CONTENTS

1 INTRODUCTION ............................................ Page 1

2 PROGRESS REPORT ....................................... Page 2
   2.1 PROMOTING FAIRNESS AND IMPROVING ACCESS .................... Page 2
   2.2 EFFICIENCY AND INNOVATION ................ Page 4
   2.3 INCREASING ACCOUNTABILITY ................. Page 7
   2.4 PRODUCTIVITY AND ENGAGING WITH INDUSTRY .................. Page 8

3 ENGAGEMENT STRATEGY .............................. Page 9

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In October 2012 the Commission launched *Future Directions*, a set of initiatives aimed at improving the performance and quality of the services provided by the Commission. The 25 initiatives in *Future Directions* are grouped under the following themes:

- Promoting Fairness and Improving Access;
- Efficiency and Innovation;
- Increasing Accountability; and
- Productivity and Engaging with Industry.

We intend to implement all 25 initiatives by the end of October this year.

Like any justice institution the Commission is accountable to the community it serves. As part of that accountability we are committed to providing regular reports on our progress in implementing *Future Directions*.

Throughout this report ✔ indicates that the initiative has been implemented and ● means that progress has been made in relation to that initiative. To date we have successfully implemented 14 initiatives and made progress in the implementation of the remaining 11 initiatives.

This progress report also provides some further information about the implementation of the Commission’s broad based engagement strategy.

The implementation of *Future Directions* initiatives is a collective effort. It requires the commitment and support of Members, staff and our key stakeholders.

I would like to thank everyone for their hard work, commitment, feedback and advice during the first six months of this project.

Justice Iain Ross AO
President
2. PROGRESS REPORT

2.1 PROMOTING FAIRNESS AND IMPROVING ACCESS

Access to justice is a fundamental human right. Tribunals have an obligation to provide the community with access to a fair hearing.

The information and assistance provided by the Commission to parties, particularly self-represented parties is an important part of providing access to justice.

For those unfamiliar with the Commission’s processes and how a hearing is conducted, the experience can be daunting. The information and assistance provided by the Commission can be a significant benefit to such parties.

In the past six months we have improved the information we provide in relation to unfair dismissal applications to assist self-represented employees and employers.

We have also made our decisions more accessible to the public by publishing summaries of significant decisions on our website. Decision summaries will be issued in matters which deal with important issues of principle or which have generated significant public interest.

Access to justice can also be enhanced by facilitating access to pro bono legal services. The provision of appropriate and timely legal advice can assist a party in the presentation of their case to the Commission and can also promote efficiency by focussing the proceedings on the real issues in dispute. In some instances the provision of timely legal advice may lead a party to discontinue an application because there is another, more appropriate, avenue to redress their grievance.

The Commission is supporting a pilot program in Western Australia to assist self-represented applicants who lodge a general protections application.

Of the 30 self-represented applicants who have received assistance, eight have discontinued their application and 16 have submitted amended applications.

We will evaluate the WA pilot in the middle of the year and if successful the model will be extended to other States.

We have also commenced engaging with the providers of pro bono legal services to extend the availability of legal advice to self-represented parties. We expect to launch a pilot pro bono scheme in May 2013. This pilot will provide access to pro bono legal assistance to self-represented parties in unfair dismissal jurisdictional hearings before the Commission in Melbourne.

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<th>INITIATIVE</th>
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<tr>
<td>1. Introduce a new ‘Fair Hearing’ Practice Note setting out the obligations of Members, parties and their representatives in relation to the provision of a fair hearing.</td>
<td>●</td>
<td>In the final stages of development. To be finalised by the end of May 2013.</td>
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<td>2. Provide better information in relation to unfair dismissal applications to assist self-represented applicants and respondent employers. Information will be made available in a variety of forms including booklets and multi-media.</td>
<td>✔</td>
<td>New information materials produced to assist parties in understanding the unfair dismissal process. A simple eligibility test for possible unfair dismissal applicants is available on the Commission’s website.</td>
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### INITIATIVE

3. Produce a ‘virtual tour’ of the Commission to be included on our website.  
   - **Work has commenced on the development of a ‘virtual tour’ which aims to improve accessibility to the Commission for first-time users.**

4. Provide better information in relation to general protections applications to assist self-represented parties (both applicants and employers).  
   - **New information materials will be available on the Commission’s website from the end of April 2013 to assist parties in understanding the General Protections process. Ongoing review and update of materials will occur following client feedback.**

5. Make the Commission’s Unfair Dismissal Bench book available online so that parties can access relevant decisions to assist them in presenting their case to the Commission.  
   - **The Unfair Dismissal Bench book will be available online by the end of May 2013.**

6. Develop further Bench books and make them available online.  
   - **Agreements Bench book is currently under development and work will commence on a General Protections Bench book later in 2013.**

7. Review all our current forms with a view to reducing their number and improving accessibility.  
   - **The Commission is reviewing all current forms and streamlining the process for form changes in future.**

8. Support a pilot program for the provision of independent legal advice to self-represented applicants in general protections matters.  
   - **A pilot program for the provision of legal advice to self-represented applicants in general protections matters commenced in Western Australia in July 2012 and will be reviewed by the end of May 2013.**

9. Engage with providers of pro bono legal services to extend the availability of legal advice to self-represented parties.  
   - **Engagement with the providers of pro bono legal services has commenced. Pilot pro bono scheme to be launched in May 2013.**

10. Substantially upgrade our website and expand the information made available on it.  
    - **Work has commenced on upgrading the Commission’s website and initiatives are being taken to support the current website during this upgrade process.**
2.2 EFFICIENCY AND INNOVATION

EFFICIENCY

An efficient dispute resolution service resolves disputes in a timely and appropriate way that minimises the costs incurred by the parties.

The Commission has a proven track record of dealing with applications relating to industrial action in a timely way. But there is scope for improvement in some other areas of the Commission’s work.

On 1 July 2012 the Commission introduced timeliness benchmarks for the delivery of reserved decisions and in relation to the time taken to determine applications for the approval of agreements.

The reserved decisions benchmark provides that 90% of all reserved decisions are to be handed down within eight weeks of the last hearing day (or receipt of the last written submission). All reserved decisions are to be handed down within 12 weeks.

In terms of applications to approve agreements there are three key benchmarks:

- 50% of all applications are to be finalised within three weeks
- 90% of all applications are to be finalised within eight weeks, and
- 100% of all applications are to be finalised within 12 weeks.

Panel heads are responsible for the timeliness performance of the members in their panel.

The introduction of the timeliness benchmarks has seen a significant improvement in the Commission’s performance in these key areas.

As shown in Chart 1, in the period 1 July 2012 to 28 February 2013, 89.7% of all reserved decisions were handed down within eight weeks benchmark. Since the introduction of the benchmark, 96.6% of all reserved decisions have been handed down within the 12 weeks benchmark. In 2011–12 only 86% of reserved decisions were handed down within 12 weeks after the final day of hearing or the last day of written submissions.

There has been a similar improvement in the time taken to deal with applications for the approval of agreements, as illustrated in Chart 2. In the period 1 July 2012 to 28 February 2013, 64.4% of all such applications were determined within three weeks of lodgement, as against the performance benchmark of 50%. This can be compared with the 12 months ending 30 June 2012 during which only 58% of agreement approval applications were dealt with within three weeks of lodgement.

The timeliness benchmarks are intended to be challenging, to that extent they are aspirational. We expect that there will be

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<th>CHART 1: TIMELINESS BENCHMARKS FOR RESERVED DECISIONS</th>
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<tr>
<td>Benchmark: 90% of all reserved decisions to be delivered within 8 weeks</td>
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<tr>
<td>Achieved: 89.7% delivered in 8 weeks</td>
</tr>
<tr>
<td>Benchmark: 100% of all reserved decisions to be delivered within 12 weeks</td>
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<td>Achieved: 96.6% delivered in 12 weeks</td>
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<th>CHART 2: TIME TAKEN TO FINALISE AGREEMENT APPLICATIONS</th>
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<tr>
<td>Benchmark: 50% of all applications to be finalised within 3 weeks</td>
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<tr>
<td>Achieved: 64.4% finalised</td>
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<tr>
<td>Benchmark: 90% of all applications to be finalised within 8 weeks</td>
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<tr>
<td>Achieved: 95.6% finalised</td>
</tr>
<tr>
<td>Benchmark: 100% of all applications to be finalised within 12 weeks</td>
</tr>
<tr>
<td>Achieved: 99.1% finalised</td>
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The Commission should provide an efficient dispute resolution service in that the Commission is affordable and resolves disputes in an appropriate and timely way.

individual instances where the Commission does not meet its own high standards, for a variety of reasons. But the setting of performance benchmarks and then publicly reporting the Commission’s performance are important accountability measures.

Efficiency is also about reducing transaction costs for parties. We can keep transaction costs down by minimising the number of times that parties are required to attend the Commission in respect of a particular matter. At present a number of hearings and conferences have to be rescheduled due to non-attendance by a party. To improve party attendance we will be trialling a system of SMS alerts to remind parties of the need to attend a conference or hearing. The trial will commence at the end of March.

INNOVATION

Even successful institutions have a tendency to decline unless they continue to innovate. By piloting new ideas, evaluating the results and implementing what works we will improve our performance and position the Commission as a leader in judicial innovation.

A NEW REGIONAL FOCUS

Section 581(b) of the Fair Work Act 2009 (Cth) (the Act) provides that the President is responsible for ensuring that the Commission performs its functions and exercises its powers in a manner that adequately serves the needs of employers and employees throughout Australia. It is important that the Commission not become too Melbourne and Sydney-centric, to the detriment of other States and regional Australia.

We have commenced a regional allocation pilot in South Australia. The pilot covers applications to approve agreements (and related matters), unfair dismissals and applications about general protections. The objective of the pilot is to deliver a better service to employers and employees in South Australia. The initial results are encouraging and the pilot has received strong support from local stakeholders.

IMPROVING CONCILIATION OUTCOMES

In 2011–12 the Commission received 14,027 unfair dismissal applications. All applications are initially referred to a voluntary conciliation conference before a Commission conciliator, unless one or both parties decline to participate. The usual practice is for conciliation to be conducted by telephone. One of the aims of telephone conciliation is to minimise the inconvenience to the parties involved. The Commission conducted 11,188 unfair dismissal conciliations in 2011–12, and successfully resolved 9064, a settlement rate of 81 per cent.

However settlement rates do not necessarily reflect the level of party satisfaction with the conciliation process. Did the participants think the process was fair?

We want to ensure that all our conciliators are in the top right hand quadrant of the chart below (i.e. high levels of party satisfaction and a high settlement rate).

In 2010, the Commission published a research report in relation to the unfair dismissal process. The research project surveyed the experiences of applicants, respondents and their representatives with the unfair dismissal application and conciliation processes. The overall satisfaction with the administration of the unfair dismissal system was high and the survey participants expressed satisfaction with the conciliators.

The information from the 2010 research report is now a little dated and so in February 2013 the Commission launched an unfair dismissal feedback form to obtain feedback from parties involved in the telephone conciliation process.

**CHART 3: HIGH PERFORMANCE CONCILIATORS**

(HIGH PARTY SATISFACTION) (HIGH SETTLEMENT RATE)

LOW

PARTY SATISFACTION

HIGH

SETTLEMENT RATE
This Initiative will assist the Commission to make the conciliation process more accessible and to ensure that it remains an effective and fair means of resolving unfair dismissal disputes.

Another aspect of improving outcomes concerns how we deal with self-represented parties in unfair dismissal conciliations. We have recently trialled a three day cooling off period in these matters. The cooling off period is intended to provide an opportunity for self-represented parties to seek advice and discuss a proposed settlement with friends and family. This pilot was evaluated by RMIT and the evaluation report is available on the Commission’s website.

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| 11. Introduce timeliness benchmarks for reserved decisions. | ✔ | In July 2012 the Commission introduced the following benchmarks for reserved decisions:  
- 90% of all reserved decisions are to be delivered within 8 weeks  
- 100% of all reserved decisions are to be delivered within 12 weeks. |
| 12. Introduce timeliness benchmarks for the finalisation of applications to approve agreements. | ✔ | In July 2012 the Commission introduced the following benchmarks for agreement approvals:  
- 50% of all applications to be finalised within 3 weeks  
- 90% of all applications to be finalised within 8 weeks  
- 100% of all applications to be finalised within 12 weeks  
Over the first six months the Commission consistently met the 50% and 90% benchmarks. |
| 13. Enable all applications to be made online, via the Commission’s website. | ● | A development plan is being scoped. |
| 14. Develop an application for smartphones to provide access to daily hearing list information. | ● | An application has been developed and is currently undergoing extensive usability testing. |
| 15. Trial SMS alerts for hearings and conferences, where required. | ✔ | Trial to begin by end of March 2013. Will be reviewed after six months. |
| 16. Pilot the regional allocation of some types of applications to improve service delivery. | ✔ | Trial in South Australia commenced October 2012. To be reviewed in October 2013. |
| 17. Upgrade the Commission’s video conferencing facilities. | ● | Video conferencing facilities have been upgraded in Adelaide. All other offices are being progressively upgraded. |
| 18. Promote consistency by introducing a new practice note incorporating standard directions for appeals. | ✔ | Following consultation with Members and the Legal Profession Reference Group, a draft Appeals Practice Note has been published on the Commission’s website. The new practice note will commence on 15 April 2013. |
2.3 INCREASING ACCOUNTABILITY

Public trust and confidence are central to the Commission’s effectiveness. The Commission serves the community through the provision of an accessible, fair and efficient dispute resolution service. In delivering that service, we are accountable to the community. Commission Members are subject to a range of accountability measures:

- Hearings are generally held in public.
- Members are bound to provide parties with a fair hearing.
- Reasons for decisions must be given and published.
- Decisions are subject to appellate review.

As a result of amendments introduced by the *Fair Work Amendment Act 2012* (Cth), s581B of the Act now provides that after consulting the other Members the President may determine a Code of Conduct for Members.

The Commission has introduced a Member Code of Conduct. The Code does not purport to lay down a prescriptive set of rules to govern Member behaviour. The primary responsibility for deciding whether or not a particular activity or course of conduct is appropriate rests with the individual Member.

The Code sets out three main objectives:

- to uphold public confidence in the Commission and in the administration of justice
- to enhance public respect for the Commission, and
- to protect the reputation of individual Members and of the Commission as a whole.

Any course of conduct that has the potential to put these objectives at risk must be carefully considered and, as far as possible, avoided.

A copy of the Code is available on the Commission’s website.

We have also improved the extent of the information we provide to the community about the work of the Commission. We regularly report on the extent to which we are meeting performance benchmarks in relation to the timely delivery of reserved decisions and the time taken to deal with applications to approve agreements.

We now also provide information about unfair dismissal outcomes on our website.

Two user groups have also been established to facilitate an exchange of views with those who regularly appear before the Commission.

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<tr>
<td>20. Provide more information about the work of the Commission on the website.</td>
<td>✔</td>
<td>Information on unfair dismissal outcomes at conciliation and arbitration now published on the Commission’s website. Further information and reports will be made available on a regular basis.</td>
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<tr>
<td>22. Establish ‘user groups’ to facilitate an exchange of views.</td>
<td>✔</td>
<td>Legal Profession Reference Group established. Termination of Employment Panel User Group established. Both groups meet on a regular basis.</td>
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2.4 PRODUCTIVITY AND ENGAGING WITH INDUSTRY

Our productivity performance as a nation underpins our standard of living. As the Secretary to the Treasury, Martin Parkinson, has observed:

“...in the long run productivity growth—producing more from the same inputs—is the only sustainable way for future generations to enjoy higher living standards.”

The 2012 Review of the Fair Work Act gave consideration to what could be done to encourage more productive workplaces and concluded that there was scope to increase the emphasis on the encouragement of productivity in the operation of the institutions created by the Act—including by the Commission.

We intend to respond positively to the Review Panel’s recommendation.

One of the initiatives suggested by the Review Panel was ‘identifying best practice productivity enhancing provisions in agreements and making them more widely known to employers and unions’.

In response to this suggestion we have introduced the capacity to electronically search the content of collective agreements approved by the Commission.

The Commission is also committed to the development of a workplace engagement strategy in consultation with the major peak employer and union bodies. Consistent with the Review Panel’s recommendation the object of the Commission’s engagement strategy will be to encourage more productive workplaces by promoting harmonious and cooperative workplace relations. The development of a more cooperative workplace culture that facilitates change and fosters innovation will be at the heart of the Commission’s engagement strategy.

The engagement strategy will include the facilitation of discussions at an industry and enterprise level to highlight the challenges and opportunities facing each sector of our economy. Such discussions, should lead to a deeper understanding of our current productivity performance and the drivers for future growth.

In October 2012 the Commission hosted a conference, Addressing the Future, with the involvement and support of ACCI, the ACTU and the Ai Group. Some 70 key stakeholders attended the conference and were addressed by Dr David Gruen, Dr Ken Henry AC and Professor Roy Green.

Many factors impact on productivity and competitiveness, including the skills of our workforce, infrastructure, taxation, the general regulatory framework, workforce participation, and the capacity for enterprises to successfully innovate. Our engagement strategy can assist the industrial parties to find common ground in at least some of these areas.

The Commission is also committed to working with other organisations, in particular the Fair Work Ombudsman and the Fair Work Building Industry Inspectorate, to minimise the potential for duplication of effort in giving effect to the Review Panel’s recommendation. In October 2012, the Fair Work Commission entered into a Memorandum of Understanding with the Fair Work Ombudsman and Fair Work Building and Construction to formalise the commitment of each organisation to work together.

Such cooperation is directed at ensuring that available resources are used effectively so that the efforts of each organisation can be most effectively targeted.

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<tr>
<td>23. Introduce the capacity to search the content of collective agreements approved by the Commission through the FWC website, by the end of 2012.</td>
<td>✔</td>
<td>Search tool launched December 2012. The new tool responds to the Fair Work Act Review Panel’s suggestion that best practice productivity enhancing provisions in agreements be more readily identifiable and made more widely known to employers and unions.</td>
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<tr>
<td>24. Develop a broad engagement strategy, in consultation with the major peak employer and union bodies.</td>
<td>●</td>
<td>A Commission-sponsored conference was held in October 2012 with key industry stakeholders including ACCI, the ACTU and the AiG. The Commission’s broad engagement strategy is addressed later in this publication.</td>
</tr>
<tr>
<td>25. Work cooperatively with other organisations to minimise the potential for duplication of effort in implementing the Commission’s engagement strategy.</td>
<td>✔</td>
<td>The Fair Work Commission signed an MOU with the Fair Work Ombudsman and Fair Work Building and Construction in October 2012, formalising their commitment to work together on the issue of productivity in Australian workplaces.</td>
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3. ENGAGEMENT STRATEGY

One of the key objectives of the Fair Work Commission’s Future Directions strategy is to engage with the community we serve through programs with the public, stakeholders and research groups.

The Commission’s engagement strategy comprises a number of elements, including:

- **Public engagement**—explaining who we are and what we do to the community we serve, supporting access to justice
- **Stakeholder engagement**—working with peak organisations to highlight the challenges and opportunities facing our economy.
- **Workplace engagement**—supporting harmonious industrial relations at the workplace level
- **Research community**—supporting and promoting research, in particular relating to improving labour productivity, and
- **International engagement**—sharing experiences to support best practice and encourage innovative processes.

**PUBLIC ENGAGEMENT**

Section 576(2)(b) provides that one of the Commission’s functions is to provide assistance and advice about its functions and activities.

Explaining who we are and what we do is an essential part of facilitating access to justice.

As part of Future Directions, we are improving our engagement with the public, particularly in relation to unrepresented parties.

Our public engagement strategy includes the following initiatives:

- **FACTS SHEETS**
  - The Commission publishes a range of fact sheets and guides to explain its role and to provide information to applicants and respondents.
  - Approximately 30 fact sheets and guides are available on the Commission’s website.
  - All fact sheets and guides are being reviewed as part of Future Directions.

- **VIRTUAL TOUR**
  - The Commission is developing a virtual tour to be launched in October 2013.
  - The tour will familiarise parties with the Commission’s environment and procedures, to demystify the experience before attending the Commission.

- **INFORMATION SESSIONS**
  - The Commission offers briefings and information sessions to interested groups upon request. Such groups include school students and workplace relations professionals.

- **FEEDBACK**
  - The Commission has introduced a pilot Unfair Dismissals Feedback form, which is sent to parties following the telephone conciliation process.
  - Users of the Commission’s services are encouraged to provide feedback via the website to the President on our Future Directions, as well as suggestions for future initiatives.
STAKEHOLDER ENGAGEMENT

The Commission has established user groups to facilitate an exchange of views and provide a two-way communication forum between the Commission and key stakeholders. These groups include:

• Legal Profession Reference Group
• Employment Termination User Group

WORKPLACE ENGAGEMENT

The Commission’s workplace engagement strategy will be developed over the next 6 months, in consultation with the major peak employer and union bodies. The workplace engagement strategy will include the facilitation of discussions at an industry and enterprise level to highlight the challenges and opportunities facing each sector of our economy. Such discussions should lead to a deeper understanding of the drivers of future productivity growth.

The pace and extent of industry engagement will vary from sector to sector and will depend on the level of interest and support of the industrial parties.

A number of Commission Members and staff will be participating in a pilot workplace engagement project. We will announce the members of the pilot project team shortly.

Those members will be available, at the joint request of the employer and union industrial parties, to facilitate broad ranging industry and enterprise level discussions.

ACCI, the Ai Group and the ACTU have committed to working collaboratively with the Commission in a consultative forum that will oversee the Commission’s workplace engagement strategy.

RESEARCH COMMUNITY

The Commission is engaging with the research community in two main ways:

1. Co-sponsoring a series of lectures by prominent researchers to facilitate a discussion about workplace relations issues.

An initial lecture series has been developed with the University of Melbourne. There will be four lectures throughout 2013.

The first lecture was delivered by Dr Brigid Van Wanrooy in February entitled “The 2011 Workplace Employment Relations Study—First findings and implications for Australia”. Some 170 people attended.

The second lecture to be delivered on 24 May, features Newcastle University’s Professor Mark Bray presenting on “The ambiguities of workplace cooperation: Bargaining engagement versus consultative management”.

Following the success of this initial lecture series we plan to sponsor similar events in other capital cities.

2. Supporting research initiatives such as the University of Newcastle’s proposed project “Improving Labour Productivity through Cooperative Workplace Relations: A proactive role of industrial tribunals in Australia”.

The research team is seeking Australian Research Council funding to support the two-year project which will investigate the effectiveness of Australian tribunals in developing cooperative workplace relationships.
INTERNATIONAL ENGAGEMENT

The Commission has historically participated in engagement with similar bodies in North America, the United Kingdom and, in particular, in the Asia-Pacific region. Such engagement provides valuable two-way communication to assist the Commission to innovate and improve efficiency and introduce best practice procedures.

The Commission has taken a structured, professional approach to international engagement including the establishment of an International Development Committee comprised of Members and staff. Some of the Commission’s international engagement activities include:

- a proposed Memorandum Of Understanding with the Supreme Court of Indonesia
- a visit from a delegation from Ministry of Manpower, Singapore (27 Feb to 1 March 2013)
- a delegation from the Guandong Human Resource and Social Security Bureau, China (11 March 2013).

Our international engagement initiatives are supported by external funding from AusAid and the International Labour Organization.