Ai GROUP SUBMISSION

Fair Work Commission

Annual Wage Review 2016-2017: Submission in Relation to Preliminary Hearing

10 October 2016

Ai GROUP

About Australian Industry Group

The Australian Industry Group (Ai Group) is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing, engineering, construction, automotive, food, transport, information technology, telecommunications, call centres, labour hire, printing, defence, mining equipment and supplies, airlines, health and other industries. The businesses which we represent employ more than one million people. Ai Group members operate small, medium and large businesses across a range of industries. Ai Group is closely affiliated with many other employer groups and directly manages a number of those organisations.

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Introduction

This submission of the Australian Industry Group (**Ai Group**) responds to the questions in the following three background papers released by the Fair Work Commission (**FWC**) ahead of the Preliminary Hearing in the *Annual Wage Review 2016-17*:

1. A proposal for a medium-term target;
2. A review of transitional instruments; and
3. A review of existing arrangements for employees with disability.

A proposal for a medium-term target

Question 1 - Taking into consideration the powers of the Panel to set national minimum wages and modern award minimum wages under s.285(2) and the minimum wages and modern award objectives set out in ss.284 and 134 of the *Fair Work Act 2009*, does the legislative framework allow the Panel to adopt a medium-term target (or target range) for the NMW or modern award minimum wages?

Answer:

In Ai Group's view, the concept of a medium-term target (or target range) for the National Minimum Wage (**NMW**) or modern award minimum wages is inconsistent with the duty of the FWC to review minimum wages annually.

The *Fair Work Act 2009* (**Act**) makes no mention of a medium-term target. It requires an *annual* wage review. This should involve a careful, annual consideration of the current economic and business environment and the outlook for the next 12 months.

Setting a target would result in the FWC being heavily influenced by that target in each Annual Wage Review and, as a consequence, being diverted from its duty to take into account:

- The factors in section 284(1)(a) to (e) when reviewing and varying the NMW;
- The factors in section 284(1)(a) to (e) when reviewing and varying the Special National Minimum Wages for employees with disability, junior employees, apprentices and trainees;
- The factors in section 284(1)(a) to (e) when reviewing and varying award minimum wages;
- The factors in s.134 when reviewing and varying award minimum wages (see s.284(2), including the Note in this section); and
- The rate of the national minimum wage that the FWC proposes to set in its national minimum wage order (s.285(3)).

Over the past 10 years, there have been a number of major events that have influenced minimum wage decisions. For example:

- In 2007, the Australian Fair Pay Commission delayed the national minimum wage increase for employees of drought affected businesses until 1 October 2008. In its *Wages and Allowances Review 2007* decision, the Australian Industrial Relations Commission adopted the same approach in relation to minimum rates in transitional awards.

- In July 2009, the Australian Fair Pay Commission decided not to grant a minimum wage increase. The global financial crisis was being experienced at the time.

- In 2010/11, Queensland experienced devastating floods and a major cyclone upon which considerable attention was focused during the *Annual Wage Review 2010-11.*

The setting of a medium-term target would make it more difficult for the FWC to take into account major events like these. Even if such events resulted in a lower wage increase in a particular year, the FWC would most likely feel under some pressure to award a higher increase in the following year to "catch-up". Such a "catch-up" increase would in many circumstances be inappropriate given the factors which the FWC is required to take into account under ss.285 and 134.

Another major problem with the concept of a medium-term target is that the FWC and its predecessors have long recognised that minimum wages are only one element of the social safety net and changes to tax transfer payments should be taken into account when determining the level of the minimum wage increase. In its *Annual Wage Review 2012/13 Decision*, the Panel relevantly said:

> **"[393]** The tax-transfer system has a significant role to play in alleviating the impact of earnings inequality and supporting the living standards of low-paid workers. Wages do not entirely determine the living standards of the majority of individual wage earners who live in households with others. We agree with the view expressed in the past three review decisions that:
>
> > "minimum wages and the tax transfer system are both relevant to the maintenance of an effective safety net for the low paid: each has its part to play. Wages play a particularly important role in the maintenance of disposable incomes for households not receiving income support payments."

The Panel has recognised that significant changes in the social safety net may be relevant when setting minimum wages. For example, in its *Annual Wage Review 2011-12 Decision* the Panel said:

> **"[21]** In relation to the general operation of the tax-transfer system, we note that there is little consensus among the parties about the way in which changes in tax-transfer payments are to be taken into account in the context of minimum wages. We would be assisted if these matters were given some consideration by the parties in their submissions in future reviews. We would also encourage the Australian Government to discuss such matters with the major parties in an effort to arrive at a consensus as to the specific effect any future tax-transfer changes may have on the variation of minimum wages in a review."

A medium-term target would inhibit the Commission from taking any future changes in the broader social safety net into account.

A further problem with a medium-term target is that it would be more difficult for the Panel to take into account any changes made to the superannuation guarantee in the future. In its *Annual Wage Review 2012-13 Decision*, the Panel said:

> **"[346]** For our part we broadly agree with Ai Group's characterisation of superannuation as part of the social safety net. But superannuation has some unique characteristics that distinguish it from the general tax-transfer system. The SG contribution is a legislative requirement paid by employers for the benefit of employees. An increase in the SG rate is a labour cost to business that provides a deferred benefit to employees. It is a deferred benefit in the sense that "superannuation is directed to enhancing living standards in retirement rather than living standards during employment". The SG Acts are also an important component of a broader retirement incomes policy."

In the *Annual Wage Review 2012/13* decision, the FWC stated that the minimum wage increase *"is lower than it otherwise would have been in the absence of the superannuation guarantee increase"*. Appropriate outcomes like this would be more difficult to achieve and more complex to implement if a medium-term target was in place.

<u>Question 2</u> - Should a medium-term target be set for the NMW or both the NMW and modern award minimum wages?

<u>Answer</u>:

A medium-term target should not be set for either, for the reasons identified above in response to Question 1, and for the reasons identified below in response to Question 3.

<u>Question 3</u> – What are the reasons for or against setting a medium-term target?

<u>Answer</u>:

See the reasons identified in response to Question 1.

In addition, United Voice has failed to establish any inadequacy in the FWC's current approach to adjusting minimum wages.

The reason that United Voice put forward for considering introducing a medium-term target was to provide *"an additional tool to assist … [the Panel] in the performance of its annual obligations".* United Voice's expressed concern is its view that over a thirty-year period the pace of increase in the NMW has trended below the rates of increase in wages more generally, as measured by Average Weekly Ordinary Time Earnings and an ABS measure of median full time earnings.

United Voice's concern is with *"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."* 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".*

However:

- The NMW is set annually by the Expert Panel in a deliberate and careful process that benefits from strong opportunities for the parties to provide input and to examine the arguments presented by others. Any trends observable over time are in fact the product of a series of explicit decisions under the explicit guidance of, and adherence to, the Act. It is incorrect to suggest that the trend has not been subject to explicit decision or acknowledged policy when it is the product of a set of explicit decisions and clearly articulated policies.

- There is no inhibition on the parties that prevents the presentation to the Panel of trend data or the use of arguments that draw attention to this data. In fact it is customary for this to occur.

- Also, there is no restriction on the Panel from taking into account trend data and arguments based on them and, once again, it is customary for this to occur.

United Voice perceives a trend it claims is in conflict with the needs of the low paid and the values of our country. Two points can be made:

- First, the needs of the low paid are carefully considered annually and to the extent that "the values of our country" are reflected in the factors the Panel is required by the Act to consider, there is strong reason to conclude that both the needs of the low paid and the values of the country are reflected in the Annual Wage Review decisions and therefore the trend data that are made up of these annual decisions.

- Second, the needs of the low paid and wage relativities are not the only factors that the Panel takes into account. Trend data on wage relativities is not on its own indicative of any shortcomings in the current process. To illustrate, one factor that is particularly relevant in this context is the impact of changes to income support and taxation arrangements. The Panel has on a number of occasions stated that such changes should be, and are, carefully taken into account in its annual deliberations on the NMW and particularly in relation to the needs of the low paid. The trend data presented by United Voice in support of its argument do not take into account any of the many changes to taxation and income support arrangements that have taken place over the past thirty years.

In view of these points, United Voice has not presented a case that demonstrates any inadequacy in the performance of the Panel's annual obligations that would be rectified by the additional tool of a medium-term target.

The proposal of United Voice has some similarity to that suggested by the National Committee of Audit in February 2014. The National Committee of Audit proposed phasing the National Minimum Wage down over time as follows:

> "Australia's minimum wage is high by international standards. Containing growth in the minimum wage would improve job opportunities and the effectiveness of the Government's employment policy programmes.

> In transitioning to new arrangements that contain growth in the minimum wage, it is important to consider its objectives. It should have regard to community standards but also maintain the incentive to work in terms of the relativity between unemployment benefits and financial benefits of working.
>
> The Commission proposes that growth in the minimum wage be slowed by applying an indexation factor of CPI less 1 percentage point for a period of 10 years (growth of around 1.5 per cent per year) until it reaches 44 per cent of National Average Weekly Earnings."

For the same reason that Ai Group does not support United Voice's proposal, Ai Group did not express support for the National Committee of Audit's proposal.

Developments in the UK

In the UK, from 1 April 2016 the Government introduced a mandatory minimum wage for workers aged 25 and over. The UK Government has asked the Low Pay Commission to recommend the level of the path of the minimum wage going forward, with the target of the total reaching 60% of median earning by 2020.

The concept of a target in the UK was developed after the Low Pay Commission identified "an immediate and unprecedented problem" whereby the GFC-induced recession resulted in a fall in the real value of the minimum wage.[1] The situation is very different in Australia.

This fall in the real value of minimum wages in the UK and the contrasting position in Australia, where a small drop in the real value of minimum wages was quickly reversed, are illustrated in Chart 1.

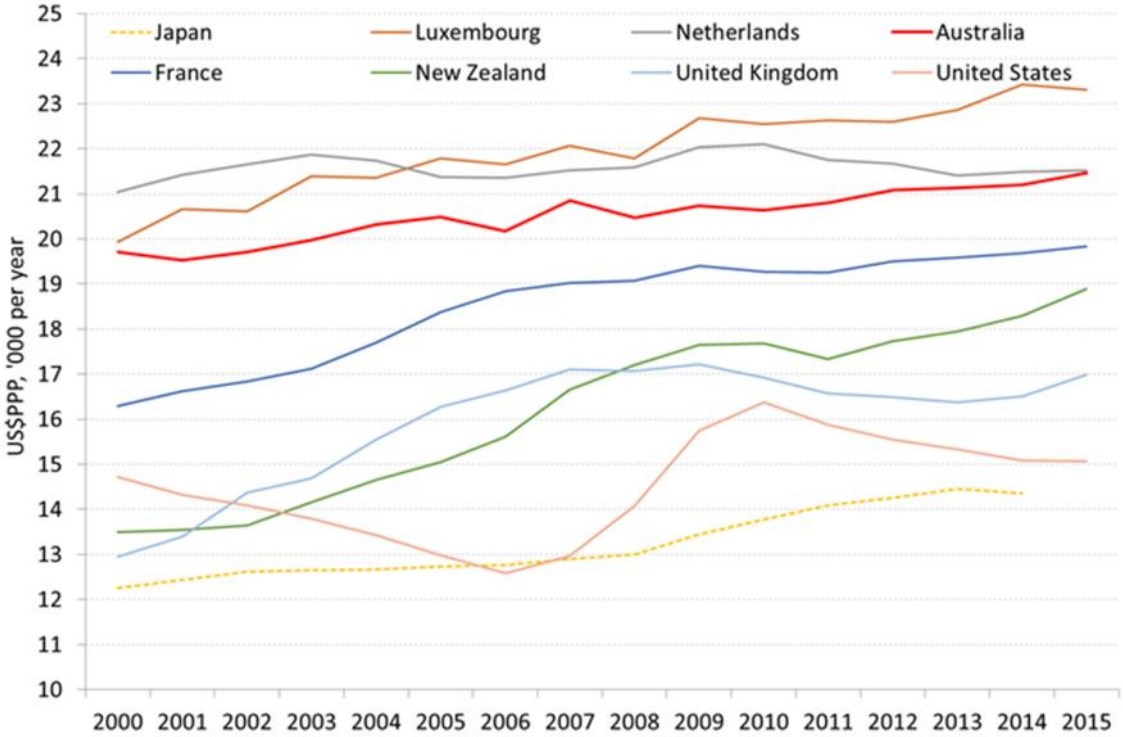
The UK policy is aimed at responding to the UK's experience of declining minimum wages in real terms, following the GFC disruptions of 2007-08. OECD wage comparisons of real wage values (on a PPP basis) show that between 2009 (UK recent peak in real minimum wages) and 2013 (UK recent trough in real minimum wages) the real value of the UK minimum wage declined by 4.9%. It subsequently recovered by 3.7% between 2013 and 2015, but remained 1.3% lower than its 2009 value, as of 2015. A similar pattern of real decline is evident in the US over a similar period.

In contrast, the real value of the minimum wage in Australia increased by 1.9% between 2009 and 2013 and by a further 1.5% between 2013 and 2015, to be 3.5% higher in 2015 than it had been in 2009.

As of 2015, Australian minimum wage rates had risen (in PPP terms) to be equal to the Netherlands and second only to Luxembourg among OECD countries.

[1] p. 9, www.fwc.gov.au/documents/sites/wagereview2016/research/ResolutionFoundation-MoreThanAMinimum.pdf

Chart 1: Real minimum wages, PPP basis 2014 dollar. Selected OECD countries



Source: OECD

Put simply, there is no decline in the real value of Australian minimum wages, as has been the case in the UK. There is, therefore, no need to introduce a new and additional policy response. The setting of a medium-term target would detract from the critical need for the Expert Panel to base its decision in each Annual Wage Review on the economic environment that exists at the time when the Review is conducted, and the outlook for the next 12 months.

Question 4 – For parties advocating a medium-term target: (a) what criteria should be applied in setting a medium-term target?; and (b) what target (or target range) should be proposed?

Answer:

Ai Group is not advocating a medium-term target

Question 5 – If a medium-term target is adopted, how should it be assessed or reviewed during subsequent annual wage reviews?

Answer:

If, despite Ai Group objections, a medium-term target is set, the target should be assessed and reviewed annually.

Question 6 – Would parties be assisted if the Panel decided on whether it ought to set a medium-term target prior to initial submissions made to the Annual Wage Review 2016–17?

Answer:

Yes. The additional consideration of a medium-term target would add considerably to the range of material that would need to be researched and presented in submissions.

However, if the Commission decides that it ought to set a medium-term target, a more workable approach would be to set the target in conjunction with the *Annual Wage Review 2017-18* decision. This would give the parties sufficient time to research the issues and prepare detailed submissions for the Annual Wage Review 2017-18. It would also give the FWC, and other parties, time to conduct relevant research.

A review of transitional instruments

Question 1 – Given the operation of s.113 of the Fair Work Act, can the long service leave awards be terminated?

Answer:

The federal award long service leave provisions that remain in operation as a result of s.113 of the Act are extremely important to employees and employers.

It appears to Ai Group that it would not have been the intention of Parliament that pre-modern long service leave awards must be maintained in order for the terms of such awards to operate as "applicable award-derived long service leave terms" under s.113 of the Act. However, if there is any doubt about this, the awards should not be terminated.

Question 2 – The parties are directed to review the list of existing transitional instruments at Appendix 1 and indicate whether there are instruments on the list in which they have an interest and that they consider need to remain current.

Answer:

For the reasons identified above, the long service leave awards on the list and the broader awards contain long service leave provisions (e.g. the *Metal, Engineering and Associated Industries Award 1998* and the *Graphic Arts - General - Award 2000*), should not be terminated if there is any doubt about the ongoing operation of the "applicable award-derived long service leave terms" which were derived from these awards.

Question 3 – Do the parties agree that when the modernisation processes have been completed, the modernisable instruments in Appendix 1 should be terminated by the Commission?

Answer:

Ai Group does not support the maintenance of any redundant instruments. However, if any valid reasons are identified for maintaining a particular transitional instrument, the instrument should not be terminated.

Question 4 – Are there any other transitional instruments not listed above that are preserved by the Transitional regulations for the purposes of providing for competency-based arrangements and provision of tools?

Answer:

Ai Group is not aware of any such instruments that are not already included on the list.

Question 5 – Do parties agree that, regardless of the termination and modernisation of other transitional instruments, there will be an on-going requirement for the Commission to review Division 2B State awards, award-based transitional instruments and related APCSs as part of the annual wage review?

Ai Group will consider the submissions of other parties and may address this question in reply.

Question 6 – Given the limitations under s.154, can instruments be made under the Fair Work Act to replace these instruments?

Ai Group will consider the submissions of other parties and may address this question in reply.

Question 7 – Given the 2012 ERO preserves the operation of transitional provisions and the Fair Work Act obliges Commission to terminate transitional instruments, is there any reason why the Commission should not terminate the remaining transitional instruments related to the SACS modern award?

Ai Group will consider the submissions of other parties and may address this question in reply.

Question 8 – Given these instruments continue to operate until 1 December 2020, should they remain as transitional instruments or can these entitlements be preserved for the affected employees in another Fair Work Act instrument?

Ai Group will consider the submissions of other parties and may address this question in reply.

Question 9 – Do the parties have any views about the on-going process of review for transitional instruments as part of the annual wage reviews?

Answer:

Ai Group has not identified any problems with the careful approach that the FWC has taken to date regarding the review and termination of transitional instruments.

Ai Group has also not identified any problems with the approach that the FWC adopted in the *Annual Wage Review 2015-16* regarding the application of minimum wage increases to transitional instruments.

A review of existing arrangements for employees with disability

Question 1 – Taking into account the historical and legislative development of special NMW1, is a special national minimum wage required to ensure minimum wage coverage for employees whose disabilities do not impact on their productive capacity?

Answer:

Ai Group has not identified any difficulties with the existing minimum wage arrangements for employees with disability. Accordingly, we support the maintenance of a special national minimum wage for employees whose disabilities do not impact on their productive capacities.

Question 2 – Do current wage rates provide adequate incentives for employees with disability to participate in the workforce?

Answer:

Yes. Higher wage rates would most likely lead to reduced workplace participation because the result would be fewer employment opportunities.

Question 3 – Would any increases to wages for employees with disability impact employees' access to employment?

Answer:

Yes. Increases to wages would adversely impact employees' access to employment.

Question 4 – Is it still appropriate to set the minimum wage for SWS employees at the income-free DSP threshold amount? If not, how should the threshold for these wages set?

Answer:

Yes. Ai Group has not identified any difficulties with the current arrangements.

Question 5 – What is the likely impact on employers of employees with disability to any changes in wage-setting arrangements or wage rates?

Answer:

The existing arrangements appear to be working effectively. Increases to wages would adversely impact upon businesses which employ a high proportion of employees with disability. In turn, this would adversely impact upon employees' access to employment.

Question 6 – What additional research would parties like to be conducted in relation to wage setting for employees with disability?

Answer:

Subject to funding being available, there would be benefit in the FWC carrying out research on wage setting arrangements for employees with disability to provide a better understanding of the number and characteristics of employees to whom the various existing instruments and arrangements apply.