



Australian Government
Productivity Commission

Workplace Relations Framework: The Inquiry in Context

Productivity Commission
Issues Paper 1

January 2015

The Issues Papers

This is the first of five issues papers released by the Commission to assist individuals and organisations to prepare submissions to the inquiry. This paper outlines:

- the scope of the inquiry
- some of the broad questions about the objectives and operation of the workplace relations system
- the Commission's approach to evidence
- the Commission's procedures, and how to make a submission.

The remaining papers raise issues about other specific matters. Participants should not feel that they are restricted to comment only on matters raised in the issues papers. The Commission wishes to receive information and comment on issues which participants consider relevant to the inquiry's terms of reference.

Key inquiry dates

Receipt of terms of reference	19 December 2014
Due date for submissions	13 March 2015
Release of draft report	June/July 2015
Draft report public hearings	August/September 2015
Final report to Government	30 November 2015

Submissions can be made

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The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website (www.pc.gov.au).

Terms of reference

WORKPLACE RELATIONS FRAMEWORK

Productivity Commission Act 1998

I, Joseph Benedict Hockey, Treasurer, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998*, hereby request that the Productivity Commission undertake an inquiry into the workplace relations framework.

Background

The Australian Government believes that it is fundamentally important to make sure that the Fair Work laws work for everyone.

Workplaces are important to our economy and society. Higher living standards, better pay and more jobs all depend on having fair, productive, and effective workplaces. The prosperity of tomorrow is driven by what happens in our workplaces today and this is why it is in our national interest to make sure that the Fair Work laws are balanced and effective.

The Australian Government's objectives in commissioning this Inquiry are to examine the current operation of the Fair Work Laws and identify future options to improve the laws bearing in mind the need to ensure workers are protected and the need for business to be able to grow, prosper and employ.

Scope of the Inquiry

The Productivity Commission will assess the performance of the workplace relations framework, including the *Fair Work Act 2009*, focussing on key social and economic indicators important to the wellbeing, productivity and competitiveness of Australia and its people. A key consideration will be the capacity for the workplace relations framework to adapt over the longer term to issues arising due to structural adjustments and changes in the global economy.

In particular, the review will assess the impact of the workplace relations framework on matters including:

- unemployment, underemployment and job creation
- fair and equitable pay and conditions for employees, including the maintenance of a relevant safety net
- small businesses
- productivity, competitiveness and business investment

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- the ability of business and the labour market to respond appropriately to changing economic conditions
 - patterns of engagement in the labour market
 - the ability for employers to flexibly manage and engage with their employees
 - barriers to bargaining
 - red tape and the compliance burden for employers
 - industrial conflict and days lost due to industrial action
 - appropriate scope for independent contracting.

In addition to assessing the overall impact of the workplace relations framework on these matters, the review should consider the Act's performance against its stated aims and objects, and the impact on jobs, incomes and the economy. The review should examine the impact of the framework according to business size, region, and industry sector. It should also examine the experience of countries in the Organisation for Economic Co-operation and Development.

The workplace relations framework encompasses the *Fair Work Act 2009*, including the institutions and instruments that operate under the Act; and the *Independent Contractors Act 2006*.

The review will make recommendations about how the laws can be improved to maximise outcomes for Australian employers, employees and the economy, bearing in mind the need to ensure workers are protected, the need for business to be able to grow, prosper and employ, and the need to reduce unnecessary and excessive regulation.

The Productivity Commission will identify and quantify, as far as possible, the full costs and benefits of its recommendations.

An overarching principle for any recommendations should be the need to ensure a framework to serve the country in the long term, given the level of legislative change in this area in recent years.

In conducting the review, the Productivity Commission will draw on the full spectrum of evidence sources including, but not limited to:

- Australian Bureau of Statistics data and publications
- data sources maintained by other relevant Government bodies, including but not limited to the Department of Employment, Fair Work Commission and Fair Work Ombudsman
- employers or their representatives
- employees or their representatives
- academia
- special interest groups.

The review should also identify gaps in the evidence base where further collection may assist in the analysis of the overall performance and impact of the system.

Process

The Commission is to undertake an appropriate public consultation process including holding hearings, inviting public submissions and releasing a draft report to the public.

The final report should be provided to the Government in November 2015.

J. B. HOCKEY

Treasurer

[Received 19 December 2014]

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The issues associated with assessing Australia's workplace relations (WR) arrangements are deep and wide. Successive Australian governments have recognised that choices about the design of a WR system reflect not just its pre-eminence in economic policy, but also its equity and ethical objectives. The current structure is also a product of history and changing social preferences. The Commission recognises that all of these dimensions are relevant to the assessment of the system.

The Commission has decided to vary from its usual practice of releasing a single issues paper. Instead, it has issued five extensive documents that reflect its initial views about the priority questions, informed by initial consultations. This approach will also make it easier for participants to focus particular effort on just one or two elements of the inquiry, if that reflects their priorities. The papers cover:

- a broad overview of the system, its objectives, its possible faults, the way in which evidence-based conclusions about reforms could be made, and the Commission's broad analytical framework (this document)
- the issues associated with the three main safety nets for pay and conditions: minimum wages, the award system (which includes penalty rates) and the National Employment Standards
- the bargaining framework, including processes associated with industrial disputes
- employee protections, such as those associated with unfair dismissal
- a range of other important matters, such as the effectiveness of the WR system's institutions, the compliance costs it imposes on parties, special WR arrangements for public sector employees, the role of competition law and alternative forms of employment.

Attachment A indicates how people can contribute to the inquiry through submissions and participation in hearings.

1.1 Scope and aim of the inquiry

Every week, around 11.6 million Australians go to work in about 2.1 million workplaces.¹ The WR framework comprises a complex array of labour laws, regulations and institutions. Along with market forces, accepted practices, cultural norms and the common law, these shape people's behaviour, the nature of their workplaces and their working lives.

This framework in turn influences the productivity, operating characteristics and internal cultures of workplaces. It affects workers' terms of employment and businesses'

¹ The data relate to 2013 and are based on ABS 2014, *Counts of Australian Businesses*, Cat. No. 8165, 31 March and ABS 2014, *Australian Labour Market Statistics*, Cat. No. 6105, 8 July.

profitability. It shapes the powers and distribution of returns to various parties in the system. It can provoke or mitigate industrial conflicts.

WR may significantly influence innovation, skill formation, the adaptability of businesses, and growth in different industries. It can affect personal and household income distribution, trust and cooperation between people, and the degree to which they regard a society as fair.

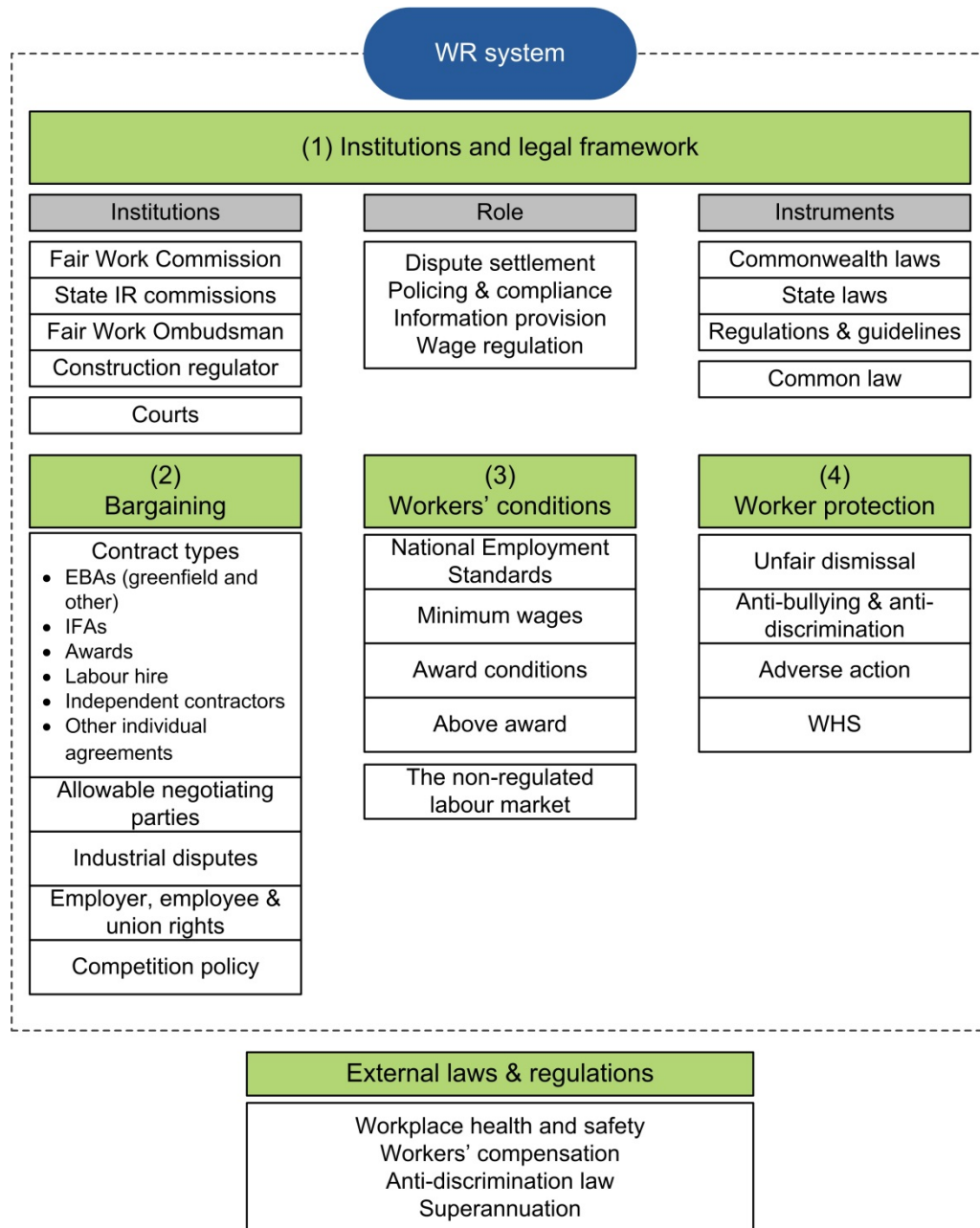
The WR framework affects unemployed workers as well as the employed. It can determine who gets employed, the total hours they work, when and where they can work, and how their employment is terminated. It can also influence the prospects of people who are unemployed or outside the labour force, as it may create barriers to their employment. Its effects can vary across regions, by the size and industry of firms, and by the age, skills and preferences of people. It can affect the way in which wages and prices move in an economy, and thereby influence overall macroeconomic performance and policy (section 4).

WR policy, institutions and regulation are now highly elaborate and broad ranging (figure 1.1). They have grown from a limited Commonwealth role in dispute settlement one hundred years ago to a position today where the Commonwealth regulates the bulk of industrial awards, resets minimum wages, and has created three specialist bodies that collectively mediate disputes, provide information, register agreements, check compliance with the law and adjudicate on some key matters of WR law. Other jurisdictions still retain a role.

The Australian Government has asked the Commission to undertake a wide-ranging inquiry into Australia's WR framework that covers these institutions and impacts. While the terms of reference for the inquiry cover an assessment of the performance of the *Fair Work Act 2009* (Cth) (FWA), the Government has requested the Commission to go beyond evaluating the current system to consider the type of system that might best suit the Australian community over the longer term.

Several key commentators have been sceptical about the need for major changes, placing some emphasis on the value of stability (Borland 2012; Giudice 2014). Previous formal reviews dating from the Hancock Committee (1985) through to the most recent review of the Fair Work Act (Australian Government 2012b) have tended to favour adaptation rather than holistic change.

Figure 1.1 The main elements of the current workplace relations arrangements



Nevertheless, there has been advocacy for and, at times, implementation of significant shifts in the WR landscape in the last few decades. For example, after almost one hundred years of centralised conciliation and arbitration, enterprise-level bargaining was introduced as the centrepiece of the *Industrial Relations Reform Act 1993* (Cth), and individual statutory arrangements were a key element of the *Workplace Relations Act 1996* (Cth). Legislated minimum standards and tests that aim to ensure a net benefit for employees involved in enterprise bargaining have taken greater precedence over judicial/tribunal

discretion by industrial tribunals. The administrative discretion exercised by the predecessor bodies to today's Fair Work Commission (FWC) through compulsory conciliation and arbitration of bargaining disputes has disappeared. The creation of the Australian Building and Construction Commission (and its successor, Fair Work Building and Construction) — the first industry specific WR agency — also reflected a major departure from historical practices.

Long-run shifts in labour markets, institutions, the nature of the economy and social security systems may provide an impetus for further change. For example:

- cooperative relations between employees and employers may be more important for innovation, technological diffusion and investments in skills — developments that are critical for future productivity, economic growth and adaptability
- the sensitivity of employment demand to regulations that raise the costs of less skilled labour may increase with technological change and the increasingly tradable outputs of the service sector. International outsourcing of call centres; the online provision of music, books, financial services, and airline and accommodation booking systems; and new models of domestic service delivery (as in taxi services) are illustrations of developments that are already in train. These will inevitably change workplaces and the competitive pressures they face
- traditional notions of the 'workplace' may change for some types of occupation as a result of technological advances that allow people to work remotely
- the occupational mix of jobs will continue to change, with less demand for semi-skilled and lower-skilled manual workers, and greater demand for people working in social services and those with higher qualifications (figure 1.2). The Department of Employment has forecast that over the five years to the end of 2018, one in three new jobs will be for professionals (Department of Employment 2014, p. 24). In the United States and Europe, employment growth has been greatest for the lowest and highest skill workers. While there is little evidence of such a trend over the past two decades, this may change in the future (Wilkins and Wooden 2014, pp. 423–424). Regardless, the WR environments of higher skilled workers and those providing social services often differ from those for other occupations
- demographic change will dramatically shift the age structure of the population, with particular implications for older workers (figure 1.3)
- youth unemployment rates are rising again after a protracted reduction from 1992 (figure 1.3)
- unions have lost their pre-eminent role as employees' representatives, especially in key parts of the private sector,² raising questions about the best ways to represent employee interests, especially where a power imbalance is present. In fact, the sustained fall in

² Such as manufacturing, heavy and civil engineering construction, air transport, telecommunications and finance (Based on data from 2006 to 2013 from ABS 2014, *Employee Earnings, Benefits and Trade Union Membership, Australia - Trade Union Membership*, Cat. No. 6310.0).

unionisation rates in Australia (and New Zealand) is exceptional among OECD economies (falling in the Australian case from around 50 per cent in 1960 to below 20 per cent in 2011).³

The Commission's task is to assess the performance of the WR framework and the need for any changes to it, taking into account Australian's future needs and the merits of possible changes. *There may well be significant trends, other than those outlined above, that affect the desirable evolution of the WR system. The Commission welcomes views on these.*

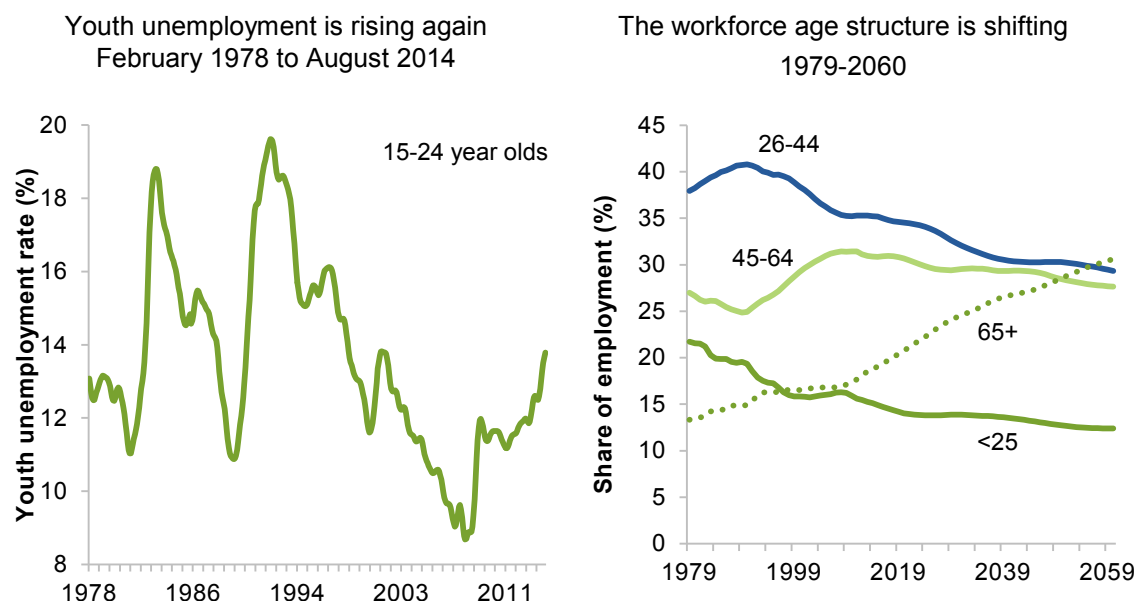
Figure 1.2 The skill mix is shifting, 2013 to 2018



Data source: Department of Employment (2014).

³ Derived from the Online OECD Employment database, 'Union members and employees' in July 2014.

Figure 1.3 Labour markets are changing



Data sources: Ageing data are from PC (2013a) and unemployment rates from ABS, *Labour Force, Australia*, Cat. No. 6202.0.

What is (largely) not in scope?

The Commission is not examining in any detail a number of issues that intersect with or are part of the WR framework, including:

- governance arrangements of individual unions (and concerns about specific instances of corruption and other criminally unlawful conduct by employers, employees and unions in the WR system)
- institutional arrangements in the construction industry, which were addressed in the Commission's inquiry into Public Infrastructure (PC 2014b)
- financial assistance for legal representation for WR matters, a matter covered in the Productivity Commission's inquiry into Access to Justice (PC 2014a)
- separate Workplace Health and Safety (WHS) institutions and laws, including workers' compensation schemes. However, the more general impact of the WR system on WHS is relevant to this inquiry
- the Superannuation Guarantee. While it may have arisen as an industrial relations trade-off, the Guarantee is now recognised as one of a set of interlocking retirement income policy measures, and consideration of it in any detail would therefore cover many issues not central to this inquiry

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- Australia's vocational training system, with the important exception of agreements that may specify training requirements in a way likely to be inefficient or inconsistent with wider economic and social needs
 - the newly established Fair Entitlements Guarantee, a statutory scheme that provides assistance to employees for unpaid entitlements following the insolvency of their employer. The Commission will examine this scheme in its inquiry into Business Set-up, Transfer and Closure.

The Commission notes that the Australian Government is proposing a variety of changes to the FWA via a number of Bills that are before Parliament.⁴ The inquiry's primary focus will be on the preferred structure for WR in Australia and it is unlikely to directly assess amendments to relevant legislation, although it may indicate how these arrangements may need to be revised, if that is necessary, to conform to its proposed policy recommendations.

1.2 The stated objectives of Australia's workplace relations system

The FWA is the primary legislative device governing the WR system in Australia, although the pre-eminence of a Commonwealth statute is relatively recent. Historically and constitutionally, the Commonwealth and the states have shared responsibility for workplace relations. The FWA cites objectives that are diverse and — as is often the case with such diversity — potentially in conflict: The FWA is intended to deliver outcomes that are **fair, flexible, co-operative, productive, relevant, enforceable, non-discriminatory, accessible, simple and clear (s. 3)**. It also provides for special arrangements for small businesses; preference for collective bargaining; balance between family and workplace responsibilities; minimum wage and employment standards; and the right of freedom of association.

State-based laws still survive, albeit with reduced reach, and their objectives largely mirror those of the FWA, though sometimes with greater elaboration. For example, the Queensland *Industrial Relations Act 1999* specifies 14 separate objectives, such as 'meeting the needs of emerging labour markets and work patterns', and 'promoting and facilitating jobs growth, skills acquisition and vocational training through apprenticeships, traineeships and labour market programs' (s. 3).

One issue for this inquiry is whether any system can hope to achieve coherence across this diversity of objectives. By its nature, legislation often claims multiple objectives. But establishing what a system is meant to achieve is important for this inquiry, and the

⁴ Fair Work Amendment Bill 2014; Fair Work Amendment (Bargaining Processes) Bill 2014; Fair Work (Registered Organisations) Amendment Bill 2014; Building and Construction Industry (Improving Productivity) Bill 2013; Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013.

relevant legislation is an obvious starting point. *The Commission encourages stakeholders to give their views on the appropriate objectives of the WR system, how these can be balanced and their capacity to adapt to future structural change and global economic trends.*

1.3 The historical context: how the WR system evolved seems important

The circumstances under which Australia's workplace relations laws and practices developed are unique to this country, but have adapted considerably over time.

Two significant events shaped the early development of the system in Australia:

- the debilitating strikes of the 1890s, which resulted in the creation of industrial arbitration tribunals at the state and Commonwealth level and the introduction of a limited dispute settlement power into the Constitution at federation
- the Harvester Judgment of 1907 in the Commonwealth Conciliation and Arbitration Court, which defined the minimum conditions under which a man would be able to support his family in 'reasonable and frugal comfort'. The criteria for determining the minimum wage and its scope have since changed considerably, exemplified by the 'equal pay for work of equal value' decision in the mid-1970s. Nevertheless, the decision was the first of many to come that set base-level standards for the wages and conditions (with such standards the main topic of Issues Paper 2).

Gradually, the system of federal awards grew, mostly due to efforts by some unions to broaden their national application through the active use of the Commonwealth's dispute settlement powers, although as recently as 1990, there were still more employees covered by state than federal awards. These awards and the processes that determined them distinguish Australia from most other developed countries. While their names and roles have changed, various specialist Commonwealth agencies have played an increasing role in regulating WR across all jurisdictions, in part due to the growing use by the Commonwealth of its constitutional powers and state governments' willingness to refer their powers (Lucev 2008; McCallum 2005). The pessimism expressed by the Constitution Commission 1988 about the capacity of the Australian Constitution to provide for a more national system was largely misplaced. The main remaining exceptions to a national system are employees of unincorporated enterprises in Western Australia and many employees paid by state governments — which provide an example of the lingering presence of past arrangements in the current system.

The most recent changes in the system include:

- the shift from centrally determining wages and conditions to enterprise-level bargaining (the biggest break from the past). While awards still provide a floor for employment conditions, there is no longer a third party industrial tribunal that settles industrial disputes by making awards (Hamilton 2012, p. 2)

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- some emphasis on productivity and flexibility at the enterprise level as *goals* of the WR system. (An aspect of this inquiry will be to assess whether these goals have been achieved)
 - simplification of awards (from 3715 state and federal awards to 122 ‘modern’ awards in 2010 (Australian Government 2012a), and the introduction of greater flexibility into such awards
 - the widening scope of the Federal Minimum Wage to encompass employees of all businesses (except those employed by unincorporated enterprises in Western Australia), and the creation of specific legislative criteria for setting the minimum (Bray 2013)
 - introduction of protections for individual workers (rather than collectives of workers) that exceeded the protections in particular awards, specific state and territory laws, and remedies at common law. The most important development was the inclusion of unfair dismissal arrangements into the federal WR system (Figgis 1998, pp. 1–2; Forsyth 2008, p. 509; Wheelright 2001, pp. 173–176). In 2014, federal employment protection was extended so that workers subjected to alleged workplace bullying in constitutionally-covered businesses could take the matter to the FWC, which could make an order to stop any proven bullying
 - the transfer of some key matters relating to working conditions (such as WHS) to dedicated laws and institutions outside the WR system
 - according less weight generally to the powers of unions as negotiating parties for wages and conditions, and as monitors of WHS (Patmore 2006), as well as a general decline in union membership (Issues Paper 3).

At the end of this period of considerable change, there remains some continuity. Safety net arrangements remain a fundamental part of the system (through awards covering a wide range of industries; National Employment Standards that must be reflected in all agreements; and a regularly re-set minimum wage). There are still elaborate laws and administrative processes governing employment relations in all but a few pockets of the economy, and multiple specialist agencies still oversee the system. Even as the system has moved towards much greater use of enterprise bargaining, the requirements for review and registration of each agreement and the circumstances under which negotiations may proceed have remained within the (adapted) legal structure.

In some important respects, Australia’s WR system is not internationally unique. Most countries have safety nets of some form, use multiple specialist agencies for (quasi and actual) judicial and mediation purposes, and prescribe laws about the processes for negotiation between parties. No system is simple. Arguably, many other federations have more fragmented WR systems. However, notwithstanding a shift towards enterprise bargaining (and, to a lesser extent, individual agreements), Australia appears to give more weight than other Anglo-Saxon countries to elaborate rules about WR processes and, most particularly, to the centralised determination of wages and conditions for many employees.

This then requires a complex legal and institutional architecture that is distinctive to Australia.

Given the weight of history in shaping Australia's current arrangements and its divergence from systems in some other developed countries, a useful question for participants is *whether the current system is well suited to contemporary (and evolving) workplace needs for Australia in an increasingly globalised economy*. It may be that overseas experiences will guide us. *However, it appears there is no single template workplace relations model globally that we can emulate, although the Commission would welcome analysis drawing on the experience of other countries.*

1.4 What might need to change?

Not surprisingly, what constitutes the 'best' design of a WR framework is hotly contested.

Some identify multiple severe flaws

Many commentators perceive flaws in Australia's WR framework, although views on the problems are divided.

Some businesses and other commentators have argued that the current system:

- lacks flexibility, and thus interferes with managers' ability to manage. In its submission to the Productivity Commission's automotive inquiry, the Australian Industry Group (2013) said that the existing system made it difficult for businesses to hire contractors and use labour hire businesses
- requires high negotiated wage rates and excessively short-term greenfield agreements that may threaten the viability of a large prospective group of long-term investments in the resource-intensive sector — particularly Liquefied Natural Gas (LNG) production (Ferguson 2014)
- does not encourage productivity, as this is not a central feature of enterprise agreements and where negotiated may sometimes be little more than buying out restrictive work practices (for example, Toyota Australia 2013, p. 16). Some survey evidence from resource businesses suggest that most enterprise agreements do not have clauses relating pay to productivity (Kates 2013, p. 5)
- encourages overly adversarial relationships between management and employees, which is likely to be inimical to productivity and innovation (PC 2014b)
- allows strikes over matters outside the employment relationship (AMMA 2014)
- imposes high penalty rates for work outside the five day working cycle (ROH Automotive 2013)

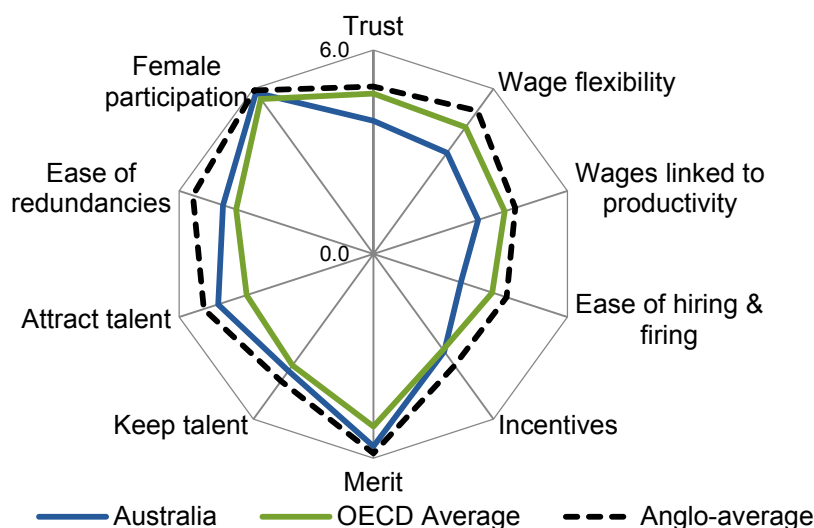
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- has costly and slow unfair dismissal laws, with employers sometimes paying ‘go away’ money to avoid the formal process
 - despite award consolidation, still has a highly regulated set of base wages across many occupations and industries, which threatens flexibility at the enterprise level and may price some workers out of jobs (Wooden 2010)
 - allows copycat agreements across many enterprises, notwithstanding variations in the circumstances of the enterprises concerned
 - remains fragmented across jurisdictions, with a panoply of laws, awards and institutions, for example in Western Australia, which has not referred its WR powers to the Commonwealth (CCIWA 2011)
 - is below international best practice. Compared with its international peers, Australian business leaders perceive that Australia’s WR system has led to a relatively inefficient labour market, especially in respect of: poor trust between employees; lower wage flexibility; higher hiring, firing and redundancy costs; and wages that are inadequately linked to enterprise productivity (figure 1.4 and World Economic Forum 2014). When asked about the most problematic factors for doing business, nearly one in four Australian business leaders cited restrictive labour regulations. (Across OECD countries, the average share of CEOs citing such regulations was just above 10 per cent).

Of course others would see at least some of the specific ‘flaws’ listed above as in fact desirable features of the system; for example, high penalty rates and the guarantees offered by highly regulated minimum standards of wages and conditions across different occupations and industries.

Moreover, some unions and other commentators have their own concerns about aspects of the current framework, including that it:

- lacks a safety net for workers not classified as employees, such as outworkers and contractors (ACTU 2012), and that sham contracting is used to reduce wages and conditions (CFMEU 2011)
- offers inadequate protections in relation to temporary overseas workers (ACTU 2014)
- is too narrow in its general protections (ACTU 2012)
- unreasonably limits the scope of bargaining through its definition of permitted matters (ASU 2012)
- too narrowly provides rights to request flexible working arrangements (ACTU 2012; AHRC 2012)
- does not confer sufficient arbitral powers to the Fair Work Ombudsman (FWO) and the FWC (AMWU 2012)
- impedes collective action with insufficient protection of right of entry (UnionsWA 2012).

Figure 1.4 **Business perceptions of Australia's relative labour market efficiency**
2014-15



^a The scores for the ease of redundancies and the female participation rate are based on re-scaling the cardinal measures of these factors using the World Economic Forum method. A higher score is 'better'.

Data source: World Economic Forum (2014).

Others paint a more positive picture

Notwithstanding the different criticisms of the current system, it can be said that the framework has (at the minimum) coincided in recent decades with positive developments in labour markets and economic performance:

Over ... two decades, the pertinent economic outcomes have been congenial. ... industrial disputes are uncommon, overall wages growth has been consistent with low consumer price inflation ... unemployment has steadily declined while participation in the workforce has increased ... and at the same time the profit share of incomes has increased. These are considerable achievements, not to be put at risk lightly. (Australian Government 2012b)

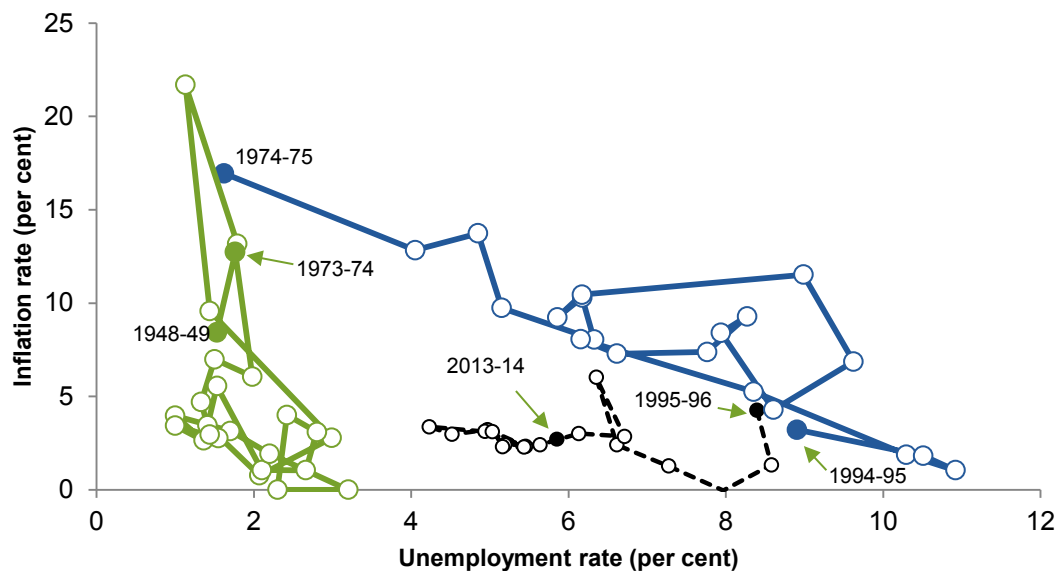
Several commentators have identified past changes in labour relations as supporting improvements in Australia's macroeconomic environment, although they are cautious about precisely quantifying their relative importance (Ballantyne, De Voss and Jacobs 2014; Battellino 2010; Borland 2012; Lowe 2012; Mallick 2014; PC 2013b). The concerns that preoccupied the 1970s — cascading strikes, demarcation disputes, thousands of state awards and the rigidities of bargaining at the time — have now waned.

Reductions in unemployment rates do not now lead to significant economy-wide wage growth (figure 1.5). Wage shocks that affect one part of the economy (as in the resources

boom) do not appear to reverberate so greatly throughout the rest of the wage system (Borland 2012). An Assistant Governor of the Reserve Bank of Australia has noted:

During these earlier booms, inflation had been more variable and Australia's centralised wage-setting system had the effect of spreading wage increases across the economy, to occupational categories for which the value of marginal product had not increased. Not surprisingly then, the result was a rise in inflation and unemployment. (Kent 2012)

Figure 1.5 Prices are now largely unresponsive to strong labour demand
1949-50 to 2013-14^a



^aThe relationship is typically referred to as the 'Phillip's curve' and is based on the premise that at some point lower unemployment creates inflationary pressures. Borland (2012) investigated the relationship between unemployment and wage pressures, finding a similarly flatter Phillips curve after the introduction of enterprise bargaining.

Data sources: ABS 2014 *Labour Force Australia, Detailed*, Cat. No. 6291.0.55.001, November; ABS 2015, *Consumer Price Index, Australia*, Cat. No. 6401.0; (Withers, Endres and Perry 1985).

As the mining boom has abated, so have wages in the mining and construction industries. Indeed, in the latter case, a key union in Western Australia has suggested that it may accept a new enterprise agreement that reduces some wages by around 20 per cent (Barrett 2014).

Evidence about the flows into and out of unemployment also suggests that the labour market may be more flexible than supposed. The overall unemployment rate is relatively low because the average duration of unemployment is also modest — one indicator of hiring flexibility (Blanchard, Jaumotte and Loungani 2013). Industrial disputes, which are one indicator of the functioning of the system, have fallen significantly in the last two decades and are low by historical standards.

Moreover, economic forces and policies *outside* the WR system affect how enterprises and employees respond to the WR system. Australia's economic environment has changed markedly over time. Trade barriers have collapsed, the exchange rate has been floated, and competition policy has injected competition into many areas of the economy. Competitive pressures inevitably change the dynamics of bargaining between parties and reduce the size of any prizes from disputes.

Data about regulatory measures from the OECD and the International Labour Organization (ILO) suggest that Australia may have less stringent employment protection regulations than many countries. (Regardless of the actual stringency of employment protection, perceptions may influence the behaviour of businesses.)⁵

And even businesses have varying perspectives. The CEDA/Business Spectator Survey of CEDA trustees and business leaders suggested that, notwithstanding the impressions gained from particular business groups, reforming industrial relations ranked ninth out of eleven priorities for policy action in 2013, and seventh in 2012 (C&B 2013).

There are mixed views by experts in the field of WR about the nature of concerns about the system, and the direction and magnitude of desired reform. For example, Borland (2012), Farmakis-Gammoni and Prentice (2011), Peetz (2012), Philipatos (2013), Sloan (2010) and Wooden (2006, 2010).

In the face of the wide diversity of views about the WR system, the Commission will take a critical, evidence-based approach to differing claims about the impacts of different configurations of the system.

Though values and social norms legitimately shape views about what the WR system should look like, it is important to determine whether any particular policy measure does in fact have the impact it is claimed to have, and whether people and institutions actually behave as the underlying theories suggest. On the latter score, the Commission notes Chief Justice Dethridge's view in the 44-Hour Week Case in 1927 that evidence is needed to make policy — in balancing the claims of opposing parties about the effects of any particular reform, 'general prognostications of disaster on the one hand, or of uninjured prosperity on the other, are of little or no value'.⁶

It appears most people believe that WR systems matter to economic performance, but they disagree about what type of arrangement is best, what 'best' means, and the strength of the evidence for any option. Even if evidence is incomplete, it may at least provide some indication of what not to do, or some comfort that certain policy directions will have likely, if not entirely proven, benefits. *The Commission invites participants to submit proposals*

⁵ Based on the OECD (2013, p. 72) and the LAMRIG database prepared by Campos and Nugent (2012).

⁶ *Amalgamated Engineering Union v J. Alderdice & Company Pty Ltd & Others* (1927) 24 CAR 755, 24 February 1927, per Dethridge CJ at 774-5.

they consider would improve the operation of the WR system together with supporting evidence and argument.

1.5 The Commission's approach

As with all Productivity Commission inquiries, under its Act the Commission is required to recommend policies to maximise the wellbeing of the community as a whole. This inquiry is not intended to maximise the benefits to any particular groups, whether they be businesses, unions, employees, consumers or other stakeholders, as their individual interests may not coincide with those of Australians as a whole. Of course, the interests of the different parties form part of this broader assessment.

The Commission's approach recognises the social as well as the economic aspects of wellbeing; and in the case of an inquiry into workplace relations, the concepts of fairness and equitable treatment, the balance of negotiating strength and the ability of parties to remain well-informed and able to manage their own interests effectively are clearly relevant, albeit sometimes difficult to balance.

The Commission also recognises that the 'price' of labour differs from the price of most other inputs into an economy. This is not only because the price (wage) offered usually affects people's workplace performance and because of the virtual exclusion of WR from competition policy (Issues Paper 5), though these are distinctive features. It is also because many people's incomes and indeed wellbeing depend to a considerable extent on that price. No nation aspires to be a low-wage economy. The more relevant question is how a workplace relations system, together with other policies and practices, should be designed to achieve high productivity and to allocate labour to its best uses, thereby sustaining higher incomes and enabling greater wellbeing over time.

Considerations for assessing policy proposals

The Commission has no presumptions about the desired direction, magnitude or form of changes to the WR system. The Commission is open to lateral suggestions so long as they are practical, beneficial and backed by solid evidence and argument. It recognises that there may be proposals that are less beholden to the past that achieve productive and fair workplaces — either modelled on other countries, or reflecting entirely new ideas.

In examining submissions and other material, the Commission will be asking how any proposed changes:

- improve the overall use and allocation of resources in workplaces and around the economy (encompassing managerial as well as employee efficiency)
- enhance employment opportunities, matching of people to jobs and informed employment choices

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- accommodate differences in the needs and circumstances and of different types of businesses and different regions
 - promote efficient pricing and efficient investment in innovation, skill and capital
 - promote institutions that are efficient and effective and avoid undue administrative or compliance costs
 - ensure that any regulatory requirements are necessary and simple to understand and use
 - curtail the abuse of power that could add significantly to social and economic costs
 - achieve outcomes that are consistent with community norms, for example in relation to equitable outcomes and ethical behaviour
 - are consistent with complementary regulations and policies
 - are adaptable, particularly, but not solely, in the light of future demographic and global economic trends
 - take account of international agreements.

The Commission welcomes evidence-based submissions that offer guidance on policy or practical changes to the WR system that improve the wellbeing of the Australian community as a whole — using the above or alternative objectives as the basis for participants' views.

Interdependencies, contingencies and risks may also be important

The impact of any given change to the WR system will often be affected by other changes to the system, or to other policies. For example, the impacts of penalty rates on the opening hours of retail outlets partly depend on the extent of any trading hour restrictions.

In considering policy options, to what extent are the benefits of a given element of a worthwhile reform package dependent on implementing other elements of the package?

All policy changes have risks. They may not have their intended effects because of miscalculation or failure to appreciate the counter responses by people. Transitional costs may be high and implementation imperfect.

What are the biggest risks from changing the present WR system and how could these be moderated or avoided? What are the likely transitional costs associated with worthwhile reforms?

Issues in assessing economy-wide impacts

In addition to assessing the impacts of particular aspects of the WR system, the Commission, in line with the terms of reference, will also seek to examine the economy-wide impacts of the system (and of possible reforms to it), including on jobs, inflation, productivity and incomes, and how these flow through at the regional and industry level.

In undertaking this task, the Commission is mindful of the complexity of the linkages between WR and the economy as a whole, and the difficulties in isolating its effects from other factors driving economic performance:

- the impacts may be indirect, such as through training, innovation, the adoption of new information technologies and investment, and thereby hard to separate from them
- the impacts may require other complementary organisational changes or policy shifts
- even if gains from any change ‘only’ show up as a modest one-off permanent upward shift in incomes (a possibility raised by Peetz 2012), these can be important to people’s lifetime incomes, but hard to discern empirically among the noise in the economy
- there may be opposing benefits and costs from reform, which make it hard to identify the effects separately. Related to this, there is no single measure by which to gauge whether a WR system has been successful (is it lower unemployment, anchoring low inflationary expectations, higher real net national disposable income, productivity, greater job security, job satisfaction, lower dispute rates, higher wages, more equitable outcomes, among many other possible measures?)
- there are limited observations in macroeconomic data, which may not be ideally suited to isolating the effects of reform, and this appears to be reflected in the lack of consensus in this area (Borland 2012; Deakin, Malmberg and Sarkar 2014). Contrary to this more aggregate analysis, more disaggregated studies based on firm-level data appear to be more promising in discovering effects that may still have aggregate impacts (Farmakis-Gamboni and Prentice 2011; Loundes, Tseng and Wooden 2003; Tseng and Wooden 2001).

Nevertheless, as discussed earlier, many macroeconomists cite past labour relations reforms as one of the reasons for Australia’s improved macroeconomic performance since the mid-1990s.

The Commission invites participants’ views on the best evidence about the impacts of the WR system. It also requests views about the mechanisms through which the WR affects aggregate economic outcomes, as well as impacts on particular regions, industries and firm sizes.

Data and analytical methods

As specified in the terms of reference, the Commission will draw on a wide spectrum of evidence, including:

- past overarching reviews of the system (most recently, the 2012 post-implementation review of the FWA (Australian Government 2012b)), analysis undertaken or commissioned by the FWC (including as part of its minimum wage and award reviews), and submissions to various recent Senate inquiries into changes to the WR system

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- ABS⁷ and other survey data (including the Household, Income and Labour Dynamics in Australia (HILDA), the Australian Workplace Relations Study (AWRS) and the Australian Work and Life Index (AWALI))
 - data held by the Australian Department of Employment, such as its Workplace Agreements Database
 - data from the FWO and the FWC that shed light on specific aspects of the WR system (such as trends in unfair dismissal cases and their outcomes)
 - key legal cases
 - submissions to this inquiry. (The Commission has also provided scope for stakeholders to make brief comments about WR matters on its website (<http://www.pc.gov.au/inquiries/current/workplace-relations/comment>).)

The Commission will consider various modelling and analytical methods in undertaking the inquiry, including econometric, micro-simulation and general equilibrium modelling.

The Commission seeks feedback on major studies and databases relevant to this inquiry. How could new data and new methods help improve the assessment of policy choices?

International experiences may provide some lessons about future directions

The Commission will consider any lessons from overseas institutional arrangements in each of the theme areas identified in the issues papers. In addition, the economic and social outcomes of different WR arrangements may sometimes be best identified using data across countries and time.

The Commission proposes to examine various international sources of evidence about WR systems, such as the United Kingdom Workplace Employment Relations Study (Van Wanrooy 2013; Van Wanrooy et al. 2013), the ILO NATLEX database, and data from the OECD (2014), the World Bank (2013) and the World Economic Forum (2014). These have several inconsistencies and other limitations (Aleksynska and Cazes 2014; Hall and Casey 2006), but may still be useful in this inquiry.

However, there may be other important sources of information and, potentially, lessons from overseas that relate to the effects of the regimes as a whole, rather than their parts.

Beyond their advantages in providing lessons about parts of the WR system and any of its flaws, are there broad lessons for Australia from overseas WR arrangements?

What are the most rigorous and comprehensive measures of the nature and impacts of international WR arrangements? What are the strengths and weaknesses of the existing measures?

⁷ For example, surveys such as Forms of Employment (2013), Working Time Arrangements (2012), Employee Earnings and Hours (2012), and micro datasets such as the Business Longitudinal Database (2006–07, 2010–11).

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Attachment A: Inquiry participation

This is a public inquiry, and the Commission welcomes participation from interested people and organisations. The five issues papers released by the Commission are intended to facilitate this participation. The papers set out the scope of the inquiry, the issues about which the Commission is seeking comment and information, the Commission's procedures, and how to make a comment or a submission.

The Australian Government has asked the Commission to provide a final report by November 2015. To meet this timetable, the Commission is seeking initial written submissions by **Friday 13 March 2015**. These submissions will inform the draft report, which will be publicly released in June/July 2015.

The Commission has commenced informal consultations and, following release of the draft report, the Commission will seek feedback from stakeholders through public hearings in August/September 2015, as well as a second round of submissions. The Commission will provide the final report to the Australian Government by 30 November 2015.

How you can contribute to this inquiry

By making a brief comment

The Commission welcomes brief comments from people who want to share their experiences or views on any topic covered by the inquiry, but do not wish to make a public, formal submission.

Unlike submissions, brief comments are not considered public by default and will only be published if the submitter gives the Commission express permission to do so (a check box has been provided on the submission form on the website). The Commission may publish comments on its website and/or within the inquiry report.

By lodging a submission

The purpose of the issues papers is to provide initial guidance on what might be relevant to this inquiry and the evidence the Commission is seeking from stakeholders. The Commission encourages submissions on any of the issues relevant to the inquiry's terms of reference, even if not explicitly discussed in the issues papers. The papers are not intended to be exhaustive. You should feel free to raise any matter you see as relevant to the inquiry,

but should not feel obliged to comment on *all* the matters raised in the issues papers. Some issues papers may be more relevant to you than others.

How to prepare a submission

Submissions may range from a short letter outlining your views on a particular topic to a much more substantial document covering a range of issues. Where possible, you should provide evidence, such as relevant data and documentation, to support your views.

As this is a public review, all submissions should be provided as public documents. Each submission, except for any information supplied in confidence (see below), will be published on the Commission's website shortly after receipt, and will remain there indefinitely as a public document. Copyright in submissions sent to the Commission resides with the author(s), not with the Commission.

Under certain circumstances, the Commission can accept sensitive material in confidence, for example, if it was of a personal or commercial nature, and publishing the material would be potentially damaging. Please contact the Commission for further information and advice before submitting such material. Material supplied in confidence should be provided under separate cover and clearly marked 'IN CONFIDENCE'.

How to lodge a submission

Each submission should be accompanied by a submission cover sheet. The submission cover sheet is available on the inquiry web page. For submissions received from individuals, all **personal** details (for example, home and email address, signatures, phone, mobile and fax numbers) will be removed before it is published on the website for privacy reasons.

The Commission prefers to receive submissions as a Microsoft Word (.docx) files. PDF files are acceptable if produced from a Word document or similar text based software. Do not send password-protected files. Do not send us material for which you are not the copyright owner, such as newspaper articles. Please provide a reference or link to such material in your submission.

Please remove track changes, editing marks, hidden text and internal links from submissions before sending to the Commission. To ensure hyperlinks work in your submission, please type the full web address. Submissions sent by email must not exceed 20 megabytes as our email system cannot accept anything larger. If your submission is greater than 20 mb in size, please contact the inquiry team to organise another method of sending your submission. It is the Commission's experience that submissions exceeding 20 megabytes do so because they contain uncompressed photographs. We encourage submitters to only supply photographs if they are evidential in nature and are in a compressed format.

Submissions can be sent by email or post:

Email workplace.relations@pc.gov.au

Post Workplace Relations Inquiry
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

* If you do not receive notification of receipt of an email message you have sent to the Commission within two working days of sending, please contact the Administrative Officer.

By attending a public hearing

The Commission holds public hearings in all of its public inquiries. They allow interested parties to expand on written submissions and to discuss inquiry issues with Commissioners in a public forum. Any organisation or individual can attend a public hearing, either to speak to a written submission or to observe the proceedings.

Public hearings will be held following the closing date of that round of submissions. The hearing schedule will generally run over a two-week period.

How to register to attend a public hearing

After the release of the draft report, the Commission will start taking registrations for presenting and observing hearings. Participants who are not able to attend a hearing in person can participate by phone.

Observers are encouraged to register to attend public hearings so that they can be notified via email of any changes to the schedule or start time of hearings. However, any member of the public is welcome to attend a public hearing as an observer without having registered beforehand.

Commission staff will contact you if you have registered to present at a public hearing to discuss a specific time for your appearance. The amount of time allotted to each appearance will vary depending on the number of registrations received for that hearing day. However, most appearances do not exceed one hour. Your name will then appear on a schedule of appearance for that public hearing, which will be made publicly available on the Commission's website prior to the hearing date.

You may register to represent yourself as an individual, or an organisation. Registrations will be accepted for up to four people to present jointly on behalf of an organisation, however registrations will not be accepted for the same organisation to be represented by different presenters at separate times or on separate dates.

Hearings are conducted in a relatively informal manner. Presenters will be called to the witness table and make a brief opening statement. Commissioners will then seek elaboration on, or clarification of, particular points raised by the presenter in their statement and written submission/s.

Legal representation is unnecessary and there is no requirement to take a formal oath. The *Productivity Commission Act 1998* does require participants to be truthful in their remarks.

The proceedings will be recorded and later transcribed into text, which will be available from the Commission's website and may be quoted in the inquiry report.

At the conclusion of the schedule for the day, Commissioners may accept brief comments from anyone in the audience. These comments would then be included in the transcript of the proceedings. Interjections from the floor are not permitted at any time during proceedings.