Queensland Government

Treasurer
Minister for Employment and Industrial Relations
Minister for Aboriginal and Torres Strait Islander Partnerships

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18 SEP 2015

Workplace Relations Inquiry
Productivity Commission
GPO Box 1428
CANBERRA ACT 2601

Dear Sir/Madam

The Queensland Government welcomes the opportunity to provide its feedback to the Productivity Commission's Workplace Relations Framework Draft Report (draft report).

Please find enclosed the Queensland Government response. The response addresses each of the 45 recommendations of the draft report (**Attachment 1**) and provides the Queensland Government's position on other matters where the Productivity Commission has sought further information (**Attachment 2**).

If you require further information or assistance, please contact Mr Jason Humphreys, Chief of Staff,

I trust this information is of assistance.

Yours sincerely

HON. CURTIS PITT MP
Treasurer
Minister for Employment and Industrial Relations
Minister for Aboriginal and Torres Strait Islander Partnerships

Enc. (2)

ATTACHMENT 1

QUEENSLAND GOVERNMENT RESPONSE TO PRODUCTIVITY COMMISSION DRAFT RECOMMENDATIONS

The Productivity Commission draft report contained **45 recommendations** relating to 14 of the 26 chapters. Each of the recommendations is set out below together with the Queensland Government response:

Recommendations	Queensland Government	Comments
Chapter 3 Institutions		
Draft Recommendation 3.1: The Australian Government should amend the *Fair Work Act 2009* (Cth) to establish a Minimum Standards Division as part of the Fair Work Commission. This Division would have responsibility for minimum wages and modern awards. All other functions of the Fair Work Commission should remain in a Tribunal Division.	**OPPOSES**	1. The Queensland Government does not support the split of the Fair Commission into two divisions, with the establishment of a Minimum Standards Division and Tribunal Division.
Draft Recommendation 3.2: The Australian Government should amend s. 629 of the *Fair Work Act 2009* (Cth) to stipulate that new appointments of the President, Vice Presidents, Deputy Presidents and Commissioners of the Fair Work Commission be for periods of five years, with the possibility of reappointment at the end of this period, subject to a merit-based performance review undertaken jointly by an independent expert appointment panel and (excepting with regard to their own appointment) the President. Current non-judicial Members should also be subject to a performance review based on the duration of their current appointment. Existing Members with five or more years of service would be subject to review within three years from the commencement of these appointment processes with reviews to be staggered to reduce disruption. Non-judicial Members with fewer than five years of service would be reviewed at between three to five years, depending on the date of their appointment.	**OPPOSES**	2. The Queensland Government does not support changes to appointment terms for members of the Fair Work Commission. The Queensland Government referred its residual industrial relations jurisdiction for the private sector to the Commonwealth to create a National Workplace Relations System. The Queensland Government continues to support the provisions of the *Fair Work Act 2009* (Cth) as the best framework for the regulation of the National Workplace Relations System.
Draft Recommendation 3.3: The Australian Government should amend the *Fair Work Act 2009* (Cth) to change the appointment processes for Members of the Fair Work Commission. The amendments would stipulate that: • an independent expert appointment panel should be established by the Australian Government and state and territory governments • members of the appointment panel should not have had previous direct roles in industrial representation or advocacy • the panel should make a shortlist of suitable candidates for Members of the Fair Work Commission against the criteria in draft recommendation 3.4	**OPPOSES**	3. The Queensland Government does not support changes to the appointment process for Members of the Fair Work Commission.

Recommendations	Queensland Government	Comments
• the Commonwealth Minister for Employment should select Members of the Fair Work Commission from the panel's shortlist, with appointments then made by the Governor General.		
Draft Recommendation 3.4: The Australian Government should amend the *Fair Work Act 2009* (Cth) to establish separate eligibility criteria for members of the two Divisions of the Fair Work Commission outlined in draft recommendation 3.1. Members of the Minimum Standards Division should have well-developed analytical capabilities and experience in economics, social science, commerce or equivalent disciplines. Members of the Tribunal Division Membership should have a broad experience, and be drawn from a range of professions, including (for example) from ombudsman's offices, commercial dispute resolution, law, economics and other relevant professions. A requirement for the Panel and the Minister for Employment respectively is that they be satisfied that a person recommended for appointment would be widely seen as having an unbiased and credible framework for reaching conclusions and determinations in relation to workplace relation matters or other relevant areas.	**OPPOSES**	4. The Queensland Government does not support the separation of the Fair Work Commission into two separate divisions.
Draft Recommendation 3.5: The Australian Government should require that the Fair Work Commission publish more detailed information about conciliation outcomes and processes. In the medium term, it should also commission an independent performance review of the Fair Work Commission's conciliation processes, and the outcomes that result from these processes.	**SUPPORTS**	5. The Queensland Government supports publishing more detailed information about conciliation outcomes and processes.
Chapter 4 National Employment Standards		
Draft Recommendation 4.1: The Fair Work Commission should, as a part of the current four yearly review of modern awards, give effect to s. 115(3) of the *Fair Work Act 2009* (Cth) by incorporating terms that permit an employer and an employee to agree to substitute a public holiday for an alternative day into all modern awards.	**SUPPORTS**	6. The Queensland government supports this recommendation on the basis that analysis by the Fair Work Commission suggests 87 of the 122 modern awards already have a provision for the substitution of public holidays.
Draft Recommendation 4.2: The Australian Government should amend the National Employment Standards so that employers are not required to pay for leave or any additional penalty rates for any newly designated state and territory public holidays.	**OPPOSES**	7. The Queensland Government does not support the removal of obligations on employers to pay penalty rates on days which are appointed as public holidays.
Draft Recommendation 4.3: Periodically, the Australian, state and territory governments should jointly examine whether there	**SUPPORTS**	8. The Queensland Government is always willing to consult with the

Recommendations	Queensland Government	Comments
are any grounds for extending the existing 20 days of paid annual leave in the National Employment Standards, with a cash out option for any additional leave where that suits the employer and employee. Such an extension should not be implemented in the near future, and if ultimately implemented, should be achieved through a negotiated tradeoff between wage increases and extra paid leave.		Commonwealth, states and territories on workplace relations issues.
Chapter 5 Unfair Dismissal		
Draft Recommendation 5.1: The Australian Government should either provide the Fair Work Commission with greater discretion to consider unfair dismissal applications 'on the papers', prior to commencement of conciliation; or alternatively, introduce more merit focused conciliation processes.	**OPPOSES – 'on the papers' consideration of applications** **SUPPORTS - more merit focused conciliation processes**	9. The Queensland Government does not support an 'on the papers' assessment of unfair dismissal applications prior to conciliation. The Fair Work Commission is a 'layperson's' tribunal and as such, an approach involving consideration of an applicant's unfair dismissal claim without providing them with an opportunity to clarify any matters which are deficient in the application are not supported. The Queensland Government would be supportive of a more merit-focused conciliation process under the *Fair Work Act 2009*. The Queensland's *Industrial Relations Act 1999* provides for a merit-focused conciliation process in unfair dismissal matters, which is utilised to clarify all of the issues raised by the parties and if possible, assist them to reach a settlement.
Draft Recommendation 5.2: The Australian Government should change the penalty regime for unfair dismissal cases so that: • an employee can only receive compensation when they have been dismissed without reasonable evidence of persistent underperformance or serious misconduct • procedural errors by an employer should not result in reinstatement or compensation for a former employee, but can, at the discretion of the Fair Work Commission, lead to either counselling and education of the employer, or financial penalties.	**OPPOSES**	10. The Queensland Government does not support the recommendation that an employee can only receive compensation if they have been dismissed without reasonable evidence of persistent underperformance or serious misconduct. The Fair Work Commission should rightly exercise its discretion in weighing up all of the factors in each case in determining if compensation is appropriate in all of the circumstances. The Queensland Government similarly does not support the second component of this recommendation.
Draft Recommendation 5.3: The Australian Government should remove the emphasis on reinstatement as the primary goal of the unfair dismissal provisions in the *Fair Work Act 2009* (Cth).	**OPPOSES**	11. The Queensland Government supports a national workplace relations system built on protection from unfair dismissal. As such where an employee is found to have been unfairly dismissed, the Queensland Government supports an approach where the

Recommendations	Queensland Government	Comments
		primary remedy is reinstatement, unless it is impracticable to do so.
Draft Recommendation 5.4: Conditional on implementation of the other recommended changes to the unfair dismissal system within this report, the Australian Government should remove the (partial) reliance on the Small Business Fair Dismissal Code within the *Fair Work Act 2009* (Cth).	**SUPPORTS**	12. The Queensland Government supports the approach under the *Fair Work Act 2009* for small businesses having different rules for dismissal. However, the Queensland Government would be supportive of a move away from the Code and checklist. Such support is conditional upon satisfaction with what the actual proposed alternative to the Code would be and adequate guidance material, advice and support to small businesses to assist compliance with fair dismissal requirements under the FW Act.
Chapter 6 The General Protections		
Draft Recommendation 6.1: The Australian Government should amend the *Fair Work Act 2009* (Cth) to formally align the discovery processes used in general protection cases with those provided in the Federal Court's Rules and Practice Note 5 CM5.	**OPPOSES**	13. The Queensland Government would oppose the aligning of the discovery processes for general protection matters with those provided for in the Federal Court's Rules and Practice Note.
Draft Recommendation 6.2: The Australian Government should modify s. 341 of the *Fair Work Act 2009* (Cth), which deals with the meaning and application of a workplace right. • Modified provisions should more clearly define how the exercise of a workplace right applies in instances where the complaint or inquiry is indirectly related to the person's employment. • The FW Act should also require that complaints are made in good faith; and that the Fair Work Commission must decide this via a preliminary interview with the complainant before the action can proceed and prior to the convening of any conference involving both parties.	**OPPOSES**	14. The Queensland Government does not support any narrowing of the meaning of a workplace right. The Queensland Government also does not support a preliminary interview to ascertain whether or not a complainant is making a complaint in good faith. A shift away from the usual approach of courts and tribunals for dealing with vexatious litigants/complainants via a costs order (available in s.570 of the *Fair Work Act* and which is consistent with the approach of the QIRC in s.335 of the *Industrial Relations Act 1999*) is not justified.
Draft Recommendation 6.3: The Australian Government should amend Part 3-1 of the *Fair Work Act 2009* (Cth) to introduce exclusions for complaints that are frivolous and vexatious.	**OPPOSE**	15. The Queensland Government does not support a process which excludes complaints which are frivolous or vexatious for the reasons outlined in relation to Recommendation 6.2(b).
Draft Recommendation 6.4: The Australian Government should introduce a cap on compensation for claims lodged under Part 3-1 of the *Fair Work Act 2009* (Cth).	**CONDITIONAL SUPPORT**	16. The Queensland Government would be supportive of a cap on compensation claims lodged under Part 3-1 of the *Fair Work Act 2009*. A cap on compensation is utilised under the Queensland *Industrial Relations Act 1999* for unfair dismissal claims. The Queensland Government's support is conditional upon confirmation of the actual cap proposed.

Recommendations	Queensland Government	Comments
Draft Recommendation 6.5: The Australian Government should amend Schedule 5.2 of the *Fair Work Regulations 2009* (Cth) to require the Fair Work Commission to report more information about general protections matters. Adequate resourcing should be provided to the Fair Work Commission to improve its data collection and reporting processes in this area.	**SUPPORT**	17. The Queensland Government is supportive of improved data collection and reporting processes for general protections.
Chapter 8 Minimum Wages		
Draft Recommendation 8.1: In making its annual national wage decision, the Fair Work Commission should broaden its analytical framework to systematically consider the risks of unexpected variations in economic circumstances on employment and the living standards of the low paid.	**SUPPORTS**	18. The Queensland Government supports the Expert Panel for Annual Wage Reviews and its capacity to draw on expertise and commission research in determining the economic and employment impact of decisions.
Chapter 9 Variations in uniform minimum wages		
Draft Recommendation 9.1: The Australian Government should amend *the Fair Work Act 2009* (Cth) so that the Fair Work Commission is empowered to make temporary variations in awards in exceptional circumstances after an annual wage review has been completed.	**OPPOSES**	19. The Queensland Government does not support changes to the FW Act that result in a reduction in award rates of pay for workers.
Draft Recommendation 9.2: The Australian Government should commission a comprehensive review into Australia's apprenticeship and traineeship arrangements. The review should include, but not be limited to, an assessment of: • the role of the current system within the broader set of arrangements for skill formation • the structure of awards for apprentices and trainees, including junior and adult training wages and the adoption of competency-based pay progression • the factors that affect the supply and demand for apprenticeships and traineeships, including the appropriate design and level of government, employer and employee incentives.	**SUPPORTS**	20. The Queensland Government supports a review into Australia's apprentice and traineeship arrangements, given the considerable changes that have occurred in recent years. Whilst increasing the uptake of apprentices and trainees is desirable, this needs to be balance against the living needs of workers. As such, the wage structure, tax and transfer system and government incentives provide fair remuneration and support to apprentices and trainees should be considered. Furthermore, regulatory simplification and consistency with State and Territory regulation and consideration of State and Territory policy/programs (for example the Queensland Government's Working Queensland Policy) should be considered as part of this review.
Chapter 12 Repairing Awards		
Draft Recommendation 12.1: The Australian Government should amend the *Fair Work Act 2009* (Cth) to: • remove the requirement for the Fair Work Commission to conduct four yearly reviews of modern awards	**CONDITIONAL SUPPORT – the removal of a requirement for a four yearly review**	21. Queensland Government reiterates its position that regular review of awards is important to ensure they remain relevant and accurate.

Recommendations	Queensland Government	Comments
• add the requirement that the Minimum Standards Division of the Fair Work Commission review and vary awards as necessary to meet the Modern Awards Objective. • To achieve the goal of continuously improving awards' capability to meet the Modern Awards Objective, the legislation should require that the Minimum Standards Division: - use robust analysis to set issues for assessment, prioritised on the basis of likely high yielding gains - obtain public guidance on reform options.	**OPPOSES – the establishment of a Minimum Standards Division** **SUPPORTS – the goal of continuously improving awards**	However, conditional support is provided for a consideration of the timeframe for a review of awards. The Queensland Government opposes the establishment of separate Minimum Standards Division within the FWC.
Draft Recommendation 12.2: The Australian Government should amend *the Fair Work Act 2009* (Cth) so that the Minimum Standards Division of the Fair Work Commission has the same power to adjust minimum wages in an assessment of modern awards as the minimum wage panel currently has in annual wage reviews.	**OPPOSES**	22. The Queensland Government opposes the establishment of the Minimum Standards Division.
Chapter 14 Regulated weekend penalty rates for the hospitality, entertainment, retail, restaurants and café industries		
Draft Recommendation 14.1: Sunday penalty rates that are not part of overtime or shift work should be set at Saturday rates for the hospitality, entertainment, retail, restaurants and cafe industries. Weekend penalty rates should be set to achieve greater consistency between the hospitality, entertainment, retail, restaurants and cafe industries, but without the expectation of a single rate across all of them. Unless there is a clear rationale for departing from this principle, weekend penalty rates for casuals in these industries should be set so that they provide neutral incentives to employ casuals over permanent employees.	**OPPOSES**	23. The initial Queensland submission to the PC Review expressed strong opposition to any changes to penalty rates or the minimum wage. This position is reiterated in this submission. The Queensland Government specifically does not support a reduction in weekend penalty rates for the hospitality, entertainment, retail, restaurants and café industries.
Draft Recommendation 14.2: The Fair Work Commission should, as part of its current award review process, introduce new regulated penalty rates as set out in draft recommendation 14.1 in one step, but with one year's advance notice.	**OPPOSES**	24. The Queensland Government supports the current award review process and any changes to penalty rates arising out of this process are a matter for the Fair Work Commission to determine.
Chapter 15 Enterprise bargaining		
Draft Recommendation 15.1: The Australian Government should amend Division 4 of Part 2-4 of the *Fair Work Act 2009* (Cth) to: • allow the Fair Work Commission wider discretion to approve an agreement without amendment or undertakings as long as it is satisfied that the employees were not likely to have been placed at a disadvantage because of the unmet requirement. • extend the scope of this discretion to include any unmet requirements or defects relating to the issuing or content of a notice of employee representational rights.	**OPPOSES**	25. The Queensland Government does not support an amendment to the agreement approval process.

Recommendations	Queensland Government	Comments
Draft Recommendation 15.2: The Australian Government should amend s. 203 of the *Fair Work Act 2009* (Cth) to require enterprise flexibility terms to permit individual flexibility arrangements to deal with all the matters listed in the model flexibility term, along with any additional matters agreed by the parties. Enterprise agreements should not be able to restrict the terms of individual flexibility arrangements.	**OPPOSES**	26. The Queensland Government does not support the use of individual flexibility arrangements within Enterprise Agreements. The *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015* recently removed the requirement for individual flexible arrangements to be included in modern industrial instruments.
Draft Recommendation 15.3: The Australian Government should amend s. 186(5) of the *Fair Work Act 2009* (Cth) to allow an enterprise agreement to specify a nominal expiry date that: • can be up to five years after the day on which the Fair Work Commission approves the agreement, or • matches the life of a greenfields project. The resulting enterprise agreement could exceed five years, but where so, the business would have to satisfy the Fair Work Commission that the longer period was justified.	**OPPOSES**	27. The Queensland Government objects are that the nominal expiry date should be extended. Extending the timeframe up to 5 years may pose a risk to both employers and employees in that they are obliged by provisions that may be outdated.
Draft Recommendation 15.4: The Australian Government should amend the Fair *Work Act 2009* (Cth) to replace the better off overall test for approval of enterprise agreements with a new no-disadvantage test. The test against which a new agreement is judged should be applied across a like class (or series of classes) of employees for an enterprise agreement. The Fair Work Commission should provide its members with guidelines on how the new test should be applied.	**OPPOSES**	28. The Queensland Government does not support changes to the better off overall test. The Queensland Government advocates a cautious approach to further industrial relations reform. The introduction of a new no disadvantage test would require careful consideration to ensure that it does not disadvantage whole classes of employees.
Draft Recommendation 15.5: The Australian Government should amend the *Fair Work Act 2009* (Cth) so that: • a bargaining notice specifies a reasonable period in which nominations to be a bargaining representative must be submitted • a person could only be a bargaining representative if they represent a registered trade union with at least one member covered by the proposed agreement, or if they were able to indicate that at least 5 per cent of the employees to be covered by the agreement nominated them as a representative.	**OPPOSES – changes to bargaining notice period** **CONDITIONAL SUPPORT – changes to who can be a bargaining representative**	29. The Queensland Government opposes any reduction in employee rights to nominate a bargaining representative during the bargaining process. However, the Queensland Government would consider supporting changes to bargaining representatives to ensure that the bargaining representative must represent a registered trade union, or they were able to indicate that at least 5 per cent of the employees to be covered by the agreement nominated them as a representative.
Draft Recommendation 15.6: The Australian Government should amend the rules around greenfields agreements in the *Fair Work Act 2009* (Cth) so that bargaining representatives for greenfields agreements are subject to the good faith bargaining requirements.	**SUPPORTS**	30. The Queensland Government agrees that greenfield agreements should be determined in good faith, as is the requirement when negotiating other types of enterprise bargaining.

Recommendations	Queensland Government	Comments
Draft Recommendation 15.7: The Australian Government should amend the *Fair Work Act 2009* (Cth) so that if an employer and union have not reached a negotiated outcome for a greenfields agreement after three months, the employer may (as illustrated in figure 15.5): • continue negotiating with the union • request that the Fair Work Commission undertake 'last offer' arbitration of an outcome by choosing between the last offers made by the employer and the union • submit the employer's proposed greenfields arrangement for approval with a 12 month nominal expiry date. Regardless of the agreement-making process chosen by the employer, the ensuing greenfields arrangement must pass the proposed no-disadvantage test.	**OPPOSES**	31. The Queensland Government believes in collective bargaining as the best way to ensure fairness. The Queensland Government does not support changes to the Fair Work System in relation to approving Greenfields agreement. The PC's proposal, employers can submit their arrangement for approval to the Fair Work Commission with a short-term expiry date (12 months). However, at the end of this 12 months workers may find that their bargaining power is eroded due to them being somewhat 'tied' to the project which is underway.
Chapter 16 Individual arrangements		
Draft Recommendation 16.1: The Australian Government should amend the *Fair Work Act 2009* (Cth) so that the flexibility term in a modern award or enterprise agreement can permit written notice of termination of an individual flexibility arrangement by either party to be a maximum of 1 year. The Act should specify that the default termination notice period should be 13 weeks, but in the negotiation of an agreement, employers and employees could agree to extend this up to the new maximum.	**OPPOSES**	32. The Queensland Government does not support any extension to the termination date of an individual flexibility arrangement.
Draft Recommendation 16.2: The Australian Government should amend the *Fair Work Act 2009* (Cth) to introduce a new 'no-disadvantage test' (NDT) to replace the better off overall test for assessment of individual flexibility arrangements. The guidance in implementing the new NDT should also extend to collective agreements (as recommended in draft recommendation 15.4). To encourage compliance the Fair Work Ombudsman should: • provide more detailed guidance for employees and employers on the characteristics of an individual flexibility arrangement that satisfies the new NDT, including template arrangements • examine the feasibility, benefits and costs of upgrading its website to provide a platform to assist employers and employees to assess whether the terms proposed in an individual flexibility arrangement satisfy a NDT.	**OPPOSES**	33. The Queensland Government does not support any changes to the 'better-off-overall-test' in relation to the assessment of individual flexibility arrangements.
Draft Recommendation 16.3: The Fair Work Ombudsman should develop an information package on individual flexibility	**SUPPORTS**	34. The Queensland Government supports the provision and assistance of information from the Fair Work

Recommendations	Queensland Government	Comments
arrangements and distribute it to employers, particularly small businesses, with the objective of increasing employer and employee awareness of individual flexibility arrangements. It should also distribute the package to the proposed Australian Small Business and Family Enterprise Ombudsman, the various state government offices of small business, major industry associations and employee representatives.		Ombudsman for individual flexibility arrangements under the *Fair Work Act 2009*.
Chapter 19 Industrial Disputes and right of entry		
Draft Recommendation 19.1: The Australian Government should amend s. 443 of the *Fair Work Act 2009* (Cth), clarifying that the Fair Work Commission should only grant a protected action ballot order to employees once it is satisfied that enterprise bargaining has commenced, either by mutual consent or by a Majority Support Determination.	**OPPOSES**	35. The Queensland Government does not support changes to protected industrial action ballot process under the FW Act.
Draft Recommendation 19.2: The Australian Government should amend s. 423(2) of the *Fair Work Act 2009* (Cth) such that the Fair Work Commission may suspend or terminate industrial action where it is causing, or threatening to cause, significant economic harm to the employer or the employees who will be covered by the agreement, rather than both parties (as is currently the case).	**OPPOSES**	36. The Queensland Government does not support removal of the requirement that the harm be to both parties and not either party as ground for the Fair Work Commission to terminate action. It should also be noted that the removal of the tighter requirements to suspend industrial action may impact upon Australia's compliance with ILO Convention C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
Draft Recommendation 19.3: The Australian Government should amend the *Fair Work Act 2009* (Cth) so that where a group of employees have withdrawn notice of industrial action, employers that have implemented a reasonable contingency plan in response to the notice of industrial action may stand down the relevant employees, without pay, for the duration of the employer's contingency response.	**OPPOSES**	37. The Queensland Government opposes these recommendations on the grounds that it has the potential to escalate an issue rather than assist in prompt resolution.
Draft Recommendation 19.4: The Australian Government should amend the *Fair Work Act 2009* (Cth) to grant the Fair Work Commission the discretion to withhold a protected action ballot order for up to 90 days, where it is satisfied that the group of employees has previously used repeated withdrawals of protected action, without the agreement of the employer, as an industrial tactic.	**OPPOSES**	38. The Queensland Government position is that existing controls around balloting requirements are sufficient and that allowing the Fair Work Commission the discretion to withhold a ballot order for a prolonged period could be a breach of ILO Right to Collective Bargaining Convention.
Draft Recommendation 19.5: The Australian Government should amend the *Fair Work Act 2009* (Cth) so that where employees engage in brief work stoppages that last less than	**SUPPORTS IN PART (final point is supported)**	39. The Queensland Government position is that allowing the employer the discretion to pay or not pay an employee for the time the employee

Recommendations	Queensland Government	Comments
the shortest time increment used by their employer for payroll purposes, the employer should be permitted to choose to either: • deduct the full duration of the increment from employee wages. The maximum permissible deduction under this provision would be 15 minutes per person, or • pay employees for the brief period of industrial action, if the employer is willingly doing so to avoid the administrative costs of complying with prohibitions on strike pay.		engages in a stoppage is a matter for the employer to determine. The Queensland *Industrial Relations Act 1999* provides that under s238 (1) An employer may pay, or refuse to pay, an employee for a period when the employee engages in a strike.
Draft Recommendation 19.6: The Australian Government should increase the maximum ceiling of penalties for unlawful industrial action to a level that allows federal law courts the discretion to impose penalties that can better reflect the high costs that such actions can inflict on employers and the community.	**OPPOSES**	40. The Queensland Government does not support increasing of current penalties under the *Fair Work Act 2009*.
Draft Recommendation 19.7: The Australian Government should amend s. 505A of the *Fair Work Act 2009* (Cth) for determining when the Fair Work Commission may make an order to deal with a dispute about frequency of entry by an employee representative to: • repeal the requirement under s. 505A(4) that the frequency of entry would require an unreasonable diversion of the occupier's critical resources • require the Fair Work Commission to take into account: - the combined impact on an employer's operations of entries onto the premises - the likely benefit to employees of further entries onto the premises - the employee representative's reason(s) for the frequency of entries.	**OPPOSES**	41. The Queensland Government position is that the existing Fair Work System to deal with right of entry issues are sufficient and should remain.
Draft Recommendation 19.8: The Australian Government should amend the *Fair Work Act 2009* (Cth) so that unions that do not have members employed at the workplace and are not covered by (or are not currently negotiating) an agreement at the workplace, would only have a right of entry for discussion purposes on up to two occasions every 90 days.	**OPPOSES**	42. The Queensland Government position is that the right of entry should be based on the right to represent rather than membership or the existence or negotiation of an agreement.
Chapter 20 Alternative forms of employment		
Draft Recommendation 20.1: Terms that restrict the engagement of independent contractors, labour hire and casual workers, or regulate the terms of their engagement, should constitute unlawful terms under the *Fair Work Act 2009* (Cth).	**OPPOSES**	43. The Queensland Government does not support changes to unlawful terms under the *Fair Work Act 2009*. While it is advantageous to allow employers access to a flexible labour market, blanket outlawing of terms which restrict alternative forms of employment may skew the power

Recommendations	Queensland Government	Comments
		structure between employer and worker groups.
Chapter 21 Migrant Workers		
Draft Recommendation 21.1: The Fair Work Ombudsman should be given additional resources for investigation and audits of employers suspected of underpaying migrant workers (including those in breach of the *Migration Act 1958* (Cth)). The Migration Act should be amended so that employers can be fined by at least the value of any unpaid wages and conditions to migrants working in breach of the Migration Act, in addition to the existing penalties under the Act.	**CONDITIONAL SUPPORT**	44. The Queensland Government notes that the exploitation of migrant workers is an emerging issue. The Queensland Government considers a multi-faceted approach involving the range of stakeholders is required to achieve effective outcomes. The Queensland Government supports continuing investigation into how best to achieve these outcomes.
Chapter 22 Transfer of business		
Draft Recommendation 22.1: The Australian Government should amend the *Fair Work Act 2009* (Cth) so that an employee's terms and conditions of employment would not transfer to their new employment when the change was at his or her own instigation.	**OPPOSES**	45. The Queensland Government opposes any changes to the current transfer of business provisions are opposed in the absence of the Federal Government's report on the Post-Implementation Review of the *Fair Work Amendment (Transfer of Business) Act 2012*.

ATTACHMENT 2

PRODUCTIVITY COMMISSION REQUEST FOR FURTHER INFORMATION AND QUEENSLAND GOVERNMENT COMMENTS

As part of the consultation process the Productivity Commission has requested further information on specific issues identified in the Draft Report. Each of the requests for information and comments is set out below.

PC Draft Report Information Request	Queensland Government Comments
Chapter 4 National Employment Standards The Productivity Commission seeks information on whether it would be practical for casual workers to be able to exchange part of their loading for additional entitlements (for example personal or carer's leave) if they so wish, and whether such a mechanism would be worthwhile.	The Queensland Government has a sound track record of supporting measures that enhance employment security for all workers including casual employees. It is also acknowledged that casual employment plays an important role in providing flexible employment options for both employers and employees. Casual employees are recognised in both federal and state legislation through the provision of specific entitlements, which taken as a whole provide an element of certainty for this group of employees. At state-level the *Industrial Relations Act 1999* includes long service leave entitlements for all Queensland Workers, including casuals. The Queensland Government suggests that it is not practical for casual workers to exchange part of their loading for entitlements. Casual loadings exist to compensate employees for 'non ongoing' nature of this type of employment.
Chapter 5 Unfair Dismissal The Productivity Commission seeks further views on possible changes to lodgement fees for unfair dismissal claims.	The PC report suggests there may be merit in considering a revised, two-tier approach to lodgement fees by: • increasing by a modest amount the fees for application lodgement, and tying the fee to income levels at the time of dismissal, such that higher income earners pay more to lodge applications; and/or • introducing an additional fee for cases proceeding to arbitration to partly recover the substantial costs involved with conducting proceedings in the FWC. The filing fee for unfair dismissal applications in the Queensland jurisdictions is $69.60. This is in keeping with the aim of tribunals to provide informal, low cost and timely avenues for resolving disputes. The Queensland Government suggests that a fee increase linked to applicants' income levels for unfair dismissal matters or for proceeding to arbitration, particularly in cases where applicants have been dismissed and do not have an income, may further disadvantage an applicant. Any fee increase must balance the impediment it poses to access to justice for employees. As such the Queensland Government suggests that this can only be adequately assessed when the increased fee amounts are proposed.

PC Draft Report Information Request	Queensland Government Comments
Chapter 9 Variations in uniform minimum wages The Productivity Commission seeks information on whether the structure of junior pay rates should be based on a model other than age, such as experience or competency, or some combination of these criteria.	In 2012 a review of all awards was undertaken and a Full Bench of the Fair Work Commission (FWC) was constituted to determine proposed variations to modern awards pertaining to apprentice conditions. The main outcomes of this process was that the FWC requested parties and the Commonwealth to develop a Competency Based Training (CBT) model clause. The Queensland Government suggests that the development of the CBT model clause by the parties is an appropriate way forward.
Chapter 10 Measures to complement minimum wages The Productivity Commission invites participants' further input on the feasibility, merits and optimum design on an earned income tax credit in Australia, what its introduction might mean for future minimum wage determinations and employment outcomes, and in what conditions it would be appropriate to implement such a scheme.	The Queensland Government suggests that further investigation of an Earned Income Tax Credit (EITC) and its potential to promote greater employment and incentives to work for low-wage earners without a reduction in low-wage household incomes should be examined. However, there are significant and complex issues around designing an effective EITC, including its interaction with existing income, tax and welfare policies and potential impact on work incentives. Moreover, as an EITC transfers the cost of meeting minimum wage increases from business to the Commonwealth there could be significant fiscal impacts.
Chapter 14 Regulated weekend penalty rates for the hospitality, entertainment, retail, restaurants and café industries The Productivity Commission seeks views on whether there is scope to include preferred hours clauses in awards beyond the current narrow arrangements, including the scope for an arrangement where an employer would be obliged to pay penalty rates when it requested an employee to work at an employee's non-preferred time in the employment contract. What would the risks of any such 'penalty rate' agreements be and how could these be mitigated?	The initial Queensland submission expressed strong opposition to any changes to penalty rates or the minimum wage. This position is further emphasised in this submission especially considering **Recommendation 14.1** and its ramifications for consumer service industries. The Queensland Government suggests that introduction of a 'preferred hours' clause in awards would effectively remove all penalty rate entitlements for weekend workers, with employees being offered employment contracts for weekend work on a 'take it or leave it' basis. The removal of weekend penalty rates also has the potential for wide-ranging implications on hours of work and overtime practice in the consumer services industries. There is growing evidence of the negative impact that longer working hours are having on the health and safety of employees and their productivity in the workplace. Research studies show that longer hours reduce the quality and quantity of sleep that employees need, increase fatigue levels, and reduce alertness. This in turn reduces workplace performance and productivity, and increase the risk of accident and injury. The PC should also consider that problems with health and safety, fatigue and loss of productivity can also be contributed to hours that are unpredictable and irregular.
Chapter 15 Enterprise Bargaining	The Queensland *Industrial Relations Act 1999* promotes collective bargaining and provides for a range of

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The Productivity Commission seeks feedback on whether there is a mechanism that would only restrain pattern bargaining: • where it is imposed through excessive leverage or is likely to be anticompetitive • while allowing it in circumstances where it is conducive to low transaction cost agreements that parties genuinely consent to.	agreements including employee collective, union collective, multi-employer and project agreements (S141). The *Fair Work Act 2009* promotes collective enterprise bargaining and provides for a range of agreements. These include: single interest; multi-employer; and greenfields.
What should be the basis for the revised form of the no-disadvantage test, including whether, and to what extent past forms of the no-disadvantage test provide a suitable model and would be workable within the current legislative framework?	The Queensland Government response to the PC Recommendations does not support any changes to the 'better-off-overall-test" BOOT.
Chapter 17 Enterprise Contract The Productivity Commission seeks information on the costs (including compliance costs) and benefits of an enterprise contract to employers, employees and to regulatory agencies. Particular areas that the Commission seeks information on are: • additional evidence on the potential gap in contract arrangements between individual arrangements (broadly defined) and enterprise agreements • the extent to which the enterprise contract would be a suitable addition to the current suite of employment arrangements, how it could fill the gap identified, and specific examples of where and how it could be utilised • clauses that could be included in the template arrangement • possible periods of operation and termination • the advantages and disadvantages of the proposed opt in and opt out arrangements. In addition, the Productivity Commission invites participants' views on the possible compliance and implementation arrangements suggested in this chapter, such as their impact on employers, employees and regulatory agencies.	The *Fair Work Act 2009* promotes collective enterprise bargaining and provides for a range of agreements for workplaces. These include: single interest; multi-employer; and greenfields. The initial Queensland Government submission to the PC provided broad support for the National Workplace Relations System that Queensland referred its private sector industrial relations powers to in 2009, and that the Queensland Government remains committed to cooperating and engaging with the Federal Government on industrial relations policy and to maintaining a uniform National Workplace Relations Framework that recognises the aforementioned principles. As such the Queensland Government would be strongly opposed to the introduction of individual agreements in 'whatever' form and their capacity to unilaterally remove award entitlements. The PC should recognise that the introduction of individual arrangements would be counterproductive to a system that is built on a safety net of awards by encouraging collective bargaining to improve Australian workplaces.
Chapter 19 Industrial disputes and right of entry	The Queensland Government position is that it is necessary to provide detail on the type of action

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The Productivity Commission seeks further input from stakeholders on how protected action ballot procedures may be simplified to reduce compliance costs, while retaining the benefits of secret ballots. Potential simplifications include: • removing the requirement that a protected action ballot specify the types of actions to be voted on by employees, and instead simply requiring a vote in favour of any forms of protected industrial action • amending or removing the requirement that industrial action be taken within 30 days of ballot results being declared • granting the Fair Work Commission the discretion to overlook minor procedural defects when determining if protected industrial action is authorised by a ballot.	employees are voting on taking. Employees ought to be well aware of the type of action that they will take if the ballot succeeds. In addition a lack of information on the proposed action may alter the outcome of the ballot. The Queensland Government does not support removing the requirement that the action be taken within 30 days of the result being declared. All parties should be aware that if action is taken it will occur within a certain timeframe, removing this detail could disadvantage both parties. In addition having a timeframe in which action may be taken may assist in hastening a resolution. The Queensland Government agrees that the proposal that the Fair Work Commission be afforded some discretion to overlook minor procedural defects when determining if protected industrial action is authorised by a ballot is one which warrants further consideration.
The Productivity Commission seeks further input from stakeholders on how 'significant harm' should be defined when the Fair Work Commission is deciding whether to exercise its powers under s. 423 and s. 426 of the *Fair Work Act 2009* (Cth).	The Queensland Government position is that it is not necessary to define 'significant harm' and that any determination regarding whether action is resulting in 'significant harm' should be considered on a case by case basis. The comment in the Interim Report regarding the bar for determining when harm is significant being set too high is disputed. Queensland's position is that there should be little interference with regard to prohibiting protected industrial action and as such the bar should be high. The power to make decisions of this nature rests with Fair Work Commissioners, it is considered that those appointed to this role should have the appropriate knowledge, experience and expertise to assess such situations and make decisions based on this.
The Productivity Commission seeks further input from inquiry participants on whether s. 424 of the Fair Work Act 2009 (Cth) should be amended to allow industrial action to proceed where the Fair Work Commission is satisfied that the risk of a threat to life, personal safety, health or welfare is acceptably low.	The Queensland Government agrees there may be some merit in granting the Fair Work Commission greater discretion with regard to making an order of this nature. The existing requirement that the Commission 'must' make an order may lead to unnecessary interference in parties taking legitimate industrial action. The proposal to empower the Commission to allow action to proceed if the threat is acceptably low has merit and should be pursued.
While the Productivity Commission sees a prima facie case for allowing employers to deduct a minimum of 25 per cent of normal wages for the duration of any partial work ban that impacts on the performance of normal duties, the Commission requests	The Queensland Government does not support stipulating a minimum amount that may be deducted for work bans. The main risk involved in deducting wages, particularly for partial work bans, as opposed to an outright stoppage, is the potential it has to escalate the dispute, stall negotiations.

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feedback from stakeholders about the risks that such a change may entail.	
The Productivity Commission seeks further feedback from inquiry participants on what forms of more graduated employer industrial action should be permitted, and how these should be defined in statute.	The Queensland Government does not support legislating to allow other forms of employer instigated industrial action. Such action is viewed as giving the employer even greater power during the negotiating phase and an impediment to successful resolution.
Chapter 20 Alternative forms of employment The Productivity Commission seeks feedback on the extent to which unpaid internships have become more commonplace across the economy, whether any growth in such arrangements has led to problems rather than opportunities, as well as the potential remedies to any specific issues.	Nil
Chapter 24 Competition policy The Productivity Commission seeks further input from inquiry participants on whether the secondary boycott prohibitions in the Competition and Consumer Act 2010 (Cth) should be amended to: • amend or remove s. 45DD(1) and s. 45DD(2) • grant Fair Work Building and Construction a shared jurisdiction to investigate and enforce the secondary boycott prohibitions in the building and construction industry.	Nil
Chapter 25 Compliance costs The Productivity Commission seeks data or other information on the extent to which the workplace relations system imposes unnecessary ongoing costs on unions, and how these costs are likely to be affected by draft recommendations proposed in this inquiry.	Nil.