
The Parliament of the Commonwealth of Australia

Getting business booming

**Report on the inquiry into barriers for small business
employment**

**House of Representatives
Standing Committee on Education and Employment**

March 2016
Canberra

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Foreword

The phrase 'the engine room of the Australian economy' has been used to describe the importance of small business time and again, and nothing could be truer. Comprising around 96 per cent of businesses in Australia, and employing over 4.5 million Australians, the small business sector is vital to the prosperity of our nation.

Small businesses, however, face many challenges. Be it financial or administrative, or a combination of both, the level of success in addressing these challenges can be the difference between success and failure. This report aims to alleviate this burden by making every day easier for small businesses.

Set against a background of a post resources economic downturn, this report takes into consideration the current operating climate faced by employers and job seekers. This climate affects many aspects of small business operations because of the effect that it has on customer demand. Less customers results in lower profit margins and slower growth.

Without customers, small businesses would not survive. To all Australians getting out there and supporting small businesses by shopping in them and using their services, we say thank you. Keep shopping and spread the word.

With success comes opportunity. Supporting small businesses to grow will create more jobs for those who need it.

We know that there are already great government initiatives that provide valuable support to small businesses. While not looking to fix what is not broken, this report recognises there are areas for improvement. It recommends some fixes: further cutting red tape, defining the difference between an employee and a contractor, reducing the costs involved in taking on an employee, and lessening the States' reliance on payroll tax.

By re-evaluating barriers to small businesses actually being able to employ people, this report presents a coherent approach to tackling the barriers that small businesses face every day.

Sadly however, many Australians still struggle to find employment. While the reasons are many and varied, the Committee took evidence that negative stereotyping is an issue facing many job seekers. Be it age, gender, ethnicity or a disability, life's struggles are made even tougher when you can't even get your foot in the door.

This report calls for this to stop. Employers can learn how to improve their business by promoting the benefits of employing a person from an Indigenous or culturally and linguistically diverse background. Young people with a clear career direction can be set on a path to a lifetime of meaningful employment. People with episodic illnesses can be given stronger incentives to work, as well as peace of mind and financial security, by amending welfare arrangements.

Ensuring that Australian small businesses are able to grow and employ freely is at the heart of this report. To the entrepreneurial women and men of small business, and to the job seekers as diverse as you are, we are behind you all the way.

My sincere thanks go to the Deputy Chair, the Hon Alannah MacTiernan MP, and my colleagues on the Committee, including the previous Chair Mr Ewen Jones MP, for your hard work and professionalism. These thanks are also warmly extended to all of the inquiry participants, individuals and organisations, which took the time to write submissions and speak to the Committee. These participants provided an invaluable insight into the small business environment and the issues that are faced on the ground, every day.

Mr Andrew Laming MP

Chair



Membership of the Committee

Chair Mr Andrew Laming MP (from 13/10/15)

Mr Ewen Jones MP (to 12/10/15)

Deputy Chair The Hon Alannah MacTiernan MP

Members The Hon Sharon Bird MP (to 26/03/15)

Mr Alex Hawke MP (to 09/09/15)

Mr Eric Hutchinson MP

Mrs Karen McNamara MP

The Hon Brendan O'Connor MP (from 26/3/15)

Ms Julie Owens MP

The Hon Amanda Rishworth MP

The Hon Sharman Stone MP (from 09/09/15 to 11/11/15)

Mrs Ann Sudmalis MP

Mr Matt Williams MP

Committee Secretariat

Secretaries

Dr Richard Grant (from 03/08/15)

Ms Samantha Mannette (from 27/04/15 to 31/07/15)

Dr Nicholas Horne (to 24/04/15)

Inquiry Secretary

Mr Robert Little

Research Officer

Ms Rebeka Mills

Administrative Officers

Ms Katrina Gillogly

Ms Jessica Ristevska (to 02/09/15)



Terms of reference

The Education and Employment Committee will inquire into and report on matters that inhibit or discourage job-creation and employment by private sector small businesses and/or provide disincentives to individuals from working for such businesses, including the following matters:

1. Matters relating to State and Commonwealth laws and regulations including, but not limited to, those that impose excessive red tape and compliance costs in relation to employment;
2. Matters relating to laws or regulations that inhibit small business expansion to create additional employment;
3. Factors that discourage or prevent certain cohorts of Australians from gaining employment in small businesses, in particular young job seekers, mature aged Australians, those from regional areas and those with a partial work capacity; and
4. Other related matters that the Committee considers relevant.



List of abbreviations

ABS	Australia Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACCI	Australian Chamber of Commerce and Industry
AES	Aboriginal Employment Strategy
Ai Group	Australian Industry Group
ANRA	Australian National Retailers' Association
AQF	Australian Qualification Framework
ARA	Australian Retailers Association
ASBAS	Australian Small Business Advisory Service
ATO	Australian Taxation Office
BOOT	Better off overall test
CALD	Culturally and linguistically diverse
CCIQ	Chamber of Commerce and Industry Queensland
CCIWA	Chamber of Commerce and Industry of Western Australia
CMRC	Community Migrant Resource Centre
COAG	Council of Australian Governments

COSBOA	Council of Small Business Australia
CTFIA	Council of Textile and Fashion Industries of Australia
DES	Disability employment services
ECCV	Ethnic Communities' Council of Victoria
FECCA	Federation of Ethnic Communities' Councils of Australia
FWO	Fair Work Ombudsman
GST	Goods and services tax
GTA	Group Training Australia
HSC	Higher school certificate
IFA	Individual flexibility agreement
LMA	Lebanese Muslim Association
LVT	Low value threshold
MBA	Master Builders Australia
MEA	Master Electricians Australia
NCVER	National Centre for Vocational Education Research
NEIS	New Enterprise Incentive Scheme
NESA	National Employment Services Association
NES	National Employment Standards
NRA	National Retail Association
NSNL	National Skills Needs List
OECD	Organisation for Economic Co-operation and Development
PAYG	Pay as you go
SBSCH	Small Business Superannuation Clearing House
SDA	Shop Distributive and Allied Employees' Association

SME	Small to medium-sized enterprise
SWL	Structured workplace learning
TCF	Textiles, Clothing and Footwear
TFIA	Council of Textile and Fashion Industries of Australia
VACC	Victorian Automobile Chamber of Commerce
VECCI	Victorian Employers' Chamber of Commerce and Industry
WHS	Work health and safety
YACWA	Youth Affairs Coalition of Western Australia



List of recommendations

Inhibitors to small businesses employing

Recommendation 1

The Committee recommends that the Australian Taxation Office and the Fair Work Ombudsman set up a working group to align the definitions of employee and contractor across government agencies and to develop a single decision tool to help small businesses correctly identify when a worker is an employee or a contractor. This working group should also identify legislative changes if needed.

Recommendation 2

The Committee recommends that the Australian Taxation Office and the Fair Work Ombudsman working group set up to align the definitions of employee and contractor, and also to look into the Master Builders Australia proposals including for a register of building contractors.

Recommendation 3

The Committee recommends that the Minister for Employment in conjunction with Safe Work Australia formulate proposals to take to COAG that eliminate the requirement for a small business operating in multiple jurisdictions to engage with multiple workers' compensation schemes.

Recommendation 4

The Committee recommends that the Australia Government work with states and territories to boost employment and business productivity by reducing state and territory governments' reliance on payroll tax as a form of revenue.

Recommendation 5

The Committee recommends that the Productivity Commission investigate the impact on small business of lowering the GST threshold on the importation of physical goods and undertake regular cost effectiveness research of GST threshold reduction.

Barriers to gaining and maintaining employment in a small business

Recommendation 6

The Committee recommends that Australian Small Business Ombudsman, Small Business Commissioners, Chambers of Commerce, Business Enterprise Centres and peak small business organisations develop strategies to promote to small business the benefits of workers from culturally and linguistically diverse (CALD) backgrounds. Where appropriate, the providers of small business advisory services should incorporate into the written and verbal material they present an explanation of how a small business can benefit from recruiting a person from a CALD background.

Recommendation 7

The Committee recommends that the Australian Government conduct a review of careers advice and support provided in schools [and online]. The purpose of the review must be to assess any gaps or areas of weakness in the current written and verbal advice that is provided [by schools and by federal and state governments], and to improve the quality of the careers advice that young people receive.

The Committee recommends that a Council of Australian Government Working Group consider the merit of a national standard for careers advice for all secondary school students.

Recommendation 8

The Committee recommends that Australian Government provide more funding and support for the provision of driver's licence programs to enable young and disadvantaged people to access employment opportunities.

Recommendation 9

The Committee recommends that the federal Department of Employment look into the implementation of a 'passport to competencies' as envisaged by Master Builders Australia.

Recommendation 10

The Committee recommends that the Australian Government assess the impact of changes at the State and Federal level to apprenticeship programs including the Joint Group Training Program and the Australian Apprenticeships Access Program.

Recommendation 11

The Committee recommends that the federal Department of Employment work with jobactive providers to ensure that ancillary service providers receive Australian Government funding for their assistance in placing jobactive clients into employment.

Recommendation 12

The Committee recommends that the Australian Government review welfare eligibility rules for people with an episodic illness transitioning from a period out of the workforce into paid employment. The Committee encourages the Australian Government to ensure that people with an episodic illness are not discouraged from entering the workforce for fear of losing their disability or Centrelink pension when they work.

Recommendation 13

The Committee recommends that Australian Government reassess the policy case for taxing the redundancy payouts of persons over 65 years of age to encourage people to stay in the workforce.

Recommendation 14

The Committee recommends that, in light of the importance of digital infrastructure for the viability of small business, special focus be given by NBN Co on ensuring their timely access to high speed broadband.

The importance of small business to the economy

- 1.1 Small businesses have been described as the 'engine room' of the Australian economy.¹ They are critical in generating economic growth and employment opportunities in most sectors of the economy. The overwhelming majority of jobs in the agricultural and construction sectors are in small businesses.²
- 1.2 An important role of Government is to promote investment conditions that enable the small business sector to thrive. The Australian Government stated upon delivering the 2015 Budget:
- Helping more small businesses become profitable, sustainable and competitive will ensure they are in the best position to hire new employees, providing more jobs, including for Australia's youth and older workers.³

1 Australian Government, 'The engine room of the Australian economy: Small businesses drive growth and create jobs', May 2015 <<http://www.budget.gov.au/>>, viewed 12 January 2016. See also the Hon. Wayne Swan, 'Small business: the engine room of our economy', *Address to the COSBOA National Small Business Summit*, Brisbane, 8 July 2010 <<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=speeches/2010/022.htm&pageID=005&min=wms&Year=&DocType=1>>, viewed 12 January 2016.

2 Ellis Connolly, David Norman and Tim West, Reserve Bank of Australia, 'Small Business: An economic overview', *Small Business Finance Roundtable*, 2012, p. 4 <<http://www.rba.gov.au/publications/workshops/other/small-bus-fin-roundtable-2012/pdf/01-overview.pdf>>, viewed 16 December 2015.

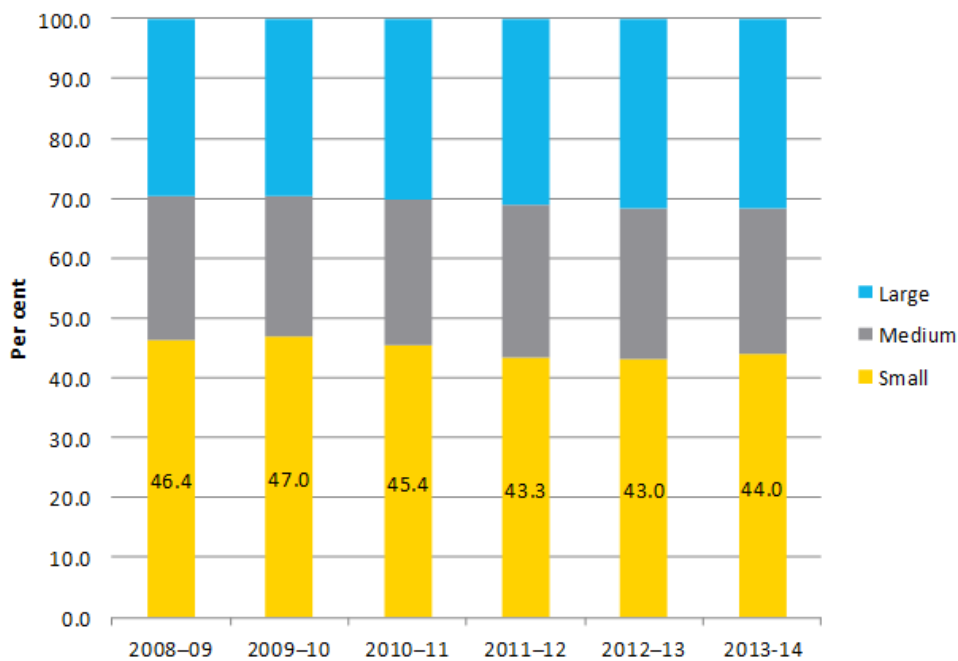
3 Australian Government, 'The engine room of the Australian economy: Small businesses drive growth and create jobs', May 2015 <<http://www.budget.gov.au/>>, viewed 12 January 2016.

1.3 Small businesses account for the vast majority of Australian businesses, nearly half of all employment in the private non-financial sector, and over one-third of production.⁴ The 2015 budget papers state that:

96 per cent of all Australia's businesses are small businesses, employing over 4½ million people and producing over \$330 billion of our nation's economic output per year.⁵

1.4 Figure 1.1 shows that at the end of June 2014, small businesses accounted for 44 per cent of total employment in Australia (4.7 million of the 10.7 million Australians employed).

Figure 1.1: Share of total employment by firm size



Source ABS, Australian Industry, Cat. No. 8155.0, Table 5.

4 Ellis Connolly, David Norman and Tim West, Reserve Bank of Australia, 'Small Business: An economic overview', *Small Business Finance Roundtable*, 2012, p. 1. See also Australian Government, Department of Industry, Innovation Science, Research and Tertiary Education, *Australian Small Business Key Statistics and Analysis*, p. 1. <<http://www.treasury.gov.au/PublicationsAndMedia/Publications/2012/sml-bus>>, viewed 16 December 2015.

5 Australian Government, 'The engine room of the Australian economy: Small businesses drive growth and create jobs', May 2015 <<http://www.budget.gov.au>>, viewed 12 January 2016.

The role of government in supporting small business

- 1.5 This inquiry is premised on the importance of the small business sector to generating economic growth and employment opportunities, and the need to promote the sector to expand these opportunities. It recognises that government has an important supporting role to help small businesses to invest and employ.
- 1.6 The majority of small businesses in Australia fail within their first three years.⁶ However, the role of government role is not to prop-up or bail out a failing small business. As the Small Business Minister, the Hon. Kelly O'Dwyer MP, was quoted in November 2015:
- Small business don't expect handouts but they do expect government to get out of the way. They expect government to make it easier for them to set up small business.⁷
- 1.7 The Committee believes that the role of government in encouraging new and existing small business should be to:
- promote an economic climate in which small businesses can invest and employ staff with confidence;
 - establish a regulatory framework in which small businesses can comply as efficiently as possible with their obligations including employment law, taxation and superannuation;
 - invest in human capital, providing training opportunities for Australian workers and entrepreneurs to ensure that small businesses have employees with the requisite skills and traits to compete; and
 - seek to change negative employer attitudes to disadvantaged groups and facilitate opportunities for people in these disadvantaged groups to find employment opportunities with small businesses.⁸

6 Australian Government, Department of Social Services, 'A New System for Better Employment and Social Outcomes', *Final Report*, February 2015, pgs 35 and 177, <https://www.dss.gov.au/sites/default/files/documents/02_2015/dss001_14_final_report_access_2.pdf>, viewed 12 January 2016. The ABS reported in March 2015 that of the 294 210 new business entries during the 2010–11 financial year, only 50 per cent were still operating in June 2014. 'The number of Australian businesses have increased', *Media Release*, <<http://www.abs.gov.au/ausstats/abs@.nsf/mediareleasesbytitle/950EC94DB899312ECA2573B00017B8F4?OpenDocument>>, viewed 12 January 2016.

7 The Hon. Kelly O'Dwyer MP stated in Waters, C, 'Kelly O'Dwyer says government needs to get out of the way of small business', *Sydney Morning Herald*, 2 November 2015, <<http://www.smh.com.au/small-business/kelly-odwyer-says-government-needs-to-get-out-of-the-way-of-small-business-20151029-gklt1c.html>>, viewed 14 January 2016.

- 1.8 This inquiry is concerned with how well the Australian Government is currently performing these roles and what could be done to improve these efforts.

What is a ‘small business’?

- 1.9 There is no settled definition of ‘a small business’ within the Australian Government. As Table 1.1 shows, government agencies use different definitions depending on their policy focus and objectives. While a case has been made that a standard definition of ‘small business’ is desirable,⁹ it has also been noted that some of the definitions currently used would exclude many businesses covered by other definitions.¹⁰

Table 1.1 Examples of small business definitions

Metric	Threshold	Institution	Purpose
Employees	Less than 15	Fair Work Australia	Unfair dismissal laws
	Less than 20	Australian Bureau of Statistics	Business surveys
		ACCI and Sensis	Business surveys
		Reserve Bank of Australia	Business liaison
		Australian Securities and Investments Commission	Annual financial reports
Legal structure	Unincorporated	Reserve Bank of Australia	Analysis of financing conditions
Revenue	Less than \$2 million	Australian Taxation Office	Taxation
	Less than \$50 million	Australian Prudential Regulatory Authority	Prudential supervision
Individual loan size	Less than \$1 million	Australian Prudential Regulatory Authority	Prudential supervision
	Less than \$2 million	Reserve Bank of Australia	

Source *Ellis Connolly, David Norman and Tim West, ‘Small Business: An economic overview’, Reserve Bank of Australia, May 2012, p. 1.*

- 8 Australian Government, Department of Social Services, ‘A New System for Better Employment and Social Outcomes’, *Final Report*, February 2015, p. 29, <https://www.dss.gov.au/sites/default/files/documents/02_2015/dss001_14_final_report_access_2.pdf>, viewed 12 January 2016.
- 9 Parliamentary Joint Committee on Corporations and Financial Services, ‘Access for Small and Medium Business to Finance’, 2011, p. 5.
- 10 Ellis Connolly, David Norman and Tim West, Reserve Bank of Australia, ‘Small Business: An economic overview’, *Small Business Finance Roundtable*, 2012, p. 2.

1.10 Apart from these metrics, a 'small business' may also be identified from qualitative operational characteristics. The Productivity Commission, for example, has made the following observations:

A small business is usually not just a larger business on a smaller scale but one that operates in a fundamentally different way. The issue of what constitutes a small business has been well examined. In qualitative terms, a small business typically has the following three fundamental characteristics:

- it is independently owned and operated, that is, it is not part of a larger corporation or controlled by another firm
- the owner manager is the principal decision maker
- the owner manager contributes most, if not all, of the operating capital.

Other characteristics common to the way a small business operates include:

- a small number of individuals work in the business – sometimes from the same family
- a simple management structure, usually with no specialised finance, personnel or regulatory/legal managers or systems
- limited resources, including finance, staff and skills – this often requires the owner manager to fulfil all regulatory obligations, leaving them time poor
- a small market share with a greater propensity to only supply the local market, or operate within a single state or territory.¹¹

1.11 In its 2013 research report, *Regulator Engagement with Small Business*, the Productivity Commission argued that a definition of small business should be determined by individual policy makers and regulators. It recommended that:

Governments should not impose upon regulators a single definition of small business as this could lead to inflexibility and higher costs for some businesses and for the community more generally. Policy makers and regulators are best placed to define small business in ways that are practical and appropriate for their regulatory area.¹²

11 The Productivity Commission, 'Regulator Engagement with Small Business', *Research Report* September 2013, p. 30, <<http://www.pc.gov.au/inquiries/completed/small-business/report/small-business.pdf>>, viewed 12 January 2016.

12 The Productivity Commission, 'Regulator Engagement with Small Business', *Research Report*, September 2013, p. 22, <<http://www.pc.gov.au/inquiries/completed/small-business/report/small-business.pdf>>, viewed 12 January 2016.

- 1.12 In its submission to this inquiry, the Australian Industry Group suggested that a definition of small business based on employment size would be of most use to the Committee:

There are a few different definitions that you can use. The ABS data always uses employment size, whereas the tax office looks at turnover size. Given your purposes are from the employment side of business and that many of the concerns and barriers raised are in the industrial relations area, employment size would appear to be more relevant for what you are looking at.¹³

- 1.13 The Committee took the approach that submitters and witnesses should define 'small business' as they see fit. It was mindful that a strict definition may have excluded interested parties from participating in the inquiry.

'It's the economy...'

- 1.14 This report is principally focussed on the regulatory, attitudinal and circumstantial issues that weigh on small business owners when making a hiring decision and on job seekers in their search for work with a small business. It is also important to recognise that macro-economic conditions can be a significant barrier to small businesses employing staff. If consumer confidence is low, small businesses will not invest or employ. As one submitter put it:

The biggest inhibitor to job creation is always a lack of aggregate demand in the economy.¹⁴

- 1.15 Recent survey findings indicate that small business is experiencing lower profit margins and a lack of customer demand for its goods and services.¹⁵ Economic indicators suggest that the Australian economy is experiencing a slower than expected transition from investment in mining to investment in non-resources activity.¹⁶ In its submission to this inquiry, the Commonwealth Department of Employment described Australia's current economic situation as follows:

13 Ms Julie Toth, Chief Economist, Australian Industry Group, *Committee Hansard*, Melbourne, 13 July 2015, p. 25.

14 Unions Tasmania, *Submission 24*, p. 2.

15 Australian Chamber of Commerce and Industry, *Submission 22*, p. 13.

16 See also Dr Martin Parkinson, 'Looking ahead: Challenges and opportunities for Australia', *Address to the Committee for Economic Development of Australia*, 27 November 2014 <<http://www.treasury.gov.au/PublicationsAndMedia/Speeches/2014/CEDA-27112014>>, viewed 12 January 2016.

The Australian economy is in the midst of transitioning from the resources investment boom to a revival of non-resources activity. As a trading nation, Australia's economy is, to a large extent, dependent on world economic conditions. Currently, many of the key external drivers of Australia's economic activity remain weak. In particular, falling commodity prices have reduced the terms of trade.

The pace of this economic transition is slow, with growth in consumption spending below average and the growth of both private non-mining business investment and public demand subdued, while mining investment has continued to fall substantially.

The transition has been restrained by weak investor and consumer confidence, even though the world economic recovery is gathering strength...

The 2015-16 Federal Budget forecasts that real GDP will grow by 2.75 per cent in 2015-16. It notes that this is one quarter of a percentage point slower than expected 12 months ago in the 2014-15 Budget, as a sustained recovery in non-mining business investment is taking longer than expected. However, stronger non-mining business investment is expected to drive an increase in growth to 3.25 per cent in 2016-17.¹⁷

- 1.16 The Australian Industry Group's submission made the following assessment:

At a headline level, the Australian economy since 2010 can best be characterised as 'slower and lower', relative to the growth rates achieved in the decades prior to this one. This trend is evident across a range of key macroeconomic aggregate measures in 2015 including growth in real GDP, business profitability, productivity, employment, investment, interest rates, prices and incomes.¹⁸

- 1.17 While macro-economic conditions in Australia have been more subdued in recent times than at the peak of the mining boom, the Committee notes strong growth in Australian small business start-ups in 2013-2014. The

17 Department of Employment, *Submission 31*, pp. 1-2. See also Dr Martin Parkinson, 'Looking ahead: Challenges and opportunities for Australia', *Address to the Committee for Economic Development of Australia*, 27 November 2014.

18 Australian Industry Group, *Submission 17*, p. 1.

2015 budget papers show that 40 000 new Australian small businesses commenced in the 2013–2014 financial year.¹⁹

Conduct of the inquiry

- 1.18 On 23 March 2015, the Minister for Employment, Senator the Hon. Eric Abetz, asked the Committee to inquire into and report on *matters that inhibit or discourage job-creation and employment by private sector small businesses and/or provide disincentives to individuals from working for such businesses*. The Committee sought and received submissions from a range of stakeholders including small businesses, peak industry and union representatives and individuals identifying a variety of issues relevant to the Terms of Reference.
- 1.19 The Committee received 49 submissions, which are listed in Appendix A, and one confidential exhibit. All public submissions are available to view on the Committee’s website.
- 1.20 The Committee held nine public hearings at five locations across Australia. The witnesses and organisations that the Committee heard from are listed in Appendix B.
- 1.21 The Committee thanks all those who contributed to this inquiry.

Context of this inquiry

- 1.22 In presenting this report to the Parliament, the Committee is mindful of the Australian Government’s *National Innovation and Science Agenda*, which was released in October 2015. While this Agenda is not focussed on small business per se, clearly, small businesses will be critical to the innovative drive that will increase job opportunities and Australia’s standard of living.
- 1.23 Most of the new, innovative businesses that the federal government is seeking to promote through the Innovation Agenda will be small and medium sized enterprises. This report does not focus on issues of innovation or small businesses in Australia’s key sectors of competitive advantage. Nonetheless, it should be read in the context of the need to

19 Australian Government, ‘The engine room of the Australian economy: Small businesses drive growth and create jobs’, <http://www.budget.gov.au/2015-16/content/glossy/sml_bus/html/sml_bus-02.htm>, viewed 12 January 2015.

provide an efficient regulatory framework and skills base to provide for new, innovative small businesses in emerging industries.

Structure of the report

1.24 This report has three chapters:

- Chapter 2 discusses current Australian Government initiatives to promote small business and job creation in these businesses. It details a range of recent initiatives including streamlining compliance, reducing the tax burden, offering wage subsidies and grants, and strengthening of employment programmes and employment entitlements;
- Chapter 3 looks at the reasons why small businesses may be reluctant to employ more staff. It considers issues such as the attitude of a business owner to growing the business, the burden of paperwork associated with employing more staff, the impost of penalty rates, and a range of workplace relations issues that can dissuade a small business from employing; and
- Chapter 4 looks at the evidence that certain categories of jobseekers face impediments to finding and maintaining employment with a small business. It considers issues including a job seeker's lack of skills and work experience, limited recognition of their skills, and their personal circumstances which can include disability and ill-health.

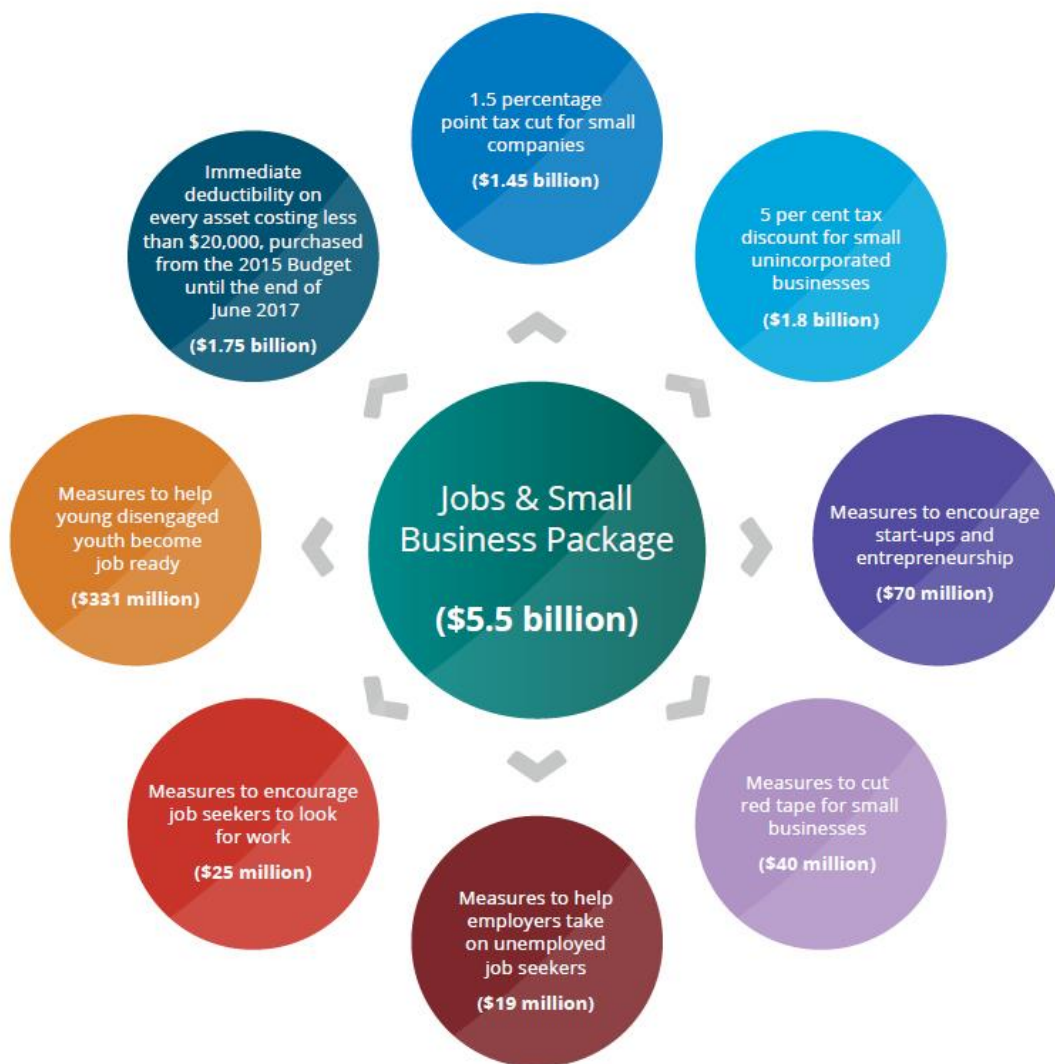
Federal government initiatives to promote small business and job opportunities

- 2.1 The capacity of small businesses to employ additional staff can be constrained by complex and time-consuming compliance processes, inefficient taxes, insufficient monetary incentives to employ and job candidates with little experience and poor skills. In terms of a decision to hire or retain an employee, a small business owner's perception of these constraints can be just as significant as their felt impact. Chapter 3 of this report discusses this issue in some detail.
- 2.2 This chapter provides an overview of the federal government's recent programmes and policies to support the Australian small businesses to employ. The current federal government has implemented a number of measures to assist small businesses including:
- cutting 'red tape';
 - streamlining compliance processes for small businesses in the areas of superannuation, taxation and employment standards;
 - reducing the tax burden on small businesses;
 - offering financial support in the form of wage subsidies to help people aged over 50 to find employment;
 - developing the quality of job seekers through work experience programmes and apprenticeships;
 - assisting disadvantaged groups into employment; and

- developing an advocacy framework for small businesses.¹

2.3 Most of these initiatives were announced in the 2015 budget. The \$5.5 billion package of measures is presented in Figure 2.1.

Figure 2.1 The 2015 federal government small business package



Source Australian Government, Budget 2015, 'The Jobs & Small Business Package', <http://www.budget.gov.au/2015-16/content/glossy/sml_bus/html/sml_bus-04.htm>, viewed 19 January 2016.

2.4 The intent of these initiatives is to simplify small businesses' administrative processes, create both monetary and efficiency incentives for businesses to employ staff, and enable job seekers to develop their skills and experience to be ready for the workforce. These initiatives

1 Australian Government, Budget 2015, 'Growing Jobs in Small Business', <http://www.budget.gov.au/2015-16/content/glossy/sml_bus/html/index.htm>, viewed 19 January 2016.

provide useful context for the discussion in Chapters 3 and 4 of this report on the employment barriers that small business and job seekers face.

Cutting ‘red tape’

- 2.5 ‘Red tape’ is an idiom that often refers to the regulations placed on business by government. These regulations can relate to a wide range of obligations including the payment and reporting of taxation and superannuation, and compliance with employment laws and occupational health and safety standards. Given their limited resources and smaller size, ‘red tape’ can have a disproportionate impact on small business.² Chapter 3 of this report discusses this impact in more detail.
- 2.6 In 2013, the Australian Government announced a plan to cut \$1 billion in red tape every year. As part of that plan, two parliamentary repeal days every year cut unnecessary and costly legislation and regulation. There have been four repeal days to date – 26 March 2014, 22 October 2014, 18 March 2015 and 12 November 2015. The Government estimates that the measures over these four days have reduced compliance costs by \$4.5 billion.³
- 2.7 In terms of the benefits for small business, the Government noted that these repeal days had:
- made it easier for small businesses to finance export activity potentially saving businesses an average of \$5 000 per export contract;
 - simplified how some small businesses work out their monthly pay-as-you-go (PAYG) tax instalments;
 - set higher entry thresholds to the PAYG system; and
 - assisted over 102 000 customer contacts through the business.gov.au website since 30 June 2014.⁴

2 Australian Government, ‘Annual Deregulation Report, 2014’, p. 15, <https://cuttingredtape.gov.au/sites/default/files/files/ausgov_annual_dereg_report_2014.pdf>, viewed 12 January 2015.

3 Australian Government, Cutting Red Tape, ‘2014 Autumn Repeal Day’, <<https://cuttingredtape.gov.au/repeal-day/2014-autumn-repeal-day>> viewed 4 September 2015.

4 Australian Government, Cutting Red Tape, ‘Track Our Progress’ <<https://cuttingredtape.gov.au/resources/track-our-progress>>, viewed 20 January 2016.

Streamlining compliance

2.8 One of the principal complaints of Australia's small business community is the difficulty of dealing with different regulatory requirements in different jurisdictions. One of the prime examples of this complexity is the different rates and thresholds of payroll tax in each of the states and territories. In recent years, the Australian Government has overseen a coordinated process to assist State and Territory governments to simplify small businesses' payment of payroll tax.

Payroll tax 2010 harmonisation joint protocol

- 2.9 Payroll tax is a general purpose state and territory tax. It is assessed on wages paid or payable by an employer to its employees when the total wage bill of an employer or group of employers exceeds a threshold amount.⁵ State and Territory Governments have developed their own administrative systems to support the tax, which has created additional complexity for small businesses.
- 2.10 On 29 March 2007, State and Territory Treasurers announced changes to payroll tax arrangements to achieve greater legislative and administrative harmonisation. As part of the Council of Australian Governments' (COAG) National Partnership Agreement to Deliver a National Seamless Economy, the States and Territories agreed to work together to produce a nationally coordinated approach in relation to payroll tax, and complete the reforms by 1 July 2012.⁶
- 2.11 In 2008, the Commissioners of all State and Territory Revenue Offices signed a protocol binding the Commissioners to agree to:
- Continue to further the harmonisation of payroll tax administration through relevant inter-jurisdictional groups;
 - Ensure that administrative protocols providing for consultation and cooperation amongst the jurisdictions in relation to operational practices and decisions are developed, agreed to and followed, and where appropriate publish information regarding those protocols for taxpayers and other stakeholders;
 - Improve the consistency of business practices, taxpayer information and administrative and compliance requirements;

5 Payroll Tax Australia, Australian Revenue Offices, <<http://www.payrolltax.gov.au/>>, viewed 14 January 2016.

6 Payroll Tax Australia, '2010 Harmonisation Joint Protocol', <<http://www.payrolltax.gov.au/harmonisation/2010-harmonisation-joint-protocol>>, viewed 12 January 2016.

- Ensure that harmonised administrative practices are maintained through consultation and cooperation amongst the revenue offices of each jurisdiction;
- Consider opportunities for further harmonisation of payroll tax legislation and, if appropriate, make recommendations to their respective governments to make legislative changes;
- Within the limits of their authority and subject to the requirements of their respective governments, consult with each other in relation to any proposal to amend payroll tax legislation of their jurisdiction;
- Continue to consult with taxpayers and stakeholders as appropriate in relation to the future direction of harmonisation in order to maximise benefits to stakeholders.⁷

2.12 COAG reported in April 2013 that the changes to payroll tax 'are now operational'.⁸ All jurisdictions have taken steps to enact legislation aligning provisions in eight areas agreed to by State and Territory Treasurers. Further, New South Wales, Victoria, Tasmania, Northern Territory and South Australia have enacted identical payroll tax legislation, apart from minor differences identified in schedules to the legislation. Queensland has also passed legislation to establish harmonisation with those jurisdictions.⁹

2.13 Notwithstanding this progress through COAG, industry groups and the small business community have called for the abolition of state payroll taxes. The Australian Chamber of Commerce and Industry (ACCI) has described payroll tax as 'not only one of the most damaging taxes in terms of its impact on economic activity, but it is also one of the most insidious given its low level of visibility'.¹⁰ Chapter 3 discusses the issue of payroll tax in more detail.

7 Payroll Tax Australia, '2010 Harmonisation Joint Protocol', <<http://www.payrolltax.gov.au/harmonisation/2010-harmonisation-joint-protocol>>, viewed 12 January 2016.

8 Council of Australian Governments (COAG), 'National Partnership Agreement to Deliver a Seamless National Economy, Report card prepared by the COAG Business Advisory Forum Taskforce', April 2013, p. 2., <<https://www.coag.gov.au/sites/default/files/Report-Card-National-Partnership-Deliver-Seamless-National-Economy.pdf>>, viewed 13 January 2016.

9 Payroll Tax Australia, '2010 Harmonisation Joint Protocol', <<http://www.payrolltax.gov.au/harmonisation/2010-harmonisation-joint-protocol>>, viewed 12 January 2016.

10 Australian Chamber of Commerce and Industry (ACCI), 'ACCI submission, Re: *think* Taxation Discussion Paper', June 2015, p. 20., <https://www.acci.asn.au/sites/default/files/uploaded-content/field_f_content_file/acci_submission_taxation_white_paper_initial-final.pdf>, viewed 19 January 2016.

Small Business Superannuation Clearing House

2.14 The Small Business Superannuation Clearing House (SBSCH) was introduced on 1 July 2015 to reduce red tape and compliance costs for small businesses. It is a free service that allows employers to pay superannuation contributions online in one transaction to a single location. The Clearing House then distributes the payments to employees' funds.¹¹ If a business registers to use this service:

- its super guarantee contributions are counted as being paid on the date the clearing house accepts them (so long as the fund does not reject the payments); and
- it has 21 days to pass an employee's choice of fund on to the clearing house.¹²

2.15 The federal government has expanded access to the SBSCH. When the scheme was introduced in November 2009, eligibility was for businesses with fewer than 20 employees. The delivery of the services was initially undertaken by Medicare, rather than the Australian Taxation Office or the private sector. On 1 April 2014, the Government announced that operation of the SBSCH would be transferred to the Australian Taxation Office (ATO).¹³

2.16 In November 2014, the former Minister for Small Business, the Hon. Bruce Billson MP, announced that as of 1 July 2015, the SBSCH will be extended to all businesses with a turnover less than \$2 million. He explained that as a result:

...approximately 27,500 additional small businesses with a cost free solution to help them meet their superannuation obligations...Since the Abbott Government transferred the SBSCH to the ATO the number of small businesses enrolled to take advantage of the service has increased by 24 per cent. This

11 Australian Government, Australian Taxation Office (ATO), 'Small Business Superannuation Clearing House', <<https://www.ato.gov.au/business/super-for-employers/paying-super-contributions/small-business-superannuation-clearing-house/>>, viewed 8 September 2015.

12 Australian Government, Australian Taxation Office (ATO), 'Small Business Superannuation Clearing House', <<https://www.ato.gov.au/business/super-for-employers/paying-super-contributions/small-business-superannuation-clearing-house/>>, viewed 8 September 2015.

13 The Hon. Bruce Billson MP, 'Superannuation made simpler for small business', The Treasury, *Media Release*, 1 April 2014, <<http://bfb.ministers.treasury.gov.au/media-release/017-2014/>>, viewed 19 January 2016.

represents an ongoing annual compliance cost saving for those businesses of over 76,000 hours.¹⁴

Small business and taxation

- 2.17 The impost of taxes – both state and federal – can dissuade small businesses from employing and retaining staff. Chapter 3 highlights the particularly harmful incidence of state payroll taxes, which are a direct levy on small businesses that seek to employ more staff. The federal government has recently:
- cut the small business tax rate for small companies and small unincorporated businesses;¹⁵ and
 - significantly increased the value of purchased stock that can be ‘written off’ as a deduction for tax purposes.

Tax cuts

- 2.18 In the 2015 federal budget, the Government cut the tax rate for incorporated businesses with annual turnover less than \$2 million by 1.5 percentage points to 28.5 per cent. It also delivered a five per cent tax discount to unincorporated businesses with annual turnover less than \$2 million from 1 July 2015.¹⁶

Instant asset write off/accelerated depreciation

- 2.19 When a small business purchases an item of stock, the value of this stock will (generally) depreciate. Small businesses are eligible to claim a deduction each year for the loss in value of the asset. While the business’ taxable income would reduce by the amount of the deduction, the actual tax deduction would be less (according to the company tax rate).
- 2.20 Successive federal governments have announced policies to enable small businesses to write-off spending on equipment up to a certain threshold. The general threshold, for the income years before 2012-13 was \$1000. In the 2011 federal budget, the Labor Government introduced an instant

14 The Hon. Bruce Billson MP, ‘Business set to save \$20 million with less red tape in the super system’, The Treasury, *media release*, 26 November 2014, <<http://bfb.ministers.treasury.gov.au/media-release/063-2014/>>, viewed 13 January 2016.

15 An unincorporated business does not possess a separate legal identity from its owner. Examples include a sole proprietorship, a partnership and a family trust.

16 Australian Government, Budget 2015, ‘Jobs and small business, tax cuts’, <<http://www.budget.gov.au/2015-16/content/highlights/jobsandsmallbusiness.html>>, viewed 19 January 2016.

asset write-off for small businesses up to a threshold of \$6500 for 2013-14. This enabled small businesses to claim an annual tax deduction of \$6 500 for a piece of equipment purchased to that value installed and ready for use before 1 January 2014.

- 2.21 In the May 2015 federal budget, the Australian Government announced a significant tax deduction for small businesses. Small businesses with a turnover of less than \$2 million per year could claim an immediate tax deduction (from the time of purchase) for individual assets purchased at a cost of less than \$20 000. In place until the end of June 2017, the rule also incorporates the ability to claim multiple purchases plus has amended pooling mechanisms for purchases over \$20 000.¹⁷
- 2.22 The former Treasurer, the Hon. Joe Hockey MP, explained the rationale for the \$20 000 instant asset write-off in his Budget speech:
- [The Government] recognise that small business, in order to succeed, needs better cash flow and better tools for innovation as well ... [This deduction] will benefit the 96 per cent of Australian businesses – more than 2 million of them – that have a turnover of less than \$2 million a year. This will be of enormous benefit to their bottom line and help businesses with their cash flow.¹⁸
- 2.23 While the success of this initiative is not yet clear, the Australian Government expects strong uptake from small businesses and positive outcomes in terms of investment and job growth.¹⁹

GST exemption on low value imported goods

- 2.24 Australians spent \$15.7 billion in the year to August 2014 buying online from both international and Australian retailers. Online shopping by Australians has increased over time, and is likely to continue doing so. A

17 Australian Government, Australian Taxation Office, 'Growing jobs and small business – expanding accelerated depreciation for small businesses', <<https://www.ato.gov.au/General/New-legislation/In-detail/Direct-taxes/Income-tax-for-businesses/Small-Business---expanding-accelerated-depreciation/>>, viewed 13 January 2016, and; Australian Government, Budget 2015, 'Accelerated Depreciation', <<http://www.budget.gov.au/2015-16/content/highlights/jobsandsmallbusiness.html>>, viewed 13 January 2015.

18 Australian Government, Budget 2015, Former Treasurer of the Commonwealth of Australia The Hon. Joe Hockey, 'Budget Speech 2015', <<http://www.budget.gov.au/2015-16/content/speech/html/speech.htm>>, viewed 13 January 2016.

19 Australian Government, The Treasury, The Hon. Joe Hockey and Senator the Hon. Mathias Cormann 'The 2015 Budget', *joint media release*, 12 May 2015, <<http://jbh.ministers.treasury.gov.au/media-release/041-2015/>>, viewed 13 January 2016.

significant portion of Australian purchases online are from Australian retailers.²⁰

- 2.25 The low value threshold (LVT) exempts eligible imports below \$1 000 in value from a number of Commonwealth legal requirements. One of these exemptions is that goods below \$1 000 in value are generally not subject to the goods and services tax (GST).²¹ That is, under current legislation, '[s]ales of goods that are to be imported into Australia that have a customs value at or below \$1000 can be non-taxable importations.'²²
- 2.26 This LVT exemption enables international retailers to sell to Australian consumers without charging GST. This can contribute to a price differential between goods sold by Australian retailers and by international retailers, which can be a significant factor in consumer choices. To the extent that the LVT influences consumer choices (and thus reduces the impact of underlying market factors), it distorts competition between Australian and international retailers.²³ The effect of this on Australian retailers is discussed in Chapter 3.
- 2.27 The LVT is not indexed, and has remained at \$1,000 since 1985, losing value in real terms. If indexed, the threshold would be significantly higher.²⁴
- 2.28 The majority of imported items below the LVT are quite low in value (many are less than \$100).²⁵
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- 20 Parliament of Australia, Department of Parliamentary Services, 'Online shopping and potential changes to the low value threshold: costs and benefits for government, consumers and retailers', *research paper*, p.1., <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/OnlineShop>, viewed 30 November 2015.
- 21 Parliament of Australia, Department of Parliamentary Services, 'Online shopping and potential changes to the low value threshold: costs and benefits for government, consumers and retailers', *research paper*, p.1 <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/OnlineShop>, viewed 30 November 2015.
- 22 Australian Government, Australian Taxation Office (ATO), 'Taxable supplies and low value imported goods', <<https://www.ato.gov.au/Business/GST/In-detail/Rules-for-specific-transactions/International-transactions/GST-and-imported-goods/?page=3>>, viewed 30 November 2015.
- 23 Parliament of Australia, Department of Parliamentary Services, 'Online shopping and potential changes to the low value threshold: costs and benefits for government, consumers and retailers', *research paper*, p.1., <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/OnlineShop>, viewed 30 November 2015.
- 24 Parliament of Australia, Department of Parliamentary Services, 'Online shopping and potential changes to the low value threshold: costs and benefits for government, consumers and retailers', *research paper*, p.1., <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/OnlineShop>, viewed 30 November 2015.

2.29 As part of the Australian Government's approach to tax reform, the then Treasurer the Hon. Joe Hockey MP announced that:

In line with these reforms, the Australian Leaders' Retreat on 22 July 2015, agreed to broaden the GST to cover overseas online transactions (physical goods) under \$1,000.²⁶

2.30 This is expected to be applicable from 1 July 2017.

Applying GST to digital products and services imported by consumers

2.31 Under current law, things imported by consumers and which are not goods or real property (including digital products and services) are not subject to the GST. This results in forgone GST revenue, which would be passed to the States and Territories. It also places domestic businesses, which generally have to charge and remit GST on the digital products and services they provide, at a tax disadvantage compared to overseas businesses.²⁷

2.32 In order to maintain the integrity of the tax system and offer a level playing field for domestic suppliers, the Government announced in the 2015–16 Budget that it would extend GST to offshore intangible supplies to Australian consumers with effect from 1 July 2017. The measure is estimated to generate a revenue gain of \$350.0 million over the forward estimates period.²⁸

2.33 The key features of the 'Netflix tax' are as follows:

- it will be imposed on intangible supplies such as supplies of digital content, games and software – but will also extend to consultancy and professional services performed offshore for customers in Australia

25 Parliament of Australia, Department of Parliamentary Services, 'Online shopping and potential changes to the low value threshold: costs and benefits for government, consumers and retailers', *research paper*, p.1.,

<http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/OnlineShop>, viewed 30 November 2015.

26 Australian Government, The Treasury, The Hon. Joe Hockey, 'Statement: Council on Federal Financial Relations Tax Reform Workshop', *media release*, 21 August 2015, <<http://jbh.ministers.treasury.gov.au/media-release/075-2015/>>, viewed 30 November 2015.

27 Parliament of Australia, Department of Parliamentary Services, 'Applying GST to digital products and services imported by consumers' <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201516/Digital> viewed 25 February 2016.

28 Parliament of Australia, Department of Parliamentary Services, 'Applying GST to digital products and services imported by consumers' <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201516/Digital> viewed 25 February 2016.

- the liability for the GST will rest either with the supplier or with the operator of an electronic distribution service
- GST will be imposed at a rate of 10 per cent on the value of the supply
- at this stage it would appear that all intangible supplies will be caught, regardless of the value of the supply (currently goods valued of less than \$1,000 from overseas suppliers over the internet imported by Australian consumers are not covered under the GST Act, hence it is likely there might be scope for this value of intangible supplies to be changed by regulation) and
- only supplies made to consumers will be caught: business-to-business transactions will be exempt.²⁹

Small Business Grants

- 2.34 The Australian Government and State and Territory governments offer a range of financial assistance packages for small businesses. Federally, there are government grants available for small businesses to expand, incentives for businesses with research and development, exporting activities, tax and duty concessions, and assistance for industries in transition.³⁰
- 2.35 AusIndustry operates a website – business.gov.au – providing prospective grant applicants with information on the types of small business grants available, the way to apply and local providers that can assist in the application process.³¹
- 2.36 Generally, there are no grants available for starting a small business. The grants available for expanding a small business are limited to a particular industry, a state or local area, or research and development or exporting activity.³² For instance, a small manufacturing business could apply for a grant through the Manufacturing Transition Programme which supports
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29 Parliament of Australia, Department of Parliamentary Services, 'Applying GST to digital products and services imported by consumers' <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201516/Digital> viewed 25 February 2016.

30 Australian Government, Business, 'Grants and assistance', <<http://www.business.gov.au/grants-and-assistance/Pages/default.aspx>>, viewed 20 January 2016.

31 AusIndustry is the Australian Government's specialist business program delivery division within the Department of Industry, Innovation, Science Research and Technology.

32 Australian Government, Australian Small Business Commissioner, 'What grants are available for starting a business?', <<http://www.asbc.gov.au/resources/faq/what-grants-are-available-starting-business>>, viewed 20 January 2016.

businesses to move into higher value or niche manufacturing activities. Grants are available for up to 25 per cent of eligible costs for projects with a minimum investment of \$4 million.³³

Small business advocacy

2.37 The Australian Government has put in place several points of contact for small businesses in seeking advice and resolving disputes.

Australian Small Business Commissioner

2.38 In 2012, the previous Labor Government appointed Australia's first National Small Business Commissioner, Mr Mark Brennan. The role of the Commissioner is to:

- provide information and assistance to small businesses, including referral to dispute resolution services;
- represent small business interests and concerns to the Australian Government; and
- work with industry and government to promote a consistent and coordinated approach to small business matters.³⁴

Small Business and Family Enterprise Ombudsman

2.39 In August 2015, the Coalition Government established the position of the Australian Small Business and Family Enterprise Ombudsman. The then Minister for Small Business, the Hon. Bruce Billson, explained the rationale for the role as follows:

The establishment of the Small Business Ombudsman was an election commitment we made to ensure small businesses had an easy access point for advice to avoid and manage disputes. With the Ombudsman in place the hard working women and men of Australian small business can get on with the important job of running their business instead of being caught up in dispute resolution.

The legislation establishes the position and outlines the Ombudsman's functions and powers. The Ombudsman will be a:

33 Australian Government, Business, 'Manufacturing transition programme', <<http://www.business.gov.au/grants-and-assistance/grant-finder/Pages/manufacturing-transition-programme.aspx>>, viewed 20 January 2016.

34 Australian Government, Australian Small Business Commissioner, 'Our Role', <<http://www.asbc.gov.au/about/our-role>>, viewed 3 September 2015.

- Commonwealth wide advocate for small businesses and family enterprises;
- concierge for dispute resolution; and
- contributor to the development of small business friendly Commonwealth laws and regulations.

Our Government has ensured the Ombudsman position has been given real powers to deliver benefits for small businesses and to ensure that disputes brought forward will be impartially resolved according to the facts. The Ombudsman is also empowered to act as an independent advocate for issues that small businesses are facing at the national level, voicing concerns to Government and industry where small businesses are being adversely affected.³⁵

Australian Small Business Advisory Services

2.40 The Australian Small Business Advisory Service (ASBAS) programme aims to improve the capacity of established not-for-profit small business advisory service providers to deliver low cost small business advisory and information services to small businesses.³⁶

2.41 ASBAS providers deliver small businesses with advice and training on:

- funding avenues and financial analysis;
- building the small business;
- capitalising on talent;
- management capabilities; and
- digital engagement implementation.³⁷

Government initiatives to assist job seekers

2.42 Aside from cleaner compliance arrangements, tax concessions and financial assistance for small businesses, the Australian Government also offers greater financial assistance to job seekers and small businesses that employ workers in particular demographics. Chapter 4 of this report

35 Australian Government, The Treasury, The Hon. Bruce Billson, 'The Small Business & Family Enterprise Ombudsman legislation passes the Senate', *media release*, 18 August 2015, <<http://bfb.ministers.treasury.gov.au/media-release/074-2015/>>, viewed 20 January 2016.

36 Australian Government, Business, 'Australian Small Business Advisory Services (ASBAS)', <<http://www.business.gov.au/grants-and-assistance/australian-small-business-advisory-services/Pages/default.aspx>>, viewed 15 December 2015.

37 Australian Government, Business, 'Australian Small Business Advisory Services (ASBAS)', <<http://www.business.gov.au/grants-and-assistance/australian-small-business-advisory-services/Pages/default.aspx>>, viewed 15 December 2015.

discusses various barriers that individual job seekers face, as well as proposed and proven measures that can make these job seekers attractive to small business employers.

jobactive

- 2.43 jobactive is the Australian Government's employment service. It replaced Job Services Australia on 1 July 2015. jobactive aims to connect job seekers with employers and is delivered by jobactive providers in over 1700 locations across Australia.³⁸
- 2.44 Small business employers can use a local jobactive provider for tailored recruitment services, at no cost to their business. jobactive providers work closely with employers to understand their recruitment needs.³⁹
- 2.45 Job seekers can get help from a jobactive provider to get and keep a job. jobactive providers have the flexibility to tailor their services to a job seeker's assessed needs.⁴⁰

New Enterprise Incentive Scheme

- 2.46 Delivered as part of jobactive, the New Enterprise Incentive Scheme (NEIS) is a programme that has been developed to assist job seekers to become self-employed business owners. The NEIS provides eligible job seekers with:
- accredited small business training and business mentoring for up to 52 weeks;
 - income support for up to 39 weeks (NEIS Allowance) and NEIS Rental Assistance for up to 26 weeks; and
 - personalised mentoring and support from a NEIS provider in the first year of the new business to help a job seeker put their business idea into practice.⁴¹
- 2.47 With 6 300 places available annually, eligibility is limited to job seekers who are fully eligible for jobactive, or are a Disability Employment Services (DES) participant, and meet qualifying criteria.⁴²

38 Australian Government, Department of Employment, 'jobactive', <<https://employment.gov.au/jobactive>>, viewed 18 September 2015.

39 Australian Government, Department of Employment, <<https://employment.gov.au/jobactive>> viewed 18 September 2015.

40 Australian Government, Department of Employment, <<https://employment.gov.au/jobactive>> viewed 18 September 2015.

41 Australian Government, Department of Employment, 'Self-employment - New Enterprise Incentive Scheme (NEIS)', <<https://www.employment.gov.au/self-employment-new-enterprise-incentive-scheme-neis>>, viewed 2 February 2016.

- 2.48 The value of the NEIS is discussed briefly in Chapter 4 in terms of the benefits for culturally and linguistically diverse (CALD) job seekers.

Disability Employment Services

- 2.49 Disability Employment Services (DES) is a network of providers that deliver specialised assistance to job seekers impeded by disability, illness or injury in order to find and maintain employment.

- 2.50 DES offers two types of services:

Disability Management Service

This service is for people with disability, illness, or injury who need the help of an employment service but do not expect to need long-term support in the workplace.

Employment Support Service

This service is for people with a permanent disability and with an assessed need for longer term, regular, ongoing support in the workplace.⁴³

- 2.51 These services combined offer a suite of tailored assistance for eligible job seekers such as training, job search support, ongoing in- job support and access to workplace modifications, including Auslan interpreters.⁴⁴

JobAccess

- 2.52 JobAccess is a free information and advice service designed to assist people with a disability to access services, financial assistance and workplace adjustments in order to support their job seeking efforts and to maintain employment. The services are also available to the job seeker/employee's employer, service providers and the community in order to assist with their employment matters.⁴⁵

Employment Assistance Fund

- 2.53 Employing a person with a mental or physical disability can be a daunting and costly task for a small business owner who is not familiar with or

42 Australian Government, Department of Employment, 'Who can take part in NEIS?', <<https://www.employment.gov.au/who-can-take-part-neis>>, viewed 2 February 2016.

43 Australian Government, Department of Human Services, 'Disability Employment Services', <<http://www.humanservices.gov.au/customer/services/centrelink/disability-employment-services#a7>>, viewed 2 February 2016.

44 Australian Government, Department of Human Services, 'Disability Employment Services', <<http://www.humanservices.gov.au/customer/services/centrelink/disability-employment-services#a7>>, viewed 2 February 2016.

45 Australian Government, JobAccess, 'Welcome to JobAccess - An Australia Government initiative', <<http://www.jobaccess.gov.au/>>, 2 February 2016.

prepared for requirements to modify work areas or equipment, or provide additional training to staff.

- 2.54 The Australian Government, however, has recognised this as a disincentive for small businesses to employ people with additional needs through the establishment of the Employment Assistance Fund.
- 2.55 The Employment Assistance Fund helps people with disability and mental health condition by providing financial assistance to purchase a range of work related modifications and services for people who are about to start a job or who are currently working, as well as those who require assistance to find and prepare for work.
- 2.56 The Fund may reimburse the cost of work related modifications and services including, but not limited to:
- the cost of modifications to the physical work environment;
 - modifications to work vehicles;
 - adaptive equipment for the workplace;
 - information and communication devices;
 - Auslan interpreting;
 - specialist services for employees with specific learning disorders and mental health conditions;
 - disability awareness training;
 - Deafness awareness training; and
 - mental health first aid training.⁴⁶
- 2.57 An example of where this fund has assisted a jobseeker with a disability in finding and maintaining employment is presented in Chapter 4.

Wage subsidies

- 2.58 A wage subsidy is a payment to an employer or business to assist in recruiting eligible job seekers. Wage subsidies can support small businesses to expand their business and employ new staff.⁴⁷

46 Australian Government, JobAccess, 'Employment Assistance Fund', <<http://www.jobaccess.gov.au/government-services/employment-assistance-fund>>, viewed 2 January 2016.

47 Australian Government, Department of Employment, <<https://employment.gov.au/jobactive>>, viewed 18 September 2015. See also Organisation for Economic Co-operation and Development (OECD), 'Strengthening public employment services', *research paper*, 24 April 2015, pp 13-14., <<http://www.oecd.org/els/Strengthening-Public-Employment-Services.pdf>>, viewed 21 January 2016.

- 2.59 Through jobactive providers, wage subsidies are available to employers who hire eligible job seekers including mature age, long-term unemployed, Indigenous, youth, parents, parent carers or Tasmanian residents.⁴⁸
- In terms of mature workers, a wage subsidy of up to \$10 000 (GST inclusive) is available for job seekers over 50 years of age.
 - A job seeker who is a parent can receive a wage subsidy of up to \$6 500 (GST inclusive) through the Parents Wage Subsidy.
 - A long-term unemployed job seeker (12 months or more) and an Indigenous job seeker (six months) can receive a wage subsidy of up to \$6 500 (GST inclusive) through the Long Term Unemployed and Indigenous Wage Subsidy.⁴⁹
- 2.60 In addition to these subsidies, the Government announced in the 2015 federal budget a new parent carer wage subsidy and increased eligibility and payment levels for other wage subsidy payments. These changes were as follows:
- a new wage subsidy of up to \$6 500 for parents who are on income support with participation requirements and are classified as a Principal Carer Parent. The subsidy is provided after six months in jobactive;
 - expanded eligibility for the Youth Wage Subsidy to include eligible job seekers aged 15 to 29 years of age after six months in jobactive, with a start date of 1 November 2015;
 - increased accessibility for payments for the Restart Subsidy by allowing employers to receive the subsidy amount of \$10 000 progressively over 12 months (rather than the previous arrangement of 24 months); and
 - from 13 May 2015, the wage subsidy under the Tasmanian Jobs Programme doubled to \$6 500.⁵⁰
- 2.61 Small businesses can receive a wage subsidy over 12 months if they employ eligible job seekers for at least 30 hours per week. Pro-rata payments starting from \$3 250 (GST inclusive) are available for part-time

48 Australian Government, Department of Employment, 'jobactive', <<https://employment.gov.au/jobactive>>, viewed 18 September 2015.

49 Australian Government, Department of Employment, 'jobactive', <<https://employment.gov.au/jobactive>>, viewed 18 September 2015.

50 Australian Government, Budget 2015, 'Expense measures', <http://www.budget.gov.au/2015-16/content/bp2/html/bp2_expense-10.htm>, viewed 15 January 2016. For information on the Tasmanian Jobs Programme see Australian Government, Department of Employment, 'Tasmanian Jobs Programme', <<https://www.employment.gov.au/tasmanian-jobs-programme>>, viewed 15 January 2016.

- work, between 15–29 hours per week. The amount will vary depending on the number of hours worked, but to receive a wage subsidy, the employee must work for a minimum of 15 hours per week.⁵¹
- 2.62 Small businesses are able to negotiate flexible payment options with their employment services providers from the day the employee starts in the job. Wage subsidies are therefore paid flexibly to employers to meet their business needs.⁵²
- 2.63 A small business employer receives payment for the employee's hours worked. If the employment ceases early, employers are able to receive payment commensurate with the hours and duration of the employment.⁵³
- 2.64 Chapter 4 discusses the Committee's evidence on the use and effectiveness of wage subsidies.

National Work Experience Programme

- 2.65 The Australian Government introduced the National Work Experience Programme on 1 October 2015 with the aim of increasing work experience and employment opportunities for job seekers.⁵⁴ Jobactive and Disability Employment Service (DES) providers can place job seekers in up to four weeks unpaid work experience at a maximum of 25 hours per week.⁵⁵ Job seekers undertaking an approved program are not considered employees under the *Fair Work Act 2009* and receive a supplement of \$20.80 per fortnight to meet the costs of participating, such as travel.⁵⁶
- 2.66 The federal Minister for Employment described the rationale for the Programme as follows:

51 Australian Government, Department of Employment, 'Wage Subsidies', <<https://www.employment.gov.au/wage-subsidies>>, viewed 15 December 2015.

52 Australian Government, Department of Employment, 'Wage Subsidies', <<https://www.employment.gov.au/wage-subsidies>>, viewed 15 December 2015.

53 Australian Government, Department of Employment, 'Wage Subsidies', <<https://www.employment.gov.au/wage-subsidies>>, viewed 15 December 2015.

54 Australian Government, Department of Human Services, 'Budget 2015-16: Growing Jobs and Small Business Package – National Work Experience Programme', <<http://www.humanservices.gov.au/corporate/publications-and-resources/budget/1516/measures/job-seekers/002129>>, viewed 22 September 2015.

55 Australian Government, Department of Human Services, 'Budget 2015-16: Growing Jobs and Small Business Package – National Work Experience Programme', <<http://www.humanservices.gov.au/corporate/publications-and-resources/budget/1516/measures/job-seekers/002129>>, viewed 22 September 2015.

56 Australian Government, Department of Human Services, 'Budget 2015-16: Growing Jobs and Small Business Package – National Work Experience Programme', <<http://www.humanservices.gov.au/corporate/publications-and-resources/budget/1516/measures/job-seekers/002129>>, viewed 22 September 2015.

One of the things that the government is aware of is that employer surveys show that often insufficient work experience prevents many job seekers, but in particular young job seekers, from getting and then keeping a job. So on 1 October, we launched the National Work Experience program. The program aims to build the confidence and real-life work experience of job seekers so that we can better prepare them for what it is like to be in the workforce and ensure that employers' expectations are managed.⁵⁷

- 2.67 Job seekers are eligible for the National Work Experience Programme if they are registered with jobactive or Disability Employment Services providers and are in receipt of Newstart Allowance, Youth Allowance (other), Parenting Payment Single, Special Benefit and Disability Support Pension (under the age of 35).⁵⁸
- 2.68 Job seekers who volunteer to participate in jobactive or Disability Employment Services and do not receive an income support payment can also be placed in unpaid work experience but will not receive the supplement.⁵⁹
- 2.69 Chapter 4 discusses the evidence relating to the value that work experience has for an individual in gaining employment.

Australian apprenticeships

- 2.70 Australian Apprenticeships - often referred to as apprenticeships or traineeships - are available to anyone of working age who, generally, must also:
- be an Australian citizen; or
 - be a New Zealand passport holder who has been resident in Australia for at least six months; or
 - a permanent resident; or
 - hold a temporary resident or working visa; or

57 The Hon. Michaelia Cash, Minister for Employment, *Senate Hansard*, 2 December 2015, p. 9636.

58 Australian Government, Department of Human Services, 'Budget 2015-16: Growing Jobs and Small Business Package - National Work Experience Programme', <<http://www.humanservices.gov.au/corporate/publications-and-resources/budget/1516/measures/job-seekers/002129>>, viewed 22 September 2015.

59 Australian Government, Department of Human Services, 'Budget 2015-16: Growing Jobs and Small Business Package - National Work Experience Programme', <<http://www.humanservices.gov.au/corporate/publications-and-resources/budget/1516/measures/job-seekers/002129>>, viewed 22 September 2015.

- have a temporary protection visa.⁶⁰
- 2.71 Australian Apprenticeships are available in a variety of certificate levels in more than 500 occupations across Australia. They are available in traditional trades, as well as a diverse range of emerging careers in most sectors of business and industry.⁶¹
- 2.72 A secondary school certificate or other qualification is not required to be able to do an Australian Apprenticeship. It can be undertaken by school-leavers, those re-entering the workforce or as an adult worker wishing to change careers. It can combine time at work with training as part of a full-time, part-time or school-based apprenticeship.
- 2.73 Australian Apprenticeships are the most direct link between training and a job because they offer opportunities to train, study and earn an income at a variety of qualification levels in most occupations, as well as in traditional trades. On completion of an Australian Apprenticeship the apprentice/trainee has a qualification recognised anywhere in Australia and one that is held in high regard abroad. Australian apprenticeship support network
- 2.74 A June 2013 Australian Industry Group report recommended 'utilising and strengthening apprenticeship mentoring support structures and career advice services to lift apprenticeship completions, particularly in small businesses'.⁶²
- 2.75 On 1 July 2015, the Australian Apprenticeship Support Network (Apprenticeship Network) replaced Australian Apprenticeships Centres. The Apprenticeship Network is designed to make it easier for employers

- 60 The specific citizenship and visa requirements vary slightly between States and Territories. See, for example, Queensland Government, 'Apprenticeships info', <<http://apprenticeshipsinfo.qld.gov.au/apprentices/become-apprentice/eligible.html>>, viewed 20 January 2016; NSW Government, 'Citizenship and residency status requirements to undertake apprenticeship or traineeship', <http://www.training.nsw.gov.au/aacs/advice_instructions/vtgs/citizenship_residency.html>, viewed 20 January 2016; ACT Government, 'Hiring and Apprentice or Trainee', <http://www.det.act.gov.au/training/employers/apprenticeships_and_traineeships>, viewed 20 January 2016; and, Victoria State Government, 'Who Can Be Employed as an Apprentice or Trainee?', <<http://www.education.vic.gov.au/training/employers/apprentices/pages/who.aspx>>, viewed 20 January 2016.
- 61 Australian Government, Australian Apprenticeships, 'About Australian Apprenticeships' <<http://www.australianapprenticeships.gov.au/about-australian-apprenticeships>>, viewed 3 September 2015.
- 62 Australian Industry Group, 'Apprenticeships: Achieving Excellence', June 2013, p. 14, <http://www.aigroup.com.au/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/LIVE_CONTENT/Publications/Reports/2013/apps%2520report%2520FINAL.pdf>, viewed 16 January 2016.

to recruit, train and retain apprentices and better support individuals undertaking apprenticeships. The Australian Government is investing up to \$200 million annually the Apprenticeship Network.⁶³ Chapter 4 of the report discusses issues relating to employer ability to attract and retain an apprentice, and the cost of an apprentice.

- 2.76 A total of 11 Apprenticeship Network providers will deliver support services to employers and Australian Apprentices from more than 420 locations nationally, including in rural and remote areas.⁶⁴ Apprenticeship Network providers will provide advice and support services tailored to the needs of employers and apprentices from pre-commencement of the apprenticeship to completion. This will be done through a combination of universal services for all employers and apprentices, and targeted services for employers and individuals assessed as needing additional support to complete the apprenticeship.⁶⁵
- 2.77 The Australian Government has announced that there will be targeted in-training support services, such as mentoring, to help apprentices and employers at-risk of not completing the apprenticeship. There are also pre-commencement services available for targeted clients including screening, testing and job-matching. Apprenticeship Network providers can also assist individuals who may be unsuited to an apprenticeship to identify alternative training pathways.⁶⁶

Australian Apprenticeships Incentives Programme

- 2.78 An important objective of the Australian Government's support for apprenticeships is to encourage both the quality and quantity of skills that are demanded in the Australian economy. A 2011 report of an expert panel into the reform of the Australian Apprenticeship System recommended that:

Redirect current Australian Government employer incentives to provide structured support services to eligible apprentices and

63 Australian Government, Australian Apprenticeships, 'Australian Apprenticeships Support Network', <<http://www.australianapprenticeships.gov.au/australian-apprenticeship-support-network>>, viewed 17 January 2016.

64 Australian Government, Australian Apprenticeships, 'Australian Apprenticeships Support Network', <<http://www.australianapprenticeships.gov.au/australian-apprenticeship-support-network>>, viewed 17 January 2016.

65 Australian Government, Australian Apprenticeships, 'Australian Apprenticeships Support Network', <<http://www.australianapprenticeships.gov.au/australian-apprenticeship-support-network>>, viewed 17 January 2016.

66 Australian Government, Australian Apprenticeships, 'Australian Apprenticeships Support Network', <<http://www.australianapprenticeships.gov.au/australian-apprenticeship-support-network>>, viewed 3 September 2015.

trainees and their employers in occupations that are priorities for the Australian economy. While a wide range of occupations should be trained through apprenticeship and traineeship pathways, Australian Government support should focus on occupations that have tangible and enduring value for the economy – both in the traditional trades and the newer forms of apprenticeships and traineeships, such as community services, health services and information technology.⁶⁷

- 2.79 The Australian Apprenticeships Incentives Programme seeks to contribute to the development of a highly skilled and relevant Australian workforce that supports economic sustainability and competitiveness. The Australian Government intends that the Programme will achieve this by encouraging:
- genuine opportunities for skills-based training and development of employees; and
 - people to enter into skills-based training through an Australian Apprenticeship.⁶⁸
- 2.80 The National Skills Needs List identifies traditional trades that are experiencing a national skills shortage. The list is based on detailed labour market research and analysis. Under the Australian Apprenticeships Incentives Programme, an Australian Apprentice undertaking a Certificate III or IV qualification that leads to an occupation listed on the National Skills Needs List may be eligible for support payments and incentives.⁶⁹
- 2.81 Chapter 4 provides evidence and further discussion about skills shortages and the issues that job seekers face in this context.

National Employment Standards

- 2.82 Chapter 3 of this report notes the time and cost for small businesses to comply with industrial legislation. This legislation has three pillars: the minimum wage, the industry award and the National Employment

67 Mr Jim McDowell et al., 'A shared responsibility: Apprenticeships for the 21st century: Final Report of the Expert Panel', 2011, p. 14, <http://www.australianapprenticeships.gov.au/sites/ausapps/files/publication-documents/apprenticeshipsforthe21stcenturyexpertpanel_0.pdf>, viewed 17 January 2016.

68 Australian Government, Australian Apprenticeships, 'Summary of the Australian Government Australian Incentives Programme', <<http://www.australianapprenticeships.gov.au/publications/summary-australian-government-australian-apprenticeships-incentives-programme>>, viewed 3 September 2015.

69 Australian Government, Australian Apprenticeships, 'About the National Skills Needs List' <<http://www.australianapprenticeships.gov.au/publications/about-national-skills-needs-list>>, viewed 3 September 2015.

Standards (NES). The national minimum wage and the NES make up the minimum entitlements for employees in Australia. An award, employment contract, enterprise agreement or other registered agreement cannot provide for conditions that are less than the national minimum wage or the NES. Further, they cannot exclude the NES.⁷⁰

2.83 The National Employment Standards (NES) are ten minimum employment entitlements that must be provided to all employees.⁷¹ These entitlements are:

- maximum weekly hours;
- requests for flexible working arrangements;
- parental leave and related entitlements;
- annual leave;
- personal carers leave and compassionate leave;
- community service leave;
- long service leave;
- public holidays;
- notice of termination and redundancy pay; and
- Fair Work Information Statement.⁷²

2.84 All employees in the national workplace relations system are covered by the NES regardless of the award, registered agreement or employment contract that applies.⁷³

2.85 Casual employees only receive NES entitlements relating to:

- unpaid carer's leave;
- unpaid compassionate leave;
- community service leave; and
- the Fair Work Information Statement.⁷⁴

70 Australian Government, Fair Work Ombudsman, 'National Employment Standards', <<https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>>, viewed 10 October 2015.

71 Australian Government, Fair Work Ombudsman, 'National Employment Standards', <<https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>>, viewed 10 October 2015.

72 Australian Government, Fair Work Ombudsman, 'National Employment Standards', <<https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>>, viewed 10 October 2015.

73 Australian Government, Fair Work Ombudsman, 'National Employment Standards', <<https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>>, viewed 10 October 2015.

- 2.86 In some states and territories long serving casuals are eligible for long service leave.⁷⁵
- 2.87 Where there is an expectation of ongoing work for a casual and the casual has been employed regularly and systematically for at least 12 months, they have extra entitlements from the NES.⁷⁶ These are:
- the right to request for flexible working arrangements; and
 - access to parental leave.⁷⁷

Mentally Healthy Workplace Alliance

- 2.88 One of the biggest barriers to individuals being able to participate fully in the workforce is poor mental health. Poor mental health can limit a person from gaining, retaining and thriving in employment. This issue is discussed in Chapter 4 of the report.
- 2.89 The Mentally Healthy Workplace Alliance (the Alliance) is a national approach by business, community and government to encourage Australian workplaces to become mentally healthy for the benefit of the whole community and businesses, big and small.⁷⁸
- 2.90 Established by the Australian Government National Mental Health Commission on 1 July 2013, the Alliance aims to make sure all people in the workplace, including those who experience mental health difficulties, their families and those who support them, are supported.⁷⁹
- 2.91 This includes minimising harm, promoting protective factors and having positive cultures that are conducive to mental wellbeing. It also recognises

74 Australian Government, Fair Work Ombudsman, 'National Employment Standards', <<https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>>, viewed 10 October 2015.

75 Australian Government, Fair Work Ombudsman, 'National Employment Standards', <<https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>>, viewed 10 October 2015.

76 Australian Government, Fair Work Ombudsman, 'National Employment Standards', <<https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>>, viewed 10 October 2015.

77 Australian Government, Fair Work Ombudsman, 'National Employment Standards', <<https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>>, viewed 10 October 2015.

78 Australian Government, National Mental Health Commission, 'Mentally Healthy Workplace Alliance', <<http://www.mentalhealthcommission.gov.au/our-work/mentally-healthy-workplace-alliance.aspx>>, viewed 17 December 2015.

79 Australian Government, National Mental Health Commission, 'Mentally Healthy Workplace Alliance', <<http://www.mentalhealthcommission.gov.au/our-work/mentally-healthy-workplace-alliance.aspx>>, viewed 17 December 2015.

that a mentally healthy workplace is not just good for people, it is also very good for business.⁸⁰

- 2.92 In addition to the Commission, Alliance members include: the Australian Chamber of Commerce and Industry (ACCI), Australian Industry Group (Ai Group), The Australian Psychological Society Ltd, beyondblue, the Black Dog Institute, Business Council of Australia, Comcare, COSBOA, Mental Health Australia, Safe Work Australia, SANE, SuperFriend and the University of New South Wales.⁸¹

Summary

- 2.93 The Australian Government has put in place a range of measures to assist small businesses, many of which – either directly or indirectly – will encourage small businesses to grow and employ. This chapter has set out the main initiatives to assist:
- small businesses to be able to employ and retain high quality staff; and
 - job seekers to develop the skills and experience to capitalise on small business employment opportunities.
- 2.94 Nonetheless, as the following chapters highlight, there are various concerns from the small business community and organisations representing vulnerable job seekers that barriers to employment remain. Small business employers are for various reasons reluctant to take on (more) staff and job seekers – particularly those in disadvantaged cohorts – report continuing difficulties finding work.

80 Australian Government, National Mental Health Commission, 'Mentally Healthy Workplace Alliance', <<http://www.mentalhealthcommission.gov.au/our-work/mentally-healthy-workplace-alliance.aspx>>, viewed 17 December 2015.

81 Australian Government, National Mental Health Commission, 'Mentally Healthy Workplace Alliance', <<http://www.mentalhealthcommission.gov.au/our-work/mentally-healthy-workplace-alliance.aspx>>, viewed 17 December 2015.

Inhibitors to small businesses employing

3.1 The environment in which small businesses operate in Australia is complex and challenging. In evidence to the Committee, small businesses and their representatives commented on the difficulties that small businesses face on a day-to-day basis in order to remain in operation. In its submission, the Australian Chamber of Commerce and Industry (ACCI) identified the top ten constraints on small businesses:

1. Business taxes and government charges
2. Insufficient demand
3. Import competition
4. Non-wage labour costs
5. Federal Government regulations
6. Insufficient retained earnings
7. Charges by lending institutions
8. Current levels of debt
9. State Government regulations
10. Wage costs.¹

3.2 This chapter addresses many of these issues. It is structured as follows:

- attitudes of business owners;
- regulation and red tape;
- industrial/workplace relations;
- workplace health and safety;

¹ Australian Chamber of Commerce and Industry (ACCI), *Submission 22*, p. 12. See also ACCI Small Business Survey, December Quarter 2014, *Identifying National Trends and Conditions for the Small Business Sector*, <<http://www.acci.asn.au/getattachment/d3885a5f-6317-4d17-bf38-a552ae63760e/ACCI-Small-Business-Survey---December-Quarter-2014.aspx>>, viewed 2 June 2015.

- penalty rates;
- payroll tax; and
- competition and fair trading.

3.3 Small business is vital to the performance of the Australian economy and its capacity to grow and employ Australians. Accounting for approximately 93 per cent² of all employing businesses, and spanning all industries, securing Australia's business future through innovation and providing the majority of employment and training opportunities within our communities.

3.4 The Victorian Employers' Chamber of Commerce and Industry expressed the importance of the small business to the Australian economy and, in particular, to employment in Australia:

Small business is vital to the growth and development of the Australian economy. Taken together, small businesses are major employers and key drivers of economic activity, investment and trade. If we are to continue to grow employment opportunities and living standards for all Australians, small business must be supported by government policies that reduce red tape and encourage business investment, innovation and growth.³

3.5 Given the large number of small businesses in Australia, it is unsurprising that their contribution to employment is significant. As Master Grocers Australia/Liquor Retailers Australia highlighted the importance of small business to retail employment and the importance of sustaining this, and removing inhibitors to job creation is crucial to economic success:

In a context where unemployment rates are high, it is imperative that inhibitors to job creation and employment are eliminated. The retail industry is a fundamental stepping stone for Australia's youth to enter the employment field.⁴

3.6 Master Grocers Australia/Liquor Retailers Australia also described a direct link between the health of small businesses and the health of the community:

The local businesses and employees supported by independent retailers, and the communities in which independent grocery retailers operate who gain significant social and community benefits as a result of the economic participation of small to

2 Australian Industry Group, *Submission 17*, p. 13.

3 Victorian Employers' Chamber of Commerce and Industry (VECCI), *Submission 39*, p. 3.

4 Master Grocers Australia/Liquor Retailers Australia, *Submission 13*, p. 6.

medium sized enterprises, would be adversely impacted by any reduction in their market share.⁵

- 3.7 Small businesses also face significant risk. Many are sole traders who put everything they have on the line to make their business a success⁶. Taking risks, especially through taking on employees who may not be a good fit for a business, can mean significant losses to personal assets. Mr Peter Coronica, Chief Executive Officer and Founder of Fingerprint Me Youth Employment Academy and previous small business owner explained that finding the correct and most skilled person for the job is critically important for small businesses:

...if you fail, you will lose your family home. When you consider that your family home is on the line every day you go to work, you will make every decision possible. You will hire the right people and you will not take risks.⁷

- 3.8 Mrs Daniela Ascone, Director, Strategy and Partnerships, Fingerprint Me Youth Employment Academy, outlined examples of how fragile the balance between success and failure can be when small businesses are faced with unexpected hurdles:

In Victoria, unfortunately, we have got many small businesses that have gone out there and have taken that risk to set up a business, but they were not expecting things like a congestion tax to be introduced into the community, where their budgets go from not having to pay anything for car spaces to some businesses having to pay \$200,000 to \$350,000 a year... as employers they would not be expecting the government to not take into consideration the impact of certain things such as a congestion levy here in Victoria or, for example, recently the announcement of a public holiday prior to the AFL grand final. That is going to cost businesses in excess of \$300,000 to pay those penalty rates et cetera. They were not expecting that when they signed their house over, when they put their assets on the line.⁸

- 3.9 To assist with managing their small businesses and providing advice in overcoming obstacles such as these, employers can seek assistance from various industry associations. However, as noted by Mr Mark Brennan, Commissioner, Australian Small Business Commission, this assistance and

5 Master Grocers Australia/Liquor Retailers Australia, *Submission 13*, p. 5.

6 Sole traders are able to employ.

7 Mr Peter Coronica, Chief Executive Officer and Founder, Fingerprint Me Youth Employment Academy, *Committee Hansard*, Melbourne, 13 July 2015, pp. 1-2.

8 Mrs Daniela Ascone, Director, Strategy and Partnerships, Fingerprint Me Youth Employment Academy, *Committee Hansard*, Melbourne, 13 July 2015, p. 7.

advice is limited and fragmented due to the absence of any absolute peak body that represents small business:

Although there is a number of industry associations and the like, and COSBOA is seen as something like a peak body, in effect there is no real peak body like you might find in other sectors of industry. One of the problems in the small business area is that there are so many people there – there are about 2.4 million small businesses in Australia – and not all of them are members of industry associations or chambers of commerce. In fact, the vast majority are not.⁹

- 3.10 This reduced amount of small business engagement with industry is significant because it can result in poor business knowledge and the inability to keep up with compliance changes. Mr Brennan explained further the problems associated with this:

It is about educating small business as to what they need to do. That educating is not just all about compliance; it is also about how to run a business. When we start to talk about inhibitors to employment, for example, a lot of small businesses would make their decisions about whether they would employ or not based on insufficient or inadequate information. They do not get themselves properly informed because they are not part of any sort of information feed. It is that area which I think is worth the effort and resources to try to get through to the small business community – that they do need to inform themselves.¹⁰

Attitudes of business owners

- 3.11 While it is generally accepted that small businesses seek growth and prosperity, and thereby creating opportunities to employ more people, a major inhibitor to growth can be the attitude of the small business owner. In 2003, the Senate Employment, Workplace Relations and Education References Committee's report into *Small Business Employment* found that this is not always the case:

The inquiry found that many small businesses have limited growth aspirations, with a minority having both the desire and potential to grow significantly. The major employment

9 Mr Mark Brennan, Commissioner, Australian Small Business Commission, *Committee Hansard*, Canberra, 3 June 2015, p. 1.

10 Mr Mark Brennan, Commissioner, Australian Small Business Commission, *Committee Hansard*, Canberra, 3 June 2015, p. 2.

contribution of many small businesses is to provide jobs for the owner, some family members and one or two others. This contribution should not be under-valued but it indicates the need for a realistic appraisal of the scope for government initiatives to lift employment across the sector.¹¹

- 3.12 Further evidence in this regard was received from Mr Tony Mylan, Chief Executive Officer, ET Australia, who provided an anecdote of a family owned business on the NSW Central Coast:

...on one of our premises we have a cleaner we have used for at least 15 years. His business model – it is a father and son business – is that they work their business up; they keep taking on new cleaning jobs until such time as those two are working themselves to death, and then they sell off particular jobs they have won to other cleaning companies so they do not have to employ anybody.¹²

- 3.13 The motive for a small business owner choosing not to expand is not clear. However, as will be discussed in further detail below, taking on an employee can be a daunting task for some employers. Coupled with significant risk and often little knowledge and assistance as to how to effectively run a business, expansion and therefore job creation, can be significantly inhibited in the small business sector.

Regulation and red tape

- 3.14 While regulation per se is not a barrier to small business employing staff, the number of regulations, the approach and mind-set of the regulator, and the overlap of both regulations and regulators can certainly constrain small business from employing people. This section looks at these issues.
- 3.15 The time, loss of productivity and actual financial costs of complying with Government regulation or 'red tape' is a major issue facing small businesses. In early 2013, a large-scale survey of 10 000 Australian businesses investigated the tax compliance costs from all taxes for Australian small and medium-sized enterprises in the 2012 fiscal year.

11 Parliament of Australia, The Senate Employment, Workplace Relations and Education References Committee, *Small Business Employment*, February 2003, p. xix. See also Mr Peter Strong, Chief Executive Officer, Council of Small Business Organisations of Australia, *Committee Hansard*, Canberra, 11 November 2015, p. 1.

12 Mr Tony Mylan, Chief Executive Officer, ET Australia, *Committee Hansard*, Tumbi Umbi, 21 August 2015, p. 13.

- 3.16 The survey found that ‘overall gross compliance costs for Australian SMEs have increased by 118% in constant dollar terms over the period from 1995 to 2012¹³’ and that:

...business size (measured by annual turnover) is the single most significant determinant of the magnitude of compliance costs at firm level. In addition, the number of taxes the entity has to comply with is also a significant predictor of the magnitude of these costs, even when controlling for size. In contrast, legal form is not found to be significantly correlated with a firm's compliance costs.

The results of the study strongly suggest that taxation compliance costs continue to be a significant issue for SMEs, and that policy shapers and policy makers need to be very cognisant of the potential impact on that burden whenever changes to legislative and administrative requirements affecting the tax system are contemplated.¹⁴

- 3.17 The Australian Government currently has a strong focus on cutting red tape, with substantial progress already being made through the introduction of bi-annual repeal days (see Chapter 2). However, inquiry participants continued to express their concern at the extent of the compliance burden and its impact on small business. Mr Dick Grozier, Associate Director, Workplace Relations, Australian Chamber of Commerce and Industry, outlined the impact of regulation on small business:

Regulation can be inappropriate because unnecessary, duplicative or disproportionate; because excessively complex; and/or because of the way it is enforced. As discussed in the written submission, regulation imposes the highest costs on the smallest because of the proportionate compliance costs and the lack of specialist expertise. This is more serious than just being an issue of concern because, given the significant proportion of microemployers in the economy, these affects echo nationally. Inappropriate regulation not only imposes costs which sap other business related activity; it leads to avoidance behaviours as well – some at the cost of employment growth, some at the cost of best compliance.¹⁵

13 Phil Lignier, Chris Evans and Binh Tran-Nam, *Tangled up in tape: the continuing tax compliance plight of the small and medium enterprise business sector*, (2014) 29 Australian Tax Forum, p. 242.

14 Phil Lignier, Chris Evans and Binh Tran-Nam, *Tangled up in tape: the continuing tax compliance plight of the small and medium enterprise business sector*, (2014) 29 Australian Tax Forum, p. 247.

15 Mr Dick Grozier, Associate Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Committee Hansard*, Sydney, 6 October 2015, p. 11.

- 3.18 Some participants, such as Master Electricians Australia (MEA), felt that it was small businesses which felt the impact of red tape the most. MEA submitted:

Business owners are forced to comply with multiple requirements just to keep their operations afloat with limited support from the regulators themselves. While this may be a burden shared by all business including large corporations, small business suffers the most, as in most cases they will not have the resources to engage legal, financial or human resources professionals to perform the work for them. For the most part, these tasks fall to the business owner who must endeavour to acquire an understanding of the complex regulatory requirements and ensure they comply. The consequences for non-compliance are also more serious for small businesses who have slim profit margins and far less capacity to absorb additional costs.¹⁶

- 3.19 This notion is supported by the Productivity Commission which made the following statement in their 2013 report *Regulator Engagement with Small Business*:

Small businesses feel the burden of regulation more strongly than other businesses. Almost universally, their lack of staff, time and resources present challenges in understanding and fulfilling compliance obligations.¹⁷

- 3.20 It was generally acknowledged that some form of regulation is necessary in the workplace for the benefit and safety of all involved. That said, there was also agreement that the cumulative impact of regulatory requirements affects the capacity of small business and their ability to employ.¹⁸ The Australian Small Business Commissioner submitted:

One regulation on its own may not be difficult to comply with. However, meeting the cumulative regulatory compliance requirements of many different laws across state and national

16 Master Electricians Australia, *Submission 20*, p. 2.

17 The Productivity Commission, *Regulator Engagement with Small Business*, Productivity Commission Research Report, September 2013, p. 2, <pc.gov.au/inquiries/completed/small-business/report/small-business.pdf>, viewed 2 June 2015.

18 See: Fingerprint Me Youth Employment Academy, *Submission 12*, p. 2; Productivity Commission, *Regulator Engagement with Small Business*, Productivity Commission Research Report, September 2013, p. 71, <pc.gov.au/inquiries/completed/small-business/report/small-business.pdf>, viewed 2 June 2015; Chamber of Commerce and Industry of Western Australia, *Submission 23*, p. 4.; Dr Brent Davis, National Director, Industry Policy, Master Builders Australia, *Committee Hansard*, Canberra, 24 June 2015, p. 3.

governments can be complicated and time consuming. So much so that some businesses opt not to employ staff.¹⁹

- 3.21 The Australian Chamber of Commerce and Industry (ACCI) Chief Executive Officer Ms Kate Carnell agreed that the burden of excessive paperwork on small businesses was a detriment to their ability to create job opportunities:

Every hour that an entrepreneur spends filling in paperwork is an hour they are not growing their business, satisfying their customers and creating job opportunities. We all recognise that some regulation is necessary, but when those regulations bury business in mounds of paperwork, they are clearly doing more harm than good. Some 55 per cent of businesses say they cannot pass on the increased cost to consumers, so they are absorbing the costs of compliance themselves. But with businesses less able to innovate, invest and hire, we all pay a big price for excessive regulation.²⁰

- 3.22 ACCI also commented on the extent and types of compliance that small businesses regularly have to meet:

These costs come from a range of sources with the Productivity Commission estimating that small businesses in Australia are subject to approximately 480 Commonwealth, state and territory regulators, as well as 560 local Government regulators. Regulation may attach to the specific activities of a business or the industry in which it operates or apply to businesses more generically. Typical obligations for employing businesses relate to the following areas (without limitation):

- income tax, including maintenance of records and submission of tax returns to the Australian Taxation Office;
- reporting and payment of goods and services tax (GST) on sales;
- reporting and remitting pay as you go (PAYG) withholding amounts to the ATO;
- businesses that provide fringe benefits to employees or associates are required to pay fringe benefits tax and submit a return to the ATO;
- payment of payroll tax on the business's wage bill;
- compliance with the Fair Work Act 2009 (Cth) (FW Act) which sets out a complex range of regulatory requirements surrounding the employment of people in the business.

19 Australian Small Business Commissioner, *Submission 11*, p. 5.

20 Australian Chamber of Commerce and Industry (ACCI), *Submission 22*, p. 7.

Legislated standards in the form of the NES must be observed and there are also different awards that apply. Dismissing staff is also heavily regulated and there are specific obligations that need to be met;

- making contributions to employees' super funds on a periodic basis in line with superannuation guarantee laws;
- compliance with work health and safety laws. There are general obligations that apply to all employers as well as well additional requirements in higher risk areas, with training and accreditation required to undertake specified activities;
- payment of workers' compensation insurance premiums.;
- financial reporting;
- business registrations;
- planning and development applications associated with the business activities.²¹

3.23 Blueberry Fields, a small agricultural business, gave one example of the frustrations that it feels when attempting to comply with regulation:

On many occasions we have attempted to proactively understand changes or proposed changes by telephoning government agencies, such as the ATO. Our experience has been that the personnel answering general enquiries at the ATO are minimally trained on how to answer specific queries and are not permitted to move the call to an expert in the area. We are often directed away from the ATO for answers, e.g. to the Ombudsman, who just directs us back to the ATO. We are often told that the ATO cannot give us advice on how to run our business yet what we are asking is for information on how to reach compliance. We are also often told just to employ more administrative staff. We have faced similar difficulties when contacting superannuation companies to work out new superannuation administrative arrangements.²²

3.24 This type of example highlights the need for businesses to be able to access information on regulatory requirements. Also highlighted is the need for trained staff and minimal points of contact. Blueberry Fields added that:

...any information provided to employers relating to red tape should be presented in such a way that it is timely, easily accessible, easy to understand, and easy to implement. If it's too hard for a whole government department to work out, then maybe it will be too hard for a small business employer to work out too.²³

21 Australian Chamber of Commerce and Industry (ACCI), *Submission 22*, p. 14.

22 Blueberry Fields, *Submission 33*, p. [1].

23 Blueberry Fields, *Submission 33*, p. [2].

- 3.25 The Council of Textile and Fashion Industries of Australia told the Committee that too many compliance and regulatory requirements can push their members to take business offshore. Ms Kiri Delly, Chief Executive Officer, explained how further reform in this area would provide an incentive for businesses to employ locally:

There also seems at present an attitude across multiple areas towards taking the path of least resistance. With the challenges in having a business, employing people, adhering to the range of compliance and legislative requirements and a loss of many skills, many operators are simply deciding to take their work offshore. We therefore need to look towards providing incentives to keep operations local and reduce the impediments in doing business here in Australia. Once businesses go offshore it is very unlikely for them to come back...²⁴

- 3.26 The Committee believes that reducing the amount of red tape that small businesses are required to navigate would create more time for small business owners to focus on growing their business.

- 3.27 A streamlined regulatory framework must still have an important role. The Australian Small Business Commissioner, Mr Mark Brennan, noted that reducing red tape does not mean doing away with regulation altogether. Rather it provides more time and opportunity for them to be successful in businesses. Extending the required renewal times for licences, and thereby reducing contact with government bodies, is one example Mr Brennan provided that would be a step in the right direction:

A really positive way of looking at reducing red tape and deregulating is to have the attitude that we are going to try to reduce the amount of contact that people have to have with us. I think a really good example of that, though it is not on your topic, is licensing schemes. People often have to renew a licence – I was regulator of gambling and liquor in Victoria, and liquor licences have to be regulated every 12 months. There is no rhyme or reason why they should be every 12 months. Why couldn't they be every five years or every 10 years? And yet people have to come back every time. So it is a good question to ask: are people coming back to agencies too often? If they are, there is something wrong with the system.²⁵

24 Ms Kiri Delly, Chief Executive Officer, Council of Textile and Fashion Industries of Australia, *Committee Hansard*, Melbourne, 13 July 2015, p. 42.

25 Mr Mark Brennan, Commissioner, Australian Small Business Commission, *Committee Hansard*, Canberra, 3 June 2015, p. 7.

- 3.28 Mr Brennan put the onus on government to educate small business on their compliance requirements:

What I say is that there is a core responsibility of government, particularly where governments intervene and if they have set up a system where you must pay according to certain things, and it is incumbent upon government to invest in educative programs to make sure people understand.²⁶

- 3.29 In this context the Fair Work Ombudsman introduction of a *Pay and Conditions Tool* aims to assist small businesses to navigate their payroll obligations. Ms Jennifer Lawrence, Adviser, Office of the Small Business Commissioner explained the tool's benefits:

It is basically a decision tool to help small businesses and employees to work out what the right award is, what the right classification within that award is and what the allowances and entitlements are. It has combined a number of existing tools that the Fair Work Ombudsman already has and made the process a lot simpler.²⁷

Conduct of regulators

- 3.30 The purpose of regulators is to ensure a fair playing field for all businesses and for the safety of employees, employers and the general public. Regulators can issue fines for non-compliance and request employers to undertake additional activities in order to comply. But they must also be a source of information, education and support for small businesses.
- 3.31 Regulators can also be an inhibitor to small business growth if they operate in a heavy handed way. The Small Business Commissioner, Mr Brennan, acknowledged this and stated that an educative approach to regulation would provide significantly greater benefit:

Regulators across the board too often take an approach of being crackdown, clampdown, 'found you there' and 'we're following you here'. They find it easier to be a crackdown, clampdown type regulator rather than to educate to comply...The business community is far more responsive to a facilitative or educative

26 Mr Mark Brennan, Commissioner, Australian Small Business Commission, *Committee Hansard*, Canberra, 3 June 2015, p. 8.

27 Ms Jennifer Lawrence, Adviser, Office of the Small Business Commissioner, *Committee Hansard*, Canberra, 03 June 2015, p. 8. See also Australian Government Fair Work Ombudsman, 'The P.A.C.T. Pay and Conditions Tool', <calculate.fairwork.gov.au/>, viewed 7 September 2015.

approach by a regulator than they are to the crackdown and clampdown.²⁸

- 3.32 Likewise, the Productivity Commission agrees that the maintenance of a positive and educative relationship between regulators and small businesses is paramount in encouraging compliance and enabling business success. The Productivity Commission, in its report *Regulator Engagement with Small Business*, stated that the success of this relationship depends primarily on the delivery of services:

The way regulations are implemented is often as important to small business and to compliance outcomes as the content of the regulations themselves. Regulators, by their conduct in interpreting, administering and enforcing regulatory requirements, can take considered, well designed regulation and produce regimes which discourage compliance, squander government resources or add to business costs and delays. Alternatively, a regulator might take an unwieldy accumulation of regulation and, by choosing judiciously what, when and how to enforce, deliver the desired regulatory outcomes in an efficient manner. It is through engagement with regulators in their role of administering and enforcing regulation that small businesses primarily 'experience' regulation and much of the associated compliance burden.²⁹

- 3.33 In this context, positive relationships are bolstered by the quality of the delivery of regulation by regulators. Such an approach would ensure that requirements are easy to understand and easy to implement, limiting the need for fines and other actions taken as a result of non-compliance.

Multiple agencies and jurisdictions

- 3.34 As noted above, a reoccurring theme of this inquiry is the cumulative effect of red tape on the capacity of small businesses to invest and employ. One particular issue of particular concern is the duplication of legislative and regulatory requirements across Federal and State jurisdictions. Some small businesses need to liaise with multiple Government agencies to take on an employee.
- 3.35 Already complex administrative requirements facing small businesses are compounded in cases where they must liaise with, and remain compliant
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28 Mr Mark Brennan, Commissioner, Australian Small Business Commission, *Committee Hansard*, Canberra, 3 June 2015, p. 8.

29 The Productivity Commission, *Regulator Engagement with Small Businesses*, September 2013, p. 3, <pc.gov.au/inquiries/completed/small-business/report/small-business.pdf>, viewed 10 June 2015.

to, numerous separate agencies. The Australian Small Business Commissioner explained the current situation:

Employers must deal with multiple agencies at the state and national levels. There are numerous requirements, which are not straightforward and often are changing. Compliance can be onerous, obligations duplicative and there are multiple definitions of 'employer' and 'small business' resulting complexity. Information is spread across many places making it difficult to find what you need and to be confident you have not missed anything. In addition, regulator messaging can instill (sic) a negative perception creating a disincentive to engage and a fear of consequences for unintentional noncompliance.³⁰

3.36 The Australian Small Business Commissioner listed some of the agencies that small business have to comply with:

- **Australian Taxation Office.** Tax File Number; superannuation; Pay As You Go,
- **Fair Work Ombudsman.** National Employment Standards and Awards; entitlements; payslips; record keeping, and
- **WorkCover.** Workers compensation; Workplace Health and Safety requirements.

In addition, a small business may need to engage with:

- **Department of Immigration and Border Protection** if the employee is on a visa,
- **Office of State Revenue** if payroll tax thresholds have been met, and
- **Portable long service leave authority** if in an applicable industry.³¹

3.37 The frustration of dealing with multiple agencies extends beyond state governments and the different compliance requirements between borders towns in particular, to local government/councils within the same immediate vicinity.

3.38 This is particularly significant in the building and construction industry where the National Construction Code can have substantial state, territory and local government variations – an issue for small businesses working between jurisdictions. Mr Wilhelm Harnisch, Chief Executive Officer, Master Builders Australia (MBA) explained:

But the other issue is for small business, even not in those border towns where you have the problem where they operate between

30 Australian Small Business Commissioner, *Submission 11*, p. [3].

31 Australian Small Business Commissioner, *Submission 11*, p. [4].

shires and local government areas where there are differences in local government standards. Queensland is a classic one – the different local shires and councils require different specifications for different aspects, and on one side of the street you have got to do this and on the other side of the street you have got to do that.³²

- 3.39 Dr Brent Davis, National Director of Industry and Policy at MBA, provided a specific example of discrepancies between local government regulations within the same city:

We are aware of instances in parts of Sydney, for example, where you do a concrete pour taking 20 minutes. You turn up, they have got the frame, in goes the concrete and then the truck drives off. There are local governments in other parts of Sydney where you have to have an approved delivery plan, scaffolding around trees and a lollipop man, and the fees can be somewhere between \$400 and \$1,200 for a 20-minute drop and go. That cascades through the process, so yes, it is the biggest problem at the borders, as Mr Harnisch rightly observed. We have got 565 local governments, and many of them have contiguous borders with seven or eight other local governments. You can imagine the lottery for the member – the small business especially – who says, 'Here's the code. Terrific, I'll go to the local council.' The council says, 'That is not how we do it here,' and the member realises, 'Okay, this is going to be a while now.' This is the cost that flows through.³³

- 3.40 Significantly, Mr Harnisch made a direct link between the navigation of these jurisdiction compliance burdens, and a small business' ability to employ:

Obviously, that is one of the consequences: certain contractors decide not to operate in certain local government areas because the compliance burden – in terms of getting approvals, such as the example of the concrete-truck delivery – just makes it too hard when you can go across the street and get the same amount of work. Expanding your business is inhibited by the fact that small business only has limited capacity and limited resources. They will make strategic choices on what delivers them the best outcome for the resources they have. They are not going to chase work – and

32 Mr Wilhelm Harnisch, Chief Executive Officer, Master Builders Australia, *Committee Hansard*, Canberra, 24 June 2015, p. 2.

33 Dr Brent Davis, National Director, Industry Policy, Master Builders Australia, *Committee Hansard*, Canberra, 24 June 2015, p. 2.

therefore employ people – in areas where the compliance burden escalates beyond the capacity of their small business.³⁴

- 3.41 MBA has suggested implementing a website, similar to the Australian Government's *MyGov* website that provides access to all local council's National Construction Code variations. Dr Davis argued that this would assist small business to navigate their regulatory requirements:

We have done some work looking at what you might call 'MyCouncil'. What would that achieve? Transparency. The local governments would be required to put up their variations from the National Construction Code and the states would put up their variations. How does this council vary from the state building act? Builders, consumers and suppliers would know.³⁵

- 3.42 MBA also recommended a regular report on local government services that looks at performance rating and benchmarks across the state as a method for local governments to be transparent and accountable in their requirements. Dr Davis continued:

We have been looking at an option where the Productivity Commission could publish a report on local government services. That sort of transparency would be enormous. What is the time that every council takes to do a development application? What is the average cost? What are your variations to the state building act? Therefore, if I develop here or I build there, this would be enormous information... There are roughly 580 local governments. ...it is this variability that is sending our members spare.³⁶

Trading hours

- 3.43 The Retail Council describes current retail hours as follows:

A host of outdated trading hour restrictions exist in Australia – most notably in Queensland, South Australia and Western Australia. These restrictions often illogically discriminate between retailers on the basis of size, location, or products sold, allowing some stores to trade when others cannot.

34 Mr Wilhelm Harnisch, Chief Executive Officer, Master Builders Australia, *Committee Hansard*, Canberra, 24 June 2015, p. 3.

35 Dr Brent Davis, National Director, Industry Policy, Master Builders Australia, *Committee Hansard*, Canberra, 24 June 2015, p. 7.

36 Dr Brent Davis, National Director, Industry Policy, Master Builders Australia, *Committee Hansard*, Canberra, 24 June 2015, p. 8.

These regulations restrict competition and therefore consumers' choice on what can be peak shopping periods – like on Boxing Day, for example.

Retail figures also show that up to 20 per cent of weekly trading volume occurs on a Sunday – when it is permitted. Some States regulate trading on each and every Sunday, which prevents all retailers from being able to open. This often results in consumers paying higher prices at those retailers that are able to trade.³⁷

3.44 This variation in trading hours across states and territories provide opportunities and challenges for small businesses. On one hand, regulated trading hours limit some small businesses ability to trade, and therefore small business losing the potential to create more employment opportunities. On the other hand, the regulation of trading hours can provide reprieve from competing with large chain stores for example, small businesses operating in the grocery sector which compete with large national grocery chains.

3.45 The National Retail Association was among some submitters that felt trading hours restrictions limited their members' ability to operate:

There can be no greater impediment to job creation for a business than being forbidden by Government regulation to open your doors and trade. Yet this is the circumstance many businesses find themselves in. While the NRA recognises that some days of the year are considered sacrosanct, there are many other times when retailers are prohibited from trading simply due to their location, their size, their product range or even their ownership structure.³⁸

3.46 Likewise, in its submission to the Productivity Commission's report on *Relative Costs of Doing Business in Australia: Retail Trade*, the Chamber of Commerce and Industry Queensland provided specific examples of how trading hours can limit a small business:

The anomalies present in Queensland's existing shop trading hours framework are disadvantaging small business. Thirty six different zones define which business can trade during certain times and confusion around trading category, location, product type, activities, ownership structures, and number of employees, makes Queensland the most restrictive trading hour's framework in the country... For example, motor vehicle dealerships are not

37 Australian National Retailers' Association (ANRA), 'Trading hours – pursuing fairer trading', media release, <<http://www.anra.com.au/policies/trading-hours.html>>, viewed 10 December 2015.

38 National Retail Association, *Submission 9*, p. 13. See also Australian Retailers Association, *Submission 37*, p. 11.

allowed to sell ride-on mowers on Sundays due to the current restrictions in the legislation, yet larger 'hardware' chains that sell the same product are permitted to trade. Similarly, caravan and boating retailers are able to open on Sundays to display vehicles and discuss their features, but cannot make a representation of price or make a sale. It is the same with the caravan and boating industries, where retailers can open on Sundays to display vehicles and discuss their features, but cannot make a representation of price or make a physical sale.³⁹

3.47 Master Grocers Australia/Liquor Retailers Australia, on the other hand, submitted that in terms of their stakeholders, complete deregulation of trading hours could have a detrimental effect on small grocery retailers that have to compete with the larger chains. Its submission stated:

...the push for the total deregulation of retail trading hours across Australia is simply another avenue for Coles and Woolworths to extend and grow their market share, as well as undercut their smaller competitors, resulting in the extinction of independent retail businesses. Furthermore, in areas such as Queensland where trading hours for non-exempt shops are regulated, consumer-based surveys and petitions have not been presented in those areas which evince a demand by consumers for greater shopping diversity or an extension of trading hours. As such, it remains only a perception that the total deregulation of trading hours in all areas of Australia is both necessary and warranted to promote consumer welfare.⁴⁰

Superannuation

3.48 Superannuation compliance is a requirement for all small businesses that take on an employee. Employers are required to register new employees with their choice of fund, as well as make regular contributions on behalf of their employee. With the introduction of the Small Business Superannuation Clearing House (as discussed in Chapter 2), this process has become less onerous for many small businesses by reducing the amount of regular paperwork. However, some businesses claimed the compliance burden had actually increased.

39 The Chamber of Commerce and Industry Queensland (CCIQ), 'Relative Costs of Doing Business in Australia: Retail Trade', 11 July 2014, *submission to the Productivity Commission's inquiry into the relative costs of doing business: retail trade industry*, <cciq.com.au/assets/Documents/Advocacy/submissions/RetailTrade-ProductivitySubmissionReview.docx>, viewed 7 September 2015.

40 Master Grocers Australia/Liquor Retailers Australia, *Submission 13*, p. 7.

- 3.49 Two submitters operating small agricultural businesses felt that the introduction of the Clearing House had in fact created more paperwork. The agriculture sector is typically seasonal with the volume of employees increasing significantly at certain times of the year. Viticulture business G & S Ellis Holdings Pty Ltd noted that despite the Clearing House processing large numbers of seasonal employees was a lengthy and onerous process. As it , explained:

Each employee's superannuation details have to be registered twice - once with the clearing house and once with the employee's superannuation fund. Whilst the clearing house aids distribution to the various super funds many employees do not qualify for minimum wage requirement triggering a superannuation payment.⁴¹

- 3.50 Grey Sands Vineyard, another small viticulture business, echoed this sentiment:

Being a small employer, I have always given employees their choice of Super Fund. In the past this has meant I've had to register as an employer with a myriad of different funds. The ATO has addressed this, in part, by the Small Business Clearing House, which allows employers to make one payment, which the ATO then disburse to the relevant Super funds...HOWEVER the information that is required to be entered in order to enable this is not readily available to the employer. eg the Fund's ABN and USI number. I had multiple instances this year where I did a 'search for Super Fund' on the ATO site to be confronted with 8+ Funds with the same name...ONE payment alone took me nearly 40 mins to be able to 'action'...I had 6 payments to make...⁴²

- 3.51 Blueberry Fields, also a small agricultural business, highlighted the difficulties agriculture businesses encounter when processing superannuation for a large amount of seasonal employees. It suggested that current systems were created to assist less fragmented employment models:

We employ more than 100 individual casual seasonal employees every year and we find that generally employment systems presume a much more stable workforce, especially for superannuation. For most of our employees, we sit outside the norm and therefore have to work out systems for ourselves, e.g.

41 G & S Ellis Holdings Pty Ltd, *Submission 1*, p. [1].

42 Grey Sands Vineyard, *Submission 26*, p. [1].

paying superannuation for workers who are terminated in the systems and then return.⁴³

- 3.52 Submitters also raised concerns with the necessity of provisions of superannuation for employees on working holiday visas. Superannuation, in this context, is often a small amount that is either accessed by the employee on departure from the country, or 'abandoned' in superannuation accounts and slowly diminished by fees.

G & S Ellis Holdings Pty Ltd explained that this is true of its experience:

The amount of superannuation paid into a seasonal casual employees account is often very small (less than \$50) ... the employee does not redeem this amount on leaving Australia and it is gradually frittered away on management fees not to mention the amount of paper, time and effort on the superannuation fund.⁴⁴

- 3.53 Grey Sands Vineyard questioned the necessity of paying superannuation in these instances, when the purpose is to provide for employee retirement:

Superannuation is meant to be for Australian residents to help with their retirement...why then do employers have to pay Superannuation Guarantee payments to casual, overseas workers who will not be staying in Australia (ie they are on 1 or 2 year 'working visas')...effectively giving them a 9.5% increase in their wages, which they can access when they leave Australia?⁴⁵

- 3.54 G & S Ellis Holdings Pty Ltd suggested that in such instances, the employee superannuation contribution could form part of their take-home wages:

Solution/recommendation

Where a casual employee's term of employment is less than 6 months (seasonal workers) and they are not residents of Australia or Australian citizens then superannuation is paid directly into their accounts instead of having to register for superannuation. This can be detailed on their payslips for auditing purposes.⁴⁶

43 Blueberry Fields, *Submission 33*, p. [2].

44 G & S Ellis Holdings Pty Ltd, *Submission 1*, p. [1].

45 Grey Sands Vineyard, *Submission 26*, p. [1].

46 G & S Ellis Holdings Pty Ltd, *Submission 1*, p. [2].

Industrial/workplace relations

- 3.55 Compared to many countries Australia has a highly regulated system on industrial/workplace relations. This creates a safety net for workers comprising of three main instruments that set minimum wages and conditions for employees: the national minimum wage, the National Employment Standards and awards which include penalty rates. Complying with industrial legislation is one of small businesses biggest costs both in time and money.
- 3.56 The following quote from the Productivity Commission's Workplace Relations draft report sums up what they see as the current workplace relations situation :
- The challenge for a WR framework is to develop a system that provides balanced bargaining power between the parties that encourages employment, and that enhances economic efficiency. It is easy to over or under regulate. Set against that framework, Australia's WR system is not dysfunctional – it needs repair not replacement.⁴⁷

National Employment Standards

- 3.57 As described in Chapter 2 the National Employment Standards (NES) specify minimums for 10 conditions of employment.
- 3.58 Discussing the NES the Chamber of Commerce and Industry WA (CCIWA) argued that:
- The National Employment Standards (NES) needs to be flexible and easy to understand, acknowledging the "special circumstances" of small to medium sized businesses. This can be achieved by reducing their complexity, leaving practical application of entitlements to employers and their employees, providing flexibility in their application to small business and removing references to state based legislation.⁴⁸
- 3.59 CCIWA highlight to inconsistencies in the NES with reference to State legislation:
- Three of the NES provisions (community service leave, long service leave and public holidays) refer to state and territory based legislation to derive entitlements. This not only results in different

47 The Australian Government Productivity Commission, *Workplace Relations Framework: Draft Report*, August 2015, p. 3, <<http://www.pc.gov.au/inquiries/current/workplace-relations/draft/workplace-relations-draft.pdf>>, viewed 11 September 2015.

48 Chamber of Commerce and Industry WA, *Submission 23*, p. 5.

outcomes depending upon the State in which the employee is engaged, but generates unintended consequences due to the incompatibility of the State and Federal provisions.⁴⁹

- 3.60 In particular, CCIWA point to the public holiday provisions in the NES that increase the entitlements in some States:

In any one year, there is the potential for WA businesses to be subject to up to four additional public holidays than that provided in the NES. Over the 2010-11 Christmas season, there were six public holidays for three occasions. In 2015 and 2016, WA will face 12 public holidays each year, rather than the national standard of 10.⁵⁰

Modern awards

- 3.61 The Productivity Commission has described awards as ‘an Australian idiosyncrasy with some undesirable inconsistencies and rigidities.’⁵¹ In recent times there has been a significant reduction in the number of awards which has been welcomed by the business community.
- 3.62 The awards that remain, however, are still criticised for their complexity leading to a call for further simplification.
- 3.63 The Australian Small Business Commissioner stated:
- There are 122 modern awards. Some cover whole industry sectors, whilst others cover occupations. It can be difficult to determine the correct award, especially considering some awards have similar occupations to other awards, for example the *Hospitality Industry (General) Award 2010* and the *Restaurant Industry Award 2010*. A business may also have to keep track of two or more awards as it is possible that employees with different roles are covered by different awards. Within the awards, there are a variety of job classifications which an employer must also navigate to determine the correct pay, conditions and entitlements.⁵²
- 3.64 The Commissioner commented that modern awards are a significant improvement on previous arrangements:

49 Chamber of Commerce and Industry WA, *Submission 23*, p. 13.

50 Chamber of Commerce and Industry WA, *Submission 23*, p. 14. See also Restaurants and Catering Australia, *Submission 40*, p. 10.

51 Australian Government, Productivity Commission, ‘Workplace Relations Framework: Productivity Commission Draft Report Overview’, p. 4, <http://www.pc.gov.au/inquiries/current/workplace-relations/draft/workplace-relations-draft-overview.pdf>, viewed 17 November 2015.

52 The Australian Small Business Commissioner, *Submission 11*, p. 6.

Modern awards are legislative instruments and can be complex to unfamiliar readers, i.e. most small businesses. Although the system may appear complex, it is a vast improvement on the previous state-based system, which had over 3,715 awards and other industrial instruments.⁵³

- 3.65 Mr Stephen Smith, Director, National Workplace Relations Policy, Australian Industry Group (Ai Group) gave the following perspective on these modern awards:

Our view is that there is a lot of scope to simplify the award system. We went from about 3,000 awards down to 122 industry and occupational awards, and that was a significant reduction, but every one of those awards is, on average, in excess of 50 pages long. They go to a vast amount of detail still in a whole range of areas, and the fact that they are so detailed makes it much harder to reduce the number of awards. We are suggesting not that there be different awards for small businesses but rather that the system should be much simpler for all employers, and that will have a particular benefit for small businesses given the higher reliance of small business on the award system.⁵⁴

- 3.66 The Ai Group claimed that the complexity of current awards exacts a particularly heavy burden on small businesses. Ai Group called for simplifying the award system:

The award system must be simpler and less prescriptive for small business employers” and “...the highly prescriptive and inflexible nature of the modern award system is a particular problem for small business employers.

...the modern award system is far too complex and prescriptive for employers and it does not reflect a genuine safety net. This problem is especially the case for small business employers who have very little resources to navigate, interpret and implement modern awards terms. Usually in a small business the business owner is responsible for and undertakes all business functions, including human resources and payroll.

The level of detail in awards in areas such as types of employment, hours of work, breaks, leave, countless allowances, and numerous other areas especially cause problems for small business

53 The Australian Small Business Commissioner, *Submission 11*, p. 6.

54 Mr Stephen Smith, Director, National Workplace Relations Policy, Australian Industry Group, *Committee Hansard*, Melbourne, 13 July 2015, p. 25.

employers and their employees ...What we have is 122 industry and occupational awards of approximately 66 pages each.⁵⁵

Figure 3.1 Citizen co-design with small business owners

Report prepared by Sweeney Research for Fair Work Commission: *Citizen co-design with small business owners*

This qualitative study was commissioned by the Fair Work Commission in the context of the 4 yearly review of modern awards to elicit practical insights from small businesses (1–19 employees) that are end-users of modern awards. The current consultation on modern awards may not necessarily capture the views of end-users from the small business sector who are not active participants (or who pay for their interests to be represented) in the workplace relations system. Accordingly, a citizen co-design process was proposed to engage some of these end-users in a qualitative study.

The overarching objective of the study was to understand the attitudes and behaviours of the small business community in relation to usage and usability of modern awards.

The research relied on the principles of citizen co-design to explore the usability of modern awards by considering matters relating to their format, content structure, language, and usability (known as ‘information architecture’)

A series of six group discussions and ten depth interviews were conducted with small business operators, resulting in a total of 47 individual participants in the study across a range of industries. The research was conducted in Victoria and New South Wales (NSW), across metropolitan and regional locations, from 17 June to 9 July 2014. The sample was split by business size (1-8 and 9-19 employees) and level of familiarity (more or less familiar) with modern awards. In all sessions, respondents explored a range of current modern awards and then compared these experiences with an exemplar modern award. The information architecture was further examined via a series of tasks that participants were asked to complete.

Consistent themes emerged across regional and metropolitan employers. These themes were also consistent across Victorian and NSW participants. Essentially, small business operators in this study faced similar challenges in relation to the modern awards.

As the study was qualitative in nature, the findings cannot be generalised across the entire small business community.

Source Sweeney Research, ‘A Qualitative Research Report on: Citizen co-design with small business owners’, prepared for the Fair Work Commission, August 2014, p. 5, <fwc.gov.au/documents/sites/awardsmodernfouryr/citizen-codesign-report.pdf>, viewed 10 December 2015.

3.67 Figure 3.1 (above) sets out the research design of research conducted by Sweeney Research for the Fair Work Commission. The report was made public in August 2014. The research found that the small business community had ‘very little confidence in the current modern awards’.⁵⁶ Specifically, the small business owners surveyed noted that the information in modern awards tends to be complex and convoluted which can lead to disengagement. As the report concluded:

...the challenges faced by the smaller end of the business community suggest that regulatory documents will struggle to have optimal impact if not presented in a manner that demonstrates an appreciation of the needs and capabilities of the end-user. Information that is too hard to deal with may result in ‘best guess’ solutions or avoidance of the document altogether.⁵⁷

3.68 The Sweeney research report noted that small businesses’ ‘best guess’⁵⁸ approach included practices such as paying above the award for fear of misinterpreting the award’s conditions. In the report’s own words:

A key implication of the current modern award information architecture is that low expectations and poor experiences were acting as barriers to using the modern awards for the participants. At the same time, participants were acutely aware of needing to adhere to and follow the modern awards. To manage this apprehension, most participants reported simply paying a little above modern award pay rates as a form of insurance, so they didn’t get caught out. They also reported providing basic holiday and leave entitlements but relied on reaching some understanding with employees about many of the other provisions around breaks and penalties.⁵⁹

3.69 The Sweeney report added that this approach is a disincentive to employ:

56 Sweeney Research, ‘A Qualitative Research Report on: Citizen co-design with small business owners’, prepared for the Fair Work Commission, August 2014, p. 6. fwc.gov.au/documents/sites/awardsmodernfouryr/citizen-codesign-report.pdf, viewed 10 December 2015.

57 Sweeney Research, ‘A Qualitative Research Report on: Citizen co-design with small business owners’, prepared for the Fair Work Commission, August 2014, p. 7.

58 Sweeney Research, ‘A Qualitative Research Report on: Citizen co-design with small business owners’, prepared for the Fair Work Commission, August 2014, p. 25.

59 Sweeney Research, ‘A Qualitative Research Report on: Citizen co-design with small business owners’, prepared for the Fair Work Commission, August 2014, p. 7.

Some participants were changing their employment practises in order to avoid dealing with the modern awards, i.e. not hiring or moving toward contract labour.⁶⁰

- 3.70 For many industries that have awards tailored to a range of tasks, such as construction and hospitality, it can be difficult for small business owners to ensure employees get correctly paid for each task that they perform. Sweeney Research made the following observations:

A key challenge for these small business operators was that there did not seem to be a modern award that clearly represented the type of activities of their employees. Participants stated that employees of small businesses are often required to multi-task and do not fit into neat or clear categories. For example, the same employee in a café could be part chef, part wait staff and part dish hand. This raised the key question for some participants of whether the modern awards were actually relevant to their business. Classification remained difficult even where an employee could be allocated to the role in which they perform the majority of their work, as this could still change depending on, for example, work flow, or peak times versus off-peak times.⁶¹

- 3.71 The Chamber of Commerce and Industry provided a detailed example of how the complicated award structure affects the construction industry:

The over-regulation of awards not only reduces flexibility, but also frequently establishes provisions that are overly onerous or difficult to for an employer to comply with. By way of example, the Building and Construction General On-site Award 2010 [MA000020] (Building Industry Award) provides for 69 separate allowances that may apply to an employee. Frequently, these allowances are payable based on the nature of work or the type of equipment that the employee is using for all or part of that day. These provisions require employers to maintain exceptionally complex records in order to be able to identify when allowances are payable. For example, clause 22.2(o) of the Building Industry Award provides that:

(o) Heavy blocks – employees laying other than standard bricks

60 Sweeney Research, 'A Qualitative Research Report on: Citizen co-design with small business owners', prepared for the Fair Work Commission, August 2014, p. 7, <fwc.gov.au/documents/sites/awardsmodernfouryr/citizen-codesign-report.pdf>, viewed 15 June 2015.

61 Sweeney Research, 'A Qualitative Research Report on: Citizen co-design with small business owners', prepared for the Fair Work Commission, August 2014, p. 27, <fwc.gov.au/documents/sites/awardsmodernfouryr/citizen-codesign-report.pdf>, viewed 15 June 2015.

(i) Employees employed laying blocks (other than concrete blocks for plugging purposes) must be paid the following additional rates:

- where the blocks weigh over 5.5 kg and under 9 kg—3.2% of the hourly standard rate per hour;
- where the blocks weigh 9 kg to 18 kg—5.8% of the hourly standard rate per hour;
- where the blocks weigh over 18 kg—8.2% of the hourly standard rate per hour.

In order to comply with this provision, the employer's payroll function needs to know not only when the employee commenced and finished work that day, but also what work has been performed (in this case laying blocks), the nature of the that work (in this case how heavy the blocks are) and for how long the employee was engaged in that activity.⁶²

3.72 Ms Madeleine Skerritt, co-owner of a small building business, felt that this award had been developed with little thought as to small businesses' ability to execute without assistance from specialists. Ms Skerritt provided an example of a typical employee's workday, outlining the onerous task her small business has in processing wages:

...on any given day we could be removing asbestos, working at heights, working in confirmed (sic) spaces, installing insulation, engaged in dirty work, lifting heavy blocks, carrying fuels & oils, spraying plaster, bagging bricks, cutting tiles, using secondhand timber, repairing roofs, computing quantities, and using pneumatic tools; each of these activities attracts a 'special rate' which is an additional hourly rate on top of the standard rate. These additional rates all vary depending upon the activity.

For instance Wednesday of last week we undertook the following activities that attract special rates:

- Removed asbestos for 1 hour - 4% added to hourly rate for wearing protective clothing & 10.8% added to hourly rate for asbestos removal
- Installed insulation for 2.5 hours - 4% added to hourly rate
- Crawled under a floor for 2.5 hours - 3.2% added to hourly rate for dirty work and 4% added to hourly rate for confirmed (sic) work

62 Chamber of Commerce and Industry of Western Australia, *Submission 23*, p. 18. See also Madeleine Skerritt, *Submission 6*.

- Lifted heavy blocks for 0.5 hour – 3.2% added to hourly rate for blocks under 9 kgs and 5.8% added to hourly rate for blocks under 18 kgs.
- Used a pneumatic tool for 0.5 hour – 17.6% added to the hourly rate
- Used secondhand timber for 2 hours - 12.6% added to hourly rate

As you can see detailed diary entries are required throughout the day to keep track of what activities were undertaken and for how long, in order to calculate the pay for our employee; this is an onerous task.⁶³

3.73 In a similar vein, the Council of Textile and Fashion Industries of Australia (TFIA) Limited submitted that the current Textile, Clothing and Footwear (TCF) Award also does not provide the requisite flexibility that meets the reality of their industry. For example, the TCF award limits the amount of hours that a casual employee can work, requiring part time employees to work a minimum of 15 hours per week. Additionally, the award places the onus on small businesses to ensure compliance of their contractors as well as the contractors employed by their contractors. This is not suited to the intermittent nature of the TCF industry. As the TFIA argued:

The current TCF Award, its rules around using contractors, and the onerous paperwork required when employing outworkers, has discouraged many businesses from using Australian workers, and in fact even disallows businesses from being created – let alone employing. TFIA members have reported that they have lost work due to the current legislation. This reduction in work has meant their turnover has been affected and they have had to reduce their staff levels to survive. Many businesses such as manufacturers are hesitant to work with new clients based on their need to give people ongoing full or part time work (minimum 15 hours per week) and concerns around being able to continue this capacity. Others have had to make decisions to look at options other than manufacturing in Australia in order to maintain the commercial viability of their businesses.⁶⁴

3.74 Ms Jenny Layton, Member, TFIA, provided a specific example of where the award provisions had led to an employee resorting to welfare:

We had a pattern maker – and it is not just the machinist – who worked for 11 people. She was a single mother with three kids. She had been working in the industry, but every time the kids

63 Madeleine Skerritt, *Submission 6*, pp. [1-2].

64 Council of Textiles and Fashion Industries of Australia Ltd. (TFIA), *Submission 25*, p. [2].

were sick et cetera she lost time out. So she set up in her garage and worked for 11 different people as a contractor. She borrowed \$25,000 from the bank to buy all the equipment needed. She is now on Centrelink payments and has moved to Ballarat because none of those people could guarantee her a minimum of 15 hours a week every week of the year. She went down to about two. We took her on for quite a few days, but we could not guarantee her either, because we have five pattern makers in-house. She ended up working for Bunnings at weekends, but it was not enough to keep her going. She was earning about \$155,000 a year, and she is now on Centrelink payments. That happened in six months. It happened about a month ago.⁶⁵

- 3.75 Mr Philip Endersbee, Member, TFIA, advised that the TCF Industry is the only such industry to have this award and it is severely stifling growth and employment prospects:

In the building industry, with plasterers, painters, electricians et cetera, if one said that the builder was totally responsible for every one of these people – having to fill in a Fair Work submission for everything they do on a quarterly basis and being responsible for going down to the plasterer and not just seeing the subbie but seeing the guys doing the job and working out what their labour rate was and making sure that that labour rate fitted in with the award structure – then you would have mayhem. But that is the way it applies in the textile industry.⁶⁶

- 3.76 Master Electricians Australia claim that modern awards are not flexible enough to fit with the changing business environment:

Award inflexibility is a common theme for members. In an increasingly '24/7' economy, many contractors can only perform maintenance and service work during shut down or quiet periods of business. There is a mismatch between client demand for when the work is to be performed and the inflexibilities in the modern award with regard to the arrangement of the hours of work ...and...Small businesses, which make up the majority of the employers within the industry, are most significantly impacted in this regard as they rely heavily on the modern award for their terms and conditions of employment. These members describe

65 Ms Jenny Layton, Member, Council of Textile and Fashion Industries of Australia (TFIA), *Committee Hansard*, Melbourne, 13 July 2014, p. 44.

66 Mr Philip Endersbee, Member, Council of Textile and Fashion Industries of Australia (TFIA), *Committee Hansard*, Melbourne, 13 July 2015, pp. 42-43.

that they undertake jobs at a loss in order to win the work and as such have very limited margins on almost all types of work.⁶⁷

3.77 The Ai Group, in their 2014 national CEO survey, found that, modern awards do not always meet the needs of employers:

A number of modern awards provide blanket restrictions on the types of employees that an employer can engage. For example, several awards do not recognise part-time or casual work at all and require employers to only offer full-time employment. This regulatory restriction limits employers' ability to engage employees who may have family responsibilities or require flexible working hours. It also restricts how a business can use labour hire services to manage peaks and troughs in demand. In addition, there are still many awards that do not permit an employer and employee to agree on non-monetary arrangements for working additional hours, such as time off in lieu of an overtime penalty.⁶⁸

3.78 Streamlining of modern awards to support small business' needs has been highlighted as a solution to these problems. Industry bodies such as the Chamber of Commerce and Industry Western Australia call for wider stakeholder consultation in the consideration of this matter, as opposed to previous methods which were limited to third party consultation.⁶⁹

3.79 Modern awards need to be reviewed to make them more user friendly for small businesses with limited resources. In its submission to the inquiry the New South Wales Business Chamber suggested that a simple set of minimum rules be established. These rules would support increase productivity and the employment of new staff via a proposed *Small (Micro) Business Schedule*:

Key features of the Schedule include:

- Applies to any employer, and their employees, when that employer employs four employees or less.
- Regular, fixed starting and finishing times for permanent employees over a maximum of six days per week, variable by agreement, or by the employer on seven days' notice.

67 Master Electricians Australia, *Submission 20*, p. 4.

68 Australian Industry Group (Ai Group), 'National CEO Survey: Burden of Government Regulation', March 2014, p. 22, <aigroup.com.au/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/LIVE_CONTENT/Publications/Reports/2014/Burden_of_Government_Regulation_Mar_2014.pdf>, viewed 19 June 2014.

69 Chamber of Commerce and Industry of Western Australia, *Submission 23*, pp. 4-5.

- Ordinary hours must not exceed 10 hours on any day or shift except by agreement, in which case the maximum number of hours is 12.
- Employees must not be required to work for more than five hours without an unpaid break of at least 30 minutes.
- There will be standardised overtime provisions, with time worked in excess of an average of 38 hours per week by full-time employees to be paid at the rate of 150% for the first three hours, and 200% thereafter. For part-time employees who agree to work extra hours, overtime will not become payable until the part-time employees work in excess of 38 hours per week.
- All wages will be required to be paid in accordance with the Fair Work Act's minimum payment period i.e. weekly, fortnightly or monthly.
- Provision for micro business employers to substitute gazetted public holidays with substitute days, provided employees (or the majority of the workforce) consent.⁷⁰
- The Shop Distributive and Allied Employees Association, however, submitted that any changes to the award system could adversely affect the moral of jobseekers:

Any fundamental change in the award system would seriously disadvantage employees and act as a major disincentive to many who would otherwise seek employment.⁷¹

3.80 The Shop Distributive and Allied Employees Association (SDA), however, submitted that any changes to the award system could adversely affect the morale of jobseekers:

Any fundamental change in the award system would seriously disadvantage employees and act as a major disincentive to many who would otherwise seek employment.⁷²

3.81 Mr Jos de Bruin, Chief Executive Officer, Master Grocers Australia/Liquor Retailers Australia stated that in his industry, the current award system, works well:

In our instance, I think an age-based award is absolutely fine because it does provide flexibility. If someone shines and does well, our members will reward that and they will pay them what they are worth...I think the current stepped award system is satisfactory. It does give our members incentive to employ young people and give them a start. We need that gap. There are lots of menial tasks, particularly when it is busy, when we require just

70 NSW Business Chamber, *Submission 38*, pp. 2-3.

71 Shop, Distributive and Allied Employee's Association, *Submission 15*, p. 8.

72 Shop, Distributive and Allied Employee's Association, *Submission 15*, p. 8.

menial skills that the juniors can perform and perform well. We give more responsibility to the adults. Adults will not be pushing trolleys, filling baskets or taking groceries out to people's car boots and things like that.⁷³

3.82 Mr Peter Strong, the Chief Executive Officer of the Council of Small Business Organisations of Australia (COSBOA), referred to retail and hospitality small businesses' view of ideal workplace relations:

...when it is a retail shop or hospitality or whatever then it should be much simpler. We know what the wages are. And with a small business industrial award I say that what we want is for the employer and the employee, neither of whom is an expert on this, to look at a computer screen and it is obvious: it is 20 bucks, 50 bucks, two hours. Whatever it is, it is really obvious – no ambiguity. You cannot, after you leave, go and complain to someone and say, 'I thought it should have been 10 hours', or whatever. That is our Holy Grail when it comes to workplace relations.⁷⁴

73 Mr Jos de Bruin, Chief Executive Officer, Master Grocers Australia/Liquor Retailers Australia, *Committee Hansard*, Melbourne, 13 July, p. 10.

74 Mr Peter Strong, Chief Executive Officer, Council of Small Business Organisations of Australia, *Committee Hansard*, 11 November 2015, Canberra, p. 5.

Enterprise bargaining

3.83 Figures 3.3, 3.4 and 3.5 explain the meaning and the context of the terms ‘enterprise bargaining’, the ‘better off overall test’ and ‘individual flexibility agreements’.

Figure 3.2 Enterprise bargaining

Enterprise bargaining

Following almost one century of centralised conciliation and arbitration, Australia introduced enterprise-level bargaining in 1993. Enterprise bargaining involves employees working together to reach an agreement with their employer over the terms and conditions of their employment. Enterprise bargaining can potentially yield efficiencies through negotiating and using one, rather than many, individual arrangements. It is also a vehicle for a delicate balance between the parties’ interests. On the one hand, it provides a counterweight to the bargaining power of the employer (the adversarial aspect to bargaining), and, on the other hand, the scope for cementing cooperation between parties that have a mutual stake in the efficiency and performance of the individual enterprise. Enterprise bargaining provides some flexibility to take into account the special circumstances of any one firm. This contrasts with collective bargaining across multiple enterprises and industries (the arrangements preceding 1993), which did not have a focus on the individual enterprise.

Source Australian Government, Productivity Commission, ‘Workplace Relations Framework: Productivity Commission Draft Report Overview’, p. 31

Figure 3.3 The better off overall test (BOOT)

The better off overall test (BOOT)

The application of the BOOT is creating uncertainty during the bargaining process and at the agreement approval stage. The main source of confusion lies with how to assess whether the relevant groups of employees (or prospective employees in the case of a greenfields agreement) are better off overall compared with the relevant award. A particularly vexing issue — for both enterprise agreements and individual flexibility arrangements — is how to trade off non-monetary benefits against other benefits of an award.

While the BOOT is not in principle defective, in practice it has sometimes lent itself to a ‘line by line’ approach, which involves assessing whether the relevant class of employees are made better or worse off by each individual term in the agreement when compared with the relevant term in the award. The intention of the BOOT was that it should be a global test, which takes into account the sum of all the benefits of an agreement and tests those against the overall benefits of the award. Shifting to a new ‘no-disadvantage’ test is likely to assist in supporting that intention. It would still ensure that employees were not disadvantaged compared with the award — an essential requirement — while allowing employees and employers to develop agreements that represent wins for both parties.

Source Australian Government, Productivity Commission, ‘Workplace Relations Framework: Productivity Commission Draft Report Overview’, p. 32.

Figure 3.4 Individual flexibility agreements (IFAs)**Individual flexibility agreements (IFAs)**

Even when part of an enterprise agreement, all employment contracts are, in law, individual arrangements. A WR system merely provides different ways in which such contracts can be packaged, weighing up the advantages and disadvantages of individual flexibility, the costs of contract variations across workers in the same enterprise, and the risks of power imbalances that arise from different contractual arrangements.

While most employees are paid at rates determined by an enterprise agreement or stipulated in an award (figure 1), a sizeable minority are paid on an individual basis at above-award rates. A relatively few — around 2 per cent of all employees covered by the Fair Work Act — have formed so-called ‘individual flexibility arrangements’ under the Act.

In principle, individual flexibility arrangements allow an employee and employer to negotiate terms and conditions that suit their personal circumstances. For example, an individual flexibility arrangement may change rostering arrangements to suit an employee and an employer. An individual flexibility arrangement may allow, but does not require, an employee to forgo some award or enterprise agreement conditions so long as they pass a ‘better off overall test’ as described above. (The BOOT is against the enterprise agreement if an employee is opting out of the agreement, but otherwise against the pre-existing award or award-based arrangement.) No agreement can trade off conditions specified under the National Employment Standards.

Individual flexibility arrangements represent a new marque of statutory individual arrangements, and supersede several variants of Australian Workplace Agreements (AWAs). Under WorkChoices, AWAs were not subject to a no-disadvantage test, and were contentious because some employees who lacked bargaining power had their entitlements reduced. Such AWAs were offered as a condition of employment (‘take it or leave it’) and had a low safety net threshold. Available data suggest the take up of AWAs was around 3 per cent of employees. Prior to WorkChoices, AWAs had stronger protections and were less controversial.

Source Australian Government, Productivity Commission, ‘Workplace Relations Framework: Productivity Commission Draft Report Overview’, p. 35.

3.84 Enterprise bargaining has been highlighted as a barrier to overcoming the expense of penalty rates. While some large businesses and corporations such as McDonald’s, are able to use their resources to develop enterprise agreements to alleviate these costs, small businesses that are under resourced often do not have such luxuries. Instead, they are subject to ill-fitting awards that hinder a small businesses’ ability to flourish.

3.85 The Productivity Commission points out:

Enterprise bargaining generally works well, although it is often ill-suited to smaller enterprises. However,

- the 'better off overall test' used to assess whether an agreement leaves employees better off compared with the award can sometimes be applied mechanically, losing some benefits of flexibility for employees and employers. Switching to a no-disadvantage test with guidelines about the use of the test would encourage win-win options. The same test should be used for individual arrangements
 - bargaining arrangements for greenfields agreements pose risks for large capital-intensive projects with urgent timelines. A limited menu of bargaining options would address the worst deficiencies, while taking account of the different nature of greenfields projects.⁷⁵
- 3.86 The line by line approach of the better off overall test (BOOT) leaves small business employees worse off.
- 3.87 While enterprise agreements still need to meet the BOOT, a large business' ability to tailor these agreements to suit their business gives them an unfair advantage. Further, there are claims that the BOOT is inconsistent in its evaluation methods and its outcomes can depend on the views of the individual assessor.⁷⁶
- 3.88 CCIWA recommends that a simplified system be made available for small businesses that enable them to establish their own enterprise agreements without the need for specialist assistance.⁷⁷

Individual flexibility agreements

- 3.89 A solution to the inability of many small businesses to effectively bargain is with the ability to provide an individual flexibility agreement (IFA) for each of their employees. Each IFA is intended for businesses to be able to fairly adjust a worker's pay and conditions to best suit the needs of both the business and the employee.
- 3.90 Business South Australia outlined the benefit of an IFA over an enterprise agreement:
- Individual agreements are necessary in the Australian workplace environment as collective bargaining is not practical for small business. These businesses are characterised by their informal nature and the close relationship between owners and employees. Often small businesses seek to simplify their industrial

75 Australian Government, Productivity Commission, 'Workplace Relations Framework: Productivity Commission Draft Report Overview', p. 4, <<http://www.pc.gov.au/inquiries/current/workplace-relations/draft/workplace-relations-draft-overview.pdf>>, viewed 11 December 2015.

76 Chamber of Commerce and Industry of Western Australia, *Submission 23*, p. 27.

77 Chamber of Commerce and Industry of Western Australia, *Submission 23*, p. 27.

arrangements and provide working conditions that cater for the needs of their individual employees and their business. The use of external bargaining agents often goes against the culture of a small business, where employer and employee relations are established and maintained on personal interaction. Further to this, collective bargaining is cost-inhibitive to small businesses, and our members tell us that they see entering into a collective agreement as unnecessary and more geared towards larger organisations that can find efficiencies in agreement making on a larger scale. It is important that individual workers and their employer are able to reach agreements, departing from the relevant award or enterprise agreements, subject to the worker not being disadvantaged.⁷⁸

- 3.91 IFAs are only able to be used if each agreement is able to meet the BOOT. The BOOT, however, also has its drawbacks as the Victorian Automobile Chamber of Commerce (VACC) explained:

In addition, the Better Off Overall Test (BOOT) has also prevented employers from achieving workplace flexibility and productivity. The new BOOT has effectively taken productivity out of the equation in negotiating an enterprise agreement. This is contrary to the objectives at the beginning of the Fair Work Act 2009 and in section 171.⁷⁹

- 3.92 The VACC believes that the forgone 'no disadvantage test' was a better and fairer option than the BOOT:

[With the BOOT] There is no scope for an employer to negotiate flexible pay arrangements and working arrangements that suit the nature of the business. The 'no disadvantage test' that operated prior to 27 March 2006 provided employees with some scope for flexibility and productivity, but within defined parameters.⁸⁰

- 3.93 The Chamber of Commerce and Industry of Western Australia also believes this test is of greater benefit than the BOOT:

Having a no disadvantage test against the [National Employment Standards] would also allow for the speedy approval of agreements that could be administratively applied, without the cost associated with approval by members of the FWC.⁸¹

- 3.94 The Productivity Commission sees benefit in a no disadvantage test:

78 Business South Australia, *Submission 27*, p. 2.

79 Victorian Automobile Chamber of Commerce, *Submission 21*, p. 15.

80 Victorian Automobile Chamber of Commerce, *Submission 21*, p. 15.

81 Chamber of Commerce and Industry of Western Australia, *Submission 23*, p. 27.

Shifting to a new 'no-disadvantage' test is likely to assist in supporting that intention. It would still ensure that employees were not disadvantaged compared with the award – an essential requirement – while allowing employees and employers to develop agreements that represent wins for both parties.⁸²

Unfair dismissal

- 3.95 Unfair dismissal laws are an accepted part of the Australian worker protection landscape. By law an employer cannot dismiss an employee in a 'harsh, unjust or unreasonable' manner.
- 3.96 In some evidence received, unfair dismissal laws were presented as a deterrent to small businesses taking on new employees. The evidence indicates that current unfair dismissal laws have resulted in many employers being wary of employing permanent staff, and instead of using casuals, family members and contractors. This evidence will be discussed here.
- 3.97 Submitters suggested the current unfair dismissal laws are geared at the protection of the employee providing low risk and low cost access to reinstatement. However, small businesses are often faced with considerable time and financial costs, such as the requirement for legal representation, sometimes through no fault of their own.⁸³ The Productivity Commission stated:

The most problematic aspect of the current legislation is that an employee who has clearly breached the normal expectations of appropriate work behaviour may nevertheless be deemed to have been unfairly dismissed because of procedural lapses by the employer. For example, in one case a business dismissed two employees after they assaulted their supervisor.¹ The FWC concluded that their physical assault was a valid reason for dismissal, but that the employer's failure to follow certain procedures meant that the dismissals were unjust, unreasonable and therefore unfair.⁸⁴

82 Australian Government, Productivity Commission, 'Workplace Relations Framework: Productivity Commission Draft Report Overview', p. 32, <<http://www.pc.gov.au/inquiries/current/workplace-relations/draft/workplace-relations-draft-overview.pdf>>, viewed 11 December 2015.

83 Chamber of Commerce and Industry of Western Australia, *Submission 23*, pp. 32-33.

84 Australian Government, Productivity Commission, 'Workplace Relations Framework: Productivity Commission Draft Report Overview', pp. 27-28, <<http://www.pc.gov.au/inquiries/current/workplace-relations/draft/workplace-relations-draft-overview.pdf>>, viewed 11 December 2015.

3.98 The Chamber of Commerce and Industry of Western Australia stated:

In the case of small businesses, concern over the unfair dismissal laws affects their preparedness to employ staff, or results in them seeking to limit their exposure to the provisions through the engagement of casual or labour hire employees. This is particularly the case amongst those businesses which have had to deal with an unfair dismissal application.⁸⁵

3.99 Master Builders Australia lamented the extensive process involved in dealing with an unfair dismissal case, which is time taken away from a small business' ability to operate efficiently:

After the first 12 months of service of an employee, a dismissal by a small business employer can be challenged on both substantive and procedural fairness grounds. The issue is that sometimes the procedural fairness elements are not met. Even though there is the Small Business Fair Dismissal Code in place at the moment, that was designed to recognise the particular position of small business. But it is not well used, because you have to prove that you have complied with it. So quite often our members are caught up by the procedural fairness elements – the written warnings, the counselling, the requirement perhaps to train a person if they are lacking in a specific area related to their performance. There is a massive body of case law that has grown up in this area.

Ultimately, unfair dismissal, if you employ one or two people, can be an extraordinary strain on their business because that is 50 per cent of your workforce.⁸⁶

3.100 The Victorian Automobile Chamber of Commerce stated that 'employers are not granted the same procedural fairness allocated to employees',⁸⁷ contributing to a wariness among small businesses in employing permanent staff.

3.101 Mr William Chesterman, Industrial Relations Manager, Victorian Automobile Chamber of Commerce, provided an example of where the employer had a strong case the process simply became too expensive and the matter settled to eliminate further costs to the business:

You will have certain lawyers and consultants picking off the process and taking a small business employer to court or the Fair Work Commission. I went through it only the other day. It was a

85 Chamber of Commerce and Industry of Western Australia, *Submission 23*, p. 33.

86 Mr Richard Calver, National Director, Industrial Relations and Legal Counsel, Master Builders Australia, *Committee Hansard*, Canberra, 24 June 2015, p. 5.

87 Victorian Automobile Chamber of Commerce, *Submission 21*, p. 8.

larger employer; it was a dealership. It was quite clear that there was one of the fee-for-win-only consultants representing the employee, and it was pretty clear when the consultant dropped the claim from 12 weeks to six weeks that he recognised that the employer did not really have much of a case after we had presented our position. I said that we should run it because I thought we had a good case. He said, 'That means I take four mechanics out of a dealership for a day and a half or two days. We'll settle for four weeks,' and that is what we did. That is one of the problems that I have with the unfair dismissal process.⁸⁸

3.102 Small businesses that are faced with, or have been affected by, the onerous and expensive task of defending themselves against an unfair dismissal claim are more likely to have a tendency to employ more casual staff in place of part-time or permanent.

3.103 Providing 'go away money', which pays the claimant to drop the case, is a method often used by small businesses to avoid lengthy and costly cases. The Australian Chamber of Commerce and Industry stated:

'Go away money' is an entrenched part of the system. Three quarters of matters conciliated settle with a monetary payment and 80 per cent of employers are influenced by the desire to avoid the cost, time, inconvenience or stress of further legal proceedings in choosing to settle rather than proceeding to an arbitrated outcome. Employers make commercial decisions to dispense with applications rather than incur further expenditure defending a claim.⁸⁹

3.104 The Victorian Automobile Chamber of Commerce provided an example of where 'go away money' had been used by one of their members to avoid ongoing unfair dismissal costs:

An apprentice was dismissed after the owner of a business found his apprentice at the workplace on Good Friday with three of his friends. The apprentice and his friends were working on their cars and drinking alcohol. Two other employees were also on the premises however they were authorised to be there.

When the apprentice was asked to remove the vehicles, the apprentice swore at the owner and then on removing the last vehicle, he spun the wheels throwing up stones over the employer

88 Mr William Chesterman, Industrial Relations Manager, Victorian Automobile Chamber of Commerce, *Committee Hansard*, Melbourne, 13 July 2015, p. 40.

89 Australian Chamber of Commerce and Industry, *Submission 22*, p. 33. See also Chamber of Commerce and Industry of Western Australia, *Submission 23*, p. 32, and Victorian Automobile Chamber of Commerce, *Submission 21*, p. 8.

and his companions who were present. The apprentice also drove a vehicle off the property although he did not have a Victorian licence and spun the wheels again 100 metres from the business premises. The employee was dismissed.

The apprentice made an unfair dismissal claim and his defence was that other people were on the premises too. The matter was settled for four weeks' pay. The owner decided it would be too expensive and time consuming to go through a hearing.⁹⁰

Employee v contractor

3.105 Whether a worker is characterised as an employee or a contractor has implication for a small business. As Mr Mark Brennan, Australian Small Business Commissioner explained:

...there are more compliance requirements associated with engaging an employee than there are for engaging a contractor. That underpins where the problem is. There seems to be a looseness. You could be a contractor for one purpose and an employee for another. In some sectors it seems to operate that way as a matter of convenience. By way of example, in one of my previous positions I was the Victorian Small Business Commissioner, the first commissioner of any type anywhere, and we dealt with the owner-drivers sector. The bigger transport companies tended to treat the owner-drivers as employees when it suited them and contractors when it suited them.⁹¹

3.106 In his submission, the Australian Small Business Commissioner also acknowledged the complexity of the employee/contractor distinction:

... The line between employee and contractor is grey. It can be time consuming to determine if a person meets the requirements of a contractor and getting this wrong can have a significant financial impact on a small business.

And

...there is no one definition of a contractor. Instead are a number of factors which may contribute to determining whether a worker is an employee or a contractor.⁹²

90 Victorian Automobile Chamber of Commerce, *Submission 21*, p. 27.

91 Mr Mark Brennan, Commissioner, Australian Small Business Commission, *Committee Hansard*, Canberra, 3 June 2015, p. 2.

92 The Australian Small Business Commissioner, *Submission 11*, pp. [3 & 5].

3.107 The Fair Work Ombudsman (FWO) sets out the factors that contribute to determining between an employee and an independent contractor in the following table (Table 3.1):

Table 3.1 Who is an employee? Who is an independent contractor?

Indicator	Employee	Independent Contractor
Degree of control over how work is performed	Performs work, under the direction and control of their employer, on an ongoing basis.	Has a high level of control in how the work is done.
Hours of work	Generally works standard or set hours (note: a casual employee's hours may vary from week to week,	Under agreement, decides what hours to work to complete the specific task.
Expectation of work	Usually has an ongoing expectation of work (note: some employees may be engaged for a specific task or specific period).	
Risk	Bears no financial risk (this is the responsibility of their employer).	Bears the risk for making a profit or loss on each task. Usually bears responsibility and liability for poor work or injury sustained while performing the task. As such, contractors generally have their own insurance policy.
Superannuation	Entitled to have superannuation contributions paid into a nominated superannuation fund by their employer.	Pays their own superannuation (note: in some circumstances independent contractors may be entitled to be paid superannuation contributions).
Tools and equipment	Tools and equipment are generally provided by the employer, or a tool allowance is provided.	Pays their own superannuation (note: in some circumstances independent contractors may be entitled to be paid superannuation contributions).
Tax	Has income tax deducted by their employer.	Pays their own tax and GST to the Australian Taxation Office.
Method of payment	Paid regularly (for example, weekly/fortnightly/monthly).	Has obtained an ABN and submits an invoice for work completed or is paid at the end of the contract or project.
Leave	Entitled to receive paid leave (for example, annual leave, personal/carers' leave, long service leave) or receive a loading in lieu of leave entitlements in the case of casual employees.	Does not receive paid leave.

Source Australian Government, Fair Work Ombudsman, 'Contractors and employees - what's the difference?', <<http://www.fairwork.gov.au/about-us/policies-and-guides/fact-sheets/rights-and-obligations/contractors-and-employees-whats-the-difference>>, viewed 2 October 2015.

- 3.108 The Small Business Commissioner commented on the ATO's and FWO's advice:

...no one resource can provide certainty and if a worker is determined to be a contractor by one agency they are not necessarily a contractor for another agency's purposes. In addition, if you change answers you can get a different result, for example, changing the basis of payment in the ATO Tool from a quoted price with progress payments to a price per activity completed (sic) changes the results from a contractor to an employee. There is a need for greater clarity, particularly across government agencies.⁹³

- 3.109 Master Builders Australia pointed to a specific example of how confusing definitions between employees and contractors can be when looking at the issue of payment of worker's compensation:

Whether a builder has responsibility for payment of workers' compensation to a subcontractor depends upon the definition of 'worker' in the workers' compensation legislation of the State or Territory where the work is being done.

The legislation may define persons as 'workers', and therefore as employees, despite the fact that by other tests, and for all other purposes they are independent contractors.

WorkCover NSW provides the following advice (per an advisory sheet titled Worker or Contractor?):

*A person may have been hired as a contractor and be a contractor for other purposes such as tax, but still be a worker for the purpose of workers' compensation.*⁹⁴

- 3.110 The MBA proposed that a government supervised registration system could be established:

... preferably hosted by the Australian Taxation Office (ATO) where contractors can voluntarily register for contractor status, subject to a single set of tests, recognised across agencies and jurisdictions which reflect the operation and conduct of a modern building sector.⁹⁵

93 The Australian Small Business Commissioner, *Submission 11*, p. 4.

94 Master Builders Australia, *Submission 32*, p. 25.

95 Master Builders Australia, *Submission 32*, p. 27.

3.111 The benefits of such a register are that it would 'require minimal Government supervision'⁹⁶ and:

...establish clear separation between commercial law which should govern independent contractors, and workplace relations law which should govern employers and employees.⁹⁷

Figure 3.5 Minimum wages

Minimum wages

Minimum wages in Australia are set by an FWC Expert Panel, taking into account changes in economic conditions and representations, especially from the government, business and union stakeholders. It generally awards modest rises in minimum wages, and its predecessors have occasionally suspended increases during downturns. A commonly used measure of the comparative level of the minimum wage is its ratio to the median wage rate, which also enables meaningful comparisons with other countries. While the minimum-to-median wage ratio remains high in Australia compared with most other countries (France and New Zealand being the notable exceptions), it has declined over the past decade.

Source Australian Government, Productivity Commission, 'Workplace Relations Framework: Productivity Commission Draft Report Overview', p. 13, <<http://www.pc.gov.au/inquiries/current/workplace-relations/draft/workplace-relations-draft-overview.pdf>>, viewed 14 December 2015.

96 Master Builders Australia, *Submission 32*, p. 27.

97 Master Builders Australia, *Submission 32*, p. 27.

Figure 3.6 Wages for juniors, apprentices and trainees**Wages for juniors, apprentices and trainees**

The FWC sets out minimum pay rates for younger workers, apprentices and trainees. Wage rates for juniors are a share of the adult minimum wage and increase with age until the person reaches 21 years old (although some awards vary this). Similarly, trainee wage rates also have an age-based structure, with rates depending on the time elapsed since leaving school. Apprentice wages vary across awards and are set as a proportion of a qualified tradesperson's wage and increase the closer the apprentice is to completion.

Australia is one of around the fifty per cent of OECD countries that set youth wages as a share of the adult rate. Indeed, notwithstanding the high ratio of the adult minimum wage to median wages, Australian youth wages start at comparatively low levels relative to those in many other countries. For example, a fast food level 1 employee aged under 16 years could have more than a year of experience, but would get \$7.59 an hour (44 per cent of the adult minimum wage). In many states in the United States, many such employees would receive at least US \$8. The decisive test in some countries is not age per se, but also experience, with substantially lower wages for someone with short experience in a job. In the United States, the federal minimum wage is around 60 per cent of the adult minimum for a person aged under 20 who has worked with their employer for less than 90 days. New Zealand has a similar system, with no minimum wage for people aged less than 16 years, and a discounted wage for 16- and 17-year olds with less than six months job experience with their employer.

Source Australian Government, Productivity Commission, 'Workplace Relations Framework: Productivity Commission Draft Report Overview', p. 18, <<http://www.pc.gov.au/inquiries/current/workplace-relations/draft/workplace-relations-draft-overview.pdf>>, viewed 14 December 2015.

The general cost of labour

- 3.112 The cost of labour in general can potentially inhibit small business employment. The higher the cost of the employee, the less likely a small business will be able to afford to employ. Chapter 2 outlines a number of wage subsidies that the Australian Government have instituted.
- 3.113 The overarching need for a business to successfully manage wage and other costs is critical to business success:

Management of costs is an important factor for the successful operation of all businesses. In the case of retail, hospitality and other service based industries, wages is one of the most significant costs.⁹⁸

3.114 In service orientated industries such as hospitality wage costs are of particular importance given the labour-intensive nature of the work that is often undertaken outside standard operating hours. Restaurant and Catering Australia noted that:

As a sector dominated by small business, the hospitality sector bears a disproportionate cost burden of the workplace relations system due to its labour intensity and customer service focus. R&CA's 2015 Industry Benchmarking Survey found wages and staff on-costs can represent up to 42.1 per cent of a business's expenses.⁹⁹

3.115 Restaurant and Catering Australia also identified a range of other issues. Their submission stated:

Payroll tax, PAYG, superannuation, penalty rates and income tax obligations all represent a greater proportion of revenues compared to small businesses operating in other sectors. In addition, the impact of penalty rates is greatest on those industries where the days and hours of work are not considered 'standard', meaning industries where weekend, evening and night work are common. The hospitality industry is no exception to this rule.¹⁰⁰

3.116 The Australian Chamber of Commerce and Industry identified a direct link between the cost of wages and a small business's ability to create jobs:

When capacity of employers to offer sufficient work is constrained (including as a result of operational and compliance costs), this heightens the risk that too large an increase in the minimum wage will lead to reduced employment and working hours.¹⁰¹

3.117 In the small business employment market where skills and experience are critical to employment decisions, junior wages cutting out after age 20 acts as a disincentive for small business to employ younger workers between the ages of 20 and 25. Fingerprint Me Youth Employment Academy highlighted this issue:

Considering that a twenty year old with no experience, and a skilled forty year old are the same price per hour, deciding who to employ if a business owners personal assets are at stake becomes clear. ... The Fair Work Act has priced youth labour from the age of twenty at a rate that is uncompetitive for small business to contemplate.¹⁰²

99 Restaurant and Catering Australia, *Submission 40*, p. 4.

100 Restaurant and Catering Australia, *Submission 40*, p. 8.

101 Australian Chamber of Commerce and Industry, *Submission 22*, p. 21.

102 Fingerprint Me Youth Employment Academy, *Submission 12*, p. 3.

3.118 The statement above refers to Clause 20.3 of the *Restaurant Industry Award 2010* which provides:

20.3 Juniors – minimum wages

(a) The minimum rate of wages for junior employees will be the percentages as set out below of the rate prescribed for the adult classification appropriate to the work performed for the area in which the employee is working.

Age	%
16 years and under	50
17 years and under	60
18 years of age	70
19 years of age	85
20 years of age	100 ¹⁰³

3.119 The key, according to Mr Peter Coronica of Fingerprint Me Youth Employment Academy, is that young people must have the following before the age of 20:

The two things we touched on were making them job ready with job skills, ideally at the end of school, and the career goal. The career goal needs to be realistic. When you have someone who is 20 years of age or beyond entering the workforce without a career goal they end up playing what we call hopscotch, hopping among employers looking for their ideal fit. Employers are fed up. They are tired of young people trying to find themselves in the workplace. If young people at 15 or 16 could have a career goal where there is really realistic demand, say, surveying, when 90 per cent of graduates get full-time work and it is a growing industry – there are many others – 40 per cent of employers claim they cannot fill skilled roles but 32 per cent of university graduates are either unemployed or underemployed. That shows that university is not the ticket anymore. Otherwise, the employers would be filling roles and university graduates would all be getting jobs. So realistic career goals from 15 or 16 work because young people earn 50 per cent to 70 per cent of the adult wage rate. That gives employers an incentive to hire them and to overcome the restrictions in the Fair Work Act from age 20 and above.¹⁰⁴

103 Australian Government, Fair Work Ombudsman, 'Restaurant Industry Award 2010', Clause 20.3, <<http://awardviewer.fwo.gov.au/award/show/MA000119>>, viewed 14 December 2015.

104 Mr Peter Coronica, Chief Executive Officer and Founder, Fingerprint Me Youth Employment Academy, *Committee Hansard*, Melbourne, 13 July 2015, p. 3.

3.120 The Small Business Commissioner, Mr Mark Brennan stated that in regional areas such as Tasmania, the cost of wages is an issue especially when small businesses are in direct competition with the public sector for quality employees:

Small businesses in Tasmania say that one of the real problems for them is that they cannot compete with the public sector in the level of wages. They cannot afford to pay the same rates that the Commonwealth or Tasmania state governments are paying their people. They get some good people in, they get a bit of experience with the small business and then they apply for a job with the government and the government can pay more.¹⁰⁵

3.121 While business groups have often identified minimum wages as a barrier to employment in small business, the union movement has argued the need for adequate minimum wages to attract young people to work in an industry. Mr Ian Blandthorn, Assistant Secretary, Shop, Distributive and Allied Employees' Association told the Committee:

In terms of minimum wages, they are critical to people having any opportunity at all to live decently with dignity. If you cannot get a decent wage in one industry, you are going to go elsewhere, and that is where it impacts on employment. It goes back to the discussion we were having earlier about why a lot of young people look for industries other than the sorts of industries that we deal with for their future. It is because of the levels of income. To cut it further creates an even bigger disincentive for young people to seek or retain employment in these sorts of industries.¹⁰⁶

3.122 Ms Julia Fox, Industrial Officer, Shop, Distributive and Allied Employees' Association, identified the particularly harmful impact that a cut in minimum wages would have on women:

A major disincentive I see in cutting the minimum wage is the impact on women. I think that, when you look back at Work Choices and all the studies that followed into the impact those cuts had on women, that is a really important issue. If you disincentivise and keep reducing the minimum wage or take penalty rates out – women are predominant employees in retail, hospitality, cleaning, the low income sector. That is where women, unfortunately, do make up a lot of the workforce. You are disincentivising by cutting. They will just stay home with children

105 Mr Mark Brennan, Commissioner, Australian Small Business Commission, *Committee Hansard*, Canberra, 3 June 2015, p. 5.

106 Mr Ian Blandthorn, Assistant Secretary, Shop, Distributive and Allied Employees' Association, *Committee Hansard*, Melbourne, 13 July 2015, pp. 22-23.

because the tax system does not work and they are on work that is not able to eventuate a decent income. So I think you have to build female workforce participation into this debate and talk about what can be done to lift that. With the gender gap only getting worse, I think that is something people need to focus on.¹⁰⁷

Workplace health and safety

- 3.123 Onerous and jurisdictionally inconsistent Work Health and Safety (WHS) requirements can dissuade small businesses from employing.
- 3.124 Australia's workplace has gone through recent changes to the workplace health and safety environment has been recently reformed to align all jurisdictions' WHS requirements. These changes, using model WHS legislation are designed to bring all Australian jurisdictions into alignment in their regulation of WHS requirements.
- 3.125 All states and territories except WA and Victoria have implemented the model Work Health and Safety laws.¹⁰⁸

Workers' compensation

- 3.126 Each state and territory has its own workers' compensation scheme and the Commonwealth has three schemes – one for Commonwealth employees and authorities licensed to self-insure under the *Safety, Rehabilitation and Compensation Act 1988* (Commonwealth), one covering seafarers and one covering military personnel.
- 3.127 The Australian Small Business Commissioner highlighted the potential complexity of multi-jurisdictional workers compensation arrangements. He noted that while Function 11b of the *Safe Work Australia Act 2008* relates to the development of national workers' compensation arrangements for employers with workers in more than one state:
- ... seven years later, a small business that has employees based in two or more jurisdictions must register and pay for WorkCover in each applicable state or territory.
- This adds red tape and complexity to business operation and could operate as a barrier to business expansion. For example, if a

107 Ms Julia Fox, Industrial Officer, Shop, Distributive and Allied Employees Association, *Committee Hansard*, Melbourne, 13 July 2015, p. 23.

108 Safe Work Australia, 'Jurisdictional progress on the model work health and safety laws', <<http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/pages/jurisdictional-progress-whs-laws>>, viewed 16 December 2015.

small financial advisory firm in New South Wales (NSW) expands into the Australian Capital Territory (ACT) and, as such, moves one employee to Canberra to set-up and operate the office the employer now has to pay WorkCover premiums in NSW and the ACT, despite having the same number of employees.¹⁰⁹

3.128 The Commissioner recommended either:

- reciprocal arrangements be established for small business employers whereby the business only registers and pays for WorkCover in their principal jurisdiction of operation but receives employee coverage Australia-wide; or
- a national WorkCover arrangement be established enabling small businesses to opt for affordable national rather than state-by-state coverage.¹¹⁰

Penalty rates

3.129 The Productivity Commission describes penalty rates as follows:

Many Australians work non-standard hours either by working longer than the 38 hour norm under the National Employment Standards or by working at non-standard times, such as at night or on weekends. They are compensated by regulated premiums on normal wage rates (sometimes generically categorised as 'penalty' rates).

Penalty rates are strongly dependent on when work is undertaken and the total time spent working. The three principal time-related wage rates are:

- shift loadings, and weekend and evening pay premiums. These are requirements placed on employers to pay additional wages at certain times of the day or on certain days of the week, and are not dependent on how many hours in total a person has worked during the week
- overtime rates, which represent higher wage rates for hours worked greater than the usual ordinary hours listed under an award or an agreement
- payments for working on public holidays.¹¹¹

109 The Australian Small Business Commissioner, *Submission 11*, p. 4.

110 The Australian Small Business Commissioner, *Submission 11*, p. 4.

111 The Australian Government Productivity Commission, *Workplace Relations Framework: Draft Report*, August 2015, p. 22, <<http://www.pc.gov.au/inquiries/current/workplace-relations/draft/workplace-relations-draft.pdf>>, viewed 14 September 2015.

- 3.130 Two of the industries most affected by penalty rates are retail and hospitality.
- 3.131 The *General Retail Industry Award 2010* provides for the following:
- On Monday to Friday evenings a penalty payment of an additional 25% will apply for ordinary hours worked after 6.00 pm. This does not apply to casuals;
 - On Saturday a penalty payment of an additional 25% will apply for ordinary hours worked on a Saturday for full-time and part-time employees. A casual employee must be paid an additional 10% for work performed on a Saturday between 7.00 am and 6.00 pm;
 - On Sunday a penalty payment of an additional 100% loading will apply for all hours worked on a Sunday. This penalty payment also applies to casual employees; and,
 - Work on a public holiday must be compensated by payment at the rate of an additional 150%.¹¹²

- 3.132 The *Hospitality Industry (General) Award 2010*¹¹³ provides for the following:

An employee performing work on the following days will be paid the following percentage of the minimum wage rate in clause 20 – Minimum wages for the relevant classification:

	Monday to Friday %	Saturday %	Sunday %	Public Holiday %
<i>Full-time and part time</i>	100	125	175	250
Casual (inclusive of the 25% casual loading)	125	150	175	275

Arguments against penalty rates

- 3.133 Service orientated industries, such as hospitality, that operate often in a seven day per week trading environment with high staffing needs, have been quite vocal about the additional costs of operating on days that attract penalty rate payments for their employees.

112 Australian Government, Fair Work Ombudsman, 'General retail industry award 2010', clause 29.4, <https://www.fwc.gov.au/documents/documents/modern_awards/award/MA000004/default.htm>, viewed 29 January 2016.

113 Australian Government, Fair Work Ombudsman, 'Hospitality Industry (General) Award 2010', clause 32.1, <https://www.fwc.gov.au/documents/documents/modern_awards/award/MA000009/default.htm>, viewed 29 January 2016.

- 3.134 Restaurant and Catering Australia, for example, stated that penalty rates have significant impacts on hospitality small businesses' ability to employ:

Australia's workplace relations framework remains the single largest impediment to employment growth in the hospitality industry in Australia. Research commissioned by R&CA indicates business owners are more likely to reduce staff hours on Sundays and public holidays, limiting employment opportunities that could have resulted should these businesses have remained open.¹¹⁴

- 3.135 Mr Stephen Smith, Director, National Workplace Relations Policy, Australian Industry Group also identified the challenges that many businesses in the hospitality and retail sectors face when trading in a 24/7 environment:

In some industries such as fast-food restaurants and retail, many employers, particularly small businesses, struggle to keep their doors open because of the level of weekend penalty rates in the relevant awards. Australian consumers expect to be able to go out for a meal, buy a coffee or go shopping on any day of the week and they expect to pay reasonable prices when they do, and it is a reasonable expectation. In many cases the employees who work on the weekend in these industries are young people who are not available to work during the week and they would be happy with the rate of pay which applies on weekdays. A high proportion of employees get their first job in the fast-food, retail or restaurant industries regardless of what industry they end up building their career in.¹¹⁵

- 3.136 Restaurants and Catering Australia argued that, in situations such as this penalty rates can be an inhibitor for businesses in creating employment opportunities:

Small businesses such as cafés now find themselves in the absurd situation where the business owner is forced to work seven days a week and earn less than the minimum wage. Employees in small businesses are also affected by being rostered to work less hours or no longer being required to work on

114 Restaurant and Catering Australia, *Submission 40*, p. 4.

115 Mr Stephen Smith, Director, National Workplace Relations Policy, Australian Industry Group, *Committee Hansard*, Melbourne, 13 July 2015, p. 24.

weekends and public holidays where high penalty rates make trading commercially unviable.¹¹⁶

- 3.137 The general shift nationwide toward seven day per week trading has put added pressure on small businesses given the requirement to pay penalty rates. Master Grocers/Liquor Retailers Australia made the following comment on seven day trading:

Seven day trading is now the norm in Australia, however, the restrictive penalty rates, especially on Sundays, severely impact on the viability of small businesses in particular, and act as a disincentive to create additional weekend employment.¹¹⁷

- 3.138 The National Retail Association (NRA) suggested that penalty rates are a major factor in weekend business closures, and limited staff in those that choose to remain open:

Feedback from our members indicates that the current workplace relations regime has prompted a significant proportion of smaller retailers on Sundays and public holidays, either to remain closed or to limit their staffing to proprietors and family members only, to avoid the imposition penalty rates. This trend is notably high in the cafes and restaurants category, as well as fast food and personal services, but it is also evident in many core categories of retail such as fashion, hardware and home wares. While trade and revenues may be higher on Sundays and public holidays, the additional labour costs imposed typically make the day less profitably than normal trading days. When this causes retailers to close, this not only denies staff the opportunity of work, but it also hinders profitability by forcing the business to attempt to recover its fixed costs over a shorter trading period each week.¹¹⁸

- 3.139 Business South Australia made a similar comment:

Small business is significantly impacted by penalty rates. The cost of opening a restaurant or cafe on a Sunday or a public holiday can be so prohibitive to some small businesses that they do not open their doors, preferring to remain closed. The demand, however, to access restaurants and cafes does not decrease on a weekend day. Businesses need to be able to look at their operating costs in light of the market conditions, and the workplace relations legislation

116 Restaurant and Catering Australia, 'Submission for the Productivity Commission into the Economic Structure and Performance of the Australian Retail Industry 2011', p. 8, <pc.gov.au/inquiries/completed/retail-industry/submissions/subdr193.pdf>, viewed 29 January 2016.

117 Master Grocers Australia/Liquor Retailers Australia, *Submission 13*, p. 9.

118 National Retail Association, *Submission 9*, p. 5.

which has in it entrenched penalty rates is a significant deterrent to productivity and profitability for most business operators.¹¹⁹

- 3.140 The NRA linked high wages to a businesses' difficulty to hire more workers or give staff additional hours::

There is an indisputable link between the cost of wages and a business's ability to hire more workers or give staff additional hours. There is clear evidence that many shops and cafes close their doors on Sundays and public holidays because of the high cost of employing staff at those times, while others will rely on "unpaid" labour such as business owners and their families. Current levels of penalty rates and the times at which they are applied are clearly hurting businesses' ability to create employment.¹²⁰

- 3.141 Penalty rates are also an issue in other businesses that operate seven days per week out of necessity. The Australian Dairy Farmers outlined in their submission the award classification differences between essential and non-essential services that are exempt from penalty rates. The submission argued that elements of the industry, such as milking, should be classified as essential services for this purpose:

Another obstacle put forward by the Pastoral Award 2010 is that milking is not classified as an essential service. Feeding and watering stock are considered essential services and are thus exempt from the double time pay for over time on Sundays. This fails to recognise that daily milking is an essential daily requirement in the care of cows. Furthermore, it can also exacerbate the additional costs related to the three hour minimum engagement clause, and put added pressure on smaller dairy farm businesses. The Award should therefore be updated to include "milking" as an essential service relating to penalty rate classifications, similar to "feeding and watering stock".¹²¹

- 3.142 Interestingly, the results of a research commissioned by the ARA showed that both employees and employers could attribute the payment of penalty rates to suboptimal operating environments:

There was consistency between retail employers and retail employees in what they reported regarding the detrimental impact on them attributed to the Sunday penalty rate. For retail employers it was that they operated with a lower number of

119 Business South Australia, *Submission 27*, p. 3.

120 National Retail Association, *Submission 9*, p. 7.

121 Australian Dairy Farmers, *Submission 14*, p. [2].

employees than optimal, or with a mix of employees that was less than optimal. For retail employees it was that older, more expensive employees were disadvantaged when compared to younger, lower cost employees when it came to the allocation of Sunday hours.¹²²

- 3.143 Some 24/7 industries, such as hospitality, add surcharges to mitigate the cost of paying penalty rates. Others, such as retail, are not able to do this:

Can you imagine anybody shopping for groceries or liquor on a Saturday or Sunday or of an evening and being told, 'We've got a surcharge on your credit card and purchase with us'? Can you imagine a supermarket doing that? There was one supermarket group that got away with it for a while because they did not tell consumers about it. But someone found out about it and, since then, they have reduced that rate by half. But there is no other supermarket group in Australia that would dare put a surcharge on it. You can go to cafes, bistros and restaurants on a Sunday or a public holiday and many of them will put a 10 per cent surcharge on, and that is to cover their penalty rates. We cannot do that, so we have to absorb that cost somewhere along the line and that just squeezes margins further and further.¹²³

Arguments for penalty rates

- 3.144 Various submitters argued that penalty rates are an appropriate and necessary measure that reflects community views and values about the special place of weekend work.
- 3.145 Unions Tasmania, argued that penalty rates provide a greater level of disposable income for employees and therefore stimulated economic growth and job opportunities:

The key driver of growth in any economy has always been demand – the demand of consumers for products and services. Demand is driven by necessity and purchasing capacity. In a modern, first-world economy such as Australia's the key driver of demand is the elastic capacity of consumers to spend 'disposable' income ...Demand can only grow when consumers have the capacity to spend. For a large number of employees, from cleaning, to nursing, to hospitality, penalties make up one third of

122 Australian Retailers Association, *Submission 37*, p. 11.

123 Mr Jos de Bruin, Chief Executive Officer, Master Grocers Australia/Liquor Retailers Australia, *Committee Hansard*, Melbourne, 13 July 2015, p. 13.

their take home pay. Cutting penalty rates for these workers will result in a reduction in their spending.¹²⁴

- 3.146 Similarly, Mr Gerard Dwyer, National Secretary, Shop, Distributive and Allied Employees' Association agreed stating that a reduction in the income of many retail workers could have an adverse economic effect:

We also say that [penalty rates] are a very important part of take-home pay for people on modest incomes, like retail workers, and we are conscious of the economic flow-on effect if people on modest incomes are to have their take-home pay reduced. That would actually feed into a weaker retail industry, because people on modest incomes tend to spend a greater percentage of their income and therefore keep the economic wheels, particularly of retail, turning.¹²⁵

- 3.147 Unions ACT agreed that not only does the payment of penalty rates provide economic stimulus, but the social and health benefits are considerable as well:

In the instance where workers agree to work during unsociable hours, they are financially compensated for these social and health costs. This is true for 1.86 million workers, where penalty rates comprise a central part of their take-home pay. For many of these workers, penalty rates are vital to ensuring a living wage. This is true for close to 40% of workers in the hospitality and retail industries. An important component of working unsociable hours is the choice to do so. Legislation that ensures the workplace security of workers who choose not to work unsociable hours must be maintained and enforced.¹²⁶

- 3.148 Further results also indicated that employees felt at a social disadvantage when working on Sundays in particular, and that some compensation for this was warranted:

The (commissioned research organisation) sought the views of retail employees about Sunday work in particular, and it is clear that there are some difficulties experienced by those working on Sundays in terms of the balance between work and their family and social lives. These difficulties are not causing employees in retail to seek to withdraw from Sunday work, and it is clear that employees in the main would be happy with a 50% penalty for

124 Unions Tasmania, *Submission 24*, p. 6.

125 Mr Gerard Dwyer, National Secretary, Shop, Distributive and Allied Employees' Association, *Committee Hansard*, Melbourne, 13 July 2015, p. 16.

126 Unions ACT, *Submission 30*, p. 7.

Sunday work. In that sense, as it relates to the retail industry, penalty rates for Sunday work are not effectively addressing these concerns as they are overcompensating for them.¹²⁷

3.149 Mr Dwyer, agreed that, for the small percentage of people working unsociable hours, some compensation was necessary:

We argue that penalty rates need to be seen for what they are: some compensation for working at unsociable hours. I think that close to 70 per cent of the workforce still works from Monday to Friday, and that has only changed one percentage point in the last 15 years. So there does need to be some compensation for people who do work on weekends and late nights outside the nine to five parameters.¹²⁸

3.150 He added:

In a consumer based economy, to reduce take-home pay for people who are on modest income and therefore spending the bulk of their money each week will have quite serious and adverse economic effects. You will see that not just in households but in whole communities. We are very concerned that it would feed into particular industries. The ones really in the gun would be retail and hospitality.¹²⁹

3.151 Mr Dwyer, warned that any changes to penalty rates needs to be carefully considered from all angles:

In regional centres earnings are below what they are in the city by anywhere between seven and 10 per cent, depending on the research, but those cafes are driven by the mums and dads, the average workers in those communities. Any playing around with take-home pay by virtue of penalty rates on a Sunday or whenever will see a negative impact on the business across the week.¹³⁰

127 Australian Retailers Association, *Submission 37*, p. 12.

128 Mr Gerard Dwyer, National Secretary, Shop, Distributive and Allied Employees' Association, *Committee Hansard*, Melbourne, 13 July 2015, p. 16.

129 Mr Gerard Dwyer, National Secretary, Shop, Distributive and Allied Employees' Association, *Committee Hansard*, Melbourne, 13 July 2015, p. 21.

130 Mr Gerard Dwyer, National Secretary, Shop, Distributive and Allied Employees' Association, *Committee Hansard*, Melbourne, 13 July 2015, p. 23.

Payroll tax and its impact on small business

3.152 Payroll tax is a self-assessed, general purpose state and territory tax assessed on wages paid or payable by an employer to its employees, when the total wage bill of an employer (or group of employers) exceeds a threshold amount. It is a significant source of state revenue. The following table (Table 3.2) shows the variation in payroll tax rates and thresholds between states and territories.

Table 3.2 State and territory payroll tax rates

State/Territory	Tax threshold	From	Tax rate
Northern Territory	\$1,500,000 (annually) \$125,000 (monthly)	1 July 2012	5.50%
Queensland	\$1,100,000 (annually) \$91,666 (monthly)	1 July 2012	4.75%
New South Wales	\$750,000 (annually) \$57,534 (28 day month) \$61,644 (30 day month) \$63,699 (31 day month)	1 July 2013	5.45%
ACT	\$1,850,000 (annually) \$154,166.66 (monthly)	1 July 2014	6.85%
Victoria	\$550,000 (annually) \$45,833 (monthly)	1 July 2014	4.85%
Tasmania	\$1,250,000 (annually) \$95,890 (28 day month) \$102,740 (30 day month) \$106,164 (31 day month)	1 July 2013	6.1%
South Australia	\$600,000 (annually) \$50,000 (monthly)	1 July 2012	4.95%
Western Australia	\$800,000 (annually) \$66,667 (monthly)	1 July 2014	5.5%

Source Payroll tax Australia, 'Payroll tax rates and thresholds', < <http://www.payrolltax.gov.au/harmonisation/payroll-tax-rates-and-thresholds> > , viewed 19 January 2016.

3.153 The Productivity Commission points to the effect that payroll tax has on curbing wages and employment growth:

All Australian states and territories levy payroll taxes on wages in enterprises with payrolls exceeding certain thresholds. (These thresholds and the applicable tax rate vary by jurisdiction.) A common feature of these taxes is that once the payroll threshold is exceeded, all of the payroll is taxed at the tax rate – thus creating

an incentive for smaller employers to curb wages and/or employment growth.¹³¹

- 3.154 The Productivity Commission noted that '[C]utting payroll tax is seen by some as a way of reducing wage costs and achieving stronger employment outcomes.'¹³² Indeed, ACCI has proposed abolishing payroll tax:

The most important priority of the business community for tax reform is payroll tax...The payroll tax threshold...negatively affects employer's decisions to expand business operations and increase wages and employment as they approach the threshold for liability. The effect of the threshold operates as an incentive to keep businesses inefficiently small.

The Henry Review found that payroll tax is the third most inefficient Australian tax after royalties and crude oil excise and insurance taxes, which causes in excess of 40 cents of economic damage for each dollar of additional revenue raised. It is incongruous for the Government to have at one point prioritised cutting the company tax rate when the efficiency gains to be realised from a reduction in the rate of payroll tax would lead to an even greater increase in social welfare.¹³³

- 3.155 Submitters and witnesses to this inquiry also highlighted the perverse employment impact of payroll taxes. Master Grocers Australia/Liquor Retailer Australia noted that based on feedback from their constituents, payroll tax can be an inhibitor to small business expansion:

A prevailing consideration for any retailer contemplating an expansion of their enterprise is whether the increase in employment growth will, depending on their size, either compound their existing payroll tax liability, or cause their business to surpass the exemption threshold.¹³⁴

131 The Australian Government Productivity Commission, *Workplace Relations Framework: Draft Report*, August 2015, p. 389, <<http://www.pc.gov.au/inquiries/current/workplace-relations/draft/workplace-relations-draft.pdf>>, viewed 15 December 2015.

132 The Australian Government Productivity Commission, *Workplace Relations Framework: Draft Report*, August 2015, p. 389, <<http://www.pc.gov.au/inquiries/current/workplace-relations/draft/workplace-relations-draft.pdf>>, viewed 15 December 2015.

133 Australian Chamber of Commerce and Industry (ACCI), 'ACCI Submission: Board of taxation review of tax impediments facing small business', May 2014, p. 4, <https://www.acci.asn.au/sites/default/files/uploaded-content/field_f_content_file/acci2014_may_small-business-tax-review-submission_final.pdf>, viewed 29 January 2016.

134 Master Grocers Australia/Liquor Retailers Australia, *Submission 13*, p. 8.

- 3.156 Similarly, Business South Australia identified payroll tax as the tax that limits a small businesses' capacity to expand:

In a survey of members conducted in 2014, over half of respondents cited payroll tax as the tax or levy most limiting the expansion of their business.¹³⁵

- 3.157 The New South Wales Business Chamber also made a direct link between payroll tax and reduced employment:

Payroll tax remains a key inhibitor for businesses, particularly those businesses that are growing and need to take on more staff. Consistent with feedback from our members, the tax that NSW businesses find most objectionable is payroll tax. Businesses report that payroll tax significantly reduces the number of staff they employ. While other taxes like GST are only payable when revenue is received, businesses are liable for payroll tax even if they make no sales.¹³⁶

- 3.158 Mr Salim Sukari is a director of an IT services company in Sydney's west. He told the Committee of the company's concerns in having reached the New South Wales payroll tax threshold:

Being the owner of a small business, I would be very inclined to hire another person myself if, for example, if I did not have to pay any more payroll tax...If I did not have to pay payroll tax then I know I could spend that money towards something. It is probably not going to cover a person's salary but it definitely would come a long way.¹³⁷

- 3.159 The Chamber of Commerce and Industry Western Australia explained that payroll tax can determine whether a business will employ more staff:

As a tax on employment, payroll tax acts as a disincentive for businesses to employ additional workers, particularly at the margin and even more particularly when a business' payroll breaches the tax free threshold. Payroll tax raises the marginal cost of employing an additional person, and so reduces the incentive for a business to employ that additional person.¹³⁸

- 3.160 Further to the inhibiting cost of payroll tax, small businesses and peak bodies outlined the confusion and additional administrative burden of navigating multi-jurisdictional payroll tax obligations. Several submitters
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¹³⁵ Business South Australia, *Submission 27*, p. 3.

¹³⁶ NSW Business Chamber, *Submission 38*, p. 3.

¹³⁷ Mr Salim Sukari, Director, Lebanese Muslim Association, *Committee Hansard*, Parramatta, 19 November 2015, p. 42.

¹³⁸ Chamber of Commerce and Industry of Western Australia, *Submission 23*, p. 8.

argued the need to harmonise payroll tax. Master Grocers Australia/Liquor Retailers Australia put the following position:

In its April 2012 Report on the impacts and benefits of COAG reforms, the Productivity Commission documented the jurisdictional differences in payroll tax rates and revenue trends. The Report stressed the benefits of harmonisation and in doing so, reiterated the existing regulatory and red tape burdens for businesses operating in multiple jurisdictions.

For these businesses, there are various compliance costs and red tape regulatory burdens which have negative consequences on business viability.¹³⁹

- 3.161 Mr Jos de Bruin, Chief Executive Officer, Master Grocers Australia/Liquor Retailers Australia, expressed frustration at the purpose of payroll tax and the disincentive it provides for people seeking to employ during a time when unemployment is rising:

When you talk about minimum wage, as you did before – that is not what an employer pays. An employer pays the 9½ per cent super, all the on costs, the insurances – so it mounts. You can add another 40 per cent to that wage rate. But on top of that, with that, is the payroll tax. When you have Victoria imposing another public holiday on grand final eve, which is going to cost our industry sector alone an extra \$3 million just to open the doors on that day – add the payroll tax to that as well. It is one of those hidden costs and it is a tax on employment. The last government in Victoria reduced payroll tax, which I think was a first, from 4.9 to 4.85 per cent. So Victoria has a low payroll tax compared to other states, but the threshold is very low. With payroll tax across the country there are inconsistencies – for example there is a very high threshold in Queensland with a medium percentage. We see that as a tax on employment, to be honest, and we do not understand it at all – not in this day and age when we want to employ people; we really do.¹⁴⁰

Competition and fair trading

- 3.162 The Australian economy is based on fair trading and open competition providing greater choice for consumers for goods and services. Innovative

139 Master Grocers Australia/Liquor Retailers Australia, *Submission 13*, p. 8.

140 Mr Jos de Bruin, Chief Executive Officer, Master Grocers Australia/Liquor Retailers Australia, *Committee Hansard*, Melbourne, 13 July 2015, p. 11.

and competitive businesses are the key driver in the delivery of higher quality products and services and lower prices for consumers.

- 3.163 For small businesses the motivation to be innovative and competitive is alive and well, however, in circumstances where the competitive forces are biased or unbalanced, small businesses are also the most vulnerable.
- 3.164 The Committee received evidence on various aspects of the current competitive marketplace that demonstrated a level of unfairness that diminished some small businesses ability to prosper and create employment opportunities. This evidence is discussed below.

Section 46 of the *Competition and Consumer Law 2010*

- 3.165 Section 46 of the *Competition and Consumer Act 2010* is the provision of Australian competition law which regulates unilateral conduct. Australian Competition and Consumer Commission Chairman Rod Simms has expressed s. 46 in the following terms:

do not take advantage of your substantial market power for the purpose of (amongst other things) substantially damaging a competitor.¹⁴¹

- 3.166 There are numerous laws affecting arrangements between two or more parties, but only section 46 - which prohibits the misuse of market power - focuses on big business acting alone.
- 3.167 Under Section 46 it must be proved that the relevant party had substantial market power, that it took advantage of that power, and that it did so for a 'proscribed purpose'. This is generally described as an anti-competitive purpose.
- 3.168 Section 46 is difficult to establish. The threshold of substantial market power is very high and it is also difficult to prove 'taking advantage' - while the courts have said this means no more than to 'use' market power.

The Harper Review and the effects test

- 3.169 On 4 December 2013 the Prime Minister and the Minister for Small Business announced a review of competition policy. On 27 March 2014, the Minister for Small Business released the final Terms of Reference, following consultation with the States and Territories, and announced the Review Panel.

141 Australian Competition and Consumer Commission, 'Section 46: The great divide', *speech by Mr Rod Sims, Chairman, Hodgekiss Competition Law Conference, Sydney, 30 May 2015*, <<http://www.accc.gov.au/speech/section-46-the-great-divide>>, viewed 15 December 2015.

- 3.170 The Draft Report was released on 22 September 2014. Submissions closed on 17 November 2014.
- 3.171 The Competition Policy Review Final Report was released on 31 March 2015. The Review has become known as the 'Harper Review' after the Chair of the review Professor Ian Harper.
- 3.172 The effects test as proposed by the Harper Review retained the first element of the current section 46 - substantial market power - but removes the other two elements; that of advantage and proscribed purpose.
- 3.173 In their place, an effects test has been inserted. The final report stated this as follows:

The Panel finds that **section 46**, dealing with the misuse of market power, is deficient in its current form. It does not usefully distinguish pro-competitive from anti-competitive conduct. Its sole focus on 'purpose' is misdirected as a matter of policy and out of step with international approaches. Section 46 should instead prohibit conduct by firms with substantial market power that has the purpose, *effect or likely effect* of substantially lessening competition, consistent with other prohibitions in the competition law. It should direct the court to weigh the pro-competitive and anti-competitive impact of the conduct.¹⁴²

- 3.174 Put simply the 'effects' of actions by firms with substantial market power rather than the purpose of such acts would be used in judging anti-competitive cases brought under section 46.
- 3.175 Mr Peter Strong, Chief Executive Officer, Council of Small Business Organisations of Australia told the Committee that the real remedy for the concentration of market power is a divestiture power:

The concern we have with the effects test is that the people who are against it are about five companies and the Business Council of Australia, and the SDA [Shop, Distributive & Allied Employees Association]. And the SDA and Coles and Woolies are basically the same company. It is a very good union, the SDA, and Coles and Woolies are very good companies. They are not evil in any way, shape or form. They are just too big. We are saying that the effects test should not let things become that big. The effects test is a way of going into the marketplace and asking, 'Is the effect of this going to impact upon competition in a way that is not good for competition and for the future of competition?' the best

142 Australian Government, 'Competition Policy Review: Final report', March 2015, p. 9, (emphasis added), <http://competitionpolicyreview.gov.au/files/2015/03/Part1_final-report_online.pdf>, viewed 13 November 2015.

example I can give is land banking. For a long time Coles and Woolies would buy the land where you would build a supermarket in competition and then not let anybody else buy it, and that did impede ALDI for quite a while. You could not, under the current section 46, go in and say, 'You're doing that to impede competition', because you need proof; you absolutely need proof. So, the change is a very watered down effects test – nothing like they have in the United States or anywhere else – but it gives the capacity for the ACCC to say, 'No, that does nothing but impede competition and therefore you must divest yourself of this land.'¹⁴³

3.176 The effects test may capture competitive conduct that is carried out in the normal course of business. Indeed s. 46 as interpreted by the High Court intends that competition be ruthless:

. . . the object of s46 is to protect the interest of consumers, the operation of the section being predicated on the assumption that competition is a means to that end. Competition by its very nature is deliberate and ruthless. Competitors jockey for sales, the more effective competitors injuring the less effective by taking sales away. Competitors almost always try to "injure" each other in this way. This competition has never been a tort . . . and these injuries are the inevitable consequence of the competition s46 is designed to foster.¹⁴⁴

3.177 Also, as per the Federal Court;

Traders commonly fix prices with the intention of diverting to themselves custom which would otherwise flow to their competitors. In doing so, they realise that, if they are successful, the result will be to damage - in some cases, even to eliminate - those competitors. But such conduct is the very stuff of competition, the result which Part IV seeks to achieve.¹⁴⁵

3.178 Clearly the kind of robust competition envisaged by the courts above can result in a lessening of competition. The question becomes whether or not the lessening of competition is from acts that benefits consumers or because of a misuse of market power that will harm consumers.

143 Mr Peter Strong, Chief Executive Officer, Council of Small Business Organisations of Australia (COSBOA), *Committee Hansard*, 11 November 2015, Canberra, p. 5.

144 *Queensland Wire Industries Pty Limited v. The Broken Hill Proprietary Company Limited* (1988) 167 CLR 177, Mason CJ and Wilson J at 191.

145 *Eastern Express Pty Limited v. General Newspapers Pty Limited* (1991) 30 FCR 385, Wilcox J at 409 - 410.

Low value threshold on imported goods

3.179 The current low value threshold (LVT) exempts GST on imported goods under \$1 000 that have been purchased from overseas based businesses for importers not connected with supply. Australian industry bodies have long lamented what they perceive as the unfairness of this arrangement, in particular those that are linked with the retail sector that struggle to compete with the burgeoning online marketplace.¹⁴⁶ In response to this persistent advocacy, the Australian Government have recently announced its intention to broaden the GST to include overseas online transactions (discussed in Chapter 2).

3.180 Several submitters to this inquiry highlighted the adverse impact of the LVT on the volume of trade for retail small business. The National Retail Association (NRA) for example, confirmed the unfairness of the LVT on the Australian retail market:

Most problematic for Australian businesses, however, is the unfair loophole that currently allows overseas retailers to avoid paying GST on imports valued at less than \$1000. This Low Value Threshold (LVT) is allowing offshore web-based businesses to deliver retail goods to consumers in the domestic market without making any contribution to the goods and services tax take. Further, this GST exemption also creates an exemption from tariffs, import duty and customs charges – costs that are borne by suppliers to the Australian retail market and passed on to local retailers. Depending on the product category, these costs can add up to 25 per cent to the wholesale price of local goods.¹⁴⁷

3.181 The NRA also highlighted the impact of the LVT on jobs, especially jobs for those who need them most:

Another report, also by Ernst and Young, estimated the loophole will cost up to 33,400 local retail jobs – most likely the jobs of lower paid or vulnerable workers such as young people, single parents and senior workers returning to the workforce.¹⁴⁸

146 Mr Gerard Dwyer, National Secretary, Shop, Distributive and Allied Employees' Association, *Committee Hansard*, 13 July 2015, Melbourne, p. 16; and, National Retail Association, *Submission 9*, p. 3. See also: Dale, T., 27 October 2014, Parliamentary Library Research Paper, 'Online shopping and potential changes to the low value threshold: costs and benefits for government, consumers and retailers', p. 3, <parlinfo.aph.gov.au/parlInfo/download/library/prspub/3471890/upload_binary/3471890.pdf;fileType=application/pdf>, viewed 11 September 2015.

147 National Retail Association, *Submission 9*, p. 4.

148 National Retail Association, *Submission 9*, p. 4.

- 3.182 Mr Ian Blandthorn, Assistant Secretary, Shop, Distributive and Allied Employees' Association, agrees that there is a definite link between businesses operating on an unfair playing field, such as with the LVT, and employment opportunities:

I think the core issue here is a level playing field. I made a comment earlier that this is fundamentally a domestic industry within the borders of Australia, except for the impact of the low-value tax threshold. I think that is, as we move forward, creating substantial problems for a range of retailers. Not only is it creating substantial problems for retailers but it obviously affects their profitability and then, by extension, it affects employment. The more you buy overseas – we have all done it, and we are all guilty of it in that sense – the more it takes away the opportunity for a retailer to make a quid and to employ people.¹⁴⁹

- 3.183 The Shop, Distributive and Allied Employees' Association (SDA) also submitted that the Australian retail industry faces significant disadvantage against overseas on-line retailers due to the LVT:

Australian retailers are required to pay G.S.T. on all merchandise they handle, plus pay any import duty on this merchandise.

Overseas-based on-line retailers do not pay the G.S.T. on merchandise priced under \$1,000. They do not pay import duty. This gives them a price advantage of up to 20% over Australian-based retailers who must pay both the G.S.T. and any import duty.

Therefore, we have an uneven playing field. This is unfair competition. The magnitude of the disadvantage suffered by Australian retailers is substantial for an industry where profit margins are generally quite small. It is not a sustainable situation...Overseas operators are taking advantage of the unfair competitive environment to grow their business. It is not uncommon for overseas operators to ensure GST and import duties are avoided. For example, if an order is over \$1000, it is automatically split into two orders to fall below the \$1000 threshold. A system that actively and willingly condones such approaches is wrong. Having inefficiencies that give overseas competitors an advantage in that they can avoid GST and import duties is something that the Australian retail industry should not have to contend with.¹⁵⁰

149 Mr Ian Blandthorn, Assistant Secretary, Shop, Distributive and Allied Employees' Association, *Committee Hansard*, Melbourne, 13 July 2015, pp. 19-20.

150 Shop, Distributive and Allied Employees' Association, *Submission 15*, pp. 38-39.

Advances in technology

3.184 Technological advancements in all areas of the modern workplace have created innovation, efficiencies and cost savings which have benefited both the business' owner and consumer. However, while there are many benefits to this, advancements in technology can also effectively reduce the reliance on a people powered workforce.

3.185 In its submission to the Productivity Commission's 2014 report on the *Relative Cost of Doing Business In Australia: Retail Trade*, the Chamber of Commerce and Industry Queensland stated that the use of technology in businesses presents both challenges and opportunities:

Technological innovation has presented the small business retail sector with both opportunities and challenges. The use of smart devices has assisted with client enticement and loyalty via social media applications and provided for virtual shopping alternatives. However, competition with overseas retailers selling at lower prices, skills shortages in digital technology in retail, the growth of non-store channels, and general hesitancy of bricks and mortar stores to take up digital sales techniques has exacerbated such challenges.¹⁵¹

3.186 ET Australia submitted that such advancements directly affect the staffing requirements of small businesses:

Constant technology advances tend to reduce the number of employees a small business requires.¹⁵²

3.187 In its submission, Fingerprint Me Youth Employment Academy made a direct link to technology advancements and youth unemployment:

We recognize that young people today face an increasing number of barriers to workforce entry. Competitive business conditions, labour saving advances in technology, an increasingly mobile and globalized labour market: many factors have conspired to make low skilled or entry-level jobs a scarcity. In these conditions it is often those who are young and inexperienced who miss out.¹⁵³

151 The Chamber of Commerce and Industry Queensland (CCIQ), 'Relative Costs of Doing Business in Australia: Retail Trade', 11 July 2014, *submission to the Productivity Commission's inquiry into the relative costs of doing business: retail trade industry*, p. 7, <cciq.com.au/assets/Documents/Advocacy/submissions/RetailTrade-ProductivitySubmissionReview.docx>, viewed 7 September 2015.

152 ET Australia, *Submission 7*, p. 1.

153 Finger Print Me Youth Employment Academy, *Submission 12*, p. 1.

- 3.188 The National Retail Association (NRA) argued that technology has created adverse competition for Australian retailers, in particular those that are solely bricks and mortar operations:

The retail sector is also undergoing a structural upheaval following advancements in technology, digitalisation and online shopping. Consumer product markets are now essentially global, meaning that Australian retailers are competing against offshore competition. In this context, widespread red tape and compliance burdens present an additional and unnecessary challenge for the sector, and in some cases a distinct competitive disadvantage.¹⁵⁴

- 3.189 There are, however, new and emerging industries boosted by technology that have the proven capacity and potential to create more jobs. Renewable energy is one such area and, as Dr Barrie Pittock PSM pointed out, the opportunities for job growth in this area appear to be limitless:

Fossil fuels and centralised electricity grids are rapidly becoming stranded assets, and investment in the new technologies are the new growth industries.¹⁵⁵

- 3.190 Dr Pittock further elaborated on how these new technologies can create entrepreneurial and employment opportunities, particularly in regional areas:

(Consideration should be given to) ways to foster local and regional growth of renewable energy industries, and especially the use of increasingly efficient and cheaper energy storage to enable local and regional communities to develop their own businesses and increase economic growth and employment. This is especially the case for remote communities such as many Aboriginal communities in northern and inland Australia.¹⁵⁶

- 3.191 The National Innovation and Science Agenda points out that:

Over the decade from 2001 to 2011, SMEs aged less than five years employed only around 15% of the Australian workforce, but made the highest contribution (40%) to net job creation in Australia.¹⁵⁷

- 3.192 The key is to recognise the importance of fostering investment and innovation in start-ups.

154 National Retail Association, *Submission 9*, p. 3.

155 Dr Barrie Pittock, *Submission 34*, p. [1].

156 Dr Barrie Pittock, *Submission 34*, p. [1].

157 Australian Government, 'National Innovation and Science Agenda', p. 8, <<http://www.innovation.gov.au/system/files/case-study/National%20Innovation%20and%20Science%20Agenda%20-%20Report.pdf>>, viewed 15 December 2015.

Retail tenancies

3.193 For many small businesses, leasing premises out of which to operate is an expected and regular cost of business. Tenancy contracts, however, particularly for small business located within shopping centre complexes, can be faced with significant ongoing costs relating to their tenancy agreement as well as uncertainty about the longevity of the tenancy. This can adversely affect their ability to employ and retain staff.

3.194 The ARA explained:

In addition to the base rental cost, significant additional rental expenditure is imposed through 'turnover rent' whereby, built into the rental agreement, the landlord is entitled to a percentage of takings in addition to the minimum rent. A retailer conducting business in a rental premise has little long-term certainty significant costs associated with set-up, and relocation is heavily leveraged at the point of re-negotiation. Due to the standard terms of a lease, which are usually five or seven years, a retailer has no security and can be told to leave the premises for the simple reason of "not fitting" with the centre's image, notwithstanding the investment into the retail space. Retailers are subject to the perceived threat that an alternative tenant is prepared to pay more for the same tenancy.¹⁵⁸

3.195 The ARA argued that this model of tenancy favours large businesses and places a small businesses at competitive disadvantage:

The dependency on securing tenancies within shopping centres poses a significant structural challenge for the ongoing viability of the retail sector. The oligopolistic nature of shopping centre ownership and a retail tenancy regime which is skewed in favour of these large-scale landlords both present an inherent disadvantage to Australian domestic bricks and mortar retailers in terms of equitable competition.¹⁵⁹

3.196 However, the Australian Small Business Commissioner, Mr Mark Brennan, believed that while disputes still arise, many of these are due to landlords behaviour which stems from a lack of understanding of their responsibilities:

The major issues of behaviour in the retail tenancy area to my mind are in those strip shopping centres, and, unfortunately, it is often small business landlord who is the problem. Again, it comes

158 Australian Retailers Association, *Submission 37*, p. 21.

159 Australian Retailers Association, *Submission 37*, pp. 20-21.

down to education and knowing what you are supposed to do as a landlord. I think that for a lot of these small business landlords it may be the only investment they have but my expression for them is that they are Dickensian in the way in which they operate. They have read Charles Dickens and they realise that that is the way you behave as a landlord – they take a tough, uncompromising attitude and they create disputes. Again, there is an educative role to take with this. I would not like to see any national intervention; it rests with the states, though I would like to see some harmonisation amongst the states.¹⁶⁰

Tendering

- 3.197 The tendering process for government or non-government contracts can often be an expensive and time consuming process. If the applicant is unsuccessful, this time and expense is wasted which, for some small businesses, can damage their aspirations to grow and employ.
- 3.198 Government regulations often set the agenda for the tendering process, particularly for the awarding of government contracts. This can be an unfair barrier for small businesses that may invest considerable resources to in order to bid on contracts.
- 3.199 In the building and construction industry, some jurisdictions require businesses to be incorporated to take out workers compensation – a requirement when being considered for tenders. The additional work involved in operating a business as a corporation acts as a significant inhibitor to growth through loss of business opportunities. Mr Richard Calver, National Director, Industrial Relations and Legal Counsel, Master Builders Australia explained:
- In some tenders, unless you are incorporated you do not get the work. It depends on the nature of the tender and it depends on whether or not that is a requirement, but in many instances, yes, there is a requirement to be incorporated before you can win that work, so it is a barrier.¹⁶¹
- 3.200 The tendering process can also take up significant amounts of time and cost with no guarantee of recouping the financial cost. Mr Philip Endersbee, Member, Council of Textile and Fashion Industries of Australia provided the following example:

160 Mr Mark Brennan, Commissioner, Australian Small Business Commission, *Committee Hansard*, Canberra, 3 June 2015, p. 9.

161 Mr Richard Calver, National Director, Industrial Relations and Legal Counsel, Master Builders Australia, *Committee Hansard*, Canberra, 24 June 2015, p. 4.

... one of the things that we floated with the government is that they should have a registration of suppliers for tender. In other words, if you want to be considered a supplier – let's say us, whatever it is going to be – then there is a process that you go through before you tender. At the moment we are doing thermal underwear for defence. Our lead time, until they announce who is going to win the tender, is nine months. Before that there was three months of work. Included in that, the cost of the submission, for thermal underwear, for us, is \$100,000. I personally think it is unfair that every one of the tender people have gone through that and the bureaucracy have to spend, I would say, 70 per cent of the time on the evaluation because they have to, of people who, in the first place, should not be registered to tender.¹⁶²

Committee comment

- 3.201 Government has an important role to play in providing conditions in which small businesses can grow and prosper. This is particularly true of small communities in regional or rural areas where small businesses can be the only economy; however, this also applies to communities across the nation who all rely on small business success for employment, services and recreation.
- 3.202 While it is widely acknowledged that some form of regulation is necessary, it is the accumulation of red tape and costs relating to regulation compliance that is the burden on small businesses, and not individual requirements and costs themselves.
- 3.203 In relation to industrial/workplace relations the Committee notes the recommendations contained within the draft report of the Productivity Commission's *Workplace Relation Framework Inquiry*.
- 3.204 The inquiry report was handed to the Australian Government on 30 November 2015. The release of the final report by the Government is the final step in the process. Under the *Productivity Commission Act 1998*, the Government is required to table the report in each House of the Parliament within 25 sitting days of receipt. This is expected to be after the Committee has tabled this report.

162 Mr Philip Endersbee, Member, Council of Textile and Fashion Industries of Australia, *Committee Hansard*, Melbourne, 13 July 2015, p. 46.

Committee comments on modern awards

3.205 The Committee acknowledges the complexity of awards. It notes the following draft recommendations of the Productivity Commission's report *Workplace Relation Framework Inquiry*:

DRAFT RECOMMENDATION 12.1

The Australian Government should amend the *Fair Work Act 2009* (Cth) to:

- remove the requirement for the Fair Work Commission to conduct four yearly reviews of modern awards
- add the requirement that the Minimum Standards Division of the Fair Work Commission review and vary awards as necessary to meet the Modern Awards Objective.

To achieve the goal of continuously improving awards' capability to meet the Modern Awards Objective, the legislation should require that the Minimum Standards Division:

- use robust analysis to set issues for assessment, prioritised on the basis of likely high yielding gains
- obtain public guidance on reform options.¹⁶³

DRAFT RECOMMENDATION 12.2

The Australian Government should amend the *Fair Work Act 2009* (Cth) so that the Minimum Standards Division of the Fair Work Commission has the same power to adjust minimum wages in an assessment of modern awards as the minimum wage panel currently has in annual wage reviews.¹⁶⁴

Committee recommendations on Employee v contractor

3.206 The Committee accepts that determining the difference between an employee and a contractor requires a number of factors to be taken into account. This can be an onerous process for a small business and a deterrent to it employing staff given the lack of certainty of a determination across government agencies.

163 The Australian Government Productivity Commission, *Workplace Relations Framework: Draft Report*, August 2015, p. 51, <<http://www.pc.gov.au/inquiries/current/workplace-relations/draft/workplace-relations-draft.pdf>>, viewed 17 November 2015.

164 The Australian Government Productivity Commission, *Workplace Relations Framework: Draft Report*, August 2015, p. 51, <<http://www.pc.gov.au/inquiries/current/workplace-relations/draft/workplace-relations-draft.pdf>>, viewed 17 November 2015.

- 3.207 The Committee therefore recommends that the Australian Taxation Office and the Fair Work Ombudsman set up a working group to align the definitions of employee and contractor across government agencies. The working group should be tasked with developing a single decision tool to help small businesses correctly identify when a worker is an employee or a contractor. The working group should also identify legislative changes if needed.

Recommendation 1

The Committee recommends that the Australian Taxation Office and the Fair Work Ombudsman set up a working group to align the definitions of employee and contractor across government agencies and to develop a single decision tool to help small businesses correctly identify when a worker is an employee or a contractor. This working group should also identify legislative changes if needed.

- 3.208 The Committee supports the MBA's suggestion of a register of contractors for the building industry. The Committee did not receive any more evidence discussing this suggestion. However, given the possible benefits of a register requiring minimal government supervision and establishing a clear separation between commercial law and workplace relations law, the Committee is supportive of the idea sees a need for more work including consultation with the broader building industry and building employee representatives.
- 3.209 The Committee therefore recommends that the above working group look into the MBA's proposal for a register of building contractors.

Recommendation 2

The Committee recommends that the Australian Taxation Office and the Fair Work Ombudsman working group set up to align the definitions of employee and contractor, and also to look into the Master Builders Australia proposals including for a register of building contractors.

Committee recommendation on workplace health and safety

- 3.210 The Committee is heartened that most jurisdictions have implemented the model Workplace Health and Safety (WHS) laws. The Committee notes the concerns of the Small Business Commissioner in relation to worker's compensation.
- 3.211 State and territory workers' compensation schemes work well. The issue here is one of the red tape involved where small businesses working across jurisdictions having to access different schemes. The Committee is drawn to the recommendations of the Small Business Commissioner for reciprocal arrangements whereby the business only registers and pays for WorkCover in their principal jurisdiction of operation but receives employee coverage Australia-wide, or a national WorkCover arrangement be established enabling small businesses to opt for affordable national rather than state-by-state coverage.
- 3.212 The Committee notes that developing proposals for 'harmonising workers' compensation arrangements across the Commonwealth, States and Territories and national workers' compensation arrangements for employers with workers in more than one of those jurisdictions'¹⁶⁵ is a function of Safe Work Australia and is concerned, as the Small Business Commissioner points out, that seven years after the *Safe Work Act 2008* more work has not been done in this area.
- 3.213 The Committee therefore recommends that the Minister for Employment in conjunction with Safe Work Australia formulate proposals to take to COAG that eliminate the requirement for a small business operating in multiple jurisdictions to engage with multiple workers' compensation schemes.

Recommendation 3

The Committee recommends that the Minister for Employment in conjunction with Safe Work Australia formulate proposals to take to COAG that eliminate the requirement for a small business operating in multiple jurisdictions to engage with multiple workers' compensation schemes.

165 Safe Work Australia, 'Workers' compensation', <http://www.safeworkaustralia.gov.au/sites/swa/workers-compensation/pages/workers-compensation>, viewed 16 December 2015.

Committee comment on penalty rates

3.214 The Committee recognises that penalty rates are a long established feature of Australia's workplace relations landscape, which reflect community values and upon which many low paid workers derive an important part of their income.

3.215 The Committee identifies with the Productivity Commission's statement that:

Penalty rates have a legitimate role in compensating employees for working long hours or at unsociable times. They should be maintained. However, Sunday penalty rates for cafes, hospitality, entertainment, restaurants and retailing should be aligned with Saturday rates.¹⁶⁶

3.216 The Commission recommends:

DRAFT RECOMMENDATION 14.1

Sunday penalty rates that are not part of overtime or shift work should be set at Saturday rates for the hospitality, entertainment, retail, restaurants and cafe industries.

Weekend penalty rates should be set to achieve greater consistency between the hospitality, entertainment, retail, restaurants and cafe industries, but without the expectation of a single rate across all of them.

Unless there is a clear rationale for departing from this principle, weekend penalty rates for casuals in these industries should be set so that they provide neutral incentives to employ casuals over permanent employees.¹⁶⁷

3.217 It is clear to the Committee that penalty rates are a significant financial impost on small business. It is also clear that many employees, often in casual work on low wages, rely on penalty rates to supplement their income. It is clear that any debate around penalty rates must seek to balance the cost to business with the wider community and societal impact.

3.218 Rather than an 'all or nothing' or zero sum game approach to penalty rates the Committee feels that award negotiations around penalty rates should

166 The Australian Government Productivity Commission, *Workplace Relations Framework: Draft Report*, August 2015, p. 4, <<http://www.pc.gov.au/inquiries/current/workplace-relations/draft/workplace-relations-draft.pdf>>, viewed 17 November 2015.

167 The Australian Government Productivity Commission, *Workplace Relations Framework: Draft Report*, August 2015, p. 52, <<http://www.pc.gov.au/inquiries/current/workplace-relations/draft/workplace-relations-draft.pdf>>, viewed 17 November 2015.

seek to think outside the square in order to reduce costs to business – particularly retail and hospitality businesses – on weekends without necessarily reducing the take home pay of the average employee.

Committee recommendation on payroll tax

- 3.219 The Committee believes that payroll tax is a major disincentive to small business employing people. What is especially incongruous to the Committee, is the different levels of payroll tax across Australia. It is disappointing that the *Payroll Tax 2010 Harmonisation Joint Protocol* (described in Chapter 2) has not been able to harmonise the impost of payroll tax.
- 3.220 The Committee draws attention to the following recommendation of the Australia's Future Tax System Review:
- Recommendation 55: Over time, a broad-based cash flow tax – applied on a destination basis – could be used to finance the abolition of other taxes, including payroll tax and inefficient State consumption taxes, such as insurance taxes. Such a tax would also provide a sustainable revenue base to finance future spending needs.¹⁶⁸
- 3.221 The Committee therefore recommends that the Australia Government work with states and territories to boost employment and business productivity by reducing state and territory governments' reliance on payroll tax as a form of revenue.

Recommendation 4

The Committee recommends that the Australia Government work with states and territories to boost employment and business productivity by reducing state and territory governments' reliance on payroll tax as a form of revenue.

168 Australian Government, The Treasury, 'Australia's future tax system: Consultation paper summary. Chapter 12: List of recommendations', <http://taxreview.treasury.gov.au/content/finalreport.aspx?doc=html/publications/papers/final_report_part_1/chapter_12.htm>, viewed 12 October 2015.

Committee comment on Section 46 of the *Competition and Consumer Law 2010*

- 3.222 The Committee acknowledges the Harper Review's proposal to introduce an effects test to section 46 of the *Competition and Consumer Law 2010* to include an effects test, the Committee points out some of the issues surrounding the effects test.
- 3.223 The Committee was not inquiring into the effects test and did not receive a great deal of submissions or oral evidence on the effects test particularly or competition law in general.
- 3.224 The Committee understands that there are views that s. 46 is not stringent enough and that an effects test is needed to properly protect consumers and small business. The Committee also understands that there are legitimate arguments for and against an effects test and differing views on the likely impact of an effects test. It is a topic upon which reasonable minds can differ.
- 3.225 The Committee supports vigorous of competition, provided this competition does not take advantage of a business' special position in the market but is rather, is the routine conduct of an efficient competitor.
- 3.226 Important in any discussion of an effects test, therefore is the structure of the market and the impact of this structure on small business. The Committee did receive the evidence to give this issue adequate consideration.
- 3.227 The Committee therefore is not minded to make recommendations in this area and notes the government's response to the Harper Review as follows:
- The Government acknowledges concerns raised in submissions to the Harper Review about the operation of the misuse of market power provision (section 46 of the CCA) and the Harper Review's recommendation for reform. In light of the importance of this issue for business and consumers, the Government will consult further on options to reform the provision and release a discussion paper on this topic.¹⁶⁹
- 3.228 The Committee looks forward to the release of the discussion paper.

169 Australian Government, 'Australian Government response to the competition policy review', p. 2
<http://www.treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2015/Government%20response%20to%20the%20Competition%20Policy%20Review/Downloads/PDF/Govt_response_CPR.ashx>, viewed 30 November 2015.

Committee recommendations on the GST threshold on physical importation

- 3.229 The Committee noted that there was evidence about the current GST threshold on the importation of physical goods. The Committee believes that there needs to be more accurate information on the impact on small business and cost effectiveness of lowering the GST threshold on the importation of physical goods.

Recommendation 5

The Committee recommends that the Productivity Commission investigate the impact on small business of lowering the GST threshold on the importation of physical goods and undertake regular cost effectiveness research of GST threshold reduction.

Barriers to gaining and maintaining employment in a small business

- 4.1 This chapter presents the Committee's evidence on the barriers faced by job seekers in finding and retaining work in the small business sector. It has three parts.
- The first part of the chapter presents the Committee's evidence relating to the personal circumstances of vulnerable cohorts of the labour force. These groups include people from culturally and linguistically diverse (CALD) backgrounds, school leavers and young people with limited skills and work experience, job seekers over 50 years of age, female job seekers with caring responsibilities, Aboriginal and Torres Strait Islander people and people living with a mental illness.
 - The second part of the chapter presents the Committee's evidence that job seekers – particularly those in these vulnerable cohorts – face structural impediments to finding work with small businesses. These structural barriers include limited recognition of skills, weaknesses in the apprenticeship system, poor transport networks and lack of work experience opportunities.
 - The third part of the chapter presents some of the ways that job seekers' disadvantage could be addressed.

Job seekers impeded by personal circumstance

- 4.2 As the largest employer group in Australia, small businesses provide significant employment opportunities for people that, due to circumstance, may have difficulties finding work. There are many cohorts of the labour force that are disadvantaged by circumstance, whether by

virtue of their cultural and linguistic background, their age, an illness they may suffer, their caring responsibilities or time out of the workforce.

- 4.3 These groups demand the attention of governments. Governments have an important role to implement policies and programmes to directly assist these people into employment. To this end, they also have a role in providing small businesses with the right mix of financial incentives and advisory information to employ people in vulnerable parts of the labour force.

The Culturally and Linguistically Diverse community

- 4.4 Non-English speaking job seekers, or those job seekers who come from a culturally and linguistically diverse (CALD) background, face particular disadvantages in the labour market. The data in Table 4.1 (below) presents 2011 figures from the *CALD Youth Census Report 2014*¹ which show that, for those aged 18–24, CALD born, refugee born, refugee ancestry and CALD ancestry people are in less employment than their Australian born counter-parts. The contrast is with enrolment in schooling. As Table 4.1 shows, CALD born, refugee born, refugee ancestry and CALD ancestry people are more likely to be enrolled in full or part time schooling than those born in Australia as well as those born her of CALD ancestry.

Table 4.1 Proportion of population aged 18 – 24 employed full or part time, enrolled in full or part time schooling, selected population groups, Australia 2011

	% Australia born	% CALD born	% Refugee born	% Refugee ancestry	% CALD ancestry
Employment	71.6	44.5	33.2	48.8	55.9
Schooling	39.4	66.3	57.3	56.0	58.2

Source Professor Graeme Hugo, Dr Kelly McDougall, Dr George Tan and Dr Helen Feist, *The CALD Youth Census Report 2014*, p. 35.

- 4.5 The most obvious obstacle to employment for people of CALD background is the language barrier. Without adequate English skills, jobs requiring customer contact are difficult to obtain. Many jobs require an ability to read signage and safety warnings. Compounding the disadvantage is often an employer bias against job seekers from a CALD background, whether conscious or unconscious.
- 4.6 Due to these factors, people from a CALD background that do gain employment are frequently underemployed and/or overqualified for the

1 Professor Graeme Hugo, Dr Kelly McDougall, Dr George Tan and Dr Helen Feist, *The CALD Youth Census Report 2014*, p. 35, <http://cmy.net.au/sites/default/files/publication-documents/CALD%20Census%20Report_Digital.pdf>, viewed 2 February 2016.

job. Ms Gulnara Abbasova of the Federation of Ethnic Communities' Councils of Australia (FECCA), told the Committee that this can give rise to the exploitation, dissatisfaction and disconnection of these job seekers and employees:

People from CALD backgrounds are among the most vulnerable in the workplace and tend to be concentrated in sectors of the job market, which creates potential for exploitation....²

- 4.7 Similarly, Mrs Melissa Monteiro of the Community Migrant Resource Centre explained that the CALD community have difficulty finding meaningful employment. She noted that this is due not only to the fact they are often over-skilled and overqualified, but also because their skills and qualifications are not recognised:

We have got communities that come with huge qualifications and many people are overskilled [and] overqualified. That in itself is one of the biggest barriers...That sheet of paper, their resume, means nothing to an employer. At the end of the day, that is a problem that we see across the board for skilled migrants. ³

- 4.8 Mr Salim Sukari of the Lebanese Muslim Association agreed that over qualification was a significant issue in his community:

...one of the biggest issues that we have is overqualification. I personally have met a couple of people, one of whom has a master's degree in chemical engineering and is now working as a taxi driver because he cannot find suitable employment. The number of people like that is quite high. I personally know a number of people who are working in convenience stores or petrol stations, and they have degrees and qualifications that would, in some cases, entitle them to work for a business like mine.⁴

- 4.9 The issue of skills recognition more broadly is discussed later in the chapter.

2 Ms Gulnara Abbasova, Director, Federation of Ethnic Communities' Councils of Australia, *Committee Hansard*, Canberra, 17 June 2015, p. 1.

3 Ms Melissa Monteiro, Executive Director, Community Migrant Resource Centre, *Committee Hansard*, Parramatta, 19 November 2015, p. 35.

4 Mr Salim Sukari, Director, Lebanese Muslim Association, *Committee Hansard*, Parramatta, 19 November 2015, p. 37.

4.10 People from a CALD background can face discrimination in the labour market from stereotyping by small business employers.⁵ FECCA contended that many people from CALD backgrounds were subject to stereotyping and either deliberate or unintentional discrimination while job seeking. It noted that this was often due to false perceptions of a lack of understanding, skill or intelligence by the job seeker. It gave the following example:

CALD workers can be the target of negative stereotypes and racist behaviour in hiring practices and at work. This topic was discussed at a recent consultation hosted by FECCA in Shepparton, Victoria. One participant felt that his accent was used as an excuse to end his employment after his probationary period, despite having performed well in the role. Another participant believed that racism occurs where businesses are not owned by people from migrant backgrounds or those familiar with the migrant experience, particularly in regional areas.⁶

4.11 Clearly, where this type of discrimination exists, it needs to be addressed. The website business.gov.au contains links to State and Territory legislation on anti-discrimination. The website also provides links to information from the Australian Human Rights Commission on preventing discrimination in recruitment. Importantly, the website also explains the benefits to a small business of recruiting a person from a CALD background:

They [a person from a CALD background] can help you to:

- understand Australia's multicultural consumers
- provide better customer service by using their language and cultural skills
- provide access to new market segments and networks
- expand internationally to overseas markets.

For example:

Australian banks and businesses often employ people who can speak Asian languages to work in their Chinatown branches, to provide a better service to consumers from Asian backgrounds.

5 There have been academic studies into the actual and simulated experience of people from CALD backgrounds in applying for work. See for example Alison Booth, Andrew Leigh and Elena Verganove, 'Does Racial and Ethnic Discrimination vary across minority groups? Evidence from three experiments' <http://library.bsl.org.au/jspui/bitstream/1/1141/1/Does_racial_and_ethnic_discrimination_vary.pdf>, viewed 22 January 2016.

6 Federation of Ethnic Communities' Councils of Australia (FECCA), *Submission 16*, p. 1.

If you run an organic produce store, an employee from a small farming background may develop a better rapport with local suppliers, and have a deeper understanding of supply issues, compared with someone from an urban area.⁷

Small business owners from a CALD background

4.12 The New South Wales Small Business Commissioner estimated that in December 2014, 2.5 per cent of the State's small business operators did not have English language proficiency.⁸ Thirty-two per cent of NSW small business operators were born overseas. Of this cohort, 17.2 per cent came from North East Asia, 10.7 per cent came from North Africa and the Middle East, another 10.7 per cent came from Europe.⁹

4.13 A lack of English language skills and familiarity with Australia's business environment can affect a business' success and capacity to grow. Mr Sukari told the Committee that the biggest barrier to establishing and developing a business is a lack of fluency in English, which hinders the ability to understand complex paperwork and regulatory requirements. He stated:

...language is definitely an issue when it comes to some of the migrants coming from overseas. They definitely have an aspiration to start a business and become highly successful. They end up confused by the number of laws: you have legislation to do with ATO, OSR, superannuation and workers comp, and the list goes on. So it is quite confusing for a person who is coming from a different cultural background and a different country altogether and is not used to any of the systems and is coming here and trying to find their pathway to establishing their own business.¹⁰

4.14 The Committee notes that the Australian Government has publicly available information to assist small business employers to recruit people from CALD backgrounds. Its website business.gov.au lists the benefits of a

7 Australian Government, Business, 'Employing people from culturally and linguistically diverse backgrounds', < <http://www.business.gov.au/business-topics/employing-people/diversity-in-the-workplace/Pages/employing-people-from-CALD-backgrounds.aspx>>, viewed 22 January 2016.

8 New South Wales Small Business Commissioner, *Small Business in NSW: Our Story*, December 2014, p. 10.

9 New South Wales Small Business Commissioner, *Small Business in NSW: Our Story*, December 2014, p. 11.

10 Mr Salim Sukari, Director, Lebanese Muslim Association, *Committee Hansard*, Parramatta, 19 November 2015, p. 37. See also Ms Nexhmije Shala, Business Development Manager, Community Migrant Resource Centre, *Committee Hansard*, Parramatta, 19 November 2015, p. 36.

CALD workplace, and some of the factors to consider when recruiting people from a CALD background.¹¹

- 4.15 The Committee also notes that in 2014, New South Wales introduced the Multicultural Small Business Advisory Service. The Service is part of the New South Wales Small Business Commissioner's Small Biz Connect Program. The Community Migrant Resource Centre won the contract to deliver the service.¹² The advisors provide 'face-to-face business advice and support, engage with multicultural stakeholders and bodies, and ensure services are suitable to the cultural needs of the small business owners they engage with'.¹³ An example of the benefits of this service is provided later in this Chapter.
- 4.16 The multicultural business advisors speak Cantonese, Mandarin, Korean, Vietnamese and Arabic. The NSW Small Business Commissioner has explained that the languages chosen are 'based on the current uptake of our services among linguistically diverse small business owners, and ABS data ranking NSW communities' proficiency in spoken English'.¹⁴

School leavers and young people

- 4.17 Against the backdrop of a sharp rise in tertiary participation rates in Australia, the lack of employment opportunities for young people is of concern. The youth unemployment rate in Australia increased to 13.81 per cent in July from 13.36 per cent in June of 2015.¹⁵ Table 4.2, from the Brotherhood of St Lawrence, shows the areas in Australia with the highest youth unemployment rates in 2014.

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- 11 Australian Government, Business, 'Employing people from culturally and linguistically diverse (CALD) backgrounds', <<http://www.business.gov.au/business-topics/employing-people/diversity-in-the-workplace/Pages/employing-people-from-CALD-backgrounds.aspx>>, viewed 22 January 2016.
- 12 The Hon. Victor Dominello and the Hon. John Barilaro, 'Multicultural Small Business Advisors a step closer', *media release*, 22 October 2014, <http://www.smallbusiness.nsw.gov.au/_data/assets/pdf_file/0003/61842/141022-Tender-for-multicultural-small-business-advisors.pdf>, viewed 22 January 2016.
- 13 New South Wales Small Business Commissioner, 'Specialist advisors announced for multicultural businesses', <<http://www.smallbusiness.nsw.gov.au/news/smallbiz-connect/specialist-business-advisors-announced-for-multicultural-businesses>>, viewed 22 January 2016.
- 14 New South Wales Small Business Commissioner, 'Specialist advisors announced for multicultural businesses', <<http://www.smallbusiness.nsw.gov.au/news/smallbiz-connect/specialist-business-advisors-announced-for-multicultural-businesses>>, viewed 22 January 2016.
- 15 tradingeconomics.com, Australia, 'youth unemployment rate', <<http://www.tradingeconomics.com/australia/youth-unemployment-rate>>, viewed 23 September 2015.

- 4.18 Some inquiry participants suggested that the high youth unemployment rate is due to a decline in available jobs. Others blamed the attitude and low skill base of young people.
- 4.19 Small businesses face significant risk every day and making poor employment choices can mean the difference between failure and success. Employers need employees with the skills and experience to foster this success and with skills such as personal presentation, timeliness and initiative apparently lacking in a rising amount of young people. The Committee's evidence suggests that these jobs are going to older people with life experience and better developed work skills.

Table 4.2 Highest youth unemployment locations in Australia

Region	State	Youth Unemployment Rate (%)
<i>West and North West Tasmania (including Burnie, Devonport)</i>	TAS	21.0
Cairns	QLD	20.5
Northern Adelaide (including Elizabeth, Gawler)	SA	19.7
South East Tasmania (including Derwent Valley, excluding Hobart)	TAS	19.6
Outback Northern Territory	NT	18.5
Launceston and North East Tasmania	TAS	18.2
Moreton Bay North (including Caboolture, Redcliffe)	QLD	18.1
Wide Bay (including Bundaberg, Gympie)	QLD	17.6
Hume including Goulburn Valley, Woodonga, Wangaratta)	VIC	17.5
Mandurah (including Dawesville, Falcon)	WA	17.3

Source Brotherhood of St Lawrence, *Australian Youth Unemployment 2014: Snapshot*, p. 4.

- 4.20 Mr Jos de Bruin, Chief Executive Officer of Master Grocers Australia/Liquor Retailers Australia, agreed that young people often lack the right attitude to be competitive in the workplace. He stated:

Many of our retailers around the countryside would prefer to employ mature age people, simply because of that big word 'attitude'. They have an attitude. They have customer service. They can relate to people. Unfortunately, many young people do not have that attitude. When you find one, you just want to keep them and you want to grow them.¹⁶

16 Mr Jos de Bruin, Chief Executive Officer, Master Grocers Australia/Liquor Retailers Australia, *Committee Hansard*, Melbourne, 13 July 2015, p. 9.

- 4.21 However, others suggested that attitudinal issues in young people stemmed from a lack of attention to work skills in the school curriculum. Mrs Daniela Ascone of the Fingerprint Me Youth Employment Academy argued that more needs to be done in schools to teach young people what employers look for in an employee:

In terms of our work and our expertise both as an employer and as professionals in the sector, we have found the root of the problem lies at a secondary school level with the lack of education provided to young people about the world of work, and the expectations of a young person but equally the role of an employer and their responsibilities... There needs to be a better understanding from a young person's perspective but also from an educator's perspective.¹⁷

- 4.22 Mrs Ascone noted the lack of importance that schools based careers counselling is given:

...there has been a lot of discussion about a review of the career support that is provided in schools. We receive a number of inquiries and in the conversations we are having with schools, we find the careers teacher is one day a week delivering transition support to young people but then a maths teacher for the rest of the week. They are usually supporting 500 to 1,300 young people in the school.¹⁸

- 4.23 While the current Higher School Certificate (HSC) in New South Wales is well suited to preparing young people for further academic studies, there are many who will take a different post-school pathway for which they are often underprepared. The New South Wales Business Chamber agreed that this issue needs to be recognised at the school level, with the incorporation of better training and job ready programs into the school curriculum, and into post school support.¹⁹

- 4.24 Starting work skills training as early as possible is crucial for engaging students and helping them transition from school to the workforce. The National Employment Services Association (NESA) submitted:

By introducing the options of work in combination with education, disconnection from school may be prevented for those at risk of leaving. Skills gained and networks developed through

17 Mrs Daniela Ascone, Director, Strategy and Partnerships, Fingerprint Me Youth Employment Academy, *Committee Hansard*, Melbourne, 13 July 2015, p. 2.

18 Mrs Daniela Ascone, Director, Strategy and Partnerships, Fingerprint Me Youth Employment Academy, *Committee Hansard*, Melbourne, 13 July 2015, p. 3.

19 NSW Business Chamber, *Submission 38*, pp. 4-5.

supported work outside school hours are likely to ease transition to post school employment later in life. Furthermore, for those disadvantaged young people seeking to leave school, having the opportunity to connect to services before actually disengaging would provide a smoother transition. This would keep them within a system of support, significantly reducing the risk of long-term disconnection from the workforce.²⁰

- 4.25 NESAs also pointed out the benefits of this approach nationally in building the future of Australia's workforce:

By redefining the eligibility for employment support to young people of legal working age who are currently at school, and expanding services to include assistance to gain work outside of school hours, greater support with school based apprenticeships, and support for transition from school to work for those that need it, governments would not only reduce the risk of long term unemployment for this group, but go a long way to providing a future workforce with the key attributes employers are seeking in young people.²¹

- 4.26 There has been a massive expansion in Australia's tertiary education sector over the past 30 years. Many young Australians now have a tertiary qualification that would previously have been out of reach. However, some witnesses have argued that the focus on tertiary education has devalued the importance of developing practical experience and the role of vocational careers.

- 4.27 Mr Peter Coronica, Chief Executive Officer and Founder of Fingerprint Me Youth Employment Academy explained that there has been too much emphasis on young people attending university, which can undermine the opportunities provided by alternative career pathways. Mr Coronica provided an anecdote to this end:

Two weeks ago I was at a careers conference doing some training as a careers teacher, explaining that you do not need to go to university. I said, 'There are 31,000 sales jobs on Seek right now. Some of these pay over six figures. It's a great way to get in the door.' The careers teacher said, 'That's not a real job.'²²

- 4.28 Mr Coronica emphasised the importance of well-defined, realistic career goals to assist young people in their search for employment. He argued

20 National Employment Services Association (NESA), *Submission 28*, p. 5.

21 National Employment Services Association (NESA), *Submission 28*, p. 6.

22 Mr Peter Coronica, Chief Executive Officer and Founder, Fingerprint Me Youth Employment Academy, *Committee Hansard*, Melbourne, 13 July 2015, p. 4.

that a university education is no longer enough in securing a job for the future:

The two things we touched on were making them job ready with job skills, ideally at the end of school, and the career goal. The career goal needs to be realistic. When you have someone who is 20 years of age or beyond entering the workforce without a career goal they end up playing what we call hopscotch, hopping among employers looking for their ideal fit. Employers are fed up. They are tired of young people trying to find themselves in the workplace. If young people at 15 or 16 could have a career goal where there is really realistic demand, say, surveying, when 90 per cent of graduates get full-time work and it is a growing industry – there are many others – 40 per cent of employers claim they cannot fill skilled roles but 32 per cent of university graduates are either unemployed or underemployed. That shows that university is not the ticket anymore. Otherwise, the employers would be filling roles and university graduates would all be getting jobs.²³

- 4.29 Other witnesses agreed that students need to have the freedom and ability to choose a career path that they are interested in at an early stage. Mr Tony Mylan, Chief Executive Officer of ET Australia, provided an example of where students on the NSW Central Coast are given tactile experiences with a variety of trades in order to provide exposure to the student, and potentially spark interest for a future career path. As he told the Committee:

...here on the Central Coast a group of organisations organise a Try a Skill day every single year and offer schools the opportunity to bring students there. TAFE, university, Group Training companies and the RTOs set up and give young people the opportunity to try construction, hairdressing, automotive – it is all there. It is about leading the right people at the right time to the right things. As Michael said, it is making sure that parents and career advisers are not telling kids what they need to do but making sure they are creating a pathway based on that kid's capabilities and interests.²⁴

- 4.30 The Shop, Distributive and Allied Employees' Association (SDA) agreed that a societal shift is needed that values both technical careers and

23 Mr Peter Coronica, Chief Executive Officer and Founder, Fingerprint Me Youth Employment Academy, *Committee Hansard*, Melbourne, 13 July 2015, p. 3.

24 Mr Tony Mylan, Chief Executive Officer, ET Australia, *Committee Hansard*, Tumby Umbi, 21 August 2015, p. 12.

university education. The National Secretary, Mr Gerald Dwyer, explained:

I would have thought that the cultural message from communities to children is that it is good to go and get entry into the workforce in those junior years. Culturally there is the talking-down of the service sector, which we have identified as a problem. One of the other things that I think is a problem culturally is the conversation that has gone on for far too long about the holding-up of university as opposed to a technical career. Kids pick these things up incredibly quickly, and we have been talking about it now as a community for God knows how many decades. It is not good. Both of them have their place and should be talked up. I actually think that in terms of government programs we could be looking at greater integration between schools and some of the technical education that can go on in parallel and even on the same campus.²⁵

- 4.31 There are industries that have difficulty attracting young people into careers despite jobs being available. Mrs Leyla Yilmaz of the Victorian Automobile Chamber of Commerce told the Committee that there is an incorrect perception of industries with no future or with no career opportunities within the community. In terms of the car industry, she said:

...we want people to come into our industry. It is a skill shortage area. We cannot get enough good quality people into it. We want people who are correct for our industry and suit our industry to come into the industry and work in our industry, be upskilled and be future leaders in our industry. That is what we would like to see: people with real jobs to fill these vacancies. There are many of them, but there have to be real outcomes, and that is my worry.²⁶

- 4.32 A similar complaint was made in regard to the retail and hospitality industries where small business employers can have difficulty in attracting staff that are looking to retail as a genuine career option. These industries are often considered transitional jobs en route to a more 'serious' career and can be overlooked by parents, careers counsellors and the like in their advice to young people. Master Grocers Australia told the Committee:

We want to keep people in our industry, and we are finding it very difficult to attract people to retail. Retail is a profession. It is a

25 Mr Gerard Dwyer, National Secretary, Shop, Distributive and Allied Employees Association, *Committee Hansard*, Melbourne, 13 July 2015, p. 21.

26 Mrs Leyla Yilmaz, Deputy Executive Director Industrial Relations, Victorian Automobile Chamber of Commerce, *Committee Hansard*, Melbourne, 13 July 2015, p. 39.

career. It is highly rewarding, and it can take people wherever they wish to go. We have lots of trouble attracting people to stay within our industry. It is a great concern because of succession planning.²⁷

- 4.33 This point is significant given that the retail and hospitality industries constitute the majority of small businesses, and are therefore major contributors to employment and the economy. Furthermore, they are also significant employers of low skilled and vulnerable people, as Master Grocers Australia/Liquor Retailers Australia pointed out:

The Australian retail sector, particularly independent supermarkets, employs a far greater proportion of the least-skilled and most vulnerable workers in Australia, including youth, students, single parents, non-primary income earners in households, trainees, apprentices, and mature-aged workers returning to the workforce.²⁸

- 4.34 Master Builders Australia (MBA) has also identified a problem with a decline in the number and the quality of young apprentices. Young apprentices with the right 'soft skills' such as communication and interpersonal skills and a strong work ethic, are becoming increasingly hard to find. MBA believes these skills should be taught alongside apprenticeship pathway programs in schools:

The number one issue identified by NSW Master Builders in their 2014 survey of members was quality apprentices. Quality apprentices with the right skills and attitudes are a real and pressing issue for the construction industry and are continually raised in discussions on a national basis by members. Master Builders recommends that a national approach be implemented to drive industry and school partnerships that support students to establish pathways into construction jobs from year 10 onwards.²⁹

- 4.35 A lack of these soft skills appears to be a problem among all job seekers. This issue is particularly pertinent to small business employers who have few employees. As NESA's CEO stated:

What is a recurrent theme is the employability skills, whether we call them foundation skills or core skills for work. There is that

27 Mr Jos de Bruin, Chief Executive Officer, Master Grocers Australia/Liquor Retailers Australia, *Committee Hansard*, Melbourne, 13 July, p. 9.

28 Master Grocers Australia/Liquor Retailers Australia, *Submission 13*, p. 3.

29 Master Builders Australia, 'Towards 2020: Policy for Australian Apprenticeship Reforms', 1 July 2015, <<http://www.masterbuilders.com.au/TemporaryDownloads/A56823F3-4E7B-4480-AD8E-45208B1BDAED-APPRENTICESHIPS%20TOWARDS%202020.pdf>>, p. 14 viewed 18 December 2015.

whole thing you will hear again and again from employers about attitude, reliability and punctuality. So it is not necessarily those things which come with credentials – although that is also very important, which all the evidence shows. It is about how you fit into your environment. That seems to be something that comes through pretty consistently from small to medium sized enterprises in their representations.³⁰

- 4.36 NESAs recognises that the cohort of job seekers who are not in employment or education are at a particular disadvantage:

I do think we have a challenge with the group which people have referred to as not in education or training or employment. That is a disaffected group in the early 20s but it is the ones who are not eligible to be in employment services and to receive the full suite of services. That really needs some very close examination in terms of making sure that those people do not become so disaffected that they dropout and by the time they get into the service they are in their late 20s and early 30s and they are pretty well broken.³¹

Mature aged job seekers

- 4.37 Over the past 20 years, the labour force participation rate of Australians in both the 55–64 age bracket and the 65 and over age bracket has increased.³² In the past decade, the proportion of mature aged workers (aged 55 to 64 years) has increased from 13.1 per cent to 17.4 per cent.³³ In part, this reflects Australia's ageing population and rising pension age.
- 4.38 However, the labour force participation rate of Australia's mature aged workers has been consistently and significantly lower than for younger cohorts. In 2014, the rate for persons aged 55 and over was 35 per cent compared with 79 per cent for people aged the 15–54.³⁴ Twenty per cent of unemployed people aged 55–64 were unemployed for over two years compared to only 6.4 per cent of unemployed people aged 15–24 years.

30 Ms Sally Sinclair, Chief Executive Officer, National Employment Services Association, *Committee Hansard*, Melbourne, 13 July 2015, p. 50.

31 Ms Sally Sinclair, Chief Executive Officer, National Employment Services Association, *Committee Hansard*, Melbourne, 13 July 2015, p. 51.

32 Australian Bureau of Statistics, 'Older people and the labour market', *Cat. 4102.0 – Australian Social Trends*, September 2010, <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Sep+2010>> viewed 22 January 2016.

33 Australian Government Department of Employment, *Submission 31*, p. 14.

34 Australian Institute of Health and Welfare, 'Older Australian staying at work', *Australia's welfare 2015*, <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129552301>> viewed 22 January 2016.

- 4.39 While the unemployment rate of mature aged workers tends to be lower than the rate in other age cohorts, the period of time that an unemployed mature aged person spends out of the workforce tends to be longer. Table 4.3 shows that a high proportion of unemployed persons aged 55–64 remain unemployed after two years.

Table 4.3 Duration of unemployment by age, 2014-2015

	15–24	25–44	45–54	55–64
26 weeks to 52 weeks	16.4	15.2	15.2	14.7
52 to 104 weeks	11.6	11.5	14.2	14.8
More than 104 weeks	6.4	10.9	15.4	20.0
Total unemployed	283 800	293 500	106 300	70 300

Source Queensland Government Statistician's Office, Taken from ABS Cat. No 6291.0.55.001, *Labour Force Australia*, Detailed <http://www.ggso.qld.gov.au/subjects/economy/labour/tables/unemployed-persons-duration-aus/index.php>

- 4.40 In its submission to the inquiry, the federal Department of Employment observed the same trend:

While persons aged 55–64 years have a relatively low unemployment rate, they continue to encounter significant barriers in finding employment if they become unemployed. Unemployed mature age people experience substantially longer periods of unemployment. In April 2015, the average duration of unemployment for persons aged 55–64 years stood at 78 weeks – well above the 46 weeks for persons aged 25–54 years.³⁵

- 4.41 A 2012 ABS survey into the reasons for retirement found that 10 per cent of respondents noted they had been retrenched, dismissed or there was no work available. Another five per cent said their business had closed down.³⁶
- 4.42 For mature aged workers, retraining and finding employment can be difficult for various reasons. Those with specific skills and experience in declining industries in Australia – such as car manufacturing – can find it challenging to adapt these skills to other industries. A laid-off Holden worker, for example, would likely face a period of retraining and reskilling to find work in the shipbuilding or mining industries.
- 4.43 If unemployed or transitioning between jobs, mature aged job seekers can have difficulties finding blue collar employment. The physical nature of

35 Australian Government Department of Employment, *Submission 31*, p. 15.

36 Australian Institute of Health and Welfare, 'Older Australian staying at work', *Australia's welfare 2015*, < <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129552301> > viewed 22 January 2016.

blue collar work combined with the requirement for up-to-date technical experience can be significant barriers. As Mrs Yilmaz of the Victorian Automobile Chamber of Commerce expressed:

The [automotive] industry is attracted to entrants coming into the industry once they leave school because they can make those transitions a lot easier. But someone coming in at 50 plus for the first time ever in the automotive industry is challenging, it really is unless they are able to do other roles that are not so physically demanding or technically challenging. Some of those jobs are few and far between because they are the nice-to-have jobs.³⁷

Discrimination against mature aged job seekers

4.44 There are also, unfortunately, employer stereotypes and misperceptions of mature aged workers that serve as a barrier to finding work. In a 2010 report, the Human Rights Commission put the following context to age discrimination in the workplace:

In the workplace, discriminatory practices instructing recruiters 'not to send me CV's of anyone over 40', can be cheaper and easier than undertaking a proper individual assessment of someone's actual ability to do the job. Cheap and convenient though this practice may be, these kinds of attitudes and practices result in unreasonable assumptions and stereotypes that could be unlawful under our anti-discrimination laws. The longer these ageist attitudes and practices persist within our workplaces, the more likely it is that mature age workers will suffer the consequences - or worse, start to believe and accept these stereotypes themselves.³⁸

4.45 The Age and Disability Discrimination Commissioner, Ms Susan Ryan AO, identified the view among some employers that mature aged people are more likely to claim workers compensation.³⁹ In fact, she noted, ABS data on work-related injuries by age group indicates that people aged

37 Mrs Leyla Yilmaz, Deputy Executive Director Industrial Relations, Policy and Engagement, Victorian Automobile Chamber of Commerce, *Committee Hansard*, Melbourne, 13 July 2015, p. 38.

38 Human Rights Commission, 'Age Discrimination – exposing the hidden barrier for mature age workers', <<https://www.humanrights.gov.au/our-work/age-discrimination/publications/age-discrimination-exposing-hidden-barrier-mature-age#Heading165>>, viewed 22 January 2016.

39 Ms Susan Ryan AO, Age and Disability Discrimination Commissioner, Australian Human Rights Commission, *Committee Hansard*, Canberra, 25 November 2015, p. 4.

65 years and over recorded the lowest rate of work related injury or illness.⁴⁰ The same point was made in the HRC report:

Where the process of getting older is linked with general assumptions of a person's physical decline and potential for injury – whether or not this is correct – such stereotypes become a thin cover for issues of disability discrimination. Avoiding mature age workers because of a perceived 'disability risk' may be discriminatory and reveals an attitude of unwillingness by some employers to provide workplaces that enable people with different abilities to work to their full potential. This is quite apart from the fact that research shows that workers with disability have a lower number of occupational health and safety incidents compared to other workers.⁴¹

4.46 The Age Discrimination Commissioner also raised the issue of unfair taxation on redundancy payments for people over 65 years. Currently, employees that take a redundancy package under the age of 65 year are eligible for tax benefits whereas those over 65 are not. As well as being discriminatory, this arrangement also fails to provide an incentive to remain employed beyond this age. As Ms Ryan explained:

If you are over 65, you do not get any tax benefit on your redundancy payment. It is taxed at your highest rate. That can mean a lot of money for someone who got quite a big redundancy, because they had been with the firm for a long time... I think it is something that should be addressed and I think it is not there. In the current climate where everyone is encouraging people to keep on working past 65, and many people want to and need to, then to say 'We're going to chew up half your redundancy when you get it'.⁴²

4.47 The human cost of a period of unemployment for a mature aged person should not be overlooked. Having often had decades of experience and engagement with the workforce, unemployment can be unexpected and disorientating. Ms Sinclair of NESAs told the Committee that mature aged unemployed job seekers:

40 Australian Government, Australian Bureau of Statistics, 'Work Related Injuries, Australia, JUL 2013 to JUN2014; Summary of findings', <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/6324.0>>, viewed 16 December 2015.

41 Human Rights Commission, 'Age Discrimination – exposing the hidden barrier for mature age workers', < <https://www.humanrights.gov.au/our-work/age-discrimination/publications/age-discrimination-exposing-hidden-barrier-mature-age#Heading165> >, viewed 22 January 2016.

42 Ms Susan Ryan AO, Age and Disability Discrimination Commissioner, Australian Human Right Commission, *Committee Hansard*, Canberra, 25 November 2015, p. 5.

...need a lot of career counselling and coaching and a lot of personal support, because invariably their whole identity has been tied up with work and it is very confronting.

...it never occurred to them that they would be without employment. But, other than having their friendship groups of their families for support, they do not get into the services. And, if they go to services, they have to pay for them. Generally by that stage every dollar is important, so you have to be careful what you are spending. And often they will not talk to their families, because they feel embarrassed. You hear many stories about how people still put on their work clothes and head out the door every morning even though they have been made redundant. It is a very complex area and one that I think needs a stronger response in terms of services and supports.⁴³

The appeal of mature aged workers

4.48 While discrimination and aged based stereotypes can be a barrier for mature job seekers, industries such as retail and grocery often prefer older workers for their work ethic and commitment. As Mr de Bruin of Master Grocers Australia explained:

[Grocery employers] want reliability, experience and maturity. They want people to turn up on time, be able to engage with customers and do the job. The other thing is initiative. You have got to have a certain amount of initiative in the workplace. For example, if there are some trolleys hanging around just outside, initiative means you go and grab them and stack them back inside. Generally speaking, an adult will see that from a mile off and just go and do it. But the kids just do not see it. Again, that is another example of adult wages versus junior rates. As they get a bit older, you pay them a little more on the basis that their maturity improves and their experience improves.⁴⁴

Assistance for mature aged workers

4.49 The Restart Wage Subsidy (discussed in Chapter 2) is a Government initiative that provides employers up to \$10 000 for employing a person aged over 50 years. While the subsidy was developed to address the lack of employment options for older people, it has not been widely utilised.

43 Ms Sally Sinclair, Chief Executive Officer, National Employment Services Association, *Committee Hansard*, Melbourne, 13 July 2015, p. 53.

44 Mr Jos de Bruin, Chief Executive Officer, Master Grocers Australia/ Liquor Retailers Australia, *Committee Hansard*, Melbourne, 13 July 2015, p. 12.

Indeed, Ms Ryan noted that it is not well known about in the small business community.⁴⁵

- 4.50 To be eligible for the Restart Wage subsidy, a jobseeker must be unemployed or on income support for at least six months.⁴⁶ This can be counterproductive for a jobseeker who is best served by gaining employment as soon as possible. Ms Ryan put this well:

I have to say, the requirement that the person be on benefits for six months is the biggest stumbling block. That is because most of the placements are done through the job provider agencies and you, really, only get into them if you go to Centrelink, if you are unemployed, and you get into the program. But if you lose your job at 53 and get a redundancy, if you have some savings or if your partner is working you do not go to Centrelink, so you do not get into the picture. We could all see, from a common-sense point of view, the best time to hire a person who has lost their job is as soon as possible after they have lost their job.⁴⁷

- 4.51 The Restart subsidy can be of great assistance to an employer of a mature employee, particularly where additional training is required. Ms Ryan provided the following anecdote of a small business employer who was able to use the subsidy to upskill a new mature employee:

The guy had been unemployed for six months so he [the small business employer] hired him, and he said he was terrific ... I said: 'Did the \$10,000 make a difference?' He said: 'It did in this way. For his first six weeks on the job he had to work alongside someone else. I wasn't employing him as a plumber. I didn't need a plumber. But I knew, because he had been a tradesman, that he would be able to upskill, pick up the stuff. So he works alongside an experienced employee for six weeks or so. He is not productive in that time...'⁴⁸

45 Ms Susan Ryan AO, Age and Disability Discrimination Commissioner, Australian Human Rights Commission, *Committee Hansard*, Canberra, 25 November 2015, pp 1–2.

46 Australian Government, Department of Employment, 'Restart- help to employ mature workers', <<https://www.employment.gov.au/restart-help-employ-mature-workers>>, viewed 16 December 2015.

47 Ms Susan Ryan AO, Age and Disability Discrimination Commissioner, Australian Human Rights Commission, *Committee Hansard*, Canberra, 25 November 2015, p. 2.

48 Ms Susan Ryan AO, Age and Disability Discrimination Commissioner, Australian Human Rights Commission, *Committee Hansard*, Canberra, 25 November 2015, p. 3.

Female job seekers

4.52 ABS data shows that the unemployment rate for men and women (aged 20–74 years) in Australia in 2013–2014 was the same at five per cent. The real gender discrepancy in terms of work is in the level of underemployment and in labour force participation rates. Table 4.4 and Table 4.5 show these differences.⁴⁹

Table 4.4 Gender differences—labour force participation rates

	2011–12	2012–13	2013–14	2014–15
Males	79.1	78.8	78.4	78.3
Females	65.2	65.1	65.0	65.1

Table 4.5 Gender differences—underemployment

	2011–12	2012–13	2013–14	2014–15
Males	4.8	4.8	5.1	5.8
Females	8.4	8.5	9.0	9.7

Source Australian Bureau of Statistics, *Cat. 4125.0, Gender indicators, Australia, August 2015*

4.53 The ABS defines underemployment as a situation when ‘the hours of work of an employed person are below a threshold, and are insufficient in relation to an alternative employment situation in which the person is willing and available to engage’.⁵⁰ In August 2015, the ABS noted:

Data from the ABS Labour Force survey also showed that there was a four percentage point difference in the underemployment rate between men and women aged 20–74 years in 2014–15. Male underemployment was 6% while female underemployment was 10%. Underemployment has increased for both men and women over the last five years.⁵¹

4.54 Women also have a lower labour force participation rate than men. The ABS commented in August 2014:

49 Australian Government, Australian Bureau of Statistics, ‘Gender Indicators, Australia, Aug 2015: Working population’, <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4125.0main+features110Aug%202015>> viewed 22 January 2016.

50 Australian Government, Australian Bureau of Statistics, ‘Underemployed workers’, <<http://www.abs.gov.au/ausstats/abs@.nsf/products/036166B5C6D48AF2CA256BD00027A857?OpenDocument>>, viewed 22 January 2016.

51 Australian Government, Australian Bureau of Statistics, ‘Gender indicators, Australia, August 2015: Economic security’, <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4125.0~Aug%202015~Main%20Features~Economic%20Security~6151>>, viewed 22 January 2016.

The ABS found that in 2013-14, 65 per cent of women aged 20-74 were working or looking for work compared to 78 per cent for men of the same age. Over the last five years, men's participation in the labour force decreased slightly from 79 per cent in 2008-09 while women's participation remained steady at around 65 per cent.

This gap widens with the arrival of children and then reduces as children enter school. Mothers with dependent children had a much lower labour force participation rate than fathers. While 57.5 per cent of mothers whose youngest child is aged 0-5 years were participating in the labour force, 94 per cent of fathers, whose youngest child is 0-5 years, were working or looking for work.⁵²

Women with caring responsibilities

- 4.55 For many women, caring responsibilities for children or elderly parents can mean an extended period of time out of the labour force (see Table 4.5). For others with the same responsibilities, the only option is to work part-time. The ABS reported that in 2014-15, 43.8 per cent of employed females worked on a part-time basis compared to only 14.6 per cent of employed males.⁵³
- 4.56 Some small business employers, who have fewer resources than their larger counterparts, can fail to see the benefit of employing someone with caring responsibilities. This is despite the fact that that these employees can be more motivated to retain employment.
- 4.57 Fitted for Work is a not-for-profit charity that provides assistance for disadvantaged women to achieve financial independence and economic security. The CEO, Ms Donna de Zwart, provided the following example of a single mother caring for a young family:

I would say that some of the most significant barriers are around flexibility for women. For example, in Holly's case – single mother, three children – the flexibility around work, looking at part-time work, looking at job share options and those types of things are an issue, particularly for small to medium employers; there is still an education piece needed around that. There is a perception that that

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- 52 Australian Government, Australian Bureau of Statistics, 'Women's participation in the labour force lower than men's', *media release* <<http://www.abs.gov.au/ausstats/abs@.nsf/products/BBFFAEB8C564175BCA257CD20025F9D9?OpenDocument>>, viewed 22 January 2016.
- 53 Australian Government, Australian Bureau of Statistics, 'Gender Indicators, Australia, Aug 2015: Working population', <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4125.0main+features110Aug%202015>> viewed 22 January 2016.

can be quite a difficult thing to manage, as opposed to it being a real opportunity to employ somebody who is going to be incredibly loyal.⁵⁴

4.58 Without assistance, and without an understanding employer, women in these situations can experience a range of devastating effects such as long term unemployment, low self-esteem, financial insecurity and even homelessness.

4.59 Specialised services helping women to gain employment, such as Fitted for Work, are able to offer tailored assistance that other, more general employment service providers do not. Ms de Zwart explained the nature of this assistance:

When someone presents to an employment consultant with significant mental health issues, how is that employment consultant expected to deal with that? When someone presents and you know that there are significant issues at home, potentially around domestic violence, how does that consultant deal with it? Their sole role is to get that person into work and they are measured on the activity of getting that person into work. What we provide is the empathy and the compassion that is needed to help these women regain their confidence and self-esteem and be able to present themselves and articulate their skills and their strengths in the best way possible. So for us to be able to pass on all these skills to employment services I think is a massive ask.⁵⁵

4.60 Ms Holly Edson, a former client of Fitted for Work, explained to the Committee how receiving personalised service from an organisation that understood her situation and the barriers she faced, gave her the confidence she needed to succeed in a job interview:

With retail, the older you get the harder it is to get in, and with my weight it is hard, because everyone wants the pretty salesperson. I said (to the Fitted for Work volunteer), 'I am worried that I am not going to get the position.' She said: 'Be open with them. Don't be afraid. You're beautiful the way you are.' She gave me that little bit of confidence that I just did not have anymore. I honestly believe that if I did not have that other person to sit there and tell me, 'You know what – be open with them,' the same thing (being

54 Ms Donna de Zwart, Chief Executive Officer, Fitted for Work, *Committee Hansard*, Parramatta, 19 November 2015, p. 3.

55 Ms Donna de Zwart, Chief Executive Officer, Fitted for Work, *Committee Hansard*, Parramatta, 19 November 2015, p. 5.

unsuccessful in an interview) would probably have happened yet again.⁵⁶

- 4.61 Other organisations emphasised the importance of the small business community acknowledging the role of carers and parents. Mr Marcus Watson of The Better Futures Hub noted that for many people, workplace flexibility can mean the difference between employment and unemployment. His evidence showed that these issues do not only affect single working mothers but fathers as well. As he told the committee:

...in the last month I have dealt with a single father, a 29-year-old with three kids, who has to be on site at 6.30 am and who has an agreement with a friend down the road to take care of the three kids before school. When that falls over the job falls over. That is not to do with the training and that is not to do with the transport. It is just that that is his situation and he has no way to manage that.⁵⁷

- 4.62 Fitted for Work do not receive government funding for their services. The funding that is allocated for placing individuals in paid employment is generally provided only to job service providers and not to charities that offer specialised services. Fitted for Work noted that this is principally due to the difficulty of measuring the output of their work:

jobactive Providers receive payments from government based on positive employment outcomes. Currently Fitted for Work receives no payment from jobactive Providers for the ancillary services provided, even though Fitted for Work contributes significantly to their successful employment outcomes. We estimate that currently more than 3,600 of the 4,000 women we assist annually are referred to us by agencies who receive government funding based on positive employment outcomes. For example, jobactive Providers currently receive a portion of government funding per jobseeker for the purchase of interview appropriate clothing. However, we know from our daily work with job seekers and our work with the jobactive Providers that this money generally does not achieve its intended purpose.⁵⁸

- 4.63 Ancillary services provided by charities like Fitted for Work include a suite of targeted assistance methods such as interview coaching, personal
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56 Ms Holly Edson, Former Client, Fitted for Work, *Committee Hansard*, Parramatta, 19 November 2015, p. 4.

57 Mr Marcus Watson, National Development Manager, The Better Futures Hub, *Committee Hansard*, Tumbi Umbi, 21 August 2015, p.7.

58 Fitted for Work, *Submission 48*, p. [5].

mentoring and outfitting with interview appropriate clothing. This type of holistic approach, as stated by Fitted for Work “fills a gap in the current jobactive service delivery model” and “allows [them] to achieve sustainable employment outcomes for our job seekers”.⁵⁹

- 4.64 Positively, however, many traditionally male dominated industries are seeking to increase their female workforce. Mr Wilhelm Harnisch, Chief Executive Officer of Master Builders Australia, has identified the building and construction industry as one that is actively promoting opportunities for women:

...we do not have enough women in our industry. In part, that is tradition, but we are determined to encourage more women and we are working in that space as well.⁶⁰

- 4.65 Ms de Zwart explained how Fitted for Work was able to find jobs for women in a male dominated industry:

I also think that in traditionally male dominated industries there is a massive opportunity for women to be employed in those industries. We have had a very successful example of a pilot project that we worked on with Yarra Trams in Melbourne. They wanted to increase not only the number of women in their workforce but also, specifically, they wanted to increase their number of women tram drivers. But they were struggling to attract women. We had a commercial arrangement with Yarra Trams where we had this beautiful workforce of ready and willing and skilled women who wanted to work in that arena, but they were not necessarily thinking about tram driving as an opportunity. We were able to remarket the role in a way that we knew would appeal to women, and so we worked very hard with Yarra Trams on that. I think we are close to 40 women over a 12-month period who have successfully becoming tram drivers in Melbourne.⁶¹

59 Fitted for Work, *Submission 48*, p. [3].

60 Mr Wilhelm Harnisch, Chief Executive Officer, Master Builders Australia, *Committee Hansard*, Canberra, 24 June 2015, p. 10.

61 Ms Donna de Zwart, Chief Executive Officer, Fitted for Work, *Committee Hansard*, Parramatta, 19 November 2015, p. 3.

Mental health as a barrier to employment

- 4.66 A mental illness is often a significant barrier in an individual's ability to gain and maintain employment. Mental illness is an invisible disability and one which can be difficult for both the sufferer and others to understand. People who suffer from mental illness are frequently discriminated against, both intentionally and unintentionally, as they are often considered too much of a risk to employ.
- 4.67 Many employers lack an understanding or tolerance for employees with a mental illness. Mr Keat Toh, the Nurse Unit Manager/Team Leader at the Parramatta Community Mental Health Service noted that this is a problem that could be addressed with training and education:
- It would be good to have regular interagency meetings with the council chambers and to get business people to have regular sessions with the mental health people. It needs a two-way understanding of where they are coming from and what their expectations are. We need to say that those people may need extra support and that they have chronic type issues; also to ensure there is more understanding to have more flexible working hours and working conditions.⁶²
- 4.68 Some headway in this area has been made with the Government's Mentally Healthy Workplace Alliance's partnership with Beyond Blue. The partnership has established *Heads Up*, a campaign to support and create mentally healthy workplaces (see Chapter 2). The initiative focusses on workplace education around mental illness, as well as providing support to people suffering from mental illness in the workplace. It is an initiative aimed at creating awareness and acceptance of what is an ever-growing barrier to employment.⁶³
- 4.69 One submitter pointed out a number of deficits with Disability Employment Services (DES)⁶⁴. The deficits included the failure to provide access to jobs in professional areas such as engineers and doctors, but rather they have a focus on jobs with lower classifications such as entry level positions. The submitter stated:
- The DES is the first point of contact for Disabled Professional job seekers. The DES has not [sic] designed to cater the needs of Professional Job Seekers. The professional categories are [not limited to] engineers, doctors, accountants, project managers,

62 Mr Keat Toh, Nurse Unit Manager/Team Leader, Parramatta Community Mental Health Service, *Committee Hansard*, Parramatta, 19 November 2015, pp. 33.

63 Heads up, 'What is Heads up?', < <https://www.headsup.org.au/>>, viewed 17 December 2015.

64 The DES is described in Chapter 2.

policy specialists, IT specialists etcetera. The DES clients fall to above categories [sic] are not assisted at all.⁶⁵

4.70 Similarly, the same submitter also demonstrated the inability for trained professionals, who most often hold university qualifications, to access funding for training for lower level qualifications, such as certificate level. This is a significant barrier for those that are no longer employable in their field of expertise due to issues such as mental illness, but wish to retrain in another field in a bid to be more employable.⁶⁶

4.71 Mental illness can also be an impediment to wanting to seek employment, particularly given the current structure of the welfare system. For example, should a mentally unwell person receiving subsidised medical and other welfare benefits obtain work, at certain wage thresholds these benefits ceases. Mr Toh of Parramatta Community Mental Health service, recognised that this cycle is often a financial impediment to seeking employment:

For a lot of people, they work to a certain financial capacity of earnings and they lose part of their disability pension or their Centrelink pension. That impacts on them – obviously their accommodation rental, food, clothing, social living expenditures and all that sort of stuff. That is a disadvantage. We have encountered individuals who had that barrier and had to decide whether to take on employment and lose out on that financial capability of sustaining themselves or their family.⁶⁷

4.72 There does need to be reassurance for people in these situations that they are able to re-access the same benefits should their employment not be successful. As Ms Maria Cassaniti of the Transcultural Mental Health Centre told the Committee:

... something as simple as a reassurance that if things go pear-shaped for their employment or their health, they can easily get back on [welfare benefits] would be great instead of just being cut-off and then having to go through the whole thing again. That reassurance would give them the security and that would also support their mental health in not having that fear of stigma of having to go through that whole process again. I would put a good bet on the point that if there was that they would probably stay in

65 Name Withheld, *Submission 45*, p. 1.

66 Name Withheld, *Submission 45*, p. 2.

67 Mr Keat Toh, Nurse Unit Manager/Team Leader, Parramatta Community Mental Health Service, *Committee Hansard*, Parramatta, 19 November 2015, pp. 32–33.

employment for a lot longer because it would be one stress they would not have to have at the back of their minds.⁶⁸

- 4.73 It is widely acknowledged that prevention is better than cure. This is particularly poignant when it comes to mental illness and even more so when referring to newly arrived migrants and refugees in order to protect their mental health and employment opportunities in their new country. With a myriad of different issues that come with trauma and separation from family, country, and culture, migrants and refugees are particularly vulnerable. Providing preventative support and opportunities, said Maria Cassaniti, Manager, Transcultural Mental Health Centre, is one crucial way mental illness can be prevented:

It has been exciting for Australia to have communities that build businesses together and to see one community doing one thing and generally specialising in something. We do not want to let go of that. But, as time moves on, we want to see more of how you work across diversity and how you get migrant communities who have been here for some time to support the new wave of migrants coming in...I am not talking about individual wellbeing at the clinical level but about trying to prevent people becoming unwell. From the transcultural perspective...we also see a lot of adjustment issues and mental health issues with things that could easily be prevented in a welcoming and supportive environment.⁶⁹

People with disability

- 4.74 The discrimination that people with disability face from employers is often done subconsciously. Mr Andrew Manning, the Employment Operations Manager at the not-for-profit organisation Northcott, is responsible for placing people with disabilities into work. He told the Committee:

One of the main inhibitors is the unconscious bias that employers have. Some discrimination is overt but most of it is an unconscious bias. If you have never seen somebody with a disability performing job X, it is human nature to think that they cannot do job X. So you immediately rule them out. If there is no precedent

68 Ms Maria Cassaniti, Manager, Transcultural Mental Health Centre, *Committee Hansard*, Parramatta, 19 November 2015, p. 33.

69 Ms Maria Cassaniti, Manager, Transcultural Mental Health Centre, *Committee Hansard*, Parramatta, 19 November 2015, pp. 33-34.

for a successful role model then a small business employer would see that as a greater risk.⁷⁰

4.75 Similarly, Mr David McQuiggin, the Manager of Employment at the Deaf Society of New South Wales, told the Committee that:

The barrier that we have is hugely employer education, a lack of awareness of what is available for an employer when they are recruiting a deaf person. It is a psychological fear that employers have in small organisations. Our employment consultants can be like a broken record at times, repeating themselves that a deaf person is able to work, a deaf person is able to drive, a deaf person is able to do whatever it may be. In our experience, we have placed managers. In our organisation, over 50 per cent of our staff members are deaf, from a senior leadership position to executive positions and all throughout the organisation so that is evidence that a deaf person can obviously work.⁷¹

4.76 Mr McQuiggin explained that, in his experience, the best way to ease an employer's doubts over the capabilities of a person with disability is through a 'seeing is believing' approach. In other words, workplace trials, volunteer work or other methods of interaction with potential employers have been proven to be effective. Mr McQuiggin provided an example of how this is done in his workplace that seeks to place deaf and hard of hearing job seekers into jobs:

We have a hard of hearing staff member who likes to shock people when they are having a discussion on the phone. She is quite well spoken but her access to the phone comes through a Bluetooth device that hangs around her neck and connects to her hearing aid. When they say, 'I do not really know if a hard of hearing person can...,' she is straightforward and says, 'You are actually talking to a hard of hearing person now.'⁷²

4.77 The Deaf Society noted that with education, flexibility, an understanding of individual needs and the use of technology, a workplace can easily accommodate a deaf employee by actively becoming aware of their needs:

...I previously worked for a corporate company and they gave me an office next to the photocopier machine and the paper shredder. I had recently got a cochlear implant and I did not realise how

70 Mr Andrew Manning, Employment Operations Manager, Northcott, *Committee Hansard*, Parramatta, 19 November 2015, p. 16.

71 Mr David McQuiggin, Manager, Employment, The Deaf Society of New South Wales, *Committee Hansard*, Parramatta, 19 November 2015, p. 11.

72 Mr David McQuiggin, Manager, Employment, The Deaf Society of New South Wales, *Committee Hansard*, Parramatta, 19 November 2015, p. 12.

much annoying noise the paper shredder and photocopier made. ... So they actually moved the shredder to another place. They were used to filtering out that background noise. It is quite different for a person with a cochlear implant or a digital hearing aid. They realised that it was annoying me. So it is important for colleagues to be aware and to notice their deaf colleagues and issues that are difficult for them or barriers. That is why we advocate the importance of deafness awareness training or an education program for everybody that has a deaf employee.⁷³

4.78 Mr Andrew Manning, the Employment Operations Manager at Northcott, gave another example of the importance of attitudinal change:

One specific example is a car yard with mechanics who service cars. Previously they had a bookings clerk who created the appointments. There were working in their workplace. We successfully placed somebody who had mobility issues. They work from home. They have a laptop. They are putting the bookings into the database from home. That employer was able to review his workplace and realise that that was going to work just as well. That has been successful.⁷⁴

4.79 The Federal Government's Employment Assistance Fund (see Chapter 2) provides financial assistance for necessary workplace modifications that may be required for an employee with a disability. This assistance can remove significant financial and physical barriers to finding employment and enable recipients of the fund to fully participate in the workforce.⁷⁵

4.80 Mr Manning gave an example of the Employment Assistance Fund being an excellent program:

As an example, we recently placed somebody with quadriplegia into work. So we spent quite a few thousand dollars. He needed a specific workstation, fully height adjustable, and longer than normal so his carer could also be there. He needed a new computer, a couple of monitors, voice recognition software and a tracking ball.

73 Ms Leonie Jackson, Chief Executive Officer, The Deaf Society of NSW, *Committee Hansard*, Parramatta, 19 November 2015, p. 15.

74 Mr Andrew Manning, Employment Operations Manager, Northcott, *Committee Hansard*, Parramatta, 19 November, 2015, pp. 16-17.

75 Mr Andrew Manning, Employment Operations Manager, Northcott, *Committee Hansard*, Parramatta, 19 November, 2015, p. 19; See also Australian Government, JobAccess, 'Employment Assistance Fund', <<http://www.jobaccess.gov.au/government-services/employment-assistance-fund>>, viewed 11 December 2015.

So there is a lot of research and leg work, but we worked with the assessor. We purchased that. I am happy to say that administratively the process was very simple. The research took a bit of leg work, but to actually purchase it and then get reimbursed by JobAccess through the Employment Assistance Fund was very simple.⁷⁶

- 4.81 NESAs argued that employers should be encouraged to create diversity and opportunity in the workplace by persons with disability. It stated:

A key component of increasing employer engagement relates to producing disability confident businesses and employers that feel comfortable in their ability to support a person with disability in their workforce. There has been much work done by organisations such as the Australian Chamber of Commerce and Industry (ACCI) to promote the benefits of workforce diversity and employment of people with disability. To build on these positive developments, policy targeted at better equipping employers, and businesses generally, to work with people with barriers to participation is essential. The more employers are exposed to the supports and assistance available to them to aid the employment of people with disability, the less daunting situations involving disability in the workplace will become. This is not only good for their business, but for anyone they may come into contact with that experiences disability, reducing stigma and future barriers to participation as a result.⁷⁷

Indigenous job seekers

- 4.82 For Indigenous job seekers, there are often unique barriers to finding employment with a small business. The extent and the sources of Indigenous disadvantage in Australia have been well documented. In addition to the endemic problems associated with intergenerational unemployment, there can also be a lack of awareness around Aboriginal issues. As Ms Kristy Masella of the Aboriginal Employment Strategy explained:

A lot of small businesses are not aware of some of the historical issues of generational unemployment that face Aboriginal families and people. Aboriginal people are presented to specialist recruiters like, for example, the AES, who are quite experienced in

76 Mr Andrew Manning, Employment Operations Manager, Northcott, *Committee Hansard*, Parramatta, 19 November, 2015, p. 19.

77 National Employment Services Association (NESA), *Submission 28*, pp 7-8.

supporting people, coaching them through the process and making sure they are ready, but it is that appreciation of small business around the challenges Aboriginal people face and the limited experience they get from parents, grandparents, aunts and uncles. It is understanding expectations of a workplace. We spend a lot of time with our career seekers, building their understanding about what to expect in a workplace. It is not surprising that small businesses have struggled to understand some of the challenges around generational unemployment and the expectations of their employees.⁷⁸

- 4.83 Ms Masella noted that small businesses are often not equipped with the skills and knowledge required to support employees with additional considerations:

It is not surprising that small businesses have struggled to understand some of the challenges around generational unemployment and the expectations of their employees. We found, too, that small businesses are experts in what they do, whether it is retail or whatever industry they are in, but have limited capability and resources around employment services and recruitment. When you are working with Aboriginal career seekers who have a complex range of needs, they are not equipped with the level of understanding of support to make the career seeker who has been employed with them a success. They often get limited retention around that employment. That again creates some damage around future willingness to provide an Aboriginal person an opportunity for a job.⁷⁹

- 4.84 Having flexibility and diversity in skills and experience is also another valuable tool that employees can develop in order to maintain long term employment. Coupling this with a hardworking and reliable employee can be a panacea, in many cases, against unemployment, particularly in regional areas where the nature of the employment market demands it.⁸⁰
- 4.85 It is also often the relationship that employment service providers and trainers, particularly those that specialise, which can be the key to breaking down barriers to stereotyping between employees and employers. Evidence received by numerous participants in the field

78 Ms Kristy Masella, Chief Executive Officer, Aboriginal Employment Strategy (AES), *Committee Hansard*, Parramatta, 19 November 2015, p. 22.

79 Ms Kristy Masella, Chief Executive Officer, Aboriginal Employment Strategy, *Committee Hansard*, Parramatta, 19 November 2015, p. 22.

80 Ms Kristy Masella, Chief Executive Officer, Aboriginal Employment Strategy, *Committee Hansard*, Parramatta, 19 November 2015, p. 23.

demonstrated that building relationships with local businesses and actively promoting the job seekers that they represent was a major determinant in successful job placement.⁸¹

Structural barriers to finding work in a small business

- 4.86 In addition to the barriers facing certain cohorts of job seekers in finding employment with a small business, there are also structural impediments. These are impediments of a systemic nature that limit opportunities for job seekers and for small businesses to employ. They include:
- limited recognition of skills by employers;
 - economy-wide skill shortages;
 - weaknesses in the apprenticeship system;
 - the costs associated with providing work experience and structured employment opportunities; and
 - poor transport networks.

Limited recognition of skills

- 4.87 Limited recognition of skills by professional and semi-professional bodies can be a significant barrier for job seekers, particularly those who have been overseas trained. While many migrants and refugees have high level skills obtained in their country of origin, often these are not recognised in Australia. Ms Abbasova of FECCA explained:

Almost half of recent permanent immigrant and temporary residents had obtained a bachelor's or higher qualification prior to arrival in Australia. A substantial proportion, which is about 30 per cent of recent immigrants and 25 per cent of temporary residents, had obtained a certificate diploma or higher qualification after arrival. Broadly, the unique skills, knowledge and expertise that culturally and linguistically diverse communities bring are not yet sufficiently acknowledged, promoted or utilised in Australian workplaces and effective diversity management to address these barriers is important to

81 See Ms Kristy Masella, Chief Executive Officer, Aboriginal Employment Strategy, *Committee Hansard*, Parramatta, 19 November 2015, p. 23; Mr Andrew Manning, Employment Operations Manager, Northcott, *Committee Hansard*, Parramatta, 19 November, 2015, p. 18.; Mr John Cafferata, Manager and Owner, Darcy St Project, *Committee Hansard*, Parramatta, 19 November 2015, pp. 8-9.

fully utilising and maximising the benefits of our diverse workforce.⁸²

- 4.88 While Australia has made some progress in improving the recognition of overseas qualifications, the fragmented nature of Australia's professional accreditation bodies raises problems of inconsistency.⁸³ It is for this reason that the Ethnic Communities' Council of Victoria have recommended, in its report *Qualified but not Recognised*, a public review of the current arrangements and the appointment of an independent Ombudsman to act as a regulatory body and avenue of appeal.⁸⁴
- 4.89 The issues associated with skills recognition are not limited to people from a CALD background. Job seekers from all areas often face a lack of job opportunities because of many employers' requirements for qualifications or prior experience. Likewise, those that do not have formal qualifications or prior experience in a particular field, often fail to have their practical life skills recognised.
- 4.90 Ms Helen Roberts, a former job seeker, expressed frustration at not being recognised for her potential to learn on the job for seemingly unskilled/low skilled positions. Ms Roberts proposed that employers need to be more open to on the job training in order to provide low skilled workers more opportunities, and not concentrate solely on job seekers formal qualifications:

The biggest barrier I found to gaining employment was the excessive and almost unilateral requirement by businesses for very specific certifications, including but not limited to TAFE qualifications. The vast majority of jobs these days require the job seeker to have previously spent at least the last year, often up to 3 years, studying for that particular job. While it is understandable that small businesses don't like taking risks, more jobs would be available to job seekers if more businesses were willing to train "on the job." Please understand that the jobs I am referring to are not highly skilled, these are relatively low skilled jobs that could very easily be taught within a 2 week to 1 month maximum

82 Ms Gulnara Abbasova, Director, Federation of Ethnic Communities' Councils of Australia, *Committee Hansard*, Canberra, 17 June 2015, p.1.

83 Ethnic Communities' Council of Victoria, 'Qualified but not Recognised', 2014, p. 8, <http://eccv.org.au/library/ECCV_Discussion_Paper_-_Qualified_but_not_Recognised_2015_Final.pdf>, viewed 1 July 2015.

84 Ethnic Communities' Council of Victoria, 'Qualified but not Recognised', 2014, p. 13, <http://eccv.org.au/library/ECCV_Discussion_Paper_-_Qualified_but_not_Recognised_2015_Final.pdf>, viewed 1 July 2015.

probation period and yet businesses still want certifications or highly experienced staff.⁸⁵

- 4.91 This suggested that potentially valuable employees are being overlooked based on a presumption that they are not able to do the job because they have not worked in that field or do not have the experience. These people appear to be a victim of stereotyping because of the assumption that without a qualification or skills relevant to the job, they could not possibly perform. Ms Roberts provided an example of the challenges that some people, including herself, face:

Jobs that advertise “no experience necessary; will train” are rare and precious diamonds. After a lengthy period of unemployment I found one of these “one in a million” jobs and am now fully employed, working hard and doing well. More businesses need to do this. I picked up some of the skills for the job while working it, the other skills required I already had by virtue of being an average human being. Most other employers looking for workers in my current field, Community Services, require certifications but the type of units these expensive certifications involve are absurd. For example, a unit of competency in how to wash dishes. As if the average person doesn't already have the “skills and knowledge required to stack, wash, dry and store dishes, kitchenware and associated implements.” I do that every day after mealtimes. I don't need a TAFE qualification for it.⁸⁶

- 4.92 People in these positions, therefore, are frequently employed in jobs that they are over-skilled for, they feel underutilised in, or they remain unemployed. In its report *Qualified but not Recognised*, the Ethnic Communities Council of Victoria discusses this issue in detail in relation to migrants but, as the previous evidence suggests, the issue also extends to many other members of the community. The report stated:

The prevalence of over-qualification and underemployment of migrants is well documented in Australia and many other EU countries; despite migrants and refugees with overseas skills and qualifications being a valuable resource for the labour market.⁸⁷

- 4.93 For migrants and refugees, employment guides are available to assist in gaining employment by having their skills and qualifications recognised, and to provide advice on undertaking training and Australian work

85 Helen Roberts, *Submission 35*, p. [1].

86 Helen Roberts, *Submission 35*, p. [1].

87 Ethnic Communities' Council of Victoria, 'Qualified but not Recognised', 2014, p.6, <http://eccv.org.au/library/ECCV_Discussion_Paper_-_Qualified_but_not_Recognised_2015_Final.pdf>, viewed 1 July 2015.

experience. While this is a positive approach, the guides have been criticised for having too large a volume of information that can be overwhelming or difficult to understand, and fail to address the lengthy, onerous and at times unfair processes that follow.⁸⁸

- 4.94 As previously discussed, adequate fluency in the English language is also a barrier to getting skills recognised and gaining employment, particularly with small businesses. Difficulties relating to skills recognition and English language competency are especially significant in industries such as construction, where safety in the workplace is paramount. Mr Harnisch of MBA elaborated:

The issue there is the verification of the qualification. That is a big issue for us, in terms of making sure that the people who do come onto building sites do have the requisite skills. Obviously that is a balance between what skills in particular are needed. Obviously, at the labouring level, maybe you do not need a cert IV, but at certain parts of the trade you do need qualifications to maintain the integrity and safety of the construction process. The other one is obviously safety. If they do not have a good command of English then they cannot read safety signs and listen to safety instructions.⁸⁹

- 4.95 While being fluent in English can be a barrier to employment, access to English tuition can also be difficult. People with caring responsibilities, for example, require flexibility. Ms Dini Liyanarachchi of FECCA told the Committee:

There are childcare facilities provided by TAFE colleges, where the TAFE college picks children up and drops them off and the parents can go for TAFE classes. I think that is a very good example, if that can be extended. I think it happens only in a couple of TAFE colleges; the facilities are not available in all. But if parents get that flexibility, where their children are within the same facility and somebody is there to look after their children while they learn English, then they would have that flexibility and the ability to learn the language. Maybe things like that could be promoted more.⁹⁰

88 Ethnic Communities' Council of Victoria, 'Qualified but not Recognised', 2014, p. 7, <http://eccv.org.au/library/ECCV_Discussion_Paper_-_Qualified_but_not_Recognised_2015_Final.pdf>, p. 7 viewed 1 July 2015.

89 Mr Wilhelm Harnisch, Chief Executive Officer, Master Builders Australia, *Committee Hansard*, Canberra, 24 June 2015, p. 4.

90 Ms Kirinde (Dini) Liyanarachchi, Policy and Projects Officer, Federation of Ethnic Communities' Councils of Australia, *Committee Hansard*, Canberra, 17 June 2015, p. 9.

4.96 Regardless, employers should not only be encouraged to employ people from diverse backgrounds or who have special needs, but also to be educated on what benefits these communities can bring to the workplace. Ms Gulnara Abbasova agreed that businesses should not be required to conform but rather should be encouraged to embrace and learn about the benefits these people bring:

We believe that business, however, should not simply be persuaded to conform with what they may see as obligations of social responsibilities but should, alternatively, be encouraged to embrace the benefits and maximise the value of a culturally and linguistically diverse workforce. We see this as a force through which to facilitate a more innovative, creative and productive workforce.⁹¹

4.97 Encouraging individuality and providing support for individuals is something to be championed, but there is a way to go before universal acceptance of workplace diversity is adopted, and likewise for the willingness of employers to provide flexibility for those who need it. Small businesses are often well placed to offer individual arrangements and provide people with opportunities such as on the job training and work experience and, in return, will reap the rewards of loyal skilled workers.

Skills shortages

4.98 Ensuring that a job seeker has the correct skills and training is one of the most important decision making factors for a small business when taking on a new employee. With so much at stake, small businesses cannot afford to make a wrong employment decision.

4.99 The challenge is for small businesses to attract the right employees with the right skills. Skills, in this context, can either be defined as 'hard' skills, such as specific training and/or knowledge in a certain area, or 'soft' skills like punctuality, the ability to converse professionally with customers and colleagues, or wearing appropriate work attire. Job seekers with a combination of both hard and soft skills are the most desirable and sought after candidates.

4.100 The Committee received much evidence pointing to skills shortages in both areas. The Australian Industry Group noted the significant increase in the number of young people not in the workforce but in tertiary education:

91 Ms Gulnara Abbasova, Director, Federation of Ethnic Communities' Councils of Australia, *Committee Hansard*, Canberra, 17 June 2014, p. 1.

With regard to employment opportunities in small businesses, Ai Group notes that even as our national output growth slows, skill shortages in key growth industries including mining services, engineering, education and health services are being exacerbated by structural changes across our economy, as well as the deepening demographic impacts of our ageing population and workforce. Around 10% of all Australian employees are now aged 60 or over and 18% are aged 55 or over. And the current population 'bulge' in these age brackets means there are fewer young people ready for these professional roles as the baby boomers retire...Participation rates [in employment] for these younger age groups are in long-term decline, with a sharper rate of decline evident over the past five years, as participation in formal tertiary education has risen.⁹²

- 4.101 Additionally, careers in industries such as retail and hospitality are frequently overlooked as serious options, but rather as 'stop gaps' to a more lucrative career. Small businesses in these industries often lack skilled employees, or lose them early on in their careers for more tertiary focussed options. Mr Jos de Bruin, Chief Executive Officer, Master Grocers Australia/Liquor Retailers Australia, lamented the lack of value that is placed on a career in retail:

We want to keep people in our industry, and we are finding it very difficult to attract people to retail. Retail is a profession. It is a career. It is highly rewarding, and it can take people wherever they wish to go. We have lots of trouble attracting people to stay within our industry. It is a great concern because of succession planning. Our retailers are going through what farmers probably went through a decade or two ago, when they were saying to their children: 'You know what, son? Go to uni because you shouldn't be coming back to the farm. There's nothing here, nothing for you – no future.' And that is what a lot of our independent retailers are saying around the country – whether they are small, medium or large or whether they are single-store owners or multistore owners.⁹³

- 4.102 As the trend towards tertiary qualifications continues, so does the expectation that job seekers will come with already well developed skills. The problem, however, is that the market for unskilled job seekers is diminishing. The National Employment Services Association recognised
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92 Australian Industry Group, *Submission 17*, pp. 3-4.

93 Mr Jos de Bruin, Chief Executive Officer, Master Grocers Australia/Liquor Retailers Australia, *Committee Hansard*, Melbourne, 13 July 2015, p. 9.

this and also outlined the need for further investment in skills development:

We know that lower skilled and entry level positions continue to disappear from the labour market as employer expectations of the skills and experience of employees continues to rise. There is a need to continue to invest in skills development given the relationship between qualifications and labour market participation as well as employer demand for employability skills. Research shows there is a relationship between skills and productivity. This highlights that skills training and workforce development is an investment, not a cost...⁹⁴

- 4.103 The Committee took evidence that the problem with skills shortages is due to limited, inappropriate, or inaccessible training options. Rural centres, for example, have a disadvantage because of their limited ability to access suitable skills training. Shortages in these areas prevent small business from being able to attract skilled workers, and therefore their ability to service their customers, and subsequently grow their business, is compromised. The New South Wales Small Business Commissioner agreed:

Businesses have raised concerns with the OSBC [Office of the Small Business Commissioner] that a lack of suitable rural-based training programs makes it difficult for employers to attract and retain skilled employees... Businesses in Katoomba are more likely to reduce their trading hours due to their inability to attract a high standard of skilled workers which inevitably impacts their service delivery and their ability to attract customers. Businesses advised the OSBC that these limitations have had significant economic impacts on the community and the local economy, and have restricted the opportunity for businesses to expand and diversify.⁹⁵

- 4.104 Some participants also said that, while additional skills training is necessary, for it to be useful more needs to be done to ensure training is well developed and done in conjunction with industry consultation in order to meet ever-changing needs.⁹⁶ MBA also outlined the need for training to be flexible:

...whatever system it is, it has to be industry driven to meet industry needs and demands. You have to have that flexibility

94 National Employment Services Association (NESA), *Submission 28*, p. 4.

95 NSW Small Business Commissioner, *Submission 10*, p. 10.

96 See Department of Education, *Submission 31*, p. 5., Victorian Automobile Chamber of Commerce, *Submission 21*, p. 23., and Master Builders Australia, *Submission 32*, p. 21.

because for our industry technology and construction techniques are changing rapidly and yet we keep delivering the same old trade training courses and curriculums that were valid 50 years ago but are no longer valid now. In our industry they are providing their own training, but that training is not recognised. For instance in terms of formwork, which is totally different now; where once you needed to be a full-blown carpenter, you do not need a full-blown carpenter's skills. They could do a cert II.⁹⁷

- 4.105 The Victorian Automobile Chamber of Commerce provided similar evidence, suggesting that the current training market often does not meet the needs of industry. Such practices, they said, leaves the trainee without work and small businesses without a skilled employee:

The current competitive training market has resulted in many to enrol in courses that do not meet the needs of industry, consequently preventing many from finding employment within the small business sector.⁹⁸

- 4.106 Sub-standard quality of training was also raised as an issue that contributes to the overall shortage of skills. This problem has been suggested to have stemmed from the current shift toward private, for profit training models that are motivated less by students post-training success, and more by profit. Mr Ian Blandthorn, Assistant Secretary, Shop, Distributive and Allied Employees' Association, said:

The thing is, it is not just the issue of full-time training; it is the fact that much of the training in these full-time establishments is substandard. Part of that is because we have moved more and more training away from the TAFE system into private enterprise. ...the key driver of that training is the profit of the provider. 'Let's get them in, give them a qualification and get them out quick; we don't give a damn about what the qualification is and whether the person can get a job.'⁹⁹

- 4.107 The Victorian Automobile Chamber of Commerce has described the current training market as a 'race to the bottom', and one that delivers substandard outcomes because of its profit orientated model:

The marketisation of the training market has resulted in a race to the bottom in terms of the provision of quality training among

97 Mr Wilhelm Harnisch, Chief executive Officer, Master Builder Australia, *Committee Hansard*, Canberra, 24 June 2015, p. 7.

98 Victorian Automobile Chamber of Commerce (VACC), *Submission 21*, p. 24.

99 Mr Ian Blandthorn, Assistant Secretary, Shop, Distributive and Allied Employees' Association, *Com skills recognition and the quality and relevance of skills training and delivery*, *Committee Hansard*, Melbourne, 13 July 2015, p. 21.

both TAFEs and private registered training providers (RTOs). In essence, it has led to a rise in for-profit-oriented private RTOs that would reduce their quality of training and selectively choose courses that are inexpensive to deliver in order to accumulate the most profit. Consequently, this had the effect of financially disadvantaging TAFEs, resulting in TAFEs to cut costs at the expense of providing quality training.

Currently, all training programs are funded equally, irrespective of how the course is being delivered. Consideration is not given towards the use of teaching resources, the length of the course or whether it meets industry needs.¹⁰⁰

- 4.108 In the building and construction industry there has been a significant reduction in new apprenticeship and trainee commencements despite predictions of industry growth. Figures on apprenticeship commencements for the 12 months to March 2015 show that:

The number of commencements in the 12 months ending 31 March 2015 was 190 200, a decrease of 19.8% from the 12 months ending 31 March 2014. This decrease resulted from:

- a decrease in trades commencements of 12.4%
- a decrease in non-trades commencements of 24.9%.¹⁰¹

- 4.109 This is coupled with a rise in the number of apprentices that commence but do not complete formal training.¹⁰² As the population ages, the need for skilled labour increases and any shortfall creates serious problems for the future workforce in gaining and maintaining meaningful employment.

- 4.110 MBA has partly attributed the skills shortage to the disjointed training matrix which has failed to keep up with industry needs:

Industry's view is the current training system suffers from administrative confusion as governance structures, responsibilities

100 Victorian Automobile Chamber of Commerce (VACC), *Submission 21*, p. 23.

101 National Centre for Vocational Education and Research (NCVER), 'Australian vocational education and training statistics: Apprentices and trainees 2015, March Quarter', p. 5, <<http://www.ncver.edu.au/wps/wcm/connect/71cf541e-a041-4473-8189-6c62bbfd6bc9/2015-apprentices-and-trainees-mar-qtr-2820.pdf?MOD=AJPERES&CACHEID=71cf541e-a041-4473-8189-6c62bbfd6bc9>>, viewed 23 September 2015.

102 The number of completions in the 12 months ending 31 March 2015 was 148 200, a decrease of 19.4% from the 12 months ending 31 March 2014. National Centre for Vocational Education and Research (NCVER), 'Australian vocational education and training statistics: Apprentices and trainees 2015, March Quarter', p. 5, <<http://www.ncver.edu.au/wps/wcm/connect/71cf541e-a041-4473-8189-6c62bbfd6bc9/2015-apprentices-and-trainees-mar-qtr-2820.pdf?MOD=AJPERES&CACHEID=71cf541e-a041-4473-8189-6c62bbfd6bc9>>, viewed 23 September 2015.

and custodianship of the system remain unclear to many users. The system has been captured by public (TAFEs) and private RTOs who are able to influence the system for their own benefit. State jurisdictions, through the implementation of different education and training priorities and funding models, have added complexities to the system. We are in a situation where jurisdictions can hold up the endorsement of national qualifications that have demonstrated support from industry.

Further, in the above-mentioned skilled and semi-skilled areas, the national training system has not kept up pace with the growth or the changes in work practices in these areas. There is a lack of formal qualifications and skill sets to recognise workers' skills, in particular for crane drivers, doggers and riggers. Students are enrolling in full qualifications and only completing the units of competency to meet licencing requirements, or to be competent in one aspect of a job role. There is a need for qualifications and skill sets that enable industry to recognise the skills of its entire workforce. Compounding the problem is the differences in the jurisdictions to funding skill sets.¹⁰³

4.111 This sentiment was echoed by Master Electricians Australia:

It is an ever increasing problem that electrical apprentices are not receiving the level of training through Registered Training Providers (RTOs) that is required in order for them to become fully competent tradespeople. As a result, the businesses who take on these apprentices must fill the gaps to ensure the apprentice can perform work safely and efficiently. While larger businesses may have capacity to invest time and money in supplementary training for apprentices, small businesses do not have this luxury. Employing an apprentice is costly enough for employers. In fact, it is widely acknowledged that apprentices do not become profitable for a business until their third or fourth year. When a small business is then expected to invest more resources in basic training for an apprentice in those first few pivotal years, this eats even more profit out of a small business' bottom line.¹⁰⁴

4.112 While there has been some work in addressing these issues, more progress needs to be made in order to achieve the goal of a nationally cohesive and

103 Master Builders Australia, 'Towards 2020: Policy for Australian Apprenticeship Reforms', 1 July 2015, p.8, <<http://www.masterbuilders.com.au/TemporaryDownloads/A56823F3-4E7B-4480-AD8E-45208B1BDAED-APPRENTICESHIPS%20TOWARDS%202020.pdf>>, viewed 18 December 2015.

104 Master Electricians Australia, *Submission 20*, p.8.

productive training framework. Industry representatives such as MBA note that the inconsistency of the National Training System is recognised and current a priority for all governments.¹⁰⁵

- 4.113 Mr Blandthorn continued in this vein, and proposed that training should return to a more historical hands on model:

I think another issue that is very important is that we have seen in terms of training a very significant shift in the last 10 or perhaps 20 years. Twenty years ago virtually all young people who acquired a skill did it through an apprenticeship. These days increasingly a large number of young people are acquiring trade skills through full-time training. Then at the end of that full-time training they seek to go out and get a job, but they have no workplace experience and they cannot perform in the workplace. Perhaps the time has come when we need to be looking much more strongly at the performance of the full-time mode of delivery in the training system and doing more to encourage people to go back to the more traditional apprenticeship model, because I think that would deal with a lot of your concerns.¹⁰⁶

- 4.114 There is also a need to recognise skill competencies, not just full qualifications. With the completion rate of apprenticeships declining, MBA proposed a 'passport to competencies' program that is more in-line with industry needs and allows for unqualified workers to have their skills recognised by eliminating the requirement to fully complete qualifications within a set timeframe.

- 4.115 This proposal would shift the current focus from the completion of full qualifications, to formal recognition of partial completion or skills learned on the job. For example, Certificate I or II qualifications can be recognised in the workplace, with the aim for employees to upskill to Certificate III or IV over time as it suits them and their employer. This would provide benefits to the trainee in the form of recognition as well as assisting those that are at risk of not completing their apprenticeship, but also give employers enhanced confidence in their employees and provide employees with a semblance of stability for their tenure.¹⁰⁷ As MBA explained:

105 Master Builders Australia, 'Towards 2020: Policy for Australian Apprenticeship Reforms', 1 July 2015, p. 11, <<http://www.masterbuilders.com.au/TemporaryDownloads/A56823F3-4E7B-4480-AD8E-45208B1BDAED-APPRENTICESHIPS%20TOWARDS%202020.pdf>>, viewed 18 December 2015.

106 Mr Ian Blandthorn, Assistant Secretary, Shop, Distributive and Allied Employees' Association, *Committee Hansard*, Melbourne, 13 July 2015, p. 21.

107 Master Builders Australia (MBA), *Submission 3*, p. 21.

Australia's training system is currently heavily focussed on the completion of full qualifications, despite the fact that the completion rate for all publicly funded VET qualifications is only 36%. A result of this is that in many trades the proportion of workers holding formal qualifications is actually dropping over time... Many of these workers, with the support of their employers, would wish to obtain some level of formal certification to provide confidence in their current work.

Master Builders recommends that part-qualifications, or skill sets, which may be appropriate to undertake a particular job role in the industry, should be recognised as a viable pathway to a job. Skill sets should not be seen as the end to training, but the "building blocks" to gain a full qualification over time where it is supported by the worker and employer.

Master Builders recommends the introduction of a 'skills passport' for the building and construction industry where skill sets and individual units of competency can be undertaken and tracked in stages as a person's skills needs develop over time.¹⁰⁸

Weakness in the apprenticeship system

- 4.116 To encourage potential apprentices, industry is focussing on making apprenticeships more attractive. Mr Ian Blandthorn, Assistant Secretary, Shops Distributive and Allied Employees' Association said, however, that this needs to be done through better alignment with states and territories and with the reduction of red tape:

If you could somehow streamline the system so that you only had one stop rather than a combination of state and federal agencies, plus the changes if somebody wants to move around... In short, I think the thing is that we have to make the industries, whatever they are – whether it is hairdressing or something else – more attractive to young people, and I am not sure that we are doing that. I think there is a job there for unions, there is a job there for employers and there is a job there for government. In terms of making it more attractive, as I said, the first thing you have to do is

108 Master Builders Australia, 'Towards 2020: Policy for Australian Apprenticeship Reforms', 1 July 2015, pp. 12-13, <<http://www.masterbuilders.com.au/TemporaryDownloads/A56823F3-4E7B-4480-AD8E-45208B1BDAED-APPRENTICESHIPS%20TOWARDS%202020.pdf>>, viewed 18 December 2015.

continue to reduce, as you call it, the red tape and just make it easier for people to move around in the system.¹⁰⁹

- 4.117 Mentorship programs have demonstrated success in attracting and retaining apprentices. Mrs Leyla Yilmaz, Deputy Executive Director Industrial Relations, Victorian Automobile Chamber of Commerce, advised the Committee that these programs should be preserved:

I think the winning formula was MAAP, our Mentor/ Advisor Apprenticeship Program. The reason is that we were able to get the correct industry careers advice out there. We were tapping in. It gave us the funding to tap into schools and venues where young people congregate, and parents, to give them a clear understanding of what the industry was so that we could manage expectations. We gave them the opportunity to connect with employers who had jobs, and then there was the mentoring program. That mentoring program provided support to the apprentices coming in as well as the employers. We think that is the important mix: it is delivered by industry for industry and it worked. We found an increase in the retention rate, up to 87 per cent.¹¹⁰

- 4.118 Much the same issues arise from the recent decision by the Commonwealth and some States to abolish the Joint Group Training Program. This program, under which the Commonwealth matched State and Territory funding to an agreed limit, subsidised GTOs for costs associated with the placement of jobseekers from specific priority groups or into specific priority apprenticeships and traineeships, as determined from time to time by State and Territory governments.

- 4.118 Continual change occurring in government policy is another identified challenge. Group Training Australia identified how the loss of certain support programs has diminished the pool of potential apprentices for small businesses, and created further barriers for those that require additional assistance :

The Australian Apprenticeships Access Program (Access) had been in existence for over 20 years in one form or another before being abolished in the 2014 federal budget...The loss of this program has meant that AGTOs, and other service providers, have lost another cohort of candidates who could eventually find work with small and micro-businesses. The only alternative for many of

109 Mr Ian Blandthorn, Assistant Secretary, Shop, Distributive and Allied Employees' Association, *Committee Hansard*, Melbourne, 13 July 2015, p. 20.

110 Mrs Leyla Yilmaz, Deputy Executive Director Industrial Relations, Victorian Automobile Chamber of Commerce, *Committee Hansard*, Melbourne, 13 July 2015, p. 39.

these job seekers are programs like Work for the Dole. GTA believes the best answer to welfare is to get a job. The provision of welfare and income support should sustain someone while engaging in genuine and meaningful job search or pre-vocational training where necessary. However it cannot and should not be an 'alternate pathway' to work like Work for the Dole...¹¹¹

- 4.119 While there may be a shortage of apprentices and the focus is on attraction and retention, some participants lamented that the cost of taking on a new apprentice is far too great for a small business. Group Training Australia stated that recent apprentice wage rises have had an adverse effect on businesses been able to afford to offer placements, making it difficult for Group Training Organisations to place apprentices in jobs:

The Fair Work Commission's (FWC) decision to increase award wages quite significantly for first and second year apprentices from 2014 also works against GTOs placing job seekers into apprenticeships with small and micro-businesses.¹¹²

- 4.120 To assist apprenticeship retention, programs such as the aforementioned 'Passport to Competencies' have been proposed to combat issues arising from the ever changing nature of the industry and a decline in apprentice completion. The MBA believe that in addition to this, a greater emphasis should be placed on practical 'on the tools' experience. While the importance of literacy and numeracy is not to be underestimated, keeping the interest of disengaged school leavers, for example, who are often drawn to trades because they are good with their hands should be a priority for the initial stages of a new apprenticeship.
- 4.121 Mr Wilhelm Harnisch, Chief Executive Officer, MBA, suggested that if these students were able to learn with their hands first, they would be more engaged and then the correlation between literacy and numeracy skills and real work experience would become more meaningful:

I am not saying they should not be doing it, but one of the reasons we have a high dropout rate – we hear this from the young people; we are not saying they are necessarily correct – is that they have different aspirations. They want to get in there and get their hands dirty – they want to cut a bit of timber, they want to put a nail in some timber, they want to put up a frame. What we are saying is keep them in there, and then they start to realise that, yes, they have to do maths because they need to calculate stuff; yes, they need to read a plan so they need to improve their English. So get

111 Group Training Australia (GTA), *Submission 5*, p. 5.

112 Group Training Australia (GTA), *Submission 5*, p. 4.

them motivated in the first place, do not demotivate them with the reason they school in the first place.¹¹³

The cost of apprentices

4.122 The general cost of wages for an apprentice, weighed up against the benefit to the employer, is sometimes also seen as too great a barrier. The Victorian Automobile Chamber of Commerce (VACC) identified this as an inhibitor to job creation for small automotive businesses:

Employing apprentices is a significant cost for employers and is a factor that has prevented young job seekers from being able to gain employment in small automotive businesses. According to Bednarz, it is generally agreed that an apprentice is a direct cost to the employer for the first two years and that much of the cost is due to the amount of supervision that the employer is required to provide to the apprentice. From an employer's perspective, hiring an apprentice is an investment. In general, employers will not hire apprentices if the cost of hiring an apprentice outweighs the perceived return of investment. Indeed, recent changes to apprentice wages and conditions have contributed to the decrease in apprentice hiring intentions.¹¹⁴

4.123 The VACC said this issue was compounded when it comes to employing mature aged apprentices (over 21 years) who are a greater expense to a small business, yet do not seem to deliver any apparent additional benefit:

I am on the phone with the VACC with our members and if they are looking for an apprentice and they ask what the rate for a first-year apprentice is who starts an apprenticeship over 21 years of age, if you tell them the rate, they will say is too expensive – they are not interested. They are prepared to go lower but they will not go for that 21 years of age and over apprentice¹¹⁵ ... The interesting thing was that we just assumed, like everybody else assumes, that once you are 21 you are much more mature and you have got your life in order... But we found the trend was different. Even though they may be older, they still are not settled, they have only just decided what career they are interested in but they have other issues and, if they have a family, there are other things. So the employer is not dealing with a young person who is transitioning

113 Mr Wilhelm Harnisch, Chief Executive Officer, Master Builders Australia, *Committee Hansard*, Canberra, 24 June 2015, p. 8.

114 Victorian Automobile Chamber of Commerce, *Submission 21*, p.19.

115 Mr William Chesterman, Industrial Relations Manager, Victorian Automobile Chamber of Commerce, *Committee Hansard*, Melbourne, 13 July 2015, p. 37.

from childhood to adulthood, they are dealing with an adult who is dealing with adult issues and it is no different. But from a learning point of view, that does not translate into capability to learn the skill quicker at all.¹¹⁶

- 4.124 With regards to employer recruitment obligations, one small business owner outlined the need for clear guidelines and employer education relating to the employment of apprentices so as not to make it a difficult or daunting task. Ms Madeleine Skerritt submitted:

Six years ago we employed an apprentice and were given a pile of employment information. However, seven months later we were contacted by TasBuild and very rudely told that we were breaking the law by not paying long service leave on behalf of our apprentice. The group training organisation had failed to inform us of this vital piece of information and when we started asking questions about what else weren't we doing, we were dismayed to discover that there was no one document or source of information that actually listed all our obligations. This experience soured the otherwise successful employment of an apprentice.¹¹⁷

The cost of work experience and structured workplace learning

- 4.125 Work experience, and structured workplace learning opportunities, can be a valuable tool for job seekers and school students to gain hands-on workplace experience. This can lead to the development of hard and soft skills, offers of employment and even the development of long term career interests. The benefits of work experience are many and varied and are not to be underestimated; but it comes at a cost to employers.
- 4.126 These costs are mostly indirect and can include lost productivity through the time it takes to induct and to provide training and mentorship, as well as complete compliance paperwork and feedback reports. Such experiences, while valuable for the trainee, can be a disincentive for employers as Ms Skerritt, a small business owner, explained:

Recently a young man approached us looking for an apprenticeship; we weren't in a position to take him on, but we gave him four weeks paid work experience instead. The experience was great for him as he was exposed to heritage restoration work which he hadn't encountered previously. However, the experience was the exact opposite for us, due to the

116 Mrs Leyla Yilmaz, Deputy Executive Director Industrial Relations, Victorian Automobile Chamber of Commerce, *Committee Hansard*, Melbourne, 13 July 2015, p. 37.

117 Ms Madeleine Skerritt, *Submission 6*, p. [2].

effort involved with employing him (i.e. completing a tax declaration form, completing a payments summary form, signing up to TasBuild and signing up to his super fund). This paid work experience helped him gain an apprenticeship a short time later, but it required the same amount of paperwork as putting on a permanent employee; so from our perspective, and we are unlikely to do it again.¹¹⁸

4.127 On the job training such as structured workplace learning (SWL) can also provide opportunities for students to observe and learn, however, they can also be at a disadvantage when the opportunity is misused. The Victorian Automobile Chamber of Commerce (VACC) provided this statement:

Yet, despite structured workplace learning being observational-based work experience, it has been over-relied on and at times, misused by both schools and employers. Below are problems identified within SWL:

- SWL being used as a substitute for school-based apprenticeships and traineeships (SBAT).
- The over extension of SWL duration
- The lack of accountability of how SWL is being conducted within a business.

The aforementioned problems has had a negative impact on industry-based outcomes as poorly constructed SWL has led to students developing no real industry relevant skills, resulting in them being lost to the industry.¹¹⁹

4.128 In support of this, the VACC provided some examples, as case studies, of where structured workplace learning in the automotive industry failed to provide the expected outcomes for students:

Case study 2

- Student was working at a business in Narre Warren for one day a week for a few months
- The student was told to move rocks and do landscaping, weeding, etc.
- The student was paid \$5 a day to do work unrelated to the business

118 Madeleine Skerritt, *Submission 6*, p. [2].

119 Victorian Automobile Chamber of Commerce (VACC), *Submission 21*, p. 23.

Case study 9

- Student travelled for 45 minutes each way every Friday for 12 months
- Student was paid \$5 a day on the promise of an apprenticeship
- After the full, the student was told not to come back and was not offered the job
- The student applied with VACC as an SBAT student in February 2014

Case study 11

- Student undertook Structured Workplace Learning for 2 years at a business
- Student was paid \$5 a day which included weekdays and Saturdays
- The business never intended to offer an apprenticeship to the student¹²⁰

4.129 In an effort to reform the current work experience arrangements and to provide further opportunities for job seekers to gain experience in the workplace, the Australian Government Department of Employment have embarked on a rollout of a National Work Experience Programme. This program was discussed in Chapter 2 of this report.

4.130 More needs to be done to support of small businesses to accept work experience students. The Victorian Automobile Chamber of Commerce (VACC) stated, despite the additional workload and cost there are still small businesses willing to provide work experience opportunities. Mrs Yilmaz provided an example of one such business:

I have one member in Wodonga – a very small businesses in a local community. He engages with the local school and encourages kids to come in and do some work experience. If he does not have a job for them, he will often connect with other employers in the shire to connect them so that they end up in jobs. That is rare, because they are a small business, as I said, they are highly competitive and profit margins are low.¹²¹

4.131 Industry bodies, such as the VACC, play an important role in the promotion of, and assistance with, work experience placements for their members. Similarly, schools and training organisations, such as community colleges, often work closely with industry and small business to promote and develop work experience opportunities. For example, not

120 Victorian Automobile Chamber of Commerce (VACC), *Submission 21*, pp. 32-33

121 Mrs Leyla Yilmaz, Deputy Executive Director Industrial Relations, Policy and Engagement, Victorian Automobile Chamber of Commerce, *Committee Hansard*, Melbourne, 13 July 2015, p. 38.

for profit training organisation ET Australia has developed a partnership with CASAR Park, a Motorsport Social Enterprise that aims to provide 200 onsite training and work experience positions once fully operational.¹²²

- 4.132 There are many other examples where social enterprises are playing a lead role in providing work experience opportunities, particularly for people from disadvantaged backgrounds. Mr John Cafferata is the Manager and Owner of Darcy St Project, a social enterprise that trains people from disadvantaged backgrounds in coffee roasting, barista operations and customer service. Mr Cafferata gave one example of how providing work experience can create real employment opportunities:

For the record, our very first student came from Nepal. He was in the country for five days and his English was very basic. But his story was heartfelt. His father had sold his farm to send him to Australia to get an education and get residency and, obviously, send some money back home to help the family. I said to him that if he would work hard that is all I needed to know. 'I will train you.' He had zero experience. That was over a year ago. Now, I am proud to say that he is my head coffee roaster and my head trainer. He also works for a local business around the corner that most people would say is a competitor of mine. But he helps them as well. It is a very good story, and it is just one of many.¹²³

- 4.133 This is particularly pertinent for small café style businesses seeking qualified baristas and café staff. Mr Cafferata explained that as a result of the success of Darcy St Project, he is often being approached by small businesses seeking to employ baristas trained by his organisations:

We have been proud to have a lot of our networks and affiliations grow by word of mouth. We have had about a dozen businesses approach us and ask if we have any trained baristas that are ready to be employed, not just within Parramatta but also towards the east and west. As the days grow, we now have nearly 20 non-profit organisations, including Wesley Mission and UnitingCare Mental Health, that are really taking focus and looking at the project in terms of its value. We are becoming a bit of a hub and attracting a lot of these businesses because the training and skills that they get cannot be offered anywhere else, and it has not been

122 ET Australia, *Submission 7*, p. 3, and CASAR Park, 'About CASAR Park', <<http://www.casarpark.org.au/about-casar.html>>, viewed 12 August 2015.

123 Mr John Cafferata, Manager and Owner, Darcy St Project, *Committee Hansard*, Parramatta, 19 November 2015, p. 8.

offered anywhere else unless they are paying quite an exuberant amount of money.¹²⁴

- 4.134 The provision of ongoing support to enable industry bodies and social enterprise organisations to continue to offer these opportunities is crucial in the skills development of job seekers and young people.

Poor transport networks

- 4.135 In remote, regional and even well-populated suburban areas, having access to transport to and from work can be the single biggest impediment to gaining employment. For some people, relying on public transport that is both irregular and impractical, or in some cases non-existent, can mean that without suitable alternatives, getting to work or being able to arrive at work on time is not an option.

- 4.136 The Better Futures Hub, an education and life skills support centre for young parents on the NSW Central Coast, assists its attendees with transport to and from the program because, in many cases they would not be able to make it. In the course of his work, Mr Marcus Watson, National Development Manager, The Better Futures Hub, came across the following example of the difficulties faced by young people in regional areas:

I read about young parents who in a day are taking a circular trip to and from home of up to six separate bus services sometimes to get to the services. So there are some significant challenges there around transport for some young jobless families.¹²⁵

- 4.137 For many, access to public transport is difficult or non-existent and access to a vehicle and obtaining a driver's licence is often out of reach. Similarly, the Youth Affairs Coalition of Western Australia (YACWA) provided evidence that demonstrated how the availability of transport can mean the difference between unemployment and employment. The YACWA submitted:

Australia's sparse urban cities have created high levels of car ownership, where to develop efficient and comprehensive public transport systems is extremely costly. However, many young people do not have access to a private car or a supervised driver to

124 Mr John Cafferata, Manager and Owner, Darcy St Project, *Committee Hansard*, Parramatta, 19 November 2015, pp 8–9.

125 Mr Marcus Watson, National Development Manager, The Better Futures Hub, *Committee Hansard*, Tumbi Umbi, 21 August 2015, p. 6.

satisfy their licensing requirements, and consequently face difficulties in accessing employment and education.¹²⁶

- 4.138 For many young people, the barrier is the financial cost of obtaining a driver's licence. This is a real dilemma: young people cannot finance their licence without a job, and cannot access a job without their licence. The YACWA also provided a particularly poignant example of this from a respondent of their 2015 Driver's Licence Survey:

"I spent two years on my L's before doing my practical driving assessment because I could not afford driving lessons or the fee it costs to book a PDA. Having now passed the PDA I have to wait another six months before I can get my licence. I'm currently looking for employment and have missed out on at least twelve job opportunities because I'm unable to drive on my own." Young person, YACWA Driver's License Survey 2015.

- 4.139 The Federation of Ethnic Communities' Councils of Australia (FECCA) also agreed that difficulties around obtaining a driver's licence, and access to transport, was a major barrier to obtaining work. FECCA explained:

FECCA's consultation in Logan, Queensland found that one of the major impediments to youth employment is the inability to obtain a driver's licence. Having a driver's licence is a key requirement for apprenticeships and employment in many small businesses. There are numerous job opportunities in remote parts of Queensland where public transport is scarce or travel times are excessively long. The process of obtaining a driver's licence, including driving lessons and licence costs, can be prohibitive for young people coming out of school.¹²⁷

- 4.140 While some states have programs that assist young and disadvantaged people to get their licence, the YACWA stated that Western Australia does not. Consequently, the YACWA have recommended the introduction of driver mentoring programs in Western Australia, similar to those that are offered in other states.¹²⁸

- 4.141 While such mentoring programs have proven success rates, they are in high demand and are often under resourced with long waiting times. The Federation of Ethnic Communities' Councils of Australia provided one example of a this being the case for an otherwise successful Queensland based program:

126 Youth Affairs Coalition of Western Australia, *Submission 47*, p. [2].

127 Federation of Ethnic Communities' Councils of Australia, *Submission 16*, pp. 4-5

128 Youth Affairs Coalition of Western Australia, *Submission 47*, p. [5].

A local organisation with the support of Commonwealth and Queensland governments introduced 'Braking the Cycle', a program where youth between 16-25 years of age are provided with free driving lessons to obtain a valid licence. Although this program is highly commendable, there are long waiting lists and many felt that this project is under resourced.¹²⁹

Addressing job seeker disadvantage

4.142 The Small Business Advisory Service – discussed previously and in Chapter 2 of this report – has been successful in addressing some of these issues. Ms Nexhmije Shala of the CMRC, explained the Small Business Advisory Service's role in the Parramatta region in western Sydney:

The opportunity to have the Small Business Advisory Service at the CMRC has raised a lot of our client numbers and also the capacity and support that we are giving a lot of our clients. It also allows us to look at other sustainable practices, like social enterprise as well. I think, this has been quite visionary with regard to how the welfare sector has been growing itself. This is a really great model and I would like to suggest that more advisory services be run out of migrant resource centres. It has worked really well.¹³⁰

4.143 Another way to address the disadvantage faced by job seekers from a CALD background is through wage subsidies. Chapter 2 discussed the wage subsidies that the federal government currently provides. They are an important mechanism through which some of the disadvantage faced by certain cohorts of job seekers can be overcome. As Ms Sally Sinclair, the Chief Executive Officer of National Employment Services Association told the Committee:

Wage subsidies are very successful. They are a good mechanism and a good measure. In fact, the OECD has just done a review of employment services, and that is one of their major recommendations as a mechanism for engaging people who are disadvantaged in the labour market. I am not talking about people who have a high currency of skills and experience but about those who need a bit of an opportunity, a bit of a leg up to get into the workforce.¹³¹

129 Federation of Ethnic Communities' Councils of Australia, *Submission 16*, p. 5.

130 Ms Nexhmije Shala, Business Development Manager, Community Migrant Resource Centre *Committee Hansard*, Parramatta, 19 November 2015, p. 42.

131 Ms Sally Sinclair, Chief Executive Officer, National Employment Services Association, *Committee Hansard*, Melbourne, 13 July 2015, p. 50.

Mentoring

4.144 As discussed earlier, workplace mentoring aimed at developing skills, knowledge and confidence can be successful in attracting and maintaining current and potential employees. Strong bonds can be formed between someone seeking experience and someone that has experience that can guide them into meaningful employment, further study or advancements in their career.

4.145 The power of this has been proven through organisations such as Fitted for Work, who provide a one-on-one mentoring service to disadvantaged women seeking employment. In their submission, Fitted for Work provided this quote from a former client describing the positive impact that the mentoring service had:

"After two years seeking employment, which involved hundreds of applications, and even walking the streets of my local towns walking in every shop asking for work, I started to wonder if I would ever be able to work again ... I benefited the most from the connection with one person who was simply there for me to ride the storms and sail the smooth seas of success. Knowing that I was not alone and that a caring and competent person was there to be honest with me and give me sound advice for me to consider allowed me to be in control" - Leonette, former client, age 56, matched with volunteer mentor and now in employment.¹³²

4.146 The value of mentoring is also seen in young people, who are typically at the beginning of their career path. Mr Salim Sukari, Director, Lebanese Muslim Association (LMA) provided an example of how mentoring has been successful in his community:

...one of the good initiatives – and perhaps this is something that could be applied elsewhere – the LMA have engaged in is what they call the Aspire Role Model program. Essentially, they pick 15 role models from the community who are running successful businesses and they get those role models into schools to speak about their experiences and how their careers have progressed. The really good thing is that they encourage those role models to take on year 11 and year 12 students for work experience and become, really, their mentors from a business and academic point of view. I mention that because it has been quite successful.¹³³

132 Fitted for Work, *Submission 48*, p. [4].

133 Mr Salim Sukari, Director, Lebanese Muslim Association, *Committee Hansard*, Parramatta, 19 November 2015, p. 37.

- 4.147 While there is evidence as to the positive effects of mentoring, there were some participants who acknowledged that more could be done. The Deaf Society of NSW was one example who recognised that mentoring for their clients from people within the business community, was one area of development for their organisation. Ms Leonie Jackson, Chief Executive Officer, The Deaf Society of NSW explained their position and provided an example of how mentoring was beneficial to her success in business:

One thing that we have not set up particularly well is our deaf professional network for those deaf people who want to get a foot in the door and also be mentored by others who are currently working as professionals. A barrier for many deaf professionals is trying to find a deaf professional to mentor them and take them under that supervisory role, as you were saying. That has been a bit of an issue. I know that there are many successful deaf professionals that do not have any mentors, and they do have a sense that there is a communication issue. There is no funding to provide that mentoring. Maybe they need an interpreter or captioning to actually benefit from a mentoring program or a mentoring situation, so I think it would be a huge benefit if that was there.

I do have a mentor. I was lucky to get this person, who is a business person, who can sign, so I am able to access that communication. That is one. But I know it is a very rare opportunity in Australia to have access to a mentor like that. I am very lucky. Many other deaf professionals, of course, do not, and they are trying to find mentors out there.¹³⁴

- 4.148 Similarly, Ms Masella acknowledged that their needs to be a greater focus on the provision of business mentors for Indigenous Australians:

Perhaps it is a stereotype, but I think a lot of us are good athletes. There is some truth in that. But we have some very successful Aboriginal men and women businesspeople around Australia. Promoting those success stories will certainly help. Like anything, when you have had someone walk before you who has been successful, it is very much easier for another Aboriginal person to come along and say, 'I can do that too.'¹³⁵

134 Ms Leonie Jackson, Chief Executive Officer, The Deaf Society of NSW, *Committee Hansard*, Parramatta, 19 November 2015, p. 13.

135 Ms Kristy Masella, Chief Executive Officer, Aboriginal Employment Strategy, *Committee Hansard*, Parramatta, 19 November 2015, p. 25. See also Denise Newham, Founder, Trainer and Advocate, Sista Successful and Darug Tribal Aboriginal Corporation, *Committee Hansard*, Parramatta, 19 November 2015, p. 27.

4.149 There is also need for mentoring for small businesses that are newly established or just starting up. This is particularly important for culturally or linguistically diverse people (CALD) who face many barriers finding employment, yet the regulatory requirements and acumen around making a small business successful can also be too difficult to navigate. Ms Melissa Monteiro, Executive Director, Community Migrant Resource Centre, made the following statement:

Providing positive role models, mentoring opportunities, career guidance and referrals for these people from these backgrounds is the way to go...Business mentoring and business mentoring programs are something that we are also trialling, and the banks are very keen. That is also something that I would recommend very highly...¹³⁶

Entrepreneurship and innovation

4.150 Generating better support for innovation and entrepreneurship is one way that some submitters have identified in creating employment opportunities. Supporting entrepreneurs in the development of new small and micro businesses can allow for job seekers with restricted work capacity, such as at home parents or carers, to create their own employment opportunities.

4.151 With the increasing availability of the technology to do so, creating online businesses as opposed to the traditional bricks and mortar, is becoming increasingly accessible. Mrs Daniela Ascone, Director, Strategy and Partnerships, Fingerprint Me Youth Employment Academy, agreed that through educating people with the skills to be entrepreneurial, more jobs can be created:

Something we are focusing on quite significantly is that if there are no jobs, let us look at creating them. Let us look at educating young people, looking at the skills an entrepreneur would need to be successful and teaching them how to do that. There are so many ways.¹³⁷

4.152 Ms Julie Toth, Chief Economist, Australian Industry Group also recognised this. Ms Toth stated that currently around 10 per cent of the workforce are not wage and salary earners, but employers or self-employed and by encouraging and increasing this number through entrepreneurship, creates another avenue for boosting employment:

136 Ms Melissa Monteiro, Executive Director, Community Migrant Resource Centre, *Committee Hansard*, Parramatta, 19 November 2015, p. 35.

137 Mrs Daniela Ascone, Director, Strategy and Partnerships, Fingerprint Me Youth Employment Academy, *Committee Hansard*, Melbourne, 13 July 2015, pp. 4-5.

I think it is fair to say that it is an ambition of many people in the workforce to be self-employed and to become employers themselves. Given that very large number – nine to 10 per cent of the workforce – already falls into that category, we need to be careful not to restrict this inquiry to looking only at the promotion of wage and salary employment. Self-employment is worth promoting and it is certainly an ambition that many individuals hold.¹³⁸

- 4.153 The Australian Retailers Association (ARA) submitted that the utilisation of an online web presence for small business, coupled with the rollout of national infrastructure including high speed broadband and fourth generation wireless services, provides a critical platform for business to harness productivity and business improvements.
- 4.154 The ARA recommended that the government's role should be commercial facilitation in this technology product rollout and skills building, encouraging and facilitating through existing skills development opportunities allowing market forces to do the rest.
- 4.153 Ms Toth also identified that Australian small businesses can have difficulty with innovative ideas and products coming to fruition as marketable products, indicating a need for support for small businesses innovators and entrepreneurs:
- The evidence suggests that Australia does not do too badly in coming up with new ideas and new technologies. Where we fall down is on growing those ideas into a marketable product or service. It is the development – taking a product to market and growing it big enough to actually make it a viable business. It is in that marketing area, growing it into a viable product, that businesses seem to need the most assistance.¹³⁹
- 4.154 The Committee also heard that the government's New Enterprise Incentive Scheme is something on which the Federation of Ethnic Communities Councils of Australia (FECCA) has 'received really good feedback' on.¹⁴⁰

138 Ms Julie Toth, Chief Economist, Australian Industry Group, *Committee Hansard*, Melbourne, 13 July 2015, p. 25.

139 Ms Julie Toth, Chief Economist, Australian Industry Group, *Committee Hansard*, Melbourne, 13 July 2015, pp. 30-31.

140 Ms Erin Gillen, Senior Policy and Project Officer, Federation of Ethnic Communities' Councils of Australia, *Committee Hansard*, Canberra, 17 June 2015, p. 6.

Committee comment and recommendations

- 4.155 This chapter has presented a range of views on the difficulties that job seekers in various sections of the labour force face in gaining employment with a small business. There are three themes that emerge.
- 4.156 First, the evidence before the Committee is that the small business community could be better informed of the benefits that people in these vulnerable groups can offer to a business. Information campaigns can be a highly effective tool to complement financial incentives to employ people in vulnerable groups.
- 4.157 Second, small businesses and their representatives have highlighted structural obstacles to employing more widely. These obstacles include the cost of apprentices and structured work experience opportunities, skill shortages and limited recognition of skills by professional and semi-professional bodies.
- 4.158 Third, there is evidence that people in these vulnerable groups could take steps to become more 'job ready'. Notwithstanding the difficulties that people in these vulnerable groups often experience in gaining employment through no fault of their own, there are measures that these job seekers can take to improve their employment prospects.

McClure Report into Welfare Reform

- 4.159 In considering its recommendations, the Committee is mindful of the recommendations of – and government response to – the 2015 *McClure Report into Welfare Reform*.¹⁴¹ The purpose of the report was to 'identify improvements to ensure the system is sustainable, effective and coherent, and encourages people to work'.¹⁴²
- 4.160 The report itself is a comprehensive review of Australia's welfare system. Various parts of the report have relevance for this Committee's deliberations. The Committee draws attention to the following section of the McClure report titled *Better Support for Employers*:

Better supports are needed for employers to ensure there are sustained employment outcomes that benefit both employer and

141 Australian Government, Department of Social Services, 'Review of Australia's Welfare System: A new system for better employment and social outcomes', February 2015, <https://www.dss.gov.au/sites/default/files/documents/02_2015/dss001_14_final_report_access_2.pdf>, viewed 28 January 2016.

142 Australian Government, Department of Social Services, 'Review of Australia's Welfare System: A new system for better employment and social outcomes', February 2015, p.5, <https://www.dss.gov.au/sites/default/files/documents/02_2015/dss001_14_final_report_access_2.pdf>, viewed 28 January 2016.

employee. This includes during the recruitment phase and placement and post placement support.

Support for employers is needed to attract suitable candidates, assist them with training, provide mentoring and support and retain employees.

Employers can also be assisted through initiatives that support young people on the pathway from study to work. These initiatives establish relationships between employers, community and business, providing support to individuals, ensuring there is a clear line of sight from education, training or work experience, to employment.

Wage subsidy schemes need to be linked with supports for both prospective employees and employers to achieve long term employment outcomes. This will assist in ensuring that employees in the schemes are provided sufficient support to be retained by employers after subsidies are no longer available.¹⁴³

4.161 The Committee supports the following recommendations contained within the McClure report:

Promote initiatives that support pathways from school to work through establishing relationships between employers, community and business, based on the principles of successful models.

Promote wage subsidy schemes to provide incentives for small to medium sized enterprises to encourage recruitment of people with disability and mental health conditions for up to twelve months.

Employment Providers and Disability Employment Services Providers achieve better jobs and skills matching.

Improve the assessment and referral arrangements for job seekers to ensure that there are stronger linkages between Centrelink and employment services to ensure better employment outcomes.

Ensure there are placement and post placement support services for people with disability and mental health conditions, including disability awareness training, mentoring and employer support based on the principles of successful existing models.¹⁴⁴

143 Australian Government, Department of Social Services, 'Review of Australia's Welfare System: A new system for better employment and social outcomes', February 2015, p. 30, <https://www.dss.gov.au/sites/default/files/documents/02_2015/dss001_14_final_report_access_2.pdf>, viewed 28 January 2016.

144 Australian Government, Department of Social Services, 'Review of Australia's Welfare System: A new system for better employment and social outcomes', February 2015, p. 30, <https://www.dss.gov.au/sites/default/files/documents/02_2015/dss001_14_final_report_access_2.pdf>, viewed 28 January 2016.

4.162 The Committee also draws attention to the section on *Jobs Plan for People with Disability and Mental Health Conditions* which suggests ‘initiatives that increase workforce participation for disadvantaged people is needed to ensure all Australians gain the benefits of employment growth’¹⁴⁵ and that in ‘the first instance, a Jobs Plan for people with disability and mental health issues should be developed.’¹⁴⁶

4.163 The report recommends, and the Committee supports, the following recommendations:

Develop Jobs Plans for groups at risk of poor employment outcomes as identified by the Australian investment approach.

In the first instance, develop a Jobs Plan for people with disability and mental health conditions which includes:

- tailored support services including integrating employment services with mental health services
- an awareness raising and education campaign to promote the benefits of employing people with disability and mental health conditions and the services and supports that are available
- a leaders group to bring together key leaders in the disability sector, business and government to develop practical strategies to increase employment of people with disability and mental health conditions
- industry led awards should be established to recognise good employment practice across different sectors
- setting targets across government for employment of people with disability and mental health conditions across all employment levels
- governments and businesses consider procurement from organisations with established records of employing people with disability and mental health conditions
- a covenant for people with disability and mental health conditions should be developed in collaboration with industry, government and civil society
- promotion of improved and streamlined wage subsidies for organisations, including small to medium enterprises to employ

145 Australian Government, Department of Social Services, ‘Review of Australia’s Welfare System: A new system for better employment and social outcomes’, February 2015, p. 31, <https://www.dss.gov.au/sites/default/files/documents/02_2015/dss001_14_final_report_access_2.pdf>, viewed 28 January 2016..

146 Australian Government, Department of Social Services, ‘Review of Australia’s Welfare System: A new system for better employment and social outcomes’, February 2015, p. 31, <https://www.dss.gov.au/sites/default/files/documents/02_2015/dss001_14_final_report_access_2.pdf>, viewed 28 January 2016.

people with disability and mental health conditions for up to twelve months.¹⁴⁷

Committee recommendation on CALD job seekers

- 4.164 Australia is a multicultural society. Employers who tap into the wealth of life experience provided by employees from a CALD background, will, in the Committee's view, be well rewarded.
- 4.165 The Committee recommends that Australian Small Business Ombudsman, Small Business Commissioners, Chambers of Commerce, Business Enterprise Centres and peak small business organisations develop strategy to promote to small business the benefits of workers from CALD backgrounds. Where appropriate, the providers of small business advisory services should incorporate into the written and verbal material they present an explanation of how a business can benefit from recruiting a person from a CALD background.

Recommendation 6

The Committee recommends that Australian Small Business Ombudsman, Small Business Commissioners, Chambers of Commerce, Business Enterprise Centres and peak small business organisations develop strategies to promote to small business the benefits of workers from culturally and linguistically diverse (CALD) backgrounds. Where appropriate, the providers of small business advisory services should incorporate into the written and verbal material they present an explanation of how a small business can benefit from recruiting a person from a CALD background.

Committee recommendation on school leavers and young people

- 4.166 The Committee is of the view that many school students are disadvantaged by the lack of high quality, structured career advice within Australian schools. There is a need for a structured, nationally consistent approach to providing one-on-one and group discussions with high school students about their further study and career options. The Committee believes that such a system, properly designed and funded, will provide many school students with direction and purpose in their studies and in the workforce.

147 Australian Government, Department of Social Services, 'Review of Australia's Welfare System: A new system for better employment and social outcomes', February 2015, p. 32, <https://www.dss.gov.au/sites/default/files/documents/02_2015/dss001_14_final_report_access_2.pdf>, viewed 28 January 2016.

- 4.167 The Committee recommends that a Council of Australian Governments Working Group be established to scope the design and funding of a national careers advice programme within secondary schools. The Working Group must give careful consideration to the need for career advice counsellors to:
- be adequately trained with a good understanding of the skills needed by employers, the courses offered by vocational and tertiary education providers and the key issues and concerns facing young people;
 - discuss with students their strengths and career interests;
 - show students how secondary courses, vocational and tertiary courses align with careers and employment opportunities;
 - allow students the opportunity to meet with key employer groups; and
 - undertake structured work experience as a requisite for the completion of this course.

Recommendation 7

The Committee recommends that the Australian Government conduct a review of careers advice and support provided in schools [and online]. The purpose of the review must be to assess any gaps or areas of weakness in the current written and verbal advice that is provided [by schools and by federal and state governments], and to improve the quality of the careers advice that young people receive.

The Committee recommends that a Council of Australian Government Working Group consider the merit of a national standard for careers advice for all secondary school students.

Improving young people's access to work

- 4.168 The Committee is concerned that difficulty accessing driver's licences impedes employment opportunities for many young and disadvantaged job seekers and part-time workers. A driver's licence is a key requirement for apprenticeships and employment in many small businesses. The Committee recommends that the Australian Government increase funding and support for the provision of driver's licence programs to enable young and disadvantaged people to access employment opportunities.

Recommendation 8

The Committee recommends that Australian Government provide more funding and support for the provision of driver's licence programs to enable young and disadvantaged people to access employment opportunities.

Committee comment on skills shortages

- 4.169 When businesses invest in their employees, it is an investment in their business. The Committee believes it is important that new employees, particularly those undertaking vocational training, must be equipped with basic skills. These skills include basic skills of the profession they are entering as well as soft skills. Small businesses have told the Committee that many prospective employees do not have this base of core skills.
- 4.170 Relevant, practical skills training that are flexible according to industry needs are paramount. Meticulously planned training packages that are developed in accordance with industry consultation, and delivered with a combination of practical experience that develops both the hard and soft skills required in most workplaces, is ideal in order to support small businesses in creating jobs.
- 4.171 The Committee received considerable evidence on skills shortages and skills issues generally as part of its 2014 report *TAFE: an Australian asset*.¹⁴⁸ During that inquiry, the Committee found that the federal government was very active in reviewing training packages and accredited courses and in the quality assurance of training packages and Australian Qualification Framework (AQF) compliance.¹⁴⁹

Committee recommendation on apprenticeships

- 4.172 The Committee is concerned with the evidence it received that some apprentices may be discouraged from learning their trade as they do not get enough time 'on the tools'. This also leads to some apprentices who do not have the hands on skills that an employer requires.

148 House of Representatives, Standing Committee of Education and Employment: 'TAFE: an Australian asset', tabled 24 November 2014, <http://www.aph.gov.au/Parliamentary_Business/Committees/House/Education_and_Employment/TAFE/Report>, viewed 3 February 2016.

149 House of Representatives, Standing Committee of Education and Employment: 'TAFE: an Australian asset', tabled 24 November 2014, pp. 39-40, <http://www.aph.gov.au/Parliamentary_Business/Committees/House/Education_and_Employment/TAFE/Report>, viewed 3 February 2016.

- 4.173 The Committee recommends that the federal Department of Employment look into the implementation of a 'passport to competencies' as envisaged by Master Builders Australia.

Recommendation 9

The Committee recommends that the federal Department of Employment look into the implementation of a 'passport to competencies' as envisaged by Master Builders Australia.

- 4.174 The Committee recommends that the Australian Government assess the impact of changes at the State and Federal level to apprenticeship programs including the Joint Group Training Program and the Australian Apprenticeships Access Program.

Recommendation 10

The Committee recommends that the Australian Government assess the impact of changes at the State and Federal level to apprenticeship programs including the Joint Group Training Program and the Australian Apprenticeships Access Program.

Committee recommendation on ancillary service providers

- 4.175 The Committee acknowledges the significant contribution that ancillary providers of employment training and services make in vulnerable job seekers' efforts to find work. As such, the Committee argues that that these ancillary service providers should be properly remunerated. Currently, they are not paid by jobactive service providers.
- 4.176 The Committee recommends that the federal Department of Employment work with jobactive providers to ensure that ancillary service providers receive Australian Government funding for their assistance in placing jobactive clients into work.

Recommendation 11

The Committee recommends that the federal Department of Employment work with jobactive providers to ensure that ancillary service providers receive Australian Government funding for their assistance in placing jobactive clients into employment.

Committee recommendation on support for people with episodic illnesses

- 4.177 The Committee took evidence that people with episodic mental illnesses can be well for some time and enter the work force, but then become ineligible for the Disability Support Pension when their illness reoccurs. Episodic illnesses, such as those suffered by the mentally ill, can often reappear with a severity that makes a person unable to work for a period of time.
- 4.178 Although it did not receive direct evidence of other illnesses that are episodic it is obvious to the Committee that such illnesses beyond those affecting mental health exist. Arthritis that 'flares up' with a severity that incapacitates someone for employment is one example that comes to mind.
- 4.179 The Committee emphasises the benefits of paid work for people with episodic illness in terms of supporting their health and self-esteem. People with illnesses that are episodic should be encouraged to work and should not fear becoming ineligible for the Disability Support Pension because they have become employed.

Recommendation 12

The Committee recommends that the Australian Government review welfare eligibility rules for people with an episodic illness transitioning from a period out of the workforce into paid employment. The Committee encourages the Australian Government to ensure that people with an episodic illness are not discouraged from entering the workforce for fear of losing their disability or Centrelink pension when they work.

Committee recommendation on taxing redundancy payments for older people

- 4.180 This chapter has discussed the anomaly of the current situation where a person over 65 years of age who receives a redundancy payout is taxed at the full rate. The Committee believes that, notwithstanding the fact that persons over 65 have superannuation and tax benefits, there should be consistency in the taxation treatment of redundancy payouts.

Recommendation 13

The Committee recommends that Australian Government reassess the policy case for taxing the redundancy payouts of persons over 65 years of age to encourage people to stay in the workforce.

Committee recommendation on innovation

4.178 The Committee recommends that, in light of the importance of digital infrastructure for the viability of small business, special focus be given by NBN Co on ensuring their timely access to high speed broadband.

Recommendation 14

The Committee recommends that, in light of the importance of digital infrastructure for the viability of small business, special focus be given by NBN Co on ensuring their timely access to high speed broadband.

Andrew Laming MP

Chair

3 March 2016



Appendix A – List of submissions

1	G & S Ellis Holdings Pty Ltd t/a G. S. Ellis Pastoral
2	St. Helens Newsagency
3	Mr Vito Giarrusso
4	Confidential
5	Group Training Australia
6	Ms Madeleine Skerritt
7	ET Australia
8	Queensland Nurses' Union
9	National Retail Association
10	Office of the NSW Small Business Commissioner
11	Australian Small Business Commissioner
11.1	Australian Small Business Commissioner
12	Fingerprint Me Youth Employment Academy
13	Master Grocers Australia / Liquor Retailers Australia
14	Australian Dairy Farmers Limited
15	Shop, Distributive & Allied Employees' Association
16	Federation of Ethnic Communities' Councils of Australia

16.1	Federation of Ethnic Communities' Councils of Australia
17	Australian Industry Group
18	Mr Bill Wyatte
19	UnionsWA
20	Master Electricians Australia
21	Victorian Automobile Chamber of Commerce
22	Australian Chamber of Commerce and Industry
23	Chamber of Commerce and Industry of Western Australia
24	Unions Tasmania
25	Council of Textile and Fashion Industries of Australia Limited
26	Grey Sands Vineyard
27	Business South Australia
28	National Employment Services Association
29	United Voice
30	UnionsACT
31	Department of Employment
32	Master Builders Australia
32.1	Master Builders Australia
33	Blueberry Fields
34	Dr Barrie Pittock
35	Ms Helen Roberts
36	Ms Carol O'Donnell
37	Australian Retailers Association
38	NSW Business Chamber
39	Victorian Employers Chamber of Commerce and Industry
40	Restaurant & Catering Industry Association
41	Mr Mark Cleary
42	Dr Brian Freeman

- 43 Council of Small Business Australia
- 44 Australian Human Rights Commission
- 45 Name Withheld
- 46 The Deaf Society of NSW
- 47 The Youth Affairs Council of Western Australia
- 48 Fitted for Work
- 49 Mr Adrian Stephan, Logistics Pty Ltd



Appendix B – List of hearings and witnesses

Wednesday, 03 June 2015 – Canberra

Office of the Australian Small Business Commissioner

Mr Mark Brennan, Australian Small Business Commissioner

Ms Jennifer Lawrence, Adviser

Wednesday, 17 June 2015 – Canberra

Federation of Ethnic Communities' Councils of Australia

Ms Gulnara Abbasova, Director

Ms Erin Gillen, Senior Policy and Project Officer

Ms Kirinde (Dini) Liyanarachchi, Policy and Project Officer

Wednesday, 24 June 2015 – Canberra

Master Builders Australia

Mr Richard Calver, National Director, Industrial Relations and Legal Counsel

Dr Brent Davis, National Director, Industry Policy

Mr Wilhelm Harnisch, Chief Executive Officer

Monday, 13 July 2015 – Melbourne**Fingerprint Me Youth Employment Academy**

Mrs Daniela Ascone, Director, Strategy and Partnerships

Mr Peter Coronica, Chief Executive Officer and Founder

Master Grocers Australia / Liquor Retailers Australia

Mr Jos de Bruin, Chief Executive Officer

Shop, Distributive & Allied Employees' Association

Mr Ian Blandthorn, National Assistant Secretary

Mr Gerard Dwyer, National Secretary and Treasurer

Ms Julia Fox, National Industrial Officer

Australian Industry Group

Ms Julie Toth, Chief Economist

Mr Stephen Smith, Director, National Workplace Relations Policy

Victorian Automobile Chamber of Commerce

Mr William Chesterman, Industrial Relations Manager

Ms Jodee Price, Education and Training Manager

Mrs Leyla Yilmaz, Deputy Executive Director Industrial Relations, Policy and Engagement

Council of Textile and Fashion Industries of Australia Limited

Mr John Condilis, Member

Mr Dale Cornell, Member

Ms Kiri Delly, Chief Executive Officer

Mr Phillip Endersbee, Member

Ms Jenny Layton, Member

National Employment Services Association

Ms Sally Sinclair, Chief Executive Officer

Dr Caroline Smith, Deputy Chief Executive Officer

Friday, 21 August 2015 – Tumby Umbi**The Better Futures Hub**

Mr Marcus Watson, National Development Manager

Central Coast Business Review - Adams Business Publications

Mr Edgar Adams, Editor/Publisher

Central Coast Business Enterprise Centre

Dr Brian Freeman, Business Adviser

Booth's Motor Group

Mr David Booth, Director

ET Australia

Mr Tony Mylan, Chief Executive Officer

Central Coast Group Training

Mr Gregory Best, General Manager

Hospitality Training Network

Mr Michael Bennett, Chief Executive Officer

Central Coast Telework Strategy Group

Mr Mark Cleary, Chair

Maddisson Employment & Training Group

Mr Tony Chesher, Chief Executive Officer

Tuesday, 6 October 2015 – Redfern**Group Training Australia Ltd**

Mr James Barron, Chief Executive Officer

Mr Jeff Priday, National Projects Manager

Australian Chamber of Commerce and Industry

Mr Dick Grozier, Associate Director, Workplace Relations

United Voice

Mr David McElrea, Assistant National Secretary

NSW Business Chamber

Mr Luke Aitken, Senior Manager, Policy

Wednesday, 11 November 2015 – Canberra**Council of Small Business Australia**

Mr Peter Strong, Chief Executive Officer

Thursday, 19 November 2015 – Parramatta**Fitted for Work**

Ms Donna de Zwart, Chief Executive Officer

Ms Holly Edson, Former client

Darcy St Project

Mr John Cafferatta, Manager/Owner

The Deaf Society

Ms Leonie Jackson, Chief Executive Officer

Mr David McQuiggin, Manager, Employment

Northcott

Mr Andrew Manning, Employment Operations Manager

Aboriginal Employment Strategy

Mrs Kristy Masella, Chief Executive Officer

Parramatta Community Mental Health Team

Mr Keat Toh, Nurse Unit Manager/Team Leader

Transcultural Mental Health Centre

Ms Maria Cassaniti, Manager

Community Migrant Resource Centre

Mrs Melissa Monteiro, Executive Director

Ms Nexhmije Shala, Business Development Manager

Lebanese Muslim Association

Mr Salim Sukari, Director

Darug Tribal Aboriginal Corporation

Ms Denise Newham, Sista Successful

Mr Mark Newham, Archaeological Site Officer

Wednesday, 25 November 2015 – Canberra**Australian Human Rights Commission**

Ms Susan Ryan, Age and Disability Discrimination Commissioner

