



*Phase 1: Review of the literature*

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# THEME 1: Spotlighting Workplace Regulation



**Working for Our Future: Modernising Workplace Relations in Australia**

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**Note:**

This report has been prepared by SEAANZ for the Australian Chamber of Commerce and Industry (ACCI) and the Department of Employment. The report presents a review of the literature and is not a policy document. It presents a broad analysis of the specific research questions addressed by this study.

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## EXECUTIVE SUMMARY

This report presents the results of the first of a multi-stage project commissioned by the Australian Chamber titled 'Working for Our Future: Modernising Workplace Relations in Australia' with funding from the federal Department of Employment.

This first stage provides a review of the literature relating to five specific themes and the research questions associated with them that were identified by the Australian Chamber as vital to a vibrant and inclusive workplace relations system in Australia.

The current report addresses *Theme 1: Spotlighting Workplace Regulation* and draws on over 200 sources including academic research papers and selected "grey" literature from government and industry over the time period 1978 to 2016.

Consistent themes emerged across the four research questions within Theme 1 and these are summarised below. As well as providing deeper insight and guidance for interpreting the research questions into later stages, the literature reviews also highlighted key gaps in the current body of knowledge that require further investigation.

### Key findings

A consistent finding from the literature was that the Australian workplace relations system presents a complex mixture of federal and state laws and regulations. This system continues to evolve within a political environment characterised by trade unions on one side and predominately large employer groups on the other. It encourages a confrontational and legalistic process that has been subject to quasi-judicial oversight for much of the nation's history.

In relation to productivity, the cost of labour and its ability to generate high output and value added are almost invariably seen as being linked to the workplace relations (WR) system via the wages and conditions that it sets for employees and their employing organisations. Overall the gap that emerges is the need to provide a robust but easy-to-understand framework to measure the impact of workplace relations regulation.

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*Take away 1: Addressing the source and types of regulation provide key dimensions that will offer major new insights for the next stage of the research project.*

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The research questions reflect the fact that the Australian WR system is regulated by federal and state legislation and operates within a dynamic political environment in which government, trades unions and employer groups seek to represent the interests of their constituents.

Much of the work reviewed in this area is at a macro-economic level, or considers the larger firm and its interaction with industrial relations laws and trade unions. Only a relatively limited amount of research has addressed the specific needs of small to medium enterprises (SMEs), with even less focused on the micro-enterprise level. As such firms are largely excluded or even invisible to the WR system a second key area which emerges from the literature is the gap in assessing the impact that the WR system has on businesses – particularly at the level of SMEs.

The Australian WR system is dominated by a view of the larger firm and its interaction with industrial relations laws and trade unions. There is limited research that has addressed the specific needs of small to medium enterprises (SMEs), with even less focused on the micro-enterprise level. There is a gap in our ability to understand the real contribution the SME sector makes to the economy. The nexus between measures of employment and investment appear to be much more nuanced than the traditional growth suggests.

The literature also supported the traditional views that the impact of WR on SMEs revolves around their limited ability to devote time and resources to the necessary compliance work required. Work health and safety (WHS) features in this body of literature as a key area where most SMEs are aware of the “duty of care” responsibilities on employers. A focus on the type or source of regulation, and the impact these have on business provides a more structured approach to identifying what the issues are and how they can be addressed.

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*Take away 2: A range of measures which capture the impact of WR will provide a second important dimension for new insights for future research.*

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The third key finding from the literature highlighted the wider context of the Australian SME sector, where the majority of firms (60%) do not employ anyone other than their owner-manager. In fact, large and medium sized firms comprise only about 4.5 per cent of the total pool of approximately 2 million firms in Australia (DIISR, 2011). This raises issues associated with the nature of flexibility in the workplace and the role of independent contractors or “nano-enterprises” engaged in freelancing and sub-contracting to larger organisations, but who are not employees.

These issues, together with moves away from the notion of standard employment as fulltime and permanent work, the role of small business at the nano end emerges as an area that requires more research. Whether the growth in this area is a result of the pull of greater flexibility or a push in response to insufficient flexibility as a result of workplace regulation is a key area for investigation in future research.

It is anticipated that differences will emerge across this type of business operator depending on their industry sector, education and skill level, and personal characteristics. Investigation of this segment of the SME domain will need to deal with the challenges of both a lack of definition, and the relatively idiosyncratic nature of what are essentially individuals who are self-employed.

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*Take away 3: Application of the notion of business size provides a third dimension that may offer major new insights for future research.*

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## Future directions

The literature review has provided guidance as to what areas may provide deeper insight into this topic through future research. Drawing on the findings from the literature review three key areas emerged for attention:

1. **Metrics behind the assessment measures used.** These range from the “business success” metrics, to HRM measures, through to the impact regulations have on employment and the growth of SMEs.
2. **Regulation source** (i.e. international, national, local or professional/industry level), or type (i.e. red tape, balanced, enabling); along with some of the emerging issues and options, including compliance and red tape, suggests that the ability to separate these areas of regulation source as distinct from regulation type may be beneficial to policy makers as well as business operators.
3. **Business size** (e.g. nano, micro, small, medium, large), has emerged consistently as an issue for workplace relations regulation. This is particularly so at the nano end where it is almost a non-existent field of research, yet has emerged in the literature as an important contributor within the SME sector.

In summary, the review of the literature examining the research questions supports the commonly held view that the Australian WR system has traditionally been regulated by federal and state legislation and operates within a dynamic political environment in which government, trades unions and employer groups seek to represent the interests of their constituents.

There are clear indications that these relationships are changing with the influence of technology, globalisation and workforce demographics all identified as key drivers in this change. Each of these drivers have been identified by the Australian Chamber and are the subject of Theme Reports to be covered within the wider project series this report is part of.

What has also emerged consistently is that much of the work reviewed in this area is at a macro-economic level, or considers the larger firm and its interaction with industrial relations laws and trade unions. There is limited research addressing the specific needs of small to medium enterprises (SMEs), with even less focused on the micro-enterprise level. Future research will need to examine existing data sources and primary data collection from employers and employees in order to provide a deeper examination of the research questions.

## INTRODUCTION

This report, is one of a series produced by the Small Enterprise Association of Australia and New Zealand Ltd (SEAANZ) for the Australian Chamber of Commerce and Industry (Australian Chamber) and the Australian Department of Employment as part of a larger study “*Working for Our Future: Modernising Workplace Relations in Australia Study*”.

SEAANZ is examining five out of a total of seven themes within the larger study and this report examines the background literature relating to Theme 1 ‘Spotighting Workplace Regulation’. It has examined the literature relating to the impact of regulatory frameworks on the behaviour and productivity levels of SMEs, start-ups, early-stage and family owned firms. This first phase of the research study provides a series of focused reviews of the literature with this report being dedicated to the theme of workplace regulation.

### The methodology followed

The review of the literature presented here drew on over 200 sources. The initial selection of papers for review were guided by a set of research questions provided by the Australian Chamber, derived from preliminary research undertaken by the University of Queensland (Gollan & Steele, 2015).

The approach taken to this literature review drew on a systematic approach recommended by academic sources (e.g. Webster & Watson, 2002; Ridley, 2008; Fink, 2010; Denney & Tewksbury, 2013). It commenced with a definition of key terms, in particular the classification of SMEs, which is a major area of focus for the study. An examination of online bibliographic databases was then undertaken with search parameters guided by the key words. The Endnote bibliographic database was used to store these documents which included both peer reviewed academic research papers and quality “grey” literature from mostly government and industry sources.

These sources were then examined using Leximancer text analytic software that uses algorithms to identify word frequency and co-occurrence counts to group words into concepts (Smith & Humphreys, 2006). These concepts are then graphically mapped to show their concentration and interrelationships within the wide corpus of text contained within the source documents. These are also grouped into themes to show the overall structure of the literature. This provided an initial foundation for the examination of the literature sources and assisted in helping to revise the initial research questions. The data used in the analysis included details of the author, title, abstract, journal of the material manually reviewed.

In addition to the Leximancer analysis NVivo a qualitative data analysis (QDA) computer software that enables the management and analysis of large quantities of rich text-based and/or multimedia information, where deep levels of analysis on small or large volumes of data are required (QSR, 2016). This analysis followed the process recommended by di Gregorio (2000). As a more manual analysis tool than Leximancer, NVivo offered a means of independently examining and coding the source data.

Finally, the literature was examined using a manual thematic analysis involving a review of each document. This was subsequently incorporated into the final report. Using both computer-aided and then manual analysis means enabled the confirmation of patterns identified in one method with those found in the other two and minimised the potential for researcher bias. The multiple perspectives provided from these three methods of manual and computer aided analysis provide a robust basis for further refinement of the research questions which were then used to guide the overall study. Further details on the methodology can be found in McKeown *et al.* (2016).

## The structure of the report

The structure of the report is as follows. The first section presents an overview of literature on the workplace regulations context which underpins the four research questions. The keywords driving the review of the literature here were “workplace regulation”. This section establishes important parameters as to how workplace regulation is seen in the literature, but just as importantly for this study, where there are gaps in the literature. This section provides the background for research question 1.

The second section builds on indications from the literature of the need for a macro-level review of the interrelationship between the WR regulatory system and productivity and growth within the wider economy. This impact is the focus of first research question, and which is developed further in the notion of workplace engagement in research question 2. The notion of the influence and effect of workplace regulation have a specific focus on the Australian economy.

The influence of WR within SME sector is dealt with in the next section and the need to focus on understanding this level of detail in more depth provides the focus for research question 3. The report then focusses on research question 4 to examine the suggestion that moves towards increased flexibility in employment, such as casual, part-time, labour hire and sub-contract work are all important areas impacting on the workplace and how it is managed and regulated.

A fifth section is devoted to the theme of compliance, as this emerged strongly across the literature reviewed for research questions 1 to 4. This is followed by a section that summarises the literature reviewed and the gaps, which are then examined provide the three key take away messages of the report. Finally, the report concludes with observations and recommendations for future research.

## Limitations

In approaching the methodology, we have been guided by best practice principles using software analysis tools (e.g. Leximancer, NVivo), and distributing the coding and analysis findings across several chief investigators who have independently assessed the results. Discussions in relation to the refining of the initial research questions were also held with our industry partner ACCI and other senior academics within the SEANZ community to review the work in progress before the finalisation of this document.

However, it should be noted that while some 226 sources were examined for this literature review we do not claim this to be a full review of all available literature. Given the complex and interdisciplinary nature of the study it was not possible, for reasons of time, to examine every source that may be relevant to this theme. In selecting documents, we have deliberately focused on publications generated within the past decades and given priority to more recently published works. Some readers may identify missing sources or disagree with our conclusions. We welcome any feedback in this regard as part of the process of developing this study.

## EXAMINING THE RESEARCH QUESTIONS

This section examines the research questions specific to this theme and provides a summary of the initial findings from the Leximancer and NVivo analysis. The specific research questions guiding this literature review were:

**Research Question 1:** *How does the Australian workplace relations (WR) system influence productivity and growth of business within the Australian economy?*

**Research Question 2:** *How do existing WR laws and regulations affect the ability of businesses to directly engage with employees in the workplace?*

**Research Question 3:** *How does the regulation of employment through the WR system influence the level of employment and investment growth within the Australian small and medium enterprise (SME) sector?*

**Research Question 4:** *How does WR regulation affect flexible forms of work, including the way people are engaged?*

## Summary of Leximancer and NVivo results

The use of both Leximancer and NVivo analysis to undertake an initial review of the literature provided a more robust overview of the sources and how they mapped into themes associated with the research questions. This combination of visual and textual interpretation allowed concepts to be viewed in different ways, thereby improving the reader's interpretation. Comparing the results from the two separate analyses enabled the review to confirm findings, or raise new issues that were not apparent from a single form of analysis. The results suggested a need to revise the initial research questions developed by Gollan and Steele (2015).

The Leximancer and NVivo analysis of the sources reviewed identified three general “clusters” within which the literature was grouped. The first of these related to the employment of people within Australia and the relationships that exist, particularly between employers and employees. Industrial relations were a major focus. The second cluster encompassed literature relating to the management of employees within the workplace, including best practice in human resource management (HRM), and innovation the development of employee performance. The third cluster contained material associated with the activities and outcomes of the businesses that operate within the economy and the impact that workplace regulation (WR) has on economic growth. Of the 226 sources examined the largest concentrations were found in relation to HRM performance management and the operation of the Australian industrial relations (IR) system. The following sections of this report examine this literature in more detail.

## WORKPLACE REGULATION IN CONTEXT

Workplace regulation (WR) has been a major focus for a diverse range of stakeholders interested in performance at the individual, organisation and national level. This review provides a synthesis of academic and “grey” (specifically practitioner and government), sources. Our starting point therefore, was a closer examination of the concept of ‘regulation’ to reveal the interplay with workplace relations.

The literature reveals considerable debate about what regulation actually is. The World Bank’s annual “Doing Business” series (World Bank, 2016a) encapsulates this with the idea that regulation comprises rules that are imposed externally rather than created internally – that regulation is seen as determined and imposed by governments, with a key sub-text being that SMEs in particular need assistance to understand and comply with regulation. As noted by the World Bank:

*Economic activity requires sensible rules that encourage firm start-up and growth and avoid creating distortions in the marketplace. Doing Business focuses on the rules and regulations that can help the private sector thrive—because without a dynamic private sector, no economy can provide a good, and sustainable, standard of living for people. (World Bank, 20116b)*

The World Bank quote above identifies some of the forms regulation can take according to jurisdiction, regulatory authority and enforcement options involved. Table 1 takes this a step further by mapping some key notions from the literature reviewed.

There are a number of findings about regulation which are identified by the synthesis of materials in Table 1. The fact that there are a variety of jurisdictions, regulatory authorities and that the form and way in which regulation can be enforced suggest a complexity that businesses may struggle to understand. Added to this, the trend to increasing globalisation and internationalisation and the need to navigate multiple jurisdictions, authorities, forms and means of enforcement.

The literature also revealed a polarisation within studies investigating how businesses respond to regulation. The first body of literature reveals the prevalence of work health and safety (WHS) concerns and an almost exclusive focus on issues of compliance. The second area that emerges is devoted to research which identify human resource management (HRM) issues, such as employee capabilities and relationships in the workplace, as the major problem for business’s ability to deal with regulation.

In both the WHS and HRM literatures it is the policy context underlying the introduction or reason for regulation, as well as the operational context within which it then has to be implemented, that appear to be specific points of disconnection. Table 1 provides an introduction as to why understanding the source and type of regulation, then how and even why they may affect a workplace is such a complex task for many businesses – particularly small to medium enterprises (SMEs):

*“small enterprises have limited resources to prioritise occupational health and safety (OH&S)” ... contextual factors can limit the efficacy of programme mechanisms and should be taken into account when designing programmes”. (Kvorninga, Hasleb and Christensen, 2015)*

Examining the policy context provides an important refocusing of our way of looking at regulation – away from what Kitching, Hart and Wilson (2015 p.30) identify as:

*“...the conventional view of business lobby groups, politicians, academics and the media...that regulation – or more pejoratively, ‘red tape’ – is a burden, cost or constraint on businesses.”*

Instead, these authors offer that:

*“regulation generates contradictory effects, enabling as well as constraining performance, and explaining regulatory effects in terms of the causal powers that regulation possesses” (Kitching et al., 2015 p. 31).*

**Table 1: Main sources of workplace regulation identified in the literature**

Jurisdiction	Regulatory Authority	Form	Enforcement
<b>International</b>	International Government Bodies and Agencies International Authorities	International Treaties and Agreements	Often voluntary
<b>Within a Country</b>	Levels of Government: - Federal/National - State - Local	- Acts of Parliament - Statutory instruments - Rules, orders and schemes - Licences and permits - Codes of practice - Guidance - Self-regulation or industry agreements	- Appropriate Government department - Statutory powers by ministers or agencies - Central govt. authority - statutory force - statute or another legal instrument
<b>Professional/ Industry Accreditation</b>	Professional Associations/ Bodies	- Licences/ permits - Codes of practice - Guidance	- Self-regulating or industry agreements

**Sources:** Gunningham, 2015; Jacquemin & Janssen, 2012; Kitching, Hart & Wilson, 2015; Lewis, Richardson & Corliss, 2014; OECD, 2015; World Economic Forum, 2016.

This changing focus resonates with the need for businesses to clearly identify the level or source of regulation identified in Table 1 – and decisions such as whether regulation is simply part of the ‘table stakes’ of doing business or something that can be negotiated or even ignored? This also accords with the role of HRM explored in the some of the literature reviewed in this area, which is summarised in Table 2.

**Table 2: Illustrative Australian examples of HRM roles in SMEs**

Study Authors	HRM issues	Research Context
Bi, Davison & Smyrnios, 2015	Efficient staff communication	IT and Fast Growth
Chong, 2014	Staff training	Business process management
Coyte, Ricceri & Guthrie, 2012	Staff as knowledge resources	Management of knowledge resources
Freeman, Styles & Lawley, 2012	Recruiting and retaining skilled staff	Firm Location effect on export performance
Lin, 2015	Staff involvement and capability	Business orientation & marketing capabilities
Mooney & Sixsmith, 2013	Staff as key source of innovation creativity and ideas	Entrepreneurial practices in innovative Australian SMEs
Pollack & Adler, 2016	Increased information technology (IT) staff capability	Skills that improve profitability
Sok, O'Cass & Sok, 2013	Staff training	Superior performance
Stachowski, 2012	Managerial capabilities	Niche marketing for success
Tan, Bi & Smyrnios, 2014	Role of staff	Market orientation in building supply chain capabilities

Overall, the notion of context is an important contribution and is a consistent theme in the literature. The general consensus has been that there is a need for a structured approach to identifying what the issues underlying regulation are, and, in turn, how these can then be best addressed. We therefore begin with a macro view of regulation as the starting point for a structured approach.

## The role of workplace regulation

There is a strong view in the literature, particularly from “grey” sources, which considers regulation as a burden and, as already noted, the notion of red tape is a common theme (see Table 3, column 1 for illustrative examples). This is an important literature which does withstand the often more rigorous scrutiny applied from within the academic realm – where for instance, the “disproportionate effect” government regulation has “on job destruction for firms aged five years or less” provides clear statistical evidence supporting this view (Colombo, Cunningham & Garcia, 2015 p.375). What is also consistent, is that despite the vulnerability both younger businesses and SMEs appear to have in terms of their ability to deal with it, the solutions offered are often more nuanced than a simple demand for the removal of regulation.



**Table 4: Illustrative examples of forms of workplace regulation issues in SMEs**

Study	Country & Key Issues	Findings	View of Regulation
<b>Aidis, Estrin &amp; Mickiewicz, 2012</b>	47 countries from GEM database Institutional Characteristics Entrepreneurship	Size matters - entrepreneurial entry is inversely related to the size of the government, "market freedom" only sometimes significant.	?✓
<b>Autio &amp; Fu, 2014</b>	Asia Pacific economic & political institutions Formal and informal entrepreneurship	Institution quality influences both formal and informal entrepreneurship.	?✓
<b>Brammer, Hoejmose &amp; Marchant, 2012</b>	UK Environmental management	Smallest firms perceive significantly fewer benefits of engagement with environmental issues.	?✓
<b>Degryse, 2016</b>	Digitisation New world of work	How does regulation keep up and remain relevant?	? ?
<b>Gunnigham, 2015</b>	Australia WHS	Need for evidence based approach to 'red tape'.	?✓
<b>Jacquemin &amp; Janssen, 2012</b>	Meta-analysis Entrepreneurship	Regulation as a source of entrepreneurial opportunities.	✓
<b>Kellner, Peetz &amp; Townsend, 2016</b>	Australia Franchising IR and HRM	Evaluation & monitoring often neglected. Mix of SME and large firms.	?✓
<b>Kitching, Kašperová, &amp; Collis, 2013</b>	UK Public disclosure exemption	Contradictory consequences of regulation.	??
<b>McCann and Ortega-Argilés, 2016</b>	EU Entrepreneurship Internationalisation	Need to set EU agenda within the broader global context.	✓
<b>Moreno, 2015</b>	Meta-analysis Entrepreneurial ecosystems	Negative relationship between restrictions and Entrepreneurship.	? ✓
<b>Nyström, 2014</b>	EU Entrepreneurship	Cautious support for red tape removal.	? ✓

**Key:** ✓ = Role of regulation supported    ? = uncertain or mixed results

Although our specific focus is workplace regulation, it is important to note that there are also numerous other areas of regulation which impact on business). For example, as presented in Table 4 these include: i) the increasing range of environmental regulations (Brammer, Hoejmose and Marchant, 2012); ii) the operation of the informal economy where a review of 18 Asia Pacific nations from 2001 to 2010 found that a single standard-deviation increase in the quality of institutions could double the rates of formal entrepreneurship, halving the rate of informal entrepreneurship (Autio & Fu, 2014); and iii) Intellectual property, labour and social rights in the emerging world of digitisation (Degryse, 2016). As the Deloitte (2015 p.3) 'Gov 2020' report states, governments are faced with a balancing act:

*"... potential innovations that enhance cognitive capacity also pose new regulatory and ethical challenges for business, government, social institutions and international organizations".*

This returns us to the view of regulation shown in Table 1, where research focussed on jurisdiction and the regulatory authority at the macro level often have also highlighted that the role of government is being re-shaped. It is a view which identifies a number of international reports which all provide the same conclusion - that internationalisation is a driver for government transforming to become an enabler rather than a solution provider (see for example: Deloitte, 2015; De Stefano, 2016 for the ILO; Fliess &

Busquets, 2006 for the OECD; Institute for Competitiveness & Prosperity, 2016 for a Canadian perspective).

The drivers of change are not restricted to the macro view of regulation and there is an increasing body of research highlighting the need for greater attention to the micro level. For instance, a recent article published in a premier management journal (the *Academy of Management Journal*), focussed on the key role of the individual in determining the outcomes of regulation. Writing about entrepreneurship policy, McMullen, Wood and Keir (2016 p.222) suggest that “individual differences can systematically influence the efficacy of public policy” and also, that they “therefore deserve greater scholarly attention”.

The lack of a detailed literature addressing the link between workplace relations regulation with growth and productivity is not a gap which can be ignored. Our review of the literature here raises some very specific questions resulting from the gaps, namely:

- what policy is the regulatory instrument seeking to advance?
- does the regulation in fact enhance that policy?
- what form does it take?
- which jurisdiction does it operate in?
- what is the impact of compliance on business? and
- what are the ‘real’ penalties for non-compliance?

Addressing these questions may help to better explain how and why businesses react the way that they do. They also indicate the need to look at the wider context and the question of intent. Specifically, why was the regulation introduced, what was the original purpose or philosophy underlying it and how relevant is that purpose today?

The literature also consistently identified that these questions are often particularly vexed ones when applied to the SME sector – but addressing them here also provides insights and solutions for the medium to large business sectors. Adding an SME theme to all of the research questions and not just limiting this to research questions 3 and 4, should add a deeper and more helpful insight into potential answers for business regardless of size.

With the need for context of regulation in mind, we now move to the very specific area of Australian workplace regulation underpinning research questions 1 and 2. This introduces us to the next section where the literature reviewed narrows to focus on the keywords from both research questions 1 and 2 of ‘workplace relations’ and ‘regulation’ to examine these concepts within the specific context of ‘Australia’.

## The regulation of Australian workplace relations

There is a common conflation of regulation with the system of workplace relations, which is not hard to explain. For example, the Australian national workplace relations system is primarily established by the *Fair Work Act 2009* and covers the majority of private sector employees and employers in the country. Workplace relations appear therefore to be largely about IR legislation. This legal environment largely provides the underlying logic, the philosophy and the expectations for regulation.

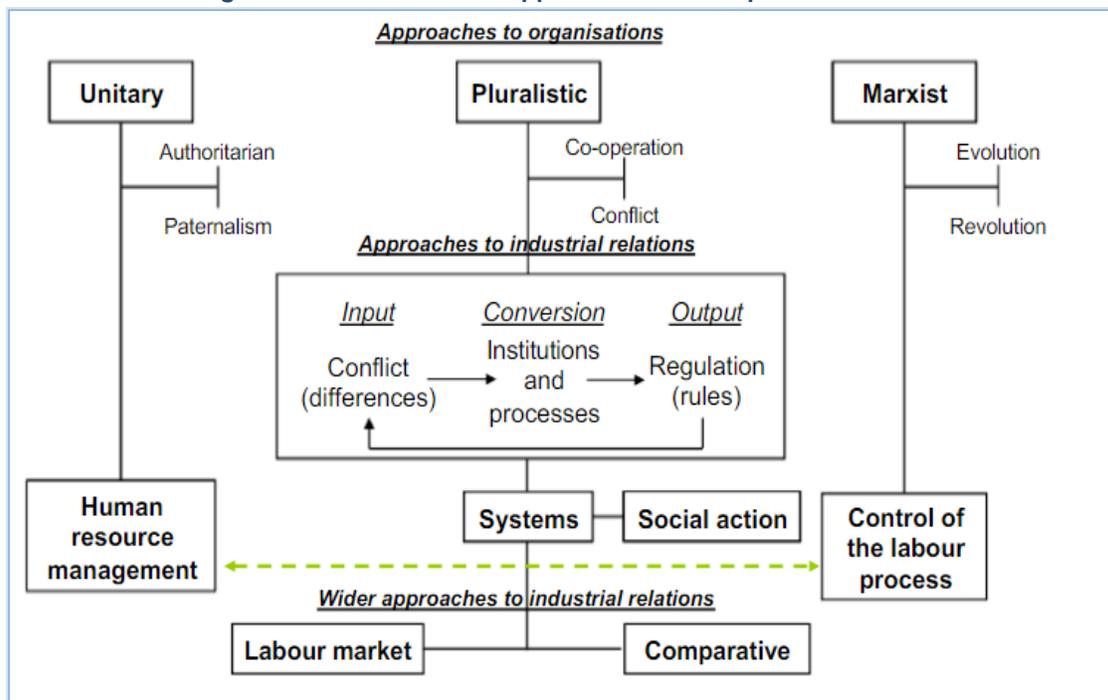
The importance of the philosophy and associated logic and expectations about work which underlies much of the literature in this area is illustrated in Figure 1. This diagram sets out the basis of workplace

relations as the relationships between what are traditionally seen as the three key players; with management representing the employer, trade unions representing employees and the government, whose role is to regulate this relationship through regulation.

While there are large bodies of literature devoted to the three approaches shown in the diagram of unitary, pluralist and Marxist, the key point here is that each offers a particular perception of workplace relations and will therefore offer quite distinct views and attitudes to workplace conflict, the role of unions and of regulation – illustrated in the middle boxed area where it is captured as an output of the approach taken to workplace relations.

The model presented in Figure 1 helps explain the inaccurate but understandable conflation of the two terms of regulation and workplace relations. While it is closed system, and uses some old terminology and ideas, the model does provide for the wider contextual variables noted above, from internationalisation through to economic imperatives for growth as well as an organisation's own strategies for issues such as promoting workplace flexibility, productivity and cooperation.

Figure 1: Overview of the Approaches to Workplace Relations



Note that the terminology used within the diagram is 'Industrial relations' rather than the more contemporary one of 'Workplace relations'

Using this model as the lens through which to examine the SME literature in this space helps to identify the tensions and issues they face when dealing with this highly structured system. For instance, Hodges and Bonds' (2014), small qualitative study of SME owners' views as to the useability of modern awards identified the tension between the need for compliance and the distraction from their core business this necessitates (see quote to the right).

*"Participants' priority focus was to maintain business profitability, and all activities were considered in this context. They sought to minimise any distractions from their core business". (Hodges & Bond, 2014 p.5)*

The literature on these tensions is explored in greater detail below, but here the literature offers insight into the dilemma, particularly for those supposedly “new” forms of work mediated by digital platforms such as Uber and Freelancer. The key theme which emerges from this as well the literature on casual, part time and other forms of flexible work, is that they are operating in a system still predicated on distinguishing manager from employee - a distinction which has historically often been difficult and today perhaps increasingly irrelevant.

Further to this, while Figure 1 provides a generic view of workplace relations, the Productivity Commission (2015) review of Australia's workplace law noted that there are some aspects of the system which are uniquely Australian – for instance, the acceptance of a minimum wage being set by government and linked to being a liveable wage. Known as the Harvester case of 1907, this saw Justice Higgins set the wages based on what an unskilled labourer would need to support himself and a family ‘in frugal comfort’.

The notion that work is tied to the ability of a worker to support (his) family still has echoes in the system we have in Australia today. It also brings us to the assumption embedded in research question 2, that workplace relations laws and regulations affect the ability for employers and employees to directly engage in the workplace. This focus provides the second area for deeper examination within the literature.

## Australian workplace relations 2010 to 2015

The macro view the literature reviewed here presents Australian workplace relations regulation as undergoing little change at the Federal Government level since 2013. The view present in Table 5 indicates that the existing WR laws and regulations, at the Federal level at least, appear to be having increasingly less impact on the ability of businesses to directly engage with employees at the workplace. However, in providing one of the most thorough reviews to date of the overall WR system, the report from the Productivity Commission generally found “repair, not replacement should be the policy imperative” (Productivity Commission, 2015a).

Drawing together the results from the investigation of research questions 1 and 2 provides an overview of the need for workplace relations to be a dynamic and adaptive system. What is not emerging in the literature reviewed here, is much in the way of the “repair, not replacement” recommended by the extensive Productivity Commission review of the system. This is a finding which has important implications. For instance, it suggests that the lack of change within the Federal system revealed in Table 5, is likely to have seen other sources of regulation increasing in importance. While this is unlikely to be seen emerging in the academic literature at this stage, it is a trend that can potentially be examined in future research.

The imperative for WR to be dynamic and flexible to cope with the changing demands of the 21<sup>st</sup> Century, also reinforces the need for research into the effect of regulation on employer/ employee engagement at the workplace level. While the gap here in the Australian literature, stems largely from the demise of the AWIRS survey (with the last being done in 1995), there is also a need for qualitative data – such as from case studies and focus groups. Ascribing this directly to the ability of employers and employees to engage directly with each other at the workplace level, the literature reviewed here suggests that Australian workplaces remain anchored in the model shown in Figure 1.

**Table 5: Some key federal workplace relations initiatives (2010 to 2015\*)**

Year	Source	Illustrative Examples of Major Workplace Relations Initiatives
2010	McCrystal & Smith, 2011	The Fair Work Act 2009 (Cth) came into full effect with new safety net provisions and referral to the Commonwealth of industrial relations powers over private-sector workforces (all states except WA). Progress on harmonization of Australian OH&S laws with a model Work Health and Safety Bill by Safe Work Australia. The establishment of a paid parental leave (PPL) scheme was the most significant development in 2010.
2011	McCrystal & Orchiston, 2012 Catanzariti & Kane, 2012 Cooper, 2012 Baird, Williamson & Heron, 2012	<ul style="list-style-type: none"> <li>• A year of 'incremental change' with the Paid Parental Leave Act 2010 (PPL Act) commencing operation on 1 January 2011 but minimal federal legislative change.</li> <li>• A 'landmark year' for Fair Work Australia in their review of major tribunal cases.</li> <li>• "Testing Fair Work" and that "industrial relations in 2011 will be remembered by most observers for the dramatic October grounding of the Qantas fleet of aircraft" (Cooper, 2012 p. 267).</li> <li>• Compared to the significant policy change in relation to women's work during the previous three years, 2011 saw consolidation.</li> </ul>
2012	McCrystal & Orchiston, 2013 Todd, 2013 Catanzariti & Kane, 2013	<ul style="list-style-type: none"> <li>• "A bumper year for industrial relations legislation" dominated by major review of Fair Work Act 2009 (Cth) (FW Act) review and the subsequent first tranche of amending legislation and, overall 10 significant industrial relations related Acts passing into law. Three industry level industrial relations Acts were enacted by the Federal Parliament concerning road transport; textile, clothing and footwear outworkers; and building</li> <li>• Much of the discussion in the public domain about Australian industrial relations has been concentrated quite narrowly on the legislative environment in which it is occurring, partly due to the Fair Work Act Review that took place in 2012.</li> <li>• A number of significant decisions from Fair Work Australia, the High Court and Federal Court that provided clarification on adverse action, good-faith bargaining requirements to the Barker decision, in which the Federal Court confirmed for the first time the existence of an implied term of mutual trust and confidence in an Australian employee's contract of employment.</li> </ul>
2013	McCrystal, 2014 Floyd & Spry, 2013 Stewart, Bray, Macneil & Oxenbridge, 2014	<ul style="list-style-type: none"> <li>• A "year of contrasts", the second tranche of amendments to the Fair Work Act 2009 (Cth) (FW Act) introducing new 'family friendly' provisions, right of entry laws and an anti-bullying regime. A second major theme emerged at State level in both Queensland and NSW with the "assertion of managerial prerogative and control over state public sector workers" (McCrystal, 2014, p.343)</li> <li>• Suggest "Four burgeoning IR issues for 2013 and beyond: Adverse action; social media &amp; workplace policy; trade union regulation (after the HSU affair); and the QANTAS aftermath"</li> <li>• A new addition to s 576(2) of the FW Act, which sets out the general functions of the FWC, the FWC has been given the task of 'promoting cooperative and productive workplace relations and preventing disputes'.</li> </ul>
2014	Sutherland, 2015 Todd, 2015 Forsyth, 2015	<ul style="list-style-type: none"> <li>• All 6 industrial relations Bills introduced into Parliament failed to secure passage.</li> <li>• An analysis of current Australian IR reveals two themes: first, a diversity of outcomes and second, fundamental employee/employer conflicts playing out often unconstructively.</li> <li>• The High Court's ruling on whether an implied term of mutual trust and confidence exists in employment contracts as the most significant employment law decision of the past 12 months – the unanimous decision that there is no such implied term in employment contracts takes Australia down quite a different path from that of English law.</li> </ul>
2015	Forsyth, 2016 Wright, 2016	<ul style="list-style-type: none"> <li>• The Fair Work Amendment Act 2015 (Cth) (FW Amendment Act) was the only one of the numerous industrial relations (IR) bills to have made it through the Parliament with two key measures – the Fair Work Amendment (Registered Organisations) Bill 2014 (No. 2)2 and the Building and Construction Industry (Improving Productivity) Bill 2013, being rejected.</li> <li>• The Productivity Commission final report's overall conclusion was that Australia's industrial relations system is 'not systemically dysfunctional. Many features work well – or at least well enough ... The key message of this inquiry is that repair, not replacement should be the policy imperative' (Productivity Commission, 2015a).</li> </ul>

\* Note that Appendix A provides detail of the literature presented in this table.

## SMEs and workplace regulation

The pattern emerging from the literature review is that the Australian WR system is regulated increasingly by federal and then by state legislation and operates within a dynamic political environment in which government, trades unions and employer groups seek to represent the interests of their constituents. However, much of the work reviewed in this area is at a macro-economic level, or considers the larger firm and its interaction with industrial relations laws and trade unions. Only a relatively limited amount of research has addressed the specific needs of small to medium enterprises (SMEs), with even less focused on the micro-enterprise level.

The SME perspective provides an important focus for this project. It is not only an area of neglect within the wider literature on workplace regulation but it is also one where investigation of the impact that external and internal factors have on shaping the workplace environment can be expected to have wider implications for all businesses. SMEs are often at the forefront of change – bearing the brunt of compliance as well as offering unique potential insight into its ‘real’ impact, often in a very immediate and unequivocal way. It is therefore, important to provide a clear definition of what is understood to be an “SME” (see: McKeown *et al.*, 2016).

Table 6 summarises the main criteria identified in the literature to define the terms. It reflects the wide variation, both within Australia and internationally, over the definition of SME where no clear agreement exists on the term (Reboud *et al.*, 2014).

**Table 6: Summary of SME and small business terms used in this report**

### Subsets of the term SME or small business

Nano	Micro	Small	Medium	Criteria used
0	1 – 4	5 – 19	20 – 200	Number of employees

**Sources:** ABS (2013 to 2016), Connolly, Norman & West (2012); McKeown & Phillips (2014).

The ability to separate out four segments of the SME sector offers an opportunity to provide a deeper and clearer insight into the realities of the small business sector. It is worth noting that this definition adds a very distinctive “nano-business” category. The term refers to the “non-employing” SME, that employs only the owner-manager. Such firms comprise around 60% of the number of all Australian businesses (DIISR, 2011). This segment of the SME sector is not only large, but also highly diverse and generally one of the most under researched within this body of literature.

While the role of the nano business may currently seem an easy one to dismiss from this study – as they have no employees, there is an increasing body of overseas literature which suggests that the owner/manager sole operator needs to see themselves as employees of the company they own. From the need to draw a wage (which many do not in times of financial hardship), through to issues with workplace health and safety and employee entitlements (such as superannuation and taking leave), application of the regulations which typically are “only” for employees are increasingly identified as beneficial to assisting in the nano business success (see for example: Baumberg and Meager, 2015; Donovan, Bradley & Shimabukuro, 2016; Fachinger & Frankus, 2015; Leighton & Brown, 2014).

The other area of nano business to investigate is whether the growth in this area is the result of regulation on other businesses (see for example: Ackerman, 2012; LeRoy, Fryberger, Tarczynska, Cafcas, Bird, & Mattera, 2015; Schawbel, 2013).

The context established here leads into the second part of the examination of workplace relations and regulation. Moving from the top down view of regulation to provide a bottom up focus on assessing the influence and the actual impact of workplace regulation which are part of research question 3.

## Summary of findings relating to research questions 1 and 2

A consistent finding from the literature was that the Australian WR system presents a complex mixture of federal and state laws and regulations. This system continues to evolve within a political environment characterised by trade unions on one side and predominately large employer groups on the other. It encourages a confrontational and legalistic process that has been subject to quasi-judicial oversight for much of the nation's history.

In relation to productivity, the cost of labour and its ability to generate high output and value added are almost invariably seen as being linked to the WR system via the wages and conditions that it sets for employees and their employing organisations. Overall the gap that emerges highlights the need to provide a robust but easy-to-understand framework to measure the affects and influence of workplace relations regulation.

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*Take away 1: Addressing the source and types of regulation are key dimensions that will offer major new insights for the next stage of the research project.*

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## THE INFLUENCE AND AFFECT OF WORKPLACE REGULATION

Embedded in the concept of assessing the influences and effects of regulation of workplace relations is the notion of measurement – that the outcomes of regulation are not only something that should be measured but that they actually can be measured. Measurement is anchored to a set of measures (metrics), and just what these metrics look like is very much determined by the same external contextual factors related to regulation as previously noted. Also, these measures can be applied at the macro or the micro level. This would see the increasingly detailed perspective of regulation shown in Table 1, moving from jurisdiction, then the regulatory authority to the means of enforcement, and could logically include a fifth column called metrics.

While the rhetoric of many governments around the world is often limited to a metric of growth (with much of the interest in SMEs in particular, predicated on them being “the engine of the economy”), there is also a conflation with the implication that growth is really only measured in terms of jobs created. The view which emerges from literature is rather different and offers some important insights. For instance, the SME focus shown in Table 7 reveals that SMEs are increasingly being identified as the source of a whole range of contributions beyond the standard “job creation” metric noted.

There is clearly a potential for a disconnect between the metrics that businesses apply in defining success with the metrics policy makers apply in defining regulatory success. While the notion of increased growth and investment is an external measure that excites policy makers and government in particular, there is also a strong theme emerging within the literature that the SME contribution here may be rather more nuanced. Their role in knowledge transfer and the positive impact this has on creativity and innovation is an emerging area of research which is revealing a largely hidden (covert) contribution. This appears to equate with the balancing role shown in Table 3.

Table 7: SMEs and the ‘Growth’ story

The Traditional View	Association	Sources
<b>SMEs are “the engine of the economy”</b>	SMEs create jobs	ILO, 2015
<b>The Expanding Views</b>		
<b>Gazelles</b>	Very, very rare... but do make a significant contribution to job growth and investment	Birch, 1987; Neumark <i>et al.</i> , 2011; Hendrickson <i>et al.</i> , 2015
<b>Most SMEs either do not grow and remain “nano-enterprises”</b>	Many do not seek growth, or at the nano end, to employ others but may positively sustain or even increase investment.	Reedy & Litan, 2011 ; Davila <i>et al.</i> , 2015 ; Acs <i>et al.</i> , 2016
<b>...at the Nano end</b>	Key sources of knowledge exchange & transfer and of innovation (so assist larger organisations’ growth and investment - covert).	Degryse, 2016; Horowitz, 2010; ILO, 2015; Kinner, 2015; MBIE, 2014; McKeown & Cochrane, 2014; OECD, 2015, Osimo, 2016
	A buffer for larger organisations to mitigate risk (so assist larger organisations’ growth and investment - overt).	Bahn & Kitching, 2013; Manuet <i>al.</i> , 2013; Relph, & Parker, 2014

Similarly, the more overt risk mitigation role (often linked with the literature on outsourcing), is an area where research into the links between workplace regulation, levels of employment and investment growth is needed – and perhaps indicative of the red tape role of regulation shown in Table 3. What also emerges from the wider literature on assessing the affects and influences of WR regulation on employment and investment, is that such regulation is often explicitly being designed to aid business success. This reflects the enabling role shown in Table 3.

Adding the notion of business “success” to the research questions provides an interesting perspective. It is a concept which provides some consistent and distinctive metrics which resonate with both the “harder” measures (particularly financial) that official regulators require to be reported on, as well as some “softer” measures (often non-financial), that may explain why SMEs are often seen as agile, responsive and innovative.

While Table 8 presents an illustrative overview of some of the metrics found in a review of the SME literature, these are relevant to businesses of any size. Combining the results of Tables 6 and 7, highlights a need for research into the cause and effect for those businesses that do not grow. Taking just one of the three roles of regulation as an example, from a red tape perspective, ongoing research project questions emerge such as: 1) Is this because it is all too hard, due to issues such as regulatory barriers, for example not employing people because of the cost? Or, 2) Perhaps due to the perceived difficulty of terminating them?

**Table 8: Illustrative examples of business success measures**

Measures	High level	Specific Criteria
<b>Hard Measures</b>		
<b>Financial</b>	Profit / Profitability	Sales Costs Investments Client conversion Client retention
<b>Operational</b>	<i>Internal Business Processes</i>	<i>Product quality</i> <i>Faults/ returns</i> <i>Accreditation</i>
	External comparison	Market position Social media position
<b>Soft Measures</b>		
<b>Satisfaction</b> <b>Loyalty</b>	Client Staff/ Owners'	Feedback
<b>Learning and Innovation</b>	Staff/ Owners' Client	<i>Feedback</i> <i>New developments</i>

**Sources:** Chong, 2014; Döckel & Ligthelm, 2015; Gopal & Thakkar, 2012; Goss, 2015; Ho & Barnes, 2013; Hupalo, 2004; Lambert & Davidson, 2013; McKenzie & Woodruff, 2013; Ngo & O'Cass, 2013; Simpson, Padmore & Newman, 2012; Tierney, 2014; White, Gunasekaran & Roy, 2014

While these are questions, we will explicitly deal with in subsequent stages of this project, the literature reviewed to date suggests that answering these questions is likely to raise a mix of hard and soft responses and measures reflective of the metrics presented in Table 8. However, while the metrics in Table 8 present the hard to soft dichotomy, the research underlying these factors all acknowledged them as being difficult to operationalise or even to be able to gather data on in what would be seen as a reliable and consistent manner. For instance, many supposed “hard” metrics can be ultimately found to rest on subjective decisions. This was found even in the supposedly hard measures of benchmarks for employment and investment levels. As noted by Mauboussin (2012, p. 48):

*“The metrics companies use most often to measure, manage, and communicate results - often called key performance indicators - include financial measures such as sales growth and earnings per share (EPS) growth in addition to nonfinancial measures such as loyalty and product quality ... these have only a loose connection to the objective of creating value. Most executives continue to lean heavily on poorly chosen statistics, the equivalent of using batting averages to predict runs.”*

The importance of context emerges again amplifying our prior findings of the need for research into the impact of regulation on workplaces - A further insight offered by the literature is that business success, in terms of the impact and effects of regulation, may have a social and cultural basis. This is a suggestion which seems particularly important for a country as multicultural as Australia. For example, Ho and Barnes' (2013) examination of entrepreneurs in Hong Kong, found that the Confucian principles of kindness and contributions valued there, provided for government incentives as well as behaviours and metrics that were quite different from that of the West.

From a regulation perspective, this suggests that “hard” metrics, such as financial outcomes and business plans focused on financial measures, may not fully capture or may even miss out on the influences of regulation when “soft” metrics are not also captured. For instance, Wach, Stephan and Gorgievski's (2015) study of over 400 German and Polish entrepreneur's views of “subjective

entrepreneurial success” revealed that they valued a variety of indicators of success - with monetary returns as only one possible option.

Further, the value of a dynamic approach to SME management is suggested by Simpson, Padmore and Newman’s (2012) finding that providing feedback on performance as a firm matures is important in allowing owner managers to reassess their critical success factors – and subsequently modify their strategic and tactical behaviours. Overall, the impetus for businesses to continually gather information to provide a sophisticated analysis of firm performance also resonates with the wider view of success advocated by researchers. However, the ability of SMEs, particularly those at the nano end, is clearly severely limited. This also makes the notion of barriers explicit and moves us to the next body of literature. As suggested by Sarasvathy, Menon and Kuechle (2013):

*“There is a need for metrics which offer more nuanced approaches... where for example, both failed firms and successful ones entail useful learning.”*

## Workplace regulation as a barrier

While the literature reveals many gaps in our knowledge of the influence and impact of WR on employment and investment growth, the notion of red tape as a barrier has emerged as an important one which needs to be explicitly dealt with. Drawing together the wider context of both WR and regulation highlights the importance (already identified within the literature) of understanding the dynamic nature of regulation.

For instance, while the historical context of Figure 1 is part of the way workplace relations still operates, the changes just from 2010 to 2015 shown in Table 3 offer evidence of a system where losing the reason or even the knowledge as to why a regulation was introduced, can quickly see what was once a “good reason” become an end in itself. The result may be that regulation then becomes seen as irrelevant and a burden to those it was intended to assist – one explanation often given for what later becomes “red tape”.

The 2015 Productivity Commission report (PC, 2015a) found that many people find the workplace relations system confusing. Further, some parties (e.g. consumers, unemployed and underemployed) should have more “voice” in the system, but essentially suffer from being marginalised. According to this report:

*“Australia’s WR framework comprises a complex array of labour laws, regulations and institutions.”* (PC, 2015a p. 4)

This review of the literature suggests that SMEs are also among those stakeholders that are marginalised. For many SMEs, the issue is that this is a system which deals with management as distinct from employees. It is a separation that is often blurred among small and micro-firms, or non-existent within nano-enterprises.

It is also a system which can be hard to negotiate for businesses that lack staff without specialised knowledge in this area. This latter issue places a different perspective on the notion of compliance with regulation. It is not just the ability to comply but actually understanding what is required - as well as



a combination of the two, that that can be issues. This also raises the question about what is involved in achieving compliance with the system from a practical perspective? As the Fair Work Commission review by Sweeney Research (Hodges & Bond, 2014) found, knowledge of obligations and compliance with obligations emerge as two distinct but equally important concepts for achieving successful regulation.

### Summary of findings relating to research question 3

The third research question draws attention to the fact that the Australian WR system is dominated by a view of the larger firm and its interaction with industrial relations laws and trade unions. Only a relatively limited amount of research has addressed the specific needs of small to medium enterprises (SMEs), with even less focused on the micro-enterprise level.

The third key finding from the literature highlighted the wider context of the Australian SME sector, where the majority of firms (60%) do not employ anyone other than their owner-manager. In fact, large and medium sized firms comprise only about 4.5 per cent of the total pool of approximately 2 million firms in Australia (DIISR, 2011).

This insight identified a major gap in our understanding as to the real contribution the SME sector makes to the economy. The nexus between measures of employment and investment appear to be much more nuanced than the traditional metric of growth suggests. The literature also supported the traditional view that WR impact on SME growth and investment revolves around their limited ability to devote time and resources to the necessary compliance work required. A focus on the type or source of regulation, as identified in Research Questions 1 and 2 above, and the impact these have on business provides a more structured approach to identifying what the issues are and how they can be addressed.

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*Take away 2: Application of a range of measures which capture the impact of WR provides a second important dimension for new insights for future research.*

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## WORKPLACE RELATIONS AND WORKPLACE FLEXIBILITY

The focus of the literature under review now moves to specifically focus on SMEs. They provide a litmus test where the results are likely to reflect issues and concerns with far wider impact. The general lack of either dedicated staff and/or access to services to assist with WR regulation is an issue we have already found within the literature already reviewed. However, investigation of the literature into the impact of regulation on SMEs reveals nuances not covered in the previous discussions. As noted by Goss (2015, p.50):

*“conventionally, employment relations with small firms have been thought of as essentially harmonious... [however]... the nature of small business employment relations is... a great deal more complex and contingent than the popular image would imply.”*

The literature focuses on the difficulty SMEs may face when dealing with complex issues, but there is also a wider context of regulation above and beyond that of workplace relations which is emerging here - that of the changing world of work and the push/pull nature of the drive to flexible work arrangements which are seen as both driving and a result. Table 9 identifies the drivers of structural change businesses can be dealing with under the banner of workplace relations regulation.

**Table 9: Illustrative examples of current issues in workplace regulation**

Source	Issue	Areas of Regulation	Findings
<b>Croucher, et al., 2013</b>	WHS and SME performance	Working conditions – international comparisons	There can be a link and win/win scenario may be possible... in certain circumstances.
<b>Degryse, 2016</b>	Digitisation/ impact on labour markets	Labour market changes/ working time	Need to balance threat with opportunity/ threat with opportunity.
<b>Deloitte, 2015</b>	Role of Government	All areas of Government	Government becoming an enabler instead of a solution provider.
<b>Done, Voss &amp; Rytter, 2011</b>	Best practice interventions	SMEs own internal systems	SMEs have limited ability to develop adequate capability for long-term change.
<b>ManPower, 2016</b>	New job entrants/ job search	Technology & digitisation	The notion of a “job” -no longer a means to an end, now integrated part of a holistic way of life.
<b>Meyermans, 2016</b>	Ageing population	Pension reforms	Idea of working age is changing - balance push & pull reasons.
<b>Palangkaraya, Spurling &amp; Webster, 2015</b>	Innovation & SME productivity	Start-up/ SME incentives	“A complicated constellation of complementary activities may be needed for success” p.193
<b>Xavier &amp; Lucidi, 2016</b>	Labour law as shared economic risk	Labour Law enforcement	The efficiency of the judicial system does appear to influence labour markets dynamics.

While the literature reveals that these challenges may create novel opportunities for new entrepreneurs and business expansion, it also echoes earlier findings that there are an increasingly wider number of actors who are, can be or need to be involved in the workplace relations space. These range from the micro to nano businesses already mentioned to the increasingly common “non-standard” employment arrangements of casual to part time and contract workers. The term “flexibility” extends beyond these forms of the “how” of employment to also cover options in terms of when and where (so time and location are also part of the mix).

Also, revealed by the literature in this area is a considerable heterogeneity which requires new and more nuanced approaches. For instance, the traditional government focus on employment growth as the (or at least a) key metric is being disrupted by new technology and digitisation in particular. This was an issue identified by Broughton and Richards (2016):

*“The divide in the way in which Government treats employees and the self-employed is making it artificially cheaper for firms to move to a model of firm-contractor, and away from the employer-employee model of working”*

This has been identified in research into nano-businesses (e.g. McQueen & Yin, 2014; Horowitz, 2010; Cave et al., 2014; Leighton & Brown, 2013), where strategies such as collaboration, networking and co-working appear to be producing both innovation and growth – as well as providing larger firms with the ability to outsource or mitigate their exposure to risk.

There is an ongoing and long-standing discussion in both the academic and the policy literature about whether flexibility is 'good' or 'bad'. This debate is also reflected in notions about its 'desirability' and who is seen as benefitting from it. The literature raises the question of whether workplace flexibility should be seen as:

- A positive phenomenon, associated with innovation and contributing to positive economic and employment growth (where it is often presented as a way out of unemployment and an option for vulnerable and marginalised sectors of the workforce). It is a view which sees flexibility as something to be supported through policy and regulation.
- A negative phenomenon equated with precarious employment and inferior working conditions, low job quality and income earnings. Regulation takes on a very different focus here as concerns often focus on the lack of protection and benefits normally associated with employment.
- Some mixture of the two, with both positives and negatives providing a challenge to regulating workplace relations.

As Table 10 shows, these tensions are captured in the wider literature reviewed around the issue of workplace change and the need for flexibility, which looks at some of the options either being adopted or being considered around the world.

**Table 10: Illustrative examples of literature dealing with workplace change**

Study Authors	Model	Area or Country	Regulator and/ or Motivator
<b>Co-operation</b>			
Bray, Budd & MacNeil, 2015		USA	Changes in law and public policy may be necessary to shift to the higher-performing model suggested.
Gunderson, 2013		Canada	Appropriate to deal with the issues of nonstandard employment and job instability give.
<b>Partnership</b>			
Xu, Patmore & Gollan, 2016		Australia	Implementation of an enhanced consultation procedure may improve job security, employability, flexibility and productivity.
Townsend, Wilkinson, Burgess & Brown, 2013			Provides a roadmap to a new Australian IR landscape but needs to be operationalised.
<b>Other</b>			
Ronit, 2014	<i>Self-Regulation</i>	Consumer laws	Industry Associations.
Schrank, 2013	<i>Regulation as a benefit</i>	Labour laws/ Dominican Republic	Move from disguised protectionism to rewarding regulation.
Sunstein, 2013	<i>Behavioural Economics – a “nudge”</i>	All forms of regulation/ USA	People more likely to respond when certain facts, risks, or possibilities are salient; effective warnings take account of this fact.
World Economic Forum, 2014	<i>Mutual benefits</i>	Europe	For large companies & entrepreneurs.

A common theme in Table 10 are the notions of mutual trust and respect. These may offer an evolution in the ways that the three main parties of management, trade unions and government, first identified in Figure 1, potentially interact.

An important result from the literature review here is that SMEs are dealing with many of the issues which confront larger businesses – but often without the presence of specialist staff to help manage either the external compliance demands of regulation, or the day to day practicalities of business operation. This returns us to the issue of ‘voice’, or lack thereof for SMEs within the formal resolution systems.

As the review of the literature has indicated, this lack of ‘voice’ or influence by SMEs is not just because of issues such as “red tape”, but is often much more likely to be due to staff capability (both in terms of the inability to employ specialist staff for dedicated specialist functions such as HRM and the capacity to cover the breadth and depth of knowledge required).

## Summary of literature relating to research question 4

Flexible employment is both part of wider moves away from the notions of standard employment as fulltime and permanent work, and where the role of small business at the nano end emerges once again as an area that requires more research. The drivers of the increasing numbers working in this way within the flexible workforce are divided. Knowing whether it is driven by the pull of autonomy or driven by the push of a system unable to cope with demands for adaptability and flexibility has important implications for the role of regulation.

It is anticipated that differences will emerge across this type of business operator depending on their industry sector, education and skill level, and personal characteristics. Investigation of this segment of the SME domain will need to deal with the challenges of both a lack of definition, and the relatively idiosyncratic nature of what are essentially individuals who are self-employed.

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*Take away 3: Application of the notion of business size provides a third dimension that may offer major new insights for future research.*

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## COMPLIANCE

The issue of compliance was a constant theme across all of the research questions in the literature reviewed. For this reason alone, it is worth devoting a concluding section to this topic. Compliance is also an issue that has produced some interesting findings, offering further insight into the important macro to micro and hard/soft data perspectives.

These are reflected in the studies presented in Table 11 where the range of data sources (shown in the ‘Type of study’ column) cover large scale national quantitative datasets to qualitative studies based on perceptions (often of only one target group) to mixed methods (where both qualitative and quantitative data is used).

Table 11: Illustrative studies specifically on compliance

Source	Issue	Country	Type of study	Results
<b>Crain &amp; Crain, 2014</b>	<i>Estimating the cost of Federal compliance</i>	USA	Perceptions/ survey National Association of Manufacturers	The cost of regulatory compliance disproportionately affects small firms.
<b>Kitching, Hart &amp; Wilson, 2015</b>	<i>Perverse effects of regulation</i>	UK	Mixed methods	Managing contradiction is a normal condition of doing business. There is no single 'small business effect' of regulation.
<b>Lewis, Richard &amp; Corliss, 2014</b>	<i>Difficulties in assessing costs of compliance</i>	Australia	Perceptions	Issues range depending on the area of regulation examined. Transfer of responsibility from government onto business. Changing regulations – over time or inconsistent between states.
<b>Wiens &amp; Jackson, 2015</b>	<i>Remove regulatory barriers to growth</i>	USA	US Census Bureau data	<b>FEDERAL</b> - Welcome immigrants & remove regulatory barriers to growth. <b>STATES</b> - Simplify tax codes and payment systems; encourage competition and labour mobility. <b>LOCAL</b> - Cultivate human capital.

The results outlined in Table 11 add to the tensions and sometimes contradictory results noted throughout our report. The perspective of the writers of each of the sources noted in this table also plays a role in explaining the viewpoints and results found. As noted by Kitching, Hart and Wilson (2015 p. 143):

*“Future research should investigate these contradictory regulatory influences and explore the wider organisational and market contexts that support small firms’ identification and exploitation of particular regulatory enablement’s and opportunities, bearing in mind that small business agents might be unaware of the sources of such opportunities “*

What emerges strongly is the need to not only look at where the drivers or pressures for regulation originally came from, but how these have then been interpreted by the regulatory authorities (whoever they may be) and then, how these regulations actually operate for the SME owner.

Compliance is not necessarily a negative. Disentangling cause from effect and perception from evidence emerges as complicated exercise and one where the perspective of the person/s asking the questions may be important. This is a theme which emerged in many of the papers presented in Table 8, where the need for self-awareness and self-disclosure underwrite the notion of trust implicit in being able to resolve many of the areas of historical tension they seek to resolve.

The last area of literature reviewed returned to the wider notion of workplace regulation, specifically that targeted to the SME, entrepreneurship and alternative workplace arrangements, to see what potential insights these offer for Australian workplace relations. Table 12 provides a summary of some of the literature relating to regulatory reform of workplace relations.

**Table 12: Informative international studies specifically on regulation**

Country	Source	Title	Features	Focus
Canada	Institute for Competitiveness & Prosperity, 2012	Small business	An accountancy view on creating a policy framework to encourage SME innovation	Entrepreneurial high growth firms
	Cave, Lampathaki, & Charalabidi, 2014	Road mapping, Research Coordination and Policy activities supporting Future Internet-based Enterprise Innovation	The number of self-employed people, entrepreneurs and micro-enterprises is expected to grow significantly during the next 10 years	Address paradox that self-employed, micro-enterprises, SMEs benefit the least from the EU initiatives in research and innovation
Europe	European Commission, 2009	Think Small First – Considering SME interests in policy-making including the application of an ‘SME Test’	An attempt to provide guidance to policy makers on how to better treat their SMEs or simply on how to “Think small first”-	SMEs can be affected by the costs of regulations more than their bigger competitors
	Osimo, 2016	Start-up nation scorecard	A 14-page roadmap containing 22 action points	Spur discussion on improving the start-up ecosystem and digital-era performance
	World economic Forum, 2014	Enhancing Europe’s Competitiveness Fostering Innovation-driven Entrepreneurship in Europe	A detailed model of life cycle phase, showcasing key influencing factors, discussing main challenges and featuring selected leading initiatives to improve conditions for entrepreneurship	Developing entrepreneurship initiatives that achieve both scale and momentum by connecting stakeholders better
New Zealand	MBIE, 2015	Small Business in New Zealand: How do they compare with larger firms?	Easy to read infographic with of SME status – including nano /non-employing data	97% of NZ business employ fewer than 20 people with 69% having 0 employees
The World	ILO, 2015	Small and medium-sized enterprises and decent and productive employment creation	There is solid empirical evidence confirming that SMEs are a major job creation engine ... but the sector is very diverse.	SME position within the Value Chain
United States of America	Wiens & Jackson, 2015	The Importance of Young Firms for Economic Growth	Breaks some myths as far as SMEs and job creation	New/young firms primary source of job creation & spur innovation

An examination of the literature summarised in Table 12 suggests two key themes emerge:

1. Understanding that the heterogeneous nature of the SME sector is only going to become more complex; and
2. Correspondingly, it is increasingly important that discussions about workplace regulation specifically, and regulation in general, actively involve the voice of this important sector.

## SUMMARY

This section brings together the literature reviewed to examine the four research questions to present a framework which both summarises this theme of workplace regulation as well as providing the basis for the future stage of the project.

The overall findings from the literature review suggest that the current system of WR regulation within Australia will need some reframing to take us into the future. Workplace regulation is important to business growth and, many suggest, to innovation and the future prosperity of the country. It also raises important questions within the context of small business, the changing world of work and the expectations of the wider society which they operate in.

A key finding of the review was the evolution from simplistic notions, often couched in terms of traditional employment, with conflict being an accepted part of workplace relations. While such views can still be found today, they have given way to increasingly more sophisticated notions which place emphasis on evidence based analysis as to the impact of regulation. This latter perspective sees a move away from SME as the potential saviour or way out of economic malaise (where rhetoric such as “small business is the powerhouse or engine of the economy” are common assertions), to a much more nuanced view which attempts to capture the heterogeneity and value of the SME sector.

The need to incorporate the nano or non-employing perspective of the smallest of businesses as shown in Table 4 provides a starting point for this but, as the lack of literature here shows, this group is just one of the missing actors in Australian workplace relations. The wider issue of flexible labour is very much part of the discussion in the future of workplace regulation.

The same need for an evolution of thought was clear in the questioning found in the literature around some of the traditional assumptions which underlie regulation – such as the increasing recognition that the relevance of policies and strategies developed for medium to large business need to be questioned in the SME sector.

Similarly, while the research questions make no such assumption, the literature has revealed an implicit focus on growth in terms of employment numbers often being seen as the most important goal of business in the SME sector. There is an emerging literature which suggests that this metric actually misses the value of this sector – and this again, has great relevance for the wider array of flexible labour arrangements. Premising research, regulation and policy initiatives on a business model that is irrelevant to small business is counterproductive. As suggested by Goss (2015, p.6):

*“Small business policy seems driven more by political expedience and ideological quest to promote an ‘enterprise culture’ than by consideration of social benefit or value for money. Although there may be some truth in this, it is not the whole picture.”*

As with Goss (2015), we find that it is the heterogeneity of small business that emerges in the literature as both the strength and the weakness of the sector. The reality is SMEs are a challenge to the institutions, structures and expectations established to support the employer-employee relationship. Issues such as fairness, protection and government support have been features of the legal, social and political systems of most developed countries for many, many decades. However, this continues to remain contentious for SMEs, particularly at the smallest end of the spectrum. This seems a surprising relic of the last century as we see new forces at play today, digital technology in particular, which can easily level the playing field in terms of the resources traditionally dominated and associated with size.

While we have focussed specifically on SMEs as the litmus test for workplace relations operating at the smallest level, we suspect that the lessons here are applicable and valuable to all sizes of business. Issues such as the need to help SMEs navigate and clearly differentiate the levels of workplace relations

regulation – whether federal, state or local government initiated – from other sources, such as professional bodies for accreditation. The widening range of actors now involved either directly or impacting indirectly in the area of WR regulation suggests that this is an area where more research is needed to provide guidance. The summation provided in Table 1 as to sources of regulation seems to provide another firm basis from which to base future research.

Internationalisation then adds another layer of complexity to this mix. Indications are that it is this increasingly complex set of stakeholders who provide a “mosaic web” and appearance of “red tape” that so many object to. There seems to be little discussion of what “good regulation” is and the gap between current and “best practice” regulation here indicates an important area to follow up on.

Overall, a key finding from this review of the literature is that a more detailed understanding of SME workplaces is absolutely vital to developing an understanding of the way that such businesses may either adapt or fail due to the regulatory environment. We know that the insights from such research will provide flow on benefits to all organisations, regardless of size. We have also seen a number of examples that do not simply comply, but often react in ways beyond those specified by regulation. While the voice that groups such as small business and others such as part-time, contract and casual workers have in shaping the systems and structures which they operate in may not be heard, this does not mean they are accepting or quiescent. Policymakers need to be aware that regulation produces a diverse range of dynamic influences on all business activity and performance – and that the first area to assess such impact is often the small business sector where it may be felt both quickly and sharply and where the impacts can be severe.

The literature indicates that many countries are adopting a more co-operative and partnering approach with their SME sector and this begins from when they are drafting and enforcing regulation through to the design and delivery of support services to SMEs. It is a refocus on the role of regulation as one which supports business and a changing mind-set which sees compliance as facilitating, allowing SMEs to exploit any opportunities arising from the regulation of stakeholders. In summary, we suggest that redesigned regulation business support programs as an enabler rather than overseer provides a stronger basis from which to achieve the objective regulations set out to achieve.

Workplace relations has emerged as dynamic in the way that it both shapes and reacts. Regulation has been seen to be the source of constraint and red tape, balance or opportunity. As the latter, it offers the potential to improve business success, particularly in an age where for instance, the power of social media is quickly emerging as a way that internal workplace relations are increasingly exposed to public attention. The literature has also shown that regulation can also impose costs and constraints for SMEs that may be greater than those imposed on larger enterprises. The results presented in this report suggest that these regulatory tensions between opportunity and constraint are often part of the business environment.

SMEs can also have the ability to shape external regulation – that they are not passive actors in the regulatory system. A key finding from the three sources of literature analysis provided for this report, Leximancer, NVivo and manual, is that the context that an SME operates within is absolutely vital to developing an understanding of the way that they may adapt to the regulatory environment. The dynamic view that the concept of adaptation brings with it has emerged in a number of ways in the literature. This has ranged from a view of compliance with regulation as a burden, through to one where business success is seen as a multilayered and often subjective concept.

Considerable overlap and interplay was identified between the four research questions. Compliance, the changing nature of work, management in general as well as HRM practices specifically, economic growth and innovation have all been identified as issues within the wider notion of workplace regulation. There has also been focus on workplace relations and this has consistently emerged as crucial to understanding the context within which workplace regulations operate.

## CONCLUSIONS

This review of the literature relating to workplace regulation has provided some deeper insights into the four research questions as well as highlighting gaps in the current body of knowledge that require further investigation.

### The WR regulatory system's impact on productivity, growth on SMEs

The first two research questions asked:

**Research Question 1:** *How does the Australian workplace relations (WR) system influence productivity and growth of business within the Australian economy?*

**Research Question 2:** *How do existing WR laws and regulations affect the ability of businesses to directly engage with employees in the workplace?*

The Australian workplace relations system is a complex mixture of federal, state and sometimes local laws and regulations. This system continues to evolve within a political environment characterised by trade unions on one side and predominately large employer groups on the other. It has historically encouraged confrontational and legalistic processes that have been subject to quasi-judicial oversight for much of the nation's history.

In relation to productivity the cost of labour and its ability to generate high output and value added is related to the IR system via the wages and conditions that sets for employees and their employing organisations. While the nexus between WR laws, productivity and growth of businesses is an area already being addressed by labour market economics, what emerges from our review of this literature is a gap in assessing the impact that the IR system has on businesses – particularly SMEs. This need emerged most clearly in the literature reviewed for research question 2 where there is a relative paucity of data on the SME and the impact of workplace regulation and employment or investment decisions.

Overall there emerges an urgent need to provide a robust but simple to understand framework to measure the impact of workplace relations regulation.

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**Take away 1:** *The ability to examine regulation by source or type, along with some of the emerging issues and options associated with WR regulation and change, plus the notion of compliance, offer the potential to provide enhanced insight and understanding for further research.*

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### Workplace regulation, HRM, and SME productivity

The next question addresses SME performance and how workplace regulation and the application of regulation might impact such performance.

**Research Question 3:** *How does the regulation of employment through the WR system influence the level of employment and investment growth within the Australian small and medium enterprise (SME) sector?*

As noted in the previous section there is a paucity of reliable evidence to fully address these questions. The pattern that emerges from our review of the literature suggests that IR laws and regulations will impact SMEs primarily in terms of their ability to devote time to the necessary compliance work required. WHS has featured in the literature and is an area that many SMEs will take seriously due to the heavy regulation and “duty of care” responsibilities on employers.

However, this question must be placed into the wider context of the Australian SME sector, where the majority of firms (60%) do not employ anyone other than their owner-manager. In fact, large and medium sized firms comprise only about 4.5 per cent of the total pool of approximately 2 million firms in Australia (DIISR, 2011). Further, relatively few of the smallest firms have well-developed or formal HRM systems in place and such systems typically emerge as the firm grows from small to mid-sized (Kotey & Sheridan, 2004; Kotey & Slade, 2005).

Future research needs to examine the nexus between formalisation of HRM process and practice, IR regulation and performance in SMEs. This should examine firms not only by size, but also across variables relating to industry, location, level of innovation (e.g. R&D intensity), and export orientation.

Such research could begin with an examination of available data sources such as the ABS Business Longitudinal Database (BLD) and the Australian Workplace Relations Survey (AWRS), but is also likely to benefit from direct surveys of employers and through interviews and case studies of best practice. A focus on the type or source of regulation, as identified in this analysis, provides a structured approach to identifying what the issues are and then, offer insight into how they may be able to be addressed.

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*Take away 2: Application of the notion of metrics behind the assessment measures used (from “business success”, HRM roles within SMEs and WR regulation on such firms provides a second dimension that seems to offer potential for new insights for future research.*

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## Adding the dimension of business size

The fourth research question that deals explicitly with the topic of the increasing range of flexible options emerging within the world of work in general (such as part time, casual and contract employment) and the SME sector in particular. Chief amongst these has been the identification of importance of the smallest of the small within the SME spectrum – the “nano” enterprises such as freelancers and independent contractors:

**Research Question 4:** *How does WR regulation affect flexible forms of work, including the way people are engaged (e.g. nano-enterprises)?*

As discussed earlier in this report the “nano” enterprise is increasingly important within the broader economy and as noted above, non-employing firms comprise the majority of all businesses in Australia. However, these independent contractors, freelancers or IPros are largely invisible within the literature and have been given relatively little attention by academics, industry groups and governments. Together with moves away from the notions of standard employment as fulltime and permanent work, the role of small business at the nano end is an area that requires more research.

It is anticipated that differences will emerge across this type of business operator depending on their industry sector, education and skill level, and personal characteristics. Investigation of this segment of

the SME domain will need to deal with the challenges of both a lack of definition, and the relatively idiosyncratic nature of what are essentially individuals who are self-employed.

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*Take away 3: Application of the notion of business size provides a dimension that may offer major new insights for future research.*

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## Directions for future research

Combining the three Take Away points provides 3 key parameters to workplace regulation which were identified within the literature. In summary, the three dimensions are:

1. The metrics behind the assessment measures used;
2. The regulation source or type;
3. The size of the business.

Future research should investigate available secondary and primary data to fully explore these particular units of analysis as it addresses the four research questions. Understanding how Australia's WR system influences productivity and growth, the ability of businesses to engage directly with their employees, how it impacts the SME sector, and how it affects flexibility in the workplace, will require consideration of each of these three dimensions.

Knowing how productivity and growth, employer-employee engagement and workplace flexibility are influenced by the Australian WR system will require a clear understanding of how these things are measured. As outlined in this report the concept of growth has very different meanings depending on the perspective of the party considering it. For government, the aim is usually to see significant growth in employment and investment leading to rising economic activity at the local, state or national level. However, growth for the owner-manager of a small firm may be significantly less ambitious and in many cases, even undesired.

The source and type of the regulation are also important units of analysis to consider when seeking to address the research questions. State or federally mandated regulations enforced by regulatory authorities will have different levels of support and engagement to those developed by industry or even within firms as part of employer-employee level negotiations.

Finally, the literature review has highlighted the importance of recognising that firm size does matter and that what might apply to a large business may not apply to a small one. Further, how the SME, in particular the micro and "nano" sized enterprises, can respond to WR system regulations will be very different from the experience of their larger counterparts.

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## Appendix A: Australian Workplace Relations 2010 - 2015

This section provides a collation of the annual reviews of the state of workplace relations in Australia from when the Fair Work Act 2009 (Cth) came into full operation in 2010, through to the most recent review from 2015. The sources drawn on are the highly ranked Journal of Industrial Relations, the Australian Bar Review and the Australian Journal of Labour Law. While generally focussed at the National level, the material summarised in Table 3 reveal clear and consistent themes which emerge from this focussed review of the literature. Moving through chronologically:

### 2010

This year is characterised by McCrystal & Smith (2010 p.300-301) as one where “the limits of cooperative federalism were put to the test”. It was the year where Fair Work Act and state referrals took full effect, the new safety net commenced operation, and the federal and state governments sought to work together to pursue national OHS laws. What also became clear were the difficulties in the goal of “achieving national uniformity where governments of different political persuasions hold power ... illustrated by the Western Australian failure to join the FW Act system for all private-sector employees and its early refusal to agree to the model OHS Bill”.

### 2011

This year seems to mirror the potential for tension between different levels of regulators, Federal and State government in this case, noted in Table 6. Not surprisingly, after the introduction of such major legislation, 2011 is summed up by McCrystal & Orchiston (2012 p. 281) as one where “developments in federal industrial relations legislation in 2011 were more incremental than in the previous few years.” They offer that “consolidation and industry-specific legislation were two general themes in 2011 federal developments, signifying a shift in the legislative agenda after the implementation of the Fair Work Act 2009 (Cth)”. Cooper (2012 p.267) provides the view that 2011 was the year of “Testing Fair Work” and suggests that workplace relations in 2011 will be remembered by most observers for the dramatic October grounding of the Qantas fleet of aircraft.

### 2012

While the prior two years saw little in terms of the number of changes (where change was in quality and depth), 2012 is a year that McCrystal & Orchiston, (2013) characterise as “a bumper year for industrial relations legislation” which, while dominated by the first major review of Fair Work Act 2009 (Cth) (FW Act) review also saw overall 10 significant industrial relations related Acts passing into law with three industry level industrial relations Acts - The Road Safety Remuneration Act 2012 (Cth) (RSR Act); the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012 (Cth) s. 2); and the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Act 2012 (Cth). Todd (2013 p.311) suggests that “much of the discussion in the public domain about Australian industrial relations has been concentrated quite narrowly on the legislative environment in which it is occurring. Given that the major parties are pursuing legislative changes that favour their interests, the discussion has been quite divisive, which has diminished the quality of public debate over industrial relations. The political context has also contributed to this outcome”.

### 2013

The notion of division and that this is not a good thing for workplaces is highlighted in the concerns noted by Todd in 2013 the suggestion that “the picture of current Australian IR is one of diversity rather than uniformity, but public debates tend to portray ‘employers’ and ‘unions’ as two monolithic blocs. Yet, in reality, there is diversity in the composition of the workforce, in employment arrangements, in economic contexts for varying sectors and in outcomes” Todd (2014 p.325). Floyd and Spry (2013 p.153) add a specific legal perspective to the changing focus on the changing context of workplace relations in Australia, suggesting that while the 2012 Review of the Fair Work Act made no recommendations for

a major overhaul of the legislation “the terms of reference of that review note that it was only ever meant to review the technical operation of the act — not to question its underpinning policy base”. They also offer that there were major developments in industrial law in 2013 in the areas of adverse action; after hours conduct and the need for specialist social media policies in the modern workplace; trade union regulation (after the HSU affair); and the effect of the aftermath of the QANTAS dispute on enterprise bargaining and the offshoring of work by Australian companies. An interesting point is made by Stewart *et al.*, (2014 p.280) who suggest that the potential for the relatively unnoticed addition to the FWC function which “has the potential to be an important catalyst towards the improvement of workplace cooperation in Australia”. This very much reflects the enabling role for regulation noted in the prior section.

## 2014

2014 saw the lack of progress in the Government of the day securing passage of IR legislation continue and an environment which Todd (2015 p.326) suggests:

*“reveals two themes: first, a diversity of outcomes and second, fundamental employee/employer conflicts playing out often unconstructively... Australian IR continues to also be an ongoing tussle between employer/s/ employer associations and employees/unions to control what happens in the workplace and influence more favourably the outcomes for their respective group. While pluralist theory guides us to understand that this is normal due to differing interests, one might observe that this conflict has become somewhat ritualised and is not resulting in the resolution of many of the real problems needing to be addressed”.*

Sutherland (2015 p. 345) adds to the concerns, the need to move to a new mind-set with the view that “the ongoing conflict between managerial prerogative and the rights of unions which has dominated the industrial relations landscape in Australia for the past 20 years” explains the “fact that these Bills have languished in the Parliament suggests that the Government has failed to strike the right balance in resolving this conflict”. However, in his review of major court and tribunal decisions Forsyth, (2015 p.422) identifies some positive movement in terms of the High Court’s ruling on whether an implied term of mutual trust and confidence exists in employment contracts as the most significant employment law decision of the past 12 months as this removes alleged breaches of the implied term of trust and confidence as the basis for a claim by employees. This again reflects the view from Table 6 as to the different levels and sources of regulation – from a view of government, either federal or State, as a regulator to the role of the courts.

## 2015

2015 was a year which Wright (2016 p.297-298) suggests that, apart from “growing momentum in the campaign for domestic violence leave, changes in the government’s paid parental leave policy and the passage of the Fair Work Amendment Act 2015 (Cth) ... [where] no major legislation was passed and few significant judgements were handed down. Sutherland and Riley’s’ (2016 p.400) review of major court and tribunal decisions 2015 concurs, adding that “key decisions of the Federal Court and FWC in 2015 have helped to clarify the rights and obligations of employers, employees and unions. As the anti-bullying provisions are still in their infancy, the FWC’s decisions in 2015 have provided much needed guidance about the limits of the jurisdiction. Both the court and tribunal have also made important decisions about collective agreement making, although they have been constrained at times by a prescriptive legislative framework”.