



Workplace Relations Framework Inquiry

Productivity Commission

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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia funded by its member companies, which generate 95 per cent of the value of all mineral and energy production and employ 80 per cent of the resources sector workforce in the state.

The Western Australian resources sector is diverse and complex, covering exploration, processing, downstream value adding and refining of over 50 different types of mineral and energy resources. A structural shift has occurred throughout 2014 in the Western Australian resources sector, from investment led growth to export led growth.

CME welcomes the opportunity to contribute to the Productivity Commission's Inquiry into the Workplace Relations Framework. General comments made in this submission address the broader terms of reference of the Inquiry and specific commentary pertaining to the Workplace Relations Framework relate predominantly to Issues Papers 3 and 5.

CME supports the submission made by the Minerals Council of Australia and also the series of reforms put forward by the Australian Mines and Metals Association (AMMA) and their supporting KPMG report *Workplace Relations and the Competitiveness of the Australian Resources Sector*.

Recommendations

CME recommends reform to the Australian workplace relations framework to ensure the sustainable global competitiveness of export-oriented industries, particularly the resources sector.

CME recommends:

- **permitted matters in agreements are limited to those that only pertain directly to the employment relationship;**
- **high income threshold agreements are afforded a rapid approvals process;**
- **reinstating individual statutory agreements, with appropriate safety nets allowing direct employment relationships between employees and employers; and**
- **agreement time frames are able to be extended or be struck relative to individual project needs.**

CME recommends provisions to restore company ability to negotiate enterprise-only agreements and to offer individual statutory agreements for greenfields sites are reinstated in law, where conscientious employer efforts to achieve an agreement are unsuccessful.

CME recommends the scope for protected industrial action is tightened and threatened industrial action is controlled to ensure timely completion of projects.

CME recommends pre Fair Work Act 2009 right of entry provisions are re-introduced.

CME recommends the current workplace relations framework system is simplified and streamlined to improve accessibility and to reduce the administrative burden on business.

Introduction

Western Australian Resources Sector Contribution

The Western Australian resource sector is a key driver of prosperity in the Australian and Western Australian economies. This contribution can be analysed from the perspective of a direct contribution fiscally, through taxation, royalties, employment and training, and through contribution to the social fabric.

In 2013-14, the value of Western Australia's mineral and petroleum production was \$121.6 billion, accounting for 91 per cent of the state's total merchandise exports. Western Australian Merchandise exports represent around 50 per cent of Australia's total merchandise exports¹. Furthermore, the value of royalties received by the Western Australian government from the resources sector reached a record \$6.98 billion in 2013-14. This data reveals the Western Australian resources industry is a critical industry to both the Federal and State Budgets.

The Western Australian resources sector is a significant employer of the Western Australian workforce. The sector currently directly employs 90,800 people as at February 2015 (up from 44,400 in February 2005)². This represents around 6.5 per cent of total employment in the state and around 40 per cent of the total direct employment in resources in Australia³. At a national level, the Australian resources sector comprises just under 2 per cent of direct employment in the Australian workforce.

In addition to employment, the Western Australian resources sector places a high priority on investing in building the capacity of it already highly skilled workforce. As at November 2014, the resources sector employed 5,008 apprentices and trainees, 12 per cent of the Western Australia's total⁴. Recent research undertaken by the National Centre of Vocational Education and Research revealed the WA resources sector spent \$470 million on training and workforce development initiatives during the financial year ending 30 June 2012, representing 5.2 per cent of payroll⁵.

The resources sector in Western Australia is also an essential contributor to the Western Australian regions. The Royalties for Regions program will see close to a billion dollars invested in regional Western Australia, directly as a consequence of the success of the resources sector. CME modelling indicates the Western Australian resources sector has a positive flow-on impact on the Western Australian economy and has led to high incomes and education attainment levels in resource development regions relative to regional Australian averages⁶. This is on top of the multitude of education, arts and community projects directly supported by individual companies in the regions.

It is clear the ongoing success of the Western Australian resources sector is essential to the long term prosperity of the State: its people, economic performance, cultural fabric and strength in the regions. The success of the sector is in turn heavily reliant on an efficient and effective workplace relations framework that drives productivity growth.

¹ Australian Bureau of Statistics, January 2015, International Trade in Goods and Services, Australia, Cat.5368.0

² Australian Bureau of Statistics, February 2015, Labour Force Detailed Quarterly Cat. 6291.0.55.003

³ Australian Bureau of Statistics, February 2015, Labour Force Detailed Quarterly Cat. 6291.0.55.003

⁴ National Centre for Vocational and Education Research, September 2014, VOCSTATS

⁵ National Centre for Vocational and Education Research, 2013, Training Activity and Expenditure for the WA Resources Sector

⁶ Economic Reach of the Western Australian Resources Sector, July 2013, Chamber of Minerals and Energy of Western Australia

Global Competitiveness of the Western Australian Resources Sector

To be in a position to successfully compete in a global commodities market, the Western Australian resources sector requires an environment that promotes favourable business conditions and promotes investment. The Western Australian resources sector is comprised of global and local companies, all operating in a global market. The overwhelming majority of production is of commodities and is export oriented, therefore exposed to the forces of global supply and demand. The ability to construct and operate resources projects in a competitive manner is reliant on a number of factors, including the ability to employ labour at an economic rate.

The attractiveness of Australia as an investment destination for resources project is in decline which is alarming for a nation where commodities comprise such a significant component of revenue. According to Bureau of Resource and Energy Economics reports, investment in minerals mining and infrastructure committed projects has declined by almost 60 per cent over the last two years to October 2014, from \$73.2bn to \$30.3bn. Similarly, there is a substantial decline in projects in the feasibility stage over this period down from \$180.9bn to \$115.1bn, a 36 per cent decline⁷.

Indeed the World Economic Forum Global Competitiveness Report reveals Australia's position slipping from well inside the top ten in 2001-02 to now 22 as at 2014-15⁸. This trend must be reversed if there is to be future investment in the Western Australian resources sector and labour market reform will be a key element of this reversal.

The recent growth in wages in the resources sector, at a pace above most other industries and well above the national average, puts the sector in jeopardy with regard to future investments and operational competitiveness. Average wages in mining are much higher than in most other industries with average (full-time) total earnings \$2,569 per week in November 2014, 67 per cent higher than the all industries average⁹. Since 2001, Australia's annual mining sector wages have grown from close to parity in similar jurisdictions, to now being double those of the United States and 50 per cent higher than those of Canada. In the oil and gas sector, it is reported that it is almost 150 per cent more expensive to staff an offshore vessel in Australia compared to Europe¹⁰.

As wages costs sit well above international averages, Australia's current position as a global destination for resources investments and operations will diminish and other and new markets will be explored and accessed by suppliers and customers. Reform of the workplace relations framework that is delivering these outcomes must be implemented to ensure Australia's standing in global commodity markets continues.

CME recommends reform to the Australian workplace relations framework to ensure the sustainable global competitiveness of export-oriented industries, particularly the resources sector.

⁷ Bureau of Resources and Energy Economics, October 2014, Resources and Energy Major Projects

⁸ World Economic Forum, Global Competitiveness Report (various issues).

⁹ Australian Bureau of Statistics, November 2014, Average Weekly Earnings, Australia, Cat. 6302.0

¹⁰ KPMG, March 2015, Workplace Relations and the Competitiveness of the Australian Resources Sector,

The Workplace Relations Framework

The Fair Work Act 2009 (FWA) objectives are to provide laws that are *'fair to working Australians'*, *'flexible for businesses'* and that *'promote productivity and economic growth for Australia's future prosperity'*. The review of the Act in 2012 found: *'the legislation is operating broadly as intended'* and *'since the Fair Work legislation came into force economic outcomes have been favourable to Australia's continuing prosperity'*¹¹. The review also noted productivity growth was disappointing in the 2000s and since the review, Australia's economic performance has waned with economic growth below long run averages. As productivity gains are a sustainable driver of economic prosperity¹², the workplace relations framework must be again evaluated as to whether it is achieving its objectives.

CME supports a workplace relations system that:

- is well-balanced with regard to the rights and responsibilities of employees and employers;
- promotes direct employee employer relationships;
- features choice and flexibility at its core;
- features appropriate safeguards and safety nets;
- promotes and generates productivity growth and innovation; and
- is transparent and easy to navigate.

The current workplace relations system is complex, adversarial, lacks flexibility and lacks a focus on productivity in its determinations. The system features design problems in that it was originally developed over a century ago for a very different system of work to that featured in the modern economy. This system sits in the context of significantly declining union membership over the last twenty years, which is just 12 per cent in the private sector in Australia¹³.

As identified, the current system is delivering high labour costs for the resources sector. It is also resulting in: delays to projects and uncertainty as a result of the agreement making framework; increased disruption to projects and increased costs as a result of industrial action and increased costs and time lost as a result of managing an increased right of entry scope for unions. The following section will examine these three aspects of the system.

1. The Agreement Making Framework

The FWA has broadened what can be included in enterprise agreements to well beyond what should be reasonably expected. Such matters include: restriction on use of contractors and temporary employees without union agreement, clauses requiring employers to encourage union membership, union attendance at induction sessions for new employees, requirements to show a union Individual Flexibility Agreements and trade union training leave and provision of on-site facilities for union delegates.

Particular issues for the resources sector under the current workplace relation systems pertaining to agreement making are as follows. The FWA has opened the door to claims against mining companies which go well beyond what should be reasonably included in an enterprise agreement.

¹¹ Department of Employment, August 2012, Fair Work Act Review

¹² G. Banks, July 2012, *Competition Policy's regulatory innovations: quo vadis?* Presented at the Economists Conference Business Symposium,

¹³ Australian Bureau of Statistics, June 2014, Employee Earnings, Benefits and Trade Union Membership, Australia, Cat. 6310.0

The Act should make clear that ‘permitted matters’ are matters that pertain only to the employment relationship. They should not include items which pertain to relations between an employer and a union or between an employee and a union.

The FWA is based on the premise an individual statutory agreement cannot be part of a workplace relations framework that features productive, cooperative and equitable relationships¹⁴. This premise can be shown to be false as evidenced by the resources sector’s experience with the successful utilisation of individual agreements featuring flexibility and productive work practices and high salaries and good working conditions. This was the case during the period of Australian Workplace Agreements and state-based individual agreements.

Limiting agreement options does not provide for a modern workforce or workplace and measures in the current Act meant to allow for direct contractual agreements badged as Individual Flexibility Agreements have proven to be ineffective and unworkable for companies.

As already stated, the average incomes of resources sector employees are amongst the highest in Australia, well above minimum standards and averages. Agreements should be able to be fast-tracked through approvals processes where they pertain to employees above a high income threshold and well above safety nets.

Some resource projects run longer than the current four year nominal expiry date applied to agreements. This is a major concern for resources companies as negotiations around the renewal period can cause significant delays to project completion. If it was possible to extend agreements or allow for longer expiry periods for long term projects, this would limit the impact of delays and costs and drive efficient project completion.

CME recommends:

- **permitted matters in agreements are limited to those that only pertain directly to the employment relationship;**
- **high income threshold agreements are afforded a rapid approvals process;**
- **reinstating individual statutory agreements, with appropriate safety nets allowing direct employment relationships between employees and employers; and**
- **agreement time frames are able to be extended or be struck relative to individual project needs.**

Under the FWA, unions have a mandatory role in the negotiation of greenfields agreements which has led to occasions of unions pursuing exorbitant claims. This has added uncertainty to project development and investment, whereby unions are in a position to cause delays to project commencement and mobilisation of labour. Greenfields agreements are also not currently subject to good faith bargaining provisions, leading to protracted negotiations. Research conducted by AMMA found one in five major resource projects have been put at serious risk due to union tactics around greenfields agreements¹⁵.

¹⁴ Minerals Council of Australia, March 2015, Submission To Productivity Commission Inquiry: Australia’s Workplace Relations Framework

¹⁵ KPMG, March 2015, Workplace Relations and the Competitiveness of the Australian Resources Sector

CME recommends provisions to restore company ability to negotiate enterprise-only agreements and to offer individual statutory agreements for greenfields sites are reinstated in law, where conscientious employer efforts to achieve an agreement are unsuccessful.

2. Protected Industrial Action

Industrial action leads to project delays and increased costs for resources projects and precipitates uncertainty in the broader economy. Industrial action should only be available as a last resort after a demonstrated attempt has been made to exhaust bargaining options and where the Fair Work Commission is satisfied good faith bargaining has occurred.

Since the implementation of the FWA in 2009, the scope for protected industrial action has grown. This 'Fair Work Act' period has shown an increase in the overall working days lost from the previous period 2006-08 on average of 60 per cent across the economy¹⁶.

Current conditions have resulted in significantly higher than average, uncompetitive wage rises and employment conditions. The scope for protected industrial actions must be amended to:

- limit the extent of claims that can result in protected industrial action,
- require a public interest test,
- be limited to a maximum duration; and
- be limited by a 'high income test' threshold.

The aforementioned statistics on lost time do not cover the threat of industrial action, which has been used by unions to win concessions from employers whilst also causing reputational damage and causing uncertainty. This has been particularly prevalent in the maritime sector in Western Australia, which facilitates the exports of the Western Australian resources sector.

CME supports the Minerals Council of Australia's summation of this issue: *"whilst the threshold for taking protected industrial action is relatively low, the threshold for employers proving substantial economic harm from such action is relatively high, particularly for third parties harmed by industrial action"*¹⁷.

This balance must be redressed from the perspective from the resources sector, which as identified is a critical sector to Australia's economic standing and is characterised by an extensive supply chain.

CME recommends the scope for protected industrial action is tightened and threatened industrial action is controlled to ensure timely completion of projects.

3. Right of Entry

Since the introduction of FWA in 2009, companies in the Western Australian resources sector have experienced an exponential rise in the number of union visits to sites and facilities. This issue is of particular concern to the resources sector.

¹⁶ Australian Bureau of Statistics, December 2014, Industrial Disputes, Australia, Cat. 6321.0.55.001

¹⁷ Minerals Council of Australia, March 2015, Submission To Productivity Commission Inquiry: Australia's Workplace Relations Framework

The changes made in 2009 expanded union access, even where the union was not part to an agreement on the site. Further changes in 2013 have seen rights expanded allowing unions to unencumbered access to and utilisation of break areas and also forcing companies to unreasonably financially subsidise union activities upfront.

The resources sector broadly supports a regime allowing reasonable union access, where the union is covered by an enterprise agreement which covers the site or is attempting to reach one, or can demonstrate it has members on the site and that those members have requested the union's presence.

The current system is balanced too far in the favour of unions and has a significant impact on industry from the perspective of administration, oversight of visits, diversion of management from other duties, additional security requirements and occupational, health and safety implications¹⁸. The increased frequency of union visits has led to a significant disruption to business operations and significant costs with arranging transport, accommodation and compliance. In this light, union right of entry laws must be wound back to a balanced and reasonable position.

CME recommends pre Fair Work Act 2009 right of entry provisions are re-introduced.

Regulation and Red Tape

In a general sense, CME supports measures to reduce red tape for business and efforts to simplify unnecessarily complex government systems.

As it stands, the resources industry is subject to multiple types of regulation, including workplace health and safety, exploration and mining leases, environmental, native title, royalties and workplace relations. This regulation occurs across three levels of government. The government's broad red tape reduction agenda is welcomed by industry and the workplace relations framework and system could also benefit from this approach.

With respect to the workplace relations system, the mere existence of differing state and federal industrial relations frameworks and systems is unnecessary and a potential hindrance to operations. Finally, procedural requirements should be simplified to ensure the enterprise agreement process operates as intended and is not characterised by technicalities leading to unnecessary delays.

CME recommends the current workplace relations framework system is simplified and streamlined to improve accessibility and to reduce the administrative burden on business.

¹⁸ KPMG, March 2015, Workplace Relations and the Competitiveness of the Australian Resources Sector

Conclusion

CME welcomes the Productivity Commission Inquiry into the Workplace Relations Framework and looks forward to ongoing engagement throughout the inquiry process.

The Western Australian resources sector is reliant on a workplace relations framework that can promote global competitiveness and looks forward to the outcomes of this review aligning to this position, so the sector can play its part in driving a prosperous Australian economy.

If you have any further queries regarding the above matters, please contact Emmanuel Hondros, Manager, People Strategies

Authorised by	Position	Date	Signed
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