



Australian Government

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Response to

Questions on Notice

9 April 2018

1 Decision making process

1.1 Question to all parties

In Chapter 7 of its submission, ACCER deals with wage setting under the Fair Work Act 2009 and addresses some aspects of the Panel’s 2016–2017 decision, in particular:

- (i) ACCER submits that the Panel’s construction of s.284(1) was erroneous and should be reconsidered (see especially [214], [234]–[237], [240], [249] and [253] of ACCER’s submission).
- (ii) ACCER maintains its contention that the Panel has adopted a ‘wages relativities policy’ which it submits is contrary to law and also asks that the Panel reconsider its decision in respect of this issue (see especially [255]–[272] and [287] of ACCER’s submission)
- (iii) ACCER makes a number of observations about ‘equal remuneration’ and the consideration in s.284(1)(d), noting that the gender pay gap is caused by factors outside the modern award system and is not relevant to the matter in s.284(1)(d) (see especially [275]–[281] of ACCER’s submission).

All parties (especially the Australian Government, ACTU, ACCI and Ai Group) are asked to comment on these aspects of ACCER’s submission.

- (i) In determining a fair increase to minimum wages that meets the Object of the *Fair Work Act 2009*, the Expert Panel is required to take into account the various paragraphs in subsection 284(1) of the Act. However, the Expert Panel has discretion as to how these considerations are balanced against each other.
- (ii) Part 2-6 in the *Fair Work Act 2009* does not constrain how the Expert Panel might vary the national minimum wage rate or modern award minimum wages.
- (iii) It remains open to any party to make submissions as to how the gender pay gap and the reasons for it (as far as they relate to the principle of equal remuneration for work of equal or comparable value) should be taken into account.

1.3 Question to the ACTU and all parties

The ACTU submission comments on the Panel's observation in last year's Review decision that the considerations we are required to take into account in reaching a judgment as to what constitutes 'fair and relevant' minimum wages require us to balance 'competing interests'.¹ The ACTU juxtaposes the notion of competing interests with a unitary interest. The ACTU submits:

'The growing body of empirical research studying the employment effects of minimum wages (discussed in Chapter 5), the new economic orthodoxy regarding the economic risks of inequality (discussed in Chapter 4) and other prominent schools of economic thought (such as dynamic monopsony and post-Keynesian economics) provide sound support for moving away from a position whereby deciding "fair and relevant" minimum wages necessarily involves a contest between "social" versus "economic" considerations, towards a position where the assessment is fundamentally about the common good.'²

The ACTU also submits:

'We do not raise the above to suggest that the Panel can or should adopt some criteria other than that which it is directed to. But we do submit that the Panel should recognise that the criteria it is asked to apply embed certain assumptions which the Panel is free to question, challenge and reject. Indeed, it has taken some steps towards this approach already. For example, the Panel has recognised that its obligation to set "fair and relevant" minimum wages does not limit it to an exclusive consideration of the particular matters referred to in the paragraphs below subsections 134(1) and 284(1) of the Act, as its consideration of social inclusion and the gender pay gap demonstrates. In addition, it has been willing to accept some limits about the rigidity of the assumptions embedded in the criteria it is compelled to consider – most notably last year's statement that:

"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."³

The above seems to suggest that the various statutory considerations in ss.134 and 284 are not in conflict, but rather are all pointing in the directions of an increase in minimum wages. Is that what is being put?

Is the proposition simply that increasing minimum wages will be good for the economy, therefore the social and economic considerations are not in conflict?

What of the consideration in s.134(1)(f), in particular the impact of an increase in minimum wages on 'employment costs'?

¹ ACTU submission, 13 March 2018 at para. 4.

² ACTU submission, 13 March 2018 at para. 9.

³ ACTU submission, 13 March 2018 at para. 8; [2017] FWCFB 3500 at para. 523.

The ACTU and all parties are invited to respond to the above questions.

The Australian Government notes the Fair Work Commission’s 2016-17 Annual Wage Review Decision states that:

“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.’ The minimum wages objective is to ‘establish and maintain a safety net of fair minimum wages.’ 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.

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.” [para 128-129]

“It seems to us that the statutory provisions relevant to the fixation of the NMW plainly seek to strike a balance between competing interests” [para 141]

2 The economy

2.1 Question to the Australian Government

The Australian Government states that over the past 5 years, labour productivity has grown by an average of 1.5 per cent for the economy as a whole and by 1.0 per cent for the non-mining sector of the economy.⁴ This implies that labour productivity has grown substantially more in the mining than in the non-mining sectors of the economy. How is this difference to be taken into account when determining any increase to the NMW and award rates?

The Australian Government considers this a matter to be determined by the Expert Panel.

The Mining industry employment is less than 2 per cent of total employment and of those employees, only a very small share have their pay determined by awards (*ABS Labour Force, Australia, Detailed, Quarterly, Feb 2018*, Cat No 6291.0.55.003 and *ABS Employee Earnings and Hours, Australia, May 2016* Cat. No. 6306.0).

⁴ Australian Government submission, 13 March 2018 at paras 87–88.

2.2 Question to all parties

In previous Reviews, the Panel has noted that productivity growth is best measured over the business cycle. The Panel has also highlighted that since the length of the business cycle is not aligned with the statutory task of an annual wage review; the Panel pays more attention to longer term trends and treats recent changes in productivity with some caution.⁵

In that context, all parties are invited to comment upon what significance, if any, should be given to the 2017 productivity growth figures in Tables 2.1 and 2.2 of the Statistical report.

As stated in the Australian Government’s 2018 submission, “*productivity measures over short time periods can be volatile, cyclical and are subject to revisions. The ABS therefore advises that productivity growth cycles be used to assess changes in labour productivity over time*” (Australian Government submission to Annual Wage Review 2017–18, 13 March 2018 at para. 196).

⁵ [2017] FWCFB 3500 at para. 228.

2.4 Question to the Australian Government

In its submission the Australian Government sets out some information about small business and its employment.⁶ Is the Australian Government able to inform the Panel about the proportion of new employee jobs that is provided by small business?

According to the Australian Bureau of Statistics *Employee Earnings and Hours* (EEH) publication, the number of small business employees increased by 85,000 from 2014 to 2016, while the total number of employees increased by 478,000 between the two surveys. The increase in small business employee numbers represented 17.8 per cent of the growth in total employees over this period.

Employers with fewer than 20 employees have been used as a proxy for small business. Employees includes owner managers of incorporated businesses, but not owner managers of unincorporated businesses.

Previous research by the Department of Industry, Innovation and Science shows around 80 per cent of net full-time jobs growth in Australia over the period 2004 to 2014 can be ascribed to small young firms (i.e. firms that are younger than 4 years and have fewer than 20 employees)⁷

The most up-to-date published data sources relate to the net change in total employment, but not the number of new jobs created or lost.

⁶ Australian Government submission, 13 March 2018 at para. 14.

⁷ See Bakhtiari S. (2017), *Entrepreneurship Dynamics in Australia: Lessons from Micro-data*, Department of Industry, Innovation and Science Research Paper no. 5.

2.5 Question to the Australian Government

Can the Australian Government explain more fully how the ‘current rate of wage growth is part of the adjustment as the economy transitions from the investment phase to the production phase of the commodities boom’?⁸

The capacity of wages to respond to developments at a sectoral and economy-wide level is an important adjustment mechanism that supports employment outcomes across the economy.

When mining investment boomed from around 2004-05, Australia already had very low unemployment. This meant there was little, if any, excess labour supply to meet the increased demand for workers. Demand for labour surged in the Mining and Construction industries, spilling into other industries in mining states. With supply limited, this increased demand for labour was met by short-term flows as workers from interstate and overseas were lured by higher wages.

In this sense, the mining investment boom drew resources from other sectors of the economy. The result was strong growth in Australia’s mining states, but relatively softer growth elsewhere.

A very important feature of both the upswing and downturn of the commodity cycle was the dispersion of wages growth across the economy. This helped reallocate resources but also helped dampen the macroeconomic, employment and inflationary consequences of the mining boom. The labour market proved very flexible.

At the aggregate level, the real consumer wage – that is, wages relative to the prices that consumers pay for goods and services – grew much faster than labour productivity during the mining investment boom (Australian Government submission to Annual Wage Review 2017–18, 13 March 2018, Chart 6.1). The real consumer wage has been largely flat since the peak in the terms of trade. This is also true of nominal unit labour costs. This is a very unusual event. We have to go back to the years following the recession of the early 1990s to find another example in Australia. This subdued period of consumer wage and labour cost growth has helped support the labour market through the downturn in commodity prices.⁹

⁸ Australian Government submission, 13 March 2018 at para. 82.

⁹ This material is drawn from a speech by Nigel Ray (Deputy Secretary, Macroeconomic Group, Treasury), “Some international trends and Australia’s emergence from the mining boom – Address to the Australia, Japan and International Economic Outlook Seminar” 26 September 2017

2.6 Question to the ACTU and all parties

The ACTU submitted that '[i]ncreased wages for the low paid raise aggregate demand disproportionately because low paid people spend most or all of any increase to their incomes. We attempt to estimate this effect in section 3.1.15.3 below.'

What is the ACTU's estimate of the effect referred to in the above submission?

What is the response of the other parties to this submission?

The Australian Government refers to its response provided to Question 6.2 as part of the 2014-15 Annual Wage Review and Question 3.1 as part of the 2016-17 Annual Wage Review.

The ACTU's suggestion that raising the minimum wage is a stimulatory measure that has macro-economic benefits is based on a very partial analysis of their proposed \$50 per week increase.

The orthodox view of the labour market is that workers are employed to the degree that they are able to contribute to the profitability of their employing enterprise. Employment contributes to the profitability where the marginal revenue product produced by a worker is larger than the cost of their employment.

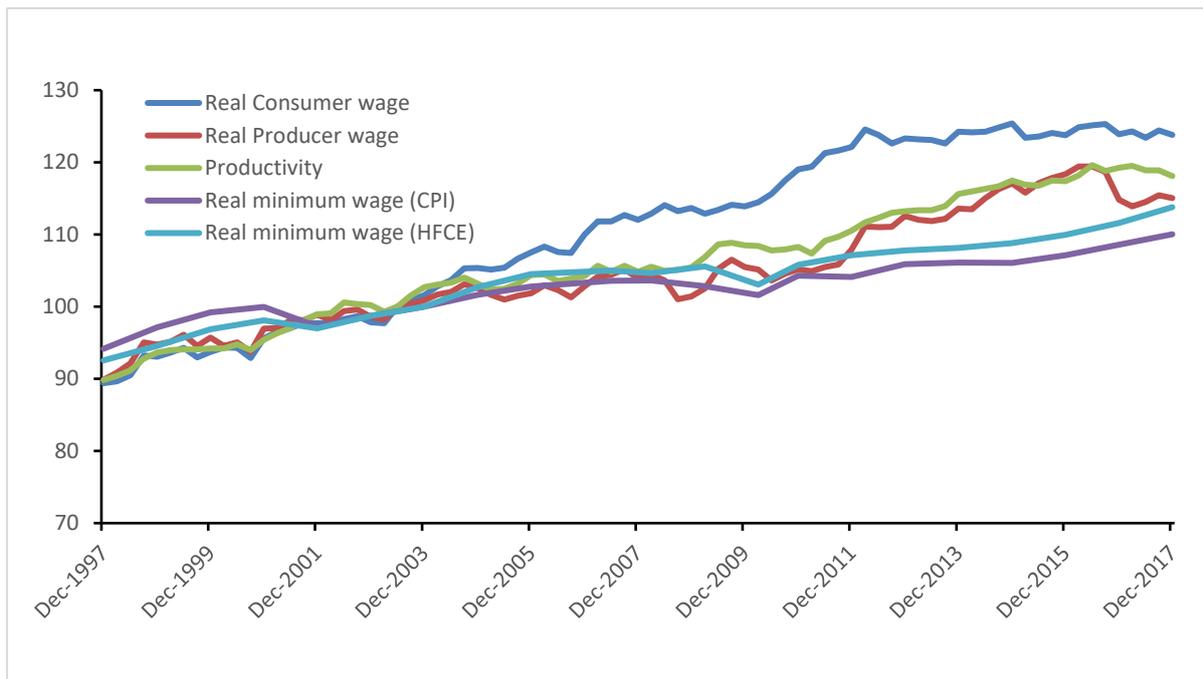
2.7 Question to the Australian Government

Can the Australian Government add lines to Chart 6.1 in its submission that show the real NMW (or equivalent) deflated by the household consumption deflator and the CPI?¹⁰

The chart below has been updated to include the real national minimum wage deflated by the household consumption deflator and the CPI.

However, it should be noted that unlike the original, this chart commences in 1997, rather than 1993, to reflect the introduction of the Federal Minimum Wage following the April 1997 Safety Net Review conducted by the Australian Industrial Relations Commission (AIRC).

Real wages and labour productivity during the mining boom (updated)



Source: ABS *Australian National Accounts: National Income, Expenditure and Product, December 2017*, cat. no. 5206.0, Department of the Treasury calculations.

Note: The real producer wage is AENA (per hour) deflated by the GDP deflator; the real consumer wage is AENA (per hour) deflated by the household consumption deflator; labour productivity is per hour. March 2003 = 100; for real minimum wage June 2003=100

¹⁰ Australian Government submission, 13 March 2018 at p. 51.

2.8 Question to the ACTU and all parties

The ACTU submitted concern regarding the extent to which the measure of underemployment captures workers searching for more work 'due to the inadequacy of wages'. The ACTU stated that:

'... excluding those who were "available and not looking" (that is did not request longer hours) underestimates the relative lack of power of the employee in the employment relationship particularly for women and other vulnerable groups, and also the risk and costs of changing jobs. Many employees do not find themselves in a position to request anything from employers. It is well understood that requesting more hours is unlikely to have the result that the worker seeks and may even be negatively interpreted by employers and have adverse consequences for the employee.'

Does the ACTU have any evidence to support this statement? All other parties are invited to comment.

The Australian Bureau of Statistics (ABS) has advised that to be considered underemployed a person needs to satisfy two requirements:

1. have a preference to work more hours; and
2. be available to work more hours.

In order to be considered underemployed a person does not need to take active steps to seek out extra hours.

2.9 Question to the Australian Government

In section 4.6.3, the Australian Government submission discusses the extent of youth unemployment. It offers some general explanations as to why youth unemployment is more than twice the rate of total unemployment. One such explanation is that youth 'often have fewer skills, and less experience and education'.¹¹ We note that the existence of lower award rates for youth, apprentices and trainees is an acknowledgement of the lower levels of experience of these groups.

- (i) Do young people have less education than the workforce in general? Do unemployed youth have lower levels of education than do unemployed adults?
- (ii) Is the Commonwealth able to shed more light on why the rate of youth unemployment has not declined since 2010, in line with the decline in total unemployment?
- (iii) We note the rise in disengagement of 20–24 year olds, especially males, as set out in paras 132–133 of the submission. Is the Australian Government able to provide an explanation for this?

- (i) Youth have lower levels of educational attainment than the rest of the adult population. For instance, in May 2017 the proportion of persons aged 15-24 who had completed year 12 stood at 62.1 per cent, compared with 80.9 per cent of persons aged 25-64 [ABS, *Education and Work, May 2017: Microdata* (Cat. No. 6227.0.30.001)]. Many young people are still finishing their studies, with more young people studying at school (and participating in university), and studying for longer.

Unemployed youth have lower levels of education than their older unemployed counterparts. Around 57.5 per cent of unemployed youth had completed year 12 or above, compared with 72.1 per cent of unemployed people aged 25-64.

- (ii) The youth unemployment rate has remained higher than the overall unemployment rate because during times of subdued labour market conditions, youth tend to be most vulnerable. Youth often have less developed skills, experience and education, and can therefore unfortunately be more significantly affected during a downturn. They also face difficulties as they tend to be competing with a better qualified and experienced job seeker cohort when looking for work.

Results from the Department of Jobs and Small Business' *Survey of Employers' Recruitment Experiences* also suggest that young job seekers at times have lower levels of employability skills which employers are often seeking.

When asked how young people could improve their employment prospects, more than half (57 per cent) of employers indicate that young people would benefit from improved employability skills. These particular skills are often gained through workplace experience. Nearly a third (30 per cent) of employers said that young people would also benefit from additional experience, education, or training.

¹¹ Australian Government submission, 13 March 2018 at para. 130.

- (iii) The relatively subdued labour market conditions for youth since the onset of the Global Financial Crisis in September 2008 (notwithstanding the recent strengthening in conditions over the last year) has translated into an increase in youth disengagement (not working or attending full time study).

Both males and females aged 20-24 recorded an increase in disengagement over the period September 2008 to January 2018 (up by 3.5 percentage points and 1.4 percentage points respectively). Data are 12-month averages of original estimates. [ABS, *Labour Force, Detailed- Electronic Delivery, February 2018* (Cat. No. 6291.0.55.001)]

While males aged 20-24 have recorded a larger increase in disengagement, this is likely to be explained, in part, by the structural transitioning that occurred in the labour market over the period. This involved stronger employment growth in the services industries, which tend to employ more women, than in the male-dominated industries, such as Manufacturing.

3 Relative living standards and the needs of the low paid

3.1 Question to all parties

The minimum wage bite is calculated as the weekly national minimum wage as a proportion of full-time median earnings of employees and owner managers of incorporated enterprises. A chart showing the trends in the minimum wage bite is presented in Chart 8.3 of the Statistical report.

The Australian Bureau of Statistics also collects median hourly earnings which include earnings of both full-time and part-time employees.

Do any parties have a view as to the preferred measure of median earnings to be used for calculation of the minimum wage bite?

The Australian Government submission uses the median wage of full-time employees and owner managers of incorporated enterprises to calculate the minimum wage bite, which is the same approach used by the Organisation for Economic Co-operation and Development.

3.2 Question to the Australian Government

In reference to Table 8.2 of its submissions, which is based on the Survey of Employee Earnings and Hours, the Australian Government submits that 'low and medium-paid employees have seen gains in real earnings over the last decade, but at a slower pace than high paid employees'.¹² The Australia Government also submits that, according to the HILDA survey, 'average annual growth in total wage income was slightly higher in the lower deciles from 2005 to 2015' and that '[a]fter controlling for hours worked, wage growth has been broadly uniform across the employee income distribution from 2005 to 2015'.¹³

Can the Australian Government reconcile the two findings given that the former refers to weekly full-time non-managerial wages and the latter refers to annual total wage income?

Can the Australian Government replicate the data in Table 8.2 to include managerial employees?

The Household, Income and Labour Dynamics in Australia (HILDA and EEH are different in their purpose, design and data collection techniques. Both data sources are sample surveys and are subject to sampling error.

- HILDA is a longitudinal household-based study which began in 2001. Information about economic and subjective well-being, labour market dynamics and family dynamics is collected annually. The HILDA Survey was initiated, and is funded, by the Australian Government through the Department of Social Services. Responsibility for the design and management of the survey rests with the Melbourne Institute of Applied Economic and Social Research (University of Melbourne). Data collection is undertaken by a private research company.
- EEH statistics are collected via a two-stage sample survey. In the first stage, approximately 8,200 businesses are selected from all employing businesses in Australia. In the second stage, selected employers choose a random sample of employees from their payroll. The number of employees selected in each business depends on the size of the business.

To replicate Table 8.2 to include managerial employees requires unpublished and historical Survey of Employee Earnings and Hours data. The Australian Government is consulting with the Australian Bureau of Statistics on whether these data are available and comparable.

¹² Australian Government submission, 13 March 2018 at para. 255.

¹³ Australian Government submission, 13 March 2018 at para. 256.

3.3 Question to the Australian Government

The Australian Government refers to a median wage of full-time and part-time employees.¹⁴ How are junior, apprentice and trainee wages, and the casual premium, treated in calculating this median wage?

The Australian Government refers to the median wage as reported in the ABS *Characteristics of Employment 2017* publication. It includes junior, apprentice and trainee wages and the casual premium.

¹⁴ Australian Government submission, 13 March 2018 at para. 34.

4 Promoting social inclusion through increased workforce participation

4.1 Question to the Australian Government

The Australian Government references the requirement for the Expert Panel to take into account the promotion of social inclusion through increased workforce participation.¹⁵ It implies that consideration of this requirement would be assisted by knowing the distribution of low-paid employees among the income distribution of all households, including those who are outside the labour force. Can the Australian Government explain how the latter informs the former?

Analysis of all households captures individuals who are able to work but do not have a job. This group is relevant to the requirement in section 134(1)(c) for the Expert Panel to promote social inclusion through increased workforce participation. As noted in paragraph 39 of the Australian Government Submission, 35 per cent of people who entered the workforce do so by taking a low-paid job.

¹⁵ Australian Government submission, 13 March 2018 at para. 46.

4.2 Question to the Australian Government

The Australian Government summarises the findings of a research paper on the employment impacts of the two large tranches of increases in the Seattle minimum wage. It provides figures that imply that overall the minimum wage rose by 37 per cent over two years (2015–2016) and that hours worked in low-wage jobs fell by 9.4 per cent as a result of the increase in the second year. It then states that the research concludes that ‘the lost income associated with the reduced hours exceeded the gain associated with the wage increase’. Can the Australian Government explain how the figures cited above can be consistent with this claim?

The first wage increase of the Seattle Minimum Wage Ordinance, from \$9.47 to \$11 per hour in 2015, was found to have no statistically significant impact on hours worked for low-wage workers. However, as stated in the paper, ‘... we associate the first minimum wage increase, to \$11, with wage effects of 1.4% to 1.9% (averaging 1.7%).’

The statement ‘the lost income associated with the reduced hours exceeded the gain associated with the wage increase’ refers to the impact of the second wage increase from \$11 to \$13 in 2016. As stated in (the abstract of) the paper, ‘the second wage increase to \$13 reduced hours worked in low-wage jobs by around 9 percent, while hourly wages in such jobs increased by around 3 per cent. Consequently, total payroll fell for such jobs, implying that the minimum wage ordinance lowered low-wage employees’ earnings by an average of \$125 per month in 2016.’

As the paper pointed out, most affected low-wage workers earned more than the statutory minimum before minimum wage increases, and therefore ‘the impact of Seattle’s minimum wage increase on wage levels is much smaller than the statutory increase’ which was 37 per cent over two years (2015-2016).

5 Equal remuneration

5.1 Question to all parties

The ACTU submission suggests that the ‘principle of equal remuneration for work of equal or comparable value’, as referenced in ss.134(1)(e) and 284(1)(d), is not relevant to the Panel’s functions in an Annual Wage Review.

Does any party take a contrary view?

Subsection 284(2) provides that the minimum wages objective (and ‘the principle of equal remuneration for work of equal or comparable value’ in paragraph 284(1)(d)) applies to the performance or exercise of the Expert Panel’s functions or powers under this Part (which includes the annual wage review) as well as the Expert Panel’s functions or powers so far as they relate to setting, varying or revoking modern award minimum wages.

In determining a fair increase to minimum wages that meets the Object of the Fair Work Act 2009, the Expert Panel must give regard to the minimum wages objective (s.284) and the modern awards objective (s.134) under the Act.