

Submission by:

United Voice

To:

**Fair Work Commission
Annual Wage Review 2015-2016**

30 March 2016



This submission is made by United Voice. We seek an opportunity to address the panel in relation to this submission during the consultation hearings.

For further information in relation to this submission, please contact:

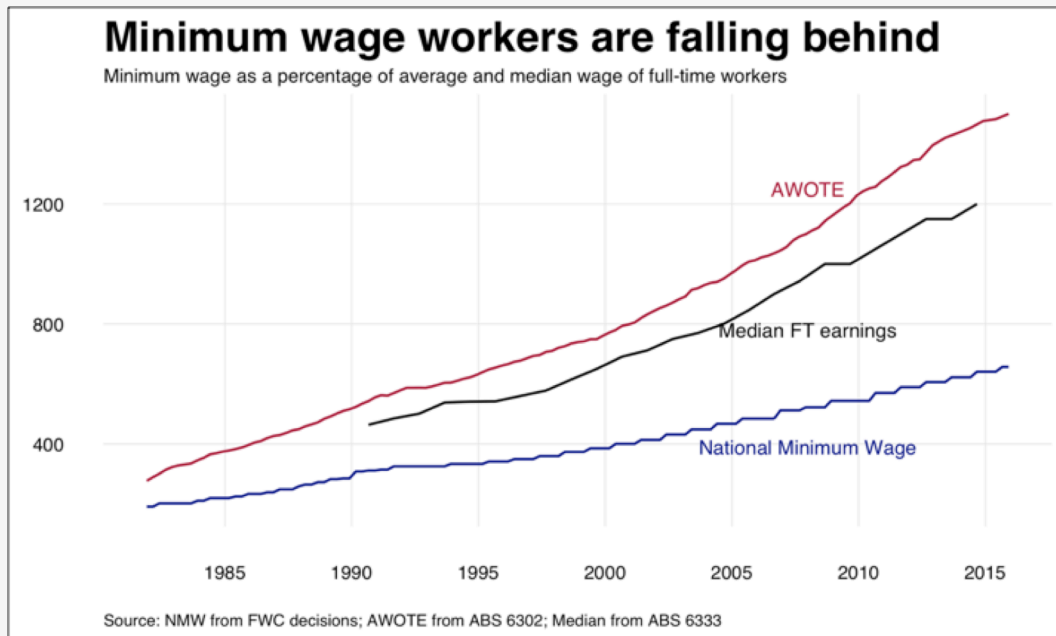
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A handwritten signature in black ink that reads "Jo-anne Schofield". The signature is written in a cursive, flowing style.

Jo-anne Schofield
National Secretary

EXECUTIVE SUMMARY

- Over a long period, Australia's lowest paid workers have fallen behind.
- Minimum wages have failed to keep pace with incomes in the economy more generally.
- As this has happened, inequality has risen, and the incidence of low-paid work has increased.
- Australia is losing its distinctive, egalitarian, minimum wage.
- United Voice wants a medium-term target for the level of the minimum wage that reflects the needs of low paid workers and the values of our country.
- As a first step, United Voice asks the Fair Work Commission Expert Panel which is currently conducting the Annual Wage Review of minimum wages to convene a special process in the second half of the year on this issue
- That process would determine if we should have a medium-term target for the level of the minimum wage and if so, what that target should be.



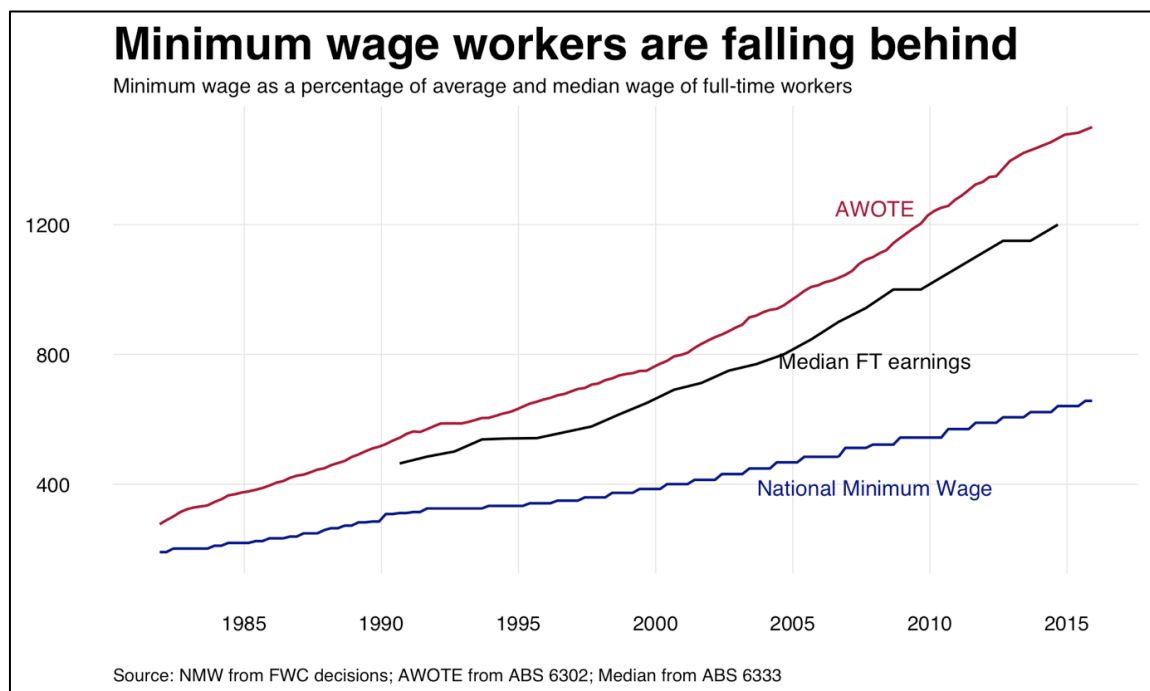
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Introduction.

- (1.) This submission to the Fair Work Commission Expert Panel ("the Panel") Annual Wage Review ("the AWR") concerning the adjustment of the National Minimum Wage ("the NMW") and other Award rates is made by United Voice. We seek an opportunity to address the panel in relation to this submission during the consultation hearings.
- (2.) United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. While all Australian unions have an interest in the minimum wages fixation, the interests of United Voice and its members are intimately linked to the outcomes of this process. Our submission is directed to the long-term trajectory of the NMW. Put simply, and as Chart 1 below demonstrates, minimum wage workers are falling behind.

Figure 1.



- (3.) There is, in our submission, a clear and obvious trend. However this is a trend that has never been the subject of explicit decision nor an acknowledged policy, and has effectively continued under at least four different wage-fixing regimes.
- (4.) In this submission we propose that the Panel program and hear argument about the question of medium-term target as additional tool to assist it in the performance of its annual obligations.

United Voice proposal.

Our request.

- (5.) United Voice submits that the Panel should determine to conduct a separate process of submissions and hearings in the relation to the following sequential questions:
- (a) Is the Panel able to adopt a medium-term target (or target range) for the NMW in relation to its relative value or absolute quantum?
 - (b) If the Panel can do so, should it adopt such a target (or target range) as a matter of discretion?
 - (c) If the Panel should do so, then what is the appropriate target (or target range)?
 - (d) What is the function and role of a target (or target range) in relation to the annual obligations of the Panel in respect of the NMW and broader modern award rates?
 - (e) If the Panel adopts a target, how often should that target (or target range) itself be the subject of reconsideration and using what process?
- (6.) Our proposal therefore involves consideration of any jurisdictional issues, discretionary matters concerning adoption, definition and composition, and resolution of incidental procedural matters concerning any target.
- (7.) We submit 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. It requires consideration of issues not beyond those routinely addressed in the course of the AWR.
- (8.) Moreover, the issues associated with the merits of a target per se and the specific considerations that would properly be considered in fixing one are so inextricably bound up with each other that they should be considered in a cognate fashion. Submissions in relation to the role of a target will necessarily canvass composition.

(9.) We submit that this process should involve written submissions and replies by interested parties in October on a timetable to allow consultation hearings in November 2016. We ask the Panel to issue a Statement, consistent with its practice in relation to programming, setting an appropriate timetable.

Relationship of 2015-2016 proceedings to our application.

(10.) The *Fair Work Act 2009* ("the Act") requires the panel to conduct a review of the NMW and of minimum wages in modern awards in each financial year. The Panel is required to make a NMW order and may alter modern award minimum wages.¹

(11.) We submit that the case for the Panel to conduct a process to determine questions in relation to the adoption of a medium term target is unaffected by any view the Panel might form in relation to these obligations for this year.

(12.) We submit that determination of the 2015-2016 case is not relevant to the determination of the application we make. The process we propose is not dependent on an analysis of current economic conditions required in this year's annual decision.

(13.) The Panel can and should determine to conduct the process we seek as an incidental outcome of the 2015-2016 review. The process itself would form the first part of the discharge of the Panel's 2016-17 obligations under the Act.

Nature of these submissions.

(14.) The procedural step we ask the Panel to take does not require the determination of any question in relation to the Panel's powers, the merits of a target (or target band) or its possible definition, function and duration.

(15.) While United Voice believes that the Panel can and should establish a medium term target for the level of minimum wages, these submissions do not exhaustively canvass the relevant matters in relation to actually setting a target. Specifically, we do not express a concluded view on the target (or target band) that should be adopted and the considerations that should inform its definition, function and duration.

(16.) We submit that it is unnecessary for us to do so in relation to the initial step we ask the Panel to take. Nevertheless, these submissions canvas some fundamental issues

¹ *Fair Work Act Section 285.*

concerning a target in a manner which foreshows submissions we would make, were the opportunity afforded to us. We do so in order to demonstrate:

- (a) that the Panel can agree to our request; and
- (b) that the issues involved are of sufficient importance, and our preferred approach of sufficient potential utility, so as to justify a discrete consideration.

The interests of United Voice.

(17.) United Voice is a union of over 100,000 members with membership in every State and Territory of Australia. United Voice was formerly known as the LHMU and it and its predecessor unions have been active in the Australian industrial landscape for over 100 years.

(18.) The union has a varied membership across the country but has common coverage in industries such as cleaning, security, hospitality, early childhood education and care and catering and significant coverage in industries such as health, aged and disability care and home care. These industries can be characterised as having a high incidence of “low paid” work with wages either at or close to the minimum wage or the Award minimum, placing the workers below two-thirds of adult median wages for full time work. Characterising these workers as low paid is consistent with the approach of the Panel. In the 2014-2015 decision the panel said that it had:

“accepted that award-reliant employees who receive a rate of pay that (as a full-time equivalent) would place them below two-thirds of median (adult) ordinary time earnings provides a suitable and operational benchmark for identifying who is low paid.”²

(19.) United Voice is a union of low-paid workers. Members’ interests are acutely affected by the AWR and by the trajectory of the minimum wage.

(20.) By way of example, hospitality workers, of whom United Voice has exclusive coverage, are the lowest paid workers in Australia, with one of the highest rates of Award reliance in the country.³ The median full time weekly earnings (before tax) for commercial cleaners is \$807, which is \$345 less than average before-tax weekly

² [2015] FWCFB 3500 at 315.

³ United Voice relies on the evidence of Dr Damian Oliver (tendered as Exhibit UV-28)and the uncontested evidence of Dr Ian Watson (tendered as Exhibit SDA-35) currently before the Full bench in the Penalty rates case. See: <https://www.fwc.gov.au/awards-and-agreements/modern-award-reviews/am2014305-penalty-rates-case>

earnings of \$1,152. The figure for actual earnings is worse with an average of \$550 per week in commercial cleaning against \$950 in all industries.⁴

- (21.) Key united Voice industries, including hospitality, early childhood education and care, security, cleaning and social assistance services all have high levels of Award dependency.⁵
- (22.) United Voice has previously made submissions to the AWR and has sought to have evidence considered by the Bench. United Voice was the lead union in the first low paid bargaining application brought under the Fair Work Act in the *Aged Care Case* [2010] FWAFB 4000.
- (23.) In summary, United Voice has a long history of representing the industrial interests of low paid workers in matters before the Fair Work Commission and its predecessor body. We have many members employed in industries where workers are “low paid” and receive either the minimum wage or the Award wage.

The trajectory of the NMW.

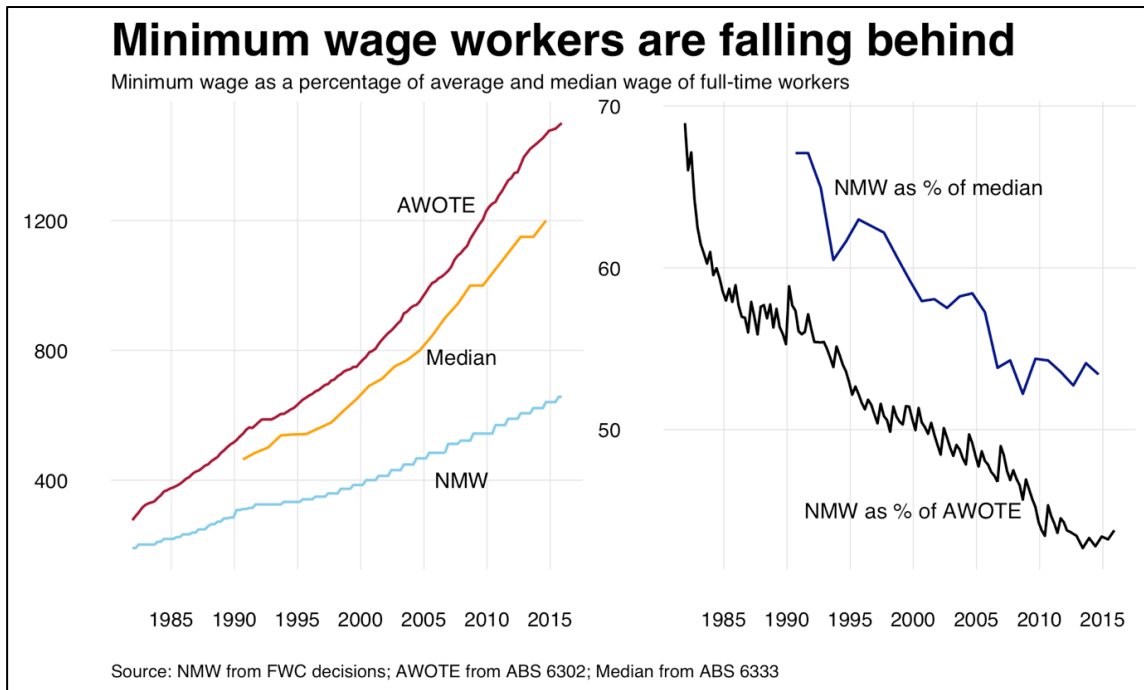
- (24.) Australia has historically been something of an innovator and an outlier on minimum wages, even when measured against the rest of the developed world. Australia's relatively high minimum wage and our essentially unique system of awards arbitrated by workplace tribunals has been a key reason why our country has had a relatively low inequality in earnings. The institutional arrangements adopted at both a State and Federal level ensured that our labour market exhibited a (relative) egalitarianism.⁶
- (25.) Much has changed in relation to this system. There has been a steady, inexorable erosion of the relative living standards of low paid workers (see FIGURE 1 above and FIGURE 2).

⁴ ABS EEBTUM Survey August 2013 cat. no. 6310.0.

⁵ See for example *Productivity Commission Childcare final report* at p. 317-318 and *ACTU AWR Submission 2014-15* at page 16-19, and evidence in *2016 Hospitality penalty rates case*.

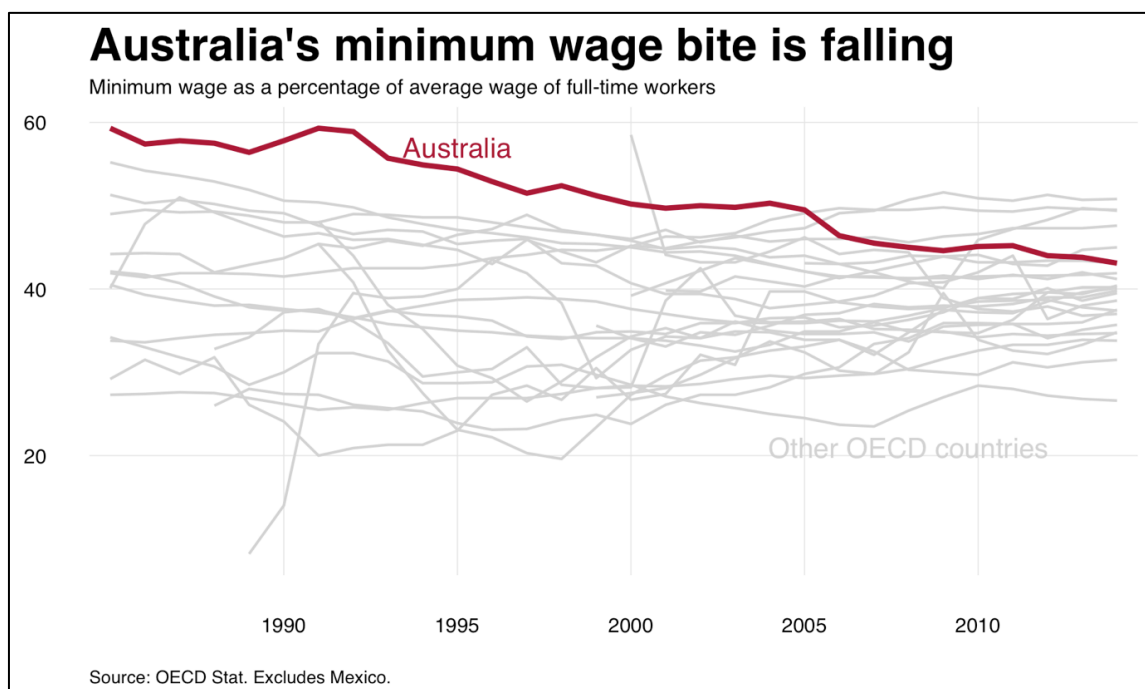
⁶ see T Lyons, *The Erosion of a Distinctive System*, *Journal of the ICTUR*, Vol. 21, No. 2, 2014

Figure 2



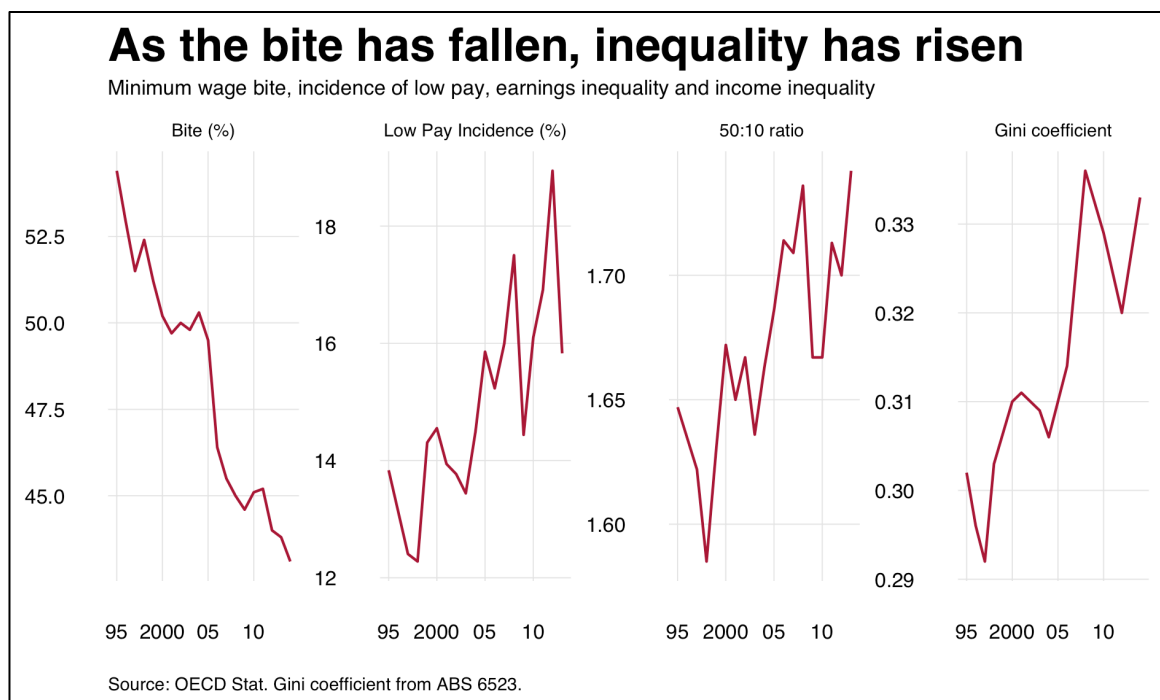
(26.) A labour market economist who examined the data on the trajectory of Australia's minimum wage but was unfamiliar with Australia's policy settings, would likely conclude that in the early 1990's a deliberate policy decision had been made to reduce the relative value of our minimum wage, to have a much lower minimum wage "bite". She might further conclude and that such a policy had been re-affirmed, or at least not been significantly adjusted, in the subsequent 25 years. And yet, as we know, no such decision was ever explicitly made. (FIGURE 2 and 3.)

Figure 3.



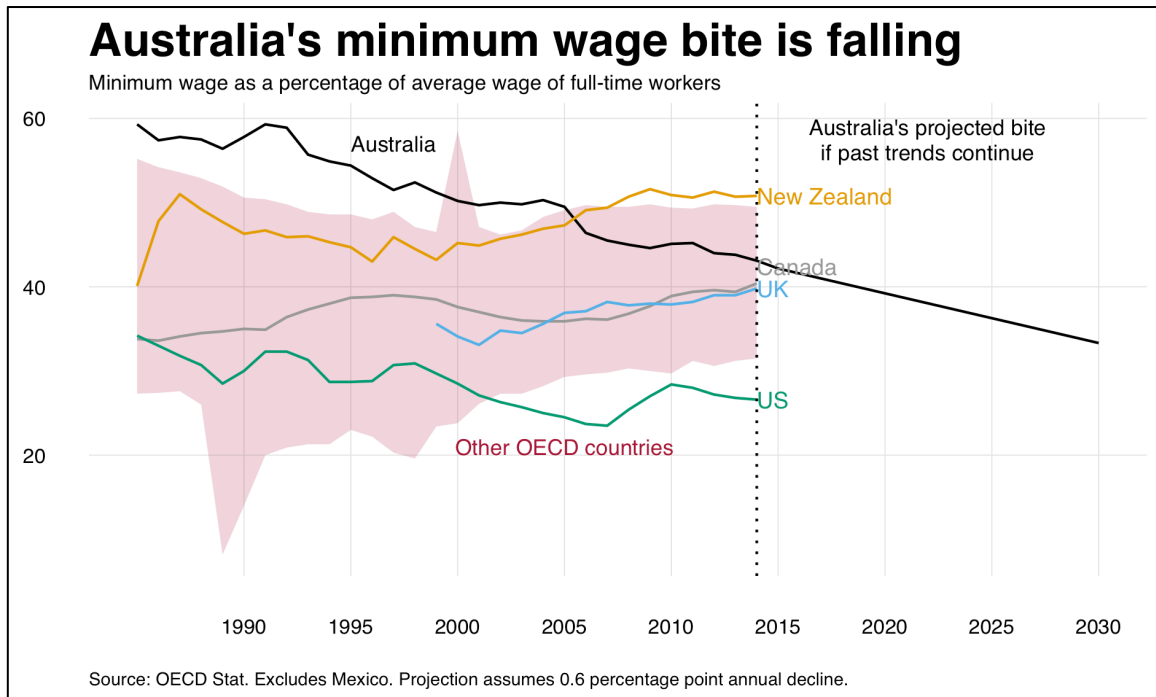
- (27.) If she consulted a labour lawyer in relation to the institutional and legislative frameworks she would see frequent change. However, on close examination she would be advised that there had been a relatively modest sequence of alterations of the basically similar set of considerations the different independent arbitrators of minimum wages have been required to consider.
- (28.) And if this pair consulted a macro-economist, they would discover that this trend had persisted regardless of broader economic conditions: starting in a severe recession and high unemployment, but continuing through a long period of strong economic growth and low unemployment, the GFC, and a period of below-trend GDP growth. And they would see that as the minimum wage bite has fallen, Australia has seen a rise in inequality and a growth in the incidence of low-pay. (FIGURE 4).

Figure 2.



- (29.) And if this group then consulted a comparative international scholar, they would discover that Australia's minimum wage bite is rapidly converging with other many OECD nations who had traditionally had a much lower bite. That is, the country is losing its distinctive system. (FIGURE 5)

Figure 3.



- (30.) In our submission, while the gap between minimum and average wages continues its growth trend (noting the very modest reversal in the last 2 years), then earnings inequality and prevalence of low pay are also likely to continue to rise. If this occurs, Australia will increasingly come to resemble other OECD countries with less egalitarian labour markets.
- (31.) It is these questions which this submission, and our request to the Panel, seeks to address.
- (32.) We submit that an ever- widening gap between low-paid workers and the rest of the workforce is inconsistent with the Act. The precipitous, long-term decline in the relative earnings of low-paid workers is not consistent with the maintenance of a fair and relevant safety net. In our view, the annual setting of minimum (and Award rates) has produced a trend (or what might look to impartial observers like a target or intention of some kind) without ever determining what that trend should be.
- (33.) In our submission the AWR should consider the annual adjustment of the NMW in the context not just of the year in question, but in the context of its past and a future indicative trajectory – specifically by establishing a medium term target or target band for the NMW. This submission proposes a process to determine the validity and utility of such an approach.

The statutory framework and the Panel's role.

(34.) As it is not required for the purpose of this submission, we have not included a comprehensive outline of the statutory framework. The following key matters are apposite:

- (a) The Act requires the panel to conduct a review of the NMW and of minimum wages in modern awards in each financial year. The Panel is required to make a NMW order and may alter modern award minimum wages.⁷
- (b) Both the modern award objective and the minimum wage objective are relevant to the Panel's task.⁸ The Panel is required to establish and maintain a safety net of fair minimum wages, taking into account a range of social, economic and industrial considerations. Amongst the most important considerations is the relative living standards and the needs of the low-paid.
- (c) The Panel has noted, repeatedly that its role necessarily involves balancing a range of considerations:

*"The wide range of data and information before the Panel and the often complex interaction between these factors mean that a comparison between reviews will rarely be straightforward."*⁹

*"There is often a degree of tension between the economic, social and other considerations which the Panel must take into account."*¹⁰

- (d) The panel has expressed the view that its task is to resist a "mechanistic approach" or a "formulaic relationship" between data and the final decisions.¹¹

(35.) For the reasons advanced below, we submit that the process we propose is consistent with the framework of the Act and of utility to the Panel.

Possible Approaches.

(36.) As noted above, the United Voice does not express a concluded view on the target (or target band) that should be adopted and the considerations that should inform its definition, function and duration.

⁷ Fair Work Act Section 285..

⁸ Fair Work Act Sections 134 and 284.

⁹ See [2015] FWCFB 3500 at Para [12].

¹⁰ See [2014] FWCFB 3500 at Para [6].

¹¹ See [2015] FWCFB 3500 at Para [10] and [12].

(37.) By way of illustration only, we offer the following examples of how a target (or target band) might be set:

(a) A target or band defined by reference to the “bite” (that is the NMW expressed as a percentage of median wages);

(b) A target or band set by reference to a goal in relation to a level of low-paid work (that is the NMW & other award wages set by reference to the OECD definition being less than two thirds of median wages);

(c) A target or band set in nominal dollars for the NMW; or

(d) A hybrid of these approaches.

(38.) In using the phrase “medium-term” we indicate that we have under contemplation a period of around 5 years.

(39.) Regardless of the measure or timeframe adopted, we note that the Panel could indicate that the precise pace with which it intends to progress towards that target will differ depending on circumstances each year. The panel could also choose to give some indication of the strength of its conviction that the target or target band would be met within the adopted timeframe.

International examples & scholarship.

(40.) International developments in relation to public policy and scholarship suggest that consideration of a target to supplement annual decision making is worthy of close examination.

(41.) We note some examples of such developments below, by way of illustration. Such developments could usefully be explored in detail as part of the process we propose. Notwithstanding different economic circumstances and regulatory regimes, international developments and advances in scholarship that are likely to assist the Panel in performing its functions should be properly considered.

(42.) Given the lingering effects of the global recession in many economies, there is growing political interest in, and a renewed focus on scholarship about, minimum wages. Declining minimum wages have been identified as a cause of rising inequality, poverty, stagnant wages and weak economic growth. There is a growing

body of work suggesting the adoption of targets in relation to the “bite” or at the very least a focus on that measure as an important public policy consideration (see paragraphs (24.) through (33.) above for a consideration of the “bite” in the Australian context). As an example, in a short paper on poverty alleviation and minimum wages that supports benchmarks, Professor Dube says:

“Low minimum wages are also problematic when they deviate too far from the median wage because they are a reflection of the bottom of the wage distribution falling behind the rest of the distribution. For this reason, economists often consider the ratio of the minimum to the average or median wage, also known as the Kaitz index.”¹²

(43.) In 2014, the Resolution Foundation published¹³ a comprehensive review of the future of minimum wages in the United Kingdom. The review, conducted by Professor Sir George Bain, a former long-term chair of the Low Pay Commission, was designed “reflect on what the minimum wage did and did not achieve, and to think about where the policy should go next.” The report found that the Low Pay Commission’s “one step at a time approach” to the adjustment of the minimum wage was too narrow given the nature of the policy lever under consideration, and left minimum wages “rudderless” and “lacking direction”.¹⁴ The report spoke of a need for a “balance between short term flexibility and long term ambition”¹⁵ with the minimum wage.

(44.) The report made three specific recommendations¹⁶ particularly relevant to this matter: (a) that a reduction in the incidence of low pay be made an explicit goal of the minimum wage system, (b) that a target date for the restoration of the real value of minimum wages lost during the global recession be set; and (c) that the Low Pay Commission include in its annual decision an indication of its intention for the following year to give more certainty to parties.¹⁷

(45.) Since that report, the UK has altered arrangements concerning its minimum wage system. In July 2015 the Conservative Government announced a “National Living

¹² Arindrajit Dube, *Designing Thoughtful Minimum Wage Policy*, Brookings, http://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/state_local_minimum_wage_policy_dube.pdf

¹³ *More than a Minimum*, Resolution Foundation, 2014 http://www.resolutionfoundation.org/wp-content/uploads/2014/03/More_than_a_minimum.pdf

¹⁴ Resolution Foundation Page 8.

¹⁵ *Ibid.* page 12

¹⁶ *Ibid.* page 12-14.

¹⁷ We note in passing the similarity in the language used in this recommendation to in the Parliamentary documents relating to the passage of the Fair Work Act – see paragraph (62.) below.

Wage” (“NLW) as an additional measure to the NMW, with a target level of adjustment over the next four years. The NLW development is described in the 2016 report of the Low Pay Commission this way:

“Whereas the NMW has been set for much of its life year by year, there is an explicit ambition for the level of the NLW by 2020. BIS (2015h) states ‘The Government estimates that the level of the combined NMW and the premium in April 2016 will be 55 per cent of median earnings and has set out an ambition that this should continue to increase to reach 60 per cent of median earnings by 2020, subject to sustained economic growth. The Government’s objective is to have a National Living Wage of over £9 by 2020.’¹⁸”

(46.) The long term decline in the value of minimum wages in the US is well documented and understood. More recently, although there has not been a move in the Federal Minimum Wage which is set by an Act of Congress, various local and State jurisdictions have moved to enact large, often staged increases in minimum wages. Some of these developments are not relevant to this process (as they involve adjustment by representative bodies or even plebiscites) but others have involved wages boards and inquiries convened to make determinations and balance a variety of economic and social considerations. Some of these moves, including in New York increasing the minimum wage from US\$9 to US\$15 (City in 2019 and State 2021) and similar developments in California are worthy of examination.¹⁹ The adoption of targets has seen increased academic analysis of this approach.²⁰ In some cases, wages board processes have supported large increases in industry specific pay rates (for example fast-food²¹) after an evidence-based process; a procedure with some parallels to Australian Award rates.

Other policy schemes.

(47.) There are a range of examples in public policy where a discretionary decision maker is required (as the Panel is) to balance a variety of potentially contradictory (or at least competitive) considerations and where a medium term target is included in the analytical framework. These examples are not advanced on the basis that they are

¹⁸ National Minimum Wage: Low Pay Commission report Spring 2016 at page 8
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507455/10493-TSO-Low_Pay-ACCESSIBLE_05.pdf

¹⁹See for example http://www.nytimes.com/2016/03/28/us/california-nears-deal-to-adopt-a-15-state-minimum-wage.html?_r=0 and <https://www.washingtonpost.com/news/work/wp/2016/03/28/california-looks-to-set-a-15-an-hour-minimum-wage-establishing-a-new-floor-while-other-states-set-ceilings/>

²⁰ See for example Berkeley IRLE, <http://irle.berkeley.edu/research/minimumwage/>

²¹ see New York Fast Food Wages Board
<http://labor.ny.gov/workerprotection/laborstandards/wageboard2015.shtm>

perfectly analogous. We note those below to demonstrate the potential utility of this approach in the context of the Panel's work.

- (48.) There are examples of transfer payment systems and collective pension schemes where a target operates in conjunction with periodic discretionary adjustment. In relation to transfer payments, there are examples where the level is determined against discretionary factors but including reference to a target rather than a fixed mechanical pass-through of indices in relation to prices or incomes.²²
- (49.) The role and function of the Reserve Bank of Australia ("the RBA") in independently setting monetary policy bears analogy to the role of the Panel. The RBA's adoption of an inflation target (as it has done for more than 20 years) is particularly relevant here. Like the Panel, the RBA is required by statute to perform its functions in a way that balances a range of considerations: currency stability, the maintenance of full employment and the economic prosperity and welfare of the people of Australia.²³
- (50.) The RBA describes the role of the medium term target and its utility this way:

"The Governor and the Treasurer have agreed that the appropriate target for monetary policy in Australia is to achieve an inflation rate of 2–3 per cent, on average, over the cycle.

.....

Seeking to achieve this rate, on average, provides discipline for monetary policy decision-making, and serves as an anchor for private-sector inflation expectations.

The inflation target is defined as a medium-term average rather than as a rate (or band of rates) that must be held at all times. This formulation allows for the inevitable uncertainties that are involved in forecasting, and lags in the effects of monetary policy on the economy. Experience in Australia and elsewhere has shown that inflation is difficult to fine-tune within a narrow band. The inflation target is also, necessarily, forward-looking."²⁴

- (51.) Like adjusting monetary policy, setting the NMW is a process that relies on both a backwards look at data and statistical analysis and a forward look at economic forecasts. As in the context of monetary policy, a medium-term target would provide additional discipline for periodic decision making and provide some certainty to those relying or required to implement the decision, while allowing for the inherent

²² See for example Keith P. Ambachtsheer, *The Future of Pension Management: Integrating Design, Governance, and Investing* (Wiley, 2016) which includes a study of jurisdictions which are moving traditional defined benefit and defined contribution formulas into "defined ambition" and "target benefit" hybrids.

²³ Reserve Bank Act 1959, Section 10.

²⁴ <http://www.rba.gov.au/inflation/>

uncertainties associated with economic forecasting and allowing for adjustment to take into account variable economic conditions.

- (52.) Similarly, there are international examples of the use of a medium term targets in relation to fiscal policy – specifically in relation to deficit management – where the annual decisions are balanced with a broader objective. As such, targets function as a form of decision making discipline while allowing appropriate flexibility to deal with current conditions – either in relation to stimulus or consolidation.²⁵
- (53.) A target with variability in periodic action as part of a need to balance considerations is frequently a feature of policies in relation to matters such as land management / release²⁶ and pollution. A common policy approach to climate change is the adoption of so called “cap and trade” systems in relation to emissions of pollutants. Like the Panel’s work, such schemes are designed to balance a range of factors (for example reducing emissions, facilitating new industries and reducing the economic costs of transition to clean energy). Such schemes commonly set output based targets for medium term periods, and provide flexibility in relation the instruments on a year to year basis: for example variable or banded prices for emissions and provision for free or exempted emissions. An example is various versions of the Carbon Pollution Reduction Scheme in Australia.²⁷

Considerations supporting our request.

- (54.) Set out below are a range of considerations which in our submission support the approach we suggest.

Our current request is procedural.

- (55.) Importantly, we repeat our submission that the Panel is not required to form a concluded view as to its ability to set a target, or the utility of a target, in order to agree to our request. Our request is designed to allow us to have our substantive position heard and determined efficiently and fairly.

²⁵ See for example O Blanchard, G Dell’Ariccia and P Mauro, *Rethinking macroeconomic policy*, IMF February 2010 at page 14. <http://www.imf.org/external/pubs/ft/spn/2010/spn1003.pdf>

²⁶ For example, the Urban Renewal Authority Victoria Act 2003 establishes an authority that sells surplus Government land on a timetable that balances competing economic and social considerations.

²⁷ <http://pandora.nla.gov.au/pan/102841/20090728-0000/www.climatechange.gov.au/whitepaper/report/index.html>

(56.) As noted above, these submissions are not exhaustive, and questions such as the role of a target for the NMW within Australia's broader system of Award minimum wages (and the role of the tax and transfer system) will need to be addressed in the substantive proceeding.

The Panel's obligations.

(57.) The Act requires the panel to conduct a review of the NMW and of minimum wages in modern awards in each financial year. The Panel is required to make a NMW order and may alter modern award minimum wages.²⁸

(58.) In performing its functions, the Panel is required to balance a series of considerations set out in the minimum wages objective and the modern awards objective.²⁹

(59.) In discharging those functions, we submit that the Panel should give consideration to the full range of analytical approaches that are consistent with its obligations and which may assist it in balancing the various matters it is required to consider.

(60.) In our submission, a medium-term target (or target band) for the NMW is such an approach. We submit that an approach of trend target with annual flexibility is consistent with the Panel's obligations (in that it would simply provide an additional analytical framework to assist the Panel in the performance of its annual obligations). In this sense it cannot be intellectually distinguished from views the Panel has necessarily had to form in relation to the reliability, probative value and function of various indicators or measures of wages, prices, employment, poverty and other matters – views which contribute to decision making on a multi-year basis. The Panel's research program on the labour market and its consideration of developments in academic work concerning the effects of minimum wages are also in effect multi-year contributions to this framework.

(61.) In simple terms, we propose a process to determine if the analytical framework the Panel uses to meet its obligations should include a new tool.

(62.) The Parliamentary documents support this approach. Both the Second Reading speech and the Explanatory Memorandum discuss the fixed obligation for an annual review (and the July 1 date in particular) as being designed to provide "certainty

²⁸ Fair Work Act Section 285.

²⁹ Fair Work Act Section 284 and 134.

and predictability” to employers and workers.³⁰ A medium-term target could contribute to that approach.

(63.) The Panel does not, and should not, refuse to consider evidence and trends that extend beyond one year. It cannot be said a medium-term aspirational target that retained annual discretion offends against the Panel's statutory obligations. The Panel has naturally developed its own jurisprudence over the period of its existence, and has adopted a multi-year approach to assessment of data, the role of forecasting and a research program. Indeed in last year's decision the Panel noted the relevance of previous findings and approaches to equivalent evidence saying:

“if there were no change in the relevant considerations from one year to the next then, all other things being equal, a similar outcome would result”³¹

(64.) In our submission, a medium-term target as an overlay to annual discretionary decision making is intellectually robust, consistent with the Panel's obligations, and would assist in the statutory intentions of “certainty and predictability” being met.

Target is consistent with a non-mechanistic approach.

(65.) The Panel has expressed the view that its task(s) resist distillation to a “mechanistic approach” such as wage indexation and there is no “formulaic relationship” or “fixed relationship” between data the Panel considers and outcomes.³² We submit that our approach – which would involve the retention of flexible annual decision making but supplemented by adjustable and periodically reviewed medium-term target - is consistent with the Panel's expressed views.

The trend we have highlighted must be acknowledged.

(66.) As noted at paragraphs (24.) through (29.), there has been a multi-decade trend of reduction in the relative value of minimum wages, a trend that has persisted over four different wage-fixing frameworks. No individual decision has ever been made and communicated that there was to be a very large (and consistent) long-term change in our minimum wage bite. Yet that is what has occurred – changing the distinctive nature of Australia's minimum wage system.

³⁰ See Hansard, House of Representatives, 28 November 2008 at page 11191 and Explanatory Memorandum to Fair Work Bill 2008 at pages xxx and 181.

³¹ See [2015] FWCFB 3500 at Para [7]

³² See [2015] FWCFB 3500 at Para [10] and [12]

(67.) In our submission, the trend we have must be acknowledged and debated before the panel. Fairness, certainty and predictability all warrant proper consideration of the indicative future direction of the NMW.

The potential value of a medium-term target.

(68.) The level of the NMW and Award wages have both short and long-term effects – on business and workers. In our submission an exclusive focus on one year periods (and by implication data most closely related to those periods) unnecessarily obscures the broader considerations about the direction of minimum wages that the Panel can and should take into account.

(69.) By contrast, a medium-term target operating in conjunction with annual decisions, allows proper ventilation of issues associated with longer term trends, is an aid to discipline in decision making, and gives the NMW an indicative direction – adding to certainty and predictability. As the Resolution Foundation said, a “one step at a time approach” is too narrow given the nature of the policy lever under consideration, and can leave minimum wages “lacking direction.”³³

(70.) The matters the Panel is required to consider in both the minimum wages objective and the modern awards objective are not, we submit, considerations which can be fully considered in respect of a single 12 month period. Matters such as living standards, economic performance, productivity, labour force participation, the incidence of collective bargaining, employment patterns and wages are long-term indicators necessarily measured in the long-term.

(71.) Our proposal is a vehicle to also consider these matters over a longer-term horizon, while taking account of variations in economic conditions and the attendant difficulties of forecasting and consistent with annual obligations.

The role of parties.

(72.) We submit that the process for determining a target would assist the Panel by requiring parties to express views and provide arguments about the longer-term trajectory of minimum wages, rather than simply the narrow view of an annual case. This will help discipline the parties to provide material that assists the Panel.

³³ Resolution Foundation (*Ibid.*) Page 8.

(73.) This particularly applies, more than any other interested party, to the Commonwealth government (and to a lesser extent State and Territory governments). The Commonwealth (regardless of Government) has tended to provide less than clear advice to the Panel about its view. Clearly, the statistical analysis that can be provided by the Commonwealth should be formidable and is undoubtedly relevant and helpful. However, we submit that too often (given the significance of their view), Commonwealth submissions on the actual question of adjustment of the NMW and modern Award wages have consisted of relatively vague adjectives. A process involving submissions concerning the trajectory of the NMW would necessarily elicit a more helpful response.

The need for discrete proceedings.

(74.) We submit that procedural fairness, administrative convenience, and the nature of our request itself (raising an issue of principle that transcends the annual decision by its very nature) supports our preferred approach. As set out in paragraph (9.) above, this would involve written submissions and replies by interested parties in October on a timetable to allow consultation hearings in November 2016.

The Panel's powers in relation to procedure.

(75.) The Act provides important procedural fairness requirements for the Review and the Panel has an obligation to ensure that all parties are given a reasonable opportunity to make and reply to written submissions.³⁴

(76.) Subject to providing for procedural fairness, questions of procedure are a matter for the Panel's determination. The Panel has previously directed that matters of principle raised by parties be heard and determined separately discretely within the AWR itself.³⁵

(77.) Our request is consistent with the Panel's approach to programming and the efficient conduct of matters it is required to determine.

Targets as an emerging international trend.

(78.) As noted in paragraphs (40.) to (46.) above, there is an emerging international trend for regulators and governments to actively consider, and actually adopt medium-

³⁴ See [2015] FWCFB 3500 at Para [2].

³⁵ See [2014] FWCFB 682 at Para [5]

term targets or plans for minimum wages. There is significant academic support for such an approach. In our submission these factors support careful and systematic consideration of the merits of such an approach in Australia.

Analogy with other policy levers.

(79.) As noted in paragraphs (47.) to (53.) above, there are a range of examples in public policy where discretionary decision makers are required to balance competing considerations use a medium-term target as part of their decision making framework. This can aid in ensuring ensure discipline in decision making, give a measure of certainty to those effected in relation to trajectory. Such an approach functions as an expression of policy intent while retaining flexibility to deal with altered circumstances, and the vagaries of forecasting. The relevance and utility of such an approach in the context of the NMW is worthy of full consideration by the Panel.

Conclusion.

(80.) In all the circumstances, and for the reason outlined about, we submit that the Panel should grant the request me make as set out in paragraphs (5.)-(9.) above.