

Department of Workplace Relations and Small Business

SUBMISSION TO THE INDUSTRY COMMISSION

BLACK COAL INDUSTRY INQUIRY

DECEMBER 1997

Contents

1. Introduction

2. The Australian Black Coal Industry

Overview

Outlook

3. Workplace Relations - Background

Regulatory Reform

Employer Representation

Union Structures

Award Coverage

Enterprise Bargaining

Wages

Industrial Disputes

Productivity Trends

Other Employee Relations Indicators

Industry-Based Arrangements

Cultural Issues and Workplace Relations Performance

4. Workplace Relations Reform

Background

Impact of the Legislation

5. The Way Forward

Source Material

1. INTRODUCTION

The Department of Workplace Relations and Small Business has maintained an interest in the industrial relations arrangements and workplace issues affecting Australia's black coal industry over time.

The Department has provided advice to successive Governments on the development of workplace arrangements that provide a basis for an improvement in Australia's economic performance; has analysed workplace developments at industry and enterprise levels; and undertaken specific initiatives to influence workplace relations practices consistent with Government policy.

The Department's submission provides a brief factual overview of the black coal mining industry, as well as a summary of the regulatory framework that governs industrial relations in the industry. Information on awards and agreements that apply in the sector is also included, and the submission discusses the way in which the *Workplace Relations Act 1996* might be, and is being, adopted in coal mining workplaces and enterprises.

In looking to the general prospects of the sector, the submission highlights the cost and productivity challenges facing the industry in the context of falling real resource prices and increased international competition.

The submission suggests that the capacity of the industry to meet these external factors is hindered by internal barriers to change, notably the existence of a distinct, though hard to define, coal industry "culture". Borne of the industry's secure domestic position of the past, and supported by separate industrial relations arrangements (until 1995) and distinct, industry wide approaches to regulation, the coal industry has in the past been inclined to operate on the basis that it is somehow "different" and "special". From this cultural standpoint, the shift towards an enterprise focus, where the needs of employers and employees can be addressed locally, and which has taken hold in the community generally, has no relevance to coal. High levels of industrial disputation, and the entrenchment of restrictive work practices have become defining manifestations of the culture. More efficient and productive working arrangements, against a backdrop of community standards, but focusing on the needs of the workplace, as part of a broader cultural shift, will be needed if the industry is to take advantage of the commercial and employment creation opportunities that are available to it.

2. THE AUSTRALIAN BLACK COAL INDUSTRY

Overview

The Australian black coal industry is of critical importance to the economy with the value of exports approaching \$8 billion annually. The industry provides almost a quarter of our total mineral resources export dollars. Coal mining also provides Australia with a comparative advantage in energy for our own industries, particularly power generation, steel production and other heavy industry.

Coal mining in Australia has expanded rapidly since the 1970s. Prior to this the industry had a domestic focus. Expanding steel production and the oil price shocks of 1973 and 1979 enabled Australia to take advantage of increasing coal demand in strongly growing markets in north Asia, particularly Japanese steel mills, and to develop an export focus.

Expansion has been driven by the development of open cut mines and, more recently, the introduction of longwall mining techniques in underground mining. Mines in Queensland and New South Wales account for virtually all production (about 95 per cent) with open cut mining providing 70 per cent of production. Western Australia, South Australia and Tasmania provide the balance of black coal production.

The most significant companies involved in production include BHP Coal, Rio Tinto (formerly RTZ-CRA), Cyprus Mining Ltd, Shell Coal Australia Ltd, ARCO Coal Australia Inc, Powercoal Pty Ltd, and MIM Holdings Ltd. Foreign investment, mainly from Japan, Europe and the USA, accounts for more than 40 per cent of coal mining in Australia

There were around 120 black coal mines in production in Australia as at December 1996. Seventy of these mines are in NSW (approximately two thirds of these are underground and one third open cut) and 43 in Queensland (about one third of these mines are underground operations and almost two thirds are open cut). There are around eight mines in other States.

Total employment in the black coal industry has fallen in the last decade with a reduction from 32,667 in December 1986 to 26,231 in December 1996 (43 per cent of people are employed in underground mines and 57 per cent in open cut production). 95 per cent of employment is in Queensland and NSW. Employment in NSW underground mines has fallen significantly in the period 1986-96 (from 13,358 to 8,975), while employment in Queensland underground mines increased slightly over the past decade. Employment in open cut mines in NSW and Queensland has slightly increased. Thus, the fall in employment has been largely been focussed in underground mines in NSW.

Export growth has been supported by improvements in the rail system and port facilities for handling coal. There are nine coal terminals at six ports on Australia's east coast and four of these - Newcastle Coal Port, Gladstone, Dalrymple Bay and Hay Point (both south of Mace) - handle over 85 per cent of exports. Other terminals are at Abbot Point (above Bowen), Brisbane. and Port Kembla.

Outlook

The Industry Commission inquiry comes at a crucial point in the fortunes of the Australian black coal mining industry; the response of coal producers, employees and their representatives will shape the long term future of the sector.

The producers in the sector have had increasing pressure imposed upon them to improve workplace performance in the light of the increasing need to compete on international markets. The change in the industry's orientation is marked. As recently as 1970, only 18 million tonnes of coal was exported from Australia; this represented around 40 per cent of total production. In 1997, the Australian Bureau of Agricultural

and Resource Economics (ABASER) forecasts that over 70 per cent of our production will be exported (145 million tonnes of a total of 206 million tonnes).

International competitive pressures have led to attempts to introduce structural and workplace changes in the past. The 1994 Taylor Report highlighted the turbulent 1980s - "the industry's exposure to the vagaries of the world coal market had heightened tensions between the industrial parties...during 1987-88, as a result of mine rationalisations and closures, employment fell by 1 1.7 per cent of the industry workforce". While some progress was made to change the workforce culture and increase enterprise focus and flexibility - the Taylor Report concluded that "much has been achieved but there is a need for further substantial change" - in the Department's judgement the reforms, particularly in relation to workplace relations, have left the industry relatively vulnerable to competitive pressures.

In the medium term, ABARE forecasts that the world demand for coal is likely to increase, and that Australian coal production appears set to rise. Production is projected to increase from around 200 million tonnes in 1996 to around 250 million tonnes in 2002; exports are expected to rise from 140 million tonnes to around 192 million tonnes over the same period. The basis for the increased level of production and exports, according to ABARE, is the more than 25 new projects that have the potential to begin production over the next five years.

ABARE notes that the forecasts are subject to a range of external uncertainties. These reservations include the rate of economic growth, and consequentially, the level of demand for electricity and steel, in the Asian region. Australia will also face strong competition in export markets - from Canada and the United States in the coking coal market and Indonesia and .South Africa in the thermal coal market.

Both ABARE and Access Economics point to a substantial decline in real coal prices. Access Economics notes that, on current forecasts, by the end of the decade coking coal prices will have dropped by 40 per cent since the 1980 peak, while thermal coal prices dropped by nearly 60 per cent; ABARE anticipates that real coal prices are expected to continue to fall over the next five years. The price trend has eroded profitability levels and led to poor rates of return on shareholders' funds in coal companies.

In these circumstances, the industry face a challenging situation. As ABARE concludes, cost reductions and productivity improvements are required if the industry is to expand where real prices continue to decline.

4

Already, the competitive pressures have resulted in many coal companies reviewing their operations. For example, some producers are seeking to restructure working arrangements and/or reduce the number of employees. This has sparked industrial tension, with the level of industrial disputation increasing over the past eighteen months. Alternatively, a significant number of coal interests have, in the past year,

signalled their intention to dispose of coal assets in Australia because of concerns about performance, economic viability and returns to investors. By mid 1997, a significant proportion of all NSW and Queensland mines - reported to be almost half - were on the market. A number of coal projects have been put on hold.

3. WORKPLACE RELATIONS - BACKGROUND

Regulatory Framework

Reforms to the industrial relations framework governing the coal industry during the 1990s resulted in the integration of coal matters into the mainstream industrial relations system. Coal industrial matters are now regulated under the Workplace Relations Act. However, prior to 1995, employment conditions and industrial matters relating to coal mining were regulated by the Coal Industry Tribunal (CIT) and a network of State-based local coal authorities. The *Industrial Relations Legislation Amendment Act (No 2) 1994* provided for the abolition of the CIT and its jurisdiction was transferred to the Australian Industrial Relations Commission (AIRC). Complementary NSW legislation completed the transition.

Under the federal legislation, existing awards, orders and agreements became awards of the AIRC. The 1994 Amendment Act also provided that the AIRC is to "have regard to any decisions of the CIT that are relevant to the matter before....(it)"; this provision was repealed by the *Workplace Relations and Other Legislation Amendment Act 1996*.

The CIT had been established by the Commonwealth and NSW *Coal Industry Acts 1946* at a time when industrial action in the industry was threatening the viability of the economy; at the time, production was largely confined to NSW and was for domestic consumption only. The 1946 Acts provided the CIT with dual NSW and federal jurisdictions so that when coal mining was subsequently developed in Queensland and Tasmania, the CIT extended its coverage to the newer coal producing States.

Employer Representation

Coal employers are represented by the Australian Coal Association (ACA), the NSW Minerals Council and the Queensland Mining Council (including the Queensland Coal Operators - QCO). None of these bodies are registered organisations under the Workplace Relations Act.

Union Structures

The coal mining sector is heavily unionised. The principal coal mining union is the Construction, Forestry, Mining and Energy Union (CFMEU) - Mining and Energy Division, (also known as the United Mine Workers or UMW) with about 18,000 members involved in coal mining.

A number of other unions have a significant coverage of coal mining employees, including the Australian Collieries' Staff Association (ACSA), the Australian Manufacturing Workers' Union (AMWU), the Australian Workers' Union (AWU) and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union (CEPU). A number of other unions operate at the state level.

6

The CFMEU has coverage of coal miners in Queensland, NSW, Tasmania and Western Australia. It also covers coke treatment operators. Trades persons (all classifications) and truck drivers in open cut and underground mines in NSW are also covered as are loco room attendants, painters, plumbers, riggers, storemen, fitters, carpenters, gardeners, labourers, bricklayers, and lamp mechanics working on mine sites. The union also has significant membership in five of the nine coal export terminals.

The CFMEU is controlled at the national and State or district level and below this it operates through a system of lodges based at mine sites. Each mine site has at least one lodge, and, depending on size, can have more than one.

Award Coverage

Coal mining is covered primarily by federal awards (although other activities peripheral to the industry, eg the Queensland coal ports, are covered by State awards). The main coal mining awards, made by the former CIT and now having the status of AIRC awards, are:

Coal Mining Industry (Production and Engineering) Interim Consent Award
September 1990:

Coal Mining Industry (Supervision and Administration) Interim Consent Award 1990.
New South Wales and Tasmania:

Coal Mining Industry (Supervision and Administration) Interim Consent Award 1990.
Queensland; and

Coal Mining Industry Interim Consent Award (Deputies and Shotfirers) 1990.

A small number of coal mining operations are covered by site specific federal awards.

A recent study by the National Institute of Labour Studies (NILS) noted employment arrangements in the coal mining sector remain highly dependent on the industry awards, notwithstanding the introduction of enterprise bargaining. This conclusion reiterated the findings of a 1995 study completed by the Australian Centre for Industrial Relations Research and Teaching (ACIRRT).

In the Department's view, some provisions of the coal awards effectively differentiate the industry from most other sectors; on their face, it would appear that the operation of several award provisions could have a negative affect on workplace performance. There are restrictions on the types of employment permitted (eg part-time and casual employment is not countenanced), the use of contractors and on working time arrangements. The awards provide for industry systems of retrenchment and recruitment that are based on seniority, eg the 'reduction in hands' clauses provide for firing on a 'last on, first off' basis. Several producers have highlighted the effect of Clause 31 (Conditions Not Dealt with by the Award) of the Production and Engineering Award in entrenching existing customs and practices without any formal awards or determinations being made by an industrial tribunal. For example, overtime restrictions were able to be imposed by the CFMEU in several districts.

The NILS study also highlighted the higher costs imposed on coal mining compared to hard rock mining by the shorter working week (and consequential higher overtime usage), higher rates of pay and more generous leave arrangements.

Enterprise Bargaining

There are around 100 formal enterprise agreements operating in the industry, comprising almost 40 enterprise specific agreements negotiated through the flexibility or facilitative clauses in the main awards (eg agreements made under Clause 20 of the Production and Engineering Award) and around 60 certified agreements negotiated under the agreement-making provisions of the *Industrial Relations Act 1988* and the *Workplace Relations Act 1996*. The spread and impact of enterprise bargaining in the coal industry has been analysed on a number of occasions in recent years, notably by ACIRRT (1994) and by NILS (1996).

These reviews reached different conclusions on the effectiveness of enterprise bargaining in the industry and producers and unions generally hold opposing views on the subject. The ACIMT study concluded that enterprise bargaining appears to be well established in the industry, and that the content of agreements appears reasonably well balanced; any shortcomings in flexibility appear to ACIRRT to also be apparent in the 'mainstream' industrial relations system. By contrast, the NILS study found that the introduction of enterprise bargaining has not meant a significantly reduced role for the coal industry awards in determining employment conditions. Further, the awards and agreements applying in coal mining have left the sector with less flexible work practices and higher costs than comparable instruments have left the metalliferous mining sector.

The Department considers that, while a significant proportion of coal companies have engaged in agreement-making under the various legislative provisions, most coal agreements have imported many of the underpinning award provisions or are silent on key working arrangements. It is the case that most coal mines are covered by bonus pay systems linked to production targets. However, the parties, in our view, have generally declined to use the opportunities provided by enterprise bargaining to depart substantively from the award arrangements on other key aspects. There are signs that

several coal producers are introducing reforms while improving employees' pay levels; on the whole, many industry-wide systems have been reinforced at the expense of the needs of individual workplaces and enterprises.

Wages

Overall weekly earnings in the Australian black coal industry are high compared to other industries

Australian Bureau of Statistics (ABS) data (May 1997) shows the average weekly total earnings of males in mining (all sectors) to be \$ 1,228; this compares, for example, with \$760 in construction and \$686 for all industries. Joint Coal Board figures (for the March 1997 quarter) show the average weekly earnings for NSW coal miners to be \$1,379 in underground mining and \$1,540 in open cut mining

Industrial Disputes

Levels of industrial action in the coal mining industry have been high in the past and remain high.

ABS industrial disputes figures show that, in the twelve months ending August 1997, the total number of working days lost in coal mining was 111,500; the total across all Australian industries was 440,700.

Using the working days lost per thousand employees measure, the coal mining sector has recorded relatively high dispute figures over the past ten years. For example, in 1988, over 15,000 working days were lost per thousand employees in coal; the all industries figure was 269. The coal industry continues to have by far the highest levels of working days lost per thousand employees. In the twelve months ending August 1997 57150 working days per thousand employees were lost in coal mining compared with the all industries figure of 62. The level of dispute can be unfavourably contrasted with other industries that traditionally record high dispute figures. For example, there were 247 working days lost per thousand employees in the construction industry in the twelve months ended August 1997.

A comparison of dispute figures provides clear evidence of the relatively poor industrial record of the coal mining sector, particularly over the past eighteen months. As mentioned earlier in the submission, in the Department's view, the majority of the disputes in this period reflect the coal producers' reaction to the impact of competitive pressures; most of the disputes relate to union resistance to changes in work practices and concerns about merit based retrenchment processes.

Finally, while the ABS does not provide figures on the spread of disputes, there is a perception that industrial disputes in the black coal mining industry have often escalated and involved lost time at the district or national level. This reflects the spread of a dispute at one coal mine to others; the Vickery dispute, for example, led to national strike action in 1996. Some State or national disputes have been politically motivated, such as the 1996 national stoppages about the federal Budget and the

workplace relations reforms. Concerns with State legislated workers compensation arrangements led to State wide strikes in Queensland and NSW in 1995 and 1996.

Productivity Trends

Notwithstanding productivity trends over the past decade, coal producers suggest that productivity levels continue to retard industry competitiveness.

Australian Black Coal Statistics 1996 notes that Australian black coal mines achieved productivity gains in 1996. Overall industry saleable output per employee hour reached 4.03 tonnes, an increase of less than 1 per cent over the previous twelve months. This contrasts with a productivity increase of 1.8 per cent in 1995. In 1996 underground mines productivity fell marginally by 0.4 per cent while productivity at open cut mines was up 0.8 per cent on the previous year. The 1996 report points out that since 1980, saleable black coal hourly labour productivity at underground mines has risen 130 per cent with an average increase of about 6 per cent per year, although in 1996 productivity fell slightly from 2.71 tonnes to 2.70 tonnes per employee per hour. At open cut mines, hourly labour productivity has increased almost 48 per cent since 1980.

However, Australian producers have claimed to the Department that productivity levels are a major impediment to the industry's competitiveness and, thus, to the maintenance of Australia's market share (particularly in the context of new entrants to the market) and the achievement of adequate returns to owners. Producers have indicated that they had invested heavily in mine development and capital equipment over the last few years and now find that, having reached the upper limits of available technology, it continues to be poor work practices that stifle productivity

It should also be noted that there is a relative lack of publicly available information which compares the performance of the Australian black coal mining sector with that of similar Australian industries and overseas coal mines. In the view of the Department, this knowledge gap has constrained the debate about the black coal industry's productivity performance.

Of course, the Industry Commission's findings in this inquiry may close this gap. There have also been two recent benchmarking studies that are relevant.

A study undertaken by Tasman Asia Pacific in 1997 compared the productivity of selected NSW and Queensland open cut black coal mines against coal mines in the USA and against domestic hard rock mines. The study found that truck and shovel operations of NSW black coal mines need to improve productivity by nearly 50 per cent to reach best practice while their dragline operations need a corresponding 36 per cent increase. While Queensland dragline operations are operating at best practice levels, truck and shovel operations need to improve productivity by 34 per cent to reach best practice. The study concluded that low productivity and high labour costs have raised the costs of operating Australian open cut coal mines far in excess of those in the coal mines in the USA and the domestic hard rock mines.

The Australian Coal Association (ACA) commissioned a limited benchmarking analysis in 1994 comparing Australian and US coal mines in three key operations. The two Australian truck/shovel operations benchmarked achieved an average productivity level some 35 per cent behind their US counterparts. In longwall underground mining, a limited sample of Australian mines were found, on average, to be achieving productivity levels about 20 per cent behind their US benchmark partners. The poorer productivity performance was reported to be due to lower machine availability and capacity utilisation and loss of work time at shift change, lunch breaks and from higher sick and annual leave entitlements.

10

Other Employee Relations Indicators

A 1997 study by NILS, *Employee Relations Indicators: Coal Mining and Other Industries Compared*, concluded that the employee relations climate in the Australian coal mining industry is poor. The current industrial dispute and wages figures are outlined above. NILS found that the national absence rate in 1996 was 2.4 per cent compared with the coal industry estimate of 3.8 per cent, ie the coal rate is nearly 60 per cent higher than the national rate. Coal mining, along with textiles, manufacturing and defence, scored relatively lowly in a national satisfaction survey. Coal mining was associated with a high rate of work injury, although the NILS study drew attention to the relatively short duration of injury-related absences.

Industry-Based Arrangements

While the regulatory framework for coal mining industrial relations has been moved to the mainstream, the perception that coal mining has 'special' characteristics has led to the establishment of a number of arrangements that treat workplace relations issues in a particular manner. These arrangements tend to involve a higher than usual level of Government intervention and involvement when compared to other industries. Two examples of these types of 'special' arrangements are occupational health and safety (OHS) and the long service leave funding scheme.

OHS is a key issue for the industry given the dangerous nature of, in particular, underground coal mining. Several coal producers have indicated to the Department, however, that they consider that the current coal mining health and safety regulatory arrangements as impeding improved performance and productivity.

In Australia during the 1980s, there was a move in all jurisdictions towards a more self-regulatory model of OHS regulation based on duty of care and the management of health and safety at the workplace. The majority of Australian industries are covered by this type of largely performance-based legislation. This reflected the recognition that a highly prescriptive, compliance-based regulatory system was an impediment to managing and taking responsibility for OHS in the workplace.

However, coal mining is still regulated by highly prescriptive legislation which was originally developed earlier this century specifically for underground coal mining. In terms of safety hazards, it would appear that open cut coal mining is more analogous to other heavy industries, eg building and construction, which are covered by the newer, less prescriptive regulation.

The Department is aware that reviews of OHS regulation of coal mining have been undertaken in both the NSW and Queensland jurisdictions. The Department understands that the Queensland legislative amendments have been finalised, with a view to having new arrangements coming into effect in July 1998.

11

The funding of the portable long service leave arrangements is another example of an industry scheme featuring an unusual level of Government involvement. Historically, the funding arrangements in the industry have been managed through a central fund administered primarily under Federal legislation. The scheme was last reviewed in 1990, following which legislative changes were made to establish a single national scheme under Commonwealth legislation managed by a board of directors, called the Coal Mining Industry (Long Service Leave Funding) Corporation.

However, since the introduction of the single Commonwealth scheme, significant changes have occurred in the way industrial relations matters are managed in Australian workplaces. The current Federal Government's reforms focus responsibility for industrial relations primarily on employers and employees at the workplace and enterprise level, without the inappropriate involvement of third parties.

In light of these developments, the Federal Government considers that it is timely to examine two key aspects of the scheme:

the need for continuing Commonwealth Government involvement in the funding arrangements; and

the appropriateness of retaining a central industry fund for black coal mining long service leave arrangements when the primary focus for managing employee relations has shifted to the enterprise.

Accordingly, on 22 October 1997, the Minister for Workplace Relations, the Hon Peter Reith MP, announced that a review would be undertaken of the funding arrangements. A copy of the terms of reference and Mr Reith's press release announcing the review is at Attachment A.

In addition to these two examples, there may be other characteristics of the industry that the Industry Commission may wish to examine, or highlight for possible future examination. For instance, the training arrangements that apply in the industry, and how these are administered and progressed, may be worthy of analysis to ensure that

there is an appropriate balance between industry-wide systems and the needs of specific workplaces and groups of employees.

The gender mix of coal employees may also justify analysis to consider, for instance, whether the principles of equality of opportunity are compatible with the application of seniority arrangements.

Cultural Issues and Workplace Relations Performance

In summary, industrial relations in the black coal mining industry has a number of defining characteristics:

very high rates of industrial disputation high levels of remuneration

12

there are reports that absenteeism is high, job satisfaction is relatively low and the frequency of work injuries is high

performance and flexibility are restrained by systems of seniority which govern or influence decisions on recruitment, retrenchment, promotion and training access and which have ceased to exist in most other industries

the existence of industry-wide arrangements regulating various matters a perceived gap in productivity performance relative to other coal producing countries.

In addition, there are differences in the standard of relations between parties. Some producers maintain stable and relatively close relations with employees and unions while others experience problems in seeking to reform work practices at their operations.

Many observers have pointed to a perception of an enduring coal industry "culture". From this cultural standpoint, the coal industry is seen to be different and special, immune from changes that might be impacting on the wider community. This culture would appear to have been brought about by:

the industry's domestic focus prior to the 1970s;

the separate industrial relations infrastructure outside of the mainstream system during the period 1947-1995;

the combined effect of the operation of industry awards and agreements, regulatory arrangements, and customs and practices that have, in the Department's view, entrenched a central role for the unions and their members:

the perception that the unions have been effective advocates for their members in relation to securing relatively good terms and conditions of employment:

the strong communication links established by the unions with their members; and the strong family employment links in coal mines.

The coal unions and their members (especially the CFMEU), which have been able to exercise considerable influence not only in the operation of mines but also in the social fabric of mining communities, have been key players in developing and maintaining the culture of the industry, but managers have also played a part.

Coal producers have advised the Department that, historically, companies often selected former members of the union for appointment to first level management positions. As these managers progressed through higher management levels, the industry culture with which they had been imbued expressed itself in the management approaches which were adopted at their workplaces, further contributing to the maintenance of existing industry arrangements.

13

Managers traditionally received very little management training and were often technical specialists rather than proponents of change. Such managers' loyalties were, at times, with their former peers. The unions meanwhile promoted the now strongly held view that the union looked after employees, developed and pursued the training agenda and maintained an active interest in OHS matters. Some industry representatives now argue, with hindsight, that management all but vacated these fields and employees saw the union as the provider of all things good.

In the light of the developments mentioned earlier in the submission - international competition, price pressures and other economic factors - some firms now consider that they must regain lost ground with their employees in ways which, in other industries, are taken for granted. Coal companies are putting more effort into training their mine managers to manage effectively. Moreover, several firms are adopting strategies, based in part on the use of the Workplace Relations Act, to improve their competitive position

A deep understanding of the nature of the coal industry culture may require further study, although such work arguably falls outside the terms of reference of this Inquiry. Nonetheless, the Department would suggest that, in framing proposals for change in the industry, the Industry Commission should be mindful of historical and cultural perspective's. While those who seek reform might see a departure from the culture as an important objective, their strategies, and the proposals of the Commission, should be cognisant of the cultural context.

14

4. WORKPLACE RELATIONS REFORMS

Background

An essential step in the current Government's approach to improving economic performance and employment growth has been the overhaul of Australia's industrial relations system. The Workplace Relations Act makes the industrial relations system simpler, more flexible and more focussed on the workplace. The Government has established a workplace relations system built on the following principles:

a more direct relationship between employers and employees, with a reduced role for third party intervention;

a fair go for all - so that the system is appropriately balanced and delivers benefits for both employees and employers;

genuine freedom of association and greater choice of union representation; and
a more accessible system.

Key reforms to achieve these principles involve:

maintaining the award system to provide a safety net of fair and enforceable minimum wages and conditions:

with continuing safety net adjustments focused on the low paid, but ensuring that awards are focused on minimum wages and conditions and are simplified to a set of allowable matters, with all other matters being determined as far as possible by agreement at the enterprise and workplace level;

providing for effective choice and flexibility in reaching both collective and individual agreements through:

the introduction of Australian Workplace Agreements (AWAs), subject to a no disadvantage test and administered by the Employment Advocate (EA);

revised arrangements for certified agreements to make them more widely available and to ensure that they have the endorsement of a majority of employees; and

revised provisions relating to industrial action, aimed at strengthening compliance with awards and orders of the Australian Industrial Relations Commission (AIRC), and to ensure compliance with commitments in agreements during their period of operation;

restricting the AIRC's arbitral role, so as to avoid inappropriate interaction between agreements and awards and the associated risk of wage instability;

15

ensuring greater employee choice about representation and removing uninvited union involvement in the bargaining process:

while opening opportunities to strengthen the focus of unionism at the enterprise level;
and

replacing the unfair dismissals provisions with a system based on a 'fair go all round'.

Further details of the Government's legislative changes and the key features of the Workplace Relations Act are set out in the document *Changes in federal workplace relations law - legislation guide*, a copy of which is at [Attachment B](#).

Impact of the Legislation

It is too early to adequately assess the impact of the workplace relations reforms. However, there is evidence that employers have begun to use the legislative provisions on agreement making, awards, compliance and freedom of association as a basis to improve the workplace relations performance of black coal mining workplaces and enterprises.

Producers are approaching workplace reform at the company and enterprise level rather than relying solely on an industry-based approach to reform. Coal producers are taking different approaches to workplace reform with some working more closely with unions than others. For example, BHP Coal, under the auspices of a national framework agreement, is currently finalising enterprise agreements with the coal unions with a view to each minesite being covered by its own individual set of terms and conditions.

Alternatively, several companies have taken initial steps to build a more direct relationship with their employees, while still recognising that, in the short term, the main avenue of agreement making will be collective agreements. Several coal producers are understood to have concluded AWAs with their employees, while a number of others are currently offering AWAs.

The Workplace Relations Act provides mechanisms for persons affected to deal quickly with industrial action. One of the first companies to make an application to the AIRC under section 127 of the Act to resolve industrial action was Shell Coal, which successfully obtained an order to end a strike in January this year at its German Creek mine. Since then, a number of other coal producers have made use of this provision to deal with industrial action, with many of these cases being resolved without the need for orders to be issued.

The new compliance provisions, particularly the availability of s127 orders and the boycott provisions of the *Trade Practices Act 1974*, also appear to have affected the spread of disputes. Despite the tensions that have arisen during 1997 in relation to the reform efforts of several firms, and union resistance to these efforts, at the time of writing the compliance provisions would appear to have played a part in ensuring that local disputes have not lead to widespread industrial disruption. Such disputation could, if it occurred, tarnish our international trading reputation and jeopardise domestic power supplies.

The legislation provides a basis for simplifying awards. Shell Coal has been active in this area. It has sought to break away from restrictive industry-wide practices to develop its own minespecific award at its new Moranbah North coal mine. The award aims to replace penalty rates and overtime with annualised salaries, remove demarcation barriers, and allow recruitment on merit. In a more general sense, the industry parties are continuing a review of the federal industry awards using the award simplification provisions of the Act to move towards the removal of outdated, inflexible practices.

The workplace relations legislation has also provided the impetus for some coal producers to start to tackle some of the practices which, they argue, have historically inhibited the competitiveness of the coal industry and which have increased union involvement and influence at mines.

Issues currently being addressed include:

the use of union retrenchment and seniority lists to control recruitment, promotion and training processes at coal mines;

the continuing application of the principle of 'last on, first off' in any retrenchment process, denying managers the right to choose on merit which employees to retain;

the practice of employers making automatic payroll deductions for union dues; union right of entry to sites; and

the practice of paying for attendance of employees who are union members at unauthorised union meetings.

The Government's Workplace Relations Act gives producers, employees and unions the flexibility to improve workplace arrangements and work practices.

17

5. THE WAY FORWARD

There are significant challenges facing the industry, particularly the pressing need to maintain and improve its international competitiveness. Difficult performance and cultural issues need to be confronted.

The Workplace Relations Act gives coal producers and their employees an opportunity to overcome inefficient work practices and confront the barriers that are inhibiting competitiveness. Simplified awards, choice and flexibility in agreement-making, and the revised compliance regime provided by the Act are available to coal industry parties, as to all other industries, in pursuing the strategies that suit the needs of individual enterprises. This can provide the basis for better performance and better pay for the benefit of the coal industry and of the Australian community in general.

The Department considers that work practices must continue to be reviewed. Coal producers have indicated to the Department that the industry is at a crucial point where sea change is required in how mines operate. If changes to inefficient work practices are not achieved the industry in Australia faces an uncertain future. Several significant producers have advised the Department that their Australian operations must improve their performance and competitiveness if current levels of investment are to be maintained. This is particularly important given the emergence of newer coal producing countries that are making the most of their advantages, in some cases, at the expense of Australian operations.

The Department considers that further reforms, focussing on the normalisation of workplace relations, are needed to enable Australia to have a viable and prosperous coal mining sector. In particular, the way ahead for Australian industry involves:

extensive cultural reform, with the continuation of efforts to move from an industry focus to an enterprise based focus, featuring

reviewing the appropriateness of certain industry-based arrangements

cooperative mine or enterprise specific agreement-making that more closely links the needs of the enterprise and the commitments of employers and employees:

coal producers increasing their efforts to develop more effective management of coal operations;

improving the OHS performance of the workplace by integrating OHS into employee relations management systems.

The black coal industry will only achieve the necessary improvement in performance and productivity if all parties involved in the industry - producers, employees and unions - work towards genuine workplace reform. Appropriate Government support, for example, in setting a regulatory framework that complements such efforts is also advocated.

18

Bearing in mind this Department's responsibilities, this submission has not explored all of those terms of reference which raise non-labour related factors. However, the Department acknowledges that issues such as infrastructure costs and Government royalties can impact on the competitive position of coal producers. This Inquiry provides an opportunity for a wide-ranging and objective assessment to be made as to how the black coal industry should move forward. It provides scope for the Industry Commission, in framing its report, to suggest a strategic approach to the issues that confront the industry, and to identify the particular separate or integrated roles that need to be played by employers, employees, unions and the different levels of Government, in ensuring the long term competitiveness of the industry.

Source Material

Access Economics August 1997, *Economics Monitor*. Canberra

Australian Bureau of Agricultural and Resource Economics 1997, *Australian Commodities Forecasts and Issues*, Vol 4 No 2, Commonwealth of Australia, Canberra

Australian Bureau of Agricultural and Resource Economics 1997, *Australian Commodities Forecasts and Issues*, Vol 4 No 3, Commonwealth of Australia, Canberra

Department of Primary Industries and Energy 1996, *Australia 's Export Coal Industry*, (Third Edition), AGPS, Canberra

Department of Primary Industries and Energy 1995, *Australian Coal Industry Statistics*, Canberra

Department of Workplace Relations and Small Business 1996, *Changes in federal workplace relations law - legislation guide*, Canberra

Easson, M. and Creighton, B. 1997, *Regulation of Occupational Health and Safety in the Australian Black Coal Mining Industry*, Corrs Chambers and Westgarth

Joint Coal Board and Queensland Coal Board 1996, *Australian Black Coal Statistics 1995* (Seventh Edition)

Joint Coal Board and Queensland Coal Board 1997, *Australian Black (.coal `statistics 1996* (Eighth Edition)

NSW Department of Mineral Resources and Joint Coal Board, January 1997, *1997 New South Wales Coal Industry Profile Incorporating Joint Coal Board Statistical Supplement*, NSW Department of Mineral Resources, St Leonards

Pragnell, B. 1994, *Enterprise Bargaining in the NSW and Queensland Black Coal Mining Industry*, Australian Centre for Industrial Relations Research and Teaching, University of Sydney

Tasman Asia Pacific 1997, *The scope for productivity improvement in Australia 's open cut black coal industry*, Sydney

Taylor, R. 1994, *Study of the Australian Black Coal Industry (Queensland and New south Wales) - A Report to the Australian Coal Industry Council*, Canberra

Wooden, M. and Robertson, F. 1997, *Employee Relations Indicators: Coal Mining and Other Industries Compared*, Working Paper Series, No. 143, National Institute of Labour Studies Inc, Adelaide

Wooden, M., Robertson, F. and Cernaz, R. 1996, *Coal Industry Awards and Agreements and the Implications for Work Practices and Working Conditions*, Working Paper Series, No 141, National Institute of Labour Studies Inc. Adelaide

Workplace Relations Act 1996

Attachment A

MINISTER FOR WORKPLACE RELATIONS AND SMALL BUSINESS
LEADER OF THE HOUSE OF REPRESENTATIVES

PARLIAMENT HOUSE

73/97

22 October 1997

REVIEW OF BLACK COAL MINING INDUSTRY
LONG SERVICE LEAVE FUNDING ARRANGEMENTS

The Minister for Workplace Relations and Small Business, the Hon Peter Reith MP, announced today that a review is to be conducted into the funding arrangements for the long service leave scheme in the black coal mining industry.

Historically long service leave funding arrangements in the industry have been managed through a central fund administered primarily under Federal legislation

The scheme was last reviewed in 1990 following which legislative changes were made to establish a single national scheme under Commonwealth legislation managed by a board of directors, called the Coal Mining Industry (Long Service Leave Funding) Corporation.

At the time the then Minister for Finance, the Hon Ralph Willis, noted in his Second Reading Speech introducing the new legislation that the Government agreed with the general thrust of the review and believed that responsibility for administering the fund should be returned to the industry in the longer term.

Since the introduction of the single Commonwealth scheme, significant changes have occurred in the way industrial relations matters are managed in Australian workplaces, Mr Reith said.

The Government's reforms focus responsibility for industrial relations primarily on employers and employees at the workplace and enterprise level.

In light of these developments, Mr Reith said it is timely to examine two key aspects of the scheme

the need for continuing Commonwealth Government involvement in the funding arrangements; and

the appropriateness of retaining a central industry fund for black coal mining long service leave arrangements when the primary focus for managing employee relations has shifted to the enterprise.

Telephone: (02) 6277 7320 Fax: (02) 6273 4115

Without pre-empting the outcome of the review the Government believes that the option advanced by former Minister Willis is now long overdue for consideration.

The review will be conducted by Mr Peter McLaughlin, Managing Director, World Competitive Practices Pty Ltd. Mr McLaughlin has substantial experience in both the private and public sectors over a number of years, and will bring an objective and independent perspective to the review, Mr Reith said.

The review will commence at the end of October and will include a comprehensive round of consultations with interested parties and individuals. Written submissions will also be invited. It is expected that the review will be completed within four months.

A copy of the terms of reference for the review is attached.

For further information contact Ian Hanke on 0419 484 095

Telephone: (02) 6277 7320 Fax: (02) 6273 4115

REVIEW OF LONG SERVICE LEAVE FUNDING ARRANGEMENTS IN THE BLACK COAL MINING INDUSTRY

Terms of Reference

The Federal Government's industrial relations reforms are aimed at giving primary responsibility for industrial relations to employers and employees at the workplace and enterprise level. The review of the long service leave funding arrangements in the coal industry in Queensland. New South Wales. Western Australia and Tasmania will examine:

whether a central fund is the most appropriate arrangement for the coal mining industry, particularly given the effect of changing work and remuneration practices in the industry; and

the need for continuing Commonwealth involvement in the funding arrangements.

In this context, the review will identify options for improved arrangements, giving particular consideration to the following

the likely effectiveness of alternatives;

the implications for the long service leave fund established by the Coal Mining Industry (Long Service Leave Funding) Corporation;

the interests of employees in the coal mining industry particularly in relation to the need to protect lawful employee entitlements;

the role of the Commonwealth Government and the Corporation in the arrangements;
and

legislative changes that may be required to give effect to alternative arrangements.

The review will not examine the long service leave entitlement of employees provided for in the coal industry awards.