

WEBINAR

Immigration, Employment & Workforce Planning for Australian Infrastructure Projects

15 November 2023, 6pm AEDT



Welcome to Country

We acknowledge the Gadigal people of the Eora Nation, the traditional custodians of the land on which we work, and pay our respects to their elders past, present and emerging



Introductions



James Simpson

Partner

Workplace and Employment Lawyer



Peter Dyball

Founder and Principal

Labour Market Forecasting Specialist



Ron Kessels

Partner

Immigration Lawyer



Lillian Ajuria

Partner

Accredited Specialist
in Immigration Law

The big picture and why we are hosting this webinar

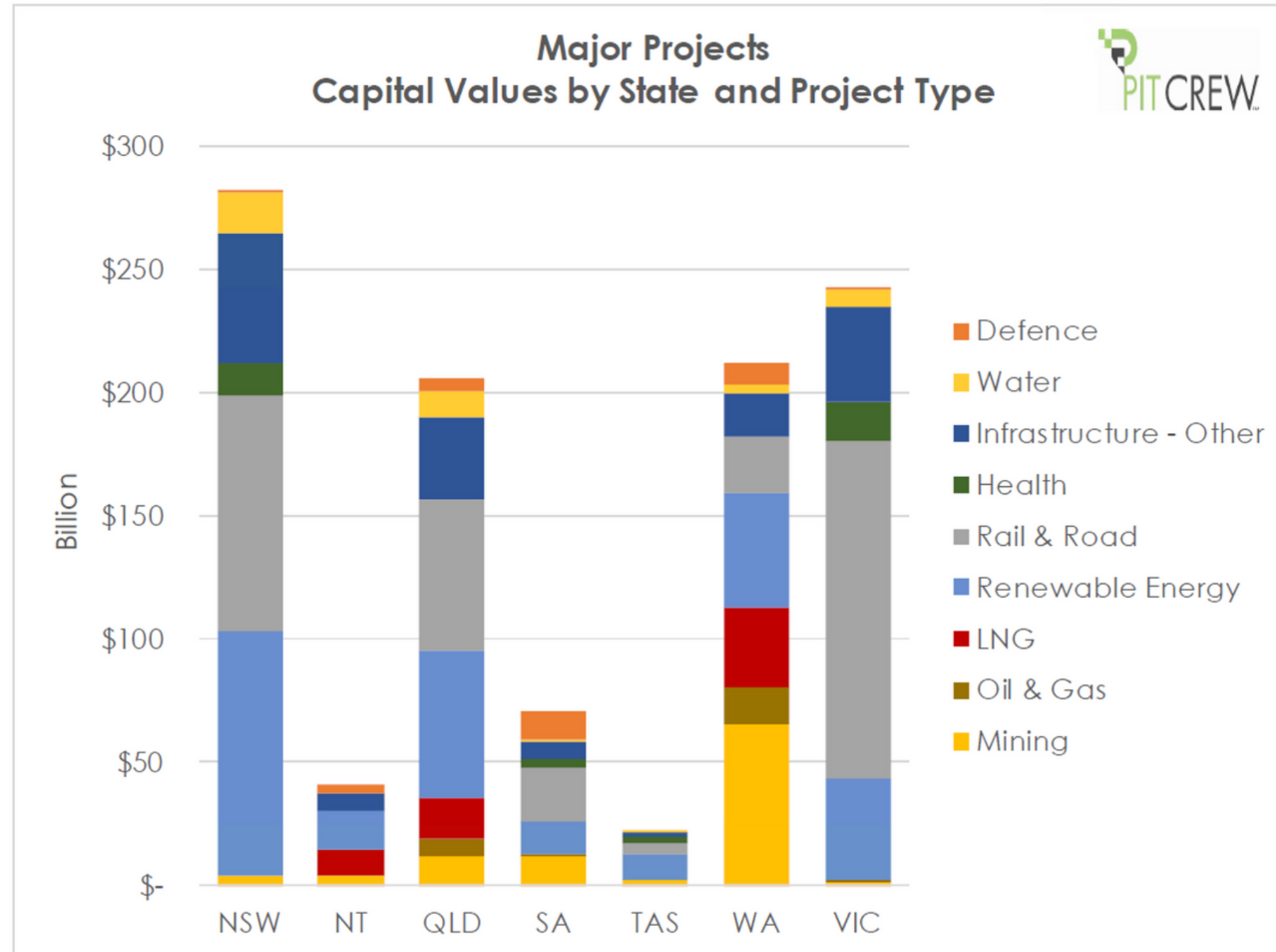
- There are shortages of skills in Australia (the state of the Australian labour market)
- These will need to be filled by international labour/experts
- A project's ability to access and use that labour is dependent on sponsorship
- Entitlement to sponsor requires full compliance with Australian laws including employment, immigration and other regulatory codes
- Government policy and legal requirements are in a state of transition
- Unions are creating a focus on the use of overseas labour and insisting on an increased role in Australia's employment and immigration system and scrutiny and compliance are becoming very big issues

Considerations

<p>How will you do business in Australia</p>	<p>The business structure & legal arrangements will impact a lot of factors including immigration options & processes</p>	<p>Seek advice from a corporate lawyer/accountant & tax advisors</p>
<p>Do you understand the industrial relations system & landscape in Australia</p>	<p>Australia has Federal & State industrial laws that are very complex</p> <p>Unions are often involved, and increasingly active</p> <p>There is a close connection between employment conditions & visas</p>	<p>Seek advice from employment lawyers. For projects- workplace law experts are needed</p>
<p>What workforce will you need in Australia to carry out our business in the next 1-5 years</p>	<p>It is often hard to turn the ship around so lots of pre-planning is essential</p> <p>This will impact many immigration decisions</p>	<p>Create high level workforce plans for larger numbers</p>
<p>Who will manage immigration for the business & how will directors & office holders ensure they know what is going on</p>	<p>There are criminal and civil penalties for companies, directors & other office holders</p> <p>It is critical that the company has processes & a clear point of responsibility & escalation</p>	<p>Ensure compliance at all time</p> <p>Minimise risks</p> <p>Check work rights - VEVO</p>
<p>How will you manage immigration & costs</p>	<p>You will need visibility & good vendors</p>	<p>Immigration planning + costs budgeting</p>

The state of the Australian Labour Market - Infrastructure

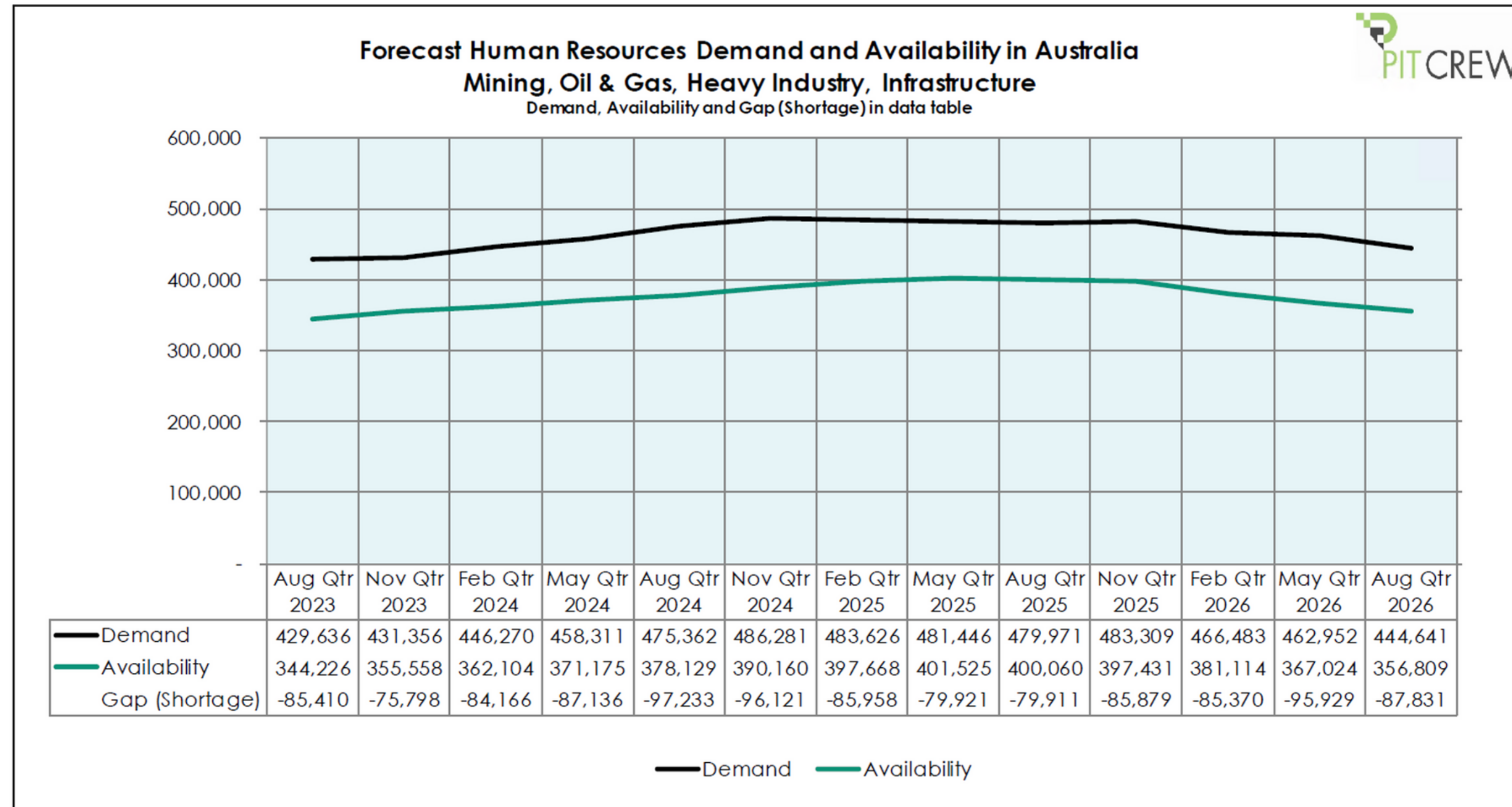
Major Projects/States/Values



- Total Capital Value = \$1,054 billion
- Currently committed = \$565 billion

The state of the Australian Labour Market - Infrastructure

Workforce Demand and Availability



The state of the Australian Labour Market - Infrastructure





Market Dynamics - Demand side

- Demand continues to increase
 - Seeing a bow-wave emerge for new project demand
 - The current pipeline of major public infrastructure projects suggest an elevated level of demand for at least the next 3 - 5 years
- New project labor demand
 - Currently driven by resources and infrastructure
 - Future drivers likely to include decarbonisation/renewables, defence, critical minerals
 - Appetite for new projects remains strong

The state of the Australian Labour Market - Infrastructure

Market Report

Pit Crew Shortage / Availability Matrix Selected Key Occupations in Australia MOGHII Sectors Managers, Professionals and Admin	Feb Qtr 2022	May Qtr 2022	Aug Qtr 2022	Nov Qtr 2022	Feb Qtr 2023	May Qtr 2023	Aug Qtr 2023	Nov Qtr 2023	Feb Qtr 2024	May Qtr 2024	Aug Qtr 2024	Nov Qtr 2024	Feb Qtr 2025	May Qtr 2025	Aug Qtr 2025	Nov Qtr 2025	Max Shortage
	1331 Construction Managers	Orange	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	
1332 Engineering Managers	Orange	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	998
2331 Chemical and Materials Engineers	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	1,005
2332 Civil Engineering Professionals	Light Green	Light Green	Light Green	Light Green	Red	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	1,085
2333 Electrical Engineers	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	1,763
2335 Industrial, Mechanical and Production Engineers	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	2,201
2336 Mining Engineers	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	1,253
2344 Geologists, Geophysicists and Hydrogeologists	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	Light Green	718
5111 Contract, Program and Project Administrators	Orange	Orange	Orange	Orange	Orange	Orange	Light Green	Orange	Light Green	Orange	Orange	Orange	Orange	Orange	Orange	Orange	1,333




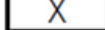
 Good Availability (Forecast demand = 15% < Availability)
 Some Availability (Forecast Demand = 5% to 15 < Availability)
 About Level (Forecast Demand = + or - 5% Availability)
 Max shortage timing




 Moderate Shortage (Forecast Demand = 5% to 15% > Availability)
 High Shortage (Forecast Demand = 15% to 25% > Availability)
 Acute Shortage (Forecast Demand = 25% > Availability)

The state of the Australian Labour Market - Infrastructure

Market Report

Pit Crew Shortage / Availability Matrix Selected Key Occupations in Australia MOGHII Sectors Technicians, Trades Workers, Operators and Labourers	Feb Qtr 2022	May Qtr 2022	Aug Qtr 2022	Nov Qtr 2022	Feb Qtr 2023	May Qtr 2023	Aug Qtr 2023	Nov Qtr 2023	Feb Qtr 2024	May Qtr 2024	Aug Qtr 2024	Nov Qtr 2024	Feb Qtr 2025	May Qtr 2025	Aug Qtr 2025	Nov Qtr 2025	Max Shortage
	3126 Safety Inspectors											X					
3212 Motor Mechanics										X							3,923
3223 Structural Steel and Welding Trades Workers										X							2,853
3232 Metal Fitters and Machinists												X					3,382
3312 Carpenters and Joiners											X						1,607
3411 Electricians							X										3,674
7121 Crane, Hoist and Lift Operators							X										1,610
7212 Earthmoving Plant Operators					X												14,457
8217 Structural Steel Construction Workers											X						2,900
8219 Other Construction and Mining Labourers											X						7,260

 Good Availability (Forecast demand = 15% < Availability)
 Some Availability (Forecast Demand = 5% to 15 < Availability)
 About Level (Forecast Demand = + or - 5% Availability)
 Max shortage timing

 Moderate Shortage (Forecast Demand = 5% to 15% > Availability)
 High Shortage (Forecast Demand = 15% to 25% > Availability)
 Acute Shortage (Forecast Demand = 25% > Availability)

The state of the Australian Labour Market - Infrastructure

Market Dynamics - Supply/Availability side

- Labour markets are tapped out in all states
 - Turnover/retention an issue
- Supply is constrained
 - Constrain inflow of worker - revolving door - job hopping
 - Net interstate migration
 - Net overseas migration
 - Limited training opportunities for current market
- Competition between states
- Skills dilution

Employment law/IR considerations for projects

- Australian workplace and employment laws are complex, and compliance is challenging for any sized business or project.
- Early stage planning and advice on labour structuring, obligations and retention strategies is a very strong and relatively easy risk management tool.
- Various sources of employment obligations:
 - *Minimum terms and conditions*
 - Fair Work Act 2009
 - Modern Awards and/or Enterprise Agreements
 - Contracts of Employment
 - Employer Superannuation contributions
 - Rights of Employee Industrial Associations (Unions)
 - Discrimination and harrassment legislation (both at Federal and State levels)
 - Workers Compensation legislation (Mostly State based)
 - Work health and safety legislation (Mostly State based)
- Differing risk profiles and strategies for management employees and other employees.

Observations on current Australian workplace law landscape

- Workplace regulator (Fair Work Ombudsman) has a heightened focus on investigating employers around wages & Modern Award Compliance - especially for businesses employing migrant/foreign workers
- Safety risks around the interaction at multi-employer sites (eg construction projects) continue to be a major area of attention for work health & safety regulators
- Union presence & activities is at its highest level for the last 15 years - unions have been emboldened by recent & impending changes to workplace laws, that provide for greater scope for unions to bargain & bring proceedings on behalf of their members. Unions in the construction space are often engaging in illegal workplace activities
- Workplace culture is an ongoing focus - particularly around discrimination, sexual harassment, & workplace bullying
- Workforce retention strategies can be grounded & supported by well developed remuneration structures, policies & procedures facilitating a flexible & highly supportive work environment, & sure-footed responses to workplace issues that may arise from time to time

Engaging and onboarding employees

- For non-management employees - identifying what Modern Award applies, and what classification the employee falls under in the Modern Award is critical. This can often be a complex assessment, but is crucial for ensuring broad workplace law compliance
- For all employees - but especially management employees - having strong written contracts of employment is a primary risk management tool
- On existing projects with high union representation, the unions may pressure new employers to enter into union-favourable Enterprise Agreements. If this is a risk, early advice and planning is essential
- Payroll systems must be set up to ensure correct wages payments, leave accruals, superannuation contributions, and that records are kept in compliance with the requirements of the Fair Work Act
- Appropriate induction and onboarding procedures are important - covering work health and safety, and expected standards of behaviour (including discrimination, bullying and harassment). Records of this should be maintained and easily accessible, and refresher training provided at appropriate intervals

Managing the employment relationship

- Ensure minimum terms and conditions are observed throughout the employment
- For employees covered by Modern Awards, ensure that the terms of those Awards are properly observed (for example, hours of work, consultation obligations on certain matters etc)
- Ensure appropriate workplace policies are in place and enforced (work health and safety, discrimination and harassment etc)
- Provide appropriate levels of supervision and information as to activities and the workplace environment at worksites
- Promptly deal with work related complaints and poor performance
- Observe probationary periods and ensure that if there are any issues with employee performance or behaviour, that serious consideration is given as to whether continue or end the employment at or before the end of the probationary period (usually six months after commencement)
- Ensure management, HR, and Safety leads are properly trained and confident in dealing with union “rights or entry” and related union interactions

Ending the employment relationship

- Ending the employment can occur through a number of avenues based on the circumstances, including:
 - end of a fixed term contract;
 - termination for poor performance or behaviours;
 - redundancy of the position the employee holds;
 - for management employees (that is employees not covered by a Modern Award or who earn a base salary of over AUD 167,500 per year), by the provision of notice or pay in lieu of notice (usually contained in the contract of employment)
- For poor performance or behaviours for non-management employees, there is generally a requirement to provide procedural fairness and substantiation of the reasons for ending the employment. Early planning and advice significantly reduces any risks around this.
- For all employees, care must be taken that decisions to end employment are not based on unlawful discriminatory grounds, or for reasons such as union membership and activities, whistleblowing, and making complaints or inquiries about employment matters

Process for sponsoring foreign labour

<p style="text-align: center;">Overseas business not operating in Australia (ARBN)</p>	<p style="text-align: center;">Operating an Australian business (ABN)</p>
<ul style="list-style-type: none"> • Can send people to establish a business • Can send people to fulfil contracts with Australian customers • Cannot support permanent residence applications 	<ul style="list-style-type: none"> • Can transfer or send most professionals or trades for short or extended periods • Can support permanent residence
<ul style="list-style-type: none"> • Applications more closely scrutinised 	<ul style="list-style-type: none"> • Applications can be streamlined and processed faster
<ul style="list-style-type: none"> • Cannot seek accredited sponsorship status 	<ul style="list-style-type: none"> • Can seek accredited sponsorship status
<ul style="list-style-type: none"> • Sponsored employees cannot work for associated entities only the sponsoring company - payroll issue 	<ul style="list-style-type: none"> • Sponsored employees can work for associated entities - more flexibility with payroll

Most common visas for foreign labour

Purpose	Visa	Company Requirement	Time for company to be approved	Time for visa
Attend business meetings, negotiate contracts	ETA, eVisitor	No Company Sponsorship	N/A	1-7 days
Highly skilled work done in less than six months	400	Company Support letter	N/A	2-3 weeks
Hire/transfer Professionals	TSS	Standard Sponsorship	3 -8 weeks	2-60 days
Hire/transfer Qualified Trades	TSS	Standard Sponsorship		
Hire/transfer Blue Collar & others	TSS	Standard Sponsorship & Labour Agreement	LA = 9 -18 months	21 -60 days
Support permanent residence	ENS	Company Nomination	5-7 months	7 months

Compliance

There are serious legal consequences for companies, directors, other office holders and individuals involved in immigration breaches:

- Loss of sponsorship rights
- Visa cancellation
- Fines
- Even imprisonment
- Reputational damage & public relations disaster - sanctions page of the ABF

Most common issues for projects are:

- Breach of Sponsorship Obligations
- Misuse of business visitor visas and 400 visas for rotating workers
- Employing visa holders in the wrong occupation
- Underpaying/overworking employees
- Deducting unauthorised payments
- Working with labour supply companies who have sponsored employees in the wrong occupation or are not paying correctly
- Having sub-contractors on-site who breach immigration laws and cause an investigation of the project

Q & A + Panel Discussion

Where it all converges & what should be done



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PitCrew provides specialist consulting services which focus on resources, energy and infrastructure projects

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Legals

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