



# MINERALS COUNCIL OF AUSTRALIA

## PRE-BUDGET SUBMISSION 2018-19

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DECEMBER 2017

## TABLE OF CONTENTS

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EXECUTIVE SUMMARY .....	1
RECOMMENDATIONS.....	3
1. MINING INDUSTRY PERFORMANCE .....	9
1.1 Health and safety .....	9
1.2 Highly skilled, highly paid jobs in regional and remote Australia .....	10
2. ECONOMIC CONTRIBUTION AND COMMODITY MARKET OUTLOOK.....	12
2.1 Mining industry contribution to the Australian economy.....	12
2.2 Outlook for commodity markets and the Australian mining industry .....	14
3. TAXATION.....	17
3.1 Mining makes a large tax contribution.....	17
3.2 Competitive company tax and royalties will improve growth prospects.....	18
3.3 Stable fuel tax arrangements are vital to mining’s competitiveness .....	19
3.4 Australia needs competitive and stable exploration and R&D tax arrangements.....	19
3.5 Integrity of Australia’s tax system and minerals taxation .....	20
3.6 GST distribution reform .....	21
4. STRUCTURAL REFORM PRIORITIES.....	22
4.1 Productive workplaces underpin living standards and national income.....	22
4.2 Streamlining project approvals and environmental regulation .....	23
4.3 Modernising workplace relations .....	25
4.4 Deregulation and competition policy .....	28
4.5 Free trade and open investment .....	31
5. ENERGY AND CLIMATE CHANGE .....	33
5.1 Australia’s energy policy must aim to restore our low-cost energy advantage .....	33
5.2 Nuclear and low emissions coal critical sources of baseload power .....	34
5.3 The potential for Australian uranium .....	36
6. Skills and training.....	37
6.1 Leveraging investment in higher education and training .....	37
6.2 Future minerals workforce.....	37
6.3 Labour mobility and skilled migration.....	38
7. INDIGENOUS PARTNERSHIPS .....	39
7.1 Reform of the Native Title Act 1993 .....	39
7.2 Introduce a modern management structure for land-related payments.....	39

## EXECUTIVE SUMMARY

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### **The 2018-19 Budget must deal with emerging risks to growth**

The 2018-19 Budget must pursue reforms that will deliver strong economic growth and long-term budget repair. The robust performance of the Australian economy over the past decade has not resulted in budget surpluses and declining net debt.

On the contrary, while real gross domestic product (GDP) has grown at an average rate of 2.7 per cent – and unemployment has remained at around 5.5 per cent – budget deficits have increased by \$53 billion and net debt by \$280 billion since 2007-08.

This will limit the government's ability to respond to the next economic downturn. Each year that budget repair is delayed puts Australia a year closer to the risk of facing an economic shock without the fiscal capacity to ward off a serious downturn or recession, with all the adverse consequences of job losses, falling living standards and wealth destruction. And the failure to repair the budget means Australian taxpayers will be paying off this debt for decades to come.

The resources sector – which includes minerals extraction, oil and gas and metals processing – has been and will continue to be integral to our economic success. Resources investment has offset declining business investment in other sectors, higher resources exports have boosted national income and resources company taxes have enabled much of the growth in government spending.

Overall, the resources sector has been the largest contributor to GDP growth over the past decade. However, historically high terms of trade (the ratio of export to import prices) have disguised the serious problem of growth in labour productivity lagging behind growth in real wages. This trend erodes the economy's competitiveness and jeopardises the prospects that Australians will enjoy better living standards into the future.

The more Australia's terms of trade fall from their 2011 peak, the greater the pressure on national income and the more urgent the need to take action on productivity becomes.

Yet multifactor productivity (the growth of output above the growth of labour and capital combined) has been declining since 2002. The Productivity Commission has warned that without higher productivity growth, income growth in Australia to 2022 will be only half of historical levels.

### **Productivity and income growth is driven by high-performance workplaces**

Over the long term, productivity growth is the main driver of rising living standards.

Productivity growth means increasing the rate of output (goods or services) from a given amount of inputs (labour, capital, land and energy) or maintaining a given rate of output with fewer inputs. It is achieved either by improving the efficiency of existing production techniques, or by significantly changing the method of supplying goods or services through innovation.

A November 2017 Treasury working paper reiterated that more productive businesses pay markedly higher average real wages and have more capital per worker. The paper also found that average real wages are higher in exporting businesses and in businesses with foreign shareholders (partly because foreign-owned businesses tend to be larger).

The Productivity Commission also notes that while the potential productivity of most Australian industries is determined by technological progress in other countries, Australia's resources sector is a global leader and one of the most productive industries in the world.

The sector uses sophisticated production techniques and highly-skilled labour to transform natural endowments into valuable exports. Average weekly earnings in the resources sector are \$2,659 per week, more than 60 per cent higher than the national average of \$1,606 per week.

## **Australian mining: further export growth hampered by productivity barriers**

In 2016-17, resources exports reached a record high of \$198 billion and accounted for 54 per cent of Australia's total export revenues. Compared to the peak of the commodity price cycle in 2011-12, Australia is now producing significantly higher volumes of its key mineral exports.

The Australian mining boom's transition to the production stage comes after a period of significant investment in the resources sector, in which more than \$400 billion of mining, energy and infrastructure projects were developed in Australia.

This investment has led to production increases over the last five years of 73 per cent for iron ore, 20 per cent for coal, 16 per cent for bauxite and 13 per cent for gold. Multifactor productivity in the resources sector increased 2.4 per cent in 2015-16.

Australia's world-class mining sector could perform at its best – generating additional benefits for the economy, the workforce and society – if policy reform was kickstarted in a number of important areas.

Reform in critical areas such as environmental assessments and project approvals, workplace relations and taxes and royalties has either stalled or regressed. Australian mining will not achieve its potential to create jobs and national prosperity while the reform agenda remains at a standstill.

### **Mining industry reform priorities**

The 2018-19 Budget must directly address the policy roadblocks to investment and employment.

These barriers include a punitive and uncompetitive corporate tax rate, regulatory delays in approving major projects, rigid workplace relations rules that block efficient management and innovation, and interventions that raise the cost of electricity while reducing the reliability of supply.

Australia's 30 per cent company tax rate is too high for a capital-hungry nation that needs to encourage business investment. Our company tax rate is now the fifth highest in the Organisation for Economic Co-operation and Development (OECD) where the average is 24 per cent.

With the Trump Administration's tax bill to slash the US corporate tax rate from 35 per cent to 20 per cent expected to be passed before the end of 2017, the Australian Parliament should pass the Turnbull Government's much more modest Enterprise Tax Plan for a 25 per cent corporate tax rate by 2026-27 as a matter of urgency.

Investors need confidence that complex construction projects with long lead times will not be rendered uncommercial by tortuous government approvals processes. Major project proponents in Australia must already overcome a mountain of red and green tape, including duplicated federal and state approvals processes and multiple vexatious legal challenges to successful approvals.

The Productivity Commission estimated in October 2017 that adopting its 2013 proposals to improve major project assessment processes would reduce project delays and save the economy approximately \$240 million.

Modern workplaces are vital to the competitiveness of the Australian mining industry which has a successful track record of adopting and integrating new technology and ideas into its operations.

But existing workplace relations laws lock in poor practices that discourage investment and hinder productivity and innovation. Without reform, productivity and competitiveness will suffer from the retention of outdated work practices and declining labour productivity, resulting in lower wages and fewer jobs.

The Productivity Commission's estimates that its 2015 workplace relations reform proposals would add \$850 million a year to the Australian economy. The MCA broadly supports the Productivity Commission's recommendations, and further advocates greater capacity for employees who are earning over a particular threshold (such as the existing high income threshold for unfair dismissals) to opt out of an enterprise agreement and enter into individual agreements.

The National Electricity Market was created to promote efficient electricity services in the long-term interests of consumers, specifically price, quality, safety, reliability and security of supply. This objective has been undermined by poorly designed climate change policies at all levels of government.

Particular technologies have been subsidised or mandated while ignoring the effect on cost and/or reliability.

The National Energy Guarantee has the potential to help policymakers navigate from the quagmire of policy distortion to the mainstream of market selection of fuels and technologies.

In particular, the Reliability Guarantee recognises the reality that industrial users (who account for 70 per cent of national electricity consumption) require affordable and reliable sources of baseload power to maintain internationally competitive operations.

This reinforces the imperative for governments to ensure that high-efficiency, low-emissions (HELE) coal technologies and nuclear power are allowed to compete with other low-emissions sources of electricity – and on equal terms.

The following recommendations set out a credible policy agenda to boost economic growth and restore the conditions for lasting budget repair.

## **RECOMMENDATIONS**

### **Taxation**

- The MCA urges parliament to pass the Treasury Laws Amendment (Enterprise Tax Plan No. 2) Bill 2017, which will ensure that by 2026-27 the corporate tax rate for all Australian corporations will be 25 per cent – close to the OECD average.
- The MCA strongly opposes any change to the Fuel Tax Credit scheme, which embodies the fundamental tax policy principle that business inputs should not be taxed.
- The government should continue to maintain the immediate deductibility of exploration expenditure, which is a critical and longstanding feature of the income tax system. The MCA also supports the speedy passage through parliament of the Treasury Laws Amendment (Junior Minerals Exploration Incentive) Bill 2017.
- The research and development (R&D) tax incentive should be maintained in its current form and not distorted by restricting eligibility on the basis of industry, firm size, R&D intensity or any other arbitrary criterion.
- The MCA supports meaningful and globally consistent tax transparency that minimises compliance burden, including in Australia the Voluntary Tax Transparency Code and the Extractive Industry Transparency Initiative (EITI). The MCA will continue to participate actively in the Multi-Stakeholder Group to help the Government fully implement the EITI in 2018.
- The MCA supports the government's announced integrity measures for deductible gift recipients, which will improve accountability and transparency, address outstanding cases of non-compliance and help maintain public confidence in the not-for-profit sector.
- Australia should remain in step with international consensus on Base Erosion and Profit Shifting (BEPS) reforms. Recent measures should now be allowed to operate and be assessed in due course.
- To address the perverse incentives, flawed methods and systemic bias in the GST distribution the MCA recommends that Australia apply a minimum 25 per cent discount to the mining revenue assessment in the GST distribution calculations.

## Structural reform priorities

### ***Project approvals and environmental regulation***

- Parliament should pass enabling legislation to facilitate a One-Stop Shop for environmental approvals to remove regulatory duplication between jurisdictions without reducing environmental protection.
- The MCA supports reforms to prevent vexatious legal challenges to approved projects. Weaknesses in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) that allow the minister's approval to be challenged on a technicality which has no bearing on the substance of the decision. Unnecessary delays would be reduced if only challenges with merit proceeded to legal judgment.
- The MCA recommends the water trigger for coal seam gas and large coal development – which replicates state processes and relies upon the same expert advice - be removed from the EPBC Act.
- The nuclear trigger in the EPBC Act should also be reformed to remove uranium mining, milling and decommissioning and rehabilitation, given that existing state assessment and approval processes are comprehensive and can effectively address any significant environmental risks.
- Other administrative reforms to the EPBC Act would improve the efficiency of environmental assessment and approvals processes, including:
  - Setting information requirements to manage clearly defined risks, rather than to insure against every conceivable risk
  - Increased use of alternative assessment mechanisms, including particular manner provisions and approval on referral information
  - Coordinated and mutually reinforcing environmental offset requirements between federal and state governments.

### ***Workplace relations***

#### *Confining permitted content in enterprise agreements to direct employment matters*

- Removing the availability of protected industrial action over business decisions and confining the content of enterprise bargaining to direct employment matters by:
  - Amending the phrase 'matters pertaining to' the relationship between an employer and employees in section 172 of the *Fair Work Act 2009* to 'matters directly related to'
  - Amending section 194 of the Fair Work Act to include an express prohibition on enterprise agreement terms that unreasonably interfere with legitimate business decisions or restrict an employer's capacity to choose an employment mix suited to its business
  - Removing matters pertaining to the relationship between an employer and a trade union from the range of permitted matters in enterprise agreements under section 172 of the Fair Work Act
  - Amending section 409 of the Fair Work Act to delete the inclusion of a 'reasonable belief' that a claim in relation to an agreement is about a permitted matter.

#### *Refocusing adverse action provisions to discourage unreasonable claims*

- Making provision for exclusions for legitimate operational and investment decisions.
- Reinstating the sole or dominant purpose test to determine whether a contravention has occurred.
- Discouraging baseless claims by allowing cost orders to follow the result of the case.

- Codifying the High Court’s approach in *CFMEU v BHP Coal Pty Ltd (2014) 253 CLR 243* to confirm that just because adverse action is connected with industrial activity, it does not mean that the adverse action occurred because of the industrial activity.

#### *Rebalancing union right-of-entry provisions*

- Rebalancing union right-of-entry provisions by anchoring right of entry provisions in the need to allow employees access to their representatives (rather than a right of unions to advance their interests).
- Addressing any continuing operational issues over frequency of entry by:
  - Removing the requirement for there to be ‘an unreasonable diversion of the occupier’s critical resources’ in order for the Fair Work Commission (FWC) to make orders regarding the frequency of entry.
  - Requiring the FWC to take account of the cumulative impact on an employer’s operations, the likely benefit to employees of further entries and the reason for the frequency of the entries in making orders regarding frequency of entry.

#### *Reforming greenfields agreements to encourage investment in new projects*

- The Fair Work Commission should adopt a simpler test in approving a greenfields agreement under which the terms are at least at the level of similar work performed at another enterprise covered by an enterprise agreement.
- There should be capacity for employers to enter into ‘life of project’ greenfields agreements, or at least agreements with a duration of up to and including five years according to operational needs.

#### *Allowing high-income earners to enter into individual agreements*

- There should be greater capacity for employees who are earning over a particular threshold (such as the existing high income threshold for unfair dismissals) to opt out of an enterprise agreement and enter into individual agreements.

#### ***Deregulation and competition policy***

- The MCA recommends that the government recommit to a comprehensive deregulation agenda that:
  - Considers non-regulatory options for achieving policy objectives
  - Ensures any new regulations are efficient by:
    - Proceeding from an established case for regulatory action
    - Embracing the best (or least worst) of available options
    - Setting clear objectives that do not overlap
    - Managing risks proportionately rather than prescriptively
  - Minimises the existing stock of regulation.
- The MCA broadly supports the improvements to coastal shipping regulation proposed in the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017.
- The MCA submits that the government should continue to prosecute the sensible and pragmatic reforms proposed in the Shipping Legislation Amendment Bill 2015, notably:
  - Introducing a single permit system allowing unrestricted trade for both domestic and foreign vessels

- Ensuring that Australian and foreign-registered vessels are subject to the same conditions of access and operation by removing the ability of domestic ships to contest voyages proposed by foreign ships.
- The MCA maintains that governments have a responsibility to foster open, transparent and competitive markets for transport and infrastructure.
- Before privatising public monopolies that provide infrastructure services, governments should consider carefully whether access arrangements or other regulatory provisions take proper account of long-term efficiency objectives relating to Australia's export competitiveness.

### **Free trade and open investment**

- The MCA supports government policies that maintain an open economy, support free trade and attract investment, including:
  - Increased public advocacy to promote the benefits of trade and investment in the community
  - Making resources a trade policy priority by developing trade, economic and political strategies to advance Australia's mining and energy interests.
  - Improving analysis of inward and outward investment flows. Funding is needed to collect data on investment by foreign-owned businesses given there has not been a comprehensive ABS survey of this type for 16 years.

### **Energy and climate change**

- The MCA advocates market-based energy and climate policies that:
  - Reduce energy costs for businesses and households – not just limit price rises
  - Promote greenhouse gas abatement at the lowest cost consistent with Australia's international competitiveness
  - Enshrine technology neutrality by enabling all low emissions fuel sources to compete on their merits in open and transparent energy markets
  - Avoid subsidies, quotas and other interventions that distort energy markets.
- The MCA welcomes the National Energy Guarantee as a constructive approach to addressing the long-running energy policy challenge confronting Australia. The proposed Reliability Guarantee will provide incentives to maintain flexible, dispatchable sources of power supply to improve the reliability of Australia's electricity grid and reduce the risks of power outages.
- Nonetheless, there is an urgent need for a clear focus on where, when and how new baseload generation will be built. Funding through the Clean Energy Finance Corporation should be available to all low emissions technologies, including high efficiency, low emissions (HELE) coal technologies and carbon capture and storage (CCS).
- The government should lift the ban on nuclear power, as well as:
  - Remove uranium mining, milling, decommissioning and rehabilitation from the definition of nuclear action in the *Environmental Protection and Biodiversity Act 1999 (EPBC Act)*
  - Finalise one-stop shop assessment and approval of bilateral agreements with efficient environmental management by states and territories
  - Standardise uranium mining legislation and regulation across the country, including rules governing the transport and export of uranium
  - Remove federally legislated bans on nuclear industries in the *EPBC Act and Australian Radiation Protection and Nuclear Safety Act 1998*, which are anti-uranium and undermine

foreign investor confidence in uranium mining in Australia. Removing the legislated bans would encourage innovation and investment in nuclear research and technologies while still ensuring that any proposed nuclear developments were required to meet all relevant federal and state environmental, safety and other regulatory approval processes.

- The MCA supports the continuation of the Emissions Reduction Fund and Safeguards Mechanism, which together have delivered significant abatement at less than \$12 per tonne.
- The MCA submits that firms should have access to international offsets to lower the cost of meeting Australia's Paris emissions reduction commitments and deliver associated environmental benefits (such as reducing deforestation).

### **Occupational health and safety**

- The MCA supports a nationally consistent, risk-based preventative occupational health and safety regulatory system, supported by efficient industry-specific regulation. Such a system would ensure that compliance challenges do not detract from the practical tasks of identifying, managing and minimising risk, or pursuing continuous improvement of safety and health outcomes by companies.
- The minerals industry requires timely access to federal health and safety data to better inform operational health and safety improvement initiatives.

### **Skills and training**

- The MCA supports the range of reforms advanced by the Productivity Commission to generate a high-quality education system that promotes skills formation and prepares students for technology adoption, use and diffusion, including:
  - Introducing a more graduated system of student assessment to signal to employers the level of proficiency in vocational education and training (VET)
  - Developing an objective VET accreditation system that signals the quality of skills, regardless of how they are acquired, to encourage the growth and acceptance of new models of skills formation that are faster, cheaper and more flexible
  - Improving student outcomes by providing affordable, high quality university education with qualifications that are relevant to labour market needs.
- The future minerals workforce will be even more diverse, geographically distributed and digitally connected. It will require broad ranging skills and competencies using both accredited and non-accredited training. Government will need to work closely with industry to ensure that accredited training is responsive to industry needs.
- Strategies such as fly-in, fly-out (FIFO) and drive-in, drive-out (DIDO) arrangements, together with an effective skilled migration program, help sustain mining activity in regional areas. The minerals industry submits that the temporary skilled migration scheme would be improved by:
  - Abolishing the arbitrary upper age limit of 45 years (or 50 years in some cases) that is preventing knowledge experts, senior managers and leaders (including chief executives) from taking up key positions and contributing to Australia's comparative advantage in minerals
  - Clarifying when occupations associated with temporary skilled visas move on, off or between the Medium and Long-term Strategic Skills List (MLTSSL) and the Short-term Skilled Occupation List (STSOL)
  - Allocating the proceeds of the Skilling Australia Fund proportionally to each industry's use of the temporary skilled migration visas to support skilling and upskilling for that and ancillary industries.

### **Native Title Act reform**

- The *Native Title Act 1993* needs to be amended to validate existing right-to-negotiate agreements under section 31.
- Anticipated reform of the *Native Title Act* should emphasise certainty and efficiency to encourage the negotiation of mutually beneficial outcomes for native title parties.
- The MCA supports the Indigenous Community Development Corporation (ICDC) entity proposed by the Native Title Working Group.

## 1. MINING INDUSTRY PERFORMANCE

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- The MCA supports a nationally consistent, risk-based preventative occupational health and safety regulatory system, supported by efficient industry-specific regulation. The industry requires timely access to federally held health and safety data to better inform operational health and safety improvement initiatives.
- Australia's resources sector depends on a highly skilled, highly paid workforce that covers a range of scientific fields and professional occupations. Technological innovation – including increased automation – requires workers continually to update their training and skills.
- The Australian mining industry is actively assessing what skills and capabilities its future workforce will need to remain innovative and competitive.

### 1.1 Health and safety

#### ***An industry committed to health and safety***

The minerals industry's most important value and commitment is the safety and health of its workforce, where everyone who goes to work in the industry returns home safe and healthy. The industry has set itself the ambitious goal of becoming fatality free. MCA member companies operate on the basis that:

- All fatalities, injuries and diseases are preventable
- No task is so important that it cannot be done safely
- All hazards can be identified and their risks managed
- Everyone has a personal responsibility for the safety and health of themselves and their workmates.

A nationally consistent, risk-based preventative occupational health and safety (OHS) regulatory system, supported by industry-specific regulation, would deliver benefits through greater certainty, consistency and efficiency. It would also help to ensure that compliance challenges do not detract from the practical tasks of identifying, managing and minimising risk and the continuous improvement of safety and health outcomes by companies.

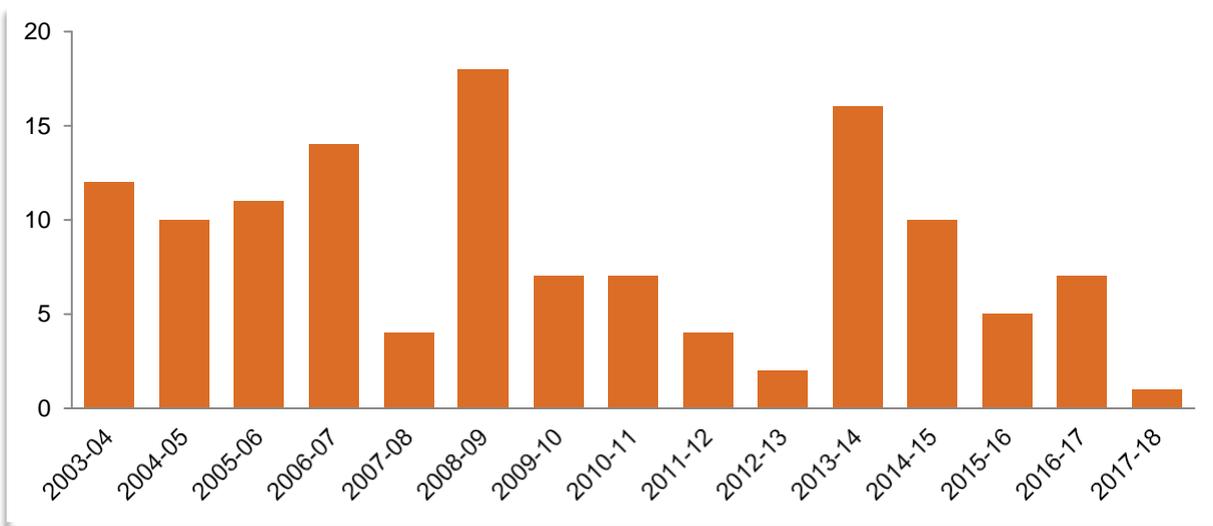
There has been one life lost to date in 2017-18 (**Chart 1**). An increase in fatalities in 2013-14 resulted in the industry embarking on initiatives to arrest this rise, including sharing and learning lessons from significant incidents and working with the International Council of Mining and Metals (ICMM) to publish practical guidance on preventing the most serious types of health and safety incidents.<sup>1</sup> This direct action has resulted in a decrease in industry fatalities.

The MCA's *Blueprint for Mental Health and Wellbeing* is another signature industry initiative.

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<sup>1</sup> International Council of Mining and Metals, [Health and safety critical control management good practice guide](#), London, 2015.

**Chart 1: Australian minerals industry fatalities**



Source: MCA

## 1.2 Highly skilled, highly paid jobs in regional and remote Australia

Mining in Australia is a sophisticated and technologically advanced enterprise that requires a highly skilled and adaptable workforce. The Australian resources sector employs around 220,000 people in high-value, high-wage, high-skilled jobs, mostly in remote and regional Australia. Average weekly earnings (full-time adult) in the resources sector are \$2,659 per week, more than 60 per cent higher than the national average of \$1,606 per week.<sup>2</sup>

Australia's resources workforce covers a range of scientific fields and professional occupations. The resources sector is the largest total employer of:

- Mining engineers (10,530)
- Geologists and geophysicists (6,470)
- Industrial, mechanical and production engineers (10,400)
- Production managers (6,600)
- Metallurgists and physicists (2,700).<sup>3</sup>

Mining is also the third-biggest employer of environmental scientists, employing more than 13,600 directly and indirectly.<sup>4</sup>

Technological innovation will continue to change the nature of work in mining and therefore skills requirements. In some parts of the industry, increasing automation of mining and logistics is moving workers from mine sites to remote operational centres. Not only does this innovation move workers from mine sites to safer environments, it also requires them to enhance their skills. As BAEconomics explains:

While robots used in other industrial processes generally remain stationary and perform tasks on products or components conveyed to them, mining and logistics robots must move around, often in complex environments. Automated technologies are therefore only made possible by increased computing power; new algorithms for signal processing, perception and control; and new sensing technology for monitoring

<sup>2</sup> Australian Bureau of Statistics, [Labour Force, Australia, Detailed, Quarterly, Aug 2017](#), ABS cat. no. 6291.0.55.003, released on 21 September 2017. [Average Weekly Earnings, Australia, May 2017](#), ABS cat. no. 6302.0, released on 17 August 2017.

<sup>3</sup> Department of Employment, [Job Outlook](#); MCA calculations, viewed 13 December 2017. NB these figures are estimates of the total number of workers directly and indirectly employed by the resources sector.

<sup>4</sup> *ibid.*

landscape geometry, including GPS, radar and laser systems. The requirements to develop and operate these technologies are correspondingly complex and rely on high-level interdisciplinary skills.<sup>5</sup>

BAEconomics argues that workers who support automated processes benefit from upskilling and higher quality jobs, and points out that the alternative – retaining old labour practices – would reduce labour productivity and ultimately put jobs at risk.<sup>6</sup>

The Productivity Commission highlights that mining, once an employer of mostly blue collar workers, now requires white collar employees with the ability to interact with remotely managed or computer directed equipment.<sup>7</sup> These new business models require people with skills and an understanding of the IT systems in use. The Productivity Commission highlights that high-skilled jobs tend to be complementary to new technology, raising productivity and the demand for suitably skilled workers. It further adds that productivity savings result in lower prices for consumers, higher wages for the employees, and/or higher profits, leading to increased demand.<sup>8</sup>

Deloitte research indicates that 69 per cent of mining companies globally are looking at introducing remote operations and monitoring centres, 29 per cent robotics and 27 per cent unmanned drones, with technologies enabling work to be moved to locations which can support a more diverse and inclusive workforce, including primary carers and people with physical disabilities.<sup>9</sup>

Deloitte further explains that shared services centres and centres of expertise will employ a mix of on-shore, off-shore and robotic workforce, with increased human-machine interaction and new and different skills with both work and equipment being redesigned. A diverse, distributed and connected workforce will consider problems and opportunities in new and unique ways, using creativity and diversity of thinking to deliver innovative solutions.<sup>10</sup>

The minerals industry is actively assessing the future minerals workforce and the skills requirements considering the increasing role of automation, robotics and artificial intelligence that will see Australian mining continue to be at the forefront of innovation.

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<sup>5</sup> Anna L. Matysek and Brian S. Fisher. [Productivity and Innovation in the Mining Industry](#), BAEconomics Research Report 2016.1, 8 April 2016, p. 31.

<sup>6</sup> *ibid.*, p. 42.

<sup>7</sup> Productivity Commission, [Shifting the Dial: 5 Year Productivity Review](#), Report No. 84, Canberra, 3 August 2017, p. 85.

<sup>8</sup> *ibid.*, p. 83.

<sup>9</sup> Deloitte. [The digital revolution – Mining starts to reinvent the future](#), February 2017.

<sup>10</sup> *ibid.*

## 2. ECONOMIC CONTRIBUTION AND COMMODITY MARKET OUTLOOK

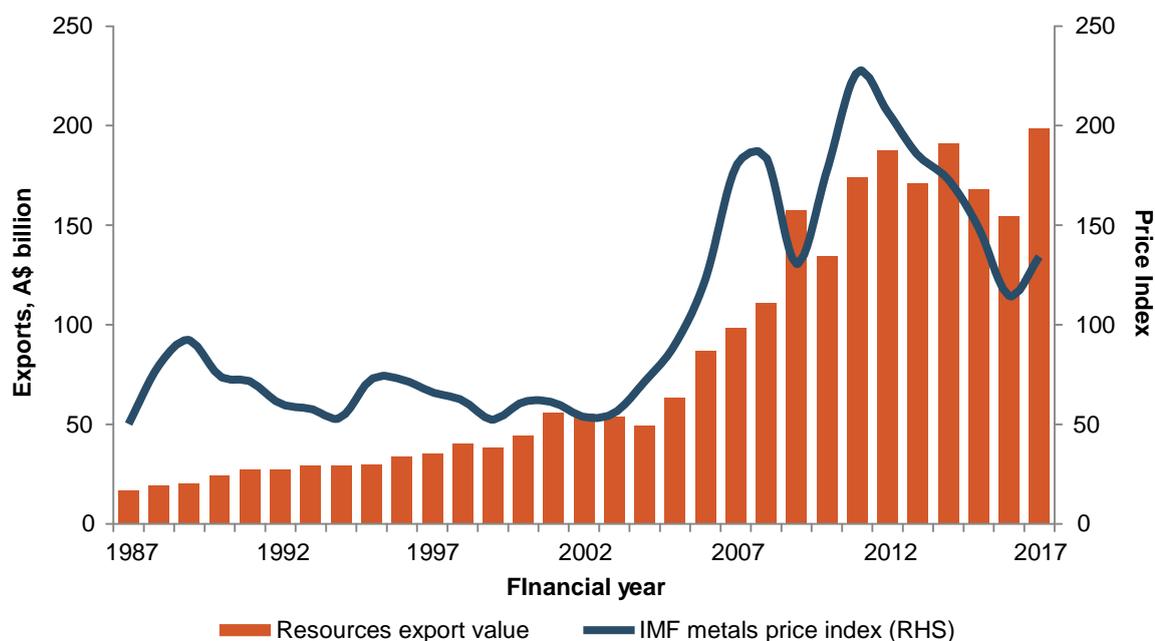
- Mining is the leading industry in the Australian economy. Australia's largest source of export revenue, a key employer in regional areas and a world leader in innovation.
- The world's resources and energy needs are projected to continue growing in the 21st century as highly populated non-OECD nations, particularly in Asia, converge to the economic levels of the OECD nations. Australia is well-placed to supply these growing markets but this opportunity is not guaranteed.
- Exploration expenditure in Australia has rebounded in 2016-17 but remains below recent high levels. Greater greenfield exploration is required in order to identify the mines of tomorrow. The government should consider increasing funding to Geoscience Australia to expedite the geological mapping of new prospective mineral regions.

### 2.1 Mining industry contribution to the Australian economy

Mining is a leading industry in the Australian economy. It is Australia's largest source of export revenue, a key employer in regional areas and a world leader in innovation. According to the Australian Bureau of Statistics (ABS), mining accounted for 6 per cent of GDP in 2016-17 making it the fourth largest contributor to the Australian economy. When the broader economic contribution of the mining equipment, technology and services (METS) sector is included, this share of the Australian economy increases to over 15 per cent.

In 2016-17 resources exports were a record high of \$198 billion and accounted for 54 per cent of Australia's total export revenues. As shown in Chart 2, commodity prices rebounded in 2016-17 but remained well below the highest levels of the price phase of the mining boom. The surge in Australia's resources export revenue was instead driven mainly by higher production of key mineral and energy commodities.

**Chart 2: Australia's resources exports**



Sources: Australian Bureau of Statistics, [International Trade in Goods and Services](#) ABS Cat No. 5368 Table 3; International Monetary Fund, 13 December 2017.

### Box 1: 2016-17 a record year for gold exports

After several challenging years stemming from lower prices, the Australian gold sector recovered in 2016-17 to post its highest value of gold exports in a year (\$19.8 billion, up 11 per cent from 2015-16). While a rebound in the Australian dollar price of gold contributed, this success was the outcome of several years of investment in new mines, expansions at existing mines and productivity initiatives that drove higher production.

There is considerable potential for further expansion in the Australian gold industry that may boost exports further. Several new mines are currently under construction or at advanced stages of planning and increased exploration expenditure in 2016-17 indicates continued confidence in the industry. Policy stability, particularly on royalties, is essential to ensuring this potential turns into investment. Although Australian dollar gold prices are currently high, new projects continue to face commercial pressure from high construction and operating costs due to their remote locations. Like many mining projects, gold projects in Australia are competing with lower cost projects to attract investment dollars. Australia's long held advantage in policy stability cannot be taken for granted particularly as political stability in emerging lower cost mining regions improves.

Compared to the peak of the commodity price cycle in 2011-12, Australia is now producing significantly higher volumes of its key mineral exports. The transition to the production stage of the mining boom comes after a period of significant investment in the mining industry in which over \$400 billion of mining, energy and infrastructure projects were developed in Australia. This investment has led to production increases over the last five years of 73 per cent for iron ore, 20 per cent for coal, 16 per cent for bauxite and 13 per cent for gold. Investment has also occurred in mines that are producing the materials used in modern technologies such as electronics, renewable energy systems and electric vehicles. As a result, Australia is already the world's largest lithium producer and one of the only countries in the world to produce rare earth elements.

The mining industry has continued to be a large employer in the production phase of the boom. According to Australia Bureau of Statistics the mining industry workforce was approximately 230,000 throughout 2016-17 and many of these jobs are located in regional areas.<sup>11</sup> When the broader METS supply chain is considered, this workforce exceeds 1.1 million people and accounts for 10 per cent of jobs in Australia.<sup>12</sup>

While the benefits of mining and METS activities are distributed across Australia, there are a number of regional areas where the sector makes a particularly significant economic contribution:

- The Pilbara region (WA), with a total economic contribution of \$37.8 billion (88 per cent of total regional economic activity) and 93,800 jobs (direct and indirect)
- The Bowen-Surat region (Queensland), with a total economic contribution of \$18.6 billion (63 per cent of total regional economic activity) and 99,700 jobs (direct and indirect)
- The Hunter region (NSW), with a total economic contribution of \$15.2 billion (34 per cent of total regional economic activity) and 93,600 jobs (direct and indirect).

In addition, Deloitte Access Economics has estimated the total economic contribution of mining and METS to Victoria, South Australia and the Northern Territory in 2015-16:

- Victoria – \$13.6 billion in value added (4 per cent of total state activity) and 121,700 jobs
- South Australia – \$8.9 billion in value added (8 per cent of total state activity) and 69,800 jobs
- Northern Territory – \$3.2 billion (10 per cent of total Territory activity) and 23,500 jobs.

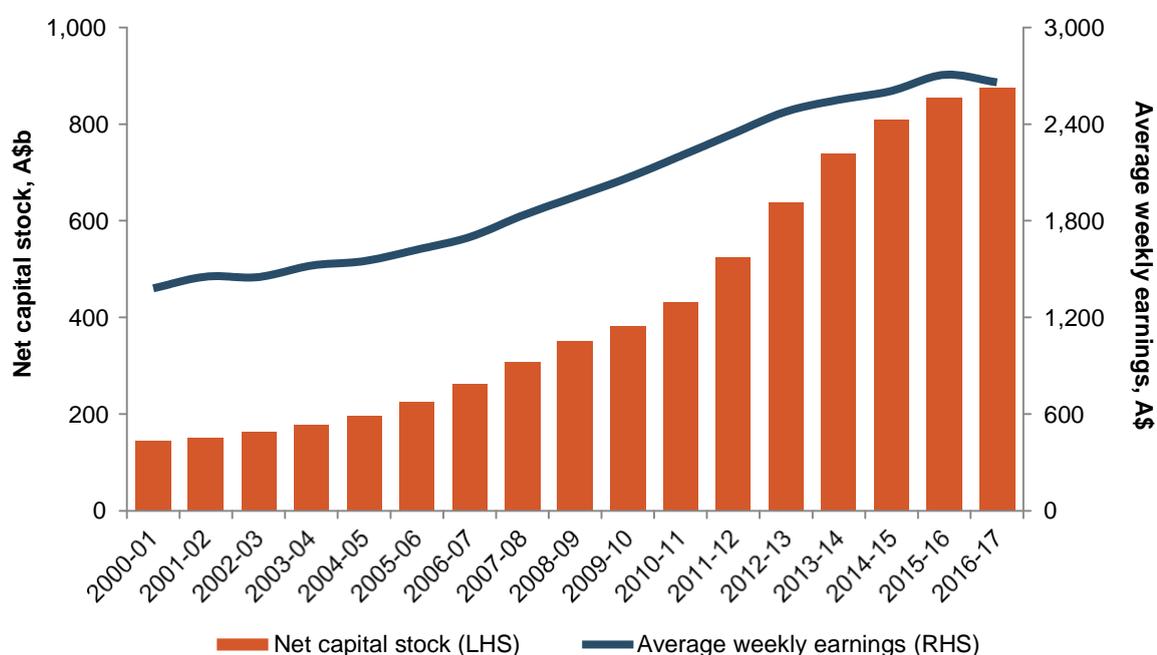
<sup>11</sup> Australian Bureau of Statistics [Cat No. 6291.0.55.003, Labour Force, Australia, Detailed, Quarterly](#), ABS cat no. 6291.055.003.

<sup>12</sup> Deloitte Access Economics, [Mining and METS: engines of economic growth and prosperity for Australians](#), 29 March 2017.

The Productivity Commission confirmed that Australian regions continue to benefit substantially from the resources sector in its report *Transitioning Regional Economies*.<sup>13</sup> This report refutes the notion that the Australian economy is transitioning away from mining and notes that the large resource base of many resource regions, combined with the expansion of capacity generated during the mining investment boom, is likely to provide economic and employment opportunities for decades to come.

The mining industry workforce has benefitted from the substantial investments made over the past decade that have expanded the industry’s capital stock. The net capital stock of the mining industry has increased by 502 per cent since 2000-01 and totalled \$876 billion in 2016-17. Over the same period industry average weekly earnings increased 93 per cent to \$2,659 – the highest of any industry in Australia and 66 per cent higher than the average for other industries. However, as shown in Chart 3, growth in the mining industry’s capital stock has slowed in recent years and average weekly earnings consequently declined in 2016-17. Government policies must address the range of factors that are holding back further investment in mining in order to support growth in employment and higher wages.

**Chart 3: Mining industry capital stock and average weekly earnings**



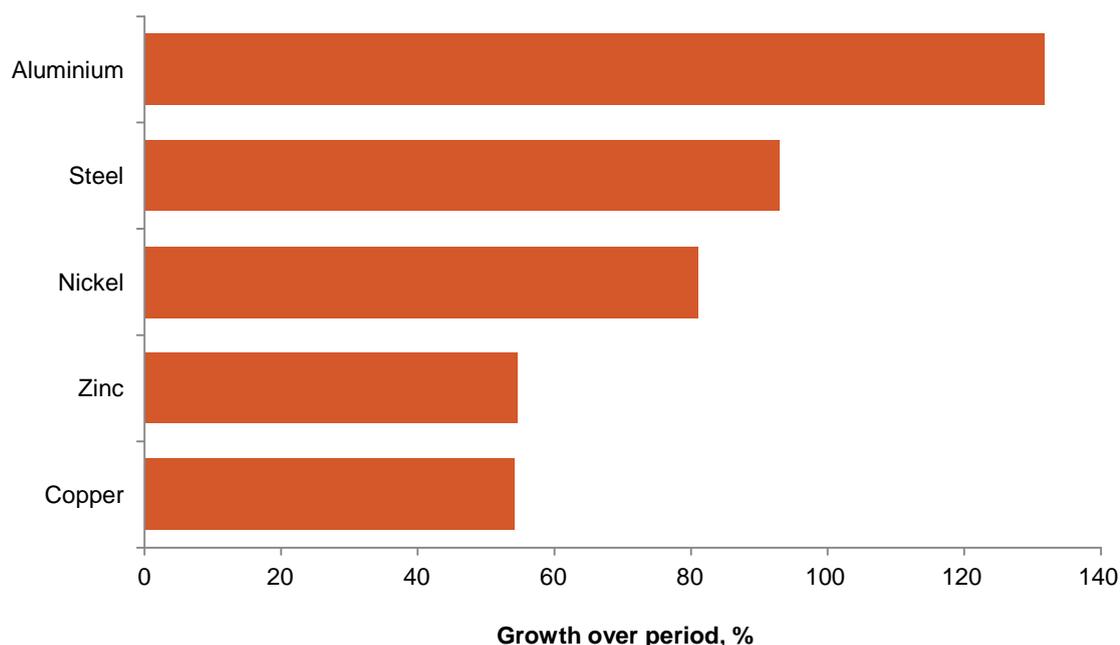
Source: Australian Bureau of Statistics; [Cat No. 5204 Australian System of National Accounts](#); [Cat No. 6302 Average Weekly Earnings, Australia](#)

## 2.2 Outlook for commodity markets and the Australian mining industry

World annual consumption of most mineral and energy commodities has increased substantially in the 21<sup>st</sup> century as a result of highly populated, non-OECD countries urbanising and implementing market-based reforms to increase growth in their economies. As shown in Chart 4, this has led to substantial increases in key industrial metals such as steel, copper and aluminium. This trend is likely to continue for some time as income levels, urbanisation rates and resource consumption per capita of these emerging economies remain well below the levels of OECD countries and have considerable potential to grow further.

<sup>13</sup> Productivity Commission, [Transitioning Regional Economies: Initial Report](#), 20 April 2017.

**Chart 4: World metals consumption growth, 2000-2016**



Sources: Department of Industry, Innovation and Science, World Steel Association

China's One Belt One Road initiative is one program that will support this economic growth and stimulate further demand for mineral resources in the future. BHP estimate that just 400 of the core projects involved in the One Belt One Road initiative will require nearly US\$1.3 trillion of investment in infrastructure.<sup>14</sup>

While demand for resources has grown, and is expected to continue growing in the long term, so has supply of all key mineral and energy resources. The price of most commodities peaked in or before 2012 and experienced a prolonged downwards trend thereafter to increased competition in commodity markets associated with new sources of supply coming online. The Australian mining industry has not been immune from this increased competition and several mining operations have closed or curtailed production in response to lower prices. These production cuts have been part of the global supply response that is now supporting a moderate rebound in commodity prices.

Higher prices cannot be grounds for complacency. Australian mining companies continue to face strong competition from new emerging mining regions in Africa and South America in both commodity supply and competition for funding from capital markets. As this global competition rises government policies must continue to support Australian companies in their efforts to increase productivity and cut costs.

### **Exploration activity**

Exploration activity is fundamental to the future success of the Australian mining industry. Exploration is the process by which geological information is collected and analysed to identify mineral deposits as well as determining the economic feasibility of their extraction. Exploration is the mining sectors equivalent of market research; it is fundamentally exploring for future business opportunities. Minerals exploration expenditure in Australia rebounded in 2016-17 after a four year decline and increased 10 per cent to \$1.6 billion.

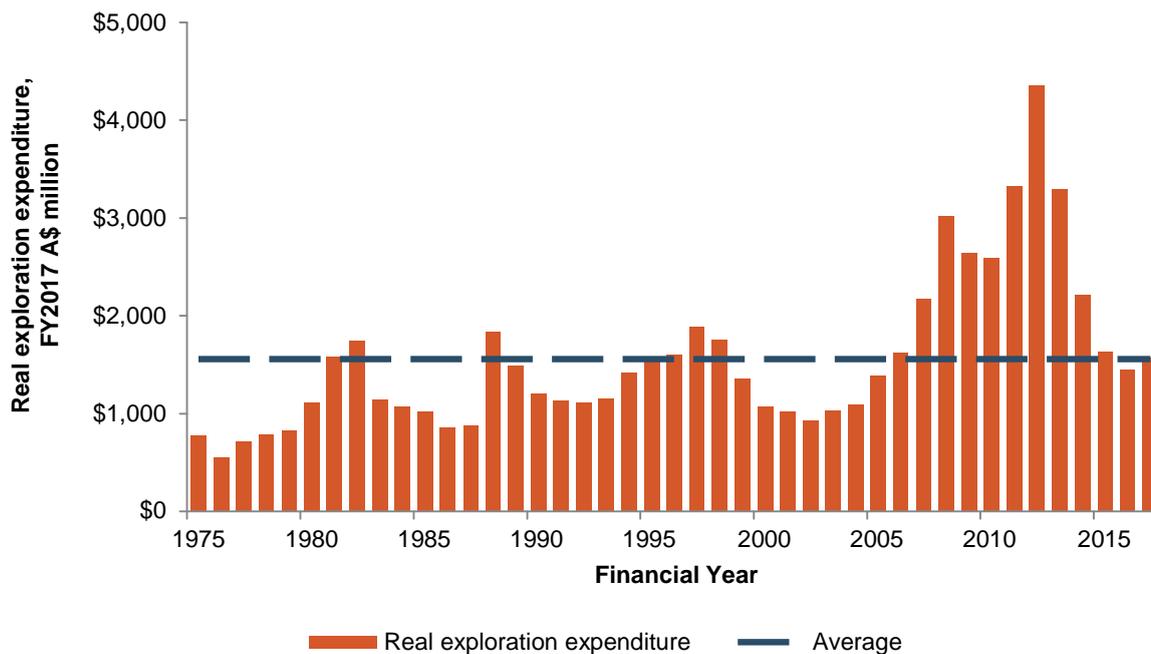
In its report *Top 10 business risks facing mining and metals 2017-18*, EY identified resources replacement (via exploration) as one of the key risks to the future of the mining industry. According to the report 'exploration was the first cost to be cut as prices declined but hasn't been the first to be reinstated.

<sup>14</sup> BHP, [China's belt and road initiative, episode two: a vision encased in steel](#), viewed 13 December 2017.

It is, however, essential for future sector growth'. The report also offers this key insight: 'resource depletion is a concern – we've stopped spending on exploration. This is the equivalent to technology companies not spending on innovation'.<sup>15</sup>

As shown in Chart 5, real mineral exploration expenditure in Australia has decreased significantly from the peaks of the price phase of the mining boom. While it still remains at its long-term historical average level this is mainly due to exploration at existing mines (known as brownfield exploration) rather than exploration to identify resources at new sites (greenfield exploration) that could become the next generation of tier one assets in Australia.

**Chart 5: Real mineral exploration expenditure**



Source: Australian Bureau of Statistics, [Cat No. 8412 Mineral and Petroleum Exploration](#), ABS cat no. 8412, MCA calculations

All governments have a role to play increasing exploration in Australia. The pre-competitive information (studies aimed at defining the geology of a basin or region) produced by Geoscience Australia and state geological surveys is a valuable public good which should receive greater government funding. The 2016-17 budget provided \$100 million over four years to Geoscience Australia to support modelling of mineral, petroleum and groundwater resources in targeted areas across northern Australia and South Australia.<sup>16</sup> This measure should not only be extended but provided with additional funding in order to expedite the mapping of prospective regions and stimulate greater investment in greenfield exploration in Australia.

<sup>15</sup> EY, [Top 10 business risks facing mining and metals 2017-18](#), page 8, viewed 13 December 2017.

<sup>16</sup> Commonwealth of Australia, Budget 2016-17, [Part 2 Expense Measures – Industry, Innovation and Science](#).

### 3. TAXATION

- Australia’s mining industry faces a heavy tax burden compared to competitor nations (company tax plus royalties of 51 per cent in 2015-16). The Turnbull Government’s Enterprise Tax Plan – which will ensure that by 2026-27 the corporate tax rate for all Australian corporations will be 25 per cent – should be passed by the Australian parliament as a matter of urgency.
- Stable tax arrangements for off-road fuel, exploration expenses and research and development (R&D) are vital to industry competitiveness and economic activity in regional Australia.
- Tax integrity and transparency measures should be carefully targeted and minimise compliance costs. Transparency measures should provide meaningful information to the public, be consistent with global initiatives, and minimise compliance burdens.

#### 3.1 Mining makes a large tax contribution

The large tax contribution by mining to the federal and state governments is demonstrated by official data from the Australian Taxation Office (ATO), tax transparency data, as well as analysis by respected economists.

Deloitte Access Economics (DAE) analysis shows that the mining industry paid \$177 billion in company tax and royalties in the decade to 2015-16.<sup>17</sup> DAE and state budget papers show royalty payments to the states are more than double what they were a decade ago, increasing from \$3.6 billion in 2006-07 to almost \$8 billion in 2015-16.<sup>18</sup>

The latest ATO data shows mining (including oil and gas) paid \$9.8 billion in company tax alone in 2014-15.<sup>19</sup> Despite mining comprising just 6,770 companies out of some 914,508 companies liable for the company tax (less than 1 per cent of the total), mining paid 14.4 per cent of the net company income tax in the 2014-15 financial year.<sup>20</sup>

**Chart 6: Minerals industry company tax and royalties, bulk commodity prices**



Source: Deloitte Access Economics

<sup>17</sup> Deloitte Access Economics, [Estimates of royalties and company tax accrued in 2015-16](#), report prepared for the Minerals Council of Australia, MCA, 5 January 2017.

<sup>18</sup> *ibid.*

<sup>19</sup> Australian Taxation Office, [Taxation Statistics 2014-15](#), 12 April 2017.

<sup>20</sup> *ibid.*

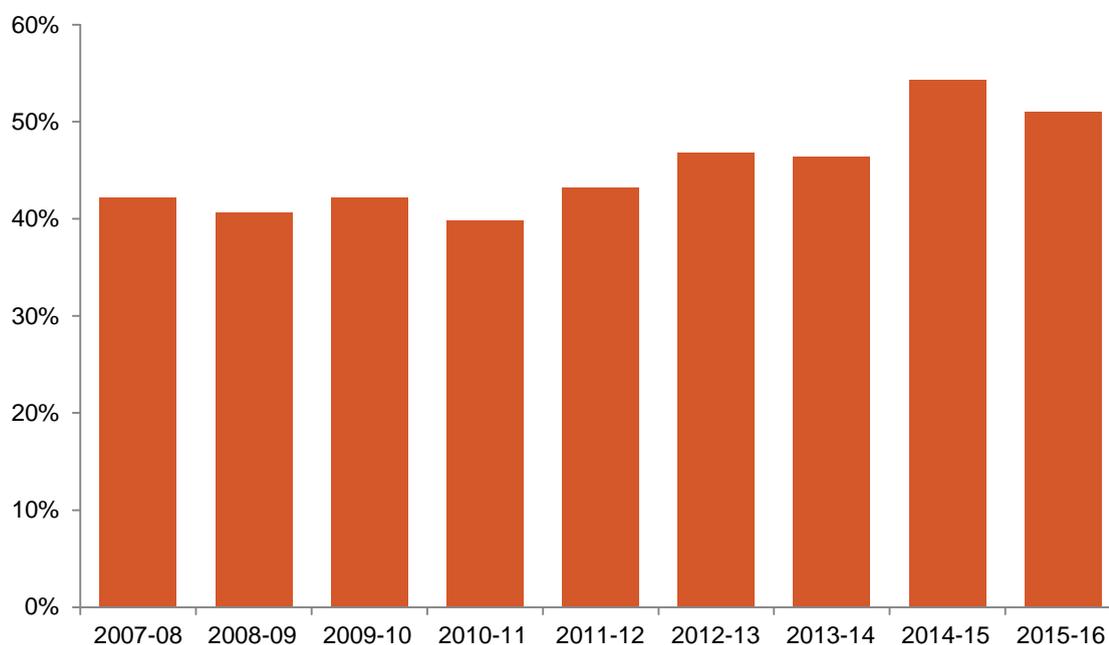
Company tax payments have fallen in line with mining profits and commodity prices over recent years. Respected economist Chris Richardson has noted: ‘Not surprisingly (given that company tax is a profit tax), these estimates continue to track the ups and downs in the ABS measure of mining profits before tax.’<sup>21</sup> Despite this, mining pays more in company tax and royalties than a decade ago.

### 3.2 Competitive company tax and royalties will improve growth prospects

A competitive tax system is critical for investment in capital-intensive industries such as mining. Mining projects involve high-risk exploration outlays, large upfront capital commitments, long-life assets, sophisticated technologies and long lead times to profitability. Competition from other resource-rich economies to capture future opportunities in resource development is intense.

The combination of state and territory royalties with federal company tax means Australia is a relatively high tax jurisdiction for mining. The 2017 minerals industry tax survey by Deloitte Access Economics found that the minerals industry faced an effective tax rate (company tax plus royalties) of 51 per cent in 2015-16 (Chart 7).

**Chart 7: Total tax take ratio on mining**



Source: Deloitte Access Economics

Australia’s 30 per cent company tax rate is simply too high for a capital-hungry country. Australia now has the fifth highest statutory company tax rate in the Organisation for Economic Co-operation and Development (OECD), slipping from the fourteenth highest in 2005. Australia’s *effective* tax rate (including corporate income taxes, sales taxes on capital, and other capital-related taxes) is 6th highest at 28.7 per cent – 9.5 percentage points higher than the OECD average.<sup>22</sup>

It is unsustainable for Australia to continue to impose such a high tax burden on new investment on our manufacturing, services and mining industries. While Australia’s corporate tax rate has been frozen since 2000, 19 countries have reduced company tax rates since 2010 and more have announced plans to cut rates including the United States and France.<sup>23</sup> The Trump Administration’s tax bill, which will slash the US corporate tax rate from 35 per cent to 20 per cent, is expected to be passed before the end of 2017.

<sup>21</sup> Deloitte Access Economics, [Estimates of royalties and company tax accrued in 2015-16](#), report prepared for the Minerals Council of Australia, MCA, 5 January 2017.

<sup>22</sup> Treasury, Australia’s future tax system, *Architecture of Australia’s Tax and Transfer System: 5.7 OECD comparison of Australia’s corporate tax rate*, Treasury.

<sup>23</sup> Jack Mintz, Philip Bazel, Duanjie Chen and Daria Crisan, [With global company tax reform in the air will Australia finally respond?](#), a policy paper commissioned by the Minerals Council of Australia, MCA, March 2017.

A 2017 study by Dr Jack Mintz at the University of Calgary found that Australia's high company tax rate and royalties impose effective tax rates close to 40 per cent on iron ore and coal. Australia's tax burden on iron ore is more than double that of our major competitor Brazil.<sup>24</sup>

A number of myths have been put forward disputing the benefits of a more internationally competitive corporate tax rate. Dr Mintz has noted:

Critics will not accept the inconvenient truth of the link between the tax burden on investment capital investment and economic growth from which every Australian would benefit. Not only would a lower tax burden on investment improve adoption rates for innovation, but workers would benefit from the higher incomes that would flow.<sup>25</sup>

Australian businesses need a lower corporate tax rate to increase investment, jobs and wages. The Government's 'Enterprise Tax Plan' legislation to reduce the corporate tax rate for all companies will move Australia's corporate tax rate back towards the current OECD average of 24 per cent.<sup>26</sup> The last corporate rate reduction to 30 per cent in 2001, with bipartisan support, moved Australia closer to the then OECD average (31 per cent).

### **3.3 Stable fuel tax arrangements are vital to mining's competitiveness**

Fuel Tax Credits (FTCs) are critical to a diverse range of regional industries reliant on diesel including mining, agriculture and tourism. In the case of mining, diesel fuel is among the top three expenses for many open cut mines and consumption accounts for up to one quarter of operating costs at some mines.

FTCs are not a tax 'subsidy' by any definition and are based on the fundamental tax policy principle that business inputs should not be taxed – the same principle that underpins the GST. FTCs also ensure that fuel excise, as an effective road user charge, is not applied to off-road use of diesel and other fuels. Any reduction to FTCs would have a significant, negative and disproportionate impact on regional Australia. It would be a new tax on regional industries and have no basis in sensible tax policy.

### **3.4 Australia needs competitive and stable exploration and R&D tax arrangements**

Exploration is critical to secure a future pipeline of mining investment. Government policy should support Australia's attractiveness as an exploration destination.

Immediate deductibility for exploration expenditure is a long-standing and critical feature of the income tax system to encourage mineral exploration in recognition of the spill-over benefits to the economy. The Australian government's commitment to retaining an exploration incentive for junior explorers undertaking greenfields exploration through a new Junior Minerals Exploration Incentive (JMEI) will ensure that junior explorers without taxable income can claim exploration deductions. The JMEI will assist small Australian exploration companies secure capital to invest in greenfields exploration. Speedy passage of the legislation will provide certainty to explorers and investors.

The mining industry spent \$1.9 billion on research and development (R&D) in 2015-16.<sup>27</sup> The R&D tax incentive is an effective, economy-wide, market-driven measure that encourages investment in innovation. It should be maintained in its current form and not distorted by restricting eligibility on the basis of industry, firm size, R&D intensity or any other arbitrary criterion.

The 2016 review of the R&D Tax Incentive's recommendation to introduce an arbitrary 'intensity threshold' would remove support for a large number of businesses investing in R&D in Australia. This recommendation should be rejected. The R&D tax incentive has been subject to frequent changes by successive governments over recent years and businesses and job growth would benefit from stability.

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<sup>24</sup> *ibid.*

<sup>25</sup> *ibid.*

<sup>26</sup> KPMG, [Corporate Tax Rates Table](#), viewed 13 December 2017.

<sup>27</sup> Australian Bureau of Statistics, [Research and Experimental Development, Businesses, Australia, 2015-16](#), ABS cat. no. 8104.0, released on 15 September 2017.

### 3.5 Integrity of Australia's tax system and minerals taxation

MCA members are committed to enhancing transparency of their activities and relationships with governments and host communities as part of the industry's commitment to contribute positively to long term social and economic development.

The MCA supports meaningful and globally consistent tax transparency that minimises compliance burdens. The mining industry has a demonstrated commitment to this principle. A number of mining companies operating globally are subject to multiple tax transparency regimes. In Australia, these include the Voluntary Tax Transparency Code and the implementation of the Extractive Industry Transparency Initiative (EITI), both of which the MCA supports.

Consistent with the industry's commitment to transparency, the MCA strongly supports the government's effort to progress to full implementation of the EITI in 2018 through our active participation in the Multi-Stakeholder Group. The EITI will address governance process in the collection of taxes and help bolster support for the EITI globally. Considerable work has gone into developing a model that is relevant to the Australian extractives industry and regulatory environment based on the successful Australian pilot that commenced in 2011.

On the same basis, appropriate standards of transparency and compliance should apply to entities that receive special tax concessions. According to Treasury, the revenue forgone from donations to deductible gift recipients was \$1.31 billion in 2016-17 and is expected to rise to \$1.46 billion in 2019-20.<sup>28</sup> However, both the House of Representatives Standing Committee on the Environment and the Joint Standing Committee on Electoral Matters have documented examples of unlawful or politically partisan activity by registered charities and/or deductible gift recipients.<sup>29</sup> The MCA supports the government's announced integrity measures for deductible gift recipients, which will improve accountability and transparency, address outstanding cases of non-compliance and help maintain public confidence in the not-for-profit sector.<sup>30</sup>

Australia should remain in step with international consensus on Base Erosion and Profit Shifting (BEPS) reforms. As a capital importer, Australia's tax rules need to be carefully designed to ensure legitimate investment is not harmed. Well-designed legislation coordinated with international moves will ensure that an identified 'tax mischief' is targeted, and unintended consequences are mitigated. Poorly targeted measures may impact legitimate transaction and substantially increase tax system compliance costs for no tax integrity outcome.

Successive Australian Governments have implemented a series of changes to strengthen corporate tax laws. The ATO has repeatedly stated that Australia has robust corporate tax laws and most companies do the right thing. ATO Commissioner Chris Jordan recently noted '*I am satisfied we have the law, the funding, the capability and strategy to reduce the large market gap over time*'<sup>31</sup>. The recent measures should now be allowed to operate and be assessed in due course.

<sup>28</sup> Australian Government, [Tax Deductible Gift Recipient Reform Opportunities](#), discussion paper, 15 June 2017, p. 5.

<sup>29</sup> House of Representatives Standing Committee on the Environment, [Report on Inquiry into the Register of Environmental Organisations](#), April 2016, released on 4 May 2016, pp. 59-64; Joint Standing Committee on Electoral Matters, [Second interim report on the inquiry into the conduct of the 2016 federal election: Foreign Donations](#), 10 March 2017, p. 13f.

<sup>30</sup> The Hon Kelly O'Dwyer MP, Minister for Revenue and Financial Services, [Reforming administration of tax deductible gift recipients](#), media release, 5 December 2017.

<sup>31</sup> Commissioner Chris Jordan AO, [Address to the National Press Club](#), 5 July 2017.

### **3.6 GST distribution reform**

The MCA welcomes the government's decision to refer the current system that underpins the distribution of the GST to the Productivity Commission. The GST is a key pillar of the Australian taxation system and the distribution of the revenue it collects is a major source of states' revenue. It is therefore imperative that this revenue is allocated in the most efficient way to benefit the whole Australian economy and to ensure equity among citizens in the level of public services they receive.

The current system of horizontal fiscal equalisation that Australia uses to distribute the GST funding pool is rewarding states that oppose or give low priority to resources development and punishing states that seek to promote investment and expansion of the resources sector. Under existing revenue sharing arrangements, states that develop their natural resources share the revenue raised from royalties with other states. This approach to equalisation works when all states make the same effort to raise revenue, but there are clear differences in states' policy settings that affect their appeal as a destination for mining investment and in some cases place bans on certain forms of mining activity.

While the Productivity Commission's draft report recognises the problem different state mining policies create for the GST distribution, it has not provided any recommendations to address this. The MCA position remains that GST reform should provide states with incentives to develop their natural resources and receive more of the benefits from doing so. The Productivity Commission's recommended reform, equalising all states to an average level of fiscal capacity, instead perpetuates a flawed system by dealing with symptoms rather than addressing its problems.

To address the perverse incentives, flawed methods and systemic bias in the GST distribution the MCA recommends that Australia apply a minimum 25 per cent discount to the mining revenue assessment in the GST distribution calculations (which includes oil and gas revenues).

## 4. STRUCTURAL REFORM PRIORITIES

- Strong economic growth requires a comprehensive reform agenda that promotes productivity gains at the workplace. The Productivity Commission has warned that without higher productivity growth, income growth in Australia to 2022 will be only half of historical levels.
- The Australian minerals industry has identified project approvals and workplace relations as key structural reform priorities. The Productivity Commission estimated in October 2017 that:
  - Adopting the commission's 2013 proposals to improve major project assessment processes would reduce project delays and save the economy approximately \$240 million
  - Implementing the commission's 2015 recommendations for workplace relations reform would add \$850 million a year to the Australian economy
  - Removing restrictions on coastal shipping would boost the Australian economy by between \$19 million and \$36 million a year.
- Liberalising trade, dismantling protectionist barriers and attracting foreign investment are key elements of the structural reform agenda. The MCA recommends measures to improve public support for trade, make mining and energy a trade priority and fill gaps in data on the contribution of foreign investment.

### 4.1 Productive workplaces underpin living standards and national income

In the long run, productivity growth is the primary determinant of rising living standards. Productivity refers to increasing the rate of output (goods or services) from a given amount of inputs (labour, capital, land and energy) or maintaining a given rate of output with fewer inputs. Productivity growth is achieved either by improving the efficiency of existing production techniques, or by significantly changing the method of supplying goods or services – that is, through innovation.<sup>32</sup>

It follows that an effective productivity agenda is one that focuses on workplaces. While the performance and profitability of enterprises are ultimately the responsibility of managers, their decisions are constrained – and sometimes prescribed – by policies and regulations. Policy settings can only be regarded as good for productivity if they encourage firms to invest in capital and use it efficiently.<sup>33</sup>

The more Australia's terms of trade (ratio of export to import prices) trend downwards from their 2011 peak, the greater the pressure on national income and the more urgent the productivity imperative becomes. However, multifactor productivity (the growth of output above the growth of labour and capital combined) has been declining since 2002. The Productivity Commission has warned that without higher productivity growth, income growth in Australia to 2022 will be only half of historical levels.<sup>34</sup>

The important link between productivity and income has also been established by the Treasury in a recent research paper on wage growth in Australia.<sup>35</sup> This research found that 'higher-productivity businesses pay higher real wages and employees at these businesses have also experienced higher real wage growth'. Treasury also emphasize the importance of capital in supporting productivity and higher wages as 'capital per worker appears to be a key in differences in labour productivity and

<sup>32</sup> See Knut Wicksell, *Lectures on Political Economy, Vol. 1: General Theory*, translated from the Swedish by E. Classen, edited by Lionel Robbins, Routledge & Kegan Paul, 1934, p. 2; Joseph Schumpeter, *Business Cycles: A Theoretical, Historical, and Statistical Analysis of the Capitalist Process, Volume 1*, Martino Publishers, 1939, pp. 84, 87f.

<sup>33</sup> See Gary Banks, [Productivity Policies: the 'to do' list](#), address to Economic and Social Outlook Conference, Melbourne, 1 November 2012, p. 6f.

<sup>34</sup> Productivity Commission, [Shifting the Dial: 5 Year Productivity Review](#), Report No. 84, Canberra, 3 August 2017, released on 24 October 2017, pp. 7, 32.

<sup>35</sup> Australian Treasury, [Analysis of wage growth](#), working/technical paper, November 2017, released on 8 December 2017.

hence real wages between businesses, with more productive businesses having higher capital per worker’.

A comprehensive productivity agenda is important to the Australian minerals industry. Australian minerals companies operate in a global industry where prices are highly transparent and there is intense competition – both from other commodity exporters and from domestic suppliers in customer countries. There is already substantial competition from emerging mining regions with high grade deposits and very low operating costs.

Following a decade of unprecedented investment in new and expanded mines, measured productivity in the Australian resources sector (including oil and gas) is rising. Multifactor productivity in the resources sector increased 2.4 per cent in 2015-16.<sup>36</sup> The Productivity Commission notes that whereas the potential productivity of most Australian industries is determined by technological progress in other countries, Australia’s resources sector is a global leader and one of the most productive industries in the world.<sup>37</sup> The sector uses sophisticated production techniques and highly skilled labour to transform natural endowments into valuable exports.

While Australia’s comparative advantage in minerals and energy exports is created by private firms, sound taxation and regulatory settings can help firms reproduce this advantage. A survey of MCA members identified required areas of policy focus to improve the industry’s productivity performance. Processes for environmental assessments and project approvals were nominated as the area of greatest concern, followed (with equal frequency) by workplace relations and taxes and royalties.

Unfortunately, reform in these critical policy areas has either stalled or regressed. The Gillard Government initially committed to streamlining state and federal project approvals, but soon reversed its position. Under the Abbott Government, states entered a memorandum of understanding to implement assessment and approval bilateral agreements with the Commonwealth. While assessment bilateral agreements were improved, legislative amendments to enable approval bilateral agreements failed to pass the Australian Senate.

Similarly, the current regulation of workplace relations diverts firms from their core goal of promoting productive and cooperative enterprises. Even though the architects of the Fair Work Act 2009 sought to balance the competing goals of efficiency and fairness, the Act has had adverse consequences for investment and employment. Separate reviews by the Fair Work Act Review Panel (appointed by then Minister Shorten in 2011) and the Productivity Commission (2015) have identified a number of areas in which the Fair Work Act could be improved. Yet despite the modesty of these proposals and their essentially bipartisan character, attempts to implement them have failed to pass through parliament.

#### **4.2 Streamlining project approvals and environmental regulation**

Delays and uncertainty in project approval processes caused by unnecessarily complex and duplicative processes pose a significant risk to the mining industry’s global competitiveness. The delay costs for projects can be substantial. A one year delay can reduce the net present value of a major mining project by up to 13 per cent and cost up to \$1 million every day.<sup>38</sup>

The Productivity Commission has concluded that overlap and duplication between federal and state processes can be greatly reduced without lowering the quality of environmental outcomes.<sup>39</sup> State processes should be fully accredited under the *Environment Protection and Biodiversity Conservation*

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<sup>36</sup> Australian Bureau of Statistics, [Estimates of Industry Multifactor Productivity, 2016-17](#), ABS cat no. 5260.0.55, released on 5 December 2016.

<sup>37</sup> Productivity Commission, [Shifting the Dial: 5 Year Productivity Review: Supporting Paper No. 1: Productivity and Income – The Australian Story](#), Canberra, 3 August 2017, released on 24 October 2017, pp. 24, 26.

<sup>38</sup> MCA member calculations, based on a project value of between \$3 billion and \$4 billion.

<sup>39</sup> Productivity Commission, [Major Project Development Assessment Processes: Research Report](#), Canberra, released on 10 December 2013, pp. 2 and 13.

Act 1999 (EPBC Act) to create a single assessment and approval process. Assurance standards will ensure continued federal government oversight and high environmental standards are met.<sup>40</sup>

The benefits of the streamlined project approvals are significant. Analysis by the then Department of the Environment concluded streamlining federal and state environmental approval processes would save Australian businesses \$426 million annually.<sup>41</sup> The Productivity Commission's five-year productivity review points to a 10 per cent reduction in delay costs for announced projects and a saving of \$240 million if its 2013 recommendations to improve and streamline major project approvals are implemented.<sup>42</sup>

The need to streamline environmental approvals has been recognised by numerous reviews over many years. Most recently, the Senate Select Committee on Red Tape found in its interim report that 'delays in environmental assessment and approval processes are having adverse economic outcomes' and recommended that 'the Australian, state and territory governments re commit to the one-stop shop initiative'.<sup>43</sup> Accordingly, the parliament should approve the necessary changes to the *EPBC Act* and allow the one-stop shop reforms to proceed.

### **Post-approval safeguards**

Judicial review processes are important to safeguard the rights and interests of affected individuals and to ensure development assessment and approval processes remain robust. The mining industry supports the rule of law and the right of affected individuals to have their say. However, industry opponents – who are often not from the local community – are deliberately misusing the appeals process to halt or delay projects.

Appeals through the Federal Court do not need to be successful in order to delay a project, and in fact most cases are not successful. The Productivity Commission found that the time between approval and legal judgement for coal projects ranged from seven months to more than 24 months.<sup>44</sup> Such challenges provide little environmental benefit, yet cost the project proponent time and money.

There are weaknesses in the EPBC Act that allow the minister's approval to be challenged on a technicality which has no bearing on the substance of the decision. This problem can be addressed without reducing environmental protection. A process whereby only challenges which have merit proceed to legal judgement would also reduce unnecessary delays.

### **Addressing wholly duplicative 'triggers' for federal approval**

The water trigger for coal seam gas and large coal development should be removed, given that it duplicates existing state processes and relies upon the same expert advice. A recent review found the regulatory costs of the trigger borne by business was estimated at \$46.8 million annually.<sup>45</sup>

The nuclear trigger should also be reformed to remove uranium mining, milling and decommissioning and rehabilitation. There is no scientific case that would justify default treatment of uranium mining related activities as a matter of national environmental significance. Where significant environmental risks are presented, these are addressed through comprehensive state and territory assessment and approval processes.

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<sup>40</sup> See Allan Hawke, [The Australian Environment Act: Final report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999](#), October 2009, p. 66f; and the Productivity Commission, op. cit., p.15.

<sup>41</sup> Department of the Environment, [Regulatory cost savings under the one-stop shop for environmental approvals](#), Australian Government, Canberra, September 2014, p. 1.

<sup>42</sup> Productivity Commission, [Shifting the dial: 5 year productivity review: Table B.3](#), Canberra, 3 August 2017, p. 237 and Productivity Commission, [Major Project Development Assessment Processes: Research Report](#), Canberra, released on 10 December 2013, pp. 31 – 38.

<sup>43</sup> Select Committee on Red Tape, [Effect of red tape on environmental assessment and approvals](#), interim report, October 2017, pp. vii and 27.

<sup>44</sup> Productivity Commission, [Major Project Development Assessment Processes: final research report](#), Canberra, released on 10 November 2013, p. 258.

<sup>45</sup> Hunter, S., [Independent review of the water trigger legislation](#), prepared for the Australian Government, tabled in Parliament on 19 June 2017, p. 9.

## **Administrative reforms**

A range of other reforms to the operation of the EPBC Act will improve the efficiency of environmental assessment and approvals processes, including:

- Setting information requirements to manage clearly defined risks, rather than to insure against every conceivable risk
- Increased use of alternative assessment mechanisms, including particular manner provisions and approval on referral information
- Coordinated and mutually reinforcing environmental offset requirements between federal and state/territory governments.

### **4.3 Modernising workplace relations**

The ultimate objective of sound workplace relations policy should be to foster the success of high-productivity enterprises accompanied by high wages and expanding employment opportunities. Labour market flexibility is essential to achieving this outcome. Arrangements that limit flexibility in management and work practices hinder productivity growth, employment and the ability to adapt to changing market conditions.

The ability to modernise workplaces is vital to the competitiveness of the Australian mining industry, which is increasingly focused on integrating new technology and ideas into its operations. Information and communications technology (ICT) is important in all stages of mining – especially exploration, three-dimensional seismic surveys and automation – and mining investment in ICT is expected to multiply rapidly.<sup>46</sup>

But existing workplace relations law locks in poor practices that discourage investment and hinder productivity and innovation. Without reform, productivity and competitiveness will suffer from the retention of archaic work practices and declining labour productivity, resulting in lower wages and fewer jobs. The Productivity Commission proposed a suite of detailed reforms in 2015, which it has since estimated would add \$850 million a year to the Australian economy.<sup>47</sup>

The MCA broadly supports the Productivity Commission's workplace relations reform agenda and recommends the following as urgent priorities.

#### **Confining permitted content in enterprise agreements to direct employment matters**

The Fair Work Act has expanded the scope of permitted content in enterprise agreements well beyond the relationship between an employer and employees (Box 2). The MCA recommends:

- Removing the availability of protected industrial action over business decisions and confining the content of enterprise bargaining to direct employment matters by:
  - Amending the phrase 'matters pertaining to' the relationship between an employer and employees in section 172 of the *Fair Work Act 2009* to 'matters directly related to'
  - Amending section 194 of the Fair Work Act to include an express prohibition on enterprise agreement terms that unreasonably interfere with legitimate business decisions or restrict an employer's capacity to choose an employment mix suited to its business
  - Removing matters pertaining to the relationship between an employer and a trade union from the range of permitted matters in enterprise agreements under section 172 of the Fair Work Act

<sup>46</sup> Anna L. Matysek and Brian S. Fisher. [Productivity and Innovation in the Mining Industry](#), BAEconomics Research Report 2016.1, 8 April 2016, pp. iv, 12f, 41.

<sup>47</sup> Productivity Commission, [Shifting the Dial: 5 Year Productivity Review](#), Report No. 84, Canberra, 3 August 2017, released on 24 October 2017, p. 233.

- Amending section 409 of the Fair Work Act to delete the inclusion of a 'reasonable belief' that a claim in relation to an agreement is about a permitted matter.<sup>48</sup>

### **Box 2: The undue scope of permitted matters in agreements is hindering workplace efficiency**

The Fair Work Act expanded the range of permitted content in enterprise agreements from 'matters relating to' the employment relationship to 'matters pertaining to' the employment relationship – including matters pertaining to employers and trade unions.

Consequently, more content must be bargained over, more issues can form the basis of protected industrial action, and more content is then able to be included in enterprise agreements which may then be subject to dispute resolution procedures under those agreements.

In the mining industry, it is not uncommon to see clauses in enterprise agreements that restrict the fundamental right of an employer to manage its own business, or which have little to do with the employer-employee relationship. For example, these clauses can require employers to:

- Consult with unions on changes to regular rosters or ordinary hours of work
- Restrict retrenchment to a 'last-in, first-out' policy
- Restrict or prohibit the use of contractors or labour hire workers
- Provide employee representatives with the names and commencement dates of new employees
- Provide paid leave for employees to attend to union business.

The MCA supports removing the availability of protected industrial action for matters not directly related to the employment relationship. This would improve workplace efficiency by ensuring that:

- Negotiations are not stifled by claims that constrain an employer's ability to manage the workforce and work flow
- The bargaining process has a clear employment focus and protected industrial action cannot be misused for ulterior purposes.<sup>49</sup>

### ***Refocusing adverse action provisions to discourage unreasonable claims***

The Fair Work Act prohibits a wide range of conduct known as 'adverse action'. Adverse action provisions were intended to protect freedom of association and prevent discrimination in the workplace. However, they are being used to interfere with ordinary management decision-making, including performance management and organisational restructuring. This problem has emerged owing to the breadth of actions described as adverse, the broad spectrum of protections related to industrial activity, the onus on the employer to prove that adverse action has not occurred, and the uncapped nature of potential compensation.

The MCA recommends:

- Making provision for exclusions for legitimate operational and investment decisions
- Reinstating the sole or dominant purpose test to determine whether a contravention has occurred
- Discouraging unmeritorious claims by allowing cost orders to follow the result of the case

<sup>48</sup> Minerals Council of Australia, [Australia's workplace relations framework: The case for reform](#), MCA, 8 August 2017, pp. 25-28; cf. the Productivity Commission, [Workplace Relations Framework: Inquiry Report, Volume 2](#), Canberra, 21 December 2015, pp. 683, 820.

<sup>49</sup> Minerals Council of Australia, [Australia's workplace relations framework: The case for reform](#), MCA, 8 August 2017, pp.25-28.

- Codifying the High Court's approach in *CFMEU v BHP Coal Pty Ltd (2014) 253 CLR 243* to confirm that just because adverse action is connected with industrial activity, it does not mean that the adverse action occurred because of the industrial activity.<sup>50</sup>

### **Rebalancing union right-of-entry provisions**

The rules for exercising workplace right of entry for union officials are rigid and allow for undue interference and disruption. Currently, a permit holder may enter a workplace even if his or her union is not party to an award or enterprise agreement which applies to employees at the premises. The workplace need only contain workers who are eligible to become members under the union's rules.

BHP's former Worsley alumina refinery had more than 550 right-of-entry visits between 2011 and 2013.<sup>51</sup> Another MCA member was subject to 257 visits between January 2015 and June 2016.

The MCA recommends:

- Rebalancing union right-of-entry provisions by anchoring right of entry provisions in the need to allow employees access to their representatives (rather than a right of unions to advance their interests)
- Addressing any continuing operational issues over frequency of entry by:
  - Removing the requirement for there to be 'an unreasonable diversion of the occupier's critical resources' in order for the Fair Work Commission (FWC) to make orders regarding the frequency of entry
  - Requiring the FWC to take account of the cumulative impact on an employer's operations, the likely benefit to employees of further entries and the reason for the frequency of the entries in making orders regarding frequency of entry.<sup>52</sup>

### **Reforming greenfields agreements to encourage investment in new projects**

Capital-intensive industries such as mining make large, decades-long investment decisions, which entail complex construction projects and long lead times before cash flows are generated. A degree of certainty about the industrial environment – including employment conditions – over the life of a construction project is vital to providing investors with confidence and making Australia an attractive destination for new capital investment.

Under the current regulatory framework, a greenfields agreement can only be made prior to project commencement, with one or more relevant unions. This effectively gives trade unions a right of veto over negotiations for major projects, and can stop or significantly delay the agreement-making process and lead to higher labour costs at the outset of an agreement.

The MCA recommends that:

- The Fair Work Commission should adopt a simpler test in approving a greenfields agreement under which the terms are at least at the level of similar work performed at another enterprise covered by an enterprise agreement.
- There should be capacity for employers to enter into 'life of project' greenfields agreements, or at least agreements with a duration of up to and including five years according to operational needs.<sup>53</sup>

<sup>50</sup> Minerals Council of Australia, op. cit., p. 28ff; cf. the Productivity Commission, op. cit., p. 622ff.

<sup>51</sup> Dean Dalla Valle, then President of Coal, BHP Billiton, '[Right to enter must not cut productivity](#)', *The Australian*, 28 November 2014.

<sup>52</sup> Minerals Council of Australia, [Australia's workplace relations framework: The case for reform](#), MCA, 8 August 2017, p. 32f; cf. the Productivity Commission, [Workplace Relations Framework: Inquiry Report, Volume 2](#), Canberra, 21 December 2015, p. 910.

<sup>53</sup> Minerals Council of Australia, [Australia's workplace relations framework: The case for reform](#), MCA, 8 August 2017, p. 34f; Productivity Commission, [Workplace Relations Framework: Inquiry Report, Volume 2](#), Canberra, 21 December 2015, p. 691.

### ***Allowing high-income earners to enter into individual agreements***

Economic and social developments continue to transform the nature of work, the composition of the workforce, when and where work is performed, and what incentives are required to secure an engaged and adaptable workforce. These changes underline why employers and employees are demanding greater choice and flexibility in the world of work.

The limited options for agreement making which are available under the Fair Work Act restrict an employer's ability to respond to changing environments or to address individual employees' personal circumstances and requirements. The architects of the Fair Work Act envisaged that Individual Flexibility Arrangements (IFAs) would provide the dynamism necessary for modern and competitive workplaces. However, the benefits of IFAs have proved to be largely illusory, owing to unions' opposition to flexibility on key matters such as hours of work, rostering and overtime.

Individual agreements have been used extensively in the mining industry for more than two decades. They have facilitated flexible and productive work practices while also providing attractive salaries and working conditions for the industry's changing workforce. Indeed, employees on individual arrangements have consistently received higher remuneration than those on collective agreements.

MCA member companies respect the right of a group of employees to be represented by a union in a bargaining context where the employees wish to do so. Equally, a modern workplace relations framework should accommodate a form of individual agreement, backed by a strong safety net, which allows an employee to agree to employment arrangements directly with his or her employer. The safety net can be managed through the National Employment Standards and modern awards.

The MCA recommends that:

- There should be greater capacity for employees who are earning over a particular threshold (such as the existing high income threshold for unfair dismissals) to opt out of an enterprise agreement and enter into individual agreements.<sup>54</sup>

#### **4.4 Deregulation and competition policy**

Regulatory settings have a profound impact on the mining industry's cost competitiveness, productivity and capacity to adapt to changing market conditions. Regulatory requirements cover all stages of industry activity, from grant of tenure, exploration, extraction, processing, transport and mine closure through to relinquishment of tenure. Regulators also tend to pursue a prescriptive approach that is driven by risk-aversion, instead of taking a light-handed approach that is guided by a clear assessment of acceptable risk.

Over the past decade, the combination of a growing compliance burden, increasing regulatory duplication and a prescriptive regulatory culture has acted to prevent or hinder investment, productivity and employment in the Australian mining industry.

The MCA recommends that the Government recommit to a comprehensive deregulation agenda that:

- Considers non-regulation options for achieving policy objectives
- Ensures any new regulations are efficient, in that they:
  - Proceed from an established case for regulatory action
  - Enshrine the best (or least worst) of available options
  - Set unambiguous objectives that do not overlap
  - Manage risks proportionately rather than prescriptively
- Minimises the existing stock of regulation.

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<sup>54</sup> Minerals Council of Australia, [Australia's workplace relations framework: The case for reform](#), MCA, 8 August 2017, p. 36f.

The Productivity Commission has affirmed that deregulation is a ‘no regrets’ policy and that its previous recommendations for microeconomic reform should be adopted immediately by all governments:

Removing unnecessary regulatory barriers is a ‘no-regrets’ or ‘win-win’ policy option – these reforms are justifiable in their own right and create incentives and open up new opportunities for communities to adapt to change. They should be pursued by all governments. Although the advantages of such reform are clear, adoption of previously recommended reforms has been patchy and slow.<sup>55</sup>

The liberalisation of coastal shipping is a striking example of an overdue microeconomic reform. The current regulatory regime is burdensome, anti-competitive and failing to achieve its own objective of revitalising the local shipping industry (Box 3). The MCA agrees with the Productivity Commission, the Australian Competition and Consumer Commission (ACCC), the Competition Policy Review Panel and the Commission of Audit that cabotage licensing is unjustified industry assistance.<sup>56</sup> The Productivity Commission estimated in October 2017 that removing restrictions on coastal shipping would boost the Australian economy by between \$19 million and \$36 million a year.<sup>57</sup>

The case of coastal shipping illustrates the importance of competition policy in shaping the business environment in which the minerals industry operates. Governments have a responsibility to foster open, transparent and competitive markets for transport and infrastructure. Regulation should only be used where a market failure is evident and there is evidence that government intervention can effectively and efficiently remedy that failure.

At the same time, governments must be alert to differing industry characteristics that give rise to differing regulatory challenges and economic consequences. Bottleneck challenges associated with the recent mining investment boom point to greater risk of inefficient outcomes in the case of multi-user, multi-owner infrastructure networks as compared to single-user, single-owner, integrated infrastructure. This underlines the need for careful analysis of the role competition policy can and should play in promoting efficient outcomes.

When implemented appropriately, privatisation can improve the efficiency of investment and management and improve community welfare. However, these benefits will not be achieved unless the resulting market structure supports competition, or the Government exercises proper regulatory oversight from the outset. Without an adequate regulatory regime, monopoly providers of infrastructure can impose high prices or poor service quality.<sup>58</sup>

The ACCC has pointed out that suboptimal privatisations ‘effectively impose a tax on future generations of Australians and hinder Australia’s competitiveness in the world market’.<sup>59</sup> The minerals industry’s experience of some infrastructure privatisations – such as Queensland Rail and the Port of Newcastle – reinforces the case for government hastening slowly and evaluating carefully.<sup>60</sup>

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<sup>55</sup> Productivity Commission, [Transitioning Regional Economics: Initial Report](#), 20 April 2017, p. 24f.

<sup>56</sup> Productivity Commission, [Final Report on Tasmanian Shipping and Freight](#), released on 24 June 2014, Canberra, p. 152f; Competition Policy Review Panel, [Final Report](#), 31 March 2015, p. 210; Australian Competition and Consumer Commission, [Submission to the Government’s Options Paper: Approaches to regulating coastal shipping in Australia](#), May 2014;

Commission of Audit, [Towards Responsible Government, Phase 2 Report](#), March 2014, p. 29.

<sup>57</sup> Productivity Commission, [Shifting the Dial: 5 Year Productivity Review](#), Report No. 84, Canberra, 3 August 2017, released on 24 October 2017, p. 233.

<sup>58</sup> Australian Competition and Consumer Commission, [Submission to Senate Economics References Committee Inquiry into the Privatisation of state and territory assets and new infrastructure](#), 29 January 2015, p. 3f.

<sup>59</sup> *ibid.*, p. 5f.

<sup>60</sup> See Queensland Resources Council, [Main submission to the Queensland Competition Authority on Aurizon Network’s draft 2013 Undertaking \(‘UT4’\)](#), 10 October 2013; Rod Sims, Chairman, Australian Competition and Consumer Commission, [How did the light handed regulation of monopolies become no regulation? Australian Competition and Consumer Commission](#), 29 October 2015.

### Box 3: The Coastal Trading Act tries to protect some jobs at the expense of many others

Internationally competitive coastal shipping services matter to businesses, consumers and communities in all Australian states and territories. Coastal ships transport refined petroleum products from Fremantle to Adelaide, newsprint from Burnie to Melbourne, and gases from Hastings to Sydney.

The Australian minerals industry is the largest user of coastal shipping. Bulk commodities account for 80 per cent of Australia's coastal shipping trade by tonnage, with bauxite and other aluminium ores and concentrates comprising 34.2 per cent, and iron ore and concentrates 7.5 per cent.<sup>61</sup>

Tens of thousands of jobs rely on the efficient transportation of freight by sea – including minerals extraction and processing, petroleum, cement, steel and agriculture. Rio Tinto alone employs 6,000 workers in bauxite mines, alumina refineries and aluminium smelters across Australia.<sup>62</sup>

The participation of foreign ships is a longstanding feature of Australia's coastal shipping trade and is essential to the efficient and timely movement of freight. However, the *Coastal Trading (Revitalising Australian Shipping) Act 2012* made retrograde changes to competition rules that have increased domestic transport and administration costs and made it more difficult to source coastal shipping services when they are needed.

Under the Coastal Trading Act, Australian-flagged ships enjoy unrestricted access to coastal trade under a five-year general license, while foreign-flagged vessels only have access to a 12-month temporary license or, in exceptional circumstances, a 30-day emergency license. In addition, the Act gives Australian ships the power to contest voyages proposed by foreign ships.<sup>63</sup>

Since the Coastal Trading Act was introduced, the carrying capacity of the Australian coastal fleet has decreased by 63 per cent. In addition, Australia's coastal fleet is older and more costly to operate by international standards, attracting higher insurance premiums.<sup>64</sup>

The Productivity Commission has argued strongly that while the Coastal Trading Act cannot sustainably protect jobs from international competition, it does increase costs for the users of coastal shipping and the broader Australian community.

In itself, protecting an industry to preserve jobs is not justified. The cabotage restrictions protect some jobs at the expense of growth in other industries ... Protecting an industry from competition not only harms consumers ... but also reduces the incentives of the protected industry to improve its efficiency and competitiveness. Over time, the protected industry falls further behind foreign competitors, requiring ever more protection and increasing the cost to consumers and the community in general.<sup>65</sup>

The Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 proposes a number of improvements to the operation and administration of the Coastal Shipping Act. While the MCA's broadly supports these remedial measures, they do not go far enough.

The MCA submits that the Government should continue to prosecute the sensible and pragmatic national interest reforms proposed in the Shipping Legislation Amendment Bill 2015, notably:

- Introducing a single permit system allowing unrestricted trade for both domestic and foreign vessels
- Ensuring that Australian and foreign-registered vessels are subject to the same conditions of access and operation by removing the ability of domestic ships to contest voyages proposed by foreign ships.

<sup>61</sup> Data provided to the MCA by the Bureau of Infrastructure, Transport and Regional Economics, 9 May 2017.

<sup>62</sup> See Rio Tinto, [Our business: Aluminium](#).

<sup>63</sup> Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), pp. 52, 90f.

<sup>64</sup> *ibid*, pp. 49f, 83.

<sup>65</sup> Productivity Commission, [Regulation of Australian Agriculture: Final Report](#), 15 November 2016, released on 28 March 2017, p. 392.

## 4.5 Free trade and open investment

### ***Importance of trade and investment***

Free trade and foreign investment have generated higher living standards and more job opportunities for Australians. Economic modelling has shown that Australia's freeing up of trade over the period from 1986 to 2016 has increased real GDP by 5.4 per cent and that 2.2 million Australian jobs rely on trade.<sup>66</sup> Foreign investment has likewise delivered economic benefits by allowing Australia to fill the gap between domestic savings and investment, which has averaged around 4 per cent of GDP over the last decade.<sup>67</sup>

Mining is Australia's largest export-earning industry, accounting for more than half of Australia's total exports in 2016.<sup>68</sup> Mining relies on access to international capital markets and on foreign investment to fund the resources development projects which generate economic opportunities for Australians. A liberal foreign investment regime with clear and consistent rules and reduced compliance costs is important for Australia's ability to attract investment.

Accordingly, the MCA supports government policies to:

- Maintain Australia's open economy, including strengthening public support for trade
- Further liberalise trade, improve access to export markets, and reduce protectionist barriers
- Attract investment by streamlining and liberalising foreign investment screening processes.

The MCA recommends the following measures to advance these reform priorities.

### ***Step up public advocacy***

The benefits of trade and investment are not well understood in the community. This represents a challenge to maintaining public support for free trade and open markets. Funding for public advocacy should be increased to improve the Government's communication and outreach activities.

### ***Make resources a trade policy priority***

Australia is a mining and energy superpower. From extraction of minerals to development of innovative technology to advanced mining services, the mining industry is at the heart of Australia's comparative advantage. But this has not always been reflected in government policies. Mining is one of Australia's most successful export sectors, but there remain significant impediments for Australian mining, mining services and mining investment in emerging markets. The Government should develop trade, economic and political strategies to advance Australia's mining and energy interests.<sup>69</sup>

### ***Improve analysis of inward and outward investment flows***

There is a pressing need for better data on the contribution to Australia's economy of foreign-owned businesses and the role of Australian-owned overseas affiliates in generating investment returns, export earnings and trade in value-added for Australia. The most recent comprehensive Australian Bureau of Statistics (ABS) survey on foreign-owned businesses dates from 2000-01.<sup>70</sup> Likewise, there are significant gaps in data on Australian overseas affiliates' trade, especially in services. The OECD recently noted that Australia needed more complete data on trade and investment by foreign-owned firms and multinational enterprises.<sup>71</sup> The Government should provide additional funding for the collection of such data, which will improve policy analysis and public understanding of the benefits of an open international investment regime.

<sup>66</sup> Centre for International Economics, [Australian trade liberalisation: Analysis of the economic impacts](#), October 2017.

<sup>67</sup> Adam McKissak and Jessica Xu, [Foreign investment into Australia](#), Treasury Working Paper, January 2016.

<sup>68</sup> Department of Foreign Affairs and Trade, [Composition of Trade Australia 2016](#), June 2017.

<sup>69</sup> Minerals Council of Australia/Trading Nation Consulting, [New frontiers: South and East Asia](#), 2017, p. 64f.

<sup>70</sup> Australian Bureau of Statistics, [Economic Activity of Foreign Owned Businesses in Australia 2000-01](#), ABS cat. no.5494.0, 2004.

<sup>71</sup> Organisation for Economic Corporation and Development [International trade, foreign direct investment and global value chains. Australia: Trade and Investment Statistical Note](#), 2017, p 8.

#### **Box 4: New Frontiers for Australian Mining Trade and Investment**

Australia's mining industry has contributed enormously to the nation's prosperity through its export success and international engagement. Asia has been a large part of this story, from the opening up of trade with Japan in the post-war period, which built Australia's export coal industry, to the China resources boom, which kept Australia growing through the Global Financial Crisis.

This story still has a long way to play out. As Asia's economies continue to develop, there will be significant new opportunities for Australian mining. These opportunities lie not only in exporting minerals commodities to new markets but in leveraging the skills, technology and expertise of Australia's world-leading mining industry. There will be scope for Australian mining companies to invest and work with local partners in developing these economies' own resources. And there will be export opportunities for Australia's mining equipment, technology and services (METS) sector.

Realising these benefits will require cooperation and engagement by business and government, in Australia and in the region. For while the region's economies are committed to open markets, there remains an array of barriers and impediments to mining and mining services trade. Trade agreements have been an important avenue for tackling such barriers. That is why the MCA has commissioned New Frontiers, a series of research reports by Trading Nation Consulting, to inform the Government's trade agenda.

The New Frontiers reports examine the opportunities, identify the impediments, and set out a policy agenda for mining and mining services trade and investment in Asia. The first report in the series provides an overview of India and the ASEAN economies. The second comprises a country study on Indonesia – and will be followed by further country studies. Each report conducts a detailed country-by-country stocktake of trade and other regulatory barriers and makes recommendations for Australia's trade negotiators on priorities for improving market access and cooperating on reforms to support growth in mining trade and investment.

## 5. ENERGY AND CLIMATE CHANGE

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- Over the past decade, Australia has lost its low-cost energy advantage as prices moved from among the lowest in the developed world to the highest. Policies that promote affordable and reliable energy are critical to the productivity and competitiveness of Australian businesses and should aim to reduce – not just limit – price rises.
- The MCA welcomes the National Energy Guarantee as a constructive approach to addressing the long-running energy policy challenge confronting Australia. The proposed Reliability Guarantee will provide incentives to maintain flexible, dispatchable sources of power supply to improve the reliability of Australia’s electricity grid and reduce the risks of power outages.
- Energy policies should be technology-neutral, with all low emissions options treated equally, including nuclear, high efficiency, low emissions (HELE) coal technologies and carbon capture and storage (CCS). Government should remove the ban on nuclear power and allow the Clean Energy Finance Corporation to co-invest in HELE and CCS.

### 5.1 Australia’s energy policy must aim to restore our low-cost energy advantage

Restoring Australia’s energy affordability and reliability should be the overriding priority for policy makers. The National Electricity Market was created to promote efficient electricity services in the long-term interests of consumers, specifically with respect to price, quality, safety, reliability and security of supply.<sup>72</sup> However, this objective has been undermined by poorly designed energy policies at all levels of government.

Government interventions have contributed to household electricity prices increasing by around 110 per cent in the last decade.<sup>73</sup> Some of this price increase is due to higher investment in network infrastructure to ensure reliable supply to customers in peak periods. But market-distorting policies – notably subsidised investment in intermittent renewable energy – have also inflated prices.<sup>74</sup>

The MCA advocates market-based energy and climate policies that:

- Reduce energy costs for businesses and households – not just limit price rises
- Promote greenhouse gas abatement at the lowest cost consistent with Australia’s international competitiveness
- Enshrine technology neutrality by enabling all low emissions fuel sources to compete on their merits in open and transparent energy markets
- Avoid subsidies, quotas and other interventions that distort energy markets.

The MCA welcomes the National Energy Guarantee as a constructive approach to addressing the long-running energy policy challenge confronting Australia. The proposed Reliability Guarantee will provide incentives to maintain flexible, dispatchable sources of power supply to improve the reliability of Australia’s electricity grid and reduce the risks of power outages.

Under the NEG firms should have access to international offsets to lower the cost of meeting Australia’s Paris commitments and deliver associated environmental benefits (such as reducing deforestation).

Energy security is vital to the productivity and competitiveness of the Australian economy, including the Australian mining industry. Ready access to reliable and affordable energy is crucial to heavy industrial users such as mining operations, refineries and smelters. Mining (including oil and gas

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<sup>72</sup> Australian Energy Market Commission, [National Electricity Market](#), viewed 12 December 2017.

<sup>73</sup> Australian Bureau of Statistics, cat No. 6401 [Consumer Price Index](#), viewed 12 December 2017.

<sup>74</sup> Australian Government, [Energy White Paper](#), 8 April 2015, p 9.

extraction) accounts for 10 per cent of national energy consumption and 13 per cent of electricity use.<sup>75</sup> Affordable energy also underpins the high standard of living of households.

Approximately 8,000 MW of baseload coal and gas capacity is likely to retire between now and 2030. This represents a decrease of about 27 per cent in baseload capacity, i.e. power that is provided 24/7. This is in addition to the 5,300 MW of baseload coal and gas plant that has retired in the last five years. Overall, this represents a 38 per cent decrease in baseload capacity over the period 2012-2030. If this baseload capacity is not replaced by reliable energy sources Australia will face major energy security issues.

The impact of the March 2017 closure of the Hazelwood Power Station in Victoria's La Trobe Valley on prices and grid stability is a portent of the difficulties Australia's energy system will face if baseload is not replaced. Unless new investment in low cost baseload generation is made in the near term and energy prices start to stabilise and fall, Australian manufacturing, minerals processing and other energy intensive activities will find themselves priced out of international markets.

A major corrosion of Australia's industrial base over the next decade is a real prospect with severe consequences for living standards. Accordingly, there is an urgent need for a clear focus on where, when and how new baseload generation will be built to replace the retiring fleet. Funding through the Clean Energy Finance Corporation should be available to all low emissions technologies, including high efficiency, low emissions coal technologies and carbon capture and storage.

The MCA supports the continuation of the Emissions Reduction Fund and Safeguards Mechanism, which have delivered significant abatement at less than \$12 per tonne.

## 5.2 Nuclear and low emissions coal critical sources of baseload power

Thermal coal and nuclear power are reliable sources of baseload power. Substantial progress is being made to reduce the carbon footprint of coal-fired power generation. High efficiency, low emissions (HELE) coal technologies can reduce CO<sub>2</sub> emission intensity by up to 40 per cent.<sup>76</sup> HELE coal-fired power stations integrated with carbon capture and storage (CCS) can reduce CO<sub>2</sub> emissions by approximately 90 per cent (Box 5).<sup>77</sup>

Nuclear power has the advantage of being able to generate baseload electricity with very low CO<sub>2</sub> emissions over its lifecycle. Modern small modular reactors could offer long-term stable electricity supply to underpin household and industrial use in mining and other remote towns. The ban on nuclear power in Australia is hampering an open debate about future energy and climate change management and stands at odds with Australia's export uranium mining industry.

Coal remains the most cost-effective form of new dispatchable electricity in Australia. A July 2017 report to ACALET by Solstice Development Services reviewed wholesale electricity costs for different technologies expressed on a long run marginal cost (LRMC) basis, using a consistent method to allow comparison. The report found that:

- Ultra-supercritical coal is the lowest cost generation option at \$40 to \$78 per MWh in (2017 prices) on a LRMC basis
- Other synchronous generation had higher wholesale costs, including combined cycle gas at \$69 to \$115 per MWh and open cycle gas at \$179 to \$430 per MWh
- Intermittent renewable energy has higher costs, including solar at \$90 to \$171 per MWh and wind at \$64 to \$115 per MWh

<sup>75</sup> Department of the Environment and Energy, [Australian Energy Statistics 2017](#), January 2017.

<sup>76</sup> ACA Low Emissions Technologies (ACELET) assessment based on publicly available information on world power plant efficiency levels, July 2015. According to a discussion paper released by the former Gillard Government, new coal technologies can increase the efficiency of Australian plants to over 45 per cent and lower their CO<sub>2</sub> emissions by up to 50 per cent. See the Department of Resources, Energy and Tourism (as was), [A Cleaner Future For Power Stations](#), Interdepartmental Task Group Discussion Paper, 1 November 2010, p. 5.

<sup>77</sup> International Energy Agency, International Energy Agency, [Technology Roadmap High-Efficiency, Low-Emissions Coal-Fired Power Generation](#), Paris, originally published in 2012, updated March 2013, p. 19.

- In the case of wind backed up by batteries (assumed to be equivalent to baseload generation for up to three days) its LRMV rises to \$211 to \$693 per MWh. This is more than eight times the cost of high range ultra-supercritical black coal.<sup>78</sup>

HELE technologies are affordable, reliable, technologically proven and deliver CO<sub>2</sub> emissions reductions. For these reasons countries that account for more than half the world's CO<sub>2</sub> emissions are using HELE technologies to meet their Paris Agreement targets while maintaining the affordability and reliability of their electricity mix. Given Australia's abundant coal resources and the competitive cost of HELE technologies, HELE should be considered as part of Australia's domestic energy policy.

More than 1,000 HELE units are already operating worldwide, including in Japan, Germany, China and India. These plants account for 632 gigawatts of coal-fired generation capacity – 10 times Australia's installed capacity across all fuel types.<sup>79</sup> The International Energy Agency (IEA) has projected that approximately 730 GW of new HELE coal-fired power plants will be built over the next 25 years, accounting for more than half of Asia's coal generators.<sup>80</sup> This includes some 100 GW of new coal-fired capacity built in Southeast Asia, bringing installed coal capacity there to 160 GW in 2040 (40 per cent of which is in Indonesia alone). Around 75 per cent of the new plants added to 2040 use HELE technology.<sup>81</sup>

The IEA also projects that while global coal-fired electricity production increases by 9 per cent to 2040, the amount of primary energy consumed in the process rises by just 1 per cent.

The improvement reflects the increasing contribution of more efficient supercritical and advanced technologies. ... Had coal plant efficiency remained at 2000 levels, by 2040 China would be consuming about 20% more coal than projected, an absolute increase of some 310 Mtce [millions of tonnes of coal equivalent] (about 6% of global coal consumption today).<sup>82</sup>

#### **Box 5: Australia has the opportunity to build a secure energy future with CCS**

Carbon capture and storage (CCS) is a proven, well-tested and reliable technology that has been in safe, operational use for more than 40 years. In 2009, G8 leaders committed to launching 20 large-scale CCS projects by 2020. This goal will be met. There are now 16 large-scale CCS facilities in operation and five under construction.<sup>83</sup> A joint government and industry sponsored 2017 CCS Roadmap sets out how Australia should proceed to the next level.<sup>84</sup> This will require projects to be underwritten by government grants and operational support, with accompanying financial and in-kind support from industry and other stakeholders. The black coal industry has agreed to support the CCS Roadmap ambition and extended the COAL21 Fund for a further ten years.

By advancing low emission fossil fuel technologies, Australia can:

- Contribute to global rollout of safe and reliable CCS
- Facilitate the ongoing use of coal in the energy mix and in producing iron, steel, cement and other manufactures while reducing emissions by up to 90 per cent
- Derive continued economic benefit from developing our vast energy resources
- Promote a practical and effective means of significantly reducing greenhouse gas emissions.

<sup>78</sup> Solstice Development Services, [Prospects for a HELE USC Coal-fired Power Station](#), June 2017, released on 3 July 2017.

<sup>79</sup> See Platts, [World Electric Power Plants Database](#), viewed 13 December 2017; and the Department of Industry, Innovation and Science, [Energy in Australia 2015](#), released on 5 February 2016, Canberra, p. 37.

<sup>80</sup> International Energy Agency, [World Energy Outlook 2016](#), Paris, released on 16 November 2016, Paris, p. 213.

<sup>81</sup> International Energy Agency, [Southeast Asia Energy Outlook](#), World Energy Outlook 2017 Special Report, Paris, p. 82.

<sup>82</sup> International Energy Agency, [World Energy Outlook 2017](#), released on 14 November 2017, Paris, p. 262.

<sup>83</sup> Global CCS Institute, [Projects](#), viewed 13 December 2017.

<sup>84</sup> Professor Chris Greig *et al.*, [Energy Security and Prosperity in Australia: A Roadmap for Carbon Capture & Storage](#), University of Queensland, 15 February 2017.

### 5.3 The potential for Australian uranium

Australia has 34 per cent of the world's uranium resources with prospective deposits located across the country.<sup>85</sup> Growth in the global nuclear energy sector is being driven by countries in Asia and Eastern Europe seeking secure, reliable and affordable energy that is low in emissions. Nuclear energy is a proven technology with substantial scope for innovation and development.

The IEA expects substantial growth in nuclear power generation in all three of its future scenarios. In its central scenario New Policies Scenario (NPS), nuclear power generation is forecast to increase 1.6 per cent per year from 2016 to 2040. It has an even more important role in the Sustainable Development Scenario (SDS). In the SDS, nuclear power generation must grow by 3 per cent per year to 2040 which will result in its share of global power output rising from 11 per cent in 2016 to 15 per cent.<sup>86</sup>

Modelling commissioned by the MCA suggests that employment in Australia's uranium industry could expand from around 3,000 direct and indirect jobs in 2014-15 to 22,600 by 2040, with the industry's economic contribution to Australia increasing from \$600 million per year to as much as \$9.5 billion per year.<sup>87</sup>

The regulatory framework for uranium mining in Australia can be made more efficient without any reduction in environmental scrutiny or non-proliferation safeguards.

The MCA's reform priorities are:

- Removing uranium mining, milling, decommissioning and rehabilitation from the definition of nuclear action in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)
- Finalising one-stop shop assessment and approval of bilateral agreements with efficient environmental management by states and territories
- Standardising uranium mining legislation and regulation across the country, including rules governing the transportation and exportation of uranium
- Removing federally legislated bans on nuclear industries in the EPBC Act and the *Australian Radiation Protection and Nuclear Safety Act 1998*, which are anti-uranium and undermine foreign investor confidence in uranium mining in Australia.

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<sup>85</sup> Geoscience Australia, [Mineral Resources: Uranium](#), viewed 13 December 2017.

<sup>86</sup> International Energy Agency, [World Energy Outlook 2017](#), Paris, released 14 November 2017.

<sup>87</sup> S Davidson and A De Silva, [Realising Australia's uranium potential](#), policy paper commissioned by the Minerals Council of Australia, September 2015.

## 6. SKILLS AND TRAINING

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- The minerals industry supports sensible higher education reform that combines fee deregulation with strong safeguards to protect the viability of minerals-related disciplines. Safeguards should include stronger accountability mechanisms to ensure increased university fee revenue is devoted to teaching and student services.
- The government should adopt the Productivity Commission's recommendation of focusing on skills formation to develop an open, high quality education system for the future workforce.
- Labour mobility is essential to existing operations and new projects in the mining industry. Government should consider the effectiveness of some of the recent changes to the temporary skilled migration scheme to age limits and the skilled occupations lists.

### 6.1 Leveraging investment in higher education and training

The Australian minerals industry spends more on training per employee than most industry sectors (5.5 per cent of payroll).<sup>88</sup> The industry is also a strong user of the vocational education and training system. In 2017, 30 per cent of mining employers used accredited training (the third largest user) and 60.5 per cent of mining employers used non-accredited training (the fourth largest).<sup>89</sup> In 2017 mining employers reported a 70.3 per cent satisfaction rating that accredited training was meeting their skills needs and a 97 per cent satisfaction rating for non-accredited training. This discrepancy indicates a lower level of industry confidence that accredited training is responsive and sufficiently industry-led to provide its skilling needs.

In addition, the minerals industry makes a significant financial contribution to Australia's higher education sector to ensure a high quality supply of Australian graduates. Through the Minerals Tertiary Education Council (MTEC), the MCA supports collaborative initiatives at 17 universities across Australia. MTEC builds capacity in higher education in the disciplines of mining engineering, metallurgy and minerals geoscience, and partners with universities and other providers to address professional skills requirements in the minerals industry. MCA members have invested more than \$50 million of unencumbered funds over the past decade in these programs, which have benefited more than 4,500 graduates.

The failure by previous governments to index higher education funding, coupled with the regulated caps on fees, has seen many university schools and departments become increasingly unviable under the student numbers based funding system, especially in minerals-related departments that traditionally have small student numbers and high teaching costs. This has resulted in a need for direct minerals industry investment to secure a future supply of professionals for the industry. Without this industry support many schools and departments would have closed, leaving Australia without the capacity to deliver its own high quality graduates.

### 6.2 Future minerals workforce

The minerals industry is actively engaged in considering the future minerals workforce and the skills requirements with the increasing role of automation, robotics and artificial intelligence that will see Australian mining continue to be at the forefront of innovation. Central to this work is the development of a sector capability framework identifying priority areas for skilling and upskilling related to technological advances to ready the current and future workforce for these opportunities.

The Productivity Commission identifies skills formation as a government priority because technology adoption, use and diffusion (the long-run drivers of productivity) requires people with the right skills.<sup>90</sup> There is additional value in improving skills formation from foundational to advanced, because it gives people better job security, income and job satisfaction. These effects are not well measured in the

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<sup>88</sup> NCVER, [Training and education activity in the minerals sector](#), 20 March 2013.

<sup>89</sup> NCVER, [Employers' Use and Views of the Vocational Education and Training \(VET\) System](#), 26 October 2017.

<sup>90</sup> Productivity Commission, [Shifting the Dial: 5 Year Productivity Review](#), Report No. 84, Canberra, 3 August 2017, p. 83-84.

official statistics, but have major implications for prosperity and quality of life more broadly. The Productivity Commission rightly points out that:

...the current skills system has fractures that put at risk its capacity to deal with the future labour market changes. There are deteriorating results among school students. The VET system is in a mess, and is struggling to deliver relevant competency-based qualifications sought by industry. Leading segments of the university sector are more focused on producing research than improving student outcomes through higher-quality teaching.

The industry accordingly supports the recommendations of the Productivity Commission for reform across the Australian education system to meet future workforce requirements for the industry and Australia. These reforms support skills formation linked to an open, high quality education system to prepare people with the right skills for technology adoption, use and diffusion.<sup>91</sup>

### 6.3 Labour mobility and skilled migration

The remote location of Australian mining operations makes fly-in, fly-out (FIFO) and drive-in, drive-out (DIDO) arrangements a necessary and desirable option for many producers and their employees. The Reserve Bank of Australia found that long-distance commuters 'helped employers meet labour demand requirements given the reluctance of workers to move permanently to remote areas.'<sup>92</sup> This finding was reiterated by the Productivity Commission and the National Centre for Vocational Education Research.<sup>93</sup> The evidence does not support claims about the negative impact of mining growth in regional areas. Far from restricting opportunities, the mining industry has boosted incomes, attracted families and reduced unemployment in mining regions.<sup>94</sup>

The minerals industry employs approximately 1 per cent of its workforce through temporary skilled migration, accounting for only 2 per cent of temporary skilled workers. Over 90 per cent of these are professionals, managers and technical trades.<sup>95</sup> An effective temporary skilled migration program is vital component of meeting the skills needs of the sector. The industry remains concerned with some aspects of the changes to the temporary skilled migration scheme announced on 18 April 2017 and subsequently revised on 1 July 2017.<sup>96</sup> Concerns include:

- The arbitrary upper age limit of 45 years (or 50 years in some cases) prevents knowledge experts, senior managers and leaders (including chief executives) from taking up key positions to aid Australia's competitive advantage in the sector
- Lack of certainty to both visa sponsors and approved temporary skilled visa holders of their longer term prospects when the associated occupations move on, off, between and/or off both the Medium and Long-term Strategic Skills List (MLTSSL) and the Short-term Skilled Occupation List (STSOL)
- It is unclear how the *Skilling Australia Fund*, to be wholly funded from a levy, will be allocated. The MCA suggests that funds be allocated proportionally to each industry's use of the temporary skilled migration visas to support skilling and upskilling for that and ancillary industries.

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<sup>91</sup> *ibid*, p. 82.

<sup>92</sup> See Reserve Bank of Australia Bulletin, [Labour Market Turnover and Mobility](#), December Quarter 2012, p. 9, viewed.

<sup>93</sup> Productivity Commission, [Geographic Labour Mobility](#), April 2014; National Centre for Vocational Education Research, viewed 13 December 2017, [An exploration of labour mobility in mining and construction: who moves and why](#), 23 June 2014.

<sup>94</sup> See KPMG, [Analysis of the Long Distance Commuter Workforce Across Australia](#), report commissioned by the Minerals Council of Australia, March 2013; KPMG, [Analysis of the Changing Resident Demographic Profile of Australia's Mining Communities](#), report commissioned by the Minerals Council of Australia, February 2013.

<sup>95</sup> Department of Immigration and Border Protection, [Subclass 457 Quarterly Report 31 March 2017](#), viewed 13 December 2017.

<sup>96</sup> Department of Immigration and Border Protection, [1 July changes to skilled visa programs](#), viewed 13 December 2017.

## 7. INDIGENOUS PARTNERSHIPS

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- The Native Title Act needs amendment to validate existing right-to-negotiate agreements under section 31 and provide a clear mechanism for finalising future agreements in circumstances where a member of the registered native title claimant is deceased.
- Anticipated reform of the Native Title Act should emphasise certainty and efficiency to encourage the negotiation of mutually beneficial outcomes for native title parties.
- The management of Indigenous land-related payments and benefits can be improved through the adoption of the Indigenous Community Development Corporation.

The Australian mining industry acknowledges the special connection that Aboriginal and Torres Strait Islander peoples have to their traditional lands and waters. In recognition of this relationship and as neighbours in large parts of rural and remote Australia, the mining industry is committed to measures that facilitate agreed beneficial outcomes with traditional owners and Indigenous communities.<sup>97</sup>

Consistent with these principles, the last two decades has seen the establishment of more than 1900 land use agreements between Indigenous peoples and the mining industry (99 per cent with no legal contest of rights) delivering economic and social benefits for Indigenous communities.<sup>98</sup>

### 7.1 Reform of the Native Title Act 1993

With more than 60 per cent of minerals operations in Australia having neighbouring Indigenous communities, companies are regularly involved in negotiations with native title parties and are at times involved in claims resolution processes. Accordingly, mining and mineral processing companies need the *Native Title Act 1993* (NTA) to provide certainty with respect to their rights and obligations, and to also promote the stability and efficiency of the native title system.

The current process for reform of the Native Title Act should give priority to resolving the uncertainty created by *McGlade v Native Title Registrar [2017]* for right-to-negotiate agreements reached under section 31 of the NTA. The Act needs to be amended expeditiously to validate existing agreements and thus remove doubt about the status of potentially hundreds of grants of tenure made rely on those agreements including mining leases and other interests.

Section 31 of the Native Title Act requires further amendment to allow for future right-to-negotiate agreements to be signed by the remaining members of the registered native title claimant in the event that some (but not all) members are deceased.

### 7.2 Introduce a modern management structure for land-related payments

Communities and companies have a range of financial vehicles for the management of benefits flowing from mining activity on Indigenous land. While some work very effectively, the Government has acknowledged that others have shortcomings that make them costly, complex and opaque.<sup>99</sup> Charitable trusts are commonly used but these place limits on the use of funds to support stand-alone businesses and also the long-term accumulation of funds to provide intergenerational benefits.

The Indigenous Community Development Corporation (ICDC) entity proposed by the Native Title Working Group is designed specifically to optimise the long-term management of Indigenous land related payments and benefits.<sup>100</sup> Unlike charitable trusts, the ICDC would allow communities to direct their funds not only to prescribed purposes such as health and education, but also accrue funds for investment over longer time frames as well as directly support small business development. An ICDC

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<sup>97</sup> See for more details: [MCA Communique: Indigenous economic development](#), June 2016.

<sup>98</sup> Marcia Langton, '[No one has done more for indigenous Australians than the mining industry](#)', *The Australian*, 26 July, 2017.

<sup>99</sup> Australian Government, [Our North, Our Future: White Paper on Developing Northern Australia](#), Canberra, 2015.

<sup>100</sup> Treasury, [Taxation of native title and traditional owner benefits and governance working group – Report to government](#), Australian Government, Canberra, 2013.

entity would allow for a more streamlined structure, strengthening governance and lowering administration costs.

The ICDC is consistent with the aim of the government's Indigenous Procurement Policy to grow the Indigenous business sector and addresses a key barrier identified in the process of developing the Indigenous Business Sector Strategy: the access of Indigenous businesses to capital.<sup>101</sup>

The current review of the *Corporations (Aboriginal and Torres Strait Islander) Act* provides the ideal opportunity to introduce this important reform. This would satisfy the commitment made by the Government in the Northern Australia White Paper to 'consider options for managing and investing land related payments and other income to better support Indigenous economic independence'.<sup>102</sup>

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<sup>101</sup> Department of Prime Minister and Cabinet, [Commonwealth Indigenous Procurement Policy](#), Australian Government, Canberra, 2015 and Department of Prime Minister and Cabinet, [Consultation Paper: Indigenous Business Sector Strategy – Supercharging Indigenous Business Start-Up and Growth](#), Australian Government, 2016.

<sup>102</sup> Australian Government, [Our North, Our Future: White Paper on Developing Northern Australia](#), Canberra, 2015, p26.