MINERALS COUNCIL OF AUSTRALIA

SUBMISSION TO THE PRODUCTIVITY COMMISSION'S INQUIRY INTO PUBLIC INFRASTRUCTURE

DECEMBER 2013

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ABOUT THE MCA

The Minerals Council of Australia is the peak industry organisation representing Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, and environmentally and socially responsible attuned to its communities' needs and expectations.

MCA member companies produce more than 90 per cent of Australia's annual minerals output and account for almost 60 per cent of Australia's merchandise exports.

The minerals industry recognises that its past success and future prosperity is dependent on a sound and expanding national economy, an educated and cohesive society and a sustainable natural environment.

For this reason, the minerals sector supports public policy settings aimed at the following objectives:

- sustainable economic growth characterised by low inflation, low interest rates, fiscal prudence, and a skilled and productive workforce;
- a sound, fair and stable society, where effort is encouraged and rewarded and a helping hand extended to those in need; and
- a sustainable natural environment, reflecting national consistency and balance in policy settings.

The MCA recognises that the future of the Australian minerals industry is inseparable from the global pursuit of sustainable development. Through the integration of economic progress, responsible social development and effective environmental management, the industry is committed to contributing to the sustained growth and prosperity of current and future generations.

The Australian minerals industry is an industry of considerable size and economic and social significance, benefiting all Australians both directly and indirectly.

EXECUTIVE SUMMARY

The mining boom has entered a new phase of increasing production and exports, which offers long-term economic benefits to the Australian community. The previous two phases of the mining boom were characterised by record commodity prices and levels of investment, which generated large and comparatively easy gains to national income.

In contrast, the current phase of the mining boom is more constrained and demanding, being marked by lower commodity prices, cost escalation, capital discipline and declining investment – but also higher levels of output.

Whereas the benefits of the price and investment phases of the mining boom were compressed into one decade, the revenue streams from the production phase will be realised over multiple decades.

The fact that the mining investment boom is at or near its peak should not divert attention from the current pipeline of projects. Ongoing net positive investment is essential to supporting future flows of mining production and exportation, and the benefits associated with them.

The difference between the likely and possible scenarios for resource investment (as assessed by the Bureau of Resource and Energy Economics) represents an enormous opportunity for Australia. Should this opportunity be realised, Australia would accumulate an additional stock of committed resource projects worth $95 billion in 2018.

However, rising construction and operational costs – notably labour costs – are the key risk to new mining projects in Australia. Further, our mining projects are increasingly prone to delays, which exacerbate costs and undermine future investment.

Australia's comparative advantage in minerals has never been simply given; rather, it has always depended on continual improvements in industry productivity and appropriate tax and regulatory settings. However, the cyclical downturn in global commodity prices has brought the imperative of cost competitiveness into sharp relief.

The minerals industry has a vital interest in efficient, stable and risk-based regulatory systems that meet policy objectives without imposing unnecessary cost burdens. The MCA advocates the principle of minimum effective regulation, whereby regulation can both meet its policy objectives and do so at least cost.

Australia needs a new wave of regulatory reform to improve productivity, cost competitiveness and enterprise flexibility. Priority priorities for encouraging the more efficient provision of both public and private infrastructure include, but are not limited to:

- streamlining processes for project approvals;
- promoting greater flexibility in workplace agreements, particularly those relating to greenfield projects;
- removing unnecessary local content reporting requirements; and
- developing a strategic, cross-government approach to the provision of social infrastructure, to ensure that industry is not left to assume a "proxy role of government" in regional and remote communities.

The urgency with which policymakers tackle the nation's structural competitiveness problem will determine if Australia secures maximum returns from future minerals resource development.

1. AUSTRALIA'S MINING BOOM: THE NEXT PHASE

The mining boom has entered a new phase of increasing production and exports, which offers long-term economic benefits to the Australian community. The previous two phases of the mining boom were characterised by record commodity prices and levels of investment, which generated large and comparatively easy gains to national income.

In contrast, the current phase of the mining boom is more constrained and demanding, being marked by lower commodity prices, cost escalation, capital discipline and declining investment – but also higher levels of output.

According to the Bureau of Resources and Energy Economics (BREE), export volumes of iron ore (Australia's largest export) will rise to 650 Mt in 2013-14, a 23 per cent increase from 2012-13. Nominal earnings from iron ore exports are forecast to total $82 billion in 2013-14, a 44 per cent increase on the previous year.[1] BREE's five-year outlook has Australia's iron ore exports growing to 836 Mt and $87 billion in 2017-18, with average annual growth rates of 10 and 6 per cent, respectively.[2]

BREE forecasts that export volumes of coal (Australia's second-largest export) will rise to 355 Mt in 2013-14, an increase of 6 per cent from 2012-13. Coal exports in 2013-14 are forecast to be worth $41 billion in nominal terms, also a 6 per cent annual increase.[3] BREE expects that coal exports will expand to 455 Mt and $59 billion in 2017-18, with average annual growth rates of 7 and 4 per cent, respectively.[4]

Whereas the benefits of the price and investment phases of the mining boom were compressed into one decade, the revenue streams from the production phase will be realised over multiple decades. As BREE explains:

> *While the capital inflows associated with investment phase of the mining boom have brought substantial economic benefits to Australia they are realised over a relatively short period of time. The economic benefits of the production phase may not be as large as the investment phase per year, but they are expected to last for considerably longer.*[5]

Reserve Bank Governor Glenn Stevens has also emphasised this point:

> *Let's be clear that Australians will continue to benefit from the higher level of resources output for a very long time. There has been a large lift in the global demand for natural resources that our country happens to have in abundance. Most people agree that the **rate of growth** of that demand will be lower in future than it has been in recent years; some say much lower. But the lift in the **level** of demand we have already seen is permanent enough, and large enough, to have a quite persistent effect on our economy. Australian production is meeting much of the additional global demand for iron ore and, prospectively, natural gas. This will be at prices that, although lower than prices observed today, are likely to be higher than the average seen for many years up to the middle of the past decade. Even allowing for the high degree of foreign ownership in the resources sector, flows of income accruing to Australians, through a few different channels, will be high over a long period.*[6]

The lasting and positive impact of the mining boom is illustrated by Treasury's projections of Australia's terms of trade in the 2013-14 Mid-Year Economic and Fiscal Outlook. Taking into account the three phases of the boom, Treasury expects a long-run terms of trade that settles (by 2019-20) at the historically high level observed in 2005-06.[7] Treasury also notes that "With the resources boom transitioning to the production phase, resources exports will begin to make up a greater share of real GDP growth."[8]

The fact that the mining investment boom is at or near its peak should not divert attention from the current pipeline of projects. Ongoing net positive investment is essential to supporting future flows of mining production and exportation, and the benefits associated with them.

BREE's October 2013 update of resources and energy major projects reveals that there are 47 minerals projects at the Committed Stage, which are collectively worth around $45 billion. There are a further 146 projects in the Feasibility Stage and 83 in the Publicly Announced Stage, with combined estimated values of approximately $143 billion and $105 billion, respectively (Table 1).[9]

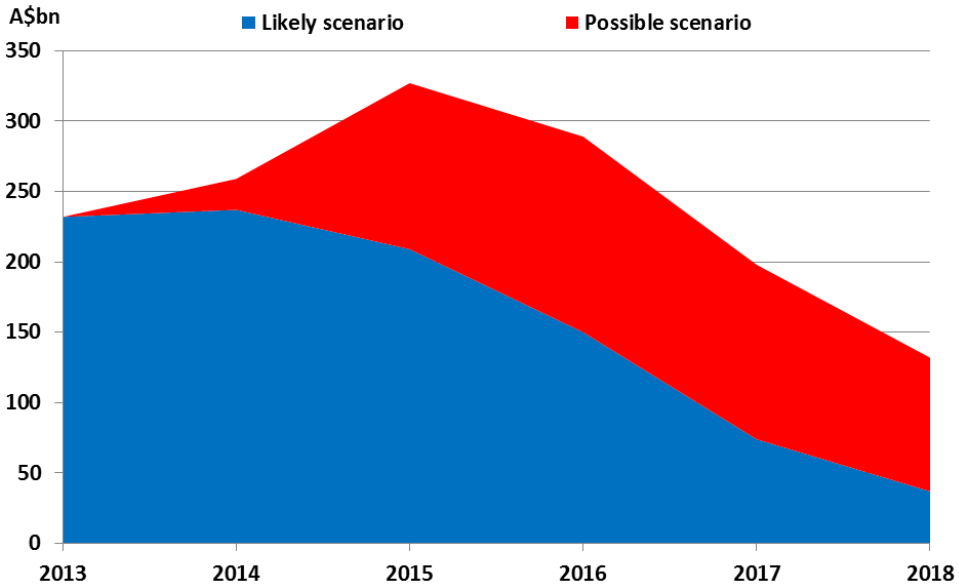
Table 1: Summary of mineral projects in the investment pipeline, October 2013

Commodity	Publicly announced		Feasibility Stage		Committed	
	No.	Value Range ($m)	No.	Value ($m)	No.	Value ($m)
Aluminium, Bauxite, Alumina	3	1 000 – 2 000	3	2 046	0	0
Coal	19	16 885 – 19 635+	50	54 123	15	11 383
Copper	5	10 200 – 11 451+	9	3 200	2	343
Gold	9	1 065 – 1 815	10	2 152	4	516
Iron ore	19	35 784 – 55 784+	22	39 614	9	17 346
Lead, Zinc, Silver	2	65 - 315	3	487	4	1 933
Nickel	4	2 000 – 4 000	7	5 883	0	0
Uranium	5	2 000 – 4 000	2	529	1	98
Other commodities	7	1 371 – 2 371	30	9 569	3	1 495
Minerals Infrastructure	10	14 750 – 23 500	10	25 160	9	11 724
Total	83	85 120 – 124 871+	146	142 763	47	44 838

Source: Bureau of Resources and Energy Economics
+ Value of Publicly Announced projects given in cost range with projects over $5 billion having no upper bound.

BREE's new model analysing the pipeline of total resource investment in Australia (i.e., minerals plus oil and gas) sets out two scenarios based on the probability that a project at the Publicly Announced or Feasibility Stage will proceed to Committed Stage in the next five years. According to BREE, a "likely scenario" would see committed resource investment moderate from $232 billion in 2013 to about $37 billion in 2018 (Chart 1).[10]

Chart 1: Alternative resource investment scenarios, by value



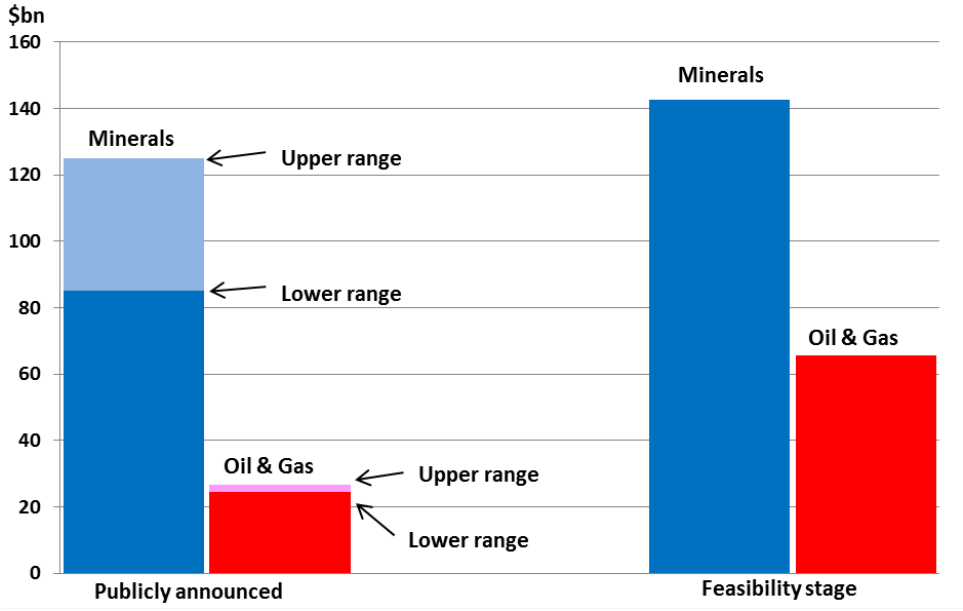
Source: Bureau of Resources and Energy Economics

An alternative scenario would generate a higher level of committed investment if Australia can maximise the number of resource projects which currently rate as "possible". From 2014, the value of projects assessed as possible increases substantially. If all projects assessed as possible progress to the Committed Stage, committed resource investment could peak at around $327 billion in 2015 before declining to around $198 billion in 2017 and $132 billion in 2018.

The difference between the likely and possible scenarios represents an enormous investment opportunity for Australia. Should this opportunity be realised, Australia would accumulate an additional stock of committed resource projects worth $95 billion in 2018.

The bulk of resources projects (including infrastructure projects) at the Publicly Announced and Feasibility Stages are minerals projects (Chart 2). Minerals account for a total of 146 Feasibility Stage projects valued at $143 billion (i.e., 90 per cent of all Feasibility Stage resource projects and 68 per cent of their combined value). Both in terms of number and value, coal mine projects make up the largest share: 50 projects with a total value of $54 billion. Nevertheless, investment potential is broadly distributed across a range of mineral commodities.

Chart 2: "Uncommitted" resource projects at October 2013



Source: Bureau of Resources and Energy Economics

The extent of Publicly Announced projects is also significant – 83 projects with a total lower range value of $85 billion and an upper range value of $143 billion (i.e., 90 per cent of all Publicly Announced resource projects and 87 per cent of their total average value). These projects are broadly distributed across a range of mineral commodities.

An important feature of the future resource investment pipeline is the material importance of small and medium-sized minerals projects (where small projects are valued at up to $500 million and medium-sized projects are valued between $500 million to $1 billion).

In the six months to October 2013, more "mega projects" (valued in excess of $5 billion) in liquefied natural gas moved through to the Completed Stage than were added to the investment pipeline. All five resource projects that progressed to the Committed Stage (four of which were minerals projects) ranged from $83 million to $766 million in value. With regard to "uncommitted" projects, small and medium-sized projects together account for about one quarter of the value of both Feasibility Stage and Publicly Announced Stage projects in the minerals industry. Though still less than the potential investment

attributed to large-scale projects, these smaller projects offer important economic gains, especially to local communities.[11]

BREE notes that there are a number of challenges in realising the opportunities for resource investment, including "rising construction and operating costs, a moderation in commodity prices, and an increasing number of alternative resource and energy investment options in other countries."[12]

Nevertheless, BREE concludes that:

> *[T]here remains significant opportunity for additional investment in Australia's resources and energy sectors. While market conditions are expected to remain challenging, **in the right commercial and policy environment** there is the potential for committed investment to remain at high levels for several more years.*[13]

In summary, there is still significant future investment and export growth to be unlocked in coming years across a large number of projects. Australia needs to be "hungrier" in bringing on projects of all sizes, including small and medium-sized mining projects. The urgency with which policymakers tackle the nation's structural competitiveness problem will determine if Australia secures maximum returns from future minerals resource development.

2. THE CHALLENGE OF ESCALATING COSTS

Australia's comparative advantage in minerals has never been simply given; rather, it has always depended on continual improvements in industry productivity and appropriate tax and regulatory settings. However, the cyclical downturn in global commodity prices has brought the imperative of cost competitiveness into sharp relief. As BIS Shrapnel explain:

> *Costs are an ongoing issue within the mining industry. When commodity prices were at record highs, rising capital costs could be absorbed because the returns on certain projects were so high. However, following the recent price declines (in particular coal and iron ore), there have been a raft of project deferrals citing the high cost environment which is challenging the feasibilities of projects.*[14]

Indeed, BIS Shrapnel regards rising construction and operational costs as the key risk to new mining projects:

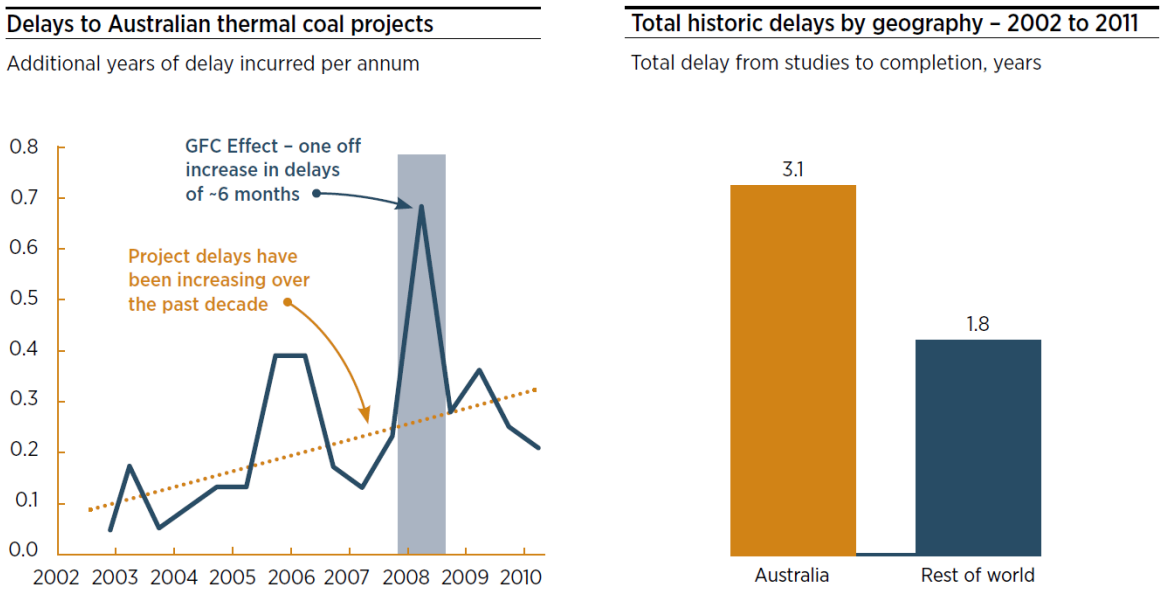
> *Rising costs – both in terms of construction and operations pose the largest risk to the industry. There is a legitimate threat that the development of greenfield developments will shift away internationally. Construction processes have already been modified to counter high local costs with a greater reliance on modular construction with prefabricated structures imported from Asia but more needs to be done … The other concerning trend is the upward movement along global production cost curves which has resulted in mine closures and asset sales. This could be the cue for miners looking overseas in search of higher returns for investment opportunities.*[15]

According to research by Port Jackson Partners, more than half of Australia's existing mines across thermal coal, metallurgical coal, copper and nickel have operating costs above global averages. And on capital costs, whereas a few years ago Australia could build iron ore and coal projects as cheaply as our competitors, now iron ore projects are 30 per cent more expensive than the global average, while for thermal coal the figure is 66 per cent. Labour costs are rising faster than the national average and are amongst the highest in the world. Energy and transport costs are also much higher in Australia than in competitor countries.[16]

Further, Australian mining projects are increasingly prone to delays, which exacerbate costs and undermine future investment. For example, the average Australian thermal coal project is now delayed an additional 1.3 years relative to projects elsewhere (3.1 years compared with 1.8 for the rest of the world) and each year the average delay increases by a further 3-4 months (Chart 3).[17]

Delays reduce the real value of future revenues from new projects, by lengthening the time between the initial investment in acquisitions and study costs on the one hand, and the start of production on the other. In addition, unexpected delays complicate deals with suppliers and create perceptions of investor risk.[18]

Chart 3: Project delays: thermal coal case study[19]



* Average new delays in each year based on ABARE announced date – may differ from actual delays incurred/announced by operator

Source: ABARE; Wood Mackenzie; PJPL analysis

In its *World Energy Outlook 2013,* the International Energy Agency observes that Australia has rapidly become one of the most expensive places to build a coal mine:

> *The currencies of most coal-exporting countries have risen against the [US] dollar in the past three years, especially the Australian dollar (A$). With rising labour costs, this has meant that Australia has shifted, in terms of US dollars, from a mid-cost supplier to being a high-cost supplier within a few years. With increases in other operating costs and construction costs, both existing and new projects are under strain and some new projects are experiencing serious delays. Some $30 billion of new coal mining and infrastructure (notably port expansions) in Australia have been delayed or cancelled in the last year.*[20]

Further, the IEA point out that the Australian coal industry cannot rely on a depreciating Australian dollar to restore the cost competitiveness of local projects:

> *Cutting costs to remain competitive in the international market is a key challenge for Australian coal exporters over the Outlook period [i.e., to 2035]. A recent fall in the exchange rate by around 15% … will certainly improve profitability, but the currency remains well above its historical level, with continuing impacts on investment projects … [N]ew coal mines have become more capital-intensive in recent years, due to escalating costs for mining equipment and construction labour. Australia is now one of the most expensive places to build a mine.*[21]

BREE reports that minerals exploration expenditure decreased by 24 per cent in 2012-13 (relative to 2011-12) to $3.1 billion, with declines across all minerals commodities. In the same period, total resource exploration expenditure at greenfield sites fell by 20 per cent in 2012-13 to $1.04 billion, with the number of metres drilled decreasing by 26 per cent to 2.7 million. Despite this drop in activity, the cost per metre drilled at greenfield sites increased by 9 per cent in real terms (Table 2).[22]

Table 2: Cost per metre drilled for resource exploration, 2002-04 to 2012-13 (in 2013-14 Australian dollars)

	2003 –04	2004 –05	2005 –06	2006 –07	2007 –08	2008 –09	2009 –10	2010 –11	2011 –12	2012 –13
Greenfield site	150	183	213	223	295	346	304	321	351	382
Brownfield site	205	196	226	251	283	300	286	324	368	367

Source: ABS.

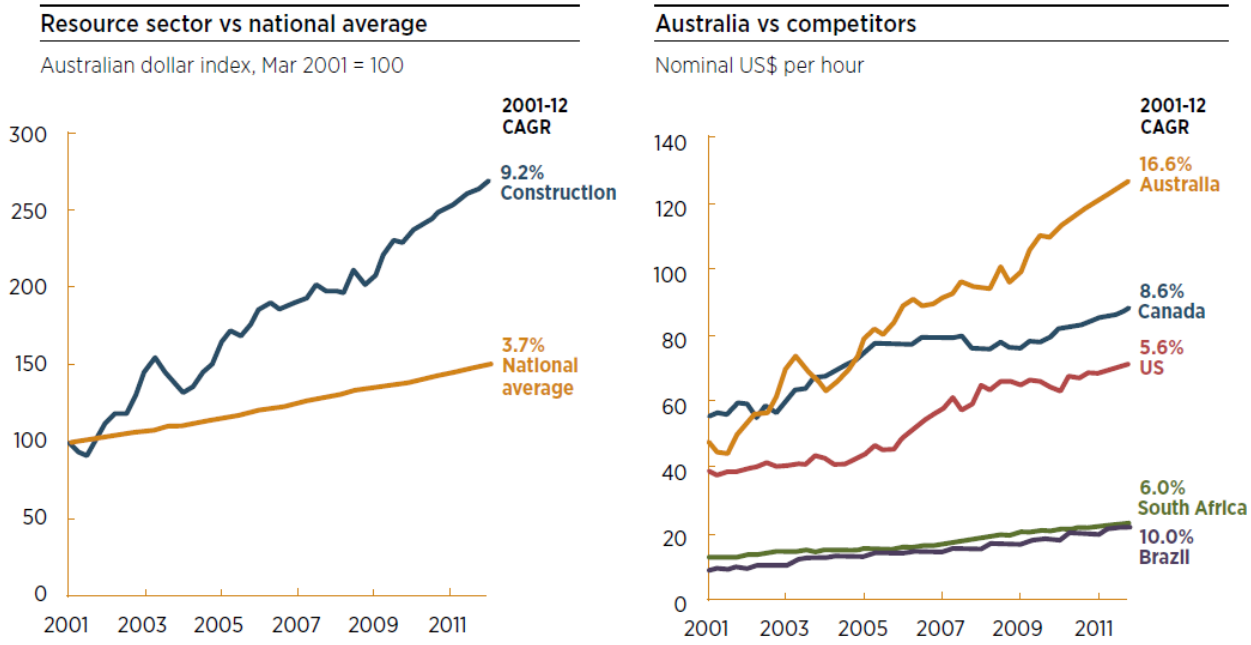
BREE draws attention to the potential long-term cost of lower exploration expenditure:

> *[R]educed exploration may have longer term implications, as known deposits are depleted through mining, identification of new resources is required to sustain future output. Therefore, lower exploration effort today could limit the ability to develop new projects when world demand supports the next wave of project investment.*[23]

BIS Shrapnel expects a resurgence in minerals exploration expenditure over the next five years, primarily owing to industry efforts to reduce costs in the case of coal, a strong price outlook for iron ore and copper, and steady price growth for lead, zinc and nickel. Expenditure on uranium exploration will be stimulated by the Queensland Government's move to lift its ban on uranium mining and favourable expected prices. BIS Shrapnel forecasts a flattening of minerals exploration prices, which they attribute to weaker overall commodity prices and surplus drill rig capacity, especially in key mining sectors such as coal, gold and nickel.[24]

Port Jackson Partners observes that in Australia, labour costs contribute approximately 50 per cent of total construction costs for bulk commodities and 30-50 per cent for a typical base metal mine. Australian construction wages grew at 9 per cent a year between 2001 and 2011 and Australian engineering wages are 60 per cent above the global average in US dollar terms (Chart 4).[25]

Chart 4: Resource and energy sector project construction wages[26]

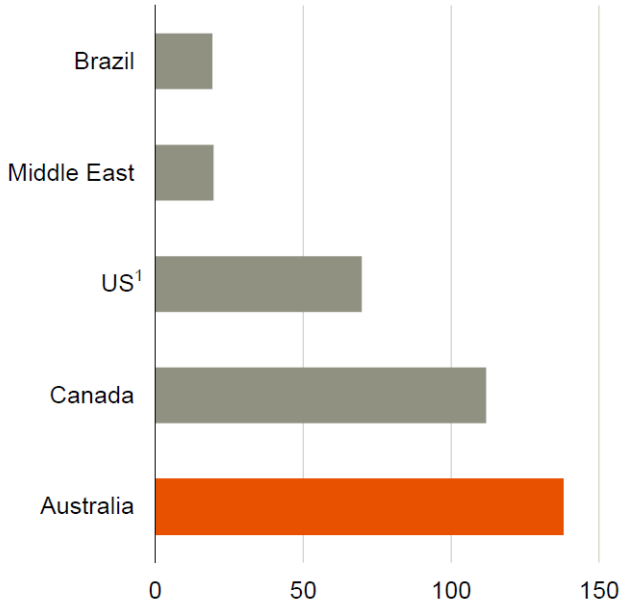


* Australian and competitor wages are all-in hourly rates. Australian all sector national average is the total hourly rate of pay national labour index

Source: IPA; ABS

Similarly, BHP Billiton has presented data that illustrates the internationally high cost of Australian construction labour (Chart 5).[27]

Chart 5: Construction all-in wage rate mean ($US)



1. US refers to US Gulf Coast.
Source: Independent Projects Analysis Inc., Engineering Procurement and Construction Market Forecast, August 2013.

Looking to the next five years, BIS Shrapnel forecast increases in mining and construction wages of 4.2 and 3.7 per cent per annum (in Wage Price Index terms) and a weakening of construction labour productivity. Conversely, BIS Shrapnel expect that mining labour productivity will improve significantly and that technological advances and improved managerial practices will be implemented.[28]

With respect to other variable input costs, BIS Shrapnel forecast (between 2013-14 and 2017-18) a decline in ready-mixed concrete manufacturing prices (-0.3 per cent per annum), a slight easing of Australian fuel prices and a contraction in plant and equipment hire rates (-0.1 per cent per annum).[29]

Clearly, containing labour costs will be a high priority for the Australian minerals industry in coming years.

3. POLICY PRIORITIES

The minerals industry has a vital interest in efficient, stable and risk-based regulatory systems that meet policy objectives without imposing unnecessary cost burdens. The MCA advocates the principle of minimum effective regulation, whereby regulation can both meet its policy objectives and do so at least cost.

Australia needs a new wave of regulatory reform to improve productivity, cost competitiveness and enterprise flexibility. Priority priorities for encouraging the more efficient provision of both public and private infrastructure include, but are not limited to:

- streamlining processes for project approvals;
- promoting greater flexibility in workplace agreements, particularly those relating to greenfield projects;
- removing unnecessary local content reporting requirements; and
- developing a strategic, cross-government approach to the provision of social infrastructure, to ensure that industry is not left to assume a "proxy role of government" in regional and remote communities.

3.1 Streamlining processes for project approvals

The Productivity Commission recognises that there is scope for making processes for project approvals less onerous, while still meeting environmental objectives:

> *Australia's federal system of government, where responsibilities for matters (such as environmental protection) span all levels of government, gives rise to overlap and duplication, which the Commission considers can be greatly reduced without lowering the quality of environmental outcomes.*[30]

The MCA supports most of the Productivity Commission's recommendations to reform Australia's development assessment and approval system, including:

- instituting a framework for "one project, one assessment, one decision", which includes strengthening bilateral assessment and approval agreements;
- limiting the use of "stop the clock" provisions;
- improved coordination between State/Territory regulatory agencies;
- institutional separation of environmental policy development from regulatory and enforcement functions
- enshrining the principle that Ministerial approval — unless a deemed approval — should not be reviewable by review bodies other than on judicial review grounds;
- establishing statutory timelines, together with appropriate safeguards, for key decision points;
- expanding the use of Strategic Assessments and Plans where practical to do so; and
- requiring that approval authorities publish reasons for their approval decisions and conditions.[31]

However, the MCA does <u>not</u> support the Productivity Commission's recommendations that:

- *"Governments should ensure legislation enables regulatory agencies to amend conditions and offsets, provided that there is a strong case, the proponent is consulted and the proposed change is publicly announced."*
- *"Governments should ensure that third parties are able to initiate legal action to enforce the conditions that have been placed on primary approvals, and that legal costs do not present a barrier to legitimate actions of this type being brought by individuals or bona fide community groups."*[32]

The implementation of these recommendations would undermine efforts to improve the predictability, timeliness and cost-effectiveness of project approvals.

The growing burden of overlap and duplication in approvals processes is indicated by a July 2013 study of regulations influencing exploration and mining activity, conducted by consultancy firm URS and commissioned by the MCA.[33] This analysis identifies a considerable increase in regulation compared with an earlier cross-jurisdictional scorecard in 2006. Across all Australian jurisdictions, new and/or amended legislation included:

- six new pieces of legislation;
- six replacement Acts; and
- more than 60 sets of additional amendments to primary legislation governing approval processes and more than 50 sets of amendments to subordinate legislation.

Despite the impost placed on project proponents, there is little, if any, evidence these additional processes have improved environmental outcomes. The complexity of project assessment has increased in part as a result of a plethora of technical and administrative changes that seek to make minor adjustments to the law, regulatory processes, fees and charges. These changes tend to be politically reactive and considered in isolation from existing regulations. Further, the increase in regulatory processes has been compounded by the imposition of additional independent advisory panels at both State and Commonwealth levels.

The consequence is additional duplication and regulations with poorly defined objectives and outcomes. The extent of regulatory "churn" is highly destabilising for business and undermines community confidence in the rigour of existing processes. The extent of this regulatory overlap and complexity is one of the main reasons that Australian mining projects are increasingly subject to lengthy and unexpected delays (refer to Section 2 above).

The minerals industry is committed to working closely with the Commonwealth Government on its plan to streamline environmental approvals through a "One Stop Shop", consistent with the shared objective of reducing unnecessary regulation and costs without compromising high environmental standards.

A number of reforms to the *Environmental Protection and Biodiversity (EPBC) Act* can be pursued within existing legislative provisions, including through administrative changes in the way the Act is applied and by more fully utilising existing mechanisms. However, wider reforms are needed to better streamline approval processes for "brownfields" projects and expansions, and ensuring Commonwealth resources are used to build biophysical data to better inform decision making regarding land development.

The MCA recommends the streamlining of strategic land use and planning, where the Commonwealth's role is limited to oversight and enforcement with assessment and approvals processes devolved to the States/Territories. Where bilateral agreements between the State/Territory and the Commonwealth are entered into, these should be supported by robust accreditation standards developed in consultation with the States/Territories. The Commonwealth should audit compliance of performance under those agreements.

Accordingly, Commonwealth resources should be directed towards strategic matters including:

- monitoring and reporting of EPBC listed entities;
- investing in the collection and integration of environmental data;
- resourcing of strategic programs to address the drivers of national biodiversity decline;
- supporting and resourcing regional environmental planning (strategic/bioregional planning); and
- championing improved and harmonised State and Territory processes.

In contrast, all States and Territories should have full responsibility for undertaking environmental assessment and approvals under the terms of the bilateral agreements and in line with agreed accreditation standards. Further, States and Territories should seek to consolidate all jurisdictional approval processes for the minerals industry into a single co-ordinated process. States should also issue a consolidated set of conditions, incorporating all intra-governmental and intergovernmental requirements. Finally, States should administer any offsetting requirements under the project conditions.

The MCA strongly advocates long-term strategic land use planning that incorporates all potential land use values for a given area. This is of particular importance as land use activities continue to increase in complexity and scale. Without a clear and consistent strategic direction, efficient and value based sustainable development is at risk, leading to reactive and possibly inconsistent regionally subjective management.

Recommendations

The MCA recommends the Commonwealth Government:

- works with State and Territory Governments and relevant stakeholders to develop a long-term strategic approach to regional land use planning and access;
- moves promptly to expand bilateral agreements (assessments and approvals) with the States and Territories to reduce compliance costs and delays in approval processes;
- effectively resources the COAG commitment to a comprehensive regulatory reform process, particularly focused on improving red tape reduction and duplication associated with project approval processes and related monitoring and reporting requirements, in line with the findings of the Productivity Commission Review; and
- works with State and Territory Governments to realign the EPBC Act in order to fill existing gaps in strategic natural resource management planning which currently exists, provides businesses with longer term certainty about areas for investment (with reduced risk), reduces regulatory overlap and provides more consistent and appropriate service delivery from the Commonwealth in biodiversity protection.

3.2 Industry policy

The minerals industry seeks a framework of workplace law and regulation that promotes cooperative and productive workplaces, recognising that a genuine, sustainable safety net and appropriate protections against exploitation or discriminatory conduct are important elements of such a framework.

Choice and flexibility in workplace arrangements on a platform of mutual respect and interest are critical to catering for the inherent operational diversity within and between projects across the minerals industry. Specific considerations include:

- the need to recruit skilled professionals and tradespeople to work in remote and difficult locations;
- the need to cater for vastly different operational requirements and operating parameters within and between enterprises;
- the challenges of operating in an inherently hazardous industry which requires absolute and unconditional commitment to the management of risks to ensure the safety and health of its workforce; and
- the need to provide flexible working arrangements to address structural and cultural barriers that have historically limited the participation of women and Indigenous people in the industry.

The *Fair Work Act* has reduced choice and flexibility in employment arrangements, created a more adversarial bargaining system and dragged more issues within the remit of an industrial tribunal, rather than be under the sway of those with a direct stake in the success of the enterprise or workplace. The

stated objectives of the Act are to ensure arrangements are "fair to working Australians, are flexible for businesses, promote productivity and economic growth for Australia's future economic prosperity". In practice, the *Fair Work Act* has opened the door to a raft of claims and activities that go beyond reasonable trade union concerns with such core matters as wages and conditions, fair treatment of employees (including union members) and workplace safety.

One area where the *Fair Work Act* has been especially harmful to the mining industry is greenfield negotiations where, unlike the previous workplace relations regime, unions have mandatory involvement under the Act. A degree of certainty about the near-term industrial environment (including employment conditions) is vital in providing investors with confidence in Australia's policy settings, especially given the capital requirements and risks associated with new mining projects. Where a competitive and timely greenfield agreement cannot be negotiated, the project proponent carries the risk of starting up with no security of terms and conditions and no protection against industrial action.

As Henry Ergas and Joe Owen put it in a public policy analysis commissioned by the MCA:

> *The FWA's greenfield agreement framework removed options previously available to employers, including the ability to negotiate employer-only agreements or to offer individual statutory agreements on greenfield sites. The result has been enhanced capacity for unions to hold major projects to ransom causing project delays and significant cost blow-outs.*[34]

According to a survey of 52 mining companies commissioned by the Australian Mines and Metals Association, 30 per cent had attempted to negotiate a greenfield agreement since the commencement of the *Fair Work Act.* Of these respondents, more than half (54 per cent) encountered difficulties in concluding a greenfield agreement, with unions often refusing to negotiate until demands relating to a separate, brownfield agreement were met.[35]

Moreover, 40 per cent of surveyed companies who had negotiated a greenfield agreement said that union conduct had caused delays on scheduled mobilisation and start-up dates. Half of this group reported that the delays had been major.[36]

In addition to rigidities imposed by the *Fair Work Act,* new mining projects are unnecessarily hampered by unnecessary local content reporting requirements.

Mining projects generate substantial benefits for Australian industry. Market realities dictate that the minerals industry has a strong interest in the development and maintenance of a vibrant and competitive domestic supply base. The exploration, mining and processing of minerals underpin vitally important supply and demand relationships with domestic manufacturing, construction, financial, legal and other professional services, process engineering, property and transport sectors.

According to the Western Australian Government, during the first nine months of 2012 the local content of operating projects worth $15 billion was 95 per cent; for expansion contracts worth $21 billion the equivalent figure was 84 per cent. Unfortunately, however, the contribution by mining to local manufacturing is underestimated in the public debate.

Recent industry policy debates have operated on a mistaken premise about the scale of Australian industry participation in minerals projects. The result has been to encourage more interventionist policy approaches, notably through the use of Australian Industry Participation (AIP) plans – a program designed to increase local industry purchasing and linked traditionally to obtaining tariff concessions on imported capital goods under the Enhanced Project By-Law Scheme.[37]

The most recent manifestation of a regulatory solution in search of a problem was the *Australian Jobs A*ct passed in June 2013. This further increased reporting requirements and introduced major new obligations on companies with large projects, including the need to employ a dedicated officer to implement AIPs and to report to an external authority on implementation.

The legislation requires that plans be provided to a third party (the Australian Industry Participation Authority) before projects have completed full internal due diligence and fiduciary responsibility requirements. The minerals industry is concerned that this is both impractical and potentially at odds with continuous disclosure obligations. Some projects never pass the scoping or Feasibility Stage for a range of commercial or technical reasons or due to factors associated with a "social licence to operate" (such as environmental or community reasons). Yet the new laws place legal obligations on companies to draw up a detailed action plan on domestic purchasing, creating the prospect of companies committing considerable time and expense for no return should the project not proceed.

Time and resources diverted to dealing with such obligations distracts from core challenges of cost competitiveness, productivity and innovation.

Recommendations:

The MCA recommends that the Commonwealth Government:

- moves promptly to develop legislative reforms based on commitments to:
  - ensure union right of entry provisions are in line with earlier rules; and
  - provide for genuine access to flexibility by ensuring that individual flexibility agreements cannot be restricted in an enterprise agreement and that the notice period to terminate an individual flexibility agreement is extended to 13 weeks;
- continues work to re-establish the Australian Building and Construction Commission; and
- repeals the *Australian Jobs Act* and streamlines the operation of the Enhanced Project By-law Scheme.

3.3 Social infrastructure

The minerals industry is a significant economic contributor to regional and remote Australia, and a critical catalyst for other economic activity. While the industry accepts that it has a key role to play in regional development, this can only be effective and sustainable as part of a long-term partnership where governments accept their responsibilities for infrastructure provision and service delivery for all Australian citizens.

Despite a slowdown in investment growth, it is expected that demand for minerals will continue to drive economic opportunity in mining regions. Increased employment opportunities associated with resource development are stimulating resident population growth and diversity in mining regions. Analysis by KPMG of 2011 census data from nine mining regions in Australia (commissioned by the MCA) concludes that in mining regions there is an average annual resident growth rate of 1.5 per cent, which is in line with national growth trends.[38]

Anecdotal evidence suggests that while more people would like to move to mining regions, the availability of affordable, quality housing and the strained provision of government services and infrastructure are not keeping pace with demand. The absence of effective and inclusive regional planning processes, governance arrangements, service delivery and community infrastructure continues to limit the ability of communities to share fully in the benefits of resource development.

KPMG's research for the MCA highlights some of the key challenges surrounding social infrastructure access and provision in six mining regions of Australia. Key among these are a focus on the current provision of social infrastructure and services that is not supported by adequate accommodation and/or transport services to ensure accessibility; and lack of alignment and commitment of government to fund services on an ongoing basis where infrastructure has been provided by the mining industry.

To address these deficiencies, the industry has taken on a "proxy role of government" in some regional and remote areas of Australia. In 2011-12 alone, the mining industry invested $91.9 million in

community infrastructure and services, including childcare, housing, schools, health care and training, often stepping in where governments have failed to provide remote and regional communities with the core citizenship entitlements enjoyed by those in capital cities and peri-urban areas.[39]

There is, however, a need for more clarity and accountability for the provision, maintenance and management of infrastructure in remote areas and mining towns in order to facilitate sustainable futures for these communities.

Recommendation:

The MCA recommends that the Commonwealth Government works with State and Territory Governments, industry, indigenous organisations and other stakeholders to develop a strategic framework for regional development. This would aim to facilitate regional planning and community development to ensure all Australians are able to access required services in regional and remote areas in Australia. Key elements of this strategic framework would include:

- clarification of industry and government roles in regional service and infrastructure provision;
- development of a model for community infrastructure and service delivery provision that can be replicated across other industries or regions;
- appropriate and equitable funding and partnership models for resourcing of community infrastructure and services in regional and remote communities as well as sufficient staffing to enable regions to realise available opportunities;
- tools for measuring and reporting the economic flows of government revenues and expenditure into and out or regional economies;
- localised decision making and prioritisation;
- localised capacity for effective implementation and management; and
- localised accountability for outcomes.

NOTES

[1] Bureau of Resources and Energy Economics, *Resources and Energy Quarterly – December 2013,* Canberra, 18 December 2013, p. 5.
[2] Bureau of Resources and Energy Economics, *Resources and Energy Quarterly – September 2013,* Canberra, 1 October 2013, p. 12.
[3] Bureau of Resources and Energy Economics, *Resources and Energy Quarterly – December 2013,* p. 5.
[4] Bureau of Resources and Energy Economics, *Resources and Energy Quarterly – September 2013,* p. 12.
[5] Bureau of Resources and Energy Economics, *Resources and Energy Major Projects – October 2013 report,* Canberra, 27 November 2013, p. 28.
[6] Glenn Stevens, Governor of the Reserve Bank of Australia, *Economic Policy after the Booms,* Address to the Anika Foundation Luncheon, Sydney, 30 July 2013, emphases in original, but italicised rather than bolded.
[7] Commonwealth Treasury, *Mid-Year Economic and Fiscal Outlook 2013-14,* December 2013, p. 17.
[8] ibid., p. 11, emphasis removed.
[9] Bureau of Resources and Energy Economics, *Resources and Energy Major Projects – October 2013 projects listing,* 27 November 2013.
[10] Bureau of Resources and Energy Economics, *Resources and Energy Major Projects – October 2013 report,* p. 26f.
[11] ibid., pp. iii, 14.
[12] Bureau of Resources and Energy Economics, *Resources and Energy Major Projects – April 2013 report*, p. 27.
[13] Bureau of Resources and Energy Economics, *Resources and Energy Major Projects – October 2013 report,* p. 27, emphasis added.
[14] BIS Shrapnel, *Mining in Australia 2013 – 2028,* October 2013, p. xiii.
[15] ibid., p. iii.
[16] Port Jackson Partners, *Opportunity at Risk: Regaining our competitive edge in minerals resources,* report commissioned by the Minerals Council of Australia, September 2012, p. 10.
[17] ibid., pp. 10, 27.
[18] ibid., p. 69.
[19] ibid., p. 27.
[20] International Energy Agency, *World Energy Outlook 2013,* Paris, 13 November 2013, p. 152f.
[21] ibid., p. 165f.
[22] Bureau of Resources and Energy Economics, *Resources and Energy Major Projects – October 2013 report,* pp. 4, 6.
[23] ibid., p. 4.
[24] BIS Shrapnel, *Mining in Australia 2013 – 2028,* October 2013, Chapter 2, p. 117.
[25] Port Jackson Partners, *Opportunity at Risk: Regaining our competitive edge in minerals resources,* report commissioned by the Minerals Council of Australia, September 2012, p. 52f.
[26] ibid., p. 53.
[27] Mike Henry, BHP Billiton, *China: Looking Forward,* presentation to the Australian National Conference on Resources and Energy, 3 October 2013, Slide 16.
[28] BIS Shrapnel, *Mining in Australia 2013 – 2028,* October 2013, pp. 107-10, 118.
[29] ibid., pp. 112-16.
[30] Productivity Commission, *Major Project Development Assessment Processes*, Productivity Commission Research Report, November 2013, p. 13.
[31] ibid., pp. 2, 13
[32] ibid., p. 37f.
[33] Update of National Audit of Regulations Influencing Mining Exploration and Project Approval Processes, URS, 2013.
[34] Henry Ergas and Joe Owen, *Rebooting the boom: unfinished business on the supply side*, report commissioned by the Minerals Council of Australia, December 2012, p. 27f.
[35] Steven Kates, *The AMMA Workplace Relations Research Project – A Survey Based Analysis, Report 6,* August 2013., p. 44f.
[36] ibid., p. 46.
[37] There is also a related arrangement for specific capital items known as the Tariff Concession Scheme.
[38] See KPMG, *Analysis of the Long Distance Commuter Workforce Across Australia,* report commissioned by the Minerals Council of Australia, March 2013 and KPMG, *Analysis of the Changing Resident Demographic Profile of Australia's Mining Communities,* report commissioned by the Minerals Council of Australia, February 2013.
[39] See Banarra, *The Value of Community Contributions in the Australian minerals industry*, report commissioned by the Minerals Council of Australia, September 2013.