered by direct employment arrangements with their employer as opposed to a collective agreement negotiated by a union.

12. This is in part evident through the growth in the take up of Australian Workplace Agreements (“AWAs”) since their inclusion in the *Workplace Relations Act 1996* (WRA) in March 1997. Almost 709,000 AWAs have been approved by the Employment Advocate since their introduction.¹⁴ 205,000 AWAs were approved in the last year.

13. As at 30 June 2005 33,700 employees (or 60 percent of employees covered by federal agreements) in the mining industry were on AWAs.¹⁵ A further 3,600 employees (7 percent) are covered by a federal collective non-union agreement.¹⁶ Federal registered union agreements (18,500 employees) now cover only 16 percent of the mining industry. Sixty seven percent of mining sector employees have chosen a workplace agreement that requires no union involvement.

14. The presence of international competition has resulted in the resources sector being ‘early adopters’ of workplace reform including a focus determining workplace arrangements at the

¹³ ABS: Employee Earnings, Benefits and Trade Union Membership, Cat No 6310.0, March 2005

¹⁴ <http://www.oea.gov.au/graphics.asp?showdoc=/home/statistics.asp&Page=3&SubMenu=3> (7 November 2005)

¹⁵ Ibid.

¹⁶ Ibid.

enterprise level. The exposure to international competition in commodities markets has not allowed resource companies to indulge in the historical nexus that had operated between Australia's system of trade protection and wage fixation.¹⁷

15. Since the early 1980s AMMA has advocated the use of direct, cooperative and mutually rewarding relationships between employers and employees as the best means of achieving efficient and productive work practices.
16. Examples of the early adoption of enterprise based arrangements include the creation of enterprise awards when certified agreements were not available and the extensive use of individual common law agreements. Whilst in recent time additional legislative options for formalising collective and individual arrangements, enterprise awards and common law agreements remain key components of workplace arrangements.
17. This statistical information provides a snap shot of the resource sector as a whole but does not give a complete picture. Workplace relations arrangements are not homogenous across each sub-sector (coal, metalliferous mining, hydrocarbons, aluminium and mining services). Each sector has differences in areas including types of engagement, the prescriptiveness of the award, level of consultation, hours of work, union coverage and remuneration arrangements.
18. AMMA has identified further labour market reform (including the reforms continued in the Work Choices legislation as essential to the long term competitiveness and viability of Australia's resources sector.

¹⁷ 'Setting the Scene – Monitoring Micro Reform' ch5 *Bureau of Industry Economics Report* at 62 <<http://www.pc.gov.au/bie/report/96-01/index.html>> 26/4/04

19. The Award Review process is an integral part of this reform and is supported by AMMA. Caution should be exercised, however, that the Award Review process should not undermine the reforms already achieved.

Previous AMMA Submissions on Workplace Reform

20. In July 1999 AMMA released a report titled *Beyond Enterprise Bargaining: The Case for Ongoing Reform of Workplace Relations in Australia*.¹⁸ This report examined the key legislative changes since 1956 and the position of the main political parties on these issues, the areas of major agreement and disagreement on industrial regulation, and how the position of the major political parties had changed during this period. *Beyond Enterprise Bargaining* drew upon a study of overseas experience commissioned by the National Institute of Labour Studies. The report concluded with a discussion on strategic options for employers in the development of their own employee relations and the Employee Relations Charter that all employers would be expected to follow in order to internally regulate their industrial arrangements.

21. In September 1999 AMMA made a submission to the Senate Employment Workplace Relations, Small Business and Education Committee Inquiry into the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999.¹⁹ AMMA's submission dealt with areas including Awards, Termination of Employment, Certified Agreements, AWAs, Industrial Action, Right of Entry and Freedom of Association. AMMA supported the thrust of the Bill but noted there was much more work to be done.

¹⁸ < http://www.amma.org.au/publications/beb_report.pdf > (7 November 2005)

¹⁹ < http://www.amma.org.au/publications/mb_submissions_wraamend.html > (7 November 2005)

22. On 10 March 2005 AMMA published a *Position Paper on Workplace Relations Legislative Reform Options*.²⁰ This paper suggested the following industrial reform;

- a single national unitary system of industrial regulation with the Workplace Relations Act to 'cover the field';
- reductions in the number of allowable matters in awards;
- the creation of an employment contract statute underpinned by statutory minimum conditions;
- AWAs to have primacy over certified agreements;
- AWAs to commence upon the date of signing;
- Protection against industrial action for 'projects of national economic importance';
- The repeal of s.166A of the *Workplace Relations Act*;
- The conduct of all compliance matters by a Court of Competant jurisdiction;
- The AIRC powers of compulsory arbitration to be significantly reduced.
- The outcome of unfair dismissal cases to be reflective of the merit of the application rather than procedural matters.

23. On 18 May 2005 AMMA released a paper titled *AMMA position paper on the requirement for a single national workplace relations system*.²¹ This paper argued that it was time for a national, simplified and harmonious workplace relations system. The paper provided a range of examples of the burden imposed upon employers by the existence of six separate statutory labour relations systems operating in Australia, each with their own awards, agreements and common law contracts. This complex mix

²⁰ < http://www.amma.org.au/publications/AMMApaper_WRreform_March05.pdf > (7 November 2005)

²¹ < http://www.amma.org.au/publications/AMMApaper_nationalWRsystem.pdf > (7 November 2005)

of jurisdictions had produced a very confusing industrial environment and costly duplication.

24. On 4 August 2005 AMMA made a submission to the Senate Employment, Workplace Relations and Education Legislation Committee Inquiry on Workplace Agreements.²² AMMA submitted the Workplace Relations Act would be improved by;

- Provision of a national system of workplace regulation including agreement making and compliance;
- Legislating a number of minimum entitlements;
- The legal recognition of the common law agreements with the capacity to override awards subject to meeting legislated minima;
- Employment contracts in excess of a pre-determined amount should be legally recognised as over-riding awards;
- Implementation of a 'opt out' mechanism for high trust workplaces with sophisticated human resource systems;
- Agreements should be processed without the need for a formal hearing;
- AWAs should override certified agreements;
- Certified Agreements should not be allowed to prevent the making and approval of a subsequent AWA;
- AWAs should cover the field and exclude all State workplace relations legislation (except OH&S, Workers Compensation and Training legislation);
- Enforcement of unlawful industrial action should be performed by the Courts without the need for preliminary proceedings in the Australian Industrial Relations

²² < http://www.amma.org.au/publications/AMMASubmission_AgreementMaking_5Aug05.pdf > (7 November 2005)

Commission. Section 166A of the Workplace Relations Act should be repealed.

- Sanctions for unlawful industrial action should include suspension of access rights, deregistration (and removal of the associated privileges), injunctive relief and damages.
- Relief should follow the event.
- Special arrangements should exist for essential services and projects of national significance.

25. On 9 November 2005 AMMA made a submission to the Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005. This submission contended that set of minimum conditions should be legislated. The minimum conditions had been previously detailed in the AMMA 10 March 2005 *Position Paper on Workplace Relations Legislative Reform Options* and included;

- Four weeks annual leave per annum (or compensation in lieu);
- One weeks sick leave per annum;
- Up to 52 weeks unpaid parental leave for employees with at least 12 months service upon the birth of a child;
- A minimum weekly wage for adults based on a 38 hour week;
- A minimum weekly wage for juniors based on a 38 hour week;
- A fair treatment process (in the absence of which the Act would deem a process specified in the regulations);
- An entitlement to be consulted concerning change in the workplace likely to result in redundancy;

26. AMMA also supported the use of the AFPC Standard as a step toward the legislated minima sought by AMMA and a reduction in the number of federal awards.

Subject Matter of the Current Inquiry

27. AMMA welcomes the AMMA Award Review Taskforce Discussion Paper and the discussion and debate it has promoted.

28. AMMA notes that some of the proposals contained in the discussion paper were not intended to be a treatise on how the review task will be performed but simply options to be considered.

29. AMMA's view of how the award review process should occur differs in a number of respects to the options suggested in the discussion paper. This submission focuses on those differences.

30. AMMA contends that the Award review taskforce should adopt a set of success criteria to be considered when evaluating its intended approach to the award review process. The success criteria is intended to ensure the WorkChoices policy intent of '*a modern workplace relations system which will give Australia a flexible labour market, allowing economic growth and employment opportunities*' is achieved.

Success Criteria

31. AMMA submits that the key objectives that any proposed reform should be measured against the following success Criteria;

- The reforms should not impose any additional cost on employers.
- The reforms should not negatively impact on the efficiency or productivity of the workplace.

- The reforms should not detract from any flexibility presently available to any employer bound (or likely to be bound) by the rationalised award.
- The reform should not increase the potential for disputation upon any employer bound (or likely to be bound) by the award.
- The reforms should not increase the scope and/or the coverage of awards.
- The reforms should not expand the coverage of awards in to previously 'award free' areas.
- The reforms should not result in increased coverage by registered employee organizations.
- The reforms should not impact on existing wage relativities or remuneration arrangements of any employer bound (or likely to be bound) by the rationalized award.
- The reforms should take cognizance of historical factors which have led to the existing award arrangements.
- The reforms should not impact on awards which apply to a single enterprise.

32. Subject to the meeting of the success criteria, AMMA supports the reduction in the number of federal awards.

Rationalised industry sector awards

33. The Taskforce terms of reference require it to consider the extent to which awards can be amalgamated or combined to avoid

overlapping of awards and to minimise the number of awards applying in relation to particular employers.

34. AMMA does not believe that the ANZSIC industry classifications provide a proper basis for an industry award rationalisation process. This approach would result in a single 'mining industry award'. The mining industry can be separated into many sectors. These sectors are as follows;

- Metalliferous mining (also called hard rock mining)
- Hydrocarbons (also called oil and gas)
- Coal Industry
- Aluminum industry
- Services Industry

35. The industrial regulation in each of these sectors is different. The award parties vary. The level of award flexibility differs. The remuneration levels differ. The hours of work provisions differ.

36. AMMA contends that a 'one size fits all' approach would result in the lowest level of productivity and flexibility with the highest level of remuneration, combined with the potential for the expansion of the representational role of award parties and expanded coverage of the award to employers not presently bound. This result would fail to meet the success criteria described above.

37. AMMA contends that the taskforce should recognise the unique history and requirements of each sector of the mining industry and retain separate awards for each sub-industry sector. The proposed AMMA approach is similar to the 'Award Cohorts' model described in the ACCI submission.

Can an industry based system of awards be achieved through a single rationalisation process or is a multi-stage approach more appropriate?

38. AMMA submits that an industry basis is appropriate but rejects the use of the ANZIC model to determine what constitutes an industry. AMMA prefers the ACCI Award Cohorts model discussed above.

How should occupational-based awards and single enterprise awards be dealt with in the rationalisation process?

39. AMMA submits that occupational based awards should be subsumed into industry based awards subject to meeting the success criteria described in paragraph 22 of this submission.

40. With regard to enterprise awards, a number of AMMA members have single enterprise awards. AMMA seeks to exclude these awards from the review process.

41. The Australian Industrial Relations Commission began its focus from industry based regulation to an enterprise focus with introduction of the 'structural efficiency principle' in the 1989 National Wage Case decision. Subsequent decisions reinforced this approach. It was not until 1991 that a formal certified agreement became available. Before this time the only formal method was to create an enterprise award.

42. A number of 'early adopters' moved away from industry awards and made enterprise awards. The rationalisation of the enterprise awards would unfairly penalize 'early adopters' of the industry reform initiatives. AMMA submits that enterprise awards should not be the subject of the award rationalisation process. AMMA supports the submission of Rio Tinto in this regard.

Should consideration be given to subsequent rationalisation of awards beyond the industry sector level?

43. AMMA does not believe this would be appropriate at this time. AMMA contends that this topic should be the subject of further review when the rationalisation at the industry level is complete.

44. AMMA does not support the single award concept. AMMA contends that if a condition of employment is of such a fundamental nature as to warrant universal application without any scope for flexibility (e.g. personal leave, notice of termination), it should be contained in legislation.

Coverage of rationalised awards

Should rationalised awards apply by common rule?

45. AMMAs proposed success criteria require that the reforms not increase the scope and coverage of awards, and not result in employers being bound by an award in respect of work not presently the subject of a state or federal award. It is difficult to see how a common rule approach would meet this criterion without a notification mechanism which allowed employers an opportunity to

challenge the expansion of award coverage into an area which was previously award free.

If rationalised awards do not apply by common rule, how should coverage be determined and updated?

46. AMMA believes that there should be an award registration process where employers who are not currently bound by an award, could apply to become respondent to an award.

Should award free employers and employees, including new employers and their employees, be covered by rationalised awards?

47. No, AMMA contends that the rationalised awards should not expand award coverage beyond those employers and/or employees who are presently bound by a state or federal award.

Should some classes of employees (for example managerial or professional employees) be exempted from common rule coverage of rationalised awards?

48. AMMA contends that awards should not operate above an easily defined level. This level could be defined in either skill terms (eg above tradesperson level) or in a remuneration threshold (eg. A fixed dollar amount similar to unfair dismissal threshold or a multiple of the Federal Minimum Wage or AWOTE).

49. Employees who have skills or remuneration in excess of the defined level would be entitled to the AFPC Minimum Standard but would not be bound by any award.

How should coverage be determined for former state award employees?

50. Former state award employees should be allocated to an industry sector award.

Preserved award entitlements

How should appropriate customs or arrangements from state awards be identified for inclusion in rationalised awards?

51. AMMA contends that existing customs and arrangements that are preserved as a result of the Work Choices legislation should be identified only to the level required for their preservation and detailed in an appendix to the award. The content of state awards should inform federal awards not dictate them.

Rationalising award terms

What factors should be taken into account when rationalising award terms?

52. AMMA submits that awards should be drafted in plain English and easy to understand format which details the base level terms and conditions within the relevant industry sector. The content of the rationalised award should meet the success criteria detailed at paragraph 22 of this submission.

53. The award content should not be so comprehensive as to discourage bargaining.

Should model rationalised awards be developed as part of the award rationalisation process to operate by default unless stakeholders raise specific criticisms?

54. AMMA submits that the process may be assisted by provision of model clauses for discussion and information purposes. However, the control over the content of the particular clause to be inserted in a rationalised industry award should be considered in the context of the industry sector under review, and subject to the views of the award parties.

Should there be transitional arrangements to allow employers and employees to move onto rationalised awards gradually?

55. Yes, AMMA contends that the award parties should try and reach agreement within a reasonable time frame. In the absence of agreement the Commission would be required to intervene and expedite.

Discrimination

How can the Taskforce best prevent discrimination in making recommendations about award rationalisation?

56. AMMA refers the Task Force to the ACCI position on this issue.

Coordination of award rationalisation with award simplification

Should award rationalisation take place prior to, or at the same time as, stage 2 award simplification?

57. AMMA contends that the Award Review tribunal should make recommendations detailing the awards which are proposed to be rationalised into one, consult with the relevant parties and then embark on the simplification process.

Should a small number of awards be simplified prior to the AIRC undertaking award rationalisation? If so, which awards?

58. No.

Should the Taskforce prioritise industry sectors for award rationalisation?

59. No, AMMA would not be opposed however to a process where award parties nominated awards for review.

How should the transition to 38 ordinary hours in awards with more than 38 ordinary hours be undertaken?

60. AMMA supports the ACCI position on this issue. Parties to 40 hour per week awards should be invited to reach agreement on how the award should be amended. Parties should be required to review the award provisions and endeavor to agree on a basis to vary the award with such improvements as is required to offset the increase in costs arising from the introduction of the 38 hour week. In the absence of agreement within a reasonable period (say two years)

the Commission should have the power to vary the award. This position is supported by the Agribusiness Employers Federation.

Publication of rationalised awards

How should rationalised awards be published?

61. Awards should be published in a manner to allow for cost effective, rapid dissemination so as to ensure that parties to awards can determine if they are bound by the award and its content. Strategies may include electronic and printed publication. Free web based access should be provided the www.wagenet.gov.au site is an example of an efficient electronic publication mechanism. Access to the historical changes to awards (for periods of at least six years) should be retained on a website to allow for calculation of employee entitlements.

Conclusion

62. In May 2005 AMMA released a paper titled *AMMA position paper on the requirement for a single national workplace relations system*.²³ The paper provided a range of examples of the burden imposed upon employers by the existence of six separate statutory labour relations systems operating in Australia, each with their own awards, agreements and common law contracts. AMMA advocated a single unitary system which reduced the complexity and cost to business.

²³ < http://www.amma.org.au/publications/AMMApaper_nationalWRsystem.pdf > (7 November 2005)

63. AMMA has previously contended that whilst WorkChoices is a significant step towards this goal it does not represent the 'state of the art'. This is particularly true in respect of the role of awards.
64. AMMA continues to encourage the Government to jettison the archaic award system in favour of the seven legislated minima detailed in our *Position Paper on Workplace Relations Legislative Reform Options*.²⁴
65. AMMA is disappointed that WorkChoices has retained a link with an archaic, complex system of awards award system and further complicated it with the introduction of 'preserved award conditions', 'protected award conditions' and the interaction with the AFPC Standard.
66. The Senate amendments to the Work Choices Bill which introduced the capacity to fall back on 'protected award conditions' after the termination of a WorkChoices agreement was a further retrograde step.
67. The continued role of the award system makes the task of the Award Review Task force even more important.
68. The Award Review process presents an opportunity to reduce the number of awards and also simplify the Award system so that it acts as a true safety net and not as a springboard for bargaining.
69. The process needs to be managed in such a manner so as not to impede the productivity and efficiency of Australian business.

²⁴ < http://www.amma.org.au/publications/AMMApaper_WRreform_March05.pdf > (7 November 2005)

70. The diverse nature of Australian industry together combined with a hundred years of a disputes based approach will ensure that the process is not an easy one.
71. The approach to the process will need to take into account the needs and circumstances of varying industry sectors and sub-sectors.
72. The adoption of the success criteria proposed by AMMA will ensure that the productivity and efficiency of Australian Business (and particularly the resource sector) is not adversely affected.
73. AMMA looks forward to contributing to the review process and would be pleased to provide further information on matters discussed in this submission.

7 February 2006