

2015

# Submission to the Productivity Commission Inquiry – Workplace Relations Framework



Printing Industry  
Association of  
Australia

## Contents

1. Introduction .....	4
1.1 The Printing Industry Association of Australia .....	4
1.2 The Australian Printing and Graphic Arts Industry .....	4
2. Barriers to bargaining .....	5
2.1 Enterprise Bargaining.....	5
2.2 Individual Flexibility Agreements (“IFAs”): a tight hamstring.....	6
2.3 “Good faith” bargaining: causing confusion and bad blood in Australian workplaces.....	7
3. FWC Jurisdiction and system.....	8
APPENDIX A: .....	9

# Executive Summary

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The Printing Industry Association of Australia (“PIAA”) welcomes the opportunity to make submissions to this Productivity Commission inquiry. Generally, the PIAA is supportive of the submissions as lodged by the Australian Chamber of Commerce and Industry (“ACCI”). The breadth and depth of ACCI’s submissions are relevant to our overall industry that PIAA represents on workplace relations and other issues.

While we support the ACCI submissions, we would like to additionally draw the Productivity Commission’s attention to several issues that have an obvious and important impact on creating a balanced workplace relations platform for all participants within our overall industry.

Generally, our industry does not perceive micro-economic change is readily achievable through the current workplace relations system and its limitations on achieving productivity gains. A snapshot of our industry evidences that productivity gains within business are generally achieved through technical refinements in process and general technological change and related improvements that are implemented in the workplace.

This view is supported by Professor David Peetz, who though conducting empirical research, concluded that industrial relations systems have, at best, a tenuous link to productivity.<sup>1</sup> However this does create a position whereby technical advancements within businesses may result in the ongoing reduction of employee numbers.

To overcome such limitations it is the PIAA’s desire to see a national workplace relations system that truly focuses on the needs of the employer and the employee at the workplace level. We are desirous of a system that brings about true flexibilities so as to reward, incentivise and develop industries and businesses so that they may create prosperity for Australia. The Federal government must base its policies on such intentions in the highly regulated atmosphere of workplace relations in Australia if positive change is to occur. Appropriately structured and intentioned policies will encourage fairness for all parties, as well as balance and flexibility which promote improved economic performance and sustainable growth.

In this submission, we provide the Productivity Commission with a background to our industry which is one of the largest manufacturing based industries left in Australia. Further, we will provide industry specific viewpoints on the need to enhance individual flexibility agreements (or similar style instruments), the need to adjust tests for determining the fairness of agreements, and the purpose of a relevant safety net.

Further, we will also provide a brief appraisal and critique of the Fair Work Commission jurisdiction arising out of the experience of PIAA’s workplace relations advocacy team and member contact with the jurisdiction.

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<sup>1</sup> David Peetz, ‘Does Industrial Relations Policy Affect Productivity?’, *Australian Bulletin of Labour*, 38 (4), December 2012, 268-292.

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## **1. Introduction**

### **1.1 The Printing Industry Association of Australia**

PIAA is the peak representative organisation for companies in the printing, packaging and visual communications industry. It was one of the first employer organisations established in Australia and is registered under the *Fair Work (Registered Organisations) Act 2009* (Cth).

The membership of PIAA comprises a broad cross section of companies within the overall industry including printers, desktop publishers, graphic designers, prepress houses, publishers, software and hardware manufacturers and distributors, paper and paper board manufacturers, paper merchants, ink manufacturers, manufacturers and suppliers of printing equipment and consumables, packaging and flexible packaging, paper converting, binding and finishing, communication and media services.

The majority of PIAA's membership is covered by the Graphic Arts Printing and Publishing Award 2010 ("GAPPA"). As such, PIAA is the primary industrial organisation entitled to best represent the industrial interests of employers covered by the GAPPA.

### **1.2 The Australian Printing and Graphic Arts Industry**

The printing and related industry has historically been a significant industry within the Australian manufacturing sector. While digital convergence within the industry has led to a paradigm shift in recent years that has seen the industry move from traditional 'manufacturing' to one with a stronger focus on 'service', it nevertheless remains the third largest manufacturing industry in Australia.

The printing and related industry as a whole has an annual turnover in excess of \$32 billion including more than \$13 billion in industry value added, annual exports in excess of \$1.5 billion and imports in excess of \$4.7 billion. It is an industry that is relied upon by every sector of the Australian economy.

Further, the printing and related industry is one of the largest employer groups within the Australian manufacturing sector. There are approximately 5,800 businesses employing over 100,000 employees nationally, with the majority of printing and related businesses considered to be small businesses.

The majority of both the business owners and the employees within the industry are technically adept and often trade qualified. As such, the majority of the employees within the industry are covered by the award terms of the GAPPA and its predecessors.

*Please refer to Appendix A for further detail on the industry.*

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## **2. Barriers to bargaining**

### **2.1 Enterprise Bargaining**

Although an intention of the *Fair Work Act 2009* (Cth) was to promote the idea of bargaining at the workplace level. For numerous reasons our industry does not generally hold the view that enterprise bargaining will likely lead to a mutually beneficial enterprise agreement. The current workplace relations system has not created a particularly participative approach to real and beneficial workplace change in our industry.

The demands of clients along with intense competition within the industry, both domestically and from overseas, result in employers having little leverage in bargaining negotiations. Protracted enterprise bargaining negotiations and related industrial action can result in serious business issues. Our industry is results driven and time poor whereby any failure in the quality of production or delay in delivery can cost a company its client and profitability. PIAA members and workplace relations advisors have observed through their involvement in enterprise bargaining processes and agreement making that most agreements ultimately become negotiations over pay rise percentages. In PIAA's experience, legislative reforms make little difference to productivity gains or cultural change in the workplace.

Although various businesses within the industry are compelled to continue with ongoing enterprise agreements, the industry is not excited by or drawn to implementing enterprise agreements. Generally they see no great advantage in their implementation. This is in part due to the related bargaining processes. In Australia, ingrained cultural misconceptions and perceptions remain whereby participants in the bargaining process often commence with an adversarial approach. The forced bargaining process can unnecessarily perpetuate classism that is not seen in other countries that utilise enterprise based agreements.<sup>2</sup> During the bargaining process management and employees can be pitted against each other, rather than engaging in pluralist discussions that work toward or incorporate a common vision or business plan.

The Fair Work Commission's recent research report, 'Productivity and innovation in enterprise agreement clauses' further illustrates current practices and processes that are barriers to enterprise bargaining.<sup>3</sup> The report provides case study findings that evidence enterprise bargaining based productivity enhancements within agreements are "perceptions" only, rather than quantifiable gains.<sup>4</sup>

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<sup>2</sup> David Peetz, above n 1.

<sup>3</sup> Samantha Famakis-Gamboni, Kelvin Yuen, Michael Preston and Mlena Katic (2014), "Productivity and innovation in enterprise agreement clauses: an overview of literature, data and case studies at the workplace level", *Future Directions 2014-15: Initiative 29*, Fair Work Commission, pp. 23-29.

<sup>4</sup> *ibid*

## 2.2 Individual Flexibility Agreements (“IFAs”): a tight hamstring

The current incarnation of Individual Flexibility Agreements (“IFAs”) have not operated as effectively as they could to create true flexibility in the workplace. Further, and as a result of legislative restrictions on the circumstances in which they may be utilised, their use in this industry has been minimal.

By way of example, the *Graphic Arts Printing and Publishing Award 2010* provides for individual flexibility agreements that allow only five conditions within the award to be varied. Adding to such limitations is that an apparent flexible agreement that can be terminated on only thirteen weeks notice.

Employers have had concerns with utilising IFAs because of the lack of certainty regarding how and whether any given agreement complies with the ‘better off overall test’ (“**BOOT**”). We seek not just true flexibility in the use and implementation of such agreements, but also an ability to register such agreements and some level of administrative scrutiny to provide certainty and thereby assurance to both employers and employees.

It is the PIAA’s view that in the face of the metamorphosis of our industry, from being centered on ink-on-substrate to what has become an incredibly diverse and digitally driven industry; we must be allowed to have a truly flexible workplace relations system that can keep pace with such rapid evolution. We believe that this can be achieved by:

1. An expansion on the terms that can be included in an IFA or similar style instrument so as to include the needs and flexibilities that suit both the individual and the production requirements of diverse companies.
2. The application of some form of an independent administrative review and consideration to the implementation of an IFA or similar style instrument in the workplace. This would provide clarity and assurance for employers and thus mitigate against their hesitancy in utilising IFAs.
3. Determination of IFA’s or similar style instrument against a global test rather than the current BOOT that is inflexibly based on financial arrangements only.

## 2.3 “Good faith” bargaining: causing confusion and bad blood in Australian workplaces

“Good faith” is a requirement in the bargaining process, however in the *Barker*<sup>5</sup> case, the High Court of Australia left open the question of whether the standard of good faith should be applied generally in Australian employment contracts. On issues such as agreement content, legislation is currently structured so that ‘matters pertaining’ to the employment relationship are no longer codified by legislative prescription but left to judicial interpretation. There is an incongruity between the notion that the employee and employer must bargain in good faith during the formation of the employment contract or workplace agreement, but at the point that the employment contract is crystallised, it is ambiguous whether good faith continues to be operative. Regardless, it is nebulous, confusing and complex to have a prescriptive legislated definition of “good faith” during the bargaining process, but ambiguity about whether such a concept applies at all once the contract is formed.

Additionally, due to the prescriptive nature of the good faith bargaining requirements in s 228 of the *Fair Work Act 2009* (Cth),<sup>6</sup> employers who genuinely have no desire to enter into an enterprise agreement nevertheless have no real option but to engage in the bargaining process if initiated by the relevant union. Should a company be held not to be bargaining in good faith, the Fair Work Commission may intervene and grant bargaining orders. For example, in the recent decision *Association of Professional Engineers, Scientists and Managers, Australia v Peabody Energy Australia Coal Pty Ltd*, the Full Bench of the Fair Work Commission held that Peabody was obliged to “*meet and discuss the revised [enterprise agreement] proposal [with APESMA]*”, not simply respond to it by letter.<sup>7</sup> The employer was also ordered to put forward a ‘genuine proposal’ of its own in response to the union. The Full Bench rejected the employer’s argument that information about salaries was commercial in confidence, and ordered that the information be provided to the union.

With respect to PIAA’s experience, our time poor members feel forced to a table to negotiate what will ultimately only result in a pay rise for employees. The current legislative ‘good faith’ bargaining requirements simply add more onerous red tape and pressure to the process.

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<sup>5</sup> *Commonwealth Bank of Australia v Barker* [2014] HCA 32 (10 September 2014).

<sup>6</sup> *Fair Work Act 2009* (Cth), s 228.

<sup>7</sup> *Association of Professional Engineers, Scientists and Managers, Australia v Peabody Energy Australia Coal Pty Ltd* [2015] FWCFB 1451 (3 March 2015) at 26 per Boulton J, Drake SDP and Cambridge C.

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### **3. FWC Jurisdiction and system**

The PIAA would like to see the Fair Work Commission continue to develop its jurisdiction so as to benefit all parties involved. We see benefit arising from the Commission undertaking research in areas such as enterprise agreement making as well as cultural and social issues that affect the workplace.

PIAA appreciates the development of Practice Notes and Benchbooks that are useful resources that clarify and explain both substantive and procedural essentials to the benefit of all parties involved in matters before the Commission.

Again we thank the Commission for the opportunity to provide this submission.

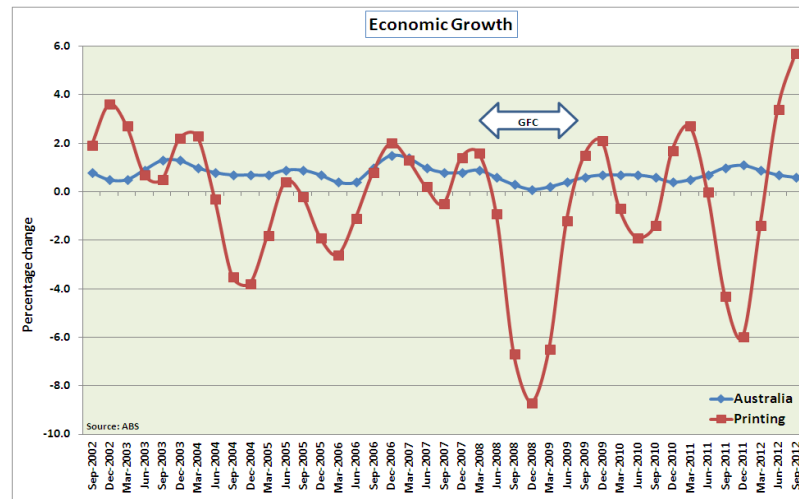
Printing Industries Association of Australia  
13 March 2015



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## APPENDIX A:

However, growth in the printing industry has been extremely volatile over the past decade. It has experienced five economic downturns during that time with a 24% contraction of the industry reported during the Global Financial Crisis.



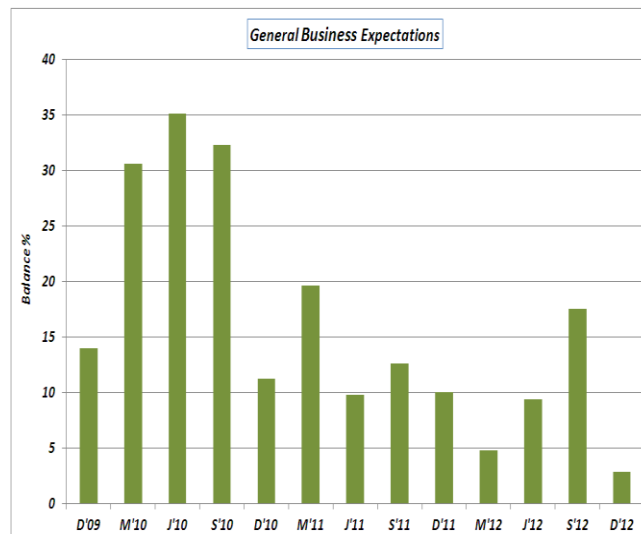
Source: ABS data compiled by Printing Industries Association of Australia

Currently, the printing industry is in a period of contraction. The PIAA Quarterly Survey of Printing Industry Trends for the December 2012 quarter shows:

- (a) Reduced orders and production;
- (b) Reduced sales and net profits;
- (c) Reduced employment and overtime levels;
- (d) Reduced selling prices;
- (e) Reduced investments in buildings and in plant and machinery;
- (f) Finance and Labour are harder to obtain;
- (g) Reduced levels of material stocks;
- (h) Increased material and wage costs; and
- (i) Increased number of outstanding debtors.

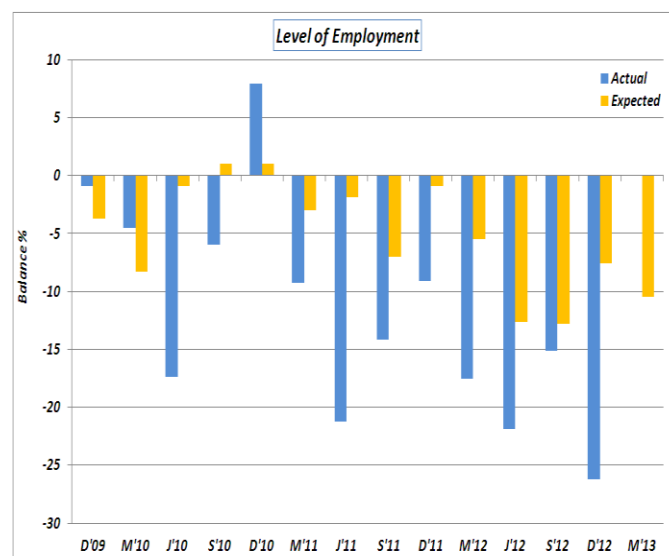
*(Printing Industry Trends, December Quarter 2012, Volume 26 Number 4)*

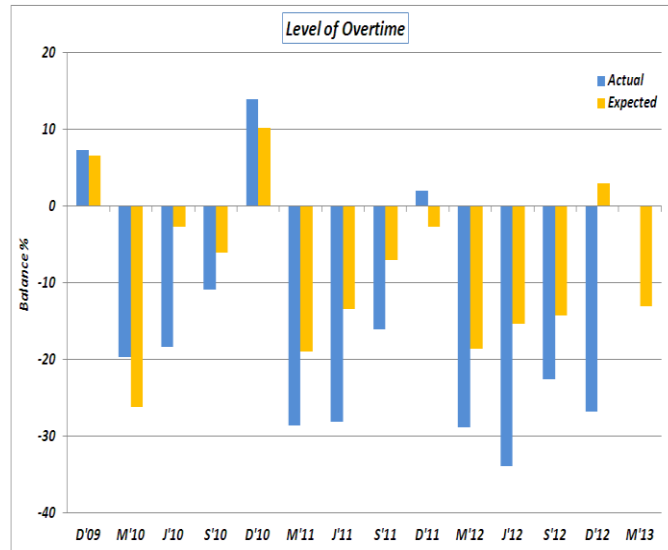
Further, general business expectations for economic conditions in the industry to improve over the next six months are at a four year low. As such, the industry is in an economic downturn that it is unlikely to recover from in the short term.



Source: Printing Industry Trends, December Quarter 2012, Volume 26 Number 4

In relation to employment in the printing industry, general employment levels and overtime have both declined over the past three years. Further, during the December 2012 quarter, respondents to the PIAA Trend Report indicated they would be shedding on a net basis 422 positions over the next 12 months. If this result is repeated throughout the industry value chain, some 6,686 positions may be shed throughout the industry during the next 12 months.

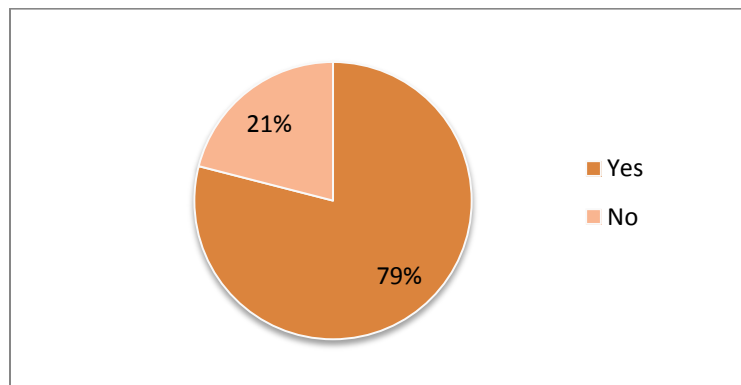




Source: Printing Industry Trends, December Quarter 2012, Volume 26 Number 4

In terms of skills shortage in the printing industry, when surveyed, approximately 105 respondent employers stated it was difficult to hire skilled tradespeople.

**Do you find it difficult to hire skilled tradespeople?**



Source: PIAA Member Survey, January 2013

Overall, the industry is constantly evolving to simultaneously ameliorate the effects of less superior products from offshore and enhance the sophistication of domestic products and value to the end user. The tight margins, rapid pace of change and the high capital investment associated with the acquisition of printing equipment requires flexibility in the workplace to drive productivity improvements.