Responses to Consultation Questions for the Fair Work Commission

Annual Wage Review 2012 - 13

21 May 2013
RESPONSES

1 Productivity

1.1 Question to all parties

All parties are invited to consider, and comment upon an article published in the Australian Financial Review from Dean Parham ‘Productivity boost first, then labour can share’.

What are the best measures of productivity to use when thinking of the improvements that are available to share between labour and capital?

Response

Labour productivity can be calculated for the whole economy, but productivity is rarely analysed on a year to year basis for the market sectors of the economy which comprise agriculture. The agriculture sectors are combined into one multifactor productivity statistic for ‘agriculture’ and as such, no distinction occurs between the various sectors within agriculture. It is for this reason that the ABARES report for 2013 is presented to the Panel within the NFF submission.

While participants within agriculture often receive non-wage income such as housing and as the article notes such employees receive a purchasing power gain, the NFF agrees with Mr Parham, when he states:

“... growth in real (consumer) wages has moved in line with productivity growth.”

“There would be risks to the domestic inflation and unemployment if stronger nominal wage growth continued without a return to stronger productivity growth.”

1.2 Question to all parties

In Figure 55 of its initial submission, the ACTU shows that real output per hour worked (labour productivity) has risen faster than real hourly labour income, particularly since the early 2000s.¹

In Table 8.1 of their initial submission, ABI provides data showing that the source of recent trend growth in labour productivity is capital deepening.² This capital deepening is illustrated in their Chart 8.1.³ On the basis of this evidence, they conclude, “Long term changes in the share of income are more likely to be attributable to changes in the share of inputs.”⁴

Parties are invited to comment on the implications of these developments for the setting of minimum rates of pay.

Response

The Panel may wish to refer to the response to question 1.1 above.

¹ ACTU submission at p. 56, para. 169.
² ABI submission at p. 16, para. 8.6.
³ ABI submission at p. 18, para. 9.2.
⁴ ABI submission at pp. 16–17, paras 8.8–8.9.
2 Real Wages, Productivity and Living Standards

2.1 Question to all parties

The ACTU submits that between the June quarter 2005 and the December quarter 2012:

- The purchasing power of the NMW/C14 rate fell by 0.3 per cent;
- The purchasing power of the C10 rate fell by 2.74 per cent;
- The purchasing power of the AWOTE rose by 11.7 per cent; and
- Labour productivity rose by 9.9 per cent.\(^5\)

The ACTU also submits that about half of award reliant employees are on rates that are greater than the C10 level, including about 9 per cent who are employed as professionals.\(^6\)

Do any other parties dispute these figures?

Response

The NFF does not dispute the figures, although many farm employees receive non-wage income (housing). As noted in the NFF submission on page 17 the National Minimum Wage increased under the Minimum Wage Panel’s first three (3) decisions – from $15.00 to $15.96.

2.2 Question to all parties

The ACTU has adopted the Living Cost Index—Employees as its preferred measure of changes in the cost of living for the purpose of evaluating the real value of changes to award wages, in preference to the Consumer Price Index in figures 55, 96 and 97 in its submission.\(^7\)

Do any other parties have a view about which is the more appropriate measure?

Response

The NFF has referred to the Consumer Price Index (CPI) in its submission to the Panel due to the CPI being the standard measure used in forecasts nationally and internationally.

The Living Cost Index (LCI) includes mortgage interest which may not apply to on farm employees as outlined in question 1.1 above.

2.3 Question to all parties

In what ways, if any, is the comparison between the purchasing power parity of the Australian National Minimum Wage and that of other OECD countries, and of its value relative to median (or mean) fulltime earnings, relevant to an assessment of the needs and relative living standards of minimum wage workers in Australia?

Response

\(^5\) ACTU submission at p. 94, para. 280.
\(^6\) ACTU submission at pp. 20–21, at paras 74–75.
\(^7\) ACTU submission at p. 55, para. 169; p. 93, para. 278.
As noted on page 14 of the NFF submission “Australian wage levels are closer to the average wages of full time employees than in most OECD countries. The Australian minimum wage is closer to medium wages of full time employees in OECD countries. The identified fact is that Australia’s minimum wage rates are among the highest in the OECD.”

2.4 Question to ACOSS, ACCER and the Australian Government

Does ACOSS, ACCER or the Australian Government have any information on how many single earner couple families there are that are reliant on award rates of pay?

Response

No response.

2.5 Question to all parties

(Please note: This question can be responded to either in writing by Friday 17 May 2013 or in oral submissions during the consultations on 21 and 22 May 2013)

In its initial submission, the ACTU provided unpublished data from the ABS Employee Earnings and Hours survey for May 2012 by industry and occupation concerning the characteristics of workers reliant on minimum wages. Does any party wish to comment on the data and/or the conclusions drawn from it by the ACTU?

Response

The ACTU Table 3: Award-reliant employees by industry doesn’t capture ‘Agriculture’. Although there is a reference to ‘Award-reliant workers by occupation’ in Table 5 which the ACTU acknowledges indicates a relative standard error between 25% and 50% for farm manager and labourers.

3 Underemployment

3.1 Questions to ACCI

The ABS measures underemployment as:

- part-time workers who would prefer to work more hours and were available to start work with more hours, either in the reference week or in the four weeks subsequent to the survey; and
- full-time workers who worked part-time hours in the reference week for economic reasons (such as being stood down or insufficient work being available). It is assumed that these people would prefer to work full-time in the reference week and would have been available to do so.

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8 ACTU submission at pp. 15–19, paras 61–70.

Full-time workers comprise a very small portion of the underemployed (around 6 per cent) hence underemployment is essentially a measure of part-time workers who would prefer more work.

ACCI submit that “Over 55 per cent of all underemployed persons are working in the four industries that employ the largest number of award dependent employees.”

Given the fact that 53 per cent of part-time employees are working in those industries and 57 per cent of part-time casual employees are working in those industries, on what basis is it submitted that “Award reliance correlates positively with underemployment across industries and suggests that award rates have negatively impacted on the capacity of employees to obtain sufficient hours of work.”

What does ACCI submit in relation to the proposition that the high relative incidence of underemployment in the four industries referred to as being award reliant, is explained by the relatively high incidence of part-time workers in those industries than by award rates?

Response

No response.

3.2 Question to ABI

Table 6.2 of the ABI submission is said to show ‘Underemployment in award reliant industries compared to the broader economy (Feb 2013)’. Table 6.2 is said to be sourced from ‘ABS, Labour Force, Detailed, Quarterly, Feb 2013, Catalogue No. 6291.0.55.003’ but the table shows underemployment rates substantially above those in the ABS publication and those reflected in the ACCI submission. The rates shown are indeed in excess of those shown in the underutilisation rate (which adds together the unemployment rate and the underemployment rate) in the ACCI submission (and the graph there included).

ABI is asked to explain the basis for the figures for “proportion underemployed” shown in table 6.2 of its submission and provide any comment in relation to the question concerning underemployment directed to ACCI above.

Response

No response.

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10 ACCI submission at p. 54, para. 192.
12 ABS Forms of Employment, Australia, November 2011, Catalogue No. 6359.0.
13 ACCI submission at pp. 53– 54, para. 191.
14 ABI submission at pp. 13–14, at para. 7.5.
15 ACCI submission at p. 53, para. 189.
3.3 Question to all interested parties

Is overemployment (the percentage of employed people in a specified population group who wanted to work fewer hours than they actually worked)\(^\text{16}\) a relevant consideration in the Annual Wage Review?

Although dated, the ABS information suggests that overemployment exceeds underemployment:

Between April and July 2007, the ABS surveyed Australian workers aged 15 years and older about their employment arrangements. At that time, around two-thirds (65%) felt they were working close to their preferred number of hours. While 1.4 million workers (14%) wanted to work more hours, about 2.2 million (21%) preferred to be working fewer hours.\(^\text{17}\)

Response

Agriculture is a seasonal occupation subject to periods of over and underemployment depending upon conditions and family responsibilities. The NFF supports the expansion of Individual Flexibility Agreements (IFAs) to allow for greater workplace flexibility and productivity.

As noted on page 8 of the NFF submission, half of all farmers work more than 49 hours per week and more than half (56 per cent) are self employed owner managers.

The Fair Work Commission is yet to properly consider the extent of the negative impact of the award system on underemployment.

4 Structural Change

4.1 Question to all parties

Is there any response to the propositions advanced by the ACTU that:

- Differences between turnover growth in various retail sub-sectors over the past five years reflects structural change in the pattern of retail spending (paragraphs 107 and 108); and
- The rise in the employment share of Health care and social assistance, and the falling share of Retail trade is caused by structural change in the economy (paragraph 221)?

Response

The industry is currently undergoing a structural adjustment as noted by Minister Ludwig in his ‘Opening Address’ to the ABARES Conference 2013.

On page 8 of the NFF submission, the median age for workers in agriculture is 48 years; the oldest of any industry (compared with the median of 39 years for all industries). While a number of forward economic indicators suggest that agriculture may be subject to reduce commodity prices across all sectors.

The ACTU say on page 109 of their submission that “the lack of any statistical significant employment effect arising from minimum wage adjustment suggest that the classical model does not provide a useful framework... .” The NFF is of the view that

\(^{16}\) ABS, Australian Social Trends, Jun 2011, Catalogue No. 4102.0.

\(^{17}\) ABS Australian Social Trends, Jun 2011, Catalogue No. 4102.0.
careful economic analysis taking into account all the relevant factors impacting the sector(s) are required to be undertaken before increasing the national minimum wage.

4.2 Question to all parties

(Please note: This question can be responded to either in writing by Friday 17 May 2013 or in oral submissions during the consultations on 21 and 22 May 2013)

Parties are invited to comment on the observations about the process of structural change in the Australian economy made by Deputy Governor Lowe of the Reserve Bank of Australia in the following speeches:

- Deputy Governor Lowe ‘The Labour Market, Structural Change and Recent Economic Developments’, Speech to the Financial Services Institute of Australasia (Finsia) Leadership Event, 9 October 2012. (Link to speech can be found here: The Labour Market, Structural Change and Recent Economic Developments)

- Deputy Governor Lowe ‘Internal Balance, Structural Change and Monetary Policy’. Speech to the Australian Industry Group 13th Annual Economics Forum, 19 March 2013. (Link to speech can be found here: Internal Balance, Structural Change and Monetary Policy)

Response

An ‘Editorial’ in The Australian on May 6, 2013 outlines the structural changes agriculture is currently undertaking:

Crippled cattle industry needs innovative policy

THE spectacle of bony beef cattle fetching $20 a head at the Longreach cattle sale last week has added to the despondency hanging over one of Australia's most important rural industries. For all the talk about food security and growing regional demand, it is a reminder that farming is a fickle business.

The return of drought conditions to large areas of inland Australia, a high dollar and erratic government intervention have brought the cattle industry to its knees. The emaciated cattle could act as a metaphor for an industry starved of capital, shunned by investors and in clear need of restructuring.

The industry will need to be in better shape if it is to become a reliable and competitive supplier to Asia's growing middle class, as foreshadowed in the Asian Century white paper. Sympathetic government policy is vital. Governments can do nothing to stave off drought, but they can assist with better water management and discourage farming in the most arid regions. With the privations caused by the millennium drought fresh in their minds, it is no wonder that farmers are anxious that a third of Queensland has again been drought declared and that 65 per cent of NSW is very dry, with little sign of autumn rain.

Against such a backdrop, long-term agricultural policy, as opposed to periodic handouts or tinkering around the edges, is vital. As David Farley, managing director of Australia's biggest beef exporter, the Australian Agricultural Company, said on these pages last week, the nation's highly efficient pastoralists and farmers don't need or want handouts, but well-thought-out structural reform and sustainable policy that will allow them to compete internationally.
Revelations of cruelty in Egyptian abattoirs that prompted a voluntary suspension of live exports to that country will be another blow to producers. It is the kind of emotive news that can prompt the Agriculture Minister's knee to jerk in the wrong direction. Joe Ludwig is right to be concerned about animal welfare, but both the government and industry were too slow to address the issue, leaving cattlemen to pay the price. After the Gillard government halted live exports to Indonesia for five weeks in mid-2011 the Indonesian government cut contracts for Australian live cattle from 520,000 to 283,000 head a year.

The Gillard government's $420 million Farm Finance package for indebted farmers provided Wayne Swan and Bob Katter with a photo opportunity but it will not remedy the problems that have put Queensland cattlemen an estimated $9 billion in debt. Other changes advocated by farmers might prove more effective. These include ready access to 457 visas for farm labour and agri-food processing, accelerated depreciation on plant and equipment to stimulate investment, a carbon price in line with the current level in Europe and better access to markets. Meat exporters believe they are being penalised in the final stages of Australia-Japan free trade agreement negotiations, with Tokyo retaining a 38.5 per cent tariff on Australian beef imports while Australia keeps the 5 per cent tariff on Japanese cars. For cattlemen, the Asian Century white paper's promised boost to prosperity in rural and regional communities is a distant goal.

5 Exceptional circumstances/differential wage outcomes

5.1 Question to all parties

Noting the observations of the Panel about the legislative context for the consideration of exceptional circumstances in the Annual Wage Review 2011-12 Decision\textsuperscript{18}, how would the supplementary exemption process proposed by the QCI\textsuperscript{19}, ARA\textsuperscript{20} and others\textsuperscript{21} operate in practice given the terms of the Fair Work Act 2009 and the timeframes involved?

Response

The NFF wrote to the Panel last year outlining its views on the ‘exceptional circumstances’ proposition.

\textsuperscript{18} [2012] FWAFB 5000 at paras 282–284.
\textsuperscript{19} CCIQ submission at p. 7, para. 15(b).
\textsuperscript{20} Australian Retailers Association submission at p. 13.
\textsuperscript{21} See for example, Business SA submission at p. 7, para 2.4.
17 May 2012

By Email: awr@fwa.gov.au
Pages: Two (2)

The Hon Justice Ross
President
Fair Work Australia
GPO Box 1994
Melbourne Vic 3000

Your Honour,

RE ANNUAL WAGE REVIEW 2011-12

We seek to reaffirm our written proposition to the Panel dated 16 March 2012, those being that no more than $10.00 is an equitable and economically reasonable decision in relation to the Annual Wage Review of 2012.

Additionally, we seek to reply to the issue at PN349 of transcript from the proceeding of Monday, 14 May 2012, where you stated:-

“…the capacity within the legislation for the panel to determine what would have in the past been known as an incapacity-to-pay principle, which would operate prospectively and allow for individual enterprises or groups of enterprises, or indeed awards, to make application after the date of decision for some relief in relation to the adjustment.” [Emphasis added]

The Agriculture industry has had a long history of natural disasters which have required applications to the precursors of this Panel and the Tribunal seeking special consideration and application of the “incapacity to pay principle”, most recently in 2007, the Australian Fair Pay Commission delayed an increase for a period of time due to the particular economic factors regarding drought affected employers.

The National Farmers' Federation (NFF) is of the view that the Fair Work Act 2009 (hereafter Act), has not substantially altered the ability to lodge and advocate for such differential treatment. NFF notes that whilst it is mandatory for the Panel to review relevant minimum wages, it continues to have discretion under the minimum wages objective (s 284) and s 285(2)(b) to exercise its powers to vary minimum wages in one or more modern awards. We further submit that s 286 reinforces that there is also no statutory presumption or requirement that the panel flow-on any increase to all classification levels and/or for all modern awards.

The minimum wage and Acts objectives (s 284 & s 3) and your wide discretionary powers contained in s 582 suggest that scope exists within the Act for the “incapacity to pay principle” to
be advocated and the Panel to evoke such differential treatment, should it be satisfied that there is cogent material, to vary some or all classification in one or more modern awards which apply to agriculture.

The explanatory material or second reading speeches to the Act do not indicate that Parliament intended to introduce unnecessary rigidity into the Annual Wage Review process. If such an interpretation was to be interposed onto the legislation, it’s our view that the annual wage system would then have an unduly compounded impact on agriculture.

We welcome the opportunity to elaborate on this correspondence when the Panel reconvenes on Monday, 21 May 2012.”

The NFF is of the view that there is no statutory barrier to presenting ‘exceptional circumstance’ argument to the Panel prior to an annual wage determination being finalised.

5.2 Question to all parties
Given the number and coverage of those sectors seeking differential outcomes as part of this Review (including in some cases no adjustment), what would be the implications of such an approach for adjustments in other sectors where no particular outcomes have been sought?

Response
The extent of any differentiation between different sectors and pay rates in the Annual Wage review decision is a matter for the Panel with regard to section 285(2)(b) in the Fair Work Act.

6 Superannuation

6.1 Question to all parties (in particular the Australian Government)
In the Safety Net Review Wages April 1998 decision22, the AIReC noted the Joint Governments’ estimate that a one percentage point increase in superannuation guarantee contributions would add about 0.4 per cent to the national accounts measure of average earnings.

What impact will a 0.25 percentage point increase in superannuation guarantee contributions from 1 July 2013 have on average earnings?

Response
As noted in the NFF submission on page 15, our proposition is that the Panel should take account of the increase in the Superannuation Guarantee Levy rate in its Annual Wage Review.

6.2 Question to all parties (in particular the Australian Government)

From 1 July 2013, the Superannuation Guarantee age limit of 70 will be removed and employers will be obliged to make superannuation contributions for employees 70 years and older.23

What is the likely impact of this change and how should it be taken into account in this Review?

Response

The Panel may wish to refer to the response to question 6.1 above.

7 Other

7.1 Question to all parties

Submissions from the ACTU,24 ABI,25 Business South Australia26 and the Queensland Government27 identified specific transitional instruments that should be considered and adjusted. Two new categories of transitional instrument that must be considered by the Panel have not been addressed in submissions, these are:

- The transitional pay equity order deemed to operate from 1 January 2010 under Schedule 3A of the Fair Work (Transitional Provisions & Consequential Amendments) Act 2009. Following modifications to the Fair Work (Transitional Provisions & Consequential Amendments) Act 2009 that took effect in 2012, the Commission is now required to review this instrument under Part 2–6 of the Act;28 and
- Instruments created under Part 6–3 of the Act following the commencement of the Fair Work (Transfer of Business) Amendment Act 2012 in December last year.29

The Panel invites the parties to comment on how these instruments should be considered in this Review.

Response

No response.

7.2 Question to all parties

Few submissions directly addressed the variation of piece rates, though the ACTU supported a flow on of any minimum wage increase awarded as part of this Review to piece rates.30

25 ABI submission at p. 23, para. 12.7.
26 Business SA submission at p. 11, para 4.3.
27 Queensland Government submission at p. 5, para. 11; pp. 11–12, paras 40–45.
29 The Fair Work (Transfer of Business) Amendment Act 2012, following its commencement on 4 December 2012, inserted a new Part 6–3 into the Fair Work Act 2009 covering the creation of these new instruments.
30 ACTU submission at p. 131, para. 419.
The Panel invites the parties to consider and comment on how piece rates should be considered in this Review.

Response

The NFF notes that piece rates are a feature of the Pastoral Award 2010, the Horticulture Award 2010 and the Wool Storage, Sampling and Testing Award 2010. The NFF acknowledges that piece rates are fixed by reference to minimum weekly or hourly wages in these awards and any adjustment in these award minimum wages will automatically flow through to employees engaged on piece rates. It is for this reason the Panel may wish to refer to the response to question 5.1 above.

The NFF fully accepts that there is a presumption of uniformity in the Fair Work Act and compelling reasons for the system of modern awards to be treated equally in Div 3 Part 2-6 Review. Nonetheless, there is a statutory capacity to make exceptions which has had application to agriculture in the past. The NFF proposition is that the Annual Wage Review allows parties to be consulted and seek exception and advocate for differential treatment.

8 Social Inclusion

8.1 Questions to all parties

All parties are invited to consider, and comment upon, the following documents:


Response

The NFF proposition to the Panel at page 9 of its submission is that the FWC is required to take into account promoting social inclusion through increased workforce participation. It is for this reason that the NFF proposes a modest national minimum wage increase of $7.50, operative from 1 July 2013.

8.2 Question to all parties

It has been customary to measure the participation rate as the proportion of people aged 15+ who are in the workforce. Many parties do so in their submissions to this Annual Wage Review.

The ageing of the workforce and the movement of the large ‘baby boom’ cohort into the traditional retirement age bracket has caused a divergence between movements in the participation rate based on the entire population aged 15+ and that based on the population of
traditional working age—either 15–64 (used, for example, in the ACTU submission\(^{31}\)) or 20–64 (used as one of the measures in the Statistical Report prepared for this Annual Wage Review\(^{32}\)).

The ACTU in its initial submission provides an illustration of the divergence.\(^{33}\) For the age group 20-64 used in the Statistical report the participation rate was higher in March 2013 (at 79.2) than in December 2011 (78.9), and unchanged from 2012. This contrasts with the decline in the participation rate when calculated on the population aged 15+, which has declined since 2011.

The Panel would appreciate the views of all parties on which is the best way, or ways, to measure the participation rate for the purpose of understanding the state of the labour market.

**Response**

The NFF notes that the FWC has included the Labour Force Participation Rate (LFPR) in its Statistical Report – Annual Wage Review 2012 – 2013 and the measure is a common feature in the Government Intergenerational Reports.

The NFF believes the choice of measure is a matter for the Panel.

**9 Profits and wages shares**

**9.1 Question to ACCI**

In its submission in reply, ACCI states that, in calculating the wage/profit share of national income, the ACTU assumes ‘that a proportion of the profits of entrepreneurs in unincorporated entities should be included in the wages share of national income.’\(^{34}\) It goes on to describe this as producing a “corrupted version of the national accounts wages share” and that ‘the adulteration of the wages share data conducted on this basis is unsupportable.’\(^{35}\)

The ABS states that ‘both GMI [gross mixed income] and IBT [taxes less subsidies] include capital and labour components.’\(^{36}\) and that:

‘The following procedure is used to impute capital and labour shares of this aggregate [GMI] for each industry in the market sector.

An estimate of labour income is imputed by assuming that proprietors and unpaid helpers receive the same average compensation per hour as wage and salary earners.’\(^{37}\)

This is essentially the procedure used by the ACTU, when it adopts the method used by the OECD, whereby it is ‘assumed that the average hourly labour income of the self-employed is equal to the average hourly labour income of employees.’\(^{38}\)

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\(^{31}\) ACTU submission in reply at p. 6, Figure 1.


\(^{33}\) ACTU submission at p. 71, Figure 75.

\(^{34}\) ACCI submission in reply at p. 7, para. 15.

\(^{35}\) ACCI submission in reply at p. 7, para. 15.


\(^{38}\) ACTU submission at p. 53, para. 166.
In the light of the National Accounts method of identifying the labour share of GMI, does ACCI wish to maintain that the ACTU measures of the aggregate wages share of national income are “unsupportable”?

Response

No response.