



MINERALS COUNCIL OF AUSTRALIA

SUBMISSION TO FIRST PHASE OF PRODUCTIVITY COMMISSION'S FIVE-YEAR PRODUCTIVITY REVIEW: INCREASING AUSTRALIA'S FUTURE PROSPERITY

DECEMBER 2016

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EXECUTIVE SUMMARY

The Productivity Commission's inquiry into Australia's productivity performance and reform priorities is timely. Only a productive and competitive Australian economy can generate the profits and wages needed to raise living standards and support essential government services.

The Productivity Commission has previously warned that: 'Without a lift in productivity to counteract the fall in the terms of trade, slower per capita GDP growth is likely to prevail in the years to come, relative to the growth that occurred in the period 2000–2010.'¹ In his final speech as Governor of the Reserve Bank, Glenn Stevens noted that Australia's long-run rate of growth appears to have slowed, prolonging the path back to fiscal balance. Mr Stevens said that Australia must 'maximise our efforts in those areas that can lift potential growth.'²

The productivity and competitiveness of the Australian mining industry is important to national growth and income. In 2015-16, resources and energy exports were worth \$157 billion and accounted for 64 per cent of Australia's merchandise exports by value. This contribution is forecast to increase 12 per cent to total \$176 billion in 2016-17. Iron ore and coal remain our two largest export earners; together they are expected to generate \$94 billion in export income in 2016-17.³

Productivity refers to increasing the rate of output (goods or services) from a given amount of inputs (labour, land, capital 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.

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 'pro-productivity' if they encourage firms to invest in capital and allow them to manage the use of that capital efficiently.⁴

A genuine productivity agenda is vital to the Australian minerals industry. Australian producers compete in fiercely contested international markets and cannot pass on higher domestic costs to customers. This competitive pressure drives innovation, which enables miners to extract and process ores at lower cost and to extract deposits that are deeper or more remote. As the Prime Minister, Malcolm Turnbull MP, has pointed out, the mining industry 'is now and always has been the most innovative and the one that takes the greatest risks in Australia's whole corporate sector.'⁵

Because mining in Australia is capital-intensive, the industry's capital productivity has a large bearing on its multifactor productivity (i.e., the growth of output above the growth of labour and capital combined). Between 2006-07 and 2015-16, the mining industry (including oil and gas) undertook an unprecedented investment in new mines, equipment and infrastructure, with a corresponding net capital stock of \$841 billion in June 2016.⁶ Measured productivity in mining declined during this period, owing to the lag between investment and production, rapid workforce expansion with constrained labour markets, and increased mining of lower grade ores that are more costly to extract. However, as the mining boom moved from the investment phase to the production phase, multifactor productivity growth turned positive, recording 7.0 per cent in 2014-15 and 2.4 per cent in 2015-16.⁷

¹ Productivity Commission, [PC Productivity Update 2016](#), Canberra, released on 26 April 2016, p. 18.

² Glenn Stevens AC, then Governor of the Reserve Bank of Australia, [An accounting](#), address to the Anika Foundation Luncheon, Sydney, 10 August 2016.

³ Department of Industry, Innovation and Science, [Resources and Energy Quarterly – September Quarter 2016](#), released on 7 October 2016, Canberra, pp. 21 and 113.

⁴ See Gary Banks, [Productivity Policies: the 'to do' list](#), address to Economic and Social Outlook Conference, Melbourne, 1 November 2012, p. 6f.

⁵ The Hon. Malcolm Turnbull MP, Prime Minister of Australia, [Address to the Australian Minerals Industry Parliamentary Dinner, Parliament House](#), Canberra, 12 October 2016.

⁶ Australian Bureau of Statistics, [Australian System of National Accounts, 2015-16](#), ABS cat. no. 5204.0, released on 28 October 2016.

⁷ See Productivity Commission, [PC Productivity Update 2016](#), Canberra, released on 26 April 2016, p. 7; Australian Bureau of Statistics, [Estimates of Industry Multifactor Productivity, 2015-16](#), ABS cat. no. 5260.0.55.002, released on 5 December 2016.

The growth in mining capacity represents a large expansion in income-earning capacity for the Australian economy. The priority now is ensuring that this capital stock is used as efficiently as possible. A survey of MCA members has identified required areas of policy focus to improve the industry's productivity performance. Project approvals processes was nominated as the area of greatest concern, followed (with equal frequency) by workplace relations and taxes and royalties.

It is notable that these priorities are reflected in the famous 'to do' list compiled by Gary Banks in 2012. Professor Banks nominated a number of outstanding recommendations of the Productivity Commission, including several that remain acutely relevant to the Australian minerals industry:

- Reform complex and duplicative project approval processes
- Test workplace regulations to ensure that: (a) they deliver public interest benefits which exceed the economic costs; and (b) these benefits cannot be delivered in another, better way
- Improve Australia's tax system by relying on fewer and less distorting taxes
- Rigorously review significant restrictions on competition, including coastal shipping protection
- Terminate selective industry subsidies that cannot deliver demonstrable net social benefits, including assistance for renewable energy
- Embed cost-benefit analysis into regulatory practices, including consideration of alternatives
- Abolish remaining tariffs and limit provisions for anti-dumping action.⁸

Some of these recommendations have been reiterated and expanded in subsequent work by the Productivity Commission, such as the reports on Australia's workplace relations framework and major development approval processes.

Unfortunately, the discussion paper for the present review downplays the significance of existing reform proposals. The paper states that the Productivity Commission:

[I]s particularly interested in new and novel ideas because there is already a strong awareness of many reform options that parties would like to see implemented. More of the same is not likely to be helpful.⁹

While certain microeconomic reform options may be familiar to some, this does not mean that the case for these reforms is widely accepted, or that they have become any less urgent. The assessment of policy proposals should not hinge on their novelty. Rather, productivity reforms should be judged on the extent to which they strengthen competition, support the accumulation of skills and capital, and enable firms to respond flexibly to changing market conditions.

The current review is an opportunity for the Productivity Commission to help reinvigorate a comprehensive microeconomic reform agenda that promotes productivity gains. The MCA proposes a number of reforms (see overleaf) that are critical to restoring Australia's international competitiveness and sustaining high-skilled, high-wage jobs.

The resurgence of protectionist sentiment means that the national benefits of robust competition policy and open markets are more contested than in previous decades. The Productivity Commission has an important role in explaining that competitive markets deliver benefits to all Australians by putting downward pressure on prices and driving the development of new products. Conversely, interventions aimed at shielding particular industries from competition, or preserving certain jobs through regulation, only transfers costs to other industries and workers – to the detriment of consumers and the nation.

⁸ Gary Banks, [Productivity Policies: the 'to do' list](#), address to Economic and Social Outlook Conference, Melbourne, 1 November 2012, pp. 8-18.

⁹ Productivity Commission, [Increasing Australia's future prosperity](#), Productivity Commission discussion paper, 7 November 2016, Canberra, p. 17, original emphasis removed.

Recommendations

1. Streamlining and safeguarding project approvals

- Duplication of federal and state environmental approval processes causes unnecessary complexity and delays in resource projects. Parliament should approve a One-Stop Shop for approval processes and remove the redundant 'water trigger' for coal projects.
- Measures should be put in place to prevent vexatious legal challenges to approved projects by anti-development activists, without reducing environmental protection.
- Some environmental organisations are misusing tax-deductible donations to disrupt and delay productivity-enhancing investment. The moderate and bipartisan recommendations of the House of Representatives Standing Committee on the Environment should be implemented immediately, to ensure that tax concessions are being used for their intended policy purpose.

2. Modernising workplace relations

- The recentralisation and overregulation of workplace relations is impeding productivity and innovation in the Australian resources industry.
- The MCA supports the Productivity Commission's recommendations for:
 - More balanced union right-of entry rules to stop frequent and unnecessary disruptions
 - Restricting permitted matters in agreements to direct employer-employee relationship
 - Stopping abuse of adverse action provisions that are interfering with reasonable management decisions
 - Facilitating greenfields agreements, including by allowing the employer to request 'last offer' arbitration after three months, and allowing the nominal expiry date of an enterprise agreement to match the life of the project.
- Ultimately, Australia's workplace relations system needs to evolve a wider set of agreement options to enable more productive and flexible enterprises, including individual statutory agreements.

3. Competitive taxation

- Mining is among Australia's highest taxed industries and faces a heavy tax burden compared to competitors in other nations. The MCA's 2016 minerals industry tax survey found that the minerals industry faced an effective tax rate (company tax plus royalties) of 54.3 per cent in 2014-15. A phased reduction in the company tax rate to at least the OECD average of 25 per cent is essential to drive future investment in Australian mining.
- Stable tax arrangements for off-road fuel use and research and development are vital to maintaining industry competitiveness and innovation, as well as economic activity in remote and regional Australia.
- The current system for distributing the goods and services tax is hampering Australia's productivity by rewarding less productive states that place low priority on economic development. The Productivity Commission should investigate the impacts of the GST distribution system to support reform in federal-state financial relations.

4. Affordable and reliable energy

- Policies that promote affordable and reliable energy are critical to the productivity and competitiveness of Australian businesses. Mining is a significant energy user, accounting for 9 per cent of national energy consumption and 11 per cent of electricity use.

- Energy policy should be technology-neutral, with all low emissions options treated equally. High efficiency, low emissions (HELE) coal technologies should be under consideration and the ban on nuclear power in Australia should be lifted.
- Australia's CO₂ emissions reduction target for 2030 (26 to 28 per cent on 2005 levels) is credible and appropriate, but it imposes an greater economic burden greater than the targets of other developed nations. To limit the cost of meeting this target, access to international abatement should be permitted.

5. Free trade and open markets

- A liberal foreign investment regime, with consistent application of rules and thresholds, is vital to investor confidence and the future growth of the minerals industry. The government should reassure investors that Australia is still open for business by minimising the burden of new reporting requirements for foreign owners of agricultural land and water entitlements.
- The MCA supports ratification of the Trans-Pacific Partnership and the conclusion of a high-quality free trade agreement with India. Ratified free trade agreements should be implemented fully so that Australian companies are able to maximise the benefits they bring.
- The government should refocus on deregulation, not just 'better' or 'best practice' regulation. Australia's coastal shipping should be deregulated to allow more efficient transport of freight.

1. STREAMLINING AND SAFEGUARDING PROJECT APPROVALS

- Duplication of federal and state environmental approval processes causes unnecessary complexity and delays in resource projects. Parliament should approve a One-Stop Shop for approval processes and remove the redundant 'water trigger' for coal projects.
- Measures should be put in place to prevent vexatious legal challenges to approved projects by anti-development activists, without reducing environmental protection.
- Some environmental organisations are misusing tax-deductible donations to disrupt and delay productivity-enhancing investment. The moderate and bipartisan recommendations of the House of Representatives Standing Committee on the Environment should be implemented immediately, to ensure that tax concessions are being used for their intended policy purpose.

Streamlined environmental approvals with high standards

Delays and uncertainty in project approval processes pose a significant risk to the industry's global competitiveness. In a survey of MCA members, 90 per cent of respondents ranked reforming approval processes as 'very important' or 'important' to improving productivity (see appendix).

A 2012 report by Port Jackson Partners found that Australian thermal coal projects experienced an average project delay of 3.1 years, compared with an average of 1.8 years in other jurisdictions.¹⁰ The delay costs for projects can be substantial. A one year delay can reduce the net present value (NPV) of a major mining project by up to 13 per cent and cost up to \$1 million every day.¹¹

Unnecessarily complex and duplicative processes contribute to lengthy approval timeframes and delays. 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.¹²

State processes should be fully accredited under the Environment Protection and Biodiversity Conservation Act (EPBC Act) to create a single assessment and approval process. Monitoring and reporting arrangements will ensure that the federal government retains oversight and high environmental standards continue to be met.¹³

The benefits of the streamlined project approvals are significant. An analysis by the then Department of the Environment concluded that streamlining federal and state environmental approval processes would save Australian businesses \$426 million annually.¹⁴ A BAEconomics study found that reducing project delays by one year would add \$160 billion to national output by 2025 and create an additional 69,000 jobs across the economy.¹⁵

The need to streamline environmental approvals has been recognised by numerous reviews over many years. The parliament should approve the necessary changes to the EPBC Act and allow the One-Stop Shop reforms to proceed.

In addition, the EPBC 'water trigger', which requires a special review for coal projects, is redundant and should be removed. The Productivity Commission found the water trigger 'imposes an extra layer of regulation on affected proponents' in a situation where 'it is not obvious that existing laws are

¹⁰ Port Jackson Partners, [Opportunity at risk: regaining our competitive edge in minerals resources](#), report commissioned by the Minerals Council of Australia, MCA, 16 September 2012, p. 27.

¹¹ MCA member calculations.

¹² Productivity Commission, [Major Project Development Assessment Processes: Research Report](#), Canberra, released on 10 December 2013, pp. 2 and 13.

¹³ 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.

¹⁴ Department of the Environment, [Regulatory cost savings under the one-stop shop for environmental approvals](#), Australian Government, Canberra, September 2014, p. 1.

¹⁵ BAEconomics, [The economic gains from streamlining the process of resource project approval](#), report commissioned by the Minerals Council of Australia, Canberra, July 2014, p. 1f.

deficient or the particular amendment adopted by the Australian Government is the best approach to deal with any identified gap in the regulatory framework'.¹⁶

Vexatious legal challenges and unlawful anti-development activism

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 rights of affected individuals to have their say.

Increasingly, however, industry opponents – often removed from the local community – are deliberately misusing the appeals process to halt or delay projects. 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. Yet this problem can be addressed without reducing environmental protection.

Further, there is compelling evidence that some registered environmental organisations are misusing tax-deductible donations to disrupt and delay productivity-enhancing infrastructure, including through vexatious litigation funded by undisclosed foreign donations, partisan political campaigns, and illegal and unsafe activities.

The Australian newspaper revealed that a number of wealthy US foundations are covertly funding the Sunrise Project – an Australian registered environmental organisation and charity – to disrupt and delay Adani's Carmichael coal project. Moreover, the Sunrise Project is coordinating anti-coal campaigning by a number of environmental organisations and has tried to hide its funding sources from the Australian parliament.¹⁷ The Executive Director of the Sunrise Project verified this report.¹⁸

The MCA has provided evidence that some registered environmental organisations and charities – such as Greenpeace Australia Pacific, Lock the Gate Alliance and 350.org Limited – have promoted or undertaken illegal activities to prevent or impede coal, gas and uranium projects. These activities have included: trespass, wilful damage, unregulated high-risk activity, failing to comply with directions of an authorised officer, illegally climbing or attaching to a maritime vessel, illegally boarding a maritime vessel, intentionally destroying Commonwealth property, obstructing police and picketing.¹⁹

The House of Representatives Standing Committee on the Environment has made nine recommendations to improve the administration and transparency of the register of environmental organisations. Seven recommendations were supported by all committee members, including:

- Abolish the register of environmental organisations and transfer responsibility for endorsing environmental organisations as deductible gift recipients wholly to the Australian Tax Office
- Require any environmental organisation seeking endorsement as a deductible gift recipient from the ATO to register as an environmental charity through the Australian Charities and Not-for-profits Commission
- Require environmental organisations with deductible gift recipient status to submit an annual self-assessment to the ATO supporting their continuing eligibility for endorsement.

These reforms would ensure that tax concessions granted to registered environmental organisations are being used for their intended policy purpose of protecting the environment. They would also ensure that all environmental deductible gift recipients, and not just those who are also registered charities, are expressly prohibited from obstructing investment projects by illegal or unsafe means.

¹⁶ Productivity Commission, [Major Project Development Assessment Processes: Research Report](#), Canberra, released on 10 December 2013, p. 149.

¹⁷ Dennis Shanahan, 'Foreign funding for Adani lawsuits', *The Australian*, 22 October 2016.

¹⁸ John Hepburn, Executive Director of the Sunrise Project, [Podesta Adani Wikileaks: Clinton Presidency will hold mirror to Turnbull's climate inaction](#), media statement, 22 October 2016.

¹⁹ See the Minerals Council of Australia, [Submission to House of Representatives Standing Committee on the Environment Inquiry into the Register of Environmental Organisations](#), MCA, 29 May 2015, pp. 14-24; [Pre-Budget submission 2016-17](#), MCA, 12 February 2016, p. 42f; Tim Connell *et al.*, 'Newcastle harbour coal blockade: live updates, photos, video', *Newcastle Herald*, 8 May 2016; Australian Associated Press, 'Police charge 66 at Newcastle protests', *The Australian*, 9 May 2016.

2. MODERNISING WORKPLACE RELATIONS

- The recentralisation and overregulation of workplace relations is impeding productivity and innovation in the Australian resources industry.
- The MCA supports the Productivity Commission's recommendations for:
 - More balanced union right-of entry rules to stop frequent and unnecessary disruptions
 - Restricting permitted matters in agreements to direct employer-employee relationship
 - Stopping abuse of adverse action provisions that are interfering with reasonable management decisions
 - Facilitating greenfields agreements, including by allowing the employer to request 'last offer' arbitration after three months, and allowing the nominal expiry date of an enterprise agreement to match the life of the project.
- Ultimately, Australia's workplace relations system needs to evolve a wider set of agreement options to enable more productive and flexible enterprises, including individual statutory agreements.

High wage jobs are not created by regulation

While mining productivity is improving, the Fair Work Act is restricting the ability of companies to change work practices, adapt to changing market conditions and ultimately grow their business. A survey of MCA members considered the workplace relations framework to be second only to project approvals processes (and equal to taxation and royalties) as a reform priority (see appendix).

The Fair Work Act imposes too many cumbersome workplace laws and regulations on the grounds that without them workers will be exploited. This premise is at odds with the reality of successful, modern businesses, which are based on shared productivity objectives with employee reward linked to performance. The Australian mining industry 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 mining are \$2,706 per week, 77 per cent higher than the average for non-mining industries.²⁰

Debate on Australia's workplace relations focuses overwhelmingly on safety net issues like the minimum wage and penalty rates. More time and energy is devoted to the regulation of low wage jobs than to helping Australian businesses create and sustain attractive, high wage jobs. This is not an argument to diminish protections for low income workers. But it does caution against a system that tries to regulate too much – especially where minimum conditions are not relevant.

The case for workplace relations reform

The Fair Work Act reversed 16 years of labour market reform by granting both a default and disproportionate role to trade unions. The Act presumes that a union will be a bargaining representative so long as it has one or more members employed at the workplace. There is no requirement for an employee to nominate the union; rather, the union is automatically designated as the bargaining agent unless individual members state otherwise in writing.²¹

The default position of trade unions is exacerbated by imbalanced right-of-entry laws. A union can apply for an entry permit to hold discussions even if it is not party to an award or agreement, and even if it has no members on site. The workplace need only contain workers who are eligible to become members under the union's rules. BHP Billiton's Worsley alumina refinery had more than 550 right-of-

²⁰ Australian Bureau of Statistics, [Labour Force, Australia, Detailed, Quarterly, Aug 2016](#), ABS cat. no. 6291.0.55.003, released on 22 September 2016; [Average Weekly Earnings, Australia, May 2016](#), ABS cat. no. 6302.0, released on 18 August 2016.

²¹ See Professor Ron McCallum, 'Unpacking the Fair Work Act', *At Work: Workplace Relations and Safety May/June 2011 Newsletter*, HWL Ebsworth Lawyers, 30 May 2011; and Paul Ludeke, [The 'Reform' Misnomer Under the Fair Work Regime](#), HR Nichols Society XXXII Conference, April 2011.

entry visits between 2011 and 2013.²² Another MCA member was subject to 257 visits between January 2015 and June 2016.

The MCA supports the Productivity Commission's proposal that the Fair Work Commission should be better able to deal with disputes about frequency of entry and be required to take into account the cumulative impact on the employer, the likely benefit to employees of further entries and the union's reasons for the frequency of visits.²³ Further, the government should legislate for the sensible arrangements that operated previously, whereby a union has a legitimate claim for access if:

- The union is party to an enterprise agreement that covers the site or is attempting to reach one
- The union can demonstrate that it has members on that site
- Those members have requested the union's presence.

The Fair Work Act outlawed individual statutory agreements, replacing them with common law contracts underpinned by modern awards with mandatory flexibility clauses. The mining industry's experience is that individual flexibility arrangements have proven to be very difficult to negotiate for anything other than relatively minor matters. There is no justification for an outright ban on statutory individual agreements in the presence of safeguards like a strong no-disadvantage test and an income threshold for such agreements or other safety net mechanisms.

The Fair Work Act unduly expanded the scope of 'permitted content' in agreements well beyond issues relating to the employment relationship. This has led to the inclusion of unreasonable clauses that carry the threat of protected industrial action. Examples of claims in the mining industry include:

- Obliging managers to consult with unions on changes to regular rosters or ordinary hours
- Providing union training leave as well as onsite facilities for union delegates
- Requiring employers to encourage union membership.

The MCA agrees with the Productivity Commission that the Fair Work Act should be amended to:

- Remove issues pertaining to the relationship between an employer and employee organisations from the list of permitted matters in enterprise agreements
- Specify that an enterprise agreement may only contain terms about permitted matters.²⁴

Adverse action is action that is unlawful if it is taken for particular reasons. The Fair Work Act allows for multiple reasons for taking action to be considered as material, and the onus is on the employer to prove that adverse action has not occurred. The MCA supports the Productivity Commission recommendation that the government should:

- Formally align discovery processes with those of the Federal Court
- More clearly define the meaning and application of workplace rights
- Allow awarding of costs against an applicant who unsuccessfully pursues a dismissal claim against the advice of the Fair Work Commission.²⁵

A redesigned greenfields agreement framework is needed to avoid investors being held to ransom on new mining projects. The MCA supports the Productivity Commission's recommendation to allow the employer to request 'last offer' arbitration after three months, and to allow the nominal expiry date of an enterprise agreement should be allowed to match the life of the project.²⁶

²² Dean Dalla Valle, '[Right to enter must not cut productivity](#)', *The Australian*, 28 November 2014.

²³ Productivity Commission, [Workplace Relations Framework: Inquiry Report, Volume 2](#), Canberra, 21 December 2015, p. 910.

²⁴ *ibid.*, p. 683.

²⁵ *ibid.*, pp. 622ff.

²⁶ *ibid.*, pp. 691, 719.

3. COMPETITIVE TAXATION AND GST REFORM

- Mining is among Australia's highest taxed industries and faces a heavy tax burden compared to competitors in other nations. The MCA's 2016 minerals industry tax survey found that the minerals industry faced an effective tax rate (company tax plus royalties) of 54.3 per cent in 2014-15. A phased reduction in the company tax rate to at least the OECD average of 25 per cent is essential to drive future investment in Australian mining.
- Stable tax arrangements for off-road fuel use and research and development are vital to maintaining industry competitiveness and innovation, as well as economic activity in remote and regional Australia.
- The current system for distributing the goods and services tax is hampering Australia's productivity by rewarding less productive states that place low priority on economic development. The Productivity Commission should investigate the impacts of the GST distribution system to support reform in federal-state financial relations.

Competitive and stable tax arrangements

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. A survey of MCA members ranked tax and royalties equal second with workplace relations as a priority for productivity reform (see appendix).

Australia's 30 per cent company tax rate is too high for a capital hungry country. While many other countries have substantially reduced their corporate tax rates over the last decade, Australia's rate has remained static for 15 years. Australia's 30 per cent company tax rate is significantly higher than the OECD average (25 per cent) and is the sixth highest among the 34 OECD countries. It compares even less favourably to an average company tax rate of 22 per cent in the Asian region.²⁷

Australia's mining industry faces a heavy tax burden compared to competitors in other nations. The 2016 minerals industry tax survey by Deloitte Access Economics found that the minerals industry faced an effective tax rate (company tax plus royalties) of 54.3 per cent in 2014-15. This is the highest tax ratio recorded since the survey began and the first time it has exceeded 50 per cent.²⁸

A 2016 study by Dr Duanjie Chen and Dr Jack Mintz at the University of Calgary found Australia had the second-highest tax burden on iron ore of nine countries examined, after South Africa.²⁹ A 2013 study by Goldman Sachs found that the tax take from Australian mining companies is within the top 25 per cent of global mining jurisdictions. Countries with lower tax burdens included Brazil, Indonesia, Canada, Peru and the United States.³⁰

Fuel Tax Credits (FTCs) are critical to the competitiveness of industries operating in remote and regional Australia. Australia's largest export earning industries – including mining, agriculture, tourism, forestry and fishing – rely on diesel to operate heavy machinery off-road and generate off grid-electricity with diesel generators. Diesel fuel consumption accounts for up to one quarter of operating costs at some mines. Any reduction to FTCs would constitute a new tax on remote and regional Australia.

²⁷ KPMG, [Corporate Tax Rates Table](#), viewed on 9 December 2016.

²⁸ Deloitte Access Economics, [Minerals industry tax survey 2016](#), report prepared for the Minerals Council of Australia, MCA, 7 December 2016.

²⁹ Duanjie Chen and Jack Mintz, [2016 update: Effective tax rates on Australian mining and an evaluation of proposed increases in taxation of iron ore](#), policy paper commissioned by the Minerals Council of Australia, MCA, 5 September 2016.

³⁰ Goldman Sachs, *Resource Nationalism Poses Big Threat to Miners*, equity research paper, January 2013.

FTCs are grounded in the fundamental principle of tax policy that business inputs should not be taxed. Treasury does not regard FTCs as a tax expenditure and the Productivity Commission does not consider FTCs to be industry assistance.³¹

The mining industry spends nearly \$3 billion on research and development (R&D) annually, or nearly \$1 in \$6 of all business R&D spending in Australia.³² The R&D tax incentive is an effective, economy-wide, market-driven measure that should be maintained. Unfortunately, the incentive has been characterised by persistent uncertainty owing to frequent changes by successive governments. It is critical that Australian businesses now be afforded a stable policy framework to encourage future innovation. In particular, the R&D tax incentive should not be distorted by restricting eligibility on the basis of industry, firm size or any other arbitrary criterion.

Reforming the GST to encourage more productive use of state resources

In Australia, the federal government has the right to collect income tax, company tax and the goods and services tax (GST), which are large sources of revenue. However, the states are responsible for administering healthcare, education and justice, which are large spenders of public funds. The main sources of state revenue – payroll tax, stamp duty, land tax and mining royalties – are insufficient to meet the demand for services. The resulting ‘vertical fiscal imbalance’ is managed through a system of horizontal fiscal equalisation (HFE) to distribute the revenue collected by the GST.

It is becoming increasingly clear that the GST distribution system is hampering the productivity and growth potential of Australia via inefficient resource allocation. For example, Western Australia is a state that has assigned a high priority to economic development and experienced an average growth rate of 5 per cent over the past decade.³³ Yet Western Australia receives a disproportionately low amount of GST funding compared to other states.

One problem is that, under existing approaches, the Commonwealth Grants Commission (CGC) assumes that all states seek to develop their mining resources with equal vigour. This is despite the fact that in its 2015 Review, the commission recognised that ‘there may be differences in state efforts [to develop their mining sectors]’.³⁴ The result is that states which take a passive or negative approach to resources development can be rewarded for doing so. An example is Victoria, which has long banned exploration and mining of uranium, which recently banned onshore gas exploration and is phasing out coal generation. This is not an academic point. In the last 13 years, Western Australia has foregone \$35.8 billion in GST revenues because of the CGC’s mining revenue assessments. Over the same period Victoria has gained \$21.4 billion. The bottom line is that a re-examination of the policy incentives embedded in CGC criteria to address unintended consequences is both worthwhile and overdue.

This unproductive allocation of the GST was evaluated in the early years of the existing distribution system by Professor Ross Garnaut and Dr Vince Fitzgerald. They found that the existing HFE system results in the public sector playing a larger role in recipient states than in donor states. Such state control of resource allocation is less efficient than allowing markets to distribute resources according to consumer demand. The HFE system does not provide incentives for state governments to find productivity gains and cut costs; on the contrary, it rewards higher cost service provision.³⁵

Fiscal reform via changes to the GST distribution system is a necessary component of a national productivity agenda. Funding allocation at the national level should support investment in the most productive parts of the economy, as well as provide incentives for state governments to operate more efficiently.

³¹ Productivity Commission, [Trade and Assistance Review 2014-15](#), Canberra, 25 July 2016, p. 1f.

³² Australian Bureau of Statistics, [Research and Experimental Development, Businesses, Australia, 2013-14](#), ABS cat. no. 8104.0, released on 9 April 2015.

³³ Australian Bureau of Statistics, [Australian National Accounts: National Income, Expenditure and Product, Sep 2016](#), ABS cat. no. 5206.0, released on 7 December 2016.

³⁴ Commonwealth Grants Commission, [Report on GST Revenue Sharing Relativities 2015 Review – Volume 2 – Assessment of State Fiscal Capacities](#), p. 115.

³⁵ Ross Garnaut and Vince Fitzgerald, [Review of Commonwealth-State Funding](#), final report presented by the Committee for the Review of Commonwealth-State Funding, August 2002.

4. AFFORDABLE AND RELIABLE ENERGY

- Policies that promote affordable and reliable energy are critical to the productivity and competitiveness of Australian businesses. Mining is a significant energy user, accounting for 9 per cent of national energy consumption and 11 per cent of electricity use.
- Energy policy should be technology-neutral, with all low emissions options treated equally. High efficiency, low emissions (HELE) coal technologies should be under consideration and the ban on nuclear power in Australia should be lifted.
- Australia's CO₂ emissions reduction target for 2030 (26 to 28 per cent on 2005 levels) is credible and appropriate, but it imposes an greater economic burden greater than the targets of other developed nations. To limit the cost of meeting this target, access to international abatement should be permitted.

Energy policy must accommodate both security and climate goals but not distort markets

Energy security is vital to the productivity and competitiveness of the Australian economy and 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 accounts 9 per cent of national energy consumption and 11 per cent of electricity use. Cheap energy also underpins the high standard of living of households. In Australia, coal remains the primary source of dependable, low-cost electricity, accounting for 63 per cent of generation in 2014-15.³⁶

However, various policy interventions have eroded Australians' access to reliable, cost-effective energy. These interventions have resulted in household electricity prices increasing by around 110 per cent in the last decade. Some of this price increase is due to higher investment in network infrastructure to ensure reliable supply to customers in peak periods. But the carbon tax and other market-distorting policies – such as subsidised investment in intermittent renewable energy – also inflated prices.³⁷

Under the modified Renewable Energy Target (RET), the estimated cost of building new wind turbines and solar installations is around \$22 billion in direct costs to 2030, met by around \$24 billion in subsidies.³⁸ Renewable energy sources received \$2.8 billion in subsidies in 2013-14, compared to support of \$145 million to fossil fuels.³⁹ When subsidies and feed-in tariffs are all included, the extra cost to consumers is 6 to 9 per cent of their total power bill.⁴⁰ For large businesses, the cost of all government schemes can be as much as 20 per cent of their total power bill.⁴¹ The operating subsidies granted to renewables are not transparent but ultimately have to be paid by consumers. Australia's competitors do not face the same policy-induced distortions in their energy markets.

Data from the International Energy Agency show that high efficiency, low emissions (HELE) coal technology (specifically, supercritical plants that have a net efficiency of 38 to 42 per cent) is cheaper than solar, wind, bioenergy and hydro in the United States, the European Union, China and India.⁴²

Further, nations with a high share of intermittent renewables in their electricity system must have access to baseload power to guarantee reliability of supply. Mauritius is the only country in the world

³⁶ Department of Industry, Innovation and Science, [2016 Australian energy statistics update](#), released on 14 October 2016, Canberra; [Energy in Australia 2015](#), released on 5 February 2016, Canberra.

³⁷ Australian Government, [Energy White Paper](#), 8 April 2015, p. 9.

³⁸ Estimate by Principal Economics provided to the MCA. Estimates of the capital costs under the original RET target suggested a cross-subsidy from users to producers of about \$22 billion to 2030 (see Australian Government, [Renewable Energy Target Scheme: Report of the Expert Panel](#), 15 August 2014). Modifications to the scheme in 2015 altered some legislated definitions of generation, but largely kept the share of large scale renewable generation required the same.

³⁹ Principal Economics, [Electricity Production Subsidies in Australia](#), policy paper commissioned by the Minerals Council of Australia, MCA, August 2015, p. 13.

⁴⁰ Australian Energy Markets Commission, cited in Principal Economics, op. cit., p. 15f.

⁴¹ ROAM/Synergies, cited in Principal Economics, [Electricity Production Subsidies in Australia](#), policy paper commissioned by the Minerals Council of Australia, MCA, August 2015, p. 15f.

⁴² International Energy Agency, [World Energy Outlook 2016](#), Paris, released on 16 November 2016, Paris, p. 451.

that generates more than 15 per cent of its electricity from solar and wind without a crossborder grid connection to a stable baseload network.⁴³

Thermal coal and nuclear power are reliable sources of baseload power. Substantial progress is being made reducing the carbon footprint of coal-fired power generation. HELE coal technologies allow power generators to operate at higher temperatures and greater pressure, reducing emissions generated per watt of electricity by up to 40 per cent.⁴⁴ New technologies under testing promise to reduce these emissions even further.⁴⁵ HELE coal-fired power stations integrated with carbon capture and storage (CCS) can reduce CO₂ emissions by approximately 90 per cent.⁴⁶

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 – ten times Australia's installed capacity across all fuel types.⁴⁷ The International Energy Agency projects 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.⁴⁸ HELE technologies should be considered as part of Australia's domestic energy policy.

Nuclear power has the advantage of being able to generate baseload electricity with very low CO₂ emissions over its lifecycle. There is much potential in modern small modular reactors, which 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.

Australia's emission target is credible and appropriate but not without economic costs

Australia faces a more intensive emissions reduction effort because it has different characteristics than other developed economies and plays a different role in the global economy. Australia has a growing population with a low geographic density and provides food, energy and resource security for dozens of nations around the world.

Australia's emissions reduction target to 2030 (26 to 28 per cent on 2005 levels) is an ambitious goal that will impose strains on the Australian economy, especially export and import-competing industries. The target will also involve Australia bearing more than a comparable share of the economic burden.⁴⁹ To limit the cost of meeting this target, access to international abatement should be permitted.

Direct Action, and specifically the Safeguard Mechanism, is now being implemented as part the suite of government climate change policy instruments. The scheme should be allowed to operate with minimal changes to allow for investor certainty.

⁴³ MCA analysis based on World Bank, [World Development Indicators](#), viewed on 6 December 2016.

⁴⁴ ACA Low Emissions Technologies 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 CO₂ emissions by up to 50 per cent. See the Department of Resources, Energy and Tourism, [A Cleaner Future For Power Stations](#), Interdepartmental Task Group Discussion Paper, 1 November 2010, p. 5.

⁴⁵ International Energy Agency, [Technology Roadmap High-Efficiency, Low-Emissions Coal-Fired Power Generation](#), Paris, originally published in 2012, updated March 2013, p. 19; Shoichi Itoh, [A New Era of Coal: The 'Black Diamond' Revisited](#), National Bureau of Asian Research, working paper commissioned for the 2014 Pacific Energy Forum, Seattle, 23-24 April 2014, p. 7.

⁴⁶ International Energy Agency, op. cit., p. 19.

⁴⁷ See Platts, [World Electric Power Plants Database](#), last viewed 12 September 2016; and the Department of Industry, Innovation and Science, [Energy in Australia 2015](#), released on 5 February 2016, Canberra, p. 37.

⁴⁸ International Energy Agency, [World Energy Outlook 2016](#), Paris, released on 16 November 2016, Paris, p. 213

⁴⁹ See Australian Government, [Australia's 2030 Climate Change Target](#), 11 August 2015, p. 2.

5. FREE TRADE AND OPEN MARKETS

- A liberal foreign investment regime, with consistent application of rules and thresholds, is vital to investor confidence and the future growth of the minerals industry. The government should reassure investors that Australia is still open for business by minimising the burden of new reporting requirements for foreign owners of agricultural land and water entitlements.
- The MCA supports ratification of the Trans-Pacific Partnership and the conclusion of a high-quality free trade agreement with India. Ratified free trade agreements should be implemented fully so that Australian companies are able to maximise the benefits they bring.
- The government should refocus on deregulation, not just 'better' or 'best practice' regulation. Australia's coastal shipping should be deregulated to allow more efficient transport of freight.

Free flows of investment and trade boost exports, innovation and employment

Australia requires international investment to fill the gap between domestic saving and investment. This capital shortfall has been on average about 4 per cent of GDP over the last decade.⁵⁰ Without international investment, Australia would otherwise need to take on additional debt or forgo inflows of finance and technology.⁵¹

International investment has long provided the finance and technology that help make Australia a world-leading exporter of minerals. The stock of foreign direct investment in the nation's mining sector is \$295 billion.⁵² And contrary to popular belief, the value of international investment in minerals is overwhelmingly retained in Australia. 77 per cent of the revenue earned by the nation's major iron ore producers stays in Australia, paid as payments to suppliers or as taxes and royalties to governments.⁵³

The MCA welcomes a liberal and orderly international investment regime, with consistent application of rules and thresholds, in order to instil public and investor confidence. However, the registers of foreign ownership of agricultural land and water entitlements will discourage additional international investment and impose onerous regulatory burdens on resident firms.

It should be borne in mind that flows of investment and changes of ownership (above certain thresholds) are already subject to considerations by the Foreign Investment Review Board (FIRB). According to FIRB data, between 2005-06 and 2014-15 the total international investment assessed and approved was \$1.5 trillion. Mining comprised almost one-third of this total (\$488 billion).⁵⁴ Treasury work has shown that if inward international investment were suddenly to dry up, the economic costs would be significant and widespread.⁵⁵

Free trade agreements open up new markets, enhance the competitiveness of Australian minerals exports and remove barriers to investment. The free trade agreements now in place with Japan, South Korea and China are delivering substantial benefits. The MCA encourages the government to ensure that the gains from these agreements are not circumvented by non-tariff barriers.

With government, the MCA and coal producers are seeking to resolve issues with China's coal quality regulations which apply upon importation. A key priority is to secure the agreement of Chinese authorities to accept testing of Australian coals conducted at Australian ports. Such a solution will increase efficiency and reduce costs and uncertainty.

⁵⁰ Adam McKissack and Jessica Xu, [Foreign investment into Australia](#), Treasury Working Paper, January 2016.

⁵¹ Department of Foreign Affairs and Trade, [The benefits of foreign investment](#), 3 June 2016.

⁵² Australian Bureau of Statistics, [International Investment Position, Australia: Supplementary Statistics](#), ABS cat. no. 5352.0, released on 11 May 2015.

⁵³ Port Jackson Partners, [Iron ore: the bigger picture](#), policy paper commissioned by the Minerals Council of Australia, July 2015, p. 22.

⁵⁴ Foreign Investment Review Board, [Annual Reports](#).

⁵⁵ Jyothi Gali and Bruce Taplin, [The macroeconomic effects of lower capital inflow](#), Economic Roundup Issue 3, 2012.

The MCA supports continued trade and investment liberalisation, including ratification of the Trans-Pacific Partnership (TPP) agreement among 12 countries. The TPP will abolish tariffs on iron ore, copper and nickel and facilitate the expansion of exports of Australian mining equipment, technology and services (METS) – including in new free trade agreement markets of Canada, Mexico and Peru. The TPP will also stimulate the injection of capital and technology into the Australian minerals industry by raising the foreign investment screening threshold from \$252 million to \$1,094 million (except in relation to uranium and plutonium extraction and nuclear facilities).⁵⁶

A high-quality deal with India will boost opportunities for the minerals industry to supply India's growing demand for resources, including coal and uranium. In 2015, exports of resources accounted for 57 per cent (\$7.6 billion) of Australia's total exports to India (\$13.4 billion), including coal (\$5 billion), gold (\$930 million) and copper ores and concentrates (\$682 million).⁵⁷

There needs to be a renewed focus on deregulation, starting with coastal shipping

The minerals industry is subject to more regulatory requirements than most other industries in Australia. Regulatory requirements cover all stages of industry activity, from grant of tenure, exploration, extraction, processing, transport and mine closure through to relinquishment of tenure. The industry therefore has a vital interest in a sound regulatory approach that:

- Considers non-regulation options for achieving policy objectives
- Ensures new regulations are efficient and focused on outcomes
- Minimises the existing stock of regulation.

The regulation of coastal shipping under the Coastal Trading Act is a striking example of burdensome and ineffective regulation. While Australian-flagged ships enjoy unrestricted access to coastal trade under a five-year general license, 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.⁵⁸

The Productivity Commission argues 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.⁵⁹ Bulk commodities such as bauxite and alumina account for 70 per cent of Australia's coastal shipping trade.⁶⁰

Some opponents of coastal shipping reform assert that it would induce the loss of around 1,000 jobs in the Australian shipping industry. But these opponents ignore the hundreds of thousands of jobs in other industries – including minerals extraction and processing, petroleum, cement, steel and agriculture – that rely on the efficient transportation of freight by sea. Rio Tinto alone employs 6,000 workers in bauxite mines, alumina refineries and aluminium smelters across Australia.⁶¹

The MCA agrees with the Productivity Commission, the Australian Competition and Consumer Commission, the Competition Policy Review Panel and the Commission of Audit that cabotage licensing is unjustified industry assistance.⁶² A controlled deregulation of coastal shipping is estimated to yield a net benefit of \$786.2 million to the Australian economy and an annual deregulatory saving to business of \$27.9 million.⁶³

⁵⁶ Joint Standing Committee on Treaties, [Report 165: Trans-Pacific Partnership Agreement](#), 30 November 2016, pp. 14, 18-21.

⁵⁷ Department of Foreign Affairs and Trade, [Country and commodity pivot table 2006 to 2015](#), last updated November 2016 using ABS cat. 5368.0 (September 2016 data).

⁵⁸ Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), pp. 52, 90f.

⁵⁹ Productivity Commission, [Regulation of Australian Agriculture, Draft Report](#), released on 21 July 2016, p. 333.

⁶⁰ Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), p. 48.

⁶¹ See Rio Tinto, [Our business: Aluminium](#), viewed on 12 December 2016.

⁶² 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.

⁶³ Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), pp. 68, 70.



March 2016

Minerals Council of Australia

MCA productivity survey: Policy reform priorities

Mining productivity and national prosperity

Australia's mining capital stock is almost four times larger than it was at the beginning of the Millennium Mining Boom. This growth in mining capacity represents a substantial increase in income earning potential for Australia.

Ensuring Australia's enlarged mining capital stock is used as efficiently as possible is a key national productivity challenge. Like some other industries, the mining industry has seen its measured productivity performance decline over the past decade or so. In part, this reflects factors associated with the mining boom such as the lag between investments and production coming on stream.

So-called 'depletion effects' (due to ore grade declines, deeper deposits, longer haul distances and the like) have also played a role.¹ In addition, there is evidence production efficiency fell as miners expanded inputs (labour and capital) in the rush to take advantage of high commodity prices.²

The industry itself has the major role in driving productivity improvement. And indeed there is evidence from official data that mining productivity is responding to company strategies aimed at delivering real productivity improvements.³ However, that still leaves a major challenge for governments to address policies and regulations that act as a drag on mining productivity.

Policy reform is needed to ensure the potential of Australia's enlarged mining capital stock to deliver improvements in national prosperity are realised. With the decline in commodity prices since 2011, strong productivity growth is even more important to growth in living standards.

MCA productivity survey

The Minerals Council of Australia (MCA) has surveyed its members to establish what policy variables are most relevant to the productivity challenge facing Australia's minerals industry. Companies were asked to identify what policy areas governments should work on to promote productivity improvement from the following list:

- Development of appropriate skills
- International trade relations
- Approvals processes
- Environmental requirements
- Occupational health and safety laws
- Workplace relations framework
- Taxes and royalties.

Responses to the survey were evenly balanced between small, medium and large mining companies and a range of commodity producers (including iron ore, coal, gold, copper and uranium) were represented.

Survey results

The key results of the MCA productivity survey are shown in Chart 1.

Approvals processes and 'green tape' in general was the area of greatest policy concern, followed (with equal frequency) by the workplace relations framework and taxes and royalties.

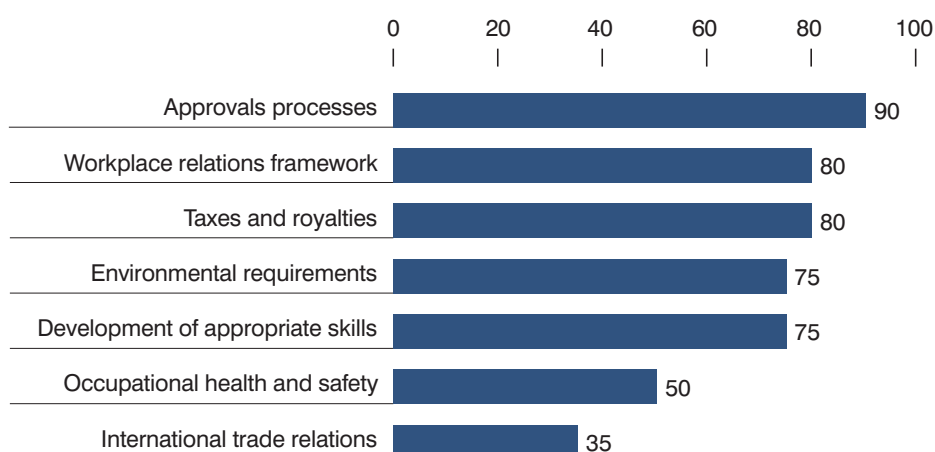
Ninety per cent of respondents ranked approvals processes as 'very important' (65 per cent) or 'important' (25 per cent). The additional category of environmental requirements was nominated as either 'very important' (40 per cent) or 'important' (35 per cent) by 75 per cent of survey respondents.

Mining companies nominated a series of inefficiencies in approvals processes and environmental regulation.

They included:

- Federal-state duplication
- Increasing average time to achieve new approvals

Chart 1 Areas nominated as 'important' or 'very important' to improving productivity
Percentage of respondents, multiple responses



Source: Survey of MCA member companies

- A prescriptive regulatory approach that imposes onerous reporting requirements, rather than risk-based assessments of the proponent's ability to manage environmental impacts
- The need to continually re-educate regulators owing to the frequent turnover of staff
- Complex and time-consuming secondary approvals, which persist even after production has commenced.

Eighty per cent of company respondents nominated taxes and royalties as an area of policy priority, with 45 per cent citing this area as 'very important' and 35 per cent citing it as 'important'.

Two themes emerged from respondents. Firstly, that the number of tax increases individually may be regarded as small but the collective is large. And secondly, that instability in tax arrangements has added to investment uncertainty.

Box 1 Examples from statements from survey respondents on approvals processes

“Average time to achieve new approvals has increased from less than 12 months to more than four years due largely to increasingly onerous approvals requirements and increased politicisation of the approvals process.”

“Environmental requirements are limiting productivity in the case where previous approvals impose conditions that are now less relevant and are directing effort to maintain compliance. This also impacts productivity of the regulator where ongoing reports are required to be reviewed and responded to. The other area where productivity is affected is where overlap remains in jurisdictional regulation and assessment.”

“For new operations the approvals process can be challenging, complex and very time consuming – not just the major approvals but all of the secondary approvals, which are ongoing even after production starts.”

“Unable to bring new mines into production to meet the market in appropriate timeframe (i.e. less than two years). Result is the market window has been missed.”

“The delay in processing time by the government has caused large inefficiencies and higher costs to be incurred by the proponent whilst waiting for a decision on the [mine] modification. Overall, the uncertainty of mine approval is also an extreme deterrent to any further investment in exploration for new projects as the prospects for achieving consent for a new greenfields site are questionable, no matter its quality.”

“Continual regulator turnover means also that the education process is constant for the miner/proponent – and delays are inherent due to having to revisit old ground time and time again. Regulators require details on everything so if almost anything changes, delays in approval result.”

Source: Survey of MCA member companies

Workplace relations in more detail

Given the extensive review of Australia's workplace relations framework undertaken by the Productivity Commission in 2015, companies were asked a number of specific questions on the operation of the *Fair Work Act*.

On the broad question as to what governments should work on to improve productivity, the results mirrored those for taxes and royalties, with 45 per cent citing workplace relations as 'very important' and 35 per cent citing it as 'important'.

The average scores mask a bifurcation in responses. For some, workplace relations issues are extremely important. For others they are not. This could be explained by a number of factors including size and age of the company, commodity sector and workforce unionisation levels.

The survey questionnaire sought to gauge the extent to which the workplace relations framework has an undue adverse effect on the ability to raise productivity. Overall, 85 per cent of respondents considered the

current workplace relations framework had a negative impact on productivity. Two thirds of respondents indicated a 'slightly negative' effect, while 20 per cent indicated a 'very negative' effect.

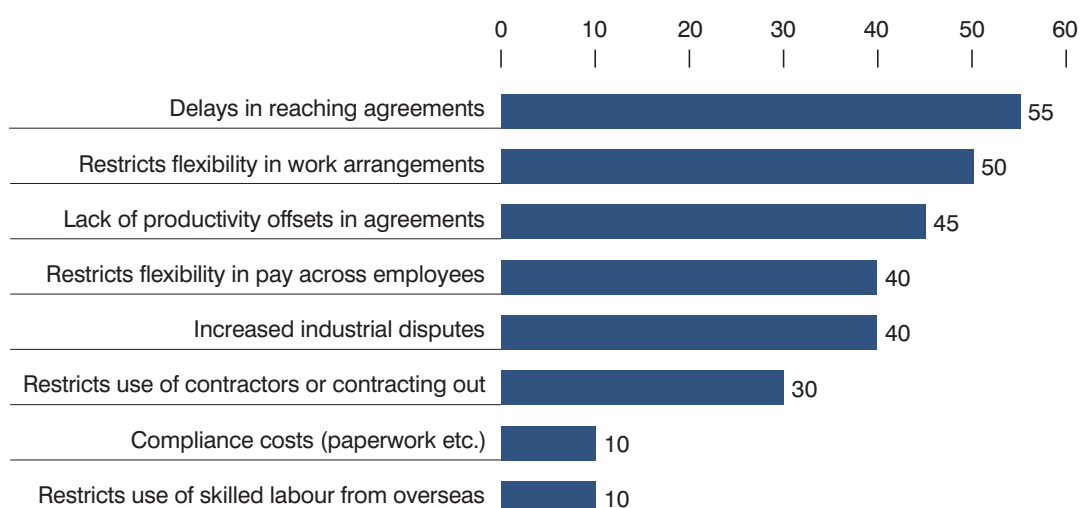
Respondents were then asked: if you consider the current framework unnecessarily impedes productivity growth, how does it do so?

The main areas identified were:

- Delays in reaching agreements
- Restrictions on flexibility in work arrangements
- Lack of productivity offsets in agreements (Chart 2).

More than half of respondents (55 per cent) nominated delays in reaching agreements as a major impediment to productivity growth. Fifty per cent of respondents nominated the system's capacity to restrict flexibility in work arrangements.

Chart 2 How is the current workplace relations framework unnecessarily impeding productivity growth?
Percentage of respondents, multiple responses



Source: Survey of MCA member companies

A common theme identified by a number of mining company respondents was the degree to which the current regime prevents businesses from reacting quickly to changes in competitive market conditions. The 'default' position of the *Fair Work Act* is viewed by a number of respondents as strongly favouring unions over direct employee engagement.

More specific comments (across multiple respondents) related to:

- The power of veto the framework gives to unions over management decisions
- The ease with which industrial stoppages can be initiated
- Insufficient provision for individual flexibility in agreements
- The complexity and high compliance costs associated with the *Fair Work Act* (including in relation to understanding award provisions, discrepancies between the National Employment Standards, awards and enterprise agreements, dealing with unfair dismissal claims etc.)

- The capacity of 'transfer of business' obligations to restrict productivity growth opportunities.

Respondents were asked to signal the relative importance of various factors that may have contributed to unnecessary productivity impediments (Chart 3).

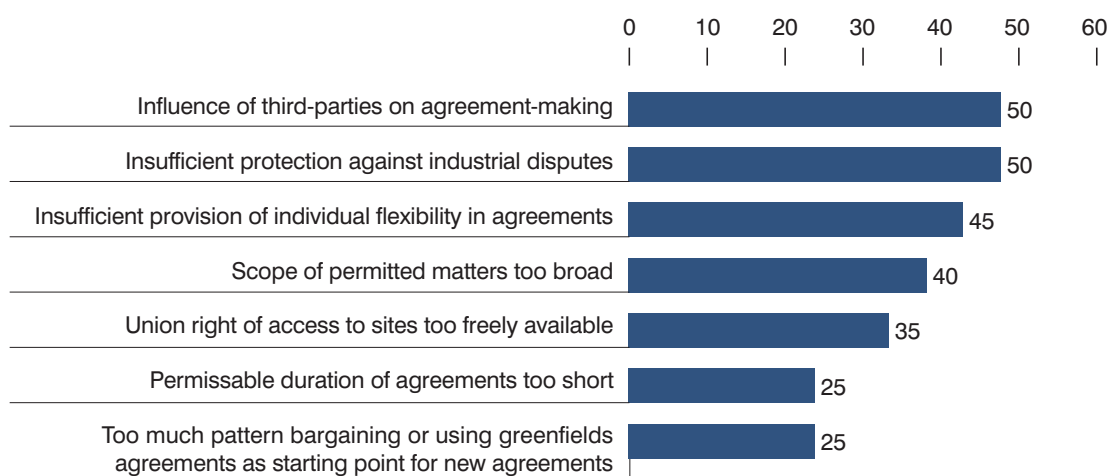
The two strongest responses were: influence of third-parties on agreement-making and insufficient provision for individual flexibility in agreements. Close behind were: insufficient protection against industrial disputes, scope of permitted matters in agreements too broad, and union right of access to sites too freely available.

The most frequently recommended changes to the *Fair Work Act* were:

- Restricting unions' right of entry
- Amending provisions for protected industrial action
- Limiting allowable matters in enterprise bargaining
- Addressing transfer of business obligations.

Chart 3 Factors contributing to identified impediments to productivity growth

Percentage of respondents, multiple responses



Source: Survey of MCA member companies