

Addressing the labour supply problem

Presentation to AMEC 2011 Conference

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EXECUTIVE SUMMARY

There is no doubt the Australian resource industry is in the midst of a serious skills/labour shortage. While shortages have traditionally existed for professional occupations, and demand for those roles continues to be the highest of all the occupational groups, demand for tradespersons and semi-skilled workers now also exceeds supply.

As the resource industry continues to strive for greater efficiencies and take advantage of the benefits that increased technology has to offer, the demand for highly skilled employees will only grow in years to come.

Mineral and petroleum processing is becoming increasingly complex and requires more highly-skilled workers in the areas of design, construction and maintenance. Emerging industries including chemical manufacture and sub-sea engineering require increasingly specialist knowledge which is rare in Australia at this point in time.

A survey of 200 AMMA members in May 2011 revealed that 86 per cent were currently experiencing a skills shortage. Despite arguments to the contrary by some parts of the union movement, the skills shortage is a reality and our members in late 2010 told us its effects ranged from 'somewhat detrimental' to 'making it extremely difficult to do business effectively'¹.

While the skills crisis abated during the global financial crisis (GFC) in 2008 and 2009, AMMA members are now experiencing a chronic shortage of engineers, closely followed by a shortage of tradespeople for the construction phases of projects. Recent wages blowouts

¹ AMMA survey of members, November 2010

in offshore construction have made it more difficult for onshore resource projects to compete with exorbitant wages in order to attract skills.

Accessing skilled and semi-skilled labour from overseas is a necessary adjunct to training Australian workers and sourcing workers locally. Unfortunately, this is not always a quick and easy process for businesses that have urgent projects to get off the ground and skilled migration is unfortunately often opposed outright by trade unions.

Other factors exacerbating the skills shortage include an extremely low completion rate by apprentices in the construction trades, and a historically low but growing proportion of women in the industry. All these factors pose real challenges for employers in terms of their ability to source adequate labour, but even more so for policy makers given that the Australian economy relies so heavily on demand for our natural resources.

ABOUT AMMA

AMMA was established in 1918 and is the largest and most representative lobby group for the resource industry. Its membership includes coal mining, metalliferous, oil and gas, energy, construction and an array of service providers to the industry. AMMA is the only national employer group for the resource industry; it regularly features in the 'IR power and influences' review; and the AMMA Board is comprised of representatives from across the sector.

INTRODUCTION

When I was invited to speak to you today, I began to consider the breadth of information that could be covered under the topic *Addressing the labour supply problem*. But in the interests of time, I decided to focus on three key areas.

Firstly, I wanted to touch on what AMMA's members are telling us they are having the most trouble with in terms of labour supply.

Secondly, I want to take a look at what the latest published research has to say about projected demand for labour in the resource industry as opposed to its supply. In particular, I will rely on the National Resources Sector Employment Taskforce (NRSET) *Resourcing the future* report, the most comprehensive analysis of labour supply issues in our industry in recent history; and the *Skills Shortages Australia* report published by the Department of

Education, Employment & Workplace Relations (DEEWR) in June 2010, which is also extremely informative.

Thirdly and finally, I will suggest some possible solutions to the labour supply problem, including calling for improvements to our temporary skilled migration scheme including maximising the benefits of the new enterprise migration agreements (EMAs) for resource projects.

ECONOMIC OVERVIEW OF THE RESOURCE INDUSTRY

Current and future resource projects and investment

As of the end of April 2011, there were 94 resource projects at an advanced stage of development – either committed or under construction – representing a record level of capital expenditure of \$173.5 billion². This was an increase of 30 per cent on the 72 projects that were at an advanced stage of development six months earlier in October 2010, with a corresponding capital expenditure of \$133 billion³.

In the six months to April 2011 alone, 10 projects with a combined capital cost of \$2.8 billion were completed in Australia; and the resource industry accounted for nine per cent of Australia's GDP in 2009-10 at a value of \$102.6 billion⁴.

According to the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARE), this record value of advanced minerals and energy projects reflects in part the decision to proceed with developing the Gladstone LNG project, as well as BHP Billiton, Fortescue Metals and Rio Tinto's commitment to commence several coal and iron ore developments over the next three years⁵.

Of direct relevance to the Association of Mining and Exploration Companies (AMEC) is the fact that exploration expenditure in Australia's minerals and energy sector is expected to be \$5.9 billion in 2010-11, broadly similar to 2009-10 levels. Investment in mineral exploration

² *Minerals and energy: major development projects: April 2011 listing*, published by ABARE in May 2011

³ *Minerals and energy: major developments: October 2010*, published by ABARE, 18 November 2010

⁴ *Australian Commodities statistical tables*, Vol 18, No 1 March quarter 2011, ABARE

⁵ *Minerals and energy: major development projects: April 2011 listing*, published by ABARE in May 2011

alone remains strong, with Australia expected to record its third highest yearly mineral exploration expenditure in 2010-11⁶.

Current and projected employment growth

As of the end of February 2011, the resource industry directly employed 205,800 people⁷. Each extra job in the resource industry is said to be responsible for a further one to three jobs in other industries, with the knock-on employment effect being higher in regional centres⁸. This means our industry is potentially responsible for another 600,000 indirect jobs on top of the more than 200,000 people it directly employs.

Just six years ago, our industry employed around half as many people as it does today, having had a direct workforce of 107,500 in February 2005. Employment growth is set to continue apace over the next few years.

By 2015, based on increased production driven mainly by demand from Asia, the resource industry is expected to employ at least 250,000 people directly⁹ and up to an extra 750,000 indirectly. This means the industry will need to find another 40,000 people to employ in the next four years, a feat made even more challenging by the fact that Australia has a comparatively low and steady national unemployment rate of 4.9 per cent¹⁰.

Employment growth in the mining industry has far outstripped growth in other industries such as manufacturing, construction and agriculture over the past 10 years, with the mining industry experiencing a growth rate of 17 per cent in February 2011 compared with 12 months earlier.

While all things considered, the economic environment looks good for our industry – high capital expenditure and investment, stable exploration expenditure, solid employment growth, low unemployment, increased demand for our products from overseas – at the same time, the talent pool is dwindling in relation to industry needs, and job vacancies continue to grow.

Current job vacancy levels

⁶ *Minerals and energy: major development projects: April 2011 listing*, published by ABARE in May 2011

⁷ *Labour Force, Australia, Detailed, Quarterly, February 2011*, ABS, Catalogue No: 6291.0.55.003

⁸ *Resourcing the Future: NRSET Report*, July 2010, Australian Government

⁹ *Resourcing the Future: NRSET Report*, July 2010, Australian Government

¹⁰ *ABS Labour Force, Australia, May 2011*, Catalogue No: 6202.0

ACTU secretary Jeff Lawrence told the AMMA National Conference on 27 May 2011 that one of four 'myths' perpetuated by employers and employer groups was that Australia was grinding to a halt with the skills shortage and only temporary migration could fix it¹¹.

According to Lawrence:

There are some areas of shortage of occupations common to the resources sector, but on a range of labour market indicators such as vacancy levels and unemployment, employers are experiencing less difficulty recruiting skilled workers than they were pre-GFC.

Lawrence's comments were made before the ABS published its latest job vacancy figures revealing the vacancy rate in the mining industry has recently hit a high¹². The mining industry was looking for 8,100 people in the February 2011 quarter, equal to a vacancy rate of 3.9 per cent of the workforce, which for the first time exceeded pre-GFC vacancy levels.

The ABS stopped collecting job vacancy data for all industries between August 2008 and August 2009, i.e. during the height of the GFC. However, compared to the current vacancy rate of 3.9 per cent in the mining industry, before the GFC took hold the vacancy rate was highest in May 2008 at 3.8 per cent. As of February this year, the mining industry had returned to and exceeded pre-GFC vacancy levels.

To put the mining industry's vacancy level into perspective, the manufacturing industry recorded 12,100 vacancies in February 2011 from a workforce of nearly a million (998,400). This was a vacancy rate of 1.2 per cent. While the construction industry saw a significant increase in job vacancies in February 2011, from 12,000 in the previous quarter to 20,100, it employed 1.030 million people and the vacancy rate was 1.9 per cent, significantly less than the 3.9 per cent in mining.

THE SPECIFICS OF THE LABOUR SUPPLY PROBLEM

Key occupations in shortage

AMMA systematically tracked its members' experiences with the emerging skills shortage as Australia's economy recovered from the GFC in an attempt to understand the extent of and

¹¹ ACTU secretary Jeff Lawrence address to AMMA 2011 National Conference, 27 May 2011

¹² *Job Vacancies, Australia, February 2011*, 30 March 2011, Catalogue number 6354.0

propose solutions to the labour supply problem as well as to be able to lobby key policy makers effectively.

Skills shortages were widespread across a range of professions and technical trades before the GFC took effect in mid-to-late 2008, after which there was a significant drop in demand for most of 2009. From late 2009 to mid-2010, there were strong signs of recovery in demand for skills and shortages again became widespread¹³. Shortages are now most serious in the professional groups including engineering and construction.

Engineering professionals

A chronic shortage of professionals and tradespeople is reflected in the results of a November 2010 survey conducted by AMMA of its membership, in which:

- 93.8 per cent of respondents said they were experiencing a shortage of professionals;
- 68.8 per cent said they were experiencing a shortage of tradespeople;
- 12.5 per cent said they were experiencing a shortage of graduates; and
- 6.3 per cent said they were experiencing a shortage of unskilled workers.

From the professional occupation group, engineering shortages were by far the most widely reported in the survey, with 81.3 per cent of respondents reporting difficulties filling engineering roles. This was closely followed by geologists, then by other occupations including:

- Maintenance workers;
- Technicians;
- Seafarers;
- Machinery operators and drivers;
- Project managers;
- Upper managers;
- Middle managers;
- OHS professionals;
- HR/IR professionals; and
- Labourers.

¹³ *Skills Shortages Australia*, June 2010, Australian Government, DEEWR, professionals

Asked what AMMA members attributed the difficulty in filling engineering roles to, they had the following observations to make:

As far as engineers are concerned, there are simply not enough qualified and experienced vessel officers and offshore marine engineers to go around.

Competition is already impacting the salary levels for engineers and making it extremely difficult for some projects to compete.

The remuneration policies of larger companies can often blow smaller companies out of the water.

Engineering shortages in Australia need to be supplemented by international labour.

If we look at what the official literature says, it accords with what AMMA members have told us about their experiences. Back in July 2010, NRSET noted there were already emerging skills shortages in the resource industry for engineers¹⁴:

There are emerging shortages at present – mainly engineers and other professional staff with more than five years' experience. The domestic supply of mining engineers and geoscientists will not be sufficient to meet demand over the next five years with a shortfall of around 1,700 and 3,000 respectively. However, there are large numbers of people with these qualifications currently working in other occupations.

Between now and 2015, there will be 1,600 new jobs created for mining engineers as well as 1,300 engineers needing to be replaced due to natural attrition (retirement, changing professions or moving to other industries). In total, the sector will need to recruit 2,900 extra mining engineers but the supply of new graduates will only be 1,200. So, unless our industry can significantly reduce attrition rates through retention strategies, attract engineers from other industries, or significantly increase the number of graduates, there will be a shortfall of 1,700 mining engineers by 2015.

¹⁴ *Resourcing the Future: NRSET Report*, July 2010, Australian Government

According to DEEWR, shortages of professional engineers had by mid-2010 already returned to pre-GFC levels, with shortages apparent for 70 per cent of engineering professions¹⁵. Specific occupations in shortage in the engineering field, according to DEEWR, are:

- Engineering managers;
- Civil engineers;
- Structural engineers;
- Transport engineers;
- Electrical engineers;
- Mechanical engineers;
- Mining engineers; and
- Petroleum engineers.

With a global shortage of suitably qualified engineers, resource companies across the board are struggling to attract and retain the specialist skills they need which in turn is jeopardising billions of dollars in capital expenditure and economic returns to Australia.

Tradespeople

Construction labour demand for committed and advanced resource projects is expected to peak in late 2012¹⁶ at 45,000 workers¹⁷. Competition for this type of skilled labour is already intense.

Between 2010 and 2015, there will be 7,800 new jobs for construction tradespeople, 15,000 for mining operations trades and 1,000 for gas operator trades (a total of 23,800 new trades jobs). There will also be an extra 22,000 jobs in mining and gas trades that will need to be replaced due to attrition, bringing total demand for tradespeople in our industry to 45,800. The supply of this labour is predicted to be just 10,000, leaving a shortfall of 35,800 tradespeople in the industry by 2015.

Back in July 2010, the NRSET report predicted a significant shortage of skilled construction tradespeople by 2015, saying it would start to bite around now:

¹⁵ *Skills Shortages Australia*, June 2010, Australian Government, DEEWR, professionals

¹⁶ *Tradespeople for the resources sector: projections 2010-2020*, Technical Paper, NCVER

¹⁷ *Tradespeople for the resources sector: projections 2010-2020*, Technical Paper, NCVER

While there are currently significant numbers of unemployed tradespeople, the taskforce expects labour market tightening will result in skills shortages by late 2011 to early 2012, particularly in Western Australia and some regions of Queensland. As a result, the resources sector could be 36,000 tradespeople short by 2015. If these workers are recruited from other sectors, there will be skills shortages in those industries.

According to DEEWR research conducted in mid-2010, around half of the trades in the construction sector were assessed as being in shortage compared with all construction trades in 2008¹⁸.

But contrary to popular belief, the mining industry is not always the most attractive industry for qualified tradespeople and has to compete with other industries such as the construction industry for scarce labour as well as having to compete on wages and allowances.

When weighing the record levels of capital expenditure for advanced resource industry projects in the pipeline, the adequate supply of construction labour and tradespeople becomes pivotal to ensuring projects proceed on time and on budget. There are also different skills requirements between the construction and operational phases of a project, and the supply of domestic and overseas labour needs to be responsive to that, which at present unfortunately it isn't.

Shortage of experienced workers

Today's resource industry is characterised by highly specialised processes that are becoming more so every day given advances in technologies for exploration and mineral processing. The industry places a premium not only on qualified tradespeople and professionals but also on those who have the specific skills and experience the industry needs. AMMA members report a variety of reasons for not being able to attract suitably qualified labour for vacant positions, including:

- Applicants lacking the specialised skills the company requires;
- There simply not being enough applicants; and

¹⁸ *Skills Shortages Australia*, June 2010, Australian Government, DEEWR, professionals

- The ageing workforce having led to a shortage of suitably qualified labour in the Australian market.

According to research published by DEEWR in mid-2010¹⁹:

In some occupations, newly qualified workers encounter some difficulty gaining employment despite shortages of experienced workers.

Employers seeking or willing and able to invest in newly qualified workers generally experience much less difficulty filling vacancies than those looking for workers with five to 10 years' experience, according to DEEWR²⁰:

Employers who had advertised in 2010 generally experienced difficulty filling positions but it is important to note they were commonly seeking qualified and experienced engineers (often requiring five to ten years or more of relevant industry experience). Recruitment appears to be significantly easier for graduate positions.

The DEEWR report noted the specifics of employer requirements, observing that:

Employers were mainly seeking engineers who had 5 to 10 years experience and many required sector-specific skills, for example, in railway signalling, water services or hard rock mining, and found applicants who lacked relevant experience to be unsuitable. Employers generally considered applicants to be unsuitable because they lacked the length of experience required or did not possess the particular specialist skills being sought. Many overseas-based applicants were considered to be unsuitable because they lacked knowledge of local conditions or did not have the required level of English communication employers demanded.

While applicants' lack of necessary experience is one factor AMMA members cite as contributing to the skills shortage, by far the most common reason cited for the inability to attract sufficient skilled labour is competition with other industries.

¹⁹ *Skills Shortages Australia*, June 2010, Australian Government, DEEWR, professionals

²⁰ *Skills Shortages Australia*, June 2010, Australian Government, DEEWR, professionals

Competition with other industries

ACTU secretary Jeff Lawrence told the AMMA National Conference on 27 May 2011 there was a 'culture' in the resource industry of 'poaching' qualified workers from other industries without training their own. The fact is that Australia currently has an extremely mobile labour force, with up to 60 per cent of employed males actively looking for other jobs²¹. Careers in the resource industry typically last from one to five years, with an annual turnover rate in many of AMMA's member companies of around 15 per cent.

Our sector is not immune from having its own highly trained and qualified workers, often those recruited from overseas at significant expense, moving on to other industries and employers once they gain experience and/or permanent residency in Australia, as many do, which I'll discuss later.

Other industries are sometimes more attractive than the mining industry in the long term because of lifestyle and location preferences. However, generous wages make the mining industry attractive in the short to medium-term. As of February 2011, full-time adult ordinary time earnings in the mining industry were \$2,098.90 a week (\$109,142.80 a year) compared to \$1,291.30 a week (\$67,147.60 a year) across all other industries. Despite these high wages, the issue of labour mobility remains a serious one and highlights the need for employers to pay serious attention to their attraction and retention policies.

The NRSET report advised employers similarly²²:

Increasing competition for graduates and skilled workers highlights the importance of attraction and retention strategies. The probability of job separation from the mining sector is relatively high compared to other industries and anecdotal advice to the taskforce suggests turnover is higher for FIFO workers. This suggests employers need to be innovative in sourcing local labour where available and finding ways to reduce skills attrition.

Some successful retention strategies adopted by AMMA members include:

- Service awards;

²¹ *Hunting the (Hidden) Hunters: Attracting and Retaining Talent in 2011*, published by CareerOne in March 2011

²² *Resourcing the Future: NRSET Report*, July 2010, Australian Government

- Multi-skilling;
- Career development;
- Rotations;
- Promoting from within;
- Sign-on bonuses;
- Finders' fees;
- Training;
- Talent management;
- Competitive remuneration;
- Permanency;
- Employee care programs;
- Formalised communication programs;
- Long-term bonuses;
- Building a solid culture;
- Subsidised private health cover;
- Higher superannuation contributions;
- Free movies;
- Discounted golf;
- Free gym membership;
- Effective performance management to eradicate unacceptable behaviour and/or performance;
- Support;
- Opportunities; and
- Development.

Despite employers' best efforts to attract and retain, the fact is the mining industry is just as susceptible as others to having to compete for labour, including competing for skilled construction labour with major infrastructure projects. Between 2010 and 2012, more than \$70 billion worth of major non-resource infrastructure projects will get the go-ahead including rail, road, port, hospitals and sporting arenas. All these projects will need to be staffed and will compete with resource projects for labour.

Smaller operators in the mining industry are also at a disadvantage compared with larger operators in the construction industry in terms of attracting labour and paying competitive wages. It is particularly difficult trying to compete with wages in the offshore construction sector where casual daily pay rates have risen by 37 per cent since July 2009.

Despite the very real challenges, many AMMA members believe the necessary skills do exist in Australia but cite significant impediments to matching people with roles. As mentioned, many suitable applicants are already employed in other industries or in other organisations; and many are working remotely or within the construction industry on higher salaries than offered in mining, particularly in offshore construction.

Wages breakouts in the offshore construction sector in 2009 have already had a flow-on effect to the rest of the resource industry, with some AMMA members telling us they cannot compete with project manager salaries in offshore construction for their onshore projects.

It is also extremely challenging to entice workers to move from one location to another in order to fill vacant roles. Many people prefer to work in metropolitan areas rather than regional and remote locations, especially where projects are not fly-in, fly-out but require them to live in camps away from family and community.

Many job applicants prefer to live in the cities for lifestyle or in remote locations for salary, leaving many projects in regional areas short of labour. It is also difficult to attract tradespeople to regional centres from the major cities when they have the option of fly-in, fly-out from the city to remote operations.

Competitive financial packages are often the key to getting someone to relocate, however, this tends to drive costs up across the industry and make it harder for some companies to compete in the labour market.

SOLVING THE LABOUR SUPPLY PROBLEM

The NRSET report suggests seven key areas that industry stakeholders need to address in order to tackle the labour supply problem²³, most of which AMMA supports in principle although in practice the solutions will be complex and multi-faceted. These seven key recommendations are:

- promoting workforce planning and sharing information;
- increasing the number of trade professionals;
- graduating more engineers and geoscientists;

²³ *Resourcing the Future: NRSET Report*, July 2010, Australian Government

- meeting temporary skills shortages with temporary migration;
- strengthening workforce participation;
- forging stronger ties between industry and education; and
- addressing the need for affordable housing and community infrastructure.

Infrastructure

In some regional areas there are not the ideal services available for workers and their families, so the prospect of relocating there becomes less attractive, especially when unemployment is low as it currently is and people have options. This is where state and federal governments have a role to play in building the infrastructure that communities need in order to grow and flourish.

The NRSET report recommends, and AMMA supports the recommendation, that the Federal Government consider funding infrastructure needs in regions affected by resource operations²⁴:

One of the major concerns raised in submissions and consultations was the effect of housing shortages and soaring accommodation costs in population centres near resources projects, which affects the willingness and financial capacity of people from many work disciplines to relocate.

The NRSET report also acknowledged:

Previous efforts to encourage people to relocate have met with mixed results. The Australian Government undertook pilot projects between 2006 and 2008, which provided additional assistance for unemployed job seekers who were willing to relocate from parts of regional NSW and northern Adelaide for specific jobs in stronger labour markets, especially Perth. The take-up of relocation assistance was low, although there were some successful employment outcomes.

According to DEEWR²⁵, there is an increased preference from employees for fly-in fly-out work in senior mining and metallurgical roles and this has impacted on employers' ability to fill permanent positions based on-site:

²⁴ *Resourcing the Future: NRSET Report*, July 2010, Australian Government

The majority of mining employment is located outside state capital cities and most employers experienced difficulty recruiting people who were willing to relocate from their current place of residence.

AMMA members were asked in a November 2010 survey about their experiences in attracting labour to regional or remote areas and here is what they had to say:

We are a regional location and some people prefer metropolitan. We are not fly-in fly-out.

We state 'residential' in our advertisements therefore only those willing to relocate usually apply.

It is by no means impossible to relocate workers; however, the migration patterns (domestically) within Australia would (anecdotally) appear to be shifting as east coast pay rates find parity or exceed west coast rates for the first time in several years.

The cost of living in Queensland is rising (both in Brisbane as well as Gladstone and the Surat basin).

We are a coastal community regionally based - sometimes applicants prefer to either: live in cities for lifestyle or live in remote locations for salary.

It is difficult to attract tradespeople to regional centres from the major when they can FI/FO from city to operations.

Some people are concerned about the cultural change attached to relocating.

Whilst there is the appeal in some areas of our business to move, i.e. moving to a coastal region on the east coast, many of our other locations are

²⁵ *Skills Shortages Australia*, June 2010, Australian Government, DEEWR, professionals

regional and in locations where there aren't the best services available for families etc.

ACTU secretary Jeff Lawrence recently told the AMMA National Conference that inadequate infrastructure was more of a factor in hampering the resource industry's ability to attract skilled labour than the skills shortage *per se*.

While it's true that infrastructure is an important issue that industry and government need to work on together to make it more attractive for people to relocate to where the jobs are, it is just one of a range of factors to be addressed in what AMMA recommends is a multi-faceted solution to the labour supply problem.

Education and training

Trades apprenticeships and trainees

It has often been said that the resource industry does not invest enough in training its own employees and instead relies on skilled migration to avoid doing so. This argument ignores the fact that most overseas workers undertake some form of training once they arrive in Australia, most commonly in relation to:

- Australian OHS standards;
- English language proficiency;
- Senior first aid;
- Working at heights;
- Local conditions;
- Industry inductions;
- Cultural familiarisation;
- Products and technology;
- Australian rules and regulations;
- Australian mining processes and laws; and
- On-the-job training.

The NRSET report identified a need for the resource industry to invest more into training their employees in order to tackle the skills shortage in the long term:

Although some companies have a strong commitment to apprentice training, the resources sector as a whole does not train enough apprentices. There is reluctance by many employers to hire young people. Companies prefer to attract mature workers in their mid twenties and older with life and work experience. An option for the sector is to employ adult apprentices (a number of companies already do) or enter into partnerships with other organisations to train, or partly train, on their behalf.

Australia's apprenticeship system was introduced in the early 19th century in response to demand for tradespeople. Apprenticeship commencements across the board for trades and non-trades generally increased throughout the 1970s and 80s and peaked at 175,000 in 1989. However, numbers declined in the early 1990s and hit a low of 111,200 in 1993. By 2001, commencements were back up to 224,800 and continued rising steadily to reach 286,900 in 2008 at which time the GFC took effect. There was then a downturn in commencements in 2009 to 272,500 but numbers are now back up to 314,600 for 2010 and this looks set to continue in 2011²⁶.

It is, however, true that completion rates for trades apprenticeships are quite low across the board. In 2008, completion rates for people that started their apprenticeships in 2003 ranged from 44.7 per cent to 55.1 per cent, which left a lot to be desired.

Asked about the impediments to hiring apprentices and trainees in a November 2010 survey, AMMA members cited the following:

- It is too expensive to train people for short-term projects (87.5 per cent of respondents);
- There is a lack of government incentives (62.5 per cent);
- There are impediments in industrial instruments (50 per cent); and
- There are impediments in modern awards (25 per cent).

Specific comments from AMMA members on barriers to hiring apprentices and trainees included:

The additional cost and timeframe to train.

²⁶ NCVET Apprentices and Trainees 2011: Early Trend Estimates March quarter

As a significant labour hire provider to the mining and construction sector, our largest issue is finding clients who will make the commitment both in contract duration and supervision to make apprentices a viable option.

We need enough people to effectively supervise them.

We hire 20 apprentices each year through a specialised program with dedicated mentors – this is probably our limit to ensure quality training outcomes.

The fact is, an apprentice does not begin to be of value to an employer until between six months and two years down the track, which acts as a disincentive to hiring apprentices when companies are looking at commencing short-term projects of up to two years.

While there is clearly an imperative to increase the number of new entrants to trade occupations through apprenticeships, and to improve on currently low completion rates, there are a multitude of economic factors that need to be taken into account in devising solutions. There is a strong need for government incentives in this area given that the economic factors often make training unworkable for employers who would otherwise choose to invest in training.

ACTU secretary Jeff Lawrence recently highlighted the ACTU's support for training levies on employers in our industry. AMMA does not support training levies and successfully lobbied against a proposed \$5,000 training levy per semi-skilled worker that would be brought in under new enterprise migration agreements (EMAs) on the grounds it would act as a disincentive to keeping jobs onshore. The Federal Government evidently shared AMMA's and the industry's concerns because it withdrew the training levy in its latest announcement on EMAs in the May 2011 Federal Budget.

In the mean time, AMMA members are taking steps to address the skills shortage under their own steam such as increasing in-house training; multi-skilling existing workers; and improving skills utilisation between roles.

Engineering and geosciences graduates

There is no doubt there is a need to increase the number of engineering and geosciences graduates from our universities, with the government having taken steps to ensure this can happen in the long term. As the NRSET report pointed out:

The Australian Government is currently implementing new funding arrangements for higher education, which will make it possible for universities to increase the number of students they enrol in engineering and geosciences, subject to operational constraints.

However, as the University of Western Australia's submission to the NRSET pointed out, it is not just a matter of increasing funding for places but also funding for university infrastructure:

Notwithstanding the introduction of new modes of course delivery, if the numbers of students in science and engineering are to be increased significantly, there will need to be significant new investment in teaching infrastructure at UWA, especially in regard to laboratories and associated equipment.

Again, all stakeholders need to take a big-picture view of the issues surrounding education and training as a long-term solution to the skills shortage and work together to develop nuanced solutions.

Female participation rates

Unfortunately, the resource industry is built around what some consider a lack of workplace flexibility. Rosters are generally longer than the standard eight-hour day, with 12-hour rosters the norm in the industry. This, coupled with geographical constraints and women's still increased role in the home as carers for children and elderly parents, means there are not as many women in the resource industry as employers would like. There is also a perception of a male-dominated culture in the industry although most if not all companies have policies in place to promote diversity and gender equality.

The proportion of women in the resource industry, while relatively low, is improving. In 2001, just 11 per cent of the mining industry workforce was female, which has grown to 16 per cent ten years later in 2011. In mining exploration and other support services, there is currently a higher proportion of women than in the industry as a whole, at 17 per cent.

This is not, however, an indication of how much the industry values women as employees, with an overwhelming 91.7 per cent of respondents to an AMMA November 2010 survey saying they would like to employ more women if they were available. This sentiment was reflected in the findings of the NRSET report:

Employer submissions recognise the strong benefits to business of employing more women. Female employees not only address labour shortages, they create more balanced workplace cultures that promote job satisfaction, productivity and employee retention. Research also suggests major financial benefits to resources companies of having more women in senior management roles.

Despite the undoubted positives associated with increasing female participation in the mining industry, AMMA members have cited problems associated with attracting and retaining women. The following barriers were reported in a November 2010 survey of AMMA members:

- a lack of interest from women in applying for roles (60 per cent of respondents);
- a lack of the required skills (40 per cent);
- family responsibilities (40 per cent);
- unattractive rosters (30 per cent);
- a lack of workplace flexibility (20 per cent);
- geographical constraints (20 per cent); and
- cultural impediments (10 per cent).

As the NRSET report pointed out:

If the sector aspires to employ more women, it needs to work with universities to increase the number of women undertaking tertiary study in relevant fields.

AMMA agrees with that recommendation and believes the industry and government must work together to highlight to women the benefits of careers in the mining industry, including generous wages and entitlements. Those benefits will be particularly attractive to younger women who have fewer carers' responsibilities and who should be encouraged to take advantage of the high earning potential while they are young and carefree.

AMMA believes the industry can do more to promote the recruitment and retention of women, including providing greater support and engagement of women in the workplace and emphasising career progression. Extra training of female workers is a valuable retention strategy but also helps with attraction as more highly-trained women move up the corporate ladder, opening up more entry-level roles for women in the industry.

Innovative job design is another factor that works to enhance the recruitment of women by helping them to more readily identify pathways to entry level jobs and promotional opportunities within the industry.

THE ROLE OF TEMPORARY SKILLED MIGRATION

AMMA has proactively lobbied for and secured changes to Australia's migration laws in order to make the system more responsive to genuine industry needs. While the current government has introduced important initiatives to ensure the temporary skilled migration program operates more effectively, much more can be done to ensure our industry is able to quickly and efficiently source skilled labour from overseas.

Current levels of skilled migration

It is important to remember that 457 temporary skilled migration visas are only used by the resource industry to satisfy a shortage of skilled labour that cannot be sourced from within the Australian workforce. They are not seen by the industry as a way of sourcing inexpensive labour or providing an alternative to existing skilled Australian labour.

Contrary to the perception that the mining industry is recruiting thousands of workers from overseas as a source of cheap labour or to avoid training obligations, the reality is quite different. In a 2010 survey of AMMA members that were sourcing skilled migrants, when asked how many workers they would seek to sponsor from overseas in the next 12 months, numbers ranged from 1 to 50 per company in 2010 and 1 to 150 per company in 2011, with many companies recruiting just 10 workers per year from overseas.

In the five years to April 2010, resource industry employers were granted 1,640 sub-class 457 temporary skilled migration visas for mining/petroleum engineers and 2,300 for geoscientists.

According to a NRSET report published in July 2010²⁷:

Over the past two decades, migration has increased to address skills shortages. Over two-thirds of the current permanent migration program is for skilled migrants. However, migration is just one tool for meeting Australia's future skills needs, and complements the ongoing training and upskilling of the Australian workforce ...

Despite what is often the outright opposition of unions to employers recruiting skilled and semi-skilled workers from overseas under 457 visas, according to the NRSET report:

There is no evidence the subclass 457 visa program reduces skills development of Australian workers. The program is strongly demand driven and provides a circuit breaker for emerging skills shortages.

Interestingly, as job vacancies rise, so do applications under the 457 visa program.

The attached slide shows the levels 457 visa applications received between 2003 and 2010. As you can see, the number of 457 visa applications, which are largely demand driven by employers although they can respond to policy changes, tracks roughly along the same lines as the ANZ Job Advertisements Series²⁸.

What we can see is that demand for 457 visa workers steadily increased from a low of around 1,900 applications in January 2003 to a high of 7,700 applications in April 2007. Demand declined during the GFC and is now on the rise again and sitting at around 3,500 as of April 2010. This has roughly kept pace with the level of job advertisements.

What the slide also shows, via the spike in the number of subclass 457 visa applications received in June 2007 in the wake of the announcement of the introduction of the English language requirement for trade occupations from 1 July 2007, is that the system responds to changes in English language requirements.

The DIAC modelling suggests that more than 1,800 extra applications were lodged in the last week of June 2007 as a result of the announcement, which was then followed by lower

²⁷ *Resourcing the Future: NRSET Report*, July 2010, Australian Government

²⁸ *The outlook for net overseas migration: May 2011*, published by the Department of Immigration & Citizenship

application rates over the next two to three months. One would have expected to see a similar spike in June 2009 following the introduction of increased English language requirements for 457 visa holders, however, given the fact that demand for the visas was already diminishing due to the GFC, any such spike, if there was one, has been obscured.

Significantly, the DIAC research shows that over 50 per cent of people granted a subclass 457 visa are successful in achieving permanent residency status, the overwhelming majority under employer sponsored arrangements. What this means is that the local training that employers invest in 457 visa workers is not lost to the Australian labour market.

Union attitudes to skilled migration

Some unions vehemently oppose skilled migration and have outright rejected proposals to bring in skilled labour from overseas under one particular proposed labour agreement for a large resource project. The agreement has been four years under negotiation to date and is still not settled. The agreement proposes several hundred jobs from overseas over the three-year life of the agreement, including welders first class. This is not a huge number. However, the ACTU and other unions consistently argue that the industry is overstating the skills shortage and that 457 visas are being used to undermine wages and conditions for Australian workers.

It is difficult to argue that 457 visas are being used to undermine local wages and conditions given the requirement to pay visa workers market rates introduced in 2009, which means overseas workers now have to be paid the same wages and enjoy the same conditions as Australian workers doing the same job.

While some unions outright oppose skilled migration, there are others that sensibly acknowledge the need for skilled migration as an adjunct to training local labour. The Association of Professional Engineers, Scientists and Managers (APESMA) in its submission to NRSET said:

Immigration is a key aspect of any strategy to alleviate labour supply issues. However, Australia's current level of reliance on skilled migration, and on international students to fill local engineering university courses, is not a sustainable strategy to meet gaping capacity shortages across industries into the future. Australia is currently supplying only just over half of its engineering needs through the education system, a particularly

tenuous position considering that employers compete in a global market for engineers.

The resource industry has and will continue to use temporary skilled migration visas to satisfy a shortage of skilled labour that cannot be sourced from within the Australian workforce at any given time. However, the industry does not view temporary skilled migration visas as a way of sourcing inexpensive labour or providing an alternative to existing skilled Australian labour or training local workers. The numbers being recruited from overseas reflect a sensible and restrained approach to recruiting from the international labour market.

Issues with 457 visas

Given the significant contribution of resource projects to the Australian economy, more flexibility must be built into the temporary skilled migration system in order to cater for short-term projects and those with short lead times. Unfortunately, there are currently no options available that bridge the gap between the 456 visa, which allows work in limited situations for up to three months in Australia, and temporary (long-stay) 457 visa, which allows a worker to remain in Australia for up to four years.

AMMA welcomes the Federal Government's proposal for a Short Stay Activity Visa (SSAV) to facilitate the entry of labour for short-term work and specialised activities where there is a genuine need for expertise. AMMA particularly supports the proposal that due to the non-ongoing nature of the business activities to be covered and the short period of stay, that formal sponsorship would not be required.

In a January 2011 submission to the Federal Government on the *Migration Program for 2011-12 and beyond*²⁹, AMMA raised concerns with the operation of the current 457 visa program, in addition to a lack of flexibility for short-term projects, which were:

- Inconsistent and unpredictable visa processing times that are nearly always longer than the 10 days promised for 'decision ready' applications. These applications are currently taking up to four weeks;
- Inconsistency of advice from DIAC about visa requirements, including the level of documentation required to be produced;

²⁹ AMMA Submission to the Migration Program for 2011-12 and Beyond, 7 January 2011

- A lack of transparency about the progress of applications (case officers are generally not able to be contacted about the progress of applications and will often not even give out their phone numbers, although there are exceptions to this rule);
- There is not enough flexibility in the system to cope quickly and efficiently with a change of employer sponsor;
- There is a need to streamline the visa renewal process to make it more efficient and speedy;
- There is a need to review the unintended consequences of a market rates ceiling, which makes it impossible for employers to reward their long-serving staff more generously than new workers from overseas; and
- Professionals' applications are treated the same as those for semi-skilled applicants despite the reduced likelihood of fraudulent qualifications and exploitation being associated with professional applications.

AMMA notes the NRSET report also recommended that DIAC improve the information and support available for employers wanting to use the 457 visa program and that it agree to finalise applications within five working days of a complete application being lodged. AMMA would welcome the NRSET recommendations in this regard not only being adopted but also monitored and enforced within the Department.

Issues with labour agreements

The NRSET report noted a low take-up by resource industry employers of the labour agreements stream for skilled migration³⁰:

Labour agreements provide the opportunity for employers to work with the Australian Government to identify the best migration options for meeting their particular skills needs. They appear to be largely under-utilised by the resources sector, with fewer than 10 active agreements in place, only one of which relates to a significant resources project.

The NRSET report went on to say:

A significant factor contributing to the under-utilisation of labour agreements is that employers perceive they take too long to negotiate.

³⁰ *Resourcing the Future: NRSET Report*, July 2010, Australian Government

The minimum amount of negotiation time needed is around three months, which is not inconsistent with other significant contracts in resources projects. Advice from DIAC suggests the average processing time is between six and nine months and some take over 12 months.

In AMMA's experience, the low take-up rate for labour agreements is not only a product of them taking far too long to negotiate, with one major resource project having been working to finalise a labour agreement for four years and counting. One of the advantages of labour agreements as opposed to other skilled migration options is that they allow semi-skilled as well as skilled workers to be recruited from overseas. However, acting as a deterrent to their uptake is the fact that they place onerous and stringent obligations on employers in the form of training levies and employment quotas that make the agreements unworkable for most employers. The labour agreements stream is not user friendly and has far more onerous conditions attached than does the standard business sponsorship for skilled migrants.

As mentioned, negotiating labour agreements is also often complicated by unions' outright opposition to bringing in skilled workers from overseas.

With a view to working through some of those issues with key union bodies, AMMA has agreed, at the invitation of the Australian Manufacturing Workers Union (AMWU) and the ACTU, to participate in a tripartite body comprised of government, industry and unions to work through issues in the resource industry, along similar lines to the NRSET.

AMMA wrote to ACTU secretary Jeff Lawrence and AMWU national secretary Dave Oliver on 6 June 2011 in response to a request from the union leaders for AMMA to agree to the establishment of a tripartite body. The letter from AMMA chief executive Steve Knott said:

AMMA, as the national employer association for the resource sector, acknowledges that there are skills and workforce challenges looming if our industry is to make the most of the improved international demand for our resources.

It went on to say:

The skills challenge for our industry was recently identified in the NRSET report. AMMA was a member of the NRSET's Industry Reference Group ... AMMA believes there is merit in the formation of a tripartite body with a

similar focus to NRSET for the resource sector. This is an issue I verbally highlighted with the former Chair of NRSET, Gary Gray, now Special Minister of State and Special Minister of State for the Public Service and Integrity, when in Canberra last week.

While work would need to be done to establish the terms of reference, which would not include industrial relations issues but skills issues, AMMA has agreed to be part of a tripartite resource body. However, this does not necessarily mean that consensus will be reached on all issues.

English language requirements

The introduction of increased English language requirements for temporary skilled migrants as of June 2009 has, in AMMA's view, made it more difficult for resource industry employers to recruit labour from countries such as China and The Philippines.

In a letter to DIAC dated March 28, 2011, AMMA raised issues associated with these increased requirements:

The introduction and gradual increase in the International English Language Testing System (IELTS) minimum test score was not discussed with industry. This lack of consultation has been in contrast with the introduction of other administrative changes where industry has been consulted. The IELTS changes are in AMMA's view inconsistent with the Government's stated objectives to facilitate the entry of overseas skilled workers on mega resource projects.

AMMA's concerns were later taken up in a follow-up letter to Minister for Immigration & Citizenship Chris Bowen on May 15, 2011.

AMMA believes the increased English language threshold is neither warranted nor justified as it goes much further than simply ensuring adequate survival and communication skills in social and workplace contexts. It has instead become a test of an applicant's academic ability to showcase a high level of English language proficiency. AMMA notes that skilled and semi-skilled employees on working holiday visas can work for up to 12 months in Australia without having to demonstrate any level of English language competency, so it appears the issue is not about safety.

In a November 2010 survey of AMMA members, 38 per cent said the increased English language testing requirements had made recruiting skilled labour from overseas more difficult.

To illustrate the difficulties involved, a 457 temporary visa applicant such as a welder who is required to undertake the speaking test under the IELTS is asked after one minute's preparation time to speak for two minutes in response to the following questions:

- What kind of interactive TV programs are there in your country?
- Are these a good or bad development? Why?
- What kind of programs will there be in the future, do you think?

The academic aspect of this question to a prospective university student is understandable, but not so much in relation to a craft worker whose chosen career is not scholastic.

AMMA members that assist 457 visa applicants with English tuition to make them more proficient in their English language competency and give them a greater chance of passing the test have advised this adds a minimum of two months to the recruitment process and significantly increases costs. Visa applicants are understandably reluctant to leave their existing employment in order to complete two months of English language classes with no guarantee of passing to the required standard. AMMA has made clear to the Minister and the Department this is not an ideal situation for employers who are in urgent need of temporary skilled labour, nor is it an ideal timeframe for visa applicants to have to wait to commence work in Australia.

English language testing requirements aside, many recent Federal Government reforms in the skilled migration area have been of benefit to employers. However, challenges remain for the industry and there is more that can be done.

Enterprise migration agreements (EMAs)

In July 2010, the NRSET report³¹ recommended a special form of labour agreement – enterprise migration agreements (EMAs) – be introduced for mega resource projects

³¹ *Resourcing the Future: NRSET Report*, July 2010, Australian Government

providing streamlined access to migration, pre-qualifying employers for sponsorship and reducing agreement negotiating timeframes.

AMMA wrote to DIAC in March 2011 about the industry's issues with the EMA parameters as they were then proposed. AMMA succeeded in getting the government to revise some of the more onerous requirements that would have attached to EMAs, in particular removing a \$5,000 training levy per semi-skilled worker.

Subject to further improvements, EMAs have the potential to offer tremendous opportunities for the industry.

EMAs are intended to act as an overarching agreement that will allow a project owner or prime contractor to establish the number of skilled overseas workers and occupations required on a project, in a not dissimilar way to how labour agreements operate. However, EMAs are 'mega' resource project-specific, applying only to projects with a capital expenditure of \$2 billion or more and a peak workforce of at least 1,500.

Other key features of EMAs, following the 2011 Federal Budget announcement, are:

- Either the project owner or the prime contractor can enter into an EMA, with sub-contractors able to come on board with the project owner's consent as long as they have a strong record of compliance with Australia's migration laws;
- EMAs offer the ability to recruit not only skilled but also semi-skilled workers from overseas;
- They have a five-year lifespan;
- As mentioned, a proposed \$5,000 additional training levy on businesses for each semi-skilled migrant recruited under an EMA has been abandoned in line with AMMA's lobbying on the issue;
- No labour market testing will be required before recruiting semi-skilled workers from overseas although labour market 'analysis' will be. This will be in the form of evidence from published research about occupations in shortage;
- EMA approvals will be fast-tracked, with the government aiming at 10-day turnaround times;
- A market rates threshold of \$180,000 will apply and require skilled workers from overseas earning less than that to be paid the same as Australian workers for the same job;

- Consultation with unions, while required up-front, will not be ongoing; and
- The current stream of labour agreements and 457 visas will remain available for all resource industry projects, including 'mega' projects.

The downside of EMAs is they will require visa applicants to demonstrate the same onerously high English language skills required for other temporary skilled migration visas, although the government has said it is prepared to be flexible around that in relation to EMAs.

The originally touted definition of 'mega' projects for EMA purposes was \$10 billion in capital expenditure, which would have excluded all but one or two resource projects from the EMA stream. In line with lobbying by industry and AMMA, the Federal Government has since announced the capital expenditure threshold has been reduced to a more sensible \$2 billion. However, this is still only expected to allow between 13 and 20 projects to be covered by EMAs.

The 13 current and committed projects that would definitely meet the \$2 billion capital expenditure threshold and have a peak workforce of at least 1,500 are the³²:

- Alpha Coal Project (Tad's Corner);
- China First Coal Project (Waratah Galilee);
- Gladstone LNG Project;
- Gorgon LNG Project;
- Queensland Curtis LNG Project;
- Australia Pacific LNG Project;
- Icthus Gasfield (including the Darwin LNG Plant);
- Wheatstone LNG Project;
- Sino Iron Project;
- Extension Hill Magnetite Project;
- Oakajee Port & Rail Infrastructure Project;
- Gladstone Nickel Project (Stage 1); and the
- Worsley Refinery Efficiency and Growth Project.

³² *Minerals and energy: major development projects: April 2011 listing*, published by ABARE in May 2011

If the capital expenditure threshold was reduced to \$1 billion instead of \$2 billion, and the peak workforce requirement reduced to 500 instead of 1,500 in line with AMMA's recommendations, it would bring at least another 15 projects under the definition of 'mega' project that would then be able to enjoy the benefits of EMAs.

AMMA strongly urges the government to consider reducing the capital expenditure and peak workforce requirements for EMAs so they can be of benefit more widely to an industry that is already feeling the pinch of a skills shortage with worse to come.

CONCLUSION

The existence of a labour shortage in the Australian resource industry and the detrimental impact this is having on the productivity of enterprises is now beyond doubt.

The skills shortage is partly a result of the rapid acceleration of demand for Australia's resource products globally, with the pace and scale of growth unprecedented in the mining and oil and gas industries to date.

Therefore, unwarranted restrictions on the ability for employers to source skilled labour from overseas could limit future growth and lead to projects or parts of projects being relocated offshore. As we saw during the GFC, demand for temporary overseas skilled labour declines when there is a downturn in the economy but increases as the economy recovers. It therefore makes sense to have a responsive skilled migration program in place to supplement short-term shortfalls in labour supply and the training of Australian workers. As mentioned, most 457 temporary migration visa holders (around 50 per cent of them) end up permanently relocating to Australia and so their skills are not entirely lost to Australia in the long run.

Resource industry employers have sought to offset the detrimental impacts of the skills shortage by employing more graduates, apprentices and trainees. State and federal governments have assisted by introducing measures to ease the financial burden on employers seeking to employ semi-skilled and unskilled labour. However, despite the best efforts of industry and government, including training new job entrants; promoting careers in the resource industry to women; and encouraging interstate migration, the labour shortage remains an ongoing problem for the industry despite its effects diminishing temporarily during the height of the GFC.

Access to temporary and permanent overseas skilled labour is a small but important component of a resource industry workforce, with the long-term intentions of employers in the industry being to up-skill and supplement the Australian workforce rather than replace it. With this in mind, the multi-faceted approach needed to tackle the skills shortage in the short and long-term needs to include sensible and sustainable skilled migration on the understanding that this reaps benefits for industry, the economy, workers and their families.

Thank you.

APPENDIX A

In addition to the skills issues identified in this speech, recent Federal Government announcements on the Resource Super Profits Tax (RSPT), the Minerals Resource Rent Tax (MRRT), employee share schemes and carbon tax have taken many in the resource industry by surprise. As we approach the second anniversary of the Government's industrial relations laws under the Fair Work Act, it is clear that some key promises have been broken in the IR area. This has led many in the industry to fear the ongoing re-regulation of the labour market, enhanced union power and falling productivity as the next big issues. The table on the following pages identifies some of the key IR promises made by the Federal Government before it won office, contrasting them with the practical realities that employers are dealing with two years on.

Labor's broken promises

Labor's pre-election promise	What actually happened	Practical implications
<p>RIGHT OF ENTRY LAWS WILL NOT CHANGE</p>		
<p>Asked what she would do if Labor failed to deliver on its pledge to retain identical right of entry provisions under the Fair Work Act to those under the Workplace Relations Act, then-Deputy Opposition Leader Julia Gillard said:</p> <p>'I'm happy to do whatever you would like. If you'd like me to pledge to resign, sign a contract in blood, take a polygraph, bet my house on it, give you my mother as a hostage, whatever you'd like ... we will be delivering our policy as we have outlined it.'</p> <p><i>Deputy Opposition Leader Julia Gillard, National Press Club debate, 8 November 2007</i></p>	<p>Despite the Labor Government's promises to the contrary, the Fair Work Act on 1 July 2009 made significant changes to right of entry laws by:</p> <ul style="list-style-type: none"> • Linking right of entry to union eligibility rules rather than the previous requirement for a union to be covered by an agreement or award at a worksite in order to have entry rights. • Abolishing the ability to make new Australian Workplace Agreements (AWAs) with the introduction of the Workplace Relations Amendment (Transition to Forward with Fairness) Act in March 2008. • Introducing the ability to include clauses in enterprise agreements conferring additional entry rights on unions. This was not possible under the Workplace Relations Act. Clauses have recently been approved by Fair Work Australia in <i>ADJ Contracting Pty Ltd</i> (FWA 2380, 28 April 2011) that broaden the allowable matters in enterprise agreements. The tribunal has endorsed the inclusion of several clauses negotiated by the ETU in Victoria, including one allowing union officials to enter workplaces without a valid entry permit, without notice, outside of meal times, and without having to abide by any of the right of entry provisions of the Fair Work Act. <p>In another recent development, a Full Bench of Fair Work Australia made some findings about the operation of the right of entry provisions that will effectively curtail employers' ability to even designate the room in which the union meets with employees. In <i>AMIEU v Dardanup Butchering Company Pty Ltd</i> (FWAFB 3847, 17 June 2011), the Full Bench said that in designating a room other than the one the union preferred to meet employees in, the onus was on the employer to prove that the union-nominated room would adversely affect its interests. The Bench also said that unions should be given access to those employees who were indifferent or hostile to the union so</p>	<ul style="list-style-type: none"> • As of 1 July 2009, unions have been able to enter worksites where there is no award or agreement in place to which the union is a party, and also where the union has no members onsite. As long as the union has potential members onsite (those able to be members based on its eligibility rules) it can enter a worksite to hold discussions. This has led to increased demarcation issues between unions that were avoided under the previous legislation by the fact that one union would often have an industrial agreement in place with the employer, meaning no other unions had entry rights. • As of March 2008, new employees have had to be employed on collective agreements because they could not be hired on new AWAs. This effectively opened up previously non-unionised worksites to union entry visits for the first time. Previously, where an entire workforce was employed on AWAs, unions had no rights to enter. An example of this was the Pluto LNG project where the entire site was covered by AWAs for the first two years of its construction. There had been no union visits on the entire project, but once the Fair Work Act took effect the site received 217 right of entry requests in the first few months which later peaked and tapered off at around 450 requests. • Unless overturned, the <i>ADJ Contracting</i> decision means that unions can neatly sidestep any right of entry restrictions applying under the Fair Work Act. They only have to say they are entering a workplace to 'assist with representing an employee under the dispute resolution clause' to sidestep the provisions. If unions say they are entering to investigate a suspected breach of the Fair Work Act or to hold discussions with eligible members, they will be bound by the right of entry requirements of the Act. The incentive is clear for unions to say the right words upon entering, regardless of their true purpose. • Further, making right of entry clauses allowable matters in enterprise agreements means unions can now apply to take protected industrial action over the clauses where employers refuse to accede to them. <p>All of these factors mean that union entry rights have been</p>

Labor's pre-election promise	What actually happened	Practical implications
	<p>that the union could have a chance to convince them otherwise. The employer should facilitate this by designating a meeting location accordingly.</p>	<p>completely opened up under the Fair Work Act, contrary to the promises made by the Labor Government. There are now virtually no restrictions or limits on union access to worksites and virtually no similarity between the previous right of entry requirements under the Workplace Relations Act and those applying at the present time. AMMA members have told us that a greater number of different unions are now able to enter their premises under the Fair Work Act and the unions that are able to enter are requesting entry more often. These exponentially increased levels of site visits and requests mean the diversion of management resources in order to process requests and escort union officials around sites. There is also the disruption to business that comes from increased meetings with workers, not to mention the safety issues involved in having groups of workers moving around a site at any given time.</p>

Labor's pre-election promise	What actually happened	Practical implications
<p>APPOINTMENTS TO FAIR WORK AUSTRALIA WILL NOT FAVOUR ONE SIDE OR THE OTHER</p>		
<p>'I will not be Prime Minister of this country and appoint some endless tribe of trade union officials or ex-trade union officials to staff the key positions in this body. I will not stand by and have this body become the agency of ex-trade union officials. People will be appointed on their merit...'</p> <p><i>Opposition Leader Kevin Rudd, The 7.30 Report, 30 April 2007</i></p> <p>'Our new industrial umpire will be independent of unions, business and government. It will definitely not be a return to the old industrial relations club. Appointments will not favour one side over the other. Labor will remove all perceptions of bias.'</p> <p><i>Deputy Opposition Leader Julia Gillard, National Press Club address, May 2007</i></p> <p>The process of appointing new members to the federal industrial tribunal Fair Work Australia will be 'rigorous and provide for bi-partisan involvement. It will ensure that all appointments made to FWA are themselves fair, balanced and made on merit alone. Never before in Australian politics has a political party volunteered to take the bias out of the industrial relations system as we are proposing to do ... It's time to achieve better than a neutered industrial umpire and a tawdry system of appointing political mates.'</p> <p><i>Deputy Opposition Leader Julia Gillard, National Press Club address, May 2007</i></p>	<p>The reality is that 9 out of 11 of the most recent appointments to Fair Work Australia have been people with union backgrounds. This includes five of the six most recent appointments being current or former union officials.</p> <p>Also, of the 12 dual appointees made to Fair Work Australia from state industrial relations commissions, at least five have had union backgrounds.</p> <p>Dual appointments from state commissions have also included two former representatives of the Australian Industry Group.</p> <p>With more than two million actively trading businesses in Australia (i.e. higher than the 1.8 million trade union members), it belies belief that under the Rudd/Gillard government they could find no-one from private sector businesses to appoint to Fair Work Australia.</p>	<p>While appointed members of Fair Work Australia strive to maintain a high degree of independence and objectivity in the course of their duties, when new appointments so clearly weigh in favour of those with a union background, it undermines employers' confidence in the system.</p> <p>With the greatly enhanced role of Fair Work Australia under the current system compared to its predecessor the Australian Industrial Relations Commission, appointments to the independent body have a much more profound impact on Australian businesses than was the case under previous IR laws.</p> <p>With Fair Work Australia continuing to hand down decisions that are causing unease in the business community, these seemingly partisan appointments are in danger of further undermining business confidence in the new IR laws.</p>

Labor's pre-election promise	What actually happened	Practical implications
<p>A TOUGH COP WILL REMAIN ON THE BEAT IN THE BUILDING AND CONSTRUCTION INDUSTRY</p>		
<p>'Obviously, what the building and construction sector is looking for is that they want a tough cop on the beat. They want to make sure there is strong compliance in the building industry with industrial law and we will be ensuring that by keeping the ABCC until January 2010 and then ensuring a seamless transition to a specialist division of Fair Work Australia which would be tough on compliance. We want to make sure that no-one is engaged in improper conduct in the building industry, whether employer, union, or employee.'</p> <p><i>Deputy Opposition Leader Julia Gillard, ABC News Radio – Batholomew, 2 August 2007</i></p> <p>“Labor can guarantee that not one project will suffer from unlawful strike action.” Spokeswoman for Julia Gillard, <i>West Australian – Labor may water down building watchdog after 2010</i>, 08 / 06 / 2007</p>	<p>In reality, the Rudd/Gillard Government has proposed substantial changes to the Building & Construction Industry Improvement Act that will significantly water down the building industry regulator's powers if and when the ABCC is replaced by the Fair Work Building Industry Inspectorate.</p> <p>Proposals for change under the Building & Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009 include:</p> <ul style="list-style-type: none"> • reducing the current fines available under the Building & Construction Industry Improvement Act to the same level as in the Fair Work Act (e.g. \$33,000 maximum fines per breach by a corporation under the Fair Work Act compared to \$110,000 under the BCII Act); • allowing the inspectorate to 'switch off' its compulsory examination powers on construction projects that exhibit 'good behaviour'; and • requiring a magistrate's authority before the inspectorate exercises its compulsory examination powers under s52 of the BCII Act. 	<p>Despite the Labor Government's assurances it would retain a tough cop on the beat in the building and construction industry, the changes proposed under the Building & Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009, if passed, will act as less of a deterrent to unlawful industrial conduct in the industry.</p> <p>The Bill was introduced into federal parliament in 2009. It had not passed the Senate by the time the federal election was called in August 2010 and so lapsed. The intent of the Bill was to replace the ABCC by February 2010.</p> <p>It is now June 2011 and the ABCC is still in operation. However, new ABC Commissioner Leigh Johns who took over from John Lloyd in October 2010 has already placed less reliance on the compulsory examination powers under s52 of the BCII Act. The industry generally agrees these powers are a valuable and necessary tool in getting information from those who would otherwise want to assist the regulator in its investigations but fear the repercussions.</p> <p>In the seven months since Johns has been ABC Commissioner, he has conducted just one compulsory examination under s52 (having issued four notices to attend in total). By way of comparison, in the first eight months that the s52 powers were introduced (from 1 October 2005 to 30 June 2006), the ABCC conducted 27 compulsory interviews. In the five years to 30 September 2010, the ABCC conducted 200 compulsory examinations (an average of 40 a year).</p> <p>Former ABC Commissioner John Lloyd in June 2011 said the consequences for the industry, the economy and taxpayers would be damaging if the ABCC was neutered. He said Queensland had already experienced a ramping up of union activity, and an increase in industrial action, intimidation and inappropriate practices. The \$1.7 billion Gold Coast hospital project was recently plagued by unlawful industrial action over allegations of sham contracting. 'There are a few examples reflecting the belief by the building unions that they have regained the ascendancy,' Lloyd said. 'A tough regulatory regime applied with rigour is required to prevent abuse of WR laws. Instead, we are heading for a dangerous relaxation of the controls over abuse of the law in the building and construction</p>

		<p>industry.'</p> <p>In Victoria, the building unions have recently negotiated a 27 per cent wage deal over four years, including overtime paid at double time from March 2012. Unions are expected to seek similar deals in other states. Victorian Premier Ted Baillieu has warned that pay rates on some big projects are rising at unsustainable rates, making government funding more difficult. He called for the ABCC to be maintained as an active and rigorous body.</p> <p>Workplace Relations Minister Chris Evans recently said the legislation amending the BCII Act would be reintroduced to parliament later this year.</p>
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Labor's pre-election promise	What actually happened	Practical implications
<p>COMMON LAW CONTRACTS WILL OFFER THE SAME FLEXIBILITY AS AWAS</p>		
<p>‘When it comes to the future, we don’t see the need for individual statutory agreements. We think there is sufficient flexibility within the common law arrangements, and/or enterprise arrangements, but we’ve still got a lot of talking to do with business.’ (Opposition Leader Kevin Rudd, <i>Sky News</i>, 10 / 05 / 2007)</p> <p>“One option of course is common law contracts. Common law contracts are individual agreements which give a great deal of flexibility. There are other options like very flexible enterprise awards, and indeed some of our mining companies work with those today.”</p> <p>(Deputy Opposition Leader Julia Gillard, <i>6/2 ABC – 9 AM News</i>, 02 / 05 / 2007)</p>	<p>New AWAs were outlawed in March 2008, with the Labor Government promising that employers would get the same level of flexibility from common law contracts underpinned by modern awards. The flexibility of modern awards was expected to come to a large degree from mandatory flexibility clauses included in each modern award. However, the reality is that the mandatory flexibility clauses are not sufficiently flexible to enable employers to negotiate with an individual employee for an individual flexibility arrangement (IFA). Thus, a large degree of flexibility promised to come from common law contracts underpinned by modern awards has been lost from the new system.</p> <p>The mandatory flexibility arrangements in enterprise agreements are even less beneficial for employers, with unions running a concerted campaign during enterprise negotiations to reduce any genuine flexibility that could be achieved. There are many examples of mandatory flexibility clauses being reduced to the ability for employers to decide when employees take a paid tea break, or in relation to a protective clothing and boots allowance.</p>	<p>When new AWAs were outlawed in March 2008, it opened up the prospect of industrial action being taken at worksites by those employees negotiating new collective agreements. The Rudd Government thereby removed one of the most significant benefits of AWAs for the resource industry, which was providing certainty that industrial action would not be taken by employees covered by AWAs.</p> <p>Employers have far less flexibility and industrial certainty under common law contracts and modern awards than they ever did under AWAs, despite the Labor Government’s promises.</p>

Labor's pre-election promise	What actually happened	Practical implications
<p>MAJORITY SUPPORT WILL BE REQUIRED FOR BARGAINING</p>		
<p>“Friends, <i>Forward with Fairness</i> isn't about trade union rights. <i>Forward with Fairness</i> is about the rights of working Australians. Labor will guarantee that if you choose to join a trade union then your union can represent you. <i>Forward with Fairness</i> will guarantee if a majority of employees in a workplace, as an enterprise, people who work all day every day as team, want to bargain for a collective agreement as a team then they will be able to do so.”</p> <p>“<i>Forward with Fairness</i> will guarantee that any collective agreement must be supported by a majority of employees. <i>Forward with Fairness</i> is for working Australians today and for their children tomorrow. Fair and flexible. Balanced and simple.” (Julia Gillard, <i>Speech – Forward with Fairness</i>, 28 / 04 / 2007)</p> <p>“What does our policy provide? That a majority of employees in a workplace can always do a deal with their employer, it doesn't matter what the union says.” (Julia Gillard, <i>7:30 Report</i>, 04 / 09 / 2007)</p> <p>‘It retains clear, tough rules against industrial action, with the right to take protected industrial action during bargaining in support of claims in relation to a new enterprise agreement following a fair and democratic secret ballot.’ (<i>Explanatory Memorandum to the Fair Work Bill about the Fair Work Bill</i>)</p> <p>“Without the capacity to determine whether majority support exists for collective bargaining, employers can simply refuse to negotiate with employees, often resulting in protracted disputes. Examples of these disputes include those at <i>Boeing</i> and <i>Cochlear</i>.” (Explanatory Memorandum to the Fair Work Bill)</p>	<ul style="list-style-type: none"> • The prevailing assumption among employers in the lead-up to the Fair Work Act being introduced, and a key reason for mining industry employers agreeing to the removal of AWAs, was that employers would only be compelled to bargain if a majority of employees wanted to bargain with them. In lieu of that, employers would have the right to refuse to bargain until and unless some of the other mechanisms under the Fair Work Act were put into play, such as the union applying for a majority support determination or a scope order in order to commence the bargaining process. • But based on a Full Bench of Fair Work Australia's interpretation of the provisions governing protected industrial action, employers now have no practical way of refusing to bargain despite the absence of majority support. In <i>JJ Richards & Sons Pty Ltd v TWU; AMMA v TWU</i> (FWAFB 3377, 1 June 2011), the Full Bench upheld earlier findings that a majority support determination was not a pre-requisite to unions applying to take protected industrial action. The decision means there are virtually no pre-requisites to taking protected industrial action under the current IR system, regardless of whether the majority of employees endorses such action. 	<p>As Freehills partner Chris Gardner recently pointed out, while the JJ Richards decision means that unions taking industrial action will not technically require an employer to sit down and bargain, in the majority of cases it will have that effect. Rather than unions having to use the less aggressive mechanisms under the Fair Work Act to get an employer to bargain, unions are able to immediately employ the very effective strategy of taking or threatening to take protected industrial action.</p> <p>Employers' ability to refuse to bargain with its workforce even where there is no majority support for bargaining has therefore been effectively removed under the current interpretation of the laws. This is contrary to promises made by the Labor Government that only if a majority of workers plus one supported bargaining would an employer be forced to bargain.</p>

Labor's pre-election promise	What actually happened	Practical implications
<p>FREEDOM OF ASSOCIATION WILL BE UPHELD</p>		
<p>“I believe in freedom of association, I believe it’s your right to choose to join a trade union if you wish to. I believe it’s your right to choose not to join that union if you wish to.” (Deputy Opposition Leader Julia Gillard, <i>3AW – Mitchell</i>, 18 / 04 / 2007)</p> <p><i>CALLER:</i> ‘I would just like to ask Ms Gillard if the ALP get in, if she would guarantee that they will not introduce a compulsory unionism or preference to union people, as what they had when they were in the last time?’</p> <p><i>GILLARD:</i> ‘I absolutely guarantee that. We will not be introducing anything like that, as I made clear when I answered the earlier talkback caller. I believe in freedom of association. If you don’t want to be a union member, it is completely wrong for anyone, government or anyone, to try and make you be a union member. So our laws will make it very clear the choice is yours. If you want to join, that’s good. If you don’t want to join, that’s good too. It’s entirely up to you.’</p> <p>(Deputy Opposition Leader Julia Gillard, <i>612ABC – King</i>, 29 / 10 / 2007)</p>	<ul style="list-style-type: none"> • In a recent decision by Fair Work Australia in <i>ADJ Contracting Pty Ltd</i> (FWA 2380, 28 April 2011), the tribunal endorsed the inclusion of clauses in enterprise agreements that require an employer to actively promote union membership to prospective and existing employees and to encourage employees to attend union meetings during work hours. Despite objections raised to the clauses by employer groups and the ABCC, the tribunal found the union ‘encouragement’ clauses did not breach s350 of the Fair Work Act (which says employers must not ‘induce’ employees to become members of a union). The tribunal made a distinction between the word ‘induce’ and the terms used in the clause - ‘promote’ and ‘encourage’. • The Federal Government, despite pre-election promises that its IR system would respect the right of employees not to join a union, has not objected to the inclusion of the above clauses and has been completely silent on the issue. 	<p>The practical implications of the <i>ADJ Contracting</i> decision are that, while technically not requiring employers to coerce existing or prospective employees to join a union, there is a fine line between coercion and encouragement. Someone applying for a job whom the employer ‘encourages’ to join a union might take that as meaning they will not get the job unless they join. Also, the requirement to actively encourage union activity will divert important management resources away from the real job of doing business.</p> <p>While unions should be free to represent members who have become members of their own accord, employers should not be required to further entrench unions’ role in the workplace by actively promoting union membership.</p> <p>Another issue is that under the Fair Work Act, unions tend to dominate enterprise bargaining whenever they are involved, despite the fact they might represent a very small minority of workers to be covered by the agreement. Again, the Fair Work Act gives primacy to union members over non-union members. This is unfair given that, according to the latest ABS statistics, 79% of the mining industry have chosen not to belong to a union along with:</p> <ul style="list-style-type: none"> • 50% in coal mining; • 81% in oil and gas extraction; • 86% in metal ore mining; • 87% in non-metallic mineral mining and quarrying; and • 85% in exploration and other support services.

ENTERPRISE BARGAINING WILL LEAD TO INCREASED PRODUCTIVITY		
<p>The Fair Work Bill ‘aims to achieve productivity and fairness through enterprise level collective bargaining underpinned by the guaranteed safety net, simple good faith bargaining obligations and clear rules governing industrial action.’ <i>Fair Work Bill 2008, Second Reading Speech, 4 December 2008</i></p> <p>‘Enterprise collective bargaining is an important driver of productivity and a key feature of our policy.’ <i>Deputy Opposition Leader Julia Gillard, Speech – Melbourne Press Club – 25 June 2007</i></p> <p>‘Labor’s industrial relations policies will be focused on the big drivers of productivity.’ <i>Deputy Opposition Leader Julia Gillard, Australian Workplace Relations Summit, 14 March 2007</i></p>	<p>The reality is there is no requirement under the Fair Work Act to link any enterprise agreement outcomes to productivity improvements. Nor is there any requirement for Fair Work Australia to ask the parties to an enterprise agreement whether productivity improvements have been considered during bargaining before approving an agreement.</p> <p>As demonstrated in the 2009/10 vessel operator’s dispute, maritime unions including the MUA were able, through ongoing strike action, to secure more than 30 per cent pay rises plus a construction allowance of \$200 for each day worked in return for absolutely no productivity offsets and no changes to their duties.</p>	<p>The overwhelming majority of resource industry employers have not been able to achieve any productivity increases in exchange for wage increases during enterprise bargaining, even where those wage increases are exorbitant.</p> <p>In February 2010, Maritime Union of Australia (MUA) national secretary Paddy Crumlin bragged that massive pay rises won by offshore oil and gas workers were secured without productivity trade-offs. Crumlin was quoted in <i>The Australian</i> newspaper as saying that employer groups like AMMA who suggested productivity should have been part of the deal were ‘dinosaurs’.</p> <p>Crumlin has since said he was misquoted in the article and actually meant that productivity improvements were built into everything the maritime workers did, and to relegate it to something the parties traded off during bargaining was an antiquated concept.</p> <p>However, the fact remains that productivity improvements are often not even able to be put on the table by employers during enterprise bargaining rounds.</p> <p>Productivity improvements are particularly elusive when it comes to negotiating greenfield agreements with unions, with many employers saying they have agreed to things they otherwise would not have in order to secure an agreement with a union.</p> <p>This is contrary to what the Labor Government promised would be the case in the lead-up to the Fair Work Act being introduced and the new system of bargaining taking effect that was supposed to result in increased productivity.</p>

Labor's pre-election promise	What actually happened	Practical implications
<p>UNIONS WILL ONLY HAVE A SEAT AT THE BARGAINING TABLE WHERE THEY HAVE MEMBERS AT A WORKSITE</p>		
<p>'Under Labor, it will be entirely possible for an employer which employs both union members and non-union members to make an enterprise agreement that the union plays no role in the making of and with which the union does not agree. Under Labor's system, unions have no automatic right to be involved in collective enterprise bargaining.' <i>Deputy Opposition Leader Julia Gillard, Speech – Queensland Media Club, 30 August 2007</i></p> <p>'True non-union collective bargaining is a feature of <i>Forward with Fairness</i>. Under our system, a union does not have an automatic right to be involved in collective bargaining. None of these requirements are in place under <i>Forward with Fairness</i>. A non-union agreement will be just that – a non-union agreement. Indeed, a union would not even know it was being made.' <i>Deputy Opposition Leader Julia Gillard, Speech – Melbourne Press Club – 25 June 2007</i></p>	<p>Despite the promise that unions would not have a guaranteed role in enterprise bargaining, the reality is quite different.</p> <p>Until recently, employers assumed that a union had to have at least one member at a worksite in order to be involved in bargaining. This was often counterproductive given that unions tended to dominate enterprise bargaining negotiations to the exclusion of other bargaining representatives, even where they represented only a small minority of workers.</p> <p>However, a recent Fair Work Australia decision has opened the way for an official of a union that has no coverage of workers on a site to be nominated to represent them in bargaining. Thus, a union gets a foot in the door in bargaining despite having no-one on a site that is even eligible to be their member.</p> <p>In <i>Tracey v Technip Oceania Pty Ltd</i> (FWA 3509, 13 June 2011), Fair Work Australia ordered a resource industry employer to recognise and bargain with an official of the MUA, Will Tracey, finding he was validly appointed by employees as an individual bargaining representative, despite the MUA not having constitutional coverage of the workers. Because Tracey was an individual and not a union, the tribunal said there was no prohibition on him being appointed as an individual bargaining representative by employees. This was despite all communication between Tracey and the employer about the negotiation of a new enterprise agreement being on MUA letterhead and Tracey's email address being his MUA email address.</p>	<p>Unless this decision is overturned, it paves the way for unions to gain a foothold and take control of enterprise negotiations that they have no right to be involved in. The potential for this to further exacerbate demarcation disputes between unions should not be underestimated. Even where unions have no lawful right to represent workers, they are now able to do so on a 'de facto' basis by appointing an individual union official to lead negotiations, but with the union pulling the strings.</p>