



DECISION

Fair Work Act 2009

s.285 - Annual wage review

Annual Wage Review 2015–16

(C2016/1)

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DEPUTY PRESIDENT ASBURY
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MELBOURNE, 31 MAY 2016

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Abbreviations

2009–10 Review	<i>Annual Wage Review 2009–10</i>
2010–11 Review	<i>Annual Wage Review 2010–11</i>
2012 ERO	<i>Social, Community and Disability Services Industry Equal Remuneration Order 2012</i>
2012–13 Review	<i>Annual Wage Review 2012–13</i>
2013–14 Review	<i>Annual Wage Review 2013–14</i>
2014–15 Review	<i>Annual Wage Review 2014–15</i>
2016–17 Review	<i>Annual Wage Review 2016–17</i>
AAWI	average annualised wage increases
ABI	Australian Business Industrial and the NSW Business Chamber Ltd
ABS	Australian Bureau of Statistics
ACCER	Australian Catholic Council for Employment Relations
ACCI	Australian Chamber of Commerce and Industry
ACOSS	Australian Council of Social Service
Act	<i>Fair Work Act 2009 (Cth)</i>
ACTU	Australian Council of Trade Unions
AFEI	Australian Federation of Employers and Industries
AFPC	Australian Fair Pay Commission
AHA & TAA	Australian Hotels Association and Tourism Accommodation Australia
Ai Group	The Australian Industry Group
ANZ	Australia and New Zealand Banking Group
APCS	Australian Pay and Classification Scale
ARA	Australian Retailers Association
Award-reliant industries	The five industries with the highest proportion of employees within the industry who are reliant on award rates of pay according to ABS, <i>Employee Earnings and Hours, Australia, May 2014</i> , Catalogue No. 6306.0: Accommodation and food services, Administrative and support services, Health care and social assistance, Other services and Retail trade
AWE	average weekly earnings
AWOTE	average weekly ordinary time earnings
AWR	Annual Wage Review
AWRS	Australian Workplace Relations Study
Australian PCI	Australian Industry Group/Housing Industry Association Australian Performance of Construction Index
Australian PMI	Australian Industry Group Australian Performance of Manufacturing Index

Australian PSI	Australian Industry Group Australian Performance of Services Index
Business Equipment Award	<i>Business Equipment Award 2010</i>
C1(b)	Professional Engineer/Professional Scientist, <i>Metal, Engineering and Associated Industries Award 1998</i>
C2(b)	Principal Technical Officer, <i>Manufacturing and Associated Industries and Occupations Award 2010</i>
C4	Engineering Associate/ Laboratory Technical Officer—Level 1, <i>Manufacturing and Associated Industries and Occupations Award 2010</i>
C5	Advanced Engineering Tradesperson—Level II Engineering/Laboratory Technician—Level V, <i>Manufacturing and Associated Industries and Occupations Award 2010</i>
C7	Engineering/ Manufacturing Tradesperson—Special Class Level II, <i>Manufacturing and Associated Industries and Occupations Award 2010</i>
	Engineering/Laboratory Technician—Level III, <i>Manufacturing and Associated Industries and Occupations Award 2010</i>
C8	Engineering/ Manufacturing Tradesperson—Special Class Level I, <i>Manufacturing and Associated Industries and Occupations Award 2010</i>
C10	Engineering/Manufacturing Tradesperson—Level 1, <i>Manufacturing and Associated Industries and Occupations Award 2010</i>
C14	Engineering/Manufacturing Employee—Level 1, <i>Manufacturing and Associated Industries and Occupations Award 2010</i>
CCIQ	Chamber of Commerce and Industry Queensland
CCIWA	Chamber of Commerce and Industry of Western Australia
CGE	Computable General Equilibrium
COE	Characteristics of Employment
Commission	Fair Work Commission
CPI	Consumer Price Index
EEBTUM	Employee Earnings, Benefits and Trade Union Membership
EEH	Survey of Employee Earnings and Hours
FMW	Federal Minimum Wage
FOB	Free on board
GDP	gross domestic product
GFC	global financial crisis
GSS	General Social Survey
GVA	gross value added
HES	Household Expenditure Survey

HIA	Housing Industry Association
HILDA	Household, Income and Labour Dynamics in Australia
ILO	International Labour Organization
Indicator	Department of Employment's Monthly Leading Indicator of Employment
L4	Professional, <i>Professional Employees Award 2010</i>
LCI	Living Cost Index
Manufacturing Award	<i>Manufacturing and Associated Industries and Occupations Award 2010</i>
Metal Industry Award	<i>Metal, Engineering and Associated Industries Award 1998</i>
MGA	Master Grocers Australia
Miscellaneous Award	<i>Miscellaneous Award 2010</i>
MTAs	Victorian Automobile Chamber of Commerce; Tasmanian Automobile Chamber of Commerce; Motor Traders' Association of New South Wales; Motor Trade Association of South Australia; and Motor Trade Association of Western Australia
NAB	National Australia Bank
NES	National Employment Standards
NFF	National Farmers' Federation
NMW	national minimum wage
NRA	National Retail Association
NSA	Newstart Allowance
NTWS	National Training Wage Schedule
OECD	Organisation for Economic Co-operation and Development
Panel	Expert Panel for annual wage reviews
PC	Productivity Commission
PC Report	Productivity Commission (2015), <i>Workplace Relations Framework</i> , Final Report, December
R&CA	Restaurant and Catering Australia
RBA	Reserve Bank of Australia
Research Report 1/2016	Mavromaras K, Sloane P and Zhu R (National Institute of Labour Studies) (2016), <i>An international comparison of minimum wages and labour market outcomes</i> , Research Report 1/2016, Fair Work Commission, February
Research Report 6/2013	Wright S and Buchanan J (2013), <i>Award reliance</i> , Research Report 6/2013, Fair Work Commission, December
Research Report 6/2010	Dunn A and Bray G (2010), <i>Minimum wage transitional instruments under the Fair Work Act 2009 and the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> , Research Report 06/2010, Fair Work Australia, June
Review	<i>Annual Wage Review 2015–16</i>

RNNDI	Real net national disposable income
SACS Award	<i>Social, Community, Home Care and Disability Industry Award 2010</i>
SPRC	Social Policy Research Centre
Statistical Report	<i>Statistical Report—Annual Wage Review 2015–16</i>
SWSS	Supported Wage System Schedule
Transitional Act	<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)</i>
Treasury	Commonwealth Treasury
UK	United Kingdom
US	United States (of America)
WGEA	Workplace Gender Equality Agency
WPI	Wage Price Index
WR Act	<i>Workplace Relations Act 1996 (Cth)</i>

1. Overview and the Decision

Introduction

[1] The *Fair Work Act 2009* (Cth) (Act) requires the Expert Panel (Panel) to conduct and complete a review of the national minimum wage (NMW) and of minimum wages in modern awards in each financial year. The Panel must make a national minimum wage order and may set, vary or revoke modern award minimum wages. This decision deals with the *Annual Wage Review 2015–16* (Review) and directly affects over 1.86 million employees in Australia who are award reliant.¹

[2] The Act sets out some important procedural fairness requirements for the Review. The Panel must ensure that all persons and bodies (referred to collectively as parties) are given a reasonable opportunity to make and reply to written submissions. In this Review, a number of parties took this opportunity by lodging one or more written submissions and participating in consultations on 10 and 11 May 2016. The timetable for the Review and all of the submissions, transcript, research reports, and some additional economic data were published on the Fair Work Commission's (Commission) website to ensure that all parties had a reasonable opportunity to participate. The Panel considered all the material received from parties and the published research and data in making its decision.

[3] This Chapter summarises the matters we have considered, our reasoning and the increase we have decided upon. A detailed discussion of these matters is provided in the subsequent Chapters.

The Panel's approach

[4] The Panel is required to conduct each AWR within the legislative framework of the Act, particularly the object of this Act in s.3, the modern awards objective in s.134(1) and the minimum wages objective in s.284(1). The relevant statutory considerations are discussed in some detail in Chapter 2. The Panel's task is to consider relevant statutory matters in the context of the prevailing economic and social environment in order to make its decision in the Review.²

[5] As part of the Review, the Panel considers both the setting of the NMW rate and whether to make any determinations varying modern award minimum wages. These tasks are undertaken by reference to the particular statutory criteria applicable to each function. As part of its decision making process, the Panel first forms a view about the NMW rate it proposes to set in the Review and then takes that proposal into account in exercising its powers to set, vary or revoke modern award minimum rates, as it is required to do by s.285(2).

[6] Chapters 4–8 of this decision deal with the statutory considerations we are required to take into account. We do not repeat all of that material here but the views expressed in this Chapter should be seen in the context of our decision as a whole.

[7] In taking into account available economic and social data, the Panel's approach is to assess the changes in these data over the past year and to consider longer-term trends in order to determine how they inform the statutory criteria.

[8] In assessing the various economic considerations, the Panel takes into account both actual data and forecasts. The actual indicators are the primary considerations because, by their nature, they are more reliable than forecasts. But it is also appropriate to have regard to future projections that cast some light on the circumstances expected to apply during the period when any adjustment will operate. It is not uncommon for actual outcomes to differ from those forecast. The *Annual Wage Review 2012–13* (2012–13 Review) decision set out how the Panel deals with those differences:

“To the extent that the forecast economic indicators do not ultimately reflect the actual performance of the economy, this forms part of our broad assessment and our consideration of the actual indicators in subsequent reviews. Importantly, when considering both actual and forecast indicators, the Panel pays particular attention to trends, because of the volatility in some of the economic indicators.”³

[9] To the extent that the “broad assessment” includes a comparison of past forecasts with actual economic outcomes, this is not undertaken to enable some sort of quantifiable adjustment to minimum wage outcomes. As the Panel has previously observed, a mechanistic approach such as this would not be consistent with the statutory framework. Rather, the Panel considers all information about the economic and social environment that is available (including forecasts and any divergence from prior forecasts) to inform its decision.

[10] When evaluating developments in the economy, the labour market, relative living standards and the needs of the low paid, collective bargaining and equal remuneration, we routinely look to developments over the medium and long term, as well as to changes over the past year. This is evident in the material that is included in the *Statistical Report—Annual Wage Review 2015–16* (Statistical Report) that accompanies the Review. Our capacity to take both a contemporary and a longer-term perspective is determined by the available data. A focus on developments over the past 12 months enables us to see how things have changed since the previous Review decision. The longer-term perspective reduces our reliance on contemporary data that can be volatile and subject to error. It also enables us to see the cumulative effects of the annual changes that we focus on, including our own decisions.

[11] The Productivity Commission (PC), in its *Workplace Relations Framework* Final Report (PC Report), addressed the Panel’s decision making process:

“... the conceptual approach of the FWC’s [Fair Work Commission’s] Expert Panel is to have a prior view (often established from past reviews) that must be dislodged by a fresh and compelling piece of evidence, and that absent that, the prior holds. Accordingly, in many cases, the FWC indicates that it is ‘not persuaded’ (or some similar kind of words) that some past proposition is untrue—effectively putting the onus of proof on a dissenting party. The requirement for new evidence to overturn a prior is reasonable if the prior has strong empirical and theoretical foundations but, in industrial relations as practiced for decades, this is not likely to be the case. It would often be better if the FWC Expert Panel itself re-investigated its priors, and did so, regardless of whether any party had adduced evidence on the matter.”⁴

[12] At the outset we would observe that it is unclear what “priors” the PC is referring to and, further, there is some tension between the above statement and some later observations in the PC Report. In particular, the PC Report also states that the Panel should articulate exactly how its decisions are reached and must see its role as “informing participants how it could be

expected to arrive at decisions in the future, in order that they can improve the quality of evidence that the FWC has previously found wanting.”⁵

[13] Two points may be made about the latter observation. The first is that informing participants about how the Panel could be expected to arrive at its decisions in the future is inconsistent with the proposition that the Panel should essentially conduct each Review on a “blank canvas” basis by an active process of reviewing “priors”.

[14] The second point is that, contrary to the suggestion in the PC Report, the Panel does inform parties of the deficiencies in the quality of their evidence so that it may be improved. For example, in the 2012–13 Review decision, the Panel provided guidance as to the requirements for survey evidence.⁶

[15] Unlike the PC, the Panel is not conducting an inquiry into a particular issue with a view to making recommendations to the Australian Government. The Panel undertakes a regulatory function of which the end result will affect the rights and responsibilities of the employees who are covered by the NMW order or a modern award and their employers. The nature of the function and the powers exercised by the Panel bring with it important procedural fairness requirements and an obligation to deliver substantive justice.

[16] In our view, the observation set out in the PC Report misunderstands the role of precedent in ensuring substantive justice and in informing participants of how they can expect the Panel to arrive at decisions.⁷ As the Australian Chamber of Commerce and Industry (ACCI) points out in its submission,⁸ the approach of the Panel—as outlined at paragraph [7] in the *Annual Wage Review 2014–15* (2014–15 Review) decision—reflects the nature of judicial reasoning that underpins the rule of law. Broadly speaking, differently constituted Panels should evaluate the evidence and submissions before them in accordance with a consistent and stable interpretation of the legislative framework.

[17] As the High Court has observed, justice requires consistency in decisions unless a difference can be articulated and applied:

“The law must keep an order and form which admit of practical application, for justice requires both consistency in decisions and discrimination between cases on bases that can be articulated and applied.”⁹

[18] These public policy considerations inform the way AWRs are conducted. This does not mean that the Panel’s consideration of the statutory framework is stagnant. As the Panel made clear in the *Annual Wage Review 2013–14* (2013–14 Review) decision,¹⁰ there is nothing wrong with a party advancing a submission that a past Panel decision had wrongly construed a statutory provision and advancing an alternate construction. The Panel has reconsidered past decisions regarding the interpretation of particular provisions. For example, in the 2012–13 Review decision, the Panel accepted an ACCI submission that past decisions had wrongly concluded that “social inclusion”, in the context of s.284(1)(b), encompassed both the obtaining of employment *and* the pay and conditions attaching to the job concerned. The Panel accepted that its consideration of “social inclusion”, in the context of s.284(1)(b) was limited to increased workforce participation.¹¹

[19] The above observation is also apposite to the Panel's consideration of all of the issues before it. In conducting a Review, the Panel is engaged in a constant process of evaluating past assumptions and findings on the basis of contemporary data and the available evidence. Contrary to the assumption made in the PC Report,¹² the Panel is not a passive observer in this process; it is an active participant. Since the commencement of the Act, the Commission has published 29 internal and commissioned research reports. The research has been both quantitative and qualitative and covers topics such as award reliance, the labour market, business performance, earnings, relative living standards and apprentices, all of which are relevant to the minimum wages and modern awards objectives. A complete list of the published research is set out at Appendix 1.

[20] In addition to these reports, the Commission also publishes the Statistical Report, containing a broad range of economic and social indicators, and a Research reference list, which referred to 91 relevant papers this year.

[21] The Commission's capacity to undertake internal or commissioned research is, of course, subject to budgetary constraints. Present indications are that such constraints are likely to limit the Commission's capacity to undertake additional research in the short to medium term.

[22] ACCI also made some observations about the Panel's decision making process. In its 30 March 2016 submission, ACCI accepted that "simple rules such as real wage maintenance ... cannot capture the full range of considerations that the Panel must take into account"¹³ and that "the Panel's judgments about the relative importance of particular considerations are difficult to fully explain".¹⁴ ACCI submitted that transparency required that:

"The Panel should explain in its decision the basis on which it differed from prior decisions and the manner in which the mix of statutory considerations in the current context differed from prior considerations. Continued emphasis on explaining the interplay of the factors that are brought to account is commended."¹⁵

[23] The above extract neatly encapsulates what the Panel attempts to do in its decision. ACCI goes on to submit as follows:

"Whilst judgments are not always able to be fully explained, that issue should give added impetus to the Panel to disclose the factors which are most relevant, and quantifying how the Panel's decision would have changed if key variables had been different. Although there is always more than one factor which changes from year to year, this sort of analysis would make the Panel's decisions more transparent and improve the relevance of submissions in subsequent years.

The Australian Chamber accepts that the range of considerations the Panel must take into account means broad judgment is to be exercised in weighing the relative importance of different considerations, but that does not preclude quantification of the weight given to the most important considerations. Continuation and refinement of that process is commended."¹⁶

[24] In a further submission, ACCI elaborated on this point, stating that "there is consonance between the view expressed by the Productivity Commission and the intent of the point raised in the 30 March 2016 submission".¹⁷

[25] The PC Report observation to which ACCI referred is the comment that there was scope for the Panel to enhance its approach to AWRs by: adopting a more targeted approach to assessing and determining award minimum wages; explicitly recognising and measuring trade-offs between the different elements of the minimum wage and modern award objectives; and considering the effect of determinations on all affected parties.¹⁸ In terms of assessing trade-offs, the PC considered the Panel should weigh “the benefits of increased earnings for the low-paid against the potentially slower employment growth from more generous increases in minimum wages”.¹⁹ While acknowledging that decisions on minimum wages cannot be reduced to a “simple formulaic approach”, the PC stated that:

“While judgment will always be necessary, scientific methodologies can provide the metrics and processes for assessing the consequences of different minimum wage and award review decisions, and can ensure that decisions are, as much as possible, informed, transparent, logical, substantiated and consistent.”²⁰

[26] The PC Report provided no detail as to the “scientific methodologies” available to provide “the metrics and processes for assessing the consequences of different minimum wage and award review decisions”.²¹ Indeed, as the PC Report also observes:

“The economic literature on the employment effects of minimum wages does not provide a simple and universal answer.”²²

“On top of these theoretical complexities, there are several empirical obstacles that together can bedevil attempts to gauge the effects of minimum wages on employment ...”²³

“Estimates of the impact of minimum wages on employment and hours worked vary in direction as well as in size and the conclusions drawn from this body of research can appear contradictory and are often the subject of dispute ...”²⁴

“... while the (Australian) studies provide an indication of the likely direction of change, they provide neither definitive evidence nor clear guidance on the magnitude of any employment effects that would result from future changes in Australia’s minimum wages.”²⁵

“The Productivity Commission’s examination suggests that it is not currently possible to arrive at a straight-forward and definitive conclusion about the effects of changes in Australian minimum wages on employment levels or hours worked.”²⁶

[27] The matters raised by ACCI and the PC Report regarding the Panel’s decision making process were put as questions to all parties on 28 April 2016. No other party supported the proposition that the Panel should disclose how its decision would have changed if key variables had been different.

[28] We agree with the proposition (advanced by ACCI) that the Panel should disclose the factors which are most relevant in a particular year, and we have done so in this decision. We also accept that the Panel’s decision-making process should be as transparent as possible. This can be seen as an iterative process. For example, ACCI submitted that the Panel should consider short and medium-term trends when analysing youth unemployment and give greater

consideration to this matter in its decisions.²⁷ We have responded to this suggestion by considering, at paragraphs [281]-[282] the youth unemployment rate, and its relationship to aggregate unemployment over the past decade and the trends in the youth labour market over a five-year period identified in the 2014–15 Review decision.²⁸

[29] However, we do not propose to quantify how the Panel’s decision would have changed if key variables had been different. Such a hypothetical exercise is neither feasible, nor appropriate. The range of considerations the Panel is required to take into account usually vary from year to year and it would be an arid exercise to embark on a hypothetical assessment of what the Panel would do in a different set of circumstances. Such an exercise may also give rise to procedural fairness issues.

[30] Nor do we intend to quantify the weight given to particular considerations, though we will identify the most significant issues which have been impacted on the Panel’s decision in each particular Review.

[31] In past Review decisions, the Panel has addressed submissions calling for specific factors to be quantified. In the 2012–13 Review decision,²⁹ the Panel addressed submissions from The Australian Industry Group (Ai Group) and the National Farmers’ Federation (NFF) to quantify the discount to be applied to any minimum wage adjustment for that year due to the 0.25 per cent increase in the superannuation guarantee. The Panel stated that the current legislative framework does not support an approach that quantifies each element, rather, minimum wage adjustment involves broad judgment:

“... we have not applied a direct, quantifiable, discount to the minimum wage increase, as proposed by Ai Group and the NFF. As we have noted, the AIRC [Australian Industrial Relations Commission] decisions following the introduction of the SGC [Superannuation Guarantee Charge] Acts provide no support for such an approach. Nor does the current legislative framework support such an approach. In reviewing modern award minimum wages and the NMW the Act requires us to have regard to a range of considerations. As we note in Chapter 2, there is a degree of overlap between the matters specified in the modern awards objective, the minimum wages objective and the objects of the Act. To the extent that these matters are of direct relevance to the Review, they may be grouped into three broad categories: economic; social; and collective bargaining. The range of considerations we are required to take into account calls for the exercise of broad judgment, rather than a mechanistic approach to minimum wage fixation.”³⁰

[32] The wide range of data and information before the Panel and the often complex interaction between these factors mean that a comparison between AWRs will rarely be straightforward. There is no formulaic relationship between changes in particular indicators or factors over time and the outcome of AWRs. While the Panel seeks to explain its view of the circumstances (including forecasts or projections) prevailing in each AWR in comparison with previous years, it is not feasible to quantify the weight given to particular factors in balancing the various considerations prescribed by the Act. This also explains why proposals premised on a fixed relationship between the rate of inflation and minimum wages directed towards real wage maintenance are not consistent with the statutory framework.

[33] We now turn to the economic, social and collective bargaining considerations which we must take into account.

Economic considerations

[34] Both the minimum wages objective and the modern awards objective require us to take into account various economic considerations. The underlying intention of these provisions is that the Panel takes into account the effect of its decisions on national economic prosperity and in doing so gives particular emphasis to the economic indicators specifically mentioned in the relevant statutory provisions.

[35] Economic growth, while slightly below trend, has continued at a reasonable level, improving over the second half of 2015 and outstripping growth in each of the seven major Organisation for Economic Co-operation and Development (OECD) economies. Real gross domestic product (GDP) grew by 3.0 per cent over the year to the December quarter 2015, compared with 2.2 per cent over the year to the December quarter 2014.

[36] Over the five years to 2014–15, labour productivity growth in the market sector was higher than the five years prior. Over the year to the December quarter 2015, GDP per hour worked fell by 0.4 per cent, following an unusually large increase in hours worked over that year. GDP per hour worked grew over each of the preceding four years. Gross value added (GVA) per hour worked for the market sector grew by 0.9 per cent over the past year.

[37] The shares of wages and profits in total income have barely changed over the past three decades in the non-mining part of the economy. In the mining sector, they have returned to close to their more usual levels in the past two years. After falling sharply in the 2000s, with the peaking of the terms of trade, the wages share started to recover in 2011 and has since been relatively flat. The profits share has fallen back in recent years. Company gross operating profits grew by 2.8 per cent for non-mining industries over the year to the December quarter 2015 which is above the average for the past five years, and fell by 14.9 per cent in the Mining industry.

[38] There is no evidence of particular corporate stress. Business bankruptcy rates and business exit rates were at relatively low levels in 2014–15. Business bankruptcy rates in 2014–15 were at their lowest level for the past decade.

[39] All measures of inflation remain at historically low levels. The headline Consumer Price Index (CPI) rose by 1.3 per cent, underlying inflation increased by 1.5 per cent (average of the trimmed and weighted mean) and the Living Cost Index (LCI) for employee households increased by 1.1 per cent over the year to the March quarter 2016.

[40] Each of the measures of wages reflects continued historically low aggregate wages growth. Over the year to the December quarter 2015, the Wage Price Index (WPI) increased by 2.2 per cent and the average weekly ordinary time earnings (AWOTE) by 1.6 per cent. Bargaining outcomes, reflected in average annual wage increases (AAWI), grew by 3.0 per cent in the December quarter 2015. Over the year to the December quarter 2015, nominal unit labour costs rose by 0.3 per cent seasonally adjusted and real unit labour costs increased by 0.9 per cent.

[41] The increase in employment, the age-adjusted participation rate and the employment to population ratio all point to improvements in the labour market. The absolute levels of these indicators are also quite favourable. The recent falls in unemployment, in long-term

unemployment and in unemployment among youth are consistent with the picture of improved labour market conditions over the course of 2015 and into 2016. The award-reliant industries have had a mixed experience, with three of the five having healthy levels of increases in employment while the other two had falls.

[42] In contrast to the generally strong labour market performance over the course of 2015, reflected across a range of labour market indicators and the continuing employment growth in 2016, the reduction in hours worked recorded between December 2015 and April 2016 suggests some weakness in labour market conditions. The reduced hours worked in the first months of 2016 primarily reflects a decline in the average hours worked by full-time employees and, to a lesser degree, a continuing shift from full-time to part-time employment. This suggests that it is caused more by the ongoing changes in the structure of the economy and reduced pressures in the mining sector, rather than by some more general weakness in the demand for labour. Having regard to the reason for the decline in hours worked and the broader information about labour market conditions, we do not think that it seriously undermines the broader information about the labour market. Nonetheless, it is a relevant consideration we have taken into account in assessing labour market conditions and the broader economic circumstances. The significant revisions to the hours worked data in the April 2016 ABS Labour Force Survey reinforce reservations about the reliability of monthly Labour Force data. We will be better informed about the fall in hours worked in the early part of 2016 when further information becomes available.

[43] The transition in the economy from the mining sector to the more labour-intensive service sectors has been evident in the strength and composition of employment growth in recent years, with most of the growth in total employment occurring in the service sectors of the economy, with the Retail trade and Health care and social assistance industries contributing most to aggregate employment growth.

[44] The employment to population ratio for people aged 20–64 years rose over each of the past two years, to 75.4 per cent in March 2016, although it remains below its peak in December 2010. The participation rate of people aged 20–64 years was higher in December 2015 than in any time over the last decade for both men and women and it rose by 0.2 percentage points over the year to March 2016.

[45] The improved labour market over the past year has arrested the persistent increase in unemployment since the global financial crisis (GFC) and brought about a moderate reduction in unemployment. The total number of unemployed persons has fallen by 37 200 (or 4.9 per cent) over the year to April 2016, and the unemployment rate has fallen by 0.4 percentage points, from 6.1 per cent in April 2015 to 5.7 per cent in April 2016.

[46] As employment growth strengthened and overall unemployment fell over the course of 2015 and into 2016, so too did the under-employment rate, long-term unemployment and the youth unemployment rate. Over the past 10 years, under-employment and unemployment have moved together, and the addition of one to the other does not alter the essential interpretation of changes in the state of the labour market.

[47] We accept that small businesses are more award reliant than larger businesses and will be particularly affected by changes in award rates of pay; have less capacity to adjust to adverse changes in business conditions; and have found it harder to bounce back from the GFC than larger businesses. However, the aggregate and sectoral economic data do not

suggest that the economic conditions for small business have recently diverged materially from those of businesses generally within the industries in which they operate. Business conditions for small businesses are harder than for large businesses, but this has been true for almost a decade and has not deteriorated recently. The survey results included in the submissions of the Australian Government do not suggest recent circumstances impacting disproportionately on small businesses.

[48] Overall the major indicators in respect of the award-reliant industries performed generally better than the all industries average over the most recent year. Whilst there is diversity in outcomes between the award-reliant industries, the data does not suggest that the most award-reliant industries have faced a relatively difficult economic environment over the past year or that recent minimum wage increases have adversely impacted on the relative economic performance of the award-reliant industries.

[49] The outlook for the Australian economy remains generally positive. All of the official forecasts expect GDP and employment to continue to grow and unemployment to fall. Inflation and wage growth is expected to continue to be below average levels in the coming year or so.

[50] The Australian economy is entering its 26th consecutive year of economic growth and a continuing transition toward broader growth in the Australian economy following the passing of the resource investment boom. The transition to broader-based growth is being supported in the short-term by household consumption, dwelling investment and exports, with non-mining investment remaining weak and falling mining investment detracting from growth.

[51] The decline in the terms of trade since late 2011 has reduced the income available for distribution to labour and capital, with employees experiencing relatively low increases in wages, on all measures, over the past two years. Each measure of wages reflects a continuing fall in aggregate wages growth over the past year, to historically low levels. This is contributing to the process of adjusting to the downturn in the terms of trade, as real net national disposable income (RNNDI) has increased by less than GDP from the second half of 2011, and fell in 2015. The shift in incomes between labour and capital associated with the rapid increase in the terms of trade and its more recent decline was most evident in the mining sector.

[52] The relatively low growth in aggregate wages is a relevant consideration for the Panel because of its bearing on relative living standards and the needs of the low paid. In the past, the Panel has not increased the NMW and modern award minimum wage rates on the basis of the stronger RNNDI movements because such movements are based on short term and volatile factors.³¹ We do not propose to alter the NMW and award rates directly on the basis of the subsequent weak RNNDI movements in order to be consistent in our approach. The force of the weak growth in RNNDI on our decision is felt through its consequences for growth in wages more generally.

Social considerations

[53] Both the minimum wages objective and the modern awards objective require us to take into account relative living standards and the needs of the low paid when setting minimum wage rates. Those matters must be considered, within the range of statutory matters

in ss.134(1) and 284(1) of the Act, in the context of the evidence relevant to a particular review. They are different, but related, concepts.³²

[54] The assessment of relative living standards requires a comparison of the living standards of workers reliant on the NMW and modern award minimum wage rates with those of other groups that are deemed to be relevant. Relative living standards focus on the comparison between award-reliant workers and other employees, especially non-managerial employees, but does not exclude comparison with other groups.³³ For the reasons set out in paragraphs [354] and [357], we do not favour a comparison with pensioners or small business owners for the purpose of assessing the relative living standards of the low paid.

[55] The assessment of the needs of the low paid requires an examination of the extent to which low-paid workers are able to purchase the essentials for a “decent standard of living” and to engage in community life, assessed in the context of contemporary norms.

[56] We accept that adult award-reliant employees who receive a rate of pay that (as a full-time equivalent) is below two-thirds of median (adult) ordinary time earnings provide an appropriate and practical benchmark for identifying who is low paid. Whilst no specific conclusion is available, the information as a whole, suggests that a sizeable proportion—probably a majority—of employees who are award reliant are also low paid by reference to the two-thirds of median weekly earnings benchmark.

[57] The NMW has increased in real terms in most years within the decade. The real value of the NMW increased by a cumulative 4.8 per cent over the past decade to the December quarter 2015, with a 3 per cent real growth over the five years to the December quarter 2015 and a 0.8 per cent real increase over the most recent year to the December quarter 2015. Since the *Annual Wage Review 2010–11* (2010–11 Review) decision, the NMW and all modern award rates have increased in real terms and at the same percentage at each classification level.

[58] The C14 (introductory) rate fell relative to measures of median and average earnings over the past decade, with much of that decline occurring between August 2005 and August 2008. The ratio of the C14 rate to median earnings has fallen marginally since the AWR adjustment in 2010—from 54.3 per cent in August 2010 to 53.4 per cent in August 2014, although it has risen from the historically low level of 52.7 per cent in August 2012.

[59] Award rates have grown more slowly over the decade than all other measures of average pay—AWOTE, average weekly earnings (AWE) and the WPI—although growth in the C14 rate has remained close to that of the WPI. Divergence between award rates and average wages has narrowed more recently, reflecting reduced growth in the AWOTE, AWE and the WPI and recent decisions of the Panel.

[60] Real weekly earnings of full-time workers have become progressively less equal in the past decade—for each decile, the lower the earnings, the lower the rate of growth in earnings, reflected in the fanning out of the earnings distribution. However, earnings inequality has stabilised since 2008.

[61] The distribution of low-paid workers across employee households, preferably households for which the principal source of income is wages, provides the best basis for

assessing the relative living standards and the needs of the low paid, for the reasons found at paragraphs [400] to [402].

[62] Overall income inequality, as measured by the Gini coefficient, has risen since 1994–95, but appears to have stabilised from at least 2007–08 at relatively high levels compared with the past.

[63] We do not accept the proposition that most low-paid workers are not in low-income households. Many low-paid workers live in households with low or very low disposable incomes. Around two-thirds of low-paid employees are found within the bottom half of the distribution of employee households and have lower living standards than other employees. Single low wage earners are particularly concentrated in the lower deciles of employee household income distribution. Single low wage earners without children receive little help from the transfer system.

[64] Increases in the minimum wage and award classification wages do have a role to play as part of a package of measures to address inequality. Increases in the minimum wage and award classification wages have directly impacted on the relative living standards of the low paid and their capacity to meet relevant needs.

[65] In December 2015, disposable income was less than the 60 per cent of median income poverty lines for single-earner couples, where one partner earns the NMW or C10 rate and the other partner is not in the labour force and therefore not in receipt of Newstart Allowance (NSA), whether or not they have children.

[66] New information from financial stress measures, for 2014, is available from the Household, Income and Labour Dynamics in Australia (HILDA) Survey and General Social Survey (GSS) survey. The 2014 data suggest that a slightly higher proportion of low-paid persons or households reported financial stress in 2014. In 2014, 13.4 per cent of low-paid employee households reported that they were “unable to raise \$3000 in a week for something important”: the highest level reported during the past five years.

[67] Our overall assessment is that the relative living standards of NMW and award-reliant employees have improved a little over recent years, although the relative position of low-paid workers has deteriorated over the past decade. Many have low levels of disposable income. Some low paid award-reliant employee households have levels of disposable income which places them below the poverty line. The current environment of low inflation and low wages growth generally provides an opportunity to provide a moderate improvement in the relative living standards of the low paid and to better meet their needs. The requirement to take into account relative living standards and the needs of the low paid supports an increase in the NMW and modern award minimum wages.

[68] The Act requires the Panel to take into account “promoting social inclusion through increased workforce participation” (s.284(1)(b)). Consistent with past AWR decisions, we interpret this to mean increased employment. Higher minimum wages can provide incentives to those not in the labour market to seek paid work, which needs to be balanced against potential negative impacts on the supply of jobs for low-paid workers.

[69] For the purposes of making a determination, we must form a view on the employment impacts of an increase in the NMW and modern award minimum wages. This issue is likely

to remain contested, especially for Australia where the application of conclusions from United States (US) and United Kingdom (UK) research is not straightforward. The additional evidence presented to this Review, especially that from the work of the PC, is consistent with our conclusion that an increase in the NMW and award wages of the size that we have determined and in the economic circumstances that we face, will not have a measurable impact on employment.

[70] The impact of the NMW and award wages on promoting social inclusion through increased workforce participation is difficult to discern with any confidence. Jobs must be attractive enough for people with alternative sources of income to be willing to seek them. The evidence is that for most, but not all, family types, there is a substantial financial gain from moving from not employed to a minimum wage job. This financial gain is sensitive to the gap between the level of income support and the level of the NMW and the lower award rates. We must be alert to the possibility that over time the incentives that are provided by this gap may diminish unduly.

[71] Evidence on the duration of employment in low-paid work points to its role as an entry point into the labour market and a stepping stone for many into better paid work. But a substantial number of low-paid workers either remain in low-paid work for a number of years, or move between low-paid work and no work. We cannot be indifferent to the standard of living of low-paid workers just because many do not stay in that situation for long periods. Those employees who are reliant on the NMW and award wages are a relevant concern to the Panel in exercising its statutory obligations.

[72] The possibility that there are greater long-run and cumulative effects on job openings for low-skill workers is a constraint on raising minimum wages to a level that would more fully satisfy the requirement to take into account the relative living standards and needs of the low paid. The modest growth in the NMW and award wages over the past decade gives little basis for a view that these wage adjustments have in fact diminished entry-level and low-skill jobs.

[73] There is general agreement in the submissions that the labour market has strengthened over the past year. The particular indicators of this are presented in Chapter 4 of this decision. This is relevant to the potential impact of changes to the NMW and award wages on the demand for labour, since it is widely agreed, and we accept, that the sensitivity of employer demand for labour, in response to wage rises, will be greater if the overall demand for labour is weak.

[74] In giving effect to both the modern awards objective and the minimum wages objective the Panel must take into account the principle of equal remuneration for work of equal or comparable value (s.134(1)(e) and s.284(1)(d)). From the data before us, we can conclude:

- there is a substantial and persistent gap in the average hourly and weekly pay of men and women, in favour of men;
- women are significantly more likely to be paid at the award rate than are men at all levels of the award structure;
- workers paid at the award rate are much more likely to be low paid than are other workers; and

- at least at the highest rates in the award structure, women are heavily over-represented among those who are paid at the award rate.

[75] An increase in award rates of pay relative to other wages would reduce the gender pay gap in two ways. The first is that it would raise the level of low pay rates relative to median pay rates, and hence particularly benefit women, who disproportionately receive low pay rates. The second is that an increase in the higher levels of award rates will particularly benefit women, because at the higher pay scales, women are substantially more likely to be paid the award rather than the bargained rate than are men.

[76] The principle of equal remuneration is a factor in favour of an increase in the NMW and the minimum wages in modern awards and as such has been considered together with the various other statutory considerations the Panel is required to take into account.

Collective Bargaining

[77] The modern awards objective applies to the setting, varying or revoking of modern award minimum wages in an AWR. One of the matters the Panel is required to take into account in giving effect to the modern awards objective is “the need to encourage collective bargaining” (s.134(1)(b)). In making the NMW order, the Panel must give effect to the minimum wages objective. The minimum wages objective makes no reference to “the need to encourage collective bargaining”. However, as we note in Chapter 2, one of the purposes of the Act is to encourage collective bargaining and, hence, it is appropriate to take that legislative purpose into account in making the NMW order.

[78] The Survey of Employee Earnings and Hours (EEH) provides data on the method of setting pay. This survey is conducted every two years and the 2014 data is the most recent release. For the reasons given in Chapter 7 (at [523] - [524]), the recent increase in award reliance does not support the contention that recent minimum wage increases have acted as a disincentive to collective bargaining. In particular, we note that while most of the award-reliant industries experienced increases in award reliance, it increased only slightly in Other services (0.5 percentage points). The Accommodation and food services industry, which has the highest proportion of “award only” employees³⁴ of all industries (42.8 per cent in 2014), had a 2 percentage point *fall* in award reliance between 2012 and 2014. This tells against the proposition that the form or size of recent minimum wage increases have increased award reliance.

[79] As the Panel observed in the 2013–14 Review decision,³⁵ the available research does not reveal any particular relationship between the incentive to bargain and increases in the NMW and modern award minimum wages. Instead it points to a complex mix of factors that may contribute to employee and employer decision making about whether or not to bargain.

[80] The Panel’s previous conclusions as to the relationship between increases in minimum wages and collective bargaining remain valid, in particular:

- whilst the gap between minimum wages and bargained wages is likely to increase the incentive for employees to bargain, a large gap may be a disincentive for employers to bargain; and
- minimum wages are only one element of the incentive to bargain.³⁶

[81] In determining the increase in the NMW and modern award minimum wages in this Review we have taken into account the need to encourage collective bargaining. Given the complexity of the factors which may contribute to decision making about whether or not to bargain we are unable to predict the precise impact of our decision on collective bargaining, with any confidence.

The Decision

[82] The Panel received submissions from the Australian Government, several state governments, bodies representing the interests of employees, employers and other groups, and individuals. Many of the submissions did not advance a specific proposal as to the quantum of any increase to the NMW or modern award minimum wages, including all government submissions. Three submissions proposed that there be no increase in minimum wages. The parties' positions are set out in more detail in Chapter 3.

[83] The Chamber of Commerce and Industry Queensland (CCIQ), Chamber of Commerce and Industry Western Australia (CCIWA) and National Retail Association (NRA) proposed flat dollar increases of varying amounts. CCIQ and CCIWA supported an increase of not more than \$7.90 per week to the NMW and modern award minimum wages. NRA supported an increase of not more than \$10.70 per week.

[84] A number of business and industry associations proposed percentage increases of differing amounts.

[85] Master Grocers of Australia (MGA) and the NFF proposed an increase of no more than 1.1 per cent to the NMW and modern award minimum wages. An increase of 1.1 per cent amounts to a \$7.20 increase to the NMW/C14 rate and \$8.40 to the C10 rate.

[86] ACCI submitted that the Panel should adopt a "cautious approach" and award an increase of no greater than 1.2 per cent. Australian Federation of Employers and Industries (AFEI), Australian Retailers Association (ARA), Business SA and the various Motor Traders Associations (MTAs) supported ACCI's submission. An increase of 1.2 per cent amounts to a \$7.90 increase to the NMW/C14 rate and \$9.20 to the C10 rate.

[87] Ai Group proposed a 1.6 per cent increase to both the NMW and modern award minimum wages, which represents a \$10.50 per week increase to the NMW. Australian Business Industrial and the NSW Business Chamber Ltd (ABI) submitted that any increase should not exceed 2 per cent.

[88] The Australian Council of Trade Unions (ACTU) and Australian Catholic Council for Employment Relations (ACCER) supported a tiered approach to any increase to the NMW and modern award minimum wages. The ACTU proposed a flat dollar increase of \$30.00 per week to the NMW and modern award minimum wages up to, and including, the C10 rate and an increase of 3.9 per cent to all modern award minimum wages above the C10 rate. A flat dollar increase of \$30.00 per week to the NMW/C14 level is equivalent to an increase of about 4.6 per cent and about 3.9 per cent at the C10 rate.

[89] ACCER proposed tiered, flat dollar increases, with the NMW increasing by \$25.10 per week and modern award minimum wages by \$19.00 per week. As initially put ACCER's proposal, if implemented, would have resulted in the NMW exceeding modern award

minimum wages at the C14 level. During the course of the final consultations on 10 May 2016, ACCER clarified its position and submitted that the NMW and modern award minimum wages at the C14 level should *both* be increased by \$25.10.

[90] We have taken into account all of the relevant statutory considerations. As mentioned in Chapter 2, the underlying intention of the various economic considerations in ss.3, 134 and 284 is that the Panel is required to take into account the effect of its decisions on national economic prosperity and in doing so give particular emphasis to the economic indicators mentioned in the relevant statutory provisions.

[91] The key changes in the economic environment evident in this Review are:

- The economy has grown at close to trend, improving over the second half of 2015. Real GDP grew by 3.0 per cent over the year to the December quarter 2015, compared to 2.2 per cent over the year to the December quarter 2014. RNNDI fell by 1.1 per cent over the year to December 2015, after remaining essentially unchanged in the previous year.
- Stronger labour market conditions over the past year are evident across all measures apart from the fall in hours worked in early 2016. The unemployment rate fell from 6.1 per cent in April 2015 to 5.7 per cent in April 2016. As overall unemployment fell over the course of 2015 and into 2016, so too did the under-employment rate, long-term unemployment and the youth unemployment rate.
- All measures of inflation and wages growth are at historically low levels.
- Over the five years to 2014–15 labour productivity growth in the market sector was higher than the previous five year period.
- Company gross operating profits grew by 2.8 per cent for non-mining industries over the year to the December quarter 2015, above the average for the past five years and greater than the 1.4 per cent growth over the year to the December quarter 2014. Mining industry profits continued to fall.

[92] Economic data does not suggest that the most award-reliant industries have faced a relatively difficult economic environment over the past year or that recent minimum wage increases have adversely impacted on the relative economic performance of the award-reliant industries.

[93] The Panel has taken into account the circumstances of different regions, industries and sectors as part of its broader consideration of the national economy. These circumstances include that there are economic challenges currently facing certain regions and sectors as a result of the transition taking place in the economy and other factors including natural disasters.

[94] Currently, wages growth is neither a source of inflationary pressure within the economy, nor a source of declining capacity for Australian firms to compete in international markets. The outlook for the Australian economy remains generally positive. Inflation and wage growth is expected to continue to be below average levels in the coming year or so.

[95] Of course these economic considerations are not the only matters which the Act requires us to take into account. We are also required to take into account a range of social and other considerations. In particular, we are required to take into account the “promotion of social inclusion through increased workforce participation”; “relative living standards and the needs of the low paid”, “the principle of equal remuneration for work of equal or comparable value”, and the “need to encourage collective bargaining”. No particular primacy is attached to the various economic, social and other considerations the Panel is required to take into account.

[96] The impact of the NMW and award wages on promoting social inclusion through increased workforce participation is difficult to discern with any confidence.

[97] The additional evidence presented to this Review, especially that from the work of the PC, is consistent with our conclusion that the employment impacts of an increase in the NMW and award wages of the size that we have determined and in the economic circumstances that we face, will not have a measurable impact on employment.

[98] Despite some recent improvement in the relative living standards of NMW and award-reliant employees, the relative position of low-paid workers has deteriorated over the past decade. Many low-paid workers live in households with low or very low disposable incomes. Around two-thirds of low-paid employees are found within the bottom half of the distribution of employee households and have lower living standards than other employees. Some low-paid award-reliant employee households have household incomes which put them below the 60 per cent of median income poverty lines.

[99] Women continue to be over-represented among the award reliant and low paid. Increases in the NMW and modern award wages can provide some assistance in addressing the gender pay gap.

[100] On the available evidence and the experience to date it is likely that the increase we have determined in this Review will impact upon the incentives to bargain in various sectors in different ways, but will not, in aggregate, discourage collective bargaining.

[101] The general economic climate is robust, with some continued improvement in productivity and historically low levels of inflation and wages growth. The prevailing economic circumstances provide an opportunity to improve the relative living standards of the low paid and to enable them to better meet their needs. The level of increase we have decided upon will not lead to inflationary pressure and is highly unlikely to have any measurable negative impact on employment. It will, however, mean a modest improvement in the real wages for those employees who are reliant on the NMW and modern award minimum wages.

[102] We have determined that it is appropriate to increase the NMW. The factors identified above have led us to award an increase of 2.4 per cent. The national minimum wage will be \$672.70 per week or \$17.70 per hour. The hourly rate has been calculated by dividing the weekly rate by 38, on the basis of the 38-hour week for a full-time employee. This constitutes an increase of \$15.80 per week to the weekly rate or 41 cents per hour to the hourly rate.

[103] Having regard to the proposed NMW and the other relevant considerations, we also consider that it is appropriate to adjust modern award minimum wages.

[104] As to the form of the increase, past flat dollar increases in award minimum rates have compressed award relativities and reduced the gains from skill acquisition. The position of the higher award classifications has reduced relative to market rates and to average earnings and has fallen in terms of real purchasing power. A uniform percentage increase will particularly benefit women workers, because at the higher award classification levels women are substantially more likely than men to be paid the minimum award rate rather a bargained rate. These matters have led us to determine a uniform percentage increase. The considerations to which we have referred have led us to increase modern award minimum wages by 2.4 per cent.

[105] The determinations and order giving effect to our decision will come into operation on 1 July 2016. Weekly wages will be rounded to the nearest 10 cents.

[106] In Chapter 2 we deal with submissions directed at an award-by-award review of minimum wages and the deferral of any minimum wage increase for those industry sectors and regions affected by the impacts of natural disasters over the past year. For the reasons given in Chapter 2 we do not propose to grant the relief sought.

[107] As foreshadowed in Chapter 9, although it will be a matter for the Panel constituted to conduct next year's Review, we propose that a review be undertaken of the transitional instruments that must be dealt with as part of AWRs, as well as a review of the existing arrangements for employees with disability, which we would propose be the subject of a preliminary hearing as part of the *Annual Wage Review 2016–17* (2016–17 Review).

[108] It is also convenient to deal here with the submission by United Voice that the Panel take the procedural step of deciding to conduct a preliminary hearing into whether the Panel should adopt a medium-term target for the NMW. United Voice submits that:

“... a separate process should be conducted both to assist procedural convenience to the Panel and those making submissions and to ensure that the merits of the matter are considered aside from the specifics of an annual review. Our proposal involves a significant consideration of the role of the Panel in determining the AWR and is likely to attract views from a range of parties.”³⁷

[109] The preliminary hearing proposed by United Voice is intended to form part of the 2016–17 Review. During the course of the public consultation on 10 May 2016, United Voice acknowledged that its proposal was really a question for the Panel constituted to deal with the 2016–17 Review, rather than the Panel as presently constituted. We agree.

2. The Statutory Framework

General

[110] As we have mentioned, the Panel is required to conduct and complete a Review in each financial year. In conducting a Review the Panel must review the NMW and modern award minimum wages and make a NMW order.³⁸ The Panel's task is set out in s.285(2) of the Act:

“In an annual wage review, the FWC:

- (a) must review:
 - (i) modern award minimum wages; and
 - (ii) the national minimum wage order; and
- (b) may make one or more determinations varying modern awards to set, vary or revoke modern award minimum wages; and
- (c) must make a national minimum wage order.”

[111] The Act requires the Panel to take into account a number of considerations in performing these functions.

[112] The minimum wages objective applies to the exercise of functions and powers under Part 2—6 of the Act, which includes the Review.³⁹ The minimum wages objective is set out in s.284 of the Act:

“284 The minimum wages objective

What is the minimum wages objective?

- (1) The FWC must establish and maintain a safety net of fair minimum wages, taking into account:
 - (a) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth; and
 - (b) promoting social inclusion through increased workforce participation; and
 - (c) relative living standards and the needs of the low paid; and
 - (d) the principle of equal remuneration for work of equal or comparable value; and
 - (e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.

This is the *minimum wages objective*.”

[113] The modern awards objective applies to the performance or exercise of “modern award powers”, which are defined to include the variation of modern award minimum wages. The modern awards objective is set out in s.134 of the Act:

“134 The modern awards objective

What is the modern awards objective?

- (1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:
 - (a) relative living standards and the needs of the low paid; and
 - (b) the need to encourage collective bargaining; and
 - (c) the need to promote social inclusion through increased workforce participation; and
 - (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
 - (da) the need to provide additional remuneration for:
 - (i) employees working overtime; or
 - (ii) employees working unsocial, irregular or unpredictable hours; or
 - (iii) employees working on weekends or public holidays; or
 - (iv) employees working shifts; and
 - (e) the principle of equal remuneration for work of equal or comparable value; and
 - (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
 - (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
 - (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

This is the *modern awards objective*.”

[114] The modern awards objective is that modern awards, together with the National Employment Standards (NES), provide a “fair and relevant minimum safety net of terms and conditions”, taking into account the particular considerations identified in s.134(1)(a)–(h). The modern awards objective is very broadly expressed and no particular primacy is attached to any of the considerations identified in s.134(1)(a)–(h).⁴⁰

[115] The above observation can also be applied to the minimum wages objective in s.284 and the considerations in s.284(1)(a)–(e).

[116] There is a substantial degree of overlap in the considerations the Panel is required to take into account under the minimum wages objective and under the modern awards objective, though some of these considerations are not expressed in the same terms.⁴¹

[117] In particular, there are differences in the expression of the economic considerations that the Panel is required to take into account under the modern awards objective and the minimum wages objective.⁴² However, the underlying intention of the various economic considerations referred to in ss.134 and 284 is that the Panel takes into account the effect of its decisions on national economic prosperity and in so doing gives particular emphasis to the economic indicators specifically mentioned in the relevant statutory provisions.⁴³

[118] Section 578(a) is also relevant. It provides that the Panel must take into account the object of the Act in performing its functions or exercising its powers in an AWR.⁴⁴ The object of the Act is set out in s.3, as follows:

“3 Object of this Act

The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:

- (a) providing workplace relations laws that are fair to working Australians, are flexible for businesses, promote productivity and economic growth for Australia’s future economic prosperity and take into account Australia’s international labour obligations; and
- (b) 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; and
- (c) ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system; and
- (d) assisting employees to balance their work and family responsibilities by providing for flexible working arrangements; and
- (e) enabling fairness and representation at work and the prevention of discrimination by recognising the right to freedom of association and the right to be represented, protecting against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms; and

- (f) achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action; and
- (g) acknowledging the special circumstances of small and medium-sized businesses. [emphasis added]

[119] As noted above, one of the considerations the Panel is required to take into account in giving effect to the minimum wages objective is “promoting social inclusion *through* increased workforce participation” [emphasis added] (s.284(1)(b)). In the present proceedings the Victorian Government submitted that the Panel should adopt “a broader understanding of the relationship between workforce participation and social inclusion”.⁴⁵ In support of this proposition the Victorian Government submitted that:

“... while employment is a key determinant, merely having a job is not always enough to facilitate social inclusion. A job with inadequate pay can create social exclusion if the level of income limits a person’s capacity to engage in the cultural, economic, political and social aspects of life.”⁴⁶

[120] The Panel considered this issue in the 2012–13 Review decision and concluded that the consideration of social inclusion in the context of s.284(1)(b) is limited to increased workforce participation, that is, obtaining employment.⁴⁷ The Panel noted that:

“This involves a consideration of the increased incentives that higher minimum wages can provide to those not in employment to seek paid work, balanced against potential impacts on the demand for low-paid workers and hence the supply of low-paid jobs, from large increases in minimum wages”.⁴⁸

[121] The Panel based its conclusion on the use of the conjunctive “through” in s.284(1)(b). We think the Panel in the 2012–13 Review was correct in its construction of s.284(1)(b). But, importantly, the 2012–13 Review decision also observed that in a review the Panel’s consideration of social inclusion is not limited to s.284(1)(b):

“However, we also accept that modern award rates of pay impact upon an employee’s capacity to engage in community life and the extent of their social participation. These are matters that can be appropriately taken into account in our consideration of the legislative requirement to ‘maintain a safety net of fair minimum wages’ and to take into account ‘the needs of the low paid’ (s.284(1)(c)). Further, the broader notion of promoting social inclusion is also relevant to the fixation of minimum wages, quite apart from the more limited construct reflected in s.284(1)(b). One of the objects of the Act is to promote ‘social inclusion for all Australians by’ (among other things) ‘ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through...modern awards and national minimum wage orders’ (s.3(b)).”⁴⁹

[122] We endorse the above observation and on that basis we accept the thrust of the Victorian Government’s submission in the quote set out at [119] above, and this forms part of our broader consideration.

National minimum wage order

[123] The NMW order applies to award/agreement free employees.⁵⁰ The NMW order is dealt with in Division 4 of Part 2–6 of the Act (ss.293–299). It sets the NMW⁵¹ and special national minimum wages which apply to employees who are juniors; to whom training arrangements apply; or who have a disability.⁵²

[124] An award/agreement free employee cannot be paid less than the rate of pay specified in the NMW order. Further, if an enterprise agreement applies to an employee and the employee is not covered by a modern award then the employee’s base rate of pay under the enterprise agreement must not be less than the rate specified in the NMW order (s.206(3)).

[125] The minimum wages objective and the object of the Act apply to the review and making of a NMW order.⁵³ But the modern awards objective is *not* relevant to the review and making of a NMW order.⁵⁴

[126] Unlike the modern awards objective, the minimum wages objective makes no express reference to “the need to encourage collective bargaining” (s.134(1)(b)). However, as the Panel observed in the 2014–15 Review decision,⁵⁵ the fact that the minimum wages objective does not require the Panel to take this consideration into account does not make much difference, in practice, to the Panel’s task. This is so because the Panel is required to take into account the object of the Act and one of the stated means by which the object of the Act is given effect is “through an emphasis on enterprise level collective bargaining” (s.3(f)). While not expressed in the same terms as in the modern awards objective, it is plain from s.3(f) and a reading of the Act as a whole that one of the purposes of the Act is to encourage collective bargaining. It is appropriate that we take that legislative purpose into account in setting the NMW rate.

[127] The making of a NMW order and the review and variation of modern award minimum wages are separate but related functions. They are related because s.285(2) provides that in exercising its powers to set, vary or revoke modern award minimum wages, the Panel “must take into account the rate of the national minimum wage that it *proposes* to set in the Review.”

[128] It follows that as part of the decision making process in an AWR the Panel must first form a view about the rate of the NMW it proposes to set in that AWR (taking into account the statutory considerations relevant to that discrete task) and then take the proposed NMW rate into account (along with the other relevant statutory considerations) in exercising its powers to set, vary or revoke modern award minimum wage rates.

[129] This does not suggest some sort of bifurcated process whereby the Panel first *makes* a NMW order (which includes setting the NMW), before turning its mind to exercising its review powers to set, vary or revoke modern award minimum wage rates.

[130] As part of the AWR, the Panel considers both the setting of the NMW rate and whether to make any variation determinations in respect of modern award minimum wages. Each of these tasks is undertaken by reference to the particular statutory criteria applicable to each function.

Modern award minimum wages

[131] Modern award minimum wages are the rates of minimum wages in modern awards, including:

- (a) wage rates for junior employees, employees to whom training arrangements apply and employees with a disability;
- (b) casual loadings; and
- (c) piece rates (s.284(3)).

[132] The review and variation of modern award minimum wages is a separate function to that of reviewing and making a NMW order, though, as we have mentioned, the two functions are related. There is no legislative requirement to set the NMW rate at the same level as the lowest modern award minimum wage rate. The setting of the NMW rate is a discretionary decision which takes into account the statutory considerations relevant to that discrete task.

[133] The modern awards objective and the minimum wages objective both apply to the exercise of functions and powers in setting, varying or revoking modern award minimum wages as part of an AWR.

[134] The Act does not compel the variation of modern award minimum wages in *all* modern awards. The Panel has a discretion to vary some or all modern award minimum wages in the context of a Review. However, in exercising that discretion considerations of fairness and stability tell against an award-by-award approach to minimum wage fixation. As the Panel observed in the 2012–13 Review decision:

“If differential treatment was afforded to particular industries this would distort award relativities and lead to disparate wage outcomes for award-reliant employees with similar or comparable levels of skill ... It is also relevant that in establishing and maintaining the minimum wages safety net, the Panel must take into account the principle of equal remuneration for work of equal or comparable value. Such a principle supports the determination of consistent minimum rates for work of equal or comparable value. The maintenance of consistent minimum wages in modern awards and the need to ensure a stable and sustainable modern award system would be undermined if the Panel too readily acceded to requests for differential treatment.

... Enterprise level collective bargaining is the primary means by which the statutory framework envisages differential treatment based on the circumstances in particular enterprises, which would be influenced by relevant sectoral considerations.”⁵⁶

[135] In the present proceedings, the ARA submitted that the Panel “should consider any increase on an award-by-award basis and provide an interim decision or statement prior to handing down a final decision.”⁵⁷

[136] The Panel has previously considered submissions to the effect that it should conduct a modern award-by-modern award review of minimum wages and that this should result in a different, lower, increase or no increase at all in specific industries or modern awards. These matters were fully canvassed in the 2011–12, 2012–13, 2013–14 and 2014–15 Review proceedings.

[137] The ARA did not advance a merit argument in favour of an alternative construction of the relevant provisions of the Act. The Panel is not persuaded to depart from the conclusions reached in past review decisions in respect of this issue.

[138] The Panel has also previously dealt with the proposition that it should hand down an interim decision or statement prior to handing down a final decision. We infer from the ARA's submission in the present proceedings that such an interim decision process is intended to allow individual employers or their representatives to then seek differential treatment on an award, sectoral or some other basis.

[139] The Panel has repeatedly noted the practical difficulties associated with such an approach having regard to the requirements in the Act regarding the time for completion of each AWR, commencement of the minimum wage determinations and the national minimum wage order and publication of any variation to modern award minimum wages.⁵⁸ The ARA has made no attempt to address any of these difficulties in its submission.

[140] The Panel is not persuaded to depart from the conclusion reached in the 2013–14 Review decision that an interim decision mechanism is neither necessary nor practical.⁵⁹

[141] We now turn to consider the submissions relating to the circumstances pertaining in particular states.

[142] The Western Australian Government submitted that, while the Commission is required to consider the economic circumstances of the nation as a whole, it is appropriate that due consideration is given to the particular conditions in Western Australia, which is currently experiencing weaker conditions in its domestic economy, resulting in a softer labour market and an increased rate of unemployment.⁶⁰ Business SA pointed to the economic challenges currently facing South Australia and submitted that because Australia's economy is undergoing transition, any minimum wage decision will impact some industries and regions more than others.⁶¹

[143] The Panel takes into account the circumstances of different regions, industries and sectors as part of its broader consideration of the national economy. In addition, the Panel has scope to consider whether exceptional circumstances should result in delaying or deferring the operation of a variation to a modern award or adjustment of the NMW and has outlined the process for such considerations in previous Reviews.⁶²

[144] CCIQ again submitted that the Panel should defer the impact of any minimum wage increase for Queensland industry sectors and regions affected by the impacts of natural disasters, such as droughts and cyclones, over the past year. In the 2014–15 Review decision, the Panel rejected a CCIQ submission in the same terms and set out, in detail, the criteria for establishing exceptional circumstances such as to warrant an exemption or deferral from a NMW order and/or modern award wages increase.⁶³

[145] The CCIQ submission in the present proceedings does not address any of the matters that the Panel has previously identified as being necessary to establish exceptional circumstances. The CCIQ submission is still unclear with respect to whether a deferral or an exemption is sought and how the employers and businesses exempted would be identified.

[146] We are conscious of the hardship inflicted on many businesses, particularly small businesses, by natural disasters. We are also conscious that while deferral of any rise in minimum wages may contribute to easing pressures on businesses, such a deferral will also adversely affect employees who may also be facing financial distress because of the impact of natural disasters on them and their families.

Relevant considerations

[147] Sections 134, 284 and 578 of the Act each direct the Panel to “take into account” certain specified considerations in conducting and completing an AWR. A matter which the Panel is directed to “take into account” is a relevant consideration in the *Peko-Wallsend* sense;⁶⁴ which is those matters which the decision maker is bound to take into account and treat as matters of significance in the decision making process.⁶⁵

[148] We note that there are some significant differences between the matters we are required to take into account and the statutory parameters which guided wage reviews conducted by the Australian Fair Pay Commission (AFPC) under the *Workplace Relations Act 1996* (Cth) (the WR Act), between 2006 and 2009. Section 23 of the WR Act provided that the objective of the AFPC in performing its wage setting function was “to promote the economic prosperity of the people of Australia”, taking into account specific criteria. As was noted in the *Annual Wage Review 2009–10* (2009–10 Review) decision there are some important considerations which we are required to take into account but which the AFPC was *not* specifically required to take into account—including relative living standards and the needs of the low paid.⁶⁶

[149] The general matters the Panel must take into account in performing its functions contain some common elements. The matters of direct relevance to an AWR can be conveniently grouped into three broad categories:

- economic;⁶⁷
- social;⁶⁸ and
- collective bargaining.⁶⁹

[150] We have considered these matters in making our decision and specifically address them in Chapters 4–9 of this decision. Chapter 3 discusses the positions of the parties to this Review.

[151] As the Panel has observed in previous Review decisions, there is often a degree of tension between the economic, social and other considerations which the Panel must take into account. No particular primacy is attached to any of these considerations.⁷⁰ For example, a substantial wage increase may better address the needs of the low paid and improve the relative living standards of award-reliant employees, but it may (depending upon the prevailing economic circumstances) also reduce the capacity to employ the marginalised and hence not “promote social inclusion through increased workforce participation”. It is this complexity that has led the Panel to reject a mechanistic or decision rule approach to wage fixation, such as the adoption of real wage maintenance.⁷¹ The real wages of award-reliant employees are relevant to our task, but not determinative. The range of considerations we are required to take into account calls for the exercise of broad judgment rather than a mechanistic approach to fixing minimum wages.

[152] The Panel’s approach is supported by the observation of the Full Court of the Federal Court in *National Retail Association v Fair Work Commission*:

“It is apparent from the terms of s 134(1) that the factors listed in (a)–(h) are broad considerations which the FWC must take into account in considering whether a modern award meets the objective set by s 134(1), that is to say, whether it provides a fair and relevant minimum safety net of terms and conditions. The listed factors do not, in themselves, however, pose any questions or set any standard against which a modern award could be evaluated. Many of them are broad social objectives. What, for example, was the finding called for in relation to the first factor (‘relative living standards and the needs of the low paid’)?”⁷²

3. The Parties’ Proposals

[153] The Panel received submissions from the Australian Government, several state governments, bodies representing the interests of employees, employers and other groups, and individuals.⁷³ The proposals advanced varied significantly, in terms of both the quantum and the form of any proposed increase to the NMW and modern award minimum wages.

[154] A number of submissions proposed tiered, flat dollar or percentage increases. Three employer groups submitted that it was not appropriate to award an increase this year.⁷⁴ The CCIQ proposed the deferral of any increase arising from this decision for farmers and agribusiness affected by drought and regions in Queensland impacted by cyclones.⁷⁵ A number of submissions identified issues for consideration without proposing a particular outcome.

[155] A summary of proposed minimum wages adjustments is set out at Appendix 2. This Chapter summarises the parties’ proposals in respect of adjustments to the NMW and modern award minimum wages. The claim by CCIQ for a deferral for employers and regions is addressed in Chapter 2.

Proposals for a tiered increase

[156] The ACTU and ACCER supported a tiered approach to any increase to the NMW and modern award minimum wages. The ACTU proposed a flat dollar increase of \$30.00 per week to the NMW and modern award minimum wages up to, and including, the C10 (base trade or equivalent) rate and an increase of 3.9 per cent to all modern award minimum wages above the C10 rate.⁷⁶

[157] A flat dollar increase of \$30.00 per week to the NMW/C14 (introductory) level is equivalent to an increase of about 4.6 per cent and about 3.9 per cent at the C10 rate.

[158] The ACTU submitted that:

“... a hybrid increase best balances the various considerations that the Panel must take into account. It would ensure that the largest wage rises, in percentage terms, go to the lowest paid workers. At the same time, it would prevent any further erosion of the skill-based wage relativities above the C10 tradespersons’ rate”.⁷⁷

[159] ACCER proposed tiered, flat dollar increases, with the NMW increasing by \$25.10 per week and modern award minimum wages by \$19.00 per week.⁷⁸ As initially put, ACCER's proposal, if implemented, would have resulted in the NMW exceeding modern award minimum wages at the C14 level. During the course of the final consultations on 10 May 2016, ACCER clarified its position and submitted that the NMW and modern award minimum wages at the C14 level should *both* be increased by \$25.10.⁷⁹

[160] A flat dollar increase of \$25.10 per week to the NMW is equivalent to an increase of about 3.8 per cent. A flat dollar increase of \$19.00 per week to modern award minimum wages is equivalent to an increase of about 2.5 per cent at the C10 rate and about 1.8 per cent at the C2(b) (senior technical) rate.

[161] ACCER submitted that:

“... the NMW and award rates up to, at least, the C10 award wage rate are insufficient to provide, in the ordinary and expected circumstances, a minimum acceptable standard of living and one that is above poverty levels and do not fulfil their intended function of being a safety net that protects workers who need protection and support”.⁸⁰

[162] In the alternative, ACCER submitted that if the Panel did not accept its proposal then priority should be given to adjusting the NMW.

Proposals for a flat dollar increase

[163] CCIQ, the CCIWA and the NRA proposed flat dollar increases of varying amounts. CCIQ and CCIWA supported an increase of not more than \$7.90 per week to the NMW and modern award minimum wages.⁸¹

[164] CCIWA contended that a flat dollar increase is appropriate as it “better reflects the focus of the annual wage review in establishing a suitable national minimum wage for low paid workers”.⁸² In relation to the proposition that flat dollar increases compress wage relativities, CCIWA submitted that:

“... no evidence has previously been provided to substantiate that this has created any practical difficulties. Furthermore, the previous history of flat dollar increases means a percentage based increase in this or future years won't restore the relativities within the award ... issues of relativities are best addressed through enterprise bargaining.”⁸³

[165] NRA supported an increase to the NMW and modern award minimum wages of not more than \$10.70 per week,⁸⁴ and submitted that “the proposed, modest increase, is fair and reasonable to workers, while also being sustainable for employers, and unlikely to impact the employment prospects of job seekers”.⁸⁵ In the alternative, NRA submitted that if a percentage increase is applied the average impact of that increase across award levels should be no more than \$10.70 per week.⁸⁶

[166] A flat dollar increase of \$7.90 per week is equivalent to a 1.2 per cent increase at the NMW/C14 rate and around 0.8 per cent at the C2(b) rate. If the increase was \$10.70 per week, it would be the equivalent of about 1.6 per cent at the NMW/C14 rate and 1.0 per cent at the C2(b) rate.

Proposals for a percentage increase

[167] A number of business and industry associations proposed percentage increases of differing amounts.

[168] MGA and the NFF proposed an increase of no more than 1.1 per cent to the NMW and modern award minimum wages.⁸⁷ An increase of 1.1 per cent amounts to a \$7.20 increase to the NMW/C14 rate and \$8.40 to the C10 rate.

[169] ACCI submitted that the Panel should adopt a “cautious approach” and award an increase of no greater than 1.2 per cent.⁸⁸ AFEI, ARA, Business SA and MTAs supported ACCI’s submission.⁸⁹ An increase of 1.2 per cent amounts to a \$7.90 increase to the NMW/C14 rate and \$9.20 to the C10 rate.

[170] Ai Group proposed an increase of 1.6 per cent to the NMW and all modern award rates and submitted that:⁹⁰

“It is important that the Expert Panel not put the interests of those in secure jobs ahead of the needs of those searching for jobs, or for more work, and the needs of those whose jobs will be threatened (including many low paid workers) if an excessive minimum wage increase is awarded.”⁹¹

[171] An increase of 1.6 per cent amounts to a \$10.50 increase to the NMW/C14 rate and \$12.20 to the C10 rate.

[172] ABI submitted that any increase should not exceed 2 per cent,⁹² and that such an increase “would be capable of delivering an increase in the standard of living of award reliant employees (based on current inflationary trends) while ensuring that minimum wage increases do not cause significant economic harm”.⁹³ An increase of 2 per cent amounts to a \$13.10 increase to the NMW/C14 rate and \$15.30 to the C10 rate.

Proposals specifying no quantum

[173] Many submissions did not propose a particular level of increase in the NMW or modern award minimum wages, including all government submissions. The Australian Government, New South Wales Government, Western Australian Government and Housing Industry Association (HIA) submitted the Panel should have regard to the effect of any decision on employment outcomes.

[174] The Australian Government submitted that “the Panel should take a cautious approach, taking into account the risks to the economic outlook and the need to boost employment and job creation, as well as maintaining wages for those on the minimum wage and those on award classification wages.”⁹⁴ In support of its contention that the Panel should take a cautious approach, the Australian Government cited the potential long-term impacts of successive decisions on employment,⁹⁵ and the need to help the long-term unemployed to enter the workforce,⁹⁶ as well as an uncertain economic and labour market environment.⁹⁷

[175] The New South Wales Government also submitted that the Panel should take a “cautious approach to setting the minimum wage”,⁹⁸ arguing that “[a]ny approach to setting

minimum wages must be balanced and sensitive to economic and labour market conditions so as to ensure minimum wage increases do not have a negative effect on employment.”⁹⁹

[176] The Western Australian Government submitted that the Panel should “determine an outcome this year which reflects the transitions presently occurring in the local economy and which supports employers to create and maintain jobs”,¹⁰⁰ and urged the Panel “to have appropriate regard for the potential impact of wage increases upon job creation”.¹⁰¹

[177] HIA submitted that the Panel should take into account forecasts for slowing construction activity and “encourage further investment and employment” by not constraining businesses from “operating in a way that enables them to meet changing market demands.”¹⁰²

[178] The Queensland Government, South Australian Government, Victorian Government and the Australian Council of Social Service (ACOSS) each supported an increase in the NMW and modern award minimum wages but did not specify a particular amount.

[179] The Queensland Government recommended “a reasonable increase that rewards productivity gains and maintains the value of real wages as well as the living standards for workers on the ... [NMW] and award wage reliant workers.”¹⁰³

[180] The South Australian Government submitted that the Panel should consider “increasing national minimum wages taking into account the current economic context ... [and] the broader context of ensuring that the real value of minimum wages is maintained.”¹⁰⁴

[181] The Victorian Government also supported an increase and stated that the Panel should “provide an economically responsible increase to low wage earners, by increasing the ... [NMW] and modern award wages for the 2015–16 year.”¹⁰⁵ The Victorian Government submitted the “increase must provide a balance between the needs of award-reliant and vulnerable working Victorians and the need to foster employment and business conditions that will support broad economic growth and distribute those benefits across the community”.¹⁰⁶

[182] ACOSS proposed that the Panel should “increase real minimum wages in order to significantly reduce the gap between them and median pay levels”.¹⁰⁷ In support of its proposal ACOSS submitted:

“... the Federal Minimum Wage (FMW) should be designed to at least provide a decent living standard, well above poverty levels, for a single adult and that the tax-transfer system should meet the basic costs of raising children in a low income family.”¹⁰⁸

Proposals specifying no increase

[183] The Australian Hotels Association and Tourism Accommodation Australia (AHA & TAA), Restaurant and Catering Australia (R&CA) and the South Australian Wine Industry Association Incorporated submitted that it was not appropriate to award any increase to the NMW or modern award minimum wages.

[184] AHA & TAA claimed that the hotel sector had experienced low growth, poor trading conditions and increased utility and compliance costs over the past year.¹⁰⁹ AHA & TAA also submitted that for a variety of factors the profitability of hotels had deteriorated.¹¹⁰ However,

if an increase were to be awarded, the AHA & TAA submitted that it should be no more than 1.2 per cent.¹¹¹

[185] R&CA urged the Panel to consider Australia's capacity to compete internationally for tourism, the impact of penalty rates on the level of increase for the restaurant industry, the wage level of working operators and the impact on future employment growth.¹¹²

[186] The South Australian Wine Industry Association Incorporated submitted there should be no increase; however, if the Panel decided to award an increase it should be no greater than the CPI and should be a flat dollar amount rather than a percentage increase.¹¹³

4. The Economy

[187] The minimum wages objective and the modern awards objective require the Panel to take into account the effect of its decisions on national economic prosperity and in doing so to give particular emphasis to the economic indicators specifically mentioned in the relevant statutory provisions.

[188] In this section, we assess recent and projected economic conditions, significant issues arising from that assessment, and the impact of AWR decisions on those economic considerations identified in the Act. In doing so, we have had regard to the submissions made, the economic information provided by the parties, data published in the Commission's Statistical Report, data from the Commonwealth Treasury (Treasury) and the Reserve Bank of Australia (RBA) and the Research reference list and additional material, which is potentially relevant to the Review, posted on the Commission's website.¹¹⁴

[189] In assessing economic indicators we consider data measuring actual outcomes, together with forecasts by Australia's official economic agencies—the Treasury and the RBA. We have regard to both the longer-term measures of Australia's actual economic data, over a five- and/or 10-year time period, together with the most recent information available. The longer-term data better reflect trends in economic indicators, is less volatile and is less prone to revision. The short-term data provides more contemporary information.

[190] Future projections cast some light on the economic circumstances that are expected to apply during the period when any adjustment will operate. For reasons outlined in the 2012–13 Review decision,¹¹⁵ there is generally a primary focus on actual data because, by their nature, they are more reliable than forecasts.

[191] Differences between the forecast economic indicators and the actual performance of the economy forms part of our broad assessment and our consideration of the actual indicators in subsequent reviews.

[192] The official forecasts are estimates, incorporating assumptions and judgments based on the best information available when they were made and are susceptible to risks, both favourable and unfavourable, which the Treasury and the RBA set out when publishing their forecasts. The published forecasts represent a best estimate with a range of likely outcomes at different confidence levels and reflect forecasting assumptions. In the 2016–17 Budget, Treasury provided an assessment of forecasting performance and estimates of uncertainty around its forecasts.¹¹⁶ The RBA published similar information.¹¹⁷ We have regard to the

risks around the forecasts and the extent to which past forecasts have reflected actual outcomes.

[193] A number of studies have sought to evaluate the accuracy of forecasts that are provided by the Treasury, the RBA and by other significant groups such as employer bodies.¹¹⁸ These studies are helpful in providing guidance on which of the sources and types of forecasts have the best reliability, how great that reliability is and how best to deal with the inaccuracies. Here we provide a brief summary.

[194] Treasury and RBA forecasts vary in their reliability, depending on the subject matter and the time horizon of the forecast. The studies which evaluated the forecasts found that forecasts of inflation were more accurate than forecasts of economic activity, such as GDP. Longer-term forecasts of output and employment tended to be revised downwards over time and near-term forecasts were more accurate. Tulip and Wallace (2012) report that the RBA responds to the uncertainty around its forecasts by placing less emphasis on forecasts and more on current developments.¹¹⁹ This is also the approach taken by the Panel.

[195] Surveys of business confidence, intentions and consumer sentiment are conducted by various groups.¹²⁰ The best of them are used to provide a more contemporary picture than is available from official data sources. Surveys of intentions are also used to look forward. For understandable reasons, these surveys often do not meet rigorous statistical standards, in which case their value must be judged by how well they perform in predicting what is coming. Surveys have been found to be helpful in predicting major turning points in the business cycle, profits, employment (through hiring intentions) and producer prices.¹²¹

[196] Outside the major private surveys that are monitored by the RBA, there are a number of surveys that are conducted by employer associations of their members. We have been provided with the results of such surveys, on matters such as the economic conditions being faced by particular industries and the impact of minimum wage increases on employment. This material is only useful where there is evidence of good survey practice and a respectable match between past predictions and actual outcomes. It is only in these circumstances that such surveys provide a reliable representation of the issues at hand.¹²² An illustration of why we need to be cautious is provided in the submission of the ARA which reported survey responses of its members seeking the identification of their plans for permanent, part-time and casual employment. The responses in various surveys since 2010 suggest that the ARA's membership planned to substantially reduce employment, whereas in fact employment in the Retail trade industry rose in almost every year.¹²³

[197] The Australian Government submitted that “[t]he Productivity Commission’s report on the Workplace Relations Framework encouraged the Panel to take more account of the risk of variations in economic performance across the country in the Annual Wage Review.”¹²⁴ This is a reference to the recommendation in the PC Report that:

“In undertaking the annual wage review, the wage regulator should broaden its analytical framework to consider systematically the risks of variations in economic circumstances on employment and on the living standards of low-paid employees.”¹²⁵

[198] As part of the consultation process in the current Review, we drew the attention of the interested parties to the PC recommendation and the reasoning of the PC and invited comment about the recommendation and, in particular, any practical proposals as to how the further

systematic consideration of the risks of variations in economic circumstances on employment and on the living standards of low-paid employees might be undertaken for the purpose of the AWR. Only the Australian Government,¹²⁶ the ACTU,¹²⁷ ACCI¹²⁸ and The Essential Points¹²⁹ addressed the question. None of them supported the recommendation or provided any practical proposal for the further systematic consideration of forecasting risks.

[199] The PC Report did not provide any specific suggestions as to how the Panel might broaden its analytical framework to systematically consider risks of variations in economic circumstances, other than to suggest the possible use or publication of fan charts depicting historical forecasting error of the type currently provided by Treasury and the RBA in relation to some key macro-economic variables with their economic forecasts.¹³⁰ Fan charts show the confidence interval around forecasts, on the basis of past forecasting error, depicting both the range and quantum of possible error based on historical forecasting outcomes in relation to the relevant economic indicator. Reflecting the nature of forecasts, fan charts depict an increasing error range for forecasts each successive year out from the time the forecasts are made.

[200] Absent any specific proposal in relation to dealing with risks of variations in economic circumstances, other than the consideration of fan charts, it is not apparent what analytical framework was intended by the PC or how the decision making process of the Panel would be enhanced.

[201] It may be, as is intimated by the Australian Government, that the PC recommendation is directed at the Panel amending the minimum wage increases it would otherwise decide on account of risks of variations in economic circumstances. This suggests that the Panel should make an assessment of the most likely economic risks, if any, and adjust the amount it would otherwise award upward or downward to reflect the most likely forecasting error. Such an approach seems to us to add to uncertainty about the level and magnitude of likely forecasting error, to the uncertainty already inherent in the forecasts themselves, and would not enhance the decision-making process. An assessment of the economic circumstances in which an AWR decision is best made, in our view, by the broader assessment the Panel now undertakes, which includes consideration of forecasts and take into account the inherent uncertainty of such forecasts.

[202] If the PC intended that the Panel automatically reduce the AWR outcome, it would have otherwise determined to reflect forecasting risk and the cost of overshooting minimum wage increases. This approach is even more problematic. First, it assumes that forecasting error will materialise in a direction which will impact as adverse employment effects of a minimum wage increase. In fact, history shows us that forecasting error can be positive or negative, as is reflected in the Treasury and RBA analysis of their forecasts and reflected in the fan charts they publish. Second, it would incorporate a built in reduction in the level of increases in the NMW and minimum award wages each year, without regard to the consequences for the relative living standards of the low paid and their capacity to meet their needs. Conceptually, such a reduction in the AWR outcome which proved not to be warranted by actual outcomes could be addressed in subsequent AWRs but any subsequent redress would be constrained by the need for the Panel to determine subsequent increases by reference to the statutory matters relating to the economic circumstances as assessed at that later time.

[203] Further, we see no benefit to be gained for our decision making process by the fan charts suggested by the PC. That suggestion, and the recommendation as a whole, elevates the significance of forecasts in our assessment of the economic circumstances beyond the significance that we currently attach to them. As already noted, our consideration of economic forecasts is one element within a broader assessment of those economic circumstances, directed to making an informed judgment as to prevailing economic circumstances and the economic circumstances in which any adjustment to minimum wages would have effect. In that context, our consideration of forecasts is focussed on the immediate future year. The longer-term forecasts are of very limited relevance to the economic context in which our decision will operate. As fan charts show, forecasting error in respect to the immediate future year is relatively limited. More contemporary forecasts, subject to lower forecasting error, will be available to the Panel for consideration in relation to the later years in subsequent AWRs, which determine minimum wages to apply in those years. A focus on fan charts would result in an unnecessary concentration on the longer term forecasts upon which we place little weight in our decision making.

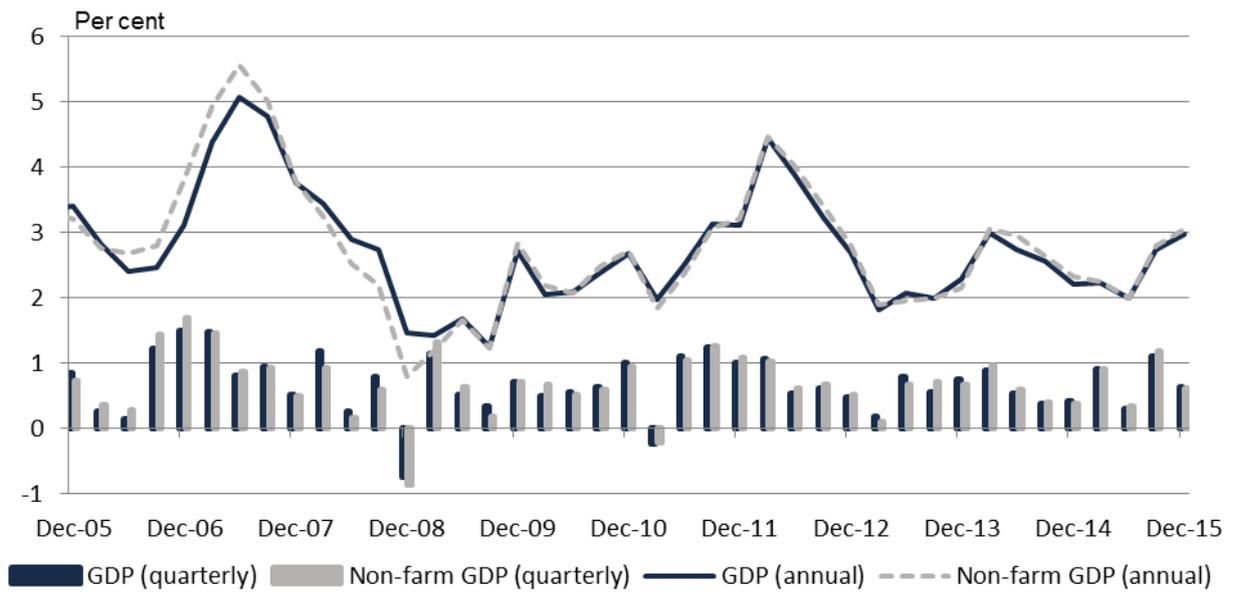
[204] Absent any practical basis for dealing with risks of variations in economic circumstances which would enhance our decision-making process, beyond the consideration of risks to the economic outlook identified by Treasury and the RBA when they publish their economic assessments and forecasts, we will continue to consider economic forecasts, and the associated risks around them, as we have in the past within the broad range of considerations which inform our assessment of economic conditions.

Recent economic performance

Economic growth

[205] Economic growth, measured by real GDP growth (seasonally adjusted), has remained slightly below trend growth of 3¼ per cent¹³¹ over the past two years, although improving over the second half of 2015 (Chart 4.1). Real GDP grew by 3.0 per cent over the year to the December quarter 2015, compared with 2.2 per cent over the year to the December quarter 2014.

Chart 4.1: Economic growth, annual and quarterly growth rates

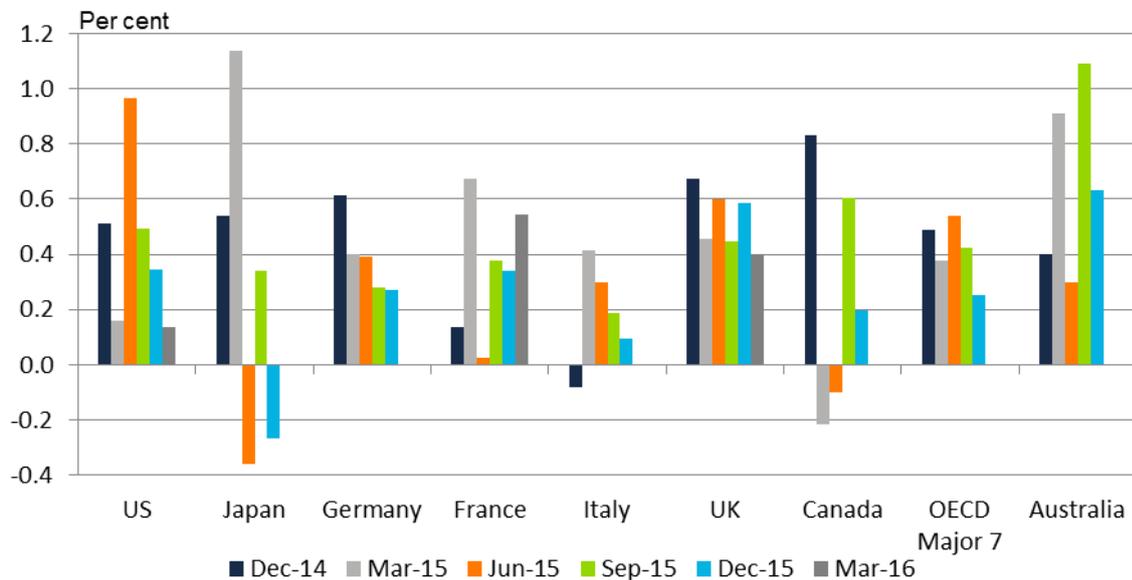


Note: Data are seasonally adjusted.

Source: ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2014*, Catalogue No. 5206.0.

[206] Australian GDP growth in the second half of 2015 outstripped growth in each of the seven major OECD economies, as shown in Chart 4.2.

Chart 4.2: International comparisons of quarterly GDP growth



Source: OECD (2016), *Quarterly GDP (indicator)*, viewed 6 May 2016, <<http://data.oecd.org/gdp/quarterly-gdp.htm>>.

[207] The percentage point contribution to aggregate growth by each component of GDP reflects the rate of growth and relative significance of the component. The main contributors to GDP growth over the year to the December quarter 2015 were consumption expenditure, two-thirds of which came from growth in household consumption, and net exports, arising

almost wholly from increased exports. Total gross fixed capital formation detracted from aggregate GDP growth, although investment in dwellings contributed positively to growth.¹³²

[208] Over the year to the December quarter 2015, final household consumption expenditure increased by 2.9 per cent, supported by improved employment and a reduction in the household savings ratio. The household savings ratio has fallen from its historical average of around 10 per cent¹³³ in the December quarter 2013 to 9.1 per cent in the December quarter 2014 to 7.6 per cent in the December quarter 2015. In trend terms, Australian retail turnover rose 3.6 per cent to March 2016 compared with March 2015.¹³⁴

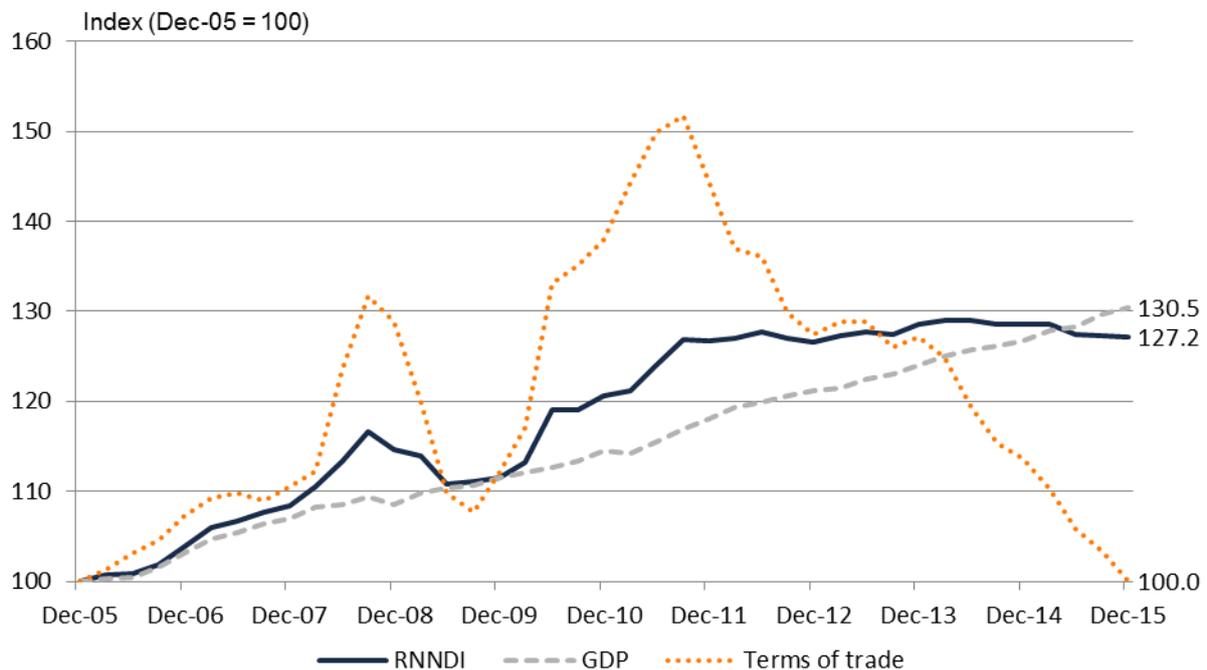
[209] General government final consumption increased by 3.6 per cent and private dwellings fixed capital formation increased by 9.8 per cent over the year to the December quarter 2015. Net exports almost doubled over the year. Private gross fixed capital formation fell by 5.5 per cent over the year, with private gross non-dwelling construction, falling by 14.2 per cent and total private business investment falling by 11.3 per cent. Public gross fixed capital formation remained at about the same level in the December quarter 2015, compared to the same quarter a year earlier.¹³⁵

[210] GDP measures the volume of goods and services produced. RNNDI measures the purchasing power of the income generated by domestic production. It adjusts national income to include the effect on purchasing power arising from changes in the terms of trade. It also deducts depreciation of the capital stock and net income flowing overseas.¹³⁶ RNNDI is a broader measure of change in national economic well-being and a better measure of the incomes available to Australians arising from their productive efforts than is GDP.

[211] ACCI drew attention to a widening gap between RNNDI and GDP¹³⁷ (see Chart 4.3). Over the year to the December quarter 2015, GDP grew by 3.0 per cent while RNNDI contracted by 1.1 per cent. ACCI “contends that income growth is far more relevant than output growth to the Panel’s determination”¹³⁸ and “[b]usinesses are bearing the brunt of weaker income growth”.¹³⁹

[212] Differences between growth in GDP and RNNDI are most pronounced when significant changes in the terms of trade occur. This is evident in Chart 4.3 which shows RNNDI, real GDP and the terms of trade.

Chart 4.3: Real net national disposable income, real GDP and the terms of trade, indexes—Dec-05 = 100



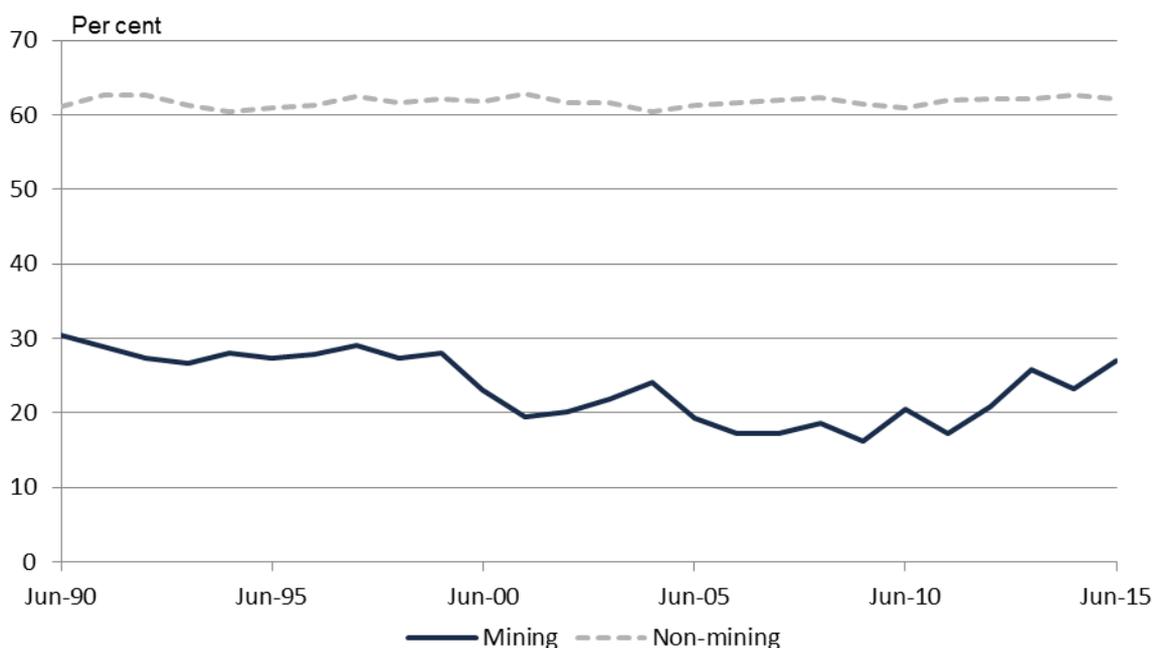
Note: Data are seasonally adjusted. RNNDI takes into account the impact of changes in prices of exports relative to imports, the real impact of income flows between Australia and the rest of the world, and the consumption of fixed capital. Income flows between Australia and the rest of the world are fairly smooth over time and changes tend to have little impact on short-term movements in RNNDI. The consumption of fixed capital tends to stall growth in RNNDI but, for the most part, the impact on short-term movement is small. See ABS, *Real net national disposable income—a new national accounts measure*, Feature Article, in ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2001*, Catalogue No. 5206.0.

Source: ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2015*, Catalogue No. 5206.0.

[213] Chart 4.3 shows more rapid growth in RNNDI than real GDP associated with the significant improvement in the terms of trade from early 2008 through to its peak in late 2011 (although interrupted during the period by the GFC from late 2008). From then until mid-2014 the declining terms of trade saw growth in RNNDI slow and then cease. As the terms of trade have fallen further, RNNDI has begun to fall.

[214] The changing relative positions of GDP and RNNDI reflect the minerals boom and our changing terms of trade. The RBA has noted, as shown in Chart 4.4 below, that the shift in incomes between labour and capital associated with the rapid increase in the terms of trade and its more recent decline, was most evident in the mining sector:

“... the wage share of total factor income has been relatively stable in the non-mining sector, despite below-average wage growth ... However, there has been an increase in the wage share of income in the mining industry because the decline in commodity prices over recent years has weighed more heavily on profits than wages, just as the earlier increase in commodity prices accrued more to profits than to wages.”¹⁴⁰

Chart 4.4: Wages share of total factor income, mining and non-mining industries

Note: Wages share is the compensation of employees expressed as a proportion of total factor income.

Source: RBA, *Statement on Monetary Policy, May 2016*, p. 57, Graph B7; ABS, *Australian System of National Accounts, 2014–15*, Catalogue No. 5204.0.

[215] Contrary to ACCI's submission that businesses are bearing the brunt of weaker income growth, data for the economy as a whole shows generally higher profit shares of GDP and offsetting lower wages shares from 2005 until late 2013. Since then, wages and profits shares have been closer to historical levels for Australia. The shift in incomes between labour and capital associated with the rapid increase in the terms of trade and its more recent decline was most evident in the mining sector.

[216] While most Australians will have benefited in some way from the terms of trade boom from early 2008 to late 2011, resources-sector businesses benefited most. The decline in the terms of trade since late 2011 has reduced the income available for distribution to labour and capital, reflected in a decline in RNNDI over the past two years. This decline in national income has also affected most Australians. It has had consequences for employee incomes. Employees have experienced relatively low increases in wages, on all measures, over the past two years. The 12-month increase, to the December quarter 2015, of 2.2 per cent and 1.6 per cent, respectively, for the WPI and AWOTE and AAWI of 3 per cent in the December quarter 2015 are the lowest for the past decade and below the unusually low growth seen since 2013. The relatively low growth in aggregate wages is a relevant consideration for the Panel because of its bearing on relative living standards and the needs of the low paid. The Panel had particular regard to the lower growth in aggregate wages in reaching its 2014–15 Review decision.¹⁴¹

[217] ACCI contended that the Panel should take account of an upward revision by the ABS of the gap between GDP and RNNDI growth compared to the data on this difference that was available to the Panel in the 2014–15 Review. This contention is premised on the erroneous assumption that the magnitude of the gap measured was in itself determinative of the Panel's 2014–15 Review decision.¹⁴² In the 2014–15 Review decision, the Panel was conscious of the relatively slow growth and more recent decline in RNNDI and its consequences for wages

growth. The Panel had regard to the consequent lower growth in aggregate wages, describing it as the most significant change in economic outcomes since the 2014–15 Review.¹⁴³ But the relevance of the gap to the Panel’s decision in this regard was not its specific size but its consequences for aggregate wages growth.

[218] In the past, the Panel decided not to alter the NMW and modern award rates on the basis of the stronger RNNDI movements as they were judged to be based on factors that were potentially short term and volatile.¹⁴⁴ For the same reasons, we do not propose to alter the NMW and modern award rates directly on the basis of the subsequent weak RNNDI movements. The force of the weak growth in RNNDI on our decision is felt through its consequences for growth in wages more generally.

[219] New capital expenditure, in volume terms (trend), has fallen by 25.8 per cent since the September quarter 2012, reflecting declining Mining investment, which fell by 43.3 per cent over that period.¹⁴⁵ Between the September quarter 2012 and the December quarter 2015, total non-mining investment fell by 0.6 per cent, with Manufacturing falling by 24.3 per cent and investment in Other selected industries¹⁴⁶ increasing by 3.9 per cent.

[220] Weaker private investment is also reflected in data over the year to the December quarter 2015, which show:

- total new capital expenditure fell by 17.7 per cent;
- investment in Mining, Manufacturing and Other selected industries fell by 28.0 per cent, 3.6 per cent and 7.2 per cent respectively;
- investment in buildings and structures fell by 19.6 per cent; and
- investment in equipment, plant and machinery rose by 13.8 per cent.¹⁴⁷

[221] Growth in GVA by industry provides information about the sectoral contribution to aggregate growth. Seasonally adjusted data¹⁴⁸ shows variation in growth between industry sectors over the past year:

- GVA growth over the year to the December quarter 2015 in excess of GDP growth (of 3.0 per cent) in:
 - Rental, hiring and real estate services (13.3 per cent);
 - Information media and telecommunications (9.7 per cent);
 - Financial and insurance services (5.2 per cent);
 - Public administration and safety (5.1 per cent);
 - Mining (5.6 per cent);
 - Other services (4.3 per cent);
 - Health care and social assistance (4.2 per cent);
 - Retail trade (3.6 per cent); and
 - Electricity, gas, water and waste (3.3 per cent).
- GVA grew more slowly than GDP growth, or fell in:
 - Arts and recreation services (2.9 per cent);
 - Education and training (2.6 per cent);
 - Wholesale trade (2.6 per cent);
 - Construction (1.9 per cent);
 - Accommodation and food services (0.7 per cent);
 - Transport, postal and warehousing (1.4 per cent);
 - Professional, scientific and technical services (–1.0 per cent);

- Agriculture, forestry and fishing (–1.0 per cent);
- Administrative and support services (–1.5 per cent); and
- Manufacturing (–3.9 per cent).

[222] An RBA research paper by Davis et al. (2016) finds it useful to divide the Australian economy into three sectors: mining (2 per cent of employment), non-mining tradeable (23 per cent) and non-tradeable (72 per cent). These three sectors are affected quite differently by the recent large changes in the terms of trade and the exchange rate.¹⁴⁹ The non-mining tradable sector has been assisted by the fall in the exchange rate and both it and the non-tradable sector have been assisted by the low interest rates. Davis et al (2016) finds:

“Many firms producing tradeable goods and services have also experienced a decline in mining-related demand, but overall they have benefited from the exchange rate depreciation most directly. Australia’s services exports have expanded noticeably in the past couple of years, with tourism, education and business services exports rising. Also, imports of services have declined as Australians appear to have switched some of their expenditure to domestically produced services, including domestic holidays rather than overseas holidays.”¹⁵⁰

Productivity and real unit labour costs

[223] The Panel’s 2012–13 Review decision set out why productivity and related measures require consideration in minimum wage fixation. The decision also included a detailed account of what the key concepts measure and how they are related.¹⁵¹ Given the short-term volatility in measures of productivity change and the susceptibility to influences which vary across the economic cycle, we routinely consider the full range of measures of productivity, understanding the different basis of each measure.

[224] Table 4.1 shows annual changes in labour productivity each year over the decade to the December quarter 2015 in seasonally adjusted terms. Productivity data can be volatile and the most recent data are frequently subject to revision. Productivity is defined as GDP per hour worked for “all sectors” and GVA per hour worked for the “market sector”. GDP per capita is also included in the table.

Table 4.1: Productivity measures, indexes and growth over the year

Quarter	GDP per capita	GDP per capita	GDP per hour worked	GDP per hour worked	GVA per hour worked - market sector	GVA per hour worked - market sector
	(\$)	(% change)	(Index)	(% change)	(Index)	(% change)
Dec-05	15 668		100.0		100.0	
Dec-06	15 908	1.5	100.3	0.3	101.4	1.4
Dec-07	16 200	1.8	101.5	1.1	102.3	0.9
Dec-08	16 084	-0.7	101.0	-0.4	103.1	0.7
Dec-09	16 226	0.9	104.6	3.5	106.5	3.3
Dec-10	16 431	1.3	104.2	-0.3	107.0	0.6
Dec-11	16 679	1.5	105.4	1.1	109.6	2.4
Dec-12	16 829	0.9	109.6	4.0	114.8	4.7
Dec-13	16 943	0.7	111.7	1.9	117.5	2.4
Dec-14	17 074	0.8	113.6	1.7	118.3	0.7
Dec-15	17 349	1.6	113.2	-0.4	119.4	0.9

Note: The percentage change is calculated in relation to the corresponding quarter in the previous year.

Source: ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2015*, Catalogue No. 5206.0.

[225] The short-term volatility is evident in the differences between the growth in GDP per hour worked for the year to the September quarter 2015 (0.9 per cent) and that measured for the year to the December quarter 2015 (-0.4 per cent). A close examination of the components indicates that the decline in productivity recorded over the 12 months to the September and December quarters arose from a significant growth in total hours worked from 1.8 per cent to 3.3 per cent, with GDP growing but more slowly. The significant hours growth over the year to the December quarter 2015 is also reflected in the ABS Labour Force Survey (1.9 per cent to the September quarter 2015 and 2.7 per cent to the December quarter 2015). Growth in the ABS Labour Force Survey measure of hours worked fell back to 1.6 per cent over the year to the March quarter 2016. This suggests the need to treat with caution the significantly higher hours growth reported over the year to the December quarter 2015 and the consequent reduction in productivity growth shown over the year to the December quarter 2015. The relevant data is set out in Table 4.2 below.

Table 4.2: Productivity Growth and its components, percentage change over the year to the quarter shown

Quarter	National Accounts						Labour Force
	Total			Market Sector			Hours worked
	GDP (% change)	Hours worked (% change)	GDP/ hour worked (% change)	GVA (% change)	Hours worked (% change)	GVA/ hour worked (% change)	(% change)
Mar-15	2.2	1.8	0.4	2.3	2.2	0.0	1.6
Jun-15	2.0	1.3	0.7	2.0	0.5	1.5	1.3
Sep-15	2.7	1.8	0.9	2.8	0.7	2.2	1.8
Dec-15	3.0	3.3	-0.4	2.8	1.9	0.9	3.0
Mar-16	n/a	n/a	n/a	n/a	n/a	n/a	1.6

Note: Data are seasonally adjusted. n/a = not available.

Sources: ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2015*, Catalogue No. 5206.0; ABS, *Labour Force, Australia, Apr 2016*, Catalogue No. 6202.0.

[226] Taking a longer term perspective, the Australian Government submitted that the latest annual data show that over the five years to 2014–15, labour productivity growth in the market sector was higher than the five years prior (2.1 per cent and 1.6 per cent, respectively).¹⁵² The Australian Government submitted that over the five years to 2014–15, Australian whole-of-economy labour productivity has grown at an average annual rate of 1.5 per cent.¹⁵³ This compares to an average annual rate of 1.5 per cent over the past 15 years and 1.6 per cent over the past 30 years.¹⁵⁴

[227] Productivity growth is best measured over the business cycle. For our purposes, however, that is too long to wait and we pay cautious attention to more recent changes. Labour productivity growth in the market sector remains positive, but has slowed to a little below 1 per cent per year over the past two years. For the year to December 2015, this slow growth appears to, in part, be caused by an unusually large growth in hours worked.¹⁵⁵

[228] Referring to OECD estimates of labour productivity (GDP per hour worked), in US dollars converted at purchasing power parity, the ACTU submitted that Australia's level of labour productivity was 16 per cent higher than the OECD average and 12th highest out of the OECD countries in 2014.¹⁵⁶ The ACTU submitted that on average, Australian labour productivity grew significantly faster than the OECD average of 0.9 per cent.¹⁵⁷

[229] Similarly, Research Report 1/2016,¹⁵⁸ which examined labour market outcomes for countries similar to Australia in terms of economic development and institutional arrangements—Australia, France, New Zealand, the UK, Canada and the US—found that over the period from 2003 to 2014, labour productivity grew fastest in the US, Australia and Canada, in that order, and slowest in New Zealand, the UK and France, in that order.¹⁵⁹

[230] Data for productivity at the industry level, on a GDP per hour worked basis provided by the ACTU, showed considerable variation in productivity growth between industries

around the all industries average of 1.0 per cent in 2014–15. The productivity growth estimates range from 22.3 per cent for Mining to –6.3 per cent for Arts and recreation services.¹⁶⁰

[231] For the industries with the highest density of award-reliant employees, GDP per hour worked increased well in excess of the all industries average of 1.0 per cent in the Other services industry (3.9 per cent), at around the all industries average in the Accommodation and food services and Health care and social assistance industries (0.9 per cent in each case), by 0.1 per cent in the Retail trade industry and fell by 2.7 per cent in the Administrative and support services industry.¹⁶¹ Whilst the usual caveats about annual productivity statistics and their volatility apply, the data show that there is nothing distinctive in the patterns of productivity growth between the award-reliant and non award-reliant industries in 2014–15.

[232] However, the Australian Government noted that over the decade to 2014–15, labour productivity growth in three of the four most award-reliant industries has been below the market sector average of 1.9 per cent (Other services 0.5 per cent, Accommodation and food services 0.4 per cent and Administrative and support services 0.1 per cent) whereas Retail trade (2.4 per cent) was above the market sector average.¹⁶²

[233] We are required by s.134(1)(f) of the Act to have regard to the likely impact of our decision on business, including on productivity.

[234] Evidence of the impact of minimum wage increases on productivity is limited, particularly in relation to increases arising from the AWRs in Australia. In the past, the Panel has noted that research undertaken for the UK's Low Pay Commission and the OECD suggested that a higher minimum wage was likely to promote productivity improvement.¹⁶³

[235] The Expert Panel Report on the Review of the Future of the National Minimum Wage in the UK noted that employers in the UK's low paying sectors raised productivity in response to the NMW, with a more marked effect in larger firms and evidence suggesting that this increased productivity was the result of capital-deepening in low wage sectors.¹⁶⁴ The UK Expert Panel Report relied on UK research,¹⁶⁵ some of which was considered in previous AWR decisions.¹⁶⁶ The more recent UK research, by Riley and Rosazza Bondibene (2013), suggested that firms responded to the rise in labour costs that occurred with the introduction of the NMW by raising labour productivity.¹⁶⁷

[236] The limited evidence before us continues to support a conclusion that increases in minimum wages are more likely to stimulate productivity measures by some employers directly affected by minimum wage increases, rather than inhibit productivity.

Business competitiveness and viability

[237] The wages share (shown in Chart 4.4) in the non-mining sector has been almost constant for the past 25 years. It has been much more volatile in the Mining sector. The wages share in Mining fell with the commencement of the mining boom in the late 1990s to reach a low point about two-thirds below its earlier level between 2006 and 2009. Since then it has almost returned to its pre-mining boom share of around 28 per cent. For the purposes of setting the NMW and award rates of pay, developments in the Mining sector have little direct relevance. There are almost no award-reliant employees in that sector.

[238] Company gross operating profits shows considerable volatility in quarterly profit growth over time, although less so in the non-mining industries.

[239] Table 4.3 shows annual growth in company gross operating profits over each of the last five years and the five and 10 years to the December quarter 2015. For all industries, including Mining, company gross operating profits (seasonally adjusted) fell by 2.3 per cent over the year to the December quarter 2015. Company gross operating profits grew by 2.8 per cent for non-mining industries over the year and fell by 14.9 per cent in the Mining industry.¹⁶⁸

Table 4.3: Company gross operating profits, total and non-mining industries, December quarter 2010 to December quarter 2015

Year	Total (%)	Non-mining (%)
Dec-11	2.3	1.2
Dec-12	-7.3	3.5
Dec-13	11.3	1.4
Dec-14	-6.2	1.4
Dec-15	-2.3	2.8
5 years to Dec-15*	-0.7	2.1
10 years to Dec-15*	4.0	4.3

Note: *Annualised growth rates. Data are seasonally adjusted.

Source: ABS, *Business Indicators, Australia, Dec 2015*, Catalogue No. 5676.0.

[240] The 2.8 per cent growth in company gross operating profits for the non-mining sector over the year to the December quarter 2015 was higher than each of the preceding two years to the December quarter and the average increase over the five years to the December quarter 2015. Over the five years to the December quarter 2015, growth in company gross operating profits was about half of that experienced over the 10 years to the December quarter 2015.

[241] Of the award-reliant industries, company gross operating profits (seasonally adjusted) increased over the year to the December quarter 2015 by 9.9 per cent in the Accommodation and food services industry, were unchanged in the Retail trade industry, but fell by 16.9 per cent in the Other services industry and by over 40 per cent in the Administrative and support services industry. No data are available for company operating profits in the Health care and social assistance industry.

[242] Business bankruptcy rates, defined as the number of business-related bankruptcies divided by the number of self-employed and employers in the economy (shown in Chart 3.3 of the Statistical Report) fell significantly in 2013–14 and 2014–15 to the lowest level recorded over the past decade.¹⁶⁹

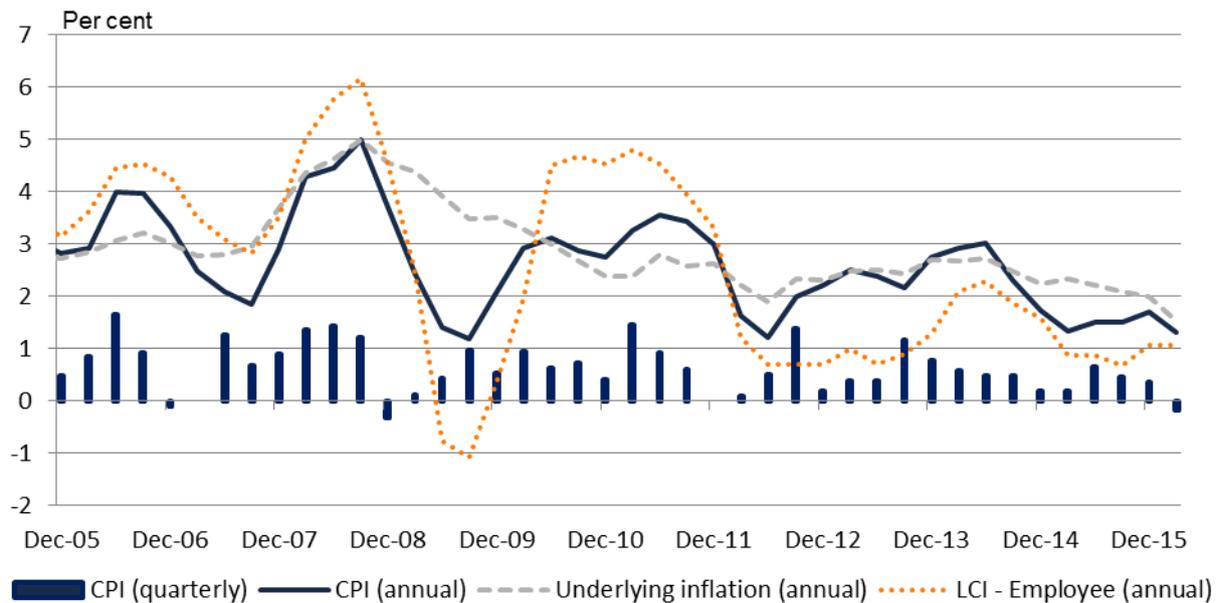
[243] At the economy-wide (all industries) level, the business exit rate was lower in 2014–15 (12.4 per cent) than in 2011–12 (13.1 per cent), whilst the business entry rate was at about the same level in each year. The business entry rate for all industries in 2014–15, at 13.4 per cent, exceeded the business exit rate, at 12.4 per cent.¹⁷⁰

[244] Of the five most award-reliant industries, four had lower exit rates in 2014–15 compared with 2011–12 (albeit by just 0.1 per cent in the Accommodation and food services industry), whilst the exit rate was 0.1 percentage points higher in the fifth industry—Health care and social assistance. In 2014–15, the entry rate exceeded or equalled the exit rate in 13 of the 19 industries. Of the six industries where the entry rate was lower than the exit rate, only one—Retail trade—is among the five most award-reliant industries.¹⁷¹

Inflation

[245] Chart 4.5 shows a number of measures of inflation. All measures show continued low growth in inflation. The headline CPI fell by 0.2 per cent in the March quarter 2016 and rose by 1.3 per cent over the year. Underlying inflation, measured as the average of the trimmed mean and weighted median measures, increased by 1.7 per cent and 1.4 per cent over the year, respectively. The LCI for employee households increased by 1.1 per cent over the year to the March quarter 2016.

Chart 4.5: Measures of inflation—CPI, underlying inflation and LCI for employee households, growth rates



Note: CPI measures quarterly changes in the price of a 'basket' of goods and services which account for a high proportion of expenditure by the CPI population group (i.e., metropolitan households). The LCI for employee households measures the change in the price of a 'basket' of goods and services which is based on the expenditure of employee households whose principal source of income comes from wages and/or salaries. CPI and LCI data are expressed in original terms.

Underlying inflation is calculated as the average of the trimmed mean and weighted median. These measures are calculated by the ABS following the methodology adopted by the RBA. The trimmed mean is calculated by ordering the CPI expenditure class components by their price change in the quarter and taking the expenditure weighted average of the middle 70 per cent of these price changes. The weighted median is the price change of the component in the middle of this ordering.

Source: ABS, *Consumer Price Index, Australia, Mar 2016*, Catalogue No. 6401.0; ABS, *Selected Living Cost Indexes, Australia, Mar 2016*, Catalogue No. 6467.0.

Wages

[246] Various measures of wages growth are available. Table 4.4 sets out annual changes in the WPI, AWOTE and AAWI for registered agreements over the past decade, together with increases in the C14 and C10 classification rates over the same period. Each measure reflects a continuing moderation in aggregate wages growth over the past year.

Table 4.4: Measures of nominal wages growth, annual percentage change

Year ended (Quarter)	WPI (% change)	AWOTE (% change)	C14 (% change)	C10 (% change)	AAWI (% change)
Dec-05	4.0	4.8	3.6	3.0	4.4
Dec-06	4.2	3.2	5.7	4.8	3.9
Dec-07	4.0	5.2	2.0	1.7	3.8
Dec-08	4.3	5.4	4.1	3.5	4.4
Dec-09	2.9	5.9	0.0	0.0	3.8
Dec-10	3.9	3.9	4.8	4.1	3.6
Dec-11	3.6	4.3	3.4	3.4	3.7
Dec-12	3.4	5.0	2.9	2.9	3.2
Dec-13	2.6	2.9	2.6	2.6	3.4
Dec-14	2.5	2.8	3.0	3.0	3.4
Dec-15	2.2	1.6	2.5	2.5	3.0

Note: The WPI is an index for total hourly rates of pay excluding bonuses in both private and public sectors. It is unaffected by changes in the quality or quantity of work performed. The figures for WPI are seasonally adjusted. AWOTE is calculated by dividing estimates of weekly ordinary time earnings by estimates of the number of employees. Ordinary time earnings refers to earnings attributable to award, standard or agreed hours of work. It is calculated before taxation and other deductions such as superannuation. It also excludes payments which are not related to the reference period such as overtime, leave loading and redundancy payments. AWOTE estimates refer to full-time adult employees. The figures for AWOTE are original. AAWI measures the average percentage increase in the base rates of pay across registered agreements for the year. It does not take into account payments such as allowances, bonuses and increases linked to productivity. The figures for AAWI are agreements approved in the quarter. The C14 and the C10 are minimum award rates set under the *Manufacturing and Associated Industries and Occupations Award 2010* (Manufacturing Award) and the former *Metal, Engineering and Associated Industries Award 1998* (Metal Industry Award).

Source: ABS, *Average Weekly Earnings, Australia, Nov 2015*, Catalogue No. 6302.0; ABS, *Wage Price Index, Australia, Dec 2015*, Catalogue No. 6345.0; Department of Employment, *Trends in Federal Enterprise Bargaining*, December quarter 2015, <<http://employment.gov.au/trends-federal-enterprise-bargaining>>; Metals Industry Award; Manufacturing Award (from 1 January 2010).

[247] Over the past year average wages growth has remained relatively low. As shown in Table 4.4, the latest 12-month increase, to the December quarter 2015, of 2.2 per cent and 1.6 per cent respectively for the WPI and AWOTE, is the lowest for the past decade and below the unusually low growth seen since 2013. The RBA observed that wage growth is well below its decade average in all industries, and dispersion across industries, measured by the WPI, is around its lowest level since the late 1990s when the WPI began.¹⁷² The most recent 12-month increase in eight different measures of wages identified by the ACTU is below the 10-year average in each case, markedly so in respect of (adult) AWOTE, AWE (all employees), average compensation per employee and the WPI.¹⁷³

[248] Bargaining outcomes, reflected in AAWI, at 3.0 per cent in the December quarter 2015, are also below their 10-year average but remain closer to that average and in excess of the growth in the other measures, including award rates.

[249] The ACTU referred the panel to the RBA's *Statement on Monetary Policy* of February 2016 which said that "the decline [in wage growth] has been more pronounced than that implied by the historical relationship with the unemployment rate".¹⁷⁴ A similar observation was noted in the 2014–15 Review decision. The ACTU further observed that real wages have not kept pace with labour productivity growth and GDP growth.

[250] The RBA's *Statement on Monetary Policy* of May 2016 included an article on wage developments by industry. The article provided data and a discussion on the dispersion and volatility of wage growth by industry. The article concluded:

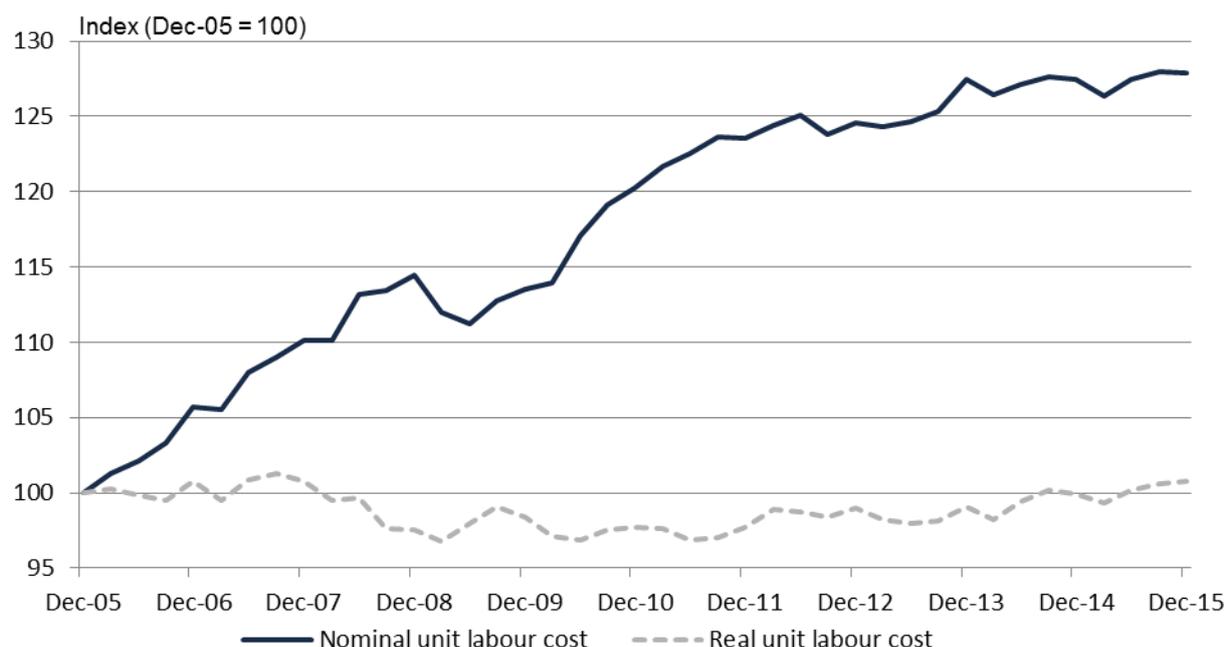
"The relationship between wage-setting methods and wage outcomes is unclear. Awards are more prevalent in industries with lower wages as they provide minimum standards. Changes in wage growth and labour market outcomes by industry may reflect differences in wage flexibility or bargaining power, but these are difficult to distinguish from a wide range of other determinants of wages, including variation in industry performance, the balance of demand and supply for different skills, and productivity".¹⁷⁵

[251] The Panel's conclusion in the 2014–15 Review decision that wages growth is neither currently a source of inflationary pressure within the economy nor a source of declining capacity of Australian firms to compete in international markets¹⁷⁶ remains true this year.

Unit labour costs

[252] Chart 4.6 presents an index of nominal and real unit labour costs. Nominal unit labour costs bring together wages growth and productivity. Real unit labour costs remove the effect of inflation from the nominal unit labour costs measure.

Chart 4.6: Unit labour costs, indexes—Dec-05 = 100



Source: ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2015*, Catalogue No. 5206.0.

[253] Over the year to the December quarter 2015, nominal unit labour costs rose by 0.3 per cent seasonally adjusted and real unit labour costs increased by 0.9 per cent, reflecting the continuing relatively weak growth in aggregate wages relative to labour productivity. There is no suggestion in the unit labour cost data of cost pressures from the labour market. In its May 2016 *Statement on Monetary Policy*, the RBA noted:

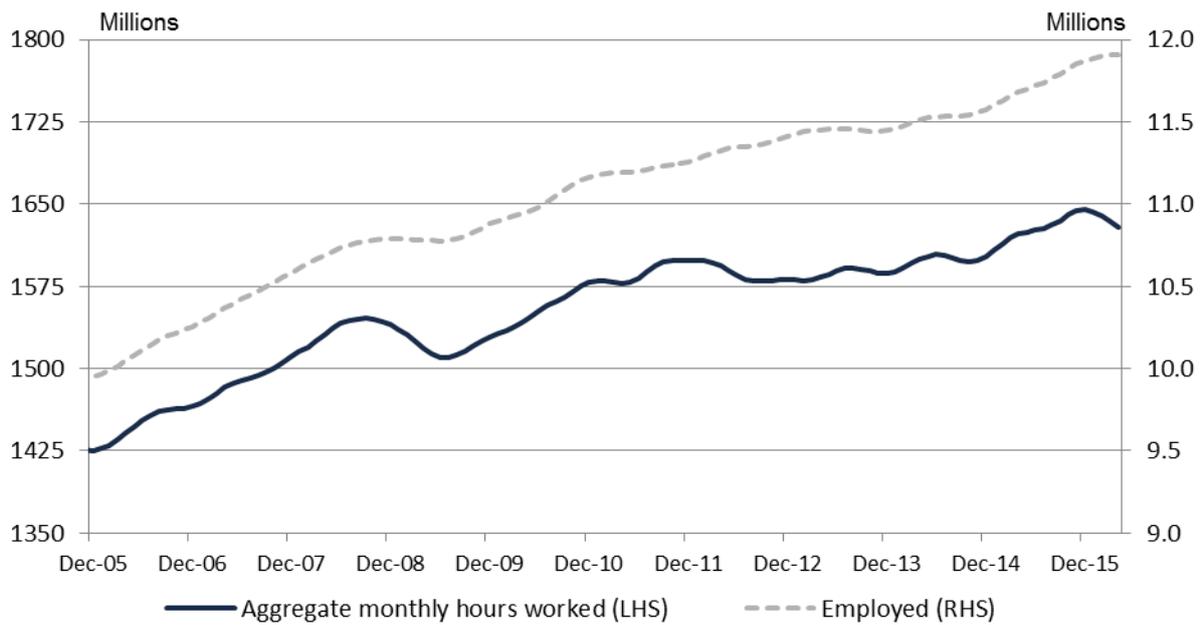
“Firms’ unit labour costs have been little changed for around four years, as any growth in average earnings per hour has been broadly matched by growth in labour productivity (output per hour worked). Together with the depreciation of the nominal exchange rate over recent years, low unit labour cost growth is helping to improve the international competitiveness of Australia’s labour, following a period of relatively strong growth in unit labour costs”.¹⁷⁷

Labour market

[254] In this section of our decision and in the Statistical Report, we utilise trend, as distinct from seasonally adjusted ABS data, unless otherwise indicated, as recommended by the ABS.¹⁷⁸

[255] Chart 4.7 shows growth in aggregate employment and hours worked in the Australian economy over the past decade. We think it desirable to consider both persons in employment and hours worked, having regard to the practice of employers evident in Chart 4.8 to adjust to weaker labour market conditions by reducing hours of work more so than numbers of persons employed (see, for example, the dips in hours worked in 2008 and 2012).

Chart 4.7: Persons employed and aggregate monthly hours worked, millions

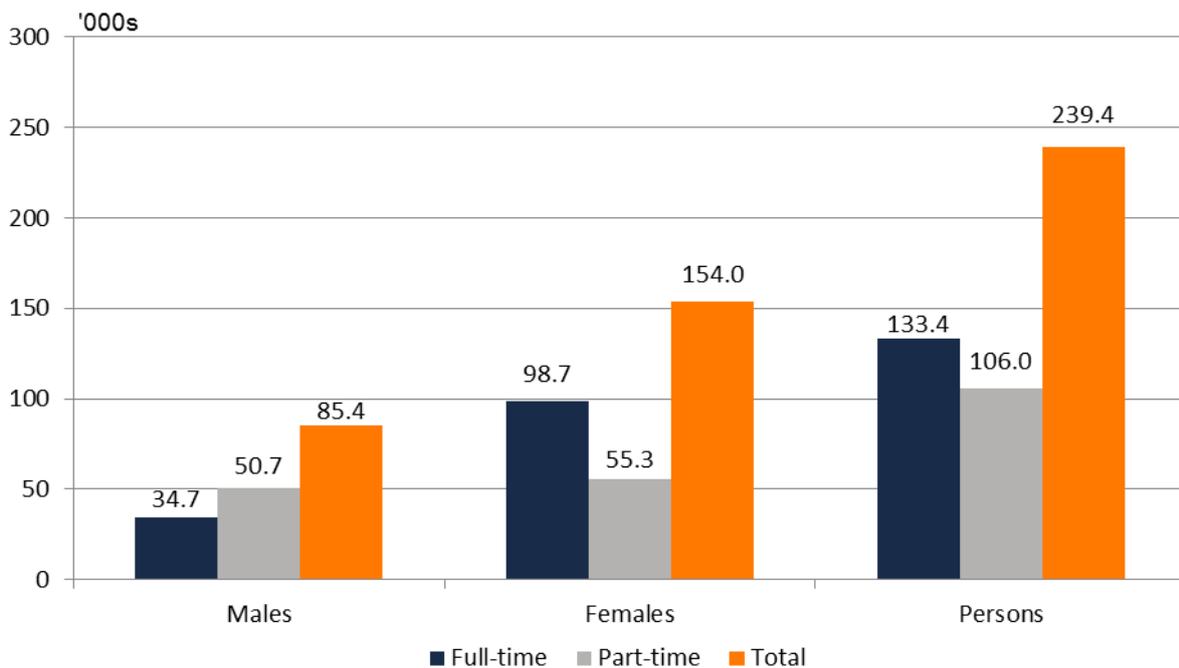


Note: All data are expressed in trend terms.

Source: ABS, *Labour Force, Australia, Apr 2016*, Catalogue No. 6202.0.

[256] The growth in employment has been greater for women than for men. The nature of the growth is shown in a chart provided by the Australian Government¹⁷⁹ and reproduced below as Chart 4.8.

Chart 4.8 Change in full-time, part-time and total employment by sex, February 2015 to February 2016



Note: Data are seasonally adjusted.

Source: ABS, *Labour Force, Australia, Feb 2016*, Catalogue No. 6202.0.

[257] In total there were more additional full-time than part-time jobs, two-thirds of which were taken by women over the past year. Men and women shared equally in the additional part-time jobs.

[258] The improvement in the labour market from late 2014 to late 2015 is evident in both employment and in hours worked. The growth of each was strong over the year to December 2015—increasing by 2.6 per cent for employment and 2.7 per cent for hours worked. Growth has moderated slightly in early 2016, with employment growth slowing to 2.0 per cent over the year to April 2016 and hours growth easing to 0.4 per cent.¹⁸⁰

[259] On its face, the slowing of growth in hours worked recorded in the April 2016 ABS Labour Force Survey is a sign of some weakness in labour market conditions, to be considered against the strong labour market performance over the course of 2015, the continuing employment growth in 2016 and the other signs of positive labour market conditions we address later. As noted above, hours worked grew by only 0.4 per cent over the year to April 2016, down from the exceptionally strong growth of around 2.8 per cent over the year to each month in the December quarter 2015. The reduction in growth of hours worked over the year reflects monthly reductions in hours worked in each of first four months in 2016. Limited growth in hours worked in January and very small reductions in hours worked in February and March, as reported in the March 2016 ABS Labour Force Survey, were revised downward by the ABS (by 0.6 per cent in respect to the March figure), with the effect that hours worked reported in the April 2016 ABS Labour Force Survey fell in each month from January to April 2016.

[260] The reduced hours worked in the first months of 2016 primarily reflects a decline in the average hours worked by full-time employees per month (from 168.4 in December 2015 to 166.2 in April 2016) and, to a lesser degree, a continuing shift from full-time to part-time employment. In the latter respect full-time employment fell by 0.1 per cent over the four months to April 2016, whilst part-time employment grew by 1.3 per cent. The reduction in average full-time hours worked is likely to reflect some reduction in overtime and the transition in employment from the resources sector to the service sector. To that extent, it reflects the successful labour market transition from resources sector employment to the service sector and the reduction in hours worked resulting from a lesser average number of hours worked by full-time employees is not a negative development in the labour market. The significant revisions to the hours worked data in the April 2016 ABS Labour Force Survey reinforce reservations about the reliability of monthly Labour Force data. We will be better informed about the fall in hours worked in the early part of 2016 when further information becomes available.

[261] The fall in hours worked in the early part of 2016 detracts from the generally favourable labour market conditions otherwise evident. We do not think that the recent reduction in hours worked seriously undermines the broader information about labour market conditions, having regard to the reason for the decline in hours worked. Nonetheless, it is a relevant consideration we have taken into account in assessing labour market conditions and the broader economic circumstances.

[262] The transition in the economy from the capital-intensive mining sector to the more labour-intensive service sectors has been evident in the strength and composition of employment growth.

- Most of the growth in total employment of over 500 000 jobs since May 2012 has been in the services sector, accounting for 90 per cent of employment growth over the past year.
- Within services, Retail trade and Health care and social assistance have been the largest contributors, each growing by around 60 000 jobs over the past year, with Professional, scientific and technical services also contributing strongly to employment growth.
- Strong growth in labour-intensive service sectors is expected to continue to support employment growth over the Budget forecast period.¹⁸¹

[263] The change in employment and hours worked by industry over the year to the February quarter 2016 is shown in Table 4.5. It shows a considerable diversity between industries around the all industries (trend) employment growth of 2.4 per cent and the all industries (original) hours worked growth of 2.3 per cent. The changes range from –5.4 per cent to 9.7 per cent for employment and –10.5 per cent to 8.0 per cent for hours worked. The diversity of employment outcomes is also evident in respect of the award-reliant industries, with the Administrative and support services, Health care and social assistance and Retail trade industries showing employment and hours growth well above the all industries average, whilst employment and hours worked fell in both the Accommodation and food services and the Other services industries.

Table 4.5: Change in employment and hours worked by industry, February 2015 to February 2016

	Employment (% change)	Hours worked (% change)
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Financial and insurance services	9.7	0.4
Administrative and support services	9.3	8.0
Health care and social assistance	5.8	7.4
Retail trade	5.6	5.1
Rental, hiring and real estate services	4.7	4.8
Transport, postal and warehousing	4.5	4.2
Professional, scientific and technical services	4.0	6.1
Information media and telecommunications	2.8	-2.5
Agriculture, forestry and fishing	2.4	4.9
All industries	2.4	2.3
Construction	2.3	3.5
Mining	1.3	6.0
Education and training	1.3	-2.0
Public administration and safety	0.9	3.0
Electricity, gas, water and waste services	0.4	2.4
Accommodation and food services	-0.4	-0.5
Arts and recreation services	-1.3	7.5
Other services	-2.2	-3.2
Manufacturing	-5.0	-4.5
Wholesale trade	-5.4	-10.5

Note: Employment data are expressed in trend terms and hours worked data are expressed in original terms. Industries are ranked by employment growth rate.

Source: ABS, *Labour Force, Australia, Detailed, Quarterly, Feb 2016*, Catalogue No. 6291.0.55.003.

[264] Table 4.6 sets out a longer-term perspective of employment growth by industry, showing annual growth to the February quarters 2014, 2015 and 2016 and over the decade to the February quarter 2016. Whilst there is considerable variability in annual employment growth by industry, employment growth in the Health care and social assistance (3.9 per cent per annum), the Accommodation and food services (2.2 per cent per annum) and the Administrative and support services (2.0 per cent per annum) exceeded the all industries average of 1.8 per cent per annum over the past decade. Employment growth in the Other services (1.2 per cent per annum) and the Retail trade industries (1.1 per cent per annum) was less than the all industries average.

Table 4.6: Employment by industry, average annual growth over decade and annual percentage changes for 2014 to 2016

Average annual growth rate	Annual percentage changes		
	Feb-14	Feb-15	Feb-16
Feb-06– Feb-16			

Agriculture, forestry and fishing	-0.9	8.6	-3.7	2.4
Mining	5.8	1.4	-15.8	1.3
Manufacturing	-1.7	-0.2	-2.3	-5.0
Electricity, gas, water and waste services	2.8	6.2	-6.3	0.4
Construction	2.1	1.5	3.0	2.3
Wholesale trade	0.0	-9.6	0.7	-5.4
Retail trade	1.1	1.9	-0.9	5.6
Accommodation and food services	2.2	-2.9	6.8	-0.4
Transport, postal and warehousing	2.4	-1.5	2.9	4.5
Information media and telecommunications	-0.8	-11.2	9.0	2.8
Financial and insurance services	1.8	-1.7	-1.1	9.7
Rental, hiring and real estate services	1.6	7.6	2.0	4.7
Professional, scientific and technical services	3.6	0.0	7.7	4.0
Administrative and support services	2.0	0.2	0.5	9.3
Public administration and safety	1.9	4.1	-1.3	0.9
Education and training	2.1	-0.2	1.7	1.3
Health care and social assistance	3.9	1.8	2.6	5.8
Arts and recreation services	2.7	-6.1	17.5	-1.3
Other services	1.2	7.5	-2.1	-2.2
All industries	1.8	0.5	1.3	2.4

Note: The annual percentage change is calculated in relation to the corresponding quarter in the previous year. All data are expressed in trend terms.

Source: ABS, *Labour Force, Detailed, Quarterly, Feb 2016*, Catalogue No. 6291.0.55.003.

[265] The employment to population ratio for people of working age (defined here as 20–64 years) controls for changes in the proportion of the adult population that is of working age and summarises the combined effects of changes in their desire and in their ability to find work. Table 4.7 shows how this ratio has changed over the past decade and distinguishes full-time from part-time employment. The employment to population ratio rose over each of the past two years, to 75.4 per cent in March 2016, although it remains slightly below its peak in December 2010. The 76.0 per cent recorded in December 2015 indicates a relatively healthy labour market; it has been exceeded, albeit by a small amount, only twice in the past 10 years.

Table 4.7: Employment to population ratio—by total and employment status, (20–64 year olds)

Month	Full-time	Change over year (ppts)	Part-time	Change over year (ppts)	Total	Change over year (ppts)
Dec-05	56.1		18.5		74.6	
Dec-06	57.0	0.9	18.6	0.2	75.7	1.0
Dec-07	57.6	0.5	18.7	0.0	76.2	0.6
Dec-08	57.0	-0.6	19.0	0.4	76.0	-0.2
Dec-09	55.6	-1.4	19.7	0.7	75.3	-0.7
Dec-10	56.6	1.0	19.8	0.1	76.4	1.1
Dec-11	56.4	-0.2	19.3	-0.5	75.7	-0.7
Dec-12	56.1	-0.3	19.5	0.2	75.6	0.0
Dec-13	54.9	-1.2	20.0	0.4	74.8	-0.8
Dec-14	55.2	0.3	20.0	0.0	75.2	0.3
Dec-15	55.7	0.5	20.3	0.3	76.0	0.8
Mar-16	54.4	-0.1	20.9	0.5	75.4	0.5

Note: The employment to population ratio is the number of employed persons expressed as a percentage of the civilian population. Change over year (ppts) calculates the percentage point change from the corresponding month in the previous year. All data are expressed in original terms.

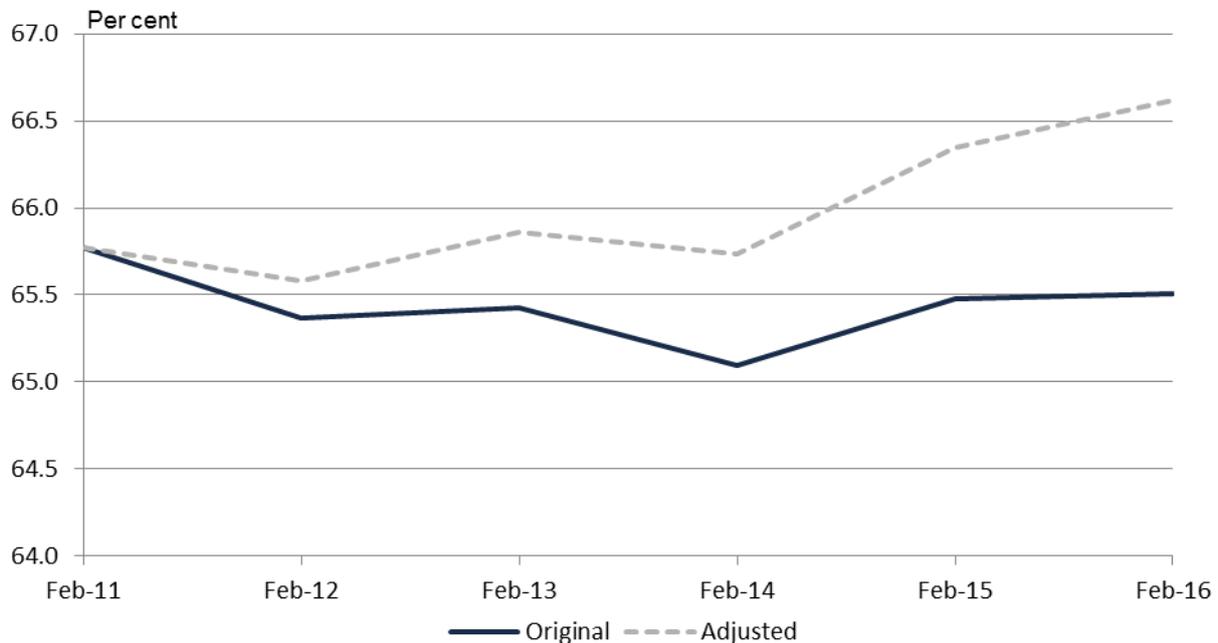
Source: ABS, *Labour Force, Australia, Detailed—Electronic Delivery, Mar 2016*, Catalogue No. 6291.0.55.001.

[266] The aggregate figures conceal a continuing structural change in the labour market, away from the full-time employment of men and towards the full-time employment of women and the part-time employment of both men and women. Over the decade to December 2015, men's full-time employment to population ratio fell from 73.7 per cent to 71.3 per cent while their part-time employment to population ratio has grown from 8.8 per cent to 10.9 per cent.¹⁸² The full-time employment to population ratio for women has grown from 38.7 per cent to 40.3 per cent over the same period, and their part-time employment to population ratio rose from 28.1 per cent to 29.6 per cent.¹⁸³

[267] A related perspective is provided by the participation rate, which shows not only those who are employed, but also those who are actively looking for work (and thus are in the labour force). Changes in the participation rate are often interpreted to reflect the extent to which people are encouraged (or discouraged) to look for work, as well as changes in unemployment and employment. As with the employment to population ratio, we focus on the participation rate of people aged 20–64 years. This is a short hand way of dealing with the ageing of the population. The participation rate in December 2015 was higher, at 79.8 per cent, than in any other time over the last decade, and rose again to 80.2 per cent in February 2016. The rise in the participation rate is particularly strong for women, being 4 percentage points higher in December 2015 than it was in December 2005, and 0.3 percentage points higher for men. The participation rate has risen by 0.2 percentage points over the year to March 2016.¹⁸⁴

[268] The Australian Government provided a measure of the participation rate that makes a more complete adjustment for the changing age structure of the adult population.¹⁸⁵ It is reproduced below as Chart 4.9.

Chart 4.9: Age-adjusted participation rates, February 2011 to February 2016



Source: Australian Government submission at p. 25, Chart 4.4; ABS, *Labour Force, Australia, Detailed—Electronic Delivery, Feb 2016*, Catalogue No. 6291.0.55.001.

[269] The chart shows the importance of making proper allowance for the ageing population when interpreting the participation rate as a measure of strength of the labour market. If the rate is not adjusted for ageing, then the participation rate has fallen a little over the past five years. If it is adjusted, as it should be, then it has risen substantially, especially in the past two years.

[270] The improved levels of employment have been reflected in falling unemployment over the past year. The total number of unemployed persons has fallen by 37 200 over the year to April 2016 (trend data), or 4.9 per cent. The unemployment rate has fallen by 0.4 percentage points, from 6.1 per cent in April 2015 to 5.7 per cent in April 2016. The unemployment rate has fallen for both men and women over the past year.

[271] The unemployment rate remains above its recent lows of around 5 per cent in early 2011 and 4.3 per cent in December 2007. Nonetheless, the improved labour market over the past year has arrested the persistent increase in unemployment since 2010 and brought about a moderate reduction in unemployment.

[272] Under-employment is a measure of the number of people who are employed part time and would like to work more hours, plus the number of people who normally work full time but are working part time in the reference week for economic reasons—about 5 per cent of the total number of under-employed.¹⁸⁶

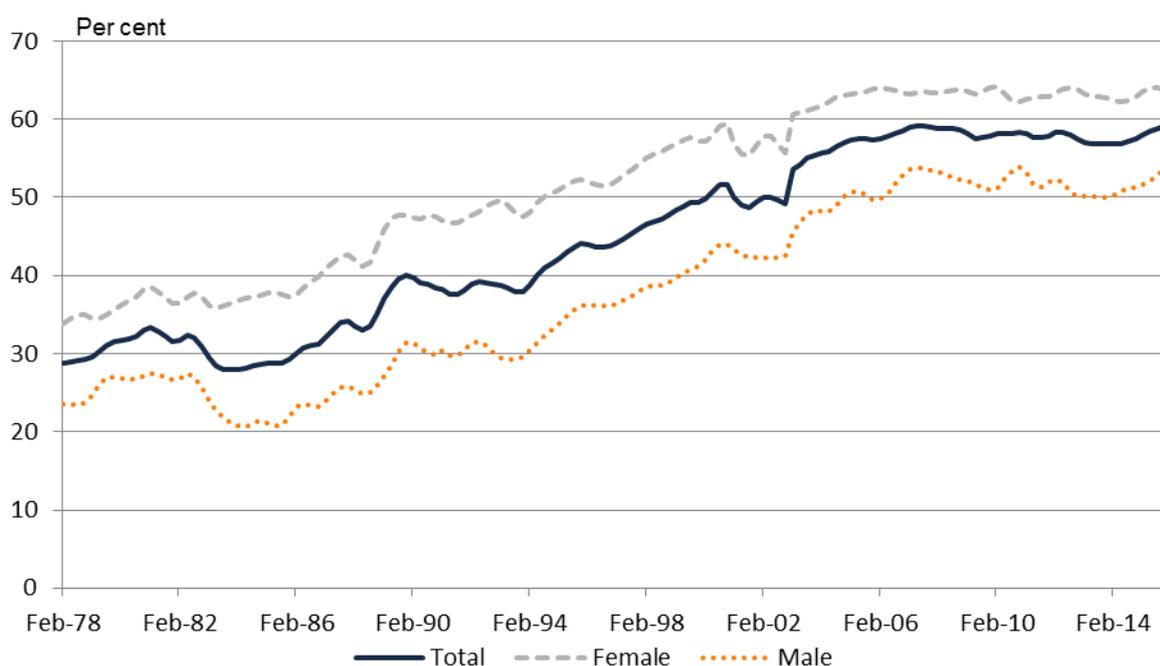
[273] The overall under-employment rate has risen consistently since it was first measured in 1978, peaking at 8.5 per cent (trend data) in February 2015. It has since fallen by 0.1 percentage points to 8.4 per cent in February 2016.¹⁸⁷

[274] As a measure essentially of the desire of part-time employees to work more hours, the extent of under-employment is directly related to the rise in part-time work as a proportion of the labour force. Part-time employment has risen from 18.8 per cent of total employment in April 1986 to 31.4 per cent in April 2016 (trend data).

[275] Like unemployment, the under-employment ratio as a proportion of total employment has fallen over the past year: from 9.1 per cent in February 2015 to 8.9 per cent in February 2016.¹⁸⁸ Similarly, the number of part-time workers who would prefer more work has fallen, as a proportion of the total number of part-time workers from 29.6 per cent to 28.6 per cent between February 2015 and February 2016.

[276] Ai Group, in particular, has sought to emphasise the importance of under-employment as a significant component of the extent of under-utilisation of the available workforce, arguing that “the consideration of underemployment is critical to an understanding of the Australian labour market and should feature prominently in any evaluation of its current condition”.¹⁸⁹ Their Chart 5 is reproduced below as Chart 4.10.

Chart 4.10: Under-employment as a share of labour force underutilisation



Source: Ai Group submission in reply at p. 11, Chart 5; ABS, *Labour Force, Australia, Mar 2016*, Catalogue No. 6202.0.

[277] Chart 4.10 shows the substantial growth in under-employment as a component of total labour force underutilisation, over the 38 years since 1978. Note that this chart is expressed in terms of the number of people who are under-employed as a proportion of the number of people who are under-utilised—i.e., unemployed plus under-employed. On average each under-employed person wants an additional 14 hours of work.¹⁹⁰ The share of the under-employed is greater on this measure than it would be in a measure based on hours under-utilised. The chart shows that the share of under-employment grew progressively from

1986 to 2007. But since then there has been no growth in its share among underutilised persons, although there has been a recent rise among males. Over the past 10 years, under-employment and unemployment have moved together, and the addition of one to the other does not alter the essential interpretation of changes in the state of the labour market.

[278] A recent article (Breunig et al. 2014) makes two pertinent points about the mismatch between the number of hours that people say they wish to work and the number that they actually work.¹⁹¹ One is that many more people say they want to work fewer hours than say that they want to work more hours. Indeed, the authors calculate that if everyone worked the hours that they say they want, total hours of labour supply would fall by about 5.5 per cent.¹⁹² The other point is that for many people, the experience of under-employment is temporary. Just as employment in a low wage job is a temporary stepping stone for many (about half of those who take a low wage job move to a higher wage job within 12 months, according to data provided by the Australian Government¹⁹³), being under-employed is also temporary for many. Breunig et al. conclude that about half of those part-time workers who wished to work more hours in one year were happy with their hours a year later, while about 35 per cent still wished to work longer hours in the following year.¹⁹⁴

[279] We do not have a complete picture of the significance of under-employment in an evaluation of the state of the labour market or of the degree of the extra work that people want. But there is nothing in the evidence that has been put before us to show that a deeper consideration of under-employment would lead us to alter the conclusions that we draw from the other labour market indicators that we use.

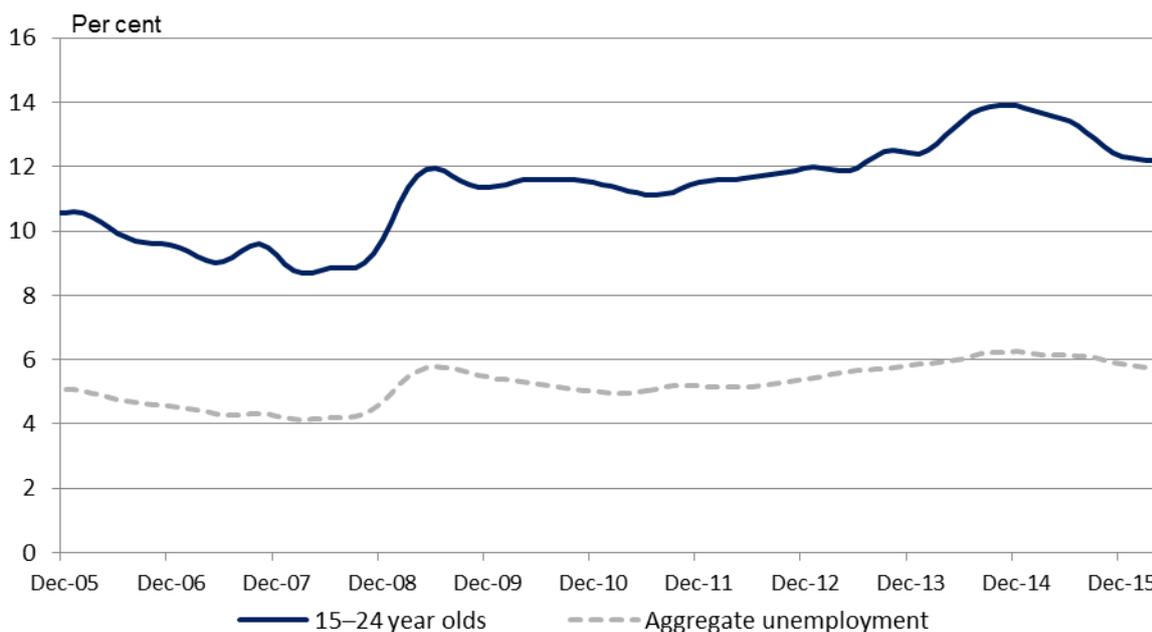
Long-term unemployment

[280] Long-term unemployment is a lagging indicator of the state of the labour market, measuring those who have been unemployed for a year or more. A sharp rise in unemployment in one period will show up as a rise in long-term unemployment after a year, which then tends to become persistent.¹⁹⁵ Long-term unemployment fell in the years preceding the GFC, reflecting the strong labour market at that time, but rose persistently since that time reflecting a weaker labour market and increasing unemployment generally. However, as employment growth strengthened and overall unemployment fell over 2015, so too did the long-term unemployment ratio (the number of long-term unemployed persons as a percentage of total unemployed), from 23.9 per cent in March 2015 to 22.6 per cent in December 2015. Between March 2015 and March 2016, the number of long-term unemployed fell by 7.4 per cent.¹⁹⁶

Youth unemployment

[281] Over the year to April 2016, employment of youth (aged 15–24 years) has grown by 1.5 per cent and the youth unemployment rate has fallen by 1.4 percentage points to 12.2 per cent, in trend terms.¹⁹⁷ The youth unemployment rate has declined significantly, down 1.7 percentage points since its recent peak of 13.9 per cent in late 2014. It is now at its lowest level since July 2013. As Chart 4.11 shows, the youth unemployment rate is consistently substantially higher than the aggregate unemployment rate: around twice as high. Over the year to April 2016, the youth unemployment rate has fallen faster than the aggregate unemployment rate, so that the ratio of the unemployment rate for 15–24 year olds to the aggregate unemployment rate fell from 2.2 in April 2015 to 2.1 in April 2016.

Chart 4.11: Unemployment rates for 15–24 year olds and lone parents



Note: Unemployment rates for 15–24 year olds and aggregate unemployment data are expressed in trend terms.

Source: ABS, *Labour Force, Australia, Apr 2016*, Catalogue No. 6202.0.

[282] The current state of the youth labour market in Australia has been affected by longer term changes in the youth labour market—a marked rise in the levels of education of young people and the increased labour force participation amongst the 15–24 year old population in education.¹⁹⁸

[283] The increases in employment, the employment to population ratio and the participation rate all point to improvements in the labour market. The absolute levels of these indicators are also quite favourable. The one negative indicator is the fall in 2016 in the number of hours worked. We discuss this matter at paragraphs [259]–[261]. The award-reliant industries have generally shared in the growth in employment and hours worked—at face value, three of the five have had increases well in excess of the economy as a whole, while two have had decreases. Here our caveat about the unreliability of hours data, especially at the industry level, needs to be borne in mind. The recent falls in unemployment, in long-term unemployment and in unemployment among youth are consistent with the picture of improved labour market conditions over the course of 2015 and into 2016.

The award-reliant industries

[284] We now consider the circumstances of industries in which a relatively high proportion of employees are award-reliant workers. Award reliance is a measure of the proportion of employees whose pay rate is set according to the relevant award rate specified for the classification of the employee and not set above that relevant award rate. Such information is obtained from the EEH,¹⁹⁹ conducted in May every two years. It is a relevant measure in assessing the impact of AWR decisions because they impact directly on the wages paid to award-reliant employees.

[285] For present purposes, we set out in Table 4.8 the extent of award reliance in August 2008, May 2010, May 2012 and May 2014 by industry. In Chapter 5, we further assess the data concerning award-reliant employees and their characteristics.

Table 4.8: Award reliance by industry—2008, 2010, 2012 and 2014

	2008	2010	2012	2014
	(%)	(%)	(%)	(%)
All industries	16.5	15.2	16.1	18.8
Mining	1.2	1.9	0.6	0.8
Manufacturing	12.2	14.6	11.3	15.7
Electricity, gas, water and waste services	5.4	3.1	4.3	6.9
Construction	9.1	10.0	10.6	13.7
Wholesale trade	9.0	10.9	8.1	11.9
Retail trade	28.9	22.3	25.6	28.5
Accommodation and food services	50.3	45.2	44.8	42.8
Transport, postal and warehousing	8.3	8.0	7.3	10.9
Information media and telecommunications	5.6	5.7	5.7	5.2
Financial and insurance services	2.2	2.1	4.7	5.0
Rental, hiring and real estate services	20.2	22.8	20.9	22.1
Professional, scientific and technical services	5.4	4.2	6.0	9.9
Administrative and support services	33.9	31.4	29.0	37.3
Public administration and safety	3.6	1.9	6.9	12.8
Education and training	8.4	5.1	6.8	5.1
Health care and social assistance	17.2	17.1	19.0	22.3
Arts and recreation services	14.2	15.1	19.7	22.0
Other services	25.4	27.2	24.6	25.1

Note: Award reliance is the proportion of employees in an industry that are paid exactly the award rate and are not paid more than that rate of pay. The 2008 survey was conducted in August.

Source: ABS, *Employee Earnings and Hours, Australia*, various, Catalogue No. 6306.0.

[286] The 2014 data identify the Accommodation and food services (42.8 per cent); Administrative and support services (37.3 per cent); Retail trade (28.5 per cent); Other services (25.1 per cent); and Health care and social assistance (22.3 per cent) industries as the most award reliant, in that they are the industries in which the highest proportion of employees are award reliant. We use this as a measure of the most award-reliant industries. An alternative approach to identifying the award-reliant industries is to select the industries with the highest number of award-reliant employees—Manufacturing would replace Other services in the five most award-reliant industries on that measure. The two approaches are legitimate and show slightly different perspectives.²⁰⁰

[287] Table 4.9 summarises data for growth in output, profitability, wages and employment in respect of the most award-reliant industries. It includes an all industries average in the final column.

Table 4.9: Economic indicators by award-reliant industries

	Accommodation and food services	Administrative and support services	Health care and social assistance	Other services	Retail trade	All industries
Percentage of employees reliant on award wages, May 2014 ^a	42.8	37.3	22.3	25.1	28.5	18.8
Gross value added: percentage growth over the year to December quarter 2015	0.7	-1.5	4.2	4.3	3.6	3.0
Company gross operating profits: percentage growth over the year to December quarter 2015 ^b	9.9	-42.0	*	-16.9	0.0	-2.3
Wage Price Index: percentage growth over the year to December quarter 2015	2.4	1.4	2.4	2.3	2.5	2.1
Percentage annual wage growth under new collective agreements December quarter 2015	2.8	3.2	2.8	3.2	2.3	3.0
Employment: percentage increase over the year to February quarter 2016	-0.4	9.3	5.8	-2.2	5.6	2.4
Hours worked: percentage increase over the year to February quarter 2016	-0.5	8.0	7.4	-3.2	5.1	2.3

Note: (a) All industries excludes Agriculture, forestry and fishing; (b) All industries excludes Education and training, Health care and social assistance and some subdivisions of Finance and insurance services.

*indicates data not available. The award-reliant industries selected are the five industries with the highest proportion of employees within the industry who are reliant on award rates of pay according to the EEH 2014 survey. The WPI and actual hours worked data are expressed in original terms. Employment data are expressed in trend terms.

Source: ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2015*, Catalogue No. 5206.0; ABS, *Business Indicators, Australia, Dec 2015*, Catalogue No. 5676.0; ABS, *Employee Earnings and Hours, Australia, May 2014*, Catalogue No. 6306.0; ABS, *Labour Force, Australia, Detailed, Quarterly, Feb 2016*, Catalogue No. 6291.0.55.003; ABS, *Wage Price Index, Australia, Dec 2015*, Catalogue No. 6345.0; Department of Employment, *Trends in Federal Enterprise Bargaining*, December quarter 2015, <<http://employment.gov.au/trends-federal-enterprise-bargaining>>.

[288] The Panel has previously noted that the industry-level economic indicators show considerable volatility from year to year, within industries and between the most award-reliant industries—most especially growth in GVA, growth in company gross operating profit and in hours worked. Further, the AAWI in some industries may reflect the small number of agreements. For that reason, the industry sector data should be relied on for the broad picture shown, rather than the specific magnitudes.

[289] Overall the major indicators in respect of the award-reliant industries performed generally better than the all industries average over the most recent year. Whilst there is diversity in outcomes between the award-reliant industries, the data does not suggest that they have faced a relatively difficult economic environment over the past year or that recent minimum wage increases have adversely impacted on their relative economic performance.

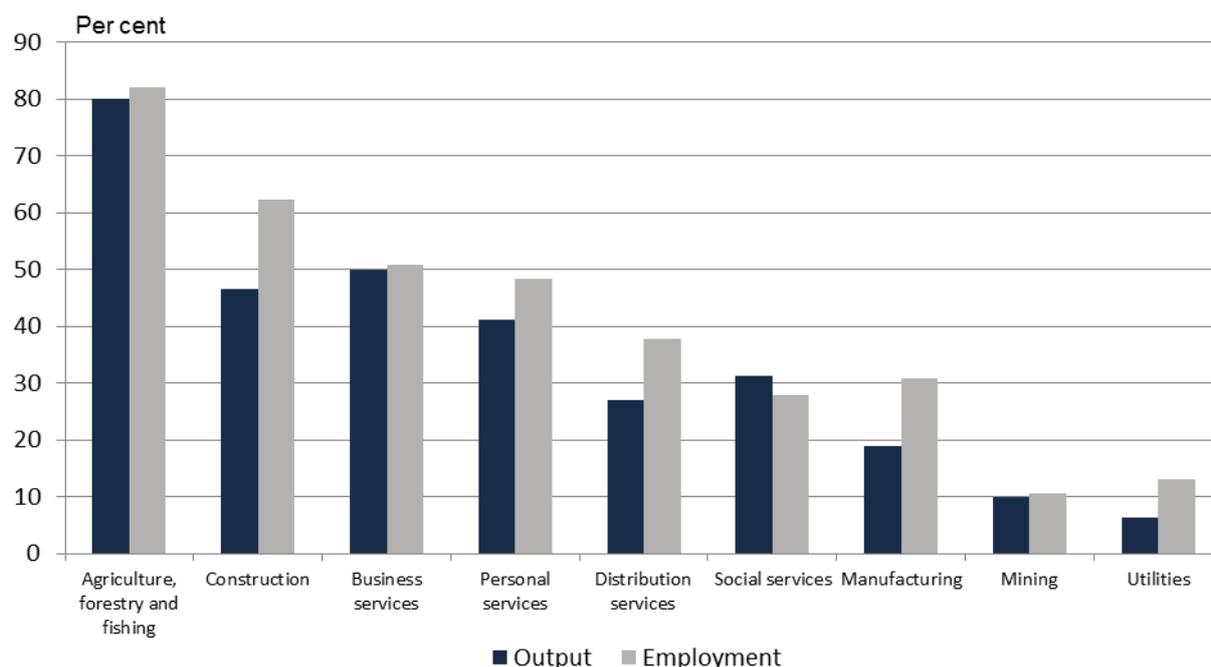
Small business

[290] There is no specific reference to small and medium-sized businesses in the minimum wages and modern awards objectives. However, the general object of the Act is directed to providing a balanced framework for cooperative and productive workplace relations, which promote national economic prosperity and social inclusion for all Australians by, amongst other things, acknowledging the special circumstances of small and medium-sized businesses.

[291] A number of employer associations brought to our attention a high level of small businesses within their industry and/or association and/or the relatively high level of award reliance of small businesses which employ labour.²⁰¹

[292] ABS data show that in June 2015, 61 per cent of actively trading businesses in Australia had no employees, 28 per cent had 1–4 employees, 9 per cent had 5–19 employees, 2 per cent had 20–199 employees, and less than 1 per cent had 200 or more.²⁰² MGA reported equivalent figures for the retail sector, submitting that “[a]pproximately 95 per cent of all retail businesses are either non-employing or small businesses (1–19 employees)”.²⁰³ The share of small businesses in employment and output varies substantially by industry (see Chart 4.12).²⁰⁴

Chart 4.12: Small business share of private sector output and employment within each industry



Note: Distribution services includes Wholesale trade; Retail trade; Transport, postal and warehousing; and Information median and telecommunications. Business services includes Rental, hiring and real estate services; Professional, scientific and technical services; and Administrative and support services. Social services includes Public administration and safety, Education and training; and Health care and social assistance. Personal services includes Accommodation and food services; Arts and recreation services; and Other services. Utilities includes Electricity, gas, water and waste services.

Source: ABS, *Australian Industry, 2013–14*, Catalogue No. 8155.0.

[293] The chart shows that in most industries, small business contributes more to employment (including the self-employed) than it does to output. It also shows that they are

especially prominent in agriculture and construction (neither of which is highly award reliant) and play only a small role in mining and utilities.

[294] AFEI asserted that small businesses typically have less ability to absorb cost increases and that small business accounts for a large share of national employment—around 43 per cent of the private non-financial sector—but its share of employment has declined over recent years.²⁰⁵ We note that the small business share of employed persons is greater than its share of employees, since about 60 per cent of small businesses have no employees.

[295] The Australian Government included a Chapter about small business in its submissions “to provide additional information to help inform the Panel on small business developments, in particular to present the evidence that small businesses are finding conditions more difficult than larger businesses”.²⁰⁶

[296] It submitted that small businesses are a significant part of the Australian economy, accounting for 97 per cent of all businesses and contributing around one-third of non-financial private sector value added and employing around 44 per cent of non-financial private sector employed persons.²⁰⁷

[297] The Australian Government noted that small businesses are relatively award reliant, with around 32 per cent of employees in a small business paid award classification wages and “[f]or businesses with 20–49 employees, 50–99 employees and 100 or more employees the equivalent percentage is 30, 24 and 11 respectively”.²⁰⁸

[298] Official statistics on the situation of small business come with a substantial time lag. We accept that in these circumstances, the information provided by business surveys is useful. In particular, we note the assessment by the Australian Government and the RBA that information from the main business surveys (by ACCI, NAB and Sensis) have proved to be quite reliable predictors of output and employment growth.

[299] The Australian Government submitted that conditions for small businesses remain challenging despite some tentative signs of improvement, relying on industry survey results in support of that proposition.²⁰⁹ They also note that “small business conditions in the Retail industry are around their long-term average”.²¹⁰ The relevant surveys are summarised below:

- The NAB surveys provide results in respect of the economic conditions of both small and large businesses. The results show business conditions for all businesses are above their long-term average, while conditions for small business have remained below average since the middle of 2014. A similar picture is evident in respect of the NAB Employment Index.²¹¹
- The ACCI Small Business Survey Employment Index shows similar outcomes for small, medium and large employers, with results deteriorating against the longer term average from early 2012, stabilising at 1–2 per cent below average from mid-2012 and improving from mid-2015, with employment outcomes approaching the long-term average by December 2015.²¹²
- The Sensis Actual Employment Index for the December quarter 2015 also shows a similar outcome as the ACCI survey, with relatively poor reported results from mid-2012 and improvement from mid-2015, with employment outcomes approaching the long-term average by December 2015. Expectations for the year

ahead are positive with a net balance of +11 in the December quarter 2015, below the long-term average and down from December 2013 and 2014.²¹³

[300] Assessing the NAB and Sensis survey results to 2014, Nicholls and Orsmond of the RBA concluded that:

“After experiencing a supportive environment prior to the financial crisis, economic conditions for the small business sector have since been quite challenging. While to some extent this is true for all firms, data suggest that conditions for small businesses have been noticeably weaker than for larger businesses since the onset of the global financial crisis in 2008–09. In particular, both business conditions and confidence for the small business sector have remained around one standard deviation below their long-run averages, and there has been little sign of recovery.”²¹⁴

[301] As noted above in relation to various survey results provided in the Australian Government submissions, there has been some recovery since 2014.

[302] Nicholls and Orsmond identified in section 4 of their paper issues raised by small businesses in liaison with the RBA as the main economic and operational constraints faced by small businesses:

- demand fluctuations—small businesses appear to be much more susceptible to cyclical fluctuations in demand for their output and, as a consequence, experience much greater swings in revenue growth than larger businesses;
- economies of scale and high fixed costs—many small businesses find it challenging to compete against larger businesses since they generally cannot take advantage of economies of scale to lower their average costs;
- managerial issues—as small businesses grow, their owner-managers often try to stretch their skills over several new areas, and can struggle to deal with the expanding complexity of operating a growing firm; and
- financing relationships—the impediments faced by small businesses also include cash constraints and the cost and access to finance, both for working capital and for investment.²¹⁵

[303] We note that the level of wages, including award wages, is not included in this list.

[304] By modeling certain variables with a standard fixed-effects regression model, Nicholls and Orsmond undertook an analysis of whether the behaviour of small businesses varies compared with that of larger businesses, on average, concluding that:

- overall the pricing behaviour of small businesses taken as a group, including responses to wage and non-wage cost pressures is not statistically different from that for larger businesses;
- the sample data provide little indication that small businesses are markedly more or less sensitive to current demand or wages in determining their employment decisions; and
- when examining the correlation of investment activities across firm size, small businesses’ behaviour is not statistically different from larger businesses.²¹⁶

[305] Nicholls and Orsmond also concluded that when considering prices, employment and investment intentions, larger businesses (those with employment greater than 100 employees) tend to be more forward looking than firms with fewer employees. This is most noticeable in terms of firms' employment decisions and to a lesser extent their investment behaviour.²¹⁷

[306] Because about 60 per cent of small businesses have no employees (as distinct from their owners), they are in fact not disproportionately large employers of employees in general or of award-reliant workers. However, small employing businesses (with 1–19 employees) do have a relatively high rate of award reliance and employ about 38 per cent of award-reliant workers.²¹⁸ They will therefore be particularly affected by changes in award rates of pay. We accept the evidence that they have less capacity to adjust to adverse changes in business conditions, and that they have found it harder to bounce back from the GFC than have large businesses.

[307] The surveys, which compare small business results with those for larger businesses, provide a mixed message. They indicate that business conditions remain less favourable for small businesses than the long-term norm and for larger businesses, although they have stabilised since 2014. In contrast, rates of employment have improved from mid-2015, having reached their long-term average by December 2015 and are expected to improve further in the year ahead. The aggregate and sectoral economic data do not suggest that the economic conditions for small business have recently diverged materially from those of businesses generally within the industries in which they operate: business conditions for small business are harder than for large businesses, but this has been true for almost a decade and has not deteriorated recently. The survey results included in the submissions of the Australian Government do not suggest recent circumstances are abnormally difficult for small business.

Other industry and sector circumstances

[308] There were a number of submissions to the effect that the Panel should consider specific industry and sector circumstances in determining the minimum wage increase arising from the Review. AHA & TAA, R&CA, ARA, MGA, HIA, South Australian Wine Industry Association Incorporated, NFF, MTAs and Business SA all provided submissions that highlighted particular difficulties in the industries that they represented. The common theme in these submissions was that, in undertaking the 2015–16 Review, the Panel should consider the capability of businesses to sustain their employment levels and total hours available in the particular economic environment that is faced by their members, or enterprises in their industries.²¹⁹

[309] These industry-specific submissions provide detail that goes behind some of the national aggregates on which we most usually focus (supplemented by our attention to the most award-reliant industries). Naturally, they are inclined to emphasise the negative aspects of developments in the economy and circumstances affecting the industry. For example, while the R&CA submission emphasised the adverse impact of penalty rates²²⁰ and the transitional arrangements in the Award Modernisation process,²²¹ it makes no mention of the fact that Sunday penalty rates in the *Restaurant Industry Award 2010* were reduced, effective from 1 July 2014, for casual employees employed on the Introductory, Level 1 and Level 2 classifications.²²² In our decision, it is necessary to balance the negative perspectives raised with the more positive outcomes that are reflected in the national aggregates.

[310] Several submissions²²³ pointed to a decline in apprentice and/or trainee commencement rates, some associating the decline with the 22 August 2013 *Modern Awards Review 2012—Apprentices, Trainees and Juniors* decision²²⁴ to adjust the rates of pay for first and second year apprentices. No particular action by the Panel was sought. This submission was dealt with in the 2014–15 Review decision.²²⁵ The level of apprentice and trainee commencements is affected by a range of influences including economic conditions, both generally and in specific sectors, and structural change in industry and employment.

[311] A number of state governments also drew our attention to the impact of changes in sectors of state economies.

[312] The South Australian and Western Australian Governments pointed to increases in unemployment rates in those states.²²⁶ The Western Australian Government submitted that the State currently faces economic circumstances differing significantly from those which prevailed during the recent rapid expansion of the State's resources sector.²²⁷ While the State's economy as a whole continues to grow, supported by exports, the domestic economy has contracted and is projected to remain subdued for the foreseeable future.²²⁸

[313] The Queensland Government directed our attention to the impact of the completion of liquefied natural gas projects and the move to the production and export stage.²²⁹ The fall in investment resulting from the completion of those projects resulted in economic growth in Queensland falling to a level of 0.5 per cent which was below the national average of 2.3 per cent.²³⁰ Since the State Budget in 2015, the Queensland drought has worsened and agricultural investment is likely to be weaker than previously anticipated.²³¹

Economic outlook

[314] In this section, we examine the economic outlook reflected in the Treasury Budget forecasts and RBA forecasts, together with forward looking indicators, including the NAB survey and Ai Group Performance Indices.

[315] The Economic Outlook, reflected in Statement 2 within *Budget Paper No 1: Budget Strategy and Outlook Budget 2016–17*, can be assessed in the context that the Australian economy is entering its 26th consecutive year of economic growth and is continuing its transition toward broader growth following the passing of the resource investment boom. The transition to broader-based growth is being supported in the short-term by household consumption, dwelling investment and exports, with non-mining investment remaining weak and falling mining investment detracting from growth. Flexibility in the labour market has also been identified, including by the RBA, as a factor assisting the transition.

[316] The Economic Outlook notes that historically low interest rates are supporting growth by lowering borrowing costs for households and businesses, the lower exchange rate over the past year has facilitated the shift of resources to the service sectors and moderate wage growth is underpinning strong employment growth. These factors are expected to continue during the forecast period, with the unemployment rate forecast to fall to around 5½ per cent by the June quarter of 2017.²³²

[317] The Economic Outlook also notes, as a positive risk, a lower exchange rate which would generate stronger economic growth and provide further impetus to broader-based growth. On the other hand, it identifies as negative risks uncertainty around the global

economic outlook which could result in greater than expected caution and more saving and less consumption by Australian households than expected. Growth in non-mining business investment was also identified as a key source of uncertainty as the economy transitions from capital-intensive resource investment to labour-intensive service sectors.²³³

Global economic conditions

[318] As shown in Table 4.10, the global economy is forecast by Treasury to grow by 3¼ per cent in 2016 and 3½ per cent in 2017, although downside risks are increasing. Overall growth in Australia's major trading partners is expected to be stronger than global growth at 4 per cent in each year of the forecast period. Growth remains particularly strong in Australia's faster growing Asian trading partners.

Table 4.10: 2016–17 Budget forecasts, international GDP growth, per cent

	Outcomes		Forecasts	
	2015	2016	2017	2018
World	3.1	3¼	3½	3¾
Major trading partners	4.0	4	4	4

Note: World growth rates are calculated using GDP weights based on purchasing power parity, while growth rates for major trading partners are calculated using export trade weights.

Source: Australian Government, *Budget Paper No. 1: Budget Strategy and Outlook 2016–17*, Canberra, p. 2-9.

[319] A number of risks to the outlook for the international economy are identified in the Economic Outlook. These include: lower commodity prices and economic difficulties in a number of commodity exporting countries; moderating growth in China as the Chinese economy transitions from investment-led to consumption-led growth; the risk that low inflation, low wage growth and low productivity growth being experienced in many advanced economies could become embedded in lower potential growth over time; and continuing financial challenges, particularly in the euro area, Japan and a range of emerging market economies. The risk associated with the transition in the Chinese economy is seen as particularly significant for Australia given the exposure of Australia and its major trading partners to China.²³⁴

The Australian economic outlook

[320] The Australian economy is expected to continue transitioning to broader-based growth. This transition has been most evident in the labour market where the shift towards the more labour-intensive service sectors is underpinning strong employment growth, supported by low wage growth.²³⁵

[321] Treasury forecasts for the main economic aggregates are summarised in Table 4.11.

Table 4.11: Major economic parameters, 2016–17 Budget

	Outcomes		Forecasts	
	2014–15	2015–16	2016–17	2017–18
Real GDP	2.2	2½	2½	3
Employment	1.6	2	1¾	1¾
Unemployment Rate	6.1	5¾	5½	5½
CPI	1.5	1¼	2	2¼
WPI	2.3	2¼	2½	2¾
Nominal GDP	1.6	2½	4¼	5

Note: Year average growth unless otherwise stated. Employment, WPI and the CPI are through the year growth to the June quarter. The unemployment rate is the rate for the June quarter.

Source: Australian Government, *Budget Paper No. 1: Budget Strategy and Outlook 2016–17*, Canberra, p. 1-8.

[322] The GDP forecasts in Table 4.11 anticipate economic growth from 2015–16 to 2017–18 and a small fall in employment growth. The CPI is forecast to increase by only 1¼ per cent in 2015–16, increasing in subsequent years to approach the middle of the RBA’s medium term 2–3 per cent target range by 2017–18. Continuing low wages growth is anticipated over the whole of the forecast period, notwithstanding a small increase from the 2015–16 level.

[323] Treasury forecasts for a broader range of domestic economic aggregates, recorded in the 2016–17 Budget, are shown in Table 4.12 below.

Table 4.12: Domestic economic forecasts, growth rates^(a)

	Outcomes ^(b)		Forecasts	
	2014–15	2015–16	2016–17	2017–18

Real gross domestic product	2.2	2½	2½	3
Household consumption	2.7	3	3	3
Dwelling investment	7.9	8	2	1
Total business investment ^(c)	-6.2	-11	-5	0
Mining investment	-17.3	-27½	-25½	-14
Non-mining investment	1.2	-2	3½	4½
Private final demand ^(e)	1.0	½	1½	2½
Public final demand ^(e)	0.0	2¼	2¼	2
Change in inventories ^(d)	0.2	0	0	0
Gross national expenditure	0.9	1	1¾	2½
Exports of goods and services	6.5	6	5	5½
Imports of goods and services	0.0	0	2½	3
Net exports ^(d)	1.4	1¼	¾	¾
Nominal gross domestic product	1.6	2½	4¼	5
Prices and wages				
Consumer price index ^(e)	1.5	1¼	2	2¼
Wage price index ^(f)	2.3	2¼	2½	2¾
GDP deflator	-0.6	0	1¾	1¾
Labour market				
Participation rate (per cent) ^(g)	64.8	65	65	65
Employment ^(f)	1.6	2	1¾	1¾
Unemployment rate (per cent) ^(g)	6.1	5¾	5½	5½
Balance of payments				
Terms of trade ^(h)	-10.3	-8¾	1¼	0
Current account balance (per cent of GDP)	-3.7	-4¾	-4	-3½

Note: The forecasts for the domestic economy are based on several technical assumptions. The exchange rate is assumed to remain around its recent average level—a trade-weighted index of around 64 and a \$US exchange rate of around 77 US cents. Interest rates are assumed to move broadly in line with market expectations. World oil prices (Malaysian Tapis) are assumed to remain around US\$43 per barrel.

(a) Percentage change on preceding year unless otherwise indicated.

(b) Calculated using original data unless otherwise indicated.

(c) Excluding second hand asset sales from the public sector to the private sector.

(d) Percentage point contribution to growth in GDP.

(e) Through the year growth rate to the June quarter.

(f) Seasonally adjusted, through the year growth rate to the June quarter.

(g) Seasonally adjusted rate for the June quarter.

(h) The forecasts are underpinned by spot prices of US\$55 per tonne (Free on board (FOB)) for iron ore; US\$91 per tonne (FOB) for metallurgical coal and US\$52 per tonne (FOB) for thermal coal.

Source: Australian Government, *Budget Paper No. 1: Budget Strategy and Outlook 2016–17*, Canberra, p. 2-6.

[324] The picture presented in this table is one of a continuing return to a more usual set of relationships between the major components of the national accounts (such as real and nominal GDP growth), and small improvements in most of these components. They reflect

the continuing transition away from the resources investment boom and exceptionally high terms of trade to more normal circumstances.

RBA Statement on Monetary Policy

Table 4.13: RBA economy forecasts, growth rates

	Dec-15	Jun-16	Dec-16	Jun-17	Dec-17	Jun-18
GDP growth	3	2½–3½	2½–3½	2½–3½	2½–3½	3–4
CPI inflation	1.7	1	1–2	1½–2½	1½–2½	1½–2½
Underlying inflation	2	1½	1–2	1½–2½	1½–2½	1½–2½

Note: Underlying inflation is calculated by taking the average of the weighted median and trimmed mean measures of inflation. Percentage change for the year-ended shown. Technical assumptions include A\$ at US\$0.75, Trade Weighted Index at 62.5, Brent crude oil price at US\$47 per barrel.

Source: RBA, *Statement on Monetary Policy*, May 2016, p. 61, Table 6.1.

[325] The RBA forecasts slightly higher GDP growth than the 2016–17 Budget (see Table 4.13). It also expects underlying inflation to exceed the very low CPI growth over the year to the June quarter 2016.

[326] Based on data for early 2016, the RBA lowered its forecasts for GDP growth for Australia’s major trading partners. The RBA expects growth of Australia’s major trading partners to be about ½ percentage point below its decade average over the next two years, with Australia’s terms of trade likely to be a bit higher in the near term than earlier forecast, following the increase in commodity prices over recent months.²³⁶

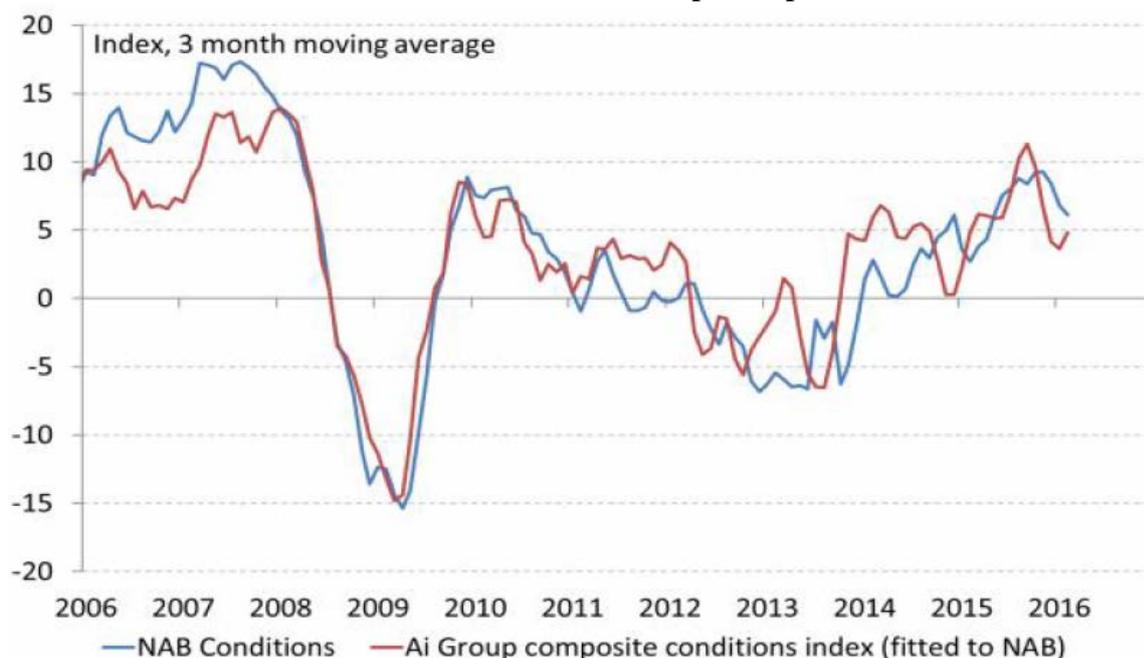
[327] The RBA notes that leading indicators of labour demand have been mixed of late but, taken together, suggest continuing improvement in labour market conditions, albeit at a slower pace than last year. The unemployment rate is expected to remain around its current rate until mid-2017, before declining gradually.²³⁷

[328] The RBA has revised down its forecasts for inflation and wage growth, having regard to the lower than expected March quarter 2016 underlying inflation outcome, the broad-based nature of the weakness in non-tradables inflation and the fact that wage outcomes were lower than expected over 2015. Underlying inflation is now expected to remain around 1–2 per cent over 2016 and to pick up to 1½–2½ per cent at the end of the forecast period.²³⁸

Other indicators

[329] Ai Group provided a useful composite of its three separate business survey performance indices and the NAB comparable index.²³⁹ This is reproduced below as Chart 4.13.

Chart 4.13: NAB business conditions and Ai Group ‘composite’ conditions indexes*



Note: *Weighted composite index of Ai Group Australian Performance of Manufacturing Index (PMI), Performance of Services Index (PSI), Performance of Construction Index (PCI), fitted to same scale as NAB. Values above zero indicate positive conditions in the NAB index and net expansion in the Ai Group index. Values below zero indicate negative conditions in the NAB index and net contraction in the Ai Group index.

Source: Ai Group submission at p. 9, Chart 5.

[330] The two indices track each other quite closely and both show positive business conditions have prevailed since 2014.

[331] Ai Group also referred to information drawn from its annual survey of CEOs.²⁴⁰ The limited response rate to the survey of about 7 per cent is insufficient to ensure the reliability of the data for the purpose of providing a representative picture at either an industry or an economy-wide level.²⁴¹ Further, despite the weighting of some data presented for all CEOs to adjust for their characteristics, the respondents were not representative of Australian CEOs as a whole when assessed against ABS data.²⁴² Despite the provision by Ai Group of information comparing the expected and actual outcomes reported by the survey respondents,²⁴³ caution must be applied in considering the survey results.

[332] The Ai Group CEO survey indicated that Australia’s CEOs are more optimistic about general business conditions in 2016 than at any time in the past three years. The CEO survey data also show a tendency for the outcomes to be more subdued than their original expectations. Mining and mining services and Construction businesses are the most pessimistic about business conditions in 2016, whilst Services businesses are the most optimistic.²⁴⁴

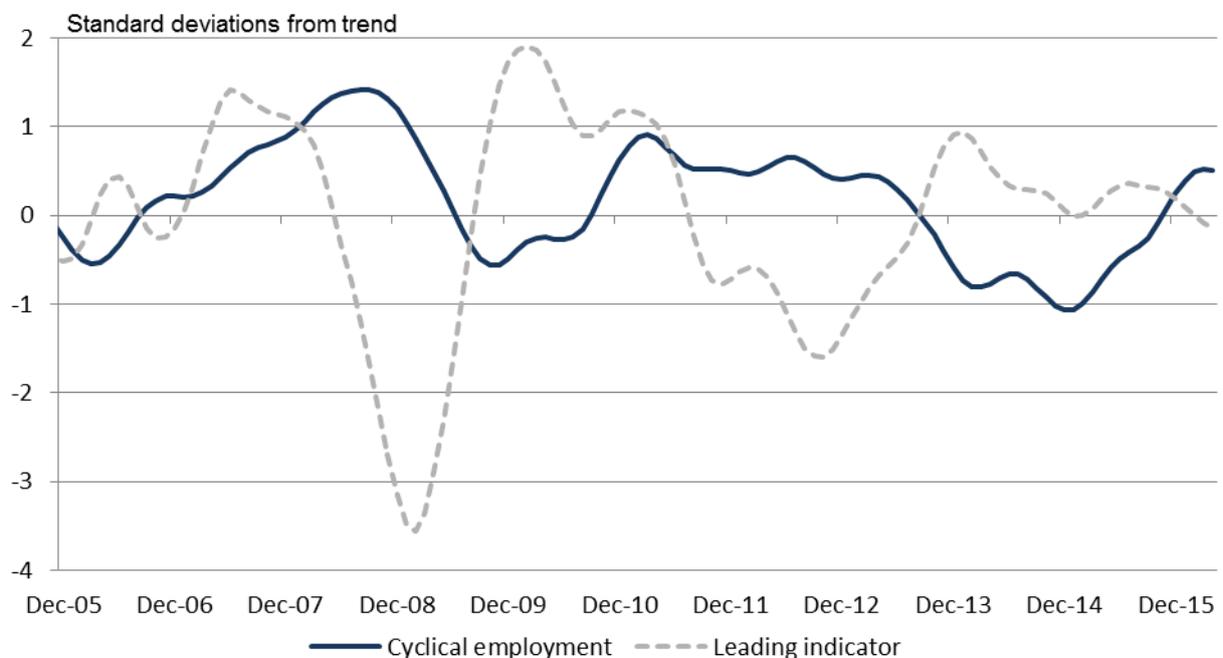
[333] The most recent NAB Monthly Business Survey was undertaken in March 2016, with the results published in April 2016. They were summarised as follows:

“This NAB Business Survey revealed a significant improvement in both business conditions and confidence, suggesting the domestic business environment not only remains favourable but appears to be strengthening further. In March, business

conditions jumped to +12 points, its equal highest value since early 2008, reflecting above-average conditions in most industries. Service industries remain the best performers, although construction also closed the gap in March, manufacturing is looking more upbeat, and transport appears to be responding positively to lower fuel prices – in contrast, mining conditions remain extremely weak and retail was disappointing. All three components of conditions (trading, profits and employment) improved during the month, with the employment index particularly encouraging (the highest read since mid-2011), and indicative of on going labour market strength.”²⁴⁵

[334] The Department of Employment’s Monthly Leading Indicator of Employment (Indicator), based on the weighted average of a select number of economic and employment indicators, is shown in Chart 4.14. The Indicator has fallen for the ninth consecutive month in April 2016. It is currently at about its trend level. Cyclical employment fell in April, after rising for 15 consecutive months, and is still above trend.

Chart 4.14: Levels of the Leading Indicator of Employment and Cyclical Employment



Source: Department of Employment, *Monthly Leading Indicator of Employment, April 2015*, https://docs.employment.gov.au/system/files/doc/other/lioe_0416.pdf

[335] Job vacancies increased by 13.4 per cent over the year to the February quarter 2016, continuing a trend increase in vacancies since the August quarter 2013.²⁴⁶ Total job advertisements, as measured by the March 2016 ANZ survey²⁴⁷ of internet and newspaper advertisements, increased by 0.2 per cent, seasonally adjusted, in March 2016 and 10 per cent over the year, remaining broadly unchanged since November 2015.

Conclusion

[336] Economic growth, whilst remaining slightly below trend, has continued at a reasonable level, improving over the second half of 2015 and outstripping growth in each of the seven major OECD economies. Real GDP grew by 3.0 per cent over the year to the December quarter 2015, compared with 2.2 per cent over the year to the December quarter

2014. RNNDI fell by 1.1 per cent over the year to the December quarter 2015, reflecting the decline in the terms of trade.

[337] Over the five years to 2014–15, labour productivity growth in the market sector was higher than the five years prior. Over the year to the December quarter 2014, GDP per hour worked fell by 0.4 per cent, following growth over each of the preceding four years, whilst GVA per hour worked for the market sector grew by 0.9 per cent, although caution is required in considering the recent data as noted in paragraph [227]. There was considerable variation in productivity growth between industries around the all industries average of 1.0 per cent in 2014–15.

[338] Company gross operating profits grew by 2.8 per cent for non-mining industries over the year to the December quarter 2015 and fell by 14.9 per cent in the Mining industry.

[339] Business bankruptcy rates and business exit rates were at relatively low levels in 2014–15.

[340] All measures of inflation remain at historically low levels. The headline CPI rose by 1.3 per cent, underlying inflation increased by 1.5 per cent (average of the timed and weighted mean) and the LCI for employee households increased by 1.1 per cent over the year to the March quarter 2016.

[341] Each measure of wages reflects continued historically low aggregate wages growth. Over the year to the December quarter 2015, WPI increased by 2.2 per cent and AWOTE by 1.6 per cent. Bargaining outcomes, reflected in AAWI, grew by 3.0 per cent in the December quarter 2015. Over the year to the December quarter 2015, nominal unit labour costs rose by 0.3 per cent seasonally adjusted and real unit labour costs increased by 0.9 per cent. The Panel's conclusion in 2014–15 that wages growth is neither currently a source of inflationary pressure within the economy nor a source of declining capacity of Australian firms to compete in international markets remains true this year.

[342] Stronger labour market conditions over the past year are evident across all measures, other than hours worked which fell between December 2015 and April 2016. The growth in both employment and hours worked was strong over the year to December 2015—2.6 per cent in each case—although it has moderated slightly in early 2016, with employment growth, slowing to 2.0 per cent in the year to April 2016 whilst hours growth eased further to 0.4 per cent over the same year and fell in the first months of 2016. Employment and hours worked in the award-reliant industries of Administrative and support services; Health care and social assistance; and Retail trade grew above the all industries average, but fell in both the Accommodation and food services and Other services industries.

[343] The employment to population ratio for people of working age rose over each of the past two years, to 75.4 per cent in March 2016, although it remains below its peak in December 2010. The 76.0 per cent recorded in December 2015 has been exceeded, and then by a small amount, only twice in the past 10 years. The participation rate of people aged 20–64 years was higher in December 2015 than in any time over the last decade for both men and women. The participation rate has risen by 0.2 percentage points over the year to March 2016.

[344] The improved labour market over the past year has arrested the persistent increase in unemployment since the GFC and brought about a moderate reduction in unemployment. The total number of unemployed persons has fallen by 37 200 (or 4.9 per cent) over the year to April 2016 (trend data), and the unemployment rate has fallen by 0.4 percentage points, from 6.1 per cent in April 2015 to 5.7 per cent in April 2016.

[345] As employment growth strengthened and overall unemployment fell over the course of 2015 and into 2016, so too did the under-employment rate, long-term unemployment and the youth unemployment rate.

[346] Economic data in respect of the award-reliant industries does not suggest that the most award-reliant industries have faced a relatively difficult economic environment over the past year or that recent minimum wage increases have adversely impacted on the relative economic performance of the award-reliant industries.

[347] The transition in the economy from the mining sector to the more labour-intensive service sectors has been evident in the strength and composition of employment growth in recent years, with most of the growth in total employment occurring in the services sectors of the economy, with the Retail trade and Health care and social assistance industries contributing most to aggregate employment growth.

[348] The Australian economy is entering its 26th consecutive year of economic growth and a continuing transition toward broader growth in the Australian economy following the passing of the resource investment boom. The transition to broader-based growth is being supported in the short-term by household consumption, dwelling investment and exports, with non-mining investment remaining weak and falling mining investment detracting from growth.

[349] All the official sources of forecasts expect GDP and employment to continue to grow and unemployment to fall. Inflation and wage growth are expected to continue to be below average levels in the coming year or so. The relatively strong economy and labour market are factors supporting a higher increase to the NMW and award wages.

5. Relative Living Standards and the Needs of the Low Paid

[350] Both the minimum wages objective and the modern awards objective require us to take into account relative living standards and the needs of the low paid when setting minimum rates. Those matters are different, but related, concepts²⁴⁸ and must be considered, together with the other matters in ss.3, 134(1) and 284(1) of the Act, in the context of available data and research.

[351] The assessment of relative living standards requires a comparison of the living standards of workers reliant on the NMW and minimum award rates determined by the AWR with those of other groups that are deemed to be relevant.

[352] The assessment of the needs of the low paid requires an examination of the extent to which low-paid workers are able to purchase the essentials for a “decent standard of living” and to engage in community life, assessed in the context of contemporary norms.

[353] After considering some preliminary issues, we will examine relative living standards before turning to consider the needs of the low paid, although we recognise that the two concepts overlap.

Relevant comparators

[354] As it has in each year since 2010, ACCER again argued that the age and disability pension rates and the estimated living standards of pensioners are a relevant consideration in assessing the relative living standards of the low paid and pointed out that pensioners have higher living standards than some low-paid wage safety net dependent families.²⁴⁹ Consistent with our past approach,²⁵⁰ our assessment of relative living standards focusses mainly on the comparison between award-reliant workers and other employed workers, especially non-managerial workers. This focus does not exclude a comparison with other relevant groups, but in our view, a comparison with pensioners for the purpose of assessing the relative living standards of the low paid is of very limited relevance for two reasons.

[355] First, the current pension system has two components: the base pension and the supplement. The base pension is adjusted by reference to a combination of price and wage movements, such that it will increase no less than male total average weekly earnings. The supplement is adjusted by reference to price movements. Given the base pension is adjusted by at least a measure of average wages, it will move broadly in line with average wages. The supplement will move in line with prices. Accordingly, pension movements reflect movements in wages and prices, to which we already have regard in adjusting the NMW and modern award wage rates.

[356] Second, the pension is a reflection of society's views on the level of comfort that the aged should have in their retirement years and the level of financial support for people who have a physical, intellectual or psychiatric condition that restricts their capacity to work. The judgments and values that underlie these views can properly be quite distinct from an assessment of the minimum standards of living that are fair for those who are still in employment. For the same reasons that we find at paragraphs [400] to [402] that the distribution of low-paid workers across employee households, rather than all households, provides the best basis for assessing the relative living standards and the needs of the low paid, we think that a comparison with the circumstances of pensioners is not appropriate in assessing the relative living standards and needs of the low paid.

[357] As it has in previous reviews, MGA submitted that the income of small business owners who, it asserted, often earn less than employees, should be considered in assessing the relative living standards of the low paid.²⁵¹ In the 2012–13 Review decision the Panel rejected the proposition that business owners are low paid for the purpose of assessing the relative living standards and needs of the low paid.²⁵² We maintain that position—the requirement to have regard to the relative living standards and the needs of the low paid is directed to employees subject to award minimum wages or the NMW. The MGA point went to the related issue—whether the income of small business owners is a relevant comparator in assessing the relative living standards of the low paid. In the 2012–13 Review, the Panel also raised questions about the equivalence of these two forms of employment for the purpose of assessing relative living standards.²⁵³ Although MGA challenged that finding, it provided no substantive basis for doing so. We maintain the views that small business owners are not low-paid employees for the purposes of the Act. There is no data of small business owners' income which permits a meaningful comparison with the income of the low paid and there is

no equivalence of these two forms of employment for the purpose of assessing relative living standards.

Award reliance and low pay

[358] No new award reliance information has been published by the ABS since the May 2014 EEH data which was considered in the 2014–15 Review. In May 2014, the pay of 1.86 million employees (18.8 per cent of all employees) was set on the basis of the award only—an applicable classification rate in one of the 122 modern awards. Using May 2014 EEH data, the Australian Government estimated that in May 2014 less than 2 per cent of all employees, or 157 100 employees, were paid the NMW rate.²⁵⁴

[359] There is broad acceptance of the proposition that the two-thirds of median (adult) ordinary time earnings constitutes a reasonable basis for identifying the low paid. As in past AWRs, we accept that adult award-reliant employees who receive a rate of pay that (as a full-time equivalent) is below two-thirds of median (adult) ordinary time earnings are an appropriate and practical benchmark for identifying who is low paid. Appropriate adjustments must then be made for juniors (who comprise a large proportion of the award reliant and of the low paid).

[360] There is, however, no single accepted measure of two-thirds of median (adult) ordinary time earnings. The surveys that provide the information about the distribution of earnings from which a median is derived vary in their sources, coverage and definitions in ways that affect the absolute values of average and median wages (and two-thirds of these values).²⁵⁵

[361] Table 5.1 provides estimates of two-thirds of median weekly earnings based on data from the two main ABS surveys of the distribution of earnings; the Employee Earnings, Benefits and Trade Union Membership (EEBTUM)/Characteristics of Employment (COE); and the EEH.

[362] According to the COE, two-thirds of median weekly earnings for full-time employees in their main job was \$800.00 in August 2014. Based on the EEH, the equivalent figure was \$880.00 in May 2014. EEBTUM/COE data are used for the conventional OECD measure of the wage bite in Australia,²⁵⁶ shown in Table 5.3.

Table 5.1: Two-thirds of median weekly earnings

Year	EEBTUM/COE	EEH
	(\$)	(\$)

2008	\$666.67	\$705.33
2009	\$666.67	n/a
2010	\$700.00	\$743.33
2011	\$733.33	n/a
2012	\$766.67	\$808.00
2013	\$768.00	n/a
2014	\$800.00	\$880.00

Note: Weekly earnings from the EEBTUM and COE are earnings in the main job for full-time employees. The figures are for August of each year. Data from EEBTUM was used for years 2008–13 and data from the COE was used for 2014. Weekly earnings from the EEH are weekly total cash earnings for full-time non-managerial adult employees. The figure for 2008 is for August and for 2010, 2012 and 2014 for May.

Source: ABS, *Characteristics of Employment, Aug 2014*, Catalogue No. 6333.0; ABS, *Employee Earnings, Benefits and Trade Union Membership, Australia, various*, Catalogue No. 6310.0; ABS, *Employee Earnings and Hours, Australia, various*, Catalogue No. 6306.0.

[363] The August 2014 COE estimate of two-thirds of median weekly earnings of \$800.00 per week sits between the minimum rate at the C7 and C8 classification levels in the *Manufacturing and Associated Industries and Occupations Award 2010*²⁵⁷ (Manufacturing Award) in August 2014. The EEH estimate of \$880.00 per week for May 2014 equates most closely to the C4 classification rate in the Manufacturing Award in May 2014.

[364] The submissions in the current case, which reflect those put to the 2014–15 Review given no new EEH data is available, reveal different estimates of two-thirds of the median wage.

[365] In its submission, the Australian Government provided two estimates to identify low-paid workers:

- \$18.67 per hour (or about \$710.00 per week over a 38-hour week), using the May 2014 EEH data; and
- \$18.42 per hour (or about \$700.00 per week over a 38-hour week) using the 2014 HILDA survey data.²⁵⁸

[366] The Australian Government contended that there were about 1.3 million low-paid employees in 2014 (or 13.3 per cent of all employees), with around one-third of award-reliant workers being low paid in the EEH data.²⁵⁹ Their analysis took explicit account of the number and the level of pay of junior workers.

[367] The ACTU used unpublished ABS EEH data on the distribution of award only workers by hourly earnings to estimate the number of employees at each award classification level. On the basis of the May 2014 data, the ACTU estimated that 43 per cent of award only employees had hourly earnings at or below the C10 rate of pay in May 2014 (\$724.50).²⁶⁰

[368] Research Report 6/2013²⁶¹ found that around 75 per cent of adult award-reliant employees in the non-public sector were earning below the C10 rate of \$18.60 per hour.²⁶²

[369] Whilst no specific conclusion is available, the information as a whole suggests that a sizeable proportion—probably a majority—of employees who are award reliant are also low paid by reference to the two-thirds of median weekly earnings benchmark.

[370] A number of award-reliant employees are paid at levels that place them above that low pay benchmark and are thus not low paid in the usual sense. The circumstances of these employees are relevant to our assessment for the reasons that we set out in the 2013–14 Review decision.²⁶³ The modern awards objective requires the Panel (in the context of Part 2—6 of the Act) to ensure that modern awards provide a fair and relevant minimum safety net of terms and conditions.

Relative living standards

[371] The Panel is required to take into account the relative living standards of those on the NMW and those on modern award minimum wages. This requirement relates to all modern award minimum rates, not just to those that fall below a threshold of low pay. Our consideration of relative living standards focusses on the comparison between award-reliant workers and other employees, especially non-managerial employees, but does not exclude comparison with other groups. We consider measures of both earnings and disposable incomes.

[372] There is no doubt that the low paid and award reliant have fallen behind wage earners and employee households generally over the past two decades, whether on the basis of wage income or household income. That conclusion arises from the longer-term data relied on by many parties. That picture is conveniently summarised in the submissions of the Australian Government:

- From when it was introduced in 1997 until 2015, the NMW has increased on average by 3.4 per cent a year in nominal terms and 0.7 per cent a year in real terms. This compares with the growth in median full-time earnings, which averaged 4.4 per cent a year in nominal terms and 1.5 per cent a year in real terms to 2014.²⁶⁴
- The minimum wage bite (the ratio of the minimum wage to median earnings) has declined from 62 per cent in 1997 to 53 per cent over the same period.²⁶⁵
- Whilst real weekly earnings of full-time adult employees between 1994 and 2014 have grown at all levels in the earnings distribution, more rapidly in the second decade than the first, the growth rates were highest amongst the higher paid. Between 1994 and 2004, real weekly earnings grew by 6.3 per cent at the 10th percentile, 11.1 per cent at the median and 17.9 per cent at the 90th percentile. Over the period 2004 to 2014, the increases were 12.9 per cent, 19.0 per cent and 27.1 per cent, respectively.²⁶⁶ Earnings inequality increased in Australia between the mid-1980s and mid-2000s, consistent with the position in most OECD countries.²⁶⁷
- There has been lesser growth at the lowest percentile within the distribution of real household disposable income than at the median or the higher percentiles, although gains in equalised real household disposable income have been more evenly spread than gains in individual earnings over the past two decades.²⁶⁸
- The Gini coefficient, which measures inequality in income distribution, has risen for household disposable income over the last two decades, although it remained more stable from 2007–08 to 2013–14.²⁶⁹

[373] Against that longer-term picture of declining relative living standards of the low paid over the past two decades which emerges consistently from the information before us, we turn now to consider more recent information about the relative living standards of the low paid.

Real earnings

[374] Our assessment of relative living standards commences with an examination of how the wages of award-reliant employees have changed relative to prices.

[375] Although subject to year-to-year variation, the NMW has increased by 4.8 per cent in real terms over the past decade and in real terms in most years within the decade (Table 5.2). The CPI-adjusted real value of the NMW increased by a cumulative 1.7 per cent over the five years to the December quarter 2010 and a further 3 per cent over the five years to the December quarter 2015. The real value of the minimum wage rose by 0.8 per cent over the most recent year, to the December quarter 2015. The increase in the real value of award wages is consistent with the intention of the Panel in the 2013–14 and 2014–15 Review decisions to award an increase which would result in a modest improvement in the real value of modern award minimum wages.²⁷⁰

Table 5.2: Real national minimum wage and percentage change—2005–2015, December quarter 2015 dollars

Year	Real national minimum wage	Change
	(\$)	(%)
2005	626.60	0.8
2006	640.71	2.3
2007	635.22	-0.9
2008	637.94	0.4
2009	625.09	-2.0
2010	637.54	2.0
2011	640.08	0.4
2012	644.45	0.7
2013	643.57	-0.1
2014	651.72	1.3
2015	656.90	0.8

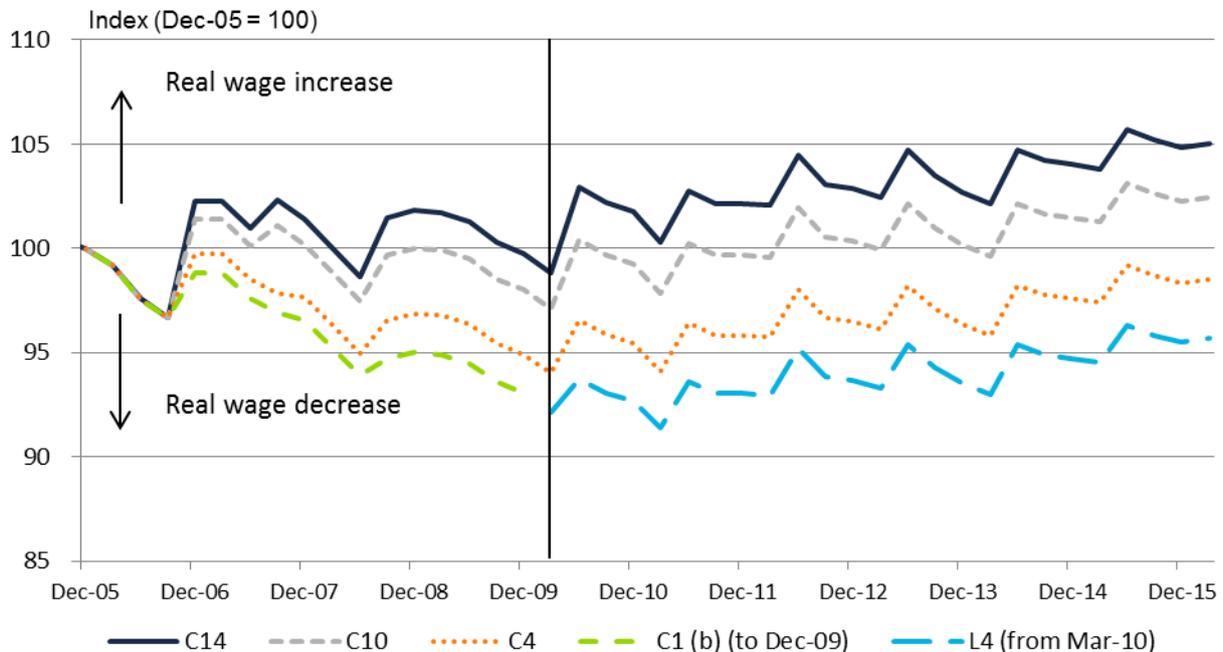
Note: Real minimum wage calculated from C14 (NMW) and CPI (original data) from the December quarter of each year.

Source: ABS, *Consumer Price Index, Australia, Mar 2016*, Catalogue No. 6401.0; Metal Industry Award; Manufacturing Award.

[376] Chart 5.1 shows an index of the real value of selected award classification rates since December 2005. The chart shows real increases in the level of the C14 (and NMW) and C10 rates and real reductions in the higher C4 and C1(b)/L4 classification rates over the decade, notwithstanding real growth in each classification rate since the 2010–11 Review decision. The more pronounced real increases at the lowest classification level (C14) and more pronounced reductions at the C1(b)/L4 level, reflect the adjustment of award wages by “flat dollar” amounts prior to 2011. Since the 2010–11 Review decision, the NMW and all modern

award rates have been adjusted by the same percentage and real wages have increased at each classification level at the time of each AWR adjustment.

Chart 5.1: Real value of selected minimum wage rates, December quarter 2005 to March quarter 2016



Note: Up until 27 March 2006 minimum rates of pay are those in the Metals Industry Award; between 27 March 2006 and 30 June 2009 the minimum rates are those in Australian Pay and Classifications Scale (APCS) (and from 1 July 2009, transitional APCS) derived from the Metals Industry Award; post 1 January 2010 minimum rates C14, C10 and C4 are those in the Manufacturing Award and the L4 rate from the *Professional Employees Award 2010*. For the purpose of the analysis, the L4 rate was calculated by dividing the annual salary for the L4 classification by 365 and multiplying by 7 to get a weekly rate from which a comparable real value could be derived.

Source: ABS, *Consumer Price Index, Australia, Mar 2016*, Catalogue No. 6401.0; Metals Industry Award; Manufacturing Award; *Professional Employees Award 2010*.

[377] We now consider broader measures of the wages of award-reliant workers relative to those of the workforce and the community as a whole, with particular focus on the comparison between award-reliant workers and other employees.

[378] The ACTU noted a correlation between the declining minimum wage bite—the NMW relative to median weekly earnings of full-time employees—over the past two decades and earnings inequality measured by the 50:10 ratio—the ratio of median earnings to earnings at the 10th percentile of the distribution. It submitted that the 50:10 ratio among full-time non-managerial adult workers was 1.49 in 2000, then 1.57 in 2010 and 1.58 in 2012 and did not change between 2012 and 2014, reflecting the declining minimum wages bite to 2012 and its subsequent stabilisation. The ACTU submitted that the “prevailing inequality which has worsened over recent decades still deserves to be ameliorated through increasing the minimum wage.”²⁷¹

[379] Table 5.3 compares the C14 rate with median weekly earnings of full-time employees measured by EEBTUM from August 2004 to August 2013, and by the COE for August 2014. The C14 rate has fallen relative to measures of median and average earnings over the past decade, with much of that decline occurring between August 2005 and August 2008. The ratio

of the C14 rate to median earnings has fallen marginally since the first AWR in 2010—from 54.3 per cent in August 2010 to 53.4 per cent in August 2014, although it has risen from the historically low level of 52.7 per cent in August 2012. The ratio is likely to have increased over the course of 2015 given the increase in the C14 rate of 2.5 per cent relative to the increase in average earnings as measured by AWOTE of 1.6 per cent over the year to December 2015.²⁷²

Table 5.3: The C14 rate relative to median weekly earnings of full-time employees

Month	C14 (\$)	Median earnings of full-time employees in main job (\$)	Ratio of C14 to median earnings in main job (%)
Aug-04	467.40	800.00	58.4
Aug-05	484.40	843.00	57.5
Aug-06	484.40	900.00	53.8
Aug-07	511.86	940.00	54.5
Aug-08	522.12	1000.00	52.2
Aug-09	543.78	1000.00	54.4
Aug-10	569.90	1050.00	54.3
Aug-11	589.30	1100.00	53.6
Aug-12	606.40	1150.00	52.7
Aug-13	622.20	1152.00	54.0
Aug-14	640.90	1200.00	53.4

Note: Following the amendments to the WR Act taking effect in 2006, the Federal Minimum Wage (FMW) was set at \$12.75 per hour, equivalent to \$484.50 per week

Source: ABS, *Characteristics of Employment, Australia, Aug 2014*, Catalogue No. 6333.0; ABS, *Employee Earnings, Benefits and Trade Union Membership, Australia, various*, Catalogue No. 6310.0; Metals Industry Award; Manufacturing Award (from 1 January 2010).

[380] The minimum wage bite has fallen over the longer term and inequality in the earnings distribution (which extends beyond minimum wage earners) has risen over the longer term. However, Table 5.3 suggests that the decline in the minimum wage bite has moderated since 2012.

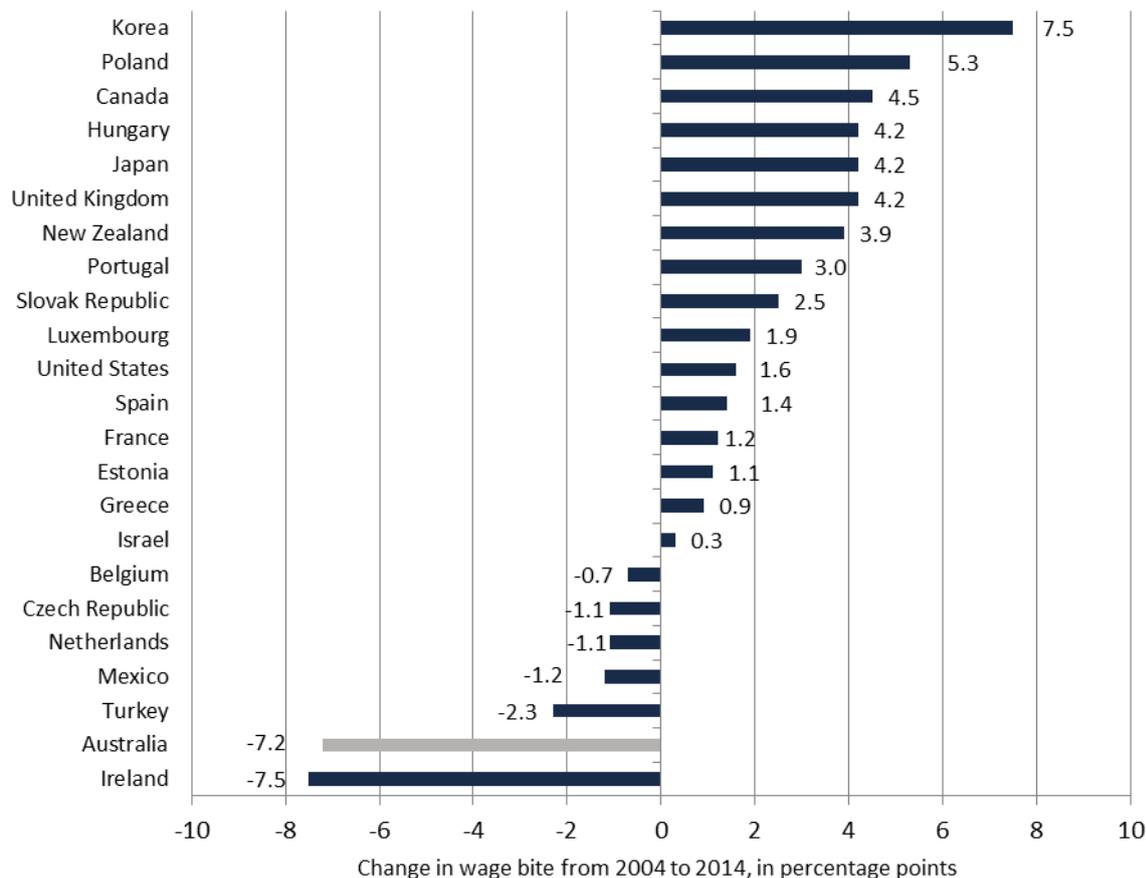
International comparisons of minimum wage levels/minimum wage bite

[381] The Australian Government submitted that while Australia’s minimum wage bite has declined from 62 per cent in 1997 to 53 per cent in 2014, it “is still above average for comparable OECD countries”.²⁷³ It submitted that in 2015, Australia’s NMW was the third highest in the OECD in purchasing power parity terms.²⁷⁴

[382] The ACTU submitted that, while Australia’s minimum wage bite remains above many other countries’, “the gap has been rapidly closing” due to other countries increasing their minimum wages.²⁷⁵ It submitted that the minimum wage bite (measured as a proportion of the mean, rather than the usual median) in Australia fell 7.2 percentage points between 2004 and

2014, from 50.3 per cent to 43.1 per cent.²⁷⁶ The ACTU provided the following chart which shows changes in the minimum wage bite in OECD countries over the decade to 2014.

Chart 5.2: Change in minimum wage bite of mean income, 2004 to 2014



Source: ACTU submission at p. 90, Figure 51. ACTU calculations based on OECD.Stat data.

[383] The Victorian Government noted the minimum wage bite in Australia has been declining since 2005, whereas the bite has increased in most other OECD countries, most notably in New Zealand, the UK and Canada.²⁷⁷

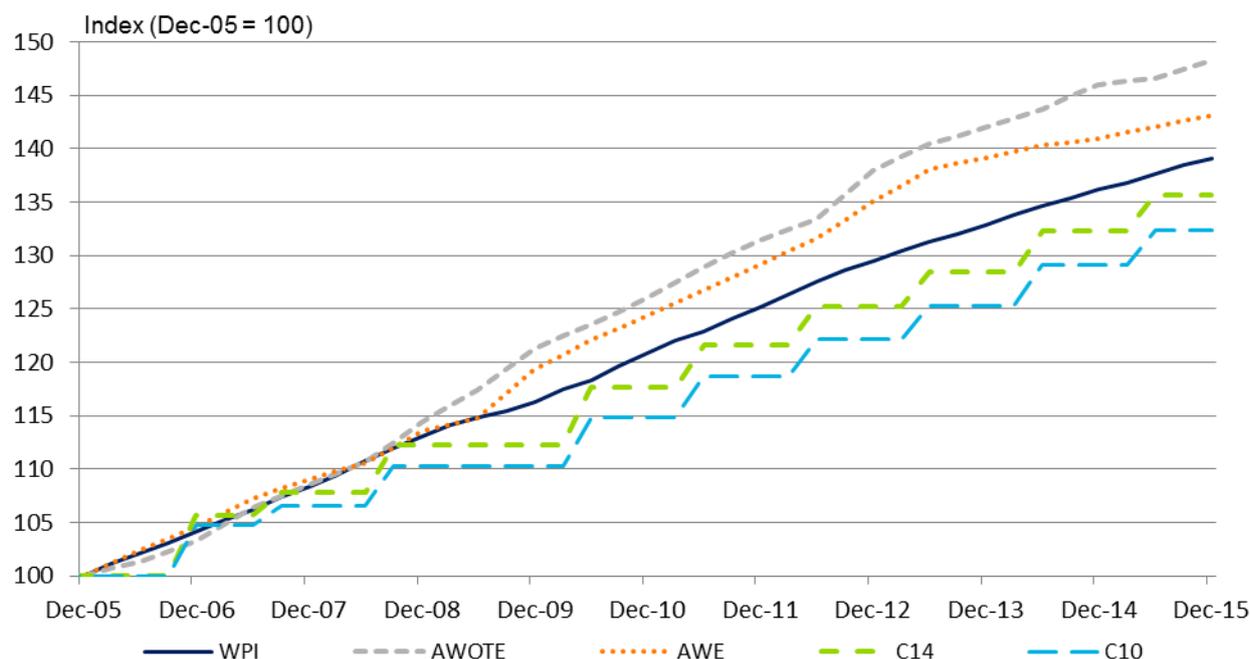
[384] The increasing minimum wage bite evident in other OECD countries over the past decade is likely to continue. Germany introduced a statutory national minimum wage for the first time at the level of €8.50 per hour (47.8 per cent of the median wage) from 1 January 2015.²⁷⁸ The UK introduced a new National Living Wage (over and above the continuing National Minimum Wage) at the rate of £7.20 an hour (or 55 per cent of median earnings) from April 2016 for working people aged 25 and older, with an explicit ambition that the rate will reach £9.00 an hour (or 60 per cent of median earnings) by 2020, subject to sustained economic growth.²⁷⁹

[385] Whilst, the decline in the NMW relative to median earnings provides one piece of information relevant to the relative living standards of the low paid, the Australian minimum wage bite relative to that of other OECD countries is of limited significance in that evaluation.

The national minimum wage relative to measures of wages growth

[386] Chart 5.3 shows the changes in the nominal value of the C14 and C10 award rates, compared with changes in AWOTE, AWE and the WPI, over the 10 years to the December quarter 2015. It shows that award rates have grown more slowly over the decade than the measures of average pay, although growth in the C14 rate has remained close to that of the WPI. More recently the size of the gap between award rates and average wages has grown more slowly or declined, reflecting reduced growth in the AWOTE, AWE and the WPI and decisions of the Panel.

Chart 5.3: Growth in C14 and C10 relative to AWOTE, AWE and WPI, cumulative percentage change



Note: This chart reflects available data for the period December quarter 2005 to December quarter 2015. WPI is the index for total hourly rates of pay excluding bonuses in both private and public sectors. It is unaffected by change in the quality or quantity of work performed. AWOTE is calculated by dividing estimates of weekly ordinary time earnings by estimates of the number of employees. It is calculated before taxation and other deductions such as superannuation. It also excludes payments which are not related to the reference period such as overtime, leave loading and redundancy payments. AWOTE estimates refer to full-time adult employees. AWE is the gross (before tax) earnings of employees (excluding salary sacrifice). The C14 and the C10 are minimum award rates set under the Manufacturing Award and the former Metal Industry Award. AWOTE and AWE data are published half-yearly for May and November, hence, a quarterly series has been derived. AWOTE and AWE data are expressed in original terms.

Source: ABS, *Average Weekly Earnings, Australia, Nov 2015*, Catalogue No. 6302.0; ABS, *Wage Price Index, Australia, Dec 2015*, Catalogue No. 6345.0; Metal Industry Award; Manufacturing Award.

[387] As shown in Table 5.4, the NMW has fallen from 44.7 per cent to 43.8 per cent of AWOTE over the five year period from November 2010 to November 2015. Equal proportionate reductions in the ratio of higher classification rates (C5 and C10) to AWOTE occurred over the same period, reflecting the percentage increases applied to each classification rate. The ratio of the minimum classification rates to AWOTE fell in 2011 and 2012, remained steady in 2013 and 2014 and increased slightly in 2015.

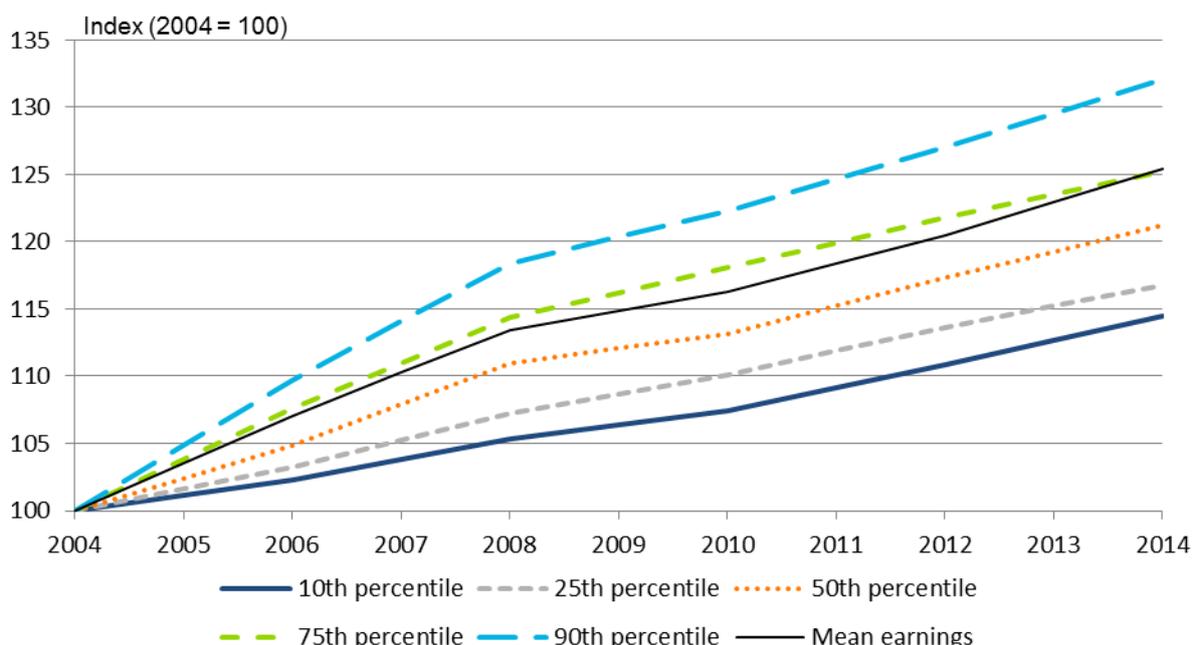
Table 5.4: Ratio of C14, C10 and C5 classifications to AWOTE wage measures—November 2010 and November 2015

	Nov-2010	Nov-2011	Nov-2012	Nov-2013	Nov-2014	Nov-2015
C14	44.7	44.3	43.4	43.3	43.4	43.8
C10	52.0	51.6	50.6	50.4	50.5	51.0
C5	60.9	60.4	59.2	59.0	59.1	59.6

Note: AWOTE data are expressed in original terms.

Source: ABS, *Average Weekly Earnings, Australia, Nov 2015*, Catalogue No. 6302.0; Manufacturing Award.

[388] While accepting that low-paid employees are not necessarily paid minimum award rates, it is useful to note the broader changes in overall levels of earnings inequality, by reference to real earnings. Overall levels of earnings inequality have increased over time. Chart 5.4 shows the growth in real weekly earnings by selected percentiles. Real weekly earnings of full-time workers have become progressively less equal over the past decade—for each decile, the lower the earnings, the lower the rate of growth in earnings, reflected in the fanning out of the earnings distribution. The increased levels of earnings inequality over the past decade occurred, notwithstanding growth in real earnings even at the lowest decile. While small relative to other deciles, there has been 15 per cent growth in the real earnings at the lowest decile. The rising earnings inequality over the past decade was concentrated in the period up to 2008 and has stabilised or even reversed since that time.

Chart 5.4: Real weekly total earnings (full-time adult non-managerial employees) by percentile, 2004 to 2014

Note: Earnings figures are slightly inflated from May 2006 due to the inclusion of salary sacrificing. The EEH was not conducted in 2005, 2007, 2009, 2011 and 2013. Results for these years have been obtained through linear interpolation. Earnings data for 2014 are based on full-time non-managerial employees paid at the adult rate.

Source: ABS, *Consumer Price Index, Australia, Dec 2015*, Catalogue No. 6401.0; ABS, *Employee Earnings and Hours, Australia, various*, Catalogue No. 6306.0.

[389] Table 5.5 presents the ratio of selected percentiles to the mean and median of real weekly total earnings between 2004 and 2014. The stabilisation of earnings inequality since 2008 is evident in the ratio at the 10th percentile to mean earnings between 2010 and 2014 and the very small fall in the ratio of the 10th and 25th percentiles to median earnings since 2008.

Table 5.5: Ratio of selected percentiles to the mean and median of real weekly total earnings (full-time adult non-managerial employees), 2004 to 2014

	2004	2006	2008	2010	2012	2014
Ratio of selected percentiles to mean real earnings						
10 th percentile	0.61	0.58	0.57	0.56	0.56	0.56
25 th percentile	0.72	0.69	0.68	0.68	0.68	0.67
50 th percentile	0.91	0.89	0.89	0.88	0.88	0.87
75 th percentile	1.18	1.18	1.19	1.20	1.19	1.18
90 th percentile	1.49	1.53	1.56	1.57	1.57	1.57
Ratio of selected percentiles to median real earnings						
10 th percentile	0.67	0.66	0.64	0.64	0.63	0.63
25 th percentile	0.79	0.78	0.77	0.77	0.77	0.77

Note: Earnings figures are slightly inflated from May 2006 due to the inclusion of salary sacrificing. Earnings data for 2014 are based on full-time non-managerial employees paid at the adult rate.

Source: ABS, *Consumer Price Index, Australia, Mar 2016*, Catalogue No. 6401.0; ABS, *Employee Earnings and Hours, Australia, various*, Catalogue No. 6306.0.

Disposable income of award-reliant workers

[390] We next consider submissions and information put to us in relation to the disposable incomes of NMW- and award-reliant workers and households.

[391] The effect of taxes and transfers on disposable incomes of the low paid is relevant to the needs of the low paid and their relative living standards, both in terms of specific changes in the tax-transfer system at the time of a particular AWR and in assessing broader information in relation to measures of the relative income of the low paid, which is affected by tax and transfer payments.

[392] The tax-transfer system affects the disposable income of employees, with taxes reducing income and transfer payments augmenting available income. That effect arises in respect of both individual incomes and household incomes.

[393] The Australian Government submitted that minimum wage workers, including some full-time workers, benefit from the tax-transfer system. It submitted that transfer payments are roughly one-third of disposable income for full-time minimum wage workers in single-income households with children.²⁸⁰

[394] In addition to tax-transfer benefits, the government also assists households, particularly low-income households, through the provision of in-kind benefits, including social services, such as access to education, health care, public housing and concession cards,

which has the effect of reducing differences in material wellbeing among Australian households.

Disposable income of award-reliant employee households

[395] Before considering measures of disposable household income, we make a preliminary observation.

[396] ACCER has again made submissions concerning the “single person benchmark”.²⁸¹ The Panel addressed extensive ACCER submissions on this point in the 2014–15 Review decision.²⁸² Within the decision, the Panel made it clear that the single adult household provides the starting point for its assessment of relative living standards and needs, but consideration is also given to the relative living standards and needs of other types of families, including single-income families, in meeting its responsibility to have regard to the relative living standards and the needs of the low paid and balancing the other considerations which it is required to take into account. We are obliged to²⁸³ and do²⁸⁴ take into account relative living standards and the needs of the low paid, as prescribed by the Act, without limitation.

Household incomes

[397] The relative living standards of employees on the NMW and award-reliant employees are affected by the level of wages that they earn, the hours they work, tax-transfer payments and the circumstances of the households in which they live.²⁸⁵ The net effect of these factors is summarised in the notion of equivalised household disposable income. It is therefore necessary to have regard to a range of measures of the relative living standards of the low paid and the household circumstances in which they live.

[398] The Australian Government submitted that, in general, household income is a better proxy of economic wellbeing than individual income, contending that low-paid workers live in a diverse range of household types and will thus have a diverse set of living standards.²⁸⁶ It identified two approaches to assessing the distribution of low-paid workers across household income:

- a. the distribution of low-paid workers across households with at least one employee (referred to as employee households); and
- b. the distribution of low-paid workers across all households (including jobless households and retiree households).²⁸⁷

[399] The distribution of low-paid workers across employee households, preferably households for which the principal source of income is wages, provides the best basis for assessing the relative living standards and the needs of the low paid, for two reasons.

[400] First, the Panel’s assessment of relative living standards focuses on the comparison between award-reliant workers and other employed workers, especially non-managerial workers.²⁸⁸ The all-households approach compares the incomes/standard of living of workers with that of households for which government pensions and allowances are the main source of household income. This latter group make up the substantial portion of households in the lower percentiles of the all-households income distribution.²⁸⁹

[401] Second, about half of all households report expenditure that exceeds their income and this is most pronounced in the lowest decile of the household income distribution. The ABS suggests that some households report extremely low or negative income, which places them well below the safety net of income support provided by government pensions and allowances, raising questions about reliability of the information reported.²⁹⁰ Such households in the bottom income decile and with negative gross incomes tend to have expenditure levels that are comparable to those of households with higher income levels (slightly above the average expenditures recorded for the fifth income decile), suggesting that these households have access to economic resources such as wealth, or that the instance of low or negative income is temporary. Other households in the lowest income decile, with average incomes at about the level of the single pension rate, were predominantly single person households and their main source of income was largely government pensions and allowances. On average, these households also had expenditures above the average of households in the second income decile, which is not inconsistent with the use of assets to maintain a higher standard of living than implied by their incomes alone.

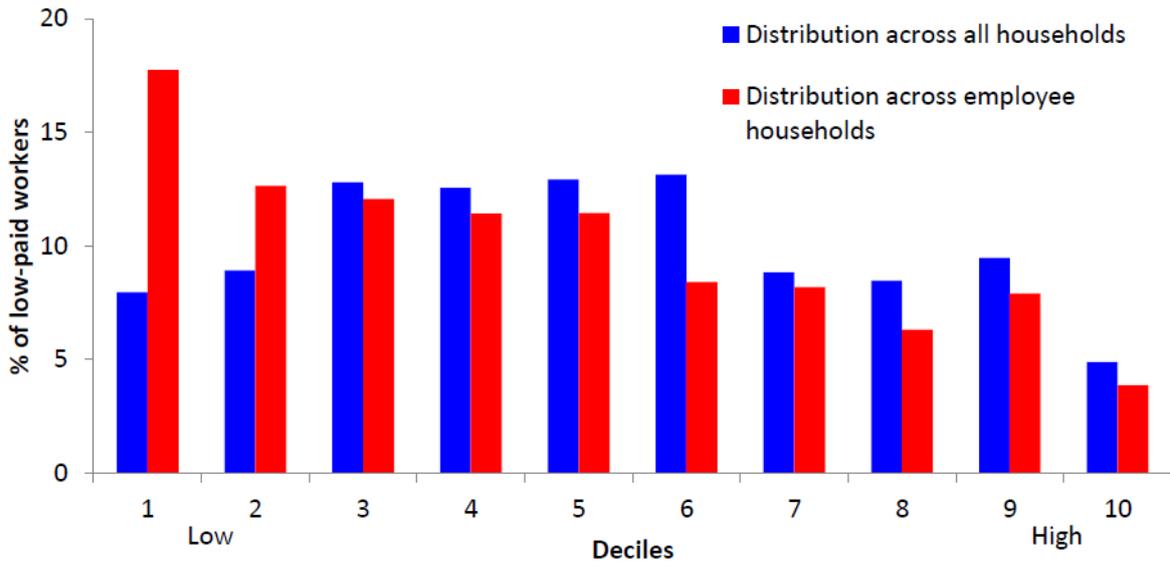
[402] In modelling the beneficiaries from a minimum wage increase, the PC observed that:

“If non-working households are excluded, the distribution of the gains from the minimum wage favour households in the lowest quintile of working households, both in gross and net terms (tables 4.8 and 4.9). Although workers in such households work fewer hours on average than those further up the income scale, a larger share of workers in this quintile are on minimum rates. These households also enjoy a lesser reduction in other transfers as their wage income increases. Overall, the minimum wage increase leads to a higher percentage increase in both the gross and net incomes of households in the lower quintiles of working households, with progressively smaller percentage gains for households in higher quintiles (‘Working households’ columns of table 4.7).”²⁹¹

[403] Drawing on HILDA data,²⁹² the Australian Government submitted that, while low-paid workers are scattered across the income distribution on both approaches, when considering *employee* households only, there is a higher proportion of low-paid employees in the lower deciles than the top deciles—65.3 per cent of low-paid employees are in the bottom five income deciles, with 30.4 per cent in the bottom two deciles.²⁹³ Household income was adjusted for household needs, including household size and composition, using the OECD equivalence scale.

[404] The greater concentration at the lower deciles in the household income distribution of the low paid in employee households is shown in Chart 5.5.

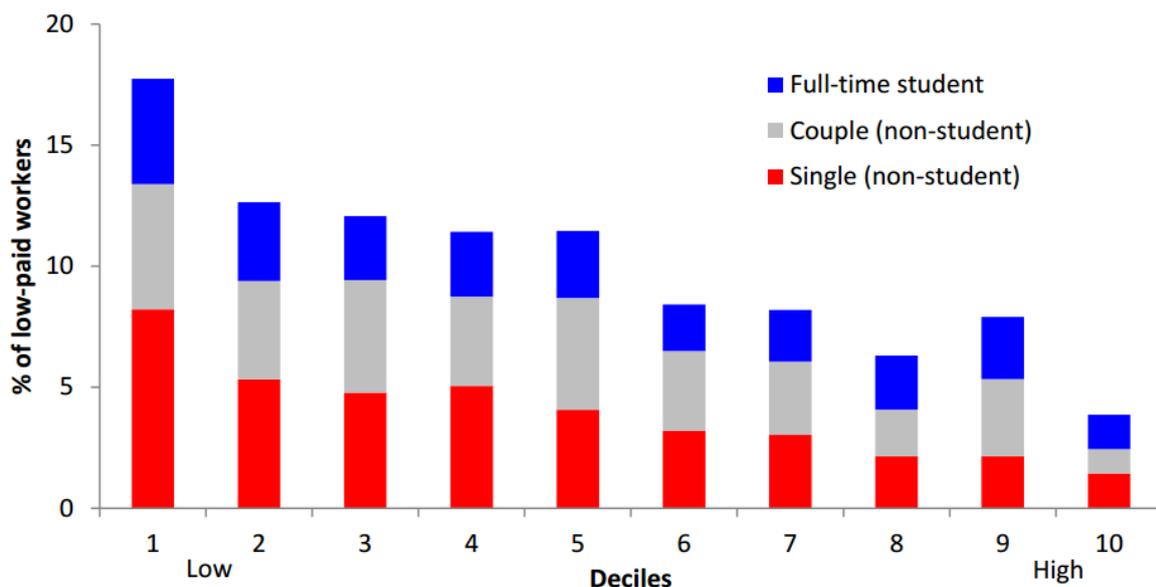
Chart 5.5: Distribution of low-paid employees, by equivalised household disposable income, comparing all households and employee households, 2014



Source: Australian Government submission at p. 11, Chart 2.2; HILDA Survey, release 14 (December 2015), wave 14.

[405] The Australian Government also provided information on the distribution of low-paid employees, by equivalised household disposable income and partnered status, for employee households, which is reproduced below. In addition to showing the greater concentration of the low paid in employee households at the lower deciles in the household income distribution, Chart 5.6 shows that single low-wage earners are particularly concentrated in the lowest deciles. Single low wage earners without children receive little help from the transfer system.

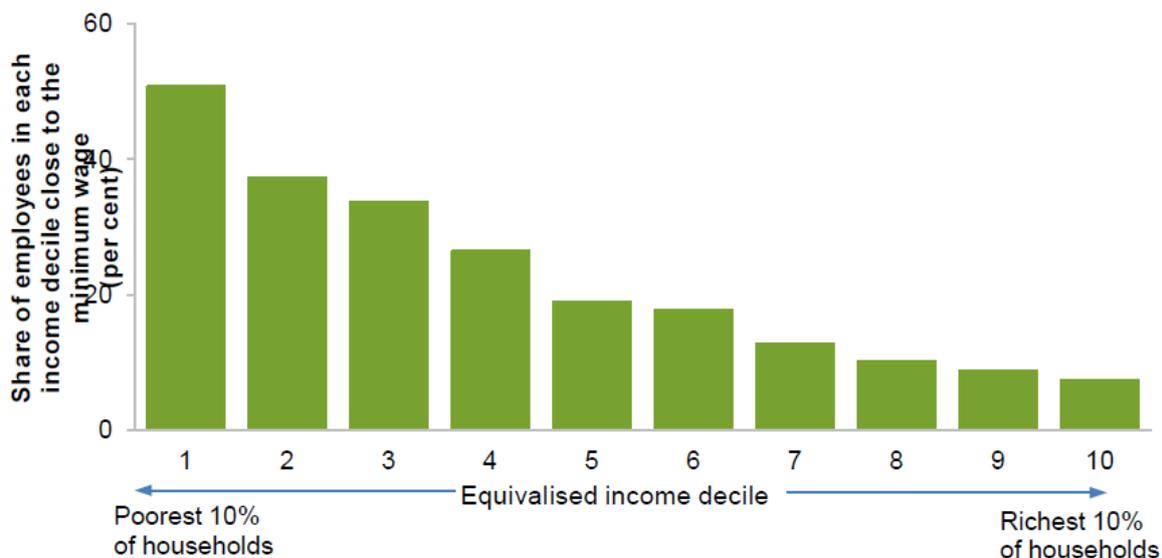
Chart 5.6: Distribution of low-paid employees, by equivalised household disposable income and partnered status, employee households only, 2014



Source: Australian Government submission at p. 13, Chart 2.4; HILDA Survey, release 14 (December 2015), wave 14.

[406] Using HILDA data, the PC provides a slightly different perspective by calculating the likelihood of being an employee in each equivalised household income decile.²⁹⁴ The PC concludes that employees in the lowest income groups are more likely to be on the minimum wage than those in higher income groups (and by more than a fivefold factor), referring to their Figure 4.8 which is reproduced below (Chart 5.7). It notes that while most people in the lowest quintile are not in work (and therefore do not receive any wages), almost half of those who are in work are paid at a minimum rate.²⁹⁵

Chart 5.7: Minimum wage reliance among employees according to household equivalised income deciles, 2013–14



Note: Equivalised household income controls for household size by dividing total household income by a weighted sum of persons in the household. The first adult is allocated a weight of 1, while additional adults are weighted at 0.5 and children weighted at 0.3.

Source: PC Report at p. 209, Figure 4.8.

[407] Based on analysis of gross weekly household income at the top of each decile, ranked according to income and including “households of all sizes and sources of income”, the ACTU concluded that around 20 per cent of the population is dependent on low pay.²⁹⁶ The ACTU further submitted that the Australian Government’s analysis of the HILDA survey in relation to low-paid households across the income distribution actually “provides a compelling argument for the importance of the minimum wage increases in supporting the low paid. It finds that 65.3% of low paid workers are in employee households below the median equivalized employee household income”.²⁹⁷

[408] ACCI submitted that most low-paid workers are not in low-income households²⁹⁸ and the Australian Government submitted that a substantial proportion of the low paid are members of higher income households.²⁹⁹ The Australian Government submitted that because low-paid workers are scattered across the entire household income distribution “there are better ways to address inequality than increases in the minimum wage and award classification wages”³⁰⁰ and raising minimum and award classification wages is not a particularly well-directed approach to improve the relative living standards of low-paid workers.³⁰¹

[409] We accept, as we have in the past, that the relative living standards of award-reliant employees are affected by the level of wages that they earn, the hours they work, tax-transfer payments and the circumstances of the households in which they live.³⁰² We also accept that increases in minimum wages are a blunt instrument for addressing the needs of the low paid³⁰³ and other instruments are required to assist in the task of ensuring that every employed family, whatever their composition, has sufficient income to meet their material needs.³⁰⁴

[410] However, we do not accept the proposition that most low-paid workers are not in low-income households. Around two-thirds of low-paid employees are found within the bottom half of the distribution of employee households and have lower living standards than other employees. Increases in the minimum wage and award classification wages do have a role to play as part of a package of measures to address the relative living standards and the needs of the low paid. So much is evident from the minimum wages objective and the modern awards objective in the Act. The potential contribution of increases in the minimum wage and award classification wages is made more apparent by the focus on employee households.

[411] As the Panel has previously noted, in relation to the slow relative growth of award wages between the longer period of 2002–2012, “the concentration of award-reliant employees in the lower deciles of the earnings distribution, the relatively slow rate of increase in the value of awards, and the influence of award rate changes on nearby bargained rates all point towards some direct contribution from AWR decisions to rising inequality of earnings”.³⁰⁵

[412] Further, minimum wage increases have contributed to the rise in absolute real disposable incomes of households containing NMW employees. Australian Government modelling of the contribution of taxes and transfers and NMW increases to changes in real disposable household income between 2011 and 2016³⁰⁶ identifies a net positive impact of real NMW increases for all household types, which is most pronounced for single person households and dual income couple households without children.

[413] The PC has also concluded that minimum wage increases have increased the wage rates of low-paid workers:

“The analysis in chapter 7 suggests that the operation of awards (including award minimum wages) over the last century has generally worked to compress wages and lift the relative employment-based incomes of low-paid workers, which accords with the Productivity Commission’s judgment that Australia’s minimum wages generally ‘bind’. This suggests that regulated minimum wages are indeed likely to have directly increased the wage rates of low-paid workers.”³⁰⁷

[414] Finally, we note that the correlation between inequality, measured by the 50:10 ratio and the minimum wage bite is very strong, both in Australia and across OECD countries.³⁰⁸ This is consistent with the OECD finding that higher minimum wages are associated with lower wage inequality, both within and across countries.³⁰⁹ The OECD noted a level of agreement with the proposition that “minimum wages on their own are a relatively blunt instrument for reducing poverty”,³¹⁰ although the OECD also noted a 2013 paper by Dube which suggests that minimum wage increases can reduce poverty for non-elderly individuals.³¹¹ Dube stated that totality of evidence from the 12 published studies for which he could obtain or construct minimum wage elasticities point towards some poverty reduction from minimum wage increases.³¹² Whilst he accepted that the minimum wage is a blunt tool

when it comes to fighting poverty, Dube found that the increase in the US federal minimum wage then under consideration can play a modest but important role in reducing poverty and raising family incomes at the bottom.³¹³

[415] Increases in the minimum wage and award classification wages have directly impacted on the relative living standards of the low paid and their capacity to meet relevant needs. They do play a role as part of a package of measures to address inequality.

[416] Table 8.3 of the Statistical Report shows changes in the nominal disposable income of selected minimum wage reliant households between July 2006 and July 2015. It shows that the nominal disposable income of each household type increased more than the CPI over the decade to July 2015. The real disposable income of each household type increased in 2014–15, by between 0.4 and 0.8 per cent.³¹⁴

[417] The Australian Government relied on modelling in Table 8.3 of its submission to submit that, as a result of a highly progressive and targeted tax-transfer system, minimum wage increases are not “fully reflected” in disposable income, even assuming no change in hours worked.³¹⁵ The modelling showed, for example, that a single full-time NMW income couple (with the partner on NSA) without children retained only 16 per cent or \$2.53 of the \$16.00 NMW increase of 1 July 2015. ACCER³¹⁶ submitted that the Commonwealth modelling is misleading because it fails to have regard to the indexation of the withdrawal rates for the means testing of the NSA. We agree that the modelling in Table 8.3 of the Australian Government’s submission presents a partial picture of the effect of taxes and transfers on the disposable incomes of the low paid and low-paid households, which is inconsistent with its submission that the tax-transfer system plays a large role in equalising the distribution of income among Australian households.

[418] Applying the approach which reflects the full impact of taxes and transfers, the Australian Government modelled the effect of the transfer payments on the equivalised income for full-time NMW workers with children on 1 January 2016 for a number of hypothetical household types with a NMW earner.³¹⁷ The Australian Government submitted that transfer payments helped compensate for the costs of raising children in particular.³¹⁸ Its modelling indicated that the transfer payments had the effect of increasing disposable income, adjusted for childcare costs, for both a single person working full time at the NMW with one child and dual income couples both working full time at the NMW with one child beyond the income of a single person without children. That was not the case in relation to both a single person working full time at the NMW and dual income couples both working full time at the NMW where there were two children. Nor was it the case in respect of single income couples, with one parent working full time at the NMW and the second parent on Parenting Payment/NSA, where the couple had one or two children, with equalised disposable income, adjusted for childcare costs being 13.9 per cent to 17 per cent below income of a single person without children. Whilst the transfer payments substantially offset the cost of raising children in all cases, they did not fully do so in respect to single person, dual income couple or single income couples with two children or single income couples with one parent working full time at the NMW and the second parent on the Parenting Payment/NSA, where the couple had one child.³¹⁹

[419] ACCER again provided longer-term data on disposable income for hypothetical single-earner households (couples and sole parents with two children) maintaining a January 2001 start point, but extending the data to January 2016.³²⁰ While they calculated that the

families earning AWOTE experienced a 100.6 per cent increase in disposable income over this period, the comparative figures for the NMW-reliant and C10-reliant families were 79.9 per cent and 74.3 per cent, respectively. ACCER submitted that, since 2001, low-paid working families at or near the safety net wage rates have fallen behind middle income families and living standards generally prevailing in Australia and the relative loss for higher-paid safety net workers and their families has been even greater.³²¹

[420] The ACCER calculations also show that whilst the disposable income of single earner NMW-reliant and C10-reliant families have increased more slowly than single earner AWOTE families, taxes and transfers have increased the real purchasing power of disposable incomes at the NMW/C14 and C10 levels, and reduced the difference compared to those with average earnings over the 14 year period shown. For the single earner NMW family, gross income increased by 64.1 per cent over the period whilst disposable income grew by 79.7 per cent (or 9.5 per cent more). For the single earner AWOTE family, gross income increased by 87.7 per cent over the period whilst disposable income grew by 100.6 per cent (or 6.9 per cent more). The long-term decline in the real NMW relative to real AWOTE, either on the basis of gross income or disposable income is consistent with the general picture noted in paragraphs [372] - [373] above.

[421] The ACCER comparison of changes in disposable income for hypothetical single-earner households (couples and sole parents with two children) for the NMW and AWOTE family show changes only between 2001 and 2016 and does not provide changes that occurred over the more recent years. Such information would shed further light on changes in relative living standards over time. To illustrate, we note that whilst ACCER calculations of increases in the gross NMW compared to gross AWOTE and household disposable income³²² show increases of 64.1 per cent, 87.7 per cent and 99.7 per cent respectively over the longer-term period from 2001 to 2016, the increases over the five years to 2016 were 15.3 per cent, 17.7 per cent and 13.5 per cent, respectively, with the NMW growing faster than household disposable income (but more slowly than AWOTE) over the more recent period.

[422] As it has in the past, the Australian Government calculated changes in real disposable income for a number of hypothetical household types with a NMW earner, in this case covering the period 1 January 2011 to 1 January 2016.³²³ It showed that for most hypothetical household types the total change in real disposable household income over the period 2011 to 2016 exceeded the impact of real NMW increases over that time, with taxes and transfers contributing to further increases in total real disposable household income. Each exception was a household type without children: single NMW employees; single income couples, with one NMW employee; and dual income couples, both of whom were NMW employees. In each case, taxes and transfers reduced the total change in real household disposable income over the five year period by about 1 per cent.

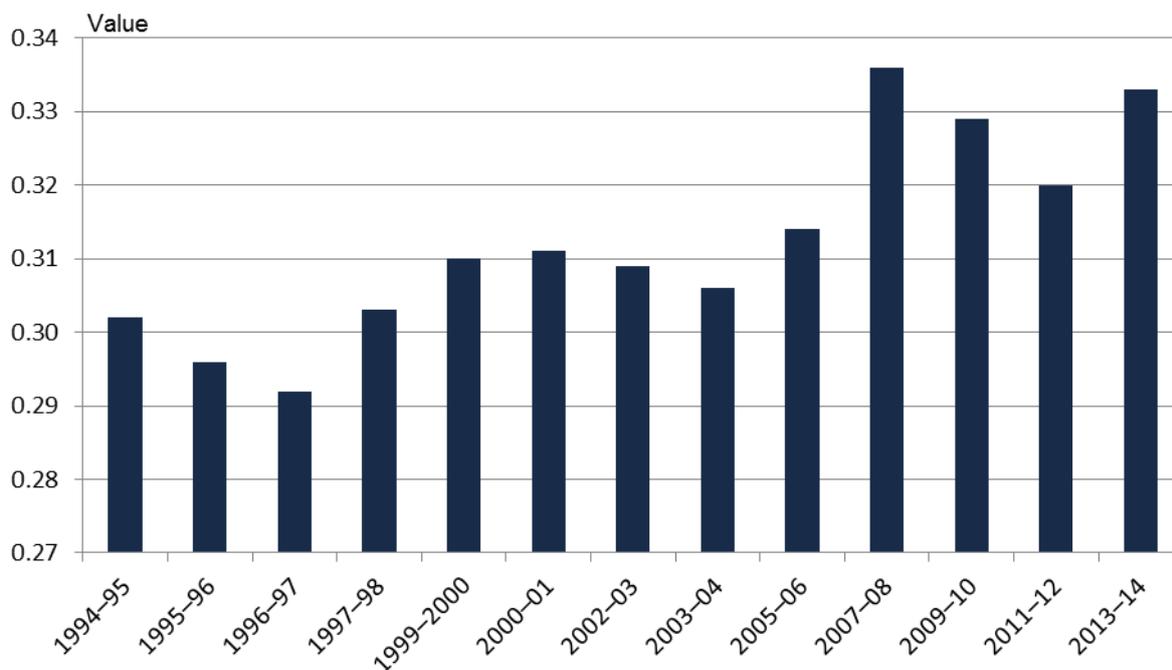
Needs of the Low Paid

Income inequality

[423] The extent of and changes in income inequality is relevant not only to the relative living standards of the low paid but also for our economy³²⁴ and for the maintenance of social cohesion.³²⁵

[424] The Gini coefficient is a measure of inequality, with inequality being greater the higher the value of the Gini coefficient. The ABS provides a Gini coefficient for the distribution of equivalised household disposable income in Australia.³²⁶ New data, for 2013–14, has been published by the ABS since the 2014–15 Review. The ABS data is shown over the past 19 years in Chart 5.8, which reproduces Figure 55 in the ACTU submission.³²⁷

Chart 5.8: Gini coefficient for equivalised household disposable income distribution in Australia 1994–95 to 2013–14



Note: Equivalised disposable household income standardizes as if a household's after tax and transfers income were that of a single individual.

Source: ACTU submission at p. 94, Figure 55; ABS, *Household Income and Wealth, Australia, 2013–14*, Catalogue No. 6523.0.

[425] The ACTU submitted that the Gini coefficient rose from 0.302 in 1994–95 to 0.333 by 2013–14. The Gini coefficient fell a little over the GFC period and after, between 2007–08 and 2011–12, before rising in the most recent data of 2013–14 almost back to the level of 2007–08 (0.336). Equivalised household disposable incomes remain more unequal in 2013–14 than at any time prior to 2007–08 for which data are available. The ACTU also provided estimates of the Gini coefficient for household types where the main source of household income is wages and salaries over the period 2003–04 to 2013–14.³²⁸ It showed a similar pattern as for all households, although the Gini coefficient rose more for wage and salary households than all households over the 10-year period.

[426] The Australian Government accepted that inequality had risen over the last two decades, although it submitted the rise between 2003–04 and 2007–08 has probably been exaggerated as a result of ABS methodological changes and that Australia's level of income inequality after taxes and transfers remains well below levels in the UK and US.³²⁹

[427] The ABS data as a whole shows a gradual increase in income inequality over the past two decades. It appears to have stabilised from at least 2007–08 at relatively high levels compared with the past.

Poverty and poverty lines

[428] The NMW and modern award minimum rates of pay impact upon the needs of the low paid insofar as they affect an employee’s capacity to purchase the necessities of life and to engage in community life.

[429] Measures of poverty, or the risk of poverty, are relevant in assessing the needs of the low paid because poverty entails an inability to buy the material resources required to meet basic needs.³³⁰ If the low paid are forced to live in poverty then their needs are not being met and those in full-time employment can reasonably expect a standard of living that exceeds poverty levels.³³¹ Information about the low paid and award-reliant employees at risk of poverty is also relevant in assessing relative living standards, given poverty measures typically involve benchmarks of community incomes or expenditure standards.

[430] The Act does not direct us to target poverty among those in employment, but it does direct us to consider the needs of the low paid, balanced against the other considerations we are required to take into account.

[431] There are two principal ways in which poverty is measured.

- The first, called a relative poverty line, defines people as poor if they have a low income relative to the rest of the community. Normally, the income measured is household disposable income, made equivalent for different family types, and compared to a level that is a proportion of the community median equivalent household disposable income. The relative poverty line is usually assessed as a fraction—either 50 per cent or 60 per cent—of median equivalent household disposable income. While straightforward, the main drawback of this approach is that it is more a measure of inequality than of whether people have enough income to meet their basic needs and it measures only the incidence of poverty and not the depth of poverty.
- The second, known as a “budget standard”, is to identify what are deemed to be essentials for an adequate standard of living, for families of different types. This basket of essentials is then costed to provide a measure of how much income each family type needs in order to be able to buy the basket of essentials.

[432] A third approach to assessing needs—measuring deprivation—is to observe directly the extent to which people in particular types of households are forced to forgo, because of insufficient money, expenditures which are regarded as essential.

[433] Limited information becomes available between AWRs to enable us to consider how needs and relative living standards have changed over the course of the past year. We consider such evidence as there is, while having regard to the broader trends that can be seen from earlier data.

[434] Table 5.6 sets out a comparison of 60 per cent median income poverty lines with disposable income of selected households earning various wage rates in December 2014 and 2015.³³² Tables 5.6 and 5.7 below reflect the passing of the *Tax and Superannuation Laws Amendment (Medicare and Levy Surcharge) Bill 2016*, increasing the various low-income and pensioner Medicare levy shade-in thresholds with effect retrospectively from 1 July 2015.

Table 5.6: Disposable income as ratio of 60 per cent median income poverty line—December 2014 and December 2015, for selected family types earning selected award rates and average earnings

Household type	C14		C10		C4		AWOTE	
	Dec-14	Dec-15	Dec-14	Dec-15	Dec-14	Dec-15	Dec-14	Dec-15
Single adult	1.13	1.13	1.28	1.28	1.46	1.47	2.19	2.19
Single parent, one child	1.25	1.26	1.37	1.38	1.50	1.50	1.91	1.91
Single parent, two children	1.16	1.16	1.25	1.25	1.36	1.36	1.69	1.68
Single-earner couple, no children	1.00	1.01	1.02	1.02	1.02	1.02	1.46	1.46
Single-earner couple, no children (no NSA)	0.78	0.78	0.87	0.87	0.98	0.98	1.46	1.46
Single-earner couple, one child	1.04	1.04	1.06	1.06	1.08	1.09	1.38	1.38
Single-earner couple, one child (no NSA)	0.91	0.91	0.99	0.99	1.08	1.09	1.38	1.38
Single-earner couple, two children	1.00	1.00	1.01	1.01	1.03	1.04	1.28	1.28
Single-earner couple, two children (no NSA)	0.88	0.88	0.95	0.96	1.03	1.04	1.28	1.28
Dual-earner couple,* no children	1.21	1.21	1.33	1.34	1.54	1.54	2.31	2.30
Dual-earner couple,* one child	1.19	1.20	1.29	1.29	1.40	1.40	1.92	1.92
Dual-earner couple,* two children	1.13	1.13	1.21	1.21	1.30	1.31	1.68	1.67

Note: * One partner earns 100 per cent of the specified wage rate, the other earns 50 per cent of this rate. The C14, C10 and C4 are minimum award rates set under the Manufacturing Award. AWOTE data are expressed in original terms. Poverty lines are based on estimates of median equivalised household disposable income for 2013–14, updated for movements in household disposable income per head as calculated by the Melbourne Institute of Applied Economic and Social Research, and adjusted for household composition using the modified OECD equivalence scale.

Assumptions: Tax-transfer parameters as at December 2014 and December 2015. Wage rates as at December 2014: C14 = \$640.90 pw, C10 = \$746.20 pw, C4 = \$896.40 pw and AWOTE of full-time employees = \$1477.00 pw. Wage rates as at December 2015: C14 = \$656.90 pw, C10 = \$764.90 pw, C4 = \$918.80 pw and AWOTE of full-time employees = \$1500.50 pw. Children aged 8–12 years. Disposable income includes all available income transfers unless otherwise specified. Households paying sufficient rent to receive maximum Rent Assistance, where applicable. Single-earner couples are modelled in two scenarios: the non-earning partner is in the labour force and receiving proportional rates of NSA where eligible and the non-earning partner is not in the labour force and therefore not in receipt of NSA. Single-parent households are assumed to be working full time and therefore not in receipt of a partial NSA payment.

Source: ABS, *Average Weekly Earnings, Australia, Nov 2015*, Catalogue No. 6302.0; ABS, *Household Income and Wealth, Australia, 2013–14*, Catalogue No. 6523.0; Fair Work Commission modelling; Manufacturing Award; Melbourne Institute of Applied Economic and Social Research (2016), *Poverty Lines: Australia*, December quarter 2015.

[435] Table 5.6 shows disposable income is less than the 60 per cent median income poverty lines for a single-earner couple without children, and a single-earner couple with one or two children, earning either the NMW or C10, in circumstances where the non-earning partner is not in the labour force and hence not receiving NSA. A comparison of the situation in 2014 with that in 2015 shows that in almost every case, disposable income remained the same as a proportion of the 60 per cent poverty line.

[436] Table 5.7 shows a medium-term perspective, between December 2010 and December 2015, of the ratio of the disposable income of selected households earning various wage rates

to a 60 per cent median income poverty line. It shows that over the five years to December 2015, the disposable income of households with a member earning the C14 or C10 award rate has increased by between 7 to 12 percentage points as a portion of the 60 per cent median income poverty line, other than for single-earner households without children where the increase has been 5 to 7 percentage points with NSA and 2 to 3 percentage points without NSA. The ratio of AWOTE to the 60 per cent median income poverty line has, in each case, increased by more than for the award-reliant households.

Table 5.7: Ratio of disposable income of selected households earning various wage rates to a 60 per cent median income poverty line, December 2010 and December 2015

Household type	December 2010				December 2015			
	60% median income PL (\$ pw)	Disposable income as a ratio of 60% median income PL			60% median income PL (\$ pw)	Disposable income as a ratio of 60% median income PL		
		C14	C10	AWOTE		C14	C10	AWOTE
Single adult	504.00	1.04	1.18	1.98	523.64	1.13	1.28	2.19
Single parent, one child	655.19	1.15	1.27	1.74	680.74	1.26	1.38	1.91
Single parent, two children	806.39	1.06	1.16	1.54	837.83	1.16	1.25	1.68
Single-earner couple, no children	755.99	0.94	0.97	1.38	785.47	1.01	1.02	1.46
Single-earner couple, no children (no NSA)	755.99	0.75	0.85	1.38	785.47	0.78	0.87	1.46
Single-earner couple, one child	907.19	0.95	0.97	1.26	942.56	1.04	1.06	1.38
Single-earner couple, one child (no NSA)	907.19	0.83	0.92	1.26	942.56	0.91	0.99	1.38
Single-earner couple, two children	1058.39	0.91	0.93	1.17	1099.65	1.00	1.01	1.28
Single-earner couple, two children (no NSA)	1058.39	0.81	0.88	1.17	1099.65	0.88	0.96	1.28
Dual-earner couple,* no children	755.99	1.10	1.22	2.08	785.47	1.21	1.34	2.30
Dual-earner couple,* one child	907.19	1.09	1.19	1.76	942.56	1.20	1.29	1.92
Dual-earner couple,* two children	1058.39	1.03	1.11	1.57	1099.65	1.13	1.21	1.67

Note: * One partner earns 100 per cent of the specified wage rate, the other earns 50 per cent of this rate. The C14 and C10 are minimum award rates set under the Manufacturing Award. AWOTE data are expressed in original terms. Poverty lines are based on estimates of median equivalised household disposable income for 2009–10 for December 2010 and 2013–14 for December 2015, and updated for movements in household disposable income per head as calculated by the Melbourne Institute of Applied Economic and Social Research, and adjusted for household composition using the modified OECD equivalence scale.

Assumptions: Wage rates for 2010: C14 = \$569.90 pw, C10 = \$663.60 pw and AWOTE of full-time employees = \$1275.20 pw. Wage rates for 2015: C14 = \$656.90 pw, C10 = \$764.90 pw and AWOTE of full-time employees = \$1500.50 pw. Tax-transfer parameters as at December 2010 and December 2015. Children aged 8–12. Disposable income includes all available income transfers unless otherwise specified. In 2010 the maximum claim is assumed for the Education Tax Refund. Households paying sufficient rent to receive maximum Rent Assistance, where applicable. Single-earner couples are modelled in two scenarios: the non-earning partner is in the labour force and receiving proportional rates of NSA where eligible and the non-earning partner is not in the labour force and therefore not in receipt of NSA. Single-parent households are assumed to be working full time and therefore not in receipt of a partial NSA payment.

Source: ABS, *Average Weekly Earnings, Australia, Nov 2015*, Catalogue No. 6302.0; ABS, *Household Income and Wealth, Australia, 2013–14*, Catalogue No. 6523.0; Fair Work Commission modelling; Manufacturing Award; Melbourne Institute of Applied Economic and Social Research (2016), *Poverty Lines: Australia*, December quarter 2015.

[437] Several parties have correctly observed by reference to Tables 5.6 and 5.7 (in the form of Table 8.2 in the Statistical Report³³³) that single earner households on low award rates struggle to reach a level of household disposable income above the 60 per cent median income poverty line where one partner is not in the labour force, whether or not they have children.

[438] The ACTU submitted that 21.5 per cent of single adult earning households were below the 60 per cent median income poverty line, which the ACTU argued shows “there is a substantial minority of workers whose needs are not being met to an adequate extent”.³³⁴ Using a 60 per cent median disposable income poverty line, ACOSS submitted that a total of 1 286 000 people in households for which wages were the main source of income lived in poverty, accounting for 32 per cent of all people in poverty.³³⁵

[439] Data from the Australian Workplace Relations Study (AWRS) suggests that single-earner couple households without children where an award-reliant employee is the sole income earner make up 4.5 per cent of all household types of all award-reliant employees and single-earner couple households with one or two children where an award-reliant employee is the sole income earner make up 2.1 per cent of all household types of all award-reliant employees.³³⁶ That suggests that the single earner couple households at or below the 60 per cent median income poverty line are a relatively small group, although we accept ACCER’s contention that this figure is limited to those in receipt of the award and there are other single earner couple households earning not much more than the minimum award wage who are below the 60 per cent median income poverty line.³³⁷ Whilst we have not been presented with data on the extent of single-earner couple households not in receipt of NSA with one or two children and single-earner couple households without children, the available data suggests that they are not a large proportion of wage earner households. Nonetheless, their circumstances cannot be ignored.

[440] We remain of the view that our consideration of any proposals to address relative living standards of NMW and award-reliant employees and the needs of the low paid is better informed by some understanding of the incidence of award-reliant households at risk of poverty.

Budget standards

[441] ACOSS and ACCER again provided budget standards updated by CPI based on the research of the Social Policy Research Centre (SPRC) conducted in the mid-1990s.³³⁸ As an example, ACCER submitted that the “Low Cost Budget” was \$971.23 per week for a family of four in January 2016, compared with disposable income of \$980.78 for a family reliant on the NMW.³³⁹

[442] We remain of the view that the SPRC budget standards data provide little guidance to the Panel because the original research upon which they are based lacks contemporary relevance. In this respect, the 2011 Report to the Minimum Wage Panel³⁴⁰ noted that “[i]n the consultations, it was widely accepted that the 1997 SPRC study has passed its use-by date as a base for updating data. Updated measures of budget standards derived from the 1997 study were not seen to provide useful contemporary information about the needs of the low paid”.³⁴¹ We note a project being undertaken by ACOSS, Catholic Social Services Australia and United Voice with the SPRC to update the SPRC 1996 budget standards benchmarks of community living standards may provide more contemporary budget standards data.³⁴²

Other measures of living standards and needs

[443] Changes in the levels of financial stress and deprivation reported by low-paid households over time, in absolute terms and relative to other households, also provide relevant information for the Panel’s consideration.

[444] There are a number of different indicators of financial stress, such as being unable to pay bills on time, missing meals or asking for help from community or welfare organisations. Questions directed to identifying financial stress on such basis have been included in a number of ABS surveys, including the General Social Survey (GSS), which is conducted every four years, the Household Expenditure Survey (HES), which is published every six years and annually in the longitudinal HILDA Survey, which is managed by the Melbourne Institute of Applied Economic and Social Research. Information from those surveys is reported in the Statistical Report. New information, for 2014, is available from the HILDA Survey and the GSS survey. The most recent HES data is for 2009–10 and provide no information about recent changes in financial stress of the low paid.

[445] The HILDA Survey, from 2010 to 2014, shows:

- In 2014, 13.4 per cent of low-paid employee households reported that they were “unable to raise \$3000 in a week for something important”—the highest level reported during the past five years.
- Reductions in financial stress in 2012 and 2013 on most indicators and an increase in 2014 on most indicators, both for all employee households and for low-paid households.
- Financial stress is higher for low-paid households than high-paid households in each year. As examples, the 14.9 per cent of low-paid households reporting an inability to pay electricity, gas or telephone bills on time in 2014, exceeded the 8.2 per cent reported by all employee households and 31.8 per cent of low-paid households reporting one form of financial stress in 2014, compared to 15.8 per cent for all employee households.

- For low-paid households, whilst subject to year-to-year variation in intervening years, the proportion reporting any stress or low stress (1–2 of the forms of financial stress) was similar in 2014 to that reported in 2011, the proportion reporting moderate stress (3–4 of the forms of financial stress) was greater in 2014 than in 2011 and the proportion reporting high stress (5 or more of the forms of financial stress) was less in 2014 than in 2011. In the most recent year, 2014, some stress measures for low-paid households increased whilst others fell, with a small increase in the proportion reporting any stress or low stress and a larger increase in those reporting moderate stress. The proportion reporting high stress fell.³⁴³

[446] The GSS survey data showed:

- Financial stress was higher for low-paid individuals than their high-paid counterparts in each year: 2006, 2010 and 2014.
- Financial stress for both low-paid individuals and all individuals generally increased between 2006 and 2010, in the wake of the GFC. Whilst varying from indicator to indicator, between 2010 and 2014 the proportion of individuals reporting financial stress grew more often or to a greater extent amongst low-paid individuals than for all individuals.
- Between 2010 and 2014 dissaving responses to financial stress by low-paid individuals was reflected in greater proportions of individuals undertaking a range of dissaving measures, other than drawing on accumulated savings or increasing credit card balances, whereas for all individuals there was a greater reliance on drawing on accumulated savings.³⁴⁴

[447] The surveys (as variously measured) each show that financial stress is higher for low-paid individuals and households than their higher-paid counterparts. The 2014 data suggests that financial stress reported has risen more for the low-paid than for all households or individuals in the most recent years.

Conclusion

[448] Both the minimum wages objective and the modern awards objective require us to take into account relative living standards and the needs of the low paid when setting minimum rates.

[449] We accept that adult award-reliant employees who receive a rate of pay that (as a full-time equivalent) is below two-thirds of median (adult) ordinary time earnings prove a suitable and operational benchmark for identifying who is low paid. Whilst no specific conclusion is available, the information as a whole suggests that a sizeable proportion—probably a majority—of employees who are award reliant are also low paid by reference to the two-thirds of median weekly earnings benchmark.

[450] The NMW has increased in real terms in most years over the decade. The real value of the NMW increased by a cumulative 4.8 per cent over the past decade to the December quarter 2015, with a 3 per cent real growth over the five years to the December quarter 2015 and a 0.8 per cent real increase over the most recent year to the December quarter 2015. Since the 2010–11 Review decision, the NMW and all modern award rates have increased in real terms and at the same level at each classification level.

[451] Whilst volatile from year to year, the minimum wage has fallen relative to measures of median and average earnings over the past decade, with much of that decline occurring between August 2005 and August 2008, the ratio of the C14 rate to median earnings has fallen marginally since the adjustment in the 2009–10 Review—from 54.3 per cent in August 2010 to 53.4 per cent in August 2014, although it has improved from the historically low level of 52.7 per cent in August 2012.

[452] Award rates have grown more slowly over the decade than all other measures of average pay—AWOTE, AWE and the WPI—although growth in the C14 rate has remained close to that of the WPI. Divergence between award rates and average wages has narrowed more recently, reflecting reduced growth in the AWOTE, AWE and the WPI and recent decisions of the Panel. The ratio of the C14, C10 and C5 minimum classification rates to AWOTE fell in 2011 and 2012, remained steady in 2013 and 2014 and increased slightly in 2015.

[453] Real weekly earnings of full-time workers have become progressively less equal over the past decade—for each decile, the lower the earnings, the lower the rate of growth in earnings, reflected in the fanning out of the earnings distribution. However, earnings inequality has stabilised since 2008, with the ratio of the 10th percentile to mean earnings remaining constant between 2010 and 2014 and the ratio of the 10th and 25th percentiles to median earnings falling marginally since 2008.

[454] The nominal disposable income of each household type modelled increased in excess of the CPI over the decade to July 2015. The real disposable income of each household type increased in 2014–15, by between 0.4 and 0.8 per cent.

[455] The distribution of low-paid workers across employee households, for which the principal source of income is wages, provides the best basis for assessing the relative living standards and the needs of the low paid on the basis of where they fall within the distribution of household income.

[456] Overall income inequality, as measured by the Gini coefficient, has risen since 1994–95, but appears to have stabilised from at least 2007–08 at relatively high levels compared with the past.

[457] Increases in the minimum wage and award classification wages do have a role to play as part of a package of measures to address inequality. Increases in the minimum wage and modern award wages have directly impacted on the relative living standards of the low paid and their capacity to meet relevant needs. Low-paid employees are distributed disproportionately within lower income households, particularly so by reference to households with at least one employee (employee households) and have lower living standards than other employees.

[458] As we have previously stated, we do not accept the proposition that most low-paid workers are not in low-income households. Around two-thirds of low-paid employees are found within the bottom half of the distribution of employee households and have lower living standards than other employees. Many low-paid workers live in households with low or very low disposable incomes. Single low-wage earners are particularly concentrated in the

lower deciles of employee household income distribution and this group receives little help from the transfer system.

[459] Disposable income is less than the 60 per cent of median income poverty lines for single-earner couples, where one partner earns the NMW or C10 rate and the other partner is not in the labour force, whether or not they have children.

[460] Over the five years to December 2015, the disposable income of households with a member earning the C14 or C10 award rate has increased by between 7 to 12 percentage points as a proportion of the 60 per cent median income poverty lines, other than for single-earner households without children where the increase was between 2 and 7 percentage points. However, the ratio of AWOTE to the 60 per cent median income poverty lines has, in each case, increased by more than for the award-reliant households over that period.

[461] New information from financial stress measures for 2014 is available from the HILDA Survey and the GSS survey. The 2014 data finds a slightly higher proportion of low-paid persons or households are reporting financial stress.

[462] Notwithstanding an improvement in their absolute position, the low paid and award reliant have fallen behind wage earners and employee households generally over the past decade, whether measured on the basis of wage income or household income. That conclusion arises from a consideration of movements over the past two decades in real wages, the ratio between the minimum wage and median earnings, increased earnings inequality measured by reference in earnings growth and growth in real household disposable income at various points within the earnings distribution and a rising Gini coefficient.

[463] Our overall assessment is that the relative living standards of NMW and award-reliant employees have improved a little over recent years, although the relative position of low-paid workers has deteriorated over the past decade. Many have low levels of disposable income. Notwithstanding some recent improvement in their position and the operation of the tax-transfer system, some low-paid award-reliant employee households—single-earner couples without children, and single-earner couples with one or two children, earning either the NMW or C10 where the non-earning partner is not in the labour force—have household disposable incomes less than the 60 per cent of median income poverty lines. The requirement to take into account relative living standards and the needs of the low paid supports an increase in the NMW and modern award minimum wages.

6. Promoting Social Inclusion through Increased Workforce Participation

[464] The Act requires the Panel to take into account, in giving effect to the minimum wages objective, “promoting social inclusion *through* increased workforce participation” [emphasis added] (s.284(1)(b)).

[465] Consistent with past decisions, we interpret this to mean increased employment.³⁴⁵

[466] In the present proceeding, the Victorian Government submitted that the Panel should adopt “a broader understanding of the relationship between workforce participation and social inclusion”.³⁴⁶ In support of this proposition the Victorian Government submitted that:

“... while employment is a key determinant, merely having a job is not always enough to facilitate social inclusion. A job with inadequate pay can create social exclusion if the level of income limits a person’s capacity to engage in the cultural, economic, political and social aspects of life.”³⁴⁷

[467] As discussed in Chapter 2, we endorse the above observation and on that basis we accept the thrust of the Victorian Government’s submission as set out above, and this forms part of our broader consideration.

[468] Conceptually, the level of minimum wages affects workforce participation by affecting the incentives for people to seek and to retain a job and through influencing the desire of enterprises to employ them.

Minimum wages, employment and the demand for labour

[469] There is general agreement in the submissions that the labour market has strengthened over the past year. The particular indicators of this are presented in Chapter 4 of this decision. This is relevant to the potential impact of changes to the NMW and award wages on the demand for labour, since it is widely agreed that the sensitivity of employer demand for labour, in response to wage rises, will be greater if the overall demand for labour is weak. In saying this, we note that we have been given no sound empirical support for this belief. Nonetheless, we accept that it is a plausible proposition.

[470] Despite the improvements in employment and unemployment, the Australian Government argued that improvements are uneven, adjustments away from resources investment-led growth are still underway and that more vulnerable groups in the labour market are still at elevated risks of unemployment.³⁴⁸ ACCI supported this view.³⁴⁹ ABI suggested that “particular caution is warranted at this time” in “an environment of low inflation, low wages growth, declining income and low productivity growth.

[471] Several of the parties drew attention to the PC Report and its consideration of the employment effects of changes in the minimum wage (for example, ACCI, ACTU, ABI, the Australian Government, Ai Group, AFEI, the Victorian Government).³⁵⁰ In determining its views on the issue, the PC considered submissions made to it in writing and in open hearings as well as reviewing the literature on relevant theoretical considerations and examining domestic and international empirical studies. The PC also conducted two studies of its own—a Computable General Equilibrium (CGE) analysis, in which increases in the minimum wage are held to one per cent less than other wages over a five-year period, and a difference-in-differences analysis using a large, newly-available dataset.³⁵¹

[472] From its examination of the issue the PC found that:

- “• At present, it is not possible to pinpoint the impacts of minimum wages on employment. Economic theory and some international empirical studies suggest that increases in minimum wages can reduce jobs and hours worked, but they also indicate that employment gains are possible in some circumstances. There have been few clear-cut wage ‘experiments’ in Australia and many studies are dated and/or have data and methodological limitations. The indirect evidence is also not clear-cut.

- While not definitive, the Productivity Commission's assessment is that modest increases in Australia's minimum wage are unlikely to measurably affect employment, but that large increases in minimum wages would reduce employment. How, and at what rate, such effects manifest will vary depending on economic conditions and other policy settings."³⁵²

[473] Of its own major difference-in-differences study, the PC says, "[i]n the final analysis, however, it is not possible to disentangle fully the ambiguity of the results presented in this technical supplement, nor, therefore, to reach definitive conclusions about the employment effects of the minimum wage changes analysed by the study."³⁵³ The PC study was beset by all the difficulties it has cited regarding other studies, other than the dated nature of the data and the analysis. However, while the database was recent it did not prove suitable for the exercise. It was difficult to establish separation of the treatment group and the control group. Minimum wage increases tended to flow over into the control group at lower levels and lacked plausible parallel paths at higher incomes, presenting difficulties for a difference-in-differences analysis.

[474] As noted by the PC, the results were mixed and ambiguous. Some tests showed a negative impact on employment or hours worked. Others showed positive impacts. The study included 2009, a year when there was no increase in the minimum wage. All the approaches taken showed significant effects for that year when there should have been none.³⁵⁴

[475] The ACTU submitted that the PC Report's findings are "all the more convincing because it begins with a model in which the inherent expectation is of a negative impact on employment from raising the minimum wage".³⁵⁵

[476] ACCI acknowledges that the PC has not found evidence, either through its own studies or from broader sources, that moderate minimum wage increases have a significant effect on employment.³⁵⁶ However, its submission quotes heavily from the PC documents to draw conclusions that run counter to the PC's overall findings.³⁵⁷

[477] The scenario used by the PC for its CGE modelling (comparing the impact of holding minimum wages to one per cent less than general wage increases) was very similar to the actual history of the minimum wages system. Indeed, since 1997 the nominal value of the NMW has increased by 1 per cent per year less than nominal median full-time earnings to 2014. The NMW has increased in real terms by 0.7 per cent per year since its establishment in 1997. This is slightly less than half the real increase in median full-time earnings of 1.5 per cent per year over the same period.³⁵⁸

[478] The broad outcomes of this modelling exercise should not be a surprise. A general equilibrium model would be expected to show an increase in output if the cost of a major input were reduced. There would also generally be an increase in the use of the cheaper input where it could be substituted for other inputs. Similar exercises using tax cuts, tariff cuts or slower increases in middle management or executive salaries would also be shown by such modelling to produce faster growth.

[479] The UK Government has in 2016 introduced a new National Living Wage, which will be the minimum that can be paid to workers aged 25 years and over. It is their objective to raise this to 60 per cent of median earnings by 2020 (a rise of over 30 per cent). Their Office for Budget Responsibility has estimated that by 2020 there will be 60 000 fewer jobs as a

result of the rise in the National Living Wage, in the context where the economy is expected to generate an additional number of total jobs of almost one million.³⁵⁹ As a step towards their longer term objective, the UK Government introduced a new premium for those aged 25 years and over, at 7 per cent above the UK National Minimum Wage rate of £6.70 per hour, leading to a National Living Wage of £7.20 as at April 2016.³⁶⁰ By Australian standards, this is a very large increase.

[480] ACCI argued that “studies that fail to find a relationship between the minimum wage and disemployment should not be taken as evidence that there is no effect at all” because such an effect is difficult to isolate from the many other changes that are occurring in the economy.³⁶¹ While this point has some force, especially for studies that rely on time series analysis, it implies that if there is any disemployment effect, it is too small to be detectable among the ‘noise’ in the data. The Victorian Government drew attention to Research Report 1/2016, which sought to identify if there were systematically worse outcomes on key labour market indicators in high minimum wage countries, including Australia, compared with low minimum wage countries. They note that this Report “indicates that Australia, with a relatively high minimum wage *fares much better in all these aspects*—short term, long term and youth unemployment—than the other OECD comparative countries in the study (i.e., France, New Zealand, Canada, the US and the UK).”³⁶²

[481] The Australian Government drew particular attention to the lower employment and higher unemployment rates among youth, the long-term unemployed and indigenous people. It is not contentious that these groups have less satisfactory employment outcomes than average.³⁶³ The question for the Panel is to what extent, if at all, do the NMW and award rates contribute to these difficulties.

Youth unemployment

[482] Youth unemployment is always higher than the unemployment rate for the whole workforce—typically about double that rate. The reasons for this are complex and the role, if any, of the level of minimum wages is poorly understood. The sharp rise in youth unemployment over 2014 was a particular concern, but it is implausible to claim that it was caused by the rises in the NMW and award rates that immediately preceded it. Indeed, since then the youth unemployment rate has fallen by 2 percentage points and relative to overall unemployment, in the context of an additional rise in minimum rates.

[483] International comparisons that conclude that Australia has a high minimum wage often fail to take into account Australia’s specific youth rates. Australia’s youth rates are a relatively low proportion of the adult rate, compared with other countries. This is shown in the table below, which is taken from Research Report 1/2016.³⁶⁴

Table 6.1: Youth minimum wage rates as a percentage of adult minimum wage rates, by country, 2014

Country	Percentage at age 16	Percentage at age 17	Percentage at ages 18/19
France ^a	80	90	100
Australia ^b	47	58	68–83
New Zealand ^c	80–100	80–100	80–100
United Kingdom	58	58	79
Canada	100 ^d	100 ^d	100 ^d
United States ^a	59	59	59

Note: (a) For France and the US, the reduced rates apply to young workers with a tenure of fewer than six months and three months, respectively. (b) These percentages apply to juniors only. Apprentices and trainees have different rates. (c) All employees aged 16 and over are entitled to the adult minimum wage. Except for new entrants and employees to whom the training minimum wage applies. The training minimum wage applies to employees aged 16 and 17, who have not completed six months' continuous employment with their current employer. Employees aged 18 and 19, who have received unemployment benefit for more than six months, will receive the training minimum wage until they have completed six months work for a single employer, after which they will be paid the adult minimum. The training wage also applies to apprentices. (d) All provinces except Ontario, Ontario's youth minimum wage is 94 per cent of the adult minimum wage.

Source: Research Report 1/2016, p. 37, Table 3.21.

[484] We note that (unlike Australia) New Zealand, France and the US only apply lower rates for young people for the first few months in the job, and not just on account of their youth.

[485] Research Report 1/2016 also shows that the employment to population ratio of 15–19 year olds and of 20–24 year olds is higher in Australia than for any of the comparator countries.³⁶⁵ To illustrate, 44 per cent of 15–19 years olds were employed in Australia in 2014, compared with 27 per cent in the US. The comparable figures for 20–24 year olds were 70 per cent (Australia) and 63 per cent (US).³⁶⁶ The US, of course, has much lower adult minimum wages than does Australia and hence their absolute level of youth minimum wages is lower—there is clearly no simple relationship between the level of minimum youth wages and the extent of employment of youth.

[486] Research Report 1/2016 cites the study by Olssen (2011), who examined the effects for youth in Australia of becoming a year older and thereby increasing their minimum wage. They “found some evidence that a 10 per cent increase in youth minimum wages resulted in a 6 per cent increase in actual wages. However, there was no evidence of any effect on hours.”³⁶⁷ This is one of the few studies in Australia which has been able to use the “natural experiment” method to identify the employment effects of a rise in minimum wages.

Long-term unemployment

[487] There is no dispute that long-term unemployment is troubling and harmful to those who experience it. But, as with youth unemployment, the causes are complex. Just for definitional reasons, the level will vary as a lagged response to the business cycle. Because a person has to be unemployed for at least 12 months in order to be defined as long-term unemployed, a rise in unemployment in one period (such as the GFC) will cause an increased inflow into long-term unemployment 12 months later. We see this in the data on long-term

unemployment.³⁶⁸ Long-term unemployment was falling with the strong labour market prior to 2008. It then rose sharply (by almost 50 per cent) by the end of 2009. It is well established in the literature that the probability of getting a job in the next period diminishes the longer a person has been unemployed.³⁶⁹ This is a phenomenon that exists independent of the level of minimum wages, although it is possible that the extent of the effect could be influenced by minimum wage levels.

[488] The long-term unemployed face many obstacles to getting a job—they are the ones that have been left behind as their fellow unemployed have found work. As ACOSS has argued in a submission to the 2012–13 Review, the gap between the immediate productivity of a long-term unemployed worker and the minimum wage will be large for many people.³⁷⁰ It is a gap that is too large to bridge by reducing wages (with all the consequences this would have for the standard of living and needs of the low paid, and the incentives to work of the non-employed). In our judgment, the level of the NMW and award rates of pay is not, within reason, an efficient or effective instrument with which to tackle long-term unemployment.

[489] We are mindful of the possibility that higher rates of growth of minimum wages could diminish the number of entry level and low-skill jobs over the longer term. There is very little evidence on this point in the academic literature. ACCI drew our attention to a recent paper on this topic.³⁷¹ Aaronson et al. found very little disemployment in response to a rise in the minimum wage in the short term, but did find greater disemployment over the longer term. We note that the long run effect (over 17 years) in this paper is, in the words of the authors, “based on an economic model and is not directly measured in the data”,³⁷² although the negligible short run effects that they report are evidence based. The analysis is based on the US fast food industry and the long run effects occur principally through the increased exit and entry of establishments in response to rises in minimum wages. While the possibility of effects that play out over 17 years cannot be dismissed, it does put us in mind of the famous aphorism of J.M. Keynes: “In the long run we are all dead.”

[490] The possibility of greater long-run and cumulative effects on job openings for low-skilled workers is a constraint on raising minimum wages to a level that would more fully satisfy the requirement to take into account the relative living standards and needs of the low paid. Over a 10-year period, the growth in the NMW has been very modest—less than aggregate WPI. The NMW has increased by 20.8 per cent as a result of the AWR decisions between 2010 and 2015, only slightly more than the growth of WPI of 19.6 per cent over the same period. In most award-reliant industries, the NMW has grown more slowly than private sector wages over the five-year period to December 2015.³⁷³ The modest growth in the NMW and award wages over the past decade gives little basis for a view that they have diminished entry level and low-skill jobs.

[491] We appreciate the continuing efforts of the parties to put before us the most recent research and thinking about the employment effects of increases in minimum wages.

[492] We remain of the view that modest and regular increases in minimum wages have a small or even zero impact on employment. We have been given no evidence that the longer term and cumulative effects of increases in the NMW and award rates has had other than a small or zero disemployment effect, or that they have significantly diminished new employment opportunities for the low skilled. There is legitimate disagreement about what constitutes a “modest” increase, and we accept that this implies a lower increase in times when unemployment is relatively high and rising and growth in employment and hours of

work is relatively low. At the time of this Review, employment has been rising and is forecast to continue to do so while unemployment is falling a little. However, the level of unemployment remains a concern as does the fall in hours worked during 2016 (following substantial rises during 2015).

Work incentives and labour supply

[493] The Panel has noted in previous years that decisions by households and individuals about how much work to seek are influenced by many factors and that the “level of the NMW and modern award minimum rates of pay will play some, but probably a small, part in this labour supply decision”.³⁷⁴ Nevertheless, incentives for people to obtain paid work is a relevant consideration in AWRs.

[494] The Australian Government submitted that “[t]he level of the national minimum wage currently provides sufficient financial incentives to work across a wide range of household types”.³⁷⁵ They based this conclusion on detailed modelling on the improvement in the financial position of various household types (including the cost of childcare for households with children) when an unemployed member of the household takes up a job paid at the NMW. Their findings include:

“A single adult household, without children, would increase their disposable income by \$324 per week (120 per cent) by moving from unemployment and into a full-time job paying the national minimum wage. Even by taking a part-time job at the national minimum wage, disposable income would increase by \$142 per week (52 per cent).

An unemployed couple without children would be \$240 per week (49 per cent) better off if one unemployed member of the household found a full-time job at the national minimum wage. A couple without children with one adult already in full-time employment at the national minimum wage would be \$460 per week (63 per cent) better off if the second member of the household moved from unemployment into full-time minimum wage work.

Households with children are also better off when an unemployed adult gains a job at the national minimum wage, even after paying for any necessary childcare costs. For example, a couple with a three year old child, with one member of the couple in a full-time job at the national minimum wage would be \$171 per week (19 per cent) better off if the second member of the couple also found a full-time national minimum wage job.”³⁷⁶

[495] ACOSS submitted that “increases in minimum wages are an effective way to improve work incentives for people who are unemployed”³⁷⁷ but added that secondary earners in low and middle income families working part time were one of the groups facing the most acute disincentives to take up work.³⁷⁸ This is as might be expected.

[496] Australian Government modelling showed that if the household has one child aged three years, then after childcare costs, the increment to household income from the second member of the household taking up a part-time job (15 hours per week) at the NMW is just 6.5 per cent (\$60 per week); or 10.2 per cent (\$92.20 per week) with one child aged nine years; or 5.5 per cent (\$57.40 per week) with one child aged three years and one aged nine years.³⁷⁹

[497] It should be noted, however, that other than childcare costs in relevant circumstances, there has been no account taken of the additional costs of taking up either full-time or part-time employment—for example, travel to and from work which, in some circumstances, would not be insignificant.

[498] We remain of the view that the need to maintain an adequate net return to working is a factor which, on its own, would lead to “a higher rather than lower increase to the NMW and award rates. But this is only one aspect of the matters that the Panel is required to take into account”.³⁸⁰

[499] As is noted in Chapter 4, there has been an improvement in the number of persons employed over the last 12 months and also an improvement in the unemployment rate. An increase in the jobs available is more likely to lead to further increases in employment in contrast to an increase in the number of people seeking work.

Labour market transitions

[500] Evidence and submissions on labour market transitions put to the Panel in this year’s Review were very similar to the previous two years.

[501] The Australian Government submitted that low-paid work was important as an entry point to the workforce and as an avenue to higher-paid work.³⁸¹

[502] For a substantial minority of people who are newly looking for work, their first job is low paid. The Australian Government used HILDA data to calculate that 26.7 per cent (subsequently revised to 36.1 per cent) of newly employed people (i.e., were previously unemployed or not in the labour force) obtained a low-paid job—the rest went straight into higher-paid jobs.³⁸² The proportion starting in low-paid jobs was higher for people under the age of 25 and for those with only Year 12 or less education. We note that these low-paid jobs were not necessarily paid at the NMW or the award rate—rather, they are approximately measured as jobs that pay less than two-thirds of median hourly pay.

[503] We are aware of the “stepping stone” effect, whereby an initial low-paid job provides the basis for later movement into a higher-paid job. It is important for two reasons. One is that, where the stepping stone effect is at work, the initial low-paid job is short lived and the low income that it provides does not have to be endured for long. The other is the proposition that working in the low-paid job develops work capacities that increase the chance of getting a higher-paid job. If low-paid jobs were entirely short term and led quite quickly to higher-paid work, then the effects of their low pay on other matters that we have to take into account, such as relative living standards and needs of the low paid, would be modest and we could reasonably give greater weight to any possible effect that the NMW and lower award rates have on the quantity of jobs and hours offered by employers. We are therefore interested in robust evidence on duration in low-wage jobs and the speed and extent of movement into higher paying jobs.

[504] In its submission to the 2014–15 Review, the Australian Government provided a table which was reproduced in the 2014–15 Review decision.³⁸³ This table was based on pooled HILDA data from 13 waves of interviews. It thus covers a diversity of macro-economic environments, from full employment in 2007 to higher unemployment levels in the early and

later waves. For this reason, it gives an average view, rather than one that is specifically related to the current labour market. We would expect the duration in low-paid jobs to be longer when there is more unemployment.

[505] The table showed that, of those who were in a low-paid job in year 1, 43.9 per cent were in a higher-paid job in the following year. This is more than for the unemployed (29.2 per cent) and less than for those who started in a higher-paid job (86.0 per cent). It also shows that of this same group, 56.1 per cent were either still low paid (42.5 per cent) or not employed (13.6 per cent) in the next year. The odds were about the same that a low-paid person in year 1 would be low paid or higher paid in the following year. There is both persistence in and mobility out of low-paid work, a majority of the latter being into higher-paid work. These data show that there is a stepping stone effect, at least for some employees. On the assumption that the people who were initially employed in a low-wage job have similar employability characteristics to those who were initially unemployed, a person is more likely to be in a higher-paid job next period if they had a low-paid job, rather than no job, in the initial period. But it is even better to have had a higher-paid job in the last period.

[506] In its submission to this Review, the Australian Government added the latest wave of data in HILDA and presented information on the proportion of those who stayed in a new low-paid job for 12 months or less (67.1 per cent), and the proportion of those who left such a job to move to a higher-paid job (76.2 per cent).³⁸⁴ Together, these percentages show that about half of workers who took a new low-paid job were in a higher-paid job 12 months later. The other half remained in a low-paid job, left the workforce or became unemployed. Again, this reveals both persistence and mobility.

[507] The Victorian Government, referring to the 2014–15 Review decision, submitted that although “minimum wage jobs are sometimes described as transitional, less than half of minimum wage workers were found to have transitioned to higher paid jobs within a year.”³⁸⁵ The ACTU also made the following submission regarding the Australian Government modelling:

“The Australian government submission presents HILDA data on flows into low wage work and timing and destination in subsequent transitions. As it points out it is based on flows and therefore there is no direct inference which can be made about stocks in low pay at any point in time. Regardless of duration and transitions, it is clear there are substantial numbers in low pay at any point in time and that hardship is a significant result.”³⁸⁶

[508] Whilst it is clear that employment in low-paid work is often a stepping stone for many into higher paid work there are still a substantial number of low paid workers who either remain in low paid work for a number of years, or who move between low paid work and no work. As the Panel observed in its 2014–15 Review decision “we cannot be indifferent to the standard of living of low paid workers just because many do not stay in that situation for long periods.”³⁸⁷

[509] The transition rates discussed above are for all employees aged 15–64 years. We have not been presented with evidence about mobility into higher-paid jobs for adults with some work experience, but we would expect their mobility to be lower than it is for young new entrants to the workforce. It is well established in the economics literature that earnings rise

most rapidly in the early years of experience in employment. By mid-career, especially in the less-skilled occupations, wage growth with additional experience is often slow.

[510] A paper by Broadway and Wilkins, commissioned by the Commission in 2015, uses HILDA survey data to calculate the proportion of employees in each age group who are low paid (Table 6.2). The lower panel of their Table 4 is reproduced below.³⁸⁸ The table shows that around 10 per cent of all employees and 13 per cent of female employees aged over 30 are low paid. For the reasons given, we expect the stepping stone effect to be less powerful for these older low-paid workers.

Table 6.2: Age group and low-pay status, HILDA Survey, employees aged 15–64 years

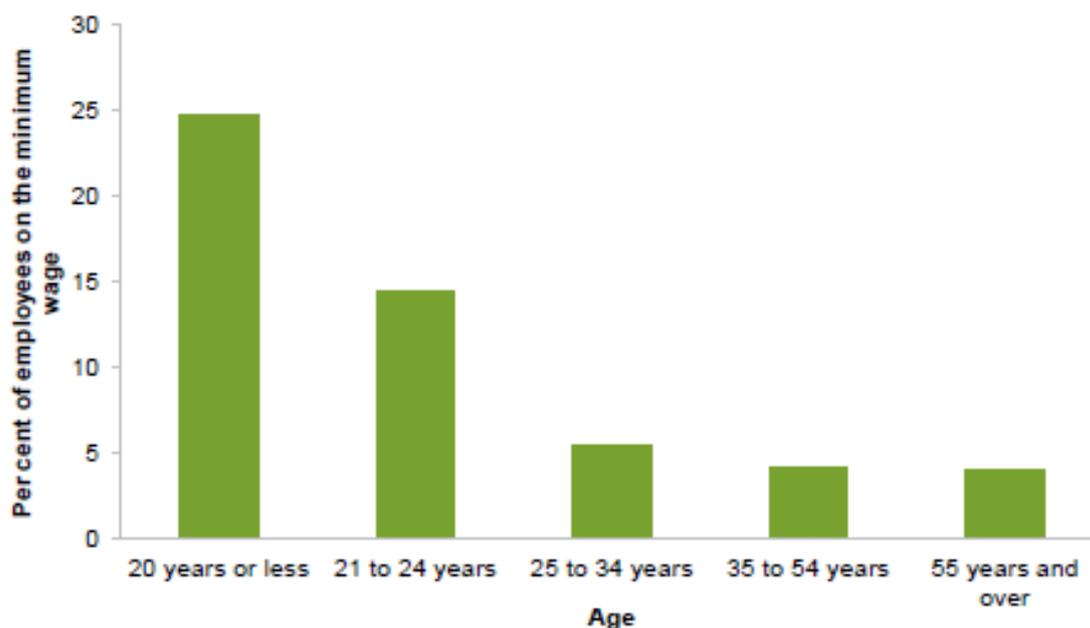
Proportion low paid	Men	Women	Total
	(%)	(%)	(%)
20 years or younger	68.0	70.0	69.0
21 to 24 years	24.5	26.1	25.2
25 to 29 years	11.9	13.6	12.7
30 to 34 years	8.2	12.7	10.2
35 to 44 years	7.3	12.7	9.9
45 to 54 years	7.3	13.1	10.3
55 to 64 years	9.0	14.6	11.7
Overall	16.4	21.2	18.8
Number of observations	38 556	35 919	74 475

Note: Authors' calculations using Waves 8–13 of the HILDA Survey.

Source: Broadway B and Wilkins R (Melbourne Institute of Applied Economic and Social Research) (2015), *Low-paid women's workforce participation decisions and pay equity*, A report for the Pay Equity Unit of the Fair Work Commission, December, p. 14.

[511] The PC Report used ABS earnings data and defined a measure of minimum wages that was the NMW plus 10 per cent, adjusted to account for junior rates and the casual premium of 25 per cent.³⁸⁹ Chart 6.1 below reproduces their Figure 4.6 and shows the proportion of employees of different ages that receive the minimum wage, as they define it.

Chart 6.1: Reliance on the minimum wage is often temporary, proportion of workers reliant on minimum wage by age, 2013–14



Source: PC Report at p. 207; PC estimates based on ABS, *Microdata: Employee Earnings and Hours, Australia, May 2014*, Catalogue No. 6306.0.55.001.

[512] Chart 6.1 shows that 25 per cent of employees who are aged less than 21 years receive this “minimum wage”, while the comparable figure for those over 24 years is about 5 per cent. The PC (and implicitly also ACCI, who quote these figures) concludes that this shows that “many” minimum wage jobs are entry level and provide employees with valuable experience.³⁹⁰ We agree that the evidence suggests that a high proportion of the young people who work in minimum wage jobs eventually leave such jobs as they get older. But it does not show that they move to higher-wage jobs (they may drop out of the labour force or become unemployed). And it does not show that they spend only a short, implicitly unproblematic, period working at low wages. We expect that there are two types of young people who work at minimum wages. One type is full-time students, often living at home or otherwise supported by family. These are very likely to move to higher, probably substantially higher, paid jobs on graduation and to have a standard of living that exceeds their current low earnings. The other type has left education and is seeking full-time work and is probably more reliant on their own earnings. It is the duration in low-paid work of this latter group that is of particular concern. We would welcome any evidence on this that the parties to the 2016–17 Review could provide.

[513] The transition rates discussed above refer to movement from low-paid jobs. These are not the same as jobs paid at all modern award minimum rates. We have no evidence about the duration of employment on award rates.

[514] For many workers, employment in a low-wage job is an episode in their working lives, rather than a long-term state, that reduces the hardship caused by low wages. But it does not remove that hardship, most especially for the 50 per cent or more who do not transition quickly into a higher-paid job.

Conclusion

[515] The impact of the NMW and award wages on promoting social inclusion through increased workforce participation is difficult to discern with any confidence. Jobs must be attractive enough for people with alternative sources of income to be willing to seek them. The evidence is that for most, but not all, family types, there is a substantial financial gain if a household member moves from not being employed to a minimum wage job. This financial gain is sensitive to the gap between the level of welfare payments and the level of the NMW and the rates at the lower awards. We must be alert to the possibility that over time the incentives that are provided by this gap may diminish unduly.

[516] Evidence on the duration of employment in low-paid work points to its role as an entry point into the labour market and a stepping stone for many into better paid work. But a substantial number of low-paid workers either remain in low-paid work for a number of years, or move between low-paid work and no work. We cannot be indifferent to the standard of living of low-paid workers just because many do not stay in that situation for long periods. Those employees who are reliant on the NMW and award wages are a relevant concern to the Panel in exercising its statutory obligations.

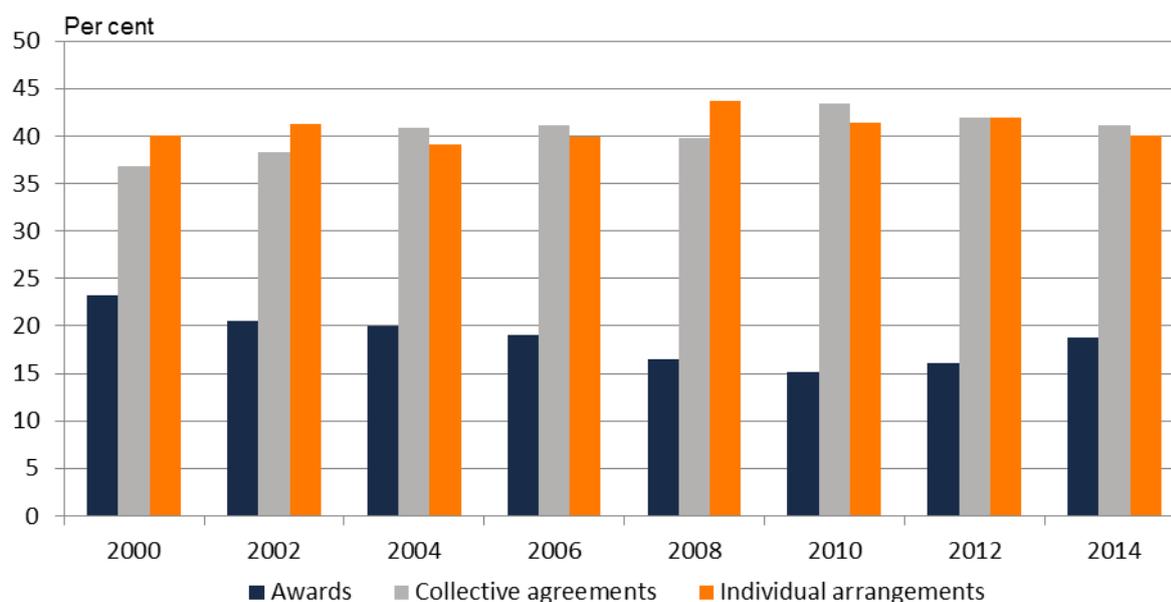
[517] We welcome the arguments and evidence that the parties provided about the impact of increases in minimum wages on the number of jobs. This issue is likely to remain contested, especially for Australia where the application of conclusions from US and UK research is not straightforward. The additional evidence presented to this Review, especially that from the work of the PC, is consistent with our conclusion that an increase in the NMW and award wages of the size that we have determined, and in the economic circumstances that we face, will not have a measurable impact on employment.

[518] The possibility of greater long-run and cumulative effects on job openings for low-skill workers is a constraint on raising minimum wages to a level that would more fully satisfy the requirement to take into account the relative living standards and needs of the low paid. The modest growth in the NMW and award wages over the past decade gives little basis for a view that these issues have diminished entry level and low-skill jobs.

7. Encouraging Collective Bargaining

[519] The modern awards objective applies to the variation of modern award minimum wages and requires the Panel to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions. One of the matters the Panel is required to take into account in giving effect to the modern awards objective is “the need to encourage collective bargaining” (s.134(1)(b)). In making the NMW order, the Panel must give effect to the minimum wages objective. The minimum wages objective makes no reference to “the need to encourage collective bargaining”. However, as we note in Chapter 2, one of the purposes of the Act is to encourage collective bargaining and, hence, it is appropriate to take that legislative purpose into account in making the NMW order.

[520] The EEH provides data on the method of setting pay. This survey is conducted every two years and the 2014 data is the most recent release. Chart 7.1 shows the most recent data.

Chart 7.1: Method of setting pay

Note: As defined by the ABS, individual arrangements include registered or unregistered individual agreements and owner managers of incorporated businesses.

Source: ABS, *Employee Earnings and Hours, Australia, various*, Catalogue No. 6306.0.

[521] The EEH data show that, between 2000 and 2014, the proportion of employees receiving award rates decreased (from 23.2 per cent to 18.8 per cent), while the proportion of employees on collective agreements increased (from 36.8 per cent to 41.1 per cent). The more recent data show that, since 2012, the proportion of employees whose pay is set by awards has increased (from 16.1 per cent to 18.8 per cent) while the proportion of employees on collective agreements has declined (from 42.0 per cent to 41.1 per cent).

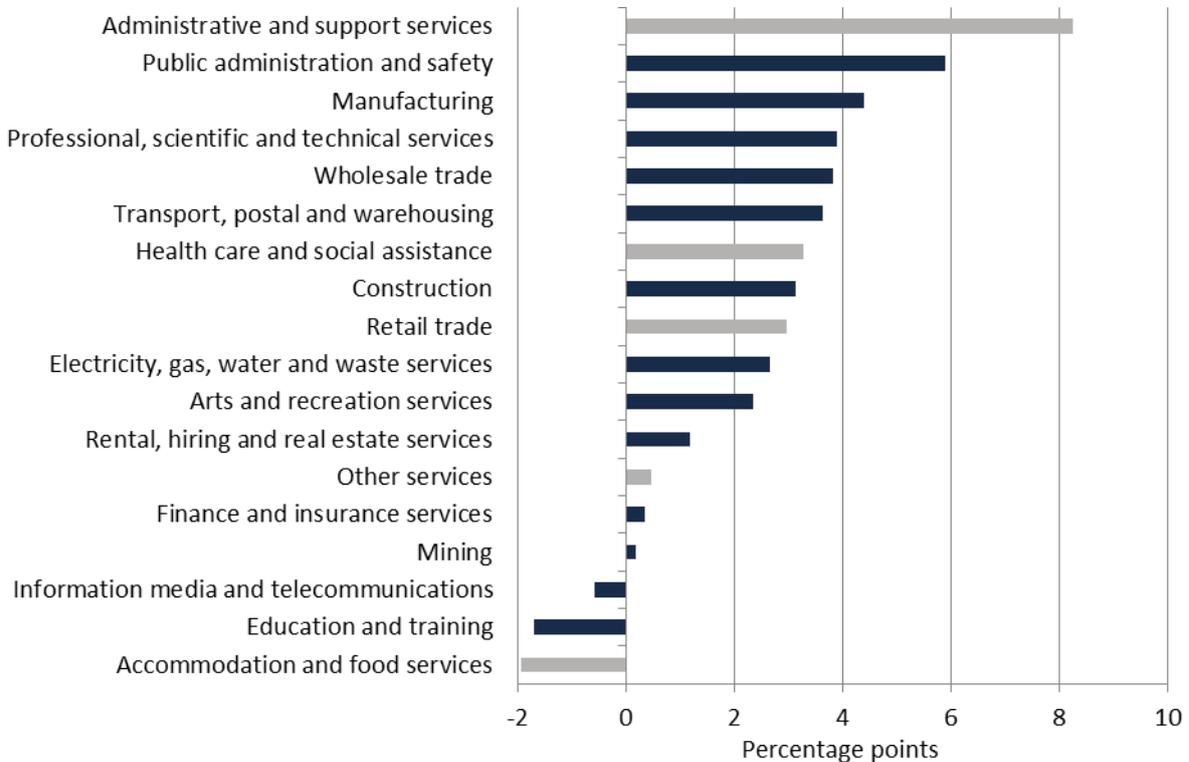
[522] These data were considered in the 2014–15 Review. In those proceedings, Ai Group, ACCI, ABI and AFEI drew attention to the rise in the extent of award reliance. ACCI submitted that any significant increase in minimum wages would act as a disincentive to bargain.³⁹¹ However, the ACTU argued that there was “no evidence” that the rise in award reliance was due to the “form or size of minimum wage increases awarded by the Panel in previous Reviews”.³⁹²

[523] In the 2014–15 Review decision, the Panel concluded that the recent increase in award reliance did not support the contention that minimum wage increases in recent years have acted as a disincentive to collective bargaining.³⁹³ The Panel made three points in this regard:

- (i) If minimum wage increases had acted as a disincentive to collective bargaining then we would expect to see a corresponding decline in the proportion of employees paid according to a collective agreement. But this is not what has occurred. The 2.7 percentage point rise in award reliance came at the expense of a 2.1 percentage point fall in the proportion of employees paid according to an individual arrangement and a fall of only 0.9 percentage points in the proportion of employees paid under a collective agreement.³⁹⁴

- (ii) The increase in award reliance between 2012 and 2014 was not uniform across industries, including across the more award-reliant industries³⁹⁵ as shown in Chart 7.2 below.

Chart 7.2: Change in award reliance by industry—May 2012–May 2014



Source: ABS, *Employee Earnings and Hours, Australia, various*, Catalogue No. 6306.0.

While most of the award-reliant industries experienced increases in award reliance, it increased only slightly in Other services (0.5 percentage points). The Accommodation and food services industry, which has the highest proportion of award-only employees³⁹⁶ of all industries (44.8 per cent in 2012), had a 2 percentage point *fall* in award reliance between 2012 and 2014 and had a significant *increase* in the proportion of employees covered by a collective agreement, which rose from 23.8 per cent to 32 per cent.³⁹⁷

- (iii) Part of the reported increase in award reliance between 2012 and 2014 may be attributed to sampling error.³⁹⁸

[524] The submissions advanced in relation to the EEH data in the present proceedings were similar to those put in the 2014–15 Review proceedings and gave us no reason to depart from the conclusions reached in that Review.

[525] The Australian Government referred to the emphasis upon bargaining within the workplace relations framework³⁹⁹ and submitted that enterprise bargaining provides “a direct avenue for firms and workers to negotiate productivity offsets for wage increases”,⁴⁰⁰ and that:

“The Panel’s decision should encourage enterprise bargaining, which provides a way for firms and workers to negotiate for wage increases consistent with the economic conditions facing the enterprise”.⁴⁰¹

[526] Ai Group, ACCI and AFEI submitted that increases to minimum wages may act as a disincentive to bargain. ACCI noted that “[a]ny significant increase to award based minimum wages will have a negative impact and will act as a disincentive to bargain”.⁴⁰² ACCI also contended that the increase in award reliance over the last five years would suggest that “awards are not meeting their intended purpose as a safety net, with the impact that fewer employers and employees are negotiating conditions above the award”.⁴⁰³

[527] Ai Group also submitted that one of the factors impacting on the decision-making of employers and employees in respect of whether or not to pursue enterprise bargaining is the level of minimum wage increase awarded in the Review, stating that “... the higher the minimum wage increase the less likely it is that an employer and its employees will engage in enterprise bargaining”.⁴⁰⁴ However, Ai Group did not take issue with the view adopted by the Panel in the 2013–14 Review decision that there is a “complex mix of factors that may contribute to employee and employer decision-making about whether or not to bargain”.⁴⁰⁵

[528] AFEI noted that the number of current private sector enterprise agreements have been “steadily declining” since 2013 which was “unsurprising” given that its members have reported “little incentive to bargain as an enterprise agreement would not be advantageous given the provisions of the modern award and the BOOT [Better off overall test]”.⁴⁰⁶ AFEI also noted that:

“Awards have moved closer to (and beyond) “paid rates” entitlements, absorbing the element of market flexibility that otherwise allows businesses to fit into a market (at various levels of quality, wages, technology, pricing, etc) and respond to fluctuating economic conditions.”⁴⁰⁷

[529] The Western Australian Government stated that the Commission should ensure that “any increase granted during this year’s Review does not remove the impetus for employers and employees to pursue negotiated outcomes”,⁴⁰⁸ while also noting that the number of employees covered by collective agreements in Western Australia has declined slightly in recent years.⁴⁰⁹

[530] The ACTU disagreed with the contention that increases in minimum wages above inflation or percentage increases in the NMW discourage collective bargaining⁴¹⁰ and submitted that:

“In Australia collective bargaining is likely to be a consequence of awarding pay increases. The awards can be taken as a signal that collective bargaining is warranted, by employees and employers. There is no straightforward effect on incentives related to the size of the increase awarded.”⁴¹¹

[531] In particular, the ACTU argued that there was “no historical relationship evident between the level of award reliance following the previous increase awarded”⁴¹² and suggested that there is likely to be a lag between initial award reliance and the undertaking of bargaining, particularly for emerging industries related to the digital economy.⁴¹³ The ACTU

further noted that large increases in minimum wages could be an incentive for employers to bargain:

“Employees may take a larger increase as a signal that collective bargaining may be more worthwhile. A larger increase may encourage employers to bargain about the complex of conditions in the employment relationship. The reverse may be true about a smaller increase, although no symmetry can be assumed in relation to the incentives engendered by the size of increase.”⁴¹⁴

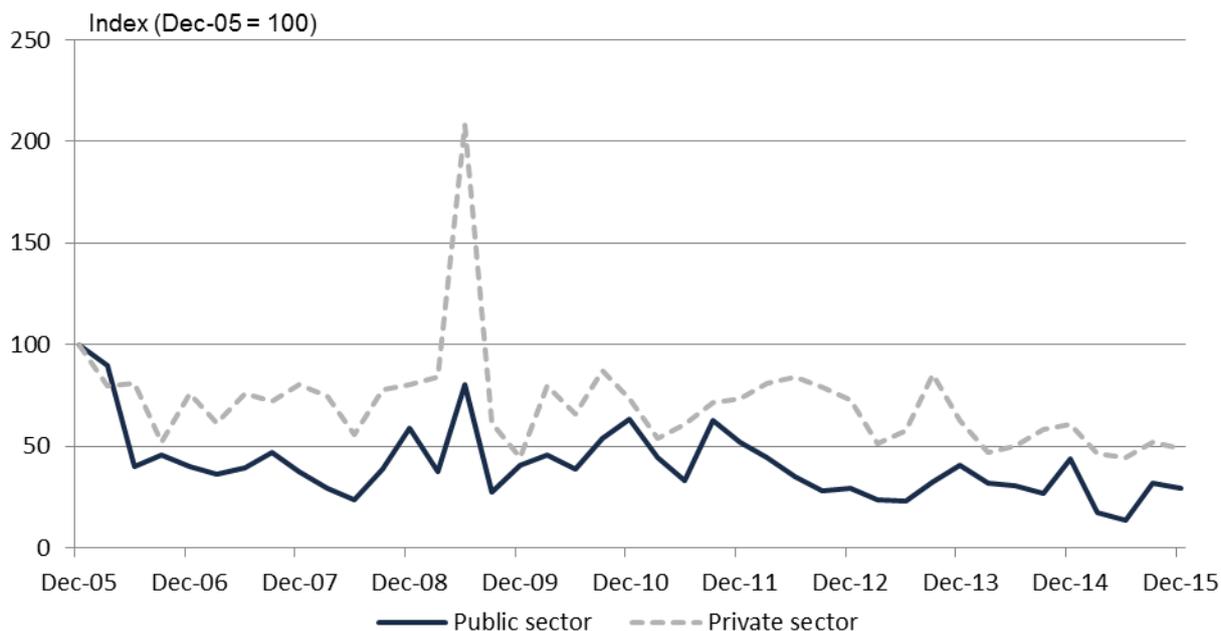
[532] The Queensland Government submitted that the current gap between enterprise agreement and award wages provide “significant incentive for employees to seek to bargain for wage increases.”⁴¹⁵ The Queensland Government also noted that there is a significant proportion of employees that have remained on awards, suggesting not all employees are able to bargain with their employers for wage increases.⁴¹⁶ In relation to this issue, the ACTU also submitted that employers may have a “diminished incentive to bargain given that minimum rates have fallen so far relative to average or median wages”.⁴¹⁷

[533] The South Australian Government contended that minimum wages “have been maintained at a level where they provide not only a safety net for award and agreement free employees, but continue to act as a relevant benchmark to underpin enterprise bargaining.”⁴¹⁸

[534] The New South Wales Government noted that while average weekly earnings for award-reliant employees remain “significantly less” than for employees reliant on collective bargaining, the difference has been reduced.⁴¹⁹ The New South Wales Government also noted that there is a significant gap between AAWI and WPI, which increased slightly between June and September quarters 2015.⁴²⁰ The New South Wales Government submitted that “the Panel should continue to set minimum wages at a level that maintains incentives for enterprise bargaining that rewards flexible and productive work practices.”⁴²¹

[535] Drawing on recent data, Chart 7.3 shows an index of federal enterprise agreements approved between December 2005 and December 2015 by sector, on a quarterly basis.

Chart 7.3: Agreements approved in the quarter by sector, December quarter 2005 to December quarter 2015, index



Note: The notable spike in agreements approved occurred in the June quarter 2009, which precedes the commencement of the Act.

Source: Department of Employment, *Trends in Federal Enterprise Bargaining*, December 2015.

[536] Over the 10-year period, approved private sector agreements have fluctuated by quarter but have trended downwards since 2013. Similarly, public sector agreements approved by quarter have also trended downwards since 2011.

[537] Contrary to the suggestion in AFEI’s submission, we are not satisfied that the recent decline in agreement approvals is a consequence of the level of minimum wage adjustments in recent Reviews.⁴²² Many factors may influence federal enterprise agreement approvals including the shifts in employment as a consequence of the economy transitioning from Manufacturing and Mining to the services sector, where collective bargaining has historically been far less prevalent. There is also likely to be an impact from the different levels of union density across various sectors and from the timing of bargaining rounds in some major industries.

[538] As the Panel observed in the 2013–14 Review decision,⁴²³ the available research does not reveal any particular relationship between the incentive to bargain and increases in the NMW and modern award minimum wages. Instead it points to a complex mix of factors that may contribute to employee and employer decision-making about whether or not to bargain.

[539] The Panel’s previous conclusions as to the relationship between increases in minimum wages and collective bargaining remain valid, in particular:

- whilst the gap between minimum wages and bargained wages is likely to increase the incentive for employees to bargain, a large gap may be a disincentive for employers to bargain; and
- minimum wages are only one element of the incentive to bargain.⁴²⁴

[540] In determining the increase in the NMW and modern award minimum wages in this Review we have taken into account the need to encourage collective bargaining. Given the complexity of the factors which may contribute to decision making about whether or not to bargain, we are unable to predict the precise impact of our decision on collective bargaining with any confidence. However, on the available evidence and the experience to date it is likely that the increase we have determined in this Review will impact upon the incentive to bargain in various sectors in different ways, but will not in aggregate, discourage collective bargaining.

[541] As mentioned in Chapter 2, the need to encourage collective bargaining is one of a range of considerations we are required to take into account, in a process which calls for the exercise of broad judgment.

8. Equal Remuneration

[542] In giving effect to both the modern awards objective and the minimum wages objective, the Panel must take into account the principle of equal remuneration for work of equal or comparable value (s.134(1)(e) and s.284(1)(d)).

[543] The parties' submissions differed on how this consideration should be taken into account and the effect of minimum wage adjustments on gender pay inequality. A number of parties made submissions about the gender pay gap. Those submissions differed in their estimates of the size of the gender pay gap.

[544] We will first deal with the gender pay gap and the extent of the gap for award-reliant employees before turning to the role of equal remuneration and minimum wages in reducing the gender pay gap.

The gender pay gap

[545] The gender pay gap refers to the difference between the average wages earned by men and women. It may be expressed as a ratio which converts average female earnings into a proportion of average male earnings on either a weekly or an hourly basis.

[546] The causes of the gender pay gap are complex. Research and reviews of literature into this area have observed that only a proportion of the gender pay gap can be explained by productivity-related characteristics such as work experience or education. This work has identified that factors influencing the gender pay gap may also include:

- differences in the types of jobs done by men and women, such as industry, occupation, location, method of setting pay and the levels of discretionary payments (bonuses, commissions, allowances, etc.);
- structures and workplace practices which restrict the employment prospects of workers with family responsibilities, leading to higher part-time and casual employment and less training; and
- the historic undervaluation of the work and skills of female dominated professions.⁴²⁵

[547] The gender pay gap may be expressed and measured in a number of ways.

[548] The two main sources of data on earnings distinguished by gender from the ABS are the Survey of Average Weekly Earnings and the EEH. The AWE produces estimates of weekly earnings. To make an approximate allowance for variations in hours worked, it is usual to focus on AWOTE for full-time adult workers. AWOTE is the most frequently released data on gender earnings. The EEH can provide an estimate for hourly earnings, and is therefore able to include part-time workers. However, up to the 2014 survey, hourly earnings in the EEH could only be estimated for non-managerial employees. Earnings data from both the AWE and EEH are affected by compositional factors such as changes in the composition of jobs and variations in the numbers and pay rates of juniors, apprentices, trainees and disability rates of pay and overtime payments.

[549] The ABS used the 2014 EEH to provide a summary of earnings indicators as part of a catalogue on gender indicators.⁴²⁶ It reported that:

“In 2014 the average female wage was 87% of the average male wage (non-managerial adult hourly ordinary time cash earnings). The median female wage was 90% of the median male wage. This gap has remained relatively steady over the past decade.”⁴²⁷

[550] The above figures can be expressed as a pay gap of 13 per cent of average hourly wages and 10 per cent of median hourly wages. The average pay gap (derived from the same source) when managerial workers are included is 16.9 per cent. This last figure is similar to the gender pay gap that is calculated using AWOTE.

[551] The following table provides estimates of the gender pay gap using data from both AWOTE and the EEH.

Table 8.1: Estimates of the gender pay gap

Measure	Male earnings	Female earnings	Gender pay gap
AWOTE (<i>November 2015</i>)	\$1602.80	\$1325.10	17.3%
EEH adult hourly ordinary time cash earnings (hourly) (<i>May 2014</i>)	\$41.09	\$34.16	16.9%
EEH non-managerial adult hourly ordinary time cash earnings (<i>May 2014</i>)	\$37.66	\$32.95	12.5%

Note: AWOTE is expressed in trend terms.

Source: ABS, *Average Weekly Earnings, Australia, May 2015*, Catalogue No. 6302.0; ABS, *Microdata: Employee Earnings and Hours, Australia, May 2014*, Catalogue No. 6306.0.55.001.

[552] Submissions have generally referred to AWOTE when dealing with the gender pay gap. Referring to the Workplace and Gender Equality Agency’s (WGEA) analysis of AWOTE, the Australian Government noted that the gender pay gap was 17.3 per cent.⁴²⁸ The South Australian Government also submitted, using AWOTE, Australia’s current gender pay gap to be 17.3 per cent.⁴²⁹

[553] The ACTU submitted that, using AWOTE, the gender pay gap was 17.7 per cent at November 2015 and that it has “basically risen on trend since August 2004 when it was 14.7%”.⁴³⁰

[554] The ACTU also provided other measures of average earnings and submitted that regardless of the measure used “women are paid less on average than men”.⁴³¹

[555] The Victorian Government cited previous analysis by WGEA which found that the gender pay gap was 19.1 per cent based on full-time base salaries and 24 per cent based on total remuneration for full-time workers.⁴³²

[556] The differing views as to the appropriate measure of the gender pay gap were considered in the 2013–14 Review decision.⁴³³ In that decision, the Panel noted that there are a number of ways to calculate the gender pay gap, each with its strengths and weaknesses.⁴³⁴ On the data available at that time, the Panel concluded that the AWOTE was preferred as it included managerial employees and nearly three-quarters of award-reliant adult employees on professional or higher classifications were female. In the 2014–15 Review decision, the Panel endorsed the conclusions reached in the 2013–14 Review decision.⁴³⁵ However, the Panel noted that the EEH had collected hourly earnings data for managerial employees in the 2014 survey, and that these data could be considered in the Review.⁴³⁶ These data are now available and it is appropriate to reconsider the preferred measure of the gender pay gap.

[557] The Survey of AWE is the most regular and timely source of data on the gender pay gap and it has, until recently, been the only one that includes both managerial and non-managerial employees. The AWOTE measure, from which the gender pay gap is derived, is confined to full-time employees. The fact that it excludes part-time employees is a significant limitation, because women are much more likely than men to work part time. The EEH provides a distribution of hourly ordinary time earnings for those paid at the adult rate, by gender. Both average and median earnings can be derived from this distribution and hence the average or median gender pay gap. In 2014, the EEH for the first time included managerial employees.

[558] Given that the EEH now extends to managerial employees and that it captures part-time employees we now consider it to be the most appropriate measure. Its principle limitation compared with AWOTE is that it is only reported every two years, rather than annually. However, a measure such as the gender pay gap is not likely to change much over the space of a year or two.

[559] In practice the different measures of the gender pay gap for all employees are similar, at about 17 per cent. On all measures the gender pay gap remains a significant and persistent form of inequality that has been described by the International Labour Organization (ILO) as “one of the most obvious examples of structural gender discrimination”.⁴³⁷

Extent of the gender pay gap for award-reliant employees

[560] In the 2014–15 Review decision, the Panel stated that women are disproportionately represented among low-paid and award-reliant workers, however, increasing minimum wages would only have a modest effect on addressing the gender pay gap.⁴³⁸ The Panel has expressed similar conclusions in previous AWRs.⁴³⁹

[561] In December 2015, the Pay Equity Unit of the Commission released two reports, which considered the extent of the gender pay gap for women reliant on awards or other industrial arrangements.⁴⁴⁰

[562] A simple measure of the average difference in wages between men and women on award rates shows that, for practical purposes, there is no pay gap: the average pay of men and women is the same. Using AWRS data, Rozenbes and Farmakis-Gamboni (2015) found that there is a difference, in favour of men, for employees not on award rates of pay.⁴⁴¹ They also found that there was no statistically significant difference in earnings between female and male award-reliant employees when you take into account the different industries, occupations, size of business, education level, among other factors. In effect, it finds that there is no “discrimination”, in the sense that an award-reliant woman in a particular occupation, industry, type of business, with a given level of education, receives the same pay as an award-reliant man who is in the same position.⁴⁴²

[563] Broadway and Wilkins (2015) used both HILDA and AWRS data to examine low pay. They found that for all methods of setting pay, women are more likely to be low paid, but that the difference in pay between males and females is smallest among award-reliant employees. Low pay was defined as less than two-thirds of the median hourly wage of employees aged 21–64 years. Both HILDA and AWRS data showed that women (24–30 per cent depending on the data used) were more likely to be on awards than men (16–18 per cent). The data also showed that workers on award rates were much more likely to be low paid than those on other pay arrangements (between 26 and 42 per cent of award-reliant workers were low paid).⁴⁴³ They conclude that “[o]f itself, the higher rate of award reliance among women implies a higher prevalence of low pay”,⁴⁴⁴ that low-paid men and women have similar characteristics and receive similar pay, and they observe that institutional wage setting plays a key role in the high degree of gender pay equity at the lower end of the wage distribution.⁴⁴⁵

[564] The Australian Government, referring to these two reports, submitted that the gender pay gap is mostly driven by higher-paid employees, with no statistically significant gender pay gap for award-reliant employees.⁴⁴⁶ Ai Group also submitted that there is no substantive earnings gap between low-paid women and men or among employees paid modern award minimum wages.⁴⁴⁷

[565] The Victorian Government submitted that females are overrepresented in low-paid jobs and failing to adjust minimum wages would increase the gender pay gap.⁴⁴⁸ It also referred to data from the EEH to present earnings differences by method of setting pay, which showed that industries with higher award reliance had a narrower gender pay gap and, for full-time employees, the narrowest gender pay gap was found in those employees whose pay was set by awards.⁴⁴⁹

[566] The ACTU submitted that the Panel should have regard to gender pay inequity more broadly as there is a large gap between the earnings of men and women. They claimed that an “increase in minimum wages can contribute to more equal remuneration between workers who are paid minimum rates and those who perform work of equal value who have the capacity to bargain”.⁴⁵⁰

Equal remuneration and minimum wages in reducing the gender pay gap

[567] The Australian Government submitted that “women are likely to be particularly at risk from any impacts on employment”⁴⁵¹ and that this is a reason to be cautious about any measures that may jeopardise female employment.⁴⁵² The Australian Government also submitted that the Panel’s decision is a “blunt tool” for addressing gender pay inequality and its effect is on the employees where the gender pay gap is the smallest.⁴⁵³

[568] Using data from the ABS COE survey, the ACTU submitted:

“One in eight full time male employees earns less than \$800 per week, whereas 1 in 5.6 full time female employees earns less than \$800 per week. This strongly suggests that female employees are more low paid and award dependent than male employees. The pattern permeates through the rest of the pay distribution. An increase in the minimum wage is a crucial measure for addressing the gender pay gap.”⁴⁵⁴

[569] In reply, the ACTU submitted that “there is no demonstrable connection between the participation rates of males and females and wages”⁴⁵⁵ and that adjustments to minimum wages assist in reducing gender pay inequality. ACOSS also submitted that minimum wages play an important role in reducing the gender pay gap.⁴⁵⁶

[570] The Queensland Government submitted that any increase to minimum wages “may only have a minimal impact on the gender pay gap”, but that a significant portion of Queensland’s award-reliant workers are women and, given the relationship between award reliance and low pay, an increase in minimum wages “is likely to positively impact on pay equity”.⁴⁵⁷

[571] The South Australian Government submitted that the minimum wage plays a “crucial part” in supporting women to remain in the workforce and in closing the gender pay gap.⁴⁵⁸ The Victorian Government submitted that women have greater award reliance than men and that influencing the wage outcomes of women through AWRs positively affects the wages of women in the short term and has a longer-term effect on women’s workforce participation.⁴⁵⁹

[572] Ai Group agreed with the Panel’s findings in the 2014–15 Review decision that minimum wage increases have only a modest impact on addressing the gender pay gap.⁴⁶⁰

Conclusion

[573] An increase in award rates of pay relative to other wages would reduce the gender pay gap in two ways. The first is that it would raise the level of low pay rates relative to median pay rates, and hence particularly benefit women, who disproportionately receive low pay rates. The second is that an increase in the higher levels of award rates will particularly benefit women because, at the higher award classifications, women are more likely to be paid the award rather than the bargained rate than are men.

[574] As the Panel noted in the 2013–14 Review decision,⁴⁶¹ Research Report 6/2013 found that 61 per cent of adult award-reliant employees in non-public sector award-reliant organisations, were female.⁴⁶² The research also found that nearly three-quarters (73 per cent) of adult employees on awards with professional classifications, and who are on professional or higher award classifications, were female.⁴⁶³

[575] From the data before us, we can conclude:

- there is a substantial and persistent gap in the average hourly and weekly pay of men and women, in favour of men;
- women are significantly more likely to be paid at the award rate than are men at all levels of the award structure;

- workers paid at the award rate are much more likely to be low paid than are other workers; and
- at least at the highest rates in the award structure, women are heavily over-represented among those who are paid at the award rate.

[576] Women continue to be overrepresented among the award reliant and low paid. It follows, and we accept, that increases in the NMW and modern award wages can provide some assistance in addressing the gender pay gap.

[577] Other mechanisms available under the Act, such as bargaining and equal remuneration provisions, provide a more direct means of addressing this issue. In the *Equal Remuneration Case 2013-14*,⁴⁶⁴ the Full Bench noted that ss.156(3) and 157 may also provide a mechanism for addressing pay equity:

“We see no reason in principle why a claim that the minimum rates of pay in a modern award undervalue the work to which they apply for gender-related reasons could not be advanced for consideration under s.156(3) or s.157(2). Those provisions allow the variation of such minimum rates for ‘work value reasons’, which expression is defined broadly enough in s.156(4) to allow a wide-ranging consideration of any contention that, for historical reasons and/or on the application of an indicia approach, undervaluation has occurred because of gender inequity. There is no datum point requirement in that definition which would inhibit the Commission from identifying any gender issue which has historically caused any female dominated occupation or industry currently regulated by a modern award to be undervalued. The pay equity cases which have been successfully prosecuted in the NSW and Queensland jurisdictions and to which reference has earlier been made were essentially work value cases, and the equal remuneration principles under which they were considered and determined were likewise, in substance, extensions of well-established work value principles. It seems to us that cases of this nature can readily be accommodated under s.156(3) or s.157(2). Whether or not such a case is successful will, of course, depend on the evidence and submissions in the particular proceeding.”⁴⁶⁵

[578] The principle of equal remuneration is a factor in favour of an increase in the NMW and modern award minimum wages and as such has been considered together with the various other statutory considerations the Panel is required to take into account.

[579] We note that ABI proposed that the Panel state in its decision how minimum wage adjustments flow through to the *Social, Community and Disability Services Industry Equal Remuneration Order 2012* and transitional pay equity orders.⁴⁶⁶ This issue is addressed in Chapter 9.

9. Other Matters

Transitional Australian Pay and Classification Scales, Division 2B State awards and other transitional instruments

[580] The Panel is required to review, and may make a determination varying, a number of transitional instruments as part of the AWR. Transitional instruments are:

- Transitional Australian Pay and Classification Scales (APCS).⁴⁶⁷

- State reference transitional awards, which include:
 - Division 2A State reference transitional awards;⁴⁶⁸
 - Division 2A State reference transitional enterprise awards;
 - Division 2A State reference public sector transitional awards;
 - Division 2B State reference transitional awards;⁴⁶⁹
 - Division 2B State reference transitional enterprise awards; and
 - Division 2B State reference public sector awards.
- Division 2B State awards, which include the following sub-sets of instruments:
 - Division 2B State awards;⁴⁷⁰ and
 - Division 2B State enterprise awards.
- Transitional Pay Equity Orders.⁴⁷¹
- Certain copied State awards.⁴⁷²

[581] The content and coverage of most of these instruments were addressed in the Panel's 2009–10 Review decision⁴⁷³ and Fair Work Australia's Research Report 6/2010.⁴⁷⁴ The 2012–13 Review decision outlined the operation of transitional pay equity orders and copied State awards.⁴⁷⁵

[582] The transitional instruments listed above include those subject to modernisation processes which continue to operate and transitional instruments preserved by operation of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Transitional Act). Most transitional instruments subject to modernisation processes have been terminated or have ceased to operate, however, some continue to operate subject to the conclusion of the review process. These instruments include, but are not limited to, instruments which cover:

- employees also covered by enterprise instruments for which a modernisation application has been made;⁴⁷⁶
- employees also covered by State reference public sector awards which have not been terminated by the Commission or replaced by a State reference public sector modern award;⁴⁷⁷ or
- employees covered by instruments which have not yet terminated as part of the termination of modernisable instruments commenced in 2010.⁴⁷⁸

[583] Transitional instruments preserved by operation of the Transitional Act include Transitional Australian Pay and Classification Scales (APCSs); State reference transitional instruments and Division 2B State awards preserved by operation of the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*; and transitional pay equity orders created by the Transitional Act.⁴⁷⁹ These instruments must be considered as part of the Panel's review.⁴⁸⁰ Also part of this category of transitional instruments are copied State awards in relation to employees of non-national system state public sector employers who transfer their employment to a national system employer as part of a transfer of business.⁴⁸¹ The Panel is required to review and, if appropriate, may make a determination varying minimum wages in copied State awards.⁴⁸²

[584] While it will be a matter for the Panel constituted to conduct the 2016–17 Review, we would propose that a review be undertaken of the transitional instruments that must be dealt with as part of AWRs. The review will consider the status and effect of transitional instruments, including whether they have been, or can be, terminated by the Commission. A background paper providing information on transitional instruments will be published later

this year. Interested parties will be given an opportunity to make submissions on any issues arising out of the review of the transitional instruments.

[585] The Queensland Government submitted that Queensland apprentices and trainees are subject to transitional instruments where competency-based wage arrangements apply. The Queensland Government further submitted that increases to Division 2B State awards and transitional APCs preserving wages for apprentices subject to competency-based wage arrangements should be in line with any adjustments made by the Panel to minimum wages.⁴⁸³

[586] In relation to the pay equity order made by the Queensland Industrial Relations Commission, two transitional pay equity orders currently operate.⁴⁸⁴ The Panel must review and may make a determination varying the transitional pay equity order as it relates to the Division 2B State award,⁴⁸⁵ to the extent that it is derived from the *Queensland Community Services and Crisis Assistance Award – State 2008*.⁴⁸⁶

[587] ABI submitted that transitional instruments referred to in the *Social, Community and Disability Services Industry Equal Remuneration Order 2012*⁴⁸⁷ (2012 ERO) are no longer available to the Panel for variation during an AWR:

“One consequence of the transitional arrangements in the *Social, Community, Home Care and Disability Services Industry Award 2010* itself and also of the ERO phasing-in regime is that relevant award-based transitional instruments were not terminated at the time that the FWC terminated the majority of modernisable instruments and relevant transitional minimum wage instruments were increased by the Panel by the amount of the adopted award increase. This capacity was provided under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Neither these transitional instruments, nor Division 2B state awards, continue in existence, terminated by various provisions of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*. They are probably best regarded as imaginary or notional instruments and they are not now available to the Panel for variation. However cl 5.4 of the ERO requires the employer to apply any adopted award increase to the *Social, Community, Home Care and Disability Services Industry Award 2010* to the minimum amount payable under cl 5.3 which also then alters the additional phase-in amount under cl 5.5 of the ERO. The adopted award increase is applied to the ERO’s phasing-in regime by the operation of the ERO.”⁴⁸⁸

[588] ABI submitted that as a result of these transitional instruments no longer being available to the Panel for variation any minimum wage adjustment operates to alter the 2012 ERO. ABI submitted, however, that if they had misunderstood the mechanism, the relevant transitional instruments should be varied consistently with any minimum wage adjustment.⁴⁸⁹

[589] This issue was raised with ACCI during the course of the consultations on 11 May 2016. ACCI and ABI subsequently reiterated ABI’s submission that it is the 2012 ERO that gives effect to minimum wage adjustments and not the transitional instruments referred to by the 2012 ERO:

“However, it is the ERO that gives effect to this outcome rather than the award based transitional instruments themselves. In other words, the application of annual wage

review increases to the preserved transitional rates is merely a step in the calculation formula prescribed by the ERO. The award based transitional instruments are not in themselves varied as a result of any decision arising from the Annual Wage Review process.

In essence, the request to the Panel is that in this year's decision the Panel clarify that any increase in the minimum wage also increases the floor rate for the relevant transitional calculation under the orders referred to in the prior paragraphs...⁴⁹⁰

[590] The transitional instruments referred to by ACCI and ABI have not yet been terminated and must be reviewed by the Panel during an AWR. As part of the *Award Modernisation—Termination of Modernisable Instruments* decision,⁴⁹¹ the Award Modernisation Full Bench decided not to terminate a number of transitional instruments relevant to the transitional provisions in the *Social, Community, Home Care and Disability Industry Award 2010* (SACS Award).⁴⁹² The Full Bench stated:

“Returning now to the ASU’s main submission concerning the transitional provisions in the SACS modern award, it is clear that the transitional provisions prescribe the continued application of the minimum wages in the transitional APCs and State reference transitional awards until 1 July 2011. For that reason those instruments should not be terminated. We consider that we should not terminate the other award-based transitional instruments either, if only because they contain penalties and loadings which continue in operation until 1 July 2011 under the transitional provisions in the modern award. In the circumstances the position should be reviewed in relation to each of the awards identified by the ASU after 1 July 2011.”⁴⁹³

[591] This issue has not been the subject of any subsequent decision. Transitional APCs and State reference transitional awards operate until the Commission makes an order to terminate them.⁴⁹⁴ Accordingly, a number of transitional instruments covering employees also covered by the SACS Award and the 2012 ERO are yet to be terminated by the Commission⁴⁹⁵ and the Panel must review and may make a determination varying these instruments.⁴⁹⁶

[592] We have decided that the increase we have awarded in modern award minimum wages should also apply to those transitional instruments which remain in operation.

[593] A different approach applies in relation to copied State awards currently in operation. In the absence of any submissions on this matter, we have decided that increases to these instruments should be consistent with the approach set down in previous AWR decisions,⁴⁹⁷ and the following increases will apply to copied State awards:

- an increase of 2.4 per cent applies to wage rates in copied State awards that were not the subject of a state minimum wage decision that commenced on and before 1 July 2015;
- an increase of 1.2 per cent applies to wage rates in copied State awards that were the subject of a state minimum wage decision that commenced after 1 July 2015 and before 1 January 2016; and
- no increase applies to wage rates in copied State awards that were the subject of a state minimum wage decision that commenced on or after 1 January 2016 and before 1 July 2016.

[594] There is no requirement to publish the variations.⁴⁹⁸

Modern award minimum wages for junior employees, employees to whom training arrangements apply, employees with disability and piece rates

[595] The Panel is required to review modern award minimum wages, including wages for junior employees, employees to whom training arrangements apply, employees with disability, and piece rates.⁴⁹⁹

Juniors

[596] The ACTU,⁵⁰⁰ Ai Group,⁵⁰¹ ACOSS,⁵⁰² and ABI⁵⁰³ supported flowing on any AWR decision to modern award minimum wages including junior rates of pay.

[597] A number of submissions raised concerns with the relatively high level of youth unemployment in comparison to other sections of the labour market and discussed the impact of minimum wage increases and labour market conditions on the employment of junior employees. We have dealt with these issues in Chapter 6. No party contended that the Panel should depart from the approach of adjusting junior rates of pay in line with the AWR decision.

[598] We have decided that the adjustment will flow through to the operation of provisions for calculating junior rates in modern awards.

Apprentices and Trainees

[599] The ACTU,⁵⁰⁴ Ai Group,⁵⁰⁵ ACOSS,⁵⁰⁶ and ABI,⁵⁰⁷ supported flowing on any wage increase to employees to whom training arrangements apply. No party contended otherwise.

[600] The decline in apprentice and/or trainee commencement rates was raised in a number of submissions. The causes of the decline were also discussed, including some submissions that Commission decisions dealing with apprentice and junior wages were a contributing factor.⁵⁰⁸ We have addressed these submissions earlier in our decision at paragraph [310].

[601] In many modern awards minimum wages for trainees are set by the National Training Wage Schedule (NTWS). The ACTU and ABI supported a flow on of any minimum wage increases awarded as part of the annual wage review to the NTWS.⁵⁰⁹

[602] We have decided that the adjustment will flow through to employees to whom training arrangements apply in modern awards. We have also decided to flow on the percentage increase we have determined to the rates in the NTWS.

Employees with disability

[603] The ACTU,⁵¹⁰ Ai Group,⁵¹¹ ACOSS,⁵¹² and ABI⁵¹³ supported flowing on any AWR decision to subsidiary wages, including to employees with disability.

[604] The ACTU submitted that proceedings arising from the decision of the Full Court of the Federal Court in *Nojin v Commonwealth of Australia*⁵¹⁴ had yet to conclude and, for this

reason, the Panel should maintain its previous approach to setting minimum wages for employees with disability.⁵¹⁵

[605] In relation to setting the minimum weekly payment in the Supported Wage System Schedule (SWSS), the ACTU, Ai Group and ABI submitted the Panel should continue to adopt the approach of adjusting the payment in line with the disability pension income-free threshold.⁵¹⁶

[606] ACOSS raised concerns about the complexity and level of minimum rates of pay for employees with disability.⁵¹⁷ The two concerns raised were not accompanied by any particular proposals for changing the existing arrangements for employees with disabilities and ACOSS did not participate in the final consultations. Nor was this aspect of ACOSS' submission addressed by any other party.

[607] It seems to us that the concerns raised by ACOSS are important and require careful consideration. While it will be a matter for the Panel constituted to conduct the 2016–17 Review, we would propose that these matters be the subject of a preliminary hearing as part of the 2016–17 Review.

[608] We have decided the adjustment granted in this Review will flow through to employees with disability through the operation of the SWSS and that the minimum payment in the SWSS should be adjusted consistent with the approach adopted in previous AWRs.⁵¹⁸

Piece rates

[609] The ACTU⁵¹⁹ and Ai Group⁵²⁰ supported flowing on any annual wage increase to piece rates of pay. No party contended otherwise.

[610] We have decided to allow the increase granted in this Review to flow through to modern award employees engaged in piece work.

Casual loadings under modern awards and the casual loading for award/agreement free employees

[611] In each AWR the Panel is required to review casual loadings in modern awards and to include a casual loading for award/agreement free employees in the national minimum wage order. The casual loading for award/agreement free employees must be expressed as a percentage.⁵²¹

[612] Consistent with the 2009–10 Review decision,⁵²² the Panel increased the casual loading for award/agreement free employees by 1 per cent each year, until it reached 25 per cent in the 2013–14 Review decision.⁵²³ The 2014–15 Review decision maintained the casual loading rate for award/agreement free employees at 25 per cent.⁵²⁴

[613] The ACTU, Ai Group and ABI supported maintaining the casual loading rate for award/agreement free employees at 25 per cent and no other party contended otherwise.⁵²⁵

[614] We have decided that the casual loading for award/agreement free employees should be maintained at 25 per cent.

[615] All Panel decisions since the 2009–10 Review have maintained the casual loading in modern awards at 25 per cent.⁵²⁶ In the present proceedings the ACTU and Ai Group supported maintaining the casual loading at 25 per cent in modern awards.⁵²⁷

[616] We have decided that the casual loading in modern awards will remain at 25 per cent.

[617] In the 2014–15 Review decision, the Panel noted that the casual loading in the *Business Equipment Award 2010* (Business Equipment Award),⁵²⁸ at 20 per cent, differed from the standard casual loading of 25 per cent found in other modern awards.⁵²⁹ In the current Review this issue was the subject of written submissions and a public consultation on 25 February 2016. Submissions were made by the ACTU and Ai Group, who were the only participants in the public consultation on 25 February 2016.

[618] The ACTU submitted that the setting of the 20 per cent casual loading in the Business Equipment Award may be regarded as an anomaly arising out of the award modernisation process:

“The Award published by the AIRC contains similar, if not identical, wording and entitlements to that proposed by the Ai Group in its draft. Given the process adopted for finalising the award, it is conceivable that the Bench perhaps did not give any deliberative consideration to the terms of the casual loading clause in that award. In that regard, the setting of the casual loading at the time of that decision at 20% rather than 25% may be regarded as anomaly.”⁵³⁰

[619] The ACTU submitted that the Panel should issue a determination varying the casual loading in the Business Equipment Award to the standard 25 per cent casual loading.⁵³¹

[620] Ai Group opposed increasing the casual loading rate in the Business Equipment Award to 25 per cent,⁵³² and submitted that the Award Modernisation Full Bench had determined that the terms and conditions of the Business Equipment Award were an “appropriate safety net, consistent with criteria which were very similar to the criteria in the modern awards objective and the minimum wages objective.”⁵³³

[621] Ai Group further submitted that there was no evidence or material before the Panel to suggest the Business Equipment Award was not “[t]ogether with the National Employment Standards, providing a fair and relevant minimum safety net of terms and conditions”, or “[p]roviding a safety net of fair minimum wages” or that an increase was required for the Business Equipment Award “to achieve the modern awards objective in accordance with section 138 of the FW Act”.⁵³⁴

[622] We turn first to the relevant award history.

[623] The Business Equipment Award was made in stage 2 of the Part 10A award modernisation process. The Award Modernisation Full Bench initially indicated that it was probably unnecessary to establish a separate award covering the servicing of business equipment as two other awards had similar coverage.⁵³⁵ Subsequent submissions by Ai Group, the ACTU and a number of unions supported the making of a separate modern award for the business equipment industry.⁵³⁶ Further submissions made during the consultation process on the stage 2 exposure drafts were primarily directed to the question of

whether an award covering the business equipment industry was necessary and the scope and application of such an award.⁵³⁷

[624] The Award Modernisation Full Bench subsequently decided to make a stand-alone Business Equipment Award,⁵³⁸ based primarily on the draft award submitted by Ai Group:

“A number of parties representing both employers and employees requested that additional awards be made covering the business equipment industry and the contract call centre industry. We have decided to accede to these requests.

It appears that there is an industry of selling and/or leasing business equipment of various types including computers, photocopiers and printers. Businesses involved in such activities are also involved in the installation and servicing of that equipment. It is not in the nature of a manufacturing, retail or electrical contracting business. The AiGroup proposed an award which effectively amalgamated three awards currently covering the servicing, clerical and sales activities of employers in the business equipment industry. The result is a comprehensive modern award covering all award-covered employees in this industry which largely reflects the terms of existing awards. In the modern award we have replicated the exemption provisions in the existing awards. The modern award makes minor changes in the draft submitted by AiGroup. The changes we have made provide greater clarity, reduce some of the prescription and conform to other modern awards. Nevertheless we are concerned at the length and complexity of the award. There is scope to revise it further in future award modernisation exercises.”⁵³⁹

[625] The draft award submitted by Ai Group provided a casual loading of 20 per cent. The level of the casual loading in the Business Equipment Award was not the subject of any specific comment in submissions or consultations during the award modernisation process, nor was it mentioned by the Award Modernisation Full Bench in the decision to make the award.

[626] It is also relevant to observe that because the Commission’s preliminary view was that a separate award covering the servicing of business equipment was probably unnecessary; no exposure draft was prepared and published for comment. As a consequence, the draft award submitted by Ai Group (and ultimately adopted by the Full Bench) may not have received the same level of scrutiny as most other modern awards.

[627] The adoption of a 20 per cent casual loading in the Business Equipment Award was inconsistent with the general approach adopted by the Award Modernisation Full Bench.

[628] In a Statement,⁵⁴⁰ issued on 12 September 2008, the Award Modernisation Full Bench dealt with a number of general matters relating to the exposure drafts of the priority modern awards, including the loading to be paid to casual employees:

“We have adopted a general standard of 25 per cent for the casual loading in the drafts. In some areas transitional arrangements may be necessary to cushion the impact of the change.”⁵⁴¹

[629] In its 19 December 2008 decision in relation to the making of the priority modern awards,⁵⁴² the Full Bench stated:

“Types of employment

In our statement of 12 September 2008 we indicated that we intended to adopt a standard loading of 25 per cent for casual employees. We received many representations in relation to that indication. For example, a number of employer representatives submitted that we should not adopt a standard casual loading or that if we did so 25 per cent was too high.

There is great variation in the casual loadings in NAPSAs [Notional Agreement Preserving State Awards] and federal awards. In some cases the situation is complicated by the fact that casuals receive an annual leave payment, usually through an additional loading of one twelfth, although in most cases casuals do not receive annual leave payments. To take some examples, a casual loading of 25 per cent is common throughout the manufacturing industry, casual loadings in the retail industry vary from 15 per cent to 25 per cent. A loading of 25 per cent is very common, although not universal, throughout the hospitality industry. A number of pre-reform awards currently provide for a 33½ per cent loading and higher when the annual leave payment is taken into account. It seems to us to be desirable to standardise provisions to apply to casuals where it is practicable to do so to avoid claims in the future based on unjustified differences in loadings. We appreciate that there are casual employees in some industries in some States receiving loadings less than 25 per cent and we understand that employers of those employees will experience an increase in labour costs if the loading is standardised to 25 per cent. Equally, there will be reductions in labour costs where the loading, including the annual leave loading where it applies, exceeds 25 per cent currently.

In 2000 a Full Bench of this Commission considered the level of the casual loading in the *Metal, Engineering and Associated Industries Award 1998* (the Metal industry award). The Bench increased the casual loading in the award to 25 per cent. The decision contains full reasons for adopting a loading at that level. The same loading was later adopted by Full Benches in the pastoral industry. It has also been adopted in a number of other awards. Although the decisions in these cases were based on the circumstances of the industries concerned, we consider that the reasoning in that case is generally sound and that the 25 per cent loading is sufficiently common to qualify as a minimum standard.

In all the circumstances we have decided to confirm our earlier indication that we would adopt a standard casual loading of 25 per cent. We make it clear that the loading will compensate for annual leave and there will be no additional payment in that respect. Also, as a general rule, where penalties apply the penalties and the casual loading are both to be calculated on the ordinary time rate.”⁵⁴³

[Emphasis added; footnotes omitted]

[630] It should also be noted that, during the award modernisation process, a number of proposals to reduce the casual loading in particular modern awards were rejected. For example, the Master Plumbers’ and Mechanical Services Association and the National Fire Industry Association unsuccessfully submitted that the casual loading in the exposure draft for

the *Plumbing and Fire Sprinklers Award 2010*⁵⁴⁴ should be reduced from 25 to 20 per cent. In rejecting the joint submissions in respect of this issue a Full Bench of the AIRC said:

“We have not acceded to the proposal in the joint amendments to alter the casual loading in the exposure draft from 25% to 20%. We see no reason not to implement the level which will apply generally to casual employment.”⁵⁴⁵

[631] Apart from awards containing “loaded up rates” that include a casual component,⁵⁴⁶ all modern awards that contain a casual loading provide a 25 per cent loading for ordinary hours, except the Business Equipment Award.

[632] It is particularly pertinent to note that the two other modern awards which the Award Modernisation Full Bench considered to have similar coverage to that of the *Business Equipment Award 2010*—the *Electrical, Electronic and Communications Contracting Industry Award 2010* and the Manufacturing Award—include a casual loading of 25 per cent.⁵⁴⁷

[633] It is apparent to the Panel that the inclusion of a 20 per cent casual loading in the Business Equipment Award was an oversight and is inconsistent with the general approach taken by the Award Modernisation Full Bench and the position in all other modern awards which contain a casual loading.

[634] As we have mentioned, the minimum wages objective applies to the variation of “modern award minimum wages”, which includes casual loadings.⁵⁴⁸ The Panel is satisfied that the existing casual loading in the Business Equipment Award, of 20 per cent, does not provide a safety net of *fair* minimum wages, as required by s.284(1) of the Act. We are also satisfied that the existing casual loading does not achieve the modern awards objective, in that it does not “provide a fair and relevant minimum safety net of terms and conditions” (s.134(1)).

[635] There is no good reason why casual employees covered by the Business Equipment Award should receive a lower casual loading than the casual employees covered by all other modern awards. Fairness requires that the casual loading in the Business Equipment Award be increased to 25 per cent to ensure that the casual employees covered by this modern award are treated equitably, relative to other casual employees.

[636] Of course, fairness, in the context of ss.134 and 284 of the Act, is to be assessed from the perspective of both employees and employers.⁵⁴⁹ Fairness to the employers covered by the Business Equipment Award requires that the increase in the casual loading be phased in.

[637] In a joint written submission following the preliminary hearing, Ai Group and the ACTU submitted:

“If the Panel is minded to implement a phased approach to increasing the 20% casual loading in the *Business Equipment Award*, our joint proposal is that the Panel:

- Follow the approach taken in the 2009/2010 Annual Wage Review in increasing the casual loading for award/agreement free employees in incremental annual instalments until it reaches 25%; and

- Issue a Statement of Principle within its Decision regarding the above phased approach.”⁵⁵⁰

[638] The Ai Group’s proposal is that the increments and time period adopted by the Panel should be the same as were adopted in the 2009–10 Review in respect of award/agreement free employees, namely:

- 21% in the first year (i.e., commencing 1 July 2016);
- 22% in the second year (i.e., commencing 1 July 2017);
- 23% in the third year (i.e., commencing 1 July 2018);
- 24% in the fourth year (i.e., commencing 1 July 2019); and
- 25% in the fifth year (i.e., commencing 1 July 2020).

[639] In its response to a question posed by the Panel, the ACTU submitted that it favoured a phasing schedule that “would bring the affected workers into line with the prevailing standard as soon as possible”.⁵⁵¹ The ACTU did not advance a particular phasing schedule because of “the gap in evidence as to the sector, its characteristics, and its willingness to absorb an immediate increase without disrupting the present working arrangements of persons in insecure casual work”.⁵⁵² The ACTU conceded that “in the absence of any credible evidence based alternative”, it was reasonable to adopt the Ai Group’s proposal.⁵⁵³

[640] We propose to adopt the suggestion advanced in the joint Ai Group/ACTU submission. In this Review, we will increase the casual loading in the Business Equipment Award to 21 per cent. As a general proposition, we would expect that the casual loading in this award will be increased by 1 per cent in subsequent AWRs, until it reaches 25 per cent, in accordance with the phasing schedule proposed by Ai Group.

Special National Minimum Wages

[641] Pursuant to s.294 of the Act, in making a NMW order the Panel must set special national minimum wages for all award/agreement free employees in the following classes: junior employees, employees to whom training arrangements apply and employees with a disability.

[642] In the 2013–14 Review decision,⁵⁵⁴ the Panel decided that, consistent with the other special minimum wages for employees to whom training arrangements apply, the adult apprentice national minimum wage should be that applying to adult apprentices under the *Miscellaneous Award 2010* (Miscellaneous Award).⁵⁵⁵ In doing so, the Panel acknowledged that this rate was lower than that previously set in the national minimum wage order. To address this, the Panel decided as follows:

“The order will therefore provide that adult apprentices will have their rate set according to the adult apprentice rate in the *Miscellaneous Award 2010*. Award/agreement free adult apprentices engaged before 1 July 2014 and who are in Year 1 of their apprenticeship will continue on the rate set in the National Minimum Wage Order 2013 until they reach Year 2 of their apprenticeship, at which time they will transition to the adult apprentice rate in the *Miscellaneous Award 2010*.”⁵⁵⁶

[643] A similar approach was adopted in the 2014–15 Review decision.⁵⁵⁷ Transitional arrangements were included in the national minimum wage order reflecting this approach.⁵⁵⁸

[644] Given the time that has passed it is likely that very few, if any, adult apprentices engaged before 1 July 2014 would remain in the first year of their apprenticeship. The gap between the rate set in the *National Minimum Wage Order 2014* and the adult apprentice rate in the Miscellaneous Award has also closed. Accordingly, we propose that this will be the last year in which a transitional arrangement for adult apprentices is included in the NMW order. If any party contends this should not occur they should set out their reasons in submissions to the 2016–17 Review.

[645] Submissions specifically dealing with special national minimum wages for award/agreement free employees are set out below. We have also taken into account submissions by the ACTU and ACOSS regarding juniors, apprentices, trainees and employees with disability more generally on the basis that these submissions are relevant to (and are not expressed to exclude) award/agreement free employees in these categories.⁵⁵⁹

Award/agreement free junior employees

[646] Ai Group and ABI submitted that the Panel should continue to adopt the junior wage percentage scale in the Miscellaneous Award as the special national minimum wage for award/agreement free junior employees.⁵⁶⁰ No party advanced a submission opposing this approach.

[647] We have again decided that the special national minimum wage for award/agreement free junior employees will again be set by reference to the junior wage percentage scale in the Miscellaneous Award.

Award/agreement free apprentices and trainees

[648] Ai Group and ABI submitted that the provisions of the Miscellaneous Award should continue to provide the basis for setting the special national minimum wage for award/agreement free apprentices (including adult apprentices).⁵⁶¹ For award/agreement free employees to whom other training arrangements apply, Ai Group and ABI submitted that, as in past AWRs, the NMW order should make reference to the minimum rates in the NTWS of the Miscellaneous Award.⁵⁶²

[649] We have decided to adopt the provisions of the Miscellaneous Award as the basis for the special national minimum wages for employees to whom training arrangements apply. The NMW order will incorporate, by reference, the apprentice and NTWS provisions of that award.

Award/agreement free employees with disability

[650] The Panel's approach in the 2014–15 Review decision, as in previous AWRs, was to set two special national minimum wages for award/agreement free employees with disability.⁵⁶³ The first, for employees with disability whose productivity is not affected, was set at the rate of the NMW. The second, for employees with disability whose productivity is affected, was to be paid in accordance with an assessment under the supported wage system schedule attached to the NMW order, with the minimum payment fixed in accordance with the disability support pension income-free threshold.

[651] Ai Group and ABI submitted that the Panel should follow the approach adopted in previous AWR decisions in setting special national minimum wages for award/agreement free employees with disability, including adjusting the minimum payment in the SWSS to reflect any increase to the disability support pension's income-free threshold.⁵⁶⁴

[652] Consistent with previous years' approaches to these wages, we have decided to set two special national minimum wages for award/agreement free employees with disability. For award/agreement free employees with disability whose productivity is not affected, the wage will be set at the rate of the NMW. For award/agreement free employees with disability whose productivity is affected, the wage will be paid in accordance with an assessment under the supported wage system. The minimum payment will be fixed in accordance with the adjustment to the SWSS.

Proposed s.290 inquiry

[653] ACCER sought the establishment of a process under s.290 of the Act for the purpose of obtaining evidence regarding the needs and relative living standards of low-paid workers and their families.⁵⁶⁵ ACCER noted that the Panel "... should be searching for better information on the requirements of acceptable living standards for low paid workers and their families".⁵⁶⁶ ACCER also submitted that during the proposed s.290 inquiry, or through some other process, the Panel should conduct an inquiry into the appropriateness of relying on calculations of the living standards of sole parents that are based on sole parents being in full-time employment.⁵⁶⁷ ACCER submitted that the living standards of sole parents in the Statistical Report should be calculated on the basis of part-time work of 27.5 hours per week, with an investigation into the costs of childcare for sole parents who work full time.⁵⁶⁸

[654] Section 290 of the Act provides that the President may give a direction under s.582 requiring that a matter be investigated, and that a report about the matter be prepared, for consideration in an AWR.

[655] The Panel has previously dealt with proposals which are similar to that advanced by ACCER in the present proceedings. A process was initiated under s.290 to consult interested parties on the most pertinent and valuable proxy measures of the needs of the low paid and report to the then Minimum Wage Panel. That process culminated in the *Measuring the Needs of the Low Paid* report published in 2011.⁵⁶⁹

[656] Further, in the 2013–14 Review, ACCER proposed that a s.290 process be established to investigate data held by government organisations relevant to the estimation of relative living standards and needs of the low paid.⁵⁷⁰ The Panel dealt with that proposal in the following terms:

"... it is not clear to the Expert Panel how ACCER intends the Fair Work Commission to undertake this investigation. We therefore suggest that this proposal be further discussed at the Minimum Wages Research Group consultation following the release of this research program. After this discussion, ACCER may wish to resubmit this proposal for the Panel's consideration as part of the Annual Wage Review 2013–14 submissions process."⁵⁷¹

[657] We also note that in its submission ACOSS referred to the SPRC's 'ACOSS, Catholic Social Services and United Voice project' to update the SPRC 1996 budget standards

benchmarks of community living standards. The project aims to update 1996 research into the weekly budgets of low-paid and unemployed workers. In a response to a question from the Panel, United Voice stated that the results of this research “will be used to inform debate and guide decisions about the levels of minimum wages and income support payments required to support healthy living consistent with individual needs and community expectations.”⁵⁷²

[658] While the timing for the release of the SPRC report is unknown, it seems to us that the results of this research will be relevant to the issue raised by ACCER. In the event that ACCER wishes to pursue its proposal for a s.290 inquiry it should submit a proposal to the President.

[659] As to the other matter raised by ACCER, the Panel is of the view that the appropriateness of relying on living standards data using modelling of households with sole parents in full-time employment is a matter that can be addressed in submissions to the 2016–17 Review.

10. Conclusion

[660] This Chapter sets out the outcome of the Review and mentions some matters relevant to the 2016–17 Review.

[661] The national minimum wage order will contain:

- (a) a national minimum wage of \$672.70 per week or \$17.70 per hour;
- (b) two special national minimum wages for award/agreement free employees with disability: for employees with disability whose productivity is not affected, a minimum wage of \$672.70 per week or \$17.70 per hour based on a 38-hour week, and for employees whose productivity is affected, an assessment under the supported wage system, subject to a minimum payment fixed under the SWSS;
- (c) wages provisions for award/agreement free junior employees based on the percentages for juniors in the *Miscellaneous Award 2010* applied to the national minimum wage;
- (d) the apprentice wage provisions and the NTWS in the *Miscellaneous Award 2010* for award/agreement free employees to whom training arrangements apply, incorporated by reference, and a provision providing transitional arrangements for first year award/agreement free adult apprentices engaged before 1 July 2014; and
- (e) a casual loading of 25 per cent for award/agreement free employees.

[662] The outcome of the Review in relation to modern award minimum wages is that from the first full pay period on or after 1 July 2016 minimum weekly wages are increased by 2.4 per cent, with commensurate increases in hourly rates on the basis of a 38-hour week. The increase applies to minimum wages for junior employees, employees to whom training arrangements apply and employees with disability, and to piece rates, through the operation of the methods applying to the calculation of those wages. Wages in the NTWS will be adjusted by 2.4 per cent.

[663] The determinations necessary to give effect to the increase in modern awards will be made available in draft form shortly after this decision. Weekly wages in the NMW order and modern awards will be rounded to the nearest 10 cents and hourly wages will be calculated by dividing the weekly rate by 38, on the basis of the 38-hour week for a full-time employee. Determinations varying the modern awards will be made as soon as practicable and the modern awards including the varied wage rates will be published as required by the Act.

[664] In relation to transitional instruments, from the first full pay period on or after 1 July 2016, wages in those instruments, including Division 2B State enterprise awards, will be varied by 2.4 per cent per week, with commensurate increases in hourly rates based on a 38-hour week. Wages in Division 2B State awards relating to Queensland trainees, apprentices and employees subject to specific Queensland labour market programs will be varied to achieve parity with minimum wages in the corresponding transitional APCs and State reference transitional awards. Copied State awards will be varied on the basis discussed in Chapter 9 of this decision.

[665] In relation to the casual loading rate in the Business Equipment Award, we propose to adopt the suggestion advanced in the joint Ai Group/ACTU submission. In this Review we will increase the casual loading in the Business Equipment Award to 21 per cent. As a general proposition, we would expect that the casual loading in this award will be increased by 1 per cent in subsequent annual wage reviews, until it reaches 25 per cent, in accordance with the phasing schedule proposed by Ai Group.

[666] As foreshadowed in Chapter 9, although it will be a matter for the Panel constituted to conduct the 2016–17 Review, we propose a review be undertaken of the transitional instruments that must be dealt with as part of AWRs, as well as a review of the existing arrangements for employees with disability, which we would propose be the subject of a preliminary hearing as part of the 2016–17 Review.

[667] We also intend to give consideration to the research program for the 2016–17 Review as soon as practicable. We note that the remaining projects from the medium-term research program are on the youth labour market and the characteristics of the under-employed and unemployed.⁵⁷³ This research may be further scoped as part of the usual practice of consultation by Commission staff with the Minimum Wages Research Group after the completion of this Review.

[668] As the medium-term research program nears completion, we invite interested parties to lodge research proposals by 31 July 2016. However, we note that the Commission's capacity to undertake additional commissioned or other research is more limited than in previous years and parties are encouraged to take these constraints into account in their proposals.

[669] The timetable for the 2016–17 Review will be announced in the third quarter of 2016.

[670] We wish to express our appreciation to the parties who participated in the Review for their contributions and to the staff of the Commission for their assistance.

PRESIDENT

Appendix 1—Research for Annual Wage Reviews

Date	Title	Research report no.
February 2016	An international comparison of minimum wages and labour market outcomes	1/2016
February 2015	Award reliance and business size: a data profile using the Australian Workplace Relations Study	1/2015
December 2013	Minimum wages and their role in the process and incentives to bargain	7/2013
December 2013	Award reliance	6/2013
February 2013	Accommodation and food services industry profile	5/2013
February 2013	Retail trade industry profile	4/2013
February 2013	Manufacturing industry profile	3/2013
February 2013	Labour supply responses to an increase in minimum wages: An overview of the literature	2/2013
February 2013	Higher classification/professional employee award reliance qualitative research: Consolidated report	1/2013
February 2012	Higher classification/professional employee award reliance qualitative research: Interim report	4/2012
February 2012	Award reliance and differences in earnings by gender	3/2012
February 2012	Analysing modern award coverage using the Australian and New Zealand Standard Industrial Classification 2006: Phase 1 report	2/2012
January 2012	Award-reliant small businesses	1/2012
February 2011	Australian apprentice minimum wages in the national system	6/2011
February 2011	Review of equal remuneration principles	5/2011
January 2011	Research framework and data strategy	4/2011
January 2011	Employees earning below the Federal Minimum Wage: Review of data, characteristics and potential explanatory factors	3/2011
January 2011	Relative living standards and needs of low-paid employees: definition and measurement	2/2011
January 2011	An overview of productivity, business competitiveness and viability	1/2011
June 2010	Consolidated Social Research Report	10/2010
June 2010	Administrative and Support Services Industry	9/2010
June 2010	Other Services Industry	8/2010
February 2011	Enterprise Case Studies: Effects of minimum wage-setting at an enterprise level	7/2010

Date	Title	Research report no.
June 2010	Minimum wage transitional instruments under the <i>Fair Work Act 2009</i> and the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>	6/2010
February 2010	Employees with disability: Open employment and the Supported Wage System	5/2010
February 2010	Earnings of employees who are reliant on minimum rates of pay	4/2010
February 2010	Social research—Phase one	3/2010
February 2010	Literature review on social inclusion and its relationship to minimum wages and workforce participation	2/2010
February 2010	An overview of compositional change in the Australian labour market and award reliance	1/2010

Appendix 2—Proposed Minimum Wages Adjustments

Submission	Proposal		
	National minimum wage	Modern award minimum wages	Exemption/deferral sought
Australian Government	No quantum specified		
New South Wales Government	No quantum specified		
Queensland Government	No quantum specified		
Government of South Australia	No quantum specified		
Victorian Government	No quantum specified		
Government of Western Australia	No quantum specified		
Australian Council of Trade Unions	\$30.00 pw	C10 and below: \$30.00 pw Above C10: 3.9 per cent	
Australian Industry Group	1.6 per cent, applicable to all		
Australian Chamber of Commerce and Industry	No more than 1.2 per cent, applicable to all		
Australian Council of Social Service	No quantum specified		
Australian Catholic Council for Employment Relations	\$25.10 pw	\$19.00 pw	
Australian Business Industrial	No more than 2 per cent, applicable to all		
Australian Federation of Employers and Industries	No more than 1.2 per cent, applicable to all		
Australian Hotels Association	No increase, in the event of an increase — no more than 1.2 per cent, applicable to all		
Australian Retailers Association	No more than 1.2 per cent, applicable to all		
Business SA	No quantum specified, supports ACCI's submission (i.e., no more than 1.2 per cent, applicable to all)		
Chamber of Commerce and Industry Queensland	\$7.90 pw, applicable to all		Exemption for industries subject to natural disasters
Chamber of Commerce and	\$7.90 pw, applicable to all		

Submission	Proposal		
	National minimum wage	Modern award minimum wages	Exemption/deferral sought
Industry of Western Australia			
Housing Industry Association	No quantum specified		
Master Grocers of Australia	No more than 1.1 per cent, applicable to all		
National Farmers' Federation	1.1 per cent, applicable to all		
National Retail Association	Not more than \$10.70 pw, applicable to all. In event of a percentage increase, the average impact of that increase across all awards should be no more than \$10.70 pw.		
Restaurant & Catering Australia	No increase		
South Australian Wine Industry Association Incorporated	No increase, in the event of an increase—a flat dollar increase no more than the increase in the Consumer Price Index		
Victorian Automobile Chamber of Commerce, Motor Traders' Association of New South Wales, Motor Trade Association of South Australia and Motor Trade Association of Western Australia	1.2 per cent, applicable to all		
McPherson, Graham	No quantum specified		
The Essential Points	No quantum specified		

Note: pw = per week.

Appendix 3—Index of Material

Organisation	Document	Date
Australian Business Industrial	Initial submission	30 March 2016
	Submission in reply	15 April 2016
Australian Catholic Council for Employment Relations	Initial submission	30 March 2016
	Submission in reply	15 April 2016
	Post-budget submission	9 May 2016
	Response to questions for consultations	9 May 2016
Australian Chamber of Commerce and Industry	Initial submission	31 March 2016
	Submission in reply	15 April 2016
	Post-budget submission	9 May 2016
	Response to questions for consultations	9 May 2016
	Response to question on notice from the Expert Panel	13 May 2016
Australian Council of Social Service	Correspondence	7 April 2016
	Initial submission	7 April 2016
Australian Council of Trade Unions	Submission (re - Preliminary hearing in relation to the casual loading rate in the <i>Business Equipment Award 2010</i>)	12 February 2016
	Correspondence	23 March 2016
	Initial submission	30 March 2016
	Joint submission of Ai Group and ACTU (re - casual loading rate in the <i>Business Equipment Award 2010</i>)	6 April 2016
	Submission in reply	15 April 2016
	Post-budget submission	9 May 2016
	Response to questions for consultations	9 May 2016
	Response to questions on notice from the Expert Panel	11 May 2016
	Response to final consultation material	17 May 2016
Australian Federation of Employers and Industries	Initial submission	30 March 2016
Australian Government	Correspondence	24 March 2016

Organisation	Document	Date
	Initial submission	6 April 2016
	Response to questions for consultations	6 May 2016
	Post-budget submission	9 May 2016
	Response to question on notice from the Expert Panel	11 May 2016
	Further response to question on notice from the Expert Panel # 1	13 May 2016
	Further response to question on notice from the Expert Panel # 2	13 May 2016
Australian Hotels Association	Initial submission	29 March 2016
Australian Industry Group	Submission (re – Preliminary hearing in relation to the casual loading rate in the <i>Business Equipment Award 2010</i>)	12 February 2016
	Initial submission	30 March 2016
	Joint submission of Ai Group and ACTU (re - casual loading rate in the <i>Business Equipment Award 2010</i>)	6 April 2016
	Submission in reply	15 April 2016
	Post-budget submission	9 May 2016
	Response to questions for consultations	9 May 2016
Australian Retailers Association	Initial submission	30 March 2016
Business SA	Initial submission	31 March 2016
Chamber of Commerce and Industry of Western Australia	Initial submission	30 March 2016
Chamber of Commerce and Industry Queensland	Initial submission	30 March 2016
Government of South Australia	Initial submission	30 March 2016
Government of Western Australia	Initial submission	30 March 2016
Housing Industry Association	Initial submission	30 March 2016
Master Grocers Australia	Initial submission	30 March 2016

Organisation	Document	Date
McPherson G	Initial submission	23 March 2016
National Farmers' Federation	Submission to draft timetable	18 September 2015
	Initial submission	30 March 2016
National Retail Association	Initial submission	29 March 2016
New South Wales Government	Correspondence	23 March 2016
	Initial submission	7 April 2016
Queensland Government	Correspondence	30 March 2016
	Initial submission	6 April 2016
Restaurant & Catering Australia	Initial submission	30 March 2016
	Post-budget submission	9 May 2016
South Australian Wine Industry Association Incorporated	Initial submission	30 March 2016
The Essential Points	Submission in reply	15 April 2016
	Response to questions for consultations	9 May 2016
United Voice	Initial submission	30 March 2016
	Response to questions for consultations	9 May 2016
Victorian Automobile Chamber of Commerce, Motor Traders' Association of New South Wales, Motor Trade Association of South Australia and Motor Trade Association of Western Australia	Initial submission	30 March 2016
Victorian Government	Initial submission	24 March 2016

Appendix 4—List of Appearances

Appearances:

T Clarke and *J Cooney* for the Australian Council of Trade Unions
D Marshall for the Australian Industry Group

Hearing details:

2016.
Melbourne and Sydney (by video):
February 25.

Appearances:

A Morehead, N Stoney and *A Durbin* for the Australian Government
T Clarke and *M McKenzie* for the Australian Council of Trade Unions
B Lawrence for the Australian Catholic Council for Employment
T Lyons for the United Voice
A Scully for The Essential Points
R Calver and *T Hicks* for the Australian Chamber of Commerce and Industry
J Toth and *S Smith* for the Australian Industry Group

Hearing details:

2016.
Melbourne and Sydney (by video):
May 10.

2016.
Sydney and Melbourne (by video):
May 11.

¹ ABS, *Employee Earnings and Hours, Australia, May 2014*, Catalogue No. 6306.0

² The relevant statutory matters vary depending on the function being performed; see Chapter 2.

³ [\[2013\] FWCFB 4000](#) at para. 8.

⁴ PC Report at p. 155.

⁵ *Ibid* at p. 344.

⁶ [\[2013\] FWCFB 4000](#) at paras 438–442.

⁷ PC Report at p. 155.

⁸ ACCI submission at p. 8, para. 22.

⁹ *Gala v Preston* (1991) 172 CLR 243, 262.

¹⁰ [\[2014\] FWCFB 3500](#) at para. 82.

¹¹ [\[2013\] FWCFB 4000](#) at paras 100–101.

¹² PC Report at pp. 341–343.

¹³ ACCI submission, 30 March 2016 at p. 8, para. 20.

¹⁴ *Ibid*.

¹⁵ *Ibid* at p. 9, para. 23.

¹⁶ *Ibid* at p. 9, paras 25–26.

¹⁷ ACCI response to questions for consultations, 9 May 2016 at p. 4.

¹⁸ PC Report at p. 231.

¹⁹ *Ibid* at pp. 343–344.

²⁰ *Ibid* at p. 344.

²¹ *Ibid* at p. 344.

²² *Ibid* at p. 184.

²³ *Ibid* at p. 187.

²⁴ *Ibid* at p. 188.

²⁵ *Ibid* at p. 194.

²⁶ *Ibid* at p. 201.

²⁷ ACCI post-Budget submission, 15 April 2016 at p. 5.

²⁸ See [\[2015\] FWCFB 3500](#) at paras 235–236.

²⁹ [\[2013\] FWCFB 4000](#).

³⁰ *Ibid* at para. 359.

³¹ [\[2014\] FWCFB 3500](#) at para 169.

³² [\[2013\] FWCFB 4000](#) at para. 361.

³³ [\[2014\] FWCFB 3500](#) at para. 85.

³⁴ Employees classified as “award only” had their rate of pay specified by an award and were not paid more than that rate of pay.

³⁵ [\[2014\] FWCFB 3500](#) at para. 472.

³⁶ [\[2010\] FWAFB 4000](#) at para. 302; [\[2011\] FWAFB 3400](#) at para. 281 and [\[2012\] FWAFB 5000](#) at para. 222.

³⁷ United Voice submission, 30 March 2016 at p. 6, para. 7.

³⁸ Fair Work Act, s.285(2)(a)(i)–(ii); s.285(2)(c).

³⁹ Fair Work Act, Part 2–6.

⁴⁰ See *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [\[2014\] FWCFB 1788](#) at [32]; *Shop, Distributive and Allied Employees Association and Another (No. 2)* (2012) 205 FCR 227 at para. 35 per Tracey J.

⁴¹ See [\[2015\] FWCFB 3500](#) at paras 88–91.

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- ⁴² For example, employment growth and inflation are mentioned as separate considerations under the modern awards objective (s.134(1)(h)), but in the minimum wages objective these factors appear to be subsidiary to the performance and competitiveness of the national economy (s.284(1)(a)) and the modern awards objective requires the Panel to take into account “the likely impact of any exercise of modern award powers on ... the *sustainability*, performance and competitiveness of the national economy” (s.134(1)(h)), whereas the “sustainability” of the national economy is not mentioned in the minimum wages objective.
- ⁴³ *Ibid* at paras 62–63.
- ⁴⁴ See also the Note after s.284(2).
- ⁴⁵ Victorian Government submission, 24 March 2016 at p. 16, para. 51.
- ⁴⁶ *Ibid*.
- ⁴⁷ [\[2013\] FWCFB 4000](#) at paras 100–102.
- ⁴⁸ *Ibid* at para. 101.
- ⁴⁹ *Ibid* at para. 102.
- ⁵⁰ Fair Work Act, s.294(3) and (4). While a special national minimum wage may apply to a “specific class of employees,” that has not been the practice to date.
- ⁵¹ Fair Work Act, s.294(1)(a).
- ⁵² Fair Work Act, s.294(4).
- ⁵³ This follows from the fact that the minimum wages objective applies to the performance or exercise of the Commission’s functions under Part 2—6 of the Act (s.284(2)(a)) and the review and making of a national minimum wage order is one of the Commission’s functions under Part 2—6. The objects of the Act are also relevant to the performance or exercise of this function (s.578), a point to which we shall return shortly.
- ⁵⁴ See s.134(2) of the Act. The review and making of a national minimum wage order does not involve the performance or exercise of the Commission’s modern award powers and hence the modern awards objective has no application to that function.
- ⁵⁵ [\[2015\] FWCFB 3500](#) at paras 134–135.
- ⁵⁶ [\[2013\] FWCFB 4000](#) at paras 77, 79.
- ⁵⁷ ARA submission, 30 March 2016 at p. 6.
- ⁵⁸ See [\[2015\] FWCFB 3500](#) at paras 112–116; [\[2014\] FWCFB 3500](#) at paras 493–515; [\[2013\] FWCFB 4000](#) at para. 98; citing [\[2012\] FWAFB 5000](#) at para. 281.
- ⁵⁹ [\[2014\] FWCFB 3500](#) at paras 515–516.
- ⁶⁰ Western Australian Government submission, 30 March 2016 at p. 7, paras 29–30.
- ⁶¹ Business SA submission, 30 March 2016 at p. 5.
- ⁶² Fair Work Act, s.286; [\[2014\] FWCFB 3500](#) at paras 492–562; [\[2013\] FWCFB 4000](#) at paras 486–549.
- ⁶³ [\[2015\] FWCFB 3500](#) paras 500–512.
- ⁶⁴ *Minister for Aboriginal Affairs and Another v Peko-Wallsend Limited and Others* (1986) 162 CLR 24.
- ⁶⁵ *R v Hunt; Ex parte Sean Investments Pty Ltd* (1979) 180 CLR 322 at 329 per Mason J; *R v Toohey and Another: Ex parte Meneling Station Pty Ltd* (1982) 158 CLR 327 at 333 per Gibbs CJ; *Friends of Hinchinbrook Society Inc. v Minister for Environment (No. 3)* (1997) 77 FCR 153; *Australian Competition and Consumer Commission v Leelee Pty Ltd* [1999] FCA 1121; *Edwards and Others v Giudice* [1999] FCA 1836; *National Retail Association v Fair Work Commission and Another* [2014] FCAFC 118 at para. 56.
- ⁶⁶ [\[2010\] FWAFB 4000](#) at paras 12–16.
- ⁶⁷ For example, promoting productivity and economic growth (s.3(a)); promoting flexible modern work practices and the efficient and productive performance of work (s.134(1)(d)); the likely impact of any determination on business including on productivity, employment costs and the regulatory burden (s.134(1)(f)); the likely impact of any determination on employment growth, inflation and the sustainability, performance, and competitiveness of the national economy (s.134(1)(h)); the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth (s.284(1)(a)); and acknowledging the special circumstances of small and medium-sized businesses (s.3(g)).
- ⁶⁸ For example, the establishment and maintenance of a safety net of fair, relevant and enforceable minimum wages within the context of an easy to understand, stable and sustainable modern award system (ss.3(b), 134(1), 134(1)(g) and 284(1)); the promotion of social inclusion through increased workforce participation (ss.134(1)(c) and 284(1)(b)); relative living

standards and the needs of the low paid (ss.134(1)(a) and 284(1)(c)); the principle of equal remuneration for work of equal or comparable value (ss.134(1)(e) and 284(1)(d)); and providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability (s.284(1)(e)).

⁶⁹ For example, the need to encourage collective bargaining (s.134(1)(b); see also s.3(f)).

⁷⁰ See *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788 at para. 32; *Shop, Distributive and Allied Employees Association and Another (No. 2)* (2012) 205 FCR 227 at para. 35 per Tracey J.

⁷¹ See [2013] FWCFB 4000 at para. 10.

⁷² [2014] FCAFC 118 at para. 109.

⁷³ See McPherson G submission, 17 March 2016; The Essential Points submission in reply, 15 April 2016.

⁷⁴ AHA & TAA submission, 30 March 2016 at p. 3; R&CA submission, 27 March 2016 at p. 15, para. 43; South Australian Wine Industry Association Incorporated submission, 30 March 2016 at p. 8.

⁷⁵ CCIQ submission, 30 March 2016 at p. 6, paras 24–26.

⁷⁶ ACTU submission, 30 March 2016 at p. 3, para. 1.

⁷⁷ *Ibid* at p. 5, para. 12.

⁷⁸ ACCER submission, 30 March 2016 at p. 2, paras 1–2.

⁷⁹ Transcript of Proceedings, 10 May 2016 at paras 359–366.

⁸⁰ ACCER submission of 30 March 2016 at p. 3, para. 6.

⁸¹ CCIQ submission of 30 March 2016 at p. 6, para. 27; CCIWA submission of 30 March 2016 at p. 2, para. 2.1; p. 9, para. 5.5.

⁸² CCIWA submission of 30 March 2016 at p. 9, para. 5.2.

⁸³ *Ibid* at p. 9, para. 5.3.

⁸⁴ NRA submission of 29 March 2016 at p. 1, paras 5–6.

⁸⁵ *Ibid* at p. 1, para. 9.

⁸⁶ *Ibid* at p. 1, para. 8.

⁸⁷ MGA submission of 29 March 2016 at p. 3; NFF submission of 30 March 2016 at p. 16, para. 39.

⁸⁸ ACCI submission of 30 March 2016 at p. 4, para. 2; p. 36.

⁸⁹ AFEI submission of 30 March 2016 at p. 27, para. 94; ARA submission of 30 March 2016 at p. 4; MTAs submission of 30 March 2016 at p. 4; and Business SA submission of 30 March 2016 at p. 8.

⁹⁰ Ai Group submission of 30 March 2016 at p. 4; p. 29.

⁹¹ *Ibid* at p. 4.

⁹² ABI submission of 30 March 2016 at p. 2.

⁹³ *Ibid* at p. 16.

⁹⁴ Australian Government submission of 6 April 2016 at p. 2, para. 12.

⁹⁵ *Ibid* at p. 1, para. 7.

⁹⁶ *Ibid* at p. 1, para. 4.

⁹⁷ *Ibid* at p. 2, para. 12.

⁹⁸ New South Wales Government submission of 7 April 2016 at p. 4, para. 10.

⁹⁹ *Ibid* at p. 4, para. 7.

¹⁰⁰ Western Australian Government submission of 30 March 2016 at p. 1, para. 8.

¹⁰¹ *Ibid* at p. 7, para. 31.

¹⁰² HIA submission of 30 March 2016 at p. 8.

¹⁰³ Queensland Government submission of 6 April 2016 at p. 2.

¹⁰⁴ South Australian Government submission of 30 March 2016 at p. 17, para. 62.

¹⁰⁵ Victorian Government submission of 24 March 2016 at p. 4, para. 1.

¹⁰⁶ *Ibid* at p. 4, para. 1.

¹⁰⁷ ACOSS submission of 7 April 2016 at p. 10.

¹⁰⁸ *Ibid* at p. 9.

- ¹⁰⁹ AHA & TAA submission of 30 March 2016 at p. 3.
- ¹¹⁰ Ibid at p. 3.
- ¹¹¹ Ibid at p. 3.
- ¹¹² R&CA submission of 27 March 2016 at p. 15, para. 47.
- ¹¹³ South Australian Wine Industry Association Incorporated submission of 30 March 2016 at p. 8.
- ¹¹⁴ Fair Work Commission, *Annual Wage Review 2015–16*, <<https://www.fwc.gov.au/awards-and-agreements/minimum-wages-conditions/annual-wage-reviews/annual-wage-review-2015-16>>.
- ¹¹⁵ [\[2013\] FWCFB 4000](#) at paras 7–8.
- ¹¹⁶ Australian Government, *Budget Paper No. 1: Budget Strategy and Outlook 2016–17*, Canberra, pp. 7–3–7–22, Statement 7: Forecasting Performance and Scenario Analysis.
- ¹¹⁷ RBA, *Statement on Monetary Policy*, February 2016, pp. 62–63.
- ¹¹⁸ Aylmer C and Gill T (2003), *Business surveys and economic activity*, Research Discussion Paper 2003-01; RBA, February, Bishop J, Gill T and Lancaster D (2013), *GDP revisions: measurement and implications*, RBA Bulletin, March Quarter; Bullen J, Greenwell J, Kouparitsas M, Muller D, O’Leary J and Wilcox R (2014), *Treasury’s medium-term economic projection methodology*, Treasury Working Paper 2014-02, May; Clark J, Gibbons C, Morrissey S, Pooley J, Pye E, Wilcox R and Willard L (2013), *Estimates of uncertainty around budget forecasts*, Treasury Working Paper 2013-04, January; Pagan A and Wilcox D (2016), *External review: Reserve Bank of Australia Economic Group forecasts and analysis*, April; Park A (2011), *Business surveys and economic activity*, RBA Bulletin, December Quarter; Roberts I and Simon J (2001), *What do sentiment surveys measure?*, Research Discussion Paper 2001-09, RBA, November; Tease W (2015), *Review of Treasury’s macroeconomic forecasting capabilities*, Commonwealth of Australia; and Tulip P and Wallace S (2012), *Estimates of uncertainty around the RBA’s forecasts*, Research Discussion Paper 2012-07, RBA, November.
- ¹¹⁹ Tulip P and Wallace S (2012), *Estimates of uncertainty around the RBA’s forecasts*, Research Discussion Paper 2012-07, RBA, November.
- ¹²⁰ For example: ACCI, *Business Expectations Survey*, March 2016; Ai Group, *Australian PMI, PSI and PCI*, April 2016; NAB, *Quarterly Business Survey*, December 2015; and Sensis, *Business Index*, March 2016.
- ¹²¹ Aylmer C and Gill T (2003), *Business surveys and economic activity*, Research Discussion Paper 2003-01, RBA, February.
- ¹²² [\[2012\] FWAFB 5000](#) at para. 203; [\[2013\] FWCFB 4000](#) at paras 265 and 438–442; [\[2014\] FWCFB 3500](#) at paras 226–228; and [\[2015\] FWCFB 3500](#) at paras 266–275.
- ¹²³ ARA submission at pp. 11–12; ARA, Minimum Wage Review 2015 submission, March 2015, at pp. 9–10; ARA, Minimum Wage Review 2014 submission, March 2014, at p. 10; ARA, Minimum wage submission 2013, March 2013, at p. 12; ARA, Minimum Wage Review 2012 submission, March 2012, at p. 12; ARA, Submission to 2011 Federal Minimum Wage Review, March 2011, at pp. 25–26; ARA, Submission to 2010 Federal Minimum Wage Review, March 2010, at p. 21.
- ¹²⁴ Australian Government submission, 6 April 2016 at p. 2, para. 11; p. 3, para. 18.
- ¹²⁵ PC Report at pp. 52 and 233, Recommendation 4.1. The discussion of the issue by the PC is set out at p. 232.
- ¹²⁶ Australian Government response to questions for consultations, 9 May 2016 at p. 3.
- ¹²⁷ ACTU response to questions for consultations, 9 May 2016 at pp. 2–3.
- ¹²⁸ ACCI response to questions for consultations, 9 May 2016 at p. 6.
- ¹²⁹ The Essential Points response to questions for consultations, 9 May 2016 at pp. 3–4.
- ¹³⁰ Australian Government, *Budget Paper No. 1: Budget Strategy and Outlook 2016–17*, Statement 7: Forecasting Performance and Scenario Analysis; and RBA, *Statement on Monetary Policy*, February 2016, pp. 62–63.
- ¹³¹ Australian Government, *Budget Paper No. 1: Budget Strategy and Outlook 2015–16*, Canberra, p. 1-5, Statement 1: Budget Overview.
- ¹³² ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2015*, Catalogue No. 5206.0.
- ¹³³ [\[2013\] FWCFB 4000](#) at para 191.
- ¹³⁴ ABS, *Retail Trade, Australia, Mar 2016*, Catalogue No. 8501.0.
- ¹³⁵ ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2015*, Catalogue No. 5206.0.
- ¹³⁶ Ibid: Glossary.

- ¹³⁷ ACCI submission, 30 March 2016 at p. 19, para. 74.
- ¹³⁸ Ibid at para. 76.
- ¹³⁹ Ibid at para. 78.
- ¹⁴⁰ RBA, *Statement on Monetary Policy*, May 2016, p. 57.
- ¹⁴¹ [\[2015\] FWCFB 3500](#) at para. 29.
- ¹⁴² ACCI submission, 30 March 2016 at p. 19, paras 74 –75.
- ¹⁴³ [\[2015\] FWCFB 3500](#) at para. 29.
- ¹⁴⁴ [\[2014\] FWCFB 3500](#) at para. 169.
- ¹⁴⁵ ABS, *Private New Capital Expenditure and Expected Expenditure, Australia, Dec 2015*, Catalogue No. 5625.0.
- ¹⁴⁶ Other selected industries includes Electricity, gas, water and waste services; Construction; Wholesale trade; Retail trade; Transport, postal and warehousing; Information media and telecommunications; Finance and insurance (excluding Superannuation funds); Rental, hiring and real estate services; Professional, scientific and technical services; Accommodation and food services; Administrative and support services; Arts and recreation services; and Other services.
- ¹⁴⁷ ABS, *Private New Capital Expenditure and Expected Expenditure, Australia, Dec 2015*, Catalogue No. 5625.0.
- ¹⁴⁸ ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2015* Catalogue No. 5206.0.
- ¹⁴⁹ Davis K, McCarthy M and Bridges J (2016), *The Labour Market during and after the terms of trade Boom*, RBA Bulletin, March Quarter, [pp. 1–10](#).
- ¹⁵⁰ Ibid at p.8.
- ¹⁵¹ [\[2013\] FWCFB 4000](#) at paras 147–160.
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- ⁴²⁵ See Layton R, Smith M and Stewart A (2013), *Equal Remuneration under the Fair Work Act 2009*, A Report for the Pay Equity Unit of the Fair Work Commission, p. 103; Romeyn J, Archer S-K and Leung E (2011), *Review of equal remuneration principles*, Research Report 5/2011, Fair Work Australia, pp. 49, 60.
- ⁴²⁶ ABS, *Gender Indicators, Australia, February 2016*, Catalogue No. 4125.0.
- ⁴²⁷ Ibid: Economic Security.
- ⁴²⁸ Australian Government submission, 6 April 2016 at p. 63, para. 274.
- ⁴²⁹ South Australian Government submission, 30 March 2016 at p. 10, para. 34.
- ⁴³⁰ ACTU submission, 30 March 2016 at pp. 108–109, para. 311.
- ⁴³¹ Ibid, at p. 108, para. 310.
- ⁴³² Victorian Government submission, 24 March 2016 at p. 14, para. 46; referring to Workplace Gender Equality Agency (2015), *Australia's gender equality scorecard; Key findings from the Workplace Gender Equality Agency's 2014–15 reporting data*, November at https://www.wgea.gov.au/sites/default/files/2014-15-WGEA_SCORECARD.pdf.
- ⁴³³ [\[2014\] FWCFB 3500](#) at paras 476–484.
- ⁴³⁴ Ibid at para. 490; referring to Pointon M, Wheatley T, Ellis G and MacDermott K (2012), *Award Reliance and Differences in Earnings by Gender*, Research Report 3/2012, Fair Work Commission, February, p. 7.
- ⁴³⁵ [\[2015\] FWCFB 3500](#) at paras 480–481.
- ⁴³⁶ Ibid at para. 481.
- ⁴³⁷ ILO (2012), *Giving globalisation a human face: General survey on the Fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalisation, 2008*, Report of the Committee of Experts on the Application of Conventions and Recommendations International Labour Conference, 101st Session, International Labour Office, Geneva, pp. 279–280.
- ⁴³⁸ [\[2015\] FWCFB 3500](#) at para. 492.
- ⁴³⁹ [\[2010\] FWAFB 4000](#) at para. 319; [\[2011\] FWAFB 3400](#) at para. 296; [\[2012\] FWAFB 5000](#) at para. 231; [\[2013\] FWCFB 4000](#) at para. 484; and [\[2014\] FWCFB 3500](#) at para. 489.
- ⁴⁴⁰ Rozenbes D and Farmakis-Gamboni S (2015), *Earnings and characteristics of employees by gender and industrial arrangement*, a report for the Pay Equity Unit of the Fair Work Commission, December; and Broadway B and Wilkins R (2015).
- ⁴⁴¹ Rozenbes D and Farmakis-Gamboni S (2015), p. 19.
- ⁴⁴² Ibid.

- ⁴⁴³ Broadway B and Wilkins R (2015), pp. 12–13.
- ⁴⁴⁴ Ibid at p. 12.
- ⁴⁴⁵ Ibid at p. vi.
- ⁴⁴⁶ Australian Government submission, 6 April 2016 at p. 64, para. 275; referring to Rozenbes D and Farmakis-Gamboni S (2015) and Broadway B and Wilkins R (2015).
- ⁴⁴⁷ Ai Group submission, 30 March 2016 at p. 29; Broadway B and Wilkins R (2015), pp. v–vi.
- ⁴⁴⁸ Victorian Government submission, 24 March 2016 at pp. 13–14, para. 44 referring to Austen S, Jefferson T, Preston A and Seymour R (2008), *Gender pay differentials in low-paid employment*, report commissioned by the Australian Fair Pay Commission, Research Report No. 3/09.
- ⁴⁴⁹ Victorian Government submission, 24 March 2016 at p. 14, para. 47.
- ⁴⁵⁰ ACTU submission, 30 March 2016 at p. 108, para. 308.
- ⁴⁵¹ Australian Government submission, 6 April 2016 at p. 5, para. 34.
- ⁴⁵² Ibid at p. 64, para. 278.
- ⁴⁵³ Ibid at p. 64, para. 276.
- ⁴⁵⁴ ACTU submission, 30 March 2016 at p.109, para. 313.
- ⁴⁵⁵ ACTU submission in reply, 15 April 2016 at p. 21, para. 50.
- ⁴⁵⁶ ACOSS submission, 7 April 2016 at p. 7.
- ⁴⁵⁷ Queensland Government submission, 6 April 2016 at p. 12.
- ⁴⁵⁸ South Australian Government submission, 30 March 2016 at p. 10, para. 34.
- ⁴⁵⁹ Victorian Government submission, 24 March 2016 at pp. 4–5, para. 7; p. 13, paras. 42–43.
- ⁴⁶⁰ Ai Group submission, 30 March 2016 at p. 29.
- ⁴⁶¹ [\[2014\] FWCFB 3500](#) at para. 488.
- ⁴⁶² Wright S and Buchanan J (2013), *Award reliance*, Research Report 6/2013, Fair Work Commission, December, Table 4.16.
- ⁴⁶³ Ibid at p. 106.
- ⁴⁶⁴ [\[2015\] FWCFB 8200](#).
- ⁴⁶⁵ Ibid at para. 292.
- ⁴⁶⁶ ABI submission, 30 March 2016 at p. 24.
- ⁴⁶⁷ Some transitional APCs may still operate. This includes (but is not limited to) instruments which cover employees also covered by enterprise awards for which an application to modernise has been made; employees also covered by State reference public sector awards for which an application to modernise has been made; or cover employees also covered by the *Social, Community, Home Care and Disability Industry Award 2010*.
- ⁴⁶⁸ Some Division 2A State reference transitional awards may still operate such as where they are related to awards that have not been terminated under the termination of instruments process or if they cover Queensland apprentices/trainees.
- ⁴⁶⁹ Some Division 2B State reference transitional awards may still operate such as where they are related to awards that have not been terminated under the termination of instruments process or if they cover Queensland apprentices/trainees.
- ⁴⁷⁰ Some Division 2B State awards may still operate such as where they cover: employees also covered by enterprise instruments; employees also covered by State reference public sector awards; or a Queensland apprentice/trainee.
- ⁴⁷¹ Two transitional pay equity orders currently operate, created under sch 3, item 43 and Sch 3A, item 30A of the Transitional Act respectively. The Panel must review and may make a determination varying the transitional pay equity order created under sch 3A, sub item 30D(1) to the extent that it is derived from the *Queensland Community Services and Crisis Assistance Award – State 2008*.
- ⁴⁷² See discussion further for whom these instruments apply.
- ⁴⁷³ [\[2010\] FWAFB 4000](#) at paras 370–396.
- ⁴⁷⁴ Dunn A and Bray G (2010), *Minimum wage transitional instruments under the Fair Work Act 2009 and the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, Research Report 06/2010, Fair Work Australia, June.
- ⁴⁷⁵ [\[2013\] FWCFB 4000](#) at paras 550–561.
- ⁴⁷⁶ Transitional Act, items 5(2) and 9(4) of Sch 6.
- ⁴⁷⁷ Ibid, items 5(3), 6 and 10(1) of Sch 6A.

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- ⁴⁷⁸ For example, certain instruments that covered employees who were also covered by the *Social, Community, Home Care and Disability Industry Award 2010* were preserved by the [\[2010\] FWAFB 9916](#) at para. 44. As at the date of this decision, they have not yet been terminated.
- ⁴⁷⁹ A more detailed outline of these instruments can be found at [\[2013\] FWCFB 4000](#) at paras 553–559.
- ⁴⁸⁰ *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*, items 10 and 20 of Sch. 9, item 12A(6) of Sch. 3 and item 30D of Sch. 3A.
- ⁴⁸¹ The *Fair Work (Transfer of Business) Amendment Act 2012*, which commenced on 4 December 2012, introduced Part 6.3 into the Act. A copied State award continues to operate under the national system for a period of five years, unless terminated or extended by regulation. See s.768AO of the Fair Work Act.
- ⁴⁸² The provisions of the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* dealing with the variation of Division 2B State awards in annual wage reviews also apply to copied State awards. Sections 768BY and 768AW(b) of the Fair Work Act.
- ⁴⁸³ Queensland Government submission, 6 April 2016 at p. 4 and pp. 12–14.
- ⁴⁸⁴ Created under Sch. 3, item 43 and Sch. 3A, item 30A of the Transitional Act respectively.
- ⁴⁸⁵ Created under Sch. 3A, sub-item 30D(1) as modified by *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* (Reg. 3A.01B).
- ⁴⁸⁶ See [\[2013\] FWAFB 4000](#) at para. 555.
- ⁴⁸⁷ [PR525485](#).
- ⁴⁸⁸ ABI submission, 30 March 2016 at pp. 23–24.
- ⁴⁸⁹ ABI submission, 30 March 2016 at p. 24.
- ⁴⁹⁰ ACCI response to questions for consultations, 9 May 2016 at pp. 1–2.
- ⁴⁹¹ [\[2010\] FWAFB 9916](#).
- ⁴⁹² [MA000100](#).
- ⁴⁹³ [\[2010\] FWAFB 9916](#) at para. 44.
- ⁴⁹⁴ Transitional Act, Sch 9, item 5–6 and Sch 5, item 3(2).
- ⁴⁹⁵ [\[2010\] FWAFB 9916](#) at para. 44.
- ⁴⁹⁶ Transitional Act, item 10 (1) of Sch. 9 and item 12A of Sch. 3.
- ⁴⁹⁷ See [\[2013\] FWCFB 4000](#) at para. 560, [\[2014\] FWCFB 3500](#) at para. 572; and [\[2015\] FWCFB 3500](#) at para. 536.
- ⁴⁹⁸ Transitional Act, item 12A of Sch. 3 and items 10 and 20 of Sch. 9.
- ⁴⁹⁹ Fair Work Act, s.284(3).
- ⁵⁰⁰ ACTU submission, 30 March 2016 at p. 112, paras 323–324.
- ⁵⁰¹ Ai Group submission, 30 March 2016 at p. 30.
- ⁵⁰² ACOSS submission, 30 March 2016 at p. 10.
- ⁵⁰³ ABI submission, 30 March 2016 at p. 22.
- ⁵⁰⁴ ACTU submission, 30 March 2016 at p. 112, paras 323–324.
- ⁵⁰⁵ Ai Group submission, 30 March 2016 at p. 30.
- ⁵⁰⁶ ACOSS submission, 7 April 2016 at p. 10.
- ⁵⁰⁷ ABI submission, 30 March 2016 at p. 22.
- ⁵⁰⁸ [\[2013\] FWCFB 5411](#); [\[2014\] FWCFB 1846](#).
- ⁵⁰⁹ ACTU submission, 30 March 2016 at p. 112, para. 325; ABI submission, 30 March 2016 at p. 23.
- ⁵¹⁰ *Ibid* at p. 113, para. 329.
- ⁵¹¹ Ai Group submission, 30 March 2016 at p. 30.
- ⁵¹² ACOSS submission, 7 April 2016 at p. 10.
- ⁵¹³ ABI submission, 30 March 2016 at p. 22.
- ⁵¹⁴ [\[2012\] FCAFC 192](#).
- ⁵¹⁵ ACTU submission, 30 March 2016 at p. 113, para. 329.
- ⁵¹⁶ *Ibid* at p. 113, paras 330–331; Ai Group submission, 30 March 2016 at p. 30; ABI submission, 30 March 2016 at p. 23.

- ⁵¹⁷ ACOSS submission, 7 April 2016 at pp. 38–39.
- ⁵¹⁸ [\[2015\] FWCFB 3500](#) at para. 552; [\[2014\] FWCFB 3500](#) at para. 599; [\[2013\] FWCFB 4000](#) at para. 580; [\[2012\] FWAFB 5000](#) at para. 303.
- ⁵¹⁹ ACTU submission, 30 March 2016 at p. 114, para. 333.
- ⁵²⁰ Ai Group submission, 30 March 2016 at p. 30.
- ⁵²¹ Fair Work Act, s.295(1)(b).
- ⁵²² [\[2010\] FWAFB 4000](#) at para. 403.
- ⁵²³ [\[2014\] FWCFB 3500](#) at para. 606.
- ⁵²⁴ [\[2015\] FWCFB 3500](#) at para. 559.
- ⁵²⁵ ACTU submission, 30 March 2016 at pp. 113–114, para. 332; Ai Group submission, 30 March 2016 at p. 33; ABI submission, 30 March 2016 at p. 22.
- ⁵²⁶ [\[2011\] FWAFB 3400](#) at para. 381; [\[2012\] FWAFB 5000](#) at para. 308; [\[2013\] FWCFB 4000](#) at para. 586; [\[2014\] FWCFB 3500](#) at para. 606; [\[2015\] FWCFB 3500](#) at para. 559.
- ⁵²⁷ ACTU submission, 30 March 2016 at pp. 113–114, para. 332; Ai Group submission, 30 March 2016 at p. 33.
- ⁵²⁸ [MA000021](#).
- ⁵²⁹ [\[2015\] FWCFB 3500](#) at para. 560.
- ⁵³⁰ ACTU Business Equipment Award submission, 12 February 2016 at p. 4, para. 10.
- ⁵³¹ Ibid at pp. 4–5, para. 11.
- ⁵³² Ai Group Business Equipment Award submission, 11 February 2016 at p. 3; Ai Group submission, 30 March 2016 at p. 32.
- ⁵³³ Ai Group Business Equipment Award submission, 11 February 2016 at p. 4.
- ⁵³⁴ Ibid at p. 4.
- ⁵³⁵ [\[2009\] AIRCFB 50](#) at para 85.
- ⁵³⁶ See Transcript in Award Modernisation proceedings on 25 February 2009 at PN2089–2094 (submissions by the “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union); Transcript in Award Modernisation proceedings on 26 February 2009 at PN2613–2635 (submissions by the Australian Municipal, Administrative, Clerical and Services Union); and PN2686–2728 (submissions by Ai Group).
- ⁵³⁷ See Transcript in Award Modernisation proceedings on 25 February 2009 at PN2017–2037 (submissions by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia); PN2089–2094 (submissions by the “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union); Transcript in Award Modernisation proceedings on 26 February 2009 at PN2613–2635 (submissions by the Australian Municipal, Administrative, Clerical and Services Union); and PN2686–2728 (submissions by Ai Group).
- ⁵³⁸ [\[2009\] AIRCFB 345](#).
- ⁵³⁹ Ibid at paras 160–161.
- ⁵⁴⁰ [\[2008\] AIRCFB 717](#).
- ⁵⁴¹ Ibid at para. 20.
- ⁵⁴² [\[2008\] AIRCFB 1000](#).
- ⁵⁴³ Ibid, at paras 47–50.
- ⁵⁴⁴ [MA000036](#).
- ⁵⁴⁵ [\[2009\] AIRCFB 345](#) at para. 107.
- ⁵⁴⁶ Casual employees under the *Road Transport (Long Distance Operations) Award 2010* [\[MA000039\]](#) are paid a 15 per cent loading while driving (see clause 10.3(b)).
- ⁵⁴⁷ [\[2009\] AIRCFB 50](#) at para 85.
- ⁵⁴⁸ Fair Work Act, s.284(3).
- ⁵⁴⁹ *Re: Shop, Distributive and Allied Employees’ Association* (2003) 135 IR 1 at para [11] (per Giudice J) and para [24] (per Watson SDP and Raffaelli C).
- ⁵⁵⁰ ACTU and Ai Group Business Equipment Award joint submission, 6 April 2016 at para. 18.
- ⁵⁵¹ ACTU response to questions for consultations, 9 May 2016 at p. 15.

⁵⁵² Ibid at p. 15.

⁵⁵³ ACTU response to questions for consultations, 9 May 2016 at p. 15.

⁵⁵⁴ [\[2014\] FWCFB 3500](#) at paras 607–617.

⁵⁵⁵ [MA000104](#).

⁵⁵⁶ [\[2014\] FWCFB 3500](#) at para. 614.

⁵⁵⁷ [\[2015\] FWCFB 3500](#) at para. 568.

⁵⁵⁸ *National Minimum Wage Order 2015*, clause 9.3.

⁵⁵⁹ ACTU submission, 30 March 2016 at pp. 112–113, paras 320–331; ACOSS submission, 7 April 2016 at p. 35–39.

⁵⁶⁰ Ai Group submission, 30 March 2016 at p. 31; ABI submission, 30 March 2016 at p. 22.

⁵⁶¹ Ai Group submission, 30 March 2016 at p. 32; ABI submission, 30 March 2016 at p. 23.

⁵⁶² Ai Group submission, 30 March 2016 at p. 32; ABI submission, 30 March 2016 at p. 23.

⁵⁶³ [\[2015\] FWCFB 3500](#) at para. 576.

⁵⁶⁴ ACTU submission, 30 March 2016 at p. 113, paras 330–331; Ai Group submission, 30 March 2016 at p. 30; ABI submission, 30 March 2016 at p. 22.

⁵⁶⁵ ACCER submission, 30 March 2016 at p. 4, para.11.

⁵⁶⁶ Ibid at pp. 195–196, para. 637.

⁵⁶⁷ Ibid at pp. 4–5, para. 12.

⁵⁶⁸ Ibid at pp. 4–5, para. 12; p. 228, para. 733; pp. 229–230, para. 738.

⁵⁶⁹ Fair Work Australia (2011), *Measuring the Needs of the Low Paid*, Report to the Minimum Wage Panel, 14 December, [PR517718](#).

⁵⁷⁰ ACCER submission regarding research proposals for the Annual Wage Review 2013–14 at p. 2, para. 5.

⁵⁷¹ [\[2013\] FWCFB 7720](#) at para. 6.

⁵⁷² United Voice response to questions for consultations, 9 May 2016 at p. 1.

⁵⁷³ [\[2015\] FWC 7969](#).

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