
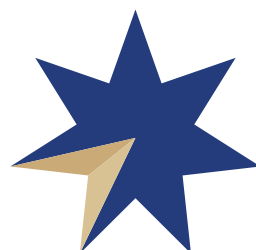


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# Fair Work Commission Minimum Wage Panel Annual Minimum Wage Review 2017-18 – Reply submissions

9 April 2018



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Chamber of Commerce  
and Industry

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# Contents

<b>1. Decision-making process</b>	<b>1</b>
1.1 Question to all parties	1
1.2 Question to all parties	7
1.3 Question to all parties	7
<b>2. The economy</b>	<b>12</b>
1.4 Question to the Australian Government	12
1.5 Question to all parties	14
1.6 Question to the Australian Chamber	14
1.5 Question to the Australian Government	15
1.6 Question to the ACTU and all parties	16
1.8 Question to the ACTU and all parties	16
1.9 Question to the Australian Government	17
<b>3. Relative living standards and the needs of the low paid</b>	<b>20</b>
3.1 Question to all parties	20
<b>5. Equal remuneration</b>	<b>21</b>
5.1 Question to all parties	21
<b>Other contentions arising from the ACTU submission</b>	<b>22</b>
The contest between “social” versus “economic” considerations	22
Excessive ACTU wage claims	22
Growth in wages	24
Penalty rates	27
<b>About the Australian Chamber</b>	<b>31</b>
<b>Australian Chamber Members</b>	<b>32</b>



1. We thank the Expert Panel for this opportunity to respond to the various Questions on Notice (QON), published 29 March 2018.

## 1. Decision-making process

### 1.1 Question to all parties

2. The Expert Panel has noted the following:

*In Chapter 7 of its submission, ACCER deals with wage setting under the Fair Work Act 2009 and addresses some aspects of the Panel's 2016–2017 decision, in particular:*

- i. ACCER submits that the Panel's construction of s.284(1) was erroneous and should be reconsidered (see especially [214], [234]–[237], [240], [249] and [253] of ACCER's submission).*
  - ii. ACCER maintains its contention that the Panel has adopted a 'wages relativities policy' which it submits is contrary to law and also asks that the Panel reconsider its decision in respect of this issue (see especially [255]–[272] and [287] of ACCER's submission).*
  - iii. ACCER makes a number of observations about 'equal remuneration' and the consideration in s.284(1)(d), noting that the gender pay gap is caused by factors outside the modern award system and is not relevant to the matter in s.284(1)(d) (see especially [275]–[281] of ACCER's submission).*
3. At paragraph 234 of its submission ACCER has stated that the *Fair Work Act 2009* (Cth)(Act) "does not treat all matters as applications of fairness between employers and employees" and seeks to rely on various sections within the Act which are not within the range of matters that the Expert Panel is required to take into account (e.g. unfair dismissal and adverse action provisions) in the fixation of minimum wages.
4. This makes it unnecessary to engage with the merit of this argument as these considerations are not relevant to the Annual Wage Review. However notwithstanding this, the Australian Chamber rejects any proposition that consideration of fairness does not extend to employers, and that employer interests do not need to be balanced with other relevant considerations in the Act such as the needs of the low paid when embarking on its task.
5. It is clearly apparent from the objects of the Act in section 3, the modern award objective in section 284 and the minimum wages objective in section 134 that the notion of 'fairness' from the perspective of not only those who are the recipients of those who will be paid wages but from the perspective of those who are required to fund those wages.

6. This is evident in various statutory references including but not limited to the requirement to acknowledge the special circumstances of small and medium-sized businesses (section 3(g)) who have higher levels of reliance on the awards and the requirement in section 134(1)(a) to take into account business competitiveness and viability.
7. The Australian Chamber agrees that the Expert Panel's task is to provide a fair safety net of minimum wages however, it needs to do so having regard to the statutory objects in the Act and these include other considerations such as the promotion of social inclusion through workplace participation as required by sections 134(1)(d), with regard to award wages, and section 284(1)(b) with regard to the NMW.
8. ACCER argue at paragraph 239 that "the objective of the NMW is to provide a standard of living in excess of poverty, even though the pursuit of that may be constrained from time to time". Minimum wages would cease to be a safety net if they were set at a rate that would result in negative employment impacts. Access to paid employment opportunities is a critical part of ensuring social inclusion and eliminating poverty and as such any minimum wage fixation framework could not be effective if it did not take into account the impact of and therefore likely response of employers to minimum wage outcomes. Furthermore:
  - a. Australia has never has never set minimum wages based solely to on needs and with no thought to the impact on business and no balance against the needs and interests of those who pay minimum wage increases. Minimum wage fixation in Australia has always been about balance, and Parliament knew this and enshrined this balance when setting up the current minimum wage fixing system.
  - b. Crude distortion of considerations must be harmful – and unashamedly we must point out that ignoring impacts on employers will lead to inflated increases that damage not only businesses and their proprietors, but also those who work for them and communities. Only looking at one side of the equation will lead to damage to other – and that cannot be course Parliament intended, nor a proper reflection of the merits of these reviews.
9. Further, the ACCER position would have a distortionary effect if adopted. It does not seem to acknowledge that minimum wage fixation is a poorly targeted means of eliminating poverty or the role of the tax and transfer system in working toward such an outcome.
10. ACCER acknowledges at paragraph 236 that "[t]he economic interests of employers are covered by some of the matters that the FWC is required to take into account "the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth..."
11. This would seem to require an engagement with the likely impacts of any wage upratings (both that have been made and those under consideration) on businesses and the environment for doing business in Australia.

12. We argue in particular that the impacts on SMEs need particular consideration, because as noted in our submission, SMEs have higher levels of reliance on awards.
13. We also submit that these considerations are in the interests of other system stakeholders. Business viability and a competitive business environment to encourage investment and growth is necessary to generate employment opportunities, including for those who rely on or would rely on the NMW and award wages.
14. We do accept the statement of ACCER in paragraph 237 to the effect that there are differences in the minimum wages objective and that the modern awards objective requires other matters to be taken into account. The Australian Chamber noted at paragraph 14 of our initial submission that the vast majority of award-reliant employees are paid higher than the NMW. The award framework also compounds the cost of awarded minimum wage increases as a range of loadings, penalty rates and allowances are applied in addition to the base wage and in the Australian Chamber's submission "*the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden*" referred to in the modern awards objective is an important consideration.
15. In the Australian Chamber's submission, the term "relevant" where appearing in the modern awards objective also enables a consideration of specific circumstances in award reliant industries as the Expert Panel embarks on its process of minimum wage fixation.
  - a. For example, it is common for businesses in award-reliant industries to operate in a highly competitive environment which means that they are not easily able to pass on increases in employment costs.
  - b. This can be seen in the retail sector where the competitive environment, including competition from an online, global marketplace, is driving a low inflationary environment. If increases to the cost of doing business, including wage increases, are not supported by higher productivity or higher prices for consumers this is likely to lead to a loss in hours and jobs.
16. Surely, the references to "relevant" in this context means relevance to the people who work for minimum wages and those who must apply minimum wage increases.
17. The Australian Chamber accepts that the construct of setting a safety net within a system that does not have a universal basic minimum wage but which has, in effect, thousands of minimum wage rates contained within well over a hundred instruments the majority of which are set at a rate higher than the NMW and which range as high as over \$170,000 per annum in the case of the Air Pilots Award, is highly unusual internationally. But then again, so is having 122 awards, and thousands of minimum wages. Australia has long been atypical, and there is nothing special or material in that.

18. However despite this and the submissions made by ACCER regarding relativities, the fact is that Australia does not have a single universal minimum wage rate for the vast majority of those working on minimum wages. Rather we have a system of industrial awards that is anchored in considerations of work value and, in particular, how wages should sit taking into account varying levels of skills acquisition.
19. Regardless of whether parties agree with public policy considerations underpinning this approach, relativities are a feature of the system that was retained when the Commission formulated a system of modern awards, and work value provisions remained in the Act.
20. Part 2-3 of the Act enables modern award minimum wages to be varied for work value reasons. In particular section 156(3) of the Act provides that in a 4 yearly review of modern awards, the FWC may make a determination varying modern award minimum wages only if the FWC is satisfied that the variation of modern award wages is justified by work value reasons. It has been open to any party to make such a case as a part of the current review and we have seen an application with regard to the Pharmacy Industry Award by way of example. Section 156(4) provides that:
  - (4) *Work value reasons are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:*
    - (a) *the nature of the work;*
    - (b) *the level of skill or responsibility involved in doing the work;*
    - (c) *the conditions under which the work is done.*
21. Section 157(2) of the Act also provides that the FWC may make a determination varying modern award minimum wages if the FWC is satisfied that:
  - (a) *the variation of modern award minimum wages is justified by work value reasons;*  
*and*
  - (b) *making the determination outside the system of annual wage reviews and the system of 4 yearly reviews of modern awards is necessary to achieve the modern awards objective.*
22. Section 157(3) also provides that the FWC may make a determination under section 157(2) on its own initiative or on application under s.158.
23. Any variation made under these provisions will turn on probative evidence and we do not accept that the framework in place for reviewing awards annually contemplates a process whereby the relativities in each award would be subject to annual reconsideration given the targeted provisions of the Act which deal with variation applications of this nature and the considerable work and disruption that would arise.



24. If a party would like to make a variation to awards to adjust relativities for changes in work value they would need to make application in accordance with Part 2-7 of the Act.
25. As noted by ACCER in setting minimum wage rates the Expert Panel is required by section 284(1)(d) to take into account “the principle of equal remuneration for work of equal value”. We also note that there are specific provisions of the Act that enable a deeper consideration of this principle through a targeted application process, which indicates that it was never intended that substantial, stand-alone equal pay cases would be run through the annual wage review process.
26. In particular, Part 2-7 of the Act creates a statutory scheme to ameliorate differences in remuneration for work that is of equal or comparable value. The Explanatory Memorandum to the Act indicates that this “allows comparisons to be carried out between different but comparable work” and “relies on job and skill evaluation techniques”. This requires identification of proper comparator groups to compare the value of work in question on the basis of gender and the identification of such groups as well as the practice of job and skill evaluation is a complex and contentious exercise. There are a range of considerations that may be relevant to the exercise of the discretion to make an equal remuneration order. As recently set out in a decision of the Full Bench of the Fair Work Commission, in the exercise of such discretion the Fair Work Commission must take into account the matters identified in sections 302(4), 578 and 3 of the Act and the nature and assessment of the relevant factors will depend on the circumstances of the case. Considerations that may be relevant to the exercise of the discretion include, without limitation:
  - a. the circumstances of the employees to whom the order will apply;
  - b. eliminating gender based discrimination;
  - c. the capacity to pay of the employers to whom the order will apply;
  - d. the effect of any order on a range of economic considerations, including any impact on employment, productivity and growth;
  - e. the effect of any order on the promotion of social inclusion by its impact on female participation in the workforce; and
  - f. the effect of any order on enterprise bargaining.<sup>1</sup>
27. It is clear that understanding the reasons for pay differentials requires a degree of rigour to carefully scrutinise and determine on an objective basis what employees are paid and why. A finding that gender is the cause of any wage disparity arising from such analysis is not one that should be made solely on the discovery of wage differentials. Nevertheless, where discriminatory practices do arise, there are laws in place that provide remedies.

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<sup>1</sup> *Equal Remuneration Decision* [2015] FWCFB 8200.

28. In the context of the Annual Wage Review we tend to share the view of ACCER that the obligation of the Expert Panel to consider this factor is best satisfied by setting wages that do not discriminate between men and women. We do not consider that the particular form of an increase (i.e. uniform percentage or tiered amount) impacts this consideration.
29. This is because the setting of the NMW and award rates of pay occurs on a gender neutral basis and we agree with ACCER's submission that the aggregate differential between male and female earnings is attributable to factors outside the award system.
30. The Workplace Gender Equality Agency (WGEA) suggests the existence of a gender pay gap calculated as the difference between average male full-time earnings and average female full-time earnings expressed as a percentage of male earnings. Its scorecard suggests that this gender pay gap "reflects a range of complex, inter-related factors including the concentration of women in low paying roles and industries and the concentration of men in the highest paying roles and industries".<sup>2</sup> While it suggests that gender segregation (of both an industrial and occupational nature) is one of the factors contributing to the gender pay gap, in a May 2016 fact sheet the WGEA suggests that it is not the only reason citing other factors that contribute to the gender pay gap including:
  - a. "A number of interrelated work, family and societal factors, including stereotypes about the work women and men 'should' do, and the way women and men 'should' engage in the workforce";
  - b. "A lack of women in senior positions, and a lack of part-time or flexible senior roles". It suggests that "[w]omen are more likely than men to work part-time or flexibly because they still undertake most of society's unpaid caring work and may find it difficult to access senior roles";
  - c. "Women's more precarious attachment to the workforce (largely due to their unpaid caring responsibilities)";
  - d. "Differences in education, work experience and seniority"
  - e. "Discrimination, both direct and indirect".<sup>3</sup>
31. This list of factors could be offered as explanation for a range of intertwining issues related to gender and highlight that the reasons underpinning the existence of a gender pay gap is complex and multi-faceted.
32. It is sometimes the case that the debate regarding the gender pay gap will be used to exert pressure on rates contained within industrial instruments applying to industries and workplaces that employ more women than men, with comparisons drawn between groups

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<sup>2</sup> Workplace Gender Equality Agency. *Australia's gender equality scorecard*, November 2016, p. 4.

<sup>3</sup> Workplace Gender Equality Agency, *International gender equality statistics*, May 2016.

that are not carrying out the same work in the same conditions. However the fact is that where wages are determined in accordance with an industrial instrument (i.e. a modern award or enterprise agreement) they are determined on a gender neutral basis and are given legal effect to via the scrutiny and decision making of the Expert Panel.

33. As noted at paragraph 278 of the ACCER submission, the Expert Panel has noted that the gender pay gap is highest end of the pay scale among non-award-reliant employees. This suggests factors are influencing this outcome beyond the influence of the Expert Panel. As such, we caution against an approach that would see a higher level of wage increase merely on account of the fact that more women are paid pursuant to awards than other instruments.

## 1.2 Question to all parties

34. The Expert Panel has noted the following:

35. *The method for adjusting wages in copied State awards was the subject of a decision by the Panel issued on 4 January 2018.<sup>4</sup> In that decision the Panel expressed the following provisional view:*

*[43] ... It is our provisional view that AWR adjustments should generally apply to copied State awards, subject to a different outcome being determined in respect of particular copied State awards. In other words, rather than seeking to apply a tiered approach as a decision rule to mitigate 'double dipping' we propose to address any 'double dipping' on a case by case basis. We invite submissions on our provisional view in the context of the 2017–18 Review proceedings.<sup>5</sup>*

36. The ACTU has invited the Panel to confirm its provisional view.<sup>6</sup> The Expert Panel has asked whether any party has a different view.
37. Where there are concerns regarding 'double dipping' there should be scope for an employer or employer representative to raise this with the Commission.

## 1.3 Question to all parties

38. The Expert Panel has noted the following:

*The ACTU submission comments on the Panel's observation in last year's Review decision that the considerations we are required to take into account in reaching a judgment as to what constitutes 'fair and relevant' minimum wages require us to*

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<sup>4</sup> [2018] FWCFB 2.

<sup>5</sup> [2018] FWCFB 2 at para. 43.

<sup>6</sup> ACTU submission, 13 March 2018 at para. 504.

*balance ‘competing interests’.<sup>7</sup> The ACTU juxtaposes the notion of competing interests with a unitary interest. The ACTU submits:*

*‘The growing body of empirical research studying the employment effects of minimum wages (discussed in Chapter 5), the new economic orthodoxy regarding the economic risks of inequality (discussed in Chapter 4) and other prominent schools of economic thought (such as dynamic monopsony and post-Keynesian economics) provide sound support for moving away from a position whereby deciding “fair and relevant” minimum wages necessarily involves a contest between “social” versus “economic” considerations, towards a position where the assessment is fundamentally about the common good.’<sup>8</sup>*

39. *The ACTU also submits:*

*‘We do not raise the above to suggest that the Panel can or should adopt some criteria other than that which it is directed to. But we do submit that the Panel should recognise that the criteria it is asked to apply embed certain assumptions which the Panel is free to question, challenge and reject. Indeed, it has taken some steps towards this approach already. For example, the Panel has recognised that its obligation to set “fair and relevant” minimum wages does not limit it to an exclusive consideration of the particular matters referred to in the paragraphs below subsections 134(1) and 284(1) of the Act, as its consideration of social inclusion and the gender pay gap demonstrates. In addition, it has been willing to accept some limits about the rigidity of the assumptions embedded in the criteria it is compelled to consider – most notably last year’s statement that:*

*“we have greater confidence in our view that modest and regular wage increases do not result in disemployment effects. Further, this research suggests that the Panel’s past assessment of what constitutes a ‘modest’ increase may have been overly cautious, in terms of its assessed disemployment effects.”<sup>9</sup>*

40. The Expert Panel has noted that the above seems to suggest that the various statutory considerations in ss.134 and 284 are not in conflict, but rather are all pointing in the directions of an increase in minimum wages and asks whether that is what is being put.
41. The Expert Panel has asked, “is the proposition simply that increasing minimum wages will be good for the economy, therefore the social and economic considerations are not in conflict?”

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<sup>7</sup> ACTU submission, 13 March 2018 at para. 4.

<sup>8</sup> ACTU submission, 13 March 2018 at para. 9.

<sup>9</sup> ACTU submission, 13 March 2018 at para. 8; [2017] FWCFB 3500 at para. 523.

42. The Expert Panel has also asked “what of the consideration in s.134(1)(f), in particular the impact of an increase in minimum wages on ‘employment costs’?”
43. The Australian Chamber submits that the Expert Panel, in setting the National Minimum Wage (NMW) and award wages is clearly required to balance a range of considerations as set out in the general objects of the *Fair Work Act 2009* (Cth)(Act) in section 3, the modern award objective in section 134 and the minimum wages objective in section 284.
44. In applying its discretion to balance these considerations there are a range of matters that should be borne in mind by the Expert Panel and which guard against setting wage rates that are so high as to be damaging. In particular, the Australian Chamber submits that:
  - a. The task of ‘ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders’ as referred to in section 3(b) needs to balance the notion of ‘fairness’ from the perspective of not only those who are the recipients of those who will be paid wages but from the perspective of those who are required to fund those wages;
  - b. The requirement to acknowledge the special circumstances of small and medium-sized businesses as required by section 3(g) is particularly relevant due to the greater reliance of small businesses on awards and minimum wages compared to businesses of other sizes, and their inability to absorb large increases in employment and other business costs;
  - c. In order to promote social inclusion through workplace participation as required by section 134(1)(d) it should be considered that if wages are set at a level that is higher than the productive value of an individual this will result in negative employment impacts. Similarly, if wage increases cannot be passed on or absorbed, employers will be forced to reduce costs which may ultimately include hours and headcount. Taking into account the promotion of social inclusion through increased workforce participation is also required by section 284(1)(b);
  - d. A consideration of the interests of those required to fund costs arising from award regulation is clearly contemplated in section 134(f). Of course the notions of ‘employment costs and the regulatory burden’ extend beyond the base wages in awards as awards prescribe penalty rates and loadings that are applied to the base wage and the increase in the wage bill also translates to an increase in the amounts an employer is required to pay in superannuation, payroll tax and workers compensation premiums;
  - e. The need to ensure a ‘stable and sustainable’ modern awards system as required by section 134(1)(g) would suggest that excessive and unexpected increases in wages are not contemplated by the system and any increases must be sustainable for those required to fund them, particularly the small businesses with higher levels of award

relance, and for the continued and future employment of those who are/would be NMW and award wage recipients;

- f. In considering the likely impact of any exercise of modern award powers on employment growth as referred to in section 134(1)(g) the Expert Panel should acknowledge that at some point if wages are too high it will discourage investment in our economy and in employment if regulated wages are set at a rate above the productive value of those who would be entitled to them. If wages are too high, capital investment may generate higher productive returns than labour;
  - g. In considering the likely impact of any exercise of modern award powers on inflation as required by section 134(1)(h) there is historical evidence pointing to the fact that if wages that are set at a rate that this will create inflationary pressures in the economy. A low inflationary environment such as the current one should also tell against a large increase in wages where this is a result of competitive pressure in the market impacting pricing. In a low inflationary environment the revenue of a business will not adjust as readily to fund wage increases through price increases passed on to the consumer. This means that if labour costs increase at a rate faster than inflation the costs will need to be absorbed by the businesses which can have negative employment effects where the increase costs need to be contained. Inflation is also a relevant consideration in section 284(1);
  - h. In considering the likely impact of any exercise of modern award powers on the performance and competitiveness of the national economy as required by section 134(1)(h) it must be noted that regulated wages and conditions are one of many inputs associated with the cost of doing business in Australia and that Australia is a high wage economy. The cost of doing business in Australia and the productive return a business is likely to generate from investment in labour is a relevant factor when businesses are making decisions to invest in Australia. Australia is a trade exposed nation and as such, policy decisions that impact its global competitiveness are of critical importance to the Australian economy. A similar consideration appears in the minimum wages objective in section 284(1) which requires a consideration of 'the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth';
  - i. Considering the 'needs of the low paid' as required by 284(c) should not merely focus on living costs but should also take into consideration the need to remain in employment and, in circumstances of higher levels of underemployment among the low paid, the need for employees to have access to more hours. If wages are set at a level that is too high there will be a reduction in employment opportunity and hours.
45. The Australian Chamber cannot accept an argument or blanket proposition that high minimum regulated wage increases are good for the economy because they would, for example, have a positive stimulus effect. The Australian Chamber submits that not only does this argument lack merit, it is important to acknowledge that the statutory objectives the

Expert Panel is required to take into account, while requiring the Expert Panel to balance economic and social considerations, do not require or empower the Panel to apply minimum wage fixation as a way to stimulate growth in market wages or for broader economic stimulus. The primary task of the Panel is to set the NMW and award wages so as to provide a fair and relevant safety net.

46. Furthermore, the literature regarding the effects of minimum wages on employment remains highly contested and as noted in previous submissions made via the Annual Wage Review process that Australia's starting position is one of having among the highest national minimum wage in the world, compounded by the modern award system which has the effect that the vast majority of those receiving increases via the annual wage review process earning wages in excess of the NMW. In a paper that acknowledges that the research regarding effects of minimum wages increases on employment remains unsettled, Neumark suggests that there are a number of economic factors that have received relatively little attention as potential sources of variation in estimated employment effects across studies.<sup>10</sup>
47. Neumark suggests that the extent of minimum wage bite is a relevant variable and refers to earlier research in Puerto Rico which is bound by the US minimum wage but has much lower wage levels generally, hence the minimum wage has much more bite. The research found "very large aggregate employment effects and particularly adverse effects on low-wage industries, consistent with stronger disemployment effects where the minimum wage binds strongly".<sup>11</sup> Neumark suggests the need for further research which takes into account how high the minimum wage is relative to wage distribution.
48. A further variable relates to the extent to which research deals with the impacts on those who are or would be direct recipients of the minimum wage with Neumark observing "the fact that the existing research does not focus solely on affected workers means that the relevant elasticity for asking how minimum wages influence the incomes of affected workers must be larger in absolute value."<sup>12</sup> Neumark concludes:<sup>13</sup>

*Thus, directly identifying the employment effect of minimum wages for affected workers would give us a more accurate sense of how minimum wage increases influence the earnings of the lowest-skill workers who are the intended "targets" of a minimum wage increase".*

49. Methods of minimum wage fixation and how a firm expects a wage increase to alter their cost are also relevant.<sup>14</sup> For example, Neumark refers to research by Sorkin (2015):

*who notes that firms may have reasonably expected the kind of non-indexed, often infrequent minimum wage increases enacted in the United States to be offset by*

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<sup>10</sup> Neumark, D (2017), "The Employment Effects of Minimum Wages: Some Questions We Need to Answer", NBER Working Paper 23584, p. 9.

<sup>11</sup> Neumark, D (2017), "The Employment Effects of Minimum Wages: Some Questions We Need to Answer", NBER Working Paper 23584, p. 10.

<sup>12</sup> Neumark, D (2017), "The Employment Effects of Minimum Wages: Some Questions We Need to Answer", NBER Working Paper 23584, p. 10.

<sup>13</sup> Neumark, D (2017), "The Employment Effects of Minimum Wages: Some Questions We Need to Answer", NBER Working Paper 23584, p. 16.

<sup>14</sup> Neumark, D (2017), "The Employment Effects of Minimum Wages: Some Questions We Need to Answer", NBER Working Paper 23584, p. 10.

*rising nominal wages (and prices) over time, which reduces the incentive for firms to invest in alternative production technologies that economize on low-skilled labor.<sup>22</sup> In contrast, indexed minimum wages, which are becoming increasingly common in U.S. states,<sup>23</sup> may well generate more adverse longer-run employment effects for low-skilled workers – a question that has not yet been explored much (although see Allegretto et al., 2011). Much larger minimum wage increases, especially in a low-inflation environment, also seem likely to be perceived by firms as creating longer-term (if not permanent) relative increases in the cost of low-skilled labor.<sup>15</sup>*

50. Neumark also suggests that studies “ignoring the effects of minimum wages in reducing flows of workers into jobs may well miss a potentially important means by which higher minimum wages reduce employment of low-skilled workers”.<sup>16</sup> In other words, the cohorts missing out on jobs because of prohibitive wage cost barriers need to be properly considered in any studies.
51. We do not accept the ACTU’s contention that there is a building international consensus supporting little or no employment effects from minimum wage increases – this is a speculative and one sided reading of global economic debate. The fact is that the debate continues, the literature remains unsettled and open to contest (as recognised by Neumark) and is subject of a number of limitations, particularly when applied in the Australian context.

## 2. The economy

### 1.4 Question to the Australian Government

52. The Expert Panel has noted:

*The Australian Government states that over the past 5 years, labour productivity has grown by an average of 1.5 per cent for the economy as a whole and by 1.0 per cent for the non-mining sector of the economy.<sup>17</sup> This implies that labour productivity has grown substantially more in the mining than in the non-mining sectors of the economy.*

53. The Expert Panel has asked the Government “How is this difference to be taken into account when determining any increase to the NMW and award rates?”
54. While this question is directed to the Australian Government there are some points arising from both the Australian Government submission and Australian Chamber submission that are worth reinforcing.

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<sup>15</sup> Neumark, D (2017), “The Employment Effects of Minimum Wages: Some Questions We Need to Answer”, NBER Working Paper 23584, p. 10

<sup>16</sup> Neumark, D (2017), “The Employment Effects of Minimum Wages: Some Questions We Need to Answer”, NBER Working Paper 23584, p. 13.

<sup>17</sup> Australian Government submission, 13 March 2018 at paras 87–88.



55. The Australian Government notes that labour productivity in the market sector has grown at an average annual rate of 1.9% in the current incomplete cycle (2011-12 to 2016-17) higher than the 1.5% annual average growth rate in the previous cycle (2003-04 to 2011-12) and lower than the 2.5% growth rate between 1998-99 to 2003-04. At paragraph 87 the Australian Government notes that labour productivity in the whole economy has grown at an average annual rate of 1.5% over the past five years compared with a long-term average of 1.6% growth over the past 30 years.
56. The Australian Government then correctly states at paragraph 88 that productivity growth has been influenced by the commodities boom where the mining sector has made a significant contribution to the output of both the market sector and whole economy. It highlights that labour productivity is lower in the non-mining sector averaging only 1.0% over the past five years and 0.7% in 2016-17. It is the non-mining sector that overwhelmingly pays award rises following these reviews.
57. Turning to the award-reliant industries the Australian Government notes at paragraph 202 of its submission that over the past decade labour productivity in three of the four most award-reliant industries has been below the national market sector average of 1.9% each year. This is clearly evident at Chart 6.3 of the Australian Government submission.
58. This is consistent with paragraph 120 of the Australian Chamber submission which highlights that three of the top four award-reliant industries experienced very weak productivity growth in the years from 2011-12 to 2016-17 with the notable exception of the retail sector. It is worth reinforcing that this is not based on 'strong' conditions in retail (which is not currently the case) but as a result of the strong and intense competition in the sector (including from online sales) that has required many retailers to adapt their business models, implementing technology to drive efficiencies and effecting improvements in the distribution of good and services.
59. The Australian Chamber submission also highlights at paragraph 119 that labour productivity is not broad based. The submission highlights that in 2016-17 while the eight industries with the highest levels of labour productivity averaged labour productivity growth of 4.6%, comparatively the bottom eight industries averaged productivity growth of -0.05%.
60. Despite this discussion of labour productivity, the Australian Chamber also encourages the Expert Panel to be mindful of the limitations in the usefulness of labour productivity as a measure of national productivity and economic performance and to give consideration to multifactor productivity which the Productivity Commission has identified the measure that comes closest to the underlying concept of productivity.<sup>18</sup>

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<sup>18</sup> Productivity Commission, PC Productivity Update 2015, 20 July 2015.

61. As noted at paragraph 116 of the Australian Chamber submission, multifactor productivity remains weak and grew just 0.8% (annual average) between 2011-12 to 2016-17. As noted at paragraph 117 of the Australian Chamber submission, multifactor productivity is skewed toward five sectors and when these are excluded average productivity growth across industry was 0%.
62. The Australian Chamber continues to reinforce its submission that Australia's economic performance and the performance of the award-reliant industries in particular is not strong enough for a sizeable, broad-based, regulated increase in minimum wages. The economy needs to be permitted to continue its transition to broader based growth.

## 1.5 Question to all parties

63. The Expert Panel has stated:

*In previous Reviews, the Panel has noted that productivity growth is best measured over the business cycle. The Panel has also highlighted that since the length of the business cycle is not aligned with the statutory task of an annual wage review; the Panel pays more attention to longer term trends and treats recent changes in productivity with some caution.<sup>19</sup>*

64. In this context the Expert Panel has invited parties to comment upon what significance, if any, should be given to the 2017 productivity growth figures in Tables 2.1 and 2.2 of the Statistical report.
65. The Australian Chamber agrees with the Panel that recent changes in productivity should be treated with caution and that it is more appropriate to look at trends – as should generally be the case with all data. The Australian Chamber would suggest that no single data point should be given undue influence in the Panel's decision but that a broad array of indicators, looked at over time, should inform the Panel of what is appropriate for the Annual Wage Review decision.
66. An exception to this may be where an indicator 'goes off a cliff' and suddenly upturns or downturns, which may support a cautious approach.

## 1.6 Question to the Australian Chamber

67. The Expert Panel has noted the Australian Chamber's submission that:

*While there is evidence of a pick-up in profit growth in the award-reliant industries, sales data shows that profit growth in the award-reliant industries is largely driven by cost cutting.<sup>20</sup>*

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<sup>19</sup> [2017] FWCFB 3500 at para. 228.

<sup>20</sup> ACCI submission, 13 March 2018 at para. 88.

68. The Expert Panel has asked the Australian Chamber what evidence it has that profit growth is largely driven by cost cutting.
69. Profits are driven by revenue (sales) and expenses. That cost cutting has been a significant driver is implied with reference to sales and profit data amid generally weak business investment data. Over the last two years, quarterly profit growth averaging 1.8% per quarter has been generated from sales growth averaging a smaller 0.8%.
70. If profits are growing faster than sales this suggests the faster growth is generated by expense management. In the last year profit growth averaging 2.7% per quarter has been generated from sales of 1.1% on average per quarter.
71. Similarly, and through much of that two year period (certainly 2016) employment growth was negligible with a quarterly average growth rate in the award-reliant industries of 0%. Employment growth has picked up of late – since May 2017 to November 2017 - but this follows a pick-up in profits.

## 1.5 Question to the Australian Government

72. The Expert Panel has asked whether the Australian Government can explain more fully how the 'current rate of wage growth is part of the adjustment as the economy transitions from the investment phase to the production phase of the commodities boom'?<sup>21</sup>
73. While this question is directed toward the Government, the Australian Chamber is aware of some RBA analysis and commentary on this issue.
74. Of note the RBA observed that the decline in large wage increases has been apparent across all industries since 2012 but has been most pronounced in mining and industries exposed to mining such as construction and professional services.<sup>22</sup> It observed:

*The average size of wage changes (conditional on there being a wage change) has also fallen since 2012. This is largely due to a reduction in 'large' wage rises (more than 4 per cent); in fact this has had a very significant effect on overall wage growth. The share of jobs that experienced a wage change of over 4 per cent has fallen from over one-third in the late 2000s to less than 10 per cent of jobs in 2016 (Graph 7). In addition, the average size of these large wage changes has declined to a little less than 6 per cent.*

*The declining share of large wage rises since 2012 has been apparent across all industries, though the shift has been largest in mining and industries exposed to mining, such as construction and professional services (Graph 8). At the peak of the mining investment boom in 2012, well over half of mining jobs received a wage*

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<sup>21</sup> Australian Government submission, 13 March 2018 at para. 82.

<sup>22</sup> RBA, James Bishop and Natasha Cassidy, "[Insights into Low Wage Growth in Australia](#)", Bulletin – March Quarter 2017'

*increase of more than 4 per cent. These large wage increases were required for labour to shift to the mining (and mining-related) sector, and accordingly, there was a high dispersion of wage growth across jobs during that period (Graph 9).*

*The current low level of wage growth dispersion might also suggest that the labour market adjustment following the end of the mining boom has run its course. However, relative wages in the mining industry and mining-exposed states are still significantly higher than they were pre-boom, suggesting there may be more adjustment to come (Graph 10). It is likely that the adjustment to lower relative wages in mining will be slower than during the run-up to the peak in the terms of trade. This is because most firms tend to be unwilling or unable to cut nominal wages (known as ‘downward nominal wage rigidity’). Indeed, real wages have been fairly unchanged over recent years (Graph 11).*

## 1.6 Question to the ACTU and all parties

75. The Expert Panel has noted that the ACTU submitted that ‘[i]ncreased wages for the low paid raise aggregate demand disproportionately because low paid people spend most or all of any increase to their incomes. We attempt to estimate this effect in section 3.1.15.3 below.’<sup>23</sup>
76. The Expert Panel has sought the response of the other parties to this submission.
77. Viewed in isolation, it is true that lower incomes earners tend to have a higher marginal propensity to consume. However if the suggestion is that regulated wage growth should be used to spur aggregate consumption, then marginal propensities to consume are not the correct comparison point. Aggregate household consumption is best encouraged by policies that promote greater workforce participation, employment growth and a low unemployment rate - a strong labour market. A strong labour market will in turn drive wage growth.

## 1.8 Question to the ACTU and all parties

78. The Expert Panel has noted that the ACTU submitted concern regarding the extent to which the measure of underemployment captures workers searching for more work ‘due to the inadequacy of wages’. The ACTU stated that:

*‘ ... excluding those who were “available and not looking” (that is did not request longer hours) underestimates the relative lack of power of the employee in the employment relationship particularly for women and other vulnerable groups, and also the risk and costs of changing jobs. Many employees do not find themselves in a position to request anything from employers. It is well understood that requesting more hours is unlikely to have the result that the worker seeks and may even be*

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<sup>23</sup> ACTU submission, 13 March 2018 at para. 62.

*negatively interpreted by employers and have adverse consequences for the employee.*<sup>24</sup>

79. In addition to asking whether the ACTU has any evidence to support this statement, all other parties are invited to comment.
80. The Australian Chamber submits that the ACTU's statement above is speculative and demonstrates a lack of knowledge of how the labour market and businesses work. If employers have the business activity and therefore the hours to offer, they will offer staff longer hours. This is because a business makes money through commercial activity, by selling goods and services. If a business cannot sell goods and services because they lack the staff to do so, then they will lose money. In this way a business is incentivised to employ people.

## 1.9 Question to the Australian Government

81. The Expert Panel has noted that in section 4.6.3, the Australian Government submission discusses the extent of youth unemployment. It offers some general explanations as to why youth unemployment is more than twice the rate of total unemployment. One such explanation is that youth 'often have fewer skills, and less experience and education'.<sup>25</sup>
82. The Expert Panel has also noted that the existence of lower award rates for youth, apprentices and trainees is an acknowledgement of the lower levels of experience of these groups.
83. The Expert Panel has asked:
- a. Do young people have less education than the workforce in general? Do unemployed youth have lower levels of education than do unemployed adults?
  - b. Is the Commonwealth able to shed more light on why the rate of youth unemployment has not declined since 2010, in line with the decline in total unemployment?
  - c. Whether the Australian Government is able to provide an explanation for the rise in disengagement of 20–24 year olds, especially males, as set out in paras 132–133 of the submission.
84. While these questions are directed at the Australian Government, the Australian Chamber wishes to make the following additional points.

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<sup>24</sup> ACTU submission, 13 March 2018 at para. 360.

<sup>25</sup> Australian Government submission, 13 March 2018 at para. 130.

85. We remain concerned that youth unemployment remains persistently high it is important that all policy settings encourage entry level opportunities and opportunities for those with lower levels of skills.
86. The damaging effects of youth unemployment are described in a CSIRO Report as follows:
- Youth unemployment and failure to find the first job have been shown to have ‘scarring’ effects on those entering the job market, with potentially lasting negative effects on health and career prospects.<sup>26</sup> Unemployment early in life is associated with a higher risk of being unemployed or discouraged from looking for work in the future, as well as lower earnings than peers,<sup>27</sup> especially among low skilled workers.<sup>28</sup> As a result, the current issues of youth unemployment in Australia may have a long-term impact.<sup>29</sup>*
87. The retail sector makes a significant contribution to youth employment and is facing a period of intense change driven by competitive market forces and developments in technology. Businesses that are able to harness technology, change their business models and adapt their product and service offering will be better placed to compete in the modern marketplace.
88. In order to compete they need to respond to consumer preferences and a CSIRO Report noted that in doing so retailers have been moving toward an “experience economy” model.<sup>30</sup> This model is described as one in which “businesses create memorable events for clients, where the memory itself and enriched experience become the product”.<sup>31</sup>
89. Businesses will need to leverage technology to better meet consumer preferences but it needs to be understood that this may have labour market impacts for traditional retail roles (e.g. the cashier/checkout operator). Recent evolution in service models can be seen abroad.<sup>32</sup>
90. While the technology underpinning new business models will need to be supported by a skilled workforce this may have implications for many of the traditional entry level jobs that exist today, increasingly raising questions about how our young people will get a foothold in the modern labour market.

<sup>26</sup> J. Fildes, A. Robbins, L. Cave, B. Perrens, and A. Wearing, *Mission Australia’s 2014 Youth Survey Report*. Mission Australia, 2014; H. Morsy, “Scarred Generation,” *Financ. Dev. Int. Monet. Fund*, vol. 49, no. 1, 2012.

<sup>27</sup> H. Morsy, “Scarred Generation,” *Financ. Dev. Int. Monet. Fund*, vol. 49, no. 1, 2012; L. B. Kahn, “The long-term labor market consequences of graduating from college in a bad economy,” *Labour Econ.*, vol. 17, no. 2, pp. 303–316, 2010

<sup>28</sup> S. Burgess, C. Propper, H. Rees, and A. Shearer, “The class of 1981: the effects of early career unemployment on subsequent unemployment experiences,” *Labour Econ.*, vol. 10, no. 3, pp. 291–309, 2003.

<sup>29</sup> Hajkowicz SA, Reeson A, Rudd L, Bratanova A, Hodges L, Mason C, Boughen N (2016) , *Tomorrow’s Digitally Enabled Workforce: Megatrends and scenarios for jobs and employment in Australia over the coming twenty years*. CSIRO, Brisbane, p.24.

<sup>30</sup> Hajkowicz SA, Reeson A, Rudd L, Bratanova A, Hodges L, Mason C, Boughen N (2016) , *Tomorrow’s Digitally Enabled Workforce: Megatrends and scenarios for jobs and employment in Australia over the coming twenty years*. CSIRO, Brisbane, p. 54.

<sup>31</sup> Ibid, p. 54.

<sup>32</sup> Grabar H, ‘Amazon Go is Dazzling. But How Many Jobs Will it Kill’ in Slate, 22 January 2018,

91. The RBA's February 2015 Statement on Monetary Policy identified the challenges that changes in the business environment were presenting for young people, noting:

*Youth unemployment, which tends to be particularly sensitive to the business cycle, has increased notably; 270 000 people aged between 15 and 24 years are now unemployed, 20 000 more than a year ago. Much of the increase in youth unemployment over the past few years, and in 2014 in particular, has been accounted for by those in full-time education who are searching for work.... More generally, a higher incidence of full-time education has accompanied the reduction in the size of the youth labour force. However, there is also evidence that it is becoming harder to find a job on completion of tertiary education. As a result, a rising portion of young jobseekers are yet to find their first job and the average duration of unemployment among 20 to 24 year olds has increased.<sup>33</sup>*

92. Managing the risk of youth and long term unemployment will need to involve policy settings that encourage people to acquire the skills that businesses need, that better encourage businesses taking a chance on labour market entrants as well as ensuring labour market entrants are not priced out of the market. It will also be critical that young people not only have the skills to enter work, but also to remain in work, and to adapt to the changing work and workplaces they will encounter across careers subject to multiple disruptions and continuous change.
93. As noted above, it is important that young people have the skills in line with demand and managing the risk of youth and long term unemployment also requires policy settings that encourages the availability apprenticeship and traineeship opportunities to enable entry to the labour market and a pathway to higher paid jobs. Chapter 8 of the Australian Chamber submission highlights in detail the challenges confronting the sector. The Australian Chamber emphasises that it important that any policy levers available to key decision makers do not exacerbate the challenges confronting the VET system. As such we urge the Panel to consider the trend decline in the commencement and completion of apprenticeships and traineeships which are likely to be attributable in part to the cumulative effects of increases to award wages.
94. While it is difficult to predict with certainty where all new entry level job opportunities will come from as the shape of the economy changes, as it stands, there is already a concentration of entry level jobs in the award-reliant service sector industries (particularly accommodation and food services and retail). These industries do not operate around the 9am – 5pm Monday-Friday paradigm around which our workplace relations framework has largely been

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<sup>33</sup> Reserve Bank of Australia, Statement of Monetary Policy, February 2015, p. 44.

centred and awards prescribe very high labour costs for operating outside of these times due to the application of penalty rates and loadings.

95. In order to avoid the build-up of a large pool of youth at risk of becoming long term unemployed care should be taken to avoid pricing low-skilled youth out of entry level jobs through large increases in award wages.

### 3. Relative living standards and the needs of the low paid

#### 3.1 Question to all parties

96. The Expert Panel has noted that the minimum wage bite is calculated as the weekly national minimum wage as a proportion of full-time median earnings of employees and owner managers of incorporated enterprises. A chart showing the trends in the minimum wage bite is presented in Chart 8.3 of the Statistical report.
97. The Expert Panel has also noted that the Australian Bureau of Statistics also collects median hourly earnings which include earnings of both full-time and part-time employees.
98. The Expert Panel has asked whether any parties have a view as to the preferred measure of median earnings to be used for calculation of the minimum wage bite.
99. The choice of comparator (mean or median) and whether the comparison is between hourly or weekly rates has real ramifications for the apparent illustration and reflection on the role and effectiveness of minimum wages in any jurisdiction. As we have seen from the ACTU, this derived metric (or metrics) has considerable scope to be used politically, beyond the specific purpose of these reviews.
100. The Australian Chamber is not clear why, if we have understood the question correctly, the Panel cannot have regard to each of the three data “lines” in Chart 8.3 of the Statistical Report. Why is a single measure required or preferred in an approach to minimum wage uprating which is not mechanistic or formulaic? Why couldn’t all three be taken into account?
101. What Chart 8.3 appears to illustrate is that when an hourly focus is employed minimum wages continue to have more bite on median wages than the rhetoric the ACTU would have our community believe. When all forms of employment are included the bite of our minimum wage increases further, and significantly.
102. We also note that of three measures in Chart 8.3, the actual application of the minimum award wages (above C14 level) is closest to the orange line showing the “Hourly C14 relative to median hourly earnings of all employees”. Assuming all award waged jobs can be done on a less than full time basis, and the minimum wage or award rate is applied on an hourly



basis, this would seem closest to how our minimum wages are actually applied. If the Panel is looking for a single comparator on minimum wage bite, this would seem to fit the bill.

103. We also note of course that only a very small proportion of award covered employees is covered by the actual C14/minimum wage rate, which is the comparator for Chart 8.3. As noted at paragraph 6 of the Australia Government submission, up to 2.3 million Australians (22.7 per cent of all employees) are paid an award rate as of May 2016. 70.3 per cent of award-reliant employees do not meet the Expert Panel's understanding of low paid (earning two-thirds of the median hourly wage or higher) and more than a quarter (26.5 per cent) are paid more than the median hourly wage (of \$29.00 per hour as at May 2016).
104. We also note that the Commonwealth submission tells us that the bite of our minimum wage is higher than many comparable OECD countries, which is to be expected given many upratings in excess of changes in prices. We note that our minimum wage is second highest in the world in terms of purchasing power. See Chart 7.1 of the Australian Government submission.
105. We found an interesting paper<sup>34</sup> (albeit in apparently draft form) which points the complexity behind what appears at first blush a fairly straightforward question.
106. The Expert Panel might usefully ask the Commission's statistical team to examine whether there is any common or prevailing approach internationally or in the academic literature to the calculation of minimum wage bite. This is not to concede that academic approaches or approaches favoured for different purposes should dictate what we do in Australia, but it would be useful information for the consideration raised.

## 5. Equal remuneration

### 5.1 Question to all parties

107. The Expert Panel notes that the ACTU submission suggests that the 'principle of equal remuneration for work of equal or comparable value', as referenced in section 134(1)(e) and 284(1)(d), is not relevant to the Panel's functions in an Annual Wage Review.<sup>35</sup>
108. The Expert Panel asks whether any party takes a contrary view.
109. Subject to the clarification above in response to Q1.1, on this occasion, the Australian Chamber does not argue that the principle of equal remuneration for work of equal or comparable value', as referenced in ss.134(1)(e) and 284(1)(d), is relevant to the exercise of

<sup>34</sup> [https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwixz-Q28KnaAhXEvrwKHTG-BZwQFggpMAE&url=http%3A%2F%2Fftp.iza.org%2Fdp7351.pdf&usq=AOvVaw1PXm8Q3takl\\_f6R8y-hyyr](https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwixz-Q28KnaAhXEvrwKHTG-BZwQFggpMAE&url=http%3A%2F%2Fftp.iza.org%2Fdp7351.pdf&usq=AOvVaw1PXm8Q3takl_f6R8y-hyyr)

<sup>35</sup> ACTU submission, 13 March 2018 at paras 478–483.

the Panel's functions in this 2017-18 Annual Wage Review, nor that it should influence the panel's decision on uprating minimum award rates in this particular case.

110. However we do recall the statutory note to s.284(2) of the Fair Work Act 2009, the Minimum Wage Objective, as follows:

*Note: The FWC must also take into account the objects of this Act and any other applicable provisions. For example, if the FWC is setting, varying or revoking modern award minimum wages, the modern awards objective also applies (see section 134).*

111. It appears that s.134(1)(e) remains potentially applicable to these reviews, were any party to assert so and support this with evidence / sound argument, as would any part of the Act.
112. However, as set out above this does not mean that these cases can be distorted to become vehicles for applications for equal remuneration orders for which a separate part of the Act applies.

## Other contentions arising from the ACTU submission

### The contest between “social” versus “economic” considerations

5. At paragraph 9 of its submission the ACTU suggests that economic theory provides support for moving away from a position whereby deciding “fair and relevant” minimum wages necessarily involves a contest “social” versus “economic” considerations, towards a position where assessment is fundamentally about the common good.
6. We dispute the dichotomy on which the ACTU submission is predicated.
7. The Australian Chamber position is that economic considerations are about the ‘common good’. A strong, competitive economy with high levels of growth and sustainable, profitable business is not just conducive to business interests, it is conducive to higher levels of employment opportunity. Taking into account economic considerations is inherently in ‘the common good’ and should not be interpreted as favouring employer interests as employees and indeed the broader community have a stake in a strong economy.

### Excessive ACTU wage claims

8. At paragraph 11 of its submission the ACTU states that it accepts that the Panel has determined that the framework under which it operates does not permit the adoption of a wage target pegged at 60% of median earnings. However the ACTU suggests that this is “not to say that it is impossible that it may in time choose to set a minimum wage at that level”. Previous ACTU/United Voice submissions have suggested that a 6.5% increase per year is required to achieve this.

9. The Australian Chamber submits that an increase of such a magnitude is neither fair nor reasonable and would not take into consideration the impacts on both the employers required to fund such increases nor the likely associated employment impacts.
10. The ACTU's pursuit of a 7.2% which would see increases to minimum wages ranging between \$50.00 and \$84.39 per week (as per Table 1 of the ACTU's submission) is an extraordinary claim that would risk business sustainability, hours and jobs if adopted.
11. The businesses impacted by the Annual Wage Review decision include small and medium businesses with lower profit margins, many with higher wages and salaries as a proportion of total expenses and lower survival rates. Award reliant sectors such as retail are facing intense competition from the online, global market.
12. Small, award-reliant businesses that run on lean margins are often unable to pass on wage cost increases to consumers and may need to cut costs by either reducing headcount and hours or substituting capital for labour. If the inflated union claim were awarded it is entirely foreseeable that short-term gains in the earnings of those who remain in employment would come at the expense of those who lose jobs and hours. Such an outcome would not be consistent with the balance of considerations the statute directs the Panel to.
13. Australia's minimum wages are already the second highest in the world on a purchasing power basis. Only 1.9 per cent of employees are paid the national minimum wage – the other wage earners are paid above this. There are around 2.3 million people paid under the modern awards which set out over 2,000 adult rates of pay. These rates of pay range from the national minimum wage to as high as over \$170,000 per year (Air Pilots Award). The unions claim, if granted would put daylight between Australia and other developed economies in terms of regulated minimum wages and increases of this magnitude flow onto superannuation, loadings, penalty rates, payroll tax and workers comp insurance premiums. It is also worth reiterating that the Australian Government data suggests the current national minimum wage is \$694.90 per week only applies to around 1.9% of employees – higher rates of pay apply to other award-reliant employees.
14. The manifestly excessive union demand comes at a time when the performance of award-reliant sectors was worse than non-award reliant sectors, with three of the top four award reliant industries experiencing very weak productivity growth in recent years. The fact is that minimum wage increases can only be sustained where there is a productivity return for these businesses. If small business can't afford the increase, people start losing their jobs, entry level positions disappear and businesses slow or stop.
15. The Australian Chamber has instead asked for a modest increase not exceeding the current rate of inflation (1.9%). Growth in the economy remains patchy and below-trend. The Australian economy lost momentum in the final quarter of 2017 according to ABS data. Annual growth slowed to a below trend rate of 2.4% in the December quarter, compared to 2.9% in the September quarter, while the quarterly growth rate of 0.4% was nearly half that of the previous quarter.

16. As noted in our submission Government spending has also been a key driver of growth lately and rose by a further 1.9% in the December quarter and 4.1% over the year.
17. Private demand, in contrast, was very weak rising only 0.1% in the quarter. It is important that we see the economy rebalance away from the public sector and more toward private enterprise so we can see productivity, jobs and incomes increase over time.
18. While economic rebalancing occurs it is important that we don't see excessive and unexpected wage increases imposed on the private sector businesses paying pursuant to modern awards, particularly SMEs in labour intensive industries that are operating on lean margins and less able to sustain increases without cutting costs and reducing hours/headcount.

## Growth in wages

19. At paragraph 12(a) of its submission the ACTU refers to slow growth in wages as a handbrake on growth and suggests that “[t]his handbrake could be released by a significant positive adjustment in this year’s Review”.
20. The Australian Chamber notes that there is a correlation between growth in the economy and wages growth but it is economic growth that drives growth in wages – not the opposite so with respect the ACTU is seeking to put “the cart before the horse”.
21. The Reserve Bank Governor has noted that Wage growth remains low in most countries, as does core inflation.<sup>36</sup> What Australia has been experiencing is part of a broader global trend and policy and decision makers in Australia need to acknowledge that Australian businesses and those who work in and for them are already competing for opportunities in a global marketplace and in a global labour market as they arrive at policy decisions.
22. Domestic and economies globally are in a state of transition and we are seeing redistribution of economic activity with impacts for developed nations that will have to adapt and to maintain the high living standards they currently enjoy. Developing nations are closing the gap as observed by the CSIRO report “*Tomorrow’s Digitally Enabled Workforce: Megatrends and scenarios for jobs and employment in Australia over the coming twenty years*” (CSIRO Report).
23. The CSIRO Report noted the concentration of internet usage in developed nations and the rapid rate at which this is changing as developing nations join the online economy.<sup>37</sup> It is expected that over a billion new online workers will join global labour markets over the next 20 years and will be able to deploy their skills without the geographical limitations of the

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<sup>36</sup> RBA, Statement by Philip Low, Governor: Monetary Policy Decision, 5 December 2017.

<sup>37</sup> Hajkowicz SA, Reeson A, Rudd L, Bratanova A, Hodges L, Mason C, Boughen N (2016) , *Tomorrow’s Digitally Enabled Workforce: Megatrends and scenarios for jobs and employment in Australia over the coming twenty years*, CSIRO, Brisbane, p. 18.

past.<sup>38</sup> The CSIRO Report also noted that income growth and increasing levels of education and skill in this growing global labour market (in particular in Asia) is further intensifying the competition from abroad. The CSIRO Report noted:

- a. *By 2030 China and India are expected to provide nearly half of the tertiary educated people aged 25-34 and over 60 per cent of the STEM qualified workforce for G20 countries.*<sup>39</sup>
- b. *Over the last decade a gap between the number of people with tertiary education from OECD and non-OECD countries has closed, and by 2030 70 per cent of people with tertiary education are expected to be from non-OECD countries.*<sup>40</sup>

24. The CSIRO Report also noted that:

*As a relatively high skill, high wage country, Australia is particularly vulnerable to losing jobs offshore as skill levels rise in lower wage economies.*<sup>41</sup>

25. It will therefore be imperative that Australia's policy settings enable Australian businesses to compete in this global environment and help ensure that there is a clear value proposition for investing and doing business in and from Australia. Other developed nations have already commenced the process of adapting their policy settings to better place them to compete and if Australia does not do the same we will get left behind. To be 100% clear this does not mean reducing minimum wages, nor seeking to directly compete with our Asian neighbours on hourly wage costs. Rather a range of policy settings need to gear our enterprises, economy and labour market to be as competitive as possible. For these reviews, it means the Panel eschewing wage claims of unparalleled levels, such as that sought by the ACTU.

26. The shape of the Australian economy continues to diversify post mining boom and as growth in the services and knowledge-based sectors continues. We have seen declining employment in traditional, male dominated industrial sectors such as manufacturing and growth in services sectors, with health care and social assistance now being the largest industry accounting for over 13 per cent of employment.<sup>42</sup>

27. The diversification of our sources of economic activity post-mining boom will not in itself be enough to maintain high levels of employment and high living standards. Australia's major trading partners are transitioning from the industrialisation phase of development into service sector economies in their own right<sup>43</sup> and Australia will need to adapt policy settings to ensure we remain competitive.

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<sup>38</sup> Ibid, p. 18.

<sup>39</sup> Ibid, p. 10 referencing OECD, "How is the global talent pool changing (2013, 2030)?" Education Indicators in Focus, No. 31. Paris: OECD Publishing, 2015.

<sup>40</sup> Hajkowitz SA, Reeson A, Rudd L, Bratanova A, Hodges L, Mason C, Boughen N (2016) , *Tomorrow's Digitally Enabled Workforce: Megatrends and scenarios for jobs and employment in Australia over the coming twenty years*, CSIRO, Brisbane, p. 52 referencing OECD, "How is the global talent pool changing (2013, 2030)?" Education Indicators in Focus, No. 31. Paris: OECD Publishing, 2015.

<sup>41</sup> Ibid, p. 71.

<sup>42</sup> Australian Bureau of Statistics (ABS), *Labour Force Australia*, November 2017

<sup>43</sup> Ibid, p. 7.

28. This is not saying Australia should seek to become a low wage economy or drive employment standards down to the level of any given competing country however it does mean that policy and decision makers need to be increasingly sensitive to the risk of negative economic and labour market implication arising from any policy levers they apply.
29. This is particularly important given that economic uncertainty persists as we transition to broader based growth and that despite recent signs of improvement, spare labour market capacity remains in Australia, evidenced by underemployment rates and persistently high levels of youth unemployment post-GFC.
30. If Australia is to remain a high income country that supports high levels of employment we need to produce goods and provide services that are or will be in demand, at a price at which people are willing to pay and, due to our high labour and other costs of doing business in Australia, which represent higher value compared with what others can produce/provide. We will need to have skills in the pipeline to that will help us deliver on our ability to do that.
31. A high-wage economy which boosts prosperity can only be sustainably achieved (and sustained) if our underlying productivity challenges are tackled. Employers continue to support a minimum wage which rises sustainably over time, but this must avoid pricing vulnerable cohorts out of work or limiting entry level opportunities to gain valuable skills (e.g. through the system of apprenticeships and traineeships).
32. Artificially inflated the level of the minimum wages safety net will not stimulate the economy – it can only endanger businesses, create barriers to hiring and put existing jobs at risk.
33. We need to be sensitive to any policy adjustments that will negatively impact our capacity to compete for our share of global investment, business opportunities and associated jobs. The Department of Jobs and Small business recently observed that Australia's labour market performance, relative to the rest of the world, has actually deteriorated. As shown in the chart below the Australian unemployment rate is well above Germany (3.6%), the USA (4.1%) and the UK (4.2%), although it remains below the OECD average (of 5.6 per cent). As at Q3 2017 however, Australia ranked 17th out of 35 countries in the OECD, with respect to its unemployment rate, compared with a more favourable ranking of 14<sup>th</sup> a year earlier. This should give rise to concern, and provide a further basis to comprehensively reject the level of wage uprating sought by the ACTU.
34. As noted in the Australian Government submission, we already have the second highest (or highest) national minimum wage in the world and this is before regulated award wages above the C14 level are factored in. The wage increases awarded by the Expert Panel under the current Act have been generous, exceeded price increases, and have cemented our position as one of the highest regulated wage economies in the world, if not the highest.

35. It is worth noting that (drawing on March quarter CPI across the review period) the last 8 increases awarded by the Fair Work Commission under the Fair Work laws have all been in excess of inflation, the cumulative effect of which has translated to significant real wage increases for award-reliant employees. There is simply no sound rationale for a radical departure in approach that would result in the adoption of (even higher) excessive wage increases of the nature sought by the ACTU.

Year	Wages increase	CPI (March quarter)
2010	\$26 per week to awards \$26.16 to National Minimum Wage (4.8%)	2.9%
2011	3.4%	3.3%
2012	2.9%	1.6 %
2013	2.6%	2.5%
2014	3%	2.9%
2015	2.5%	1.3%
2016	2.4%	1.3%
2017	3.3%	2.1%

## Penalty rates

36. At paragraph 23 of its submission the ACTU asks the Expert panel to take the penalty rates decision into account and that a “higher increase in this Review is necessary to mitigate the impact on the affected employees...”
37. In this regard we reiterate the submissions made in part 9 of our initial submission:
- Independent analysis indicates that the penalty rates decision affected fewer than 220,000 employees, less than 10% of award-reliant employees. The Annual Wage Review decision affects around 2.3 million employees, including in sectors not impacted by the penalty rates decision. By way of illustration the accounting or clerical firm, the local shop operating Monday to Friday or Monday to Saturday, and the small manufacturer will gain no direct benefit from the penalty rates changes, but would under the ACTU’s thinking have their wages bill inflated to account for labour cost reductions they do not benefit from;
  - In making the adjustment to penalty rates in the retail, pharmacy and hospitality sectors the Fair Work Commission found that the rates altered were having the effect that the relevant awards were not providing a fair nor a relevant safety net.

- c. It is not appropriate to then lift base rates in awards to 'square up' the reduction as this would mean that the awards will continue to fail to provide a fair and relevant safety net;
- d. The Fair Work Commission acknowledged the unique characteristics of the industries impacted by the penalty rates changes. In particular, retail and accommodation and food services are among the industries with the highest levels of award reliance.
- e. The Fair Work Commission identified that the businesses impacted by the penalty rate decision include small and medium businesses with lower profit margins, many with higher wages and salaries as a proportion of total expenses, lower survival rates, facing strong or intense competition and many that are operating weekends.<sup>44</sup> These are the last businesses that should be saddled with artificially inflated minimum wage increases.
- f. The Fair Work Commission accepted evidence demonstrating that the current level of penalty rates has led employers in these industries to reduce labour costs associated with Sunday and public holiday trading by imposing a number of operational limitations, such as:
  - i. Restricting trading hours;
  - ii. Lowering staff levels; and
  - iii. Restricting the type and range of services provided
- g. The Fair Work Commission also accepted that the evidence that a reduction in penalty rates is likely to lead to:
  - i. Increased trading hours on Sundays and public holidays;
  - ii. A reduction in the hours worked by some owner operations;
  - iii. An increase in the level and range of services offered on Sundays and public holidays; and
  - iv. An increase in overall hours worked.<sup>45</sup> The Fair Work Commission noted that 65.5% of respondents to a retail survey said that they would allocate more hours to employees on Sunday if the Sunday penalty rate was reduced (from 200 per cent to 150 per cent).<sup>46</sup>

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<sup>44</sup> [2017] FWCFB 1001 at paras [742], [1463]

<sup>45</sup> [2017] FWCFB 1001 at paras [71], [1619], [1620]

<sup>46</sup> [2017] FWCFB 1001 at paras [1620], [1671].



*Employment growth by selected industries over 2017*



Source: Department of Jobs and Small Business 'Australian Labour Market in 2017', ABS Labour Force Australia, Detailed, Quarterly, November 2017 (Cat. No. 6291.0.55.003), trend data

38. While there has been some jobs growth in the impacted industries, the ACTU suggests at paragraph 26 “that a range of benefits for workers that the Full Bench expected from the Penalty Rates decision have not materialised and indeed some workers may have experienced a reduction in their weekly earnings notwithstanding the impacts of the increase to their base rates by the Panel’s decision last year”. This is clearly meaningless – the Sunday penalty changes are being phased in and it is axiomatic that the full benefits cannot flow immediately, particularly in light of the phasing process.
39. In addition, the ACTU fails to acknowledge the challenges that continue to confront the relevant sectors, the fact that transitional arrangements mean that implementing the decision will take time, the high increase awarded last year and the high quantum of Sunday and public holiday rates as a starting point. To use some examples:
40. If a full-time Level 1 guest services employee under the Hospitality Industry Award (cleaner) was working 38 hour week in Melbourne– 8 hours on a Sunday, 8 hours on a Saturday and the remaining 22 hours Monday – Friday, based on today’s rates they would have received a \$20.08 per week or \$1,044.16 per year in wages relative to the wages that applied before the penalty rates decision.

*Current rates*

Sunday = 8 hours @\$31.98 per hour  
 Saturday = 8 hours @ \$23.51 per hour  
 Weekdays = 22 hours @\$18.81 per hour  
 Total = \$857.74 per week

*From 1 July 2016 – before changes*

Sunday = 8 hours @\$31.87 per hour  
 Saturday = 8 hours @ \$22.76 per hour  
 Weekdays = 22 hours @\$18.21 per hour  
 Total= \$837.66 per week

41. The rates for working weekends and public holidays remain significantly higher than the base rates. For example a casual Pharmacy Assistant with no qualifications in community pharmacy is entitled to the following rates of pay from 1 July 2017:

Monday – Friday (day): \$25.10 per hour  
 Saturday (day): \$30.12 per hour  
 Sunday (day): \$44.18 per hour  
 Public Holiday: \$50.20 per hour

42. If the person has progressed to a level 4 Pharmacy Assistant they would be legally entitled to the following rates of pay from 1 July 2017:

Monday – Friday (day): \$27.71 per hour  
 Saturday (day): \$33.26 per hour  
 Sunday (day): \$48.77 per hour  
 Public Holiday: \$55.43 per hour

43. Transitional arrangements that will see the changes phased in across as many as four wage cycles will already delay the benefits of this decision and if increases to the base rate of pay from which penalty rates are calculated, are too high the benefits may not materialise at all. This would be almost certain if the Panel attempted to cancel out the Commission's penalty rates decision through a massively inflated minimum wage uprating – which is the course the ACTU would have the Commission follow.
44. Many businesses simply cannot pass these costs on to consumers. The Reserve Bank of Australia has noted that competitive pressures in the retail sector continue to put downward pressure on consumer prices.<sup>47</sup>
45. As noted in our initial submission this is a key reason for sustained levels of low inflation and evidences the inability of retailers to pass on escalating costs in competitive, digitally connected marketplace. Cost increases are absorbed by retail businesses and when this becomes unsustainable it risks seeing businesses closed and jobs lost or cuts to jobs and hours

<sup>47</sup> Reserve Bank of Australia, Statement on Monetary Policy, May 2017, p. 49.

## About the Australian Chamber

The Australian Chamber of Commerce and Industry is the largest and most representative business advocacy network in Australia. We speak on behalf of Australian business at home and abroad.

Our membership comprises all state and territory chambers of commerce and dozens of national industry associations. Individual businesses are also able to be members of our Business Leaders Council.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, employing over 4 million Australian workers.

The Australian Chamber strives to make Australia a great place to do business in order to improve everyone's standard of living.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

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