

# GETTING BACK ON TRACK

DELIVERING THE WORKPLACE  
RELATIONS SYSTEM AUSTRALIA NEEDS

Reform priorities of the  
Australian resource industry

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MAY 2015

# GIVING VOICE TO AUSTRALIA'S RESOURCE INDUSTRY

AMMA (Australian Mines and Metals Association) is Australia's national resource industry employer group and has provided the sector's unified representative voice for more than 97 years.

Our membership employs more than 1.1 million people, directly and indirectly, across the entire resource industry value chain: mining, oil and gas, exploration, construction, maritime, smelting and refining, transport and energy, as well as service sectors and suppliers.

AMMA's dedicated policy and advocacy work directly shapes our operating landscape, endeavouring to make Australia an attractive place to invest, do business and employ people, now and into the future.

Through our influence on workplace relations policy in Australia, we seek national employment laws that properly support the aspirations and successes of resource employers, employees and the broader community.

Working closely with our members, AMMA's work is driven by the pursuit of an operating environment in which the industry can innovate, better utilise people capacities and flexibilities and increase the productivity of workplaces and projects.

This ensures our members' views on workplace legislation and broader industry policy issues are represented, heard and acted upon at the highest levels of decision making in this country.



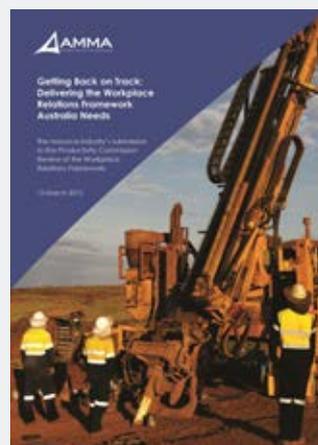
## HELPING YOUR WORKPLACES BECOME MORE COMPETITIVE

In 2015, the Productivity Commission (PC) is undertaking a wide-ranging review of Australia's workplace laws. This is a critical opportunity for fundamental workplace reform and comes as the Australian resource industry faces significant challenges that are impacting not only on resource industry employers, but also on employees, our economy and the wider community.

As the resource industry's representative, AMMA has recommended to this review a range of reforms that would better support a viable, prosperous, job generating and globally competitive resource industry, in the interests of all Australians.

AMMA's submission is backed not only by our members' practical experiences and evidence, but also by comprehensive research from KPMG that examines competitive pressures on the Australian resource industry and the potential benefits of the key workplace relations reforms AMMA recommends.

This overview provides a snapshot of the key reforms presented in AMMA's submission, as well as supporting analysis, findings and evidence from the KPMG research report.



View AMMA's submission and the supporting KPMG report in full at [www.amma.org.au/backontrack](http://www.amma.org.au/backontrack)

# THE ECONOMIC CASE FOR REFORM

A viable, growing, prosperous and internationally competitive resource industry is vital for the Australian economy and the wellbeing of all Australians. Our resource industry contributes:

- 18% of GDP from direct and indirect economic activity.
- 10% of national employment, or around 1.1 million people, directly and indirectly.
- 24% of corporate tax receipts in Australia.
- 20% of dividends paid by Australian companies to shareholders.
- 13% increase in household disposable income due to the 'resources boom'.
- 6% real wages increase nationally due to the 'resources boom'.

However, Australia is becoming a less attractive place to invest and do business. We now rank as one of the most costly and least competitive places to employ compared to our fellow OECD economies and other competing nations.

Investment and jobs in Australia are at risk from fundamental problems in our workplace relations system that negatively impact on attracting investment which in turn detracts from employment opportunities.

It is an uncomfortable reality that if we do not better encourage and support productivity in the resource industry and throughout the broader economy, our living standards will decline.

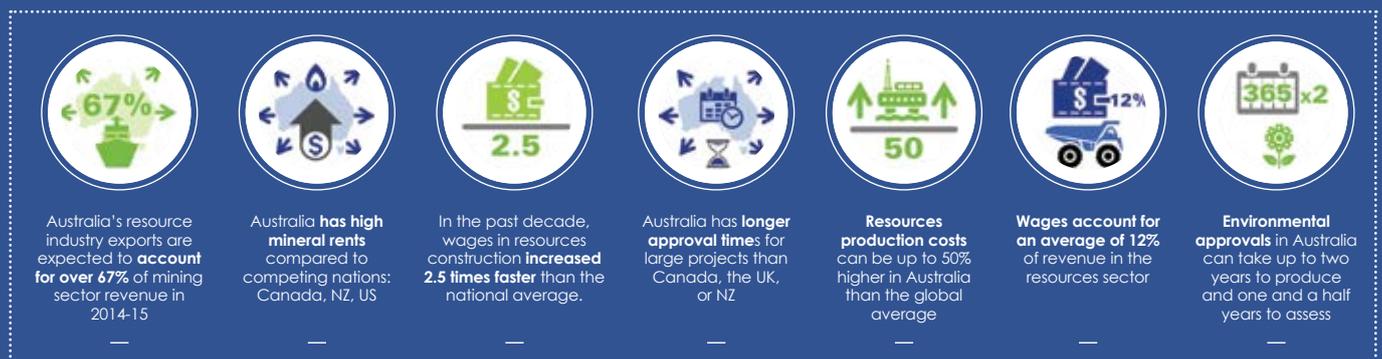


"In the medium term, income growth will...largely be determined by our success in raising our productivity. Increasing productivity to achieve the income growth that we are used to will be a significant challenge."

**Dr Martin Parkinson PSM,**  
former Secretary to the Treasury

## KPMG ANALYSIS FOUND:

- Mining productivity in Australia has declined by more than 45% in the past decade.
- Between 2007 and 2012, Australia has gone from being one of the most competitive markets for coal production to being 66% more expensive than the global average.
- It is now 26-30% more expensive to produce LNG in Australia than it is in Canada.
- Wages in the Australian iron ore industry are 21% higher than the global average.
- From 2001-2012, construction wages in the Australian resource industry rose at 2.5 times the national average; twice as fast as Canada and three times as fast as the USA.
- It is nearly 150% more expensive to staff the same vessel in Australia's offshore resource industry than in a comparable European OECD economy.
- Australia has longer major project approval times than Canada, the UK and NZ.



# WORKPLACE RELATIONS MATTERS

Each part of Australia's workplace relations system must balance the need for genuine protections for employees with support for productive, flexible and globally competitive enterprises that can contribute valuably to Australia's economic and social advancement. Our current workplace system is not delivering this balance, harming confidence in Australia as a place to invest, do business and create jobs.

**KPMG** finds AMMA's recommended reforms support favourable outcomes in the resource industry, including continued new project investment, improved operational performance and employment growth.

AREA OF REGULATION	IMPACTS ON COMPETITIVENESS	PROPOSED REFORMS	BENEFITS
<b>AGREEMENT MAKING AND THE BARGAINING FRAMEWORK</b>	<ul style="list-style-type: none"> <li>Most agreements unsupportive of increased productivity or competitiveness.</li> <li>Unions encouraged and rewarded for pursuing union, not employee interests.</li> <li>High negotiation costs and highly legalistic, adversarial processes.</li> <li>Expanded union claims encouraging disputes, delaying agreements and imposing additional costs.</li> <li>Union monopoly on new project agreements (greenfield agreements), delaying projects and inflating costs.</li> <li>Inflated wages and conditions secured through unbalanced processes.</li> <li>Uncertainty regarding agreement costs and timelines discouraging investment.</li> </ul>	<ul style="list-style-type: none"> <li>Extend nominal expiry date for agreements.</li> <li>Increase flexibility and options in agreement making.</li> <li>Provide collective and individual agreement making options.</li> <li>Restrict agreement content that negatively impacts on productivity and competitiveness.</li> <li>Ensure timely agreement negotiation and discourage protracted bargaining.</li> <li>Introduce an expedited agreement making and approvals process.</li> <li>Ensure practical, accessible and reliable scope to make greenfields agreements for new resource projects.</li> </ul>	<ul style="list-style-type: none"> <li>Bargaining focused on employment not union matters, expanding scope to address productivity and competitiveness.</li> <li>Reduced costs and delays for construction of major projects, encouraging increased investment.</li> <li>Timely greenfield agreements for new projects, with unions no longer able to veto new project agreements.</li> <li>Increased capacity for managers to make key strategic operational decisions impacting on productivity and competitiveness.</li> </ul>
<b>INDUSTRIAL ACTION / STRIKES</b>	<ul style="list-style-type: none"> <li>Unions encouraged and rewarded for using strikes and strike threats as a standard negotiating tactic.</li> <li>Low threshold for legally protected industrial action, increasing actual and threatened strikes in unionised workplaces.</li> <li>Disruptions to operations and supply-chains increasing costs, reducing revenue, and harming Australia's reputation as place to do business.</li> <li>Strikes over claims previously deemed off-limits and irrelevant to the employer-employee relationship.</li> </ul>	<ul style="list-style-type: none"> <li>Allow legally protected strikes only where genuine bargaining has been attempted and exhausted.</li> <li>Limit industrial action during the life of any agreement.</li> <li>Subject strikes to a public interest test, and allow third parties to raise concerns over potential flow-on impacts.</li> <li>No longer legally protect industrial action over excessive claims and those unrelated to the direct employment relationship.</li> <li>Place a high income threshold on industrial action.</li> </ul>	<ul style="list-style-type: none"> <li>Reduced days lost to industrial action and associated loss of production.</li> <li>More agreements reached cooperatively without actual or threatened strikes.</li> <li>Greater certainty in project timelines and costs.</li> <li>Reduced ability to influence bargaining through strike tactics.</li> <li>No legal protection for strikes clearly against the public interest.</li> <li>Increased confidence in investing and doing business in Australia.</li> </ul>
<b>UNION WORKPLACE ENTRY RULES</b>	<ul style="list-style-type: none"> <li>Significantly relaxed controls and conditions for union officials to legally force access to workplaces.</li> <li>Incentives and rewards for unions misusing entry powers to harass employers and employees.</li> <li>Increased difficulty in establishing a valid reason and legal authorisation for union officials to enter a workplace.</li> <li>Lost productivity and increased costs from extreme frequency of union visits.</li> <li>Additional administrative costs from facilitating and supervising union visits.</li> <li>Increased safety risks from increased third-party presence in high risk workplaces.</li> </ul>	<ul style="list-style-type: none"> <li>Set and enforce a code of conduct for union officials entering worksites.</li> <li>Ensure unions are either covered by an existing agreement or negotiating with an employer to legally enter workplaces.</li> <li>Ensure unions only hold discussions with employees eligible to be their members.</li> <li>Remove requirements to provide unions with access to employee lunch rooms.</li> <li>Remove requirements to subsidise union access to remote workplaces (i.e. offshore rigs and remote mines).</li> </ul>	<ul style="list-style-type: none"> <li>Entry limited to unions that have a legitimate connection to the workplace.</li> <li>Reduced administrative and compliance costs.</li> <li>Reduced lost time and impact on productive operations.</li> <li>Ensuring union officials behave lawfully, follow directions and do not disrupt work.</li> <li>Permission to legally enter workplaces again being treated as a privilege, carrying responsibilities and being revocable if misused.</li> </ul>
<b>EMPLOYEE PROTECTIONS (UNFAIR DISMISSAL, ADVERSE ACTION)</b>	<ul style="list-style-type: none"> <li>Confusion and costs from inconsistent interpretations and decisions.</li> <li>Incapacity to set workplace standards and enforce them in critical areas affecting performance, attendance, workplace safety and organisational values.</li> <li>Increased unfair dismissal claims and associated costs of investigating and responding to employee claims.</li> <li>Speculative adverse action claims that are difficult and costly to defend, particularly through the reversed onus of proof.</li> <li>Expanded and ambiguous protections encroaching on decision making to meet the legal, safety and commercial duties of managers.</li> </ul>	<ul style="list-style-type: none"> <li>Exempt terminations for serious offences and misconduct from contesting dismissal.</li> <li>Preclude workers earning above a high income threshold from unfair dismissal claims.</li> <li>Ensure each unfair dismissal application is determined on its merits only, not influenced by employee circumstances.</li> <li>Cap compensation for adverse action claims.</li> <li>Place onus of proof on those making a claim and introduce a 'genuine reasons' defence.</li> <li>Increase application and hearing fees.</li> </ul>	<ul style="list-style-type: none"> <li>Fairer, more transparent treatment of employees through simpler, clearer and more reliable rules for fair dismissal.</li> <li>Fewer unmeritorious claims and less frequent payment of 'go away money'.</li> <li>Clearer limits on compensation.</li> <li>Greater clarity for employers and employees on conduct justifying dismissal.</li> <li>Reduced business costs and productivity impacts through a more balanced and practical employee protections framework.</li> </ul>



**DID YOU KNOW?:** Strike action threatened by just 50-60 tug boat employees during the Teekay Shipping dispute of 2014 would have cost our iron ore industry \$100m per day, and the WA state government \$7m per day in lost royalties.

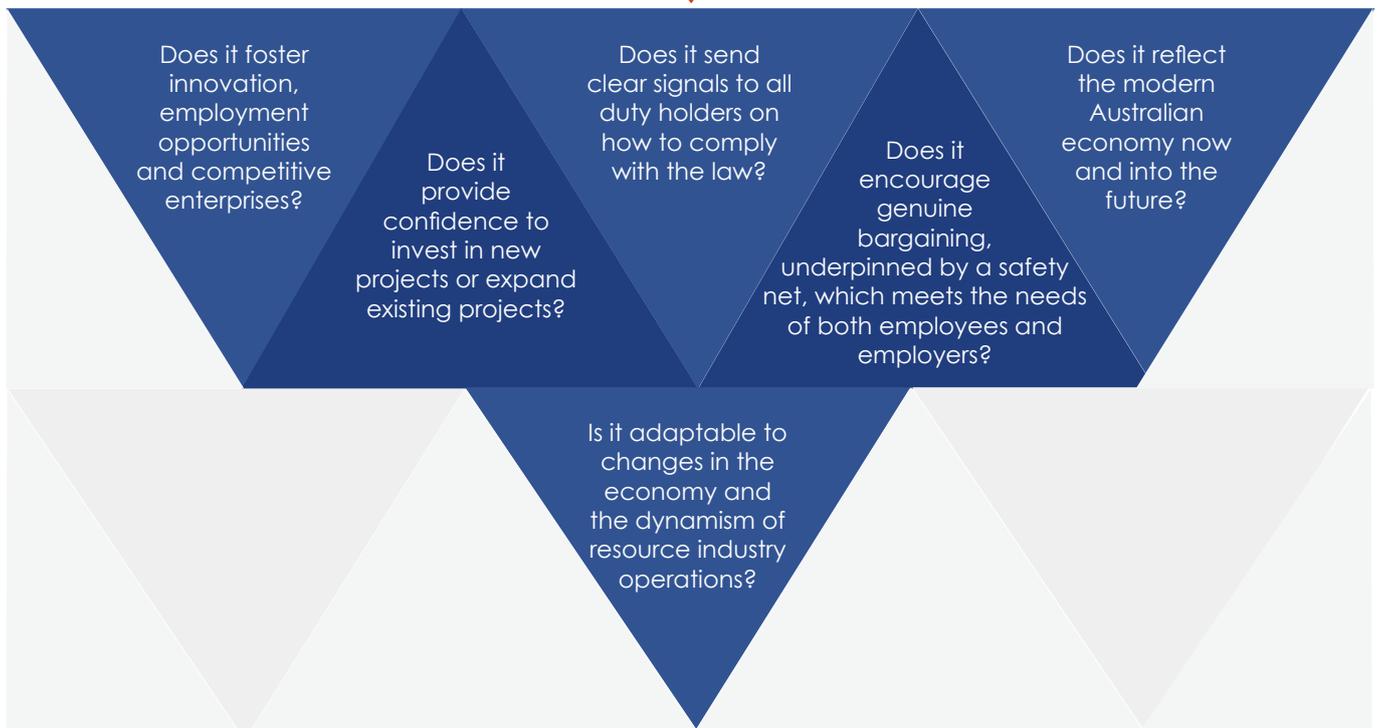
**DID YOU KNOW?:** It can often take one to two years to negotiate a greenfields agreement that will only run for four years. Shortening the negotiation delays by just two months would increase the average resource project's net present value by \$4.6m.

# ROAD MAP FOR REFORM

AMMA’s advocacy is grounded in the clear vision that Australia must restore balance and practicality to its workplace laws to advance the interests and capacity of resource employers and the jobs and communities they support.

This will require significant amendments to the current system. Such changes can support more productive and flexible policies at the workplace level, and deliver a regulatory approach that focuses on valuable employment outcomes and globally competitive Australian enterprises.

AMMA has assessed Australia’s workplace relations system to see if it is ‘fit for purpose’ and can meet the challenges facing resource employers, both now and into the future.



AMMA recommends changes across three broad areas:

WORKPLACE POLICIES	WORKPLACE LAWS	EMPLOYMENT INSTITUTIONS
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- Balance legitimate interests of employers and protections for employees.
- Flexible and adaptable to different industry, sector and workplace needs.
- Recognise structural changes in workplaces (i.e. decline in union membership).
- Complement other policy objectives (i.e. training, migration, skills formation).
- Recognise employee preferences for individual flexibility.
- Support multiple work options (i.e. labour hire and casual work).

- Expand agreement making options for new and existing projects.
- Restrict agreement content to employment matters.
- Balance rules for strike action.
- Useable individual flexibility options.
- Balanced and practical rules for unions entering workplaces.
- Balanced safety net protections for employees.

- New and modern ‘fit for purpose’ employment institutions.
- Specialised new institutions to better assist both employers and employees.
- Access to independent expert assistance and dispute resolution services.
- Streamlined processes to reduce red tape.
- Overall reduction in costs and litigation of the employment system.
- New separate appeals tribunal reflecting international best practice.

**CURRENT (‘FAIR WORK’ BODIES)**

- ▶ Fair Work Commission
- ▶ Fair Work Ombudsman

**PROPOSED (‘EMPLOYMENT’ BODIES)**

- ▶ Australian Employment Conciliation and Arbitration Service (AECAS)
- ▶ Australian Employment Tribunal (AET)
- ▶ Australian Employment Appeals Tribunal (AEAT)
- ▶ Australian Employment Safety Net Commission (AESNC)
- ▶ Australian Employment Ombudsman (AEO)

# A NATIONAL IMPERATIVE FOR WORKPLACE REFORM

## // THE ECONOMIC BENEFITS OF IMPROVING THE COMPETITIVENESS OF THE AUSTRALIAN RESOURCES SECTOR HAVE THE POTENTIAL TO BE SIGNIFICANT..."

Using economic modelling, KPMG has taken the resource industry's priority reform recommendations as outlined in this summary and quantified the potential benefits for Australia's economy, employment and living standards.

KPMG forecasts that if key workplace reforms advocated by AMMA were fully implemented, they could collectively support additional resource sector productivity growth of between 2% and 5%, and increase investment in the sector by 5% to 8%.

**In real numbers, this means Australia could have an additional \$30.9 billion in GDP and 36,000 jobs if modest workplace changes recommended by the resource industry were adopted.**

Further, this could raise national household consumption by 1.8% and exports by 1.5%. A stronger resource industry also boosts technological development, environmental research and education and training in regional areas.

If these are just the gains through the resource industry, imagine the significant benefits genuine workplace reform could deliver for our whole economy.

## // THE PROPOSED AMMA OPTIONS...ADDRESS (WORKPLACE) CHALLENGES AND SUPPORT FAVOURABLE OUTCOMES, INCLUDING CONTINUED INVESTMENT IN RESOURCES PROJECTS, IMPROVED OPERATIONAL EFFICIENCIES AND EMPLOYMENT GROWTH." – KPMG



## SUPPORTING REAL CHANGE TO BENEFIT YOUR BUSINESS AND THE WIDER INDUSTRY

AMMA's submission to the Productivity Commission's Review is the resource industry's most significant representation on workplace relations policy in the 21st Century.

Yet this is only the beginning of the process.

The Commission will issue an interim report midyear, followed by public hearings in August and September. A final report to government is due before December 2015.

As this process plays out, no other sector of our economy has a more important role to play in advocating reforms that will support national productivity growth, new employment opportunities and increased living standards.

On behalf of our members, AMMA will remain front and centre and uncompromised in our advocacy for a more

supportive, competitive and productive workplace system, in the interests of all Australians, including both employers and employees.

AMMA's representations equip the Productivity Commission to truly appreciate the scale of the workplace problems that must be confronted if the resource industry is to attract billions of dollars in new major project investment and deliver more employment opportunities and flow-on economic benefits for our nation.

You can get involved. Visit [amma.org.au/backontrack](http://amma.org.au/backontrack) to learn how you can contribute to AMMA's lobbying activities and help shape a policy environment where our industry can grow, prosper and generate jobs and improved living standards for all Australians.



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