

**INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE  
TRIBUNALS IN NSW**

**Organisation:** Hunter Business Chamber

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LEADING BUSINESS

# Hunter Business Chamber

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*Inquiry into opportunities to consolidate tribunals*

NSW Parliamentary Standing Committee on Law & Justice

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P: 02 4969 9600

F: 02 4969 9620

E: [info@hunterbusinesschamber.com.au](mailto:info@hunterbusinesschamber.com.au)

PO Box 607, Hamilton NSW 2303  
99 Selwyn Street, Mayfield East NSW 2304

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[hunterbusinesschamber.com.au](http://hunterbusinesschamber.com.au)

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## Background

The Hunter Business Chamber is the largest regional business chamber in Australia and in 2011 it celebrated its 125<sup>th</sup> year. The Chamber represents over 900 member businesses to all levels of government.

The Hunter Region has long held the reputation as the powerhouse of the NSW economy and ranks highly as one of the most valued, diverse and resilient regions in Australia. The Hunter has significant untapped capacity to grow in a sustainable manner and provides a highly desirable lifestyle and strong employment opportunities.

The Hunter Business Chamber welcomes the opportunity to provide feedback to the NSW Standing Committee on Law and Justice into opportunities to consolidate tribunals. The Chamber appreciates the need for Government to regularly review the efficient administration of justice in NSW.

The Issues Paper in relation to the current Inquiry refers in some detail to the Industrial Relations Commission (IRC).

The Chamber highly values the benefits the current structure and operation of the IRC have brought to the Hunter Region.

This region has a stable industrial environment and has experienced positive investment and flow on economic benefits because of the unwavering presence of the IRC. It is vital that this stability is not overlooked in any recommendations resulting from the current Inquiry.

## CONTEXT

It is interesting to note the sentiments expressed in an editorial in the Newcastle Herald on 16 July 2009 which said in part:

*“In the early 1980s the Hunter had the wrong kind of reputation for industrial relations. Turf wars between trade unions often resulted in demarcation disputes on job sites that in turn out projects behind schedule and over budget.*

*Decades of distrust between unions and employer groups, and between union blocs of different political orientations, meant strikes, bans, go-slows and all manner of related counterproductive tactics that kept the Hunter in the national spotlight for all the wrong reasons.*

*Investors were reluctant to commit themselves to projects in an environment where unpredictable disputes could eat up profits.*

*Projects that once would have almost certainly be held up by senseless disputes now routinely come in ahead of time and within budget.*

*It is true that the Hunter has changed since those days. Trade unions have suffered a marked decline in membership and influence. Manufacturing and blue collar industries have shrunk and it might be thought that the region no longer needs its own industrial relations umpire.*

*This would be a dangerously risky assumption. Like a good general manager who makes workplace harmony in the workplace seem effortless, the regional industrial arbiter is at its best when its hand is least visible.*

*Re-centralising that umpire’s function to Sydney could endanger the Hunter’s reputation for industrial peace and put investment and jobs at risk.”*

The Herald editorial noted that a turning point was the decision in 1987 to appoint a Deputy President of the IRC to sit in Newcastle. The editorial commented that;

*“.....this meant that local knowledge of critical issues could be harnessed. What followed was a string of successful site agreements for major projects that swept away demarcation disagreements, established payments and penalties and put in place reliable grievance procedures. Almost overnight, the Hunter was transformed in the eyes of major investors from an industrial no-go zone to a model of co-operation.”*

It is the view of business in this region that the messages expressed in that editorial are as relevant in 2011 as they were in 2009.

The umpire’s presence in the region provides confidence, process and commitment to mutually acceptable outcomes that are welcomed by employers, employees and by the wider community.

Stakeholders in the Hunter regard the presence and success of the IRC as an outcome of considerable effort to provide certainty for their investments.



## Consistency with objects of the IRC

The benefits flowing from the presence of the IRC in the Hunter are consistent in our view with the objects set out in Section 3 of the *Industrial Relations Act* (1996) (NSW) which include;

- To promote efficiency and productivity in the economy of the State
- To promote participation in industrial relations by employees and employers at an enterprise or workplace level
- To provide for the resolution of industrial disputes by conciliation and, if necessary, by arbitration in a prompt and fair manner and with a minimum of legal technicality
- To encourage and facilitate co-operative workplace reform and equitable, innovative and productive workplace relations.

The Chamber considers that the presence of the IRC in the Hunter has achieved these objectives resulting in increased investment and development in the Hunter for the economic and social benefit of the region and the broader state and national economies.

## Fair Work Australia

A further current benefit from the presence of the IRC in the Hunter in its current form is the delegated authority the Deputy President and the Commissioner hold under Section 629(2) of the *Fair Work Act* (2009) (Cth).

Those appointments would come to an end if those persons cease to be a member of a prescribed State industrial authority.

The Issues Paper notes the extent of the reduction in the workload of the IRC since the establishment of Fair Work Australia but fortunately for the Hunter Region the arrangements between FWA and the IRC have enabled the matters which would otherwise be dealt with by FWA possibly only in Sydney, to be dealt with in the Hunter with the benefit of local knowledge and providing convenience, costs savings and efficiency to Hunter based employers and employees.

The Chamber understands that it is only through the current system of dual appointments that matters within the jurisdiction of Fair Work Australia are able to be dealt 'on the ground' in the Hunter, or in any other region.

It would be unfortunate for the Hunter economy if any restructure of Tribunals in NSW resulted in the loss of this advantage to the region.

## Successful Hunter examples

With the advantage of accessibility and local knowledge there have been a number of successful outcomes from the involvement of the IRC in the Hunter.

These include;

- Collective site agreement endorsed by the IRC in relation to various stages of the expansion of the Port Waratah Coal Loader resulting in project completion ahead of schedule and millions of dollars under budget.
- The co-operative spirit overseen by the IRC was achieved in the context of the following unions involved on the site (which avoided the potential for inter-union disputes);
  - Unions NSW – Peak Council
  - Newcastle Trades Hall Council – Local Peak Council
  - Australian Workers’ Union – Labourers
  - Metal Workers’ Union – Mechanical trades
  - Electrical Trades Union – Electricians
  - Construction Workers’ Union – Crane drivers, carpenters and labourers
  - Plumbers’ Union – Plumbers and roofing trades
  - Transport Workers’ Union – Truck drivers
- Newcastle Coal Infrastructure Group (NCIG) development. A similar site agreement was implemented for Stage 1 of this project which was completed on schedule and now also with the subsequent stages currently under construction.
- Approval of the Port Stephens Council Enterprise Agreement in 2011 involving over 500 employees providing a range of community services and covered by 3 separate unions.

## Stability for the Hunter

Despite considerable change on the national agenda in industrial relations in the past decade or so the Hunter scene has remained relatively stable and co-operative.

To a large degree this has been a direct impact of the confidence of stakeholders in the IRC to arbitrate both regional and specific matters, while allowing national issues to be addressed through other forums and processes.

During the recent global economic downturns the Hunter has performed well and even above the national average. While it is readily accepted that much of this continued growth has been driven by the resources sector it should be recognised that such success is only possible through co-operative effort for the common outcome.

Businesses in the Hunter recognise that arguments can be made for consolidation of services to the Sydney metropolitan area and that opposition from regional and rural centres is not uncommon and occasionally driven by little more than local ambition.

That said, it is our view that the performance of the regionally based IRC has not only brought stability to the region but has contributed substantially to the economic performance of NSW.

It has been argued that the matters which come before the IRC are common to all centres but it is the view of business that the unique industrial and business structure of the Hunter warrants its own commission focus.

No region in Australia is as economically diverse as the Hunter with the special blend of mining, power generation, thoroughbred breeding, viticulture, health, manufacturing, retail, tourism and professional services.

## RECOMMENDATIONS

It remains vital to the continued prosperity of the Hunter and to its industrial relations success that there is a significant presence of the IRC process in the Hunter.

The loss of the delegation from Fair Work Australia by the abolition of the IRC as we know it could prove disastrous for the region. However, the Chamber recognises there is considerable potential for the region to contribute even further to the success of NSW if a broader Tribunal is established.

Each of the options canvassed in the Issues Paper has the potential to establish a Tribunal with a wider range of functions.

The Chamber does not support any option which puts at risk the future of a *prescribed State industrial authority* within the meaning of Section 629(3) of the *Fair Work Act* (2009) (Cth). As described in the Issues Paper, Option 1 is unlikely to have that effect and so that would be the option recommended by the HBC.

If Options 2 and 3 can be implemented without putting at risk the future operation of the current functions of the IRC in the Hunter Region, then there is merit in establishing a Tribunal with the ability to provide an expanded range of legal dispute resolution services in the Hunter region, which could also benefit the broader geographic regions of the mid North Coast and New England districts.

Implementation of either Options 2 or 3 may require co-operation with the Federal Government to ensure the prescription of the industrial authority of any such Tribunal for the purposes of the *Fair Work Act*.

If such a Tribunal had a permanent presence in Newcastle it would provide a benefit to the community in the expanded range of legal services available to the Hunter, Mid North Coast and New England regions, all of which are more accessible to Newcastle than Sydney.

### **RECOMMENDATION: secure permanent IRC presence in the Hunter and expand capacity**

*It is critical for the maintenance of good industrial relations and economic prosperity in the Hunter Region (and by extension the State and national economies), that any restructured Tribunal make provision for the retention of the statutory powers and functions of the IRC which should also;*

- *ensure retention of the delegated authority from Fair Work Australia; and*
- *continue to provide these functions through a permanent presence in Newcastle.*



## Contact

For further information please contact:

Richard Anicich  
President  
Hunter Business Chamber

p: 02 4969 9600  
f 02 4969 9620  
e: [info@hunterbusinesschamber.com.au](mailto:info@hunterbusinesschamber.com.au)

PO Box 607, Hamilton NSW 2303  
99 Selwyn Street Mayfield East NSW 2304

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