

Barton Deakin Brief: Workplace Relations Review Issues Papers

23 January 2015

The Productivity Commission today released a series of Issues Papers to inform submissions into a review of Australia's workplace relations framework.

The [Issues Papers](#) provide analysis on five key aspects of the Commonwealth's existing legislative arrangements, set out in the [Fair Work Act 2009](#):

1. The context of the current inquiry;
2. Existing safety nets, including the minimum wage, National Employment Standards, the award system and penalty rates;
3. The Bargaining Framework, including enterprise bargaining, individual arrangements and dispute resolution;
4. Employee protections, including unfair dismissal regulations and anti-bullying laws; and
5. Other workplace relations issues, such as public sector industrial relations, business compliance costs and the effectiveness of institutions and agencies central to the workplace relations framework.

The Coalition Government today indicated that it will consider, but not necessarily adopt, the Productivity Commission's recommendations. A Final Report is due in November 2015.

The Minister for Employment, Senator the Hon Eric Abetz, and the Treasurer, the Hon Joe Hockey MP, released the [Terms of Reference](#) for the review on 19 December 2014. Barton Deakin's Brief on the review's Terms of Reference can be accessed [here](#).

The Productivity Commission is encouraging stakeholders and the general community to respond to the Terms of Reference and Issues Papers by 13 March 2015. Information on how to prepare a submission is available [here](#).

This Barton Deakin Brief outlines the key issues canvassed in each Productivity Commission Issues Paper.

Issues Papers

The five Issues Papers provide a comprehensive assessment of the workplace relations system. An analysis of some key topics raised in each Paper is provided below.

1. The Inquiry in Context

[Issues Paper 1](#) outlines the scope and aim of the Productivity Commission's inquiry. Each week 11.6 million Australians work in 2.1 million workplaces.

A broad range of observations are made:

- The current workplace relations system is 'highly elaborate and broad ranging';



- Workplace relations laws and regulations can influence the prospects of unemployed individuals seeking a new job;
- Technological innovation is changing the way in which Australian workplaces operate;
- The role of trade unions in Australian workplaces has diminished; and
- There is greater demand for individuals working in social services and highly skilled professions.

In the course of the inquiry process, the Productivity Commission will **not**:

- Examine the governance arrangements of unions;
- Consider the financial assistance available for individuals and groups seeking legal representation in workplace matters;
- Review Workplace Health and Safety laws and institutions; and
- Assess the Superannuation Guarantee.

The first Issues Paper lists many common criticisms of Australia's existing workplace relations framework (page 10-11). The Productivity Commission will consider the experiences of other nations in relation to the social and economic impact of various workplace relations regimes.

2. Safety Nets

[Issues Paper 2](#) notes the importance of assessing the economic and social impact of minimum wage and employment standards.

Australia's minimum wage is at \$16.87 per hour for adults. Younger workers, including apprentices, receive lower minimum wage rates. Western Australia maintains an independent minimum wage for certain employees of unincorporated enterprises. 26 of 34 nations in the Organisation of Economic Co-operation and Development (**OECD**) have a legislated minimum wage.

The Issues Paper highlights the lack of consensus on the impact of wage settings, citing reports suggesting that a high minimum wage acts as a barrier to employment in low socio-economic communities. In the Final Report, the Productivity Commission will produce quantitative analysis designed to 'unravel this contested area of labour economics.'

In relation to the [National Employment Standards \(NES\)](#), the Productivity Commission argues that there is little controversy relating to the operation of the NES as a whole.

3. The Bargaining Framework

[Issues Paper 3](#) raises the issues associated with the bargaining process through which employers and employees negotiate on pay and conditions for workers.

Currently, approximately one third of Australian enterprise agreements contain provisions relating to productivity improvements. The Issues Paper notes that many businesses have called for a greater emphasis on productivity in the bargaining process, whilst acknowledging that any reform in this direction may detrimentally affect employees (through the introduction of new technologies).

The Productivity Commission argues that the extent to which Individual Flexibility Arrangements (**IFA**) increase flexibility in Australian workplaces is 'unclear' - (page 8). Further feedback is sought.



The Issues Paper also describes the current framework for dealing with industrial disputes, noting that the number of strikes is historically low. The Productivity Commission is calling for feedback on the current role of the Fair Work Commission (**FWC**) in the industrial dispute process, with a focus on avoiding such events.

The Issues Paper observes that there is a ‘tussle’ between the common law and legislation governing individual arrangements outside workplace agreements. This leads to complexity and practical impacts on the ability of employees to understand the agreements they are subject to.

4. Employee Protections

[Issues Paper 4](#) considers unfair dismissal laws, stressing the need to balance the fair treatment of workers and the prerogative of employers to manage their enterprises effectively. Furthermore, the Productivity Commission notes that employer perceptions of unfair dismissal legislation must be considered. If businesses are concerned about the difficulty of firing underperforming workers, this may act as a barrier to employment for some prospective staff.

The Productivity Commission is also seeking feedback on the design and operation of anti-bullying provisions.

5. Other Workplace Relations Issues

[Issues Paper 5](#) requests stakeholder feedback on the operation and structure of the Commonwealth’s key workplace relations regulators and dispute resolution bodies; the [Fair Work Commission \(FWC\)](#) and the [Fair Work Ombudsman \(FWO\)](#). States and Territories also have industrial relations agencies, each with varying powers and responsibilities.

The Productivity Commission will assess the compliance costs of engaging with Australia’s workplace relations system, noting that the current framework is ‘highly complex.’ This is in part due to ‘legalistic features that raise costs and present problems for participants.’

The Issues Paper also raises the role of alternative employment arrangements in the Australian economy, including:

- Independent contractors, which now represent nine per cent of the national workforce;
- Owner-managers of incorporated and unincorporated enterprises;
- Contracted workers engaged through labour hire firms;
- Skilled migrant workers; and
- Casual workers.

Further information

The Minister for Employment today released a press statement responding to the publication of the Issues Papers - see [here](#).

For further information or assistance in preparing a submission to the Productivity Commission, please contact [Grahame Morris](#) on +61 411 222 680, [David Alexander](#) on +61 457 400 524 or [Alexander Clark](#) on +61 418 894 040.