australian council of trade unions

ACTU Reply Submission to the Annual Wage Review 2018

ACTU Reply Submission, 9 April, 2018

ACTU D. No 62/2018

CONTENTS

INTRODUCTION

Our initial submission demonstrates that our claim in this Review is appropriate and accords with all the factors the Panel must take into account.

Our claim to increase the National Minimum Wage ('NMW') by $50 per week or 7.2%, and all other award minimum wages by 7.2% is proposed as a means of addressing the sliding growth in real wages and the relative standard of living and the needs of the low paid. It will also raise spending and employment in the economy. It will work towards reducing inequality and increasing economic growth.

In this submission we show that data released since 13 March are consistent with the description of current economic conditions and the near-term economic outlook that we offered in our initial submission.

In this submission we also respond to a range of arguments and claims made in other parties' initial submissions. We do not respond to all the arguments with which we disagree. We rely on our previous submissions in respect of arguments that have been adequately addressed in earlier Reviews, particularly where the Panel has expressed firm views about such arguments.

This submission also includes our responses to the Questions on Notice published by the Panel.

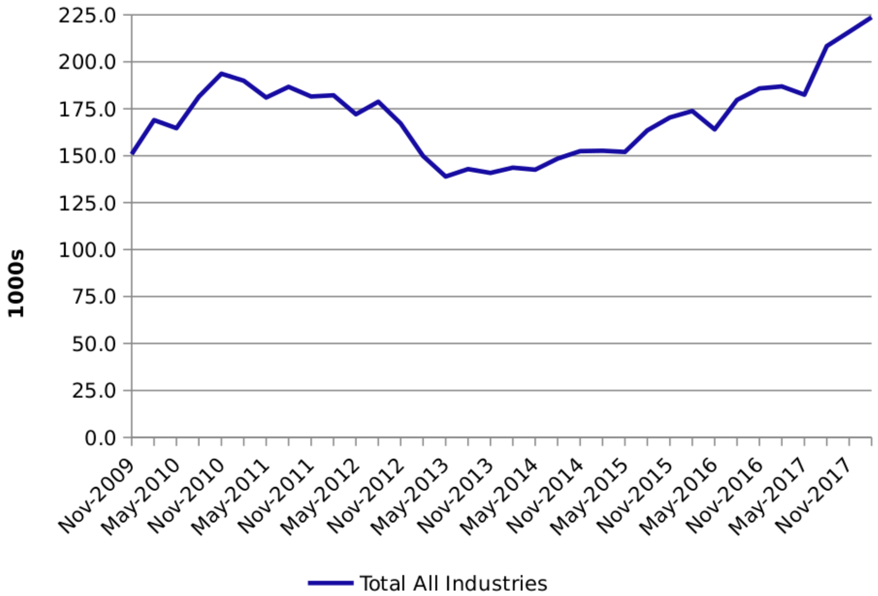
We express our interest in participating in the consultations to occur in Melbourne on 15 May, at which the Panel members will be able to seek our responses to any matters not addressed in this reply submission.

DATA RELEASED SINCE 13 MARCH

Job Vacancies

The ABS released its quarterly vacancies data for February 2018 on 29 March. Total vacancies at February 2018 were 220,900, seasonally adjusted, 23,200 more than at February 2017, an increase of 19.3%. Figure 1 shows that quarterly vacancies have trended upwards since the low of 139,000 at May 2013.

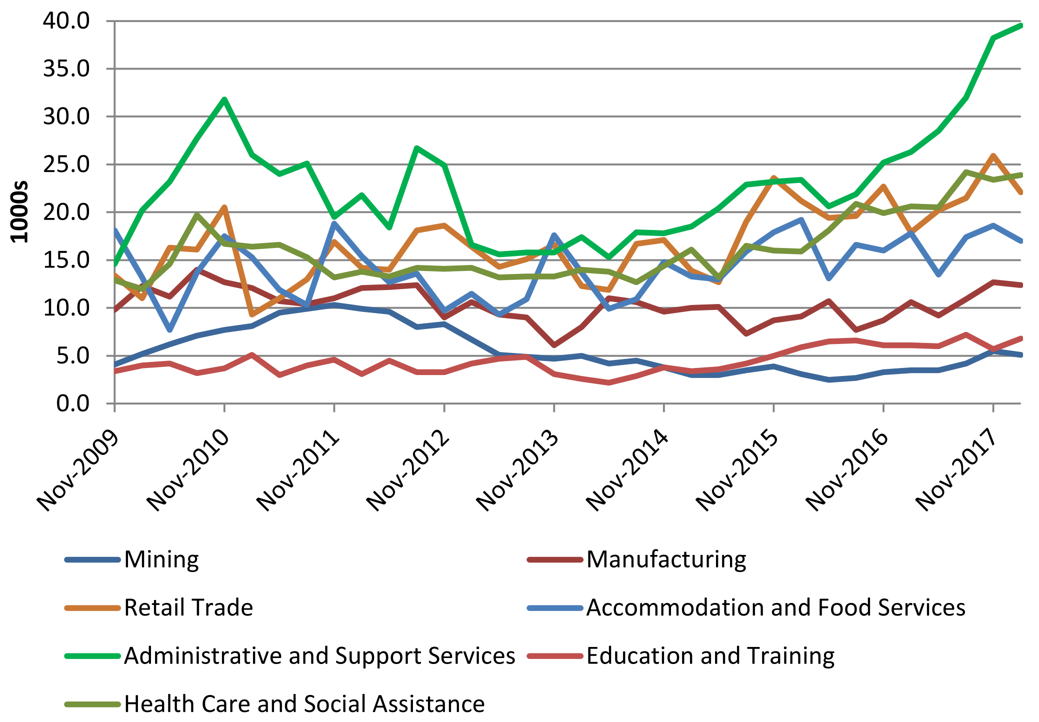
Figure 1: Vacancies, quarterly, 1000's



Source: ABS 6354

Figure 2 shows vacancies in various industries including the award reliant industries, original data. Although volatile, in general there is an upward trend in vacancies in the award reliant industries since May 2014. The number of vacancies in Retail was still above that of two years ago, despite a fall in the February quarter figures. The overall trend in vacancies including in the award reliant industries does not suggest dire straits for business and they would be able to well accommodate an increase in the minimum wage.

Figure 2: Vacancies in selected industries, quarterly, November 2009 to February 2018, 1000's



Source: ABS 6354

Labour Force

The ABS released its Labour Force figures for February 2018 on 22 March 2018. The mixed signals from the labour market continued. Employment increased a net 17,500 to 12,480,500 between January and February 2018, seasonally adjusted. Full time employment increased 64,900 to 8,533,600 million while part time employment fell 47,400 to 3,946,900, seasonally adjusted. Unemployment increased from 5.5% to 5.6%, an addition of 8,900 persons, making it 734,100 unemployed persons, seasonally adjusted, in February 2018.[1] Unemployment remains at a high level, but in itself cannot be taken to indicate a weakening of the economy. Monthly hours worked increased 1.2% from January to February 2018 seasonally adjusted, after a decrease of 1.3% the previous month.

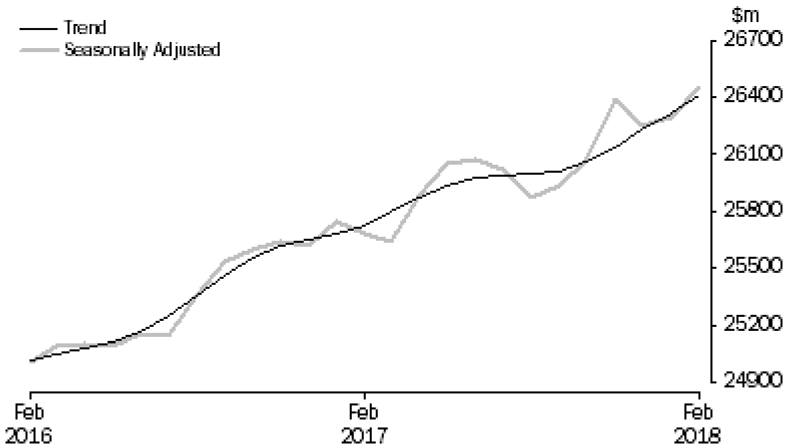
[1] ABS 6202 February 2018 released 22 March. http://www.abs.gov.au/ausstats/abs@.nsf/mf/6202.0

Retail Trade

Monthly retail sales are notoriously volatile, but continued to grow strongly in February 2018, by 0.6% in seasonally adjusted terms.[2]

This leaves an annual growth rate in retail sales of 2.5% year on year to February 2018 which exceeds inflation (ACTU calculation). Retail business cannot claim they are unable to afford pay increases or penalty rates.

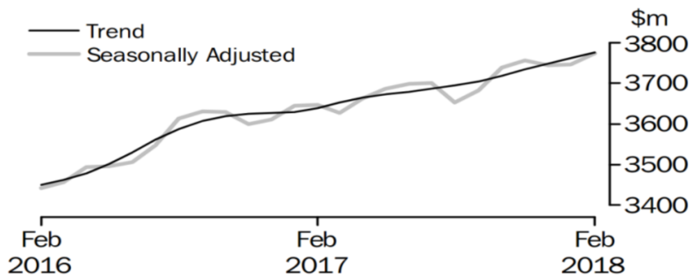
Figure 3: Retail Turnover (reproduced from ABS)



Source: ABS[3]

Moreover, sales grew in February 2018 in all retail sectors in seasonally adjusted terms, including cafes restaurants and takeaway food services, where they grew 0.7% seasonally adjusted. These are award dependent areas impacted by penalty rates falls, and insecure work.

Figure 4: Cafes, restaurants and takeaway food services (reproduced from ABS)



Source: ABS[4]

[2] http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/8501.0Main%20Features2Feb%202018?opendocument&tabname=Summary&prodno=8501.0&issue=Feb%202018&num=&view=

[3] http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/8501.0Main%20Features2Feb%202018?opendocument&tabname=Summary&prodno=8501.0&issue=Feb%202018&num=&view=

[4] http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/8501.0Main%20Features3Feb%202018?opendocument&tabname=Summary&prodno=8501.0&issue=Feb%202018&num=&view=

REPLY TO THE AUSTRALIAN RETAILERS ASSOCIATION

The submission of the Australian Retailers Association ('ARA') is premised on a model in which minimum wage increases reduce employment which has been widely debunked empirically in the literature, as indicated in the ACTU's submissions.[5] The ARA's request for a low minimum wage is evidently also underscored by an assumption that the Wage Price Index is both a measure of businesses capacity to pay and the market clearing rate of pay.

It is apparent that that the ARA submission ignores the impact of increased expenditure on employment and the economy. Yet, all the while retail trade is adding employment. Employment in retail trade grew 57,700 over the year to November 2017, or 4.7%.[6] These are not increases that suggest an industry in difficulty. Moreover, the employment share of retail trade in total industry grew over the year to November 2017.[7]

Figure 31 of our initial submission and the discussion adjacent thereto shows that retail profit growth far outstrips the growth in wages in the sector. It shows that over the year to September 2017 the wage bill in retail grew 1.4% in nominal terms - in fact a fall of 0.4% in real terms - while its profits grew a healthy 13.4% in nominal terms. It also shows high profitability among smaller businesses, the likely beneficiaries of the Federal Government's accelerated depreciation measures and recently implemented tax cuts to small businesses (both incorporated and unincorporated). Because of these relatively recent tax cuts, the extent to which increased profits can be retained has increased. These businesses, to the extent that they employ workers on Sunday, may also see lower wage costs next year depending on the combined impact of the Panel's decision and the 10-15% reduction in Sunday penalty rates.

As discussed in section 3.13 of our initial submission, the small decline in the number of retail business has levelled off compared to the previous year. When business numbers fall or don't increase but profits and employment increase, it reflects a trend towards business concentration, that is a general increase in firm size, rather than difficulty. The number of hours worked has increased more than the increase observed in most other sectors. Whilst it is fair to surmise that much of this growth is in employment of less than full time hours, this is to be expected in the retail industry where such employment is very prevalent. Retail employers often prefer to employ via flexible forms of employment that enable them to scale up to meet periods of peak demand.

To the extent that the ARA attempt to paint a gloomy picture of their employment intentions over the next 6 to 12 months by reference to their survey responses, it is to be noted that in each category of employment the prediction is overwhelmingly that employment levels will stay stable or increase, rather than decrease. Further, the responses to the survey question "Describe the impact on employment and labour costs in your business from last year's 3.3% increase in the NMW" are highly uninformative. Any employer that experienced an increase in labour costs by force of the Panel's decision is likely to respond that the impact was negative.

Whilst growth in retail turnover might be low by reference to longer term averages, it continues to grow along with consumption, notwithstanding lower householder incomes, due to a lower household saving ratio. The best insurance against further decline is boosting the incomes of consumers through a meaningful and significant adjustment of minimum wages.

---

[5] See section 5.2.1 of our Initial Submission

[6] ACTU submission to AWR 2017-18, Figures 78 and 79.

[7] ACTU submission to AWR 2017-18, Figure 80.

REPLY TO THE NATIONAL RETAIL ASSOCIATION

The National Retail Association's ('NRA') submissions about the impact of casual overtime provisions should be disregarded. Their complaints concerning a lack of certainty between July and December of last year are without merit given that the substance of the obligation was clear from the Full Bench Decision of 5 July 2017[8]:

> "For these reasons, we conclude that it is necessary to vary the awards to provide for overtime penalty rates to apply to casuals in order to meet the modern awards objective. In reaching this conclusion, we have taken into account all the matters specified in s.134(1), but we have placed particular weight on s.134(1)(da)(i), and we have also considered the effect of casual overtime rates on employment costs and the operation of businesses generally pursuant to s.134(1)(f). Each award should provide that casual employees should receive the same overtime penalty rates as full-time and part-time employees performed in excess of 38 hours per week or, where the casual employee works in accordance with a roster, in excess of 38 hours per week averaged over the course of the roster cycle. In respect of daily hours, the position should be as follows:
>
> > (1) In the Retail Award, overtime penalty rates hours should apply to hours worked outside the span of hours for each day specified in clause 27.2(a), or for hours worked by in excess of 9 hours per day, provided that one day per week a casual employee may work 11 hours without attracting overtime penalty rates (consistent with clause 27.3).
> > (2) In the Fast Food Award, a casual employee should receive overtime penalty rates for hours worked in excess of 11 hours in a day, consistent with clause 25.3.
> > (3) In the Hair and Beauty Award, hours worked in excess of 10½ hours in a day should attract overtime penalty rates consistent with clause 28.3.
> >
> > In each case overtime penalty rates are to be applied to the ordinary hourly rate of pay, with the casual loading also to be applied to the ordinary hourly rate of pay. Overtime rates should not compound upon the casual hourly rate of pay.
> >
> > We direct the SDA to draft determinations varying the 3 awards to give effect to our decision. We will then give other interested parties an opportunity to make submissions about the form of the variations."

Although the NRA was a participant in the *Casual and Part Time Common Issue* proceedings, it filed no submissions or evidence that addressed the claims for casual overtime that were granted in the above decision. Nor did it file any response to the Draft Determinations, foreshadowed in the extract above, prepared by other parties to give effect to the Decision in relation to casual overtime. The assertion of some crisis whereby some of its members or potential members were "scrambling in the middle of the financial year to hastily adjust budgets and operational plans simply to continue their operations within the law" is at odds with the NRA's evident lack of interest in the issue at the relevant time and its lack of any effort to influence the outcome either in form or substance.

Further, as was noted by the Full Bench in the *Casual and Part Time Common Issue* decision, the effects of the decision to award casual employees with overtime are likely to be minor:

---

8 [2017] FWCFB 3541 at [676]-[678]

> "We do not consider that a requirement for employers under the 3 awards to pay overtime penalty rates for casuals would result in the imposition of a significant costs burden upon them. Most casuals in the industries covered by the awards do not work full-time hours."[9]

The Panel should be cautious in its treatment of the Retail Trade figures quoted in the NRA's submissions. Their claim that "the sector suffered a 0.5% fall (seasonally adjusted) during the traditionally busy month of December" does not suggest that the month of December was not objectively busy relative to November, as seasonal fluctuations have been smoothed in that measure. Rather, consistent with patterns in recent years, December trade rose 21.4% and fell by 23% in January, a typical annual pattern for that period. Interestingly, when trend data is used (which adjusts for seasonality as well as other irregular influences), growth in turnover has been positive in both December 2017 (0.3%) and January 2018 (0.3%), the highest month on month growth seen since April-May 2017.

9 [2017] FWCFB 3541 at [675]

REPLY TO THE HOUSING INDUSTRY ASSOCIATON

We concur with the Housing Industry Association that the overall conditions in the construction industry are determined by reference to cyclical factors. However, the tax cuts (to incorporated and unincorporated business) and accelerated depreciation measures referred to earlier provide some level of cushioning against the gradual levelling off of demand in the sector. We have some doubt that the broad characterisation of the industry as one where "profit margins are low" is accurate. Neither that claim or the assertion that wage increases have had a negative effect on apprenticeships are attributed to any source. As indicated in Figure 31 of the ACTU's initial submission, profits in the construction industry grew 13.0% in the year to September 2017 in nominal terms while wages grew 3.0%. Employment in the construction industry grew 9.5% over the year to November 2017.

REPLY TO RESTAURANT AND CATERING INDUSTRIAL

Restaurant and Catering Industrial ('RCI") warn that a "significant" increase to minimum wages might mean that industry jobs forecasts produced by the Department of Jobs and Small Business prove to be inaccurate. Whilst they don't identify what a "significant" level is, they nonetheless state that their position is that there be no increase in minimum wages.

RCI's submission reveals no new insights on any relationship between minimum wages and employment. Further, their own description and data visualisation of the conditions in their industry is somewhat at odds with the conclusions they seem to wish the Panel to draw: Despite several years of minimum wage decisions outstripping CPI, there has been a "clear pick-up in growth" in their industry following the largest rise (in percentage terms) to minimum wages in 6 years.

We do not quarrel with RCI's assertion that many cafe, catering and restaurant operators run on low margins (although some would not), however as with other small businesses, they have recently had the benefit of lower tax rates. In addition, as the submission points to, local competitive pressures are a major factor because there is an oversupply of businesses.

RCI is to be criticised for its stance in paragraphs 26 and 27 of its submission, where it points to the multiplier effects of penalty rates payable in its industry on weekends and public holidays. In relation to public holidays, the penalty rates were reduced at the urging of Restaurant and Catering Industrial (among others). In relation to Sunday penalty rates, Restaurant and Catering Industrial ultimately abandoned its efforts to reduce those rates. As noted in a recent decision of a Full Bench of Commission, Restaurant Catering and Industrial have conceded that the penalty rate provisions of the Restaurants Award (not just the weekend penalty rate provision) are fair and relevant:

> "In response, the Commission notified the parties the same day that their attendance at the hearing was required in order "to consider the final disposition of the review of penalty rates provisions" in the Restaurant Award. RCI and United Voice consequently attended the hearing the following day. During the hearing, the following exchange occurred between the bench and counsel for the RCI:
>
> > "VICE PRESIDENT HATCHER: ...The Full Bench has noted the correspondence received from Restaurant & Catering Australia, but it raises a question as to on what basis we now conclude the review, that is, we had the penalty rates decision which indicated a provisional outcome but gave Restaurant and Catering Industrial a further opportunity. It's now made a decision not to pursue that opportunity. Are we now in a position to conclude that at least insofar as the penalty rate provisions of the award are concerned the provisions meet the modern awards objective and the review is concluded? Mr Duc?
> >
> > MR DUC: <u>That's so.</u> The common issue of the penalty rates from RCI's point of view should be concluded.
> >
> > VICE PRESIDENT HATCHER: We need to form a conclusion that the provisions are consistent with the modern awards objective. Is there anything else preventing us from forming that conclusion?
> >
> > MR DUC: <u>No, your Honour</u>."[10] (emphasis added)

10 [2017] FWCFB 6034 at [13]

REPLY TO THE AUSTRALIAN GOVERNMENT

In the ACTU's view, the Australian Government's estimate of 196,300 employees (or 1.9%) being on the NMW rate is at best too narrow.[11] It implies that this is the number of employees that would benefit from an increase in the NMW.

Customised data obtained by the ACTU from the ABS Employee Earnings and Hours for May 2016 (the most recent) regarding the distribution of hourly pay rates amongst award reliant employees shows that, at that time, when the NMW was $17.29, 512,300 award reliant employees earned from $17 to less than $20 per hour. This is 22.4% of award reliant employees. This means that 5.0% of total employees at the time earned from $17 to less than $20 per hour. Because we do not have precise figures for those earning exactly $17.29, the NMW at the time, the range includes some award reliant employees who were earning between $17 and the NMW. If we increase the range to $17 up to less than $23 dollars per hour, 960,000 or 42.1% of award reliant employees receive from $17 to less than $22 per hour, making up 9.5% of total employees. That is, a significant proportion of award reliant employees earn within only $3 dollars more per hour of the minimum wage.

[11] Australian Government submission to the AWR 2017-18, p.13

REPLY TO THE AUSTRALIAN INDUSTRY GROUP

The Ai Group continues to question the effectiveness of the minimum wage fixation framework as a policy tool for improving relative living standards and meeting the needs of the low paid. We would refer, in response, to the Panel's consideration in last year's Review of a similar argument put by the Australian Government:

> "The Australian Government continued to put the case that the 'tax-transfer system plays a large role in equalising the distribution of income among Australian households' and is more efficient in doing so than increases to the NMW and modern award rates. For the reasons given in Chapter 6 we do not accept that the tax-transfer system relieves us from the statutory obligation to consider relative living standards and the needs of the low paid when setting the NMW and modern award wages. Furthermore, the changes to the tax-transfer system in the past 2 budgets have reduced the financial assistance that is provided for low-income families with children. A majority of low-wage workers are single without children and the many who work full time are not assisted by the social welfare system; indeed, they have their disposable incomes reduced by income tax."[12]

Further, consistent with observations last year, the Australian Government's modelling continues to show that household disposable income for all household types increased as a result of the Panel's decision in the last Review.

We would add that the Ai Group's apparent dedication to an adequate social safety net is somewhat at odds with its public statements in relation to the most recent debate concerning corporate tax rates.[13]

Whilst we agree that changes to the child care system are relevant, we note that the Panel does not favour a mechanistic response to such changes. In any assessment, the extent to which any favourable impacts of recent changes to childcare subsidies merely ameliorate other changes (such as the abolition of the schoolkids bonus, the grandfathering of the Energy Supplement and the freeze on Family Tax Benefit B rates) ought to also be considered.

We reject Ai Group's submission that increases to minimum wages should generally be set at a level that is lower than average annualised wage increases in enterprise agreements. Low wages are widely recognised as a problem in the current economy and the Panel can and should do its part to assist address that. Relevantly, the Panel made the following observation:

> "… the requirement that modern awards provide a fair and relevant minimum safety net does not imply that the variation of modern award minimum wages must 'always follow, predict or seek to reproduce the trends observed in market wages'. One of the considerations the Panel must take into account in giving effect to the modern awards objective is 'relative living standards'. Trends in market wages are relevant for that purpose, but they are not determinative. As we have mentioned, the range of considerations we are required to take

[12] [2017] FWCFB 3500 at [65]. See also paragraphs [564]-[567]

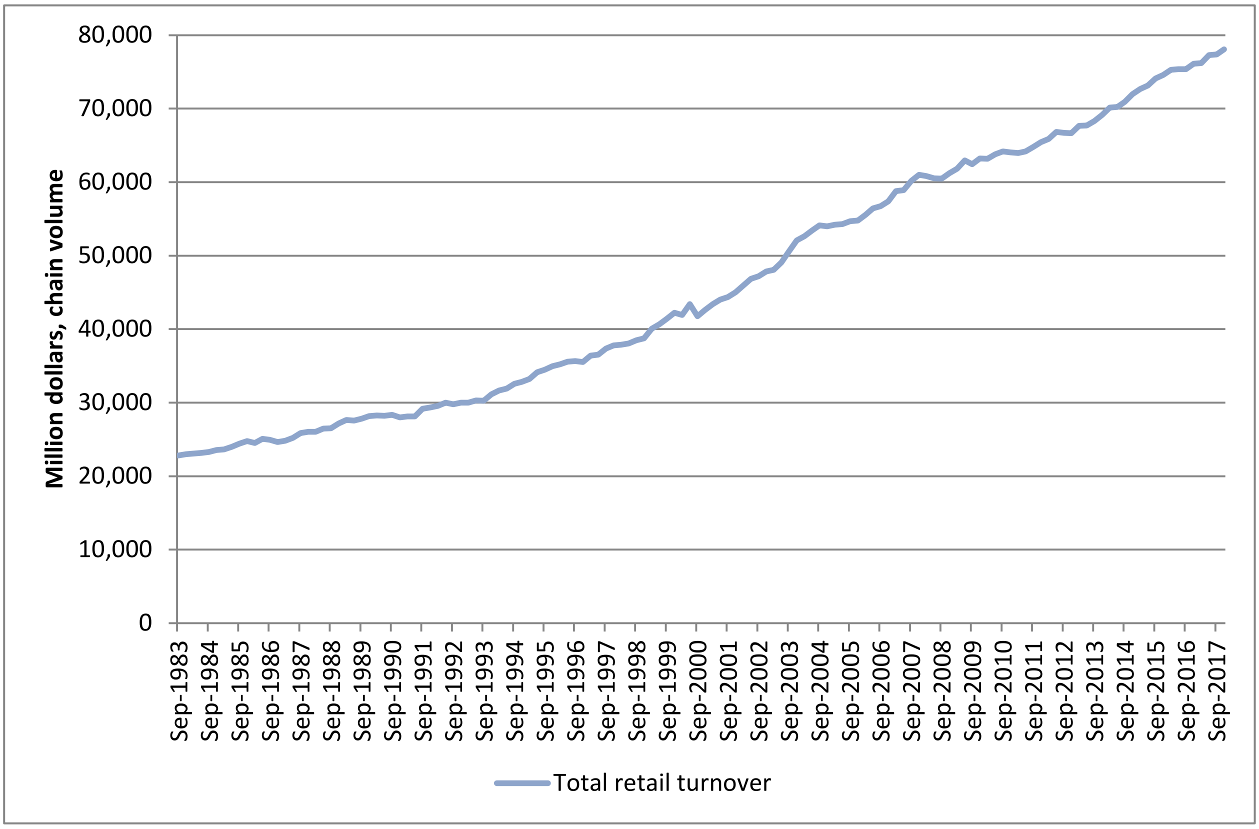
[13] See for example "Enacting tax bill would be a major step along road to fit-for-purpose tax system" (https://www.aigroup.com.au/policy-and-research/mediacentre/releases/Tax-Bill-8Feb/#extended) ; "The time is right to cut the company tax burden" (https://www.aigroup.com.au/policy-and-research/mediacentre/releases/5125f510-ad1c-e611-80ce-0050568007a5/) ; "Tax reform top Budget priority for business" (https://www.aigroup.com.au/policy-and-research/mediacentre/releases/4185a3bf-aa1c-e611-80ce-0050568007a5/)

into account calls for the exercise of broad judgement rather than a mechanistic or decision rule approach to wage fixation."[14]

The Ai Group submission has made much of the difficulties of retail as an area where minimum wage increases would negatively impact.

Quarterly chain volume data for retail turnover to December 2017 released in March indicates that retail turnover has grown consistently in real terms as shown in Figure 5.

Figure 5 Total retail turnover, quarterly, seasonally adjusted, chain volume, million dollars

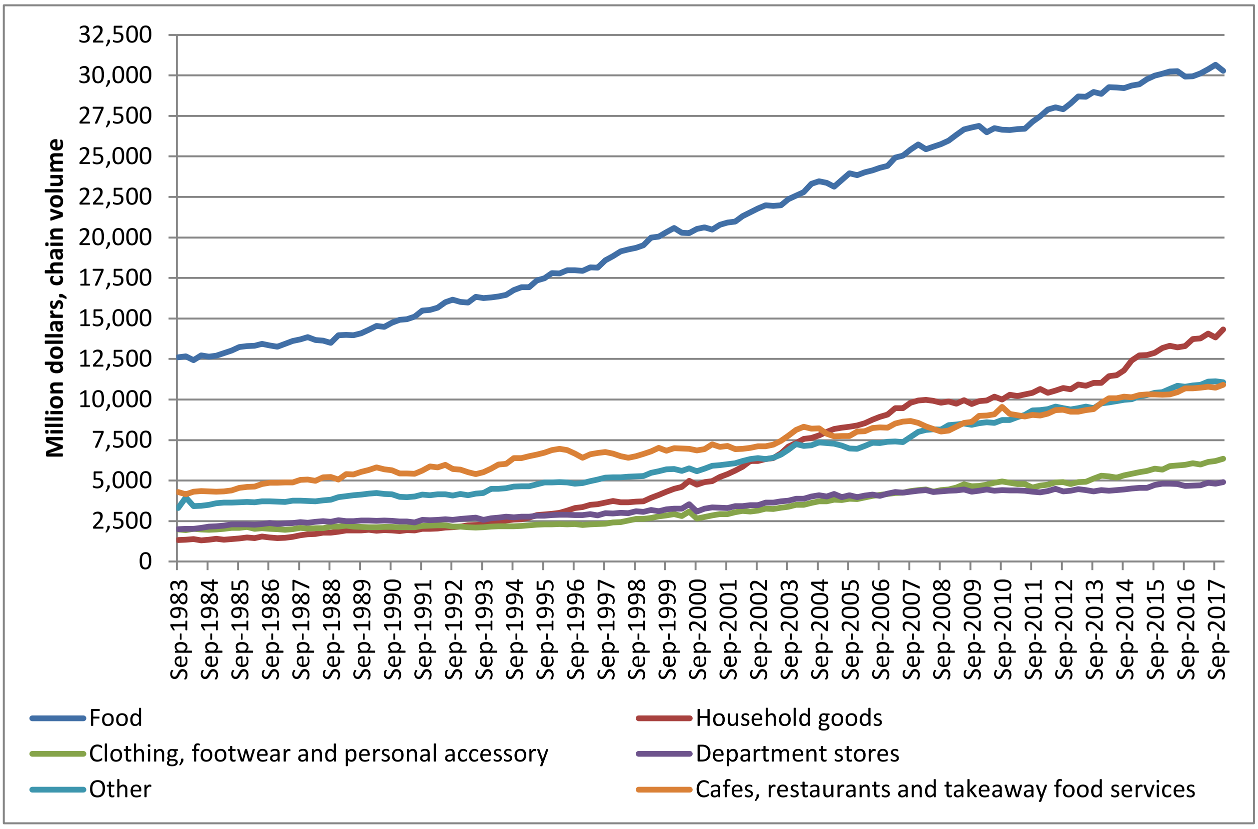


Source: ABS 8501

A slight downturn in food retail sales in the last quarter of 2017 was made up for by increases in other retail areas, including cafes restaurants and takeaway food as shown in Figure 6. The data do not suggest particular hardship in the retail sector or any reason why business would not be able to pay higher wages. Moreover an increase in the NMW and awards would be faced equally by businesses, and therefore cannot affect their competitive position.

[14] [2017] FWCFB 3500 at [145]

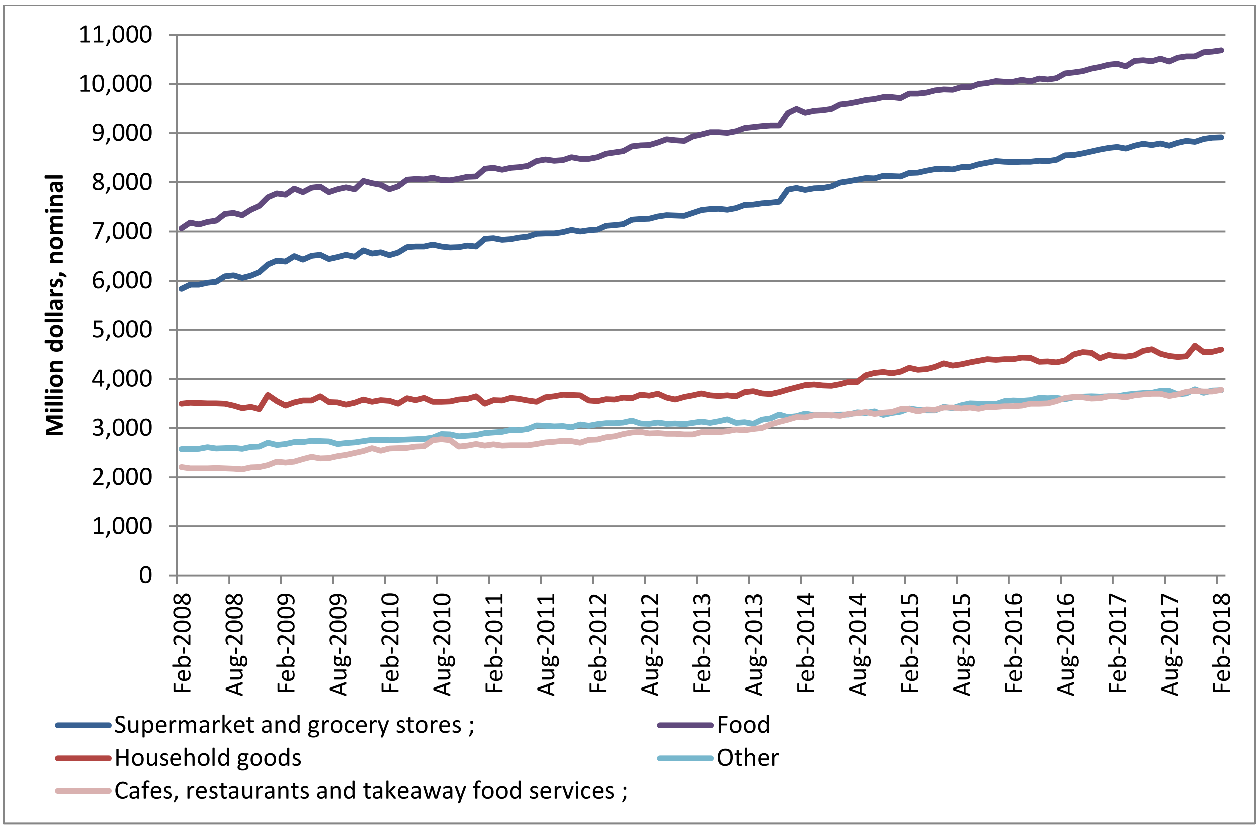
Figure 6 Retail turnover by industry, quarterly, seasonally adjusted, chain volume, million dollars



Source: ABS 8501

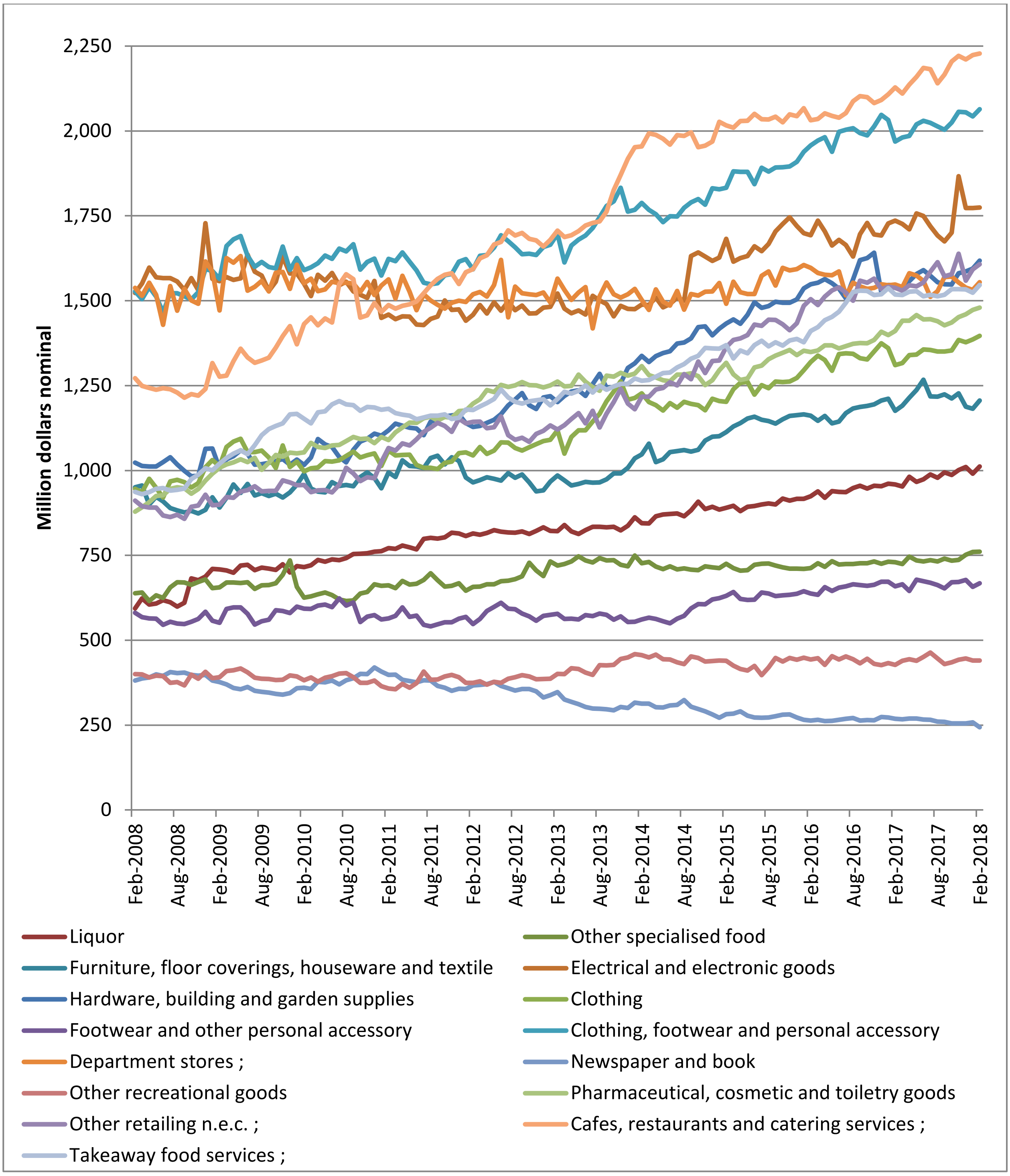
More disaggregated data for monthly nominal turnover seasonally adjusted shows that the only fall on trend over the last ten years is for newspaper and book retailing, with furniture showing a fall since June 2017, as shown in Figure 7 and Figure 8.

Figure 7 Retail turnover in industry subgroups, monthly, seasonally adjusted, nominal, millions of dollars



Source: ABS 8501

Figure 8 Retail turnover in industry subgroups, monthly, seasonally adjusted, nominal, millions of dollars



Source: ABS 8501

The data do not suggest any dramatic departure over the last year in terms of trends in retail turnover.

REPLY TO THE AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY

The Australian Chamber of Commerce and Industry ("ACCI") submission notes the Government's submission that over 70% of award reliant employees did not fall within the Panel's definition of low paid, that is earning less than two thirds of the median hourly wage.[15] The ACTU notes that this amounts to $22 an hour or less based on the median wage of $1261 from ABS 6333.

Based on ABS data from Cat 6306, 54.1% of award reliant employees earn $22 per hour or less, not the less than 30% claimed in the ACCI submission.

[15] ACCI submission to AWR 2017-18, pp.4-5

RESPONSES TO QUESTIONS ON NOTICE

Response to Question 1.1

"In Chapter 7 of its submission, ACCER deals with wage setting under the *Fair Work Act 2009* and addresses some aspects of the Panel's 2016–2017 decision, in particular:

(i) ACCER submits that the Panel's construction of s.284(1) was erroneous and should be reconsidered (see especially [214], [234]–[237], [240], [249] and [253] of ACCER's submission).

(ii) ACCER maintains its contention that the Panel has adopted a 'wages relativities policy' which it submits is contrary to law and also asks that the Panel reconsider its decision in respect of this issue (see especially [255]–[272] and [287] of ACCER's submission)

(iii) ACCER makes a number of observations about 'equal remuneration' and the consideration in s.284(1)(d), noting that the gender pay gap is caused by factors outside the modern award system and is not relevant to the matter in s.284(1)(d) (see especially [275]–[281] of ACCER's submission).

All parties (especially the Australian Government, ACTU, ACCI and Ai Group) are asked to comment on these aspects of ACCER's submission"

Response:

(i) As we understand it, ACCER's complaint is that the Panel did not embrace the "Operational Objective" advanced by the ACCER and impermissibly relegated its elements to considerations which have no primacy or priority. ACCER's "Operational Objective" is as follows:

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

ACCER's "Operational Objective" is a laudable one which we fully support and one that is in our view capable of being met concurrently with the minimum wages objective and the modern awards objective. It is not however the objective expressed in the legislation. We do not concur that the Panel's construction of s. 284 was erroneous.

In past submissions, ACCER and ourselves have at times contended that the minimum wage fixation framework should be regarded as "beneficial legislation". The Panel turned its attention to this question in last year's decision (at the urging of ACCER), and agreed that it should be so regarded[16]. In particular:

> "A remedial or beneficial provision is one that gives some benefit to a person and thereby remedies some injustice. We accept that it is appropriate to characterise the statutory provisions relating to the variation of the NMW as remedial or beneficial provisions. They are intended to benefit national system employees. Further, as the Panel observed in its Preliminary Decision dealing with the proposed adoption of a medium-term target for the NMW:

[16] [2017] FWC 3500 at [134]-[135], [142]

> 'The effect of a fair and relevant safety net is to raise wages received by the low paid above those that they would receive in the absence of enforceable minimum wages.' "[17]

The Panel then went on to observe that, notwithstanding the identified beneficial purpose, the relevant provisions could not be regarded as pursuing that purpose to the nth degree without limitation or moderation by other factors. In doing so, it relied on the comments of Gleeson CJ in *Carr v. Western Australia*:

> "…the problem of interpretation is that there is uncertainty as to how far the provision goes in seeking to achieve the underlying purpose or object of the Act. Legislation rarely pursues a single purpose at all costs. Where the problem is one of doubt about the extent to which the legislation pursues a purpose, stating the purpose is unlikely to solve the problem. For a court to construe the legislation as though it pursued the purpose to the fullest possible extent may be contrary to the manifest intention of the legislation and a purported exercise of judicial power for a legislative purpose."

The minimum wages objective and the modern awards objective self evidently require "fairness" and "relevance" to be assessed by reference both to their meaning in the statutory context in which they appear as well as by the consideration of explicit factors, including what might be described as "economic factors". Some of those factors - such as "the competitiveness of the national economy", "business competitiveness and viability", "employment growth" and "employment costs" - clearly involve the consideration of the direct interests of persons other than the employees who stand to benefit from any wage rise which the Panel might award. In that sense, such "economic factors" *appear* in form to be and *might* in substance be moderating factors which condition the extent to which the minimum wage objective and modern awards objective pursue their beneficial purpose "at all costs". As we explore further in our response to 1.3 below, it is for the Panel to determine the extent to which those "economic factors" are, in actuality, moderating factors. For our part, we are not convinced that weighing those factors in the overall assessment of fairness and relevance should lead to a situation where ACCER's "Operational objective" is unachievable.

For completeness, in our view, there is nothing untoward about the Panel identifying the beneficiaries of each of the enumerated considerations in the minimum wages objective and the modern awards objective, identifying the interests of those beneficiaries and reaching a view about what would constitute fairness to them. This is a permissible and logical step in the decision making process. The Panel is asked to consider to the "needs" of the low paid and it is legitimate for the Panel to describe what those needs are. The Panel is asked to consider relative living standards and it is entitled to examine what living standards the beneficiaries of its decisions can reasonably expect.

---

[17] [2017] FWCFB 3500 at [134]

(ii) We see no error of law in the decision of the Panel to set the C14 rate at the same rate as the National Minimum Wage.

(iii) The Panel has consistently recognised that the adjustments to the national minimum wage and modern award minimum wages can assist to close the gender pay gap. We do not accept that a hybrid increase to minimum wages (of the type we have proposed in the past) will necessarily do less to address the gender pay gap than a uniform percentage increase. Such a proposition is, in our respectful view, too broad.

We do not agree that the causes of the gender pay gap lie entirely outside of the award system. However, for the reasons set out in Chapter 7 of our initial submission, any systemic gender based undervaluation of female dominated work as between awards is not readily capable of being addressed in the Review.

Response to Question 1.2

"The method for adjusting wages in copied State awards was the subject of a decision by the Panel issued on 4 January 2018. In that decision the Panel expressed the following provisional view:

> '[43] … It is our provisional view that AWR adjustments should generally apply to copied State awards, subject to a different outcome being determined in respect of particular copied State awards. In other words, rather than seeking to apply a tiered approach as a decision rule to mitigate 'double dipping' we propose to address any 'double dipping' on a case by case basis. We invite submissions on our provisional view in the context of the 2017–18 Review proceedings.'

The ACTU invites the Panel to confirm its provisional view. Does any other party take a different view?"

Response:

For completeness, our initial submission further suggested that "If the Panel were inclined to confirm its provisional view, it would in our view be usefully supplemented by an expression of support for the merits of the approach adopted in the 2012-13 decision - and re-applied to the 2016-17 decision by the correction order issued this year - when dealing with requests for an exemption."

Response to Question 1.3

The ACTU submission comments on the Panel's observation in last year's Review decision that the considerations we are required to take into account in reaching a judgment as to what constitutes 'fair and relevant' minimum wages require us to balance 'competing interests'. The ACTU juxtaposes the notion of competing interests with a unitary interest. The ACTU submits:

> 'The growing body of empirical research studying the employment effects of minimum wages (discussed in Chapter 5), the new economic orthodoxy regarding the economic risks of inequality (discussed in Chapter 4) and other prominent schools of economic thought (such as dynamic monopsony and post-Keynesian economics) provide sound support for moving away from a position whereby deciding "fair and relevant" minimum wages necessarily involves a contest between "social" versus "economic" considerations, towards a position where the assessment is fundamentally about the common good.'

The ACTU also submits:

> 'We do not raise the above to suggest that the Panel can or should adopt some criteria other than that which it is directed to. But we do submit that the Panel should recognise that the criteria it is asked to apply embed certain assumptions which the Panel is free to question, challenge and reject. Indeed, it has taken some steps towards this approach already. For example, the Panel has recognised that its obligation to set "fair and relevant" minimum wages does not limit it to an exclusive consideration of the particular matters referred to in the paragraphs below subsections 134(1) and 284(1) of the Act, as its consideration of social inclusion and the gender pay gap demonstrates. In addition, it has been willing to accept some limits about the rigidity of the assumptions embedded in the criteria it is compelled to consider – most notably last year's statement that:
>
> > "we have greater confidence in our view that modest and regular wage increases do not result in disemployment effects. Further, this research suggests that the Panel's past assessment of what constitutes a 'modest' increase may have been overly cautious, in terms of its assessed disemployment effects."'

The above seems to suggest that the various statutory considerations in ss.134 and 284 are not in conflict, but rather are all pointing in the directions of an increase in minimum wages. Is that what is being put?

Is the proposition simply that increasing minimum wages will be good for the economy, therefore the social and economic considerations are not in conflict?

What of the consideration in s.134(1)(f), in particular the impact of an increase in minimum wages on 'employment costs'?

The ACTU and all parties are invited to respond to the above questions."

<u>Response:</u>

In our initial submission, we have sought to mount a case that minimum wage increase in this Review would have social *and* economic benefits.

We do not suggest that each of the various statutory considerations will *always* point in the direction of an increase in minimum wages. We do, however, suggest that:

a) A benefit for workers must not be axiomatically equated with detriment to employers and the economy. Social justice and economic justice are not, nor should they be assumed to be, mutually exclusive;
b) The "economic considerations" expressed in the minimum wages objective and the modern awards objective were in part shaped by neoclassical theory and supply side economics and were no doubt intended to have a moderating effect on the wage increases that might otherwise be forthcoming;
c) Such a moderating effect, even if it were intended when the legislation was drafted, should not be given effect to now merely because of the underlying assumptions or theoretical propositions that informed how the "economic considerations" are expressed; and
d) The Panel is required to make its own assessment of how different interests will be impacted by any change in minimum wages and ascertain where the common interest lies. This may be at odds with the assumptions embedded in the criteria it is asked to apply or the position advanced by on behalf of particular interests.

Taking employment costs as an example, considered in isolation, they are cost centres that deplete profitability, create pressure to raise prices to less competitive levels and reduce the capacity to hire new employees. However, the fact that other employers also face an increase in employment costs diminishes the competitive impact of price shifts and the additional costs translate into increased income and spending in the economy. Raised costs also serve to promote the search for greater productivity which will increase growth in the economy. Increasing innovation and productivity also leads to greater engagement and skill levels among low paid employees which could in turn provide them a pathway to higher paid work.

It is very clear that higher wages are found in richer economies and vice versa. Higher wages *per se* are not an economic disadvantage. Rather, they can provide and effective positive contribution to the economy and employment.

Response to Question 2.2

"In previous Reviews, the Panel has noted that productivity growth is best measured over the business cycle. The Panel has also highlighted that since the length of the business cycle is not aligned with the statutory task of an annual wage review; the Panel pays more attention to longer term trends and treats recent changes in productivity with some caution.

In that context, all parties are invited to comment upon what significance, if any, should be given to the 2017 productivity growth figures in Tables 2.1 and 2.2 of the Statistical report."

Response:

The ACTU is in agreement with the Panel regarding its paying more attention to long term trends in productivity, because the complex processes relating to it take decades to work through the economy. The ACTU's initial submission at [85] provides reasons why productivity measures based on macroeconomic cycles should be treated with caution in any case.[18]

The volatility in annual measures relating to labour productivity in Tables 2.1 and 2.2 of the Statistical report show that annual movements cannot be easily measured, or interpreted with any precision. The most that might be said is that the figures in Tables 2.1 and 2.2 suggest that labour productivity growth has generally been low over the last ten years and does not appear to have increased on trend.

Response to Question 2.6

"The ACTU submitted that '[i]ncreased wages for the low paid raise aggregate demand disproportionately because low paid people spend most or all of any increase to their incomes. We attempt to estimate this effect in section 3.1.15.3 below.'[19]

What is the ACTU's estimate of the effect referred to in the above submission?"

Response:

The ACTU has refined its estimates of the effect on aggregate spending and employment of its claim in the current Annual Wage Review. It seeks to respond to the Panel's comments in the Decision regarding the soundness of its results. Accordingly, it takes a triangulation approach in which two alternative methodologies incorporating different assumptions are used. The first uses disaggregated household

[18] ACTU submission, 13 March 2018 at para. 85.

[19] ACTU submission, 13 March 2018 at para. 62.

information based on modelling from the Government's submission and FWC research while the second uses a Keynesian macroeconomic aggregate approach. The two approaches both of which make very conservative assumptions in fact yield remarkably similar results. The first approach finds an increase of 50,000 to 57,000 employed in the first year, and an increase of 30,000 in the second year. The second approach finds an increase of 40,000 in the first year and an increase of 27,000 in the second year. These estimates are remarkably close considering that they were obtained by two quite different methodologies.

First estimate

The first approach makes use of information about the household structure of NMW and low paid employees, and the impact of taxes and transfers on additional household income, in order to construct the net additions to income from increases in the minimum wage.

Table 1 presents the methodology used to obtain the effect on income and employment of the ACTU's claim of $50. Table 2 presents the estimates of employment effects in the first and second years after the increase, assuming the spending based on the increase is undertaken in those respective years. The increase in employment in the first year is between 50,000 and 57,000. The increase in the second year is 30,000 based on an increase of spending of 0.69 from that, with deductions for average savings and inflation.

The ACTU's view is that the second round (year) effects should not be different from those of a public spending stimulus, as once it is received as income no recipient has any idea where it has come from, hence the single estimate is made. The assumptions are extremely conservative throughout and only refer to increases for low paid households. They show the effectiveness of a NMW and award increase for increasing spending and employment in the economy. Last year's increase may be one reason why employment has kept growing.

Table 1 Household composition for low paid employees, percent retained of increase in NMW and estimated total increase in wage bill for the year.

Household type	Number of people in HH on NMW / low award rate, est.	HH total wage increase ($pw)	Increase in HH disposable income ($pw)	Percentage of wage increase retained (%)	Type of HH, per cent of total low paid HHs, est.	Percentage of low paid employees, est.	Contribution to total mpc, no savings, first round	Number of low paid employees	Total annual wages increase for awards < $26, $ 1000s
Single, no children									
Full-time NMW	1	50.00	39.50	79	5	4	0.03	55688	114384
Part-time NMW	1	19.93	7.87	39.5	2	1	0.01	22275	9120
Student on part-time NMW	1	19.93	7.97	40	3	2	0.01	33413	13853
Single parent									
Full-time NMW, child aged 3	1	50.00	16.05	32.1	1	1	0.00	11138	9295
Full-time NMW, child aged 9	1	50.00	19.80	39.6	1	1	0.00	11138	11467
Part-time NMW, child aged 3	1	19.93	11.96	60	1	1	0.00	11138	6926
Part-time NMW, child aged 9	1	19.93	8.47	42.5	1.2	1	0.00	13365	5887
lone parents with one child >15	1	50.00	39.50	79	2.1	2	0.01	23389	48041
Single-income couples (partner on Newstart Allowance)									
Full-time NMW, no children	1	50.00	7.90	15.8	6	4	0.01	66826	27452
Full-time NMW, child aged 3	1	50.00	13.90	27.8	4	3	0.01	44551	32201
Full-time NMW, children aged 3 and 9	1	50.00	16.50	33.0	4	3	0.01	44551	38224
Dual-income couples									
Both FT NMW, no children	2	100.00	79.00	79	6	9	0.07	133652	549042
One FT and one PT NMW, no children	2	69.93	45.39	64.9	6.9	10	0.07	153700	362743
One FT and one PT NMW, child aged 3	2	69.93	39.09	55.9	6	9	0.05	133652	271687
One FT and one PT NMW, children aged 3 and 9	2	69.93	53.30	53.3	7.1	10	0.06	158155	438341
with only children aged 15 and over	2	100	79	79	10	15	0.12	222753	915069

Household type	Number of people in HH on NMW / low award rate, est.	HH total wage increase ($pw)	Increase in HH disposable income ($pw)	Percentage of wage increase retained (%)	Type of HH, per cent of total low paid HHs, est.	Percentage of low paid employees, est.	Contribution to total mpc, no savings, first round	Number of low paid employees	Total annual wages increase for awards < $26, $ 1000s
Other									
Non dependent child	1	35	35	100	22.0	16	0.16	245028	445951
Dependent student	1	35	35	100	4.8	4	0.04	53461	97299
other person	1	50.00	39.50	79	6.8	5	0.04	75736	155562
Total						100	0.69	1513607	3552546

Sources and notes:

Household composition estimated from Australian Government submission to the AWR 2017-18, Table 8.5, p.69, and Yuen, K., Ellis, G., and Nelms, L. Characteristics of workers earning the national minimum wage rate and of the low paid Fair Work Commission, Research Report (February 2018), p.25 Table 3.5. Estimate.

HH total wage increase, increase in disposable income and percentage of wage increase retained are based on Australian Government submission to the AWR 2017-18, Table 8.5, p.69. Marginal effects of NMW increase assumed to be similar for NMW and other low paid award dependent employees, earning up to $25 per hour.

Type of HH, per cent of total low paid is estimated based on Australian Government submission to the AWR 2017-18, Table 8.5, p.69, and Yuen, K., Ellis, G., and Nelms, L. Characteristics of workers earning the national minimum wage rate and of the low paid Fair Work Commission, Research Report (February 2018), p.25 Table 3.5.

Percentage of low paid employees in each category is based on the number of NMW employees in each type of household, and re-weighting the shares of each HH type accordingly.

The contribution to total mpc first round no savings is the percentage of wage increase retained by each category of employee, weighted by the share of that category in the total low paid employees . The total is the sum of these shares. This assumes that the initial increase in disposable income will be entirely spent.

The number of low paid employees is the total of award reliant employees earning $25 or less, the total is 66.5% of all award reliant employees, provided to the ACTU by ABS: customised Survey of Employee Earnings and Hours (cat. no. 6306.0), May 2016.

The annual wage increase is based on allocating the weekly dollar NMW increase retained for each employee category, across all award reliant employees earning $25 per week or less, a conservative estimate. This is multiplied by 52 to obtain the annual dollar increases. It is a static estimate in that the net effect of taxes and transfers on the increase retained is assumed to be constant for the NMW increase, whereas the net marginal outcome is ambiguous because tax is likely to increase and welfare support is likely to fall.

Table 2 Estimates of first and second year effects of an increase of $50 in the NMW on total income and employment

	Total annual wages increase for awards < $26, $ 1000s	Number of employees added, based on median total weekly earnings
Total first year effects:		
With mpc out of total income = 0.69	3552546	57338
with 10% savings, mpc out of total income = 0.62	3197291	51604
with 10% savings, mpc out of total income = 0.62 and 2% inflation	3133345	50572
Total second year effects:		
with 10% savings, mpc out of total income = 0.62 and 2% inflation	1903821	30728

Sources and notes: The total wage increase in the first row is from the last cell of Table 1. The corresponding number of employees was obtained by dividing by total weekly earnings (including full and part time workers, from ABS 6202, Average Weekly Earnings, November 2017) times 52.

Second estimate

The second methodological approach uses a multiplier based on Government Budget assumptions for a 'transfer to households' of 0.4 for the first year and 0.7 for the second year effects.

We can see in the table below the Treasury makes the following assumptions about the size of the multipliers in Australia based on OECD and IMF estimates with the size of the multiplier depending on where the increase (or decrease) in demand comes from. In general, the multiplier impact of increases in public spending is higher than the multiplier impact of tax cuts or transfers to households, largely because consumers tend to save rather than spend a portion of the extra disposable income which they gain from the tax cut or transfer payment, which reduces the multiplier effects.

Table A: OECD and IMF estimates of fiscal multipliers

	OECD - Australia		OECD - US		IMF - G-20
	Year 1	Year 2	Year 1	Year 2	
Spending measures					
Infrastructure	0.9	1.1-1.3	0.9	1.1-1.3	0.5-1.8
Government consumption	0.6	0.7-1.0	0.7	0.8-1.1	
Transfers to households	0.4	0.7-0.8	0.5	0.8-0.9	
Revenue measures					
Personal income tax cuts	0.3-0.4	0.4-0.8	0.3-0.5	0.5-0.9	0.3-0.6
Indirect tax cuts and other	0.2-0.3	0.3-0.5	0.2-0.3	0.3-0.5	

Source: OECD 2009 and IMF 2009a.

Source: Treasury, 2009-10 Budget Paper No.1, Statement 4: http://www.budget.gov.au/2009-10/content/bp1/html/bp1_bst4-03.htm

The Budget papers explain that Multipliers may differ with economic circumstances. Where the economy is operating with a large amount of excess capacity, stimulus measures are expected to have a larger impact on activity. In contrast, where the economy is close to full employment, the multiplier would be smaller as a result of exchange rate and price movements and the reaction of monetary policy. Given the spare capacity currently in the labour market, as seen by the high underemployment and underutilisation rate, we argue there is still a significant amount of excess capacity in Australian economy and an increase in the minimum wage should have a significant impact on activity.

For our calculations, the multiplier that is most relevant to estimate the macroeconomic effects from an increase in the minimum award rates is that of an increase in transfer payments to households largely because consumers tend to save rather than spend a portion of the extra disposable income. Intuitively there should be little difference in the behaviour of households regarding spending decisions whether they receive extra income from a transfer or an increase in minimum wages.

Therefore a multiplier effect between 0.4 and 0.8 based on the IMF, OECD and Treasury figures is an appropriate multiplier range. However we have conservatively applied a lower multiplier of 0.3 for all award workers earning over $25 per hour.

Table 3 presents the estimates of employment effects in the first year after the increase. The increase in employment in the first year is around 40,000 jobs with a total spend increase in the year of around 2.5 billion.

Table 3: First year multiplier effects from a $50 increase in the NMW

Employees	Number	Multiplier	additional jobs
less than $25 per hour	1,534,355	0.4	29,550
Everyone else on Award	772,946	0.3	11,168
Total jobs created			**40,719**
Total spend increase in the year (millions)			**2,521**

Table 4 presents the estimates of employment effects in the second year after the increase. The increase in employment in the second year is around 28,000 jobs. This again applies the Government Budget assumption on a year 2 multiplier of 0.7 for a transfer.

Table 4: Second year multiplier effects from a $50 increase in the NMW

Employees	Number	Multiplier	additional jobs
less than $25 per hour	1,534,355	0.7	20,685
Everyone else on Award	772,946	0.7	7,818
Total jobs created			**28,503**
Total spend increase in the year (millions)			**1,765**

We can see that using these different methodological approaches actually yields similar results in terms of jobs created.

Response to Question 2.8

"The ACTU submitted concern regarding the extent to which the measure of underemployment captures workers searching for more work 'due to the inadequacy of wages'. The ACTU stated that:

> ' … excluding those who were "available and not looking" (that is did not request longer hours) underestimates the relative lack of power of the employee in the employment relationship particularly for women and other vulnerable groups, and also the risk and costs of changing jobs. Many employees do not find themselves in a position to request anything from employers. It is well understood that requesting more hours is unlikely to have the result that the worker seeks and may even be negatively interpreted by employers and have adverse consequences for the employee.'

Does the ACTU have any evidence to support this statement? All other parties are invited to comment".

Response:

Employees' decisions about raising matters with their employer are tempered by their perceptions of how their employer might respond. This presents in numerous ways including in decisions about requesting changes to working arrangements.

For example, in the *Casual and Part Time Common Issue* proceedings, expert evidence prepared by Markey, O'Brien and McIvor and filed by the ACTU referred to the reasons why casual employees did not make requests to become permanent. Around 18% of workers surveyed as part of the ACTU case who did not request a change in status did so out of perceptions that their employer would respond adversely to such a request. The expert reports filed by the ACTU included the following:

> "As we noted in section 4.2 of our first Supplementary Report, 19.8 per cent of casuals in the ACTU survey indicated having made a request to become permanent. Of those who had not made such a request, just under half (48.3 per cent) indicated that this was because they were satisfied with current arrangements. The remainder indicated either that they were afraid to ask their employer because of job security concerns (10.0 per cent), that they believed permanent status was not available (25.1 per cent), that they were not convinced their employer would allow them to change (8.3 per cent), or other reasons. These latter reasons largely imply that the employees in question desire more permanent employment, should it be offered, but feel constricted in terms of their ability to make an effective request."[20]

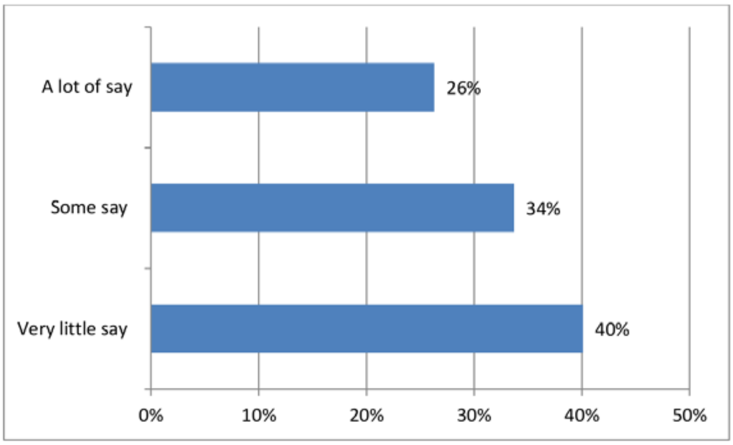
More generally, in relation to the working arrangements of casual workers, the expert material filed by the ACTU said:

> "Much of the evidence concludes that casual work is often controlled by employers – with hours largely dictated to employees (ACTU, 2012; Bohle et al, 2011; Heron and Charlesworth, 2012; Hosking and Western, 2008; LaMontagne et al, 2012; Masterman-Smith and Elton, 2007; McGann, Moss and White, 2012; McNamara, Bohle and Quinlan, 2011; Pocock, Prosser and Bridge, 2004). Figure 4.2, based on the ACTU survey, shows that 40 per cent of casuals indicate having very little say over their working hours, while only 26 per cent indicate having a lot of say. Analysis of HILDA data also shows that casual employees had lower average satisfaction with hours worked than permanent employees.

---

20 Markey, R., O'Brien, M. & McIvor, J., (2016) "Second Supplementary Report: Casual and Part Time Employment in Australia", at p17 (the report can be found as exhibit RM-4 to the Witness Statement of Professor Markey: https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/common/markey.pdf)

Figure 4.2 Casual employees, degree of say over hours



Source: ACTU Survey, 2015"[21]

More recently, a Full Bench of the Commission has delivered a decision[22] in the *Family Friendly Working Arrangements Common Issue* proceedings which contained a discussion[23] of research concerning why some workers did not make requests to change working hours that they were dissatisfied with. The Commission made the following finding based on that research:

> "A significant proportion of employees are not happy with their working arrangements but do not make a request for a change (a group referred to as 'discontented non-requestors'), for various reasons including that the work environment is openly hostile to flexibility. Men are more likely to be discontented non-requestors than women.
>
> A lack of access to working arrangements that meet employees' needs is associated with substantially higher work-life interference (as measured by the AWALI work-life index). This is so whether a request is made and refused, or whether the employee is a 'discontented non-requestor'.
>
> The fact that a significant proportion of employees are 'discontented non-requestors' suggests that there is a significant *unmet* employee need for flexible working arrangements."[24]

One of the research papers which underpinned the Commission's findings relevantly said:

> "For many interviewees, their decision not to request was framed by a work environment which was openly hostile to flexibility. In such environments, workers' relative power is central to employment outcomes and – as has long been recognised in employment relations literature – workplace power is

---

21 Markey, R., & McIvor, J., (2015) "Report on Casual and Part Time Employment in Australia", at p21 (the report can be found as exhibit RM-2 to the Witness Statement of Professor Markey: https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/common/e001-ws-markey.pdf)

22 [2018] FWCFB 1692

23 At [309]-[319]

24 At [392]

shaped by a range of factors including individuals' knowledge, information, skills, experience, tenure, job security, age, gender, spatial location, and unionisation, as well as the legislative and discursive circumstances within which they work and live (Collinson 2000). In our analysis, decisions not to request flexibility were made in order to protect against reprisals that employees had observed based on past experience or their observation of others' experience."[25]

Response to Question 3.1

"The minimum wage bite is calculated as the weekly national minimum wage as a proportion of full-time median earnings of employees and owner managers of incorporated enterprises. A chart showing the trends in the minimum wage bite is presented in Chart 8.3 of the Statistical report.

The Australian Bureau of Statistics also collects median hourly earnings which include earnings of both full-time and part-time employees.

Do any parties have a view as to the preferred measure of median earnings to be used for calculation of the minimum wage bite?"

Response:

For as long as the dominant form of employment is full time, the full time median should be used.

---

25 Skinner, S., Cathcart, A & Pocock, B (2016), "To ask or not to ask? Investigating workers' flexibility request and the phenomenon of discontented non-requesters", Labour & Industry, DOI:10.1080/10301763.2016.1157677, at p10.

ADDRESS
ACTU
365 Queen Street
Melbourne VIC 3000

PHONE
1300 486 466

WEB
actu.org.au

D No: 62/2018