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THE CHANGING INDUSTRIAL RELATIONS LANDSCAPE

OPPORTUNITIES AND RISKS

MONDAY 18 APRIL 2016

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TOPICS FOR TODAY

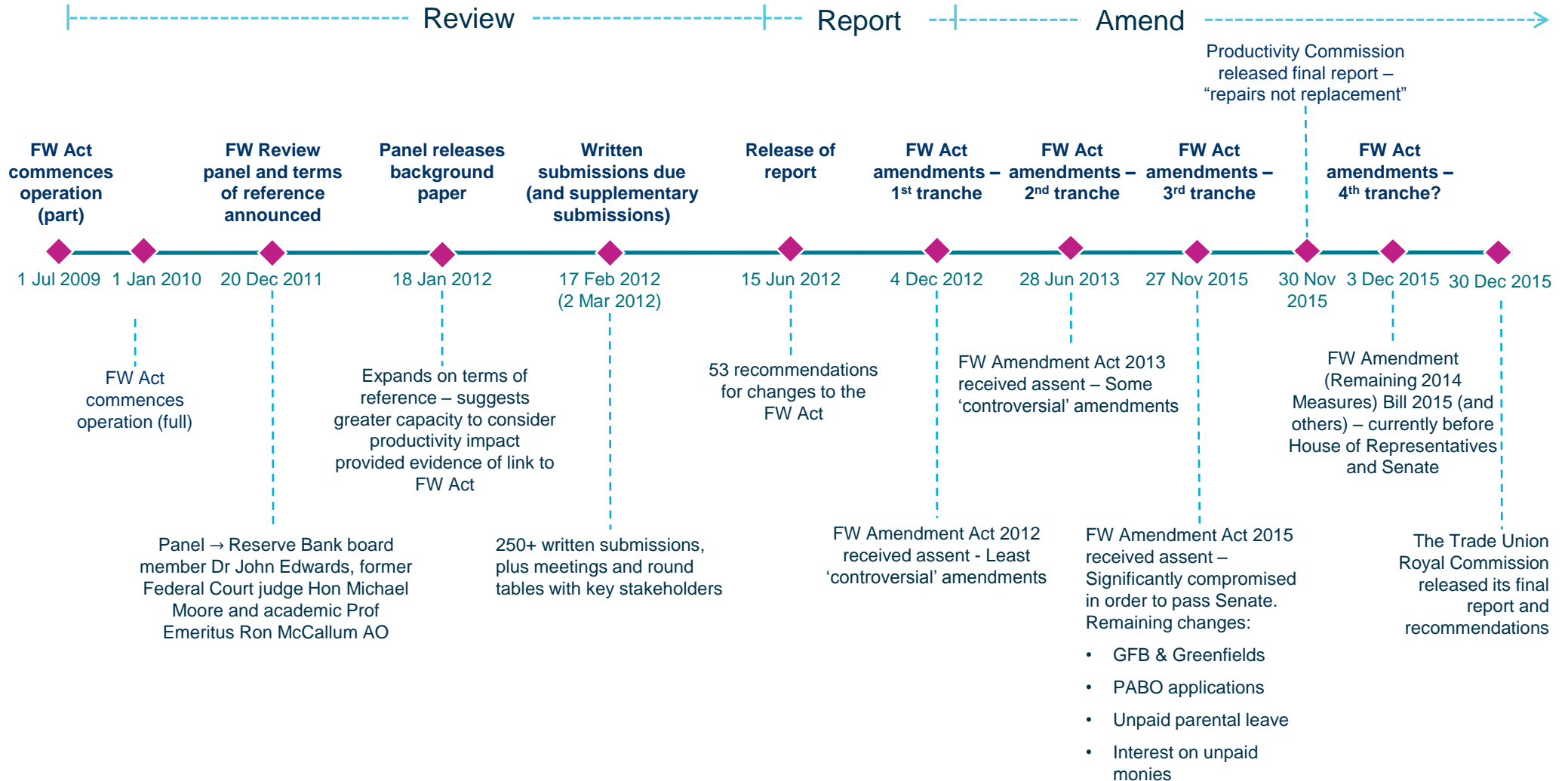
Overview of
TURC reform
proposals

Review of the
ABCC Bill 2013
and FW (RO) Bill
2014

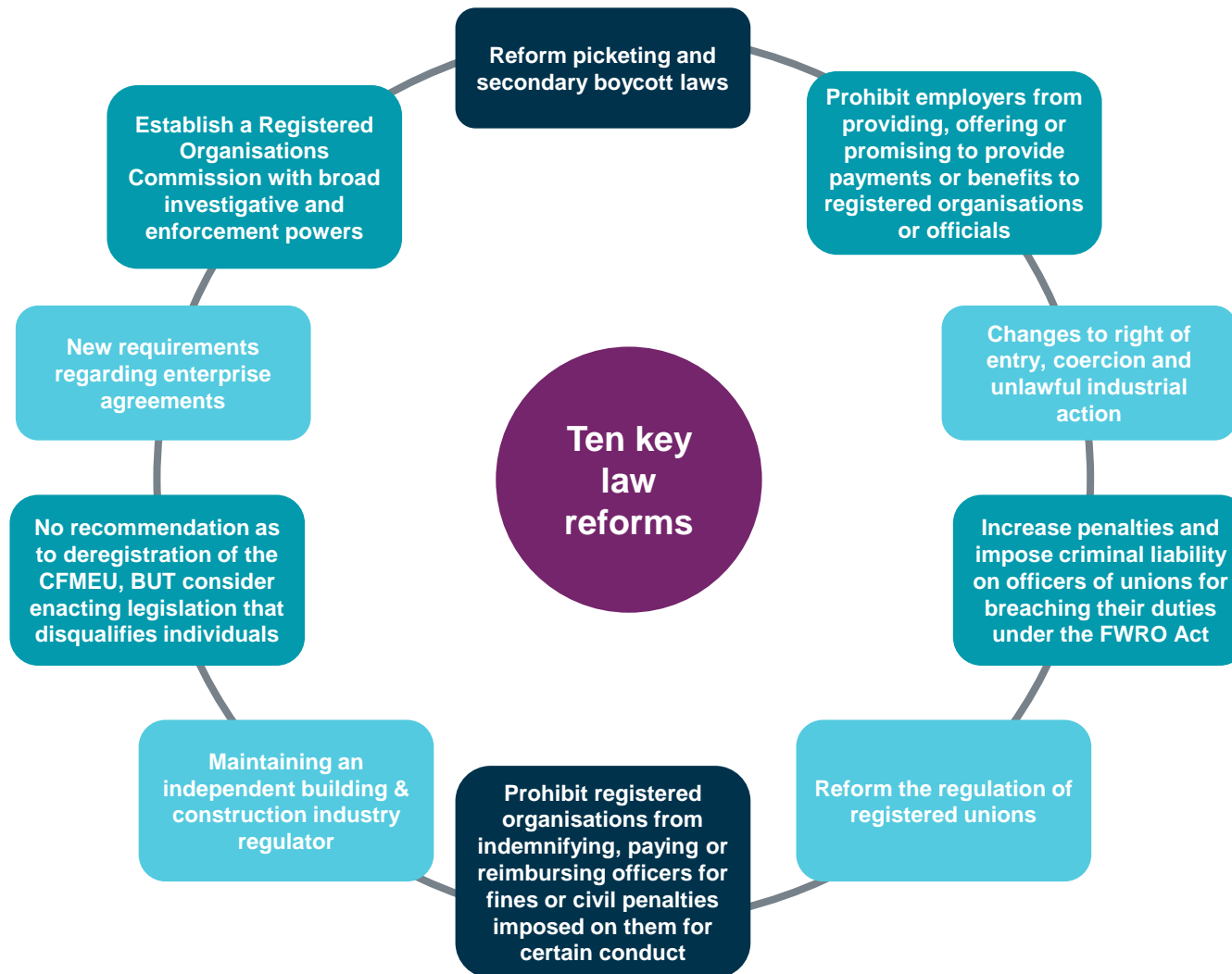
Fair Work
Amendment Act
2015

Fair Work Act
Amendments – before
parliament

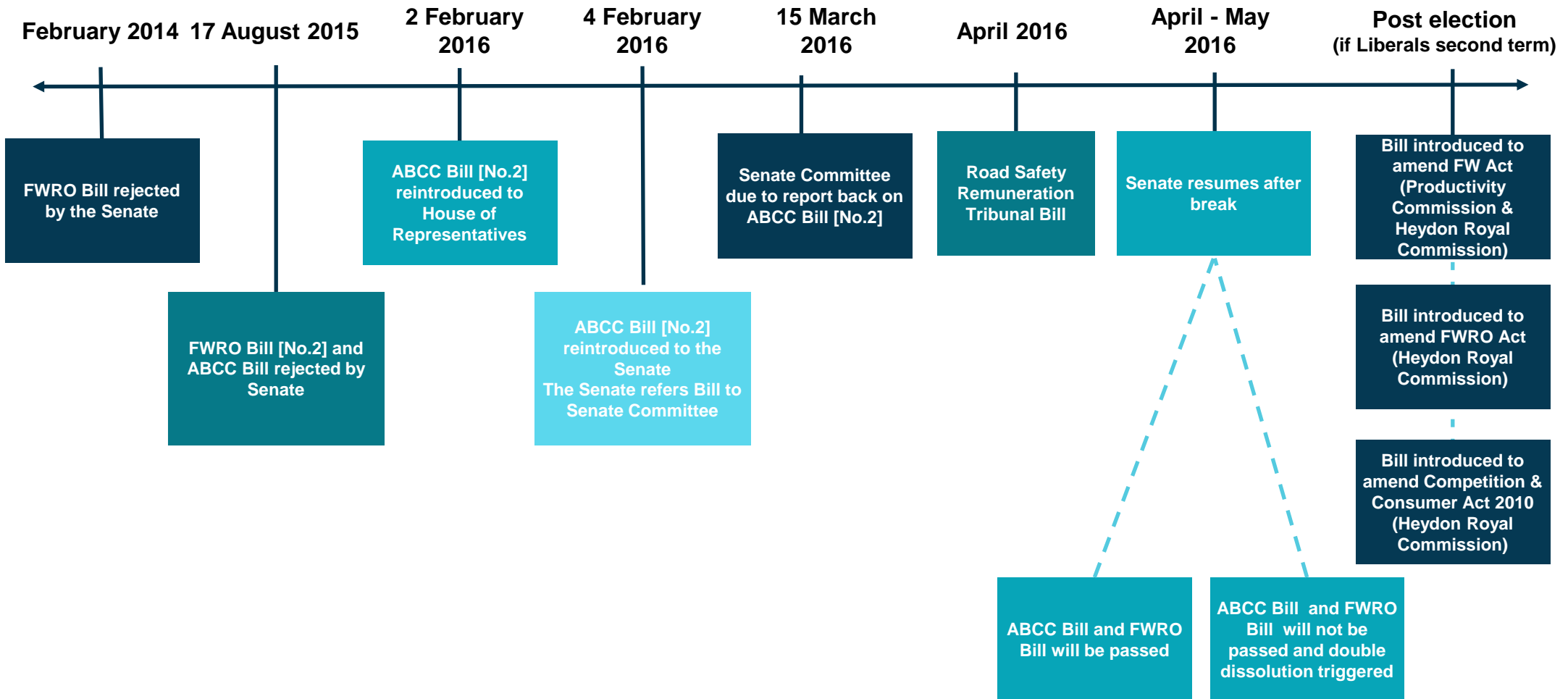
FW ACT – LONG ROAD TO REFORM



TRADE UNION ROYAL COMMISSION - 2016 & BEYOND



ABCC BILL - REFORM TIMELINE



ABCC BILL – STALLED FOR MUCH LONGER?

- ✓ Re-establishes the Australian Building and Construction Commission (and ABC Commissioner), the Federal Safety Commissioner
- ✓ Enables the minister to issue a Building Code
- ✓ Prohibits unlawful action, coercion, discrimination and unenforceable agreements
- ✓ Enhanced powers for ABCC to obtain information and enforcement
- ✓ Miscellaneous amendments in relation to self-incrimination, admissible records and documents, protection and disclosure of information

Federal Circuit Court judge Salvatore Vasta found “behaviour does not get much worse than the present case” and deemed official Scott Vink to have engaged in “sheer thuggery” at the Pacific Fair shopping Centre redevelopment site in Queensland in March 2014.

The Australian revealed yesterday that the Construction Forestry Mining and Energy Union and its state branches and officials have paid \$6.95m in court ordered penalties after action by successive building industry watchdogs.

The Australian can reveal the Fair Work Building and Construction Agency has launched action against 100 CFMEU officials and delegates who are before the courts, accused of more than 1000 industrial breaches.

FAIR WORK (REGISTERED ORGANISATIONS) AMENDMENT BILL 2014

- Establishes a *Registered Organisations Commission* which would hold union officials to greater governance standards
- March 2015 the Bill was re-introduced to the House - Passed on 25 June 2015
- 17 August 2015 the Senate rejected by a 34 to 33 vote despite the Education and Employment Legislation Committee recommending that the Senate pass it
- Federal Budget 2015-2016 did not list the ROC as a Department priority
- Nominated in March 2016 as possible double dissolution trigger alongside ABCC Bill

FW ACT – KEY CHANGES IMPLEMENTED AND PENDING

IMPLEMENTED - FW AMENDMENT ACT 2015	TO BE IMPLEMENTED - FW AMENDMENT (REMAINING 2014 MEASURES) BILL
Employers must not refuse request for extension to UPL unless the employer has given the employee reasonable opportunity to discuss	On termination, annual leave is to be paid at the base rate of pay (unless otherwise specified in an Award, Agreement or NES).
GFB applies to Greenfields negotiations. Employer can apply to FWC for approval of greenfields agreement if agreement is not reached within 6 month negotiating period (subject to certain requirements)	Leave does not accrue while a worker is already away from work and receiving workers' compensation
Restriction on protected industrial action – may only occur after bargaining has commenced (no PAB before notification time)	IFAs, as a minimum, may deal with when work is performed, overtime rates, penalty rates, allowances and leave loading
FWO pays interest on unclaimed monies held	Transfer of business will not occur where an employee voluntarily moves between associated entities
	Narrowing of the eligibility rules for right of entry for discussion purposes and clarifying requirements for the location and frequency of meetings
	Widening the FWC's powers to dismiss an unfair dismissal application without a hearing under sections 399A or 587 where the appropriate conditions are met

FW ACT - OTHER CHANGES COMING SOON?

Bill	Status	Impact
Fair Work Amendment (Penalty Rates Exemption for Small Businesses) Bill 2015	Pending. Introduced into the Senate and received its second reading speech on 13 August 2015.	The Bill proposes to exclude small business operating in the restaurant, catering, hospitality and retail industries from the obligation to pay penalty rates. The exemption would not apply where the relevant hours to be worked were: <ul style="list-style-type: none"> • in addition to 38 hours already worked in the relevant week; • in addition to 10 hours already worked in the same 24 hour period; or • were on a public holiday.
Fair Work Amendment (Gender Pay Gap) Bill 2015	Pending. Introduced into the Senate and received its second reading speech on 17 September 2015.	The Bill proposes to invalidate contractual, award or EA provisions that: <ul style="list-style-type: none"> • restrict or prohibit employees from discussing pay or earnings; and • permit employers to take adverse action against employees for discussing pay or earnings.
Fair Work Amendment (Prohibiting Discrimination Based On Location) Bill 2015	Pending. Introduced into the House of Representatives and received its second reading speech on 19 October 2015	The Bill proposes to restrict employers from taking adverse action against an employee or prospective employee because of where the person lives.
Fair Work Amendment (Bargaining Processes) Bill 2014	Pending. Received its first and second reading in the Senate on 10 February 2015.	The Bill proposes to increase the difficulty of obtaining a PABO and to allow greater opportunity for employers to challenge them. The Bill: <ul style="list-style-type: none"> • would prevent a PABO order if the applicants claims are manifestly excessive or would significantly, adversely impact productivity; • identifies mandatory considerations for the GTRA test; • would require unions to discuss workplace productivity (genuinely) before the FWC could approve a non-greenfields EA; and • would require unions to consider and discuss workplace productivity (genuinely) before the FWC could issue a PABO.

FW ACT - OTHER CHANGES COMING SOON? (CONT'D)

Bill	Status	
Fair Work Amendment (Protecting Australian Workers) Bill 2016	Pending – currently before the Senate. Second reading occurred in March 2016.	<ul style="list-style-type: none"> • Clarifies that the protections under the FWA apply to individuals in breach of the <i>Migration Act 1958</i>, in breach of their visa or in Australia beyond the expiry of their visa. Clarifies employer obligations to such employees • Introduces protection for employees that raise or propose to raise an issue with the workplace rights of another employee • Permit the Federal Court to make orders requiring the executive officers of 'phoenix companies' to pay amounts owed by failed companies • Permit the Federal Court to disqualify an executive director of a failed company from becoming an executive director of another company within a specified timeframe • Introduces a 'reasonable person' test in determining whether an employer has engaged in sham contracting
Fairer Paid Parental Leave Bill 2015	Pending – currently before the House of Representatives. Second reading on 25 June 2015.	<ul style="list-style-type: none"> • Amends <i>the Paid Parental Leave Act 2010</i> to provide that parents entitled to receive employer-provided primary carer leave payments (or other like payments) in excess of the total amount of parental leave pay will not receive parental leave pay under the Paid Parental Leave scheme

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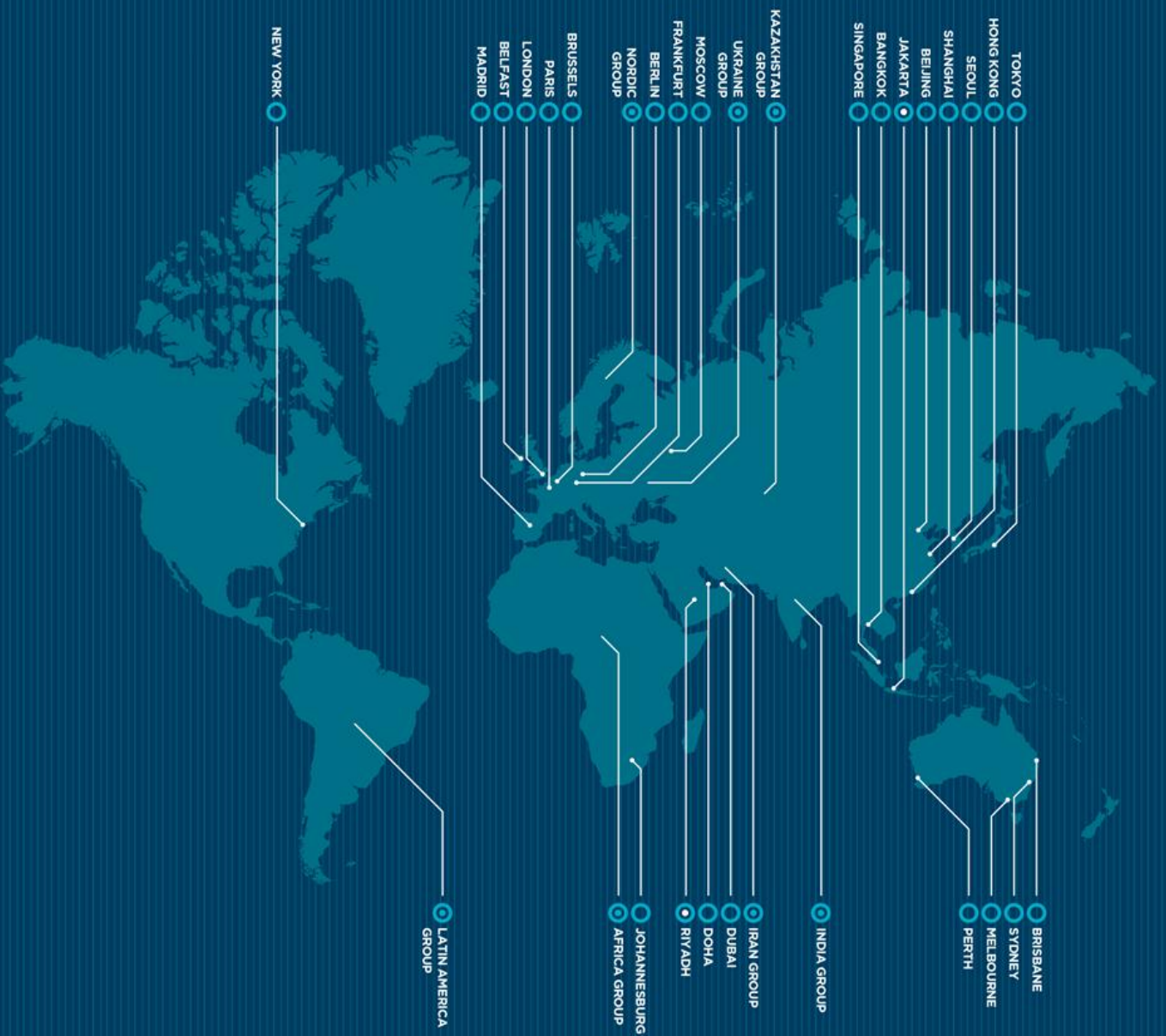
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