

Position statement on the Fair Work Act review

On behalf of the NSW Government

4 April 2012

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INTRODUCTION

1. New South Wales (NSW) is the most populous State in the Australian federation (7.3 million people or about one-third of the total population), with the largest economy and the largest labour force (3.5 million). As the leading economic unit in the country, NSW has a special interest in the subject matter of this Review, that is, 'the extent to which the Fair Work legislation is operating as intended' and 'areas where the evidence indicates that the operation of the Fair Work legislation could be improved'.
2. This interest is heightened by the role of NSW as a referring and participating jurisdiction in the national workplace relations system for the private sector. The NSW Government, in partnership with the Commonwealth, has a shared responsibility to ensure that the national workplace relations system delivers the best possible outcomes for workplaces in this State and through these efficient, flexible and productive workplaces, delivers a strong and robust economy.
3. In light of this special interest, the NSW Government has taken the approach that it should be fully apprised of the views of industrial relations stakeholders in formulating its own views of the adequacy or inadequacy of the Fair Work laws. This statement of the NSW Government's position takes account of the available evidence as well as the wide range of concerns expressed in the submissions to the Review Panel.
4. On this basis, NSW identifies the following key focus areas:
 - Providing employers and employees with the capacity to achieve more flexible, efficient and productive work practices, through both more user friendly enterprise bargaining and realistic individual arrangements, rather than maintaining a rigid approach with unrealistic so-called 'minimum' standards and procedural requirements;
 - Putting an end to a bargaining system which entrenches conflict rather than achievement of meaningful workplace improvements;
 - Removing constraints which prevent workplaces from adjusting to changing economic and market circumstances by the exercise of managerial prerogative;
 - Ensuring that the workplace relations system supports employment growth.

5. The underlying need for better data to support analysis of how the system is operating and what might improve it is another theme of concern to NSW.
6. The NSW Government is pleased to provide the Review Panel with a copy of this position statement for its information and consideration. The paper provides background information about the situation in NSW, both in terms of the economic environment and the regulatory environment, before turning to a consideration of the issues raised by stakeholders about the operation of the *Fair Work Act 2009* (FW Act) (Cth).
7. Had the Commonwealth taken seriously the consultation obligations in the multilateral intergovernmental agreement that underpins the referrals that created the national workplace relations system for the private sector, a meeting of the Select Council for Workplace Relations would already have taken place, to allow responsible Ministers a timely and meaningful opportunity to jointly consider the best process for undertaking the promised review of the Fair Work legislation. The NSW Government strongly believes that the Productivity Commission is the most appropriate body to be charged with this important task.

KEY NSW ECONOMIC AND LABOUR FORCE DATA

8. At June 2010, the estimated resident population of NSW reached 7.23 million people, representing around one-third of Australia's population.¹ Current statistics show that almost 3.6 million people in NSW participate in paid work.² If public sector employees are deducted from this figure (445,000 State Government and 62,000 Local Government employees), there are approximately three million people covered by the national industrial relations system in NSW.³

9. Economic forecasts prepared by NSW Treasury are provided in the Attachment, indicating that some concerns remain in relation to global factors and local employment performance, and highlighting the following:
 - NSW demand and output growth forecasts have been revised down modestly for both 2011-12 and 2012-13. However, activity is expected to recover to trend growth in 2012-13;
 - Current forecasts assume that global financial market instability does not intensify, however if this assumption turns out to be incorrect, there will be flow-on effects to the Australian and NSW economies via financial, confidence and trade linkages;
 - NSW economic output is expected to grow by a below-trend 2 1/4% in 2011-12, and strengthen to a trend rate of 2 3/4% in 2012-13;
 - Household consumption spending continued to improve throughout 2011, growing by 0.8% in both the December 2010 and March 2011 quarters, followed by 0.9% and 1.1% in the June and September 2011 quarters respectively. NSW retail sales rose by 0.5% in the second half of 2011;
 - Household consumption growth is expected to be weaker than at Budget time, reflecting slower than expected employment and wage growth and lower household wealth;

¹ ABS, *Regional Population Growth, Australia, 2009-10*, 3218.0

² ABS, *Labour Force*, 6202.0, February 2012, p.9

³ ABS, *Employment and Earnings, Public Sector, Australia, 2010-11*, 6248.0.55.002, June 2011

- NSW private business investment grew by 3.1% in 2010-11, and is expected to improve over the next two years, although less robustly than expected at budget time;
- Export growth is expected to strengthen and import growth is expected to slow over the next two years. NSW is also expected to benefit from positive contributions from interstate trade with strong demand from resource-intensive States for NSW services and manufactures;
- Over recent months there have been modest increases in employment, labour supply and average hours worked. Combined with leading indicators that suggest ongoing modest labour demand, this points to the labour market improving;
- The unemployment rate is expected to rise slightly above the November 2011 rate of 5.3% before remaining broadly stable over the forecast period. The unemployment rate is expected to be 5 ½ % in both 2011-12 and 2012-13;
- The current seasonally adjusted unemployment rate for NSW of 5.2% is slightly above the national average rate of 5.1%;
- There is some variation in unemployment rates between regions in NSW – the Newcastle and Hunter areas have rates of 4.2 and 4.5% respectively, while the Illawarra, Wollongong, Murray-Murrumbidgee and Northern, Far West-North Western and Central West all have rates in excess of 6%. The Sydney unemployment rate is 5.1%.
- At May 2010, the most common methods of setting pay for NSW employees were individual arrangement (40%), followed by collective agreement (39%) and award-only arrangement (16%). The remaining workers were owner managers of an incorporated enterprise (5%)⁴. This information is set out in Table 1 below.
- Moreover, the introduction of the carbon tax is likely to have strongly felt and lasting consequences for the Australian and NSW economies.

⁴ ABS, *Employee Earnings and Hours*, 6306.0, May 2010, p.15

Table 1**Methods of setting pay – NSW**

	Award only %	Collective agreement %	Individual arrangement %	Owner/manager of incorporate d enterprise %	Total %
July 2009*	20	36	38.5	5.5	100
March 2011^	16	39	40	5	100

- *Source: ABS, *Employee Earnings and Hours, 6306.0, August 2008*, p.31
- ^Source: ABS, *Employee Earnings and Hours, 6306.0, May 2010*, p.15

PRODUCTIVITY AND LABOUR RELATIONS

10. On a national level, productivity measures reflect a ratio of realised output to specified inputs. Improvements in productivity ratios - or productivity growth - are a significant driver of increases in productive capacity. Productivity growth is also a key to improvements in living standards, welfare and wellbeing and the affordability of increases in wages.
11. Productivity growth in Australia tailed away in the 2000s after a historically strong period of sustained improvements. For example, in NSW labour productivity growth averaged just over two per cent a year for the period from 1989-90 to 2001-02, whereas growth since that time has been just under one per cent. The pattern of marked decline is consistent across all Australian States.
12. NSW 2011-12 Budget Paper Six⁵, 'Long Term Fiscal Pressures Report' defines labour productivity growth as, 'the growth in real gross domestic product (GDP) per hour worked'. The report notes that average annual labour productivity growth over the last 30 years has

⁵ www.budget.nsw.gov.au/budget_papers.../2011-12_budget_paper_6

been 1.6 per cent. Since 1990-91, NSW and national productivity have grown at similar rates. The approach adopted by NSW Treasury therefore is to assume that NSW productivity growth will remain in line with national productivity growth.

13. Following the global financial crisis, many businesses are looking at the way their workplace functions to improve efficiency measures and employee performance. Productivity gains can be secured by improved staff training, investing in skills formation and adopting effective management processes or new operational procedures to bring about qualitative improvements in service delivery. At the workplace level, increased productivity chiefly refers to employee output during time worked.
14. It is a key expectation of any industrial relations system that it should not stand in the way of a nation's productivity performance. Rather, a good industrial relations system should have as a key objective the enhancement of national productivity and increasing choice and flexibility for individuals.
15. As the AIG states in its submission, 'Gains in productivity require, among other things, flexible and effective workplace relations.' It goes on to say that workplace relations is not 'the only contributor to productivity and competitiveness, but it is a major driver in its own right and is integral to the successful adoption of other drivers of productivity. Workplace relations are a vital part of the economic and regulatory framework.' (AIG p.3)
16. Of course, an industrial relations system must also have other objectives, not least of all providing for an effective and user friendly means by which employers and employees can manage their relationship for both mutual benefit and in the interests of the contribution that their workplace makes to the economy and to society and to individual circumstances.
17. There can be little doubt that an industrial relations framework that constrains employers from being able to adjust their business activities to address competitive and market pressures has at the very least a negative impact at the level of the firm. Constraints on flexibility can constrain efficiency and inhibit innovation, and this can affect firm profitability and viability, as well as decisions about employee numbers and configurations.

NSW INITIATIVES

18. Before the expansion of the federal industrial relations jurisdiction in 2006, NSW had the most extensive State based industrial relations system in Australia. It is notable that it was the 1988-95 Coalition Government that introduced Australia's first legislated enterprise bargaining regime and a true individual unfair dismissal regime.
19. It was also during those years that the building and construction industry in NSW was cleaned up by virtue of the Gyles Royal Commission. NSW takes this opportunity to re-assert its opposition to the Building and Construction Industry Improvement Amendment Bill 2011. The presence of the Australian Building and Construction Commission, with its full panoply of powers to deal with unlawfulness and thuggery on building sites has proved an important factor in maintaining the cultural change achieved by the Gyles Royal Commission.
20. In any event, NSW supports the general proposition that it would have been appropriate to defer action on the various workplace related bills that have recently been before the Commonwealth Parliament until after the outcomes of the Review are clear. These include the Fair Work Amendment (Textile Clothing and Footwear Industry) Bill 2011, the Road Safety Remuneration Bill 2011 and the associated consequential amendments bill, as well as the Building and Construction Industry Improvement Amendment Bill 2011 discussed above.
21. Unfortunately, despite similar calls made in other submissions to this Review, all of these bills have now passed all stages of the parliamentary process.
22. The development of the national system commenced when the *Workplace Relations Act 1996* was amended in 2006 to cover all corporate employers in the country. This process was completed when the NSW Parliament passed the *Industrial Relations (Commonwealth Powers) Act 2009* which provided for the referral of powers to regulate the industrial relations of non-corporate employers to the Commonwealth.
23. As a result of that referral, all private sector workplaces in NSW have, since 1 January 2010, operated under the national Fair Work laws. Only the state public sector and the local government sector continue to operate under the *Industrial Relations Act 1996* (IR Act) (NSW). That Act also has some ongoing operation with respect to outworkers in the clothing industry and public vehicles and carriers.

24. Some parts of the broader state public sector, by virtue of their corporate status, operate under the Fair Work laws. These include the State owned corporations (SOCs) and other corporate entities such as TAFE NSW. In this sense, the NSW Government has a direct interest in the operation of the Fair Work laws, as well as its more over-arching interest as a referring jurisdiction.
25. The present NSW Government, when in Opposition, did not oppose the referral of powers that created the unitary national system. In State Parliament on 1 December 2009, now Minister Greg Pearce, speaking on the Bill for the then Opposition said:

The NSW Liberal Party and The Nationals support national coverage for employees of corporations and are on the record as criticising the complexity and inconsistencies between existing State systems covering non-corporate employees, which cause problems for businesses operating across State borders.

26. The Liberals and Nationals shared the concerns raised by business groups at the time, both about the haste and lack of consultation in achieving the reforms and about the substantive content of the new Fair Work system. In other words, while the NSW Government supports the principle of a national system that should not be taken as meaning that we necessarily support all the elements of that system, particularly recent directions.

THE STATE PUBLIC SECTOR

27. The Government supports continuing industrial relations regulation of the State public sector in the State jurisdiction. A core concern of State Governments is to ensure that public finances are well-managed in the interests of the community which the Government serves. Employee related costs represent a substantial proportion of the State budget. The industrial relations environment clearly has a bearing on how well those costs can be managed. In this context, the NSW Government does not intend to refer industrial relations regulation of the State public sector to the Commonwealth.
28. Since its election in March 2011, the NSW Government has taken a number of crucial steps to ensure that the industrial relations system of the State is fit for purpose – that it

provides an industrial relations framework for the State public sector that enables the government to achieve its objectives of delivering better services to the NSW community.

29. The NSW Government has made a commitment to the community to rebuild the economy, return quality services, renovate infrastructure, restore accountability, and protect the local environment and communities. In order to deliver on this plan and ensure that the commitments will be funded, action has been taken to control government expenditure, through the implementation of NSW Government public sector wages policy and legislation.
30. The *Industrial Relations Amendment (Public Sector Conditions of Employment) Act 2011* and its associated Regulation requires the Industrial Relations Commission to apply the Government's wages policy, which requires that increases in excess of 2.5 per cent are available but must be funded through identifiable and realised employee-related cost savings.
31. In addition, the NSW Government has put in place a new policy for managing excess employees within the 'Government Service', to replace the previous Government's 'no forced redundancy' policy. Under the new policy, excess employees will have the incentive to choose voluntary redundancy through a generous package or a three month retention period in which to pursue redeployment. If an excess employee declines voluntary redundancy and cannot find a new job within three months, they will be made redundant.
32. The new policy will make it easier for Government agencies to adapt to changing priorities and implement much-needed organisational reforms.
33. These changes to the management of excess employees will save NSW taxpayers an estimated \$16.3 million per annum from 2012-13.
34. As will be readily appreciated, these reforms can only be required to be applied to those parts of the public sector that still fall within the scope of the state industrial relations system. Many state public sector entities, however, operate in the Fair Work system.
35. In order for the NSW Government to be able to deliver its commitments to the community of this State, it is absolutely vital that we be in a position to manage the wages outcomes in all parts of the state public sector, including all the corporate entities that currently fall within the Fair Work system. Similarly, we must retain our right to determine the

appropriate configuration and size of the public sector, both in the core public service and in state corporate entities.

36. The NSW Government therefore calls on the Commonwealth to amend the *Fair Work Act* to recognise laws of State Government that deal with public sector employment. In particular, where a State makes laws such as the *Industrial Relations Amendment (Public Sector Conditions of Employment) Act 2011* and its associated Regulation or establishes policies or laws in relation to the appointment, termination and redundancy of its employees, those laws and policies should be respected and given effect to by Fair Work Australia when it approves agreements and performs other functions relevant to entities that fall within the public sector of the State.
37. On 22 February 2012, the NSW Government released the interim report of the NSW Commission of Audit's report on public sector management. The report makes a large number of recommendations for improving the public sector's capacity in the areas of financial, asset and people management, with a view to enabling the Government to deliver its five strategies for NSW:
 - rebuild the economy
 - return quality services
 - renovate infrastructure
 - strengthen our local environment and communities
 - restore accountability to Government.
38. The Commission of Audit has made recommendations on structure and accountability, financial management, asset management and importantly for present purposes, the management of staff.
39. Clearly, it is in the interests of the community and the economy of the State as a whole that the industrial relations framework within which the public sector operates does not stand in the way of, but rather enables, a well managed, efficient and productive public sector. To that end, the report includes as one of its 52 recommendations that:

The Government should review the *Industrial Relations Act 1996*, to ensure that it is responsive to the needs of a modern public sector and that it is not inconsistent

with the federal legislative employment landscape that applies to the private and not for profit sectors.

40. Importantly, the Schott report directed that, in reviewing the IR Act, particular consideration be given to 'ensuring that the Government continues to have sufficient flexibility to alter workforce policies in response to emerging priorities, changes in economic conditions or changes in service delivery design' (Schott Report, p.80).
41. It is further noted that two bills to amend the IR Act are currently before the State Parliament: the Industrial Relations Amendment (Dispute Orders) Bill 2012 and the Industrial Relations Amendment (Industrial Representation) Bill 2012. The first bill seeks to update penalties for contravention of dispute orders made by the Industrial Relations Commission of NSW (that is, orders that require industrial action not to take place), bringing them more into line with penalties elsewhere, specifically Queensland. The second bill seeks to harmonise NSW law with arrangements under the FW Act that provide employees with choice of union membership.

IMPROVING THE BUSINESS ENVIRONMENT

42. In terms of improving the business environment, the NSW Government is committed to reducing regulatory costs for business and the community by 20 per cent by 30 June 2015. In monetary terms, this equates to a reduction to regulatory imposts by \$750 million each year.
43. To facilitate the achievement of this target all proposals for new principal legislation submitted to Cabinet are required to comply with what is known as the 'one on, two off' policy. Put simply, for each new piece of principal legislation proposed, Ministers must demonstrate that at least two other pieces of principal legislation have been repealed or are proposed to be repealed.
44. Furthermore, all proposed new principal legislation that may result in a change in regulatory burden to business and the broader community must include a quantification of any increases (costs) or reductions (benefits) before they can be considered by Cabinet.

45. Through these achievements and through our commitment to ongoing reforms and improvements, the NSW Government demonstrates how a government with the community's interests at heart can act to achieve more efficient and productive workplaces and a better environment in which to do business.

THE FAIR WORK ACT

46. More than 200 submissions and submissions in reply have been loaded on the FW Act Review website. The submissions come from a wide range of stakeholders and interested persons, including not only employer organisations and unions, governments and academics, but from individual employers also.
47. Rather than addressing every individual suggestion for amendment of this or that provision of the FW Act, the NSW Government has taken a broad overview of the issues raised in the submissions, and identified the following broad themes:
- Objects of the FW Act are not being fulfilled
 - Minimum standards are inappropriate and constrain flexibility
 - Provisions for flexibility do not work
 - Bargaining is not delivering productivity and efficiency
 - System promotes disputation rather than focus on what is best for workplace
 - Negative impact on whether to employ more staff
 - The workplace has been taken backwards in terms of the relationship between employers and employees
 - Impact on Australia's appeal to foreign investors.

OBJECTS OF THE FAIR WORK ACT NOT BEING FULFILLED

48. The stated object of the FW Act is to provide a balanced framework for cooperative and productive workplace relations that promote national economic prosperity. This is to be achieved, among other means, through workplace relations laws that are flexible for business while fair for workers, promote productivity, assist employees to balance their work and family responsibilities through flexible working arrangements and recognise the special circumstances of small and medium sized businesses.
49. A key theme of this position statement is that there are legitimate concerns that the FW Act is not operating in a way that sufficiently meets the criteria for providing a balanced framework for productive and cooperative workplace relations.

50. The submissions have identified many areas of the FW Act where flexibility for employers could be more effectively facilitated and the law could be more closely aligned with actual practices and arrangements operating in workplaces. Flexibility is a broad concept, and includes both giving employers greater scope to manage the workplace and allowing employers and employees to reach mutually beneficial flexible workplace arrangements.
51. Flexibility also means that the Fair Work rules should not, in areas such as general workplace protections and transfer of business rules, encroach on the way employers can legitimately organise and structure their business or fairly exercise their managerial prerogative.

MINIMUM STANDARDS AND FLEXIBILITY

52. The FW Act creates a framework of minimum standards through a combination of the National Employment Standards (the NES) and modern awards.
53. Many submissions to the Review indicate how the minima set out in the NES and modern awards do not reflect workplace realities or impose unrealistic or inflexible requirements. This is of particular concern in areas relating to working hours and payments for different working hours, expressed for example by the concern of the Restaurant and Catering Association that the weekly hours NES does not reflect the reality of the 24/7 nature of the business environment. (RCA, p 8)
54. The framework of the FW Act provides for individual flexibility arrangements (IFAs) and enterprise bargaining as two avenues, one individual, the other collective, for achieving flexibility in the face of the requirements of the NES and modern awards. However, it is clear from the submissions that large numbers of employers do not feel that either of these avenues is delivering the kind of flexibility that is desirable. These matters are taken up in greater detail later in this submission.
55. The overall impression is that, taken together, the NES and modern awards perpetuate the fiction of a 'standard' worker and a 'normal' way of working. Flexibility, in this paradigm, is something that deviates from the norm. The NSW Business Chamber notes this point in its submission to the Fair Work Review (p9).

56. It is clear that 9 am to 5 pm, five day a week, male breadwinner employed on a full time basis, who commutes to an office and works little overtime is far from the 'standard' in contemporary Australian workplaces. A modern industrial relations system needs to recognise that many Australian workplaces do not conform to this 'standard' rather than focusing on an outdated stereotype.
57. Within such a framework, it is not surprising that flexibility is a goal that many workplaces seek but few are able to achieve.
58. The NSW Government would submit that the relevant Commonwealth and State Ministers should work co-operatively with stakeholders to consider how the Fair Work system can be altered to facilitate the implementation of appropriate flexibility arrangements that genuinely reflect the practical realities of Australian workplaces and the lives of individual employees. The achievement of flexible and adaptable workplaces that assists productivity growth should be the core goal of any modern industrial relations system, rather than a peripheral matter that merely treats 'flexibility' as a deviation from the norm.

Modern Awards

59. There is no doubt that the award modernisation process has somewhat rationalised the previous framework of old state and federal responsibility awards. It is, however, apparent that many businesses have found the transition confusing and expensive to apply within individual workplaces.
60. Although the majority of modern awards are industry based, the retention of a number of occupation based awards (such as the Clerks Private Sector Award and the Nurses Award) mean that many employers are still potentially confronted with multiple industrial instruments in relatively small workplaces. Such circumstances impose regulatory red tape burdens upon employers and such burdens are particularly acute on small business that ordinarily do not have access to sophisticated human resources advice.
61. Without doubt the principal regulatory burden imposed upon business is the transitional arrangements situated within modern awards. These arrangements provide a framework whereby rates of pay, penalty rates and loadings from pre-modern awards will be phased into modern awards.

62. Business has reported that the application of these arrangements is very complex and is exacerbated by different arrangements applying by virtue of commencement of business dates and corporate status. As noted in the submission from the Victorian Government (at p 50), such confusion is demonstrated by the outcomes of a recent FWO compliance audit into the retail industry, which found that over a quarter of employers were found to be in contravention of the relevant modern award. In its final report, FWO acknowledged that 'many employers underpay as the result of a lack of information or they make mistakes interpreting the information they have'.⁶
63. It is also evident that many businesses, particularly within the retail and hospitality sectors, are now facing significantly higher labour costs than under previous NSW state awards⁷ particularly in circumstances where they apply to apparently 'non-standard hours' worked on weekends.

National Employment Standards

64. The NSW Government supports the concept of a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions. However, it shares the concerns of business that the present arrangements foster uncertainty and are excessively prescriptive.
65. An example of the lack of certainty within the NES is matters relating to the taking of annual leave. Put simply, there is no capacity for an employer to direct the taking of annual leave to those employees with excessive amounts of leave. This was not the case under the *Annual Holidays Act 1944* (NSW) which gave employers the ability to direct the taking of annual leave on the basis of one months notice.
66. The absence of such a provision in the NES impacts detrimentally upon an employer's ability to effectively manage excessive annual leave on the payroll and prevents a consistent disbursement of costs throughout the financial year. The insertion of a provision in line with the NSW Annual Holidays Act provision should be considered.

⁶ See Submission of the Victorian Government to the Fair Work Act Review – Feb 2012, p.50

⁷ For example: the NSW Shop Employees (State) Award imposed a 150% penalty for ordinary hours worked on Sundays while the modern General Retail Industry Award 2010 imposes a 200% penalty rate.

PROVISIONS FOR FLEXIBILITY DO NOT WORK

67. It is argued by many that the capacity to achieve flexibility by way of Individual Flexibility Agreements (IFAs) is too limited. Both modern awards and enterprise agreements must include provisions enabling IFAs between individual employees and their employer to meet the genuine needs of the employee and the employer. However, there are a number of important limitations on IFAs. Those identified in the submissions include, amongst others:
- that the provision of the award or agreement that allows IFAs specifies which terms are able to be varied by an IFA – in other words, the issues with which an IFA may deal are limited⁸, thereby constraining their utility in achieving true flexibility;
 - that IFAs are unilaterally terminable on four weeks' notice, thereby limiting certainty and predictability;
 - that IFAs are not able to be offered as a condition of employment, thereby potentially creating outcomes where disparate conditions of employment apply to new and existing employees;
 - there is no third party approval process, meaning that users are uncertain whether their agreements are in accordance with relevant requirements; and
 - there is a lack of clarity regarding the practical application of the Better Off Overall test (the BOOT test).
68. The NSW Government is mindful that both the objects of the FW Act (section 3) and the 'fundamental workplace relations principles' that are a key part of the referral provisions (section 30L(9)), explicitly state that the FW Act should not provide for individual statutory agreements. However, the existence of the IFA provisions in the FW Act demonstrates that these objects do not mitigate against proper provision being made for individual employees to enter into individual arrangements that suit them and the business that they work in.
69. In other words, it is no answer to the concerns of employers about the difficulties and uncertainties inherent in the current IFA provisions to dismiss them as merely seeking a return to AWAs. Clearly, what is required is a close analysis of the IFA provisions to determine how they can be fine-tuned to provide a more useful and practical avenue for achieving the flexibilities that are desired by both parties to the employment relationship.

⁸ Terms of an IFA are limited to arrangements for when work is performed, overtime rates, penalty rates, allowances and leave loading.

70. The AIG suggestion that the IFA framework be set out in the FW Act itself rather than a matter that is dealt with in the provisions of modern awards or enterprise agreements is attractive as it would make the circumstances in which they are available and the requirements for entering into them apparent on the face of the FW Act. In particular, such provisions could make it clear that IFAs are available to achieve flexibility for individual employees and their employers on a far wider range of issues.
71. As is acknowledged in some submissions, there is little hard data on the extent to which IFAs are or are not in use at present. Such data would help to illuminate this area, and might point the way towards relevant solutions.

BARGAINING IS NOT DELIVERING PRODUCTIVITY AND EFFICIENCY

72. The evidence presented in the submissions is that, rather than focusing attention on the substance of bargaining, that is, the improvements and efficiencies that can be achieved at the enterprise level, bargaining under the FW Act is in reality a process driven exercise that encourages tactical positioning and industrial action as a first resort rather than a last resort. The prevalence of industrial action is dealt with later in this paper. This part of the paper deals with the issues of process and substance.
73. The notion that productivity and efficiency improvements should be incorporated as positive considerations in the bargaining process and in agreement approval can be traced back to the passage in NSW of the *Industrial Arbitration (Enterprise Agreements) Amendment Act 1990*. This legislation also marked the inception in Australia of legislatively mandated modern enterprise bargaining.
74. As the NSW Business Chamber has indicated, the FW Act has not promoted productivity improvements and the notion of improving the quality of workplace relations has been pursued at the expense of establishing productive workplaces (p32 and following).
75. The Business Council of Australia has also noted that productivity bargaining has not progressed under the FW Act:

Experience under the FW Act suggests that most collective agreements have been wages-only deals. The bargaining framework has not promoted discussion and uptake of measures to improve workplace productivity (p 35)

76. The FW Act's rules about bargaining should therefore be revisited to help achieve substantive bargaining outcomes in a way that is not adversarial, tactical and overly concerned with procedural compliance with the good faith bargaining rules. A more positive and results oriented regulatory framework would help to ensure that the main focus of bargaining is on matters directly relating to the workplace requirements and needs of employers and employees.
77. These requirements are best understood by the employer and employees themselves rather than by outside parties or bargaining representatives.

Impediments to achieving substantive bargaining outcomes

78. There are a number of factors which impede effective and outcomes based bargaining at the enterprise level. If these factors were not present, the bargaining process would be better equipped to facilitate enterprise level efficiency gains and productivity improvements. These factors include the ongoing issue of pattern bargaining across enterprises and a perceived focus in the FW Act on compliance with good faith bargaining rules that are essentially procedural and do not provide a benchmark standard for substantive reasonableness in bargaining.
79. The NSW Business Chamber (p 42) identifies another significant factor as being the current restrictions on Fair Work Australia's capacity to take a more active role in facilitating reasonable outcomes through the provision of conciliation and dispute resolution services.
80. However, it is clear that not all the submissions on this point would support an expansion of the powers of FWA as a facilitator in the bargaining process. AIG, for example, prefers a return to what it describes as the voluntary bargaining system which prevailed in the years 1994-2009 which included no capacity for tribunal interventions in the form of scope orders or majority support determinations and under which employers were not compelled to bargain (p 69).

81. The role of tribunals in assisting the parties to focus their attention on the substantive workplace issues that should be the major concern on the parties is a matter which should be given some consideration. It may be, as suggested in other submissions, that more assistance could be provided to first time bargainers, and/or to smaller businesses, in an effort to ensure that they too can participate in the unlocking of productivity and flexibility that should be the objective of a healthy enterprise bargaining system.
82. On the other hand, the right of so-called 'mature' bargainers to engage with each other without interference also needs to be respected.

Role of unions in bargaining

83. The submissions convey a widespread concern that, notwithstanding the rapidly reducing level of union membership in the workforce at large, the FW Act privileges unions in the enterprise bargaining process by making them the default bargaining representative. With union membership levels so low, it is difficult to accept the assertion of unions that they can best represent the interests of relevant employees. The following table (Table 2) demonstrates the decline in union membership since 1993. In NSW, as at August 2010, the proportion of the total workforce that were union members was 18.3%.

Table 2

National Trade Union Membership				
Membership	August 1993	August 2003	August 2004	August 2010
Union Membership	2.37 million	1.86 million	1.84 million	1.79 million
Public Sector	64%*	47%*	46%*	41%*
Private Sector	28%*	18%*	17%*	14%*

Australian Bureau of Statistics Cat. No 6310.0 – Employee Earnings, Benefits and Trade Union Membership

84. There would seem to be some merit in considering whether it might be appropriate in at least some circumstances for a union to have to obtain a majority support determination before the obligations of good faith bargaining and opportunities for protected action become available. It should not be unreasonable for an employer to request a majority support determination where the relevance of the union's involvement in bargaining is unclear.
85. In the light of the preferential role accorded to unions in the Fair Work enterprise bargaining process it is useful also to explore the question of what persons or entities

should be authorised bargaining units in the process. The NSW Business Chamber submits that the current bargaining regime has disenfranchised or sidelined site or enterprise consultative committees which dating back to the late 1980's had historically been vehicles for the negotiation of agreements and were once a focal point for workplace engagement and a driver for improved productivity (p.40).

86. Empowering these workplace bodies as recognised bargaining units would give them an ongoing bargaining role and effectively improve the bargaining process as such bodies could more appropriately address directly industrial concerns at the enterprise specific level. This seems a reasonable proposition.
87. As drafted, the FW Act enables unions to press issues in bargaining that would positively impede productivity and flexibility at the workplace level, in particular, to restrict the use of contractors and the outsourcing of work or deployment of labour, this view is put strongly by AIG (p 16), amongst others.
88. A clearer definition of the matters that may not be the subject of bargaining would seem to be worth pursuing.

SYSTEM PROMOTES DISPUTATION

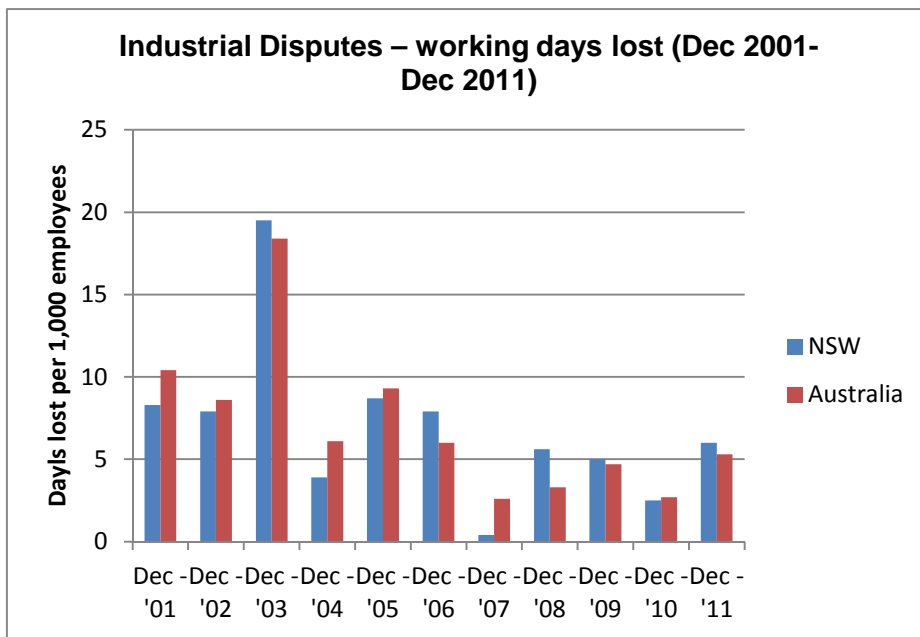
89. The NSW Government is particularly concerned by the tendency of the Fair Work bargaining system to promote the use of industrial action as a standard tactical tool of bargaining irrespective of the realistic prospect or otherwise of settling differences, rather than an instrument of last resort. The potential for protected industrial action to be unnecessarily protracted for tactical reasons because of the relatively high thresholds for FWA intervention to suspend or terminate such actions (whether or not progress towards settlement has been made on the disputed issues) is a related concern for NSW.
90. The ubiquity of industrial action and the real difficulty of putting an end to it while bargaining is ongoing, notwithstanding the damage being done to a firm's business or its reputation as a result, never mind the general economy, is demonstrated by the situation faced by Qantas last year.

91. The submission by the NSW Business Chamber is instructive on the issue of the relative roles of tribunals and industrial organisations as bargaining representatives in bargaining related disputes. After noting that enterprise bargaining, in its modern form, commenced in NSW in 1991, it observes that from those beginnings, bargaining in Australia evolved into a process that was ‘effectively facilitated’ by industrial tribunals, that made use of existing enterprise based consultative structure, and that disputation was not commonplace, with tribunals playing ‘a strong role in resolving bargaining disputes to generate mutual beneficial outcomes’ (p 30).
92. Unfortunately, the way that bargaining has developed more recently is out of step with that early evolution. As the Chamber notes, the Fair Work system provides for lawful industrial action, a minimal role for the industrial umpire, difficult access to arbitration, a technical procedure based approach to bargaining, and ‘ economic power and direct conflict being the primary method of resolving bargaining disputes’ (pp 30-31).
93. The Business Chamber characterises the shift in focus under the Fair Work bargaining regime in the following way:
- ‘What has become clear is that the ability to use industrial action very early has increasingly moved bargaining away from a relational based search for mutually beneficial outcomes to a more blunt transactional conflict.’ (p.41)
94. The Business Council of Australia also noted a rise in the incidence of threats of industrial action much earlier than in previous negotiating rounds and that application for protected action ballot orders were frequently being lodged after only one or two meetings (p 49).
95. The view expressed by BCA is that unions can take industrial action to force employers to bargain and the FW Act’s good faith bargaining regime processes, involving majority support determinations, scope orders and good faith bargaining orders can be bypassed and effectively undermined by allowing access to protected industrial action (p 49).
96. It is arguable that the current thresholds for orders requiring industrial action to terminate or be suspended are too high. Industrial action continues ‘just because it can’, because it is protected and not subject to sanction. There is no guarantee that, meanwhile, any meaningful negotiations are occurring. The industrial action itself can become the focus of attention, rather than the achievement of positive bargaining outcomes. A greater capacity

to suspend industrial action, and order a return to the bargaining table, may assist. In this respect, the capacity of the NSW Industrial Relations Commission to deal with industrial action in a timely and effective manner is noted.

- 97. The concern about the level of industrial disputation and the way the current federal regulatory approach may be contributing to this situation is borne out by figures contained in Table 3 below which reveals that for the year ended December 2011, there were 241,500 working days lost nationally compared with 126,600 in the year ended December 2010 representing an increase of almost 115,000 in the number of working days lost.
- 98. NSW had the most number of working days lost behind Queensland in the December 2011 quarter, with 19.3 working days lost which was slightly higher than the national average.

Table 3



Australian Bureau of Statistics 6321.0.55.001 – Industrial Disputes, Australia, Dec 2011

- 99. One way to address this issue of adversarial and process driven bargaining using procedural rules and industrial action to leverage a negotiating/bargaining advantage, may be to provide Fair Work Australia with the power to intervene, for example by way of mandatory conciliation prior to the taking of industrial action.

NEGATIVE IMPACT ON EMPLOYMENT

100. The minimum standards provided to employees, both by the NES and modern awards, and the lack of access to meaningful flexibility to deal with the rigidities of those minimum requirements, create a serious cost consideration for businesses contemplating the hiring of staff. These issues have been addressed earlier.
101. Decisions to employ may also be impacted by the difficulties employers know they will face if an employee proves unsuitable, or where an employee needs to be managed to improve performance. These barriers are created both by the unfair dismissal provisions and by the adverse action provisions of the FW Act.
102. Many of the submissions from employer groups/associations express dissatisfaction with the current unfair dismissal and adverse action provisions dealing with termination of employment matters. The general feeling among employer groups/associations is that current unfair dismissal and adverse action provisions create a significant obstacle to the smooth operation of businesses, and remove the flexibility for employers to dismiss employees who do not perform. Another major concern for employers is the duplication of provisions that protect employees from dismissals.
103. These submissions raised a number of issues related to unfair dismissal and adverse action provisions and their practical application, including:
- frivolous and vexatious claims;
 - paying applicants 'go-away' money rather than going through costly FWA process;
 - strict procedural rules and consultative requirements;
 - time limits for lodging applications;
 - application fees;
 - exemptions for small business;
 - dismissal on the grounds of redundancy;
 - reverse onus of proof;
 - inconsistency of provisions in different avenues for protection against dismissal.

Unfair dismissal provisions

104. Concern about the potential for dismissed employees to bring frivolous and vexatious claims against the employer was widespread amongst employer groups, with submissions providing a range of suggestions for improvement. For example, both the Australian Industry Group (AIG) and the Australian Chamber for Commerce and Industry (ACCI) state in their submissions that the current fee for filing an unfair dismissal application is too low, with AIG suggesting that this encourages the payment of 'go away' money (p 122). The AIG and ACCI suggest that increasing the fee for unfair dismissal applications will discourage 'speculative' claims that have no merit (ACCI p 17). The NSW Business Chamber suggests that the FW Act is amended to require FWA to dismiss unmeritorious claims at the conciliation stage (p 81).
105. Another matter raised by a number of submissions is the application of unfair dismissal provisions to small businesses. AIG suggested exempting small businesses from the requirements of Part 3-2 of the FW Act (p 122). ACCI states in its submission that consideration should be given to the full exemption of small to medium sized firms (p 17).
106. Compliance with strict procedural rules and consultative requirements in relation to unfair dismissals also present problems for many businesses. The ACCI submission, for instance, noted that despite having a valid reason for dismissing an employee, FWA may still rule against an employer who is found not to have followed the procedural requirements. ACCI suggests that if there is a finding of a valid reason for dismissal, it should provide a 'complete defence' to an unfair dismissal claim (p 16).

Adverse action provisions

107. Among the main concerns regarding adverse action provisions in the FW Act is the reverse onus of proof, with several submissions calling for its removal. Another concern for employers is the potential for dismissed employees using adverse action provisions as another avenue of pursuing unfair dismissal claims, and the inconsistency between unfair dismissal and adverse action provisions regarding time limits for lodging applications and compensation amounts.
108. A number of submissions including the Business Council of Australia (BCA) and ACCI call for the alignment of adverse action provisions with anti-discrimination legislation (BCA p 67; ACCI p 19). The AIG and NSW Business Chamber submissions suggest removing

anti-discrimination provisions from the FW Act, except for those related to unlawful termination (AIG p 22; ABI p 74).

Need for issues to be addressed

109. The NSW Government's view is that while it is important to protect employees from capricious employer action, the achievement of this aim should not come at the cost of removing the capacity of employers to manage their business and ensure that they have the right employees for the jobs that need to be done. If managers think that they haven't got the tools to deal with under-performance or disciplinary issues, they may think twice about hiring in the first place. Serious attention needs to be paid to the unfair dismissal and adverse action provisions to ensure that they do not operate as a disincentive to employment.

OTHER CONSIDERATIONS

110. A variety of other concerns are addressed in the many submissions made to this Review. In addition to those canvassed above, the NSW Government notes the following:

- The workplace has been taken backwards in terms of the relationship between employers and employees. Instead of promoting direct and productive relations between employers and their employees, the Fair Work Act puts various barriers in the way, including the privileging of unions as bargaining agents and the restrictions on achieving flexible arrangements for individuals.
- The current state of affairs has an impact on Australia's appeal to foreign investors. The heavily regulated and rules based nature of the Australian workplace relations system can operate as a disincentive to foreign investors, with the level of industrial action a particular concern. Greenfields agreements for new projects should be easier to put in place.
- Given the uncertain and difficult economic circumstances, restrictive industrial relations requirements are likely to have an impact on the ability of businesses to maintain levels of employment and reduce the willingness of many businesses to hire additional staff.

111. In a speech in Sydney on 17 February 2012, the NSW Premier, the Hon Barry O'Farrell said:

The cost and value of Australia's working men and women to our economy, and the way in which we organise and reward our precious energy and skills should be one of the most important pieces of research we can do if we want to grow our opportunities, choices and quality of life, wherever we live.

We should be making decisions based on evidence and data ...

112. The Terms of Reference for this Review note, inter alia, that 'a wide range of qualitative and quantitative data will be drawn upon to measure the regulatory impact of the legislation'⁹. This data is to be drawn from a range of existing sources, including the ABS, FWA, FWO, the DEEWR Workplace Agreements Database, and others. The Terms of Reference also indicate that 'any additional quantitative and qualitative data' required may be commissioned by the Panel¹⁰.

113. This evidence is to be deployed with the objective of producing 'a comprehensive evidence based report which will draw conclusions about whether the legislation is meeting its objectives.'¹¹

114. While the utility of drawing on a diverse range of evidence cannot be doubted, the NSW Government notes, in this context, the absence of a single comprehensive workplace data collection in any Australian jurisdiction. In particular, the absence of a regular collection of linked employee-employer data (LEED) is a particular matter of concern.

115. No such collection has existed in Australia since the last Australian Workplace Industrial relations Survey 1995¹². While some States have conducted some survey work since¹³, no

⁹ <http://www.deewr.gov.au/WorkplaceRelations/Policies/FairWorkActReview/Pages/TermsOfReference.aspx>

¹⁰ Ibid

¹¹ Ibid

¹² Morehead, Alison, Steele, Mairi, Alexander, Michael, Stephen, Kerry, and Duffin, Linton *Changes At Work: The 1995 Australian Workplace Industrial Relations Survey* Longman 1997

comprehensive ongoing LEED collection is currently conducted in any Australian jurisdiction.

116. To some extent, the FW Act recognises the importance and utility of collecting data in relation to important matters such as enterprise agreements, IFAs and the operation of the NES¹⁴. However, requiring the General Manager of Fair Work Australia to research these matters is some way from a comprehensive workplace data collection.
117. By contrast, LEED collections already exist in numerous other OECD countries - WERS in the UK (operating since 1980, five surveys completed), RESPONSE¹⁵ in France (employer-based survey, but with linked employee administrative data), and the IAB's¹⁶ Establishment Panel collection in Germany, for example.
118. It also appears that EU jurisdictions are attempting to align the content of their surveys to facilitate international comparisons, through a project called MEADOW¹⁷.
119. The nature and utility of such collections is well described by the UK Department of Trade and Industry:

These are usually collected using dedicated survey instruments, often in face-to-face interviews, with HR managers and employees. Nationally representative data of this type are available for the UK (1998 and 2004), Australia (1995), Canada (1999, 2001) and Norway (1989) while in France employer-based surveys (REPNSE 1998 and 2004) have been linked to administrative data on employees. The value of these survey-based LEED lies in the detailed information they contain regarding both policies and practices of workplaces across national economies, coupled with information on employees. In some cases they also contain information on employee attitudes. The available data items permit comparisons of avowed policies, on the one hand, and practices on the other, sometimes distinguishing between the simple incidence of a practice or procedure, and the

¹³ See, for example, the Victorian Workplace Industrial Relations Survey 2008, conducted by Workforce Victoria: <http://www.business.vic.gov.au/busvicwr/assets/main/lib60047/irv-pay-equity-women-in%20work.pdf>

¹⁴ *Fair Work Act 2009*, s653

¹⁵ *Relations Professionnelles et Negociations d'Enterprise*

¹⁶ *Institut fur Arbeitsmarkt und Berufsforschung*

¹⁷ See <http://www.meadow-project.eu/>

extent to which it is 'embedded' within an organisation (in terms of coverage and its integration with other policies). The data on employee attitudes to jobs and to the employer also permit us to establish whether the causal mechanisms posited by Human Resource Management (HRM) and other academics do, in fact, obtain and, if so, where and under what conditions.¹⁸

120. The advantages of a LEED, and the extent of new information it could provide are described in a recent research paper prepared for the 2011 FWA Minimum Wage Review:

The main advancement offered by LEEDs is that they can allow the analysis of labour markets using information from both the demand for labour (employers) and the supply of labour (employees). There are some general key advantages that can be gained through a LEED:

- A LEED with longitudinal information allows the complete study of the dynamics of the labour market. Again, this comes down to distinguishing between the effects of changes in demand from the effects of changes in supply of labour. The dynamics of training and human-capital development and utilisation can be examined in a better informed way.
- To the degree that administrative data can be used, and for the limited information that administrative records can offer, a longitudinal LEED with a large sample size is feasible at little extra cost. Additional survey information may not have as large a sample for it to be useful.
- A LEED can allow the study of firm birth, growth, decline and death in the context of individual firm as well as sector and national productivity.

Examples of likely advances in the understanding of minimum wages that can be gained through a LEED include:

- A LEED will allow for the estimation of productivity in relation to minimum wage reliance. Using the information on firm characteristics will remove biases from the estimation of the differences between workers who are minimum wage-reliant and workers who are not.

¹⁸ UK Department of Trade & Industry, *Making Linked Employer-Employee Data Relevant to Policy*, DTI occasional paper no. 4, April, 2006, pp. 2-3 <http://www.dti.gov.uk/files/file28176.pdf>

- A LEED will allow the investigation of heterogeneous firm responses to changes in minimum wages. Economic theory predicts that these responses may differ by firm size and the extent of product market competition.
- A LEED will illuminate different practices by different firms and how they lead to different economic outcomes.
- A LEED will illuminate the relationship between minimum wages and productivity and profitability. A longitudinal LEED will allow the investigation of the relevant dynamics.¹⁹

121. Given the controversy that attends many of the matters being considered by the Review Panel, the NSW Government submits that the availability of comprehensive and robust data illuminating complex workplace issues would greatly assist policy review processes such as the current one, as well as being of considerable utility to employer and employee organisations, governments and researchers.²⁰

122. Obviously, a data collection of this kind could not be made available to assist the present Review. However, neither controversies about industrial relations issues nor the need to craft policy responses to such controversies are likely to disappear in the foreseeable future.

123. Consequently, the NSW Government submits that a comprehensive longitudinal workplace linked employer-employee data collection be established and maintained for the purpose of monitoring and assessing the effectiveness of current workplace regulation.

¹⁹ Healy, Josh; McDonald, Ian; Macaitis, Kirsten; Mavromaras, Kostas; Sloane, Peter *Fair Work Australia Research Report 4/2011 – Research framework and data strategy* Minimum Wages and Research Branch Fair Work Australia January 2011 pp55-56 http://www.fwa.gov.au/sites/wagereview2011/research/Research_Report_4-2011.pdf

²⁰ It is worth noting that the *FW Act* appears to recognise the need for, and the value of, collecting useful data regarding controversial industrial matters: ss290-291 thereof provide for FWA to commission research for Annual Wage Reviews, which is then made available to the parties to assist them in making submissions to such Reviews. See, for example the paper by Healy et al at fn11, and Farmakis-Gamboni, Samantha, Rozenbes, David and Yuen, Kelvin *Research Report 1/2012 Award reliant small businesses* Minimum Wages and Research Branch Fair Work Australia January 2012

CONCLUSION: WHAT SHOULD THE OBJECTIVES OF CHANGE BE?

124. This paper identifies a number of concerns about the current operation of the FW Act that are appropriate to address in order to provide a workplace relations framework that is better suited to achieving the objects of the FW Act.
125. Having reviewed the concerns expressed by submitters in relation the broad issues outlined above, and mindful of the objects of the FW Act, the NSW Government believes that changes should be considered to the FW Act with a view to:
- Putting 'flexibility' at the centre of the system, rather than treating it as a deviation from some standard or norm;
 - Providing employers and employees with the capacity to achieve more flexible, efficient and productive work practices, through both more user friendly enterprise bargaining and sensible individual arrangements;
 - Having more realistic 'minimum' standards without impeding flexibility in enterprise bargaining or individual agreements;
 - Putting an end to a bargaining system which entrenches conflict rather than achievement of meaningful workplace improvements;
 - Removing constraints which prevent workplaces from adjusting to changing economic and market circumstances;
 - Ensuring that the workplace relations system supports employment growth.

NSW Economic Performance and Outlook

The 2011-12 Budget (released in September 2011) revised down forecasts for NSW economic activity and employment growth. This reflected a slowdown in NSW domestic demand and declining employment in the first half of 2011, a weakening global outlook and deteriorating global financial market conditions.

Since Budget-time there was a further deterioration in global economic and financial conditions and a downgrade to the Australian outlook. Furthermore, downside risks to the outlook had grown, with contagion from the Euro zone sovereign and banking debt crisis a particular concern.

Accordingly, NSW demand and output growth forecasts were revised down modestly in both 2011-12 and 2012-13 in the Half-Yearly Review. Activity is expected to recover from a period of below-trend growth in 2011-12 to trend growth in 2012-13 as private sector demand strengthens and net export performance improves. The labour market is expected to be slightly weaker than forecast at Budget-time, with wage and inflation pressures more moderate.

The current forecasts assume that global financial market instability does not intensify, but that the policy response is not enough to avoid periodic volatility which will continue to weigh on the global economy. If global downside risks were to materialise it would have flow-on effects to the Australian and NSW economies via financial, confidence and trade linkages.

At the time of the 2011-12 Half Yearly Review (released 9 December 2011), NSW Treasury forecasts for major aggregates were:

Economic Performance and Outlook (a)				
	2010-11	2011-12	2012-13	2013-14 & 2014-15 (b)
	Actual	HYR Forecast	HYR Forecast	HYR Projection
New South Wales				
State Final Demand	3.3	2.5	3.25	
Gross State Product	2.2	2.25	2.75	3
Employment	3.1	1	1.4	1.25
Unemployment Rate (c)	5.1	5.5	5.5	
Sydney CPI (d)(e)	3.8	2	3.25	2.5
Wage Price Index	3.7	3.5	3.5	3.5
Australia				
Non-Farm GDP Deflator	6.3	2.4	1.5	2.2
Ten year bond rate	5.3	4.6	5.3	5.8

(a) Per cent change, year average, unless otherwise indicated

(b) Projections are in year average terms

(c) Year average, per cent

(d) Per cent change through the year to the June Quarter

(e) 2012-13 forecasts include the 3/4 percentage point impact of the carbon tax

World Economy

The outlook for global growth has deteriorated since Budget-time, reflecting a weaker outlook for the Euro zone and the United States, and an intensification of the Euro zone sovereign and banking debt crisis. Global growth is now expected to be below trend in 2012 with the Euro zone facing a modest recession and growth in most other major advanced economies well below trend. Growth in emerging economies is expected to moderate (though remain firm), reflecting earlier tightening policies to control rising inflation and linkages to advanced economies via trade and financial flows.

In November 2011 the Organisation of Economic Co-ordination and Development forecast global output growth of 3.8 per cent in 2011, 3.4 per cent in 2012 and 4.3 per cent in 2013. This represented a significant downgrade for global growth compared with forecasts at Budget-time. In its January 2012 update of the World Economic Outlook projections, the IMF expects global growth in 2012 to be 3¼ per cent (down from its earlier forecast of 4 per cent). This is largely due to the IMF now expecting the Euro area economy to experience a mild recession in 2012 (-0.5 per cent), reflecting rising sovereign yields, bank deleveraging and fiscal consolidation. This represents a significant downgrade to the IMF's forecasts made in September 2011 and indicates the speed at which the global outlook deteriorated in late 2011/early 2012.

Like most forecasters, the OECD and IMF are assuming a “muddle through” scenario – with disorderly sovereign defaults and systematic bank failures avoided, containing the Euro Zone debt crisis but not avoiding periodic volatility which will continue to weigh on the global economy. Thus far in 2012 that assumption has remained valid, though so too has the periodic volatility in financial markets.²¹

²¹ Information provided by Treasury on 28 February 2012