Working for business.
Working for Australia

2018-19 Annual Wage Review

First Submission of the Australian Chamber of Commerce and Industry 15 March 2019

Australian
Chamber of Commerce
and Industry

Australian Chamber of Commerce and Industry

WORKING FOR BUSINESS.
WORKING FOR AUSTRALIA
Telephone 02 6270 8000
Email info@australianchamber.com.au
Website www.australianchamber.com.au

CANBERRA OFFICE
Commerce House
Level 3, 24 Brisbane Avenue
Barton ACT 2600 PO BOX 6005
Kingston ACT 2604

MELBOURNE OFFICE
Level 2, 150 Collins Street
Melbourne VIC 3000

SYDNEY OFFICE
Level 15, 140 Arthur Street
North Sydney NSW 2060
Locked Bag 938
North Sydney NSW 2059

ABN 85 008 391 795

Australian Chamber of Commerce and Industry

CONTENTS

Australian Chamber of Commerce and Industry

1. INTRODUCTION

1. This submission has been prepared by the Australian Chamber of Commerce and Industry (Australian Chamber) in consultation with our members to assist the Expert Panel (Panel) in conducting its 2018-2019 annual review of the national minimum wage (NMW) and modern award minimum wages.

2. As expanded on below (at 1.2), **the Australian Chamber recommends an increase in the National Minimum Wage and award wages not exceeding 1.8%.**

3. The balance of economic, labour market, agreement making and other considerations, along with evidence on needs and living standards, make this a year in which there should not be a sizeable or inflated increase in the NMW and a commensurate percentage increase in higher minimum rates of pay in modern awards.

4. The balance of evidence and in particular downwards revisions, risks and uncertainties in the economy and its outlook, favour greater caution and moderation in the quantum of increase awarded compared to the decisions of recent years. This is not a year in which the level of increase awarded should again be inflated as it was in 2017 and 2018, the evidence, consistent with how the Panel approaches these matters under the statute, does not support such a conclusion being repeated.

5. The 'balance of interests' and fairness considerations addressed by the Panel[1] do not demand an outcome of the level of previous years. Economic performance and forecasts in particular are materially different to those 12 months ago (see Chapters 2 and 3), and as the Panel made clear in 2018:

> *[46] In assessing the various economic considerations, we take into account both actual data and forecasts. The actual indicators are the primary consideration because, by their nature, they are more reliable than forecasts. But it is also appropriate to have regard to future projections that cast some light on the circumstances expected to apply during the period when any adjustment will operate…*

6. The circumstances in which the Panel's decision will operate are materially different to those of 2019 and 2017, and require a very different approach.

1.1 Core Contentions

7. **Chapter 2, Economic Forecasts**. In 2018, the Panel found that "*compared to the position at the time of the 2016–17 Review, the economic indicators now point more unequivocally to a healthy national economy and labour market*".[2] The Panel concluded in 2018 that economic forecasts pointed to improved economic conditions, and awarded a 3.5% increase.[3] A key basis for the 3.5% increase awarded last year was:

[1] [2018] FWCFB 3500, [17]
[2] [2018] FWCFB 3500, [60]
[3] [2018] FWCFB 3500, [206]

> *[72] The economic forecasts from the Australian Government, as presented in the 2018–19 Budget, the RBA and the International Monetary Fund (IMF) all point to improving economic conditions.*

8. Such a conclusion is not available to the Panel in 2019:

   a The 2018 forecasts were not borne out, and the performance of the economy has been weaker than expected.

   b By 2019, forecasts have been revised downwards pointing to a weaker economy.

   c This favours a genuinely more moderate (i.e. lower) minimum wage increase in 2019.

9. **Chapter 3, Economic Considerations**: The balance of economic considerations, along with the other matters the Panel considers, does not favour a further substantial uprating of minimum and award wages well in excess of inflation in 2019.

10. There has been a dramatic weakening in GDP growth,[4] inflation remains low, and the second half of 2018 saw various indications of weakness. Labour productivity has fallen and is not moving in sync with capital productivity;[5] productivity growth is being sustained by investment and multi factor productivity is flat. Labour productivity differs from industry to industry, but a steady downwards spiral prevails overall.

11. Prices continue to track at the bottom of, or below Reserve Bank of Australia (RBA) target levels, underscoring not only the weakness of the economy, but also a stability in employee needs and expenditures.[6] There is no case to uprate minimum wages in excess of changes in prices on this occasion, particularly not by a significant amount. Small businesses continue to be disproportionately impacted by the outcome of these reviews.[7]

12. **Chapter 4, Wages**: Contrary to perceptions, wages are growing in excess of prices.[8] There is some recovery in wages growth, as measured by the Wage Price Index (WPI), however wages growth in award reliant sectors does not favour any inflated or significant increase, such as that awarded in 2018.[9]

13. The Panel has a responsibility with regard to minimum wages, not average wages or wages payable to those on above award or individual arrangements.

14. There is no basis to inflate the outcome in this matter in any attempt to stimulate wider wage growth across the economy or as a catalyst to wages growth across the community. This would not be consistent with the Panel's role under the FW Act, it would not work and it would have damaging unintended consequences.

[4] See Section 3.1
[5] See Section 3.2
[6] See Section 3.4
[7] See Section 3.6
[8] See Section 4.4
[9] See Section 4.3

15. **Chapter 5, Labour Market**: Jobs growth and full time jobs growth in particular, is strengthening, and the RBA is forecasting unemployment to fall further. However, too many Australians remain out of work or underemployed. Unless interrupted (which is a foreseeable risk if there is an excessive uprating of minimum wages), the labour market is expected to place healthy pressures upon wages growth.

16. **Chapter 6, Living Standards / Needs of the Low Paid**: Disposable income of NMW-reliant households has increased for all household types over the past year. Overall, income inequality is lessening, with income growing faster for household at the bottom of the income distribution than at the top. While the minimum wage is important for maintaining real disposable incomes of many low-income households, the tax and transfer system should the primary mechanism for addressing wealth inequity and poverty income redistribution to low-income households.

17. **Chapter 7, Agreement Making**: Enterprise agreement numbers (new agreements and the total number of agreements in force) are in continuing decline. Any significant / above inflation increase to award based minimum wages risks a negative impact and creating further disincentives to bargain.

18. In addition:

    a Australia is a high minimum wage economy, and will remain so. The question in this matter is how much minimum wages should be uprated by in the current and foreseeable climate, and consistent with the range of statutory considerations weighed by the Panel. The level of increase employers commend to the review will in no way see any minimum wage covered employee 'lose' or fall behind.

    b This review is being undertaken in the midst of a maelstrom of political claims and counterclaims on wages and minimum wages, and calls to change the rules under which these reviews are undertaken. For over a century the FWC (however named) has been diligent in applying the law to evidence, and blocking its ears to the irrelevant background noise of wider political debate. We have no doubt this will again be the case in this review and that calculated criticisms of minimum wage levels from any quarter will have no impact on the level of increase awarded.

    c Many Australians are concerned at the slow rate of growth of their pay packets. Recent years have seen slower rates of aggregate or economy-wide wages growth compared to previous years / community expectations. Many perceive the value of their wages as going backwards, and not keeping pace with increases in prices; a perception that is not in fact borne out by data showing real wage increases at the aggregate or economy-wide level.

    d There is however no basis to either explicitly or implicitly attempt to use the minimum wages safety net as some kind of stimulus or catalyst for community wide wages growth.

    e Of course Australians are concerned that wages growth is below longer term trend levels, as are working people in the UK, US and other OECD countries. Low wage growth is a global phenomenon, not unique to Australia. As the RBA tells us, something structural is going on, which is unlikely to be coming from the workplace relations system.

f A minimum wage[10] that applies to just 23% of employees, is not a tool that could be used to counteract an economy wide macroeconomic trend. This is not 1975, when the system was highly centralised and arbitrated wages were a direct lever to increase community wide wages. The consequences of attempting such a course are not properly understood; it would pose an unacceptable risk of damage to jobs, the economy and small businesses.

1.2 Position / Proposed Minimum Wage Adjustment

19. **Quantum**: The Australian Chamber does not oppose an increase in the National Minimum Wage and commensurate minimum adult award rates of pay[11] of not more than **1.8%** on this occasion.

20. From the first full pay period commencing on or after 1 July 2019, minimum weekly wages should be increased by not more than **1.8%**, with commensurate increases in hourly rates on the basis of a 38-hour week.

21. **Commencement**: Consistent with recent decisions:

    a. Any increase awarded in this review should apply from the first full pay period commencing on or after 1 July 2019. Looking again at [490] of the 2018 Decision[12] we recommend an addition to the wording used to hand down the decision's commencement as follows:

    > *[490] The outcome of this Review in relation to modern award minimum wages is that from the first full pay period commencing on or after 1 July 2019 minimum weekly wages are increased by X.X per cent, with commensurate increases in hourly rates on the basis of a 38-hour week.*

    b. Panel members will recall that was the traditional formulation for the awarding of changes in pay and conditions. The re-addition of the verb "commencing" will remove any scope for ambiguity.

22. **Modern award minimum wages for junior employees, employees to whom training arrangements apply, employees with disability and piece rates**: As set out at [454] of the 2018 Decision,[13] the Panel is required to review modern award minimum wages, including wages for junior employees, employees to whom training arrangements apply, employees with a disability, and piece rates.

23. Approaches to such subsidiary and flow on matters should be as per the previous, 2018 decision in Sections 5 and 6. Subject to members of chamber network engaging with such considerations in detail in relation to particular modern awards:

[10] And linked award minimum wages.
[11] As per the application of the preceding increase as set out at [2018] FWCFB 3500, ¶[490]
[12] [2018] FWCFB 3500
[13] [2018] FWCFB 3500, p.115

a. Special national minimum wages for employees with a disability should maintain the approach in [489(b)] and [494] of the 2018 Decision, and as otherwise addressed in Chapters 5 and 6 of the 2018 decision.[14]

b. Wages provisions for award/agreement free junior employees should maintain the approach in [489(c)] and [492] of the 2018 Decision.

c. The apprentice wage provisions and the National Training Wage Schedule in the Miscellaneous Award 2010 should maintain the approach in [489(d)] of the 2018 Decision.

d. The casual loading for award/agreement free employees should continue to be 25%, maintaining the approach in [489(e)] and [493] of the 2018 Decision.

e. Arrangements for transitional instruments should maintain the approach in [495] of the 2018 Decision.

1.3 Why this level of increase?

24. The Panel has rejected any automatic formula or target for minimum wage increases. It has also rejected the ACTU's claim for a 'living wage' pinned to a particular proportion of the median wage in the Australian community; a proposal that has come back into sharp focus in the days leading up to the lodgement of these submissions (expanded on at 1.4).

25. In its 2017 Decision the Panel found / recalled[15] that:

> *[32] In the Annual Review 2016–17 Preliminary decision (the 2016–17 Preliminary decision), the Panel considered a proposal advanced by the ACTU, United Voice and others that the Panel adopt a medium-term (4-year) target for the NMW, set at 60 per cent of the median (adult) ordinary time earnings. Based on stated assumptions regarding increases in the Consumer Price Index (CPI) and real median wage growth, United Voice estimated that, to reach the target for the NMW of 60 per cent of median adult ordinary time weekly earnings by 2020, the NMW would have to increase by 6.5 per cent over each of the next 4 years, providing a total increase of $194.35 The submissions advanced in support of the proposal argued that a medium-term target was necessary to assist the Panel with its consideration of the relative living standards and needs of the low paid, by addressing inequality, particularly the minimum wage relative to median earnings.*
>
> *[33] As mentioned in the 2016–17 Preliminary decision, it was uncontroversial that in the context of a particular Review the Panel cannot 'bind' future panels in subsequent Reviews. It followed that any attempt to adopt a 'hard' or binding medium-term target for the NMW would be ineffective (even if it were accepted that the Panel had power to adopt such a target). The issue then became whether any useful and appropriate purpose would be served by adopting a more 'flexible' medium-term target of the type described by the ACTU and United Voice.*

[14] [2018] FWCFB 3500, pp.113-122
[15] From its preceding *Preliminary Decision,* [2017] FWCFB 1931.

> *For the reasons set out in the 2016–17 Preliminary decision we thought not and accordingly, we rejected the adoption of a medium-term target for the NMW, for the following reasons:*
>
> > *'Those supporting a medium-term target for the NMW do so principally for the reason that they believe a target would increase the weight given to the requirements for the Panel to set rates that 'establish and maintain a safety net of fair, relevant and enforceable minimum wages'; and to consider the relative living standards and the needs of the low paid' as the Panel considers the full range of matters that it is required to take into account. Those who oppose a medium-term target share this view, that such a target would give greater weight to these criteria, and oppose it on those grounds (among others)…*
> >
> > *As we have mentioned, no particular primacy is attached to any of the considerations identified in the modern awards objective (s.134(1)(a)–(h)) or in the minimum wages objective (s.284(1)(a)(e)). The adoption of the proposed target would, in our view, have the effect of elevating one statutory consideration ('relative living standards and the needs of the low paid') above all others on an ongoing basis, rather than requiring consideration of that matter in the social and economic context of each review and weighting it accordingly relative to the other considerations. As we have mentioned while the relevant statutory considerations must be taken into account it is important to bear in mind that they inform the modern awards objective and the minimum wages objective, but they do not themselves constitute the relevant statutory objectives.'*
>
> *[34] In essence, we did not adopt the medium-term target proposal because to adopt such a target would effectively elevate one statutory consideration ('relative living standards and the needs of the low paid') above the other considerations we are required to take into account.*

26. The Australian Chamber supports this approach:

    a The Panel undertakes this review based on an annual consideration of all the relevant factors the *Fair Work Act 2009* (FW Act) directs it to, and it must do so each year.

    b The Panel must take into account the full range of statutory considerations, not any single consideration and certainly not solely the needs of the low paid.

27. However, there should be no barrier to any party deriving its nominated 'position' figure from data, or any indicator, provided that:

    a That rate is consistent with merits what the Panel can award based on the range of considerations under the FW Act.

    b That position does not elevate one consideration above all others (which the Panel has found it cannot do).

c The Panel is not being asked to adopt a multi-year or ongoing target that would see the reviews become mechanistic or simple exercises in applying a mathematical formula.

28. Our 1.8% position is equal to and derived from the headline rate of inflation to December 2018, the latest available when our network met to determine its position in this review.

29. This is not a proposal to return to year-on-year indexation, or any request for a multi-year approach (which the Panel has clearly rejected). Rather it arises from the logical series of questions employer representatives ask in addressing these reviews:

a Do economic and labour market considerations, and feedback from the businesses we represent (particularly smaller enterprises that disproportionately pay minimum wage rates) make this a year in which we should oppose any increase in minimum wages? YES/NO

b If there is to be an increase, do economic and labour market considerations, and feedback from the businesses we represent (particularly smaller enterprises) make this a year in which there is any basis for minimum wage raises to exceed increases in prices? YES/NO

c If there was to be a minimum wage increase in excess of increases in prices, what should be it, and how should it be determined?

30. In 2019, our decision making process exhausted after two of these three stages. We determined that this was a year in which there can and should be an uprating in the NMW and award minimum wages, but it is not a year in which such an increase should exceed changes in prices / the increase in incomes coming in the door of businesses in the consumer sector. Some employer representatives reached differing positions on the quantum of increase.

31. For the reasons set out throughout this submission, the Australian Chamber argues that the merits and the balance of statutory considerations favour an increase in 2019 at or around measured changes in prices on an annual basis (not more than 1.8%).

a The minimum wage should not go backwards in terms of purchasing power, but equally any further attempted redistribution or increase in excess of price rises would be damaging and unmerited in light of prevailing economic uncertainty and the performance of the economy.

b Changes in employee needs and comparative living standards, when weighed with other considerations do not demand or justify a level of increase in excess of inflation.

c Taking into account the balance of considerations, including economic and jobs considerations, and needs and relative living standards, this would be an appropriate and merited level of increase.

32. The art/science of determining wage claims and counterclaims, to say nothing of the decisions ultimately handed down over many years, does not always 'show its workings' or make clear how rates are derived. We have been a step more transparent, and also maintain that our chain of reasoning in regard to minimum wage increase levels is one that the Panel should follow consistent with the FW Act. We are in no way seeking to have the Panel set out any multi-year or target approach.

33. This stands in stark and direct contrast to the 'living wage' model being pursued by the ACTU, which would see the Panel abandon what the Act requires of it annually, in favour of adopting a multi-year target (see 1.4, below).

1.4 What is modest?

34. The Panel concluded as follows in its previous decision:[16]

> *[260] We expressed the view in the 2016–17 Review that the international research, particularly that from the UK, suggested that the Panel's past assessment of what constitutes a 'modest' increase may have been overly cautious in terms of its assessed dis-employment effects. This influenced our decision to increase the NMW and modern award minimum wages in modern awards by 3.3 per cent. We also stated '[t]he level of increase we have decided upon will not lead to inflationary pressure and is highly unlikely to have any measurable negative impact on employment.'*

35. The Panel has increased minimum wages since 2012 by an average of 2.89%, this has been an average real annual increase of 0.84% (i.e. the average annual differences between minimum wage increases and price increases).

36. Labels can be subjective, and important messages from review participants to the Panel, and from the Panel to review participants can be lost when subjective labels are contested.

37. That said, minimum wage increases significantly in excess of both inflation and wages growth generally cannot be characterised as modest or cautious under any reckoning. However, to go back to our core point, regardless of the labels or characterisation, there is no merit or case for another increase of the magnitude of 2017 and 2018.

38. 2019 is a time for genuine caution and moderation, and for a more balanced and sustainable minimum wage increase.

1.5 Evidence of detriment

39. The previous Decision stated that:

> *[80] We remain of the view that modest and regular minimum wage increases do not result in disemployment effects or inhibit workforce participation. Recent Australian research published by the RBA (Bishop 2018), discussed in Chapter 2, provides support for our view. Recent research in the UK continues to support this conclusion. The position is more contested in the US.*
>
> *[81] A number of parties submitted that the increase of 3.3 per cent awarded in last year's Review was too high in the prevailing circumstances. No party was able to identify any economic indicator which demonstrated any discernible detriment arising from last year's decision. However, we accept that the 2016–17 Review increase may have longer-term effects which are not yet discernible.*

[16] [2018] FWCFB 35000, p.69.

40. We are confident the Panel is not acting on an assumption that it can stretch minimum wages, and keep stretching minimum wages until such a point that things start to break. We do not read this conclusion from 2018 as the Panel saying it will uprate minimum wages by high amounts until it observes actual detriment through some macroeconomic indicator that can be causally proven to have risen / fallen based on the minimum wage.

    a The Panel needs to be more cautious in concluding that "modest and regular minimum wage increases do not result in disemployment effects or inhibit workforce participation".

    b Whether an increase is in fact modest is contextual, and employers did not attach such a characterisation to the 2017 and 2018 increases.

    c Alternatively, if minded to maintain this generalisation, the Panel should conclude that a "modest"[17] increase will look different in 2019 than it did in 2018 and 2017. This may be a valid conclusion *ceteris paribus*, but there is increased economic uncertainty and downwards revisions that change circumstances markedly.

    d "*No party was able to identify any economic indicator which demonstrated any discernible detriment arising from last year's decision*".[18] This becomes irrelevant where circumstances change markedly in a negative direction. Risks of "*discernible detriment"* cannot be ruled out in the economy of 2019-20, simply because they were not observed in the materially different, stronger economy of 2018-19.

41. The Panel's previous approach is also retrospective in focus, predicated on an assumption that the setting of the prospective increase should be determined in some substantial part by the experience and effect of awarding the previous increase. This must be a *ceteris paribus* assumption, and (without in any way conceding its validity) could only proceed where there is no material or significant change in one or more of the indicators / factors the Panel has regard to. Where circumstances change, such an approach needs to change.

42. Circumstances have changed in 2019. As stated, employers do not support another increase at the level of recent years. This would not be consistent with the evidence, or with the performance of the economy in various of the areas the Panel looks at in these matters.

43. Evidence from the UK and US also needs to be treated with caution, and extrapolation to Australia and these reviews interrogated closely. Factors favouring caution and distinguishing this research unless proven directly relevant and translatable include:

    a Australian minimum wages being uprated annually (and historically more frequently) where in the US they can go years without uprating.

    b Differing bites of minimum wages on market rates in different national systems (linked to different foundations for the rate and different regularity of upratings).

[17] [2018] FWCFB 3500 at [80].
[18] [2018] FWCFB 3500 at [81].

c Differences between minimum rates that have been in place for a century (Australia), versus those which are comparatively new (UK) and are effectively being stretched to test their impact on employment, business viability etc.

1.6 A 'Living Wage' Target

44. We will read the ACTU submission closely and reply appropriately by 12 April.

45. However, in the lead up to lodging this submission it has been revealed that:

a Unions will seek a $43 per week increase in the NMW / award minimum wages (6%) in 2019.[19]

b This is being prosecuted on the basis that "*if successful,* [unions would seek to have minimum wages increase] *by a further 5.5 per cent next year to bring the minimum wage to 60 per cent of median earnings*". i.e. this is a multi-year proposal.

46. Such an excessive / ambit increase in 2019 cannot be reconciled with the economic, labour market, and needs considerations weighed in these reviews, and those set out in Australia's international obligations.

47. The merits of this case, the performance of economy and labour market, and the needs of the low paid, could not lead to the awarding of an increase at the level sought by the ACTU. The merits of the case will not favour an increase 2.5 percentage points higher than the 2018 decision, which was itself above the average increases under the FW Act to date, and the highest increase for some years.

48. This is an exaggerated, ambit claim from unions grounded firmly in the theatre and politics of the moment. The Panel and the preceding FWC minimum wage setters have consistently disregarded the theatre and politics surrounding these decisions. At various points, exogenous pressures have included calls from employers, unions and competing political parties to change the rules under which minimum wages are varied, just as the tribunal was arbitrating competing wage claims. We have no doubt the Panel will close its ears to the background noise of political debate.

49. We do need to address the second part of the ACTU's minimum wage blueprint (the two year plan), whether it is solely for media and political consumption this week or is explicitly set out in the unions' written submission (which we will have accesses to on 15 March). This has already been ruled out.

50. In essence, the Panel has already determined that: [20]

a The range of considerations it is required to take into account calls for the exercise of broad judgment rather than a mechanistic approach to fixing minimum wages.[21]

b It must consider the evidence in each annual review, and not adopt a multi-year target.

[19] "Unions want $43-a-week more for the lowest paid", *The Australian,* Ewan Hannan, 13 March 2019
[20] [2017] FWCFB 1931
[21] [2017] FWCFB 1931, [58]

c It cannot 'bind' future panels in subsequent reviews.[22]

d No particular primacy can be given to one statutory considerations over another.[23]

e A medium term target would be of "little assistance", given the "legislative context and the Panel's approach to its statutory task".[24]

f Various international and domestic precedents previously cited by unions in support of the adoption of a (multi-year) target are "unpersuasive".[25]

51. The proposal for a multi-year target (a NMW set to 60% of median wages and commensurate increases for those on higher rates) has already been heard and rejected by the Panel.

52. There is no basis for the Panel to disturb these conclusions or embark on a level of increases from 2019 that would be inconsistent with its clear conclusions in 2017. The outcome of this review should not be a $43 per week / 6% increase in the NMW / award minimum wages.

1.7 This Submission

53. This submission is in 8 chapters:

Chapter 1 – Introduction

Chapter 2 – Economic Forecasts

Chapter 3 – Economy

Chapter 4 – Wages

Chapter 5 – Labour Market

Chapter 6 – Needs of the Low Paid and Living Standards

Chapter 7 – Agreement Making / Collective Bargaining

Chapter 8 – Other Considerations: Including changes in penalty rates[26], equal remuneration[27] and the gender pay gap[28].

[22] [2017] FWCFB 1931, [45]
[23] [2017] FWCFB 1931, [66]
[24] [2017] FWCFB 1931, [59]
[25] [2017] FWCFB 1931, [74]
[26] [2018] FWCFB 3500, [93]
[27] [2018] FWCFB 3500, [411]
[28] [2018] FWCFB 3500, [418]

2. ECONOMIC OUTLOOK

1. While the Australian economy showed signs of strengthening across a range of measures, such as GDP and employment growth in 2018, a number of persistent macroeconomic challenges remain.

2. Current high levels of household and net foreign debt, weak multifactor productivity growth and Australia's lagging international competitiveness pose both immediate and medium to long-term risks to the health, sustainability and stability of the Australian economy. This is occurring against a backdrop of a slowing global economy with significant structural imbalances, especially global debt.

3. The balance of these economic considerations favour a moderate rather than expansionary approach in this review and in the uprating of minimum wages, and favour a minimum wage increase, but not a further significant increase in real terms.

2.1 Global forecasts

4. The previous decision pointed to various global forecasts as indicative of "improved economic conditions".[29] However, this conclusion could not be sustained this year given changing circumstances.

5. Despite a very positive outlook for global economic growth in 2018, the outlook for 2019 does not look quite as rosy, with forecasts of global expansion weakening considerably.

6. As recently as October 2018, the IMF's World Economic Outlook (WEO) forecast was projecting global growth of 3.7% in 2019.[30] However, weaker than expected performance in some economies, notably Europe and Asia has moderated this forecast down to 3.5% in 2019, with only a slight improvement to 3.6% expected in 2020.[31]

7. The IMF had already revised down global growth forecasts for 2019 and 2020, in part due to the negative effects of tariff increases by the United States and China earlier in 2018. Further downward revisions since October 2018 reflect softer momentum in the second half of 2018, due to natural disasters in Japan, new fuel emission standards in Germany, and concerns about sovereign and financial risks in Italy.

8. Similarly, the OECD view is that the global expansion has peaked, projecting global GDP growth to ease gradually from 3.7% in 2018 to around 3.5% in 2019 and 2020 in its November forecasts and then downgrading the forecast to 3.3% in 2019 and 3.4% in 2020 in its January interim update.[32]

[29] [2018] FWCFB 3500, [207] – [208]
[30] International Monetary Fund, *World Economic Outlook, October 2018: Challenges to Steady Growth.* https://www.imf.org/en/Publications/WEO/Issues/2018/09/24/world-economic-outlook-october-2018.
[31] International Monetary Fund, *World Economic Outlook, January 2019: A Weakening Global Expansion.* https://www.imf.org/en/Publications/WEO/Issues/2019/01/11/weo-update-january-2019.
[32] OECD Economic Outlook, analysis and forecasts, Editorial: *Growth has peaked – Challenges in engineering a soft landing.* 21 November 2018 http://www.oecd.org/economy/outlook/growth-has-peaked-challenges-in-engineering-a-soft-landing.htm; and OECD Interim Economic Outlook Projections 6 March 2019. http://www.oecd.org/eco/outlook/economic-outlook/

9. The OECD also cautions that outcomes could be weaker still if downside risks materialise.[33] These include further moves by the United States and China to raise barriers on bilateral trade, a "no-deal" Brexit, the slowdown in China being even greater than anticipated and a deeper contraction in Turkey, all of which will hit output in these economies, with adverse effects on global growth and trade.

10. This fall-off in global forecasts is illustrated in material provided by the FWC, through a comparison of the Government's Budget forecasts from May 2018 presented in the June 2018 decision and the 2019 Statistical Report based on the Government's Mid-Year Economic and Fiscal Outlook from December 2018.

11. Turning firstly to the 2018 Decision and its 'Budget Forecasts of International GDP Growth':

2018 Decision[34]

Table 2.11: 2018–19 Budget forecasts of international GDP growth

	2017 (actuals)	2018 (forecasts)	2019 (forecasts)	2020 (forecasts)
World	3.8	3¾	3¾	3¾
Major trading partners	4.6	4¼	4¼	4¼

Note: World growth rates are calculated using GDP weights based on PPP, while growth rates for major trading partners are calculated using export trade weights.

Source: Statistical report, Table 12.1; Australian Government, *Budget Paper No. 1: Budget Strategy and Outlook 2018–19*, Canberra, p. 2-10.

2019 Statistical Report[35]

Table 13.1: 2018–19 Mid-Year Economic and Fiscal Outlook, international GDP growth forecasts

	2017 (actuals)	2018 (forecasts)	2019 (forecasts)	2020 (forecasts)
World	3.7	3¾	3¾	3¾
Major trading partners	4.5	4¼	4	4

Note: World growth rates are calculated using GDP weights based on purchasing power parity (PPP), while growth rates for major trading partners are calculated using export trade weights.

Source: Australian Government, *Mid-Year Economic and Fiscal Outlook 2018–19*, Canberra, p. 16.

12. The comparison shows a decrease in the 2019 and 2020 forecasts of GDP growth of our major trading partners of ¼ a percentage point.

13. Turning then to the second of the international forecasts examined by the Panel, 'IMF Real GDP Growth Forecasts':

[33] OECD Economic Outlook, analysis and forecasts, Editorial: *Growth has peaked – Challenges in engineering a soft landing.* 21 November 2018 http://www.oecd.org/economy/outlook/growth-has-peaked-challenges-in-engineering-a-soft-landing.htm
[34] [2018] FWCFB 3500, Table 2.10, p.59
[35] Statistical Report, p.54

2018 Decision[36]

Table 2.10: IMF real GDP growth forecasts

	2017 (estimates)	2018 (projections)	2019 (projections)
Australia	2.3	3.0	3.1
Advanced economies	2.3	2.5	2.2
World	3.8	3.9	3.9

Note: Year-on-year percentage changes shown. World and domestic economy growth rates are calculated using GDP weights based on purchasing power parity (PPP).

Source: Statistical report, Table 12.2; IMF (2018), *World Economic Outlook*, April,

2019 Statistical Report[37]

Table 13.2: IMF real GDP growth projections

	2018 (estimates)	2019 (projections)	2020 (projections)
Australia	3.0	2.7	2.6
Advanced economies	2.3	2.0	1.7
World	3.7	3.5	3.6

Note: Data for Australia from October 2018. Year-on-year percentage changes shown. World and domestic economy growth rates are calculated using GDP weights based on PPP.

Source: IMF (2019), *Australia: staff report for the 2018 Article IV consultation*, IMF Country Report No. 19/55, 18 January, released 21 February; IMF (2019), *World Economic Outlook Update*, January,

14. These show a larger downgrade to the forecasts, with the 2018 and 2019 projections for advanced economies revised down 0.2%, and the projections for the world down 0.2% and 0.4% respectively. Based on the revisions to the IMF forecasts between November and March, it is highly likely the Government's forecasts will be revised down further when it delivers its Budget on 2 April 2019.

15. This adds up to a situation in which:

    a Global consensus of forecasts are being revised downwards, often significantly.

    b There are considerable unknowns.

    c The unknowns / areas of concern and monitoring in the global economic outlook represent risks of even more pessimistic / downside outcomes (i.e. the unknowns seem to be in the direction of additional risks and slowing, not on the potential upside).

[36] [2018] FWCFB 3500, Table 2.10, p.59
[37] Statistical Report, p.54

16. Given this, in its consideration of real net national disposable income (RNNDI), the Panel cannot assume that RNNDI will rise in 2019 as it did in 2018,[38] nor can it assume RNNDI will provide any basis for a significant increase in minimum wages in real terms.

2.2 Australian forecasts

17. The Australian domestic forecasts[39] in the FWC's 2018 decision pointed to a "*strengthening GDP*", "*strengthening household consumption*", and a "*completion*" of the effect of declining mining investment.

18. However, the situation has changed radically in 2019, with the domestic economic outlook weakening considerably in recent months.

19. In November 2018, the RBA was predicting annualised GDP growth for December 2018, to reach 3.25%.[40] However, by February 2019 the actual data showed December 2018 GDP growth to be 2.75%.[41] Similarly, the forecasts for June 2019 and June 2020 have been lowered.

20. The weaker growth forecast is in part a reflection of weaker than expected consumption growth and slower growth in household income.

21. While wages growth plays some part in the lower household income growth, falling house prices and its impact on overall household wealth is the major driving factor.

22. The inflation forecast has also been revised downwards, due mainly to an expected 11% fall in oil prices. In its most recent outlook, the RBA indicated that it expected inflation to fall from the current level of 1.8% to around 1.25% by mid-2019 before bouncing back to around 1.75% by the end of the year.[42]

23. In its February *Statement on Monetary Policy* the RBA shows a weakening in the outlook for 2019. The RBA had previously indicated the economy is strengthening and expectations were for the next move in the benchmark interest rate to be up. However, the February 2019 *Statement* indicated a lack of consensus and increasing uncertainty, as to whether the next movement in interest rates in Australia will be upwards or downwards.[43] Some market analysts are speculating that the RBA will lower interest rates twice in the second half of 2019, taking the benchmark interest rate down to 1.0%.[44]

24. This accommodative monetary policy, along with tighter labour market conditions, is expected to provide ongoing support for household income and consumption. However, the outlook for consumption growth continues to be a key source of uncertainty, as confidence in housing market

[38] [2018] FWCFB 3500, [118]
[39] [2018] FWCFB 3500, [209] – [223]
[40] RBA *Statement on Monetary Policy*. November 2018. https://www.rba.gov.au/publications/smp/2018/nov/
[41] RBA *Statement on Monetary Policy*. February 2019. https://www.rba.gov.au/publications/smp/2019/feb/
[42] RBA *Statement on Monetary Policy*. February 2019. https://www.rba.gov.au/publications/smp/2019/feb/
[43] RBA *Statement on Monetary Policy*. February 2019. https://www.rba.gov.au/publications/smp/2019/feb/
[44] https://www.businessinsider.com.au/australia-home-loan-rba-cash-rate-funding-costs-2019-3; https://www.theguardian.com/australia-news/2019/feb/21/reserve-bank-will-cut-rates-twice-in-2019-westpac-chief-economist-says; https://thewest.com.au/business/economy/wa-jobless-rate-hits-17-year-high-ng-b881113646z

weakens with declining prices. There are increasing concerns on how this will impact on consumer decision making.[45]

25. Public demand is expected to provide ongoing support for growth, with increasing public investment through the large pipeline of infrastructure projects and public consumption expanding with the roll-out of the National Disability Insurance Scheme.[46]

26. The Budget is still expected to return to surplus in 2019-20, supported by additional revenues as employment continues to grow and mining profits remain high.[47]

27. Imports will continue to grow consistent with ongoing public and private investment. However, exports are expected to weaken, due to the impact of the drought on agricultural exports and weakening demand for other commodity (mining) exports as China's growth slows.

2.3 Budget

28. We note that a significant proportion of the forecast material cited by the Panel in its recent decisions comes from the Budget Papers, including in particular Table 2.12 '2018 Budget, Domestic Economic Forecasts'.[48]

29. As is made clear in the timetable for this matter, the 2019 budget is scheduled a number of days after the lodgement of this initial submission.

30. We will take the opportunity in our second submission to review any revisions to the forecasts in Table 2.12, and the Budget papers more generally, and identify for the Panel what should be concluded from them and how this should and should not translate into an uprating of the National Minimum Wage (NMW) and award minimum wages in mid-2019.

2.4 Conclusion

31. The Expert Panel addressed the economic outlook globally and domestically from [206] to [223] of the previous decision, looking at forecasts from the Australian Government through the Budget, the RBA and the IMF, concluding that "*The economic forecasts… all point to improved economic conditions*".[49]

32. Such a conclusion is unlikely to be reached by the Panel this year, based on the evidence from the same sources considered on the previous occasion. The Australian and global economies are slowing, forecasts are being revised downwards, and the risks and uncertainties, i.e. the known unknowns, are on the pessimistic side.

33. The evidence on this occasion favours a conclusion that:

[45] RBA *Statement on Monetary Policy*. February 2019. https://www.rba.gov.au/publications/smp/2019/feb/
[46] RBA *Statement on Monetary Policy*. February 2019. https://www.rba.gov.au/publications/smp/2019/feb/
[47] Commonwealth of Australia *Mid-Year Economic and Fiscal Outlook* 6 December 2018.
[48] [2018] FWCFB 3500, p.61
[49] [2018] FWCFB 3500, [206]

a Forecasts are more pessimistic than those that led to previous historically high upratings in minimum wages.

b Where there are unknowns, the risks to forecasts lie on the pessimistic side, with downwards scenarios more likely.

c Leads to a considerably more moderate uprating in minimum wages in 2019 than that awarded in 2018, and closer to the level of changes in prices.

34. With a weakening in the outlook for both the global and domestic economy in 2019, the FWC should move more cautiously in raising the minimum and award wage rates on this occasion than in 2018 and recent years. Any increase in wages that is out-of-sync with the rest of the economy, and the domestic and global economic conditions impacting on the doing of business in Australia, is likely to weigh heavily on employment growth, lead to higher rates of underemployment, reduce productivity and constrain economic growth.

3. ECONOMIC CONSIDERATIONS

3.1 Economic growth

35. There were signs the Australian economy was strengthening in the first half of 2018, with an increase in the expectation for GDP growth, rising employment and falling unemployment. However, as we moved into the second half of the year, it appeared that this improvement in economic conditions would be short lived, with a dramatic weakening in GDP growth in the September and December quarters.

36. As we approached the end of the year, confidence that had previously been shown in the Australian economy was waning. The outlook of many economic observers, as well as the official Government forecast from the Treasury and the RBA, were revised down.[50]

37. Recent figures from the Australian Bureau of Statistics (ABS) indicate GDP grew at 3.0% in the year to June 2018. However, this weakened considerably in the second half of the year, with growth of only 0.3% in the September quarter and 0.2% in the December quarter. This dragged GDP growth down to 2.3% year-on-year to December 2018. [51] This represents a significant slowdown over the past six months. However, growth for 2018 remains close to the average rate of growth over the past five years of 2.5%.

38. The weak GDP growth in the September and December quarter has raised concern that Australia may enter a recession in 2019. Some commentators have gone as far as to say that on a per capita basis we have already entered a recession, with per capita GDP of negative 0.2% in the December quarter. However, this is a new concept that is not commonly applied as a measure of economic recession. Population is a key driver of growth and should not be discounted in assessments of economic performance. While it is too early to say whether recent weak growth will lead to a recession in 2019, claims of a per capita recession appear more political rhetoric than economic reality. (Note: the technical definition of recession is two successive quarters of negative GDP growth).

39. Gross Value-Added (GVA) was a solid 2.7% in the year to June 2018, but slowed considerably in the second half of the year, registering negative 0.2% in both the September and December quarters. This dragged down GVA to 1.5% year-on-year to December 2018.[52]

40. Real net national disposable income continues to grow steadily, rising 0.5% in the December quarter 2018, taking the annual growth rate to 3.0% for the year to December. This compares to 2.6% for the year to December 2017.[53]

[50] Commonwealth of Australia *Mid-Year Economic and Fiscal Outlook 2018-19*, December 2018 and RBA *Statement on Monetary Policy,* February 2019
[51] ABS 5206.0 Australian National Accounts — 06 March 2019.
[52] ABS 5206.0 Australian National Accounts — 06 March 2019.
[53] ABS 5206.0 Australian National Accounts — 06 March 2019.

41. Terms of trade fluctuated widely over the year, achieving a strong positive quarter in March of 3.0%, followed by a 1.2% decline in the June quarter before shifting up 1.1% in September and a further 3.1% in December. Overall, the terms of trade was 6.1% for the year to December 2018, compared to -1.1% for the year to December 2017.[54]

42. While the terms of trade appear to be improving in 2018, this is on the back of a weakening Australian dollar. Following a peak of almost US$0.81 in January, the Australian dollar fell steadily over 2018, down to around US$0.74 by the end of June, and US$0.70 by the end of December 2018.[55]

43. The RBA has maintained the cash/interest rate at 1.5% since August 2016 in an effort to support growth, create the conditions for lower unemployment and a gradual increase in inflation.[56] This has steadied the Australian economy and supported strong employment growth over the past two years. However, inflation has stayed very low over this period, remaining outside the RBA's target range of 2% to 3%.

3.2 Productivity

44. As noted in the 2018 decision[57] both productivity and unit labour costs are relevant considerations in the Minimum Wage Review, with the productivity of labour inputs relevant to the ability of businesses to pay for labour.[58]

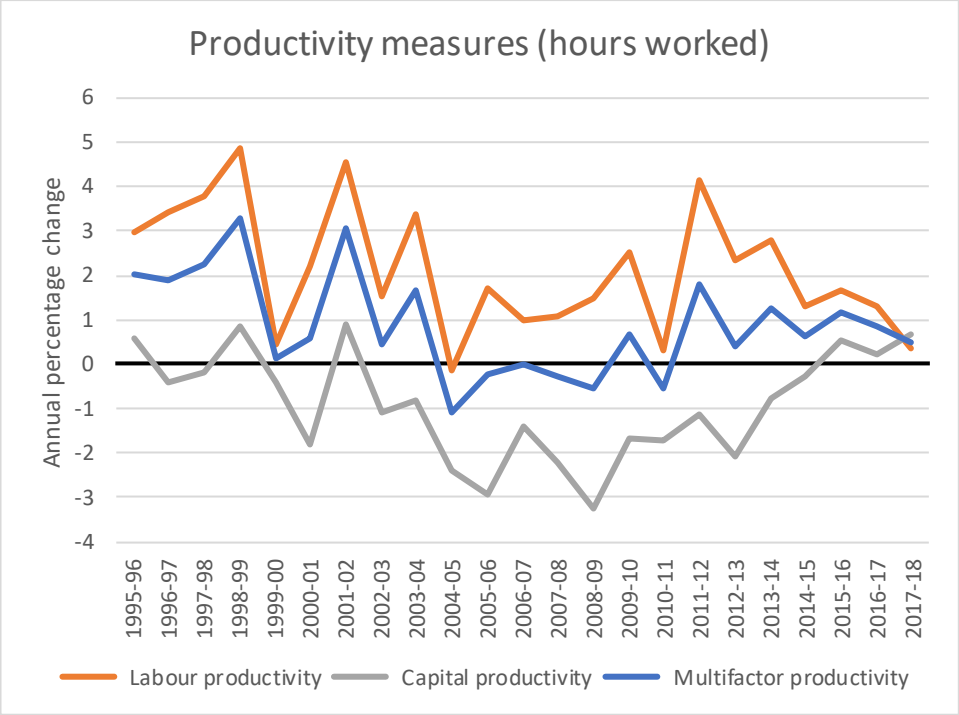
45. We do not disagree with the 2018 decision that historically '*increases in the minimum wages are more likely to stimulate productivity measures by some employers … rather than inhibit productivity*.'[59] However, this only holds true because increasing labour costs drive employers to substitute labour inputs with capital inputs. As such, it also holds true that an increase in the minimum wage will lead to a decrease in employment or an increase in the underemployment rate, as businesses look to capital improvements to reduce their workforce, or reduce the number of hours worked for employees, in an effort to reduce costs.

46. As shown in the chart below,[60] over the past 20 years, labour productivity and capital productivity have typically moved in sync, with labour productivity on average relatively high in the period between 1998-99 and 2003-04 matched by relatively high capital productivity; and relatively low labour productivity in the period between 2004-05 and 2010-11 matched by relatively low capital productivity.[61]

47. However, this dynamic has changed in recent years, with labour productivity trending steadily downward from 2011-12 and 2017-18, while capital productivity trended upward. It appears businesses are relying on increasing capital productivity to offset the falling labour productivity in a period of relatively low inflation and nominal wages growth.

[54] ABS 5206.0 Australian National Accounts — 06 March 2019.
[55] Reserve Bank of Australia website — https://www.rba.gov.au/statistics/historical-data.html#exchange-rates
[56] Reserve Bank of Australia website — https://www.rba.gov.au/statistics/cash-rate/
[57] [2018] FWCFB 3500, [122]
[58] Fair Work Commission *Annual Wage Review 2017-18 — Summary of Decision.* 1 June 2018. p.29
[59] Fair Work Commission *Annual Wage Review 2017-18 — Summary of Decision.* 1 June 2018. p.29
[60] Source: ABS 5260.0.55.002 Estimates of Industry Multifactor Productivity. 03 December 2018
[61] ABS 5260.0.55.002 Estimates of Industry Multifactor Productivity. 03 December 2018.

48. To maintain a reasonable level of multifactor productivity, there is a heavier reliance on investment in capital and capital efficiency at a time when labour productivity is low.



49. With the steady decline in labour productivity over the past seven years, more-or-less matched by increasing capital productivity, despite some volatility, multifactor productivity has remained relatively flat over this period.

50. Labour productivity continued to trend down over the past two years. At just 0.37% in 2017-18, it is at its lowest level since 2010-11.[62] Therefore, despite a strong increase in the NMW and award minimum wages, in 2016-17 and 2017-18, 1.4% and 1.7% in real terms, it would appear that it has not stimulated the labour productivity growth that would normally be expected. This suggests that the relationship between the minimum wage and productivity may no longer be holding. Given the very low level of labour productivity in 2017-18, it is likely that further increase in minimum wage in 2018-19 will do little to improve labour productivity.

51. Productivity measures of the major market sectors are presented in the table below. While there has been some improvement in labour and multifactor productivity in some sectors over the past year, the results have been scattered. Some award reliant industries, such as administration and support services (8.5%), accommodation and food services (3.9%), manufacturing (3.7%) and rental, hiring and real estate services (1.4%) have seen improvement in labour productivity over the past year.

[62] ABS 5260.0.55.002 *Estimates of Industry Multifactor Productivity.* 03 December 2018

52. Others such as arts and recreation services (-7.2%), transport, postal and warehousing (-3.8%), construction (-2.4%), retail trade (-1.1%) have experienced declines in labour productivity. Overall, it appears that the gains in some sectors have been offset by losses in others.

Productivity Measures By Market Sector, Hours Worked Basi, Annual Percentage Change, 2017-18[63]

	Multi-factor productivity	Output (GVA)	Labour productivity	Capital productivity
Agriculture, forestry and fishing	-7	-5.1	-11.4	-5.5
Mining	0.9	2.9	-0.5	1.3
Manufacturing	3.8	3.1	3.7	3.9
Electricity, gas, water and waste services	-1.7	1.9	-4.5	-0.5
Construction	-0.8	5.1	-2.4	3
Wholesale trade	-0.8	0.7	-0.2	-1.9
Retail trade	-0.6	2.4	-1.1	0.6
Accommodation and food services	3.7	4.1	3.9	3
Transport, postal and warehousing	-3	0.8	-3.8	-1.9
Information, media and telecommunications	-0.8	2.7	1.2	-2.4
Financial and insurance services	2.9	3.4	7.1	1.2
Rental, hiring and real estate services	-0.7	1	1.4	-2.1
Professional, scientific and technical services	3.7	4.4	4.1	1
Administrative and support services	8.2	4	8.5	2.7
Arts and recreation services	-4.9	3.5	-7.2	0
Other services	1.2	3.4	1.7	-2.5
Market sector	**0.5**	**2.7**	**0.4**	**0.7**

53. Research by the IMF has observed that slow productivity growth can be a bigger reason for slow nominal wage growth than a country's unemployment rate.[64]

54. As noted in the Rozenbes and Ellis research paper[65], which references research by Grant, Fazzone and Moore (2017), labour productivity is a major driver of real wages growth. Grant et al. observed changes in the real producer wage (the producer's labour costs relative to the price of their output), and real consumer wage (the consumers' wage relative to the cost of goods and services purchased).

[63] ABS 5260.0.55.002 *Estimates of Industry Multifactor Productivity.* 03 December 2018, here. See also Statistical Repot, Table 2.3, p.8
[64] Hong GE, Koczan Z, Lian W, Nabar M (2017) *The disconnect between unemployment and wages.* IMF blog 27 Sept 2017.
[65] Rozenbes D and Ellis G 2019, *Developments in Wages Growth.* FWC Research Papers 2019. p.25.

55. Grant et al. found the real consumer wage was rising at a rate above labour productivity, while the real producer wage has been growing at a rate in line with labour productivity.

56. The research concluded that the measures of real wages growth provide some indication why wages growth has been low in recent years, with the nominal wages growth appearing low, but real wages growth is more in line with expectations based on productivity growth and inflation.

57. This research indicates that despite low nominal wages growth in recent years, when viewed in real terms wages growth is consistent with expectations. Given declining productivity growth in recent years, wages growth has been in line with the growth in output. Further, the rate of real wages growth has been greater than the increase in the cost of consumer goods and services purchased (living costs), so despite low nominal wages in recent years, workers have experienced an increase in living standards.

58. The Panel's 2018 decision[66] notes the Panel has previously concluded that short-term trends in labour productivity should be treated with caution, as productivity is best measured over the business cycle. While that may be true, it is clear from the chart that the trend in labour productivity has been steadily downward, from a peak of 4.13% at the beginning of the current business cycle in 2011-12, to the current low of 0.37% in 2017-18.

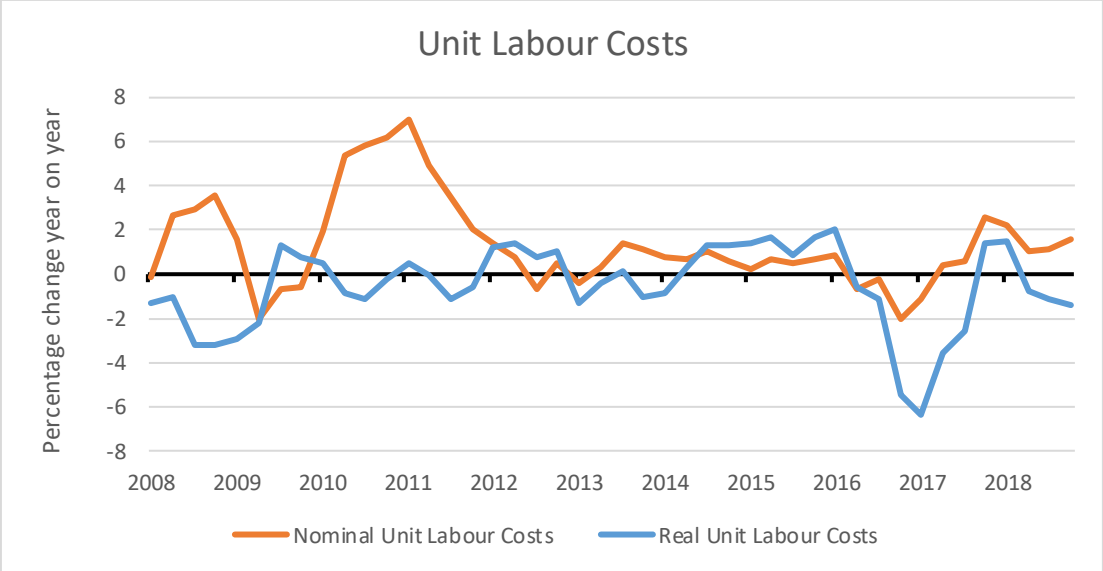
59. With labour productivity currently at very low levels and having been on a steady downward trajectory over the past 8 years, in combination with a weakening economy, the Australian Chamber submits that a further sizeable, broad-based increase in minimum wages cannot be sustained in 2018-19 and is not consistent with the balance of considerations the Panel has regard to in these matters.

3.3 Unit labour costs

60. Unit labour costs are the costs incurred by employers in the employment of labour. They are of particular interest as they impact on the competitiveness of organisations and employers willingness / appetite to employ.[67] Understanding movements in labour costs is important in making minimum wage determinations. Unit labour cost represents a link between productivity and the cost of labour in producing output.

61. Following a decline in unit labour costs in 2016, unit labour costs bounced back strongly in 2017. They have since turned downward again in 2018. Overall, following an increase of 1.1% in the December quarter of 2018 to 1.6% year-on-year, nominal unit labour costs remain above the average of the current business cycle, from 2012, of 0.6% year-on-year. In real terms, unit labour costs continued to fall in the December quarter, down to negative 1.4% year on year.[68] The following chart is drawn from the national accounts[69]:

[66] [2018] FWCFB 3500, [127]
[67] ABS 5206 National Accounts. Feature Article: *Measuring Change in Labour Costs.* June 2006. http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/5206.0Feature%20Article1Jun%202006
[68] ABS 5206.0 Australian National Accounts. 06 March 2019
[69] ABS 5206.0 Australian National Accounts. 06 March 2019



62. Previous FWC decisions[70] have placed very little weight on the rise and fall of unit labour costs, as it has followed changes in the terms of trade.[71] The sharp decline in 2016 was associated with a 18% rise in the terms of trade. Similarly, in 2018 the downturn in the unit labour costs can be linked to a 6.1% increase in the terms of trade.

63. We agree with the Panel's previous position that given labour costs are influenced by changes in the terms of trade, they are of little relevance in the determination of the minimum and award wages. We suggest the Panel again place little weight on unit labour costs in the current minimum and award wage determination.

3.4 Inflation and living costs

64. The Consumer Price Index (CPI) measures quarterly changes in the price of a 'basket' of goods and services which account for a high proportion of expenditure by the population. The basket covers eleven groups of goods and services, including food and non-alcoholic beverages; alcohol and tobacco; clothing and footwear; housing; furnishings, household equipment and services; health; transport; communication; recreation and culture; education; insurance and financial services

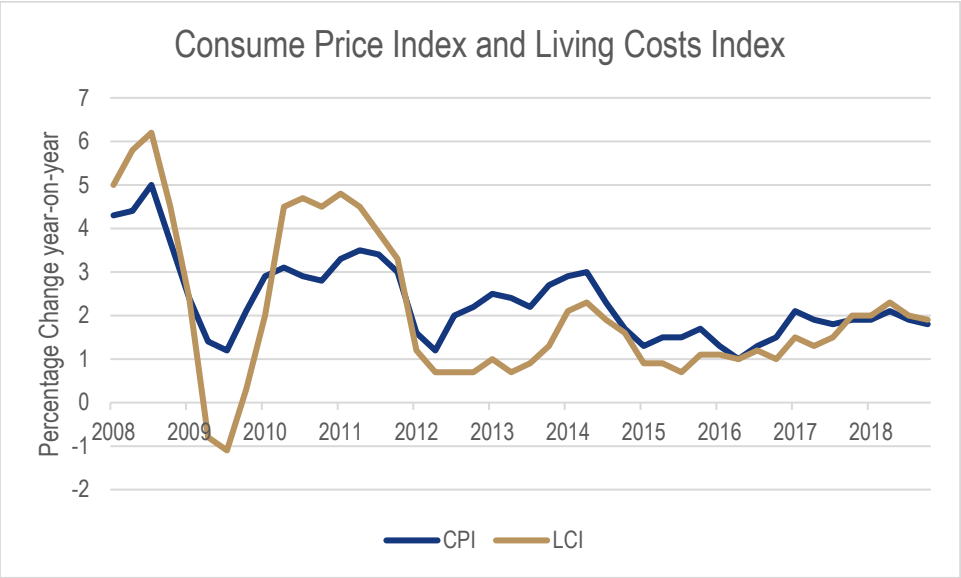
65. The Living Costs Index[72] (LCI) for employee households is a measure of the effect of changes in prices on the out-of-pocket living expenses for households whose principal source of income is from wages and salaries. It reflects changes over time in the purchasing power of the after-tax incomes of households.

66. While the LCI and CPI measure a similar basket of goods, there are different weightings applied to the items included in the basket. The LCI focuses on the actual money outlays of a household. The CPI on the other hand is designed to measure price inflation for the household sector as a whole, focusing on the acquisition of good and services by households.

[70] See, for example [2018] FWCFB 3500, [133]
[71] Fair Work Commission (2018) *Annual Wage Review 2017-18*. FWCFB 3500, 1 June 2018. p.33
[72] 6467.0 - Selected Living Cost Indexes, Australia, Dec 2018

67. Inflation as measured by the CPI fell to 1.5% in 2015 and has since remained at the bottom of or below the Reserve Bank's target range of 2% to 3%.[73]

68. Similarly, the LCI fell sharply in 2012 and has remained low over the current business cycle. The living cost index has remained below inflation for the past seven years, but over the past 12 months has increased at a rate equal to inflation (i.e. at a rate below the RBA target range, and significantly below previous increases in minimum wages in preceding reviews).[74]

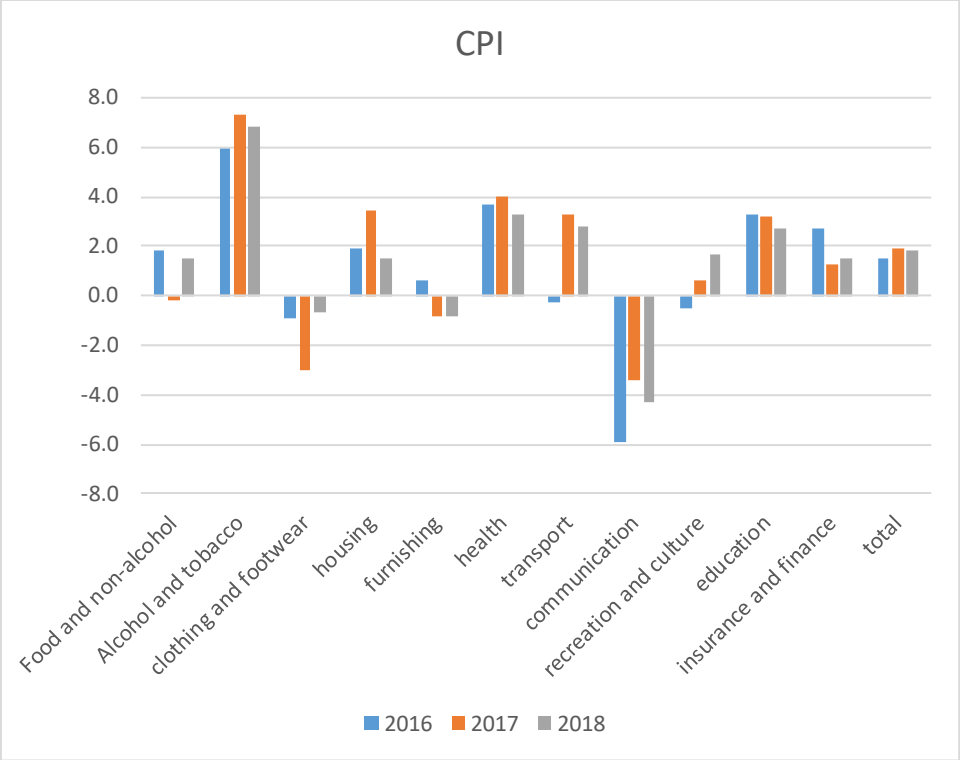


69. CPI rose 0.5% in the December quarter 2018, taking the overall increase for the year to December 2018 to 1.8%.[75] This is slightly down from the 1.9% for the year to December 2017.

70. Similarly, the LCI increased 0.6% in the December quarter, to an annual increase of 1.9% to December 2018.[76] Again, this is slightly down from the 2.0% increase recorded in December 2017.

71. In 2018, the highest rates of CPI inflation were observed in alcohol and tobacco (6.8%), health services (3.3%), transport services (2.8%) and education (2.7%), while the costs of communication (-4.3%), furnishings (-0.8%) and clothing and footwear (-0.7%) fell.[77]

[73] ABS 6401.0.0 Consumer Price Index . 30 January 2019
[74] Source: ABS 6401.0.0 Consumer Price Index . 30 January 2019 and ABS 6467.0 Selected Living Cost Indexes . 06 February 2019
[75] ABS 6401.0.0 Consumer Price Index . 30 January 2019
[76] ABS 6467.0 Selected Living Cost Indexes . 06 February 2019
[77] ABS 6401.0.0 Consumer Price Index . 30 January 2019



72. Weakness in overall economic growth coupled with a significant (11%) decline in oil prices, as well as decreasing domestic utility prices due to government intervention in the electricity and gas markets, are expected to drive further declines in inflation in 2019.

73. The RBA is projecting that CPI will fall to 1.25% by the middle of the year, before showing some signs of recovery in the second half of the year.

74. Inflation is expected to increase gradually in the second half of 2019, rising to 1.75% by the end of the year and reaching 2.25% by the end of 2020.

75. None of these factors / evidence before the panel points to any basis to uprate minimum wages in excess of changes in prices (current and forecast) or at levels of recent years. Employee needs, as illustrated by price changes do not justify an uprating in excess 2%, let alone the 3.5% awarded in 2018.

3.5 Profits

76. Company gross operating profits grew at 10.5% in the year to December 2018 (a fall from the September data included in the initial 2019 statistical report). This was heavily influenced by high profit growth by the mining sector, which recorded profit growth of 26.3% (also slightly down from September). Profit growth of the non-mining sectors fell considerably from September to December 2018, to 2.5%, well below the revised 5-year average of 4.4%.[78]

[78] FWC, *Statistical Report – Annual Wage Review 2018-19,* 8 March 2019 p.11 (also compared to earlier February version).

77. The following two tables warrant comparison (compare the final three rows). Profitability is not growing as rapidly as it was. It cannot provide a basis for an increase of the same magnitude to that awarded in 2018.

78. February 2019 Statistical Report, Table 3.3:

Table 3.3: Company gross operating profits, mining and non-mining industries, growth rates

	Mining (%)	Non-mining (%)	Total (%)
Dec-08	95.5	–5.0	18.8
Dec-09	–42.6	10.5	–10.1
Dec-10	62.5	1.2	16.4
Dec-11	4.3	1.1	2.2
Dec-12	–27.3	3.3	–7.5
Dec-13	36.3	1.1	10.9
Dec-14	–21.0	0.9	–6.6
Dec-15	–16.8	1.9	–3.5
Dec-16	76.3	10.6	27.0
Dec-17	1.2	5.8	4.2
Sep-18	27.1	6.8	13.5
5 years to Sep-18*	8.3	4.9	6.1
10 years to Sep-18*	3.3	3.2	3.2

79. March 2019 Statistical Report, Table 3.3:

Table 3.3: Company gross operating profits, mining and non-mining industries, growth rates

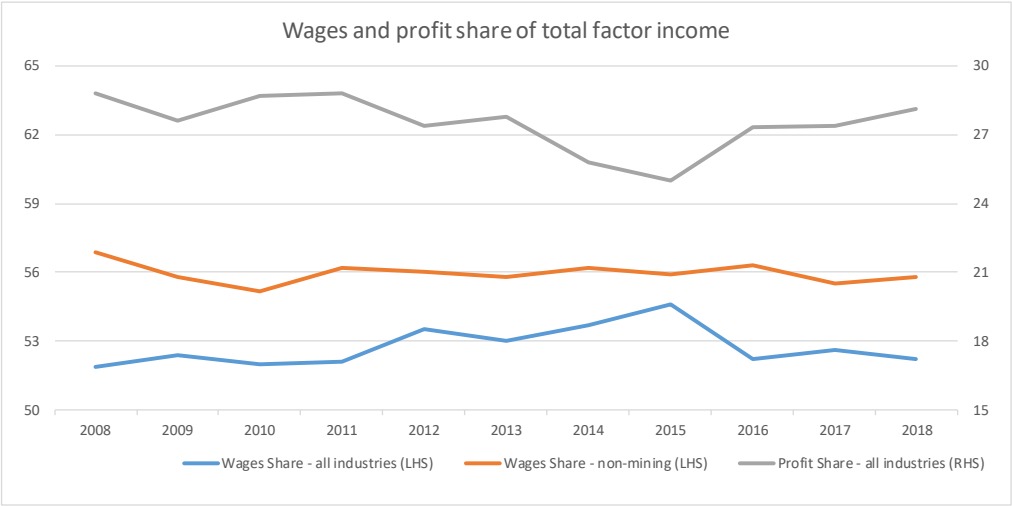
	Mining (%)	Non-mining (%)	Total (%)
Dec-08	95.5	–5.0	18.8
Dec-09	–42.6	10.5	–10.1
Dec-10	62.5	1.2	16.4
Dec-11	4.3	1.1	2.2
Dec-12	–27.3	3.3	–7.5
Dec-13	36.4	1.1	10.9
Dec-14	–20.9	1.0	–6.5
Dec-15	–16.8	2.0	–3.4
Dec-16	76.3	10.6	27.0
Dec-17	1.0	5.9	4.2
Dec-18	26.3	2.5	10.5
5 years to Dec-18*	8.2	4.4	5.7
10 years to Dec-18*	3.6	3.9	3.8

80. While the annual increase in company profits in the non-mining sector was higher than the increase in the wage price index, and minimum and award wages, it must be taken into consideration that relative to wages, company profits are highly volatile, with large losses some years, and higher profits in others.

81. The profit share of total factor income varied widely over the past decade, driven mainly by volatility in the profitability of the mining sector. The profit share was relatively high between 2008 and 2011, around 28.8%, but fell over the preceding years to a low of 25% in 2015. It has since improved over recent years, up to 27.6% in 2018, returning to the average of 27.4% over the past decade.

82. Wages share of total factor income moves countercyclical with profit share, rising from a low of 51.9% in 2008 to a peak of 54.6% in 2015, and has since settled back to 52.2% in 2018. Much of the volatility in the wages of total factor income has been due to the mining sector, with the wages share of total factor income a lot more stable in the non-mining sector, moving within a band of between 55% and 57% over the past decade. At 55.8% in 2018, it is slightly below the average over the past decade of 56%.

83. While profit share of total factor income for the non-mining sector was not provided in the recent Statistical Report, it is expected that the profit share of the non-mining sector was also relatively stable around 24% over the past decade.



84. Company profits have improved over the past two years, such that the profit share of total factor income has returned to it is long-term average. However, it is not certain that profits will continue to grow in 2019, with signs of deteriorating economic conditions, both domestically and internationally.

85. In making its decision in this wage review, the Panel should consider the weakening economic conditions in 2019 and its likely impact on businesses. A further sizeable, broad-based increase in minimum wages cannot be sustained in 2019 and may further exacerbate the weakening economic conditions.

3.6 Small business

86. Small business contributes to a higher rate of employment per unit of output than larger businesses, i.e. are more labour intensive than larger businesses, even within the same industry. In 2018, small businesses represented almost 44% of total employment, but contributed 33% to total income and 35% of total industry value added.[79]

87. Small businesses are also likely to employ a higher proportion of entry-level award and minimum wage employees than larger businesses, as they contribute 35% of total wages and salaries compared to their 44% share of total employment. Therefore, small businesses are likely to be more sensitive to increases in the minimum wage.

88. The rates of employment in small businesses are high in many minimum wage and award reliant industries, particularly agriculture, fisheries and forestry (78%), rental, hiring and real estate services (76%), construction (71%), accommodation and food services (46%), transport, postal and warehousing (44%).[80]

89. With a higher share of minimum wage employees, any increase in the minimum wage is likely to have a greater impact on small business than other sectors.

3.7 Conclusion

90. Economic performance, trends and forecasts are significant to the determination of minimum wage increases in these matters. s.284(1) directs the Panel to consider / weigh against other factors:

> *(a) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth;*

91. As set out in Chapter 1, the key ILO Convention on minimum wages (No 131) sets out various elements to be taken into consideration in determining the level of minimum wages, including:

> *economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.*

92. These are interconnected rather than discrete considerations. The performance of the economy, and the factors looked at under 'Economic Considerations' in the decisions of the Panel also impact on those examined under the rubric of the 'needs of the low paid' and as 'labour market considerations'.

93. On this occasion, economic indicators and considerations, along with the changing forecasts addressed in Chapter 2, favour conclusions that:

    a Economic circumstances have changed, with evidence of weakening domestic and international economic conditions in the second half of 2018.

[79] ABS 8155.0 Australian Industry 2016-17. 25 May 2018
[80] ABS 8155.0 Australian Industry 2016-17. 25 May 2018

b Labour productivity levels have continued their downward trend and are at very barely positive level in 2018.

c Inflation and living costs remain low.

d While company profits returned to long-term average levels in 2018, the softening economy is likely to put downward pressure on profits in the year ahead.

e Small businesses with a higher share of minimum wage employees are likely to be more sensitive to the impact of any minimum wage increase.

94. The balance of these factors, properly considered, does not favour another substantial uprating of minimum and award wages well in excess of inflation in 2019. The vastly inflated ambit levels expected to be put advanced by other key submitting interests cannot be supported and if pursued would exacerbate weakening economic conditions.

95. Therefore, the Australian Chamber submits that an increase in the minimum and award wages should not exceed measured increases in prices (the CPI). This would represent the appropriate balance of the Panel's statutory considerations on this occasion.

4. WAGES GROWTH

4.1 Introduction

96. In 2018, the Panel concluded that:[81]

> *[163] We conclude that since about 2011 a range of factors have operated to depress the rate of growth of nominal wages and, to a lesser extent, of real wages. The phenomenon is not fully understood and is not confined to Australia; and it must be noted that over the past decade real wages as measured by producer prices have continued to rise at about the rate of labour productivity. Further, the real value of the wage measured at consumer prices, while almost unchanged over the past six years, has still grown more rapidly than the real producer wage over the period since 2003.*
>
> *[164] Whatever the relative weight that should be attributed to the many factors identified as weighing on wage growth, the low wage growth environment supports an increase to the NMW and modern award minimum wages. So too does the extent to which growth in the real values of the NMW and modern award minimum wages has lagged behind growth in labour productivity over time.*

97. **This is not a stimulatory or disruptive exercise**: The Introduction to this submission addressed calls, explicit and implicit, for the Expert Panel to 'do something' about wages growth across the Australian community and to address economy wide phenomena that are being played out the political arena. This includes any calls for the Panel to attempt to use these reviews as a circuit breaker, catalyst or as stimulus in an attempt to somehow "kick-start" an acceleration in wages growth generally. For the reasons set out in the Introduction and throughout this submission, this is neither open to the panel, nor merited, nor in any way a sound approach.

98. **This Chapter**: As the Panel has repeatedly made clear, this review is a creature of statute. Section 4.2 revisits the statutory context and addresses highly predictable calls (explicit or implicit) for the Panel to somehow counteract, correct or inflate average levels of wages growth across the community (see 4.3) via the lever of uprating the NMW and award minimum wages.

99. This Chapter then examines recent developments on wages in three parts:

    a Current wages data and what should be made of it (4.3).

    b The wider phenomena of comparatively lower wage growth in historic terms (4.4).

    c The 'Developments in wages growth' Research Paper[82] (4.5).

[81] [2018] FWCFB 3500, p.45
[82] David Rozenbes and Grant Ellis (2019), Developments in wages growth, FWC Research report 1/2019

4.2 Legislative considerations

100. There is a clear conflation being attempted on the roles of minimum wages and average wages in the public debate on wages growth in Australia. The ACTU is clearly trying to use below longer term trend growth in community wide wage measures as an argument to increase the NMW and award minimum wage rates.

101. Unions would have the Panel either somehow (a) attempt to counteract below trend wages growth across the community using rates for the just 23% of employees that are directly subject to these decisions, or (b) have the Panel adopt some form of stimulatory to catalytic role to kick start wages growth.

102. The Panel has across a series of decisions set out how it approaches the balance of statutory considerations in this matter, including the Object of the FW Act (s.3), the Modern Awards Objective (s.134) and the Minimum Wages Objective (s.284).

103. We have looked again at these provisions and submit that they support neither a focus on economy wide wage growth, nor any particular level of increase in this matter. We ask that the Panel look again at its balance of considerations prior to reaching another conclusion comparable to that of 2018, at [164]:

> *[164] Whatever the relative weight that should be attributed to the many factors identified as weighing on wage growth, the low wage growth environment supports an increase to the NMW and modern award minimum wages.*

104. Such an environmental or contextual consideration and foundation for an increase should not be repeated this year.

105. As set out below, the "low wage growth environment" has also changed since last year, based on changes in data and the trajectory of wages growth (see 4.3). Were the approach of 2018 to be continued, less weight or support for an inflation in the increase to be awarded could be derived from the data in 2019 than was derived in 2018.

106. **Object of the Act**: Turning firstly to s.3 of the FW Act.

a Subsections 3(b) and (c) are framed as a 'safety net', not as a focus on market or economy wide rates.

b The safety net must be 'relevant', however looking at the data, safety net wages apply to a higher proportion of Australians than they did in 2010[83] (and are therefore 'relevant' under at least some meaning of that concept).

c As set out below, minimum wages have also for some years risen by more than prices and the WPI, more than discharging any requirement for relevance. In fact, any increase that is at or in excess of changes in prices would meet a threshold test for relevance.

[83] *Statistical Report*, 8 March, Chart 7.1, p.35

d Subsection 3(f) indicates that productivity and fairness (concepts from s.3(a)) will be progressed through an emphasis on enterprise level collective bargaining.

107. **Modern Awards Objective**: Looking at s.134 of the FW Act:

a Section 134(1) goes to the same point about the safety net role of the minimum wage, which is not as a market or redistributive instrument.

b Looking at the 'relative' living standards of the low paid[84] means (at best) looking at how the low paid compare to the norm or to other pay cohorts. It cannot mean trying to change the wider population (the whole) using the lever of the safety net designed to protect the low paid (the group being compared).

i. Whatever relativist considerations may have been interpreted in applying these provisions this seems a very difficult construction to sustain.

ii. If the Panel is attracted to such a course, any party arguing it should show how this could be sustained under the FW Act.

c Put another way, comparing (A[85]) to (B[86]) for the purposes of increasing (A), cannot mean importing into setting the level of (A) the goal of increasing (B).

i. If Parliament had intended such a course, it would have directed so.

ii. It would not have framed the role of awards as minimums and safety nets.

d The economic considerations in s.134(1)(h) direct consideration of the impact of a rate that is under consideration on the economic considerations listed, not that any increase seek to engineer particular macroeconomic outcomes across the whole economy.

e To put it plainly, this section does not demand or endorse the Panel somehow attempting to use the increase awarded in this review to advance, accelerate or kick start aggregate or cross economy wages growth. That is not what we understand the approach to have been in 2018. Regardless, such an approach could not be pursued in 2019 based on the evidence and role of these reviews under the FW Act.

f Any attempt to use minimum wages as a primer or stimulus to wage growth across the economy would also need to be weighed against other considerations such as the likely impact on growth, inflation and the sustainability, performance and competitiveness of the national economy. Any party arguing, directly or implicitly that the Panel and this review be a tool of correcting or accelerating wages growth should face a stiff burden in regard to both merit and consistency with the FW Act.

[84] s.134(1)(a)
[85] Minimum wages
[86] Community wide wage growth, as an average

108. **Minimum Wage Objective**: Looking at s.284 of the FW Act:

a The same points as made above in relation to s.134 on the safety net would apply and the same questions would be raised.

b Any party urging a stimulatory or catalytic role for the NMW and award minimum wages would need to satisfy the Panel that this would be consistent with the considerations in s.284(1).

c The reference to "relative living standards" allows some comparison of minimum wage earners to others in the economy. It does not allow for attempting to use minimum wages to move industry wide averages.

i. Consider for example inflation. If it were somehow desirable to increase the rate of inflation across our economy, the implications of attempting to start wage-push inflation using just 23% of wage earners would need to be carefully considered.

ii. In addition to all other reasons to not attempt to manipulate economy wide averages using a minority cohort, there is also simply less leverage than may have been the case in more in a centralised time. It has to be more likely that unintended or collateral consequences outweigh any purported benefits.

d (For completeness in regard to the needs of the low paid[87] both the NMW and award rates, and the WPI are exceeding the CPI, see below).

109. If the submissions of the ACTU and others bemoan average wage growth levels across the economy, and cite them in support of a particular level of ambit increase, the Panel should exercise considerable caution and demand the party so advocating satisfy the Panel on how this could be done under the FW Act.

110. If this is not the ACTU's submission, then any remarks on levels of wage growth across the economy should be dismissed as political theatre in the lead up to an election. Commentary not germane to the consideration at hand is extraneous to the Panel's considerations.

111. Looking again at [163] and [164] of the 2018 Decision, the merited approach on this occasion would be to note developments across the economy on wages (i.e. the WPI and other comparable measures) as part of the Expert Panel's general environmental scan, but to not conclude that the wider wages environment supports or merits any particular level of minimum wage uprating in 2019.

112. The Panel should also directly reject any calls to have it (either explicitly or in effect) somehow intervene or stimulate aggregate / cross economy wages growth through the lever of the NMW and award minimum wages. Any party asking for such an approach would need to satisfy the Panel in regard to at least the following:

[87] s.284(1)(c)

a How this is possible under the FW Act.

b What the impact of this course of action would be, pros and cons.

c How it accords with the other economic and labour market considerations.

113. Alternatively, as set out throughout this Chapter, the Panel should conclude that any assessment of the wage growth environment on this occasion should, along with the balance of other considerations such as the slowing economy and the growing disparity between the NMW and the WPI, favour a considerably more moderate uprating of minimum wages in 2019 than occurred in 2018.

4.3 Wages Data

4.3.1 WPI

114. As the Rozenbes and Ellis Paper, explored below at 4.4, indicates:

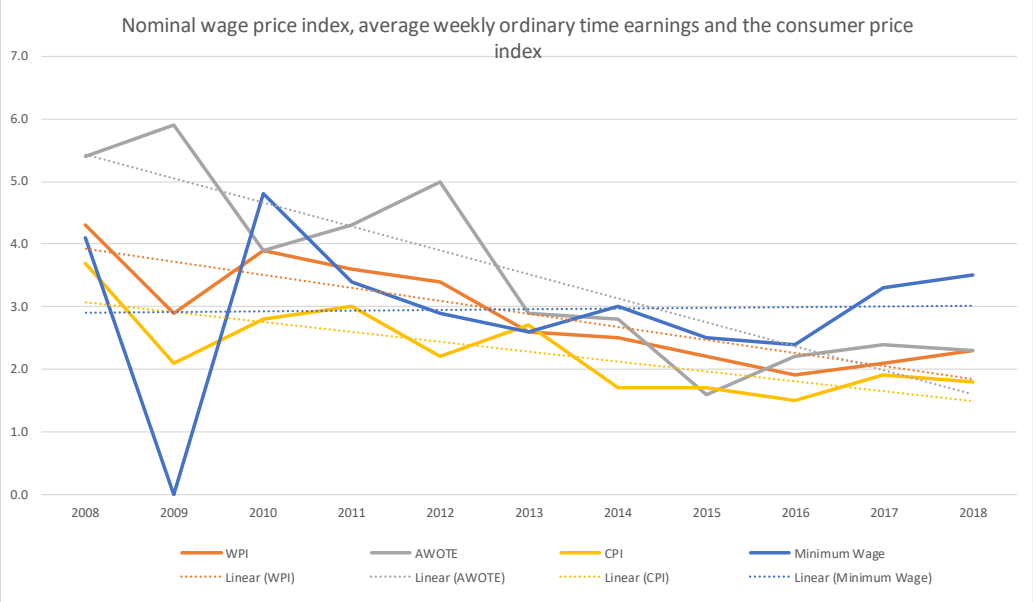
> *The ABS recommends using the Wage Price Index (WPI) to measure changes in the price of labour, or wages, over time.*[88]

115. The WPI is the most appropriate indicator of wage growth. It follows price changes in a fixed "basket" of jobs in a similar manner to the CPI, thus providing an indicator of inflationary pressure on wages and salaries. The WPI simply measures changes in the wages paid by Australian businesses to employees and is not influenced by changes in quality and quantity of work.[89]

116. In the year to December 2018, the WPI for all sectors rose to 2.3%, with the private sector up 2.3% and the public sector increasing 2.5%.[90] For the private sector, this is the highest rate of annual growth since the December quarter of 2014. This continues the steady rate of wages growth over the past two years, up from 1.8% in the year to December 2016.[91]

117. Over the past decade, the nominal WPI has trended down, from over 4% in 2008 to a low of 1.9% in 2016, before a modest increase to 2.1% in 2017 and 2.3% in 2018.[92] Generally, the change in nominal WPI and the inflation rate have followed each other relatively closely over this period, with the WPI tracking above inflation. The gap between the two narrowed between 2014 and 2017, but began to increase again in 2018. Overall, the gap between the WPI and inflation has averaged around 0.5 percentage points between 2014 and 2018.

[88] David Rozenbes and Grant Ellis (2019), Developments in wages growth, FWC Research report 1/2019, p.4
[89] ABS 6345.0 Wage Price Index . 22 February 2019. See also 2019 *Statistical* report. p. 20
[90] ABS 6345.0 Wage Price Index . 22 February 2019
[91] Statistical Report – Annual Wage Review 2018-19, p.20, 25 March 2019; ABS 6767.0 Living Cost Index. 6 February 2019,
[92] ABS 6345.0 Wage Price Index . 22 February 2019



118. Full-Time Adult Average Weekly Ordinary Time Earnings (AWOTE) represents the average gross (before tax) earnings of employees. This is the preferred measure of average weekly earnings to derive estimates of nominal wages growth.[93] This avoids the measure of wages growth being influenced by changes in the composition of hours worked among the workforce included in the survey. However, AWOTE is influenced by the change in labour quality, such that a larger proportion of workers with higher levels of education attainment or working in occupations such as management or professions will result in a higher AWOTE value. For this reason, AWOTE is usually expected to be higher than the rate of growth in the WPI.

119. Similar to the WPI, AWOTE has tracked downward over the past decade but from a higher starting position and at a faster rate — from peak of 5.9% in 2009, to a low of 1.6% in 2015. It has since risen in line with the WPI to 2.3% in 2018, to a rate of $1,605.50 per week.[94]

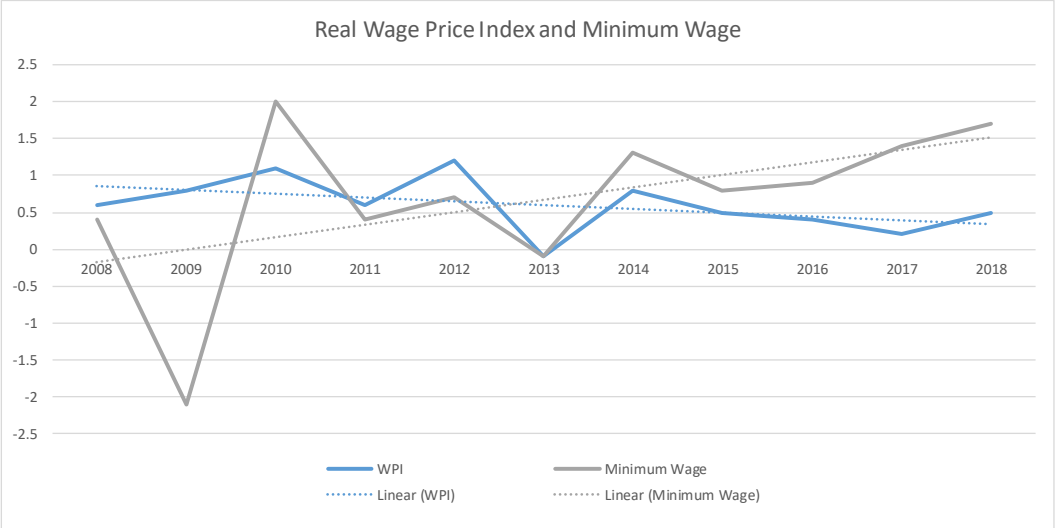
120. While the rate of change in AWOTE was higher than that of the WPI in the first half of the decade, since 2013 it has moderated, such that the growth rate of AWOTE has followed a similar average rate of growth to the WPI over the past five years. The rate of growth of the minimum wage has been notably higher than that of the AWOTE, particularly in the past two years, with the minimum wage rate growing at above 3%, and the AWOTE below 2.5%.

121. Over the past decade, increases in the NMW have fluctuated. Since 2011 the NMW has remained within a relatively narrow band between 2.5% and 3.5%.[95]

122. In real terms, there has been a notable increase in the rate of growth of the real NMW over the past five years. This contrasts with the real WPI, which has followed a modest downward trend over this period.

[93] Borland J. *Overview of research to inform the Annual Wage review 2018-19.* February 2019 p.3
[94] ABS 6302.0 Average Weekly Earnings. 21 February 2019
[95] FWC, *Statistical Report – Annual Wage Review 2018-19,* March 2019. Table 5.1, p.20

123. Since 2014, gap between the real minimum wage and the real WPI has been expanding, suggesting the minimum and award wage decisions over the past five years have been out of step with wages growth, inflation and overall economic activity.



124. The nominal WPI (year to December) for sectors with a higher reliance on minimum wage and award rates is presented in the table below. It is noted that the WPI all sectors was above the rate of inflation (1.8%) in 2018, indicating real wages growth, and an improvement in the standard of living for employees, in all sectors.

	Award reliance - 2018	2014	2015	2016	2017	2018
All industries	*22.5%*	*2.6%*	*2.1%*	*2.0%*	*2.1%*	*2.3%*
Accommodation and food services	44.9%	2.6%	2.3%	2.3%	2.0%	2.3%
Administrative and support services	41.3%	2.0%	1.4%	1.3%	1.8%	2.2%
Health care and social assistance	31.7%	2.8%	2.4%	2.4%	2.8%	2.8%
Retail trade	30.1%	2.3%	2.5%	1.8%	1.6%	2.0%
Rental, hiring and real estate services	29.4%	2.4%	1.7%	1.2%	1.6%	2.1%
Arts and recreation services	22.5%	3.4%	2.3%	1.9%	2.6%	2.7%
Manufacturing	20.8%	2.7%	2.5%	1.8%	2.3%	2.2%
Construction	16.6%	2.5%	1.6%	1.7%	1.9%	1.9%
Wholesale trade	16.1%	2.5%	1.7%	1.8%	1.8%	2.2%
Transport, postal and warehousing	12.7%	2.4%	2.2%	2.0%	1.8%	2.4%
Public administration and safety	10.9%	2.2%	2.2%	2.2%	2.1%	2.6%
Education and training	10.0%	3.4%	2.6%	2.4%	2.4%	2.6%

4.3.2 Wage increases in enterprise agreements

125. We do not concede that the rate of wage increases in enterprise agreements is relevant to this matter, but for completeness we note that the rate of AAWI[96] in enterprise agreements is:

   a Also rising, being higher in September 2018[97] (3.2%) than the preceding June quarter (2.7%),[98] and compared to 12 months prior (2.2%).[99]

   b Rising in real terms, in excess of inflation.[100]

   c Rising in in excess of increases in the WPI.[101]

126. 38% of employees have their pay set by collective / enterprise agreements, well in excess of those subject to these decisions (23%).[102]

127. This points to agreement wage settlements as a factor weighing in favour of a return towards trend wages growth across the economy / certainly not (or no longer) being a factor depressing economy wide wages growth.

4.4 Wages Growth

128. Many Australians, across various income deciles and subject to both minimum wages and other, higher paying, pay arrangements, are concerned about the pace of growth in their pay packets.

129. Nominal wages growth across all indicators has been relatively low over the past five years, remaining below its 20-year long-term average (3.2%[103]). This subdued growth in nominal wages has been consistent across all industries.

130. In debate on the NMW / award minimum wages, too great an emphasis appears to be placed on the decrease in wages growth in nominal terms. This discussion appears to overlook the very low rate of inflation in Australia over the past five years, which has been consistently below the RBA's target range of 2% to 3%.

131. Notwithstanding perceptions, wages have grown in real terms across the community (the WPI and AWOTE), under enterprise agreements, and for those on the NMW / award rates.

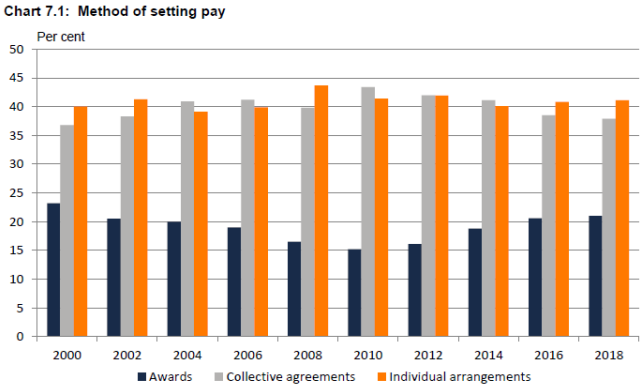
132. To the extent the Panel looks at wage growth, it is important it focus on real wages growth, as this is a fairer indication of whether wages growth is maintaining or improving the relative living standards.

[96] Average Annualised Wage Increases
[97] The most recent data available, see also 2019 Statistical Report, Chart 10.2, p.50
[98] *Trends in Federal Enterprise Bargaining Report*, September Quarter 2018, p.1
[99] *Trends in Federal Enterprise Bargaining Report*, September Quarter 2018, Table 3, p.1
[100] *Trends in Federal Enterprise Bargaining Report*, September Quarter 2018, Chart 1, p.3
[101] *Trends in Federal Enterprise Bargaining Report*, September Quarter 2018, Chart 1, p.3
[102] Statistical Report, March 2019, Chart 7.1, p.35
[103] Jeff Borland (2019) Overview of research to inform the Annual Wage Review 2018–19, p.4

133. Real wages growth, as measured by the WPI, has generally remained positive over the past decade. For most of the past five years, real wages growth has remained in line with the 20-year average. While it has dipped below the long-term average over the past two years, it remains positive, suggesting it continues to support increases in living standards.

4.4.1 It's the individual arrangements holding average wages back

134. Boreland, and Rozenbes and Ellis, point to the complexity and unknowns behind slower aggregate / average wages growth across our economy (slower than the 20 year trend rate of roughly 3.2%).[104] However there seems a very straightforward point that may have been missed.

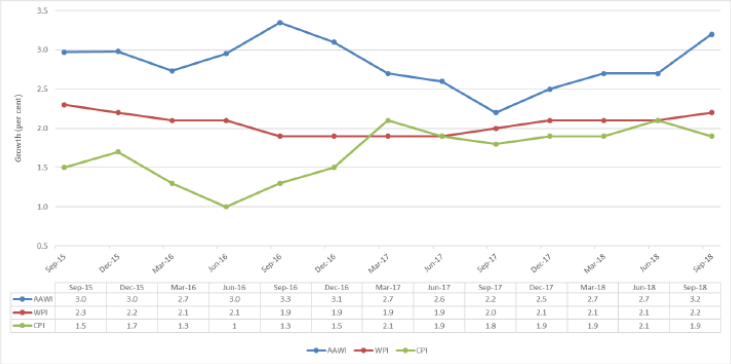


135. Looking at Chart 7.1 from the Statistical Report[105] (above), it is axiomatic that measured wages growth across the economy must be a mix of outcomes for (a) those paid on awards, (b) those paid on collective agreements, (c) and those paid on individual arrangements (which includes those working subject to awards, but paid in excess of them). Employed Australians fall into one of these three baskets.

136. We know that Australians in receipt of award / minimum rates of pay have seen their wages rise by more than inflation for 9 years, and by more than the WPI in most years. The average annual increase handed down in these reviews since 2010 has been identical to the 3.2% longer term trend wage growth rate (which we argue has been excessive for what should be a safety net wage rate). It seems clear that the outcomes of these cases cannot be argued to have been dragging down the average. Looking at Chart 7.1 from the Statistical Report, it cannot be the dark blue column that is dragging down the average. The share of workers on award wages has increased strongly over the past eight years the NWM and award wages are increasing at a faster rate than the average of all wages, as measured by the WPI. If anything the NWM and award wages are boosting the average wages growth.

[104] Jeff Borland (2019) Overview of research to inform the Annual Wage Review 2018–19, p.4
[105] Statistical report—Annual Wage Review 2018–19, March 2019, p.35

Chart 1 - AAWI in approved agreements, ABS Wage Price Index (WPI) and Consumer Price Index (CPI) – September quarter 2015 to September quarter 2018



	Sep-15	Dec-15	Mar-16	Jun-16	Sep-16	Dec-16	Mar-17	Jun-17	Sep-17	Dec-17	Mar-18	Jun-18	Sep-18
AAWI	3.0	3.0	2.7	3.0	3.3	3.1	2.7	2.6	2.2	2.5	2.7	2.7	3.2
WPI	2.3	2.2	2.1	2.1	1.9	1.9	1.9	1.9	2.0	2.1	2.1	2.1	2.2
CPI	1.5	1.7	1.3	1	1.3	1.5	2.1	1.9	1.8	1.9	1.9	2.1	1.9

137. There has been some gap between AAWI under enterprise agreements in many quarters, however:

a AAWIs in collective agreements are trending upwards.

b The most recent data is right on the longer term wage growth average of 3.2%.

c In each quarter, wages in enterprise agreements have exceeded increases in wages generally (the WPI) and prices (CPI).

138. So as a matter of logic, we shouldn't be looking to those on minimum / award wages or agreements to understand below trend wage growth across the community. It is the 41% of workers with individual arrangements, the orange column in Chart 7.1 of the Statistical Report, where the explanation must lie.

139. Slower wages growth seems to be driven from those working in jobs that have never been award reliant / are paid in excess of award minimum wages. Perhaps we should be trying to understand wages growth by industry and occupation for those less award reliant. Sectors with low award reliance include mining (0.9%), electricity, gas, water and waste services (4.1%), financial and insurance services (5.1%), information media and telecommunications (7.1%) and professional, scientific and technical services (8.0%). All low award reliance sectors experienced wages growth in 2018 that was below the WPI average of 2.3%, ranging from 1.3% for mining and 2.1% finance and insurance services.[106]

140. The Commission should:

a Note that a "depress(ed) rate of growth in nominal wages" and a "low wage environment" arise from parts of our economy and labour market which are not directly impacted on by these decisions.

b Not consider this a factor that supports a particular level of increase in this matter, or alternatively not accord aggregate / average wage growth across the community any particular determinative weight. This should not inflate the increase to be awarded in this matter.

[106] Statistical report—Annual Wage Review 2018–19, March 2019, Table 7.1, p.36

4.4.2 Wage growth in comparable economies

141. Trade unions and some others would have Australians believe that below trend wages growth is a uniquely Australian phenomenon. Supposedly, Australians are experiencing below trend wages growth because the FW Act is broken and needs to change, or this Panel is not increasing minimum wages sufficiently.

142. They argue these cases and the decisions of the Expert Panel are equally broken and failing working families. Supposedly these reviews need to change fundamentally because aggregate wage growth across the economy is below trend terms.

143. However, as unions are well aware, comparatively low wage growth, below trend terms, is not just an Australian phenomenon. It occurs across other comparable developed / highly-industrialised economies.

144. Generally wages growth is Australia over the past decade has been consistent with that of comparable economies. Most major economies have experienced low wages growth over the past decade. In the wake of the Global Financial Crisis central banks have relied on monetary policy to stabilise their economies. As a result, core inflation in many advanced economies remains below the central bank's target range.

145. Latest estimates from the Office of National Statistics show that average weekly earnings for employees in the United Kingdom in nominal terms increased by 2.8% in the year to December 2018, compared to 3.3% a year earlier.[107] In real terms, the estimates show that average weekly earnings of employees increased by 1.1%, compared with a year earlier.

146. Similarly, in the United States, despite solid economic growth, wages growth has been modest, remaining at or below 2% over the past five years.[108] The Bureau of Labour Statistics indicated a modest increase in real wages growth in January 2019, with real average hourly earnings increasing 1.7%, seasonally adjusted, from January 2018 to January 2019.

147. Employment prospects have been improving in Japan and labour force participation is on the rise. Workers' real wages rose 2.8% in June from a year earlier, marking the fastest pace of growth since January 1997.[109]

148. Wages in the eurozone are rising again after years of stagnation. Official data showed that hourly wages in the eurozone rose 2.6% year-on-year for the June quarter 2018, following on from growth of 2.5% for the same quarter in 2017.[110] Experts attribute the growth to a shortage of workers, particularly in countries like Germany.

149. Australia, the US, the UK and other OECD economies have very different industrial relations and minimum wage systems, including different regularity in increasing minimum wages.

[107] Office of National Statistics (UK) EARN01: Average Weekly Earnings, 19 February 2019. https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/averageweeklyearningsearn01
[108] Bureau of Labour Statistics (US) Real average Hourly Earnings. 15 February 2019. https://www.bls.gov/opub/ted/2019/real-average-hourly-earnings-increase-1-point-7-percent-over-the-year-ending-january-2019.htm
[109] https://www.reuters.com/article/us-japan-economy-spending/japan-wage-growth-hits-21-year-high-signals-pickup-in-household-spending-idUSKBN1KR2GY
[110] Eurostat September 2018, https://ec.europa.eu/eurostat/documents/2995521/9102894/3-14092018-AP-EN/496a616d-6ae3-465a-998e-f137a242bc85

150. However, there is a common phenomenon of slower wages growth, and slower wages growth than would be expected following reasonable levels of jobs growth / comparatively low unemployment.

151. Boreland, and Rozenbes and Ellis, point us in the right direction, suggesting the situation in Australia is not unique, but similar to that of many of the world's developed economies.

152. Comparatively low wages growth is occurring in economies with very different workplace relations and wage setting approaches to those in Australia. This appears a deep seated structural phenomenon that we do not sufficiently understand globally.

153. RBA Governor Phillip Lowe recently expressed this quite well:

> *"There is something deep and structural going on and in my own view it is not really coming from the industrial relations system,"*[111]

4.5 Developments in wages growth research

4.5.1 Introduction

154. We thank the FWC, David Rozenbes and Grant Ellis for this research.[112] This paper seeks to provide information on possible explanations for the comparatively lower wage growth of recent years, described in the 2018 Decision as "low wages growth".[113]

155. To clarify as we do in each of these reviews, the participation of the Australian Chamber in the Minimum Wages Research Group (MWRG) should in no way be taken as:

    a Endorsement of any particular piece of research, its accuracy or veracity.

    b Endorsement of the relevance of research, or any particular weight that should be attached to it in determining the uprating of minimum wages (i.e. what the Panel should make of the research).

156. As noted above, the paper provides some useful data on wages. It also attempts to engage with one of the more significant economic questions plaguing a number of developed economies, namely the paradox of why wages growth remains at historic lows in a climate of comparatively healthy jobs growth and historically moderate unemployment. The authors have ultimately advanced a useful description rather than nailing down causation.

157. We note the following from the introduction to the Paper:

> *In the Annual Wage Review 2017–18 (2017–18 Review) decision, the Expert Panel stated that wages growth had not improved over the previous year.*[114]

[111] Kehoe, J "'Something deep and structural going on' with low wages growth says Phil Lowe", AFR, 6 March 2019
[112] Rozenbes D & Ellis G (2019), Developments in wages growth, Fair Work Commission Research Report 1/2019, February.
[113] [2018] FWCFB 3500, [152]
[114] Rozenbes D & Ellis G (2019), Developments in wages growth, Fair Work Commission Research Report 1/2019, February, p.1.

158. Such a conclusion is not available to the Panel this year. Wages growth has been improving, up 2.3% in the year to December 2019, compared to 2.1% in 2017 and 1.9% in 2016. Therefore, with wages growth strengthening over the past two years, there is a clear difference between this year's review and preceding reviews.

4.5.2 Take inflation into account

159. The Research Paper also focuses too heavily on the decrease in wages in nominal terms, suggesting that wages growth is well below the 20 years average in recent years. However, this overlooks the fact that inflation has also been well below its long-term average (a point clearly noted in the Panel's last decision[115]).

160. In 2015 inflation fell below and has since remained outside the Reserve Bank's target range of 2% to 3%.

161. Nominal wages growth has remained above inflation (CPI) over the past five years, indicating that real wages growth has been positive against all indicators (WPI, AWOTE). At the same time, the Living Cost Index[116] has been rising at or below the rate of inflation. This suggests there has been a real improvement in the standard of living for the average waged employee over the past five years.

162. This point would seem to apply even more strongly for an employee on the NMW or award minimum wages. Minimum wages have risen in excess of inflation on 9 straight occasions, in most years by a significant proportion:

Year-over-year, Dec quarter	Minimum Wages increase	CPI
2010	4.80%	2.8%
2011	3.40%	3.0%
2012	2.90%	2.20%
2013	2.60%	2.70%
2014	3.00%	1.70%
2015	2.50%	1.70%
2016	2.40%	1.50%
2017	3.30%	1.90%
2018	3.50%	1.80%

163. The research paper notes that "*attempts to explain the recent low rates of growth in nominal wages in Australia generally begin by considering the influence of cyclical factors such as labour utilisation, price inflation expectation and labour productivity growth*".

[115] [2018] FWCFB 3500, [152]
[116] Rozenbes D & Ellis G (2019), Developments in wages growth, Fair Work Commission Research Report 1/2019, February, p.1.

164. Rozenbes and Ellis in their review of the literature on the factors driving wages growth conclude that "*Universally, the studies have shown that the slow-down has been related to the decrease in price inflation expectations and a rise in labour market spare capacity since the early 2010s.*"[117]

165. Since the Global Financial Crisis in 2008, the RBA has been relying on monetary policy to stimulate the economy, lowering the benchmark interest rate to 1.5% in August 2016 and maintaining it there for over 2½ years. This has proven only moderately successful, with the economy treading-water, but not strengthening, over this period. Recent indications by the RBA are that the economy will weaken further in the year ahead and it has suggested that the next move in the benchmark interest rate may be down.

4.5.3 Insufficient regard to productivity

166. Labour productivity is another factor that has been downplayed. Rozenbes and Ellis found studies that have examined the relation between nominal wages growth and labour productivity have found that the slowdown in wages growth can also be partly attributed to slower productivity growth. [118]

167. Labour productivity over the current business cycle (i.e. since 2012), has been sluggish and has exhibited a steady downward trend.[119] Overall, the weak labour productivity growth observed over the past seven years is also likely to be contributing to the weak wages growth.

4.5.4 Structural factors

168. The research papers by Borland, and Rozenbes and Ellis also considered the influence of structural factors on wages growth. The structural factors included in their review included decreases in worker bargaining power due to declining unionisation and changes to wage setting practices; or longer term demand for labour due to technology change and/or globalisation.[120] The research showed that these structural factors did not influence wages growth over the past decade, with Rozenbes and Ellis concluding:

> *"Despite a wide range of possible structural influence being proposed, there is little evidence on which, if any, of the factors have mattered in Australia"*

169. This counters calls for unions to have a greater role in negotiating wages to increase the bargaining power of employees, beyond that which arises from their support and representation of their members.

170. Of course such arguments would also need to meet the threshold test of being relevant to these reviews and the statutory considerations. In addition to the research not validating union power being a salient factor influencing wages growth, this cannot find a foundation in the statutory objectives for these reviews.

[117] Jeff Borland (2019) Overview of research to inform the Annual Wage Review 2018–19, p.10
[118] Rozenbes D & Ellis G (2019), Developments in wages growth, Fair Work Commission Research Report 1/2019, February. Jeff Borland (2019) Overview of research to inform the Annual Wage Review 2018–19, p.10
[119] ABS 5260.0.55.002 *Estimates of Industry Multifactor Productivity.* 03 December 2018
[120] Jeff Borland (2019) Overview of research to inform the Annual Wage Review 2018–19; Rozenbes D & Ellis G (2019), Developments in wages growth, Fair Work Commission Research Report 1/2019, February.

4.5.5 The determinants of wages growth may not lie within the Panel's remit:

171. We note the following from the introduction explaining the focus of the Paper:

> *Cyclical reasons, such as inflation, productivity and labour market spare capacity are tested and, while some papers find these to be an important factor, they do not provide a full explanation. This has led researchers to consider structural factors, such as job security, advances in technology and shifts in bargaining power. However, these are relatively difficult to measure and also do not provide conclusive reasons for recent wages growth outcomes.*[121]

172. Such structural factors, even were they to have been found to be salient or determinative of average or aggregate wages growth across the economy, do not lie within the Panel's remit in these reviews. Bargaining power for example, to the extent it is a function of how we regulate workplace relations, is regulated by other elements of the FW Act and regulatory system.

    a This is not subject to change from year to year, review to review.

    b Parliament cannot have intended that these reviews seek to correct or adjust for the framework it otherwise sets for bargaining.

4.6 RBA Governor's Comments

173. RBA Governor Phillip Lowe has made a number of comments on the importance of Australia returning towards longer term wage growth levels. A number of interests have attempted to use his reported comments (or selections from them) in support of changes to the statutory parameters for setting and varying minimum wages, and may argue their relevance in this matter.

174. His comments need to be properly understood, and properly contextualised.

175. In comments on the comparatively low / below trend wages growth, Dr Lowe has stated, that:

> *"There is something deep and structural going on and in my own view it is not really coming from the industrial relations system,"*[122]

176. This suggests that the low wages growth observed in recent years has more to do with structural factors in the economy as a whole, than the industrial relations system itself. A key factor here is clearly the low inflation environment experienced by the Australian economy over the current business cycle, i.e. since 2012.

177. Dr Lowe also told the recent AFR Business summit that wages had failed to keep pace with labour productivity gains enjoyed by business in the last five years, suggesting this might be a payback for wages growth that was faster than productivity growth during the mining boom in the earlier half of the past decade.

[121] Rozenbes D & Ellis G (2019), Developments in wages growth, Fair Work Commission Research Report 1/2019, February, p.1.
[122] Kehoe, J "'Something deep and structural going on' with low wages growth says Phil Lowe", AFR, 6 March 2019

178. He stated that:

> *"It's probably the case that some of what we've seen in the past five years is the unwinding but I also think it's partly structural because we're seeing in many countries around the world the same phenomenon play out,"*
>
> *"We're seeing in many countries the growth of real incomes of workers fall short of growth of productivity and I think the underlining factor here is perceptions of competition from globalisation and technology weighing on everyone's pricing power."*

179. In other comments on wages growth during the Q&A at the recent AFR Business Summit[123], Dr Lowe clarified that it was not his view that wages growth was too low, but that wages growth is below people's expectations based on historic wages growth. He went on to comment that many households had taken out home loans on the expectation that wages growth would continue at the rates experienced in the 2000s of 4%-6%, and were finding it challenging to meet their payments in an environment with wages growth around 2%.

180. These expectations based on the decision to take out a home loan should not be confused with wages growth in a low inflation environment.

181. Dr Lowe indicated that in his view the latest reading of the wage price index is welcome, showing a gradual pick-up in wage growth, especially in the private sector. His expectations are that over the next year the labour market will continues to tighten, supporting further growth in wages.

4.7 Consumer spending

182. Recent comments by the ACTU appear to suggest that a significant increase in the minimum wage is needed to somehow stimulate consumer spending and this will flow on to a pick-up in economic growth which will support further wage increase. This is the submission that a higher minimum wage increase will be good for business and doing business in Australia, and is needed to stimulate demand. The ACTU made a similar submission in last year's minimum wage review.[124]

183. While a circular argument, it also overlooks that the minimum (1.9%) and award (23%) wages affect only a small proportion of workers and therefore is unlikely to ever have a significant impact on overall consumer spending.

184. This issue was canvassed in last year's Review,[125] where the Panel found: "… *that the impact of an increase in minimum wages was 'not likely to be comparable to that of a public sector macroeconomic stimulus*."

185. The Panel went on to state that "*We remain of that view. Its significance for this Review is not that we seek to have an effect on macroeconomic outcomes, as suggested by ACCI*. [126]

[123] Lowe, P. (2019) 'The Housing Market and the Economy', Address to the AFR Business Summit, Sydney – 6 March 2019
[124] See [2018] FWCFB 3500 at [248], and ACTU submission, 13 March 2018 at para 62.
[125] [2018] FWCFB 3500 at [248].
[126] [2018] FWCFB 3500 at [248].

4.8 Conclusion

186. Australia already has the second highest minimum wages globally,[127] and the third highest minimum wage relative to the median wage of full time employees.[128] The living standard of the average Australian worker far exceeds that of our OECD counterparts, and has not fallen.

187. Further significant, in-excess of moderate increase in the NMW and award minimum wages will weaken labour productivity and our international competitiveness.

[127] Behind Luxembourg
[128] RBA (2019) Statement on Monetary Policy, February 2019, Box A, p.22

5. LABOUR MARKET CONSIDERATIONS

188. The labour market, and impacts on employment, unemployment, participation etc, is one of the major considerations for setting and uprating minimum wages in these reviews.

189. The Expert Panel is directed to consider impacts on employment and the labour market by the various considerations in the FW Act it weighs in these reviews, including:

a The need to promote "economic prosperity and social inclusion", s.3.

b The Modern Awards Objective, s.134(1)(c) and (h).

c The Minimum Wage Objective, s.284(1)(a) and (b).

190. The importance of considering impacts on jobs when varying minimum directly informed the drafting of the relevant provisions of the FW Act.

191. This consideration also arises from Australia's treaty obligations, which have in part been codified into the FW Act and the provisions that are balanced in these matters. Article 3 of the ILO's Minimum Wage Fixing Convention, 1970 (No. 131)[129], sets out the considerations (elements) that should be taken into account in setting and varying minimum wages, which clearly includes the importance of jobs:

Article 3

The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include--

(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;

(b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

192. The Panel looks closely at labour market considerations in these reviews, including employment and hours worked,[130] unemployment and underemployment,[131] participation,[132] and labour market transitions.[133]

[129] Ratified by Australia, 15 June 1973
[130] [2018] FWCFB 3500, from [166]
[131] [2018] FWCFB 3500, from [171]
[132] [2018] FWCFB 3500, from [183]
[133] [2018] FWCFB 3500, from [193]

5.1 Employment

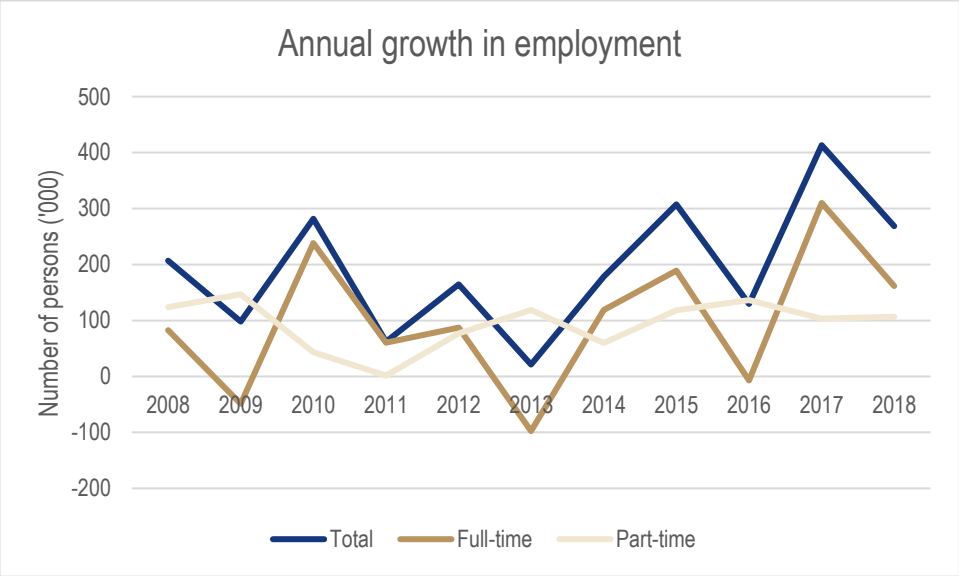
193. Total employment (seasonally adjusted) increased by 39,100 persons from December 2018 to January 2019, with an increase of 65,400 in full-time employment and a decrease of 26,300 in part-time employment.[134]

194. Since January 2018, 281,300 new jobs were added to the Australian economy, with almost nine in ten of these jobs being full-time (236,100).[135]

195. The unemployment rate remains steady at 5.0% in January 2018, and the RBA has indicated it expects unemployment will fall further over the next two years, to around 4.75% in 2020.[136]

196. The RBA suggests that the unemployment rate is moving closer to conventional estimates of full employment.[137] However, it also indicates that the labour market could still have some capacity to absorb additional labour demand before putting pressure on wage and price inflation, with the underemployment rate at 8.6% in January 2019, despite a steady decline over the past two years from a peak of 9.5% in January 2017.[138]

197. Over the past five years, an average of almost 260,000 jobs have been added per year, with around 60% (155,000) of these jobs full-time and 40% (105,000) part-time. Additions to part-time employment have been relatively stable around 105,000 persons per year since 2012. While there have been wide fluctuations in the annual increase in full-time jobs over the past five years, the general trend had been increasing.



[134] ABS 6202.0 Labour Force. 21 February 2019
[135] ABS 6202.0 Labour Force. 21 February 2019
[136] Reserve Bank of Australia, *Statement on Monetary Policy*. February 2019. p.69
[137] Reserve Bank of Australia, *Statement on Monetary Policy*. February 2019. p.38
[138] The underemployment rate includes those working part-time who desire more hours of work.

5.2 Participation

198. Labour force participation feel slightly to 79.9% in January 2019.[139] The 2018 budget forecasts expect strong participation to continue.

199. Labour force participation has grown steadily over the past decade, from 78.8% in 2009. Most of this growth has been in female participation, which has grown from 71.5% in 2009 to 74.3% in 2019. Male participation rates have changed little over this period, from 86.1% in 2009 to 85.6% in 2018.[140]

200. The Panel previously noted *"the reason that strong employment growth had not translated into a much lower employment rate is that there had been a corresponding increase in individuals participating in the labour force."*[141]

201. This is not the case in 2018, as it appears the labour force participation rate has peaked, remaining steady at 80.8/9% in 2017-2018.[142] This tightening of the labour force was reflected in the unemployment which fell from 5.5% at the beginning of the year to 5.0% by September 2018 and has remained steady at that rate since. This is also having an impact on wages growth, with wages growth continuing to trend upwards to 2.3% for the year to December 2018.

202. This tightening of the labour market is expected to continue in 2019,[143] with unemployment and underemployment expected to continuing to decline. This will put further pressure on wages growth, which can be expected to grow further in 2019.

5.3 Long-term unemployment

203. Long-term unemployment refers to the number of persons unemployed for 52 week or more.

204. Strong recent growth in employment has had a notable impact on the long-term unemployed. The strong growth in full time employment drove a decline in the number of long-term unemployed persons of 5.4% over the year to December 2018, from 171,200 to 162,000 persons. This represents the lowest number of long-term unemployed persons since December 2013. It follows a more modest decrease in the number of long-term underemployed persons in 2017 of 1.5%.

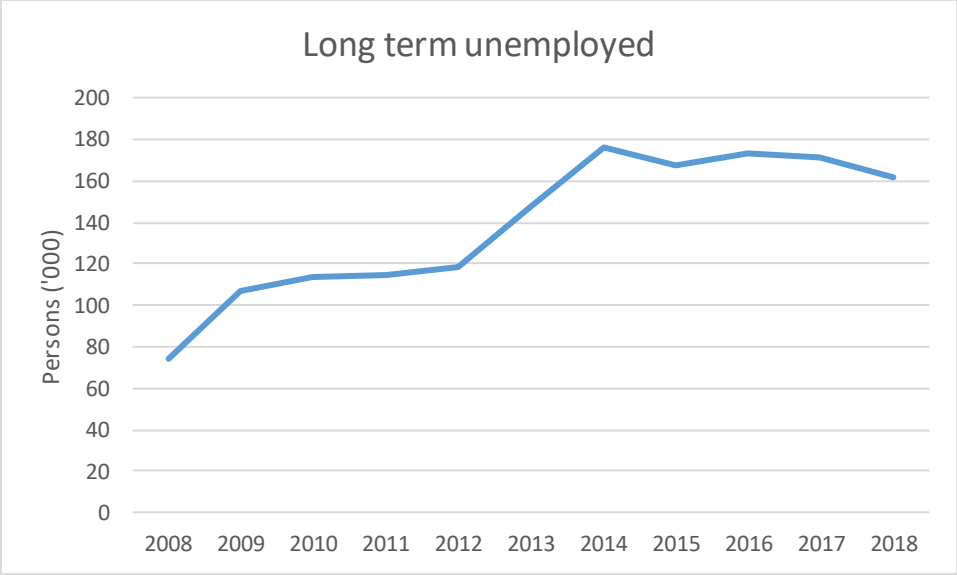
205. Despite the decline in the number of long-term unemployed of almost 10,000 persons in 2018, the ratio of long-term unemployed (the long term unemployed relative to all unemployed persons) increased modestly to 24.1% in 2018. This increase is more a reflection of the decline in the unemployment rate than any novel consideration (unemployment fell from 5.5% in December 2017 to 5.0% in December 2018).

206. It is logical that the shorter term unemployed, with higher skills and more recent work experience, will be hired 'first' as employment demand strengthens, and that jobs demand must be sustained to make sustained inroads into long term unemployment.

[139] FWC, *Statistical Report – Annual Wage Review 2018-19,* March 2019 p.32
[140] FWC, *Statistical Report – Annual Wage Review 2018-19,* March 2019 p.32
[141] Fair Work Commission (2018) *Annual Wage Review 2017-18.* FWCFB 3500, 1 June 2018 p.51
[142] FWC, *Statistical Report – Annual Wage Review 2018-19,* March 2019 p.32
[143] Reserve Bank of Australia, *Statement on Monetary Policy.* February 2019. p.69

207. Nothing in this would seem to favour any particular level of change in minimum wages. Whether someone is long-term unemployed or has been out of work for less than 12 months, it seems equally important that the NMW and award minimum wages be set at a level which does not disrupt healthy levels of labour market demand, and that minimum wage levels not interrupt demand or discourage hiring.

208. With the RBA forecasting unemployment to fall further over the next two years, to 4.5% by the end of 2020,[144] further falls in the number of long-term unemployed persons can be expected. This would be threatened by any excessive or unsustainable uprating of minimum wages, such as those which have been commended to the Panel by some other review participants in recent years.



5.4 Labour market transitions

209. In its 2018 decision, the FWC downplayed the role of lower paying work as a stepping-stone into higher paid work.[145]

210. Using data from the HILDA survey, the Australian Government's 2018 submission showed that only one-third of people who enter the workforce by taking low-paid jobs remain in low-paid employment for more than one year, with only 2.3% remaining in low paid work for over 5 years. The statistics also show that 75% to 80% of those entering the workforce through a low-paid job move on to higher paid work. While around 15% leave the workforce for various reasons, less than 7% return to unemployment, which is consistent with the declining average unemployment rate over the past five years. It also shows that the vast majority of those that rely on the minimum wage are younger, lower skilled workers, with 45% under the age of 25 and 43% with year 12 qualifications or less.

[144] Reserve Bank of Australia, *Statement on Monetary Policy*. February 2019. p.69
[145] [2018] FWCFB 3500, p.55

211. From this data, it is clear that only a very small proportion of the workforce relies on the NMW for an extended period. For most employees on the minimum wage, it is temporary, giving them an entree to the workforce, enabling them to prove their skills, employability and giving them access to higher paid employment.

212. In making its decision on setting the level of the NMW and award minimum wages, the Panel should take into account that only a very small proportion of the population rely on the minimum wage and those that do use it as a stepping-stone to higher paid work. The minimum wage should be set at a level that encourages business to employ more workers and maximises the opportunity for new workers to enter the workforce, along with the other considerations prescribed in the FW Act.

213. This is particularly important for young workers, who rely on low-paid, minimum wage employment to access the workforce, gain experience and build a career.

214. The Panel should conclude that:

a Successful labour market transitions, into work and from lower paying employment to higher paying employment, remain an important consideration.

b The uprating of minimum wages in these reviews / in mid-2019 should not have effect of making these transitions more difficult, or discouraging employers from the offering of higher paying work.

5.5 Apprenticeships and traineeships

215. Statistics from National Centre for Vocational Education Research (NCVER) indicate that apprenticeships and traineeships have experienced a steeply declining trend over the past seven years, which has continued in 2018. From a peak of 515,000 in 2012, apprentices and trainees in-training have fallen to 267,385 as at 30 September 2018, a decrease of over 48%. This has been driven mainly by falls in non-trade traineeships, which fell 57% from 299,400 in 2012 to 96,500 in 2018, while trade apprenticeships fell around 20% from 215,500 in 2012 to 173,200 in 2018.[146]

216. Apprenticeship commencements have also fallen sharply over this period, down 57% from 377,000 in 2018 to 161,700 in 2018. While completions peaked at 214,500 in 2013, they have subsequently fallen 58% to 89,700. Cancellations and withdrawals were down less, although not insignificantly, falling over 36% from 164,500 in 2012 to 92,900 in 2018.[147]

217. In this review, the Panel needs to consider the trend decline in the commencement and completions of apprenticeships and training, which are in part can be attributable to the cumulative effects of increases in award wages being higher than the average wage increases across the whole economy. The Panel has needs to be aware of the consequences of successive decisions, recognising that its decisions have both immediate and cumulative impacts.

[146] National Centre for Vocational education Research, *Historical time series of apprenticeships and traineeships in Australia*, 4 December 2018, https://www.ncver.edu.au/research-and-statistics/data/all-data/historical-time-series-of-apprenticeships-and-traineeships-in-australia-from-1963-to-2018.
[147] National Centre for Vocational education Research, *Historical time series of apprenticeships and traineeships in Australia*, 4 December 2018, https://www.ncver.edu.au/research-and-statistics/data/all-data/historical-time-series-of-apprenticeships-and-traineeships-in-australia-from-1963-to-2018.

5.6 Underemployment

218. The underemployment rate measures persons in part-time work aged 15 years and over who want or are available for more hours of work than they currently have. The underutilisation rate is the sum of the number of people unemployed and those underemployed.

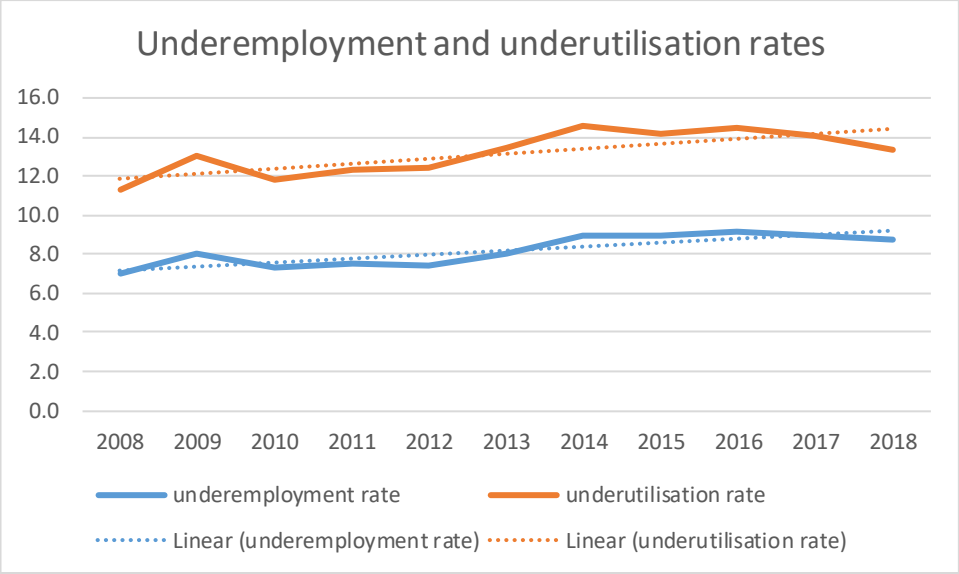
219. The underemployment rate includes both:

a Part-time employees wanting any additional hours they can get, who can be assumed to want full time employment but are unable to find it.

b Part-time employees who want additional work, but within personally defined parameters. This includes employees with parenting and caring responsibilities wanting work to match their desired hours and those for whom childcare restricts their work availability. It also includes students trying to match work with classes.

220. There has been an improvement in both the underemployment and underutilisation rate in the past year, with the underemployment rate dipping to 8.7% in December 2018, having maintained a level around 9.0% since 2014. Similarly, the underutilisation rate fell to 13.3% in December 2018, after hovering above 14% since 2014.

221. In recent decisions, the Panel observed a change in the relationship between unemployment and underemployment, and a divergence between moves in the unemployment and underemployment rates.[148]



[148] [2018] FWCFB 3500, [171]

222. However, circumstances have changed since 2018, when the Panel found that "*Over the past year the unemployment rate and the underemployment rate declined only slightly, reflecting a sharp rise in the participation rate*".[149] These facts have changed since the preceding review, and the decreases in underemployment have been more significant.

223. As noted by Rozenbes and Ellis[150] *"… higher wages growth occurs with lower measures of labour market spare capacity. The underemployment rate has recently reached record high levels, with equivalent wages growth closer to what would be expected. The comparison of the relationship between wages and labour market spare capacity (the underutilisation rate) indicates that it is around the trend-line for this relationship.*"

224. As the research paper notes[151], "inflation expectations and slower growth in labour productivity may be more important factors that have contributed to lower wages growth than spare capacity. There may be more spare capacity in the labour market than indicated by the unemployment rate, in the form of underemployment."

5.6.1 Yuen and Smith Research

225. We thank the FWC, Kelvin Yuen and Oliver Smith for the 'Insights into Underemployment' Research Report[152] looking at trends in underemployment, relationships to unemployment and the characteristics of the underemployed.

226. To clarify as we do in each of these reviews, the participation of the Australian Chamber in the Minimum Wages Research Group (MWRG) should in no way be taken as:

   a Endorsement of any particular piece of research, its accuracy or veracity.

   b Endorsement of the relevance of research, or any particular weight that should be attached to it in determining the uprating of minimum wages (i.e. what the Panel should make of the research).

227. That said, we have some observations on the paper and what should be made of it.

228. It is very interesting to see a longer term assessment of developments in underemployment across 25 years and to better understand who is underemployed and where. However, it is not clear how this is germane to the consideration at hand, being how to uprate the NMW and award minimum wages in the economy and labour market of mid-2019. There is a lever to be pulled in these matters, and we see nothing in the research that can help the Panel determine how hard it should be pulled / the level of minimum wage uprating.

[149] [2018] FWCFB 3500, [65]
[150] Rosenbers & Ellis p. 31
[151] Rozenbers & Ellis p.34
[152] Yuen K & Smith O (2019), Insights into underemployment, Fair Work Commission Research Report 2/2019, February.

229. That said, some general points are raised by the research:

a Youth unemployment is a major social and economic concern. We are therefore concerned about the observed links between youth unemployment and disproportionate underemployment for younger people. This favours a moderate and balanced approach to uprating minimum wages, and not a level of increase that risks increasing underemployment.

b We were not clear to what extent underemployment for the young is driven by simply wanting more work generally, or by wanting particular additional hours, for example trying to get work that accords with study commitments. It will be both for different cohorts of young people, but more information is needed.

c Looking at the list of key industries for unemployment, Arts and Recreation and Community and Personal Services include significant public sector employment. If enterprise agreements for local government employees, for example, are yielding underemployment, the role of wage levels would seem to be limited in regard to underemployment.

d Retail employees already enjoy entry / prevailing rates significantly in excess of the national minimum wages.

e More hours of work being available to those wanting it in industries such as retail and hospitality was one of the key findings that led to the penalty rates decision in February 2017.[153] As taken up in the final Chapter of this submission we see no role for the decisions of the Panel to seek in any way to compensate for or counteract merited decisions of the FWC exercising its powers under the same statute.

230. As to what can ultimately be made of the Yuen and Smith research paper:

a We know of no basis to conclude that increasing minimum wages can do anything positive for underemployment.

b It is difficult to see how underemployment could do other than favour the level of increase we commend in this matter. It is hard to see how making additional hours more expensive relative to the money coming in the doors of small shops, cafes etc could encourage the offering of additional hours.

c The relationship between underemployment and the decisions to be made in these matters, is inherently a negative one and must focus on understanding risks in regard to employment and not making it harder for the underemployed to gain access to additional hours of work.

d We know of no basis to reach any particular conclusions about the needs of the underemployed or their characteristics in regard to incomes into their households and expenditures, recalling of course that they are working less than full time and we are far from clear that it has ever been intended (or possible under the FW Act) that the needs of the low paid should be 'met' in full from less than full time jobs.

[153] Summary of Decision, [2017] FWCFB 1001 [30] – [31]

e There is nothing in the underemployment data, either current or historical, which suggest the Panel should make a significant uprating based on a consideration of either current underemployment, or changes across 25 years.

f One conclusion that can be derived from the paper is that part time work should be more flexible and there should be more options and choices available to part time employees and employers to agree on additional hours. However that falls outside the scope of this review.

5.7 Employment Effects

231. The Panel, and the preceding tribunal minimum wage setters have for many years considered the relationship between minimum wage increases and employment. This is an area of some research interest, albeit that there is some debate on the relevance of international experiences and conclusions into Australia's idiosyncratic minimum wage system (which has for example more than 2000 minimum wage rates, not the single rate applicable in many other developed countries).

232. Over series of submissions the Chamber has indicated to the Panel that:

a The circumstances of the small businesses that overwhelmingly pay minimum wage rates must be taken into account in considering proposals to increase wages by significant amounts.

b Small, award-reliant businesses that run on lean margins and are unable to pass on sizeable increases to consumers, may need to cut costs by either reducing headcount and hours or substituting capital for labour. It is very possible that short-term gains in the earnings of those who remain in employment come at the expense of those who are negatively impacted with broader economic consequences.

c Many award-reliant businesses operate in a highly competitive environment and are unable to pass costs on.

d If wages are increased excessively this risks discourage investment and entrepreneurship.

e Wage increases that are not supported by higher productivity or higher prices for consumers, are likely to cost jobs.

f To the extent that international research demonstrates negative employment impacts caused by minimum wages overseas and their uprating, these impacts may be compounded in Australia due to our high statutory minimum wages.

g Any non-effects or negligible effects in international contexts cannot be assumed in Australia where there is more bit on the market, and where minimum wages are long standing and entrenched.

233. In Chapter 1, we addressed the Panel's conclusions at [80] and [81] of the 2018 Decision ([2018] FWCFB 3500, p.19). We acknowledge that the impact of inflated decisions may not be observed through macroeconomic indicators in immediate order, within 12 months.

234. This is not 1975 when the former tribunal had control of a highly centralised system, and its decisions directly translated into wages growth across the community and into inflation and employment. Now only 23% of employees are directly subject to these decisions, it may not be at the macro level where negative impacts will be most felt. It may well be at the localised, enterprise, small business and community level that the impacts will be most keenly felt.

235. That said:

a Circumstances have changed and the economy in 2019 is different to that of 2018. The Panel cannot assume that what it considers to have been the effect of previous increases will be the effect in 2019.

b The Chamber will continue to monitor the impacts of previous review increases which employers view as above the odds and very difficult to sustain.

c The Chamber will respond to any engagement with this consideration by others.

5.8 Conclusion

236. The Panel should again accord significant weight to labour market considerations in determining the rate of any minimum wage increase in 2019.

237. There are grounds to conclude the labour market has strengthened, albeit in a climate of wider economic uncertainty and downwards revisions in other key parameters of our economy:

a Total employment is increasing, and new jobs are being added to our labour market.

b More full time jobs are being created than in the past.

c Unemployment is steady at a relatively positive rate (5%) from the perspective of recent economic history (i.e. a near 'full employment rate').

d Underemployment and underutilisation are declining more rapidly in recent times.

e Participation is at record high levels.

f Long term unemployment is declining.

238. This reflects an ongoing trend in Australia towards the labour market performing more strongly than other elements of our economy, and more strongly than other economic indicators would seem to suggest.

239. However, as the Panel has repeatedly made clear, it weighs a range of considerations each year. As we have argued for some years, the Panel should understand particular phenomena prior to basing any particular increase upon them, and any incapacity or limitations in reaching an effective understanding should compel additional caution.

240. Despite a strengthening labour market, the range of labour market and other considerations should favour greater caution and moderation in varying the minimum wage in 2019, than the 2018 variation of 3.5%. Greater uncertainty, combined with downwards revisions in forecasts, and the other points emphasised throughout this submission should lead to a more moderate uprating in 2019, more akin to that we commend to you (not more than 1.8%).

241. As outlined in Chapter 4, the Australian Chamber does not argue that the Panel has a role to play in regard to wages growth across the community generally nor that any stimulatory or catalytic role be attempted:

a This would not be merited, nor find favour in the evidence.

b It would not be consistent with the statutory framework.

c It would not work.

d It would cause significant damage to those whose interests would purport to be served by such an approach.

242. That said, from the perspective of the minimum wage review, ongoing falls in unemployment will put pressures on wages and will be the sustainable, non-job destroying catalyst / perpetuator of momentum for, accelerated wages growth across the economy (in the WPI, AWOTE etc).

6. LIVING STANDARDS / NEEDS OF THE LOW PAID

6.1 Introduction

243. The Australian Chamber maintains that minimum wage fixation is not an effective way of addressing the needs of the low paid. The tax and transfer system is better targeted to address the actual household circumstances of low paid employees and provide necessary support.

244. As we have argued for some years, it cannot be assumed that lower paid employees necessarily reside in lower income households. The Research Report for the previous 2018 review found that:

a Minimum wage earners are found throughout the distribution of household income, with most residing in middle-income households (which could reflect findings indicating that many minimum wages workers are not the primary earner of a multiple-earner household).[154]

b While minimum wage earners are strongly concentrated among low-income households compared to other employed persons, when compared with the wider population, lower income groups are dominated by the unemployed and those outside the labour force.[155] This limits the effectiveness of wage setting in the context of the needs of the low paid.

245. Nevertheless, the Minimum Wages Objective requires that this consideration be taken into account in conducting annual wage reviews, and the Panel has emphasised in a number of occasions that this is one of the key considerations that it must weigh.

246. The Panel has also clarified that the needs of the low paid and relative living standards cannot be the sole or determining considerations under the current legislation.

247. The Panel is required by both the minimum wages objective and the modern award objective to take into account relative living standards and the needs of the low paid when setting fair and relevant minimum wage rates. Those matters are different, but related, concepts and must be considered, together with the other matters in ss.3, 134(1) and 284(1) of the FW Act, in the context of available data and research.

248. The Panel has previously outlined how it goes about these assessments:

> *[361] The assessment of relative living standards requires a comparison of the living standards of workers reliant on the NMW and minimum award rates determined by the Review with those of other groups that are deemed to be relevant and focuses on the comparison between low-paid workers (including NMW and award-reliant workers) and other employed workers, especially non-managerial workers.*

[154] Fair Work Commission, Research Report 3/2018, Characteristics of workers earning the national minimum wage rate and of the low paid, Feb 2018, pp. 4-5
[155] Fair Work Commission, Research Report 3/2018, Characteristics of workers earning the national minimum wage rate and of the low paid, Feb 2018, p.6

> *[362] The assessment of the needs of the low paid requires an examination of the extent to which low-paid workers are able to purchase the essentials for a 'decent standard of living' and to engage in community life, assessed in the context of contemporary norms.*[156]

249. The Australian Chamber has consistently argued that comparisons of 'relative living standards should extend to those out of work, and to those in our community not participating in the labour market / not in employment.

    a We maintain that the unemployed, small business proprietors, and welfare recipients should be included in comparisons undertaken under the minimum wage setting schema of the FW Act.

    b We cannot identify anything in the statutory framework that would suggest that an assessment of relative living standards should only entail a comparison of award-reliant employees and employees that are not employed pursuant to awards.

    c However we acknowledge this is not the Panel's interpretation and that the Panel attaches limited relevance to a number of comparisons employers view as relevant.[157]

250. The remainder of this Chapter focusses on the considerations addressed in Chapter 3 of the Panel's 2018 Decision[158] in light of additional information, including that contained in the updated Statistical Report.

6.2 Award reliant employees and the low paid

251. The Panel addressed these considerations in 2018 Decision in Section 3.[159]

252. We again have updated data in the Statistical Report, showing largely unchanged numbers of award reliant employees, and of those directly reliant on the NMW. Most employees (in fact over 90% of those on minimum wages) are on minimum rates that are in excess of the NMW.

253. We note the following caveat from the preceding decision:[160]

> *…not all of the estimated 2.3 million workers who are award reliant will be affected by this decision, because a proportion of these are state public sector employees and private sector employees in non-incorporated businesses in Western Australia who are not in the federal industrial relations system.*

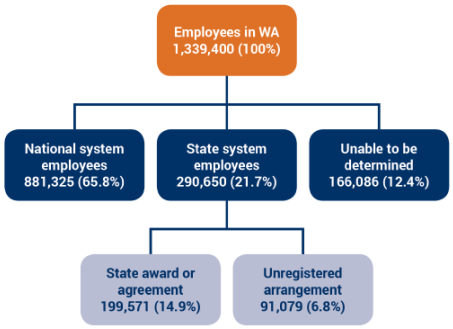
254. This needs to be better understood, and something as fundamental as the reach of these decisions needs to be clarified to the extent possible.

[156] [2017] FWCFB 3500
[157] [2016] FWCFB 3500, [354]-[357]
[158] [2018] FWCFB 3500, p.71, [263]-[371]
[159] [2018] FWCFB 3500, pp.71-783, [263]-[276]
[160] [2018] FWCFB 3500, [265]

a The Panel should provide a new Table 7.1a in an updated Statistical Report by sector, which would allow parties to make a realistic assessment of how much of the 2.3 million can be discounted for state public sector employees.

b We are aware of the WA problem. We note the following from the WA Government's review of its workplace relations system:[161]

Figure 1A Number and Proportion of Employees by Pay Setting Methods, Western Australia[38]



c We ask the FWC research team liaise with the WA government and engage with the state public services more generally to clarify any revisions to the 2.3 million, 22.7% and 1.9% figures.[162] Clarity on the reach of these decisions seems very important going forward.

255. We note the observations on the characteristics of those on the NMW and comparatively lower rates of pay,[163] and observe that they seem similar to some of the characteristics of the underemployed found by Yuen and Smith.[164]

256. However, we cannot see that these characteristics favour one level of increase over another. We caution in particular against any conclusion that the characteristics of those receiving minimum wages justify using minimum wages as a tool to address disadvantage.[165] This would be a partial approach unless it could accord with the wider balance of considerations required of the Panel. We also see nothing in these considerations or the data in statistical report which favours a particular level of increase.

257. What is required in these matters is more information on the characteristics of employers passing on wage increases awarded in these reviews. We need to better understand their businesses, and how much income they take home / the wages they pay themselves. We ask that this be formally put on the agenda of the Research Group for late 2019.

[161] Western Australia (2018) Interim Report - Ministerial Review of the State Industrial Relations System, p.60
[162] [2018] FWCFB 3500 at [265]
[163] [2018] FWCFB 3500 at [267]
[164] Yuen K & Smith O (2019), Insights into underemployment, Fair Work Commission Research Report 2/2019, February.
[165] [2018] FWCFB 3500 at [271]

258. The observation that "*low-paid workers, whose wages are likely to be affected by the NMW or modern award minimum wages, are disproportionately located in the lower deciles of equivalised household disposable income*" is something we intend to re-examine in light of wider evidence, including replying to the 2019 submissions of the Australian Government.

259. However, we can state at this point that such an observation, even were it accepted again, does not compel a particular level of increase in the NMW / award minimum wages. It is also unlikely that there will be any material change in the households where minimum wage earners reside, meaning this consideration could not favour any higher increase than that awarded in 2018 (not that we in any way concede that level of increase should be repeated, as set out above, this year's increase should certainly not start with a 3).

6.2.1 Real Earnings

260. As shown in Table 9.1 of the 2019 Statistical Report, the percentage change in the real national minimum wage has increased by 7.1% over the past decade, with most of this growth (6.1%) over the past five years.[166] Relative to the previous year's decision it appears that the change in the real minimum wage is accelerating, as in 2017 the increase over the decade was 5.8% and over the previous five years was 4.3%,[167] driven by the 1.7% increase in the real wage in 2018.

261. Chart 9.1 of the Statistical Report also shows that the steady growth in the real minimum wage over the past decade.[168] The chart indicating this rate of growth in the real minimum wage to be accelerating in recent years.

6.2.2 Household Disposable Income

262. Equivalised household disposable income is most commonly used in analysis of the living standards of NMW employees. This observes both labour market earnings and income from other sources, as well as the net impact of the taxes and transfers, by household type.

263. Changes in the tax and transfer system can have a positive or negative impact on the equivalised household disposable income. The introduction in July 2018 of the Child Care Subsidy, replacing the Child Care Benefits and Rebate schemes with a single means-tested subsidy paid directly to the provider, had a positive impact on the income of NMW-reliant employees with children in the past year. Similarly, changes to the tax income thresholds, announced in the 2018-19 Budget will benefit low-paid workers, although the changes to the lowest threshold that will benefit NMW-reliant employees the most will not come into effect until 2022.

264. Overall, in the year to July 2018, the increase to the NMW and change to the tax and transfer system have had an observable positive impact on the disposable income of NMW-reliant employees. Table 8.4 of the Statistical Report[169] shows a real increase in the nominal disposable income of NMW-reliant households for all household types over the past year.

[166] Statistical Report – Annual Wage Review 2018-19, Table 9.1
[167] [2018 FWCFB 3500 at [277]
[168] Statistical Report – Annual Wage Review 2018-19, Chart 9.1
[169] Statistical Report – Annual Wage Review 2018-19, Table 8.4

265. Most household types have received an increase over $20 per week.[170] Overall the increase in disposable income for NMW-reliant households was between 1.8% and 3.5%, with the average around 2.6%.

266. Table 8.5 indicates single parent and single earner households retained the greatest share of the NMW increase, over 75%.

267. We agree the minimum wage is important for maintaining real disposable incomes of many low-income households. However:

a The level of increase we commend in this matter will maintain these incomes.

b There have been significant real increases across the business cycle (from 2012).

c The tax and transfer system should the primary mechanism for addressing wealth inequity and poverty income redistribution to low-income households.

6.3 Relative earnings and earnings inequality

268. One of the factors considered by the Panel is earnings inequality with reference to changes in the minimum wage relative to median earnings of full-time employees (the minimum wage bite) and, more broadly, in the distribution of real weekly earnings for full-time non-managerial adult employees.

269. The Panel has previously noted that the relative living standards of low-paid workers are affected by the degree of dispersion in earnings. The Panel has said "*if the earnings of workers in the lowest deciles are growing more slowly than those in the higher deciles, then the relative earnings of the low paid will fall*."[171]

270. We have reviewed Section 8 of the Statistical Report, and make the following observations:

a The ratio of C14 rate relative to median weekly earnings of full-time employees has increased (54.1% in August 2018) when compared with that of ten years ago (52.8% in August 2008).[172] This means that those paid on the lowest award rates are not going backwards relative to other wage earners in the community. It also provides no basis for any inflated increase in 2019.

b Two thirds of median weekly earnings continues to be markedly higher than the existing minimum wage, pursuing such a course would necessitate a safety net increase of at least $167 per week.[173] This is not reconcilable with the minimum wage objective and general objects of the Act.

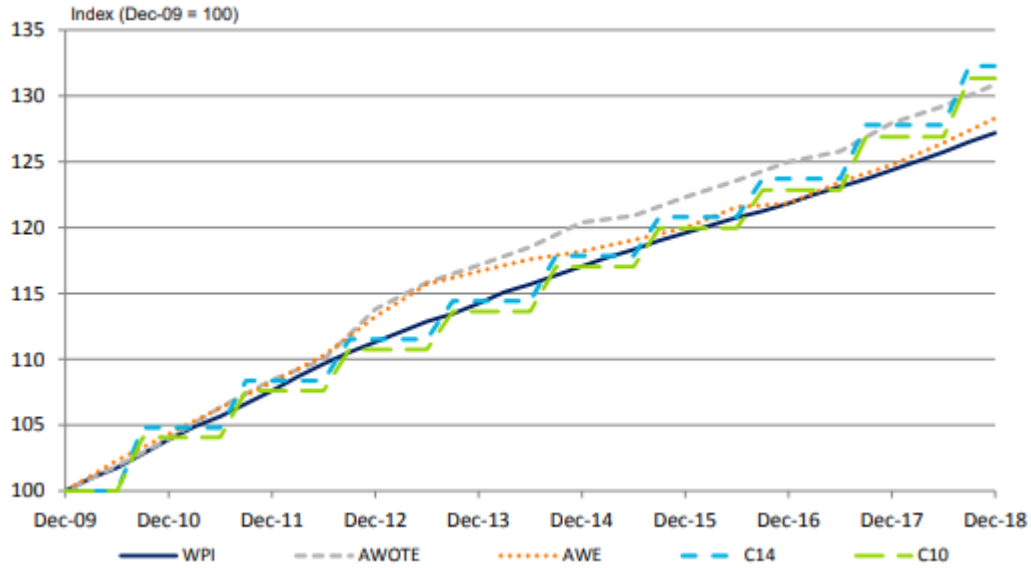
c The real value of the NMW has increased markedly in the past four years.[174]

[170] The exceptions were those working part-time where the increase was around $14 per week and those on the new start allowance, where the increase was over $16 per week.
[171] [2018] FWCFB 3500 at [302]. See also [2017] FWCFB 3500 at [444].
[172] Statistical Report – Annual Wage Review 2018-19, Table 8.1.
[173] Statistical Report – Annual Wage Review 2018-19, Table 8.2.
[174] Statistical Report – Annual Wage Review 2018-19, Chart 8.2.

d Comparing changes in modern award minimum wages with broader measures of wage growth, we note that while their relative growth rates varied somewhat over the period, by the September 2018 quarter the rate of growth in modern award minimum wages exceeded that of AWOTE, WPI and average weekly earnings (AWE) (refer to Chart 8.1 of the Statistical Report, below).[175] This development has improved the relative position of the low paid.

e Table 8.3 in the Statistical Report indicates there has been very little change in the ratio relative to the mean and median real earnings for each of the selected income percentiles.

Chart 8.1: Growth in C14 and C10 relative to AWOTE, AWE and WPI, index



271. The relative earnings of award-reliant employees and the capacity of the low paid to meet their needs has improved in recent years. The degree of dispersion in earnings does not point to the need for an increase in the minimum wage beyond the rate of inflation in 2019.

6.4 Income and wealth inequality

272. The last decision,[176] referred to the finding of the Panel in the 2017 decision that "*there was no evidence of recent rises in inequality of household disposable income among at least the bottom half of income distribution for all households*"[177] It went on to conclude that income inequality had stabilised and there were some indicators that income growth in households at the bottom of the distribution was increasing more than households at the middle and top of the income distribution.

273. As the ABS data on Household Income and Wealth (Cat. 6523.0) presented in the 2018 decision has not been updated (the same data is presented in the 2019 Statistical Report)[178], we can assume that the conclusion of the Panel in 2018 still holds true.

[175] Statistical Report – Annual Wage Review 2018-19, Chart 8.1.
[176] [2018] FWCFB 3500 at [317]
[177] [2018] FWCFB 3500 at [326], see also [2017] FWCFB 3500 at [63];[484].
[178] This includes Statistical Report – Annual Wage Review 2018-19 — Chart 8.5: Gini coefficient of equivalised household disposable income; Table 8.7: Growth in real weekly equivalised disposable income; Chart 8.5: Growth in real weekly equivalised household disposable income by quintile.

274. Recent analysis by the Melbourne Institute of Applied Economics and Social Data supports the Panel's earlier conclusions on this matter. Using the Household Income and Labour Dynamics in Australia (HILDA) survey, the analysis indicated that a similar share of the lowest paid workers were living in the richest 20% of households (13.8%), as were living in the poorest 20% of households (13.6%). The study's author, Melbourne University Professor Mark Wooden, concluded that "*the data provide one reason for why raising the minimum and award wages are not an effective tool for reducing poverty or income equality*."[179] He went on to suggest that the tax and transfer system was a far better mechanism for ensuring Australians have adequate incomes.

275. The ACTU has recently released a highly politicly charged briefing paper on inequality in Australia, which suggests that Australia is experiencing "*extreme inequality*", with the "*vast wealth generated over the past three decades has decisively gone into the hands of the privileged few*".[180]

276. The ACTU briefing paper quotes research by Associate Professor Ben Phillips from ANU to show wealth inequality and "the fall" in Australian living standards. However, this research is not published nor has it been peer reviewed. All that is presented are simple charts, with no detail on the method and approach to prepare this data or any conclusions Dr Phillips made based on his analysis. Therefore, any contentions the ACTU derives from this analysis should be accorded little weight or credibility.

277. The Productivity Commission released a major report on inequality in Australia in August 2018.[181] The Productivity Commission found:

a 27 years of economic growth have delivered significantly improved living standards for the average Australian across every income decile.

b Australia's progressive tax and highly targeted transfer systems substantially reduce income inequality.

c While some measures show a slight rise in income inequality over the past 30 years, others show no clear trend.

d Economic mobility is high in Australia, with almost everyone moving across the income distribution over the course of their lives. HILDA data shows the fluid nature of income and wealth, indicating most people are not in the same income decile today that they were in 15 years ago.

e A small group of Australians do experience entrenched economic disadvantage, in particular those without jobs. While many Australian experience economic disadvantage at some stage of their life, for most it is temporary.

[179] http://online.isentialink.com/afr.com/2019/03/12/abb4e51d-eea4-42af-8893-170d47269fec.html
[180] ACTU *Inequality in Australia: An economic, social and political disaster*, March 2019. https://www.actu.org.au/media/1385450/actu_inequality_briefing.pdf
[181] Productivity Commission *Rising Inequality: A stocktake of the evidence.* August 2018 https://www.pc.gov.au/research/completed/rising-inequality

278. The Australian Chamber concurs with the Panel's earlier conclusion that income inequality is lessening, with income growing faster for household at the bottom of the income distribution than at the top.[182] We also agree with Professor Wooden's recommendation that the focus should be on reforming the tax and transfer system to address wealth inequality.

279. We urge the Panel maintain its approach that wealth inequality is a matter that should be assigned little weight in increasing the minimum wage.[183]

6.5 Poverty and poverty lines

280. Employers agree that the low paid should not be forced to live in poverty, and the minimum wage should be set at a level that provides a 'decent standard of living' for NMW and award reliant employees, as those concepts are operationalised in legislation.

281. We note comments in previous decisions, that because families differ in size, composition and the extent of employment, it is not feasible for the minimum wage to be set at a level that ensures all families with a full time minimum wage worker have incomes that exceed poverty levels. Some larger families may need help from the welfare system, and do get that help.[184]

282. We acknowledge the approach taken by the Panel to set the relative poverty line as the equivilsed household disposable income derived from 60% of the median income. However, we take this as illustrative only. This in no way should be taken to infer that we agree that this is the appropriate level for such measures. We consider this to be arbitrary and would like the FWC to explain further why it believes this to be the correct illustrative threshold.

283. We note the Panel's previous conclusion[185] that the NMW provides a disposable income that exceeds the threshold poverty line set by the FWC by 20% in 2017. This margin was much higher, at 34% for those on award wages. Following the Panel's 2018 decision to raise the NMW by 3.5%, which was far in excess of inflation, living costs and wages growth, it is expected that the NMW and award wages will exceed the threshold poverty line by a greater amount in 2018.

284. Therefore, we argue that the minimum wage is more than meeting its purpose and there is no justification for a further increase in the minimum wage beyond the rate of inflation in 2018 of 1.8%.

285. The NMW applies to only 1.9% of employees (approximately 200,000 people). For most people the NMW enables them to transition to higher paid employment, noting earlier discussion in Section 4 on labour market transitions, which showed two thirds of those on low paid work transitioning to higher paid work within one year and only 2.3% remaining on the minimum wage more than five years.

[182] [2018] FWCFB 3500 at [326],
[183] [2018] FWCFB 3500, [328]
[184] [2018] FWCFB 3500, [330]
[185] [2018] FWCFB 3500, [336]

286. Therefore, the Australian Chamber submits that the minimum wage is not an appropriate tool to address poverty. We believe poverty in Australia should be addressed through the tax and transfer system.

6.6 Financial stress and deprivation

287. The Panel has previously found:[186]

> *[359] …The Panel considers that changes in the levels of financial stress and deprivation reported by low-paid households over time, both in absolute terms and relative to other households, assists with its assessment of the extent to which the needs of the low paid are being met, and that minimum wages are fair.*

288. The Statistical Report includes data on financial stress experienced by low-paid employee households.[187]

Table 12.2: Financial stress experienced by low-paid employee households: both partners, lone parent or lone person report stress

Financial stress indicators	2013 (%)	2014 (%)	2015 (%)	2016 (%)	2017 (%)
Unable to raise $3000 in a week for something important	10.4	13.8	12.8	10.8	12.6
Could not pay electricity, gas or telephone bills on time	16.0	13.7	14.4	13.1	14.9
Could not pay the mortgage or rent on time	9.1	8.2	8.0	6.9	6.0
Pawned or sold something	5.0	4.2	4.3	5.0	4.4
Went without meals	3.4	5.2	4.3	3.0	3.1
Could not afford to heat home	3.0	2.6	4.3	2.7	3.5
Sought assistance from welfare/community organisation	2.6	3.4	2.7	2.2	3.0
Sought financial help from friends or family	15.1	16.5	15.5	13.1	11.6
Any stress	30.8	31.2	31.7	27.5	27.9
Low stress (1–2)	21.8	21.3	23.2	18.8	19.3
Moderate stress (3–4)	6.7	7.7	5.9	6.9	6.6
High stress (5 or more incidences of financial stress)	2.3	2.1	2.5	1.9	2.1
Observations	890	892	906	973	1019

289. The data shows that the level of financial stress experienced by low-paid employee households is lower than it was in 2013. The decline is consistent across all stress levels; those experiencing 'any stress', 'low stress', 'moderate stress', and 'high stress'. This is relatively consistent with the trend in relation to the level of financial stress experienced by all employee households, where the level of financial stress either decreased or remained steady when comparing 2013 to 2017.[188]

[186] [2018] FWCFB 3500 at [359], see also [2017] FWCFB 3500 at [471]; [2016] FWCFB 3500 at [443]; [2015] FWCFB 3500 at [398]; [2014] FWCFB 3500 at [379].
[187] Statistical Report – Annual Wage Review 2018-19, table 12.2.
[188] Statistical Report – Annual Wage Review 2018-19, table 12.1.

6.7 Conclusion

290. The Panel should conclude that:

a There has been no material or substantial increase in employee needs between the preceding increase (mid-2018) and the date of any fresh increase (mid-2019).

b Consideration of employee needs, in the context of the wider balance of considerations the Panel has regard to does not favour a minimum wage increase in excess of 1.8% in 2019.

7. AGREEMENT MAKING

7.1 Introduction

291. One of the matters the Panel is required to take into account in giving effect to the modern awards objective is 'the need to encourage collective bargaining'.[189] As noted by the Panel in previous decisions,[190] while the minimum wages objective does not refer to '*the need to encourage collective bargaining*', one of the objectives of the Act is to encourage collective bargaining and it is therefore appropriate to consider that legislative purpose in making the NMW order.[191]

292. The Panel examined this consideration in the 2018 Decision[192], making clear that:

> *[11] The modern awards objective also requires the Panel to take into account 'the need to encourage collective bargaining,' whereas the minimum wages objective makes no express reference to any such consideration. This is relevant because it is the minimum wages objective, not the modern awards objective, which is relevant to setting the NMW rate. But as the Panel observed in the Annual Wage Review 2014–15 decision (2014–15 Review decision), the fact that the minimum wages objective does not require the Panel to take this consideration into account does not make much difference, in practice, to the Panel's task. This is because the Panel is required to take into account the object of the Act and one of the stated means by which the object of the Act is given effect is 'through an emphasis on enterprise-level collective bargaining' (s.3(f)). While not expressed in the same terms as in the modern awards objective, it is plain from s.3(f) and a reading of the Act as a whole that one of the purposes of the Act is to encourage collective bargaining. It is appropriate that the Panel takes that legislative purpose into account in setting the NMW rate.*[193]

293. Unfortunately, enterprise agreement making is in continuing decline. The September 2018 *Trends in Federal Enterprise Bargaining Report* shows:

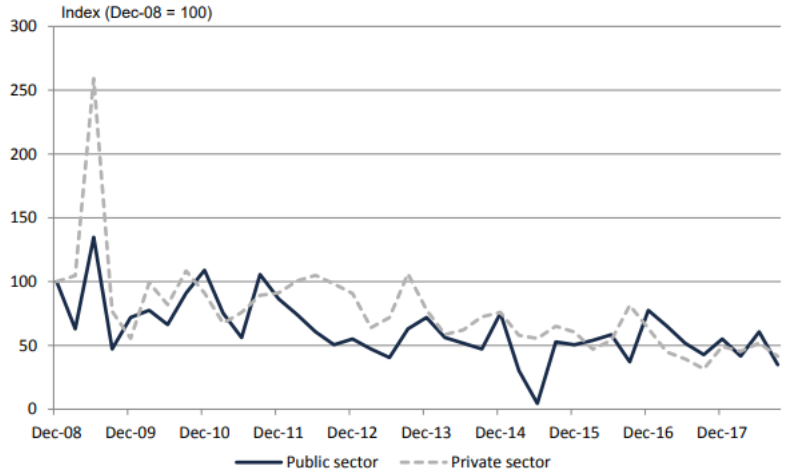
   a. Total numbers of current agreements declined from the June to September quarters (down from 12,832 to 10,989 agreements); an ongoing trend.[194]

   b. Just 873 new agreements were approved in the September Quarter 2018, down from 1,109 in the June quarter 2018.[195] At its peak (2009 – 2012) more than 2,000 agreements were regularly approved per quarter.

   c. The data on number of agreements approved in the quarter by sector is set out in the *Statistical Report – Annual Wage Review 2018-19* published by the Fair Work Commission:

[189] *Fair Work Act 2009*, s 134(1)(b).
[190] See, for example, [2018] FWCFB 3500 at [373]; [2017] FWCFB 3500 at [592].
[191] *Fair Work Act 2009*, s 3(f).
[192] See also [2018] FWCFB 3500, [372] – [405]
[193] [2018] FWCFB 3500, [11]
[194] Trends in Enterprise Bargaining Report, September Quarter 2018, Item 9.
[195] Trends in Enterprise Bargaining Report, September Quarter 2018, Table 3.

Chart 10.1: Number of agreements approved in the quarter by sector, index



Source: Department of Jobs and Small Business, *Trends in Federal Enterprise Bargaining*, September quarter 2018.

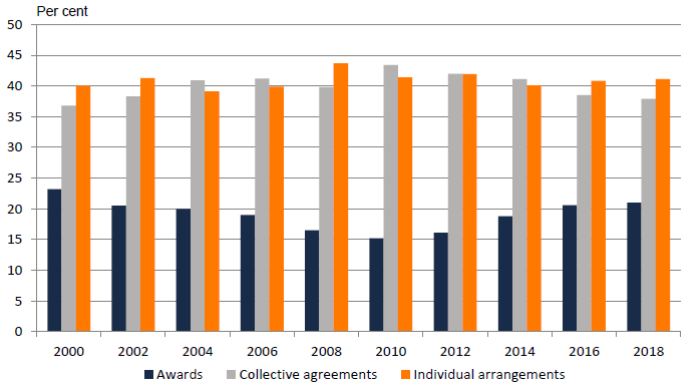
294. The September 2018 *Trends in Federal Enterprise Bargaining Report* shows that employee coverage by current, in term, agreements has also fallen:

a 1.89 million employees were covered by current agreements at 30 September 2018. This is lower than the 1.95 million employees covered at 30 June 2018 and but higher than the 1.76 million employees at 30 September 2017.[196]

b This remains in stark contrast to the 2.4 million employees covered by current agreements in 2015.

c The fall in the number of agreements and employee coverage may be partly attributable to a seasonal pattern in the expiration of agreements, that is, agreements expiring on 30 June especially in the Construction industry.[197] However this cannot mask the reality that fewer agreements are being approved and fewer employees are covered by enterprise agreements, and this trend is ongoing.

Chart 7.1: Method of setting pay



[196] Trends in Enterprise Bargaining Report, September Quarter 2018, Item 9.
[197] Trends in Enterprise Bargaining Report, September Quarter 2018, Item 9.

295. Chart 7.1 from the Statistical Report (above), demonstrates a sustained increase in award reliance and a decrease in the percentage of employees covered by collective agreements since 2010.[198]

296. This trend is evident across almost all industries over the last eight years:[199]

Table 7.1: Award reliance by industry, per cent

	2010	2012	2014	2016*	2018*
All industries	**15.2**	**16.1**	**18.8**	**22.4**	**22.5**
Mining	1.9	0.6	0.8	0.1	0.9
Manufacturing	14.6	11.3	15.7	17.7	20.8
Electricity, gas, water and waste services	3.1	4.3	6.9	6.5	4.1
Construction	10.0	10.6	13.7	19.7	16.6
Wholesale trade	10.9	8.1	11.9	16.8	16.1
Retail trade	22.3	25.6	28.5	34.5	30.1
Accommodation and food services	45.2	44.8	42.8	42.7	44.9
Transport, postal and warehousing	8.0	7.3	10.9	11.9	12.7
Information media and telecommunications	5.7	5.7	5.2	5.5	7.1
Financial and insurance services	2.1	4.7	5.0	3.6	5.2
Rental, hiring and real estate services	22.8	20.9	22.1	27.2	29.4
Professional, scientific and technical services	4.2	6.0	9.9	9.3	8.0
Administrative and support services	31.4	29.0	37.3	42.0	41.3
Public administration and safety	1.9	6.9	12.8	15.2	10.9
Education and training	5.1	6.8	5.1	8.5	10.0
Health care and social assistance	17.1	19.0	22.3	27.8	31.7
Arts and recreation services	15.1	19.7	22.0	26.2	22.5
Other services	27.2	24.6	25.1	34.3	38.1

297. With the exception of mining, and accommodation and food services, all other industries are making less use of agreement making, not more across the past eight years.

298. The accommodation and food services industry, which has the highest proportion of award-only employees of all industries (44.9% in 2018), had a 2.2 percentage point increase in award reliance between 2016 and 2018.

299. The September Report 2018 *Trends in Federal Enterprise Bargaining Report* also shows:

a. The average annualised wage increase (AAWI) for enterprise agreements approved in the September Quarter 2018 was 3.2%, up from 2.7% in the June Quarter 2018, and up from 2.2% in the September Quarter 2017.[200]

[198] Fair Work Commission, Statistical Report – Annual Wage Review 2018-19, p 35.
[199] Fair Work Commission, Statistical Report – Annual Wage Review 2018-19, Table 7.1.
[200] Trends in Enterprise Bargaining Report, September Quarter 2018, Item 1.

b. For the 7,470 enterprise agreements current as at 30 September 2018 (that is, agreements that have not passed the nominal expiry date and not been terminated) that had a quantifiable wage increase, the AAWI was 2.7 per cent, down from 2.8 per cent in the June quarter 2018, and down from 2.9 per cent in the September quarter 2017.[201]

c. The industries with the highest AAWIs across the quarter were the Rental, Hiring and Real Estate Services industry (7.9%), Construction (5.9%) and Administrative and Support Services (4.5%).[202]

d. The industries with the lowest AAWIs were Information Media and Telecommunications (1.9%), Wholesale Trade (2.0%), Public Administration and Safety (2.1%) and Education and Training (2.1%).[203]

e. Average annualised wage increases were highest in Victorian agreements (4.1%) and lowest in Western Australian agreements (1.8%).[204]

f. New union agreements are paying more (3.2%) than new non-union covered agreements (2.2%).[205]

7.2 Implications for setting the NMW / award minimum wages

300. A reduction in the gap between modern award minimum wages (which should be a safety net) and bargained wages is, and will continue to be, an impediment to bargaining.

301. Bargaining is intended to deliver benefits for both employees and employers, including productivity benefits.[206] Parties are unlikely to reach agreement unless an enterprise agreement will deliver these benefits, and the benefits stack up against the relative level of minimum wages

302. Where an employer is considering whether to bargain for an enterprise agreement, the level of the minimum wage floor is a key factor in the assessment of whether bargaining is worth pursuing. Minimum wages, combined with award conditions, provide a floor against which the "better off overall test" (BOOT) applies, so they are intrinsically linked to this consideration. The level of the minimum wage increase awarded by these Reviews has a significant impact upon claims and expectations in enterprise bargaining negotiations. If minimum wages are set at a level too close to the rates actually paid in workplaces (market rates) they will fail to meet the objectives of encouraging agreement making, and will with other factors, continue to discourage rather than encourage bargaining.

303. While there are other issues at play, if an employer is voluntarily seeking to bargain with employees, all else being equal, any significant increase to award based minimum wages will have a negative impact and will act as a disincentive to bargain. These disincentives are sharpest when minimum wage increases exceed inflation.

[201] Trends in Enterprise Bargaining Report, September Quarter 2018, Item 1.
[202] Trends in Enterprise Bargaining Report, September Quarter 2018, Item 5.
[203] Trends in Enterprise Bargaining Report, September Quarter 2018, Item 5.
[204] Trends in Enterprise Bargaining Report, September Quarter 2018, Item 7.
[205] Trends in Enterprise Bargaining Report, September Quarter 2018, Item 8.
[206] *Fair Work Act 2009*, ss 3(f) and 171(a).

304. The relevance of this consideration weights in favour of the Panel seeking to ensure that any increase to the minimum wage is at a level that maintains incentives for enterprise bargaining that rewards flexible and productive work practice or at the very least does not further discourage enterprise bargaining, or exacerbate and add to non-minimum wage factors discouraging enterprise bargaining.

305. In making this submission we note the Panel's comments in its previous Decision at [408].[207]

7.3 Conclusion

306. The Panel has previously found that the complexity of factors determining propensity to bargain make it difficult to "predict the precise impact of our decision".[208] It continued in the 2018 decision:

> *[409]… We cannot be satisfied that the increase we have determined will encourage collective bargaining and this is a factor to be weighed along with the other statutory considerations. However, we are also of the view that it is likely that the increase we have determined in this Review will impact on different sectors in different ways and will not, in aggregate, discourage collective bargaining.*
>
> *[410] We are not persuaded that the gap between modern award minimum wages and bargained wages, to the extent it can be identified with any precision, has reached a level where it is encouraging or discouraging collective bargaining. We maintain the view that the decline in agreement making and levels of current agreements is impacted by a range of factors, many of which are unrelated to the Review process.*[209]

307. No additional material is advanced for this review beyond updated bargaining data. However, we can parse and respond to the approach determined in the 2018 Decision (above).

308. It would be extraordinary to conclude that high award wage increases, above inflation could in any way encourage collective bargaining.

a Minimum wages have gone up by more than inflation consistently since 2010, and enterprise bargaining has decreased markedly across this period.

b We cannot see how increasing the real level of reward for not bargaining (i.e. increasing the payment in real terms for the status quo approach of staying on the safety net rate) could in any way stimulate bargaining. The relationship could only go the other way.

c If the Panel genuinely considers it is possible for high, above inflation minimum wage increases to somehow encourage agreement making, we would like to engage with the chain of reasoning behind that.

d Alternatively if the Panel was merely for technical completeness recalling that a lower, perhaps below inflation level of minimum wage rise may better encourage agreement making, we ask the Panel to note that:

[207] [2018] FWCFB 3500, p.107
[208] [2017] FWCFB 3500, [636]
[209] [2018] FWCFB 3500, pp.107-108

i. Employers are not making such an argument on this occasion.

ii. The level of increase we commend in this submission is not being advanced on this basis, and would not have such an effect.

iii. An increase equivalent to inflation would, until proven otherwise, be likely to have a neutral effect on propensity to enterprise bargain. In the current bargaining context, it would do nothing to make a poorly performing enterprise bargaining system perform better, nor would it make it worse.

309. Any conclusion that high, above inflation minimum wage increases somehow encourage agreement making should be ruled out of consideration and not be repeated in 2019. The live consideration remains and must remain whether the level of increase awarded serves to (additionally) discourage bargaining.

310. However, we also question the second of the conclusions in 2018, namely that "*it is likely that the increase we have determined in this Review will impact on different sectors in different ways and will not, in aggregate, discourage collective bargaining".*[210]

311. With due respect this is a known unknown. The Panel knows what it does not know, namely the impact of its decisions on bargaining. The conclusion should not be that the level of increase awarded will not / is not discourage(ing) enterprise bargaining, it should be that Panel cannot determine that on the information before it.

[210] [2018] FWCFB 3500, [409]

8. OTHER CONSIDERATIONS

8.1 Penalty Rates

312. The FWC's February 2017 Decision to vary Sunday and Public Holiday penalty rates in a limited subset of modern awards[211], and subsequent decisions on implementation were identified as a matter relevant to last year's precedings, the 2018 Decision[212] set out the decisions relevance as follows:

> *[93] The Penalty Rates decision provides for the phased reduction of Sunday penalty rates in certain awards in the hospitality and retail sectors which will reduce the employment costs of some employers covered by the modern awards affected by the decision. We note that there have also been other changes to modern awards that have increased employment costs. It is not appropriate to take account all of these matters in some quantifiable or mechanistic way to support a particular outcome in the Review. But these matters form part of the broad context in which the Review is conducted and are relevant considerations.*

313. **We do not agree this is a relevant consideration**: The Panel exercises its minimum wage setting and variation powers under the various provisions of the FW Act, as set out under introductory "The Statutory Framework" subsection of the 2018 Decision.[213] Our understanding is that this constitutes the "relevant considerations" for these review decisions, and the only relevant 'context' can be those considerations set out in ss.134, 284, and 578.[214]

    a We do not understand there to be any "broader context" beyond the "specified considerations for these reviews"[215] that could see moderate and far from universally applied changes in penalty rates determine, even in part, the level of increase in this matter.

    b We can see no particular element of ss.134, 284, and 578 that advances such a consideration, nor what could be made of moderate changes in some penalty rates in 4 of 122 modern awards.

    c Any review participant that argues the ongoing implementation of a two-year-old decision, for some rates, in 4/122 modern awards is relevant to this matter or favours a particular level of increase, should be required to show the Panel how this could be considered under the relevant parts of the statutory framework, how it is germane to the considerations at hand, and what should made of it.

314. The FWC was of course also exercising the same statutory framework in the Penalty Rates litigation as it is in these reviews. It seems very difficult to conclude there could be any imperative to counteract or compensate for the operation of other decisions reached on merit under the same legislation.

[211] [2017] FWCFB 1001 and [2017] FWCFB 2955.
[212] [2018] FWCFB 3500, [93]
[213] [2018] FWCFB 3500, from [5]
[214] [2018] FWCFB 3500 [8]
[215] [2018] FWCFB 3500 [8]

315. The FWC was also entirely cognisant of these reviews when it handed down the Penalty Rates decision. Its reassessment of the level of Sunday penalties was clearly made in the context of a series of these award wage decisions which have more than kept pace with changes in prices (and which will see hourly rates on Sundays rise by more than double the increase in prices).

316. **Only a fraction of employees subject to these decisions have had Sunday penalties changed**: Around 217,000 employees are subject to the Penalty Rates decision in regard to Sunday rates,[216] well short of the 700,000 inaccurately and persistently claimed by some quarters.

    a This represents just 9.4% of the 2,307,300 Australian employees paid award rates only[217], who are directly subject to these decisions. It is difficult to see how rates for over 2 million persons could legitimately be determined, even by way of broad context, by a circumstance or development that affects less than 10% of them.

317. **Sunday penalties haven't changed for the overwhelming majority of minimum wage jobs**: The vast majority of employment subject to the decisions in these reviews fall outside hotels, pharmacies, shops and fast food (the modern awards subject to the Penalty Rates decision).

318. The following comparatively 'award reliant' industries did not benefit in any way from the Penalty Rates decision, but must pass on any minimum wage increases arising from these reviews to substantial proportions of their employees, and would need to pay any 'inflated' component of an increase attributable (directly or indirectly) to the penalty rates decision:[218]

a	Administrative and support services	41.3% of employees paid award rate
b	Other services	38.1% of employees paid award rate
c	Health care and social assistance	31.7% of employees paid award rate
d	Rental, hiring and real estate services	29.4% of employees paid award rate
e	Arts and recreation	22.5% of employees paid award rate
f	Manufacturing	20.8% of employees paid award rate

319. A small accountancy firm for example, open Monday to Friday, gained absolutely no benefit from the Penalty Rates decision, and it would seem strange that such a decision could form any part of the context or considerations for determining an uprating in that firm's minimum wage obligations.

320. Even within the Retail Trade, and Accommodation and Food Services industries, also both highly award reliant industries, not all employees or even all employees working Sundays were impacted by the Penalty Rates decision.

321. For example:

[216] https://theconversation.com/factcheck-will-700-000-workers-be-ripped-off-by-penalty-rate-cuts-as-bill-shorten-said-75048
[217] Australian Government Submission, 2018, Chart 2.1, p.12
[218] Statistical report – Annual Wage Review 2018–19 (PDF) – updated 8 March 2019, Table 7.1, p.36

a Many of the activities covered by the *Vehicle Manufacturing, Repair, Services and Retail Award 2010*, are for ABS purposes included under Retail Trade.

b There are many areas of the accommodation and food services that did not benefit from the Sunday penalty rate changes of 2018, including caravan parks, and youth hostels.

322. It would be profoundly unfair and misplaced to in any way inflate outcomes in an attempt to compensate or counteract a decision of the FWC in minimum rates of pay payable to employees who have not been subject to any arguable "loss" as a result of that decision (which would of course also to be to misread the penalty rates decision, the basis for it, and its impact).

323. There is no fair go in penalising businesses / compensating employees for the so called benefits of an outcome they did not in fact benefit from, or conversely incur any loss from. This cannot be what the Panel accepted or intended on the last occasion.

324. **The penalty rate changes are being phased in**: It should also be recalled that:

a There has been no change to the schedule of phased changes under the Penalty Rates Case Transitional Arrangements Decision of 5 June 2017[219].

b From what we can see of the transitional decision, in no award, for either casual or ongoing employees, is the percentage reduction from 1 July 2019 any greater than that of 1 July 2018. Thus, there can be no additional consideration or imperative to somehow uprate any increase in 2019 in excess of any that may have been considered in 2018, recalling of course that we maintain this remains a consideration that could not be relevant or germane to determining any uprating.

325. **Within 100 days the penalty rates changes could be reversed**: Caution is also needed on the relevance and impact of penalty rate changes, given those changes may be short lived in the 12 months from mid-2019. We understand the Labor Party if elected will:

a Reverse the penalty rates decision, apparently overturing the determination of a Full Bench of the FWC, based on a long running case and considerable expert and lay evidence.

b Move to introduce legislation to this effect within 100 days of gaining office / as the first Bill of a new Labor government.[220]

326. Whilst reductions in penalty rates have been phased in, we understand any planned reversal will be immediate and not phased in.[221] If Labor is elected, and the Parliament passes legislation in the terms canvassed to date, employers would see Sunday penalty rates increase in a single hit as follows.[222]

a General Retail Award, Sunday penalties will increase from 165% to 200%.

[219] [2017] FWCFB 3001
[220] The Australian, Bill Shorten vows to restore Sunday penalties in first 100 days as PM, 18 July 2018. Bill Shorten Speech – Launch of the "Queensland jobs not cuts" bus tour, 7 January 2018.
[221] Fair Work Amendment (Restoring Penalty Rates) Bill 2018.
[222] See summary [24] to [27]

b Pharmacy Award, Sunday penalties will increase from 165% to 200%.

c Hospitality Award, Sunday penalties will increase from 150% to 175%.

d Fast Food Industry Award, Sunday penalties will increase from 125% to 150%.

327. This means in practice that an increase in award rates in this matter would take effect from 1 July 2019, and penalty rates in the four modern awards could increase significantly in a single hit, approximately two months later. It is very difficult to see how this could favour any uprating of the safety net increase awarded, and if anything, penalty rates should weigh as a factor warranting caution and additional moderation in 2019.

8.1.1 What should be made of this

328. The Australian Chamber can see no basis for the ongoing implementation of the Penalty Rates decision to be relevant to the determination of an uprating of minimum wages on this occasion. Changes in some penalty rates in just 4 of 122 modern awards should neither inflate nor deflate the level of uprating the Panel may be inclined to award in this whole of award system review.

329. The Panel should exercise caution in light of this and in no way inflate the quantum of increase awarded in this review (whether in a "quantifiable or mechanistic way" or otherwise) beyond that otherwise merited, based on penalty rate changes.

330. Alternatively, were any weight or influence accorded to the penalty rates changes as a consideration (notwithstanding that we argue it should not, as set out above):

a The significant increase to penalty rates planned by the alternative government could serve only to favour moderation in the quantum awarded, not inflation.

b Alternatively, no greater weight could be accorded to penalty rates in 2019 compared to 2018, and such rates could not uprate the overall decision to any greater extent to that of 2018.

8.2 Equal pay

331. The Panel has previously found that it must take into account the principle of equal remuneration for work of equal or comparable value, under ss.134(1)(e) and 284(1)(d) of the FW Act.[223]

332. In particular, we recall the following from the 2018 Decision:

> *[417] The application of the principle of equal remuneration for work of equal or comparable value is such that it is likely to be of only limited relevance in the context of a Review. Indeed it would only be likely to arise if it was contended that particular modern award minimum wages were inconsistent with the principle of equal remuneration for work of equal or comparable value; or if the form of a proposed increase enlivened the principle.*

[223] [2018] FWCFB 3500, ¶415

> *We agree with the observations of a number of parties that Review proceedings are of limited utility in addressing any systemic gender undervaluation of work. It seems to us that proceedings under Part 2-7 and applications to vary modern award minimum wages for 'work value reasons' pursuant to ss 156(3) and 157(2) provide more appropriate mechanisms for addressing such issues. But the broader issue of gender pay equity, and in particular the gender pay gap, is relevant to the Review. (emphasis added)*

333. We see no basis to depart from this conclusion or approach on this occasion. Pay equity is a very important policy matter, but it is not enlivened in this review, nor can it assist the Panel in determining the quantum of any increase to be applied in 2019.

8.3 Gender pay gap

334. Australia, as with all countries, records a gap between average pay for women and average pay for men, and like other major economies, Australia is concerned to identify, understand and narrow that gap which has proven persistent over time, notwithstanding more women entering work and women working across increasingly diverse fields.

335. The Panel found as follows at [97] of the 2018 Decision:

> *[97] The gender pay gap is a factor in favour of an increase in minimum wages and we have considered this together with the various statutory considerations we are required to take into account.*

336. The Panel has also previously found that:

> *The gender pay gap becomes a relevant consideration in our task because, as was stated in the Penalty Rates decision, it is an element of the requirement to establish a safety net that is fair as well as relevant…*
>
> *[435]… the following general observations may be made:*
>
> - *there are more women than men who are award reliant;*
> - *award-reliant workers are more likely to be low paid than other workers;*
> - *women are significantly more likely to be paid at the award rate than are men at all levels of education and experience (except in their first year of work); and*
> - *men are more likely to receive over-award payments or be subject to collective agreements (with higher wages) due to the industry or occupation in which they work.*

> *[436] Women are disproportionately represented among the low paid and, hence, an increase in minimum wages is likely to promote gender pay equity. Increases in minimum wages, particularly adjustments that might exceed increases evident through bargaining, are likely to have a beneficial impact.*
>
> *This is so because of the dispersion of women within award classification structures and the greater propensity for women to be paid award rates.*

337. The Australian Chamber has previously argued, and argues again that:

    a The causes of gender pay disparity are complex and multifaceted, and much of the gap appears explicable from the operation of the labour market more widely, well beyond the specific minimum and award wage remit of the Expert Panel.

    b Any obligation of the Panel to consider this factor is best satisfied by setting wages that do not discriminate between men and women.

    c A single percentage increase applied to the minimum wage and all adult rates in awards (the Panel's recent approach), is an effective mechanism, taking gender pay disparity considerations into account.

338. The question becomes what if anything should be made of this consideration and what outcome should it favour on this occasion, noting it is one among a range of considerations to be weighed in this decision. This complexity of causation is underscored by the Workplace Gender Equality Agency (WGEA), which identifies a number of factors driving gender pay disparity, including:

    a Discrimination and bias in hiring and pay decisions.

    b Women and men working in different industries and different jobs, with female-dominated industries and jobs attracting lower wages.

    c Women's disproportionate share of unpaid caring and domestic work.

    d Lack of workplace flexibility to accommodate caring and other responsibilities, especially in senior roles.

    e Women's greater time out of the workforce impacting career progression and opportunities.[224]

339. Only some small component of these complex considerations could, in any way, be considered to be able to be positively impacted by the decisions of the Panel in these reviews. Minimum wage uprating is not an efficacious or relevant means to address gender pay disparity.

340. Caution should be exercised in assuming the gender pay gap is always and inalienably a factor favouring an inflated increase, or that an inflated increase will always necessarily be in the interests of women.

[224] https://www.wgea.gov.au/newsroom/media-releases/national-gender-pay-gap-hits-record-low

Australian Chamber of Commerce and Industry

9. ABOUT THE AUSTRALIAN CHAMBER

The Australian Chamber of Commerce and Industry is the largest and most representative business advocacy network in Australia. We speak on behalf of Australian business at home and abroad.

Our membership comprises all state and territory chambers of commerce and dozens of national industry associations. Individual businesses are also able to be members of our Business Leaders Council.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, employing over 4 million Australian workers.

The Australian Chamber strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

OUR MEMBERS

Australian Chamber of Commerce and Industry

CHAMBER

Business SA Chamber of Commerce and Industry South Australia
Canberra Business Chamber
Chamber of Commerce NORTHERN TERRITORY
CCIQ Powering business potential
Chamber of Commerce and Industry WA
NSW Business Chamber
TCCI Invigorating Business
Victorian Chamber of Commerce and Industry

INDUSTRY ASSOCIATION

accord
AMCA
Animal Medicines Australia
afa Great advice for more Australians
ais nsw
Australia Arab Chamber of Commerce & Industry
AADA
Australian Beverages
ADA Australian Dental Association
ADIA Australian Dental Industry Association
AFEI Australian Federation of Employers & Industries
Australian Gift & Homewares Association
AHA
aicm Australian Institute of Credit Management
Australian Made
AMPC
AMMA Australian Resources & Energy Group
AMTA Australian Mobile Telecommunications Association
apmf Australian Port Manufacturers' Federation Inc.
ARIA Australian Recording Industry Association
ARITA
Australian Retailers Association
ARTA
ASMI Australian Self Medication Industry
Australian Steel Institute
ATEC Australian Tourism Export Council
ATIC Australian Tourism Industry Council
ATA Australian Trucking Association
AVA Australian Veterinary Association
BIC Bus Industry Confederation moving people
Business Council of Co-operatives and Mutuals
Caravan Industry Association of Australia
Cement Concrete & Aggregates Australia
Chemistry Australia
CAA
CMAA
Consult Australia
COPHE Council Of Private Higher Education
CPA Australia
CLIK Cross Link International Association Australasia
Customer Owned Banking Association
Direct Selling Australia
Exhibition & Event Association of Australasia
Fitness Australia
Franchisee Federation
HIA
LFRA Large Format Retail Association
Live Performance Australia
Master Builders Australia
master plumbers Expert. Committed. Professional.
MTAA Medical Technology Association of Australia
Medicines Australia
NALSPA
NDS National Disability Services
neca national electrical and communications association
nesa national employment services association
National Fire Industry Association
NRA National Retail Association
NRMA MYNRMA.COM.AU
NSW HCA The voice of the Hire Car Industry
NSW Taxi Council
Outdoor Media Association
The Pharmacy Guild of Australia
ppca
Primerus The World's Finest Law Firms
rcsa Leading in the world of work
Restaurant & Catering
S P
The Tax Institute
Think Brick Australia
VACC You're in good hands