Workplace Relations Policy Scorecard

24 April 2007

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AMMA
Workplace Policy Division
24 April 2007

Executive Summary

The Australian resources sector makes a significant contribution to Australia's wealth and prosperity, underpinning critical supply and demand relationships with the Australian manufacturing, construction, banking and financial, process engineering, property and transport sectors. Ever present global competition has ensured the relentless pursuit of greater efficiency and productivity in the resources sector. In the global market you have to 'run fast just to stand still'.

AMMA has long advocated workplace reform on behalf of the resource sector. Key areas of reform that have been proposed by AMMA include the creation of a national workplace relations system, core employment standards, flexible agreement making, reducing the role of awards, industrial action, restricting union right of entry to legitimate representation, the need to ensure compliance with the industrial laws, and unfair dismissal. AMMA believes the 2006 WorkChoices legislative reforms facilitate much needed evolutionary workplace relations reform.

The resource sector presently enjoys record exports, historically low disputation levels, high wages and increasing levels of direct and indirect employment. These conditions are underpinned by a flexible workplace relations system that allows employers and employees to determine working arrangement that suit their needs with minimal outside interference.

The 2007 election presents a significant workplace relations policy risk to Australian workplaces. The risk is that the gains of the past 16 years of reform may be unwound with serious consequences for the productivity of the resources sector.

It is essential that the content of the workplace relations policies of political parties vying for Government are evaluated against the key workplace relations needs of the resources sector.

This paper sets out a workplace relations policy (at the macro level) designed to meet the needs of the resources sector. Each key component is discussed and, where possible, practical examples are provided which have contributed to the development of the policy. This policy provides the criteria for the AMMA Workplace Relations Policy Scorecard which will be used to evaluate the competing workplace relations policies of political parties.

The AMMA Workplace Relations Policy Scorecard covers the following seven broad policy areas:

1. National regulatory framework
2. Minimum standards and awards
3. Agreement making
4. Agreement processing
5. Industrial action & Compliance
6. Unfair dismissal
7. Union right of entry

AMMA looks forward to the release of the detailed workplace relations policies of all political parties in a timeframe that allows for proper consideration before the election.

AMMA Workplace Relations Policy Scorecard Criteria

National Regulatory Framework
A single national workplace relations system, without the duplication and complexity resulting from the interaction of six states, two territories and a federal system, is a prime requirement of a modern industrial relations system. This national system should cover all employing entities including both constitutional corporations and unincorporated bodies.
Minimum Standards and Awards
There must be a set of legislated statutory core minimum standards of general application. There must also be an ability to agree to hours of work that meet operational needs having regard to OHS and fitness for work principles. Awards should be restricted to providing a safety net of core conditions of employment in industry (and where relevant sub industry) sectors. Enterprise awards should be treated as if they were enterprise agreements.
Agreement Making
There must be access to a broad range of agreement making options including collective agreements, Greenfield agreements and statutory individual agreements, with a duration of up to five years. Agreements should be able to customise the conditions of employment to the needs of the parties and be capable of overriding awards or (in the case of individual agreements) collective agreements. Agreements should not be imposed except in limited circumstances.
Agreement Processing & Compliance
There should be a simple administrative agreement registration process, without a requirement to attend a formal hearing. Agreements should commence on signing and be required to meet a simple set of legislated minimum conditions.
Industrial Action and Compliance
The law should prohibit the taking of industrial action during the life of an agreement and provide readily accessible remedies to prevent or stop the taking of unlawful industrial action and the capacity to seek compensation. Access to protected industrial action for employees and employers during the negotiation of an agreement should be conditional on the party taking action having genuinely attempted to reach agreement and in the case of employees, approved by a majority of employees in a secret ballot vote prior to commencement of the action. There should be a statutory prohibition of secondary boycotts, pattern bargaining, action which impacts on to essential services and action in support of claims that do not relate to the employment relationship. The provision of special education and policing arrangements in the Construction sector and *Trade Practices Act 1974* (Cth) breaches should continue.
Unfair Dismissal
There should be a single unfair/unlawful dismissal system, with exemptions for probationary employees, and high income earners. The primary determinant of whether a termination is unfair should be confined to the merits of the case. Employers should be protection from vexatious and frivolous claims by providing an ability to recover costs in the case of unmeritorious claims.
Union Right of Entry
There should be a single national right of entry law for unions, with access restricted to meeting with union members who have requested the meeting and where a genuine breach of an industrial instrument or a provision of the *Workplace Relations Act 1996* (Cth) has occurred.

About AMMA

AMMA is the national employer association for the mining, oil and gas and associated processing and service industries. It is the sole national employer association representing the employee relations and human resource management interests of Australia's onshore and offshore resources sector and associated industries.

AMMA member companies operate in the following industry categories:

- Exploration for minerals and hydrocarbons
- Metalliferous mining, refining and smelting
- Non-metallic mining and processing
- Coal mining
- Oil and Gas
- Associated services such as:
    - Construction and maintenance
    - Diving
    - Transport
    - Support and seismic vessels
    - General aviation (helicopters)
    - Catering
    - Bulk handling of shipping cargo

AMMA represents all major minerals, coal and hydrocarbons producers as well as significant numbers of construction and maintenance employers in the resources sector. AMMA is uniquely able to articulate the workplace relations needs of the resources sector.

The resources sector was forecast to contribute minerals and energy exports in the order of $107.7 billion in 2006-2007.[1] This represents approximately two thirds of Australia's total commodity export earnings. In 2007-08 this contribution is forecast to increase to $116.5 billion.[2]

The mining industry directly employs 139,600 employees.[3] Many more employees are indirectly employed as a result of activity in the mining sector. The coal industry continues to be heavily unionised with 66.2 percent of employees being members of a union.[4] In the non-coal metal ore mining sector the level of union membership is 11.6 percent.[5] This is lower than the average level of unionisation in the private sector of 15.2 percent.[6]

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[1] Abare Economics, *Australian Commodities*, Vol 14, 1, March Quarter 2007, Commonwealth of Australia, Canberra.
[2] Ibid.
[3] Australian Bureau of Statistics, *Australian Labour Market Statistics*, Cat. No. 6105.0, April 2007.
[4] Australian Bureau of Statistics, *Employee Earnings, Benefits and Trade Union Membership* Cat. No 6310.0 August 2006.
[5] Ibid.
[6] Australian Bureau of Statistics *Employee earnings, Benefits and Trade Union Membership*, Cat No. 6310.0, January 2007.

The Australian resources sector makes a significant contribution to Australia's wealth and prosperity, underpinning critical supply and demand relationships with the Australian manufacturing, construction, banking and financial, process engineering, property and transport sectors.

Introduction

The resources sector has always been subject to global competition. This competition has resulted in a continuous drive towards greater efficiency and productivity, as in the global resources market you have to 'run fast just to stand still'.

In support of this drive for greater efficiency and productivity, AMMA has long advocated industrial reform on behalf of its members. Key areas of reform that have been proposed by AMMA in numerous submissions and papers have dealt with topics including the creation of a national workplace relations system, minimum conditions of employment, agreement making, the role of awards, industrial action, right of entry, the need to ensure compliance with the industrial laws, and unfair dismissal.[7] AMMA has also been actively involved in the 2005 Senate Inquiries on Workplace Agreements and the WorkChoices Bill.[8]

AMMA has long supported the provision of a full range of regulatory options for employers. In its 1999 paper *Beyond Enterprise Bargaining,* AMMA explored a model of regulation which would allow high performance workplaces (with the express support of the majority of employees) to opt out of the formal workplace relations laws and internally regulate their workplace. Underpinning this option was the implementation of an Employee Relations Charter[9] This model has the support of the Australian Chamber of Commerce and Industry and remains a future objective.

In March 2007 AMMA published a paper titled *AWAs – A Major Matter for Miners*.[10] This paper highlighted the features of AWAs and their benefits to the resources sector and debunked the myth that common law contracts (in their present form) are a suitable alternative to AWAs.

Australia's present workplace relations system is a vast improvement on that which existed in the 1980's. The devolution of Australian workplace relations commenced with the introduction of agreement making at the enterprise level by the Keating Government in 1991, followed by access to non-union agreement making in 1993. In 1996 the Howard Government introduced the capacity to make individual agreements.

In 2006, the WorkChoices reforms brought about a single national system for corporations, introduced statutory minimum conditions, streamlined access to agreement making and placed a greater onus on the industrial parties to be responsible

[7] All AMMA publications and submissions can be found at: http://www.amma.org.au/publications
[8] Ibid.
[9] AMMA (1999) Beyond Enterprise Bargaining Report, AMMA. http://www.amma.org.au/publications/beb_report.pdf
[10] < http://www.amma.org.au/home/publications/ammapaper_awas_amajormatterforminers_22march2007.pdf > (19 April 2007)

for their own actions. The WorkChoices reforms have assisted the resources sector to improve their already substantial contribution to the Australian economy.

With the upcoming general election, political parties and interest groups are now developing their workplace relations policy positions. It is essential that the content of these policies are evaluated against the key workplace relations needs of the resources sector. This will enable the resources sector to determine the impact of the policies on the sector's capacity to:

- recruit a skilled workforce;
- enter into legally binding working arrangements that meet the operational needs of the business;
- ensure continuity of the supply of labour;
- deal effectively with any disputes that arise; and
- ensure parties are held responsible for their actions.

For the purposes of this paper, the key workplace relations needs of the resources sector have been grouped into seven broad policy areas, each of which will be discussed separately. They are:

1. National regulatory framework
2. Minimum standards and awards
3. Agreement making
4. Agreement processing
5. Industrial action & Compliance
6. Unfair dismissal
7. Union right of entry

This paper will consider workplace relations policy at the macro level in order to establish a broad framework by which the policies of political parties and interest groups can be evaluated. This will enable AMMA to focus on the key workplace relations policy areas that will have the most significant impact on the resources sector.

AMMA Policy Criteria

National Regulatory Framework

National Regulatory Framework

A single national workplace relations system, without the duplication and complexity resulting from the interaction of six states, two territories and a federal system, is a prime requirement of a modern industrial relations system. This national system should cover all employing entities including both constitutional corporations and unincorporated bodies.

There are six separate statutory workplace relations systems operating in Australia – the federal system and a system in each state other than Victoria. Each state system has its own awards, agreements and workplace relations legislation that confer rights and entitlements to employees of unincorporated employers in that state.[11]

Prior to WorkChoices, the existence of six separate jurisdictions meant that resources sector companies operating concurrently in each jurisdiction had to comply with the different regulatory requirements of each. This was described by Professor Andrew Stewart in the following way:

> Since interstate disputes rarely occur spontaneously, federal award coverage is constantly dependent on unions manufacturing appropriate paper disputes. With some unions content to have state awards for some or all of the occupations or industries they cover, the result is a patchwork of regulation which causes particular inconvenience for employers who have workers covered by both federal and state instruments.[12]

This complexity was illustrated in a recent review by the Award Review Taskforce, which found that there are 105,235 classifications and over 4000 awards operating in Australia.[13]

The debate over a shift to a national workplace relations system has been ongoing but there has of late emerged a relatively consistent support, across political parties and industry, for the move to a national system. The following are examples of such support:

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[11] Unincorporated employers fall outside the scope of the *Workplace Relations Act 1996* (Cth) unless they are covered by the transitional arrangements due to being bound by a federal award or agreement prior to its commencement. However, if they do not incorporate within 5 years of the commencement of WorkChoices, they will revert to the State system.

[12] Professor Andrew Stewart, 'Federal Labour Law and New Uses for the Corporations Power', in ACIRRT Working Paper Series, and in papers from Industrial Relations Forum Proceedings, Business Council of Australia, Melbourne, 17 October 2000, p.32

[13] Award Review Taskforce, Final Report: Rationalisation of Wage and Classification Structures, Australian Government, July 2006.

- Senator Andrew Murray, Australian Democrats:

> The evolution of the six Australian industrial relations systems towards a single system is the challenge governments must rise to in this new century…I believe that now is the time to consider the creation of a single industrial relations system. Consider this – tax law, corporate law and financial institutions law are all now national to the great benefit of Australia…We must continue to search for ways to ensure all workers and employers in Australia are guaranteed a fair and reasonable set of standard national employment conditions.[14]

- Justice Geoffrey Giudice, AIRC:

> It is a very important question for the many employers and employees who are covered by a dual system and whose time and other resources are thereby wasted or at least under threat of being so…although progress has been made, a number of the fundamentals have not changed at all. Only so much can be achieved in cooperation between tribunals in a dual system. It is surely time to reassess the Hancock Committee's conclusion that a unitary system is an unattainable objective. Events in Victoria at least have demonstrated that fundamental change can occur even without threatening the welfare of our society and its award-covered citizens.[15]

- Simon Crean, ACTU:

> I think that there is a substantial view within the ACTU that there should be a movement towards the development of a national industrial relations system.[16]

- Bill Shorten, Australian Workers Union National Secretary:

> Variations in State laws are also time consuming and frustrating for employers. It is ridiculous that there are more than 130 pieces of State and federal legislation pertaining to industrial law.[17]

The following examples illustrate the types of problems that resources sector companies face when operating within competing State and Federal workplace relations systems:

- **BHP Billiton Iron Ore** – A change of government in Western Australia in 2001 and the subsequent removal of the capacity to use Western Australian workplace agreements meant that BHP Billiton Iron Ore lost its employment contract of choice for its workforce[18] – a choice it had successfully defended in time consuming and costly legal hearings in the Federal Court.[19]

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[14] Senator Andrew Murray, Australian Democrats Spokesperson for Workplace Relations, cited in Peter Reith, MP, Breaking the Gridlock, Discussion Paper No 1, October 2000 <http://www.simplerwrsystem.gov.au/discussion/changecase.htm#4#4>

[15] Justice Giudice, cited in Peter Reith, MP, Breaking the Gridlock, Discussion Paper No 1, October 2000 <http://www.simplerwrsystem.gov.au/discussion/changecase.htm#4#4>

[16] Simon Crean, cited in Peter Reith, MP, Breaking the Gridlock, Discussion Paper No 1, October 2000 <http://www.simplerwrsystem.gov.au/discussion/changecase.htm#4#4>

[17] Bill Shorten, cited in ACCI (2002) Modern Workplace: Modern Future – A Blueprint for the Australian Workplace Relations System 2002-2010, ACCI, Canberra.

[18] The Workplace Agreements Act 1993 (WA) provided for statutory individual workplace agreements. These agreements were abolished in 2002 with the election of a new government.

[19] AWU v BHP Iron Ore Pty Ltd [2001] FCA 3

The state agreements that replaced the Western Australian individual workplace agreements did not meet BHPB Iron Ore's business requirements. Due to the lack of a suitable state alternative, BHPB Iron Ore offered its employees Australian Workplace Agreements, under the federal system.

During this period, BHP Iron Ore was also engaged in arbitration proceedings for a new state award. At the same time industrial action was being taken by unions under the federal *Workplace Relations Act 1996* (Cth) while the company was still required to afford the unions benefits under the state system. Associated with this action were difficulties arising from different right of entry conditions applying to state and federal union officials.

- **Rio Tinto Iron Ore** – Rio Tinto Iron Ore found that differing state and federal industrial systems created uncertainty and the potential for less flexible working arrangements in the company's iron ore operations in Western Australia. Rio Tinto Iron Ore, who also operated under Western Australian workplace agreements, felt that their abolition and the enhancement of the Western Australian Industrial Relations Commission's power to arbitrate actual rates of pay would reduce the flexibility and effectiveness of direct employment arrangements.

  Rio Tinto turned to the federal jurisdiction and entered into a federal non-union collective agreement at Robe River and AWAs with 90 per cent of its workforce at Hamersley Iron. However, the potential for these arrangements to be undermined by union applications for new awards and enterprise orders under the state system drove Hamersley Iron and Robe River to apply for a federal award. This took nearly two years, during which time Rio Tinto incurred substantial legal costs, lost management time and was exposed to union action despite little or no involvement with unions for over a decade. The companies also had to defend themselves in both state and federal commissions simultaneously when unions opposing the federal award made applications in the state commission to enhance their prospects of success in the federal commission.

While these examples both relate to operations in Western Australia, they are indicative of the types of problems that multiple jurisdictional arrangements have generated throughout Australia. Further examples can be found in the decision of *CFMEU v Hanssen Pty Ltd*[20] and *CFMEU (NSW Branch) v Newcrest Mining Limited.*[21]

In the Hanssen case, a CFMEU application to the Western Australian Industrial Relations Commission under the State *Industrial Relations Act* for an enterprise order was granted despite the fact that the company's entire workforce was covered by Federal Australian Workplace Agreements.

[20] [2005] WAIRC 00418 (24 February 2005)
[21] [2005] NSWIRComm 129 (6 May 2005).

In the Newcrest case, the New South Wales Commission held that it could conciliate and arbitrate a dispute under the *Industrial Relations Act 1996* (NSW) in respect to an employee whose terms and conditions were covered by a Federal Australian Workplace Agreement.

Consequently, while many AMMA member companies have moved into the federal jurisdiction by entering into Australian Workplace Agreements, they have found themselves caught up in disputes with unions in the state commissions. Clearly, a multi state and federal workplace relations system in Australia has caused confusion and significant cost to resources sector companies, particularly where it has involved protracted hearings in the state industrial relations commissions and courts. This is a distraction from the main game of exporting Australian minerals and energy to the global market.

Whilst WorkChoices has significantly modified the workplace relations regulation of constitutional corporations, six different workplace relations systems still exist. State industrial systems remain relevant to unincorporated employers[22] and the Labor state governments continue to seek to exert influence over the workplace relations of corporations. [23] Further reform is needed to create a truly national workplace relations system.

[22] Except for Victoria which has referred their powers to the Commonwealth.

[23] In South Australia, parliament passed legislation to give the South Australian Industrial Relations Commission power to act as an alternative dispute resolution provider for industrial disputes between constitutional corporations and their employees/union (*Commercial and Arbitration (Referral of Disputes) Act 1986* (SA)). In Tasmania, the Workplace Standards Tasmania ran a six month trial appointing union representatives as workplace inspectors under the *Workplace Health and Safety Act 1995* (TAS).

Minimum Standards and Awards

Minimum Standards and Awards

There must be a set of legislated statutory core minimum standards of general application. There must also be an ability to agree to hours of work that meet operational needs having regard to OHS and fitness for work principles.

Awards should be restricted to providing a safety net of core conditions employment in industry (and where relevant sub-industry) sectors. Enterprise awards should be treated as if they were enterprise agreements.

WorkChoices introduced a set of legislated core minimum conditions of employment for constitutional employers. In light of this the role of awards as a safety net is largely redundant. However, if awards are to remain they should be rationalised and simplified by removing provisions that impede business efficiency. This will provide for a safety net of core award conditions on an industry (and where relevant, sub-industry or enterprise) basis.

The legislated minimum conditions should be comprised solely of the core minima. Setting minimum conditions beyond the core minima in order to protect employees against isolated conduct of rogue employers is overly prescriptive and reduces the capacity for the majority of employers to introduce and/or maintain flexibility in the workplace. This type of conduct is best dealt with by ensuring a strong economy with a high demand for skills, which provides opportunities for dissatisfied employees to move to better paid, more satisfying jobs.

The core minima should replace the comparable award standards, presenting employers and employees with an accessible and nationally consistent set of minimum conditions. This is particularly important in the resources sector where companies operate on a nationwide basis, as it will ensure that employees working in different states with varying transitional arrangements can be guaranteed the same minimum level of entitlement.

These core minima should underpin agreement making, providing employers and employees with a simple, understandable and easily applied test for the registration of an agreement.

Such a system will allow the awards to be simplified and rationalised. However, protection should be given to the continuation of enterprise awards, which should be regarded as enterprise agreements rather than as an award minimum, particularly with respect to setting a minimum wage.

Enterprise specific awards such as the *Iron Ore Production and Processing (BHP Billiton Iron Ore Pty Ltd) Award 2002,* are 'akin to an Enterprise Agreement.'[24] Importantly, the rates of pay are not award based minima in these types of awards. In respect to the making of the above award, the wage rates of employees employed under individual agreements were considered[25] with the result being that the wage rates 'significantly exceed comparable federal awards.'[26] The Western Australian Industrial Relations Commission made the following comments in respect of the award:

> The evidence before us shows that the safety net award prescribes the rates of wage actually paid by BHPB. The terms and conditions of employment it prescribes are those actually received by the employees…in the present circumstances the safety net award is effectively an enterprise award. The award may thus be distinguished from the common rule *Metal Trades (General) Award*.[27]

Therefore, enterprise specific awards must continue, as they were established to meet the needs of a particular business and form the basis of their employment arrangements.

[24] BHP Billiton Iron Ore Pty Ltd, Submission to the Australian Fair Pay Commission, 30 March 2007, 1. http://www.fairpay.gov.au/NR/rdonlyres/210D2491-F795-4CFE-95E1-06377D7FF7A9/0/BHPBIO_Submission_2007.pdf <18 April 2007>
[25] Ibid, 1.
[26] Ibid, 2.
[27] WAIRC, cited in BHP Billiton Iron Ore Pty Ltd, Submission to the Australian Fair Pay Commission, 30 March 2007, 4. http://www.fairpay.gov.au/NR/rdonlyres/210D2491-F795-4CFE-95E1-06377D7FF7A9/0/BHPBIO_Submission_2007.pdf <18 April 2007>

Agreement Making

Agreement Making

There must be access to a broad range of agreement making options including collective agreements, Greenfield agreements and statutory individual agreements, with a duration of up to five years.

Agreements should be able to customise the conditions of employment to the needs of the parties and be capable of overriding awards or (in the case of individual agreements) collective agreements. Agreements should not be imposed except in limited circumstances.

The resources sector is a pioneer in determining working arrangements at the workplace level. An early example can be found in the 1978 *Iron Ore Production and Processing (Hamersley Iron Pty Ltd) Award*.

In the 1990's Australian industry recognised that it needed a flexible labour market in order to maximise economic growth, employment opportunities and to maintain and improve our standard of living in an increasingly globalised economy. The need for workplace agreements to become a key element of the workplace relations system was endorsed by major political parties, all major employer associations, the Australian Council of Trade Unions (ACTU) and most individual unions.[28]

In 1991 ACTU Secretary Bill Kelty, claimed that employee capacity, willingness and confidence to put forward innovative ideas had been reduced. He attributed this to:

> wages being totally controlled by people workers don't know, by people who have never visited their workplace and through a process which workers do not understand or have direct input into…[29]

In 1992 former Prime Minister Paul Keating said that the 1901 based system of settling disputes by conciliation and arbitration and making awards was 'a system which served Australia quite well.' However, he went on to state:

> the news I have to deliver today to those of our visitors who still think Australian industrial relations is run this way, is that it is finished. Not only is the old system finished, but we are rapidly phasing out its replacement, and have now begun to do things in a new way.[30]

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[28] Hon Peter Reith MP, Federal Minister for Workplace Relations and Small Business, Workplace Agreements: The benefits for jobs, wages and economic security, Ministerial Discussion Paper, Canberra, February 1998.

[29] Kelty, Bill, Together for Tomorrow: recognising change, repositioning the union movement, rethinking unions, recruiting new members, ACTU Congress, September 9-13 1991, ACTU, Melbourne, 1991. cited in Peter Reith, MP, Breaking the Gridlock, Discussion Paper No 1, October 2000 <http://www.simplerwrsystem.gov.au/discussion/changecase.htm#4#4>

[30] Address by the (then) Prime Minister, the Hon Paul Keating to the International Industrial Relations Association Ninth World Congress, Sydney, 31 August 1992, cited in Peter Reith, MP, Breaking the Gridlock, Discussion Paper No 1, October 2000 <http://www.simplerwrsystem.gov.au/discussion/changecase.htm#4#4>

This was followed by the introduction of union collective agreements and in 1993 non-union collective agreements (termed Enterprise Flexibility Agreements) which could be made directly between an employer and its employees.[31] In respect to these agreements, former Prime Minister Paul Keating stated:

> Let me describe the model of industrial relations we are working towards…It is a model which places primary emphasis on bargaining at the workplace level within a framework of minimum standards provided by arbitral tribunals…it is a model under which compulsorily arbitrated awards and arbitrated wage increases would only be there as a safety net…the safety net would not be intended to prescribe the actual conditions of work of most employees, but only to catch those unable to make workplace agreements with employers.[32]

In 1996 the Howard Government provided for a broader range of collective agreements: union certified agreements (including Greenfield agreements) and non-union certified agreements (but without some of the procedural requirements of the EFAs).[33] New types of agreements that allowed an employer to negotiate directly with an individual employee were also introduced and called Australian Workplace Agreements.[34] These formal agreements have now been available and utilised by employers in all industries for over a decade. Informal agreement making has been in use for considerably longer.

Individual Australian Workplace Agreements continue to be welcomed by employers in the resources sector, who have a close relationship with their employees. This has been demonstrated by the growth in direct employment relationships since 1996.[35] The prevalence of Australian Workplace Agreements in the resources sector and its benefits to both employers and employees is discussed further in AMMA's March 2007 paper titled *AWAs - A Major Matter for Miners*.[36]

AMMA believes that a modern workplace relations system should provide a range of agreement making options. Such a system should ensure the varying needs of the employers and their employees can be met, and that the range of agreement options is reflective of the levels of union representation at the workplace.[37] The agreement making options should include collective agreements (both union and non-union), statutory individual agreements and Greenfield agreements.

It is important that statutory individual agreement making remains an option, as without these types of agreements the only form of individual agreement available to employees and employers is a common law contract of employment.

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[31] Industrial Relations Act 1988 (Cth)
[32] Prime Minister Paul Keating (1993) Speech to the Institute of Company Directors, Melbourne, 21 April 2003.
[33] Workplace Relations Act 1996 (Cth)
[34] Workplace Relations Act 1996 (Cth).
[35] 66.7% of all resource sector employees are employed under direct individual arrangements. Australian Bureau of Statistics, *Employee earnings and hours survey*, May 2006, (6306.0). Of the federal agreements that have been entered into in the resource sector, 62% of those agreements are Australian Workplace Agreements, as opposed to a union or employee collective agreement.
[36] AMMA (2007) *AWAs: A Major Matter for Miners*, AMMA. http://www.amma.org.au/home/publications/publications_home.html#1
[37] Australian Bureau of Statistics 2007 *Employee earnings, Benefits and Trade Union Membership*, January 2007 (6310.0) ABS, Canberra.

Common law contracts of employment are not a suitable alternative to statutory individual employment arrangements such as AWAs. The shortcomings associated with a common law contract of employment, as opposed to an AWA, are that it:

1. cannot be used to override terms of a collective workplace agreement;
2. cannot be used to override terms and conditions of employment contained in a federal award;
3. cannot be used to override terms and conditions of employment contained in a NAPSA;
4. cannot be used to override terms and conditions of employment contained in a pre-reform federal agreement;
5. cannot be used to override terms and conditions of employment contained in a pre-reform state agreement;
6. cannot displace conditions of employment contained in a Commonwealth law that is prescribed by the regulations;
7. cannot be used to override applicable state workplace related legislation (e.g. long service leave);
8. cannot be used to specify a Superannuation Fund (in cases where this is available);
9. cannot be used to facilitate workplace flexibility where union consultation or agreement is required by an award, transitional arrangement or workplace agreement (e.g. implementation of 12 hour shifts);
10. cannot be used to cash out annual leave;
11. does not provide any protection against the initiation of a bargaining period and the taking of industrial action;
12. does not provide a means to agree to an alternative to dispute resolution process contained in Division 1 of Part 13 of the *Workplace Relations Act 1996* (Cth);
13. does not protect against uninvited union involvement in the investigation of an alleged breach of an individual agreement;
14. does not protect against a union exercising right of entry to hold discussions with employees;[38] and
15. does not provide the capacity to vary the meal break entitlements under section 607 of the *Workplace Relations Act 1996* (Cth).

In order to provide a workable common law agreement option as an alternative to an AWA the following legislative changes would be required:

- The common law agreement must recognise the direct relationship between the employee and the employer and not be subject to the mandated involvement of external parties.
- The common law agreement must be capable of regulating the terms and conditions to the exclusion of subordinate industrial instruments such as awards or agreements and be enforceable in an easily accessible Court.

[38] If an employer has entered into an AWA with all its employees, a union does not have a right to enter the workplace to hold discussions with employees: see *Workplace Relations Act 1996* (Cth) s760.

- The agreement should meet or be globally equivalent to the applicable minimum standards.
- Industrial action must be prohibited in the negotiation of, and during the operation of, the agreement.

Another means of facilitating individual agreement making could be provided by allowing workplaces to 'opt out' of the existing workplace relations regulation system and internally regulate.

In 2000 AMMA published *A Model of Internal Regulation of Workplace Employee Relations: Discussion Paper*[39] which described an internal regulation model where workplaces (with the express support of the majority of employees) could 'opt out' of the traditional statutory based regulations system in favour of a self-regulated arrangement termed 'internal regulation'.

This model would be appropriate for workplaces which have mature, highly developed human resource management systems and processes for internal resolution of workplace grievances.

Within an internal regulation model common law contracts could operate without needing to override awards, and employees would not have access to protected industrial action under this system, thus ensuring the supply of labour. Any disputes would be resolved under internal dispute resolution mechanisms.

It is also important that greenfields agreements remain an agreement option. Greenfield agreements underpin the vast majority of new resources sector construction projects' labour relations arrangements and are utilised to:

- Assist in the approval of major projects by allowing developers to more accurately forecast construction labour costs by negotiating and agreeing employment arrangements in advance of a project's approval and/or commencement.

- Reduce the potential for industrial action over terms and conditions of employment by registration of the agreement prior to the commencement of work. This prevents the taking of lawful industrial action, significantly reducing the risk of industrial disputation in an industry previously characterised by high levels of industrial militancy.

The labour relations arrangements in a workplace are one of the major factors in the successful planning, financial approval and execution of major projects in the resources sector. The certainty and security of the capital investment is closely linked to developing and maintaining stable labour relations arrangements. New projects or expansion of existing operations in the mining and hydrocarbons sectors invariably requires investment of substantial sums of money. While the viability of projects will be primarily driven by the quality of the resource to be developed, the growing scale of such

[39] A Model of Internal Regulation of Employee Relations: Discussion Paper', February 2000, http://www.amma.org.au/tl_index_publications.html , 5/7/05.

projects means that the development costs, including the engineering and construction phase costs, are critical to the financial planning and decision making for these projects.

Agreements must also have an appropriate operating period. This is important as major infrastructure projects typically last more than 3 years. The maximum operating period must allow the project to be completed before the expiry of the agreement to ensure certainty in respect to labour costs and protection from industrial action during the life of the agreement. In 1996 AMMA successfully lobbied the Government to increase the maximum term of agreements to 5 years, and access to these arrangements has further encouraged infrastructure development in the resources sector.[40]

Agreement making should be free from the mandated involvement of third parties. This involvement extends beyond the negotiation of an agreement and includes the potential for compulsory arbitration in agreement making. Arbitration, with its attendant imposition of an agreement on the parties by an external body (e.g. the Australian Industrial Relations Commission), should only be permitted in exceptional circumstances. Those circumstances include where the failure of the parties to reach agreement is significantly impacting on the life, safety, or health of the population or where it may cause significant damage to the Australian economy.

The content of an agreement should be restricted to matters that pertain to the relationship between the employee and the employer. Matters outside of the employment relationship, such as the payment of union bargaining fees by non-union members, should not be permitted to be contained in an agreement.

[40] Exports are forecast to earn $116 billion in the resources sector in 2007-08. Abare, Australian Commodities, March Quarter 2007. www.abareeconomics.com

Agreement Processing

Agreement Processing

There should be a simple administrative agreement registration process, without a requirement to attend a formal hearing. Agreements should commence on signing and be required to meet a simple set of legislated minimum conditions.

Once an agreement that provides for the minimum conditions has been entered into between the parties, the actual processing of the agreement remains a purely administrative matter - the steps to registration need only include an easily applied objective test against a legislatively defined set of minimum conditions. This approach is preferred over a global test against an award (or possibly a number of awards) which involves a 'highly complex comparative assessment of at least two industrial instruments, a task which requires careful scrutiny of numerous conditions.'[41]

A simple process will result in 'red tape' being kept to a minimum, reduce transaction costs and time spent in processing agreements. Registration in such circumstances can be attended to by a single administrative authority as opposed to holding a formal hearing.

The previous approach of conducting formal Commission hearings, where parties and the Australian Industrial Relations Commission could 'seek evidence, ask questions, produce witnesses and provide testimony'[42] in the process of certifying the agreement was expensive, onerous and time consuming. It also produced inconsistent results as was evident in Re *Knight Watch Security Pty Ltd* (*Knight Watch*).[43]

In *Knight Watch*, the Commission at first instance sought advice of an academic consultant and it was not until 15 weeks later that the consultant advised that the agreement would not meet the requirements of the *Workplace Relations Act 1996* (Cth) without undertakings being given by the employer.[44] Consequently the Commission refused to certify the agreement. Although the decision at first instance was set aside on appeal, the entire process was unnecessarily lengthy and involved significant cost despite the parties having reached an agreement.[45]

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[41] Mitchell, Richard; Campbell, Rebecca; Barnes, Andrew' Bicknell, Emma; Creighton, Kate; Fetter, Joel and Korman, Samantha, 'What's going on with the NDT? An analysis of outcomes and process under the Workplace Relations Act 1996 (Cth) *Journal of Industrial Relations*, V47, No4, December 2005, 393-423, 400.
[42] Ibid, 401.
[43] Cited in Mitchell, Richard; Campbell, Rebecca; Barnes, Andrew' Bicknell, Emma; Creighton, Kate; Fetter, Joel and Korman, Samantha, 'What's going on with the NDT? An analysis of outcomes and process under the Workplace Relations Act 1996 (Cth) *Journal of Industrial Relations*, V47, No4, December 2005, 393-423, 401.
[44] Mitchell, Richard; Campbell, Rebecca; Barnes, Andrew' Bicknell, Emma; Creighton, Kate; Fetter, Joel and Korman, Samantha, 'What's going on with the NDT? An analysis of outcomes and process under the Workplace Relations Act 1996 (Cth) *Journal of Industrial Relations*, V47, No4, December 2005, 393-423, 401.
[45] Ibid.

In addition, the volume of agreements subject to a formal process places serious time constraints on the government agency responsible. In the first year of WorkChoices there have been 312,438 workplace agreements lodged with the Office of the Employment Advocate[46] and this only appears to be increasing. If all of these agreements had required a formal hearing in order to be processed, such a requirement would have wasted an estimated 39,500 days of unproductive time for employers and employees (or their representatives).[47]

Where there is a simple and straightforward agreement registration process which recognises that the parties have made an agreement that meets the minimum conditions, all agreements should commence on the date agreement was reached (unless otherwise agreed). From an employee perspective, the commencement of the agreement upon lodgement in conjunction with the removal of formal hearings will remove unnecessary delays in receiving the benefits of the agreement (e.g. a wage increase).

[46] Office of the Employment Advocate, *Workplace Agreements under WorkChoices to end of March 2007*, Australian Government, Canberra. http://www.oea.gov.au/docs/news/factsheet_mar07.pdf , 19 April 2007.
[47] This is based on a half hour hearing to process an agreement.

Industrial Action and Compliance

Industrial Action and Compliance

The law should prohibit the taking of industrial action during the life of an agreement and provide readily accessible remedies to prevent or stop the taking of unlawful industrial action and the capacity to seek compensation.

Access to protected industrial action for employees and employers during the negotiation of an agreement should be conditional on the party taking action having genuinely attempted to reach agreement and, in the case of employees, approved by a majority of employees in a secret ballot vote prior to commencement of the action.

There should be a statutory prohibition of secondary boycotts, pattern bargaining, action which impacts on essential services and action in support of claims that do not relate to the employment relationship.

The provision of special education and policing arrangements in the Construction sector and *Trade Practices Act 1974* (Cth) breaches should continue.

There should be no need for the taking of industrial action in a modern workplace relations system. If industrial action is made available, access should be restricted to genuine bargaining and only used as a last resort. The decision to take industrial action should also be one supported by a majority of the workforce via a secret ballot.

Genuine bargaining should not include claims that do not pertain to the employment relationship or pattern bargaining. Restricting claims to matters pertaining to the employment relationship prevents negotiations being used to further political motives, such as bargaining fees for non-union members.

Pattern bargaining seeks to achieve common terms, conditions and agreement expiry dates across multiple employers both within and across industry sectors. The pursuit and imposition of common outcomes in this manner has no regard to the unique commercial pressures facing different industries and different employers within particular industries. It is most unlikely that productivity increases linked to common wage outcomes will be uniformly delivered.

However, pattern bargaining should be distinguished from project agreements made in respect to resource projects – these are project specific in scope and effect. Terms and conditions of employment in these types of agreements are set having regard to the unique aspects of the particular project, i.e. location, remoteness, project value and work environment disabilities. Terms and conditions contained in a project agreement do not automatically carry forward to the next job or project as a construction contractor moves on. Importantly, through pre-start agreement negotiation processes routinely employed

by head contractor/s, sub-contractors coming onto the project would have a clear understanding of the rates and conditions on which the work was to be tendered for and undertaken.

Once an agreement has been reached, industrial action should be prohibited during the life of the agreement. This is on the basis that *'a deal is a deal'* and all employers and employees understand that they are legally precluded from taking industrial action during the period of operation of an agreement. Similarly, employers and employees should be able to expect that their agreed arrangements continue through changes in government.

Concurrent with the right to take lawful industrial action, parties who choose to take unlawful industrial action should be held responsible for their actions without additional warning on a strict liability basis. The capacity to stop or prevent unlawful industrial action must be swift and orders to stop action must be treated seriously.

Where orders to prevent or stop industrial action are not treated seriously significant damage is often suffered by innocent parties. For example, Melbourne Barrister Stuart Wood quotes one union official who boasted in respect to the old section 127 orders that 'I've got hundreds of them and I just throw them in the bin.'[48] Another example can be found in the Hunter Valley No. 1 mine in the NSW coal fields where picketing continued for weeks after a section 127 order was made until an injunction was finally granted by the NSW Supreme Court.'[49]

Delays in preventing or stopping industrial action are also a cause of concern for employers. In one example Transfield Construction Pty Ltd was the subject of a picket at the Patricia Baleen gas processing facility. The picket restricted the flow of materials and labour on site. Transfield lodged a section 127 application seeking an order that the employees return to work. In this matter the AWU submitted that the picket was a community protest, after 10 days and in spite of continuing applications for adjournment by the AWU, the Commission granted the application.[50] In separate proceedings instituted by the Australian Competition and Consumer Commission, the Federal Court imposed penalties totaling $300,000 against the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union; the Australian Workers' Union and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia for unlawfully hindering the construction of the gas plant in contravention of the s.45D *Trade Practices Act 1974*

[48] Stuart Wood, cited in Des Moore, 'Judicial Intervention: The Old Province for Law and Order,' An Address to The Samuel Griffith Society's Thirteenth Conference held in Melbourne on 31 August 2 September, 2001. http://www.hrnicholls.com.au/Special/MooreSG2002.html

[49] Stuart Wood (2000) *The Death of Dollar Sweets*, Presentation to the HR Nicholls Society, 8 September 2004. http://www.hrnicholls.com.au/nicholls/nichvo21/wood2000.html

[50] Transfield Construction Pty Ltd - re Application for order that industrial action not occur - PR924386 (6 November 2002)

In a dispute in the metal industry the Commission took 17 days to determine a section 127 application. [51] In another, a NSW freight rail application took 9 days for a section 127 order.[52] Delays of this nature allowed a culture to develop where Unions take short term wildcat action with impunity.

In the resources sector contractual arrangements for the supply of commodities (such as energy) do not allow for the supply to be deferred. Employers who are subject to unlawful action therefore are prone to suffering considerable losses in short periods. In one case an Electricity Generator was forced to purchase electricity on a spot market to meet a contractual requirement and lost over $15 million in less than two hours.

In light of the above, the legislation needs to provide a capacity for rapid access to dispute resolution providers and the Courts to enable disputes to be dealt with and resolved at short notice at any time of the day or week. There must also be an avenue to seek compensation for loss.

The compliance provisions are not restricted to the *Workplace Relations Act 1996* (Cth). The provisions of sections 45D and 45E in the *Trade Practices Act 1974* (Cth) in respect to secondary boycotts also play an important role.

Secondary boycott action should remain prohibited through the *Trade Practices Act 1974* (Cth). Secondary boycott action harms innocent businesses that have no direct involvement in an industrial dispute and those businesses must be adequately protected. Failure to prevent such action interferes with the ability of a business to trade or go about its lawful activities. Maintaining these provisions in the *Trade Practices Act 1974* (Cth) will ensure that there is sufficient incentive to refrain from secondary boycott action and other unlawful conduct and that there is sufficient remedy where this occurs.

A practical example of the positive effect of the secondary boycott provisions in the *Trade Practices Act 1974* (Cth) is found in the waterfront dispute. In 1998, those parties not directly involved in the dispute between Patricks and the MUA were protected from secondary boycott action due to the risk of substantial monetary penalty. This meant that despite the dispute occurring, the waterfront kept on working because P&O, who was not a party to the dispute, was able to continue unaffected. Thus, the secondary boycott provisions of the *Trade Practices Act 1974* (Cth) have an ongoing role in ameliorating extreme behaviour and their success is not measured purely by successful actions.

In the Building and Construction sector the industry specific compliance regime in the *Building Construction Industry Improvement Act 2005* (Cth) and the reintroduction of the 'rule of law' as a result of the activities of the Australian Building and Construction Commission have significantly contributed to historically low levels of industrial disputation in the construction sector.

[51] David Purvis, 'Section 127 of the Workplace Relations Act 1996 and all that', address to the HR Nicholls Society XVIII Annual Conference 1997, http://www.nicholls.com.au/nichvo18/volxvii9.htm
[52] Ibid.

Industry wide, the number of working days lost per year in Australian workplaces, while fluctuating, has decreased substantially over the last decade,[53] to just 8.9 working days lost per 1000 working Australians in 2006 (to the September quarter only).[54] In the mining industry (excluding coal), there were 1190 days lost per 1000 employees in the June and September quarters of 1995 compared to 11.9 days lost in the same period in 2006.[55]

Low levels of industrial disputation, supported by a strong regime that protects employers from unprotected industrial action, gives those employers confidence to invest. Commenting on the reforms to the building industry, Brian Seidler, Executive Director of Master Builders, New South Wales stated that:

> [t]here were suggestions that contractors had to allow for up to 30 percent of a tender for illegal industrial activity. The industry can tender properly without worrying about grotesque industry problems.[56]

There is also a case for separate arrangements in respect to industrial action affecting 'essential services,' which AMMA raised in its *Submission to the Senate Committee on Agreement Making*.[57] The 'public interest' is best served where there is certainty regarding the continuity of supply of 'essential services.' The benefits of separate arrangements to the Australian community, our trading partners and Australia's position in the international community should take precedence over the capacity for employees to disrupt essential services.

[53] Australian Bureau of Statistics, *Year Book Australia 2007*, ABS, 185.
[54] Australian Bureau of Statistics, *Industrial Disputes*, September 2006 (6321.0.55.001). Table 2b: Industrial disputes which occurred in the period, Working days lost per thousand employees, Industry (all industries figure). In 1996 131.5 working days per 1000 employees were lost.
[55] Australian Bureau of Statistics, *Industrial Disputes*, September 2006 (6321.0.55.001).table 2b: Industrial disputes which occurred in the period, Working days lost per thousand employees, Industry (other mining).
[56] Brian Seidler, cited in Richard Calver (2007) 'Building and Construction Industry Workplace Reform: Current Controversies,' A Paper for the Master Builders Association of Newcastle, 22 February 2007, Master Builders Australia, 4.
[57] AMMA, Submission to the Senate Enquiry on Agreement Making, August 2005. http://www.amma.org.au/home/publications/publications_home.html#1

Unfair Dismissal

Unfair Dismissal

There should be a single unfair/unlawful dismissal system, with exemptions for probationary employees, and high income earners.

The primary determinant of whether a termination is unfair should be confined to the merits of the case.

Employers should be protected from vexatious and frivolous claims by providing an ability to recover costs in the case of unmeritorious claims.

If there is to be a statutory remedy for unfair dismissal it must operate within the confines of strict boundaries. The interests of both the employer and employee need to be balanced. AMMA supports the retention of the existing provisions concerning unlawful termination. These provisions are consistent with AMMAs employee relations charter. The interests of both the employer and employee need to be balanced.

Business needs to be protected from vexatious or frivolous claims by a vetting process designed to remove such claims before they are listed for conciliation. This will reduce the cost of defending such claims. Not only does this cover financial cost to pay for representation or offers of settlement merely to have the matter finalised, but also the cost associated with lost time in the course of defending a claim.

The pursuit of a claim lacking in merit is illustrated in *Gasz v Mobil Refinery Australia Pty Ltd.*[58] In this case the dismissed employee had effectively subcontracted his job to another employee, paying the other employee for his shifts with either cash or tattslotto tickets. Gasz was aware that the other employee had a gambling problem and that paying other employees to work his shift breached company policy and raised fitness for work issues. The employee was not successful in his application for unfair dismissal and he appealed the decision. Although the same conclusion was reached on appeal, the employer was nevertheless subject to substantial cost in defending the claim.

With claims such as these being made, it is important that appropriate measures are in place to ensure that a culture does not form where employees make speculative applications despite lack of merit, on the chance of receiving financial compensation.

On that basis, there must also be an ability to recover costs associated with defending an unfair dismissal claim, particularly where such claims are found to be lacking merit. In addition, there must be a cost associated with making an unsuccessful application as a disincentive to unmeritorious claims.

[58] PR956377, Australian Industrial Relations Commission, 14 April 2005.

It is also important that unfair dismissal claims and their defence can focus on the merit of the dismissal as opposed to the procedural aspects. While procedure remains an important consideration, it should not be the paramount consideration when determining whether a dismissal is harsh, unjust or unreasonable. In *AWU (Tasmania Branch) v Goldfields Ltd*[59] the Commission ordered re-employment of a dismissed employee on the basis that he had not received procedural fairness despite being satisfied that the employee had smeared human excrement on the knob of a truck's steering wheel. The employer had also put forward other evidence that the employee had a history of playing offensive and distasteful jokes on other employees.

This case involved six days of hearing at significant cost to the employer. Although the employer appealed, the full bench awarded three months pay to the employee due to shortcomings in the employer's procedure.

Therefore, it is important that where there is a valid reason for dismissal and no substantive unfairness is present, the Commission should not be able to accede to a claim of unfair dismissal solely on procedural grounds.

Employers must also be given adequate time to assess the suitability of the employee, which is offered by the probationary period. This is important particularly in the mining industry where employees are on a rotating fly in and fly out roster. For example, in a three month period, a resources sector employee on an even time roster will only be at work for half this time, effectively giving the employer only approximately six weeks to determine their suitability. A sufficient qualifying period will give an employer more time to assess the employee's suitability.

[59] T9601, Tasmanian Industrial Relations Commission, 14 March 2002.

Union Right of Entry

Union Right of Entry

There should be a single national right of entry law for unions, with access restricted to meeting with union members who have requested the meeting and where a genuine breach of an industrial instrument or a provision of the Workplace Relations Act 1996 (Cth) has occurred.

It is imperative to have a single national set of right of entry laws to ensure consistency and certainty for employers and employees. In *BCG Contracting v CFMEU,*[60] the CFMEU sought to enter the workplace for discussion purposes under the Western Australian right of entry laws. These laws differed from the *Workplace Relations Act 1996* (Cth), which did not allow entry where all employees are covered by an AWA. Understandably, BCG Contracting sought to rely on the provisions of the federal right of entry laws on the basis that all its employees were covered by AWAs.

The Federal Court disagreed with BCG Contracting and held that right of entry can still be exercised under state legislation even where the employees at the workplace are engaged solely under a federal industrial instrument. Such a decision makes it difficult for employers, as they are required to manage multiple sets of right of entry provisions.

Union right of entry should not be an unfettered right. Limitations on right of entry are important to minimise unnecessary disruption in workplaces to ensure the continued performance of work. When unions are able to enter a workplace it should be done where they have a permit in place and the right should be exercised responsibly, for example, that the union does not try to coerce employees to become members. This will protect the right of the employee to choose to become or not become a member of a union.

The risk that union officials will engage in wrongful or unlawful behaviour is demonstrated by recent prosecutions bought against Joe McDonald, the assistant secretary of the Construction Forestry Mining and Energy Union in Western Australia. He has been charged with five counts of trespass for allegedly entering construction sites without a permit in early 2007.[61]

According to *The Australian*, Joe McDonald's federal permit was revoked five years ago and was not reinstated.[62] His Western Australian permit was revoked in 2006 after he was caught climbing on a crane at a Perth worksite[63] and in the 2002 Cole Royal

[60] FCA 981 (29 July 2004)
[61] Elizabeth Gosch, 'Union Chief to fight trespass charges', *The Australian*, 11 April 2007.
[62] Ibid.
[63] Ibid.

Commission inquiry, he admitted to shutting down one construction site to force workers to join the union.[64]

Therefore, a permit regime is required to regulate the behaviour of union officials who wish to enter a workplace, to ensure access presents minimal interference of the business operations.

Entry should be restricted to the investigation of a breach of an industrial instrument applying to the union or its member or where there is a breach of the *Workplace Relations Act 1996* (Cth). In addition, entry must only occur where the member has made a request to the union to investigate the matter. The purpose of the entry to the workplace must be communicated to the employer at the time of providing the required notice of entry. This will also give the employer the opportunity to specify the occupational health and safety requirements and meeting locations that are to be followed while exercising the right of entry.

Unions (like other service providers) should not have a right to enter a workplace to recruit members or promote their organisations' political objectives. Unions now represent a minority of Australian workers: in the non-coal resources sector the average level of unionisation is only 11.6%.[65] The Australian Chamber of Commerce and Industry has estimated that 90 percent of Australian workplaces do not have a single union member.[66] Unions should organise themselves outside of the workplace and outside working hours.

[64] Ibid.
[65] Australian Bureau of Statistics, *Employee Earnings, Benefits and Trade Union Membership* Cat. No 6310.0 August 2006.
[66] Peter Hendy CEO ACCI, *Increasing union power would be at odds with latest workplace data*, Media Release, 3 April 2007, ACCI.

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