Ai GROUP SUBMISSION

Productivity Commission Review Of Barriers To Business Entries And Exits In The Australian Economy

FEBRUARY 2015

Contents

About Australian Industry Group

The Australian Industry Group (Ai Group) is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing; engineering; construction; automotive; food; transport; information technology; telecommunications; call centres; labour hire; printing; defence; mining equipment and supplies; airlines; and other industries. The businesses which we represent employ more than one million people. Ai Group members operate small, medium and large businesses across a range of industries. Ai Group is closely affiliated with more than 50 other employer groups in Australia alone and directly manages a number of those organisations.

Australian Industry Group contact for this submission

Dr. Peter Burn, Director of Public Policy

Executive summary

Ai Group welcomes this opportunity to comment on the existence and extent of barriers to business entries, transfers and exits in Australia.

Ai Group has observed impediments to the successful setup, entry, transfer and exit of businesses in Australia in the following areas:

- declining international competitiveness for Australia with regard to the time and ease of starting a new business;
- poor international competitiveness for Australia with regard to the overall burden of government regulation and the flexibility of workplace relations, which may impede the setup of new businesses and/or the retention of existing businesses;
- a declining number of businesses operating in Australia in 2012-13, in absolute numbers and on a per capita basis;
- a need to encourage and improve Australian business innovation, leadership and capabilities;
- barriers to new business formation arising from workplace relations;
- barriers to new business formation arising from access to finance;
- barriers to the successful transfer of ownership of existing businesses.

Ai Group looks forward to examining the draft report of the Productivity Commission examining these issues, and to providing a response to the Commission's draft findings and recommendations at a later stage in this inquiry process.

.

International data on business entry barriers

PC2: What international research, including published indexes, provide robust insights into the relative ease of, and barriers to, business set-up, transfer and closure?

Ai Group is the Australian research partner in the annual World Economic Forum (WEF) *Global Competitiveness Report* series. These Reports include a number of measures that are relevant to this inquiry. They provide a score for each country and then a relative ranking to determine which countries are doing relatively better (or worse) on each measure.

The latest WEF *Global Competitiveness Report* shows that Australia's relative Global Competitiveness Index (CGI) has deteriorated since 2009-10, dropping continuously from a peak ranking of 15th place in 2009-10 to 22nd place in 2014-15. This is one position lower than Australia's ranking in 2013-14 (21st). This fall in ranking has been because Australia's GCI score has been broadly stable since 2010-11, but at the same time, many other countries have improved their performance on various measures within the headline WEF Index. As a result, Australia's ranking – which indicates our relative competitiveness with regard to our productivity, capabilities, flexibility and use of resources – has deteriorated.

Some of the measures in the WEF Global Competitiveness Reports that may be relevant to ease of business entry and setup include (see charts 1 and 2 below):

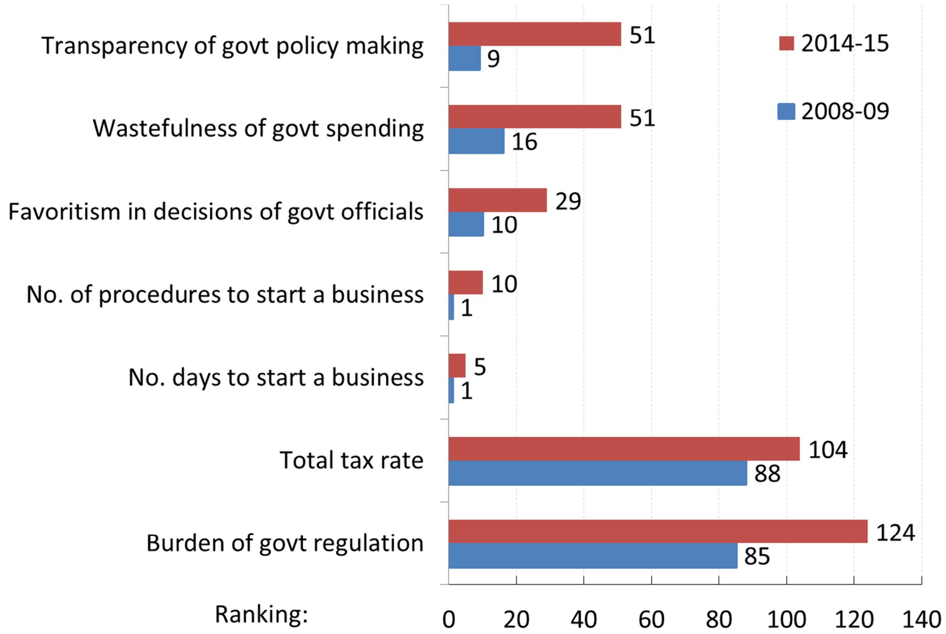
- Number of days to start a business. Australia ranks relatively highly at 5th position in 2014-15, but has slipped in relative terms, from equal 1st position in 2008-09.
- Number of procedures to start a business. Australia ranks relatively highly at 10th position in 2014-15, but has slipped in relative terms, from equal 1st position in 2008-09.
- Burden of government regulation is a particular weakness for Australia. In 2014-15, Australia ranked 124th out of 144 countries for the perceived burden of regulation, down from 85th position in 2008-09.
- Hiring and firing practices are seen as a barrier for Australian business, ranking 136th out of 144 countries in 2014-15, which is down considerably from 46th place in 2008-09.
- Flexibility of wage determination is another area of concern for those considering a new business in Australia. Australia was ranked 132nd on this measure in 2014-15, down from 75th in 2008-09. Related to this measure, Australia was ranked 125th on 'pay and productivity' in 2014-15, down from 26th in 2008-09.

In 2014-15, Switzerland is ranked again as the most competitive country in the world, closely followed by Singapore. This is the six consecutive year in which Switzerland has topped the WEF Global Competitiveness Index. Rankings at the top of the GCI have remained relatively stable in recent years. Highly advanced large economies including the US, the UK, Japan and Hong Kong continue to dominate the Top 10 list, as do the more specialised and 'boutique' northern European nations including Germany, Finland, the Netherlands and Sweden (see Table 1).

These nations all tend to share competitive characteristics such as:

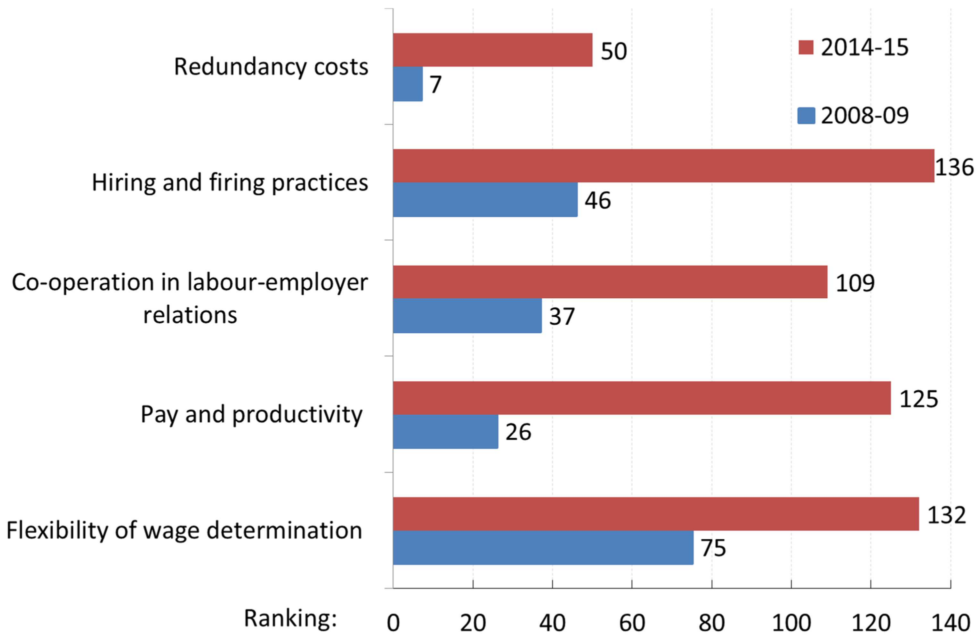
- very open and competitive trade facilities (including large and efficient ports),
- advanced manufacturing sectors,
- very high education standards and
- strong and stable financial, legal and political systems.

Chart 1: Australian ranking on tax and regulation indicators



Source: WEF Global Competitiveness Reports

Chart 2: Australian ranking on labour market indicators



Source: WEF Global Competitiveness Reports

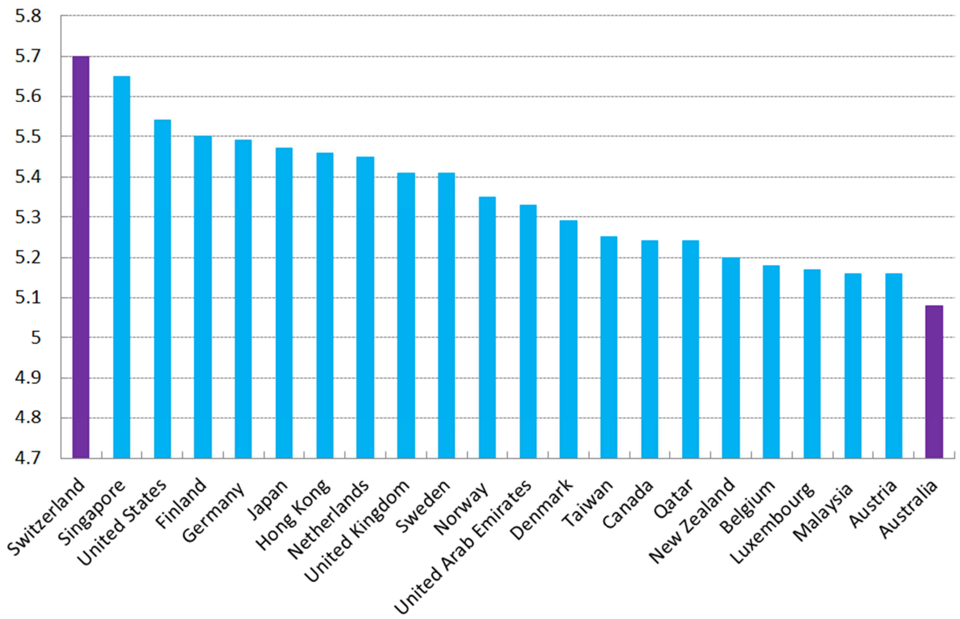
Switzerland – A Model for Australia?

Switzerland, long known for watches, chocolates and its banking system, may have some important answers to the policy issues facing Australian today.

The small mountainous nation, with a relatively small population of eight million people and very few natural resources, have shown itself to be one of the world's most robust economies in the past five years. Despite the ongoing economic turmoil of the euro area, its neighbor and major trading partner, Switzerland has recorded firm and stable growth in GDP and per capita incomes in all years barring a contraction in 2009. Like Australia, Switzerland is a small open economy. It is heavily reliant on trade (in 2013 goods and services exports amounted to over a half of its GDP). Even as the Swiss franc soared higher against the euro, the nation continued to grow and unemployment has remained low and almost half the rate of Australia's (3.4% in December 2014). Wages for the highly-skilled workforce are high, but have been driven by firm productivity with inflation contained.

The key to the country's economic strength has been the policy settings in place that have encouraged a broad industrial base and a strong service sector. Switzerland has been ranked the most competitive economy since 2011-12 on the World Economic Forum's Global Competitiveness Ranking. And increasingly, multinational companies have looked to base advanced manufacturing operations in the country and several Australian companies recently have established manufacturing facilities there.

Chart 3: Global Competitiveness Ranking



Source: WEF Global Competitiveness Reports

The frequently cited factors behind the country's success include:

- **Stability**: Macroeconomic, political and legal stability, plays a particularly important role by creating certainty for businesses to make investments.
- **Innovation**: The World Economic Forum ranks Switzerland first on the *Innovation and sophistication factors* component of the Competitiveness Index, which owes to strong production process efficiency, high local supplier quality, and a very strong capability in

research and development. Swiss companies have a high level of R&D and strong links with universities and research organisations. Tax privileges such as deductions for research and development expenditure can help keep the average tax burden low. Patents, industrial designs and models, trademarks and copyrights are legally recognised in Switzerland.

- Strong focus on **education**, especially around mathematics and science.
- An environment of light-touch **regulation.**
- **Labour market flexibility**: Businesses cite the most notable advantage of the Swiss economy is labour market efficiency including strong and co-operative relationships between businesses and unions. Hiring and firing practices are easier.

Sources: World Economic Forum's *The Global Competitiveness Report 2014-15*, and Swiss Business Federation's *Seven Principle of Success.*

Table 1: WEF Global Competitiveness Index (GCI) 2014-15: the Top 30

Rank	Country / economy	Rank	Country / economy	Rank	Country / economy
1	Switzerland	**11**	Norway	**21**	Austria
2	Singapore	**12**	United Arab Emirates	**22**	**Australia**
3	United States	**13**	Denmark	**23**	France
4	Finland	**14**	Taiwan	**24**	Saudi Arabia
5	Germany	**15**	Canada	**25**	Ireland
6	Japan	**16**	Qatar	**26**	South Korea
7	Hong Kong	**17**	New Zealand	**27**	Israel
8	Netherlands	**18**	Belgium	**28**	China
9	United Kingdom	**19**	Luxembourg	**29**	Estonia
10	Sweden	**20**	Malaysia	**30**	Iceland

Source: WEF Global Competitiveness Reports

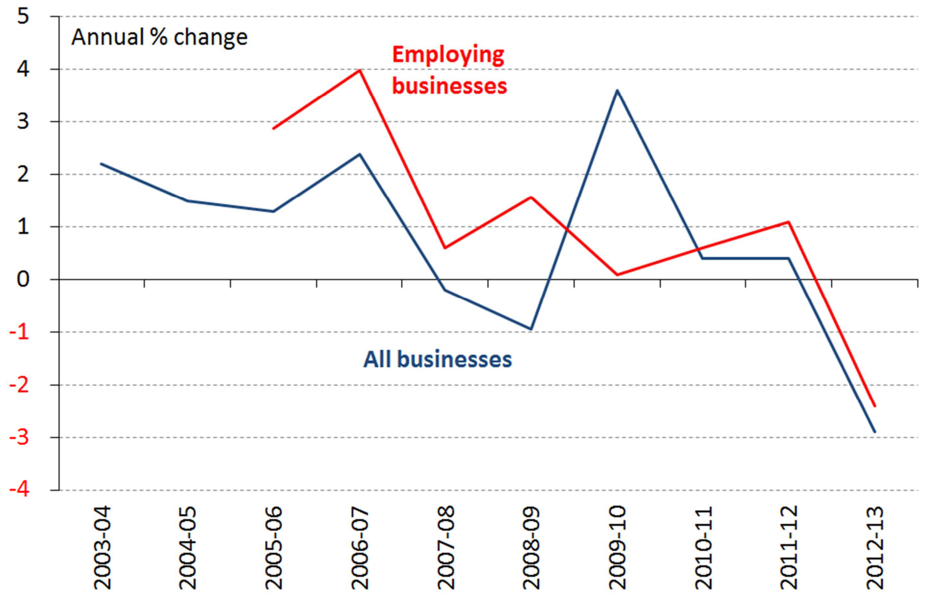
Trends in business set-up, transfer and closure

ABS data for businesses in existence, entries and exits show that the total number of businesses in Australia declined in 2012-13, for the first time since 2008-09 (see Chart 4). On a per capita basis, there appears to be a shallow trend towards a declining number of businesses (see Chart 5).

In manufacturing, the number of businesses in Australia has declined in every year since 2003, while the number of businesses with employees has declined in every year since 2009-10 (see Chart 6).

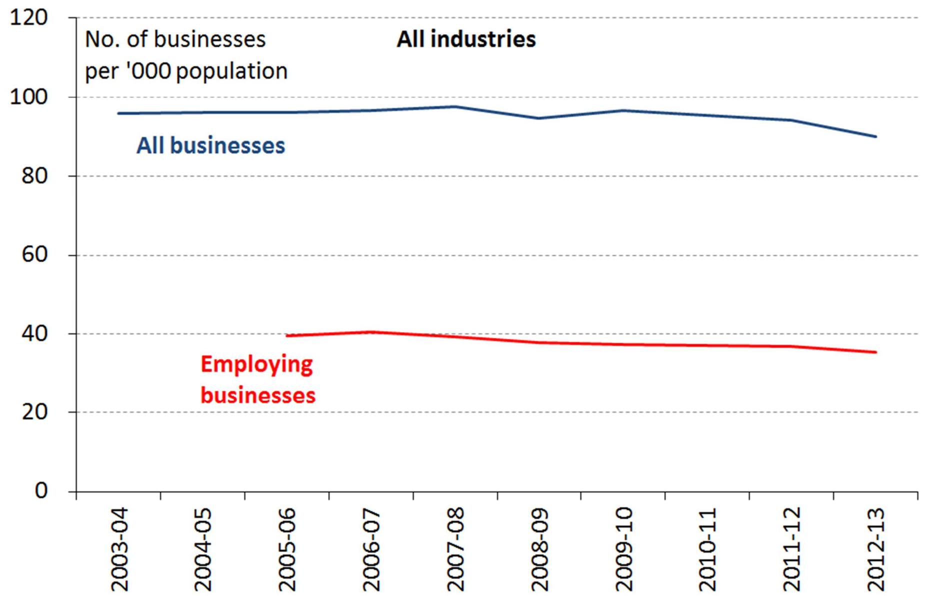
The ABS will release its annual estimates of the number of Australian businesses, entries and exits (to June 2014) on 27 February 2015. This will provide the latest data on entry and exit trends.

Chart 4: Australian businesses, annual % change



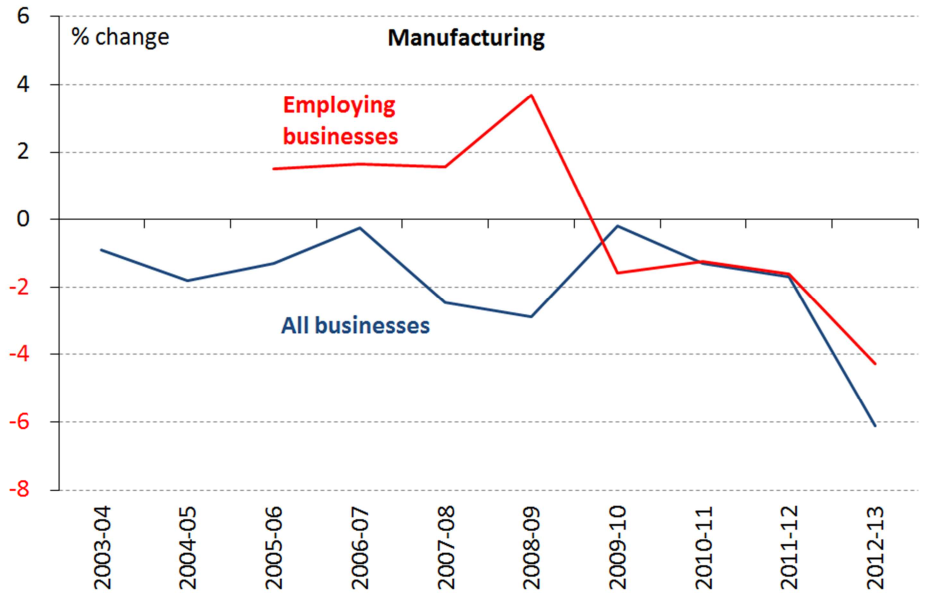
Source: ABS, *Counts of Australian Businesses*, June 2003 to June 2013

Chart 5: Number of Australian businesses, per '000 population



Source: ABS, Counts of Australian Businesses, June 2003 to June 2013

Chart 6: Australian manufacturing businesses, annual % change



Source: ABS, Counts of Australian Businesses, June 2003 to June 2013

Trends in business innovation

PC3: What proportion of new businesses display entrepreneurial or innovative characteristics as opposed to new businesses operating established business models providing known goods and services (for examples, operating under an existing franchise or providing outsourced business consulting services)? Does this vary by location, jurisdiction or sector? What data and other evidence is available on this issue?

The latest data on rates of business innovation indicate that just over a third of all Australian businesses (37%) introduced some sort of innovation in 2012-13, across areas such as goods and services production, operational processes, organisational processes and marketing methods. This was a lower proportion than a year earlier (41.3% in 2011-12) but a similar proportion to earlier years. There appears to be a slight positive trend towards a growing proportion of businesses undertaking innovation over the past decade, although the annual data are highly variable and, in some years, incomplete (chart 2). These data on innovation are not available by age of business or date of establishment, but across all Australian businesses in 2012-13:

- Large businesses were more likely to innovate (67% of businesses with 200+ employees and 58% of businesses employing 20-199 people) than smaller ones (29% of businesses with less than 5 employees).
- Businesses in the wholesale trade, retail trade, and IT & telecoms industries were the most active innovators (close to 50% of businesses in these industries reported an innovation) with transport the least innovative (24%).
- Changes to organisational or managerial processes were the most common type of innovation (20.2% of businesses) followed by changes to goods or services (20%), marketing methods (19%) and operational processes (17%) (see chart 3).
- Not all innovations required expenditure. Indeed, 39% of innovators said there was no expenditure associated with their innovation in 2012-13. Another 34% said they acquired new machinery or equipment and 28% spent something on training. 27% spent money on marketing activities to introduce new goods or services.
- Collaborative innovation activities were relatively rare in 2012-13, with just 14% of all businesses undertaking any form of collaborative arrangement (38% of businesses employing 200+ people). 6% of businesses undertook some type of joint marketing while 5% undertook the joint production of goods or services and 4.6% undertook joint R&D activity. For the innovation collaborators, their partners included clients and customers (44% of collaborators), suppliers (42%), consultants (28%) and other businesses in the same company group (22%). Of the 14% of businesses that undertook collaborative innovation, just under 10% partnered with a university and 5% partnered with a government research agency.
- 6% of all businesses abandoned (that is, ceased without completing) an innovation activity during 2012-13. Manufacturers were more likely than businesses in other sectors to have abandoned an innovation (almost 10%).

- The most common reason for undertaking innovation in 2012-13 was 'profit related reasons' (72% of innovators). Other frequent reasons (as well as profit) were 'to increase responsiveness to customers' (51% of innovators);
- 'increase market share' (43%); 'establish new markets' (35%); 'improve product quality' (38%); improve efficiency of supply (34%) and 'improve safety and working conditions' (22%).
- Ideas for innovation came from a wide range of sources including: from within the company or group of companies (59% of innovators); from company clients or customers (40%); competitors (30%); research sources such as journals and publications (30%); suppliers (26%); professional conferences (23%); consultants (19%); or industry associations (17%).
- 90% of businesses that introduced an innovation reported a benefit from doing so in 2012-13 (although this included 29% who said it was too early to identify the exact nature and size of the benefit). 43% improved their customer service, 40% improved their revenue and 28% 'gained a competitive edge'. 19% reduced their costs.
- Barriers to undertaking or increasing innovation in 2012-13 included lack of funds (20% of all businesses), lack of skilled personnel (17% of all businesses), uncertain demand of new goods and services (15%), government regulations and compliance (13%) and adherence to standards (4.5%).

Chart 4: Businesses 'introducing an innovation', selected industries

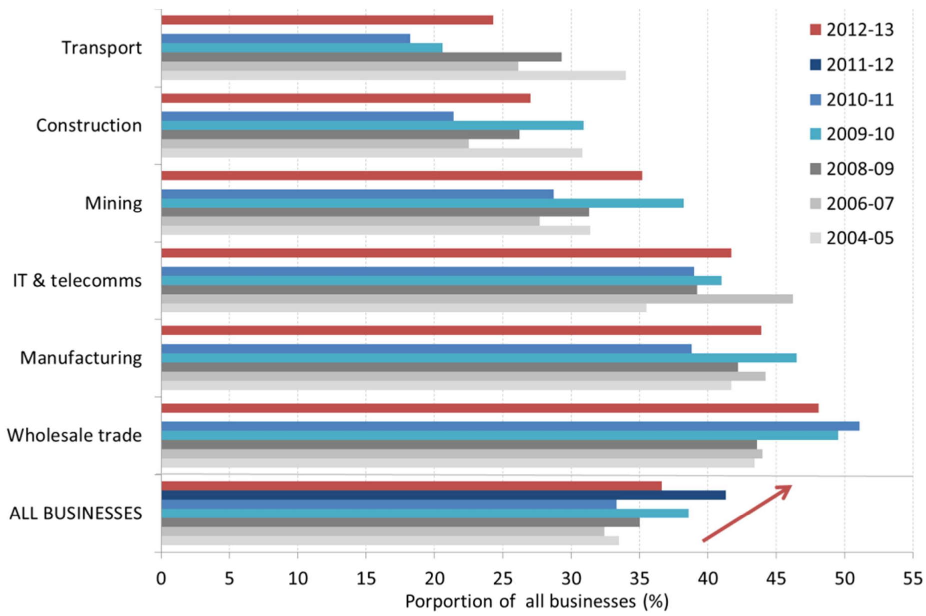
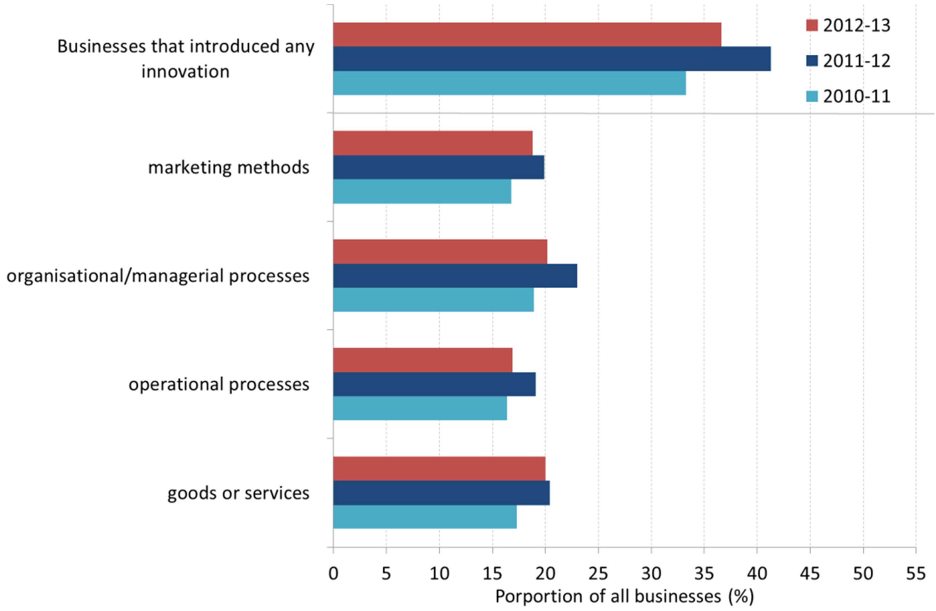


Chart 5: Businesses 'introducing an innovation', types of innovation



Source: ABS 8158.0, Innovation in Australian Business, 2012-13, and various earlier years.

Table 2: Innovation(a)(b), by type, degree of novelty, 2012-13

	New or significantly improved:			
	Goods or services	**Operational processes**	**Organisational / managerial processes**	**Marketing methods**
Degree of novelty of the introduced innovation that was:	**%**	**%**	**%**	**%**
New to the world	11.0	4.2	1.1	1.7
New to Australia but not new to the world	8.1	3.4	1.4	1.5
New to the industry within Australia but not New to Australia or the world	9.4	7.9	6.1	6.7
New to the business only (none of the above)	75.0	85.4	91.6	91.7

(a) Proportions are of innovating businesses only (i.e. those who introduced innovation).
(b) Businesses could provide more than one response to each question (i.e. report for all of their new or significantly improved goods, services, processes or methods).
Source: ABS 8158.0, Innovation in Australian Business, 2012-13.

Boosting business innovation and improving attitudes to innovation

PC40: Is there a need to improve the overall attitude to risk and innovation in Australia to increase business set-ups in Australia? How should risk taking be appropriately rewarded and mistakes not excessively penalised? How should the balance between rewards and sanctions be set to maximise overall community welfare?

PC41: Is there a need to systematically encourage a more innovative culture, for example, through the education system?

PC42: Should governments provide incentives, such as grants, through the tax system and insolvency arrangements, to increase the willingness of individuals and businesses to take on risk and innovate?

PC43: What should governments not do to reduce barriers to business set-up and closure?

Key policy recommendations:

- We support, and are consulting the Government regarding the implementation of its Industry Innovation and Competitiveness agenda, including the commitment to five Industry Growth Centres.
- Government policy should encourage investment in innovation. The Government should reconsider the planned, further restrictions on access to the R&D Tax Incentive.
- We welcome and are part of consultations on measures to encourage strong collaboration among businesses and between businesses and researchers.
    - We would like to see the overall level of commitment to collaboration maintained, while ensuring programs deliver the best value for money. In this context, we believe the decision to review and reform the Cooperative Research Centres Program is sensible; and
    - We strongly urge the Government to maintain its level of commitment to the Entrepreneurs Infrastructure Programme (EIP), its flagship initiative to improve business competitiveness and productivity at the firm level.

On improving the **culture of innovation in the education sector**, Ai Group asks the Government to:

- support increased and earlier exposure to businesses by the future workforce, through a funded program of collaboration between schools, academic institutions and business;
- provide funding for practical leadership research into cultural barriers that exist to leadership and Australia's ability to innovate, together with appropriate development frameworks that allow organisations to build capability relating to an organisation's operating environment; and
- advocate and support further reform in the education sector as it relates to management education.

On improving **business leadership capabilities**, Ai Group asks the Government to:

- Support increased and earlier exposure to businesses by the future workforce, through a funded program of collaboration between schools, academic institutions and business.
- Provide funding for practical leadership research into cultural barriers that exist to leadership and Australia's ability to innovate, together with appropriate development frameworks that allow organisations to build capability relating to an organisation's operating environment.
- Advocate and support further reform in the education sector as it relates to management education.

Boosting innovation

Boosting innovation, investment and productivity in Australian businesses must be an economic priority, particularly in the non-mining sectors. To achieve this action will be needed across the entire innovation system and needs to be integrated into all aspects of government policy.

Australia needs an innovation system that:

- encourages investment in innovation and encourage intellectual property (IP) and its flow on benefits to stay, and create jobs and wealth, in Australia;
- facilitates networking opportunities;
- develops and helps to acquire human capital and skills; and
- provides support for institutions and organisations that generate and disseminate knowledge.

We also need an ambitious, holistic innovation policy framework that maximises Australia's competitive strengths and ties together individual measures that are coordinated, cost-effective and targeted.

Ai Groups emphasises the need for industry policies to be coherent and coordinated within an overall framework directed at clearly identified goals. Policies should not be ad hoc bandages with no clear objective. Ai Group understands the fiscal pressures facing the Government but stresses that any savings identified in the industry space be redirected towards proven policies known to boost the productive capacity of Australian industries, especially manufacturing. This will help Australia transition to a more balanced growth path and away from an excessive reliance on the resource sector.

In particular, the Government should not proceed with plans to reduce the existing R&D Tax Concession as a budget savings measure. The Incentive was set at its current level and coverage after extensive consultation and design, and there is no convincing policy rationale to narrow or reduce it. Indeed, additional measures to encourage the translation of research into commercial outcomes should be considered. One example is the 'patent box' concept, a version of which has been introduced in the UK. Similar proposals deserve further scrutiny in the Australian context.

Industry Growth Centres

We support the Government's policy to create five Industry Growth Centres. It is appropriate that several of these focus on manufacturing and its subsectors given the major transitions underway in the sector.

The Centres need to be genuinely industry-centred: led by industry, responsive to industry needs, with activities driven by industry, rather than researchers or government. They must capture industry ideas and turn them into achievable plans. A clearly articulated rationale and purpose should underpin every activity, rather than conducting networking or other activities for their own sakes.

Widespread industry participation will be needed to ensure that the Centres are successful in fulfilling their objectives. Unfortunately the transient nature of many past industry initiatives may reduce industry enthusiasm to participate in the Centres. It will therefore be important to demonstrate the seriousness of intent to commence and sustain these initiatives and achieve worthwhile objectives.

It will also be important that opportunities to participate are open to businesses of all sizes across the range of relevant industries, including providers of supporting or enabling technologies, products and services to the targeted sectors.

While there is a useful role for the Centres, there are also a range of existing services and programs offered by the private, not for profit and government sectors, from consultancies to industry associations to the Entrepreneur's Infrastructure Program. It is important that the objectives and activities of the Centres complement these existing activities and build coherency, rather than duplication or confusion.

Ai Group believes that Germany's Fraunhofer Society, the UK's Technology Strategy Board's (TSB) Catapult Programme, and the USA's Small Business Innovation Research programs have done a tremendous amount to bridge the gap between business, academia, research and government. These initiatives should be considered as models for the Industry Growth Centres.

Improving collaboration between industry and research institutions

Ai Group supports collaborative links as an important means of lifting the pace of innovation by Australian businesses. Collaboration and networking have been cited as consistent weaknesses in Australian innovation when compared with other OECD countries, with just 4.6% of innovation-active businesses collaborate with universities and 8.9% with publicly funded research agencies and programs.[1]

The relationship between the public research sector and industry represents a two-way opportunity for the exchange of knowledge, ideas and capabilities. By gaining access to technical expertise and research facilities businesses will be better equipped to exploit ideas and opportunities as they arise. Equally, businesses can aid scientists and researchers in identifying and exploiting commercial applications for their knowledge and resources. This mutually beneficial

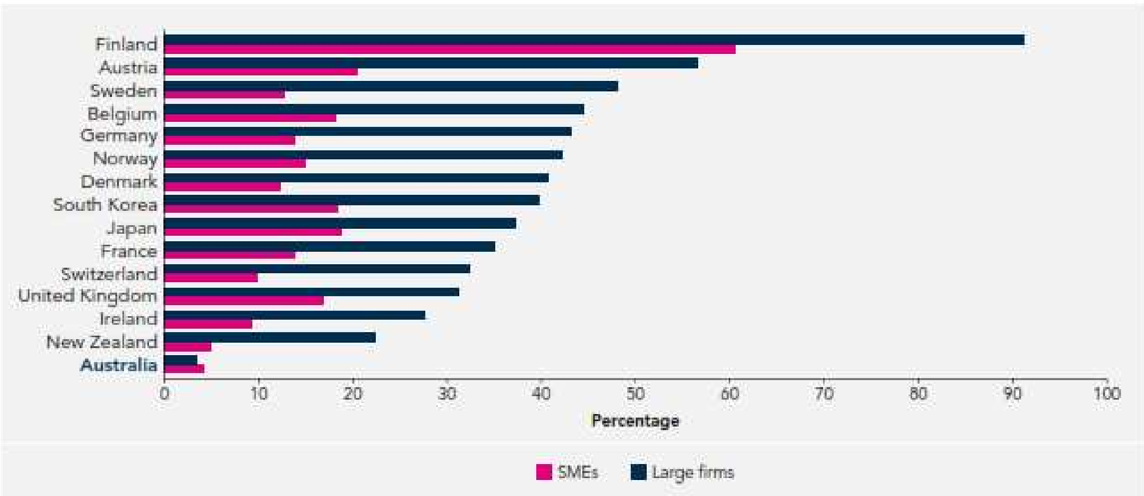
[1] Australian Bureau of Statistics, *Innovation in Australian Business 2010-11*, August 2012.

relationship will require government funding of public research to be restructured to place greater emphasis on the importance of demonstrating commercial outcomes. Government, in making decisions about how it finances innovation and what activities it will fund, should play a greater role in ensuring there are incentives for collaboration between businesses and public sector research organisations.

The Commonwealth invests in two programs that act as crucial bridges linking business and industry; Cooperative Research Centres and the Entrepreneurs' Infrastructure Programme. Funding for these measures should be retained. These are described in more detail below.

Industry – university collaboration is at a low level in Australia compared to many other countries. For example, Australia has the lowest level of business to research collaboration among comparator countries. Australia ranks 32nd out of 33 OECD countries for SMEs and last for large enterprises; this is about 4% of large firms. This compares, for example, with Sweden (5th) where the figure is 50% of large firms and the UK (19th) where it is about 30%.[2]

Chart 6: Business and Research Collaboration



Notes: By OECD classifications, firms with 10–250 employees are considered SMEs, and firms with more than 250 employees are large firms. Where no data were available for 2008–2010, other years are displayed: Australia 2010–2011, New Zealand 2009–2011, Ireland 2006–2008, Switzerland 2009–2011, Japan 2009–2010 and South Korea 2005–2007.
Source: OECD 2011b.

Ai Group surveys indicate that only 26% of employers have links with universities and that about half have no education links at all. There are also very few plans for employers to change their links to universities with over 80% indicating that existing links will stay the same.[3]

Cooperative Research Centres Program[4] (CRC)

Collaborative links between research institutions and industry are important to lift the pace of innovation by Australian businesses. Ai Group supports the retention of initiatives, like the

---

[2] *Benchmarking Australian Science, Technology, Engineering and Mathematics*, Office of the Chief Scientist, November 2014, page 30.

[3] Employer Survey of Workforce Development Needs 2014.

[4] Note that Ai Group is a Portal Partner in the proposed Innovative Manufacturing Cooperative Research Centre currently being considered by the Commonwealth.

Cooperative Research Centres (CRC) Program, to encourage greater collaboration between businesses and researchers.

That said changes need to be made to the CRC program to enhance industry engagement and improve the program's effectiveness at achieving commercial outcomes. We support the review and reform of the Cooperative Research Centres Program. However, we would not like to see a reduction in the overall level of support for initiatives to encourage collaboration.

Innovation and research and development are often prohibitively expensive for many businesses, particularly small and medium enterprises. SMEs often lack familiarity with the research community. By aggregating the financial and in-kind contributions of participants, and by giving individual businesses privileged access to Australia's finest researchers and institutions, CRCs reduce the costs to industry of participating in R&D projects and ensure that businesses are directed to the research organization best suited to their needs.

The broader benefits of an effective CRC are felt in an accelerated pace of innovation amongst individual companies and the diffusion of new knowledge to the wider sector. There are also benefits to the Australian economy, with a 2012 study estimating that CRCs have spun out technologies, products and processes making an annual contribution of $278 million to the economy.[5]

Entrepreneurs' Infrastructure Programme

Ai Group is a partner in the delivery of the Entrepreneurs' Infrastructure Programme (EIP), which is the Australian Government's flagship initiative to improve business competitiveness and productivity at the firm level. It forms a crucial part of the Australian Government's new industry policy outlined in the Industry Innovation and Competitiveness Agenda.

Under EIP, Eligible businesses can access:

- advice and support from highly experienced Advisers and Facilitators, drawn from industry,
- co-funded grants to commercialise new products, processes and services
- funding to take advantage of growth opportunities, and
- connection and collaboration opportunities.

The delivery of the Entrepreneurs' Infrastructure Programme in partnership with industry through Advisers and Facilitators with real world business and business advisory experience is a key strength. It is essential that there is a smooth roll out of the Programme from 1 July 2015 when new delivery arrangements are due to commence.

Boosting the pool of early stage finance

Businesses need to have access to the early stage capital required to expand on and invest in new ideas. We welcome the Government's progress by winding back rules limiting employee share schemes and the foreshadowed expansion in eligibility of significant investor scheme to include venture capitalists.

---

[5] Department of Industry, *Australia's Innovation System Report*.

Ai Group welcomes the Treasury's review currently underway into establishing a crowdfunding market in Australia, examining how the ease of regulation can be balanced against the need for investor regulations. We would encourage the Government to act swiftly upon the review's recommendations once they are handed down to ensure Australia has a vibrant crowdfunding market with appropriate investor safeguards.

Supporting Australia's innovation by improving leadership capability

Increasing complexity, volatility and ambiguity in Australian workplaces is posing a challenge for those with leadership responsibilities. Australian businesses have acknowledged that globalisation is rapidly changing our business landscape and this has exposed us to significant international competition. The pace of technological change is increasing and this is making industry and the entire economy more susceptible to disruptive change. It is forcing companies to change the way they do business with new business structures emerging that lend themselves to a more volatile environment. Economic uncertainty has also led to increased pressure to deliver short term financial results and this has influenced the way in which business leaders approach strategy and the metrics they use to support their decision-making. Lifting Australia's leadership capability in order to enhance productivity, innovation and sustainability is critical to our future.

The *IMD World Competitiveness Yearbook*[6] 2014 showed that in Australia the perception of management practices by employees, relative to other countries has been dropping, with Australia's ranking falling from 8th in 2009 to 18th in 2014. This measure contributes to the decline in Australia's overall competitiveness ranking down from 7th in 2009 to 17th in 2014. The *WEF Global Competitiveness Report*[7] measures leadership on a limited basis using two elements of leadership, staff training and the willingness of managers to delegate responsibility to measure leadership. Australia's ranking has slipped significantly in recent years with regard to staff training. The second element of leadership measures willingness to delegate by asking employees about the extent to which they believe managers are willing to delegate authority in their country, and in this regard Australia is also slipping in its performance dropping from 11th in 2011 to 17th in 2014.

The level of innovation uptake and the ongoing competitiveness and sustainability of industry in Australia will largely depend on the capability of our leadership and action taken now. Ai Group is concerned that little policy attention has been devoted to building Australia's leadership capability in recent years. Ai Group intends to work with member companies to develop leadership communities, develop leadership tools and information and promote leadership success stories. However support is needed from the Government to reform leadership and management education; drive collaboration between our schools, academic institutions and business; and fund practical leadership research.

[6] International Institute of Management Development (2013),World Competitiveness Yearbook

[7] World Economic Forum (2013), Global Competitiveness Report

Barriers to business set-up: workplace relations

The Fair Work Act 2009 (FW Act) operates as a barrier to business start-ups and investments through a lack of flexibility and overly prescriptive provisions.

Problems include:

- The requirement that greenfields agreements for new undertakings and projects can only be entered into with union/s.
- An excessive amount of power given to unions in the bargaining process.
- The outlawing of statutory individual agreements which played an important role in delivering flexibility to employers and employees while they were available between 1996 and 2009.
- The ability for unions in unionised workplace to, in effect, veto Individual Flexibility Arrangements (IFAs) providing any meaningful flexibility.
- In assessing whether an IFA meets the Better Off Overall Test, the Act should make it clear that the preferences of employees for particular work arrangements should be able to be taken into account.
- Overly prescriptive provisions in the 122 modern awards.
- The system of 4 Yearly Reviews of Modern Awards which encourage unions to pursue a raft of costly and unproductive claims every 4 years, which take the next 4 years to defend until the whole process starts again.

A large proportion of Australian businesses which compete with overseas companies have a major cost competition problem. In order to encourage businesses to invest in Australia, our workplace relations system needs to be far more flexible than it currently is.

Barriers to business set-up: financial barriers

As we flagged in **our two submissions to the Financial System Inquiry** in 2014 (see: http://www.aigroup.com.au/policy/submissions), Ai Group sees banks and capital markets playing a vital role in enabling industry to reposition and set the economy on a new diversified growth path with a greater range of sources of competitive strength.

As part of this repositioning, businesses will need to take more risk and invest in new products, services, processes and business models. For this, businesses will need to source finance from banks, capital markets offshore or through venture capital, at a competitive cost. A key role of the financial system is to assist this by providing finance under sufficiently attractive terms and conditions.

By and large, Australian businesses have good access to finance but some businesses, particularly in the manufacturing sector, find they face difficulties with banks by virtue of their industry classification. This in part owes to a reduced focus by the banks on their relationships with businesses in favour of residential borrowers.

Businesses need to have access to the early stage capital required to expand on and invest in new ideas. This issue was raised in Ai Group's submission to the Financial System Inquiry. There is no single answer to creating a deeper early-stage finance market in Australia. However, there have been important developments since the Financial System Inquiry panel handed down its report.

We welcome the Government's progress by winding back rules that limited employee share schemes and look forward to seeing draft legislation. We also welcome the foreshadowed expansion currently being considered by Trade Minister Andrew Robb to widen the eligibility of significant investor scheme to include venture capitalists.

Ai Group welcomes the Treasury's review currently underway into establishing a crowdfunding market in Australia, examining how the ease of regulation can be balanced against the need for investor regulations. We would encourage the Government to act swiftly upon the review's recommendations once they are handed down to ensure Australia has a vibrant crowdfunding market with appropriate investor safeguards.

Barriers to business transfers

The FW Act contains a number of provisions which act as a barrier to business transfers including:

- The transfer of business laws in Part 2-8 of the FW Act;
- Overly generous and inflexible redundancy provisions; and
- The general protections in Part 3-1 of the FW Act.

Transfer of business laws

Since the introduction of the FW Act, Ai Group has expressed major concern about the transfer of business provisions in the Act, seeking both substantive changes and important technical amendments. These issues are not theoretical; our member companies are expressing continual, strong concerns about the adverse impact of the transfer of business laws on their businesses.

A 'transfer of business' under the FW Act occurs when an employee ceases employment with the old employer and within three months becomes employed by a new employer in circumstances where there is a business 'connection' between the two employers and the employee performs the same or substantially similar work for the two employers.

The types of 'connection' between the old and new employer that can give rise to a transfer of business are:

- A transfer of assets between the old employer and the new employer, in accordance with an arrangement between the employers, where the new employer owns or has the beneficial use of tangible or intangible assets owned or used by the old employer;
- Where the old employer outsources work to a new employer;
- Where the new employer ceases to outsource work to the old employer; and
- Where the new employer is an associated entity of the old employer.

Subject to any order of the Fair Work Commission (FWC), if there is a transfer of business, the new employer must observe and comply with any transferring industrial instrument that covered the work performed by transferring employees. Also, generally the new employer must recognise the past service of the employees of the old employer for various entitlements.

Even though a new employer may seek an order from the FWC that the transferring industrial instrument does not apply to the new employer, this process is cumbersome and not aligned with the nature of business transfers where often confidentiality issues arise.

The current transfer of business laws are:

- Impeding the restructuring of Australian businesses and hence impeding productivity and competitiveness;
- Increasing redundancies and removing employment opportunities for many Australian workers;

- Discouraging organisations which win outsourcing contracts from employing any of their clients' workers and, hence, many of these workers are made redundant by the client;
- Constraining opportunities for companies in the business of outsourcing (e.g. Information, Communication and Technology ('ICT') companies);
- Deterring companies that wish to outsource functions from doing so and consequently opportunities for productivity improvement are lost ;
- Driving work and jobs offshore;
- Restricting employee career progression and redeployment opportunities within corporate groups;
- Imposing multiple and inconsistent employment conditions on employers resulting in higher costs, more red tape and reduced productivity, efficiency and staff morale; and
- Imposing unworkable obligations on employers in excess of what is reasonable to protect employees' interests.

These problems have arisen due to the design of the transfer of business laws, including basing such laws on the concept of 'work performed' rather than the former 'character of the business' test which operated under the *Workplace Relations Act 1996*.

Industrial instruments are very much focused on the industry and the type of business for which they were specifically designed to cover. Consequently the notion that an employer in one industry can easily adopt an industrial instrument from another industry is flawed. This notion, however, is the default position in the FW Act in relation to transfer of business.

Such a situation defies common sense and needs to be addressed.

Redundancy entitlements

The entitlement to redundancy pay is a minimum safety net entitlement under the National Employment Standards. This minimum safety net entitlement is also commonly supplemented in enterprise agreements.

Overly generous redundancy entitlements often present a significant barrier to business transfers and restructuring. Nowadays businesses need to be able to restructure quickly and effectively to take advantage of market opportunities, to deal with market threats, and to remain productive and competitive.
Redundancies typically occur when employers are experiencing a downturn in their operations or when they decide to restore or improve profitability. Often the reasons which underlie the necessity for redundancies are beyond the control of the employer.
Sometimes an employer's redundancy liabilities are so great, with unions and employees refusing to implement more appropriate redundancy provisions, that the only option is business closure. Problems with existing redundancy arrangements include:

- In more profitable times, many employers acceded to union claims for very generous redundancy arrangements (e.g. 3-4 weeks per year of service, often without a cap on payments) and now find that they cannot afford to restructure or downsize;

- The *Fair Entitlements Guarantee Act 2012* implements an extremely generous level of redundancy protection (4 weeks' pay per year or service) which encourages unions to pursue claims for this excessive level of entitlements;

- Redundancy is generally not payable where termination of employment arises from "the ordinary and customary turnover of labour" (see s.119(1)(a) of the FW Act) but this term is not defined and the unions argue that the concept rarely if ever applies. A classic case where this exclusion should apply is where termination arises due to the loss or expiry of a contract between the employer and a client company and an employee was hired to work upon that contract. However, even in this circumstance the unions typically argue that the exclusion does not apply. (See the recent decision of a Full Bench of the FWC in *CFMEU v Spotless* [2015] FWCFB 1162, 19 February 2015);

- Traditionally redundancy pay has not been payable where an employee is approaching the normal retirement age. However, the unions have pursued cases to have the relevant provisions removed from awards on the basis that they are discriminatory. Proceedings of this nature are currently before a Full Bench of the FWC regarding a provision in the redundancy clause of the *Black Coal Mining Industry Award 2010.* This matter was heard by the Full Bench on 16 February 2015 and the decision is reserved;

- Redundancy pay is generally not payable by order of the FWC where an employer finds acceptable employment for the employee with another employer. However, the FWC has imposed a very high bar on such applications. (See the recent decision of Commissioner Roe in *Serco Sodexo Defence Services* [2015] FWC 641, 28 January 2015);

- The definition of "genuine redundancy" in section 389 of the FW Act is too onerous for employers in terms of redeployment obligations, exposing employers to unfair dismissal claims from redundant employees.

General protections

The general protections in Part 3-1 of the FW Act are too loose and uncertain.

Under the general protections, employees and unions have access to injunctions to stop business restructures as well as access to compensation and other remedies. The result is that businesses are wary about restructuring.

The general protections need to be tightened, including by implementing the standard onus of proof whereby the person making the claim bears the onus of proving it. Currently a reverse onus of proof applies.

AUSTRALIAN INDUSTRY GROUP METROPOLITAN OFFICES
SYDNEY 51 Walker Street, North Sydney NSW 2060, PO Box 289, North Sydney NSW 2059 Tel 02 9466 5566 Fax 02 9466 5599
CANBERRA 44 Sydney Avenue, Forrest ACT 2603, PO Box 4986, Kingston ACT 2604 Tel 02 6233 0700 Fax 02 6233 0799
MELBOURNE Level 2, 441 St Kilda Road, Melbourne VIC 3004, PO Box 7622, Melbourne VIC 8004 Tel 03 9867 0111 Fax 03 9867 0199
BRISBANE 202 Boundary Street, Spring Hill QLD 4004, PO Box 128, Spring Hill QLD 4004 Tel 07 3244 1777 Fax 07 3244 1799
ADELAIDE 45 Greenhill Road, Wayville SA 5034 Tel 08 08 8394 0000 Fax 08 08 8394 0099

REGIONAL OFFICES
ALBURY/WODONGA 560 David Street Albury NSW 2640 Tel 02 6041 0600 Fax 02 6021 5117
BALLARAT Suite 8, 106-110 Lydiard St South, Ballarat VIC 3350, PO Box 640, Ballarat VIC 3350 Tel 03 5331 7688 Fax 03 5332 3858
BENDIGO 87 Wills Street, Bendigo VIC 3550 Tel ~~03 5440 3900~~ Fax 03 5444 5940
NEWCASTLE Suite 1 "Nautilos", 265 Wharf Road, Newcastle 2300, PO Box 811, Newcastle NSW 2300 Tel: 02 4925 8300 Fax: 02 4929 3429
WOLLONGONG Level 1, 166 Keira Street, Wollongong NSW 2500, PO Box 891, Wollongong East NSW 2520 Tel 02 4254 2500 Fax 02 4228 1898
AFFILIATE: PERTH Chamber of Commerce & Industry Western Australia
180 Hay Street, East Perth WA 6004, PO Box 6209, East Perth WA 6892 Tel 08 9365 7555 Fax 08 9365 7550

www.aigroup.com.au