GOVERNMENT ADVISORY SERVICES

Fair Work Commission
Opportunities for process and governance improvements

Final Report

16 April 2015
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**Inherent Limitations**

This report has been prepared as outlined in the Project Scope Section. The services provided in connection with this engagement comprise an advisory engagement which is not subject to Australian Auditing Standards or Australian Standards on Review or Assurance Engagements, and consequently no opinions or conclusions intended to convey assurance have been expressed.

The findings in this report are based on a qualitative study and quantitative analysis, and the opportunities identified reflect a perception of the Fair Work Commission but only to the extent of the sample surveyed, being Fair Work Commission’s approved representative sample of internal and external stakeholders. Any projection to the wider group of internal and external stakeholders is subject to the level of bias in the method of sample selection.

No warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by Fair Work Commission personnel and stakeholders consulted as part of the process.

KPMG has indicated within this report the sources of the information provided. We have not sought to independently verify those sources unless otherwise noted within the report.

KPMG is under no obligation in any circumstance to update this report, in either oral or written form, for events occurring after the report has been issued in final form.

The findings in this report have been formed on the above basis.

**Third Party Reliance**

This report is solely for the purpose set out in the Project Scope Section and for the Fair Work Commission’s information, and is not to be used for any other purpose or distributed to any other party without KPMG’s prior written consent.

This report has been prepared at the request of the Fair Work Commission in accordance with the terms of KPMG’s contract dated 27 August 2014. Other than our responsibility to the Fair Work Commission, neither KPMG nor any member or employee of KPMG undertakes responsibility arising in any way from reliance placed by a third party on this report. Any reliance placed is that party’s sole responsibility.
Executive summary

Overview of the Fair Work Commission

The Fair Work Commission (FWC; ‘the Commission’) encourages fair and productive workplaces in its role as Australia’s national workplace relations tribunal. It plays a key role in the lives of Australians by setting minimum wage and award safety net provisions, dealing with workplace bargaining and disputation, and dealing with individual matters such as unfair dismissal and anti-bullying applications. The Commission has the power to conciliate, determine, settle and, in some cases, arbitrate workplace relations matters.

The Commission’s key objectives and functions are established by the Fair Work Act 2009 (Cth). The Act provides that the Commission must perform its functions and exercise its powers in a manner that:

(a) is fair and just; and

(b) is quick, informal and avoids unnecessary technicalities; and

(c) is open and transparent; and

(d) promotes harmonious and cooperative workplace relations.1

The Commission has stated it seeks to perform its functions and enhance its public value through a focus on four key objectives:

• promoting fairness and improving access;
• encouraging efficiency and innovation;
• increasing accountability; and
• improving productivity and engaging with industry.2

The tribunal arm of the Commission consists of the President (Justice Iain Ross AO, also a judge of the Federal Court of Australia), and other Members with the titles of Vice President, Senior Deputy President, Deputy President, Commissioner and Expert Panel Member.3 They are supported by the administrative arm of the Commission led by the General Manager, a statutory appointee.4

Members of the Commission are selected from diverse backgrounds and experiences, such as the employment and workplace relations sector, public service, law firms, industry and unions. Members are appointed by the Governor-General on recommendation of the Minister for Employment.5 The President, Vice Presidents, Senior Deputy Presidents, Deputy Presidents and Commissioners are provided tenure, with a compulsory retirement age of 65. Expert Panel Members are appointed for a maximum period of five years.6

The President of the Commission is responsible for ensuring the Commission performs its functions and exercises its powers in a manner which is efficient and adequately services the needs of employers and employees throughout Australia.7 The General Manager assists the President in carrying out this role. As of 30 June 2014, the Commission employed 305 administrative staff8 under the Public Service Act 1999 (Cth), including Associates and conciliators. These staff are led by an Executive team comprised of the General Manager and the Directors of the four administrative branches: Client Services, Corporate Services, Tribunal Services and Regulatory Compliance.

The Commission’s operating environment has changed significantly in recent years, following on from the commencement of the Fair Work Act 2009 (Cth). The key change has been an increase in the proportion of the Commission’s work in relation to individual matters (as distinct from the collective matters which have historically characterised the Commission’s sphere of operation).9 Other factors include:

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1 Fair Work Act 2009 (Cth) s 577.
4 Fair Work Act 2009 (Cth) s 657.
5 Fair Work Act 2009 (Cth) s 626.
6 Fair Work Act 2009 (Cth) s 629.
7 Fair Work Act 2009 (Cth) s 581.
the expansion of the Commission’s jurisdiction to Australia’s national workplace relations system, which covers the majority of Australians;\(^\text{10}\)

changing legislative remit, such as the introduction of unfair dismissal laws, as well as later amendments introducing the anti-bullying jurisdiction;

changing scope of power, including amendments granting FWC the power to arbitrate when consent is granted by both parties; and

the award modernisation process.\(^\text{11}\)

New unfair dismissal laws and new causes of action have added to the changing environment, and significantly increased the Commission’s jurisdiction.

Recognising the changing nature of the Commission’s work and parties appearing before it, the Commission has undertaken a number of significant projects and reform initiatives internally over the last two years in order to reform its governance and improve its efficiency. In order to continue its response to the changing environment, the Commission has sought an independent, comparative review of its governance and processes to identify opportunities, to improve its accountability and efficiency.

**Project scope and approach**

KPMG was engaged by FWC to consider opportunities for improvement across FWC’s governance, accountability, efficiency, and performance measures in order to align the Commission with international best practice for courts and tribunals. The purpose of this engagement was to identify future opportunities for the Commission’s governance and processes to improve accountability and efficiency.

This paper is comparative in nature. Opportunities to improve governance and accountability, and administrative and organisational efficiency, were developed by drawing on information and analysis undertaken during all stages of the project.

The key inputs into the development of the opportunity areas included:

- the International Framework for Tribunal Excellence (IFTE) and International Framework for Court Excellence (IFCE);
- document and data review and KPMG analysis of the current state;
- consultations with selected FWC Members, Executives, external stakeholders and comparator jurisdictions; and
- desktop research and analysis of comparator jurisdiction initiatives and reforms.

Analysis of information from these inputs provided the evidence base from which opportunity areas, observations and opportunities were identified.

This paper has focused on four key opportunity areas across two themes, as outlined below:

**GOVERNANCE AND ACCOUNTABILITY**

1. **Member workload management and efficiency**

This opportunity area examines opportunities to improve the Commission’s performance by considering the current workload allocation model, performance measures and reporting arrangements to improve Member accountability and performance.

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\(^{10}\) This system was introduced on 1 July 2009 and includes the majority of Australians, but excludes employees in:
- The state public sector in WA, NSW, QLD, SA, or TAS;
- Local government in NSW, QLD, or SA; or
- A non-constitutional corporation in either local government or private industry in WA.

2. Leadership and culture

This opportunity area considers opportunities to strengthen leadership and accountability structures in order to support the proposed workload allocation models, and continue to foster a collegiate and collaborative culture at the Commission.

ORGANISATIONAL AND ADMINISTRATIVE EFFICIENCIES

3. ICT as an enabler

This opportunity area examines opportunities to use technology to realise greater efficiency for the Commission and external parties, improve quality of service provision, and increase transparency and accountability. Underpinning these opportunities is an understanding of the critical role that ICT plays in enabling improvements to workload allocation.

4. Organisational and administrative efficiencies

This opportunity area focuses on improving organisational effectiveness by aligning staff capabilities and roles to organisational requirements and improving the effectiveness and efficiency of activities undertaken. Consideration has also been given to reducing the cost of the Commission’s premises, while maintaining adequate access to justice.

Key detail and observations

GOVERNANCE AND ACCOUNTABILITY

In considering the Commission’s current governance and accountability arrangements, KPMG has focused on Member workload management and allocation models, performance measures and leadership structures. In the context of the Commission’s operating model, the effective operation of Member workload management and allocation is a critical factor in the performance of the Commission. Similarly, as outlined above, open and transparent reporting on performance and operations is a core objective of good governance. In addition, strong leadership and culture is viewed as a fundamental element underpinning the achievement of good public sector governance and has been considered as part of this opportunity area.

Member workload management and efficiency

The IFCE notes the importance of proactive and continual improvement of workload models to balance workloads across Judges and Members. Within the Commission, allocation of workload to Members is currently administered by one of two systems overseen by the President.

The two methods of workload allocation are through:

- industry and matter-based panels, which are used for collective matters, including agreements and disputes, industrial action, anti-bullying applications, matters relating to registered organisations and termination of employment matters; and
- the “off-the-clock” system, which uses a case management system (CMS) to automatically allocate all other matters such as unfair dismissals and general protections to Members in each state and territory on a roster basis through a National Panel Head.

Members receive work from the Panel Heads of all panels on which they sit, in addition to receiving matter allocations through the “off the clock” system on a rotational basis.

The Commission currently operates five industry panels, a major projects panel, two expert panels and three matter-based panels. Each of these panels is led by a Panel Head and is comprised of a select number of Members who hear matters arising under the relevant panel. There are currently nine Panel Heads across 11 panels, with Justice Iain Ross and Vice President Watson leading two panels each. A list of panels and Members on each panel is provided in Appendix 3.

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A small number of industries in the panel system generate a high proportion of total collective matters. Just over 11,000 collective matters were dealt with by the Commission in 2013-14. Of the 142 distinct industries, 10 industries generated 60 per cent of the total number of collective matters at the Commission, with the remaining 132 industries generating 40 per cent of the workload between them. Of these 10 industries, four fall into the manufacturing and building panel.

There is some indication from Members consulted that this structure may cause uneven workloads across industry panels. There is also some evidence from consultations that the dual allocation system may, on occasion, result in limited visibility of workload allocation. IFCE notes the importance of proactive and continual improvement of workload models to balance workloads across Judges and Members.

The system of industry panels is notionally a national system, with each industry panel comprised of Members located across Australia and matter allocation conducted by a national Industry Panel Head. Matters such as unfair dismissals and general protections are allocated to Members on a regional basis, with matters allocated either automatically from the case management system (“off the clock”), or manually from a spreadsheet administered by the Matter Panel Head.

There is some evidence which suggests that Members’ workloads may also vary across offices. For example, 30 per cent of Members are based in Sydney but only 26 per cent of hearings are conducted in Sydney; conversely, 10 per cent of Members are based in Brisbane but 15 per cent of hearings are conducted in Brisbane. However, this measure of Member workloads does not account for matter complexity or aspects of Members’ workloads that are additional to hearings.

There are also uneven workloads across offices. More than half of all matters lodged are lodged in either Melbourne (approximately 37 per cent) or Sydney (26 per cent). The Brisbane office also receives a relatively high number of lodgements, followed by Perth and Adelaide.

Comparator jurisdictions consulted used both regionally-based and national workload allocation models. Evidence from these jurisdictions suggests there is a trade-off between allocating matters on a regional and panel basis, which may help to retain industry and local specialisation, and allocating matters nationally, which may improve cost and time efficiencies.

Taking into account initiatives proposed by FWC internal projects, analysis of relevant publicly available information and stakeholder consultation, three options / models have been identified for FWC to consider in relation to matter allocation. An overview of each is provided below.

**Model 1: Regional allocation**
All matters are initially processed by Registry staff on a national basis, and then allocated manually to individual Members by Regional Leaders in each state and territory.

**Model 2: Hybrid allocation**
All matters are initially processed by Registry staff on a national basis, and then allocated manually to individual Members by a National Registry Allocations Leader.

**Model 3: National allocation**
All matters are initially processed by Registry staff on a national basis, and then allocated automatically via an electronic system to individual Members, overseen by a National Registry Allocations Leader.

These models range from a low to high degree of change, and from a regionally-based to centralised system of allocation. Each model, however, proposes the national distribution of processing matters in the registry team, rather than processing based on place of lodgement. This is consistent with the current direction of FWC reforms, under which the number of applications processed in locations other than their place of lodgement is increasing.

**Opportunity 1** – Consider implementation of an alternative workload allocation system with transparency regarding Member workload and performance, and an accountability framework for workload and performance.

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Good governance also requires robust performance measures and reporting. In this respect, FWC currently reports on its performance externally against the key performance indicators (KPIs) listed in the Portfolio Budget Statement. These include timeliness benchmarks for reserved decisions, agreement approvals and appeals matters, as well as time taken to finalise unfair dismissals and time taken to list industrial action applications. The Commission is also developing a performance monitoring framework (see further in Appendix 5). Internally, FWC tracks individual Member performance.

External frameworks, such as the IFCE and IFTE, are being used in some comparator jurisdictions consulted to establish performance frameworks. Use of these frameworks assists courts and tribunals to align performance measures and evaluation with international practice. As with the current practice in the Commission, many of the courts and tribunals consulted are increasingly using performance monitoring dashboards, shared among all Judges or Members, to track individual Judge or Member performance.

The Commission has already recognised the need for nuanced and comprehensive Member performance monitoring and reporting. The introduction of satisfaction surveys to measure quality has supplemented existing timeliness and volume measures.

Changes to the workload allocation model are likely to have an impact on the Commission’s current leadership structures and practices.

**Opportunity 2** – Investigate establishing detailed Member performance measures and improved performance monitoring to assist with increasing Member accountability and performance

**Leadership and culture**

The majority of comparator jurisdictions examined by KPMG have established a standing leadership group of Judges or Members to provide strategic advice and assistance to the Chief Judge or President of the court or tribunal. The size of leadership groups ranges from under 10 members, to up to 15 members. In some circumstances, leadership groups also include senior executives from the administrative or registry arms of the relevant court or tribunal.

There are different leadership models which exist across comparator jurisdictions examined. Responsibilities of leadership teams includes accountability for Member workload and performance, responsibility for coaching and mentoring and a leadership role in setting the strategic direction of the court or tribunal. Available evidence appears to suggest that most comparator jurisdictions consulted have well defined leadership and management structures, with clear roles and responsibilities.

**Opportunity 3** – Consider reviewing leadership structures to enable increased Member support and Member contribution to the strategic direction of the Commission

There is also some evidence from comparator jurisdictions consulted that facilitating Member and Judge-led change was effective in successfully implementing change initiatives. This is consistent with the IFTE, which suggests that tribunals should actively seek the views of Members in change processes.

A focus on culture and level of collaboration has been evident in consultations with most comparator jurisdictions. These include initiatives to improve Member-to-Member relationships, for example through peer support programs, and initiatives to improve knowledge transfer between Members.

**Opportunity 4** – Consider options to increase collaboration and communication across the Commission to foster a national culture

Issues, trends and observations identified by Commission Members through their day-to-day involvement in workplace relations issues contribute to the information and evidence available to inform decision-making and policy reform.

The Commission’s recently established user groups are considered favourably by external stakeholders consulted by KPMG. This is consistent with good practice identified by the IFTE, which provides that regular stakeholder and community engagement is important to ensure tribunals are accountable to, and trusted by, the public.

**Opportunity 5** – Consider promoting further open dialogue with external stakeholders regarding workplace relations issues, trends and observations to enhance the Commission’s external influence and to maintain its reputation and regard
ORGANISATIONAL AND ADMINISTRATIVE EFFICIENCIES

In supporting the Commission to maintain strong accountability to the community, consideration has been given to how the Commission can improve delivery of its core functions and enhance its public value. Public value, in the context of the Commission, relates to the provision of an efficient and effective dispute resolution service and affordable access to justice for all parties.\(^{17}\) The efficient implementation of a number of core initiatives, such as consideration of a national workload allocation model and improved access to justice for parties, relies on fit-for-purpose ICT solutions. Improving the efficiency of administrative and organisational operations, such as functions and performance of staff and use of premises, can also enhance the Commission’s public value.

**ICT as an enabler**

The Commission has introduced a number of technology reforms to move towards an efficient technology-based system for receiving, managing and allocating matters, including online lodgement. These have been received positively by external stakeholders and users of the Commission. The Commission’s approach is consistent with changes made by comparator jurisdictions consulted, all of which have implemented online lodgement systems.

All comparator jurisdictions consulted are investing in information technology projects, particularly electronic case management systems and electronic court files, as an enabler for the longer term transition to ‘paperless’ courts/tribunals. They are doing so to achieve accompanying efficiency gains and to improve online accessibility and flexibility.

The use of teleconferencing by the Commission has also allowed parties unable to travel into capital cities access to the Commission, as well as enabling more flexible resourcing for the Commission. Videoconferencing is able to provide the same benefits.

The Commission has also seen a significant increase in the number of self-represented parties and individual applicants in recent years. The Commission has already undertaken a significant amount of work to ensure its processes and support materials assist self-represented parties. Building on this work, there are opportunities to improve access to the Commission’s services for self-represented parties through the use of technology.

There are also opportunities to improve parties’ access to the Commission by partnering with other organisations and investing in technologies such as kiosks and videoconferencing.

Existing IT systems at FWC may not, however, be able to provide the support required for the Commission to achieve its future business and operational objectives. The IFCE notes that courts and tribunals should have adequate technology systems.

**Opportunity 6** – Consider upgrading current ICT systems and increasing the use of technology to support efficiency improvements, improve quality of service and increase accountability. The technology upgrade is a critical pre-condition for other reforms.

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involve conciliators in other Commission work, with merit in providing conciliators with more training opportunities to build their capability. This is consistent with the ICFE which encourages delegation of work to the appropriate level to manage judicial and Member workload.

**Opportunity 7 – Consider engaging conciliators with additional work to provide for career development opportunities and to optimise Member workload**

The Unfair Dismissal Case Management Team model has improved transparency and accountability of case management. Some external stakeholders consulted, however, noted that the centralisation of unfair dismissal case management has, in some cases, made the process less accessible for parties. There is an opportunity to further monitor the views of stakeholders about this model.

Associates can also assist to improve overall efficiency by releasing Member capacity for higher-value work. There has been relatively low turnover of Associates in the Commission’s recent history. A number of long-serving Associates perform administrative roles, rather than a broader role in assisting with legal issues, managing cases and drafting of decisions. Members are increasingly engaging legally-trained Associates to improve efficiency. All comparator jurisdictions employ legally-trained Associates on one to two year fixed term contracts.

There may also be opportunities to clarify the roles and responsibilities of Member Support staff, Associates and Relief Associates. Business rules could be established to define staff and Member role distinctions.

Workplace and Economic Research (WER) staff have important technical and research capabilities based on their specialist industrial relations, social research and economics skill set. Consideration could be given to devolving other, more general, activities performed by WER staff to staff such as the Member Support Team, Associates, or Relief Associates with more general skill sets.

**Opportunity 8 – Seek to increase use of Associates and other Member support staff to support Members in other ways, to improve efficiency and to release Member capacity for higher-value work**

**Opportunity 9 – Consider the extent of alignment of roles, staff capabilities and practices to the core functions of the Commission to ensure there is clarity regarding roles and responsibilities and that activities are undertaken in an effective, efficient and consistent manner**

In 2013-14, property costs comprised 20 per cent of the Commission’s total costs. To realise efficiencies in the cost of premises, the Commission has recently refurbished its Melbourne and Sydney offices in order to increase office density to match Commonwealth Government office density targets of 14 square metres per occupied work point.

There are opportunities to improve the level of utilisation of hearing rooms and chambers, particularly in locations with low workload volumes and fewer Members. Close scrutiny of such utilisation is aligned with initiatives undertaken in comparator jurisdictions such as the AAT and FCA. Furthermore, ICFE notes that courts and tribunals should have appropriate court facilities and office space.

**Opportunity 10 – Continue to increase office density and reduce costs to more efficiently use premises, while maintaining adequate access to justice and quality of service provision**

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### Summary of opportunities

The opportunities outlined below provide potential means by which FWC could improve both its governance and accountability mechanisms, and efficiencies across the administrative and tribunal arms of the Commission.

#### GOVERNANCE AND ACCOUNTABILITY

**Member workload management and efficiency**

| Opportunity 1 – Consider implementation of an alternative workload allocation system with transparency regarding Member workload and performance, and an accountability framework for workload and performance |
| Opportunity 2 – Investigate establishing detailed Member performance measures and improved performance monitoring to assist with increasing Member accountability and performance |

**Leadership and culture**

| Opportunity 3 – Consider reviewing leadership structures to enable increased Member support and Member contribution to the strategic direction of the Commission |
| Opportunity 4 – Consider options to increase collaboration and communication across the Commission to foster a national culture |
| Opportunity 5 – Consider promoting further open dialogue with external stakeholders regarding workplace relations issues, trends and observations to enhance the Commission’s external influence and to maintain its reputation and regard |

#### ORGANISATIONAL AND ADMINISTRATIVE EFFICIENCIES

**ICT as an enabler**

| Opportunity 6 – Consider upgrading current ICT systems and increasing the use of technology to support efficiency improvements, improve quality of service and increase accountability. The technology upgrade is a critical pre-condition for other reforms |

**Organisational and administrative efficiency**

| Opportunity 7 – Consider engaging conciliators with additional work to provide for career development opportunities and to optimise Member workload |
| Opportunity 8 – Seek to increase use of Associates and other Member support staff to support Members in other ways, to improve efficiency and to release Member capacity for higher-value work |
| Opportunity 9 – Consider the extent of alignment of roles, staff capabilities and practices to the core functions of the Commission to ensure there is clarity regarding roles and responsibilities and that activities are undertaken in an effective, efficient and consistent manner |
| Opportunity 10 – Continue to increase office density and reduce costs to more efficiently use premises while maintaining adequate access to justice and quality of service provision |

#### Implementation considerations

The opportunities presented in this report are for FWC’s consideration only. Should FWC choose to implement some or all of the opportunities identified, implementation of opportunities may be a significant undertaking. If opportunities are adopted, a detailed implementation plan should be prepared before any implementation activity commences. An implementation plan would identify key milestones, timelines, stakeholders, and governance and accountability arrangements, as well as monitoring and evaluation of implemented opportunities and initiatives.

The volume of initiatives outlined under each opportunity also presents an opportunity to sequence the implementation of opportunities, in order to focus on achieving each opportunity’s intended outcomes. The implementation plan could also identify any interdependencies across multiple initiatives.
1 Introduction

This section provides an overview of the project background, scope and project approach. It also contains an overview of the International Courts’ and Tribunals’ Excellence Framework.20 21

1.1 Project background

The Fair Work Commission (FWC; “the Commission”) has a legislative obligation to promote cooperative and productive workplaces in its role as Australia’s national workplace relations tribunal.22 The Commission’s operating environment has changed significantly in recent years, following on from the commencement of the Fair Work Act 2009 (Cth). The key change has been an increase in the proportion of the Commission’s work in relation to individual matters (as distinct from the collective matters that have historically characterised the Commission’s sphere of operation).23 Other factors include:

- the expansion of the Commission’s jurisdiction to Australia’s national workplace relations system, which covers the majority of Australians;24
- changing legislative remit such as the introduction of unfair dismissal laws, as well as later amendments introducing the anti-bullying jurisdiction;
- changing scope of power, including amendments granting FWC the power to arbitrate when consent is granted by both parties; and
- the ongoing award modernisation process.25

The award modernisation process, new unfair dismissal laws and new causes of action have added to the changing environment, and significantly increased the Commission’s jurisdiction.

The Commission has already responded to this complex changing environment by putting in place its Future Directions change strategy. The initiatives identified in the strategy are directed at improving the Commission’s performance and quality of service.26

In order to continue the response to the changing environment, the Commission has sought an independent, comparative review of its governance and processes to identify opportunities to improve its accountability and efficiency.

1.2 Project scope

KPMG was engaged by FWC to develop a high-level paper identifying opportunities for improving FWC’s governance and internal and external accountability, as well as opportunities for improving FWC’s administrative and organisational processes27 across Australia to deliver improved public value. Governance here refers to the set of responsibilities and practices, policies and procedures exercised by an agency’s executive to provide strategic direction, ensure objectives are achieved, manage risks and use resources

24 This system was introduced on 1 July 2009 and includes the majority of Australians, but excludes employees in:
- the state public sector in WA, NSW, QLD, SA, or TAS;
- local government in NSW, QLD, or SA; or
- a non-constitutional corporation in either local government or private industry in WA.
26 Fair Work Commission, Future Directions (October 2012), p 1.
27 Administrative and organisational processes include all processes used to provide advice to the community or finalise matters lodged with the FWC, including administration undertaken by Registry and other support staff, and work undertaken by Members and Associates.
responsibly and with accountability.28 In turn, accountability is defined as being answerable for decisions and having meaningful mechanisms in place to ensure that FWC adheres to all applicable standards.29

This paper has identified opportunities to improve governance and accountability across FWC. It has also identified opportunities to improve work flows and resource allocation within FWC, taking into account optimal allocation of resources and FWC’s presence at key locations across Australia.

The paper is comparative in nature, and has used the International Framework for Tribunal Excellence as a reference point for analysis of practice in comparator jurisdictions. The analysis has drawn on publicly available data, unpublished administrative data and working documents, and consultation with selected FWC staff, Members and external stakeholders to identify potential opportunities. This paper includes analysis of opportunities across four key opportunity areas;30

1. Member workload management and efficiency
   This opportunity area seeks to improve the Commission’s performance by considering the current workload allocation model, performance measures and reporting arrangements to improve Member accountability and performance.

2. Leadership and culture
   This opportunity area considers options to strengthen leadership and accountability structures to support the proposed workload allocation models, and continue to foster a collegiate and collaborative culture at the Commission.

3. ICT as an enabler
   This opportunity area examines options to use technology to realise greater efficiency for the Commission and external parties, improve quality of service provision, and increase transparency and accountability. Underpinning these options is an understanding of the critical role that ICT plays in enabling improvements to workload allocation.

4. Organisational and administrative efficiencies
   This opportunity area focuses on improving organisational effectiveness by aligning staff capabilities and roles to organisational requirements and improving the effectiveness and efficiency of activities undertaken. Consideration has also been given to reducing the cost of the Commission’s premises, while maintaining adequate access to justice.

This paper is intended to complement other initiatives, including the development of a workload model for Members, internal processes to review and improve FWC’s administrative processes such as the restructure in 2012, internal business planning and strategy processes, and the Future Directions initiatives being implemented to improve the services provided by FWC to the public.

1.3 Project approach

Opportunities to improve governance and accountability, and administrative and organisational efficiency, were developed by drawing on information and analysis undertaken during all stages of the project. The four key inputs into the development of the opportunity areas and high-level opportunities included:

- the International Framework for Tribunal Excellence (IFTE) and International Framework for Court Excellence (IFCE);
- document and data review and KPMG analysis of the current state of the Commission;
- consultations with a selection of FWC Members, members of the FWC Executive team, and a selection of FWC’s key external stakeholders and comparator Australian courts / tribunals; and
- desktop research and analysis of comparator jurisdiction initiatives and reforms.

This analysis provided the evidence base from which opportunity areas, key findings and opportunities were identified.

This project has been conducted according to the methodology agreed with FWC and outlined in Table 1.

30 Efficiency here is defined as “ensuring the best use of resources to further the aims of the organisation, with a commitment to evidence-based strategies for improvement” [APSC, Building Better Governance, p 2.]
Table 1: Project methodology

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<th>Details</th>
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<tr>
<td>Project initiation and planning</td>
<td>KPMG developed and agreed with the Commission a detailed project plan, which confirmed the objectives and scope of the project, and the deliverables and timeframes. This included identification of relevant stakeholders for consultation.</td>
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<tr>
<td>Data collection and analysis</td>
<td>Relevant data was provided by FWC and collected by KPMG from publicly available sources. Data analysed included, for example, the types of matters, financial and premises data, organisational structures and FTE, matter lodgement data, key performance indicators and measures collected. This data was used to understand the current state of the Commission and in identifying potential opportunity areas and opportunities for improvement.</td>
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<td>Stakeholder consultation</td>
<td>The four consultation groups were:</td>
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<td></td>
<td>• selected FWC Members, including the President;</td>
</tr>
<tr>
<td></td>
<td>• FWC Executive team;</td>
</tr>
<tr>
<td></td>
<td>• selected external FWC stakeholders, including employer groups, unions and the legal profession; and</td>
</tr>
<tr>
<td></td>
<td>• comparator jurisdictions – Federal Court of Australia (FCA), Federal Circuit Court of Australia (FCC) and Family Court of Australia (FCoA), the Administrative Appeals Tribunal (AAT), the County Court of Victoria (CCV) and the Victorian Civil &amp; Administrative Tribunal (VCAT).</td>
</tr>
<tr>
<td></td>
<td>Full details of the stakeholders consulted and questions used to guide the consultations are provided in Appendix 2. A detailed summary of stakeholder consultation themes is provided in Appendix 4.</td>
</tr>
<tr>
<td>Comparative analysis</td>
<td>KPMG undertook comparative analysis of selected state and international jurisdictions with a view to identifying and comparing opportunities for improvement, based on good courts and tribunals practice. The full comparative analysis is provided in Appendix 5.</td>
</tr>
<tr>
<td>Opportunities identification</td>
<td>The opportunities identification stage included the development of a list of opportunities with comments on the feasibility of their implementation. Criteria was also developed to facilitate their assessment.</td>
</tr>
<tr>
<td>Project reporting</td>
<td>Preliminary findings were presented to FWC on 8 December 2014. Subsequently, a draft report was delivered on 19 December 2014. A final report will be provided in April 2015.</td>
</tr>
</tbody>
</table>

Report limitations

In considering this report, the following limitations are noted:

- **Stakeholders consulted** – Stakeholders consulted were determined by the Commission. The limited number and limited breadth of stakeholders consulted means that the views expressed by stakeholders cannot be considered as representative of those of all FWC stakeholders.

- **Data sources** – The sources of the information provided are indicated throughout this report. KPMG has not sought to independently verify those sources unless otherwise noted within the report.

- **Opportunities presented** – KPMG has not sought to make recommendations regarding the governance, accountability, or efficiency of the Commission. Instead, a range of opportunities have been identified.

1.4 International Courts and Tribunal Excellence Frameworks

Two internationally recognised frameworks which identify best practice for excellence in the quality of services and administration of tribunals and courts were used to guide the identification of opportunities. An overview of the two frameworks is provided below, with an illustration of how each opportunity area identified through this project is aligned with the area of excellence identified in each of the frameworks.

**International Framework for Tribunal Excellence (IFTE)**

The current version of the IFTE, released in April 2014, outlines eight areas of tribunal excellence. The IFTE is a resource which can assist tribunals across jurisdictions to assess their performance and identify areas for improvement.

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opportunities to improve the quality of services which are required to undertake their role. The IFTE was developed by the Council of Australasian Tribunals (COAT). It draws on the work of the International Consortium which developed the IFCE, but has been modified to reflect the particular needs of tribunals. The IFTE was first published in February 2012, and has since been revised a number of times and applied to tribunals in a range of international jurisdictions.

International Framework for Court Excellence (IFCE)

The current version of the IFCE, released in March 2013, outlines seven areas of court excellence, and is a resource that can be used to assist courts to assess their performance and identify where performance can be improved.32 The IFCE was developed by an International Consortium which comprised a number of groups and organisations from across the globe, including Europe, Asia, Australia and the United States. The initial IFCE was developed in 2008, and has been designed to apply to all types of courts. Since 2008, the IFCE has been applied by many courts around the world, and has been refined to reflect feedback and courts’ experiences.

The figure below maps the ICCE and IFTE areas of excellence to the four opportunity areas identified in this report. Some opportunity areas, such as Member workload management and efficiency, map to multiple areas of excellence across the two frameworks. Appendix 5 outlines the experiences of comparator jurisdictions in applying the frameworks to their own reform programs.

Figure 1: Alignment between ICCE and IFTE areas of excellence and opportunity areas

The opportunity areas identified have been aligned with IFTE’s eight areas for tribunal excellence and the IFCE’s seven areas for court excellence. This ensures that the Commission’s strategic reform program aligns with best practice for courts and tribunals.

2 Overview of operations at the Commission

This section provides a high-level overview of the current state of the FWC, examining its overall governance and accountability, and its administrative and tribunal framework.

2.1 Overview of the FWC

Overview
The FWC is Australia’s national workplace relations tribunal. It plays a key role in the lives of Australians by setting minimum wage and award safety net provisions, dealing with workplace bargaining and disputation, and dealing with individual matters such as unfair dismissal and anti-bullying applications. The Commission has the power to conciliate, determine, settle and, in some cases, arbitrate workplace relations matters.

History
The FWC is the historical successor to a series of workplace relations tribunals extending back to shortly after Federation, including Fair Work Australia (2009-2012), the Australian Industrial Relations Commission (1988-2009), the Australian Conciliation and Arbitration Commission (1973-1988), the Commonwealth Conciliation and Arbitration Commission (1956-1973), and the Commonwealth Court of Conciliation and Arbitration (1904-1956). Successive governments have expanded or reduced the role of the Commission and its predecessors, although the basic functions of approving agreements, setting awards and minimum employment conditions and resolving disputes in some form have largely endured.

The Commission, as it stands today, is established under the Fair Work Act 2009. Its name was changed from Fair Work Australia to the Fair Work Commission in 2013 following the enactment of the Fair Work Amendment Act 2012. The Commission also administers the Fair Work (Registered Organisations) Act 2013.

2.2 Jurisdiction
The FWC’s jurisdiction is limited to employers and employees covered by Australia’s national workplace relations system established by the Fair Work Act 2009. This system commenced on 1 July 2009. Public sector employees in most states are not subject to the system, and those states retain their own workplace relations systems and tribunals for their employees. The Commission’s jurisdiction was expanded by the Fair Work Amendment Act 2013. This Act introduced key changes to the Commission’s jurisdiction such as the new anti-bullying jurisdiction. The Commission’s staff also provide assistance and support to the Road Safety Remuneration Tribunal (RSRT), which is an independent tribunal established under the Road Safety Remuneration Act 2012.

2.3 High-level organisational structure
The tribunal arm of the Commission consists of the President (Justice Iain Ross AO, also a judge of the Federal Court of Australia), and other Members with the titles of Vice President, Senior Deputy President,
Deputy President, Commissioner and Expert Panel Member.\(^{34}\) They are supported by the administrative arm of the Commission led by the General Manager, a statutory appointee.\(^{35}\) Figure 2 provides a high-level organisational structure of the Commission.

**Figure 2: High-level overview of the FWC’s organisational structure**

As of 30 November 2014, the Commission had 58 Members as follows:

- forty-five primary Members, four of whom are dual appointments to the Road Safety Remuneration Tribunal;
- eight dual appointments with state workplace relations tribunals; and
- five Expert Panel members.

Members of the Commission are selected from diverse backgrounds and experiences, such as the employment and workplace relations sector, public service, law firms, industry and unions. Members are appointed by the Governor-General on recommendation of the Minister for Employment.\(^{36}\) The President, Vice Presidents, Senior Deputy Presidents, Deputy Presidents and Commissioners are provided tenure, with a compulsory retirement age of 65. Expert Panel Members are appointed for a maximum period of five years.\(^{37}\)

The President of the Commission is responsible for ensuring that the Commission performs its functions and exercises its powers in a manner which is efficient and adequately services the needs of employers and employees throughout Australia.\(^{38}\) The current President of the Commission is also a Judge of the Federal Court of Australia.

The General Manager assists the President in carrying out this role. As of 30 June 2014, the Commission employed 306 administrative staff under the Public Service Act 1999 (Cth), including Associates and conciliators. These staff are led by an Executive team comprised of the General Manager and the Directors of the four administrative branches: Client Services, Corporate Services, Tribunal Services and Regulatory Compliance.

### 2.4 Locations

FWC operates from an office in each state and territory capital city across Australia. It also conducts sittings in Wollongong and Newcastle using the offices of the New South Wales Industrial Relations Commission. This is aligned with the Commission’s goal of providing access to justice. The head office of the Commission is located in Melbourne, where approximately two-thirds of FWC’s administrative staff, and almost two-thirds of its Members, are based. Figure 3 illustrates the split of FWC staff across states and territories.

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\(^{34}\) Fair Work Act 2009 (Cth) s 575; Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth), 2(1), sch. 18, pt 1.

\(^{35}\) Fair Work Act 2009 (Cth) s 657.

\(^{36}\) Fair Work Act 2009 (Cth) s 626.

\(^{37}\) Fair Work Act 2009 (Cth) s 629.

\(^{38}\) Fair Work Act 2009 (Cth) s 581.
2.5 Functions

The Commission has jurisdiction to hear a range of employment and industrial matters including industrial disputes, unfair dismissals, approval of enterprise bargaining agreements and setting of awards and minimum wages and entitlements. Figure 4 sets out the Commission’s functions.

**Facilitating the making of enterprise agreements and good faith bargaining**

**Resolving individual and collective disputes through conciliation, mediation, and arbitration**

**Providing for minimum wages and other employment conditions in awards**

**Conducting functions in relation to equal remuneration, minimum wages, general workplace protections, transfer of business, right of entry, and stand down**

**Granting remedies for unfair dismissals**

Source: Fair Work Act 2009

Some of the most common matter types heard or determined by the Commission are:

- **Unfair dismissals** of employees alleged to have been dismissed from their job in a harsh, unjust, or unreasonable manner. The FWC conciliates and determines these disputes.
- **General protections** matters involving employees who have alleged to have been faced with adverse action in the course of exercising a workplace right. Adverse action may, or may not, involve dismissal. The FWC has the power to conciliate and determine these disputes. It may also hold conferences and, if the issue cannot be resolved, issue certificates.
- **Enterprise agreement** matters where the FWC assesses and approves agreements, facilitates good faith bargaining, and assists in determining bargaining disputes.
- **Modern awards** determinations where the FWC makes and varies modern awards, modernises old awards and reviews all modern awards every four years.
- **Dispute resolution** for both individual and collective matters other than unfair dismissals and general protections. This includes bargaining disputes and disputes under the terms of an award or enterprise agreement. The FWC undertakes conciliation, mediation and occasionally arbitration.
- **Industrial action** matters where the FWC issues protected action ballot orders and resolves disputes.

Other matters include registered organisations applications, anti-bullying matters, full bench appeals from single member decisions, transfer of business matters, and right of entry matters. In addition, the Commission must conduct an annual wage review, in which it reviews modern award minimum wages and the national minimum wage.

The jurisdiction of the Commission is varied and complex. The Commission’s functions are quasi-judicial (when acting as a tribunal determining individual and collective disputes), executive (when acting as an approver of agreements and maker of awards) and regulatory (when administering its registered organisations functions). These varied functions require a broad set of member and staff skills, and efficient and effective business processes and practices, given the high volume of matters it deals with annually.

**Matters and parties dealt with by the Commission**

The Commission has recently experienced a significant shift from collective dispute resolution to individual dispute resolution, from under 10,000 individual matters prior to 2008-09 to around 20,000 individual matters per annum from 2009-10 onwards.

*Figure 5: Change in types of matters over time, 1998-99 to 2013-14*

The shift in the incidence of types of matters processed has reflected a change in the nature of the parties coming before the Commission, as well as a change in the size and nature of the jurisdiction from the commencement of the *Fair Work Act 2009*. 39 Parties to collective disputes often include ‘repeat players’ such as unions, employer organisations and employers, who are generally familiar with the legislative environment and the Commission’s processes and procedures. Individual disputes, however, often involve

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self-represented parties, for which this may be their first and only engagement with the Commission. Often, self-represented parties require greater support from both administrative staff and Members to assist them with the conduct of their proceedings.\textsuperscript{40}

\section*{2.6 Financial position}

Table 2 summarises income and expenditure for 2012-13 and 2013-14 for the Commission.

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|c|}
\hline
\textbf{Income} & \textbf{2012-13} & \textbf{2012-13} & \textbf{2013-14} & \textbf{2013-14} \\
 & $'000 & \% of total & $'000 & \% of total \\
\hline
Revenue from Government & 74,294 & 94.6% & 79,996 & 98.7% \\
Revenue from other sources & 1,461 & 1.9% & 1,004 & 1.2% \\
Other gains & 2,745 & 3.5% & 58 & 0.1% \\
\hline
Total revenue & 78,500 & & 81,058 & \\
\hline
\textbf{Expenses} & & & & \\
\hline
Staff related costs (including both Members and staff) & 48,867 & 61.5% & 50,828 & 62.8% \\
Court/member services & 4,943 & 6.2% & 4,188 & 5.2% \\
Lease, property and office costs & 15,477 & 19.5% & 16,224 & 20.1% \\
ICT & 2,913 & 3.7% & 2,672 & 3.3% \\
Contractors & 3,826 & 4.8% & 3,695 & 4.6% \\
Other expenses & 3,381 & 4.3% & 3,281 & 4.1% \\
\hline
Total expenses & 79,407 & & 80,888 & \\
\hline
\textbf{Variance} & & & & \\
\hline
Net profit & (907) & & 170 & \\
Operating margin & -1.2\% & & 0.2\% & \\
\hline
\end{tabular}
\caption{Revenue and expenditure of the Commission}
\end{table}


The Commission achieved an operating profit margin of 0.2 per cent (or $170,000) in 2013-14. In the period 2010-11 to 2012-13, the FWC returned a combined deficit of approximately $6 million. The improvement in the FWC’s financial position has been driven by a 3.3 per cent increase in Government funding, compared to a 1.9 per cent rise in costs.

The two major expenditure categories of the Commission are labour costs and property costs. Labour costs comprised 62.8 per cent of the total FWC expenditure in 2013-14\textsuperscript{41} – approximately 37.9 per cent for Member remuneration\textsuperscript{42} and 24.9 per cent in staff costs.\textsuperscript{43} Property costs comprised 20.1 per cent of the total expenditure in the same period.

\section*{2.7 Current and future reforms}

Recognising the changing nature of the Commission’s work and parties appearing before it, the Commission has undertaken a number of significant projects and reform initiatives internally over the last two years in order to reform its governance and efficiency. These reforms can be categorised into four groups: business as usual reforms, Future Directions reforms, pilots, and current programs to move to paperless files.

\textsuperscript{40} Justice Iain Ross (2013) ‘Institutional accountability and the concept of public value’, speech delivered for 2013 Chancellor’s Lecture, Swinburne University.


\textsuperscript{42} Fair Work Commission, Direct member benefits including superannuation and other entitlements by category. Provided by FWC on 20 November 2014.

Business as usual reforms

Since its restructure in July 2012, the FWC has undertaken a wide range of business as usual reforms, largely focused on achieving cost efficiencies. This includes reviewing travel costs, a move to video conferences, reducing the number of subscriptions, terminating outsourced property services arrangements, decreasing freight and postage costs, reviewing mobile phone plans, reducing marketing and advertising expenditure, reviewing health and lifestyle packages, reducing furniture hire, reducing external legal services, leasing out car park spaces, limiting printer and copier usage and reviewing stationary practices.44

Future Directions 1

In October 2012, the FWC introduced 25 reform initiatives collectively grouped as Future Directions. All reforms were implemented by December 2013. These were grouped around the four key areas:

- **Promoting fairness and improving access**: Ten of the 25 reforms focused on improving parties’ access to information and understanding of the process required in dealing with the Commission. This reflects an increase in individual matters, and subsequently, a rise in the number of self-represented parties (who are likely to be unfamiliar with the operations of the Commission and thus may not understand how they can best obtain access to the justice system). This included providing benchbooks and other information to self-represented parties for common case type matters such as unfair dismissals, establishing a pilot program to provide pro bono legal advice to self-represented parties, upgrading information available on the website (including a ‘virtual tour’ of the FWC) and improving the accessibility of forms.

- **Efficiency and innovation**: In this area, the FWC emphasised timeliness benchmarks as a measure of the efficiency of the organisation, both in minimising the FWC’s costs and parties’ costs. A number of reforms also examined the use of technology. These included the introduction of online applications, a smartphone app for daily listings, a trial for SMS alerts for hearings and conferences and upgrades to the FWC’s video conferencing capabilities. Internal efficiency reforms, such as the South Australian pilot for regional matter allocation, is also included under this category.

- **Increasing accountability**: These reforms largely surround external accountability to the public. They included the introduction of a Member Conduct Guide, the publishing of information about the Commission on the FWC website, the publishing of updates to Future Directions initiatives and the establishment of “user groups” to facilitate an exchange of views.

- **Productivity and engaging with industry**: Productivity reforms relate to improving industry access to the Commission. This includes developing the capacity to search the content of collective agreements, developing a broad engagement strategy in consultation with peak industry bodies and working cooperatively with other organisations, such as the Fair Work Ombudsman and the Fair Work Building and Construction Commission, to minimise the duplication of effort.

Future Directions 2

In May 2014, a second tranche of the Future Directions program was introduced, detailing 30 initiatives to be implemented over the following two years. As with the first Future Directions program, the proposed reforms are grouped into the same four categories:

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44 Data provided to KPMG by FWC on 29 October 2014.
• **Promoting fairness and improving access:** The second tranche seeks to continue its assistance to self-represented parties by reviewing the scope of the pro bono lawyer program introduced in *Future Directions I*, piloting an information kiosk in the Sydney Registry, creating additional “Virtual Tours” of the Commission’s functions and assisting Commission staff to provide support to self-represented applicants. Other reforms to promote greater access to Commission services include a review of all of the FWC’s forms, improving information available including benchbooks and audio files and improving the use of technology.

• **Efficiency and innovation:** These reforms relate to the use of technology to reduce both the Commission and parties’ costs. They include WiFi access in hearing rooms, SMS alerts for parties to Commission matters, developing smart forms and bulk lodgements, an electronic case management system and a paperless Annual Wage Review.

• **Increasing accountability:** The accountability measures in the second tranche are broader in scope than in *Future Directions I*. Three reforms focus on performance benchmarking: developing additional timeliness benchmarks for unfair dismissals, developing a performance indicator framework (including an external review of the current performance indicator framework) and evaluating the Commission’s performance against the IFTE. Two other reforms seek to capture client satisfaction data with respect to the Commission’s services and a pilot to provide clients with selected application benchmark information.

• **Productivity and engaging with industry:** The FWC’s reforms relating to engagement in this round are more wide-reaching. They include public engagement through conducting mock hearings and consulting with clients to develop a communications strategy, stakeholder engagement through establishing new user groups and providing better services to small business, workplace engagement through developing a strategy for promoting cooperative workplace relations, and continuing the Australian Workplace Relations Study and research community engagement by co-sponsoring a series of papers and lectures. Finally, in order to facilitate productivity, the FWC will engage in research to identify clauses in enterprise agreements which enhance productivity and map the locations and business needs of parties.

**Pilot projects**

The Commission has introduced a number of changes through the use of trials and pilots. The four pilots currently in progress are:

<table>
<thead>
<tr>
<th>Pilot</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General protections conciliations</strong></td>
<td>This pilot has introduced conciliators for general protections involving dismissal in the ACT, Western Australia and parts of Queensland. This trial seeks to build on the success of conciliations for unfair dismissals and draws upon FWC’s existing core of 25 conciliators. The Commission has reported that early results of the general protections pilot have been positive.45</td>
</tr>
<tr>
<td><strong>Agreement approvals</strong></td>
<td>Under this pilot, administrative staff work under the direction of Members who are ultimately charged with the approval of agreements. Previously, all agreements approvals were conducted by Members in chambers with some staff support. Anecdotal indications from Commission staff are that a high proportion of agreements are straightforward to process and pass the Better Off Overall Test (BOOT). A team of staff members has been trained to triage agreements and then seek approval of straightforward agreements by providing a completed template and the necessary documents to a Member for their review, approval and signature. Baseline data was established prior to commencement to inform the effectiveness and efficiency of this trial. While outcomes from the pilot have not yet been published, data from the first eight weeks suggests that this trial has been successful in minimising Members’ workloads.46</td>
</tr>
<tr>
<td><strong>Regional allocation in South Australia</strong></td>
<td>This pilot has trialled reconfiguring the regional-national divide in South Australia by adopting a regional allocation pilot covering agreements, unfair dismissals, and general protections applications. The FWC reported that the initial results of this pilot have received strong support from local stakeholders.47</td>
</tr>
</tbody>
</table>

45 Data provided to KPMG by FWC on 5 November 2014.  
46 Data provided to KPMG by FWC on 2 December 2014.  
Moving UDCMT functions to chambers in South Australia

A second South Australian pilot is trialling the conduct of case management for unfair dismissals in chambers to reduce staff costs and improve the timeliness of listing matters.\(^48\)

These pilots have sought to improve the efficiency and effectiveness of the Commission’s service delivery.

\(^{48}\) Ibid.
3 Governance and accountability

Public sector governance refers to ‘the arrangements and practices which enable a public sector entity to set its direction and manage its operations to achieve expected outcomes and discharge its accountability obligations.’\(^{49}\) This encompasses both leadership and accountability, with good governance assisting an organisation to achieve its outcomes in a way which enhances both internal and external confidence. The two core objectives of good governance arrangements and practices are to:

- improve the overall performance of an organisation and successful delivery of the organisation’s objectives; and
- provide accountability and visibility of an organisation’s performance to leaders in the organisation, the government and the community.\(^{50}\)

Accountability and transparency are crucial to maintaining the support of the community and, subsequently, the legitimacy of the Commission.\(^{51}\)

In considering the Commission’s current governance and accountability arrangements, KPMG has focused on Member workload management and allocation models, performance measures and leadership structures. In the context of the Commission’s operating model, ensuring Member workload management and allocation is operating effectively is a critical factor in the performance of the Commission. Similarly, as outlined above, open and transparent reporting on performance and operations is a core objective of good governance.\(^{52}\) In addition, strong leadership and culture is viewed as a fundamental element underpinning the achievement of good public sector governance and has been considered as part of this section.\(^{53}\)

3.1 Member workload management and accountability

This section considers the Commission’s current workload allocation model and Member accountability mechanisms. The opportunities seek to create an improved workload allocation model for Members, and establish comprehensive performance measures to improve Member accountability and performance.

3.1.1 Allocation of matters

Allocation of workload to Members is currently administered by one of two systems overseen by the President. The two methods of workload allocation are through:

- **industry and matter-based panels**, which are used for collective matters, including agreements and disputes, industrial action, anti-bullying applications, matters relating to registered organisations and termination of employment matters; and
- **the “off-the-clock” system**, which uses a case management system (CMS) to automatically allocate all other matters such as unfair dismissals and general protections to Members in each state and territory on a roster basis through a National Panel Head.

Appeals are listed according to an annual roster set by the President in consultation with Members. The President has delegated to a Vice-President responsibility for constituting Full Benches in accordance with the annual roster. Legislated award review matters are allocated by the President. Some Members may sit on multiple industry and matter-based panels.

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\(^{50}\) Ibid.


\(^{53}\) Ibid, p 10.
Figure 6 below diagrammatically represents the two workload allocation methods. Members receive matters simultaneously from both the ‘off-the-clock’ system and the panel system.

**Figure 6: FWC workload allocation methods**

![Diagram of workload allocation methods]


Under the dual allocation system, Members receive work from the Panel Heads of all panels on which they sit, in addition to continuing to receive matter allocations through the “off the clock” system on a rotational basis. Some Members may sit on multiple panels, while other Members may sit on none. Figure 7 illustrates how Members receive matters.

**Figure 7: Sources of matters allocated to Members**

Industry and matter-based panel system

The Commission currently operates five industry panels, a major projects panel, two expert panels and three matter-based panels. Each of these panels is led by a Panel Head and is comprised of a select number of Members who hear matters arising under the relevant panel. There are currently nine Panel Heads across 11 panels, with Justice Iain Ross and Vice President Watson leading two panels each. The list of panels and Members on each panel is provided in Appendix 3.

Industry panels usually include at least one Member from each of Victoria, New South Wales, Queensland, Western Australia and South Australia wherever possible. The system of industry panels is notionally a national system, with each industry panel comprising Members located across Australia and with matter allocation by a national Industry Panel Head.

Expert Panel Members are required to have knowledge or experience in one or more fields specific to their panel (i.e. for annual wage reviews: workplace relations, economics, social policy, or business, industry or commerce; and for superannuation fund reviews: finance, investment management, or superannuation).

Figure 8 outlines the process by which matters are allocated to Members through the panel system.

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54 ‘PH’ here refers to Panel Heads.


**“Off the clock” system**

Matters such as unfair dismissals and general protections are allocated to Members on a regional basis, with matters allocated either automatically from the case-management system (called “off the clock”), or manually from a spreadsheet administered by the Matter Panel Head. In practice, however, most states have a designated Associate or Registry staff member who receives all allocations for his or her respective state from CMS and, with a Member, individually distributes matters on a rotational basis. This is illustrated in Figure 9.

**3.1.1.1 Issues with the dual allocation system**

In the period 2010-11 to 2013-14, the Commission experienced a shift in the types of matters lodged. There was an increase in the number of individual matters relating to general protections and unfair dismissals, and a reduction in collective matters, such as those relating to enterprise agreements and industrial disputation. Unfair dismissal cases now represent 40 per cent of all cases lodged with the FWC. The total

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56 CMS is the acronym for case management system.
57 UDCMT is an acronym for Unfair Dismissal Case Management Team.
number of matters lodged with the FWC also declined by 0.2 per cent over the same period. Table 3 below sets out cases lodged by matter type over this period, ordered by the average percentage change from 2010-11 to 2013-14.

**Table 3: Cases lodged by matter type**

<table>
<thead>
<tr>
<th>Matter type</th>
<th>No. cases lodged in 2013-14</th>
<th>% of total cases lodged in 2013-14</th>
<th>% change in 2013-14 on previous year</th>
<th>Average % change from 2010-11 to 2013-14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other matters*</td>
<td>3,495</td>
<td>9.4</td>
<td>12.7</td>
<td>28.8</td>
</tr>
<tr>
<td>Dispute resolution</td>
<td>2,615</td>
<td>8.9</td>
<td>13.6</td>
<td>19.0</td>
</tr>
<tr>
<td>General protections not involving dismissal</td>
<td>779</td>
<td>2.1</td>
<td>40.4</td>
<td>17.3</td>
</tr>
<tr>
<td>General protections involving dismissal</td>
<td>2,879</td>
<td>7.8</td>
<td>18.5</td>
<td>12.2</td>
</tr>
<tr>
<td>Appeals</td>
<td>214</td>
<td>0.6</td>
<td>49.7</td>
<td>10.8</td>
</tr>
<tr>
<td>Unfair dismissal</td>
<td>14,796</td>
<td>39.9</td>
<td>(0.1)</td>
<td>4.9</td>
</tr>
<tr>
<td>Enterprise agreements</td>
<td>6,754</td>
<td>18.2</td>
<td>(4.7)</td>
<td>(0.3)</td>
</tr>
<tr>
<td>Orders relating to good faith bargaining</td>
<td>422</td>
<td>1.1</td>
<td>3.9</td>
<td>(1.7)</td>
</tr>
<tr>
<td>Orders relating to industrial action</td>
<td>989</td>
<td>2.7</td>
<td>22.2</td>
<td>(3.2)</td>
</tr>
<tr>
<td>Registered organisations applications</td>
<td>1,381</td>
<td>3.7</td>
<td>7.2</td>
<td>(8.8)</td>
</tr>
<tr>
<td>Award variation</td>
<td>37</td>
<td>0.1</td>
<td>37.0</td>
<td>(18.4)</td>
</tr>
<tr>
<td>Applications to terminate individual agreement based transitional instruments</td>
<td>2,841</td>
<td>7.7</td>
<td>(10.5)</td>
<td>(21.8)</td>
</tr>
<tr>
<td>Termination of employment (WR Act s.643)</td>
<td>2</td>
<td>0.0</td>
<td>0.0</td>
<td>(39.4)</td>
</tr>
<tr>
<td>Notification under dispute settling procedure of pre-reform certified agreement</td>
<td>35</td>
<td>0.1</td>
<td>(49.3)</td>
<td>(63.4)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>37,066</strong></td>
<td><strong>100</strong></td>
<td><strong>1.2</strong></td>
<td><strong>(0.2)</strong></td>
</tr>
</tbody>
</table>

*Other matters include right of entry permits and anti-bullying matters.

Source: Fair Work Commission, 2013-14 Annual Report

This shift in the nature of the work has had broader implications for the Commission’s operations, the obligations of the Commission to support the needs of the parties appearing before it and for the need for the Commission to engage widely with the community about its role.59

As with the change of mix in matter types lodged over time as shown in the table above, there has also been a change in the mix of matters reaching sittings, with a decline in matters traditionally requiring industry specialisation.60 Between 2010-11 and 2013-14, the number of sittings for agreements declined by 6.5 per cent on average, and the number of industrial action sittings declined by 14.5 per cent on average.61

One of the merits of the panel allocation system is that Members are familiar with particular industries and, in some cases, it provides continuity with regard to the history and background of particular unions, employers and workplaces. This can result in faster decision-making.62 This needs to be balanced with evidence indicating that a high proportion of collective matters are concentrated into a small number of industries, as outlined in the table below.

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60 Sittings consist of hearings, which are conducted in public, and conferences, which are conducted in private.
### Table 4: Collective matters (agreements and others) by industry 2013-14

<table>
<thead>
<tr>
<th>Top 10 industries (by number of collective matters)</th>
<th>FWC Industry Panel</th>
<th>No. collective matters 2013-14</th>
<th>% of total collective matters 2013-14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building, metal and civil construction industries</td>
<td>Manufacturing and Building</td>
<td>2,046</td>
<td>19%</td>
</tr>
<tr>
<td>Manufacturing and associated industries</td>
<td>Manufacturing and Building</td>
<td>1,460</td>
<td>13%</td>
</tr>
<tr>
<td>Children’s services</td>
<td>Government Services</td>
<td>576</td>
<td>5%</td>
</tr>
<tr>
<td>Health and welfare services</td>
<td>Media, Ports, Oil &amp; Gas</td>
<td>607</td>
<td>6%</td>
</tr>
<tr>
<td>Educational services</td>
<td>Government Services</td>
<td>466</td>
<td>4%</td>
</tr>
<tr>
<td>Electrical contracting industry</td>
<td>Manufacturing and Building</td>
<td>343</td>
<td>3%</td>
</tr>
<tr>
<td>Plumbing industry</td>
<td>Manufacturing and Building</td>
<td>250</td>
<td>2%</td>
</tr>
<tr>
<td>Road transport industry</td>
<td>Transport, Logistics and Services</td>
<td>309</td>
<td>3%</td>
</tr>
<tr>
<td>Storage services</td>
<td>Transport, Logistics and Services</td>
<td>292</td>
<td>3%</td>
</tr>
<tr>
<td>Aged care industry</td>
<td>Media, Ports, Oil &amp; Gas</td>
<td>206</td>
<td>2%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>6,555</strong></td>
<td><strong>60%</strong></td>
</tr>
</tbody>
</table>

Source: Fair Work Commission, Data_Matters by Panel, provided by FWC on 9 February 2015

Just over 11,000 collective matters were dealt with by the Commission in 2013-14. Of the 142 distinct industries, 10 industries generated 60 per cent of the total number of collective matters at the Commission, with the remaining 132 industries generating 40 per cent of the workload between them. Of these 10 industries, four fall into the manufacturing and building industry panel, generating 37 per cent of total collective matters.

This indicates that there may be some unevenness in the workload across the panel system, with some industry panels and Members dealing with significantly higher volumes of collective matters than other panels.

All Members consulted indicated that Panel Heads may, on occasion, have limited visibility over work allocated by other Panel Heads and the ‘off-the-clock’ system, as there is no central tracking system. This can make it difficult to ensure an even workload across Members on each panel. The other main issue raised by most Members and Executive staff consulted is that this model does not account for peaks in demand. When a particular industry experiences a spike in demand, for example, during a bargaining round or a major hearing, the resulting workload for Members of the relevant panel can be heavy, particularly in smaller states where there may be fewer resident panel Members. There is some capacity for Panel Heads to ‘smooth out’ workloads in larger states, but less capacity to do so in smaller states.

#### KPMG observation
A small number of industries generate a high proportion of total collective matters. There is some evidence from Members consulted which suggests this structure may cause uneven workloads across industry panels. There is also some evidence from consultations that the dual allocation system may, on occasion, result in limited visibility of workload allocation. IFCE notes the importance of proactive and continual improvement of workload models to balance workloads across Judges and Members.

#### 3.1.1.2 Alternative workload allocation models

Differences in workload allocation models in comparator jurisdictions resulted from whether the jurisdiction adopted a national or regional model. A national allocation model and a regionally-based allocation model are discussed further below.

**National allocation model**

Comparator jurisdiction national allocation models, examined by KPMG, centralise all workload allocation in a central body or delegate of the Chief Justice or President. The central body or delegate assigns matters to a Member or Judges on a rotational basis, ensuring an appropriate mix of matter types allocated. This model may require a strong Regional Leader to ensure each state and territory office is appropriately supported and
to ensure on-the-ground considerations are able to be fed back into workload allocation. This may include, for example, requests from parties for particular Members with specialist knowledge and experience.

A national allocation model was recently adopted by the FCA, as outlined in the following case study. The FCA model uses a docket system to manage workload. Each matter is randomly allocated through the electronic case management system to a Judge at the time of filing, who then becomes responsible for the matter from commencement to disposition.

### Case study 1 – Federal Court of Australia National court framework

The FCA adopted a centralised allocation model with the implementation of its national court framework in early 2015. The primary objective of these changes is to streamline FCA processes to provide greater consistency in management of practice areas across Australia and to improve the quality and timeliness of judgments. Under the new model, FCA cases will be divided across eight practice areas: administrative, human rights and constitutional; native title; commercial; intellectual property; tax; admiralty and maritime; industrial relations and labour; and criminal cartel trials. The operation of each practice area will be overseen by a senior Judge and registrar. In addition, the operation of the national structure will be managed by the newly created role of National Operations Registrar (NOR). The NOR will monitor each Judge’s caseload and manage workflows across the court. Operation of the new model is supported by the court’s recent transition to a fully electronic court file. The NOR will also be responsible for the allocation of cases, in conjunction with the Chief Justice and other senior Judges.


In its annual report, the FCA indicated that the centralised allocation model will likely assist Judges to develop greater familiarity with cases, while also contributing to consistency of approach, overall efficiency, flexibility and timeliness in case management. Cases which require specific expertise are randomly allocated to Judges who belong to the relevant specialist lists. The approach seeks to balance the need to retain judicial impartiality through random allocation of cases, while also taking into account Judges’ specialist skills. Specialist panel members meet regularly with court users and Judges from other courts to discuss issues relating to their area of expertise.

### KPMG observation

KPMG observes that the benefit to the Commission of a national allocation model is greater visibility over Member workload, and potentially more efficient allocation of matters. National allocation also enables greater smoothing of workload across offices. It can be supported by increased use of teleconferencing and videoconferencing. An optimal national allocation model would be supported by improved online lodgement, an electronic case management system (including electronic court files) and electronic hearing facilities. This is discussed further in section 4.1.

Any workload allocation model also needs to consider matter complexity and appropriate mix of matter types, alongside volume. FWC Members consulted all indicated there was large variability in the complexity of matters, affecting the expected time taken to deliver decisions.

### Regional allocation model

The alternative to a national allocation model is a regionally-based model where matters are allocated on a geographical basis according to where the matter was lodged. As matters are lodged, the state or territory registry team assigns them to a designated Member, or Regional Leader, in the state or territory of lodgement. Regional Leaders then assign matters to Members in their state or territory. Regional Leaders may shift workload to ensure there is an even spread across Members in different geographies. For example, if there are more matters originating in a particular state or territory, in consultation with other Regional Leaders, matters can be reassigned to Members in other states and territories.

Some courts and tribunals consulted, such as the AAT and the FCC, continue to use regionally-based allocation systems. This has been attributed to the nature of their jurisdiction and comparatively large volumes of matters. The FCC / Family Court State Registrars in each state work together closely to manage workload allocation to ensure on-the-ground considerations are fed back into workload allocation. This may include, for example, requests from parties for particular Members with specialist knowledge and experience.
workload. Although FCC uses a docket system, its case allocation function is performed by a Judge in each major registry. This Judge is also the contact point for the legal profession. FCC currently moves Judges around the country to meet demand in different states, but is seeking to discontinue this practice.

A completely regionally-based allocation model may, however, result in uneven workloads for both Members and state registry teams. This is because some states receive significantly higher volumes of matters lodged than others (see the table below). For example, 30 per cent of Members are based in Sydney but only 26 per cent of hearings are conducted in Sydney; conversely, 10 per cent of Members are based in Brisbane but 15 per cent of hearings are conducted in Brisbane. However, this measure of Member workloads does not account for matter complexity or aspects of Members’ workloads that are additional to hearings.

<table>
<thead>
<tr>
<th>Location</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
<th>Proportion of total matters lodged (2013-14)</th>
<th>Annual variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Melbourne</td>
<td>14,826</td>
<td>13,608</td>
<td>13,857</td>
<td>37%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Sydney</td>
<td>9,323</td>
<td>9,014</td>
<td>9,716</td>
<td>26%</td>
<td>7.8%</td>
</tr>
<tr>
<td>Brisbane</td>
<td>5,894</td>
<td>5,963</td>
<td>5,692</td>
<td>15%</td>
<td>-4.5%</td>
</tr>
<tr>
<td>Perth</td>
<td>3,169</td>
<td>3,675</td>
<td>3,614</td>
<td>10%</td>
<td>-1.7%</td>
</tr>
<tr>
<td>Adelaide</td>
<td>2,378</td>
<td>2,225</td>
<td>2,174</td>
<td>6%</td>
<td>-2.3%</td>
</tr>
<tr>
<td>Hobart</td>
<td>614</td>
<td>633</td>
<td>668</td>
<td>2%</td>
<td>3.9%</td>
</tr>
<tr>
<td>Canberra</td>
<td>819</td>
<td>754</td>
<td>625</td>
<td>2%</td>
<td>-17.1%</td>
</tr>
<tr>
<td>Darwin</td>
<td>314</td>
<td>390</td>
<td>409</td>
<td>1%</td>
<td>4.9%</td>
</tr>
<tr>
<td>Newcastle</td>
<td>81</td>
<td>314</td>
<td>266</td>
<td>1%</td>
<td>-15.3%</td>
</tr>
<tr>
<td>Wollongong</td>
<td>26</td>
<td>40</td>
<td>55</td>
<td>0%</td>
<td>37.5%</td>
</tr>
</tbody>
</table>

Total: 37,444 36,616 37,066 100% 1.2%


More than half of all matters lodged (63 per cent) are lodged in either Melbourne (approximately 37 per cent) or Sydney (26 per cent). The Brisbane office also receives a relatively high number of lodgements, followed by Perth and Adelaide.

KPMG observation

Comparator jurisdictions consulted used both regionally-based and national workload allocation models. There is a trade-off between retaining industry and local specialisation (and allocating matters on a regional and panel basis) on the one hand, and allocating matters nationally, on the other hand.

Regional Leader

In addition to the matter allocation responsibilities under the national or regionally-based models, there is an opportunity to appoint Regional Leaders who could also assist with performance management and support of Members in their region.

The establishment of Regional Leaders in each office could assist to provide a local management contact point for other Members in the office. It may also assist to establish a national culture by breaking down any geographical barriers and promoting face-to-face interaction.

Research indicates that interactive leadership and clearer line of sight to activities of direct reports, through co-location or other mechanisms, not only ensures leaders are able to provide more effective support, but also improves accountability of performance. A Regional Leadership model provides greater line of sight and engagement with Members through co-location. Co-location also enables early identification and resolution of potential Member issues. Additionally, Regional Leaders would have clearer oversight of

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66 De Lacy, Jonnie Catherine (2009) Employee engagement: the development of a three dimensional model of engagement; and an exploration of its relationship with affective leader behaviours. Masters by Research thesis, Queensland University of Technology., p 16 – De Lacy also references a number of studies which indicate that high levels of employee engagement correlate to high staff performance, as measured by improved productivity and profitability.
particular issues and themes arising in matters in their geography. This information could be shared across other geographies to encourage intelligence sharing, consistency and a national FWC culture.

Regional Leaders could be appointed in Queensland, NSW, Victoria, SA and WA. An additional Regional Leader could be appointed in states with a higher number of Members to ensure adequate support is provided to Members. Regional Leaders would likely need to communicate with each other regularly to discuss matter allocation and workload management.

### 3.1.1.3 Proposed workload allocation models

FWC internal projects have considered potential changes to the current matter allocation model to improve the efficiency, fairness and accountability of the allocation system, while at the same time maintaining, or improving, the quality of service provided to the community. The proposals include establishment of a full national registry model (to process matters lodged on a national basis, rather than in the state of lodgement), the establishment of a Member in each state and territory as a Regional Leader or “Captain” and the creation of a National Allocation Registry Leader role.

Taking into account initiatives considered by FWC internal projects, analysis of relevant information and stakeholder consultation, three potential allocation models have been provided for illustration as follows. These models range from a low to high degree of change, and from a regionally-based to centralised system of allocation. Each model, however, proposes the national distribution of processing matters in the registry team, rather than being based on place of lodgement. This is consistent with the current direction of the FWC, under which the number of applications processed in locations other than their place of lodgement is increasing.67

An overview of each model is provided below.

**Model 1: Regional allocation**

All matters are initially processed by Registry staff on a national basis, and then allocated manually to individual Members by Regional Leaders in each state and territory.

**Model 2: Hybrid allocation**

All matters are initially processed by Registry staff on a national basis, and then allocated manually to individual Members by a National Registry Allocations Leader.

**Model 3: National allocation**

All matters are initially processed by Registry staff on a national basis, and then allocated automatically via an electronic system to individual Members, overseen by a National Registry Allocations Leader.

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individually. Business rules may need to be developed for triaging and assessing complex and non-complex matters.

This model represents a *medium degree of change* from the current model.

**Figure 11: Workload allocation model 2: hybrid national and regional allocation by the National Registry Allocation Leader and Regional Leader**

Model 3: Establish a national basis for processing matters. Adopt the use of an integrated online lodgement, electronic case management and electronic court file system to allocate all matters to Members nationally on an automatic basis (this is a similar model to that adopted by the FCA). Before matters are distributed, a National Registry Allocations Leader will check that the allocation on the system contributes to an even distribution of matters between Members (also taking into account matter complexity). Regional Leaders operate as leaders and performance managers in their state or territory office, but do not contribute to the substantive allocation of matters. They remain in constant contact, however, with the National Registry Allocations Leader on a range of matters, such as Member workload.

This model represents the *largest degree of change* from the current model, particularly as this model is dependent on the implementation of an integrated electronic case management and court file system.

**Figure 12: Workload allocation model 3: national allocation with oversight by the National Registry Allocation Leader**

Models 2 and 3 require the establishment of a National Registry Allocations Leader role. This role would need to be delegated powers by the President to enable effective triaging and allocation of matters to Members. This role could be held by an administrative staff member, similar to the National Registrar role recently established by the FCA.

Some Members consulted also raised the possibility of putting in place high level, functional or industry streams under a national allocation system in order to preserve industry expertise and expertise in relation to particular types of matters. There are several ways in which this could occur. For example, the National Registry Allocations Leader could administer formal or informal streaming of cases at the point of allocation on the basis of Member expertise. Implementation of streaming may best occur once a new allocation system is fully implemented, but could occur in parallel.
Opportunity 1
Consider implementation of an alternative workload allocation system with transparency regarding Member workload and performance, and an accountability framework for workload and performance.

3.1.2 Performance measures and KPIs
An efficient workload allocation system is one of the keys to good governance. In addition, good governance requires robust performance measures and reporting. The Commission currently reports its performance externally against organisational wide key performance indicators (KPIs). Internally, it also tracks individual Member performance.

3.1.2.1 FWC external performance measures
The FWC reports its performance externally through two measures, KPIs and timeliness measures. Its KPIs are published in annual reports, and timeliness benchmarks are published on the FWC website. KPIs are set by the Department of Employment and listed in Portfolio Budget Statements. Monitoring these KPIs is a critical means by which the Commission can evaluate its performance in providing access to justice.

Table 6 lists the Commission’s performance against its KPIs for the past four years. It indicates that, historically, the FWC has been successful in meeting its KPIs. The Commission did not meet its unfair dismissals KPI in 2013-14. This can be attributed to five of 25 conciliators leaving the Commission at a peak time, and unfair dismissal application lodgements not following usual seasonal patterns. Similarly, the Commission did not reach its KPI regarding the percentage of financial reports lodged under the Registered Organisations Act assessed for compliance within 40 working days. This was due to the requirement in the Registered Organisations Amendment Act that each registered organisation amend its rules by 1 January 2014. This imposed a substantial additional workload on the FWC and required the diversion of additional resources.

Table 6: Key performance indicators, Fair Work Commission

<table>
<thead>
<tr>
<th>KPI</th>
<th>Target</th>
<th>2010-11</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Unfair dismissals – improve or maintain the time from lodging applications to finalising conciliations</td>
<td>34 days</td>
<td>28</td>
<td>28</td>
<td>25</td>
<td>46</td>
</tr>
<tr>
<td>2. Industrial action – improve or maintain the time taken to list applications</td>
<td>3 days</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>3. Agreements – improve or maintain approval time</td>
<td>32 days</td>
<td>21</td>
<td>17</td>
<td>16</td>
<td>17</td>
</tr>
<tr>
<td>4. Annual wage review – completion</td>
<td>30 June</td>
<td>3 June 2011</td>
<td>1 June 2012</td>
<td>3 June 2013</td>
<td>4 June 2014</td>
</tr>
<tr>
<td>5. Registered organisations – 95% of financial reports lodged are assessed for compliance within 40 working days</td>
<td>within 40 working days</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>37.7%</td>
</tr>
</tbody>
</table>


Table 7 outlines the FWC’s timeliness measures. Timeliness benchmarks were introduced on 1 July 2012 for reserved decisions and agreement approvals, and on 1 July 2013 for appeals matters.

Table 7: Timeliness benchmarks for the Fair Work Commission

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Reserved decisions</td>
<td>97%</td>
<td>83.6%</td>
<td>82.5%</td>
<td>85.8%</td>
<td>84.8%</td>
</tr>
<tr>
<td>90% of all reserved decisions delivered within eight weeks</td>
<td>100%</td>
<td>93.3%</td>
<td>91.6%</td>
<td>96.1%</td>
<td>93.8%</td>
</tr>
<tr>
<td>100% of all reserved decisions delivered within 12 weeks</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

69 Fair Work Commission, Annual Report 2013-14, p 76.
### Timeliness

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Agreement approvals</td>
<td>50% of all applications to be finalised within three weeks</td>
<td>82.4%</td>
<td>56.8%</td>
<td>65.4%</td>
<td>57.8%</td>
</tr>
<tr>
<td></td>
<td>90% of all applications to be finalised within eight weeks</td>
<td>98.7%</td>
<td>93.5%</td>
<td>92.7%</td>
<td>91.9%</td>
</tr>
<tr>
<td></td>
<td>100% of all applications to be finalised within 12 weeks</td>
<td>100%</td>
<td>98.5%</td>
<td>97.5%</td>
<td>98.4%</td>
</tr>
<tr>
<td>Appeals matters</td>
<td>90% of all appeals listed within 12 weeks</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>92.3%</td>
</tr>
<tr>
<td></td>
<td>100% of all appeals listed within 16 weeks</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>100%</td>
</tr>
</tbody>
</table>


A high-level review of comparator jurisdictions indicates that external reporting by those jurisdictions against performance measures is relatively limited, although formal reporting is typically supplemented by additional information about activities undertaken and outputs achieved. This is usually published in publicly available documents (such as annual reports). The County Court of Victoria is in the process of developing external performance measures, and VCAT is developing and implementing a performance management and reporting framework.70

### The use of frameworks as performance metrics

The Commission has committed to evaluation of its performance against the IFTE, as a key external framework, to identify further measures to improve performance.71 Other comparator jurisdictions have also aligned both their performance metrics, and their broader reform programs with the IFCE. This indicates that Australian courts and tribunals are increasingly seeking to adopt global best practice.

#### County Court of Victoria

In 2010, the CCV adopted the IFCE, which provides a framework of values, as well as a methodology, to help courts improve the quality of justice and court administration.72 The framework emphasises the need to take a holistic approach to court performance, rather than presenting a limited range of performance measures. It is designed to apply to all courts and to be equally effective for sophisticated, large urban courts, and for smaller rural or remote courts and tribunals.

Critically, the IFCE incorporates a self-assessment questionnaire, which allows courts to undertake their own performance assessment against seven areas and helps to prioritise areas of focus and monitor improvements over time. Through this process, the CCV has identified areas for improvement and incorporated relevant actions in its Annual Business Plan.73

#### Federal Circuit Court

The FCC is currently implementing the IFCE. In 2013-14, the FCC conducted a survey of Judges and court staff in accordance with the IFCE. This included the areas of leadership, policy and planning, resources, management of court processes, court user satisfaction, access and affordability, and public confidence.74 The survey results identified opportunities for improvement across a range of areas, including business processes and practices around the dispatch of the Court’s business. The survey also revealed that a significant majority of FCC Judges saw the docket case management system as an effective system.75

Overall, the value of current reporting practices across all comparator jurisdictions examined by KPMG could be strengthened by developing additional performance targets in order to facilitate ongoing performance

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73 Ibid.
75 Ibid.
assessment. The Commission has already developed an initial draft of a proposed performance indicator framework.

A high-level assessment of the Commission’s proposed performance indicator framework is contained in Appendix 6.

3.1.2.2 FWC internal performance measures

In addition to reporting against organisation-wide KPIs, the Commission internally monitors and reports Member performance. Internal Member performance measures have largely related to timeliness of matter finalisation and volume of matters considered. The Commission has recently commenced providing Members with a comparative Member workload quarterly report which provides Members with a comparison of their individual timeliness metrics in relation to other Members. This report is a continuation of accountability measures introduced in the initial Future Directions program of 2012. Figure 13 is an example of the quarterly report.

Figure 13: FWC pilot comparative workload quarterly report: Reserved decisions performance by member, 2013-14

Other performance indicators being developed to measure client satisfaction include the ‘Day in the Life’ survey conducted by the FWC in 2014. The survey captures client satisfaction with Commission services that were provided on a particular day. Parties have also been surveyed to measure the success of the general protections pilot.

All Members consulted generally supported open and transparent monthly reporting of Member performance measures on the basis that this improves understanding of individual performance, improves accountability and assists to ensure timely decision-making. All Members consulted recognised the benefit of using performance monitoring to assist with open conversations with Members to ensure adequate support.

Internal performance measures in other jurisdictions

Comparator jurisdictions examined by KPMG rely on performance measures to support accountability and timely decision making. These are at varying levels of maturity in use of performance measures across jurisdictions. Performance reporting is usually monthly or quarterly and often involves a traffic light “dashboard” or a one page report, similar to the Commission’s quarterly report in the figure above. Timeliness of decision-making is the predominant performance metric considered. In terms of quality of decision-making, most jurisdictions rely only on rate of appeals as a measure of quality.

Some jurisdictions consulted have intermittently conducted satisfaction surveys of court and tribunal users. Only the AAT has in place a system of peer review where Members review hearings on the basis of accessibility, transparency and language criteria. The AAT uses the Administrative Review Council guide to tribunal member conduct as a basis for these reviews. FCC and the County Court of Victoria measure quality (of both Judges and Registry staff) using the International Framework for Court Excellence and client surveys.

The FCA, VCAT and the County Court of Victoria are either using or developing formal benchmarking processes and dashboards by which Judges and Members can assess their performance compared to their

peers. Some jurisdictions consulted, such as the FCA, disclose a comprehensive report to all Judges so that there is complete transparency and Judges can then compare performance against each other. Other jurisdictions consulted provide de-identified reports that enable comparison with national averages. These reports are usually discussed at a senior leadership level in regular forums and at one-on-one meetings with Judges/Members.

FCC also measures the performance of registrars and registry staff. In general, comparator jurisdictions consulted indicated that performance measurement regimes result in improved timeliness.

**Case study 2 – Federal Circuit Court of Australia and Family Court of Australia judicial monitoring dashboard**

The FCoA and FCC have developed a formal, one-page document to monitor performance metrics of family law final order applications across the courts. This includes analysis of finalisations, clearance rates, transfer times and pending number of matters. This information is captured by registry location. Consultations indicated that the document can facilitate a high level understanding of how the courts are performing relative to a target range and emerging pressure areas. A ‘traffic light’ colour code supports easy understanding of performance against targets. Emerging and persistent trends can be identified and monitored to allow remedial action where necessary.

Source: Stakeholder feedback

**KPMG observation**

External frameworks, such as the IFCE and IFTE, are being used in some comparator jurisdictions consulted. Their use enables alignment of performance measures and evaluation with international practice. Similarly, comparator jurisdictions are increasingly using performance monitoring dashboards, shared among all Judges or Members, to track individual Judge or Member performance.

**Suggested Member performance measures**

While current FWC performance benchmarks provide transparency and accountability for Member performance, they predominantly focus on timeliness. In addition to measures of timeliness and volume, an option is to establish further reporting mechanisms which capture measures of quality and which differentiate matter types by complexity.

The Commission’s recently introduced client satisfaction surveys are able to supplement appeals data to assist in measuring decision-making quality. This is likely to improve the Commission’s ability to identify good practice amongst Members, and also to identify areas for improvement. This approach is also consistent with the comparator jurisdictions examined by KPMG.

The FWC could also consider developing client satisfaction survey questions which measure accountability of the Commission against its core functions as outlined in s.576 of the *Fair Work Act 2009*. For example, questions could relate to whether the Commission provided sufficient ‘assistance and advice about its functions and activities’.

In addition to these measures of quality, another option is to establish a Member peer review system, similar to that established by the AAT. A peer review system could assess the quality and transparency of decision-making, in tandem with a committee established to analyse trends in data collected from the surveys noted above. The Committee could be similar to the FCC Case Management Judges Committee outlined in the following case study.

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78 *Fair Work Act 2009 (Cth)*, s.576(2).
79 *Fair Work Act 2009 (Cth)*, s.576(2)(b).
Case study 3 – Federal Circuit Court of Australia Case Management Judges Committee

To support and monitor the docket system across Australia, the Federal Circuit Court has appointed a Case Management Judges Committee, comprising the National Coordinator of Case Management as well as several case management Judges who each represent different regions\(^80\). The Committee meets quarterly with the Chief Judge and the National Coordinator to discuss trends and issues in their regions, and to monitor and evaluate case management.\(^81\) The Committee’s discussions are informed by statistical reports that include analysis of the following measures:\(^82\)

- Filing numbers – a count of the applications by type received by the Court;
- Clearance rates – the filings received within a defined period measures against finalisations;
- Matters requiring judicial determination;
- Attendance rate – the number of times a matter is listed for a court event; and
- Time taken from filing to disposition, age of pending matters and the age of matters finalised.

Consultation feedback has indicated that the structure assists to support centralised visibility and strategic management of Judges’ workloads across Australia. The reporting framework not only assists with resource planning, but also supports judicial performance management and helps to drive greater accountability.

Source: Stakeholder feedback

KPMG observation

The Commission has recognised the need for more detailed Member performance monitoring and reporting. The introduction of satisfaction surveys to measure quality has supplemented existing timeliness and volume measures. Comparator jurisdictions consulted are also considering more detailed performance measures.

A balanced score-card approach which measures timeliness, case complexity and quality would provide a more comprehensive assessment of Member performance. This approach to measuring Member performance ensures a focus on Member effectiveness, rather than just timeliness.

Process to develop performance metrics

Establishing a Member working group or committee to assist with development of additional performance metrics may assist with the process. The FCA consulted with Judges on the development of performance measures over a period of two years.

Example performance metrics could include:

- clearance rates/disposal of matters;
- transfer times;
- time to finalisation;
- matter complexity;
- party satisfaction surveys; and
- quality of decision-making measured by appeal rates, party surveys and peer assessment.

More comprehensive performance metrics would need to be supported by regular, transparent reporting. In addition to regular reporting, Members could convene performance meetings twice each year to discuss dashboards and overall performance, as is the practice at FCA.

Opportunity 2

Investigate establishing detailed Member performance measures and improved performance monitoring to assist with increasing Member accountability and performance.

\(^80\) Federal Circuit Court of Australia, Annual Report 2013-14, p 84.
\(^81\) Ibid; Federal Circuit Court of Australia, Submission to the Productivity Commission review of Access to Justice, p 1.
\(^82\) Federal Court of Australia, Submission to the Productivity Commission review of Access to Justice, p 1.
3.1.2.3 Member professional development

Professional development and continuous improvement to support Member and judicial effectiveness are key activities undertaken across the comparator jurisdictions examined by KPMG. VCAT and the AAT have developed comprehensive professional development programs. These programs include peer mentoring and tailored professional development opportunities for Members, such as those detailed in the case study below. Another example is the County Court of Victoria, which has implemented a weekly knowledge sharing forum for its Judges. This forum provides an opportunity for Judges to discuss experiences and insights from criminal trials, particularly in respect of jury directions.83

Case study 4 – Administrative Appeals Tribunal Members’ Professional Development Program

The AAT runs a Members’ Professional Development Program based on a framework of competencies developed specifically for the AAT. The program includes induction, mentoring, appraisal and other professional development opportunities. The appraisal scheme involves self-assessment in addition to peer review against the AAT’s framework of competencies. The scheme as a whole assists Members to identify areas where they require further professional development. The AAT also makes a range of courses available to Members. These include both in-house professional development seminars (for example, sessions on the effective of family violence or recent legal developments) and external seminars and activities, such as those offered through the National Judicial College of Australia and other national and state-based professional bodies.

Source: AAT Annual Report 2013-14, p 59

The Commission currently provides some Member professional development, such as professional development sessions at the annual Members conference. Feedback from some Members consulted was that, where professional development programs have been offered by the Commission, they have been well received and have improved Member practice. The decision-writing course was identified by some Members as being very useful. Some Members consulted also commented favourably on the induction program for new Members.

3.2 Leadership and accountability

Any changes to the workload allocation model may have an impact on current FWC leadership structures and practices. This section considers opportunities to strengthen leadership and accountability structures to support the proposed workload allocation models and to continue to foster a national collaborative culture at the Commission.

3.2.1 Leadership

Current FWC leadership structures

The Commission is led by the President, who is responsible for the discharge of the functions of the Commission as directed under the Fair Work Act 2009,84 and the General Manager, who assists the President in this role.85 The President also has the power to delegate certain functions to a Vice President, Senior Deputy President or Deputy President.86

In leading the Commission, the President is supported by three groups of Members: senior Members, Panel Heads and Matter Heads. Panel Heads and Matter Heads are chosen from the body of Members, and hold responsibility for allocating matters to Members, and hold responsibility for allocating matters to Members. Nominally, Panel Heads and Matter Heads are also accountable for Member performance, as they intervene when Members report having too heavy a workload. At present, there is no formal body, among Members, which is responsible for leadership, management and administration of the Commission. However, Panel Heads, Matter Heads and senior Members of the Commission are generally assigned leadership responsibilities, including management of panel lists and oversight of Member performance.

83 County Court of Victoria Annual Report 2012-13, p 21.
84 Fair Work Act 2009 (Cth), s.581.
85 Fair Work Act 2009 (Cth), s.657.
86 Fair Work Act 2009 (Cth), s.584.
Leadership in comparator jurisdictions

The majority of comparator jurisdictions examined by KPMG have established a standing leadership group of Judges or Members to provide strategic advice and assistance to the Chief Judge or President of the court or tribunal. The size of leadership groups ranges from under 10 members, to up to 15 members. In some circumstances, leadership groups also include senior executives from the administrative or registry arms of the relevant court or tribunal.

In most of the comparator jurisdictions with a standing leadership group, leadership teams have been given additional formal responsibilities. These include provision of advice to the Chief Justice or President about strategic decisions and forward planning, accountability and supervision for workload and performance, performance management, coaching, mentoring and promotion of a collegiate culture. Some leadership teams also perform a change agents or ‘champions’ role in relation to reform activities.

The County Court of Victoria recently implemented a revised governance framework to strengthen the Court’s management capability. This includes a Council of Judges (required under the County Court Act 1958) and Board of Management to support the Chief Judge and the CEO in the leadership and management of the Court. The CEO and Judges who lead the various matter divisions and lists in the County Court sit below the Board. Figure 14 outlines the new governance structure.

Figure 14: County Court of Victoria governance structure 2013-14

Source: Adapted from information provided to KPMG by the County Court, 11 November 2014

Membership of the Board of Management includes the Chief Judge (as Chair), members of all judicial Portfolio committees, the CEO, the Deputy CEO and Principal Registrar. The Board may also be supported by the Director, Finance and Administration, Director, Systems and Processes and Strategic Adviser – Governance, as appropriate.

The establishment of the Board of Management seeks to refocus the Council of Judges to matters of most importance to the judiciary, such as how cases are managed. This removes the administrative accountability of the Council of Judges. That administrative role is instead undertaken by the Board of Management. The Board of Management and the Administrative Executive Leadership team come together twice a year for the purpose of planning and strategy. The outcomes of those sessions are reported to the Council of Judges. All Board and Executive meeting minutes are also tabled at meetings of the Council of Judges.

Importantly, the CEO of the County Court sits on the Board of Management, and administrative staff provide secretariat support to the Board and head of list judges. The CEO of CCV indicated that this has significantly improved interactions between the judiciary and the administrative arm of the Court.

Another example is the AAT, which has established the Executive Deputy Presidents Committee. This is comprised of the President and the Executive Deputy President/Senior Member for each District Registry. It exists to facilitate discussion between the Executive Deputy Presidents regarding the management of the AAT – both within each region and nationally – and to provide high level advice to the President on key developments.

87 County Court Act 1958 (Vic), s. 87.
88 County Court of Victoria (2014) Governance structure County Court – a discussion paper, internal document provided to KPMG by the County Court, 11 November 2014.
KPMG observation

There are different leadership models which exist across comparator jurisdictions examined. Responsibilities of leadership teams includes accountability for Member workload and performance, responsibility for coaching and mentoring and a leadership role in setting the strategic direction of the court or tribunal. Available evidence appears to suggest that comparator jurisdictions consulted have well defined leadership and management structures, with clear roles and responsibilities.

Member-led change

Some comparator jurisdictions consulted indicated they had started to shift towards facilitating Member and Judicial-led change, rather than having change led by administrative and registry arms. Under a Judge / Member-led change model, Members and Judges are the key drivers of change strategies and initiatives, with administrative staff providing logistical support for the change process.

The approaches taken by CCV, FCA and VCAT have sought to increase the depth of engagement with Members and Judges. Feedback from comparator jurisdiction consultations indicate that these jurisdictions now regularly consult with all their Members and Judges prior to commencement of large-scale or strategic change processes. The FCA noted that the electronic court file and case management system, implemented in late 2014, involved extensive consultation and engagement with Judges over a 10 year period, and as each phase of the system was implemented.

There is also some evidence from comparator jurisdictions consulted that facilitating Member and Judge-led change was effective in successfully implementing change initiatives. This is consistent with the IFTE, which suggests that tribunals should actively seek the views of Members in change processes.

In this context, the Commission has also undergone significant change over the past five years to improve its service delivery and outcomes. Changes have occurred as a result of legislative change (brought about by the commencement of the Fair Work Act 2009) and also as a result of a refresh of the strategic direction of the Commission through the Future Directions program and other internal initiatives.

Feedback from consultations undertaken by KPMG is that the administrative arm of the Commission has actively sought to engage Members before and during change processes. Some Members consulted indicated that, while Members viewed this engagement favourably, there are further opportunities in relation to the timing and depth of engagement. All Members consulted noted the success of initiatives which have involved significant and broad-based Member input and consultation during the design phase.

KPMG observation

Feedback from comparator jurisdictions consulted indicated that facilitating Member and Judge-led change was effective in successful implementation of change initiatives. This is consistent with the IFTE, which suggests that tribunals should actively seek the views of Members in change processes.

Opportunity 3

Consider reviewing leadership structures to enable increased Member support and Member contribution to the strategic direction of the Commission.

3.2.2 Culture

Many comparator jurisdictions consulted by KPMG have sought to achieve positive cultural change by updating their physical working environment so that work spaces are bright and open. Shared spaces and open floor plans have been employed by many comparator jurisdictions to encourage interaction between Judges / Members and administrative staff.

Comparator jurisdictions consulted indicated that national jurisdiction, and Judges / Members in each state and territory, have not necessarily been an impediment to developing a national, collaborative culture. Constant communication between the regions and a collaborative work environment has been noted,
however, as essential. This is particularly important due to the, potentially, isolating nature of Member / Judicial office and the recognition of the need to support Members and Judges.©

VCAT has recently sought to implement a Peer Support Program among Members to continue to support its Members and promote collegiality. The program comprises six components:

- Member orientation;
- ongoing training;
- a mentoring program;
- a feedback framework; and
- a professional development program.

VCAT has also engaged with the Judicial College of Victoria to develop VCAT-specific training programs. This includes a more structured mentoring program for new and recently appointed Members, and a comprehensive Alternative Dispute Resolution Advanced Skills Development Program in 2014-15. This involves seminars, workshops and master classes. Implementation of similar initiatives to encourage greater interaction between Members could also improve the transition process for new Members.

KPMG observation

A continuous focus on culture and level of collaboration has been evident through consultations with comparator jurisdictions. These include initiatives to improve Member-to-Member relationships, for example through peer support programs, as well as to improve knowledge transfer between Members.

Opportunity 4

Consider options to increase collaboration and communication across the Commission to foster a national culture.

3.2.3 FWC accountability

Internal committees

The Commission currently has 11 committees. These are tasked with a wide range of responsibilities, such as organising professional development activities for Members, guiding the communications activities of the Commission and assisting the General Manager in relation to risk control, compliance, external accountability and internal and external auditing.

The Commission’s governance committees are as follows:

- Rules Committee;
- ICT Committee;
- Audit Committee; and
- Procurement Committee.

The Commission’s administrative committees are as follows:

- Archives Committee;
- Communications and Access to Justice Committee;
- International Development Committee;
- Melbourne Members’ Building Committee;
- Professional Development Committee;
- Sydney Building Committee; and
- FWC Staff Consultative Committee.

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91 Ibid.
All but three committees have membership from Members and administrative staff. The Audit, Procurement and FWC Staff Consultative committees comprise only administrative staff. All stakeholders consulted indicated that the terms of reference for FWC committees could be clearer and more closely aligned to the core functions of the Commission. Comparator jurisdictions consulted by KPMG also have committee structures with Judge/Member and administrative staff membership.

External accountability and leadership

The President is required under section 654 of the *Fair Work Act 2009* to provide certain information to the Minister for Employment and to the Fair Work Ombudsman. This information includes the number of unfair dismissal and anti-bullying applications made and finalised. This information is presented in quarterly reports to the Minister for Employment and the Fair Work Ombudsman, as well as being published on the FWC’s website. The President must also produce the annual report, which is tabled in the Australian Parliament.

The Commission is able to collect extensive information relating to employment and industrial matters from its interactions with employers and employees. This includes information relating to effective problem resolution. The Commission is able, as a result, to identify trends. To enhance its public value, the Commission has a key opportunity to use this information to inform public policy and contribute to the current views and perspectives in this area. This could be achieved through further reporting or data analysis beyond that in quarterly reports.

There are many examples where the Commission has historically endeavoured to contribute its insights, including various research reports and the recent development of a workplace engagement strategy. The FWC has also contributed to the Australian Workplace Relations Study. The workplace engagement strategy seeks to promote cooperative and productive workplace relations to facilitate overall productivity growth. This strategy has been developed in consultation with major peak employer and union bodies. There is scope to broaden this contribution to include primary data collected through the Commission’s interactions with employers and employees.

The General Manager is required to provide a number of reports under section 653 of the *Fair Work Act 2009*. These include reports on developments in agreement making, the operations of the provisions of the National Employment Standards relating to employee requests, and the extent to which there has been agreement in relation to individual flexibility arrangements under modern awards and enterprise agreements.

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

- **Legal Profession Reference Group** – comprising the President of the Commission and national law firms that frequently appear in matters before the Commission; and
- **Employment Termination User Group** – comprising the Termination of Employment Panel Head and representatives from national bodies whose affiliates or members represent applicants and respondents in unfair dismissal matters before the Commission.

Consultation feedback from external stakeholders indicated that the user groups have been an effective forum to provide feedback to the Commission about its operations and quality of service provision.

Finally, FWC Members are subject to a range of accountability measures (as outlined in the *Fair Work Act*), as follows:

- hearings are generally held in public;
- Members must provide parties with a fair hearing;
- reasons for decisions must be given and published; and
- decisions are subject to Full Bench review.

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92 Justice Iain Ross (2014) ‘Future Directions – Improving institutional performance and the concept of “public value”’, *speech delivered for IRSNSW.*
94 *Fair Work Act 2009 (Cth).*
KPMG observation

Issues, trends and observations identified by Commission Members through their day-to-day involvement in workplace relations issues contribute to the information and evidence to inform decision-making and policy reform.

The Commission’s recently established user groups are considered favourably by external stakeholders consulted by KPMG. This is consistent with good practice identified by the IFTE, which provides that regular stakeholder and community engagement is important to ensure tribunals are accountable to, and trusted by, the public.

Opportunity 5

Consider promoting further open dialogue with external stakeholders regarding workplace relations issues, trends and observations to enhance the Commission’s external influence and to maintain its reputation and regard.
4 Administrative and organisational efficiencies

In supporting the Commission to maintain strong accountability to the community, consideration has been given to how the Commission can improve delivery of its core functions and enhance its public value. Public value, in the context of the Commission, relates to the provision of an efficient and effective dispute resolution service and affordable access to justice for all parties.95

In identifying opportunities to improve the Commission’s administrative and organisational processes, KPMG has focused on the importance of ICT in enabling better public value for the Commission’s services, as well as efficiency improvements to administrative and organisational operations. The efficient implementation of a number of core initiatives, such as consideration of a national workload allocation model and improved access to justice for parties, rely on fit-for-purpose ICT solutions. Similarly, improving the efficiency of administrative and organisational operations, such as functions and performance of staff and use of premises, can also enhance the Commission’s public value.

4.1 ICT as an enabler

This section considers the use of technology to realise greater efficiency for the Commission and external parties and improve quality of service provision. Underpinning these opportunities is the critical role which ICT plays in enabling improvements to workload allocation and other initiatives.

Use of technology

Over the past few years, the Commission has sought to improve its use of technology to realise efficiencies in its operations, and improve the effectiveness of its services. Improvements undertaken by the Commission to date represent a shift from a paper-based system to an efficient technology-based system for receiving, managing and allocating matters.

Key elements of technology reforms to date include, but are not limited to:

- **eCase systems and Smart Forms** – The FWC is introducing online Smart Forms and is developing an eCase system for online lodgement. These are designed to improve efficiencies by prompting and “nudging” parties to complete application forms before lodgement, and to only lodge applications within the Commission’s jurisdiction. This has included the use of checklists and making supporting information readily available for parties online.

- **Telephone and videoconferencing** – FWC offices now have access to videoconferencing facilities. The number of hearings conducted by videoconference has fluctuated over the past 10 years, from 1,107 in 2003-04 to 755 in 2013-14. This suggests that hearings and conferences are sometimes held by videoconference when parties do not have access to a Commission office, rather than due to matters being allocated by one state for hearing by videoconference in another state (for example, in order to smooth work flow between Members in different states). The number of telephone conferences has risen over the past 10 years from 468 to 2004-05 to 3,198 in 2013-14.96

- **Website upgrades** – Over the past two years, the FWC has invested in upgrades to its website with an emphasis on providing access to justice by assisting parties, particularly self-represented parties, prepare for their interactions with the Commission. This material includes the publishing of benchbooks for unfair dismissals, general protections and anti-bullying, a video tour of the Commission to familiarise parties, FAQs and “how to” guides and online forms for lodging applications.


96 Fair Work Commission, Annual Report 2013-14, p 28. Note: this does not include telephone conferences conducted by administrative staff.
All external stakeholders consulted made reference to these technology upgrades and expressed positive views on the relative ease of access to the Commission. The Commission’s ability to upload files at any time, to upload documents onto the FWC website, and to allow parties’ online overview of all information available was seen as highly positive. One stakeholder consulted noted that the FWC’s technological capabilities in areas such as file lodgement and management compared favourably to other courts and tribunals.

These reforms are also consistent with reforms occurring in the comparator jurisdictions consulted, where information technology is at the forefront of court reform processes. As with paper-less reforms introduced by the Commission, all other comparator jurisdictions consulted are undertaking IT reforms with the view to implementing ‘paper-less’ systems and electronic hearings. The FCA’s reforms are the most progressed of the comparator jurisdictions, with an integrated online lodgement, electronic court file and electronic hearing system in place. The case study below illustrates the extensive use of the Commonwealth Courts Portal for parties to electronically upload documents.

**Case study 5 – Commonwealth Courts Portal**

The Commonwealth Courts Portal (CCP) is a joint initiative of the FCA, FCoA and FCC of Australia, with the cost shared between the three courts. The CCP provides lawyers and parties with web-based access to information about cases. Following initial registration, users obtain access to real-time information about their cases, including documents files, scheduled listing events and details of any orders made. The Commonwealth Courts Portal has more than 153,000 users. Over 500,000 documents were filed using the portal as at 30 June 2014.

Source: Family Court of Australia website; Family Court of Australia, Chief Executive Officer’s Report 2014, 26

**KPMG observation**

The Commission has introduced a number of technology reforms to move towards an efficient technology-based system for receiving, managing and allocating matters, including online lodgement. These have been received positively by external stakeholders and users of the Commission. The Commission’s approach is consistent with changes made by all the comparator jurisdictions consulted, all of which have implemented online lodgement systems.

All comparator courts and tribunals consulted are investing in information technology projects, particularly electronic case management systems and electronic court files, as an enabler for the longer term transition to ‘paperless’ courts/tribunals. They are doing so in order to achieve accompanying efficiency gains and to improve online accessibility and flexibility.

**Teleconferencing and videoconferencing**

All comparator jurisdictions consulted also frequently use teleconferencing and videoconferencing. A common barrier to increased use of videoconferencing in these jurisdictions has been poor connectivity. The FCC and FCoA noted in consultations that both had successfully implemented a videoconferencing system with limited connection dropouts, as detailed in the following case study.

**Case study 6 – Federal Circuit Court of Australia / Family Court of Australia videoconferencing facilities**

The FCC and the FCoA introduced Internet Protocol videoconferencing in 2012-13, with further upgrades undertaken during 2013-14. Specifically, 30 fixed units have been installed in courtrooms, while 27 portable units are also available across FCC registries. This new equipment allows free videoconferences between registries to be conducted. Content is being carried over the courts’ Internet Protocol network, rather than external ISDN lines. Other benefits have included free calls, a significant reduction in travel time for meetings, the availability of remote access for the protection of vulnerable witnesses and ease of use. The technology has been predominantly used for internal meetings. Registrars are increasingly using the system for directions hearings. Judges are now considering how to make greater use of these facilities for hearings.

Source: Family Court of Australia, Chief Executive Officer’s Report 2014, p 24

External stakeholders consulted indicated that teleconferencing and videoconferencing had enabled greater access to justice for parties appearing before the FWC who are unable to travel. It has also provided greater flexibility in allocation of matters to Members in states outside of the state in which the matter was lodged.
With a reliable connection, the use of teleconferencing and videoconferencing can assist to support greater flexibility in Member workload allocation and smoothing out of workload peaks and troughs across geographies.

**KPMG observation**

The use of teleconferencing has allowed parties unable to travel into capital cities access to the Commission, as well as enabling more flexible resourcing for the Commission. Videoconferencing is able to provide the same benefits.

**Self-represented parties**

The Commission has seen a significant increase in the number of self-represented parties and individual applicants in recent years. The recent Productivity Commission *Access to Justice Arrangements* report indicates that self-represented parties require more information and greater support. This ensures that the experience of parties through the process is improved and the time spent by Members and staff in handling these matters is reduced.97

The Commission has already undertaken a significant amount of work to ensure its processes and support materials assist self-represented parties. This includes:

- a pro-bono legal scheme for self-represented parties involved in unfair dismissal jurisdictional hearings;
- benchbooks for unfair dismissals, general protections, and anti-bullying;
- an appeals practice note;
- a virtual tour of the Commission on the website;
- publishing information on unfair dismissal applications in a variety of forms, including booklets and multimedia;
- reviewing and simplifying forms; and
- upgrades to the website to improve accessibility.98

VCAT has employed the use of standard form templates and standard orders as part of its alternative dispute resolution processes. It has found this initiative to be successful in helping self-represented parties articulate their legal position. Similarly, the AAT has made available a series of brochures that provide information about each stage of the review process. These brochures are written in plain English and have been translated into a range of community languages to increase accessibility.99

Opportunities to improve the Commission’s online information and offering to support parties include:

- improving the quality and completeness of the information provided; and
- ensuring that the information is relevant and addresses key issues.

This will not only improve the experience of parties, but also reduce the time spent by Members and staff processing information, or converting it into the structure or format needed in order to decide the matter. There is also an opportunity to improve access to the FWC’s services for self-represented parties through the use of technology. This includes greater provision of information to parties and tools to guide them through the application process.

**Kiosks and co-location**

One potential opportunity to better utilise technology in order to achieve the FWC’s objectives is the establishment of kiosks and videoconferencing facilities outside the FWC offices. The FWC Sydney office is currently undertaking a trial of a kiosk where community members are able to obtain access to information about the Commission with the assistance of FWC staff. If this trial proves successful, the Commission may wish to examine potential co-location of kiosks in the offices of other government agencies. For example, placement of kiosks in the offices of the FWO may be useful in regional cities where the FWO has a presence, but FWC does not.

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99 AAT submission to the Productivity Commission’s Inquiry into Access to Justice Arrangements, pp 8-10.
The kiosk initiative mirrors a kiosk pilot soon to be trialled by the Victorian Department of Justice and Regulation (DOJR) at the Braybrook Community Centre in western Melbourne. The DOJR project seeks to improve parties’ access to information by offering a touchscreen and built-in printer facilities at the Community Centre.100

Similar opportunities include co-investment in teleconference and videoconference facilities with public libraries or other government agencies. While the FWC conducted 755 videoconferences through its Melbourne, Sydney, and Brisbane offices in 2013-14, parties’ ability to access high-quality videoconferencing technology has affected the expansion of the videoconferencing program. In order to encourage greater use of the videoconferencing system by parties, the Commission may consider working with local councils or state governments to identify opportunities for videoconferencing.

KPMG observation
There are opportunities to improve parties’ access to the Commission by partnering with other organisations and investing in technologies such as kiosks and videoconferencing.

IT environment
A number of initiatives currently being undertaken by the Commission, and opportunities identified in this report, require a mature IT environment which can support reform and serve as an enabler to the FWC achieving its objectives. KPMG considers that there needs to be a review of the Commission’s current IT environment to identify detailed opportunities to increase alignment of the IT function with the Commission’s business strategy. There is also a need to articulate the future technology direction, and corresponding investment required, to achieve a desired level of maturity appropriate for the Commission. A 3-5 year a ‘road map’ for implementation is also suggested as an opportunity.

KPMG observation
Existing IT systems at the FWC may be unable to provide the support required for the Commission to achieve its future business and operational objectives. The IFCE notes that courts and tribunals should have adequate technology systems.

Opportunity 6
Consider upgrading current ICT systems and increasing the use of technology to support efficiency improvements, improve quality of service and increase accountability. The technology upgrade is a critical pre-condition for other reforms.

4.2 Organisational efficiency
This section considers the Commission’s current organisational structure and the roles and functions of each team. Opportunities for improvement have been identified which seek to better align staff capabilities and roles to organisational requirements and improve the effectiveness and efficiency of activities undertaken. Consideration has also been given to reducing the cost of the Commission’s premises, while maintaining adequate access to justice for parties.

4.2.1.1 Detailed organisational structure
The administrative arm of the FWC is organised into four branches:

- **Client Services** – the 107 staff in this branch deal with public inquiries, receive and process applications, coordinate hearing and conference rooms and lists, maintain and develop the case management system, arrange and conduct conciliations and mediations, publish documents including decisions and orders, and produce all FWC administrative data;

- **Tribunal Services** – the 122 staff in this branch provide specialist research, project management and administrative support to Members of the Commission. They coordinate the day-to-day support in the Members’ chambers, undertake high-level research activities, provide support to the Road Safety Remuneration Tribunal and assist the Commission with the management of large statutory reviews, such as those associated with modern awards, default superannuation funds and the minimum wage. In addition, they oversee national and international engagement activities, coordinate arbitration hearings for unfair dismissal matters, provide research for individual Members, undertake the work of the Pay Equity Unit and maintain a workplace relations library;
- **Corporate Services** – the 46 staff in this branch are responsible for human resources, information and technology, media and communications, legal support, corporate governance and reporting, financial management and payroll; and
- **Regulatory Compliance** – the 27 staff in this branch assist in administering the functions of the *Fair Work (Registered Organisations) Act 2013*.101

Figure 15 provides a high-level organisational structure of the Commission.

*Figure 15: High-level overview of the FWC’s organisational structure*

Source: Fair Work Commission, Organisational Structure as at 1 September 2014, provided to KPMG on 7 October 2014

4.2.1.2 **Staffing profile**

Table 8 provides a breakdown of the total number of administrative staff by level as of 30 June 2014, highlighting the change over time since 1 July 2009. The table does not include the General Manager, who is a statutory appointee.

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101 Staff figures provided to KPMG on 7 October 2014. The sum of total staff members at this date is 302, against a reported total of 305 as of 30 June 2014.
Table 8: Staffing profile of the FWC by number of staff

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|                | Total staff              | 317        | 313        | 299        | 305        |

Source: Fair Work Commission Annual Reports 2010-11, 2011-12, 2012-13, 2013-14 *Note: Salary ranges for APS 1 staff are drawn from the 2011-12 Annual Report, as no APS 1 staff were employed beyond this year.

FWC conducted an organisational restructure in the financial year 2012-13 to improve the efficiency of operations. This restructure created the Regulatory Compliance branch and saw the total number of branches reduced to four, with a reduction of 14 staff. KPMG has not undertaken an organisational review as part of this report.

Figure 16 compares the Commission’s staff profile to the general APS profile. Relative to the APS workforce, FWC has a higher proportion of EL2 (8.6 per cent of total FWC workforce) and APS6 (21.6 per cent of total FWC workforce). The number of EL2s reflects that the Commission employs 25 specialist conciliators at the EL2 level. The proportion of EL1s is significantly lower than the APS average.

Figure 16: Comparison of FWC and general APS staff profiles


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4.2.2 Potential efficiencies identified

Administrative staff are employed across the four branches of the Commission. The functions of these four branches are outlined in this section, along with opportunities in relation to each area.

4.2.2.1 Client Services Branch

The Client Services Branch is responsible for client-facing functions, comprising the following sections and teams:

- Registry (also known as National Registry);
- Conciliation; and
- Information and Data Systems (CMS+).

A description of each team’s function is set out below.

**Registry**

The Registry team is responsible for receiving, managing and, in some cases, allocating applications. Registry also handles public enquiries by telephone or in person at Commission offices, manages Associates and Relief Associates in their respective states and territories (except Victoria), and coordinates sittings and hearing lists.

The Commission established the Anti-Bullying Case Management Team, which reports to Manager, National Registry, following the adoption of the anti-bullying jurisdiction on 1 January 2014. This team centralises file management for anti-bullying matters. Positions in this team are not ongoing, as the team was established to manage initial uncertainty in matter workload with the introduction of the anti-bullying jurisdiction.

**Regional practices**

Historically, matters were processed in each state or territory of lodgement. More recently, Registry has attempted to initiate a shift away from region-based processing. This has led to 17 per cent of matters being processed outside the state in which they were lodged in 2013-14 (up from three per cent in 2011-12). This initiative was intended to improve efficiencies at a national level, as staff in some offices were over-utilised, while others were under-utilised. As a result of these activities, Registry staff in Tasmania and the ACT are performing 300 per cent more work than previously which reduces the burden on Registry staff in the Melbourne office.

**KPMG observation**

Regional practices and uneven workloads were identified, through consultations, in the Registry teams across geographies, with only 17 per cent of matters processed outside the state or territory of lodgement. Recent shifts away from region-based processing have enabled more efficient and equal utilisation across Registry teams.

**Conciliation**

The Conciliation team is responsible for conciliating unfair dismissal matters and general protections under the pilot conducted in selected states and territories. The conciliation function was introduced to the Commission during a 2009 Alternative Dispute Resolution trial, prompted by Members. The trial was successful and the function was established permanently. Conciliators are expected to be self-managing, and work closely with Tribunal Services and Registry staff to attempt to finalise or settle matters before a potential hearing. The 27 conciliators are considered ‘specialists’, and all but one of them are engaged at the EL2 level. This contributes to the FWC’s higher proportion of EL2 employees relative to the APS.

The use of conciliators for unfair dismissals and general protections has been highly successful. Approximately 60 per cent of unfair dismissals are now settled at conciliation and, in the recent general

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104 Data provided to KPMG by FWC on 5 November 2014.
105 Fair Work Commission, Fair Work Australia Unfair Dismissal Conciliation Research Survey Results, November 2010.
106 Data provided to KPMG by FWC on 7 October 2014.
protections pilot, almost 70 per cent of applications (out of 67 applications) were settled at conciliation.\textsuperscript{107} In addition, the settlement rate achieved at conciliation is 79 per cent.\textsuperscript{108} All stakeholders consulted noted that the conciliation program could be expanded to enable conciliators to undertake a broader range of work, dependent on the availability of resources and conciliator workloads. This could release further Member capacity for more complex matters. Targeted training for conciliators could be considered in order to build capability across the conciliator cohort.

\begin{center}
\textbf{KPMG observation}
\end{center}

\textit{The introduction of conciliators has reduced Member workload. Approximately 60 per cent of all unfair dismissal applications are now settled at conciliation without requiring Member involvement. There is further scope to involve conciliators in other Commission work, with merit in providing conciliators with more training opportunities to build their capability. This is consistent with the ICFE which encourages delegation of work to the appropriate level to manage judicial and Member workload.}

\begin{center}
\textbf{Opportunity 7}
\end{center}

Consider engaging conciliators with additional work to provide for career development opportunities and to optimise Member workload.

\begin{center}
\textbf{Information and Data Systems (CMS+)}
\end{center}

The Information and Data Systems (CMS+) team is responsible for maintaining the case management system, providing data to aid statutory and internal reporting, and conducting the current redesign of the eCase system in order to:

\begin{itemize}
  \item provide a simpler and more accessible system for Members and staff (leading to paperless processes);
  \item reduce transaction costs for the Commission and its clients;
  \item improve the level of service the Commission provides to its clients (i.e. implementing a system whereby the public can access the progress of their case electronically);
  \item meet all legal requirements, including the \textit{Archives Act}; and
  \item improve the quality of information about the work of the Commission available internally and externally.
\end{itemize}

CMS+ produces all Commission administrative data, develops reporting systems and frameworks and manages business intelligence projects and improvements. This team works closely with the Registry team to allocate matters and troubleshoot any issues with the system.

This team is also responsible for publishing a range of content, including uploading submissions to the website; publishing decisions, awards, transcripts, and listings; sending subscriber emails and other publications; and publishing other content. FWC has begun to identify means by which publications work can be automated, potentially in the context of the eCase system.

\begin{center}
4.2.2.2 \textbf{Tribunal Services Branch}
\end{center}

Tribunal Services branch supports Members in carrying out their functions, and comprises the following sections and teams:

\begin{itemize}
  \item Workplace and Economic Research (WER) section, including the Pay Equity Unit;
  \item Member Support, including National and International Engagement, Unfair Dismissal Case Management Team (UDCMT) and the Member Support Research team;
  \item National Associates team;
  \item Library and Records Management; and
  \item Road Safety Remuneration Tribunal Support.
\end{itemize}

A description of each team’s function is set out below.

\textsuperscript{107} Data provided to KPMG by FWC on 5 November 2014.
**Workplace and Economic Research**

WER produces externally published and internal research and analysis for the Commission including the President, its Members, the General Manager and the Director of the Tribunal Services Branch. WER also assists the Road Safety Remuneration Tribunal. WER’s main streams of works are for the Annual Wage Review, Pay Equity Unit, General Manager’s s.653 research and reports, Future Directions projects and research, advice and analysis for the RSRT in addition to ad hoc projects requiring expertise in primary and secondary research methods and analysis. It undertakes its research drawing on specialist qualifications and research experience to enable empirical research methods and analysis to be applied (including economics, statistics, law and psychology). In addition to undertaking research, the WER also externally commissions and manages research to inform the above work streams.

A sub-branch of WER, the Pay Equity Unit (PEU), conducts specific research on pay equity related issues and provides information to inform matters relating to pay equity, such as the the annual wage review, the four-yearly modern awards review and equal remuneration cases. Examples of the Unit’s work include the Australian Workplace Relations Study (AWRS) and the equal remuneration research report.

**Research capability**

WER staff have important technical and research capabilities based on their specialist industrial relations and economics skill set. KPMG observes that the team appears to contribute to a number of research projects aimed at furthering debate and extending knowledge about those employed in the workplace relations sphere.

At present, however, some WER staff are being required to undertake more generalist work. For example, the WER team currently conducts some procurement for the Commission and manages a range of projects for the President and General Manager.

**KPMG observation**

Consideration could be given to devolving these activities to the Member Support Team, Associates, or Relief Associates with more general skill sets. It is noted that currently, there may be a capability gap or insufficient capacity for other parts of the Commission, to undertake procurement or project-related activities. There may be a need to build this capability before devolving these responsibilities to other teams.

WER’s future research program should continue to be aligned to the core functions and strategic direction of the Commission. This alignment should continue to be communicated to Members and the community.

**Member Support**

The Member Support Team provides specialised workplace relations and administrative support to Members of the Commission. The three sub-branches of the Member Support Team are:

- **The general research team**, which provides assistance with the management of large statutory reviews such as those associated with modern awards, default super funds and the minimum wage. This includes the preparation of documents, timetables and research in areas such as awards and appeals.
- **The National and International Engagements Team**, which is responsible for coordinating the Commission’s involvement with international courts and tribunals with similar functions, management conferences and projects and working with the broader workplace relations community.
- **The UDCMCT** which was established in order to receive, process and allocate matters for unfair dismissals. The UDCMCT is a central body responsible for programming, listing and management of the Melbourne, Sydney and Brisbane arbitration rosters, the Melbourne and Sydney jurisdictional roster, and the rosters for a range of regional locations. The UDCMCT is also responsible for allocating matters not settled at conciliation at the direction of the Panel Head and for providing telephone and written advice to parties on the process and procedures of the Fair Work Commission, specifically with matters involving Applications for Unfair Dismissal Remedy under s.394 of the *Fair Work Act 2009*.

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General research team

The function of the Member Support Team is to provide assistance to different areas of the Commission. For example, approximately one-third of the team are currently engaged in undertaking the Agreements pilot. The team also provide pooled research and administrative support to Members. Consultation feedback from Members indicated that this research function, however, was largely being performed by Associates and, in some cases, by Members themselves.

The majority of comparator jurisdictions utilise one or two Associates per Member to undertake legal research and assist in preparing decisions, rather than through a pooled research team.

KPMG observation

KPMG observes that there may be a need to clarify the different roles and responsibilities of Member Support staff, Associates and Relief Associates. Business rules could also be established to assist staff and Members understand these role distinctions.

The Commission may be able to realise efficiencies by formally devolving research and document drafting functions currently performed in the Member Support Team back to Associates. Relief Associates could then provide the back-up research and support needed in busy periods. The Commission would need to consider the current workload of Relief Associates and whether there is capacity to absorb this additional research work.

Unfair Dismissals Case Management Team

The Unfair Dismissal Case Management Team (UDCMT) handles unfair dismissal matters that do not settle at conciliation until they are allocated to a Member for determination. This constitutes about 20 per cent of all unfair dismissal applications made to the Commission. The team operates under the direction of the Panel Head for Termination of Employment.

The UDCMT model was introduced in 2009 in order to manage an increase in the unfair dismissal workload following the expansion of the national workplace relations system and changes to unfair dismissal laws. Figure 17 outlines the process by which matters are allocated and managed through UDCMT.

Figure 17: The process for allocating files through the Unfair Dismissal Case Management Team

A recent internal FWC project reported that UDCMT has been effective. This is because it provides a centralised overview of Members’ workloads in the area of unfair dismissals, and the subsequent flexibility needed to take into account individual Member workloads.

UDCMT has also ensured that the administrative and upfront management of the high volume of unfair dismissal matters is conducted at lower pay scales. Given that more than 14,000 applications for unfair dismissals were lodged in 2013-14, UDCMT has also minimised Associates’ workloads by centrally managing these high volume of cases, including interactions with parties and preparation of the case file.

All external users of the Commission consulted noted that there were few noticeable changes resulting from the centralisation of unfair dismissals. Some concerns, however, were raised about UDCMT’s matter allocations and difficulties in communicating with the UDCMT. One stakeholder reported that parties were sometimes not given relevant information until shortly before the hearing, leading to difficulties in being able to advise clients properly. Some stakeholders consulted also reported experiencing delays in the listing of unfair dismissal cases.
If it was determined that delays had occurred, the transfer of unfair dismissal case management functions to chambers and close management of cases by Associates could be one option to assist to improve timeliness. This is an option to consider if Associates are able to effectively absorb additional workload. This requires consideration of the current functions performed by Associates and whether they can be transferred elsewhere or ceased (as discussed in the following section).

Transfer of case management to Associates would need to be supported by clear business rules regarding case management expectations, best practice file management practices in chambers and close scrutiny of Member performance and timeliness benchmarks.

KPMG observation

The Unfair Dismissal Case Management Team model has improved the transparency and accountability of case management. Some external stakeholders consulted, however, noted that the centralisation of unfair dismissal case management has, in some cases, made the process less accessible for parties.

National Associates Team

The National Associates Team manages Associates and Relief Associates located in Victoria. Associates provide direct support to Members of the Commission in chambers, including assisting with proceedings, liaising with parties and preparing documentation.

Each Member is currently assigned one Associate, with Panel Heads and the President assigned two Associates in recognition of their increased workload. Associates are employed to support Members with administrative and legal tasks, such as personal administration, case management and legal research.

Broadly, their work can be divided into six components:

- case management: preparing files for listing, maintaining and securing files, and using information systems such as CMS for creating, transmitting, and storing documents;
- preparing documents: preparing correspondence, briefing notes, and decisions for publication as well as reference material for parties;
- legal research and decision-writing: identifying and retrieving information to support decision-making and supporting Members in writing decisions;
- personal administration: acting as an executive assistant for Members;
- stakeholder management: liaising with parties on behalf of the Member, as well as working with internal staff to meet Members’ needs in relation to issues such as equipment and facilities; and
- acting in a “Clerk of Court” role in hearings.110

There has historically been no requirement for Associates and Relief Associates to be legally trained, with some Associates and Relief Associates performing administrative tasks to support Members and the Registry branch.111 In more recent years, Members have engaged legally trained Associates who can assist with decision-drafting, editing and legal research.

FCA, FCC and FCoA Judges generally have two Associates, or an Associate and an executive assistant (up to 1.5 full time equivalent positions). Associates, but not executive assistants, are engaged on fixed term contracts and usually turn over every one to two years. Associates are all legally qualified and assist with drafting and proofing decisions under the close supervision of Judges/Members. In these jurisdictions, consultations indicated that these staff are critical in assisting to manage the docket system, especially where electronic court files and electronic case management is needed.

The AAT uses more flexible support arrangements due to its mix of full-time, part-time and sessional Members. The Sydney office uses a pool of Associates, and there is approximately one Associate for every part-time Member. Associates in this pool are managed by a Team Leader, who plays a gate-keeping role for use of the Associates.

\[\text{110 Information provided to KPMG by FWC on 7 October 2014.}\]

\[\text{111 Research Relief Associate APS 5 Position Description from FWC.}\]
KPMG observations

There has been relatively low turnover of Associates in the Commission’s recent history. A number of long-serving Associates perform administrative roles, rather than a broader role in assisting with legal issues, managing cases and drafting of decisions. Members are increasingly engaging legally-trained Associates to improve efficiency. All comparator jurisdictions employ legally-trained Associates on one to two year fixed term contracts.

Inconsistent practices

There also appears to be inconsistencies in the business practices and processes among Associates, such as the use of different checklists and case management and file management practices. Developing business rules outlining reasonable Associate practice would assist to improve consistency and transparency across Associates’ roles and better support Member workload management.

In addition, there may be benefit in mapping the skills and capabilities of the Associate cohort and their professional development needs. A peer support or buddy program for Associates and Member support staff is a further initiative for consideration. Such a program may foster stronger relationships among Associates and promote the sharing of good practice across chambers, such as effective case management and efficient decision-writing.

Use of Relief Associates

Relief Associates are employed on a full-time, ongoing basis to perform Associate duties for Members in a relief capacity.112 The reporting lines of Relief Associates and full-time Associates differs across geographies – Relief Associates and Associates in NSW, QLD, SA and WA report to state Registry managers, while Associates in Victoria report to the National Associates Team in the Tribunal Services branch. This has contributed to some stakeholders consulted indicating that the National Associates Team has limited visibility over the use of Relief Associates across geographies. There may also be benefit in improving the understanding across the Commission of the role of Relief Associates.

Opportunity 8

Seek to increase use of Associates and other Member support staff to support Members in other ways, to improve efficiency and to release Member capacity for higher-value work.

Library and Records Management

The Library and Records Management Team is responsible for managing and distributing library resources such as books, managing and archiving records appropriately, and conducting research for Members. Library staff also provide training to Members and Associates on legal research.

Road Safety Remuneration Tribunal team

The Road Safety Remuneration Support team provides administrative support to Road Safety Remuneration Tribunal Members. This includes managing enquiries, and supporting with the preparation of the annual report and other communications.

4.2.2.3 Corporate Services Branch

Corporate Services Branch is responsible for the Commission’s back-end functions and provision of business support to Members and administrative staff. It is comprised of the following teams:

- Finance & Resources Team;
- Information & Communications Technology (ICT) Team;
- Media & Communications Team;
- Reporting, Planning & Legal Team; and
- Workforce Team.

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112 Research Relief Associate APS 5 Position Description from FWC.
Finance and Resources

The Finance and Resources team coordinates the Commission’s account, finance, property, travel and payroll functions. Negotiations are taking place to outsource payroll services in order to improve efficiencies, in recognition of the fact that payroll in courts and tribunals is complex.

ICT team

The ICT team provides information communications and technology systems to the Commission. It is comprised of three sub-branches:

- ICT Infrastructure is responsible for the implementation, management and support of Enterprise Infrastructure, systems and applications including security, remote access and the internet gateway;
- ICT Operations is responsible for the business support of computers, handheld devices, videoconferencing, telephones, Wi-Fi and desktop applications;
- Web Systems is responsible for websites, intranet, online content, graphic design, desktop publishing, multimedia, and videography, website hosting and mobile apps; and
- Online Projects is responsible for a program of improvement work including usability, accessibility, search and content rewrite into contemporary English.

In addition to business as usual activity, the ICT team has been engaged in major IT infrastructure reform since 2012. The majority of these reforms are now complete.

Media and Communications

The Media and Communications team is responsible for producing media releases, external communications and co-ordinating publications such as the annual report. This team has also taken on responsibilities such as internal communications, web content and development of the intranet.

Reporting, Planning and Legal

The Reporting, Planning and Legal team assists in the preparation of the Annual Report. Three legal officers provide internal counsel, including on freedom of information and privacy matters. The team oversees corporate governance (procurement, business and strategic planning, records management, protective security and business continuity) and parliamentary liaison.

Workforce team

The Workforce team provides human resources advice regarding policies and practices, recruitment support, support to performance management, coordination of learning and development activities, assisting with reporting and managing of the payroll services outsourced to Aurion.

4.2.2.4 Regulatory Compliance Branch

Regulatory Compliance Branch was established as a dedicated, separate branch in 2012. This branch undertakes the Commission’s registered organisation functions, including regulation of all registered organisations. Staff in this branch assist in administering the functions of the Registered Organisations Act, process right of entry permits, oversee compliance of unions and employer organisations with legislative obligations and conduct inquiries and investigations into non-compliant organisations and individuals.

Opportunity 9

Consider the extent of alignment of roles, staff capabilities and practices to the core functions of the Commission to ensure there is clarity regarding roles and responsibilities and that activities are undertaken in an effective, efficient and consistent manner.

4.2.3 Premises

In 2013-14, property costs comprised 20 per cent of the Commission’s total costs. To realise efficiencies in the cost of premises, the Commission has recently refurbished its Melbourne and Sydney offices to increase office density to match Commonwealth Government office density targets of 14 square metres per
occupied work point. Brisbane is not subject to the same Government Property Data Collection (PRODAC) targets for office density, but it has also recently refurbished its premises. By rearranging its workspaces and improving office density, the Melbourne office has been able to reduce its office footprint to one building, at a saving of $235,000 per annum excluding outgoing costs. Similarly, two floors in Sydney, representing 30 per cent of the total tenancy, were sublet to another Commonwealth entity, saving an average of $1.63 million per annum in rental costs. The Commission has also refurbished and sublet underutilised space in the Melbourne, Sydney and Brisbane offices.

**Potential efficiencies**

There remain opportunities to improve office density further, particularly in Darwin, Canberra and Hobart. In 2013-14, the Darwin office received only 10 per cent of total FWC application lodgements and conducted 0.21 per cent of total sittings. No Members reside permanently in the Northern Territory, and only 40 sittings were conducted there in 2013-14. The hearing rooms and chambers are therefore underutilised in Darwin. Similarly, Hobart also receives a low proportion of matters, with 10.6 per cent of application lodgements and only 0.38 per cent of total sittings.\(^{114}\)

The Canberra office space (excluding chambers and public areas) also exhibits low density at 76.7 square metres per staff member. There may be opportunities to consider different leasing, co-location and sharing arrangements to reduce property costs in relation to underutilised space.

The AAT minimises rental costs by sharing office spaces, including a joint registry with FCA in Hobart and shared facilities with the Veteran’s Review Board in Adelaide, Canberra and Perth.\(^{115}\) Members often share their chambers with other Members, especially when Members use flexible working arrangements such as working from home. The AAT does, however, have a larger number of part-time and sessional Members who do not require dedicated chambers.

The majority of FWC premises are located, usually by necessity, in the central business districts of state and territory capital cities, resulting in high rental costs. The tenancy in Perth is the most expensive of the Commission’s offices.\(^{116}\) Perth also has the third-largest hearing and chambers space (332m\(^2\) per Member), compared to Melbourne (119m\(^2\) per Member).\(^{117}\) There are opportunities to explore the level of utilisation of premises by location. For example, the Commission could seek to increase the use of office sharing arrangements amongst Members. Sharing of hearing rooms and registries with other court and tribunals, or the use of kiosks and other shared ‘front-doors’ into the Commission can also be considered (refer to section 4.1).

The Commission is required to ensure that its facilities remain accessible to the public. The transaction costs of moving offices, reducing office space or shifting staff to smaller offices should also be taken into account when considering total efficiencies to be gained from adopting any changes. The timing flexibility may also be limited by lease terms and renewal dates.

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**KPMG observation**

There are opportunities to improve the level of utilisation of hearing rooms and chambers, particularly in locations with low workload volumes and fewer Members. Close scrutiny of such utilisation is aligned with initiatives undertaken in courts and tribunals such as the AAT and FCA. Furthermore, ICFE notes that courts and tribunals should have appropriate court facilities and office space.

**Opportunity 10**

Continue to increase office density and reduce costs to more efficiently use premises while maintaining adequate access to justice and quality of service provision.

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\(^{114}\) Fair Work Commission, 2013-14 Annual Report

\(^{115}\) AAT Annual Report 2013-14, pp 48-49.

\(^{116}\) Locations, Rents and Square Meterages spreadsheet provided to KPMG by FWC, 20 November 2014.

\(^{117}\) Locations, Rents and Square Meterages spreadsheet provided to KPMG by FWC, 20 November 2014.
5 Implementation considerations

This section provides a high-level overview of several key implementation considerations. These considerations relate to interdependencies across the opportunities identified and monitoring and evaluation.

Implementation planning

An implementation plan identifies key milestones, timelines, stakeholders, and governance and accountability arrangements, as well as monitoring and evaluation of implemented opportunities. Implementation plans also include change management considerations.

Interdependencies across opportunities

There is also an opportunity to sequence the implementation of any opportunities to focus on achieving each of their intended outcomes. The implementation plan would also identify these interdependencies across multiple opportunities.

Monitoring and evaluation

In order to capture the benefits of change and ensure that any implemented opportunities have led to improvements in service quality, it is important to conduct monitoring and evaluation activities.

The main purposes of undertaking monitoring and evaluation activities is to:

- guide decision making;
- improve the delivery of the opportunity; and
- enhance accountability.

A monitoring and evaluation plan could be developed in tandem with the implementation plan. As well as identifying key milestones, timelines, stakeholders, governance and accountability arrangements in the implementation plan, the monitoring and evaluation component would identify key evaluation points and progress measures. The implementation plan could identify responsibilities for conducting monitoring and evaluation activities, and responsibilities for acting on findings and recommendations. The timing of monitoring and evaluation activities can also be informed by critical milestones.

Evaluation activities can assist the FWC leadership to understand the progress that has been achieved, and whether delivery can be improved with further refinement of the way opportunities are implemented. At a high level, evaluation activities are expected to assist the FWC leadership to develop a better understanding of the answers to the following questions:

- Are we doing the right thing? This addresses the rationale, the pragmatic context of the delivery process and the outcomes for intended beneficiaries.
- Are we doing it the right way? This addresses all the components of how expected outcomes are being achieved.
- Are there better ways of achieving the results? This addresses good practices, lessons learned and possible alternative opportunities.

Evaluation and monitoring activities can be undertaken during or after implementation. The benefit of undertaking assessments at different stages over the life of an opportunity is that it enables the measurement of progress toward achieving expected outcomes, and identification of improvements that may be required to improve delivery. The benefit of completing evaluation activity following implementation is that is enables an assessment of the impact of the opportunity. This must, however, be timed to ensure the full effects of the opportunity can be captured.

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119 Ibid.
Appendix 1: Acronyms and definitions

The following provides an overview of the acronyms used throughout this report.

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<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>AAT</td>
<td>Administrative Appeals Tribunal</td>
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<td>ACAS</td>
<td>Advisory Conciliation &amp; Arbitration Service</td>
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<td>ADR</td>
<td>Alternative dispute resolution</td>
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<td>Commonwealth Courts Portal</td>
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<td>CCV</td>
<td>County Court of Victoria</td>
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<td>CMS</td>
<td>Case management system</td>
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<td>COAT</td>
<td>Council of Australasian Tribunals</td>
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<td>Victorian Department of Justice and Regulation</td>
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<td>International Framework for Court Excellence</td>
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<td>IFTE</td>
<td>International Framework for Tribunal Excellence</td>
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<td>PRODAC</td>
<td>Government Property Data Collection</td>
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<td>Road Safety Remuneration Tribunal</td>
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<td>UDCMT</td>
<td>Unfair Dismissal Case Management Team</td>
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<td>Victorian Civil and Administrative Tribunal</td>
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Appendix 2: Stakeholder consultations

Stakeholders consulted

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<th>FWC Administration Executive Team</th>
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<tr>
<td>Bernadette O’Neill</td>
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<tr>
<td>Louise Clarke</td>
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<tr>
<td>Miranda Pointon</td>
</tr>
<tr>
<td>Chris Enright</td>
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<td>Murray Furlong</td>
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Comparator Jurisdictions

Senior representatives from:
- Federal Court of Australia
- Federal Circuit Court of Australia and Family Court of Australia
- Victorian Civil and Administrative Tribunal
- County Court of Victoria
- Administrative Appeals Tribunal

FWC Members

Seven FWC Members

External stakeholders

Senior representatives from:
- Australian Chamber of Commerce and Industry
- Australian Industry Group
- Australian Council of Trade Unions
- Minter Ellison
- Ryan Carlisle Thomas Lawyers

Consultation questions

Consultation questions for internal stakeholders broadly included the following questions:

- Does FWC’s current structure support it to carry out its functions in an effective and efficient way? If not, why not?
- Is there any duplication or overlap among the branches/areas/teams within the Fair Work Commission?
  - What reporting and accountability mechanisms are in place within FWC?
- What other governance arrangements are currently in place at FWC? How well are these working?
- How does the relationship between the administrative and tribunal arms of the FWC operate? How well has this been working?
- Are there any areas for improvement?
- How effectively do you think the structure and composition of the FWC Executive has been functioning?
- What opportunities are there to improve member performance?
- In your opinion, how efficiently is FWC operating? You may like to consider the processes and time in which matters are finalised, appropriateness of the allocation of resources and facilitation of general administrative functions/duties.
- Are there any barriers to achieving greater efficiencies?
What are the key challenges (or trade-offs) in balancing improved accountability and improved efficiency?

How well has the Future Directions change strategy worked?

How are the pilot programs progressing? (particularly the agreement approval pilot)

Are there any changes you would like to see in the current allocation of roles and responsibilities, functions, resources and reporting arrangements across FWC to improve organisational performance, including considerations of accountability, governance and efficiency?

Consultation questions for comparator jurisdictions broadly included the following questions:

- Have you introduced any strategies to improve governance and accountability arrangements within your jurisdiction? You may like to consider reporting arrangements (including personnel, frequency and content).
- How do you measure Member/Judicial performance? What performance monitoring tools do you use and what metrics are measured?
  - What accountability mechanisms are in place?
  - Are there any business rules or guides in place to guide Member/Judicial behaviour and performance?
- Have you introduced any strategies or process to improve efficiency within your jurisdiction? You may like to consider the processes and time in which matters are disposed, how appropriate the allocation of resources is and facilitation of general administrative functions/duties.
- Are these strategies/processes working?
- What benchmarks (if any) do you use to measure the impact of these strategies/processes?
- How do you track and optimise Member/Judicial workloads? How is work allocated?
- How have you understood what is unacceptable, acceptable and optimal practice in how Members/Judges carry out their work?
- What support services are provided to members and how are these managed?
  - How are Associates and Member Support Staff (or equivalent) used? What roles and activities do they perform?
- Has your jurisdiction used technology to improve efficiency? If so, in what ways? You may like to consider the use of video conferencing, smart-forms and other similar initiatives.
- In introducing potential governance and efficiency strategies, did you make any trade-offs between accountability and efficiency? If so, what were these – and what factors did you consider in making these decisions?
- What future plans do you have in place to improve efficiency and governance?

Consultation questions for external stakeholders broadly included the following questions:

- Could you please describe your role and function(s), and your relationship and interaction with FWC?
- What is your perception of the governance and accountability arrangements of FWC?
- What do you know about the governance and accountability arrangements in other similar courts and tribunals?
- What is your perception and experience of the efficiency and effectiveness of FWC? You may like to consider:
  - How the FWC compares to other organisations you interact with in terms of efficiency, effectiveness and key processes
  - How your interaction(s) with FWC have changed over time – and whether changes to legislation, policy or administrative requirements have influenced these interactions (noting that some FWC procedures cannot be changed as they are mandated by legislation)
  - The level of specialist expertise/skill displayed by members and FWC personnel
  - Changes in FWC’s processes over time, and whether these have had any impact on its efficiency and effectiveness
• How could FWC improve its performance? You may like to consider opportunities to improve accountability, governance and efficiency.
Appendix 3: List of Panels and Members

Table 9: List of Panels and Members, effective 1 September 2014

<table>
<thead>
<tr>
<th>Major resources/ infrastructure project panel</th>
<th>Industry panel</th>
<th>Termination of employment</th>
<th>Anti-bullying</th>
<th>Organisations</th>
<th>Expert panel</th>
<th>Annual wage reviews</th>
<th>Default superannuation funds</th>
</tr>
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<tr>
<td>Government services</td>
<td>Media, ports, oil and gas</td>
<td>Manufacturing and building</td>
<td>Mining, agriculture and electric power</td>
<td>Transport, logistics and services</td>
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<td>Annual wage reviews</td>
<td>Default superannuation funds</td>
</tr>
</tbody>
</table>

Panel heads

**Boulton J (SDP)**

- Catanzariti VP
- Watson VP
- Watson SDP
- Harrison SDP
- Acton SDP
- Gooley DP
- Hampton C
- Watson VP
- Ross J
- Ross J

Panel members

- Watson SDP*
- Lawler VP
- Hamilton DP
- Drake SDP
- Hamberger SDP
- Sams DP
- All Members serve on this panel
- All Members serve on this panel
- Hatcher VP
- Watson SDP
- Acton SDP
- Harrison SDP
- O’Callaghan SDP
- Cribb C
- Richards SDP
- Bartel DP
- Spencer C
- Boulton J (SDP)
- Hampton C
- Bull C
- Richards SDP
- Williams C*
- Cambridge C
- Gooley DP
- Lewin C
- Roberts C
- Richards SDP
- Mr Cole
- Johns C
- Sams DP
- McKenna C
- Cloghan C*
- Lawrence DP
- Williams C*
- Williams C*
- Lawrence DP
- Professor Richardson
- Mr Harcourt
- Gooley DP
- Bissett C
- Hampton C*
- Gostencnik DP
- Cloghan C*
- Gostencnik DP
- Mr Gibbs
- Mr Apted
- Spencer C
- Booth C
- Simpson C
- Kovacic DP**
- Hampton C*
- Williams C*
- Wilson C
- Johns C
- Blair C
- Roe C
- Cloghan C
- Ryan C
- Lee C
- Hampton C
- Riordan C
- Bull C
- Roe C
- Gregory C
- Bissett C

*Member on more than one panel

Appendix 4: Stakeholder consultation themes

This section provides an overview of the key consultation themes observed from each of the stakeholder groups consulted by KPMG.

KPMG conducted a series of consultations with selected FWC internal and external stakeholders to gain an in-depth understanding of current issues. The consultations assisted to identify opportunities to improve governance and accountability, and efficiency. Observations from consultations were considered in the development of opportunity areas and future opportunities for the Commission.

Stakeholders consulted

KPMG consulted with a limited cross-selection of stakeholders as identified by the Commission. It is noted that the stakeholders consulted are not a representative sample and views expressed may not be comprehensive.

The four consultation groups were:

- FWC Members, including the President;
- FWC Executive team;
- External FWC stakeholders, including employer groups, unions and the legal profession; and
- Comparator jurisdictions – Federal Court of Australia (FCA), Federal Circuit Court of Australia (FCC) and Family Court of Australia (FCoA), the Administrative Appeals Tribunal (AAT), the County Court of Victoria (‘County Court’) and the Victorian Civil & Administrative Tribunal (VCAT).

A full list of individual stakeholders consulted and the consultation questions are provided in Appendix 2.

Members

Leadership and culture

Leadership

All Members consulted were of the view that the Commission could benefit from the establishment of a stronger leadership team among Members and expanded responsibilities for this leadership team. These could include accountability and mentoring over Member workload and performance, performance management, coaching and mentoring of other Members, promotion of a stronger, more collegiate culture among Members, and provision of advice to the President about strategic directions for the Commission. The majority of Members consulted considered that the appointment of Members to leadership positions should be made on the basis of capability and experience, and potentially selected through an open expression of interest process.

Most Members consulted stated that they would prefer regional leaders in each state and territory and greater engagement between the leaders and the President with regards to performance management. The majority of Members consulted were supportive of the annual Members’ conference and more structured professional development for Members.

Some Members consulted considered themselves “removed” from the strategic planning and operational functions of Commission, predominantly resulting from the historic separation of the Tribunal and Administrative arms of FWC. Most Members stated that they would prefer greater involvement in strategic decision making for the Commission, more frequent Member consultation and the opportunity to have input regarding reform projects and initiatives.

Some Members stated that there have been good examples of Member consultation, such as for Future Directions. KPMG, however, heard that the level of consultation and consideration of Member feedback has
been variable. This resulted in some reforms which have had a negative impact on Member efficiency, including the recent website redesign and the archiving of historical FWC decisions which are used by Members regularly.

A number of Members consulted also commented that it would be beneficial for the Commission to undertake a formal business planning process to develop a business or strategic plan, to understand the core functions and responsibilities of the Commission and ensure future reforms and initiatives align with these functions.

There is also a perception expressed by some Members that reform has been driven by head office in Melbourne. In general, Members consulted, particularly those from smaller states, expressed the view that the management of the Commission is Melbourne-centric and that regional knowledge and expertise is not utilised enough. This has also led to a perceived lack of support for smaller states and territories.

Culture

Most Members consulted consider that collegiality and sharing of information and good practice among Members could be improved considerably, as Members have tended to work in an isolated manner. Members consulted also noted that knowledge sharing occurs in an ad hoc manner and would be more effective if it were formalised and more widespread. Suggestions to improve the culture included formalised Member-to-Member shadowing and peer support, and more forums for Members to interact and collaborate with each other.

All Members consulted held a strong view that the relationship between Members and administrative staff requires improvement, including a need for greater communication and collaboration. Many Members consulted noted that they have a lack of understanding of the roles and responsibilities of administrative staff, and the level of support and professionalism Members can expect to receive. Members consulted stated that they would benefit from greater support from the administrative team, particularly for smaller states. There is a perception among some Members that they are under-serviced in comparison to Members based in Melbourne or Sydney.

Member feedback from those consulted also suggested that current application of administrative policies could be more flexible and fit-for-purpose, rather than applied in the same manner for every circumstance.

Allocation of matters

Panel system

Members consulted held widely differing views on the utility of the panel system. Some Members expressed support for retaining a streamlined Panel system under which Panel Heads are more pro-active, work together more effectively across state boundaries, and are potentially rotated regularly. Members who advocated for this system held that the status of Panel Heads should be granted on the basis of management and leadership capability.

However, other Members consulted expressed the view that the Panel system should be replaced on the basis that it results in uneven workload allocation and potentially rewards inefficient work practices. This could occur when Members are unable to meet timeliness benchmarks, and their work is reassigned to other Members without penalties or other implications for performance. If an alternative system to the Panel is adopted, there was broad consensus among Members consulted that some industry-specific expertise should be retained in order to preserve the Commission’s reputation and the respect of industry sectors, particularly in industries with complex awards and agreements.

Members who considered that the workload allocation method should be replaced varied in the replacement system they supported. Some favoured a regionally-based system where Regional Leaders allocate matters to Members in their state. Others favoured a hybrid system under which matters are allocated at a high-level on regional, functional and national lines with an industry overlay for specific industries. The view of these Members is that under the current system, Panel Heads do not have sufficient visibility of Member workload and have few levers to improve Member performance and accountability.

Members consulted also stated that there is a lack of broader understanding of the skills and experience of Members and how this could be used for particular industries and matters, or more broadly through the Commission. One-on-one consultations with Members to map skills, capabilities and interests were suggested.
UDCMT and conciliations

Some Members consulted were of the view that the centralisation of unfair dismissal management in the post-conciliation/pre-hearing phase through the UCDMT has not been efficient. They consider that allocating matters directly to Members and their Associates for case management following conciliation would result in fewer delays and less time to finalise matters. A pilot to trial this approach is currently underway in South Australia, with reported success in achieving greater settlement numbers without hearing and a reduction in the overall time taken of matters from lodgement to finalisation by approximately one-third.

All Members consulted regarded the conciliation process highly and viewed this as a successful reform that has improved Members’ capacity and generated successful outcomes for the community. Most Members consulted suggested there is further scope for greater involvement of conciliators in other Commission work, and that there is merit in providing conciliators with more training and shadowing opportunities with Members to build their capability. Some Members consulted held the view that directions hearings held by telephone and second conciliations could also improve the rate of settlements, thus lowering Members’ workloads in sittings.

Performance monitoring and Member accountability

All Members consulted generally support open and transparent monthly reporting of Member performance measures on the basis that this improves understanding of individual performance, improves accountability and assists to ensure timely decision-making. All Members consulted recognised the benefit of using performance monitoring to have open conversations with underperforming Members to provide greater support and guidance to improve performance and meeting of benchmarks.

Several Members consulted raised the idea of regional performance metrics to introduce healthy competition among the states and territories, as well as to promote a more collaborative environment within regions whereby Members would support each other to meet group targets.

However, some considered that monthly reports need more nuance and should include more than just timeliness measures. For example, complex or difficult cases, which usually involve self-represented parties, are often flagged as being overdue when this may not always be warranted. All Members consulted supported reporting measures other than just timeliness, with a view to include quality measures through surveying parties regarding the quality of the process. One Member consulted suggested that there should also be clearer expectations for Members regarding what is urgent work and a greater weighting of timeliness benchmarks by type of matter. For example, some matters require more urgent finalisation than others due to the level of impact on individuals and workplaces the longer the matter is unresolved.

Some Members consulted noted that the development of performance measures should be Member-led to ensure widespread acceptance and adherence to the metrics. One Member consulted stated that performance metrics could be aligned to section 577 of the Fair Work Act 2009, which relates to FWC’s performance of functions.

There is a general view amongst Members consulted that some Members are more willing to take on a greater workload than others, and that Member workload is relatively high. Improving both internal and external performance feedback loops to Members was also regarded as beneficial to improve Member accountability. Internal feedback loops could include regular performance management meetings held among Members and the President and more one-on-one discussions, mentoring and support. External feedback loops include more user surveys and consultation processes.

A few Members consulted were positive about the training and induction of new Members, and found access to professional development courses beneficial, particularly the decision-writing course. It was suggested that more professional development and knowledge-sharing among Members can assist to identify and resolve inconsistent and inefficient Member practices where they are currently occurring.

Associates and Member support

Most Members consulted considered that the Commission should move to employ legally qualified Associates engaged on annual fixed-term contracts, similar to other courts and tribunals. Members noted that there are significant time and cost savings in employing legally-qualified Associates, as Members can devolve some drafting and research activities to their Associate and free up Member time for more complex activities. Only one Member consulted preferred to have an administrative Associate, although a number of
Members consulted indicated that it can take a considerable amount of time and investment to train Associates and that they would prefer to retain Associates for longer than one year.

Members consulted generally preferred to have a one-to-one relationship with their Associate and were not supportive of pooling or rotating Associates. There is general support, however, for Associates being used more efficiently. Members generally considered that they should take a greater role in assisting with drafting of decisions under direction from the Member, preparing legal research and summaries, and undertaking case management of unfair dismissals in the post-conciliation phase.

Other

One Member consulted considered that the Commission should play a great role in educating and advising employers and industry in order to prevent workplace disputes before they occur, acknowledging that elements of the Future Directions strategy are directed at these goals. The UK Advisory Conciliation & Arbitration Service (ACAS) provides a model for an organisation undertaking a more preventative or proactive role. The Member suggested that if other initiatives release Member time and capacity, this additional function would be a high-value activity for Members to undertake with their released time.

Executives

The General Manager and Directors of the four administrative branches at FWC (“Executives”) were consulted to understand their views on governance and accountability within the organisation.

Leadership and culture

Executives identified three key elements to leadership and culture: Commission-wide culture, office culture, and team culture.

Commission-wide culture

Cultural changes at a Commission-wide level were positively perceived. All Executives noted that the culture of FWC had become more open to change since the introduction of the Future Directions program in October 2012, as it encouraged the idea that reform is a business-as-usual process. Likewise, cross-Cross-Commission reform projects were said to have empowered lower-level administrative staff and Members alike to contribute to the strategic direction of the organisation.

However, a majority of Executives stated that the leadership team below the Executives (most of whom are employed at EL2 level and report to Directors) could work better together across branches and have clearer reporting lines. It was also suggested that the culture could be more proactive rather than reacting to crises.

Office culture

Views of culture at an office level were more mixed. Executives indicated that administrative staff operate largely on a regional basis, partially the result of practical issues such as managing the allocation of Relief Associates. Some Executives expressed a preference for more national visibility over their branches’ operations, and it was suggested that differences in regional practice had contributed to staff inefficiencies. To this end, the Commission is currently conducting two trials, one to test a move to a more regional system of operation through the South Australia regional allocation pilot, and a second a move to a more national system of operation (through an initiative to encourage Registry staff to process matters lodged outside of their state of origin).

Team culture

At a team level, Executives observed variations in staff culture. Some Executives identified pockets of ‘good culture’ within their branches, while others spoke of issues around whether the Commission should operate as an organisation of lawyers, or as a broader public service agency where staff have a range of skillsets.

Relationships between tribunal and administrative staff

Several Executives raised issues between tribunal and administrative staff arising from the lack of clear business rules around Member support, including in back-end areas such as facilities, repairs, and IT.
support. It was identified that further training may be beneficial for Registry staff in effective communication skills.

The majority of Executive stakeholders perceived that there has traditionally been a cultural division between tribunal and administrative staff. A number of Executives observed that the culture of ‘one Member, one Associate’ creates a situation where Associates see the focus of their role as supporting their individual Member, rather than the Commission as a whole.

**Staff capability and performance management**

Executive staff identified staff capability gaps as one of the most critical issues facing their branches. Staff capability was not perceived to match requirements in a range of areas. General capability gaps listed across all four branches included project management, writing and research, business analyst skills and general technology skills. Some Executives consulted considered that team profiles typically resulted from historical structures rather than alignment to the core functions of the Commission. Some of these capability gaps have been precipitated by technology-focused reforms such as the move to paperless files. The ICT team was particularly noted as requiring new skills and capabilities to meet the requirements of the Commission and IT reforms.

In addition to skills gaps, some Executive staff highlighted a capability gap in performance management. At present, some Executives considered that some performance managers have been reluctant to address poor performance or to focus on developing staff skillsets. This issue was particularly observed in performance management of Associates, as Associates’ roles are not clearly defined and practices vary depending on the preference of Members. This makes it difficult to measure and manage individual performance of Associates and to ensure consistency of skills, capabilities, roles and responsibilities.

Some Executive staff considered that there could be clearer internal branch governance and greater staff accountability to deal with performance and project management in some teams. Two Executives observed that managerial staff have sometimes experienced difficulties in balancing the manager-staff ratio, with managers currently in charge of up to eight staff members.

Executives also observed that, even though some staff have the required capability, they have heavy workloads, and often have a narrow view of their roles and responsibilities leading to less innovation and a focus on their particular role rather than the best outcome for the Commission as a whole. Executives have considered a range of “experiments” to encourage innovation, with varying degrees of success.

Finally, Executives noted that further work is underway to optimally use staffing resources in the administrative arm of the Commission.

**Comparator jurisdictions**

**Leadership and culture**

*Leadership*

All comparator jurisdictions consulted have formalised a leadership team as part of their governance structure to provide leadership and management of the court or tribunal. In most instances, appointment to the leadership team was through a formal expression of interest process, rather than appointment based on seniority or hierarchy.

The County Court recently implemented a revised governance structure to include both a Council of Judges and Board of Management to support the Chief Judge and the CEO in the leadership and management of the Court. The CEO and Judges who lead the various matter divisions and lists in the County Court sit below the Board. Figure 18 outlines the new governance structure.
Figure 18: County Court of Victoria governance structure 2013-14

Importantly, the CEO of the County Court sits on the Board of Management, and administrative staff provide secretariat support to the Board and head of list judges. This has significantly improved relations between the judiciary and administration.

Comparator jurisdictions consulted indicated Member and Judge-led cultural changes to governance and other reforms as the most effective approach to ensure adequate buy-in and support for changes. Leading models in the County Court, FCA and FCC pair Judges with key senior executive staff, who then work together to support reform initiatives.

The other key element in good practice governance arrangements has been the establishment of governance committees. Comparator jurisdictions consulted indicated that joint committees with combined membership of Judges/Members and Executive staff from the administrative arm have been successful in developing stronger relations between tribunal and administrative staff.

Most courts and tribunals consulted also employed the use of one-on-one interviews with Judges and Members as an effective engagement tool, indicating that frequent engagement from the head of the Jurisdiction was important in driving reform programs.

Culture

Many jurisdictions consulted have sought to achieve positive cultural change by updating the physical environment so that work spaces are bright and open. Shared spaces and open floor plans have also been employed to encourage interaction between Judges/Members and administrative staff. Comparator jurisdictions consulted indicated that the national jurisdiction and Judges/Members in each state and territory has not necessarily been an impediment to a collegiate culture, although they stressed the importance of constant communication between the regions and a collaborative work environment.

Allocation of matters

The FCA has recently announced a national case management system, headed by a national registrar. Other courts and tribunals such as the AAT and the FCC do not see such a national system as being as appropriate, predominantly due to the nature of their jurisdiction and large volumes of matters. These courts allocate matters on a regional basis. In the AAT, some specific national matters, such as freedom of information and National Disability Insurance Scheme matters, are allocated at a national level.

The FCC/Family Court State Registrars in each state work together closely to manage workload. Although FCC uses a docket system, their case allocation function is performed by a Judge in each major registry; this Judge is also the contact point for the legal profession. FCC currently moves Judges around the country to meet demand in different states, but is seeking to discontinue this practice.

Performance monitoring and KPIs

Member performance and accountability is being considered and implemented in jurisdictions consulted, but each is at a different stage of maturity. Performance reporting is usually monthly or quarterly and involves a traffic light “dashboard” or a one page report. Timeliness of decision-making is the predominant performance metric considered. In terms of quality of decision-making, most jurisdictions rely only on appeals as a measure of quality. Some jurisdictions consulted have intermittently collected satisfaction surveys of court and tribunal users. Only the AAT has in place a system of peer review where Members review hearings on the basis of accessibility, transparency and language criteria. The AAT uses the Administrative Review Council guide to tribunal member conduct as a basis for these reviews. FCC
measures quality using the International Framework for Court Excellence and client surveys (particularly in relation to its National Inquiry Centre).

Some jurisdictions consulted, such as the FCA, disclose a comprehensive report to all Judges so that there is complete transparency, and Judges can compare performance. Others consulted provide de-identified reports that enable comparison with national averages. These reports are usually discussed at a senior leadership level in regular forums and at one-on-one meetings with Judges/Members.

FCC also measures the performance of registrars and registry staff. In general, those consulted indicated that performance measurement regimes result in improved timeliness.

**Associates**

FCA, FCC and FCoA Judges generally have two Associates, or an Associate and an executive assistant (up to 1.5 full time equivalent positions). Associates, but not executive assistants, are engaged on fixed term contracts and usually turnover every one to two years. Associates are all legally qualified and assist with drafting and proofing decisions under the close supervision of Judges/Members. In these jurisdictions, these staff are critical in assisting to manage the docket system, especially where electronic court files and electronic case management is needed. These jurisdictions did not appear to have pooled research or support functions and these functions were instead performed by Associates.

The AAT uses more flexible support arrangements due to its mix of full-time, part-time and sessional Members. The Sydney office uses a pool of Associates, and there is approximately one Associate for every part-time Member. Associates in this pool are managed by a Team Leader, who plays a gate-keeping role for use of the Associates.

**Use of technology**

FCA is the only comparator jurisdiction with a fully integrated national electronic online lodgement, case management and electronic court file system. Its systems were fully implemented in 2014. This has been a key factor in allowing FCA to move to a national case management system. The system has also allowed the reform of the governance structure of the court so there is now a truly national structure as the system allows complete visibility over the number of cases active for each Judge, the status of cases (including whether parties have uploaded the requisite information), how progressed Judges are with each case, including outstanding judgements.

As cases are lodged in the electronic system, they are immediately allocated under the FCA’s docket system to a Judge who will manage the case to finalisation.

*Figure 19: Case lodgement process for FCA electronic case file system*

| Parties create electronic file in e-lodgement system | Parties are prompted with standard questions regarding information required by the court | Parties upload all required documents into electronic file | Case allocated to Judge’s docket and notification to relevant Judge is sent |

Source: KPMG following consultation with FCA.

The system has shifted upfront information collection from the registry team to parties, with prompts to input all requisite information prior to opening a case. Over time, the extensive meta-data captured at this stage will enable pre-filling of information for parties. This is viewed as a more efficient method of collecting the required information, as well as ensuring that parties are more prepared for their hearing as they are now required to pre-prepare a significant portion of their information prior to lodgement.

The FCA has advised that it has received positive feedback from legal practitioners who have used the system and from their Judges regarding the seamlessness of the system from lodgement to finalisation. In implementing the system, the FCA undertook significant in-house briefings at major law firms, reaching over 1,000 legal practitioners, and provided information, training and videos on their website. They also invested in a proof of concept in the initial stages, which was demonstrated to Judges to enable an easier transition to the complete system.
The electronic case file has shifted the burden of file management from Registry to Associates as court files are now electronic, rather than paper based. If Judges request paper-based files, these are printed by their Associates. However, it remains incumbent on parties to bring original documents to hearings. An electronic court file has also made the use of national videoconference hearings easier. Such hearings are increasingly occurring with Registrar directions hearings and high volume bankruptcy applications.

The FCC and FCoA use the same FCA Commonwealth Courts Portal to enable parties to electronically lodge documents. FCoA is in the process of requiring all divorce applications, the largest matter type lodged, to be lodged online, with the management and approval of applications also to be conducted entirely online by Registrars.

The FCC and FCoA have also recently implemented a reliable videoconferencing system using a voice over internet protocol system. Although the courts have yet to use the system for hearings, they are expected to gradually transition to this as parties increasingly become more comfortable with remote hearings.

External stakeholders

KPMG consulted the ACTU, two major industry groups and Partners from two law firms on their views of FWC. FWC has determined the list of external stakeholders to be consulted. The Department of Employment and the Minister for Employment were not consulted.

All external stakeholders consulted expressed a high level of respect for the Commission and its Members. FWC was generally seen to be more efficient, effective, and “easy to use” than some other jurisdictions.

“I have immense respect for the efficiency of the FWC. Its practical management of litigation is excellent. The way FWC has organised itself over time has been good from a user’s point of view.”

Richard West, Partner, Minter Ellison Lawyers, FWC Legal Profession Reference Group

Members and matter allocation

External stakeholders consulted had mixed views on the efficacy of the panel system. Broadly, they acknowledged that the system is potentially less relevant now due to the relative increase of unfair dismissals and other disputes not requiring specialist knowledge. However, stakeholders also acknowledged that particular industries have complex awards and enterprise agreements, and may best be dealt with by specialists. One stakeholder noted that, on occasions where a matter requiring specialist knowledge had been allocated to a non-specialist, parties have usually been able to have the matter transferred to a specialist.

Views of the impact of the panel system on timeliness were also mixed. Two potential advantages of maintaining a structure similar to the panel system were raised. Firstly, the consistency of Members provided by industry panels allows law firms to advise their clients on a potential outcome with greater certainty. Secondly, Members on particular panels can develop relationships with repeat litigants, which may also have a positive impact upon timeliness. However, some stakeholders perceived that the workload of panels varied and that hearings for busier panels were sometimes delayed. They indicated that any changes to the panel system would ideally involve consultation with external users and stakeholders in order to make users feel comfortable with the change.

FWC’s hybrid practice of allocating some matters nationally and others regionally is proving challenging for some stakeholders, who expressed a preference for a national system of matter allocation. These stakeholders see regional allocation as isolating Members from national issues and from each other, impeding Members’ ability to share knowledge and good practice. One stakeholder also noted that differing regional practices made it difficult to advise clients and to prepare for matters when travelling interstate. For example, at least one state requires the filing of a mediation position statement while others do not.

Stakeholders’ perceptions of Members’ skills varied. All stakeholders expressed their respect for the skill and competency of Members.

“FWC is held in high regard by the Australian Industry Group (AIG). AIG’s members are, in general, satisfied with the assistance given by FWC.”

Peter Nolan, Director, Workplace Relations, Australian Industry Group
Several stakeholders consulted noted that some Members specialist in mediation and pragmatic resolution of disputes, while other specialise in the technical aspects of industrial law. A number of stakeholders consulted also commented that some Members appeared more reluctant than previously to resolve disputes informally.

**Involvement of external stakeholders**

Industry group stakeholders expressed strong appreciation for the degree to which they are consulted on major reform processes conducted by FWC. FWC consultation includes discussions regarding changes to processes, procedures, and initiatives. Industry groups and other stakeholders are also usually requested to make submissions on key precedent matters which could have major implications for industry at large. Stakeholders also supported the two user groups and the pro-bono legal representation pilot for self-represented parties established by the *Future Directions* reforms.

**Ease of access to the Commission**

External stakeholders expressed positive views on the relative ease of access to the Commission. Associates and Registry staff were perceived as easy to contact and helpful in coordinating files and hearings. Both law firms and industry groups considered that FWC was willing to consider their views. Stakeholders also noted that FWC is less formal than other courts and tribunals and takes a practical view of litigation as supportive of self-represented parties.

> “FWC runs efficiently, but its workload demands are high. FWC has also made its users more efficient. Benchbooks, for example, have made users more conversant about FWC and the law.”

Trevor Clarke, Director, Industrial & Research, Australian Council of Trade Unions

Stakeholders consulted observed that navigating the hearings system was potentially more complicated with the Unfair Dismissal Case Management Team (UDCMT), leading to a perceived negative impact on the timeliness of hearings. In the view of one stakeholder, UDCMT has been established to improve internal efficiencies for FWC, but with insufficient consideration of the impact on parties.

Several stakeholders commented on FWC’s positive use of technology. The ability to upload files at any time, to upload documents onto the FWC website, and to allow parties’ online overview of all information available was seen as highly positive. One stakeholder consulted noted that FWC’s technological capabilities in areas such as file lodgement and management compared favourably to other courts and tribunals.

Most stakeholders consulted were also supportive of the website, although several found it difficult to navigate at times, particularly in locating historical information and archived decisions.

> “The Future Directions changes have been really good. These have made FWC more transparent and responsive. They have also provided for the users of FWC to become more educated.”

Trevor Clarke, Director, Industrial & Research, Australian Council of Trade Unions

Finally, stakeholders consulted commented on the use of teleconferencing. Most external stakeholders consulted expressed positive views on telephone conciliations, with only one stakeholder considering that telephone conciliations were inconsistent in quality compared to face-to-face conciliations. One industry group stakeholder indicated that its members often did not have the resources to travel into a capital city, so the availability of teleconferencing was highly useful. This feedback was balanced against the caveat that face-to-face sittings were still preferable where available. While the ability to conduct videoconferences was largely supported by stakeholders, a number of stakeholders consulted considered that this capacity was under-utilised and that their members did not feel comfortable with videoconferencing.
Appendix 5: Comparative jurisdictions

This section provides an overview derived from publicly available information and stakeholder consultations of a selection of reforms and initiatives undertaken by comparator jurisdictions to improve governance, accountability and efficiency of their organisations. These reforms and initiatives have been grouped under the four key opportunity areas.

Research was undertaken using publicly available information and stakeholder consultations, as well as drawn from information provided to KPMG by the jurisdictions. The comparator jurisdictions analysed using publicly available information are as follows:

- Federal Court of Australia (Federal Court);
- Federal Circuit Court (FCC) and Family Court of Australia (FCoA);
- Victorian Civil and Administrative Tribunal (VCAT);
- County Court of Victoria (CCV); and
- Administrative Appeals Tribunal (AAT).

These comparator jurisdictions were selected in consultation with FWC.\(^1\)

Leadership and culture

Member and Judicial involvement in strategic planning

With the exception of the Federal Court, all comparator jurisdictions have established clear consultative structures to facilitate Member and judicial involvement in corporate governance and strategic oversight. Notably, each of the examples discussed below incorporates both Members, Judges and senior administrative staff in governance and oversight structures.

AAT

Within the AAT, two committees contribute to the strategic oversight of the Tribunal. The Executive Committee provides strategic advice and assistance to the President on the management of AAT issues, including oversight of the Tribunal’s Strategic Plan. It is chaired by the President and includes a Deputy President, the Registrar, the Executive Directors, the Director of Alternative Dispute Resolution and District Registrar.\(^1\) In addition, the AAT has established the Executive Deputy Presidents Committee, comprising the President and the Executive Deputy President/Senior Member for each District Registry. It exists to facilitate discussion between the Executive Deputy Presidents regarding the management of the AAT – both within each region and nationally – and to provide high level advice to the President on key developments.\(^2\)

Federal Circuit Court

The Policy Advisory Committee provides advice to the Chief Judge and Chief Executive Officer in relation to the FCC’s strategic direction and policies for delivering court services. The Committee also advises on the level of support required by Judges. In 2013-14, the Committee met four times and comprised 12 Judges and four FCC senior staff, although no details were available about the selection process.\(^3\) In addition, judicial working groups are established as issues arise to provide advice to the Chief Judge about areas of policy and practice.

VCAT

Established in 2013, the President’s Advisory Committee (PAC) comprises the President, two Vice Presidents, Chief Executive Officer, three Deputy Presidents (who are Heads of Divisions), Principal

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\(^1\) Some comparator jurisdictions provided KPMG with information during consultations that is not publicly available. This section is limited to an analysis of publicly available information.


\(^3\) Ibid.

Professional development for Members and Judges

Approaches to Member and judicial professional development vary across the comparator jurisdictions from informal participation by Members and Judges in conferences and training seminars to the implementation of formal training and support programs. Among the comparators, the AAT and VCAT offer the most structured and comprehensive professional development programs.

AAT

The AAT runs a Members’ Professional Development Program, which is based on a framework of competencies developed specifically for the AAT and includes induction, mentoring, appraisal and other professional development opportunities. The appraisal scheme involves self-assessment as well as peer review against the AAT’s framework of competencies, with a view to supporting Members to consider opportunities for further professional development. The program is overseen by the Members’ Professional Development Committee, which met five times during 2013-14. In addition, the AAT runs a formal mentor induction program which pairs new AAT appointees with more experienced Members to help guide them in the workings of the Tribunal.

The AAT also makes available to members a range of courses. This includes both in-house professional development seminars (for example, sessions on the effective of family violence or recent legal developments) and external seminars and activities, such as those offered through the National Judicial College of Australia and other national and state-based professional bodies.

County Court of Victoria

Judicial professional development at CCV is overseen by the Professional Development Committee. The primary focus of the Committee appears to be supporting Judges to contribute to seminars and conferences, rather than coordinating training and professional development activities for Judges themselves. Nonetheless, a notable CCV initiative has been the implementation of a weekly knowledge sharing forum for Judges. This provides an opportunity to discuss experiences and insights from criminal trials, particularly with regard to the implementation of jury directions. In addition, the CCV runs a Peer Support Program for Judges and staff.

VCAT

VCAT’s strategic plan, Building a Better VCAT 2014-2017, identifies the professional development of Members and staff as a key area of focus over the next three years. The President of VCAT is responsible for overseeing the professional development of VCAT Members and is supported in this role by the Professional Development Group (PDG), which is chaired by a Vice President and comprises all Deputy Presidents. The PDG has developed a Professional Development Charter that confirms the responsibility of PDG for evaluating and meeting the professional development needs of Members.

In 2013-14, the PDG expanded VCAT’s Peer Support Program, which comprises six components: Member orientation, ongoing training, a mentoring program, feedback framework and a professional development program. PDG is also engaging with the Judicial College of Victoria to develop more VCAT-specific training programs, implementing a more structured mentoring program for new and recently appointed Members, and developing a comprehensive Alternative Dispute Resolution Advanced Skills Development Program in 2014-15, which will involve seminars, workshops and master classes. The PDG is further expanding and...

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125 Ibid.
127 Ibid.
128 County Court of Victoria, Annual Report 2012-13, p 21.
130 Ibid.
131 Ibid.
132 Ibid.
targeting the professional development opportunities made available to Members in response to a satisfaction survey that helped VCAT develop a profile of members’ professional development needs. One example of a more recent change is the introduction of a Member Feedback Framework, which involves senior Members conducting feedback sessions with other Members every two to three years. These sessions focus on addressing the Member Competency Framework, as well as identifying Members’ professional development needs and opportunities.

**Member workload management and efficiency**

**Allocation of matters**

Comparator jurisdictions have established practices such as the introduction of a docket system to ensure that their matters are allocated to Members and Judges in a way that maximises consistency and evens workloads across the country.

**Federal Circuit Court and Federal Court**

Both the Federal Court and the Federal Circuit Court use a docket system to manage their caseloads. Under this approach, each matter is randomly allocated to a Judge at the time of filing, who is responsible for managing it from commencement to disposition. This system allows Judges to develop greater familiarity with their cases, while also contributing to consistency of approach throughout a case’s history. It also supports overall efficiency, flexibility and timeliness in case management. Cases that require specific expertise are randomly allocated to Judges who belong to the relevant specialist panel. This approach seeks to balance the need to retain the perception of judicial impartiality through random assignment, while also taking into account Judges’ specialisation. Specialist panel members meet regularly with court users and Judges from other courts to discuss issues relating to their area of expertise.

**Federal Circuit Court**

To support and monitor the docket system across Australia, the Federal Circuit Court has appointed a Case Management Judges Committee, comprising the National Coordinator of Case Management as well as several case management Judges who each represent different regions. The Committee meets quarterly with the Chief Judge and the National Coordinator to discuss trends and issues in their regions, and to monitor and evaluate case management. The Committee’s discussions are informed by statistical reports that include analysis of the following measures:

- Filing numbers – a count of the applications by type received by the Court;
- Clearance rates – the filings received within a defined period measures against finalisations;
- Matters requiring judicial determination;
- Attendance rate – the number of times a matter is listed for a court event; and
- Time taken from filing to disposition, age of pending matters and the age of matters finalised.

This structure supports centralised visibility and strategic management of Judges’ workloads across Australia. The reporting framework not only assists with resource planning, but also supports judicial performance management and helps to drive greater accountability.

There was limited publicly available information regarding AAT and VCAT matter allocation.

**Performance monitoring and accountability**

Performance measures are used by most comparators as a case management tool. The County Court of Victoria is the only exception, but it has committed to establishing court performance measures in its 2013-14 Annual Business Plan.

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134 Ibid, p 43.
137 Federal Court of Australia, Submission to the Productivity Commission review of Access to Justice, p 1.
A high-level review of the comparators indicates that external reporting against performance measures is relatively limited, although formal reporting is typically supplemented by additional information published in publicly available documents (such as annual reports) about activities undertaken and outputs achieved. The County Court of Victoria is in the process of developing external performance measures, and VCAT is developing and implementing a performance management and reporting framework.

Overall, the value of current reporting practices across all comparators could be strengthened by developing additional performance targets in order to facilitate ongoing performance assessment. As such, the implementation of a comprehensive performance framework would align the Commission with VCAT and position it ahead of the other comparators. A high-level benchmarking assessment of the Commission’s proposed performance indicator framework is included in Appendix 3.

Performance measures

Comparator jurisdictions depend upon performance measures in order to support accountability and timely decision making. These performance measures are, however, at varying levels of maturity. Performance measures are both external, in the form of timeliness benchmarks and KPIs, and internal, in the form of benchmarks regarding the performance of individual Members and Judges. The public measures published involve external performance benchmarks.

AAT

The AAT publishes both KPIs and timelines measures. In 2013-14, the AAT reviewed and changed its KPIs to the following:

- to finalise 75 per cent of applications within 12 months of lodgement; and
- to resolve 80 per cent of applications without a hearing.

With regard to the second KPI, the AAT uses alternative dispute resolution to help parties reach agreement about how their case should be resolved, and only conducts a hearing if the application cannot otherwise be resolved.138 The AAT measures its performance periodically through client satisfaction surveys.

The AAT monitors its performance against time standards for stages in the review process, as well as for the finalisation of applications, both in the aggregate and in each of its major jurisdictions.139 The AAT seeks to finalise most applications within 12 months of lodgement and has specific targets for each for each of the major jurisdictions. The four stages are as follows:

- the time taken by the decision maker to lodge the documents relating to the decision under review that are required under section 37 of the AAT Act after receiving notice of an application;
- the time between lodging an application and holding the first conference;
- the time between lodging an application and holding a hearing; and
- the time taken by the AAT to deliver a decision following the last day of hearing of the date of receipt of further material after a hearing.

The AAT has also established a system of peer review, whereby Members will sit in on other Members’ hearings and later provide feedback. It also has a small board which peer-reviews appeals.

Federal Circuit Court

The FCC reports against three KPIs:

- less than one per cent of matters litigated being subject of a complaint;
- 60 per cent of matters resolved before trial; and
- complete 90 per cent of all applications filed within six months.

While it achieved the first two KPIs in 2013-14, it only achieved an 81 per cent completion rate with regard to the third KPI. The FCC has developed several strategies to achieve this KPI, including:

- the development of national roster relief;
- operational reports to provide the FCC with greater visibility of its workload;

139 Ibid, p 30.
• focus on the accuracy of data entry in statistical and operational reports;
• ongoing review of the FCC’s oldest active cases; and
• collaboration between case management Judges.

Federal Court
The Federal Court reports against three time goals:\footnote{FCA, \textit{Annual Report 2013-14}, p 12-14.}

• time taken from filing a case to completion: 85 per cent of cases completed within 18 months of commencement;
• time taken to deliver reserved judgments: judgments to be delivered within three months were delivered within three months of the date of being reserved (the same as in 2012-13); and
• time taken to complete migration appeals: disposition of migration appeals and related applications within three months.

The FCA has developed several initiatives to help it achieve its final KPI, which include listing appeals and related applications for hearing as soon as possible after filing, and introducing additional administrative arrangements to streamline pre-hearing procedures.\footnote{Ibid, p 14.}

In terms of internal measures, the Federal Court recently introduced a judicial dashboard that publishes data regarding Judges’ workloads and the number of matters yet to be finalised within particular timeframes. This dashboard can be viewed by all Judges, which has anecdotally encouraged an improvement in performance.

VCAT
In \textit{Building a Better VCAT}, VCAT identified the development and implementation of a performance management and reporting framework as a key area of focus over the next three years. This includes a commitment to upgrade case management systems, as well as align VCAT’s IT strategy with its data requirements.\footnote{VCAT, \textit{Building a Better VCAT}, p 6.}

The use of frameworks as performance metrics
Other comparator jurisdictions have aligned both their performance metrics and their broader reform programs with external frameworks such as the IFCE. This indicates that Australian courts and tribunals are increasingly seeking to adopt global best practice.

County Court of Victoria
In 2010, the CCV adopted the IFCE, which provides a framework of values as well as a methodology to help courts improve the quality of justice and court administration delivered.\footnote{County Court of Victoria, \textit{Annual Report 2012-13}, p 4.} The framework emphasises the need to take a holistic approach to court performance, rather than presenting a limited range of performance measures. It is designed to apply to all courts and to be equally effective for sophisticated large urban courts, smaller rural or remote courts and tribunals.

Critically, the IFCE incorporates a self-assessment questionnaire, which allows the court to undertake its own performance assessment against seven areas and helps it to prioritise areas of focus and monitor improvements over time. Through this process, the CCV has identified areas for improvement and incorporated relevant actions in its Annual Business Plan.\footnote{Ibid.}

Federal Circuit Court
The FCC is currently implementing the IFCE. In 2013-14, it conducted a survey of Judges and court staff in accordance with the IFCE. This included the areas of leadership, policy and planning, resources, management of court processes, court user satisfaction, access and affordability, and public confidence.\footnote{Federal Circuit Court of Australia, \textit{Annual Report 2013-14}, p 5.} The survey results identified opportunities for improvement across a range of areas, including business...
processes and practices around the dispatch of the Court’s business, and also revealed that a significant majority of FCC Judges saw the docket case management system as an effective system.146

Federal Court
The Federal Court recently announced its intention to implement a national court framework in early 2015. The primary objective of this reform is to streamline Federal Court processes and provide greater consistency in how each practice area is managed across Australia, as well as to improve the quality and timeliness of judgments. Under this new model, Federal Court cases will be divided across eight practice areas: administrative, human rights and constitutional; native title; commercial; intellectual property; tax; admiralty and maritime; industrial relations and labour; and criminal cartel trials. The operation of each practice area will be overseen by a senior Judge and registrar. In addition, the national structure will be directed by the newly created role of National Operations Registrar, who will monitor each Judge’s caseload and managing workflows across the court. This function will be supported by the Federal Court’s recent transition to the electronic court file. The National Operations Registrar will also be responsible for the allocation of cases, in conjunction with the Chief Justice and other senior Judges.

Pilot programs for improving timeliness and access to justice
Case backlogs and delays present an ongoing challenge to the comparator jurisdictions, as they impede the public’s access to justice. Comparators have employed a range of strategies to identify and target the matters perpetuating high workloads.

County Court of Victoria
The County Court of Victoria has recently introduced the 24 Hours Initial Directions Pilot with the objective of reducing delays in the time to trial. In this trial, all non-sexual offence matters which are the subject of a committal order in the Magistrates’ Court with a ‘not guilty’ plea are now listed in the General Crimes List court at 9am on the following day for an Initial Directions Hearing (IDH). This initiative was highly successful in that it immediately reduced the time taken from committal to IDH from 10-12 weeks to 24 hours, thus significantly reducing the time and number of delays. The CCV has also reported that this process resulted in a clearer identification of issues and better trial estimates. In January 2014, the CCV expanded the pilot to include all Melbourne metropolitan matters in the Sexual Offences List.

The CCV has also implemented several strategies in recent years to reduce the number of outstanding trials, including:147

- In February 2013, the 30 oldest trials in the Bendigo list were selected for an intensive one week period of special mentions. This was considered a successful strategy for reducing delay, with a similar strategy planned for the Shepparton list in late 2014.
- Additional Bendigo sittings were held in Melbourne, which helped to reduce the number of pending criminal trials, pleas and appeals, and resulted in significant reduction in number of trials older than two years.
- Double circuits were used in the Latrobe Valley/Gippsland region, where two Judges sat at the court at the one time in order to boost the court’s productivity.

Federal Court
To streamline court procedures further and thereby reduce cost and delay, the Federal Court has also introduced a Fast Track List for dealing with certain commercial matters. The list provides a framework in which cases can be heard and finalised within five to eight months, in large part by abolishing pleadings, scheduling conferences for six weeks after hearings, dealing with interlocutory applications on the papers, reducing the volume of discovery, imposing a pre-trial conference, and establishing a “chess-clock” style of trial. The initial Victorian pilot was seen as highly successful and was rolled out nationally in 2009-10.

146 Ibid.
ICT as an enabler

Technology as a means to improve efficiency

It is clear from publicly available information that comparator jurisdictions have invested in new technologies and electronic document management systems in order to enable broader reforms to jurisdictions’ matter allocation processes and governance structures. Technological reforms are also critical to improving public access to court and tribunals.

AAT

The AAT is implementing an Electronic Services and Information Management Program, which is designed to support the delivery of more online services and improve the AAT’s ability to manage its information electronically. The broader objective of the program is to enhance the efficiency of the AAT’s review process. Elements of this program include:

- a new information and records management framework designed to support the longer-term transition to an electronic document and records management system, implemented in 2013-14;
- a successful pilot with the Australian Taxation Office for the electronic notification of applications lodged with the AAT, which is now being considered for expansion to other agencies in 2014-15; and
- the launch of the AAT’s first online service, eCase Search, which allows the public to search for information about most post-March 2013 AAT applications. In particular, parties and lawyers can gain access to information about their case without contacting the AAT registry.

County Court of Victoria

iManage is an electronic document management system that has been introduced in regional courts to reduce delay and improve the quality of service delivered. The system has provided regional list Judges (RLJs) based in Melbourne with visibility of criminal court files across regional Victoria, thereby improving circuit planning and helping RLJs to manage files more efficiently through providing immediate electronic access to all documents filed. In addition, by reducing the need for criminal circuit files to be sent between locations, iManage has reduced document transport costs and delays.

The CCV is now seeking to implement iManage into the Melbourne County Court, with a view to eliminating physical files and transforming the CCV into a “paperless Court”. In particular, iManage will support third party filing directly into the system. Once established in Melbourne, electronic filing will be expanded to all regional courts.

Federal Circuit Court

The Federal Circuit Court uses teleconference and videolink facilities where appropriate. Infrastructure to support Internet Protocol videoconferencing was introduced in 2012-13 with further upgrades undertaken during 2013-14. Specifically, 30 fixed units have been installed in courtrooms, while 27 portable units are also available across FCC registries. This new equipment allows videoconferences between registries to be conducted for free because the content is now being carried over the courts’ Internet Protocol network, rather than expensive external ISDN lines. Other benefits include free calls, significant reductions in travel time for meetings, the availability of remote access for the protection of vulnerable witnesses, and ease of use.

The Federal Circuit Court has introduced eLodgment in conjunction with the Federal Court. This has contributed to efficiency gains and greater levels of access to litigants and their lawyers, particularly for high-volume matter types such as divorces. An ongoing challenge for the Federal Circuit Court is aligning its information technology strategy with that of its two superior courts, the Federal Court and the Family Court,

150 Ibid, p 43.
151 AAT submission to the Productivity Commission’s Inquiry into Access to Justice Arrangements, p 16.
152 CCV, Annual Report 2012-13, pages 1; 19; 28.
154 Family Court of Australia, Chief Executive Officer’s Report 2014, p 24.
155 FCA & FCC CEO presentation to Victorian Courts, Recent Information Technology Initiatives, p 2.
156 FCC submission to the Productivity Commission’s Inquiry into Access to Justice Arrangements, p 3.
which are employing different approaches with regard to case management systems and electronic court files.  

**Federal Court**

The Federal Court’s eServices strategy aims to generate greater efficiencies in case management and decision making, and is expected to deliver a range of benefits to both Court users as well as the FCA itself by increasing online accessibility to documents and information. In July 2014, the Federal Court introduced the electronic court file (ECF) for all new court files in the Adelaide registry, followed by other registries across Australia in the second half of the year. This is expected to facilitate the Federal Court’s transition to a paperless courtroom over the longer term, “where actions are commenced, case managed and heard by filing documents electronically”. The implementation of the ECF follows a series of enabling technological reforms that have all been undertaken in recent years as part of the broader eServices strategy to help improve the efficiency of court services. These initiatives include the development of an online filing application, eLodgment, which is the mechanism by which documents are placed on an ECF. eLodgment was responsible for the electronic filing of more than 56 per cent of Federal Court documents during 2013-14.

**VCAT**

In *Building a Better VCAT*, the Tribunal has committed to transitioning to a paperless environment by 2017, and is seeking to facilitate this shift by improving its use of information technology. This includes the development of more online forms for applications and payments, as well as automated processes to enable the Tribunal to operate more efficiently, such as an automated case scheduling system. In addition, VCAT has committed to pilot *iManage* software to help support electronic document management.

**Technology as a means to support parties**

Technological innovations have also focused on providing support to parties by displaying important information online and facilitating teleconferences and videoconferences. These measures are vital in achieving the broad aim across courts and tribunals of providing access to justice.

**Federal Circuit Court and Family Court**

The FCC and the FCoA share the National Enquiry Centre (NEC), which provides family law telephone and email support services. As the first point of telephone contact with the courts, the NEC received more than 356,000 telephone calls in 2013-14. It is also responsible for a high proportion of telephone and email contacts from existing court customers and stakeholders, and provides support for users of the Commonwealth Courts Portal website, among other core functions. Importantly, the activities of the NEC are monitored, with a view to evaluating performance and identifying areas for ongoing improvement. Examples of KPIs include the percentage of calls answered within 90 seconds, the average time of a call, and the number of calls abandoned while queued.

The FCC and FCoA have also recently upgraded their videoconferencing facilities, to use Internet Protocol videoconferencing. This has improved the quality of video transmission and has enabled Judges and parties to have the flexibility to choose this medium for hearings, especially for procedural hearings or where parties apply for separate locations (for example, in situations where there are allegations of violence, or financial constraints that prevent travel). This has also been used internally for inter-registry meetings, rather than traditional telephone conference calls or travel.

**VCAT**

In November 2013, VCAT introduced a new service to make audio recordings of hearings available to parties. Supported by new audio visual and recording equipment in hearing rooms introduced in 2013-14,
this service provides a less expensive alternative to written transcripts, and is accessible by people with a vision impairment. 166

**Federal Circuit Court and Federal Court**

The Commonwealth Courts Portal (CCP) is a joint initiative of the Federal Court, FCoA, and FCC, with the cost shared between the three courts. The CCP provides lawyers and parties with web-based access to information about their cases. 167 Following initial registration, users are able to access real-time information about their cases, including documents files, scheduled listing events and details of any orders made.

During 2013-14, there was a 30 per cent increase in the number of registered users of the CCP, with more than 153,000 users and 500,000 documents filed as at 30 June 2014. 168

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**Organisational and administrative efficiency**

**Premises**

Select comparator jurisdictions have considered ways to achieve cost efficiencies by reducing the costs spent on premises.

**AAT**

The AAT has in place arrangements with several courts and tribunals to share facilities and services, with the arrangements operating in 2013-14 listed below:

- The AAT and the Federal Court of Australia operated a joint registry in Hobart, with Federal Court staff providing registry services and conducting ADR processes for the AAT. 169
- The AAT provided accommodation and hearing room facilities for the Migration Review Tribunal-Refugee Review Tribunal (MRT-RRT), with AAT staff in Adelaide, Brisbane and Perth now receiving applications and handling enquiries on behalf of the MRT-RRT. 170
- The AAT provided hearing rooms and facilities to the Social Security Appeals Tribunal in its Canberra Registry. 171
- The AAT had an agreement with the Norfolk Island Administration for the Supreme Court of Norfolk Island to provide basic registry services in relation to AAT applications. 172
- The AAT shared its facilities in Adelaide, Canberra and Perth with the Veterans’ Review Board to conduct hearings. 173

**Support for self-represented parties**

As with FWC, all comparator jurisdictions have processes for supporting self-represented parties. This both ensures that all parties have an equal opportunity to be represented, and reduces transactional costs for courts and tribunals by minimising the number of unmeritorious or incomplete applications.

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166 VCAT Annual Report 2013-14, p 50.
168 Family Court of Australia, Chief Executive Officer’s Report 2014, p 26.
170 ibid.
171 ibid, p 49.
172 AAT Annual Report 2013-14, p 49.
AAT

The AAT has developed its processes with a view to supporting self-represented parties. As such, AAT processes are deliberately informal and flexible, and allow for assistance to be provided to self-represented parties. The *Administrative Appeals Tribunal Act 1975* was drafted to minimise the number of formal requirements for applicants, for example, by not prescribing the form in which applications must be made.

As part of its Outreach activities, the AAT also proactively contacts self-represented parties after an application has been made to discuss the AAT and answer any questions, identify whether the person may need special assistance, and provide referrals to other organisations, such as legal service providers. The AAT also makes available a series of brochures that provide information about each stage of the review process. These brochures are written in plain English and have been translated into a range of community languages to increase accessibility.  

County Court of Victoria

In response to the growing number of self-represented parties, the CCV introduced the role of Self Represented Litigant Coordinator in January 2013. The Coordinator acts as the primary contact for people who wish to represent themselves in civil matters and criminal proceedings, and provides procedural and practical advice; for example, in relation to timeframes and court fees. As at 30 June 2013, the Coordinator had received more than 400 requests for assistance from self-represented parties. Importantly, details of these requests are documented and analysed by the Coordinator, with a view to informing the development of new court processes and procedures. The Coordinator also meets regularly with the Judiciary, the Principal Registrar and Registry managers to consider opportunities to better address the needs of self-represented parties.

Federal Circuit Court

Subject to funding, the FCC is seeking to establish a pilot program to make financial counsellors available to self-represented parties on the Melbourne registry’s bankruptcy lists. The role of the counsellors is to help self-represented bankruptcy parties understand their financial position, identify opportunities, provide referrals to external organisations, and help with creditor negotiations. This program will be overseen by the Consumer Action Law Centre and Melbourne University Law School, in collaboration with the FCC and the Financial and Consumer Rights Council.

VCAT

As at 30 June 2014, more than 80 per cent of people with a matter before VCAT were self-represented. Given the informal nature of the Tribunal, VCAT’s processes have been designed to support self-representation; for example, VCAT uses standard form templates and standard orders as part of its ADR processes, and has found this to be successful in helping self-represented parties to articulate their legal positions. Nonetheless, the VCAT strategic plan identifies support for self-represented parties as a key area of focus over the next three years, with the Tribunal continuing to seek opportunities to “improve access to [its] services, information and advice, and practical support to self-represented parties”.

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174 AAT submission to the Productivity Commission’s Inquiry into Access to Justice Arrangements, pp 8-10.
176 Ibid.
177 Ibid.
179 Building a Better VCAT, p 3.
Appendix 6: Performance indicator framework high-level assessment

The Commission’s proposed performance indicator framework focuses on external performance measures and KPIs for the Commission. External performance measures are transparently reported on a regular basis to stakeholders and government, commonly within an annual report or operational plan.

In developing an external performance indicator framework, the alignment between internal performance management reporting and external measures should be considered. This will help inform the design and implementation of the Commission’s ICT systems, to ensure it supports the capture and reporting of relevant information.

High-level assessment of the Commission’s proposed framework

KPMG has considered the Commission’s proposed performance indicator framework to provide a high-level assessment of whether the identified performance indicators and method of assessment are the most appropriate outputs for the Commission to measure. This analysis has drawn on the Productivity Commission’s Report on Government Services 2014 (ROGS)\(^{182}\), the International Framework for Tribunal Excellence and a review of publicly available information.

The figure below sets out the framework under which KPMG has considered the proposed performance indicators.

Figure 20: Assessment framework of performance indicators

Source: KPMG analysis

Fair Work Commission proposed performance indicator framework: high level assessment

Drawing on information from comparator jurisdictions and good practice performance indicators, a review of the proposed framework and each output measure has been provided. The ‘impact of the indicator’, identified in the last box in the figure above, has not been assessed at this point. It is suggested the performance framework be reviewed post-implementation against this criteria.

Design of indicators – Do indicators have clear links to FWC objectives?

Overall, the design of the proposed framework aligns with the three core objectives of the ROGS court performance indicator framework (equity, effectiveness and efficiency). The adoption of these broad categories of indicators at other tribunals, such as the AAT, indicates that the Commission is consistent with performance management approaches in other jurisdictions.

These objectives also align to the Commission’s establishing legislation, as outlined in the following table.

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Table 10: FWC legislated functions and ROGS objectives

<table>
<thead>
<tr>
<th>Fair Work Act 2009</th>
<th>ROGS objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>FWC must perform its functions and exercise its powers in a manner that:</td>
<td></td>
</tr>
<tr>
<td>(a) is fair and just; and</td>
<td></td>
</tr>
<tr>
<td>(b) is quick, informal and avoids unnecessary technicalities; and</td>
<td></td>
</tr>
<tr>
<td>(c) is open and transparent; and</td>
<td></td>
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<tr>
<td>(d) promotes harmonious and cooperative workplace relations.</td>
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<tr>
<td>Equity</td>
<td></td>
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<tr>
<td>Efficiency</td>
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<tr>
<td>Equity; Effectiveness</td>
<td></td>
</tr>
<tr>
<td>Effectiveness</td>
<td></td>
</tr>
</tbody>
</table>

Source: Fair Work Act 2009 s.577.

The remainder of the assessment against the framework is provided in the tables below.

**Objective: Equity**

<table>
<thead>
<tr>
<th>PROPOSED OUTPUT MEASURE</th>
<th>FWC PROPOSED METHOD OF ASSESSMENT</th>
<th>ASSESSMENT AGAINST FRAMEWORK</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Design of indicators</td>
<td>Usability of indicator</td>
</tr>
<tr>
<td>Fees paid by applicants</td>
<td>• Averages fees per lodgement</td>
<td>• No further refinements identified</td>
</tr>
<tr>
<td></td>
<td>• Existence of a fee waiver system based on hardship</td>
<td>• Quality data exists for these methods of assessment and is collected by FWC</td>
</tr>
<tr>
<td></td>
<td>• Number of fees waived due to hardship as a percentage of fees payable</td>
<td>• There is a clear link between providing a fee waiver due to hardship and enhancing equity</td>
</tr>
<tr>
<td>Publication of information and guidance materials</td>
<td>• Information materials published for main subject areas dealt with by the Tribunal</td>
<td>• The method could be refined by referring to the target audience, method of distribution, language(s) of publication or community education activities, and collection of survey data from parties using the information</td>
</tr>
<tr>
<td></td>
<td>• Multi-media publication of information materials</td>
<td>• Survey data could include the level of usability, relevance and helpfulness of the materials</td>
</tr>
<tr>
<td>Publication of decisions</td>
<td>• Timeliness</td>
<td>• Suggest to move this output measure to efficiency as the publication of decisions may assist other parties in similar disputes in earlier resolution, thereby saving private and public transaction costs(^{183})</td>
</tr>
<tr>
<td></td>
<td>• Timeliness measure: time from issuing decision to publication</td>
<td>• Quality data exists for these methods of assessment and is collected by FWC</td>
</tr>
<tr>
<td></td>
<td>• Availability</td>
<td>• The publication of decisions may provide relevant information for other parties in similar disputes, thereby enhancing equity</td>
</tr>
<tr>
<td></td>
<td>• Measure number of decisions published as a percentage of decisions made</td>
<td></td>
</tr>
</tbody>
</table>

## Objective: Effectiveness

<table>
<thead>
<tr>
<th>PROPOSED OUTPUT MEASURE</th>
<th>FWC PROPOSED METHOD OF ASSESSMENT</th>
<th>ASSESSMENT AGAINST FRAMEWORK</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Design of indicators</td>
<td>Usability of indicator</td>
</tr>
</tbody>
</table>

### Backlog and timeliness
- **Defined as a measure of the age of the total pending case load**
- **Backlog Benchmarks:**
  - No more than 10% pending at 6 months
  - No lodgements pending at 12 months
- **Timeliness Benchmarks:**
  - Reserved Decisions
  - High volume applications

- **No further refinements identified**
- **Quality data exists for these methods of assessment and is collected by FWC**
- **There is a clear link between greater access to the Commission and enhancing equity**
- **These methods of assessment are able to be benchmarked against data collected in ROGS from comparator courts and tribunals**
<table>
<thead>
<tr>
<th>PROPOSED OUTPUT MEASURE</th>
<th>FWC PROPOSED METHOD OF ASSESSMENT</th>
<th>ASSESSMENT AGAINST FRAMEWORK</th>
</tr>
</thead>
</table>
| Attendance              | Average number of attendances recorded for cases finalised during the reporting period  
                          | Attendance = number of times parties or reps required to be present in Court where binding orders can be made including adjournments and rescheduled hearings | Design of indicators: Suggest to move this measure to efficiency as reducing the number of attendances can lower the cost (time and resources) of cases for parties and the Commission  
                                                    | Usability of indicator: Quality data exists for these methods of assessment and is collected by FWC  
                                                              | Comparability: The link between attendance and effectiveness is unclear |
| Appeals                 | Number of cases appealed as a percentage of cases finalised  
                          | Of those appealed, the proportion upheld | Design of indicators: Suggest to include peer review as method of assessment  
                                                    | Usability of indicator: Quality data exists for these methods of assessment and is collected by FWC  
                                                              | Comparability: This method of assessment is able to be benchmarked against publicly available information from comparator jurisdictions |
| Participant feedback    | Survey participants experience to measure effectiveness of Tribunal processes | Design of indicators: Suggest to change measure to 'User satisfaction', with participant feedback as key method of assessment  
                                                    | Suggest to include specific questions to understand effectiveness, such as the perceived fairness of the parties' interactions with the Commission, satisfaction with the decision-making process, understandability of decisions  
                                                              | Usability of indicator: Survey data from parties is not currently readily available  
                                                              | Some comparator jurisdictions publish user satisfaction survey results, with others intending to do so in the future  
                                                              | Comparability: This could be collected by FWC periodically as part of a broader user satisfaction survey |
### Objective: Efficiency

<table>
<thead>
<tr>
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<th>FWC PROPOSED METHOD OF ASSESSMENT</th>
<th>ASSESSMENT AGAINST FRAMEWORK</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Clearance</strong></td>
<td>Number of finalisations in a reporting period divided by number of lodgements in the same period (x 100 to convert to a percentage) &gt;100% indicates more matters finalised than lodged &lt;100% indicates more matters lodged than finalised</td>
<td>Design of indicators: No further refinements identified Usability of indicator: Quality data exists for these methods of assessment and is collected by FWC Comparability: There is a clear link between improving clearance rates and enhancing efficiency These methods of assessment are able to be benchmarked against data collected in ROGS from comparator courts and tribunals</td>
</tr>
<tr>
<td><strong>Cost per finalisation</strong></td>
<td>Total recurrent expenditure (gross and net) divided by number of finalisations</td>
<td>Usability of indicator: No further refinements identified Comparability: Quality data exists for these methods of assessment and is collected by FWC There may be difficulty in collecting this data as some jurisdictions do not publicly publish this information, or use different metrics</td>
</tr>
<tr>
<td><strong>Use of ADR (KPMG additional suggested output measure)</strong></td>
<td>Percentage of tribunal hearing days saved as a consequence of conciliation[^{185}] Satisfaction with the ADR process, compared to satisfaction with hearings and other tribunal processes[^{186}] Suggest to include the use of ADR as an additional efficiency measure</td>
<td>Design of indicators: Some data exists for these methods of assessment and is collected by FWC Usability of indicator: Survey data from parties is not currently readily available This could be collected by FWC periodically as part of a broader user satisfaction survey ADR can be employed to promote early settlement and minimise hearing times, and so avoid significant costs (both incurred costs and opportunity costs)[^{187}] Comparability: There may be difficulty in collecting this data as some jurisdictions do not publicly publish this information, or use different metrics</td>
</tr>
</tbody>
</table>

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