ACTU Post-Budget Submission

Annual Wage Review 2012/13
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Introduction

1. This submission informs the Minimum Wage Panel (‘the Panel’) regarding relevant matters arising from the Australian Government’s 2013-14 Budget, which was released on 14 May.

2. Other relevant information has been released since reply submissions were lodged on 19 April. The Reserve Bank of Australia (‘RBA’) released its May Statement on Monetary Policy, which includes updated forecasts for the global economy and the Australian economy, as well as an examination of current economic conditions. The ABS has released the results of the April Labour Force survey, the March quarter Wage Price Index and the March Retail Trade data, and new figures have been released regarding consumer sentiment. This submission also provides a brief summary of this data. None of the new material detracts from our claim in this Review.

3. Finally, the submission includes responses to the consultation questions posed by the Panel.
Recent economic indicators

4. This section contains a brief summary of recent economic indicators. They show that the Australian economy continues to perform well.

Labour force

5. Employment growth has been solid thus far in 2013, though it has been somewhat volatile month to month. Employment grew by 71 700 people in February, the largest rise since 2000, but there was a partial correction in March, when employment fell 31 100. April was again a very strong month for jobs growth, with the number of employed people rising by 50 100.¹

6. Looking through the volatility, employment grew by an average of 25 700 people per month in the first four months of this year. In the past six months, employment has grown by 1.1% - that’s the fastest employment growth in a comparable period since the six months to March 2011.

7. Full-time employment accounted for around two-thirds of the net additional employment in April. Female employment grew faster than male employment, which may reflect an economic rebalancing towards services industries (in which women are more likely to be employed).

8. The unemployment rate fell from 5.6% to 5.5% in seasonally adjusted terms, remaining at 5.5% in trend terms. The participation rate (aged 15+) rose by 0.1 points to 65.3%; it was 65.2% in April 2012. The participation rate for people aged 15-64 also rose, and is back to its late-2011 level (see

¹ ABS 6202
The issue of the ageing population and the participation rate is addressed further in our response to the Panel’s consultation questions.

9. The employment-to-population ratio for people aged 15-64 remained unchanged at 72.3% in trend terms, and rose slightly in seasonally adjusted terms. Further evidence of the improvement in labour market conditions in 2013 can be seen in the number of hours worked. Trend hours worked fell over the year to October 2012, but they have now grown 0.9% in the year to April 2013. This is shown in Figure 6: Hours worked and employment.

10. Labour force conditions have improved. We maintain that our claim is appropriate and reasonable in the circumstances.

Source: ABS 6202 and ACTU calculations.
Wages

11. The Wage Price Index for March 2013 showed the pace of wages growth slowing to 0.6% in the quarter for both the public and private sectors. Over the year, the WPI rose by 3.2%, down from its long-run average of around 3.6%. Wages growth in the public sector has been particularly weak, with growth the lowest since 2000. Private sector wages growth is also below-average, but not as far below average, growing at 3.1% over the year to February compared to a long-run average of around 3.5%.²

![Figure 7: Wage Price Index – year ended growth](image1)

![Figure 8: Public and private WPI – past 10 years](image2)

Source: ABS 6345 and ACTU calculations.

12. The strongest growth rates were recorded in utilities (+4.4%), Mining (+4.2%), and Wholesale Trade (+4%). The weakest over the year were in Accommodation and Food Services and Rental, Hiring and Real Estate Services (both +2.4%), as well as Education and Training and Retail Trade (both +2.7%). The dispersion in growth rates across states and across industries remains around its typical level, measured both in terms of the percentage point gap between fastest and slowest growth, and the unweighted standard deviation in growth rates.

Retail trade

13. The volume of retail trade increased very strongly in the first quarter of this year, rising by 2.2% in the quarter and 3.6% over the year.³ Although the monthly nominal figure was weaker (-0.4% seasonally adjusted, +0.4% trend), this measure is subject to greater volatility. The increase in quarterly turnover volumes suggests that the interest rate cuts in late 2012 may already have begun to have an impact on consumer behaviour.

² ABS 6345
³ ABS 8501
Consumer sentiment

14. Consumer sentiment dipped a little in April, but remained well above its average level. In trend terms, the Westpac-Melbourne Institute Index of Consumer Sentiment was 107.7 in April, down from 107.9 in March. This is still the highest level since December 2010. When the sentiment index exceeds 100, this indicates that optimists outnumber pessimists.

![Figure 9: Consumer sentiment](image)

Source: Westpac-Melbourne Institute Index of Consumer Sentiment

15. Economic conditions have improved since late 2012, consistent with our previous submissions.
Economic outlook

16. Much public commentary regarding the federal Budget is concentrated upon discussion of the stance of fiscal policy, specifically the Government’s decision to allow a small deficit to persist rather than instituting a savage fiscal contraction in order to achieve a surplus this financial year. The ACTU makes two points in response to this aspect of the Budget. The first is that the weakness in Commonwealth tax revenue growth does not imply weakness in real economic activity. The Panel’s task is to set a fair and relevant safety net, having regard to the considerations in the Minimum Wages Objective; the weakness in revenue growth is not a relevant consideration. The economic outlook for Australia remains sound, as discussed below. The second point is that by avoiding a push to surplus this year, fiscal policy will exert a less contractionary influence on the overall economy than it otherwise would have.

17. The economic outlook depicted in the Budget papers is a cautiously optimistic one. It forecasts an increase in global growth and growth among our major trading partners. The domestic economy is portrayed as one in transition. The resources industry is moving from a period of exploration, investment and construction to one of extraction and increased export volumes. The broader economy is expected to undergo a transition from relatively high reliance on mining investment for growth, to a broader base of economic activity. This transition is expected to be encouraged by low interest rates, which are forecast to boost household consumption and residential construction.

18. The outlook, as always, is not without risks. There is the potential for the global and domestic economies to underperform relative to expectations, just as they may surprise on the upside. We submit that the Panel should not give undue weight to these risks, the most acute of which have abated somewhat in the past 12 months. The outlook does not materially differ to that we outlined previously and does not alter our claim.

Australian economy

19. The Budget summarises the domestic economic outlook as follows:

The Australian economy continues to outperform most of the developed world and prospects remain favourable, with an outlook of solid growth, low unemployment and contained inflation.4

20. The key forecasts from the Budget are in Table 1, below.

<table>
<thead>
<tr>
<th></th>
<th>2011-12 outcomes</th>
<th>2012-13 forecasts</th>
<th>2013-14 forecasts</th>
<th>2014-15 forecasts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real GDP growth</td>
<td>3.4%</td>
<td>3%</td>
<td>2.75%</td>
<td>3%</td>
</tr>
<tr>
<td>Employment growth</td>
<td>1.2%</td>
<td>1.25%</td>
<td>1.25%</td>
<td>1.5%</td>
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<td>Unemployment rate (June quarter)</td>
<td>5.1%</td>
<td>5.5%</td>
<td>5.75%</td>
<td>5.75%</td>
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<tr>
<td>Participation rate (June quarter)</td>
<td>65.3%</td>
<td>65%</td>
<td>65%</td>
<td>65%</td>
</tr>
<tr>
<td>CPI</td>
<td>1.2%</td>
<td>2.5%</td>
<td>2.25%</td>
<td>2.25%</td>
</tr>
<tr>
<td>WPI</td>
<td>3.7%</td>
<td>3.5%</td>
<td>3.5%</td>
<td>3.5%</td>
</tr>
</tbody>
</table>

Source: Australian Government Budget 2013-14, Table 1. The domestic forecasts are reproduced in full in the FWC Statistical Report.

21. While mining investment is expected to reach its peak in the next year and then begin to decline, the central forecast in the Budget is not for a precipitous decline but rather a modest fall to still-high levels. The Budget notes that “resources investment is expected to remain elevated through to at least the middle of the decade.”\(^5\) It also notes that as resource projects move into the production phase, the increased volume of outputs will add to GDP, even as investment (and possibly prices) decline.

22. The broader transition towards household-led growth is expected to be spurred by reductions in interest rates. The Budget notes that the RBA’s cash rate “is now 200 basis points lower than it was in late 2011, and parts of the economy are starting to respond to this. Dwelling investment is already showing signs of a recovery and consumer sentiment has increased since the start of the year and is now above historic-average levels.”\(^6\) This is consistent with the outlook we depicted in our opening submission to this Review.

23. Industries that depend on household consumption (such as Retail Trade and Accommodation and Food Services) should benefit from this economic rebalancing. The Budget notes that “household consumption is expected to grow solidly over the forecast period, and provide a platform for recovery in some non-resources parts of the economy... Recent strength in retail trade is also indicative of the recovery underway in household consumption, with positive implications for the retail sector and other related sectors...”\(^7\)

24. The move to delay the return to surplus, in light of weaker than expected revenue growth, will mean that fiscal consolidation does not detract from economic growth (and employment) to the same extent that it would have if the earlier timetable had been maintained.

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\(^7\) p.2-5.
25. Real GDP is expected to grow, by 3% this financial year, 2.75% in 2013-14, and 3% the year after that. The Budget describes the Australian trend rate of growth as “around 3 per cent”.\(^8\) Growth will therefore by around trend this financial year and just slightly below in the next year. This is a solid outlook for the Australian economy.

26. The unemployment rate is expected to remain at 5.5% by June of this year. The forecast is now for an unemployment rate of 5.75% in June 2014. This modest rise would still leave our unemployment rate very low relative to most other advanced economies, and low relative to the Australian average for the past 30 years. The participation rate is forecast to stabilise at around 65%; the Budget notes that most of the fall in recent years has been due to “demographic drag as a greater number of baby boomers reach retirement”.\(^9\) Employment growth is expected to be 1.25% in the year to June 2013 and the same in the following year, before picking up a little to 1.5%. This is solid, though unspectacular, growth.

27. The Budget anticipates that inflation will remain low, with the CPI rising just 2.5% in the year to June 2013 (including the carbon price effect), then 2.25% in the two subsequent years. Wages growth, as measured by the WPI, is forecast to be 3.5% in each year, a touch below its long-run average of 3.6% since 1997. Given the low WPI growth in the March quarter this year (for which data were released on 15 May, after the Budget), it looks likely that wages growth in the year to June 2013 will be somewhat below the forecast.

28. Overall, the forecast for the labour market is solid. If the economy grows as forecast, there should be above-average employment growth in those sectors reliant on household spending and residential construction, and a fall in the share employed in resources-related activity.

29. While there are, as always, downside risks to this outlook, the Budget notes that the RBA is able to respond with looser monetary policy if it deems that consistent with its goals. We note that with core and headline inflation expected to remain below the mid-point of the RBA’s target band over the forward estimates, the RBA retains room to deliver more stimulatory policy. We note that financial markets had fully priced in an additional 25 basis point cut to the cash rate by September this year as at market close on 16 May.\(^10\)

30. The Budget’s description of current economic conditions is consistent with that depicted in the RBA’s May Statement on Monetary Policy. The RBA notes that “growth in consumer spending looks

\(^8\) p.2-45.  
\(^9\) p.2-37.  
to have increased, consistent with stronger consumer sentiment and rising asset prices”.\textsuperscript{11} The Bank notes that “the volume of retail sales... grew strongly” in the March quarter and that “information from the Bank’s liaison suggests that retail sales rose further in April”.\textsuperscript{12} This is consistent with the rebalancing in economic activity that is described in the Budget towards a greater reliance on household spending and residential construction, spurred on by low interest rates.

31. The RBA also notes that “there has been a further shift in employment growth away from mining and business services... in contrast, the household services sector, which includes health care and education, has continued to make a significant contribution to aggregate employment growth.”\textsuperscript{13}

32. The forecast for consumption spending was revised up in the RBA’s May Statement, in light of strong retail sales and improvement in the housing market. This is consistent with the rebalancing anticipated in the Budget. The RBA says:

\textit{The forecasts for the Australian economy continue to embody a gradual shift in growth from mining investment towards exports, non-mining business investment and household spending.}\textsuperscript{14}

33. Overall, the Australian economic outlook is for solid growth, with the non-mining sector set to assume a larger share of that growth. We submit that this is fully consistent with our claim in this Review.

\textsuperscript{11} Reserve Bank of Australia 2013, \textit{Statement on Monetary Policy}, May, RBA, Sydney, p.27.
\textsuperscript{12} Ibid., p.28.
\textsuperscript{13} Ibid., p.35.
\textsuperscript{14} Ibid., p.65.
Relevant policy changes in the 2013-14 Budget

34. The Budget includes a number of policy measures that will affect the disposable incomes of some low-paid workers’ households. It also includes measures that will close business tax loopholes, mainly pertaining to large, multinational companies engaged in profit-shifting activities.

35. None of the changes announce in the 2013-14 Budget have caused us to alter our claim in this Review. We continue to believe that our claim is appropriate, reasonable, and warranted.

Family payments

36. The Budget announced the Government’s intention to cease paying the Baby Bonus from 1 March 2014. Most working families will remain eligible for Commonwealth-funded Paid Parental Leave; the policy change will not affect such families.

37. Families that do not take up Paid Parental Leave will get a higher rate of Family Tax Benefit Part A (‘FTB Part A’) rather than the Baby Bonus. The increase in FTB Part A will be $2000 for the first child, and $1000 for subsequent children, rather than the $5000/$3000 paid under the Baby Bonus.

38. This policy will result in some households being worse off. Many of the families that will be worse off will be so because their income is too high for them to receive FTB Part A. Such families are less likely to include low-paid workers. Others that will be worse off will be low income families in which the primary caregiver has not performed sufficient paid work in the 13 months prior to the birth to be eligible for Paid Parental Leave. This may include some low-paid workers with low and/or sporadic hours of work.

39. The Government will also maintain the pause on indexation in the FTB supplements and the higher income tests for family payments.

Newstart income free area

40. At present, recipients of Newstart and a number of other allowances\(^\text{15}\) are able to earn only $62 per fortnight before their payment begins to be reduced. This threshold has been the same, in nominal terms, since 2000-01, when it was raised from $60 to $62. It was $60 in 1995-96. Inflation and increases in minimum wages over the period have meant that allowance recipients are able to work fewer hours before beginning to have their payments withdrawn.

\(^{15}\) The affected allowances include Newstart, Sickness Allowance, Parenting Payment Partnered, Widow Allowance, Partner Allowance Benefit and Partner Allowance Pension.
41. The Budget announced that this threshold will increase to $100 per fortnight from 20 March 2014. This threshold will be indexed from 1 July 2015.

42. At the current NMW, this change will mean that Newstart recipients can work 3 hours per week before their payment is reduced. This is up from 1.9 hours at present. The policy change effectively restores the threshold to its late 1990s level, when it was also equivalent to 3 hours work at the NMW.

43. The change will modestly reduce barriers to workforce participation. It will lead to a small reduction in Effective Average Tax Rates (EATRs) for Newstart recipients – these are also known as Participation Tax Rates (PTRs).\(^\text{16}\) PTRs measure the net amount that a person would lose if they went from having no earnings to being in work. By reducing PTRs, this policy change encourages workforce participation. We note that employer groups sometimes express concern that high effective tax rates mean that low-paid workers will receive much less benefit from increases in minimum wages. We have shown that most low-paid workers face modest effective tax rates and accordingly receive substantial benefit from minimum wage increases; nevertheless, by modestly reducing effective tax rates, this policy change reduces the extent to which high effective tax rates should concern the Panel.

44. The effect of the change is relatively small. 150 000 people who receive an affected Allowance and earn more than $62 per fortnight are expected to receive an average increase of $19 per fortnight.

45. We welcome this policy change. We had called for such a change to be made. However, we submit that the Panel should not alter the amount by which it increases minimum wages on account of this modest change that will only affect a small number of low-paid, part-time workers.

**Personal income tax**

46. The Government announced that it will not proceed with the planned changes to the personal income tax rates and thresholds in 2015-16. The rates will remain at their current levels. There were no announcements regarding changes to the basic rates and thresholds in the Budget.

47. The Medicare levy will increase from 1.5% to 2% from 1 July 2014 in order to provide funding for DisabilityCare Australia. This change is not relevant to this year’s Review (as it will not take effect until next year). To the extent this might be a relevant matter, it can be considered by the Panel in next year’s Review.

\(^\text{16}\) Participation tax rates are EATRs in which the effective rate is measured over a span of private income from 0 to a given level.
Tobacco excise and customs duty

48. The Budget includes an effective increase in indirect taxation via a change to the indexation arrangements for tobacco excise and excise equivalent customs duty. Rather than being indexed using CPI, these taxes will now be indexed to AWOTE. This will ensure that cigarette excise per packet does not fall relative to the average wage, as would happen with CPI indexation. While this will result in some low-paid workers facing higher costs over the long-term than they otherwise would have, we believe this is an appropriate policy change. We have not changed our claim as a result of this policy change.

Business tax changes

49. The Government announced in the Budget that it intends to make a number of changes to business taxation. The rate of company income tax will not be changed. The Budget measures will protect the tax base by closing loopholes and reducing the potential for tax avoidance. These changes are directed towards multinational companies with the ability to shift profits to other jurisdictions, as well as towards resources companies and banks. There should not be any implications for businesses in the industries that employ most award-reliant workers, nor for small business. We therefore submit that these changes are not relevant to the Review.

50. The key business tax changes announced in the Budget are:

a. **Thin capitalisation.** One way for multinational companies to shift their profits to low-tax jurisdictions and reduce their Australian tax bill is by loading up their Australian subsidiaries with debt. A company with a large amount of debt, relative to its equity, is thinly capitalised. Australia, as well as most other advanced economies, has rules regarding thin capitalisation. They currently limit companies to a 3 to 1 ratio of debt to equity. The changes announced in the Budget will reduce this to 1.5 to 1 from 1 July 2014. This is to be accompanied by a range of related technical changes to prevent profit-shifting. This change will only affect multi-national companies that are highly leveraged.

b. **Consolidation regime.** The independent Board of Taxation has identified a number of ways in which consolidated corporate groups are able to avoid tax, including by ‘churning’ assets between parts of the group to claim double deductions. Regulations pertaining to consolidated groups will be amended from 1 July 2014 to prevent such avoidance. This change will not have any implications for unincorporated businesses, or for companies that are not part of consolidated groups, or for consolidated groups that are not attempting to avoid tax through churning and other methods.
c. **Offshore Banking Unit.** Changes will be made to the regulations pertaining to Australian banks’ offshore activities.

d. **Exploration expenses.** Resources companies are able to immediately deduct the cost of resource exploration from their taxable income. There is evidence that some firms have claimed deductions for expenses that are not truly related to exploration, or that pertain to expenses made after resource deposits have effectively already been discovered. The immediate deduction will be maintained for true exploration expenses, but firms will no longer be able to instantly write-off the cost of acquiring mining rights and information. These will instead be deducted over 15 years or the effective life of the mine. This change has no implications for non-resource firms.

51. These do not represent an additional impost on business activities. Rather, they are designed to protect the tax base to guard against tax avoidance activity. They will only affect some multinational firms, banks operating offshore, and resources firms. Nothing in these business tax changes have a bearing on the considerations facing the Panel in this Review.
Responses to consultation questions

52. We thank the Panel for the opportunity to respond in writing to a number of consultation questions. Our responses are below. We look forward to the opportunity to address these and other matters further during the consultations.

Question 1.1 – Productivity measures

53. The Panel has asked the parties to consider and comment upon an article by Dean Parham, titled ‘Productivity boost first, then labour can share’.

54. Mr Parham notes that a fall in the labour share of national income is equivalent to a ‘growth gap’ between labour productivity and hourly labour income. We made this point at para. 159 of our opening submission. Mr Parham also refers to recent speeches by Ged Kearney and Tim Lyons of the ACTU, and says that “the statement that real wage growth has lagged productivity growth in the 2000s is correct... the labour share of income has dropped by about 5 percentage points. That is a big fall.”

55. We are pleased that Mr Parham’s figures accord with our own (see Figure 53 of our opening submission). Where Mr Parham differs from our analysis is in the implications he draws from the facts about the productivity-labour income growth gap in the 2000s. Mr Parham notes that part of the growth gap is due to differences between the price measure used to deflate output, and thus productivity, and the price measure used to deflate labour income.

56. We agree that some of the growth gap is explained by this divergence between price indices. However, we disagree that the gap between producer and consumer prices means that labour has been fully compensated for the ‘growth gap’. Our disagreement comes about for two reasons. First, it appears that we use a different measure of consumer prices than Mr Parham to deflate labour income over time. We believe Mr Parham has used the CPI to calculate real wages. We favour the ABS Living Cost Index for employee households, as noted in our opening submission and at para. 86 of this submission. Between June 2000 and June 2012, the CPI rose by 43%, while the LCI rose by 46.9%. The difference means that real wage gains over the period appear larger when calculated using the CPI rather than the LCI.

57. Over the period 2000-2012, we calculate that real total factor income (TFI) per hour worked rose by 17.3%. We estimate that real hourly labour income rose by the following proportions, when calculated using different price deflators:

   e. Real hourly labour income, deflated by the GDP implicit price deflator, rose 6.9%;
f. Real hourly labour income, deflated by the employee LCI, rose by 13.1%.

g. Real hourly labour income, deflated by CPI, rose by 16.2%.

58. This therefore suggests that there was a 10.4 percentage point growth gap between labour productivity and hourly labour income when both are deflated using the same price measure. This gap closes to a 4.2 percentage point growth gap when labour income is deflated using the LCI, or a 1.1 point gap using the CPI. We therefore submit that divergence between price indices has ‘compensated’ labour for around 60% of the growth gap (6.2 of the 10.4 percentage points), not the entirety of the gap.

59. The second way in which our analysis differs from Mr Parham’s is in the choice of base year. Our analysis, for example at Figure 55 of our opening submission, compares labour income and labour productivity growth over the period since 1989-90. Mr Parham’s analysis in the piece to which the Panel has referred pertains only to the 2000s. When the 1990s are included, the size of the total growth gap between real hourly labour income and labour productivity is around the same, whether you use consumer or producer prices to deflate labour income. Figure 55 in our opening submission shows this.\(^{17}\) The price indices affect the timing, but not the total size, of the growth gap since 1990.

60. Mr Parham notes that at least some of the fall in the labour share in the past decade or so has come about due to the mining boom, and that part of the change in factor shares that has come about for this reason may be temporary. We do not disagree with this general point. However, we disagree about the extent to which the falling labour share in Australia can be dismissed as merely a temporary side effect of the commodity price boom.

61. We calculate that around 70% of the total fall in the labour income share in Australia between 2000 and 2012 is due to falls within particular industries, with the remainder being due to a shift in the composition of economic activity towards industries with lower labour shares.\(^{18}\) We submit that this is not consistent with a position that suggests that the mining boom is the sole or even primary cause of the productivity-labour income growth gap in the 2000s. Our analysis accords with that of

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\(^{17}\) The measure of consumer prices used in Figure 55 is the CPI to 1998 and the LCI thereafter. The LCI commences in 1998, which is when the conceptual basis of the CPI was changed.

the OECD, which found that within-industry changes accounted for around two-thirds of the fall in the Australian labour share between 1990 and 2007.\(^\text{19}\)

62. The labour share of income has fallen in a range of industries that have little to do with the mining boom. For example, the share has fallen in both the Accommodation and Food Services industry and the Retail Trade industry, as shown in Figure 56 of our opening submission. We do not accept that the failure of real hourly labour income to keep up with productivity growth in these industries is the temporary result of the mining boom.

63. The Panel also asked a specific question about the “best measures of productivity to use when thinking of the improvements that are available to share between labour and capital.”

64. The question has a long history within Australian wage fixation. The Productivity Principle announced by the Commission on 30 April 1975 led to the formation of a Working Party on the Measurement of Labour Productivity, comprised of senior officers of various Commonwealth Departments and the ABS. The Working Party found that “nobody has yet been able to develop a fully satisfactory measure of productivity at the national level for wage fixation purposes”. It nevertheless recommended labour productivity as “the appropriate measure for national wage determination”.\(^\text{20}\)

65. The issue acquired renewed prominence in the 1986 National Wage Case. The ABS began to publish estimates of total factor productivity in the mid-1980s, and some employer groups submitted to the 1986 Case that this measure was more appropriate than labour productivity for wage fixation purposes. The ACTU and the Commonwealth disagreed. The Commission in that Case found:

\[\text{W}e\ \text{are\ on\ balance\ inclined\ to\ regard\ labour\ productivity\ as\ the\ more\ appropriate\ measure\ for\ national\ wage\ fixing\ purposes,\ we\ share\ the\ views\ expressed\ by\ both\ CAI\ and\ the\ ACTU\ that\ the\ range\ between\ the\ different\ measures\ suggested\ is\ not\ great,\ particularly\ when\ allowance\ is\ made\ for\ overstatement\ and\ understatement\ arising\ from\ statistical\ deficiencies.}\]\(^\text{21}\)

66. The matter was again considered by the AIRC in the National Wage Case of April 1991. The AIRC found:

\[\text{A\ misleading\ impression\ is\ given\ if\ statistics\ of\ labour\ productivity\ alone\ are\ used\ to\ assess\ productivity\ performance.\ The\ rapid\ growth\ of\ employment\ which\ occurred\ in\ the\ period\ 1983-90}\]

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\(^\text{20}\) 1986 National Wage Case [Print G3600]

\(^\text{21}\) Ibid.
facilitated by wage policy - tended to depress the productivity of labour and to raise the productivity of capital. Hence the low growth of labour productivity is not necessarily indicative of poor performance. Measures of multifactor productivity, wherein inputs of labour and capital are combined, entail formidable statistical complexities... There is also room for disagreement about the sectors of the economy which ought to be excluded from productivity estimates on the ground that the measurement of output is related to the measurement of inputs. A range of opinions exists as to the "true view" of Australia's productivity record in the 1980s.22

67. Every decision in reviews by the AIRC, AFPC and the Panel have made mention of labour productivity. Relatively few have mentioned multifactor productivity. Even where the latter has been mentioned, emphasis tends to be given to labour productivity. This is shown in Table 2, which summarises references to productivity in wage-setting decisions between 1997 and 2012.

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22 AIRC Dec 300/91 [PR J 7400]
<table>
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<tr>
<th>Year</th>
<th>Institution</th>
<th>Reference</th>
<th>Productivity measures referred to</th>
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<tr>
<td>1997</td>
<td>AIRC</td>
<td>PRP1997</td>
<td>Multifactor productivity is not mentioned. Labour productivity is emphasised (see table 6.7).</td>
</tr>
<tr>
<td>1998</td>
<td>AIRC</td>
<td>PRQ1998</td>
<td>Labour productivity is emphasised (see Chart 5 and Table 3). The rising capital stock is noted, but multifactor productivity is not mentioned.</td>
</tr>
<tr>
<td>1999</td>
<td>AIRC</td>
<td>PRR1999</td>
<td>Labour productivity is emphasised (see Table 3). Multifactor productivity is not mentioned.</td>
</tr>
<tr>
<td>2000</td>
<td>AIRC</td>
<td>PRS5000</td>
<td>Table 3 in Attachment B, reproduced from the Joint Coalition Governments’ submission, includes growth rates for labour productivity, capital productivity, and multi-factor productivity. The discussion in the decision gives greater emphasis to labour productivity, particularly in the market sector.</td>
</tr>
<tr>
<td>2001</td>
<td>AIRC</td>
<td>PR002001</td>
<td>Table 4 at para. 53 reproduces the Joint Coalition Governments’ table on productivity growth. This includes four estimates of labour productivity, one of capital productivity, and one of multi-factor productivity. The decision refers to “poor productivity outcomes in the final part of 2000”(^{23}), this suggests that the AIRC was using ‘productivity’ as short-hand for ‘labour productivity’, as multifactor productivity is not available on a quarterly basis.</td>
</tr>
<tr>
<td>2002</td>
<td>AIRC</td>
<td>PR002002</td>
<td>Multifactor productivity is not mentioned. The AIRC refers to “productivity, measured by market sector GDP per hour worked”.(^{24})</td>
</tr>
<tr>
<td>2003</td>
<td>AIRC</td>
<td>PR002003</td>
<td>Multifactor productivity is not mentioned. The AIRC again refers to GDP per hour worked in the market sector.(^{25})</td>
</tr>
<tr>
<td>2004</td>
<td>AIRC</td>
<td>PR002004</td>
<td>Multifactor productivity is not mentioned The AIRC again refers to GDP per hour worked in the market sector.(^{26})</td>
</tr>
<tr>
<td>2005</td>
<td>AIRC</td>
<td>PR002005</td>
<td>Both labour productivity and multifactor productivity are referred to.(^{27})</td>
</tr>
<tr>
<td>2006</td>
<td>AFPC</td>
<td>Wage-setting decision</td>
<td>Multifactor productivity is not mentioned. Labour productivity is repeatedly referred to.</td>
</tr>
<tr>
<td>2007</td>
<td>AFPC</td>
<td>Wage-setting decision</td>
<td>Multifactor productivity is not mentioned. Labour productivity is repeatedly referred to.</td>
</tr>
<tr>
<td>2008</td>
<td>AFPC</td>
<td>Wage-setting decision</td>
<td>Multifactor productivity is not mentioned. Labour productivity is repeatedly referred to.</td>
</tr>
<tr>
<td>2009</td>
<td>AFPC</td>
<td>Wage-setting decision</td>
<td>Multifactor productivity is not mentioned. Labour productivity is repeatedly referred to.</td>
</tr>
</tbody>
</table>

\(^{23}\) AIRC PR002001 at para 65.  
\(^{24}\) AIRC 2002 PR002002, para. 36.  
\(^{25}\) AIRC 2003 PR002003, para. 65.  
\(^{26}\) AIRC 2004, PR002004, table 15.  
\(^{27}\) AIRC 2005, PR002005, paras.133-134.
Multifactor productivity is not mentioned. The Panel referred to “labour productivity, as measured by GDP per hour worked for all sectors and for the market sector”. The Panel compared growth in the real NMW with productivity growth;

Multifactor productivity is referred to only in the context of summarising Australian Government and ACTU submissions regarding the cause of a slowdown in that measure in the 2000s. The Panel’s summary of productivity uses labour productivity, measured using “indices of GDP per capita and GDP per hour worked, for all sectors and for the market sector”.

Multifactor productivity is not mentioned. The Panel referred to labour productivity, using GDP per hour worked and GVA per hour in the market sector.

Source: ACTU analysis of past wage-setting decisions.

68. In the 2009-10 Review, the Panel compared growth in the real NMW with productivity growth. It noted that the NMW had not grown at the same pace as labour productivity and thus the “implication is that minimum wage earners have only shared to a very limited extent in the benefits of productivity growth”. This suggests that the Panel regarded labour productivity growth as the measure that provided an indication of the size of the improvements that are available to share between labour and capital. We submit that the Panel was correct to do so.

69. Our position in this Review is in line with that we have put in the past, such as in the 1997 Safety Net Review when we submitted the following:

The granting of the Living Wage Case enables the equitable distribution of labour productivity growth to low paid workers. This is consistent with the longstanding principle in wage fixing that money wages should be adjusted for changes in the cost of living and effective productivity. As low paid workers are unable to gain the rewards of productivity increases through enterprise bargaining like other workers the appropriate way is to distribute their entitlement through the Living Wage application. This enables real wages as a whole to grow in line with advancements in efficiency and productivity.

70. We believe that labour productivity is the best measure to use when thinking of the improvements that are available to share between labour and capital. To comprehensively review the merits and

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31 [2011] FWAFB 3400, para 137.
33 ACTU 1997, Submission to the AIRC Safety Net Review, Exhibit ACTU 5, Section C at p.119.
drawbacks of different measures of productivity for the purposes of wage-setting would be a major exercise. Should the Panel call for submissions on this issue in the 2013-14 Review, we will be pleased to address the matter in greater detail.

**Question 1.2 – Labour income, capital deepening, and minimum wages**

71. ABI’s submission at chart 8.1 suggests that the capital-labour ratio has increased more-or-less steadily over the past three decades, while the capital-output ratio has risen around 20% in the past decade. The presence of capital deepening is therefore not a new phenomenon.

72. Parham, et al. of the Productivity Commission provide a decomposition of changes in the labour and capital shares. They report that:

   h. The change in the labour income share equals the change in the real product wage minus the change in labour productivity. This means that a fall in the labour share indicates that labour productivity has grown faster, in proportionate terms, than the real product wage.

   i. The change in the capital income share equals the change in the rate of real profitability per unit of capital minus the change in the output/capital ratio. So if the capital income share rises, this means that the rate of profit per unit of capital has risen faster than the output/capital ratio. This means that in the presence of capital deepening, the rate of profit would need to fall by a proportion equal to the rise in the output/capital ratio in order to maintain a stable capital income share. When capital deepening is present and the capital share is rising (as has occurred), this means that either the profit rate has risen, or it has not fallen to a sufficient extent to offset the rise in the output/capital ratio.

73. There have been fierce debates within the economics literature regarding the meaning and measurement of ‘capital’; these raise profound questions about the coherence of concepts of ‘capital deepening’ and measures of profit ‘per unit of capital’. That said, capital deepening need not be inconsistent with stable factor shares of income. A rising ratio of capital to output (ie. capital deepening) means falling capital productivity. Falling capital productivity would generally be expected to lead to a fall in the rate of return per unit of capital. If the fall in capital productivity and the fall in the return per unit are of equal proportion, then the capital share would remain stable.

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35 The real product wage is real hourly labour income deflated in producer prices.
74. On this view, the fact that the capital share has risen since 2000 means that the rate of return per unit of capital has not fallen by the same proportion as capital productivity. In this sense, it can be said that Australia has a return to capital ‘overhang’, on the same basis that we were diagnosed with a ‘real wage overhang’ in the mid-to-late 1970s.

75. The Panel invited the parties to comment on the implications of the gap between hourly labour income and productivity, as well as capital deepening, for the setting of minimum rates of pay. We believe we have already done this in our opening submission. We showed that the labour share has fallen in the two most award-reliant industries (implying a productivity-labour income growth gap)\(^{37}\), and that minimum rates have lagged well behind productivity over the past two decades, whichever price measure is used to deflate wages.\(^{38}\) We noted that the Panel directly sets the wages of around one sixth of Australian workers, with some influence on the rate of wages growth beyond that sixth. We argued that the gap between labour productivity and labour income growth is therefore clearly a relevant consideration for the Panel.

76. We noted in our opening submission that the Panel itself, in its decision in the 2009-10 Review, noted the gap between labour productivity growth and change in the real NMW, and commented:

> In the context of productivity growth and increasing community living standards, the maintenance of the real value of award wages alone would not adequately maintain relative living standards.\(^{39}\)

77. The gap between labour productivity growth and real NMW growth is thus directly relevant to the Panel’s task. The overall gap between labour productivity growth and average hourly labour income is part of the range of broader economic considerations that we believe the Panel should be informed about in making its decision. At the very least, the existence of the overall growth gap (falling labour share) suggests that Australia has not experienced an inflationary or otherwise unsustainable rate of wages growth in recent years.

**Question 2.1 – Purchasing power of wages compared to productivity**

78. The Panel has asked other parties whether they dispute certain figures contained at para. 280 of our opening submission. In case there is confusion or dispute regarding these figures, the following table shows their derivation in more detail.

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\(^{37}\) ACTU 2013, *Submission to the 2012-13 Annual Wage Review*, Figure 56.

\(^{38}\) Ibid., Figure 57.

\(^{39}\) [2010] FWAFB 4000, [241].
Table 3: Real wage changes between the June 2005 and December 2012 quarters

<table>
<thead>
<tr>
<th></th>
<th>Nominal wage measures</th>
<th></th>
<th>Real wage measures</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NMW/C14</td>
<td>C10</td>
<td>AWOTE</td>
<td>NMW/C14</td>
</tr>
<tr>
<td>June quarter 2005</td>
<td>$484.40</td>
<td>$578.20</td>
<td>$995.40</td>
<td>80.6</td>
</tr>
<tr>
<td>December quarter 2012</td>
<td>$606.40</td>
<td>$706.10</td>
<td>$1,396.00</td>
<td>101.2</td>
</tr>
<tr>
<td>Increase ($)</td>
<td>$122.00</td>
<td>$127.90</td>
<td>$400.60</td>
<td></td>
</tr>
<tr>
<td>Increase (%)</td>
<td>25.2%</td>
<td>22.1%</td>
<td>40.2%</td>
<td>25.6%</td>
</tr>
</tbody>
</table>

Source: 2005 minimum rates from AIRC Safety Net Decision PR002005. 2012 minimum rates from the Manufacturing and Associated Industries and Occupations Award 2010 MA000010. Average weekly ordinary time earnings for full-time adults from ABS Average Weekly Earnings, cat. no. 6302. ABS Living Cost Index for employee households from ABS Selected Living Cost Indexes, Australia, cat. no. 6467. ACTU calculations; real wage in June 2005 is the nominal wage in 2005, divided by the 2005 price index, multiplied by the 2012 price index.

79. We maintain that the figures given in our opening submission regarding the change in the purchasing power of the various wages measures are correct, as shown in Table 3.

80. We also maintain that the labour productivity figure given in our opening submission and referred to in the Panel’s question is correct. The figure is derived from the ABS Australian National Accounts, catalogue number 5206, table 1. This table provides an index of GDP per hour worked (‘labour productivity’). In the June 2005 quarter, this index was equal to 95; in December 2012, it was 104.4. The December 2012 figure is 9.9% higher than the June 2005 figure.

81. It is true that the productivity figure above uses a different inflation measure to deflate nominal GDP over time than the deflator used in Table 3 to measure real wage changes. However, the employee LCI actually rose faster over the period (25.6%) than the GDP implicit price deflator (23.9%). If GDP and nominal wages were deflated using the same measure, the gap between productivity growth and real minimum wages growth would be even greater.

82. An illustrative estimate of the impact of the deflators on the extent of labour productivity growth over the period is given in Table 4. The first column shows nominal GDP – ie. GDP in the prices that prevailed at the time, unadjusted for inflation. The second column is the GDP implicit price deflator, an inflation measure from the National Accounts. The third is the ABS Living Cost Index for employee households. The next two columns show the difference between real GDP when calculated using these two price indices. The next column is the index of hours worked, taken from the National Accounts. The final two columns show an estimate of real GDP per hour worked, when real GDP is calculated using the two different deflators. The levels here are meaningless (as they are merely real GDP divided by the index of hours); it is the percentage increase (final row) that is important.

83. It can be seen that if the GDP price deflator had risen at the same pace as the LCI, then real GDP per hour worked would have risen 12% over the period. It actually rose 10% (9.9% on the ABS’ figures). This means that the divergence between price measures over the period served to increase, not decrease, the gap between labour productivity and minimum rates of pay.
Table 4: Estimates of real GDP per hour worked using different price deflators

<table>
<thead>
<tr>
<th></th>
<th>Nominal GDP</th>
<th>GDP implicit price deflator</th>
<th>ABS LCI (employees)</th>
<th>Real GDP (implicit price deflator)</th>
<th>Real GDP (LCI)</th>
<th>Hours worked (index)</th>
<th>Real GDP per hour worked (implicit price deflator)</th>
<th>Real GDP per hour worked (LCI)</th>
</tr>
</thead>
<tbody>
<tr>
<td>June quarter 2005</td>
<td>236376.0</td>
<td>78.7</td>
<td>80.6</td>
<td>302152.8</td>
<td>296789.7</td>
<td>90.1</td>
<td>3353.5</td>
<td>3294.0</td>
</tr>
<tr>
<td>December quarter 2012</td>
<td>374403.0</td>
<td>100.6</td>
<td>101.2</td>
<td>374403.0</td>
<td>374403.0</td>
<td>101.5</td>
<td>3688.7</td>
<td>3688.7</td>
</tr>
<tr>
<td>Increase (%)</td>
<td>58.4%</td>
<td>27.8%</td>
<td>25.6%</td>
<td>23.9%</td>
<td>26.2%</td>
<td>12.7%</td>
<td>10.0%</td>
<td>12.0%</td>
</tr>
</tbody>
</table>

Source: ABS National Accounts, cat. no. 5206, ABS Selected Living Cost Indexes, Australia, cat. no. 6467, ACTU calculations.

84. We maintain that the figures provided in our opening submission at para. 280 are true and accurate. The fact that the purchasing power of minimum rates has fallen over the period, while labour productivity has risen 9.9%, should be a matter of serious concern to the Panel.

Question 2.2 – LCI and CPI

85. The Panel has noted that we have generally used the Living Cost Index for employee households when calculating the change in the purchasing power of wages over time. We have done this despite the fact that the LCI has not risen as rapidly as the CPI, as we wish to remain consistent in our approach.

86. We believe the conceptual and methodological differences between the LCI and the CPI make the former measure more appropriate for the calculation of real wages. The ABS explains the overall differences between the measures as follows:

A living cost index reflects changes over time in the purchasing power of the after-tax incomes of households. It measures the impact of changes in prices on the out-of-pocket expenses incurred by households to gain access to a fixed basket of consumer goods and services. The Australian Consumer Price Index (CPI), on the other hand, is designed to measure price inflation for the household sector as a whole and is not the conceptually ideal measure for assessing the changes in the purchasing power of the disposable incomes of households.40

Question 2.3 – OECD comparisons

87. The matters that the Panel is required by the Fair Work Act to take into account do not include the level of Australia’s NMW relative to the minimum rates of other countries. For that reason, such international comparisons are less relevant to the Panel’s deliberations than information that pertains directly to the minimum wages objective, such as changes over time in the real minimum rates and the minimum wage bite.

40 ABS 2013, Selected Living Cost Indexes, Australia, Mar 2013, explanatory notes, para. 7, cat. no. 6467.
88. We have expressed caution regarding international comparisons in the past. Australia’s process for adjusting minimum wages, the criteria used in that adjustment, and the presence of an array of skill-based minima, are all factors that render us unique.

89. However, we believe that international comparisons can still assist in informing the Panel. Australia’s NMW is higher than the minima of many other OECD countries (in either ‘bite’ or PPP terms) and yet Australia has enjoyed better labour force outcomes (like lower unemployment) in recent years. At the very least, this should lead the Panel to view some of the employer groups’ claims about the trade-off between employment and wages with scepticism.

90. We provided additional information regarding international comparisons in our submission-in-reply in order to ensure that the Panel had the latest and most complete data. Some other parties’ submissions used older and/or partial OECD data to draw conclusions about the relative level of Australia’s minimum wages. To the extent that international comparisons can assist the Panel in its deliberations, the Panel should be provided with the most recent and complete information.

Question 2.5 - Unpublished EEH data

91. The ACTU purchased a large amount of unpublished data from the Employee Earnings and Hours survey, as the Panel has noted. We have faithfully reproduced that data in our opening submission. If other parties or the Panel have any specific queries pertaining to this data, we would be happy to answer them.

Question 3.3 - Overemployment

92. Granting our claim will not worsen overemployment. It may ease the pressure on some workers to work long hours, if an increase in wages allows them to earn an adequate income with fewer hours. Similarly, underemployed workers who receive a wage rise will be more able to make ends meet with a given number of hours if their wage increases.

Question 4.1 - Structural change

93. We stand by our claim that differences in the rate of turnover growth in retail sub-sectors reflects structural change in the pattern of retail spending and is not related to changes in minimum wages.

94. Likewise, we maintain that the changing employment shares of particular industries are not due to minimum wage adjustments. The Retail Trade industry’s employment share has fallen more or less steadily since around 2005, including through the Work Choices period and in 2009 when minimum wages did not rise. The employment share of Accommodation and Food Services has been remarkably stable over the decade. This suggests that there has not been a general shift in employment away from the more award-reliant industries per se; we maintain that the shifting employment shares is due to broader, structural factors.
Question 4.2 – RBA Deputy Governor Lowe’s comments regarding structural change

95. The Panel indicated that parties may respond to this question in oral submissions during the consultations. We will do so.

Question 5.1 – Supplementary exemption process proposed by some employer groups

96. The Panel’s decision in the 2011-12 Review provides, at paragraphs 282-284, that the operation of ss.157(2), 285(1) and 286 of the *Fair Work Act* 2009 (Cth) (FW Act) gives rise to what may be an unintended outcome. That outcome being that the Panel is not able to establish a process by which to assess the capacity of a party to pay the minimum wage ordered after the Review has been conducted. We submit that this outcome was an intentional consequence of the FW Act.

97. S 157(2) relevantly provides that the Fair Work Commission (FWC) can vary modern award minimum wages if it is satisfied that the variation is justified by work value reasons and making the variation outside of the Annual Wage Review system and 4 yearly modern award review system is necessary to achieve the modern awards objective. The FWC exercises powers under this section. S.612(1) provides that a function or power of the FWC may be performed or exercised by a single member, other than a Minimum Wage Panel.

98. Ss 285(1) and 286 relevantly provide for the conduct of Annual Wage Reviews and when a variation determination comes into effect. S 617 provides that an Annual Wage Review under Part 2-6, of which ss 285(1) and 286 form part, can only be conducted by the Minimum Wage Panel.

99. The operation of ss 612(1) and 617 clearly indicate that a Minimum Wage Panel has different work to do under Part 2-6 than the FWC has to do under s 157(2).

100. Further, the ACTU notes that the considerations required in relation to s 157(2) involve additional criteria to those under Part 2-6, being work value considerations. The Panel is only required to consider the minimum wages objectives, while the FWC when exercising powers under s157(2) must consider work value considerations. As such, we submit that the intention of the legislation is clear. S 157(2) operates separately and distinctly to ss 285(1) and 286. It cannot be said that s 157(2) has any negative impact on ss 285(1) and 286. The provisions do not work together to produce a negative outcome. The intention of the FW Act is clear.

101. We now turn to the proposals of the employer organisations mentioned in question 5.1. The process proposed by the Chamber of Commerce and Industry Queensland (CCIQ) is in essence that a hearing should be established to determine to what extent national minimum wage increases should be passed on to industry specific modern awards. The Australian Retailers Association (ARA) proposes award-by-award increases and that the FWC hand down an interim decision prior to any
final decision being issued. Business SA proposes that different industries be permitted to apply for a lesser wage increase and/or a delay in the date of commencement of wage increases resulting from the Annual Wage Review (Supplementary Exemption Processes).

102. The Supplementary Exemption Processes appear to have been proposed in order to ‘rectify’ the perceived negative operation of ss 157(2), 285(1) and 286. The Supplementary Exemption Process broadly propose two approaches. The first being that different industries be subject to different minimum wage amounts; the second being that a review mechanism be established in relation to the Annual Wage Review.

Proposal 1 – different minimum wages for different industries

103. The ACTU is opposed to any proposals to apply different minimum wage order amounts to different industries or different employing entities. While the minimum wage increase clearly requires an increase to the NMW, it must also be the minimum increase afforded to workers across all industries. There should be no deviation from this position. Any deviation has the very real potential to create subclasses of workers depending on the industry in which they work, or which entity employs them.

104. We refer to our submissions in reply to the 2010-11 Annual Wage Review. We reiterate our submission that adjusting the minimum rates in various awards by different amounts would:

- Undermine the consistency and coherence of the safety net;
- Be inconsistent with the requirement to ensure equal remuneration for work of equal or comparable value;
- Be inconsistent with the Panel’s obligation to establish and maintain a fair and relevant safety net; and
- Would distort award relativities.

105. We remind the FWC that employer organisations have suggested that minimum wages be adjusted on an industry by industry basis previously and this is not a new argument. See for example the Australian Chamber of Commerce and Industry (ACCI), Submission to the 2011-12 Annual Wage Review. In previous Annual Wage Reviews, the Panel has rejected requests to award lower increases in minimum rates for particular industries (see the ARA’s submission in the 2010-11 Annual Wage Review that award-reliant retail businesses should be exempt from any minimum wage increase due to adverse trading conditions). No material has been advanced that should cause the Panel to deviate from the approach taken in previous Annual Wage Reviews.
106. Proposal 1 would greatly increase the time taken to conduct the Annual Wage Review. In reality the Panel would have to conduct a review of the annual wage for each industry as well as for award-free employees. This would be both time consuming and costly to the parties involved and to taxpayers.

Proposal 2 – mechanism for review of the Annual Wage Review

107. The ACTU submits that current Annual Wage Review process provides ample opportunity for interested parties to make submissions, as well as submissions in reply. Parties can establish what they believe to be a fair and appropriate minimum wage increase. The Panel takes into account all submissions when making its decision. Establishing a mechanism for any kind of post-decision review (including the issuing of an interim decision) would allow parties to have two bites of the cherry. Allowing for a post-decision review is essentially establishing an appeal jurisdiction for the review which would create uncertainty and instability and will greatly reduce the effectiveness of the process.

108. It is clear that the intention of the FW Act is to ensure that the Annual Wage Review process has been completed by the end of the financial year so that any increases ordered can be applied on 1 July in the next financial year. Any deviation from this would likely result in the annual nature of the process to be lost. A result of this could be that the FWC is required to deal with backlogs of reviews, back-dated wage increases and arguments from employer organisations about having to provide increases close together and/or back-pay.

109. There should be no supplementary review process permitted through the Annual Wage Review process, because, as noted above, if the FWC is satisfied that modern award minimum wages should be varied based on work value reasons and the minimum wages objective has been met, then the minimum wages in an individual modern award can be varied outside of the Annual Wage Reviews and the 4 yearly modern award reviews. Clearly the operation of Part 2-6 relates to wholesale wage adjustments which are to be made annually. S 157(2) has work to do in situations where an anomaly arises in relation to work value.

Question 5.2 – Implications of differential adjustments

110. We refer to our response to question 5.1 above, particularly in relation to Proposals 1 and 2. The ACTU further submits that the implications of the approach set out in question 5.2 would create inequality, confusion, and inefficiencies in all sectors, including the ones where no particular outcomes have been sought.
111. We submit that such an approach is likely to necessitate a party accessing the provisions of s 157(2) to seek a modern award minimum wages variation on the basis that the variation is justified by work value reasons. Applications would most likely come from industries which have been afforded lower minimum wage increases.

112. Sectors which have not sought particular outcomes and are obliged to implement the full annual wage order will be at a disadvantage to those who may have been permitted to implement a lesser amount of the annual minimum wage.

113. Failing to issue a minimum wage order which covers all industries equally will likely result in the creation of significantly more work during the 4 yearly review of modern awards. Parties, likely to be employee representatives, will be required (by section 156(3)) to make submissions in relation to work value during this process which would in effect create another level of award minimum wage reviews. Ensuring that a standard minimum wage order is made and applied will help ensure that Annual Wage Reviews retain their ‘annual character’ and wage issues will be less likely to form part of every aspect of modern award reviews.

114. Noting the number of employer groups advocating an approach where different industries would be afforded different increases, the ACTU cautions the FWC against giving too much weight to the volume of applications, rather than the merits of applications.

Question 6.1 – Superannuation Guarantee impact on average earnings

115. The Panel indicated that this question was directed in particular to the Australian Government. In the available time we have not had a chance to properly consider this question.

Question 6.2 – Extension of Superannuation Guarantee to workers aged 70 and older

116. As at April 2013, there were 404 300 people aged 65 and over who were in employment. The ABS labour force data to which we have access do not enable us to say how many of these workers are aged 70 and over. We submit that the vast bulk of the 404 300 workers aged 65+ are likely to be aged 65-69. We believe there is only a very small number of an employee aged 70 and over. Furthermore, we believe that those few people over 70 who are in work are unlikely to be award-reliant.

117. For that reason, we do not believe that the change to the removal of the age limit for the Superannuation Guarantee will have a material impact. We submit that it will have a negligible impact on the award-reliant workforce and their employers, and should therefore not be taken into account in this review.
Question 7.1 – Transitional instruments

Pay equity

118. The scheme for maintaining the currency of Transitional Pay Equity Orders is complex. There are in effect two classes of Transitional Pay Equity Orders:

- The Transitional Pay Equity Order described in Schedule 3 of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (‘Transitional Act’) as modified by the Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009 (‘Transitional Regulations’) applies to employers and their employees who were previously bound by notional instruments derived from federal awards (Transitional Awards) and were not constitutional corporations, but became subject to the modern award because of the referral of State powers post 1 July 2009.

- The Transitional Pay Equity Order described in Schedule 3A of the Transitional Act as modified by the Transitional Regulations applies to employers and their employees who were previously bound by notional instruments derived from State Awards (Division 2B State Awards), but became subject to the modern award because those notional instruments were terminated.

119. The first class of Transitional Pay Equity Order is derived from the “source pay equity order” of the Queensland Industrial Relations Commission of 12 June 2009. The second class of Transitional Pay equity order includes all source pay equity orders meeting the following description:

“...an order, decision or determination of a State industrial body that:

- Was made before 15 September 2009; and

- Provided for increases in rates of pay payable to a particular class of employees (whether the increases were expressed to take effect before, on or after the Division 2B referral commencement); and

- Was made wholly or partly on the ground of work value, pay equity or equal remuneration (however described).”

120. Aside from the order of the Queensland Industrial Relations Commission of 12 June 2009, the ACTU is not aware of any orders, decisions or determinations of State industrial bodies that would meet this description.

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41 Per Regulation 3.03C of the Transitional Regulations and Item 43 of Schedule 3 of the Transitional Act.
42 Item 30A of Schedule 3A of the Transitional Act.
121. The ACTU submits that if the Panel varies the minimum wages in the *Social, Community Home Care and Disability Services Industry Award 2010* (‘SACS Award’), then consequences follow for the employers and employees to whom a Transitional Pay Equity Order applies where that Transitional Pay Equity order is the one based on order of the Queensland Industrial Relations Commission of 12 June 2009. The Panel is not required to make a determination to vary the Transitional Pay Equity Orders in order to give effect to these consequences. Rather, the consequences are brought about by the Transitional Act as modified by the Transitional Regulations. However, we submit that it would be desirable for the Panel to set out in its decision (or to otherwise request the Commission publish) the base rates of pay that would become payable under the Transitional Pay Equity Orders that are based on the order of the Queensland Industrial Relations Commission of 12 June 2009, as a consequence of its decision to vary minimum wages in the SACS award.

122. Items 30B of Schedule 3A and Item 44 of Schedule 3 of the Transitional Act (as varied by Transitional Regulations 3.A01B and 3.03H respectively), deem that there presently exist “varied transitional pay equity orders” (VTPEOs), which contain the base rates of pay set out in Schedule 1A to the Regulations. Importantly, Schedule 1A does not contain all terms of the VTEOs, although their effect is alluded to in the Notes that appear in that Schedule.

123. Relevantly, the obligation upon employers to whom the Transitional Pay Equity Order applies is to pay a base rate of pay that is not less than that which would have been payable if “…the base rate of pay had continued to be determined in whole or in part by, or in accordance with, the source pay equity order”. The source pay equity order that is the order of the Queensland Industrial Relations Commission of 12 June 2009 relevantly provided as follows:

“From 1 July 2010, and applied each 1 July until 2015, following any State Wage Case decision of the previous year, an additional Equal Remuneration Component (ERC) of 1% of the rate payable is to be included in the overall wage rate and paid for all purposes. Wage rates published from 1 July 2010 will include and assume the addition of the ERC. The ERC is additional to Award rate changes effected by a State Wage Case”.

124. We submit that the Equal Remuneration Component must form part of the base rate of pay, and the Notes to Schedule 1A of the Transitional Regulation suggest the legislature reached the same conclusion. Accordingly, any increases to the base rates of pay in the Transitional Pay Equity

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43 Regulation 3A.01B at 30C, Regulation 3.0H at 45.
44 Per 3.03H and 3A0.1B of the Transitional Regulations
Orders based on this source order (being increases that are consequent on its decision made by the Panel in respect of the SACS Award) should be additional to, and not offset against, the Equal Remuneration Component.

125. As noted above, the second class of Transitional Pay Equity Orders is derived from a broader source. To the extent that there are any source orders beyond the order of the Queensland Industrial Relations Commission of 12 June 2009, it is that broader class of orders that the Panel may make a determination to vary directly rather than have the variation come about as a statutory consequence of its decision reached in respect of the SACS award. This is a result of the limitation placed on Item 30D(1) of Schedule 3A of the Transitional Act\(^{46}\) by Item 30D(3). As above, we are unaware of any qualifying orders in this regard. Were there any such orders we would seek that the determination of the Panel vary them in line with its determinations in respect of modern award minimum wages.

*Transfer of business*

126. The *Fair Work (Transfer of Business) Amendment Act 2012* relevantly provides that “copied State instruments” exist in particular circumstances associated with a transfer of business from a State public sector employer to a national system employer. Two classes of “copied State instruments” are envisaged: Copied State awards and copied state employment agreements. It is only the former with which the Panel needs to be concerned.

127. The combined effect of sections 768AW, Item 2 in the table below section 768BY(1) and Item 14 in the table below section 768BY(2) of the FW Act as amended is that the Panel may make a determination varying the terms of a copied state award during this Annual Wage Review. Because the determinations that the Panel may make are expressly limited to “…a determination varying the terms of a copied State award for the transferring employee relating to wages”, it is clear that such determinations may only be made in respect of copied State awards that are in operation as at the date the determination is made.

128. In our submission, two factors are relevant to the discretion as to whether copied State awards should be varied by the Panel and how such variations should be expressed.

129. Firstly, the very nature of copied state instruments (i.e. that they do not operate until there is a relevant termination of a relevant transferring employee) is that the Panel is not in a position to be informed of how many (if any) presently are in operation, aside from information that may be

\(^{46}\) As modified by Transitional Regulation 3A.01B
evident from applications filed in the Commission under Part 6-3A of the FW Act as amended. Parliament chose to nonetheless provide a power that those instruments could be varied. That power must be capable of being exercised, and the inherent features of those instruments as constructed by the Parliament provides no reason refrain from exercising the power. In our submission, it is not necessary to identify which (if any) copied State awards are in operation as at the date of a determination, and the inability to do so should not weigh against the exercise of the Panel’s discretion to make a determination. We refer in particular to Item 20(2) of Schedule 9 of the TP&CA Act which has the effect that there is no obligation to publish particular rates as part of the determination. The type of determination previously provided by the Panel in respect of Transitional Instruments:

“We have decided to adjust transitional instruments which remain in operation in line with the increase in modern award minimum wages. There is no requirement to publish the variations”47

is an appropriate one, subject the next consideration below.

130. Secondly, because copied State awards reflect the content of State Awards as at the date those copied State awards come into operation, including orders of industrial bodies affecting those awards per section 768AI of the FW Act as amended, some of them would be affected by minimum wage cases in State industrial relations systems. We concede that it would be counter intuitive to permit “leapfrogging” of minimum rates merely by transferring from the State to the Federal system. Against that is the fact that copied State awards, once they come into operation, may be in operation for up to five years and there is very limited capacity to vary their otherwise static terms over that period. We submit that the Panel distinguish in its determinations, as follows:

- Copied State awards which reflect minimum rates as increased by a State industrial tribunal in the 6 months before the determination - we submit that no determination should be made in respect of those Copied State instruments.

- Copied State awards which reflect minimum rates as increased by a State industrial tribunal more than 6 months, but less than 12 months before the determination – we submit that there should be an increase of 50% of the increase (if any) provided to modern award minimum wages.

47 [2012] FWAFB 5000 at [294]
• Copied State awards which reflect minimum rates as increased by a State industrial tribunal 12 months or more before the determination – we submit that there should be an increase that matches the increase (if any) provided to modern award minimum wages.

Question 7.2 – Piece rates

131. The ACTU refers to our original submissions at page 131, paragraph 419.

Question 8.1 – Mission Australia Youth Survey and UK Low Pay Commission report

Mission Australia Youth Survey

132. Mission Australia’s publication provides interesting and useful qualitative insights into the attitudes and perceptions of young people. However, we caution against drawing firm conclusions from the survey’s quantitative results. Although the survey has a large number of respondents (15 351), it does not appear that the respondents were randomly selected, nor are they statistically representative of the youth population as a whole.

133. The Mission Australia publication includes information about the proportion of young people in paid employment. The results are not consistent with those collected as part of the ABS Labour Force survey, which is a large-scale survey of randomly selected, statistically representative households.

134. Table 5 compares Mission Australia’s results with those of the Labour Force survey. It is not clear what month of the year Mission Australia’s survey was conducted. For that reason, the table below includes the seasonally adjusted ABS results from December 2012, as well as the average figures for each month of 2012.

135. The table shows that Mission Australia’s results show a much smaller proportion of full-time workers than the ABS survey. Whereas 34.1% of respondents to the Mission Australia survey report that they are not in paid employment and are looking for work (‘unemployed’), the ABS data suggest that only 9% of the population aged 15-19 are unemployed.\footnote{Note that this is the number of unemployed 15-19 year olds as a proportion of the population aged 15-19. This differs from the standard unemployment rate, which is the number of unemployed people as a proportion of people in the labour force. The ACTU has calculated the figures in this way so that they are most comparable with the Mission Australia results.}
Table 5: The Mission Australia employment figures compared to the ABS labour force survey for 15-19 year olds

<table>
<thead>
<tr>
<th></th>
<th>Mission Australia</th>
<th>ABS - Dec 2012</th>
<th>ABS - 2012 average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employed full-time</td>
<td>0.60%</td>
<td>13.2%</td>
<td>13.6%</td>
</tr>
<tr>
<td>Employed part-time</td>
<td>38.90%</td>
<td>31.9%</td>
<td>32.1%</td>
</tr>
<tr>
<td>Unemployed</td>
<td>34.10%</td>
<td>9.0%</td>
<td>9.2%</td>
</tr>
<tr>
<td>Not in the labour force</td>
<td>26.40%</td>
<td>45.9%</td>
<td>45.1%</td>
</tr>
</tbody>
</table>

Source: Mission Australia Youth Survey 2012 and ACTU calculations based on ABS 6202.

136. The survey shows that the survey respondents are much more concerned with school or study, as well as relationships, than with getting a job. While this is an interesting qualitative insight, we would caution against drawing an inference from the respondents’ views about the broader population of young people, for the reasons noted above.

*UK Low Pay Commission Report 2013*

137. The other document to which the Panel has asked the parties to respond is the 2013 report of the UK Low Pay Commission (‘LPC’).

138. The report shows that the LPC in recent years has allowed the real value of the UK NMW to fall a little, but that it has stabilised the value of the NMW at a historically high level relative to UK average earnings. In other words, the UK NMW and UK average wages have both fallen in real terms, by a similar proportion. This is not the case in Australia – real average wages have increased at a solid pace, while the purchasing power of the NMW remains below its 2005 level.

139. UK nominal wages had grown by a little less than 2% at the time the LPC made its decision (1.8% - total pay, 1.7% - regular pay) and the LPC recommended a 1.9% increase in the UK NMW. This means that the LPC recommended an increase which would maintain the ratio of the UK NMW to the average wage. The LPC said “the value of the NMW relative to average earnings has never been higher than it was in October 2012,” and it then recommended an increase that would maintain this ratio.

140. We note that the most recent ABS figures show that AWOTE rose by 4.9% in the year to the November quarter, with AWE rising by 4.5%. Awarding our claim in full would see the Australian NMW rise by 4.9%. That would maintain the current NMW/AWOTE ratio, just as the UK LPC has stabilised its ratio.

141. A further salient point is that the economic context in which the LPC made its most recent recommendation is very different to that facing the Panel in this Review. The UK economy is enduring a period of prolonged stagnation, with high unemployment and falls in real incomes. Australia’s circumstances are far more favourable, with a more positive economic outlook.
142. The LPC report notes that the forecasts of the Bank of England, the IMF, and the OECD all suggest that “by the end of 2014, the level of real GDP will still be below its level in the first quarter of 2008.”

143. Table 6 compares some key economic variables as reported in the LPC report with their equivalents in Australia.

<table>
<thead>
<tr>
<th>Table 6: Comparison of the UK and Australian economies</th>
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<tbody>
<tr>
<td><strong>UK</strong></td>
</tr>
<tr>
<td>Unemployment rate (working-age)</td>
</tr>
<tr>
<td>Most recent figure for annual real GDP growth</td>
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<tr>
<td>Forecast for real GDP growth in 2013 calendar year</td>
</tr>
<tr>
<td>Inflation</td>
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<tr>
<td></td>
</tr>
<tr>
<td>Average nominal wages growth</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>NMW increase</td>
</tr>
</tbody>
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144. The stark differences between the two economies, and thus the context for minimum wages fixation, can also be seen in the figures below. The UK unemployment rate has not been below 7.5% since the beginning of 2009. The Australian unemployment rate has not been above 7.5% since November 1998. In the final quarter of 2012, the Australian economy was 11.9% bigger than in the first quarter of 2008; the UK economy was 2.9% smaller than it had been four years earlier. Between February 2008 and November 2012, Australian average real wages (AWOTE) rose by 11%; UK average real wages had fallen on 6.6%.

50 Unemployment rate pertains to people aged 16-64 in UK; 15-64 in Australia.
51 The October figures are the latest that the LPC had access to at the time of writing its report. The latest figures available from the UK Office for National Statistics show 0.4% growth in AWE (total pay) in the year to the March 2013 quarter and 0.8% growth over the same period in AWE (regular pay).
Another key point is that the LPC remains of the view that the creation of the NMW and increases in its rate have not negatively affected employment. The LPC said:

*Despite the increase in the bite of the NMW, total employment has continued to grow. Moreover, although the bite in the low-paying sectors has grown even more than in the economy as a whole since 2007, in 2012 the number of jobs in the low-paying sectors increased faster than the number in the whole economy. Further, generally the employment performance of those groups of workers most affected by the minimum wage – women, older workers, disabled workers, ethnic minorities, and migrants – has been better, since the onset of the recession, than their less affected*
counterparts. However, there are two groups whose experience has been worse: young people and those with no qualifications.

Our research programme for this report has further extended the literature on the impact of the NMW on earnings, employment and hours. Our overall conclusions from this work are that as a result of the NMW the lowest paid have received higher pay rises than their peers, and that there remains little evidence of a significant adverse effect of the minimum wage on employment. Our most recent research has not altered these findings although it has refined our understanding, for example of the propensity of some employers to set wage rates at round numbers.52

146. The LPC has found “little evidence of a significant adverse effect of the minimum wage on employment”. It has also found the minimum wage increases boost the earnings of the low-paid. These findings were based on its own observations of the data and also on commissioned studies.

147. A key LPC-commissioned study by Bryan, Salvatori and Taylor (2013) “found little evidence that the minimum wage had generally affected employment retention in the period before or during the recession.” Their research concluded that “they could find no systematic effect of the NMW on hours worked by adults across time or even during the recession”.53 The LPC noted that the pre-recession results were consistent with findings from previous studies.

148. The LPC’s examination of the impact of previous increases in the NMW concludes as follows:

We have now commissioned over 100 research projects that have covered various aspects of the impact of the National Minimum Wage on the economy. Since the introduction of the NMW, the low paid had received higher than average wage increases but that the research had, in general, found little adverse effect on aggregate employment; the relative employment shares of the low-paying sectors; individual employment or unemployment probabilities; or regional employment or unemployment differences. The research suggests that employers have coped with the minimum wage by adopting a combination of strategies. Pay structures may have been adjusted or non-wage costs reduced. There may have been small reductions in hours worked and increases in productivity. Some prices may have been increased and profits squeezed but these reductions in profits had not been sufficient to lead to an increase in business failure.

149. The LPC report confirms the point we made in our opening submission – that increases in minimum wages need not cause dis-employment.

Question 8.2 – Measuring the participation rate

150. Falls in the participation rate can occur for two reasons. First, there could be a fall in the participation rate within particular groups (for example, women aged 25-34). Second, there could be a shift in the composition of the population, with a rise in the population share of groups with relatively low participation rates (for example, people aged 65 and over).

151. We suggest that falls in the participation rate that occur for the first reason (within-group falls) could be suggestive of softening labour market conditions. One reason why such falls may occur is due to the ‘discouraged worker’ effect – people who feel their job prospects are low and who choose to leave the labour force as a result.

152. We submit that falls in the participation rate that occur for the second reason (changes in the demographic structure) do not provide any information about the state of the labour market.

153. The Panel’s question indicated that it would like the parties’ views on the best way(s) to “measure the participation rate for the purpose of understanding the state of the labour market”. We suggest that if this is the purpose for which the Panel wishes to be informed about the participation rate, then it is important to distinguish between changes in participation that arise from within-group changes in participation and those that arise from shifts in the demographic structure.

154. Participation rates that exclude people aged 65 and over, we submit, give a clearer sense of the cyclical state of the labour market than the standard measure which includes all civilians aged 15 and over. For that reason, we presented the 15-64 participation rate in our submission in reply at figure 1. The 20-64 rate, which is included in the Statistical Report, is also a relevant measure.

155. Of course, a fall in the 20-64 rate could still reflect the changing composition of the population. People aged 60-64 have a lower average participation rate than those aged 55-59. If the former group grows as a share of the population aged 20-64 and the expense of the latter group, then (other things being equal), this will lead to a fall in the 20-64 participation rate that will not be a reflection of the state of the labour market. The 20-64 rate (or the 15-64 rate) is less affected by the ageing population than the standard 15+ rate, but it is not entirely unaffected by compositional change in the population.

156. For that reason, Table 7 of our opening submission provided a full decomposition of the change in the participation rate in the past two years into within-group changes and demographic change. Figure 75 represented this decomposition graphically. We showed that the large majority of the fall in the participation rate in the past two years is due to the ageing of the population, not within-group falls in participation.
157. Analysis contained within this week’s Commonwealth Budget accords with our submission. The Budget explains the effect of demographic change on the participation rate in Box 6, page 2-38. It finds:

*The most significant factor weighing on participation is Australia’s ageing population, resulting in fewer potential workers as a share of the total population. The Intergenerational Report projects that the participation rate will fall from its current level of around 65 per cent to less than 61 per cent by 2049-50... This demographic change is already having an effect, with the changing age distribution accounting for around 80 per cent of the decline in the participation rate since 2010.*

158. The standard (15+) participation rate will become less useful as a guide to the cyclical state of the labour market over time as the population ages. To “measure the participation rate for the purpose of understanding the state of the labour market,” we suggest that a rate that excludes people aged 65 and over is most relevant. This could either by the 15-64 or 20-64 measure. We submit that this ‘headline’ measure should be supplemented by a more detailed examination of trends in participation within particular age groups, as provided in our opening submission. If it assists the Panel, we will update our analysis of the impact of demographic change on participation and provide the results in our submissions to future reviews.

159. We note that the employment-to-population ratio is similarly affected by demographic change. It may be more appropriate to examine a 15-64 or 20-64 measure of this ratio rather than the standard 15+ ratio. The unemployment rate is not significantly affected, as it is likely that older workers who are not in employment will not be in the labour force.

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