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**Presentation to the 2014 Australian Mining Productivity forum**

**Scott Barklamb, AMMA Executive Director Policy & Public Affairs**

*“The impact of workplace relations policy on resource industry productivity”*

## INTRODUCTION

### SLIDE 1: ABOUT AMMA

Good morning ladies and gentleman and thank you for the opportunity to join you today as we engage with one of the principal challenges for our industry and for our country, that of becoming more productive and competitive.

AMMA, or the Australian Mines and Metals Association, is the national resource industry employer group - serving all sub-sectors of the industry since 1918.

While today AMMA offers a full suite of workforce consultancy services, historically we are best known as the workplace relations voice of the industry, through both practical advice and lobbying and advocacy.

### SLIDE 2: AMMA MISSION STATEMENT

Our mission for the past 96 years has been to ensure Australia's resource industry is an attractive place to invest, employ people and that we have an opportunity to advance the national wellbeing.

**SLIDE 3: PRESENTATION TITLE / CONTENT**

Just as any other key area of the policy work we do for our members, AMMA does not presume to have all the answers to boosting productivity in your individual workplaces.

You have different competitive challenges, different locations, different logistics, and use a range of technologies to extract a range of outputs.

Our remit is to influence the operating environment to ensure our members can freely innovate, build their internal capacities, create flexibilities in how they work and drive more productive outputs.

It's our job to work for a policy environment that allows you to make your operations more productive and competitive.

Today, I will address various considerations impacting on your scope to pursue productivity including, but not restricted to, workplace relations policy and regulation.

I hope to demonstrate why workplace relations is critical to productivity, in particular labour productivity and how we should address our challenges as an industry and as a nation.

## **PART ONE: INDUSTRY CONTEXT**

**SLIDE 4: RESOURCE INDUSTRY CONTEXT**

To understand the productivity challenge we must first recognise what's going on in much of our sector, and the project, employment and investment transition we are experiencing.

**SLIDE 5: THREE PROJECT PHASES**

We all know that the past decade has not really seen a 'mining boom', but rather a 'construction boom' driven by the sheer volume of unprecedented investment into resource new projects and existing mine expansions.

At its peak in around 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.

If you counted all the arms and legs required to build these projects, there were more than 137,000 construction-related roles alone.

It is the subsequent transition into the long-term production phase of Australia's new mega-resources projects that creates a number of productivity challenges, and opportunities for our industry.

Looking at the three project phases in this slide, a critical question for Australia is whether there will be a feedback loop back to the start, and whether the next phases of global demand for energy and resources will bring new investment to this country.

The productivity and return on such investments, through both the construction and productions phases, is critical in determining whether more capital comes to our country.

**SLIDE 6: THREE PROJECT EXAMPLES**

On screen are three examples of well-known mega resources projects and their capital expenditure and workforce requirements. This is drawn from data published by the federal government's Bureau of Resources and Energy Economics (BREE).

I've used the Gorgon LNG project offshore Western Australia, the onshore Santos GLNG coal seam gas development in Queensland, and the more recently approved Roy Hill iron ore project in the Pilbara to demonstrate the vastly different skills needs and workforce volume between the construction and production phases.

These are just three examples of the plethora of mega-resources projects that achieved final investment decision during what is called the 'mining boom' and are now well progressed in construction.

## CANCELLED PROJECTS

So there was always going to be a natural industry transition as the record investment and construction period moved into a longer term production phase.

However, this has been exacerbated by the number of new mega-resource projects being deferred or cancelled over the past two years.

### SLIDE 7: EXAMPLES OF CANCELLED PROJECTS

On screen are well-publicised examples of projects either lost to our shores or deferred indefinitely and likely not to proceed. There is almost \$100 billion worth of lost capital investment across these six projects alone, and these are just the most publicised examples.

In a few moments I will explain how labour productivity and our current industrial relations framework have played a key role in this sudden decline in investment prospects.

### SLIDE 8: AWPA SKILLS TRANSITION DATA

But first, I'd like to direct your attention to this data from the Australian Workplace Productivity Agency's 2013 *Resource Sector Skills Needs* report, demonstrating the labour force implications of this transition, and of further investment not flowing into Australia.

The trend lines demonstrate how the drop-off in resources construction labour from 119,000 workers to just 28,900, will be partially taken up by the increased demand for operational labour.

This demand will be particularly prevalent in oil and gas operations, with a projected workforce increase from about 39,000 jobs to more than 61,000 by 2018.

### SLIDE 9: TWO PARTS TO THE PRODUCTIVITY CHALLENGE

I've run through this industry data to demonstrate why AMMA sees the productivity challenge as having two parts, and why addressing our labour productivity issues are critical to the future of our industry.

Firstly, we must recognise and understand the influence of industrial relations policy on our labour productivity, and how this dynamic impacts on our national competitiveness when seeking new resource project investment.

Secondly, the extent to which we can maximise our labour productivity at the enterprise level will also be critical to ensuring our nation can take full advantage of the record production era we are transitioning into.

Perhaps you could sum this up in terms of our productivity performance being critical to both creating opportunities as a nation, and to seizing them.

## PART TWO: THE PRODUCTIVITY CHALLENGE

### SLIDE 10: MULTIFACTOR PRODUCTIVITY INDEXES

With this in mind, I'd like to briefly outline our industry's labour productivity performance in a national and international context.

An examination of multifactor productivity over the past 20 years shows a steady growth trend for the ABS representative group of 'other industries'. At the same time, the statistics show a resource industry characterised by greater volatility, and productivity falling sharply from 2000-01 onwards.

The graph on screen references 2010-11 as "100", and shows that since peaking in 2000-01 multifactor productivity in the resource industry has fallen at an average annual rate of 4.5 per cent, or by 34 per cent in total.

Without doubt, the surge in commodity prices and record project investment has made an impact, with large increases in the *value* of output that has not been matched by a commensurate increase in the *volume* of mining output.

### SLIDE 11: CAPITAL PRODUCTIVITY VS. CAPITAL EXPENDITURE

This graph presents the inverse correlation between capital expenditure in our industry to capital productivity, particularly since around 2001.

When interpreting this data, remember the impact of the lag effect – that is the fact that output does not come online until three years after the capital is invested.

So we know that in the medium term we will experience a natural lift in capital productivity as many of our new resource projects enter full production capacity and our expenditure growth decreases.

Given multifactor productivity accounts for the impacts of both capital and labour on output, this means the key to enhancing our industry's overall multifactor productivity is labour productivity.

This is an economic validation of what many in your positions already know from managing in complex and competitive environments.

**SLIDE 12: LABOUR PRODUCTIVITY INDEXES**

Unfortunately, labour productivity – the productivity we need - is a major problem for Australia's resource industry.

The graph on-screen shows the significant discrepancy between mining and other industries trends. Other industries' labour productivity has shown a steady but moderate growth over a 20 year period, rising 20 per cent over the past decade.

Resource industry labour productivity, on the other hand, showed much stronger growth up until 2000-01 but then went into sharp decline and is now 60 per cent lower than its peak.

Remember we have removed the impact of capital investment from the equation. This is about how well and how effectively we work.

**SLIDE 13: SAUL ESLAKE QUOTE**

As well known economist Saul Eslake noted:

*There's no denying that both labour and multifactor productivity have fallen sharply in the mining and utilities sectors over the past decade<sup>1</sup>.*

**GLOBAL CONTEXT**

**SLIDE 14: MULTIFACTOR PRODUCTIVITY: AUSTRALIA VS. CANADA**

Declining productivity in the mining industry is not unique to Australia, with the commodity price boom leading to less 'productive' mines coming online elsewhere.

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<sup>1</sup> Saul Eslake (2011), Productivity: The Lost Decade, p229

However, this graph compares our performance to one of our primary OECD competitors, Canada. It shows that Canada's decline in mining productivity occurred later and at a far less severe rate than Australia's.

## **LABOUR RELATIONS DRAGGING DOWN OUR COMPETITIVENESS**

Unfortunately, the politicised nature of industrial relations debate in Australia continues to see some commentators and interest groups neglect or downplay the impact of the industrial relations framework on productivity.

There is a cottage industry of “productivity deniers”, who argue that the costs and inflexibilities of how we regulate work in Australia have no impact on your competitiveness and productivity.

AMMA has never argued that that workplace relations policy and regulation is the sole factor affecting productivity, but it is without doubt a priority issue for policymakers to get right in order to drive much needed improvements.

### **SLIDE 15: GARY BANKS QUOTE**

Former Chairman of the independent Productivity Commission, Gary Banks put this very clearly:

*...industrial relations regulation is arguably the most crucial [area of regulation] to get right. Whether productivity growth comes from working harder or working ‘smarter’, people in workplaces are central to it<sup>2</sup>”.*

At the same time as resource industry employers face productivity problems, Australia's international competitiveness has declined significantly. Recent reports have attributed the steep decline in Australia's competitiveness to our labour relations system.

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<sup>2</sup> Gary Banks, 'Successful Reform: Past Lessons, Future Challenges', Keynote address to the Annual Forecasting Conference of the Australian Business Economists, Sydney, 8 December 2010

Combined with intensified global competition and escalating costs, significant amounts of Australian resource investments are at risk.

**SLIDE 16: THE MOST PROBLEMATIC FACTORS TO DOING BUSINESS IN AUSTRALIA**

The annual Global Competitiveness Report, produced by the World Economic Forum, shows that in 2013-2014, restrictive labour regulation was singled out as the most problematic from a total of 16 competitiveness factors including infrastructure, tax, and government bureaucracy. This follows similar results in the previous year.

Back in 2010-11, immediately after the commencement of the Fair Work Act, only 13.1 percent nominated labour regulation as the most problematic factor for doing business in Australia.

That rose to 16.6 per cent in 2011-12 and 20.3 per cent in the 2012-13 report.

The same report lists Australia's overall global ranking as a place to competitively do business at 21 – that is, 20 nations in the world are more competitive in which to do business, and when you review the detail, our workplace relations laws are a key part of this

**SLIDE 17: AUSTRALIA'S 'HIT-AND-MISS' RANKINGS IN INTERNATIONAL COMPETITIVENESS**

While our nation ranks 7<sup>th</sup> in our management acumen, 9<sup>th</sup> for the stability of our banking system and 8<sup>th</sup> for the quality of scientific research institutions, Australia also ranks a dismal 103<sup>rd</sup> for labour cooperation, 135<sup>th</sup> for flexibility of wage determinations and, tellingly, 113<sup>th</sup> in the world for pay and productivity.

Our overall labour market efficiency ranks 54<sup>th</sup> in the world, whereas Canada's labour market ranks 7<sup>th</sup>, the UK 5<sup>th</sup>, New Zealand 8<sup>th</sup> and the US 4<sup>th</sup>.

Further issues exacerbating this decline in labour relations competitiveness include the threat of emerging low cost competitors in the Asia Pacific region and the increasing domestic cost pressures causing project cancellations.

As a first world nation we understand that we can't compete with Mongolia, West Africa or the Middle East on labour costs, but we clearly can on the stability of financial systems, our managerial acumen our technological innovation.

If we can once again begin to compete on labour productivity at least at the level of our OECD peers, our overall place in the world's competitive rankings should start to rise sharply, and we can harness our advantages in other areas which make Australia an attractive place to do business.

## PART THREE: NON-LEGISLATIVE APPROACHES

### SLIDE 18: NON-LEGISLATIVE APPROACHES

Having noted the problem, and the challenge, what has AMMA identified as solutions, to better equip and empower you to make your operations more productive?

Let's start with some non-legislative, non-workplace relations ideas that could support our industry in increasing enterprise-level productivity.

### SLIDE 19: TABLE OF RECOMMENDATIONS PART ONE

The first is building a stronger business case and helping employers advocating for productivity **Investments:**

One mechanism we think could be further considered is for instance, the development of a national productivity index to provide baseline data could support the business case for employer investment in employee engagement, process improvements and information and communication technologies.

AMMA understand that many of its members are developing their own internal productivity measurement processes, and an industry wide measure would neatly complement current industry decision making frameworks and encourage more businesses to look at the metrics and identify their goals and benchmarks.

The second area is in **work practices:** Fly-in fly-out (FIFO) work can be essential mechanism for accessing key skills in remote areas, but it can also raise questions for productivity.

Roster cycles providing a longer time-off ratio are argued to create turnover problems, but shortened rosters have been associated with employees taking less task ownership, and less focus on production standards.

Further research on such issues has been suggested by both academics and practitioners.

**Leadership** is the third area. 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.

**SLIDE 20: TABLE OF RECOMMENDATIONS PART TWO**

Our **Technology** recommendation is based on the premise that we live in an era of 'open-source innovation' where the best ideas are those that are spread and shared.

AMMA has argued for the formation of an 'inter-industry technology forum' that brings together experts and practitioners from various sectors to capitalise on this trend and discuss how innovation can cross-fertilize between industries to drive ongoing productivity growth.

**Bargaining:** In a moment I will discuss bargaining from a legislative perspective, but away from law, we need to recognise that productivity improvement is simply off the bargaining agenda in nearly all workplace negotiations.

With employers and trade unions losing capacity and creativity in this area, we recommend placing productivity back on the bargaining agenda through a global study of innovative practices.

We think this would help reignite the creativity and commitment of employers and employees to address productivity gains in bargaining efforts.

**Human Capital:** The final of our six non-legislative ideas is the integration of 'enhancing productivity and efficiency' modules into various levels of vocational education and training.

This will help instil a productive culture, mindset and relevant skills at a workplace level. The first step would be a scoping study and consideration by national skills authorities.

## PART FOUR: WORKPLACE RELATIONS REFORM

### SLIDE 21: WORKPLACE REFORM

And now to AMMA's best known focus – workplace relations policy, and how it impacts on your capacity to make your enterprises more productive.

AMMA works closely with our members at the coalface, and at the highest levels of workplace policymaking nationally.

Our members, resource industry employers, continue to report deteriorating labour productivity under the Fair Work laws.

Across recent years AMMA regularly surveyed its members. This revealed 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 threaten projects of national significance.

### SLIDE 22: RMIT PRODUCTIVITY RESPONSES

I want to direct your attention to some key productivity results from the final report in an AMMA/RMIT research project, published late last year just before the federal election.

As the table on screen shows, the benchmark productivity level is in April 2010, shortly after the Fair Work Act commenced.

Employers' perceptions of labour productivity then dropped in the second and third surveys in October 2010 and April 2011 respectively, with the index falling a full ten points from 66.7 in April 2010 to 56.7 one year later.

Perhaps a more 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 23: KEY RMIT FINDINGS

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.

AMMA's members are reporting that productivity has been forced off the bargaining table by unions who have been empowered under the Fair Work Act, resulting in a return to workplace restrictions that have not been seen for decades or at very least an incapacity to keep pace with market imperatives for change.

The Fair Work Act has also led to resource industry employers reporting **a more combative labour environment** and rising incidence of conflict in the workplace.

The number of resource employers who rated their industrial environment as unacceptable due to conflict increased five-fold between April 2010 and April 2012.

This is due to the workplace relations system broadening the capacity for unions to take legally protected industrial action, and doing so in unproductive ways.

For example, union claims now commonly include clauses restricting the use of contractors and labour hire workers, which were prohibited content under the previous IR system.

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

This has enhanced the capacity for unions to delay major projects. One in five major projects have been 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 more than 60% of resource industry employers reporting existing 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 AWAs at their peak that provide flexibility and protection against industrial action.

Our industry has never used individual flexibility to drive down wages or undercut conditions – rather workplace flexibility is a crucial part of modern working practices, commercial realities and employee satisfaction, and it is one that we cannot address as well as we could prior to our industrial relations laws changing for the worse.

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.

The 2009/10 vessel operators' dispute in the offshore oil and gas industry illustrates the Fair Work Act's invitation for greater union militancy, allowing a broader range of strike options, limiting options for employer's to resist wage claims and leading to inflated wage deals.

In this case, maritime unions were able to use damaging strike action to pressure the industry, and eventually secure, 37 per cent pay rises plus a \$200-a-day construction allowance in return for zero productivity improvements.

MUA national secretary Paddy Crumlin actually criticized employers seeking productivity offsets in the 2009/10 enterprise bargaining negotiations as being 'dinosaurs'<sup>3</sup>.

**SLIDE 24: OFFSHORE CONSTRUCTION RATES**

In the offshore resources construction sector, the Fair Work system's flawed new project or 'greenfield agreement' process saw unions basically able to name their price and then stall, delay and otherwise pressure employers to accept nominated terms and conditions or risk losing the confidence of investors and future resources clients.

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<sup>3</sup> 'Union leader claims `dinosaur' employers out of touch', 3 February 2010, The Australian online

The leap-frogging of short-term offshore construction contracts has amplified this wages inflation. On screen is a wages chart for four-week on, four-week off rosters on actual offshore construction projects, outlining day rates and calculated annual earnings.

This data is pulled from publicly available labour agreements lodged with the Fair Work Commission and 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.

Lest my friends from the MUA misunderstand me, I want to stress again these are rates from offshore construction, not for such work in other areas of the maritime industry.

These phenomenal wages, and other inflated outcomes across the industry are achieved with zero productivity improvements for the employer.

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

SLIDE 25: ALP QUOTES

It has been encouraging to see some senior Labor Party figures recently stand up and question the long-term impacts of the uncommercial, unproductive and unsustainable workplace relations system our industry confronts.

### **AMMA'S SIX WORKPLACE REFORM PRIORITIES**

Australia's workplace relations system is as complex and regulated as any in the world, and its principle legislation, Labor's Fair Work Act, has expanded to rival an old fashioned phone book.

Literally hundreds of individual policy settings stack the deck of workplace policy against Australian employers.

**SLIDE 26: AMMA'S SIX WORKPLACE REFORM PRIORITIES**

However, AMMA has worked with its members to identify six key priority areas for change to restore our sector's competitiveness, and empower you to pursue greater productivity in how you organise work, employ technology etc.

I'll begin in the two areas in which the Abbott Government has already made progress through the *Fair Work Amendment Bill 2013*, which is expected to go before the new Senate again shortly.

**SLIDE 27: UNION ENTRY INTO WORKPLACES**

### **Union entry to workplaces**

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

These rules are especially important to the resource industry, given the safety implications of having a third-party on-site and the productivity impacts of interrupted operations or needing to assign a dedicated person to chaperone union officials around a worksite.

The Fair Work Act significantly changed laws governing union entry into worksites, opening up any business to an influx of disruptive, productivity-killing union recruitment drives by removing established criteria governing union entry.

These changes broke an explicit promise by then-deputy opposition leader Julia Gillard in 2007 that Labor would not change the widely understood and effective union site entry laws.

What Labor actually did in government significantly added to business costs and gave rise to a major problem plaguing the Fair Work system. This was a function of AMMA's concerns being ignored by the previous government, and the problems we foresaw coming to pass.

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 previously 'off limits' to unions.

The Coalition'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 28: GREENFIELD AGREEMENT MAKING**

**Greenfield (new project) agreement making**

The second key area for change already being addressed by the government is in the Greenfield, or new project, agreement making system. This is critical to addressing the wages inflation and project delays outlined earlier.

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 Australia.

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 for determination.

This is in direct response to AMMA advocacy linking the current flawed greenfields process to both project delays and unsustainable wage inflation.

We do have some concerns about the government's proposed new model, namely in the way the Fair Work Commission would determine the appropriate wages and conditions for each agreement.

Requiring any new project agreement to provide 'prevailing industry standards' above and beyond award and statutory requirements could inadvertently lock in current inflated and unsustainable wage levels as the benchmark for all future projects.

As I hope I have demonstrated today, our nation cannot compete with not only emerging resource suppliers but also comparable economies such as the US and Canada, unless we allow market realities to better inform the employment conditions from project to project.

We believe the three existing tests are more than adequate to protect employees without any unintended consequences and are continuing to work with the government and others to ensure we get this important policy area right.

**SLIDE 29: FURTHER CHANGES ON THE HORIZON**

### **Protected industrial action**

The next four priorities are continuing 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.

Recent experiences in our sector have shown that industrial action can cost employers up to \$3.5 million per day through lost working time, jeopardised contracts and commercial agreements, project delays and undermined productivity.

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.

When industrial action is taken, there should be greater access to suspension orders and 'cooling off' periods to bring the parties back to the negotiating table without the federal industrial tribunal arbitrating outcomes.

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, and can stop the rush to strike forcing productivity changes off the table.

### **Allowable matters**

'Allowable matters' is an industrial term basically describing what is allowable in enterprise bargaining, and which claims can give rise to legal strike action.

Under the Fair Work system, we have seen such matters expanded to include clauses restricting the use of contractors and labour hire workers, to use just one common example.

This is really about unions controlling who gets to work on projects and under what terms and conditions.

Such clauses undermine managerial decision-making and the running of productive workplaces.

Industry requires an agreement making system that does not encourage the taking of protected industrial action in support of matters that have nothing to do with the efficient and productive operation of the enterprise or the terms and conditions of employees.

### **Genuine individual agreement making**

Productivity is also being undermined by employers and employees having little real scope to directly engage their employees in pursuit of 'high-performance, high-reward' arrangements, and flexibilities which suit both parties.

With the removal of the ability to make new Australian Workplace Agreements in March 2008, the recent prohibition of opt-out clauses in

enterprise agreements, the prohibition on making an enterprise agreement with one employee, plus statutory requirements that a group of workers be 'fairly chosen', means the only form of individual agreements other than common law contracts under the current system are Individual Flexibility Arrangements (IFAs).

In practice these IFAs, Labor's so-called alternative to AWAs, have failed to deliver flexibility for either employers or employees, and have been a front to remove powerful individually agreed productivity from Australian workplaces.

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 something other than both AWAs and Labor's flawed IFA alternative

### **Adverse action / general protections**

The final 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 capacities to sue employers, which benefit only the legal profession.

These protections create unlimited liability for employers, resulting in great uncertainties that impact their decision making. They also give unions and the legal profession yet another avenue to focus on something other than making workplaces more productive, and jobs more secure.

These provisions are being used in union employer disputes, and again are dragging the focus even further from the competitive markets employers need to navigate.

The adverse actions also form barriers to undertaking basic workplace managerial processes such as disciplinary action or dismissal.

SLIDE 30: KEY POINTS (FINAL SLIDE)

## CONCLUSION

Ladies and gentlemen, I thank you for the opportunity to share some of how we see the challenges and how we can start to address them.

I hope I succeeded in giving you a snap shot of AMMA's work in this area, and what our mining and resources members are telling us they need to address their and productivity and competitiveness challenges.

I will leave you with a final thought.

Australia's Fair Work legislation was intended to increase the productivity, flexibility and fairness of workplaces.

In reality, it has become one of the single largest barriers to labour market productivity, to rebooting the mining boom, and to increasing Australia's competitiveness. It has thereby become a barrier to fairness and opportunity for more Australians.

The answer to Australia's productivity challenge is to address the full range of productivity drivers, and to accept that labour market reform must be at the heart of our efforts.

To not do so risks decline for an industry which has so regularly underpinned our growth as a nation, and has the opportunity to do so again.

Nonetheless, we are confident that by combining research and advocacy with your experiences in workplaces, and in trying to navigate globalized capital and product markets, our industry will be in a strong position to influence positive policy outcomes as the Abbott Government tackles these challenges and embarks on its reform and deregulation agenda.

Thank you and good afternoon.