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SUBMISSION TO THE

AUSTRALIAN BLACK COAL

INQUIRY

November, 1997

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AUSTRALIAN BLACK COAL INDUSTRY INQUIRY

INTRODUCTION

The Australian Black Coal Industry has been isolated from mainstream workplace influences for several decades and has subsequently developed a culture and work ethos unique to the industry. There is insufficient time, or necessity to examine the evolutionary phases of this phenomenon, but a manifestation of this isolation from general industry has been the establishment of expectations, work practices and behaviour that now form the basis of a workplace value system.

This culture is today dependent upon a number of support systems which are both dated, and dysfunctional., and herein lies the dilemma. The isolation of the past has nurtured a value system which has difficulty in embracing even moderate change, is adversarial in nature, and is indifferent to the relationship between enterprise efficiency and a sustainable business. It is the dysfunctional support systems that are primary obstacle to reconciling present industry performance with best practice .From an employee relations perspective if the culture and prevailing value system is to be modified then further attention is required in the following areas:

* INDUSTRY AWARD- (Production & Engineering) Interim Consent Award, 1990.

* DEMARCATION - Single Occupational Stream

* RECRUITMENT & RETENTION.

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It will be the contention of this short submission that the Industry Award, in its present form, is both a distraction, and testament to a number of outdated concepts and

practices of the past and requires immediate reform. Also, demarcation within the industry is entrenched and is arguably the single greatest impediment to the introduction of competitive work practices. Finally, the introduction of socially responsible recruitment and retention criteria is an imperative. If this particular issue is not resolved in the immediate future then the industry disruption of the recent past will continue. There is no suggestion that this is an exhaustive list and undoubtedly other contributors will identify equally important issues.

INDUSTRY AWARD: Coal Mining Industry (P & E) Interim Consent Award.

On 29 June 1939 Drake-Brockman J, of the Commonwealth Court of Conciliation and Arbitration made three interim Federal Awards for various classes of coal mining employees in three states. The class of employees defined in these Awards were "Miners", "Engine Drivers & Fireman" and "Mechanics". These interim awards, and the awards which superseded them, formed the basis of much of the content of the present industry award . The attached diagram depicts the ongoing relationship between these early awards and the present Production & Engineering Award, 1990.

A cursory review of the number of registered agreements within the coal industry suggests that a majority of operations are covered by "in term" enterprise agreements and under the general principles of enterprise bargaining it would be reasonable to presume that the flexibility's available in other mining sectors would have flowed through to the coal industry . However, this is not necessarily the case. An analysis of a number of agreements establishes striking similarities in both content and form with the Industry P&E Award. There is little doubt that some site negotiations have been dominated by a desire to preserve the sanctity of the industry award thereby

maintaining established work practices. It is unfortunate that in the Coal Industry this award is still the dominant instrument from witch negotiations tend to start, and in many cases are confined.

The most recent evidence of this intransigence is to be found in the circumstances surrounding the *Moranbah North Coal* (MNC) negotiations that took place with the *CFMEU* between August 1995 to late 1996. Negotiations focussed on the principles, and the vehicle to be used to enshrine an agreement for this new mine which represented an investment of approximately $500 million. It would be improper to discuss the substance of those negotiations but after extensive discussions it became obvious that any departure from the P&E Award was going to be opposed by the CFMEU

What followed was an application by the *CFMEU* for a roping in award (C.No.22841 '95) and an application by MNC for the creation of a new award (C. No. 40821'96). Of interest is the fact that when pressed by the commission to supply an appropriate

industrial instrument for a new operation the *CFMEU* simply tabled a draft award that mirrored the provisions of *the Coal Mining Industry (Production & Engineering) Interim Consent Award,* 1990. There was no regard for, or attempt to comply with the current Act when it came to the making of a new award. The principal argument appeared to revolve around the proposition that the P&E Award constituted an industry safety net, and it was not open to an employer, or employees to move away from the this award without the express consent of the administrative arm of the *CFMEU.*

MNC argued that the primary responsibility for determining matters affecting the relationship between employers and employees rests with those parties at the enterprise level, and that they should be able to choose the most appropriate form of

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agreement for their particular circumstances. Furthermore, this position was completely consistent with the *Workplace Relations Act* and the suggestion that new entrants to the industry should be handicapped by the Industry Award until the *CFMEU* conceded otherwise was not a particularly compelling argument **It should be noted that the Full-Bench presiding on these matters have reserved their**

decision

This exercise was time consuming and expensive, and it is still unclear as to whose interests the *CFMEU* were representing because employees of MNC were apparently not asked their views on the matter before the Commission. What can be concluded with confidence is that a major industry investment was subjected to an unwarranted level of frustration for the simple reason that one party could not accept that the industry award was no longer functional. Of greater concern is the view that there is little likelihood of any established operation successfully pursuing similar efficiencies while the industry award remains in its present form.

The Industry Award is the framework (system) that underpins an entire centralised infrastructure that permits remote, policy making bodies (Central Committees, Boards of Management et al) to influence local outcomes by encouraging conformity with a central dogma. It retains a prominent position within Coal because it embodies the past and can be used to ensure compliance with agendas and vested interests that have little to do with workplace productivity, or employee interests.

As **a matter of urgency the P&E Award should be reduced to a minimum rates award so that interested parties at the workplace can focus on enterprise arrangements without being distracted by fallacious, self serving arguments over the preservation of the Industry Award.** (1)

1. The metalliferous sector has never been subject to an industry award . Historically terms and conditions of employment have been regulated by state enterprise awards. Today, other workplace arrangements have superseded these awards.

DEMARCATION- Single Occupational Stream.

The Coal Industry has been impervious to the introduction of single occupational streams. This observation is not a criticism as there is sufficient evidence to suggest that the industry collectively pursued a dedicated engineering and production scheme in the form of Industry Work Models. The work and commitment required to document and establish a skills based industry framework should be recognised and acknowledged as an example of the industry working together . It is also however, a further example of an industry utilising a centralist strategy to address a multiplicity of issues that are best resolved at the enterprise level. As commendable as the objective may have been, it completely failed at the implementation stage, and was a less than an optimal solution when consideration is given to efficient allocation of manpower resources.

Demarcation between the occupational streams due to award classifications and union membership is a major impediment to improving industry productivity. It is also one of the more emotive site issues because there is no compelling argument to support the continuation of this restrictive practice. There are numerous examples of the negative impact of this restriction ranging from a misapplication of labour resources, to production ceasing because there are insufficient members of a particular union in the process at any point in time. A single occupational stream is based on a very simple concept; all employees should be capable of working, in a safe manner, up to the limits of their skill, experience, knowledge and training, there can be no justification for the present demarcation or the inexplicable resistance to this reform.

As mentioned previously the central work models attempted to institutionalise two occupational streams but not before some attempt was made to break this demarcation deadlock. An "incidental and peripheral" list of trades based activities was agreed at a national working party level and passed down to minesites in the form of general guidelines. Unfortunately these guidelines facilitated ongoing disputation as parties

remote from the original discussions, and not committed to the intent of the agreement ensured that the initiative failed

A more recent example of the quality of the argument against the introduction of a single stream workplace can be found at pp. 591 *transcript CFMEU v Moranbah North Coal Pty Ltd; C No "s. 22841 of 1995 & 40821 of 1996* where during cross examination a CFMEU witness simply conceded the following:

CMR 19A CON: You might be able to help me. Why is it that the CFMEU is opposed to tradespeople in panels operating equipment? What is the reason for the opposition? *WITNESS:* Well, I think its been around for a long time where its the view of not only underground workers but surface workers that if that was allowed to happen in the long term eventually you would see non-skilled people less and less employed and employers would be more inclined in the future to be employing tradespeople in toto so they could access both production and maintenance or what ever sort of skills, and that's no secret. It's been around ever since I've been in the industry. *CMR BACON: So* do you say that that is the only opposition, that there is no safety, there is no skill issues here, that the only reason the CFMEU opposes what is being proposed by Moranbah North is that the CFMEU envisages over time that the recruitment procedures and requirements of employers were changed the disadvantage of people who do not hold trades? *WITNESS:* Yes, and I think that's quite obvious with an application form for employment that's currently floating around the industry...

This is a candid insight into the resistance that employers face when attempting to dismantle workplace demarcations . The argument for dedicated production and engineering streams is often accompanied by suggestions that a single stream is unsafe, or there are unanswered questions over the competencies of engineering personnel. In reality it is a conscious endeavour to retain demarcation along union membership lines based on a popular mix-conception that this practice preserve jobs.

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The impact of this reform cannot be overstated. It is a significant difference between the Coal Industry and other mining sectors. It would facilitate a more rational allocation of resources and augment the mine planning process by fully utilising employees and equipment. It is not a coincidence that the better performing operations have had some success in addressing this restriction.

RECRUITMENT & RETENTION

It is difficult to quantify the impact on enterprise productivity attributable to the recruitment and retrenchment practices of the industry. There is no doubt that the new *Workplace Relations Act* will modify the questionable practice of employing exclusively from union retrenchment lists thereby permitting the employer to select the most appropriate personnel for employment. It is a matter of record that Shell Coal Australia was prepared to withhold capital investment from the Moranbah project until the right to employ the best available personnel was unfettered.

On 8 June 1995 (C.R. 4833) the current sub-clause 22(c), *Preference to retrenched members of unions party to this award*, was inserted into the Award as a result of the tribunals decision in C.R. 4779 on 4 January 1995. The variation arose out of an application by the respondent unions. The C.I.T. found in favour of the application and enshrined in the Award a further dubious practice. This practise is unlawful under the new Act (although there is still some resistance to this interpretation) but assists in understanding how the Award became the depository of workplace arrangements that would not have survived in general industry.

Of greater concern and possibly the issue of the moment is the application of Clause 24 - 'Reduction *of Hands'* . **Drake-Brockman J on 29 June 1939 (No. 3784-Award, No3811)** remarked in No 3811, at page 21 that:

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'The "last on first off rule" is rigidly enforced by the Federation and apparently quite regardless of such matters as misbehaviour or inefficiency. A miner with several years seniority is so firmly entrenched in his job that nothing short of closing down of the mine, death or a compensatable illness can prise him out of it."

This observation would appear to be equally relevant today as in 1939. For calendar year 1997 there has been no fewer than six major disputes with the application of *Clause* 24, or recruitment and retention issues being a fundamental issue in each dispute. It is generally accepted that length of service in conjunction with other selection criteria is a legitimate indicator in determining which employees will be retained in time of redundancies. However, there is no support for the contention that retention of employees shall be determined by gate seniority exclusively. If the status of *Clause* 24 remains ill-defined into the future there is no doubt that this clause will continue to be the cornerstone of a number of high profile disputes

· As **a matter of some urgency this clause should be removed from the Award on the basis that it is discriminatory and unacceptable when compared with general community standards.**

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