

**Agency Snapshot: The Productivity Commission**

September 2013

The Productivity Commission is one of Australia’s most highly respected research and advisory bodies, and is regarded as the Federal Government’s principal advisory body on all aspects of microeconomic reform. Established under the [Productivity Commission Act 1998 \(Cth\)](#), the Productivity Commission came into effect in April 1998 following the amalgamation of the Industry Commission, Bureau of Industry Economics and the Economic Planning Advisory Commission. The Productivity Commission is an independent statutory authority within the Treasury portfolio, with the current ten commissioners appointed on five-year terms.

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**Background**

The origins of the Productivity Commission date as far back as the federal Tariff Board in 1929. The decision to amalgamate a range of economic commissions and advisory boards in 1996 led Prime Minister John Howard to establish an economic advisory and policy commission under a new name. From the outset, the Australian Labor Party promised to replace the Commission should they be elected, opting to replace it with a ‘National Development Authority’. However, since the time of its inception, the Commission has become a staple of domestic economic policy discussion, advising the Federal Government across a wide range of issues.

In the second reading speech, Parliamentary Secretary to former Prime Minister Howard, the Hon. Chris Miles, said that the Productivity Commission Bill would allow the Productivity Commission to “play a key role in promoting policies at both the government and business level to improve the competitiveness and dynamism of the Australian industry”. Since its inception in 1998, the Productivity Commission has published over two hundred inquiries and studies on a wide range of economic topics and issues.

## **Productivity Commission Act 1998**

The establishment, functions and powers of the Productivity Commission are set out in the *Productivity Commission Act 1998* (Cth). The Act states that the Productivity Commission will have a broad range of functions, including but not limited to:

- the holding and reporting of inquiries referred to it by the Treasurer concerning matters relating to industry, industry development and productivity;
- the provision of secretariat or research services to government bodies as directed by the Treasurer;
- as requested by the Treasurer, the provision of advice concerning matters relating to industry, industry development and productivity;
- the undertaking, on its own initiative, research concerning matters relating to industry, industry development and productivity; and
- the promotion of public understanding of matters relating to industry, industry development and productivity.

In addition, the Act establishes that the Treasurer has additional powers to compel the Productivity Commission to undertake further activities during individual inquiries, including:

- the holding of hearings in order to complete the inquiry;
- the release of a draft report to the public during the inquiry; and
- the formulation of recommendations on the basis of its inquiry and consequential report.

## **Members of the Productivity Commission**

The structure of the Productivity Commission is defined by the Act, with the appointment of a Chairperson and a maximum of eleven commissioners allowable for five-year terms. Following the resignation of former Chairperson Mr Gary Banks in December 2012, Mr Peter Harris was appointed Chairman of the Productivity Commission. Mr Harris has previously served as Secretary of the Commonwealth Department of Broadband, Communications and the Digital Economy, and the Victorian Government agencies responsible for Sustainability and the Environment; Primary Industries; and Public Transport. He will serve as Chairperson until 10 March 2018.

The current commissioners are:

- Mr Peter Harris - *Chairman* (Melbourne);
- Mr Mike Woods - *Deputy Chairman* (Canberra);
- Jonathan Coppel (Melbourne);
- Ms Wendy Craik AM (Canberra);
- Mr Robert Fitzgerald (Canberra);
- Ms Angela MacRae (Melbourne);
- Ms Alison McClelland (Melbourne);
- Ms Siobhan McKenna (Melbourne);
- Mr Warren Mundy (Canberra);
- Ms Patricia Scott (Canberra); and
- Mr Philip Weickhardt (Melbourne).



## **Influence on Policy-Making**

The Productivity Commission has played an important role in the development of modern policy. For example, the Commission's 2011 report *Carbon Emissions in Key Economies* was key to securing Independent MP Tony Windsor's support for the former Federal Government's Clean Energy Future legislation. The Commission's report into disability services in Australia, titled *Disability Care and Support*, formed the basis for the Labor Government's National Disability Insurance Scheme policy, to be launched from 1 July 2013.

More recently, the Productivity Commission has reported on economic relations between Australia and New Zealand, default superannuation funds and adaptation to climate change.

A full list of the Productivity Commission current and former inquiries can be found [here](#).

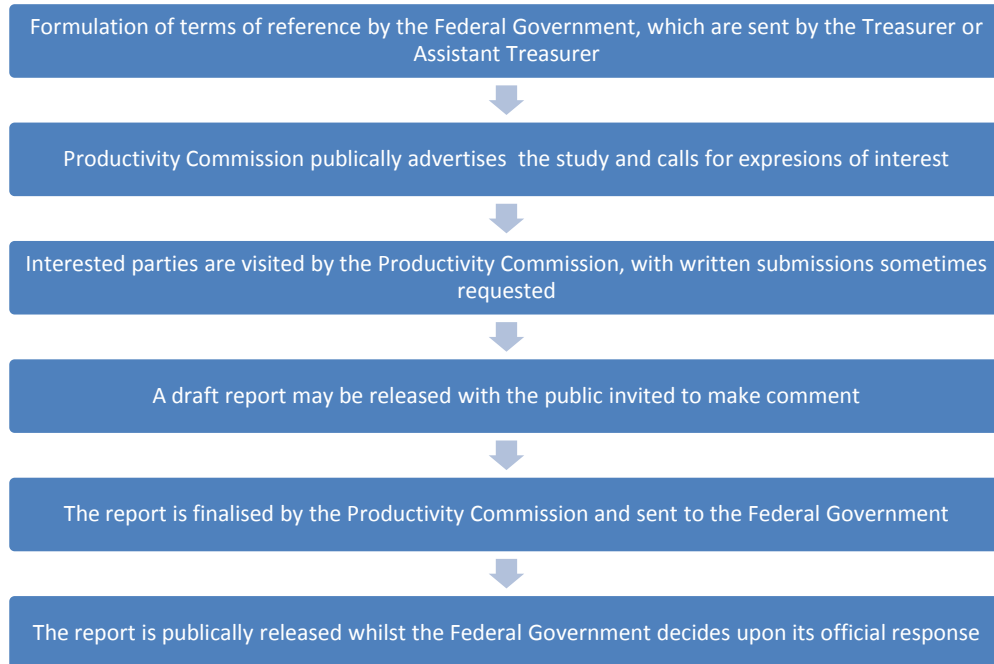
## **The Process**

An inquiry is initiated following the production of terms of reference by the Treasurer or Assistant Treasurer. At the time of outlining the terms of reference, the Government will specify a time frame within which the report must be completed, with 9 to 12 months usually specified. Such a request for an inquiry may follow as a result of coverage of a particular issue in the media, or a decision by the Government to reform that particular area. As per the terms of the *Productivity Commission Act 1998*, the terms of reference must fit within the broader framework of industry, industry development and productivity.

Upon receipt of the reference, the Productivity Commission will first publically advertise the study and call upon parties, interest groups and industry stakeholders to register their interest. After this period, the Productivity Commission will then visit these parties, distribute issues papers or research briefs, and possibly accept written submissions to further inform the inquiry.

Following from investigation of interested parties and stakeholders, the Productivity Commission will produce its own research and commence drafting accordingly. Following the completion of a 'draft' report, the Productivity Commission may publically publish a draft and invite comment on the same, with the reference in some cases requiring the release of a draft report. This allows for wider public discussion to occur, and may provide the Government with an opportunity to formulate a more timely response.

Upon completion of the report, the report will be sent by the Productivity Commission to the Treasurer or Assistant Treasurer. Following this, the report will be made publically available whilst the Federal Government decides upon its official response.



### **Inquiries reported in the 43<sup>rd</sup> Parliament**

#### *Default Superannuation Funds in Modern Awards*

On 6 February 2012, then then-Assistant Treasurer former Senator Mark Arbib requested the Productivity Commission to examine default superannuation funds in modern awards to establish a transparent set of criteria that such funds could be assessed against. The Productivity Commission was also asked to design a process for the selection and ongoing assessment of super funds for nomination as a default fund in a modern award. The Productivity Commission developed transparent and objective criteria to ensure that funds wishing to be on the default list could be assessed accordingly.

In response, the Hon. Bill Shorten MP, former Minister for Employment and Workplace Relations and Minister for Financial Services and Superannuation, announced that the Federal Government would accept the criteria proposed by the Productivity Commission, and would establish an Expert Panel within the Fair Work Commission to assess funds based on the Productivity Commission's recommendations. These changes have since been approved within the *Fair Work Amendment Act 2012*.

#### *Australia's Export Credit Arrangements*

On 18 September 2011, then-Minister Shorten requested the Productivity Commission undertake a review of the Export Finance and Insurance Corporation (EFIC), the government provider of export credits, insurance, reinsurance and other financial services that support Australian exports and overseas investments.

The Productivity Commission was asked to review the need for government intervention in this area, and if needed, how the EFIC can operate more effectively. The Productivity Commission made 22 recommendations, with the Federal Government agreeing fully or partially to 15. These changes include measures to clarify EFIC's operations, tighten the definition of 'Australian export trade' and introduce a

new market failure test to ascertain whether assistance of exporters by EFIC is required. The Federal Government introduced the *Export Finance and Insurance Corporation Amendment (Finance) Bill 2013* (Cth) on 13 February 2013 to enact these changes.

#### *Economic Structure and Performance of the Australian Retail Industry*

On 3 February 2011, former Minister Shorten requested the Productivity Commission conduct an inquiry into the structure, performance and efficiency of the retail sector. The Federal Government responded to a range of the report's recommendations by establishing a Low Value Parcel Processing Taskforce to investigate how the processing of parcels, particularly those from overseas could be deal with in a more effective and efficient manner; and by committing to work with the states and territories through the Council of Australian Government's to lessen regulatory burdens upon retailers.

#### *Economic Regulation of Airport Services*

On 15 December 2010, then-Minister Shorten requested the Productivity Commission examine the effectiveness of current economic regulation of airports in facilitating ongoing investment in infrastructure and preventing potential abuses of market power. The Productivity Commission was also asked to make recommendations in relation to the requirement for future regulation and monitoring of services, and the scope and appropriate mechanism for the provision of greater transparency and accountability in airport infrastructure and services.

The Federal Government accepted some, although not all of the Productivity Commission's findings, largely strengthening the powers of the Australian Competition and Consumer Commission to investigate airport pricing through a newly formed 'show cause' process. No supporting legislation has been presented to Parliament for these changes as it is unlikely that legislation will be required to enact the same.

#### *Australia's Urban Water Sector*

On 22 July 2010, then-Assistant Treasurer former Senator Nick Sherry requested the Productivity Commission analyse and inquiry into the need for micro-economic reform in the domestic urban water sector. At present, the Federal Government is yet to announce an official response beyond committing to continued to working with the states and territories on water reform.

#### *Caring for Older Australians*

On 21 April 2010, Senator Sherry referred the aged care system for inquiry by the Productivity Commission. In April 2012, the Federal Government announced its full or partial acceptance of a majority of the report's findings with the launch of the 'Living Longer. Living Better. Aged Care Reform Package'. Along with \$3.7 billion in new funding, the package includes initiatives to allow 100,000 older Australians to receive home care, provide more choice payment options for aged care, and new regulations to ensure there are immediate improvements to the aged care system.

A full analysis of this package by Hawker Britton can be found [here](#).

#### *Disability Care and Support*

On 17 February 2010, Senator Sherry asked the Productivity Commission to propose a long-term care and support scheme for disabled Australians. Following the release of the report, the Federal Government announced that it would adopt the proposal authored by the Productivity Commission, and implement a plan to establish the National Disability Insurance Scheme. The Federal Government also announced the formation of an Advisory Group to guide the implementation of the program, which will take up to seven years. Trial sites will commence on 1 July 2013 in New South Wales, Victoria, South Australia, the Australian Capital Territory, and Tasmania.

A full analysis of this package by Hawker Britton can be found [here](#).

#### *Rural Research and Development Corporations*

On 15 February 2010, Senator Sherry requested the Productivity Commission hold an inquiry into rural research and development corporations (RDCs) in Australia. These RDCs are funded by a co-investment model reliant on industry levies and matching funding by the Federal Government.

The final report by the Productivity Commission recommended that the Government reduce its matching contributions from 0.5 per cent to 0.25 per cent of an industry's gross value of production. However, the Federal Government rejected this change, along with the suggestion to establish a new RDC titled Rural Research Australia. The Federal Government did commit to an outline of what is expected of RDCs in order to gain funding.

#### *Compulsory Licensing of Patents*

On 29 June 2012 the then-Assistant Treasurer David Bradbury asked the Commission to undertake an inquiry into the compulsory licensing provisions in the *Patents Act 1990* (Cth). The purpose of the inquiry was to assess, advise and recommend on the impacts and mechanisms of compulsory licensing invoked by the Patent Act's public interest and anti-competitive safeguard.

The Report recommended that, in order to remove overlap and inconsistency, when a patent is used to engage in unlawful anticompetitive conduct, a compulsory licence should only be available under the *Competition and Consumer Act 2010* (Cth). It also recommended that a public interest test should replace existing criteria based on the 'reasonable requirements of the public' in the *Patents Act 1990* (Cth). This would provide an access regime when greater use of a patented invention would deliver a substantial net benefit to the community.

#### *Electricity Network Regulatory Frameworks*

On 7 December 2012, then-Assistant Treasurer David Bradbury requested that the Productivity Commission undertake a research study to benchmark the extent to which the different approaches to regulator engagement with small business have the potential to affect the costs (including time and effort) incurred by these businesses. The purpose of the inquiry was to inform the Australian Government about whether there were any practical or empirical constraints on the use of benchmarking of network businesses and then provide advice on how benchmarking could deliver efficient outcomes, consistent with the National Electricity Objective (NEO).

The Report advocated for the use of benchmarking, and recommended modifications to the reliability requirements to promote efficiency, improved demand management, more efficient planning of large transmission investments, changes to state regulatory arrangements and network business ownership and adding some urgency to the existing reform process.

### **Current commissioned projects**

- [Access to Justice](#), a 15-month inquiry into Australia's system of civil dispute resolution, with a focus on constraining costs and promoting access to justice and equality before the law.
- [Labour Mobility](#), a research study assessing geographic labour mobility within Australia and its role in a well-functioning labour market.
- [Major Project Development Assessment Processes](#), a study to benchmark Australia's major project development assessment processes against international best practice.
- [Mineral and Energy Resource Exploration](#), a 12-month inquiry into the non-financial barriers to mineral and energy resource exploration.
- [National Access Regime](#), a 12 month inquiry into the National Access Regime, which is intended to promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets.
- [Processed Fruit Imports](#), a 6-month inquiry into whether safeguard action is warranted against imports of processed fruit products of the Australian Customs Tariff.
- [Processed Tomato Imports](#), a 6-month inquiry into whether safeguard action is warranted against imports of processed tomato products falling within tariff subheading 2002.10.00.60 of the Australian Customs Tariff.
- [Small Business Engagement](#), following the agreement of Council of Australian Governments' (COAG) Business Regulation and Competition Working Group, the Productivity Commission is undertaking a 9-month benchmarking study into regulator engagement with small business.

### **Productivity Commission Inquiries and Review foreshadowed by the Coalition**

#### *Productivity Commission inquiry into child care*

The Coalition has committed to an independent Productivity Commission review of the Australian child care system to direct Coalition policy on funding for the industry. The review will identify the best



methods to achieve these goals, including the effectiveness of child care subsidies, rebates and tax deductions. The terms of reference include:

- The utility of affordable, quality child care;
- The current and future demand for child care in Australia;
- Whether any specific models of child care should be trialed;
- Options to increase the range of programs within the existing funding parameters;
- The impacts of previous changes to child care regulation; and
- The success of the National Quality Framework.

The press release committing to this review is available [here](#).

#### *Productivity Commission Inquiry into Industrial Relations*

As part of its Policy to Improve the Fair Work Laws released on 9 May 2013, the Coalition has committed to a Productivity Commission report on the impact of the current workplace relations system on employers, employees, the community and government. The inquiry will consider the system's differential effect across regions, industries and occupations. It will also review the Coalition's workplace relations policies, which include:

- Re-establishing the Australian Building and Construction Commission;
- Create realistic timeframes for Greenfield agreements;
- Ensuring that union right of entry provisions are sensible and fair; and
- Promoting harmonious, sensible and productive enterprise bargaining.

The full press release committing to this report is available [here](#).

#### *Productivity Commission Inquiry into the Automotive Sector*

The Coalition also committed to engaging the Productivity Commission to report on the future of automotive manufacturing in Australia. The inquiry will identify funding benchmarks and recommend a level of taxpayer-funded subsidies to the industry.

The full press release committing to this report is available [here](#).