

# Productivity Commission review – is the 'Fair Work Act' fair?

The most significant industrial relations review in a generation is underway. Lisa Burrell outlines what HR needs to know

**It's a topic which occupies much debate amongst HR professionals, economists, politicians and academics: the impact of our legislative framework on workplace productivity, the balance of the IR framework, and the increasing costs of compliance.**

On 22 January 2015, the Productivity Commission ('PC') released five issues papers in which it confirmed the Australian Government had asked the PC to undertake a public inquiry to examine "the performance of the workplace relations framework" and identify "improvements" to it. Initial submissions are due on 13 March, with the final report scheduled for November 2015.

In what is being touted as the most significant industrial relations review in a generation, the issues papers outline the key areas which will be at the heart of the review, which include:

- Unemployment, underemployment and job creation
- Safety nets, including the federal minimum wage, NES, modern awards and penalty rates
- Red tape and the compliance burden for employers
- Bargaining, industrial disputes and industrial action
- The ability for employers to flexibly manage and engage with their employees
- Employee protections, including unfair dismissal, general protections and anti-bullying legislation
- The efficiency and effectiveness of institutions such as the Fair Work Commission ('Commission')

## EXPECTED OUTCOMES

Employers will be particularly interested in the opportunity to reduce uncertainty and remove red tape for issues that were either not identified or not rectified by the outcomes of the 2012 Fair Work Act review. Key issues for business will likely focus upon

the impact of penalty rates, the barriers to hiring (and terminating) staff, the compliance cost of existing Fair Work Act processes, the reality of 'go-away' money and continuing issues around union right of entry.

Selecting just one issue from the myriad to illustrate the PC approach, the papers revisit a century old question of whether the current framework presents 'a bog of technicalities'. The recent decision in Peabody is cited, whereby the Full Bench of the Commission held two documents that were stapled to the Notice Of Representational Rights ('NORR'), informing parties of their rights to appoint a bargaining agent formed part of the NORR. As a result, the Commission determined that NORR contained 'other content' contrary to the Fair Work Act and did not approve the proposed enterprise agreement, resulting in the bargaining process needing to recommence.

The PC papers aim to highlight the current situation whereby much of one case 'related to the role of a staple' and the compliance costs and complexity that are obviously present, seeking feedback on specific questions around the level of cost, opportunities to mitigate and barriers created within the framework.

The PC review will be a fascinating examination of the effectiveness and 'fairness' of the current system for Australian businesses and employees and will no doubt make for interesting debate throughout 2015. **HRD**



**Lisa Burrell** is the general manager of the Victorian Employers' Chamber of Commerce and Industry (VECCI). VECCI is Victoria's most influential employer group, servicing over 15,000 Victorian businesses per annum. An independent, non-government body, VECCI was founded in 1851 by the business community to represent business.