Annual Wage Review 2017–18: Questions on notice

All interested parties are invited to comment on any question published for reply submissions, including those that have been addressed to specific parties.

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1. Decision-making process
   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:

1. 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).
2. 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)
3. 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.

* 1. Question to all parties

The method for adjusting wages in copied State awards was the subject of a decision by the Panel issued on 4 January 2018.[[1]](#footnote-1) In that decision the Panel expressed the following provisional view:

‘[43] … It is our provisional view that AWR adjustments should generally apply to copied State awards, subject to a different outcome being determined in respect of particular copied State awards. In other words, rather than seeking to apply a tiered approach as a decision rule to mitigate ‘double dipping’ we propose to address any ‘double dipping’ on a case by case basis. We invite submissions on our provisional view in the context of the 2017–18 Review proceedings.’[[2]](#footnote-2)

The ACTU invites the Panel to confirm its provisional view.[[3]](#footnote-3) Does any other party take a different view?

* 1. 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’.[[4]](#footnote-4) 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.’[[5]](#footnote-5)

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.”’[[6]](#footnote-6)

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’?

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

1. The economy
   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.[[7]](#footnote-7) 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?

* 1. 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.[[8]](#footnote-8)

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.

* 1. Question to ACCI

ACCI submitted that:

‘While there is evidence of a pick-up in profit growth in the award-reliant industries, sales data shows that profit growth in the award-reliant industries is largely driven by cost cutting.’[[9]](#footnote-9)

What evidence does ACCI have that profit growth is largely driven by cost cutting?

* 1. Question to the Australian Government

In its submission the Australian Government sets out some information about small business and its employment.[[10]](#footnote-10) Is the Australian Government able to inform the Panel about the proportion of new employee jobs that is provided by small business?

* 1. 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’?[[11]](#footnote-11)

* 1. 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.’[[12]](#footnote-12)

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?

* 1. 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?[[13]](#footnote-13)

* 1. 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.’[[14]](#footnote-14)

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

* 1. 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’.[[15]](#footnote-15) 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.

1. Do young people have less education than the workforce in general? Do unemployed youth have lower levels of education than do unemployed adults?
2. 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?
3. 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?
4. Relative living standards and the needs of the low paid
   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?

* 1. 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’.[[16]](#footnote-16) 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’.[[17]](#footnote-17)

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?

* 1. Question to the Australian Government

The Australian Government refers to a median wage of full-time and part-time employees.[[18]](#footnote-18) How are junior, apprentice and trainee wages, and the casual premium, treated in calculating this median wage?

1. Promoting social inclusion through increased workforce participation
   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.[[19]](#footnote-19) 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?

* 1. 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’.[[20]](#footnote-20) Can the Australian Government explain how the figures cited above can be consistent with this claim?

1. Equal remuneration
   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.[[21]](#footnote-21)

Does any party take a contrary view?

1. [2018] FWCFB 2. [↑](#footnote-ref-1)
2. [2018] FWCFB 2 at para. 43. [↑](#footnote-ref-2)
3. ACTU submission, 13 March 2018 at para. 504. [↑](#footnote-ref-3)
4. ACTU submission, 13 March 2018 at para. 4. [↑](#footnote-ref-4)
5. ACTU submission, 13 March 2018 at para. 9. [↑](#footnote-ref-5)
6. ACTU submission, 13 March 2018 at para. 8; [2017] FWCFB 3500 at para. 523. [↑](#footnote-ref-6)
7. Australian Government submission, 13 March 2018 at paras 87–88. [↑](#footnote-ref-7)
8. [2017] FWCFB 3500 at para. 228. [↑](#footnote-ref-8)
9. ACCI submission, 13 March 2018 at para. 88. [↑](#footnote-ref-9)
10. Australian Government submission, 13 March 2018 at para. 14. [↑](#footnote-ref-10)
11. Australian Government submission, 13 March 2018 at para. 82. [↑](#footnote-ref-11)
12. ACTU submission, 13 March 2018 at para. 62. [↑](#footnote-ref-12)
13. Australian Government submission, 13 March 2018 at p. 51. [↑](#footnote-ref-13)
14. ACTU submission, 13 March 2018 at para. 360. [↑](#footnote-ref-14)
15. Australian Government submission, 13 March 2018 at para. 130. [↑](#footnote-ref-15)
16. Australian Government submission, 13 March 2018 at para. 255. [↑](#footnote-ref-16)
17. Australian Government submission, 13 March 2018 at para. 256. [↑](#footnote-ref-17)
18. Australian Government submission, 13 March 2018 at para. 34. [↑](#footnote-ref-18)
19. Australian Government submission, 13 March 2018 at para. 46. [↑](#footnote-ref-19)
20. Australian Government submission, 13 March 2018 at para. 230. [↑](#footnote-ref-20)
21. ACTU submission, 13 March 2018 at paras 478–483. [↑](#footnote-ref-21)