



# MINERALS COUNCIL OF AUSTRALIA

SUBMISSION TO THE SENATE EDUCATION,  
EMPLOYMENT AND WORKPLACE RELATIONS  
COMMITTEE INQUIRY INTO THE FAIR WORK BILL 2008

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## TABLE OF CONTENTS

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<b>EXECUTIVE SUMMARY</b>	<b>2</b>
<b>PREAMBLE</b>	<b>6</b>
<b>PART ONE – POLICY IMPACT</b>	<b>7</b>
1. Workplace arrangements in the modern minerals industry	7
2. Labor’s policy position	8
3. Labor assurances	8
4. Exceeding the mandate	9
<b>PART TWO – ECONOMIC IMPACT</b>	<b>12</b>
1. The benefits of labour market reform and dangers of erosion	12
2. The immediate economic challenge – containing the economic fallout	13
3. The economic benefits of reforms – employment and productivity	13
4. The cost of reversing the gains – a study of a productivity shock	15
<b>CONCLUSION</b>	<b>17</b>
<b>APPENDIX ONE</b>	<b>18</b>
Workplace relations in the minerals industry	18
<b>APPENDIX TWO</b>	<b>22</b>
Mining Productivity – explaining recent figures	22
<b>APPENDIX THREE</b>	<b>23</b>
The contribution of the minerals industry	23
Growing the industry	24

## EXECUTIVE SUMMARY

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Two and a half decades of industrial relations reform, spanning the Hawke, Keating and Howard administrations, have transformed Australia's workplace relations system to emphasise the individual worker, the individual enterprise and productivity. These reforms provided the framework for the Australian minerals industry to remove outdated, restrictive work practices, providing flexibility and choice in workplace arrangements and transforming pay and conditions and workplace culture, delivering significant tangible dividends.

The Australian minerals industry has transformed its workplaces from a culture of confrontation and divisiveness, where workplaces were battlegrounds of a "them and us" conflict, to a workplace culture of collaboration and direct relationships. These relationships are founded in individual enterprise and personal accountability, recognition of contribution and performance, a shared commitment to skills and personal development, and a culture of mutual dependency and prosperity. This transformation started long before the resources expansion from 2004 to 2008, and, indeed, the change was founded in the initial stages of workplace reforms and at a time when the Australian minerals industry was struggling, barely recovering the cost of its investment capital.

The proposed Fair Work Bill represents an opportunity to further build on these reforms, and not to undermine or compromise them either by design or as unintended consequences. The stated goal of the legislation is a workplace relations system that promotes productivity while retaining the twin pillars of flexibility and fairness. The MCA supports these broad objectives and considers that the essential ingredient of a flexible and fair workplace is a collaborative partnership between employers and employees founded in direct relationships, shared objectives and mutual respect.

The MCA considers that while the overall *intent* of the legislation is to improve workplace arrangements for improved productivity, flexibility and fairness, in line with the trend of earlier reforms, the legislative package contains substantial flaws in critical areas.

As a consequence, the proposed Fair Work Bill is not consistent with the reforms undertaken by former Labor and Coalition administrations. If implemented without amendment, it would unravel many of the advances secured by previous workplace relations reforms. It would reverse a steady trend toward increased labour market flexibility, and particularly in promoting direct relationships in the workplace, just as the Australian economy faces its most critical economic challenge for at least a generation.

Significantly, the legislation is not consistent with the "*Forward with Fairness*" package unveiled by the Australian Labor Party prior to the 2007 Federal Election. The legislation *does* reflect elements of the Labor Party's pre-election commitments including access to common law contracts and individual arrangements, union or non-union collective agreements, simplified modern awards that offer an improved safety net, a 'better off overall test' for agreements and greater protection against coercion. There are, however, critical areas of the legislation where both the letter and the spirit of the legislation are at odds with policy commitments provided by the Government, in Opposition, prior to the last election.

### **The proposed legislation is inconsistent with pre-election commitments...**

In respecting the Government's mandate for workplace relations reform in accordance with its pre-election policy, it is important to recognise that the MCA is **not** arguing for retention of those aspects of the existing Work Choices legislative framework that the Rudd Government secured a mandate at the federal election in November 2007 to reform. Further the MCA supports many aspects of the proposed legislative package.

**That said, critical provisions of the Fair Work Bill exceed that mandate, with direct and indirect impacts that threaten to undermine the legislation's principal goals of flexibility, fairness and improving productivity, specifically in proposing:**

- an expansion of the scope of right of entry;
- increased access to the private records of employees, particularly non-union employees;
- broader than necessary Good Faith Bargaining rules that will increase complexity, breach commercial confidentiality, tie companies and employees in additional legal proceedings and may distort bargaining in good faith because of the presumption of arbitration; and
- appointing unions as default bargaining agent for any of their members.

### ***Right of entry***

The most serious breach of mandate is the expanded rights of a union to apply for a permit to enter a workplace. This contradicts the ALP's promise that the current right of entry provisions would stay "without exception"<sup>1</sup>.

Union access rights should be based on direct and unambiguous connection with the workplace – such as employee interest or historical union coverage (which recognises existing demarcation decisions) and the application of a modern award or agreement that covers the employees at the workplace. Existing right of entry laws should be retained, including protocols on applying for permits and behaviour at the workplace.

### ***Access to records***

Similarly, the appointment of the union as the default bargaining agent and inspection of non-union employees records without just cause, were not declared before the Federal Election, and, even more significantly, represent an impost on freedom of association principles, the right to privacy and the goals of flexibility and fairness. In addition, the removal of the existing definition of "relevant record" broadens the type records that can be accessed.

### ***Prescriptive Good Faith Bargaining rules***

The proposed Good Faith Bargaining rules breach the pre-election mandate by creating interventionist processes that ultimately contradict the goals of fairness, flexibility and productivity. The Bill makes provision for the minutiae of how bargaining, negotiating and agreements are made. In being so prescriptive, and thus restrictive, the Bill compromises the flexibility needed for modern businesses operating in a dynamic highly competitive global market for human resources, capital and products. Instead of establishing an appropriate framework of rules with an independent umpire, the Bill seeks to direct participants.

While "Good Faith Bargaining" appears a benign concept, it disguises a myriad of opportunities for third party interference. Under this arrangement:

- a union can demand a seat at the table with only one employee as a member;
- the union is the default bargaining representative for a member. The employee must deliberately opt out of the union representing them – so-called "conscientious objection"- at the beginning of the process. There is no way for an employee to revoke that representation during the negotiation or appoint alternative representation;
- while there is a specific provision that says an employer does not have to make a concession in a negotiation, an employer may have to prove it has considered the union offer. Without such proof – or even with it – a union may still seek further good faith bargaining orders from Fair Work Australia;
- the prospect of the default arbitration undermines the integrity and the commitment to bargain in good faith. The prospect of arbitration creates an environment of "position" bargaining – where parties resist concessions in anticipation of the consensus that will be forced upon them by the arbitrator – rather than bargaining with an attitude of mutual interests;
- gain access to confidential commercial arrangement on the grounds it may be pertinent to employees terms and conditions; and
- decide whether a company has divided its workforce in a "fair" way for the purposes of bargaining groups.

### ***The potential impact in workplaces will be significant...***

The transformation of workplace culture – characterised by collaborative, direct relationships – over the past two decades is fundamental to the economic success of the minerals sector, improvements in occupational health and safety and the industry's commitment to corporate social responsibility. An important contributor to this success has included unions who have built their legitimacy on a platform of service and adding value to the workplace culture.

Over the last decade the level of industrial disputation in Australian workplaces has fallen steadily. Elements of the proposed legislative package pose a significant risk of inciting a new wave of industrial unrest, with profound direct

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<sup>1</sup> Julia Gillard, (then) Shadow Minister for Employment and Industrial Relations, Balance and Flexibility – Opinion Piece, Australian Financial Review, 31 August 2007.

and indirect impacts on the Australian minerals industry and the Australian economy. This disruption stands to have the following impacts:

- undermine the culture of:
  - collaboration, of individual enterprise and personal accountability,
  - commitment to the inviolability of safety and health, and
  - increasing productivity and mutual prosperity;
- the renaissance of union demarcation dispute as competing unions apply for the right to enter and hold discussions because their rules overlap;
- a return of unions seeking to make test cases out of selected companies;
- confusion and compliance costs for managers having to deal with increased bureaucratic procedures, shifting the focus to administration and away from improving production and boosting returns to shareholders and employees;
- undermine the confidence and independence of employees to make their own decisions about representation.

### **Risks of substantial adverse economic impacts ...**

The broad-ranging economic reforms over the past 25 years – including the labour market reforms – have delivered a sustained boost in real incomes and productivity. Unemployment has fallen and business investment risen. Workplace relations changes have been an integral part, along with financial, trade and competition reform, in producing this economic dividend. Greater choice in agreement making has facilitated a greater alignment between the strategic goals of the corporation and employee terms and conditions, thereby promoting the essential secondary drivers of productivity: responsiveness, innovation, motivation, incentive and efficient resource allocation.

The creation of barriers to the flexible engagement and deployment of workers will weaken the capacity of the economy to adjust to economic challenges posed by the global financial crisis.

This is specifically unfortunate given that the Australian economy in general and the minerals industry in particular are confronting the most difficult economic environment for at least a decade. The MCA is concerned that a more restrictive workplace relations system could contribute to a deeper and more sustained economic downturn than might otherwise be the case. With forecasts that Australia's jobless rate could reach 7.5 per cent in early 2010, Government and industry must work closely to ensure that domestic policy reforms do not exacerbate the adverse impact of the global downturn.

In practical terms, this means higher unemployment and lower productivity. The scale of such impacts could be considerable. For example, a 10 per cent fall in productivity could cost the economy up to \$8 billion by 2020.<sup>2</sup>

Research by the Reserve Bank of Australia, looking at 18 OECD countries over the past 30 years, found not only a link between higher productivity and lower levels of regulation but that "*labour and product market deregulation have more of an effect in combination*".<sup>3</sup>

Moreover, both the Organisation for Economic Co-operation and Development and the International Monetary Fund have noted the contribution to labour market flexibility in Australia's economic performance and urged caution over the direction of changes prior to the tabling of the Fair Work Bill in December last year.

### **Conclusion**

The laudable objectives of the Fair Work Bill for an improved safety net within a legal framework of flexible workplace terms and conditions are at odds with the direct or unintended consequences that flow from significant elements of the legislation. If unamended these flaws could transform the current productive and harmonious workplace environment in the minerals sector into an operating environment characterised by demarcation disputes and drawn out legal proceedings in the newly formed Fair Work Australia. A shift in focus from improving productivity and performance to bureaucratic procedures and administration will undermine economic performance and international competitiveness of the Australian economy in general and the minerals sector in particular.

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<sup>2</sup> The Allen Consulting Group, The Economic Importance of the Australian Construction Industry in Australia, August 2007. Report on behalf of the Australian Constructors Association.

<sup>3</sup> C Kent and J Simon, Productivity Growth, The Effect of Market Regulations, Research Discussion Paper, Reserve Bank of Australia, 2007.

The MCA strongly recommends that the Bill be amended to ensure it conforms to the policy and practical commitments made in pre-election 2007 policy statements and the promises of the Australian Labor Party to create a fairer and more flexible industrial relations system that would build a high productivity, high skill economy.

The amendments proposed by the MCA will ensure that the legislation is consistent with the two decade trend towards greater flexibility in Australian labour markets and workplaces, in particular to continue to improve productivity and ensure that the letter and spirit of the Fair Work legislation is consistent with the workplace relations policies put before the Australian electorate in November 2007.

The MCA requests that the Senate Education, Employment and Workplace Relations Committee recommend the following changes, that:

- existing union right of entry laws be retained in their entirety. Further, union access rights be based on a direct and unambiguous connection to the workplace, such as employee interest or historical union coverage (which recognises existing demarcation decisions), and the application of a modern award or agreement that covers the employees at the workplace.
- all investigations of suspected breaches of industrial instruments, including inspection of records, to be undertaken by an independent Government authority. Reinstate the existing definition of a relevant record;
- remove the union default bargaining representation rule and make union representation of a member subject to specific written approval;
- enable an employee to revoke or change the appointment of a bargaining agent;
- ensure that good faith bargaining orders cannot be imposed on employers who exercise their right to not make concessions or agree to a term to be contained in an agreement;
- Good Faith Bargaining rules be amended so that they respect commercial arrangements and the confidentiality of companies' commercial operations, relevant information should be defined; and
- strict restrictions on the access to default arbitration to prevent it undermining the integrity and the commitment to bargain in good faith. The Bill must not allow the prospect of arbitration to create an environment of "position" bargaining, where parties resist concessions in anticipation of the consensus that will be forced upon them by the arbitrator rather than bargaining with an attitude of mutual interests.

## PREAMBLE

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This submission to the Senate Education, Employment and Workplace Relations Committee on the Fair Work Bill is made on behalf of Minerals Council of Australia (MCA) and complements the submission of the Australian Mines and Metals Association.

The MCA represents Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. MCA member companies produce more than 85 per cent of Australia's annual mineral output. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, environmentally responsible and attuned to community needs and expectations.

## PART ONE – POLICY IMPACT

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### 1. Workplace arrangements in the modern minerals industry

Two decades of industrial relations reform, spanning the three administrations of prime ministers Bob Hawke, Paul Keating and John Howard, have transformed Australia's workplace relations system to emphasise the individual worker, the individual enterprise and productivity. These reforms provided the framework for the Australian minerals industry to remove outdated, restrictive work practices, providing flexibility and choice in workplace arrangements and transforming pay and conditions and workplace culture, delivering significant tangible dividends.

The Australian minerals industry has transformed its workplaces from a culture of confrontation and divisiveness where workplaces were battlegrounds of a "them and us" conflict to a workplace culture of collaboration and direct relationships. These relationships are founded in individual enterprise and personal accountability, recognition of contribution and performance, a shared commitment to skills and personal development, and a culture of mutual dependency and prosperity. This transformation started long before the expansion between 2004 and 2008. Indeed, change was founded in the initial stages of workplace reforms and at a time when the Australian minerals industry was struggling, barely recovering the cost of its investment capital.

Choice and flexibility in workplace arrangements are necessary to provide the diverse range of employment options needed for vastly different operational requirements and operating parameters, within and between companies, across the minerals industry.

Over the past decade, implementation of the reforms has seen:

- employees in the minerals industry earn over 60 per cent more than the Australian all-industry average,
- multifactor productivity on average 11 percent per annum higher in mining than the all-industry average, averaging 2.3 per cent per annum (when accounting for the unique effects of capital effects and the access harder to mine reserves – See Appendix Two);
- occupational health and safety improve dramatically, though it fell short of the industry's goal of zero harm;
- days lost to industrial disputation at the lowest level on record;
- investment in new projects skyrocket by 38 percent or \$5 billion per year to record levels; and
- a strong training culture with:
  - expenditure on training per employee at three times the national average;
  - 96 per cent mining industry employers engaging workers in training;
  - 83 per cent of mining industry employers engaging with the VET sector, primarily private training providers.

#### *MCA Policy*

The Minerals Council of Australia (MCA) is committed to a national workplace relations system that provides choice and flexibility in the full range of employment instruments, underpinned by an effective safety net that promotes rather than impedes direct relationships between employers and employees, in order to cater for employment options, operational diversity, gender and cultural diversity, skills development, trust and mutual regard.

Choice in flexibility in workplace arrangements are necessary to provide the range of employment options needed to cater for operational diversity across the minerals industry in employing skilled professional and trades people from diverse backgrounds in a wide range of occupations. Employees work in dramatically different workplace environments – from cities to remote locations or small regional centres to small hamlets adjoining traditional Indigenous communities – and in an industry which is inherently hazardous and therefore requires absolute and unconditional commitment to the health and safety of its workforce.

The MCA therefore supports a national system of workplace relations that provides for matters affecting the employment relationship to rest primarily with employers and employees at the enterprise or workplace level – for mutually beneficial direct relationships between employers and employees.



The dividends of flexible workplace relations are not simply measured in output, but also in a new modern progressive workplace culture, which is more harmonious and more productive, and more conducive to the needs and expectations of the workforce, the business and the communities in which the minerals industry operates.

## 2. Labor's policy position

In March 2007, the Australian Labor Party released its industrial relations policy, *"Forward with Fairness"*. After much consultation with industry about defects in the original policy, an overhauled and largely improved position was put forward in August 2007 under the title of the *"Forward with Fairness Policy Implementation Plan"*.

Under the final version of the policy released on August 27 Labor would:

- abolish AWA's and create interim contracts with a bolstered safety net to apply until 2010;
- create a stronger 'safety net', with 10 legislated minimum conditions (National Employment Standard and a further 10 basic conditions and entitlements in all Awards (that would be 'modernised' and simplified);
- write modern awards to underpin all future agreements (i.e common law, union and non-union, green and non-greenfield collective agreements) with exceptions in common law agreements where the employee earns more than \$100,000 per annum;
- promote collective bargaining through the creation of Good Faith Bargaining laws;
- maintain existing rules for right of entry at the workplace;
- maintain prohibitions on rogue action and secondary boycott laws (Section 45 D and E of the Trade Practices Act), and, until 2010, retain the Australian Building and Construction Commission; and
- bolster the powers of the umpire through the creation of a new body (Fair Work Australia).

The MCA at the time welcomed the revised policy saying it represented an *"important shift in the ALP's preparedness to accommodate the minerals industry's primary requirement for a modern and progressive industrial relations system"* although it did not meet all the industry's goals for flexibility and choice. The MCA added that there were *"whips in the detail"* that warranted closer scrutiny. These included:

- clarification of the grounds for union right of entry;
- clarification of the application of collective bargaining re: the extent of employee support required, and the extent and nature of union involvement;
- unprotected industrial action - clarification of what constitutes *"related matters"* as the basis/justification on which employees may strike;
- the proposed role of the Fair Work Australia (previously the Australian Industrial Relations Commission) as a third party in making judgments on terms and conditions of *"Modern Awards"* or arbitration
- transitional arrangements – what arrangements will apply for the termination/expiry of existing AWAs and non-union collective agreements; and
- clarification on the application of "multi-enterprise bargaining" specifically with regard to project agreement arrangements.

## 3. Labor assurances

Mr Rudd and Ms Gillard, in their statement of August 28, 2007<sup>4</sup>, stressed the ALP policy would provide a fairer and more flexible industrial relations system that would help to build a high-productivity, high skill economy. The plan would provide for more flexible common law agreements and awards as well as more flexible collective enterprise agreements including genuine non-union agreements.

The MCA was encouraged by Mr Rudd and Ms Gillard's statement that *"Federal Labor understands that most employers simply want to get on with running successful businesses and creating jobs"*. As Mr Rudd said in his media conference after the release of the policy:

*We emphasise flexibility and the importance to providing appropriate flexibility for businesses across Australia to keep our economy strong.*<sup>5</sup>

<sup>4</sup> Joint Statement, Kevin Rudd MP Federal Labor Leader and Julia Gillard MP Deputy Labor Leader and (then) Shadow Minister for Employment and Industrial Relations, Media Release, Flexibility – Federal Labor's Policy Implementation Plan for a More Flexible Industrial Relations System, 28 August 2007.

<sup>5</sup> Federal Labor Leader Kevin Rudd, Transcript of joint press conference with Julia Gillard, (then) Shadow Minister for Industrial Relations, Parliament House Canberra, 28 August 2007.

The ALP stated that it acknowledged the variety of workplace arrangements and greater use of direct relationships in the workplace with an acknowledgement by Mr Rudd that for many workers it was *"increasingly possible for people to look after themselves"*<sup>6</sup>. There were also several assurances that there would not be a return to a privileged role for unions.

*Under Labor, it will be entirely possible for an employer which employ[s] both union members and non-union members to make an enterprise agreement that the union plays no role in the making of and with which the union does not agree. Under Labor's system unions have no automatic right to be involved in collective enterprise bargaining* (emphasis added).<sup>7</sup>

During the course of discussions with industry the ALP made it clear that there would be:

- genuine non-union collective agreements. There will be no automatic right for unions to be involved in collective bargaining. Even where an employer employs both union and non-union members, it will be possible for an employer to make a non-union agreement.
- retention of the current arrangements for dealing with secondary boycotts. Employers faced with unprotected industrial action will have access to quick and effective remedies from Fair Work Australia or the courts. Labor will not allow industrial action to be taken in pursuit of pattern bargaining.
- retention of existing right of entry arrangements, only fit and proper persons hold a right of entry permit and that permit holders understand that the right to enter another's premises comes with significant responsibilities).
- retention of existing regulatory arrangements for Australia's building and construction industry. The Australian Building and Construction Commission together with its powers and resources will continue until 31 January 2010. Following that date, responsibilities will transfer to the specialist division of the inspectorate of Fair Work Australia.
- where individual common law contracts are used, there will be no scope for employees to take wildcat industrial action. Employees wanting to take industrial action will have to have been bargaining in good faith for a collective agreement and will have to have held a secret ballot approving the industrial action. All other industrial action will be unprotected. Further, those affected by unprotected industrial action will be able to proceed directly to the courts for relief including injunctions and compensation. The current arrangements for obtaining orders to stop or prevent industrial action will also apply, including the current arrangements for obtaining interim orders.
- even if (the company) has both union and non-union employees in a workplace, it will still be able to make a non-union agreement directly with its employees. There will be no scope for uninvited third parties to be involved in collective bargaining.
- Labor will ensure that those affected by unprotected industrial action will have ready access to fast and effective remedies from both Fair Work Australia and the courts.

The ALP re-affirmed these undertakings after the federal election in the release of transitional legislation and keynote addresses at the National Press Club and labour law conferences.

#### 4. Exceeding the mandate

The MCA considers that The Fair Work Bill exceeds the mandate sought at the federal election, with direct and indirect impacts that undermine its own goals of flexibility, fairness and boosting productivity. The Bill introduces changes that were not clearly articulated or explained in policy documents or undertakings provided. They breach the principle of freedom of association by limiting flexibility and choice and raising the prospect of mandated third-party interference. These breaches of the mandate include:

- an expansion of the scope of right of entry;
- increased access to the private records of employees, particularly non-union employees;
- broader than necessary Good Faith Bargaining rules that will increase complexity, breach commercial confidentiality and tie companies and employees in additional legal proceedings; and
- appointing the union as default bargaining agent for any member.

#### *Right of entry*

<sup>6</sup> Transcript of joint press conference.

<sup>7</sup> Deputy Labor leader, Julia Gillard MP, Speech to the Queensland Media Club, 30 August 2007.

The rules for allowing right of entry into the workplace for discussions with employees have been expanded markedly. This is despite repeated assurances that the regime established under the 2006 WorkChoices legislation would continue to apply. At the release of the *Forward with Fairness Policy Implementation Plan* on 28 August 2007, Ms Gillard stated:

*We will make sure that current right of entry provisions stay. We understand that entering on the premises of an employer needs to happen in an orderly way. We will keep the right of entry provisions.<sup>8</sup>*

Under the present arrangements, a union could only seek a permit for right of entry to a workplace if it is party to a live instrument – an award, collective agreement, or a nominated bargaining agent under a contract.

However under the changes the circumstances in which right of entry is permitted will be “*significantly broadened*”.<sup>9</sup> Under the proposed changes a union can apply for a permit if the union rules under its Constitution allow it to cover workers in the industry. This means:

- employees do not have to be union members. All that is required is for there to be employees who are “eligible” members under union rules;
- competing unions can all apply for the right to enter and hold discussions because union rules overlap (for example, both the Australian Workers Union and Construction Forestry, Mining and Energy Union have coverage in the metallic mining sector, while the Australian Manufacturing Workers Union and the Communications, Electrical and Plumbing Union also cover trades people) giving rise to a renaissance of union demarcation disputes; and
- even if there is a specific award agreement with a particular union, if another union is eligible under its own rules to cover workers at a site it can gain a permit; and
- even though awards do not “apply” to an employee who earns over \$100,000 or on a collective agreement, a union may cover these employees and seek a permit for a right of entry for discussions.

There is every prospect that these changes will see unions seek to disrupt harmonious workplaces and undermine the hard work of co-operation and collaboration that have been built up over the past decade. This, in turn, will add to the compliance cost of business which must monitor the exercise of the permit and ensure it is complied with. Although the law says a permit holder may not disrupt an operation, it forces employees and employer to engage with the union despite no invitation to do so. More than one union may seek to apply, further complicating the process and diverting resources from the core business. Employees are well aware of their rights and will exercise them if they wish.

The proposal impinges on freedom of association rights by mandating third party involvement in the workplace.

#### ***Access to records***

The proposed changes to arrangements for access to the records of employees – particularly non-union employees – constitute another modification to the current right of entry regime. Under the Fair Work Bill, unions no longer have to get a specific authority from the AIRC (or its replacement) to inspect the records of non-union members. Previously, the union had to make a case as to why inspecting the records of others was appropriate when investigating an alleged contravention of an agreement affecting a member. This process, and hence the protection to an individual's privacy, has been removed and there is no right of appeal.

The Fair Work Bill also removes the existing definition of a “relevant record” which broadens the type of records that can be accessed. Existing privacy laws do not protect employees from the use of their information for recruiting purposes and the removal of this definition weakens privacy protections.

Freedom of association provisions require employers to strictly guard the privacy of union and non-union employees within the workplace to ensure that management decisions do not discriminate on the grounds of the membership. Yet the constraints on the employer are ignored by the blanket right of the union to seek information without having established grounds.

#### ***Good Faith Bargaining rules and default bargaining representation***

The ALP has promoted the proposed Good Faith Bargaining rules as an exceptional device to deal with the breakdown of the bargaining relationship. As recently as September 2008, Ms Gillard noted:

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<sup>8</sup> Ibid.

<sup>9</sup> Tony Wood, Partner, Freehills, Summary of Fair Work Bill, November 25, 2008.

*Most workplaces already bargain in good faith without intervention. They meet; they exchange positions; they provide relevant supporting information; they respect each other's right to be represented in the bargaining processes; and they consider and respond to each others' positions. Occasionally, though, this does not happen.<sup>10</sup>*

The MCA submits that without careful definition of the extent of these rules, there is a danger they will encourage protracted negotiations and drag employers into legal proceedings as a technique for extracting concessions. Under the Fair Work Bill parties must enter into discussions. If this does not happen, a party may apply for an order from Fair Work Australia directing parties to negotiate. Under this arrangement:

- a union can demand a seat at the table with only one employee as a member;
- the union is the default bargaining representative for a member. The employee must deliberately opt out of the union representing them – so-called “conscientious objection”- at the beginning of the process. There is no way for an employee to revoke that representation during the negotiation or appoint alternative representation;
- while there is a specific provision that says an employer does not have to make a concession in a negotiation, an employer may have to prove it has considered the union offer. Without such proof – or even with it – a union may still seek further good faith bargaining orders from Fair Work Australia;
- repeated disputes over response to the orders may be used as grounds for arbitration;
- third parties could gain access to confidential commercial arrangement on the grounds it may be pertinent to employees terms and conditions; and
- third parties could ask FWA to decide whether a company has divided its workforce in a “fair” way for the purposes of bargaining groups – “scope orders”.

Notwithstanding that the Fair Work Bill provides opportunities for employers to hold unions to account for bargaining tactics used during negotiations and that Good Faith Bargaining will not require parties to make concessions or sign up to an agreement when they don't agree, there are greater concerns. These “balances” miss the fundamental point that modern and harmonious workplaces have achieved their success by eschewing the confrontational and legalistic model of workplace relations. Scope orders, in particular, may set in train a chess game of positioning where unions seek to define a company's workforce in a way that suits them with companies forced to respond in kind. Good Faith Bargaining orders should be used sparingly rather than becoming a tool for de-facto conciliation and arbitration.

It is the very prospect of the default arbitration that undermines the integrity and the commitment to bargain in good faith. The prospect of arbitration creates an environment of “position” bargaining, where parties resist concessions in anticipation of the consensus that will be forced upon them by the arbitrator rather than bargaining with an attitude of mutual interests.

The MCA is opposed to mandated external third party involvement (unions, industrial tribunals, non-government organisations or employer associations) in the workplace and/or workplace agreement negotiations and to mandated collective bargaining and collective agreements. Employees should know their entitlements and be able to choose to bargain collectively, but neither the employees nor the employer should be compelled to reach a collective agreement. Employees that choose to stand aside from any collective bargaining should not be forced to be part of a collective agreement, even if the majority of the workforce chooses to do so.

The Fair Work Bill's approach to Good Faith Bargaining and default representation are at odds with the undertakings given before the federal election and undermines the workplace relationships that underpin the modern minerals industry. This will have implications for employment and productivity and thus to the wages of employees, returns to shareholders and the community's share of the joint venture of turning Australia's minerals endowment into societal capital.

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<sup>10</sup> The Hon. Julia Gillard MP, Deputy Prime Minister and Minister for Workplace Relations, Introducing Australia's New Workplace Relations System, National Press Club, September 17, 2008.

## PART TWO – ECONOMIC IMPACT

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### 1. The benefits of labour market reform and dangers of erosion

*Industrial relations arrangements in Australia at the start of the 21st century are very different from what prevailed just two to three decades earlier, with the fundamental difference being that employers and workers are generally expected to determine their own employment arrangements with far less involvement from third parties.<sup>11</sup>*

Economic reforms began in earnest under the Hawke Government in the early 1980s, with the opening up of the economy to international market competition (the floating the dollar, further reduction of tariffs and deregulation of the finance sector). This in turn meant that in order to successfully compete, Australia had to reduce rigidities in other sectors. The wages/welfare trade-off known as the Accord, embryonic forms of enterprise agreements and the rationalisation of the union movement from over 300 bodies to essentially 20 large industry groups emerged. Flowing from this, the Keating Government reforms of the 1994 created a decisive break with the centralised wage fixing system of the past. The Howard Government changes of 1996 continued these changes but extended flexibility to individual arrangements – the statutory employment agreements known as Australian Workplace Agreements. All through these periods, other forms of direct agreements were available through common law contracts.

The re-election of the Howard Government in 2004, with its control of the numbers in the Senate guaranteeing the passage of legislation, saw a hastening of the changes which had begun in the 1980s. Some of these changes were modified in 2007, most significantly the restoration of the safety net test for lower paid workers.

It is difficult to attribute the respective contribution that growing international competition and government policies had on improvements in output and firms' performance - productivity. While a point of some contention among academic economists, it can be argued that reform and choice in agreement making has facilitated a greater alignment between the strategic goals of the corporation and employee terms and conditions, thereby promoting the essential secondary drivers of productivity: **responsiveness, innovation, motivation, incentive and efficient resource allocation.**

As the Productivity Commission's Dean Parham notes, over the past two decades:

*Labour markets have become more flexible, particularly with greater focus on enterprise bargaining.... there is a range of evidence that flexibility in labour markets has allowed work and organisational arrangements to be restructured and labour to be reallocated; and has facilitated the productive use of technology.<sup>12</sup>*

Indeed it is a product of the greater flexibility and overall productivity of the Australian labour market that new challenges, such as the need for increased education and skills development, become more important. It is right for policy makers to be looking towards an "education revolution" for the next boost to productivity, as some previous gains peak and new ways are sought to maximise Australia's economic recovery.

Both the Organisation for Economic Co-operation and Development and the International Monetary Fund have noted the contribution to labour market flexibility in Australia's economic performance and urged caution over the direction of changes prior to the tabling of the Fair Work Bill in December.

*The simplification and gradual decentralisation of industrial relations since the early 1990s has made the economy more resilient.... The (proposed) reform will strengthen collective bargaining at the firm level, widen the minimum employment conditions safety net, restore the right to appeal against unfair dismissal and introduce a uniform national system of labour relations in the private sector. While equity concerns need to be addressed, care should be taken not to undermine labour market flexibility.<sup>13</sup>*

The IMF in September 2008 said that "maintaining labor market flexibility will be crucial to facilitate smooth adjustment of the economy to potential swings in commodity prices or other shocks".<sup>14</sup>

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<sup>11</sup> Mark Wooden, Implications of Work Choices Legislation, Agenda, Volume 13, No 2, 2006.

<sup>12</sup> Dean Parham, Sources of Australia's Productivity Revival, Productivity Commission, 2003.

<sup>13</sup> Organisation for Economic Co-operation and Development, Economic Survey of Australia 2008, Chapter 4.

<sup>14</sup> International Monetary Fund, Australia: Article IV Consultation – Staff Report, 2008.

## 2. The immediate economic challenge – containing the economic fallout

An economic slowdown sees a contraction of wealth and economic growth. Profits fall and employment comes under threat. The degree to which the slowdown harms the employment of Australians is, as former Treasury Secretary Ted Evans put it in 1993, *"a matter of choice"*. The ability of Australian economy to maintain jobs for Australia is directly related to the flexibility of its labour market.

In 2009, the Australian economy will face immense pressure on growth, profits and employment. Access Economics forecasts that the slowdown in national income over the coming 18 months will *"fall disproportionately on profits"*. On Access Economics forecasts, the size of the downswing will see the national profit share drop below where it was in the recession of the early 1990s and fall close to where it was in the mid-1980s in the wake of the 'real wage overhang' which developed in the late 1970s and early 1980s.<sup>15</sup> The extent that the labour market allows the **pace** of wages growth to respond to the performance of particular enterprises, through direct relationships matched to the circumstances in each workplace, will be crucial.

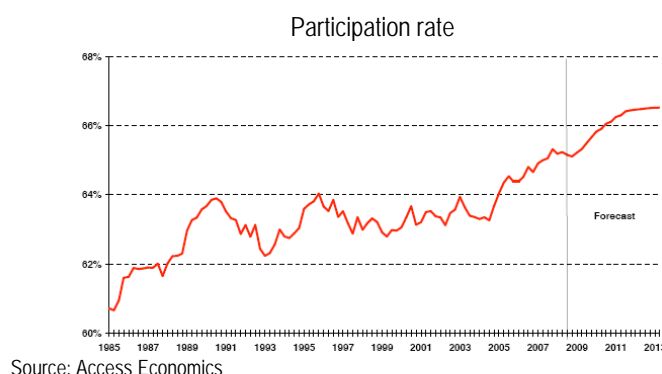
This will also apply in relation to rules and restrictions on the transfer of business. For the economy to recover the essential dynamism of the creation of new firms, including through aggregation of existing operations, will be essential. Again, above the safety net, the labour system must not build in disincentives to a new employer taking on employees from another company through insisting that workplace arrangements that are inflexible or too costly must be maintained.

## 3. The economic benefits of reforms – employment and productivity

The lack of flexibility of Australia's labour market played a major role in the deterioration of macroeconomic performance in Australia in the 1970s. Subsequent reforms in the labour market have, in the words of some academics, *"improved Australia's macroeconomic possibilities"*<sup>16</sup>. This is particularly in the case of its effect on inflation and subsequently, unemployment. Reforms have attuned wages outcomes more closely to both current and prospective economic outcomes – both in the broader economy and at the enterprise. This will be important for the economy in the present economic circumstances and maximising the recovery.

### Employment

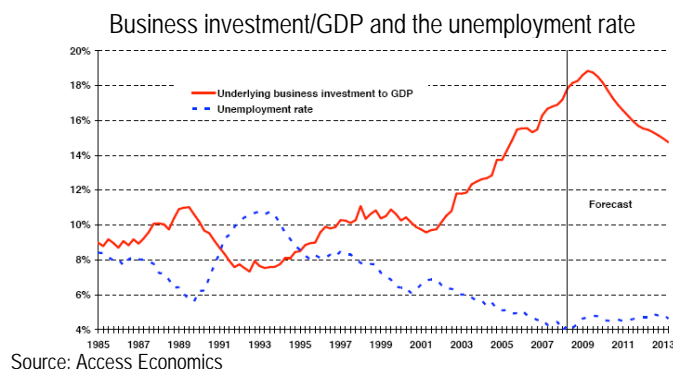
Greater flexibility has allowed for the pool of workers to increase. Participation rates have risen at the same time as unemployment has fallen, with flexibility providing scope for hours and wage arrangements that meet both the employees and employers needs. Within the mining sector there are at least 350 different rostering arrangements – including special shift arrangements for women with principal care for children, fly-in and fly-out shifts and 12-hour shifts. This variety is not possible under a more centralised system.



This workplace flexibility has also helped encourage employers to spend on both labour and investment, boosting employment and capital expenditure. Further evidence of the benefits of flexibility – financial as well as labour – was the resilience of the economy in handling shocks such as the Asian Economic Crisis, the fallout from the September 11 terrorist attacks in the United States and the domestic collapse of the housing market in 2002.

<sup>15</sup> Access Economics, analysis for the MCA, December 2008.

<sup>16</sup> J Lye and IM MacDonald, *Union Power and the Inflation Barrier 1964:4 to 2003:3*, University of Melbourne, November 2005.



Studies by the OECD suggest permanent gains to reducing unemployment by increased labour market flexibility.<sup>17</sup> Australian versions of OECD work point to similar findings.<sup>18</sup>

### *Productivity*

The benefits of reform are evident from the measures of productivity over the past 15 years. Productivity has been identified by the Government as a key macro-economic outcome for this administration.

For the economy as a whole, studies commissioned by the International Monetary Fund found that structural reforms (trade liberalisation, labour market reform and increased competition) had lifted Australia trend multifactor productivity growth in the 1990s by between 0.5 and 0.9 percentage points.

The OECD Growth Project, published in 2000, examined 23 industries in 18 OECD countries looking at product and labour market rules and their effects. The OECD concluded that countries with a decentralised bargaining system and less restrictive employment protection legislation were better equipped to be innovative in industries characterised by multiple and rapidly evolving technologies.<sup>19</sup>

The mining sector's improvements in productivity have been historically higher than other sectors during the significant phases of reform – 1990 to 1995; 1996 to 2000 and 2000 to 2004. As explained in Appendix Two, mining productivity figures of late have been adversely affected for unusual reasons: high levels of capital investment, expanding employment, and (the Productivity Commission asserts) declining reserves and poorer quality of readily mineable ores. With unusual factors aside the industry has averaged 2.3 per cent compound growth over the past 25 years.

In summary:

- Between the three periods - 1990 to 1995, 1996 to 2000, and 2001 to 2004, mining multi-factor productivity (MFP) increased on average 2.1 per cent, 9.4 per cent and 5.9 per cent a year respectively. The average increase in productivity from 1986 through to 2007 was 2.3 per cent.
- This compared with the national increase in productivity of 1 per cent from 1990 to 1995, 2.3 per cent from 1996 to 2001 and 1.1 per cent from 2001 to 2005.
- For the economy as a whole, the Productivity Commission estimates that the suite of competition reforms in the 1990s had delivered the equivalent of \$7000 to an average household.<sup>20</sup>

The link between education and training and productivity is crucial, and factor enhanced through greater workplace flexibility. The mining industry spends three times the national average on workplace education and training. The National Centre for Vocational Education Research estimated that earlier this decade mining employers spent \$1500 per employee on training compared with the national average of \$500.

<sup>17</sup> S Scarpetta and T Tressel, Productivity and Convergence in a Panel of OECD Industries: Do regulations and institutions matter, OECD Economics Department Working Papers, 2002.

<sup>18</sup> KPMG Econtech, in various work, estimates the gains from reforms over the previous 15 years had produced a structural improvement in unemployment of 1.77 percentage points. This is produced by falls in union density, decentralised wage fixing and changes to unfair dismissal laws.

<sup>19</sup> Cited in Parham, op.cit.

<sup>20</sup> Gary Banks, Productivity Commission, Annual Report, 2003.

The mining industry, while often characterised as an older industry, is at the forefront in the use of ICT to improve its productivity and performance. While Australia has lagged behind the so-called “frontier economy” for productivity, the United States, over the past thirty years, the mining industry is the exception lifting its productivity performance substantially by 2003. Flexible workplace relations that allow for innovation – in both technology and management – are a key.

The Productivity Commission’s Dean Parham says while there are disputes among academic economists about the scope of the surge of productivity in the 1990s and the contribution of product and labour reforms, most research points to *“the importance of accumulation of physical and human capital, combined with a policy and institutional environment that promotes competition openness and flexibility”*.<sup>21</sup>

Any erosion of that flexibility would be counterproductive for the Australian economy.

#### 4. The cost of reversing the gains – a study of a productivity shock

It is not yet possible to make firm economic predictions about the impact of the proposed changes in the Fair Work Bill. But general modelling work can be used as a reference case to reinforce the dangers of undermining flexibility and productivity growth. Allen Consulting, using the MONASH Multi-Regional Forecasting model (MMRF), looked at the impact of 10 per cent drop in productivity from 2007 levels in the non-residential construction industry – which includes construction for mining. A 10 per cent “shock” was the equivalent of reversing the economic gains of the previous four years.<sup>22</sup>

The work serves as a reference case for changes to flexibility. This will be relevant also for changes to the Australian Building and Construction Commission, which will be made a part of Fair Work Australia and will be subject of later, more detailed legislation.

The results from the modelling suggest that by 2020, real gross domestic product is about \$8.8 billion lower than the reference case and the purchasing power of income is reduced with real wages adjusting to lower levels after initial falls in employment. Investment also falls \$5 billion in the year immediately after the modelled “shock” and remains about this level through to 2020.

**NATIONAL ECONOMIC OUTCOMES OF PRODUCTIVITY SHOCK TO THE CONSTRUCTION INDUSTRY**

	Percentage deviation from base case in 2020 (%)	Absolute deviation from base case in 2020 (value, \$m)
Gross domestic product	-0.65	-\$8 814
Consumption	-0.42	-\$3 169
Investment	-1.23	-\$4 839
Real wages	-0.43	na

Source: MMRF modelling results.

The linkages between construction, mining, cement and electricity generation industries are such that all sectors feel the effect of the modelled loss of productivity.

<sup>21</sup> Parham, op.cit.

<sup>22</sup> The Allen Consulting Group, The Economic Importance of the Australian Construction Industry in Australia, August 2007. Report on behalf of the Australian Constructors Association.



**INDUSTRY REAL OUTPUT DEVIATIONS FROM THE BASE CASE**

Industry	Deviation in real output in 2020 (per cent)
Construction services	-1.76
Cement	-1.42
Other metals ore mining	-1.33
Coal mining	-1.31
Electricity generation — other renewable	-1.27
Non-metallic mineral products	-1.19
Electricity generation — oil products	-1.11
Iron and steel	-1.05
Non-ferrous metals	-1.00
Iron ore mining	-0.99

Source: MMRF Modelling Results.

The Allen Consulting Group also note that Western Australia and Queensland, with their large resource industries are heavily dependent upon mining and transport infrastructure that is provided by the construction industry. It follows, then, that the negative productivity shock to the construction industry has the largest impact in these two states.

**GROSS STATE PRODUCT, DEVIATIONS FROM BASE CASE IN 2020**

Jurisdiction	Deviation from base case in 2020 (per cent)	Deviation from base case in 2020 (value in 2007 prices, \$m)
New South Wales	-0.67	-\$2 739
Victoria	-0.62	-\$2 057
Queensland	-0.68	-\$1 827
South Australia	-0.59	-\$459
Western Australia	-0.72	-\$1 426
Tasmania	-0.48	-\$91
Northern Territory	-0.50	-\$99
Australian Capital Territory	-0.47	-\$116

Source: MMRF modelling results.

Service industries that underpin much business, trade and financial activity in the economy are all big losers of labour. About 5500 people are drawn out of the business services industry and about 3700 people leave the trade services industry. For financial services, the loss of employment by the year 2020 equates to about 2500.

These results are not predictive of the impact of the Fair Work Bill, per se. What they illustrate, though, is the scope for damage if the Fair Work Bill does not meet the flexibility objectives set out by the ALP before the 2007 federal election.

## CONCLUSION

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The Australian Labor Party went to the 2007 election promising to create a *“fairer and more flexible industrial relations system [that] will help to build a high productivity, high skill economy that can compete against the rest of the world – locking in Australia’s future prosperity”*<sup>23</sup>. While the Federal Government has kept largely to election commitments, in key areas it has exceeded its mandate, either through breaching assurances given prior to the election or by introducing changes which undermine its own policy aims.

The economic costs of reversing the dynamism of Australia’s modern workplace are potentially large. Barriers to flexibility ultimately come at the cost of Australian jobs. Any shock to the system – a 10 per cent fall in productivity – could cost the economy up to \$8 billion by 2020. Access Economics suggests that unemployment may peak at 7.5 per cent, or 875,000 people, in early 2010 if the present system allows the flexibility to match wages with the economic performance of enterprises across the country. This is below the double-digit jobless rates seen in previous serious downturns. Containing such effects depend greatly on the flexibility of the system.

The minerals sector has transformed its workplaces from a culture of confrontation and divisiveness where workplaces were battlegrounds of a “them and us” conflict to a workplace culture of collaboration and direct relationships. These relationships are founded in individual enterprise and personal accountability, recognition of contribution and performance, a shared commitment to skills and personal development, and a culture of mutual dependency and prosperity.

In the process, the modern internationally-competitive minerals sector has delivered benefits to the whole nation. While the industry makes up 8 per cent of the economy, it will pay approximately 10 per cent of the corporate and individual tax revenue or \$21 billion in 2008/9 – despite the slowdown of the Australian economy late in 2008.<sup>24</sup> The benefits from the improved minerals sector performance have not just flowed to the industry, its employees and shareholders but “substantially” lifted profits across the wider Australian economy.

Bringing the Fair Work Bill back into line with the ALP’s election promises will help stop the gains of the past 15 years being lost.

**The MCA requests that the Senate Education, Employment and Workplace Relations Committee recommend the following changes, that:**

- existing union right of entry laws be retained in their entirety. Further, union access rights be based on a direct and unambiguous connection to the workplace, such as employee interest or historical union coverage (which recognises existing demarcation decisions), and the application of a modern award or agreement that covers the employees at the workplace.
- all investigations of suspected breaches of industrial instruments, including inspection of records, to be undertaken by an independent Government authority. Reinstate the existing definition of a relevant record;
- remove the union default bargaining representation rule and make union representation of a member subject to specific written approval;
- enable an employee to revoke or change the appointment of a bargaining agent;
- ensure that good faith bargaining orders cannot be imposed on employers who exercise their right to not make concessions or agree to a term to be contained in an agreement;
- Good Faith Bargaining rules be amended so that they respect commercial arrangements and the confidentiality of companies’ commercial operations, relevant information should be defined; and
- strict restrictions on the access to default arbitration to prevent it undermining the integrity and the commitment to bargain in good faith. The Bill must not allow the prospect of arbitration to create an environment of “position” bargaining, where parties resist concessions in anticipation of the consensus that will be forced upon them by the arbitrator rather than bargaining with an attitude of mutual interests.

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<sup>23</sup> Joint Statement, Kevin Rudd MP Federal Labor Leader and Julia Gillard MP Deputy Labor Leader and (then) Shadow Minister for Employment and Industrial Relations, Media Release, Flexibility – Federal Labor’s Policy Implementation Plan for a More Flexible Industrial Relations System, 28 August 2007.

<sup>24</sup> Access Economics, Tax Contribution of the Minerals Industry, December 2008.

## APPENDIX ONE

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### Workplace relations in the minerals industry

The Australian minerals industry has transformed its workplaces from a culture of confrontation and divisiveness where workplaces were battlegrounds of a “them and us” conflict to a workplace culture of collaboration and direct relationships. These relationships are founded in individual enterprise and personal accountability, recognition of contribution and performance, a shared commitment to skills and personal development, and a culture of mutual dependency and prosperity. This transformation started long before the “current boom”. Indeed, change was founded in the initial stages of workplace reforms and at a time when the Australian minerals industry was struggling, barely recovering the cost of its investment capital.

Choice and flexibility in workplace arrangements are necessary to provide the range of employment options to cater for the employment diversity of vastly different operational requirements and operating parameters, within and between companies, across the minerals industry.

In the past decade:

- employees in the minerals industry earned over 60 per cent more than the Australian all-industry average;
- occupational health and safety improved dramatically, though it fell short of the industry’s goal of zero harm, with a 77 percent reduction in lost time injury frequency rates and a 50 percent decrease in fatalities per year;
- the days lost to industrial dispute were the lowest on record;
- investment in new projects skyrocketed by 38 per cent or \$5 billion per year and is currently at record levels;
- multi-factor productivity on average was 11 per cent per annum higher in mining than the all industry average.
- The increase was particularly pronounced in the 5 year period after the 1996 reforms notwithstanding that this was a period of “disinvestment” in an industry struggling to recover the cost of its investment capital.
- While the headline rate of growth has subsided in recent years, the underlying rate of productivity growth remains at the health long-term average of 2.3 per cent.<sup>25</sup>

The transformation to a workplace culture characterised by collaborative, direct relationships is fundamental to the industry’s commitment to corporate social responsibility – the wellbeing of its workforce and surrounding communities – this is the foundation for a continuing social licence to operate.

The Australian minerals industry is committed to an industry free of fatalities, injuries and diseases. The industry can have no greater stewardship responsibility than the safety and health of its people. The industry considers that employment agreements do not compromise safety and health. Indeed, the contrary is the case to the extent that workplace arrangements facilitate a closer relationship between management and the workforce, so fundamental to effective risk management promoting a shared responsibility for culture, systems and behaviours.

Choice and flexibility in workplace arrangements are necessary to provide the range of employment options needed to cater for operational diversity across the minerals industry, in:

- employing skilled professional and trades people from diverse backgrounds in a wide range of occupations;
- operating in dramatically different workplace environments – from head offices in capital cities, to remote locations hundreds of kilometres from the nearest town or community, within small regional communities near provincial population centres to small hamlets adjoining traditional Indigenous communities;
- vastly different operational requirements and operating parameters within and between enterprises as a result of diverse geography, geomorphology (differing ore bodies), prevailing local circumstances and operational function (exploration, mining, processing, closure);
- an inherently hazardous industry which requires absolute and unconditional commitment to the safety and health of its workforce;
- a highly competitive globally integrated industry, Australia must be internationally competitive to be positioned as a strategic location for investment and production within converging global supply chains; and
- providing flexible working arrangements to address structural and cultural barriers that have limited the participation of women and Indigenous people in the industry.

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<sup>25</sup> Vernon Topp et. Al., Productivity in the Mining Industry, Measurement and Interpretation, Productivity Commission Staff Working Paper, December 2008.

The MCA contends that workplace relations policy should offer:

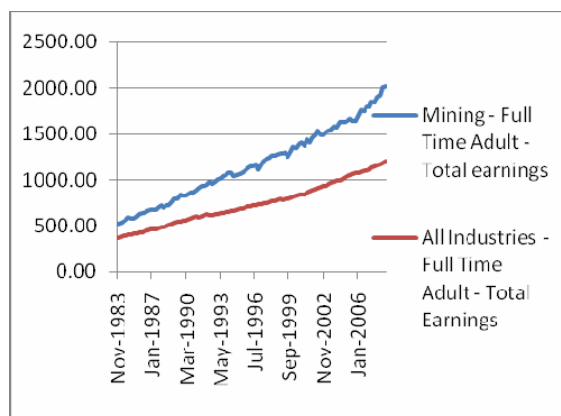
- flexibility and choice in the full range of employment instruments within the scope of this legislation that allow employers and employees to choose the most appropriate form of agreement for their particular circumstances;
- an economically and socially sustainable safety net through:
  - minimum conditions – applicable to all types of agreements that are enshrined in legislation; and
  - an independent body to protect minimum and Award classification wages;
- a simplified agreement making and lodgement process;
- freedom of association, i.e. the right to belong or not to belong to a organisation or association, and the right to choose or to refuse to be represented in any negotiations;
- the freedom to determine whether to, or not to, collectively bargain and the freedom to determine, by mutual agreement, the nature of the terms and conditions of employment;
- a prohibition on industrial action during the life of an agreement;
- unfair dismissal laws that discourage vexatious claims and prevent and eliminate unlawful discrimination;
- recognition of the legal standing of independent contractors;
- the modernisation of awards that leads to reduced prescription and complexity;
- flexible mechanisms for the voluntary settlement of disputes;
- appropriate sanctions to deal with illegitimate and unprotected industrial action;
- promotion of Australia's obligations in relation to international labour standards;
- outlawing of secondary boycotts via the Trade Practices Act;
- prohibitions on the taking of industrial action [over the life of the agreement];
- restrictions on uninvited third party intervention or expansion of union rights of entry;
- agreements to be restricted to matters pertaining to employment relationship (e.g no union deductions, preference to trade unions, restrictions on casuals, labour hire, trade union training leave etc);
- restrictions on industrial tribunals acceding to applications which, under the guise of "Good Faith Bargaining", impose agreements on employers unless significant damage to economy would occur (eg. strike in essential service);
- no mandated external third party involvement in the workplace and/or workplace agreement negotiations (unions, tribunals, NGOs or employer groups);
- no mandated collective bargaining and collective agreements - to bargain collectively is a matter of free choice, but a collective agreement should only be determined if both parties agree – it cannot be mandated that they agree;
- employees knowing their entitlements and being able to choose to bargain collectively;
- neither the employees nor the employer be compelled to reach a collective agreement; and
- employees who choose to stand aside from any collective bargaining not be forced to be part of a collective agreement, even if the majority of the workforce chooses to do so.

The dividends of flexible workplace arrangements are not simply measured in output, but also in a new modern progressive workplace culture, which is safer, more harmonious and more productive, and more conducive to the needs and expectations of the workforce, the business and the communities in which the minerals industry operates. Jobs, wages and salaries, productivity and investment have all grown strongly, occupational health and safety has improved, and industrial disputes are at record lows.

In the past decade workplace relations reforms

- employees in the minerals industry earned over 60 per cent more than the all industry average - annual average full time adult ordinary time earnings (in real terms) in the minerals industry were \$1,101 per week compared with the all industry average of \$719 per week;
- ordinary full time earnings of males in the minerals industry grew by an average 2 per cent per annum during the decade 1996-2006 compared with the all industry average of 1.5 per cent per annum;

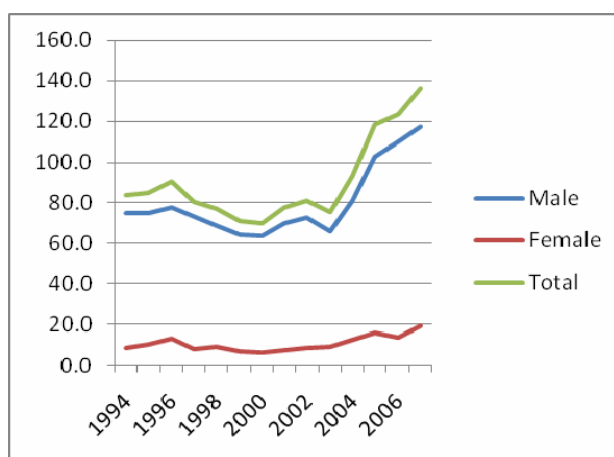
### Mining industry wages



Total earnings per week. Source: ABS 6302 – Average Weekly Earnings.

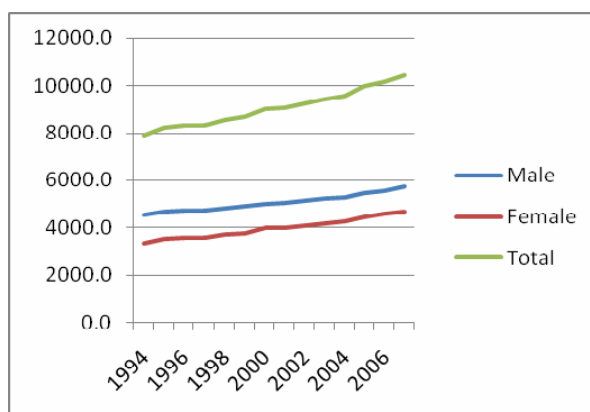
Approximately 142,000 Australians are directly employed in the industry, with indirect employment estimated at around 200,000. Since 2003-04, employment in the mining sector has grown by 38 per cent. Female employment has also risen in recent years with more flexible workplace arrangements contributing to the lift as well as general economic conditions.

### Mining Industry Employment



Source: ABS 6202 – Labour Force

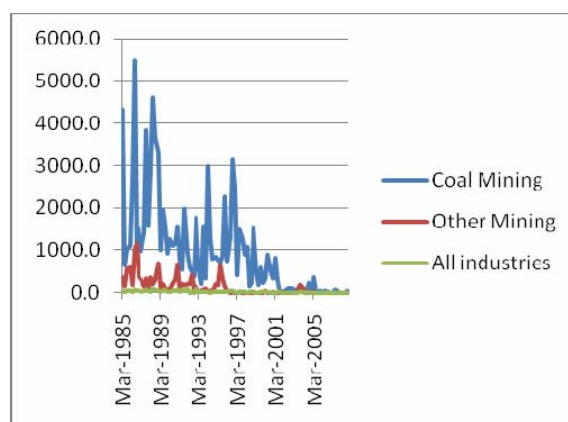
### All Industries Employment



Source: ABS 6202 Labour Force

The most dramatic change in the workplace has been the decline of industrial action, with the mining industry declining from one of the worst performers to very little industrial action.

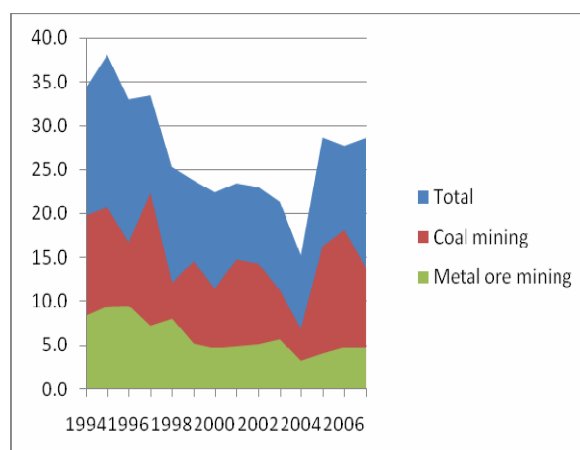
### Industrial Action



Source: ABS 6321 – Industrial Disputes

In line with general trends, there has been a decline in union membership, but not at the cost of employee's freedom of association rights. Indeed from 1994 trade union membership across the country has fallen by 26 per cent but in the mining sector it has fallen only 17 per cent.

### Trade Union Membership



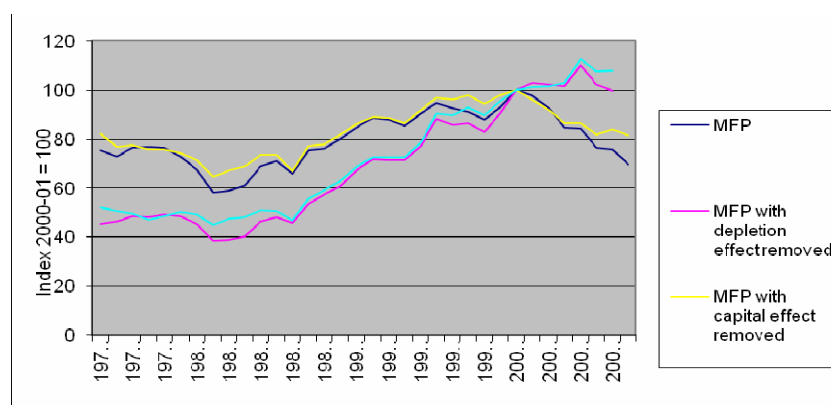
Source: ABS 6210 Employee Earnings, Benefits and Trade Union Membership

## APPENDIX TWO

### Mining Productivity – explaining recent figures

Australia's productivity performance has subsided over recent years, stalling at the beginning of 2007. Because of the way productivity is calculated, assessing the reasons for this are complicated and will take time. One factor appears to be a statistical anomaly created by the surge in minerals production with the rise of commodity prices over the past three years. Capital investment and employment have risen sharply and this can create a drag on productivity ratios. In the case of the minerals industry, there appears to be another "hidden" variable, which is the quality of reserves. The Productivity Commission has examined the effect of this variable in the sector's contribution.<sup>26</sup>

These technical issues can distort figures in the short run and ultimately productivity is a long run measure which has shown the minerals industry at the fore-front of boosting economic performance. The Productivity Commission's paper suggests that mining sector has maintained a healthy productivity growth of 2.3 per cent per annum over the past 25 years.



Source: Productivity Commission, 2008.

<sup>26</sup> Vernon Topp et al., Productivity in the Mining Industry: Measurement and Interpretation, Productivity Commission Staff Working Paper, December 2008.

## APPENDIX THREE

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### The contribution of the minerals industry

Australia's minerals industry covers the exploration, mining and processing of resources such as coal, iron ore, uranium, nickel, bauxite, gold, lead, copper, zinc, minerals sands and diamonds. Australia is among the top producers of most of the world's key mineral commodities. Economically demonstrated resources of uranium, nickel, zinc, lead and mineral sands (rutile and zircon) are the world's largest, while Australian endowments of black coal, brown coal, iron ore, bauxite, gold and industrial diamonds all rank in the top six worldwide.

At current levels of production, Australia's mineral resources are expected to last for many decades to come. For example, the Federal Department of Resources, Energy and Tourism estimates Australia's economic reserves are sufficient to sustain current black coal production rates for over 100 years.<sup>27</sup>

Comprising around 8 per cent of GDP, the mineral resources industry is a major source of national income, investment, export earnings and employment opportunities in Australia. Approximately 142,000 Australians are directly employed in the industry, with indirect employment estimated at around 200,000. Since 2003-04, employment in the mining sector has grown by 38 per cent.

Australia is overwhelmingly a net exporter of mineral commodities. Mineral resources (including energy commodities) accounted for 49 per cent of Australia's exports in 2007-08, up from 36 per cent in 2003-04. With a strong orientation toward Asian export markets, Australia's minerals industry has helped propel rapid industrial growth and higher living standards in East Asia in recent decades.

A major contributor to economic activity and employment in regional and remote Australia, the minerals industry is especially important to the economies of Western Australia, Queensland and the Northern Territory. Strong employment growth in the mining sector in Queensland and Western Australia has resulted in unemployment in these states falling to around 1 percentage point below the unemployment rate in the rest of Australia.<sup>28</sup> In the past decade, robust global demand growth (and, in particular, the rapid industrialisation of China) has provided a platform for significant development and expansion in Australia's minerals industry.

The gross value of mine production in Australia has more than doubled over this period to reach \$112.7 billion in 2007-08. New capital expenditure in 2007-08 is estimated at \$27.3 billion, a rise of 24 per cent on 2006-07. In the six months to April 2008, 22 major minerals and energy projects, with a total capital expenditure of \$10.8 billion, were completed. The Australian Bureau of Agricultural and Resource Economics has identified a further 85 projects at an advanced stage with projected capital expenditure of \$67.3 billion.<sup>29</sup>

Growth in mineral exploration expenditure has helped maintain Australia's position as a world-leading mineral producer. Mineral exploration (other than for petroleum) totalled \$1.7 billion in 2006-07, 38 per cent higher than in 2005-06. Western Australia accounted for the largest share of mineral exploration in Australia at around 50 per cent.<sup>30</sup>

More than 80 per cent of Australia's mineral resource production is exported. High global commodity prices have underpinned significant growth in Australia's mineral resource exports in the past five years, as shown in Figure 1.3. Most notably over this period, increased demand from steel producers, especially in China, has driven up the prices of iron ore and coal.

Black coal (metallurgical and thermal) was the largest export earner in 2007-08 (\$24.1 billion), followed by iron ore (\$20.3 billion), refined gold (\$10.9 billion), copper (\$6.7 billion), alumina (\$5.8 billion) and aluminium (\$5.0 billion).

In 2007-08, there were significant increases in export earnings for iron ore (up 31 per cent), thermal coal (up 23 per cent), metallurgical coal (up 5 per cent) and refined gold (up 6 per cent). Apart from gold, higher export values reflected both increased volumes exported and higher export prices. Copper export values in 2007-08 rose by 3 per cent to \$6.7 billion due to higher export prices.

Commodities that recorded a decline in export earnings in 2007-08 included nickel, zinc, aluminium and alumina. Lower prices more than offset higher export volumes for zinc, aluminium and alumina, while nickel exports fell as a result of both lower volumes and lower prices.<sup>31</sup>

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<sup>27</sup> Department of Resources Energy and Tourism, Australian Minerals Commodities, 2008.

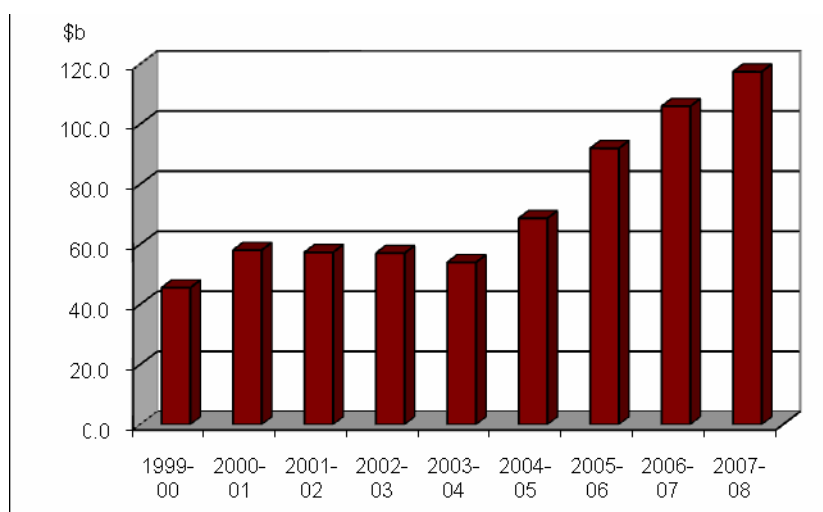
<sup>28</sup> Phil Garton, The Resources Boom and the Two Speed Economy, Treasury Economic Roundup, Spring 2008.

<sup>29</sup> Australian Bureau of Agricultural and Resource Economics, Minerals and Energy: Major Development Projects – October 2008.

<sup>30</sup> Australian Bureau of Statistics, Year Book, 2008.



Mineral Resource Exports, by value



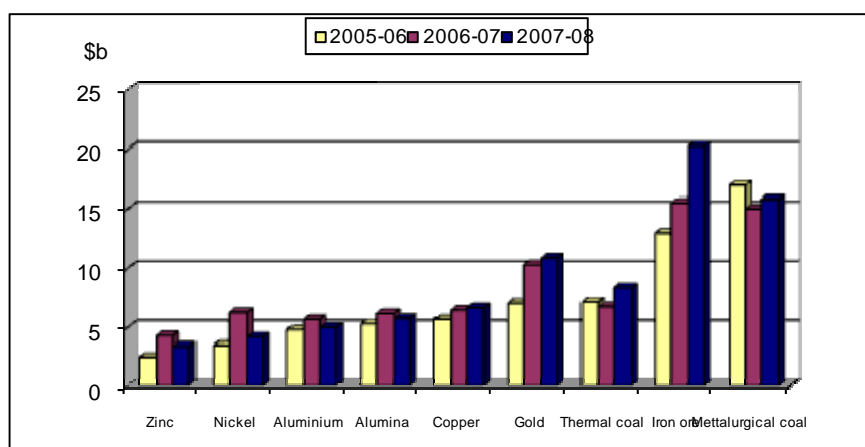
Source: Australian Bureau of Agricultural and Resource Economics (includes oil and gas), Concept Economics

Until recently, expectations were for further strong growth in Australian mineral production, exports and exploration based on higher negotiated contract prices and expanded volumes in key commodities. However, the slowdown in the global economy will result in projections of the short term outlook being revised down in coming months.

Concept Economics notes that historically global mining production moves with global economic activity but with more pronounced swings. Mineral exports are in turn even more variable than mineral production, while mining export prices are highly pro-cyclical with absolute price falls common during slowdowns in global economic activity.

Any industry will face employment pressures with a downturn. However the mining industry having worked hard to gain skilled labour will be reluctant to let it go quickly in anticipation of the recovery of long-term demand trends.

Select Resource Commodity Exports, by Value



Source: Australian Bureau of Agricultural and Resource Economics (includes oil and gas); Concept Economics

### Growing the industry

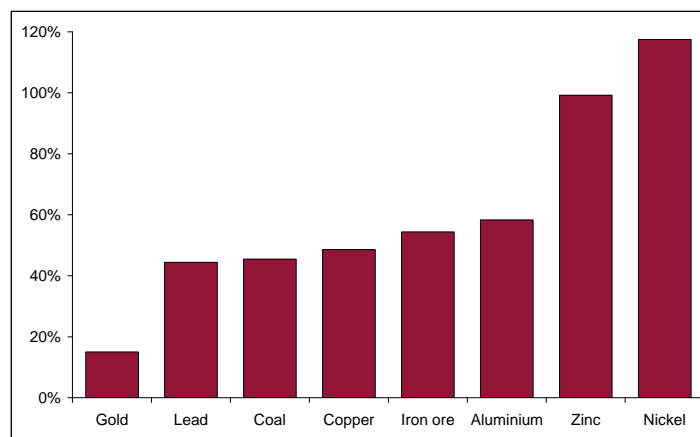
Maintaining a flexible workplace relations system for the mining industry has already translated into a higher standard of living for all Australians and the need to maintain that flexibility will be vital in the years ahead.

Despite the current global financial difficulties, the medium-term outlook for minerals commodities is strong, driven by strong demand from developing nations, including China and India. The scale of this opportunity is immense.

<sup>31</sup> ABARE, Australian Commodities, September Quarter, 2008.

For Australia simply to maintain its market share of this expanding commodity trade, a dynamic and skilled workforce together with substantial new investment in minerals operations and supporting infrastructure will be necessary. To meet expected global demand in 2020, Australia will need to lift annual coal and iron ore volumes by 211 million tonnes and 328 million tonnes respectively over and above their 2007 levels. That is more than three times the matching lift in tonnages achieved across the period 2002 to 2007. For aluminium, the matching jump is almost five times that achieved from 2002 to 2007.<sup>32</sup>

INCREASE IN GLOBAL INDUSTRY SCALE INCREASE REQUIRED BY 2020



Source: Access Economics

If Australia is unable to rebuild market share over the next decade, the costs will be substantial. Modelling by Access Economics has shown that if Australia's market share dips between 2013 and 2020 like it dipped between 2002 and 2007, then the costs will be significant. Under this "*decline*" scenario, Australia would be more than \$91 billion worse off in 2020 alone compared to a "*holding the line*" scenario. If Australia can lift its performance, the rewards will be great. If Australia can recover and retain market share over the next decade, Australia's national income will be almost \$129 billion higher in 2020 than under the "*holding the line*" scenario. That is equivalent to around 12 per cent of today's national income.<sup>33</sup>

The importance of sustaining the industry for the nation's economic wellbeing cannot be understated. For the Commonwealth Budget, Access Economics estimates that the economic cycle will deliver an additional \$26 billion in taxation revenue of which \$15 billion of income is directly related to the commodity boom.

The outlook into 2009/10 is more problematic in light of the economic fallout out from the 2008 Global Financial Crisis, and the economic slowdown in China – arguably, already underway before the crisis because of the need to contain inflation – and the effect that will have both on demand and commodity prices in the years ahead.

But while the industry makes up 8 per cent of the economy, it will pay approximately 10 per cent of the corporate and individual tax revenue or \$21 billion in 2008/9 – despite the slowdown of the Australian economy late in 2008.<sup>34</sup>

Research by Access Economics finds that:

- The tax contribution of the minerals sector has risen by some 103.3 per cent over the three years to 2008-09, with an estimated increase of 60.6 per cent in the 2008-09 year alone.
- The current (2008-09) tax take from the minerals sector is estimated at \$21.0 billion.
- Western Australia and Queensland dominate mineral production and mining royalties paid to the States, with these two jurisdictions accounting for nearly 80 per cent of royalty collections (excluding petroleum).

The benefits from the improved minerals sector performance – both the increased in demand and more productive supply – have not just benefited the industry, its employees and shareholders. Access Economics notes that the

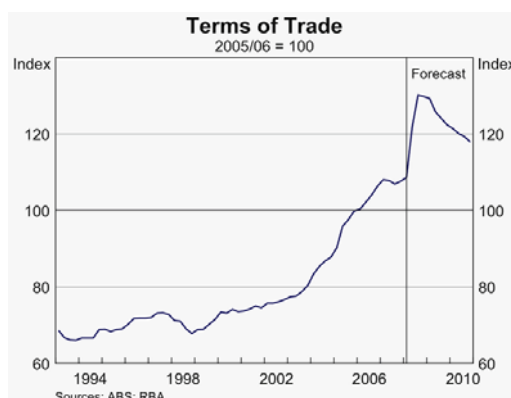
<sup>32</sup> Access Economics, Infrastructure 2020 – Can the Domestic Supply Chain Match Global Demand?, May 2008.

<sup>33</sup> Ibid.

<sup>34</sup> Access Economics, Tax Contribution of the Minerals Industry, December 2008.

commodity price boom of recent years has “substantially” lifted profits across the wider Australian economy. The Reserve Bank estimates that the higher commodity prices secured in contract negotiations for iron and coal in 2007 alone would lift national income by 3 per cent – a boost to national wealth of about \$30 billion. In total, Access Economics estimates that by 2007/8 an extra \$120 billion of income had accumulated to the nation above the income the nation would have earned if prices had stayed at 2002/3 levels.

Only about one-third of the improvement of the nation’s strong positive terms of trade – the higher price a nation gets for its exports over what it pays for imports – has gone to minerals industry in terms of higher profits, according to Access Economics. The higher national income increases retail spending boosting profits in that sector and, particularly in Western Australia, greater purchasing power, and hence demand, for property.



To compete and prosper the Australian minerals sector needs to be adaptable, technologically advanced and safe. This requires, among other things, mutually beneficial partnerships between employers and employees founded in flexible workplace arrangement that cater for employment options, gender and cultural diversity, skills development, trust and mutual regard. This can only be achieved in an industrial relations environment that provides for ingenuity and individual enterprise, inclusiveness and engagement of employees in determining workplace arrangements and practices, and the capacity to differentiate rewards for performance, in itself a product of both productivity and regard for the welfare of fellow workers and social cohesion.

Workforce growth is projected to remain strong in the growth areas of the industry. Two thirds of the long-term projected growth is for tradespeople and experienced miners and operators.

The industry has a strong training culture with:

- expenditure on training per employee at three times the national average;
- 96 per cent mining industry employers engaging workers in training;
- 83 per cent of mining industry employers engaging with the VET sector, primarily private training providers.