



**MARITIME UNION OF AUSTRALIA (MUA)**

**SPEAKING NOTES FOR PADDY CRUMLIN**

**ADDRESS TO AUSTRALIAN MINES AND  
METALS ASSOCIATION (AMMA) 2011 ANNUAL  
CONFERENCE**

**ROYAL PINES RESORT, GOLD COAST**

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## Speaking points for speech

### Opening remarks

- Thank Ian Smith, CEO, Newcrest Mining and AMMA President and Steve Knott, Chief Executive, AMMA for the invitation to speak
- MUA's preferred way of doing business is through reasoned dialogue, though the union won't shy away from a robust tussle if that's where we find ourselves

### The context for maritime industrial relations in the resource sector

- You could indicate that there are a unique and sometimes contradictory set of factors that surround the industrial relations and bargaining circumstances in the Australian resources industry and in particular the offshore oil and gas sector
- These include:
  - That the drivers of production outputs, be they hydrocarbons or minerals, are external to Australia and are driven by a truly globalised market that has both cyclical (supply and demand) and finite (resources are non renewable) characteristics
    - ✓ These production outputs are central to the growth centres in the global economy and are critical to consumption led world economic growth and to satisfying the aspirations of those populations involved in mass urbanisation and industrialisation in the developing world
    - ✓ The production outputs are also the source of global supply chains, that return to countries like Australia in the form of finished manufactured goods
  - There is a high level of foreign investment and foreign corporate involvement in the industry resulting in lower than desirable Australian participation
    - ✓ This also results in a range of regional management cultures being imposed on the Australian resources sector e.g. in hydrocarbons, from the European North Sea culture to the US/Gulf of Mexico culture to the Asian culture
  - The locations of production are physically isolated and disconnected from centres of population and permanent communities
  - The work environment is harsh and unpredictable
  - The work is high risk and occupational health and safety is of paramount concern to the workforce

- The majority of the labour is from out of town i.e. the workforce by and large do not live in their local community
- There is a fundamental imbalance in the market power of the employers of labour (such as supply vessel operators and labour hire companies) who negotiate the industrial instruments governing labour relations, and the principals – the oil and gas majors who tender the work that the contractors bid for
- In addition, there are differing influences at play, both domestic and international, in relation to the various stages of offshore oil and gas projects where the maritime workforce is involved, covering:
  - Exploration, which is largely influenced by an international market, and disconnected from the domestic economy
  - Construction, which is largely connected to a domestic market and the regional economy
  - Production/Production support, which exhibits the characteristics of both a domestic and international market
  - Transportation (shipping), which is largely influenced by an international market
- This mix results in a set of market and economic circumstances where the industrial players are guided by differing aspirations, differing approaches and have differing external influences, depending on which segment of a project they are involved, or the stage of a project
- Furthermore, the employers' workforce, also being the unions' membership, also exhibit some contradictory behaviours – on the one hand having less corporate and union commitment due in part to the transient nature of the work, but on the other wanting to use both corporate and trade union support to maximise their economic advancement for what is often a relatively short period of their working life in a higher than average wage environment
- This set of powerful influences is overlaid by a market driven and enterprise focussed labour relations framework in the form of the *Fair Work Act 2009*, which has as its fundamental principle, the concept of enterprise bargaining, strongly advocated by AMMA and most Australian employer organisations, which both guides and constrains the parties in what can and cannot be achieved in bargaining

### **The implications of this market**

- What then are some of the implications of this market context that flows back to the labour relations and bargaining environment?
- First and foremost, like in all market systems, there are market failures, market inequities and lags in market responsiveness. There are now exhibiting as:

- A lack of forward planning to prepare for the labour demands of resource projects, the net result being a shortage of workers across a diverse range of occupations
  - Underinvestment in the skills required to equip the required workforce with both the breadth but also the depth of skills required, but in addition, a severe inequity in the investment responsibility for the skills required, whereby the non Government responsibility for skill formation has fallen disproportionately on the sub contractors (who actually employ the labour) and not on the principal contractors and resource majors who are ultimately the major beneficiaries of profitability and commercial advantage from the sector
  - An over reliance on a fly-in fly-out workforce and severe under resourcing of community development, in housing and related community facilities to support the workforce
- Second, and as a result of the abovementioned market imperfections, simple supply and demand factors are at work – a scarcity of any factor of production will inevitably have a price implication, and this is no different with labour
  - Third, the contradictions in the interests of principals V head contractors V sub-contractors V representatives of the workforce, are all exacerbated when operating under this set of pressures and influences
  - Fourth, a scramble to truncate the reaching of the FID stage of projects where access to competitively priced capital is an important factor, which is exacerbating demands not just on labour but on all inputs to production. This capital competitive environment undermines the potential for phasing of projects, which could be important in easing the pressure on access to capital equipment such as drill rigs, supply vessels, and would enable labour to move from project to project in a functional way

### **What has been the response of employers**

- In the face of this very complex set of characteristics, the response of employers, at least in relation to offshore maritime EBA negotiations, has regrettably, been inward looking, narrow and self serving
- Furthermore, a new and disturbing phenomena is being adopted by employers - what I describe as bargaining through spin and public relations
- This approach results in distortion of facts, and leads to oversimplification of what are often complex issues, and takes no account of the environmental or cultural factors surrounding the bargaining
- Once the spin and public relations strategy kicks in it takes on a life of its own and overshadows the real negotiations – it becomes a distraction from good faith bargaining and interferes severely with the bargaining process

- Spin becomes accepted as fact and perceptions become entrenched. It creates added difficulties for the parties to climb down from adversarial positions
- This very public approach is of course being watched not only by those at the negotiating table but everyone the enterprise and in the industry, as well as in the media and in politics
- Within a short space of time everyone becomes a commentator and expert, creating a need for the media to drag our all sorts of has beens looking for a place in the sun
- During the offshore negotiations, the media dragged our such luminaries as Peter Reith, Peter Walsh, Eric Abetz and others from the HR Nichol club to comment on a negotiation they knew nothing about
- This spin and public relations strategy during the offshore negotiations led the employers into all sorts of distractions such as to:
  - Attack the legislation – which is founded on the very market based principle that the employers have always advocated and which has now been the cornerstone of labour relations in Australia for some 20 or more years – enterprise bargaining
  - Attack the Government – a fruitless exercise which ultimately diminishes the capacity to be a serious stakeholder in a change process
  - Attack the union, even when the union represents those company’s employees that in our experience consistently voted with their feet when the opportunity for taking protected action against their own employer was available – with majorities consistently above 80%
    - ✓ Although the union was pilloried for both its claim and the bargaining strategy it adopted in the 2010 negotiations, the facts are that there was only limited industrial action, confined to a small number of employers involving a small number of employees for a short time duration
    - ✓ The claim was severely misrepresented, bearing in mind that the construction allowance which excited everyone is payable to only a small number of employees in quite limited circumstances
    - ✓ Further, that element of our claim arose from a parity argument, based on the principle of comparable pay for comparable work, where the wage benchmark was set by agreed outcomes reached on project agreements, which were none of our making, but very much in the hands of AMMA and its members
    - ✓ None of the scare mongering projections about wage breakout, pushing companies to the wall or flow through to the Bluewater shipping sector have eventuated

- Claim that there is no scope for productivity offsets in bargaining, but when pressed for specific productivity measures the employers required, could do no better than suggest that they want better performance from individual workers
  - ✓ I have always agreed with employers that we have a common goal to ensure we have a highly motivated and high performing workforce, built around teamwork, but that is a management issue, a supervisory issue, a workplace cultural issue, not a matter for which an outcome can be bargained
  - ✓ For the record, none of the offshore employers proposed any specific productivity improvements at the beginning of, or during, the last bargaining round
  - ✓ It is important to that the record be put right - the MUA did not reject any proposals for productivity improvement during the last bargaining round as there were none put on the table for negotiation
- Adopted the tactics of pattern bargaining by acting in concert under the guidance of AMMA
- The approaches adopted by employers are adversarial in the extreme, are divisive, are based on the victim mentality, lack creativity, are uninspiring, destroy goodwill, undermine the foundations for productivity improvement (which requires trust and leadership) and have failed to deliver the outcomes that employers claim they require

### **The facts about productivity and maritime labour relations in the offshore oil and gas industry**

- I have always said and I have placed this view on the record, that productivity in maritime operations in the offshore oil and gas industry is not some trade off that can be bargained as a once off every 3 or 4 years
- Productivity improvement must constitute a process of continuous improvement against agreed areas or identified issues where capital and labour both stand to gain and both commit to contribute
- The idea of productivity trade-offs in our industry became irrelevant when the industry began looking at performance as a team- based, whole of enterprise approach. We've worked hard in the hydrocarbon and other industries with employers to link performance and productivity as a day-by-day proposition, not as a one-off argy bargy with winners and losers as part of the bargaining cycle
- Productivity in the offshore industry must be linked to safety and a skill formation and application of those safer practices and better skills to get the best use of the capital assets and the time available to perform functions in the

time sensitive commercial environment in which offshore maritime operations are conducted

- Issues such as lost time injury, safe working practice, competency building and efficient performance that results in the job being done safely, on time or before time and in the best interests of both the business and the workers is at the heart of the approach to productivity improvement.
- This is essentially in an industry where workers work a minimum of 12 hours a day and up to 18 hours, 7 days a week over a 5-6 week period of intensive activity in a safety critical industry. It's about better labour use with the same crew numbers servicing much more sophisticated ships - some three times bigger than in the past, often with more complex systems and capabilities than in the past
- The union noted with great interest the results of a survey conducted for AMMA in mid 2010 by Dr Steven Kates of RMIT University entitled the *AMMA Workplace Relations Research Project*. On the issue of labour productivity the responses to questions seeking information about any impact the Fair Work Act has had on labour productivity since its introduction are revealing and appears to contradict AMMA's public view (see Table 1 below). When asked to describe the current level of labour productivity at worksites, 64.6% of respondents said it was high or quite high, with only 12.3% describing productivity as quite low or low. The survey data show that labour productivity is reasonably good across the industry. Most respondents (70.8%) indicated that productivity was within the range of high or better. Only 12.3% of respondents indicated that productivity was either low or quite low.

**Table 1: Extract from RMIT Paper for AMMA on Labour Productivity**

How would you describe the current level of labour productivity at your worksite(s)?						
Labour productivity						
Extremely low	Quite low	Low	Acceptable	High	Quite high	Extremely high
(%)	(%)	(%)	(%)	(%)	(%)	(%)
0.0	4.6	7.7	16.9	30.8	33.8	6.2

**Source:** AMMA Paper: Kates, Dr Steven, RMIT University , The AMMA Workplace Relations Research Project – A Survey Based Analysis Report – June 2010

### The response of the union

- We do not resile from the fact that we bargain hard, but within the law
- Following settlement in the 2010 offshore enterprise negotiations however, we made it clear to the industry that unless new approaches were adopted, and assuming market conditions remained buoyant, another slugfest remains a

likely prospect in 2012 and 2013 when the current EBA comes up for renegotiation

- We have doubts as to the sustainability of the current bargaining approach, despite our confidence to once again bargain hard. As a democratic organisation we constantly rely on the power of ideas and renewal to reflect on the past and appraise the future, to ensure long term job and income security for our members, and sustainability of our industries
- Given the market characteristics I earlier referred to and given our internal processes or review, we have embarked on a multi pronged approach to try to alter the fundamentals of the bargaining environment in advance of the next bargaining round:
  - We are participating in a dialogue with other offshore unions, including the construction unions, to test the consensus on the principles that could underpin some form of joint union and employer understanding that would aim to reconcile the aspirations of unions responsible for bargaining the construction aspects of projects with the aspirations of unions who have a continuing presence in resources projects, across exploration, construction, production and transportation, such as the MUA
  - We are in a dialogue with Government Ministers about this concept, because it will require some innovation and commitment on the part of Government to support key elements of such a framework, revolving around employment including for disadvantaged sections of the labour market, supply and sourcing of labour, skills and training, safety, procurement, and community development
  - We are working closely with Government in developing new approaches to address labour shortages and skill deficits in the offshore oil and gas industry, including direct discussions on the introduction of Enterprise Migration Agreements
  - We are working closely with enlightened employers, through an industry training company, Maritime Employees Training Ltd (METL) to provide additionality and innovation in helping meet the labour shortage and skills deficit:
    - ✓ METL is a not-for-profit company which is coordinating the provision of training for seafarers, utilising additional funding and additional training berths to deliver qualified and licensed seafarers to help meet the seafarer labour shortage:
    - ✓ METL is working closely with industry to provide an expanding suite of needs-based training and trainee employment services through an approved Group Training Organisation (GTO) and facilitates a common, national approach to training and skill development, driving innovative and essential training services for employers and employees across the maritime industry.



- ✓ In 2011, METL has allocated \$1.5m in targeted training initiatives for the training of new seafarers (Ratings), which is additional funding. 20 METL Trainees have been recruited and placed with Registered Training Organisations (RTOs). 8 METL Trainees are on ships, and another 14 will start with RTOs before the end of June 2011. METL plans to have 100 Trainees by the end of 2011. That will result in METL being the largest single employer of seafarer Trainees in Australia. METL is also currently financing the skill upgrade of 4 Able Seamen so that they can become Integrated Ratings, with more to come throughout 2011. Part of the METL advantage is that it has undertaken a comprehensive workforce planning analysis of the seafarer labour market and has very robust data on demand predictions and labour supply capability, which it shares with partner organisations, and which underpins its expenditure on training
  
- We have also refreshed our trade union labour exchange programs with the Maritime Union of New Zealand (MUNZ) and the UK Rail, Maritime and Transport Union (RMT) and have recently held discussions with the US Seafarers International Union (SIU). The seafarer labour exchange program is built around three important principles:
  - ✓ Foreign seafarers entering Australia to work in the offshore oil and gas industry must be qualified and licensed to international standards;
  - ✓ Foreign seafarers are not to be offered permanent employment; and
  - ✓ They must return to their country of origin when the project completes or when Australian resident seafarers become available for work:
    - ❖ This scheme has worked effectively for nearly a decade, with the cooperation of industry employers
  
- We are working closely with the Government and with NOPSA to implement the recommendations and findings arising from the Government's response to OHS and related recommendations contained in various Government inquiries, including:
  - ✓ The 2008 NOPSA operational review
  - ✓ The better practice and effectiveness of the National Offshore Petroleum Safety Authority Report
  - ✓ The Marine Issues Report
  - ✓ The Department of Resources, Energy and Tourism Working Group Report on offshore crane operations and competencies
  - ✓ The NOPSA review of offshore accommodation standards
  - ✓ The Montara Commission of Inquiry Report
  - ✓ The upcoming 2011 NOPSA Operational Review
  - ❖ The union has engaged a consultant to assist in preparing its response to key recommendations from these inquiries to

ensure our inputs are technically sound, practical and professional

- The union is also working with the ACTU and other key private sector unions involved in large industry superannuation funds, as well as with Government, on identifying ways in which that savings pool, which we refer to as workers capital, can become a source of capital to support infrastructure development that is required to underpin resource development, be it in ports, rail, road or workers housing
- We welcomed the superannuation tax changes announced in the Budget aimed at encouraging new investment in infrastructure, which will provide a platform for industry superannuation funds to consider investing worker's savings in nation building projects that will secure long-term employment for the workforce, but more needs to be done
- I am interested in assessing the views of employers on possible representations to Government on changes to the concessional contributions cap of \$25,000 for classes of employees involved for short periods in a higher earning sector like offshore oil and gas, aimed at allowing employers and employees a tax favourable option of converting a higher proportion of their income into superannuation savings
  - ✓ However, I make it clear that we do not support trade offs between wages and superannuation as this simply amounts to a net income loss to employees. Any incentives to direct income to superannuation must occur post the income entitlement
- The union is also working with our union alliance partners in transport, manufacturing and mining, in consultation with Government, to identify ways that Australian companies and Australian workers can benefit in both the short and long term from maximising Australian participation in resource projects. Procurement strategies such as the Governments *Buy Australian at Home and Abroad* initiative for major resources projects and opportunities to develop Australian domestic and international shipping under the Government's shipping reform strategy are important, and we hope are fully supported by the industry
- Procurement and industry development strategies are important redistributive policies that help ensure that wealth generated from the resource sector is setting up opportunity for investment and employment in a diversified economy that can ride out shocks in resource price fluctuations or other economic shocks such as rising energy and fuel costs
  - ✓ It is for this reason that we fully support the AWUs new steel industry plan and the joint AMWU and AWU plan for building a stronger manufacturing industry

## The challenge ahead

- There is an historic opportunity for AMMA and the offshore employers it represents in the maritime sector to take a new approach to labour relations and productivity improvement in the offshore oil and gas industry
- If AMMA wishes to consider such a new approach it will however need to accept:
  - That the market characteristics of the resources sector are a driving force in shaping the sector's labour relations and that the attack dog approach is a blunt instrument with no prospect of lasting success; and
  - That the workforce and the unions that represent those workers are a legitimate and constructive force with which mature engagement will be necessary
- I throw out the challenge to AMMA to:
  - 1. Commence a genuine non ideological dialogue with the resource unions on understandings that could over-arch future enterprise bargaining negotiations as agreements come up for renegotiation
  - 2. To open a dialogue with the MUA on identification on the opportunities for continuous improvement to underpin productivity improvement - for labour and for capital assets
  - 3. To jointly explore opportunities announced in the Budget under the National Workforce Development Fund and the Productivity Education and Training Fund to support workforce development and to assist the bargaining environment
  - 4. To work with METL and encourage individual member employers to enter into discussions with METL as to how it can help coordinate both enterprise and industry outcomes and solutions that will better balance future demand and supply for seafaring labour and therefore help take the heat out of the maritime labour market
    - ✓ And if they take that step, to consider the longstanding invitation to take a seat on the Board of METL
      - ❖ Engagement with METL is a critical step as there is a direct connection between labour/skills demand and the price of labour for which there is now a mechanism which provides a supply side option to take the heat from labour demand
  - 5. To ensure that at employer CEO level, there is serious participation in the Transport and Logistics Industry Skills Council
    - ✓ The objective here is to ensure the Maritime Training Package fully reflects current and emerging job roles, to ensure the pre-conditions for skill formation, career progression and labour productivity enhancement are in place

- 6. To work closely with the MUA and Government in implementing the Government's response to OHS and related recommendations arising from various Government inquiries, including:
  - ✓ The 2008 NOPSA operational review
  - ✓ The better practice and effectiveness of the National Offshore Petroleum Safety Authority Report
  - ✓ The Marine Issues Report
  - ✓ The Department of Resources, Energy and Tourism Working Group recommendations on offshore crane operations
  - ✓ The NOPSA review of offshore accommodation standards
  - ✓ The Montara Commission of Inquiry Report
  - ✓ And actively participate in the 2011 NOPSA Operational Review
    - ❖ There must be a genuine bi-partite approach to improving OHS performance in the industry'
- 7. To work in partnership with the maritime unions, the Australian Shipowners Association and the Government to fully embrace the Government's proposals for reforming Australian shipping, to the extent these reforms are applicable to maritime elements of the offshore oil and gas industry
- 8. To work with the resource sector unions on policy approaches where there are common interests, in procurement, in industry policy, in superannuation, in infrastructure development
- All the predictions indicate that the resources boom will continue for some time. The Commonwealth Treasury estimates that resources investment in the next financial year will be in the order of \$76B. Resource projects under development have a total investment tag of nearly \$220B
- Labour demand and supply and the price of labour will continue to be central to the way in which that investment is applied, to the stability and sustainability of that investment and to the performance of the Australian economy
- There is a clear choice available to employers, the contractors, the resource owners and the corporate sector generally – continue with your current approach and undermine the value of your shareholder worth and the long term sustainability of your businesses or take an enlightened approach and adopt the pathway I have outlined, adding value and increasing worth, while contributing to the community and adopting the values of decent work
- I leave that proposition on the table

**END**

**[Additional points for the panel session](#)**

**The future labour relations environment – our vision**

- That we have an agreed approach to reconciling the project agreement approach applied to the workforces engaged on the construction phases of projects with the longer term contract bargains that underline the employment of workforces that operate across all phases of resource projects
- That we rely on the maturity of our bargaining capacities to find solutions and adopt processes suited to our industry that avoids reliance on both the carrots and sticks in the Fair Work Act
- That the bargaining process and labour relations dynamics are underlined by a demonstrable commitment, including additional resource allocation, to safety and to skill formation, so that these enhance the bargaining of economic outcomes and don't become enmeshed in the economic bargain, or worse, become secondary to the economic outcomes
- That productivity is not a bargained issue, but that there is commitment to a process of continuous improvement around agreed matters that enhance labour and capital productivity

### **The future labour relations environment – the likelihood**

- Realistically, as at today, I think the future labour relations environment will look something like the 2009/10 bargaining environment
- I say this because regrettably, AMMA continues to publicly vilify the MUA for the way it claims we behaved during the last bargaining round, and seems devoid of a capacity to think laterally or creatively, and to enter a genuine engagement about a new way forward
- Having said that I'd like to think that what I have outlined today, and in fact my very presence here might be a turning point. There is a lot of ground to be made up however and the ball is now in AMMA's court

### **Alliances**

- The MUA devotes considerable resources to establishing and nurturing alliances. History has shown that in global industries such as those MUA members work in, cooperation along supply chains and in strategic sectors is necessary to match the power and agility of capital and the power of information/communication – both of which have no regard for national boundaries
- Alliances are simply a convenient mechanism to work to common objectives where there are common interests and values
- But alliances are not just good for unions and workers, they are good for employers and for industry associations. For example, achieving a single bargaining unit in small workplaces such as on supply vessels or tugs must surely be beneficial to employers; or having a safety issue addressed across an entire work group where irrespective of union demarcations, representatives can speak on behalf of all the workforce; or removing the craft barriers to enable genuine team work, utilisation of labour to competency

levels and career progression irrespective of union coverage is surely a good thing

- We continue to build alliances in areas such as in the Australian and Trans Tasman oil and gas industry – we now have a mature and solid MUA-AWU Hydrocarbons Alliance, and are building a Trans Tasman Oil and Gas Alliance
- We are seeking to extend alliances to the region beyond NZ into areas such as PNG, Timor and the Pacific Islands
- These alliances provide opportunities for developing integrated regional labour markets which, if there is appropriate employer buy in, can avoid brawls over use of foreign labour and can build regional maritime capacity that can smooth out peaks and troughs in labour demand and supply, with consequential impacts on the price and stability of labour
- However, there will need to be much stronger employer and industry buy-in in terms of commitment to and resourcing of training, to formalising of VET qualifications and appropriate licensing as well as to consistency of safety standards if the potential for regional labour markets is to develop to its potential
- We consider our alliances in these areas are creating the foundation for moves in this direction

### **Foreign labour and EMAs**

- We are not yet convinced it will be necessary to import foreign labour under 457 Visas using either current Immigration Labour Agreements or the proposed new Enterprise Migration Agreement (EMA) framework in Ratings occupations to meet the demands for Ratings skills in the offshore oil and gas industry in the foreseeable future
- We say that a combination of current labour exchange programs, current investments in training by employers, additional Government funding support through programs such as the Critical Skills Investment Fund, new skill formation initiatives announced in the Budget such as the National Workforce Development Fund and Productivity Education and Training Fund and the additional funding and coordination that METL is now injecting into seafarer training should help match supply with forthcoming demand:
  - However, elements of this strategy depend on employer and industry support and commitment
- The union is generally supportive of the EMA concept, though we are yet to be fully appraised on the policy framework to support the EMA proposal announced in the Budget
- However, like the AMWU we are disappointed that the Government did not proceed with its proposal to require participating employers to contribute a \$ amount to training