ATTACHMENT B

Resource Industry Productivity Analysis and Policy Options

Discussion Paper

Australian Mines & Metals Association (AMMA)

July 2013

AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for 95 years, AMMA's membership covers employers in every allied sector of this diverse and rapidly evolving industry.

Our members include companies directly and indirectly employing more than half a million working Australians in mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as suppliers to these industries.

AMMA works with its strong network of likeminded companies and resource industry experts to achieve significant workforce outcomes for the entire resource industry.

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RESOURCE INDUSTRY EMPLOYER GROUP

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Executive summary

> *Unless you are highly productive in Australia, projects will go offshore and construction jobs will go offshore. Every major project under evaluation, including Browse, has to confront this issue.*
> ***– Michael Chaney AO, Chairman of Woodside Energy***

The year 2013 sees the Australian resource industry at a crossroads. Labour productivity is at its lowest level in a generation, competition for global capital is more intense than ever and new frontiers for resource investment continue to open.

Overall productivity in the resource industry has been in decline since 2000-01 and is now 45% off its peak. The surge in commodity prices, an investment boom and resource depletion have all been cited for initiating a steady but inevitable decline in overall productivity, particularly capital productivity. Increasing the level of labour productivity, through both legislative and non-legislative measures, is therefore essential to lift overall productivity in the resource industry.

At the same time, Australia's international competitiveness is in decline. The World Economic Forum has cited labour relations as a key reason for a drop in our competitiveness, with Australia's overall labour market efficiency amongst OECD countries falling from 7th in 2009-10 to 18th in 2012-13.

Increased competition from emerging resource nations combined with escalating costs creates serious concern for the $383 billion of resource investment currently under consideration in Australia. Of that figure, $150 billion has either been shelved or delayed in the past 12 months. The Australian resource industry is now in danger of being perceived as a 'high-cost/low-productivity' place to invest and do business. Globally significant projects worth billions of dollars and thousands of jobs will continue to go offshore under such conditions.

With this in mind, AMMA has set out in this discussion paper six productivity proposals in the areas of investment, work practices, leadership, technology, bargaining and skills development to boost productivity and collaboration in the resource industry.

Given that resource industry employers continue to report deteriorating labour productivity under the current industrial relations framework – the *Fair Work Act 2009* – and continue to face unsustainable wage claims, an increasingly militant labour environment, project delays and undermined flexibility, this paper also sets out six priorities for workplace relations reform.

Both the first and second tranche of amendments to the *Fair Work Act* have failed to address industry concerns.

Ultimately, a multi-faceted approach is required to ensure our resource industry can deliver on its great promise. This paper seeks to facilitate genuine discussion around both workplace relations (WR) and non-WR measures to restore resource industry productivity.

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1 Productivity initiatives – key proposals

Chapter snapshot

- While reform to the *Fair Work Act 2009* is essential, a range of non-legislative means are also required to improve productivity in the Australian resource industry.
- Securing productivity improvements was rated as the highest priority by organisations in the agriculture, mining, resources and utilities sectors for the year 2013, as indicated by 93% of respondents to a recent survey.
- This chapter advances six particular non-workplace relations initiatives which the resource industry believes can drive productive improvement through innovative investment, work practices, leadership, technology, bargaining and skills development.

1. This chapter focuses on ideas and initiatives to increase productivity in the Australian resource industry separate to any consideration of amending the *Fair Work* legislation or pursuing workplace relations reform. AMMA members report that driving productivity gains is a key corporate priority.

2. The Telstra Productivity Indicator 2012[1], a survey of organisational attitudes towards productivity, found that productivity improvement is rated as the highest priority by organisations in the agriculture, mining, resources and utilities sectors looking ahead to the year 2013 (93% of respondents agreed).

3. AMMA is releasing for discussion the following six non-legislative productivity initiatives for the consideration and feedback of all stakeholders.

	Productivity driver	**AMMA's proposed initiative**
1	Investment	Develop a productivity index to provide baseline data to support the business case for employer investment in employee engagement, process improvements and ICT.
2	Work practices	Produce a research paper on innovative work practices that investigates how rostering schedules can increase productivity at FIFO worksites.
3	Leadership	Roll out recent landmark findings to resource employers on the management and leadership drivers of High Performing Workplaces (HPWs).
4	Technology	Create an inter-industry technology forum that brings together experts and practitioners in logistics, operations and technology from both resource and manufacturing industries to share and cross-fertilize ideas.

[1] The Telstra Productivity Indicator 2012: A report on the attitudes and behaviours of Australian enterprise and government organisations towards improving productivity
http://www.telstra.com.au/business-enterprise/resources-insights/telstra-productivity-indicator/

5	Bargaining	Place productivity back on the bargaining agenda through a global study drawing together the '20 most innovative practices' around the globe to reignite the creativity and commitment of employers and employees to address productivity gains in workplace bargaining.
6	Human Capital	Integrate 'enhancing productivity and efficiency' modules into various levels of vocational education and training in order to instill 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.

1.1 Development of a productivity investment index

4. Employers recognise the role of investment in driving productivity. Respondents to the Telstra Productivity Indicator survey[2], including resource industry employers, rated investment in information and communications technology (ICT), process improvements, employee engagement and customer communications as equally important in driving productivity improvements.

5. However, research suggests that one of the most significant challenges to investment in productivity is to secure buy-in from management. Uncertain or inefficient data to support a genuine 'business case' in favour of productivity investment appears to be a substantial barrier to its implementation.

6. AMMA therefore proposes the establishment of a 'productivity investment index'. The index would establish baseline data for productivity investment in the resource industry, developed from a survey of resource industry enterprises. The index would collate industry best practices in the key areas of employee engagement, process improvement and technological adaption. Case studies would be utilised to illustrate the qualitative and quantitative benefits of productivity-driven investment.

7. The index would serve the dual purposes of showcasing productivity initiatives by resource employers as well as providing a road map for future investment. AMMA understands that many of its members are developing their own internal productivity measurement processes, and an industry-wide measure would neatly complement and support current industry decision-making frameworks.

1.2 Innovative work practices: FIFO rostering research

8. Given the capital-intensive nature of the resource industry, work arrangements can have a big influence on capacity utilisation[3]. For example, the introduction of 12-hour shifts was a key factor in labour and capital utilisation in the resource industry, and by the end of the 1990s it was estimated that around half of all

[2] The Telstra Productivity Indicator 2012: A report on the attitudes and behaviours of Australian enterprise and government organisations towards improving productivity
http://www.telstra.com.au/business-enterprise/resources-insights/telstra-productivity-indicator/

[3] Productivity Commission, Productivity in the Mining Industry: Measurement and Interpretation, 2008

production and maintenance employees in the industry were working 12-hour shifts.

9. Fly-in fly-out (FIFO) work arrangements are an essential mechanism for accessing key skills in remote areas. A question that arises out of this labour supply mechanism is how it affects productivity. A study by the Centre for Social Responsibility in Mining identified labour turnover as a significant threat to the productivity of FIFO operations[4].

10. AMMA therefore proposes a research paper aimed at identifying innovative work practices to increase productivity at FIFO work sites. A mixed-method study would draw upon direct interviews with mine site managers, FIFO employees and be supplemented by production data from selected sites. This grass-roots approach to productivity is likely to unearth innovative and practical ways to increase productivity 'at the coal face'.

1.3 Leadership and productivity

11. On 14 October 2012, Minister for Employment and Workplace Relations, Bill Shorten, announced that the Australian Government, in collaboration with industry, would provide $12 million over four years to establish a new Centre for Workplace Leadership[5]. Focusing on leadership 'as it happens at the enterprise level every day', the centre's activities would lead the public debate on the importance of leadership and drive a broader movement to 'do things differently at work'.

12. The Minister's media release stated that 'ensuring Australian jobs and workplaces of the future continue to lift productivity is a key priority for the Gillard Government'. The minister further stated that for too long the workplace relations debate in Australia had focused on conflict between unions and employers and the transactions involved in setting pay and conditions. As a result, relationships at work had been given insufficient attention.

13. At the same time, landmark research is being undertaken in a Department of Education, Employment & Workplace Relations (DEEWR)-funded cross-disciplinary study into high performing workplaces in the services sector. That study has so far found that, compared with low performing workplaces, high performing workplaces:

    a. Are more productive – having a 12% higher total factor productivity when ranked in terms of their intangible asset performance.

    b. Perform significantly better financially – with profit margins nearly three times higher.

    c. Have significantly higher levels of innovation performance, for example – high performing workplaces dedicate more resources to fund new strategic initiatives (46.9% higher).

[4] Workforce Turnover in FIFO Mining Operations in Australia: An Exploratory Study, University of Queensland, 2003

[5] Centre for Workplace Leadership, 14 October 2012, Media Release, The Hon Bill Shorten MP

14. The DEEWR report found that improving productivity is largely a function of commitment to developing leadership and management capabilities[6]. The high performing workplace study is now working with a small number of study participants to design and trial tailored intervention strategies to lift workplace performance and improve management of intangible assets, productivity and profitability.

15. This could be replicated for the resource industry. Resource industry employers could be informed of the significant benefits from increased productivity by way of enhanced leadership and management capabilities, as reported in the DEEWR study. Working in partnership with members, AMMA could develop strategies, tailored to each organisation, to enhance workplace performance, improve the management of intangible assets and increase productivity and profitability.

1.4 Fostering technological innovation

16. Unearthing new metal ore reserves is now more technically challenging than at any time in history, with reserves increasingly located in remote regions[7]. Business imperatives to improve performance and contain costs, combined with a chronic shortage of skilled labour, compound the difficulty of operating profitably in these inhospitable locations. Mining companies thus need to find new ways to achieve increases in productivity to meet demand.

17. Recent advances through driverless trucks, remote operations and control systems enable resource employers to produce many times the ore with fewer workers and better safety than ever before. However, the challenge is that the last step-change of technology has now been exhausted: infrastructure is being pushed to its limits.

18. Other industries, such as manufacturing, have been able to make quantum leaps in productivity and responsiveness through new technology paradigms such as assembly lines, automation and just-in-time methodologies[8]. As mining enterprises aspire to achieve similar gains, elements of these concepts are now being investigated for their application in mining through emerging technology that includes 'intelligent production' and 'demand-driven planning'.

19. AMMA proposes the formation of an 'inter-industry technology forum' that brings together experts and practitioners in logistics, operations and technology from both the manufacturing and mining sectors, to capitalise on this trend. We live in an era of 'open-source innovation' where the best ideas are those that are spread and shared. A technology forum would enable industry and thought leaders to discuss how innovation can cross-fertilise between industries to drive ongoing productivity growth. This would create industry flow-on effects between sectors, boosting productivity and competitiveness by fostering an innovative mindset.

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[6] Leadership, Culture and Management Practices of High Performing Workplaces in Australia: The High Performing Workplaces Index.
http://www.deewr.gov.au/Skills/Programs/WorkDevelop/Documents/SKEHPW.pdf

[7] 'Four Must-Have Productivity Increasing Technologies', Mining Australia, 29 October 2012

[8] Four Must Have Productivity Increasing Technologies, Mining Australia, 29 October 2012

1.5 Putting productivity back on the bargaining table

20. Productivity improvement is simply off the bargaining agenda in too many if not all enterprise bargaining negotiations with trade unions. Australia has ended up in a situation in which bargaining fatigue has given way to no practical scope to bargain for increased productivity. Employers and trade unions have lost capacity and creativity in this area and need reinvigoration and re-equipping to pursue productivity increases going forward.

21. AMMA proposes three ways to get productivity back on the bargaining agenda.

22. Firstly, AMMA proposes that a study be undertaken into the barriers to productivity bargaining at the workplace level. In 2008, the Productivity Commission released a report on productivity in the mining industry[9]. As we approach the five-year anniversary of that report in 2013, the time is right to ask the Productivity Commission to produce, in collaboration with a committee comprised of employer groups and unions, a report identifying barriers to productivity bargaining as well as recommending solutions.

23. Secondly, funding needs to be used to support employer organisations and unions in delivering innovative enterprise bargaining. In the 2010-11 Federal Budget the Federal Government announced $20 million over two years for a Productivity Education and Training Fund to assist trade unions and employer organisations to achieve better productivity outcomes through enterprise bargaining under the *Fair Work Act*[10]. This funding should continue, expand and target 'productivity-at-risk' industries such as the resource sector. This funding should be linked with productivity outcomes and employer associations should play a primary role in progressing initiatives.

24. Thirdly, AMMA proposes that a rapid research project be undertaken by DEEWR on the 20 most innovative business practices and initiatives from around the globe as a catalyst to place productivity back on the bargaining agenda. For example, 'new works agreements' are now commonplace in the German automobile industry and rely on cooperation between management and unions to secure investment projects. In one instance, Ford management signed new investments at the five German Ford plants at Cologne, Düren, Berlin, Wülfrath and Saarlouis. In return, the union agreed to a tapering of 'payments above contract wages' and more flexibility in working time[11]. Ford announced that the new works agreement would bring savings of $US120 million per year and would secure jobs at Ford Germany for the next 10 to 15 years.

1.6 Human capital and productivity

25. Skills shortages are a well-documented threat to productivity in the resource industry. PricewaterhouseCoopers has reported that, with an underemployment rate of only 1% compared with the national average of

[9] Productivity Commission, Productivity in the Mining Industry: Measurement and Interpretation, 2008
[10] Commonwealth Government, 2011-2012 Budget: Building Australia's future Workforce
[11] European Foundation for the Improvement of Living and Working Standards: New Practices in Industrial Relations, 2012

11.1%, the resource industry is operating at close to full labour capacity[12]. Therefore, productivity can easily be undermined by increased labour turnover and difficulties attracting and retaining skilled labour. This can be further exacerbated by the remote nature of many resource projects.

26. In response, AMMA has developed several industry initiatives aimed at domestic skills and training, as well as attraction and retention:

    a. Miningoilandgasjobs.com is an electronic platform that matches the correct skill set with employer requirements.

    b. AMMA Skills Connect brings together specific training and development, apprenticeship and cadetship programs, verification of competency and international skills assessments at a single point of service delivery to employers.

    c. The Australian Women in Resources Alliance (AWRA) is a jointly funded initiative led and managed by AMMA with the goal of increasing women's participation in the mining sector.

27. To further drive productivity through skills development, AMMA proposes that the teaching of productive work practices be integrated into vocational training programs. This will encourage future generations of trained employees to develop and implement productivity improvements, and has already been flagged as a valuable initiative by employers. The Telstra Productivity Indicator reported that over the past year there has been a significant increase in the perceived impact of investment in staff training on productivity improvement, from 35% in 2011 to 46% in 2012 by employers[13].

28. A curriculum on "managing for efficiency and productivity" for managers in particular, as well as across various levels of trades, sciences and engineering roles onsite could also be developed. The Minister's 14 October 2012 media release on Centre for Workplace Leadership stated that 'productivity happens at work'. To facilitate this, vocational and leadership training needs to incorporate the productivity agenda and better equip future employees to harness the methods of improved productivity.

Your feedback sought

29. To provide feedback in response to the issues raised in this chapter, please contact AMMA policy adviser Luke Achterstraat on (07) 3210 0313 or at luke.achterstraat@amma.org.au.

[12] Productivity Scorecard: Mining edition, PricewaterhouseCoopers May 2012
[13] The Telstra Productivity Indicator 2012: A report on the attitudes and behaviours of Australian enterprise and government organisations towards improving productivity
http://www.telstra.com.au/business-enterprise/resources-insights/telstra-productivity-indicator/

2 Australia's waning productivity

Chapter snapshot

- The resource sector is at a crossroads – labour productivity in the industry is now 60% off its 2001 peak and at its lowest level since 1987. Capital, labour and multifactor productivity have all been in decline since 2000-01.
- Multiple factors influence productivity in the mining industry including commodity prices, resource depletion, the lumpy nature of mining investment, production lags, work practices, innovation, technology and labour efficiency.
- A boom in capital investment has created an inevitable, steady decline in capital productivity, placing further importance on improving levels of labour productivity to drive overall resource sector productivity growth.
- Australia's mining industry has performed poorly compared with our international competitors on productivity. The United States, the Euro Area, the United Kingdom, Japan and Korea all outperformed Australia with regard to labour productivity in the mining and quarrying sectors.
- Declining productivity in Australia's mining sector drags down overall productivity levels in resource-rich states such as Queensland and Western Australia.
- Productivity is a key determinant of resource sector investment and vital to the long-term improvement of living standards in Australia.

2.1 What is productivity?

30. Productivity is a measurement of the ratio of output to one or more inputs.

31. Productivity growth is the most important determinant of long-running improvements in economic prosperity. Over the past 30 years, it is estimated that around 80% of the increases in Australia's living standards have been due to increases in productivity[14].

32. The Australian Bureau of Statistics (ABS) provides industry-level indexes for three measurements of productivity: multifactor, capital and labour productivity.

33. Labour productivity is the output of goods and services generated per hour worked. Capital productivity is the output generated per unit of capital, where capital comprises assets such as buildings, plant, machinery and mines. Multifactor productivity can be thought of as a weighted average of labour and capital productivities.

2.2 Multifactor productivity

34. The productivity measure preferred by economists is multifactor productivity. It takes into account the effects of both labour and capital inputs on output.

[14] Commonwealth Treasury, Recent Productivity Outcomes and Australia's Potential Growth 2012

35. In 2008, the Productivity Commission published a report[15] on productivity in the mining industry which used the ABS data series entitled *Experimental Estimates of Industry Multifactor Productivity*. This data index has also been used by eminent economist Saul Eslake in his 2011 paper 'Productivity: the Lost Decade'[16] and also by the Bureau of Resources & Energy Economics (BREE)[17].

36. The graphs in this chapter have been created using that same data series. They compare the 'mining' industry data to the ABS 'selected industries' data[18]. The latter is henceforth referred to as 'other industries'.

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

38. Since peaking in 2000-01, multifactor productivity in the resource industry has fallen at an average annual rate of 4.5%, or by 34% in total, as displayed in the following graph.

[15] Productivity Commission, Productivity in the Mining Industry: Measurement and Interpretation 2008
[16] Productivity: the Lost Decade, Saul Eslake, 2011
http://www.rba.gov.au/publications/confs/2011/eslake.pdf
[17] Australian Mining Productivity, Presented at the ANU-Harvard Public Symposium
https://crawford.anu.edu.au/pdf/events/2013/8801/Grafton-Australian-Mining-Productivity-18-March-2013-Finalversion.pdf
[18] A cross-section of the economy that includes: Agriculture, Forestry and Fishing; Manufacturing; Electricity, Gas Water and Waste Services; Construction; Wholesale Trade; Retail Trade; Accommodation and Food services, Transport, Postal and Warehousing; Information, Media and Telecommunications; Financial and Insurance Services; and Arts and Recreation Services.

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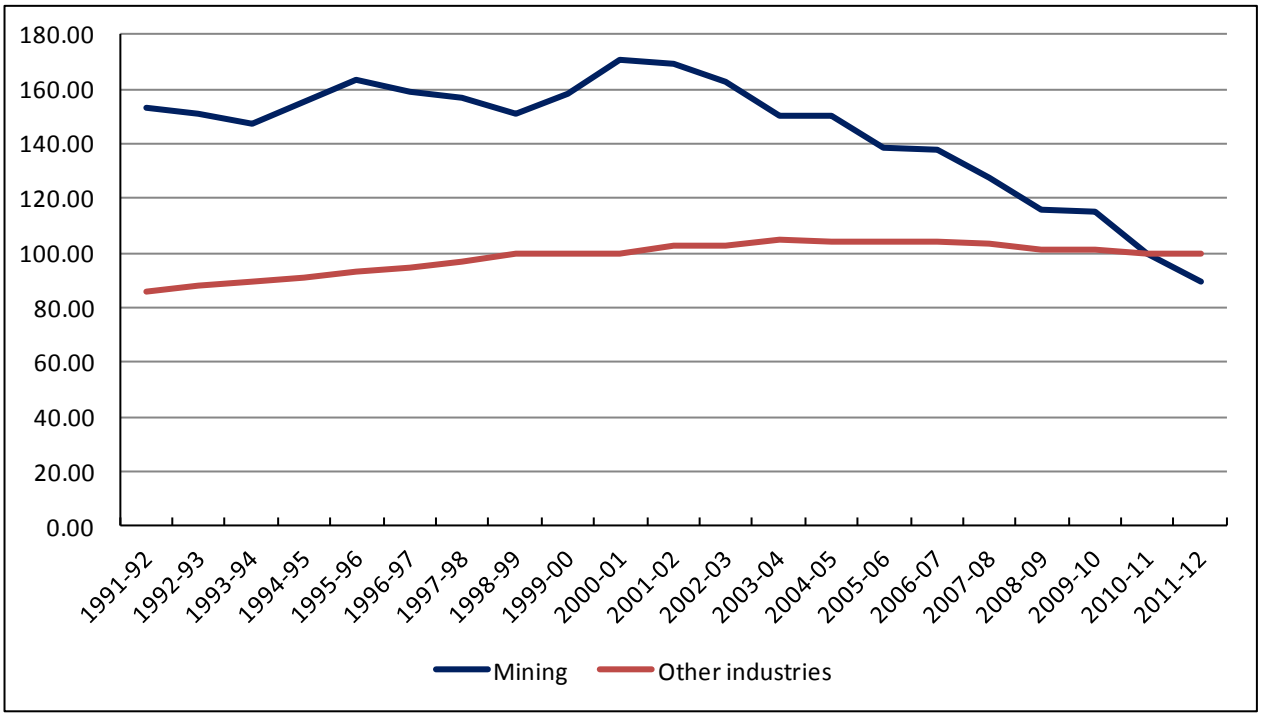
Figure 1: Multifactor productivity indexes



***Data source*: ABS 5260.0.55.002. Estimates of Industry Multifactor Productivity, Australia: Detailed Productivity Estimates (Reference year for indexes is 2010-11 = 100.0).**

39. One key reason economists cite for the decline in multifactor productivity in the resource industry is the impact of a surge in commodity prices. This has produced large increases in the *value* of output that has not been matched by a commensurate increase in the *volume* of mining output.

40. The Productivity Commission explains:

> *…a commodity price boom can lead to lower productivity (albeit occurring at the same time as high profitability) because higher prices render less efficient mines and mining practices economically viable. In boom times the primary focus of mining operations is usually on increasing output, albeit at a higher unit cost of production*[19].

41. While significant, the impact of commodity prices on resource industry productivity is only one part of the current productivity challenge. The Productivity Commission has recently detailed other factors including: the transition to lower yielding resources (resource depletion), inefficiencies of vintage capital, output-input lags and the lumpy nature of mining investment[20].

42. To unpack these complexities we need to look at the two key components of multifactor productivity: capital productivity and labour productivity.

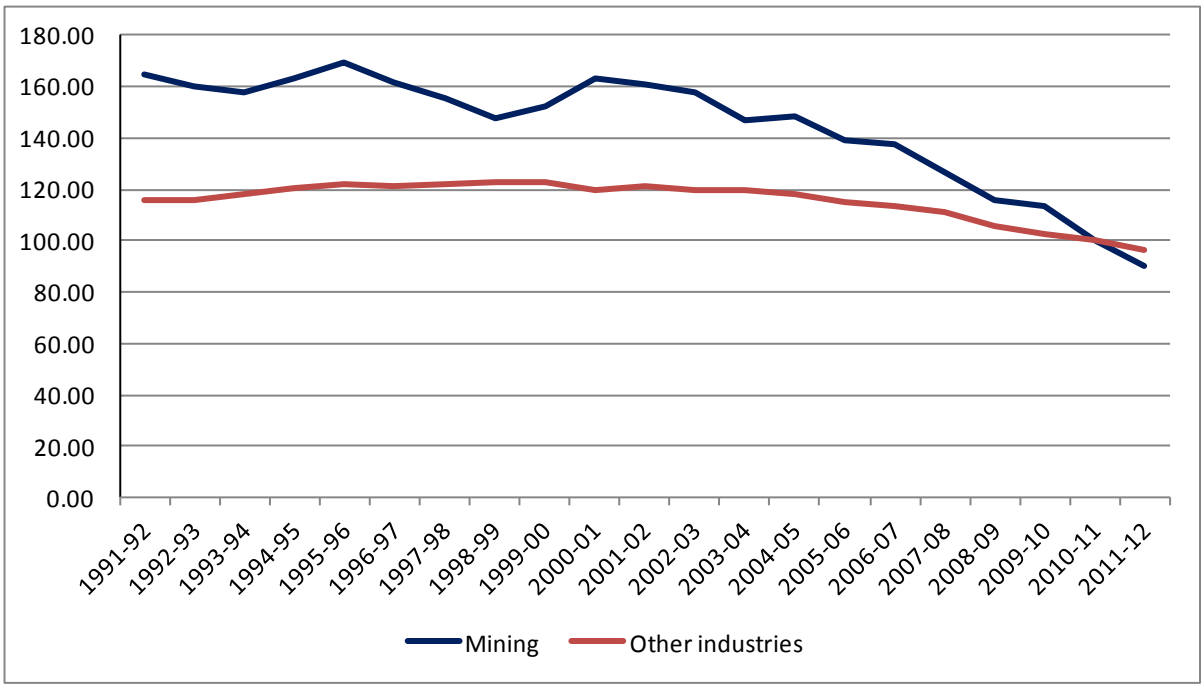
[19] Productivity Commission, Productivity in the Mining Industry: Measurement and Interpretation 2008
[20] Bureau of Resources and Energy Economics, Productivity in the Australian Mining Sector, BREE Discussion Paper Series, March 2013

2.3 Capital productivity

43. Capital productivity is the measure of the amount produced per unit of capital services utilised. The composition of capital used in the resource industry differs to that of other industries because it includes exploration expenditure as a capital input on the basis that, regardless of whether it is successful or not, exploration is required in order to acquire new reserves.

44. Given the capital-intensive nature of Australia's resource industry, it is useful to consider how capital productivity has trended over the past two decades.

Figure 2: Capital productivity indexes

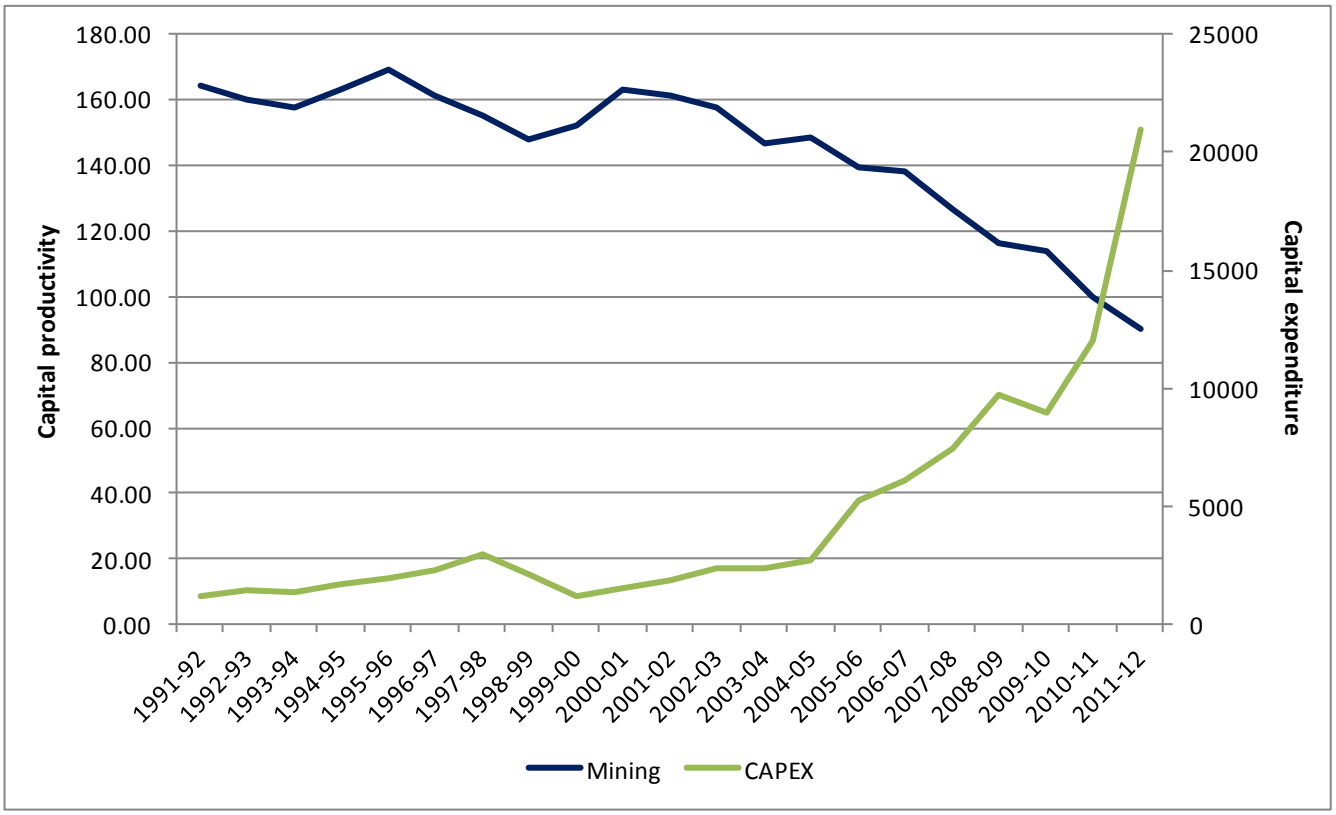


***Data source*: ABS 5260.0.55.002. Estimates of Industry Multifactor Productivity, Australia: Detailed Productivity Estimates (Reference year for indexes is 2010-11 = 100.0).**

45. As the graph above shows, while capital productivity for selected industries has remained fairly stable over the 20-year period, there has been a sustained general downward trend since 2004.

46. Adding mining industry capital expenditure to the scene in the graph below provides a more complete picture.

Figure 3: Capital productivity vs. capital expenditure



***Data source*: ABS 5625.0 - Private New Capital Expenditure and Expected Expenditure, Australia**

47. What becomes apparent from the graph above is that capital expenditure in the resource industry shows an inverse correlation to capital productivity. As expenditure increases, productivity falls, particularly since 2000-01.

48. A factor at play here is the lag effect that occurs when measuring capital productivity. The Productivity Commission has stated that the average production lag time in mining is around three years, meaning output does not come online until three years after the capital is invested.[21]

49. There is over $590 billion of capital investment in resource projects either under way or under consideration. But these large potential investments will be subject to an inevitable production lag. We must find ways to increase productivity in the meantime to ensure the benefits of expansion are fully realised and that future investments continue to be made.

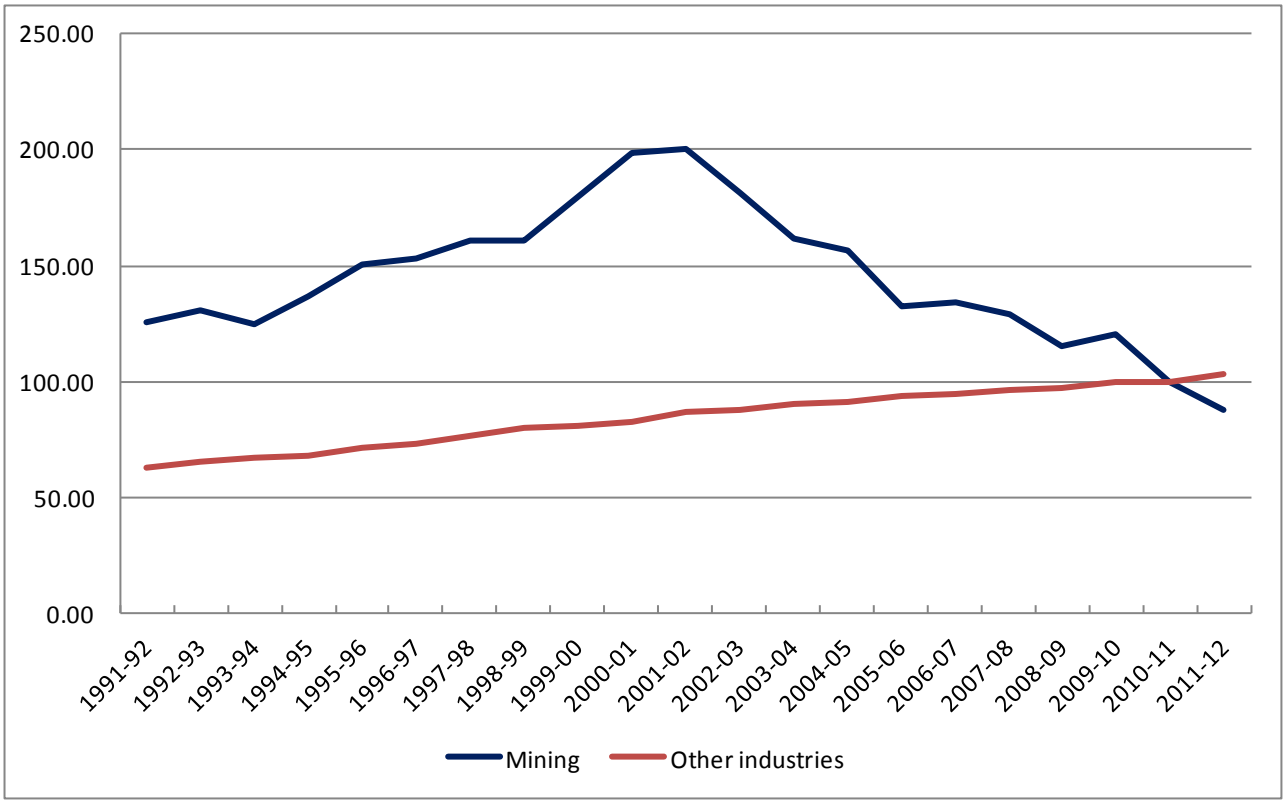
2.4 Labour productivity

50. As mentioned, multifactor productivity accounts for the impacts of both capital and labour on output. As shown above, capital productivity is unlikely to pick up in the short term given the sheer volume of capital investment already in the pipeline. This means raising labour productivity will be significant in enhancing overall productivity in the Australian mining sector.

[21] Productivity Commission, Productivity in the Mining Industry: Measurement and Interpretation 2008

51. The labour productivity index is often seen as most relevant from a workplace relations perspective. It measures the output produced by a typical employee over a period of time.

Figure 4: Labour productivity indexes



***Data source*: ABS 5260.0.55.002. Estimates of Industry Multifactor Productivity, Australia: Detailed Productivity Estimates (Reference year for indexes is 2010-11 = 100.0).**

52. Immediately apparent from the graph above is the significant discrepancy between the trend lines for mining compared with other industries. Other industries' labour productivity has shown a steady but moderate growth over a 20-year period, rising 20% over the past decade.

53. 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% lower than its peak. As Saul Eslake commented:

> *There's no denying that both labour and multifactor productivity have fallen sharply in the mining and utilities sectors over the past decade*[22].

54. There is also a notable decline coinciding with the commencement of the *Fair Work Act* in July 2009. Labour productivity in the industry is currently at its weakest level since 1987.

55. A recent report from BIS Shrapnel[23] describes mining industry labour productivity as a 'disaster' and argues that governments have failed to deliver the structural reform required to increase output. While acknowledging the impact

[22] Saul Eslake (2011), Productivity: The Lost Decade, p229
[23] BIS Shrapnel (2012), Mining in Australia 2012 – 2027

of the surge in commodity prices, the report argues that the resource industry is at a crossroads and that changing the relevant policy levers is more urgent than ever, including but not limited to workplace relations, tax and regulation.

56. These findings are consistent with feedback from AMMA's own membership. Resource industry employers continue to stress that greater productivity can be generated through flexible workplace relations arrangements, particularly through more direct employer-employee arrangements at the workplace level. Access to skilled labour, including via skilled migration in a small number of cases, is also of vital importance in delivering productivity growth.

57. The BIS Shrapnel report also found that, faced with rising wage costs, construction cost blowouts, increasing regulation and additional taxes, resource industry employers need flexibility in dealing with contractors in order to secure productivity improvements. Similarly, AMMA's policy is that where there is third-party involvement in workplaces, it must be both reasonable and constructive, including respecting the making of strategic management decisions.

58. Unfortunately, some commentators and interest groups continue to refuse to acknowledge the impact of the workplace relations framework on productivity. While workplace relations policy is by no means the only factor affecting productivity, it is certainly something policymakers have to get right in order to help drive much needed improvements.

59. Eminent economist and outgoing Chairman of the independent Productivity Commission, Gary Banks, has forcefully made the point that:

> *…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"*[24].

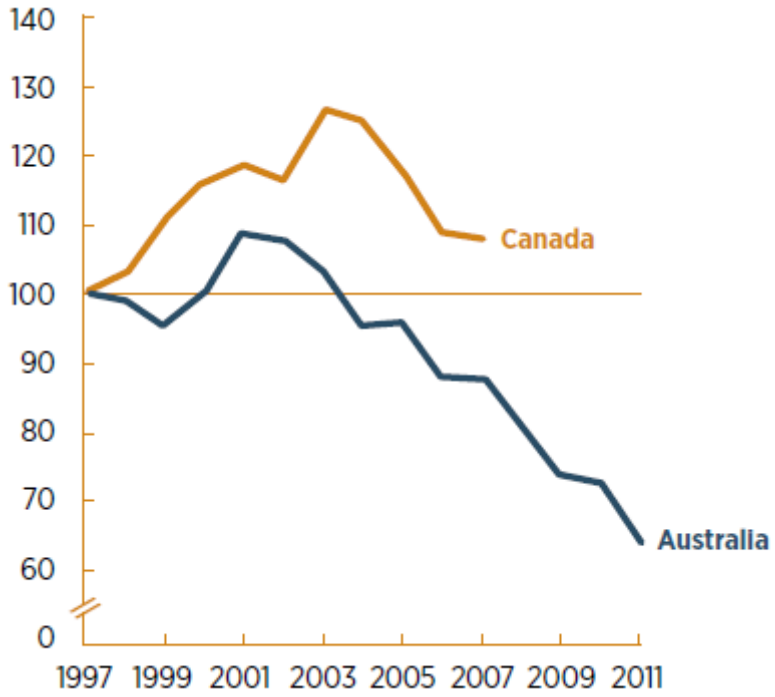
2.5 Putting Australia's productivity into a global context

60. It should be acknowledged that declining mining industry productivity is not unique to Australia. The boom in commodity prices has led to less 'productive' mines coming online around the world.

61. However, the following graph shows that while Canada has also experienced declining mining productivity, Australia has performed significantly worse[25]. While Australia's mining productivity peaked in 2001, Canada experienced growth until 2003 and, unlike Australia, has been able to retain some of the gains made since 1997.

[24] Gary Banks, 'Successful Reform: Past Lessons, Future Challenges', Keynote address to the Annual Forecasting Conference of the Australian Business Economists, Sydney, 8 December 2010
[25] Minerals Council of Australia, Opportunity at Risk: Regaining Our Competitive Edge, 2012

Figure 5: Multifactor productivity: Australia vs. Canada

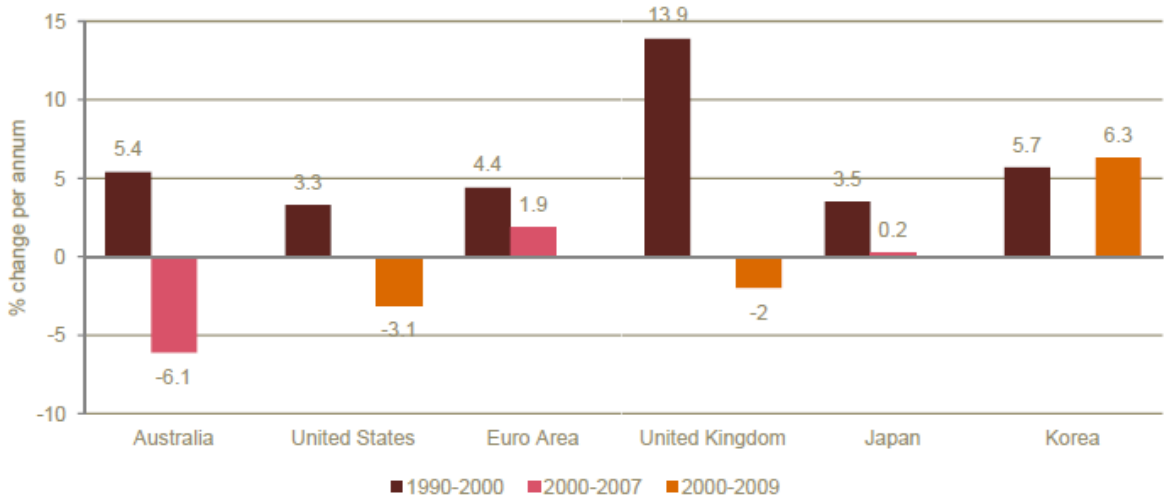


***Source**: 'Opportunity at Risk: Regaining our competitive advantage in minerals resources', Port Jackson Partners for the Minerals Council of Australia, September 2012*

62. Australia's mining productivity performance has been poor not only compared with Canada but also compared with other advanced economies. PricewaterhouseCoopers (PwC) has stated "there is no doubt that while the past decade has also seen mining industries' labour productivity decline in advanced economies around the world, the decline in Australia is notable"[26].

[26] PricewaterhouseCoopers, Productivity Scorecard: Mining edition, May 2012

Figure 6: Labour productivity: international comparisons (mining and quarrying)



***Source*: PwC Productivity Scorecard, March 2012**

63. Saul Eslake[27] has published data showing that Australia's mining and quarrying labour productivity decreased 6.1% from 2000 to 2007, while labour productivity in the Euro Area grew 1.9% and Japan managed to avoid any loss in labour productivity. These comparisons are displayed in the above graph first published by PricewaterhouseCoopers.

64. While the United States and the United Kingdom both registered productivity losses, Korea's mining and quarrying sector recorded 6.3% labour productivity growth between 2000 and 2009. Of the nations listed above, since the year 2000 Australia has been the poorest performer in terms of labour productivity in the mining and quarrying sector.

[27] Saul Eslake 2011, "Productivity" presented to the Annual Policy Conference of the Reserve Bank of Australia, HC Coombs Conference Centre, Kirribili, Sydney, 15-16 August 2011

3 Declining competitiveness – Resource investment at risk

Chapter snapshot

- Independent studies cite labour relations as highly problematic for conducting business in Australia and as partly responsible for a decline in our competitiveness.
- The efficiency and competitiveness of Australia's labour market has fallen from 7th in 2009-10 to 18th in 2012-13 amongst OECD nations.
- The search for capital has intensified with emerging resource-rich countries now genuine competitors with distinct cost advantages over Australia.
- Projects in Australia operate at a cost disadvantage to developed economies and are 38% to 50% more expensive to run than those on the US Gulf Coast.
- Recent project scale-backs show that cost escalations are impacting jobs and investment. We can no longer rely on high commodity prices to underwrite our revenues, jobs and national income.
- The resource sector is at a crossroads and responsible workplace reform in conjunction with non-WR initiatives can assist in addressing cost blowouts and increasing productivity.

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

66. Combined with intensified global competition and escalating costs, billions of dollars of Australian resource investment are potentially at risk.

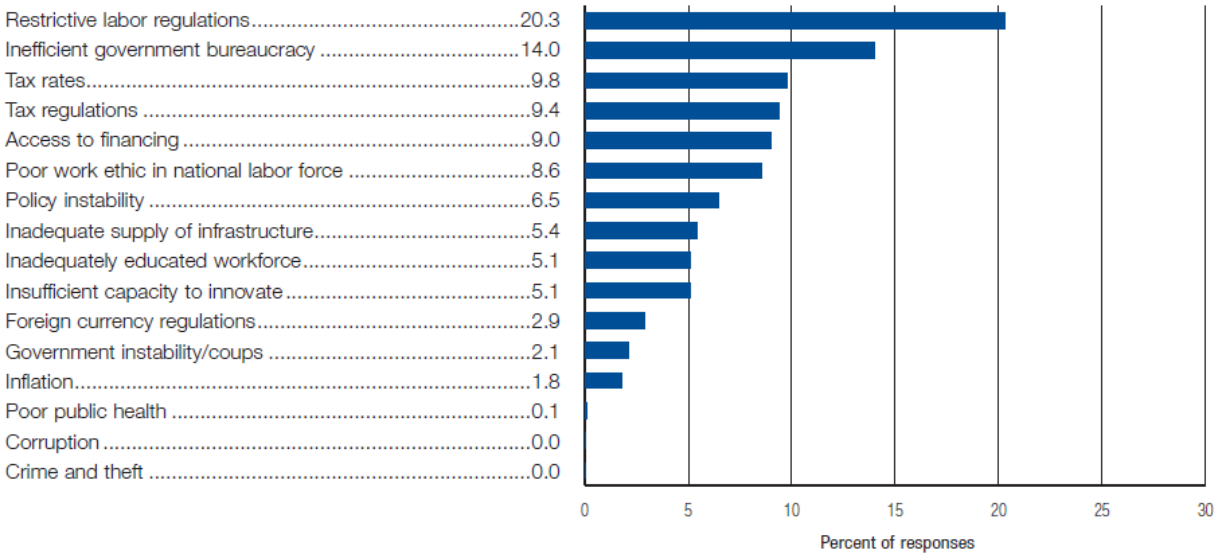
3.1 Labour relations dragging down our competitiveness

67. In the 2012-13 Global Competitiveness Report[28] major sectors of the Australian economy were asked by the World Economic Forum (WEF) to select and rank the five most problematic factors facing their businesses. The report is based on economic data and a survey of 15,000 individuals.

68. As pictured below, in 2012-13, restrictive labour regulation was singled out by Australian respondents as the most problematic factor from a total of 16 competitiveness factors including infrastructure, tax, and government bureaucracy.

[28] WEF Global Competitiveness Report 2012-13, accessed 1 February 2012

Figure 7: The most problematic factors to doing business in Australia



Note: From the list of factors above, respondents were asked to select the five most problematic for doing business in their country and to rank them between 1 (most problematic) and 5. The bars in the figure show the responses weighted according to their rankings.

***Source*: World Economic Forum Global Competitiveness Report, 2012-13**

69. Back in 2010-11, soon after the commencement of the *Fair Work Act 2009*, only 13.1% of respondents to the above survey nominated labour regulation as the most problematic to doing business in Australia. That figure rose to 16.6% in 2011-12 and to 20.3% in the most recent 2012-13 report.

70. The fact that twice as many respondents in 2012-13 cited restrictive labour regulation as a greater impediment to doing business than tax rates is highly concerning, particularly in light of Australia being one of the world's highest-taxed countries.

71. Despite ranking 4th in the efficiency of corporate boards (a proxy for management acumen), 5th for the stability of our banking system and 7th for the quality of scientific research institutions, Australia ranked a dismal 42nd in overall labour market efficiency in the WEF report as pictured below.

72. Canada – a commonly used comparator against Australia – ranked 4th in labour market efficiency while our New Zealand rivals across the Tasman also earned a top 10 place. As the WEF report noted, "the main area of concern for Australia is the rigidity of its labour market". A full comparison with OECD countries only is included at the back of this paper in Appendix A.

Figure 8: Australia's 'hit-and-miss' rankings in international competitiveness

'Top 10' rankings		***'Situation critical'***	
Efficiency of corporate boards	4th	Flexibility of wage determination	123rd
Stability of banking system	5th	Hiring and firing practices	120th
Intensity of local competition	6th	Pay and productivity	80th
Quality of scientific research institutions	7th	Co-operation in labour relations	67th
Financial market development	8th	Overall labour market efficiency	42nd

***Source*: World Economic Forum's Global Competitiveness Report, 2012-13**

3.2 Intensified global competition

73. An examination of trends in the international resource sector further illustrates why Australia's decline in international competitiveness threatens the billions of dollars of uncommitted investment in our resource industry pipeline.

74. With capital more global and mobile than ever before, the $383 billion worth of uncommitted resource projects and hundreds of thousands of jobs could be at risk unless investors are reassured of Australia's status as a reliable prime destination for investment. Improving productivity is a crucial part of this.

75. While substantial attention is rightly being paid to China's demand for Australia's natural resources, it must not be overlooked that China is both an energy customer and energy competitor to Australia. A sole focus on China's demand appetite would be misguided.

76. China remains the world's largest producer of coal, steel, cement, aluminium, lead, zinc, tin and magnesium. China's mining industry as a whole has approximately 80,000 state-owned mining companies and 200,000 collectively-owned mines. According to the Australian Trade Commission, the Chinese mining industry has been experiencing strong growth driven by increasing demand from the power, manufacturing and construction industries[29].

77. Australia's strategic location in Asia is often cited as a key driver of our resource industry's competitiveness. However, there are other emerging competitors in this region. These are often low-cost economies with a significant headstart against Australia. Mongolia was the world's fastest growing economy in 2011, driven by foreign investment in its rich coal, copper and gold mining sectors.

78. *The Guardian* newspaper reported a prominent hedge fund manager saying[30]:

> *If you were going to develop a commodity supply source anywhere – even today, when global commodity prices have taken a dip – it would be in Mongolia, this former Soviet satellite right next to China, the most resource-hungry market in the world.*

[29] Australian Trade Commission, 'Mining to China', accessed 1 February 2013 http://www.austrade.gov.au/Mining-to-China/default.aspx (Last updated: 31 July 2012)

[30] The Guardian online, Foreign firms dig deep for Mongolia's commodity riches, 20 August 2012

79. The recent discovery of vast mineral deposits in the Mongolian hinterlands is helping drive the country's progress and diverting the attention of investors away from conventional markets like Australia.

3.3 Increasing cost pressures

80. According to an August 2012 *Australian Financial Review* article[31], up to $100 billion of mining projects were at that stage under threat due to rising costs and falling commodity prices, with the analysis predicting that more than a dozen developments would be further delayed. As it happens, over $150 billion of resource projects have been delayed or shelved in the past 12 months.

81. Xstrata reportedly told a Hunter Valley business in August 2012 that the cost of building a new thermal coal mine in Australia was 66% more than anywhere else in the world, at $US176/ton versus the global average of $US106/ton[32].

82. In 2012, the Business Council of Australia commissioned an analysis of the cost of building large-scale resource projects in Australia and found productivity and wage inflation levels in Australia were far worse than those of our global competitors, rendering our projects up to 50% more costly than in the US:

Figure 9: Summary of Australian project cost performance

Project type	Average cost compared with US Gulf Coast
Sustaining capital projects	40%
Iron ore and coal developments	38%
Large complex processing projects	50%

Source: Internal report prepared for Business Council of Australia by Independent Project Analysis, 2012

83. While Australia should never seek to compete against many of our Asian neighbours on wage costs, it is concerning to see our industry at a distinct cost disadvantage compared with an economy that has comparable living standards to ours such as the US. It is little wonder that Australian companies developing the largest LNG projects in the world in Western Australia cite such cost escalations from an already high base as a major concern.

84. Numerous resource industry leaders have warned that Australia cannot afford to have its cost curve worsened by escalating wage claims, and have flagged labour productivity improvements as essential when the cost of labour in Australia is double that of many of our competitors.

85. As the then Managing Director of Rio Tinto stated at the Australian Resources Conference and Trade Show in November 2012:

> *Australian projects are now at a distinct capital cost disadvantage relative to peers. Reform of the Fair Work Act needs to go much further than has so far been flagged by the government*[33].

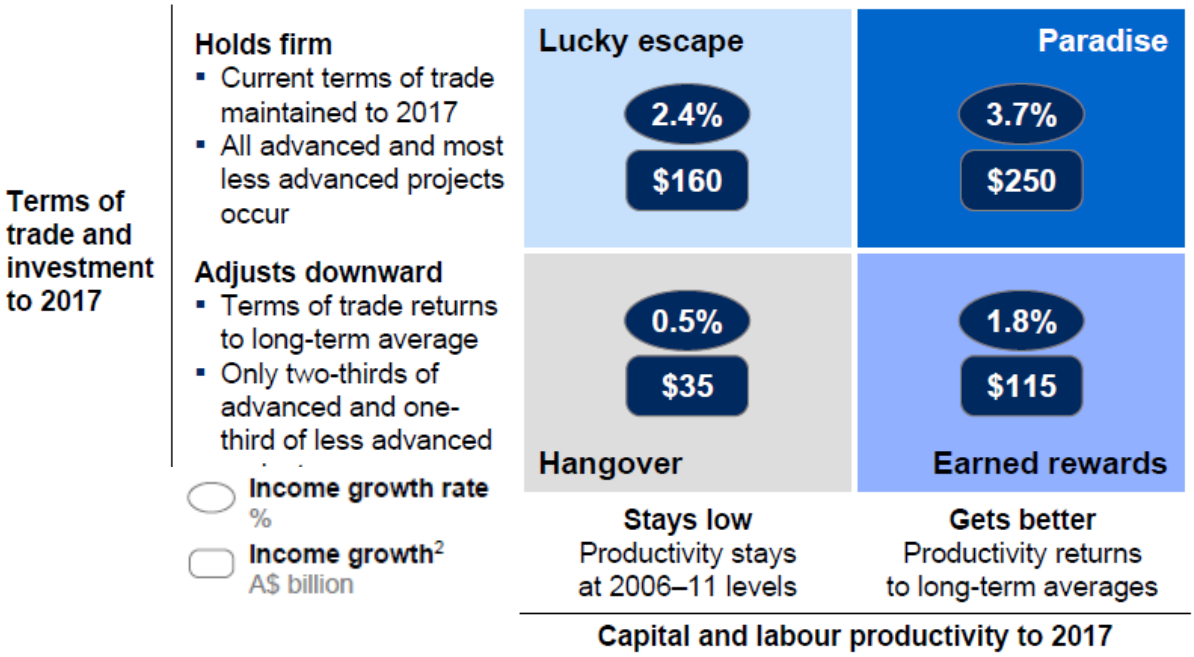
[31] $100bn mining projects threatened , Australian Financial Review, 4 September 2012
[32] More big mine projects at risk, Australian Financial Review, 25 August 2012

3.4 The cost of inaction

86. The dynamics of the mining investment phase have changed and the associated policy challenges have become greater and more urgent. In the past, higher prices underwrote strong revenues but Australia can no longer rely on sustained high commodity prices to drive growth. While our terms of trade remain at historically high levels, Australia needs to do the hard yards of increasing productivity to ensure our value growth for the long term.

87. In their 'Beyond the Boom' report[34], McKinsey and Co depict four scenarios for the Australian resource industry, dependent upon potential outcomes in: (i) our productivity and (ii) the terms of trade (ie. commodity prices):

***Figure 10:* McKinsey's 'Four Scenarios' for the Resource Industry**



Source: McKinsey & Co, 'Beyond the Boom: Australia's productivity imperative'

88. Looking ahead to 2017, Australia's national income could vary by up to $A135 billion depending on the direction of our terms of trade.

89. While the global commodity price cycle is out of our control, Australia can take meaningful steps to increase productivity and shore up the certainty of advanced and less advanced project investment.

90. Returning our productivity to long-term averages and the levels experienced in the 1990s is required to 'earn ongoing rewards' in the resource sector and guarantee at least $90 billion of income growth over the next five years.

[33] Rio Tinto, Presentation to the Australian Resources Conference and Trade Show, November 13, 2012
[34] McKinsey & Co, 'Beyond the boom: Australia's productivity imperative' August 2012

4 Labour productivity – The case for workplace relations reform

Chapter snapshot

- The *Fair Work Act* has failed to deliver productive workplace outcomes, with resource industry employers continuing to report deteriorating labour productivity at their worksites under the current laws. Four out of five resource industry employers reported being unable to negotiate productivity improvements for wage increases under the *Fair Work Act*[35].
- A culture of union militancy has emerged as the current system widens the capacity for unions to take protected industrial action in pursuit of unsustainable wage claims. Even a former President of the ACTU has acknowledged that unsustainable wage claims have the capacity to threaten future projects.
- Restricted agreement-making options available to employers for new projects have enhanced the power for unions to delay major projects – one in five projects are now at risk due to stalling tactics. Under the *Fair Work Act*, the only way for a business to negotiate a new project agreement is with a union.
- An internationally competitive, productive and sustainable resource industry requires a workplace relations system that ensures:
  - **Protected industrial action** during bargaining can only be taken as a last resort and that there is greater access to 'cooling off' periods;
  - The capacity to make **greenfield (new project) agreements** without exorbitant wage and condition outcomes or unnecessary project delays;
  - **Allowable matters** in enterprise agreements pertain to the direct relationship between employers and employees and not to third parties;
  - The location and frequency of **union right of entry** visits is reasonable and does not undermine operational requirements;
  - **Agreement-making options** are broadened through a more workable form of individual agreement; and
  - Greater rigour is introduced into the threshold for accessing the **adverse action / general protections** jurisdiction to minimise the incidence of unmeritorious claims.

91. The fact is that resource industry employers continue to report deteriorating labour productivity under the Fair Work laws.

92. AMMA's Workplace Relations Research Project, conducted in conjunction with RMIT University, is a survey-based analysis that over the past three years has revealed a story 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.

[35] The AMMA Workplace Relations Research Project

93. The respondents to comprehensive surveys on the impacts of the *Fair Work Act* on resource industry projects, conducted twice a year since 2010, are resource companies operating in every part of the industry across Australia. Respondents have been asked every six months to rate their perception of current levels of labour productivity at their worksites. This is then converted into an index score out of 100. The higher the index score, the more positive the perception of labour productivity. The results for the five surveys published to date are provided below.

Figure 11: What is your perception of the current level of labour productivity at your worksite(s)?

Survey date	Extremely low (%)	Quite low (%)	Low (%)	Acceptable (%)	High (%)	Quite high (%)	Extremely high (%)	Index score out of 100
April 2010	0.0	4.6	7.7	16.9	30.8	33.8	6.2	66.7
Oct 2010	0.0	0.0	8.8	38.2	30.9	20.6	1.5	61.3
April 2011	0.0	2.9	20.0	28.6	32.9	14.3	1.4	56.7
Oct 2011	1.2	3.5	11.6	31.4	31.4	15.1	5.8	59.5
April 2012	1.0	5.0	14.0	27.0	27.0	22.0	3.0	58.8

Source: AMMA Workplace Relations Research Project

94. As the table above shows, the benchmark level for labour productivity is that reported in the first survey conducted 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.

95. A telling statistic is that between April 2010 and April 2012, the number of resource industry employers who perceived their labour productivity as 'high' or better dropped from 70.8% to just 52%.

96. The level of satisfaction with labour productivity in April 2010 could arguably be attributed to actions taken by resource workplaces to lock in pre-*Fair Work Act* agreements before 1 July 2009. But going forward, as hundreds of these agreements expire and more employers are exposed to bargaining under the *Fair Work Act*, we would expect to see reported labour productivity levels drop even further.

4.1 Bargaining for productivity 'off the table'

97. The *AMMA Workplace Relations Research Project* surveys have found that four in five companies have failed to negotiate productivity improvements in exchange for wage increases under the *Fair Work Act*[36].

98. AMMA's members are increasingly reporting that productivity has been forced off the bargaining table by unions who have been empowered under the *Fair*

[36] The AMMA Workplace Relations Research Project – Fifth Report – April 2012

Work Act, resulting in a return to workplace restrictions that have not been seen for decades. Among other things, AMMA members have reported roster schedules being union-driven rather than productivity-driven.

4.2 A combative labour environment

99. The *Fair Work Act* has led to resource industry employers reporting a rising incidence of industrial conflict in the workplace. In the AMMA surveys, the numbers of resource employers who rated their industrial environment as unacceptable due to conflict have increased five-fold between April 2010 and April 2012.

100. The current industrial relations system also broadens the capacity for unions to take protected industrial action. For example, union claims now commonly include clauses restricting the use of contractors and labour hire workers, clauses that were prohibited under the previous IR system.

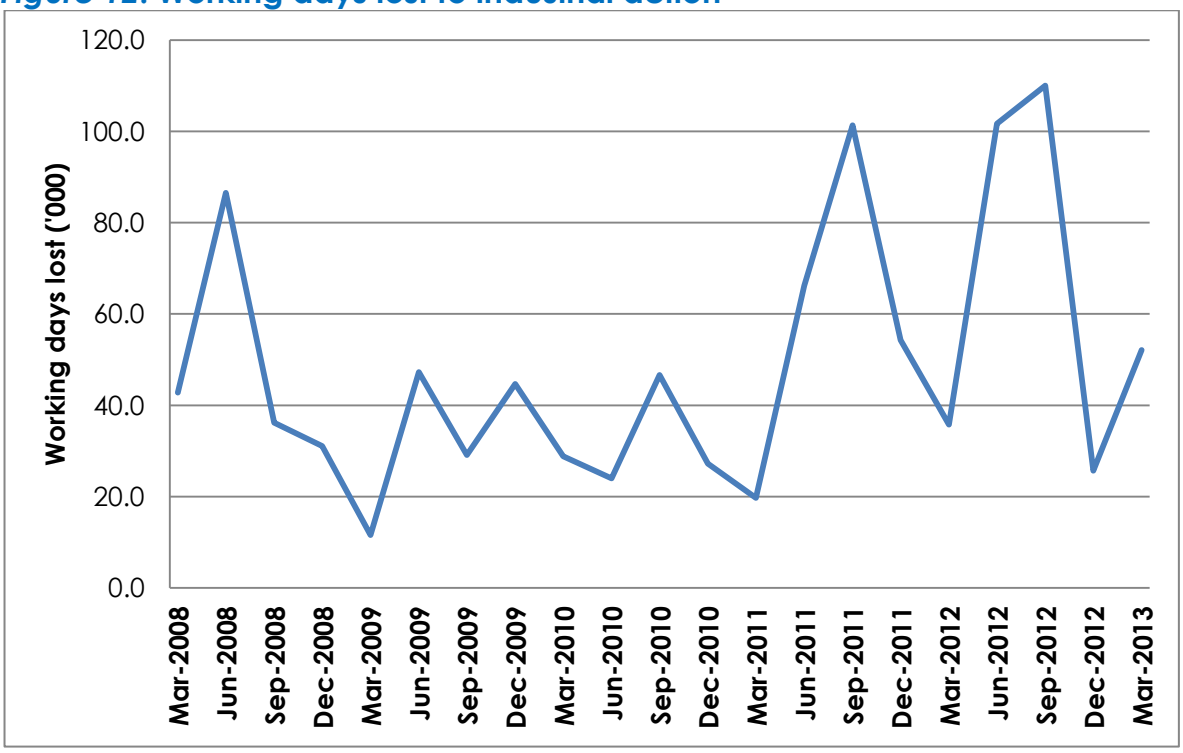
101. It is therefore no surprise that at the same time, Australia's global ranking for 'labour co-operation' fell from 43rd in 2009-10 to 67th in 2012-13, as reported by the World Economic Forum in its Global Competitiveness Reports.

102. ABS data on recent levels of industrial disputation also point towards a more combative labour environment. Since the commencement of the *Fair Work Act*, working days lost have exceeded 100,000 in the Sept quarter 2011, the June quarter 2012 and Sept quarter 2012[37]. Prior to the *Fair Work Act's* commencement, the last time more than 100,000 days of work were lost for any given quarter was back in 2004, almost ten years ago.

103. The graph below shows the trajectory in working days lost to industrial action over the past five years and clearly shows an increasing trend under the *Fair Work Act*.

[37] ABS data source 6321.0.55.001 - Industrial Disputes, Australia, June 2013

Figure 12: Working days lost to industrial action



Data source: 6321.0.55.001 - Industrial Disputes, Australia, June 2013

104. While some of these recent spikes can be attributed to large public sector bargaining rounds, industrial action in the construction and coal mining sectors has also contributed to the increase in days lost, with coal mining recording the highest number of working days lost per 1000 employees of all industries for the September quarter 2012.

105. The financial cost of industrial action is a function of each particular project, its size, the stage of development it is at, and the duration of any stoppage or work bans. But not only does industrial action directly affect the hip pocket of employers, it causes industrial uncertainty and the threat of industrial action causes investors and other stakeholders to question the viability of investing in resource projects in Australia.

106. The Grocon dispute in September 2012 was indicative of an increasing culture of militant unionism. Unionists started picketing in the Melbourne CBD in August 2012 in an effort to halt work on Grocon's Emporium site. The picket continued in spite of a Supreme Court injunction to end the blockade[38].

107. Grocon has since said the dispute cost the company about $500,000 a day[39]. Consequently, it decided to sue the union for damages given the costs arising from the picket and blockades were not factored into its service contracts.

[38] Unions' workplace war goes national, Australian financial review, August 2012

[39] 'Grocon to sue CFMEU as police smuggle workers through CBD blockade', news.com.au, 2012

4.3 Unsustainable wage claims

108. The limited range of agreement options available to employers under the current industrial relations system combined with the lack of compliance measures to discourage union militancy has allowed unions to pursue and obtain unsustainable wage increases in recent bargaining rounds with no productivity dividend for employers.

109. In the 2010-11 vessel operators' dispute in the offshore oil and gas industry, maritime unions were able to secure on the back of ongoing strike action 37% pay rises plus a $200 a day construction allowance in return for no productivity improvements. MUA national secretary Paddy Crumlin actually criticised employers that sought productivity offsets in the latest enterprise bargaining negotiations for being 'dinosaurs'[40].

110. Another employer was forced to accept the following indicative pay rates for three week on, three week off rostered employees in the offshore construction sector[41]:

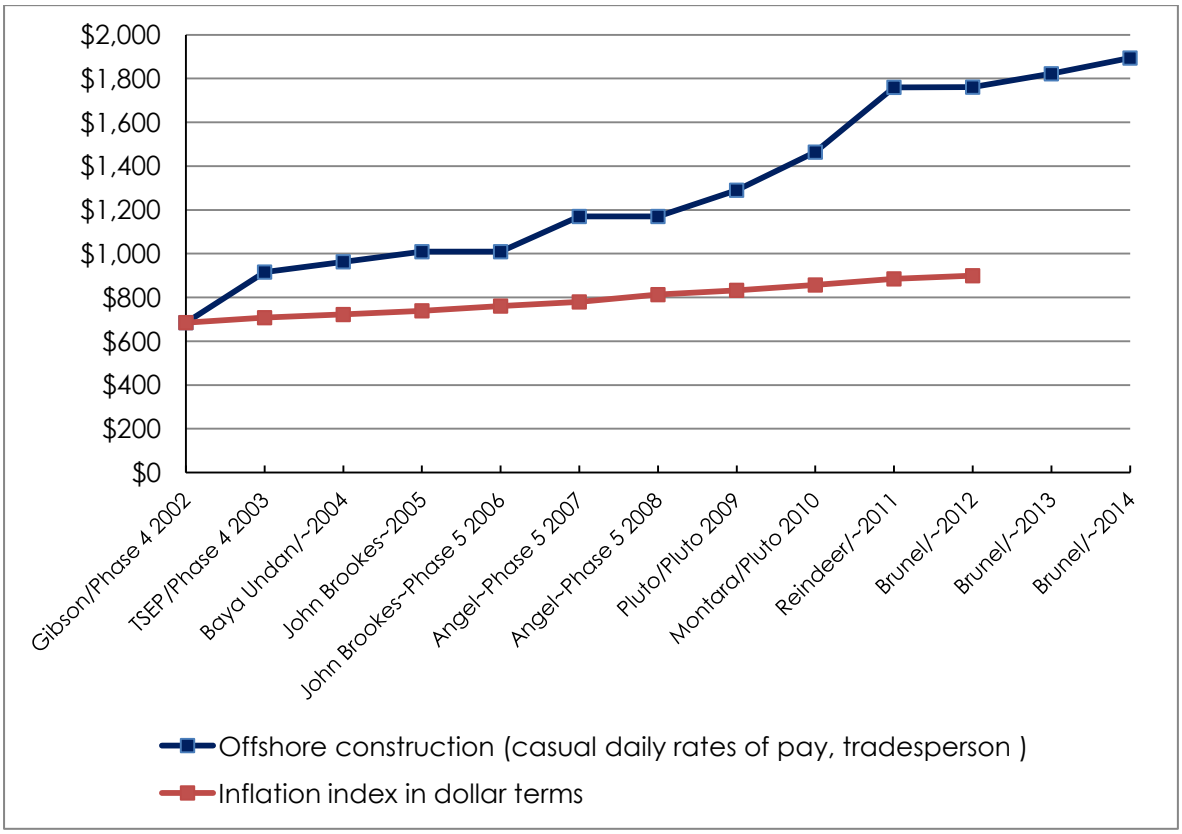
- $317,734 per annum for a laundry hand.
- $334,408 per annum for a cook.
- $337,484 per annum for a tradesperson.
- $373,701 per annum for a barge welder.

111. Across the board, casual daily pay rates for offshore construction trades have seen phenomenal growth in the past 10 years, as shown in the following graph produced using data obtained from an AMMA member operating in this space.

[40] 'Union leader claims dinosaur employers out of touch', 3 February 2010, The Australian

[41] Based on Enterprise Agreement established in offshore oil and gas vessel operators negotiations, 2010

Figure 13: Casual daily rates of pay in offshore construction (tradesperson)



112. As the above graph shows, in 2002 the casual daily rate of pay for an offshore construction tradesperson was $685. By 2011, this had nearly tripled to $1,760 a day excluding superannuation and accommodation expenses.

113. These types of wage increases are clearly not sustainable or justifiable on productivity grounds. Even former President of the ACTU and former Resources Minister, Martin Ferguson, has stated that:

> *...in some projects we are getting improvements in wages and conditions that I think are unsustainable over time. I think there's a message to all of us, including some elements of the union movement, if they're not very careful some members will do exceptionally well, but future members in 10 and 20 years time will miss out*[42].

114. It is worth noting that it is not just in offshore construction that wage rises in the resource industry are achieved with absolutely no productivity improvements. These types of non-productive outcomes are common and encouraged by our current workplace relations system in part due to the ease with which unions can take protected industrial action.

4.4 Project delays

115. The *Fair Work Act* reduced the range of agreement-making options available to resource employers for new projects. This has enhanced the capacity for unions to delay major projects, with AMMA surveys revealing that one in five

[42] Minister slams unsustainable wage demands, smh.com.au, July 2012

major projects is at serious risk of not being delivered on time and on budget due to ongoing union stalling tactics, particularly in the greenfield (new project) agreement space.

116. AMMA members have reported that the time and costs associated with negotiating agreements have significantly increased under the current framework. Again, these difficulties have created bargaining fatigue and made addressing productivity during bargaining all but impossible.

4.5 Undermined flexibility

117. More than 60% of resource industry employers report that Individual Flexibility Arrangements (IFAs) are of little or no value and that there is no real option for individual flexibility under the *Fair Work Act*[43]. This is in contrast to the up to 80% of resource industry workplaces in hard rock mining that were covered by pre-*Fair Work Act* individual agreements that gave all parties more flexibility and provided protection against industrial action.

4.6 Six essential workplace relations reforms

118. Australia's Fair Work legislation has among its objectives to increase the productivity, flexibility and fairness of workplaces. In reality, it appears to be one of the single largest barriers to labour market productivity and to increasing Australia's competitiveness.

119. The answer to Australia's productivity challenge is to address the range of productivity determinants, including a realistic acceptance that labour market reform must be at the heart of our efforts. Unless there is an acceptance of the need for workplace relations reform in conjunction with other productivity initiatives, resource industry productivity will continue to decline.

120. Resource industry employers have identified the following six priority areas as requiring reform to improve industry competitiveness and productivity.

4.6.1 Industrial action

121. **Ensuring protected industrial action can be taken as a last resort only and that there is greater access to 'cooling off' periods**. Industrial action can cost employers up to $3.5 million per day through lost working time, jeopardise contracts and commercial agreements, delay projects and undermine productivity.

122. Bargaining should be the central focus of any industrial relations system. The parties' interests being furthered should be those of the employer and their employees, not third parties. It is not conducive to employer-employee relations to have a union as the default bargaining representative: instead, employees should elect in writing if they wish to choose a non-employee representative. Importantly, industrial action should be a last resort and the bar should be raised so that bargaining needs to have been exhausted before protected action can be taken.

[43] Based on research findings from the AMMA Workplace Relations Research Project

123. 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. These changes are needed given that unions regularly fail to show any restraint in their wage and condition demands and commonly resort to threats of industrial action at the earliest stages of bargaining. Improving productivity will rely on our system better encouraging negotiation, not strategic and premature strike action.

4.6.2 Greenfield (new project) agreement making

124. **Ensuring the capacity to make greenfield (new project) agreements without exorbitant wage and condition outcomes or unnecessary project delays**. Securing greenfield agreements for new projects in a timely manner with sensible wages and conditions is essential in delivering projects productively, on time and on budget because work cannot commence until employment terms are secured. As previously stated, even the former head of the ACTU, Martin Ferguson, has warned that resource sector productivity will diminish further in future if unsustainable wage claims are secured at the expense of long-term wealth creation and win-win outcomes.

125. The only way an employer can make a greenfield agreement under the *Fair Work Act* is with a trade union. The resource industry has a strong desire to make greenfield agreements with the unions that represent workers but if employers are not able to strike a reasonable agreement with a union there must be an alternative.

126. Industry needs a workable set of rules that do not provide unions with unfettered power over the content of new project agreements and which provide employers with some ability to temper extortionate union demands. It is vital that our system provide employers and investors with the certainty needed to secure new project investments.

4.6.3 Allowable matters

127. **Ensuring allowable matters in enterprise agreements pertain to the direct relationship between employers and employees and not to third parties**. Clauses in enterprise agreements such as those restricting the use of contractors and labour hire workers and those entrenching union rights in the workplace undermine essential managerial decision-making and the running of productive workplaces.

128. While such clauses purport to be about increasing job security, they are really about unions controlling who gets to work on projects and under what terms and conditions. This level of unwarranted control by unions over project costs and productive capacities must not be allowed to continue. 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 enterprises. Agreement matters must properly pertain to the employment relationship. Clauses pertaining to union rights should be expressly prohibited as having nothing to do with industry productivity.

4.6.4 Union access to the workplace

129. **Ensuring that the location and frequency of union access to Australian workplaces is reasonable and reflects what employees choose, not what unions want**. The high frequency of union visits to some sites clearly threatens to undermine productive workplaces as time and attention are absorbed in accommodating union officials and diverted away from management and operational concerns.

130. Given the size, location and type of machinery on various resource projects as well as employers' enormous safety obligations, employers must retain the capacity to reasonably direct permit holders in relation to locations and times of workplace visits. A measure of proportion and reasonableness needs to be inserted back into the *Fair Work Act*'s right of entry rules.

4.6.5 Genuine individual agreement making

131. **Ensuring agreement-making options are broadened through a more workable form of individual flexibility arrangement**. Productivity is being undermined as a direct result of employers having less scope to directly engage with their employees in pursuit of 'high-performance, high-reward' arrangements.

132. With the removal of the ability to make new Australian Workplace Agreements (AWAs) in March 2008, the recent prohibition of opt-out clauses in enterprise agreements, the prohibition on making an enterprise agreement with one employee, plus existing requirements that a group of workers be 'fairly chosen', means the only form of individual agreement other than common law contracts available under the current system is Individual Flexibility Arrangements (IFAs). However, IFAs are not sufficiently usable or able to be relied on by either employer or employees to create a stable foundation for productivity improvement. With some targeted, reasonable adjustments, IFAs could provide a vastly improved productivity springboard.

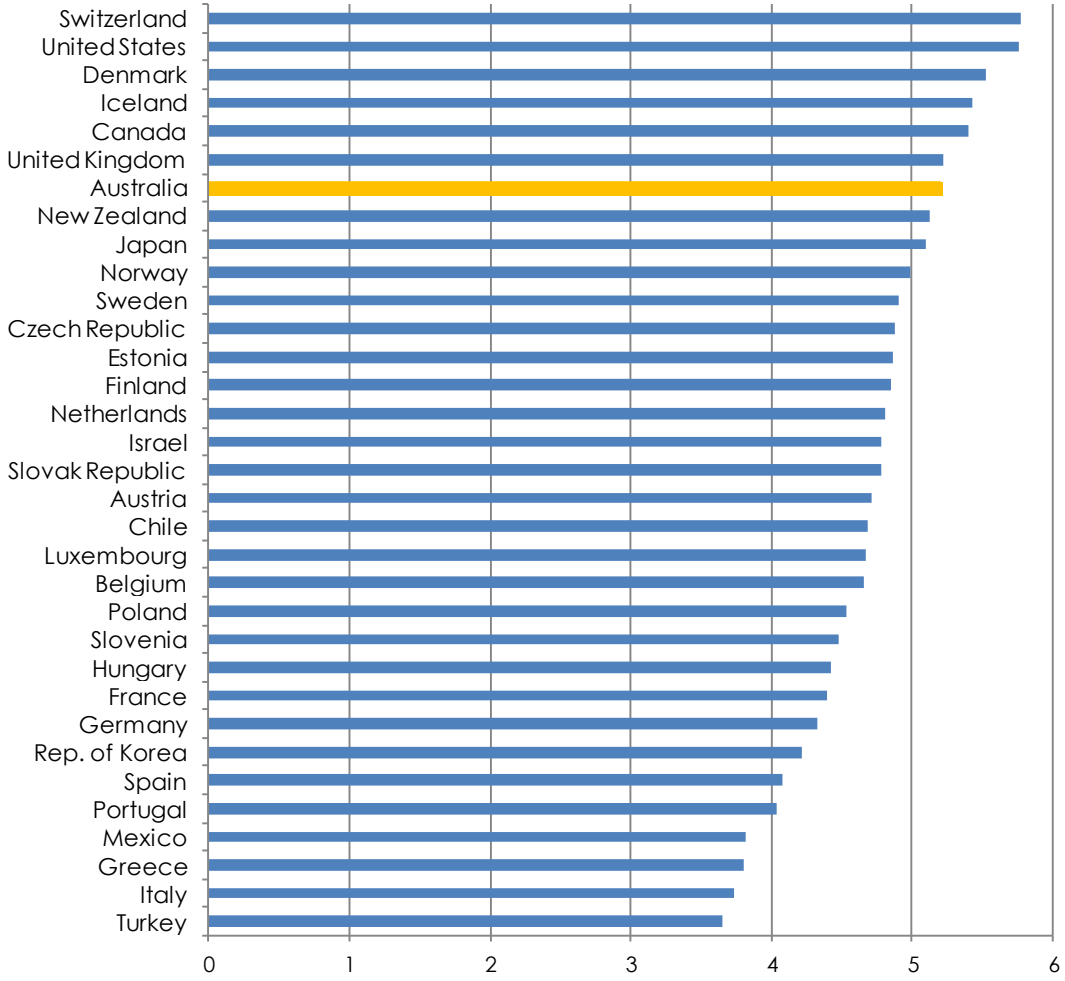
4.6.6 Adverse action / general protections

133. **Ensuring there is rigour introduced to the threshold for accessing the adverse action / general protections jurisdiction in order to moderate employers' potentially unlimited liabilities for damages and minimise the incidence of unmeritorious claims.** The prospect of unlimited liability creates great uncertainty for employers. The reverse onus of proof in the current adverse action provisions means that employers must go through a rigorous process of defending claims, even unmeritorious ones. This detracts from the running of productive workplaces by diverting attention away from management and operational concerns.

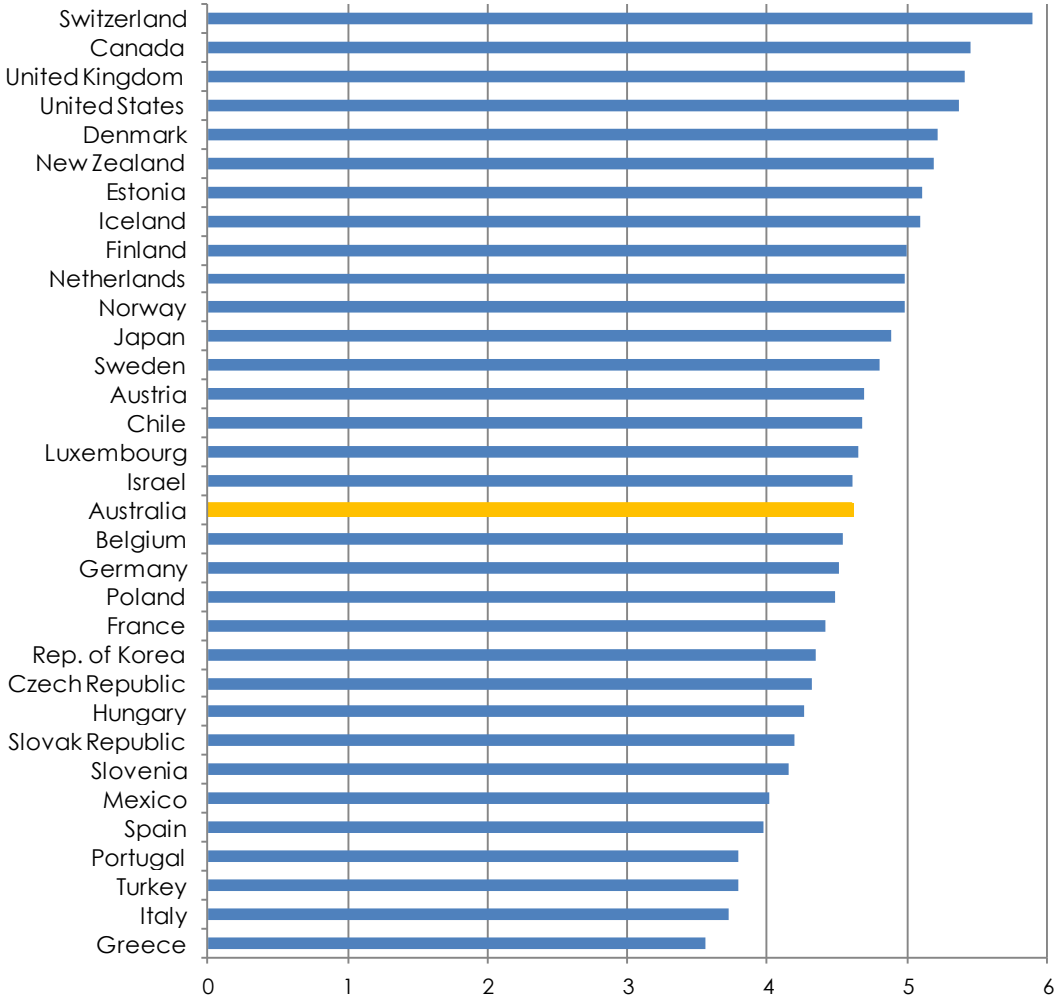
134. The adverse action provisions introduced with the *Fair Work Act* on 1 July 2009 should be removed in their entirety. However, if the provisions continue to exist there should be an upper limit on compensation such as a maximum of six months' pay which currently exists under the unfair dismissal jurisdiction. This would discourage employees from 'forum shopping' to get the best financial outcome or have the best chance of being paid 'go away' money by their employer.

Appendix A - The decline of Australia's labour market efficiency under the Fair Work Act: comparison with OECD countries between 2009-10 and 2012-13

2009-10: Global Ranking (9), OECD Ranking (7)



2012-13: Global Ranking (42), OECD Ranking (18)



Rankings from The World Economic Forum's Global Competitiveness Reports 2009-10 and 2012-13.
The WEF is an independent organisation and the report is based on economic data and a survey of 15,000 individuals