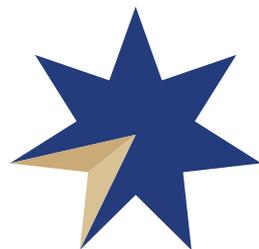


Working for business.
Working for Australia



2018-19 Annual Wage Review

Supplementary
Submission of the
Australian Chamber of
Commerce and Industry
12 April 2019



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 2019

This work is copyright. No part of this publication may be reproduced or used in any way without acknowledgement to the Australian Chamber of Commerce and Industry.

Disclaimers & Acknowledgements

The Australian Chamber of Commerce and Industry has taken reasonable care in publishing the information contained in this publication but does not guarantee that the information is complete, accurate or current. In particular, the Australian Chamber is not responsible for the accuracy of information that has been provided by other parties. The information in this publication is not intended to be used as the basis for making any investment decision and must not be relied upon as investment advice. To the maximum extent permitted by law, the Australian Chamber disclaims all liability (including liability in negligence) to any person arising out of use or reliance on the information contained in this publication including for loss or damage which you or anyone else might suffer as a result of that use or reliance.

CONTENTS

1.	MATTERS ARISING FROM THE 2019 BUDGET	1
1.1	Updated economic forecasts	1
1.2	Positive changes for the lower paid	3
2.	DATA PUBLISHED AFTER 15 MARCH 2019	5
2.1	Minutes of the RBA Monetary Policy Meeting	5
2.2	Further downwards revisions to global growth forecasts	6
2.3	Department of Jobs and Small Business, Monthly Leading Indicator of Employment	7
2.4	Trends in Enterprise Bargaining	8
3.	QUESTIONS ON NOTICE	9
3.1	Decision-making process	9
3.2	Economic and labour market considerations	18
3.3	Relative living standards and the needs of the low paid	23
3.4	Other relevant considerations	30
3.5	Transitional instruments and other matters	30
4.	MATTERS RAISED BY OTHER SUBMISSIONS	32
4.1	Submission by the ACTU: issues with economic narrative	32
5.	ABOUT THE AUSTRALIAN CHAMBER	36

1. MATTERS ARISING FROM THE 2019 BUDGET

1.1 Updated economic forecasts

1. Major economic forecasts have been revised down for the financial year 2019-2020 in this year's budget ahead of a slowing economy.
2. Consensus of a slowing economy is broad-based across the private and public sector. Recent reports by the Commonwealth Bank of Australia and KPMG suggest a slowing economy in the year ahead.¹
3. Any increase in the NMW above the rate of inflation will further exacerbate the slowing economy and impact on the jobs market. Low wage/lower skilled employees are likely to be most affected by the slowing jobs market.

Table 1: Domestic economy forecasts.²

	Outcomes(b)	Forecasts		
	2017-18	2018-19	2019-20	2020-21
Real gross domestic product	2.8	2 1/4	2 3/4	2 3/4
Household consumption	2.8	2 1/4	2 3/4	3
Dwelling investment	0.2	1/2	-7	-4
Total business investment(c)	6.0	1	5	4 1/2
<i>By industry</i>				
Mining investment	-4.1	-10 1/2	4	4 1/2
Non-mining investment	9.7	4 1/2	5 1/2	4 1/2
Private final demand(c)	3.0	1 1/2	2 1/4	2 3/4
Public final demand(c)	4.5	5 1/2	3 1/4	3
Change in inventories(d)	0.0	0	0	0
Gross national expenditure	3.4	2 1/2	2 1/2	2 3/4
Exports of goods and services	4.1	3 1/2	4	1 1/2
Imports of goods and services	7.1	1 1/2	3	2 1/2
Net exports(d)	-0.6	1/2	1/4	- 1/4
Nominal gross domestic product	4.7	5	3 1/4	3 3/4
Prices and wages				
Consumer price index(e)	2.1	1 1/2	2 1/4	2 1/2
Wage price index(f)	2.1	2 1/2	2 3/4	3 1/4
GDP deflator	1.8	2 1/2	1/2	1
Labour market				
Participation rate (per cent)(g)	65.6	65 1/2	65 1/2	65 1/2
Employment(f)	2.7	2	1 3/4	1 3/4
Unemployment rate (per cent)(g)	5.4	5	5	5
Balance of payments				
Terms of trade(h)	1.9	4	-5 1/4	-4 3/4
Current account balance (per cent of GDP)	-2.8	-1 3/4	-2 3/4	-3 3/4

¹ KPMG 2019, Federal Budget 2019: A review of the Budget's major business implications

² Source: The 2019-2020 Budget paper 1, page 2-6.

4. The Real GDP growth forecast for financial year 2018-19 was revised down to 2.75% in the 2019-2020 Budget from 3% in the previous year and the MYEFO.
5. Forecast household consumption for 2019-2020 was also revised down to 2.75% from 3% in the MYEFO and previous year's budget.
6. Dwelling investment forecasts have observed a major downward revision from -4% in MYEFO and 0% a year earlier, to -7% in the latest budget. This large downward forecast has the potential to impact on house prices and further exacerbate declining consumer confidence and household spending, as mortgage owners aim to repay mortgages sooner in the case a larger unexpected correction occurs.
7. This is reflected in private final demand being revised down to 2.25% from 2.75% in MYEFO and 3% a year earlier (in the 2018-19 Budget).
8. Nominal GDP growth forecast for the 2019-2020 financial year was also revised down from 4.75% in last year's budget, to 3.5% in the MYEFO and 3.25% in the 2019-2020 Budget.
9. Wage price forecasts for 2019-2020 declined from 3.25% in the 2018-19 Budget to 3% in the MYEFO, to 2.75% in the latest Budget.
10. While the CPI remains unchanged from MYEFO 2018-19, at 2.25%, it remains within the lower target range and is down from the previous year's Budget forecast of 2.5%.
11. New research by the Commonwealth Bank of Australia suggests that labour market slack is larger than the headline unemployment rate suggests and that the old correlation between the unemployment rate and wages growth has disappeared³.
12. Assumptions that reduced spare capacity in the labour market will necessarily lift wages growth are not being supported by evidence to date. A closer correlation appears to be emerging with underemployment.

³ Commonwealth Bank of Australia, Australia in 2019: Risks and issues

Chart 1: Wages and underemployment



13. Underemployment combined with comparatively lower wages growth certainly does not favour a substantial increase in the NMW as part of this review. In no way would the relatively high rate of underemployment driven or linked low wages growth in any way be improved by an inflated minimum wage increase. In fact, the opposite is true. The high underemployment rate favours a more restrained minimum wage raise, to encourage employers to demand more hours of work / create new job to reduce underemployment.

1.2 Positive changes for the lower paid

14. The Government has announced several new tax measures aimed at easing the tax burden of low and middle income earners.
15. From the 2018-19 income year, additional tax relief will be provided to low-and-middle-income taxpayers through an increase to the current low and middle income tax offset (LMITO). Under the changes, the maximum tax relief provided by LMITO will increase by \$550 from the previous level of \$530 to a new maximum of \$1080.
16. The base amount will increase from \$200 to \$255 for 2018-19 and the next three income years.
17. The LMITO will continue to be provided in addition to the low income tax offset (LITO).
18. Approximately 2.3 million Australians with taxable income less than \$37,000 will receive an offset of up to \$255. This is equivalent to approximately 0.76 per cent increase in disposable income passed through the tax and transfer system to those on the minimum wage working full time.
19. The LMITO is aimed to assist over 10 million Australians, with about 4.5 million taxpayers with taxable incomes between \$48,000 and \$90,000 receiving the full \$1,080 reduction in tax for 2018-19. For those on award rates from \$48,000 this is equivalent to 2.78 per cent increase in disposable income.⁴

20. The Government will lock in the benefits of the increased LMITO through changes to income tax thresholds and LITO from 1 July 2022. The top threshold of the 19 per cent tax bracket will increase from \$41,000 as legislated under the plan to \$45,000 and the maximum amount of the LITO will increase from \$645 to \$700.
21. The widening of the top threshold of the 19 per cent tax bracket from \$41,000 to \$45,000 will prevent around 590,000 taxpayers from entering the 32.5 per cent tax bracket in 2022-23.
22. This builds on the already legislated increase in the top threshold of the 19 per cent tax bracket from \$37,000 to \$41,000, which is projected to prevent around 560,000 taxpayers from paying tax at the 32.5 per cent tax rate in 2022-23.

2. DATA PUBLISHED AFTER 15 MARCH 2019

23. The timetable for the Review makes clear that this second, supplementary stage of submissions should include any submissions relating to data published after 15 March 2019.

2.1 Minutes of the RBA Monetary Policy Meeting

24. The RBA held interest rates at historic lows of 1.5% for the 32nd consecutive month at its meeting on 3 April 2019. There is further market speculation that interest rates could fall further in the final quarter of 2019, indicating a general slowing of economic activity.

In its statement following the of 3 April 2019 meeting, the RBA also indicated that the downside risks had increased. GDP growth had softened, rising by just 0.2% in the December quarter; household consumption remains weak, affected by protracted period of weakness in household disposable income and adjustments in the housing market; inflation remains low and stable. This follows on from the statement following the 5 March 2019 meeting indicating the balance had shifted, such that there are significant uncertainties and the likelihood of an decrease or an increase in the interest (cash) rate later in 2019 was more evenly balanced that it had been in the preceding year. 20.

Major considerations for monetary policy:

- a. Members observed that growth in the global economy had been above trend in 2018, although it had slowed over the second half of the year and timely indicators suggested that this moderation had extended into 2019. The slowing in the second half of 2018 was also observed in the domestic economy. GDP rose by just 0.2 per cent in the December quarter to be 2.3 per cent higher over 2018 – this compares to expectations of GDP growth of 3.5% over 2018 and 2019.
- b. The transmission of tighter labour market conditions to inflation pressures was taking longer than might be expected, based on historical experience.
- c. Slowing growth in China and ongoing trade tensions had led to lower growth in global trade, and continued to be a source of uncertainty for the outlook for global growth.
- d. Domestically, there continued to be tension between the ongoing improvement in labour market data and the apparent slowing in the momentum of output growth in the second half of 2018.
- e. The available data indicated that established housing prices in Sydney (13% lower than their July 2017 peak), Melbourne (10% lower than their November 2017 peak) and Perth (down to 2006 levels) had declined further since the beginning of 2019.
- f. Momentum in consumption growth has been highly volatile over recent quarters and remains a key source of uncertainty.
- g. Wages growth has been inconsistent across states, with wage growth well above inflation (CPI at 1.8%) at 2.7 per cent in Victoria, while Western Australia's WPI had remained low at 1.6 per cent over the year.

- h. Retail sales volumes had increased by just 0.1 per cent in the December quarter and growth had eased to 1.6 per cent in year-ended terms.
 - j. Firms were finding it difficult to attract suitable labour.
- 25. The RBA is taking a cautious approach to a number of confounding factors that have potential to impact the domestic economy, including weakening consumption growth and a more volatile international economy.
- 26. This is not the appropriate time to lift minimum wages significantly above inflation as businesses face several confounding forces affecting growth, including slowing momentum in output growth, slowing growth with our biggest trading partner (China — with significant ramifications for trade and business conditions throughout Asian markets), and increased labour market friction caused by a mismatch of labour supply and demand.
- 27. The RBA's recent statement suggests that the board is less optimistic about the domestic economy than it was a year ago. Despite bipartisan support for fiscal stimulus through income tax changes, this may not go far enough to alleviate a general decline in consumer spending growth— as indicated by the 0.1 per cent growth in retail trade over December quarter (easing to 1.6 per cent in year-ended terms). Recent market speculation suggests that further monetary easing may be required to lift consumer confidence and spending.
- 28. A further concern is that growth is vastly inconsistent amongst states. While some states may be experiencing stronger consumer spending and a strong labour market others are not. This needs to be factored in any decision that affects all the NMW and award wage rates in the country.
- 29. Further declines in housing values will continue to be an ongoing concern to home owners – which flows through to household spending and consumption growth throughout the year. This will have significant impacts to business activity and profitability.
- 30. The overall cautious approach taken by the RBA – with indication of potential reduction in the cash rate towards the end of the year – suggests that consumption growth and business activity will be under increasing pressure this year. It would not be the appropriate time to lift the NMW and award wages well above inflation as businesses struggle in a slowing domestic and global economy

2.2 Further downwards revisions to global growth forecasts

- 31. Table 13.1 of the Statistical Report was updated with new data on global GDP forecasts. This was addressed in our initial submission at Section 2.1⁵.
- 32. Projected “World” growth has been revised downwards.
 - a. 2019 forecasts have been revised down from 3¾ to 3½ percent.

⁵ Australian Chamber, Initial Submission, pp.12-15.

- b. 2020 forecasts have been revised down from 3¾ to 3½ percent.
33. The RBA Board recently observed that “the more recent data that had been received had been consistent with a continuation of slower global growth in the fourth quarter of 2018 and early 2019”.⁶
34. Such downwards revisions, and the data observed by the RBA Board strengthen the case for adopting the conclusions we commended to the Panel in our initial submission, namely:

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

There are considerable unknowns.

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).

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, nor can it assume RNNDI will provide any basis for a significant increase in minimum wages in real terms.

2.3 Department of Jobs and Small Business, Monthly Leading Indicator of Employment

35. The indicator fell for the eleventh consecutive month in March 2019, following a rise of eight consecutive months.
36. The indicator’s decline this month driven by falls in the Purchasing Manager’s Index for Manufacturing Output in China, the Leading Index of Economic Activity, the US Yield Difference and the NAB Forward Orders Index.
37. This is a worrying trend that is not fully reflected in the Government’s recent economic forecasts.
38. When the leading indicator is falling following a peak, employment growth is likely to slow below its long-term trend rate.
39. This suggests that employment growth may continue for a short period, but was likely to turn down towards the end of the year.
40. The decline in NAB’s Forward Orders Index suggests businesses confidence is weakening and consumer demand is expected to fall below business operation costs (in particular, labour costs). This has particularly negative ramifications for lower-skilled minimum wage employees.
41. We iterate the need to observe the NAB Forward Orders Index with caution, as a lift in labour costs at a time of lower consumer demand will have major consequences to business activity and business survival rates.

⁶ Minutes of the Monetary Policy Meeting of the Reserve Bank Board, Sydney – 5 March 2019

2.4 Trends in Enterprise Bargaining

42. New Trends data has been released, with the most recent Trends report for the December quarter 2018 report published on 29 March 2019.
43. There was very little change in the data on agreement numbers and the rate of agreement making between the September and December quarters of 2018. The Australian Chamber continues to rely on the analysis and contentions in Section 7 of our initial submission.

3. QUESTIONS ON NOTICE

3.1 Decision-making process

Question 1.1 Relativities and Work Value (All Parties)

ACBC proposed an inquiry to determine the appropriate margins for skills and responsibilities (or work value) of the C10 rate in the Manufacturing and Associated Industries and Occupations Award 2010 and the Level 1 graduate employee rate under the Professional Employees Award 2010. Does any other party support such an inquiry?

There is no justification for such an inquiry

44. We understand this relates to the following from the ACBC submission :

The ACBC asks the FWC to review and reform the minimum wages system for the purpose of ensuring that the NMW and award wages are set at levels that are consistent with the objects and provisions of the Fair Work Act. A comprehensive reform of the NMW and award wage rates is required if minimum wage rates are to have contemporary relevance consistent with the objects and terms of the Fair Work Act.⁷

45. **The Australian Chamber does not support such an inquiry.** It is neither necessary nor merited, nor is this the correct forum to raise such a proposal, nor does the *Fair Work Act 2009* allow such an inquiry to arise from this review.
46. The ACBC has not demonstrated that “the NMW and award wages are set at levels that are (not) consistent with the objects and provisions of the Fair Work Act”.⁸ The Expert Panel has made 9 decisions under the Fair Work Act, following consultation with unions, employers and other interests each year. The Panel has clearly articulated how it makes each decision under the framework of the Act.
47. The fact that a party is not happy with the outcome(s) of the review is not evidence that the Panel has erred.
48. Employers recognise, as the Panel has been at pains to stress, that minimum wage review is an exercise of discretion, with the Panel balancing a range of considerations in reaching its decisions. In fact there are a series of balancing exercises, as the Panel balances the merits of what it hears/receives and also balances the multiple directions it gets from different parts of the Fair Work Act.
49. We also note the ACTU’s Change the Rules campaign, and proposals from the Opposition to amend the Fair Work Act as it pertains to minimum wage setting. These proposals to change the law arise

⁷ ACBC Submission, [61], p.20

⁸ ACBC Submission, [61], p.20

precisely because, tacitly, it is accepted that the Panel has applied the law consistently with what the Fair Work Act asks of it.

50. The Australian Chamber do not consider it appropriate for Labor to change the FWA, which it developed and legislated in 2009 and has proven to be appropriate and effective in balancing the needed of employees and employers for over a decade, for political expediency, under pressure from the ACTU.
51. We do not agree with the ACBC contention that the Panel is not setting minimum wages consistently with the Fair Work Act. Submissions from all other parties also appear to be of this view. While many, perhaps all, key interests that participate in these reviews are not fully satisfied with the outcomes from their perspective, either every year or in some years. This of itself does not justify the ACBC's proposed review. It implies that the FWC is balancing the views and needs of all parties and not favouring one or a few individual organisations in making its decision. That is, it is doing its job in administering the Fair Work Act.

Nothing new

52. We are not aware of any significant change of facts or new information which would justify the radical change in approach sought by the ACBC. Something significant would need to have changed between 2018 and 2019 to justify such a radical change of approach. It would need to be demonstrated that any change of circumstances (such as for example a change in employee needs) could not be accommodated by the Panel exercising its wage review powers in the ordinary manner.
53. The ACBC has not provided evidence of any significant change of facts or new material to justify the change of approach it seeks. Nor has it proven that the current approach and current framework could not accommodate consideration of any new material it may bring forward.

The ACBC's proposed review is not consistent with the Fair Work Act

54. The Panel cannot and should not countenance the ACBC proposal unless it is consistent with the FWA. There is no evidence the ACBC proposal is inconsistent with the statutory scheme, as follows:
 - a. The type of wider at large re-examination of relativities and rates proposed by the ACBC does not appear to fall within the remit of an annual wage review under part 2-6 of the Fair Work Act, and cannot therefore be conducted by the Expert Panel.
 - b. The matters raised by the ACBC should have been raised in the making of modern awards or in the 6 plus years of reviews which followed. ACCER / ACBC was well aware of these processes.
 - c. The four year review process has now ended following the passage of the *Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Act 2018*.

- d. The only avenue for the ACBC to bring forward its concerns would be an application to the FWC under s.157 of the Fair Work Act, claiming that the minimum wage rates in an award or awards need to be varied to achieve the modern awards objective.⁹
 - e. Looking at s.158, the ACBC is neither an employer, employee or organisation that is covered by the modern award; nor organisation that is entitled to represent the industrial interests of one or more employers or employees that are covered by the modern award.
 - f. The ACBC proposal for a wider review of relativities and rates must be rejected.
55. The ACBC may have found more solace in the previous national wage cases before the AIRC, in which each annual case was also a review of the wage setting principles.
56. However, the current Act much more tightly constrains both the Expert Panel and the FWC in considering the proposal from the ACBC, and precludes the course proposed.

A work value claim

57. We note the following paragraphs from the ACBC submission (emphasis added):
- 65. *Unlike other modern awards, where classifications and wage rates reflected past classification structures, the Miscellaneous Award included a contemporary assessment of the appropriate wage for unskilled workers. The Level 1 rate, at \$49.10 per week in excess of the NMW, emphasises the inconsistency of wage rates for unskilled work and supports the contention that rates below the C12 rate should be adjusted to that rate.*
 - 66. *Our proposal for the reform of the award wage relativities is focussed on determining the appropriate margins for skills and responsibilities, i.e. work value, of two key award wage rates: the base trade-qualified wage rate, the "C10" rate, in the Manufacturing and Associated Industries and Occupations Award 2010 and the first year graduate wage rate in the Professional Employees Award 2010.*
58. If this ultimately boils down to work value claims; the ACBC should simply make such claims in relation to the particular awards and classifications that concern them. There is no need to make this into something wider (the proposed inquiry), particularly when it is not clear what the something wider would be.
59. However, the Fair Work Act could not be clearer that work value proceedings are not the role of this Expert Panel, as set out in s.157(2):
- (2) *The FWC may make a determination varying modern award minimum wages if the FWC is satisfied that:*
 - (a) *the variation of modern award minimum wages is justified by work value reasons; and*

⁹ Noting also s.157(3)(a)

- (b) *making the determination outside the system of annual wage reviews is necessary to achieve the modern awards objective.*

Note: As the FWC is varying modern award minimum wages, the minimum wages objective also applies (see section 284).

60. Note the words of s.157(2)(b) “making the determination (which is a work value determination) outside of the system of annual wage reviews...”. The Act could not be clearer; considerations of work value arise outside of these annual wage reviews. Therefore any proposals regarding a reassessment of work value must be made to the FWC, not the Expert Panel.
61. Work value matters are underway relating to the pharmacy, education and children’s services awards.
62. These matters illustrate that work value claims can be made and engaged with under the Fair Work Act, not the more limited and directed sphere of the work of the Expert Panel. If the ACBC wants to contest work value, there is a clear avenue to do so before the FWC, under the Fair Work Act.
63. However, looking at s.158 of the Fair Work Act, and Column 2 of the table “Who may make an application”, the ACBC also lacks standing to make such a work value claim. The ACBC is neither:
- (a) *an employer, employee or organisation that is covered by the modern award; nor*
- (b) *an organisation that is entitled to represent the industrial interests of one or more employers or employees that are covered by the modern award.*

This proposes a multi-year target, which the Expert Panel has rejected

64. It is also clear from the ACBC submission that they are seeking a minimum wage decision that involves a multi-year target, with the ACBC’s initial submission stating:
56. *The claim for a further increase of \$9.80 per week in the NMW is made on the basis that it would the first step in a process of reform of minimum wage rates for unskilled workers. Currently the minimum wage rate for unskilled work varies across the industries and occupations covered by awards. This causes unfairness and uncertainty in the protection of low paid workers and in the enforcement of their rights. The proposed increases in the NMW will move it towards a Living Wage and, over time, remove these inconsistencies, provide clarity of minimum wage rights and establish a fair minimum award rate for unskilled work.¹⁰*
65. We need only recall that the Panel clearly rejected such an approach when the ACTU asked for it. We see nothing in the ACBC materials to signal anything other than dissatisfaction with the approach to date. We see no argument that should convince the Panel to change its rejection of multi-year decision making.

¹⁰ ACBC, Initial Submission, p.19, emphasis added.

Previous Decision

66. The proposal from the ACBC is not a new one. The 2018 Decision contains the following:

[106] As to ACCER’s ‘wages relativities policy’ argument, we considered, and rejected, a submission in substantially the same terms in the 2016–17 Review decision. Nothing put in the present proceedings has persuaded us to depart from the views expressed in our previous decision.¹¹

67. This argument wasn’t new in 2018, and it is even less new now. ACBC has advanced no basis for the Panel to conclude any differently in 2019.

68. Looking more generally to the ACBC / ACCER arguments in 2018, we see that the Panel concluded as follows:

[21] We reject the proposition that ‘fairness’ in the context of the modern awards objective and the minimum wages objective excludes the perspective of employers...

[25] We also reject ACCER’s submission as to the ‘operational objective’ of minimum wage setting under the Act. The proposition advanced finds no support in the words of the statute and seeks to elevate one relevant consideration...

[104]... But to grant an increase to the NMW and modern award minimum wages the size necessary to immediately lift all full-time workers out of poverty, or an increase of the size proposed by ACCER and the ACTU, is likely to run a substantial risk of adverse employment effects. Such adverse effects will impact on those groups who are already marginalised in the labour market, with a corresponding impact on the vulnerability of households to poverty due to loss of employment or hours. An increase of the magnitude proposed by ACCER and the ACTU would also carry a substantial risk of reducing the employment opportunities for low-skilled workers, including many young persons, who are looking for work.

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

[338] ACCER argued, as it has previously, that the minimum wage should be sufficient to support sole parents and single-earner couples with one or two children, with the implication that the Panel should set a NMW for these families at a margin above the 60 per cent relative poverty line....

[340] The size of the adjustment required to reach such a level would also, in our judgement, run a substantial risk of causing job losses and reduced employment opportunities for low-skilled workers, including many youth. We are reassured that the NMW and modern award minimum wages that we have set are at least sufficient to enable a single adult who works full time to have an income that is significantly above the 60 per cent poverty line. This will

¹¹ [2018] FWCFB 3500, p.23

contribute to providing an adequate income to other household types, but those with dependents also need assistance from the tax-transfer system.

69. We see no reason to depart from the previous decision in regard to the bulk of the matters raised / re-agitated by the ACBC.

Wider context

70. The Expert Panel, and prior to that the Commission's predecessors, have established that they apply current law, to the claims and facts that come before them. They have traditionally been disinclined to have regard to wider political events, or competing policy proposals that have not yet become legislation.
71. This said, in considering what the ACBC is proposing, it is worth stepping back and thinking about where we are in minimum wage setting, and where the rules may head next.
72. The weeks between the lodgement of initial and supplementary submissions have seen substantial national political debate on the adequacy of the increases that arise from these matters, and whether Australia should change approach from a minimum wage focus to the living wage target previously put forward to the ACTU, and to date found to not be open to the panel under the current Fair Work Act.
73. The Labor Opposition apparently has publicly announced that should it win government it plans to change the rules governing minimum wage setting to go to precisely the issues being raised by the ACBC.
74. If the Expert Panel is directed or encouraged by amended legislation to disconnect the setting of the NMW and the setting of minimum award rates, we are going to have to engage with the future for margins and relativities. Without making any election prognostication, this could under some scenarios happen as early as the next wage review.
75. It would make absolutely no sense to commence the review being proposed by the ACBC presumably at some stage after this review is completed, only to potentially have the legislation change and the Panel or the FWC then asked to conduct a different form of review, with potentially different parameters on directly comparable considerations.

Understanding the 'living wage'

76. The ACBC and others repeatedly use the term 'living wage'. However:
- a. This term does not appear in the Fair Work Act, and it does not appear in the various objectives and objects of the Act the Panel has regard to in these matters.
 - b. It is not a relevant consideration, and ACBC references to a 'living wage' are misplaced.
77. Parliament could have chosen to include the words 'living wage' in the Act had it been so minded. The concept of a 'living wage' is well known, having appeared in the ILO constitution since 1948.

78. Alternatively, it can very credibly be argued that Australia already has a 'living wage':
- a. Australia has the second highest minimum wages in the world, it is growing year on year in excess of inflation, and standards of living for persons on minimum wages, whilst there can be challenges, are vastly in excess of other developed countries. Australian minimum wages are increasing with metronomic regularity by levels that equal or exceed those in comparably developed minimum wage systems.
 - b. Our minimum wages have been set for more than four decades in full compliance with ILO Convention 131, *Minimum Wage Fixing Convention, 1970*. This in turn is a function of the constitution of the ILO, which is where the living wage concept comes from.¹²

Question 1.2 Wording of Commencement (ACCI)

Clause 2.1 of the National Minimum Wage Order (NMW Order) 2018 states '[t]his order comes into operation on 1 July 2018 and takes effect in relation to a particular employee from the start of the employee's first full pay period that starts on or after 1 July 2018.'

ACCI submits that any increase should apply from the first full pay period 'commencing on or after 1 July 2019'.

ACCI is asked to clarify what change in the existing formulation is sought and the reasons for such a change.

79. This was advanced to assist the Panel and those applying minimum wages (see para 21 of the Chamber's initial, 15 March 2019 submission), as follows:

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 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.*

¹² [ILO Constitution](#), Annex - Declaration of Philadelphia, Article III(d)

80. This was proposed for no other reason than to reduce scope for ambiguity in the application of increases, and to avoid any accidental under or overpayments, or compliance confusion in workplaces after the decision comes into effect.
81. The words “commencing on or after” were formerly very widely used in orders varying awards under the pre-Fair Work Act system. This is a clearer and less ambiguous formulation, and provides better guidance to employees, employers, the FWO and other users of the system.
82. Unions use this formulation to communicate with their members:
83. This formulation has been used by the FWC under the current Fair Work Act 2009 in the variation of Modern Awards¹³:
- B. This determination comes into operation on the first full pay period commencing on or after 1 January 2014.*
84. This is far from a new formulation, as the following from 1973¹⁴ illustrates:

APPENDIX

1077

CHAPTER 10. LABOUR, WAGES AND PRICES

Determination of wage rates in Australia

On 8 May 1973, the Commonwealth Conciliation and Arbitration Commission, in its decision in the National Wage Case 1972-73, increased total wage rates for adult males and adult females in Commonwealth awards by 2 per cent plus \$2.50 a week and increased the rates of minimum wage for adult males by \$9.00 a week. These increases were operative from the beginning of the **first pay-period commencing on or after 29 May 1973**.

Subsequent to this decision, wage rates prescribed in State awards, etc., were increased as follows.

In New South Wales weekly rates of wages in State awards were increased by 2 per cent plus \$2.50 from the beginning of the first pay-period to commence on or after 29 May 1973. These increases incorporated basic wage increases of \$3.30 a week for adult males and \$3.10 a week for adult females to operate from 29 May 1973.

In Victoria total wages for adult males and for adult females in wages board determinations were increased by 2 per cent plus \$2.50 a week and the minimum wage for adult males by \$9.00 a week to operate from the beginning of the **first pay-period commencing on or after 29 May 1973**.

Queensland State basic wage rates were increased by \$1.90 a week for adult males and by \$2.05 a week for adult females, margins in awards were increased by 2 per cent and the minimum wage for adult males was increased by \$7.70 a week as from 29 May 1973.

In South Australia the living wage for adult males was increased by \$3.30 a week, the living wage for adult females by \$3.10 a week, marginal rates of pay were effectively increased by 2 per cent, and the minimum wage for adult males was increased by \$9.00 a week. These increases were operative from the beginning of the **first pay-period commencing on or after 29 May 1973**.

In Tasmania margins in State wages board determinations were increased by 2 per cent of the sum of the basic wage and margin; basic wages for both adult males and adult females were increased by \$2.50 a week; and the minimum wage for adult males was increased by \$9.00 a week. These increases operated from the beginning of the **first pay-period commencing on or after 29 May 1973**.

In Western Australia the basic wage for adult males was increased by \$3.55 a week, the basic wage for adult females by \$3.60 a week, and the minimum wage for adult males by \$3.50 a week. These increases were operative on and from 8 June 1973.

¹³ MA000005 PR544252

¹⁴ Official Year Book of Australia, No.59, 1973, p.1077

How to Proceed

85. We thank the Panel for the direction to consider Clause 2.1 of the *National Minimum Wage Order (NMW Order) 2018*. There is no room for ambiguity in that formulation, and in fact it reads more attractively and clearly to the lay user than the formulation the Chamber advanced in our initial submission.
86. However, we press our point that [490] of the preceding decision could be clearer in relation to when the increase should be applied to the pay of a particular employee, and that whilst the Decision is not an Order, it would be useful to users to be more exact on the commencement of any increase.
87. We fear a difference in wording between the decision and order on this matter could cause confusion.
88. We therefore now advance a modified version of our initial proposal to the Panel as follows:
- a. Amend this year's equivalent of [490] of the 2018 Decision to be more exact on when the increase takes effect in relation to a particular employee.
 - b. Pick up the Panel's chosen wording in relation to commencement from the NMW Order and also apply it to the 2019 Decision.
 - c. Add the verb commencing. We maintain this sentence needs a verb.
 - d. This would yield a revised paragraph [490], more fulsomely integrating the NMW Order wording, as follows (using the 2018 wording for illustration, and marked as revisions):

[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. This increase takes effect in relation to a particular employee from the start of the employee's first full pay period that starts on or after 1 July 2019.

Question 1.3 Floods and Deferral (CCIQ and other parties)

The CCIQ has sought a deferral of any increase in the NMW and modern award minimum wages on the basis of the January and February 2019 rainfall event in the Townsville region. The submission states that:

'The proposed mechanism to determine which employers should receive the minimum wage deferral is to be guided by the Disaster Recovery Funding Arrangements 2018 (DRFA) and specifically the DRFA event – North and Far North Queensland Monsoon Trough, 25 January – 14 February 2019.'

The submission further identifies three forms of assistance, namely:

- *Disaster Assistance (Essential Working Capital) Loans Scheme for Small Business*
- *Disaster Assistance (Small Business Loans)*

- *Special Disaster Assistance Recovery Grants for Small Business (hereinafter referred to as the Special Recovery Grant)*

CCIQ is requested to provide the following additional information:

- *Is it proposed that an employer in receipt of any one of the three forms of assistance would be subject to the deferral? If not, what scope is proposed and how will the relevant employers be formally identified in the NMW order and any determination concerning the modern awards?*
- *What are the criteria by which businesses that receive the relevant DRFA assistance are identified and assessed?*
- *Are any of the relevant forms of assistance directed to assisting businesses to pay employee wages and entitlements and/or support continuing employment?*
- *What forms of assistance are available to directly assist employees impacted by the relevant DRFA event?*
- *How would the proposed deferral impact upon the considerations in the modern awards objective (s.134) and the minimum wages Objective (s.289)?*

89. The Chamber supports the recommendation contained in the CCIQ's submission. The Australian Chamber understands our member, the CCIQ is addressing Q1.3.

3.2 Economic and labour market considerations

Question 2.1 RBA Research (All parties)

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

The aggregate labour share in Australia rose over the 1960s and early 1970s but has been on a gradual decline since then. In an accounting sense, the decline in the aggregate labour share over recent decades is largely because of a larger share of imputed income accruing to home owners, along with a lower labour share in the financial sector. The decline in the financial sector labour share, in turn, appears to be partly due to structural changes in the financial sector, such as financial deregulation, labour-saving technology adoption and high productivity growth. But it also may be affected by issues with measuring the output of the financial sector.

At the same time, the aggregate capital share has risen. This is largely explained by rising profits accruing to financial institutions and rising rents paid to land owners. In turn, higher housing rents over recent decades appear to reflect a combination of higher-quality owner-occupied housing, lower interest rates and rising housing prices. Across the rest of the economy, there have been varying trends in factor shares that are largely offsetting.

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

90. The study claims that the divergence between consumer wages and labour productivity appears to have been a temporary phenomenon and some of the stagnation in consumer wages over recent years is 'part of the adjustment process to the unwinding of mining boom'. This is an important observation that explains the recent convergence of the consumer wage and labour productivity that is adjusting back to the longer term trend line.
91. The study finds that since 1995, the growth in 'real consumer wages' has matched the growth in labour productivity.
92. A closer observation shows that consumer wages has significantly outpaced labour productivity – consumer wages is an important measure of consumers' purchasing power. This is shown in graph 2 below.

Graph 2: Real wages and productivity (non-farm sector, 1995 = 100)



Question 2.2 Unit Labour Costs (ACCI and other parties)

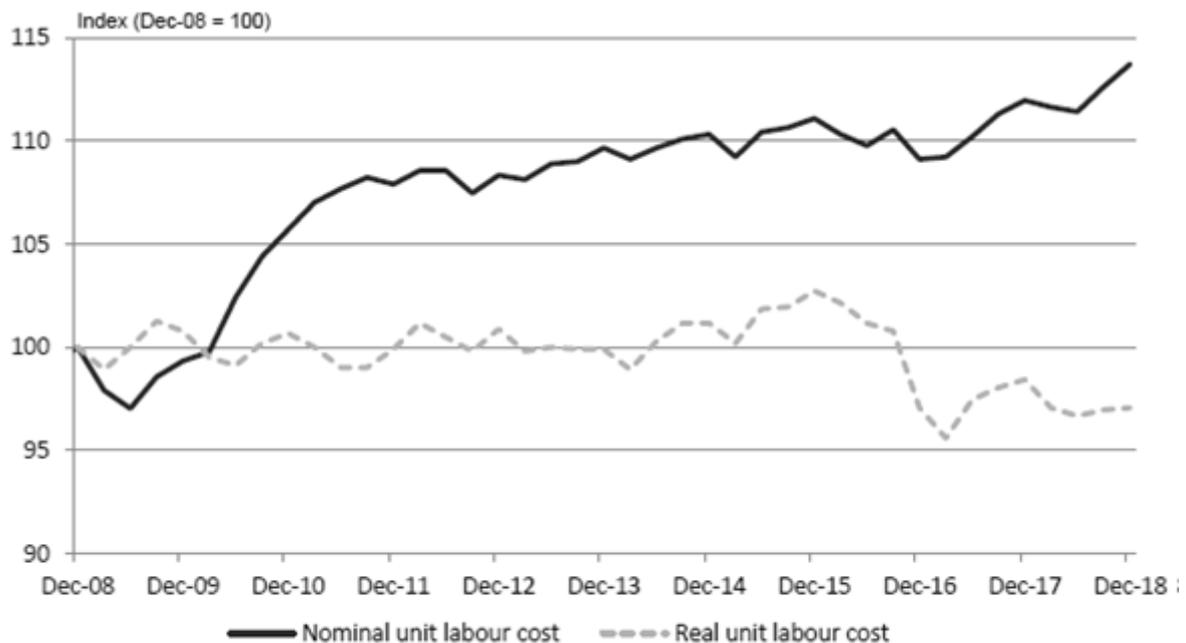
ACCI submitted that previous Review decisions 'have placed very little weight on the rise and fall of unit labour costs, as it has followed changes in the terms of trade' and suggested that the Panel again place little weight on unit labour costs in the current Review.

In the 2017–18 Review, the Panel placed 'little weight' on the fall in real unit labour costs due to the RBA's view that the high levels of the terms of trade were unlikely to be sustained. However, the terms of trade have remained at these elevated levels for two years.

ACCI are invited to expand on its submission that the Panel should disregard the fall in real unit labour costs. All other interested parties are invited to comment on this issue.

93. Approximately 50% of Australia's share of goods and service exports are mining-related commodities such as iron ore, coal and gas. Given that Australia's unit labour costs are heavily influenced by the terms of trade, and that terms of trade is heavily reliant on mining activity, unit labour costs should not weigh heavily on the Panel's decision, which determines wages for mainly non-mining private sector industries.
94. Terms of trade has recently lifted which has resulted in a decline in real unit labour costs and a lift in nominal unit labour costs. This is depicted in graph 1.
95. The Australian Chamber is of the view that the Panel should place minimal weight on unit labour costs specifically as variations in it relate mainly to fluctuations in demand for energy and mineral commodities, which are not related to the industries predominately affected by the NMW decision.

Graph 1: Unit labour costs, index



Source: ABS, Australian National Accounts: National Income, Expenditure and Product, Dec 2018, Catalogue No. 5206.0.

Question 2.3 Terms of Trade (ACCI and other parties)

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

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

96. Greater than 50% of export goods and services are energy and mineral resource commodities. In the case that the Panel wishes to use terms of trade data, it is the Australian Chamber's recommendation that the trade data be further disaggregated from total terms of trade sales and volumes, to reflect industries that are directly exposed to the NMW decision.
97. For instance, non-mining profits have been substantially weaker than mining profits, and given the private non-mining sector is more heavily reliant on the NMW decision, more weight should be placed on non-mining terms of trade data.

Question 2.5 Retail Wages Growth (ARA, MGA and NRA)

Over the year to the December quarter 2018, the increase in the Wage Price Index (WPI) in Retail trade was 2.0 per cent. The increase in the NMW and modern award minimum wages in 2018 was 3.5 per cent.

Are ARA, MGA and NRA able to explain how the WPI increase in Retail trade was so much less than the increase in the NMW and modern award minimum wages?

All other interested parties are invited to comment.

This issue was also discussed at paragraph 162 of the 2017–18 Review decision.

98. The Wage Price Index (WPI) (year to December) for all sectors with a high reliance on minimum wage and award rates was below the increase in the NMW and modern award wages, as demonstrated by the table below. Each increase in minimum wages fails to completely translate into the WPI, in a diverse range of industries.

	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%

99. The key explanation for this is that award reliance/minimum wage reliance in these industries is less than 100% – and indeed in the retail industry, award reliance is at only 30.1%, meaning that almost 70% of workers in the retail industry have their pay set by means other than the modern award minimum wage. These are the managers, the professionals, those on enterprise agreements, those paid over-award, etc.
100. As the Australian Chamber has previously flagged, the only circumstance in which minimum wage decisions could be expected to translate perfectly into aggregate or average wages growth would be one in which the minimum wage bite was 100%, and there was neither any non-minimum wage employer, nor any labour market forces or skills considerations at play that favour higher or lower increases. It seems logical that with the majority of the workforce not having its wages set by the Expert Panel's decision, that there will always be a lack of strict one-to-one correlation between WPI and the level of increase in a particular industry.
101. It is also logical that the system of 2019 is very different to that of 1979 or 1969. Only in a highly centralised system would there be a high direct correlation between a minimum wage increase and the WPI.
102. However, some additional reasons behind the discrepancy between the WPI increase in Retail trade and the increase in the NMW and modern award minimum wages may include the following:
- a. Very low or no wage increase for some of the non-award agreement jobs in retail industry, reflecting the wider labour market. If for example, a portion of the 69.9% of those in the retail industry whose wages are not set by an award had their wages frozen, or capped only to

inflation (1.8%), this would contribute to an aggregate WPI growth level below the last, over-inflation minimum wage increase of 3.5%.

- b. There may also be scope for some absorption into the above-award remuneration of salaried roles that are nominally award covered (but not directly award wage reliant).
 - c. Average wage increases under agreements are also at comparatively lower levels, and are likely to be another factor weighing to some extent in favour of overall WPI growth at below minimum wage increase levels. The AAWI for Retail Trade agreements current in the December quarter was 2.4%,¹⁵ notably less than the 3.5% NMW increase. These agreements applied to 110,200 employees.¹⁶
103. Further, and related to the above, there are labour market forces at play which may potentially favour a lower increase for those not on NMW or modern award minimum wages. These may include factors such as contracting profits in the retail sector, decline in the prices of retail goods, and weak consumer and business confidence. We refer to the submissions of the Australian Chamber's longstanding members, the Australian Retailers Association (ARA) and the National Retail Association (NRA) for further detail in relation to these factors. We also understand the ARA and NRA will address this Question on Notice.
104. Ultimately we say little can be made of this in determining the level of any increase from 1 July.

3.3 Relative living standards and the needs of the low paid

Question 3.3 Poverty Line (ACCI)

ACCI contest the adoption of a relative poverty line measured as 60 per cent of median equivalised household disposable income, submitting that it considers this to be 'arbitrary' and while acknowledging it, do not agree that this is the 'appropriate level for such measures'.

How does ACCI propose that the relative poverty line should be defined and measured?

105. There is no established consensus on the definition of poverty in Australia as the Australian Chamber does not consider it is possible to set a hard definition to determine whether an individual lives in poverty.
106. There are a number of different ways of measuring poverty, including looking at a basket of essential items and the proportion of an individual's income spent on these essential items, or by measuring poverty at a specified income threshold. Other ways to measure poverty are to observe various characteristics or life experiences that prevent the individual participating in society.
107. Alternative references to measure poverty may be made to individuals that possess various characteristics and or experience various events throughout their lives such as:

¹⁵ Trends in Federal Enterprise Bargaining Report, December quarter 2018, p 22.

¹⁶ Trends in Federal Enterprise Bargaining Report, December quarter 2018, p 22.

- a. Inadequate access to housing or shelter.
 - b. Inadequate access to healthcare, education and sanitation.
108. Australia has a sophisticated tax and transfer system that aims to support the needs of the low paid through a graduated tax system, tax benefits and other top-up payments, various education and health concessions, and energy and other rebates. Therefore, poverty in Australia is relative to the socio-economic standards of the broader population. An Australian on the same wage living in one region of Australia (i.e. central Sydney) may be in a very different financial situation to someone living in another region (i.e. Northern Queensland).
 109. The above illustrates that an individual's experience with poverty is complicated by various factors and any one measure of poverty, particularly a hard definition of a poverty line, where incomes vary between states, cities and regions can be quite arbitrary.
 110. The Australian Chambers note Table 8.6 of the Statistical Report, which shows that very few household types would be classified as below the poverty line (i.e. disposable income 60% of the median income) if the wage earner in the household received the minimum wage. For example, a single income adult earning the minimum wage receives over 23% above 60% of median disposable income when tax and transfer payments are taken into consideration. It is only single parents working part-time and single-earner couples with children that, if earning the minimum wage (C14) are deemed to be below the poverty line. Raising these household classifications out of poverty is best done through the transfer (social security) system than increases in the minimum wage.
 111. The minimum wage is a safety net and an important stepping stone to full time employment in higher award categories. The minimum wage should not be used as a social lever.

Question 3.4 Budget Standards Errors (all parties)

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

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

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

112. **Poverty:** The ACBC contend that there is "a major error in the way in which the FWC has applied the budget standards research report".¹⁷
113. Prior to addressing the specific contention, we want to take issue with the way the ACBC frames the entire section of its submission on needs. Chapter 4 of the submission is headed "The failure of decisions to target and alleviate poverty".¹⁸

¹⁷ ACBC Submission (2019), [198], p.56

¹⁸ ACBC Submission (2019), p.71

114. We can take the absolute versus relative poverty debate as read, noting that a calculation of poverty as a percentage of one income against another is inherently a relativist concept, and as such poverty could never be from such a perspective.
115. Putting that to one side, the best way to alleviate poverty in any society is to reduce unemployment and have more people in work. In our sophisticated economy, the minimum wage, progressive taxation, public services and extensive social security transfers also combine to combat poverty and minimise its incidence.
116. The Panel may wish to recall that the word “poverty” does not appear in the Fair Work Act, and in fact only appears in four acts of the Australian Parliament. More correctly the Panel has looked at what the statute directs it to consider, and to the various objects of the legislation.
117. The ACBC is ultimately seeking for something we all look for in these reviews, but which the Panel has repeatedly told us is not possible. All participants want to see a specific value attributed to their key concern(s), and some mathematical workings showing how a specific issue has been considered, and the weight attached to it in determining the ultimate level of increase.
118. The Panel has stressed repeatedly that this is not possible, and that it takes a basket of factors into consideration in determining an ultimate level of increase.
119. It is extraordinary to suggest that the world’s second highest minimum wage in nominal terms, that has increased in 9 straight reviews in excess of inflation, that is increasing well above average wages growth across the community and that increased by 6.8% across the past two years is (a) not sufficiently taking poverty into account or (b) is not doing anything to address poverty for those in work. Were this the case, these minimum wage reviews must be the wrong lever to look to pull to address poverty.
120. **The purported error in the consideration of budget standards:** We have reviewed [347] to [380] of the ACBC submission. The ACBC appear to suggest that the authors of the budget standards research made methodological errors and may also have inserted imperfect or sub-optimal data into their model.
121. If this were correct, the only conclusion the Panel could reach is that the Budget Standards material can no longer be relied upon in any way, and that as research subject to serious methodological criticism it cannot be treated as reliable. Were the ACBC correct, the conclusion that must be drawn is that the budget standards research would need to come off the table.
122. The ACBC’s criticisms should be communicated to Professor Saunders and Ms Bedford, and they should have an opportunity to respond and potentially rebut the ACBC, or even to re-run their research with the suggested inputs identified by the ACBC, and to properly consider the results.
123. What cannot happen, which seems to be what the ACBC is asking for, is any on the fly revision of the research absent from its authors, their model, or any form of peer review. The Panel cannot make any reliable assumptions about what the budget standards research would have shown with the different inputs identified by the ACBC. That course would be methodologically unsafe and could not yield a reliable approach.

124. In 2018, the Panel concluded as follows in relation to the Budget Standards Research:

[351] The new budget standards research is the first time that a serious effort has been made, using contemporary scholarship in this field, to estimate the needs of low-paid employee households. We judge it to be useful and relevant, while recognising its limitations and the Panel has taken it into account along with all of the relevant material we have before us. We note the comment from the authors that '[b]udget standards are not a panacea but they provide important information that can inform and assist decisions taken about adequacy...'

*[352] We agree with ACCER's submission that the research is the 'best evidence available in regard to the needs of the low paid Australian workers and their families,' but also with ACCI's submission that the 'budget standards cannot of themselves be determinative of the NMW or any uprating of minimum award rates.'*¹⁹

125. There is nothing new in 2019. The Budget standards research has not been revised, it is known rather than new information, and there is no basis for it have any more or less determinative value in 2019 than it had in 2018.

126. There is no reason to repeat the 2018 conclusions in the 2019 decision and the ACBC has not supplied sufficient basis to revisit or revise them in any way.

127. Alternatively:

- a. The Budget Standards research has become dated, with some elements having been undertaken as far back as 2015. It fails to take into account an increase in minimum wages of 3.5% in 2018, at least. This favours not revisiting it or treating it as current or determinative in 2019.
- b. If this is not correct, the only available approach would be to note the mythological critique from the ACBC and to no longer conclude that the budget standards research can be deemed to be "useful and relevant". Rather, the "New Minimum Income for Healthy Living Budget Standards for Low-Paid and Unemployed Australians" paper would become contested research that the authors may wish to re-examine, and axiomatically something that could not help determine the outcome to be awarded in this review.

¹⁹ [2018] FWCFB 3500,p.93

Question 3.5 Secondary Jobs (all parties)

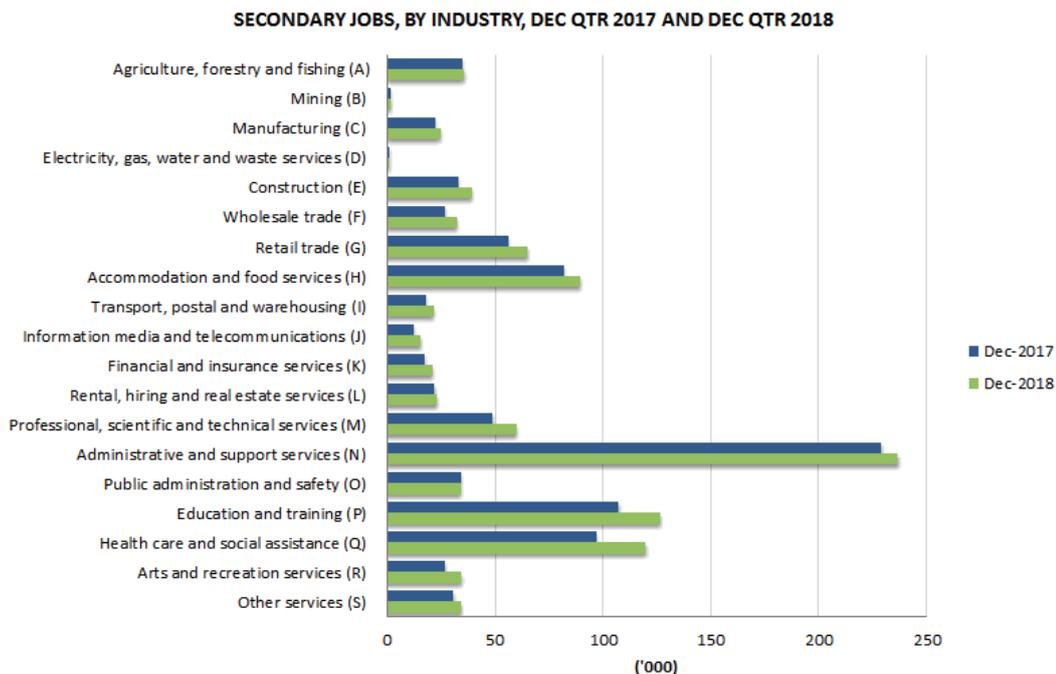
The ACTU submits that the record rate of Australians working a secondary job recorded by the ABS in December 2018 is an indicator of financial stress. They cite the fact that many of the secondary jobs are in low-paid sectors as evidence that this increase is a result of financial stress.

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

128. We understand this was advanced at paragraphs 366(c) and 456 to 456, and Figures 14, 15 and 97 of the ACTU's initial submission.
129. The Australian Chamber strongly contests that any growth in second / secondary jobs is illustrative of, or can be assumed to be a function of, increased financial stress. The ACTU has failed to show either any correlation or causation in this regard.
130. **Work is changing:** There are widespread forecasts of the future of work changing markedly away from the model of a single full time job in which people work from commencement until retirement, and of such changes already being underway. If the futurists are correct, the rise in second jobs is a global megatrend and not something subject to, or alterable by, these reviews. It cannot be illustrative of any inadequacy in minimum wages.
131. **Two part time jobs equals a full time job:** It is widely thought that some (especially younger) people may be working multiple part time jobs to assemble a full time income, or because they cannot easily obtain full time work in the field they may want to work in (or have studied for). For example someone who has studied video game design may find limited work in this field in Australia at present, and may work multiple different jobs more or less linked to their qualifications for some period.
132. This has nothing to do with inadequacy or financial stress and it cannot be assumed that obtaining the equivalent of full time work from multiple sources necessarily implies income inadequacy.
133. **The barrier to entry to second jobs is lower than ever:** It has never been easier to take on a second job, and to match that job and the hours of secondary work with one's primary job and personal commitments. Perhaps Australians have a greater appetite to work second jobs than realised, and in recent years have new options to do so.
- a. Looking at Figures 14 and 15 of the ACTU submission, the take off in secondary jobs seems to correlate directly with the take off in platform work.
 - b. Uber driving for example can be matched to one's availability as never before, and it is not surprising that more Australians are taking this up.
 - c. This seems a far more plausible explanation for a rise in second jobs than a take-off in financial stress.
134. **This may be circular, being prompted by minimum wage increases:** The past two wage review increases (3.3% and 3.5%) have significantly exceeded both inflation and wage growth across the community. To the extent that award covered work, rather than the changing nature of work, is driving

any increase in secondary jobs, it may be that high minimum wage rises are every bit as plausible an explanation as purported financial stress. It may be that some employees outside the direct remit of these reviews (the non-award, contract of employment, managerial, self-employed, EBA covered cohorts of employees) are seeking second jobs because their pay is not growing as quickly as it was 5 or 10 years prior, and it is the award wage jobs that are growing. It may be for example that some people are choosing to also work second jobs in shops or cafés because the annual movement in wages is higher than it is in their primary industries.

135. **This could not be about award covered employees:** The Panel has increased minimum wages in excess of inflation on 9 straight occasions since the commencement of the Fair Work Act (last year by more than 75% in excess of inflation) and in excess of average wage growth across the economy. How could accelerating minimum wages explain greater working of second jobs? If wage stress were at play, it is far more likely to be driven by those whose primary jobs are beyond the direct application of these reviews.
136. **There is no logic to the industries cited:** Reviewing again Figure 97 from the ACTU submission:



137. We read this as recording the primary industries in which someone works and also works a second job, and not as telling the industry the second jobs are worked in. We looked at this against Table 7.1 of the Statistical Report.
- Only very few of the more NMW/award reliant sectors have recorded employees working secondary jobs in any numbers. This suggests that income inadequacy and financial stress are not the primary considerations to attaining a second job.
 - If the ACTU were right, why would only some of the more highly minimum wage / award wage reliant sectors record the working of second jobs. If income adequacy and financial

stress were at play, wouldn't we also see second jobs being worked by those in the retail trade and rental, hiring and real estate services industries (for example)?

- c. The only two industries that appear to exceed a general, all industries, trend towards second jobs are Education and Training and Health Care and Social Assistance. One is highly award reliant (Health, 31.7%) and the other is not (Education, 10.0%)²⁰, making it questionable (a) whether income adequacy or financial stress can be the explanatory factor and (b) whether there can be any link to minimum wages.
 - d. The Education and Training Industry has a low rather than high degree of direct award reliance. If there is a trend towards second jobs in that sector, its causes cannot lie in the adequacy of wage increases arising from these reviews.
 - e. Education employees also have long, clearly scheduled periods away from school (for example across scheduled holidays) and thus would always have been more likely to work second jobs. It may be that platforms are allowing more and more of them to do so.
 - f. We understand the working of second jobs to have been common in the health care and social assistance sector for decades. In looking for factors that may explain an increase in working second jobs, the advent of the NDIS cannot be ruled out, as established health and allied employees may seek to garner new work opportunities to meet the needs of persons with disability, perhaps in their local communities.
138. **Too much we don't know:** To be able to engage with a claim such as that from the ACTU, the Panel would also need to know who is working these second jobs, their age and other characteristics, the nature (e.g. ASCO and industry) of both the primary and secondary jobs, and the incomes and shares of total income derived from each. The Panel would also need to be able to correlate any observed phenomena with household incomes and expenditures, and could not simply assume this was a phenomena driven by low pay.

No determinative value:

139. This seems a conjectural or speculative point from the ACTU, and not something that could be relied as germane to determining the rate of a minimum wage increase in 2019. The Panel should not rely on the material on secondary jobs, nor adopt the conclusions put forward by the ACTU based on it.

Question 3.6 Low and Middle Income Tax Offsets (all parties)

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

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

140. We agree with the analysis presented by the Ai Group.

²⁰ Statistical Report, Table 7.1

Question 3.7 Tax Transfer Changes (all parties)

Fair Work Commission staff has published as additional material an information note on legislated changes to the tax-transfer system that have taken effect, including the Low and Middle Income Tax Offset and changes to child care assistance.

141. The Australian Chamber has addressed this question in section 1.2 of this submission.

3.4 Other relevant considerations

Question 4.1 Award Reliance and Agreement Making (ACCI)

ACCI submitted that:

'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.'

Is this statement based on data on award reliance by industry (Table 7.1 of the Statistical report)? If not, can ACCI provide the appropriate data source?

142. This is based on the award reliance data in Table 7.1 of the Statistical Report.

3.5 Transitional instruments and other matters

Question 5.1 Junior Rates – VMRSR Award (all parties)

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

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

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

'Award minimum wages range from the national minimum wage rate of \$719.20 per week (\$37,398 per year) up to \$3,409.83 per week (\$177,311 per year, Air Pilots Award 2010). The national minimum wage rate of \$719.20 per week features in 45 of the 122 modern awards.⁵ In the remaining 77 modern awards, all wage rates are above the national minimum wage rate.¹⁴

Of the 45 awards, 26 express the lowest adult wage rate as both the hourly national minimum wage of \$18.93 and the weekly national minimum wage of \$719.20, a further 16 refer only to the weekly rate, two refer to the weekly and annual rate, and the remaining one states the lowest adult wage as an hourly amount. However, in one of these awards, workers may receive commission on top of the weekly national minimum wage, and in a further two awards, workers have shorter ordinary working hours resulting in a higher hourly wage than the hourly national minimum wage. Also, in several of the 45 awards, the lowest rate is paid as an introductory rate or a trainee rate.'

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

143. The Australian Chamber understands our member the VACC, and other Motor Trades Organisations, will address the AWU submission regarding the alignment of the percentage levels for the minimum wage rates for juniors in Sections 1 and 2 of the Vehicle Manufacturing, Repair, Services and Retail Award 2010 and the National Minimum Wage Order, and Question 5.1.

4. MATTERS RAISED BY OTHER SUBMISSIONS

4.1 Submission by the ACTU: issues with economic narrative

The Australian Chamber has some concerns with the economic narrative of the ACTU. For ease, we have used a fact checker approach to identify flaws and omissions.

1 - 'In its decision last year, the Panel took what in relative terms was a significant step to improve employees' wages, which has had some positive effect in lifting living standards. It does not appear to have had any negative effects'

Fact: The latest economic data published in the 2018-19 Federal Budget, where GDP growth has been revised down on 2 consecutive occasions since the previous financial year. GDP is a powerful indicator of consumption and consumer spending. If a modest lift in wages were to lift consumption and economic activity as claimed by the ACTU then these figures would have been revised upwards not down.

2 - 'Compared with other workers, these workers (minimum wage employees) are more likely to be women, likely to be part-time, more likely to be casual and more likely to work in a small business'

Fact: The referred workers on the NMW are also more likely to live in medium-to-high income households and less likely to be the sole breadwinners in the family. They are more likely to be young, studying and/or juggling multiple commitments such as raising a family. The NMW is also temporary for most employees, with the data from the FWC indicating that only on third of NMW employees remain on the NMW for more than a year and less than 2.5% of employees are on the NMW for more than 5 years.

3 - 'The overall picture of the labour market is inconsistent with a view that the Panel's decision last year – to raise minimum wages and modern award minimum wages to a degree not seen in nearly a decade – inhibited employment through reducing the demand for labour'

Fact: The leading indicator of employment published by the Department of Jobs and small business²¹ shows that the indicator has fallen consecutively since the decision of the Fair Work Commission was passed last year. The leading indicator is an important precursor to employment growth in the preceding year. Research shows that a lag between wage decisions and employment effects exists as businesses consider their future decisions to employ and retain staff²². We do not expect in any one year to see immediate effects of the wage case, as decisions take time to permeate through the business cycle and more broadly throughout the economy. The leading indicator of employment is a powerful indicator of future employment decisions based on current economic circumstances including labour costs.

4 - '...a larger increase to minimum wages is likely to bite into the premium received by employees on individual agreements above the award and some cases drive those workers at the margin back to the award only category. This would be expected to have an equalising effect on the hourly earnings between men and women and should be pursued'

FACT: The minimum wage and/or the above award rates are by no means determined by gender and as such is not the appropriate mechanism to address the gender pay gap issue.

Particularly concerning is that the ACTU would advocate for those with individual agreements on a higher payment premium back to the award rate – most of which are negotiated on an individual case-by-case

²¹ <https://www.jobs.gov.au/department-employment-s-leading-indicator-employment-latest-release>

²² http://legacy.iza.org/en/papers/21672_21042015.pdf

basis, many of which are women, and many of which possess skills, qualifications and experience that merit them to do so.

5 - 'Wage growth continues to drag behind labour productivity growth according to a range of measures. Labour productivity annual measures grew a little faster at the most recent year than their 10 year average, and, in general, wage growth continues to fail to keep up'

FACT: The divergence between consumer wages and labour productivity appears to be a temporary phenomenon and some of the stagnation in consumer wages over recent years is 'part of the adjustment process to the unwinding of mining boom'.²³

6 - 'Weak wage growth in the last three years has delivered the biggest fall in living standards for more than 30 years, with more than a million people now forced to work more than one job'

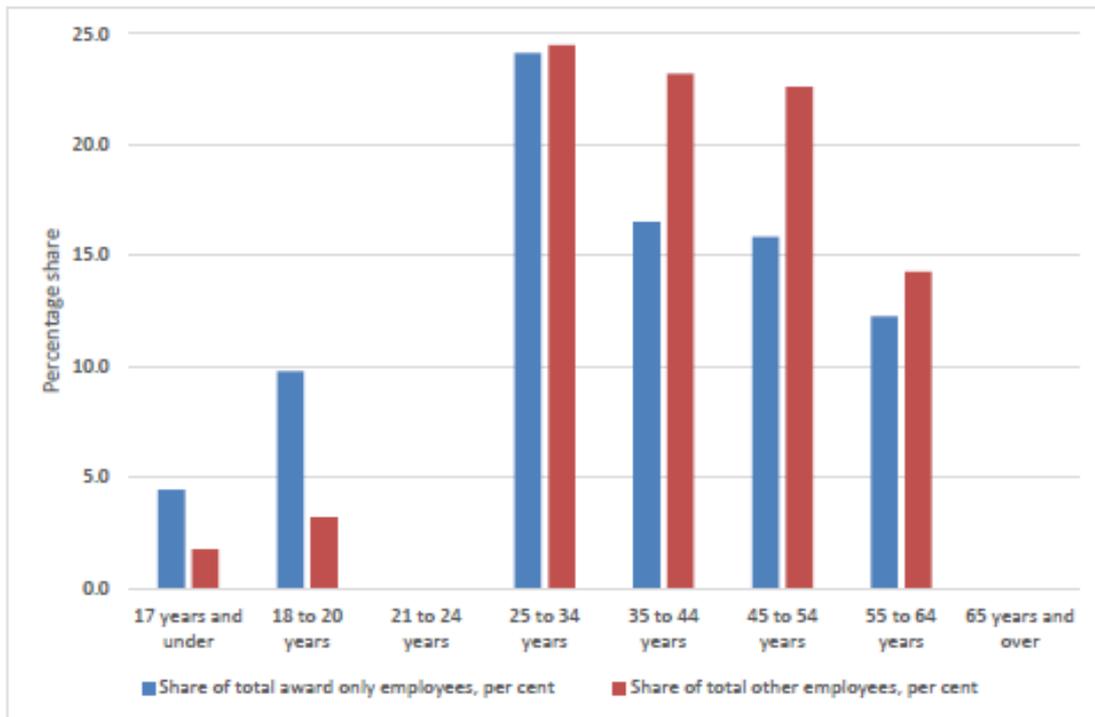
FACT: There is no evidence that people are forced to work more than one job. In fact, employees find the increasing benefits and flexibility of 2 jobs, whether in FTE or PTE. In many cases, employees require permission from their primary employer to hold down a second job. There is insufficient evidence to suggest that the sole and or primary workplace is not meeting individual income expectations and or that the people that work more than one job are on the NMW.

7 - 'Profit margins in small business continue to grow faster than for bigger business and yet small business has a much bigger proportion of award-reliant workers who have seen above WPI wage increases in recent years.'

FACT: Many high-growth firms are small business start-ups such as technology start-ups that grow at a faster pace and possess higher profit margins than large incumbent firms. High-growth firms, do not typically grow at this pace for more than 2 consecutive years and their employees are more likely to possess higher skill set, such as IT qualifications, and therefore are not on the NMW. Incumbent small firms are typically not high-growth firms. Large incumbent firms are not expected to grow as quickly as new small business start-ups, just like an advanced economy is not expected to outpace a developing economy's growth rate. There is no justification on that basis whatsoever to claim that small business, particularly incumbent small businesses, have the capacity to pay a 6 per cent increase in NMW.

²³ <https://www.rba.gov.au/publications/bulletin/2019/mar/pdf/the-labour-and-capital-shares-of-income-in-australia.pdf>

8 – Graph on award only employees by age, page 17 of ACTU submission



Source: ABS 6306 and ACTU calculations. Note where data missing, group data not published.

‘The ‘under representation’ of award only in the 35 to 54 year old range, in particular, is not only due to people rising into over award positions. It is also due to women with children being removed from employment, where women are disproportionately reliant on award only’

FACT: There is no data or evidence to back the claim that women are removed permanently from the workforce and that they represent a higher proportion of NMW employees in the 35-54 year old age cohort. The data represented is not disaggregated by gender, and there is a vital age cohort, those representing the largest number on NMW, eliminated from the chart. This data is purposefully aimed to mislead the reader and is not useful in the minimum wage case.

9 – *The Panel in its decision for the AWR of 2018 noted the results of the unpublished interim report (Aitken et al 2017) by the UK National Institute of Economic and Social Research (NIESR) as summarised in the UKLPC 2017. The UKLPC said that the interim report found no robust impact on employment with mixed evidence on hours, based on one year of data since the introduction of the NLW.*

FACT: The study provides evidence of adverse effects on the employment retention rates of women working part-time and further evidence of a reduction in employment retention for some of the lowest paid workers in the retail industries.²⁴ The elasticities of the reduction to employment retention is also troubling which would have significantly adverse impacts in Australia, particularly as a living wage would set a floor on all award rates and therefore shift all rates along with it. It would be wreckless to industry and the most vulnerable if a National Living Wage were to be implemented when early evidence suggests adverse impacts in the UK labour market – particularly on those most vulnerable and industries that are most

²⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775197/The_impact_of_the_introduction_of_the_NLW_on_employment_hours_and_wages__NIESR.pdf

vulnerable to competitive market forces and digital disruption. Furthermore, the study analyses only one year of data and as employers make decisions throughout the business cycle, the adverse effects may be amplified further in the medium term. It is too early to suggest that there is no affect to employment given the business cycle may take more than a year.

10 - *'The Australian economy has grown 2.3% for the year 2018, below the RBA forecast of 2¾ % for 2018, and just under 2017. This supports the view that slow wages growth continues to impede growth in the economy.'*

FACT: Several economic forces have led to a revised economic growth forecast for the year 2018 that stem far beyond wages. As stated in the 2018-19 Budget economic forecast and RBA monetary statement on monetary policy, these forces include slowing international growth particularly in China, housing prices in major cities, increasing friction in the labour market (supply vs. demand) not being met, further skills shortages, energy costs, and access to finance. These forces also affect whether businesses can survive, operate and turn a profit.

5. 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



CHAMBER



INDUSTRY ASSOCIATION

