



*Reply to the Productivity Commission's
Draft Report on Australia's Workplace
Relations Framework
– Introductory Remarks*

23 September 2015

AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for more than 97 years, AMMA's membership covers the entire resource industry value chain: exploration, construction, commercial blasting, mining, hydrocarbons, maritime, smelting and refining, transport and energy, as well as suppliers to those industries.

AMMA's dedicated work is to ensure that Australia's resource industry is an attractive and competitive place to invest and do business, employ people and contribute valuably to Australia's well-being and living standards.

The resource industry is and will remain a major pillar of Australia's economy. The sector directly contributed \$155 billion to Australia's GDP in 2013-2014 and, factoring in the full direct and indirect effects of resources activity, generates about 18 per cent of GDP in total. It is forecast that Australian resources will comprise the nation's top three exports in 2018-19.

AMMA members across the resource industry are responsible for a great deal of employment in this country. In 2013-2014, the industry directly employed 269,000 people in resources extraction and 190,000 people in resources-related construction and manufacturing – directly representing 4 per cent of total employment in Australia. When considering the flow-on effects of our sector, an estimated 10 per cent of the national workforce, or 1.1 million Australians, are employed as a result of the resource industry.

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1. We thank the Commission for the opportunity to appear today, and wish to pass on our appreciation at both this level and to the PC secretariat, for the support and information we have received throughout the review process.
2. We want to focus our comments today firmly on outcomes, and on the final recommendations PC should make to government.
3. AMMA wants to help ensure the government receives a report in November that:
 - a. Delivers on the terms of reference.
 - b. Contains recommendations that will improve the capacity of our economy and labour market to navigate current and future challenges.
 - c. Charts a course to a system that will do better for employers, employees and the wider economy and community.
4. We wish to make a few introductory points on the draft report, and how the PC should proceed in its final report and recommendations.
5. **AMMA supports the majority of the recommendations:** Up front we want to say there is much the PC gets right, and many draft recommendations we support.
6. However, there are also fundamental inadequacies in what has and has not been addressed, and the approach taken in the draft report on particular issues.
 - a. **Doesn't go far enough:** In many areas the draft recommendations don't go far enough and don't tackle what have been identified as core problems for those using the system.
 - b. **Too few, too limited recommendations:** There is often no solution or way forward on issues the PC acknowledges in the text.
 - i Much of the introduction to the draft report we could agree with, but it does not flow through into sufficient remedial recommendations.
 - ii The draft report also fails to tackle the range of issues AMMA and others raised in our submissions.
 - c. **Missed opportunity:** The biggest danger in all this is of missed opportunity, and not doing all we can by employees, job seekers, employers and the community, because....

7. **This review really matters:** The Australian economy and labour market are under real challenge and have weaknesses. There is a genuine danger that we will see further job losses, and widespread impacts on living standards for individuals, families, and the community.
8. WR reform alone is not going to fix our economy, investment or confidence – and no one is saying it is – but it has a role to play to equipping Australia to ride out trouble and to be competitive in a globalised world.
9. This review is ultimately too important and timely an opportunity for genuine reform to allow it to be missed or under done.
10. That's why AMMA has put so much effort into this process, including:
 - a. A 481 page initial submission.
 - b. A 133 page economic report from KPMG.
 - c. A 249 page submission responding to the draft report.
11. **This review must grapple with our future challenges:** The PC observes that "*the past is assumed innocent unless found guilty, embedding old, but outdated, features of the WR system*"¹.
 - a. This criticism from the PC could be a criticism of the PC and the approach in the Draft Report, except it is the status quo which is being presumed innocent, leading to failure to properly and critically evaluate the existing WR system, and engage with options for genuine change.
 - b. The focus should not be on how far we have come or how our system has changed, but how we compare and can compete in future.
 - c. The Draft doesn't seem to have sufficiently made the link between future trends and how our WR system needs to change.
 - d. **Analysis needs to be critical not descriptive:** The PC draft suffers from a tendency to merely recite the status quo, or its evolution, but fails to then go the next step to critically evaluate the performance of current regulation and how this could be improved in future.
12. **And our WR system needs to be critiqued at the fundamental level,** to ensure it can be as effective as possible in supporting employment, growth and opportunities, and that it is fit for purpose in the globally competitive and challenging environment we face.

¹ PC Draft Report, p.11

13. **The recommendations need to do more than make minor changes to the existing Fair Work system, and they need to do more than tinker.**
 - a. We need smarter, more effective and more targeted regulation.
 - b. This is not necessarily deregulation, but about the right regulation.
14. **The terms of reference demand the PC go further:** We ask the PC to look again at its terms of reference, and reconsider whether it has delivered the analysis, critique and recommendations it was tasked with delivering.
 - a. As the PC acknowledges at p.9 of the draft report:

The terms of reference require the Productivity Commission to cover all those aspects of workplace relations that impinge upon the ability of the system as a whole to adapt to longer-term structural shifts and changes in the global economy.
 - b. We couldn't have put it better – but we question whether the draft report actually delivers on this.
15. **Repair or replace is irrelevant:** The repair or replace discussion used by the PC is a bit of a straw man.
 - a. The terms and reference did not ask for replacement level change or major deregulation.
 - b. Most submitters avoided such recommendations, or contextualised them.
 - c. The question is whether the PC has recommended a sufficient level of repair, and the right repairs for the future?
16. **Institutions are means not ends:** Institutions are important and AMMA says a great deal about them, but even more important is getting their powers and responsibilities right, and this means changing the legislation for the better.
17. **Insufficient international comparison:** The terms of reference task the PC with looking at Australia's fellow OECD economies, understanding how they regulate work differently to Australia, and critically evaluating what we might take from this international experience to improve our system for the future.
 - a. This is not sufficiently explored in the draft report, which lacks a chapter providing these comparisons, and basing reform recommendations upon them. This is an area of great disappointment to date.
18. **Have due regard to economic evidence:** AMMA commissioned first rate economic evidence / modelling to assist the PC. This is the KPMG report lodged with our initial submission.

- a. We did this because we knew you would confront a deficiency of economic evidence for workplace reform. The terms of reference predicted gaps in the evidence and we sought to plug a critical gap for you in advance.
 - b. We strongly recommend the PC look again at the KPMG report as the only substantive piece of bespoke independent economic research undertaken for this review.
 - c. KPMG estimates that if key workplace reforms advocated by AMMA were implemented, they could collectively support resource sector productivity growth of up to 5% and investment growth of up to 8%.
 - d. This would grow national GDP by 2% and employment by 0.3%., adding \$30.9 billion to Australia's GDP and create up to 36,000 additional jobs.
19. In advancing these summary points we also note with approval the opening remarks from both ACCI and the BCA. We understand our business colleagues to have broadly identified similar concerns.
20. **Above all resource employers urge the PC not to allow this review to be writ small and not to miss the opportunities and obligations it has to better support jobs, growth and fairness for all users of the system – existing and future.**

How to proceed

21. With these introductory comments (which we will hand up and lodge electronically), we commend our written reply submission to you.
22. I want to complete our opening by reiterating the AMMA reform priorities that we say should be prioritised in what you recommend to government:
- a. Improving the capacity to access reliable, timely, greenfields agreements for new resource projects without exorbitant wage and condition outcomes or unnecessary project delays.
 - b. Ensuring allowable matters in enterprise agreements pertain to the direct relationship between employers and employees and not to third parties or commercial and competitive rather than employment matters.
 - c. Ensuring employers and employees can rapidly and efficiently enter into agreements that progress their interests.
 - d. Ensuring agreement-making options are broadened to encompass individual and collective, union and non-union options, and ensuring additional mechanisms, such as IFAs, are as effective and accessible as possible.

- e. Ensuring protected industrial action during bargaining can only be taken as a last resort and greater access to “cooling off” periods.
 - f. Ensuring the location and frequency of union “right of entry” visits is reasonable and takes due account of operational needs.
 - g. Ensuring greater rigor is introduced into the threshold for accessing the adverse action / general protections jurisdiction.
23. There is a great deal more in our original and reply discussion on these issues and the range of matters included and not included in the draft report.
24. But with this introduction, we look forward to your questions.