**STEVE KNOTT AM**

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**"Another way forward on workplace relations"**

## Introduction

Thank you for the introduction and good morning everyone.

My name is Steve Knott and I've been Chief Executive of Australia's national resource industry employer group, AMMA, since 1998.

For those of you who don't know AMMA, we've been around since 1918 and our national membership covers every sector of the resources and related industries – mining, energy, construction, transport, services, refining, smelting and much more.

Our point of difference on workplace relations is that we not only have a track record of influencing real legislative reform through our research, advocacy and lobbying efforts, but we also have a national team of specialist consultants who provide solutions to the everyday practical workplace relations problems experienced by employers and practitioners.

I've been in and around Australia's workplace relations system for almost 40 decades. In that time there isn't much I haven't seen.

I've been through various cycles of Labor and Liberal changes to Australia's IR framework, including Bob Hawke's Accord in the 80s, Keating's big focus on enterprise bargaining in the early 90s and then the Howard / Reith deregulation efforts from the mid-90s and beyond.

When people ask me about these various periods in Australia's IR history and what we are seeing today from the body politic, the truth is I've never been as concerned about our workplace relations system and the prospects for reform as I am today.

I'd like to give you an overview of these concerns and why I believe that political paralysis in Canberra means fundamental workplace relations reform – the type of reform our country so desperately needs - is as far distant on the horizon as ever before.

I'll also provide an overview of AMMA's 2017 campaign for change, because despite the concerning inertia at the national policy level, AMMA will remain the most nation's most forthright advocate for workplace relations reform and will not give up the fight.

## Economic Context / Penalty Rates

Any presentation on workplace relations in Australia at the moment cannot go past the current debate about penalty rates.

Open any newspaper in Australia over the past three weeks and you'd be forgiven for thinking workplace relations reform is all about Penalty Rates. But let's quickly recap its limited significance to our future living standards, economic prosperity and national wellbeing.

The decision of February 24 was made by the Fair Work Commission during its first four-year long review of Australia's awards system. After more than two years of submissions and evidence hearings, the decision means 200-odd-thousand employees in about three or four lower paid sectors will see a reduction in their take-home pay on Sundays of between 14 and 25 per cent.

It concerns me to no end that it appears this fight on penalty rates is looking like being the big industrial relations war of this term of government.

To borrow a term from Tony Abbott – the battlelines have been drawn.

Bill Shorten, who I've know personally for a long time from his AWU days, is proving more a political opportunist than I'd ever imagined.

Bill is effectively wedging Malcolm Turnbull and his government on the outcome of a review that he instigated when he was Julia Gillard's workplace relations minister, and that for years he said should be respected for its independence.

The union movement is calling the penalty rates decision Malcolm Turnbull's "Work Choices moment". Last week, a national day of protest led by the CFMEU, which represents little-to-no members relying on Sunday penalties, saw 40 construction sites in Queensland closed down and $8 million ripped out of the state's economy.

Now let's think about the economic context in which this penalty rates war rages.

Australia narrowly avoided an official recession in this first quarter of 2017, after the end of 2016 saw the first contraction of our economy in 25 years. Our AAA credit rating is also under threat by all three international rating agencies.

When John Howard left office in 2007, unemployment was at 4.4 per cent and real wages growth average above 2 per cent. Today, unemployment is at 5.8 per cent, wages growth is at historic lows and substantial underemployment and youth unemployment is contributing significantly to serious social issues including crime, welfare dependence and drug abuse.

In our industry, the pipeline of future job-creating resources and energy projects has dropped by more than $54 billion since 2014.

So penalty rates is not a big issue for our industry, which has the best remunerated workforce in the nation and most of whom are on annualised salaries. Many of you may have heard anecdotes about laundry hands earning $400,000 per year during the offshore oil and gas construction boom.

The issue for us is that if the Turnbull government is spooked by the union's "Work Choices" style campaign – as opposed to wearing it as a badge of honour – we can only expect they'll act like scared rabbits on more substantive WR reforms.

And when you consider all the economic and employment issues we face in Australia today, it is hardly the case that a 14-25 per cent reduction in wages bills, for a handful of sectors, for one-in-seven working days, represents the type of transformational workplace relations reform our nation needs to sustain our future prosperity and living standards.

## Dual approach to reform

The fact is our workplace relations system is among the most heavily regulated, over-complex, unproductive and enterprise-suffocating in the world.

Despite nine in every 10 Australian employees choosing not to be union members, we are operating in a workplace relations system built on Labor and the unions' ideological agenda and not fit for a modern, competitive economy.

There are concerns from some – including Peter Costello – that Australia is sleepwalking into a recession and it will take a crisis of recession levels to spark a policy response.

But that isn't stopping AMMA from advocating for a much more proactive approach to workplace relations regulation in this country.

If we can somehow, miraculously, convince our current crop of political leaders to pursue fundamental, meaningful reforms, our nation will be in a far better position to dig ourselves out of a prolonged economic downturn or even avoid one in the first place.

In doing our very best to achieve this, AMMA is taking a dual approach to workplace reform.

Firstly, to provide employers in the resource sector and indeed the entire business community immediate relief, we are advocating for "Five Urgent Reforms" that address well identified, major problems with the current Fair Work system and would start to restore some balance to our national workplace relations system.

And secondly, beyond that, AMMA is providing a leading voice for what I label 'transformative' workplace relations reform. That is, if we could start all over again and build a new system fit for the way we work in 2017, and the way enterprises interact and compete in a 2017 global economy, what would that system look like?

Noting the time restraints of today's event, please allow me to briefly outline these distinct, but interlocking campaigns.

## Five Urgent Reforms

In the lead-up to the 2016 Federal Election, AMMA conducted a national survey of more than 100 key resource companies, collectively employing more than 85,000 people in Australia, to learn of their pressing priorities for workplace change.

From this survey five clear areas of the Fair Work system were identified as creating the greatest practical problems, and requiring the most urgent attention.

These themes are as follows:

1. **Return balance to union workplace entry laws** by creating an enforceable code of conduct and removing union access to employee lunch rooms when other suitable meeting rooms are available;

2. **Focus enterprise bargaining**, and ensure legally protected strike action can only be taken over claims pertaining to the employment relationship, not union 'wish lists' of claims;

3. **Expand agreement making options** to facilitate employment arrangements, both individual and collective, directly between employees and employers;

4. **Return to balanced termination of service laws, where a valid reason exists.** This involves firstly addressing the absolute basket case of the Fair Work Act's unfair dismissal provisions, and remove the absurd 'general protections' and adverse action provisions, to ensure employers are not forced to pay 'go away money' to settle claims without merit; and

5. **Replace the Fair Work Commission** with modern, balanced institutions that are truly independent, by creating an Australian Employment Tribunal and a separate Employment Appeals Tribunal.

I could speak all day on any one of these priorities, but again with consideration of our timings today, I'll briefly touch on the first and the fifth.

## Union site entry laws

Some of you may have seen an animated video AMMA launched into the marketplace a few weeks ago, highlighting the absurdity of the Fair Work Act's expanded union site entry laws. If you haven't yet seen it I recommend watching it via AMMA's website.

The animation is a little tongue in cheek but the issues and concerns it raises have very serious impacts for the resource industry and indeed the national economy.

It's quite well documented that when Labor's Fair Work Act gave union officials and recruiters almost unlimited rights to enter worksites, the number of visits at many projects sky-rocketed to thousands.

Common examples cited in the resource sector include one project receiving 17 visits in just 24 hours and another more than 300 in 90 days. These are by no means isolated cases under the Fair Work laws.

What is perhaps less understood are the true practical impacts that such excessive site visits have on the productive and competitive running of complex operations such as in the resource sector.

When your site involves molten metals, earth moving and mine blasting, gas plants, high-tech engineering, and 24/7 transport logistics; inducting, accompanying and moving visitors around on site becomes a major exercise.

Chaperoning around a union official involves the strict supervision of highly paid safety representatives and/or site superintendents, diverting management attention away from productive activities.

Now imagine having to do that more than three times a day, for nothing more than recruitment exercises from different unions all competing for membership dollars in an environment where less and less employees are interested in their message.

Further changes in 2013, again by WR minister Bill Shorten, meant union officials could target employees in their lunchrooms, which is a direct affront to the long respected industrial principle that employees should be able to enjoy their lunches in peace, free from being badgered by union reps.

Last year these lunchroom provisions were tested when the CFMEU here in Queensland argued that its officials should be granted access to the small crib rooms on 2,500 tonne excavators, known as draglines, where operators might eat a sandwich on a quick smoko break.

As ridiculous as it sounds that an employer should transport a union official kilometres out into an open cut coal mine and have their operators stop their draglines so a union official can jump into their small break space with them, the Fair Work Commission nonetheless agreed with the union's argument.

The Federal Court only last week dismissed the employer's latest appeal.

Next we'll be hearing of unions accessing aeroplane cockpits because the pilots are occasionally munching on muesli bars.

The other of Bill's changes was to require employers to subsidise union access to remote worksites, leading to wide concerns that employers would have to cop the bill (no pun intended) for unions taking helicopter joy rides out to offshore oil and gas rigs or to remote mine sites.

You need to remember that these sites aren't two-star-motels with vacancies waiting to be filled.

While some transport and accommodation expenses can be charged back to the union, helicopters can cost up to $30,000 to charter crews to offshore rigs. If one of those seats is filled by a union visitor, that's one less productive worker who is on that charter and working that swing.

In short, union site access rules do have a very real operational and cost impact on resource sector operations and it's not too much to ask that balance is restored to these rules, which before Labor's changes were longstanding and well understood by all.

## Fair Work Commission

The other of AMMA's "Five Urgent Reforms" that I'd like to touch on is our advocacy for reforming and eventually replacing the Fair Work Commission.

Before the penalty rates issue exploded, the big IR story of the start to 2017 was FWC Vice President Graeme Watson's early retirement from the national tribunal.

The public interest came from his very detailed resignation letter sent to Employment Minister Michaelia Cash, in which the well-respected and longstanding Vice President outlined a number of significant frustrations and concerns with the Fair Work Act, the Fair Work Commission and the way many of his tribunal colleagues approached their work.

Among his chief concerns were:

- Unpredictable outcomes of unfair dismissal cases;
- Confusion, complexity and cost of 'adverse action' laws;
- Enterprise bargaining giving rise to adversarial behaviour;
- Unduly complexity of agreement approvals;
- Ineffective remedies for unprotected industrial action; and
- The Fair Work system is undermining the Act's intention.

Many of the Vice President's grievances mirror those of employers.

AMMA has been the most vocal critic of the Commission in recent years due to an unedifying politicisation of the appointment process, an unprecedented restructuring of its leadership, and a myriad of inconsistent decisions that are too often out-of-touch with community expectations.

As noted in the current slide, VP Watson is just one of a number of presidential level members of the tribunal to have retired early. Senior Deputy President Matthew O'Callaghan exited the tribunal last month as did SDP Richards in September 2016.

All-in-all, there have been 15 total departures from the FWC since March 2014, seven of which were presidential members leaving well before their statutory retirement dates.

It is increasingly clear that the national IR tribunal is currently dysfunctional, over-politicised and losing quality members at a concerning rate.

To address these issues, AMMA has urged the government to take the following steps as soon as possible:

- Stop the growth and reach of paid conciliators, some of whom remain politically active and who are doing work that should be solely in the remit of sworn FWC members (for example, unfair dismissal conciliations);

- Urgently fill vacancies on the tribunal created by the high volume of departures and the unexpected early resignations of Watson, Richards and O'Callaghan and more;

- Appoint new FWC members to 'commissioner' level, given the tribunal currently has 'too many chiefs, not enough Indians', with 21 Commissioners and 20 Presidential members;

- Seek new appointees with real experience running businesses and employing people rather than recruiting from the 'IR Club' of ex-trade union bosses and labour lawyers; and

- Pursue the creation of a new, separate appeals jurisdiction to ensure consistent decision making and send clearer signals about employment to business owners and managers.

We believe that these first steps would restore confidence, independence and credibility in the Fair Work Commission.

Longer-term, we will advocate for the commission to be re-named and re-purposed into the Australian Employment Tribunal, with a renewed focus on supporting

productive and valuable employment outcomes, rather than acting as a quasi-judicial court pursuing agendas and taking an impractical and overly legalistic approach to its work.

## Campaign for transformational reform

The second campaign for workplace relations reform pursued by AMMA in 2017 goes beyond tinkering with the Fair Work system, which many would agree is fundamentally flawed.

I recalled earlier working through the various periods of IR reform since Hawke's Accord Years and contrasting that with the lack of political leadership we are seeing today.

Today the workplace is changing at a more rapid pace than anything faced by Hawke, Keating or Howard. The advancement and application of new technologies, skills sets, and globalisation has seen our economy and the way we work become more agile, nimble and innovative than ever before.

But at the same time, it has been two decades since the last transformational economic and labour market reforms were delivered with Australia's future prosperity in mind.

In advocating for 'transformational workplace relations reform', we are calling for greater political vision to ask the tough questions about our workplace relations system that have been well avoided in recent years and that were not asked by the Productivity Commission's 12-month long review in 2015.

Rather than having a national, overly-emotive debate about a 14 to 25 per cent difference in Sunday penalties, we should have used the Fair Work Commission's awards review process to consider why we have an awards system in the first place.

Comparing our system to the rest of the developed world is a great place to start.

That Australia is the only nation in the world with a so-called 'modern' awards system was identified by the Productivity Commission but replacing this prehistoric system with something more agile and suited to work today wasn't included in its recommendations.

With 23 million people, or about 0.3 per cent of global population, what is so special about Australia that we have to be the only nation dividing much of its workforce into 122 largely out-of-date and useless awards?

Another area worth considering is the potential for the highest paid employees and highest paying employers in Australia to 'opt out' of the national workplace relations system where the mutual benefits clearly justify it.

For instance, in the resource industry where the average weekly earnings wage is $2572, or $941 more than the national all-industries average, I would argue that it is not appropriate or productive for our sector to be subject to the layers-upon-layers of workplace regulation more designed to protect the lowest paid and most vulnerable in our national labour market, rather than support competitive enterprise and productive employment relationships.

These are just some of the considerations that Australia needs to ask itself if we are to get serious about restoring our national competitiveness within a rapidly evolving global economy.

We must consider what our workplace relations system would look like if we were to start fresh and build it from the 'ground up', with proper deliberation given to innovation, growth and the future job opportunities, prospects and living standards of our children and grandchildren.

Because how we regulate work today will impact on Australia's future, and reform in the national interest goes much further and far deeper than superficial politicking over penalty rates.

**Thank you for your time today. I'm happy to take questions.**

(Media Inquiries – Tom Reid, 0419 153 407)