DECISION

Fair Work Act 2009
s.285 - Annual wage review

Annual Wage Review 2016–17
(C2017/1)

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT HATCHER
DEPUTY PRESIDENT ASBURY
COMMISSIONER HAMPTON
MR COLE
PROFESSOR RICHARDSON
MR GIBBS

MELBOURNE, 6 JUNE 2017

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Abbreviations

2009–10 Review decision	*Annual Wage Review 2009–10* decision
2011–12 Review decision	*Annual Wage Review 2011–12* decision
2012–13 Review decision	*Annual Wage Review 2012–13* decision
2013–14 Review decision	*Annual* Wage *Review 2013–14* decision
2014–15 Review decision	*Annual Wage Review 2014–15* decision
2015–16 Review decision	*Annual Wage Review 2015–16* decision
2016–17 Review decision	*Annual Wage Review 2016–17* decision
AAWI	average annualised wage increase
ABI and NSWBC	Australian Business Industrial and NSW Business Chamber Ltd
ABS	Australian Bureau of Statistics
ACCER	Australian Catholic Council for Employment Relations
ACOSS	Australian Council of Social Service
Act	*Fair Work Act 2009* (Cth)
ACTU	Australian Council of Trade Unions
AFEI	Australian Federation of Employers and Industries
AHA and TAA	Australian Hotels Association and Tourism Accommodation Australia
Ai Group	Australian Industry Group
All Trades matter	*All Trades Queensland Pty Limited v CFMEU and Ors*
ANZSIC	Australian and New Zealand Standard Industrial Classification
APCSs	Australian Pay and Classification Scales
Apprentices decision	Modern Awards Review 2012—Apprentices, Trainees and Juniors, [2013] FWCFB 5411
ARA	Australian Retailers Association
ARTIO	Australian Road Transport Industrial Organisation
AWE	average weekly earnings
AWOTE	average weekly ordinary time earnings
AWRS	Australian Workplace Relations Study
ACCI	Australian Chamber of Commerce and Industry
Business SA	Chamber of Commerce and Industry South Australia
C2(b)	Principal Technical Officer
C4	Engineering Associate/Laboratory Technical Officer Level 1
C10	Engineering/Manufacturing Tradesperson Level 1
C14	Engineering/Manufacturing Employee Level 1
CCIQ	Chamber of Commerce and Industry Queensland

CCIWA	Chamber of Commerce and Industry Western Australia
Commission	Fair Work Commission
CPI	Consumer Price Index
DSP	Disability Support Pension
ERO	Equal Remuneration Order
EEH	Survey of Employee Earnings and Hours
GDP	gross domestic product
GFC	global financial crisis
GVA	gross value added
HES	Household Expenditure Survey
HIA	Housing Industry Association
HILDA	Household, Income and Labour Dynamics in Australia
IMF	International Monetary Fund
LCI	Living Cost Index
LNG	Liquefied natural gas
Manufacturing Award	*Manufacturing and Associated Industries and Occupations Award 2010*
MFP	Multifactor productivity
MGA	Master Grocers Australia
Miscellaneous Award	Miscellaneous Award 2010
MTA-SA	Motor Trade Association of South Australia
MYEFO	Mid-Year Economic and Fiscal Outlook
NAB	National Australia Bank
NAPSA	Notional Agreement Preserving State Awards
NCVER	National Centre for Vocational Education Research
NERR	Notice of Employee Representational Rights
NFF	National Farmers' Federation
NMW	national minimum wage
NRA and HA	National Retail Association and Hardware Australia
NTWS	National Training Wage Schedule
OECD	Organisation for Economic Co-operation and Development
Panel	Expert Panel for annual wage reviews
PC report	Productivity Commission (2015), *Workplace Relations Framework, Final Report*, Final Report, Canberra, November
PCI	Performance of Construction Index
Penalty Rates decision	4 yearly review of modern awards – Penalty Rates decision [2017] FWCFB 1001
PMI	Performance of Manufacturing Index
PSI	Performance of Services Index

PPP	Purchasing Power Parity
R&CA	Restaurant and Catering Australia
RAND report	Hafner M, Taylor J, Pankowska P, Stepanek M, Nataraj S & van Stolk C (2016), *The impact of the National Minimum Wage on employment: a meta-analysis*, RAND Europe, a report for the UK Low Pay Commission, October
RBA	Reserve Bank of Australia
Peetz and Yu report	Peetz D and Yu S (2017), *Explaining recent trends in collective bargaining*, Fair Work Commission, Research Report 4/2017, February
Review	Annual Wage Review
RNNDI	Real net national disposable income
SAWIA	South Australian Wine Industry Association
Statistical Report	*Statistical Report—Annual Wage Review 2016–17*
SWS	Supported Wage System
SWSS	Supported Wage System Schedule
Transitional Act	*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*
UK	United Kingdom
US	United States of America
VACC	Victorian Automobile Chamber of Commerce and Tasmanian Automobile Chamber of Commerce
WAD	Workplace Agreements Database
WPI	Wage Price Index
WEF	World Economic Forum
WGEA	Workplace Gender Equality Agency

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 modern award minimum wages, in each financial year. The Panel must make a NMW order and may set, vary or revoke modern award minimum wages. The NMW order applies to award/agreement free employees and modern award minimum wages are the minimum wages contained in modern awards (including classification rates, junior rates and casual loadings). As part of its decision making process, s.285(2) of the Act requires that the Panel first form a view about the NMW rate it proposes to set in the annual wage review (Review) and then take that proposal into account in exercising its powers to set, vary or revoke modern award minimum rates. The relevant statutory framework is discussed in some detail in Chapter 2.

[2] This decision deals with the *Annual Wage Review 2016–17* (2016–17 Review) and directly affects over 2.3 million employees in Australia who are award reliant.[1]

[3] The main source for information on the number of employees affected by the Panel's decision is from the ABS' Survey of Employee Earnings and Hours (EEH). The most recent survey was undertaken in May 2016.[2]

[4] From these data, the Australian Government and the Australian Council of Trade Unions (ACTU) submitted that 22.7 per cent of employees (over 2.3 million employees) had their pay set by an award in May 2016.[3] In addition, the Australian Government used data from the 2016 EEH to estimate that a further 66 100 employees on individual arrangements are paid the NMW rate.[4] Further, as noted by the Australian Government, the NMW rate features in 45 of the 122 modern awards.[5]

[5] In addition, as we have previously accepted, the impact of Review decisions extends beyond award-reliant employees and employers as increases flow-on to other employees.[6]

[6] 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. 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.

The Panel's approach

[7] 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. The Panel's task is to consider the relevant statutory criteria in the context of the prevailing economic and social environment in order to make its decision in the Review.[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] 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 2016–17* (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 on which we focus, including our own decisions.

[9] As mentioned in the *Annual Wage Review 2015–16* (2015–16 Review) decision, the Review is essentially a regulatory function the end result of which will affect the rights and responsibilities of the employees who are covered by the NMW order or a modern award and their employers.[8] 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.

[10] The Act requires that the Panel 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 17 and 18 May 2017. 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's) website to ensure that all parties have 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.

[11] The Panel's approach to its statutory function is encapsulated in the following extract from the *Annual Wage Review 2014–15* (2014–15 Review) decision:

> 'In taking into account available economic and social data, the Panel's approach is broadly to assess the changes in these data from year to year and determine how they inform the statutory criteria. Put another way, and consistent with ACCI's submission, 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.'[9]

[12] The approach set out in the above passage 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. Justice requires consistent decision making unless a difference can be articulated and applied.[10]

[13] These public policy considerations inform the way Reviews 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,[11] 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.[12]

[14] 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. To illustrate that point, in the current Review our consideration of the international research on the impact of increases in minimum wages on employment, particularly the United Kingdom (UK) research, has fortified our view that modest and regular wage increases do not result in disemployment effects. Further, that research suggests that the Panel's past assessment of what constitutes a 'modest' increase may have been overly cautious, in terms of its assessed disemployment effects. We discuss these issues in Chapter 6.

[15] In each Review decision the Panel discloses the factors which are most relevant in a particular year, and we have done so in this decision. The Panel's decision-making process should be as transparent as possible, and we identify the most significant issues which have impacted on the Panel's decision in each particular Review.[13] But, as noted in the 2015–16 Review decision, we do not quantify the weight given to particular considerations.

[16] In past Review decisions, the Panel has rejected submissions calling for specific factors to be quantified. In the *Annual Wage Review 2012–13* (2012–13 Review) decision, 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 legislative framework did not support an approach that quantifies each matter taken into account, rather, minimum wage fixation involves the exercise of 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.'[14]

[17] 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. There is no formulaic relationship between changes in particular indicators or factors over time and the outcome of particular Reviews. While the Panel seeks to explain its view of the circumstances (including forecasts or projections) prevailing in each Review 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. These considerations also informed our recent decision to decline to adopt a medium-term

target for the NMW. Before turning to that decision, it is convenient to first deal with the submissions which contended that we should take into account the *Penalty Rates decision* in determining any increase in the NMW and modern award minimum wages.

The Penalty Rates decision

[18] On 23 February 2017 the Commission issued a decision (the *Penalty Rates decision*)[15] dealing with the weekend and public holiday penalty rates and some related matters in a number of modern awards in the hospitality and retail sectors.

[19] The *Penalty Rates decision* determined that the existing Sunday penalty rates in the *Hospitality,*[16] *Fast Food,*[17] *Retail*[18] and *Pharmacy*[19] *Awards* did *not* achieve the modern awards objective, as they do not provide a fair and relevant minimum safety net.

[20] Broadly speaking, the effect of the *Penalty Rates decision* was to reduce Sunday penalty rates to 150 per cent for full-time and part-time employees and to 175 per cent for casual employees in the *Hospitality, Retail* and *Pharmacy Awards.*[20] In relation to the *Fast Food Award*, for reasons associated with the preferences of the relevant employees and the limited impact of Sunday work upon those employees (see Chapter 7.5 of the *Penalty Rates decision*), the Full Bench decided to reduce the Sunday penalty rate, for Level 1 employees from 150 per cent to 125 per cent (for full-time and part-time employees) and from 175 per cent to 150 per cent (for casual employees). No change was made to the Sunday penalty rate for Level 2 and 3 employees.[21]

[21] The *Penalty Rates decision* also reduced the public holiday penalty rates in the *Hospitality, Fast Food, Restaurant,*[22] *Retail* and *Pharmacy Awards.*[23] In essence, the existing rates for full-time and part-time employees are to be reduced from 250 per cent to 225 per cent and the public holiday rates for casuals are to be set at 250 per cent.

[22] In a subsequent decision,[24] the Full Bench determined the transitional arrangements in respect of these penalty rate reductions.

[23] A number of submissions referred to whether and how the Panel should consider the *Penalty Rates decision*.

[24] The Victorian Government submitted that the *Penalty Rates decision* should be taken into account in this Review.[25] The Federal opposition submitted that the Panel should consider the impact of the reduction in penalty rates on workers and the economy[26] as they 'will represent significant reductions in the total earnings and income of workers in these industries, and accordingly impact on fairness across our society and the performance of the Australian economy'.[27]

[25] Ai Group submitted that it would be 'inappropriate for the *quantum* of any minimum wage increase to be any higher as a result of the *Penalty Rates Decision*'[28] and any increase to the NMW to 'compensate' for the *Penalty Rates decision* 'would negate the intended beneficial effects.'[29]

[26] During final consultations, the ACTU stated that while it was not convinced that the Review could deal directly with the *Penalty Rates decision* it accepted that it was a 'general contextual matter'.[30]

[27] The South Australian Government proposed that, upon the implementation of the *Penalty Rates decision*, a special national minimum wage be set for the 'specific class of employees' affected.[31] This proposition was not supported by any other party and Ai Group submitted that '[t]he FW Act does not enable a "special national minimum wage" to be set for the class of employees proposed by the South Australian Government'.[32]

[28] The Panel invited the South Australian Government to elaborate on the statutory or legislative grounds for this proposal in advance of consultations.[33] No reply was received from the South Australian Government.

[29] The *Penalty Rates decision* will, over time, reduce the employment costs of some employers covered by the *Hospitality* and *Retail Awards* affected by the decision. It is not appropriate to take account of the decision in some quantifiable or mechanistic way to support a particular level of increase in the NMW or in modern award minimum wages. Nor are we persuaded (on the limited submissions before us) that we have jurisdiction to set a 'special NMW' of the type proposed by the South Australian Government, even if we were persuaded of the merit of doing so, which we are not.

[30] The *Penalty Rates decision* does form part of the broad factual matrix against which the Review is conducted and, to that limited extent, we have taken it into account.

[31] We now turn to deal briefly with our preliminary decision regarding the adoption of a medium-term target for the NMW before turning to the economic, social and collective bargaining considerations we must take into account.

Preliminary Decision—medium-term target

[32] In the *Annual Review 2016–17 Preliminary decision* (the *2016–17 Preliminary decision*),[34] the Panel considered a proposal advanced by the ACTU, United Voice and others that the Panel adopt a medium-term (4-year) target for the NMW, set at 60 per cent of the median (adult) ordinary time earnings. Based on stated assumptions regarding increases in the Consumer Price Index (CPI) and real median wage growth, United Voice estimated that, to reach the target for the NMW of 60 per cent of median adult ordinary time weekly earnings by 2020, the NMW would have to increase by 6.5 per cent over each of the next 4 years, providing a total increase of $194.[35] The submissions advanced in support of the proposal argued that a medium-term target was necessary to assist the Panel with its consideration of the relative living standards and needs of the low paid, by addressing inequality, particularly the minimum wage relative to median earnings.

[33] As mentioned in the *2016–17 Preliminary decision*, it was uncontroversial that in the context of a particular Review the Panel cannot 'bind' future panels in subsequent Reviews. It followed that any attempt to adopt a 'hard' or binding medium-term target for the NMW would be ineffective (even if it were accepted that the Panel had power to adopt such a target). The issue then became whether any useful and appropriate purpose would be served by adopting a more 'flexible' medium-term target of the type described by the ACTU and United Voice. For the reasons set out in the *2016–17 Preliminary decision* we thought not and accordingly, we rejected the adoption of a medium-term target for the NMW, for the following reasons:

> 'Those supporting a medium-term target for the NMW do so principally for the reason that they believe a target would increase the weight given to the requirements for the Panel to set rates that 'establish and maintain a safety net of fair, relevant and enforceable minimum wages'; and to consider the relative living standards and the needs of the low paid' as the Panel considers the full range of matters that it is required to take into account. Those who oppose a medium-term target share this view, that such a target would give greater weight to these criteria, and oppose it on those grounds (among others)…
>
> As we have mentioned, no particular primacy is attached to any of the considerations identified in the modern awards objective (s.134(1)(a)–(h)) or in the minimum wages objective (s.284(1)(a)(e)). The adoption of the proposed target would, in our view, have the effect of elevating one statutory consideration ('relative living standards and the needs of the low paid') above all others on an ongoing basis, rather than requiring consideration of that matter in the social and economic context of each review and weighting it accordingly relative to the other considerations. As we have mentioned while the relevant statutory considerations must be taken into account it is important to bear in mind that they inform the modern awards objective and the minimum wages objective, but they do not themselves constitute the relevant statutory objectives.'[36]

[34] In essence, we did not adopt the medium-term target proposal because to adopt such a target would effectively elevate one statutory consideration ('relative living standards and the needs of the low paid') above the other considerations we are required to take into account.

[35] We also acknowledged the need to periodically assess the medium and long-term consequences of successive Review decisions and recognised that these decisions have both an immediate and cumulative impact. A chart on the minimum wage bite over the last 10 years is now included in the Statistical report. Parties can make submissions on the level and trends in the minimum wage bite in each Review and the Panel can consider these submissions at that time. As outlined earlier, the Panel also tracks changes in other relevant indicators over time, including factors such as productivity, living costs and inflation, employment and financial stress. It is also appropriate that medium and longer-term trends in these factors are considered as part of each Review.

[36] In rejecting the proposition that we adopt a medium-term target we made a number of observations regarding our statutory obligation to take into account 'relative living standards and the needs of the low paid', to which we refer later. We now turn to the economic, social and collective bargaining considerations which we must take into account.

Economic considerations

[37] As is often the case, not all the signals about the strength of the economy and the labour market point in the same direction.

[38] Our conclusions are influenced by the summary of economic conditions provided by the Reserve Bank of Australia (RBA) in its May 2017 *Statement on Monetary Policy*:

> 'The Australian economy grew by 2.5 per cent over 2016, which is a bit below central estimates of potential growth. GDP growth rebounded to 1.1 per cent in the December quarter, confirming that the weak outcome in the September quarter largely reflected

> temporary factors. Recent data are consistent with moderate growth in early 2017. Employment growth was fairly subdued over 2016, but picked up to be around average in early 2017. Looking ahead, economic growth is expected to pick up gradually to be a bit above potential growth, supported by the low level of interest rates and the ongoing recovery in the global economy'.[37]

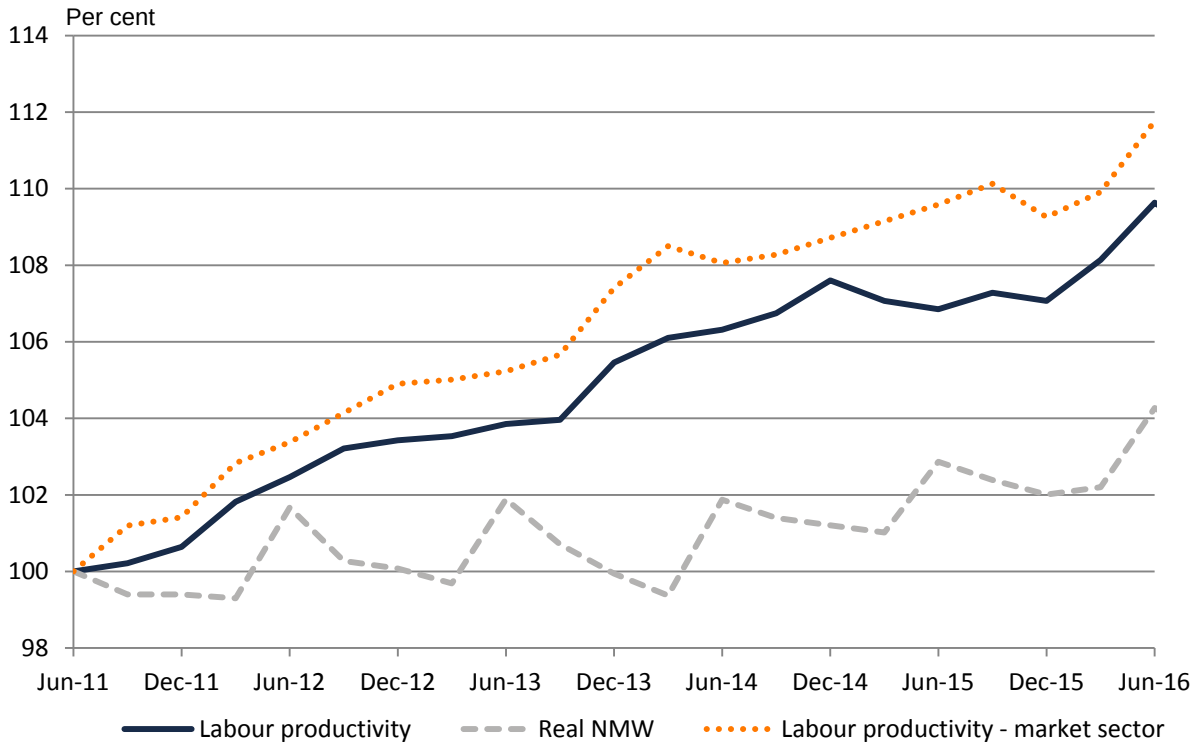
[39] Gross domestic product (GDP) growth in Australia outperformed the average of the major 7 OECD countries across 4 of the 5 quarters to the December quarter 2016. Real net national disposable income (RNNDI) has grown more quickly than GDP over the past year, as the terms of trade have improved. Economic conditions have varied across states, with stronger growth in New South Wales and Victoria and weakest growth in Western Australia. As usual, the different parts of the economy have had diverse outcomes. Agriculture, forestry and fishing has done particularly well while there has been a decline in Construction.

[40] Business conditions generally look quite healthy. Profitability grew by a very strong 26 per cent for all industries and by a still strong 10 per cent for non-mining industries over the past year. As a result, the profit share of factor income rose. The most recent data (for 2015–16) show that the growth in profit margins was greater for small businesses than for all businesses. Consistent with these profit outcomes, bankruptcy rates remain quite low and the entry of new businesses exceeded the exits by a margin that exceeds that of 2015. The most reliable business surveys show that businesses see their conditions as the most positive since the global financial crisis (GFC). Growth in output was below the all industry average for 3 of the 4 most award-reliant industries and profits grew in only two of them.

[41] Labour productivity in the market sector grew more strongly across 2016 than it had in the previous 2 years. After some years of decline, multifactor productivity (MFP) continued its more recent modest growth. It grew more strongly over the year to the June quarter 2016 than it had in all but one of the past 10 years. The 2.3 per cent per annum growth in labour productivity in the period 2007–08 to 2014–15 exceeds or is virtually the same as growth in all periods from 1973–74, except 1993–94 to 1998–99.

[42] Labour productivity (GDP per hour worked) has grown by 14.1 per cent over the decade to 2016 and by 9.6 per cent over the period from the June quarter 2011 to the June quarter 2016. Over the last 5 years, the real value of the NMW and modern award rates has grown by less than half the rate of growth of labour productivity, at 4.3 per cent. This is displayed in Chart 1.1.

Chart 1.1: Changes in labour productivity and the real NMW, June quarter 2011 to June quarter 2016, index (Jun-11 = 100)



Source: Based on Fair Work Commission, *Statistical report—Annual Wage Review 2016–17*, 1 June 2017, Charts 2.1; 9.1; ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2016*, Catalogue No. 5206.0; ABS, *Consumer Price Index, Australia, Mar 2017*, Catalogue No. 6401.0; *Manufacturing and Associated Industries and Occupations Award 2010* (Manufacturing Award).

[43] We acknowledge that there is considerable variation in labour productivity growth at the industry level, reflecting the specific conditions in each industry, as well as a range of data measurement issues. But, as shown in Chart 4.26, over the past 2 business cycles the average annual growth rates in labour productivity (and multifactor productivity) in the Retail trade sector exceeded the average annual growth rates for the market sector generally. This is significant because the Retail trade sector accounts for more award-reliant employees than any other sector.[38]

[44] The RBA has noted that the growth in nominal unit labour costs has been lower than our major trading partners and concludes that:

> 'These differences in the growth rates of Australia's unit labour costs versus those of its trading partners have led to a more marked improvement in Australia's labour market competitiveness than in the competitiveness of the prices of its goods and services. Australia's real effective exchange rate based on unit labour costs has depreciated by around 25 per cent since March 2013.'[39]

[45] Real and nominal unit labour costs have remained reasonably steady over the 4 years to mid-2016. The most recent sharp downturn is largely attributable to the rise in the terms of trade during the year. This is not expected to persist.

[46] The unemployment rate has remained steady for several years. There has been some rise in underemployment, but when the extra hours that the underemployed wish to work is taken into account, underemployment has risen only a little. On this basis, movements in underemployment are continuing to track the unemployment rate. A large majority of part-time workers were not seeking extra hours of work. While about 25 per cent said that they would like to work extra hours, only half of these had taken active steps to find more work.

[47] When the impact of the ageing of the population is taken into account, there has been no fall in either the participation rate or the employment to population ratio. These are signs of strength in the labour market. We note, however, that the full-time employment of men of working age continues its long-term decline.

[48] Inflation and wages have continued to grow at historically low rates. Consumer inflation has mostly been below 2.0 per cent, though the CPI rose by 2.1 per cent over the year to the March quarter 2017. The prices faced by producers were boosted by the rise in the terms of trade during 2016. Wages growth was highest for agreements and lowest (at 1.9 per cent) for the WPI. Growth in the NMW and modern award rates, at 2.4 per cent, exceeded inflation and growth in both the Wage Price Index (WPI) and average weekly ordinary time earnings (AWOTE).

[49] Employment continued to grow in 2016, but hours worked was flat. The main reasons for the small growth in hours worked were a relatively high growth in part-time employment (rather than full-time) and a decline in the average number of hours worked by full-time workers.

[50] Both the Commonwealth Treasury (Treasury) and the RBA expect growth to pick up in 2017–18, to around its potential growth rate. They expect that as a result, employment will grow at 'around its long-run average'[40] with little change in unemployment.

Social considerations

[51] 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, in the context of the relevant evidence in a particular Review. They are different, but related, concepts.[41]

[52] The assessment of relative living standards requires a comparison of the living standards of workers reliant on the NMW and modern award minimum rates with those of other groups that are deemed to be relevant and focuses on the comparison between award-reliant workers and other employed workers, especially non-managerial workers.[42]

[53] As to the assessment of the needs of the low paid, this 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. In successive Review decisions the Panel has concluded that a threshold of two-thirds of median full-time wages provides 'a suitable and operational benchmark for identifying who is low paid', within the meaning of s.134(1)(a).[43]

[54] Employees who are award reliant and/or receive low pay comprise substantial parts of the employee workforce. Approximately 23 per cent of employees are paid the equivalent of the NMW or a modern award minimum rate. Estimates of the share of employees who are low paid are less exact. The Australian Government provided the most detailed estimate of the numbers of the low paid and concluded that they comprised 12.4 per cent of all employees and 29.3 per cent of award-reliant employees.[44] On ACTU data, 42 per cent of the award reliant were paid at or below the C10 rate.[45]

[55] While 86 per cent of award-reliant employees are adults, they are disproportionately young, female, single, have no children, work part time, work as casuals and work for small businesses. The proportion working for large businesses has risen recently.

[56] In considering the relative living standards of the low paid the most appropriate comparator group is employees, especially non-managerial employees. The living standards of people who are not in the labour force, including the retired, is of some interest but carries only a small weight in our assessment of the relative living standards of the low paid.

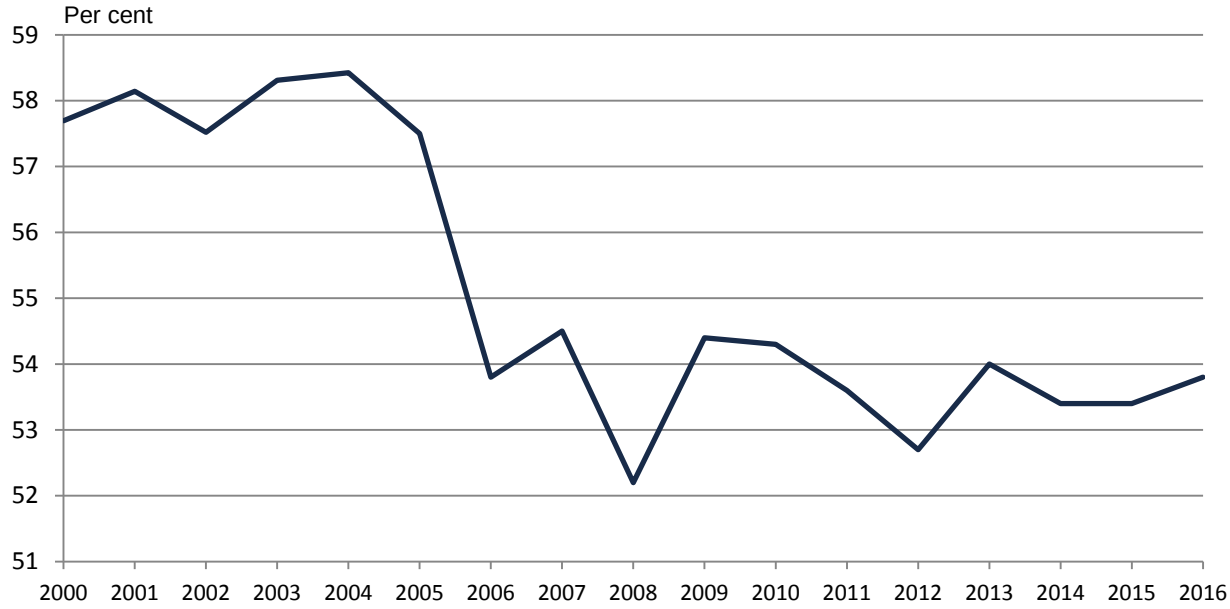
[57] The relative standard of living of the low paid is affected by their wage, but also by other contributors to the equivalent disposable income of the households in which they reside. Taking these factors into account, it is appropriate to focus on the location of the low paid in the distribution of the disposable income of employee households. We prefer this distribution to the distribution that includes all households. The evidence before us shows that 28 per cent of low-paid employees are in the bottom 2 deciles of all employee households and 62 per cent are in the bottom half of that distribution. Low-paid men were more concentrated in the 2 bottom income deciles than were women, as were low-paid part-time workers. Around 70 per cent of award-reliant workers are located in the bottom half of the employee household income distribution. We think that it is clear that workers who receive the NMW or a modern award rate of pay are disproportionately located in the lower deciles of the relevant (i.e., employee) distribution of household disposable income.

[58] The NMW increased in real terms by 3.5 per cent over the decade and by 0.9 per cent over the year to the December quarter 2016. Although subject to year-to-year variation, the change in the real NMW has been positive in most years over the decade. Since 2009, the growth in the C14 and C10 rates has matched quite closely the growth in the WPI, and been only a little below growth in average weekly earnings (AWE) and average weekly ordinary time earnings (AWOTE).

[59] Measured as a proportion of median full-time adult earnings, the wage bite of the NMW/C14 award rate fell from a high of 58.4 per cent in mid-2004 to 53.8 per cent in mid-2016: most of the fall occurred from 2005–08. This compares with the Organisation for Economic Co-operation and Development (OECD) average of 52.0 (in 2015). Australia had a lower growth rate in minimum wages from 2003 to 2014 than did New Zealand, France, UK, United States of America (US), and Canada.

[60] As we acknowledged in the *2016–17 Preliminary Decision*, the minimum wage bite is an important indicator of relative living standards and wage inequality[46] and Chart 1.2 shows the decline in the minimum wage bite over the 16 years to 2016, although it has stabilised in recent years.

Chart 1.2: C14 rate relative to median weekly earnings of full-time employees in main job, 2000 to 2016

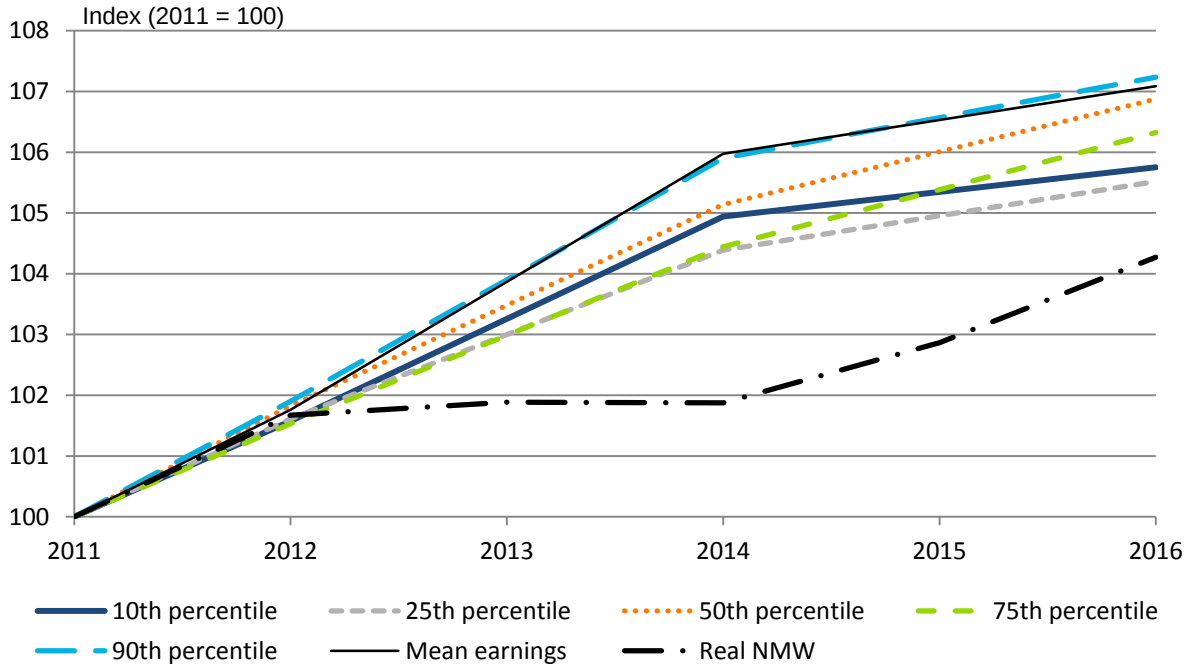


Note: Median earnings are measured in August of each year. Following the amendments to the *Workplace Relations Act 1996* (Cth) taking effect in 2006, the Federal Minimum Wage (FMW) was set at $12.75 per hour, equivalent to $484.50 per week.

Source: Statistical report, Chart 8.4; ABS, *Characteristics of Employment, Australia, various*, Catalogue No. 6333.0; ABS, *Employee Earnings, Benefits and Trade Union Membership, Australia, various*, Catalogue No. 6310.0; *Metal, Engineering and Associated Industries Award 1998*; Manufacturing Award (from 1 January 2010).

[61] There has been a substantial rise in inequality in the earnings distribution, much of which occurred in the earlier part of the decade to 2016 and indeed in the decade prior to that. There has not been a clear growth in inequality of earnings over the past 5 years. The real value of the NMW has taken a different path, first rising then remaining unchanged until 2014 when it rose again. Over the period, it rose by 4.3 per cent, a little behind the growth in the 10th and 25th percentiles of the earnings distribution of 5.8 per cent and 5.5 per cent, respectively (Chart 1.3).

Chart 1.3: Real weekly total earnings (full-time adult non-managerial employees) by percentile and the real NMW, 2011 to 2016—index (2011 = 100)



Note: The EEH Survey was not conducted in 2011, 2013, and 2015. Results for these years have been obtained through linear interpolation. Earnings data for 2014 and 2016 are based on full-time non-managerial employees paid at the adult rate.

Source: Statistical report, Chart 8.3; ABS, *Consumer Price Index, Australia, Mar 2017*, Catalogue No. 6401.0; ABS, *Employee Earnings and Hours, Australia, various*, Catalogue No. 6306.0; Manufacturing Award.

[62] The fact that there has been some growth, albeit modest, in the real value of the NMW and modern award rates means that those who remain dependent on the wage safety net have had their real earnings increased, even while their relative position has declined. In evaluating these changes, we consider both minimum rates and low earnings, being aware as we do so that the influence of changes to the NMW and modern award rates will be apparent in changes in the absolute and relative earnings of those at the bottom of the earnings distribution.

[63] Inequality in household disposable income did not rise as fast as that for earnings (moderated by the tax-transfer system and the composition and levels of employment of households). Although the latest data are for 2014, at that time there was no evidence of recent rises in inequality of household disposable income among at least the bottom half of the income distribution for all households. Nonetheless, on the Gini coefficient measure, Australian levels of inequality of household disposable income remain relatively high by OECD standards.

[64] Most hypothetical family types that have a NMW job have disposable incomes above the 60 per cent of median household disposable income relative poverty line, with the greatest margin being for a single parent with one child. All have had some small increase in their income over the period from 2011 to 2016, and over the year to December 2016, relative to the 60 per cent of median measure of poverty. The family types that have an income that is below the 60 per cent poverty line are those that have an adult who is not in the labour force (i.e., does not receive a wage or the Newstart Allowance). This applies whether or not there are children in the household. In another perspective on needs, in 2015, the proportion of

low-paid employee households who reported financial stress was down across most measures compared with 2011 and little changed between 2014 and 2015. The evidence on financial stress is consistent with the evidence on inequality and poverty. Levels have risen over the longer period and remain elevated. But none has become worse in recent years.

[65] The Australian Government continued to put the case that the 'tax-transfer system plays a large role in equalising the distribution of income among Australian households'[47] and is more efficient in doing so than increases to the NMW and modern award rates. For the reasons given in Chapter 6 we do not accept that the tax-transfer system relieves us from the statutory obligation to consider relative living standards and the needs of the low paid when setting the NMW and modern award wages. Furthermore, the changes to the tax-transfer system in the past 2 budgets have reduced the financial assistance that is provided for low-income families with children. A majority of low-wage workers are single without children and the many who work full time are not assisted by the social welfare system; indeed, they have their disposable incomes reduced by income tax.

[66] The high and continuing levels of child poverty indicate that the combination of wages and social welfare assistance, are not sufficient to ensure that the needs of all low-wage families are met. We view this as a serious matter for society. This conclusion is supported by the evidence that about one-third of people in poverty lived in households for which wages were the main source of income and that about half of these families had children.

[67] The level of the NMW and modern award rates of pay have a significant role to play in seeking to reduce the financial stresses on families. But this role does not extend to a requirement to set the NMW at a level that ensures that a single-earner couple family with children on the NMW has an equivalent disposable income that exceeds the 60 per cent poverty line.

[68] Like many developed countries, Australia has come through an extended period of rising inequality. Rising inequality in the distribution of earnings has not translated fully into rising inequality in the distribution of household disposable income, partly because of the changing nature and work effort of households and partly because of the equalising effects of the tax-transfer system. The rise in inequality has been tempered in recent years. But it has left Australia with a legacy of relatively high inequality in earnings and in household disposable income, and disturbing levels of poverty especially among families with children. The NMW and modern award rates of pay affect the level of earnings of the low paid and of many employee households with relatively low disposable income. Higher levels of safety net pay rates will assist low-paid individuals and families to better meet their needs, and improve their relative standard of living. As a consequence, increasing the NMW and modern award minimum wage will also have some effect in reducing poverty and inequality.

[69] The Act requires the Panel to take into account 'promoting social inclusion through increased workforce participation' (s.284(1)(b)). Consistent with past Review decisions, we interpret this to mean increased employment. 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. 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. 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.

[70] We conclude from our review of the international literature that the findings of research on the impact of increases in minimum wages on employment have different degrees of relevance for our task, depending on the broad comparability of the countries in question. Specifically, we judge the UK evidence to be quite relevant, both for its comparability and its quality. Although the US is less applicable, we note that its findings generally align with those of the UK. As a result of this international research, particularly in the UK, we have greater confidence in our view that modest and regular wage increases do not result in disemployment effects. Further, this research suggests that the Panel's past assessment of what constitutes a 'modest' increase may have been overly cautious, in terms of its assessed disemployment effects. We are also of the view that minimum and award wage increases would likely lead to some positive, but probably small, effect on consumer demand and this needs to be taken into account.

[71] Some employer groups submitted that increases to minimum and award wages have been excessive having regard to the prevailing economic conditions, and that this level of increase should not be repeated in the current Review. However, the material before us does not cause us to change the view previously expressed that modest increases to the NMW and award wages do not have a discernible impact on employment levels in the prevailing circumstances.

[72] The data on workforce participation and the employment to population ratio do not support the proposition that, among persons within the main working age group (20–64 years), there is an increasing cohort of discouraged job seekers who have left the labour market.

[73] The Panel is of the view that the NMW is at a level that does not discourage people from seeking employment. Because of the operation of the tax-transfer system, the group with the smallest incentive to work is partners in couple families who wish to work part time.

[74] It is not clear what relationship there is, if any, between the level of underemployment and the recent history of increases in the NMW and award wages. There has been no real variation in underemployment rates for the past 2 years. The trend is likely to be driven largely by the decline in the proportion of full-time jobs and the increase in the proportion of part-time jobs over the last 30 years as a result of structural changes in the Australian economy. The unemployment rate remains the best indicator of spare capacity in the labour market, although the underemployment rate should continue to be monitored.

[75] Noting that low-paid work can be a stepping stone to higher-paid work, the Panel endorses the statement made in the 2014–15 Review decision that '[w]e cannot be indifferent to the standard of living of low-paid workers just because many do not stay in that situation for long periods'.[48]

[76] The research on factors affecting apprenticeships and traineeships concluded that the withdrawal of government subsidies (notably for existing workers and part-time workers in some occupations) clearly contributed to the decline in commencement rates, and that while the 2013 Modern Awards Review decision (*Apprentices decision*)[49] to increase apprentice wages 'may have played a role, it seems that any effect appears minor' given the prevalence of over-award payments to apprentices and the lack of uniformity in commencement trends across individual trades.[50]

[77] 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)). The gender pay gap becomes a relevant consideration in our task because, as was stated in the *Penalty Rates decision*, it is an element of the requirement to establish a safety net that is fair as well as relevant.[51] It may also arise for consideration in respect of s.284(1)(b) ('promoting social inclusion through workforce participation'), because it may have effects on female participation in the workforce. We deal with these issues in Chapter 8. For the reasons given in Chapter 8, the grant of a uniform percentage adjustment to the NMW and modern award wage rates would be the approach most consistent with the equal remuneration principle.

[78] In relation to the gender pay gap, women are disproportionately represented among the low paid and hence an increase in minimum wages is likely to promote gender pay equity, though we accept that moderate increases in minimum wages under awards would be likely to have a relatively small effect on the gender pay gap. Increases in minimum wages, particularly percentage adjustments that might exceed increases evident through bargaining, are more likely to have a beneficial impact that is broader than would be the case if flat rate increases were applied to lower classification levels. This is so because of the dispersion of women within award classification structures and the greater propensity for women to be paid award rates at all levels. The other mechanisms available under the Act, such as bargaining and equal remuneration provisions, also provide a further, more direct means of addressing this issue.

[79] The principle of equal remuneration and the gender pay gap consideration are factors in favour of an increase in minimum wages and as such we have considered this together with the various other statutory considerations the Panel is required to take into account.

Collective Bargaining

[80] The modern awards objective applies to the setting, varying or revoking of modern award minimum wages in a Review. 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.

[81] In general terms, there has been a slight trend away from collective bargaining and an increase in award reliance in recent times. Research Report 4/2017—*Explaining recent trends in collective bargaining* examined factors that have influenced recent changes in collective agreement coverage. It is clear from that report—the findings of which were not challenged by any party—that there are issues of statistical classification[52] as well as economic, structural and societal changes that have contributed to the overall trend towards an increase in award reliance and that the level of minimum wages has not had a significant effect.

[82] As the Panel observed in the 2013–14 Review decision,[53] 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.

[83] 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 award-reliant 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.[54]

[84] Further, while Review decisions determine the floor of such a gap, bargaining outcomes determine the extent of the gap

[85] 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. 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. However, we are not satisfied that the increase we have determined in this Review will *encourage* collective bargaining and this is a factor we have taken into account, and balanced against the other matters we are required to consider, in determining the outcome of this Review.

[86] In reaching this conclusion, we accept that minimum wage increases may influence bargained outcomes, depending upon the circumstances in each industry sector, including the degree to which the existing bargained or over-award rates exceed the minimum award rates.

The Decision

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

[88] 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.

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

- RNNDI increased by 6.8 per cent over the year to the December 2016, after it fell in the previous year.
- All measures of inflation have increased since the March quarter 2016, but are currently at the lower end of the RBA's medium-term target range (CPI increased by 2.1 per cent over the year to the March quarter 2017).[55]

- Over the 5 years to the December quarter 2016, labour productivity growth in the market sector was higher than the previous 5-year period and rose sharply in 2016.
- On an annual basis, profit growth was particularly strong in 2016 compared with the preceding years and above the 5-year and 10-year averages for both total industries and non-mining industries.
- The principal business conditions surveys show that the assessment of business conditions is positive and above long-term average levels.

[90] The economy has continued to grow, slightly below trend, with real GDP increasing by 2.4 per cent over the year to the December quarter 2016. The unemployment rate has been relatively stable, increasing slightly from 5.7 per cent in April 2016 to 5.8 per cent in April 2017. Wages growth remained subdued, growth in the WPI was lower in 2016 than in 2015, growth in AWOTE rose. The subdued inflation means that there is little risk to the macroeconomic inflationary environment from our decision.

[91] 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. Over the last 5 years, the real value of the NMW and modern award rates has grown at 4.3 per cent which is less than half the rate of growth of labour productivity.

[92] Our consideration of the international research on the impact of increases in minimum wages on employment, particularly the UK research, has fortified our view that modest and regular wage increases do not result in disemployment effects and that research suggests that the Panel's past assessment of what constitutes a 'modest' increase may have been overly cautious, in terms of its assessed disemployment effects.

[93] 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 an improvement in the real wages for those employees who are reliant on the NMW and modern award minimum wages and an improvement in their relative living standards.

[94] 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. No exceptional circumstances have been demonstrated such as to warrant a deferral of the increases we have awarded.

[95] We have determined that it is appropriate to increase the NMW. The factors identified above have led us to award an increase of 3.3 per cent. The NMW will be $694.90 per week or $18.29 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 $22.20 per week to the weekly rate or 59 cents per hour to the hourly rate.

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

[97] Some parties proposed a higher adjustment to the NMW than the adjustment they proposed to modern minimum rates (or to award rates above a certain classification level),

with the apparent intention of providing a more substantial increase to the lowest paid and particularly those living in poverty.

[98] In previous Reviews, the Panel has accepted that if the low paid are forced to live in poverty then their needs are not being met and that those in full-time employment can reasonably expect a standard of living that exceeds poverty levels.[56] While we have not departed from that position, we acknowledge that the increase we propose to award will not lift all award-reliant employees out of poverty (measured by household disposable income below a 60 per cent median income poverty line), particularly those households with dependent children and a single-wage earner. However, to grant an increase to the NMW and award minimum rates of the size necessary to immediately lift all full-time workers out of poverty, or an increase of the size proposed by some parties, is likely to have adverse employment effects on those groups who are already marginalised in the labour market with a corresponding impact on the vulnerability of households to poverty due to loss of employment or hours.

[99] 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. In doing so, classification structures designed to properly remunerate work according to its value, and to ensure that equal minimum rates are provided for work of equal or comparable value both within and across awards, have been distorted to a degree. A fundamental feature of the minimum wage objective is the requirement to establish and maintain 'a safety net of fair minimum wages', and a necessary element of this is that the level of those wages bears a proper relationship to the value of the worked performed.[57] Flat dollar increases may have had the effect of undermining the achievement of the objective in this respect. The position of the higher award classifications (applying to work of higher value) 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 than 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 3.3 per cent.

[100] The determinations and order giving effect to our decision will come into operation on 1 July 2017. Weekly wages will be rounded to the nearest 10 cents.

2. The Statutory Framework

General

[101] In conducting and completing a Review each financial year, the Panel must review the NMW and modern award minimum wages and make a NMW order[58] as 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.'

[102] The Act requires the Panel to take into account a number of considerations in performing its functions.[59] The relevant statutory considerations are set out in the object of the Act,[60] the modern awards objective[61] and the minimum wages objective.[62] The Panel must conduct the Review within the legislative framework of the Act.

[103] As part of the Review, 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.

National minimum wage order

[104] The NMW order applies to award/agreement free employees[63] and is dealt with in Division 4 of Part 2-6 of the Act.[64] The NMW order sets both the NMW[65] and special NMWs which apply to employees who are juniors; to whom training arrangements apply; or who have a disability.[66]

[105] 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.[67]

[106] The minimum wages objective and the object of the Act apply to the review and making of a NMW order.[68] But the modern awards objective is *not* relevant to the review and making of a NMW order,[69] as the making of such an order does not involve the performance or exercise of modern award powers.

Modern award minimum wages

[107] 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.[70]

[108] 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 they both form part of the 'safety net' (see s.3(b)) and s.285(3) 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'. It follows from s.285(3) that as part of the decision-making process in a Review the Panel must first form a view about the rate of the NMW it proposes to set (taking into account the statutory considerations relevant to that discrete task) and then take that 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.

[109] As the Panel observed in the 2014–15 Review decision,[71] 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. So much is clear from s.285(2) which suggests that the 2 tasks take place in the context of a single Review; s.285(3) which refers to the NMW rate the Panel *proposes* to set in the Review (as opposed to the NMW rate *as currently set* in a NMW order);[72] and the statutory direction that both the NMW order[73] and Review variation determinations come into operation on 1 July in the next financial year (absent exceptional circumstances[74]).

[110] We now turn to the principal statutory objectives to which we must have regard.

[111] The minimum wages objective applies to the exercise of functions and powers under Part 2-6 of the Act (which includes the Review)[75] and 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***.'

[112] The modern awards objective applies to the performance or exercise of 'modern award powers',[76] (which are defined to include the variation of modern award minimum wages),[77] and 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***.'

[113] Further, s.578(a) provides that the Panel must take into account the objects of the Act in performing its functions or exercising its powers in a Review.

[114] Sections 134, 284 and 578 of the Act each direct the Panel to 'take into account' certain specified considerations in conducting and completing a Review. In *Peko-Wallsend*,[78] the matters the decision maker must 'take into account' are those matters the decision maker is bound to consider and treat as matters of significance in the decision-making process.[79]

[115] 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.[80]

[116] 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.[81] 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.

[117] Both the minimum wages objective and the modern awards objective require the Panel to take into account:

- promoting social inclusion through increased workforce participation;[82]

- relative living standards and the needs of the low paid;[83]
- the principle of equal remuneration for work of equal or comparable value;[84] and
- various economic considerations.[85]

[118] However, the modern awards objective also requires the Panel to take into account 'the need to encourage collective bargaining'[86] whereas the minimum wages objective makes no express reference to any such consideration. As we have mentioned it is the minimum wages objective, *not* the modern awards objective, which is relevant to setting the NMW rate. But as the Panel observed in the 2014–15 Review decision,[87] 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 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 the Panel takes that legislative purpose into account in setting the NMW rate.

[119] The review and variation of modern award minimum wages and making a NMW order are separate, though related, functions. However, for the reasons given, there is little practical difference between the range of considerations the Panel is obliged to take into account in performing these 2 functions. We return later to the relationship between the NMW and modern award minimum wages when we deal with the Australian Catholic Council for Employment Relations' (ACCER's) submission.

[120] The general matters the Panel must take into account in performing its functions can be conveniently grouped into three broad categories:

- economic;[88]
- social;[89] and
- collective bargaining.[90]

[121] We have considered these matters in making our decision and specifically address them in Chapters 4–8 of this decision. Chapter 3 discusses the positions of the parties to this Review.

[122] We now turn to deal with aspects of the proper construction of the modern awards objective and the minimum wages objective.

[123] The proper construction of the expression 'a fair and relevant minimum safety net of terms and conditions'[91] in the modern awards objective was the subject of some consideration in the *4 yearly review of modern awards – Penalty Rates – hospitality and retail industries decision* (the *Penalty Rates decision*).[92] Three points emerge from the consideration of that expression in the *Penalty Rates decision*.

[124] First, 'fairness' in the context of the modern awards objective is to be assessed from the perspective of the employees *and* employers covered by the modern award in question.[93]

[125] Second, the word 'relevant' is intended to convey that a modern award should be suited to contemporary circumstances. As stated in the Explanatory Memorandum to what is now s.138:

> '… the scope and effect of permitted and mandatory terms of a modern award must be directed at achieving the modern awards objective of a fair and relevant safety net *that accords with community standards and expectations*.' (emphasis added)[94]

[126] Finally, as to the expression 'minimum *safety net* of terms and conditions', the Penalty Rates Full Bench rejected a proposition advanced in the joint employer reply submission that the reference to a 'minimum safety net' in s.134(1) means the 'least … possible' to create a 'minimum floor', noting that:

> '… the argument advanced pays scant regard to the fact the modern awards objective is a composite expression which requires that modern awards, together with the NES, provide 'a fair and relevant minimum safety net of terms and conditions'. The joint employer reply submission gives insufficient weight to the statutory directive that the minimum safety net be 'fair and relevant'. Further, in giving effect to the modern awards objective the Commission is required to take into account the s.134 considerations, one of which is 'relative living standards and the needs of the low paid' (s.134(1)(a)). The matters identified tell against the proposition advanced in the joint employer reply submission.'[95]

[127] We agree with the above observations and adopt them in our consideration of the modern awards objective. We are also of the view that the observations as to the meaning of 'fair' and 'safety net' in the modern awards objective apply with equal force to the meaning of those words in the minimum wages objective.

[128] In giving effect to these statutory objectives the Panel must take into account the particular considerations identified in ss.134(1)(a) to (h) (the s.134 considerations) and 284(1)(a) to (e) (the s.284 considerations). While the statutory considerations referred to must be taken into account it is important to bear in mind that these considerations inform the modern awards objective and the minimum wages objective, but they do not themselves constitute the relevant statutory objectives. The modern awards objective is to 'ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions.'[96] The minimum wages objective is to 'establish and maintain a safety net of fair minimum wages.'[97] These objectives are very broadly expressed and the notion of fairness is at the heart of both statutory objectives. As we have mentioned, fairness in this context is to be assessed from the perspective of the employees and employers covered by the NMW or the modern award in question.[98]

[129] 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.[99] 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,[100] and, more recently, to reject the adoption of a medium-term target for the NMW.[101]

[130] Further, as ABI observes in its submission in these proceedings:

> 'Distilling the range of factors that must be considered by the Panel into a simple and clear strategy for approaching AWR decisions is not an easy exercise. The Act requires the Panel to weigh up the trade-offs presented by the inherent tensions in the statutory factors that it must take into account.'[102]

[131] The submissions made in this Review have raised five discrete issues which relate to the statutory framework, in particular:

(i) the setting of the NMW—'beneficial' legislation;
(ii) the modern awards objective— 'a fair *and relevant* minimum safety net';
(iii) the setting of the NMW and modern award relativities;
(iv) whether the Panel made an 'error of law' in the 2015–16 Review decision; and
(v) proposals that the Panel should consider award, industry or regional variations.

(i) Beneficial legislation

[132] ACCER submits that the provisions of the Act which deal with the setting of the NMW should be 'treated as beneficial legislation and should not be construed or applied narrowly'.[103]

[133] The statutory provisions relating to the Review and to NMW orders are set out in Divisions 3 (ss.284–292) and 4 (ss.293–299) of Part 2-6 of the Act. The purpose of Chapter 2 is to prescribe minimum terms and conditions of employment for national system employees (including those terms and conditions arising from a NMW order).[104]

[134] A remedial or beneficial provision is one that gives some benefit to a person and thereby remedies some injustice.[105] We accept that it is appropriate to characterise the statutory provisions relating to the variation of the NMW as remedial or beneficial provisions. They are intended to benefit national system employees. Further, as the Panel observed in its Preliminary Decision dealing with the proposed adoption of a medium-term target for the NMW:

> 'The effect of a fair and relevant safety net is to raise wages received by the low paid above those that they would receive in the absence of enforceable minimum wages.'[106]

[135] A NMW order operates in the same way. An award/agreement free employee cannot be paid less than the rate specified in the NMW order and hence, in practice, the effect of such an order is to raise the wages received by the lowest paid award/agreement free employees above what they would receive in the absence of such an order. Contrary to the submissions advanced by Ai Group, it is appropriate to regard such a legislative scheme as remedial or beneficial. It is intended to create a regulatory instrument which intervenes in the market setting minimum wages, to lift the floor of such wages.

[136] The proper approach to the construction of remedial or beneficial provisions was considered by the Full Bench in *Bowker and others v DP World Melbourne Limited T/A DP*

World, Maritime Union of Australia and others[107] (‘*Bowker*’). In *Bowker* the Full Bench said:[108]

> ‘The characterisation of these provisions as remedial or beneficial has implications for the approach to be taken to their interpretation. As the majority (per Gibbs CJ, Mason, Wilson and Dawson JJ) observed in *Waugh v Kippen*:
>
> > “...the court must proceed with its primary task of extracting the intention of the legislature from the fair meaning of words by which it has expressed that intention, remembering that it is a remedial measure passed for the protection of the worker. It should not be construed so strictly as to deprive the worker of the protection which Parliament intended he should have.”
>
> Any ambiguity is to be construed beneficially to give the fullest relief that a fair meaning of its language will allow, provided that the interpretation adopted is ‘restrained within the confines of the actual language employed that is fairly open on the words used.’ As their Honours Brennan CJ and McHugh J put it in *IW v City of Perth*:
>
> > “...beneficial and remedial legislation, like the [Equal Opportunity] Act, is to be given a liberal construction. It is to be given ‘a fair, large and liberal’ interpretation rather than one which is ‘literal or technical’. Nevertheless, the task remains one of statutory construction. Although a provision of the Act must be given a liberal and beneficial construction, a court or tribunal is not at liberty to give it a construction that is unreasonable or unnatural.”
>
> If the words to be construed admit only one outcome then that is the meaning to be attributed to the words. However if more than one interpretation is available or there is uncertainty as to the meaning of the words, such that the construction of the legislation presents a choice, then a beneficial interpretation may be adopted.’ (footnotes omitted)

[137] We adopt the above remarks and apply them to the matter before us.

[138] Section 15AA of the *Acts Interpretation Act 1901* is also relevant. It requires that a construction that would promote the purpose or object of the Act is to be preferred to one that would not promote that purpose or object (noting that s.40A of the Act provides that the *Acts Interpretation Act 1901*, as in force at 25 June 2009, applies to the Act). The purpose or object of the Act is to be taken into account even if the meaning of a provision is clear. When the purpose or object is brought into account an alternative interpretation may become apparent. If one interpretation does not promote the object or purpose of the Act, and another does, the latter interpretation is to be preferred. Of course, s.15AA requires us to construe the Act, not to rewrite it, in the light of its purpose.[109]

[139] Despite its beneficial purpose a statutory provision may be constrained in its operation if it represents a compromise between competing intentions.[110] As Gleeson CJ observed in *Carr v Western Australia:*

> ‘Another general consideration relevant to statutory construction is one to which I referred in *Nicholls v The Queen*. It was also discussed, in relation to a similar legislative scheme, in *Kelly v The Queen*. It concerns the matter of purposive construction. In the interpretation of a provision of an Act, a construction that would

> promote the purpose or object underlying the Act is to be preferred to a construction that would not promote that purpose or object. As to federal legislation, that approach is required by s 15AA of the *Acts Interpretation Act* 1901 (Cth) ("the Acts Interpretation Act"). It is also required by corresponding State legislation, including, so far as presently relevant, s 18 of the *Interpretation Act* 1984 (WA). That general rule of interpretation, however, may be of little assistance where a statutory provision strikes a balance between competing interests, and the problem of interpretation is that there is uncertainty as to how far the provision goes in seeking to achieve the underlying purpose or object of the Act. Legislation rarely pursues a single purpose at all costs. Where the problem is one of doubt about the extent to which the legislation pursues a purpose, stating the purpose is unlikely to solve the problem. For a court to construe the legislation as though it pursued the purpose to the fullest possible extent may be contrary to the manifest intention of the legislation and a purported exercise of judicial power for a legislative purpose.'[111] [Footnotes omitted]

[140] Similar observations are made in *Victims Compensation Fund v Brown*[112] and in *Baytech Trades Pty Ltd v Coinvest Ltd.*[113]

[141] It seems to us that the statutory provisions relevant to the fixation of the NMW plainly seek to strike a balance between competing interests. So much is clear from the range of considerations the Panel is required to take into account in giving effect to the minimum wages objective (for example compare s.284(1)(a) and (c)). It is also clear from the minimum wages objective itself—to "establish and maintain a safety net of *fair* minimum wages". Fairness in this context is to be assessed from the perspective of the employees and employers covered by the NMW order. The object of the Act also speaks to multiple legislative purposes. Section 3 provides that the object of the Act 'is to provide *a balanced framework* for cooperative and productive workplace relations that promotes national prosperity and social inclusion for all Australians' (emphasis added), by the means specified in sections 3(a) to (g).

[142] It follows that while the statutory provisions relating to the Review and to NMW orders are properly characterised as remedial or beneficial provisions, the extent to which they are to be given 'a fair, large and liberal' interpretation in pursuit of that broad purpose is constrained by the fact that the relevant provisions seek to strike a balance between competing interests.

(ii) The modern awards objective – 'a fair and *relevant* minimum safety net'.

[143] The ACTU drew attention to the observations in the *Penalty Rates decision* about the meaning of the word 'relevant' in the modern awards objective. The relevant passage is at [120] of the *Penalty Rates decision*:

> 'Second, the word "relevant" is defined in the Macquarie Dictionary (6th Edition) to mean "bearing upon or connected with the matter in hand; to the purpose; pertinent". In the context of s.134(1) we think the word "relevant" is intended to convey that a modern award should be suited to contemporary circumstances. As stated in the Explanatory Memorandum to what is now s.138:
>
> > '… the scope and effect of permitted and mandatory terms of a modern award must be directed at achieving the modern awards objective of a fair and

> relevant safety net *that accords with community standards and expectations*.'[114]

[144] In respect of the above proposition, the ACTU submits:

> 'In essence, the proposition is that the creation by statute of a regulatory function to centrally set and maintain "fair" minimum wages is a labour market intervention that stems from the legislature taking the position that in the absence of such an intervention, the minimum wages of employees would not (or at least might not) be fair. If one accepts that proposition, it cannot follow that "relevant" centrally determined minimum wages—minimum wages that are suited to contemporary circumstances—must always follow, predict or seek to reproduce the trends observed in market wages. Rather, contemporary circumstances may demand that the intervention enabled by the legislation be exercised to a much fuller extent, including an extent that results in a major disparity between market wage movements and movements in minimum wages.'[115]

[145] We agree with the ACTU's submission above. In particular, the requirement that modern awards provide a fair and relevant minimum safety net does not imply that the variation of modern award minimum wages must 'always follow, predict or seek to reproduce the trends observed in market wages'.[116] One of the considerations the Panel must take into account in giving effect to the modern awards objective is 'relative living standards'.[117] Trends in market wages are relevant for that purpose, but they are not determinative. As we have mentioned, the range of considerations we are required to take into account calls for the exercise of broad judgement rather than a mechanistic or decision rule approach to wage fixation.

(iii) The setting of the NMW and modern award relativities

[146] ACCER points to the fact that in the past 6 Review decisions the Panel has increased both the NMW and modern award minimum wages by the same percentage amount and contends that, since the 2011–12 Review decision, the Panel has applied what ACCER describes as a 'wage relativities policy', which it submits has been contrary to law.[118] Further, ACCER submits that in applying such a policy the Panel has failed to set the NMW in accordance with the terms of the Act. The gravamen of ACCER's argument is set out at paras. 70–71 of its submission:

> '70. The FWC's obligation under the Fair Work Act to take into account the ―needs of the low paid‖, when setting the NMW (see section 284(1) (c)) and award rates of pay (see section 134(1)(a)) are effectively disregarded by this policy. The policy of maintaining relativities set in the past, and based on relativities established prior to the enactment of the Fair Work Act, is not based on the terms of the legislation. The obligation on the FWC is to take into account the needs of the low paid unconstrained by wage relativities within award classifications. In applying the policy the FWC has failed to give any or any proper consideration and weight to the needs of the low paid.
>
> 71. Furthermore, the application of the policy has meant that the NMW has not been set independently of the operation of the award system, as the legislation intends. The Fair Work Act intends that the NMW will be established as a general wage entitlement upon which awards may provide further minimum wage entitlements covering "skill-

> based classifications and career structures"; see section 139(1)(a)(i). It would be permissible for the FWC to develop policies about wage relativities within those award classifications, but it would be impermissible for those policies to constrain the setting of the NMW and to constrain the obligation on the FWC to take into account the needs of the low paid, as it is required to do under sections 284(1) and 134(1).'[119]

[147] The argument put relies on the different statutory considerations involved in setting the NMW and modern award minimum wages and the proposition that the 'needs of the low paid' have been effectively disregarded by the adoption of the 'wage relativities policy.' ACCER characterises the NMW as a 'general legal right conferred on Australian workers, independent of, and not ancillary to, the award system'[120] and contends that 'as a general safety net entitlement the NMW should not [be] set by reference to wage relativities that may be set by awards and/or collective bargains'.[121]

[148] We reject the submission advanced by ACCER. It is fundamentally misconceived, for 2 reasons.

[149] First, we accept that 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. However, as we have mentioned, there is little practical difference between the range of considerations the Panel is obliged to take into account in making a NMW order and in reviewing and varying modern award minimum wages. In such circumstances it is hardly surprising that the 2, separate, functions have yielded the same result.

[150] Second, ACCER's submission seeks to elevate *one* of the considerations the Panel is obliged to take into account—the needs of the low paid—above all others. ACCER appears to take 2 passages from previous Review decisions out of context and combine them into a composite formulation which it describes as 'the operational objective of the NMW'[122].

[151] The first passage is from the 2012–13 Review decision:

> 'The minimum wages objective and the modern awards objective both require us to take into account two particular matters, relative living standards and the needs of the low paid. These are different, but related, concepts. The former, relative living standards, requires a comparison of the living standards of award-reliant workers with those of other groups that are deemed to be relevant. The latter, 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. The assessment of what constitutes a decent standard of living is in turn influenced by contemporary norms.'[123]

[152] The second passage is from the 2015–16 Review decision:

> '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. 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. 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.'[124]

[153] ACCER's composite formulation, which it describes as the 'operational objective of the NMW', is in the following terms:

> 'Full time workers have a reasonable expectation of a standard of living that will be in excess of poverty and one which will enable them to purchase the essentials for a 'decent standard of living' and engage in community life, assessed in the context of contemporary norms.'[125]

[154] While we do not resile from either of the passages referred to above it is important to bear in mind that these observations were made in the context of the Panel's consideration of *one* of the various statutory considerations we are required to take into account. ACCER's submission suffers from the elevation of one consideration—'relative living standards and the needs of the low paid'—above all others.

[155] As noted in previous Review decisions, the Act requires the Panel to take into account *all* of the relevant statutory considerations,[126] and the relative living standards and needs of the low paid are but 'one of a number of considerations that [the Panel] must take into account.'[127] The legislature has not attached any particular primacy to any of the considerations we are required to take into account.[128]

[156] In our decision of 7 April 2017 we rejected a proposal for the adoption of a medium term target for the NMW for similar reasons:

> 'Those supporting a medium-term target for the NMW do so principally for the reason that they believe a target would increase the weight given to the requirements for the Panel to set rates that 'establish and maintain a safety net of fair, relevant and enforceable minimum wages'; and to consider the relative living standards and the needs of the low paid' as the Panel considers the full range of matters that it is required to take into account. Those who oppose a medium-term target share this view, that such a target would give greater weight to these criteria, and oppose it on those grounds (among others)…
>
> As we have mentioned, no particular primacy is attached to any of the considerations identified in the modern awards objective (s.134(1)(a)–(h)) or in the minimum wages objective (s.284(1)(a)(e)). The adoption of the proposed target would, in our view, have the effect of elevating one statutory consideration ('relative living standards and the needs of the low paid') above all others on an ongoing basis, rather than requiring consideration of that matter in the social and economic context of each review and weighting it accordingly relative to the other considerations. As we have mentioned while the relevant statutory considerations must be taken into account it is important to bear in mind that they inform the modern awards objective and the minimum wages objective, but they do not themselves constitute the relevant statutory objectives.'[129]

[157] For completeness we note that the suggestion that the 'needs of the low paid' have not been taken into account in past Review decisions is devoid of merit. Each of these decisions referred to by ACCER dealt directly with 'relative living standards and the needs of the low paid', as required by sections 134(1)(a) and 284(1)(c) of the Act.

[158] ACCER also requests that in next year's Review proceedings the Panel invite submissions from interested parties on 'the issues and options regarding the adjustment of the NMW to a level where [it] has an impact on lower paid award classifications'.[130] ACCER also advances the following submission:

> 'ACCER's consistent argument has been that, in the transition to a fair and sufficient NMW, annual increases in the NMW should be greater than those set for award classifications. In some awards there are classifications and wage rates that are equal to or close to the NMW so that, unless further action is taken in respect of them, those award rates would be overtaken or their margins over the NMW will be reduced. This would be a matter to be considered by the FWC once it had decided on the increase in the NMW. ACCER's preference would be for consequential adjustments being made to award rates, rather than lower paid work classifications being made redundant by being overtaken by an adjusted NMW.'[131]

[159] It seems to us that there is an evident inconsistency between the propositions in the first and last sentences in the above extract. If ACCER's proposal was accepted—and annual increases in the NMW would be greater than the increases in modern award minimum wages—then it would inevitably, and immediately, call into question the utility of some lower modern award classification levels as the rates specified for those levels would be lower than the NMW.

[160] The desire of ACCER to give primacy to increasing the NMW, as distinct from modern award minimum wages, is at odds with the impact that each can be expected to have on meeting the needs of the low paid. The Australian Government provided estimates of the number of adults who are paid according to the NMW, and according to an award. These data show that the 66 100 adults identified as 'national minimum wage employees' comprise 5 per cent of all low-paid workers and 33 per cent of all adult workers who are paid at the same rate as the NMW, or lower.[132]

[161] We consider that there is a real possibility that even these proportionately low numbers are an overestimate. The *Miscellaneous Award 2010* covers employers and their employees who fall within 4 generically-defined classifications who are in an industry not covered by any other modern award. The wage rate for the lowest paid classification (Level 1) is aligned with the NMW. The exceptions to the broad coverage of the *Miscellaneous Award* are unlikely to have application to any significant number of low-paid employees.[133] It is therefore difficult to identify any employees who are not covered by a modern award and to whom the NMW applies. It appears highly likely that many employers are not aware that their employees are covered by the *Miscellaneous Award*, and this may be reflected in the award reliance statistics.

[162] Even if the number of NMW-reliant workers has been accurately estimated by the Australian Government, it remains clear that the level of the lower award minimum rates affects many more low-paid workers than does the level of the NMW. An adjustment of the NMW that was not also reflected in the lower award minimum rates would be of no value to the overwhelming majority of low paid workers who are paid according to a modern award, an enterprise agreement or by an individual arrangement that makes reference to a modern award. Even the 67 per cent of adult workers who are paid the NMW rate but are on a modern

award or an enterprise agreement would not gain from a rise in the NMW, unless it was also reflected in award rates.

[163] The Australian Government notes that 45 of the 122 modern awards contain rates of pay which are equivalent to the NMW.[134] Generally these are the lowest classification rates for full-time adult employees and, for most of these awards, may be regarded as 'transitional rates', in that they are limited to an initial period of employment (usually 3 months) or to the attainment of specific competencies.

[164] If the NMW was set at a level above these modern award minimum wage levels it would raise for consideration whether the maintenance of a modern award minimum wage at a level *below* the NMW meets the minimum wages objective. There is also the added complication of any potential limitation on the Panel's power to vary the classification structures in modern awards (as opposed to the variation of modern award minimum wages).

[165] These issues warrant some consideration and they can be addressed in the submissions of all parties in next year's Review.

(iv) Alleged 'error of law'

[166] ACCER submits that Table 5.7 (at paragraph 436) of the 2015–16 Review decision was erroneous and, further, the Panel's use of the material did not comply with s.289 of the Act.[135]

[167] The Panel published a Statement on 26 July 2016[136] correcting the public record as to the error in the calculation of the figures for the December 2010 poverty lines in Table 5.7. We do not propose to add anything further to what has been said in that Statement.

[168] As to whether there has been any non-compliance with s.289 of the Act, it is not the function of Review proceedings to embark on some sort of judicial review of past Panel decisions.

[169] To ensure that such issues do not arise in the future all charts, tables and research referred to a Review decision will be published in either the statistical report, the research reference list or in submissions made to the Review.

(v) Award, industry or regional variations

[170] 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 on the grounds of natural disaster should result in delay or deferral of the operation of a variation to a modern award or adjustment of the NMW and has outlined the process for such considerations in a number of previous Reviews.

[171] In addition to submitting that the Panel should award a 1.2 per cent increase in the NMW, the Australian Retailers Association (ARA) again submitted that the Panel should consider any increase to award minimum rates on an award-by-award basis and 'provide an interim decision or statement prior to handing down a final decision'.[137]

[172] 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.'[138]

[173] As noted in the 2015–16 Review decision, in response to the same submission from ARA, 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.[139] These matters were fully canvassed in the 2011–12, 2012–13, 2013–14 and 2014–15 Review proceedings.[140]

[174] As was the case in its submission to the 2015–16 Review, ARA has again failed to 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.

[175] 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, sector or some other basis.

[176] 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 NMW order and publication of any variation to modern award minimum wages.[141] ARA has made no attempt to address any of these difficulties in its submission.

[177] The Panel is not persuaded to depart from the conclusion reached in the 2013–14 Review decision, and reaffirmed in the 2015–16 Review decision, that an interim decision mechanism is neither necessary nor practical.[142]

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

[179] 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.[143] 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.[144]

[180] The Chamber of Commerce and Industry Queensland (CCIQ) again submitted that the Panel should consider circumstances where an increase in the NMW may be deferred for Queensland farmers, agri-business and small business affected by ongoing impacts of drought.[145] CCIQ also seeks deferral of an increase in the NMW on the basis of the effects of Cyclone Debbie which impacted Northern Queensland in March 2017.[146] CCIQ urges the Panel to consider that extenuating circumstances warrant a deferral of any increase in the minimum wage for farmers, agri-business and small businesses impacted by drought and cyclone this year, for a 'given period'.[147]

[181] CCIQ has made very similar if not identical submissions in past Reviews.[148] In our decision in the 2015–16 Review, we observed in relation to a similar submission by CCIQ that it did not make clear whether the deferral sought relates to either the NMW or modern award minimum wage or both.[149] We also referred to earlier Review decisions in 2013–14 and 2012–13 in which we set out the requirements that proponents of an exemption or deferral of wage increases on the grounds of natural disasters must meet.[150] These can be summarised as follows:

- a deferral claim may be granted in respect of one or more modern awards or in respect of particular regions covered by modern awards, provided that we are satisfied that there are exceptional circumstances justifying such a course;
- a claim must clearly indicate whether a complete exemption is sought from any minimum wage increase or, if a deferral is sought, the period of the deferral;
- proponents of a deferral or exemption should advance a mechanism for the proper identification of the employers and employees affected and to whom the exemptions should apply;
- the declaration of natural disasters by government cannot, of itself, be regarded as constituting 'exceptional circumstances' for the purpose of s.286;
- information about the effect of the disaster event on different classes of employers and enterprises and the assistance provided by government are necessary elements in any case seeking to establish exceptional circumstances;
- any assessment of the effect of a natural disaster must necessarily include an assessment of the impact upon employees who would bear the cost of a deferral of or exemption from a minimum wage increase; and
- sufficient detail is required so that if exceptional circumstances were found to exist, any order made would comply with the statutory obligation that it be 'limited just to the extent necessary because of the particular situation to which the exceptional circumstances relate'.[151]

[182] As we have previously stated, we recognise that natural disaster inflicts hardship on many businesses, particularly small businesses and that deferral of any rise in minimum wages may contribute to easing pressure on businesses. However, we also recognise that natural disaster inflicts hardship on employees and their families due to loss of wages and damage to property and that in some cases the employees affected may be among the lowest paid in the community.

[183] In relation to the CCIQ submission to the current Review, we accept that there are significant numbers of businesses in Queensland which continue to be affected by drought. We also accept that Cyclone Debbie has had a devastating effect on businesses in other areas of Queensland. However, as has been the case in previous Reviews, we are not assisted by the submission of CCIQ which continues to suffer from the deficiencies that we have identified in previous decisions.

[184] Again CCIQ has not made clear whether the deferral relates to the NMW or to modern award wages, or both. CCIQ has not proposed any mechanism to properly identify the employers affected and to whom the deferral should apply. Other than indicating that there should be a deferral of any wage increase for farmers and agribusinesses in the regions which have been affected by drought or cyclone, no other information is provided about who these employers may be. There is no detail about the employees they may engage. The submission does not identify which modern award or awards these employers and employees may be covered by nor is there any indication if the NMW order would apply to the employees.

[185] The submission provides little material upon which we could make a finding that exceptional circumstances exist and that they are such as to warrant a deferral of any increases to minimum wages. There is also no material on the impact of any potential deferral upon the employees concerned. We note that there are many employees who have likely been adversely affected by the natural disasters cited in the CCIQ submission. In particular, employees in the regions impacted by Cyclone Debbie have likely been stood down without pay, which can only have compounded the effects of that event on those employees. No information is given by CCIQ about any government assistance that may be provided to the relevant employers or employees. Further, we note that CCIQ has again sought an exemption for a 'given period' without identifying the period for which the exemption is sought or proposing a mechanism by which such period can be identified.

[186] We are not persuaded that CCIQ has established that there are 'exceptional circumstances' which justify an operative date of the NMW order and modern award minimum wage increases we have decided to be later than 1 July 2017. The considerations CCIQ has raised are, however, relevant matters and we have taken them into account in our consideration of the economy in Chapter 4.

3. The Parties' Proposals

[187] This Chapter summarises the parties' proposals in respect of adjustments to the NMW and modern award minimum wages. The Panel received submissions from the Australian Government, several state governments, and bodies representing the interests of employees, employers and other groups. The quantum and the form of the proposed increase to the NMW and/or modern award wages varied significantly among these parties. Proposals for flat dollar amounts, percentage increases and a tiered approach were submitted and one party submitted that no increase be awarded.

[188] The Victorian Government, the South Australian Government and the Federal opposition submitted that the *Penalty Rates decision* be taken into account in the Panel's determination.[152] The proposal from United Voice responded to the Panel's decision regarding the adoption of a medium-term target for the NMW.[153] As in previous Reviews, CCIQ proposed the deferral of any increase arising from this decision for farmers, agri-business and small businesses affected by drought and cyclones[154] and ARA recommended that any increase should be considered on an award-by-award basis.[155] The South Australian Government proposed that, upon the implementation of the Penalty Rates decision, a special national minimum wage be set for the 'specific class of employees' affected.[156] These issues are addressed separately in Chapters 1 and 2.

[189] A summary of proposed minimum wages adjustments is set out at Appendix 1.

[190] We note that the increases proposed by a number of parties in their initial submissions were based—in whole or part—upon the 1.5 per cent increases in the CPI over the year to the December quarter 2016. Later CPI data showed an increase of 2.1 per cent over the year to the March quarter 2017 (and a 1.8 per cent increase in the underlying rate). On 3 May 2017 the Commission published Questions on Notice, with replies due on 12 May 2017. In light of the more recent CPI data one of the questions put to all parties was:

> 'Given that a number of parties referred to the CPI in reaching their proposed increase to the NMW and/or award minimum wages, with some parties suggesting that their proposal provided a real increase in the standard of living of award-reliant employees, do any parties seek to revise their proposal?'

[191] None of the principal parties sought to revise their proposal.[157]

Proposals for a tiered increase

[192] The ACTU proposed a tiered approach, consisting of a flat dollar increase of $45.00 per week to the NMW and to modern award minimum wages up to and including the C10 rate and an increase to all modern award wages above the C10 rate of 5.7 per cent.[158] The ACTU submitted that its proposal would ensure the largest wage rises, in percentage terms, go to the lowest-paid workers while preventing any further erosion of the skill-based wage relativities above the C10 tradepersons' rate.[159]

[193] ACCER also proposed a tiered increase and recommended increasing the NMW by $37.30 per week and modern award minimum wages by $30.70 per week.[160] ACCER submitted that the proposal was 'to provide relatively more to those most in need'[161] and that the proposal would maintain the real wages of workers paid at higher award classification rates.[162]

Proposals for a percentage increase

[194] The Victorian and Queensland Governments proposed a minimum increase of 2.5 per cent to the NMW and all modern award minimum wages.[163] The Victorian Government stated that the effect of the *Penalty Rates decision* on many low-paid workers should also be taken into account.[164]

[195] United Voice proposed an increase of 13.5 per cent to the NMW 'with follow-on percentage increases to all award minimum wages'[165] and submitted that the increase 'is a significant and necessary step to remedy the cumulative impact successive Review decisions have had on low paid workers and to arrest the long term decline in their relative living standards'.[166] During the course of final consultations on 17 May 2017, United Voice clarified that it would be content with any approach as to how this would be flowed on in modern award minimum wages.[167]

[196] The Australian Business Industrial and the NSW Business Chamber Ltd (ABI and NSWBC) submitted that the Panel should be 'cautious' in its approach and that any increase to the NMW and modern award minimum wages should not exceed 1.8 per cent.[168]

[197] Ai Group proposed a 'modest' increase of 1.5 per cent to the NMW and all modern award minimum wages.[169] NRA and HA also recommended an increase of 1.5 per cent to the NMW.[170]

[198] The Australian Chamber of Commerce and Industry (ACCI) urged the Panel to 'exercise genuine caution and restraint'[171] and proposed an increase of no more than 1.2 per cent to the NMW and modern award minimum wages.[172]

[199] The Australian Federation of Employers and Industries (AFEI), ARA and Victorian Automobile Chamber of Commerce (VACC) supported ACCI's submission and proposed an increase of 1.2 per cent to the NMW.[173] The Motor Trade Association of South Australia (MTA-SA) also supported ACCI's submissions but proposed an increase of 'no greater than 1.2%'.[174] AFEI and MTA-SA submitted that the increase should also apply to all modern award minimum wages.[175]

[200] Master Grocers Australia (MGA) proposed an increase of not more than 1.1 per cent to the NMW and modern award rates, or $8.15 based on a 38-hour working week in the *General Retail Industry Award 2010*.[176] MGA also submitted that the *Penalty Rates decision* 'should not be given any significant consideration' in the current Review.[177]

[201] NFF proposed an increase of up to 1.0 per cent and submitted that '[a]djustments to the national minimum wage traditionally flow on to all modern award classifications, without exception.'[178]

Proposals for a flat dollar increase

[202] CCIQ recommended what it characterised as a 'modest increase' to the NMW and modern award minimum wages of $8.10 per week,[179] while the Chamber of Commerce and Industry Western Australia (CCIWA) supported ACCI's proposed increase of $8.10 per week to the NMW and recommended that any variation to modern award rates of pay should occur as a flat dollar increase[180] without providing a quantum. CCIWA submitted that '[i]n the current environment, we believe that a greater focus should be given to the potential negative implications that a compounding increase in wage rates will have on the utilisation of employees given the high level of underemployment'.[181]

[203] The South Australian Wine Industry Association (SAWIA) submitted that the Panel consider 'only a small flat increase that is fair to all employees and capped no higher than the rate of inflation'.[182]

Proposals specifying no quantum

[204] A number of parties made no submission as to the quantum of any variation to the NMW or minimum rates in modern awards, including the Australian Government, several state governments, the Federal opposition, the Australian Council of Social Service (ACOSS), the Housing Industry Association (HIA) and the Australian Road Transport Industrial Organisation (ARTIO).

[205] The Australian Government submitted that 'the Panel should take a cautious approach, taking into account the uncertain economic outlook and the need to boost employment and job creation, particularly for young people and the low-skilled.'[183] The New South Wales Government also submitted that the Panel take a 'cautious approach to setting the minimum wage'[184] and submitted that '[a]ny adjustment to the minimum wage should have regard to the need to maintain current economic and labour market performance'.[185]

[206] The Federal opposition expressed support for a 'strong and appropriate minimum wage'[186] that takes into account the impact of the reduction in Sunday penalty rates, the changes in living costs, the decline in the minimum wage bite over time, as well as the economic environment since the 2015–16 Review.[187]

[207] The South Australian Government submitted the Panel 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'.[188] The Western Australian Government encouraged the Panel 'to award a fair and economically sustainable wage increase that will help to protect the living standards of the low paid and encourage their participation in the workforce.'[189]

[208] ACOSS submitted that '[t]here is scope to significantly increase minimum wages without impacting employment growth, and a need to do so to reduce poverty and the gap between the NMW and median earnings.'[190] As in previous Reviews, ACOSS submitted that decisions 'on the level of minimum wages should be informed by "benchmark" estimates of the cost of attaining a "decent basic living standard" for a single adult according to contemporary Australian standards.'[191]

[209] Australian Hotels Association and Tourism Accommodation Australia (AHA and TAA) and Business SA generally supported ACCI's submissions, without nominating a particular quantum.[192]

[210] HIA submitted that the Panel's decision should 'encourage both investment and employment'[193] and commented that housing construction activity has slowed and the 'current conditions affecting apprentice employment deserves special consideration'.[194] ARTIO submitted that any increase should be 'modest'[195] and that the Panel should be 'guided by signs of the overall state of the Australian economy, especially the labour market',[196] such as the fall in the labour force participation rate and 'historically modest' wages growth.[197]

Proposals specifying no increase

[211] Restaurant and Catering Australia (R&CA) submitted that the Panel should decide to award no increase in the NMW or modern award minimum wages[198] and submitted that the Panel should have 'regard to Australia's ability to compete internationally, particularly from a tourism standpoint, the increased cost of wages, and importantly, the impact on future employment growth'.[199]

4. The Economy

[212] 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. We have taken account of the economic information provided by parties in submissions, data published in the Statistical report, research published by the Commission, data from the Treasury and the RBA.

[213] Our approach to the economic information, published data and forecasts in the context of the relevant statutory provisions concerning economic matters was set out in the 2015–16 Review decision.[200]

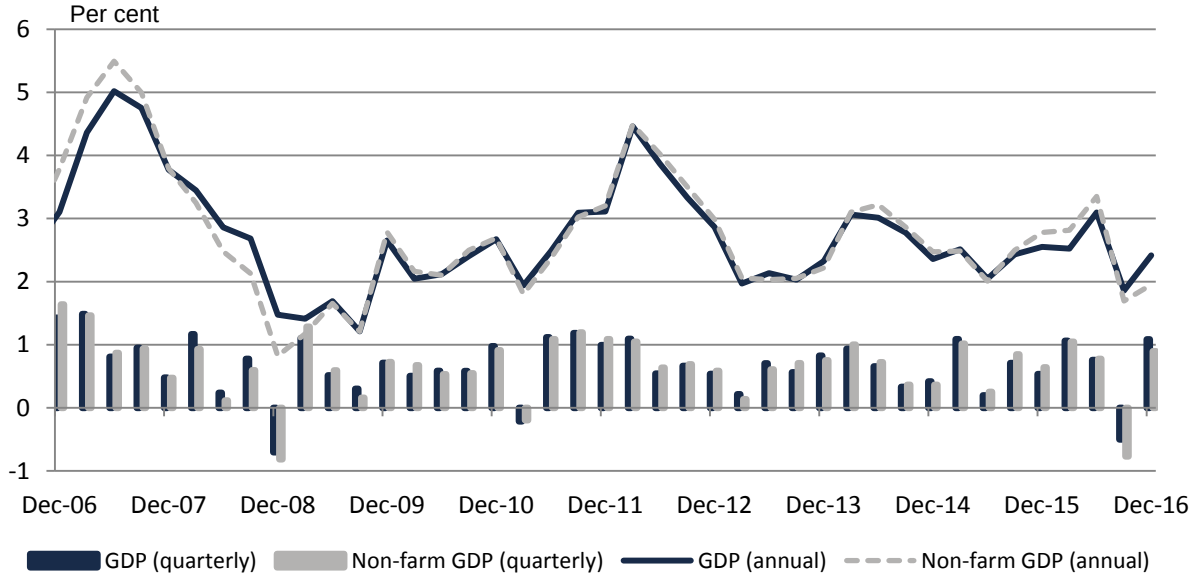
[214] In this Chapter we discuss trends in international and domestic economic growth, productivity and unit labour costs, business conditions, inflation, wages, various aspects of the labour market, the particular circumstances of the most award-reliant industries, and the economic outlook.

Economic growth

[215] Real GDP rebounded in the December quarter 2016 to grow by 1.1 per cent in the quarter and 2.4 per cent over the year after falling by 0.5 per cent in the September quarter (Chart 4.1). Annual GDP growth was a little below the average over the 10 years to the December quarter. Because of the volatility in quarterly data, particularly evident in 2016, we pay particular attention to annual changes.

[216] The RBA stated that GDP growth in the December quarter 2016 was higher than expected due to an increase in mining investment and confirmed that the decrease in the September quarter reflected temporary factors including disruption to coal supplies and bad weather. The RBA added that contributors to growth over 2016 were resource exports, household spending, business and dwelling investment and low interest rates.[201] GDP growth over 2016 was slightly lower than estimates of potential output growth, which the RBA suggested was consistent with a subdued labour market and low inflation.[202]

Chart 4.1: Economic growth, annual and quarterly rates

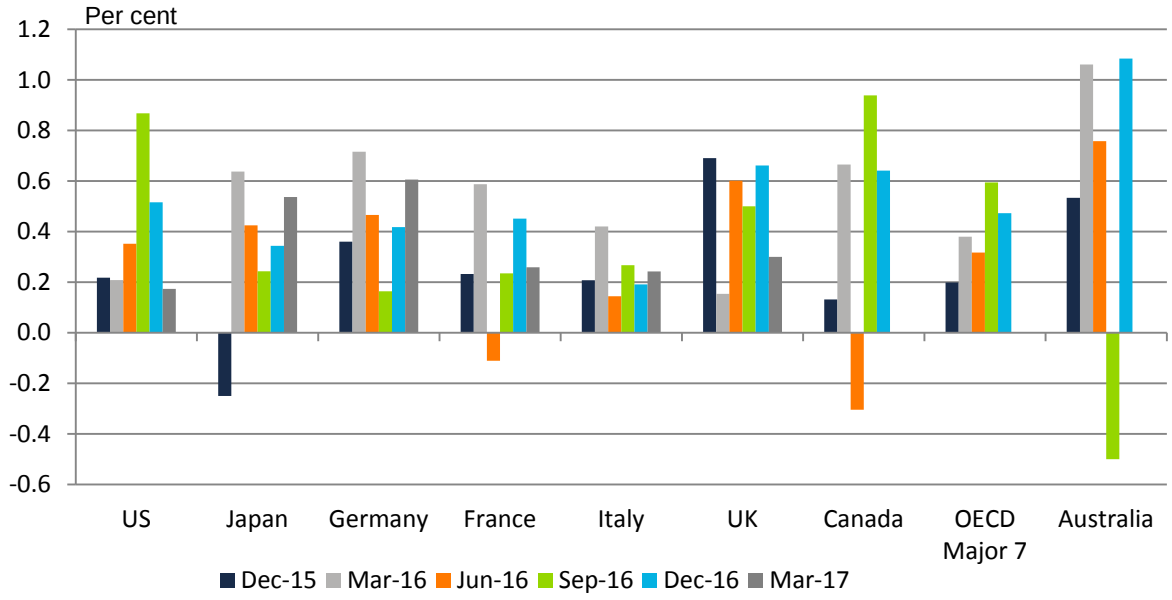


Source: Statistical report, Chart 1.1; ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2016*, Catalogue No. 5206.0.

[217] Over the year to the December quarter 2016, household consumption grew by 2.6 per cent and contributed 1.5 percentage points to national growth. With compensation of employees rising at the slower rate of 1.5 per cent, the growth in consumption was financed partly by a progressive decline in the savings rate from 6.2 per cent in the December quarter 2015 to 5.2 per cent in the December quarter 2016. Public investment grew by 11.9 per cent and contributed 0.5 percentage points to total growth over the year. Exports rose by 8.9 per cent, contributing 1.8 percentage points to growth. At the industry level, Agriculture, forestry and fishing, Mining and Professional, scientific and technical services made significant contributions to growth over the year.[203]

[218] GDP growth in Australia outperformed the average of the major 7 OECD countries across 4 of the 5 quarters to the December quarter 2016 (Chart 4.2).

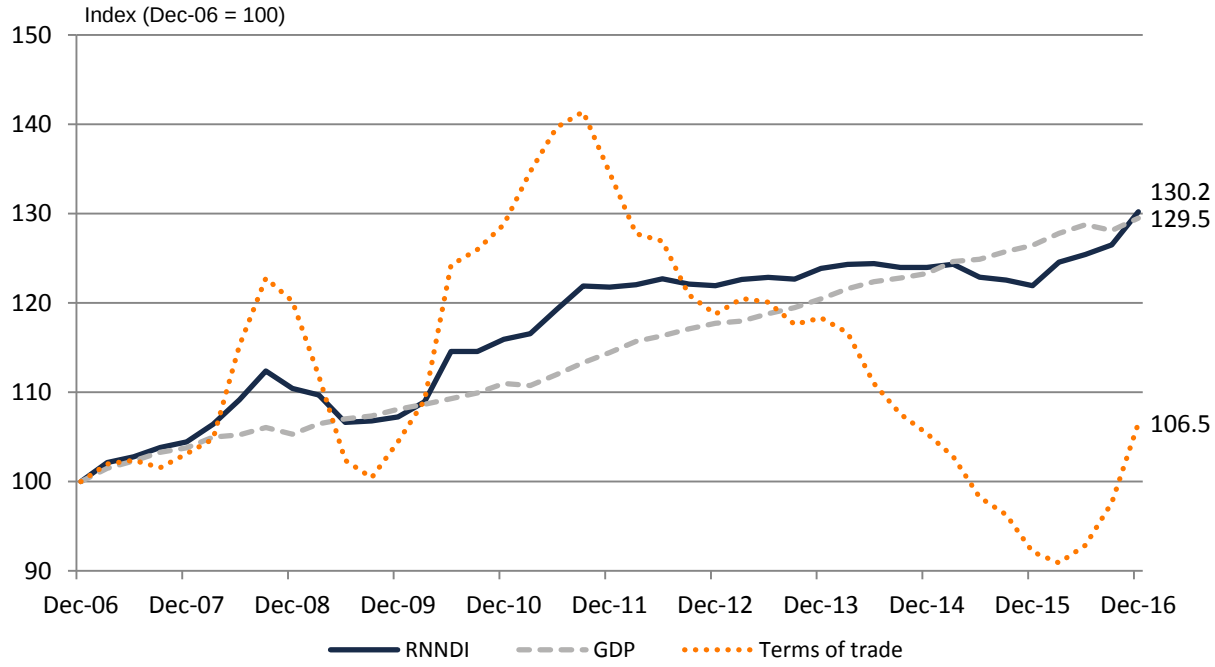
Chart 4.2: International comparisons of quarterly GDP growth



Source: Statistical report, Chart 1.2; OECD (2017), *Quarterly GDP (indicator)*, <http://data.oecd.org/gdp/quarterly-gdp.htm>.

[219] A number of submissions noted that the Australian economy continues to transition from the investment phase to the production phase of the mining boom.[204] This has been accompanied over recent years by the falling terms of trade. However, more recently, the terms of trade have increased by a strong 15.6 per cent over the year to the December quarter 2016. This has had an impact on RNNDI, which rose over 2016 after falling in 2015 and being relatively stable for some years before then (Chart 4.3). The 2012–13 Review provided a description of what RNNDI measures[205] and as the Panel has stated, it remains a better measure of the incomes available to Australians than GDP.[206] It is interesting to note, however, that over the past 10 years, and despite the volatility of RNNDI, real GDP and RNNDI have each grown by 30 per cent.

Chart 4.3: RNNDI, real GDP and the terms of trade, index (Dec-06 = 100)

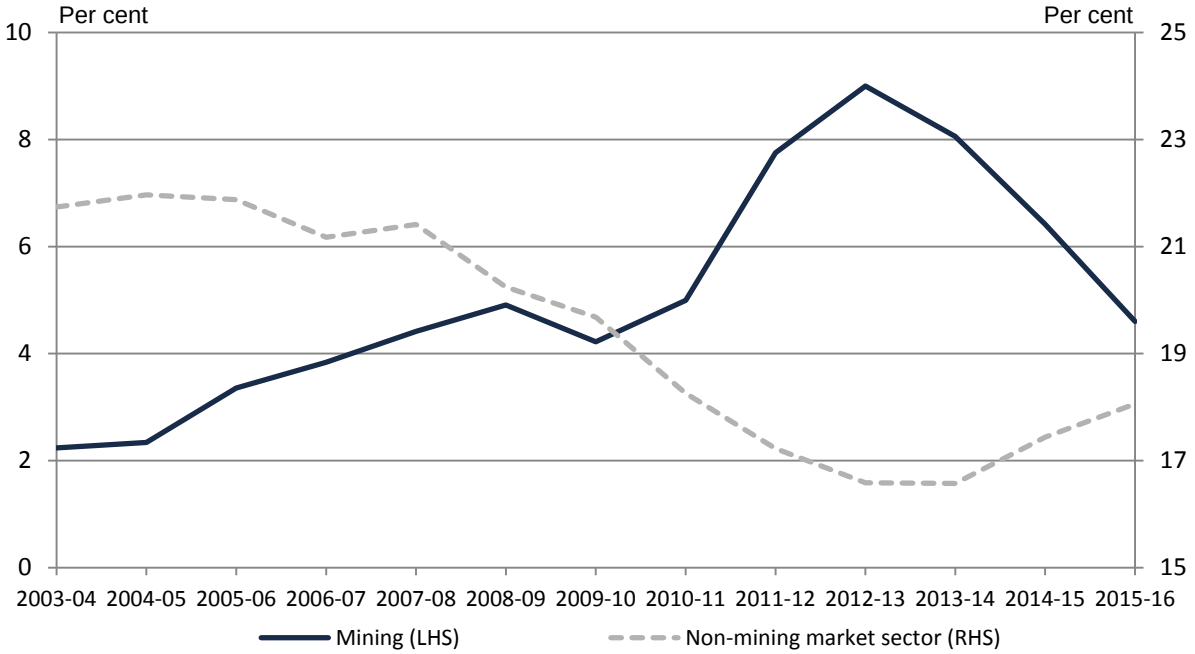


Note: RNNDI takes into account the impact of changes in prices of exports relative to imports, the real impact of income flows between Australia and the rest of the world, and the consumption of fixed capital. Income flows between Australia and the rest of the world are fairly smooth over time and changes 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: Statistical report, Chart 1.3; ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2016*, Catalogue No. 5206.0.

[220] In the February 2017 *Statement on Monetary Policy*, the RBA noted that the 'transition from the mining investment boom is still in progress, but is now well advanced; the drag on [GDP] growth from falling mining investment should wane' and that recent increases in commodity prices are unlikely to lead to much new investment over the coming years.[207] Chart 4.4 shows the share of mining and non-mining investment in GDP over the 12 years to 2015–16. It shows that the very high levels of investment in mining between 2011 and 2015 were largely offset by falls in non-mining investment. In the most recent years, mining investment has continued to fall. Non-mining investment has risen, but not yet to the point where it has fully offset the fall in mining investment.

Chart 4.4: Mining and non-mining market sector investment share of GDP



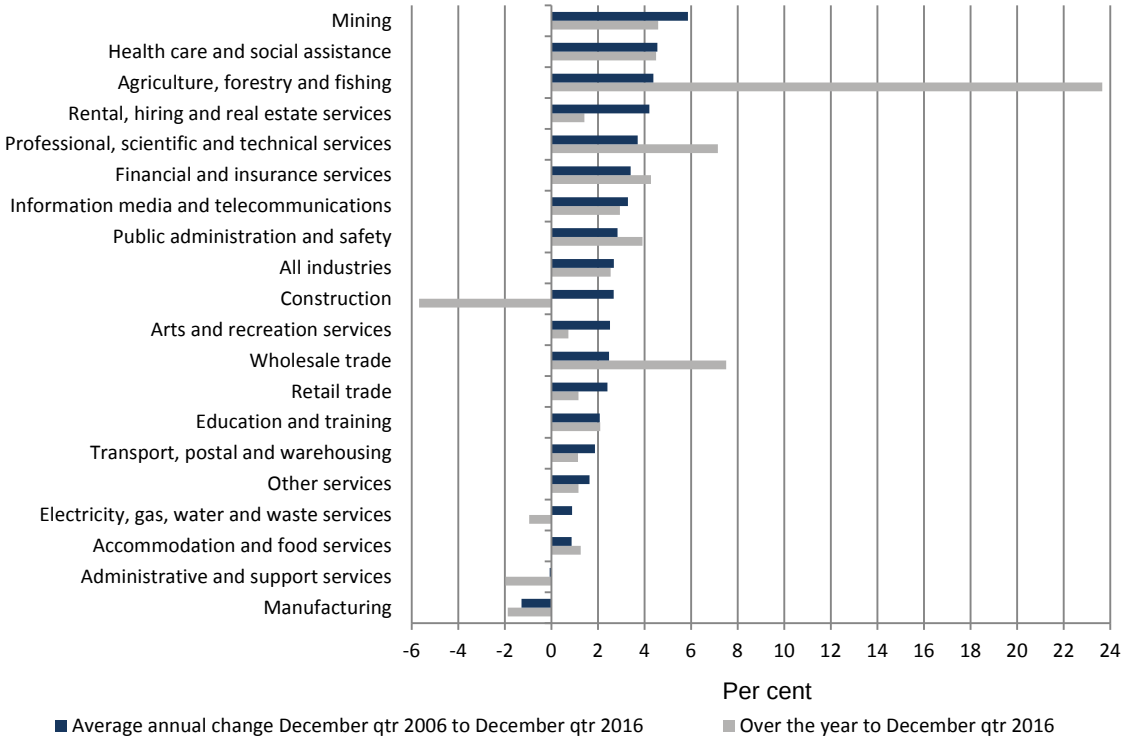
Source: Statistical report, Chart 1.6; ABS, *Australian System of National Accounts, 2015–16*, Catalogue No. 5204.0.

[221] The RBA noted that economic conditions have varied across states, with stronger growth in New South Wales and Victoria and weakest growth in Western Australia.[208] ACCI argued that non-mining investment has remained relatively subdued[209] with the transition to broader-based growth at the end of the mining boom resulting in a two-speed economy shown by stronger performances in New South Wales and Victoria and weaker performance elsewhere.[210] CCIWA also commented that signs of economic recovery are not being experienced across all states and territories.[211]

[222] Economic growth across different industries is represented by gross value added (GVA) which provides information on the contributions made to output at a sectoral level (Chart 4.5). Over the decade to the December quarter 2016, annual average growth in GVA was highest in Mining, Health care and social assistance, Agriculture, forestry and fishing, and Rental, hiring and real estate services, and fell in Manufacturing. GVA growth over the year to the December quarter 2016 was 2.5 per cent across all industries, however, it varied from 23.7 per cent in Agriculture, forestry and fishing to –5.7 per cent in Construction.

[223] Among award-reliant industries, annual average growth in GVA over the decade was highest in Retail trade and fell in Administrative and support services. Although the fall in Administrative and support services was greater over the year to the December quarter 2016, GVA growth in Accommodation and food services was higher over the year to the December quarter 2016 than over the decade.

Chart 4.5: GVA by industry, December quarter 2006 and December quarter 2016



Source: Statistical report, Chart 1.4; ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2016*, Catalogue No. 5206.0.

Productivity and unit labour costs

[224] Both productivity and unit labour costs are relevant considerations in the Review. There are complexities in measuring both concepts. Ai Group drew attention to the following observation of the Productivity Commission:

> 'Despite the best efforts of statisticians and economists, the measurement and interpretation of productivity remains a challenge'.[212]

[225] Productivity is defined as the quantity of GDP produced per unit of labour and/or capital used. Productivity is a real, or volume, measure. Labour productivity is total GDP divided by total hours worked for all workers (managerial and non-managerial employees, the self-employed and employers). Because of the difficulty of measuring output in the public sector, productivity is also measured just for the market sector, as GVA per hour worked.

[226] Unit labour costs 'represent a link between productivity and the cost of labour in producing output'[213] and are measured by the average cost of labour per unit of output. Real unit labour costs adjust this for general inflation in producer prices (as measured by the GDP deflator). If real unit labour costs remain constant, then the labour share of output will remain constant and the real cost of a unit of labour will rise at the same rate as labour productivity. In this scenario, there will be no added labour cost pressures across the economy as a whole.

[227] As no evidence to the contrary was provided in this Review, the Panel 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. The Victorian Government expressed a different but related view when it submitted that the Act 'provides ample scope for employers to negotiate flexible working arrangements with their employees that can in turn, support productivity improvements. In turn, therefore, productivity impacts cannot be said to provide a strong rationale against increasing minimum wages in a balanced way.'[214]

Productivity

[228] The Panel has previously noted that productivity growth is best measured over the business cycle.[215] One reason is that the level of excess capacity in the economy affects the measured productivity of both labour and capital. However, the length of the business cycle does not align with the statutory task of an Review, and for this reason we also pay more attention to longer term trends and treat recent changes with some caution. Labour productivity growth across the whole economy (1.9 per cent) and for the market sector (2.4 per cent) was higher over the year to the December quarter 2016 than the previous year (Table 4.1). The low productivity growth of 2015 now looks to have been an exception, in the context of the past 5 years or so. Since the December quarter 2011, GDP per hour worked has risen by 8.4 per cent, and GVA per hour worked in the market sector has risen by 10.3 per cent. Growth in hours worked, which was low over the year to the December quarter 2016 and higher over the previous year, appears to be influencing the measures of labour productivity.

Table 4.1: Productivity growth and its components, percentage change over the year

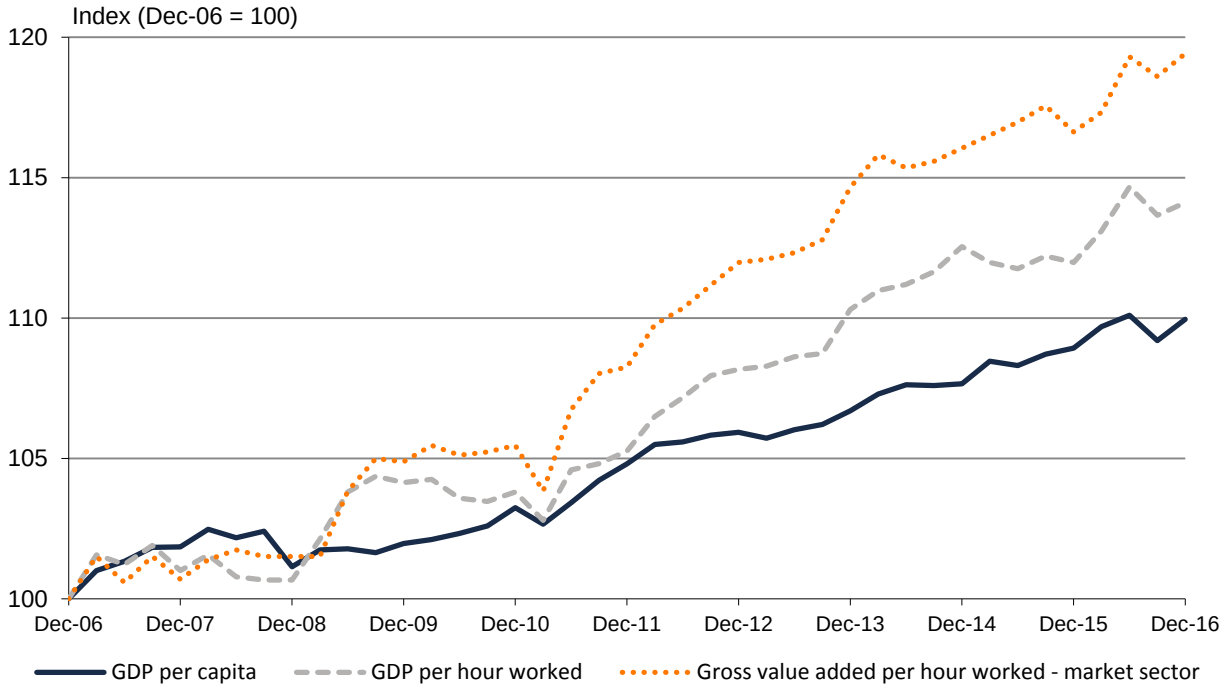
	National Accounts						Labour Force
	Total			Market Sector			
Quarter	**GDP**	**Hours worked**	**GDP/ hour worked**	**GVA**	**Hours worked**	**GVA/ hour worked**	**Hours worked**
	(% change)	**(% change)**	**(% change)**	**(% change)**	**(% change)**	**(% change)**	**(% change)**
Dec-06	3.1	2.8	0.1	4.1	2.9	1.3	2.8
Dec-07	3.8	2.8	1.0	3.6	2.8	0.7	3.1
Dec-08	1.5	1.9	–0.3	2.6	1.8	0.8	2.0
Dec-09	2.7	–0.8	3.4	1.4	–1.8	3.3	–0.8
Dec-10	2.7	3.0	–0.3	2.8	2.2	0.6	3.3
Dec-11	3.1	1.8	1.4	3.5	0.9	2.6	1.1
Dec-12	2.9	0.1	2.8	3.7	0.2	3.4	0.3
Dec-13	2.3	0.3	2.0	2.0	–0.4	2.4	0.2
Dec-14	2.4	0.4	2.0	2.2	1.1	1.2	0.9
Dec-15	2.5	2.9	–0.5	2.2	1.6	0.5	2.6
Dec-16	2.4	0.6	1.9	2.3	–0.1	2.4	0.4
Mar-17	n/a	n/a	n/a	n/a	n/a	n/a	0.7

Note: Data from the Australian National Accounts are seasonally adjusted. Data from the Labour Force are in trend terms. n/a = not available.

Source: Statistical report, Table 2.2; ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2016*, Catalogue No. 5206.0; ABS, *Labour Force, Australia, Apr 2017*, Catalogue No. 6202.0.

[229] Productivity growth over a longer period shows that GVA per hour worked for the market sector has grown faster than GDP per hour worked since 2010 and both have risen more than GDP per capita over the same period (Chart 4.6). Both GVA per hour worked for the market sector and GDP per hour worked have increased at a higher rate over the 5 years to the December quarter 2016 than the previous 5 years.

Chart 4.6: Measures of productivity growth, index (Dec-06 = 100)



Note: Labour productivity is measured as real GDP per hour worked. Gross value added measures the value of output at basic prices minus the value of intermediate consumption at purchasers' prices. The market sector includes all industries except for Public administration and safety, Education and training and Health care and social assistance.

Source: Statistical report, Chart 2.1; ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2016*, Catalogue No. 5206.0.

[230] Chart 4.7 presents labour productivity growth over 3 productivity cycles between 1998–99 and 2015–16. The ABS identify productivity growth cycles by examining changes in productivity over an extended period of time and comment that analysis of averages of productivity statistics between growth cycle peaks allows better understanding of the drivers of productivity growth.[216]

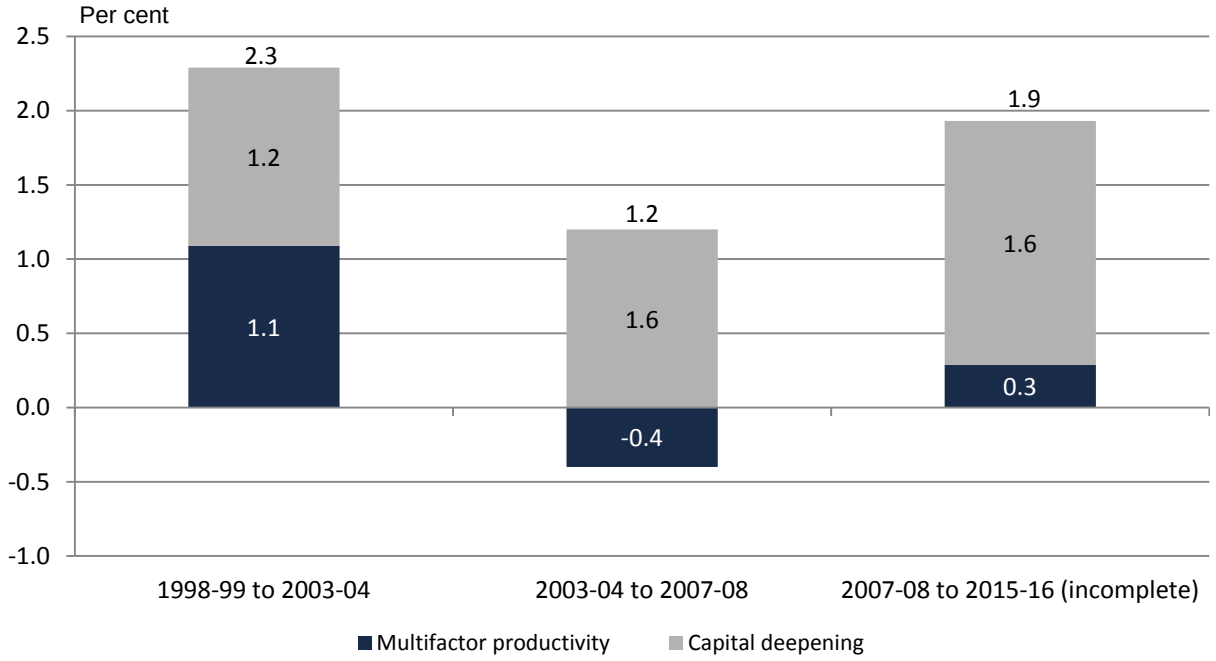
[231] As measured by the ABS:

> 'Labour productivity growth reflects growth in two areas. The first is from an increasing capital-labour ratio (capital deepening). That is, more capital per unit of labour input. The second is from increasing multifactor productivity. For example, the introduction of new disembodied technologies, organisational improvements, economies of scale, and the implementation of research and development.'[217]

[232] Estimates of MFP provide a measure of changes in the efficiency of production. MFP represents that part of the change in production that cannot be explained by changes in the measured inputs—in practice, measured as labour and capital.

[233] While the current business cycle (2007–08 to 2015–16) is incomplete, it shows that the growth in labour productivity has been higher than the preceding cycle but lower than the previous cycle before that. Chart 4.7 also shows that in the current cycle, capital deepening accounted for a significant proportion of growth in labour productivity.

Chart 4.7: Annualised labour productivity growth over productivity cycles, market sector, 1998–99 to 2015–16



Note: MFP is measured as output per combined unit of labour and capital. Capital deepening is the component of labour productivity growth which is due to the increase in the amount of capital that each unit of labour has to work with. Labour productivity is represented by the numbers above the columns, and is the sum of MFP and capital deepening. Data are expressed in original terms. Market sector excludes Public administration and safety; Education and training; Health care and social assistance and Ownership of dwellings.

Source: Statistical report, Chart 2.3; ABS, *Australian System of National Accounts, 2015–16*, Catalogue No. 5204.0.

[234] We note here the large effects that the exceptional levels of investment in the resources industry have had on the usual interpretation of measures of productivity change. Much of the capital deepening that occurred in the last two cycles was a result of mining investment and did not increase the productivity of the 98 per cent or so of the labour force that is not employed in the mining sector. In effect, there have been 2 separate economies, and we have to be careful in adding them together as we seek to understand the non-mining economy and what it means for the adjustment of the NMW and award rates. The decline and then low growth in MFP that we see in the chart is in significant part caused by the very large investment in mining.

[235] ACCI observes that 'since 2004 [MFP] has stalled in Australia and around the developed world.'[218] The discussion by the Productivity Commission that ACCI cites for this view goes on to say:

> 'The peculiarities of production in the mining sector partly affect this outcome. It takes time to construct mining facilities before production can begin. Accordingly, during any significant expansion of mining—as occurred in the 2000s—capital rises rapidly without an accompanying increase in output, reducing measured productivity… [however] the "tos and fros" of mining productivity have not been important enough to fully explain the downward shift in *economywide* MFP growth rates.'[219]

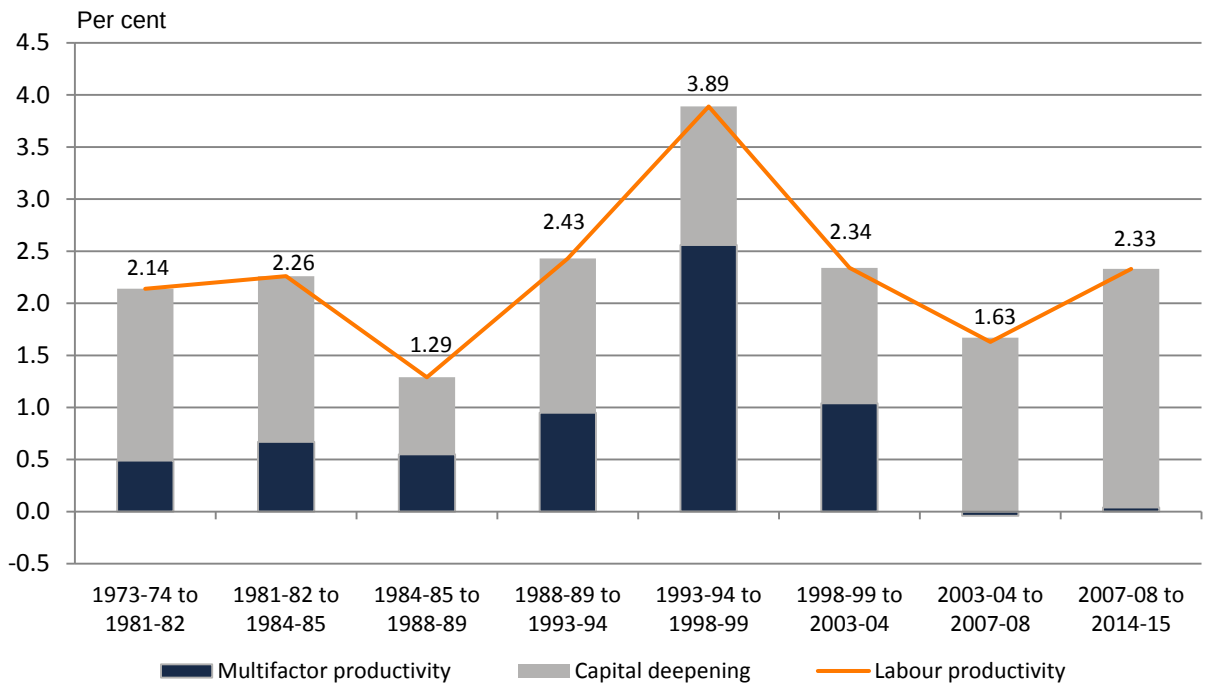
[236] For the reason given by the Productivity Commission, we do not accept that the causes of the decline in MFP growth in Australia are the same as for the rest of the developed world:

most other countries did not experience an equivalent of Australia's mining construction boom. We still need to assess the impact of the resources sector, and its impact on the economy wide measures that are relevant to making a decision about the NMW and award wages. While we are unable to do this precisely, it is clear that the decline and then slow growth in aggregate MFP, and the high rate of capital deepening seen since 2003–04 are mostly not attributable to the non-mining parts of the economy. Investment in the non-mining part of the economy has moved in the opposite direction to that in the mining sector over the past decade (see Chart 4.4 above). The mining sector is highly paid and has few award-reliant workers (see Table 4.7). For these two reasons, the impact of the mining sector on MFP and capital deepening should be discounted as we consider the growth in overall economic efficiency and labour productivity.

[237] Ai Group focuses on changes in MFP in its consideration of the capacity of the economy to pay higher wages. It notes that MFP has 'been improving by around 1% p.a. since 2011. On a quality-adjusted hours-worked basis, MFP improved by 0.6% in 2015–16 ... This is an improvement from the previous decade, but is still exceedingly weak.'[220] It also states that '[t]his failure to improve MFP is (sic) a sustainable manner and over a longer time frame hampers these industries' ability to raise real income for business (real profits) and workers (real wages) alike.'[221] This view is at odds with the position of the Productivity Commission, which states, '[b]roadly speaking, if output per hour rises, then workers can expect wages to rise.'[222] We share the view of the Productivity Commission, that workers can expect wages to rise if labour productivity (and not just MFP) rises.

[238] ACCI submitted that 'Australia's current productivity growth still falls well short of the sustained, stronger productivity growth of previous decades.'[223] To support its position, in response to questions from the Panel,[224] it provided Chart 4.8, taken from a report by the Productivity Commission.

Chart 4.8: Market sector labour productivity decomposition, percentage points contribution, average per annum



Note: Excludes ANZSIC divisions Rental, hiring and real estate services, Professional, scientific and technical services, Administrative and support services, Public administration and safety, Education and training, Health care and social assistance and Other services. The 2007–08 to 2014–15 growth cycle is incomplete.

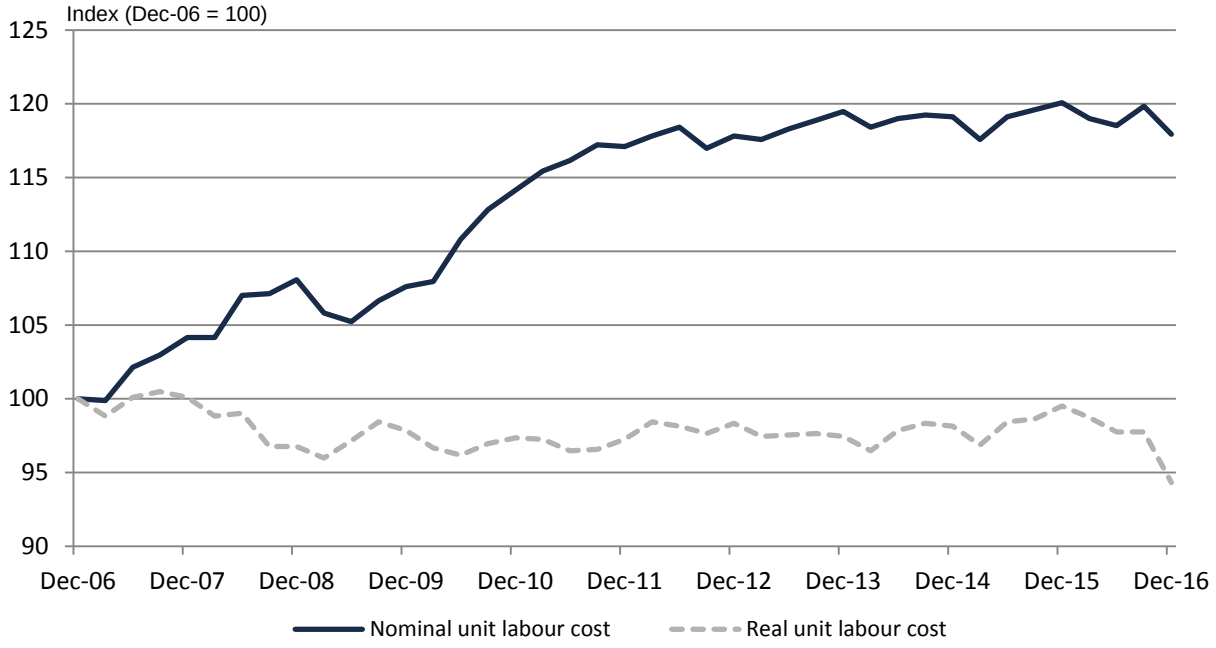
Source: ACCI additional material, 19 May 2017 at para. 5; Productivity Commission (2016), *Increasing Australia's future prosperity*, Discussion Paper, 5 year productivity review, November, Figure 3; ABS, *Estimates of Multifactor Productivity, 2014–15*, Catalogue No. 5260.0.55.002.

[239] We accept that much of the growth in labour productivity since 2003–04 has been a result of capital deepening, rather than of MFP. But we do not accept that labour productivity growth since 2007–08 is 'well short' of that in earlier decades. The 2.3 per cent per annum growth in labour productivity in the period 2007–08 to 2014–15 exceeds, or is virtually the same as, growth in all prior periods except 1993–94 to 1998–99.

Unit labour costs

[240] Nominal unit labour costs have remained quite stable since 2011 and real unit labour costs were also relatively stable over that period before falling by 5 per cent over the year to the December quarter 2016 (Chart 4.9). Citing recent research from the RBA, the Australian Government noted that 'relatively stable real unit labour costs in recent years has provided some support to employment growth and prevented the unemployment rate from rising to "the extent that might otherwise have been expected"'.[225]

Chart 4.9: Unit labour costs, nominal and real, index (Dec-06 = 100)



Source: Statistical report, Chart 5.3; ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2016*, Catalogue No. 5206.0.

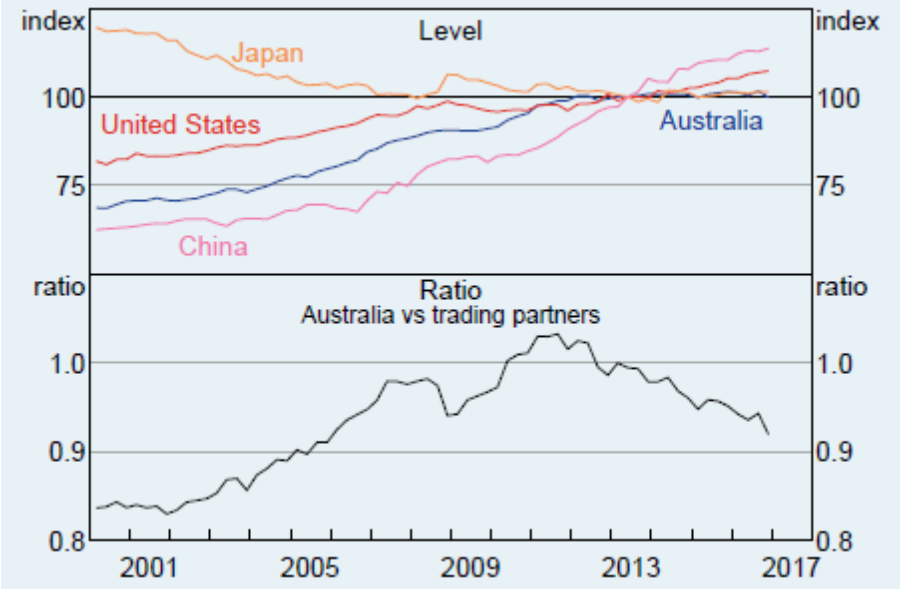
[241] Since 2013 there has been almost no growth in nominal unit labour costs, which is most unusual. It implies that labour costs in nominal terms have risen at about the same rate as labour productivity, in part because of the very low growth in wages and the GDP deflator (i.e., inflation in producer prices). Over the past year, real unit labour costs have fallen, as the gains from increased labour productivity have gone proportionately more to capital (in the form of profits) than to labour (in the form of wages). In large part, this is due to the rise in the terms of trade, which has increased revenue for a given level of volume exported by the mining sector. Most of this increase in revenue goes to profits, with the RBA stating that '[t]he higher commodity price levels are boosting the profits of resource firms', much of which goes to foreign shareholders.[226] An example of this trend is noted by the RBA in its *Statement on Monetary Policy* of May 2017, which observed that:

> 'LNG [liquefied natural gas] production is very capital intensive and requires relatively few employees, a sizeable portion of LNG profits will flow to foreign investors and tax revenue will be constrained by deductions (such as depreciation)'.[227]

[242] The RBA also shows that the growth in nominal unit labour costs has been lower than for our major trading partners, as shown in Chart 4.10, and concludes that:

> 'These differences in the growth rates of Australia's unit labour costs versus those of its trading partners have led to a more marked improvement in Australia's labour market competitiveness than in the competitiveness of the prices of its goods and services. Australia's real effective exchange rate based on unit labour costs has depreciated by around 25 per cent since March 2013.'[228]

Chart 4.10: Nominal unit labour costs, index (March 2013 = 100)



Source: RBA, *Statement on Monetary Policy*, May 2017, p. 26, Graph A4.

[243] We draw several conclusions from this discussion. While there have been some modest fluctuations, the gains in labour productivity over the past 8 years have matched those of all but one of the periods since 1973–74. These gains have by and large been reflected in wages (or, more precisely, in costs of employment). The exception is 2016, where the boost to national income from the improved terms of trade has gone mostly to profits, especially (but not entirely) in the resources sector. The terms of trade have been volatile in the past decade and the RBA is of the view that the current high levels are unlikely to be sustained. Nor do the benefits from them flow in any direct way to labour. It is prudent at this stage to place little weight in our deliberations on the most recent rise in the profit share of total factor income, and associated fall in real unit labour costs.

[244] We note that in earlier years the NMW and award rates were intentionally not raised commensurately with the growth in national income that flowed from the very high terms of trade. The Panel judged at the time that growth in national income from this source was too volatile to provide a sound foundation for growth in enforceable minimum wages.[229] We are still of that opinion.

Business competitiveness and viability

[245] On an annual basis, profits growth was particularly strong over the year to the December quarter 2016 compared with the preceding years and above the 5-year and 10-year averages for both total industries and non-mining industries (Table 4.2). Profits in the non-mining part of the economy grew by 2.0 per cent over the year to the December quarter 2015 and 9.6 per cent over the year to the December quarter 2016, and have averaged annual growth of 3.4 per cent over the past 5 years. This compares with growth of 4.2 per cent over the past 10 years and suggests that the 9.6 per cent growth in the most recent year is particularly healthy. Over the past 5 years, profitability in the non-mining parts of the economy has exceeded that of all industries (i.e., including mining), albeit by a small margin.

Table 4.2: Company gross operating profits, total and non-mining industries, growth rates

	Total (%)	Non-mining (%)
Dec-06	11.1	9.5
Dec-07	10.9	18.4
Dec-08	18.8	–5.0
Dec-09	–10.1	10.5
Dec-10	16.4	1.2
Dec-11	2.3	1.2
Dec-12	–7.5	3.4
Dec-13	11.0	1.3
Dec-14	–6.6	1.1
Dec-15	–3.4	2.0
Dec-16	26.2	9.6
5 years to Dec-16*	3.2	3.4
10 years to Dec-16*	5.1	4.2

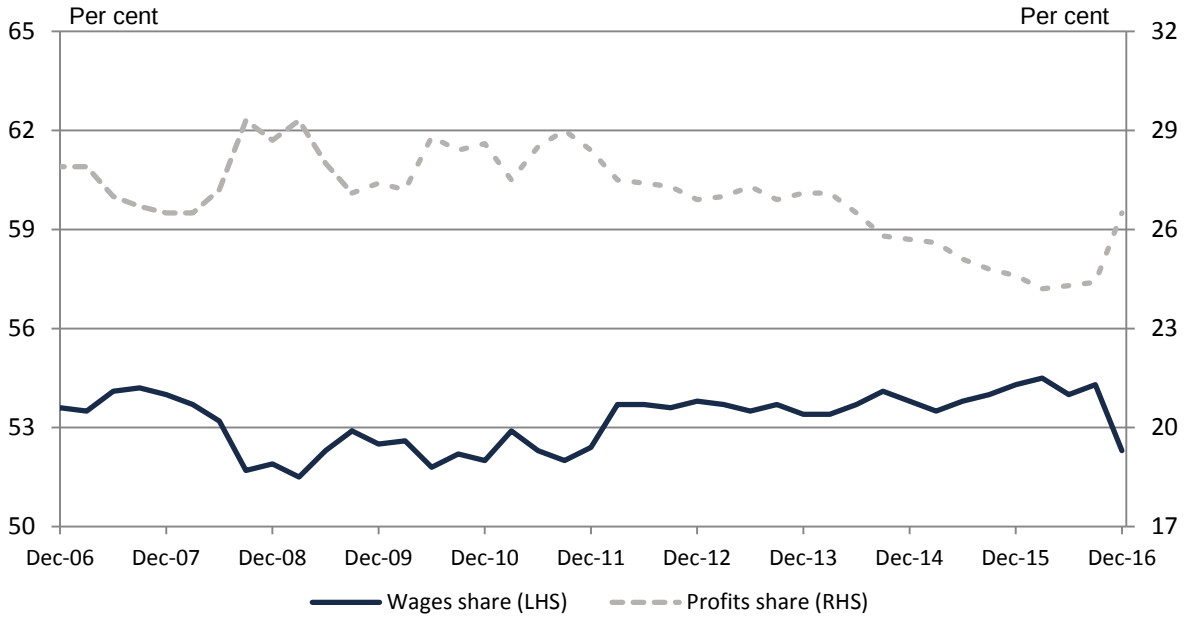
Note: *Annualised growth rates.

Source: Statistical report, Table 3.2; ABS, *Business Indicators, Australia, Dec 2016*, Catalogue No. 5676.0.

[246] As shown in Table 4.8, the percentage change in gross operating profits (over the year to the December quarter 2016) for the most award-reliant industries varied widely. The Accommodation and food services industry had a 14.1 per cent decline in profits, Retail trade also suffered a decline (3.7 per cent) whilst gross operating profits increased in the Administrative and support services industry by 3.7 per cent and in the Other services industry by 81.2 per cent.

[247] The profits share of total factor income fell over the 5 years to the September quarter 2016 to 24.4 per cent before increasing to 26.5 per cent in the December quarter 2016 (Chart 4.11). While the wages share had been relatively stable for most of the 5 years to the September quarter 2016, it fell to 52.3 per cent in the December quarter 2016.

Chart 4.11: Profits and wages shares of total factor income

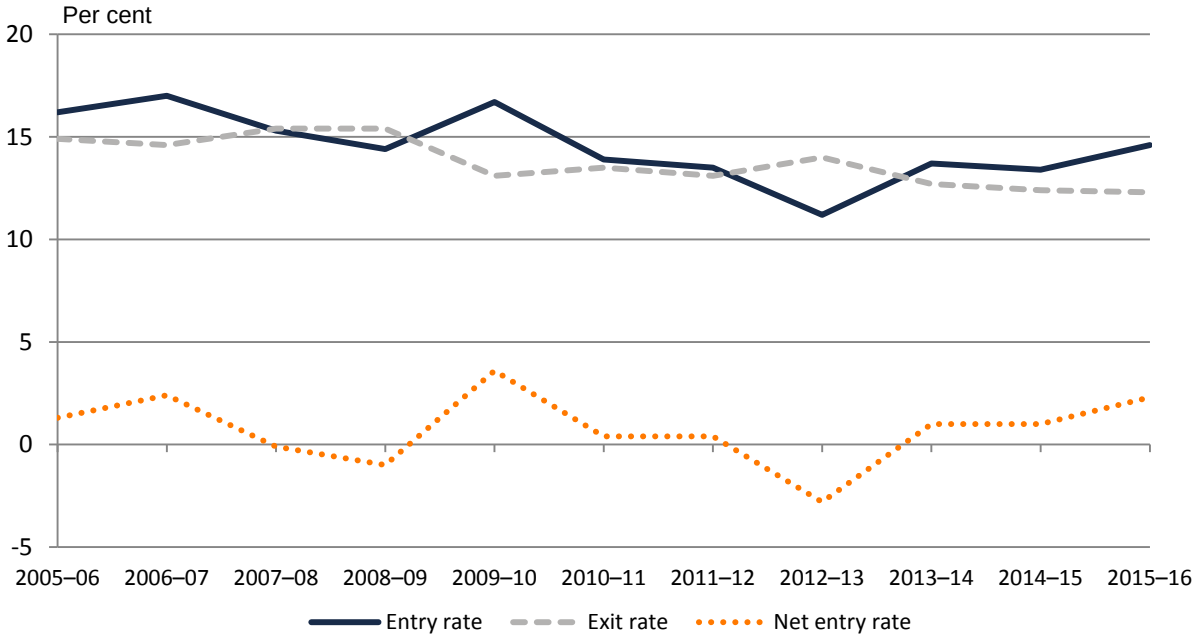


Source: Statistical report, Chart 3.1; ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2016*, Catalogue No. 5206.0.

[248] Business viability may be assessed using measures published by the ABS which are often referred to in submissions.[230] Business entry, exit and net entry rates between 2005–06 and 2015–16 are shown in Chart 4.12.

[249] The chart shows that, since 2012–13, the business entry rate has increased, while the business exit rate has steadily declined. This is reflected in the positive net entry rate, which shows that the number of businesses in the economy has grown each year since 2013–14.

Chart 4.12: Business entry, exit and net entry rates, 2005–06 and 2015–16



Note: Entry rates are business entries in the financial year as a proportion of total businesses operating at the start of the financial year. Exit rates are total business exits in the financial year as a proportion of total businesses operating at the start of the financial year. Net entry rates are the difference between the entry and exit rates, and represent the percentage growth in the number of businesses over the respective financial year.

Source: Statistical report, Chart 3.5; ABS, *Counts of Australian Businesses, Including Entries and Exits*, various, Catalogue No. 8165.0.

[250] Business entry and exit rates and the proportion of businesses by industry as at June 2016 are presented in Table 4.3. The entry rate over the year to June 2016 was higher than the exit rate and this was also the case across most industries, including 3 of the 4 most award-reliant industries being Accommodation and food services, Administrative and support services and Other services, whereas in Retail trade business exits were higher than entries. Entry rates were highest in Accommodation and food services, however, this industry also had the second highest exit rate.

Table 4.3: Business entry and exit rates by industry

	Proportion of businesses at June 2016 (%)	Entry rate (%)	Exit rate (%)
Agriculture, forestry and fishing	8.3	7.0	8.5
Mining	0.4	10.3	12.9
Manufacturing	3.9	11.1	11.3
Electricity, gas, water and waste services	0.3	16.0	12.9
Construction	16.7	17.3	13.8
Wholesale trade	3.6	13.6	12.3
Retail trade	6.1	12.9	13.9
Accommodation and food services	4.2	19.2	16.1
Transport, postal and warehousing	6.2	18.7	14.4
Information media and telecommunications	0.9	17.5	15.5
Financial and insurance services	9.0	14.0	9.3
Rental, hiring and real estate services	11.2	11.5	9.5
Professional, scientific and technical services	12.2	15.7	13.4
Administrative and support services	3.8	18.5	15.4
Public administration and safety	0.3	16.6	16.5
Education and training	1.3	17.2	13.6
Health care and social assistance	5.8	12.8	8.4
Arts and recreation services	1.2	15.1	14.0
Other services	4.3	15.1	12.8
All industries	**100.0**	**14.6**	**12.3**

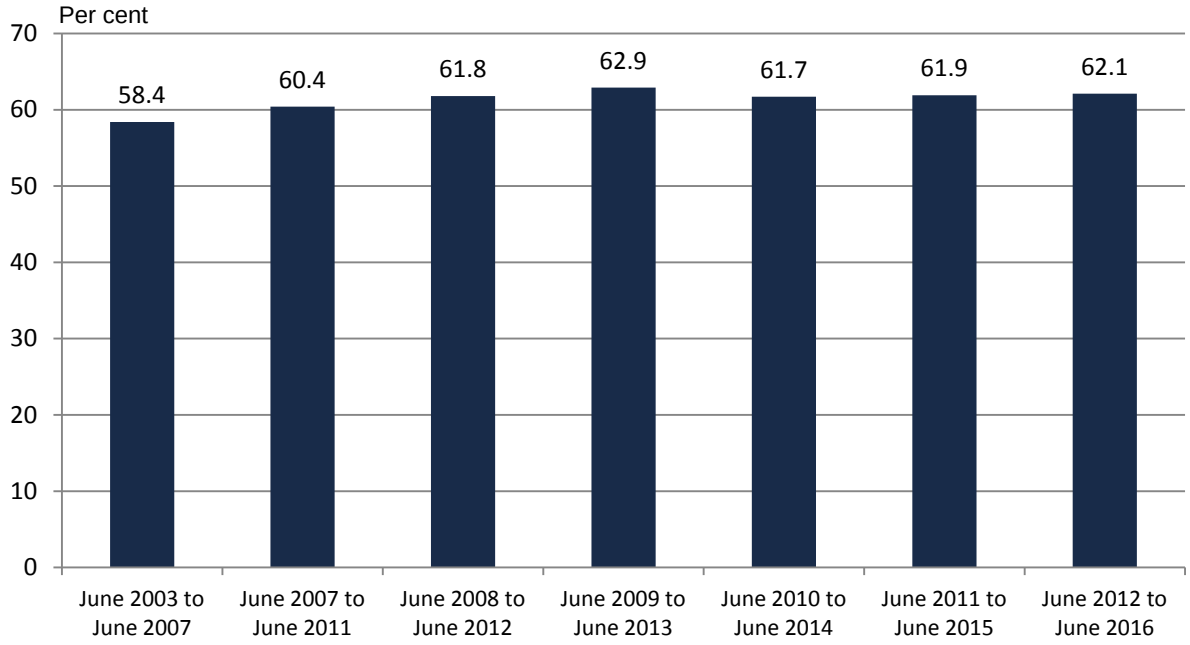
Note: Entry rates are business entries in the financial year as a proportion of total businesses operating at the start of the financial year. Exit rates are total business exits in the financial year as a proportion of total businesses operating at the start of the financial year. Only data for those businesses that were able to be classified to an industry division are presented. Of all businesses that were actively trading as at June 2013 and June 2016, 2.0 per cent and 1.4 per cent, respectively, were not classified to an industry.

Source: Statistical report, Table 3.4; ABS, *Counts of Australian Businesses, Including Entries and Exits, June 2012 to June 2016*, Catalogue No. 8165.0.

[251] Survival rates measure the proportion of businesses that were actively trading in an initial period and continued to be trading in a later period.

[252] Chart 4.13 shows business survival rates over 4-yearly intervals. Over the period, business survival rates increased, with survival rates highest among businesses that were operating in June 2009 and still operating in June 2013. Since then, survival rates declined slightly, though they remain near their highest levels over this period.

Chart 4.13: Business survival rates



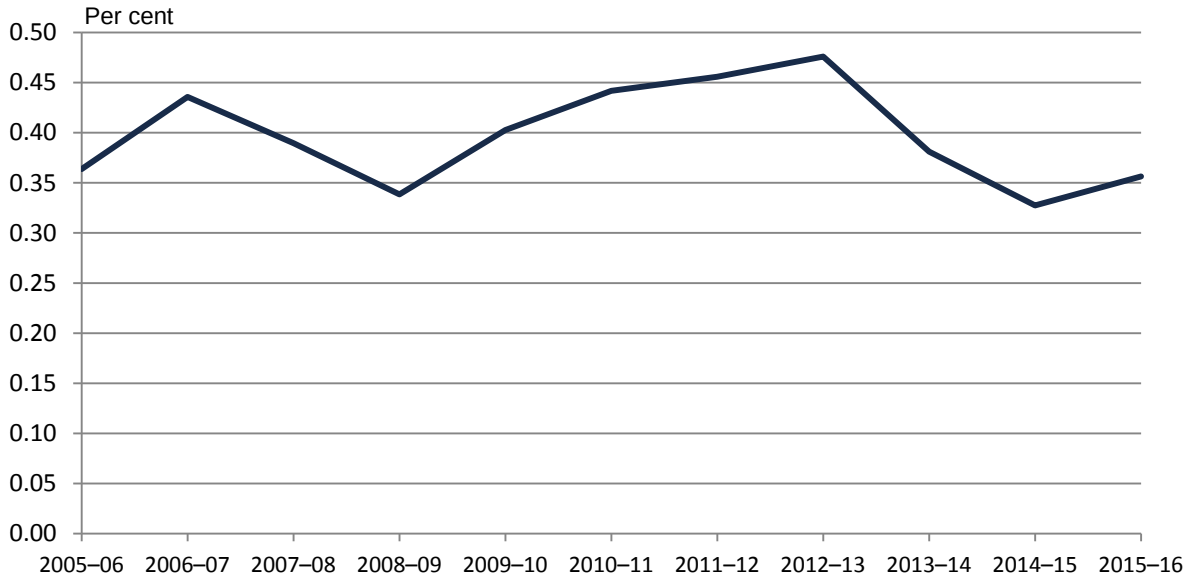
Note: A surviving business is defined as a business which was actively trading in the first period and continued to be trading in the second period.

Source: Statistical report, Chart 3.6; ABS, *Counts of Australian Businesses, Including Entries and Exits*, various, Catalogue No. 8165.0.

[253] All of the 4 most award-reliant industries had survival rates below the all industries average for the period June 2012 to June 2016.[231] This reflects the nature of the industries and has been the case for many years. As Table 4.3 shows, for 3 of the 4 most award-reliant industries, (the exception is Retail trade), entry rates of new businesses exceeded exit rates in 2016.

[254] Another measure of business viability is business bankruptcy rates. Chart 4.14 shows the business bankruptcy rates between 2005–06 and 2015–16. While business bankruptcy rates have risen slightly in 2015–16 to 0.36 per cent, they remain near their lowest levels over the last decade.

Chart 4.14: Business bankruptcy rates



Note: The bankruptcy rate is defined as the number of business-related bankruptcies divided by the number of owner managers of an unincorporated enterprise in the economy. The business bankruptcy rate is adopted from Bickerdyke I, Lattimore R, and Madge A (2000), *Business Failure and Change: An Australian Perspective*, Productivity Commission Staff Research Paper, Ausinfo, Canberra. Data are expressed in original terms.

Source: Statistical report, Chart 3.4; ABS, *Labour Force, Detailed, Quarterly, Feb 2017*, Catalogue No. 6291.0.55.003; Australian Financial Security Authority, Provisional business and non-business personal insolvency time series, Bankrupts entering a business related bankruptcy (under Parts IV and XI of the *Bankruptcy Act 1966*), September quarter 2016, https://www.afsa.gov.au/statistics/time-series-0.

[255] Business bankruptcies are a small component of business exits. In 2015–16, there were 4323 business bankruptcies and 260 126 business exits.[232] Other reasons for business exits include sale of the business, takeover/mergers, business closure unrelated to bankruptcy (e.g., retirement, sickness or death), and company liquidations.[233]

[256] These measures suggest that there has been a modest improvement in the viability of businesses in recent years, as indicated by the growth in the number of businesses and the low proportion of business bankruptcies.

Profit margins

[257] Profit margins measure the proportion of operating profits before tax from sales and service income received.

[258] Differences between profit margins across industries can reflect different features of the industry, including the level of capital intensity. Table 4.4 shows the profit margins for both small (including non-employing businesses)[234] and all businesses by industry in 2015–16 (the most recent data), as well as the annual average of the 5 years to 2015–16. The table shows that profit margins grew quite strongly for all businesses over the past 5 years and over 2015–16. They grew more rapidly for small businesses than across all businesses in 2015–16 and for the annual average over the 5 years to 2015–16. These data may be affected by including non-employing businesses as part of small businesses, which may operate differently to employing businesses. Unfortunately, these businesses cannot be removed from the data. Nonetheless, the data do not support the contention by ACCI that small businesses

have lower profit margins and therefore lower capacity to absorb increased labour costs.[235] The Sensis Business Index for the December quarter 2016 reports that the main barrier to small and medium-sized firms taking on more workers was limited sales. Only 9 per cent cited costs of employing as the main reason.[236]

Table 4.4: Profit margins, annual growth rates, small and all businesses, 2015–16

	5 years to 2015–16		2015–16	
	Small (%)	All (%)	Small (%)	All (%)
Agriculture, forestry and fishing	20.3	17.2	23.6	19.2
Mining	3.4	19.9	–30.2	3.7
Manufacturing	9.2	5.4	8.0	6.7
Electricity, gas, water and waste services	12.9	12.2	11.8	11.4
Construction	13.0	9.3	13.9	10.4
Wholesale trade	4.9	3.5	3.6	3.4
Retail trade	6.1	4.8	6.6	4.3
Accommodation and food services	10.4	8.5	7.7	7.9
Transport, postal and warehousing	18.2	10.5	18.4	10.7
Information media and telecommunications	14.2	11.2	11.9	10.8
Rental, hiring and real estate services	48.3	42.4	56.6	50.1
Professional, scientific and technical services	23.4	24.1	19.9	22.2
Administrative and support services	18.5	9.3	16.1	9.2
Public administration and safety (private)	15.8	9.1	16.0	8.0
Education and training (private)	25.4	19.2	26.8	18.6
Health care and social assistance (private)	36.9	26.4	38.2	27.2
Arts and recreation services	20.5	13.8	16.7	12.3
Other services	18.3	14.9	17.2	14.1
Total selected industries	**16.9**	**11.4**	**17.1**	**10.9**

Note: Profit margins are operating profits before tax divided by sales and service income. Small businesses employ less than 20 people (include non-employing businesses). Total selected industries excludes Financial and insurance services.

Source: Statistical report, Table 3.3; ABS, *Australian Industry, 2015–16*, Catalogue No. 8155.0.

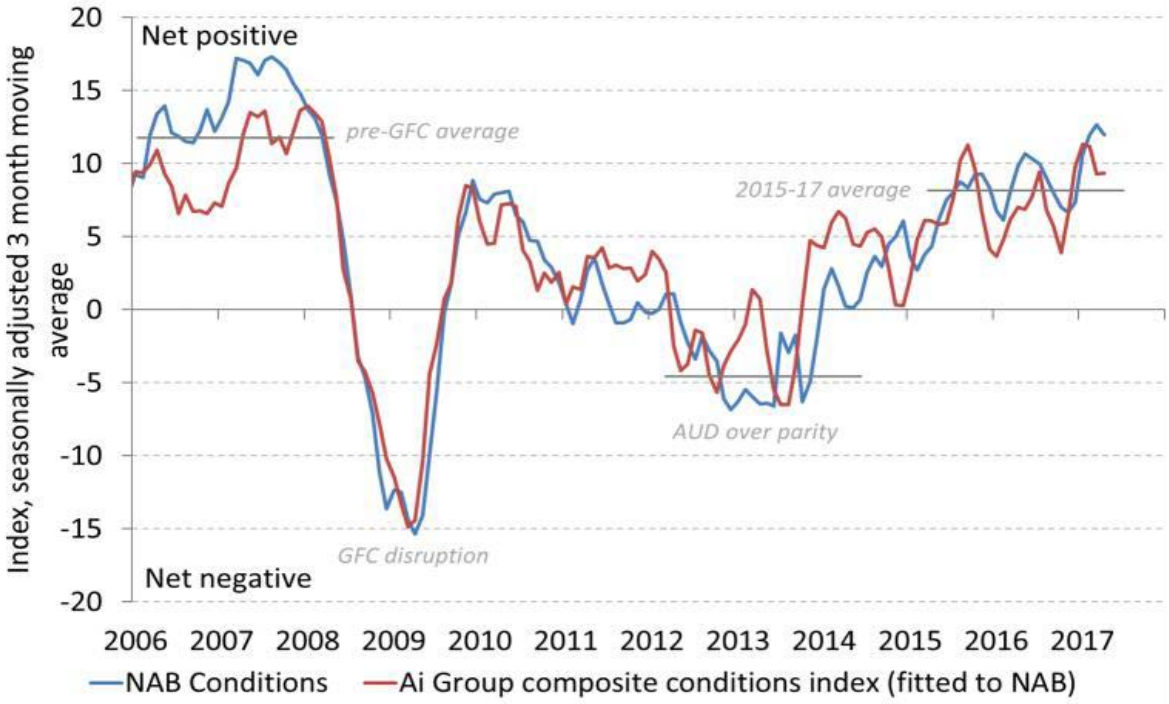
Surveys of Business Performance

[259] Once again the Panel was referred to a number of surveys of business. The Panel has commented in previous decisions about the usefulness or otherwise of these surveys.

[260] As was noted in the 2015–16 Review decision, the Australian Government and the RBA had assessed 'that information from the main business surveys (by ACCI, NAB, and Sensis) have proved to be quite reliable predictors of output and employment growth'.[237]

[261] Ai Group again submitted their composite Ai Group PMI, PSI and PCI index and NAB business conditions chart reproduced below (Chart 4.15).

Chart 4.15: Composite Ai Group PMI, PSI & PCI index and NAB business conditions



Source: Ai Group response to questions for consultations, 12 May 2017 at p. 7.

[262] On the basis of this chart, Ai Group submitted that 'business conditions dropped in February 2017 after a surge in January, but remained at positive (and above average) levels'.[238]

[263] It can be seen from Chart 4.15 that business conditions are at their most positive since the GFC.

Small business

[264] 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.[239]

[265] The Australian Government highlighted 'the important role played by small businesses in the Australian economy, through their contribution to economic growth and employment'.[240]

[266] The Australian Government provided extensive information about small businesses and their particular circumstances in section 5.4 of its submission.

- While 97 per cent of all businesses are small (i.e., employ 0–19 employees), they account for a smaller percentage of employees (45 per cent) and of value added (36 per cent). Thirty eight per cent of these small businesses were employing small

businesses. They are particularly prevalent in agriculture, construction and services.[241]

- As at 30 June 2015, small businesses employed around 4.8 million Australians or 45 per cent of non-financial private sector employment.[242]
- 'Small businesses contribute to a greater proportion of employment compared to output in almost every industry which suggests that small businesses may be more labour intensive … than large businesses within the same industry.'[243]
- Small businesses are more award reliant than large businesses but similar in this regard to medium businesses. Small businesses alone account for around 34 per cent of total employees on award classification wages and around 35 per cent of employees in a small business are paid award classification wages—this compares to 33 per cent for businesses with 20–49 employees and 17 per cent for larger businesses (with 100–999 employees).[244]

[267] The Australian Government submitted that business conditions for small business have shown a steady improvement with both the NAB and Sensis surveys showing that business conditions are above long-term average levels.[245] Over the year and 5 years to 2015–16, small businesses had on average higher rates of growth in their profit margins than did all businesses (17.2 per cent compared with 11.9 per cent for the 5-year period) (Table 4.4).

[268] The Australian Government (on the basis of the NAB and Sensis surveys) concluded that:

- 'the proportion of small businesses that experienced an improvement in business conditions over the December 2016 quarter outweighed the proportion of those that experienced deterioration';[246]
- at an industry level, the latest NAB survey results suggest conditions are positive across all industries except manufacturing;[247]
- 'consistent with the NAB SME survey the Sensis results suggest that small business conditions continue to improve';[248]
- the NAB surveys show that small businesses are now reporting better conditions than all businesses in general;[249]
- the NAB business surveys indicate that small businesses remain cautious in their employment decisions with more small businesses reducing the size of their workforce compared to those that have reported an increase. However, encouragingly, the employment indicator continues to improve;[250] and
- the 'Sensis December Quarter 2016 Business Index which includes small and medium sized businesses shows encouraging signs of improvement in the labour market, with more firms for the first time since March quarter 2015 increasing the size of their workforce compared to those reducing the size of their workforce'.[251]

[269] The ACTU used unpublished data from the EEH to show that there has been some shift in the concentration of award-only workers from small to larger businesses between 2014 and 2016. The proportion in small businesses fell from 37.9 per cent to 33.4 per cent while the proportion working in businesses with over 50 employees rose from 42.4 per cent to 50.0 per cent over the 2 years.[252] The ACTU contends that this shift reduces the extent to which small businesses are disproportionately sensitive to changes in award rates of pay. This perspective gains some support from the fact, cited by the Australian Government,[253] that labour costs are a slightly smaller share of total expenses for small employing businesses than for larger ones, at 16 per cent.

[270] The Australian Government claims that it is appropriate to include non-employing small businesses in our considerations, 'as labour costs have a direct and immediate bearing on the propensity of non-employing small businesses to take on workers.'[254] While we accept that labour costs will be a factor that sole operators take into account if they are considering employing a worker, it is also the case that they will not otherwise need to accommodate rising labour costs, unlike their employing counterparts.

[271] The Panel recognises that small businesses do have distinguishing features, some of which make it harder for them to accommodate rising costs from any source. But we note that the situation of small businesses is more robust in 2017 than it has been for some time, that the extent of award reliance has diminished, and that their growth in profit margins has been substantially higher than for larger businesses.

Inflation and wages

[272] Inflation and wages have continued to grow at unusually low rates over the past year. The historically low growth in wages was acknowledged in the 2017 Budget Speech, where the Australian Treasurer said 'it's been a fair while since most hardworking Australians have had a decent pay rise'.[255]

[273] These measures are discussed in more detail in the following sections.

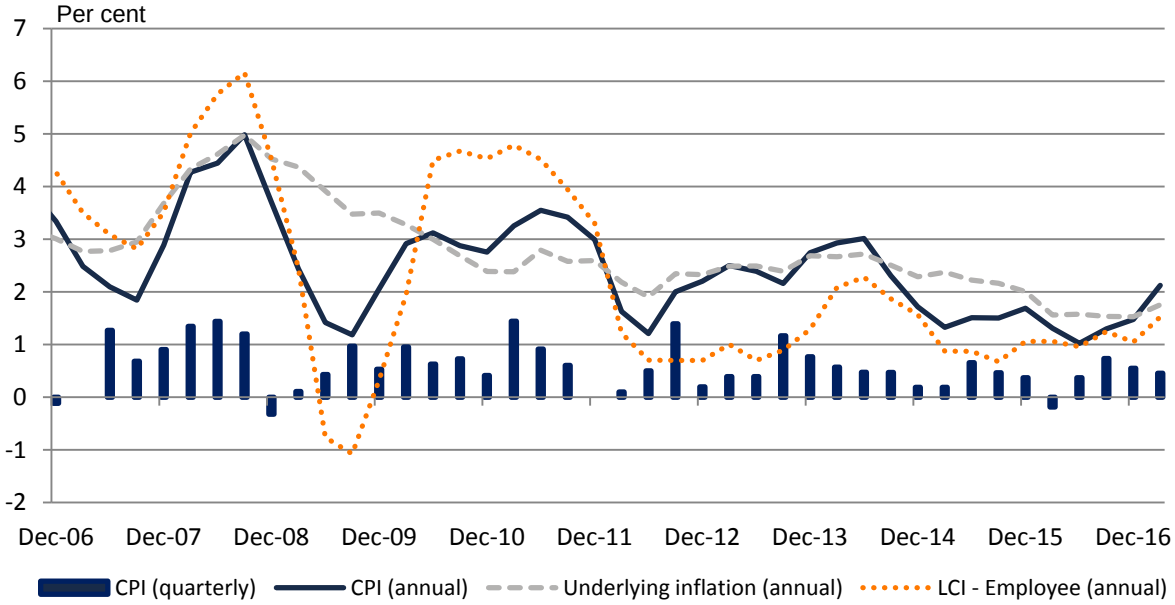
Inflation

[274] We look at 3 different measures of inflation in consumer prices and each has been relatively low over the past year. The different measures can diverge, with the Living Cost Index (LCI) being more volatile. However, over the year to the March quarter 2017, they have moved mostly in tandem, with growth below an annual rate of 2.0 per cent. Annual growth in the CPI was below 2.0 per cent between the December quarter 2014 and the December quarter 2016 before increasing to 2.1 per cent over the year to the March quarter 2017 (Chart 4.16). Annual growth in underlying inflation, the average of the trimmed mean and weighted median measures, has been below 2.0 per cent since the March quarter 2016. The LCI for employee households increased by 1.5 per cent over the year to the March quarter 2017.

[275] Until the March quarter 2017, both the headline and underlying measures of inflation have been below the RBA medium-term target of 2–3 per cent. The Australian Government noted that the subdued inflationary environment is occurring globally.[256]

[276] The parties differed in their interpretation of the significance of low inflation for wage setting. ACCI submitted that low inflation suggests that spending is subdued, consumer confidence is lagging and competitive pressure is impacting prices.[257] ABI and NSWBC concurred that it suggests 'limited opportunity for firms to accommodate increasing labour costs'.[258] The ACTU, in contrast, submitted that it provides an opportunity to provide a real increase to the NMW.[259]

Chart 4.16: Measures of inflation—CPI, underlying inflation and LCI for employee households



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: Statistical report, Chart 4.1; ABS, *Consumer Price Index, Australia, Mar 2017*, Catalogue No. 6401.0; ABS, *Selected Living Cost Indexes, Australia, Mar 2017*, Catalogue No. 6467.0.

[277] While none of the inflation measures that we report provides a perfect measure of the changes in the cost of living for award-reliant workers, or for all workers, they do provide essential information from which to judge whether real wages—their ability to buy a basket of goods and services—have risen in recent years. The subdued inflation means that there is little risk to the macroeconomic inflationary environment from our decision.

[278] The prices that producers receive for domestically produced products (producer prices, as measured by the GDP deflator) have followed a different pattern over the past 10 years. They rose by 20 per cent between 2006 and 2011, and then remained almost unchanged until the December quarter 2015. They have risen by 3.6 per cent over the year to the December quarter 2016.[260] Much of this unusual pattern is explained by the large rise, then fall, in the terms of trade, including the further rise we have seen in 2016.

[279] In response to a question on notice, the Australian Government advised that the GDP deflator has risen more strongly than wages over the past year in part because 'the GDP deflator is affected by export prices, which have risen by around 10 per cent through the year to the December quarter 2016 due to increases in commodity prices'.[261]

Wages

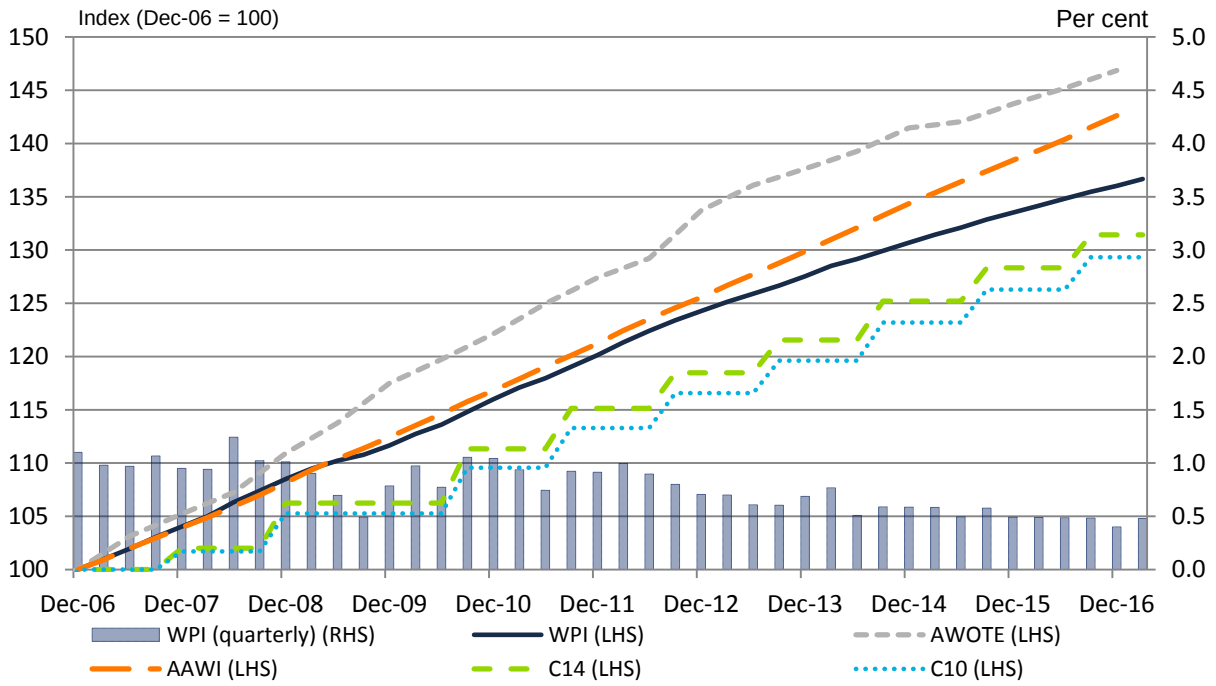
[280] Growth in all measures of wages has remained low. In the December quarter 2016, the fastest growth has been for federal enterprise agreements, as shown in Chart 4.17 below. The average annualised wage increase (AAWI) for federal enterprise agreements rose by 3.1 per cent while AWOTE rose by 2.2 per cent over the year. Both measures slightly exceeded measures of inflation for the same period. The WPI, which tracks changes in pay for the job by holding constant the employment structure, grew by only 1.9 per cent over the year to the March quarter 2017.[262] Growth in the NMW and award rates in 2016, at 2.4 per cent, exceeded inflation and growth in both the WPI and AWOTE. This reflects the Panel's view in the 2015–16 Review decision, that '[t]he prevailing economic circumstances provide an opportunity to improve the relative living standards of the low paid'.[263] Over the longer term, as shown in the chart, AWOTE is the measure that has grown most strongly, followed by AAWI. An important reason for this is the change in the structure of employment, with growth in the higher paying managerial and professional jobs exceeding that of many of the lower paid and trade jobs.

[281] Several parties (ABI and NSWBC and ARA[264]) argued that the WPI is the 'better' or 'most appropriate' measure. The RBA is also of this view, although it supplements information about the WPI with AWOTE, AAWI and average labour costs from the national accounts.[265] As can be seen from Chart 4.17 below, over the 10-year period, growth in the NMW and the C10 rate has been more than 5 percentage points lower than growth in the WPI, and 10 percentage points lower than growth in AAWI.

[282] ARA and ACCI advocated that WPI in the private sector is the most appropriate wage measure 'because the capacity of the public sector to grant wage increases is divorced from the capacity of private firms'.[266] ACCI reports that growth in the private sector WPI over the year to the December quarter 2016 was at a record low of 1.8 per cent, even lower than the 2.0 per cent recorded in 2015.[267]

[283] We accept the point that for private businesses, the private sector WPI is of more direct relevance than the WPI for the whole economy. In practice, however, there is very little difference between the two series. As shown in Table 5.2 of the Statistical report, the private sector WPI has grown by 36.0 per cent between the December quarter 2006 and the March quarter 2017 while the all sectors WPI has grown by 36.7 per cent.[268]

Chart 4.17: Measures of nominal wages growth, quarterly and cumulative percentage change, index (Dec-06 = 100



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. 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. 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 AAWI index is calculated by first deriving a quarterly rate from the AAWI per employee for agreements approved in the quarter for all sectors. The C14 and the C10 are minimum award rates set under the Manufacturing Award and the former *Metal, Engineering and Associated Industries Award 1998*.

AWOTE data are published half-yearly for May and November; hence a quarterly series has been derived. AWOTE data are expressed in original terms.

Source: Statistical report, Chart 5.1; ABS, *Average Weekly Earnings, Australia, Nov 2016*, Catalogue No. 6302.0; ABS, *Wage Price Index, Australia, Mar 2017*, Catalogue No. 6345.0; Department of Employment, *Trends in Federal Enterprise Bargaining*, December quarter 2016, <http://employment.gov.au/trends-federal-enterprise-bargaining>; *Metal, Engineering and Associated Industries Award 1998;* Manufacturing Award (from 1 January 2010).

[284] Submissions discussed the possible reasons for low wage growth. The Australian Government and ACCI submitted that the low wage growth reflects the economy transitioning from the investment to the production phase of the mining boom.[269]

[285] Ai Group made reference to a recent article on this topic by Bishop and Cassidy (2017) of the RBA.[270] Together with findings from previous RBA research,[271] this article discussed the reasons for low nominal wage growth, including:

- spare capacity in the labour market;
- concerns of future employment prospects leading employees to be more willing to accept lower wage rises;
- low inflation expectations;
- lower prices for producers that have resulted from the large fall in the terms of trade; and

- the need for the real exchange rate to fall to adjust to the fall in the terms of trade, as wage growth had exceeded that of our international competitors.

[286] The article also considered whether low wage growth may be due to a decline in the bargaining power of workers. However, the authors stated that this is difficult to observe and the evidence is limited.[272]

[287] AFEI submitted that the 'disappearance of the elevated rate of wage increases' and shift in employment away from the mining sector have been a major factor in the slowdown of wages.[273] Their view is supported by Bishop and Cassidy, who say that there has been a 'steady decline in the frequency of wage changes since the early 2000s' and that the fall in the average size of wage changes is largely a result of a reduction in the number of increases that exceed 4 per cent. Much, but not all, of the fall in large pay increases has been in the mining and related sectors.[274]

[288] AFEI submits that 'it would appear that the bulk of recent wage growth has been primarily driven by the minimum wage review Decisions, not by the demand and supply conditions faced by employers'.[275] The RBA article provides some support for this view, but the principle mechanism that the authors identify is through 'anchoring of wage outcomes to CPI'.[276] The article goes on to express the view that '[d]ecisions by the Fair Work Commission, which sets awards and minimum wage outcomes, are heavily influenced by the CPI'.[277] In response to the AFEI point, we draw attention to the fact that while the Panel has taken the CPI (and other measures) into account as part of our assessment of cost increases for employees, the basis for, and level of, the adjustments has not been limited to the CPI.

[289] We believe that the reasons given by the RBA article for the low growth in wages are salient, but share the view that it is still somewhat puzzling. There has been spare capacity in the labour market since the GFC, and the RBA estimates that this has recently declined a little, while the growth in the WPI continues to fall to record lows. The RBA article notes that other advanced economies are having a similar experience of low wage growth. Possible reasons that they consider are the growing job insecurity from sources such as 'technological progress, an increase in contract work, and increased competitive pressure from growing internationalisation of services trade'.[278] But Bishop and Cassidy observe that while measures of feelings of job insecurity are low this is 'not measuring anything separate to traditional labour market indicators such as unemployment'.[279]

[290] We accept that the modest increases to the NMW and minimum award rates do reflect, in part, low inflation, and play some part in low growth of wages more generally.

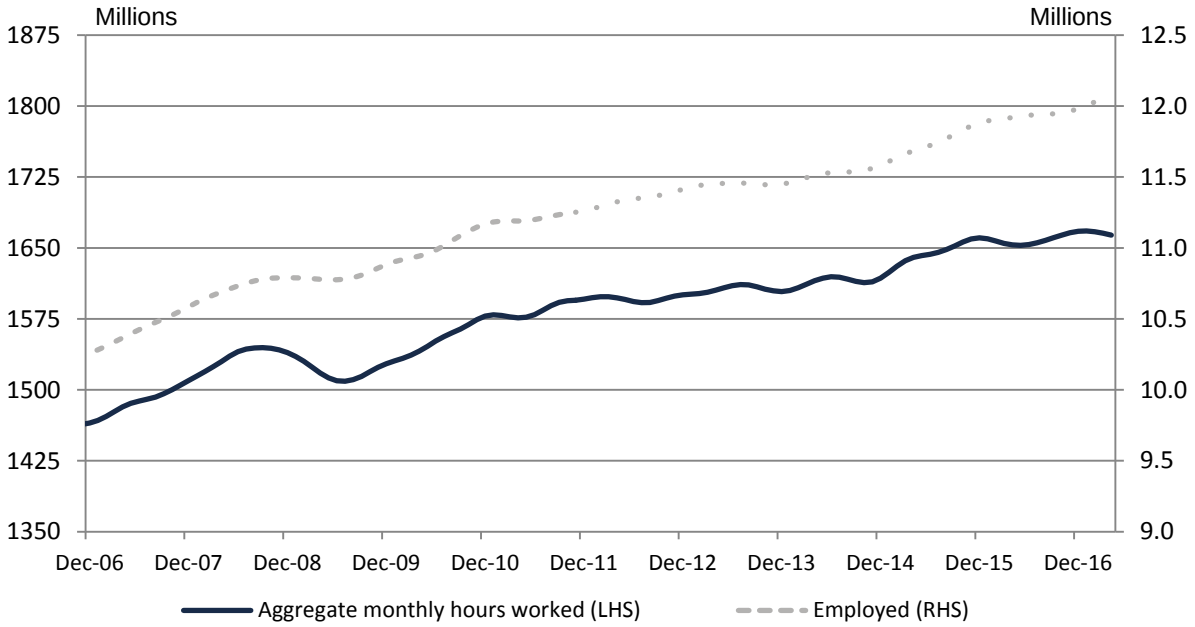
Labour market

[291] Trends relating to the labour market encompass employment and hours worked, including by industry, as well as data on workforce participation indicators such as underemployment, long-term unemployment, participation and youth employment. As in the Statistical report, trend data is used in this section unless otherwise indicated.

Labour market developments

[292] The number of persons employed and monthly hours worked from December 2006 to April 2017 are shown in Chart 4.18. Annual employment growth fell below 1.0 per cent towards the end of 2016 and in early 2017 while annual growth in monthly hours worked fell below 0.5 per cent over the same period. Both growth rates picked up slightly in April 2017.

Chart 4.18: Persons employed and monthly hours worked in all jobs



Source: Statistical report, Chart 6.1; ABS, *Labour Force, Australia, Apr 2017*, Catalogue No. 6202.0.

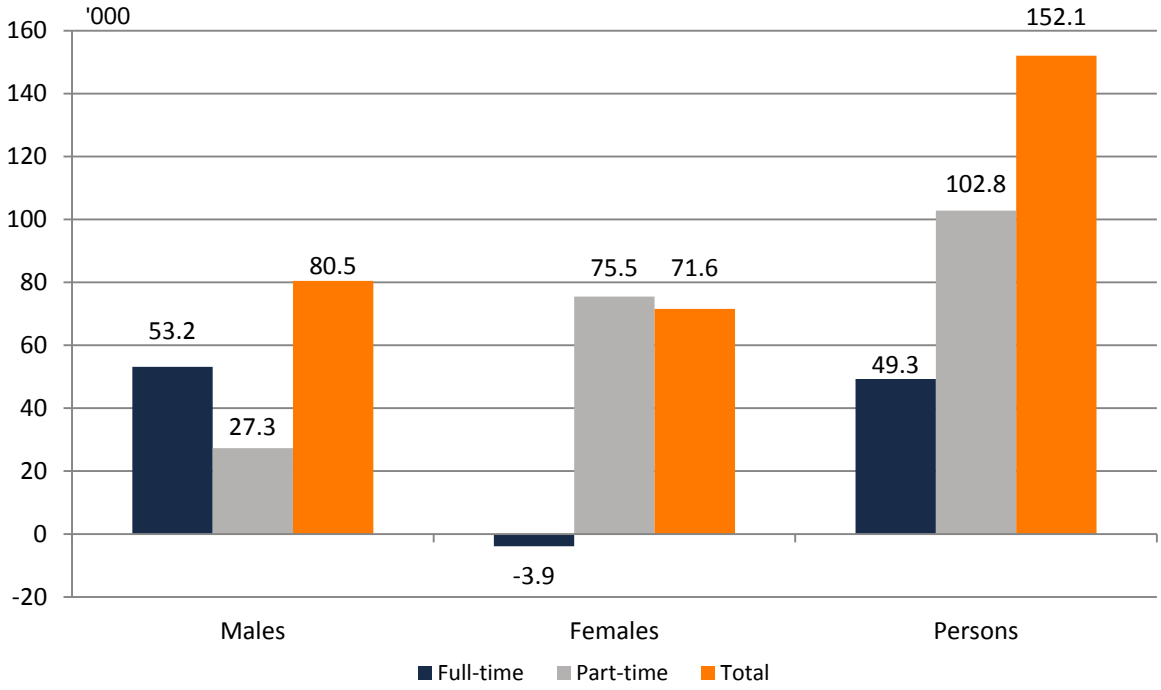
[293] The growth in total hours worked is a key indicator of the strength of employment, and accommodates changes in both full- and part-time employment. Chart 4.18 suggests that there has been little growth in hours worked over the past year. On closer inspection, this slow total growth in hours worked has been caused, in part, by substantial falls in the average number of hours worked by *full-time workers*, over the 12 months to April 2017. In the first half of 2016, there was a small fall in average hours worked by part-time workers, but this was reversed after August 2016.[280] We do not know the reasons for the fall in average monthly hours worked by full-time workers. But it is much less concerning as an indicator of a weak labour market than other causes of low employment growth, such as growth in underemployment or low growth in total employment.

[294] Chart 4.19 shows the change in employment by full-time and part-time hours and by gender from April 2016 to April 2017. Total employment increased by 152 100 over the year to April 2017, with 67.6 per cent of the increase attributable to part-time employment, particularly for females. Growth in total female and male employment was similar over the year to April 2017, although female full-time employment declined over the period.

[295] According to the RBA *Statement on Monetary Policy* in February 2017, the continued increase in part-time employment relative to full-time employment may reflect compositional changes as the economy continues its transition towards the services sector and subdued labour market conditions as a result of cyclical factors or broader structural changes to the economy.[281] The RBA also noted that fewer part-time workers have moved to full-time work

than is normally the case, consistent with higher underemployment, while the movement of workers from full-time employment to outside the labour force has picked up, driven by both demographic changes and cyclical factors.[282] In Chapter 6 we consider in more detail the interpretation of both underemployment and the significance of the growth in part-time employment.

Chart 4.19: Change in full-time, part-time and total employment by gender, April 2016 to April 2017



Source: Statistical report, Chart 6.7; ABS, *Labour Force, Australia, Apr 2017*, Catalogue No. 6202.0.

[296] The change in employment and hours worked by industry over the year to the February quarter 2017 is shown in Table 4.5. It shows considerable diversity between industries around the all industries (trend) employment growth of 1.2 per cent and the all industries (original) hours worked growth of –1.0 per cent. The changes range from –9.5 per cent to 10.8 per cent for employment and –20.2 per cent to 8.2 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, Other services and Accommodation and food services industries showing employment and hours growth above the all industries average, whilst employment and hours worked fell in Retail trade.

Table 4.5: Change in employment and hours worked by industry, February 2016 to February 2017

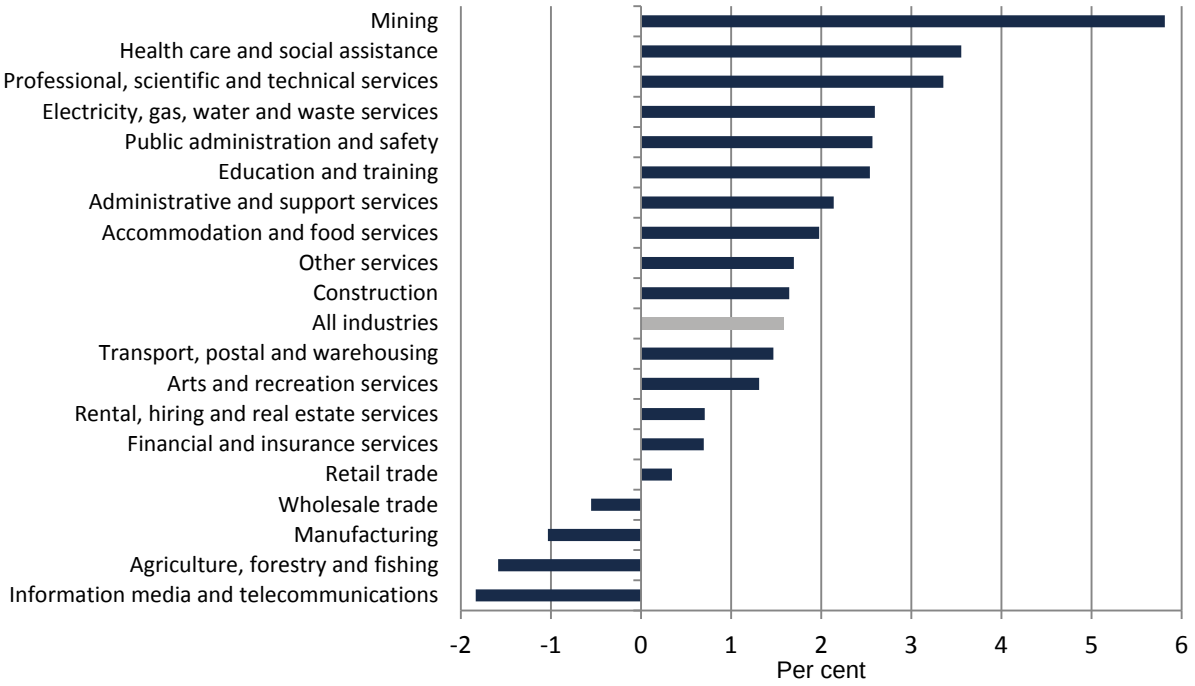
	Employment (% change)	Hours worked (% change)
Public administration and safety	10.8	5.5
Mining	6.6	0.3
Manufacturing	4.6	0.2
Education and training	3.9	3.2
Administrative and support services	3.7	–0.7
Construction	3.4	3.5
Other services	3.3	4.7
Accommodation and food services	2.4	0.0
Professional, scientific and technical services	2.1	–4.7
All industries	**1.2**	**–1.0**
Wholesale trade	0.7	2.8
Information media and telecommunications	–0.1	–0.9
Financial and insurance services	–0.8	8.2
Health care and social assistance	–2.2	–2.6
Rental, hiring and real estate services	–2.4	–0.6
Electricity, gas, water and waste services	–3.8	–3.5
Transport, postal and warehousing	–4.6	–8.3
Retail trade	–4.7	–7.8
Agriculture, forestry and fishing	–8.9	–3.4
Arts and recreation services	–9.5	–20.2

Note: Hours worked data are expressed in original terms. Industries are ranked by employment growth rate.

Source: Statistical report, Table 6.6; ABS, *Labour Force, Australia, Detailed, Quarterly, Feb 2017*, Catalogue No. 6291.0.55.003.

[297] Over the 10 years to the February quarter 2017, employment has grown in all except 4 industries, with 3 of the 4 most award-reliant industries (Administrative and support services, Accommodation and food services and Other services) exhibiting growth in employment above the all industries average, and Retail trade showing growth in employment but below the all industries average (Chart 4.20).

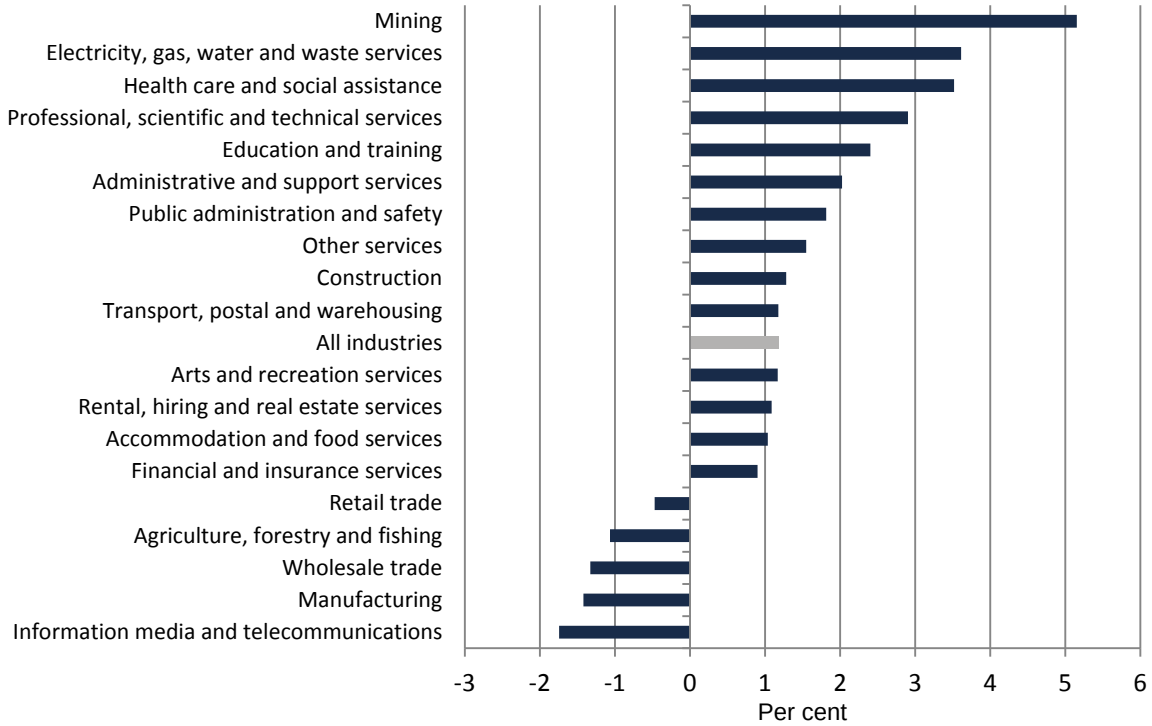
Chart 4.20: Average annual change in employment by industry, February 2007 to February 2017, per cent



Source: Statistical report, Chart 6.5; ABS, *Labour Force, Australia, Detailed, Quarterly, Feb 2017*, Catalogue No. 6291.0.55.003.

[298] Hours worked fell in Retail trade and Administrative and support services over the year to the February quarter 2017. Accommodation and food services had zero growth in hours worked, whilst in Other services, hours worked grew by 4.7 per cent (Table 4.5).

Chart 4.21: Average annual change in hours worked by industry, February 2007 to February 2017, per cent



Note: All data are expressed in original terms.

Source: Statistical report, Chart 6.6; ABS, *Labour Force, Australia, Detailed, Quarterly, Feb 2017*, Catalogue No. 6291.0.55.003.

[299] Chart 4.21 shows the average annual change in hours worked by industry over the 10 years to the February quarter 2017. Three of the 4 most award-reliant industries had increases in hours worked, although Accommodation and food services was slightly below the all industries average. There was a decline in hours worked in Retail trade.

Unemployment

[300] Table 4.6 shows the number and percentage change year-on-year of employed and unemployed persons since December 2006. Over the last year or so, the unemployment rate fell slightly (from 5.8 per cent in December 2015 to 5.7 per cent in December 2016) but has risen to 5.8 per cent in April 2017. The unemployment rate has barely changed since it peaked in December 2014 at 6.2 per cent.

Table 4.6: Employment and unemployment, percentage and percentage point changes over the year

Year ended (Month)	Employed persons ('000s)	Unemployed persons ('000s)	Unemployment rate (%)	Employed persons (% change)	Unemployed persons (% change)	Unemployment rate (ppt change)
Dec-06	10 258.6	490.2	4.6			
Dec-07	10 585.1	469.4	4.2	3.2	–4.3	–0.3
Dec-08	10 790.1	531.6	4.7	1.9	13.3	0.4
Dec-09	10 882.6	627.5	5.5	0.9	18.0	0.8
Dec-10	11 168.9	589.9	5.0	2.6	–6.0	–0.4
Dec-11	11 261.8	614.3	5.2	0.8	4.1	0.2
Dec-12	11 413.1	649.6	5.4	1.3	5.8	0.2
Dec-13	11 449.2	710.5	5.8	0.3	9.4	0.5
Dec-14	11 581.9	770.0	6.2	1.2	8.4	0.4
Dec-15	11 881.4	736.7	5.8	2.6	–4.3	–0.4
Dec-16	11 981.6	729.6	5.7	0.8	–1.0	–0.1
Apr-17	12 071.3	744.4	5.8	1.3	2.8	0.1

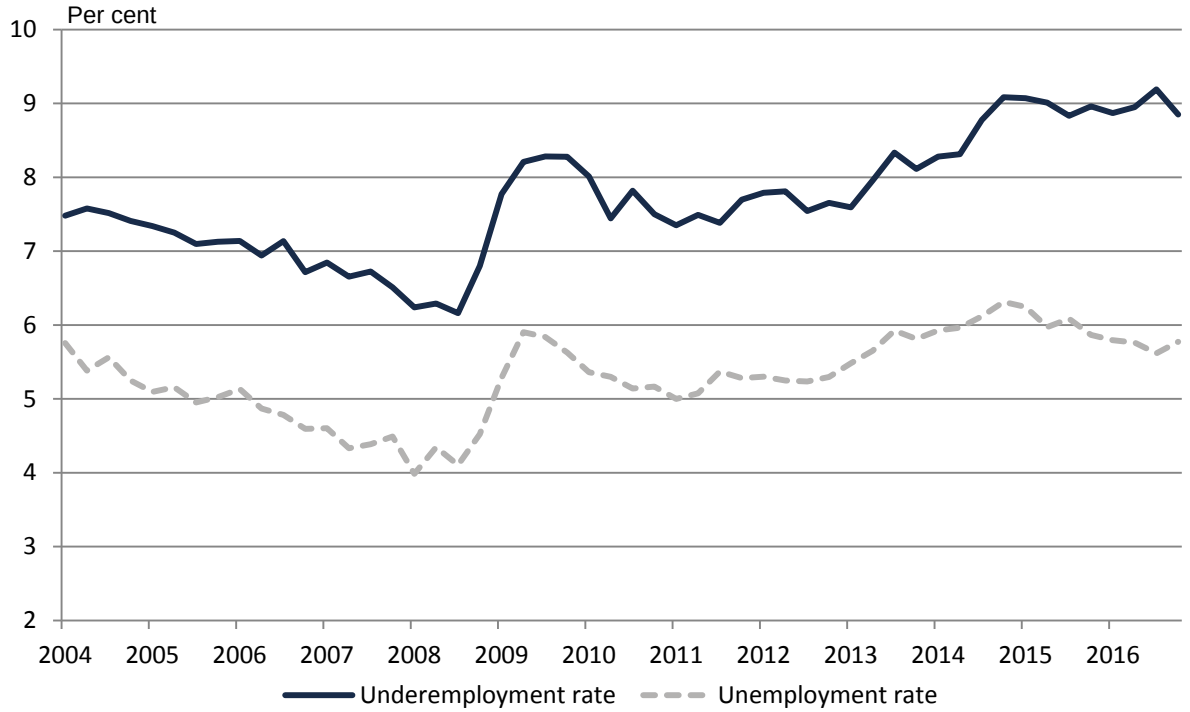
Note: The unemployment rate is the number of unemployed persons expressed as a percentage of the labour force. The rate is calculated for persons aged 15 and over. The percentage change and percentage point (ppt) change are calculated in relation to the corresponding month in the previous year.

Source: Statistical report, Table 6.1; ABS, *Labour Force, Australia, Apr 2017*, Catalogue No. 6202.0.

Underemployment and underutilisation

[301] The unemployment rate and the underemployment rate have, since the mid-2000s, generally moved similarly, however, over the past 2 years they have diverged somewhat (Chart 4.22).[283]

Chart 4.22: Underemployment and unemployment rate, proportion of the labour force



Note: All data are seasonally adjusted.

Source: RBA, *Statement on Monetary Policy*, February 2017, p. 38, Graph B1; ABS, *Labour Force, Australia, Jan 2017*, Catalogue No. 6202.0.

[302] The underemployment rate, in seasonally adjusted terms, increased from 8.3 per cent in February 2016 to 8.7 per cent in February 2017.[284] The significance of any change in underemployment is considered more fully in Chapter 6. In brief, we conclude from that discussion that the apparent rise in underemployment as shown in Chart 4.22 overestimates its growth, and that there is not yet a significant divergence between the trends in unemployment and the trends in underemployment. Specifically, the consideration of the extra hours that some part-time workers wish to work does not alter the overall interpretation of the degree of slack in the labour market.

[303] The RBA notes that the upward trend in the underemployment rate since the early 1980s is consistent with the rise in the share of part-time employment.[285] This may also help to explain why underemployment is larger in the most award-reliant industries.

[304] The ACTU speculates that 'the increase in the unrequited desire to work more hours may be a response to low wage growth if more people find they cannot make ends meet'.[286] The RBA also makes this point, that low wage growth may be a cause of rising underemployment, rather than just a symptom of it.[287]

Workforce participation

[305] 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 6.2 shows how this ratio has changed over the past decade and distinguishes full-time

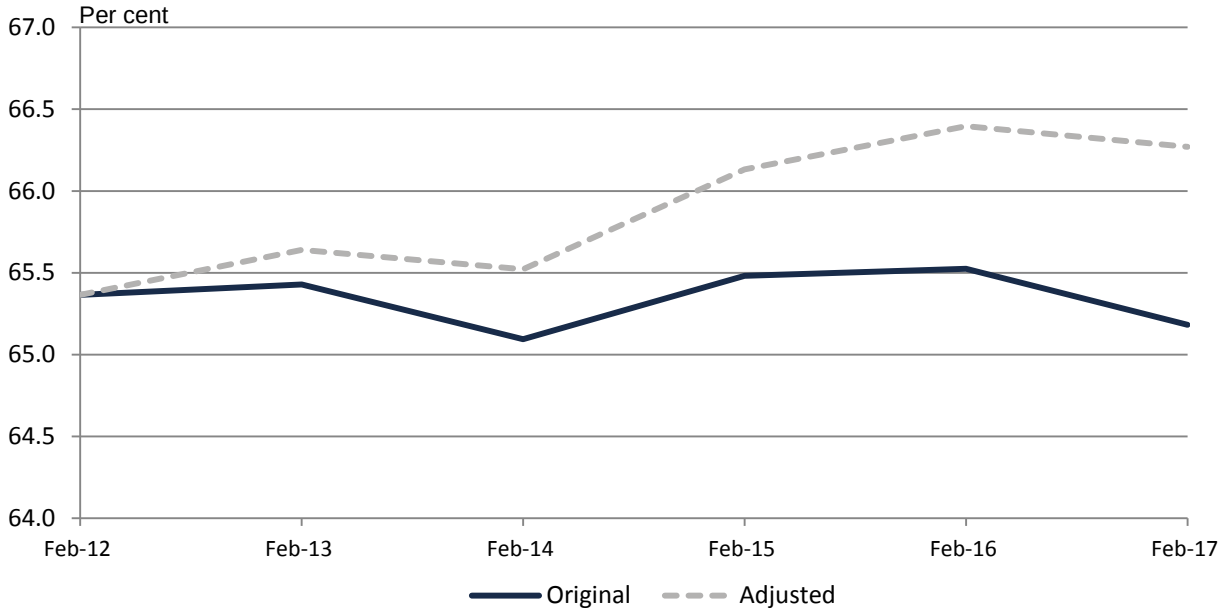
from part-time employment. The employment to population ratio increased by 0.1 percentage points to 75.8 per cent in April 2017, and is down from 75.9 per cent in December 2016. The employment to population ratio is expressed in original terms, therefore, it does not take seasonality into account.

[306] The part-time employment to population ratio has continued its steady increase since December 2011 to 21.7 per cent in April 2017, which is a 0.4 percentage point increase over the year. The full-time employment to population ratio fell by 0.7 percentage points over the year to December 2016 to 55.0 per cent and fell further to 54.1 per cent in April 2017.

[307] The employment to population ratio is considered in more detail in Chapter 6. The key point for a consideration of the state of the labour market is that this important indicator is not signalling a particular weakness in the opportunities for employment. The proportion of the population that is of working age that is employed has hardly changed over the past year. Within this aggregate figure, there have been different outcomes for men and women.

[308] The Australian Government presented analysis which reported that the decline in the participation rate over the 5 years to February 2017 had been 'driven entirely by the ageing of the population' and that had there been no change in the age distribution from February 2012, then the participation rate 'would have been over one percentage point higher' in February 2017 (Chart 4.23).[288]

Chart 4.23: Age-adjusted participation rates, February 2012 to February 2017



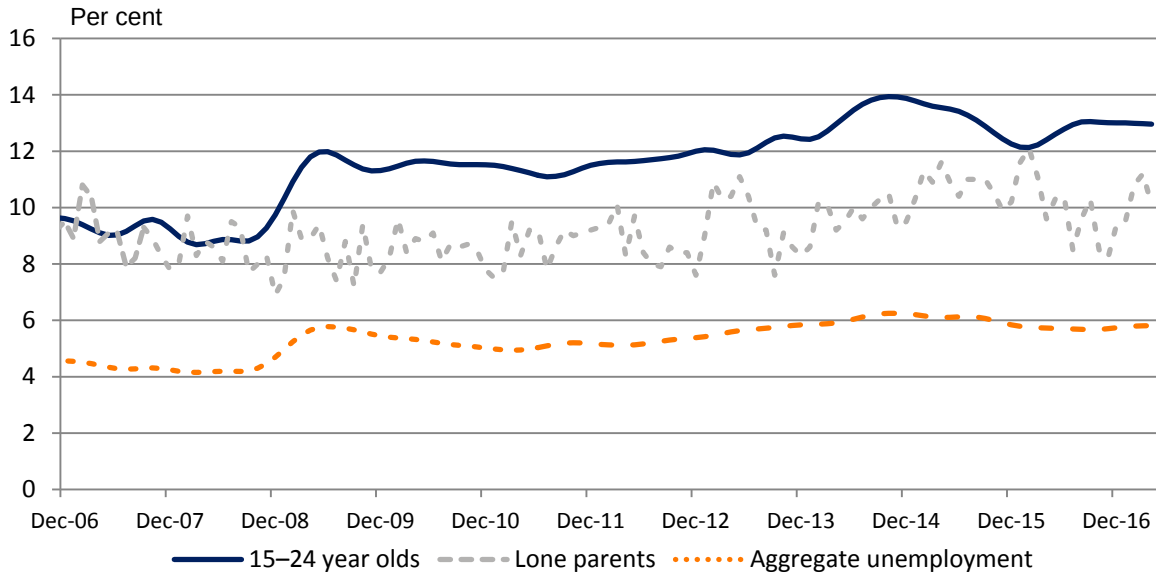
Source: Australian Government submission at para. 128, Chart 4.4; ABS, *Labour Force, Australia, Detailed—Electronic Delivery, Mar 2017*, Catalogue No. 6291.0.55.001.

[309] A number of parties made submissions about the participation rate which was not adjusted for the ageing of the population. We should make it clear, as we have in the past, that we are not assisted by references to the participation rate which is not adjusted for the ageing of the population and we pay little or no attention to such information.

[310] Both the measures of the employment to population ratio and of the participation rate, when the effects of the ageing population are removed, show a reasonably healthy state of the labour market.

[311] As shown by Chart 4.24, the most recent peak in the youth unemployment rate was in late 2014 where it reached 13.9 per cent. It has since fallen and from July 2016 it has been maintained at around 13 per cent. The youth unemployment rate tends to follow the same pattern of movement as the aggregate unemployment rate, although it is generally more sensitive to any demand or supply shocks affecting aggregate unemployment. As has been apparent over the past decade, the youth unemployment rate has been roughly double that of the total unemployment rate. As noted by the ACTU, the relationship between total unemployment and youth unemployment is cyclical in nature and there have not been any structural changes evident in the labour market that would change this relationship.[289] The RBA stated that a fall in full-time youth employment tends to occur when there is spare capacity in the labour market.[290]

Chart 4.24: Unemployment rates for 15–24 year olds and lone parents



Note: The series for lone parents is expressed in original terms.

Source: Statistical report, Chart 6.8; ABS, *Labour Force, Australia, Apr 2017*, Catalogue No. 6202.0; ABS, *Labour Force, Australia, Detailed—Electronic Delivery, Apr 2017*, Catalogue No. 6291.0.55.001.

[312] In assessing the current state of the youth labour market, we were informed by Research Report 2/2017—*The youth labour market*. Part I of the report, undertaken by Commission staff, examined factors that influence youth labour market outcomes between youth (aged 15–24 years) and the rest of the working age population.[291] Between 2001 and 2015, the trend in the youth labour market was characterised by higher unemployment, a lower participation rate and a greater increase in part-time employment compared with the rest of the working age population.

[313] A variety of factors were found to be associated with labour force status, with some common to both youth and the rest of the working age population. Higher socioeconomic status and living with parents at age 14 was associated with an increase in the probability of employment for both cohorts. Factors which varied among youth and the rest of the working

age population included whether they lived in a mining state; certain family types in which they lived and whether they were born outside of Australia in an English-speaking country. An important difference was whether individuals were currently studying, which was found to be associated with a lower probability of unemployment for youth and a higher probability among the rest of the working age population.

[314] Part II, undertaken by researchers at the Melbourne Institute of Applied Economic and Social Research, focused on the youth age group and found that while the patterns in the labour market changed over the period 2001 to 2015, the relationships between full-time student status and labour market outcomes changed by only a small magnitude.[292] The proportion of youth who were full-time students was found to increase substantially over the period, with more young people who were full-time students and not in the labour force in 2015 than in 2001. Whether an individual was a full-time student had a significant impact on which activity they were observed in, being associated with an increase in the probabilities an individual was not in the labour force or employed part-time and a decrease in the probability they were employed full-time.

[315] The analysis found changes over time in the activities individuals engaged in, illustrated by strong growth in full-time employment in the period before the GFC and a decrease in full-time and increase in part-time employment, underemployment or not in the labour force in the period after the GFC. This was particularly felt in the male labour market and among non-students. It was also found that these changes were more likely reflected by changes across the labour market rather than by changes in the characteristics of youth.

[316] Both parts of the report found that studying is associated with a higher probability of employment, particularly part-time employment, for female youth and a higher probability of not being in the labour force for male youth.

Award-reliant industries

[317] Table 4.7 presents award reliance by industry for May 2012, May 2014 and May 2016 from the 2016 EEH. Data on award reliance by industry for May 2016 are only available for non-managerial employees, whereas prior publications presented these data for all employees. This difference is likely to result in a higher proportion of award reliance than otherwise would have been reported as managerial employees are less likely to be award reliant.

[318] As the Panel has considered previously,[293] the most award-reliant industries are those in which the highest proportions of employees are award reliant. This approach provides a better focus for considering the impact of Review decisions on employers in those industries, given that any impact would be expected to be more pronounced within industries where a greater proportion of employees are award reliant.[294]

[319] The 2016 data show Accommodation and food services; Administrative and support services; Retail trade and Other services as the 4 most award-reliant industries.

[320] In previous years, the Panel has referred to the 5 most award-reliant industries and in submissions to this Review some parties have continued to refer to the 5 most award-reliant industries. The fifth most award-reliant industry is Health care and social assistance but, as can be seen from Table 4.7, there is a substantial gap between the proportion of employees in this industry that are paid exactly the award rate (28.8 per cent) and the fourth most

award-reliant industry which is Other services (34.3 per cent). Moreover, there is not much difference between the Health care and social assistance industry (28.8 per cent) and the next 3 highest award-reliant industries of Rental, hiring and real estate services (27.2 per cent), Arts and recreation services (26.2 per cent) and Education and training (26.0 per cent)

Table 4.7: Award reliance by industry, per cent, May 2012, May 2014 and May 2016

	2012	2014	2016*
All industries	**16.1**	**18.8**	**24.5**
Mining	0.6	0.8	n/a
Manufacturing	11.3	15.7	17.7
Electricity, gas, water and waste services	4.3	6.9	6.5
Construction	10.6	13.7	19.7
Wholesale trade	8.1	11.9	16.8
Retail trade	25.6	28.5	34.5
Accommodation and food services	44.8	42.8	42.7
Transport, postal and warehousing	7.3	10.9	13.4
Information media and telecommunications	5.7	5.2	5.5
Financial and insurance services	4.7	5.0	n/a
Rental, hiring and real estate services	20.9	22.1	27.2
Professional, scientific and technical services	6.0	9.9	9.3
Administrative and support services	29.0	37.3	42.1
Public administration and safety	6.9	12.8	18.1
Education and training	6.8	5.1	26.0
Health care and social assistance	19.0	22.3	28.8
Arts and recreation services	19.7	22.0	26.2
Other services	24.6	25.1	34.3

Note: *Data on non-managerial employees are presented in 2016 as data for all employees by method of setting pay and industry are not available. 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. n/a = not available

Source: Statistical report, Table 7.1; ABS, *Employee Earnings and Hours, Australia*, various, Catalogue No. 6306.0.

[321] The proportion of employees that were considered to be award reliant increased between the EEH 2014 and EEH 2016. Part of the reason was explained by the Australian Government, which noted that the changes were affected by recent improvements made to the ABS coding processes:

> '… the ABS have noted that as part of the 2016 EEH cycle, they undertook a review of the application of the Method of Setting Pay conceptual framework. This resulted in the shift of a significant portion of employees in the NSW public sector to the Award only category between EEH 2014 and 2016. Improvements to ABS coding processes for Method of setting pay during this time also resulted in more recoding from Collective Agreements to Awards'.[295]

[322] Table 4.8 presents data summarising the main indicators of growth, profitability, wages and employment for the most award-reliant industries compared with all industries. As a number of these indicators can be volatile, the Panel continues to use these data not for the specific magnitudes but to assist with the overall picture.[296]

Table 4.8: Economic indicators by award-reliant industries

	Accommodation and food services	Administrative and support services	Other services	Retail trade	All industries
Percentage of non-managerial employees reliant on award wages, May 2016[a]	42.7	42.1	34.3	34.5	24.5
Gross value added: percentage growth over the year to December quarter 2016	1.3	–2.0	1.2	1.2	2.5
Company gross operating profits: percentage growth over the year to December quarter 2016[b]	–14.1	3.7	81.2	–3.7	26.2
Wage Price Index: percentage growth over the year to March quarter 2017	2.2	1.3	1.7	1.8	1.9
Percentage annual wage growth under new collective agreements December quarter 2016	2.5	2.3	2.7	2.7	3.1
Employment: percentage increase over the year to February quarter 2017	2.4	3.7	3.3	–4.7	1.2
Hours worked: percentage increase over the year to February quarter 2017	0.0	–0.7	4.7	–7.8	–1.0

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.

The award-reliant industries selected are the 4 industries with the highest proportion of employees within the industry who are reliant on award rates of pay according to the EEH 2016. The WPI and actual hours worked data are expressed in original terms. Employment data are expressed in trend terms.

Source: Statistical report, Table 7.2; ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2016*, Catalogue No. 5206.0; ABS, *Business Indicators, Australia, Dec 2016*, Catalogue No. 5676.0; ABS, *Employee Earnings and Hours, Australia, May 2016*, Catalogue No. 6306.0; ABS, *Labour Force, Australia, Detailed, Quarterly, Feb 2017*, Catalogue No. 6291.0.55.003; ABS, *Wage Price Index, Australia, Mar 2017*, Catalogue No. 6345.0; Department of Employment, *Trends in Federal Enterprise Bargaining*, December quarter 2016, <http://employment.gov.au/trends-federal-enterprise-bargaining>.

Other industry and sector circumstances

[323] As has been the case in past Reviews, there were a number of submissions which sought to highlight issues impacting on specific industries. These included submissions from MTA-SA, Business SA, R&CA, NFF, VACC, CCIWA, CCIQ, ARA, HIA, MGA and SAWIA.[297] All state governments (except Tasmania) also provided relevant information about economic conditions in their respective states.

[324] We have dealt with the submissions about apprentices and trainees in Chapter 6. There was only one specific request for the panel to defer an increase in the NMW and award minimum wages. This is dealt with in Chapter 2.

[325] Several parties raised the issue of high and rising electricity (energy) prices.[298] Whilst all employers would face rising energy costs the precise impact on individual employers and industries would be likely to vary greatly. It is also worth noting that employees on the NMW or award minimum wages also have to cope with high and rising energy prices. We do not accept the implicit view that somehow wages are different from other types of business costs, such that if other costs rise, wages should be adjusted to compensate.

[326] We have considered the submissions by employer organisations/industry bodies raising specific circumstances in specific industries. We have also considered the submissions by state governments as to the economic circumstances in those states. All of this information is taken into account in our overall assessment of the state of the national economy.

Retail trade

[327] The Retail industry is the second highest employer and one of the most award reliant. ARA submitted that the industry is facing a 'difficult trading environment' with low consumer confidence and low to negative growth.[299] In the light of these features, we examined more closely the circumstances of the Retail industry to evaluate the view that it had a very limited capacity to absorb a rise in the NMW and modern award rates.

[328] The Retail industry is one of the 4 most award reliant, with 34.5 per cent of employees paid the award rate in 2016.[300] The following table provides economic data on Retail trade over each of the last 3 years and an annual average over the 3-year period. Over the year to the February quarter 2015, employment fell while hours worked increased. Over the following year, both increased, and over the most recent year, both decreased. The considerable variation in these figures, especially compared with the growth rates across all industries, confirms our view that annual industry-level data should be treated as indicative only.[301] Around half of all Retail trade workers are classified in the occupation 'Sales workers'. Similar labour market trends were found for Sales workers, with growth in employment and hours worked over the year to the February quarter 2016 and a reduction over the following year.

[329] We are aware that the Retail industry is undergoing some significant changes, including increased competition through online retailing, international competition and technological change. As explained in the *Penalty Rates decision*:

> 'Most enterprises in the Retail sector and across all industries operated within the domestic market only. A higher proportion of enterprises in the Retail sector focused on the immediate local area only compared with enterprises across all industries, which were more likely to focus Australia wide. We note however that enterprises in the Retail sector are facing increased competition from overseas based on-line retailers.
>
> We note that the Productivity Commission has identified that the most sweeping change impacting upon the retail sector "does not involve physical provision of goods and services" but rather "online provisions playing a much more important role" in

relation to some products and services. This in turn has increased competition and reduced the need for brick and mortar establishments.'[302]

[330] The tables and charts that follow provide an overview of the performance of the Retail industry over the past 3 or so years.

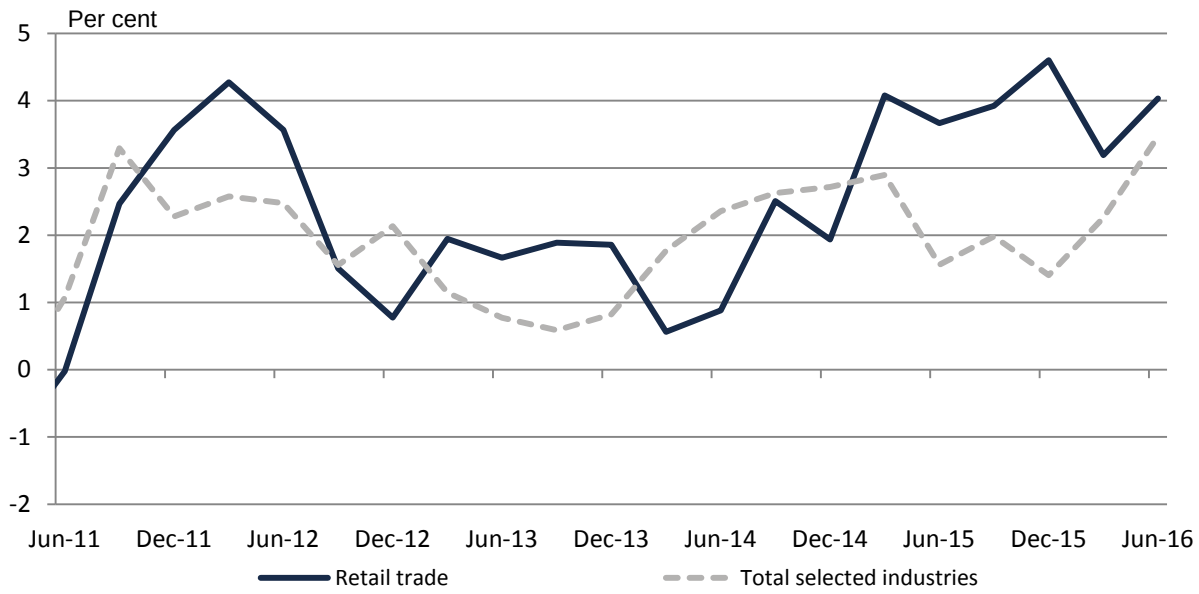
Table 4.9: Retail trade, selected economic data

Indicator	**Annual change/rate**			**3-year period**
	Feb qtr 2015	Feb qtr 2016	Feb qtr 2017	
Retail trade				
Employment [ab]	–1.1	4.3	–4.7	–0.6
Hours worked [ab]	2.0	5.1	–7.8	–0.4
*Sales workers**				
Employment [ac]	–0.8	5.1	–4.3	–0.1
Hours worked [ac]	1.2	5.0	–4.7	0.4
	Dec qtr 2014	Dec qtr 2015	Dec qtr 2016	
Gross operating profits [ad]	3.1	3.6	–3.7	0.9
Gross value added [ad]	2.4	3.6	1.2	2.4
	2013–14	20014–15	2015–16	
Profit margins	4.8	4.8	4.3	4.6
Entry rate	13.4	12.3	12.9	12.9
Exit rate	13.9	14.0	13.9	13.9
Survival rate^	57.4	57.1	56.9	57.1

Note: [a] Annual growth rates. ^Survival rates are businesses in June 2010/2011/2012 that were still operating in June 2014/2015/2016. *Sales workers comprise over 50 per cent of total employment in Retail trade. The data presented are in [b] trend terms, [c] original terms and [d] seasonally adjusted.

Source: Statistical report, Table 7.7; ABS, *Labour Force, Australia, Detailed, Quarterly, Feb 2017*, Catalogue No. 6291.0.55.003; ABS, *Business Indicators, Australia, Dec 2016*, Catalogue No. 5676.0; ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2016*, Catalogue No. 5206.0; ABS, *Australian Industry, 2015–16*, Catalogue No. 8155.0; ABS, *Counts of Australian Businesses, Including Entries and Exits*, various, Catalogue No. 8165.0.

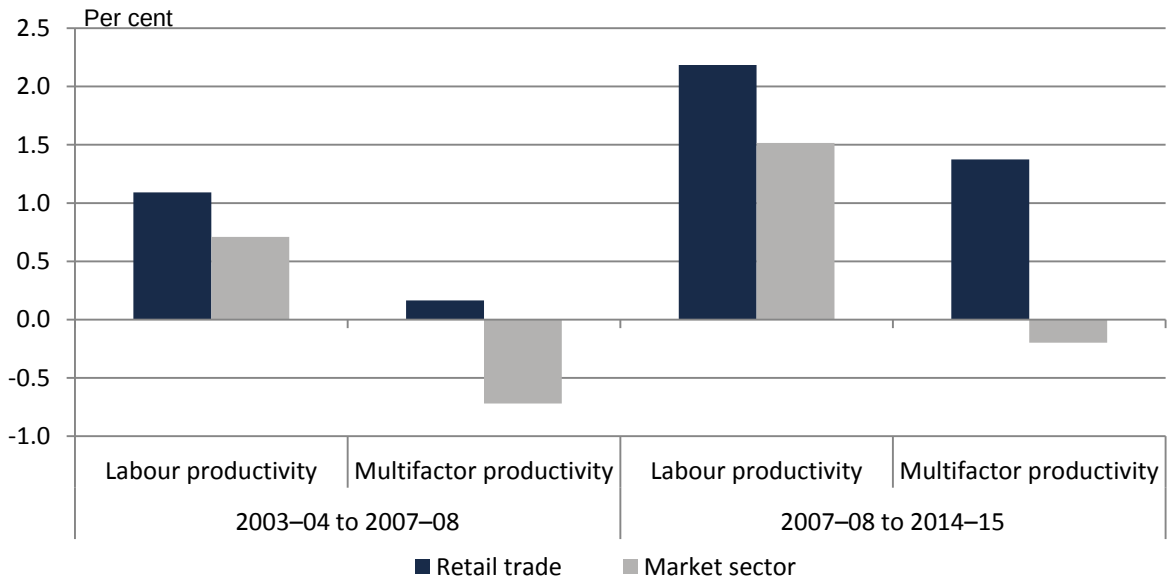
Chart 4.25: Sales of goods and services, annual percentage change, June quarter 2011 to June quarter 2016



Note: Sales is seasonally adjusted and expressed in real terms from chain volume estimates. Sales of goods and services and gross operating profit estimates are not available for Education and training and Health care and social services, as well as Depository financial intermediation and Insurance superannuation funds subdivisions from Finance and insurance services.

Source: Fair Work Commission, *Industry profile—Retail trade*, Material to assist AM2014/305—Penalty rates case, January 2017, Figure 4.11; ABS, *Business Indicators, Australia, Jun 2016*, Catalogue No. 5676.0.

Chart 4.26: Average annual growth rates of labour and multifactor productivity, 2003–04 to 2014–15



Note: The 2007–08 to 2014–15 growth cycle is incomplete. The total market sector comprises all industries except for Public administration and safety, Education and training and Health care and social assistance.

Source: Fair Work Commission, *Industry profile—Retail trade*, Material to assist AM2014/305—Penalty rates case, January 2017, Figure 4.13; ABS, *Estimates of Industry Multifactor Productivity, 2014–15*, Catalogue No. 5260.0.55.002.

[331] The following data, taken from the Statistical report (Table 3.4), also shows that the entry rate has increased and the exit rate decreased between 2012–13 and 2015–16.

Table 4.10: Business entry and exit rates, Retail trade, 2012–13 and 2015–16

	2012–13			2015–16		
	Proportion of businesses at June 2013 (%)	**Entry rate (%)**	**Exit rate (%)**	**Proportion of businesses at June 2016 (%)**	**Entry rate (%)**	**Exit rate (%)**
Retail trade	6.6	10.4	15.7	6.1	12.9	13.9

Source: Statistical report, Table 3.4; ABS, *Counts of Australian Businesses, Including Entries and Exits, June 2012 to June 2016*, Catalogue No. 8165.0.

[332] The different data show a complex picture for Retail. Profit margins, business entry and exit rates, and survival rates changed little over the 3-year period. Recent growth in sales and service income and productivity (both labour and MFP) has been strong relative to all industries.

[333] The employment data show a more mixed picture and one that is very volatile. Specifically, hours worked grew quite strongly in the years to February 2015 and 2016, but then fell sharply in the year to February 2017, to show a small decline over the 3 years. Employment fluctuated but fell a little over the 3-year period.

[334] We conclude that there are some stresses in the Retail industry, but the above data indicates that, in aggregate, the conditions are not particularly difficult. However, we acknowledge that some individual retail businesses may face more difficult circumstances. We note the apparent fall in employment and hours worked over the past year. Because of the volatility of the annual data on employment, it is not yet clear whether there is a substantial and continuing loss of jobs and hours.

Economic outlook

[335] This section summarises the economic outlook and forecasts from the Australian Government, as presented in the 2017–18 Budget, the RBA and the International Monetary Fund (IMF).

[336] Table 4.11 shows real GDP growth projections from the IMF World Economic Outlook for April 2017. The IMF was optimistic about global economic growth, citing continued cyclical recovery, adjustment to terms of trade of emerging or developing economies and productivity headwinds as key forces of growth. For Australia, the IMF projected real GDP growth to rise to 3.1 per cent in 2017 and 3.0 per cent in 2018 due to a recovery in commodity prices, accommodative monetary policy, supportive fiscal policies/infrastructure investment and less drag from declining commodity (mining) investment.[303]

Table 4.11: IMF real GDP growth forecasts

	2016 (actuals)	2017 (projections)	2018 (projections)
Australia	2.5	3.1	3.0
Advanced economies	1.7	2.0	2.0
World	3.1	3.5	3.6

Note: Year-on-year percentage changes shown. World and domestic economy growth rates are calculated using GDP weights based on PPP.

Source: Statistical report, Table 11.2; IMF, *World Economic Outlook*, April 2017, <http://www.imf.org/en/Publications/WEO/Issues/2017/04/04/world-economic-outlook-april-2017>.

Budget forecasts

[337] The Budget papers indicate that the economic outlook should be viewed in the context of the Australian economy entering another year of economic growth and the continuing transition to broader growth since the end of the resource investment boom.

[338] According to *Statement 2: Economic outlook* of the 2017–18 Budget Papers (Budget Paper No. 1), growth is expected to be higher at 2¾ per cent in 2017–18 after 'slowing in 2016–17 as a result of weather related factors'.[304] Growth in household consumption is expected to improve; exports are expected to continue to grow strongly as is non-mining business investment. The economic adjustment that has been underway following the peak of the investment phase of the mining boom has been aided by accommodative monetary policy, a lower exchange rate and a flexible labour market.

Global economic conditions

[339] Global growth is expected to recover over the forecast horizon. Last year, the global economy recorded its lowest growth rate since the GFC but there are encouraging signs that growth is strengthening in 2017. Growth in Australia's major trading partners is forecast to be above growth across the global economy over the forecast period (Table 4.12).[305]

Table 4.12: 2017–18 Budget forecasts of international GDP growth

	2016 (actuals)	2017 (forecasts)	2018 (forecasts)	2019 (forecasts)
World	3.1	3¼	3½	3¾
Major trading partners	3.9	4	4	4

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

Source: Statistical report, Table 11.1; Australian Government, *Budget Paper No. 1: Budget Strategy and Outlook 2017–18*, Canberra, p. 2-9.

[340] The global economic outlook in the Budget papers identifies a number of risks to improved global growth forecast, including policy uncertainty in a number of countries, growing support for policies that could restrict global trade (and therefore growth), and in China, high levels of debt, financial imbalances and over capacity in some sectors. Europe

continues to face legacy issues following the GFC and upward movement in US interest rates is also 'a source of uncertainty'.[306]

The Australian Economic Outlook

[341] Australia is in its 26th consecutive year of economic growth. Treasury expect real GDP growth to 'rebound to around its potential rate in 2017–18 and 2018–19'.[307] The risks to the outlook for GDP growth include commodity prices, the momentum of household consumption, as well as uncertainty around dwelling investment, a faster than expected decline in dwelling investment (due to a significant number of medium to high density dwellings due for completion) and the pace of the recovery in non-mining business investment.[308] The recent increase in commodity prices and the terms of trade are expected to increase national income in the near-term[309] while household consumption is expected to grow faster than household income leading to a lower household saving rate.[310] The Australian Treasury stated that indicators such as job advertisements, vacancies and business surveys suggest an improved labour market with the unemployment rate forecast to decline modestly as GDP growth increases.[311]

[342] Table 4.13 presents the Australian Treasury forecasts for the domestic economy.

Table 4.13: 2017–18 Budget, domestic economic forecasts[(a)]

	Outcomes[(b)]		Forecasts	
	2015–16	**2016–17**	**2017–18**	**2018–19**
Real gross domestic product	**2.6**	**1¾**	**2¾**	**3**
Household consumption	2.9	2½	2¾	3
Dwelling investment	10.6	4½	1½	–4
Total business investment[(c)]	–10.3	–6	0	3
Mining investment	–27.5	–21	–12	–3
Non-mining investment	1.4	1½	4½	4½
Private final demand[(c)]	0.8	1	2¼	2½
Public final demand[(c)]	3.4	4	2½	3
Change in inventories[(d)]	–0.1	0	0	0
Gross national expenditure	1.3	1¾	2½	2¾
Exports of goods and services	6.7	5½	5	4
Imports of goods and services	–0.3	3	3	3
Net exports[(d)]	1.4	½	½	¼
Nominal gross domestic product	2.3	6	4	4
Prices and wages				
Consumer price index[(e)]	1.0	2	2	2¼
Wage price index[(f)]	2.1	2	2½	3
GDP deflator	–0.3	4	1	1
Labour market				
Participation rate (per cent)[(g)]	64.8	64½	64½	64½
Employment[(f)]	1.9	1	1½	1½
Unemployment rate (per cent)[(g)]	5.7	5¾	5¾	5½
Balance of payments				
Terms of trade	–10.2	16½	–2¾	–4¼
Current account balance (per cent of GDP)	–4.4	–1½	–1½	–2

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 65 and a US dollar exchange rate of around 76 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$55 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 price assumptions for iron ore, metallurgical coal and thermal coal.

Source: Statistical report, Table 11.3; Australian Government, *Budget Paper No. 1: Budget Strategy and Outlook 2017–18*, Canberra, p. 2-6.

RBA Statement on Monetary Policy – May 2017

[343] The RBA's economic forecasts are presented in Table 4.14. The RBA forecast for GDP growth for the year ending June 2018 (2¾ per cent to 3¾ per cent) is slightly lower for this period than its forecast released in May 2016 (3 per cent to 4 per cent) although the lowest point of its range accords with the Treasury forecast.

Table 4.14: RBA economic forecasts, per cent

	Dec-16	Jun-17	Dec-17	Jun-18	Dec-18	Jun-19
GDP growth	2.4	1½–2½	2½–3½	2¾– 3¾	2¾–3¾	2¾–3¾
Unemployment rate*	5.7	5¾	5–6	5–6	5–6	5–6
CPI inflation	1.5	2	1½–2½	1½–2½	1½–2½	2–3
Underlying inflation	1½	1¾	1½–2½	1½–2½	1½–2½	2–3

Note: *Rate at end of period. 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$0.74, Trade Weighted Index at 64.0, Brent crude oil price at US$51 per barrel. Shaded regions are historical data.

Source: Statistical report, Table 11.4; RBA, *Statement on Monetary Policy*, May 2017, Table 6.1.

[344] In late 2016 and early 2017, the RBA revised its projection upwards for growth in Australia's major trading partners—with this growth expected to be around its long-term average this year before easing slightly in 2018. According to the RBA, since late 2016 most forecasters have revised up their forecasts for global growth.[312]

[345] The RBA noted that while the terms of trade increased in the March quarter 2017, they are forecast to decline due to falls in commodity prices.[313] However, GDP growth is expected to increase to be above its potential over the forecast period as resource exports increase and the drag from mining investment subsides.[314] The forecast for non-mining investment is subdued with growth expected to pick up later in the forecast period. The RBA expects household consumption to grow at a bit above its average since the GFC over the forecast period with household income expected to grow at a similar rate to consumption.[315] However, indicators of non-mining investment are mixed.[316]

[346] The RBA expects employment growth to be fairly steady 'at around its long-run average', after it 'picked up a little' since late last year following below-average growth over much of 2016.[317] The unemployment rate is expected to edge only a little lower over the forecast period which 'suggests that spare capacity in the labour market will remain over the next few years.'[318]

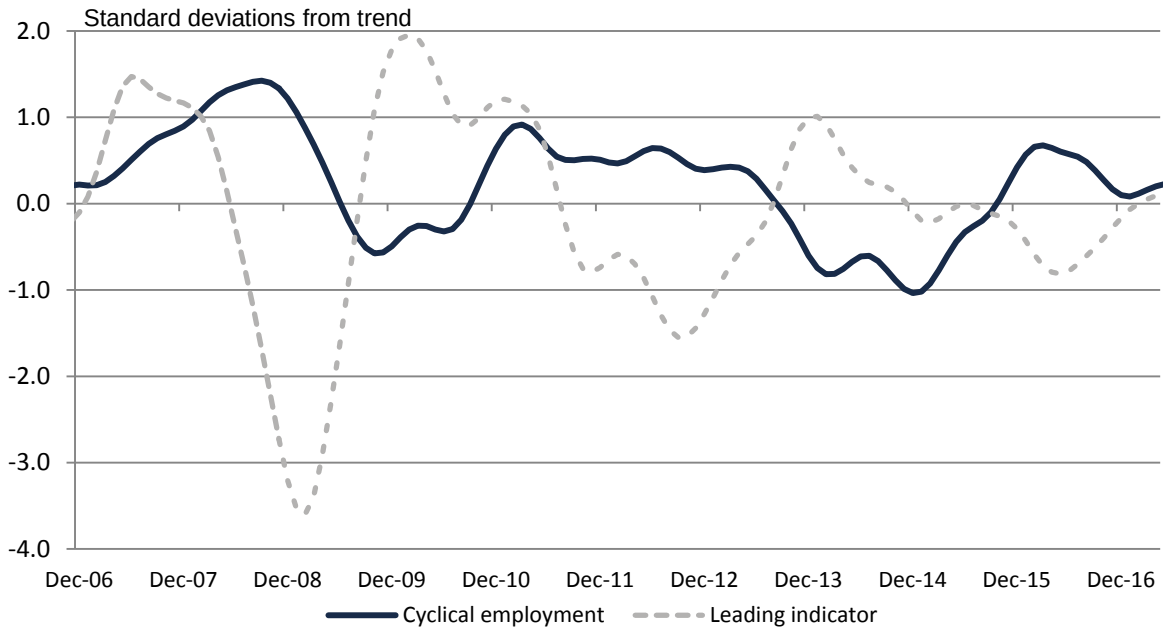
[347] The RBA expects wages growth to remain at around its current rate over the next year and then to pick up over 2018 and 2019, while '[h]eadline inflation is expected to be between 2 and 3 per cent throughout the forecast period'.[319]

[348] The outlook for the Chinese economy, which will affect commodity prices and exports, is a key uncertainty around the RBA's economic forecasts.[320] Domestically, the RBA's uncertainties are around the amount of spare capacity in the labour market over the next few years. The recent increase in the terms of trade could lead to higher economic activity and employment than expected, as might the components of GDP growth, and this would reduce the unemployment rate further than expected. On the other hand, reductions to the amount of spare capacity could come from firms meeting their demand for labour through

increasing the hours worked by their existing employees, and this may not reduce the unemployment rate.[321]

[349] The Department of Employment's Monthly Leading Indicator of Employment (indicator) is based on a number of economic indicators and is designed to predict turning points in cyclical employment. The indicator increased for 12 consecutive months to May 2017, suggesting that employment growth may increase above its long-term trend rate of about 1.4 per cent per year after a lag (Chart 4.27).

Chart 4.27: Department of Employment Monthly Leading Indicator of Employment



Source: Statistical report, Chart 11.1; Department of Employment, *Monthly Leading Indicator of Employment*, May 2017, <http://employment.gov.au/department-employment-s-leading-indicator-employment-latest-release>.

Conclusion

[350] As is often the case, not all the signals about the strength of the economy and the labour market point in the same direction.

[351] Our conclusions are influenced by the summary of economic conditions provided by the RBA in its May 2017 *Statement on Monetary Policy*:

> 'The Australian economy grew by 2.5 per cent over 2016, which is a bit below central estimates of potential growth. GDP growth rebounded to 1.1 per cent in the December quarter, confirming that the weak outcome in the September quarter largely reflected temporary factors. Recent data are consistent with moderate growth in early 2017. Employment growth was fairly subdued over 2016, but picked up to be around average in early 2017. Looking ahead, economic growth is expected to pick up gradually to be a bit above potential growth, supported by the low level of interest rates and the ongoing recovery in the global economy'.[322]

[352] GDP growth in Australia outperformed the average of the major 7 OECD countries across 4 of the 5 quarters to the December quarter 2016. RNNDI has grown more quickly than

GDP over the past year, as the terms of trade have improved. Economic conditions have varied across states, with stronger growth in New South Wales and Victoria and weakest growth in Western Australia. As usual, the different parts of the economy have had diverse outcomes. Agriculture, forestry and fishing has done particularly well while there has been a decline in Construction.

[353] Business conditions generally look quite healthy. Profitability grew by a very strong 26 per cent for all industries and by a still strong 10 per cent for non-mining industries over the past year. As a result, the profit share of factor income rose. The most recent data (for 2015–16) show that the growth in profit margins was greater for small business than for all businesses. Consistent with these profit outcomes, bankruptcy rates remain quite low and the entry of new businesses exceeded the exits by a margin that exceeds that of 2015. The most reliable business surveys show that businesses see their conditions as the most positive since the GFC. Growth in output was below the all industry average for 3 of the 4 most award-reliant industries and profits grew in only 2 of them.

[354] Labour productivity in the market sector grew more strongly across the year 2016 than it had in the previous two years. After some years of decline, MFP continued its more recent modest growth. It grew more strongly in the year to June 2016 than it had in all but one of the past 10 years. The 2.3 per cent per annum growth in labour productivity in the period 2007–08 to 2014–15 exceeds or is virtually the same as growth in all periods from 1973–74, except 1993–94 to 1998–99. Real and nominal unit labour costs have remained reasonably steady over the 4 years to mid-2016. The most recent sharp downturn is largely attributable to the rise in the terms of trade during the year. This is not expected to persist.

[355] The unemployment rate has remained steady for several years. There has been some rise in underemployment, but when the extra hours that the underemployed wish to work is taken into account, underemployment has risen only a little. On this basis, movements in underemployment are continuing to track the unemployment rate. A large majority of part-time workers were not seeking extra hours of work. While about 25 per cent said that they would like to work extra hours, only half of these had taken active steps to find more work.

[356] When the impact of the ageing of the population is taken into account, there has been no fall in either the participation rate or the employment to population ratio. These are signs of strength in the labour market. We note, however, that the full-time employment of men of working age continues its long term decline.

[357] Inflation and wages have continued to grow at historically low rates. Consumer inflation has mostly been below 2.0 per cent, though the CPI rose by 2.1 per cent in the year to the March quarter 2017. The prices faced by producers were boosted by the rise in the terms of trade during 2016. Wages growth was highest for agreements and lowest (at 1.9 per cent) for the WPI. Growth in the NMW and modern award rates, at 2.4 per cent, exceeded inflation and growth in both the WPI and AWOTE.

[358] Employment continued to grow in 2016, but hours worked was flat. The main reasons for the small growth in hours worked were a relatively high growth in part-time employment (rather than full-time) and a decline in the average number of hours worked by full-time workers.

[359] Both the Treasury and the RBA expect growth to pick up in 2017–18, to around its potential growth rate. They expect that as a result, employment will grow 'at around its long-run average'[323] with little change in unemployment.

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

[360] The Panel is required by both the minimum wages objective and the modern award objective to take into account relative living standards and the needs of the low paid when setting fair and relevant minimum wage rates. Those matters are different, but related, concepts[324] 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.

[361] 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 Review with those of other groups that are deemed to be relevant and focuses on the comparison between low-paid workers (including NMW and award-reliant workers) and other employed workers, especially non-managerial workers.[325]

[362] 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.[326]

[363] After considering some preliminary issues, we examine relative living standards before turning to consider the needs of the low paid, although we recognise that the 2 concepts overlap.

Relevant Comparators

[364] In its submission to this year's Review, ACCER requested that the Panel reconsider 'its assessment and treat the level of pensions as having significant relevance and weight in the setting of safety net wages for low-paid workers'.[327] ACCER has consistently made submissions, since 2010, that the Age and Disability Support Pension rates and the estimated living standards of pensioners are a relevant consideration in assessing the living standards of the low paid.[328]

[365] In its submission to the 2015–16 Review, ACCER said '[p]rimary emphasis needs to be given to the wages of other workers across the broad range of incomes … but that does not exclude other matters being taken into account'.[329] Essentially this is what the Panel has done as evidenced by the statement in the 2015–16 Review decision:

> 'Consistent with our past approach, 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'.[330]

[366] However, the Panel went on to find that 'a comparison with pensioners for the purpose of assessing the relative standards of the low paid is of very limited relevance'.[331]

[367] ACCER also referred to the Pension Review Report of 27 February 2009 and asserted that the Panel, in its 2015–16 Review decision, did not consider this report. Whilst no direct

reference was made to the Pension Review Report in the 2015–16 Review decision it was before the Panel by virtue of ACCER's submission[332] and was taken into account along with the other extensive material before the Panel.

[368] We do not propose to depart from our conclusion in the 2015–16 Review decision.[333]

Award-reliant and the low-paid workforce

[369] In the 2015–16 Review, the Panel stated:

> '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…
>
> 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).'[334]
>
> 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'.[335]

[370] According to the most recent data, two-thirds of median full-time earnings is $833.33 (Characteristics of Employment survey) or $917.33 (EEH).[336]

[371] The Australian Government referred to data from the EEH 2016 which found that 22.7 per cent of employees (2.3 million employees) had their pay set by an award in May 2016, higher than the 18.8 per cent in May 2014.[337] The ACTU noted that the proportion of employees that were award reliant increased by 3.9 percentage points between May 2014 and May 2016 while the proportion on collective agreements fell by 4.7 percentage points over the same period.[338] The Australian Government highlighted that, while this is part of a trend since 2010, the ABS review of their framework for determining method of setting pay resulted in a significant shift in the classification of employees in the NSW public sector from collective agreements to the award only category in 2016.[339]

[372] In addition, the Australian Government used data from the EEH 2016 to estimate that 1.9 per cent of employees are paid the NMW rate.[340] The Australian Government also submitted that the NMW rate features in 45 of the 122 modern awards and that award minimum wages range from $672.70 per week up to $3189.27 per week in the *Air Pilots Award 2010*.[341]

[373] Further analysis of the EEH 2016 by the Australian Government found that 12.4 per cent of all employees were considered to be low paid (defined as less than two-thirds of the median hourly wage), with 29.3 per cent of award-reliant workers considered to be low paid.[342] Analysis of the HILDA survey by the Australian Government showed that low-paid

workers were more likely to be young, female, single, without children and employed on a casual basis.[343]

[374] The ACTU highlighted that the EEH 2016 showed that more than one in 5 employees are paid 'the lowest wage that they may legally be paid' and that increases arising from the Review 'are all the more pertinent as the share of workers on the NMW and award-only continues to increase'.[344]

[375] The ACTU submitted that most award-reliant workers (85.6 per cent) are adults aged 21 years or older and that award-reliant employees are 'over represented' among those aged under 25 years. The ACTU added that the 'under representation' of award-reliant workers in the 35–54 years age group is partly 'due to women with children being removed from employment' where women are disproportionately reliant on awards.[345]

[376] The ACTU contended that, compared with other workers, award-reliant workers are more likely to be:

- female;
- working part time;
- employed on a casual basis;
- working in a small business;
- working in the public sector; and
- earning less than $1000 per week, for full-time non-managerial workers paid at the adult rate.[346]

[377] The ACTU undertook analysis using unpublished data from the EEH 2016 and concluded that 41.9 per cent of award-reliant employees have hourly earnings at or below the C10 rate.[347] This was 'a little lower' than estimates for May 2012 and May 2014,[348] while the proportion earning above the C2(b) rate increased from 20.9 per cent in May 2014 to 30 per cent in May 2016 and was 'likely to be related' to the increase in award reliance in Education and training.[349] The ACTU noted that the proportion of award-reliant employees in the private sector also rose.[350] The ACTU contended that an increase in award reliance is related to a changing industry structure with the 'most rapidly growing industries' being service industries.[351]

[378] The ACTU's analysis of employees by business size using the EEH 2016 found 'a shift in concentration' from small businesses to large businesses[352] with non-managerial award-reliant workers in small businesses having lower average hourly earnings than award-reliant employees in larger businesses.[353] The Panel notes that the increase from 2014 to 2016 in the proportion of award-reliant employees earning above the C2(b) rate may well be due, at least in part, to the recoding of NSW public sector employees mentioned above. This recoding is also likely to have significantly contributed to the recorded shift in concentration of award-reliant employees from small businesses to large businesses.

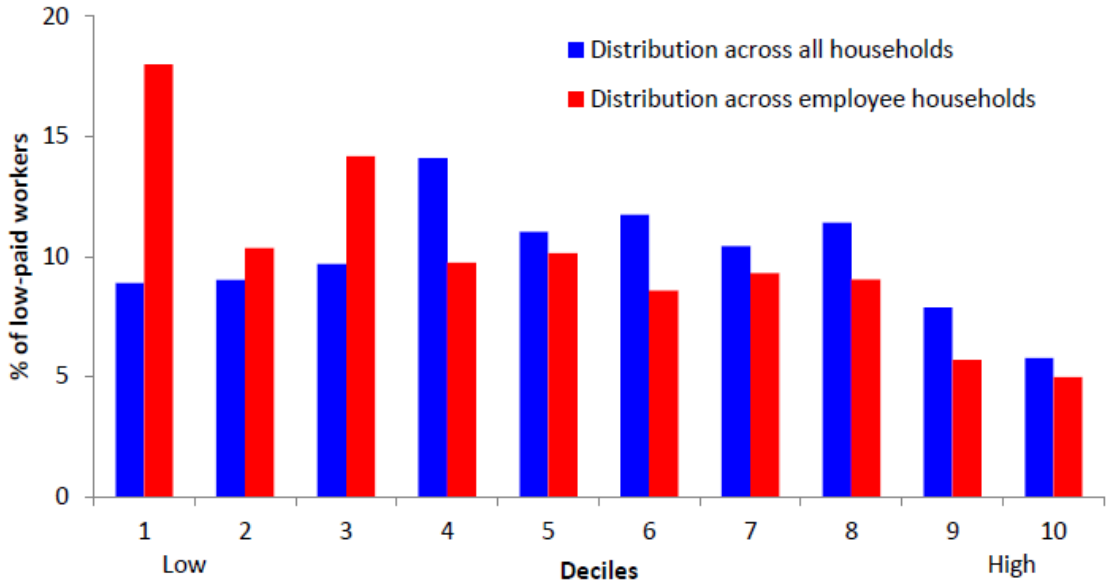
[379] ACCI submitted that '[a]bsent further evidence, the overall conclusion should be that the typical households of award-reliant workers have higher living standards relative to other workers than the headline or nominal differences in pay would imply.'[354] We do not accept this conclusion. The Australian Government provides data on the earnings of the partners of low-paid workers (admittedly not the award workers that ACCI refers to, but relevant nonetheless). Contrary to ACCI's submission, the partners of low-paid workers are typically

either not employed or low paid themselves. Twenty-five per cent of couple low-paid workers have a partner who is not employed. A further 30 per cent have partners who earn no more than $50 000 per annum.[355]

Award-reliant and low-paid households in the income distribution

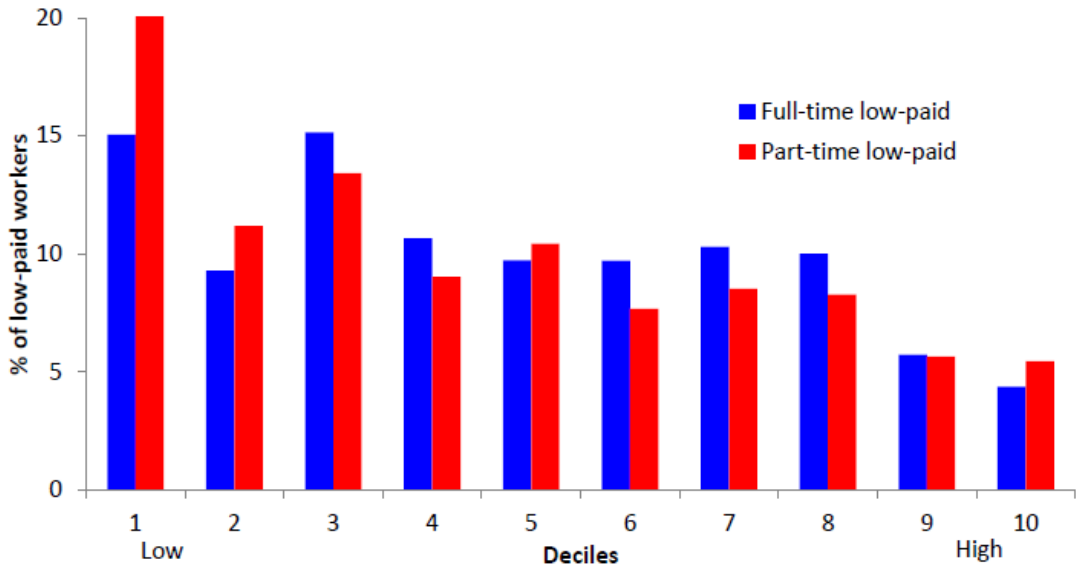
[380] The Australian Government, as it has in previous Reviews, presented data on low-paid employees across the equivalised household income distribution for both employee households (with at least one employee) and all households (including jobless and retiree households), using the most recent wave of the HILDA survey (for 2015).[356]

Chart 5.1: Distribution of low-paid employees, by equivalised household disposable income, comparing all households and employee households, 2015



Source: Australian Government submission, 29 March 2017 at p. 10, Chart 2.2; HILDA Survey, release 15 (December 2016), wave 15.

Chart 5.2: Distribution of low-paid employees, by equivalised household disposable income, employee households only, 2015



Source: Australian Government submission, 29 March 2017 at p. 11, Chart 2.3; HILDA Survey, release 15 (December 2016), wave 15.

[381] In relation to these data, the Australian Government submitted:

> '… Across *all* households, low-paid workers tend to be concentrated in the middle of the income distribution, with only 17.9 per cent of low-paid workers in the bottom two income deciles, and 13.6 per cent in the top two deciles.'[357]
>
> 'When considering *employee* households only, low-paid workers remain scattered across the income distribution although there are a higher proportion of low-paid employees in the lower deciles than the top deciles. For example, 62.4 per cent of low-paid employees are in the bottom five income deciles, with 28.4 per cent in the bottom two deciles. This means that 37.6 per cent are in the top five deciles, with 10.7 per cent in the top two deciles…'[358]
>
> '… low-paid part-time workers are more likely to be in the lower household income deciles than low-paid full-time workers'.[359]

[382] The Australian Government submitted that 26.7 per cent of low-paid women were in the bottom 2 income deciles compared with 30.3 per cent of low-paid men, and 11.9 per cent of low-paid women were in the top 2 income deciles compared with 9.1 per cent of low-paid men.[360]

[383] The Australian Government also submitted that over two-thirds of the 22.9 per cent of low-paid workers who were full-time students were dependent students whose household income and living standards were likely to be determined by their parents' income rather than their own.[361] Analysis of low-paid workers in a couple household found that around one-quarter of partners of low-paid employees were not employed, with a further 10 per cent earning less than $25 000.[362]

[384] From this analysis, the Australian Government concluded that 'the vast majority' of workers affected by Review decisions are not defined as low-paid employees and that nearly half of low-paid workers are located in the top half of the household income distribution.[363]

[385] In the 2015–16 Review decision, the Panel stated:

> '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.'[364]

> '… 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.'[365]

[386] We remain of that opinion. We think that there is little basis for comparing the household income of the low paid and the award reliant with that of households that are principally reliant on social welfare benefits or private savings, when the purpose is to identify whether an increase in the NMW and modern award rates of pay will assist the relative standard of living of the low paid.

[387] Research undertaken for the Commission using data from the HILDA survey (Research Report 1/2017—*Award-reliant workers in the household income distribution*) finds that around 70 per cent of award-reliant employees are located in the bottom half of the household income distribution of employee households and almost half are located in the bottom 3 deciles. This compares with fewer than 15 per cent in the highest 3 deciles. Almost one in 5 award-reliant employees work full-time hours and are located in the bottom 3 income deciles. While over one-third of award-reliant employees are students, they are evenly divided between dependent and non-dependent students, with more than half of award-reliant employees that were dependent students located in the bottom half of the household income distribution. While the majority of secondary earners were also located in the bottom half of the household income distribution, they were comparatively more likely to be located across the higher income deciles.[366]

[388] The ACTU submitted that the research 'clearly demonstrates the inaccuracy of the notion that many of the award reliant are women supplementing the income of the breadwinner in high income households'.[367]

[389] The Victorian Government, in the context of older workers being 'more exposed to lower wage outcomes', highlighted that the research showed that 28 per cent of award-reliant employees were 45 years and over.[368]

[390] ACCER submitted that a focus on the award reliant is 'far too narrow' and preferred that the Panel look into the circumstances of the low paid.[369] ACCER added that it is 'unnecessary' to limit the Review to award-reliant workers who 'may be very different to the low paid'[370] and that:

> 'A focus on low paid workers is consistent with the object of the *Fair Work Act* to promote social inclusion (section 3) and is necessary for the FWC to carry out its

> obligation to establish and maintain a safety net of fair minimum wages, taking into account, among other matters, "the needs of the low paid" (section 284(1)).'[371]

[391] The above research presents an alternative picture of the relative position of award-reliant employees in the household income distribution. While the Australian Government concluded that low-paid workers tend to be concentrated in the middle of the income distribution of all households, the same analysis restricted to employee households shows that over 60 per cent of low-paid workers are located in the bottom half of the household income distribution.

[392] We think that it is clear that workers who receive the NMW or a modern award rate of pay are disproportionately located in the lower deciles of the relevant distribution of household disposable income.

Relative living standards

Real earnings

[393] The NMW has increased above inflation over the decade and, indeed, in most years throughout the decade. The NMW has increased in real terms by 3.5 per cent over the 10 years to the December quarter 2016. Over the shorter-term, the real NMW has increased by 3.6 per cent over the 5 years to the December quarter 2016, with an increase of 0.9 per cent occurring over the year to the December quarter 2016 (Table 5.1).

Table 5.1: Real national minimum wage and percentage change—2006–2016, December quarter 2016 dollars

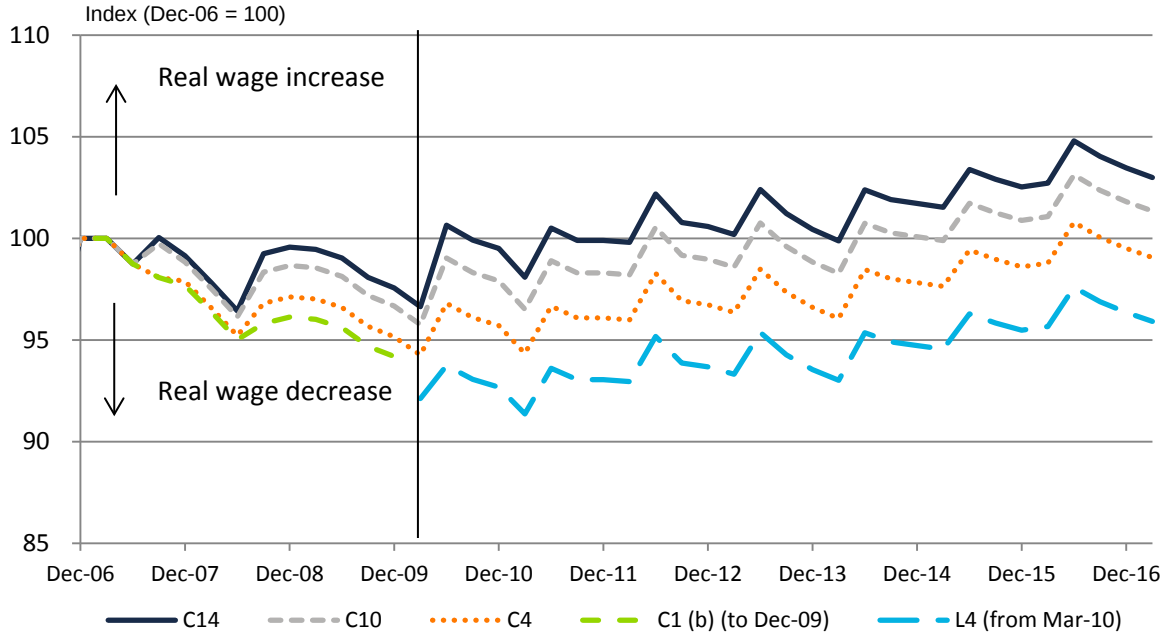
Year	Real national minimum wage ($)	Change (%)
2006	650.17	2.3
2007	644.59	–0.9
2008	647.36	0.4
2009	634.31	–2.0
2010	646.95	2.0
2011	649.53	0.4
2012	653.96	0.7
2013	653.07	–0.1
2014	661.34	1.3
2015	666.60	0.8
2016	672.70	0.9

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

Source: Statistical report, Table 9.1; ABS, *Consumer Price Index, Australia, Mar 2017*, Catalogue No. 6401.0; *Metal, Engineering and Associated Industries Award 1998*; Manufacturing Award.

[394] As Chart 5.3 shows, while there has been a rise in the real value of the lowest award rate over the decade, this is not true for higher rates. The higher rates declined in real terms up to mid-2009 and have increased since.

Chart 5.3: Real value of selected minimum wage rates, December quarter 2006 to March quarter 2017, index (Dec-06 = 100)



Note: Between 27 March 2006 and 30 June 2009, the minimum rates are those in Australian Pay and Classifications Scale (and from 1 July 2009, transitional Australian Pay and Classification Scale) derived from the *Metal, Engineering, and Associated Industries Award 1998*; 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: Statistical report, Chart 9.1; ABS, *Consumer Price Index, Australia, Mar 2017*, Catalogue No. 6401.0; *Metal, Engineering and Associated Industries Award 1998*; Manufacturing Award.

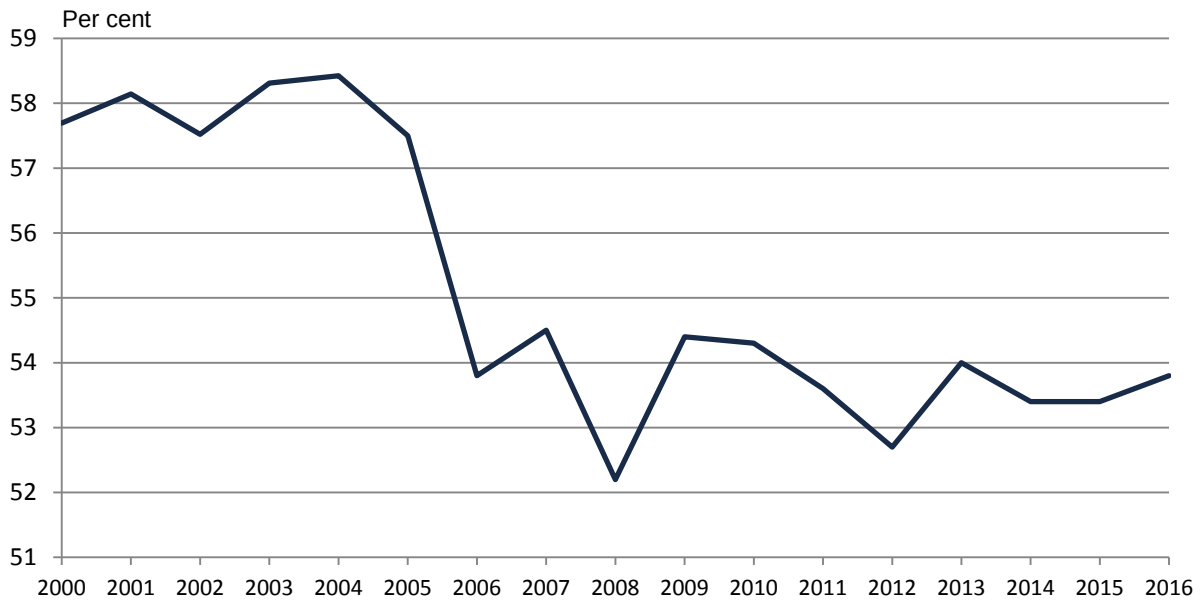
NMW relative to other wage measures

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

[396] Chart 5.4 shows the C14 rate as a proportion of median weekly earnings of full-time employees in their main job between 2000 and 2016. The ratio of the C14 rate to median earnings declined over this period, with most of the decline occurring between August 2005 and August 2008.

[397] Since the first Review decision in 2010, the ratio of the C14 rate to median earnings has decreased marginally (from 54.3 per cent in August 2010 to 53.8 per cent in August 2016), although it has risen from the trough of 52.7 per cent in August 2012.

Chart 5.4: C14 rate relative to median weekly earnings of full-time employees in main job, 2000 to 2016



Note: Median earnings are measured in August of each year. Following the amendments to the *Workplace Relations Act 1996* (Cth) taking effect in 2006, the Federal Minimum Wage was set at $12.75 per hour, equivalent to $484.50 per week.

Source: Statistical report, Chart 8.4; ABS, *Characteristics of Employment, Australia, various*, Catalogue No. 6333.0; ABS, *Employee Earnings, Benefits and Trade Union Membership, Australia, various*, Catalogue No. 6310.0; *Metal, Engineering and Associated Industries Award 1998*; Manufacturing Award.

[398] While acknowledging the Panel's view on the 'limited significance' of comparing the Australian minimum wage bite with that of other OECD countries,[372] the ACTU submitted that a declining minimum wage bite is 'very far from a necessary and inevitable consequence of globalisation and/or technological change … it is an outcome of the regulatory frameworks and institutions specific to a country. Therefore insight is to be gained by comparing minimum wage outcomes for Australia as against other countries'.[373] ACCI also urged the Panel 'to give greater weight to comparisons of Australia's NMW with those in other developed nations'[374] and submitted that:

> 'Australia continues to have one of the highest minimum wages in the world relative to the average worker, and the higher rates imposed by the award system further increase the disparity, and negatively impact Australia's competitiveness.'[375]

[399] The Australian Government noted that Australia's minimum wage bite is 'greater than many comparable' OECD countries whether measured as a median earnings bite or in terms of purchasing power.[376] The ACTU submitted that Australia's minimum wage bite of 0.53 (full-time employees with median earnings as the base) was 'just above' the OECD average of 0.52 in 2015, while Australia's minimum wage bite of 0.44 (full-time with average wages as the base) was 'above' the OECD average of 0.40 in 2015.[377]

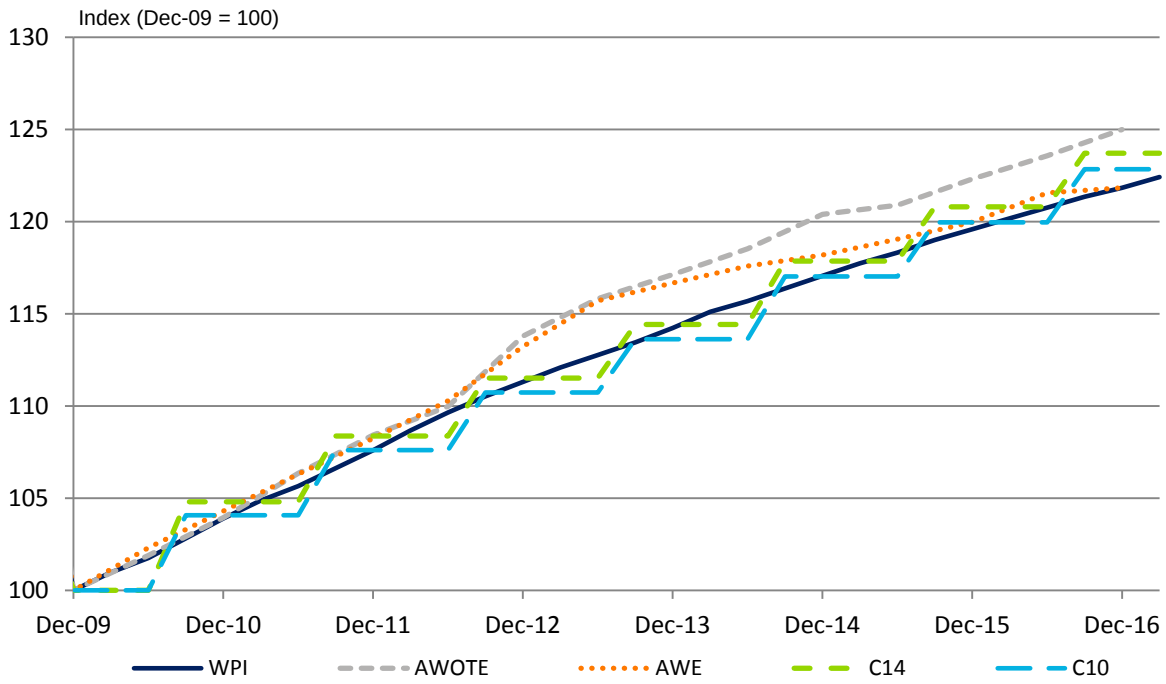
[400] The Victorian Government noted that while Australia's minimum wage bite is high relative to other OECD countries, it has declined over the past decade. Citing Research Report 1/2016—*An international comparison of minimum wages and labour market outcomes*, the Victorian Government submitted that Australia had the lowest growth rate in minimum wages from 2003 to 2014 relative to the 5 other countries analysed (New Zealand, France, United

Kingdom, United States, and Canada).[378] The ACTU submitted that 9 OECD countries experienced a falling minimum wage bite (both median and average wages for full-time workers), with Australia experiencing the fourth largest decline in the median wage bite, despite 'Australia being one of the least affected countries by the GFC'.[379]

[401] Consistent with our past approach, we maintain the position that data comparing the Australian minimum wage bite relative to other OECD countries is of limited significance in evaluating the relative living standards of the low paid.[380] In saying this, we accept that it has relevance for other questions, including the diversity of outcomes that are possible or are being promoted in countries that have economies that are broadly similar to Australia.

[402] Chart 5.5 shows the changes in the nominal value of the C14 and C10 award rates, relative to changes in AWOTE, AWE and the WPI between December 2009 and March 2017. This chart is based on Chart 8.1 in the Statistical report, however we have chosen to base the comparison on 2009 because the past trends started to alter at that date. Specifically, the divergence between growth in the award rates and the market rates almost ceased. This can be seen in the chart. The growth in C14 and C10 has matched quite closely to the growth in the WPI, and been only a little below growth in AWOTE.

Chart 5.5: Growth in C14 and C10 relative to AWOTE, AWE and WPI, December quarter 2009 to March quarter 2017, index (Dec-09 = 100)



Note: This chart reflects available data for the period December quarter 2009 to March quarter 2017. 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, Engineering and Associated Industries Award 1998*. 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: Based on Statistical report, Chart 8.1; ABS, *Average Weekly Earnings, Australia, Nov 2016*, Catalogue No. 6302.0; ABS, *Wage Price Index, Australia, Mar 2017*, Catalogue No. 6345.0; *Metal, Engineering and Associated Industries Award 1998*; Manufacturing Award (from 1 January 2010).

[403] The Victorian Government provided data from the EEH 2016 on the average total cash earnings of non-managerial employees by method of setting pay (reproduced below as Table 5.2) and submitted that these data show 'continuing disparities' between award wages and wages for collective agreements and individual arrangements, and that this shows 'a level of income inequality between low paid workers, who are generally award reliant and those on average weekly earnings or above usually set by agreement or individual arrangement'.[381]

[404] In May 2016 the average hourly total cash earning rate for award only non-managerial employees ($29.60) was around $9–$10 lower than employees who have their method of setting pay determined by collective agreement ($39.60) or individual arrangement ($38.50).

Table 5.2: Average weekly and hourly total cash earnings of non-managerial employees by method of setting pay (May 2016)

Method of setting pay	Average weekly total hours paid for (hours)	Average hourly total cash earnings ($)	Average weekly total cash earnings ($)
Award only	27.1	29.60	802.80
Collective agreement	30.7	39.60	1215.20
Individual arrangement	34.0	38.50	1311.60
All methods of setting pay	**31.0**	**37.00**	**1149.40**

Source: Victorian Government submission, 29 March 2017 at para. 24, Table 2; ABS, *Employee Earnings and Hours, Australia, May 2016*, Catalogue No. 6306.0.

Household disposable income

[405] In the 2015–16 Review decision the Panel noted:

> '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.[382] 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.'[383]

[406] Further, broadly re-stating the position from earlier Reviews,[384] the Panel went on to state:

> '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…'[385]

[407] The Australian Government,[386] Federal opposition[387] and ACCI[388] also emphasised the importance of considering living standards at the household level.

[408] The Australian Government emphasised that the 'tax-transfer system plays a large role in equalising the distribution of income among Australian households'[389] and further submitted:

> 'Only part of an increase to the minimum wage and award classification wages flows through to employees when taxes and transfers are taken into account. The Government shares the view of the Panel's 2014 decision, which stated that "*increases in minimum wages are a blunt instrument for addressing the needs of the low-paid*" (Paragraph 360), since some low-paid people live in households with high effective

> marginal tax rates, and others live in households with relatively high disposable incomes …'[390]

[409] Similarly, ABI and NSWBC in reply submitted that the tax-transfer system has 'a vital role to play in complementing the minimum wage system' because '[m]inimum wages are a blunt instrument involving trade-offs associated with the benefits of improving the incomes of those employed on minimum wages and the costs of eliminating opportunities for lower skilled workers who are unemployed'.[391]

[410] ACCER, in response to the Australian Government position, submitted that:

> 'The Government's arguments about the inefficiency of wage increases, of better ways to help the low paid and of wage increases being blunt instruments to provide for the needs of the low paid, are disconnected from the real world'.[392]

[411] In relation to the Panel's consideration of the tax-transfer system, the Federal opposition,[393] ACTU,[394] ACOSS[395] and ACCER[396] drew attention to the consequences of recent changes in transfers for families (further discussed in the following section).

Tax-transfer system changes

[412] The Panel noted in the 2013–14 Review decision that the 'prospect of legislative change is not something that we propose to take into account in making our decision'[397] and reaffirmed this position in the 2014–15 Review decision.[398]

[413] Acknowledging the Panel's position, the Federal opposition nevertheless submitted that:

> '… we would urge the Panel to scrutinise carefully any argument by the Government that the tax and transfer system can be solely relied upon to provide targeted support to the lowest-paid workers … If the Government's plans were legislated in full, low income Australians would be significantly and disproportionately worse off.'[399]

[414] Consistent with the position taken by the Panel in the past we do not propose to take prospective legislative changes into account.

[415] ACOSS detailed a series of legislated changes to social security payments that 'leav[es] families with low incomes more reliant on wage increases'.[400] Some of these changes were effective as far back as 2009.

[416] Recent changes to the tax-transfer system include:

- The abolition of the Schoolkids Bonus. In 2016 the Schoolkids Bonus was valued at $430 per annum for each primary school student and $856 per annum for each secondary school student. The final instalment of the bonus was paid in July 2016.
- The *Social Services Legislation Amendment Act 2017* included a measure to freeze the base and the maximum rate of Family Tax Benefit (Part A) and the maximum rate of Family Tax Benefit (Part B) for low-income families in nominal terms from 2017 to 2019. Whilst this measure does not commence until 1 July 2017 it will have application during the period when the Panel's decision will apply. The measure

does not reduce nominal incomes as such but will reduce their real value by the amount of inflation over the two years.

- The *Social Services Legislation Amendment Act 2017* maintains the nominal value of income areas from 1 July for working age payments and parenting payments at their current levels for 3 years.

[417] In addition to these changes in the tax-transfer system there are others that will affect low-income households. The Low Income Supplement will cease from 30 June 2017.[401]

[418] The Income Support Bonus ceased in 2016 with the last instalment paid in September 2016.[402]

[419] The Federal opposition was the only party to mention the cuts to the Energy Supplement in submissions, and provided no detail of the nature or impact of these changes.[403]

[420] The ACTU also drew the Panel's attention to what was then prospective legislative change related to government assistance for child care[404] ahead of the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2016* being passed in both Houses of Parliament on 27 March 2017 and receiving Assent on 4 April 2017.[405]

[421] The Child Care Subsidy in the Jobs for Families Child Care Package will not commence until 1 July 2018 and therefore its impact would be more appropriately dealt with in the 2017–18 Review.

[422] The Australian Government did not provide a summary of recent changes to the tax-transfer system that would affect the relative living standards and needs of the low paid. In the light of this, we have relied on information provided in other submissions which strongly suggest that changes in the past 2 budgets have reduced, rather than increased, the relative living standards of the low paid.

[423] ACCER advocated an approach by which identified reductions in welfare payments under the tax-transfer system, in particular the abolition of the SchoolKids Bonus, were quantified in dollar terms and that the Panel would then include a component in any increase to the NMW and modern award wages to specifically compensate for such reductions.[406] ACCER further proposed the development of a process for phasing in such increases over time, and also to compensate for the past discounting of wage increases that ACCER asserts had been implemented by wage-setting tribunals because of benefits to low-paid households in the tax-transfer system.[407]

[424] We reject the proposition that past decisions of the Panel and its predecessors have erred in the manner in which they have taken into account changes in the tax-transfer system, and that this needs to be compensated for in this and in future Reviews.

[425] We accept that changes in the tax-transfer system, whether of benefit or detriment to low-paid households, are relevant to our consideration of relative living standards and the needs of low-paid employees. To the extent that identified changes to the tax-transfer system have adversely impacted low-paid employees, those changes have been taken into account pursuant to s.134(1)(a) and s.284(1)(c). However, we do not accept that a mechanistic or formulaic approach can be taken to our consideration of this matter such that the dollar

amount of any particular detrimental change to the tax-transfer system necessarily becomes determinative of the quantum of an increase to minimum rates.

[426] It is not the role of the Panel to use NMW orders or increases in modern award wages to specifically counter-act changes to the tax-transfer system enacted by government. Further, we reject the proposition that we should adopt a policy to redress changes in the tax-transfer system over the longer term for the same reasons that we rejected United Voice's proposal for a minimum wage target in the *2016–17 Preliminary decision*. It needs to be made clear however that any future substantial and sustained changes to the tax-transfer system which operate to reduce the household incomes of the low paid will be taken into account as matters affecting the relative living standards and the needs of the low paid, in our assessment of the quantum of future adjustments to the NMW and award wage rates.

Disposable income of award-reliant workers and households

[427] As they have in previous submissions, the Australian Government provided modelling (Table 5.3) showing the impact of the 2016 NMW increase on the disposable income of a range of household types.

Table 5.3: Effect of 2016 minimum wage increase on household disposable incomes

Household type	Wage increase ($pw)	Increase in household disposable income ($pw)	Percentage of wage increase retained (%)
Single, no children			
Full-time NMW	15.80	12.48	79.0
Part-time NMW	6.15	2.46	40.0
Student on part-time NMW	6.15	2.48	40.3
Single parent			
Full-time NMW, child aged 3	15.80	5.07	32.1
Full-time NMW, child aged 9	15.80	7.68	48.6
Part-time NMW, child aged 3	6.15	3.69	60.0
Part-time NMW, child aged 9	6.15	3.00	48.8
Single-income couples (partner on Newstart Allowance)			
Full-time NMW, no children	15.80	2.49	15.8
Full-time NMW, child aged 3	15.80	4.39	27.8
Full-time NMW, children aged 3 and 9	15.80	5.20	32.9
Dual income couples			
Both full-time NMW, no children	31.60	24.96	79.0
One full-time and one part-time NMW, no children	21.95	2.86	13.0
One full-time and one part-time NMW, child aged 3	21.95	2.19	10.0
One full-time and one-part time NMW, children aged 3 and 9	21.95	2.18	9.9

Note: Figures are based on tax and benefit rates applicable on 1 July 2016. Part-time hours are assumed to be 15 hours per week. The modelling does not include indexation of benefits as it has been designed to specifically to show the Panel the direct impact of the 2017 minimum wage increase on household disposable incomes. Indexation of benefits is a separate process in the tax-transfer system and is not affected by the Panel's decision.

Source: Australian Government submission, 29 March 2017 at para. 272, Table 8.3; Australian Government modelling.

[428] As can be seen from the table the percentage of wage increase retained ranged from a high of 79 per cent (for a full-time employee, single with no children and earning the NMW) to just 9.9 per cent (for a couple one full time and one part time both earning NMW with one child aged 3 and one child aged 9).

[429] ACOSS reflected on the lower increases in disposable income received by families with children shown in Table 8.4 of the Statistical report, and suggested '[a] likely reason for this is reductions in the real value of Family Tax Benefits'.[408]

[430] The Australian Government also provided modelling of the real growth in disposable income for a range of households for January 2012–January 2017.[409]

[431] In regards to the Australian Government modelling, ACCER in-reply, suggested that the choice of households was 'narrow and selective … in that they focus on families in receipt of Centrelink income support payments received by singles and couples with children and, for comparative purposes, singles and couples without children. They say nothing about the operation of the tax-transfer system for families who do not receive income support allowances, but who receive Family Tax Benefits (family payments).'[410] ACCER also commented that this modelling does not show the impact over the full year and the reduction in family payments resulting from minimum wage increases.[411]

[432] The Australian Government submitted that the current (to January 2017) Australian tax-transfer system 'has also assisted real income growth in minimum wage households. The Government has modelled the percentage change in real disposable income for a number of hypothetical households over the five years from 2012 to 2017'.[412]

Table 5.4: Changes in real disposable household income, 2012 to 2017

Household type	Total change (%)	Tax-transfer contribution (%)	Net impact of real NMW increases (%)
Single, no children			
Full-time NMW	2.9	–0.7	3.6
Part-time NMW	5.3	4.3	1.1
Student on part-time NMW	17.8	16.4	1.5
Single parent			
Full-time NMW, child aged 3	1.6	0.6	0.9
Part-time NMW, child aged 3	4.4	3.6	0.9
Full-time NMW, child aged 9	8.4	6.7	1.7
Part-time NMW, child aged 9	9.9	8.9	1.0
Single-income couples			
Full-time NMW, no children	2.4	1.8	0.6
Full-time NMW, child aged 3	2.5	1.7	0.9
Full-time NMW, children aged 3 and 9	2.3	1.4	0.9
Dual income couples			
Both full-time NMW, no children	2.9	–0.7	3.6
One full-time and one part-time NMW, no children	2.9	1.8	1.1
One full-time and one part-time NMW, child aged 3	2.8	1.8	0.9
One full-time and one-part time NMW, children aged 3 and 9	3.0	2.1	0.8

Note: Based on NMW and tax-transfer system of 1 January each year. The first column shows the percentage change in real disposable income given the actual changes in the national minimum wage and tax-transfer system. The second column shows the contribution of the tax-transfer system, by assuming that the minimum wage had grown in line with the Consumer Price Index (CPI), while the third shows the contribution of real NMW increases (the difference between the first two). They may not sum exactly due to rounding. This modelling includes indexation benefits as it examines disposable household income over the long term. The effect is shown as part of the 'tax-transfer contribution', as it occurs independently of the Panel's decision on the NMW.

Source: Australian Government submission, 29 March 2017 at para. 284, Table 8.6; Australian Government modelling.

[433] The Australian Government points out that Table 5.4 shows that 'even if the national minimum wage had remained constant in real terms, most minimum wage households' disposable incomes would have improved in real terms due to changes in the tax-transfer system. Further, the real increase in the national minimum wage only increased household incomes by a marginal amount as measured by the difference between the first two columns (shown in the third column).'[413]

[434] In response to a question on notice from the Panel, the Australian Government provided further information as to the increases in households' disposable incomes if the real increase in the NMW had been double what it was. This information is in the following table.

Table 5.5: Hypothetical changes in real disposable household income, 2012 to 2017, had the real increase in the NMW been double the actual increase

Household type	Total change (%)	Tax-transfer contribution (%)	Net impact of real NMW increases (%)
Single, no children			
Full-time NMW	6.5	–0.7	7.2
Part-time NMW	6.3	4.3	2.0
Student on part-time NMW	19.1	16.4	2.8
Single parent			
Full-time NMW, child aged 3	2.5	0.6	1.9
Part-time NMW, child aged 3	5.3	3.6	1.7
Full-time NMW, child aged 9	9.8	6.7	3.1
Part-time NMW, child aged 9	10.6	8.9	1.7
Single-income couples			
Full-time NMW, no children	3.0	1.8	1.2
Full-time NMW, child aged 3	3.2	1.7	1.6
Full-time NMW, children aged 3 and 9	3.1	1.4	1.6
Dual income couples			
Both full-time NMW, no children	6.5	–0.7	7.2
One full-time and one part-time NMW, no children	6.7	1.8	4.9
One full-time and one part-time NMW, child aged 3	5.6	1.8	3.8
One full-time and one-part time NMW, children aged 3 and 9	5.4	2.1	3.2

Note: Based on NMW and tax-transfer system of 1 January each year. The first column shows the percentage change in real disposable income if the real increase in the NMW was double and the actual change in the tax-transfer system, as it occurs independently of the Panel's decision on the NMW. The second column shows the contribution of the tax-transfer system, by assuming that the minimum wage grew in line with the CPI, while the third shows the contribution of real NMW increases (the difference between the first two). They may not sum exactly due to rounding. This modelling includes indexation of benefits as it examines disposable household income over the long term.

Source: Australian Government response to supplementary question, 22 May 2017 at p. 8; Australian Government modelling.

[435] The above table shows that, not surprisingly, if real increases to the NMW had actually been double what they were then the net impact of real NMW increases also doubles or more, in many cases. The point here is that the statement by the Government that 'real increases in the national minimum wage only increased household incomes by a marginal amount'[414] might give the impression that real increases to the NMW do not have much impact on household incomes. Real increases in the NMW do have an impact on household incomes and the higher the increases the more impact they have. It should also be noted that the data supplied is over a 5-year period and therefore does not show the contribution of real NMW increases and changes to the tax-transfer system on household incomes over the last year or 2.

[436] The Australian Government submitted, as it has for a number of years, that '[t]he tax-transfer system is the primary means of redistributing income in Australia. It can provide better targeted and more effective assistance to maintain living standards, including the living standards of low-paid workers in low income households, than increases in the national minimum wage and award classification wages.'[415]

[437] We accept the general point that increases in social welfare payments and reductions in taxes have a direct and targeted impact on the disposable incomes of mostly lower income households. In that sense, that means that they have the potential to be more 'efficient' than a rise in the NMW and modern award wages in meeting the needs and sustaining the relative standard of living of the low paid. But the comparison between the 2 redistributive instruments is complex. We set out some of the complexities in what follows.

[438] Employers pay for a wage increase and taxpayers (individuals and corporations) pay for an increase in net transfers to low-income households. This obvious point means that any assessment of the 2 redistributive instruments must take into account the cost of raising and distributing the revenue required to deliver the welfare increases. The latter costs include the distortionary effects of taxes and social welfare benefits and the administrative costs of the tax-transfer system.

[439] The very advantage of the tax-transfer system as a redistributive tool—that it can be tightly targeted to those most in need—is also its weakness. The more targeted is the system, the higher is the 'effective marginal tax rate' faced by recipients of social transfers, and the lower the incentive that they therefore have to obtain work, especially low-paid work. To illustrate, we cite an example given in the Australian Government submission. A couple with a 3-year old child, with one member of the couple in a full-time job at the NMW would be $327 per week (49 per cent of the $672 wage) better off if the second member of the couple also found a full-time NMW job. If the second member of the household took a part-time job at the NMW the household would increase their disposable income by $103 per week (39 per cent of the part-time wage of $265).[416] These figures make no allowance for child care costs that might be incurred to make it possible for the second partner to work. These outcomes significantly reduce the incentive to work and it is exactly these families with children that gain most from the tax-transfer system relative to a rise in the NMW. Those who can most expect their ability to meet their needs to be protected by the social welfare system are also those who therefore face the smallest gains from obtaining employment.

[440] The earnings from part-time jobs face the highest effective marginal tax rates. It has been put to us that part-time employment is an important entry point into the labour force and is a stepping stone to higher-paid and to full-time work. This provides an additional reason to

be concerned about relying too heavily on the social welfare system, as distinct from the wages from work, to ensure that the needs of the low paid are met.

[441] The Australian Government provided data that show about 81 per cent of low-paid people did not have dependent children: around 58 per cent were single without children.[417] The single and couple households without children who have a full-time NMW job, receive no or very little assistance from the tax-transfer system—indeed, on the Australian Government figures their disposable income is reduced, not increased, by this system. These workers rely entirely on the level of the NMW and modern award wages for any gain in their personal income and are a large proportion of the low paid.

[442] We make one final point. A number of parties emphasise the benefits of being employed. These benefits extend beyond just the income earned, to include greater dignity and self-respect and capacity for social inclusion. It is consistent with this view to believe that dignity and self-respect, and sense of fairness, is enhanced when individuals and families are paid a fair wage and are able to rely more on what they earn and less on social welfare benefits to sustain themselves. A dollar received as a wage carries a different meaning from a dollar received as a welfare transfer.

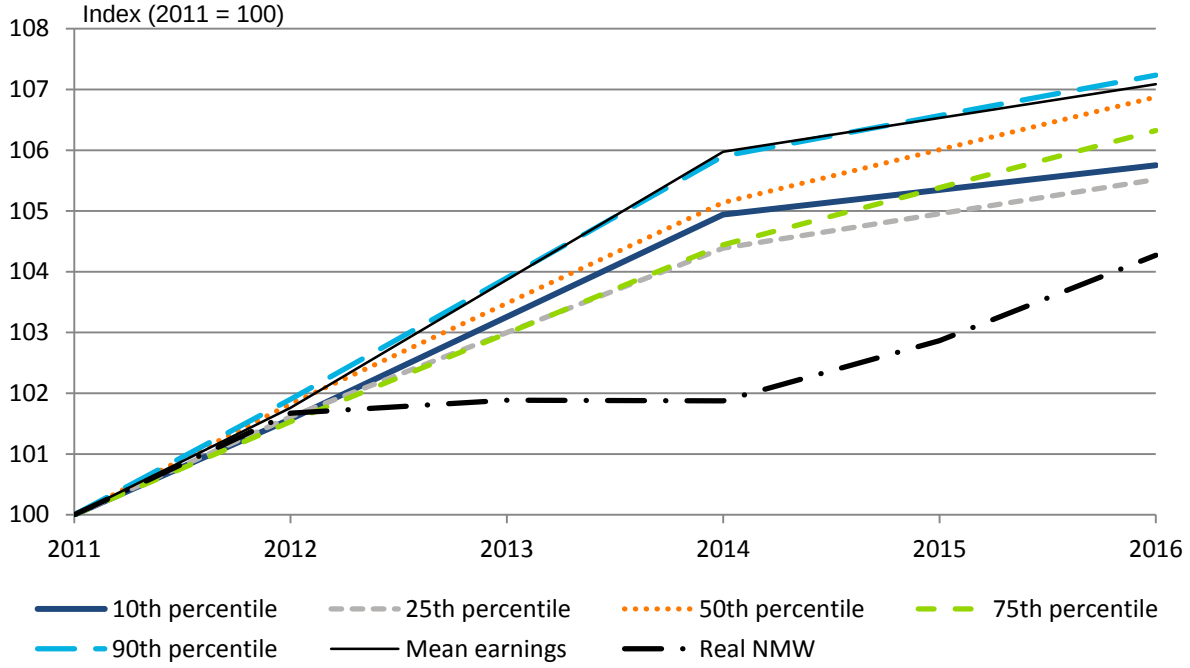
[443] In previous Reviews, the Panel has expressed the view that the tax-transfer system has a significant role to play in supporting the living standards of low-paid workers and in the maintenance of an effective safety net for the low paid.[418] The Panel has also consistently rejected submissions that it have regard to changes to legislation that are proposed but not enacted. Further, on a number of occasions in recent Review decisions, the Panel has concluded that the evidence before it has suggested that the tax-transfer system has been effective in increasing the real level of disposable incomes for lower-paid award-reliant families but has noted that it has had little impact on single adults.[419] In the current Review, a number of parties have drawn our attention to changes to the tax-transfer system which will have some detrimental effect on low-income households. Consistent with the previous approach it is also appropriate that we now take that detrimental effect into account as part of our statutory obligation to consider the relative living standards and the needs of the low paid when setting the NMW and modern award wages.

Earnings inequality

[444] The relative standard of living of low-paid workers is affected by the degree of inequality in the dispersion of earnings. If the earnings of workers in the lowest deciles are growing more slowly than those in the higher deciles, then the relative earnings of the low paid will fall. Such an increase in earnings inequality has been observed in many countries and has occurred in Australia over the past decade.[420] Over the decade, the real weekly total earnings of full-time non-managerial employees in the bottom decile rose by 13.0 per cent while that of employees in the 90th percentile rose by 22.0 per cent. Note that real earnings rose for all points in the earnings distribution, so that while the relative the earnings of the low paid has fallen, the absolute value has in fact risen.

[445] Much of the rise in inequality occurred in the earlier part of the decade and indeed in the decade prior to that. Chart 5.6 shows the growth at various points in the earnings distribution from 2011 to 2016.

Chart 5.6: Real weekly total earnings (full-time adult non-managerial employees) by percentile and the real NMW, 2011 to 2016—index (2011 = 100)



Note: The EEH was not conducted in 2011, 2013, and 2015. Results for these years have been obtained through linear interpolation. Earnings data for 2014 and 2016 are based on full-time non-managerial employees paid at the adult rate.

Source: Statistical report, Chart 8.3; ABS, *Consumer Price Index, Australia, Mar 2017*, Catalogue No. 6401.0; ABS, *Employee Earnings and Hours, Australia, various*, Catalogue No. 6306.0; Manufacturing Award.

[446] The chart shows that over the past 5 years, the 90th percentile earnings have grown at about the average (mean) rate, that the 10th percentile has grown faster than the 25th percentile, and that overall there is little difference in the growth rates at different points in the distribution. The overall message is that there has not been a clear growth in inequality of earnings over the past 5 years.

[447] The real value of the NMW has taken a different path, first rising then remaining unchanged until 2014 when it rose again. Over the period, it rose by 4.3 per cent, a little behind the growth in the 10th and 25th percentiles of 5.8 per cent and 5.5 per cent, respectively.

[448] The Australian Government submitted a table (Table 5.6) that compared the growth in full-time real weekly earnings for the decade 1996–2006, with that of the decade 2006–2016. It shows that in the later decade, earnings dispersion continued to rise, but at a reduced rate.

Table 5.6: Growth in full-time real weekly earnings, 1996 to 2016

% growth	1996 to 2006	2006 to 2016
10th percentile	9.3	12.8
50th percentile (median)	15.6	17.5
90th percentile	24.2	21.9

Note: 1996 to 2006 growth is for ordinary time earnings and 2006 to 2016 is for total cash earnings.

Source: Australian Government submission, 29 March 2017 at para. 254, Table 8.1; ABS, *Consumer Price Index, Australia, Mar 2017*, Catalogue No. 6401.0; ABS, *Employee Earnings and Hours, Australia*, various, Catalogue No. 6306.

[449] Table 5.7 shows a more detailed account of the changes in the dispersion of earnings over the past decade. As with Chart 5.6 above, it shows that from 2010–2016, the rise in the relative earnings of the top percentiles ceased while the relative position of the lower deciles declined only a little: the trend for the period 2006–08 ceased for the higher deciles and was attenuated for the lower deciles.

Table 5.7: Ratio of selected percentiles to the mean and median of real weekly total earnings (full-time adult non-managerial employees), 2006 to 2016

	2006	2008	2010	2012	2014	2016
Ratio of selected percentiles to mean real earnings						
10th percentile	0.58	0.57	0.56	0.56	0.56	0.55
25th percentile	0.69	0.68	0.68	0.68	0.67	0.67
50th percentile	0.89	0.89	0.88	0.88	0.87	0.88
75th percentile	1.18	1.19	1.20	1.19	1.18	1.18
90th percentile	1.53	1.56	1.57	1.57	1.57	1.57
Ratio of selected percentiles to median real earnings						
10th percentile	0.66	0.64	0.64	0.63	0.63	0.63
25th percentile	0.78	0.77	0.77	0.77	0.77	0.76

Note: Earnings data for 2014 and 2016 are based on full-time non-managerial employees paid at the adult rate.

Source: Statistical report, Table 9.2; ABS, *Consumer Price Index, Australia, Mar 2017*, Catalogue No. 6401.0; ABS, *Employee Earnings and Hours, Australia*, various, Catalogue No. 6306.

[450] The ACTU, as it did in the 2015–16 Review, points to the correlation across OECD countries between a lower minimum wage bite and higher 50/10 wage inequality. They conclude that '[t]his is convincing because the institutional and economic environment varies widely amongst countries and the minimum wages and average wages are established basically independently in each country. It is clear that a smaller minimum wage bite is associated with greater earnings inequality.'[421]

[451] ACCER urges the Panel not to equate the earnings of the low paid (e.g. the bottom decile) with the earnings of those who rely on the NMW and the award safety net.[422] They claim that the safety net has grown more slowly than the earnings of the low paid as measured by the bottom decile. Chart 5.6 above provides evidence on this matter for the past 5 years. It confirms that the real value of the NMW has not fully matched the growth in the bottom quarter of the earnings distribution over the whole period. However, the NMW has grown faster than the bottom quartile over the past 2 years.

[452] We accept that those who are in the bottom one or 2 deciles of the earnings distribution, and those who are paid the NMW or an award rate are not necessarily the same, although there will be considerable overlap. Indeed, as has been pointed out by a number of the parties, many award-reliant workers receive rates of pay that put them above the usual measures of low pay.[423] Further, the Review decisions have an impact on the growth rates of earnings in the lower part of the earnings distribution. But we reject the proposition implied by ACCER that it is inappropriate for us to focus on growth in the earnings of the lower deciles when considering the relative living standards and needs of the low paid, and instead that we should focus just on the relative values of the NMW and award rates. In the end, more important to the ability of workers to sustain a decent standard of living is what in fact they earn, not what the safety net provides. The fact that there has been some growth, albeit small, in the real value of the NMW and award rates means that those who remain dependent on the safety net have had their real earnings increased, even while their relative position has declined. In fact, we consider both minimum rates and low earnings, being aware as we do so that the influence of changes to the NMW and award rates will be apparent in changes in the absolute and relative earnings of those at the bottom of the earnings distribution.

Income inequality

[453] ACCI submitted that 'minimum wage fixation should not be seen as a tool to achieve income redistribution. Approaching minimum wage uprating as a potential remedial measure for income disparity would have very damaging consequences for those minimum wages are designed to benefit, and their current and potential employers.'[424] We do not accept this proposition. A consideration of the relative living standards of the low paid is essentially a consideration about income distribution. The relative living standards of the low paid will fall even if their absolute living standards remain constant but the living standards of other relevant groups rise. On the second point, the asserted damaging consequences, we consider this in some detail in Chapter 6, and do not agree that the evidence supports the position expressed by the ACCI.

[454] A more comprehensive measure of living standards is provided by household disposable income. This takes into account not just the earnings of the individual, but also that of other members of the household, the number of people in the household, other sources of private income and the net effect of the tax-transfer system. On that measure, real household disposable income has risen faster and more equally than has earnings. Table 5.8, from the Australian Government submission, shows the changes over the past 2 decades in equivalised real household disposable income, with the latest data that are available. There has been no new data on this measure since the 2015–16 Review.

Table 5.8: Growth in equivalised real household disposable income, 1994–95 to 2013–14

% growth	1994–95 to 2003–04	2003–04 to 2013–14
10th percentile	20.0	28.1
50th percentile (median)	24.0	28.5
90th percentile	23.2	34.5

Note: Estimates for 2007–08 onwards are not directly comparable with previous estimates due to improvements in income measurement. Estimates for 2003–04 and 2005–06 have been recompiled to reflect the new measures of income, however not all components introduced in 2007–08 are available earlier.

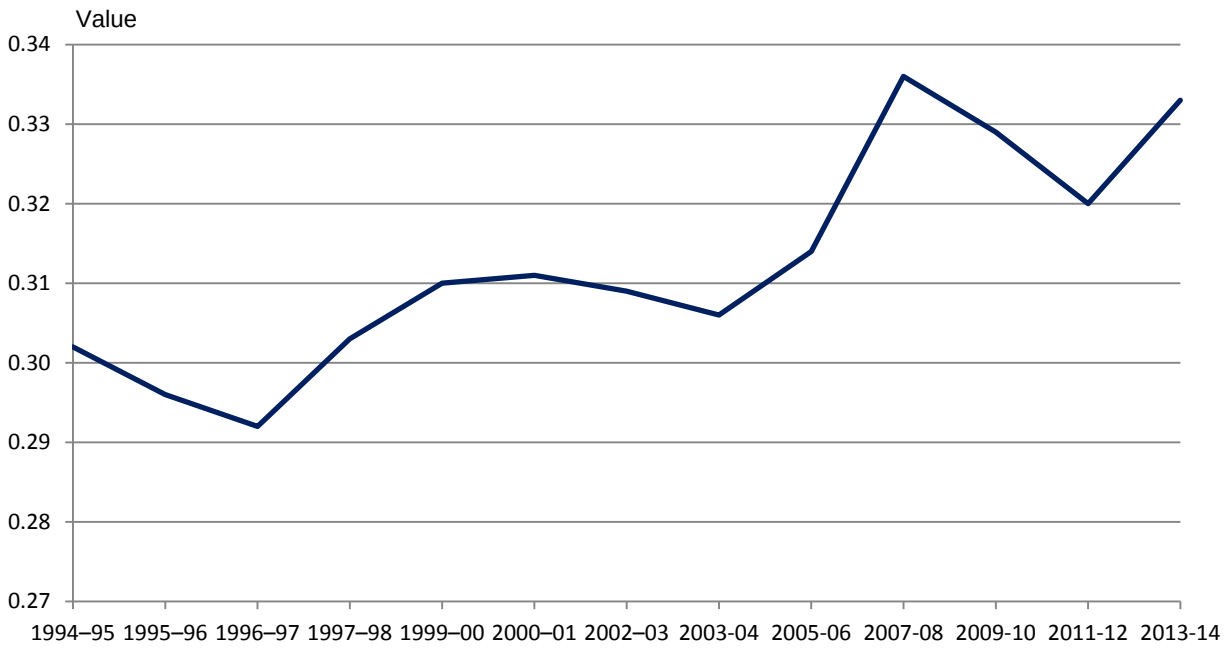
Source: Australian Government submission, 29 March 2017 at para. 256, Table 8.2; ABS, *Household Income and Wealth, Australia, 2013–14*, Catalogue No. 6523.0.

[455] The Australian Government advised that improvements in the Survey of Income and Housing, including a new definition of income, had a greater impact at the top of the income distribution. This accounts in part for the apparent higher growth in the income of the 90th percentile, from 2003–04 to 2013–14. Income growth is higher than earnings growth generally, because of more rapid growth in employment and investment income, and changes to the tax-transfer system.[425]

[456] Table 5.8 shows that over the decade to 2013–14, households in the bottom decile of equivalised real disposable income (not earnings) had a 28 per cent rise in their real disposable income and this matched the growth of the median household. Households at the top of the distribution had the fastest growth in disposable income.

[457] 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. This is shown in Chart 5.7 which provides the latest available data.

Chart 5.7: Gini coefficient for equivalised household disposable income distribution in Australia 1994–95 to 2013–14

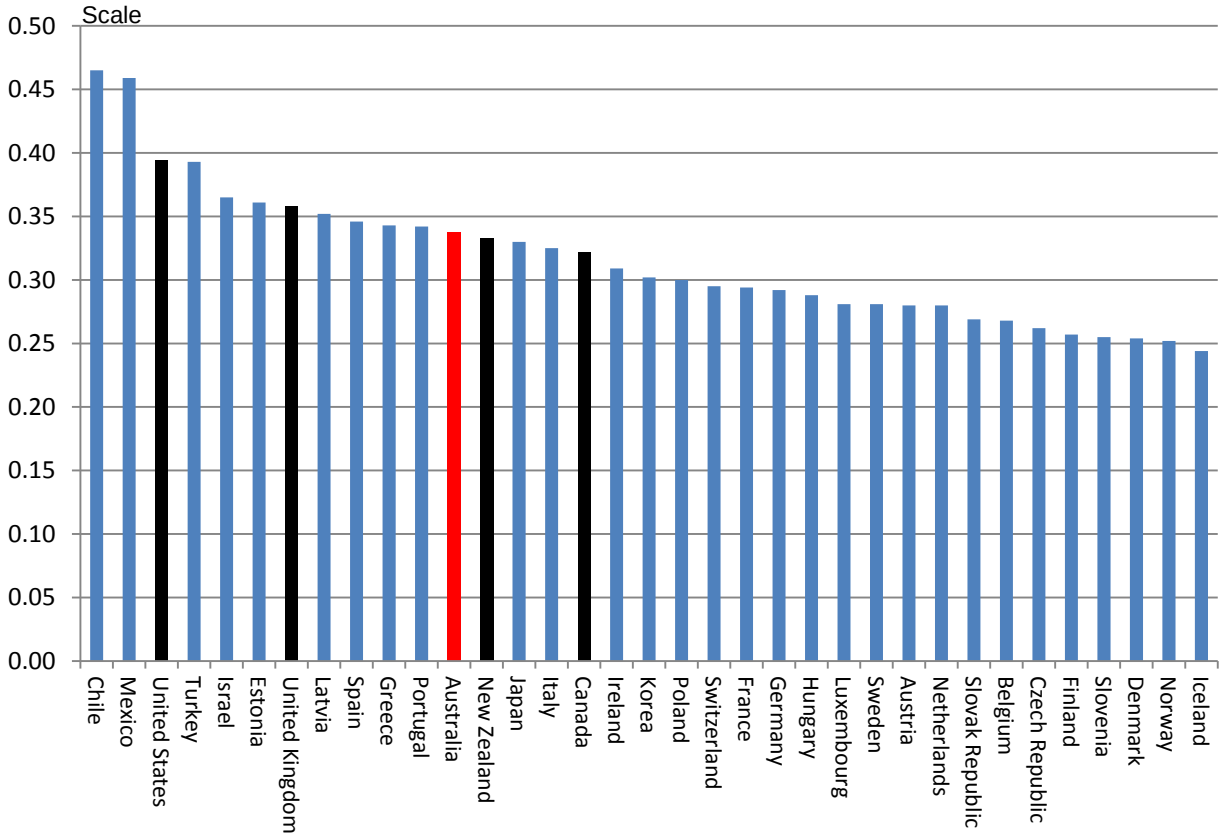


Note: Equivalised disposable household income standardizes as if a household's after tax and transfers income were that of a single individual.

Source: ACTU submission, 29 March 2017 at p. 126, Figure 69; ABS, *Household Income and Wealth, Australia, 2013–14*, Catalogue No. 6523.0.

[458] The Australian Government submitted that increases in inequality in household disposable income since the 1980s in Australia was less than that for many other OECD countries, and that inequality peaked in 2006.[426] Nonetheless, as Chart 5.8 shows,[427] this inequality remains relatively high in Australia, with a ranking of 12 out of 35 countries in terms of high inequality on this measure. Australia is substantially more unequal than a number of major European countries including France and Germany.

Chart 5.8: Gini coefficient measures of inequality among OECD countries: household disposable income, 2012–14



Note: A black bar indicates countries included in the Australian Government's initial submission (Chart 8.1).

Source: Australian Government response to questions on notice, 22 May 2017 at p. 4; OECD Stat Extracts, <http://stats.oecd.org/>.

[459] We conclude that there has been little change over the 4–5 years to 2013–14. Inequality in household disposable income did not rise as fast as that for earnings (moderated by the tax-transfer system and the composition and levels of employment of households). Although the latest data are for 2014, at that time there was no evidence of rising inequality of household disposable income among at least the bottom half of the income distribution for all households. Nonetheless, on the Gini coefficient measure, Australian levels of inequality of household disposable income remain relatively high by OECD standards.

Needs of the low paid

Poverty and poverty lines

[460] 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.

[461] 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. 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. 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. In the 2015–16 Review decision,[428] the Panel discussed the use of relative poverty lines, budget standards and measures of deprivation to identify the extent of poverty. We do not repeat that discussion here. We do, however, observe that contemporary poverty lines are in effect a measure of inequality at the lower end of the income distribution. They are not based on observed incapacity to meet needs: this incapacity is better indicated, given available data, by measures of deprivation, and financial stress, such as not being able to raise $3000 in a week for something important, to pay utility bills on time, or to heat one's home.

[462] 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.

[463] Table 5.9 below compares the equivalent household disposable income of selected family types that are reliant on the NMW or higher award rates, with a 60 per cent median income poverty line. It is customary in this field of research to set a poverty line as either 50 or 60 per cent of the median value of the distribution of equivalent household disposable income. This income takes account of private income, taxes and transfers and household size. This form of poverty line is a measure of relative income, not of absolute needs. We present the data for 60 per cent of median income on the basis that those in full-time work are entitled to expect some margin above a harsher measure of poverty.

Table 5.9: Ratio of equivalised disposable income of selected households earning various wage rates to a 60 per cent median income poverty line, December 2011 and December 2016

	December 2011				December 2016			
	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	474.00	1.13	1.30	2.18	523.01	1.16	1.31	2.23
Single parent, one child	616.20	1.26	1.39	1.91	679.91	1.29	1.40	1.94
Single parent, two children	758.40	1.16	1.26	1.69	836.81	1.18	1.28	1.72
Single-earner couple, no children	711.00	1.00	1.02	1.45	784.51	1.02	1.03	1.49
Single-earner couple, no children (no NSA)	711.00	0.77	0.87	1.45	784.51	0.80	0.89	1.49
Single-earner couple, one child	853.20	1.04	1.06	1.38	941.42	1.06	1.07	1.40
Single-earner couple, one child (no NSA)	853.20	0.91	1.00	1.38	941.42	0.93	1.01	1.40
Single-earner couple, two children	995.40	0.99	1.02	1.29	1098.32	1.01	1.02	1.31
Single-earner couple, two children (no NSA)	995.40	0.88	0.96	1.29	1098.32	0.90	0.97	1.31
Dual-earner couple,* no children	711.00	1.17	1.34	2.29	784.51	1.20	1.37	2.34
Dual-earner couple,* one child	853.20	1.20	1.30	1.91	941.42	1.22	1.31	1.95
Dual-earner couple,* two children	995.40	1.13	1.21	1.70	1098.32	1.15	1.23	1.68

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 2011–12 for December 2011 and 2013–14 for December 2016, and adjusted 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. NSA = Newstart Allowance.

Assumptions: Tax-transfer parameters as at December 2011 and December 2016. Wage rates for 2011: C14 = $589.30 pw, C10 = $686.20 pw, C4 = $824.30 and AWOTE of full-time employees = $1330.10 pw. Wage rates for 2016: C14 = $672.70 pw, C10 = $783.30 pw, C4 = $940.90 pm and AWOTE of full-time employees = $1533.40.

Source: Statistical report, Table 8.6; ABS, *Average Weekly Earnings, Australia*, Nov 2016, Catalogue No. 6302.0; ABS, *Household Income and Income Distribution, Australia, 2011–12*, Catalogue No. 6623.0; 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 (2017), *Poverty Lines: Australia*, December quarter 2016.

[464] We draw out 3 insights from the table. The first is that all categories of family type and minimum wage rate have had some small increase in their income relative to the selected measure of poverty over the period from 2011 to 2016. Table 8.6 in the Statistical report confirms that this was true also for the year to December 2016. The second is that most family types have incomes above the relative poverty line even if they are on the NMW, with the greatest margin being for a single parent with one child. The third is that the family types that have an income that is below the 60 per cent poverty line are those that have an adult who is not in the labour force (i.e., does not receive a wage or the Newstart Allowance). This applies

whether or not there are children in the household. Indeed, the family with the biggest gap between their income and the poverty line is the single-earner couple with no children and one partner not in the labour force or actively seeking employment. No party contended that the NMW should be at a level which would enable a couple without dependent children to have sufficient income such that one able-bodied partner neither has to work nor seek work.

[465] Both the ACTU[429] and ACOSS[430] drew attention to the fact that it is only through receipt of Newstart Allowance that some single-earner households reach an income above the 60 per cent poverty line. ACCER did argue that a single minimum wage, together with social welfare support, should be sufficient to maintain a couple family with children above the poverty line, while only one partner is in the workforce. At present this is not the case. Such families do have a substantial margin above the poverty line if the second adult earns a part-time NMW: they have a slender margin if receiving a Newstart payment.

[466] There has been a long debate in Australia about whether minimum wages should be expected to meet the expenses of a dependent family, starting with the Harvester case in 1907. Families, and the expected role of women, have changed a great deal since this issue was first considered. It is well accepted that a minimum wage that was sufficient to support a dependent family would be well in excess of the needs of a single adult. The data in Table 5.9 show that currently a single adult on the NMW has a margin of 16 per cent above the 60 per cent poverty line. As we have mentioned, around 58 per cent of low-paid workers are single without children.

[467] The tax-transfer system plays a major role in raising the living standards of minimum wage families that have children. It does not, however, support them to the point where they can have an adult not in the workforce and still have an income above the 60 per cent poverty line.

[468] We do not accept the position, implied by ACCER, that the 60 per cent poverty line is a clear representation or measure of poverty, such that those who receive this income or less are unquestionably unable to meet their needs. By construction, it is more akin to a measure of inequality than of poverty in the normal meaning of this term. We discuss at a later point what can be learned about the needs of the low paid from alternative measures, such as deprivation. Here we observe that the families of today take many forms and have diverse ways in which they bring up their children. The sole breadwinner couple with several children is no longer the norm, although it remains one of a range of family types. Society has responded to this growing diversity by the development of a range of adaptations including paid parental and personal leave, formal child care, informal child care, out of school hours care, and a range of family payments. It is most important to evaluate whether these arrangements, together with the wages that can be earned, are sufficient to provide families with adequate incomes. The high and continuing levels of child poverty indicate that they are not and this is a serious matter for society. This conclusion is supported by the evidence provided by ACOSS, drawing on the 2016 *Poverty In Australia* report. This finds that about one-third of people in poverty lived in households for which wages were the main source of income; and that about half of families in poverty had children.[431]

[469] The level of minimum wages has some role to play in seeking to reduce the financial stresses on families. But this role does not extend to a requirement to set the NMW at a level that ensures that a single-earner couple family with children on the NMW has an equivalent disposable income that exceeds the 60 per cent poverty line. The 60 per cent poverty line is

arbitrary, and a fair and relevant safety net must take account of the full range of statutory considerations, be fair to employers as well as to employees, and be alert to the likelihood that at some level of increase, it will probably reduce employment opportunities for lower-skilled people.

[470] ACOSS, as it has in the past, drew attention to the link between minimum wage levels and poverty, 'through their indirect effect on the adequacy of social security payments'.[432] In order to maintain a sufficient incentive to work, it is necessary to set social welfare payments below minimum wage rates. If minimum wage rates fail to rise in real terms, there is little or no scope for increases in payments such as Newstart. We acknowledge that this relation implies that changes in minimum wage rates can have consequences for poverty that go well beyond their direct effect on earnings. This consideration is relevant to our decision only to the extent that it affects the relative living standards and needs of the low paid.

Other measures of living standards and needs

[471] As we noted in the 2015–16 Review decision:

> '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.'[433]

[472] Two sources of information available to us on the experience of financial stress—the ABS' General Social Survey and Household Expenditure Survey—have not had new data releases since the last Review.

[473] The Statistical report provided data on the experience of financial stress by employee households. This data has been updated to include 2015. Several parties referred to this data, covering the period 2011 to 2015, noting that all employee households had experienced a fall in the incidence of financial stress, while it remained relatively stable for low-paid employee households.

[474] Results from the HILDA Survey, from 2011 to 2015, show that:

- In 2015, the proportion of low-paid employee households who reported financial stress was down across most measures compared with 2011 and little changed between 2014 and 2015.
- The key, and most widely reported, indicators of financial stress are:
  - Unable to raise $3000 in a week for something important;
  - Could not pay electricity, gas or telephone bills on time; and
  - Sought financial help from friends or family.
- The levels of low-paid employee households that reported each of these was virtually unchanged between 2011 and 2015, and between 2014 and 2015.
- Low-paid employee households were more than twice as likely to experience financial stress across most indicators compared to all employee households in each year. For example, 8.3 per cent of low-paid employee households reported an inability to pay the mortgage or rent on time compared to 3.4 per cent of all employee households in 2015.
- The proportion of low-paid households who experienced any form of financial stress has remained relatively stable at around 31–32 per cent since 2011. Although

subject to year-to-year variation, the proportion for all employee households has declined overall from 17.5 per cent in 2011 to 15.8 per cent in 2015.
- The proportion reporting moderate to high stress (3–5 or more forms of financial stress) in 2015 was indistinguishable from 2011, and 2014.

[475] The ABS data on financial stress, while unchanged from the 2015–16 Review, still has some relevance.[434] It shows that during the strong economic growth and low unemployment just prior to the GFC, levels of financial stress for both all adult employees and low-paid adult employees were relatively low. By 2014, these indicators of stress barely changed for all employees, but rose for low-paid employees. This is evidence that the state of the macroeconomy plays an important role in the financial stress of households and that low-paid workers are most at risk of this negative impact.

Conclusion

[476] Employees who are award reliant and/or receive low pay comprise substantial parts of the employee workforce. Approximately 23 per cent of employees are paid the equivalent of the NMW or a modern award minimum rate. Estimates of the share of employees who are low paid are less exact. A standard measure is the proportion that are paid at a rate that is equivalent to less than two-thirds of the median earnings of adult employees. This is not an exact measure for several reasons. First, different data series on earnings give different estimates of the median value. Second, decisions must be made as to how to treat youth wages, managerial employees and the casual premium. The Australian Government provided the most detailed estimate of the numbers of the low paid and concluded that they comprised 12.4 per cent of all employees and 29.3 per cent of award-reliant employees. On ACTU data, 42 per cent of the award reliant were paid at or below the C10 rate.

[477] While 86 per cent of award-reliant employees are adults, they are disproportionately young, female, single, have no children, work part time, work as casuals and work for small businesses. The proportion working for large businesses has risen recently.

[478] In considering the relative living standards of the low paid the most appropriate comparator group is employees, especially non-managerial employees. The living standards of people who are not in the labour force, including the retired, is of some interest but carries only a small weight in our assessment of the relative living standards of the low paid.

[479] The relative standard of living of the low paid is affected by their wage, but also by other contributors to the equivalent disposable income of the households in which they reside. Taking these factors into account, it is appropriate to focus on the location of the low paid in the distribution of the disposable income of employee households. For the reasons given above, we prefer this distribution to the distribution that includes all households. The evidence before us shows that 28 per cent of low-paid employees are in the bottom 2 deciles of all employee households and 62 per cent are in the bottom half of that distribution. Low-paid men were more concentrated in the 2 bottom income deciles than were women, as were low-paid part-time workers. Around 70 per cent of award-reliant workers are located in the bottom half of the employee household income distribution. We think that it is clear that workers who receive the NMW or a modern award rate of pay are disproportionately located in the lower deciles of the relevant (i.e., employee) distribution of household disposable income.

[480] The NMW increased in real terms by 3.5 per cent over the decade and by 0.9 per cent over the year to the December quarter 2016. Although subject to year-to-year variation, the change in the real NMW has been positive in most years over the decade. Since 2009, the growth in the C14 and C10 rates has matched quite closely the growth in the WPI, and been only a little below growth in AWE and AWOTE.

[481] Measured as a proportion of median full-time adult earnings, the wage bite of the NMW/C14 award rate fell from a high of 58.4 per cent in mid-2004 to 53.8 per cent in mid-2016: most of the fall occurred from 2005–08. This compares with the OECD average of 52.0 per cent (in 2015). Australia had a lower growth rate in minimum wages from 2003 to 2014 than did New Zealand, France, United Kingdom, United States, and Canada.

[482] There has been a substantial rise in inequality in the earnings distribution, much of which occurred in the earlier part of the decade to 2016 and indeed in the decade prior to that. There has not been a clear growth in inequality of earnings over the past 5 years. The real value of the NMW has taken a different path, first rising then remaining unchanged until 2014 when it rose again. Over the period, it rose by 4.3 per cent, a little behind the growth in the 10th and 25th percentiles of the earnings distribution of 5.8 per cent and 5.5 per cent, respectively.

[483] The fact that there has been some growth, albeit modest, in the real value of the NMW and modern award rates means that those who remain dependent on the wage safety net have had their real earnings increased, even while their relative position has declined. In evaluating these changes, we consider both minimum rates and low earnings, being aware as we do so that the influence of changes to the NMW and modern award rates will be apparent in changes in the absolute and relative earnings of those at the bottom of the earnings distribution.

[484] Inequality in household disposable income did not rise as fast as that for earnings (moderated by the tax-transfer system and the composition and levels of employment of households). Although the latest data are for 2014, at that time there was no evidence of recent rises in inequality of household disposable income among at least the bottom half of the income distribution for all households. Nonetheless, on the Gini coefficient measure, Australian levels of inequality of household disposable income remain relatively high by OECD standards.

[485] Most hypothetical family types that have a NMW job have disposable incomes above the 60 per cent median household disposable income relative poverty line, with the greatest margin being for a single parent with one child. All have had some small increase in their income over the period from 2011 to 2016, and in the year to December 2016, relative to the 60 per cent of median measure of poverty. The family types that have an income that is below the 60 per cent poverty line are those that have an adult who is not in the labour force (i.e., does not receive a wage or the Newstart Allowance). This applies whether or not there are children in the household. In another perspective on needs, in 2015, the proportion of low-paid employee households who reported financial stress was down across most measures compared with 2011 and little changed between 2014 and 2015. The evidence on financial stress is consistent with the evidence on inequality and poverty. Levels have risen over the longer period and remain elevated. But none has become worse in recent years.

[486] The Australian Government continued to put the case that the 'tax-transfer system plays a large role in equalising the distribution of income among Australian households' and is more efficient in doing so than increases to the NMW and modern award rates. For the reasons set out above, we do not accept that the tax-transfer system can relieve us from the statutory obligation to consider relative living standards and the needs of the low paid when setting the NMW and modern award wages. Furthermore, the changes to the tax-transfer system in the past 2 budgets have reduced the financial assistance that is provided for low-income families with children. A large majority of low-wage workers is single without children and the many who work full time are not assisted by the social welfare system: indeed, they have their disposable incomes reduced by income tax.

[487] The high and continuing levels of child poverty indicate that the combination of wages and social welfare assistance, are not sufficient to ensure that the needs of all low-wage families are met. We view this as a serious matter for society. This conclusion is supported by the evidence that about one-third of people in poverty lived in households for which wages were the main source of income; and that about half of these families had children.

[488] The level of the NMW and modern award rates of pay have a significant role to play in seeking to reduce the financial stresses on families. But this role does not extend to a requirement to set the NMW at a level that ensures that a single-earner couple family with children on the NMW has an equivalent disposable income that exceeds the 60 per cent poverty line.

[489] Like many developed countries, Australia has come through an extended period of rising inequality. Rising inequality in the distribution of earnings has not translated fully into rising inequality in the distribution of household disposable income, partly because of the changing nature and work effort of households and partly because of the equalizing effects of the tax-transfer system. The rise in inequality has been tempered in recent years. But it has left Australia with a legacy of relatively high inequality in earnings and in household disposable income, and disturbing levels of poverty especially among families with children. The NMW and modern award rates of pay affect the level of earnings of the low paid and of many employee households with relatively low disposable income. Higher levels of safety net pay rates will assist low-paid individuals and families to better meet their needs, and improve their relative standard of living. As a consequence, increasing the NMW and modern award minimum wages will also have some effect in reducing poverty and inequality.

6. Promoting Social Inclusion through Increased Workforce Participation

[490] As noted in Chapter 2, 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'.[435] 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.'[436]

[491] In the 2012–13 Review decision the Panel 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.[437]

[492] The Panel based its conclusion on the use of the conjunctive 'through' in s.284(1)(b).[438] 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)).'[439]

[493] We endorse the above observation and note that in the 2015–16 Review decision, the Panel accepted the 2012–13 Review decision's construction of s.284(1)(b):[440]

> '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.'[441]

[494] In this Chapter we discuss minimum wages, employment and the demand for labour and the effects of past Review decisions and future wage increases on specific award-reliant sectors. We also discuss workforce participation, particularly among vulnerable groups, work incentives, labour market transitions and apprenticeships and trainees.

[495] We have taken account of the information provided by parties in submissions, data published in the Commission's Statistical report, research published by the Commission, the Research reference list and data from the RBA.

[496] There is an inevitable overlap between some of the discussion in this chapter and in Chapter 4. In Chapter 4 we discuss various labour market characteristics as indicators of the state of the economy. In this Chapter those matters are discussed in the context of our statutory requirement to promote social inclusion through workforce participation.

Minimum wages, employment and the demand for labour

[497] In recent years we have proceeded on the basis that increases to the NMW and award wages of the amounts that have been ordered would not have a discernible impact on employment levels in the prevailing circumstances. In the 2015–16 Review the Panel said:

> '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).
>
> . . .
>
> 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 [Productivity Commission], 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.'[442]

[498] The Productivity Commission report (PC Report) referred to in the above statement had stated the following conclusions:

> '• 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.'[443]

[499] For the most part, the submissions did not seek to challenge these general conclusions for the purpose of this Review. The Australian Government, for example, emphasised the risks for employment associated with excessive increases in minimum wages beyond a certain level,[444] but commented that the meta-analyses of the US and international studies finds 'a mix of negative and insignificant effects'[445] while the Australian empirical literature 'reaches similar conclusions'.[446] It also said:

> 'From a theoretical perspective, in the standard model of the labour market, a minimum wage increase will reduce employment among affected workers. Under certain theoretical assumptions, in some circumstances the minimum wage may have a negligible or even positive effect on employment. It is generally agreed, however that even in these models, excessive minimum wage increases will reduce employment.'[447]

[500] The ACTU submitted that a review of international and Australian research on minimum wage effects demonstrated that the minimum wage was not detrimental to the level

of employment nor did it bear any particular relationship with unemployment. Its review of a number of recent studies included a study which the UK's Low Pay Commission commissioned RAND Europe to undertake (RAND report). The study was a meta-analysis of existing literature on the effect of the UK NMW on employment, hours and job retention rates.

[501] The ACTU also cited multiple US studies which explore a range of topics including, but not confined to, the employment effects of higher minimum wages. These studies generally supported the position that we have taken in the past, namely that modest rises in minimum wages have small negative or positive or undetectable impacts on employment.

[502] In the past, the Panel has been reluctant to draw heavily on international experience and research in reviewing the NMW and modern award minimum wages on the grounds that Australia's system has unique features. These are described by the ACTU in its submission:

> 'The Australian system is unique in that it fixes the minimum wage plus a host of other higher minimum wage levels across occupations and industries more comprehensively than anywhere else, on a national basis.'[448]

[503] The ACTU goes on to say '[y]et the empirical findings for the impact of the minimum wage on employment in Australia are basically similar to those found for other countries, across a range of statistical methodologies'[449] and submitted that this is exemplified by the PC Report referred to above.

[504] A large increase in empirical research overseas, particularly in the US and the UK, has produced increasingly similar findings. Moderate increases in minimum wages are seen everywhere to have very low or no negative employment impacts. No new studies to the contrary were presented to the Panel for this Review.

[505] The Panel commented in its 2013–14 Review decision that the quality of this new research and the refined theoretical understandings are consistent with the view taken by it that a modest increase in minimum wages leads to a very small, or even zero, effect on employment.[450] International research (and the Productivity Commission's findings in Australia) were again taken into account in the Panel's 2015–16 Review decision.[451] Some parties (Australian Government, Ai Group, AFEI) continue to submit that increases in minimum wage rates will cause a loss of jobs or hours worked. AFEI quoted the Productivity Commission as follows:

> 'But the likelihood that minimum wages cause some disemployment means that, in considering adjustments to minimum wages, there is a need to weigh up the potential benefits to low-paid workers who retain their jobs (and/or hours) against the potential losses to those 'would be' employees who fail to gain employment, or experience greater underemployment or job loss, as a result. The greater the assessed risk and extent of such disemployment effects, the greater would be the case for constraining the growth of minimum wages (so as to reduce the minimum wage bite) or even reducing them.
>
> Determining "optimum" minimum wage adjustments depends largely on how these gains and losses are balanced. This involves judgments about both the employment

> response to changes in the minimum wage and the relative size of the groups affected, and value judgments about whose welfare warrants the most weight.'[452]

[506] Contrary to the submission put, the above extract does not support the general assertion that minimum wage increases *will* cause a loss of jobs or hours worked. Rather, the extract does no more than state the obvious proposition that the determination of 'optimum' minimum wage adjustments depends on striking an appropriate balance between the 'assessed risk of disemployment effects' and the 'potential benefits to low paid workers'.

[507] Despite some assertions to the contrary, we judge there to be a widespread view that regular, modest increases will have little or no impact on employment but that excessive increases would likely result in losses of jobs and/or hours. This leaves the definition of 'modest' and 'excessive' as a major issue of contention when considering the appropriate quantum of each year's decision. It has been accepted that these will vary depending on economic conditions, although the empirical evidence for this belief is not strong. When unemployment is high and rising, smaller increases are seen to be appropriate. In stronger economic conditions, somewhat larger increases have been determined.

[508] Over recent years the ACTU has presented current international and Australian research as part of its initial submission.[453] There have been numerous studies in the US and the UK, the latter often sponsored by the UK Low Pay Commission. With so many studies published it is convenient to use meta-analysis to simplify understanding.

[509] For the UK, the newest meta-analysis (2016) is one commissioned by the UK Low Pay Commission, referred to earlier as the RAND report. The meta-analysis considered 2313 estimates from 22 papers and, unlike the previous meta-analysis study undertaken on the UK minimum wage by de Linde Leonard et al. (2014)[454] and referred to in the paper, it covered papers that included employment retention effects (that is the probability of staying in employment after a minimum wage increase) and also covered the effects on different labour market sub-groups. Confirming previous findings from de Linde Leondard et al. (2014), the study found no evidence of significant employment effects or publication selection bias. Although no adverse effects were found on employment, hours or employment retention probabilities, analysis of sub-groups found some larger adverse negative employment effects for part-time employees compared with other groups. No adverse employment effects were found for young employees following minimum wage increases, although there is some evidence the employment retention of young people was more adversely affected during the GFC period. The study covered all research undertaken prior to 2016. Looking at the period from 1999 (when the UK minimum wage was introduced) to 2015, the minimum wage for adults (22 years and over) rose from £3.60 to £6.70, an increase of 86.1 per cent in nominal terms and 33.1 per cent in real terms.[455] Annual nominal increases averaged 4.0 per cent, with the largest (10.8 per cent) occurring in 2001. Over the same period Australia's minimum wage increased by 70.4 per cent in nominal terms and 7.0 per cent in real terms (affected by the introduction of the Goods and Services Tax).

[510] In 2016 a new system was introduced in the UK which provides a National Living Wage for those 25 years and over. This was initially set at £7.20, an increase of 7.5 per cent on the previous adult minimum. The National Living Wage was increased by a further 4.1 per cent in 2017. In addition to the National Living Wage, the Low Pay Commission also recommends minimum rates for people over 21 years and up to 24 years and employees aged 18–20 years.

[511] While the annual increases in the UK have outstripped those granted in Australia it is notable that it was pitched initially at a level much lower than then applying in Australia (on a Purchasing Power Parity basis the UK minimum in 1999 was $US4.96 compared with $US7.82 in Australia) and has remained lower to date. Even taking the latest increase in the National Living Wage for those over 25 years, the UK minimum of £7.50 (on a PPP basis $US10.44) remains below Australia's minimum adult rate ($US12.23).[456]

[512] Through annual reviews by the Low Pay Commission, the UK has increased the real and relative incomes of the low paid. While studies to date show this has been done without adverse employment effects overall, there remains concern for some sub-groups and that at some point higher increases may prove unsustainable for businesses. Around 2.3 million workers (8.5 per cent of all workers) are expected to be on one of the minimum wage rates in 2017.[457] The minimum wage levels set in the UK are national in coverage.

[513] There are similarities and differences between the UK and the Australian systems. The UK does not set higher rates for skilled workers. In Australia, submissions are made by interested parties (including the Australian Government) to an independent determining body, whereas in the UK the government sets the levels based on advice from an independent advisory body. The similarities include that in both systems there are annual adjustments to minimum wages; there is concern that excessive increases may do harm to lower-paid workers if they lead employers to cut jobs or hours; there are lower rates for juniors, which apply until they reach the next age threshold; and the minimum wages are determined on a national basis. This last point is important, because it makes it more expensive for firms to avoid the higher costs by relocating activities. While it started with minimum wage levels that were considerably lower than Australia's, the UK has on average granted annual increases higher than those granted in Australia.

[514] From early on, the Low Pay Commission has commissioned a steady flow of research to evaluate the impacts of its decisions on a range of topics but, most relevantly, on levels of employment, unemployment, hours worked, likelihood of losing one's job, and the earnings of the low paid. We have come to the view that the UK experience is most relevant to our own task. The main reasons for this view are the similarities that we have identified above, the large and sustained increases that have been made, which have altered the wage distribution and the level of earnings of low-paid workers, and the substantial body of credible evaluation that has been generated.

[515] The more aggressive UK approach might be seen as more measured when the low starting point is taken into account but the current intention to tie the level to 60 per cent of median wages will move the National Living Wage bite to a higher level than the Australian bite.

[516] There are far fewer similarities and much greater differences between the setting of minimum wages in Australia and the US than is the case with the UK. While the US has a Federal Minimum Wage, it also has state and city level minimum wages which are often higher than the federal rate. Employers generally must pay the highest of the three rates when their locality is affected by all 3 levels of government. Minimum wages at federal, state and local levels are not reviewed on an annual basis. They tend to be adjusted infrequently and in very large increments, phased in over 3 or 4 years. For example, the federal minimum wage

was last increased in 2007–2009. The increase was from $5.15 to $7.25, an increase of 41 per cent.[458] The federal rate has not been adjusted since.

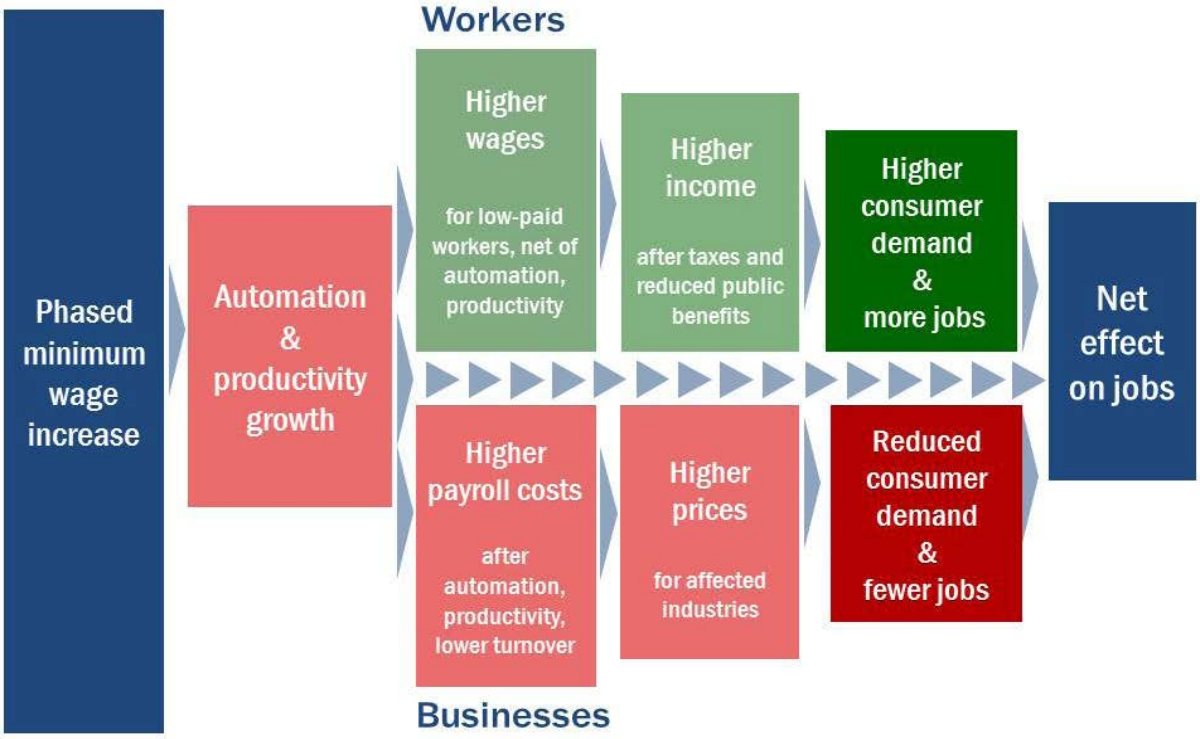
[517] The US approach to minimum wage setting is not national—indeed it is not even statewide. This makes it feasible for employers to relocate activities and jobs if wage increases are a threat to their business. It also means that at least part of any stimulus resulting from higher disposable incomes will, in the normal course of commerce, leak to other jurisdictions. Minimum wages in the US are not regular: there is no annual review. Variations are made after being instigated by the relevant federal, state or local government legislature and approved by the President, Governor or Mayor. Increases tend to be infrequent and, by Australian standards, very large.

[518] With so many natural experiments to observe and such relatively large adjustments the US would appear to provide an excellent opportunity to observe the impact of changes in minimum wages on employment, incomes and the economy. It has certainly attracted a lot of academic attention. All this attention, however, has not fully resolved the issue of the employment effects, if any. The weight of empirical work suggests that, at the overall level at least, employment effects are negligible or zero. Professor Alan Manning of the London School of Economics sums up the state of the discussion as follows:

> 'The conclusion is that the employment effect is elusive but that we should not be surprised by this given the way labour markets operate in which deviations from perfect competition are much larger than, say, in some product markets. And that it is time for the literature to move on to try to address the question of how high the minimum wage can be raised without significant employment effects appearing.'[459]

[519] We suggest that it would also be helpful if researchers continued their efforts to explain why the employment effects have been so small. This could help reconcile empirical findings with the strong prior expectations of traditional market focussed economists and perhaps also better inform submissions to us and our own thinking. Recent papers by Reich et al. (2016) have made a serious start to this work as they seek to define and quantify the impacts of minimum wage increases on employers, employees and the economy generally. The model developed to undertake this exercise analysed the substitution, scale and income effects of changes in the minimum wage in accordance with the following structure that takes into account 'how workers, businesses, and consumers are affected and respond' to the proposed increase in the New York State minimum wage.[460]

Chart 6.1: UC Berkeley IRLE minimum wage model



Source: Reich et al. (2016).

[520] Germany has for the first time introduced a general minimum wage. Its level was set at €8.50 and it came into effect on 1 January 2015. This move resulted from the continued erosion of the German collective bargaining system. The introduction of the minimum wage was strongly resisted by most industry and employer associations and a large number of German economists who warned up to a million jobs could be lost. Instead, the study finds that the effects on employment were not as expected:

> 'One year after the introduction of the statutory minimum wage economists across the country are generally in agreement that the predicted job drama did not happen. On the contrary, at the end of 2015 Germany recorded the lowest unemployment figures since the beginning of the 1990s.'[461]

[521] Germany plans to establish a Minimum Wage Commission comprising 3 employer representatives and 3 union representatives with an independent chair to decide on any adjustment every 2 years. It is intended that the minimum wage will reflect collectively bargained wage increases. It was increased to €8.84 from 1 January 2017.

[522] The German experience provides another case where economists have forecast that disaster will follow the introduction of a minimum wage, only to see no impact on employment. It is too early to derive any other element of it which may be useful in refining the Australian process.

[523] We conclude from this review of the international literature that the findings of research on the impact of increases in minimum wages on employment have different degrees of relevance for our task, depending on the broad comparability of the countries in question. Specifically, we judge the UK evidence to be quite relevant, both for its comparability and its quality. The US evidence is much less applicable, though we note that its findings generally

align with those of the UK. The wage increases that have been evaluated in the UK and the US have been larger than those awarded by the Panel since the Review process was established in 2010. As a result of this international research, particularly in the UK, we have greater confidence in our view that modest and regular wage increases do not result in disemployment effects. Further, this research suggests that the Panel's past assessment of what constitutes a 'modest' increase may have been overly cautious, in terms of its assessed disemployment effects.

[524] In relation to its own claim, the ACTU submitted that it would have a significantly positive effect on employment. It calculated that the direct effect of the award of its claim would be an increase to the total annual income of award-only employees of $5.446 billion[462] or, less an estimated 10 per cent tax, about $4.9 billion.[463] It then modelled the economic effect of this extra income, on the assumption that the recipients would mainly be low paid and would spend most or all of it on current consumption, using various multipliers—the Treasury multiplier of 0.4 which was used in economic modelling of the GFC stimulus package transfer to households, and also the less 'conservative' multipliers of 0.7 and 1.0. This resulted, on the ACTU's analysis, in economy-wide spending increases of $2.2 billion, $3.8 billion and $5.4 billion respectively, and employment increases of 35 000, 60 000 and 87 000, respectively.[464] It was also contended that business profits would increase commensurate with the additional sales revenue achieved.

[525] In response to this submission, Ai Group did not seek to deny that a minimum and award wage increase would have a multiplier effect, but said that the aggregate multiplier effect of a large increase in the minimum wage that was funded from the current cash flow of private sector businesses was very likely to be significantly smaller than a similar-sized macroeconomic stimulus that was funded from future public sector spending and saving, because there would be offsetting reductions in concurrent spending and investment by businesses.[465] This might take the form of one or a combination of:

- reducing its own net profits and net profit margin (that is, reduce the pay of the owners);
- reducing the number of employees or the hours that they work;
- reducing the amount spent on other business inputs (e.g. rent, energy, raw materials, IT);
- reducing the amount of gross profits set aside for future investment and expansion;
- increasing debt in the short term, in the hope that increased productivity and/or sales will allow it to pay it off later; in the meantime, debt servicing costs will rise for the business and cash flow will be weakened for other purposes.[466]

[526] To this might be added the response of raising prices (as in the Reich et al. model), with the potential effects of reducing demand and consequentially employment.

[527] ABI and NSWBC similarly submitted that the ACTU submission applied the multiplier 'crudely' and ignored 'all other impacts beyond the additional consumption that could be potentially generated'.[467] ABI and NSWBC added that the modelling does not account for impacts associated with the tax-transfer system, that any multiplier effect must take account of the impacts of taking funds away from where wages are sourced, that the ACTU analysis did not consider 'second-round impacts' such as crowding out, and that a 'significant increase' in the minimum wage would produce substitution effects.[468]

[528] We accept the submissions of Ai Group and ABI and NSWBC that the ACTU modelling has not taken into account these offsetting effects, and that the multiplier effect of a minimum wage increase is not likely to be comparable to that of a public sector macroeconomic stimulus. Nonetheless, the ACTU submission makes the important point that increases to the NMW and award wages are likely to have some effect on consumer demand that needs to be taken into account.

Effects of past AWRs and future wage increases in specific award-reliant sectors

[529] ARA, MGA and R&CA submitted that increases to the NMW and award wages have been excessive having regard to the prevailing economic conditions, and that this level of increase should not be repeated in the current Review. ARA submitted that:

> 'FWC decisions have been generous, given the faltering economy and slow pace of growth across key sectors, rising unemployment, weak jobs market, global risks, rising business costs and increased global competition through the rising dollar. We seek the FWC to consider high minimum wage increases over recent years as compensation that the economy, employment levels and businesses can no longer afford.'[469]

[530] ARA did not provide any specific information concerning the employment effects of recent Reviews in the retail industry. It did provide the results of a member poll conducted in March 2017 about future employment intentions over the next 6–12 months.[470] Regrettably the survey data provided suffers from the same deficiencies the Panel has identified in previous decisions, a point to which we shall return shortly. It is not clear from the submissions what if any assumptions those polled were asked to make about future employment costs. Nor, having regard to the high levels of part-time and casual employment in the retail industry, is it clear what the poll results taken at face value indicate about future changes to the aggregate level of employment amongst ARA members.

[531] MGA submitted:

> 'The large scale increases in labour costs associated with wage increases in recent years have been borne by small businesses as opposed to their large counterparts (e.g. Coles and Woolworths) whose operations are governed by enterprise agreements with favourable penalty rates. The discriminatory nature of the award modernisation process ultimately exposes the difficulty faced by small businesses and places them at the mercy of the Panel's wage decision…
>
> Increased award rates negatively impact on the ability of employers to provide sufficient hours of work. Retail Employers often manage increases in award rates of pay by reducing the number of hours offered to their employees, and in many instances take on that work themselves to mitigate the cost burden'.[471]

[532] MGA's submission included the results of a survey it had undertaken of its members on the impact of the 2015–16 Review decision. We deal with the MGA survey later.

[533] R&CA submitted that the 2.4 per cent increase awarded in the 2015–16 Review was 'higher than necessary in the circumstances'[472] and 'higher than the subsequent prevailing economic conditions warranted'.[473] It referred to employment projections contained in the *Employment Outlook to November 2020* produced by the Australian Government (Department

of Employment) in August 2016,[474] which are 'derived from best practice time series models that summarise the information that is in a time series and convert it into a forecast'.[475] This showed that the Cafes, restaurants and takeaway food services industry sector was projected to make the largest contribution to employment growth to November 2020 of all industry sectors, adding a total of 84 300 jobs over a 5-year period.[476] The report said:

> 'At the more detailed sector level, Australia's largest employing industry sector - Cafés, Restaurants and Takeaway Food Services, also supported by domestic tourism and further increases in international arrivals, is projected to make the largest contribution to growth over the five years to November 2020 (up by 84,300 or 14.9 per cent).'[477]

[534] R&CA submitted that 'any significant increase to wage levels, in the award-reliant, customer facing industries, will jeopardise estimated employment growth',[478] and 'there is a strong link between the rate of wages growth in the restaurant and catering sector and the capacity of the sector to achieve the projected employment growth'.[479]

[535] ABI and NSWBC submission also contained a survey conducted in December 2016 that asked its members with employees whose wages are affected by changes in the minimum wage to indicate how they would adjust their staffing decisions in response to different specified increases.[480] ABI and NSWBC acknowledged that the survey results are not representative of the Australian business population and submitted that 'the survey provides anecdotal evidence, at least at the firm level, as to how businesses may respond to alternative wage increases'.[481]

[536] We have previously commented on the utility of surveys provided by parties. In the 2012–13 Review, we said:

> '… if we are to rely on such material, we need to be confident that it is a reliable representation of the issues at hand. There are well-understood rules about the conduct of surveys that need to be followed if the results of a survey of a sample of a particular population are to accurately represent the picture that you would get if you obtained the same information from that entire population. These rules include that the sample size or proportion sampled must be large enough. Most important, the sample for the survey must be selected on a random basis. If a membership list is used as the basis for a survey, then it is essential that those that respond are properly representative of the entire membership base (e.g. by firm size, form of ownership, industry sector, geographic location). Where this is not the case, then the responses become more like case studies or anecdotes—accounts of the situation of those who did respond, but not to be taken as representative of the survey population (e.g. the membership) as a whole. Even where the survey is representative of the membership, it needs additional evidence to show that it is representative of, for example, employers more broadly. A valuable step in assessing the representativeness of the respondents is to check the answers against other data that is known to be reliable, such as those from the ABS, where possible. It is good practice to include in such surveys one or more questions that match those in a relevant ABS or other reliable survey, so that this test may be applied. As an example, the collection of information about the industry of the employer and the numbers of persons employed would provide information allowing a comparison with ABS data for employment by industry.'[482]

[537] ARA has previously presented surveys of its members to Reviews. In the 2015–16 Review, we responded to the surveys by stating:

> '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.'[483]

[538] The ARA survey presented in the current Review is a repetition of the previous surveys that were the subject of comment in the above passage. The MGA submission does not disclose anything about the methodology used to obtain its survey results. The NSWBC survey, apart from having the limitations identified in its own submissions, only records opinions about possible future events and does not provide information about how businesses have actually responded to NMW and award wage increases.

[539] There is no clear evidence that the 2015–16 Review decision had any particular adverse effect in the restaurant sector, as the R&CA suggested. Its own submission identified that turnover in the café, restaurant and catering sector grew by 2.0 per cent in the year to January 2017, and turnover in the café, restaurant and takeaway food services sector grew by 4.9 per cent.[484] Employment in the Accommodation and food services sector grew by 2.4 per cent,[485] continuing a decade-long history of employment growth in the sector. Data at a more detailed industry level presented in the Accommodation and food services industry profile compiled for the Penalty Rates case shows that both full-time and part-time employment growth in Cafes, restaurants and takeaway food services was higher than for the whole Accommodation and food services industry as well as across all industries.[486]

[540] The position in the Retail sector is discussed in some detail in our discussion of the economy (Chapter 4). The signals for this sector are mixed, with profits, sales and productivity being quite strong but employment looking weak over the last year. Because of its variability from year to year, we do not at this stage treat the 2016 employment data as entirely reliable.

[541] The Department of Employment projections as to employment growth forecast healthy growth in the highly award-reliant sectors and occupations of retail and restaurants, catering and takeaway food. R&CA did not identify that these forecasts had a relationship with any particular level of increase in the NMW and award wages, so the basis of the proposition that increases of the order of those awarded in recent Reviews might endanger the projected growth is unclear.

[542] These submissions do not cause us to change the view previously expressed that modest increases to the NMW and award wages do not have a discernible impact on employment levels in the prevailing circumstances.

Participation in the labour market

[543] A number of submissions pointed to a decline in the participation rate in recent years as an indicator that there was a heightened risk that increasing the NMW and award rates would reduce participation in paid work, and hence diminish social inclusion. Ai Group, in

particular, said that, '[t]he participation rate declined steadily from November 2015 (65.1%) through to November 2016 (64.6%) and stayed relatively low through to February (64.6%)'.[487] It pointed, in particular, to a fall in the participation rate for men, with the female rate being steady, and said 'this could reflect a deterioration in labour demand for traditionally "male" industries and occupations, compared to the female-dominated services sectors such as health and education', and that 'the most recent decline is likely indicating a greater number of "discouraged" job-seekers exiting the labour force instead of actively looking for work'.[488]

[544] In analysing participation rates, it is necessary to isolate the effects of the ageing population, which results in a smaller proportion of the population being in the main working years of 20–64. The total participation rate in that age group has in fact increased over the last decade, with the male participation rate staying relatively steady and the female participation rate significantly increasing (even after the peak of the mining construction boom had passed) (Table 6.1).

Table 6.1: Participation rate by gender, 20–64 years

Month	Participation rate - male	Participation rate - male (ppt change)	Participation rate - female	Participation rate - female (ppt change)	Participation rate - total	Participation rate - total (ppt change)
Dec-06	86.2		70.7		78.4	
Dec-07	86.5	0.3	71.2	0.5	78.8	0.4
Dec-08	86.3	–0.2	71.6	0.4	78.9	0.1
Dec-09	86.1	–0.2	71.5	–0.1	78.8	–0.1
Dec-10	86.9	0.8	72.0	0.5	79.4	0.6
Dec-11	85.9	–1.0	72.0	0.0	78.9	–0.5
Dec-12	86.4	0.5	72.0	0.0	79.1	0.2
Dec-13	85.8	–0.6	71.9	–0.1	78.8	–0.3
Dec-14	85.8	0.0	72.5	0.6	79.1	0.3
Dec-15	86.2	0.4	73.6	1.1	79.8	0.7
Dec-16	86.0	–0.2	73.7	0.1	79.8	0.0
Apr-17	86.0	0.3	73.7	0.4	79.8	0.3

Note: The participation rate is the number of persons in the labour force expressed as a percentage of the civilian population. The ppt change calculates the percentage point change from the corresponding month in the previous year. All data are expressed in original terms.

Source: Statistical report, Table 6.13; ABS, *Labour Force, Australia, Detailed—Electronic Delivery, Apr 2017*, Catalogue No. 6291.0.55.001.

[545] Indeed, as mentioned in Chapter 4 had there been no change in the age distribution from February 2012 then the participation rate 'would have been over one percentage point higher' in February 2017.

[546] The total employment to population ratio similarly shows little change over the course of the last decade when applied to those in the main working age group (20–64 years). As shown in Table 6.2 below this ratio was 75.7 in December 2006 and 75.9 in December 2016.

Table 6.2: Employment to population ratio, total and by full-time/part-time status, 20–64 years

Month	Full-time	Change over year (ppts)	Part-time	Change over year (ppts)	Total	Change over year (ppts)
Dec-06	57.0		18.6		75.7	
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
Dec-16	55.0	–0.7	20.9	0.6	75.9	–0.1
Apr-17	54.1	–0.1	21.7	0.4	75.8	0.3

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: Statistical report, Table 6.10; ABS, *Labour Force, Australia, Detailed—Electronic Delivery, Apr 2017*, Catalogue No. 6291.0.55.001.

[547] These statistics do not support the proposition that, among persons within the main working age group (20–64 years), there is an increasing cohort of discouraged job seekers who have left the labour market. However, the employment to population ratio figures do point to a long-term compositional change in the workforce, with a marked decline in full-time employment and a corresponding increase in part-time employment. Once the figures are segregated for gender, they also show some decline in the male employment to population ratio and corresponding increase in the female employment to population ratio, with the decline in the ratio of male full-time employment to population (73.8 per cent in December 2006 to 70.4 per cent in December 2016[489]) being quite marked. This may reflect, as Ai Group suggests, a relative decline in employment in male-dominated industries such as manufacturing, mining, construction, and utilities, and a relative increase in service industries.[490] However we consider it unlikely that changes to the NMW and award wages have played any discernible part in this compositional change, since the level of award reliance in these industries is low, and these industries are most affected by other factors such as exchange rates, commodity prices, energy prices and government policy on matters such as industry assistance, infrastructure development and privatisation.

Unemployment (including long-term and youth unemployment)

[548] As noted in Chapter 4, the unemployment rate at the end of April 2017 was 5.8 per cent (in trend terms) which is the same as it was in December 2015.

[549] After growing significantly from the GFC until 2014, the numbers and proportion of the long-term unemployed appear to have stabilised (Table 6.3).

Table 6.3: Long-term unemployment

Month	Long-term unemployed	Change over year	Long-term unemployment ratio

	('000s)	(%)	(%)
Dec-06	83.0		16.9
Dec-07	69.1	–16.7	14.7
Dec-08	73.3	6.0	13.8
Dec-09	107.7	47.0	17.2
Dec-10	114.9	6.7	19.5
Dec-11	115.2	0.2	18.8
Dec-12	121.9	5.8	18.8
Dec-13	149.7	22.8	21.1
Dec-14	175.7	17.4	22.8
Dec-15	166.4	–5.3	22.6
Dec-16	178.3	7.2	24.4
Apr-17	177.2	4.4	23.8

Note: Data are trend estimates. The long-term unemployed refers to the number of persons unemployed for 52 weeks or more. The long-term unemployed ratio refers to the number of long-term unemployed persons expressed as a percentage of the total unemployed population. The percentage change is calculated in relation to the corresponding month in the previous year.

Source: Statistical report, Table 6.14; ABS, *Labour Force, Australia, Detailed—Electronic Delivery, Apr 2017*, Catalogue No. 6291.0.55.001.

[550] The causes of long-term unemployment are complex and the long-term unemployed face many difficulties in obtaining a job. The latest survey on job search from the ABS shows that the main difficulties in finding work for the long-term unemployed was own ill health or disability, considered too old by employers, too many applicants for the job and insufficient work experience.[491] In the 2015–16 Review decision, the Panel noted that 'as ACOSS has argued in 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. It is a gap 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).'[492]

[551] As the Panel has consistently noted, 'youth unemployment is always higher than the unemployment rate for the whole workforce—typically about double that rate'.[493]

[552] The ACTU submitted that youth unemployment has fallen faster than total unemployment from 12.7 per cent in January 2016 to 12.3 per cent in January 2017.[494] Whilst the Australian Government, using data that was one month more recent, noted that youth unemployment has increased from 12.1 per cent in February 2016 to 13.3 per cent in February 2017.[495] Both sets of data are correct and consistent with, as we have observed in past decisions, youth unemployment being more volatile than aggregate unemployment, particularly for month-to-month changes. The most recent statistics show the youth unemployment rate at April 2017 to be 13.0 per cent in trend terms.

Underemployment as a measure of the degree of social inclusion

[553] A number of submissions pointed to the rate of underemployment rather than unemployment as indicating slackness in the labour market. In that connection, AFEI, in particular, submitted:

> 'The Panel has determined that s.284(1)(b) of the *Fair Work Act 2009* encompasses both the obtaining of employment ***and*** the pay and conditions attaching to the job concerned. High levels of underemployment suggest that the Panel should give greater weight to considerations about obtaining employment with sufficient hours as opposed to considerations about the rate of pay enabling a worker with a job to fully participate in society.'[496]

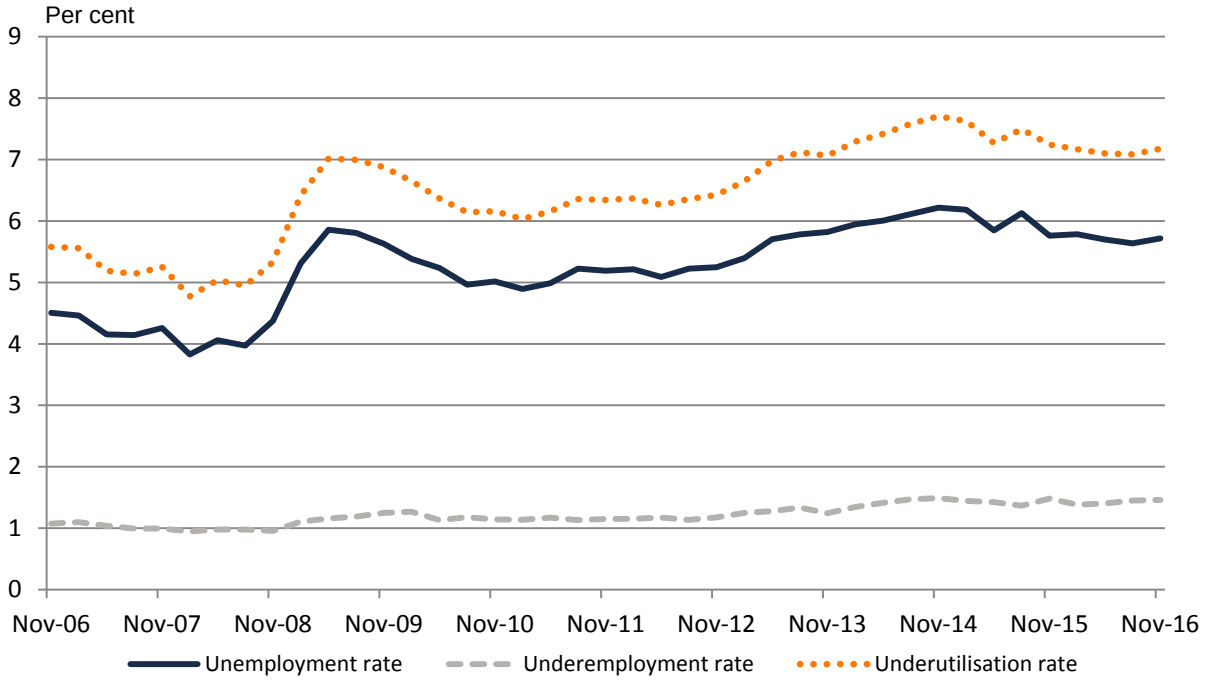
[554] In February 2017, the trend underemployment rate was 8.6 per cent of the labour force and 9.1 per cent of those employed.[497] These figures have remained largely unchanged over the last 2 years, but have trended upwards over approximately the last decade. The current figures are higher than during the GFC. The RBA stated:

> 'There are two categories of underemployed workers as defined by the Australian Bureau of Statistics (ABS). The first is part-time workers preferring and available to work additional hours; by this definition, around one quarter of all part-time workers are underemployed, accounting for around 8 per cent of the workforce. The second category is people who usually work full-time but are currently on part-time hours for economic reasons; these workers account for less than one per cent of the labour force.'[498]

[555] Three-quarters of part-time workers are therefore not looking to work longer hours. We do know that a person does not have to be searching for more hours of work to be classified as underemployed (unlike the unemployed, who do have to be actively seeking employment to be classified as unemployed) and only around half of all underemployed workers reported that they were actively searching for additional hours—so only one-eighth of part-time workers want more hours of work and are actively looking for them. Of those who do want additional hours around half would prefer not to change their employer to find additional hours.

[556] The RBA has constructed an hours-based measure of underutilisation, 'the sum of hours of work sought by unemployed people and additional hours of work *actively* sought by underemployed workers, as a share of total hours worked and actively sought'.[499] This is shown in Chart 6.3. Part-time workers who are underemployed contribute less to the hours based measure of total underemployment than to the heads-based measure, as on average they seek fewer additional hours than do unemployed people. Therefore, the RBA conclude that the unemployment remains a 'broadly reliable' guide to spare capacity in the labour market.

Chart 6.2: Labour underutilisation, hours-based measure



Source: RBA, *Statement on Monetary Policy*, February 2017, p. 40.

[557] As part of its November 2016 Labour Force Survey, the ABS published a 'Spotlight on Underemployment' (to which AFEI refers extensively in its submissions).[500] The ABS' summary of conclusions about these data was as follows:

> 'In recent years Australia's unemployment rate has been trending downwards while the underemployment rate has been trending upwards. This rise in the underemployment rate has led to a growing sentiment that the level of slack in Australia's labour market is not wholly represented by the unemployment rate, and that it is increasingly important to consider additional measures of labour underutilisation like the underemployment rate.
>
> The ABS has been producing underemployment statistics since the 1980s. This spotlight highlights some of the key trends in underemployment, including its relationship with unemployment, and the groups with the highest rates of underemployment.'[501]

[558] In summary, it shows that:

- Over the past decades there have been changes in the relationship between the unemployment and underemployment rates.
- Since February 2015, there has been an increasing divergence between the rates. While the unemployment rate has decreased 0.5 percentage points to 5.7 per cent, the underemployment rate has remained at 8.5 per cent, a series high.
- Females have consistently represented the greater share of underemployed workers; accounting for 56.9 per cent of underemployed persons in November 2016.
- The 15–24 years age group has consistently had the highest underemployment rate.
- The prevalence of underemployment has consistently been greatest in the lower-skilled occupation groups, and lowest in the higher-skilled groups.

[559] The ABS also observed that:

- underemployment reflects underutilised productive capacity, and for individuals and households 'it represents lost opportunities for people to engage more fully in work and derive their desired financial and personal benefits'; and
- the underemployment rate has generally been increasing over the past 30 years, and has generally risen during periods of weakness in the labour market and fallen or plateaued when conditions have improved.[502]

[560] The information from the ABS provides some additional insight as to who is underemployed and the consequences of underemployment. It does not contradict the RBA position that it is useful to take into account the number of extra hours of work that is sought by the underemployed and that when this is done, unemployment and underemployment track each other quite closely.

[561] The underemployment rates submitted by AFEI were highest in the industry sectors of Accommodation and food services, Retail trade and Arts and recreation services, and in the occupations of Sales workers, Labourers and Community and personal service workers.[503] These are all industries and occupations with high levels of part-time employment. Since, for the most part, only workers who are employed part-time are eligible to be considered underemployed, there is a strong association between proportions of a workforce that are employed part-time, and proportions that are underemployed.

[562] The general proposition advanced by AFEI that underemployment should be given weight as a consideration relevant to promoting social inclusion through increased workforce participation is a reasonable one. Where employment produces a level of income that is inadequate for an employee's needs because of insufficient hours of work, it is likely to operate as a limiting factor upon the employee's degree of social inclusion. Additionally, because the inadequacy of working hours in part-time employment will often arise in connection with casual employment, an actual or perceived lack of job security may be an exacerbating factor.

[563] However, it is not clear what relationship there is, if any, between the level of underemployment and the recent history of increases in the NMW and award wages. Certainly, the fact that the share of underemployment is high in award-reliant industry sectors such as Accommodation and food services and Retail trade merits attention. In this connection, Ai Group submitted that offering more or fewer hours to part-time employees 'is a more flexible, less expensive and more likely area of response by employers to changes in wage rates' compared with changing the number of people employed.[504] However, the historical picture drawn by the ABS makes it difficult to discern a correlation between the long-term increase in the underemployment rate and the level of the NMW and award wages. There had been no real variation in underemployment rates for the past 2 years. The trend is likely to be a consequence of the decline in the proportion of full-time jobs and the increase in the proportion of part-time jobs over the last 30 years as a result of structural changes in the Australian economy.

Incentive to seek employment at the NMW and the tax-transfer system

[564] In previous Reviews, we have recognised that incentives for people to obtain paid work is a relevant consideration,[505] and that the level of the NMW and award wages 'will play some, but probably a small, part' in the decision made by household and individuals as to how much work to seek.[506]

[565] In its submissions to this Review, the Australian Government pointed to the necessity to take into account the effect of the tax-transfer system in assessing incentives to work at the NMW.[507] In support of that submission, it modelled the effect of unemployed household members (either on the Newstart Allowance or, in the case of a student, on the Youth Allowance, or Parenting Payment for some households with children) obtaining employment on the NMW either on a full-time or part-time (15 hours per week) basis for a broad range of hypothetical single and dual-earner households as at 1 January 2017.[508] The modelling showed that, in each case, after taking into account the effect of the tax-transfer system, the householder derived a net financial benefit from being employed. However, the extent of the benefit, and the extent of the contribution of the tax-transfer system, varied greatly. At the bottom end of the range, for a couple with children where one is already employed full-time and the other becomes employed part-time on the NMW, the net improvement in their financial position factoring in child care expenses is 10 per cent or less depending on the number of children. At the upper end of the range is the single adult without children who takes a full-time job at the NMW, who obtains a 125.7 per cent financial improvement, and the student living with parents who obtains a part-time time job, who receives a 165 per cent financial improvement.

[566] Given financial gains from working are affected by any income tax payable and any loss of government benefits (known as the effective marginal tax rate),[509] the modelling generally shows that those who receive the least in payments from the tax-transfer system (single adults and couples without children) tend to gain the most from employment.

[567] The Australian Government's modelling is useful in demonstrating that, as at 1 January 2017, the NMW was set at a sufficient level to ensure that persons employed at the NMW would be better off than if unemployed and in receipt of welfare benefits. However, for some scenarios, the differential is not significant and might further be diminished once the incidental costs of employment (for example, transport costs and in some cases the cost of child care) are taken into account. Given that the Newstart Allowance is adjusted in accordance with the CPI, a failure to adjust the NMW by at least a corresponding amount would quickly lead to the result, on the Australian Government's modelling, whereby for some household scenarios currently at the lower end of the range, the benefit of employment at the NMW over welfare benefits may disappear entirely. That would not, on any view, be a desirable outcome.

Labour market transitions

[568] We have dealt with evidence and submissions concerning transitions from low-paid to higher-paid employment in previous Reviews. In the 2014–15 and 2015–16 Review decisions, we referred to tables provided by the Australian Government, based on HILDA survey data, which showed the time during which employees remained in low-paid jobs, and their employment destination after leaving such positions. That information was further

updated by the Australian Government in its submissions for this Review, based on HILDA survey data for waves 1 to 15 released in December 2016, in the following tables:[510]

Table 6.4: Duration in low-paid employment, per cent

Duration	Less than 1 year	1 to 2 years	2 to 5 years	More than 5 years
Proportion	67.8	17.4	12.7	2.0

Note: Data is based on flows into low-paid work, not the number of people in low-paid work at a point in time. Numbers are mutually exclusive.

Source: Australian Government submission, 29 March 2017 at p. 51, Table 7.1.

Table 6.5: Destination on leaving low-paid employment, per cent

Duration in low-paid employment	Higher paid work	Left the labour force	Unemployment
Less than 1 year	76.6	16.4	7.0
1 to 2 years	76.0	17.2	6.7
2 to 5 years	80.3	13.2	6.5

Note: Those remaining in low pay for 5 years or more are not shown due to a small sample size.

Source: Australian Government submission, 29 March 2017 at p. 52, Table 7.2.

[569] From the above data it may be noted that about half [511] of low-paid workers spend less than a year in low-paid work and then move on to higher work. The above figures include students who work in low-paid jobs while studying and then move into a graduate position, usually in a different occupation, however, information supplied by the Australian Government subsequent to the consultations show that the impact on the data of removing students is relatively small.[512]

[570] A number of submissions, including the Australian Government on the basis of the above statistics, stressed the importance of low-paid work as a 'stepping stone' to higher-paid employment, particularly for younger and less well-educated workers.[513] We have dealt with this issue extensively in earlier Reviews. The approach taken in the 2015–16 Review decision seems to us to remain sound:

> '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."'[514]

Apprenticeships and traineeships

[571] ACCI,[515] HIA,[516] NFF,[517] and VACC[518] all raised in their submissions the reduction in the commencement and completion rates for apprentices and trainees since the 2013 Full Bench decision to increase rates of pay for apprentices[519] (*Apprentices decision*), and have identified this as representing a significant loss of opportunity for young persons to enter the labour market and obtain valuable skills.

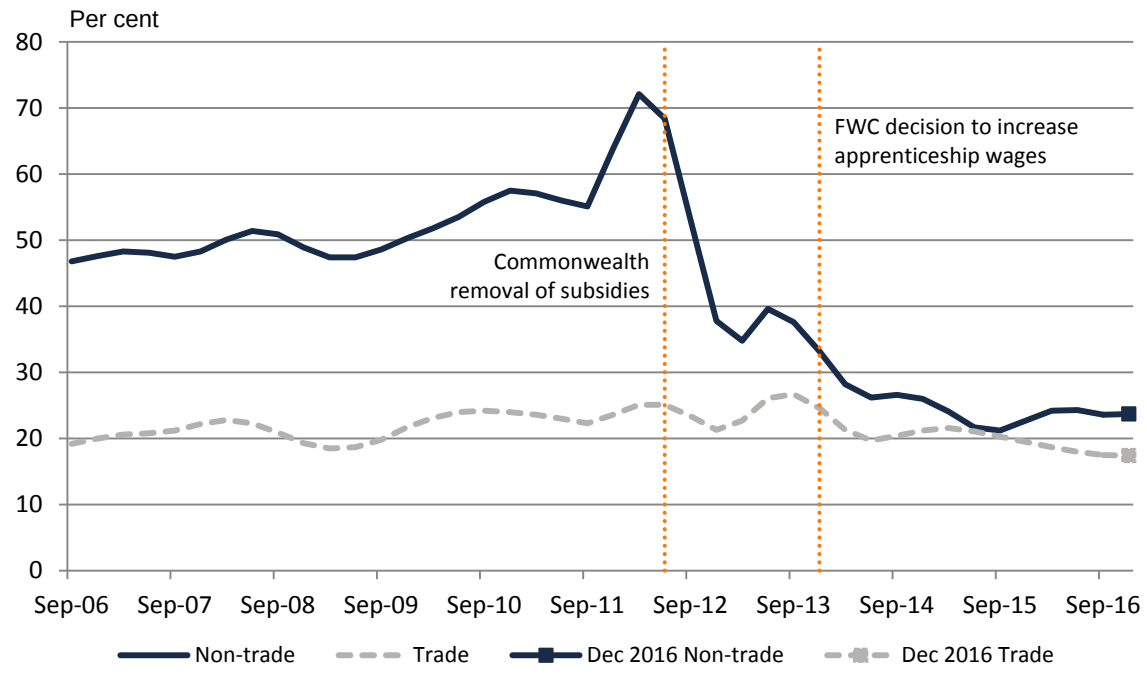
[572] VACC submitted:

> 'Auto Skills Australia's 2015 Automotive Environmental Scan found that only 25% of businesses aimed to hire apprentices that year—a rate lower than at any time since the Automotive Environmental Scan's inception. Demand is highest for skilled workers, including 457 visa holders, rather than apprentices. The higher costs and comparatively lower production capacity associated with hiring and training apprentices and trainees compared with tradespeople are key factors suppressing demand for apprentices and trainees amongst small business. The 2015 survey constitutes the most recently available data on the topic of skills shortages in the Australian automotive industry. It is expected that the 2017 survey will show little if any improvement in this area.'[520]

[573] HIA made the more modest claim that the finding in the *Apprentices decision* that the increased rates for apprentices might assist in attracting more young people into apprenticeships compared to other training or employment options and improve completion rates[521] did not appear to be coming to fruition.[522]

[574] The long-term trends in commencement rates for apprentices and trainees (trades and non-trades) is illustrated in the following figure from the statistical report published by the National Centre for Vocational Education Research (NCVER) for the September quarter 2016 (Chart 6.3).

Chart 6.3: Trades and non-trades commencements, seasonally adjusted and smoothed, September 2006 to December 2016



Note: Data are expressed in seasonally adjusted terms. December quarter 2016 data are early trend estimates.

Source: NCVER (2017), *Australian vocational education and training statistics: apprentices and trainees 2016 – September quarter*, NCVER, Adelaide, p. 6, Figure 1. Based on Nelms L, Yuen K, Pung A, Farooqui S & Walsh J (2017), *Factors affecting apprenticeships and traineeships*, Fair Work Commission, Research Report 3/2017, Part I, February, Figure 3.

[575] The same NCVER report showed that, for the September quarter 2016 compared to the September quarter 2015:

- the number of apprentices and trainees in training decreased by 5.7 per cent;
- the number of apprentices and trainees commencing training increased by 2.9 per cent, of which trades commencements decreased by 14.0 per cent and non-trades increased by 17.0 per cent;
- the number of completions decreased by 15.6 per cent.[523]

[576] The most marked reductions in trade commencements were for those aged 25 years and older (26.3 per cent), and for completions, those aged 25 years and older in both trades (25.4 per cent) and non-trades (28.5 per cent).[524]

[577] Comparing the year ending 30 September 2016 with the year ending 30 September 2015, the relevant figures for commencements were:

Table 6.6: Commencements by trades status and state/territory, 12 months ending 30 September 2015 and 2016, '000s

		NSW	VIC	QLD	SA	WA	TAS	NT	ACT	Australia
2015	Trades	21.2	25.7	18.2	4.3	11.2	1.6	0.8	1.5	84.4
	Non-trades	24.4	19.9	20.5	5.8	14.9	3.3	1.3	1.9	91.9
	Total	**45.6**	**45.6**	**38.6**	**10.1**	**26.0**	**5.0**	**2.1**	**3.4**	**176.4**
2016	Trades	21.8	21.1	16.0	3.8	7.1	1.6	0.7	1.7	73.9
	Non-trades	25.2	23.8	20.7	5.6	13.4	3.2	1.4	2.6	95.8
	Total	**47.0**	**44.9**	**36.7**	**9.4**	**20.5**	**4.8**	**2.1**	**4.3**	**169.7**
Actual change from 2015 to 2016 ('000)	Trades	0.6	–4.6	–2.1	–0.6	–4.1	–0.0	–0.1	0.2	–10.5
	Non-trades	0.8	3.9	0.2	–0.2	–1.5	–0.1	0.1	0.7	3.9
	Total	**1.4**	**–0.7**	**–1.9**	**–0.7**	**–5.6**	**–0.1**	**0.0**	**1.0**	**–6.6**
Percentage change from 2015 to 2016 (%)	Trades	3.0	–17.8	–11.7	–12.8	–36.5	–2.2	–8.0	16.5	–12.5
	Non-trades	3.1	19.6	0.9	–2.6	–10.0	–3.3	6.7	37.8	4.3
	Total	**3.1**	**–1.4**	**–5.0**	**–7.0**	**–21.3**	**–2.9**	**1.0**	**28.3**	**–3.8**

Source: NCVER (2017), *Australian vocational education and training statistics: apprentices and trainees 2016 – September quarter*, NCVER, Adelaide, p. 16, Table 16.

[578] It may be accepted that a reduction in opportunities to engage in apprenticeships and traineeships, and the concomitant skills and career development, would represent a potential diminution in social inclusion. The NCVER data does not explicitly separate apprenticeships from traineeships, but it is at least clear the most significant trend is the reduction in non-trades commencements which began in mid-2012 and continued until mid-2015 before stabilising. Trades commencements have been more stable over time, but have declined over 6 consecutive quarters from the March quarter 2015.[525]

[579] The Commission published Research Report 3/2017—*Factors affecting apprenticeships and traineeships* in February 2017. The aim of this report was to discuss supply (i.e., supply of apprentices) and demand factors (i.e. demand for apprentices from employers) that can affect people commencing and completing apprenticeships and traineeships.

[580] Part I of this report, prepared by Commission staff, discussed a range of supply-side factors affecting the commencement and completion of apprenticeships and traineeships. The factors explored included: personal characteristics; education and training; perceived labour market factors; wages and the wage premium upon completion; perceptions, awareness and promotion; intrinsic factors; and experience of working conditions and training.

[581] Part II of this report, commissioned externally to Dr Tom Karmel, contended that it was the demand-side factors that were dominant in determining the number of apprentices and trainees, rather than supply-side factors. The report noted a number of reasons for this, such as data from the ABS Survey of Education and Work showing that the number of unsuccessful

applicants represents around 15 per cent of apprentices and trainees, suggesting that if employers offered more positions, there would be more apprentices and trainees. Further, the number of part-time and existing worker apprentices and trainees 'plummeted' after commencement incentives for existing worker and part-time worker apprenticeships and traineeships (for occupations not on the National Skills Needs List) were removed in 2012 as illustrated in Chart 6.3.[526]

[582] The report noted that since 2008 there had been a significant decline in the number of apprentices and trainees, although training rates had held up reasonably in some occupations (for example Construction and Electrotechnology and telecommunications trades workers) and there had been considerable employment growth in many occupations.

[583] The report concluded that the change in availability of government subsidies (notably for existing workers and part-time workers in some occupations) clearly contributed to the decline in commencement rates, and that while the *Apprentices decision* to increase apprentice wages 'may have played a role, it seems that any effect appears minor' given the prevalence of over-award payments to apprentices and the lack of uniformity in commencement trends across individual trades. This part of the report concluded that 'employers are becoming increasingly less enamoured with the apprenticeship and traineeship model'.[527] Having regard to these conclusions, we do not consider that the material before us calls for any differential treatment of apprentices and trainees in order to enhance workforce participation and social inclusion.

Conclusion

[584] We conclude from this review of the international literature that the findings of research on the impact of increases in minimum wages on employment have different degrees of relevance for our task, depending on the broad comparability of the countries in question. Specifically, we judge the UK evidence to be quite relevant, both for its comparability and its quality. Although the US is less applicable, we note that its findings generally align with those of the UK. As a result of this international research, particularly in the UK, we have greater confidence in our view that modest and regular wage increases do not result in disemployment effects. Further, this research suggests that the Panel's past assessment of what constitutes a 'modest' increase may have been overly cautious, in terms of its assessed disemployment effects. We are also of the view that minimum and award wage increases would likely lead to some positive, but probably small, effect on consumer demand and this needs to be taken into account.

[585] Some employer groups submitted that increases to minimum and award wages have been excessive having regard to the prevailing economic conditions, and that this level of increase should not be repeated in the current Review. However, the material before us does not cause us to change the view previously expressed that modest increases to the NMW and award wages do not have a discernible impact on employment levels in the prevailing circumstances.

[586] The data on workforce participation and the employment to population ratio do not support the proposition that, among persons within the main working age group (20–64 years), there is an increasing cohort of discouraged job seekers who have left the labour market.

[587] The Panel is of the view that the NMW is at a level that does not discourage people from seeking employment. Because of the operation of the tax-transfer system, the group with the smallest incentive to work is partners in couple families who wish to work part time.

[588] It is not clear what relationship there is, if any, between the level of underemployment and the recent history of increases in the NMW and award wages. There had been no real variation in underemployment rates for the past 2 years. The trend is likely to be driven largely by the decline in the proportion of full-time jobs and the increase in the proportion of part-time jobs over the last 30 years as a result of structural changes in the Australian economy. Only one in 8 part-time workers wants to work additional hours and is actively seeking such additional hours suggesting that for the vast majority part-time work is by choice. The unemployment rate remains the best indicator of spare capacity in the labour market, although the underemployment rate should continue to be monitored.

[589] Noting that low-paid work can be a stepping stone to higher-paid work, the Panel endorses the statement made in the 2014–15 Review decision that '[w]e cannot be indifferent to the standard of living of low-paid workers just because many do not stay in that situation for long periods'.[528]

[590] The research on factors affecting apprenticeships and traineeships concluded that the withdrawal of government subsidies (notably for existing workers and part-time workers in some occupations) clearly contributed to the decline in commencement rates, and that while the *Apprentices decision* 'may have played a role, it seems that any effect appears minor' given the prevalence of over-award payments to apprentices and the lack of uniformity in commencement trends across individual trades.

7. Encouraging Collective Bargaining

[591] In giving effect to the modern awards objective, the Panel must take into account 'the need to encourage collective bargaining' (s.134(1)(b)). It is important to appreciate that s.134(1)(b) speaks of 'the need to *encourage* collective bargaining'[529] and that our consideration of the level of increase to the NMW and minimum award wages must take into account this consideration.

[592] 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'. But as we mention in Chapter 2, one of the objects 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.[530] We have taken account of the statistical information provided by parties in submissions, data published in the Statistical report and research published by the Commission.

[593] In general terms, there has been a decline in the number of employees reported as covered by collective agreements and an increase in the extent of reported award reliance between 2014 and 2016. We need to consider these developments in a broader context and to assess the implications for the level and adjustment of the NMW and modern award minimum wages. The submissions to the Review present competing contentions about these issues.

[594] Some submissions have also suggested that the Panel's decision will affect other employees that are not award reliant. This also needs to be considered to the extent that it

informs the relationship between minimum wage increases and the incentive to bargain and the other statutory considerations relevant to this Review.

[595] Consequently, it is appropriate for us to consider the following issues as part of our consideration:

- the changing degree of award reliance and coverage by enterprise agreements;
- the implications of these changes for the setting of the NMW and minimum award wages; and
- the relationship between minimum wage increases and bargaining outcomes.

[596] We have also considered changes in the coverage and nature of individual wage-setting arrangements.

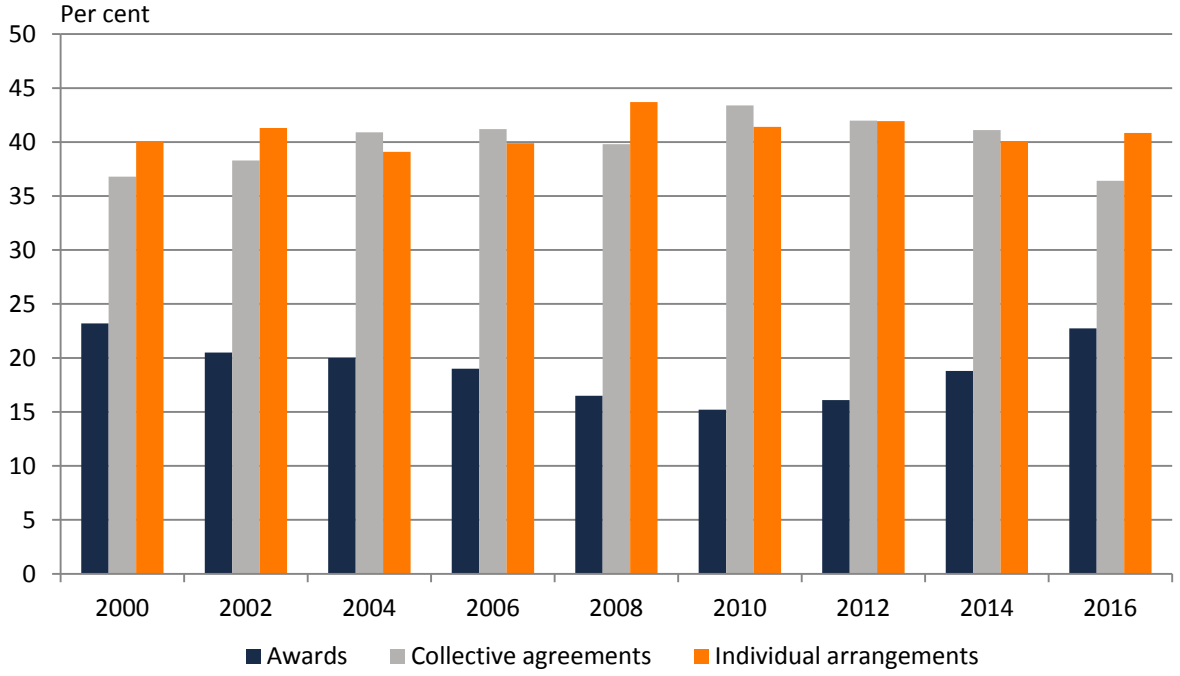
The changing degree of award reliance and coverage by enterprise agreements

[597] There was a range of material before the Panel dealing with the changing degree of award reliance and coverage by enterprise agreements. Research Report 4/2017 *Explaining recent trends in collective bargaining* (the Peetz and Yu Report) examined factors that have influenced recent changes in collective bargaining agreement coverage. The report sets out to address how the incidence of collective agreements has changed in recent years, and how this has been affected by the decline in union density and changes in the composition of the workforce.

[598] The report analysed 2 data sources, each with their limitations—the EEH and the Workplace Agreements Database (WAD). The scope of the EEH captures employees covered by collective agreements, whereas the WAD only captures employees covered by federal agreements that have not passed their expiry date. The EEH is a survey of employers and produces estimates of the distribution of employment that differ from the ABS Labour Force Survey, and the effect of this is reported throughout the paper.

[599] Chart 7.1 based on EEH data sets out the method of setting pay for the period since 2000. The chart shows the that coverage of industrial arrangements in 2016 is similar to the coverage reported in 2000.

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: Statistical report, Chart 7.1; ABS, *Employee Earnings and Hours, Australia*, various, Catalogue No. 6306.0.

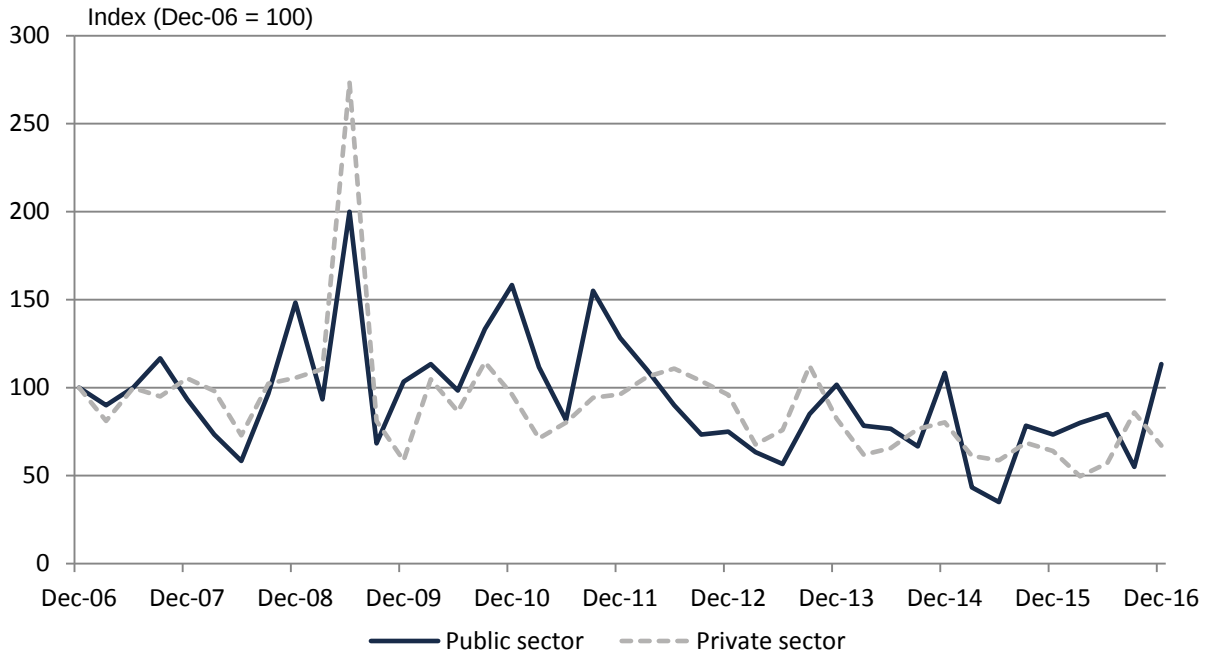
[600] Peetz and Yu observe that EEH data show that, over most of the period since 2002, approximately two-fifths of employees have been covered by collective agreements. In May 2016, the proportion of employees on collective agreements was 36.4 per cent, representing a fall of 4.7 percentage points from 2014 when it was 41.1 per cent and a fall of 7 percentage points since 2010 when the proportion of employees on collective agreements was 43.4 per cent (the peak since 2000).

[601] Peetz and Yu also point to a decline in award coverage between 2002 and 2010 from 23.2 per cent in 2000 to 15.2 per cent in 2010 before rising to 18.8 per cent in 2014 and 22.7 per cent in 2016. However, they also note that the ABS defines award coverage as relating to employees whose pay is entirely set by their award and does not include the category 'individual arrangements' comprising those with individual contracts providing for wages ranging from significantly to slightly above the award.[531] Further, Peetz and Yu point to the decline in the numbers of employees covered by current collective agreements from a peak of 2.65 million in 2011 and 2012, 2.5 million in 2014 and 2.2 million in the June quarter 2016.[532]

[602] The Australian Government highlighted that there was a decline in collective agreement coverage between 2010 and 2016[533] while Ai Group commented that collective agreements continue to be the most common method of setting pay.[534] The ACTU argued that the increase in award reliance is due to the 'changing industry structure' where rapidly growing service industries experience a likely lag between 'initial award reliance and undertaking of collective bargaining'.[535] ACCI contended that while the level of award reliance was stable in Accommodation and food services, this was 'more the exception than the norm when compared to other sectors characterised by high levels of award reliance', such as Administrative and support services, Retail trade, and Health care and social assistance.[536]

[603] The number of enterprise agreements being approved by the Commission is also an indicator of trends in the extent of bargaining. Chart 7.2 shows an index of the number of federal enterprise agreements approved between December 2006 and December 2016 by sector, on a quarterly basis.

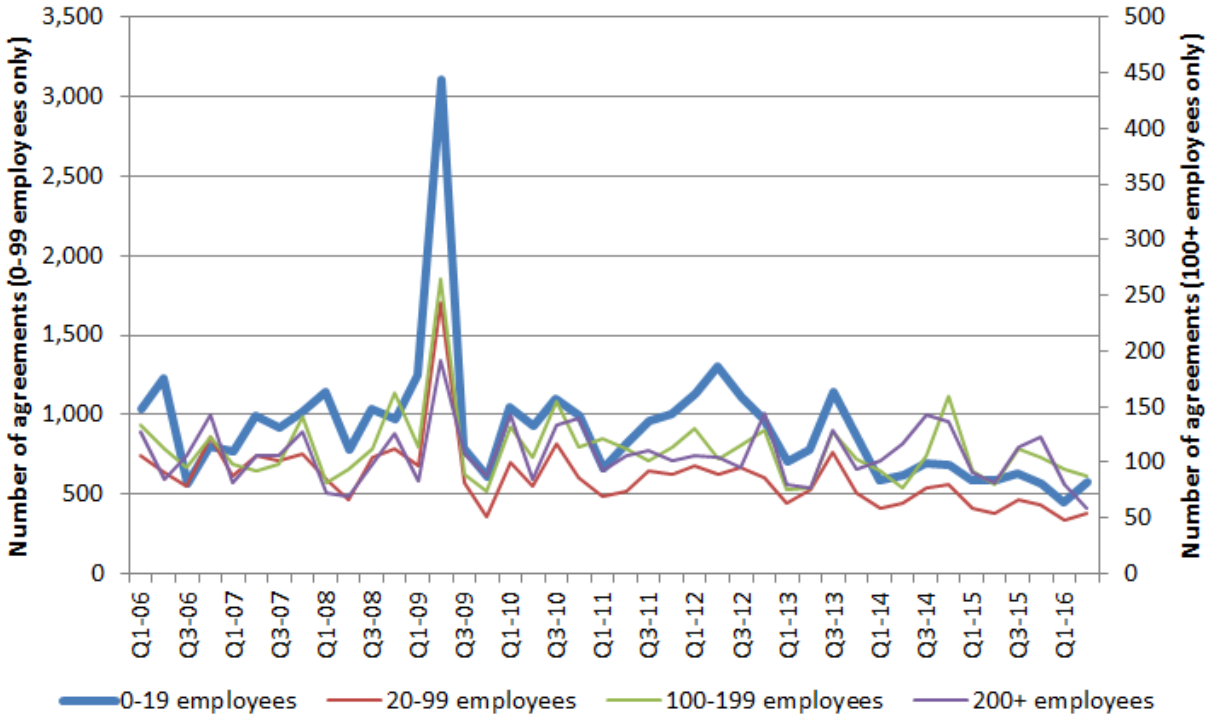
Chart 7.2: Agreements approved in the quarter by sector, indexes—Dec-06 = 100



Source: Statistical report, Chart 5.2; Department of Employment, *Trends in Federal Enterprise Bargaining*, December 2016.

[604] The trends in the private sector are evident from Chart 7.3, which is based upon data collected by the Department of Employment.

Chart 7.3: Private sector agreements by agreement size and approval



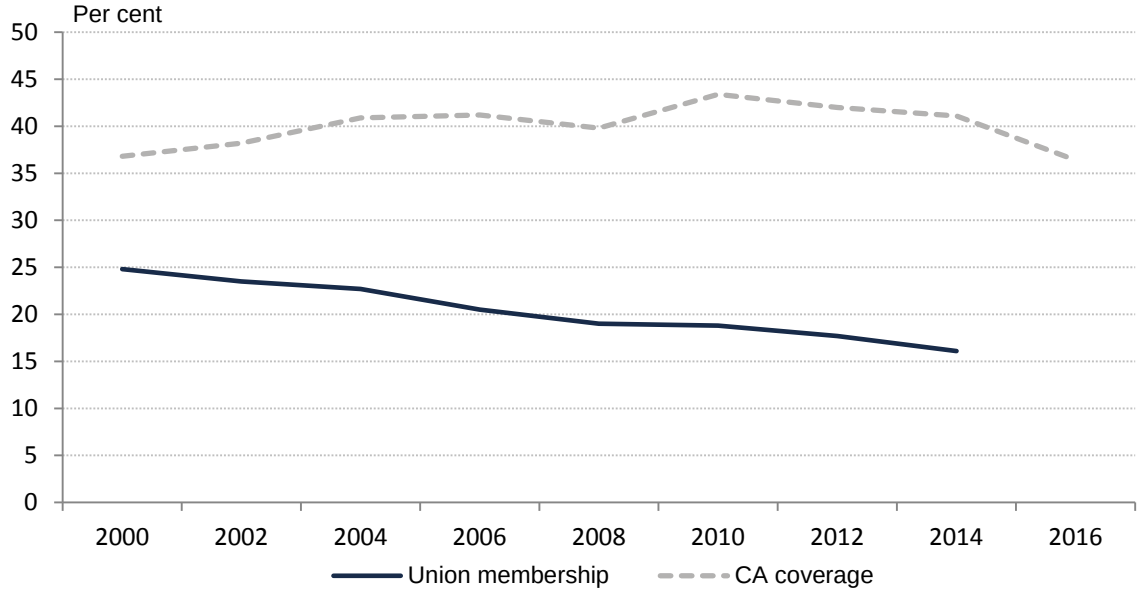
Source: Australian Government (2017), *Report on enterprise bargaining*, Department of Employment, February, Chart 4.

[605] As the chart indicates, following a spike in 2009, which coincided with the commencement of the FW Act, there has been a downward trend across all categories on employment size since early 2012, most evident in the 0–19 employees sector. This chart is consistent with the trends observed by Peetz and Yu in relation to changes in the overall incidence of collective agreements between 2010 and 2016.

Contributing Factors

[606] Figure 2 of the Peetz and Yu report presents data on union membership (referred to as union density throughout the report) and the proportion of employees covered by collective agreements (referred to as collective agreement coverage density throughout the report). Together these data show that the fall in union density between 2000 and 2014 was greater than the decline in the proportion of employees covered by collective agreements (Chart 7.4).

Chart 7.4: Union density and CA coverage density in EEH, 2000–2016



Source: Peetz D and Yu S (2017), *Influences on changing collective agreement coverage*, Fair Work Commission Research Report, February, p. 12, Figure 2; ABS, *Employee Earnings and Hours, Australia*, various, Catalogue No. 6306.0; ABS, *Employment Benefits and Trade Union Membership*, various, Catalogue Number 6310.0; ABS, *Characteristics of Employment, Australia*, various, Catalogue Number 6311.0; ABS, *Labour Force, Australia, Detailed, Quarterly, Nov 2016*, Catalogue No. 6291.0.55.003.

[607] Peetz and Yu discuss possible reasons for this and infer an increase over time in 'free riding on the benefits of agreements' or the possible time lag associated with changes in union membership and the coverage of collective agreements, i.e., an employee who is no longer a union member may remain covered by a collective agreement.[537]

[608] Using the WAD, Peetz and Yu report that although decreases in the proportion of workers covered by both non-union and union collective agreements have occurred, the decline between 2014 and 2016 was primarily due to a fall in the number of employees that were covered by union current federal agreements. The authors explained that this reflects the 'cumulative effect' of a decline in replacement agreements.[538]

[609] The report also found that structural changes in the composition of employment have not significantly driven the decline in the incidence of collective agreements in Australia. If anything, structural changes have acted to increase the incidence of collective agreements. The decline in the incidence of collective agreements is primarily explained by decreases in the coverage of collective agreements within categories of job characteristics, such as industry or occupation. In fact, the decline in public sector employment between 2000 and 2014 was found to have had a large negative effect on collective agreement coverage. For the period 2014 to 2016, analysis of the WAD found that all of the decrease in the incidence of collective agreement coverage can be explained by falls in Retail trade, Public administration and safety and Health and community services.

[610] We also note that the Australian Government observed that the increase in the reported trends in award reliance and decrease in collective agreement coverage between 2014 and 2016 were partly affected by a review of the application of the Method of Setting Pay conceptual framework undertaken by the ABS, resulting in the shift of a significant portion of

employees in the NSW public sector to the Award only category between EEH 2014 and 2016 and other recoding from Collective Agreements to Awards.[539]

[611] ACCI agreed with the assessment of the Panel in the 2015–16 Review decision that research about award reliance points to 'a complex mix of factors that may contribute to employee and employer decision making about whether or not to bargain.'[540] ACCI also submitted that there are other issues at play impacting on employers' decisions about whether to bargain, including: flaws in the design of bargaining architecture; impractical approaches in the application of the legislative mechanisms for bargaining; difficulties with passing the better off overall assessment as it is being applied; and problems with the Notice of Employee Representational Rights (NERR). ACCI asserted that employers make cost-benefit assessments of whether there is any value in pursuing an enterprise agreement, particularly where there may be no union presence in their workplace. Further, ACCI asserted that for many employers the benefits associated with enterprise agreements such as predictable forward labour costs and periods free of industrial action, can be secured without 'the transactional costs, complications and risks of bargaining' under the Act.[541]

[612] During the consultation phase, the Panel sought further submissions on the accuracy of the reported trends and, in particular, the significance of changes in coding process and treatment of classes of work, as opposed to actual changes in their status. We were advised by the Australian Government that '[w]hile all data items are extensively quality assured, the full impact of the change on EEH outputs cannot be accurately quantified as the EEH collection is designed to measure aspects of the labour market at a point in time, rather than as a time series'.[542]

[613] We also note that the WAD data relies upon current enterprise agreements, that is agreements that have not expired (passed their nominal expiry date) or been terminated. This is likely to mean that delays in negotiating replacement agreements in significant sectors, such as the Commonwealth Government and in the retail sector, will have contributed to the decline in collective agreement coverage. In the normal course, we anticipate that collective bargaining in these sectors will ultimately lead to agreements being made, however this is not guaranteed.

[614] Relying upon EEH data, the ACTU contended that the reduction in collective agreement coverage since 2012 was associated with a drop in employment in the Commonwealth public sector, an increase in the state public sector, and relatively stable local government sector.[543]

[615] AFEI pointed to the decline in the number of agreements in all industries with the exception of Electricity, gas, water and waste services and submitted that the across the board fall in the number of agreements does not appear to be primarily a reflection of the economy transitioning to the services sector or change in union density. AFEI further submitted that the Peetz and Yu report did not find a large effect for structural change in industry and composition of employment. AFEI went on to submit that the decline in the number and coverage of agreements indicates that the level of minimum rates and conditions prescribed in modern awards is curtailing both the incentive and scope for enterprise bargaining.[544]

[616] We accept that there has been a slight trend away from collective bargaining in recent times. The factors influencing this trend were explained in the Peetz and Yu research report, which was not challenged by any party in the proceedings.

[617] We sought more detailed consideration from parties of the factors discussed in the research report through a question for final consultations. The Australian Government stated that 'the primary factor for the decline in enterprise bargaining is the decline in union density' which predates the current reduction in the number of enterprise agreements.[545] This was also noted by ACCI[546] who also submitted that the factors are more complex for employers when considering the benefits of pursuing an enterprise agreement, including consideration of the better off overall assessment and the NERR.[547]

[618] Having regard to the factors discussed in the research report and the submissions, we have not been persuaded that our decision has the effect of discouraging enterprise bargaining. It appears that the decline in union density and changes in job characteristics have been important factors in the recent decline.

The implications of these changes for the setting of the NMW and minimum award wages

[619] The Australian Government submitted that 'enterprise bargaining provides a direct avenue for firms and workers to negotiate productivity offsets for wage increases'.[548] The Australian Government cited a number of studies that are 'broadly supportive' of a link between productivity growth and enterprise bargaining, such as Connolly, Trott and Li (2012)[549] and the Fair Work Act Review Panel report.[550] The New South Wales Government urged the Panel to 'continue to set minimum wages at a level that maintains incentives for enterprise bargaining that rewards flexible and productive work practices',[551] and cautioned that:

> '… any unnecessary increase to minimum wages that does not reflect productivity improvements may limit the capacity of businesses to absorb such increases and consequently have a deleterious impact on employment growth'.[552]

[620] The New South Wales Government also commented that average weekly earnings for award-reliant workers 'remain significantly less' than for workers covered by collective bargaining.[553] The Queensland Government submitted that real wage increases in award wages will not result in bargaining being less attractive to employees given the 'significant' difference between wage outcomes of those on award rates of pay and those on enterprise agreements.[554] The Queensland Government added:

> 'The fact that a significant proportion of employees have remained award reliant, despite the fact their rate of pay falls well short of the pay of those on agreements, suggests that it is not a matter of choice that employees remain subject to award only rates. The reality is that, for a variety of reasons, not all employees are able to bargain with their employers for wage increases.'[555]

[621] The ACTU argued that employers' incentive to bargain has declined due to the fall in the minimum wage bite.[556] The ACTU agreed with the Panel's previous assessment that a large gap may act as a disincentive to bargain and suggested this is reflective of Australia's current environment.[557] The ACTU further argued that large increases in minimum wages could be an incentive to bargain for both employers and employees:

> '… 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. Such bargaining also takes place in the context of the state of demand in the output market, both for the business' own output and aggregate demand. 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.'[558]

[622] As we have mentioned, ACCI submitted that the propensity of employers to enter into enterprise agreements, and consequently the degree of award reliance, was affected by 'flaws in the design of the bargaining architecture and impractical approaches in the application of the legislative mechanisms for bargaining', including the difficulties of passing the better off overall assessment and problems with the NERR.[559]

[623] Ai Group and AFEI also submitted that increases to minimum wages may act as a disincentive to bargain. Ai Group contended that, in its experience, 'the higher the minimum wage increase granted by the Expert Panel, the less likely an employer and its employees will seek an enterprise agreement'.[560] AFEI submitted that the 'persistent decline in the number and coverage of agreements indicates that the level of minimum rates and conditions prescribed in modern awards is curtailing both the incentive and scope for enterprise bargaining'.[561]

[624] The ACTU contended that:

> '… increases in the real minimum wage have been so small recently that the decline in the share of employees on collective agreements could hardly be attributed to that. The implication of the argument is that minimum wage increases would need to be negative in real terms before they are a sufficient incentive for collective bargaining'.[562]
>
> 'With low real minimum wage increases, it is hard to say the increase in award reliance is due to the relative unattractiveness of collective bargaining outcomes for workers'.[563]

The relationship between minimum wage increases and other wage outcomes

[625] The Australian Government submitted that the Panel's decision will affect other employees that are not award reliant:

> '• There will be wage implications for workers who are paid at or around the minimum wage, but have their pay set through an individual arrangement or collective agreement;
> • The minimum wage adjustment may be passed on to higher wage earners in order to maintain wage relativities; and
> • Wage outcomes in many collective agreements are explicitly linked to Annual Wage Review outcomes. As of September 2016, there were 346,400 employees whose collective agreement was formally linked in some way to the Panel's decision. For 64,900 of these employees the link was direct and automatic.'[564]

[626] Similarly, the South Australian Government referred to the Commission's Research Report 6/2013—*Award Reliance*,[565] which showed that 'increases to minimum award rates

are passed on to many over-award workers, particularly those whose over-award payment is not significantly higher than the award rate'.[566]

[627] Referring to data from the AWRS presented in the Commission's *First Finding* report, the ACTU concluded that 'there is no reason to doubt the general point that a small proportion of the workforce, varying greatly as between their employers, receives pay rates that are determined having some regard to movements in modern award wages'.[567]

[628] We accept that minimum wage increases may influence bargained outcomes and pay set by individual arrangements, depending upon the circumstances in each industry sector including the degree to which the bargained or over-award rates exceed the minimum award rates.

Individual wage setting arrangements

[629] A number of submissions referred to the group of employees whose wages are set through individual arrangements or common law contracts of employment or who receive over-award payments. The Australian Government submission identifies that the number of such employees at May 2016 was 3 782 600 or 37.3 per cent.[568] The ACTU submits that the percentage of employees on individual arrangements at May 2016 is 36.6 per cent and that this is a reduction from 40.1 per cent at May 2014.[569] The difference between the estimates is that the ACTU present the figures for non-managerial employees. According to the Australian Government submission, some of this group of employees is paid at or around the level of the NMW.[570] It is submitted that these employees may be affected by the Panel's decision, on the basis that the minimum wage adjustment may be passed on to higher wage earners to maintain relativities or because wages at the NMW level are required to be increased in line with the Review decision.

[630] In an article published by the RBA, Bishop and Cassidy observe that while wage growth across all pay-setting methods has declined, wage growth in industries that have a higher prevalence of individual agreements has declined most significantly over recent years following strong growth in the previous few years. They go on to observe that this reduction may reflect the fact that these industries have been influenced by large terms of trade movements but may also indicate that wages set by individual contracts can respond most quickly to changes in economic conditions.[571]

[631] We accept that minimum wage outcomes may influence individual wage-setting arrangements. However, the proportion of employees whose wages are set by individual arrangements has declined as has the quantum of the wage increases paid to these employees. While these changes may have increased the number of employees whose wages are directly affected by the Panel's decision in relation to the NMW and award minimum wages, it is unlikely that the quantum of increases granted by the Panel in recent times has significantly contributed to this trend. It is more likely that the changes in levels of collective and individually agreed wage-setting arrangements are impacted by the same range of economic, structural and societal changes that have impacted on collective agreement coverage and outcomes that we have referred to elsewhere in our decision.

Conclusions

[632] It is clear from the Peetz and Yu Report—the findings of which were not challenged by any party—that issues of statistical classification as well as economic, structural and societal changes that have contributed to the overall trend towards an increase in award reliance and that the level of minimum wages has not had any significant impact.

[633] As the Panel observed in the 2013–14 Review decision,[572] 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.

[634] 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 award reliant 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.[573]

[635] Further, while Review decisions determine the floor of such a gap, bargaining outcomes determine the extent of the gap.

[636] 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. 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. However, we are not satisfied that the increase we have determined in this Review will *encourage* collective bargaining and this is a factor we have taken into account, and balanced against the other matters we are required to consider, in determining the outcome of this Review.

[637] In reaching this conclusion, we accept that minimum wage increases may influence bargained outcomes, depending upon the circumstances in each industry sector, including the degree to which the existing bargained or over-award rates exceed the minimum award rates.

8. Equal Remuneration

Equal remuneration principle

[638] 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)). We have taken account of the statistical information provided by parties in submissions, data published in the Statistical report and research published by the Commission.

[639] In previous Reviews, and in various submissions made as part of this Review, the nature and the impact of the gender pay gap have also been considered. Consideration of the gender pay gap does not arise in connection with the requirement to take into account the equal remuneration principle. In the *Equal Remuneration Decision 2015*[574] a Full Bench of the Commission said that the application of the principle, which is defined in s.302(2) to mean 'equal remuneration for men and women workers for work of equal or comparable

value', required a comparative exercise to determine whether the remuneration of an employee or employees of one gender performing work of a certain value was equal to the remuneration of an employee or group of employees of the opposite gender performing work of equal or comparable value.[575] The principle has a particular application in the context of our minimum wage fixing function. Section 284(1) requires the Panel to take into account the equal remuneration principle for the purpose of establishing and maintaining a safety net of fair minimum wages. That safety net is primarily made up of the NMW and minimum rates of pay in modern awards (as well as some transitional and other instruments). In the context of that function, the requirement to take into account the equal remuneration principle compels consideration of whether the NMW and the modern award rates fixed by us equally remunerate men and women doing work of equal of comparable value.

[640] That s.284(1)(d) is concerned with the principle as it applies only to the NMW and modern award minimum rates of pay (and, unlike Part 2-7, not with remuneration at large[576]) was stated by the Full Bench in the *Equal Remuneration Decision 2015* as follows:

> 'The fundamental feature of the minimum wages objective is the requirement to establish and maintain "a safety net of fair minimum wages". We consider, in the context of modern awards establishing minimum rates for various classifications differentiated by occupation, trade, calling, skill and/or experience, that a necessary element of the statutory requirement for "fair minimum wages" is that the level of those wages bears a proper relationship to the value of the work performed by the workers in question ... s.284(1) itself, in paragraph (d), requires the principle of "equal remuneration for work of equal or comparable value" to be taken into account in setting fair minimum wages. This suggests that the setting of equal *minimum wages* for work of equal or comparable value in modern awards was intended to occur so far as it could be achieved in balance with the other matters required to be taken into account under s.284(1).'[577]

[641] This approach was followed in the *Penalty Rates decision* in relation to the requirement in s.134(1)(e) to take into account the equal remuneration principle in the context of the modern awards objective. The Full Bench determined that a reduction in award Sunday penalty rates, even if it disproportionately impacted upon women workers, which was not found, would not enliven the equal remuneration principle in s.134(1)(e) because the reduction would apply equally to men and women workers.[578] The Full Bench distinguished this from an adverse impact on the gender pay gap, which might separately be relevant because of the requirement to provide a *fair* and relevant minimum safety net.[579]

[642] Modern award minimum rates are structured to provide equal remuneration for work of equal or comparable value both within and across awards. No interested party submitted otherwise, nor was it contended that the NMW did not bear a proper work value relationship to award rates of pay. That being the case, if the approach taken in a Review is to increase the NMW and award rates by a uniform percentage, then the equal remuneration principle could not be offended because all rates would retain the same relativity to each other. However, the equal remuneration principle might be enlivened if a Review resulted in a flat dollar increase, or ordered different outcomes in respect of different modern awards. In the former case, the equal remuneration principle might be enlivened because of any differential gender dispersion across lower and higher paid award classifications. In the latter case, it might be enlivened by any gender differences in the award-reliant workforces covered by different awards with different pay outcomes.

[643] The gender pay gap becomes a relevant consideration in our task because, as was stated in the *Penalty Rates decision*, it is an element of the requirement to establish a safety net that is fair as well as relevant. It may also arise for consideration in respect of s.284(1)(b) ('promoting social inclusion through workforce participation'), because it may have effects on female participation in the workforce.

Gender pay gap—Nature and extent

[644] In the 2015–16 Review decision, the Panel noted that the causes of the gender pay gap were complex and influenced by factors such as: differences in types of jobs performed by men and women; discretionary payments; workplace structures and practices; and the historical undervaluation of female work and female-dominated occupations.[580] The Panel observed that the gender pay gap may be measured in a number of ways, with the 2 main data sources being the Survey of Average Weekly Earnings and EEH.[581]

[645] Table 5.3 in the Statistical report sets out three of the alternative measures of the gap as follows (Table 8.1):

Table 8.1: Estimates of the gender pay gap

Measure	Male earnings	Female earnings	Gender pay gap
AWOTE *(Nov 2016)*	$1631.00	$1369.70	16.0%
EEH adult hourly ordinary time cash earnings (hourly) *(May 2014)*	$41.09	$34.16	16.9%
EEH non-managerial adult hourly ordinary time cash earnings *(May 2014)*	$37.66	$32.95	12.5%

Note: AWOTE is expressed in trend terms and refer to full-time adult employees.

Source: Statistical report, Table 5.3; ABS, *Average Weekly Earnings, Australia, Nov 2016*, Catalogue No. 6302.0; ABS, *Microdata: Employee Earnings and Hours, Australia, May 2014*, Catalogue No. 6306.0.55.001; Statistical report, Table 5.3.

[646] The Australian Government contended that the gender pay gap had increased from 14.9 per cent in 2004 to 18.5 per cent in 2014 before decreasing.[582] The South Australian Government and Federal opposition both submitted that the gender pay gap has hovered between 15 per cent and 19 per cent over the past 2 decades.[583]

[647] The ACTU submitted that measuring the gender pay gap using the AWOTE is appropriate for calculating the gap 'as it refers to full time adult earnings for "ordinary time"'.[584] The ACTU also submitted that other wage measures 'provide useful information' on gender pay inequity and presented a table using 3 different ABS sources, each showing that 'women are paid less on average than men', although noting that in some measures the gap has narrowed or reversed, arguing that this is due to a fall in male average earnings rather than an improvement in female earnings.[585] The ACTU also analysed data from the OECD and found that Australia's gender pay gap was higher than the OECD average.[586]

[648] The Australian Government cited research for the Pay Equity Unit of the Commission (Rozenbes and Farmakis-Gamboni (2015) and Broadway and Wilkins (2015))[587] and concluded that:

> 'The gender pay gap, therefore, appears to be mostly driven by higher paid workers … among non-managerial employees, women earn roughly the same per hour as men on awards. This suggests the gender pay gap is concentrated among employees on collective agreements and individual arrangements.'[588]

[649] Citing one of the reports, Ai Group submitted that there was no statistically significant difference in earnings between female and male award-reliant employees taking into account different industries, occupations, educational levels and other factors.[589]

[650] Using data on average weekly total cash earnings from the EEH 2016, the Victorian Government contended that the gender pay gap is narrowest for award-reliant employees and highest for employees under collective agreements.[590] These results are similar to those found in the research of Rozenbes and Farmakis-Gamboni.

[651] The Victorian Government cited data from Workplace Gender Equality Agency (WGEA) for 2015–16 which found a gender pay gap of 23.1 per cent for full-time total remuneration, with men earning on average $26 853 a year more than women (1.6 percentage points lower than in 2013–14).[591] The Victorian Government also cited research from the ACTU that found that 60–70 per cent of workers in lower-paid occupations (such as clerical and administration, community and personal services, and sales) were women.[592] Similarly, the Victorian Government referred to data from the ABS *Forms of Employment* survey from November 2013 and submitted that women were less likely to be paid leave entitlements than men as over 70 per cent of casual workers classified as Clerical and administrative workers, Community and personal service workers and Sales workers were women who were also 'overrepresented' in Accommodation and food services and Arts and recreation services.[593]

[652] ACCER cited a report undertaken for the Commission which showed that 74 per cent of all award-reliant women were lower paid[594] and another which found that 56 per cent of award-reliant workers were women and 37 per cent of all award-reliant workers were women living in the bottom half of the household income distribution compared with 19 per cent in the top half.[595]

[653] In a separate report for the Pay Equity Unit of the Commission, Broadway and Wilkins (2015) reported '[i]f men or women are paid the award rate, they are equally likely to be low-paid. If employees are covered by any method of setting pay other than the award rate, women are more likely to be low paid.'[596] In addition, that report found that a 'substantial' portion of the low-paid workforce were women aged over 55 years.[597] Using data from the EEH 2016, the Victorian Government submitted that the gender pay gap widens and persists for middle-aged and older workers, particularly those aged 45 to 54 years (at approximately 20 per cent) regardless of whether women are in full-time or part-time employment. The gap was higher for those aged 55 years and over than for those aged 35 to 44 years.[598]

[654] Drawing upon various sources of data,[599] the Panel in the 2015–16 Review concluded as follows:

> ' 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.'[600]

[655] These conclusions remain apt.

[656] Accordingly, the gender pay gap arises from a range of circumstances and is evident in a number of industry sectors. Age and the method of setting pay are also operative factors in the extent of the gender pay gap. There are a higher proportion of women reliant upon award wages at the lower end of the pay scale. At the higher award classifications, women are more likely to be paid the award rather than the bargained rate than are men. Further, the gender pay gap is highest at the higher end of the pay scale among non-award reliant employees.[601]

[657] The gap at the higher end of the pay scale is likely to be due, in part, to the existence of bargained or agreed individual over-award rates. However, this is not a straightforward relationship. There are marginally more women than men covered by collective agreements. Using EEH data from May 2016 for non-managerial employees, approximately 1.93 million females and 1.7 million males were classified under a collective agreement.[602] We note that the EEH classifies employees under a collective agreement if they had the main part of their salary set by a collective agreement.

[658] Using the same EEH data, the following table illustrates the extent of the gap between award, collective agreement and individual arrangement total hourly cash earnings for non-managerial employees paid at adult rates, according to industry (Table 8.2).

Table 8.2: Average hourly total cash earnings for full-time non-managerial employees paid at the adult rate, by industry and method of setting pay, May 2016

	Award only	Collective agreement	Individual arrangement	Ratio of earnings in Award only to collective agreement	Ratio of earnings in Award only to individual arrangement
	($)	($)	($)	(%)	(%)
Mining	n/a	n/a	58.80	n/a	n/a
Manufacturing	24.60	35.70	37.10	0.69	0.66
Electricity, gas, water and waste services	28.30	49.40	47.90	0.57	0.59
Construction	30.60	49.90	40.90	0.61	0.75
Wholesale trade	n/a	n/a	35.90	n/a	n/a
Retail trade	24.20	26.50	30.60	0.91	0.79
Accommodation and food services	n/a	n/a	28.90	n/a	n/a
Transport, postal and warehousing	30.30	40.20	34.50	0.75	0.88
Information media and telecommunications	28.30	46.00	48.60	0.62	0.58
Finance and insurance services	22.80	44.60	45.80	0.51	0.50
Rental, hiring and real estate services	24.80	32.00	36.40	0.78	0.68
Professional, scientific and technical services	29.70	49.20	45.30	0.60	0.66
Administrative and support services	27.80	36.20	39.00	0.77	0.71
Public administration and safety	44.20	42.90	36.50	1.03	1.21
Education and training	44.40	46.80	44.50	0.95	1.00
Health care and social assistance	40.90	44.80	37.70	0.91	1.08
Arts and recreation services	26.30	33.60	39.10	0.78	0.67
Other services	26.50	35.90	34.20	0.74	0.77
All industries	**33.10**	**42.70**	**39.70**	**0.78**	**0.83**

Note: Employees are classified to the Award only category if they are paid at the rate of pay specified in the award, and are not paid more than that rate of pay. Employees are classified under collective agreement if they had the main part of their pay set by a collective agreement (registered or unregistered) or enterprise award. n/a = not available.

Source: Statistical report, Table 5.4; ABS, *Employees Earnings and Hours, Australia, May 2016*, Catalogue No. 6306.0.

[659] We understand that further data on the relationship between gender and the method of setting pay **by industry** will be released by the ABS in June 2017 as part of the EEH's Confidentialised Unit Record File. These data may further reveal the gender aspects of bargaining and cast some light on whether the same work is being paid at different rates and, if so, the extent of gender differentiation. Further, the material before the Commission does not presently enable us to form a view about the broader notion of comparable work value as discussed in the *Equal Remuneration Decision 2015.* Accordingly, this is an aspect that we would consider revisiting in subsequent Reviews.

[660] However, there is presently sufficient data available for the Panel to make some relevant observations.

[661] Table 8.3 reveals the coverage of agreements by industry, using EEH data, in certain years up until 2014

Table 8.3: Coverage of collective agreements in EEH, by industry, numbers of employees and percentage incidence of employees, 2008–2014

	Number of employees			Percentage of employees			
Industry	**2010**	**2012**	**2014**	**2008**	**2010**	**2012**	**2014**
Mining	56.9	64.2	56.8	30.9	41.5	42.3	33.6
Manufacturing	218.2	276.1	230.4	29.9	26.4	34.3	33.0
Electricity, gas, water and waste services	65.3	72.0	69.3	67.5	67.0	65.6	60.7
Construction	123.3	135.5	179.7	25.6	23.1	23.4	26.2
Wholesale trade	51.4	53.7	52	10.1	12.3	12.3	11.7
Retail trade	376.3	458.2	469.5	36.2	41.0	42.1	41.8
Accommodation and food services	194.0	163.9	236.9	19.3	30.1	23.8	32.0
Transport, postal and warehousing	214.0	261.2	229.7	48.9	52.2	56.3	52.4
Information media and telecommunications	50.1	55.6	57.5	31.1	31.3	32.9	35.7
Financial and insurance services	164.1	162.4	166.3	38.9	42.6	44.8	41.5
Rental, hiring and real estate services	16.8	16.5	17.6	11.9	9.5	10.4	9.9
Professional, scientific and technical services	74.3	65.0	87.4	8.6	11.9	8.7	11.2
Administrative and support services	139.4	136.8	85.1	15.7	27.2	23.3	13.9
Public administration and safety	607.1	539.5	497.5	88.2	92.3	85.9	79.9
Education and training	710.1	734.2	788.5	81.2	84.1	81.9	84.1
Health care and social assistance	725.6	741.1	730.7	64.5	64.1	60.9	57.9
Arts and recreation services	73.4	67.5	69.7	37.9	46.0	43.9	40.8
Other services	31.7	30.1	45.6	7.3	9.8	8.3	12.6
Total	**3891.9**	**4033.6**	**4070.1**	**39.8**	**43.4**	**42.0**	**41.1**

Source: Peetz and Yu (2017), p. 45, Table A2; ABS, *Employee Earnings and Hours, Australia*, various, Catalogue No. 6306.0.

[662] Table 8.4 illustrates the extent of female employment by industry.

Table 8.4: Proportion of female employment, by industry

Industry	Proportion female (%)
Agriculture, forestry and fishing	29.8
Mining	15.1
Manufacturing	28.0
Electricity, gas, water and waste services	23.5
Construction	12.0
Wholesale trade	32.2
Retail trade	55.4
Accommodation and food services	53.9
Transport, postal and warehousing	22.3
Information media and telecommunications	37.6
Financial and insurance services	50.3
Rental, hiring and real estate services	52.0
Professional, scientific and technical services	40.6
Administrative and support services	50.9
Public administration and safety	50.2
Education and training	70.8
Health care and social assistance	78.0
Arts and recreation services	48.2
Other services	45.4
Total	**46.4**

Note: Data are the average of the 4 quarters to the February quarter 2017 in original terms.

Source: Statistical report, Table 6.5; ABS, *Labour Force, Australia, Detailed, Quarterly, Feb 2017*, Catalogue No. 6291.0.55.003.

[663] When Tables 8.2, 8.3 and 8.4 are considered together, this reveals a tendency for collective bargaining in the male-dominated industries to cover a significant proportion of the workforce and to produce a higher gap between award and bargained rates in those industries. Although this tendency is not uniform, Electricity, gas, water and waste services, Manufacturing, and Transport, postal and warehousing industries are examples. This tendency, in turn, is likely to impact upon the gender pay gap more generally. Further, although the outcomes are not uniform, the degree of average over-award pay levels tends to be less under individual arrangements than for collective agreements, and as Bishop and Cassidy observe, wages growth in industries that have high levels of individual agreements has declined most significantly when compared to all pay setting methods, after having risen most rapidly in recent years.[603]

[664] The various contributors to the gender pay gap, as evident from the research, inform the Panel about the extent to which the Review may have a role in addressing the issue.

The implications of gender pay equity for the adjustment of minimum wages

[665] The gender pay gap continues in Australia and remains an appropriate consideration for this Panel.

[666] In the 2015–16 Review decision, the Panel observed that increases in the NMW and modern award wages could assist to address the gender pay gap:

> '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.'[604]

> '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.'[605]

[667] In this Review, various parties contended that an increase in minimum wage and modern award minimum wages would positively impact upon the gender pay gap, although the extent of that impact varied. The ACTU submitted that raising the minimum wage and award rates would assist in reducing the gender pay gap[606] and is 'a very effective way' of reducing the gap.[607] The ACTU also contended that an increase in the NMW will assist in addressing the gender pay gap for female workers on awards with higher rates of pay:

> 'Increasing the minimum wages is a key strategy for reducing the gender pay gap. This is especially as the average for females on awards is greater than that for males on awards by some measures, because the increase in employment has been so great in some female intensive areas which are on some of the higher awards.'[608]

[668] The Victorian Government agreed with the Panel's conclusion from the 2015–16 Review decision and submitted that the Panel should again make minimum wage adjustments recognising women are in predominantly award-reliant industries and occupations, as these women 'experience persistently higher levels of income and employment insecurity'.[609] The South Australian Government submitted that an increase in the minimum wage is 'a crucial part of supporting women to remain in the workforce and plays an important role in closing the gender pay gap'.[610] It added that industries where female employment predominates tend to have lower levels of pay and higher award reliance and argued that 'fair adjustments' to modern award minimum wages 'can contribute to a reduction in gender wage inequality'.[611]

[669] The Queensland Government supported the Panel's position stated in the 2015–16 Review decision and submitted that an increase to the NMW and award rates of pay will 'positively' impact on pay equity, although any impact may only be 'minimal'.[612]

[670] ACOSS submitted that minimum wages 'play an important role in reducing the gender pay gap' which is 'caused by a combination of unequal sharing of caring roles, the over-representation of women in relatively low-paid caring occupations (including in the community services sector), and discrimination against women in hiring and promotions'.[613] ACOSS cited research for the Australian Fair Pay Commission which showed that from 1995

to 2005, minimum wage increases were estimated to reduce the gender pay gap by 1.2 percentage points.[614]

[671] The Australian Government submitted that, to the extent that more women were award reliant than men, minimum wage increases in awards could reduce the gender pay gap, although the effects would be 'marginal'[615] and concurred with the Panel's 2013–14 Review decision which found that 'the annual wage review decision is not the most effective instrument for addressing the gender pay gap'.[616]

[672] Similarly, ACCI and Ai Group contended that increases in the NMW and minimum wage rates within awards only have a modest impact in addressing the gender pay gap and that the Panel's decisions regarding the NMW and award wages are not well suited to addressing the complex factors contributing to gender pay inequity.[617] ACCI also submitted that the Panel's requirement to take into account the principle of equal remuneration should not be 'interpreted as requiring a higher increase in statutory and award minimum wages by reason that more women are recipients of wages of this nature'[618] and that these issues should be addressed by Part 2-7 of the Act in the making of an Equal Remuneration Order.[619]

[673] ACCER submitted that a dollar value increase would provide 'more assistance' to women than a percentage increase.[620] However, given the nature and extent of the gender pay gap at the higher end of the award classification scale, percentage adjustments reflecting an increase through the range of award wages are more likely to have a beneficial impact in that regard.

[674] Given the apparent causes of, and contributing factors for, the gender pay gap, we accept that increases in minimum wages are likely have some positive impact upon the gender pay gap. Increases in minimum wages, particularly those that might exceed increases evident through bargaining, are more likely to have such an impact.

[675] However, there are also other mechanisms available under the Act for providing more direct means of addressing the issue of the gender pay gap, such as through bargaining and the equal remuneration provisions in Part 2-7.

Conclusion

[676] The grant of a uniform percentage adjustment to the NMW and modern award wage rates would be the approach most consistent with the equal remuneration principle.

[677] In relation to the gender pay gap, women are disproportionately represented among the low paid and hence an increase in minimum wages is likely to promote gender pay equity, though we accept that moderate increases in minimum wages under awards would be likely to have a relatively small effect on the gender pay gap. Increases in minimum wages, particularly percentage adjustments that might exceed increases evident through bargaining, are more likely to have a beneficial impact that is broader than would be the case if flat rate increases were applied to lower classification levels. This is so because of the dispersion of women within award classification structures and the greater propensity for women to be paid award rates at all levels. The other mechanisms available under the Act, such as bargaining and equal remuneration provisions, also provide a further, more direct means of addressing this issue.

[678] The principle of equal remuneration and the gender pay gap consideration are factors in favour of an increase in minimum wages and as such we have considered this together with the various other statutory considerations the Panel is required to take into account.

9. Other Matters

Transitional Australian Pay and Classification Scales, Division 2B State awards and other transitional instruments

[679] The Panel is required to review, and may make a determination varying a number of transitional instruments as part of the Review. Transitional instruments include:

- Transitional Australian Pay and Classification Scales (APCSs).[621]
- State reference transitional awards, which include:
  - Division 2A State reference transitional awards;[622]
  - Division 2A State reference transitional enterprise awards;
  - Division 2A State reference public sector transitional awards;
  - Division 2B State reference transitional awards;[623]
  - 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;[624] and
  - Division 2B State enterprise awards.
- Transitional Pay Equity Orders.[625]
- Certain copied State awards.[626]

[680] The content and coverage of most of these instruments were addressed in the Panel's 2009–10 Review decision[627] and Fair Work Australia's Research Report 6/2010.[628] The 2012–13 Review decision outlined the operation of transitional pay equity orders and copied State awards.[629] The *2016–17 Preliminary decision* provides further background to the various instruments.[630]

[681] Transitional instruments also include those award-based transitional instruments subject to modernisation processes which continue to operate, and those 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 modernisation process. These instruments include, but are not limited to:

- transitional instruments which cover employees also covered by enterprise instruments;[631]
- transitional instruments which cover 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;[632] or
- transitional instruments which cover employees which were not terminated as part of the termination of modernisable instruments commenced in 2010.[633]

[682] Transitional instruments preserved by operation of the Transitional Act include Transitional 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.[634] These instruments must be considered as part of the Panel's review.[635] Also within 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.[636] The Panel is required to review and, if appropriate, make a determination varying minimum wages in copied State awards.[637]

[683] Transitional APCSs and State reference transitional awards operate until the Commission makes an order to terminate them.[638] Accordingly, a number of transitional instruments covering employees also covered by the *Social, Community, Home Care and Disability Industry Award 2010* and the *Social, Community and Disability Services Industry Equal Remuneration Order 2012* (ERO) are yet to be terminated by the Commission[639] and the Panel must review and may make a determination varying these instruments.[640]

[684] In the 2015–16 Review decision, the Panel proposed that a preliminary hearing for the 2016–17 Review be conducted which, among other things, would consider the status and effect of transitional instruments, including whether they have been, or can be, terminated by the Commission.[641]

[685] A background paper[642] was issued by the Commission and interested parties made submissions. A preliminary hearing was held on 24 October 2016. A decision[643] was issued (the *Preliminary decision*) in which the Panel determined that we should not, at this stage, proceed to terminate any transitional instruments as a part of the Review for 2 reasons.

[686] First, we considered that it was questionable whether there was power to terminate transitional instruments as part of the conduct of the Review.[644] There is no express power to terminate a transitional instrument in the course of the Review.[645] The Transitional Act does confer power on the Commission to terminate certain categories of transitional instruments under item 9(2) of Sch 3. The main power to terminate transitional instruments is contained in item 3 of Sch 5 to the Transitional Act.

[687] Second, we noted that the Commission's decision in *All Trades Queensland Pty Limited,*[646] affirmed on appeal in *All Trades Queensland Pty Limited v CFMEU and Ors*[647] (the All Trades matter) left in doubt the appropriate course that should be taken in relation to the transitional APCSs that had applied to apprentices and trainees in the State of Queensland.[648] The decision related to two of the three Queensland apprentice orders that operated.[649] However, the legal reasoning is equally applicable to all three.[650]

[688] In the All Trades appeal,[651] the Full Bench found that item 16 of Sch 5 to the Transitional Act did not operate to extend the legal existence of any notional agreement preserving State awards (NAPSA) beyond the 1 January 2014 date specified in item 20 of Sch 3, and there was no inconsistency between item 20 of Sch 3 and item 16 of Sch 5 which required the implication to be drawn that the latter provision modified the effect of the former. Consequently, the coverage of any APCSs which operated in conjunction with a NAPSA also lapsed on 1 January 2014, because their continued coverage under item 16(5) of Sch 5 was dependent upon continued coverage by the associated NAPSA (operating as an award-based transitional instrument).[652]

[689] The Queensland Master Builders Association and the HIA have initiated Federal Court proceedings seeking declarations to the effect that Queensland NAPSAs, to which item 16 of Sch 5 to the Transitional Act applied, remained in effect by virtue of item 16 of Sch 5. These proceedings have not been determined before the handing down of our decision for this Review.

[690] In the *Preliminary decision* we invited interested parties to make further submissions about whether the termination power in item 3 of Sch 5 and/or other powers of termination provided for in the Transitional Act were exercisable in the conduct of an Review.[653]

[691] Ai Group[654] submitted in reply that the task of terminating transitional instruments should not be undertaken by the Panel, and should be undertaken outside of the Review process. Ai Group submitted that this is consistent with the approach taken to date regarding the termination of transitional instruments and agreed with the position of the Panel at paragraph 147 of the *Preliminary decision*:

> 'It may be observed that the categories of transitional instruments that are terminable under item 3 of Schedule 5 are not co-extensive with the categories of instruments which are reviewable in the conduct of an annual wage review. "Modernisable instruments" includes all ABTIs, which includes pre-Fair Work Acts awards as well State reference transitional awards or common rules and NAPSAs. It may also be observed that the termination power is to be exercised arising out of the modernisation of awards. Both these matters tend to suggest that the power is not intended to be exercised by the Expert Panel as part of the Annual Wage Review process.'[655]

[692] ABI and NSWBC's submission in reply[656] also noted the Panel's conclusion that the power to terminate these instruments is not available to the Commission constituted as the Panel. ABI and NSWBC submitted that the Panel's functions imposed by Part 2-6 of the Act can include the revocation of modern award minimum wages arising out of its review of modern award minimum wages and the issuing of NMW orders. ABI and NSWBC submitted that whilst this might extend to cover APSCs, allowing the Panel to revoke them were it satisfied as to coverage, the capacity seems inadequate to extend to other types of award based transitional instruments.

[693] ABI and NSWBC[657] raised a question about the Panel's powers with respect to certain transitional instruments referred to in the 2012 ERO.[658] ABI and NSWBC submitted that the ERO preserves the operation of the relevant transitional instruments and applies AWR increases to the transitional rates applying in those instruments in operation.

[694] ABI and NSWBC[659] proposed that the rates in the relevant transitional instruments be increased consistent with any increase determined for modern award minimum wages in accordance with item 12A(5) of Sch 3, and items 10(1) and 20(1) of Sch 9 to the Transitional Act. ABI and NSWBC did not support terminating these instruments because of the operation of s.154 of the Act—terms that contain State-based differences.

[695] HIA[660] submitted that the status of the Queensland instruments was currently a 'live' issue having regard to the All Trades matter. HIA submitted that the termination of the savings provisions has substantially increased the wage costs for employers of Queensland apprentices who were engaged under the saved instruments. HIA requested that the Panel have regard to these matters.

[696] In its submissions in-reply, the ACTU[661] submitted that the termination of transitional instruments was not a role that could be performed by the Panel unless the President of the Commission made an appropriate direction to the Panel for it to perform the Commission's functions under item 3 of Sch 5 to the Transitional Act. However, it did not submit that this course should be taken, but rather that a separate process to terminate transitional instruments should be established in order to avoid any doubt about the proper exercise of power and to maximise input from stakeholders.

[697] For the reasons set out in the *Preliminary decision*,[662] we conclude that the Act does not authorise us to terminate transitional instruments in the course of conduct of the Review. We are not persuaded that a direction by the President pursuant to s.582 could empower a Panel to engage in such an exercise. Accordingly we do not propose to give further consideration to the termination of transitional instruments.

[698] We have decided that the increase we have awarded in modern award minimum wages should apply to those transitional instruments which remain in operation. That is the approach that has been taken in previous Reviews,[663] and no interested party submitted that any different course should be taken.

[699] A different approach applies in relation to copied State awards currently in operation. Given 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 Review decisions,[664] and the following increases will apply to copied State awards:

- an increase of 3.3 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 2016;
- an increase of 1.65 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 2016 and before 1 January 2017; 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 2017 and before 1 July 2017.

[700] There is no requirement to publish the variations.[665]

Modern award minimum wages for junior employees, employees to whom training arrangements apply, employees with disability and piece rates

[701] 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.[666]

Juniors

[702] The ACTU,[667] Ai Group,[668] ACOSS[669] and ABI and NSWBC[670] supported flowing on any AWR decision to junior rates of pay in modern awards.

[703] A number of submissions discussed the youth labour market,[671] commenting that youth unemployment has remained high since the GFC and that young people have been disproportionately affected since this period. This issue is addressed in Chapter 4.

[704] No party contended that the Panel should depart from the approach of adjusting junior rates of pay in line with the AWR decision.

[705] We have decided that the adjustment to minimum wages will flow through to the operation of provisions for calculating junior rates in modern awards.

Apprentices and Trainees

[706] The ACTU,[672] Ai Group,[673] ACOSS[674] and ABI and NSWBC[675] supported flowing on any Review decision to modern award rates of pay for employees to whom training arrangements apply.

[707] The decline in apprentice and trainee commencement and completion rates was raised in a number of submissions.[676] It was also discussed in Research Report 3/2017, *Factors affecting apprenticeships and traineeships*,[677] undertaken by Commission staff and Dr Tom Karmel. This report examined the supply and demand side factors affecting the commencement and completion of apprenticeships. The ACTU submitted that pursuant to the report's findings, the Panel should not depart from increasing wage rates for apprentices and trainees:

> '… we are of the view the observations and conclusions in that report provide no basis from [*sic*] departing from the increased wage rate percentages for apprentices that were progressed by us and our affiliates through the Transitional Review with the support of employer associations. The report tends to indicate that the most significant demand side factors influencing the rate of apprenticeships and trainees are those beyond the control of the Panel.'[678]

[708] We have addressed these submissions and the research in Chapter 6. For the reasons we have set out earlier, we are not satisfied that the decline in apprentice and trainee numbers is causally related to the award rates of pay established for apprentices and trainees.

[709] In many modern awards, minimum wages for trainees are set by the National Training Wage Schedule (NTWS). The ACTU submitted that a percentage increase to the rates in the NTWS in modern awards was important to prevent further compression of relativities within the NTWS and in relation to the NMW.[679] The ACTU also submitted that in the case of modern awards that contain separate training rates outside the NTWS, there should be a $45 increase to trainee rates equivalent to the C10 rate or less, and a 5.7 per cent increase to trainee rates in excess of the C10 rate.[680]

[710] ACOSS submitted a proposal for targeting lower training wages to disadvantaged adult job seekers on income support to improve their job prospects.[681] There was insufficient detail provided in relation to this proposal to enable it to be given consideration as part of this Review. Further, the proposal was not the subject of detailed consideration by any other party. Should ACOSS (or any other party) wish to pursue the issue in subsequent reviews, a more detailed proposal outlining the justification for the proposed training wage, including its intended scope and level, should be provided.

[711] We have decided that the adjustment to minimum wages 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

[712] Parties' responses to the Commission's review of existing arrangements for employees with disability, including the Panel's *Preliminary decision*, are discussed below at 'Special National Minimum Wages.'

[713] The ACTU,[682] Ai Group,[683] ACOSS[684] and ABI and NSWBC[685] supported the flow-on of any Review decision to modern award rates of pay for employees with disability.

[714] We have decided the adjustment granted in this Review will flow through to employees with disability through the operation of the Supported Wage System Schedule (SWSS) and that the minimum payment in the SWSS should be adjusted consistent with the approach adopted in previous Reviews.[686]

Piece rates

[715] The ACTU[687] and Ai Group[688] supported the flow-on of any Review decision to piece rates of pay.

[716] The Victorian Government referred to the *Victorian Inquiry into the Labour Hire and Insecure Work Final Report* and noted that misuse of piece rate award provisions for labour hire and casual workers may 'create … the possibility that employees may be paid below the minimum hourly rate, and accordingly undermines the minimum safety net intended to be established by minimum hourly rates.'[689] This submission raises some important issues, but we consider that they are beyond the purview of the Review. If the piece rates provided for in any modern awards are not structured to provide a level of remuneration which is at least that which would be provided by a minimum hourly rate which properly reflects the value of the work performed, that is a matter which may be dealt with in the 4 yearly review of awards or by specific application. If piece rates are being paid in an non-award compliant manner, that is a matter for the Fair Work Ombudsman and other entities with award enforcement powers.

[717] 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

[718] The Panel is required to review casual loadings in modern awards and to include a casual loading for award/agreement free employees in the NMW order. The casual loading for award/agreement free employees must be expressed as a percentage.[690]

[719] The 2015–16 Review decision maintained the casual loading rate for award/agreement free employees at 25 per cent.[691] The ACTU[692] and Ai Group[693] submitted the casual loading for award/agreement free employees should be maintained at 25 per cent and no other party contended otherwise.

[720] We have decided that the casual loading for award/agreement free employees should be maintained at 25 per cent.

[721] All Panel decisions since the 2009–10 Review have maintained the casual loading in modern awards at 25 per cent.[694] The ACTU and Ai Group supported maintaining the casual loading at 25 per cent in modern awards.[695]

[722] We have decided that the casual loading in modern awards will remain at 25 per cent.

[723] In the 2015–16 Review decision, the Panel decided to increase the casual loading in the *Business Equipment Award 2010* (Business Equipment Award), which had remained at 20 per cent as a result of an 'oversight' and was inconsistent with the standard casual loading in all other modern awards:[696]

> '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.'[697]

[724] The Panel decided to incrementally increase the casual loading in the Business Equipment Award until it reaches 25 per cent, with an increase to 21 per cent in the 2015–16 Review decision.[698]

[725] To this Review, Ai Group and ABI and NSWBC submitted that the casual loading in the Business Equipment Award should be increased to 22 per cent.[699] No other party contended otherwise.

[726] Consistent with the phasing approach outlined by the Panel in its 2015–16 Review decision,[700] we have decided to increase the casual loading in the Business Equipment Award to 22 per cent.

Special National Minimum Wages

[727] Pursuant to s.294 of the Act, in making a NMW order the Panel must set special NMWs for all award/agreement free employees in the following classes: junior employees, employees to whom training arrangements apply and employees with a disability.

[728] Submissions specifically dealing with special NMWs for award/agreement free employees are set out below. We have also taken into account submissions by the ACTU[701] and ACOSS[702] regarding juniors, apprentices and 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.

Award/agreement free junior employees

[729] Ai Group[703] and ABI and NSWBC[704] supported the Panel's previous approach in using the junior wage percentage scale in the *Miscellaneous Award 2010* (Miscellaneous

Award) to set the special NMW for award/agreement free junior employees. No party advanced a submission opposing this approach.

[730] We have again decided that the special NMW for award/agreement free junior employees will be set by reference to the junior wage percentage scale in the Miscellaneous Award.

Award/agreement free apprentices and trainees

[731] Ai Group[705] and ABI and NSWBC[706] submitted that consistent with the previous Review decision, the Panel should adopt the wage rates in the Miscellaneous Award for award/agreement free apprentices and trainees.

[732] We have decided to adopt the provisions of the Miscellaneous Award as the basis for the special NMWs 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

[733] The Panel's approach in the 2015–16 Review decision, as in previous years, was to set two special NMWs for award/agreement free employees with disability.[707] The first, for employees with disability whose productivity is not affected (special NMW1), 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 SWSS attached to the NMW order (special NMW2), with the minimum payment fixed in accordance with the disability support pension income-free threshold.

[734] In the *Preliminary decision*, we decided that 'in the absence of a legislative amendment, [the Panel] will continue to set special NMW1 as part of our annual review'.[708] In relation to the setting of special NMW2, we decided that we would consider this matter after conferences concerning the *Supported Employment Services Award 2010*[709] (SES Award) had further progressed:[710]

> 'We consider that further deliberation of these issues should take place after the conferences being conducted by the Commission concerning the SES Award have been further progressed, and ideally, finalised. The present SWS forms the basis of special NMW2 and any changes to that system would be influential. Further, the relationship between the special NMW2 and the income-free DSP threshold amount is complex and any significant change to the level of the special NMW2 could impact upon the overall level of income for the employees and the costs to the employers concerned. In addition, the implications for the decision in *Nojin* need to be taken into account. These and related issues will be considered during the SES Award conferences and this Panel will be informed by any outcomes.'[711]

[735] The ACTU submitted that special NMW1 should continue to be set at the same level as the NMW.[712] ACOSS,[713] Ai Group[714] and ABI and NSWBC[715] submitted that minimum wage rates for employees with disability should be adjusted in line with any general increase awarded.

[736] ACOSS reiterated their 2 concerns, submitted to previous Reviews,[716] namely that the system of disability wages was too complex and the minimum rate of pay for people whose productivity is affected by their disability was too low:

> 'The system is too complex. For example, there is no need to adopt a separate system of minimum wage regulation for people whose disabilities do not affect their productivity [as] is the case presently (even though for practical purposes this is the same as the NMW).
>
> The minimum rate of pay for people with disabilities whose productivity is affected by a disability is far too low. This is set at the income test free area for the Disability Support Pension.'[717]

[737] ACOSS's submission to this Review did not refer to the *Preliminary decision*, the Commission's review of existing arrangements for employees with disability, or ACOSS's submission to the preliminary hearing which acknowledged that ACOSS's concern with special NMW1 'may be a legislative problem rather than a matter the Commission can resolve of its own accord'.[718]

[738] The ACTU in its submission to this Review referred to the other pending matters before the Commission relevant to disability wage setting, including in relation to Supported Wage System (SWS) wages,[719] and submitted that these proceedings should be decided before the Panel departed from its previous approach regarding wage setting for employees with disability.[720]

[739] Consistent with previous years' approaches to these wages, we have decided to set 2 special NMWs 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 SWSS. The minimum payment will be fixed in accordance with the disability support pension income-free threshold.

[740] We note that conferences concerning the SES award referred to in our Preliminary decision[721] are continuing. Accordingly the special NMW2 will need to be further considered in a subsequent Review, after the issues in the SES award have been finalised.

10. Conclusion

[741] This Chapter sets out the outcome of the Review and mentions some matters relevant to the 2017–18 Review.

[742] The national minimum wage order will contain:

(a) a national minimum wage of $694.90 per week or $18.29 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 $694.90 per week or $18.29 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.

[743] The outcome of this Review in relation to modern award minimum wages is that from the first full pay period on or after 1 July 2017 minimum weekly wages are increased by 3.3 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 increased by 3.3 per cent.

[744] 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.

[745] In relation to transitional instruments, from the first full pay period on or after 1 July 2017, wages in those instruments will be varied by 3.3 per cent per week, with commensurate increases in hourly rates based on a 38-hour week. Copied State awards will be varied on the basis discussed in Chapter 9 of this decision.

[746] Consistent with the phasing approach outlined by the Panel in its 2015–16 Review decision,[722] the casual loading in the Business Equipment Award will be increased to 22 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 Reviews, until it reaches 25 per cent, in accordance with the phasing schedule proposed by Ai Group.

[747] Matters raised at the Preliminary hearing in October 2016 were dealt with in the *2016–17 Preliminary decision* issued in April 2017.[723] Parties were provided an opportunity to comment on the decision in submissions in-reply and this was addressed in Chapters 1 and 9.

[748] We also intend to give consideration to the research program for the 2017–18 Review as soon as practicable. We note that the remaining project from the medium-term research program is the characteristics of the underemployed and unemployed. 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.

[749] As the medium-term research program nears completion, we invite interested parties to lodge research proposals by 28 July 2017. However, we note that the Commission's capacity to undertake additional commissioned or other research remains limited and parties are encouraged to take these constraints into account in their proposals.

[750] The timetable for the 2017–18 Review will be announced in the third quarter of 2017.

[751] 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

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Appendix 1—Research for Annual Wage Reviews

Date	Title	Research report no.
February 2017	Overview of research to inform the Annual Wage Review 2016–17	
February 2017	Explaining recent trends in collective bargaining	4/2017
February 2017	Factors affecting apprentices and trainees	3/2017
February 2017	The youth labour market	2/2017
February 2017	Award-reliant workers in the household income distribution	1/2017
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

Date	Title	Research report no.
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
June 2010	Minimum wage transitional instruments under the *Fair Work Act 2009* and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*	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 less than 2.5 per cent, applicable to all		
South Australian Government	No quantum specified		Request special NMW for employees affected by the *Penalty Rates decision*
Victorian Government	No less than 2.5 per cent, applicable to all		
Western Australian Government	No quantum specified		
Federal opposition	No quantum specified		
Australian Council of Trade Unions	$45.00 pw	C10 and below: $45.00 pw Above C10: 5.7 per cent	
Australian Industry Group	1.5 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	$37.30 pw	$30.70 pw	
Australian Business Industrial and the New South Wales Business Chamber	No more than 1.8 per cent, applicable to all		
Australian Federation of Employers and Industries	1.2 per cent, applicable to all		
Australian Hotels Association/Tourism Accommodation Australia	No quantum specified		
Australian Retailers Association	1.2 per cent	No quantum specified	Requests increases to be considered on an award-by-award basis.
Australian Road Transport Industrial Organisation	No quantum specified		
Business SA	No quantum specified		
Chamber of Commerce and Industry Queensland	$8.10 pw, applicable to all		Exemption for industries subject to natural disasters
Chamber of Commerce and Industry of Western Australia	$8.10 pw	No quantum specified	
Housing Industry Association	No quantum specified		
Master Grocers of Australia	No more than 1.1 per cent, applicable to all		
Motor Trade Association of South Australia	No more than 1.2 per cent, applicable to all		

Submission	Proposal		
	National minimum wage	**Modern award minimum wages**	**Exemption/deferral sought**
National Farmers' Federation	No more than 1.0 per cent, applicable to all		
National Retail Association/Hardware Australia	1.5 per cent	No quantum specified	
Restaurant & Catering Australia	No increase		
South Australian Wine Industry Association Incorporated	A flat dollar increase no more than the increase in the CPI		
Victorian Automobile Chamber of Commerce	1.2 per cent	No quantum specified	
United Voice	13.5 per cent, applicable to all		
The Essential Points	$25.96 pw	No quantum specified	

Note: pw = per week.

Appendix 3—Index of Material

Organisation	Document	Date
Australian Business Industrial and the NSW Business Chamber Ltd	Submission to preliminary hearing	10 October 2016
	Submission in reply to preliminary hearing	17 October 2016
	Initial submission	29 March 2017
	Submission in reply	13 April 2017
	Post-budget submission	12 May 2017
	Response to questions for consultation	12 May 2017
Australian Catholic Council for Employment Relations	Submission to preliminary hearing	10 October 2016
	Submission in reply to preliminary hearing	17 October 2016
	Initial submission	29 March 2017
	Submission in reply	13 April 2017
	Post-budget submission	12 May 2017
	Response to questions for consultation	12 May 2017
Australian Chamber of Commerce and Industry	Submission to preliminary hearing	10 October 2016
	Initial submission	29 March 2017
	Submission in reply	21 April 2017

Organisation	Document	Date
	Post-budget submission	12 May 2017
	Response to questions for consultation	12 May 2017
	Response to question on notice from the Expert Panel	19 May 2017
Australian Council of Social Service	Submission to preliminary hearing	10 October 2016
	Initial submission	29 March 2017
Australian Council of Trade Unions	Submission to preliminary hearing	10 October 2016
	Submission in reply to preliminary hearing	17 October 2016
	Response to questions on notice regarding preliminary hearing	28 October 2016
	Initial submission	29 March 2017
	Submission in reply	20 April 2017
	Post-budget submission	12 May 2017
	Response to questions for consultation	15 May 2017
Australian Federation of Employers and Industries	Submission to preliminary hearing	10 October 2016
	Initial submission	29 March 2017

Organisation	Document	Date
Australian Government	Submission to preliminary hearing	10 October 2016
	Response to questions on notice regarding preliminary hearing	28 October 2016
	Initial submission	29 March 2017
	Post-budget submission	12 May 2017
	Response to questions for consultation	12 May 2017
	Response to supplementary question	22 May 2017
	Response to question on notice from the Expert Panel	22 May 2017
Australian Hotels Association and Tourism Accommodation Australia	Initial submission	29 March 2017
Australian Industry Group	Submission to preliminary hearing	10 October 2016
	Submission in reply to preliminary hearing	17 October 2016
	Reply submission to questions on notice regarding preliminary hearing	2 November 2016
	Initial submission	29 March 2017
	Submission in reply	13 April 2017

Organisation	Document	Date
	Post-budget submission	12 May 2017
	Response to questions for consultation	12 May 2017
Australian Retailers Association	Initial submission	29 March 2017
Australian Road Transport Industrial Organisation	Initial submission	20 March 2017
Business SA	Initial submission	30 March 2017
Chamber of Commerce and Industry of Western Australia	Initial submission	29 March 2017
Chamber of Commerce and Industry Queensland	Initial submission	29 March 2017
Community and Public Sector Union	Submission to preliminary hearing	5 October 2016
Construction, Forestry, Mining and Energy Union (Construction & General division)	Submission to preliminary hearing	10 October 2016
Construction, Forestry, Mining and Energy Union (Forestry, Furnishing, Building products and Manufacturing division)	Submission to preliminary hearing	10 October 2016
Federal opposition	Initial submission	29 March 2017
Government of South Australia	Initial submission	28 March 2017
Government of Western Australia	Initial submission	1 May 2017
Housing Industry Association	Submission to preliminary hearing Initial submission	10 October 2017 29 March 2017
Master Grocers Australia	Initial submission	28 March 2017
Motor Trade Association of South Australia	Initial submission	7 April 2017

Organisation	Document	Date
MTA Organisations	Submission to preliminary hearing	11 October 2016
National Disability Services	Submission to preliminary hearing	12 October 2016
National Farmers' Federation	Initial submission	29 March 2017
National Retail Association and Hardware Australia	Submission in reply	13 April 2017
New South Wales Government	Initial submission	12 April 2017
	Response to questions for consultation	11 May 2017
Queensland Government	Initial submission	13 April 2017
Restaurant and Catering Australia	Initial submission	29 March 2017
	Response to questions for consultation	12 May 2017
South Australian Wine Industry Association	Initial submission	27 March 2017
Textile Clothing & Footwear Union of Australia	Submission to preliminary hearing	11 October 2016
The Essential Points	Submission in reply	13 April 2017
	Response to questions for consultation	11 May 2017
United Voice	Submission to preliminary hearing	17 October 2016
	Submission in reply to preliminary hearing	10 October 2016
	Initial submission	29 March 2017
	Submission in reply	13 April 2017

Organisation	Document	Date
Victorian Automobile Chamber of Commence	Initial submission	29 March 2017
Victorian Government	Initial submission	29 March 2017

Appendix 4—List of Appearances

Appearances:

A Morehead, A Durbin and *N Stoney* for the Australian Government

T Clarke and *M McKenzie* for the Australian Council of Trade Unions

T Lyons for United Voice

S Smith and J *Toth* for the Australian Industry Group

Hearing details:

2017.

Melbourne, and Sydney (by video):

17 May

Appearances:

S Barklamb, A Carr and *A Matheson* for the Australian Chamber of Commerce and Industry

B Lawrence and *Fr. F Brennan* for the Australian Catholic Council for Employment

Hearing details:

2017.

Sydney:

May 18.

[1] ABS, *Employee Earnings and Hours, Australia, May 2014*, Catalogue No. 6306.0.

[2] Ibid.

[3] Australian Government submission, 29 March 2017 at para. 37; ACTU submission, 29 March 2017 at para. 35.

[4] Australian Government submission, 29 March 2017 at Chart 2.1. This estimate excludes workers paid junior, apprentice and disability rates of pay. The national minimum wage in May 2016 was $17.29. Employees paid at or below $17.50 per hour in May 2016 are considered to be paid the national minimum wage rate (this uses an upper error band of 21 cents).

[5] Australian Government submission, 29 March 2017 at para. 39.

[6] [2015] FWCFB 3500 at para. 208.

[7] The relevant statutory matters vary depending on the function being performed; see Chapter 2.

[8] [2016] FWCFB 3500 at para. 2.

[9] [2015] FWCFB 3500 at para. 7.

[10] *Gala v Preston* (1991) 172 CLR 243 at para. 12.

[11] [2014] FWCFB 3500 at para. 82.

[12] For example, in the 2012–13 Review decision, the Panel accepted ACCI's 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: [2013] FWCFB 4000 at paras 100–101.

[13] [2016] FWCFB 3500 at para. 30.

[14] [2013] FWCFB 4000 at para. 359.

[15] [2017] FWCFB 1001.

[16] MA000009.

[17] MA000003.

[18] MA000004.

[19] MA000012.

[20] [2017] FWCFB 1001 at para. 55.

[21] Ibid at para. 56.

[22] *Restaurant Industry Award 2010*.

[23] [2017] FWCFB 1001 at para. 61.

[24] [2017] FWCFB 2955.

[25] Victorian Government submission, 29 March 2017 at para. 7.

[26] Federal opposition submission, 29 March 2017 at para. 11.

[27] Ibid at para. 30.

[28] Ai Group submission, 29 March 2017 at p. 35.

[29] Ibid at p. 38.

[30] Transcript of Proceedings, 17 May 2017 at PN 767 and PN837–839.

[31] South Australian Government submission, 28 March 2017 at para. 37.

[32] Ai Group submission in-reply, 13 April 2017 at pp. 28–29.

[33] Fair Work Commission, *Annual Wage Review 2016–17: Questions for consultations*, 3 May 2017, Question 2.1.

[34] [2017] FWCFB 1931.

[35] United Voice submission to the preliminary hearing, 10 October 2016 at para. 123.

[36] [2017] FWCFB 1931 at paras 64 and 66.

[37] RBA, *Statement on Monetary Policy*, May 2017 at p. 29.

[38] ACTU submission, 29 March 2017 at para. 50, Table 2.

[39] RBA, *Statement on Monetary Policy*, May 2017, p. 26.

[40] Ibid, p. 5.

[41] [2016] FWCFB 3500 at para. 350; [2015] FWCFB 3500 at para. 309; [2014] FWCFB 3500 at para. 302; [2013] FWCFB 4000 at para. 361.

[42] [2016] FWCFB 3500 at para. 371.

[43] Ibid at para. 449; [2015] FWCFB 3500 at para. 315; [2014] FWCFB 3500 at para. 310.

[44] Australian Government submission, 29 March 2017 at p. 6, Chart 2.1.

[45] ACTU submission, 29 March 2017 at para. 67.

[46] [2017] FWCFB 1931 at para. 69.

[47] Australian Government submission, 29 March 2017 at para 281.

[48] [2015] FWCFB 3500 at para. 453.

[49] [2013] FWCFB 5411.

[50] Karmel T (2017), *Factors affecting apprenticeships and traineeships*, Fair Work Commission, Research Report 3/2017, Part II, February, p. 71.

[51] [2017] FWCFB 1001 at para. 216.

[52] The Australian Government observed that the increases in the reported trends in award reliance and collective agreement coverage between 2014 and 2016 were partly affected by a review of the application of the Method of Setting Pay conceptual framework undertaken by the ABS, resulting in the shift of a significant portion of employees in the NSW public sector to the Award only category between EEH 2014 and 2016 and other recoding from Collective Agreements to Awards. Australian Government submission, 29 March 2017 at para 37.

[53] [2014] FWCFB 3500 at para. 472.

[54] [2015] FWCFB 3500 at para. 472; [2010] FWAFB 4000 at para. 302; [2011] FWAFB 3400 at para. 281 and [2012] FWAFB 5000 at para. 222.

[55] Compare [2016] FWCFB 3500 at para. 245 with the discussion in Chapter 4 of this decision.

[56] [2016] FWCFB 3500 at para. 429; [2015] FWCFB 3500 at para. 383; [2014] FWCFB 3500 at paras 323; 370; [2013] FWCFB 4000 at paras 33; 367.

[57] *Equal Remuneration Decision* [2015] FWCFB 8200 at para 272.

[58] Fair Work Act, s.285(2).

[59] See s.578(a).

[60] Fair Work Act, s.3.

[61] Fair Work Act, s.134(1).

[62] Fair Work Act, s.284(1).

[63] Fair Work Act, s.294(3) and (4). While a special NMW may apply to a 'specified class of … employees', that has not been the practice to date.

[64] Fair Work Act, ss.293–299.

[65] Fair Work Act, s.294(1)(a).

[66] Fair Work Act, s.294(1)(b).

[67] Fair Work Act, s.206(3).

[68] 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 NMW 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).

[69] See s.134(2) of the Act. The review and making of a NMW 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.

[70] Fair Work Act, s.284(3).

[71] [2015] FWCFB 3500 at paras 137–139.

[72] Fair Work Act, s.135(2).

[73] Fair Work Act, s.287(1).

[74] Fair Work Act, ss.286(2); 287(4).

[75] Fair Work Act, s.284(2)(a).

[76] Fair Work Act, s.134(2).

[77] Fair Work Act, s.134(2)(b).

[78] *Minister for Aboriginal Affairs and Another v Peko-Wallsend Limited and Others* (1986) 162 CLR 24.

[79] *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 v Giudice* [1999] FCA 1836; *National Retail Association v Fair Work Commission and Another* [2014] FCAFC 118 at para. 56.

[80] See [2015] FWCFB 3500 at paras 88–91.

[81] 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: [2015] FWCFB 3500 at para. 88.

[82] Fair Work Act, s.284(1)(b) and s.134(1)(c).

[83] Fair Work Act, s.284(1)(c) and s.134(1)(a).

[84] Fair Work Act, s.284(1)(d) and s.134(1)(e).

[85] Fair Work Act, s.284(1)(a) and s.134(1)(d), (f) and (h).

[86] Fair Work Act, s.134(1)(b).

[87] [2015] FWCFB 3500 at paras 134–135.

[88] 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)).

[89] 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)).

[90] For example, the need to encourage collective bargaining (s.134(1)(b); see also s.3(f)).

[91] Fair Work Act, s.134(1).

[92] [2017] FWCFB 1001 at paras 128–132.

[93] Ibid at para. 117.

[94] *Explanatory Memorandum to the Fair Work Bill 2008* at para. 527.

[95] [2017] FWCFB 1001 at para. 128.

[96] Fair Work Act, s.134(1).

[97] Fair Work Act, s.284(1).

[98] [2017] FWCFB 1001 at paras 117–119.

[99] 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.

[100] See [2013] FWCFB 4000 at para. 10.

[101] [2017] FWCFB 1931 at paras 64–66.

[102] ABI and NSWBC submission, 29 March 2017 at p. 4.

[103] ACCER submission, 29 March 2017 at paras 196; 426.

[104] Fair Work Act, s.43(2)(a).

[105] *Estate of McComb* [1999] 3 VR 485.

[106] [2017] FWCFB 1931 at para. 77.

[107] [2014] FWCFB 9227.

[108] Ibid at paras 25–27.

[109] *Mills v Meeking* (1990) 169 CLR 214 at 235 per Dawson J; *R v L* (1994) 49 FCR 534 at 538.

[110] *Kennedy v Australian Fisheries Management Authority* [2009] 182 FCR 411 at paras 426–429.

[111] [2007] 232 CLR 138 at para. 5.

[112] [2002] 54 NSWLR 668 at para. 12 per Spigelman CJ.

[113] [2015] VSCA 342.

[114] [2017] FWCFB 1001 at para. 120.

[115] ACTU submission, 29 March 2017 at para. 29.

[116] Ibid at para. 29.

[117] Fair Work Act, s.134(1)(a).

[118] ACCER submission, 29 March 2017 at paras 58–83.

[119] Ibid at paras 70–71.

[120] Ibid at para. 24.

[121] Ibid at para. 24.

[122] Ibid at para. 174.

[123] [2013] FWCFB 4000 at para. 361.

[124] [2016] FWCFB 3500 at para. 429.

[125] ACCER submission 29 March 2017 at para. 173.

[126] [2010] FWAFB 4000 at paras 244–245; [2011] FWAFB 3400 at para 228; [2012] FWAFB 5000 at paras 4; 14–15; 41; 149; [2013] FWCFB 4000 at para 56; [2014] FWCFB 3500 at para. 8; [2015] FWCFB 3500 at para. 10; [2016] FWCFB at paras 151–152.

[127] [2013] FWCFB 4000 at para. 424.

[128] 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.

[129] [2017] FWCFB 1931 at paras 64; 66.

[130] ACCER submission 29 March 2017 at para. 2(c).

[131] Ibid at para. 359.

[132] Australian Government submission 29 March 2017 at p. 6, Chart 2.1.

[133] MA000104 at clause 4.2.

[134] See Australian Government submission 29 March 2017 at para. 39. Note: This does not include rates for employees with a disability, juniors, apprentices (including adult apprentices) or trainees being paid in accordance with the National Training Wage Schedule.

[135] ACCER submission, 29 March 2017 at paras 487–494.

[136] [2016] FWCFB 5047.

[137] ARA submission, 29 March 2017 at p. 10.

[138] [2013] FWCFB 4000 at paras 77, 79.

[139] [2016] FWCFB 3500 at paras 134–136.

[140] Ibid at para. 136.

[141] 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; [2016] FWCFB 3500 at paras 139–140.

[142] [2014] FWCFB 3500 at paras 515–516.

[143] Western Australian Government submission, 1 May 2017 at paras 16; 36.

[144] Business SA submission, 30 March 2016 at pp. 2–4.

[145] CCIQ submission, 29 March 2017 at paras 25–28; 31.

[146] Ibid at paras 29–30; 31.

[147] Ibid at para. 33.

[148] CCIQ, Submission to the 2015–16 Review, 30 March 2016 at paras 23–26; CCIQ, Submission to the 2014–15 Review, 27 March 2015 at paras 20–25; CCIQ, Submission to the 2013–14 Review, 28 March 2014 at paras 61–64; CCIQ, Submission to the 2012–13 Review, 28 March 2013 at paras 52–53; CCIQ, Submission to the 2011–12 Review, 16 March 2012 at para. 4.23.

[149] [2016] FWCFB 3500 at para. 145.

[150] Ibid at para. 143.

[151] Fair Work Act at ss.287(2)(b); 287(3)(b).

[152] Victorian Government submission, 29 March 2017 at p. 4; South Australian Government submission, 28 March 2017 at paras 37–38; 64; Federal opposition submission, 29 March 2017 at para. 11.

[153] United Voice submission in reply, 13 April 2017 at para. 1.

[154] CCIQ submission, 29 March 2017 at paras 31–32.

[155] ARA submission, 29 March 2017 at p. 10.

[156] South Australian Government submission, 28 March 2017 at para. 37.

[157] The Essential Points response to questions for consultations, 11 May 2017.

[158] ACTU submission, 29 March 2017 at para. 7.

[159] Ibid at para. 11.

[160] ACCER submission, 29 March 2017 at paras 1–2b.

[161] Ibid at para. 2a.

[162] Ibid at para. 2a.

[163] Victorian Government submission, 29 March 2017 at p. 4; Queensland Government submission, 13 April 2017 at p. 13.

[164] Victorian Government submission, 29 March 2017 at p. 4.

[165] United Voice submission in reply, 13 April 2017 at para. 7.

[166] Ibid at para. 9.

[167] Transcript of Proceedings, 17 May 2017 at PN 865.

[168] ABI and NSWBC submission, 29 March 2017 at p. 2.

[169] Ai Group submission, 29 March 2017 at pp. 4; 33.

[170] NRA and HA submission in reply, 13 April 2017 at paras 2.2; 3.3 and 4.3.

[171] ACCI submission, 29 March 2017 at para. 15.

[172] Ibid at paras 15; 21(c); 32; and 213.

[173] AFEI submission, 29 March 2017 at para. 3; ARA submission, 29 March 2017 at pp. 5; 8; 16; VACC submission, 29 March 2017 at p. 2.

[174] MTA-SA submission, 7 April 2017 at p. 7.

[175] AFEI submission, 29 March 2017 at para. 3; MTA-SA submission, 7 April 2017 at p. 7.

[176] MGA submission, 28 March 2017 at pp. 3–4.

[177] Ibid at p. 12.

[178] NFF submission, 29 March 2017 at p. 9.

[179] CCIQ submission, 29 March 2017 at para. 34.

[180] CCIWA submission, 29 March 2017 at para. 2.1.

[181] Ibid at para. 4.2.

[182] SAWIA submission, 27 March 2017 at p. 10.

[183] Australian Government submission, 29 March 2017 at para. 11.

[184] New South Wales Government submission, 12 April 2017 at para. 11.

[185] Ibid at para. 10.

[186] Federal opposition submission, 29 March 2017 at para. 43.

[187] Ibid at para. 11.

[188] South Australian Government submission, 28 March 2017 at para. 63.

[189] Western Australian Government submission, 1 May 2017 at para. 38.

[190] ACOSS submission, 29 March 2017 at p. 5.

[191] Ibid at p. 12.

[192] AHA & TAA submission, 29 March 2017 at p. 1; Business SA submission, 30 March 2017 at p. 2.

[193] HIA submission, 29 March 2017 at p. 9.

[194] Ibid at p. 9.

[195] ARTIO submission, 20 March 2017 at p. 4.

[196] Ibid at p. 3.

[197] Ibid at p. 4.

[198] R&CA submission, 29 March 2017 at para. 51.

[199] R Ibid at para. 56.

[200] [2016] FWCFB 3500 at paras 189–196.

[201] RBA, *Statement on Monetary Policy*, May 2017, pp. 29–30.

[202] Ibid, p. 55.

[203] ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2016*, Catalogue No. 5206.0.

[204] For example, Victorian Government submission, 29 March 2017 at Attachment 1, para. 1.6.

[205] [2013] FWCFB 4000 at para. 150.

[206] [2016] FWCFB 3500 at para. 210.

[207] RBA, *Statement on Monetary Policy*, February 2017, p. 28.

[208] RBA, *Statement on Monetary Policy*, May 2017, p. 30.

[209] ACCI submission, 29 March 2017 at para. 66.

[210] Ibid at para. 214.

[211] CCIWA submission, 29 March 2017 at para. 2.3.

[212] Ai Group response to questions for consultations, 12 May 2017, p. 12; PC, *Productivity Update*, http://www.pc.gov.au/research/ongoing/productivity-update

[213] ABS, *Australian National Accounts: National Income, Expenditure and Product, Dec 2016*, Catalogue No. 5206.0.

[214] Victorian Government submission, 29 March 2017 at para. 18.

[215] [2016] FWCFB 3500 at para. 227.

[216] ABS, *Australian System of National Accounts, 2007–08*, Catalogue No. 5204.0, p. 11.

[217] ABS, *Australian National Accounts: National Income, Expenditure and Product, Jun 2006*, Catalogue No. 5206.0, Feature article: Measuring changes in labour costs.

[218] ACCI submission, 29 March 2017 at para. 46.

[219] Productivity Commission (2016), *Increasing Australia's future prosperity*, Productivity Commission Discussion Paper, p. 7.

[220] Ai Group submission, 29 March 2017 at p. 19.

[221] Ai Group submission in reply, 12 April 2017 at p. 8.

[222] Productivity Commission (2016), *Increasing Australia's future prosperity*, Productivity Commission Discussion Paper, p. 2.

[223] ACCI submission, 29 March 2017 at para. 103.

[224] Transcript of Proceedings, 18 May 2017 at para. 973.

[225] Australian Government submission, 29 March 2017 at para. 210; Davis K, McCarthy M, and Bridges J (2016), *The labour market during and after the terms of trade boom*, RBA Bulletin, March.

[226] RBA, *Statement on Monetary Policy*, February 2017 at p. 1.

[227] RBA, *Statement on Monetary Policy*, May 2017 at p. 56.

[228] Ibid at p. 26.

[229] '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.' [2016] FWCFB 3500 at paras 217–218.

[230] For example, ACTU submission, 29 March 2017 at paras 214–215; ACCI submission, 29 March 2017 at paras 108–109; 113–114; AFEI submission, 29 March 2017 at paras 25–29; ABI and NSWBC submission, 29 March 2017 at p. 11.

[231] Statistical report, Chart 3.7.

[232] Calculated using business bankruptcies data from Australian Financial Security Authority, *Provisional business and non-business personal insolvency time series*, Bankrupts entering a business related bankruptcy (under Parts IV and XI of the *Bankruptcy Act 1966*), September quarter 2016, <https://www.afsa.gov.au/statistics/time-series-0> and business exits data from ABS, *Counts of Australian Businesses, Including Entries and Exits, June 2012 to June 2016*, Catalogue No. 8165.0.

[233] ABS, *Business Exits, Australia, 1994–95 and 1995–96*, Catalogue No. 8144.0.

[234] Data from ABS *Australian Industry, 2014–15* does not allow non-employing businesses to be separated from small businesses.

[235] ACCI submission, 29 March 2017 at para. 28.

[236] Australian Government submission, 29 March 2017 at para. 194.

[237] [2016] FWCFB 3500 at para. 298.

[238] Ai Group submission, 29 March 2017 at p. 9.

[239] Fair Work Act, s.3(g).

[240] Australian Government submission, 29 March 2017 at para. 162.

[241] Ibid at paras 165–167. Note that the figures for employment and value added are for share in the non-financial private sector.

[242] Ibid at para. 166.

[243] Ibid at para. 169.

[244] Ibid at paras 172–173.

[245] Ibid at para. 186.

[246] Ibid at para. 187.

[247] Ibid at para. 188.

[248] Ibid at para. 189.

[249] Ibid at para. 190.

[250] Ibid at para. 192.

[251] Ibid at para. 193.

[252] ACTU submission, 29 March 2017 at paras 63–64.

[253] Australian Government submission, 29 March 2017 at para. 170.

[254] Ibid at para. 168.

[255] The Hon. Scott Morrison MP Treasurer of the Commonwealth of Australia, *Budget speech*, Transcript of the Treasurer's Budget night speech, <http://budget.gov.au/2017-18/content/speech/html/speech.htm>.

[256] Australian Government submission, 29 March 2017 at para. 97.

[257] ACCI submission, 29 March 2017 at para. 196.

[258] ABI and NSWBC submission, 29 March 2017 at p. 9.

[259] ACTU submission, 29 March 2017 at para. 242.

[260] Statistical report, Table 4.1.

[261] Australian Government response to questions for consultations, 12 May 2017 at p. 3.

[262] Statistical report, Table 5.1.

[263] [2016] FWCFB 3500 at para. 101.

[264] ABI and NSWBC submission, 29 March 2017 at p. 8; ARA submission, 29 March 2017 at p. 7.

[265] Bishop J & Cassidy N (2017), *Insights into Low Wage Growth in Australia*, RBA Bulletin, March, p. 5.

[266] ACCI submission, 29 March 2017 at para. 79.

[267] Ibid at para. 81.

[268] Statistical report, Table 5.2.

[269] Australian Government submission, 29 March 2017 at para. 93; ACCI submission, 29 March 2017 at para. 85.

[270] Bishop J & Cassidy N (2017), *Insights into Low Wage Growth in Australia*, RBA Bulletin, March.

[271] Jacobs D & Rush A (2015), *Why is wage growth so low?*, RBA Bulletin, June, pp. 9–18.

[272] Ibid at p. 16.

[273] AFEI submission, 29 March 2017 at para. 39.

[274] Bishop & Cassidy (2017), p. 17.

[275] AFEI submission, 29 March 2017 at para. 45.

[276] Bishop & Cassidy (2017), p. 19.

[277] Ibid, p. 18.

[278] Ibid, p. 16.

[279] Ibid.

[280] Statistical report, Table 6.3.

[281] RBA, *Statement on Monetary Policy*, February 2017, p. 32.

[282] RBA, *Statement on Monetary Policy*, May 2017, p. 36.

[283] Ibid.

[284] Australian Government submission, 29 March 2017 at para. 118.

[285] RBA, *Statement on Monetary Policy*, February 2017, p. 38.

[286] ACTU submission, 29 March 2017 at para. 264.

[287] Bishop & Cassidy (2017), p. 16.

[288] Australian Government submission, 29 March 2017 at paras 127–128.

[289] ACTU submission, 29 March 2017 at para. 258.

[290] RBA, *Statement on Monetary Policy*, May 2017, p. 36.

[291] Rozenbes D & Farmakis-Gamboni S (2017), *The youth labour market*, Fair Work Commission, Research Report 2/2017, Part I, February.

[292] Ryan C and Ribar DC (2017), *The youth labour market*, research commissioned by the Fair Work Commission, Research Report 2/2017, Part II, Melbourne Institute of Applied Economic and Social Research, February.

[293] [2016] FWCFB 3500 at para. 286.

[294] [2013] FWCFB 4000 at para. 283.

[295] Australian Government submission, 29 March 2017 at para. 37.

[296] [2016] FWCFB 3500 at para. 288.

[297] MTA-SA submission, 7 April 2017 at p. 6; Business SA submission, 30 March 2017 at p. 3; R&CA submission, 29 March 2017 at paras 4–11; NFF submission, 29 March 2017 at p. 7; VACC submission, 29 March 2017 at p. 9; ARA submission, 29 March 2017 at p. 12; HIA submission, 29 March 2017 at p. 6; MGA submission, 28 March 2017 at pp. 9–11; SAWIA submission, 27 March 2017 at pp. 4–6.

[298] ACTU submission, 29 March 2017 at para. 406; Ai Group submission, 29 March 2017 at p. 6; ACCI submission, 29 March 2017 at paras 229–230; Business SA submission, 30 March 2017 at p. 3; MTA-SA submission, 7 April 2017 at p. 5; SAWIA submission, 29 March 2017 at pp. 7–8; United Voice submission, 29 March 2017 at pp. 14; 20; 26.

[299] ARA submission, 29 March 2017 at pp. 12–13; 16.

[300] See Table 4.7.

[301] [2016] FWCFB 3500 at para. 288.

[302] [2017] FWCFB 1001 at paras 1422–1423.

[303] IMF (2017), *World Economic Outlook*, April, p. 17.

[304] Australian Government, *Budget Paper No. 1: Budget Strategy and Outlook 2017–18*, Canberra, p. 2-3.

[305] Ibid, p. 2-6.

[306] Ibid, p. 2-5.

[307] Ibid, p. 2-11.

[308] Ibid, p. 2-5.

[309] Ibid, p. 2-22.

[310] Ibid, p. 2-16.

[311] Ibid, p. 2-17.

[312] RBA, *Statement on Monetary Policy*, May 2017, p. 53.

[313] Ibid, p. 54.

[314] Ibid, p. 55.

[315] Ibid, p. 56.

[316] Ibid, p. 33

[317] Ibid, p. 56.

[318] Ibid.

[319] Ibid, p. 57.

[320] Ibid, p. 58.

[321] Ibid, p. 59.

[322] Ibid, p. 29.

[323] Ibid, p. 56.

[324] [2016] FWCFB 3500 at para. 350; [2015] FWCFB 3500 at para. 309; [2014] FWCFB 3500 at para. 302; [2013] FWCFB 4000 at para. 361.

[325] [2016] FWCFB 3500 at para. 371.

[326] Ibid at para. 55.

[327] ACCER submission, 29 March 2017 at para. 57.

[328] Ibid at para. 55.

[329] Ibid at para. 768.

[330] [2016] FWCFB 3500 at para. 354.

[331] Ibid at para. 354.

[332] ACCER submission, 29 March 2017 at para. 494.

[333] [2016] FWCFB 3500 at paras 355–356.

[334] Ibid at paras 359–360

[335] Ibid at paras 369–370.

[336] Statistical report, Table 8.2.

[337] Australian Government submission, 29 March 2017 at para. 37; ABS, *Employee Earnings and Hours, Australia, May 2016*, Catalogue No. 6306.0.

[338] ACTU submission, 29 March 2017 at para. 42.

[339] Australian Government submission, 29 March 2017 at para. 37.

[340] Ibid at para. 36.

[341] Ibid at para. 39.

[342] Ibid at p. 6, Chart 2.1.

[343] Ibid at paras 45, 48; Appendix A.

[344] ACTU submission, 29 March 2017 at para. 36.

[345] Ibid at para. 47.

[346] Ibid at para. 48.

[347] Ibid at para. 67. The earnings of casual employees were deflated by 20 per cent to account for casual loading. The figures include juniors, apprentices, trainees and people with disability.

[348] Ibid at para. 69.

[349] Ibid at para. 70. See also para. 72, Figure 5.

[350] Ibid at para. 85.

[351] Ibid at para. 79.

[352] Ibid at para. 62.

[353] Ibid at para. 71.

[354] ACCI submission, 29 March 2017 at para. 185.

[355] Australian Government submission, 29 March 2017 at para. 56.

[356] Ibid at p. 10, Chart 2.2.

[357] Ibid at para. 52.

[358] Ibid at para. 53.

[359] Ibid at para. 54.

[360] Ibid at para. 57.

[361] Ibid at para. 55.

[362] Ibid at para. 56.

[363] Ibid at paras 58–59.

[364] [2016] FWCFB 3500 at para. 455.

[365] Ibid at para. 410.

[366] Jimenez C & Rozenbes D (2017) *Award-reliant workers in the household income distribution*, Research Report 1/2017, Fair Work Commission, February.

[367] ACTU submission in reply, 20 April 2017 at para. 72.

[368] Victorian Government submission, 29 March 2017 at para. 30.

[369] ACCER submission, 29 March 2017 at para. 992.

[370] Ibid at para. 997.

[371] Ibid at para. 50.

[372] ACTU submission, 29 March 2017 at para. 362; [2016] FWCFB 3500 at para. 385.

[373] Ibid at para. 364.

[374] ACCI submission, 29 March 2017 at para. 161.

[375] Ibid at para. 162.

[376] Australian Government submission, 29 March 2017 at para. 230.

[377] ACTU submission, 29 March 2017 at para. 368.

[378] Victorian Government submission, 29 March 2017 at para. 76; Mavromaras K, Sloane P and Zhu R (2016), 'An International Comparison of Minimum Wages and Labour Market Outcomes', Fair Work Commission Research report 1/2016. Countries analysed in this research report include: Australia, New Zealand, France, United Kingdom, United States, and Canada.

[379] ACTU submission, 29 March 2017 at para. 370.

[380] [2016] FWCFB 3500 at para. 385; [2015] FWCFB 3500 at para. 361; [2014] FWCFB 3500 at para. 356.

[381] Victorian Government submission, 29 March 2017 at para. 24.

[382] [2014] FWCFB 3500 at para. 346.

[383] [2016] FWCFB 3500, at para. 397.

[384] [2015] FWCFB 3500 at para. 363; [2014] FWCFB 3500 at para. 358.

[385] [2016] FWCFB 3500 at para. 391.

[386] Australian Government submission, 29 March 2017 at para. 255.

[387] Federal opposition submission, 29 March 2017 at para. 23.

[388] ACCI submission, 29 March 2017 at paras 170–171.

[389] Australian Government submission, 29 March 2017 at paras 281–282.

[390] Ibid at para. 30.

[391] ABI and NSWBC submission in reply, 13 April 2017 at p. 8.

[392] ACCER submission in reply, 13 April 2017 at para. 29.

[393] Federal opposition submission, 29 March 2017 at para. 17.

[394] ACTU submission, 29 March 2017 at para. 349.

[395] ACOSS submission, 29 March 2017 at p. 11.

[396] ACCER submission, 29 March 2017 at para. 84.

[397] [2014] FWCFB 3500 at paras 19; and 300.

[398] [2015] FWCFB 3500 at para. 371.

[399] Federal opposition submission, 29 March 2017 at para. 26; [2014] FWCFB 3500 at para. 19.

[400] ACOSS submission, 29 March 2017 at p. 5.

[401] For further details on the Low Income Supplement see: https://www.humanservices.gov.au/customer/services/centrelink/low-income-supplement

[402] See: https://www.humanservices.gov.au/customer/services/centrelink/income-support-bonus

[403] Federal opposition submission, 29 March 2017 at paras 10 and 17.

[404] ACTU submission, 29 March 2017 at paras 433–434; https://www.careforkids.com.au/child-care-articles/article/77/cost-of-child-care

[405] See: http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5696

[406] ACCER submission, 29 March 2017 at para. 84.

[407] Ibid at paras 89; 93.

[408] ACOSS submission, 29 March 2017 at p. 8.

[409] Australian Government submission, 29 March 2017 at p. 62, Table 8.6.

[410] ACCER submission in reply, 13 April 2017 at para. 41.

[411] Ibid at para. 45.

[412] Australian Government submission, 29 March 2017 at para. 284.

[413] Ibid.

[414] Ibid.

[415] Australian Government submission, 29 March 2017 at para. 286.

[416] Ibid at p. 77, Appendix C.

[417] Ibid at para. 48.

[418] [2013] FWCFB 4000 at para. 393; [2012] FWAFB 5000 at para. 161; [2011] FWAFB 3400 at para. 205.

[419] [2013] FWCFB 4000 at para. 426; [2012] FWAFB 5000 at para. 186; and [2011] FWAFB 3400 at para. 228.

[420] Statistical report, Chart 8.2.

[421] ACTU submission, 29 March 2017 at para. 384.

[422] ACCER submission, 29 March 2017 at paras 52–53.

[423] For example, Australian Government submission, 29 March 2017 at para. 12.

[424] ACCI submission, 29 March 2017 at para. 151.

[425] Australian Government submission, 29 March 2017 at para. 256, fn 31.

[426] Ibid at para. 258.

[427] Australian Government response to questions on notice, 22 May 2017 at p. 4.

[428] [2016] FWCFB 3500 at paras 431–432.

[429] ACTU submission, 29 March 2017 at para. 343.

[430] ACOSS submission, 29 March 2017 at p. 7.

[431] Ibid at p. 22; ACOSS/Social Policy Research Centre (2016) *Poverty in Australia 2016*, http://www.acoss.org.au/wp-content/uploads/2016/10/Poverty-in-Australia-2016.pdf.

[432] ACOSS submission, 29 March 2017 at p. 4.

[433] [2016] FWCFB 3500 at para. 443.

[434] Statistical report, Table 10.3.

[435] Victorian Government submission, 24 March 2016 at para. 51.

[436] Ibid.

[437] [2013] FWCFB 4000 at paras 100–102.

[438] Ibid at para. 100.

[439] Ibid at para. 102.

[440] [2016] FWCFB 3500 at paras 120–121.

[441] [2013] FWCFB 4000 at para. 101.

[442] [2016] FWCFB 3500 at paras 492; 517.

[443] Ibid at para. 472; PC report at p. 177.

[444] Australian Government submission, 29 March 2017 at para. 20.

[445] Ibid at para. 227; Doucouliagos H and Stanley T (2009), 'Publication selection bias in minimum-wage research? A meta-regression analysis', *British Journal of Industrial Relations*, Vol. 47, Issue 2, pp. 406–428; Boockmann B (2010), 'The combined employment effects of minimum wages and labour market regulation: A meta-analysis', *Applied Economics Quarterly*, Vol. 61, pp. 167–188; Belman D and Wolfson P (2014), 'The New Minimum Wage Research', *Employment Research*, Vol. 21, No. 2, pp. 4–5; Giotos G and Chletsos M (2015), *Is there publication selection bias in minimum wage research during the five-year period from 2010 to 2014?*, Economics Discussion Papers, No 2015–58, Kiel Institute for the World Economy.

[446] Australian Government submission, 29 March 2017 at para. 227; Bray R (2013), *Reflections of the evolution of the minimum wage in Australia: Options for the future*, Crawford School SPI Working Paper 1/2013, pp. 75–76; Productivity Commission (2015), *Workplace Relations Framework*, Final Report, Canberra, pp. 191–195.

[447] Australian Government submission, 29 March 2017 at para. 233.

[448] ACTU submission, 29 March 2017 at para. 101.

[449] Ibid.

[450] [2014] FWCFB 3500 at para. 426.

[451] [2016] FWCFB 3500 at para. 97; 471–472.

[452] AFEI submission, 29 March 2017 at para. 56; PC report at p. 226.

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[459] Manning A (2016), *The Elusive Employment Effect of the Minimum Wage*, CEP Discussion Paper, May, p. 3.

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[462] ACTU submission, 29 March 2017 at para. 303.

[463] Ibid at para. 307.

[464] Ibid paras 312–314.

[465] Ai Group submission in reply, 13 April 2017 at pp. 14–15.

[466] Ibid at p. 15.

[467] ABI and NSWBC submission in reply, 13 April 2017 at p. 7.

[468] Ibid.

[469] ARA submission, 29 March 2017 at p. 5.

[470] Ibid at pp. 14–15.

[471] MGA submission, 28 March 2017 at p. 12.

[472] R&CA submission, 29 March 2017 at para. 25.

[473] Ibid at para. 29.

[474] Ibid at para. 2.

[475] Department of Employment (2016), *Employment Outlook to November 2020*, Labour Market Research and Analysis Branch, p. 11.

[476] Ibid at p. 4.

[477] Ibid.

[478] R&CA submission, 29 March 2017 at para. 5.

[479] Ibid at para. 7.

[480] ABI and NSWBC submission, 29 March 2017 at p. 20.

[481] Ibid at p. 20.

[482] [2013] FWCFB 4000 at para. 441.

[483] [2016] FWCFB 3500 at paras 195–196.

[484] R&CA submissions, 29 March 2017 at para. 4; ABS, *Retail trade, Australia*, Catalogue No. 8501.0.

[485] See Australian Government submission, 29 March 2017 at para. 111.

[486] Fair Work Commission, *Industry Profile – Accommodation and food services*, Material to assist AM2014/305—Penalty rates case, Table 5.9.

[487] Ai Group submission, 29 March 2017 at p. 29.

[488] Ibid at pp. 28–29.

[489] Statistical report, Table 6.11.

[490] Ai Group submission, 29 March 2017 at p. 29.

[491] Statistical report, Table 6.14; ABS, *Participation, Job Search and Mobility, Australia, February 2016*, Catalogue No. 6226.0

[492] [2016] FWCFB 3500 at para. 488.

[493] [2016] FWCFB 3500 at para. 482.

[494] ACTU submission, 29 March 2017 at para. 243.

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[498] RBA, *Statement on Monetary Policy*, February 2017 at p. 38, Box B: Underemployment and Labour Market Spare Capacity.

[499] RBA, *Statement on Monetary Policy*, February 2017 at p. 40.

[500] AFEI submission, 29 March 2017 at paras 76–78.

[501] ABS, *Labour Force, Australia, Nov 2016*, Catalogue No 6202.0; Spotlight on underemployment.

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[503] AFEI submission, 29 March 2017 at para. 79.

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[505] [2016] FWCFB 3500 at para. 493; [2015] FWCFB 3500 at para. 436; [2013] FWCFB 4000 at para. 461.

[506] [2016] FWCFB 3500 at para. 493; [2015] FWCFB 3500 at para. 437.

[507] Australian Government submission, 29 March 2017 at para. 236.

[508] Ibid, Appendix C.

[509] [2015] FWCFB 3500 at para. 437.

[510] Australian Government submission, 29 March 2017 at para. 245.

[511] 67.8 per cent spend less than one year in low paid employment. Of these 76.6% move to higher paid work. Thus 51.9 per cent (76.6 per cent of 67.8 per cent) who spend less than one year in low paid work move to higher paid work.

[512] Australian Government response to questions on notice, 22 May 2017, pp. 7–9.

[513] Australian Government submission, 29 March 2017 at para. 242; CCIWA submission, 29 March 2017 at para. 3.6.

[514] [2016] FWCFB 3500 at para. 508.

[515] ACCI submission in reply, 21 April 2017 at para. 66.

[516] HIA submission, 29 March 2017 at p. 4.

[517] NFF submission, 29 March 2017 at pp. 5–6.

[518] VACC submission, 29 March 2017 at p. 5.

[519] [2013] FWCFB 5411.

[520] VACC submission, 29 March 2017 at p. 5.

[521] [2013] FWCFB 5411 at paras 177–178.

[522] HIA submission, 29 March 2017 at para. 2.1.

[523] NCVER (2017), *Australian vocational education and training statistics: apprentices and trainees 2016 – September quarter*, NCVER, Adelaide, p. 5.

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[529] [2017] FWCFB 1001 at para. 87.

[530] Fair Work Act, s.3(f).

[531] Peetz D & Yu S (2017), *Explaining recent trends in collective bargaining*, Fair Work Commission, Research Report 4/2017, February, pp. 7–8.

[532] Ibid, p. 8.

[533] Australian Government submission, 29 March 2017 at para. 219.

[534] Ai Group submission, 29 March 2017 at p. 30.

[535] ACTU submission, 29 March 2017 at paras 79–80.

[536] ACCI submission, 29 March 2017 at para. 211.

[537] Peetz D and Yu S (2017), *Explaining recent trends in collective bargaining*, Fair Work Commission, Research Report 4/2017, February, p. 12.

[538] Ibid, p. 18.

[539] Australian Government submission, 29 March 2017 at para. 37.

[540] ACCI submission, 29 March 2017 at para. 203.

[541] Ibid at paras 202–206.

[542] Australian Government response to questions for consultations, 12 May 2017 at p. 13.

[543] ACTU response to questions for consultations, 15 May 2017 at pp. 16–17.

[544] AFEI submission, 29 March 2017 at paras 92–93.

[545] Australian Government response to questions for consultations, 12 May 2017 at p. 14.

[546] ACCI response to questions for consultations, 12 May 2017 at paras 46.

[547] Ibid at paras 46–47.

[548] Australian Government submission, 29 March 2017 at para. 218.

[549] Ibid at para. 220; Connolly G, Trott D & Li Y (2012), *Workplace agreements and other determinants of labour productivity*, paper presented to the 23rd Australian Labour Market Research Workshop.

[550] Fair Work Act Review Panel (2012), *Towards more productive and equitable workplaces: an evaluation of the Fair Work legislation.*

[551] New South Wales Government submission, 12 April 2017 at para. 46.

[552] Ibid at para. 47.

[553] Ibid at para. 42.

[554] Queensland Government submission, 13 April 2017 at pp. 11–12.

[555] Ibid at p. 12.

[556] ACTU submission, 29 March 2017 at para. 82.

[557] Ibid at para. 75.

[558] Ibid at para. 76.

[559] ACCI submission, 29 March 2017 at paras 204–205.

[560] Ai Group submission, 29 March 2017 at p. 32.

[561] AFEI submission, 29 March 2017 at para. 93.

[562] ACTU submission, 29 March 2017 at para. 74.

[563] Ibid at para. 81.

[564] Australian Government submission, 29 March 2017 at para. 42.

[565] Wright S & Buchanan J (2013), *Award Reliance*, Fair Work Commission Research Report 6/2013, December.

[566] South Australian Government submission, 28 March 2017 at para. 23.

[567] ACTU submission, 29 March 2017 at para. 90; Fair Work Commission (2015), *AWRS First Findings Report*.

[568] Australian Government submission, 29 March 2017 at p. 6, Chart 2.1, which excludes from the calculation of 'all employees' those in Agriculture, forestry and fishing.

[569] ACTU Submission, 29 March 2017 at para. 81. The difference in the estimates cited by the ACTU from those cited in the Australian Government submission is the use of "non-managerial employees" by the ACTU and "all employees" by the Australian Government.

[570] Australian Government submission, 29 March 2017 at p. 6, Chart 2.1.

[571] Bishop J & Cassidy N (2017), *Insights into low wage growth in Australia*, RBA Bulletin, March Quarter, p. 19.

[572] [2014] FWCFB 3500 at para. 472.

[573] [2015] FWCFB 3500 at para. 472; [2010] FWAFB 4000 at para. 302; [2011] FWAFB 3400 at para. 281 and [2012] FWAFB 5000 at para. 222.

[574] [2015] FWCFB 8200.

[575] Ibid at para 290.

[576] See [2015] FWCFB 8200 at paras 276–277.

[577] [2015] FWCFB 8200 at para. 272.

[578] [2017] FWCFB 1001 at para. 215.

[579] [2015] FWCFB 8200 at para. 216.

[580] [2016] FWCFB 3500 at para. 546.

[581] Ibid at paras 547–548.

[582] Australian Government submission, 29 March 2017 at para. 273; ABS, *Average Weekly Earnings, Nov 2016*, Catalogue No. 6302.0.

[583] South Australian Government submission, 28 March 2017 at para. 30; Federal opposition submission, 29 March 2017 at para. 34.

[584] ACTU submission, 29 March 2017 at para. 443.

[585] Ibid at paras 444; 446–447.

[586] Ibid at paras 450–451, Figures 75–76.

[587] Australian Government submission, 29 March 2017 at para. 275; Rozenbes D & Farmakis-Gamboni S (2015), *Earnings and characteristics of employees by gender and industrial arrangement*, report for the Pay Equity Unit of the Fair Work Commission, December; and Broadway B & Wilkins R (Melbourne Institute of Applied Economic and Social Research) (2015), *Low-paid women's workforce participation decisions and pay equity*, report for the Pay Equity Unit of the Fair Work Commission, December.

[588] Australian Government submission, 29 March 2017 at para. 275.

[589] Ai Group submission, 29 March 2017 at p. 33; [2016] FWCFB 3500 at paras 562–563; Rozenbes & Farmakis-Gamboni (2015), p. 19.

[590] Victorian Government submission, 29 March 2017 at para. 59, Table 6; ABS, *Employee Earnings and Hours, Australia, May 2016*, Catalogue No. 6306.0.

[591] Victorian Government submission, 29 March 2017 at para. 57; Workplace Gender Equality Agency (2016), *Australia's gender equality scorecard: Key findings from the Workplace Gender Equality Agency's 2015–16 reporting data*, November 2016, available at: https://www.wgea.gov.au/sites/default/files/80653_2015-16-gender-equality-scorecard.pdf

[592] Victorian Government submission, 29 March 2017 at para. 58; ACTU (2016), *The Gender Pay Gap Over the Life Cycle*, March.

[593] Victorian Government submission, 29 March 2017 at para 64; ABS, *Forms of Employment, November 2013*, Catalogue No. 6359.0.

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[596] Broadway & Wilkins (2015) at p. ii.

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[603] Bishop J and Cassidy N (2017) *Insights into low wages growth in Australia*, RBA Bulletin, March Quarter, p. 19.

[604] [2016] FWCFB 3500 at para. 573.

[605] Ibid at para. 576.

[606] ACTU submission, 29 March 2017 at para. 441.

[607] Ibid at para. 446.

[608] Ibid at para. 453.

[609] Victorian Government submission, 29 March 2017 at pars 63–66; citing [2016] FWCFB 3500 at para. 573.

[610] South Australian Government submission, 28 March 2017 at para. 30.

[611] Ibid at para. 31. Also Queensland Government submission, 13 April 2017 at p. 6.

[612] Queensland Government submission, 13 April 2017 at p. 12.

[613] ACOSS submission, 29 March 2017 at p. 9.

[614] Ibid; Austen S, Jefferson T, Preston A & Seymour R (2008), *Gender pay differentials in low paid employment*, Women in Social and Economic Research, Curtin University, report commissioned by the Australian Fair Pay Commission, October.

[615] Australian Government submission, 29 March 2017 at para. 274.

[616] Ibid at para. 9.

[617] ACCI submission in reply, 21 April 2017 at para. 52 and Ai Group submission, 29 March 2017 at p. 33.

[618] Ibid at para. 56.

[619] Ibid at para. 54.

[620] ACCER submission, 29 March 2017 at para. 228.

[621] Some transitional APCSs may still operate. This includes (but is not limited to) instruments which cover employees: covered by enterprise awards for which an application to modernise has been made; also covered by enterprise awards, also covered by State reference public sector awards; or also covered by the *Social, Community, Home Care and Disability Industry Award 2010*.

[622] 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.

[623] 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.

[624] Some Division 2B State awards may still operate such as where they cover: employees also covered by enterprise instruments; or State reference public sector awards.

[625] Two transitional pay equity orders currently operate, created under item 43 of Sch 3, and item 30A of Sch 3A, of the Transitional Act respectively. The Panel must review and may make a determination varying the transitional pay equity order created under sub item 30D(1) of Sch 3A, to the extent that it is derived from the *Queensland Community Services and Crisis Assistance Award – State 2008*.

[626] See discussion further for whom these instruments apply [2013] FWCFB 4000 at paras 550–561.

[627] [2010] FWAFB 4000 at paras 370–396.

[628] Dunn A & 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.

[629] [2013] FWCFB 4000 at paras 550–561.

[630] [2017] FWCFB 1931 at para. 81.

[631] *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, items 5(2) and 9(4) of Sch 6.

[632] Transitional Act, items 5(3), 6 and 10(1) of Sch 6A.

[633] 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 been terminated.

[634] A more detailed outline of these instruments can be found at [2013] FWCFB 4000 at paras 553–559; and [2017] FWCFB 1931 at para. 81.

[635] *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.

[636] 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.

[637] 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.

[638] Transitional Act, item 5–6 of Sch 9, and item 3(2) of Sch 5.

[639] [2010] FWAFB 9916 at para. 44.

[640] Transitional Act, item 10(1) of Sch 9 and item 12A of Sch 3.

[641] [2016] FWCFB 3500 at para. 584.

[642] Fair Work Commission (2016), *Background Paper Annual Wage Review 2016–17—Transitional instruments*. See also 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.

[643] [2017] FWCFB 1931.

[644] Ibid at para. 144.

[645] Ibid at para. 145.

[646] [2016] FWC 2832.

[647] [2017] FWCFB 132.

[648] [2017] FWCFB 1931 at para. 148.

[649] *Order – Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003* and *Order – Supply of Tools to Apprentices (Qld)* and *Order – Supply of Tools to Apprentices (Qld).*

[650] The third is the *Order – Apprentices' and Trainees' Wages and Conditions (Queensland Government Departments and Certain Government Entities) 2003*.

[651] [2017] FWCFB 132.

[652] Ibid at paras 64 and 66–68.

[653] [2017] FWCFB 1931 at para. 155.

[654] Ai Group submission in reply, 13 April 2017 at pp. 29–30.

[655] [2017] FWCFB 1931 at para. 147.

[656] ABI and NSWBC submission in reply, 13 April 2017 at p. 4.

[657] ABI and NSWBC submission, 29 March 2017 at p. 30.

[658] PR525485.

[659] ABI and NSWBC submission, 29 March 2017 at p. 31.

[660] HIA submission, 29 March 2017 at pp. 4–5.

[661] ACTU submission in reply, 20 April 2017 at paras 9–11.

[662] [2017] FWCFB 1931 at paras 144–147.

[663] See [2013] FWCFB 4000 at para. 561; [2014] FWCFB 3500 at para. 572; [2015] FWCFB 3500 at para. 535; and [2016] FWCFB 3500 at para. 592.

[664] See [2013] FWCFB 4000 at para. 560; [2014] FWCFB 3500 at para. 572; [2015] FWCFB 3500 at para. 536; and [2016] FWCFB 3500 at para. 593.

[665] *Transitional Act*, item 12A of Sch 3 and items 10 and 20 of Sch 9.

[666] Fair Work Act, s.284(3).

[667] ACTU submission, 29 March 2017 at para. 457.

[668] Ai Group submission, 29 March 2017 at p. 38.

[669] ACOSS submission, 29 March 2017 at p. 12.

[670] ABI and NSWBC submission, 29 March 2017 at p. 30.

[671] Australian Government submission, 29 March 2017 at para. 137; ACCI submission, 29 March 2017 at para. 6; ACOSS submission, 29 March 2017 at p. 34; ARA submission, 29 March 2017 at p. 6; MGA submission, 28 March 2017 at p. 15; Ai Group submission, 29 March 2017 at p. 18; ACTU submission, 29 March 2017 at para. 257.

[672] ACTU submission, 29 March 2017 at para. 457.

[673] Ai Group submission, 29 March 2017 at p. 38.

[674] ACOSS submission, 29 March 2017 at p. 12.

[675] ABI and NSWBC submission, 29 March 2017 at p. 30.

[676] ACOSS submission, 29 March 2017 at p. 35; HIA submission, 29 March 2017 at p. 4; VACC submission, 29 March 2017 at p. 5.

[677] Nelms L, Yuen K, Pung A, Farooqui S and Walsh J (2017), *Background and supply side factors affecting commencement and completion of apprentices and traineeships*, Fair Work Commission, Research Report 3/2017, Part I, February; and Karmel T (2017), *Factors affecting apprenticeships and traineeships*, Fair Work Commission, Research Report 3/2017, Part II, February.

[678] ACTU submission, 29 March 2017 at para. 461.

[679] Ibid at para. 459.

[680] Ibid at para. 460.

[681] ACOSS submission, 29 March 2017 at p. 36.

[682] ACTU submission, 29 March 2017 at para. 465.

[683] Ai Group submission, 29 March 2017 at p. 38.

[684] ACOSS submission, 29 March 2017 at p. 12.

[685] ABI and NSWBC submission, 29 March 2017 at p. 30.

[686] See [2016] FWCFB 3500 at paras 608; 650.

[687] ACTU submission, 29 March 2017 at para. 468.

[688] Ai Group submission, 29 March 2017 at p. 38.

[689] Victorian Government submission, 29 March 2017 at para. 49, citing (2016) *Victorian Inquiry into the Labour Hire and Insecure Work: Final Report*, August, para. 44, <http://economicdevelopment.vic.gov.au/__data/assets/pdf_file/0016/1390111/IRV-Inquiry-Final-Report-.pdf>.

[690] Fair Work Act, s.295(1)(b).

[691] [2016] FWCFB 3500 at para. 614.

[692] ACTU submission, 29 March 2017 at para. 467.

[693] Ai Group submission, 29 March 2017 at p. 42.

[694] [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; [2016] FWCFB 3500 at para. 616.

[695] ACTU submission, 29 March 2017 at para. 467; Ai Group submission, 29 March 2017 at p. 41.

[696] [2016] FWCFB 3500 at para. 633.

[697] Ibid at para. 635.

[698] Ibid at paras 638–640.

[699] Ai Group submission, 29 March 2017 at p. 41; ABI and NSWBC submission, 29 March 2017 at p. 30.

[700] [2016] FWCFB 3500 at para. 640.

[701] ACTU submission, 29 March 2017 at para. 458.

[702] ACOSS submission, 29 March 2017 at p. 12.

[703] Ai Group submission, 29 March 2017 at p. 39.

[704] ABI and NSWBC submission, 29 March 2017 at p. 30.

[705] Ai Group submission, 29 March 2017 at p. 40.

[706] ABI and NSWBC submission, 29 March 2017 at p. 30.

[707] [2016] FWCFB 3500 at para. 652.

[708] [2017] FWCFB 1931 at para. 173.

[709] MA000103.

[710] [2017] FWCFB 1931 at para. 187.

[711] Ibid at para. 186.

[712] ACTU submission, 29 March 2017 at para. 462.

[713] ACOSS submission, 29 March 2017 at p. 12.

[714] Ai Group submission, 29 March 2017 at p. 39.

[715] ABI and NSWBC submission, 29 March 2017 at p. 30.

[716] ACOSS submission to 2015–16 Review at pp. 38–39; ACOSS submission to 2014–15 Review at pp. 52–53; ACOSS submission to 2013–14 Review at pp. 59–60; ACOSS submission to 2012–13 Review at pp. 58–59; ACOSS submission to 2011–12 Review at p. 57; ACOSS submission to 2010–11 Review at pp. 45–46 and ACOSS submission to 2009–10 Review at p. 46.

[717] ACOSS submission, 29 March 2017 at p. 37.

[718] ACOSS submission to the preliminary hearing, 10 October 2016 at p. 4.

[719] ACTU submission, 29 March 2017 at para. 464.

[720] Ibid at para. 465.

[721] [2017] FWCFB 1931 at para. 186.

[722] [2016] FWCFB 3500 at para. 640.

[723] [2017] FWCFB 1931.