Ai GROUP SUBMISSION

Fair Work Commission

Annual Wage Review 2019-20

16 March 2020

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1. Introduction

The Australian community is facing a rapidly escalating health threat from the Coronavirus 'COVID-19' pandemic. The Australian economy has been disrupted by measures implemented to respond to COVID-19 internationally and further, deeper disruptions now seem inevitable. The effects of COVID-19 are in addition to the damage and disruption of the summer bushfire crisis and extended, severe drought.

The effects of the COVID-19 pandemic are escalating rapidly and will affect every segment of the economy in 2020. Economic developments as of mid-March indicate a rapid, serious deterioration is now under way.

The serious economic impacts of the COVID-19 pandemic and the bushfire crisis are not accounted for in the Q4 2019 *National Accounts* figures that were released by the ABS on 4 March 2020. However, these effects will undoubtedly have a big impact on the Q1 2020 *National Accounts* figures that will be released by the ABS on 3 June 2020.

In these exceptional circumstances, there is obvious merit in the Commission delaying the *Annual Wage Review 2019-20 Decision* until the Q1 2020 *National Accounts* statistics have been released by the ABS on 3 June and properly considered.

It is vital that the Expert Panel make a careful decision on the basis of up-to-date statistics on how the economy is faring at the time any minimum wage increase is payable. Without taking into account the Q1 2020 *National Accounts* figures, the Commission's decision would not be based on up-to-date statistics, and the Commission would be taking unnecessary, very significant risks if a wage increase is awarded.

As the Expert Panel acknowledged in the *2018-19 Annual Wage Review Decision*, an excessive minimum wage increase can create a significant risk of disemployment and of adversely affecting the employment opportunities of low-skilled and young workers.[1] Without the Q1 2020 *National Accounts* statistics, the Expert Panel will be unable to reliably decide what level of wage increase would be appropriate and what level would be excessive.

Last year, Ai Group proposed a 2% minimum wage increase but an increase of this magnitude in 2020 could be unsustainable depending upon how the economy is faring at the time that the wage increase is payable.

Given these factors, Ai Group proposes the following sensible approach, that is in the interests of employers, employees and the broader economy:

- The Timetable for the Annual Wage Review should be amended to allow all interested parties to file a further written submission by Monday 8 June following the release of the Q1 2020 *National Accounts* statistics on 3 June 2020.

[1] *2018-19 Annual Wage Review Decision*, [359].

- The Expert Panel should not hand down its *Annual Wage Review 2019-20 Decision* until the Q1 2020 *National Accounts* statistics and the proposed 8 June round of submissions have been considered.

- "Exceptional circumstances" for the purposes of ss.286(2) and 287(4) of the *Fair Work Act 2009* (**FW Act**) justify an operative date of 15 July 2020 this year (i.e. a delayed operative date of two weeks).

A 15 July 2020 operative date will enable the Expert Panel to consider the Q1 2020 *National Accounts* statistics and consider the submissions of employer groups, unions and Governments on those statistics.

Ai Group has not quantified a particular minimum wage increase in this initial submission given the current exceptional economic uncertainty. However, we intend to put forward a position on the quantum of any minimum wage increase, later in the Annual Wage Review proceedings. If the approach that Ai Group has proposed is adopted, we would do this in the 8 June round of submissions. At that time we will be in a much better position to assess what level of wage increase would be appropriate.

2. Australian community and economy at risk in 2020

The Australian community is facing a rapidly escalating health threat from the COVID-19 pandemic in 2020. The Australian economy has been disrupted by measures implemented to respond to COVID-19 internationally. Further, deeper, local disruptions now seem inevitable.

The effects of COVID-19 will be additional to the damage and disruption of summer's bushfire crisis and extended, severe drought. These disasters disrupted tourism, building sites, transport and general business activity far beyond the immediately affected areas.

The effects of the COVID-19 pandemic are escalating rapidly and will affect every segment of the economy in 2020.

2.1 Australian economy is deteriorating rapidly in Q1 of 2020

Economic developments as of mid-March indicate a rapid, serious deterioration is now under way:

- **The OECD and IMF** have both issued 'interim' outlooks for 2020 that highlight Australia's close trade relationships with China and Japan as a particular risk factor for our economy. The OECD expects the impact of COVID-19 has already shaved 0.5 percentage point off Australia's GDP growth in 2020, taking expected annual GDP growth down to 1.8% (from GDP growth of 2.2% in 2019), before rebounding to 2.6% in 2021. On 2 March, the OECD said that if COVID-19 develops into a pandemic "*global growth could drop to 1.5% in 2020, half the rate projected prior to the virus outbreak*."[2]

- The **Reserve Bank of Australia (RBA)** cut the cash rate to a new record low of 0.50% at its board meeting in early March. In the accompanying statement, RBA Governor Lowe said this was a pre-emptive move "*to support the economy as it responds to the global coronavirus outbreak*".[3]

- **RBA** Deputy Governor Dr Guy Debelle says the COVID-19 effect on tourism and international education exports alone will reduce GDP by 0.5% in Q1 of 2020, with further (not yet quantified) damage to Australian business supply chains, consumer demand and exports. The RBA says this disruption is particularly affecting the construction and retail sectors, which are among Australia's largest employing industries. Ai Group is already seeing evidence of this damage. These losses in output and activity due to the COVID-19 disruptions will be on top of the 0.2 percentage point loss in GDP that the RBA expects (in Q4 and Q1) due to the bushfire crisis.[4]

- **The Australian Government** has announced support measures for businesses and welfare recipients in response to COVID-19. Details of the timing and eligibility are yet to be announced. The likely effects of government support for employment and incomes are not yet known.

- **The Australian dollar** has depreciated by 10% (to a recent low of just 62 US cents) since 1 January 2020, taking it to lowest level since the GFC. It has recovered partially and remains volatile.

- **Australian share markets** (equity prices) have fallen by 30% from their 2019 peak. This is the largest fall since the GFC, with $600 billion in market capitalization lost since 20 February.

- **Global oil prices** (the benchmark Brent Crude) fell by 24% to US$33.36 per barrel on 9 March. This was its lowest price in four years and the largest single-day plunge in oil prices since 1991.

- **Ai Group's monthly indicators** of industry activity fell sharply across the board in December, January and February. The Australian Industry Group Australian Performance of Business Index (Australian PBI[5]) fell by 0.3 points to 46.3 points in February 2020 (seasonally adjusted). February was the third consecutive month below 50 points and the lowest monthly result since January 2019 (chart 1). Ai Group's Australian PBI has tracked closely to ABS measures of real domestic final demand since 2014, so these recent monthly results suggest that growth in real domestic

[2] OECD, *Coronavirus: The world economy at risk,* 2 March 2020. http://www.oecd.org/economic-outlook/#resources https://blogs.imf.org/2020/03/04/potential-impact-of-the-coronavirus-epidemic-what-we-know-and-what-we-can-do/

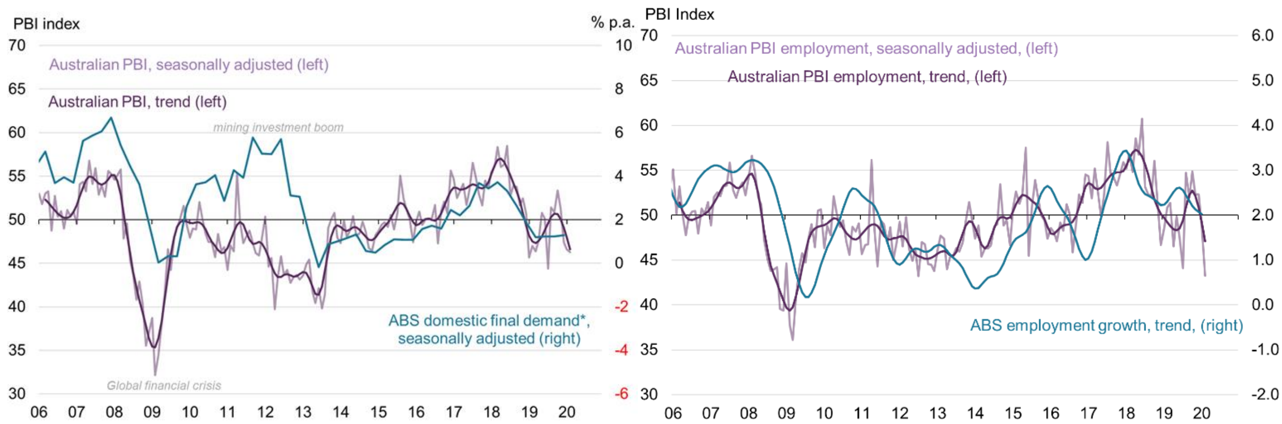
[3] RBA, *Statement by Philip Lowe, Governor: Monetary Policy Decision,* 3 March 2020. https://www.rba.gov.au/media-releases/2020/mr-20-06.html

[4] Dr Guy Debelle, RBA Deputy Governor, *The Virus and the Australian Economy*, 11 March 2020. https://www.rba.gov.au/speeches/2020/sp-dg-2020-03-11.html

[5] The Australian Performance of Business Index (Australian PBI) is a weighted composite of Ai Group's Australian Performance of Manufacturing Index (PMI®), Australian Performance of Services Index (PSI®), and Australian Performance of Construction Index (PCI®). An Australian PBI result above 50 points indicates that business activity is generally expanding in that month compared to the previous month; below 50, that it is contracting. The distance from 50 indicates the strength of the expansion or decline.
https://www.aigroup.com.au/policy-and-research/mediacentre/releases/PBI-Feb-2020/

final demand is likely to slip towards zero in Q1 of 2020 (from just 0.1% q/q and 1.3% p.a. in Q4 of 2019). Three of the four activity indexes included in the Australian PBI indicated a contraction in February and at a steeper rate. The employment index dropped sharply in February, which suggests total employment growth dropping towards 1.0% p.a. later in 2020 from 2.0% p.a. in Jan (chart 1). Input price pressures moderated through late 2019 but jumped higher again in February 2020.

Chart 1: Ai Group Australian PBI index and employment index to Feb 2020 and ABS domestic final demand to Q4 2019 & ABS employment growth to Jan 2020



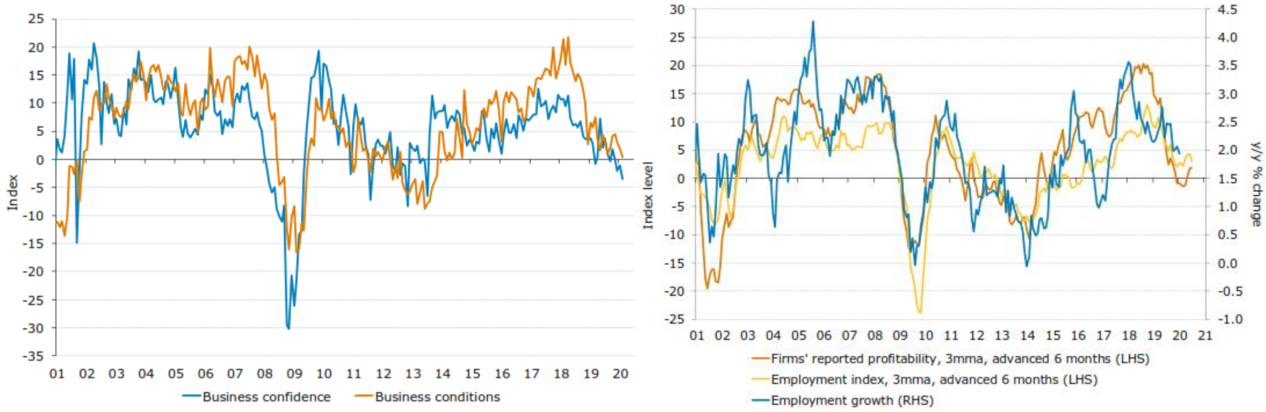
Sources: Ai Group, *Australian PBI*, Feb 2020; ABS, *National Accounts*, Dec 2019; ABS *Labour force survey*, Jan 2020.

- **Ai Group anecdotal information** and business liaison indicate that a rapidly growing number of Australian businesses are cancelling business travel, events, investments and projects. Requests for advice about employment arrangements in response to COVID-19 jumped sharply in March.

- The **NAB** monthly business survey showed a similarly large fall in the three months to February. Conditions fell to neutral on average, and confidence fell to -4 points. Both measures are now well below their own long-run averages (see chart 2). NAB economists noted that about 50% of surveyed businesses were already reporting an impact from the coronavirus as of February. In aggregate, "*confidence is now firmly negative and business conditions appears to have renewed its previous downward trend – with both series well below long run averages. More importantly, forward orders deteriorated significantly and is quite negative*." [6] The profitability and employment indexes in the NAB business survey currently suggest weaker jobs growth ahead.

[6] NAB *Monthly Business Survey*, February 2020. https://business.nab.com.au/wp-content/uploads/2020/02/NAB-Monthly-Business-Survey-February-2020.pdf

Chart 2: NAB indexes for business confidence, conditions, profitability and employment to Feb 2020 and ABS employment growth, to Jan 2020



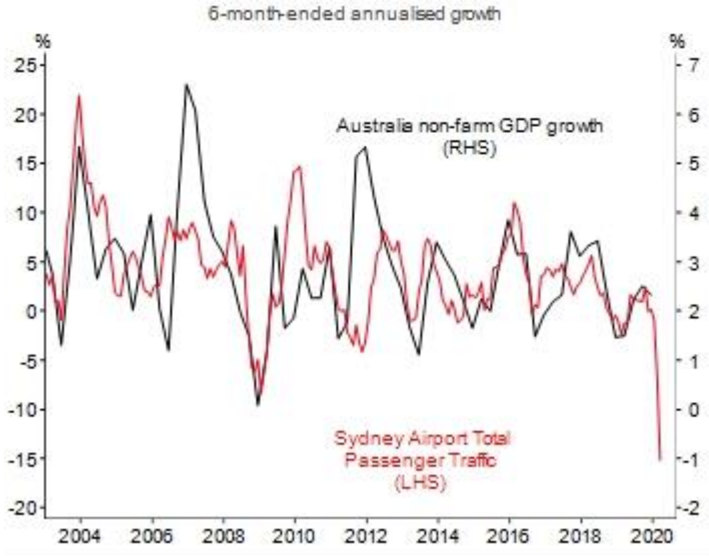
Source: ANZ Economics; NAB *Monthly Business Survey*, Feb 2020; ABS *Labour Force Survey*, Jan 2020.

- The **Westpac-MI** monthly consumer confidence survey and the **Roy-Morgan ANZ** weekly consumer confidence survey both indicate large declines in confidence, as of early March 2020.

- **ABS retail trade sales** data show the total value of nominal sales declined by 0.7% m/m in December and a further 0.3% m/m in January, to be up by just 2.0% p.a. With inflation running at around 1.8% p.a., this confirms extremely weak growth in retail sales volumes over summer. Sales dropped in January for all types of retailers except food (mainly supermarkets) and for all states and territories except South Australia (+0.1% m/m). The ABS directly attributed this fall to the bushfires and associated smoke: "*Bushfires in January negatively impacted a range of retail businesses across a variety of industries … Retailers reported a range of impacts that reduced customer numbers, including interruptions to trading hours and tourism*." Online Australian sales rose to 6.3% of total Australian retail sales, up from 5.6% in Jan 2019.

- **Major airlines** and travel services have announced large cuts to Australian international and domestic services. Passenger numbers at Sydney airport (Australia's largest and busiest airport) fell sharply in February. Analysis by Macquarie Bank suggests Sydney airport traffic movements are a good 'leading indicator' of Australian non-farm GDP (see chart 3). This recent plunge in passenger traffic points to GDP contracting in Q1 and possibly falling further in Q2 of 2020.

Chart 3: Sydney airport passenger traffic to March 2020 and ABS non-farm GDP to Q4 2019



Sources: Sydney Airport; ABS, *National Accounts*, Dec 2019; Macquarie Macro Strategy, 11 March 2020.

These very rapid changes in circumstances in Q1 of 2020 mean that evidence about recent national economic trends – and especially the latest ABS *National Accounts* – that normally shape Australia's key economic policy decisions (including this Annual Wage Review) are less helpful than normal, as a guide to the current outlook and risks for Australian businesses and communities.

That said, the ABS *National Accounts*, ABS *Business Indicators*, ABS *Labour Force Survey*, Ai Group's annual *Business Prospects* survey plus other data clearly indicate that the private-sector industries that account for the majority of Australia's economic activity, income, investment and employment experienced lacklustre conditions at best through 2019 and were decelerating (again) by Q4 of 2019.

Of particular concern to the outlook for income and wages, the data for 2019 indicate that:

- **Jobs growth is slowing**, with national employment growth slowing to 2.0% p.a. in January 2020. Job advertisements and business surveys in January and February point to slower jobs growth ahead (see Ai Group *Performance of Business Index* and NAB *Monthly Business Survey*, above).

- **unemployment and underemployment** continue to indicate a significant degree of spare capacity in the labour market, with especially high (and rising) rates of underemployment in large, lower-skill services industries including hospitality, retail and administrative services.

- **inflation** remains well below the RBA target range of 2 to 3% and shows no sign of lifting.

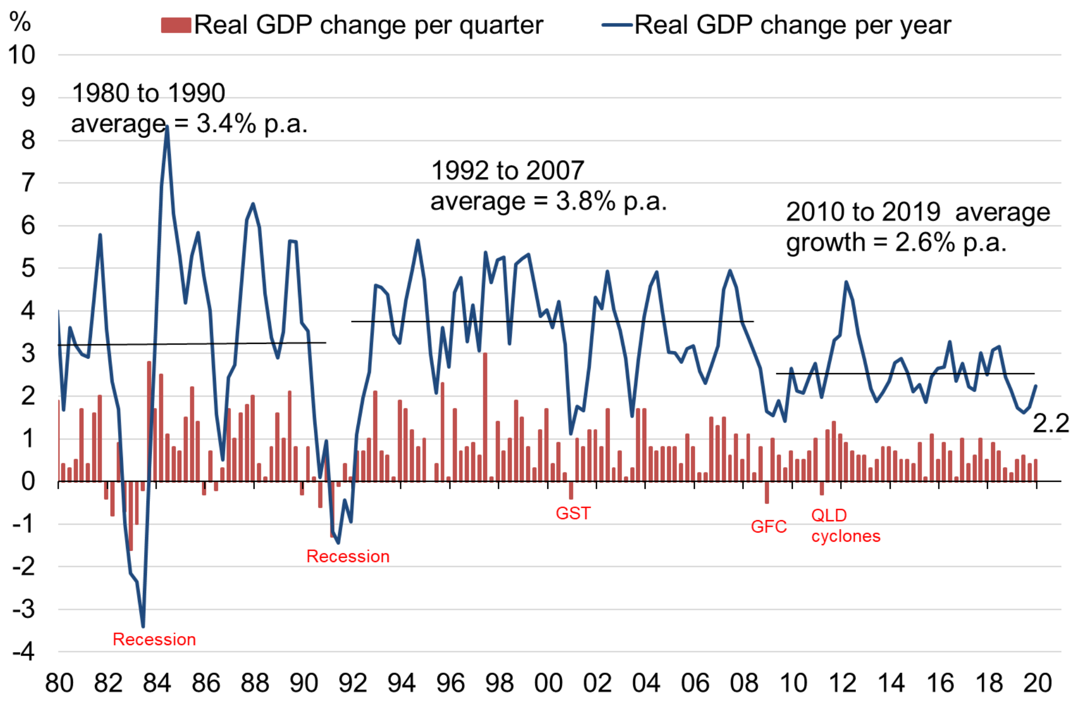
- **national productivity** growth went backwards in 2018-19, after a prolonged period of weak improvement at best, according to estimates by the ABS and the Productivity Commission.

These underlying economic trends are explored in more detail in sections 2.2 to 2.7 below.

2.2 Australian GDP was already lacklustre in Q4 2019

Headline growth in real GDP picked up to 0.5% q/q and 2.2% p.a. in Q4 of 2019. This was an improvement on growth rates in early 2019 but remains below the average growth rate since 2010 (2.6%) and well below the pre-GFC average (3.8% on average from 1992 to 2007) (chart 4). Australia has not suffered an outright recession since 1991, but single quarters of shrinkage in GDP have occurred due to cyclones, the GFC and the introduction of the GST. At least one quarter of significant shrinkage seems likely to occur in 2020 due to responses to COVID-19.

Chart 4: real GDP growth, annual and per quarter, 1980 to Dec 2019



* chain volume measures. seasonally adjusted and inflation adjusted. Source: ABS, *National Accounts,* Dec 2019.

The composition of growth in Q4 indicates that Australia remains highly reliant on government consumption and mining exports to support growth (table 1). Private sector expenditure by households and businesses remains especially weak. Even with the boost afforded by government expenditure, domestic final demand (GDP expenditure excluding trade and inventories) grew by just 0.3% q/q and 1.3% p.a. in Q4. Across the expenditure categories in Q4:

- Household consumption grew slowly, but the sheer size of household spending (as a share of the total) meant it still contributed 0.2 percentage points to growth (almost half the total) in Q4.

Table 1: Key components of GDP: expenditure, trade and income, Q4 2019

seasonally adjusted	% change q/q	% change p.a.	Contribution to growth in the quarter, ppts
Real GDP	**0.5**	**2.2**	**0.5**
National expenditure			
Household consumption	0.4	1.2	0.2
General government consumption	0.7	5.3	0.1
Total investment	-1.0	-1.8	-0.2
Dwelling investment	-3.4	-9.7	-0.2
Private Business investment	-1.7	-1.4	-0.2
New building	-3.0	4.6	-0.1
New engineering construction	-3.6	-12.6	-0.1
New machinery and equipment	0.9	-1.0	0.0
Intellectual property investment	2.0	7.8	0.0
Public (government) investment	-0.4	4.1	0.0
Domestic final demand	**0.1**	**1.3**	**0.1**
Change in inventories	-	-	0.2
International Trade			
Exports (volumes)	0.0	3.4	0.0
Imports (volumes)	-0.5	-1.5	0.1
Net exports			**0.1**
Terms of trade (relative prices)	-5.3	-0.6	
Real income and productivity			
Real net national disposable income	-0.9	2.7	
Real GDP per capita	0.3	0.7	
Real GDP per hour worked	0.2	0.3	
Real output per hour worked in market sectors	0.2	0.1	
Nominal GDP	**-0.3**	**4.1**	**Share of total**
Nominal income (total factor income)	**0.0**	**4.1**	**factor income, %**
Compensation of employees (wages & incomes)	1.0	5.0	52.5
Private sector gross operating surplus (profits)	-1.6	5.0	28.0
Private sector financial corporations	0.4	3.9	6.5
Private sector non-financial corporations	-2.3	6.3	21.5
Gross mixed income (unincorporated businesses)	-1.8	-2.9	8.4
Dwellings owned by persons	0.2	1.6	7.8

* chain volume measures. seasonally adjusted and inflation adjusted. Source: ABS, *National Accounts,* Dec 2019.

- Strong growth in non-defence services (including health, welfare and disability services from federal and state governments) saw total government expenditure grow by 5.3% over the year.

- Export volumes were flat in Q1 as the mining industry's output (up 7.1% p.a.) went into stockpiles instead of ships. This saw a build-up of mining sector inventory that contributed 0.1 percentage point to growth. This will be unwound in future quarters as the stockpile is exported.

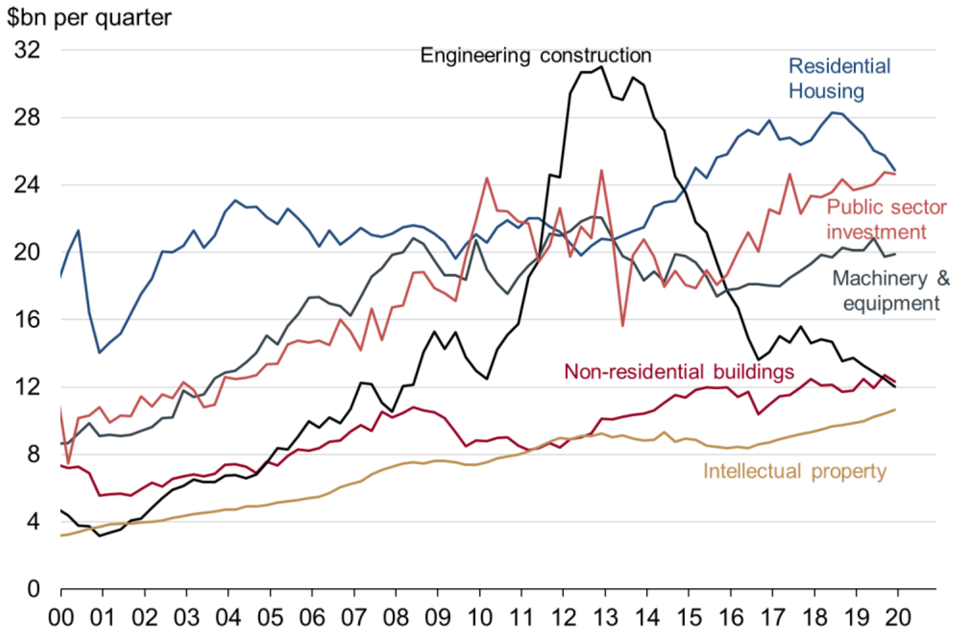
- Import volumes declined as consumers and businesses bought fewer goods (including cars).

- Dwelling investment continued to shrink, as construction rates fall for apartments and houses.

- Business investment spending continued to shrink across all types of building and engineering construction, but recovered a touch in machinery and equipment (up 0.9% q/q but still 1% lower over the year) and in intellectual property investment, which includes computer software, IT applications, resources exploration and R&D spending (table 1 and chart 5). The gentle rise in intellectual property investment in recent years is significant, because this type of investment has great potential to lift future productivity growth across Australian industries.

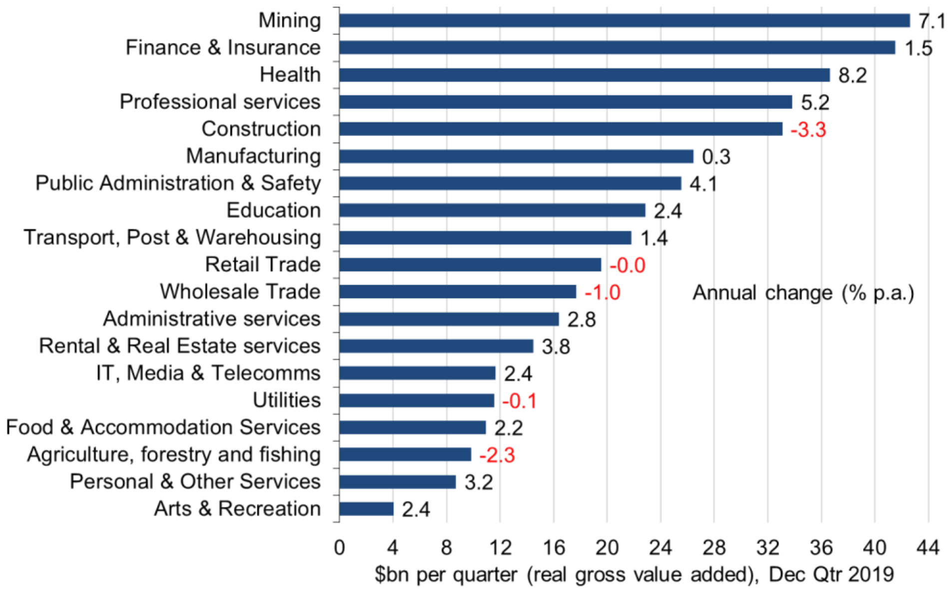
On the production side, industry output volumes were higher over the year in all industries except construction, retail trade, wholesale trade, utilities and agriculture. Industry output growth was strongest in mining, healthcare, professional services and public administration in 2019 (chart 6).

Chart 5: Australian investment per quarter*, 2000-2019



* chain volume measures. seasonally adjusted and inflation adjusted. Source: ABS, *National Accounts,* Dec 2019.

Chart 6: Industry output size and growth per quarter*, Q4 2019



* chain volume measures. seasonally adjusted and inflation adjusted. Source: ABS, *National Accounts,* Dec 2019.

Quarterly state final demand (the state equivalent of national 'domestic final demand') increased in the ACT, New South Wales, Northern Territory and Queensland in Q4 of 2019 but contracted in Tasmania, South Australia, Western Australia and Victoria (see table 2). These contractions in state final demand are sometimes referred to as a ‘local recession’, which is not entirely accurate. State final demand in the quarterly *National Accounts* is calculated from local consumption rather than local production and does not include net exports (exports less imports). A fall in state final demand indicates a decline in total spending and/or investment at the local level.

Table 2: State final demand* and components of expenditure, Q4 2019

Seasonally adjusted, real	Government consumption	Household consumption	Private investment	Government investment	State final demand	State final demand
	% q/q	% q/q	% q/q	% q/q	% q/q	*% p.a.*
NSW	1.4	0.2	0.1	1.3	0.5	**1.6**
Victoria	0.2	0.5	-1.3	-3.9	-0.1	**1.3**
Queensland	1.4	0.6	-2.9	1.6	0.2	**1.2**
South Australia	1.7	0.1	-1.6	-6.0	-0.2	**-0.0**
Western Australia	-0.6	0.5	-1.1	-1.6	-0.2	**1.7**
Tasmania	1.1	0.7	-8.7	-8.2	-1.0	**1.6**
NT	-1.2	0.1	1.3	7.8	0.3	**-3.2**
ACT	-1.1	0.5	5.4	8.7	0.8	**2.5**
Australia	0.8	0.4	-0.1	2.1	0.5	**1.3**

* State Final Demand is equivalent to national Domestic Final Demand. Source: ABS, *National Accounts*, Dec 2019.

Across Australia’s states in Q4 (table 2):

- NSW’s state final demand rose by 0.5% q/q, driven by government spending. Household consumption growth was modest. The ABS notes that NSW hospitality spending was adversely affected by smoke from the bushfires in Q4. Private investment was flat, with a rise in machinery and equipment investment offset by a fall in construction-related spending.

- Victoria’s state final demand fell by 0.1% q/q, with higher consumption from both government and households only partially offsetting a fall in both government and private sector investment. Government investment included a fall in road infrastructure investment from recent peaks. Household consumption increased because of an apparent rise in discretionary spending.

- Queensland’s state final demand increased by 0.2% q/q due to higher government spending on health, education and transport projects. Private investment fell by 2.9% q/q, mainly due to a further fall in dwelling investment.

- South Australia's state final demand fell by 0.2% in Q4. The ABS notes that government investment was affected by the sale of second-hand assets in this quarter. Private investment was lower because of a fall in non-dwelling construction, as large projects neared completion.

- Western Australia’s state final demand fell by 0.2% q/q. This included a fall of 6.4% q/q in dwelling investment, which was the fourth consecutive quarterly fall.

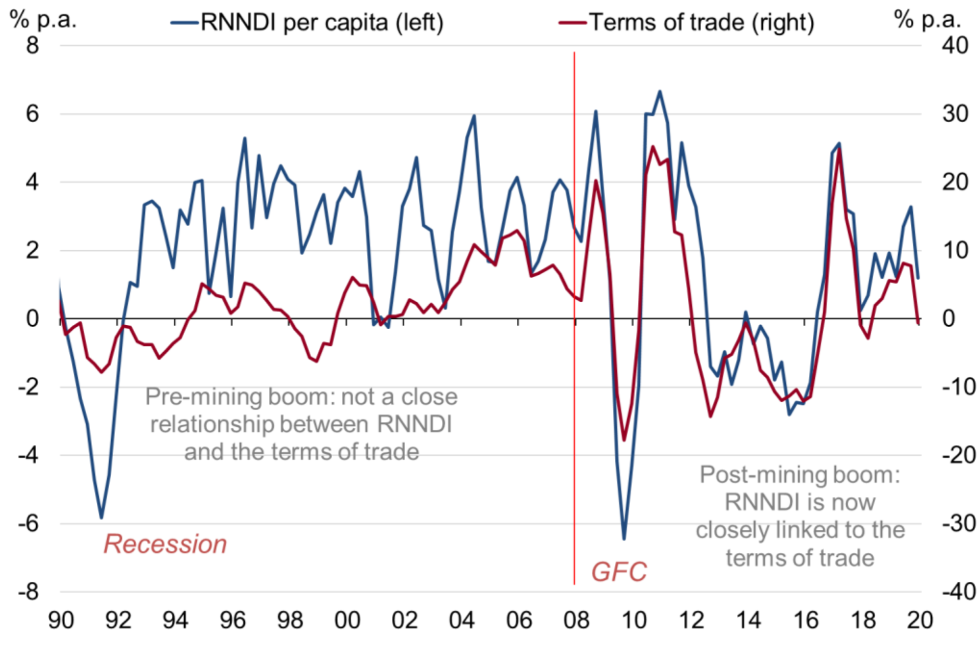
- Tasmania's state final demand dropped by 1.0% q/q. This included a sharp fall in both private sector and government investment. The ABS reports that private sector investment fell by 8.7% q/q, mainly due to reduced spending on renewable energy and accommodation projects. Government consumption (including public services and the NDIS) increased by 1.1% in Q4.

2.3 National aggregate income hit by lower terms of trade and weak business sales in 2019

The current structure of Australian growth means that national income growth is closely tied to export revenue and especially to the terms of trade. The importance of the terms of trade can be seen in the close statistical relationship between the terms of trade and real net national disposable income per capita (RNNDI per capita, which is the ABS' recommended measure of real income growth) that has developed since the GFC in 2008 and the mining boom that followed it (chart 7). In Q4 of 2019, a drop in the terms of trade (-0.6% p.a.) led directly into slower RNNDI (1.2% p.a.) as well as to the drop in nominal GDP (-0.3% q/q).

The terms of trade affect national income growth mainly via global commodity prices for mining (and to a lesser extent, agricultural) commodities. Changes in these prices directly and immediately affect the export revenue – and profits – earned by mining companies. And since mining profits now account for around 40% of all company gross operating profits earned, this single mechanism is large enough to move the measures of national aggregate income growth (charts 7 and 8).

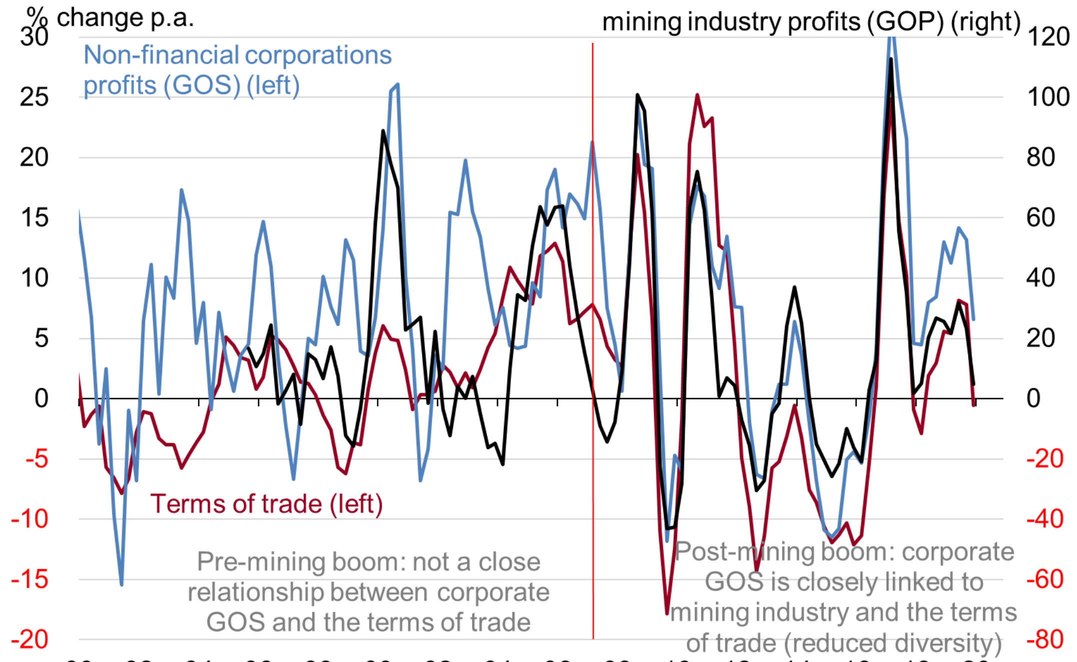
Chart 7: RNNDI per capita and terms of trade, 1990 to 2019



* chain volume measures. seasonally adjusted and inflation adjusted. Source: ABS, *National Accounts,* Dec 2019.

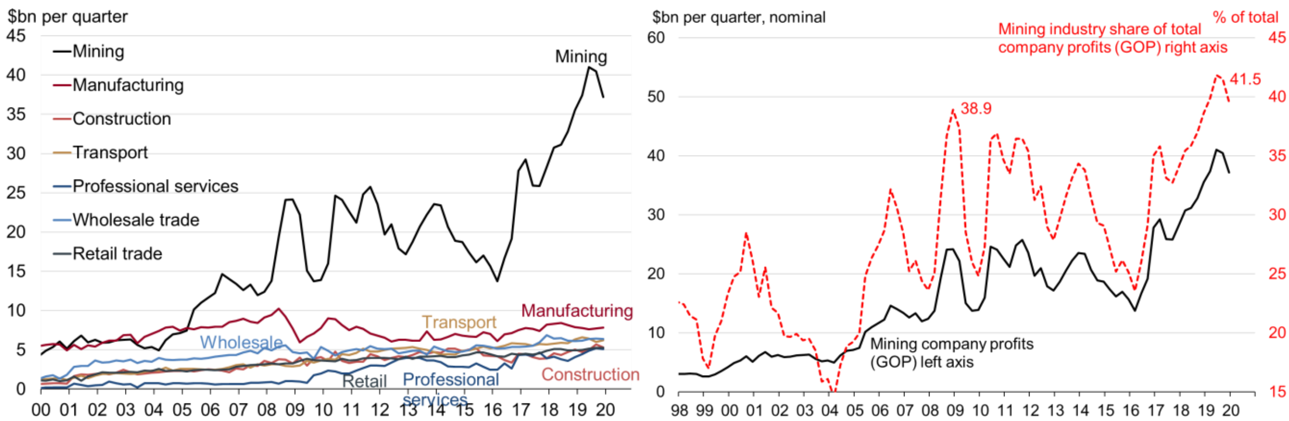
The growing significance of mining import earnings and the terms of trade has implications for income distribution as well as income growth. Australia's large mining industry now dominates aggregate output, incomes and profit growth, but it is relatively concentrated and highly capital-intensive. In 2019, mining accounted for 9% of value-added output volumes (chart 6) and over 40% of private-sector company gross operating profits (chart 9) but just 0.4% of employing businesses (3,438 businesses) and 1.9% of the total workforce (250,000 directly employed workers).

Chart 8: Nominal profit growth for all companies (GOS), mining companies (GOP) and terms of trade, 1990 to 2019



* seasonally adjusted. Source: ABS, *National Accounts,* Dec 2019; ABS *Business Indicators*, Dec 2019.

Chart 9: nominal growth in company profit (GOP) for mining and other selected industries, 1990 to 2019



* seasonally adjusted. Source: ABS *Business Indicators*, Dec 2019.

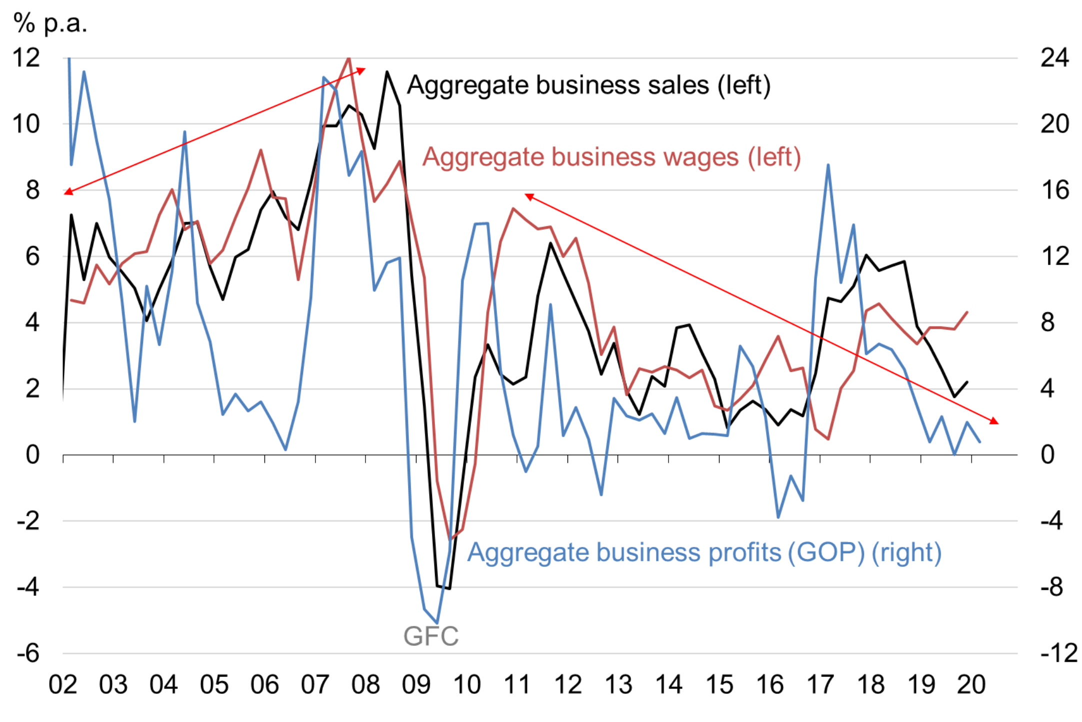
In contrast, in the non-mining industries, private-sector incomes – in the form of business profits and wages - remain closely tied to business sales to a mix of domestic and offshore customers and is not overly influenced by the terms of trade (chart 10 and table 3). Profit growth is typically more volatile from year to year than are sales or wages, due to the tendency of businesses to absorb short-term cost increases and/or sales fluctuations.

For non-mining businesses, aggregate sales, profits and wages have all tended to grow at a slower pace since the GFC. Since 2011, non-mining aggregate business sales have grown by an average of 3.2% p.a. (and 2.2% p.a. in 2019), with profit growth slightly slower (3.1% p.a. in average) and wage growth slightly higher (3.4% p.a.). In Q4 of 2019 however, aggregate wage growth for all non-mining businesses (that are included in the ABS *Business Indicators* dataset) lifted to 4.3% p.a. while business profit growth slumped to 0.6% p.a. (chart 10 and table 3). The reasons for this slow income growth (profits and wages) across non-mining businesses are complex, but they include slow sales growth and the long-term slump in national productivity growth in Australia (and globally).

In the industries in which low-wage workers tend to be concentrated, annual growth in nominal aggregate sales, profits and wages have been slower since the GFC than in the preceding period (table 4). Aggregate nominal sales and profits grew extremely weakly or declined in Q4 of 2019 in retail trade, hospitality and arts and recreation, even as aggregate wages grew (table 4). There is no clear long-term trend towards changing profit or wage ratios in these industries (chart 11).

Company insolvencies remained elevated in 2019 in construction and hospitality but declined in retail trade, administrative services and manufacturing, according to the latest ASIC data (chart 12).

Chart 10: nominal growth in non-mining business sales, profits and wages, 2002-19



* seasonally adjusted. Source: ABS *Business Indicators*, Dec 2019.

Table 3: nominal growth in aggregate business sales, profits and wages for selected industrial sectors and all industries*, 2002-19

aggregate nominal dollars	**2002-08 (pre-GFC)**	**2009-10 (GFC)**	**2011-19 (post GFC)**	**Dec 2019 (latest)**
	average annual % change	average annual % change	average annual % change	annual % change
Mining				
Sales	17.5	10.0	7.4	6.1
Profits	22.3	16.3	10.2	4.7
Wages	14.4	10.2	4.9	6.3
Manufacturing				
Sales	6.5	-3.9	-0.4	1.2
Profits	8.2	0.7	-0.6	0.9
Wages	5.0	-0.6	0.5	4.6
Construction				
Sales	11.5	1.8	4.8	1.5
Profits	10.3	8.0	3.4	2.5
Wages	10.1	6.5	4.3	1.5
Non-Mining				
Sales	7.2	0.4	3.2	2.2
Profits	9.4	3.7	3.1	0.6
Wages	7.4	2.2	3.4	4.3
All industries*				
Sales	7.8	0.8	3.6	2.6
Profits	11.3	4.4	4.5	2.0
Wages	7.6	2.5	3.5	4.4

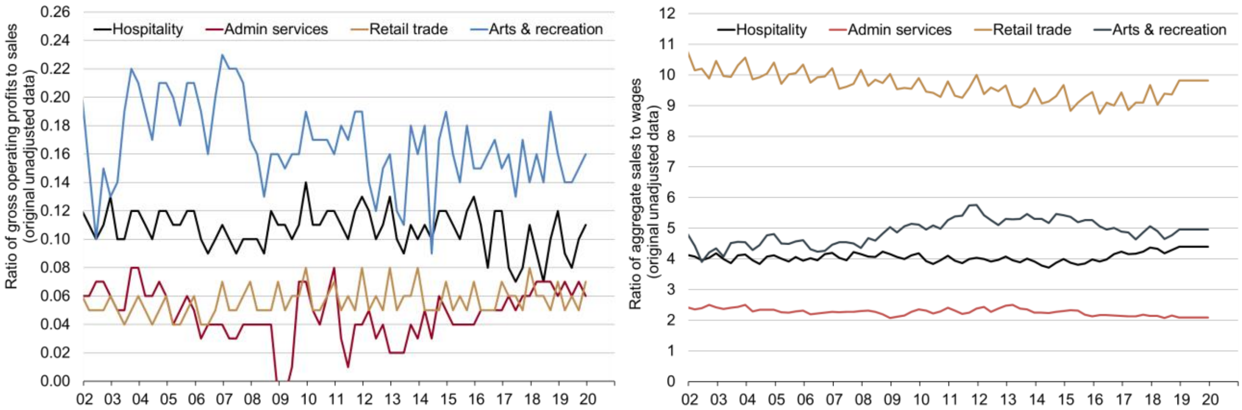
* nominal aggregate business sales, profits and wages for all industries that are included in the *Business Indicators* data series except education and healthcare. Source: ABS *Business Indicators*, Dec 2019.

Table 4: nominal growth in aggregate business sales, profits* and wages in selected low-wage industries, 2002-19

aggregate nominal dollars	**2002-08 (pre-GFC)**	**2009-10 (GFC)**	**2011-19 (post GFC)**	**Dec 2019 (latest)**
	average annual % change	average annual % change	average annual % change	annual % change
Retail trade				
Sales	5.5	2.5	3.0	0.5
Profits	9.3	6.3	3.3	2.0
Wages	5.4	4.3	3.3	4.1
Hospitality				
Sales	5.6	2.5	4.5	4.7
Profits	6.8	7.2	3.3	-3.6
Wages	4.9	4.7	3.8	5.0
Administrative services*				
Sales	7.3	2.5	4.3	4.7
Profits*	-2.5	-981.3	14.2	7.4
Wages	9.2	0.4	5.5	7.3
Arts & recreation				
Sales	9.1	2.0	4.9	0.9
Profits	13.9	7.8	5.2	-1.0
Wages	8.5	-1.0	5.7	5.2

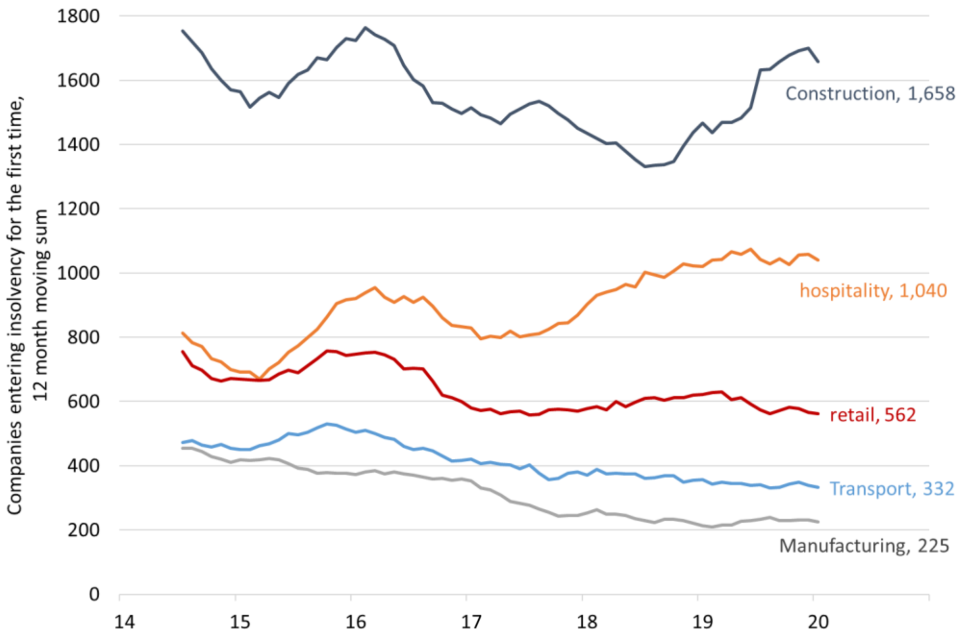
* Includes 2 quarters of negative profits in administrative services in 2008 and 2009. Source: ABS *Business Indicators*, Dec 2019.

Chart 11: business profit* and wage ratios in selected low-wage industries, 2002-19



* Includes 2 quarters of negative profits in administrative services in 2008 and 2009. Source: ABS *Business Indicators*, Dec 2019.

Chart 12: Companies entering external administration for the first time, selected industries, 2014 to Jan 2020



Source: ASIC *Insolvency statistics: Table 1A.2.2 - Companies entering external administration (EXAD) for the first time – Appointment type and industry summary, MONTHLY,* March 2020.

2.4 Labour market deteriorating in early 2020

Australia's labour market is showing signs of slowing in early 2020. In January employment growth slowed to around its long-run average of 2.0% p.a. Unemployment and underemployment are both rising. More positively, labour force participation (the proportion of adults in work or actively seeking work) is at a new record high for women and close to recent peaks for all adults.

In trend terms, the national unemployment rate held steady at 5.2% in January, up from 5.0% one year earlier. Total employment increased by 20,000, or 2.0% p.a., which is slower than in 2017 and 2018 but around the long-run average. Growth in January consisted of 14,600 more full-time workers and 5,400 more part-time workers. Full-time employment has increased faster than part-time employment in recent months. As a result, the share of work that is part-time has fallen to 31.7% of the workforce, from a recent high of 31.8% in May 2018 and a record high of 31.9% in late 2016 (table 5).

Table 5: Key labour market numbers, January 2020 (trend)

	Number '000	Change per month '000 m/m	Change per month % m/m	Change per year '000 p.a.	Change per year % p.a.
Total employed persons	**12,997**	**20.0**	**0.2**	**257.4**	**2.0**
full-time (35+ hours p.w.)	8,879	14.6	0.2	146.1	1.7
part-time (<35 hours p.w.)	4,117	5.4	0.1	111.2	2.8
Aggregate hours worked	1,785,461	875.9	0.0	22,439.3	1.3
Labour force	13,706	20.5	0.2	291.8	2.2
	Number '000	Rate % of labour force		Percentage point change from one year ago	
Unemployment	**709.6**	**5.2**		**0.1**	
Underemployment	1,165.5	8.5		0.2	
Underutilisation	1,875.1	13.7		0.4	
		Rate, % of adult population		Percentage point change from one year ago	
Participation rate		66.0		0.4	
Employment to population ratio		62.6		0.3	

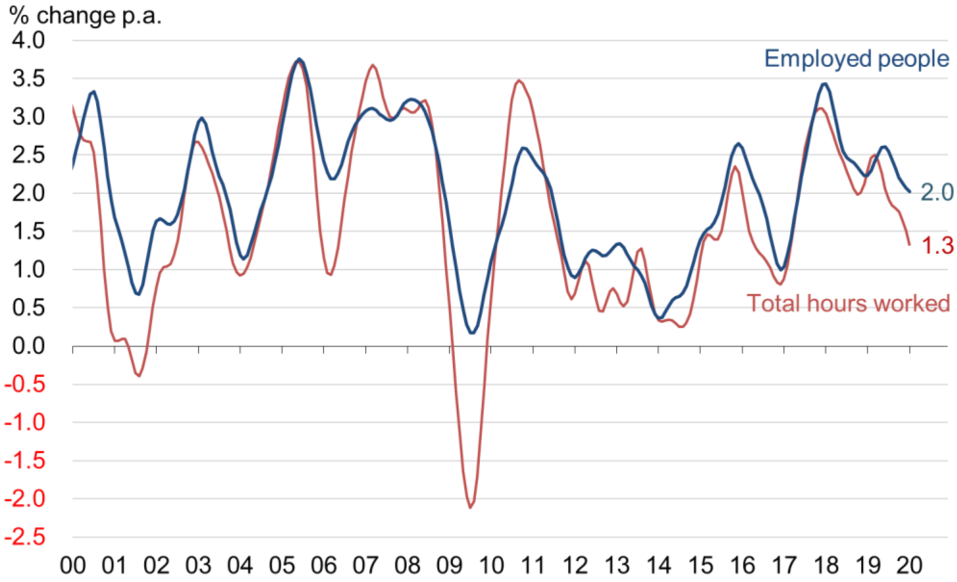
Source: ABS, *Labour force Australia,* Jan 2020.

Despite this rise in full-time work (absolutely and as a proportion of the workforce), aggregate hours worked across the economy did not grow at all in January and was up only 1.3% p.a. (trend, see Table 5 and chart 13). This indicates that underlying labour demand is weaker than 'headcount' employment suggests. Indeed, annual growth in total hours worked has been weaker than annual growth in headcount employment in almost every month since October 2017 (trend, see chart 13).

Even so, employment growth remains strong enough to attract more people into active participation in the labour market to work or seek work. In January 2020, Australia's participation rate remained near record levels at 66.0%, with the female participation rate reaching another record high at 61.4% in January (trend).

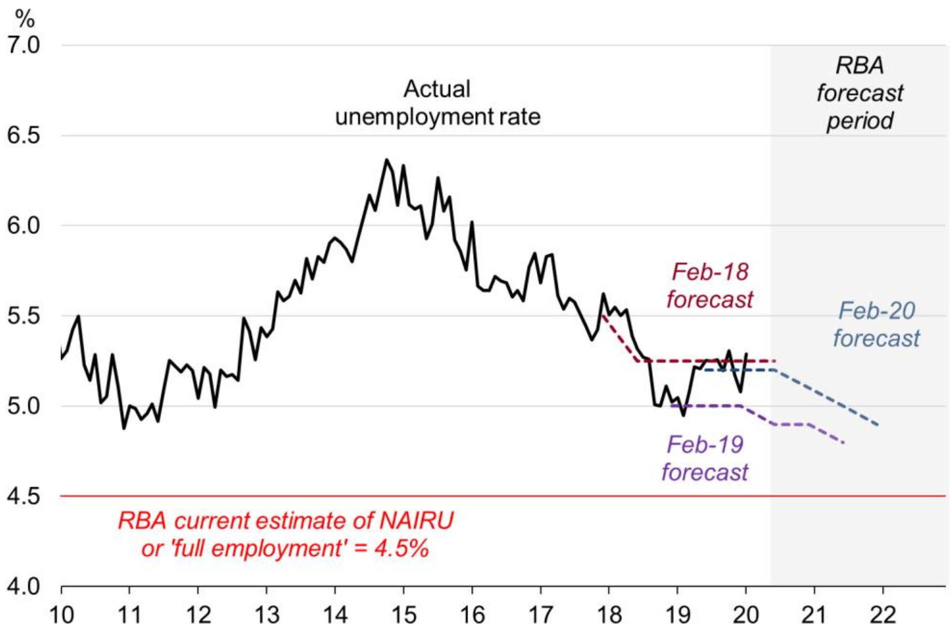
The national unemployment rate has been stuck at 5.2% or higher since May 2019 (trend). This is well above the RBA's current estimate of Australia's NAIRU, which is around 4.5% (chart 14) and a touch above the RBA's latest forecasts for unemployment (as of Feb 2020, which pre-date the local escalation of COVID-19). The female unemployment rate is currently at 5.0% while the male unemployment rate is higher, at 5.3% nationally. Across age groups, unemployment rates remain highest for those under 25 years, despite falling participation rates as education participation rises.

Chart 13: Annual change in employment and total hours worked (trend)



Source: ABS, *Labour force Australia*, Jan 2020.

Chart 14: Annual change in employment and total hours worked (trend)

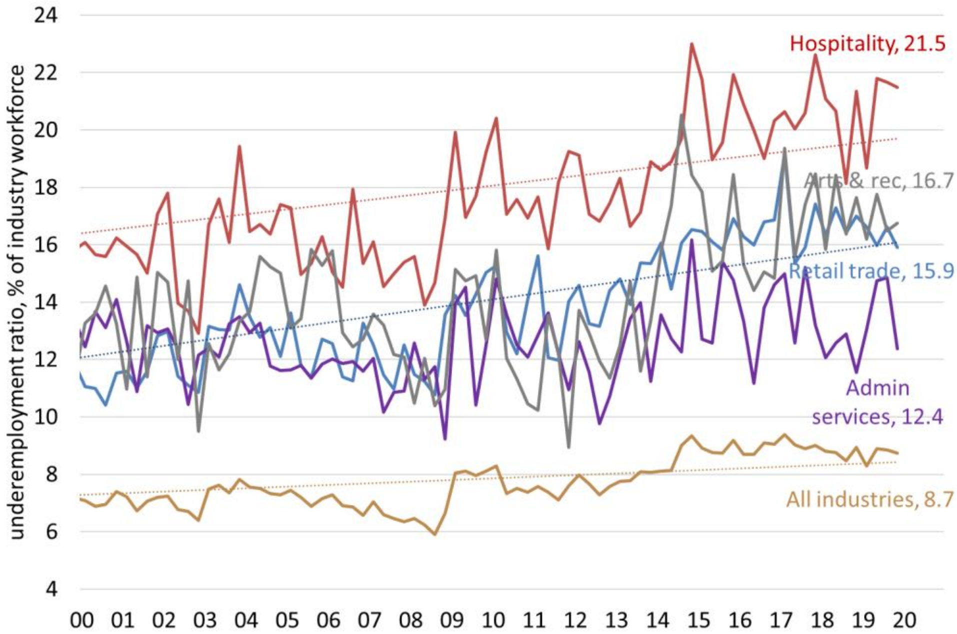


Sources: ABS, *Labour force Australia*, Jan 2020; RBA, *Statement on Monetary Policy*, Feb 2018, 2019 and 2020.

The underemployment rate (that is, the proportion of the labour force who are working but seeking more hours) remained elevated 8.5% in January. As a proportion of each industry's workforce, underemployment remains highest in the large services industries in which lower-skill and lower-wage workers are prevalent (see chart 15).

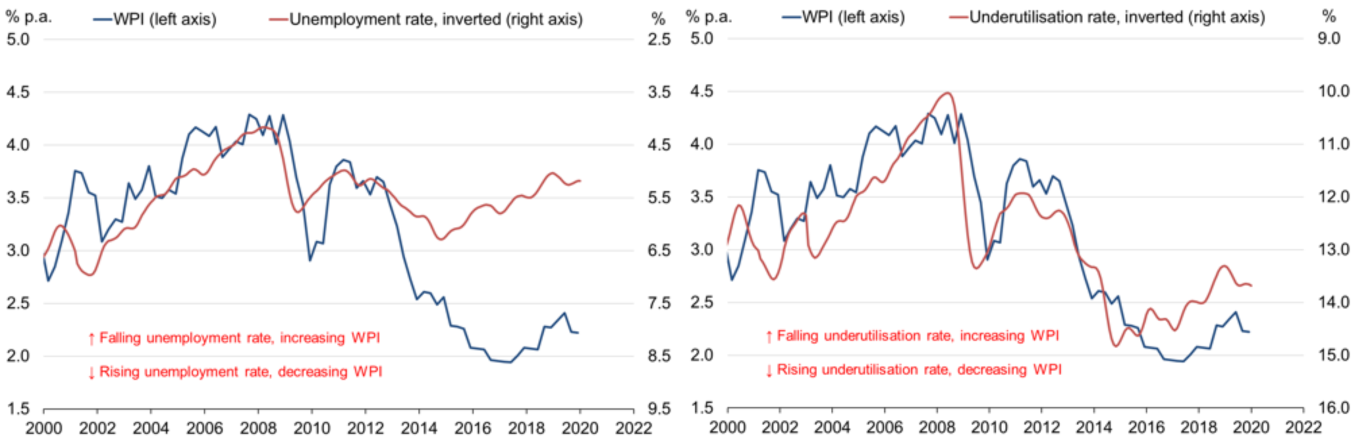
The underutilisation rate (unemployment plus underemployment) remains stubbornly high at 13.7%. Wage growth tends to track more closely to underutilisation rather than unemployment rates, due to the signficance of total 'spare capacity' in the labour market (chart 16). Relatively high and persistent labour underutilisation continued to heavily on wage growth in 2019.

Chart 15: Underemployment ratios for selected low-skill industries, to Nov 2019



Sources: ABS, *Labour force Australia,* Jan 2020.

Chart 16: Unemployment, underemployment and Wage Price Index, to Q4 2019



Sources: ABS, *Labour force Australia,* Jan 2020; ABS, Wage Price Index, Dec 2019.

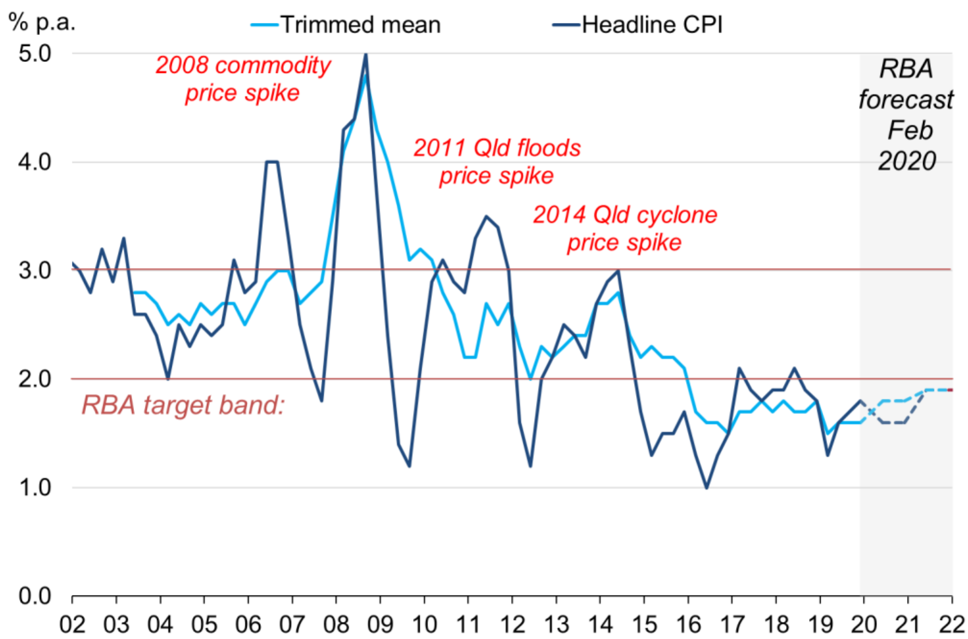
2.5 Inflation and wage growth stay below RBA target range

The headline consumer price index (CPI) rose by 0.7% q/q and 1.8% p.a. in Q4 of 2019, accelerating slightly from Q3 (0.5% q/q and 1.7% p.a.). Headline inflation has been below the RBA's target band of 2-3% over the cycle in almost all quarters since 2014. The RBA's preferred measure of underlying inflation - the trimmed mean - was stable at 0.4% q/q and 1.6% p.a. in Q4 of 2019 and has been below 2% since 2015. The RBA expects headline and underlying inflation to stay below 2.0% until at least the end of 2021 (see chart 17).

Many of the price increases recorded in Q4 2019 were because of seasonal or temporary factors, which is why the 'trimmed mean' inflation rate was so much lower than the headline rate. In Q4, the largest quarterly price increases were for tobacco (+8.4% q/q), domestic holidays, travel and accommodation (+7.3% q/q), automotive fuel (+4.4% q/q) and fruit (+6.8% q/q). With regard to rising food prices, the ABS said "*Drought conditions are impacting prices for a range of food products. Food prices increased 1.3% this quarter with price rises for beef and veal (+2.9%), pork (+4.7%), milk (+1.7%) and cheese (+2.4%). Both the impact from the drought and lower seasonal supply contributed to price rises for fruit (+6.8%) this quarter*." (ABS, *CPI*, Dec 2019).

These drought-related price rises in Q4 were offset by falling prices for widespread (but largely discretionary) items including international travel (-2.9% q/q), women's garments (-2.5% q/q), non-alcoholic beverages (-1.7% q/q), furniture (-1.0% q/q), household textiles (-3.7% q/q), household appliances (-1.3% q/q), communications (-1.0% q/q) and newspapers and books (-0.6% q/q). Among the essential goods and services, prices fell in Q4 for medical products, appliances and equipment (-1.2% q/q) and medical services (-0.1% q/q). Over the year to Q4, prices fell for utilities (-1.0%) and new dwelling purchases (-0.1%), while rents rose more modestly (+0.2% p.a.).

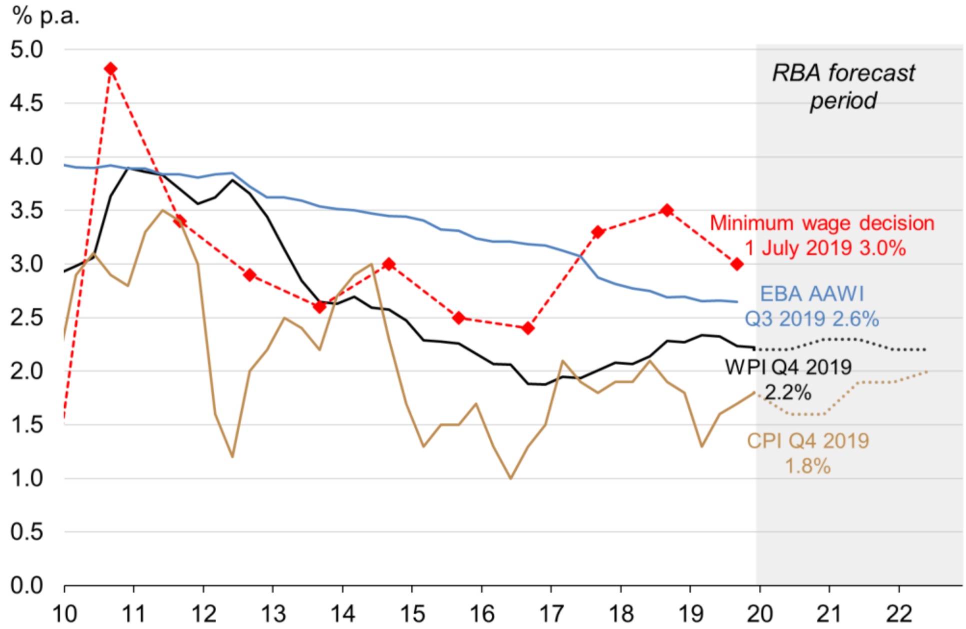
Chart 17: Headline and 'trimmed mean' inflation to Q4 2019 and RBA forecasts



Sources: ABS *Consumer Price Index*, Dec 2019; RBA, *Statement on Monetary Policy,* Feb 2020.

This extended period of decelerating inflation mirrors slower wage growth. Australia's Wage Price Index (WPI) grew by 0.5% q/q and 2.2% p.a. in the December quarter (Q4) of 2019. Annual wage growth has stalled at 2.2 to 2.3% p.a. since early 2018, after lifting from its recent low of 1.9% p.a. in 2016 (chart 18). Wage inflation (measured by the WPI) has been stronger than inflation in most quarters since the GFC, with the gap indicating a (modest) improvement in average real wages over this period. Wage increases in EBAs tend to be larger, averaging 2.6% p.a. in Q3 2019.

Chart 18: Inflation and wage indicators to Q4 2019 and RBA forecasts



Sources: ABS *Wage Price Index*, Dec 2019; RBA, *Statement on Monetary Policy,* Feb 2020.

Private sector wages grew by 0.5% q/q and 2.2% p.a. in Q4 2019. This is up from the lows of 2016, but slower than the 2.4% p.a. increase at the start of 2019. It is consistent with a small rise in labour underutilization through 2019. Private sector wage growth was well above core inflation in all industries in 2019, indicating real wage growth on average in all industries. Wage growth was strongest in Q4 in industries with more jobs growth and/or a larger share of workers on Enterprise Bargaining Agreements (EBAs), such as utilities (3.4%) and health care (3.2%) (chart 19).

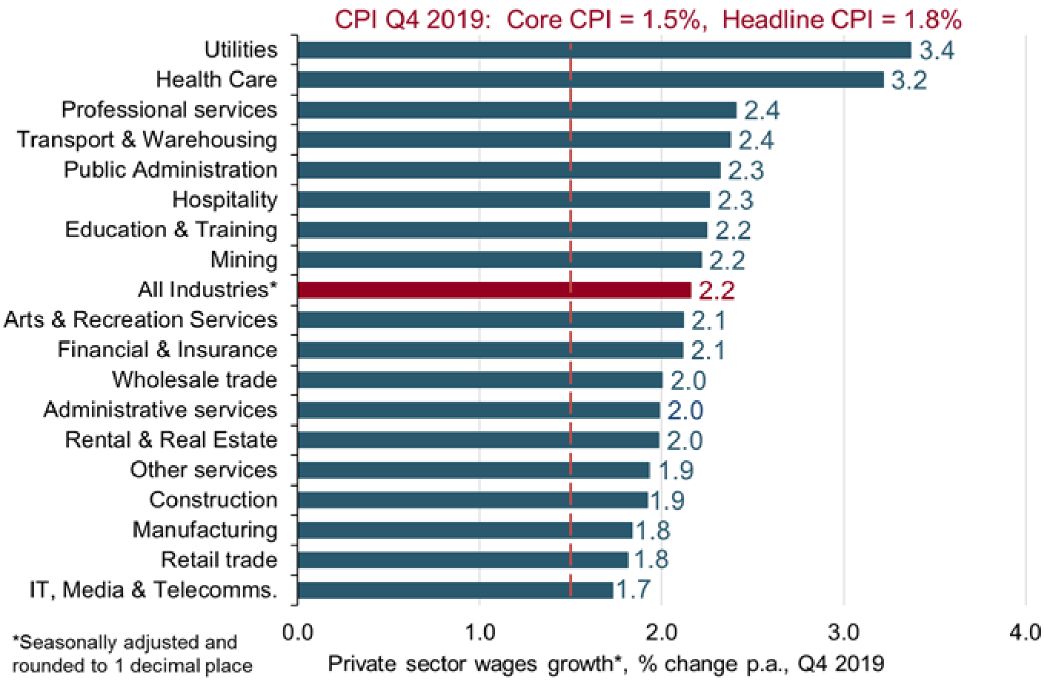
In Q4 of 2019, public sector wages rose by 0.4% q/q and 2.2% p.a. This was the slowest growth rate for public sector wages since the commencement of the index in 1997 and reflects government 'wage caps' for state public servants in place in many jurisdictions.[7]

The RBA expects wage growth to remain around 2.2% p.a. over the next few years, with inflation hovering under 2.0%. The RBA notes that from 2021 it expects *"increases in superannuation payments will be offset to a large extent by lower wages growth outcomes. … the increase in the superannuation guarantee in 2021 is expected to constrain wages growth for many wage earners,*

[7] RBA *Statement on Monetary Policy*, Feb 2020, p. 74.
https://www.rba.gov.au/publications/smp/2020/feb/pdf/statement-on-monetary-policy-2020-02.pdf

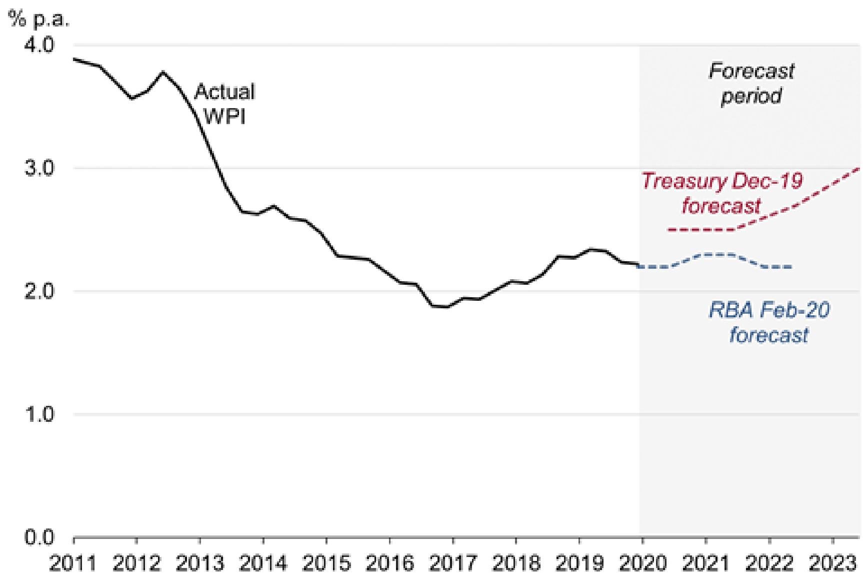
although the timing and extent of this is highly uncertain"[8]. The RBA's forecasts for Australian WPI remain significantly lower than those of the Treasury (chart 20). The reasons for this difference in wage and inflation expectations between the RBA and the Treasury warrants further investigation.

Chart 19: Inflation and private sector wage indexes by industry, Q4 2019



Sources: ABS *Wage Price Index*, Dec 2019; RBA, *Statement on Monetary Policy,* Feb 2020.

Chart 20: Wage Price Index (WPI) to Q4 2019 and latest Treasury and RBA forecasts



Sources: ABS *Consumer Price Index*, Dec 2019; RBA, *Statement on Monetary Policy,* Feb 2020; Treasury, Mid-Year Economic and Financial Outlook, Dec 2019.

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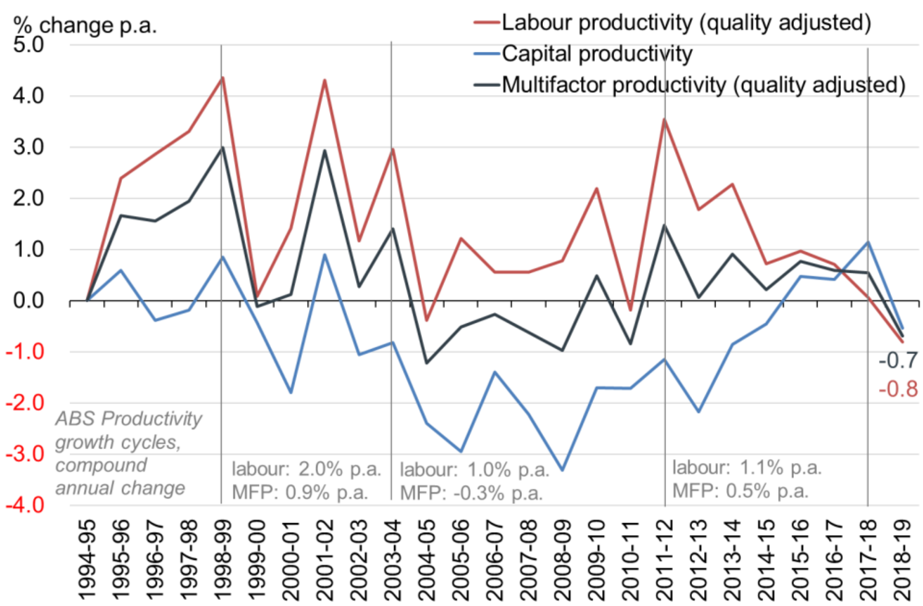
[8] RBA *Statement on Monetary Policy*, Feb 2020, p. 74.
https://www.rba.gov.au/publications/smp/2020/feb/pdf/statement-on-monetary-policy-2020-02.pdf

2.6 National productivity fails to lift in 2019

ABS estimates of national productivity change confirm weak improvements at best for Australia's aggregate productivity measures since around 2003-04. In the latest complete productivity cycle (2011-12 to 2017-18, as identified by the ABS), labour productivity improved by an average of 1.1% p.a. and multifactor productivity improved by 0.5% p.a. In the latest year of available data (2018-19), labour productivity fell by 0.8% p.a. while multifactor productivity fell by 0.7% p.a. (chart 21).

Productivity measures in the quarterly *National Accounts* picked up from recent lows in Q4 but remained exceedingly weak. Real GDP per hour worked recovered by 0.3% p.a. in total and by just 0.1% p.a. in the 'market sectors' (tradeable industries) in Q4 of 2019, after falling earlier in 2019.

Chart 21: ABS estimates of annual productivity change*, 1994-95 to 2018-19



* Quality adjusted hours worked basis, market sector industries aggregate. ABS productivity growth cycles.
Source: ABS *Estimates of Industry Multifactor Productivity, Australia,* Dec 2019

In one of its latest report on Australia's productivity performance[9], the Productivity Commission concludes that productivity growth has been weak since around 2012 and that "*strong terms of trade have allowed incomes to outgrow productivity over the past 20 years*". The Australian Treasury reached the same conclusion in its research paper '*Analysis of wage growth*' in 2017.[10] As noted in section 2.3 above, the terms of trade and export revenue have become stronger determinants of Australian national aggregate income since 2012. These earnings have added significantly to aggregate national income but, as noted above, the distribution of income growth from these sources is uneven across industries, with almost all of it accruing directly to the mining sector.

[9] Productivity Commission, *PC Productivity Insights: Recent Productivity Trends,* Feb 2020.
[10] Australian Government Treasury, *Analysis of Wage Growth*, 2017.

The Productivity Commission finds that the mining sector and the terms of trade are central to explaining Australia's productivity and incomes trends up to 2019, at the national aggregate level:

> *"Labour productivity and multifactor productivity in the market sector both fell in 2018 19, the first fall since the peak of the mining boom, by 0.2 per cent and 0.4 per cent respectively.*
>
> *This continues a spell of weak productivity growth since the peak of the investment phase of the mining boom in 2012 13. Advanced economies the world over have experienced a productivity growth slowdown since about 2005. The Australian slowdown was somewhat smaller, partly because of the expansion of the mining sector during this period.*
>
> *Wages growth, measured against consumer prices, has been weak since about 2012 13 for three reasons:*
>
> - *labour productivity growth has slowed (accounting for about half of the slowdown in wages)*
> - *consumer price inflation has outpaced producer price inflation due mainly to the shifting terms of trade (about a quarter of the slowdown)*
> - *the labour share of income has continued its pattern of decline since 2000 (accounting for about a fifth of the slowdown in wages). The fall in the labour share of income was due to labour reallocation towards the mining sector and increased profitability in the finance sector."* (PC, Feb 2020, p. 1).

At the disaggregated level of individual businesses, research by the Australian Treasury based on longitudinal microdata finds that business productivity and wage growth are intrinsically linked:[11]

> *"an important link between individuals' wages and firm-level productivity over the period 2001-02 to 2015-16, consistent with the idea that firms share rents with their workers. ... Our estimates – which are the first for Australia – imply that an idiosyncratic shock to firm-level productivity of 10 per cent is associated with an increase in wages of around 1 per cent, ... This is around the midpoint of the range of leading international estimates, and highlights the important link between firm productivity and wages …*
>
> *… this pass-through may have declined modestly in the period after 2012-13, when aggregate wage growth slows … A back-of-the-envelope estimate nonetheless provides useful context, suggesting that growth in the aggregate wage price index could have been around 0.15 percentage points higher annually after 201213, had an aggregate shift in pass-through – equivalent to the same magnitude as estimated from microdata over this period – not occurred … our dataset for this part of the analysis concludes in 2014-15, however, it is not clear whether lower pass-through of productivity to wages has persisted … what emerges is not a single unified explanation of slower aggregate wage growth, but rather a pattern of evidence*

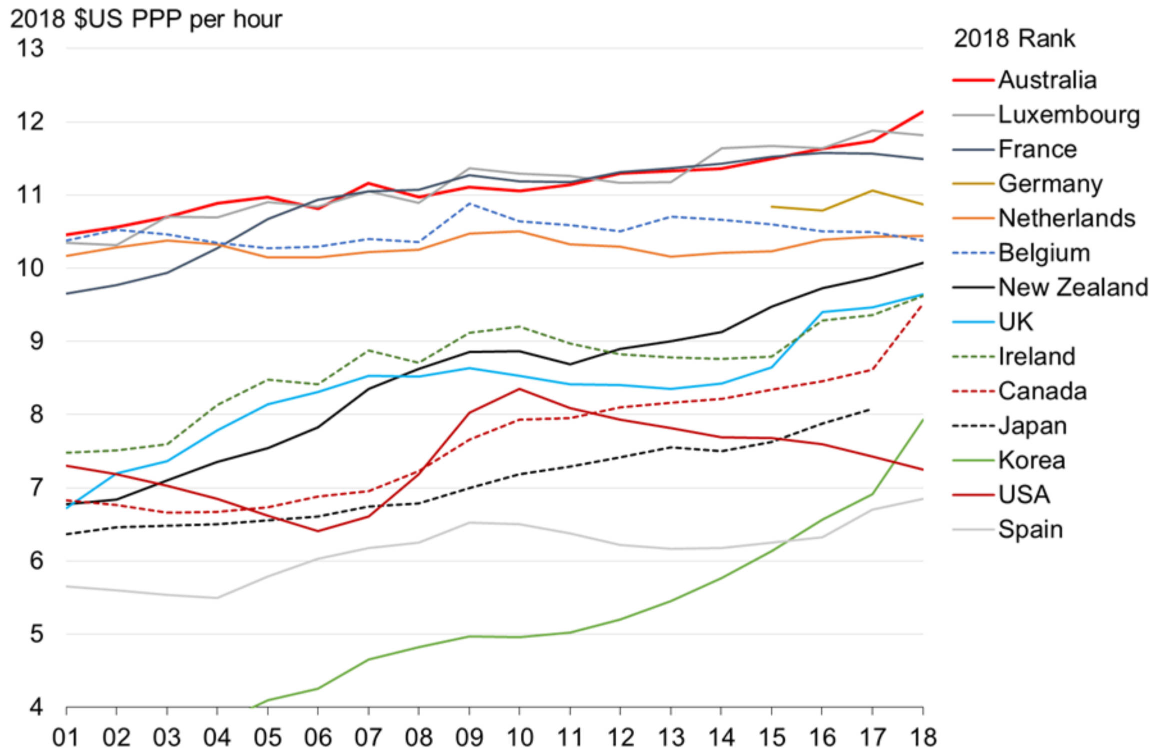
[11] Dan Andrews, Nathan Deutscher, Jonathan Hambur and David Hansell 2019, *Wage Growth In Australia: Lessons From Longitudinal Microdata,* Australian Treasury 2019-04.

that lends credence to the idea that structural factors may have weighed on wage growth in Australia up until at least 2014-15." (Treasury 2019, pp. 1-2).

2.7 Australia remains a high-cost economy in 2020

OECD data confirm that Australia regained its place as the country with the highest hourly minimum wage in the world in 2018 (chart 22), when calculated in constant 2018 US dollars at 'purchasing power parity' (PPP, which adjusts for differences in living costs, inflation rates and exchange rates). This estimate does not include the rise of 3% in Australia from 1 July 2019. Australia had the highest minimum wage globally from 2001 to 2006, when calculated by the OECD on a PPP basis.

Chart 22: minimum wages per hour in 2018 (in USD at 2018 PPP)



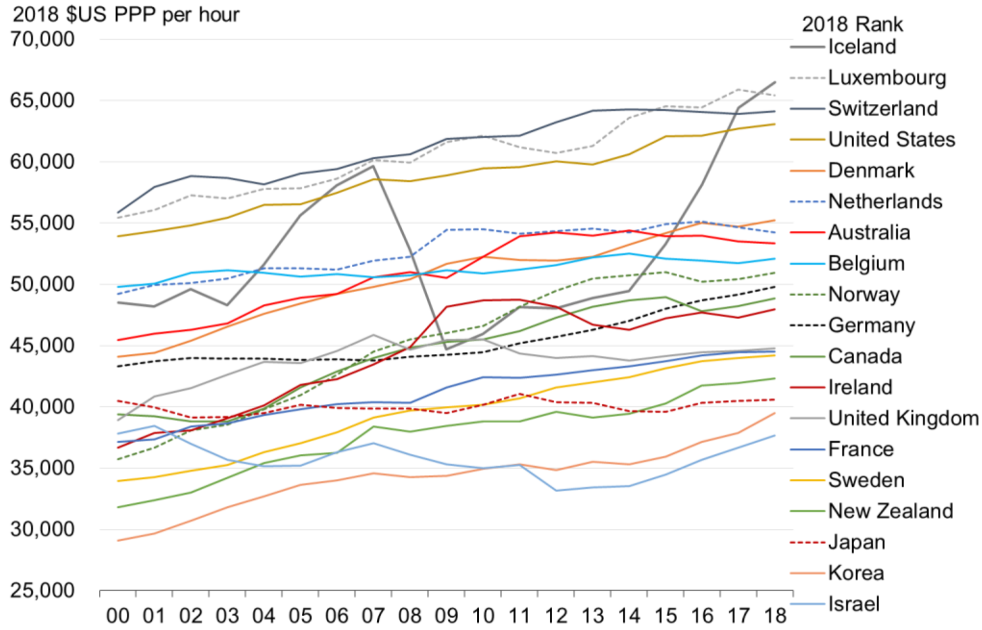
Source: OECD Stat database.

For all workers, the OECD estimates that average annual wages for full-time employees were highest in Iceland and Luxembourg in 2018, when measured in constant US dollars and adjusted for PPP (chart 23). Australia ranked 7th on this measure of wages, behind the USA and some smaller European countries.

This estimate does not include average labour on-costs that are paid by employers in addition to wages, or household income from non-wage sources. These vary substantially across countries. When other income is included, the Productivity Commission estimates that Australia has the 12th highest average income among OECD countries.[12]

[12] Productivity Commission, *Productivity Insights: Can Australia be a productivity leader?* March 2020.

Chart 23: average full-time wages per year in 2018 (in USD at 2018 PPP)



Source: OECD Stat database.

Australia's relatively higher labour costs do not reflect relatively better productivity, or relatively better performance on other measures of business competitiveness. The OECD estimates that when measured on the same PPP exchange-rate basis, Australia's labour productivity was 15th highest in 2018, among the OECD countries for which data were available (chart 23).

In its latest report comparing Australia's productivity performance to international peers, the Productivity Commission ranks Australia as 16th most productive (based on GDP per hour worked) among OECD countries in 2018, with the USA providing the global 'productivity frontier' benchmark The Commission concludes that:

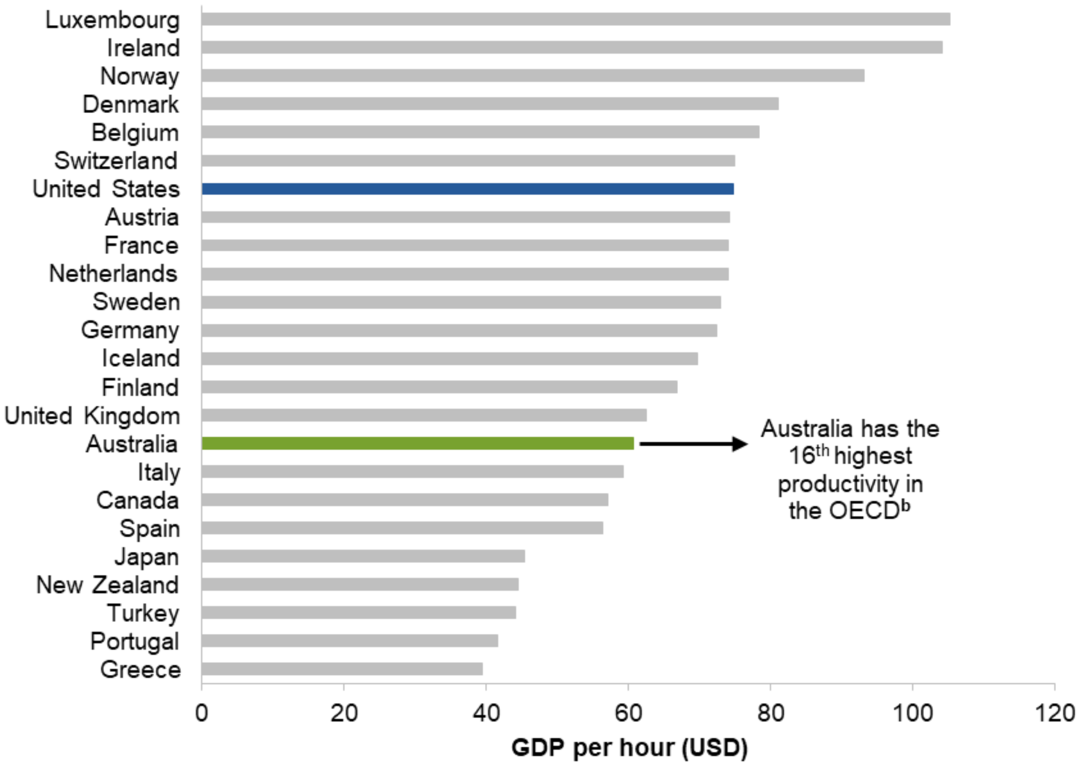
> *"When it comes to working smarter –measured by our labour productivity level or GDP per hour worked –Australia' s productivity is middling, sitting at 16th among the OECD.*
>
> *The United States effectively represents the productivity frontier — a large diversified economy with high underlying productivity. It currently takes a typical Australian worker five days to produce what would take their American counterpart four days.*
>
> *Catch up to the productivity level of the United States has proven elusive over the past five decades, partly because our relative remoteness and low population density have been a barrier to achieving efficient scale in manufacturing and goods distribution.*
>
> *Australia's remoteness and low population density will continue to limit convergence in manufacturing and goods distribution, but there are substantial opportunities to improve performance in Australia's service industries.*

Estimates suggest the Australian service industries are between 20 per cent and 60 per cent less productive than the same industries in the United States.

Australian formal educational attainment is rapidly approaching United States levels. And while the Australian economy is less research and development (R&D) intensive, this largely reflects the different industries in which Australia's comparative advantage lies — more in mining and agriculture, and less in manufacturing.

Management capability is critical in facilitating innovation but Australian businesses tend to perform poorly in this area, particularly in harnessing the benefits of digital technologies.".[13]

Chart 24: Labour productivity in 2018 (in USD at 2018 PPP[a])



a Foreign currencies converted to US dollars using current PPPs.

b Only the 24 longest standing OECD countries were considered. The figure for Turkey is for 2017 as the 2018 figure is not available.

Source: OECD Stat database, cited in Productivity Commission, *Productivity Insights: Can Australia be a productivity leader?* March 2020, p. 5.

World Bank business indicators rank Australia the 14th best economy for 'ease of doing business' in 2020, with a score of 81.2 out of a possible 100 points (chart 25). This is based on 10 aspects of establishing and operating a business, but does not include direct measures of labour costs, wage rates or labour productivity. It suggests that other aspects of Australia's business competitiveness do not compensate or explain Australia's high labour costs relative to our national productivity.

[13] Productivity Commission, *Productivity Insights: Can Australia be a productivity leader?* March 2020.

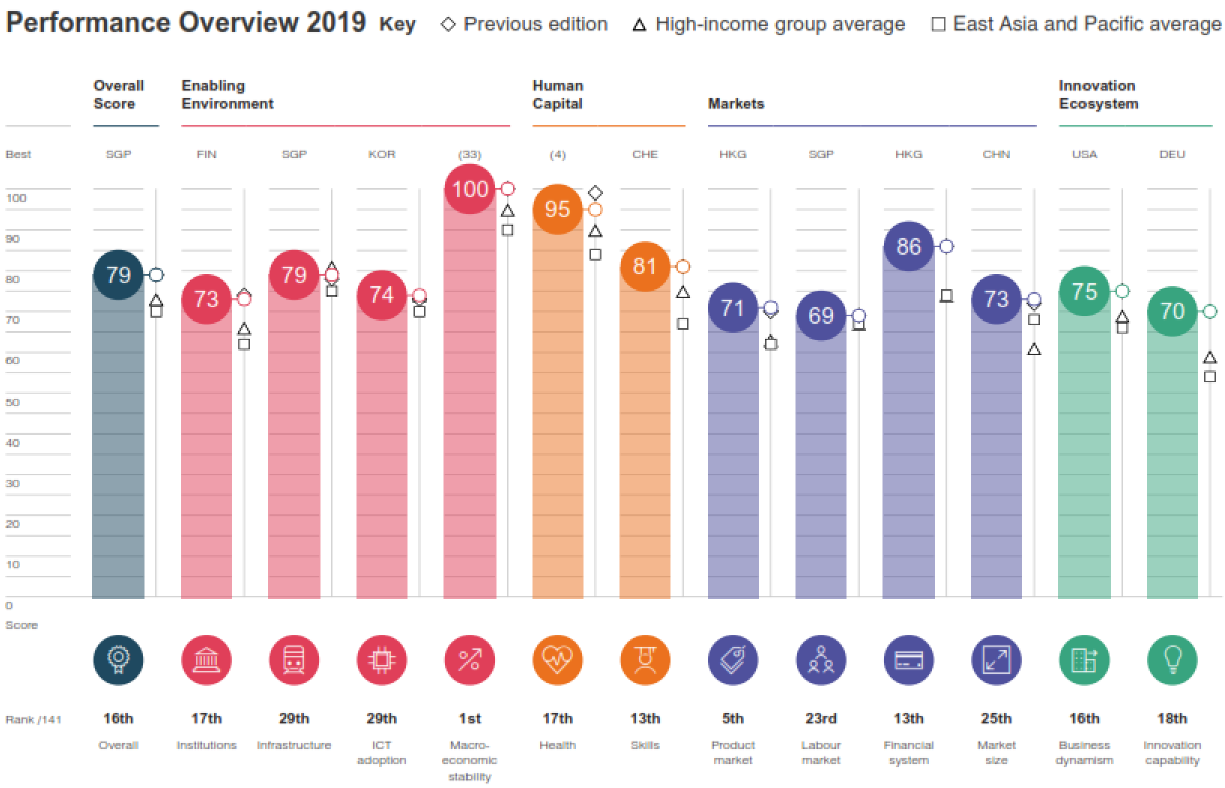
Chart 25: Australia's scores and ranks in WB 'Ease of Doing Business', 2020

Source: World Bank, *Economy Profile: Australia. Doing Business 2020*, Nov 2019.

The latest WEF *Global Competitiveness Report* produces very similar results to the World Bank. The WEF ranked Australia as the 16th most competitive business environment globally in 2019, down two places (14th place) from 2018. This fall in Australia's global competitiveness in 2019 was largely due to improvements in other countries while Australia failed to improve its total score (79 out of a possible 100 points). Australia ranked inside the top 10 in only two of the twelve 'pillars' that make up the WEF Global Competitiveness Index. These were 'macroeconomic stability' and 'product markets'. Australia shared the top score for 'macroeconomic stability' with 33 other countries.

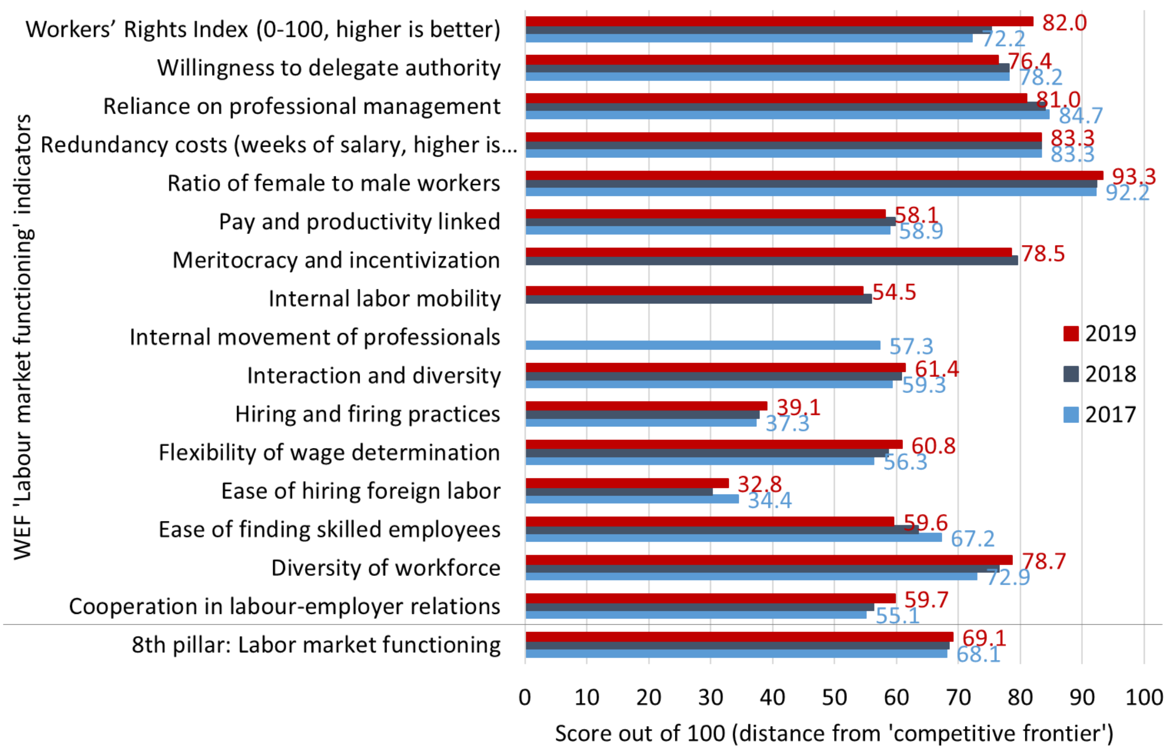
Australia's lowest global competitiveness rankings in 2019 were for the infrastructure and ICT adoption pillars, but Australia's lowest scores (out of 100 points) were for the 'labour market functioning' and 'innovation capability' pillars (chart 26). These pillars include a range of indicators of labour cooperation, collaboration, adaptability, business innovation and entrepreneurship but they do not include direct measures of labour costs, wage rates or labour productivity. Results across these indicators were mixed in 2019, but they generally indicate that Australia's performance and rankings for workplace cooperation, adaptability and flexibility are slowly improving (chart 27).

Chart 26: Australia's scores and ranks in WEF Global Competitiveness Index, 2019



Source: WEF *Global Competitiveness Report*, Oct 2019.

Chart 27: Australia's competitiveness scores: WEF labour market indicators, 2017-19



Source: WEF *Global Competitiveness Report*, Oct 2019.

3. "Exceptional circumstances" justify a 15 July 2020 operative date for any wage increase

As outlined in section 2 of this submission, the Australian community is facing a rapidly escalating health threat from the COVID-19 pandemic. The Australian economy has been disrupted by measures implemented to respond to COVID-19 internationally and further, deeper disruptions now seem inevitable. The effects of COVID-19 are in addition to the damage and disruption of the summer bushfire crisis and extended, severe drought.

The effects of the COVID-19 virus are escalating rapidly and will affect every segment of the economy in 2020. Economic developments as of mid-March indicate a rapid, serious deterioration is now under way

The serious economic impacts of the COVID-19 virus and the bushfire crisis are not accounted for in the Q4 2019 *National Accounts* figures that were released by the ABS on 4 March 2020. However, these effects will undoubtedly have a big impact on the Q1 2020 *National Accounts* figures that will be released by the ABS on 3 June 2020.

In these exceptional circumstances, there is obvious merit in the Commission delaying the *Annual Wage Review 2019-20 Decision* until the Q1 2020 *National Accounts* statistics have been released by the ABS on 3 June and properly considered.

It is vital that the Expert Panel make a careful decision on the basis of up-to-date statistics on how the economy is faring at the time any minimum wage increase is payable. Without taking into account the Q1 2020 *National Accounts* figures, the Commission's decision would not be based on up-to-date statistics, and the Commission would be taking unnecessary, very significant risks if a wage increase is awarded.

As the Expert Panel acknowledged in the *2018-19 Annual Wage Review Decision*, an excessive minimum wage increase can create a significant risk of disemployment and of adversely affecting the employment opportunities of low-skilled and young workers.[14] Without the Q1 2020 *National Accounts* statistics, the Expert Panel will be unable to reliably decide what level of wage increase would be appropriate and what level would be excessive.

Last year, Ai Group proposed a 2% minimum wage increase but an increase of this magnitude in 2020 could be unsustainable depending upon how the economy is faring at the time that the wage increase is payable.

[14] *2018-19 Annual Wage Review Decision*, [359].

Given these factors, Ai Group proposes the following sensible approach, that is in the interests of employers, employees and the broader economy:

- The Timetable for the Annual Wage Review should be amended to allow all interested parties to file a further written submission by **Monday 8 June** following the release of the Q1 2020 *National Accounts* statistics on 3 June 2020.

- The Expert Panel should not hand down its *Annual Wage Review 2019-20 Decision* until the Q1 2020 *National Accounts* statistics and the proposed 8 June round of submissions have been considered.

- “Exceptional circumstances” for the purposes of ss.286(2) and 287(4) of the *Fair Work Act 2009* (**FW Act**) justify an operative date of 15 July 2020 this year (i.e. a delayed operative date of two weeks).

A 15 July 2020 operative date will enable the Expert Panel to consider the Q1 2020 *National Accounts* statistics and consider the views of employer groups, unions and Governments on those statistics.

A 15 July 2020 operative date will enable the Commission to hand down the *Annual Wage Review 2019-20 Decision* in mid-June and enable the Commission to make the *National Minimum Wage Order 2020* and the determinations varying each modern award by 30 June 2020.

A 15 July 2020 operative date will also provide sufficient time for employers and employees to be notified of the new wage rates and allowances before they come into operation. There are substantial direct and administrative costs associated with back-paying wage and allowance increases.

Ai Group has not quantified a particular minimum wage increase in this initial submission given the current exceptional economic uncertainty. However, we intend to put forward a position on the quantum of any minimum wage increase, later in the Annual Wage Review proceedings. If the approach that Ai Group has proposed is adopted, we would do this in the 8 June round of submissions. At that time we will be in a much better position to assess what level of wage increase would be appropriate.

3.1 Legislative requirements – “exceptional circumstances”

Subsection 285(1) of the FW Act requires that the *Annual Wage Review 2019-20* be completed by 30 June 2020. Therefore, a decision needs to be handed down by this date.

Subsection 285(2) of the Act provides that, in the context of an Annual Wage Review, the Commission may make one or more determinations varying modern awards to set, vary or revoke modern award minimum wages. Generally, such determinations are to come into operation by 1 July the next financial year (s.286(1)). However, s.286(2) of the Act enables the Commission to specify a later operative date provided the following conditions are met:

- The Expert Panel is satisfied that there are exceptional circumstances justifying why a variation determination should not come into operation until a later day; and

- The determination is limited just to the particular situation to which the exceptional circumstances relate.

Subsection 287(1) of the Act requires that a National Minimum Wage Order that is made in an Annual Wage Review come into operation on 1 July in the financial year after the conclusion of the Annual Wage Review proceedings. However, s.287(4) enables the Order to provide that adjustments to the National Minimum Wage and Special National Minimum Wages take effect on a specified day later than 1 July if:

- The Commission is satisfied that there are exceptional circumstances justifying the adjustment taking effect on that day; and

- The adjustment is limited just to the particular circumstances to which the exceptional circumstances relate.

The following extract from the *Annual Wage Review 2009-10 Decision* recognises that the tests for determining whether a later operative date for a determination varying modern award minimum wages and a National Minimum Wage Order are similar: (emphasis added)

> *The Panel is required to conduct an annual wage review in each financial year. Any determination made varying minimum wages in modern awards in the review must come into operation on 1 July in the next financial year, unless there are exceptional circumstances. A national minimum wage order must also come into operation on 1 July in the next financial year, <u>subject to the same qualification</u>.* [15]

In the *Annual Wage Review 2012-13 Decision*, the Panel commented that, **in the absence of exceptional circumstances**, the Panel must issue its decision in early June:

> ***[93]*** *The second point is that there is a statutory requirement that variation determinations arising from annual wage reviews come into operation on 1 July in the next financial year, absent exceptional circumstances (s.286). In order to meet the 1 July requirement, the Panel must, as a matter of practicality, issue its decision in early June in order to provide sufficient time for draft variation determinations to be prepared and commented upon, prior to final variation determinations being issued prior to 1 July.*

The above extract reinforces the merit of what Ai Group is proposing.

[15] *Annual Wage Review Decision 2009-10*, [5].

In the *Annual Wage Review 2013-14 Decision*, the Commission said: "*Exceptional circumstances can and should be considered on their merits as required by the Act".*[16] The delayed operative date that Ai Group is proposing has substantial and obvious merit.

If 'exceptional circumstances' are not held to exist this year, it is hard to see what circumstances would be sufficient to convince the Panel that such circumstances exist. The Commonwealth Parliament included ss.286(2) and 287(4) in the FW Act for use in appropriate circumstances, and this year it is extremely appropriate that these provisions of the Act are utilised.

4. Statutory considerations

The Expert Panel is required to conduct each Annual Wage Review in accordance with the FW Act.

In previous Annual Wage Reviews, a number of important observations have been made by the Panel in respect of the manner in which it is to carry out its statutory task, including:

1. The following legislative provisions are particularly relevant: the object of the FW Act in section 3; the modern awards objective in subsection 134(1); and the minimum wages objective in subsection 284(1).

2. There are differences in the expression of the economic considerations that the Expert Panel is required to take into account under the modern awards objective and the minimum wages objective. But the underlying intention of the various economic considerations referred to in ss.134 and 284 is that the Panel takes into account the effect of its decisions on national economic prosperity and in so doing gives particular emphasis to the economic indicators specifically mentioned in the relevant statutory provisions.[17]

3. The Expert Panel's task is to consider relevant statutory matters in the context of the prevailing economic and social environment.[18]

4. No particular primacy is to be given to any of the specific factors that the Expert Panel must take into account.[19]

5. The relative living standards of employees are affected by the level of wages that they earn, the hours they work, tax-transfer payments and the circumstances of the households in which they live. It is therefore necessary to have regard to a range of measures of the

[16] *Annual Wage Review Decision 2013-14*, [517].

[17] *Annual Wage Review Decision 2017-18*, [10].

[18] *Annual Wage Review 2015-16 Decision*, [4].

[19] *Annual Wage Review 2016-17 Decision*, [129].

relative living standards of the low paid and the household circumstances in which they live.[20]

6. In determining the award wage increases that would be consistent with the need to provide a ‘fair and relevant safety net of terms and conditions’[21] (s.134), fairness is to be assessed from the perspective of both employees and employers, and the term ‘relevant’ is intended to convey that modern awards should be suited to contemporary circumstances.[22]

7. Even though the ‘need to encourage collective bargaining’ is not an element of the minimum wages objective, this is an important consideration for the Expert Panel because it is an element of the modern awards objective.[23]

8. While the statutory provisions relating to the Annual Wage Review are properly characterised as ‘remedial or beneficial provisions’, the extent to which they are to be given ‘a fair, large and liberal’ interpretation in pursuit of that broad purpose is constrained by the fact that the relevant provisions seek to strike a balance between competing interests.[24]

9. The considerations which the Expert Panel is required to take into account do not generally set a particular standard against which a modern award or the ‘safety net of fair minimum wages’ can be evaluated; many of them may be characterised as broad social objectives.[25]

10. The range of considerations the Expert Panel is required to take into account calls for the exercise of broad judgment rather than a mechanistic or decision rule approach to wage fixation. It is on this basis that past Review decisions have rejected proposals for the adoption of real wage maintenance; a medium term target for the NMW; and the variation of modern award minimum wages based on trends in market wages.[26]

11. Broadly speaking, differently constituted Expert Panels should evaluate the evidence and submissions before them in accordance with a consistent and stable interpretation of the legislative framework. Justice requires consistent decision making unless a difference can be articulated and applied.[27]

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[20] *Annual Wage Review 2015-16 Decision*, [397].

[21] s.134 of the FW Act.

[22] *Annual Wage Review 2016-17 Decision*, [123] – [125].

[23] *Annual Wage Review 2015-16 Decision*, [519].

[24] *Annual Wage Review 2016-17 Decision*, [142].

[25] *Annual Wage Review Decision 2017-18*, [15].

[26] *Annual Wage Review Decision 2017-18*, [44].

[27] *Annual Wage Review Decision 2017-18* [58].

12. As part of its decision-making process, the Expert Panel must first form a view about the proposed increase to the NMW and then take that proposal into account in exercising its powers to vary award minimum wages.[28]

13. There is no justification to increase the NMW by a higher rate than modern award minimum wages. To do so would create a significant risk of disemployment effects—thus putting low-paid workers at risk of unemployment and poverty. Nor would it be fair to those on higher modern award minimum wages as it would erode the recognition of their higher skill and relative 'work value.'[29]

14. The FW Act requires the Panel to take into account *all* of the relevant statutory considerations, and the relative living standards and needs of the low paid are but one of a number of considerations that the Panel must take into account.[30]

15. The Expert Panel's decision-making process should be as transparent as possible and should disclose the factors which are most relevant in a particular year.[31]

In the *Annual Wage Review 2018-19 Decision*, the Panel determined that the statutory tasks in ss.134 and 284 involve an 'evaluative exercise' which is informed by the considerations in s.134(1)(a)–(h) and s.284(1)(a)–(e) of the Act. However, the Panel stated that those matters "*do not necessarily exhaust the matters which the Panel might properly consider to be relevant".*

5. A fair and relevant safety net

The Expert Panel is tasked with determining and maintaining a fair and relevant safety net for employees working in Australia.

Clearly fairness in this context should consider not just the rates of wages paid to employees but also the amount of work available at different wage rates. It is the combination of these that determines individuals' income from wages. The Panel should be mindful of the unfairness that would arise when an increase in minimum wages resulted in lower quantities of work available particularly for the most vulnerable members of the labour force (relative to the levels that would have been the case in the absence of the wage rise or in the event of a smaller wage rise).

In a dynamic labour market, fairness in the determination and maintenance of a fair and relevant safety net for employees should, in addition to existing employees, also consider potential employees whose opportunities of finding work would be reduced at higher minimum wage levels. This applies to potential new entrants to the labour force; people actively looking for work; and

[28] *Annual Wage Review 2015-16 Decision*, [5].

[29] *Annual Wage Review Decision 2017-18,* [105].

[30] *Annual Wage Review 2018-19 Decision*, [11].

[31] *Annual Wage Review 2018-19 Decision*, [23].

people who, because of their experience of not being able to find a job, have been discouraged from actively looking for work.

It is instructive to note[32] that the employment growth of around 257,000 in the year between January 2018 and January 2019 was associated with generally moderate growth in wages. While this jobs growth is welcomed, it is considerably less than the employment growth of 414,000 in the period from January 2017-January 2018 and a further slowing on the pace of jobs growth between January 2018 and January 2019 of 278,000.

This slower growth of employment has meant that rates of unemployment and underemployment are higher than they would have been had job creation continued at the same rate as it had in the previous two years. The rate of unemployment rose from 5.0% (revised from last year) to 5.2% (trend data) in the year to January 2020 and the underemployment rate rose 8.3% to 8.5% over the same period and remains at close to historic highs.

According to the latest ABS labour force data:

- The number of active jobseekers among unemployed people stood at 709,600. This is 5% more than a year earlier.
- At the end of January 2020, the number of underemployed people was 1,165,500 – an increase over the year from end January 2019 of 55,400. This was an increase of 5%.
- The labour force underutilisation rate, which is a broader measure of underutilisation than either the unemployment rate or the underemployment rate stood at 13.7 per cent of the labourforce in January 2020 compared with 13.3% a year earlier.
- In January 2020 one in every 7.3 people in the labourforce were either unemployed or underemployed.

Particular note should be made of the extent of youth unemployment, underemployment and underutilisation. Recent ABS data show that each of these measures are more than twice as high for people aged between 15 and 24 than they are for the labour force as a whole. The unemployment rate for 15-24-year olds was 11.9% in January this year and the underemployment rate for this age group was 17.7%. These combine to produce an underutilisation rate among 15-24-year olds of 29.6%. This was an increase from the rate of 28.8% a year earlier and means that, for 15 to 24-year olds, around one in every 3.4 people in the labour force are either unemployed or underemployed.

[32] The data in this and the following three paragraphs are trend data drawn from ABS 6202 *Labour Force Australia*, February 2020.

Over the past year underutilisation rates among young people moved up as the economy has slowed. If labour market outcomes deteriorate further over the course of 2020, as the combination of further underlying slowing, and the bushfire and COVID-19 shocks take their course youth unemployment and underemployment are set to escalate from this already high base.

Of course, the same is true for the labour force as a whole. With the underutilisation of the Australian labour force already on the rise, there are clear and growing risks that higher wage costs would further slow employment growth and speed up the reversal of the relatively modest inroads that were made into labour force underutilization in the few years to the end of 2018.

In the *Annual Wage Review 2018-19 Decision*, the Panel expressly recognised the risk of disemployment – particularly of young people and low-skilled people - associated with large increases in minimum wages when it stated:

> *"In our judgment the magnitude of the increase required in this Review to lift these household types above the relative poverty line would run a significant risk of disemployment and of adversely affecting the employment opportunities of low-skilled and young workers. …"*[33]

The cumulative effect of the increases in minimum wages over the past three years (of 3.3%, 3.5% and 3.0%) is a rise of over 10%. This is large relative to inflation and general movements in wages. The risks of disemployment effects of further increases have clearly risen both because of the higher base from which further increases will be calculated and because of the changed labour market conditions that Australia is now confronting.

6. Relative living standards and the needs of the low paid

The FW Act charges the Fair Work Commission with establishing and maintaining a safety net of minimum wages, taking into account, among other things, questions relating to 'relative living standards and the needs of the low paid.'

Relative living standards and the needs of the low paid are shaped by a very wide variety of factors. These include wage rates, availability of work, hours worked, continuity of employment and the family/household situation of low-paid employees. They are also shaped by individuals' and households' access to the broader social safety net which, in addition to the public health and education systems, the public-funding of childcare, public assistance in relation to housing and also includes Australia's well-developed and highly-progressive income tax and transfer systems.

[33] *Annual Wage Review 2018-19 Decision*, [61].

In this section we highlight the major findings of the most authoritative recent studies of inequality in Australia and we examine the impact on low-wage earners of personal income tax changes announced in the 2019 Budget.

6.1 Relative living standards and inequality in Australia

The two most authoritative recent studies of inequality in Australia were undertaken by the Productivity Commission[34] and the Australian Bureau of Statistics.[35] While both these reports were considered in the context of the *Annual Wage Review 2018-19*, the major findings remain relevant to the present considerations of relative living standards of the low paid.

- Contrary to popular conceptions, neither study found that income inequality had undergone a significant shift in the periods under examination (for the Productivity Commission the period since the late-1980s and for the ABS, the years from 2009-10 to 2015-16). The Productivity Commission found a modest increase in inequality in the period since the late 1980s but attributed this increase to the exceptional period of the mining boom and also noted a slight reduction in inequality in the years since the GFC.

- Both studies noted the critical role that income taxes and transfers played in reducing inequality in Australia and further highlighted the additional role played by "social transfers in kind" such as education and healthcare in reducing inequality in Australia.

- The most resounding finding of the Productivity Commission Report (at page 2) was: "Among the various forces acting on inequality and poverty, the one constant that matters is having a job."

Two important implications for minimum wage setting flowing from these general findings can be highlighted. The first is that any argument calling for a large increase in minimum wage levels to offset growing income inequality is based on a false premise. Such an argument should therefore be rejected. A second implication arises from the central role of unemployment in inequality and relative living standards as highlighted by the Productivity Commission. This is the prominence that should be attached to the risks of disemployment associated with the Panel's decisions on minimum wage levels.

[34] Productivity Commission, *Rising Inequality; A Stocktake of the Evidence,* August 2018.

[35] ABS 6537.0 - *Government Benefits, Taxes and Household Income, Australia*, 2015-16, 20 June 2018.

6.2 Changes in personal income tax arrangements

In its Decision in last year's Review the Panel reiterated its well-established view "*that changes to the tax-transfer system are important to our consideration of the relative living standards and needs of the low paid*" and noted that "*identified changes to the tax-transfer system and their effects on low-paid employees have been taken into account*"[36] in the determination of the 2019 increase.

The Panel indicated[37] that its considerations included the following relevant budget measures which took effect on 1 July 2018:

- The introduction of the Low and Middle Income Tax Offset (**LMITO**) (which provides an offset of $200 for those whose personal income is less than $37 000, increasing to $530 for incomes from $37 000 to less than $48 000 at a rate of 3 cents per dollar phasing out at a rate of 1.5 cents per dollar for incomes above $90 000); and

- Increases in the Medicare levy thresholds for the 2018–19 income year (the Medicare levy's low-income threshold for singles, families and seniors and pensioners was increased to take into account movements in the CPI; the threshold for singles increased from $21 980 to $22 938, while the threshold for families increased from $37 089 to $37 794).

Subsequently, as announced in the 2019-20 Budget and later legislated, the LMITO applying in respect of the 2018-19 year was increased. The base level of LMITO was raised from $200 to $255 and the maximum level of LMITO was raised from $530 to $1,080. Other key parameters of the changed offset were:

- The new base level of the offset was available if taxable income was $37,000 or less;

- Between incomes of $37,000 and $48,000 the amount of LMITO increased at a rate of 7.5 cents for each dollar greater than $37,000;

- At an income of $48,000 the maximum LMITO of $1,030 was reached;

- The maximum LMITO applied for incomes between $48,000 and $90,000;

- Beyond the $90,000 income level, the LMITO reduced at 3 cents for each dollar greater than $90,000 until no LMITO applied for incomes above $126,000.

Thus, the amount of LMITO made available to taxpayers in respect of income earned in the 2018-19 year was larger than the LMITO factored into last year's Review.

[36] *Annual Wage Review 2018-19 Decision*, [241].

[37] Annual Wage Review 2018-19 Decision, [226].

Table 6 below illustrates the impacts of the higher LMITO on the disposable incomes of a range of income levels for a single income earner. For direct relevance to this year's Review, the comparisons are based on 2019-20 wage levels.

Table 6: Illustrative[1] Impacts on Disposable Incomes arising from the Increase in LMITO

% of National Minimum Wage	Pre-tax income		Disposable income change due to higher LMITO		Marginal Tax Rate[2]	Equivalent increase in pre-tax income	
	$pw	$pa	$pw	%	(%)	$pw	%
50%	370.40	19,312.66	0.00	0.0%	0.0%	0.00	0.0%
60%	444.48	23,175.19	1.05	0.2%	29.0%	1.49	0.3%
70%	518.56	27,037.72	1.05	0.2%	29.0%	1.49	0.3%
80%	592.64	30,900.25	1.05	0.2%	21.0%	1.34	0.2%
90%	666.72	34,762.78	1.05	0.2%	21.0%	1.34	0.2%
100%	**740.80**	**38,625.31**	**2.46**	**0.4%**	**28.5%**	**3.44**	**0.5%**
110%	814.88	42,487.84	5.79	0.8%	28.5%	8.10	1.0%
120%	888.96	46,350.37	9.12	1.2%	28.5%	12.76	1.4%
130%	963.04	50,212.91	10.55	1.3%	36.0%	16.48	1.7%
140%	1,037.12	54,075.44	10.55	1.2%	36.0%	16.48	1.6%
150%	1,111.20	57,937.97	10.55	1.2%	36.0%	16.48	1.5%
160%	1,185.28	61,800.50	10.55	1.1%	36.0%	16.48	1.4%
170%	1,259.36	65,663.03	10.55	1.1%	36.0%	16.48	1.3%
180%	1,333.44	69,525.56	10.55	1.0%	34.5%	16.10	1.2%
190%	1,407.52	73,388.09	10.55	1.0%	34.5%	16.10	1.1%
200%	1,481.60	77,250.62	10.55	0.9%	34.5%	16.10	1.1%

1. The Impacts are illustrative in that they do not take into account that an individual is often a member of a household in which the net impacts of the changed LMITO and indeed other income tax changes may also affect living standards of household members; they rely on annualising weekly payments assuming the person is paid the same weekly amount for the full 52.14 weeks of the year; and they do not include any income from other sources.
2. The marginal tax rate (MTR) includes the tax rate in the personal tax scale, the Medicare Levy rate (including the 10% shade-in rate over a range of low incomes), and the impacts on MTRs as tax offsets shade in and out.

Although the increases in disposable income are smaller than those considered and taken into account in the 2018-19 Review, they are again material across a range of incomes relevant to the living standards of low paid employees. As shown in Table 6, a person on the National Minimum Wage for the whole of the 2019-20 tax year will enjoy a disposable income that is higher and will be better off by $2.46 per week. This is an increase in after-tax income of 0.4%. Because income tax is not paid on this extra amount it is equivalent to a rise in the pre-tax wage of $3.44 (equivalent to a 0.5% increase in pre-tax income). While 0.5% may not seem a large percentage, in an environment when inflation is running at just 1.8% (CPI for the year to December 2019), it is an increase that represents a substantial contribution to preservation of real disposable incomes for the low paid.

The difference between the pre-tax equivalent of the increase and the increase in disposable income arises because last year's increase in the National Minimum Wage lifted employees earning the National Minimum Wage for the full tax year into the 32.5% tax bracket in the personal income tax scale.

As illustrated in Table 6, for employees earning below the weekly National Minimum Wage (for example part-time and younger employees), the dollar and percentage increases in disposable incomes (and equivalent pre-tax incomes) are lower than for a person earning the National Minimum Wage for the full year. This is generally because the higher amount of LMITO available at annual incomes below $37,000 is constant at $55 a year over much of this income range. The amount of LMITO then rises with incomes above $37,000 over the range of incomes relevant to the consideration of the needs of low-paid employees.

The changed level of LMITO was factored into tax returns in respect of income earned in the 2018-19 year. It will apply again in respect of income earned in the 2019-20, 2020-21 and 2021-22 years after which it will be overtaken by other prospective changes to personal income tax arrangements.

While it was available in respect of last year's income, it was not taken into account in last year's Review and Ai Group urges that the higher rate of LMITO be taken into account in this year's decision.

Ai Group also believes that any additional changes to personal income tax arrangements and transfer payments that may be announced in this year's Federal Budget and that have a bearing on the needs of the low-paid should also be taken into account by the Expert Panel. On 12 March 2020, the Government announced a range of payments to households – including to families with children – that will be of material benefit to many low-paid employees. We will include our analysis of these changes, together with any changes announced in the May Budget in our post-Budget submission to this Review.

7. Promoting social inclusion through increased workforce participation

The FW Act charges the Fair Work Commission with establishing and maintaining a safety net of minimum wages, which requires consideration of, among other things, the objective of 'promoting social inclusion through increased workforce participation'.

As we have stated in previous submissions, Ai Group recognises the importance of participation in the paid workforce for social inclusion. Participation in the paid workforce can be closely linked to individuals' sense of self-worth and it can signal the contributions people make to the well-being of the broader community. In addition, of course, participation in paid work can provide the financial means by which people can participate in many aspects of social life.

It is sometimes suggested that raising minimum wage rates is a means by which social inclusion can be promoted, because it encourages more people to participate in the workforce (or to lift their participation in the workforce from existing levels). However, as we have argued in previous Annual Wage Review submissions, such encouragement would only have a positive impact on social inclusion if it leads to actual increases in participation in paid work.

Employment in a low-paid job is very often positively related to longer-term social inclusion beyond that which might be implied from the level of earnings or the status of the particular job. As the Panel noted in the *Annual Wage Review 2018-19 Decision*:

> *low paid employment is often temporary and can act as a 'stepping stone' to higher paid work….* [38]

Viewed in the context of the dynamics of workforce participation, social inclusion is promoted (or stifled) not only in the immediate sense but over time by the availability (or unavailability) of paid work – even at low wage levels.

Current levels of unemployment and underemployment show there is still considerable underutilisation of the labour available at current wage rates (see section 2 above). With supply still exceeding demand in aggregate, there is certainly no need to lift minimum wage rates in order to encourage additional labour supply.

With demand for labour at grave risk of diminishing in the period ahead both because of the general slowing of the economy and as a result of the bushfire and COVID-19 shocks, there is a clear threat that the current imbalance between demand and supply will be extended. In these circumstances the greater threat to participation in paid work (and therefore the near-term and ongoing social inclusion associated with this participation) will come more from a reduction in the demand for labour rather than from an unwillingness to supply labour. In this environment we urge the Panel to be particularly wary of exacerbating the growing pressures on labour demand and the associated impacts on social inclusion.

8. Encouraging collective bargaining

The Expert Panel must take into account the need to encourage collective bargaining, as set out in s.134(1)(b) of the modern awards objective.

In past submissions, Ai Group has recommended the Expert Panel set the minimum wage increase generally at a level that is lower than average annualized wage increases in enterprise agreements. Ai Group notes the Expert Panel's comments in the *Annual Wage Review 2018-19 Decision* that this submission pays insufficient regard to the statutory obligation to take into account 'relative living standards'.[39] 'Relative living standards' are only one of the Expert Panel's considerations and Ai

[38] *Annual Wage Review 2018-19*, [62].

[39] *Annual Wage Review 2017-2018 Decision*, [381].

Group maintains that in most circumstances, it will be appropriate to set the minimum wage increase no higher than the average annual wage increase in order to encourage collective bargaining.

In last year's Annual Wage Review, the Panel gave consideration to the reasons why, over recent years, there has been a significant decline in the number of employees covered by collective agreements and a significant increase in award reliance. No firm conclusions were reached by the Panel on the reasons for this.[40]

We agree with the view expressed by the Expert Panel in the *Annual Wage Review 2016-17 Decision* that there are many complex factors that may contribute to decisions of employers and employees about whether or not to bargain.[41]

9. The principle of equal remuneration for work of equal or comparable value

Subsection 284(1) of the FW Act set out the minimum wages objective, which the Expert Panel is required to consider when setting minimum wages. Paragraph (d) of the objective requires the Panel to turn its mind to *"the principle of equal remuneration for work of equal or comparable value"*, a principle which is included within the modern awards objective at s.134(1)(e) of the Act.

Ai Group supports the principle of equal remuneration for work of equal value and the importance of improving gender equality in the workplace. We have been a vocal advocate for realistic, practical and targeted measures to eliminate the causes of gender inequality in the workplace.

In the *Annual Wage Review 2017-2018 Decision*, the Expert Panel acknowledged the applicability of the definition of 'equal remuneration' in s.302(2) of the Act for the purposes of ss.134 and 284 and that hence, the correct approach to the construction of ss.134(1)(e) and 284(1)(d) is to read the definition into the substantive provision. As such, the consideration is to be read: "the principle of equal remuneration for men and women workers for work of equal or comparable value".[42] The Expert Panel also accepted that the expression 'work of equal or comparable value' refers to equality or comparability in 'work value.[43]

Past annual wage review decisions have reached the following conclusions regarding the principle of equal remuneration for work of equal or comparative value:

- The application of the principle of equal remuneration for work of equal or comparable value is such that it is likely to be of only limited relevance in the context of a Review. Indeed it

[40] *Annual Wage Review 2018–2019 Decision*, [385]-[387].

[41] *Annual Wage Review 2016-2017 Decision*, [634]-[637].

[42] *Annual Wage Review 2017-2018 Decision*, [33].

[43] *Annual Wage Review 2017-2018 Decision*, [34].

would only be likely to arise if it were contended that particular modern award minimum wage rates were inconsistent with the principle of equal remuneration for work of equal or comparable value; or, if the form of a proposed increase enlivened the principle.[44]

- Review proceedings are of limited utility in addressing any systemic gender undervaluation of work. Proceedings under Part 2-7 and applications to vary modern award minimum wages for 'work value reasons' pursuant to ss.156(3) and 157(2) provide more appropriate mechanisms for addressing such issues.[45]

- The broader issue of gender pay equity, in particular the gender pay gap is relevant to the Review as it is an element of the requirement to establish a safety net that is 'fair.'[46]

- The issue of gender pay equity may arise for consideration in respect of s.284(1)(b), because it may have effects on female participation in the workforce.[47]

- The causes of the gender pay gap are complex and influenced by factors such as: differences in the types of jobs performed by men and women; discretionary payments; workplace structures and practices; and the historical undervaluation of female work and female-dominated occupations.[48]

- Moderate increases in the National Minimum Wage and modern award minimum wages would be likely to have a relatively small, but nonetheless beneficial, effect on the gender pay gap.[49]

- The gender pay gap is mostly driven by higher paid workers.[50]

10. Penalty Rates Decision

On 23 February 2017, a Full Bench of the Commission issued the *4 Yearly Review of Modern Awards – Penalty Rates Decision.*[51] The Decision:

- adjusted Sunday penalty rates in the *Fast Food Industry Award 2010*, the *General Retail Industry Award 2010*, the *Hospitality Industry (General) Award 2010*, and the *Pharmacy Industry Award 2010*; and

[44] *Annual Wage Review 2017-18 Decision*, [35].

[45] *Annual Wage Review 2017-18 Decision*, [35].

[46] *Annual Wage Review 2017-18 Decision*, [36].

[47] *Annual Wage Review 2017-18 Decision*, [36].

[48] *Annual Wage Review 2017-18 Decision*, [38].

[49] *Annual Wage Review 2017-18 Decision*, [38].

[50] *Annual Wage Review 2018-29 Decision*, [391].

[51] [2017] FWCFB 1001.

- adjusted public holiday penalty rates in the above awards and in the *Restaurant Industry Award 2010*.

The Full Bench determined that the existing Sunday penalty rates in the four relevant modern awards did not achieve the modern awards objective, as they did not provide for a fair and relevant safety net. The statutory considerations required of the Expert Panel in the current proceedings were considered by the Full Bench in the *Penalty Rates Decision*, including: the objects of the FW Act (s.3); the modern awards objective (s.134); and the minimum wages objective (s.284).

The *Penalty Rates Decision* applies only to a small number of awards in the hospitality and retail industries. In this regard, the Full Bench said:

> ***[76]*** *It is important to appreciate that the conclusions we have reached in relation to the weekend and public holiday penalty rates in the Hospitality and Retail Awards is largely based on the circumstances relating to these particular awards. The Hospitality and Retail sectors have a number of characteristics which distinguish them from other industries.*

The adjustments to Sunday penalty rates in the relevant awards are being phased-in over 3 or 4 years. The phasing-in was completed on 1 July 2019 in respect of the *Fast Food Industry Award,* the *Hospitality Industry (General) Award* and for casual employees covered by the *General Retail Industry Award*. The fourth and final increment will be operative from 1 July 2020 in the *General Retail Industry Award*, the *Pharmacy Industry Award* and for full-time and part-time employees covered by the *General Retail Industry Award*.

Even though the *timing* of the adjustments has been sensibly aligned with the operative date of any minimum wage increase in Annual Wage Review decisions, it would be inappropriate for the *quantum* of any minimum wage increase to be any higher as a result of the *Penalty Rates Decision*. This would negate the intended beneficial effects of the *Penalty Rates Decision* in the relevant industries. This would also be unfair to businesses in other industries that have not received the benefit of adjusted penalty rates.

In this regard, we note the following observations of the Expert Panel in the *Annual Wage Review 2017-2018 Decision*:

> *The Penalty Rates decision provides for the phased reduction of Sunday penalty rates in certain awards in the hospitality and retail sectors which will reduce the employment costs of some employers covered by the modern awards affected by the decision. We note that there have also been other changes to modern awards that have increased employment costs. It is not appropriate to take account of all of these matters in some quantifiable or mechanistic way to support a particular outcome in the Review. But these matters form part of the broad context in which the Review is conducted and are relevant considerations.*[52]

[52] *Annual Wage Review 2017-2018 Decision*, [93]

11. Minimum wages for adults

For the reasons explained in section 3 of this submission, Ai Group has not quantified a particular minimum wage increase in this initial submission given the current exceptional economic uncertainty.

However, we intend to put forward a position on the quantum of any minimum wage increase later in the Annual Wage Review proceedings. If the approach that Ai Group has proposed in section 3 of this submission is adopted, we would do this in the 8 June round of submissions. At that time we will be in a much better position to assess what level of wage increase would be appropriate.

12. Special National Minimum Wage 1 and 2 for award/agreement free employees with disability

In its *Annual Wage Review 2018-19 Decision,* the Commission decided to maintain the approach it had adopted in previous years in respect of setting special minimum wages for award / agreement free employees with disability.[53]

This approach is twofold. For employees, whose productivity is not affected, a special national minimum wage is set at the level of the National Minimum Wage (Special National Minimum Wage 1) and for employees whose productivity is affected a special national minimum wage is paid in accordance with an assessment under the supported wage system (Special National Minimum Wage 2).

Ai Group supports the continuation of the existing structures for award / agreement free employees with disability in the *National Minimum Wage Order 2020.*

13. Special National Minimum Wage 3 for award / agreement free junior employees

In its *Annual Wage Review 2010-2011* decision, the Expert Panel decided to use the scale in the *Miscellaneous Award 2010* to set the special national minimum wage for award/agreement free junior employees. The Panel has followed this approach in subsequent Annual Wage Review decisions.

This approach remains appropriate for setting rates for award/agreement free junior employees.

[53] *Annual Wage Review Decision 2018-19*, [419].

14. Special National Minimum Wage 4 for award / agreement free apprentices

In its *Annual Wage Review 2013-2014 Decision*, the Expert Panel reached the following conclusions and decision on special national minimum wages for award / agreement free apprentices, consistent with Ai Group's submissions:

> ***[613]*** *We have decided to adopt the provisions of the Miscellaneous Award 2010 as the basis for the special national minimum wages for employees to whom training arrangements apply. The national minimum wage order will incorporate, by reference, the apprentice and NTWS provisions of that award.*
>
> ***[614]*** *We also accept Ai Group's submission that the adult apprentice national minimum wage in the order should now be set in accordance with the Miscellaneous Award 2010 which, since 1 January 2014, has specified a rate for adult apprentices…."*

The Panel adopted this approach in subsequent Annual Wage Reviews, including the *2018-2019 Annual Wage Review*.[54] Consistent with the above conclusions of the Panel, and its decision last year, the wage rates for apprentices in the *Miscellaneous Award 2010* should be adopted for the purposes of the *National Minimum Wage Order 2020*.

15. Special National Minimum Wage 5 for award / agreement free employees to whom a training arrangement applies who are not apprentices

In the *National Minimum Wage Order 2012*, the Expert Panel decided to adopt the minimum wage rates in the National Training Wage Schedule of the *Miscellaneous Award 2010* for the special national minimum wage for award / agreement free employees to whom training arrangements apply, other than apprentices. The Panel adopted the same approach in its subsequent Annual Wage Review decisions.

Ai Group supports the continuation of the above approach in the *National Minimum Wage Order 2020*.

16. Transitional instruments

In the *Annual Wage Review 2018-2019 Decision*, the Expert Panel decided to maintain the approach taken by the Panel in previous Annual Wage Reviews, by increasing the rates in relevant transitional instruments consistent with any increase determined for modern award minimum wages. Ai Group supports a continuation of this approach in the current Annual Wage Review.

[54] *Annual Wage Review Decision 2018-19*, [438].

17. Modern award minimum wages for junior employees

Consistent with previous Annual Wage Review decisions, any minimum wage increase resulting from this year's Annual Wage Review should flow through to the minimum award wages of junior employees, through the operation of the relevant award provisions relating to these employees.

18. Modern award minimum wages for employees to whom training arrangements apply

Consistent with previous Annual Wage Review decisions, any minimum wage increase resulting from this year's Annual Wage Review should flow through to the minimum award wages of employees to whom training arrangements apply, through the operation of the relevant award provisions relating to these employees.

18.1 Wage rates in the Rail Award

In last year's Annual Wage Review proceedings, the Rail, Tram and Bus Union Australia (**RTBU**) raised an issue concerning the relationship between Special National Minimum Wage 4 and the apprentice wage rates in the *Rail Industry Award 2010* (**Rail Award**). The Commission subsequently issued a background paper on apprentice wage rates in the Rail Award, identifying those that are below the rates in Special National Minimum Wage 4.

In a 24 February 2020 submission, Ai Group urged the Commission to treat this issue in a similar manner to the issues concerning minimum rates for junior employees that were dealt with during the *Annual Wage Review 2018-19*. In the *Annual Wage Review 2018-19 Decision*, the Expert Panel said: (emphasis added)

> ***[417]*** *We consider that there is some force in the propositions advanced by Ai Group regarding the basis upon which we have been requested to adjust the junior rates in the 19 modern awards. As has been noted in previous Reviews, the review and variation of modern award minimum wages is a separate, though related, function to reviewing and making a NMW order. 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', but <u>there is no mandated relationship between wage rates set by a NMW order and modern award minimum wages and certainly no requirement that any particular modern award minimum wage rate be no less than a NMW rate</u>. Without a proper consideration of the basis upon which the rates in the modern awards and NMW3 were set, we are unable to determine whether adjustments are justified, including whether any such adjustments would distort existing relativities.*

> ***[418]*** *We also note that Rail, Tram & Bus Union Australia (RTBU) raised a similar issue about the relationship between special NMW4 and certain apprentice rates in the Rail Industry Award 2010. Many of the same issues arise.*

Ai Group participated in a conference which took place on 27 February 2020 before Commissioner Hampton. At the Conference, Hampton C foreshadowed that a report would be prepared for the President of the Commission and the Expert Panel. Taking into account the Expert Panel's decision pertaining to junior rates, Hampton C invited the RTBU consider pursuing the matter through an application under s.157 of the FW Act rather than as part of the Annual Wage Review:[55]

> *So look, the only potential significance of this is that it would seem to me, at least by analogy, whenever the Commission comes to consider the appropriate vehicle for this, you can expect there will be serious consideration as to whether section 157 is the right vehicle, and I make those comments to assist all parties, not to indicate any interim or preliminary view of myself or indeed the Commission more generally, but just my own observations based on what looks to be a somewhat analogous situation.*
>
> *…*
>
> *… I suspect in that context the ball is going to be in the union's court to initially make in effect the in-principle decision as to whether you want to push ahead with the annual wage review to consider the matter, or alternatively to take the 157 route and make an application sort of largely in the terms that you foreshadowed here, and it would seem to me, depending on your timeframe for doing so, it might be prudent for me to wait in terms of my report to the President to await your decision on that.*

On 3 March 2020, the RTBU wrote to Hampton C confirming its intention to pursue the matter during the *Annual Wage Review 2019-20*, rather than through an application under s.157 of the Act.

Ai Group urges the Expert Panel to reject the RTBU's claim for the following reasons set out in Ai Group's 24 February 2020 submission:

> *The Australian Industrial Relations Commission, in making the Miscellaneous Award 2010, determined that the conditions applicable should be 'basic'. No suggestion was ever made that the rates applicable under this award were intended to constitute the minimum across the award system.*[56]
>
> *The statutory framework relevant to the setting of the National Minimum Wage should be taken into account for the purpose of the present proceedings. The Fair Work Act 2009 (Cth) (FW Act) does not require that the minimum wage rates for award-covered apprentices be equal to or higher than the wage rates for award/agreement free apprentices. There is nothing in the FW Act to suggest that such an approach is intended or required.*

[55] C2020/1, *Transcript* (27 February 2020), PN43-PN44.

[56] [2009] AIRCFB 945, [153].

As already flagged in the Background Paper, varying the Rail Award to address only those rates in the Award which are currently lower than NMW4 would disrupt existing relativities. The scale of rates in each modern award is designed to reflect an appropriate graduated scale of rates for the relevant industry. The resulting distortion of the rates applicable to apprentices under the Rail Award should persuade the Commission that it is not appropriate to vary the Rail Award as proposed by the RTBU.

19. Modern award minimum wages for employees with disability

Consistent with previous Annual Wage Review decisions, any minimum wage increase resulting from this year's Annual Wage Review should flow through to the minimum award wages of employees with disability, through the operation of the relevant award provisions relating to these employees.

The minimum weekly payment in the Supported Wage System Schedule in awards should be adjusted to reflect any increase to the disability pension's income free threshold. This is consistent with the Panel's decisions in previous years.

20. Piece rates in modern awards

In the *Annual Wage Review 2018-19 Decision*, the Commission determined that the piece rates in modern awards are presently fixed by reference to minimum rates expressed on an hourly or weekly basis, and therefore they do not require separate adjustment. We support a continuation of this approach.

21. Casual loadings in modern awards

Paragraphs 285(2)(a)(i) and 284(3)(b) of the FW Act requires that the Expert Panel review casual loadings in modern awards.

In the *Metal Industry Casual Employment Case*,[57] a Full Bench of the Australian Industrial Relations Commission (**AIRC**) decided to increase the casual loading in the *Metal, Engineering and Associated Industries Award 1998* from 20% to 25%.

After the *Metal Industry Casual Employment Decision* was handed down, the 25% quantum flowed into many other awards. During the Award Modernisation process in 2008-09, the Award Modernisation Full Bench of the AIRC in the *Priority Stage Award Modernisation Decision*[58] relevantly said: (emphasis added)

[57] Print T4991, 29 December 2000.

[58] [2008] AIRCFB 1000.

> ***[49]*** *In 2000 a Full Bench of this Commission considered the level of the casual loading in the Metal, Engineering and Associated Industries Award 1998 (the Metal industry award). The Bench increased the casual loading in the award to 25 per cent. The decision contains full reasons for adopting a loading at that level. The same loading was later adopted by Full Benches in the pastoral industry. It has also been adopted in a number of other awards. Although the decisions in these cases were based on the circumstances of the industries concerned, we consider that the reasoning in that case is generally sound and that the 25 per cent loading is sufficiently common to qualify as a minimum standard.*
>
> ***[50]*** *In all the circumstances we have decided to confirm our earlier indication that we would adopt a standard casual loading of 25 per cent. We make it clear that the loading will compensate for annual leave and there will be no additional payment in that respect. Also, as a general rule, where penalties apply the penalties and the casual loading are both to be calculated on the ordinary time rate."*

The current standard casual loading in modern awards of 25 per cent is already relatively high and should not be increased.

22. Casual loading in the Business Equipment Award

The Expert Panel in its *Annual Wage Review 2015-16* decision, at paragraphs [637] to [640], determined that the casual loading in the *Business Equipment Award 2010* should be increased from 20 per cent to 25 per cent incrementally over the course of five years, commencing 1 July 2016.

We do not oppose the casual loading in the Award being increased from 24 per cent to 25 per cent as of 1 July 2020, consistent with the phasing-in approach determined by the Expert Panel in 2016.

23. Casual loading for award / agreement free employees

Paragraph 294(1)(c) of the FW Act requires that the Expert Panel set the casual loading for award / agreement free employees.

The casual loading in the *National Minimum Wage Order 2019* is 25 per cent, and a similar loading should be reflected in the *National Minimum Wage Order 2020*.

24. The form of the National Minimum Wage Order

In Ai Group's experience, the form of the *National Minimum Wage Order 2019* did not lead to any difficulties. We suggest that the same model is used for the *National Minimum Wage Order 2020.*

25. Request to participate in the final consultations in Melbourne on 19 May

The Timetable for the Annual Wage Review 2019-20 states that parties wishing to participate in the final consultations are requested to express interest by 5 May 2020.

Ai Group hereby advises that it wishes to participate in the final consultations in Melbourne on 19 May 2020.