

## **Examining IR challenges from an AMMA Perspective**

When I considered the sort of content that could be covered when given this topic, a significant one that comes to mind is the reality of another major round of industrial relations reforms within the space of a few years.

I'm sure employer organisations with an IR consulting business such as AMMA, employment lawyers and so forth are planning a busy 2008 developing IR strategies for clients impacted by such significant changes. From a legal perspective, look no further than the program for this Summit, at least 8 different law firms are represented!

Firstly, I would like to address the AWA issue. On the AWA front, an employment instrument widely used in the resources sector, AMMA was on the record on 3 December 2007 stating that the industry had and was planning for an ex-AWA environment.

I can recall turning to the Monty Python Parrot sketch at the time stating that post 24 November 2007 election:

*'AWAs are not pining, they are passing on. The AWA environment will be no more!*

*They will cease to be. They are expiring and going to meet their maker.*

*There will soon be a late AWA regime, they will be stiff, bereft of life, and will rest in peace.*

*If it wasn't for the transition provisions they would now be pushing up the daisies. AWAs are fast running down the curtain and joining the choir invisible. This will quickly become an ex-AWA environment.'*

In this context, many AMMA members have or will commence the transition from AWAs to 'employee collectives' and/or common law contracts to support their direct employment arrangements. Simply put you will find a fairly practical bunch in our industry and they are simply getting on with the job of IR strategy planning for the long term.

Our industry has never relied on governments of either persuasion for their IR salvation. In the 21<sup>st</sup> century, businesses generally think more holistically about the environment in which they operate and the environment in which employees work. Industrial relations reform is but one challenge for the resources sector, so it is important that we turn our mind to all the challenges it faces in 2008.

Under the wing of a new government, it seems an excellent time to undertake a SWOT analysis of the current business environment. Let's consider what the Strengths, Weaknesses, Opportunities and Threats are for the resources sector.

## **Strengths**

The mining industry is the world's leading producer of bauxite, alumina and zircon; the second largest producer of gold, iron ore, uranium, diamonds and zinc and the fourth largest producer of coal and nickel. Australia is the largest exporter of alumina, black coal, iron ore, lead and zinc.

This is where one of our strengths lies. The minerals and energy sector is forecast to contribute \$115 billion in export earnings in 2007/08. The benefits to the State economies are not insignificant. For Western Australia, the resources sector is the key driver of the state economy with mineral and petroleum industries contributing approximately 21% of that State's employment and 80% of its total exports.

The minerals industry in New South Wales is that state's largest export earner, representing approximately 32% of its total merchandise exports. Queensland benefits from an approximate \$20.3 billion contribution by the resources sector to its economy and Tasmania's resources sector is worth \$2.1 billion to its economy.

South Australia now ranks 4<sup>th</sup> in the world in terms of mineral potential, up from 18<sup>th</sup> place in 2005 and has experienced a 111% increase in its exports in the past five years. Mining exports alone account for 3.1% of total goods exports in South Australia, contributing \$1.8 billion to the State's economy, with 1.5% of its workforce directly employed in mining expected to double by 2013.

Cumulatively, the resources sector accounts for 38% of Australia's total goods and services exports and energy and minerals make up 9 of the top 12 export commodities.

The resources sector offers strong employment prospects, with 138,000 directly employed and thousands more in the pipeline when the future projects come to fruition. Although much of the industry is located in remote sections of Australia, our flexibility and ability to pay excellent remuneration, with the average annual salaries of \$100,000, assists in making the resources sector an attractive place to work.

The flexibility that we have been able to achieve through individual employment arrangements is a character of the industry imbedded since 1993 for Western Australia and 1996 nationally. The resources sector has benefited from being able to determine its rostering arrangements, such as fly-in-fly-out rosters, without incurring exorbitant cost and fulfilling the wishes of many employees who want to go home to spend quality time with their families. It has enabled business to cut red tape by paying annualised salaries that compensate for penalties and allowances.

Nationally more than one in two mining employees is on an AWA. Western Australia leads the way here with approximately 80% of all mining employees on AWAs. These arrangements will ultimately be replaced by other forms of direct employment arrangements.

We have also experienced a significant decline in disputation levels, enabling business to just get on with, well, business. The mining industry, excluding coal, had no industrial action at all in the June and December quarters in 2007. The stunning success of the ABCC is evident in the decline of industrial disputation in the construction industry from a high of 534.5 working days

per thousand employees in the June 1996 quarter to just 1.7 working days per thousand employees in the same quarter last year.

### **Weaknesses**

As a result of there being approximately 275 major minerals and energy projects at either advanced or less advanced stage, more than 80,000 people will be required to fill jobs in the resources sector.

Our problem?

Finding the people required to fill these positions while continuing to meet demand for our products and meet our contractual requirements. In its recent release of major resource projects ABARE commented that *'the scarcity of skilled labour, and increased materials and construction costs continue to have an impact on the timing and overall costs for some projects.'*

The mining boom and record low unemployment levels are contributing to a labour shortage in the resources sector. We need to continue to attract people to the resources sector, focus on the development of training systems within industry and we need to continue to develop all available labour resources including mature aged workers, indigenous persons, women in mining initiatives and international recruitment programs.

The section 457/456 visa program is an important solution, albeit a short-term solution designed only to supplement the workforce. But the visa program remains problematic for the resources sector:

- The inflexibility of ASCO and ANZSCO in defining new and emerging occupations and specialisations is slow in keeping pace with changes in the resources sector;
- The new fast tracking system for visa applications, while welcomed by AMMA, is yet to be implemented;
- The \$41,850 indexed minimum salary threshold does not recognise guaranteed payments that are common in the resources sector, such as regular penalty payments, cost of living, allowances and field bonuses;
- The current 456 short stay visas, which do not actually allow hands on work and do not meet the short term temporary employment needs of business, such as short term projects.

### **Opportunities**

At a national level, there are opportunities abound to increase Australia's export earnings and continue to contribute to the economies of each State and Territory. The mining boom has been described by Access Economics as *'a boom that has become an even bigger boom'* in light of the \$178 billion in definite projects and additional \$200 billion in planned projects identified.

214 resources projects are at the feasibility stage – a record number. Not all will proceed to development, but certainly it is within Australia's economic interests if most do. ABARE's most notable projects undergoing feasibility are seven proposed LNG developments. These include Woodside's Pluto LNG Project, which has received investment approval, its Browse LNG Development that is currently going through the appraisal process and Chevron's Gorgon Project. Collectively, these projects involve investment in the vicinity of \$50 billion. Also at feasibility stage is the proposed and very large BHP Billiton \$6 billion Olympic Dam extension, which aims to double its current output. Six other projects at the less advanced stage have an estimated capital expenditure of \$1 billion or more.

Yet many will need to secure financial investment to proceed. The good news is that in the last six months to November, mining industry investment has risen by 33%. Exploration expenditure is at its highest level at around \$4 billion. Exploration expenditure is imperative to the continuation of the resources sector in Australia. Without mineral exploration there is no mining and without mineral production the economy will falter, unemployment will increase and our regional centres so heavily reliant on mining will suffer. We need to continue and maintain innovative programs that encourage mineral exploration and not miss the opportunities offered by the strong growth in China and its demand for our resources. China takes a huge amount of our iron ore – we need to be in a position to satisfy its demand.

Confidence in the ability of Australia to deliver, which includes confidence in our working environment, is clearly required to attract continued global investment in the Australian resources sector.

At the individual business level, employers have the opportunity to improve business competitiveness by increasing employee engagement. In times of labour shortages and the mining boom, the resources sector is acknowledging that one way to remain competitive both in terms of business profitability and retaining talented employees is to keep their employees engaged.

Research clearly shows that direct working relationships may provide a more conducive and stable environment for high levels of employee engagement to be achieved.<sup>1</sup>

Where a union is a party to the determination of workplace arrangements, increases in productivity and business outcomes afforded by increased employee engagement will depend on whether the union's demands are aligned to the needs of the business.

This is a tenuous situation. Third parties are often caught up in external agendas, trying to achieve different goals that may not be aligned to the business and its employees. Direct employment arrangements often assist employers and employees have better alignment with personal and organisational goals.

When employees are engaged, research shows that business benefits from greater customer satisfaction, increased workplace safety, increased profitability and reduced staff turnover.<sup>2</sup> A

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<sup>1</sup> As detailed in the AMMA Employee Engagement: A Lifetime of Opportunity paper.

<sup>2</sup> This research has been undertaken by the Gallup Organisation – a global consultancy firm and Ulrich and Smallwood, two prominent consultants specialising in employee engagement.

survey of human resource managers from approximately 80 mining companies identified that individual workplace agreements were used by these companies because they offered:

- greater efficiency and simplification of payroll;
- An opportunity to break down divisions with the organisation;
- an easier to understand and consistent approach to remuneration and job requirements; and
- a greater emphasis on a unified approach to company operation and performance.

The benefits of employee engagement were evident in the 1999 merger negotiations between BHP and Hamersley Iron in Western Australia, where BHP's union involved operation was approximately 25% less efficient than Hamersley Iron's individual focused operation. This represented a minimum \$51 million gap between the two companies at that time. BHP realised it could increase its productivity significantly if it began to work directly with its employees to increase engagement, so they went down this path.

### **Threats**

This is where one of major threats lies. Regulation by AWAs will be phased out, cease to exist, be no more under the newly elected ALP government. The challenge for the industry will be to ensure the advantages experienced by the AWA regime are not lost by the resources sector. Our greatest challenge in 2008 will be to continue to work directly with our employees to achieve and maintain high levels of employee engagement, but to do so without the legislative facility of individual AWAs.

The period during which we acclimatise to a new set of industrial relations laws will test the leadership, structures and systems of business that are important for the achievement of high levels of employee engagement.

The flexibility that we are used to – the flexibility that the new Government has promised to deliver – must continue. It is essential to the continued success of the resources sector that employers are able to adjust labour input and work rosters to accommodate changes in demand, to link wages to productivity improvements, to have a workforce capable of moving between tasks to meet demand for different types of labour and to introduce change.

The proposed \$100,000 plus common law agreement regime proposed by the Rudd Government, which on its face looks and operates like an AWA and has the potential to offer the flexibility desired by the resources sector, may have limited ability to offer the continuity business requires at the workplace. Prior to the ALP announcing the \$100,000 threshold, AMMA lobbied for a \$75,000 threshold so that such a regime would capture most resources sector employees currently on AWAs. This lobbying continues.

With AWAs gone, a lot of companies will now look to enter into employee collective arrangements to maintain the flexibility they are used to, to keep the direct employment

relationship going and to maintain and improve levels of employee engagement. Some have already done so.

Others will review how the new government pieces together the new National Employment Standards and Award modernisation process. Done properly, common law contracts could become an attractive proposition for the resources sector.

Increased and the potential for almost mandatory union involvement in agreement making, the ability of unions to enter workplaces that have traditionally been union free and so forth may be testing on employers. For those who have a truly and highly engaged workplace, who focus on their employees as individuals, have sound people management systems etc may find their employees are less easily swayed by the advances of unions.

Past poor investment in infrastructure will present an ongoing challenge to the resources sector as we attempt to increase production to meet demand. Increased investment by the resources sector must be met with increased investment in infrastructure. Sure, we are in a boom but this is not the time to become complacent.

There are some good signs. Flinders Ports, the private owner of the Outer Harbor container terminal in Adelaide is investing more than \$50 million on a bulk handling facility to cater for the projected mining boom in South Australia.

This is an example that should be followed to deal with infrastructure problems that are being experienced in Queensland and New South Wales, where up to 100 ships have had to wait off the coast for backlogs to clear.

Companies may question why they should incur the cost of building a bigger mine or invest in exploration if they can't be guaranteed that they can ship it. Some companies also reportedly pay their customers millions each year to compensate for shipping delay. Planned production levels cannot be met, resulting in employees being laid off, which was the experience of one of our members recently. Left unresolved this will affect Australia's reputation as a credible international supplier.

### **Working with stakeholders**

AMMA has a strong track record of working with key stakeholders, including all major political parties, to get IR outcomes that meet the needs the resources sector in terms of flexibility and certainty. The significance of the sector is also highly visible to all and one that that is currently underpinning Australia's sound economic performance.

The consequences of not allowing this industry to boost productivity to survive in a highly competitive international market place, would indeed impact the living standards of all Australians.

During the lead up to the election there was a lot of 'heat' in the IR debate. AMMA was very active in this debate.

Through various consultative mechanisms, including direct dialogue with the then Opposition and now government, a lot of issues have been worked through and some sound outcomes have been achieved.

In this regard the following was outlined in the Deputy Prime Minister's address to AMMA's National Conference earlier this month:

*'We have listened to each other and I have been able to take many of AMMA's substantive concerns into account as I refined the terms of our Transition to Forward with Fairness Act.*

*The Transition Act, which commenced on 28 March, incorporated those concerns in a number of important ways:*

- The creation of Individual Transitional Employment Agreements for employees previously on AWAs;*
- The commencement of award modernisation, with a requirement that each award contain a mandatory flexibility clause to allow for individual employers and employees to make genuinely individual arrangements;*
- The creation of new, simple, modern awards with a limited number of award matters to ensure they are not, and do not become, large, unwieldy, inflexible documents; and*
- The limit of award coverage to employees earning \$100,000 per year or less allowing more highly paid employees to negotiate their employment arrangements against a limited safety net of our 10 National Employment Standards.*

*I want to acknowledge Steve Knott's generous acknowledgment that:*

- Employers in the sector have already developed strategies to operate in the new workplace relations environment;*
- The existence of ITEAs will make the transition to the new system smoother;*
- The Government's plans for a modern award system is positive for this sector; and*
- The mining industry is well placed to manage necessary changes.*

*Importantly, AMMA's submission to the Senate Inquiry into the Transition Bill also acknowledged that the Rudd Government had stuck to its pre-election commitments and has no intention of stifling the flexibility and productivity of the mining sector.*

*Other matters, like those dealing with industrial action and compliance, secondary boycotts and union right of entry, will be dealt with in our substantive workplace relations legislation which will be introduced into the Parliament later this year.*

*But let me make it clear that just as we stuck to our promises over ITEAs, flexibility and the \$100,000 award limit, we will stick to our promises on our other policy commitments.*

*That means there will be tough, clear rules on industrial action, secondary boycotts will remain regulated by the Trade Practices Act and the current approach to right of entry will be retained.*

*Each of you will have the opportunity to participate in award modernisation processes, to provide feedback on our proposed National Employment Standards and to have your say on the substantive workplace relations laws.*

*AMMA and major minerals and energy companies will be helping us draft our substantive workplace relations reforms through their participation on the National Workplace Relations Consultative Committee and the Business Advisory Group.*

*Rio Tinto - represented by Stephen Creese and Paul Davies as well as Woodside - represented by Don Voelte and Ian Masson are both members of the Government's Business Advisory Group.*

*Consultation seldom gets stronger than this.'*

As always we are also in dialogue with the Opposition. Should the introduction of the proposed National Employment Standards combined with the award modernisation process reduce flexibility for the resources sector, calls for a form of statutory individual employment agreement will no doubt be part of the IR political landscape again.

Indeed at our Conference earlier this month Julie Bishop, Shadow Minister for Workplace Relations, highlighted that the Opposition's IR platform going forward will include such agreements.

AMMA was on the public record before the former government introduced the 'Fairness Test' for AWAs in May 2007, stating the old 'no disadvantage test' that worked for 10 years prior to WorkChoices, would be a suitable alternative to WorkChoices AWAs for the resources sector.

If the Rudd Government makes common law contracts a suitable alternative to AWAs and ITEAs, a return to an individual statutory agreement regime may not be necessary.

Time will tell, but be rest assured AMMA will be active in this debate.

### **The Cost of Legislative Change**

Costs associated with 2005 legislative reform, which were incurred by reviewing and ensuring that existing employment arrangements and record keeping systems comply with the legislation; and adapting and applying the new Fairness Test is in the vicinity of \$2 million for 10 AMMA member companies. Add to this \$6.5 million spent in contingency planning in anticipation of the 2005 reforms and *Forward with Fairness*.

## **Conclusion**

So the challenges facing the resources sector in 2008 are widespread, born in no small part by the adaptation of business to the forthcoming changes to the industrial relations legislation. However, I have said previously that the resources sector will learn to live with the new regime. Industrial relations legislation is not the sole priority of business – the pendulum keeps on going back and forth and business understands that the legislation itself will not dictate the relationship they have with their employees. The continued focus for business will be on managing its people and rewarding innovation.

The greatest challenge rests with the incoming Rudd Labor government, a government who says they have a policy that strikes an appropriate balance between employer and employee rights and will be good for the economy. The challenge simply will be to facilitate mechanisms that keep record low industrial disputation levels, reduce unemployment, keeps inflation and interest rates under control, to provide certainty to business, to restrain militant union behaviour and give access to skilled migration.

The mandate for the Rudd Government's policy to abolish AWAs was not disputed by AMMA or the resources sector - with AWAs gone the focus for business remains the same – to IR proof its business by ensuring its employees are fully engaged.