Ai GROUP SUBMISSION

Fair Work Commission

Annual Wage Review 2016-2017: Post-Budget Submission and Questions for Final Consultations

12 May 2017

Ai GROUP

About Australian Industry Group

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

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Introduction

Ai Group's Initial Submission and Reply Submission provide a comprehensive account of the economic and business environment.

Additional important considerations are raised in the following responses to the Questions for the Final Consultations in the Annual Wage Review 2016-2017.

Questions for the Final Consultations

2.3 Question to all parties

The latest Consumer Price Index (CPI) from the Australian Bureau of Statistics showed an increase of 2.1 per cent over the year to the March quarter 2017 and increase of 1.8 per cent in underlying inflation, both higher than the 1.5 per cent increase over the year to the December quarter 2016.[1]

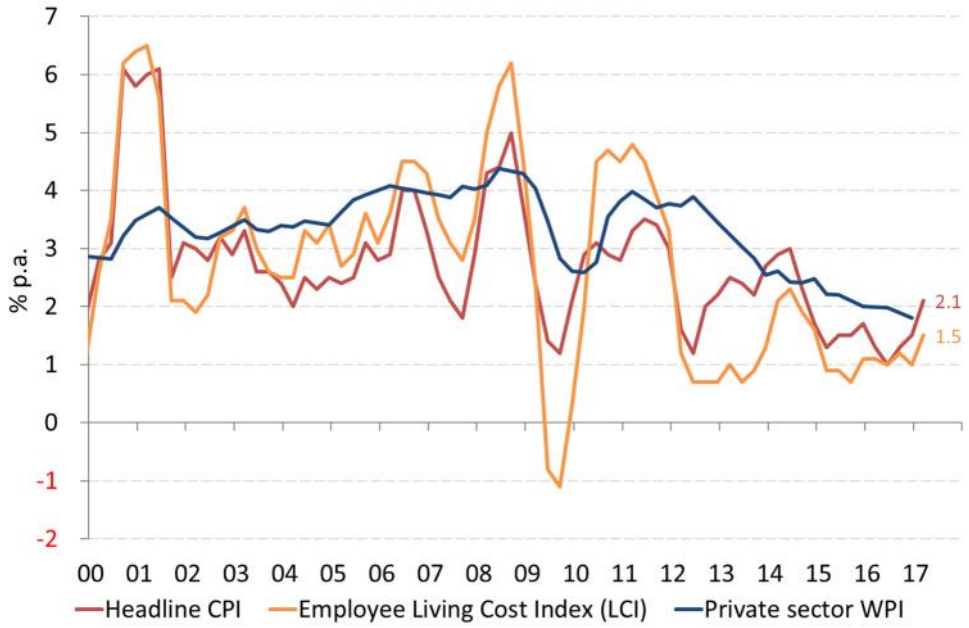
Given that a number of parties referred to the CPI in reaching their proposed increase to the NMW and/or award minimum wages, with some parties suggesting that their proposal provided a real increase in the standard of living of award-reliant employees, do any parties seek to revise their proposal?

Ai Group's comment

The ABS living cost indexes provide useful supplementary detail to the Consumer Price Index (CPI). The latest living cost index for employee households accelerated to 1.5% p.a. in March 2017. This index has grown by 1.5% p.a. or slower in every quarter since December 2014. It has grown by less than the Wage Price Index (WPI) for private sector employees in every quarter since September 2011 (see Chart 1). In contrast, the ABS living cost indexes for aged pensioner households and other government transfer recipient households rose by 2.4% and 2.5% respectively in March 2017, due to stronger price rises in health and welfare services that are utilised relatively heavily by these groups.

[1] ABS, Consumer Price Index, Australia, Mar 2017, Catalogue No. 6401.0.

Chart 1: CPI, private sector WPI and employee living cost index, annual change



Sources: ABS, CPI (to March 2017), WPI (to Dec 2017) and Living cost index (to March 2017).

This ongoing gap between average wages and average living costs for employees suggests that on average, private sector employees have achieved real wage growth since 2011, albeit modest. This modest real wage growth has brought several benefits at an aggregate macroeconomic level:

- In its recent review of the Australian labour market,[2] the OECD found that Australia's "real wage growth has been relatively weak since 2007" (confirmed for example, in chart 1). The OECD says that this brake on real wage growth "may have helped to limit job losses and the rise in unemployment" since 2007. That is, more modest real wage increases may have helped to increase aggregate employment over this period.

- Recent research by the RBA[3] found that "the decline in wage growth has also contributed to lower inflation outcomes over recent years" and that "since the peak in the terms of trade in 2011, firms output prices have not grown as quickly and wage growth has subsequently slowed … since the terms of trade have been declining, low growth of wages has played the reverse role of improving international competitiveness, in conjunction with the depreciation of the exchange rate". That is, more modest real wage increases may have helped to improve international competitiveness (the ability to export and to compete with imports) over this period, which in turn helps to stimulate growth in activity, jobs and future incomes.

Ai Group remains of the view that a modest wage increase of 1.5 per cent is warranted in this year's Annual Wage Review. This equates to an increase of about $10.10 per week in the National Minimum Wage and about $11.75 per week at the base trade level.

[2] OECD July 2016, *How does Australia Compare? Employment Outlook 2016*.

[3] J Bishop and N Cassidy, "Insights into low wage growth in Australia, RBA Bulletin, March Quarter 2017.

3.10 Question to Ai Group

In reference to modelling undertaken by the ACTU, Ai Group submitted that:

> ***'… the aggregate "multiplier' effect of a large increase in the minimum wage that is funded by private sector businesses is very likely to be significantly smaller than a similar-sized macroeconomic stimulus that is funded from future public sector spending and savings.'***

Does Ai Group accept that there would be some positive net macroeconomic stimulus, and hence growth in sales and employment, from a large increase in minimum wages?

Ai Group's comment

Private-sector wage increases are fundamentally different, in theory and in practice, to increases in income that are a result of a deliberate and targeted Government-funded stimulus payment (e.g. an income tax reduction or a one-off increase in payments to households). Conventional economic theory holds that in a competitive market-based economy, increases in real incomes per capita (profits and wages) are the result of productivity improvements that allow more output to be generated from the inputs that are available. In a competitive market environment, wage increases that are not supported by a commensurate increase in productivity carry a strong risk of generating only inflation and not stimulation, since the cost of providing them must be covered from a combination of reduced spending on other inputs and/or higher prices charged for outputs.

Regardless of which measures are used, productivity growth has been exceedingly weak in Australia for an extended period and across an extensive range of market-sector industries (see Ai Group's initial submission, the ACTU submission and further comments on productivity in response to Q3.13 below). Weak productivity performance is a key reason for the weak growth in real incomes in recent years across most industries in Australia, and not just at the lower income levels.

In the absence of a commensurate improvement in private-sector productivity that can support a large increase in private-sector wages, Ai Group remains concerned that the large wage rise proposed by the ACTU will be purely inflationary and/or will occur at the expense of other types of private-sector consumption and investment including:

- **Reduced business income**, and especially the income of small business owners, who are likely to have a similar spending propensity to other low to medium income earners;
- **Reduced business investment expenditure**, and especially the investments of small and medium businesses. Investment expenditure is a key element of aggregate demand and has flow-on effects to suppliers of the goods and services that are consumed as an investment. Reduced investment also has negative implications for future potential growth in output, employment, productivity and incomes. Weak Australian investment growth has become problematic in recent years. So much so that the RBA continues to regularly voice its concerns that "Non-mining investment remains low as a share of GDP and a stronger pick-

up would be welcome." (RBA 2 May 2017, *Statement by Philip Lowe, Governor: Monetary Policy Decision)*;

- **Reduced aggregate hours worked** by people receiving the wage increase and/or by other workers, as a response from employers who face an outsized increase in labour costs and limited ability to pass the cost increase on to customers or to reduce other input costs; and
- **Reduced employment opportunities** for unemployed and underemployed people, as a response from employers who face an outsized increase in labour costs and limited ability to pass the cost increase on to customers or to reduce other input costs.

Ai Group is also concerned that in the current environment many businesses in the relevant industries are already trading on very thin margins. This increases the risk that **nominal prices for local goods and services could increase strongly** as a result, as businesses try to pass on the cost of the wage rise to their customers (to the extent that competition allows them to pass it on).

Such inflationary effects are not benign. If it were widespread, such an inflationary response would erode the real purchasing power of everyone - whether or not they have personally received the compensating benefit of a nominal wage increase - including all other workers, non-working pensioners and welfare recipients. Non-working low-income groups would not receive any compensating increase in nominal income and, in effect, suffer a real spending decrease as a result.

If local output prices rise strongly in response, then **there is likely to be a negative effect on international competitiveness**. This is because any rises in the price of goods and services as a result of an outsized rise in the minimum wage would affect locally produced goods and services only. They would then become relatively more expensive than imported goods and services of the same type, thus reducing the competitiveness of local goods and services and potentially reducing their sales in the local market, rather than increasing them. The same loss of competitiveness would occur in export markets, if the cost of exported goods and services rises as a result. In these circumstances, some businesses would be prompted to move their production offshore, just as they have in response to other sudden sharp rises in input costs (e.g. energy costs or regulatory costs). Given the open trade-exposed nature of Australia's economy, this trade effect creates an extra 'wildcard' for consideration.

We are not able to quantify the probability or the effects of each of these elements (foregone consumption and investment plus pricing plus trade effects). We note however, that they are unlikely to be zero. Given these risks, more information is needed about the likely responses of businesses to an outsized rise in the minimum wage that is not supported by a commensurate rise in workplace productivity. The distributional effects must also be considered, including potential harm to people in the very lowest income brackets who are currently outside the labour market.

3.11 Question to Ai Group

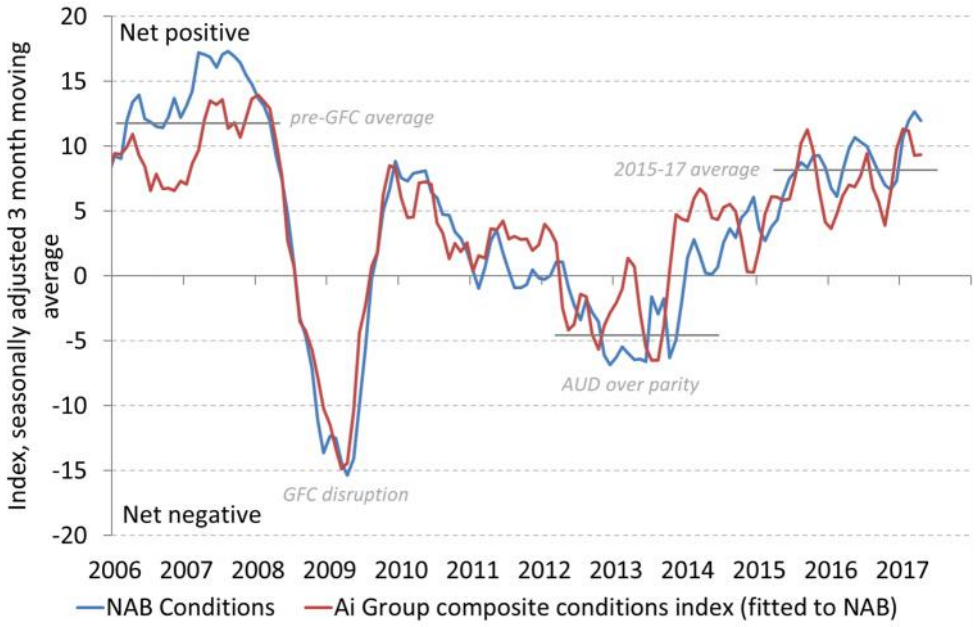
Ai Group described the Australian economy as 'weak', including national aggregate income, employment growth and productivity growth. However, Chart 1 of its submission shows that business conditions are better than at any other time since the GFC.

How does Ai Group reconcile these different positions?

Ai Group's comment

Chart 1 of our submission does indeed suggest that business conditions are better in 2017 than at any time since the GFC disruptions began to bite in 2008. That said, both the Ai Group monthly indicators and the NAB monthly business survey suggest business conditions have been broadly positive since 2015, with the period of improvement roughly commencing when the Australian dollar dropped below parity against the US dollar. Compared with average pre-GFC levels however, both data sources suggest business conditions remain positive but are far from exuberant. Updated data for these business surveys are presented in Chart 2 below (data available to end April 2017).

Chart 2: Ai Group and NAB business conditions, to April 2017

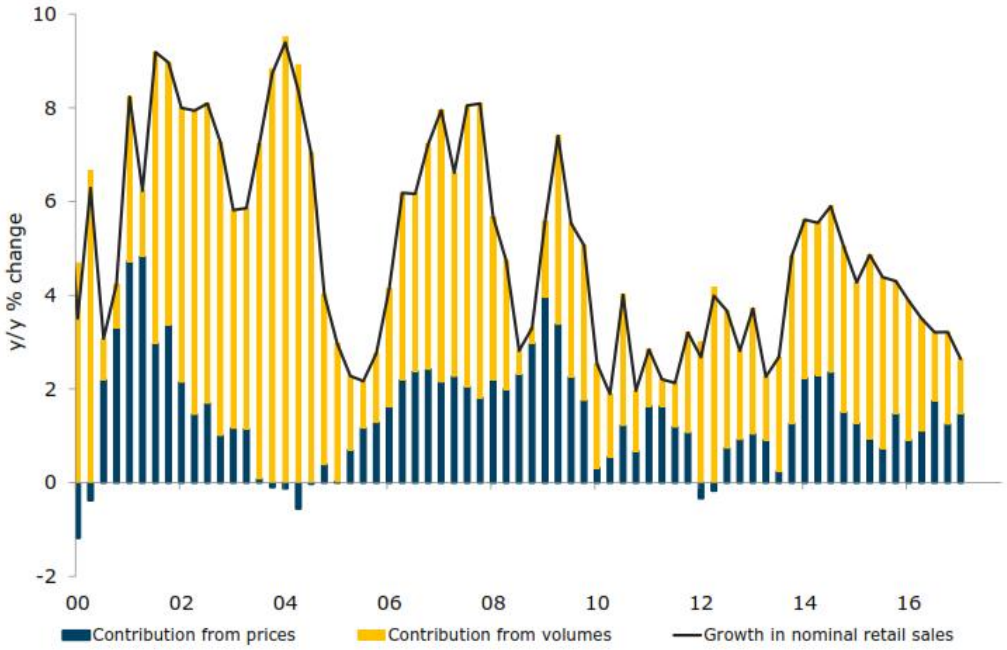


Beneath the headlines shown in chart 2, both data sources confirm a very patchy landscape across different industries and geographies. ABS data confirm that although broadly positive, growth is not broad-based. Indeed, growth is heavily reliant on a handful of sectors including mining, finance, house construction and selected services. This pattern of growth is not generating strong or widespread growth in aggregate employment, business investment, productivity or incomes (profits and wages). The surprise dip in GDP in Q3 2016 confirms that the economy remains vulnerable.

Of particular concern to employment, the retail trade sector (Australia's second largest employing sector after healthcare) remains subject to weak demand and stiff pricing competition. The latest sales data for March show total nominal sales falling 0.1% m/m in March, from a downwardly

revised February. Sales are now just 2.1% higher than a year earlier, the weakest annual growth rate since June 2013. In real volume terms, retail sales rose by just 0.1% q/q (from a downwardly revised 0.7% q/q in Q4 2016) to be 1.5% higher than a year earlier. Retail prices rose by just 0.1% q/q and 1.5% y/y in Q1, again highlighting the price pressures in the retail sector (see chart 3).

Chart 3: retail sales growth, to March 2017



Sources: ABS and ANZ Research.

Ai Group notes that the RBA's latest update on the outlook for the Australian economy (released 5 May)[4] concludes that GDP growth is still tracking below trend and below potential in 2016-17 and will remain modest in 2017-18. Treasury's outlook and forecasts – as detailed in the Federal Budget documents on 9 May 2017 – are almost identical (see Table1 below). The RBA says this is because:

> "*The strength in the December quarter, which included a surprise increase in mining investment, is not expected to be sustained in the near term. Overall, GDP growth over 2016 was slightly below central estimates of potential output growth, consistent with subdued labour market outcomes and low inflation*." (RBA May 2017, Statement on Monetary Policy, p. 55).

Regarding the key growth metrics of investment, employment and wages, the RBA concludes that:

> *"non-mining business investment as a share of GDP remains low relative to its history. The outlook over the next year or so is subdued, consistent with the Australian Bureau of Statistics (ABS) capital expenditure survey of firms' investment intentions and the downward trend in non-residential building work*
>
> *… Leading indicators of labour demand, such as job advertisements and vacancies, point to moderate employment growth over the next six months. Further out, employment growth is*

[4] RBA 5 May 2017, *Statement on Monetary Policy.*

expected to be fairly steady at around its long run average. Even though overall GDP growth is forecast to be above potential, the boost to GDP from higher LNG production is not expected to generate significant employment growth. This is because LNG 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).

Labour force participation has been a little stronger recently than expected and the unemployment rate is currently a little higher than was forecast at the time of the February Statement. From this higher starting point, the unemployment rate is expected to edge slightly lower over the forecast period. This suggests that spare capacity in the labour market will remain over the next few years. The participation rate is assumed to remain at around current levels over the forecast period.

*Wage growth is expected to remain at around its current rate over the next year, which is consistent with information from the Bank's liaison program and a survey of union wage expectations. Wage growth is then expected to pick up gradually over 2018 and 2019, although at a slightly slower pace than had been forecast in February. The level of real wages is forecast to increase, having been fairly flat over the past couple of years. Spare capacity in the labour market is expected to continue to weigh on wage growth over the next few years." (*RBA May 2017*, Statement on Monetary Policy, pp. 56-7).*

Table 1: latest full-year growth rates and government forecasts

RBA, SoMP (May 2017)	**2015-16 actual**	**2016-17 f**	**2017-18 f**	**2018-19 f**	**2019-20 p**	**2020-21 p**
GDP, % change p.a., year end	3.1	1.5-2.5	2.75-3.75	2.75-3.75		
Unemployment rate, %, year end	5.8	5.75	5-6	5-6		
Inflation (CPI), % change p.a., year end	1.0	2.0	1.5-2.5	2.0-3.0		
Treasury, 2017-18 Budget (May 2017)						
GDP, % change p.a., year average	2.6	1.75	2.75	3.0	3.0	3.0
Household consumption, % p.a., year av.	2.9	2.5	2.75	3.0		
Dwelling investment, % p.a., year av.	10.6	4.5	1.5	-4.0		
Business investment, % p.a., year av.	-10.3	-6.0	0.0	3.0		
Employment growth, % p.a., year end	1.9	1.0	1.5	1.5	1.5	1.5
Unemployment rate, %, year end	5.8	5.75	5.75	5.5	5.5	5.25
Terms of trade, % change p.a., year end	-10.2	16.5	-2.75	-4.25		
Inflation (CPI), % change p.a., year end	1.0	2.0	2.0	2.25	2.5	2.5
Wages (WPI), % change p.a., year end	2.1	2.0	2.5	3.0	3.5	3.75

f = forecast. p = projection. Sources: ABS various data; RBA *Statement on Monetary Policy* (SoMP), latest quarter; Australian Treasury, *Federal Budget 2017-18* (May 2017).

3.12 Question to Ai Group

Ai Group submitted that the employment to population ratio and participation rate have fallen, indicating 'fragility' in the labour market and 'is likely indicating a greater number of "discouraged" job-seekers exiting the labour force'. However, Tables 6.8 and 6.11 in the Statistical Report present data on these indicators for persons aged 20–64 years (which reduces the effect of the ageing population). These do not show falling levels of participation.

Can Ai Group explain why it uses a measure of participation that does not adjust for demographic change? Does Ai Group wish to maintain that recent changes in the employment to population ratio and participation rate indicate 'fragility' in the labour market?

Ai Group's comment

Ai Group agrees there are various methods of calculating labour force participation, some of which highlight the key demographic influences and some of which highlight other factors. We acknowledge the importance of demographic factors such as the ageing of the population, but we note that they tend to influence participation rates over long time periods and tend to move very slowly. For this reason, they may be of more limited value in explaining sudden or strong changes in participation rates that occur in a short space of time.

In our initial submission, we sought to highlight some of the factors that might be affecting participation rates, other than ageing. For example, in chart 9 we show ABS data on participation rates by sex (chart 9 on p. 18). This demonstrates significant differences in participation trends between men and women, with participation for women rising in recent years, but participation for men falling to a record low of 70.2% by the end of 2016. These divergent trends are observable (but are less pronounced) in participation rates for people aged 15-64 years (see chart 4 below). For this age group (and based on a 12 month moving average of the original data), the male participation rate dropped to a recent low of 82.1% in October 2014 and came close to that low again in Feb 2017 (82.2%). In contrast, female workforce participation rose to a record high of 71.7% of the 'working age' female population and has remained close to that rate since then.

We are concerned that factors other than ageing are influencing these divergent participation trends, and especially the trend toward lower participation among 'working age' men. We remain concerned that the recent sharp drops in participation among men indicates a significant and growing group of 'discouraged workers' who are not participating in the workforce. We believe this drop in male participation and a possible rise in 'discouragement' are worth further investigation, in order to identify the factors contributing to it (e.g. structural changes in labour demand).

In its latest update on the Australian economy, the RBA touches on this issue in its observations of current labour market conditions:

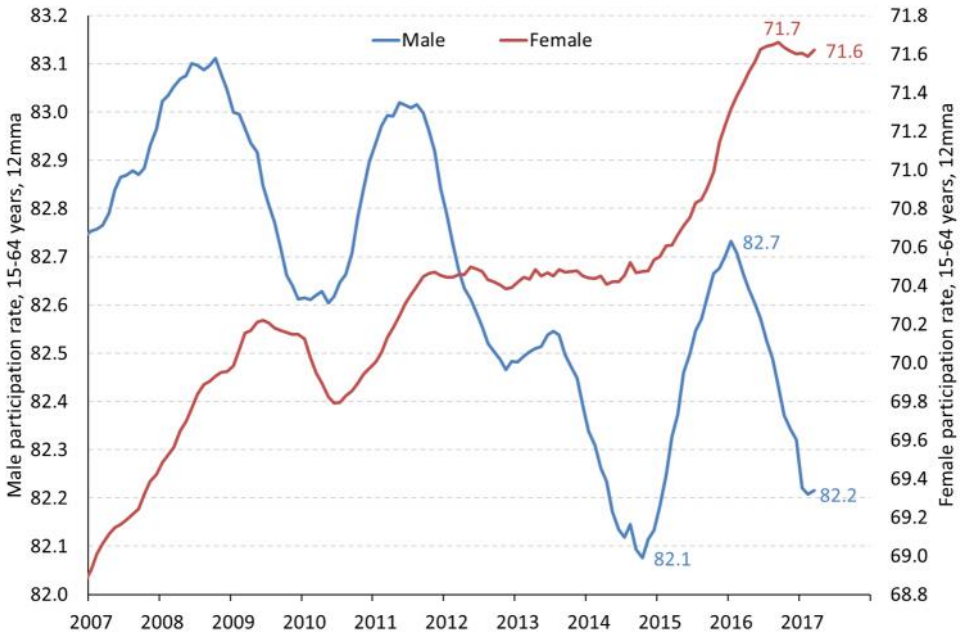
> *"Conditions in the labour market* have *been mixed recently. Employment growth picked up in the March quarter but the unemployment rate has edged higher over recent months to 5.9%. "*

> *… Analysis of the movement of individuals between different labour market categories [shows] … the net flow of workers from full-time employment to outside the labour force has also picked up; over the medium term, this trend will be partly driven by demographic changes, as more workers move into retirement age, but there also appears to be a cyclical component" (*RBA May 2017*, Statement on Monetary Policy, pp. 35-6)*

On the outlook, the RBA says there is "uncertainty" about 'spare capacity' in the labour market at present, due to the interaction between participation, unemployment and underemployment:

> *"Spare capacity in the labour market over recent years has put downward pressure on wage growth and inflation. While the central forecast is for the unemployment rate to edge slightly lower over the forecast period, there is uncertainty about how much spare capacity there will be over the next few years." (*RBA May 2017*, Statement on Monetary Policy, p. 59)*

Chart 4: Labour force participation rates, males and females aged 15-64 years, Jan 2007 to March 2017 (12 month moving average)



Source: ABS 6291.0.55.001 Labour Force, Australia, Detailed - Electronic Delivery, Table 01. Labour force status by Age, Social marital status, and Sex.

3.13 Question to Ai Group

Can Ai Group explain why it focuses on multifactor productivity and does not consider changes in labour productivity in deciding on an appropriate increase in minimum wages?

Ai Group's comment

Ai Group notes that labour productivity is included in multifactor productivity calculations, along with all other input factors. That is, labour productivity is effectively a sub-set of multifactor productivity. The ABS data defines multifactor productivity as:

> *"Multifactor productivity (MFP) is defined as a ratio of a measure of output to a combined input of multiple factors, for example labour and capital. In empirical analyses, it is expressed in terms of growth rate; that is, growth rate of output minus the growth rate of inputs. At the aggregate and industry level, value added-based MFP is defined as the ratio of gross value added to the combined inputs of capital and labour. At an industry level, gross output-based MFP is also measured as the ratio of gross output to the combined inputs of capital, labour, and intermediate inputs."*[5]

Considered on its own, labour productivity is of course relevant in its own right. However, we note that the various measures of productivity are very closely inter-related, so it can be difficult to tease out exactly which input is responsible for any given change in MFP. For example, the ABS notes that:

> *"Capital productivity is defined as a ratio of a measure of output to capital input; that is, output per unit of capital. Changes in this ratio can also reflect technological changes, and changes in other factor inputs (such as labour). Capital deepening refers to changes in the capital to labour ratio. … Growth in capital deepening is an important driver (alongside MFP) of labour productivity growth."*[6]

The Productivity Commission notes that the complexity of productivity calculations means that "*[d]espite the best efforts of statisticians and economists, the measurement and interpretation of productivity remains a challenge*".[7]

In its latest PC Update (April 2016) and in earlier editions, the Productivity Commission notes that MFP is the most comprehensive measure of productivity available, but that labour productivity includes the effects of changes in capital, even when considered alone:

> *"**Multifactor productivity (output produced per unit of combined inputs of labour and capital) is the measure that comes closest to the underlying concept of productivity** — efficiency of producers in producing output using both labour and capital. Growth of multifactor productivity is the growth of output over and above the growth of combined labour and capital.*
>
> *Labour productivity (output produced per unit of labour input) measures efficiency in the use of labour. Growth of labour productivity is the growth of output over and above the growth of labour input — it not only measures change in the efficiency of labour but also captures the value added from growth in capital (and more advanced technology intrinsic in the new investment) that supports increased output without increasing labour."*[8]

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[5] ABS, 5 Dec 2016. 5260.0.55.002 - Estimates of Industry Multifactor Productivity, 2015-16, Frequently Asked Questions, http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/5260.0.55.002Main%20Features22015-16?opendocument&tabname=Summary&prodno=5260.0.55.002&issue=2015-16&num=&view=

[6] ABS, 5 Dec 2016. 5260.0.55.002 - Estimates of Industry Multifactor Productivity, 2015-16, Frequently Asked Questions. http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/5260.0.55.002Main%20Features22015-16?opendocument&tabname=Summary&prodno=5260.0.55.002&issue=2015-16&num=&view=

[7] PC Productivity Update, http://www.pc.gov.au/research/ongoing/productivity-update

[8] PC April 2016, *Productivity Update 2016*, p. 3.

4.1 Question to all parties

In the Annual Wage Review 2015–16 decision, the Expert Panel stated:

> ***'… we do not accept the proposition that most low-paid workers are not in low-income households. Around two-thirds of low-paid employees are found within the bottom half of the distribution of employee households and have lower living standards than other employees. Increases in the minimum wage and award classification wages do have a role to play as part of a package of measures to address the relative living standards and the needs of the low paid. So much is evident from the minimum wages objective and the modern awards objective in the Act.'***

Does any party dispute either the facts or interpretations that the Expert Panel has placed on them in the paragraph cited above?

Ai Group's comment

Ai Group refers to its initial submissions.

4.5 Question to the ACTU

The ACTU submitted that raising the minimum wage will reduce inequality and thereby promote economic and productivity growth.

All parties are invited to comment on this part of the ACTU submission.

Ai Group's comment

Ai Group refers to its initial submissions.

4.12 Question to all parties

ACCER submitted that the Panel's *'policy of maintaining relativities set in the past … 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.'***
>
> ***ACCER submitted that the Panel, in deciding that a percentage increase should be applied to both the NMW and award wage rates, 'conflated what should have been two separate wage setting processes.'***

All interested parties are invited to comment on this aspect of ACCER's submission.

Ai Group's comment

ACCER raised a similar issue in its submissions to the Expert Panel during the Annual Wage Review 2014 – 2015. In ACCER's initial submission in 2015 it said:

> *"88. The Fair Work Act provides a very different process for the setting of the NMW. The legislation requires that it be set and provides that it operates as a general right of workers within and outside and the award system. The clear intention of the legislation is that award rates are to be based on a separately assessed NMW and, it follows, that the NMW is not to be constrained by existing award rates. Having assessed the NMW, the FWC is to take it into account in setting award rates. This is very significant in our consideration of the level of, and the adjustments to, the NMW.*
>
> …
>
> *95. This new scheme in which centrality is given to the setting of the NMW is very relevant to the setting of award wage rates and to the consequences of setting a fairer NMW. In some awards there are classifications and wage rates sitting close to the NMW, so that, if the NMW is to be increased by a further amount (such as the extra $10.00 per week claimed by ACCER), changes will be have to be made to some award classifications and the rates prescribed by them. The award classification system has operated to constrain the adjustment of the NMW. Since 1997 the NMW and the C14 award rate appear to have been tied together by a Gordian Knot. The provisions of the current legislation, properly applied, cut that knot."*

Ai Group responded to the contention made by ACCER when questioned by the Expert Panel "[w]*hat are other parties' views on this construction of the Act (particularly in relation to setting the NMW and its relationship with the C14 rate) and the ruling sought by ACCER?*". Ai Group's response to the Expert Panel is extracted below:

> "*Section 285 of the FW Act requires that the Expert Panel of the FWC conduct an Annual Wage Review each financial year and that it:*
>
> - *Must review modern award minimum wages;*
> - *Must review the National Minimum Wage Order;*
> - *May make one or more determination varying modern awards to set, vary or revoke modern award minimum wages; and*
> - *Must make a National Minimum Wage Order.*
>
> *The making, varying or revoking of award minimum wages is relevant to award covered employees. This function is separate to the making of the National Minimum Wage Order which is relevant to award/agreement free employees, but these functions are nonetheless, interrelated and are impacted by each other.*

The National Minimum Wage is the same as the C14 rate in the Manufacturing and Associated industries and Occupations Award 2010. An equivalent rate appears in various other awards.

The C14 rate has been the same as the National Minimum Wage and its predecessor, the Federal Minimum Wage, since 1997. The April 1997 Safety Net Review Decision[9] *saw the introduction of a new Federal Minimum Wage. The Decision relevantly stated:*

> *"..we have decided not to link the level of the federal minimum wage with any defined benchmark of needs. We think that the most appropriate course to follow now is to equate the federal minimum wage with the minimum classification rate in most federal awards; that is, the rate of the C14 classification in the Metal Industry Award."*[10]

A separation between the C14 rate and the National Minimum Wage would skew this longstanding relationship."

The Expert Panel's determination on this issue during the Annual Wage Review 2014 – 2015 is set out below. It acknowledged the necessary connection between the national minimum wage and modern award minimum wages:

"[130] The review and variation of modern award minimum wages is a separate function to that of reviewing and making a national minimum wage order, though the two functions are related. We accept the proposition 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.

…

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

[137] It follows that as part of the decision making process in an annual wage review the Panel must first form a view about the rate of the NMW it proposes to set in the review (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.

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[9] Print P1997

[10] Section 8.2.4 in the Decision

> *[138] No party contended that the Act precluded the Panel from continuing to conduct annual wage reviews in a manner that involves a concurrent assessment of the NMW and modern award minimum wages. Nor does the Act suggest some sort of bifurcated process whereby the Panel first makes a national minimum wage 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 two tasks take place in the context of a single annual wage 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 national minimum wage order (see s.135(2)); and the statutory direction that both the national minimum wage order and annual wage review variation determinations come into operation on 1 July in the next financial year (absent exceptional circumstances (ss.286 and 287)).*
>
> *[139] Accordingly, as part of the annual wage 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. As part of its decision making process the Panel first forms a view about the NMW rate it proposes to set in the review and then takes that proposal into account in exercising its powers to set, vary or revoke modern award minimum rates."*

The formulation of the issue by ACCER for this Annual Wage Review focusses on two elements:

- that the "*policy of maintaining relativities set in the past … based on relativities established prior to the enactment of the Fair Work Act, is not based on the terms of the legislation*"; and
- that "*the obligation on the FWC is to take into account the needs of the low paid unconstrained by wage relativities within award classifications*"

The relationship between the national minimum wage and modern award minimum wages is not a new phenomenon, and has been cemented over many years of annual wage reviews by the Fair Work Commission and its predecessors. The issue agitated by ACCER is not new and while, more recently, it was raised before the Expert Panel during the Annual Wage Review 2014 – 2015 (above) the matter was also ventilated during the review of minimum wages 20 years ago by the Australian Industrial Relations Commission (**AIRC**). The response by the AIRC in 1997 was referred to by Ai Group in our response to the Expert Panel's questions on notice for the Annual Wage Review 2014 -2015 (see above), but for the purpose of responding to the Expert Panel's current question we provide a larger extract of the AIRC's determination during its Safety Net Review in April 1997:

> *"For reasons given in Chapter 7.6, we have decided not to link the level of the federal minimum wage with any defined benchmark of needs. We think that the most appropriate course to follow now is to equate the federal minimum wage with the minimum classification rate in most federal awards; that is, the rate of the C14 classification in the Metal Industry Award. This approach (which is consistent with the proposal of the BCA), in our view, lends industrial realism to the minimum wage we have set because it is linked to the classification*

structure established by the Commission as a result of the August 1989 decision. The Commission, in deciding to establish minimum classification rates in the metal and building industries, said:

> *"Subject to what we say later in this decision, we have decided that the minimum classification rate to be established over time for a metal industry tradesperson and a building industry tradesperson should be $356.30 per week with a $50.70 per week supplementary payment. The minimum classification rate of $356.30 per week would reflect the final effect of the structural efficiency adjustment determined by this decision." [Print H9100 at p.12]*

As a result of this decision, minimum awards were varied, over a period of time, to reflect the relativities so decided, leading to the C14 rate in the Metal Industry Award becoming the minimum classification rate in most federal awards."

While the above decision was made under the former *Workplace Relations Act 1996*, the relationship between the national minimum wage (then known as the federal minimum wage) and award minimum wages, and the historical framework on which that relationship is based, remain relevant and should not be disturbed.