Ai GROUP SUBMISSION

Fair Work Commission

Annual Wage Review 2016-2017

29 March 2017

Ai GROUP

About Australian Industry Group

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

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1. Introduction

The Australian Industry Group (Ai Group) submits that when all the relevant factors are weighed up, a modest wage increase of 1.5 per cent is warranted in this year's Annual Wage Review.

This equates to an increase of about $10.10 per week in the National Minimum Wage and about $11.75 per week at the base trade level.

We have reached this position based on a number of factors, including:

1. Employment growth is exceedingly weak nationally;
2. Inflation has been low over an extended period;
3. Rising energy costs and other cost pressures have eroded businesses' capacity to afford wage increases;
4. Measurable productivity growth is very weak; and
5. National aggregate income remains weak and unevenly distributed.

Rising youth unemployment and underemployment, and falling participation, suggest significant pockets of spare capacity are building up, particularly at the lower-skilled end of the labour market. In such circumstances, it is important that the Fair Work Commission adopt a cautious approach when determining the level of any minimum wage increase in this year's Annual Wage Review

2. Australian growth, jobs and wages in 2016-2017

Australian economic performance was positive but not outstanding in 2016. Real GDP grew by 2.4% over the year, but this included a rare fall in Q3. Nominal income growth recovered in 2016, but this was largely due to a recovery in the terms of trade and in export earnings. Its distribution is uneven, with most of the benefits of this recovery showing up in the form of stronger profits in the mining and finance industries, rather than in profit or wage income more widely. This pattern of growth in national activity and incomes is not supporting stronger employment or wages.

Indicators of economic activity suggest this pattern of reasonable growth in national output and export income, but weak growth in employment and wages incomes, has continued into 2017. A complex combination of factors is contributing to this extended period of slow labour market outcomes. These factors are examined in more detail below. They include:

1. **National aggregate income recovered in 2016, but remains weak and unevenly distributed**, for the purposes of generating sustainable growth in jobs and wages. In nominal terms, aggregate profits recovered to the same level in 2016 as they had been in 2011 (at the height of the previous peak in the terms of trade). The distribution of income has also become a factor for jobs and wage outcomes, since the recovery in 2016 was all in mining, rather than in the services and industrial sectors that are the biggest employers.

2. **Inflation has been historically low over an extended period**, rising to just 1.5% (headline) and 1.6% (core) in Q4 2016. This has reduced the ability of businesses to raise their own prices or to pay higher wages. More positively, it also means that smaller nominal wage rises will generate real wage increases for workers, including those in low-wage jobs.

3. **Employment growth is exceedingly weak nationally.** The headline unemployment rate has been stable, but rising youth unemployment and underemployment, plus falling participation, suggest significant pockets of spare capacity are building up, particularly at the lower-skilled end of the labour market.

4. **Measurable productivity growth is exceedingly weak nationally**. Low productivity growth makes it extremely difficult to generate rises in real incomes, be it in the form of profits or wages. This is also contributing to a lack of improvement in Australia's global competitiveness. The lower AUD over the past two years has helped, but as for productivity, this lack of improvement makes it extremely difficult to fund real income rises for anyone, be it in the form of profits or wages.

The RBA examined the causes of weak wages growth in its latest *Bulletin* (March Quarter 2017).[1] The RBA concluded that in mining-related industries the main cause of weaker wages in 2015-16 was weaker industry activity and profitability, while in the non-mining industries, slow inflation and a consequent reduction in inflation expectations seem to be the key reasons:

> "*Following the decline in the terms of trade, there has been a reduction in the average size of wage increases. This has been particularly pronounced in mining and mining-related wage industries. The increasing share of wage outcomes around 2–3 per cent also provides further*

[1] Bishop J. and Cassidy, N., "Insights into Low Wage Growth in Australia", *RBA Bulletin*, March Quarter 2017.

> *support for the hypothesis that inflation outcomes and inflation expectations influence wage-setting.*"

With a recovery evident in mining profitability in 2016, the RBA expects wages in the mining sector to pick up pace again, with some spillovers to other industries. For non-mining industries, it expects wages growth to resume more slowly, in line with inflation outcomes and expectations:

> "*The Bank's expectation is that wage growth will gradually pick up over the next few years, as the adjustment following the end of the mining boom runs its course".*

In addition to these contributing factors, 2017 is seeing rising pressures on business costs from electricity and gas markets. This is directly impeding businesses' ability to raise incomes for themselves or their employees. Energy prices are rising fast across the National Electricity Market and Eastern Australian gas market. Wholesale electricity prices are roughly doubling. Wholesale gas prices are at least doubling and may well rise much further. Spot prices are becoming more volatile.

Ai Group's CEO survey (conducted in late 2016) indicated that businesses expected their energy prices to worsen in 2017, even before the blackouts and pricing problems experienced over the summer. Over half (51%) of businesses expected price increases in 2017 and only 4% expected a decrease. In 2016, 39% of businesses had already experienced energy price increases, while 9% had seen price decreases. Wholesale prices have continued to worsen since this survey.

Once fully passed through, the current electricity and gas price increases will cost business up to $8.7 billion per year. Within business, more energy intensive manufacturers will be particularly hard hit, paying up to $4 billion a year (see **Table 1**). This is worsening margin pressures for business, with some manufacturers questioning their ongoing viability as a result. The cost increase for small to medium energy-intensive manufacturers is averaging around $740,000 each. Companies in primary metals manufacturing, food manufacturing, basic chemicals and non-metallic mineral products (including building products) are particularly exposed to a double hit to their profitability from steep electricity and gas price increases.[2] Among non-manufacturing businesses, McDonald's advises that a $40-$50/MWh increase in electricity prices equates to a total cost increase of $60,000 per store.

[2] Ai Group, *Energy Shock: Tight Markets Bring High Prices*, February 2017.

Table 1: Estimated price energy impacts

	$40-$50/MWh electricity price impact ($billion)*	$4-$5/GJ gas price impact ($billion)*	Total ($billion)
Manufacturing businesses	2.2 - 2.7	1.0 - 1.3	3.2 - 4.0
Non-manufacturing businesses	3.2 - 4.1	0.6 - 0.6	3.8 - 4.7
Total businesses	**5.4 - 6.8**	**1.6 - 1.9**	**7.0 - 8.7**

*Price impacts are based on 2014-15 energy demand in NSW, Vic, QLD, SA and Tas and the assumption of 100% wholesale price increase pass-through. Sources: Department of Industry, Innovation & Science; Ai Group estimates

2.1 Outlook for the Australian economy

In its latest forecasts for the Australian economy[3], the RBA expects GDP growth to stay relatively modest, at 1.5% - 2.5% p.a., in 2016-17 (down from an expected range of 2.5% to 3.5% in its November forecasts) due to very weak GDP growth in Q3 of 2016. GDP growth is expected to pick up to 2.5% - 3.5% in 2017-18 (as previously forecast) and to accelerate in 2018-19. CPI inflation forecasts are largely unchanged, with the RBA expecting inflation to reach 2% (the lower end of the RBA's target range) in 2016-17. These forecasts are in line with those of the Australian Treasury, as documented in its Mid-Year Economic and Financial Outlook 2016-17 in December 2016 (see **Table 2**). They suggest any pickup in activity or inflation in 2017 will be mild at best.

The RBA also highlighted a number of risks to Australia's outlook from global and local factors, but has not explicitly factored them into these latest forecasts. These include: policy announcements from the US administration; the strength and structure of demand from China; commodity prices and their effects on Australia's terms of trade, export earnings and inflation; ongoing weakness in the labour market; household consumption and savings trends; and local input cost pressures.

The OECD's latest half-yearly *Economic Survey for Australia* (March 2017) concluded that Australia has been relatively successful in 'rebalancing' the economy following the end of the commodity investment boom, supported by record low interest rates and a lower Australian dollar. The OECD expects real GDP growth of around 3% p.a. in 2018 but only a gradual reduction in unemployment.

[3] RBA, *Statement on Monetary Policy*, February 2017.

The OECD says that although Australia is progressing well, it is concerned about rising unemployment, wealth inequality and developing better 'innovation related' skills.

The concerns of the RBA and OECD about Australian economic trends were echoed in an issues paper by the IMF[4] which highlighted (1) structural changes in the Australian labour market and weak productivity growth and (2) a pressing need for fiscal and tax reform that can repair the structural deficit in the Federal Government's Budget but also encourage stronger growth and investment over the longer term. The IMF noted that addressing these inter-related structural problems is rendered more difficult by the current, low-growth, low-inflation, environment.

Table 2: Latest full-year growth rates and government forecasts

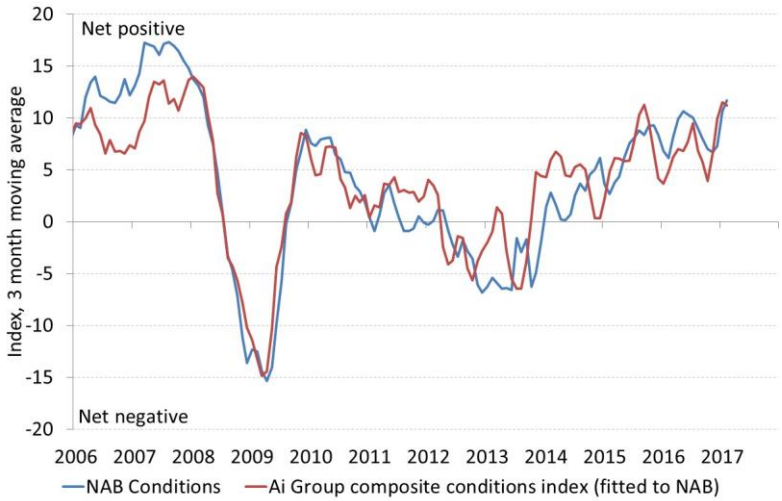
RBA SoMP (Feb 2017)	**2015-16 actual**	**2016-17 f**	**2017-18 f**	**2018-19 p**	**2019-20 p**
GDP, % change p.a., year end	3.3	1.5-2.5	2.5-3.5	2.75-3.75	
Inflation (CPI), % change p.a., year end	1.0	2.0	1.5-2.5	2.0-3.0	
Treasury MYEFO 2016-17 (Dec 2016)					
GDP, % change p.a., year average	2.7	2.0	2.75	3.0	3.0
Household consumption, % p.a., year average	2.9	2.75	3.0		
Dwelling investment, % p.a., year average	8.3	4.5	0.5		
Business investment, % p.a., year average	-14.7	-6.0	0.0		
Employment growth, % p.a., year end	1.9	1.25	1.5	1.5	1.5
Unemployment rate, %, year end	5.8	5.5	5.5	5.25	5.25
Terms of trade, % change p.a., year end	-5.4	14.0	-3.75		
Inflation (CPI), % change p.a., year end	1.0	1.75	2.0	2.5	2.5
Wages (WPI), % change p.a., year end	2.1	2.25	2.5	3.25	3.5

f = forecast. p = projection. Sources: ABS various data; RBA *Statement on Monetary Policy* (SoMP), latest quarter; Australian Treasury, *Mid-year Economic and Financial Outlook 2016-17* (MYEFO) (Dec 2016).

[4] International Monetary Fund, "*Australia: selected Issues*", IMF Country Report 17/43, February 2017.

The various monthly business surveys (including the Ai Group Australian PMI, PSI and PCI and the NAB Business Survey) suggest business conditions dropped in February 2017, after a surge in January, but remained at positive (and above average) levels (see **Chart 1**). Consumer confidence was muted, according to the monthly Westpac MI Index of Consumer Sentiment (to March).

Chart 1: Composite Ai Group PMI, PSI & PCI index* and NAB business conditions



Sources: Ai Group and NAB.

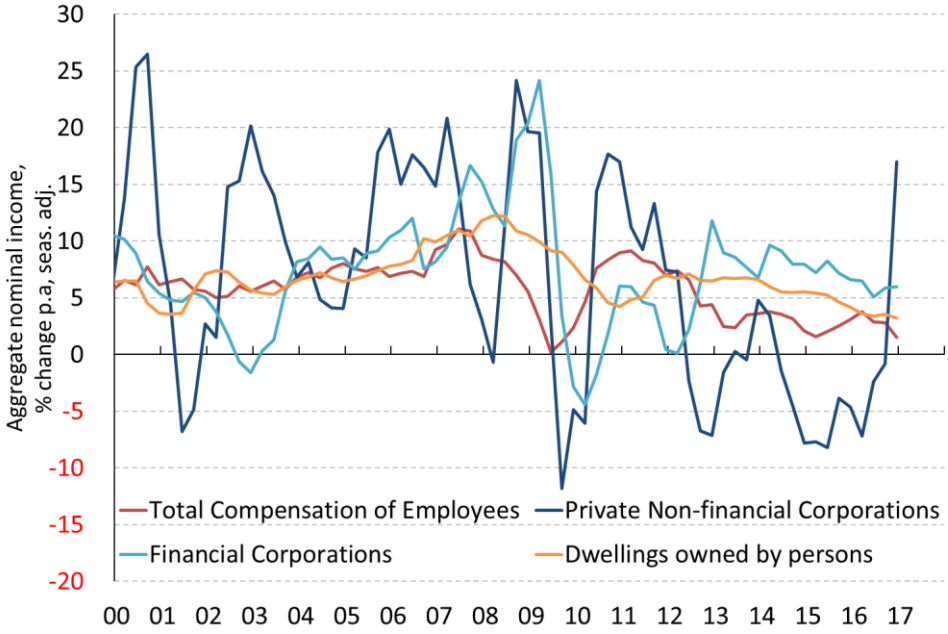
2.2 Recent trends in national income

The Australian economy returned to growth in the December quarter (Q4) of 2016, after a surprise contraction of 0.5% q/q in Q3. GDP grew by 1.1% q/q in Q4, taking annual growth to 2.4% and avoiding a 'technical recession'. Growth in Q4 was driven by stronger consumption, exports, government investment and dwelling construction. Business investment also recovered slightly.

One of the most positive developments in the national data in Q4 was a further recovery in net national income. This recovery is important, because aggregate national disposable income per capita fell steadily between 2012 and 2016, in a so-called 'income recession' that roughly coincided with falling commodity prices and a falling terms of trade, even though mining export volumes and real GDP outputs were rising. This unwelcome income recession began to reverse in 2016 and especially in the last quarter of 2016. Stronger commodity prices caused the terms of trade to jump 9.1% q/q (15.6% p.a.) higher in Q4, in what has been dubbed 2016's 'mini-mining boom'. It also caused real net national disposable income (the ABS' preferred measure of national spending capacity) to grow by a further 2.9% q/q (+6.8% p.a.), its fourth quarter of recovery.

This welcome recovery in national income became a newsworthy – and somewhat contentious – development because almost all of it came through in the form of company profits rather than wage earnings, at least in this initial phase. In nominal terms, aggregate profits earned by private-sector non-financial corporations (that is, all companies except the banks) jumped 16.5% higher in Q4, to be 17.0% higher than a year earlier, but aggregate 'compensation of employees' (that is, all wage earnings) fell by 0.5% q/q in Q4, to be up just 1.5% from a year earlier (see **Chart 2**). This rare fall in aggregate wage earnings occurred in the context of weak growth in employment (+0.8% p.a. to Feb 2017), work hours (+0.9% p.a. to Feb 2017) and private sector wages (+1.8% p.a. in 2016).

Chart 2: Growth in aggregate nominal income, % change p.a.



Source: ABS *National Accounts*, Dec 2016.

It is worth unpacking these national incomes trends to understand exactly what is going on.

First, the longer-term trends in Australian company profits show that this recovery in Q4 marked three quarters of recovery but followed eight consecutive quarters of flat or declining nominal profits (measured in the National Accounts as 'gross operating surplus', see **Chart 2**). In nominal aggregate terms then, Q4's recovery took total corporate profits for private non-financial corporations back to the level they reached in 2011, when commodity prices were also at a peak.

In contrast, nominal aggregate wages rose by 15.3% over the same period (Dec 2011 to Dec 2016), which is closer to (but still less than) the rise in real GDP (17.5%) over this period. So the timing of any comparison between wages and profits growth matters: over the past five years (and indeed,

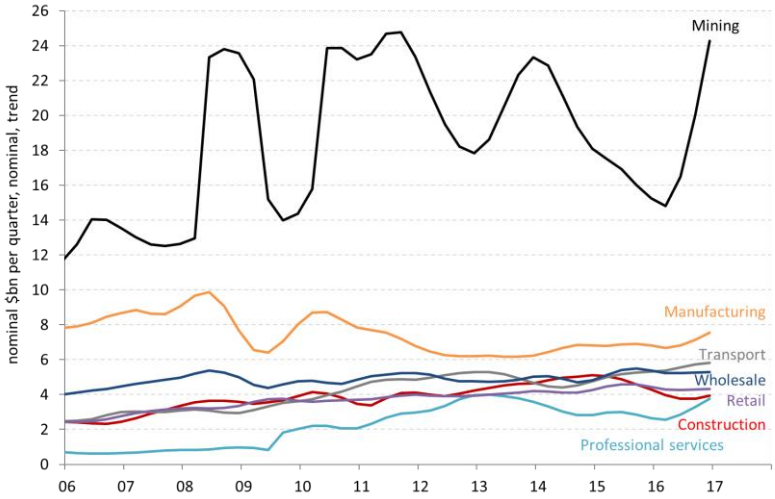
over the past decade since the GFC disruptions began in 2007), profits growth for non-financial corporations has been volatile and mostly negative, while wages growth has been positive.

Separate to both of these key income categories, long-term growth has been stronger and more consistent for nominal income accruing to financial corporations (via banks and superannuation funds) and to individuals from dwelling ownership (via actual and imputed rental income). The latter category is often overlooked in debates about national income, but its share of total factor income rose to a record 8.9% in 2016, from 7.5% a decade earlier (and around 7.5% since 1990).

Second, detailed data on the distribution of company profits across industries (published separately in the ABS *Business Indicators* series) confirms that this nominal profit recovery in Q4 was largely concentrated in the mining sector, reflecting improved profitability due to recovering commodity prices (see **Chart 3**). In trend terms (which smooths over 'lumpy' seasonally adjusted earnings from quarter to quarter), aggregate nominal 'gross operating profits' (a different but related measure to 'gross operating surplus') earned by mining companies recovered to $24.2bn in Q4, up 60% from a year earlier and close to the record high achieved by mining companies in Q3 2011. The profit margin estimated for the mining sector as a whole jumped to 0.46 (ratio of gross operating profit to sales) in Q4. This margin is elevated but it is not close to the sector's record high ratio of 0.53, achieved in Q3 2008.

Across the other large industries that are included in the ABS *Business Indicators* series, aggregate gross operating profits recovered in Q4 in manufacturing, construction, professional services and transport services, but all remain lower than previous peaks for these industries, in nominal dollars. Nominal profits were flat in wholesale and retail trade in Q4 (trend data, see **Chart 3**).

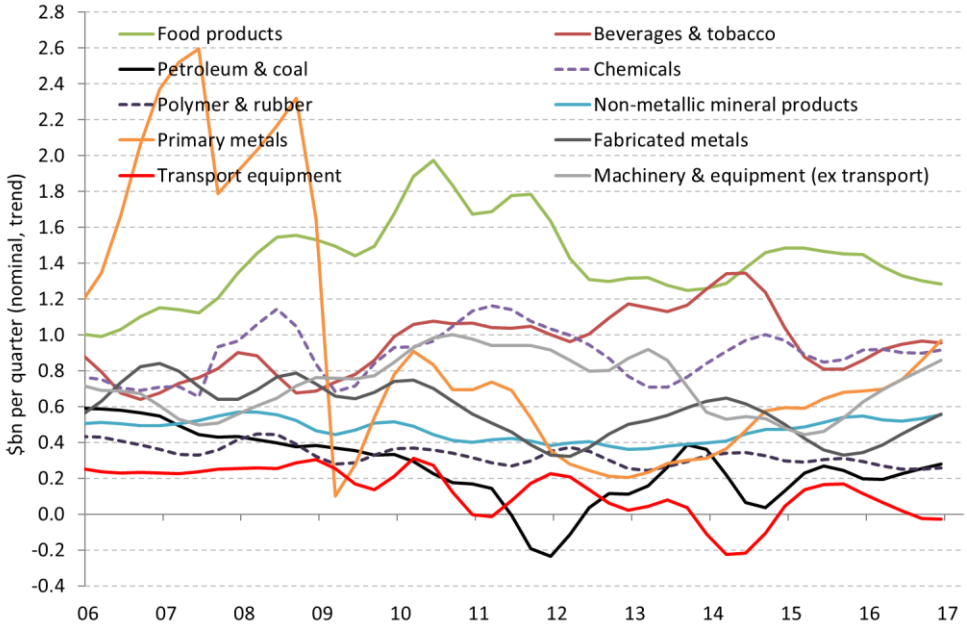
Chart 3: Aggregate company profits by sector, nominal dollars per quarter



Source: ABS *Business Indicators*, Dec 2016.

In manufacturing, nominal aggregate company profits rose by 11% p.a. in Q4 but they remain well below the previous peaks achieved in 2010 and 2008 (and far less in real terms). Drilling down into individual manufacturing sectors reveals that aggregate profits recovered best in 2016 in primary metals, fabricated metals and machinery and equipment other than transport (see **Chart 4**), but even among these sectors, none recovered to previous aggregate nominal peaks. The transport sector (which includes automotive) saw aggregate profits turn negative again in 2016. No rise in aggregate profits was evident in food processing or beverages in 2016 however, despite the lifts evident in other indicators of activity (such as employment and output).

Chart 4: Aggregate company profits in selected manufacturing sectors, nominal dollars per quarter



Source: ABS *Business Indicators*, Dec 2016.

2.3 Recent trends in inflation

Headline inflation inched up to 1.5% p.a. in the December quarter of 2016 (Q4) from 1.3% in Q3, moving closer to the RBA's target band of 2 to 3%. In quarterly growth terms, headline CPI grew by +0.5% which was slower than in Q3 (+0.7%). Underlying inflation (the average of the trimmed mean and weighted median measures of inflation, and a less volatile measure than headline CPI) moved slightly higher in annual terms in Q4, at +1.6% p.a. from +1.5% p.a. in Q3. Core inflation remains around the lowest levels recorded since this series commenced in 2003. This suggests that inflation remains structurally weak, despite these recent modest increases.

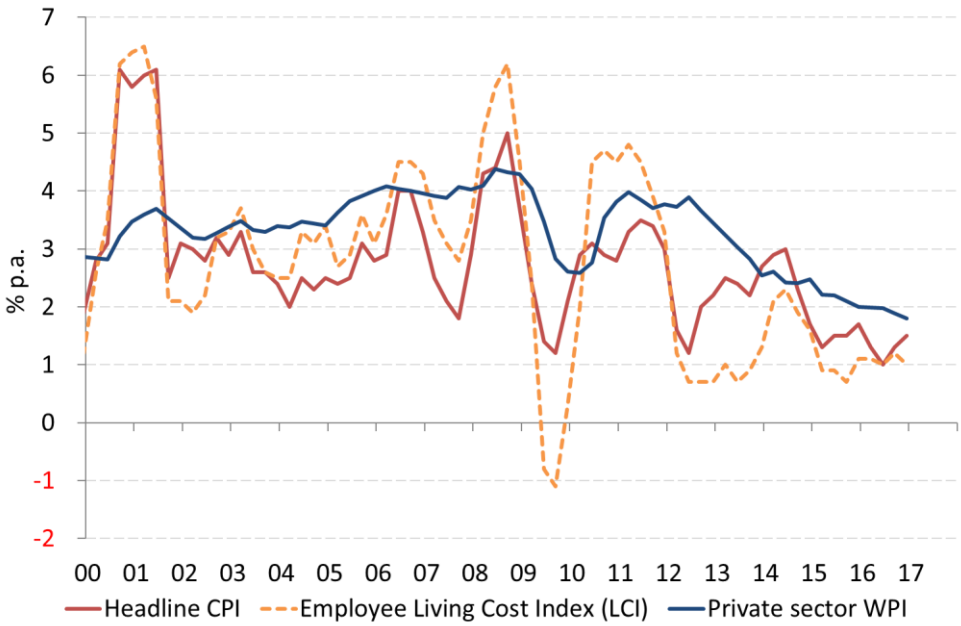
Headline inflation has now been below the RBA's target range of 2-3% since Q4 2014. The ABS living cost index for employees grew by just 1.0% p.a. in Q4 2016. It has stayed consistently slower than headline inflation since early 2012 (see **Chart 5**).

This long period of structurally lower inflation is clearly having an impact on both the ability of businesses to raise their prices, and the expectations that employees have about likely future increases in their living costs and in inflation. These transmission mechanisms mean there is a very clear and direct link between the downward trend in inflation and the downward trend in wage growth. Even so, private sector wage inflation has remained persistently stronger than price

inflation since Q3 2014, and mostly stronger since the one-off inflation spike associated with the introduction of the GST in 2000-01 (see **Chart 5**).

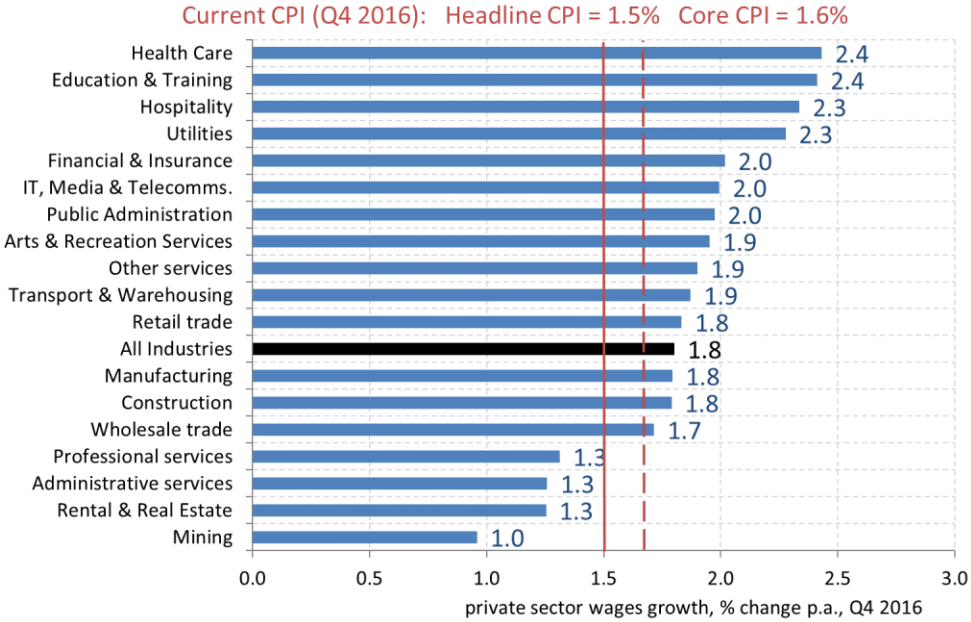
Average private sector wages rose by more than CPI (1.5% p.a.) in Q4 2016 in all industries except mining, professional services, administrative services and real estate. These industries are among the highest average-wage sectors in Australia (mining being the highest). The large services industries that typically employ large numbers of low-wage workers (including retail trade, hospitality, arts and recreation, and healthcare services) all enjoyed average private sector wage rises in Q4 that were at or above the average for all industries and well above CPI (see **Chart 6**).

Chart 5: Annual change in prices and wages indexes



Source: ABS.

Chart 6: Private sector wage price index changes, Q4 2016



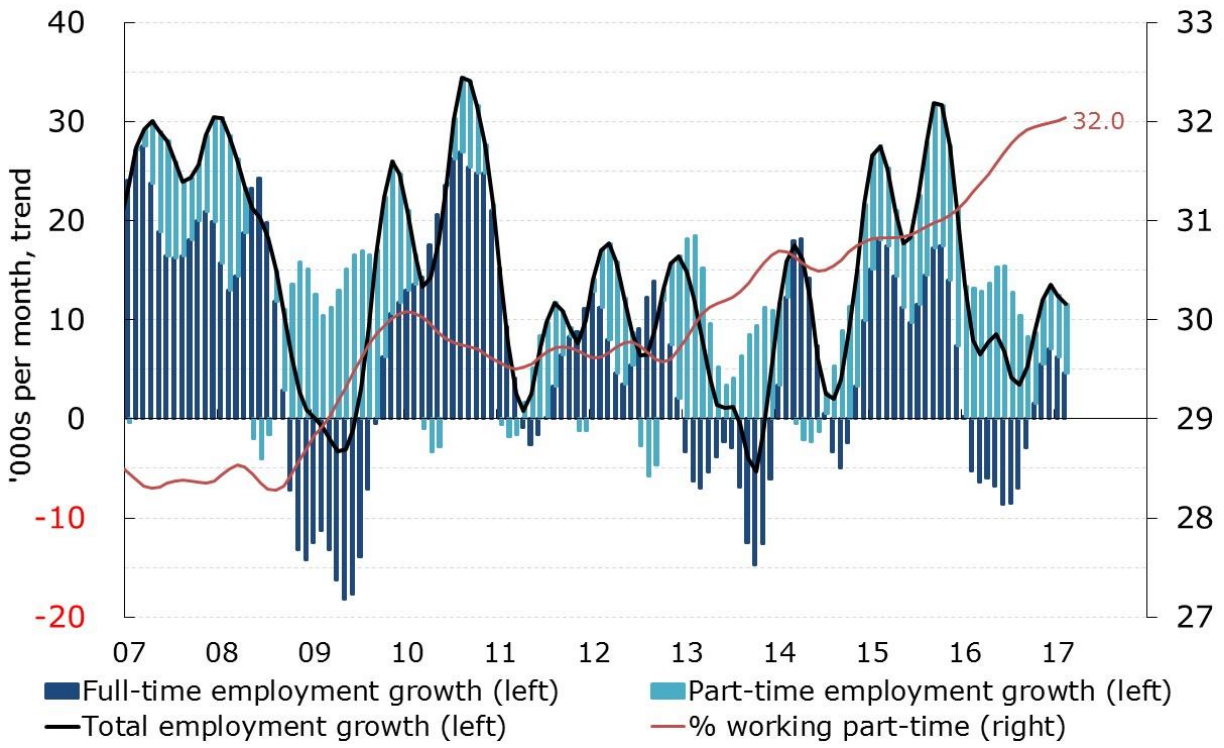
Source: ABS.

2.4 Recent trends in employment and unemployment

Widespread concerns about rising unemployment and underemployment in Australia are well-founded. In February 2017, headline unemployment rose to 5.9%, or 748,000 people (unchanged in trend terms). Employment growth remained weak, up by just 97,300 (+0.8%) over the year to Feb (trend), and largely driven by part-time jobs growth. The employment to population ratio was 60.9% of the adult population in February, down from a recent peak of 61.3% in December 2015. Fragility is evident in lower participation and relatively high underemployment. Measures of youth unemployment and underemployment are especially elevated.

Part-time employment (35 hours or less per week) remains the main source of overall employment growth, but its pace of growth is slowing (+3.3% p.a.). Part time jobs have increased by 148,400 since the beginning of 2016. In trend terms, full-time employment has grown very weakly in each of the last five months, and is down by -0.3% p.a. For a fourth month in a row, the proportion of the workforce employed on a part-time basis remained at a record high of 32.0% (see **Chart 7**).

Chart 7: Employment growth by part-time and full-time status (trend)

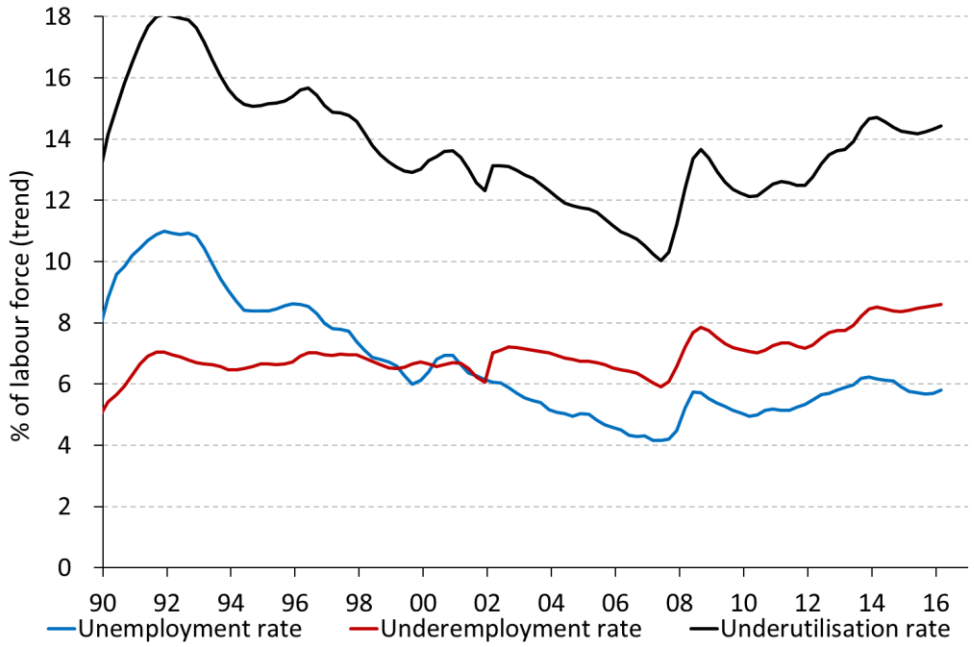


Source: ABS *Labour Force Australia,* February 2017.

Although the number of part-time workers increased again in February, the proportion of the workforce reporting themselves as 'underemployed' (that is, working but seeking more work hours) declined to 8.8% in February (8.6% trend), from a recent peak of 9.1% in each of January and December (original data). So although the majority of part-time workers are not underemployed (that is, they are not available to work more hours), the steep rise in part-time work has pushed the underemployment rate to a record high, as a proportion of the whole labour force (8.6% trend) and in absolute numbers (1.1 million people, trend). Since far more women (47%) work part-time than men (19%), more women (10.7%) than men (6.8%) are underemployed.

This in turn, has caused the national underutilization rate to stay above 14% since 2014, despite a mild fall in the unemployment rate during this period. This has been the longest period of elevated labour force underutilization since the 1990s (see **Chart 8**).

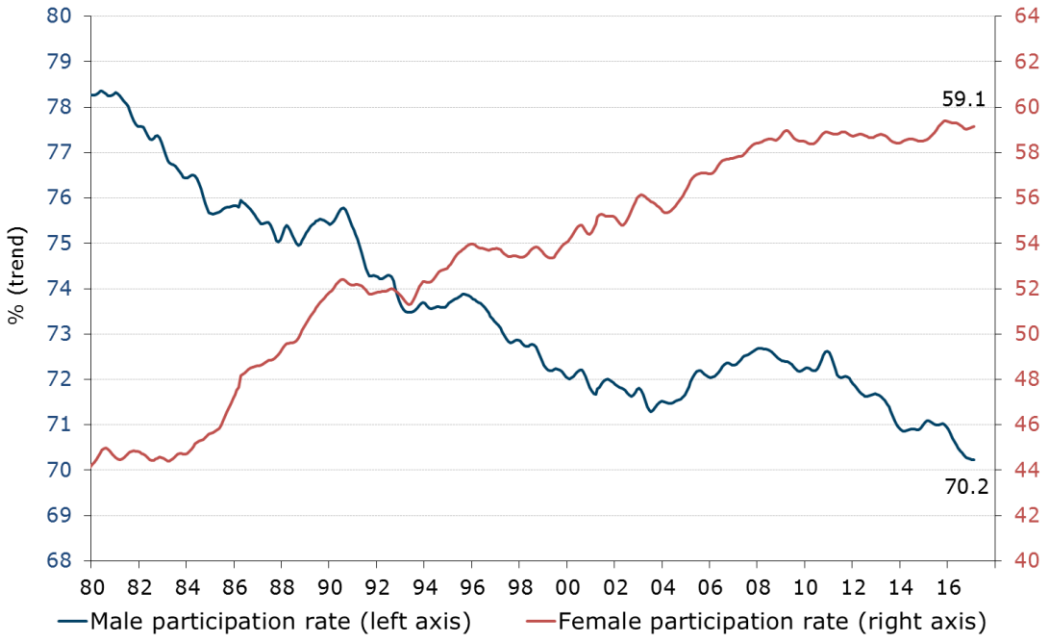
Chart 8: Unemployment, underemployment and underutilization rates (trend)



Source: ABS *Labour Force Australia*, February 2017.

The participation rate is also pointing to ongoing underlying weakness in the labour market at present. The participation rate declined steadily from November 2015 (65.1%) through to November 2016 (64.6%) and stayed relatively low through to February (64.6%). Participation has fallen for men but been relatively steady for women, which could reflect a stronger deterioration in labour demand in traditionally 'male' industries and occupations, compared to the female-dominated services sectors such as health and education. Male participation reached a record low of 70.2% in late 2016 and has remained low (**Chart 9**). There are various reasons for declining participation including in the longer term, an ageing population and changes in education participation. However, this most recent decline is likely indicating a greater number of 'discouraged' job-seekers exiting the labour force instead of actively looking for work. It is likely that the unemployment rate would be materially higher if these non-working people were actively seeking work and included in the unemployment numbers.

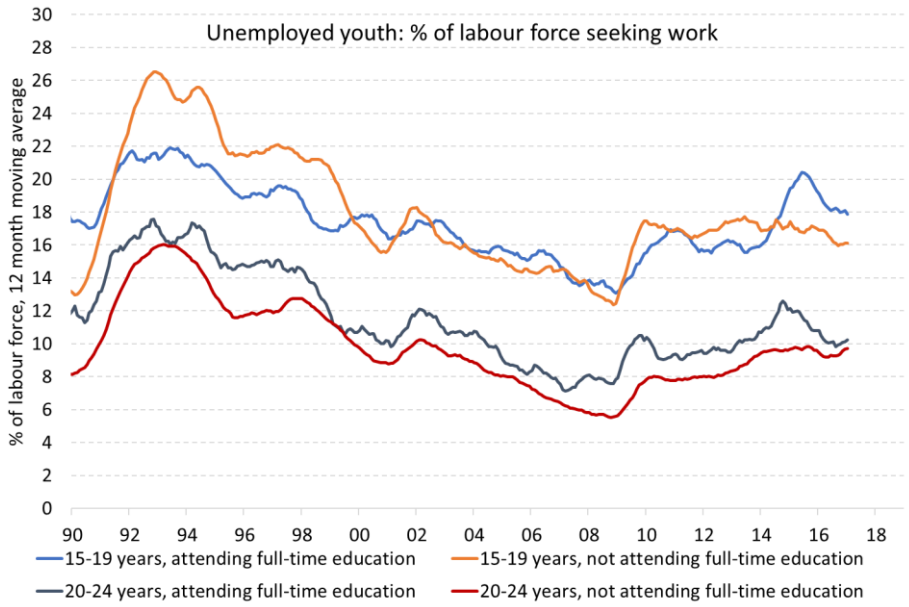
Chart 9: Labour market participation by sex (trend)



Source: ABS *Labour Force Australia,* February 2017.

Unemployment rates for people aged 15-24 years have remained elevated since reaching a cyclical low in 2008 (**Chart 10**). In February 2017, 14% of this age group (301,000 people) was unemployed (with 67.7% participating in the labour force). For 15-19 year olds, 54.6% were participating in the labour force (mostly part-time while studying) and 19.3% of those participating were unemployed.

Chart 10: Youth unemployment rates, by age and education participation

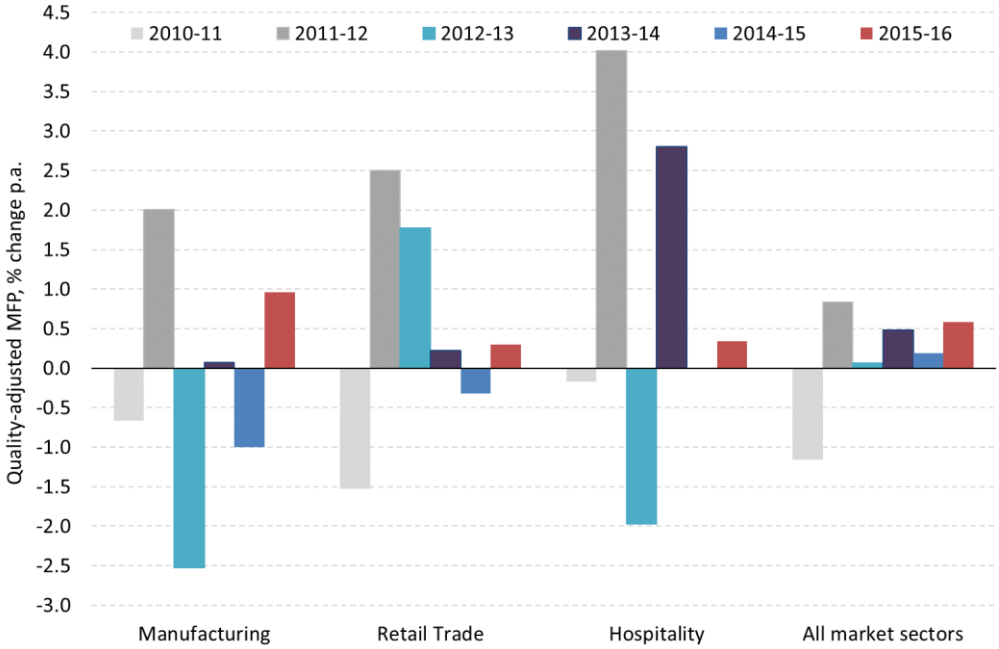


Source: ABS *Labour Force Australia, Detailed,* February 2017.

2.5 Recent trends in productivity and global competitiveness

At a national level, multifactor productivity (MFP) in Australia's market-sector industries improved by 0.9% in 2015-16 and has been improving by around 1% p.a. since 2011. On a quality-adjusted hours-worked basis, MFP improved by 0.6% in 2015-16. This measure has been above zero since 2011. This is an improvement from the previous decade, but it is still exceedingly weak. This weakness is contributing to weak incomes growth across the board in real terms, for both businesses and workers. In industries that are the largest employers of low-wage workers, quality-adjusted MFP improved by 0.3% p.a. in 2015-16 and was flat or declined in 2014-15 (see **Chart 11**).

Chart 11: Multi-factor productivity change, selected market sectors



Source: ABS *Multifactor productivity estimates*, December 2016.

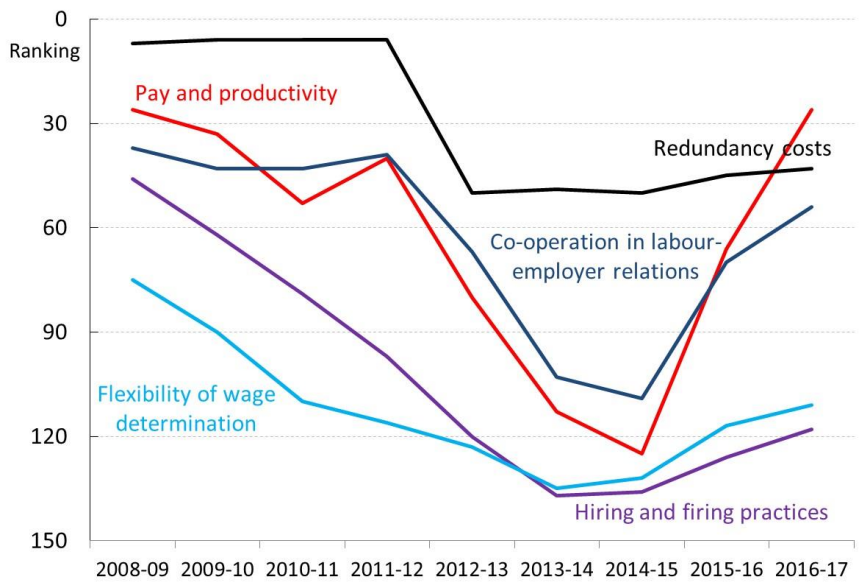
Related to this weak productivity improvement, Australia's Global Competitiveness Index (CGI) score edging up by 0.1 points to 5.2 out of a possible 7 points in 2016-17. This was the first change in Australia's score since 2010-11. Australia's *ranking* however, slid one place to 22nd in 2016-17, indicating a slight deterioration in national business competitiveness compared to one year earlier. This took Australia's ranking back to its equal worst position of 22nd, reached in 2014-15. This combination of a better score but a worsening ranking indicates that although Australia's competitiveness score improved slightly, other countries improved by a greater extent, thus pushing Australia down one place in the rankings. Our relatively poor global position continues to reflect the

commonly heard comment from business leaders that "Australia is a very expensive country in which to make things or to do business".

Among the twelve 'pillars' in the WEF Global Competiveness comparisons, Australia continues to rank relatively poorly on 'labour market efficiency', but 2016-17 saw a large movement in this indicator, up 8 places to 28th place. This is a big improvement from 56th place for 'labour market efficiency' in 2014-15.

However, Australia still trails behind other comparable economies on many labour market measures. Australia ranks poorly on hiring and firing practices (118th), flexibility of wage determinations (111th) and taxation incentives to work (111th). Other outstanding areas of concern in our labour market are co-operation in labour-employer relations (54th), female participation in the labour force (54th) and redundancy costs (43th). A number of WEF measures improved significantly compared to 2015-16, notably the link between pay and productivity (from 66th place to 26th) and cooperation in labour-employer relations (from 70th place to 54th).

Chart 12: WEF Global Competitiveness Index, Labour Market Efficiency Indicators: Australia's ranking



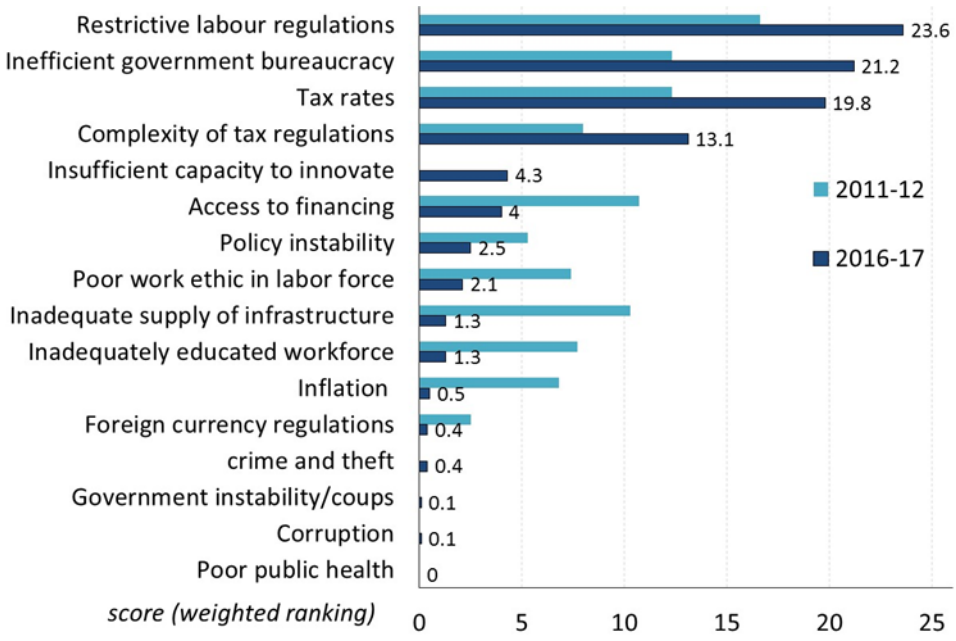
Source: WEF, *Global Competitiveness Report*, September 2016.

In a separate section to these detailed indicators, the WEF Report also identifies the five 'most problematic factors for doing business in Australia' in 2016-17, as identified by CEOs participating in the WEF's Global Executive Opinion Survey (**Chart 13**). These factors are:

- restrictive labour regulations;
- inefficient government bureaucracy;
- high tax rates;
- complexity of tax regulations; and
- insufficient capacity to innovate.

Restrictive labour regulations have been identified as the most problematic factor for Australian business since 2011-12. Also of note this year, 'insufficient capacity to innovate' is becoming a more prominent issue for Australian business. Compared with five years ago, restrictive labour regulations are of greater concern to Australian businesses now (scoring 23.6 points now versus 16.6 points in 2011-12), as are government bureaucracy, tax rates and the complexity of tax administration for businesses in Australia.

Chart 13: Global Competitiveness indicators: Australia's "most problematic factors for doing business" in 2016-17 and 2011-12*

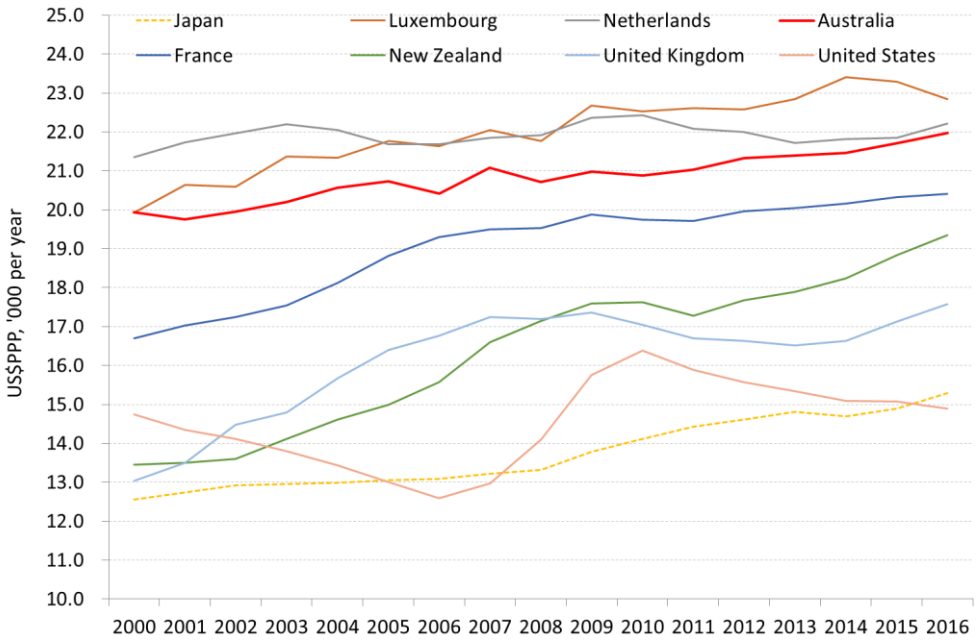


Source: Ai Group and WEF *Global Competitiveness Reports*

* From this list of factors, respondents were asked to select the five most problematic factors for doing business in their country and to rank them between 1 (most problematic) and 5 (least problematic). The score corresponds to the responses weighted according to their rankings.

High labour costs contribute to, but do not define, Australia's relatively poor international competitiveness (labour costs are not included in the WEF business competitiveness indicators). Australia's relatively high labour costs have been mitigated somewhat by the lower Australian dollar over the past two years, that makes it easier for Australian companies to compete globally, on a cost basis. OECD data indicate however, that among OECD countries that had a national minimum wage in 2016, Australia's minimum wage moved closer to the top of the scale. In 2016, Australia's national minimum wage was lower only than that in the Netherlands and Luxembourg (measured in 2015 US dollars on a purchasing power basis (see **Chart 14**).

Chart 14: Real minimum wages to 2016 (2015 US dollars, PPP basis)



Source: OECD, *Real minimum wages, OECD.Stat Online.*

3. Statutory considerations

The Expert Panel is required to conduct each Annual Wage Review within the legislative framework of the *Fair Work Act 2009* (**FW Act**). It is now well-established that the following legislative provisions are particularly relevant:

- The object of the Act in section 3;
- The modern awards objective in subsection 134(1); and
- The minimum wages objective in subsection 284(1).

The Panel's task is to consider relevant statutory matters in the context of the prevailing economic and social environment. (See paragraph [4] of the *Annual Wage Review 2015-16 Decision*).

As part of its decision-making process, the Expert Panel first forms a view about the proposed increase to the National Minimum Wage and then takes that proposal into account in exercising its powers to vary award minimum wages. (See paragraph [5] of the *Annual Wage Review 2015-16 Decision*).

4. 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 take into account not just the rates of minimum 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 (relative to the levels that would have been the case in the absence of the wage rise) - particularly for the most vulnerable members of the workforce.

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 take into account potential employees whose opportunities of finding work would be reduced as minimum wages rise. This applies to potential new entrants into the labour force; people actively looking for work; and people who, because of the current weakness of the labour market, have been temporarily discouraged from actively looking for work.

A key point of reference in the Australian debate about the relationships between minimum wage rates and disemployment is the Productivity Commission's finding (Productivity Commission Inquiry Report, *Workplace Relations Framework*, November 2015) that econometric evidence about aggregate (i.e. economy-wide) impacts of changes in minimum wage rates on labour force utilisation (i.e. "disemployment") was ambiguous. Critically, the Productivity Commission also found that *"the employment impacts of any changes in minimum wages can be expected to vary at different times, depending on other policy settings and broader economic conditions"* (page 202).

It is therefore instructive to note that currently the "broader economic conditions" are characterized by persistent weakness in the labour market as evidenced by the following data:[5]

- In February 2017, the unemployment rate was 5.8 per cent (in trend terms) which is the same as in February 2016 and the number of active jobseekers stood at 746,600 (10,675 more than in February 2016).
- A further 9.1 per cent of the workforce were 'underemployed' in February 2016 (that is, in work but willing and able to work more hours) compared with 8.9 per cent in February 2016.
- The labour force underutilisation rate, which is a broader measure of underutilisation than either the unemployment rate or the underemployment rate, stood at 14.4 per cent of the workforce in February 2016 (compared with 14.2 per cent in February 2016).
- Thus 1,845,100 people, or more than one in every seven members of the workforce is currently either unemployed or underemployed.
- While the ABS has not published extended labour force underutilisation data beyond August 2013, estimates can be based on the historical (1994-2013) relationship between the extended labour force underutilisation rate and the labour force underutilisation rate. On this basis approximately 200,000 people are currently discouraged from participating in the workforce.[6]

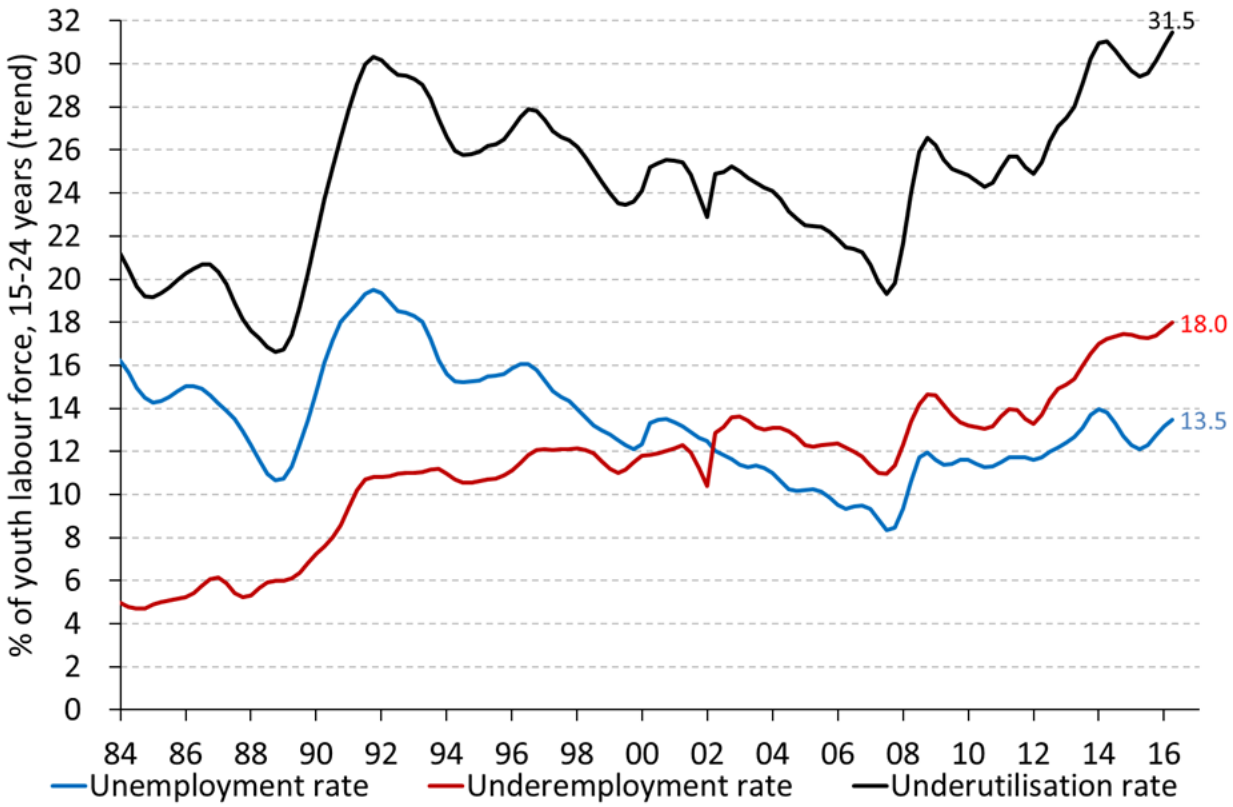
Particular note should be made of the extent of youth unemployment, underemployment and underutilisation. Recent ABS data show that for each measure, labor market outcomes are more than twice as bad for people aged between 15 and 24 than they are for the workforce as a whole. Youth underemployment and labour underutilisation among this age group are at historical highs (greater even than during the recession of the early 1990s.) The ABS data are summarised in **Chart 15**.[7]

[5] ABS 6202.0, *Labour Force Australia*, March 2017.

[6] Estimate based on ABS 6105.0, *Labour Market Statistics*, July 2014.

[7] ABS 6202.0, *Labour Force Australia*, March 2017.

Chart 15: Youth unemployment, underemployment and underutilization



Thus, with well in excess of two million employees or potential employees currently underutilised in Australia's labour market and with particular concentrations among people aged between 15 and 24, our broader economic conditions point to a heightened risk of adverse disemployment impacts from a rise in minimum wage rates. Accordingly, the Expert Panel should give considerable weight to the risk of detrimental impacts on the absolute and relative level of the safety net associated with minimum wage rates.

5. 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 also includes Australia's well-developed and highly-progressive income tax and transfer systems.

In our Annual Wage Review Submission 2015-2016, we emphasised the significance of the high incidence of underemployment in Australia pointing out that despite its persistence since the recession of the early 1990s - even as unemployment was falling (at least until around 2008) - underemployment had not attracted the degree of attention that it should have received as a reflection of spare capacity in the labour market. We suggested that high levels of underemployment were clearly relevant to both the relative living standards and the needs of the low paid employees whose opportunities to find additional hours of work risk being diminished if minimum wage rates rise to deter employers from offering additional hours of work.

Offering more or fewer hours to part-time employees is a more flexible, less expensive and more likely area of response by employers to changes in wage rates compared with the more costly alternative of adding to or reducing the number of people employed. While changes in the total quantity of jobs on offer clearly remains relevant to the consideration of the impacts of changes in minimum wage rates on relative living standards and the needs of the low paid, the more sensitive margin of impact is very likely to be felt in changes to the quantity of hours offered to part-time employees.

We remain concerned that in the particular circumstances of the excess capacity evident in the labour market at present, an excessive rise in minimum wage rates could have the apparently paradoxical impacts of worsening relative living standards for households whose members faced a high risk of underemployment and detracting from rather than enhancing the ability of low paid people to contribute to meeting their needs from employment.

Further insights into the vulnerability of low-income employees to underemployment are available from the recent research report commissioned by the Fair Work Commission on the incidence of award-reliant employees across Australia's household income distribution.[8]

[8] Carlos Jimenez and David Rozenbes, Award-reliant workers in the household income distribution, Fair Work Commission Research Report 1/2017, February 2017.

Key findings of this report in this regard include the following:

- More than half (53 per cent) of award-reliant employees across the employee household income distribution work part-time. The incidence of part-time employment is higher in lower income employee households with 56 per cent of award-reliant employees in the lower half of the employee household income distribution working part-time and 59 per cent of award-reliant employees in the lowest three deciles in the employee household income distribution working part-time (calculated from Figure 6 on page 13).

- The high prevalence of part-time employment among award-reliant employees is associated with a high incidence of underemployment (i.e. having a preference to work more hours). Thus, across the full range of employee households, the 53 per cent of award-reliant employees who work part-time sits alongside the 32 per cent of award-reliant employees who would prefer to work more hours (calculated from Figures 6 and 7 on pages 13 and 14).

- For award-reliant employees in the lower income households, both the incidence of part-time work and the preference for more hours are higher than for all award reliant employees. In the lower half of the employee household income distribution, the 56 per cent of award-reliant employees who work part-time sits alongside the 37 per cent of award-reliant employees who would prefer to work more hours. And in the lowest three deciles in the employee household income distribution the 59 per cent of award-reliant employees who work part-time sits alongside the 36 per cent of award-reliant employees who would prefer to work more hours (calculated from Figures 6 and 7 on pages 13 and 14).

- Many more award-reliant employees would prefer to work more hours than the number of those who would prefer to work fewer hours. Thus, in no sense is the extent of underemployment among award-reliant employees offset by the number of award-reliant employees who would prefer to work fewer hours. Across the full sample of award-reliant employees, 11 per cent would prefer to work fewer hours whereas 31 per cent would prefer to work more hours (calculated from Figure 7 on page 14).

- Further, and not surprisingly, the disparity between the number of employees who would prefer to work more hours and those who would prefer to work less hours is greater for award-reliant employees in lower income employee households. For award-reliant employees in the bottom three deciles of the employee household income distribution, 9

per cent of employees would prefer to work less hours while 36 per cent would prefer to work more hours (calculated from Figure 7 on page 14).

This high incidence of part-time employment among award-reliant employees and the greater incidence of part-time employment among award-reliant employees in lower income employee households highlight the vulnerability of these employees to underemployment. This vulnerability is clearly evident both in the extent to which award-reliant part-time employees would prefer to work more hours than are currently available to them and the even-greater preference for more hours of work for award-reliant part-time employees in lower income households.

In key respects, this heightened vulnerability of award-reliant part-time employees in lower income households is where the risks of disemployment impacts of excessive rises in minimum wage rates will be most keenly felt. Underemployment is high in Australia and it rose further over the year to February both in absolute terms and as a share of the total workforce. Neither relative standards of living nor the needs of the low paid would be advanced and in fact could be worsened if the disemployment impacts of a rise in wage rates further exposed these vulnerabilities.

Accordingly, in order to reduce these risks of detrimental impacts on the relative living standards and the needs of the low paid, Ai Group recommends the Panel adopts our proposal for a modest increase in minimum wage rates.

6. 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 made clear 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 by encouraging people to participate in the workforce (or to lift their participation in the workforce from existing levels). However, such encouragement would only have a positive impact on social inclusion if it leads to actual increases in participation in paid work.

Indeed, lifting minimum wage rates may reduce participation in paid work (below the level that would otherwise apply) if, by making labour more costly, it reduced employers' demand for labour.

As we discussed in Section 2.4 above, currently the participation rate is pointing to ongoing underlying weakness in the labour market. The participation rate declined steadily from November 2015 (65.1%) through to November 2016 (64.6%) and stayed relatively low through to February (64.6%). Participation has fallen for men but been relatively steady for women, which could reflect a stronger deterioration in labour demand in traditionally 'male' industries and occupations, compared to the female-dominated services sectors such as health and education. Male participation reached a record low of 70.2% in late 2016 and has remained low. While there are a variety of reasons for declining participation including in the longer term, an ageing population and changes in education participation. However, the most recent decline is likely indicating a greater number of 'discouraged' job-seekers exiting the labour force instead of actively looking for work. It is likely that both the unemployment rate and the underemployment rate would be materially higher if these non-working people were actively seeking work and included in the unemployment numbers.

With more than 2 million Australians either unemployed, underemployed or discouraged from entering the paid workforce, the labour market weakness of recent times is clearly persisting.

Certainly the recent data does not suggest there is a pool of potential labour that would become available if only wages were increased. Still less does it suggest that, if underutilised labour was enticed to seek employment by a rise in minimum wage rates, there is ready capacity to absorb this additional supply. Rather they point to an oversupply of labour relative to demand at current wage rates.

As we have said in previous submissions, in the environment of a weak labour market there is a heightened risk that raising minimum wage rates will reduce rather than increase participation in paid work relative to the situation that would have otherwise applied. This would be to the detriment of social inclusion.

Accordingly, we again urge the Expert Panel to avoid the risk of further stifling improvements in social inclusion by limiting the increase in minimum wage rates to the levels proposed in this submission.

7. Encouraging collective bargaining

It is important that the level of increase in minimum wages awarded by the Expert Panel does not limit the scope or motivation for bargaining over wages at the enterprise level. Enterprise bargaining is the most common method of wage setting in Australia.

On 19 January 2017, the ABS released the most recent *Employee Earnings and Hours, Australia* (6306.0) survey report. The report concluded:

1. 24.2 per cent of all non-managerial employees in the private sector were paid by award only.

2. The methods of wage setting for all non-managerial employees (working within both the private and public sectors) were:

    - 38.9 per cent – collective agreement;
    - 36.6 per cent – individual arrangement;
    - 24.5 per cent – award only.

On 13 December 2016, the Department of Employment released its report on *Trends in Federal Enterprise Bargaining* for the September 2016 quarter. The results are summarised in the following table.

Table 3: Average annualised wage increases (AAWI) in enterprise agreements – Agreements lodged in the September 2016 quarter.

Industry Sector or Type of Agreement	AAWI (%) in September 2016	Change from June 2016 (%)
All sectors	3.4	Up 0.4
Private sector	3.4	Up 0.5
Public sector	3.0	Same
Manufacturing	2.9	Up 0.2
Metals manufacturing	3.0	Up 0.2
Non-metals manufacturing	2.8	Up 0.1
Construction	6.0	Up 2.1
Transport, postal & warehousing	3.4	Up 0.6
Mining	1.6	Same
Information media and telecommunications	2.4	Up 0.1
Health and community services	3.0	Up 0.1
Single enterprise non-greenfields	3.4	Up 0.5
Single enterprise greenfields	3.0	Down 1.1
Union/s covered	3.4	Up 0.4
No Union/s covered	2.5	Up 0.1

In its *Annual Wage Review 2015-2016 Decisio*n, the Expert Panel said:

> *"**[539]** The Panel's previous conclusions as to the relationship between increases in minimum wages and collective bargaining remain valid, in particular:*
>
> - *whilst the gap between minimum wages and bargain wages is likely to increase the incentive for employees to bargain, a large gap may be a disincentive for employers to bargain; and*
> - *Minimum wages are only one element of the incentive bargain."*

Despite the Expert Panel's conclusion, it is Ai Group's experience that the level of the minimum wage increase granted in the Annual Wage Review is a factor considered by employers and employees when deciding whether to pursue the making of an enterprise agreement. For example, in Ai Group's experience, the higher the minimum wage increase granted by the Expert Panel, the less likely an employer and its employees will seek an enterprise agreement.

8. 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 echoed in the modern awards objective at paragraph 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.

The Expert Panel in its *Annual Wage Review 2014-2015* decision[9] concluded that minimum wage increases only have a modest impact on addressing the gender pay gap. While the Expert Panel did not rebuke this conclusion, in its *Annual Wage Review 2015-2016* decision it expressed the view that an increase in the award rates of pay relatively to other wages would reduce the gender pay gap by:

- Firstly, it would raise the level of low pay rates relative to the median pay rates, and hence benefit women who disproportionately receive low pay rates; and
- Secondly, an increase in the higher levels of award rates will particularly benefit women because, at the higher award classifications, women are more likely to be paid the award rather than the bargained rate than are men.

[9] [2015] FWCFB 3500 at [492]

We do not entirely agree and continue to hold the view that there is no substantive earnings gap between low-paid women and men. This includes employees paid award minimum wages.

Therefore, we continue to submit that increases in the national minimum wage, and minimum wage rates within awards, only have a modest impact in addressing the gender pay gap.

Research referred to by the Expert Panel in its Annual Wage Review 2015-2016 decision supports this view. For example, at paragraph [562] and [563] of the decision, the Expert Panel referred to the following findings:

- "*There is no "discrimination", in the sense than an award-reliant woman in a particular occupation, industry, type of business, with a given level of education, receives the same pay as an award-reliant man who is in the same position*"; and
- "*… the difference in pay between males and females is smallest among award-reliant employees*"

9. Minimum wages for adults

In setting minimum wages this year, Ai Group proposes a **1.5 per cent** wage increase for all classifications. This equates to an increase of about $10.10 per week in the National Minimum Wage and about $11.75 per week at the base trade level.

The proposed minimum wage increase takes into account the following factors:

1. Employment growth is exceedingly weak nationally;
2. Inflation has been low over an extended period;
3. Rising energy costs and other cost pressures have eroded businesses' capacity to afford wage increases;
4. Measurable productivity growth is very weak;
5. National aggregate income remains weak and unevenly distributed;
6. Australia is experiencing rising youth unemployment and underemployment, and falling participation;
7. The need to provide a fair and relevant safety net;

8. The relative living standards and the needs of the low paid;
9. The promotion of social inclusion through increased workforce participation;
10. The need to encourage collective bargaining; and
11. The principal of equal remuneration for work of equal or comparable value.

When all of the above factors are taken into account and weighed up, it can be seen that a 1.5% minimum wage increase is appropriate.

10. Penalty Rates Decision

On 23 February 2017, a Full Bench of the Fair Work Commission issued the *4 Yearly Review of Modern Awards - Penalty Rates Decision.*[10] The Decision will:

- Adjust Sunday penalty rates in the *Fast Food Industry Award 2010*, *General Retail Industry Award 2010*, *Hospitality Industry (General) Award 2010*, and *Pharmacy Industry Award 2010*.
- Adjust public holiday penalty rates in the above awards and in the *Restaurant Industry Award 2010*.

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 *Penalty Rates Decision* was determined by a five-Member Full Bench of the Commission after more than two years of proceedings, 39 hearing days, 143 witnesses and 5,900 submissions. Ai Group represented the fast food industry in the case.

The Full Bench's 550 page decision is very robust and based on the vast amount of evidence that was presented and considered during the case.

[10] [2017] FWCFB 1001

In its Decision, the Full Bench expressed the following provisional view about the adjustment to Sunday Penalty Rates: (emphasis added)

> *[86] We have concluded that appropriate transitional arrangements are necessary to mitigate the hardship caused to employees who work on Sundays. We have not reached a concluded view as to the form of those transitional arrangements and we propose to seek submissions from interested parties as to that issue. For the assistance of those parties who wish to make submissions as to the form of the transitional arrangements we have expressed the following provisional views:*
>
> *(i) Contrary to the views expressed by the Productivity Commission we do not think it appropriate to delay making any changes to Sunday penalty rates for 12 months, as it would impose an unnecessary delay on the introduction of any reduction in Sunday penalty rates and would give rise to a sharp fall in earnings for some affected employees at the end of the 12 month period.*
>
> *(ii) If 'take home pay orders' are an available option then they may mitigate the effects of a reduction in Sunday penalty rates. But we do not favour any general 'red circling' term which would preserve the current Sunday penalty rates for all existing employees.*
>
> *(iii) <u>The reductions in Sunday penalty rates should take place in a series of annual adjustments on 1 July each year (commencing 1 July 2017) to coincide with any increases in modern award minimum wages arising from Annual Wage Review decisions</u>.*
>
> *(iv) As to the number of annual instalments, the 5 annual instalment process which accompanied the making of the modern awards is too long for present purposes. It is likely that at least 2 instalments will be required (but less than 5 instalments). The period of adjustment required will depend on the extent of the reduction in Sunday penalty rates, the availability of 'take home pay orders' and the circumstances applying to each modern 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*.

We note that in past Annual Wage Reviews the Expert Panel has rejected claims by employers that 'exceptional circumstances' be considered for the *Fast Food Industry Award 2010* because of the significant increase to penalty rates imposed on employers following award modernisation. In the *Annual Wage Review 2009-2010* Ai Group made the following submission:

> *201. Employers in the fast food industry who are currently bound by the following NAPSAs are required to very substantially increase the rates paid to employees from 1 July 2010, as a result of the award modernisation process:*
>
> - *Quick Service Food Outlets (QSFO'S) Award - State 2004 – QLD NAPSA*
> - *Fast Food Outlets Award 1990 - WA NAPSA*
>
> *…*
>
> *203. Notwithstanding the phasing-in of the new penalties and loadings, employers in the fast food industry in QLD and WA will face major cost increases from 1 July 2010 which are likely to create hardship for employers and reduce employment opportunities for employees.*
>
> *204. For example, a casual employee working on a Saturday, Sunday or in the evening after 9.00pm on a Monday through Friday all receive substantial loadings where previously none applied to casual employees. In the case of Saturday work the additional loading is 25% and on Sundays the additional loading is 50%.*
>
> *205. Ai Group submits that the employers bound by the abovementioned two NAPSAs should be the subject of a separate Variation Determination, delaying the implementation of any minimum wage increase awarded as a result of the 2010 Minimum Wage Review until 1 January 2011. We submit that "exceptional circumstances" exist in respect of these employers, for the purposes of s.286(2) of the FW Act.*
>
> *206. A similar approach should be taken with any other classes of employers – whether in the fast food industry or any other industry – who are identified as facing substantial labour cost increases from 1 July 2010 as a result of award modernisation.*

> *207. There is a recent precedent for delaying a minimum wage increase for an industry sector in exceptional circumstances. In its 2007 wage-setting decision, the Australian Fair Pay Commission recognised that farm businesses in regional Australia were experiencing genuine financial hardship due to the drought. The wage increase which resulted from the Fair Pay Commission's decision was delayed for a maximum of 12 months on the basis that even a minor increase could increase financial strain and result in job losses."*

Nonetheless, the Expert Panel decided against a delayed operative date for the increase to minimum wages in the *Fast Food Industry Award 2010*. The Expert Panel said in its *Annual Wage Review 2009-2010* decision:

> ***[45]*** *We are not satisfied that exceptional circumstances exist justifying an operative date later than 1 July. It would not be appropriate to delay the operation of our decision in this review on account of award modernisation. It is apparent that increased costs resulting from award modernisation have already been taken into account by the AIRC in deciding upon the transitional provisions and operative dates in modern awards. Furthermore, the material advanced in support of a delay based on award modernisation was not convincing. We also think it would be undesirable to provide for different operative dates for some industries or groups of employers when it is clear that modern award conditions will impact differently across the economy generally depending upon the arrangements which previously applied. As to the general delay of one month sought by ACCI and others, in the circumstances, including the date of this decision and the fact that 1 July is the operative date which would generally apply, we do not think any further delay is justified.*"

Notably the argument advanced by Ai Group in the *Annual Wage Review 2009-2010* was rejected on the basis that "*increased costs resulting from award modernisation were taken into account by the Australian Industry Relations Commission in deciding upon the transitional provisions and operative dates in modern awards"* (see above extract). Similarly, the variations arising out of the *Penalty Rates Decision* will be transitioned to ameliorate any adverse effects on employees.

Furthermore, the Full Bench in the *Penalty Rates Decision* determined that the existing Sunday penalty rates in the four modern awards subject to the change do not achieve the modern awards objective, as they do not provide for a fair and relevant safety net.

The statutory considerations required of the Expert Panel in the current proceedings were also considered by the Full Bench in the *Penalty Rates Decision*. For example, the Full Bench, in reaching its decision, considered the objects of the FW Act (s.3), the modern awards objective (s.134), special provisions relating to modern award minimum wages (s.135), and the minimum wages objective (s.284). Each of these are considerations for the Expert Panel for the purposes of the Annual Wage Review.

It is important that the Expert Panel does not determine any 'additional' increase to the national minimum wage to 'compensate' for the *Penalty Rates Decision*. This would negate the intended beneficial effects of the *Penalty Rates Decision*.

11. Modern award wages for junior employees, employees to whom training arrangements apply, employees with disability and piece workers

Consistent with previous Annual Wage Review decisions:

- The minimum wage rate resulting from this year's Annual Wage Review should flow through to the minimum award wages of junior employees, employees to whom training arrangements apply, employees with disability and piece workers, through the operation of award provisions relating to these employees.
- The minimum weekly payment in the Supported Wage System Schedule of 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.

12. Special national minimum wages for award / agreement free employees with disability (Special National Minimum Wage 1 and 2)

In its *Annual Wage Review 2014-15 Decision,* the Expert Panel 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.

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 2017.*

13. Special national minimum wages for award / agreement free junior employees (Special National Minimum Wage 3)

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.

Ai Group still considers this approach to be appropriate for setting rates for award/agreement free junior employees.

14. Special national minimum wages for award / agreement free apprentices (Special National Minimum Wage 4)

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:

> ***"[612]*** *Ai Group, however, submitted that the Panel should not take previous years' approach of setting the award/agreement free adult apprentice minimum wage at the rate of the adult national minimum wage, but instead set it at the rate for adult apprentices set in the Miscellaneous Award 2010 (from 1 January 2014). R&CA*

supported this proposed change. The ACTU submitted that the decision to include an adult apprentice rate in the Miscellaneous Award 2010 was not intended to interfere with existing, more favourable provisions and opposed the proposed change.

[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. Though we acknowledge that this rate is lower than the rate previously set in the national minimum wage order we accept the Full Bench's conclusion in the Apprentices decision that the minimum rate for a new adult apprentice be set (where not specified previously) at 80 per cent of the C10 or base trade rate in the first year or stage of the apprenticeship. The order will therefore provide that adult apprentices will have their rate set according to the adult apprentice rate in the Miscellaneous Award 2010. Award/agreement free adult apprentices engaged before 1 July 2014 and who are in Year 1 of their apprenticeship will continue on the rate set in the National Minimum Wage Order 2013 until they reach Year 2 of their apprenticeship, at which time they will transition to the adult apprentice rate in the Miscellaneous Award 2010."*

The Panel also adopted this approach in its *2014-2015 Annual Wage Review* decision and *2015-2016 Annual Wage Review* decision. Ai Group submits that, 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 2017*.

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

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 2017*.

16. 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.

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

17. Casual loading in the Business Equipment Award

The Expert Panel in its *Annual Wage Review 2015-16* decision at paragraphs [638] to [640] determined that the casual loading in the *Business Equipment Award 2010* (**Award**) 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 to 22 per cent as of 1 July 2017, consistent with the phasing-in approach determined by the Expert Panel in 2016.

18. 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 2016* is 25 per cent, and a similar loading should be reflected in the *National Minimum Wage Order 2017*.

19. Process for varying modern awards to reflect the Annual Wage Review Decision

In previous years, the Commission has issued draft Determinations and a draft National Minimum Wage Order following the Annual Wage Review Decision to allow interested parties, such as Ai Group, to check the Commission's calculations and provide feedback before the final Determinations and National Minimum Wage Order were published. Ai Group urges the Expert Panel to implement the same consultative approach in this Review.

A very large number of employers rely on industry organisations, such as Ai Group, to advise them of the wage rates and allowances payable under modern awards. Ai Group provides a specific information service on most modern awards and it is a huge task for our staff to check the draft Determinations, prepare written advice on each award and distribute the advice to thousands of employers.

Keeping this in mind, we urge the Commission to publish the final Determinations with as much lead-time as possible before 1 July 2017 to enable industry associations to advise employers and then for employers to make the necessary payroll adjustments. There are substantial direct and administrative costs associated with back-paying wage and allowance increases.

20. The form of the National Minimum Wage Order 2016

In Ai Group's experience, the form of the *National Minimum Wage Order 2016* did not lead to any significant difficulties.

We suggest that the same model be used for the *National Minimum Wage Order 2017.*

21. Matters raised at the Preliminary Hearing stage

Following the *Annual Wage Review 2015-16 Decision*, the Expert Panel invited parties to respond to several questions in the following three background papers released by the Fair Work Commission (**FWC**) ahead of the Preliminary Hearing in the *Annual Wage Review 2016-17*:

- A proposal for a medium-term target;
- A review of transitional instruments; and
- A review of existing arrangements for employees with disability.

Ai Group provided its response to the Expert Panel in a submission dated 10 October 2016. Ai Group provided further submissions to the Expert Panel on 17 October 2017 (reply submission) and 2 November 2016 (reply to questions on notice).

Ai Group also participated in a hearing of the Expert Panel on 24 October 2016 convened to deal with the above matters (Preliminary Hearing).

We understand that the Expert Panel is yet to reach a determination arising from the above matters. Nonetheless, Ai Group continues to rely on its submissions already made.

22. Request to participate in final consultations

The Directions for the Annual Wage Review 2016-2017 state that parties wishing to participate in the final consultations are requested to express interest by 5 May 2017.

Ai Group hereby advises that it wishes to participate in the final consultations.

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