Ai GROUP SUBMISSION

Fair Work Commission

Annual Wage Review 2018-2019

Reply Submission, Post-Budget Submission and Responses to Questions on Notice

12 April 2019

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

On 15 March 2019, the Australian Industry Group (**Ai Group**) filed its main submission in the *Annual Wage Review 2018-2019* (**Ai Group's March 2019 submission**). In our submission**,** we urged the Expert Panel of the Fair Work Commission to award a modest increase in minimum wages.

In our March 2019 submission, we highlighted the following factors:

- The Australian economy moved back into the slow lane in the second half of 2018 and looks set to stay there for some time. While employment has been strong in recent years and is still holding up, deceleration is evident in business conditions, confidence, building approvals, retail sales, car sales and most crucially, job vacancies. Company insolvencies increased through late 2018 in the construction, retail and hospitality industries.

- Businesses are struggling to cope with high and rising input costs, especially energy costs. Also, productivity growth is weak nationally and in industries with mainly low-wage employees.

- Inflation remains weak which means that even a small rise in the minimum wage will deliver a real increase in household spending power.

- The single biggest challenge for the Australian economy at present is generating stronger rates of productivity growth than can, in turn, support stronger and more broad-based growth in real incomes. Productivity growth has remained weak in Australia this century.

- Low wage employees have benefited from tax changes introduced in the 2018 Federal Budget. The Low and Middle Income Tax Offset (**LAMITO**) has increased disposable incomes for many low wage earners. While the impacts vary across low and middle-income groups, the increase in disposable income for a person earning the current National Minimum Wage (NMW) of $719.20 a week is 0.63 per cent which equates to a change in pre-tax income of $6 per week which is **nearly 1% (0.83 per cent)**.

- An excessive increase would reduce the job security of low paid workers and would reduce employment opportunities for the unemployed and underemployed.

- Global competitiveness is a key risk for Australian businesses. Australia already has one of the highest national minimum wage rates in the world, and most Australian workers are entitled to minimum award wage rates that are higher than the NMW.

- The minimum wage increases awarded by the Expert Panel in the last two Annual Wage Reviews (3.3% and 3.5% respectively) were exceptionally high and out of step with overall wage movements and economic settings. It is essential that the increase awarded by the Panel this year is much more modest.

In the circumstances, we submitted that, when all the relevant factors are weighed up, **a modest minimum wage increase of 2% is warranted. This equates to an increase of about $14.40 per week in the National Minimum Wage and about $16.75 per week at the base trade level**.

We have considered the submissions of other parties and none have led us to change the views expressed in our March 2019 submission.

In this Reply Submission, we address some of the issues raised by other parties, as well as matters arising from the 2019 Budget. We have not sought to address all the issues covered in the submissions of other parties, as Ai Group's position on most issues will be evident from our March 2019 submission.

The 6% wage increase proposed by the ACTU is obviously unsustainable. A minimum wage increase of this magnitude would be a certain way to destroy jobs, harm businesses and threaten Australia's long period of economic growth.

In formulating its claim, the ACTU has taken no account of the *Annual Wage Review 2017-18 Decision* in which the Expert Panel said:

> [104] …… an increase of the size proposed by ACCER and the ACTU, is likely to run a substantial risk of adverse employment effects. Such adverse effects will impact on those groups who are already marginalised in the labour market, with a corresponding impact on the vulnerability of households to poverty due to loss of employment or hours. An increase of the magnitude proposed by ACCER and the ACTU would also carry a substantial risk of reducing the employment opportunities for low-skilled workers, including many young persons, who are looking for work.
>
> [105] Workers at the lower end of the wage distribution (such as those paid the NMW), including those on modern awards who tend to have less skill than other workers, are more vulnerable to disemployment.

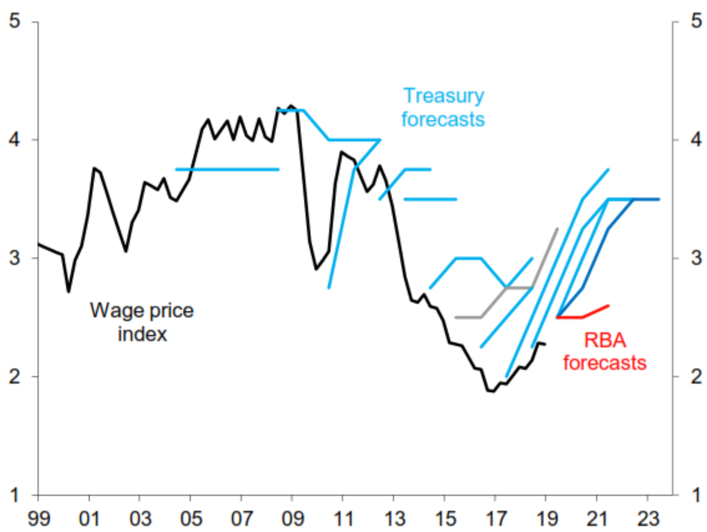
The above observations are equally relevant to the ACTU's claim in the current Annual Wage Review.

2. Federal budget 2019-20 and outlook for Australia's economy

This year's Federal budget largely acknowledges the slow state of Australia's economy at present and the risks to the outlook. It is less optimistic about growth in the outlook period (the next four years) than was MYEFO in December 2018 and last year's budget in May 2018.

In this year's budget, real GDP growth is forecast to stay below 3% p.a. for at least the next three years. Employment growth is forecast to slow from here and the unemployment rate is forecast to stay at around its current level of 5%, largely because the participation rate may fall a touch from its recent record highs. Inflation is expected to move back up to the middle of the RBA's target band of 2% to 3% by 2020-21, which is more optimistic than the RBA's own forecasts. Wage inflation is expected to pick up pace as inflation rises, but the slower labour market suggests wage growth could undershoot Treasury's expectations yet again. Of note, the Treasury's wage forecasts have consistently over-estimated actual wage price index growth rates since 2007-08 and are currently well above the forecasts issued by the RBA (see chart 1).

Chart 1: Treasury and RBA forecasts for wage price index growth, % p.a.



Source: Commonwealth of Australia, Macquarie Macro Strategy

These forecasts will be updated again prior to May's forthcoming Federal election in the Pre-Election Fiscal Update (**PEFO**). This document will be prepared by Treasury and the Parliamentary Budget Office and released by Treasury 10 days after the election is called, as required by the *Charter of Budget Honesty Act 1998*. Given the very short time between this budget document and the PEFO, the forecasts in the PEFO are unlikely to differ significantly from those presented in the Budget.

Relatively weak GDP growth means that this year's improvement in the Budget operating balance has been due almost entirely to stronger nominal taxation revenue flowing from higher resources prices. These higher prices mean that tax revenue paid on mining company profits is higher than was anticipated in the MYEFO in December. Expectations about resources prices and export earnings are playing an increasingly pivotal role in the Australian Government's revenue forecasts and in its forecasts for the entire economy, as the size and influence of our mining sector grows.

Sensitivity analysis conducted by Treasury for this year's budget indicates the iron ore price is especially important. This year's budget has been relatively conservative in assuming an iron ore price of $55 per tonne over the next four years, which is well below the current price. Treasury has calculated that a $10 fall (or rise) in the iron ore price would reduce (or increase) nominal GDP by $6.3bn in 2019-20 and $13.6bn in 2020-21 and reduce (or increase) nominal tax receipts by $1.1bn in 2019-20 and $3.7bn in 2020-21. These large effects mean that the price of iron ore has a direct impact on the economy and on the Government's ability to achieve and maintain a budget surplus.

The difference in economic performance between the mining and non-mining parts of Australia's economy is becoming increasingly stark as 2019 progresses. This widening gap is reflected in this year's budget forecasts, but its implications are downplayed. Resources-related export earnings (and resulting tax revenues) may be booming in 2019, but the non-mining sectors are now up against the combined headwinds of: global trade disruptions; slower growth in Australia's trade partners; a downturn in residential property markets and residential construction activity; weak consumer confidence; weak background inflation; weak national productivity growth; and the devastating effects of drought, flood and other natural disasters.

Weak national productivity growth is the biggest concern over the longer term. Prior to this year's Federal budget (and based on MYEFO) the ISA's Chief Economist Stephen Anthony calculated that:

> "Australia's medium and long-term fiscal strategy is predicated on productivity growth of 1.6 per cent from 2019-20 [but] the post 2012 trend is closer to 1 per cent. Our failure to attain this goal and the lack of structural policy reform over the past decade should be foremost in the minds of Australian decision makers. The productivity shortfall should justify urgent remedial policy and a rethink of planning processes to help ensure per capita living standards are maintained into the next decade. … The way to raise trend growth rates is to more systematically embed economic decision making into tangible long-term productivity enhancing reform agenda."[1]

In its latest *World Economic Outlook* (released 9 April 2019), the IMF forecasts growth in global output of 3.3% p.a. in 2019, down from 3.9% p.a. in its forecasts published this time last year. If realised, this would be the slowest rate of global growth since the Global Financial Crisis. It reflects slower than expected growth in several major economies including the euro area, Latin America, the United States, the United Kingdom, Canada and Australia.

The IMF says slower than expected growth in the second half of 2018 has persisted into the first half of 2019. It attributes this to a number of factors including: US–China trade tensions, credit tightening in China, economic woes in Argentina and Turkey, disruptions to the auto sector in Germany, financial tightening, and higher central bank interest rates in the larger advanced economies (especially the United States).

Among advanced and developing economies, growth prospects are diverging. In advanced economies, growth will slow from 2.2% in 2018 to 1.7% in 2020 (Table 1). In contrast, emerging and developing economies are expected to boost global growth after 2019, with growth easing from 4.5% in 2018 to 4.4% p.a. in 2019, before climbing to 4.8% in 2020.

The IMF says risks are currently tilted to the downside. Escalating trade tensions are the greatest near-term threat to global growth because it damages confidence, asset prices and investment. However, if trade differences are resolved quickly this could balance some of the risks. Over the medium term, the IMF says climate change and political discord are key risks that could lower global potential output.

In response, the IMF recommends "multi-national cooperation to resolve trade conflicts, address climate change and the risks from cybersecurity and to improve the effectiveness of international taxation." At national level the IMF recommends fiscal policy that manages the trade-offs between supporting demand and making sure that public debt stays on a sustainable path.

[1] Stephen Anthony, ISA Economics, *2019-20 Federal Budget Preview*, March 2019.

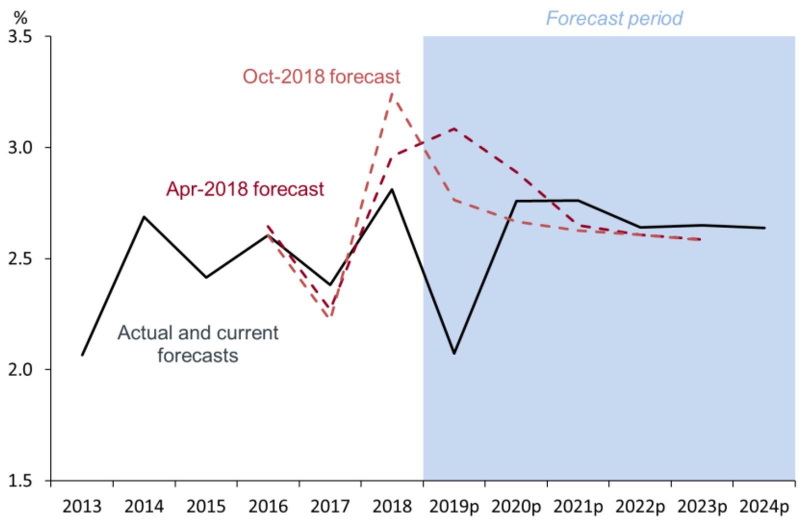
Table 1: IMF growth forecasts and revisions, selected economies, April 2019

Real GDP, % change p.a.	2018	2019p	2020p
		(Revision from Oct 2018)	
World output	**3.6**	**3.3 (-0.4)**	**3.6 (-0.1)**
Australia	2.8	2.2 (-0.7)	2.8 (0.1)
Advanced economies	**2.2**	**1.8 (-0.3)**	**1.7 (0.0)**
US	2.9	2.3 (-0.2)	1.9 (0.1)
Euro area	1.8	1.3 (-0.6)	1.5 (-0.2)
UK	1.4	1.2 (-0.3)	1.4 (-0.1)
Japan	0.8	1.0 (0.1)	0.5 (0.2)
Emerging and developing economies	**4.5**	**4.4 (-0.3)**	**4.8 (-0.1)**
China	6.6	6.3 (0.2)	6.1 (-0.1)
ASEAN-5	5.2	5.1 (-0.1)	5.2 (0.0)
India	7.1	7.3 (-0.1)	7.5 (-0.2)
World trade volumes, % change p.a.	**3.8**	**3.4 (-0.6)**	**3.9 (-0.2)**

p = projection. Source: IMF *World Economic Outlook Update*, April 2019.

For Australia, the IMF expects output growth to ease from 2.8% in 2018 to 2.1% in 2019. This forecast for 2019 is 0.7 percentage points lower than the IMF expected last October and a full one percentage point lower than it expected in April last year (see Chart 2). It is also significantly lower than the IMF report on Australia of January 2019, which expected GDP growth to be 2.7% in 2019. The report welcomed Australia's commitment to trade and participation in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11). However, it warned that "baseline forecasts entail a soft landing in the housing market, but a stronger market correction remains a risk. Overall, near-term risks to growth are to the downside, mirroring the global risk picture, with the impact of shocks potentially being amplified by high household debt." For Australia's next Government, the IMF recommends a supportive macroeconomic policy stance, stable macroprudential policies, raising potential growth through tax reform, sustained promotion of innovation and competition, and energy market reform.

Chart 2: IMF forecasts for Australia, real GDP growth, % p.a.



Source: IMF, April 2019

Note: p = projection

3. RBA Conference on Low Wage Growth

On 4 and 5 April 2019, the Reserve Bank of Australia held its 2019 annual conference which focussed on the topic of 'Low Wage Growth'. It considered possible causes, consequences and international perspectives on the issue, including the possible effect of non-standard employment and other changes to work arrangements on wage growth; the effect of declining union coverage on wage outcomes in Australia; the possible role of changes in firm market power; and international perspectives on the relationship between productivity and wage growth; as well as other related themes.

Several relevant papers were delivered at the Conference. Draft papers have been made available on the RBA's website and the website states that final versions of the papers will be published at a later date.

The draft papers that have been made available by the RBA are:

- *New Zealand Wage Inflation Post-crisis*, by Adam Richardson, Reserve Bank of New Zealand;
- *The Characteristics of Individuals Experiencing Low Wage Growth and the Consequences of Low Wage Growth*, by Guyonne Kalb and Jordy Meekes, Melbourne Institute of Applied Economic and Social Research, University of Melbourne;
- *Non-standard Employment and Wages in Australia*, by Inga Laß and Mark Wooden, Melbourne Institute of Applied Economic and Social Research, University of Melbourne;
- *Immigration and Wage Growth: The Case of Australia*, by Courtney Brell and Christian Dustmann, University College London;
- *Is Declining Union Membership Contributing to Low Wages Growth?*, by James Bishop and Iris Chan, Reserve Bank of Australia;
- *The Rise of Market Power and the Macroeconomic Implications*, by Jan Eeckhout, Universitat Pompeau Fabra Barcelona;
- *Decoupling of Wages from Productivity*, by Cyrille Schwellnus, Organisation for Economic Co-operation and Development

Ai Group recommends that the above papers be added to the Fair Work Commission's *Research Reference List – Annual Wage Review 2018-19.*

4. Changes in Personal Income Tax Arrangements

In our March 2019 Submission, we set out the favourable impacts on disposable incomes of tax changes legislated following the 2018-19 Budget.

Those legislated changes apply to income earned in the 2018-19 year and were comprised of an increase in the threshold at which the 37 per cent tax bracket cuts in (an increase from $87,000 to $90,000) and the introduction of a new tax offset – the Low and Middle Income Tax Offset (**LAMITO**). While many low wage earners live in households that have benefited from the change in the threshold, the new tax offset is more directly relevant to low wage earners in general.

In the 2019-20 Budget the Government committed to increase the LAMITO for the 2018-19 year from the levels currently legislated. In its response to the April Budget, the Opposition responded by committing to similar changes to LAMITO. While the proposed changes differ in one respect and while they are not yet legislated, with both contenders to the May 18 election committing to similar proposals, and with those changes set to be in taxpayers' hands at the same time as the legislated changes arising from the 2018-19 Budget, Ai Group contends there is sufficient certainty for the modified changes to be taken into account in the current wage case.

In the remainder of this section, the impacts of the LAMITO are explored in depth. In summary, LAMITO delivers material increases in the disposable incomes of low and middle-income wage earners. The LAMITO delivers larger increases in post-tax incomes than would be delivered by the same dollar increase in the NMW.

While the impacts vary across low and middle-income groups, under the Government's proposals, the increase in disposable income for a person earning the current NMW of $719.20 a week would be 0.85 per cent which equates to a change in pre-tax income of 1.06 per cent. This is a material impact and should be taken into account in the determination of the change in the NMW.

The LAMITO reduces the income tax payable on 2018-19 low and middle-income earners' income by up to $1,080. The main dimensions of the Government's proposal are set out below.

- For people earning a taxable income of up to $37,000, the maximum offset available is $255 (previously $200).
- Between $37,000 and $48,000, the LAMITO increases (at a rate of 7.5 (previously 3) cents for each dollar above $37,000) to the $1,080 (previously $530) maximum level.
- The $1,080 amount applies up to incomes of $90,000 after which it reduces (at a rate of 3.0 (previously 1.5) cents per dollar above $90,000).
- The LAMITO ceases to be available to people on incomes above $126,000.
- The LAMITO is not refundable so the maximum available is the amount that reduces income tax payable to zero.

Table 2 below summarises the impacts of the new income tax arrangements for a range of income earners under the Government's proposal. For example, as shown in the row in bold font, for a single person working full time and earning the national minimum wage of $719.20 per week (or $37,499 annualised), the introduction of the LAMITO:

- Lifts annual disposable income by $292.43 – an increase of 0.85 per cent.

- More relevantly for purposes of comparison, given the marginal tax rate at this level of income of 26.5 per cent, this equates to a lift in pre-tax income of $397.87 – an increase of 1.06 per cent.

The equivalent increase in pre-tax income delivered by the change in tax arrangements are higher than the impacts on disposable income because an increase in pre-tax income (for example as might be delivered by an increase in the NMW) is subject to tax.

Table 2: Illustrative[1] Impacts of Low and Middle-Income Tax Offset (LAMITO): The Government's Proposal

% of NMW	Pre-tax income		LAMITO	Disposable Income after LAMITO	Change in disposable income due to LAMITO		Marginal Tax Rate	Equivalent increase in pre-tax income	
%	$ per week	$ pa	$ pa	$ pa	$ pa	%	%	$ pa	%
50	359.60	18,750	255.00	18,750	0.00	0.00	0	0.00	0.00
53	381.86	19,910	255.00	19,910	0.00	0.00	0	0.00	0.00
60	431.86	22,517	255.00	22,397	255.00	1.15	19	314.81	1.40
67	481.86	25,124	255.00	24,509	255.00	1.05	19	314.81	1.25
86	619.20	32,285	255.00	30,309	255.00	0.85	19	314.81	0.98
93	669.20	34,892	255.00	32,421	255.00	0.79	19	314.81	0.90
100	**719.20**	**37,499**	**292.43**	**34,505**	**292.43**	**0.85**	**26.5**	**397.87**	**1.06**
107	769.20	40,106	487.96	36,421	487.96	1.36	26.5	663.89	1.66
114	819.20	42,713	683.48	38,337	683.48	1.82	26.5	929.91	2.18
133	956.54	49,874	1,080.00	43,460	1,080.00	2.55	34	1,636.36	3.28
150	1078.80	56,249	1,080.00	47,667	1,080.00	2.32	34	1,636.36	2.91
167	1201.06	62,623	1,080.00	51,874	1,080.00	2.13	34	1,636.36	2.61

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 LAMITO and indeed other income tax changes may also affect living standards of household members; they rely on the annualization of 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.

The Opposition's proposal differs from that proposed by the Government in that for people earning a taxable income of up to $37,000, the maximum offset available is $360. Related to this change is that the rate at which the LAMITO increases with incomes above $37,000 is approximately 6.5 cents for each dollar above $37,000) to the $1,080 maximum level.

Table 3 below summarises the impacts of the new income tax arrangements for a range of income earners under the Opposition's proposal. For example, as shown in the row in bold font, for a single person working full time and earning the national minimum wage of $719.20 per week (or $37,499 annualised), the introduction of the LAMITO under the Opposition's proposal would:

- Lift annual disposable income by $392.67 – an increase of 1.15 per cent.
- More relevantly for purposes of comparison, given the marginal tax rate at this level of income of 27.455 per cent, this equates to a lift in pre-tax income of $541.27 – an increase of 1.44 per cent.

Table 3: Illustrative[1] Impacts of Low and Middle-Income Tax Offset (LAMITO): The Opposition's Proposal

% of NMW	Pre-tax income		LAMITO	Disposable Income after LAMITO	Change in disposable income due to LAMITO		Marginal Tax Rate	Equivalent increase in pre-tax income	
%	$ per week	$ pa	$pa	$pa	$pa	%	%	$pa	%
50	359.60	18,750	360.00	18,750	0.00	0.00	0	0.00	0.00
53	381.86	19,910	360.00	19,910	0.00	0.00	0	0.00	0.00
60	431.86	22,517	360.00	22,502	360.00	1.63	19	444.44	1.97
67	481.86	25,124	360.00	24,614	360.00	1.48	19	444.44	1.77
86	619.20	32,285	360.00	30,414	360.00	1.20	19	444.44	1.38
93	669.20	34,892	360.00	32,526	360.00	1.12	19	444.44	1.27
100	**719.20**	**37,499**	**392.67**	**34,605**	**392.67**	**1.15**	**27.455**	**541.27**	**1.44**
107	769.20	40,106	563.31	36,496	563.31	1.57	27.455	776.49	1.94
114	819.20	42,713	733.95	38,388	733.95	1.95	27.455	1,011.71	2.37
133	956.54	49,874	1,080.00	43,460	1,080.00	2.55	34	1,636.36	3.28
150	1078.80	56,249	1,080.00	47,667	1,080.00	2.32	34	1,636.36	2.91
167	1201.06	62,623	1,080.00	51,874	1,080.00	2.13	34	1,636.36	2.61

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 LAMITO and indeed other income tax changes may also affect living standards of household members; they rely on the annualization of 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.

Two common features of the impacts set out in tables can be highlighted.

- For income earners without a tax liability pre-LAMITO, the introduction of LAMITO has no impact on disposable income. Prior to the introduction of LAMITO the effective tax-free threshold for low-income earners was $20,542 due to the combination of the generally available tax-free threshold and the availability of the Low Income Tax Offset (LITO) which remains in place in the 2018-19 year.

  It is worth noting in this context that the same income earners who do not benefit from the introduction of the LAMITO will get higher proportional benefits from any increase in the NMW relative to taxpayers on higher incomes because the impact of rises in pre-tax incomes on disposable incomes will not be diluted by income taxation.

- The proportional impact of LAMITO on changes in disposable income depends on the amount of LAMITO for which the income earner is eligible and the level of their previous disposable income. Thus, for income earners eligible for the $255 (or $360) level of the LAMITO, the higher proportional changes in disposable income are delivered to those with lower pre-LAMITO disposable incomes. Similarly, for income earners eligible for the $1,080 level of the LAMITO, the higher proportional changes in disposable income are also delivered to those with lower pre-LAMITO disposable incomes.

5. The need to encourage collective bargaining

Regarding the Expert Panel's obligation to consider the need to encourage collective bargaining in the course of the Annual Wage Review, this issue is addressed in section 7 of our March 2019 submission.

The ACTU Submission states that the decline in the number of new enterprise agreements being made and the number of agreements covered by them is attributable to an alleged weakened bargaining power of organised labour.[2] In support of this submission, the ACTU referred to a report by Allison Pennington which postulated that the decline in enterprise bargaining was partially attributable to the erosion of unions' capacity to undertake effective collective bargaining.[3]

If the ACTU's position on this question were correct, it might be expected that the 'erosion' of unions' effectiveness in collective bargaining would be reflected in the rates of pay applicable under enterprise agreements where a union was involved in the negotiations. One would also expect a decline in the proportion of the workforce covered by an enterprise agreement that was negotiated with the involvement of a union.

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[2] Annual Wage Review 2018-19, *ACTU Submission* 15 March 2019, [496], citing Isaac, J., "Why Are Australian Wages Lagging and What Can be Done About It?", Australian Economic Review, 51(2), pp 175-90.

[3] Annual Wage Review 2018-19, *ACTU Submission* 15 March 2019, [497], citing Pennington, A., "On the Brink: The Erosion of Enterprise Agreement Coverage in Australia's Private Sector", The Australia Institute - Centre for Future Work, December 2019, at pp.7-8.

A research paper recently released by the Economic Research Department of the Reserve Bank of Australia has discredited the notion that consistently declining union membership rates have contributed to low wage growth in the years since the advent of enterprise bargaining, at least via their influence on collective bargaining.[4] The study used data available from the Department of Jobs and Small Business' Workplace Agreements Database which contains information on every federally registered enterprise agreement from the early 1990s.

The following important findings were made in the study which gave rise to the report, including

- Despite one of the largest declines in union membership rates amongst countries in the Organisation for Economic Co-operation and Development, Australia has seen one of the smallest declines in coverage by collective bargaining agreements.[5]

- The share of workers covered by collective agreements has remained steady at around 40% since 2000.[6]

- The share of the workforce in the Commonwealth that is covered by an enterprise agreement that was negotiated with the involvement of a union has not fallen with the decline in union membership rates. If anything, the share of the workforce covered by a union-negotiated enterprise agreement has risen in recent years.[7]

- Unions' effectiveness in extracting wage increases in the context of enterprise agreement negotiations has not diminished over time with a 'union wage growth premium' of 1/3 percentage point per year among private sector agreements.[8]

The report comments that any decline in the unions' ability to negotiate favourable wage outcomes should manifest itself in a smaller union premium over time.[9] That this has been demonstrated not to be the case, should put to rest the notion that unions' capacity to advocate for higher rates of pay through collective bargaining is substantially diminished.

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[4] James Bishop and Iris Chan, 'Is Declining Union Membership Contributing to Low Wages Growth' (Research Discussion Paper), Reserve Bank of Australia (RDP 2019-02), 2.

[5] James Bishop and Iris Chan, 'Is Declining Union Membership Contributing to Low Wages Growth' (Research Discussion Paper), Reserve Bank of Australia (RDP 2019-02), 8.

[6] James Bishop and Iris Chan, 'Is Declining Union Membership Contributing to Low Wages Growth' (Research Discussion Paper), Reserve Bank of Australia (RDP 2019-02), 6.

[7] James Bishop and Iris Chan, 'Is Declining Union Membership Contributing to Low Wages Growth' (Research Discussion Paper), Reserve Bank of Australia (RDP 2019-02), 7.

[8] James Bishop and Iris Chan, 'Is Declining Union Membership Contributing to Low Wages Growth' (Research Discussion Paper), Reserve Bank of Australia (RDP 2019-02), 36.

[9] James Bishop and Iris Chan, 'Is Declining Union Membership Contributing to Low Wages Growth' (Research Discussion Paper), Reserve Bank of Australia (RDP 2019-02), 22.

6. The Commission's 2017 Penalty Rates Decision

In its submission, the ACTU urges the Panel to take the Fair Work Commission's 2017 Penalty Rates Decision into account.

In its *Annual Wage Review 2016-2017 Decision* and in its *Annual Wage Review 2017-2018 Decision* the Panel observed that the *Penalty Rates Decision* should not be considered in some quantifiable or mechanistic way to support a particular level of increase to the National Minimum Wage or in modern award minimum wages.[10]

The *Penalty Rates Decision* only applies to a small number of awards in the hospitality and retail industries. In its decision, 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 *Fair Work Act 2009* (**FW Act**) (s.3); the modern awards objective (s.134); and the minimum wages objective (s.284).

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.

7. Response to submissions of the Australian Catholic Bishops Conference

7.1 The construction of section 284(1)

The ACBC submission raises two principle issues concerning the correct interpretation of s.284(1) of the FW Act. These may be summarised briefly as:

- The *Primary Construction Issue* which relates to the connection between the introductory words of s.284(1) and the considerations in the paragraphs of the subsection; and
- The *Subsidiary Construction Issue* which concerns the role of 'fairness' in the Fair Work Commission's task of setting safety net wages.

The ACBC disagrees with the decision of the Expert Panel in the *Annual Wage Review 2017-18* to reject a suggested 'operational objective' of minimum wage setting under the FW Act, proposed in the 13 March 2018 submission of the Australian Catholic Council for Employment Relations (ACCER). The proposed operational objective was in the following terms:

[10] *Annual Wage Review 2016-17 Decision*, at [29]; *Annual Wage Review 2017-18 Decision* at [93].

> "Full time workers have a reasonable expectation of a standard of living that will be in excess of poverty and one which will enable them to purchase the essentials for a "decent standard of living" and engage in community life, assessed in the context of community norms."

ACBC contends, at paragraph [537] of its submission, that the command in the legislation is:

> "To set a safety net which is, of its nature, for the protection of workers, and the adjective "fair" refers to the worker's safety net. The safety net is to be fair for workers having regard to, among other matters, the considerations in the paragraphs, which include the economic interests of employers, i.e. the perspectives of employers."

Ai Group agrees with the decision of the FWC to reject ACCER's submission as to the alleged 'operational objective' and, by extension, disagrees with the ACBC Submission in these proceedings, for the following reasons:

- Although the Fair Work Commission is not necessarily limited to the considerations in s.284(1)(a) - (e), in making an appropriate determination pursuant to s.284, the wording in s.284(1) which requires the Commission to establish and maintain a 'safety net' of fair minimum wages, should be viewed in the light of these considerations.

- The ACBC Submission seeks to read words into s.284 relating to the meaning of the term 'safety net' which are not supportable by the wording of the legislation or any relevant extrinsic material. The reference in the ACBC submission to the International Covenant on Economic, Social and Cultural Rights should not distract the Expert Panel from its main task, which is to seek to apply the 'ordinary meaning' of the words in the Act.

- To interpret the reference to a 'safety net' in s.284(1) as primarily geared toward protecting and improving the living standards of workers undermines the object of the FW Act to ensure a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions.

- The employees whose wages will be directly impacted by the national minimum wage order are low paid. As such, to view the interests of such workers as construing the principle object of s.284 would result in double-counting this consideration. Such employee's interests are clearly addressed in s.284(1)(c).

The 'subsidiary construction issue' raised by the ACBC submission relates to the interpretation of 'fairness' in the context of the obligation upon the Fair Work Commission to establish and maintain a safety net of 'fair' minimum wages. The ACBC disputes that the Commission is required to set the NMW and modern award minimum wages at a level that is fair to both employees and to employers.

Ai Group vehemently opposes the ACBC's contention, at paragraph [578] of its submission that a beneficial reading of s.284(1) excludes decision-making that is "based on the criterion of fairness as between employers and employees". This contention was considered in detail in the *Annual Wage Review 2016-17* in the context of an ACCER submission and rejected. The following extracts from the *Annual Wage Review 2016-17 Decision* are relevant:

[139] Despite its beneficial purpose a statutory provision may be constrained in its operation if it represents a compromise between competing intentions. As Gleeson CJ observed in *Carr v Western Australia:*

> 'Another general consideration relevant to statutory construction is one to which I referred in *Nicholls v The Queen*. It was also discussed, in relation to a similar legislative scheme, in *Kelly v The Queen*. It concerns the matter of purposive construction. In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act is to be preferred to a construction that would not promote that purpose or object. As to federal legislation, that approach is required by s 15AA of the *Acts Interpretation Act* 1901 (Cth) ("the Acts Interpretation Act"). It is also required by corresponding State legislation, including, so far as presently relevant, s 18 of the *Interpretation Act* 1984 (WA). That general rule of interpretation, however, may be of little assistance where a statutory provision strikes a balance between competing interests, and the problem of interpretation is that there is uncertainty as to how far the provision goes in seeking to achieve the underlying purpose or object of the Act. Legislation rarely pursues a single purpose at all costs. Where the problem is one of doubt about the extent to which the legislation pursues a purpose, stating the purpose is unlikely to solve the problem. For a court to construe the legislation as though it pursued the purpose to the fullest possible extent may be contrary to the manifest intention of the legislation and a purported exercise of judicial power for a legislative purpose.'

[140] Similar observations are made in *Victims Compensation Fund v Brown* and in *Baytech Trades Pty Ltd v Coinvest Ltd.*

[141] It seems to us that the statutory provisions relevant to the fixation of the NMW plainly seek to strike a balance between competing interests. So much is clear from the range of considerations the Panel is required to take into account in giving effect to the minimum wages objective (for example compare s.284(1)(a) and (c)). It is also clear from the minimum wages objective itself—to "establish and maintain a safety net of *fair* minimum wages". Fairness in this context is to be assessed from the perspective of the employees and employers covered by the NMW order. The object of the Act also speaks to multiple legislative purposes. Section 3 provides that the object of the Act 'is to provide *a balanced framework* for cooperative and productive workplace relations that promotes national prosperity and social inclusion for all Australians' (emphasis added), by the means specified in sections 3(a) to (g).

[142] It follows that while the statutory provisions relating to the Review and to NMW orders 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.

The long running theme evidenced in the objects in the FW Act, which is clearly evidenced throughout the legislation, is one of balance between the interests of employees and employers. To assert otherwise and to claim that the Commission should adopt a conception of 'fairness' which is clearly weighted in favour of one party, conflicts with the clear and obvious intent of the legislation. ACBC's contentions also conflict with a very large number of decisions of Full Benches of the Commission and of the Expert Panel.

At paragraph [577] of the ACBC Submission, the assertion is made that some of the matters dealt with the FW Act, such as the provisions against discrimination, are not based on balancing the perspectives of, or fairness between, employers and employees but rather on the protection of fundamental rights. The assertion is aimed at convincing the Expert Panel that provisions placing lesser weight on the interests of employers are already present in the Act and that this supports the notion that the process of setting an appropriate NMW and appropriate award wage rates should be viewed through the same lens. The example is given by ACBC that the prohibition on discriminating against employees in an award or other industrial instrument or policy is grounded in the fundamental rights of employees rather than any balancing act of interests. This is not correct. The protections against discrimination are included within Part 3-1 – General Protections, of the Act. Subsection 336(1) sets out the objects of Part 3-1, and s.336(2) states that the protections are provided to a person (whether an employee, an employer, or otherwise).

For the above reasons, the ACBC's contentions about the construction of s.284(1) should be rejected.

7.2 Relativities

In its submission, the ACBC proposes an inquiry to determine the appropriate margins for skills and responsibilities at the C10 level in the *Manufacturing and Associated Industries and Occupations Award 2010* (Manufacturing Award) and at Level 1 (graduate employee) in the *Professional Employees Award 2010* (Professional Employees Award).

Ai Group is strongly opposed to the proposal for the following reasons:

- Inadequate justification has been provided by ACBC for such an inquiry.
- The proposal is directed toward the object of establishing *"the appropriate margins for skills and responsibilities for those workers in skilled positions, based on the NMW being set so as to provide a Living Wage for unskilled workers"*,[11] which is not sufficiently related to the work value of employees classified at C10 under the Manufacturing Award or Level 1 under the Professional Employees Award. It is evident that the ACBC is proposing an increase in higher award wage rates for the purpose of achieving an increase in the NMW.
- It is unclear whether the wide range of matters that would need to be addressed in the proposed inquiry would be within the jurisdiction of the Expert Panel.
- Any party that has standing to apply to vary the Manufacturing Award or the Professional Employees Award can apply for a variation to the classifications and the wage rates in these awards on the basis of an alleged change in work value, at any time. If such an application is made, the application will be determined by the Fair Work Commission on its merits. The ACBC proposal appears to be an attempt to circumvent the relevant provisions of the FW Act.

[11] Annual Wage Review 2018-19, *ACBC Submission* 15 March 2019, [91].

- The proposed inquiry would require that industrial parties devote extensive resources at a time when their resources are stretched due to the demands of the 4 Yearly Review of Awards.

- The proposed inquiry would require that the Fair Work Commission devote extensive resources at a time when its resources are stretched due to the demands of the 4 Yearly Review of Awards.

- The relativities within skill-based classification structures are compressed due to the many flat dollar minimum wage increases which were awarded by the Fair Work Commission's predecessors prior to the enactment of the FW Act, but the existing relativities are still meaningful and are not problematic. Low paid employees benefitted from the flat dollar increases that were awarded, and the re-establishment of the former relativities would constitute "double-dipping".

As highlighted by the ACBC, the Expert Panel has on a number of occasions rejected claims by the Australian Catholic Council for Employment Relations for a greater increase to apply to the NMW than the increase applied to award rates.[12] The Panel's consistent rejection of this proposition aligns with the submissions of Ai Group, and is appropriate.

The ACBC Submission states at [103]:

> The current inadequate award relativities are the product of a number of ways in which relativities have been compressed over the years without regard to the proper recognition of the skills and responsibilities of workers in semi-skilled and skilled work classifications. The compression of relativities calls for a "decompression" of those relativities based upon a contemporary assessment of the skills and responsibilities (i.e. work value) of the award classifications.

Ai Group does not agree that the current award relativities are inadequate or that there should be a reassessment of them.

The framework of classifications and wage rates in modern awards are traceable to the implementation of the *Structural Efficiency Principle* as a result of the *National Wage Case August 1988* and the *National Wage Case February 1989 Review*. The classification structures in modern awards are to a large extent based on the classification structures in key pre-modern federal awards.

In the years following the establishment of relativities pursuant to the *Structural Efficiency Principle*, flat dollar increases were applied in Safety Net Reviews and Minimum Wage Reviews from 1993 to 2008. Although this resulted in compression of the relativities within skill-based classification structures, the compression never reached the stage where the relativities became meaningless or problematic.

[12] Annual Wage Review 2018-19, *ACBC Submission* 15 March 2019, [80], [82] and [87].

The compression of relativities between award classifications was considered by the Expert Panel in the *Annual Wage Review 2009-10*. That year, the Panel decided to award a percentage increase. A similar approach has been taken in subsequent Annual Wage Reviews and therefore the relativities have not compressed any further.

In the *Annual Wage Review 2010-11*, the ACTU claimed that the time had come to address 'distortion' in award relativities owing to the compression which had taken place due to past flat-dollar increases to minimum wage rates and foreshadowed the making of a claim in the *Annual Wage Review 2011-12*. In its decision, the Expert Panel referred to the weight of the arguments by Ai Group and other employer parties that restoring relativities would be unfair to employers:[13] (emphasis added)

> **[308]** It was also suggested by the ACTU that we should give guidance on the approach to be adopted to facilitate the restoration of relativities in award structures. Our decision in this review is based on the current economic and other circumstances including developments since the last annual wage review. We do not think we should give any indication as to the appropriateness of award relativities beyond what is necessary for this decision. <u>We note, however, the submissions advanced by some employers that it would be unfair to restore relativities when the practice of awarding flat dollar increases in past annual reviews has resulted in higher increases for employees in the lower classification levels than would have occurred if relativities had been maintained. In our view that submission raises a serious argument against any claim to restore relativities</u>.

The points raised by Ai Group and other employer groups in the *Annual Wage Review 2010-11* remain pertinent in the current proceedings. Considering the application of flat dollar increases between 1993 and 2008, it would be unfair to restore relativities. The conduct of an inquiry into this matter would be unnecessary.

The following points are relevant and weigh in favour of a conclusion that the relativities between classifications in modern awards have not compressed to the point of being irrelevant or problematic:

- Minimum rates of pay in modern awards function as a safety net only. Employers can and often do pay above the applicable minima. This is more common than it was at the time of the establishment of the *Structural Efficiency Principle;*

- Higher award classifications are those affected by the compression of relativities but market factors and the high incidence of over-award payments for skilled employees substantially reduces any detrimental impact of compressed relativities.

- The low paid have benefitted from the compression of relativities; they have not been adversely affected. The Expert Panel is required to particularly take into account "the needs of the low paid".[14]

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[13] *Annual Wage Review 2010-11 Decision*, [307]-[308].

[14] S.284(1)(c) of the FW Act.

The ACBC's proposed inquiry is directed at the establishment of a 'Living Wage'. This is not an object in the FW Act. There is currently no universally accepted definition of this term and to urge the Expert Panel to carry out an inquiry with an ultimate purpose of applying an increase to the NMW and modern award minimum wages which is in line with a 'Living Wage' would be a waste of resources and potentially take the Panel outside of its powers under Part 2-6 of the Act.

The 'safety net of fair minimum wages' which the Expert Panel is directed to maintain under s.284 is neither designed, nor intended to act, as a Living Wage. Any perceived shortfalls in the NMW or modern award minimum wages should be viewed in light of the impact of the 'tax transfer system'. This has been long recognized by the Expert Panel, as evinced by the following passage from the *Annual Wage Review Decision 2013/14*:

> **[357]** The tax-transfer system has a significant role to play in alleviating the impact of earnings inequality and supporting the living standards of low-paid workers. Wages do not entirely determine the living standards of the majority of individual wage earners who live in households with others. We agree with the view expressed in the past three review decisions that:
>
> > "minimum wages and the tax transfer system are both relevant to the maintenance of an effective safety net for the low paid: each has its part to play. Wages play a particularly important role in the maintenance of disposable incomes for households not receiving income support payments."
>
> **[358]** The effect of taxes and transfers on disposable incomes of the low paid is relevant to the needs of the low paid and their relative living standards. This is so in relation to both specific changes in the tax-transfer system at the time of a particular annual wage review and assessing broader information in relation to measures of the income of the low-paid expressed as a proportion of overall median or average incomes. Consideration of the effect of changes in the tax-transfer system on the absolute or relative circumstances of the low paid must be made in the particular circumstances that apply.

The ACBC contends that there is inconsistency between the wage rates in awards for unskilled work. In support of this argument it refers to the fact that the lowest rate of pay in the *Miscellaneous Award 2010* is higher than the NMW.

As highlighted by the following comments of the Award Modernisation Full Bench, the *Miscellaneous Award 2010* has a very simple classification structure with few levels:[15]

> **[82]** The classification structure is very general with only four levels. The first level is set at the minimum wage and applies to employees with less than three months service. The second level covers an employee with more than three months service. The third level requires trade or trade equivalent qualifications. The fourth level is for a graduate employee.
>
> **[83]** The draft provides for full-time, part-time and casual employees and has flexible working hours provisions. The minimum wage levels have been set having regard to minimum wages for <u>lower skill,</u> trades and graduate employees in other relevant modern awards. A range of generally applicable

[15] [2009] AIRCFB 865.

allowances is also included.

It can be seen that the Level 1 classification in the *Miscellaneous Award 2010* is directed at providing remuneration for 'lower skill' rather than 'unskilled' employees. Level 1 does not align with the NMW.

The ACBC also incorrectly contends that the *Miscellaneous Award 2010* applies widely to low paid employees. In support of this, it refers to the Full Bench decision in *United Voice v Gold Coast Kennels Discretionary Trust Pty Ltd* (Gold Coast Kennels).[16] The ACBC's contention is not correct. The *Miscellaneous Award 2010* has very limited coverage.

The ACBC Submission is based on a misreading of the Decision of the Full Bench in *Gold Coast Kennels*. The ACBC makes the following comments concerning the decision at paragraph [451] of its submission:

> This decision, which was delivered on January 2018 was unknown to ACCER and, we presume, at least some of other parties. An online search of the case name will show that it was barely reported, and commented upon during 2018. Yet it is an important decision in regard to the operation of the NMW and the Australian award system. It means that all low paid workers in unskilled jobs who are not otherwise covered by an award are covered by the Miscellaneous Award. It also means that these workers should progress to the C12 wage rate after 3 months employment.

The above description of the decision is not correct. *Gold Coast Kennels* is not authority for the contention that the coverage of the *Miscellaneous Award 2010* extends to all low paid workers in unskilled jobs who are not otherwise covered by an award. Such a contention ignores the exclusions in the *Miscellaneous Award 2010*.

In *Gold Coast Kennels*, a Full Bench of the Commission was required to decide whether employers engaged in performing basic animal care functions were covered by the *Miscellaneous Award 2010*. The Full Bench decided that they were, but the decision is not directly relevant to any other types of employees.

Ai Group was not involved in the *Gold Coast Kennels* proceedings and we do not interpret the decision as having widespread relevance to the award coverage of employees other than those performing animal care functions. If the proceedings were intended to have broader relevance in determining the extent of the coverage of the *Miscellaneous Award 2010*, fairness would dictate that the proceedings be communicated to peak councils and other parties with a significant interest in the outcome so that these parties could make submissions. The fact that this did not occur lends weight to Ai Group's view that the decision is not intended to have wide relevance.

[16] *United Voice v Gold Coast Kennels Discretionary Trust Pty Ltd* [2018] FWCFB 128.

Clauses 4.1 to 4.4 of the *Miscellaneous Award 2010* state:

> **4.1** Subject to clauses 4.2, 4.3, 4.4, 4.5 and 4.6 this award covers employers throughout Australia and their employees in the classifications listed in clause 14—Minimum wages who are not covered by any other modern award.
>
> **4.2** The award does not cover those classes of employees who, because of the nature or seniority of their role, have not traditionally been covered by awards including managerial employees and professional employees such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists.
>
> **4.3** The award does not cover employees:
>
> (a) in an industry covered by a modern award who are not within a classification in that modern award; or
>
> (b) in a class exempted by a modern award from its operation, or employers in relation to those employees.
>
> **4.4** The award does not cover employees excluded from award coverage by the Act.

The above exclusions were intended to very substantially limit the coverage of the *Miscellaneous Award 2010*. Ai Group was heavily involved in the proceedings that led to the making of the *Miscellaneous Award 2010* and we made detailed submissions about all of the above exclusions. Indeed some of the exclusions are based on those proposed by Ai Group.

ACBC's argument that the *Miscellaneous Award 2010* has wide coverage to unskilled employees is not sustainable.

We urge the Expert Panel to reject ACBS's proposal for a review of relativities.

Responses to Questions on Notice

1.1 Question to all parties

ACBC proposed an inquiry to determine the appropriate margins for skills and responsibilities (or work value) of the *C10 rate in the Manufacturing and Associated Industries and Occupations Award 2010* and the Level 1 graduate employee rate under the Professional Employees Award 2010.[17]

Does any other party support such an inquiry?

Ai Group's Response to Question 1.1

Ai Group strongly opposes such an inquiry. See section 7.2 above.

[17] ACBC submission, 15 March 2019 at paras 66; 105–111.

2.1 Question to all parties

The Reserve Bank of Australia recently published research on *The labour and capital shares of income in Australia* (included in the Research Reference List) which analysed the developments and causes of the declining labour share in Australia over the long term. The paper concluded that:

> **The aggregate labour share in Australia rose over the 1960s and early 1970s but has been on a gradual decline since then. In an accounting sense, the decline in the aggregate labour share over recent decades is largely because of a larger share of imputed income accruing to home owners, along with a lower labour share in the financial sector. The decline in the financial sector labour share, in turn, appears to be partly due to structural changes in the financial sector, such as financial deregulation, labour-saving technology adoption and high productivity growth. But it also may be affected by issues with measuring the output of the financial sector.**
>
> **At the same time, the aggregate capital share has risen. This is largely explained by rising profits accruing to financial institutions and rising rents paid to land owners. In turn, higher housing rents over recent decades appear to reflect a combination of higher-quality owner-occupied housing, lower interest rates and rising housing prices. Across the rest of the economy, there have been varying trends in factor shares that are largely offsetting.[18]**

All parties are invited to provide comments on the findings and implications of this research.

Ai Group's response to Question 2.1:

Ai Group agrees with the RBA that long-term structural changes in the Australian economy have resulted in an increase in the share of total factor income that can be attributed to the financial sector and to real and imputed rents earned on housing. We agree with the RBA that these long-term trends are relevant and material to trends observed in the share of total factor income that is attributed to labour. As noted by Ai Group at page 32 of our first submission to the AWR this year:

> "In the longer term, the rise (and role) in the shares of total factor income derived from (or accruing to) financial corporations and 'dwellings owned by persons' should also be considered. These categories of income do not fit neatly into the traditional dichotomy between company profits v wage income; financial corporations income includes the returns earned on our (massively growing) pot of national superannuation funds which are mainly paid out to retirees, while 'dwellings owned by persons' includes the real and imputed rents paid to the nation's individual home owners. Both of these categories of income have been rising slowly but steadily over time, in size and in importance to aggregate household incomes. Much of the income from these categories accrues to households that are no longer working, but many working households also derive some of their income from one or both sources. Together, these two categories accounted for 14.8% of total factor income in 2018, up from around 10% prior to the last recession in 1991."

[18] La Cava G (2019), The labour and capital shares of income in Australia, RBA Bulletin, March.

Recent research by staff at the Department of Jobs and Small Business seeks to adjust the share of total factor income attributed to labour, so as to exclude the effects of real and imputed income from housing. After making these adjustments, they found that "net of depreciation and housing, the wage share in Australia was around its historical average at the end of our period. We further estimate the wage share for the business and private sectors, with similar results". [19]

Taken together, these research findings confirm that the changes that have been observed in the labour share of total factor income are the result of complex long-term shifts in the Australian economy. They are not the result of a simple shift in income shares from labour (employees) to capital (business owners). Instead they show that a greater share of national income is going to neither labour nor capital, as traditionally understood. The traditional dichotomy between labour income (employees) and capital income (businesses) is too simplistic to capture these changes in Australia's national income streams.

2.3 Question to the Australian Government, ACCI, Ai Group and the ACTU

GDP per capita has risen, over the past year, by 0.7 per cent, whereas RNNDI per capita has risen by 2.1 per cent. The difference appears to have arisen principally from improvements in the terms of trade. Further, mining profits have risen by 26.3 per cent while non-mining profits have risen only by 2.5 per cent in the year to December 2018; and the wages share of total factor income has fallen by 11.3 percentage points in mining and by 0.5 percentage points in non-mining over the past two years.

How should variations in the terms of trade, and the very different experiences of the mining sector and the rest of the economy, be taken into account in setting the NMW and modern award minimum wages?

Ai Group's response to Question 2.3:

Ai Group urges the Commission to take into account the very large differences between Australia's mining and non-mining industries, with regard to their recent experience, performance and relevance to low-wage incomes. This is important for the following reasons:

- The gap in growth rates, incomes and business profitability between mining and non-mining industries is large and it is still growing larger. The mining industry has grown rapidly over the past decade, far outpacing any other Australian industry. Large-scale investment has increased capacity and output volumes, with further boosts from global commodity prices (as reflected in the terms of trade). Global commodity prices were high again in 2018 but they are volatile and notoriously difficult to forecast with accuracy;

- The mining industry accounted for 38% of nominal company gross operating profits in 2018 (in the ABS *Business Indicators* dataset) but just 2% of the national workforce (251,000 people in Feb 2019, trend). Workers in the mining industry have the highest average weekly earnings (AWOTE) of any industry. The mining industry directly employs very few low wage

[19] Declan Trott and Leo Vance, "Adjusting the Australian wage share for depreciation, housing, and other factors, 1960-2016" *Department of Jobs and Small Business Staff Discussion Paper Series*, 7/03/2018.

workers. This disconnection means that mining company profits cannot be redirected to low-wage workers via the workplace or the wage system. Such workers might benefit indirectly and in the long-term however, via mining company shares owned by them or by their superannuation funds;

- The performance of the mining industry is not indicative of the performance of industries that employ low wage workers in Australia. The conditions that prevail in the industries that employ low-wage workers should be examined specifically and separately to conditions in mining.

Ai Group provided further information about these important and relevant differences in industry performance in our first submission at pages 12-14 and 33-34, including the following key points:

> "The ABS *Business Indicators* data reveal a growing gap between mining and non-mining industry performance with regard to company sales, wages and profits growth (table 2 and chart 7). In Q4 2018, the mining industry increased its nominal sales by 22.6%, its company GOP by 26.3% and its total wages by 7.0% p.a. In contrast, for non-mining companies**, aggregate sales rose by 3.9% p.a., aggregate GOP rose by 2.5% p.a. and aggregate wages rose by 3.4% p.a. In the non-mining industries, all of the annual increase in aggregate company GOP occurred in Q1 of 2018 (+3.6% q/q), with falls in GOP in both Q3 (-0.2% q/q) and Q4 of 2018 (-1.0% q/q).

Table 2: Aggregate nominal company profits, business sales and wages, Q4 2018

Nominal $ per quarter Seasonally adjusted	Level $bn per qtr	Growth to Q4 2018 % q/q	 % p.a.	Share % of total	Average annual growth 10 years 2009-18, % p.a.
Mining					
Company profits (GOP)*	34.5	4.0	26.3	38.4	10.4
Business sales **	73.5	6.1	22.6	10.2	7.0
Business wages **	6.1	1.1	7.0	4.4	5.8
Manufacturing					
Company profits (GOP)*	7.8	-3.6	-2.9	8.7	0.3
Business sales **	89.3	-0.2	3.9	12.4	-1.2
Business wages **	13.3	-0.8	2.9	9.5	0.0
Non-mining industries **					
Company profits (GOP)*	55.5	-1.0	2.5	61.6	3.4
Business sales **	648.2	0.1	3.9	89.8	2.7
Business wages **	133.5	0.5	3.4	82.7	3.1
All Industries **					
Company profits (GOP)*	90.0	0.8	10.5	100	4.5
Business sales **	721.7	0.7	5.5	100	3.0
Business wages **	139.6	0.8	4.1	100	3.2

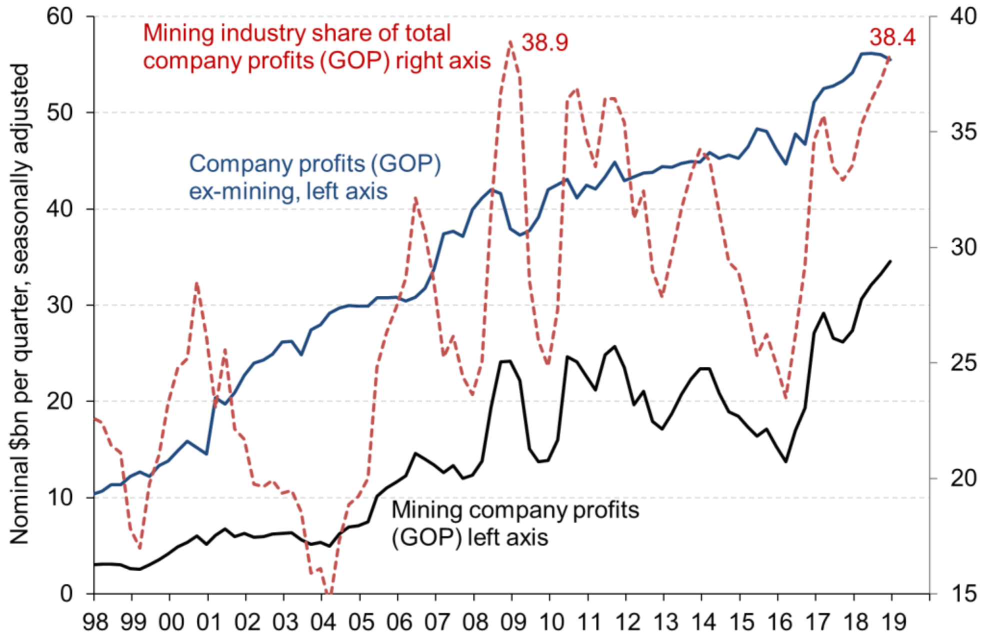
* Company gross operating profits for industries that are included in the *Business Indicators* dataset. "Selected items are excluded from company profits before income tax to provide a measure of underlying company profits. These items include interest income and expenses; depreciation and amortisation; and selected items which do not involve the production of goods and services such as net foreign exchange gains/losses, gains/losses arising from the sale of non-current assets, and net unrealised gains/losses from the revaluation of current or non-current assets".

** Nominal aggregate sales and wages for businesses in all industries that are included in the *Business Indicators* dataset, excluding healthcare and education. Source: ABS, *Business Indicators,* Dec 2018.

The contrast between mining and manufacturing profit performance is especially stark. Aggregate nominal profits for manufacturing companies fell in each of Q3 and Q4 2018, unwinding all of the modest recovery experienced in 2017 and early 2018. As of Q4 2018, aggregate GOP in manufacturing ($7.8bn) remained 23% below the industry's all-time peak in 2008 ($10.2bn). The same data show that nominal aggregate sales were up by 3.9% p.a. for the manufacturing industry in Q4 2018, but all of this rise was due to rising prices (+5% p.a.) and not volumes (-1.2% p.a.)

Looking at the longer term trends, aggregate nominal GOP for mining companies grew by an average of 10.4% p.a. over the decade from 2009 to 2018, compared to 3.4% p.a. for non-mining companies (table 2). With inflation averaging 2.1% p.a. over this ten year period, this implies average real growth of just 1.3% p.a. in non-mining GOP. Aggregate GOP in manufacturing has grown by just 0.3% p.a. over the past decade, implying a sizeable fall in real terms. The rapid growth of mining income has seen its share of total company GOP rise to a peak of 38% in 2018 (also briefly in 2008, as profits in other industries fell), up from around 23% in 2008 and 17% in 1998 (chart 7)."

Chart 7: Aggregate nominal company profits (GOP), mining and non-mining industries, 1998 to 2018



3.4 Question to all parties

The ACBC submission referred to the research report, 'New Income for Healthy Living Budget Standards for Low-Paid and Unemployed Australians'.

Chapter 4.D.(5) is titled 'Errors in the application of the budget standards research' and states that 'Table 5.17 contains significant errors in relation to the calculation of safety net income' and comment that the research 'gave a very misleading summary of the living standards of low income families with children.'[20]

All parties are invited to provide comments on the observations of the ACBC.

Ai Group's response to Question 3.4:

The general nature, as opposed to the specific details, of the claims made by the ACBC in relation to the budget standards research reinforce the cautionary views presented in Ai Group's submission to the Annual wage Review 2017-18 (at Section 5.2). For convenience our comments are reproduced below.

> "Recent research on Budget Standards presented to the Fair Work Commission[21] provides important insights into the needs of low paid households. While the study reveals a wealth of contestable methodological and measurement issues that deserve close examination, there are two sets of results that are particularly pertinent to the consideration of relative living standards and the needs of the low paid. There are:
>
> - For low-paid households there is a wide variation in the calculated adequacy of Safety net income relative to the relevant Grossed-up Budget Standard. The calculated adequacy assessed in the research for a set of household types ranges from +$61.91 to -$88.74 depending on the characteristics of the individual household. For the range of household types covered purpose of this Budget Standards research the results vary according to whether there are other adults in the household; whether other adults in the household are employed; whether there are children; and the number of children).
>
> - For each of the categories of households considered, the Safety net income is greater for low-paid households than it is for unemployed households. Moreover, even though the Grossed-up Budget Standards for each household type is lower for unemployed households than for low-paid households, the discrepancy between the Grossed-up Budget Standard and the Safety net income is greater for unemployed households than it is for low-paid households.
>
> The variations in calculated adequacy of Safety-net income for low paid households, reinforces an argument that Ai Group has being making for well over a decade: namely that, for all its virtues, minimum wage setting which does not and indeed cannot discriminate between low-wage earners according to the range of household characteristics, is ill-suited to the task of addressing the needs of

[20] ACBC submission, 15 March 2019 at para. 351.

[21] Peter Saunders and Megan Bedford, S, *New Minimum Income for Healthy Living Budget Standards for Low-Paid and Unemployed Australians,* Social Policy Research Centre, University of New South Wales, August 2017.

low-income households. Low-paid employees live in rich as well as low and middle-income households; they may or may not have children; they may or may not having other caring responsibilities; they may or may not have partners who may or may not also be in the workforce; and they, or other members of their household may have non-wage sources of income.

Certainly, minimum wage setting is a considerably less-effective social policy instrument than the broader system of income support that has developed in Australia. This system is practiced in making allowance for a very wide range of family and household circumstances.

While we welcome the Budget Standards research, we are very wary of it being used to support an argument to raise minimum wage rates to address discrepancies between calculated Grossed up Budget Standards and the Safety-net level of income for particular household types. We are particularly concerned that adjusting wage rates to address this discrepancy would raise the risks of disemployment both for this household type and for all other low-paid households including low-paid household types for which no discrepancies between calculated Grossed up Budget Standards and the Safety-net level of income is suggested.

It is instructive to note in this context that, according to the research under discussion, for any low-paid employee who, as a result of such a wage rise, failed to find work that would otherwise have be available or lost employment, both the level of Safety-net income would be lower than otherwise and the discrepancy between the level of Safety-net income and the relevant Grossed-up Budget Standard household type would be greater than if they were a low-paid household. Thus, these households would suffer both an absolute and relative deterioration in their living standards (as well as experiencing the other costs of unemployment).

Ai Group supports the suggestion offered in the research that an annual process similar to that applying to minimum wage setting also be considered for the assessment of the adequacy of the broader safety net. Indeed, we suggest that the research is more directly related to effective policy possibilities in that domain than it is in the domain of minimum wage setting.

We further note that caution should be applied to the results of Budget Standards research because of the often-considerable lags in the availability of household data and the frequency of changes to both the broader social safety net and to minimum wage rates. The research under discussion is based on calculations based on household circumstances and safety-net levels as at the June quarter of 2016. Thus, among other more contemporary considerations relevant to this year's decision, the Federal Government's new Child Care Package which are considered below and which will be operative from 2 July 2018, is not reflected in the Budget Standards research."

3.5 Question to all parties

The ACTU submits that the record rate of Australians working a secondary job recorded by the ABS in December 2018 is an indicator of financial stress. They cite the fact that many of the secondary jobs are in low-paid sectors as evidence that this increase is a result of financial stress.

Does the ACTU have any further evidence that this trend is being caused by financial stress or deprivation? What is the response of the other parties to this submission?

Ai Group's response to Question 3.5:

Drawing general conclusions about the extent of financial stress from either the rate of secondary employment or the sectors in which people work in secondary jobs is very difficult.

A key structural factor that bears on the increased rate of secondary employment is the increase in part-time work. Part-time workers often seek flexibility in their work patterns to fit with their lifestyle choices and other circumstances. A key way that flexibility can be achieved is to have more than one source of employment. Even in the absence of financial stress, it is extremely likely that the increase in part-time work would have been associated with an increase in secondary employment.

Further, people work in secondary jobs for a wide variety of reasons. Among many other possibilities, they may be students living in their family home working in a number of part-time positions to support their life styles; they may be second earners in middle to higher-income households taking advantage of multiple short-term work opportunities perhaps as part of a transition back into the workforce on a more regular basis; they may be people managing a transition to retirement; and they may be people taking a second or third job to help manage their short-term or more systematic stretched financial circumstances. Without further investigation, it would be unwise to conclude that rates of secondary employment are attributable to financial stress.

It is also worth considering the possibility that financial stress may be more closely related to an absence of opportunities for secondary employment than to higher rates of secondary employment. Of two people in similar circumstances in all other respects, the one with a secondary job could reasonably be assumed to be less likely to be experiencing financial stress than the person without the secondary position.

Finally, while the industrial sectors in which people work are very broad categories. They include high and low wage employees and they have different proportions of full and part time positions. A sector with low average wages may have higher wage rates than a sector with higher average wages and the average wages will disguise the extent of the range of remuneration within that sector. Given the shortcomings with associating secondary work with financial stress in general, the particular employment sectors in which people work in secondary jobs is not likely to be a useful indicator of financial stress.

3.6 Question to all parties

At pp. 56–58 of its submission, Ai Group sets out what it submits are the impacts of the Low and Middle Income Tax Offset announced in the 2018–19 Budget.

All parties are invited to comment on Ai Group's analysis.

Ai Group's response to Question 3.6:

Since our submission, both the major parties have committed to increase the Low and Middle Income Tax Offset. Our analysis of these commitments is set out in Section 4 above.

5.1 Question to all parties

In its submission to this Review, the AWU draws the attention of the Panel to minimum wage rates for junior employees covered by the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* which appear (in most cases) to be lower than the wage rates for award-free junior employees covered by the NMW order because:

(a) the adult rate for entry-level employees in the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* is equal to the adult NMW; and
(b) the relevant junior rate percentages in the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* are lower than those in the NMW Order.

We also note that at paragraph 23 of its submission the Australian Government states:

> ***Award minimum wages range from the national minimum wage rate of $719.20 per week ($37,398 per year) up to $3,409.83 per week ($177,311 per year, Air Pilots Award 2010). The national minimum wage rate of $719.20 per week features in 45 of the 122 modern awards.[22] In the remaining 77 modern awards, all wage rates are above the national minimum wage rate.[23]***
>
> ***Of the 45 awards, 26 express the lowest adult wage rate as both the hourly national minimum wage of $18.93 and the weekly national minimum wage of $719.20, a further 16 refer only to the weekly rate, two refer to the weekly and annual rate, and the remaining one states the lowest adult wage as an hourly amount. However, in one of these awards, workers may receive commission on top of the weekly national minimum wage, and in a further two awards, workers have shorter ordinary working hours resulting in a higher hourly wage than the hourly national minimum wage. Also, in several of the 45 awards, the lowest rate is paid as an introductory rate or a trainee rate.'***

Do other parties agree with the submission of the AWU to the effect that the Panel should vary the junior rates in the Vehicle Manufacturing, Repair, Services and Retail Award 2010 (and any other modern award where the same may issue arise)?

Ai Group's response to Question 5.1:

The AWU submission includes two tables demonstrating disparity between the rates applicable to award / agreement free junior employees to which Special National Minimum Wage 3 applies and the following categories of employee engaged under the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* (Vehicle Award):

- Unapprenticed junior employees covered by Section 1 (Vehicle Industry RS & R Employees), whose minimum rates are provided for in clause 33.7 of the Award; and

- Unapprenticed junior employees covered by Section 2 (Vehicle Manufacturing Employees), whose minimum rates are provided for in clause 52 of the Award.

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[22] AWU submission, 18 March 2019 at para. 4.

[23] Australian Government submission, 15 March 2019 at para. 23.

Rates in Section 1 (Vehicle Industry RS & R Employees)

With regard to the junior rates in Section 1 of the Award, it is important to note that Table 1 in the AWU Submission only relates to the junior rates of pay in clause 33.7(a) of the Award for the classifications referred to in clause 33.7(b). These rates are based on percentages of the Level 1 wage rate. The rates are much lower than the junior rates of pay in clause 33.7(c) for the classifications set out in clause 33.7(d), which are based on percentages of the Level 4 rate.

Rates in Section 2 (Vehicle Manufacturing Employees)

With regard to junior rates in Section 2 of the Award, as the Fair Work Commission is aware Ai Group and the AMWU have been involved in lengthy negotiations to implement the Commission's decision to incorporate the manufacturing stream of the Vehicle Award into the *Manufacturing and Associated Industries and Occupations Award 2010* (Manufacturing Award). The latest 4 Yearly Review exposure draft of the Manufacturing Award incorporates the outcome of the negotiations between the parties, including in respect of junior rates of pay.

The parties have agreed that, from the time that the new Manufacturing Award comes into operation, the junior rates of pay that currently apply under the existing Manufacturing Award will apply to the vehicle manufacturing employees who become covered by the award. These rates are calculated on the C13 rate and exceed the rates in Special National Minimum Wage 3.

Ai Group would not oppose the wage rates in Special National Minimum Wage 3 applying to junior vehicle manufacturing employees covered by the Vehicle Award, from 1 July 2019 up until the time when the new award comes into operation. The latest 4 Yearly Review exposure draft of the Vehicle Award does not contain a schedule of wage rates for junior vehicle manufacturing employees because the vehicle manufacturing stream does not appear in the exposure draft.

It is important that any increases in junior rates under the Vehicle Award not set a precedent for rates in other awards or rates for other types of employees

Ai Group is unaware of any other awards which contain junior rates of pay that are below the rates in Special National Minimum Wage 3, but we have not reviewed the rates in all other awards. It would be inappropriate for the Panel to vary the junior rates in any other award in this manner without an understanding of which awards are affected and whether there are any award-specific, industry-specific or occupation-specific reasons which justify the existing pay rates.

Also, Ai Group does not accept the proposition that Special Minimum Wages that are based on proportions of wage rates for certain adult employees should, in all circumstances, be no less than the wage rates for similar types of employees who are award covered. For example, Special Minimum Wage 4 and Special Minimum Wage 5 are based on proportions of wage rates in the *Miscellaneous Award 2010*. There are many examples where the rates for adult employees covered by the *Miscellaneous Award 2010* are higher than rates of pay for adult employees under various other awards. Therefore, it is not surprising that the wage rates in a Special Minimum Wage that are based on a proportion of the wage rates in the *Miscellaneous Award 2010* would be higher than the award wage rates for some award-covered employees.

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