

4 April 2008

NES Exposure Draft submission
GC 31
Workplace Relations Policy Group
Department of Education, Employment and Workplace Relations
GPO Box 9879
CANBERRA ACT 2601

Via: NES_comment@deewr.gov.au

Dear Sir or Madam

Please find attached a submission on behalf of the Queensland Resources Council, which relates specifically to the coal long service leave aspects of the National Employment Standards exposure draft.

QRC endorses and supports the submission made on this matter by the New South Wales Minerals Council (NSW MC).

If you have any questions on this matter, please feel free to contact QRC's Andrew Barger on (07) 3316 2502 or andrewb@qrc.org.au

Yours sincerely



Michael Roche
Chief Executive

QRC

submission

Working together for a shared future

National Employment Standards: Coal Long Service Leave Provisions

**Department of Education,
Employment & Workplace Relations**
4 April 2008

ABN 59 050 486 952
Level 13 133 Mary St Brisbane Queensland 4000
T 07 3295 9560 F 07 3295 9570 E info@qrc.org.au

www.qrc.org.au



NATIONAL EMPLOYMENT STANDARDS EXPOSURE DRAFT AND DISCUSSION PAPER

Coal long service leave

This submission is being made to alert the Workplace Relations Policy Group of an unintended consequence arising from the potential application of the National Employment Standards to employees in the coal mining industry. The Queensland Resources Council is concerned that this unintended consequence will put the long service leave entitlements of employees in the Coal Mining Industry at risk, if industry stakeholders are not able to discuss options for the reform of the current industry long service leave arrangements.

→ About the QRC

The Queensland Resources Council (QRC) is a non-government organisation representing companies with interests in exploration, mining, minerals processing and energy production. It is the resource sector's key policy-making body in Queensland, working with all levels of government, interest groups and the community. QRC works on behalf of members to ensure Queensland's resources are developed safely, profitably and competitively, in a socially and environmentally sustainable way.

→ The economic importance of the resources sector

The resources sector lies at the heart of the Queensland economy. It is the foundation around which modern life revolves – providing the incomes, jobs, government revenues and infrastructure services needed for much of the state's unique quality of life.

The value of minerals and energy production in Queensland passed \$25 billion in 2007 – further consolidating the sector's position as the state's key export earner.

Exploration, mining, minerals processing, energy and electricity production companies represented by the QRC directly employ around 45,000 people and are estimated to be responsible directly and indirectly for one in every eight jobs in the state.

Over the past three years, Queensland's minerals and energy industries have:

- generated state royalties in excess of \$3.7 billion from production worth \$65 billion; and
- directly underwritten more than \$4 billion of new investment in the state's rail and port infrastructure capacity, with commitments in excess of \$2 billion for future expansions.

→ QRC's agenda for a sustainable Queensland resources sector

The future of the Queensland minerals and energy resources sector is inseparable from the global pursuit of sustainable development. The Queensland resources sector is committed to contributing to the sustained growth and prosperity of current and future generations of Queenslanders.

The foundation of our commitment to sustainable development is the concept of a '*social licence to operate*', an unwritten social contract to operate in a manner attuned to community expectations while acknowledging that businesses have a shared responsibility with government and the broader community to help facilitate the development of strong and sustainable communities.

The QRC has a strong track record of providing governments with prompt, representative and strategic feedback and advice on policies affecting the resources sector.



→ **Subject**

This submission relates to the National Employment Standards Exposure Draft and Discussion Paper concerning long service leave.

→ **Current long service leave arrangements in the coal mining industry**

The coal mining industry in New South Wales, Queensland, Tasmania and Western Australia presently has unique arrangements for long service leave. These unique long service leave arrangements pre-date and depart in substantial respects from more general long service leave standards and arrangements for employees in Australia. In particular:

- Coal mining industry standard long service leave entitlements are prescribed in the main federal awards for the coal mining industry – although, they are replicated in many enterprise agreements. The current award standards originated in awards of the former Coal Industry Tribunal;
- Long service leave entitlements are based on coal mining industry service and so are portable, as employees move between employers;
- Employees are entitled to 13 weeks long service leave after 8 years of continuous coal mining industry service - a more generous condition than applicable in other industries under State or Territory laws;
- The coal mining industry awards contain provisions referring to the making of orders, in some circumstances, that "bridge", breaks between periods of industry service or "deem" service outside the coal mining industry to be treated as if it is service in the industry for long service leave purposes – these provisions are problematic, and if not resolved could put the entitlements of employees to long service leave at risk;
- In addition, the long service leave entitlements for defined coal mining industry employees (whether or not covered by awards) are funded under a Commonwealth statutory scheme under which employers contribute by way of a levy and are then reimbursed for long service leave payments when made (see the Coal Mining Industry (Long Service Leave Funding) Act 1992 and cognate legislation);
- There are significant deficiencies in the operation of the current arrangements, including in the present Commonwealth statutory scheme.
- The QRC understands that in accordance with s.55 Coal Mining Industry (Long Service Leave Funding) Act 1992, a review of that Act is now required.

Under the auspices of the New South Wales Minerals Council (NSWMC) and the Queensland Resources Council (QRC), employers in the coal mining industry have been discussing issues concerning the current long service leave arrangements and statutory scheme over the course of 2007 and have resolved to commence a process of consultation with other industry stakeholders to bring about improvement in the present arrangements that have proper regard to the interests of all stakeholders.



→ **The National Employment Standard Exposure Draft and Discussion Paper – long service leave aspects**

The Discussion Paper deals with the proposed national employment standard for long service leave at paragraphs 233 to 242 and in the draft provision, Division 8 – *Long service leave*. The NSWMC and QRC are concerned that the national employment standard proposed in the exposure draft, especially when coupled with the draft award modernisation request, would prevent coal mining industry stakeholders and the Commonwealth Government giving proper attention to, and bringing about improvements in, the current long service leave arrangements both in respect of award provisions and the statutory scheme, until new long service leave standards have been developed, and potentially even after that time.

The present view of the NSWMC and QRC is that improvements are both necessary and desirable in the interests of industry stakeholders and currently appropriate having regard to the purpose and objectives of national employment standards and modernised awards – as reflected in the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008*.

→ **Suggested approach**

The NSWMC and QRC request that the national employment standards and award modernisation request provide a suitable exception in respect of long service leave arrangements in the coal mining industry. Such an exception would allow:

- The review by coal mining industry stakeholders of present arrangements concerning long service leave in the coal mining industry and, if appropriate, the variation of present award long service leave provisions;
- The review of the terms and operation of the present statutory coal mining industry long service leave funding scheme provided for in the Coal Mining Industry (Long Service Leave Funding) Act and related acts;
- Regard to be given to the purpose and objectives of the national employment standards and award modernisation.

→ **Support for other Submissions on this Issue**

The QRC endorses and supports the submission made on this matter by the New South Wales Minerals Council (NSW MC).

→ **Further discussion**

The QRC and NSWMC would welcome the opportunity for further consultation with the Government in relation to the matters referred to in this submission.