



National
Retail
Association

ANNUAL WAGE REVIEW 2018-19

Submission to the Expert Panel of the
Fair Work Commission

March 2019



About the National Retail Association

The National Retail Association, Union of Employers (**the NRA**) is an industrial organisation representing the interests of employers in the retail, fast food, and associated industries and is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth).

The NRA has fulfilled this function, under one name or another, since its formation as a non-corporatised entity in the 1920s and then as a formally registered union of employers since 1931.

Since that time, the NRA has grown and now represents the interests of over 6,000 retailers, encompassing over 24,000 shop fronts and their associated employees nationwide.

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1. Introduction

- a. The National Retail Association (**NRA**) submits that a modest increase to the minimum wage provided in the National Minimum Wage Order (**the NMWO**) and the modern award minimum wages is warranted in the Annual Wage Review 2018-19 (**the Review**).
- b. The broader economy is beyond the scope of NRA's remit from its members, and as such the NRA joins with the submissions of the Australian Chamber of Commerce and Industry (**ACCI**) in relation to the broader economy. These submissions of the NRA are intended to focus on the particular perspective of retail and related industries in the context of the Review.
- c. The NRA advises caution in the setting of minimum wages, as a significant increase to minimum wages is likely to have a significant negative impact on already-lagging business confidence. Any negative effect on business confidence is likely to be felt adversely in business competitiveness and employment growth.
- d. The retail industry as a whole continues to suffer from very low increases, or indeed decreases, in the real price of goods. Despite some quarters with positive growth in prices, in the twelve months to December 2018 only the food and non-alcoholic beverages and alcohol and tobacco groups experienced growth in prices, and in the case of tobacco this increase was largely due to an increase in government excise and did not benefit the retailer.
- e. Retail gross operating profits also experienced a decline in both trend and seasonally-adjusted terms. The trend estimate for sales of goods and services increased, but the seasonally-adjusted estimate decreased.
- f. With the real price of retail goods decreasing, and the real purchasing power of wages (as typified by the WPI) increasing, the gap between the profit derived from sales and the labour cost of making those sales is widening to the detriment of the employer.
- g. In this difficult economic climate for retail, members of the NRA have expressed concern at the prospect of an increase to minimum award wages and the national minimum wage at the same level as has been seen in recent years.
- h. Having regard for the various matters that the Expert Panel is required to take into account under the *Fair Work Act 2009* (Cth) (**the Act**), the NRA supports ACCI's recommendation that an increase to the national minimum wage and modern award minimum wages of **no more than 1.8%** is warranted in the Review. This equates to an increase of \$12.94 per week to the NMWO.

2. Economic indicators, 2018 – 2019

- a. Whilst overall economic indicators remain generally positive in that the economy continues to grow, the information available from the Australian Bureau of Statistics indicates that the Australian economy has failed to meet optimistic forecasts and is in fact beginning to slow down.

2.1 A slowing economy

- a. The Australian economy closed the December 2018 quarter less optimistically than previous quarters. Whilst the economy continues to grow, the rate of that growth is slowing, in some areas quite sharply.
- b. GDP in the December 2018 quarter grew 0.2% in seasonally-adjusted chain volume terms,¹ the lowest quarterly growth in since September 2016 (when GDP fell by 0.1%).²
- c. This is also a contraction in growth from the September 2018 quarter, which saw growth in GDP of 0.3% in seasonally-adjusted chain volume terms.³
- d. This contraction is further indicated in the twelve months to the end of the quarter, with GDP in the twelve months to December 2018 growing by 2.3% in seasonally-adjusted chain volume terms.⁴ This continues the decline in GDP growth seen in the 12 months to September 2018, in which GDP grew by 2.8%,⁵ a sharp drop from the 3.4% growth enjoyed in the 12 months to June 2018⁶ and indicating a sharp slow-down in the national economy.
- e. In terms of seasonally-adjusted production chain volume measures, retail trade grew by 0.1% from the September to December 2018 quarters, for a total growth of 1.4% in the 12 months to December 2018. The growth in retail trade was not significant enough to have an effect on overall GDP from September to December 2018.⁷ This continued the trend seen from June to September 2018,⁸ and a significant slow-down from the 2.3% growth seen in the twelve months to June 2018.⁹
- f. Compensation of employees grew by 4.3% in the twelve months to December 2018 in seasonally-adjusted terms, significantly above its five year December average of 3.4% growth.¹⁰ From September 2018 to December 2018 compensation of employees grew by 0.9%,¹¹ a slight slow-down from the 1.0% growth seen from June to September 2018.¹²
- g. Growth in household consumption slowed in the December 2018 quarter, growing by 2.0% in seasonally-adjusted terms in the twelve months to December 2018¹³ as compared to 2.5% growth in the 12 months to September 2018.¹⁴

¹ Australian Bureau of Statistics, 2019, *Australian National Accounts: Income, Expenditure and Product, December 2018*, cat. no. 5206.0, ABS, Canberra

² Australian Bureau of Statistics, 2018, *Australian National Accounts: Income, Expenditure and Product*, "Table 2. Expenditure on Gross Domestic Product (GDP), Chain Volume Measures", time series spreadsheet, cat. no. 5206.0, viewed 5 March 2019, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/5206.0Sep%202018?OpenDocument>

³ Australian Bureau of Statistics, 2018, *Australian National Accounts: Income, Expenditure and Product, September 2018*, cat. no. 5206.0, ABS, Canberra

⁴ Supra, note 1

⁵ Supra, note 3

⁶ Australian Bureau of Statistics, 2018, *Australian National Accounts: Income, Expenditure and Product, June 2018*, cat. no. 5206.0, ABS, Canberra

⁷ Supra, note 1 at p. 6

⁸ Supra, note 3 at p. 6

⁹ Supra, note 6 at p. 6

¹⁰ Supra, note 1 at p. 15

¹¹ Supra, note 1 at p. 8

¹² Supra, note 3 at p. 8

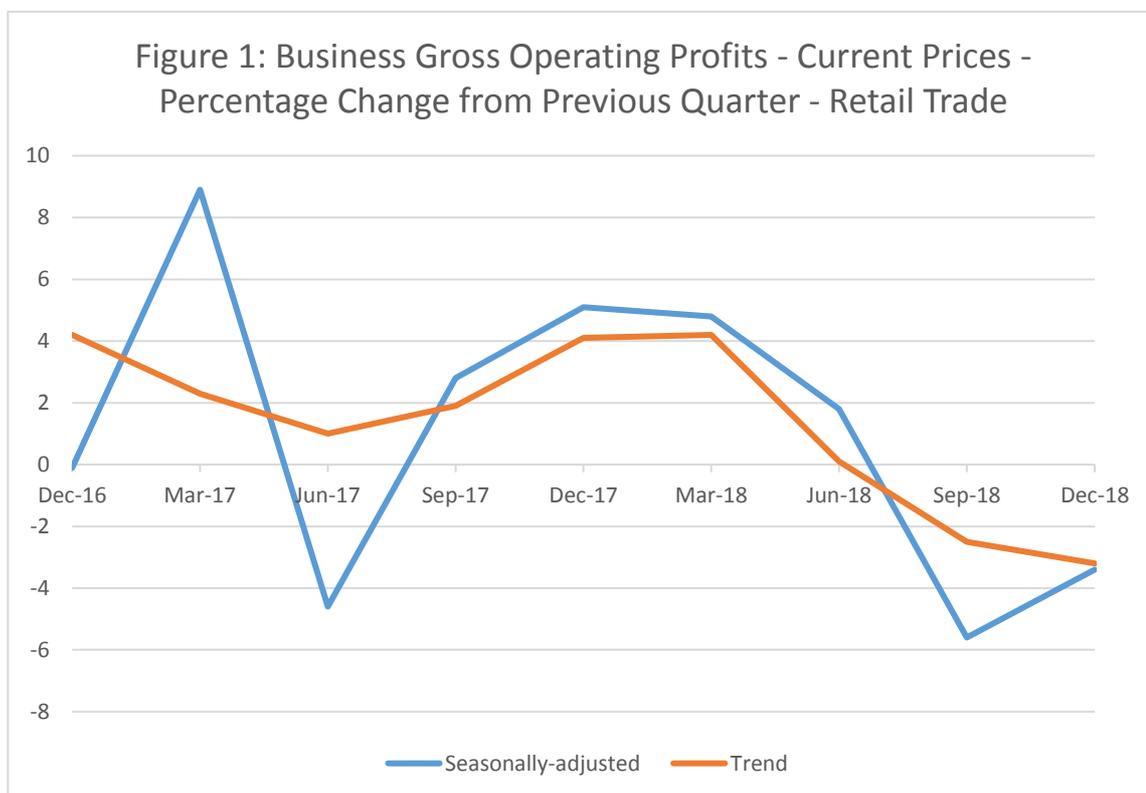
¹³ Supra, note 1 at p. 4

¹⁴ Supra, note 3 at p. 4

- h. Gross household disposable income experienced a modest pick-up due to continued growth in the compensation of employees, a slow-down in the growth of household spending, and an increase in insurance claims granted to households generating a non-sustainable additional income stream.¹⁵

2.2 Contracting profits in the retail sector

- a. The contraction in the growth of the economy as a whole is felt particularly keenly in the retail sector.
- b. In the December 2018 quarter, the gross operating profits of retail businesses experienced not merely a slow-down in growth, but seasonally-adjusted negative growth of 3.4%. This was on the back of negative growth of 5.6% in the September 2018 quarter.¹⁶
- c. The retail sector has not seen such a protected contraction in gross operating profits since the 2015-16 financial year, in which the sector experienced negative growth in gross operating profits in all but the September quarter (which experienced growth of 0.0%).¹⁷
- d. Although seasonally-adjusted gross operating profits in the retail sector have picked up slightly from September to December 2018 (from -5.6% to -3.4%), the trend continues to be for negative growth, from -2.5% in September 2018 to -3.2% in December 2018.¹⁸ The passage of seasonally-adjusted and trend operating profits in the retail sector are shown in Figure 1.



Source: Derived from Australian Bureau of Statistics, 2019, *Business Indicators, December 2018*, cat. no. 5676.0

- e. The retail sector was one of seven sectors to experience negative growth in gross operating profits in the December 2018 quarter in seasonally-adjusted terms, and one of eight sectors experiencing negative growth in gross operating profits in trend terms.¹⁹

¹⁵ Supra, note 1 at p. 16.

¹⁶ Australian Bureau of Statistics, 2019, *Business Indicators, December 2018*, cat. no. 5676.0, ABS, Canberra at p. 48

¹⁷ Australian Bureau of Statistics, 2017, *Business Indicators, December 2016*, cat. no. 5676.0, ABS, Canberra at p. 48

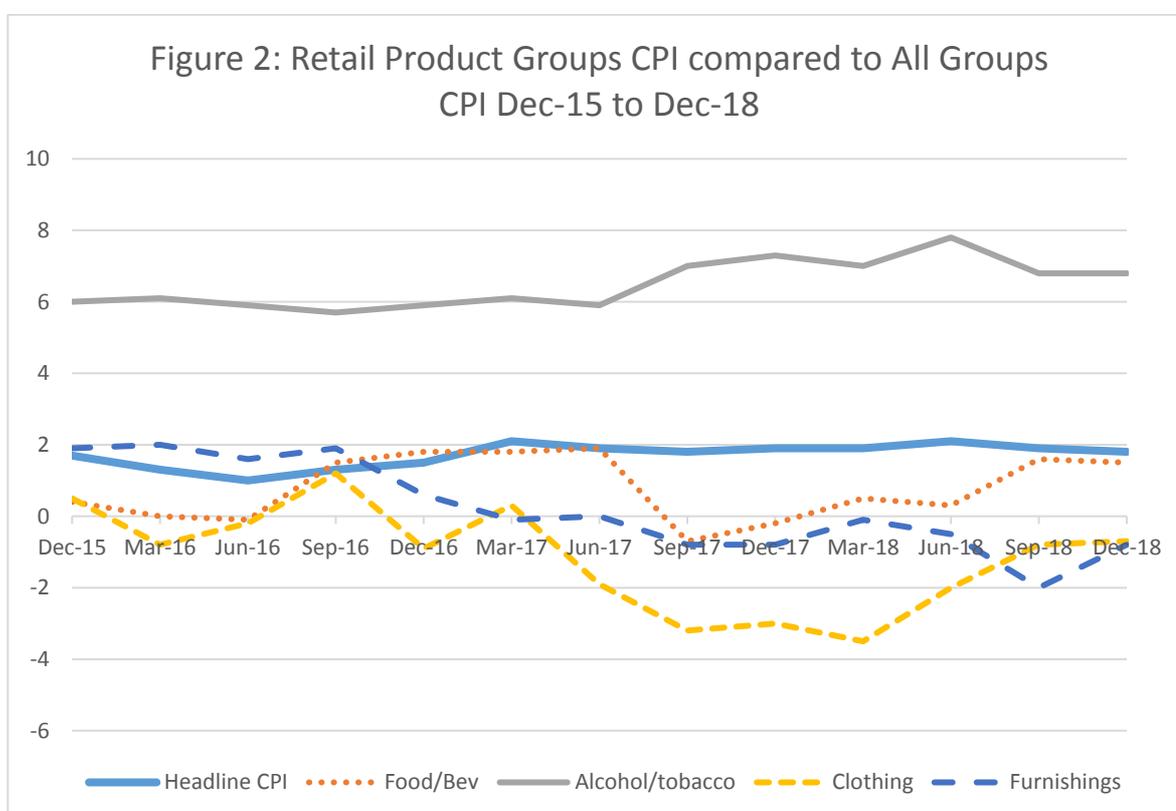
¹⁸ Supra, note 16

¹⁹ Ibid

- f. The retail sector was one of only three sectors experiencing negative growth in gross operating profits in seasonally-adjusted terms across both quarters of the financial year to date, the other sectors so affected being manufacturing and wholesale trade.²⁰

2.3 Prices of retail goods continue to decline

- a. Prices for goods sold by retail continue to either grow at very low rates or decline, indicating that competition is putting downward pressure on prices. Where prices for retail goods increase, it is due to shortage of supply (and corresponding increase to the wholesale price) or increases to government excise.
- b. As such, the CPI figures for December 2018 indicate that retailers continue to compete on price, with consequential diminishing returns, and that where prices have been increased the retailer does not generally derive any benefit from that increase.
- c. Figure 2 shows that whilst All Groups CPI demonstrates that, over the past three years, whilst All Groups CPI indicates that prices are growing overall, the individual groups containing retail goods, with the notable exception of alcohol and tobacco, indicate an extended period of price contraction.



Source: Derived from Australian Bureau of Statistics, 2016 – 2019, *Consumer Price Index*, cat. no. 6401.0

- d. CPI grew by 0.5% from the September to December 2018 quarters, for a twelve-month growth to December 2018 of 1.8%.²¹
- e. Although the all-groups CPI from the corresponding quarter in the previous year has declined since June 2018, when it peaked at 2.1%, all-groups CPI has remained reasonably stable between 1.8% and 2.1% since the March 2017 quarter.²²

²⁰ Ibid

²¹ Australian Bureau of Statistics, 2019, *Consumer Price Index, December 2018*, cat. no. 6401.0, ABS, Canberra

²² *Supra*, note 21 at p. 13

- f. The largest (retail-related) group contributing to inflation in the December 2018 quarter was alcohol and tobacco, which increased by 3.2% largely due to the 12.5% increase in the federal excise tax and other government-mandated increases effective from 1 September 2018.²³
- g. The food and non-alcoholic beverages group rose by 0.9% over the December 2018 quarter, with the main drivers being fruit (5.0%) due to seasonal rises in specific produce. Meat and seafood rose by 1.6% due largely to drought conditions in eastern states and territories adversely affecting supply, with prices for lamb and goat rising by 6.8%.²⁴
- h. Prices for the clothing and footwear group fell by 0.2% in the December 2018 quarter, driven largely by falls in the prices of women's footwear (-3.6%) and women's garments (-0.9%) due to intense competition in this market.²⁵
- i. Furnishings, household equipment and services experienced low price growth of 0.5%, mainly due to increases in the price of furniture (1.8%) and child care (1.4%).²⁶
- j. Over the 12 months to December 2018, alcohol and tobacco increased by 6.8%, with food and non-alcoholic beverages 1.5% (from -0.2% in December 2017). Clothing and footwear continued its decline, with prices falling 0.7% over the twelve months to December 2018. Whilst furniture, household equipment and services experienced an increase in the December 2018 quarter, over the 12 months to December 2018 prices in this group fell by 0.8%.²⁷
- k. Both the clothing and footwear and furniture, household equipment and services groups experienced falls in prices over the preceding 12 months for all quarters in 2018.²⁸

2.4 Wages outpace prices

- a. Real wages in Australia continue to grow, albeit the rate of growth is not necessarily heralded with fanfare by all parties. Despite this, wage growth appears to have turned a corner, with WPI in the twelve months to December 2018 growing at its highest rate since December 2014.²⁹
- b. WPI rose 0.5% in trend, seasonally-adjusted and original terms in the December 2018 quarter, with a 2.3% increase over the 12 months to December 2018.³⁰
- c. Only two industry sectors – mining and telecommunications and information services – experienced wages growth below CPI (1.8% and 1.6% respectively) whilst only one industry – construction – experienced wages growth equal to CPI. All other industries experienced wages growth in excess of CPI.³¹
- d. All sectors retail trade experienced an increase in WPI (total hourly rates of pay excluding bonuses) of 0.5% in the December 2018 quarter, with an increase of 2.0% over the 12 months to December 2018.³²
- e. WPI (ordinary hourly rates of pay excluding bonuses) for all sectors retail trade rose 0.4% in the December 2018 quarter, with an increase of 2.0% over the 12 months to December 2018.³³
- f. Due to the volatility of penalty and overtime rates in the retail sector, with changes to penalty and overtime rates taking effect on 1 July 2018 and 1 November 2018, the WPI (ordinary hourly rates of pay excluding bonuses) measure is likely to be a more accurate descriptor of real wage changes in the retail sector.

²³ Supra, note 21 at p. 3

²⁴ Ibid

²⁵ Supra, note 21 at p. 5

²⁶ Supra, note 21 at p. 4

²⁷ Supra, note 21 at p. 16

²⁸ Ibid

²⁹ Australian Bureau of Statistics, 2019, *Wage Price Index, December 2018*, cat. no. 6345.0, ABS, Canberra at p. 4

³⁰ Supra, note 29 at p. 1

³¹ Supra, note 29 at p. 11

³² Supra, note 29 at p. 11

³³ Supra, note 29 at p. 15

- g. In dollar terms, the average weekly ordinary time earnings (AWOTE) for full-time workers in the retail trade sector increased from \$1,161.30 to \$1,184.90 from May to November 2018,³⁴ an increase of 2.03%. This is up from an increase of 1.64% from November 2017 to May 2018, and an increase of 1.63% from May 2017 to November 2017.
- h. Despite declining gross operating profits over the six months to December 2018 as discussed above, expenditure on wages and salaries by retail businesses continues to increase, with the trend estimate increasing by a total of 0.7% and the seasonally-adjusted estimate increasing by a total of 0.9%.³⁵

2.5 High underemployment reflecting increased wage pressures

- a. The national labour market grew strongly in the twelve months to January 2019, with seasonally-adjusted total employed persons increasing by 2.2% and the seasonally-adjusted unemployment rate falling by 0.5 points over the preceding twelve months.³⁶
- b. In trend terms, the unemployment, underemployment and underutilization rates remained steady at 5.1%, 8.3% and 13.3% respectively.³⁷
- c. Underemployment in the retail sector remains reasonably steady at 17% as at November 2018. This is consistent with past performance in this area, as Figure 3 shows that apart from extreme movements between November 2016 and May 2017 underemployment in the retail sector has generally occupied a band between 16% and 17.5% since November 2014.



Source: Derived from Australian Bureau of Statistics, 2018, *Labour Force, Australia, Detailed, Quarterly, Nov 2018*, cat. no. 6291.0.55.003

- d. This rate of underemployment is, however, significantly higher than the national average (8.9% as at November 2018)³⁸, and indicates that the ability of retailers to provide full employment is lesser than in other industries due to cost pressures and declining profits.

³⁴ Australian Bureau of Statistics, 2018, *Average Weekly Earnings Australia, November 2018*, 'Table 10G. Average Weekly Earnings, Industry, Australia (Dollars) – Original – Persons, Full Time Adult Ordinary Time Earnings', time series spreadsheet, cat. no. 6302.0, viewed 5 March 2019, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6302.0Nov%202018?OpenDocument>

³⁵ Supra, note 16 at p. 52

³⁶ Australian Bureau of Statistics, 2019, *Labour Force, Australia, January 2019*, cat. no. 6202.0, viewed 5 March 2019, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6202.0Main+Features1Jan%202019?OpenDocument>

³⁷ Ibid

³⁸ Australian Bureau of Statistics, 2018, *Labour Force, Australia, Detailed, Quarterly, Nov 2018*, 'Table 19. Underemployed persons by Industry division (ANZSIC) or Occupation major group (ANZSCO) of main job and sex' cat. no. 6291.0.55.003, viewed 12 March 2019, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6291.0.55.003Nov%202018?OpenDocument>

- e. It is likely significant that the underemployment rate in retail trade reached its lowest point in the last four years shortly after the Fair Work Commission's announcement of a reduction to Sunday penalty rates in February 2017.
- f. This likely indicates that this prompted employers to offer more weekend work to more staff under the perception that this work would become more affordable. This began to correct itself following the announcement of phased implementation of the reduction to Sunday penalty rates, and the underemployment rate has remained steady between 16.4% and 17.3% since November 2017.
- g. Whilst the NRA notes that there is no direct evidence that the announced reduction to Sunday penalty rates is causative of these changes to the underemployment rate in 2017, we consider the temporal correlation between these to be sufficiently close for there to be an arguable nexus between these events.
- h. We note the observation of the Expert Panel in the Annual Wage Review 2017-18 in relation to the changes to penalty rates that:

*"... these matters form part of the broad context in which the Review is conducted and are relevant considerations."*³⁹
- i. Given what appears to be a significant reaction by employers to a perceived negative cost pressure on labour, it may reasonably be extrapolated that increasing the cost pressure on wages is likely to result in an increase in underemployment.

2.6 Productivity needs to improve

- a. Productivity over the twelve months to December 2018 paints a very mixed picture of the Australian economy.
- b. The twelve months to September 2018 demonstrated a steady growth in productivity, with GDP per hour of labour growing by 1.0% in trend terms and 0.7% in seasonally-adjusted terms in that period.⁴⁰
- c. The twelve months to December 2018, however, paint a very different picture, indicating no quarter-on-quarter change in trend GDP per hour worked in the September 2018 quarter and -0.2% growth in both trend and seasonally-adjusted terms in the December 2018 quarter, for a paltry growth in trend GDP per hour worked in the twelve months to December 2018 of just 0.4 (0.8% in seasonally-adjusted terms).⁴¹
- d. In terms of multi-factor productivity, the retail industry experienced a decline of 0.6%, alongside a decline in labour productivity of 1.1%. The decline in labour productivity was offset at least in part by an increase in capital productivity of 0.6%.⁴²
- e. The twelve months to December 2018 also indicate quarter-on-quarter growth in real unit labour costs in trend terms, being 0.4% in all industries and 0.1% in non-farm industries. In seasonally-adjusted terms, both the September and December 2018 quarters experienced quarter-on-quarter growth in real unit labour costs of 0.3% and 0.1% respectively,⁴³ indicating that labour cost pressures have been growing over the course of the financial year.

2.7 Growth in retail trade continues to slow

- a. Retail trade acts as an important barometer for the national economy, as it provides the most holistic view of consumer spending.

³⁹ *Annual Wage Review 2017-18* [2018] FWCFB 3500 at [93]

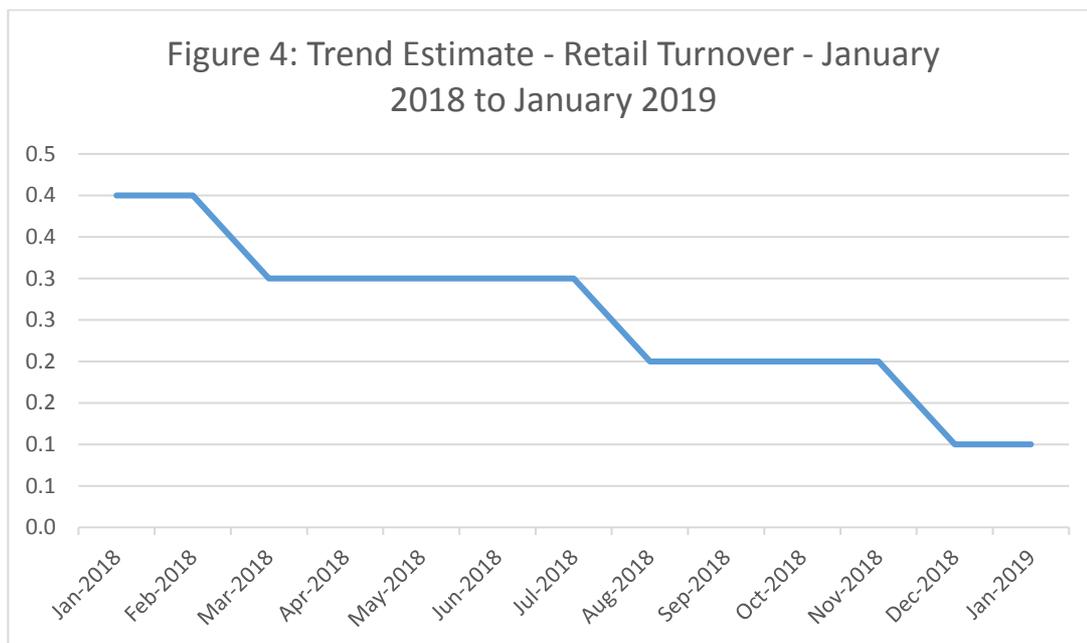
⁴⁰ Australian Bureau of Statistics, 2018, *Australian National Accounts: Income, Expenditure and Product, September 2018*, cat. no. 5206.0, ABS, Canberra

⁴¹ *Supra*, note 1 at pp. 20 - 21

⁴² Australian Bureau of Statistics, 2018, *Estimates of Industry Multifactor Productivity, 2017-18*, cat. no. 5260.0.55.002, viewed 14 March 2019, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/5260.0.55.002Main+Features12017-18?OpenDocument>

⁴³ *Ibid*

- b. Unfortunately, much like the most recent figures for GDP, the most recent figures for retail trade indicate an economy that is slowing down. The trend estimate growth in retail turnover has declined from 0.4% in January and February 2018 to 0.1% in December 2018 and January 2019, as demonstrated by Figure 4.
- c. As in previous years, where growth in retail trade has occurred it has been minimal, driven in large part due to deflationary price measures and increased competition from a growing online marketplace. Whilst Australian retailers continue to endeavor to compete in this developing paradigm, the struggle for smaller retailers in particular to compete with overseas markets accessible online is ongoing.
- d. It is as yet unknown what effect recent changes to the application of GST to imports will have on the ability of Australian retailers to compete against international traders.

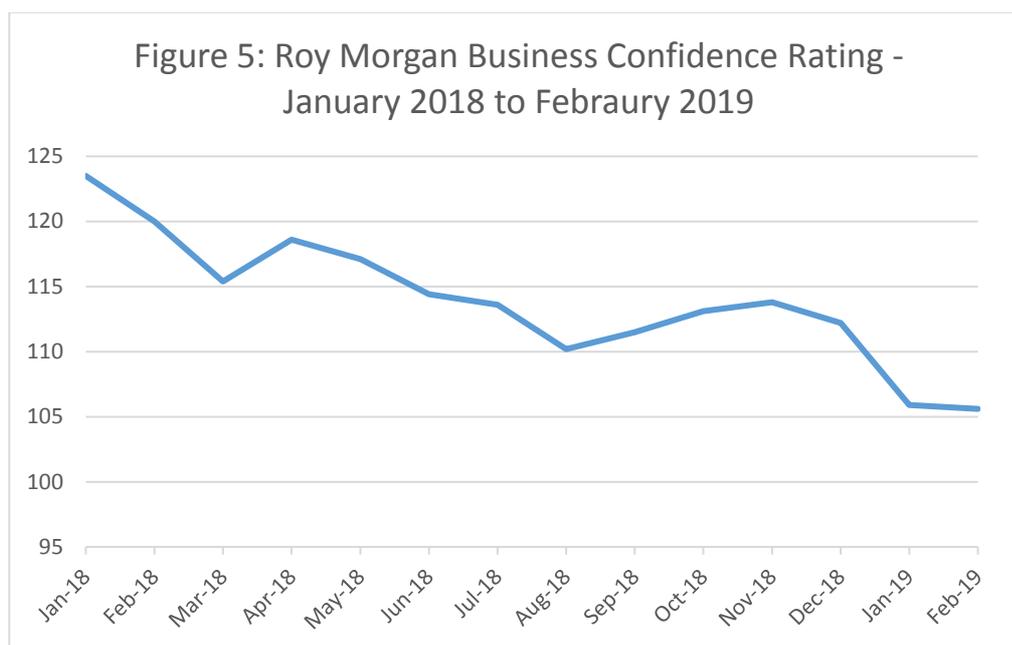


Source: Derived from Australian Bureau of Statistics, 2018 – 2019, *Retail Trade, Australia*, cat. no. 8501.0

2.8 Business confidence in doldrums

- a. The Roy Morgan Business Confidence Survey discloses a bleak outlook on the Australian economy in the coming year.
- b. In February 2019, business confidence on the Roy Morgan Business Confidence Rating was 105.6, the lowest rating for February on record for that survey. Business confidence declined steadily throughout 2018 and into 2019, peaking at 123.5 in January 2018 to reach its lowest point in February 2019.⁴⁴ Figure 5 demonstrates the decline in business confidence throughout the year.

⁴⁴ Roy Morgan, 2019, *Roy Morgan Business Confidence 2010-2019*, viewed 12 March 2019, <http://www.roymorgan.com/morganpoll/consumer-confidence/roy-morgan-business-confidence>



Source: Derived from Roy Morgan, 2019, *Roy Morgan Business Confidence 2010-2019*, viewed 12 March 2019, <http://www.roymorgan.com/morganpoll/consumer-confidence/roy-morgan-business-confidence>

- c. The decline in business confidence means that it is unlikely that businesses will invest further in Australia, including in Australian labour, if cost pressures (including labour cost pressures) continue to mount.
- d. It should be remarked that at least some of the lack of business confidence is likely due to the uncertainty around the Federal election likely to be held in May this year, and the consequential uncertainty that this heralds for various areas of regulation including industrial relations.

2.9 Conclusion – a timid economy

- a. Whilst the Australian economy as a whole may continue to grow, the retail sector as a whole is not reaping the benefits of this growth.
- b. Whilst wages and other costs of doing business continue to rise, the prices of retail goods – and consequently, the unit profit per sale – are declining as they have done for some time now. Gross operating profits in retail sector have experienced a significant contraction to date this financial year as a result.
- c. Although the unemployment figures for the retail sector do not appear to indicate a significant reaction to changes in cost pressures, the underemployment figures indicate that the retail sector tends to react to increases to cost pressures by increasing underemployment.
- d. The NRA submits that a further increase to the national minimum wage and award minimum wages of the same magnitude as seen in the 2016-17 and 2017-18 Annual Wage Reviews will likely result in increasing underemployment in the retail sector, which in turn will reduce the total income from that employment for the individual employees affected.
- e. Current data indicates that profits of retail businesses are contracting, not growing, and consequently the ability of retail businesses to sustain a significant increase to minimum wages such as those handed down in the previous two Reviews is constrained. Added to this a significant decline in business confidence since January 2018, and any significant increase to labour cost pressures is likely to have a negative effect on employment growth.

3. NRA Member Survey

- a. In aid of these submissions, the NRA commissioned a survey of its members to determine the views of retailers within the membership of the NRA in relation to the Review (**the Survey**).
- b. For demographic purposes, respondents to the Survey were grouped according to business size as follows:
 - Small businesses (1 – 19 employees)
 - Medium businesses (20 – 199 employees)
 - Large business (200+ employees)

3.1 Reaction to Annual Wage Review 2017-18

- a. NRA members were asked to advise how their business had responded to the 3.5% increase to the national minimum wage and award minimum wages as a result of the Expert Panel's decision in the Annual Wage Review 2017-18.
- b. Of medium and large businesses, only 18.75% indicated that they had implemented no significant changes as a direct result of the previous increase to award minimum wages.
- c. Of those that had made significant changes, strategies for responding to the increase to minimum wages varied (note that respondents may have implemented more than one form of significant change):
 - 62.50% decreased staffing levels;
 - 43.75% implemented alternative rostering arrangements;
 - 25.00% passed at least some of the increased labour cost on to consumers by increasing their prices; and
 - 31.25% reduced their trading hours.
- d. Of small business respondents, 16.22% indicated that they had implemented no significant changes as a direct result of previous increase to award minimum wages. Of those that did make significant changes as result of the increase to minimum wages (note that respondents may have implemented more than one form of significant change):
 - 51.53% decreased staffing levels;
 - 48.65% implemented alternative rostering arrangements;
 - 21.62% passed at least some of the increased labour cost on to consumers by increasing their prices; and
 - 13.51% reduced their trading hours.

3.2 Sustainability of increase to minimum wages

- a. As part of the Survey, members were asked to indicate what level of increase to minimum wages as an outcome of the Review that their business would be able to sustain without significant adjustment.
- b. Of small business respondents:
 - 29.73% indicated that they would be able to sustain an increase to minimum wages equal to CPI without significant adjustment; and
 - 70.27% indicated that they would not be able to sustain any increase to minimum wages without significant adjustment.
- c. Of medium and large business respondents:

- 43.75% indicated that they would be able to sustain an increase to minimum wages equivalent to CPI without significant adjustment;
 - 18.75% indicated that they would be able to sustain an increase to minimum wages marginally above CPI without significant adjustment;
 - 6.25% indicated that they would be able to sustain an increase to minimum wages significantly above CPI without significant adjustment; and
 - 31.25% indicated that they would not be able to sustain any increase to minimum wages without significant adjustment.
- d. Across all respondents to the Survey:
- 58.49% indicated that they would not be able to sustain any increase to minimum wages without significant adjustment; and
 - 41.51% indicated that they would be able to sustain an increase to minimum wages of CPI or greater, and of these:
 - 33.96% indicated that they would be able to sustain an increase to minimum wages equivalent to CPI;
 - 5.66% indicated that they would be able to sustain an increase to minimum wages marginally above CPI; and
 - 1.89% indicated that they would be able to sustain an increase to minimum wages significantly above CPI.

3.3 How businesses are likely to respond to an increase to minimum wages

- a. In addition to querying the ability of respondent businesses to sustain an increase to minimum wages, the Survey also asked how businesses were likely to react to an (unspecified) increase to minimum wages.
- b. Responses to this question were various, as follows:

Action	All Respondents (%)	Small Businesses (%)	Medium & Large Businesses (%)
Alternative rostering arrangements	67.92	67.57	68.75
Pass on the cost to consumers	37.74	35.14	43.75
Not replace outgoing staff	28.30	27.03	31.25
Implement redundancies	24.53	24.32	25.00
Reduce trading hours	13.21	10.81	18.75

- c. In all cases, businesses indicated a preference for 'reshuffling' their rosters in order to minimise wage costs, although the natural consequence of this would likely be an increase in the underemployment of existing staff.

3.4 Wages cost most significant constraint on retail profits

- a. Respondents to the Survey were asked to identify what they saw as the biggest constraint on the profit of their business (multiple responses were permitted).

- b. Wage costs were overwhelmingly identified as the biggest constraint on profitability, being identified by 91.67% of respondents. The 'runner-up', energy costs, followed far behind at a 'mere' 50.00%. 27.08% of respondents identified rent as one of the major constraints on business profitability.
- c. Among small business respondents wages of marginally higher concern, with 94.29% identifying this as one of the major constraints to profitability; 60.00% identified energy costs as a major constraint to profitability.
- d. Among medium and large business respondents wages remained the greatest constraint on profitability, identified by 84.62% of respondents. However, other labour costs were the runner-up among this group of respondents, identified by 38.46% of respondents as a major constraint on profitability. Rent costs came in third place at 30.77%.

3.5 Wage costs single most significant factor affecting business confidence

- a. Respondents to the Survey were asked to identify factors which they considered most affected their business confidence. Respondents were permitted to select multiple responses.
- b. Across all respondents, wage costs were the overwhelming concern, identified as such by 81.25% of respondents. 80.00% of small business respondents and 84.62% of medium and large business respondents identified wages costs as a factor affecting their business confidence.
- c. Among small businesses, the next most significant factors affecting business confidence were overhead costs (65.71%) and consumer confidence and demand (57.14%).
- d. This represents a divergence from medium and large businesses, for which government policy was the second most significant factor affecting business confidence (53.85%) whilst consumer confidence and demand came in third at 46.15%.

3.6 Retail businesses experiencing minimal growth

- a. The majority of respondents to the Survey indicated that, over the last twelve months, sales had either decreased (48.84%) or remained the same (27.91%). Only 20.93% of respondents reported an increase in sales volumes.
- b. Among small businesses, 80% of respondents indicated either a decline or a stagnation of sales. Among medium and large businesses this figure was 69.23%.
- c. This result from the Survey is broadly reflective of the ABS data in relation to growth in retail turnover and decline in retail profits discussed above.

3.7 Wage costs present most significant barrier to offering employment

- a. When asked what they perceived to be the most significant barrier to taking on new employees, wage costs were again overwhelmingly identified as the primary barrier (respondents could select multiple answers), identified as such by 83.33% of respondents to the Survey.
- b. Cash flow came in at second place at 35.42% followed by business confidence at 33.33%, as barriers to offering employment.
- c. 80.00% of small businesses identified wage costs as a significant barrier to employment, compared to 92.31% of medium and large businesses.
- d. Medium and large businesses had a different perspective of the next most significant barriers to employment, with 38.46% identifying government policy and 23.08% identifying the availability of suitable labour as the next most significant barriers to employment.

3.8 Conclusion – a cautious industry

- a. The results of the Survey broadly align with the ABS data to indicate that the retail industry as a whole is experiencing a downturn in trade and commensurate reduction in profits, with a consequential aversion to increased costs.
- b. Following above-average wage increases in the 2016-17 and 2017-18 Annual Wage Reviews, the Survey results indicate that an increase to minimum wages of a similar extent is likely to result in changes to working patterns and employment levels which will result in:
 - an increase in underemployment (alternative rostering arrangements to spread work around in a more cost-effective fashion);
 - a reduction in retail employment (by redundancies);
 - a reduction in opportunities for trade (due to reduced trading hours to minimise the need for staff);
 - a growth in unemployment, at least insofar as the retail industry is concerned, as vacancies created by departing staff are not turned into employment opportunities for job seekers.

4. Legislative considerations

- a. In exercising its powers to make the NMWO at the conclusion of the Review, the Expert Panel must have regard for the minimum wages objective (**MWO**).
- b. Subsection 284(1) of the Act specifies the MWO as follows:
 - (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.*
- c. In addition, the note to subsection 284(2) of the Act advises that when exercising its powers under section 285, the Expert Panel must also take into account the objects of the Act and any other relevant provision of the Act.
- d. The objects of the Act, as specified as section 3 thereof, are:

... to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:

 - (a) *providing workplace relations laws that are fair to all Australians, are flexible for business, promote productivity and economic growth for Australia's future economic prosperity and take into account Australia's international labour obligations; and*
 - (b) *ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders; and*

- (c) *ensuring that the guaranteed safety net of fair, relevant and enforceable minimum standards can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system; and*
 - (d) *assisting employees to balance their work and family responsibilities by providing for flexible working arrangements; and*
 - (e) *enabling fairness and representation at work and the prevention of discrimination by recognizing the right to freedom of association and the right to be represented, protecting against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms; and*
 - (f) *achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action; and*
 - (g) *acknowledging the special circumstances of small and medium-sized businesses.*
- e. In setting the NMWO, the Expert Panel must have regard to both the MWO and the objects of the Act.
- f. In setting or varying modern award minimum wages, the Expert Panel must similarly have regard for the MWO and the objects of the Act. In addition, the Expert Panel must have regard for the modern awards objective (**MAO**), this specified at section 134(1) of the Act as being to:

... to 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 which avoids unnecessary overlap of modern awards; and*
- (h) *the likely impact of the exercise of modern award powers on employment growth, inflation and sustainability, performance and competitiveness of the national economy.*

- g. The MWO, the objects of the Act, and the MAO are each composite expressions, in that whilst each objective is expressed as incorporating a number of discrete criteria, none of these criteria are of themselves severable from the objective to which they relate, but must be assessed as part of the objective as a whole.⁴⁵

5. Legislative considerations in the economic context

- a. The NRA submits that the current economic context of the retail industry prohibits an increase to minimum wages of the extent seen in the 2016-17 and 2017-18 Annual Wage Reviews.
- b. Under the MWO, the Expert Panel is required to take into consideration, *inter alia*:
- (a) *the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth*
- c. The MAO similarly requires the Expert Panel to consider:
- (c) *the need to promote social inclusion through increased workforce participation*
 - (f) *the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden*
- d. Finally, the objects of the Act impose an expectation that, in exercising its powers, the Expert Panel will have regard for the principles of:
- (a) *providing workplace relations laws that are fair to all Australians, are flexible for business, promote productivity and economic growth for Australia's future economic prosperity and take into account Australia's international labour obligations*
 - (g) *acknowledging the special circumstances of small and medium-sized businesses*
- e. The NRA does not purport to speak for all businesses, and in this regard defers to ACCI in relation to the status of the national economy.
- f. The NRA does, however, speak for the retail industry which remains the second-largest employer of Australian workers. In this voice, the NRA respectfully submits that the retail industry, in the current economic climate, cannot sustain an increase to minimum wages of the magnitude seen in recent years.
- g. Profits of retail businesses in the financial year to date have contracted significantly, and the current trend indicates that this contraction will continue into the foreseeable future.
- h. As a decline in profit growth also means a decline in surplus monies with which to service increased wages, it is likely that any significant increase to minimum wages will result in retail businesses laying off workers in order to free up funds to service the increased wage bill owed to the remainder.
- i. As such, the NRA considers it likely that any significant increase to minimum wages will have a negative effect on employment growth in the retail industry. This will necessarily frustrate the objective of increasing workforce participation.
- j. The general economic conditions and the likely response of retail employers to any significant increase to minimum wages means that any such increase is likely to have an adverse effect on business viability by increasing the cost pressures on already declining retail profits.
- k. Whilst it may be that some larger retail businesses are able to sustain an increase to minimum wages above CPI, the majority of retail businesses have indicated that they are not able to do so. At least one small business respondent to the Survey indicated that any increase to minimum wages would result in the business owner themselves working more hours and reducing the working hours of their employees commensurately.

⁴⁵ [2017] FWCFB 1001 at [128]; upheld in *Shop, Distributive and Allied Employees' Association v The Australian Industry Group* [2017] FCAFC 161 at [41] to [67] in respect of the MAO

- l. In order for the growth of the Australian economy to be sustained, rather than reduced, retail businesses need a measure of relief from the significant changes that they have seen through increases to minimum wages and changes to the modern awards in the last 18 to 24 months.
- m. It is imperative, in its consideration, that the Expert Panel not come to a conclusion that is apt to result in the low-paid becoming the unpaid, and the underemployed becoming the unemployed. The NRA submits that an increase to minimum wages of the extent seen in recent years is likely to have such a result.
- n. Instead, the NRA respectfully submits that a moderate increase to minimum wages in line with CPI strikes the only fair and appropriate balance between those receiving wages and those paying them.

6. Recommendation

- a. In light of the above matters, the NRA reiterates its submission that an increase to the national minimum wage and to award minimum wages of **no more than 1.8%** is appropriate in the current economic climate.



National
Retail
Association