



Submission to the Productivity Commission

Inquiry into Increasing Australia's Future Prosperity

January 2017



AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for more than 98 years, AMMA's membership spans 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 works to ensure Australia's resource industry is an attractive and competitive place to invest, do business, employ people and contribute to our national wellbeing and living standards.

The resource industry is and will remain a major pillar of the national economy and its success will be critical to what Australia can achieve as a society in the 21st Century and beyond.

The Australian resource industry currently directly generates over 8% of Australia's GDP. In 2014-15, the value of Australian resource exports was \$171.9 billion. This is projected to increase to \$256 billion in 2019-20. It is forecast that Australian resources will comprise the nation's top three exports by 2018-19. Over 50% of the value of all Australian exports are from the resource industry.

Australia is ranked number one in the world for iron ore, uranium, gold, zinc and nickel reserves, second for copper and bauxite reserves, fifth for thermal coal reserves, sixth for shale oil reserves and seventh for shale gas reserves.

AMMA members across the resource industry are responsible for significant levels of employment in Australia. The resources extraction and services industry directly employs 219,800 people. Adding resource-related construction and manufacturing, the industry directly accounts for four per cent of total employment in Australia.

Considering the significant flow-on benefits of the sector, an estimated 10 per cent of our national workforce, or 1.1 million Australians, is employed as a result of the resource industry.

First published in 2017 by

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1. INTRODUCTION

1. AMMA welcomes this review which addresses real and pressing concerns not only for the Australian economy, but also as the Discussion Paper¹ makes clear, for the translation of economic performance into individual opportunity, living standards and services for all Australians. Productivity is not an abstract economic consideration, or something that matters only to the business community, it impacts on all Australians and the quality of life and opportunity they can enjoy.
2. This inquiry goes directly to the very *raison d'être* of the Australian Mines and Metals Association (AMMA) which exists to “ensure Australia's resource industry is an attractive and competitive place to invest, employ people and add value to the nation's well-being and living standards.”
3. It also addresses one of Australia's foremost and most pressing national challenges, and as the Discussion Paper indicates², one of our national economic fundamentals for which “something is seriously awry.”
4. A widely used and abused quote from one of the world's foremost economists, captures the importance the resource industry attaches to Australia's productivity performance, and the importance that should be accorded to policies and settings that will improve Australia's productivity:

*Productivity isn't everything, but in the long run it is almost everything. A country's ability to improve its standard of living over time depends almost entirely on its ability to raise its output per worker.*³
5. The resource industry supports not only the holding of this inquiry, but how it has been framed and introduced in the Discussion Paper⁴.
6. We commend the Productivity Commission (PC) for the gravity and urgency with which the Discussion Paper frames Australia's productivity challenge.
7. The resource industry shares this concern, and shares the sense of urgency in the Discussion Paper. As an industry that trades and competes globally, and in particular competes for capital and investment globally, resource organisations are directly exposed to the strengths and weaknesses of Australia's productivity performance.

¹ Productivity Commission (2016) [Increasing Australia's Future Prosperity – Discussion Paper](#), p.1

² Productivity Commission (2016) [Increasing Australia's Future Prosperity – Discussion Paper](#), p.1

³ Paul Krugman, *The Age of Diminishing Expectations* (1994)

⁴ Productivity Commission (2016) [Increasing Australia's Future Prosperity – Discussion Paper](#)

8. The resource industry's successes and challenges in operating productively directly determine our capacity to be competitive in genuinely globalised commodity markets.
9. Before AMMA addresses particular measures we say should be prioritised in seeking to improve Australia's productivity, we wish to recommend upfront that these reviews continue and be undertaken more regularly.

Recommendation 1: The PC recommend to government that this review be undertaken more regularly, and that five years not be allowed to elapse between such major reviews that go to the heart of our living standards and what Australia can achieve as a nation.

A 24 or 30 month cycle would be more appropriate, timely and useful, and would allow the PC to focus on specific dimensions of productivity and particular options for reform, perhaps on a cyclical basis.

This review is of such importance that consideration should be given to varying the *Productivity Commission Act 1988* to make it a specific and regular output of the agency, which is required under statute and that does not rely on future individual ministerial requests to continue to be undertaken.

This submission

10. Responds to the challenge in the PC's Discussion Paper to bring forward specific areas of reform that the PC should be commending to government to redress longer term declines in Australia's productivity performance.
11. The core of this submission concentrates on workplace relations. Australian resource employers identify workplace relations reform as a critical element to improve Australia's future economic and productivity performance, and how well and efficiently Australia regulates work and balances the application of labour to outputs, with appropriate, effective and proportionate protections for employees.
12. Subsequently, and addressing point 3 of the terms of reference of this review, this submission discusses the need for greater market efficiency, specifically highlighting the need for taxation reform and red-tape reduction.



2. WORKPLACE RELATIONS REFORM

Introduction

13. The PC's Discussion Paper indicates that:

... failure to develop the policies most relevant to future higher productivity — and its outcome, higher income — will burden future generations with the eventual adjustment cost.⁵

14. The resource industry could not agree more. Australia cannot afford to remain complacent on key areas of national policy and regulation that impact on our productivity and competitiveness. In particular, we cannot afford to rest on our laurels when it comes to reforming our workplace relations laws.

Workplace relations is critical to our productivity performance

15. The PC correctly observes that it needs to narrow the field of reforms it examines to improve Australia's productivity performance.⁶

16. AMMA has therefore concentrated this submission on the importance of reforming Australia's workplace relations system and the benefits this can generate for Australia's future productivity performance.

17. We urge the PC, as it harvests many ideas and winnows them down to a narrower set of considerations⁷, to include workplace relations as one of the key areas it focuses on to improve Australia's productivity performance. Workplace relations reform should be one of the "coherent and interlinked suite of reform options"⁸ that the PC will recommend at the end of this process.

18. Wider benefits: Workplace relations reform is not just good for business. Implemented correctly it benefits the whole community⁹ and delivers on the aims of the PC as set out in its empowering legislation¹⁰. Such benefits can include:

- a. Increased employment opportunities.
- b. More flexible employment options, which can support labour market engagement for those with caring and family responsibilities.
- c. Increased job security in more productive and competitive enterprises.

⁵ Productivity Commission (2016) [Increasing Australia's Future Prosperity – Discussion Paper](#), p.1

⁶ Productivity Commission (2016) [Increasing Australia's Future Prosperity – Discussion Paper](#), p.16

⁷ Productivity Commission (2016) [Increasing Australia's Future Prosperity – Discussion Paper](#), p.16, 6th para

⁸ Productivity Commission (2016) [Increasing Australia's Future Prosperity – Discussion Paper](#), p.20, 2nd para

⁹ Productivity Commission (2016) [Increasing Australia's Future Prosperity – Discussion Paper](#), p.17, 2nd para

¹⁰ Productivity Commission Act 1998, s.8(1)(a)

- d. Lower cost goods and services.
 - e. Higher tax and royalties returns to the community.
19. How we work, and how we regulate work is critical to all the 'factors' of productivity.
 20. With the advancement and application of new technologies and skill sets, the way we regulate work needs to be far more agile and responsive to change from what it has been in the past.
 21. It is important to conceptualise technological advancement and our productive future. For example in the resource industry, there is now a greater shift towards remote operations and monitoring centres along with advancements in robotics and mechatronics which will increase the use of autonomous and remote-controlled equipment such as trucks, bulldozers, drills and shovels.
 22. As a result, skill sets and individual job roles in the resource industry are vastly different from the past, and with innovative / technological breakthroughs anticipated to become more prevalent, the jobs of tomorrow are likely to be very different from the jobs of today. Therefore, how we regulate work must be flexible and agile enough to transition with, and not detract/stifle, operational (human capital) transformation as this is critical to advancing multifactor productivity levels.
 23. A former head of the PC captured the importance of workplace relations to Australia's productivity performance more than half a decade ago:

“Workplace relations regulation is arguably the most crucial [area of regulation] to get right.

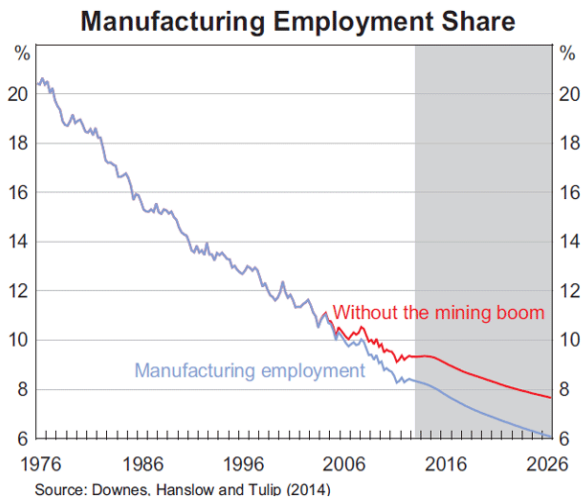
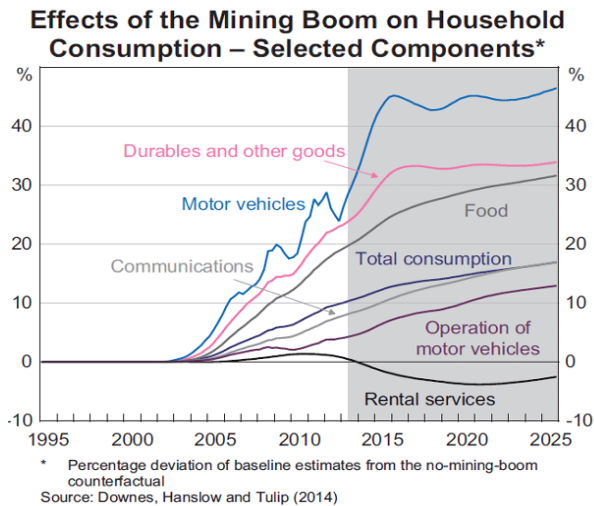
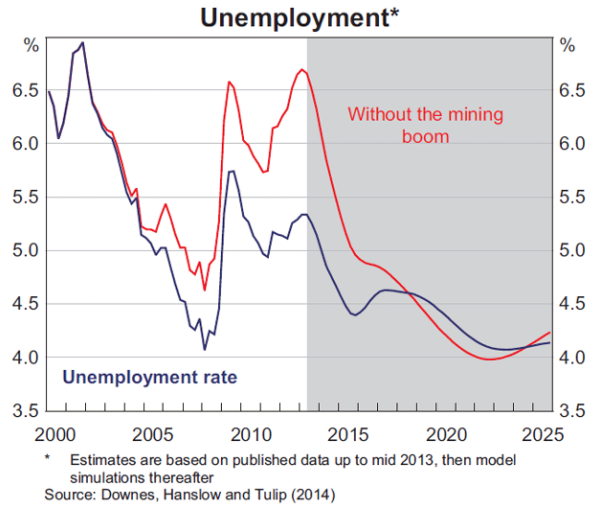
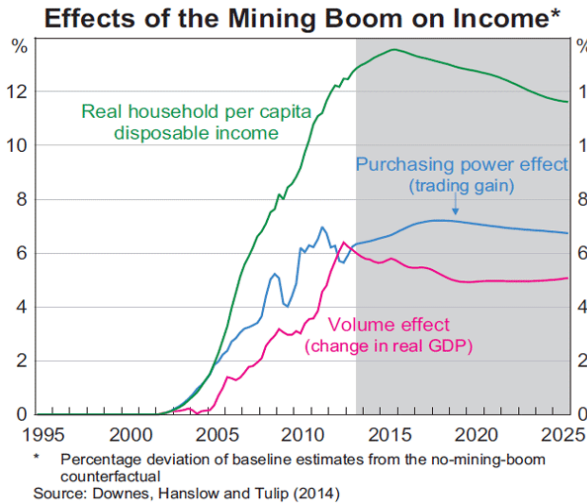
*Whether productivity growth comes from working harder or working 'smarter', people in workplaces are central to it”.*¹¹
 24. The PC discussion paper rightly points out a key dimension to reducing inequality is income growth¹². As seen below from four graphs sourced from the RBA¹³, *the effect of the most recent mining boom on the Australian Economy* increased the purchasing power effect (trading gain), increased household per capita disposable income (key metric to assess living standards) reduced unemployment, as well as increased consumption of selected household goods.

¹¹ Banks G (2011), 'Successful Reform: Past Lessons, Future Challenges', Keynote address to the Annual Forecasting Conference of the Australian Business Economists, Sydney, 8 December, Productivity Commission, Chairman's Speeches series.

¹² Productivity Commission (2016) [Increasing Australia's Future Prosperity – Discussion Paper](#), p.4

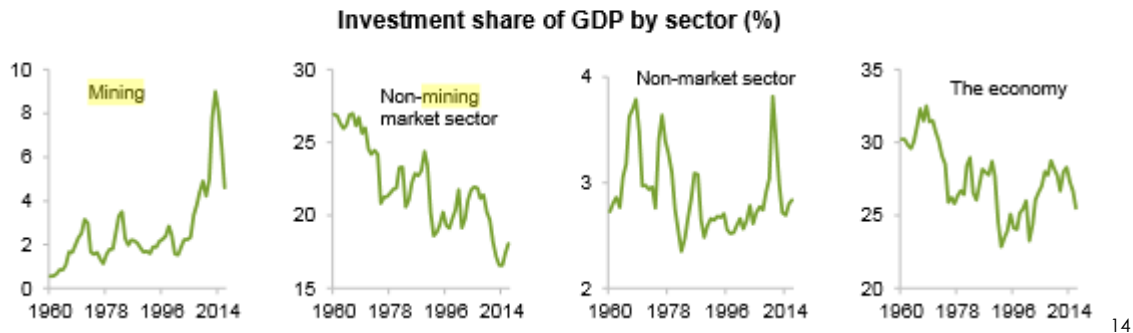
¹³ <http://www.rba.gov.au/publications/bulletin/2014/dec/3.html>

In other words, the mining boom directly and indirectly increased the prosperity for a significant number of Australians.



25. Since the re-correction in commodity prices, investment in the resource ‘mining’ sector has dropped and investment in the non-mining market sector has not accelerated as fast as the government may have hoped.

Figure 8 Digging deeper: investment patterns
1959-60 to 2015-16



26. With Australia ranked number one in the world for iron ore, uranium, gold, zinc and nickel reserves, second for copper and bauxite reserves, fifth for thermal coal reserves, sixth for shale oil reserves and seventh for shale gas reserves; and with our sun, our wind, our vast landscape, significant opportunities should lie ahead for our entire resource industry, including the Mining Equipment Technology Services (METS) sector.
27. Australia has, and should capitalise on our competitive advantage to become a global powerhouse in the mining as well as energy (non-renewable and renewable) industries.
28. For Australia to best position itself to obtain its share of the next wave of resource-related activity, CEO's and key influencers have told Australia that workplace relations reform is vital.
29. For example:

“There are a number of public policy areas that are critical to the future development of the Australian economy: *trade, tax, workplace relations and regulatory efficiency. These go to the heart of Australia's future economic success*¹⁵” – Dr. Andrew Mackenzie – (CEO, BHP Billiton).

“*I have a concern about what is happening in terms of industrial action in Australia...this a return to the mid-80s and early 90's that saw the destruction of so much of the competitiveness our industry*¹⁶” – Nev Power (CEO, Fortescue).

¹⁴ Productivity Commission (2016) [Increasing Australia's Future Prosperity – Discussion Paper](#), p.14

¹⁵ <http://www.afr.com/brand/chanticleer/the-chanticleer-ceo-outlook-poll-in-full-20161208-gt7eqw#ixzz4UllPAbLf> – Dec 2016

¹⁶ AMMA National Conference, May 2014

“Australia is a great country but it hasn't got a legislative and regulatory base that enables growth for business in the longer term¹⁷” – Ian Smith (former CEO Orica and CEO Newcrest Mining).

“There is no avoiding the need to have the right labour market arrangements¹⁸” – Glenn Stevens AC (ex-RBA Governor).

Australia is letting itself down in how we regulate work

- 30. Governments of all levels play an active role in influencing the immediate drivers of real incomes. They also control levers that influence these choices, for good or bad¹⁹. Of note, not making changes to a flawed system is still an active policy decision of any government.
- 31. The World Economic Forum latest Global Competitiveness Report 2016-17²⁰ which assessed the competitive landscapes of 138 economies, highlighted that the way Australia regulates work is amongst the least competitive places in the world. Overall for a country that ranked 22nd in the world, Australia notably fell short in:

World Economic Forum series name	World Ranking
Hiring and firing practices	118
Flexibility of wage determination	111
Effect of taxation on incentives to work	111

- 32. These uncompetitive rankings echo the concerns raised by various CEO's and it provides further support as to why “labour relations” is a “top 10” business issue facing miners [according to Deloitte²¹], as well as various other industry sectors.

¹⁷ Resource People magazine, October 2012

¹⁸ Remarks to the National Reform Summit – 26 August 2015

¹⁹ Productivity Commission (2016) [Increasing Australia's Future Prosperity – Discussion Paper](#), p.16

²⁰ <http://reports.weforum.org/global-competitiveness-index/#topic=data>

²¹ <https://www.australianmining.com.au/news/the-top-ten-issues-facing-miners-in-2016/>

BARGAINING IS NOT DRIVING PRODUCTIVITY

33. The key driver of productivity through our workplace relations system is supposed to be / should be enterprise bargaining.
34. During the 1980s and 1990s, a conscious process was pursued of deliberately devolving and decentralising the organisation of work and determinations of wages and conditions to employers and employees in workplaces, with the goal of greater productivity and efficiency.
35. Many workplaces achieved a great deal through the early generations of their enterprise agreements, and productivity was increased by eliminating rank inefficiencies and job divisions which had become entrenched under the former centralised award system. Enterprise bargaining also emerged concurrent with, and as a means to complement, computerisation of many industries.
36. However, two decades have passed, the system has matured, technology is an entrenched part of how Australia does business and the easy gains of the first rounds of enterprise bargaining cannot be secured more than once.
37. A number of negative trends have emerged in enterprise bargaining, including:
 - a. The bureaucratisation of bargaining has led to employers increasingly processing extensive union logs of claims into somewhat workable four year agreements. Often, the only gain for employers is in not being subject to industrial action and securing a reasonable level of annual pay increase. According to some AMMA members, employer ideas to improve productivity or efficiency through changes to organisation of work are often crowded out / forced off the table.
 - b. Linked to this is an increasing trend to simply roll over one generation of agreement to the next in identical terms, save for increased pay levels.
 - c. Pattern bargaining, and unions insisting on standard agreements developed centrally, and imposing these on particular enterprises. This can inherently separate the terms and conditions of employment in any enterprise from its unique needs in being productive and competitive. Knowing all competitors are observing identical terms also robs an employer of any incentives to innovate or pursue greater efficiencies in the organisation of work.
 - d. A number of unions insisting enterprise bargaining is solely about increasing employee pay and conditions, and that either:

- i) There should be no productivity or efficiency dividend for employers in enterprise agreements, or
 - ii) If there are any gains or improvements for the business, these must in all circumstances be shared with employees, or flow through in full to employees.
- e. The over bureaucratisation and complex nature of bargaining under the Fair Work Act leading to 'bargaining fatigue' for employers, employees and employee representatives, which is counterproductive to the parties coming up with new ideas of innovations to improve productivity within their enterprises.
38. These are not universal developments, but they are common, and in some industry subsectors they dominate.
39. These developments are not positive for Australia's productivity performance. Changes are needed to our workplace relations system to ensure it better encourages and supports productivity improvement, and in particular returns the individual enterprise and its employees to the centre of our workplace relations system.

PC recommendations on enterprise bargaining

40. The PC made a number of recommendations relating to or impacting on enterprise bargaining in its report on Australia's Workplace Relations Framework. The implementation of these recommendations will go some way to ensuring that how we allow employers and employees to bargain in workplaces again supports and encourages productivity improvement.
41. The key existing recommendations from the PC's November 2015 Report on Australia's Workplace Relations Framework, include:
- a. PC Recommendation 20.2 – Focusing enterprise bargaining on matters pertaining to the relationship between employers and employees and not on relations between employers and unions.
 - b. PC Recommendation 25.2 – Stopping agreements being misused to restrict the use of independent contractors and labour hire services.
 - c. PC Recommendation 20.3 – Requiring enterprise flexibility terms to permit individual flexibility arrangements (IFAs) to deal with all the matters listed in the model flexibility term, along with any additional matters agreed by the parties.

- i) This would remove an unnecessary and damaging restriction on the capacity for individuals and their employers to agree on the organisation of work, which can yield key productivity benefits at workplaces.
- d. PC Recommendation 22.1 – Longer individual flexibility arrangements (IFAs), less able to be abandoned by employees.
- e. PC Recommendation 20.4 – Allowing employers and employees to agree to longer enterprise agreements, which can enshrine agreed approaches to productivity growth, and be less focused on renegotiation concerns.
- f. PC Recommendations 21.1 and 21.2 – Providing new avenues to overcome breakdowns in the negotiation of greenfields agreements for new projects, which can include tying elements of pay to productivity.
- g. PC Recommendation 20.1 – Allowing the FWC greater discretion to correct minor defects in bargaining paperwork and processes.

Recommendation 2: The PC should reiterate and re-recommend to government those recommendations from its final report on Australia's Workplace Relations Framework considered most likely to contribute to future productivity improvements.

Wider workplace relations reforms

- 42. As set out in the following section, AMMA was dissatisfied with the ultimate conclusions and recommendations of the PC's review of Australia's Workplace Relations Framework. The resource industry maintained that a wider range of changes were needed to redress Australia's declining productivity performance.
- 43. Notwithstanding the gains that would flow from implementing what the PC has recommended, AMMA made a series of recommendations in its submissions to the PC both directly on enterprise agreement making and approval, and for workplace relations reform more generally. We again commend these ideas for consideration as measures that can contribute to improving Australia's productivity performance.
- 44. Key ideas that AMMA has previously put to the PC that warrant re-examination in this review include:

- a. Restoring options for individual bargaining / agreement making to Australia's workplace relations system.²²
- b. Longer, more reliable options for Individual Flexibility Arrangements (IFAs).²³
- c. Restoring options for non-union collective bargaining, and separating union negotiated from directly negotiated agreements.²⁴
- d. Fast track approvals for high income employees / workplaces.²⁵
- e. Faster and more efficient agreement approvals.²⁶
- f. Expanded requirements to be genuinely trying to reach an agreement to trigger powers and processes under the Fair Work Act 2009.²⁷
- g. A clearer nexus between taking protected action and genuine claims, and genuinely trying to reach an agreement.²⁸

Economic benefits

45. One of the most frequently cited arguments against reforming Australia's workplace relations laws is a claimed lack of economic evidence to connect more balanced approaches to workplace relations regulation with particular economic benefits, including with productivity.
46. AMMA foresaw this challenge and commissioned independent econometric research from KPMG to support our submission to the PC's inquiry into Australia's workplace relations framework.
47. A 133-page report by KPMG, *Workplace Relations and the Competitiveness of the Australian Resources Sector*, examined the economic impacts of four of the six WR reform priorities AMMA recommends to the PC in its earlier review:
 - a. Restoring balance and suitable limits to union entry into workplaces.
 - b. Greenfields agreement making for new projects.

²² AMMA (2015) [Getting Back on Track](#): Delivering the Workplace Relations Framework Australia Needs, AMMA's submission to the PC Inquiry into Australia's Workplace Relations Framework, March 2015, - Section 3.2

²³ AMMA (2015) [Getting Back on Track](#): Delivering the Workplace Relations Framework Australia Needs, AMMA's submission to the PC Inquiry into Australia's Workplace Relations Framework, March 2015, - Section 3.3

²⁴ AMMA (2015) [Getting Back on Track](#): Delivering the Workplace Relations Framework Australia Needs, AMMA's submission to the PC Inquiry into Australia's Workplace Relations Framework, March 2015, - Section 3.5

²⁵ AMMA (2015) [Getting Back on Track](#): Delivering the Workplace Relations Framework Australia Needs, AMMA's submission to the PC Inquiry into Australia's Workplace Relations Framework, March 2015, - Section 3.5

²⁶ AMMA (2015) [Getting Back on Track](#): Delivering the Workplace Relations Framework Australia Needs, AMMA's submission to the PC Inquiry into Australia's Workplace Relations Framework, March 2015, - Section 3.7

²⁷ AMMA (2015) [Getting Back on Track](#): Delivering the Workplace Relations Framework Australia Needs, AMMA's submission to the PC Inquiry into Australia's Workplace Relations Framework, March 2015, - Section 3.8

²⁸ AMMA (2015) [Getting Back on Track](#): Delivering the Workplace Relations Framework Australia Needs, AMMA's submission to the PC Inquiry into Australia's Workplace Relations Framework, March 2015, - Section 4.1

- c. A useable option for statutory individual agreement making.
 - d. Rebalancing unfair dismissal and adverse action protections.
48. This research shows that the resource industry's recommended reforms could:
- a. Add up to \$30.9 billion to Australia's GDP.
 - b. Create up to 36,000 additional jobs.
 - c. Support resource sector productivity growth of up to 5%.
 - d. Support investment growth of up to 8%.
 - e. Grow national GDP by 2% and employment by 0.3%.

Where to from here?

49. The PC asks in the final paragraph of its Discussion Paper, *Where to from here?*²⁹
50. The PC says it is particularly interested in "new ideas for advancing reform". However, we urge the PC to look to both new and established ideas for reform.
51. In an area like the regulation of work, there is not much that is entirely new or many untraversed policy options. This does not however diminish the value and impact that improving the regulation of work and workplace relations would have for Australia's future productivity performance.
52. It is also important to appreciate that the former Labor government re-regulated key parts of our workplace relations system in 2009, and went a great deal further than merely 'correcting' the Work Choices changes of 2005. Thus, some of the key contemporary options for workplace relations reform are not going to be new ones, and they will come from or build on ideas that have already been tried and tested (introduced by both Labor and Coalition governments).
53. We also have existing ideas / recommendations from the PC that should sensibly form part of the recommendations in this review.
54. In late 2015, the PC handed the government two volumes of analysis and findings, and 69 individual recommendations to improve Australia's workplace relations framework and laws, principally but not solely through amendments to the *Fair Work Act 2009*. This followed the PC's major review of Australia's Workplace Relations Framework³⁰.
55. Resource industry employers, through their national employer body AMMA, were very disappointed in what the PC delivered. AMMA responded at the time that:

²⁹ Productivity Commission (2016) [Increasing Australia's Future Prosperity – Discussion Paper](#), p.21

³⁰ <http://www.pc.gov.au/inquiries/completed/workplace-relations#report>

- a. The PC had given Australia's unnecessarily complicated workplace relations system a free pass and had not fully considered how our workplace relations laws should be fundamentally reformed for the future.
 - b. The PC had missed an opportunity deliver a comprehensive plan for to ensure our workplace relations system can best support jobs, productivity and competitiveness in Australia's 21st Century economy.
 - c. The PC had failed to engage with and adopt the positive ideas and improvements that employers had put to it.
 - d. The PC had in particular failed to engage with the econometric evidence/modelling that AMMA had commissioned to support the ideas and analysis we put to the PC, with AMMA the only review participant to have sought to back up its views with detailed economic evidence.
56. However, AMMA also consistently made clear that the PC's review, while overall disappointing in its scope and ambition (i.e. falling well short of employer expectations), had delivered 21 pages of recommendations that contained positive ideas that would improve our workplace relations laws and that would be supported by employers.
57. This has remained AMMA's subsequent message - both to government and publicly - that the government should implement the vast bulk of what the PC recommended to it, and adopt most of the 69 recommendations to improve Australia's workplace relations framework.
58. This should also be the message that this review reiterates and sends to government. In essence to say that one of the key pillars for Australia's future productivity performance has to be improving how we regulate work and addressing significant problems plaguing our workplace relations system under the current Fair Work Act:

Recommendation 3: The system 'repair' the PC identifies in its 2015 report should be implemented as a critical measure for Australia's future productivity performance. The PC should use the opportunity of this review to specifically and expressly reiterate the importance of:

- Workplace relations regulation to Australia's productivity performance.
- Implementing the vast majority of the PC's 69 recommendations to government contained in its

November 2015 Inquiry Report on Australia's Workplace Relations Framework.

What we need to see in 2017

59. The time has come to act on concerns in our workplace relations system. Whether one wants to characterise the job as one of replacement or repair, it is clear that improving how we regulate work is important and must be part of improving our future productivity performance.
60. The PC should use the opportunity provided by this review to urge the government to introduce amendments to give effect to the (majority of the) PC's workplace relations recommendations during the 2017 Parliamentary year.
61. Of course, AMMA would go further and urge the government to implement the wider body of recommendations our organisation made to the PC during the course of its review of Australia's workplace relations framework³¹. This included quite specific recommendations to remediate real areas of inefficiency, poor regulation and real impacts on employers and employees (and the wider community) in areas such as:
 - a. Bargaining, agreement making and agreement approval.
 - b. Industrial action and dispute resolution.
 - c. Union access to workplaces, often called 'Right of Entry'.
 - d. The operation, effectiveness and clarity of the award and statutory safety net, and the obligations of employers.
 - e. Employee protections, including problems with laws relating to unfair dismissal, general protections / adverse action and the transfer of business.

AREA OF REGULATION	CURRENT PROBLEMS	PROPOSED REFORMS	BENEFITS
Agreement making and the bargaining framework	<ul style="list-style-type: none"> Most agreements doing nothing to increase productivity or competitiveness. Unions encouraged and rewarded for pursuing union, not employee interests. 	<ul style="list-style-type: none"> Extend nominal expiry date for agreements. Increase flexibility and options in agreement making. Provide collective and individual agreement making options. 	<ul style="list-style-type: none"> Bargaining focused on employment not union matters, expanding scope to address productivity and competitiveness. Reduced costs and delays for construction of major projects,

³¹ AMMA (2015) [Getting Back on Track](#): Delivering the Workplace Relations Framework Australia Needs, AMMA's submission to the PC Inquiry into Australia's Workplace Relations Framework, March 2015

AREA OF REGULATION	CURRENT PROBLEMS	PROPOSED REFORMS	BENEFITS
	<ul style="list-style-type: none"> • High negotiation costs and highly legalistic, adversarial processes. • Expanded union claims encouraging disputes, delaying agreements and imposing additional costs. • Union monopoly on new project agreements (greenfield agreements), delaying projects and inflating costs. • Inflated wages and conditions secured through unbalanced processes. • Uncertainty regarding agreement costs and timelines discouraging investment. 	<ul style="list-style-type: none"> • Restrict agreement content that negatively impacts on productivity and competitiveness. • Ensure timely agreement negotiation and discourage protracted bargaining. • Introduce an expedited agreement making and approvals process. • Ensure practical, accessible and reliable scope to make greenfields agreements for new resource projects. 	<p>encouraging increased investment.</p> <ul style="list-style-type: none"> • Timely greenfield agreements for new projects, with unions no longer able to veto new project agreements. • Increased capacity for managers to make key strategic operational decisions impacting on productivity and competitiveness.
Industrial Action / Strikes	<ul style="list-style-type: none"> • Unions encouraged and rewarded for using strikes, and strike threats as a standard negotiating tactic. • Low threshold for legally protected industrial action, increasing actual and threatened strikes in unionised workplaces. • Disruptions to operations and supply-chains increasing costs, reducing revenue, and harming Australia's reputation as place to do business. • Strikes over claims previously deemed off-limits and irrelevant to the employer-employee relationship. 	<ul style="list-style-type: none"> • Allow legally protected strikes only where genuine bargaining has been attempted and exhausted. • Limit industrial action during the life of any agreement. • Subject strikes to a public interest test, and allow third parties to raise concerns over potential flow-on impacts. • No longer legally protect industrial action over excessive claims and those unrelated to the direct employment relationship. • Place a high income threshold on industrial action. 	<ul style="list-style-type: none"> • Reduced days lost to industrial action and associated loss of production. • More agreements reached cooperatively without actual or threatened strikes. • Greater certainty in project timelines and costs. • Reduced ability to influence bargaining through strike tactics. • No legal protection for strikes clearly against the public interest. • Increased confidence in investing and doing business in Australia.
Union workplace entry rules	<ul style="list-style-type: none"> • Significantly relaxed controls and conditions for union officials to 	<ul style="list-style-type: none"> • Set and enforce a code of conduct for union officials entering worksites. 	<ul style="list-style-type: none"> • Entry limited to unions that have a legitimate connection to the workplace.

AREA OF REGULATION	CURRENT PROBLEMS	PROPOSED REFORMS	BENEFITS
	<p>legally force access to workplaces.</p> <ul style="list-style-type: none"> • Incentives and rewards for unions misusing entry powers to harass employers and employees. • Increased difficulty in establishing a valid reason and legal authorisation for union officials to enter a workplace. • Lost productivity and increased costs from extreme frequency of union visits. • Management and administration costs from facilitating and supervising union visits. • Increased safety risks from increased third-party presence in high risk workplaces. 	<ul style="list-style-type: none"> • Ensure unions are either covered by an existing agreement or negotiating with an employer to legally enter workplaces. • Ensure unions only hold discussions with employees eligible to be their members. • Remove requirements to provide unions with access to employee lunch rooms. • Remove requirements to subsidise union access to remote workplaces (i.e. offshore rigs and remote mines). 	<ul style="list-style-type: none"> • Reduced administrative and compliance costs. • Reduced lost time and impact on productive operations. • Ensuring union officials behave lawfully, follow directions and do not disrupt work. • Permission to legally enter workplaces again being treated as a privilege, carrying responsibilities and being revocable if misused.
Employee protections (unfair dismissal, adverse action)	<ul style="list-style-type: none"> • Confusion and costs from inconsistent interpretations and decisions. • Incapacity to set workplace standards and enforce them in critical areas affecting performance, attendance, workplace safety and organisational values. • Increased unfair dismissal claims and associated costs of investigating and responding to employee claims. • Speculative adverse action claims that are difficult and costly to defend, particularly through the reversed onus of proof. • Expanded and ambiguous protections encroaching on decision making to 	<ul style="list-style-type: none"> • Exempt terminations for serious offences and misconduct from unfair dismissal claims. • Preclude workers earning above a high income threshold from unfair dismissal claims. • Ensure each unfair dismissal application is determined on its merits only, not influenced by employee circumstances. • Cap compensation for adverse action, place the onus of proof on those making claims. • Increase application and hearing fees. 	<ul style="list-style-type: none"> • Fairer, more transparent treatment of employees through simpler, clearer and more reliable rules for fair dismissal. • Fewer unmeritorious claims and less frequent payment of 'go away money'. • Clearer limits on compensation. • Greater clarity for employers and employees on conduct justifying dismissal. • Reduced business costs and productivity impacts through a more balanced and practical employee protections framework.

AREA OF REGULATION	CURRENT PROBLEMS	PROPOSED REFORMS	BENEFITS
	meet the legal, safety and commercial duties of managers.		

62. AMMA has prioritised five areas for reform which could usefully form the core of amending legislation in 2017:
- a. Focus enterprise bargaining, and ensure legally protected strike action can only be taken over claims pertaining to the employment relationship, not union 'wish lists' of claims.
 - b. Return balance to union workplace entry laws by creating an enforceable code of conduct and removing union access to employee lunch rooms when other suitable meeting rooms are available.
 - c. Expand agreement making options to facilitate employment arrangements, both individual and collective, directly between employees and employers.
 - d. Reform unfair dismissal and 'general protections' laws to ensure employers are not forced to pay 'go away money' to settle claims without merit.
 - e. Replace the Fair Work Commission with modern, balanced institutions by creating an Australian Employment Tribunal and a separate Employment Appeals Tribunal.

What Australia definitely cannot afford

Reregulation

63. Australia also cannot afford significant further or additional regulation of our labour market, or to add even further prescription, impediments or requirements to what are already some of the world's most over-detailed and over-regulated labour laws.
64. Having deliberately re-regulated the system under the former Labor government, and having vastly over-corrected the 2005 Work Choices changes, Australia cannot afford any further moves towards additional regulation or prescription.
65. Of course workplace relations is a complex and contested area, and a number of views exist and a forcefully advocated calling for policy change, including

those seeking to add more regulation to the system. There are also occasional developments that governments will chose to address through additional regulation, enforcement and penalties, such as those at 7-Eleven in recent years.

66. However, at the general or systemic level, one thing Australia definitely cannot afford to countenance is adding even further regulation / further reducing flexibility and choice in our workplace relations system. Work in this country is already vastly over-regulated, particularly in a higher paying industry such as the resource industry. There is no targeting of most of the protections in our workplace relations to the genuinely lower paid or more vulnerable who may need such protections, and no regard to the impact of indiscriminate or at large regulation on macro considerations such as confidence to employ, competitiveness or productivity.
67. A necessary corollary to the PC recommending positive changes to our workplace relations system in the interests of increased productivity, should be some statement opposing the addition of further regulation or centralisation to the system.

Delay

68. We also note from the first page of the Discussion Paper that a grand crisis is unlikely to be the trigger for action on productivity, and that instead Australia faces “just an inexorable slowing towards reduced opportunity, greater dispute over shares of a smaller than expected pie, and selective protection.”
69. This applies equally in relation to workplace relations.
70. AMMA is concerned, that 12 months on from the completion of the PC's final inquiry report into workplace relations, the government has yet to formally respond to the PC recommendations.
71. Since the PC's final report, the Australian economy has slowed, evidenced by the Australian economy contracting 0.5% in the September 2016 quarter. This is the first fall since the March quarter of 2011³². With forecasts for economic growth in the December 2016 quarter ranging from positive 0.2 per cent to minus 0.2 per cent³³, AMMA encourages the PC to recommend to government that more than a “nudge and [a] wink³⁴”, more like *substantive and timely* reform is required to improve Australia's workplace relations regulatory framework.

³²

[http://www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/534F4DE62327CDD3CA258081001563AF/\\$File/52060_sep%202016.pdf](http://www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/534F4DE62327CDD3CA258081001563AF/$File/52060_sep%202016.pdf)

³³ <http://www.smh.com.au/business/the-economy/reserve-bank-holds-rates-amid-fears-of-low-or-negative-economic-growth-20161206-gt4zk9.html>

³⁴ <http://www.pc.gov.au/news-media/speeches/workplace-relations-innovation/workplace-relations-innovation.pdf>



3. ECONOMIC PERFORMANCE

72. In addition to the workplace relations reform priorities outlined above, AMMA has identified a number of economic and industry policy / regulatory areas in which targeted reform could significantly improve Australia's productivity and thus future prosperity and living standards.

Taxation

73. Australia's corporate taxes are internationally recognised as being inefficient and uncompetitive. For example and according to the IMF: "...[Australia's] tax system should shift towards more efficient taxes, while ensuring fairness, including by preventing personal income tax bracket creep and reducing the corporate tax rate³⁵."

74. The World Economic Forum's Global Competitiveness Report 2016-17³⁶, which assessed the competitive landscapes of 138 economies, highlighted that Australia's taxation system was among the most uncompetitive in the world. For a country ranked 22nd in the world in overall competitiveness, Australia notably fell short in:

World Economic Forum series name	World Ranking
Effect of taxation on incentives to invest	96
Total tax rate, % profits	100
Effect of taxation on incentives to work	111

75. Minerals specific, according to a Deloitte Access Economics report released in December 2016 "across all minerals, the effective tax rate has increased to 54.3%³⁷" even though "the minerals sector's taxable profits halved in 2014-15³⁸."

76. The Australian resource sector operates in fiercely competitive international markets, including the global market for investment capital. Capital is increasingly mobile and, given that resource commodities are relatedly

³⁵ <http://www.imf.org/external/pubs/ft/scr/2015/cr15274.pdf>

³⁶ <http://reports.weforum.org/global-competitiveness-index/#topic=data>

³⁷ http://www.minerals.org.au/file_upload/files/publications/MCA_2016_Tax_Survey.pdf

³⁸ http://www.minerals.org.au/file_upload/files/publications/MCA_2016_Tax_Survey.pdf

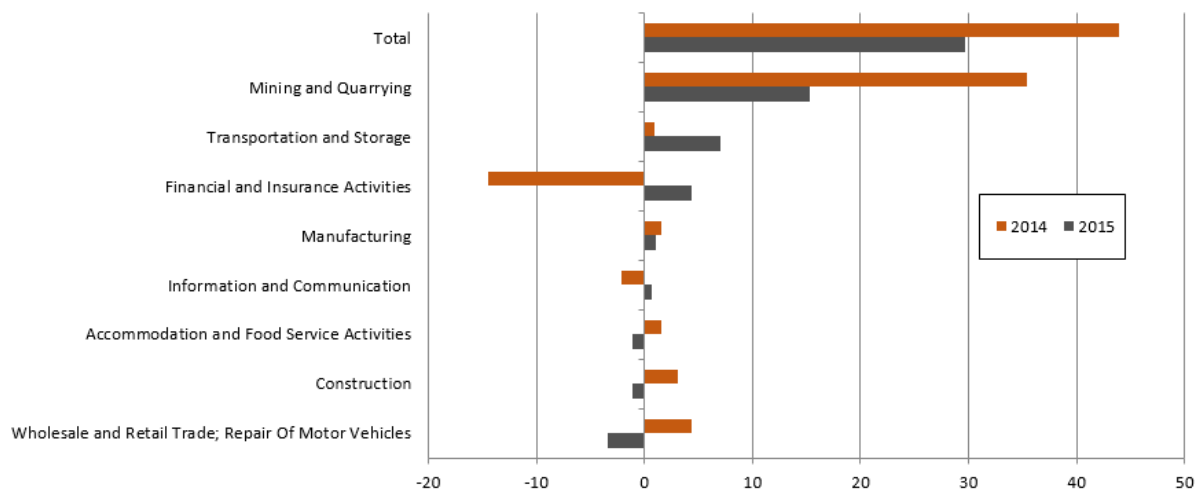
homogenous, project proponents and investors have increased choice as to where to invest and domicile their capital.

- 77. Taxation policy is a strong enough factor to determine whether or not to invest, do business and employ in one jurisdiction over another.
- 78. With investors in the resource sector typically making long-term multi-billion investment decisions, the taxation environment in a particular country has become a large enough factor to sway an investor to invest into a lesser asset (poorer quality ore body or deposit) or into a country that has a higher sovereign risk, if the taxation arrangements compensate accordingly.
- 79. Australia's current tax system has become increasingly uncompetitive and is not sufficiently conducive to attracting foreign investment compared to competing resource-reliant economies (refer to the graph below which shows falling foreign direct investment into the mining industry as well as the national economy). As a result, it is curtailing economic growth, investment and living standards.

A fall in mining investment is the main driver

FDI into Australia: Financial account transactions by industry 2015

A\$ billions



Source: ABS 5352.0.

39

- 80. With approximately 50 per cent of the value of all Australian exports being derived from the resource sector, it is vital for Australian jobs, economic growth,

³⁹ <http://www.austrade.gov.au/news/economic-analysis/fdi-into-australia-a-first-look-at-the-2015-figures> (released May 2016)

and future government revenue streams that Australia pursues genuine taxation reform.

81. At present, advanced economies, such as the US⁴⁰, are looking to or are already reducing company tax rates. The purposes of doing so include to attract future investment and stimulate upfront wage growth. It is critical for trade exposed countries such as Australia to at least provide an equal playing field (particularly against competing economies) or risk losing future investment and jeopardising wage growth and national living standards.

Recommendation 4: Company and individual taxation arrangements must be globally competitive, and support the resource industry in attracting foreign investment, trade and world leading talent.

Australia's company tax rate should be reduced over the next decade to a maximum of 25% for all companies, regardless of size.

Red tape, regulatory hurdles and approval processes

82. Regulation is a fundamental and inherent pillar of the modern state that business relies on to operate in any country.
83. Doing business, investing and offering employment is necessarily subject to regulation to protect the interests of employees (employment regulation), the community (environmental and consumer regulation), and the commercial and operating interests of enterprises, shareholders and investors (competition and trade regulation, corporations law, Australian Stock Exchange (ASX) rules, shipping and other transport regulation, etc.).
84. Few industries are subject to as broad a range of regulatory obligations or as high compliance costs as the resource sector. The industry gives rise to dedicated regulators and legislation, which combine with already extensive compliance obligations generally imposed on doing business on any scale in a sophisticated, industrialised economy.
85. Notwithstanding the importance of regulation, regulation should be smart, effective, proportionate and fit for purpose. Both those subject to regulation and those whose interests are being protected are entitled to expect clear, high-quality, effective, efficient, up-to-date and best practice approaches that seek to minimise the regulatory impact and compliance obligations.

⁴⁰ <http://www.forbes.com/sites/leesheppard/2016/11/13/trumps-tax-plan/#2860be201110>

86. However, as noted by prominent Australian businesswoman Gina Rinehart: “Unfortunately for Australia, government regulation and red tape is one of our biggest industries and it is growing⁴¹”.

87. The CEO of Roy Hill, Ms Rinehart’s \$13.5 billion new iron ore mine in the Pilbara, describes the mine navigating Australia’s complex regulatory systems in the following anecdote:

“ [The] Roy Hill mega-project had to navigate more than 4000 regulations, licences, approvals, and permits just to get us to construction, and then even more were required for actual construction!..

“Dealing with over-regulation in our country has become so complicated and time consuming that it’s difficult to comply with all that is regulated. As I’ve said before, even trying to find out all the regulations that must be met, is a very hard task too!..

“This can take years, just finding them, as we learnt for our major projects in Queensland especially...

“It’s giving us a rotten reputation internationally as a place to invest, and as a consequence investment continues to fall⁴².”

88. Excessive red-tape and uncertainty around environmental regulation is seriously hampering our nation’s competitiveness and ability to secure investment for and build new mega-resource projects that drive jobs and national multifactor productivity. KPMG analysis found that:

- *“Environmental approvals in Australia can take up to two years to produce and a further 1.5 years to assess.*
- *Australia has longest approval times for large projects compared to Canada, United Kingdom and New Zealand⁴³.”*

89. The World Economic Forum’s Global Competitiveness Report 2016-17⁴⁴ similarly concurs that Australia’s burden of regulation is at odds with Australia’s competitiveness. Australia’s “burden of government regulation” was ranked as the 77th least competitive in the world, from 138 countries analysed. Competing first world countries such as Germany, United Kingdom, New Zealand and United States of America were assessed as having less burdensome government regulation compared to Australia.

⁴¹ <http://www.theaustralian.com.au/national-affairs/treasury/gina-rinehart-donald-trump-shows-us-the-way-to-succeed/news-story/aa2b6328aad9b557e164b4d7fa75f0fa>

⁴² <https://www.royhill.com.au/wp-content/uploads/2015/11/Mrs-Rineharts-Small-Business-Association-and-Roy-Hill-Ball-Speech-21-November-2015.pdf>

⁴³ http://www.amma.org.au/wp-content/uploads/2015/03/KPMG_WR_and_the_competitiveness_of_the_Australian_resources_sector.pdf

⁴⁴ <http://reports.weforum.org/global-competitiveness-index/#topic=data>

90. The business community for a considerable period of time has advocated to federal and state authorities to significantly remove government-imposed duplicative, inefficient and ineffective regulation and red tape.

Recommendation 5:	Remove government imposed duplicative, inefficient and ineffective regulation and red tape – including streamlining compliance measures; to make it easier to do business.
Recommendation 6:	Streamlined approval processes: State and national approval processes (including environmental processes) should be streamlined into a national “one-stop-shop” for resource project approvals. It is imperative that resource project proponents be able to complete approval processes on a sensible and internationally competitive timetable.
Recommendation 7:	Supportive trade policies: Australia's trade policies should encourage and support resource and allied industry growth and investment; whether through global or regional trade frameworks, free trade agreements, partnerships, trade in service agreements, bilateral investment treaties etc. Trade agreements should be prioritised with emerging countries that are likely to become key/significant trading partners (importers) of Australian commodities, including energy exports.
Recommendation 8:	Level playing field: Australia's trade policies should allow Australian resource companies to compete on a level playing field with other established trade exposed, resource-reliant countries, and with newer and emerging resource exporting economies.



4. OTHER MATTERS

A major, more regular national data series on productivity:

91. One very useful outcome or deliverable arising from this review would be a single national, consolidated baseline data resource on productivity.

Recommendation 9: ABS / PC publish a single consolidated set of national productivity statistics on at least a six-monthly basis.

If this requires additional funding, it should be allocated.

92. This should be a stand-alone series that compiles all of the different measures from all of the different sources (ABS, national accounts, etc).
93. Our understanding is that not only is there contestability on which productivity concepts or measures should be used, but the data is episodic and with too long a gap between measurements and publications. This is not good enough, as the Discussion Paper points out, productivity is vitally important to our national success, and as such we need a more regular and high profile release of productivity data.
94. A major new data series / publication (potentially) entitled "Productivity – Australia" should be developed and released as a major national indicator, triggering market and political responses / engagement, as the CPI and Labour Force data do. This might be jointly produced by the ABS and PC.
95. Its release should trigger anticipation and be subject to embargo and release sensitivity as applies to many of the ABS' leading product releases.
96. With due respect to the ABS, this leading national consideration appears buried in publications such as Measures of Australia's Progress: Summary Indicators, 2012⁴⁵. Productivity is so important to our nation's future, and its ebbs and flows so significant for our economy and community, as the Discussion Paper makes clear, that it needs a far more prominent data set and one which will rank with employment, inflation and other key national data.
97. This data also needs to be as regular and up to date as possible. If the ABS needs more resources from government to properly measure productivity and report on it in a timely manner, such resources should be allocated.

⁴⁵ ABS Cat No. 1370.0.55.001

98. Such a series should not seek to pick winners on how to measure productivity. It should provide as wide a range of measures as possible (MFP, Labour Productivity, etc) then let the political and policy process assess which is most relevant for particular purposes
99. It would also be useful to ensure that:
 - a. Australian measures are broadly consistent with internationally agreed methodology, allowing Australia to be compared with comparable economies. Australia's links to the OECD, International Labour Organisation and organisations such as the [UN Statistical Commission](#) and [Committee for the Coordination of Statistical Activities](#), may be of assistance.
 - b. The new regular series we suggest arise from this review provide information on productivity in competing / comparable nations, allowing comparison and evaluation.
100. Finally, whilst we have recommended a new 'release' or 'series' on Australia's productivity performance, it may not come to market in such traditional terms. A purely online data service would be equally useful to decision makers, interest organisations, markets, investors etc.
101. AMMA would be pleased to answer any questions in relation to this submission at any time, should it assist the PC.