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Presentation to IMARC 2014 Melbourne

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"The importance of people policies for a competitive and productive resource industry"

INTRODUCTION

SLIDE 1: TITLE PAGE

Good afternoon ladies and gentlemen and thank you for the opportunity to present at this fantastic resource industry event.

SLIDE 2: ABOUT AMMA

For those of you who I haven't had the pleasure of meeting yet, I am Steve Knott, chief executive of the Australian Mines and Metals Association. AMMA is the national resource industry employer group – and has represented and served all sub-sectors of the industry since 1918.

AMMA offers a full suite of workforce consultancy services, though we are perhaps best known as the industry's industrial relations experts, in both delivering practical advice at the workplace level and through our lobbying, advocacy and government relations.

Everything we do falls under our mission: to grow Australia's prosperity by ensuring that the resources sector is an attractive place for employment and investment.

My presentation today will explore the impact of industrial relations policy on the labour efficiencies, productivity and overall competitiveness of Australian resource enterprises.

I'll give you a crash course in the industrial relations challenges experienced by our members, many of them here today, and the key IR reform areas we are advocating for on behalf of the industry.

INDUSTRY TRANSITION

SLIDE 3: AWPA SKILLS DATA

Firstly I'd like to very briefly outline why a discussion about workplace relations and other people policies is very important for the resource industry in 2014.

In the five years to 2013, our direct workforce doubled to about 270,000. The Reserve Bank has estimated the total flow-on employment effects of our sector accounts for about 1.1 million jobs in Australia.

After this phenomenal growth period, our industry's transition from the price and construction booms into a long-term production phase creates very complex workforce challenges for our industry.

The data on screen outlines how our industry's skills demands and workforce composition will change over the next four years.

It shows that there will be a large decline in resources-related construction jobs from 119,000 to 28,900 by 2018.

This will be will be partially absorbed by the increased demand for operational labour, in particular in oil and gas operations where the workforce is projected to increase from about 39,000 jobs to more than 61,000 by 2018.

However there is clearly going to be a large shortfall in new construction, trade and related engineering roles to offset the sudden decrease in construction activity in our industry. It is important to note the roles attract high levels of remuneration so each role lost can equate to the equivalent of 2-4 times the average weekly earnings, in some instances even higher.

I won't go into the macroeconomics behind this transition, rather the following two slides outline key drivers of this workforce change.

SLIDE 4: PROJECT WORKFORCE EXAMPLES

The first is the significant volume differences between short-term peak construction workforces and long-term production workforces, illustrated by the three major project examples on screen.

In terms of new projects coming online, as recently as early 2013 Australia had 73 committed projects with a combined value of \$268 billion; while another 113 projects worth a further \$332 billion were in various stages of feasibility and consideration.

This has dramatically slowed, meaning it is no longer as easy for construction workers to move from project to project to cater for differing stages of project development.

SLIDE 5: LOST PROJECT INVESTMENT

Now on screen is the second major driver of this workforce transition.

What would have been a more gradual, natural project transition has been exacerbated by a large number of proposed investments being deferred or cancelled over the past two years. There is almost \$100 billion in lost capital, and thus lost construction and production job opportunities, in these six projects alone.

SLIDE 6: THE INDUSTRY'S CHALLENGE

In AMMA's view, the challenge from here is two-fold.

Firstly, a focus on being as productive, as efficient, as innovative and as competitive as possible is absolutely critical to delivering a strong return on our new production capacity and reaping the full national benefits.

Secondly, we must stop and think about why the flow of new project investment has slowed to a drizzle. In particular, we should examine the impact of a range of poor taxation, economic and industrial relations policies implemented in recent years that has contributed to our declining global competitiveness.

LEADERSHIP

SLIDE 7: ROLE OF LEADERSHIP

Before I talk about industrial relations regulation, I'd like to briefly speak on how important industry leadership is to managing this transition.

There is an argument that over the past decade or so, the price and investment boom has seen Australia's resource industry take its eye off the ball; perhaps things were a little too prosperous or too easy.

Whether you agree or not, there is no doubting that our industry's top leaders are not counting on regulatory reform to address competitive challenges within their individual enterprises.

On screen are quotes from two such leaders, CEO of Orica Ltd Ian Smith, and CEO of Transfield Services Graeme Hunt. Both are highly attuned to the influence of policy and politics on business, in fact both are members of Board Directors of AMMA – the voice for IR reform in Australia.

Both Ian and Graeme look after tens of thousands of employees across dozens of countries, so they understand as well as anyone that the regulatory environment is always shifting, evolving and changing.

What doesn't change is the need for industry leadership to find new, more effective ways to engage with their workforces, to invest in technologies that will help get the best out of their people and to work smarter, not necessary harder.

AMMA has never said that industrial relations policy is the "be all and end all" to more productive, competitive Australian workplaces.

Significant benefits can flow from enhanced leadership and management capabilities, and more industries and more workplaces need to benefit from productivity oriented leadership and innovation.

However, in a highly globally exposed industry, our nation cannot afford to be hampered by ineffective, uncompetitive domestic policies that create barriers and distractions away from leadership and innovation.

If we are to take advantage of our production boom, as well as secure new investment opportunities, we need to be on a level playing field.

The recent repeal of the Carbon and Mining Taxes are certainly a good starting point – but a bigger obstacle we face is industrial relations reform.

IR AND AUSTRALIA'S GLOBAL COMPETITIVENESS

SLIDE 8: BARRIERS TO DOING BUSINESS

AMMA has long argued that if the Australian Government is to deliver a policy framework that supports employers to innovate, create efficiencies and compete globally, the starting point must be industrial relations.

On screen are some of the 2014-2015 results from the World Economic Forum's *Global Competitiveness Report*, which is compiled from employer surveys all around the world.

It shows that for the third year in a row, restrictive labour regulation was singled out as the most problematic factor for doing business in Australia.

Back in 2010-11, before the full impacts of the Fair Work Act, only 13.1% of survey respondents nominated labour regulation as the biggest barrier to business in Australia. This has risen steadily to now see 25.4%, or over one-in-four business leaders, nominate IR as our worst area.

The same report ranks 21 other nations in the world as more competitive to do business and when you review the detail, our workplace relations laws are a key part of this.

SLIDE 9: 'HIT AND MISS' RANKINGS

Tellingly, the WEF measures of corporate governance, tertiary education, market competition, banking stability and scientific research (innovation) all place Australia within the top 10.

Meanwhile, the worst performers are flexibility in wage determination (132), pay and productivity (125), hiring and firing practises (136) and co-operation in labour-employer relations (109).

Our overall labour market efficiency ranks 54th in the world, whereas Canada's labour market ranks 7th, the UK 5th, New Zealand 6th and the US 4th.

SLIDE 10: GARY BANKS QUOTE

Gary Banks, former chairman of the Productivity Commission has a pretty clear message on the impact of IR policy on workplace productivity and competitiveness.

He notes that industrial relations regulation is the most crucial area to get right.

AMMA MEMBER FEEDBACK

SLIDE 11: FW IMPACT / REFORM

Most relevant to all you in this room, is how Labor's signature workplace legislation, the Fair Work Act 2009, has impacted competitiveness and productivity in resource industry operations.

Across recent years AMMA has regularly surveyed its members, with the assistance of RMIT University researchers, to track the ongoing impact of the Fair Work Act at the practical level.

What this research has revealed is a picture of reduced flexibility, increased union power, productivity being forced 'off the table' in bargaining, project delays and a climate of industrial uncertainty, all combining to significantly impact the competitiveness and efficiencies of Australian resource businesses.

SLIDE 12: LABOUR PRODUCTIVITY RESPONSE

The first key measure to examine is the perception of labour productivity in our members' workplaces. This is a measure of how employers' view the Fair Work Act in supporting their ability to manage and get the most from their people.

As the table on screen shows, employers' perceptions of labour productivity in their workplaces have dropped significantly since 2010.

Perhaps the most telling statistic is that the number of resource employers who rated their workplace productivity 'high' or above has dropped from more than 70% in April 2010, to just 33.3%, or less than half, in the six month period starting from October 2012.

SLIDE 13: RMIT FINDINGS SUMMARY

Our now-concluded research project with RMIT also found that:

Bargaining for productivity is 'off the table', with four in five companies that have tried to negotiate productivity improvements in exchange for wage increases under the Fair Work Act - unable to do so.

Unions are empowered under the Fair Work Act to pursue workplace restrictions that have not been seen for decades and there is no requirement for productivity or competitive considerations in doing so.

The Fair Work Act has also led to resource industry employers reporting **a more combative labour environment**. In fact, the number of AMMA members who rated their industrial environment as unacceptable due to conflict increased five-fold.

This is primarily because of the broadened capacity for unions to take legally protected industrial action over matters that have little to do with the employment relationship.

Project delays have increased as a function of the Fair Work Act reducing agreement making options for new projects available to resource employers.

This has enabled unions to delay major projects, with one in five major projects reportedly being put at serious risk of not being delivered on time and on budget due to ongoing union stalling tactics.

There is also **no real option for individual working flexibility** under the Fair Work Act, with over 60% of resource industry employers reporting Individual Flexibility Arrangements (IFAs) are of little or no value.

This is in contrast to the up to 80% of resource industry workplaces in hard rock mining being covered by some form of direct employment, including Australian Workplace Agreements at their peak. These weren't used to cut wages but to facilitate modern working practices and greater employee satisfaction.

Finally, reduced agreement options and the watering down of measures to discourage union militancy have led to **unsustainable wage claims** across Australia's resource industry.

One of the best examples of this is in the offshore construction sector.

SLIDE 14: OFFSHORE CONSTRUCTION RATES

On screen is chart showing real wages for four-week on, four-week off rosters on actual offshore construction projects. It shows that as of 2013, the following wages were being paid on offshore resources construction projects.

- \$1,855 per day or \$337,617 per annum for a laundry hand.
- \$1,952 per day or \$355,193 per annum for a cook.
- \$1,969 per day \$358,438 per annum for a tradesperson.
- \$2,180 or \$396,811 per annum for a barge welder.

This is the legacy of an unbalanced new project agreement making process that has allowed unions to basically name their price and then stall and delay projects to pressure the employer into agreeing.

This was worsened by previous exorbitant wages being used as the starting point for the next, known as leap-frogging wage outcomes.

Such outcomes are commonplace and virtually encouraged by the ease with which unions can take legally protected industrial action under the Fair Work system.

SLIDE 15: NEV POWER QUOTE

We have witnessed the increased capacity for unions to take protected industrial action with the tug boat dispute at Port Hedland, which exports more than \$100 million worth of iron ore a day.

Speaking at AMMA's 2014 Resource People Summit, Fortescue Metals Group CEO Nev Power criticised the militant approach of the maritime unions involved and asked how Australia's IR system could allow 55 employees in a small area of the supply chain to threaten stoppages of the Pilbara's lucrative iron ore export projects and cost the Western Australian economy \$7 million per day.

As Mr Power noted, in three days, the strike would cost the West Australian taxpayer the entire 2015 budget for the homeless. It would cost the construction of a new primary school.

This matter provides one of the best examples of why it was important for the Australian Government to introduce regulatory changes in June that meant that any third party that would be significantly impacted by strikes could have its case heard in the Fair Work Commission (FWC) for that strike action to be suspended or terminated before the damage was done.

For employers such as large resource companies, which rely heavily on operational continuity and stability, this would help discourage militant unions from holding millions of dollars in revenues to ransom by targeting small employers along the commodity supply chain.

Given project operators are often most impacted by such strike action, it is a no brainer that organisations, which employ thousands of people and are responsible for billions of investment dollars in our country, should be able to state their case before Australia's workplace tribunal.

It was very encouraging to see last night the Palmer United Party and other crossbench Senators vote with the Coalition Government to defeat a Greens motion to disallow this new regulation.

The defeat of the Greens' disallowance motion was a very positive outcome for any employer which has been, or could be inadvertently impacted by damaging strikes in areas of the supply chain in which it has no control.

"It was also a very positive result for communities in Western Australia, given this new regulation provides the WA government with the same ability to intervene in serious industrial disputes as has been afforded to other Australian states since 2009.

The much welcome support of the PUP and other crossbench senators on this important issue is an encouraging sign that other critical workplace relations changes could be progressed through Parliament by the Australian Government.

AMMA'S SIX WORKPLACE REFORM PRIORITIES

SLIDE 16: AMMA'S SIX REFORM AREAS

So where do we begin to fix our nation's overcomplicated, overcentralised, unproductive and uncompetitive IR legislation?

AMMA has worked with its members to identify six key priority areas for change to restore our sector's competitiveness and better support the industry leadership, efficiencies and innovation we need to navigate our industry's transition.

I'll begin with the two major areas where the Abbott Government has already progressed change through its *Fair Work Amendment Bill 2014*, which is currently being considered by the Senate.

SLIDE 17: UNION ENTRY INTO WORKPLACES

Union entry into workplaces

The first major area of reform on AMMA's agenda relates to the laws governing how, when and why union officials can legally enter workplaces.

These rules are very important to resource industry operations, where strict safety requirements must be adhered to and having a third party on-site can cause great disruption.

Breaking an explicit promise by then-deputy opposition leader Julia Gillard in 2007 to not change the laws, the Fair Work Act significantly opened up any business to an influx of disruptive, union recruitment drives by removing key criteria governing union entry.

In 2010, resource operations that previously had no union involvement became hot targets for union fishing expeditions to the point where one project, Pluto LNG, had 217 entry requests in just four months.

The Worsley alumina plant experienced more than 180 visits in a single year.

In 2013, then-workplace relations minister Bill Shorten took this a step further by further opening up remote resource industry sites to union visits, and expecting employers to subsidise such visits.

He also made staff lunch rooms the default meeting place – areas sometimes previously 'off limits' to unions. One needs to note on a resource sector site there are multiple lunch rooms, some a kilometer underground and union access to all such lunchrooms and employee opposition to same, has been an area of contention and dispute.

These further changes were clearly ignorant of how major resource sector sites operate. As highlighted an onshore project with thousands of people and multiple lunchrooms, the cost and complexity of chaperoning union recruiters around the site safety and security is considerable and unreasonable.

There are also significant economic and logistical costs in moving people out to offshore operations. Australia's offshore oil and gas projects aren't running commercial airports where union officials can jump on a helicopter any time they like.

The concept that employers must subsidise union officials on their timetable, and then provide access to crib rooms where employees prefer to read newspapers or nap rather than hearing union recruitment pitches, lacks any sense of reality or balance.

The government's policy is to return to the pre-2009 model. This is consistent with AMMA advocacy and it is well overdue that practicality be restored in this area.

SLIDE 18: GREENFIED AGREEMENTS

New project 'greenfield' agreements

The second key area for change already being addressed by the government is in the Greenfield, or new project, agreement making system.

AMMA has consistently maintained that the process for setting workplace relations arrangements for new projects requires urgent change to better encourage and support future project investment.

In November last year, Employment Minister Eric Abetz told AMMA's Tasmania Conference that it was in the 'national interest' for the greenfields negotiation process to be overhauled.

AMMA welcomes the government's introduction of a three month window for unions to reach an agreement before an employer can take the proposed agreement to the Fair Work Commission.

This is in direct response to AMMA advocacy linking the current flawed greenfields process to project delays and the types of unsustainable wage inflation I outlined just a moment ago.

We do have some technical concerns about the government's proposed new model, particularly relating to the benchmarking of

existing market rates, but their proposed system goes a long way towards getting this important policy area right.

SLIDE 19: FOUR OTHER REFORM AREAS

The next four priorities are ongoing areas for reform that we have consistently engaged the Abbott Government on, and are confident will be addressed in due time – hopefully much sooner than later.

Protected industrial action

Recent experiences in our sector have shown that industrial action can cost employers up to \$3.5 million per day.

Unions regularly fail to show any restraint in their demands and commonly resort to threats of industrial action at the earliest stages of bargaining – and our law can do more to stop this occurring.

AMMA argues legally Protected Industrial Action should only be a last resort and the bar should be raised so that bargaining needs to have been exhausted before any strike action will be legally protected.

Allowable matters

‘Allowable matters’ basically describes what is allowable in enterprise bargaining, and which claims can give rise to legal strike action.

Under the Fair Work system, we have seen these expanded to include matters that are really about unions controlling who gets to work on projects and under what terms and conditions.

Our industry requires a system that does not encourage the taking of protected strike action in support of matters that have nothing to do with the direct employment relationship.

Genuine individual agreement making

I spoke before about how our members having little scope to directly engage their employees in pursuit of 'high-performance, high-reward' arrangements, and flexibilities which suit both parties.

Labor's so-called alternative to AWAs have failed to deliver flexibility for either employers or employees.

For our industry to reboot its productivity, we once again need access to a workable, practical and genuine option for individual flexibilities in our workplaces.

Adverse action / general protections

The sixth area of AMMA's workplace reform advocacy is to remove the adverse action / general protections provision in the Fair Work Act, and to return to more traditional approaches to unlawful discrimination against employees.

This is a technical legislative matter that I won't go into great detail on, but at its simplest level, the Adverse Action provisions create completely unnecessary new 'employer guilty, until proven innocent' capacities to sue employers and form barriers to basic workplace managerial processes.

SLIDE 20: PROBLEMS AT THE TRIBUNAL

Appeals Bench

Outside the six key legislative reforms we are pushing with the government, I'd like to also speak briefly on AMMA's ongoing advocacy for the creation of a new specialist IR appeals body.

This is about ensuring employers receive greater quality and consistency of decisions coming from Australia's IR tribunal – the Fair Work Commission.

In recent times employers have become increasingly concerned about the way the Fair Work Commission has handled various matters, with the current system too often resulting in unnecessary, expensive appeals through the Commission and judicial system.

We are seeing many matters without merit coming before the Commission that should be struck out at first instance, and uncertainty from an array of Full Benches arriving at different decisions on essentially the same subject matter.

There are also concerns about a perceived politicisation of the Fair Work Commission under the former ALP government, with 19 out of 27 appointees made under Rudd/Gillard coming from Labor or trade union backgrounds, plus a Tribunal restructure that essentially demoted long-standing Howard-appointed Vice Presidents.

SLIDE 21: PERPLEXING DECISIONS

On screen are examples of recent decisions where the Commission has overcomplicated and confused matters involving seemingly clear breaches of community standards and company policies.

Such cases include drug and alcohol testing policies, which is a crucial safety management issue in our sector, or overruling employers' dismissal actions even when the employee was rightly found to have breached company policies.

SLIDE 22: A SEPARATE APPEALS BENCH

AMMA believes the introduction of a separate, independent appeals jurisdiction to the Fair Work system will improve decision making and provide consistency and certainty to employers and employees.

We simply want to see less unmeritorious claims being brought to the commission and less employers and employees dragged through expensive appeals processes. The cost of such appeals can easily exceed \$100,000, plus loss of valuable management time and resources.

The cost savings to business are better invested into valuable, employment generating activities.

CONCLUSION

SLIDE 23: WRAP UP KEY POINTS

That comes to the end of my presentation and I'll wrap-up with a few concluding points.

I hope today to have provided a 'crash course' about the impact of Australia's workplace relations system to our national competitiveness, and how acknowledging and understanding the need for reform will be critical to creating new, long-term opportunities within our sector.

The record new project investment our sector has secured over the past decade has ensured the resource industry's production prosperity has decades to play out.

But we must not rest on our laurels while there is more investment capital out there that will fuel the next wave of new resource projects, bringing further jobs and economic value to this country.

It is AMMA's role as Australia's resource industry employer group to pursue an operating environment in which our members can innovate, build internal capacities, create flexibilities in how they work and drive more productive outputs.

Long term, sustainable workplace relations change will provide this platform and help bolster Australia's reputation in the international marketplace, as we seek to deliver on this promise.

Thank you again to the conference organisers for having me today, and I'll be glad to take any questions either now or in networking opportunities.

SLIDE 24: PRESENTATION END