

Submission to the Productivity Commission's
Draft report on Mineral and Energy Resource
Exploration

15 July 2013

Compilation of academic opinions coordinated by
the Energy and Minerals Institute at the University
of Western Australia

Introduction

The Energy and Minerals Institute considers the Productivity Commission's Report on Mineral and Energy Resource Exploration important in relation to issues for Western Australia.

The EMI has approached academics and experts from The University of Western Australia in order to provide a submission reflecting their views in relation to the report. This submission is a compilation of those responses and does not represent the views of The University of Western Australia, nor of the Energy and Minerals Institute.

For further information on The University of Western Australia's submission please contact Tim Shanahan – Director, Energy and Minerals institute tim.shanahan@uwa.edu.au

Overview

There were two responses from The University of Western Australia staff for the Overview, the first from Prof. T. Campbell McCuaig and the second from Prof. Matthew Tonts.

The University of Western Australia Contact:

Prof. T. Campbell McCuaig - Director, Centre for Exploration Targeting

“the average cost per metre drilled has doubled in real terms since the late 1990s (figure 3). Cost rises are attributed to the need to drill to greater depths and comply with an increased regulatory burden”

Comment - and salary rises, and also by availability of rigs. Drillers make hay while the sun shines, with prices very much set by supply and demand of rigs. The trend from 2003 to present directly mirrors this in Figure 3.

“ the rate of discovery of significant new resources has declined despite increased exploration expenditure (figure 4)”

Comment - There is a lag between exploration and full delineation of the size of a deposit. Nevertheless this graph does reflect the situation. However, a more pressing issue is the declining QUALITY of the resources being discovered (measured by grade, recovery, energy consumption per unit extracted metal, etc).

With respect to the complication of different regulations in different states – *“Most resource explorers are not exposed to the full force of this legislative complexity as they do not operate across multiple jurisdictions or explore for a combination of mineral and energy resources.”*

Comment - many explorers have land holdings in multiple states/territories, so I do not know that this statement is correct. Certainly I would agree that very few span minerals and energy.

Referring to the section: *“Precompetitive geoscience”*

Comment - should note that it involves understanding physical AND CHEMICAL character of the landmass, through collection of geophysical AND GEOCHEMICAL datasets.

The University of Western Australia Contact:

Prof. Matthew Tonts – Head of School, School of Earth and Environment

Comment - The report offers a fair assessment of some of the key workforce issues, noting firstly the relatively small size of this segment of the labour force and in particular the need to play into the global labour market. Such is the cyclical nature of the industry, the high

degree of skills specialisation, and its global geography, that it is important to see this industry as integrated into the wider international labour market. Thus, the report's recognition of the importance of temporary work arrangements within Australia is critical for this industry. However, the report does tend to reduce workplace issues to a rather traditional labour market economics view of work in this industry (quite traditional supply and demand side discussion throughout). Our research has shown though that attracting workers to this (and closely related) parts of the resources workforce requires an appreciation of the role of a "social wage" (non-monetary workplace conditions), the social and cultural determinants of labour choice, notions of place utility (the perceived advantages of working in a particular place), and of course the separation of work and home (e.g. FIFO). These are critical to getting at issues of attraction and retention.

Draft Recommendations

The University of Western Australia Contact:

Prof. T. Campbell McCuaig - Director, Centre for Exploration Targeting

Regarding the section: "*Cost recovery*"

Comment - charging an extra fee to exploration companies on a mineral license basis such as NSW does, and concatenating this back to precompetitive geoscience data collection, could be adopted more widely. Charging for the data itself should NOT be supported in any way. To 'commoditise' the data would be a step backward, and would restrict access by people who could add serious value to the information to attract mineral exploration (e.g. academics).

Regarding a further recommendation

Comment – another recommendation should be added to underpin precompetitive geoscience information collection and delivery with increased block funding rather than on the basis of brief initiatives

Chapter 2: The nature of resource exploration and the role of government

The University of Western Australia Contact:

Prof. T. Campbell McCuaig - Director, Centre for Exploration Targeting

Regarding the quote “Greenfield exploration occurs in unexplored or incompletely explored areas and is directed at discovering new resource deposits. This exploration is a high risk, and potentially high reward venture with large returns possible for those which successfully discover substantial viable deposits. This approach appeals to junior mining companies which often on-sell significant commercial discoveries, or form joint ventures to exploit the resources.”

Comment – “incompletely explored areas” is meaningless terminology, all areas are incompletely explored or we would not be exploring them. Change to ‘areas with limited exploration’. Also, change ‘new resource deposits’ to ‘new resource districts’

Comment - The statement of greenfields exploration appealing to juniors is incorrect. True greenfields exploration, while having attractive rewards, does not appeal to the majority of juniors because it is a longer term strategy that their investors do not have patience for. The juniors often explore in brownfields (around existing infrastructure in terranes where other companies have existing major resources) to find a small deposit to generate cashflow, then as a mid-size company venture into greenfields. I would say that mid-size companies are the people that undertake the most greenfields exploration. Adjunct Professor Richard Schodde or Professor Pietro Guj could put some quantification behind this. I suspect the commission’s definition of greenfields is too broad (incorporating what I would call brownfields), and definition of brownfields is too narrow (I would class as mine extension exploration). It is the true greenfields exploration (looking for new districts) that we need to encourage.

Chapter 3: Exploration licensing and approvals

Comments regarding Chapter 3 were not received in time for this submission

Chapter 4: Land access issues

Some Land Access Issues discussed in response to Chapter 5 – Heritage Protection

The University of Western Australia Contacts:

Professor Alistair Paterson, Head - School of Social Sciences

Associate Professor Joe Dortch, Director - Eureka Archaeological Research and Consulting

Winthrop Professor Peter Veth, Kimberley Foundation Ian Potter Chair in Rock Art

Winthrop Professor Jo McDonald - Rio Tinto Chair of Rock Art Studies/Director - Centre for Rock Art Research and Management

Associate Professor Martin Porr, Chair - Discipline of Archaeology

Chapter 5: Heritage protection

The University of Western Australia Contacts:

Professor Alistair Paterson, Head - School of Social Sciences

Associate Professor Joe Dortch, Director - Eureka Archaeological Research and Consulting

Winthrop Professor Peter Veth, Kimberley Foundation Ian Potter Chair in Rock Art

Winthrop Professor Jo McDonald - Rio Tinto Chair of Rock Art Studies/Director - Centre for Rock Art Research and Management

Associate Professor Martin Porr, Chair - Discipline of Archaeology

The commitment of an entire chapter to heritage shows the importance of this issue for Australian miners and explorers. The major concern is with Aboriginal heritage, which is encountered more frequently than historic or maritime European heritage. The report states that interlinked issues of native title and land rights are beyond its remit, but the omission of these issues is problematic, for reasons discussed below. Aboriginal representative bodies, industry peak bodies and WA Government submissions to the Productivity Commission (PC) all note the importance of these wider issues in mining and exploration.

All three draft recommendations appear to be worthy and positive proposals, but all ignore some cogent realities.

Draft recommendation 5.1 would seem to increase certainty and reduce duplication. However the PC makes no comment on how accreditation will be introduced, and how it will impact very different heritage regimes and laws in different states. For example, on-going reform to the *Aboriginal Heritage Act 1972 (Western Australia)* (the AHA) has taken considerable time, yet does not involve Aboriginal representative bodies in a meaningful way. Since many stakeholders in WA continue to criticise the current reform, and heritage surveys continue to be more guided by agreements reached under Native Title than heritage legislation, it appears that accreditation would be unlikely to have much impact in Western Australia at least.

It is also unclear how each state or territory would be required not to repeal necessary standards in legislation without the ATSIHP Act as a benchmark.

Draft Recommendation 5.2 also appears to be impracticable. Aboriginal representative organisations (Native Title Representative Bodies, Prescribed Body Corporates, or other legal representatives) who organise the surveys are highly concerned that any survey reports provided to the states should not be used by the states in appeals against native title claims. Survey methodology has varied significantly between heritage consultants and

over time, so detailed metadata will be required. Site information in many jurisdictions is also seriously incomplete due to the vastness and remoteness of many project areas. Despite the claims of the current reform process in WA (see Department of Aboriginal Affairs' *Due Diligence Guidelines*), the distribution of known sites is not a reliable guide to the distribution of heritage material.

The PC report also does not acknowledge that reform of processes surrounding the operation of the AHA has resulted in uncertainty regarding core definitions of a) a site; b) site significance; c) applications for s18; d) objects versus places; and e) the mesh between sections 5 and 19 of the AHA. Without amendments to the actual statute and lacking discoverable DAA regulatory and registration processes, proponents, consultants and Aboriginal communities and other representative organisations are currently unable to make informed decisions about heritage.

Most critically, traditional beliefs require information about some sites ("sacred sites") to be managed carefully, and current government protocols do not always reassure Aboriginal parties. In Western Australia, historically, many significant and registered sites have been selected for development, further reducing Aboriginal community trust in the process. This lack of trust has then led to tighter Aboriginal control over remaining components of heritage management, causing increased uncertainty on all sides.

If trust and certainty can be improved then possibly survey metadata could be made public so that proponents could identify areas where information is likely to be current and relevant. This information would enable proponents to apply to the specified representative organisation for basic information and create some transparency about the management of this information by representative organisations.

Draft Recommendation 5.3 seems most uncertain. If risk is self-assessed by proponents then there are some obvious concerns, notably, proponents lacking expertise and motivation to assess risk impartially and accurately. If risk is to be monitored by government, governments need to invest significantly in expert personnel to administer proposals. In Western Australia, despite recent reform, this investment has been minimal.

If risk is to be monitored by Aboriginal representative organisations, then an impartial and expert opinion on risk will be available to the proponent (insofar the organisation is accountable to its clients and has no conflict of interest in the proposal). The representative organisation would have to be well-resourced to handle proposals efficiently. Nevertheless the PC report is consistent with the views of the few Aboriginal organisations that made submissions; that is, risk is best handled by Aboriginal groups who have the most to lose in terms of cultural impacts. Having representative organisations continue to handle agreements will also restore trust and certainty in the process.

However in many regions the major flaw with the proposed agreement approach will be that poorly-represented and poorly-resourced Aboriginal parties will be less able to protect heritage. The report proposes that disadvantaged (under-resourced, inexperienced, etc) parties may seek help from third parties, like state governments (heritage departments) and land councils but does not mention that these third parties are often under-resourced (at least in WA). There may well be positive aspects of reaching agreements rather than resorting to legislation or government direction, but the PC report fails to address the potential for some mining parties to exploit unequal encounters between miners and Indigenous people. How Native Title and land rights regimes may redress this potential imbalance is not discussed, and should be.

Many mining and Indigenous parties have, through negotiating from positions of mutual respect, arrived at equitable agreements. Several mining companies have developed sophisticated heritage management practices and community relations as cost-effective means of improving land access and social license. The potential success of agreements is undisputed. However, the means to prevent inequitable agreements should be explored further. For example, should Indigenous people have stronger vetoes over development on significant sites? Without greater empowerment of Indigenous people in this process there seems no way around the fact that government or statutory bodies eventually will have to step in to mediate conflict, or that conflict will lead to litigation, both of which are undesirable from an industry point of view.

General comments

(1) The PC report fails to mention how their heritage is critical to many Indigenous people's well-being and social and cultural needs. This is in contrast to purely monetary gains expected by mining parties. Put another way, no price can be put on heritage, so it is difficult to compare conflicting values. This is presumably another reason to prefer negotiation between parties over direction from government which, all too often, considers only economic benefits.

(2) From the point of view of archaeologists and heritage practitioners, there is little acknowledgement of scientific and wider community value of heritage – the value of heritage to groups other than Indigenous people. This situation contrasts to North America and Europe where scientific and wider community values are given high ranking in decision processes. Although these values may be secondary to Indigenous ones, they are appreciated by almost all members of society and archaeological and conservation interests should be considered in decision-making.

(3) The WA Government and Association of Mining and Exploration Companies (AMEC) submissions, which are cited by the PC report, are misleading and inaccurate, using selective statistics and anecdotal evidence to make a case for reducing heritage compliance costs which are in fact a small fraction of exploration costs. A single case of high survey costs

(perhaps due to remoteness of survey areas or the size of groups to be consulted) is presented in both submissions and is not clearly shown to be standard for heritage surveys as a whole. The WA Government submission in particular is discredited by lack of evidence. These submissions also do not clarify that initial costs that may be needed to reach agreements are then reduced in subsequent consultations by use of smaller working groups appointed by traditional owners to advise proponents. As stated in a subsequent submission from Yamatji Marlpa Aboriginal Corporation and in transcripts of interviews with Kimberley Regional Economic Development (an Aboriginal organisation), Aboriginal representative organisations have in fact passed on such cost savings, where appropriate, to proponents.

Summary

The PC report identifies some interesting potential solutions to conflicts between miners and Indigenous people over heritage, but because of its restricted scope, fails to explore alternative solutions to this problem, likely available by better-resourcing representative organisations who have expertise in the area as well as respecting the non-financial, cultural concerns of their clients. It also could have identified scientific and non-Indigenous community interests in Indigenous heritage as complementary interests in this sphere.

Chapter 6: Environmental management

The University of Western Australia Contact:

Dr Mark Griffin - Professor of Organizational Psychology, School of Psychology

Comment: The role of NOPSEMA is also relevant to safety though the report mainly focuses on environmental rather than safety role. The recommendation for increasing NOPSEMA coverage is based on environmental issues but implicates safety management as well.

Chapter 7: Pre-competitive geoscience information

The University of Western Australia Contact:

Prof. T. Campbell McCuaig - Director, Centre for Exploration Targeting

Comment - Precompetitive geoscience information also impacts on other land use decisions, regardless of its use by industry, therefore is in the public good. It helps Australia manage its landmass for the benefit of all Australians.

Comment - Geoscience Australia also has a role to play ONSHORE in providing larger scale syntheses and datasets that cross state boundaries, and therefore could not be carried out by state surveys alone.

Comment - Advisory committees for geoscience surveys are highly recommended. CET has a seat on the GSWA Liaison Committee, and this committee works very well in vetting the strategies and outputs of GSWA precompetitive geoscience programs.

Chapter 8: Workforce issues

There were three responses from The University of Western Australia staff for Chapter 8, the first from W/Prof John Dell the second from Dr Jacqui Hutchinson and the third from Dr Mark Griffin

The University of Western Australia Contact:

W/Prof. John Dell, Dean - Faculty of Engineering, Computing and Mathematics. Winthrop Professor of Electrical and Electronic Engineering

This response is primarily from a university education provider perspective. The report makes a number of assertions that are no longer applicable because of the current economic cycle the resources sector appears to be entering now. Nevertheless, the work force issues raised are not specific to the resources sector and need to be addressed. In particular the anti-cyclical nature of graduate supply and demand, and the general complaint by industry that graduates are not as well prepared as 10, 15, 20 or 25 years ago.

Summary:

- The anti-cyclical nature of graduate supply and demand is not restricted to the resources sector and is a significant structural problem embedded in the way post-secondary education is delivered, but also impacted by career expectations set by parents and schools.
- The models for university education that allow generalist undergraduate and specialist postgraduate education address the requirements for rapid changes in curriculum and human capital needed to respond to changes in demand.
- The domestic workforce must be allowed and encouraged to undertake further education, particularly specialist technical postgraduate programs.
- The current proposal to reduce the tax concessions for further education will be retrograde to achieving workforce flexibility.
- Industry need to recognise the benefits of the Knight review of university education, which allow international students to work in Australia for a number of years once they have graduated.
- The reduction on funding per student to the university post-secondary education sector, combined with the very large increase in student numbers means that industry needs to take more responsibility for the education of the workforce.
- The real issue of industry is not supply of graduates, but supply of a workforce with appropriate experience.
- Industry does not have the incentives to invest in giving students appropriate experience during their studies.

Anti-cyclical nature of graduate supply and demand:

This is not only a resource industry issue, and is currently an issue in the IT sector (although it is slowly turning around). The causes of this problem are complex: For example, the socialisation of career choices by parents with children starts as early as primary school. Another example is traditional business models of education providers who enter into social contracts with prospective students as early as two years before the students enter post-secondary education, through requirements for pre-requisites for entry to particular courses or simply setting the expectation that a particular program is being offered. As a result, education providers do not have unrestricted ability to reallocated limited teaching resources to development of new programs or reinstate programs that in a previous downturn became uneconomic.

Recognition of this makes clear that traditional approaches to post-secondary education, particularly university-based education, will always be faced by long lead times to change graduate supply.

A partial solution is can be found in the education models developed by the University of Melbourne and The University of Western Australia that offer flexible undergraduate degrees followed by professional postgraduate programs. The latter are generally shorter than bespoke undergraduate programs for professional qualifications.

Critical in addressing the anti-cyclical nature of graduate supply and demand, is to allow students to delay career choices as late as possible in their formal education. To this end, the model for undergraduate education at The University of Western Australia is designed to allow students to do this rather than “trapping” them into programs from first year. Of particular note in this model is the ability to prepare students for professional programs who did not select appropriate units in year 10 of high school.

While a potential issue related to technical depth arises in both the University of Melbourne and University of Western Australia models, this is addressed by offering flexible delivery of one to three year postgraduate programs. Importantly, flexible delivery allows students to be in the workforce at the same time as studying. These programs are therefore also attractive to people who have been in the workforce for some time, who can use these courses as professional qualification conversion programs.

Such postgraduate programs are significantly more responsive in their ability to change in terms of both processes and resourcing:

- Approval by academic standards bodies of such programs is generally quicker.
- Different funding models can be used, in particular a mixture of Commonwealth Supported Places and full-fee paying student places.
- Delivery is typically by a mixture of professional academics, industry experts and researchers (because the latter two classes are primarily funded from other income

streams, they represent a very flexible workforce for teaching, but need flexibility in delivery and timing that typically can't be accommodated in undergraduate programs).

Of particular note is the need for flexible delivery: without the ability to deliver in concentrated blocks in non-standard times, access to industry and research funded teaching resources becomes problematical. Such delivery is usually incompatible with undergraduate programs.

Finally, the issue of supply of suitably qualified graduates can be further addressed by increasing the intake of international students. Unfortunately, this opportunity isn't taken up to the extent possible in professional education, primarily because of industry's reluctance to take on international students for the professional practicums that are essential components of the professional qualification. While there are a number of reasons for this, one relates to the return on the investment of time such programs deliver, in particular the perception that international students all return home. Industry needs to be made (further) aware of the Strategic Review of the Student Visa Program (the Knight Review – http://www.immi.gov.au/students/_pdf/2011-knight-review.pdf), the recommendation of which have now been implemented. In particular, international students completing a master's level qualification are able to work in Australia for two years, in any profession, without sponsorship from an industry partner.

Industry preparedness of graduates:

This has been a long-standing issue with industry. Indeed, in the nearly twenty years the author of this response has been in the university sector, this has been the rhetoric from industry, with now the people of whom the complaint was made twenty years ago now making the same complaint).

Nevertheless there is a matter is real:

- The lack of experienced professionals in the resources sector has meant that younger and less experience people have been put in to management roles. This has led to issues around competency in assessment of risk, financial management and people management skills that have generally been acquired after graduation.
- The number of industry placements needed for the professional practicums have not kept up with the increased number of students undertaking the professional programs that used to require them. Therefore, there are now a number of universities graduating students in professional programs some of whom may have had no industry experience¹.

¹ This is not the case at The University of Western Australia.

- The funding per student has declined significantly since the introduction of indexation². As a result, universities have increased student numbers, increased class sizes and decreased staffing to ensure financial viability. While economies of scale do apply, there is now significant pressure on quality outcomes in some universities.
- Finally, the uncapping of student numbers has seen some universities take significantly lower capability students (as measured by ATAR) into professional programs.

Addressing the last two points require a mixture of government policy change and education industry diversifying its funding base. These are beyond the scope of this response.

Addressing the first issue regarding risk assessment and management skills could be addressed by changes in university teaching. However, this would have to be done at the expense of other parts of the curriculum, which is very crowded already with industry demands for relevancy.

The second issue related to the lack of investment by industry in professional education via the professional practicum model is one of the causes of the first issue, and is a long-term consequence of the outsourcing by governments of many professional activities to commercial entities. Government departments with cadetship programs offered relatively large numbers of students opportunities to work in “industry,” with the costs absorbed by government. Industry requires a productive workforce, and the induction of students affects that workforce negatively in two ways that are significantly more obvious in industry than in government:

- Under current models for student placement, it is unlikely that a student will be productive while with the company; and
- To give a student appropriate experience, particularly in the resources industry, takes away productive resources in terms of staffing for supervision, but also infrastructure (e.g. given the cost of accommodation in a mining camp, the opportunity cost of taking a student to a mine site is huge).

In general, there is no incentive for industry to be giving students experience other than as part of a recruitment process, which only requires them to take small numbers of interns. It is only the very large resource companies who can afford to provide these opportunities on any scale.

² It is recognised that this has been addressed in part by changes to tertiary education funding, but the recent productivity dividends along with wage costs and increased student numbers will continue to impact funding per student.

There are a number of ways in which this situation can be addressed. Among these could be:

- Structure education processes to allow students to be productive members of a company while undertaking the last stages of their formal education. This will allow companies to see a return on the investment of time and effort needed to induct a person into their company and industry. This model is being developed at The University of Western Australia;
- Offer compensation in some form for the costs associated internships; and
- Develop multi-company/industry wide internship schemes.

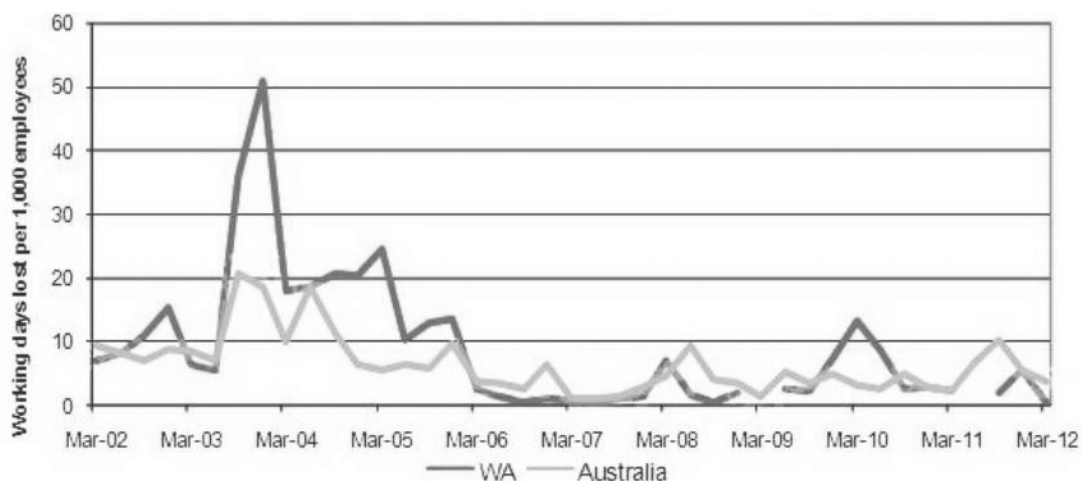
The University of Western Australia Contact:

Dr Jacqui Hutchinson – The University of Western Australia Business School

Regarding section: “*Workplace Relations*”

The recent review into the Fair Work Act highlighted limitations of the current legislation to deal with the multi-dimensional extremes of the mining and resources sector. These extremes are to be found in levels of investment, profits and wages, and demands for uninterrupted construction, production and distribution, and a world-wide sourcing of skills.

This unique situation has stretched the limits of the Fair Work Act, which, when indicators such as days lost through industrial action are considered (See Fig 1) appears to have provided an orderly framework for the majority of Australian industries and employment.



Source: ABS Cat. 6321.0.55.001 table 3b (original data).

Figure 1. Working days lost per 1,000 employees--- WA and Australia

However, in the submissions from employers and employer groups from the mining and resource sector, there is some evidence that The Fair Work Act is unable to effectively regulate employment or the employment relationship in such a unique environment in which the financial risks and gains for the parties to the employment agreement are so high.

Thus, there appears to be a need for a different regulatory instrument to ensure that employees, employers and the national interest are protected. While this suggests the development of 'green fields' agreements, these site specific arrangements may however need to be located in an employment framework different to the Fair Work Act.

Comments Specific to the Productivity Commission Report

Regarding section: "*Bargaining*"

The MCA (sub. 27) proposed that: good faith bargaining rules be amended so that the confidentiality of commercial operations is respected; legislative protection from legal actions for 'fanciful claims' be removed; and that bargaining representatives be appointed explicitly by employees, and not by default. AMMA proposed a wide suite of reforms to the bargaining arrangements, including that the default bargaining representative status for employee organisations be removed (sub. 32, attachment 3).

The Fair Work Act's addition of good faith bargaining provisions is a significant change from previous Work Choices legislation and is still evolving through case law. In the development, implementation and practice of the FW Act both employers and employer groups have expressed concern and even trepidation at the inclusion of good faith bargaining provisions. Central to this unease is a perception that their inclusion is designed to both encourage and facilitate union power, at the same time as limiting employer rights and interests. Unfortunately, the sector appears to overlook the opportunity to use these provisions to engage more cooperatively with the parties. There has been some suggestion that the provisions, by being named 'good faith', have rather lost their intent.

Industrial disputes such as the cases of TMS and Farstad v MUA illustrate some of the difficulties arising from the uncertainty surrounding the implementation of the good faith bargaining provisions. At different times the MUA, Farstad Shipping and TMS all applied to FWA for good faith bargaining orders with little success, with FWA determining that the parties were acting in good faith and recommending they return to the bargaining table.

A further constraint, particularly for employers is the requirement under FW Act to bargain in good faith with, at times, multiple bargaining representatives alongside growing demarcation tensions between unions and this may be encouraging the dissatisfaction and unease reflected in the employer group submissions. The Fair Work Review found that the good faith provisions are still developing and that it was too early to look at revising them. However, when considering the difficulties experienced within the mining and resources sector (as opposed to other industries), there is evidence supporting the need for amendments to the legislation by way of perhaps a good faith code (as exists in Canada) and a revision of the complexity of multi-representation bargaining.

The MCA also suggested that arbitration should be available if agreed to by both parties, with compulsory arbitration only used where it is in the national interest. AMMA also have expressed misgivings about the use of compulsory arbitration. Both the MCA and AMMA also suggest changes to the circumstances under which protected action can be pursued during a bargaining process.

Australia has a long history of using conciliation and arbitration as a means of resolving industrial disputes and while those powers are greatly diminished, there is still an expectation that there will be certain circumstances where FWA will intervene. This is particularly true when the parties become so entrenched in a dispute that there is little chance of a way forward, and the impact of the situation is judged to be having a negative effect more broadly. This was recognised by the Fair Work Review which recommended “the FW Act be amended to include a new provision which expressly empowers FWA to intervene on its own motion where it considers that conciliation could assist in resolving a bargaining dispute.”

There is also a suggestion by the Fair Work “when negotiations for a ‘green fields’ agreement have reached an impasse, a specified time period has expired and FWA conciliation has failed, FWA may, on its own motion or on application by a party, conduct a limited form of arbitration, including ‘last offer’ arbitration, to determine the content of the agreement.” These types of powers are common in the US involving essential services such as fire, emergency or police where industrial disputation can result in economic loss but and damage to public health and safety. In contrast to traditional arbitration, where the arbitrator usually makes a compromise between the parties’ positions, in final-offer arbitration the arbitrator must choose between the two final proposals.

Regarding section: “*Flexibility*”

Both the MCA and AMMA argued that the current industrial relations environment is not conducive to individual flexibility. The MCA (sub. 27) suggested that agreements should be prohibited from restricting Individual Flexibility Agreements (IFAs). This concern is shared by AMMA, who also suggests, among other reforms in this area, it should be possible to make IFAs a condition of employment and be able to run for the nominal term of an enterprise agreement (sub. 32, attachment 3).

The ability to offer IFAs needs to be investigated. There is also a demand in other sectors for this provision.

Regarding section: “*Union right of entry*”

AMMA submitted that the Fair Work Act has increased union access to worksites, imposing additional costs and uncertainty on employers. AMMA also suggested that current provisions have allowed a greater number of unions to visit worksites and this is being used by unions to promote membership (sub. 32, attachment 3). The MCA (sub. 27) also expressed broader dissatisfaction with current right of entry provisions, suggesting that the rules should reflect the interests of the workers and not unions’ claims.

The right of entry provisions have not emerged as such a problem in other industries. It appears that in the mining and resources sector, some employers and employees are using the provisions to reinforce respective bargaining powers.

Regarding section: “*Greenfield agreements*”

Several submissions pointed to inflexibility around the establishment of greenfield agreements within the framework of the Fair Work Act. Greenfield agreements are enterprise agreements between one or

more employers and one or more unions for a genuinely new enterprise that does not have employees as yet (Fair Work Ombudsman 2013).

Business SA noted the degree of union influence in greenfield agreements and suggested the Fair Work Act be amended to:

... allow employers the option of a non-union greenfield agreement that would be tested against the relevant modern award, minimum standards and a 'no disadvantage test'. (sub 7, p. 2)

The MCA also noted that:

... greenfield agreements should not be subject to lengthy tortuous, onerous negotiation process arrangements caused by default representatives of a yet to be appointed workforce. (sub. 27, p. 37)

See opening paragraph. Greenfields within a new regulatory framework for this sector. Prime Minister Rudd has flagged greater use of 'greenfields' in Press Club Address (11/07/2013)

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The University of Western Australia Contact:

Dr Mark Griffin – Professor of Organizational Psychology, School of Psychology

Comment: Safety was not a big part of the report but there are mentions of skills shortages in this area that might be addressed by further company supported training. The integration of safety and other skills training seems important.

Declaration

The University of Western Australia receives funding to conduct research and provide education services from State and Federal governments and from the private and corporate sector including mining and energy companies and industry groups.