

WORKING PAPER 1

# Australia's Productivity Commission:

Providing Independent  
Policy Advice to Government





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Written by:  
**Kym Holthouse**

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## Providing Independent Policy Advice to Government

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## Key messages:

- The Productivity Commission provides independent, evidence-based policy advice to the Australian Government with the aim of improving living standards for all Australians.
- The Commission's profound influence on Australia's economic and social policy over a long period demonstrates how genuinely independent advisory bodies can help governments make difficult reforms.
- Essential to the Commission's ability to sustain its influence has been its ability to preserve its independence.
- Legislation is important to establish the formal independence of advisory bodies, but the Productivity Commission's independence also owes much to its institutional culture, the transparency of its inquiry processes, and recognition by politicians that independence underpins the Commission's credibility and therefore the value of its advice.
- The Commission's experience shows that when governments are free to choose which matters they refer to independent advisory bodies, and whether or not to follow their advice, they have little to fear from their independence.

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# Abbreviations and Acronyms

ACIS	: Automotive Competitiveness and Investment Scheme
ACTU	: Australian Council of Trade Unions
AMA	: Australian Medical Association
Bappenas	: <i>Badan Perencanaan Pembangunan Nasional</i> – National Development Planning Agency
BIE	: Bureau of Industry Economics
CEDAW	: Convention on the Elimination of All Forms of Discrimination against Women
EFS	: Export Facilitation Scheme
EPAC	: Economic Planning Advisory Commission
GCIF	: Green Car Innovation Fund
IAC	: Industry Assistance Commission
ILO	: International Labour Organisation
HREOC	: Human Rights & Equal Opportunity Commission
PMV	: Passenger Motor Vehicles
PPL	: Paid Parental Leave
WTO	: World Trade Organisation

# Executive Summary



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This paper examines the Australian Productivity Commission<sup>1</sup> and its role in Australian policy making. The Productivity Commission is one of Australia's most prolific and influential government advisory bodies, providing evidence-based policy advice on a wide spectrum of social and economic issues aimed at raising living standards across society. The paper aims to show how the Commission has become such a prominent actor in Australian policy making, highlighting its origins and the way it is used by the government. Two case studies provide more contextualised accounts of the Commission's role.

As the policy choices of all governments are inevitably informed by political realities, politicians tend to be understandably wary of creating advisory bodies that might restrict these policy choices in future. Indeed, the Productivity Commission's broad mandate was initially strongly opposed by the Labor opposition when it replaced the Industry Commission in 1997. Similarly, one of its earlier predecessors, the Industry Assistance Commission (IAC), was opposed by the Coalition when it was formed in 1973. In both cases, opposition reflected concerns that the Commission's independence would encroach on the government's autonomy in setting policy.

The Productivity Commission is unusual among government advisory bodies throughout the world in the breadth of issues it considers, its independence and the transparency of its procedures. The Commission itself claims that three operating principles—*independence, transparency and a 'whole of society' focus*—set it apart from most other advisory bodies. Taking a 'whole of society' approach means the Commission must place the interests of the entire Australian community ahead of those of any particular group. As its overarching

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<sup>1</sup> Throughout the paper the terms Productivity Commission or Commission are used interchangeably.

aim is to improve the living standards of all Australians, in many cases this translates into measures aimed at increasing the efficiency and productivity of the entire economy. Inevitably, some of these measures can disadvantage particular groups, which partly explains why many of the Commission's reports generate vigorous public debate.

The paper finds that the Productivity Commission's policy influence cannot be explained by its statutory powers alone, but rather flows from the strong demand for evidence among Australian policymakers. Such demand developed in response to high levels of public scrutiny towards government policy, which encourages politicians to seek evidence to justify their policies. The Commission lacks the power to initiate the public inquiries and major studies that constitute its most important work. These processes must be triggered by a formal referral from the executive branch.

The high value that governments place on the Commission's ability to generate policy ideas and evidence to support them can be seen from the frequency with which they refer issues to the Commission. The government is under no obligation to refer any policy matters to the Commission, and yet the Commission is generally kept busy by the rate of government referrals. One of the factors that encourages the government to utilise the Commission is that it is under no obligation to adopt any of the Commission's recommendations. This clearly reduces the political risk for the government in referring matters to an independent advisory body and consequently means the government has less to gain from seeking to undermine the Commission's independence in any way.

Despite these limitations on its powers, the Productivity Commission has repeatedly demonstrated an ability to influence policy. In some cases, governments adopt its recommendations immediately and without modification, while in others several years might pass and a change of government

might occur before they are taken up in some modified form. Many of the Commission's recommendations are never acted upon. Even so, the Commission can be regarded as making a valuable contribution by deepening the public's understanding of the inherent trade-offs contained in different policy options.

The Commission's independence means it can afford to ignore criticism, something that is more difficult for elected governments. Objective, credible evidence from independent sources becomes even more important when governments are considering reforms that, although for the greater good of society, threaten to adversely impact influential interest groups. Many important reforms have no clearly defined constituency to support them, yet provoke strong opposition from particular interest groups. As the Commission's mandate requires it to prioritise the interests of society as a whole, it can help prevent such interests from dominating the policy agenda at the expense of the wider community.

Independent advisory bodies can enhance the public's ability to engage with the policymaking process, thereby strengthening the democratic contract between the government and the electorate. The Productivity Commission provides many formal opportunities for organisations and individuals to ensure their views and experiences are heard and taken into account. All written documents associated with the

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Commission's work—terms of reference, issues papers, written submissions, oral testimony, draft and final reports, and government responses—are made available on the Commission's website.

This not only allows the public to convey its views to the Commission, but also to scrutinise the arguments and data put forward by others, and the synthesis and analysis undertaken by the Commission.

This encourages more informed public debate as the trade-offs between the competing interests at stake in any policy discussion become clearer. Opportunities to comment on issues papers and draft reports also encourage a sense of enfranchisement for the public, of being taken seriously by government, even if the policies ultimately adopted do not reflect participants' own views.

# Introduction

Within the expanding field of research on knowledge-to-policy processes, a major focus is on understanding the factors that affect the extent to which policymaking processes draw on evidence. Much of this focus takes the perspective of knowledge producers situated outside the state and the challenges they face in transmitting knowledge into policymaking processes in the absence of well-defined pathways. However, knowledge producers can also take the form of state institutions, such as Australia's Productivity Commission, where a formal mechanism governs the production of evidence for policymakers. This scenario implies a quite different set of questions about the knowledge-to-policy process.

The existence of independent advisory bodies in democracies suggests that both politicians and the public recognise that impartial evidence can improve public policy. However, as the case studies included in this paper highlight<sup>2</sup>, the contribution that such bodies make to policymaking processes is still highly contingent on a raft of factors, including their mandate, the mechanism by which governments use them, and government priorities. Objective evidence alone never 'determines' policy, and even when governments seek independently produced evidence, it does not remove politics from policymaking. To paraphrase a former Productivity Commission chairman, the extent to which evidence ultimately informs policy remains subject to multiple forces, including 'values, interests, personalities, timing, circumstance and happen stance', or in other words, the democratic process at work (Banks, 2011).



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<sup>2</sup> See Annex: case study 1 and case study 2.

Nevertheless, having permanent, independent, knowledge-producing institutions as part of the state policymaking architecture does offer particular advantages. Reviews of policy options by such bodies can greatly clarify the relative costs and benefits of various courses of action, enabling governments to make more informed choices. When governments are considering undertaking reforms that are likely to be unpopular with particular groups, objective, impartial evidence from an independent institution can help inform the public of the need for change, and cultivate public support. This can embolden governments to pursue reforms that, although for the greater good, present political risks.

For members of the public, inquiries and studies undertaken by independent institutions allow them to scrutinise the motives and arguments of politicians more effectively. The independence of actors reviewing policy can make a crucial difference to public perceptions regarding the credibility of evidence and recommendations produced. In contrast, when governments appoint eminent persons or ad-hoc committees to undertake reviews of policy options, they are always vulnerable to accusations that they have already decided on a policy approach and are merely undertaking the review to provide justification. This can undermine the public's confidence in the proposed policies.

Parliamentary standing committees play an important role in reviewing and developing policy in democracies, but by definition these are made up of partisan actors subject to political pressures. Parliamentary committees lack the resources, in terms of time, funding and expertise, to perform the same role as statutory independent advisory bodies that have a more or less guaranteed level of funding.

Where state knowledge producers consult the public through public hearings and written submissions, they also provide

an important channel through which the public can transmit its views to policymakers. This strengthens the democratic process as the public can see how a range of viewpoints have been taken into account in the policies that finally emerge.

Notwithstanding the advantages that independent advisory bodies offer, some politicians can also perceive their independence as a potential threat to government autonomy. This suggests that the creation of such bodies in the first place is in some respects unlikely, and also raises questions about the extent to which independent advisory bodies are able to exercise their independence. The case of the Productivity Commission highlights how, against the odds, such institutions can emerge, encouraged by changes in political leadership, the policymaking challenges that governments confront, and developments in the production of knowledge itself.

To a significant extent, the Productivity Commission's prominence in Australian policymaking processes is attributable to the high level of scrutiny applied to policies and proposed policies in the Australian political context. Jones et al. (2013) observe that the higher the level of scrutiny applied to policies in a given context, the greater the demand for evidence is likely to be. In the Australian context, policies and proposed policies are heavily scrutinised by a diverse cast of actors within the parliament, media, academia, and a wide range of well-organised and highly motivated special interest and lobby groups. This scrutiny ensures politicians are under considerable pressure to justify their policy choices, generating strong demand for evidence from a range of sources.

This paper was inspired by a study visit to Canberra undertaken by officials from the Policy Analysis Team at Indonesia's National Development Planning Agency (Bappenas) with funding from the Australia Awards. During the visit, the delegation met with

officials from the Productivity Commission and heard a presentation on the role it performs for Australian policymakers. On their return to Jakarta, several members of the delegation said the meeting with the Productivity Commission was a highlight of the trip. Vice-minister Bapak Lukita Dinasyah Tuwo expressed his desire to see Bappenas making greater use of evidence in its contributions to national development policy, and exploring possibilities to transform itself into a knowledge-producing institution in the future. This paper is intended to build on this interest by encouraging wider discussion about the potential future role of independent state advisory bodies in Indonesia.

The paper draws on Productivity Com-

mission reports and documents, academic articles and media reports. The next section, section 2, will interest readers who want to learn about the series of events and political decisions that led to the creation of the Productivity Commission. Section 3 describes the role and responsibilities of the Productivity Commission today, focusing on the guiding principles and mandate. Section 4 concludes the paper. In the Annex, readers will find two detailed case studies of the influence that the research evidence produced by the Productivity Commission has had on two important areas of Australian policy: the Passenger Motor Vehicle industry and paid parental and maternity leave.

# Productivity Commission:

## Institutional Origins and Timeline of Political Decisions

Although the Productivity Commission was only formed in 1997, its institutional roots can be traced back to several earlier institutions. While the scope of the mandate has increased with each transition to a new institution, the Productivity Commission's core principles of transparency, political independence and a 'whole of society' approach can be traced back to these earlier bodies. The following brief history of the Productivity Commission's predecessors—the Tariff Board, the IAC and the Industry Commission—highlights how changes to the Australian economy that these institutions helped bring about also paved the way for an institution such as the Productivity Commission to emerge.

### BOX 1.

#### KEY EVENTS IN THE FORMATION OF THE PRODUCTION COMMISSION

- 1923 – The Tariff Board is established.
- 1963 – New chairman appointed to the Tariff Board begins to assert Board's independence.
- 1972 – The Labor Party wins office.
- 1973 – Prime Minister Gough Whitlam abolishes the Tariff Board, establishes the Industry Assistance Commission (IAC) and cuts all tariffs by 25 per cent.
- 1975 – The Coalition returns to power and takes no further action on tariff reform.
- 1981 – The IAC urges further cuts to tariffs.
- 1982 – Labor returns to government.
- 1983 – Prime Minister Bob Hawke begins talking about the need for further tariff cuts.
- 1985 – First round of industry-wide tariff cuts announced.
- 1988 – First round of tariff cuts takes effect.
- 1990 – Labor renames the IAC the Industry Commission and broadens its mandate to providing advice on all aspects of industry competitiveness.
- 1991 – Labor announces a second round of industry-wide tariff cuts.
- 1996 – The Coalition returns to office, announces plans for a Productivity Commission, with a still broader mandate to advise on competitiveness and productivity throughout the economy.
- 1997 – Despite Labor's initial opposition, the Productivity Commission replaces the Industry Commission.

### The Tariff Board (1923-1973)

When the Australian Tariff Board was created in the 1920s, there was a strong consensus among Australia's politicians and the public that protecting Australian industry against competition from imports was justified to create jobs and encourage local manufacturing. The government at the time, however, also recognised the political benefit of basing decisions about tariffs and other forms of protection on advice from an independent body holding transparent public inquiries.

Before the government could impose any new tariffs or raise existing ones, it was required by law to refer industry requests for protection to the Tariffs Board. The Board's mandate was a narrow one – to consider manufacturers' requests for protection for individual products. Public hearings were held to invite comment from interested stakeholders, but it was difficult for the Board to reject requests for protection. The reason for this was that under its terms of reference, the Board was only to consider whether the viability of a particular Australian-made product was threatened by cheaper import substitutes, and whether imposing tariffs on the imported product would provide effective protection. In most cases the answer to both questions was 'yes', leaving the Board no option but to approve requests (Productivity Commission, 2003).

The 1960s marked a new era in relations between the government, the Tariff Board and industry as the Tariff Board began to assert its independence. The trade minister at the time, John McEwen, was committed to maintaining Australia's protectionist trade policies, and sought to ensure that government referrals to the Board were worded in such a way as to leave it no option but to recommend that requests for protection be granted (Emmery, 2000).

The Tariff Board, however, was increasingly concerned at the cost of rising tariffs on the wider economy. Its chairman from 1963, Alf

Rattigan, a former head of the Department of Customs and Excise under McEwen's portfolio, demonstrated he was prepared to assert the Board's statutory independence in a more meaningful way. Rattigan became increasingly vocal in lobbying politicians, the media and academics about the need for reform (Productivity Commission, 2003).

Rattigan complained that the powerful trade ministry had effectively undermined the independence of the Board, including by influencing the appointment of commissioners to discourage more capable applicants. When he took over the chairmanship he found the Board was failing to implement several of its core functions under its mandate, including facilitating informed public debate on matters related to tariffs, reporting annually on tariffs, and examining matters of public concern such as residual high tariffs first imposed as emergency measures during the Great Depression in 1930 (Emmery, 2000).

Under Rattigan's leadership, the Board began to draw on pioneering work by Professor Max Corden, which showed the 'effective rate' of protection, as opposed to the 'nominal rate', as had been used previously. The new approach revealed tariff protection to be far higher and more costly to the economy than previously thought (Leigh, 2002, p.492). Rattigan also used the Board's 1966-67 annual report to propose to the government that the Board undertake a thorough and wide-ranging review of tariff levels across all industries to assess the extent to which tariff forms and levels supported the government's national economic objectives (Emmery, 2000).

However, there was no public interest in tariff reform, in part because the lack of transparency around their impact on prices prevented consumers from knowing how much tariffs cost them (Productivity Commission, 2003). On the other hand, the interest groups with most at stake in maintaining high levels of protection for Australian industry—manufacturers and

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unions—were vocal, organised and highly influential. Although the Board's proposals failed to make a major impression on the Coalition government, they did persuade the leader of the opposition, Gough Whitlam, of the need for change.

#### **The Industry Assistance Commission (1973-1990)**

The transition from the Tariff Board to the IAC was a direct result of the change of government that occurred at the 1972 federal election. The new Labor<sup>3</sup> prime minister was determined to reduce the dependence of Australian industry on tariffs. The problem was that under the Tariff Board's mandate, this was almost impossible.

In 1973, despite strong opposition from within his party, Whitlam announced a 25 per cent tariff cut across all industries (Leigh 2002, p. 493). In the same year he abolished the Tariff Board and established the IAC. The IAC's policy guidelines required it to take into account impacts on other industries, consumers and the economy as a whole in

evaluating the case for industry assistance. The new body's mandate recognised that the interests of manufacturers were not necessarily identical to those of the nation as a whole. To protect the new body from the influence of the bureaucrats at the Trade Ministry, Whitlam had it report initially to the Department of Prime Minister and Cabinet, before relocating it to the Department of Business and Consumer Affairs.

To carry out its function of assessing industry protection measures against the cost to the economy as whole, the IAC recognised that it needed new, more powerful methods of economic modelling. Soon after its inception, in collaboration with researchers from several universities, the IAC began developing the ORANI economic model. A feature of the model was that it was made accessible to the public, so that academics from around the country were able to carry out their own modelling work to compare the costs of various combinations of industry assistance. The model was continually refined and provided the IAC with a powerful tool to generate evidence in support of its advocacy for substantial lowering of industry protection (IAC, 1987).

During the 1970s and 1980s, the IAC continued to be a forceful advocate for dismantling industry protection. In the 1980s, it repeatedly stated in annual reports that:

'...the general objective of a competitive industry structure must have priority over the adjustment-averting demands of particular sections'

Productivity Commission Annual Reports 1985-87 (in Conley & van Acker, 2011)

However, after the initial round of tariff cuts in 1973 and the Whitlam government's dismissal from power in 1975, the Coalition government (1975-1983) sought to distance itself from the tariff reform agenda of its predecessor. Although the IAC kept up the

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3 Since the national parliament was founded with federation in 1901, Australian parliamentary politics has been dominated by two major parties: the Australian Labor Party, a vehicle of the labour movement formed prior to federation, and the Liberal Party of Australia, formed in 1945, and its predecessors. Since its creation, the Liberal Party has always formed a parliamentary Coalition with the National Party (formerly the Country Party), to represent conservative values and viewpoints.

pressure in its annual reports, there would be no further mention of tariff cuts by an Australian government until the mid-1980s.

The IAC became a far more influential actor in Australian policymaking from the early 1980s, following the election of a new Labor government. In 1983, the former trade union leader Bob Hawke led the party back into office. Prime Minister Hawke and his treasurer, Paul Keating, were both firm believers that a more 'open, efficient and competitive economy' would generate greater long-term prosperity for all Australians (ibid, p.57). Even when serving as leader of the Australian Council of Trade Unions (ACTU) during the 1970s, Hawke had been prepared to anger the union movement by offering public support for Whitlam's 1973 tariff cuts (Leigh, 2002, p. 500).

However, Hawke was also aware that tariff cuts were still unpopular with the public; and with the economy in recession and unemployment high, he gave no sign during the election campaign that tariff reform would be a priority for a Labor government. Soon after taking office, however, Hawke revealed his long-standing belief that protectionist trade policies 'dulled the entrepreneurial spirit' and needed to be reduced for Australia to develop a globally competitive export-oriented economy (ibid, p. 501). By the middle of the decade, the IAC, through its frequent pronouncements about the need to cut tariffs, had persuaded a broad coalition of key opinion-makers, including senior bureaucrats, economics commentators in the media and academics. This helped it win over a majority of cabinet members, despite the Labor Party's close ties to the union movement, and the movement's opposition to tariff cuts (ibid, p. 496).

Treasurer Keating announced the first round of cuts in 1988, and later attributed the intellectual foundations for them to the IAC (ibid, p. 495-6). The government announced another round of cuts in 1991 despite rising unemployment and the national economy

officially being in recession.

### **The Industry Commission (1990-1997)**

By 1990, the IAC had been so successful in helping the government to dismantle tariffs that there was relatively little work left to do. With direct forms of industry assistance in the process of being phased out for most industries, the government identified the need for a new body to advise it on the broader, economy-wide issues that impacted industry productivity and competitiveness.

The Industry Commission was formed through the merger of the IAC with two other advisory bodies: the Inter-State Commission, which had advised on interstate transport issues, and the Commonwealth Business Regulation Review Unit. Consistent with its broader mandate to advise on structural reform, the Industry Commission was moved from the trade ministry to the treasurer's portfolio. The Industry Commission was to be guided by four policy objectives:

- Encourage the development and growth of Australian industries that are efficient in their use of resources, self-reliant, enterprising, innovative and internationally competitive;
- Facilitate adjustment to structural changes in the economy and ease social and economic hardships resulting from those changes;
- Reduce the regulation of industry where this is consistent with the social and economic goals of the Commonwealth Government; and
- Recognise the interests of industries and consumers likely to be affected.

The wider scope of the Industry Commission's work can be seen in the early referrals for public inquiries by the government. The government announced a two-year work schedule of public inquiries into energy generation and distribution, railways, product liability, exports of health services, recycling, the availability of capital

and construction costs for major plants.

Whereas the IAC's inquiries during the 1970s and 1980s focused overwhelmingly on manufacturing, manufacturing accounted for only 10 per cent of the inquiries undertaken by the Industry Commission. This reflected the broader mandate of the Industry Commission to address economy-wide issues, particularly in areas of regulation and infrastructure (Productivity Commission, 2003, p. 29).

The Industry Commission continued to use its annual reports to urge the government to continue along the path of microeconomic reform. Its first annual report observed that Australia needed to increase productivity to remain internationally competitive and maintain or raise its standard of living. According to the Industry Commission, market interventions such as tariffs had 'blunted the incentives and disciplines that competition provides'. Markets would provide the right incentives as long as they were allowed to facilitate competition. One of the key challenges for increasing productivity therefore was to remove impediments to competition (Industry Commission, 1990, p. 9).

The Industry Commission cautioned against returning to direct government intervention in the economy, arguing that requests for assistance from industry groups overlooked the cost of assistance for consumers, and that industries previously selected for special assistance had generally performed poorly (Industry Commission, 1990, p. 15). Instead it argued that the government should promote better public understanding of the benefits of higher productivity growth, encouraging vigorous competition in product markets and increasing flexibility around labour markets

(ibid, p. 17). These themes were revisited in all of the Industry Commission's annual reports until the government folded it into the Productivity Commission in 1997.

### **The Productivity Commission (1997- )**

The Productivity Commission was formed through a merger of three bodies: the Industry Commission, the Economic Planning Advisory Commission (EPAC) and the Bureau of Industry Economics (BIE). EPAC's role was to advise ministers and encourage public debate on economic and social issues. It also kept the minister informed on the views of industry, the trade union movement and the community in relation to the federal budget. The BIE was created in 1977 to carry out research for the government into manufacturing and commerce to inform policy related to industry. All of these functions were taken over by the Productivity Commission in 1997.

The Labor Party initially strongly opposed the formation of the Coalition government's plan to establish the Productivity Commission, and promised to abolish it once it returned to office (Banks, 1998). Had the party followed through with this policy, it is an open question as to whether it would have succeeded in passing legislation to create the Paid Parental Leave Scheme or the National Disability Insurance Scheme which were two of its major policy achievements while in office from 2007 to 2013. Ultimately, however, it agreed to support the passage of legislation in the Senate following multiple amendments to the original draft bill.

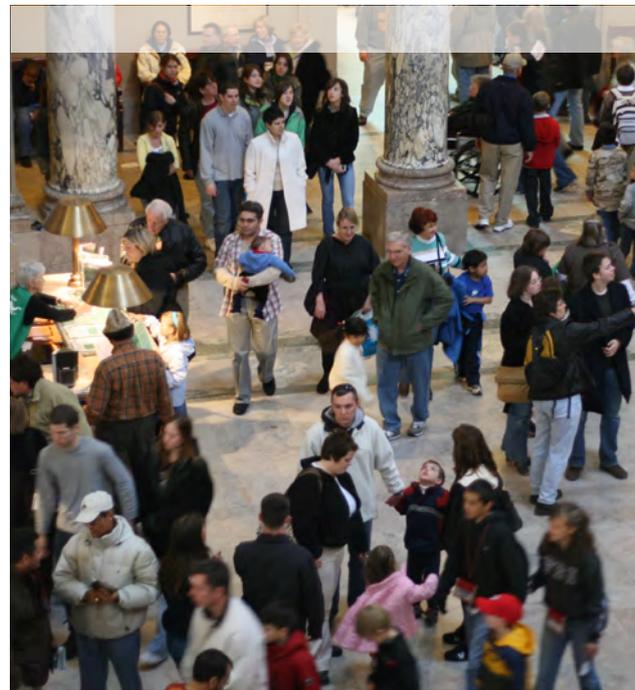
The next section examines in greater detail the roles and responsibilities of the Productivity Commission, focusing on its mandate and working principles.

# The Productivity Commission Today: Mandate and Operating Principles

**T**he Productivity Commission provides Australia's Federal Government with independent and impartial policy advice to support its on-going objective of raising living standards across the whole of society. The Commission's name reflects the views of many leading economists: that the productivity of an economy is the key to achieving sustained growth and increases in national prosperity. Productivity as used in this sense refers not to labour output, but to the output of the entire economy, implying a focus on factors that exert an economy-wide effect, such as incentives for business, regulation, infrastructure, and the ability of the population to participate in the economy.

The Productivity Commission's work is guided by three core principles: independence, transparency and a 'whole of society' approach (see sections 3.1, 3.2 and 3.3). Until New Zealand passed legislation in 2010 to create its own Productivity Commission with the same features, Australia's Productivity Commission was able to claim that adherence to these principles made it unique among government advisory bodies around the world (Productivity Commission, 2003).

The Commission contributes to government policy and the improvement of government effectiveness in a number of ways. It undertakes its most important and influential research based on referrals by the government. It is entirely a matter for the government to decide which issues, if any, it refers to the Commission. When the government refers matters to the Productivity Commission, the terms of reference will specify whether it wants the Commission to hold a full public inquiry or a commissioned study. Public inquiries entail far more resources than commissioned studies and take longer to complete, as they also facilitate many more opportunities for



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public consultation. The terms of reference clearly define the scope of the inquiry or commissioned study, and the deadline for the Commission to report back to the government with its recommendations.

By referring issues to the Commission, the government signals to the public that it is considering policy reforms on an issue it considers important. Apart from any consultations that take place, the referral itself stimulates debate in the public arena about the issues under consideration, and the implications of various policy options. These debates, played out in the media, often feed back into the political process as politicians are asked to respond to statements made by various interest groups affected by the issues under consideration. This process ensures that a range of policy options is subjected to intense scrutiny before the government makes its decision, further enriching the policy process.

Only the government, through the treasurer's office, can refer matters to the Productivity Commission. Government decisions to refer matters to the Commission would normally be made in cabinet discussions. Any organisation or individual is free to propose to the government that it refer a particular matter to the Productivity Commission, but the government is under no obligation to grant these requests. From time to time, agencies within the federal bureaucracy, the federal opposition, state governments, policy analysts in academia, think tanks and the media, business groups and non-profit organisations all suggest topics to the government for referral to the Productivity Commission (Productivity Commission, 2013, p. 47).

It is important to emphasise that the Commission has no power whatsoever to choose the subject of public inquiries and commissioned studies. The Commission is, however, able to choose the topics of much more limited studies carried out under its 'Supporting Research Program'.

These self-initiated studies are carried out with far fewer resources and do not involve the public consultations that are a feature of public inquiries and, to a lesser extent, commissioned studies. Although Commission researchers have some autonomy to select topics for self-initiated studies under the Supporting Research Program, all such studies must address one of the following four themes, defined by the government<sup>4</sup>:

1. Productivity performance and its determinants;
2. Environmental and resource management (especially water);
3. Labour markets, including social dimensions; and
4. Development of economic models and frameworks to aid analysis of policies and trends, and identification of impediments to improving living standards.

Although the Commission's independence from the government is formally guaranteed, its work is guided by a set of 'legislative instructions' that collectively define its mandate. These instructions are contained in the same act of parliament that formally established the Commission. It is worth noting that since the Productivity Commission was established in 1997 these legislative instructions have remained constant despite changes of government. Lengthy negotiations between the (Coalition) government and the (Labor) opposition to have the Productivity Commission Act passed by both houses of parliament appears to have produced a set of guidelines that both major parties find acceptable (Banks, 1998).

In formulating its recommendations, the Commission must seek to:

- a) Improve the overall performance of the economy through higher productivity in both the private and public sectors to achieve higher living standards for all members of the Australian community;
- b) Reduce regulation of industry where

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4 See [www.pc.gov.au](http://www.pc.gov.au)

this is consistent with the social and economic goals of the Commonwealth Government;

- c) Encourage the development of efficient and internationally competitive industries that are efficient in their use of resources, enterprising, innovative and internationally competitive;
- d) Facilitate adjustment to structural changes in the economy and the avoidance of social and economic hardships arising from those changes;
- e) Recognise the interests of industries, employees, consumers and the community likely to be affected by measures proposed by the Commission;
- f) Increase employment, including in regional areas;
- g) Promote regional development;
- h) Recognise the progress made by Australia's trading partners in reducing both tariff and non-tariff barriers;
- i) Ensure Australian industry develops in ecologically sustainable ways; and
- j) Ensure Australia meets its international obligations (Productivity Commission Act, 1998).

Clearly, there is potential for some of these objectives to be in conflict with each other. For instance, prioritising productivity across the whole economy could adversely affect employment in regional areas if it means cutting subsidies to industries based in regional areas. However, the instructions are intended as broad guidelines and inevitably the Commission must make trade-offs in formulating its recommendations, just as the government does in developing its policy. When the government refers matters to the Commission for an inquiry or study, it provides detailed terms of reference defining the scope of the inquiry and more specific policy objectives.

### **A diverse research agenda**

The Productivity Commission's broad mandate to identify ways to improve

productivity throughout the entire economy is reflected in the diversity of issues the government asks it to investigate. In recent years, there has been a notable increase in government referrals related to social welfare policy, underlining the Commission's broad view of the economy as a vehicle for distributing resources efficiently and equitably across society. The titles of recent public inquiries and commissioned studies listed below provide a sense of the vast range of policy issues that fall within the Commission's mandate:

#### **Public inquiries**

- Natural disaster funding (2014)
- Public infrastructure (2014)
- Australia's automotive industry (2014)
- Childcare and early childhood learning (2013)
- Access to justice arrangements (2013)
- Mineral and energy resource exploration (2013)
- Electricity network regulation (2013)
- Import of processed fruit products (2013)
- Barriers to effective climate change regulation (2013)
- Disability care and support (2011)
- Caring for older Australians (2011)
- Wheat export marketing arrangements (2010)

#### **Commissioned studies**

- Geographic labour mobility (2014)
- Major project development assessment processes (2013)
- Regulator engagement with small business (2013)
- Carbon emission policies in key economies (2011)
- Identifying and evaluating regulation reforms (2011)
- Schools workforce (2011)
- Bilateral and regional trade agreements (2010)

Finally, the Commission has another important and continuous function to regularly report on government performance in five areas: Indigenous Expenditure;

National Agreements; National Partnerships; Overcoming Indigenous Disadvantage; and Government Services. The Commission publishes annual reports on the government's performance in all of these areas on its website.

### **3.1 The principle of independence**

The Commission's independence is formally protected by the act of parliament that established it. As the Commission cannot be abolished without further legislation, requiring the agreement of both houses of parliament, its existence is relatively secure. This provides it with considerable protection against governments attempting to influence the findings or recommendations of an inquiry by raising doubts about the certainty of its future.

In a practical sense, the Commission's independence is achieved by the appointment of its commissioners for fixed terms of up to five years. The government cannot dismiss commissioners, except for reasons relating to misconduct. This ensures commissioners have no reason to withhold advice and recommendations that do not align with the government's policy preferences. Commissioners are formally appointed by the Governor-General, as the representative of the head of state. Although the Governor-General does so based on the government's recommendations, the government must be able to demonstrate that the candidates it recommends have been selected for the right reasons (Productivity Commission Act, 1998).

In addition to the chair there can be no fewer than four and no more than 11 other commissioners. The Productivity Commission Act requires commissioners to be appointed according to their qualifications and experience, which must be relevant to the duties they are required to perform. Most commissioners are appointed according to general competencies rather than specific knowledge or experience of a particular

sector. There are three exceptions to this rule. Among the commissioners, there must always be at least one commissioner each with experience and skills related to ecologically sustainable development and conservation, the social effects of economic adjustment and social welfare service delivery, and Australian industry (Productivity Commission Act, 1998). Although it might appear tempting for governments to politicise the appointment process in order to create a compliant body to endorse its policies, a recent former Productivity Commission chairman claims that politically motivated appointments to the Productivity Commission have been extremely rare. The professional demands on commissioners, and the public scrutiny that surrounds their appointments, are such that any appointments based on politics rather than credentials are likely to be revealed, and challenged in the public domain. In practice, governments have largely respected the integrity of the appointment process and refrained from appointing 'their people' as commissioners (Banks, 2011, p. 4-7).

A further safeguard against political interference in the appointment process was introduced in 2008, with new rules for all appointments to Commonwealth statutory bodies requiring that positions be advertised and filled according to a formal merit-based selection process, based on prescribed selection criteria. As the Productivity Commission formally reports to the treasurer, a selection panel chaired by the treasury secretary administers this process and makes a recommendation to the treasurer. If the treasurer prefers a different candidate to the one recommended from this process, he or she must write to the prime minister explaining why, and also convince cabinet, which must approve all appointments. As deemed necessary, the minister can also appoint associate commissioners after consulting with the chair (Australian Public Service Commission, 2012). Associate

commissioners are appointed to enhance the Commission's expertise on particular issues that are the subject of government referrals. The selection of associate commissioners is therefore always based on their expertise in a particular area.

Although the Commission regularly provides updates and briefings on its activities to ministers and parliamentary committees, it is an unwritten convention that the government will not seek information on the findings and likely recommendations from inquiries and studies in progress. On the other hand, another unwritten convention requires that the Commission allows the government time to read final reports from inquiries before they are made public. At this point, the report has been signed and sent for printing, ensuring the government cannot use this as an opportunity to seek amendments (Banks, 2011, p. 8).

Overall, governments have generally respected the Productivity Commission's independence. To the extent that governments value the role the Commission plays, they would appear to have a collective longer-term interest in preserving the public perception of it as an institution that provides independent and impartial advice (ibid, p.10-11). The temptation to reshape the Commission according to a government's own political beliefs might also be tempered by the knowledge that this would likely invite similar actions from the opposition following a change in government.

Finally, one of the most important safeguards of the Commission's independence is, ironically, the government's ability to simply exclude it from the policymaking process. The government is under no obligation to use the Commission. Where the government perceives that the Commission, perhaps based on previous advice, is likely to provide advice that does not align with the government's policy preferences, rather than attempt to influence the Commission's advice it is far easier for the government to simply

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Public hearings operate on a relatively informal basis. Parties wishing to address a hearing are encouraged to make a written submission beforehand, in order that the issues raised in the written submission can be examined in greater depth during the hearing.

formulate its policy without consulting the Commission. When advisory bodies operate under a compulsory referral mechanism, as the experience of Australia's Tariff Board (1923-1973) demonstrates, governments clearly have a greater incentive to try to co-opt the institution.

If a government prefers not to refer a matter to the Commission, but needs a review of the available policy options to validate its approach, it can always appoint an individual or ad-hoc committee instead. The ability to appoint a person or persons to undertake the review clearly gives a government a greater ability to obtain the justification it seeks for its preferred policies. The downside of this approach, used by the Labor government in relation to the auto industry in 2008, is that the credibility of findings and recommendations produced in this way can be undermined by the perception that they might have been subject to government influence. Indirectly, this might serve to reinforce the value of an independent advisory body such as the Productivity Commission.

### 3.2 The principle of transparency

Transparency around the Commission's work is achieved in a number of ways, the most important of which is holding public inquiries. Public inquiries usually allow two opportunities for interested parties to provide input on the issues under consideration. Upon receipt of a referral from the government, the Productivity Commission is required to

announce the inquiry to the public through the press in every state and territory. At the same time, individuals and organisations with an interest in the issue are invited to register their interest. The Commission usually then consults with some of those parties as it develops an 'issues paper' to clarify the policy issues to be reviewed. The issues paper is published on the website and becomes the basis for the first round of public comment.

After the first period for written submissions closes, the Commission will usually hold public hearings and roundtable discussions with stakeholders. The purpose of public hearings is to allow issues to be examined in greater depth through dialogue. The hearings are open to any member of the public who wishes to attend, whether to provide oral input or merely observe. Anybody who wishes to provide oral input at a public hearing needs to communicate in writing his or her interest in doing so. The Productivity Commission will schedule a time, usually around one hour.

Public hearings operate on a relatively informal basis. Parties wishing to address a hearing are encouraged to make a written submission beforehand, in order that the issues raised in the written submission can be examined in greater depth during the hearing. All testimony provided at public hearings is recorded and transcripts are made available on the Productivity Commission's website. This is another important way in which the Commission seeks to maximise transparency. The hearings are also open to the media (see: [www.pc.gov.au](http://www.pc.gov.au)).

Based on input received to this point, the Commission produces a draft report, which is subjected to another round of comment through public hearings and written submissions. The Commission incorporates this feedback into its final report. Many inquiries receive hundreds of written submissions, ranging from a few paragraphs from interested citizens, to professionally prepared

documents articulating the positions of various interest groups.

In some cases, the time frames the government gives the Productivity Commission to conduct an inquiry do not allow for a second round of public hearings. In such cases no draft report is published, but instead the Productivity Commission releases a 'position paper' ahead of invitations for public comment. In some cases, the Productivity Commission also issues 'Works in Progress' reports to inform stakeholders of issues still to be considered during the inquiry process. Commissioned studies follow a similar process for facilitating written submissions, but do not involve public hearings. Occasionally, the Productivity Commission will also organize a conference or workshop to bring together expertise on a particular issue from within academia and other research institutions. The proceedings of these events are also published on the Productivity Commission's website.

Transparency is also guaranteed by the statutory requirement that the treasurer table the Productivity Commission's final reports in parliament within 25 days of the Productivity Commission handing the report to the treasurer's office. This often stimulates intense parliamentary debate between the government and opposition, spilling into other public forums through media reporting. Occasionally, governments delay the release of final reports to give themselves additional time to consider their responses. The Commission constantly urges the government to respect the 25-day tabling requirement, arguing that failing to do so diminishes the transparency of the inquiry process as a whole.

A recent example of where the government withheld a report from the parliament and the public for well beyond the maximum period was the final report of the 2013-14 public inquiry on 'Australia's Automotive Manufacturing Industry'. The Commission handed its final report to the government

on 31 March, 2014, as required under the terms of reference for the inquiry. The government, however, did not table the report in parliament until 26 August, 2014. On the same day, the government also made its formal response to the report (Macfarlane, 2014), and the report became available for download on the Commission's website. (The government's decision to delay the release of the report followed announcements by two car manufacturers during the inquiry that they had decided to cease producing cars in Australia. See the case study on the auto manufacturing industry in the Annex to this report).

Since the late 1990s, the Commission has greatly enhanced the transparency of its operations through use of the Internet. All documents generated by commissioned studies and public inquiries—terms of reference, issues papers, draft and final reports and submissions from stakeholders—are posted on the Commission's website as soon as they become available. This means all stakeholders have full access to the positions, arguments and data being put forward by other stakeholders, encouraging rigorous scrutiny.

The Commission keeps track of all visitor activity on its website and publishes this data in its annual report. In 2011/2012 the Commission's website received 18 million file requests from external users. Also in 2011/2012, visitors to the website made 272,000 requests for the index pages of public inquiries and commissioned studies, with inquiries into aged care, disability support and the retail industry attracting the most interest. Public inquiries often continue to generate strong demand for the documents they produce for some time after they have been completed. In 2011/2012 more than 39,000 people accessed the index page for the 2009 inquiry into the gambling industry, reflecting on-going intense public interest in government reforms to gambling legislation (Productivity Commission, 2012, p. 45).

The Commission also provides an email alert service to notify parliamentarians, the media, government departments and state and territory government officials of the release of reports or completion of inquiries and studies. In 2012, the Commission began using a Twitter account to increase public awareness of its activities (Productivity Commission, 2013, p. 27).

### **3.3 The principle of applying a 'whole of society approach'**

As the Commission's overall aim is to raise living standards for all Australians, the requirement to apply a 'whole of society' approach to its work effectively means the Commission must take an 'economy-wide' view in forming its recommendations. While this ensures the Productivity Commission is focused on the national interest rather than the narrower concerns of special interest groups, it is also what generates most of the criticism directed towards it.

Taking an economy-wide view means the Productivity Commission cannot recommend measures that will benefit a single industry while imposing significant costs on other industries, consumers, or the wider economy. As the case study on the auto industry included in this report highlights, this has led the Productivity Commission, and even more so its predecessors, to consistently advocate reductions in government assistance to industry, even though this eventually threatened the viability of those industries. The Productivity Commission does not attempt to determine which industries survive or thrive in Australia, but rather strives to maximise efficiency across the economy, which often compels it to endorse measures that have an adverse impact on certain sectors. As the benefits that flow from such efficiency gains tend to be widely dispersed and take time to be felt, the more immediate negative impacts tend to attract the most attention. The Commission's strength is that, due to its independence, it has nothing to

## BOX 2

### ABSTRACT OF CASE STUDY 1 – AUTO INDUSTRY ASSISTANCE

Until the late 1980s, Australia's Passenger Motor Vehicle (PMV) industry was one of the most heavily protected in the world. Most of the cars it produced were for the small domestic market, and while protection from competition ensured the industry's survival, it also meant consumers paid high prices for their vehicles. Although the industry employed tens of thousands of workers, its significance went beyond jobs, supporting the development of the nation's design, engineering and manufacturing capabilities. While governments eventually came to recognise the costs to consumers and the economy of subsidising the industry, no government wanted to be blamed for bringing about job losses or threatening the viability of the industry altogether. The evidence and advocacy provided by the Productivity Commission and its predecessors from the early 1980s played a key role in the gradual reduction of government support to the industry between 1988 and 2014. The Commission, under its various names, was asked to hold multiple public inquiries into government support for the industry and continually advised the government to continue reducing protection and assistance to the industry. When the last of Australia's four carmakers announced in 2014 that it would close its Australian operations, many interpreted this as the inevitable outcome of governments following the Commission's advice to gradually withdraw government assistance.

lose by offering unpopular advice, and nothing to gain by seeking favour with certain groups. Further, its rigorous analysis is able to reveal and quantify 'hidden' costs of existing policies.

The Commission's role in the transformation of the Australian economy during the 1980s and 1990s has led its critics to claim it is more concerned with advancing the cause of liberal market or neo-liberal ideology than the lives of real people. Recently, this charge was also made by a Labor senator following a suggestion by the Commission's chairman that the collective bargaining provisions in Labor's industrial relations policy should be included in a review of Australia's competition policy (Cameron, 2012). Reflecting the intense political sensitivity around labour relations, governments on both sides of politics have largely refrained from making referrals to the Commission regarding labour and industrial relations issues.

The Commission has consistently rejected claims that its privileging of the economy

over the interests of particular groups means it takes an ideological approach to its work. In the words of former chairman Gary Banks (1998-2012) the Commission had merely 'helped governments make the right decisions in the face of pressure from special interest groups to make the wrong ones'. Banks (1998) also claimed that any survey of the Commission's recommendations would make it difficult to sustain the accusation that it was pursuing an ideological agenda. He pointed to the Commission's support for structural adjustment assistance to industries affected by tariff cuts, and the Commission's recommendation that tariffs be removed gradually as two examples that showed it was also concerned about the impact of reforms on workers. Another former commissioner has pointed out that the Commission's strong advocacy for new social welfare programs to support the disabled, the aged and new mothers is difficult to reconcile with depictions of it as a vehicle for neo-liberal ideology (Sloan, 2012).

# The Commission's Influence on Policy

The volume of the Productivity Commission's output makes it difficult to generalise about its influence on government policy. The government is under no obligation to accept or adopt any recommendations contained in Commission reports, and often elects not to do so. The processes and time frames by which the Commission's advice impacts government policies can also vary greatly according to the politics surrounding different issues. However, according to the Commission's own monitoring of government responses to its work, 'governments have typically adopted a substantial majority of the Commission's recommendations and generally endorsed its findings' (Productivity Commission, 2013a, p. 32).

To some extent, this merely reflects that governments usually do not refer matters to the Commission unless they are already seriously considering reforms. Even when the government explicitly rejects or accepts, but chooses not to act on recommendations, the Commission can still be said to be exerting an influence on the policymaking process. This is because the Commission's analysis can be assumed to enhance the government's understanding of the trade-offs associated with different policy options (Productivity Commission, 2013a, p. 23).

The Commission's annual reports always include the formal government responses to individual recommendations contained in reports made public in the preceding 12 months. This ensures the Commission's work is officially recognised and provides an important sense of closure to the Commission's work. However, even when governments indicate agreement with the Commission in these formal responses, this is not a guarantee that it will enact legislation or formal policy to give effect to the recommendations.

### BOX 3

#### CASE STUDY 2 – PAID PARENTAL AND MATERNITY LEAVE

By the early 2000s, Australia was unusual among developed countries in not having a statutory paid parental or maternity leave scheme. Around half of all working women had no access to paid maternity leave. Many women were unable to afford to take time off work after giving birth to care for their newborn babies during the critical first few months of their lives. Governments on both sides of politics had long resisted calls for a statutory scheme to give all women access to paid maternity leave. Following a long campaign by women's groups, the Human Rights Commission and labour unions, in 2009 the government asked the Productivity Commission to hold a public inquiry to examine the case for a scheme to provide universal access to paid maternity leave and make recommendations on the possible design for such a scheme. The government adopted the model proposed by the Productivity Commission almost without change. By referring the matter to the Productivity Commission the government was able to obtain vital independent and objective support for a publicly funded scheme. The Commission's arguments in favour of such a scheme were widely accepted, making it politically difficult to continue to oppose universal paid maternity care.

In some cases the government enacts policy that closely resembles the Commission's recommendations. This includes instances where the government asks the Commission to design a new program and to provide it with evidence to justify the cost to the budget. An example was the Paid Parental Leave (PPL) scheme adopted by the former Labor government in 2011, which was almost identical to the scheme proposed by the Productivity Commission in its 2009 inquiry into Paid Maternity, Paternity and Parental Leave<sup>5</sup>. Another example was the National Disability Insurance scheme, introduced in 2012. The scheme was closely based on the design proposed by the Commission following its public inquiry into Disability Care and Support the previous year.

Often, there is a considerable time lag between the formal government response to Commission reports and concrete action in implementing changes to laws and policies.

<sup>5</sup> The Coalition government that succeeded Labor after the 2013 federal election announced plans for an alternative, far more generous scheme than the one proposed by the Commission. See the case study in the Appendix.

Recommendations that are initially rejected, heavily modified or that elicit no clear response from the government are often resurrected in policy enacted much later by different governments. One example is the Industry Commission's 1982 report on 'Approaches to General Reductions in (Industry) Protection', which called for major tariff reductions that were not implemented until 1988 (Industry Commission, 1992, p. 401). From that point on, however, government policy on tariffs was closely aligned with the Commission's advice. Another example of a delayed impact is the Commission's 2006 inquiry report on waste management, which heavily informed the Victorian Government's Waste and Resource Recovery Policy seven years later (Productivity Commission, 2013a, p. 71).

Regardless of how many of the Commission's recommendations are ultimately adopted as government policy, the influence of the Commission's total body of work on the policymaking process can also be measured in the frequent referencing of Commission findings and recommendations by members of parliament. This occurs both in parliamentary debate and in the numerous

legislative committees attached to both the upper and lower houses.<sup>6</sup> The Commission monitors closely all references to its work in the parliament and records them in its annual reports. In 2012/2013, a total of 55 Commission reports were cited in parliamentary debate, 2,145 times in the lower house, and 66 times in the Senate. In 2012/2013, 10 separate parliamentary committees referred to 27 Commission reports, while people invited to address parliamentary committees referred to the Commission's work on 45 different subjects (Productivity Commission 2013a, p. 72-73). Examples of references to Productivity Commission output by parliamentary committees in 2012/2013 included:

- The Parliamentary Joint Select Committee on Gambling Reform, that drew on the Commission's 2010 inquiry report, 'Gambling', while reviewing the *Gambling Reform Bill 2012*;
- Senate Environment and Communications Legislation Committee, that referred to the Commission's 2000 inquiry report into broadcasting while reviewing the *Media Reform Bills Package 2013*; and
- The Senate Rural and Regional Affairs and Transport Legislation Committee, that drew on the Commission's 2010 research report, 'Market Mechanisms for Recovering Water in the Murray Darling Basin', in its own report on the 'Management of Murray-Darling Basin' in 2013 (ibid. p. 75).

The Commission's work also has the potential to influence policy indirectly when it is used by other advisory bodies, both government and non-government, in their

own reports and policy papers. Examples include:

- The Commission's 1998 and 2003 reports on waterfront benchmarking that were heavily drawn on by the Australian Competition and Consumer Commission in its 2012 report on container stevedoring;
- The Commission's 2007 report on science and innovation, which was an important input to the Advisory Council on Intellectual Property's 2012 report on intellectual property in innovation processes; and
- The Commission's 2005 inquiry into the health workforce that was heavily referenced by the Australian Medical Association (AMA) in a series of papers on workforce programs published in 2012 (ibid. p. 71).

Finally, the Productivity Commission uses its annual reports as a platform to focus public and government attention on issues it regards as priorities that need to be addressed by government policy. The themes addressed in the Productivity Commission's annual reports generate debate in policymaking circles and the public sphere through media reporting. Recent examples of themes discussed in the Productivity Commission's annual reports include:

- Using administrative data to achieve better policy outcomes (2012/13)
- Structural adjustment in a multi-speed economy (2011/12)
- Managing Australia's demographic change (2010/11)
- Good public policy – why evidence and process matter (2009/10)
- Reform beyond the (global financial) crisis (2008/09)
- Enhancing Australia's productivity growth (2007/08)
- Enhancing labour force participation (2006/07)

<sup>6</sup> Australia has a bicameral legislature, with a lower house known as the House of Representatives, and an upper house referred to as the Senate. The government is formed by the party (or parties) with a majority of seats in the lower house, and often does not command a majority in the Senate, forcing it to negotiate with parties, and sometimes independents, in the Senate to pass legislation.

## Conclusion

The Productivity Commission has become an entrenched part of Australia's policymaking landscape, since being established under its current name and mandate in 1997. Its advice often makes it unpopular with certain interest groups and the government rejects many of its recommendations, but its overall prominence and influence show no sign of waning. Although the Commission's continued existence is protected by a statute, which means it can only be abolished by an act of parliament, this in itself cannot explain its continued relevance to the process of undertaking major policy reform.

The Commission's influence on Australian policymaking debates and actual policy would not be possible without the absolute independence it enjoys from the executive branch of government. Independence means the Commission does not need to be concerned about the reactions of influential groups to its advice. Unlike government departments, it does not create policy, and its recommendations on their own have no bearing on the government's popularity.

It matters that the Commission is not only independent, but also that it is perceived as such by the public. Although the Commission's advice is frequently criticised, it would be difficult to question the Commission's independence. The fact that the government regularly rejects its recommendations is perhaps the most visible indication of its independence.

One factor that helps make the Commission impervious to criticism of its findings and recommendations by interest groups is the wide diversity of issues it considers. Institutions that provide advice on a single area of government policy tend to become the target of constant criticism and lobbying from stakeholder groups. As the Commission typically undertakes several public inquiries or commissioned studies each year

on very different policy issues, the conversation and the stakeholders it engages are constantly changing. This makes it harder for critics to portray the Commission as ideologically driven. Those who oppose the Commission's recommendations on some issues are likely to support them in relation to others.

The Commission's independence is protected by both the statute and its formal procedures, but just as important is the willingness of politicians to resist the temptation to seek to influence the advice it provides. This suggests that Australia's politicians generally recognise that the Commission's credibility would soon be eroded by constant attempts to shape its advice, and that this would rob them of a valuable source of ideas and evidence to present to the electorate.

The government's complete discretionary power over referrals to the Commission encourages it to view the Commission as an asset, rather than a threat to its autonomy. There is no obligation for the government to make any referrals to the Commission on any matter. It must be remembered that most government policy is made without the direct involvement of the Commission and that the wheels of government would soon grind to a halt if this were not the case. Those policy matters that tend to be referred are usually areas requiring major reforms, hard evidence or a canvassing of a wide range of stakeholder views to mitigate conflict between different

interest groups.

When governments do elect to refer matters to the Commission, the complete freedom the government enjoys to reject or not implement the Commission's advice greatly reduces the political risk associated with making referrals. This feature of the relationship between the executive and the Commission also encourages governments to regard the Commission as a valuable asset rather than a threat to their autonomy.

When governments want to undertake policy reforms that are likely to generate strong opposition, they need to be able to demonstrate to the public why such reforms are necessary. Transparent public inquiries and studies provide governments with a means of demonstrating to affected groups that their interests have been taken into consideration in whatever policies are enacted. At the same time, they can also provide governments with the evidence needed to justify policies that involve pain for some, while acting in the interest of the greater good.

A major challenge of representative government everywhere is finding practical ways of allowing stakeholders to convey their views to government. It must be said that despite frequently attracting criticism, the Productivity Commission has achieved this and encouraged the vigorous testing of ideas in a transparent manner, which can only enhance the democratic process.

Annex:

## Case Studies



### **CASE STUDY 1:**

#### **Auto industry assistance**

In early 2014, the last of three remaining car manufacturers still making cars in Australia announced its decision to close its Australian operations in 2017. Although politicians from across the political spectrum all described the demise of the industry and the inevitable job losses as regrettable, a series of decisions taken by both Labor and Coalition governments over more than two decades contributed significantly to this eventual outcome. The case of Australia's car-making industry highlights the way the Productivity Commission and its predecessors have helped shape government policy, but also how, ultimately, responsibility for decision-making rests with elected governments.

Between 1990 and 2013/2014, the government referred four separate public inquiries into the auto industry to the Commission, primarily to obtain advice on appropriate levels and forms of government assistance. In addition, the Commission was asked to undertake a study using economic modelling analysis in 2008, to examine the effects on the economy of postponing scheduled tariff cuts. In its recommendations over more than two decades, the Commission consistently advocated reductions in protection against competition from imported vehicles, while also urging the government to assist local car makers to increase their competitiveness in export markets. Overall, the government followed this advice, and for a period the reorientation towards exports appeared to hold the promise of a sustainable future. Finally, however, a combination of factors—including the soaring value of the Australian dollar and high per unit costs from small production output—convinced car makers that they could not continue without

guarantees of increased subsidisation in one form or another.

The final report from the Commission's most recent auto industry inquiry had not been made public when, in early 2014, Toyota announced its intention to close. Although the Coalition government claimed it might have been able to put together an assistance package to enable Toyota to continue operating, many industry analysts observed that the company had little choice once the other car makers had announced their decisions to close, due mainly to the impact of the earlier closures on component suppliers. The Labor opposition seized the political opportunity to blame the government of the day for overseeing the 'death of the Australian car industry', but in reality, policies advocated by the Industry Assistance Commission in the 1980s and adopted by the then Labor government, had marked the beginning of the 'managed decline' of the Australian auto industry (Conley, 2014).

### **The 1988 tariff cuts – the beginning of the end**

Australia's car industry lobby had always argued that no country could sustain a car manufacturing industry without significant government support in one form or another. The small domestic market and historically low level of penetration into export markets meant high per unit production costs, making the industry unable to compete on equal terms against larger and more efficient industries overseas. Until the 1980s, Australian governments had generally accepted that some level of public support, through tariffs and other means, was the price that had to be paid to maintain the industry's viability and protect the jobs it provided. Even when tariff reform eventually came to Australian manufacturing, the car industry lobby's political influence and often-cited significance as a source of engineering and technical capacity, ensured it was treated as a special case (Emmery, 2000).

Looking back, many analysts agree that Australia's car industry was living on borrowed time from the mid-1980s, when the Labor government moved to start reducing the high tariffs that had enabled the industry to dominate the domestic market, despite its inefficiency (McCrann, 2014). The first step in this process was negotiation of the 'industry plan' in 1985. Known as the 'Button plan', after Industry Minister John Button, the plan provided structural adjustment assistance to support the car industry while it adapted to increased competition from imports and reoriented itself toward export markets, as tariff cuts exerted their effect.

At the time the Button plan was announced, tariffs on imported cars were at an all-time high of 57.5 per cent. Under the Button plan, the government cut tariffs to 45 per cent in a single move in 1988, and followed this with further cuts of 2.5 per cent per annum for four years, bringing the rate down to 35 per cent by 1992 (Industry Commission, 1990a, p. 3). Although a big adjustment, this was still much higher than the rate for other industries.

The Industry Assistance Commission continued to lobby the government to continue with further cuts. In 1990, the government asked the newly established Industry Commission to hold a public inquiry to examine options for the auto industry from 1993, when the 1988 round of cuts would be fully implemented. The Industry Commission recommended the government continue with annual cuts of 2.5 per cent until 2000, to bring the rate down to 15 per cent (Industry Commission, 1990a, p. 3). Despite the economy being in recession and unemployment rapidly rising, the government adopted the Industry Commission's recommendation.

The government still needed to be mindful of the industry's ability to adjust, and its political influence. In the 1992 federal election, opposition leader John Hewson told car manufacturers that a Coalition government would reduce tariffs to zero

immediately. The manufacturers warned this could force them to close their Australian plants, but the opposition leader dismissed these warnings as political posturing. The industry responded by campaigning against the Coalition during the 1992 election, with some observers interpreting this as a significant factor in the Coalition's electoral defeat that year (Davison, 2012).

#### **Brief period of respite for the carmakers: 2001-2005**

In 1997 the new Coalition government led by John Howard asked the Industry Commission to hold another public inquiry to consider options for auto industry assistance beyond 2000. In its submissions, the industry argued that a decision on further cuts should be delayed until more was known about the post-2000 economic environment. The Commission, however, rejected this proposal, which it said implied that the industry had no prospect of becoming internationally competitive in the future, a conclusion the Industry Commission also rejected. The Industry Commission also warned that 'backsliding' on tariffs could hurt Australia's credibility in international trade negotiations. At 15 per cent, tariffs on imported new cars into Australia were still significantly higher than in Japan, the United States, the European Union and Korea (Industry Commission, 1997, p. XLIII).

The report also noted a number of major changes that had occurred in the Australian car industry since the Button plan was adopted. In 1985, imported cars accounted for only 20 per cent of total new car sales, but by 1995-96, this had risen to 46 per cent. The new environment had prompted Nissan to close its Australian manufacturing operations. To stay competitive, the remaining four car manufacturers had taken advantage of economies of scale by reducing the number of models they produced (from 13 to five) and producing more cars at fewer plants. Exports of Australian-made cars had also increased three-fold, offsetting some of

the losses to imports in the domestic market (Industry Commission, 1997, p.4).

The Industry Commission recommended the government continue to reduce tariffs by 2.5 per cent per year from 2001 to 2004, bringing the rate down to 5 per cent, making it comparable to other manufacturing industries (Industry Commission, 1997, pp. 340-42). On this occasion, however, the government rejected the Commission's recommendation, and instead announced it would suspend further cuts until 2005, when it would impose a single tariff cut of 5 percentage points to bring the rate down to 10 per cent.

Also in 1997, the Industry Commission advocated discontinuing the Export Facilitation Scheme (EFS) which had run since 1982. This scheme provided an incentive for car makers to increase exports by allowing them to reduce the local content in their cars according to the volume of their exports. The EFS was due to expire in 2000 and the Commission argued it had 'served its purpose' of getting Australian cars into export markets. Further, it was inconsistent with the position taken by Australia in international trade negotiations, which had been to encourage other nations to reduce export subsidies on manufactured and agricultural goods and, the Industry Commission argued, could be challenged under the rules of the World Trade Organisation (WTO) (Industry Commission, 1997, p. LIV).

Although the government adopted the Industry Commission's recommendation to discontinue the EFS, it also announced a new \$2 billion, five-year program of structural adjustment support, called the Automotive Competitiveness and Investment Scheme (ACIS). ACIS provided support through the budget to encourage investment in new technologies to increase the industry's efficiency and competitiveness.

#### **Mixed messages: tariff cuts to resume, budgetary support increased**

In 2002, the Howard government asked the Productivity Commission to hold another

public inquiry into the automotive industry to examine options for assistance from 2005. As in previous inquiries, the Commission received submissions from industry bodies, the four individual car makers, component manufacturers, unions and the state governments of Victoria and South Australia arguing strongly against further cuts. Many of these submissions acknowledged that further tariff cuts were likely to be unavoidable at some point, but argued they should be postponed until Australia's car makers had secured better access to export markets (Productivity Commission, 2002, p. 99).

With more and more Australians buying imported vehicles, in large part responding to lower prices flowing from tariff cuts, it was becoming clear that the domestic industry's future would depend on its ability to increase export sales. Over the five-year period since the commencement of ACIS and the 2002 public inquiry, the car makers made enormous progress in refocusing their businesses on export markets. In 2002, while announcing the post-2005 assistance arrangements, Industry Minister Ian Macfarlane observed that in 1995, Australian car manufacturers had produced 312,908 cars, with only around 24,000 of these exported. At the time, tariffs on imported cars and components were 27.5 per cent. Six years later, in 2001, car makers produced just under 350,000 units, with almost one third (111,844) of these vehicles exported. As this had been achieved with an import tariff of 15 per cent, the government was able to claim that the overall approach of steadily increasing competition in the domestic market, while encouraging Australian car makers to become export-oriented, offered the industry a viable future (Macfarlane, 2002).

In its recommendations from the 2002 public inquiry, the Productivity Commission rejected all of the arguments for keeping tariffs at their current level of 10 per cent. It noted that international agreements were not entirely within Australia's control to secure, and that the Australian car industry

had continued to attract foreign investment despite reductions in tariffs of around 50 per cent since 1988. As always, the Commission emphasised the cost of tariffs on the Australian economy and consumers.

The Productivity Commission did, however, accept that the industry needed more time to consolidate its position and prepare for increased competition before the next tariff cut took effect. It therefore advocated a single 5 per cent cut in 2010. The Commission also recommended that the government not increase budgetary support to the PMV industry through ACIS, and commit itself to discontinuing ACIS by 2010. The Commission argued that by then ACIS would have fulfilled its objective of helping the industry adjust to the lower tariff environment (Productivity Commission, 2002, p. XXXV).

This time the Coalition government adopted the Commission's recommendation on tariffs, committing to a further cut of 5 per cent in one move in 2010. This would bring the tariff on imported new cars down to 5 per cent. However, the government rejected the Commission's recommendation to maintain ACIS support at current levels from 2005 to 2010 before ceasing budgetary support altogether. Instead, it guaranteed ACIS would continue until 2015, and made available additional funds for research and development. In declaring that its new auto industry assistance policy would provide 'a decade of certainty' for the industry, the government highlighted that its continued support for ACIS would be more generous than what had been proposed by the Productivity Commission (Macfarlane, 2002).

### **A new government, a new assistance package**

At the 2007 federal election, the Labor Party returned to government. Rather than asking the Productivity Commission to hold another public inquiry into the auto industry to examine policy options for the auto industry beyond 2010, as had been foreshadowed when the last inquiry was held in 2002,

the new Labor government asked former Victorian Premier Steve Bracks to review the options for future industry assistance. Based on Bracks's recommendations, the government announced its 'New Car Plan for a Greener Future' policy, which committed \$6.2 billion to a new budgetary assistance program, to run until 2020. This commitment would ensure the auto manufacturing industry would remain one of Australia's most heavily subsidised. A major part of this funding was the \$1.3 billion Green Car Innovation Fund (GCIF), designed to encourage investment in the production of cleaner cars (Priestly, 2008).

The decision to appoint its own ad-hoc committee, headed by a former Labor premier, rather than ask the Productivity Commission to hold another full public inquiry, suggests the government knew that the Productivity Commission was not likely to provide it with the justification it was seeking for substantially increasing and extending budgetary assistance to the auto industry. The decision highlights that the Commission's ability to influence policy is dependent on the government's willingness to make referrals.

Nevertheless, the government did not entirely exclude the Productivity Commission from its decision-making process on auto industry policy for 2010 onwards. In 2008, the government asked the Productivity Commission to undertake an economic modelling study to assess the impacts on the economy of implementing or delaying the 2010 tariff cut, and of continuing to provide budgetary assistance through ACIS. The Commission's modelling found that making the 2010 tariff cut as scheduled, and discontinuing ASIS by 2015, would have significant benefits for the economy (Productivity Commission, 2008). The government followed this advice in relation to the 2010 tariff cut, but its decision to commit a further \$6.2 billion in budgetary assistance to the industry to 2020 under its 'New Car Plan' policy was a clear rejection of both the Commission's recommendation in 2002 to

end budgetary assistance by 2010, and its subsequent advice in 2008 to cease support in 2015.

### **Endgame: the Commission's advice prevails**

In early 2011, the confidence of the remaining three car makers was shaken when the Labor government announced it was scrapping the \$1.3 billion GCIF, scheduled to commence later that year, due to budgetary pressure created by the damage bill from cyclones in Queensland. Some analysts argued at the time that this decision had the potential to bring about the industry's end as the car makers had invested heavily based on the scheme's impending implementation (Porter, 2011). The first clear indication that these predictions might be right came in May 2013, when Ford announced it would cease making cars in Australia from 2016. As this decision heavily impacted on economies of scale for component suppliers, many observers predicted that, despite government assurances of on-going assistance to the industry to 2020, Ford's decision would eventually force the two remaining car producers, Holden and Toyota, to follow.

In September 2013, the Coalition returned to government and almost immediately (the following month) the new treasurer asked the Productivity Commission to hold its first full public inquiry on the Australian automotive manufacturing industry since 2002. The speed with which the new government made this referral suggested it was considering reducing the overall level of government support to the industry, especially through the budget. The Commission was asked to advise the government on 'possible alternative government support mechanisms' including a 're-targeting of the existing Automotive Transformation Scheme' (Productivity Commission 2014a, p. v-vi). Whatever the government's plans, Holden, and soon after Toyota, interpreted this latest public inquiry as a sign that they could no longer count

on existing levels of support continuing indefinitely. In December 2013, just as the Commission was set to release its Preliminary Findings Report, Holden announced it would close its Australian manufacturing plants from 2017.

The Commission's Preliminary Findings Report highlighted a number of factors adversely impacting the competitiveness and viability of the Australian auto manufacturing industry. These included: global production capacity exceeding demand, partly due to the lingering effects of the global financial crisis of 2008; production volumes at Australian plants well below the minimum level required to be competitive on production costs; increasing supply from countries such as Thailand and China with lower labour costs; the small domestic market compared to other major car producing nations; and the high value of the Australian dollar and trade barriers, both of which limited exports. The report also noted the significant levels of government assistance already provided to the industry to help ensure its viability (Productivity Commission, 2013, p.2).

In January 2014, the Productivity Commission released a position paper, and then allowed two weeks for interested parties to make final submissions to the inquiry. The position paper concluded that there was 'no compelling evidence that spillover and multiplier benefits exceed the costs of assistance to the industry', and recommended that budgetary support to Toyota, assuming Toyota continued operating, cease from 2020 (Productivity Commission, 2014, p. 2). In February, however, before the Commission handed its final report to the government, Toyota announced that it too would cease making cars in Australia in 2017.

The Final Report of what would be the Commission's final inquiry into the auto industry was delivered to the government on 31 March, 2014, but was not tabled in parliament, and therefore not made public, until 26 August, 2014. By this time, much of

the media and public interest in the issue had dissipated. As all three remaining car makers had already made known their decisions to close their Australian operations, much of this report, devoted to arguing the case for ending budgetary assistance to the industry, had become redundant. With no domestic car industry left to protect beyond 2017, the Commission recommended the government consider removing the five per cent tariff on imported new cars from that time, as well as the luxury car tax. Buyers of second-hand cars would have welcomed the Commission's recommendation that the government also abolish the \$12,000 tariff on imported used cars 'as soon as practicable' (Productivity Commission 2014a, p. 32-33).

In its response, released on the same day as the report, the government said it agreed, or agreed in principle, with most of the Commission's nine recommendations. The government only committed to retaining the 5 per cent tariff on new cars until the car makers closed their factories in 2017. It also 'noted' the Commission's recommendation to remove the \$12,000 import tax on second hand cars, and said this would be considered, as part of a review of the 1989 Motor Vehicles Standards Act. The recommendation to remove the luxury car tax would be considered as part of the government's review on taxation (Macfarlane, 2014).

Possibly the section of the Commission's final report likely to attract most attention, however, was that dealing with the options and case for providing structural adjustment support for workers, businesses and regions directly impacted by the industry's demise (Productivity Commission 2014a). In its 'Position Paper' issued in January, the Commission had already expressed its scepticism of both the efficiency and equitability of providing targeted structural adjustment support for specific groups of workers and particular regions. In its 'Position Paper' the Commission said it was 'seeking further information' on whether such

assistance could be justified (Productivity Commission 2014, pp. 131-52).

This likely explains, at least in part, why the government did not table the final report in parliament until late August, some five months after it took receipt of the report from the Commission. The delay allowed the government time to evaluate the Commission's analysis and advice, and finalise its level of structural adjustment support before the Commission's recommendations became a subject of public debate. Ultimately, the government announced a package of transitional support programs to assist workers, businesses and local communities in adjusting to the industry's closure from 2017 (Macfarlane 2014).

### Conclusion

Following the car makers' announcements of their decisions to close their factories, media reports predictably focused on the difficult consequences for those employed either directly or indirectly by the industry. This highlights why, however accurate the Productivity Commission's assessment that the economy as a whole gains from reducing targeted government assistance to specific industries, it is politically difficult to do. The dispersed costs and concentrated benefits associated with industry-specific government assistance can make it appear that there are no winners and only losers when businesses close as a result of reducing government support. Although the closure of Australia's car industry from 2017 will make the budget resources previously spent on industry assistance available for spending on other government programs, and consumers should benefit from lower prices for new and used cars, the constituencies for these benefits are poorly defined.

The notion that the longer-term benefits to the economy should outweigh the immediate pain caused to individuals when industries fail can be difficult to sell when job

losses are in the news. Following Holden's announcement, Prime Minister Tony Abbott told a media conference that:

'Some of (the workers) will find it difficult, but many of them will probably be liberated to pursue new opportunities and to get on with their lives.'

Prime Minister Tony Abbott, December 2013 (Price, 2014).

Similarly, when former Labor Prime Minister Paul Keating was asked what he would say to the blue-collar workers who had lost their jobs as a result of tariff and other structural reforms of the economy undertaken by Labor, Keating replied that he would simply ask:

'What is your new job like? One of the 2.5 million created since the early 1980s. People have found better jobs. I mean, did we ever hurt anybody liberating them from the car assembly line? When they left the car assembly line and got a more interesting job in the economy, did we do them a disservice? Of course we didn't. And the way people talk about this free and fair trade as if the economy is static and not dynamic and a job lost is not a job replaced, is just bunkum (nonsense).'

Former Prime Minister Paul Keating, 2000 (Workers Online, 2000).

Clearly, the issue is not quite so simple. Those who find jobs in new industries that emerge partly in response to economic reforms are not necessarily the same actors who have lost jobs in industries that have ceased to exist (Aly, 2013). Politicians are well aware of this, as well as the economic impacts on regions where factories close. As a result, even though both sides of politics likely perceived that Australia's automotive industry had a limited future, no government wanted the factories to close 'on their watch' if they could avoid it (McCran, 2014). This explains why Australian governments have generally followed the Productivity

Commission's advice to cut tariffs, while continuing to provide substantial subsidies through a range of budgetary mechanisms to keep the industry afloat. Ultimately, however, the car makers apparently recognised that their continued reliance on government support, coupled with consistent advice from the Productivity Commission to reduce that support, would always make their future in Australia uncertain.

## CASE STUDY 2:

### Paid parental and maternity leave

When the Australian parliament passed legislation in 2011 to create a scheme to provide universal paid maternity leave, it was among the last few countries in the world to do so. In 1999, Australia was one of only six countries out of more than 160 that had signed the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) not to have created a statutory right to paid maternity (or parental) leave. The other countries were Lesotho, New Zealand, Papua New Guinea, Swaziland and the United States (HREOC, 1999, p. 242). Almost one decade later, Australia still had not ratified any of the International Labour Organisation (ILO) Maternity Protection Conventions (O'Neil & Johns, 2009, p. 172).

Despite being out of step with most of the world in recognising paid maternity leave as a basic labour right for working women, the eventual turnaround in government policy was not necessarily inevitable. Deeply ingrained cultural attitudes regarding the role of women in society and the workforce underpinned strong resistance among politicians on both sides of the political spectrum to the idea of making paid maternity leave a statutory right (Brennan, 2009, p. 1). Although many women did already enjoy access to paid maternity leave, this was as a result of employment conditions in their individual workplaces, rather than a statutory right. As a result, around half of Australian women did not have

access to paid maternity leave (Productivity Commission, 2009, p. 1.1). The Productivity Commission's public inquiry on this issue, which began in 2008, was a pivotal moment in changing a long-standing government policy that had bipartisan support.

Women's groups and labour unions had struggled for decades without success for a universal paid maternity leave scheme. The first sign that politicians might be receptive



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to their demands came in 1973, when the Labor government, led by Gough Whitlam, passed a bill to make available 12 weeks of paid maternity leave for all women employed in the public service. In 1979, Australian unions won a test case in the Arbitration Commission that established the right for all working women to take 12 months of unpaid maternity leave without risking dismissal from their positions.

During the International Year of the Family in 1994, Australia reported to the UN CEDAW committee that the government was preparing to introduce a paid parental leave scheme (HREOC, 2002, p. 11). However instead, the Labor government, led by Paul Keating, only passed legislation to make 12 months of unpaid maternity leave a statutory right, reinforcing the decision of the Arbitration Commission. For most women employed in the private sector, paid maternity leave

remained out of reach.

On the other hand, women who left the workforce to have a baby were often able to access a range of family welfare and tax benefits that actually provided an incentive for them to sever their ties with the workforce and become 'stay-at-home' mothers. This represented a cost not only for the women themselves in terms of their future employment and earning potential, but also for businesses that had to recruit and train their replacements, and for the economy as a whole due to the reduced participation of women in the workforce. There were, therefore, sound economic and productivity reasons for the government to consider a paid parental leave scheme, leaving aside the more contentious arguments of gender equity.

The lack of financial support available to new mothers to take time off from their jobs to care for newborn babies was also believed to be a contributing factor in women choosing to have fewer children, to have them later and, in some cases, deciding not to have any children. As women's participation in the workforce continued to rise and Australia's fertility rate dropped well below the replacement rate of 2.1, it was apparent to many observers that the incentives around decisions regarding the balance between work and families needed adjustment.

#### **Paid maternity leave – a basic labour right or 'discriminatory' welfare?**

The federal election in 1996 resulted in a change of government, but made little difference to policy regarding paid parental leave. The Coalition government, led by John Howard, was philosophically committed to minimal government intervention in labour relations. The government's new industrial relations policy, 'Work Choices', encouraged employees and employers to negotiate their terms of employment, including benefits, within individual 'enterprise bargaining agreements'. The government believed paid

maternity leave should be negotiated between employees and employers in the same way as other benefits, rather than guaranteed under a statutory right. Alternatively, women might access paid maternity leave as part of award conditions negotiated collectively on their behalf by unions, or where companies voluntarily offered it as a standard benefit designed to attract skilled female employees (O'Neil & Johns, 2009, p. 186).

Labour unions continued to argue that paid maternity leave should be a universal statutory right, and that a scheme to provide it should be funded by businesses. Businesses, however, especially smaller ones, argued they could not afford to pay women 14 weeks of maternity leave (as recommended by ILO conventions). Non-government organisations also pointed out that if businesses were forced to pay, this would discourage them from recruiting women in the first place, undermining the aim of keeping women in the workforce (O'Neil & Johns, 2009, p. 183).

Despite the Howard government's opposition to paid maternity leave, in 1998 the government responded to constant lobbying on the issue by asking the independent Human Rights and Equal Opportunity Commission (HREOC) to hold a 'National Pregnancy and Work Inquiry'. The inquiry's report, 'Pregnant and Productive: It's a right not a privilege to work while pregnant', apart from restating the main arguments for paid parental leave, cited survey results that indicated overwhelming public support for a scheme to provide it. The report recommended the government undertake a costing analysis for a taxpayer-funded maternity leave scheme (HREOC, 1999).

As the government rejected this recommendation, in 2002 HREOC commissioned a private consulting firm to do this work. The estimates produced were based on a proposed scheme to provide 14 weeks of paid maternity leave for all mothers who had been employed for at least 10 of the previous 12

months (HREOC, 2002). Payments were to be equivalent to the lesser amount of the national minimum wage or the woman's weekly wage prior to taking leave. It was therefore not intended to replace the salaries of higher-earning women, but rather to ensure all women had a minimum income to cover basic needs for 14 weeks of maternity leave. As the proposed scheme was to be funded entirely by government, it also attracted in-principle support from business and industry groups (AIG, 2002).

However, the government rejected the HREOC proposal. Instead, in 2003, it announced a new one-off maternity allowance payment (initially \$3000, later increased to \$5000), which came to be known as the 'Baby Bonus', for all new mothers. Available to all women, whether working or not at the time of childbirth, this payment did little to help working women take more time off during the first few months of their child's life. Following statements by the treasurer urging Australian women to have more babies, the Baby Bonus was widely interpreted as an inducement to this effect.

The Baby Bonus reflected the government's often-stated view that paid maternity leave discriminated against non-working women, by basing the provision of support to mothers on their participation in the workforce rather than on their status as mothers. The Australian Council of Trade Unions (ACTU) countered that according to this logic then providing workers, male or female, with annual leave or sick leave would need to be seen as discriminating against the unemployed (O'Neil & Johns, 2009, p. 178). Nevertheless, the government's view of paid maternity leave was quite a common one, reflecting a cultural tendency to emphasise women's roles as mothers over their roles as members of the workforce (Brennan, 2009).

In opposition, the Labor Party said little to suggest it was considering changing the status quo. During the 2007 election campaign, Labor detailed a range of proposed

welfare and tax assistance measures for families under its 'Working Families' policy. This included a commitment to extend the statutory unpaid maternity leave entitlement by a further 12 months for a total of 24 months, but the policy made no promises about revisiting the issue of paid maternity leave. According to one government advisor, paid parental leave was effectively 'dead in the water' in the lead-up to the 2007 election (Broomhill & Sharp, 2012, p. 5).

### **Testing and building public support**

Despite not having perceived any electoral advantage in campaigning on the issue in 2007, once in government, Labor decided to test public support for paid maternity leave by referring the matter to the Productivity Commission in 2008. Decisions to refer issues to the Productivity Commission are discussed and taken within cabinet, and due to the convention of cabinet confidentiality, the public often cannot know which members of cabinet were the major drivers behind a referral. According to government advisor Ann Summers, Deputy Prime Minister Julia Gillard was largely responsible for the decision to refer paid maternity leave to the Productivity Commission (Broomhill & Sharp, 2012, p.5). In 2010, however, the media reported leaks from the Labor Party that suggested Gillard had actually opposed paid maternity leave during cabinet discussions, allegedly due to concerns that it would alienate older voters and stay-at-home mothers (Leslie, 2010). Whoever was most responsible for persuading cabinet to refer the matter to the Productivity Commission, ensured that paid maternity leave received unprecedented attention as the issues were debated in the public arena.

Under its terms of reference for the public inquiry, the Commission was asked to identify the economic, social and productivity costs and benefits of providing paid maternity, paternity and parental leave (PPL), and to explore the implications of different models

for providing PPL for families, for the government budget and for business. The inquiry received 416 formal submissions from organisations and individuals, and held 16 public hearings, spread across all capital cities over a period of six months. Many more informal submissions were received in the form of emails from individual citizens. Notwithstanding some concerns expressed by business groups, the testimony received by the Commission was overwhelmingly in favour of introducing a PPL scheme, and media reportage helped to generate a groundswell of support that suggested it was a policy whose time had come.

The Commission's final report, delivered to the government in early 2009, noted that women's high level of participation in the workforce had meant the issue of paid parental leave could no longer be ignored. Of women who gave birth in 2007, 62.5 per cent were employed, with around 80 per cent of those women intending to return to work. Only around half of Australian women already had access to paid maternity leave (Productivity Commission, 2009, XV).

The Commission's headline recommendation was that the government should introduce a taxpayer-funded paid parental leave scheme to provide 18 weeks of paid post-natal leave, sharable between both parents. It also advocated a separate allocation of two weeks of paid paternity leave for fathers. The report proposed payments be equivalent to the federal minimum wage, and subject to taxation. All workers, including casual employees and contractors, were to be included in the scheme, as long as they had been participating in the workforce for at least 10 of the 13 months prior to the arrival of the baby.

The Commission argued that such a scheme would have substantial benefits for newborn babies, who would enjoy significantly longer periods of parental care during their first months of life. It also predicted that the scheme would help to

negate existing incentives provided through welfare and taxation policies that encouraged mothers to leave the workforce. Encouraging working mothers to maintain a connection with the workforce after childbirth would have benefits for women, employers and the economy as a whole. Finally, paying parents while taking care of newborn babies would promote acceptance of the idea that taking time out of the workforce to care for infants was a 'normal' and important thing to do. The Productivity Commission argued that this would increase the value society placed on children and child-rearing, with widespread flow-on benefits for society (Productivity Commission, XIV). The Productivity Commission's detailed costing analysis revealed that while the proposed model would cost around \$1.3 billion to implement, the actual cost to taxpayers would be less than one quarter of that (\$310 million) due to savings on the payments of a range of other family benefits.

### **The government's response**

The government chose Mother's Day 2009 to release the final report and its response: a firm commitment to implement a new Paid Parental Leave (PPL) scheme, commencing in 2011. Its scheme closely resembled the model proposed by the Productivity Commission, providing 18 weeks of paid parental leave, sharable between both parents, at a level equivalent to the minimum wage. Eligibility was restricted to parents whose annual incomes were less than \$150,000. The government did not initially adopt the Productivity Commission's recommendation of an additional two weeks of paid paternity leave, but this was added to the scheme in 2012 (Broomhill & Sharp, 2012, p. 8).

The change in the political landscape around PPL following the Productivity Commission inquiry, and the government's response, demanded that the opposition also review its PPL policy stance. From

2010, the Coalition had a new leader, Tony Abbott, who not only endorsed PPL but also developed an alternative, and far more generous, model. The Coalition's version of PPL would provide working mothers with a full replacement wage up to a maximum of \$150,000, and extend the period of paid leave from 18 weeks (under Labor) to 26 – a full six months. Another important difference was that the scheme was to be funded not by taxpayers, but by a levy on big business.

Since the Coalition announced its alternative scheme, intense public debate has continued over the relative merits and weaknesses of both schemes. Critics of the Coalition's scheme have argued that it is an inappropriate use of resources to provide a full replacement salary for high-income earners. The Coalition leader, however, has argued that a replacement salary is justified because household budgets are geared to the incomes of both parents and the loss of one of those incomes to care for a newborn baby places a level of stress on household finances that payments at the level of the minimum wage do not address. If households could not access a replacement wage for the mother's salary, the Coalition reasoned that

many mothers would simply continue to work and spend less time with their infant children.

Regardless of the validity of arguments used by both sides of politics to justify their respective policies, the most significant development was that after a long struggle, Australian women were now assured of having access to paid maternity leave, regardless of which political party was in government. Furthermore, there was now a choice between two schemes. While the weight of public opinion might eventually have forced one party or another to recognise an opportunity for electoral advantage by proposing to introduce PPL, the evidence collected and presented by the Productivity Commission's public inquiry provided the government with powerful ammunition to counter perennial arguments against the use of taxpayers' money to fund PPL. Whilst the Productivity Commission might have had a profound effect in increasing public support for PPL, or persuading the government that such support existed, the case also underlines again that the Commission's ability to influence policy remains contingent on the government's preparedness to make referrals.

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