ACTU Submission

Annual Wage Review 2013-14

28 March 2014

australian council of trade unions

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Contents

Introduction

1. This ACTU submits that the Fair Work Commission Expert Panel ('the Panel') should increase the National Minimum Wage ('NMW') and all award minimum wages up to and including the C10 tradespersons' rate by $27 per week. We submit that award rates above the C10 rate should be increased by 3.7%.

2. This increase is necessary to stop the erosion of low-paid workers' relative living standards. The NMW has fallen to just 43.3% of the average full-time wage, the lowest minimum wage bite on record, down from 48.2% ten years ago. If the NMW had grown at the same pace as average earnings over the past decade, it would be $693 per week rather than $622.20.

3. If the minimum wage bite continues to decline at the same pace it has for the past two decades, then it will be the same as Canada's current bite in around four years and the same as the UK's current bite in around five. Over the past two decades, the minimum wage bite has declined during both economic booms and times of slower growth. It has declined under each of the three institutions that have had responsibility for adjusting minimum wages. If the trend of the past two decades continues, then in just two more decades Australia's minimum wage will be worth less than 30% of the average full-time wage, in the vicinity of the present level in the United States.

4. Around 16% of employees are paid exactly at the NMW or an award minimum wage and the Annual Wage Review indirectly influences the pay of many more. The minimum wage arrangements a country adopts can have a broad influence on its level of wage inequality. If the minimum wage bite continues to fall, earnings inequality and the incidence of low pay are likely to continue to increase. The characteristic egalitarianism of Australia's labour market will be further eroded.

5. The ACTU submits that there is no new evidence that should cause the Panel to change its view, expressed in the decision in the 2012-13 Review, that "a modest increase in minimum wages has a very small, or even zero, effect on employment."[1]

6. Economic growth in mid-2013 was slightly below-trend, although still strong by the standards of OECD advanced economies. It has since picked up, with real GDP growing by 0.8% in the December quarter. More recent indicators have been positive, with clear signs of improvement in retail turnover and residential construction. Employment and job advertisements both picked up strongly up in February, suggesting that the labour market is starting to improve. The $27/3.7% increase we seek in this Review is entirely appropriate in the economic circumstances.

7. Our claim is modest and appropriate. It is necessary to arrest the decline in the relative living standards and begin to modestly improve them. We submit that the Panel should award it in full.

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[1] [2013] FWCFB 4000, [464]

Our claim

8. We ask the Panel to increase the full-time National Minimum Wage by $27 per week. This would increase the NMW to $649.20 per week or $17.08 per hour. We also ask the Panel to increase all rates of pay in modern awards up to and including the benchmark C10 tradespersons' rate (and its equivalents) by $27 per week. We ask that the Panel increase award rates of pay for classifications above the C10 rate by 3.7%.

9. The minimum rates we propose for each classification level in the *Manufacturing and Associated Industries and Occupations Award 2010* are set out in Table 1.

Table 1: ACTU's proposed minimum rates

	Current rates		Proposed rates				
	Weekly	Hourly	Weekly	Hourly	% increase	Weekly $ increase	Hourly $ increase
NMW/C14	$622.20	$16.37	$649.20	$17.08	4.3%	$27.00	$0.71
C13	$640.20	$16.85	$667.20	$17.56	4.2%	$27.00	$0.71
C12	$664.80	$17.49	$691.80	$18.21	4.1%	$27.00	$0.72
C11	$687.60	$18.09	$714.60	$18.81	3.9%	$27.00	$0.72
C10	$724.50	$19.07	$751.50	$19.78	3.7%	$27.00	$0.71
C9	$747.20	$19.66	$775.00	$20.39	3.7%	$27.80	$0.73
C8	$769.90	$20.26	$798.60	$21.02	3.7%	$28.70	$0.76
C7	$790.50	$20.80	$820.00	$21.58	3.7%	$29.50	$0.78
C6	$830.60	$21.86	$861.60	$22.67	3.7%	$31.00	$0.81
C5	$847.60	$22.31	$879.20	$23.14	3.7%	$31.60	$0.83
C4	$870.30	$22.90	$902.70	$23.76	3.7%	$32.40	$0.86
C3	$915.80	$24.10	$949.90	$25.00	3.7%	$34.10	$0.90
C2(a)	$938.60	$24.70	$973.60	$25.62	3.7%	$35.00	$0.92
C2(b)	$979.70	$25.78	$1,016.20	$26.74	3.7%	$36.50	$0.96

10. We believe that an increase structured in this way best balances the range of factors that the Panel must take into account. It delivers the largest proportionate increase to the lowest paid, while preserving the existing skill-based relativities for award classifications above C10. Research for this Review finds that 75% of award-reliant workers are employed below the C10 rate of pay, strengthening our contention that there should be special emphasis on the needs and relative living standards of the lowest paid.

11. The wage increase should be uniform across awards. We agree with the Panel's statement in its 2012-13 decision, that:

> *The award-by-award approach to minimum wage fixation, based on sectoral considerations, advocated by some parties in these proceedings is inimicable to the safety net nature of modern award minimum wages.*[2]

12. The increase that the Panel grants should take effect from 1 July. There are no extraordinary circumstances that would justify an adjustment taking effect at a later date.[3]

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[2] [2013] FWCFB 4000, [13]
[3] *Fair Work Act* 2009, s.287(4)

13. An increase of this size is needed to prevent further erosion in the relative living standards of the low paid and to begin the task of restoring lost ground. The proposed increase is compatible with all the considerations the Panel must take into account, as set out in this submission.

14. Media reports have suggested that the Australian Chamber of Commerce and Industry ('ACCI') will ask the Panel to increase the National Minimum Wage and award wages by just $8.50 per week.[4] If this were granted, the NMW would increase by just 1.4% and the C10 rate by 1.2%.

15. If inflation is around the level forecast by the Commonwealth (2.75%[5]), the adjustment proposed by ACCI would represent a real wage cut for the 1.54 million workers who rely on the NMW and award minimum wages. This would range from a 1.35% real wage cut for workers receiving the NMW/C14 rate of pay, up to a 1.85% real wage cut for workers on the C2(b) rate.

16. The increase that ACCI proposes would result in a large fall in the earnings of low-paid workers relative to workers on average wages. Even if average wages continue to grow at only 2.9%, as they did in 2013, granting the increase proposed by ACCI would see the minimum wage fall from 43.3% of average full-time earnings to 42.7%. If average full-time wages were to grow at their average pace over the past decade (4.4%) and the ACCI proposal were adopted, then the minimum wage would fall to just 42% of the average. ACCI's proposal is inconsistent with the requirement that the Panel maintain a fair and relevant safety net, taking into account relative living standards and the needs of the low paid.

17. The freeze in the nominal value of minimum wages proposed by the Restaurant and Caterers Association would be even worse. If the Panel were to hold nominal minimum wages constant in 2014, there would be a large decline in their purchasing power and in the relative earnings of the low-paid. The Panel should give no credence to such regressive proposals that are fundamentally at odds with the legislative criteria that guide the Annual Wage Review.

[4] Massola, J. and Lucas, C. 2014, 'Employers fight $8.50 wage rise', *Sydney Morning Herald,* 28 March. Available online: http://www.smh.com.au/federal-politics/political-news/employers-fight-850-wage-rise-20140327-35lyy.html. [Accessed 28 March 2014].
[5] Commonwealth Government 2013, *Mid-Year Economic and Fiscal Outlook 2013-14,* p.15.

The need for a fair increase in minimum wages

19. The Panel is required to establish and maintain a safety net of fair minimum wages, taking into account relative living standards and the needs of the low-paid, among other considerations.[6] We submit that an ever-widening gap between low-paid workers and the rest of the workforce is inconsistent with this requirement. The precipitous, alarming decline in the relative earnings of low-paid workers is inconsistent with the maintenance of a fair and relevant safety net and must not be allowed to continue.

20. If the gap between minimum and average wages continues to grow, then earnings inequality and prevalence of low pay are also likely to continue to rise. If this occurs, Australia will increasingly come to resemble other OECD countries with less egalitarian labour markets.

21. To arrest the decline in the relative earnings of low-paid workers a larger increase than was awarded in 2013 is required. Another increase that only keeps up with inflation, more or less, will see low-paid workers continue to fall behind the rest of the workforce. Awarding our claim in full is necessary to stop the minimum wage bite from falling further and to begin to reverse this trend.

The decline in low-paid workers' relative earnings

22. The National Minimum Wage fell as a proportion of average wages in 2013, continuing the long-term trend. Last year, average full-time wages rose by 2.9%. Although growth in average wages was slow, low-paid workers still lagged behind, with the Panel deciding to increase minimum rates by 2.6%.

23. The National Minimum Wage is now just 43.3% of the average full-time wage (AWOTE), the lowest minimum wage 'bite' on record. Five years ago, the NMW was 46.9% of the average. Five years before that, the ratio was 48.2%. If the NMW had grown at the same pace as AWOTE over the past decade, it would be $693 per week rather than $622.20.

24. Over the past two decades, the minimum wage bite has declined during both economic booms and times of slower growth. Under each of the three institutions that have had responsibility for adjusting minimum wages over the past two decades, the bite has declined.

25. Over the past ten years, average full-time wages rose by $211.30 per week in real terms, or 17.2%. The NMW was increased by just $31.10 in inflation-adjusted terms, a real increase of 5.3% over the past decade. The NMW is only slightly higher in inflation-adjusted terms than it was in 2006.

26. The current minimum wage bite (NMW as a percentage of AWOTE) is 43.3%, the lowest on record. The ratio of the NMW to the median full-time wage has also fallen steadily, and by a similar magnitude, as shown in Figure 3.

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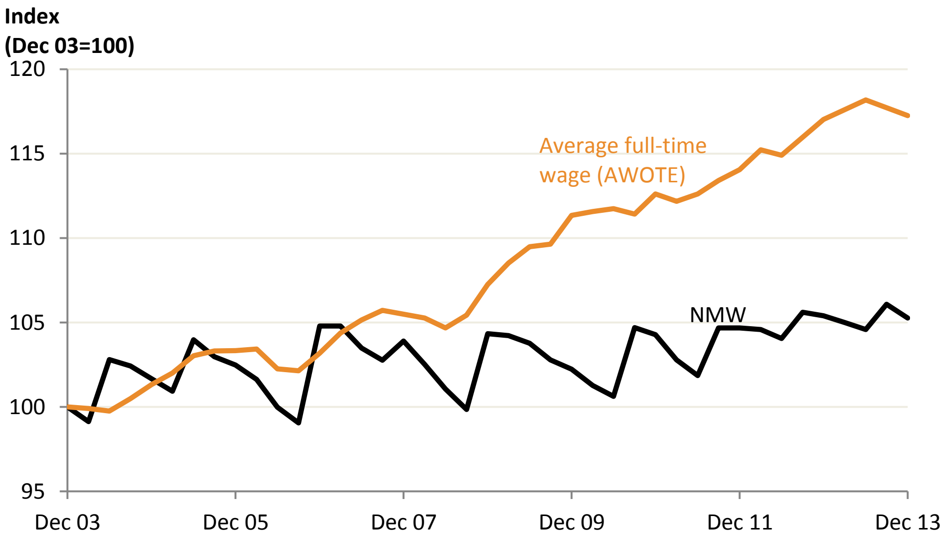
[6] *Fair Work Act* 2009, s.284(1)(a)

Figure 1: Growth in real NMW and AWOTE since December 2003



Source: ACTU calculations based on ABS 6302 and historical minimum wage rates. Deflated by CPI (ABS 6401).

Figure 2: Real average, median, and minimum full-time wages over time

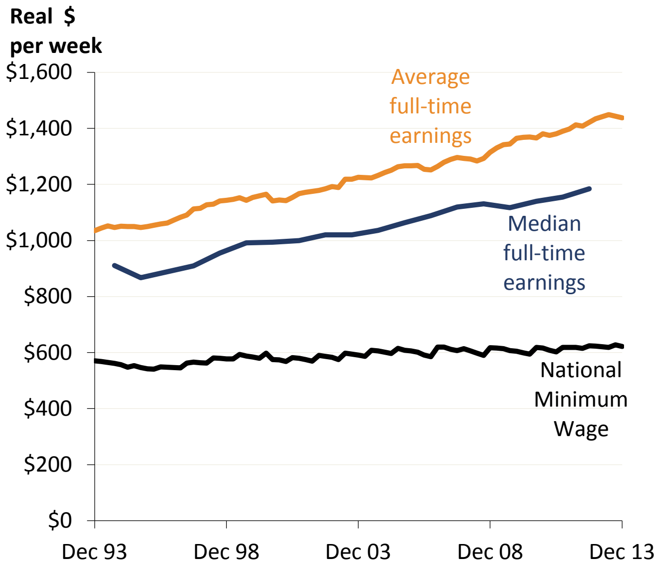
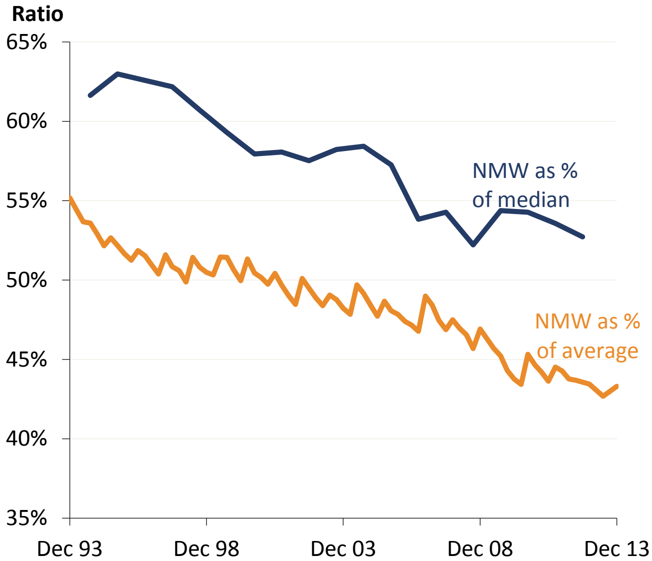


Figure 3: Minimum wage bite: the NMW as a percentage of average and median full-time wages



Source: Average full-time earnings is AWOTE from ABS 6302. Median full-time earnings is from ABS 6310. NMW from past decisions of FWC and predecessors. All series deflated by the CPI (ABS 6401).

27. . Over the past decade, average full-time wages in every Australian industry have risen more rapidly than minimum wages. The fall in low-paid workers' relative earnings isn't due to some outlier industries (like mining and utilities) experiencing rapid real wage growth and dragging up the average. In Accommodation and Food Services, the most award-reliant industry[7], real[8] average full-time wages (AWOTE) rose by an average of 1.5% a year over the decade to November 2013. Over the same period, the National Minimum Wage rose by an average of 0.5% per year (in real terms). As a result, the NMW fell from 65.6% to 59.3% of AWOTE in the Accommodation and Food Services industry, which represents a large decline in the earnings of low-paid workers relative to average wage workers in the industry.

[7] See Table 5 for the density of award-only workers by industry.
[8] By 'real terms' we mean adjusted for changes in the Consumer Price Index.

Figure 4: NMW as a percentage of AWOTE in the four more award-reliant industries

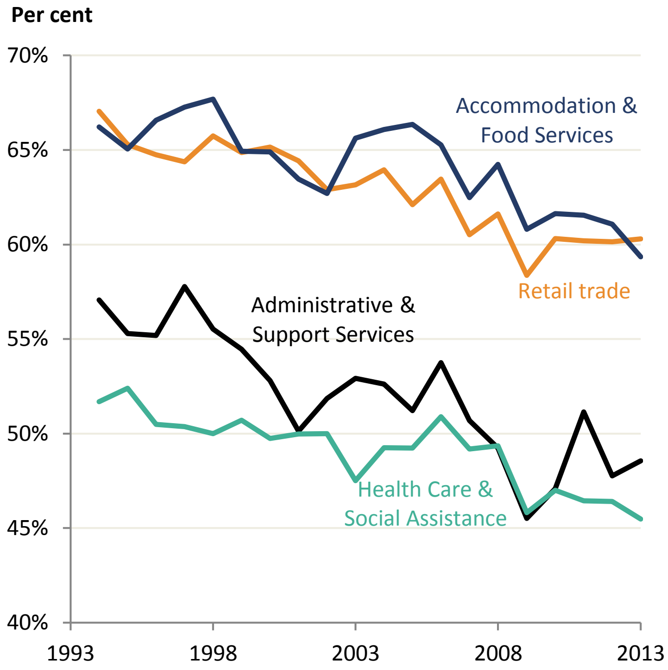
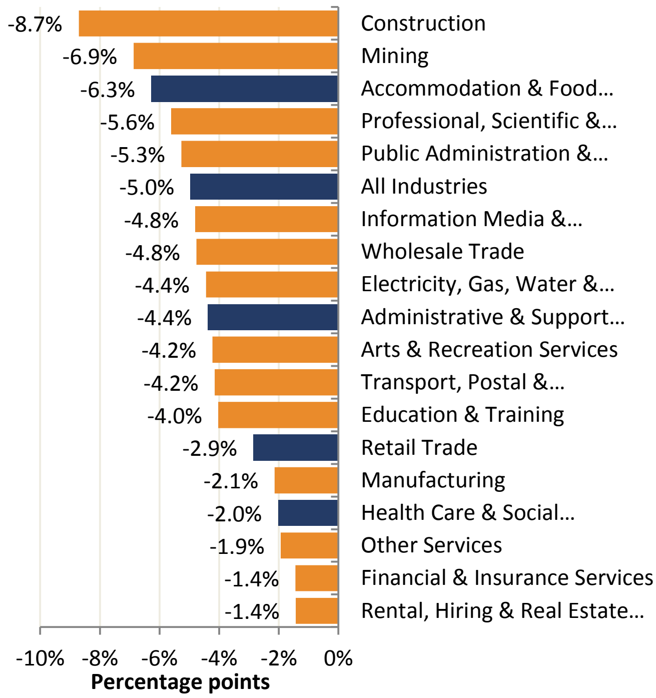


Figure 5: Change in NMW as a percentage of AWOTE by industry: 2003 to 2013



Source: ABS 6302; historical minimum wage rates from FWC; ACTU calculations.

28. The Panel recognised the decline in minimum rates relative to average and median earnings in its decision in the 2012-13 Review, when it stated:

Over the past decade, all award rates of pay have fallen relative to all measures of median and average earnings… All of the evidence before the Panel indicates that the earnings of award -reliant workers have been falling behind the earnings of the rest of the workforce.[9]

29. The Panel expressed some concern about this trend, stating:

It is apparent that while real earnings have generally increased over the past decade, earnings inequality is increasing. Changes in the overall levels of earnings inequality show that real weekly earnings of full -time workers have become progressively less equal in the past decade: for each decile, the lower the earnings, the lower the rate of growth in earnings… If not addressed , these trends may have broader implications both for our economy and for the maintenance of social cohesion in Australia.[10]

30. The Panel is right to be concerned about rising earnings inequality. The Panel should act on these concerns. If the minimum wage bite continues to fall, earnings inequality is likely to continue to rise.

31. As minimum wages fell relative to average and median wages, earnings inequality grew. Over the decade to May 2012, the earnings of full-time non-managerial workers at the 90th percentile grew more than three

[9] [2013] FWCFB 4000, [31]
[10] [2013] FWCFB 4000, [54] and [55]

times as fast as the earnings of workers at the 10th percentile. Workers at the median saw their earnings rise more than twice as fast as those at the 10th percentile.

Figure 6: Real full-time earnings for non-managerial employees in 1992, 2002 and 2012

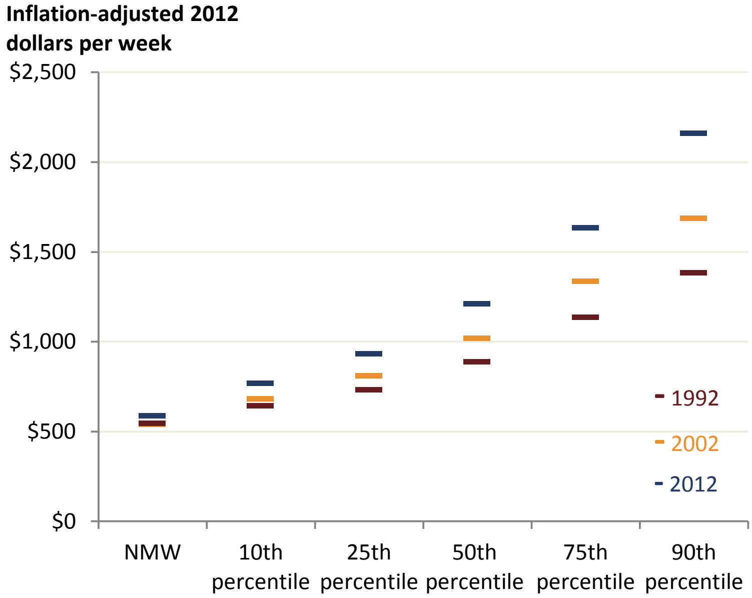
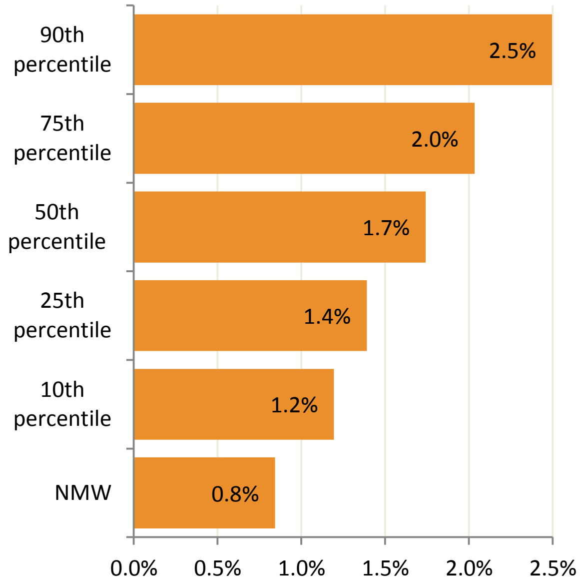


Figure 7: Average annual growth in real full-time earnings: 2002 to 2012



Source: ABS 6306 and ACTU calculations. Wages deflated using the CPI (ABS 6401).

32. The fall in the minimum wage bite (the NMW as a percentage of the average wage) has coincided with a rise in earnings inequality and a rise in the prevalence of low pay. Figure 8 shows the fall in the minimum wage bite, alongside the rise in the ratio of the earnings of the median worker to the worker at the 10th percentile – a key measure of earnings inequality known as the 50:10 ratio. It also shows the rise in the proportion of Australian workers who meet the OECD definition of low pay – those with earnings below two-thirds of the median. The final panel in Figure 8 shows the Gini coefficient, a measure of the inequality of household income.

Figure 8: The minimum wage bite, the 50:10 earnings ratio, the incidence of low pay, and the Gini coefficient

Source: Minimum wage bite, 50:10 ratio and incidence of low pay from OECD Stat. Gini coefficient from ABS 6523. The bite shows the NMW as a proportion of the average full-time wage. The 50:10 earnings ratio is the ratio of the median full-time wage to the 10th percentile. The incidence of low pay is the proportion of full-time workers with earnings below 2/3 of the median for full-time workers. The Gini coefficient is a summary measure of inequality in equivalised household disposable income.

33. The rise in the incidence of low pay is particularly sharp and concerning. In 2002, 13.8% of Australian full-time workers had earnings below two-thirds of the median; by 2012 this had risen to 18.9%.[11] We submit that the rise in the incidence of low pay, and of earnings inequality, is at least partly due to the fall in the relative value of minimum wages. This submission is based on the correlation in Australia between the falling minimum wage bite and the rising level of inequality and low pay; as well as the cross-country correlation between the minimum wage bite and the prevalence of low pay and the extent of earnings inequality (as shown later in Figure 16 and Figure 17).

Australia's minimum wage in international context

34. In its 2012-13 decision, the Panel expressed the view that a comparison of Australia's minimum wage bite with those of other OECD countries "is of limited significance in evaluating the relative living standards supported by award wages."[12] In our submission, and for the reasons set out below, we believe international comparisons are informative. International comparisons can provide an indication of the likely consequences of allowing the minimum wage bite to continue to fall. Studies from comparable economies are also somewhat more relevant now than in the past, as the fall in Australia's minimum wage bite and compression of award relativities makes Australia less distinctive than it was a decade or more ago. For these reasons, we present a broader range of information about other advanced economies than we have in the past.

35. There is no one clear criterion by which the relative living standards of the low-paid can be deemed adequate or inadequate. Informed judgement is required. Historical comparisons are clearly relevant – such

[11] OECD Stat 2014, *Decile ratios of gross earnings*. Available from: http://stats.oecd.org/Index.aspx?DataSetCode=DEC_I [Accessed 16 March 2014].
[12] [2013] FWCFB 4000, [382]

comparisons tell us that the relative living standards of low-paid Australian workers have deteriorated over time. Historical comparisons also show that measures of inequality and the prevalence of low pay have risen as the relative value of minimum wages have fallen, as shown in Figure 8.

36. International comparisons are also useful. These can provide some information about the consequences for Australia of choosing a particular level of relative living standards for low-paid workers. They shed a light on what the possible consequences may be for Australia if our minimum wage bite continues to fall.

37. There is a precedent for an advanced economy with a minimum wage worth over half the median that allowed this ratio to fall to a dangerously low level: the United States. In 1968, the US minimum was equivalent to 55% of the US median wage. It is now worth just 37.8% of the median. The purchasing power of the US minimum wage was greater in 1968, in inflation-adjusted terms ($US10.40) than the Australian minimum wage in 2013 ($US10.20, converted at PPP).[13]

38. The US allowed its minimum wage to fall sharply in real terms in the 1980s. Since then, the minimum has remained more or less constant in real terms (with declines between adjustments followed by relatively sharp rises). The US minimum wage has been worth an average of 35% of the median full-time wage for the past twenty five years or so.

39. Unlike the US, Australia's minimum wage has increased modestly in real terms in recent decades. However, the decline in the value of the Australian minimum wage relative to the median has been steep, as discussed earlier in this chapter.

Figure 9: Minimum wage in inflation-adjusted 2012 US dollars, converted at purchasing power parity

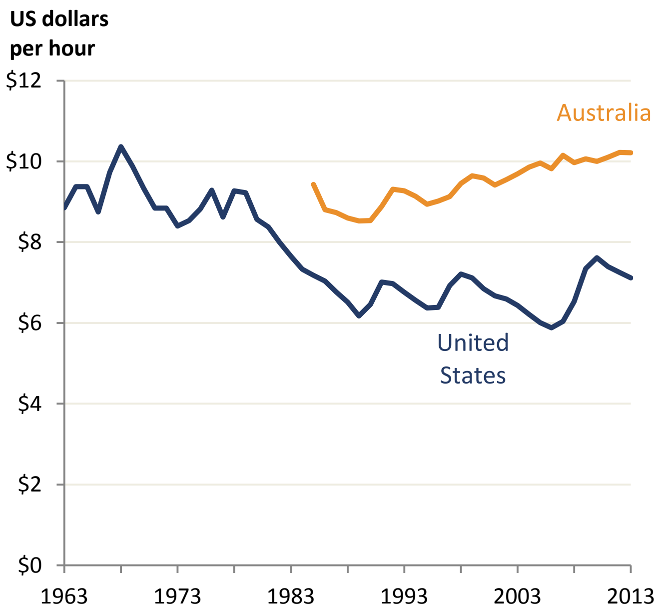
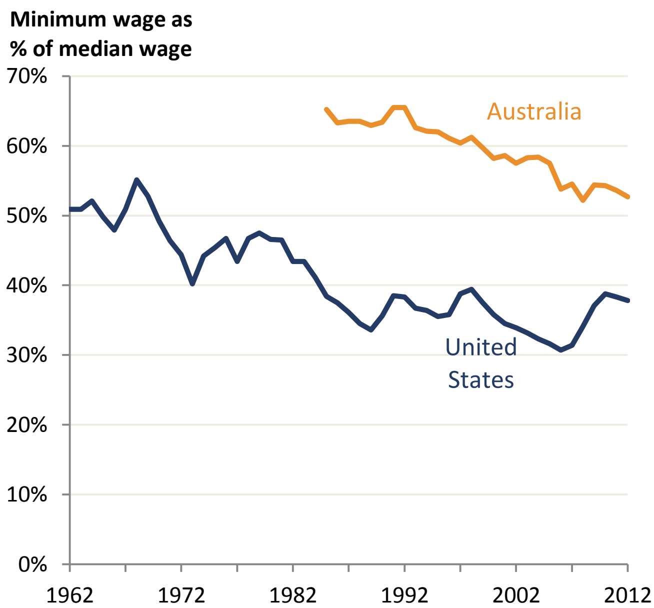


Figure 10: Minimum wage as a percentage of median wage of full-time workers

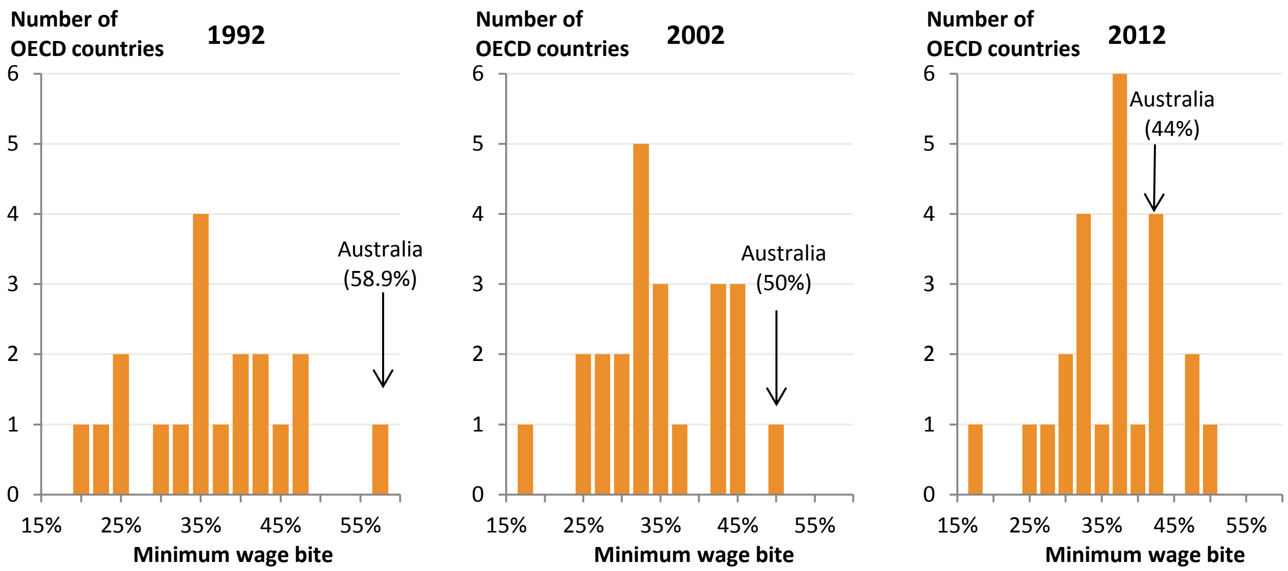


Source: OECD Stat.

[13] OECD Stat 2014, *Real Minimum Wages.* Available from: http://stats.oecd.org/Index.aspx?DataSetCode=RMW [Accessed 15 March 2014].

40. Australia's safety net used to be distinctively robust. Only two decades ago (in 1992), Australia's minimum wage (the C14 award rate) was nearly 60% of the average full-time wage, clearly the highest ratio in the OECD. By 2002, Australia's minimum wage bite had fallen significantly (to around 50% of the average wage), yet remained the highest in the OECD. But as Australia's bite has continued to fall over the past decade, those of many OECD countries have risen. Australia's bite is no longer distinctively high and we are rapidly descending to the middle of the pack. Figure 11 shows this clearly.

Figure 11: The distribution of minimum wage bites in OECD countries over time



Source: OECD Stat and ACTU calculations. The minimum wage bite here refers to the minimum wage as a proportion of the average wage.

41. Over the decade to 2012 (the most recent year for which OECD Stat contains minimum wage information), Australia's minimum wage bite fell by the largest amount of any OECD country, equal with Greece. The minimum wage bite increased in 16 of the 23 OECD countries that had a minimum wage in both 2002 and 2012.

Figure 12: Minimum wage bite in OECD countries (2012)

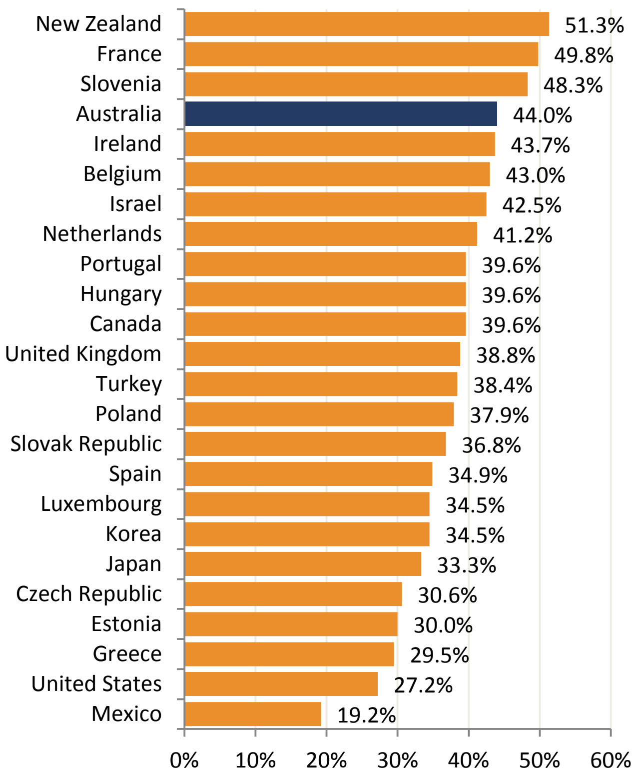
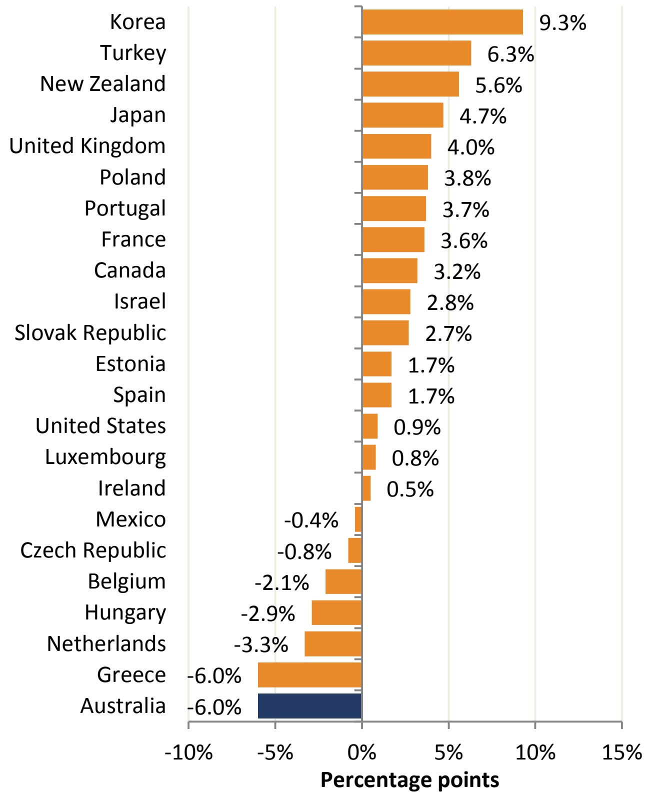


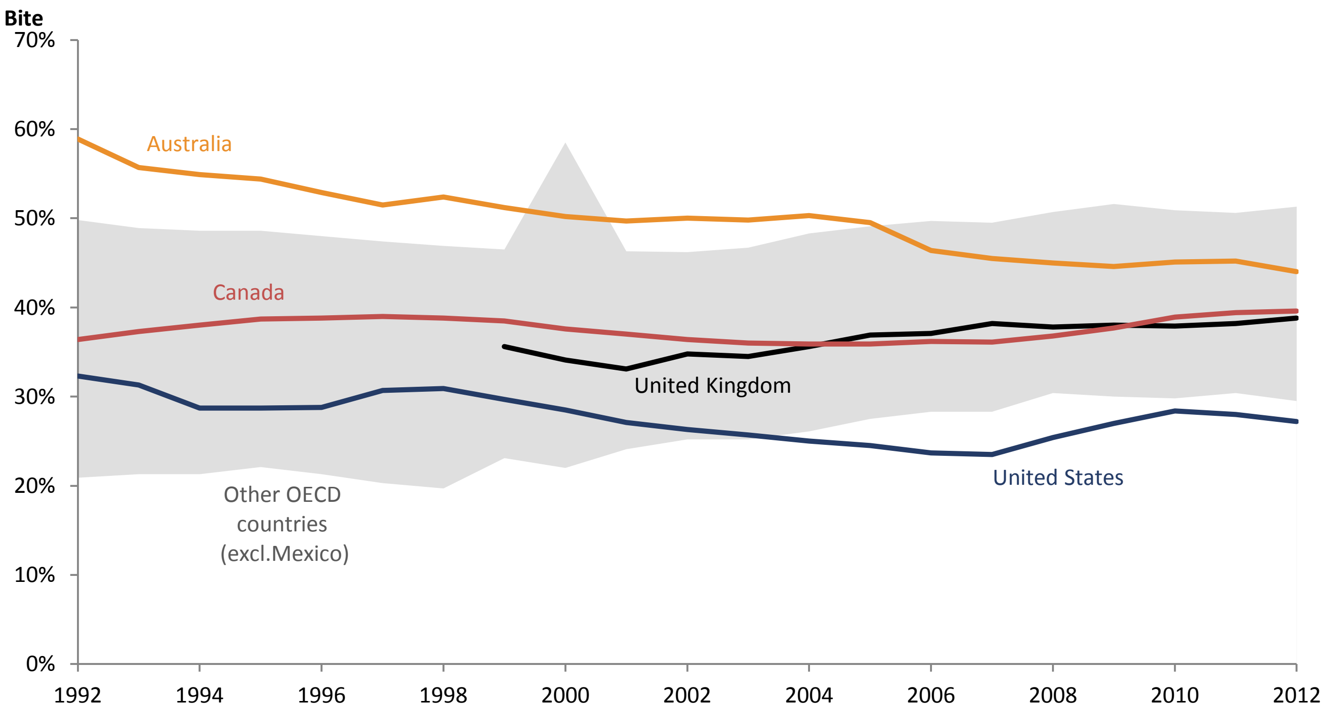
Figure 13: Change in minimum wage bite: 2002 to 2012



Source: OECD Stat and ACTU calculations. The minimum wage bite here refers to the minimum wage as a proportion of the average wage.

42. Figure 14 shows that Australia's minimum wage bite is converging with those of Canada and the UK. The grey shaded area shows the range of minimum wage bites in all OECD countries other than the US, UK, Canada, and Australia.

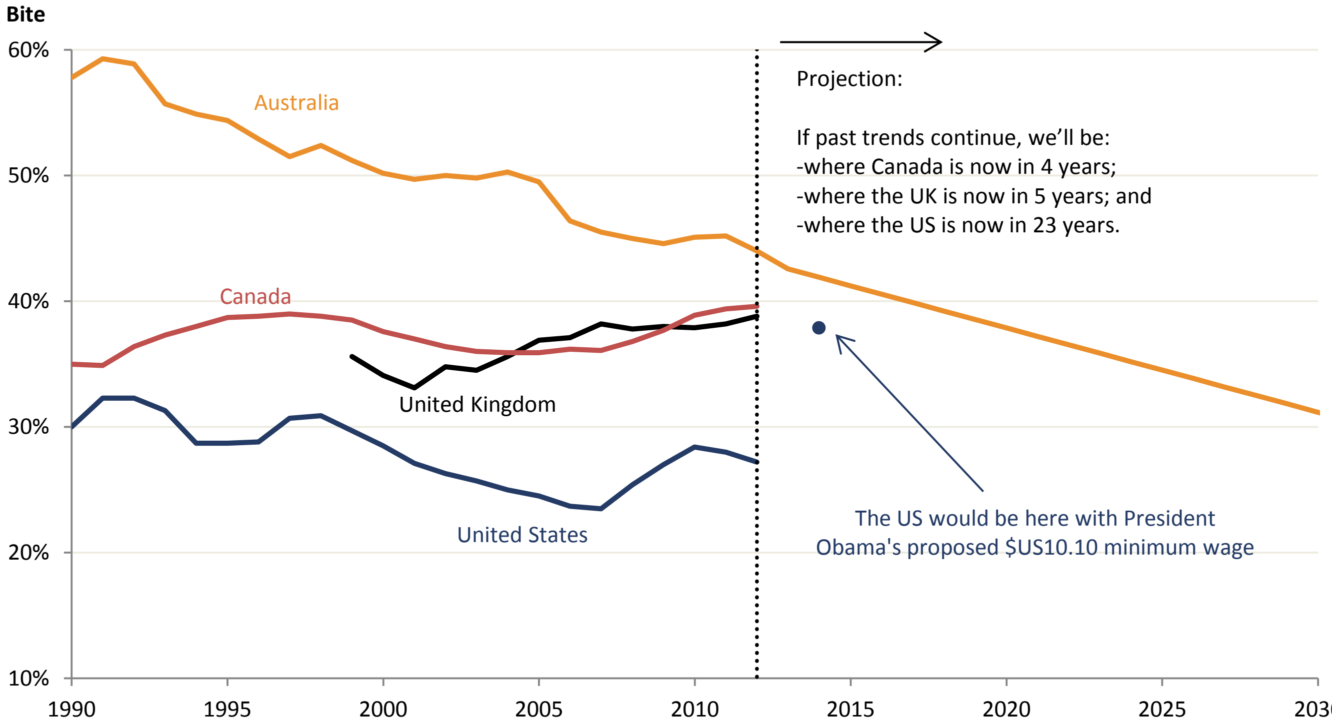
Figure 14: Minimum wage as a percentage of average wage in OECD countries



Source: OECD Stat.

43. If these trends continue, in around four years our bite will be the same as Canada's current bite and in around five years it will be the same as the UK's current bite. In just two decades, if the trend continues, Australia's minimum wage will be worth less than 30% of the average full-time wage, in the vicinity of the present level in the United States.

Figure 15: Minimum wage as a percentage of average wage, including projected Australian bite



Source: OECD Stat and ACTU calculations. The projection assumes a 0.67 percentage point decline per year, the average since 1990. The average between 2002 and 2012 was 0.68 percentage points.

44. The projection in Figure 15 illustrates one reason why we believe international comparisons are of some relevance. Although countries differ in many ways other than just their minimum wage bite (including in factors such as taxes and transfers that affect living standards, as well as in their wage-setting institutions), these comparisons provide an indication of the possible consequences for Australia's labour market and Australian society if the low-paid continue to fall behind.

45. Countries with smaller minimum wage bites unsurprisingly tend to experience greater earnings inequality, as measured by the 50:10 ratio (see Figure 16). Countries with smaller bites also tend to have a greater prevalence of low-paid work, measured as the share of workers who are paid less than two-thirds of the median (Figure 17).

46. In the US, research has suggested that the rise in earnings inequality in the 1980s and 1990s is largely explained by policy-related changes, such as the fall in the real value of the minimum wage. [14] Lee found that the falling real US minimum wage in the 1980s could explain nearly all the growth in inequality in that

[14] Card, D. and DiNardo, J.E. 2002, 'Skill-Biased Technological Change and Rising Wage Inequality: Some Problems and Puzzles', *Journal of Labor Economics,* vol. 20, no. 4, p. 774.

decade.[15] A more recent study by Chernozhukov, Frenandex-Val and Melly found that changes in the US minimum wage can explain nearly all the increase in the US 50/10 ratio since 1979.[16]

47. There is a correlation between a falling minimum wage bite and rising earnings inequality and rising low-paid incidence for Australia over time (see Figure 8) and across countries at a point in time (Figure 16 and Figure 17). Based on this, we submit that further reductions in the minimum wage bite are likely to result in a higher incidence of low pay and higher earnings inequality.

Figure 16: Earnings inequality and the minimum wage bite in OECD countries (2010)

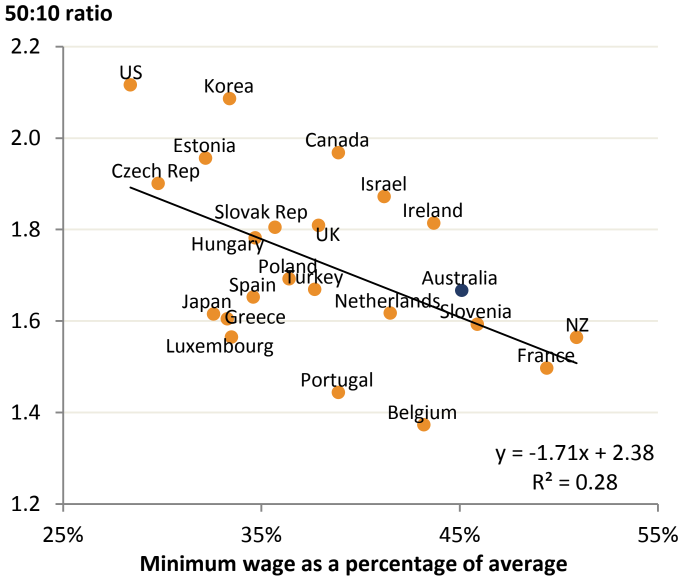
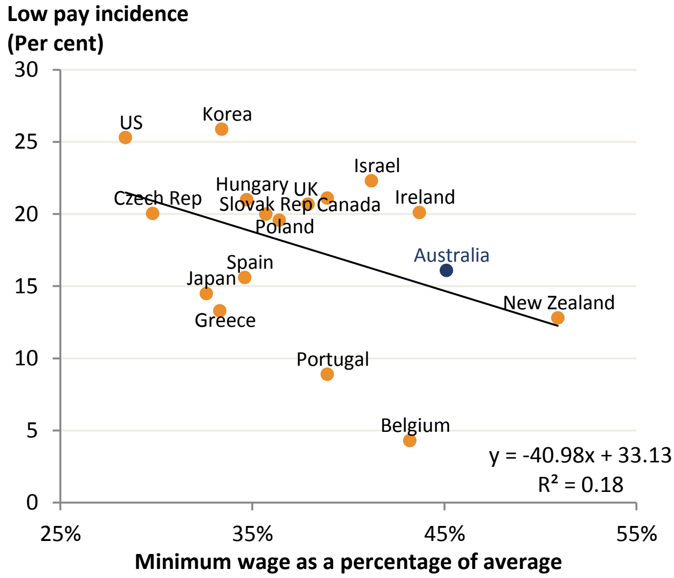


Figure 17: The incidence of low pay and the minimum wage bite in OECD countries (2010)



Source: OECD Stat. The 50:10 ratio measures the earnings of the median full-time employee as a multiple of the earnings of the full-time employee at the 10th percentile. Low pay incidence refers to the share of full-time workers earning less than two-thirds of gross median full-time earnings. The charts include all OECD countries for which data was available for 2010.

48. The rise in earnings inequality (the 50:10 ratio) and the incidence of low pay has been large in Australia over the past decade, relative to other OECD countries, just as the fall in our minimum wage bite has been relatively large. We believe this reflects a causal relation between the fall in the minimum wage bite and the rise in earnings inequality and the incidence of low pay.

49. If the minimum wage bite continues to fall, then earnings inequality and the prevalence of low pay are likely to continue to rise.

[15] Lee, D.S. 1999, 'Wage Inequality in the United States During the 1980s: Rising Dispersion or Falling Minimum Wage?', *The Quarterly Journal of Economics,* vol. 113, no. 3, pp.977-1023.

[16] Chernozhukov, V., Fernandez-Val, I. and Melly, B. 2013 'Inference on Counterfactual Distributions', *Econometrica,* vol. 81, no.6, pp.2205-2268.

Figure 18: Incidence of low pay in OECD countries
(% of full-time workers with earnings below two-thirds of the median)

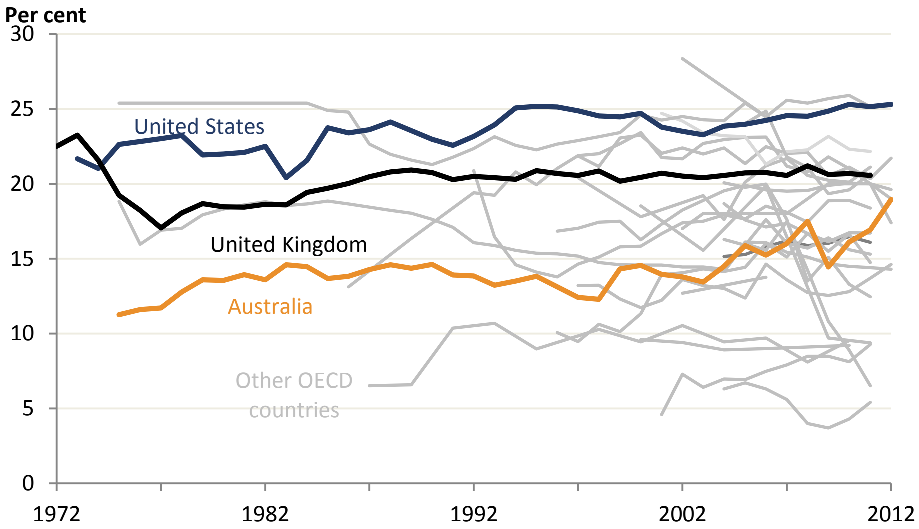
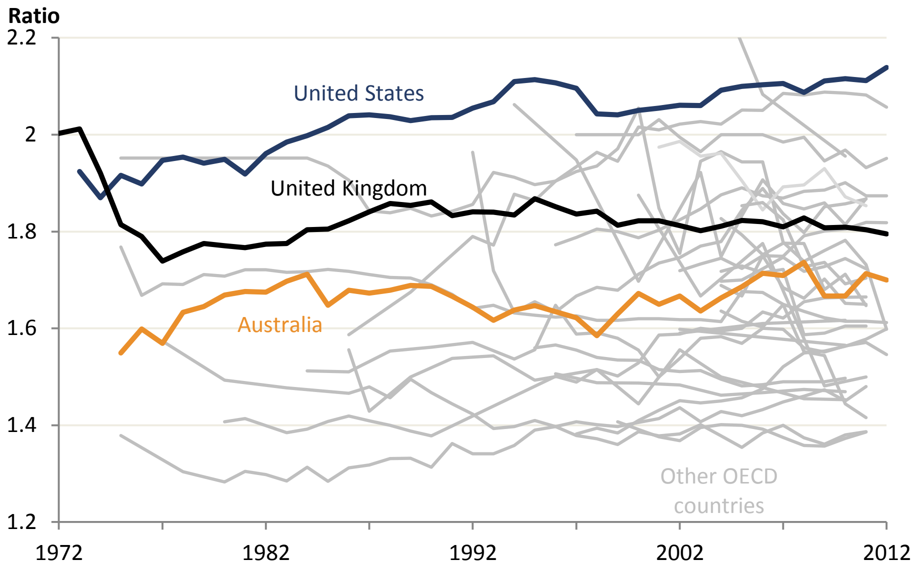


Figure 19: 50:10 ratio among full-time workers in OECD countries



Source: OECD Stat.

50. The Panel's decision in the 2012-13 Review noted that if rising earnings inequality is not addressed, there may be "broader implications both for our economy and for the maintenance of social cohesion in Australia".[17] Some of those implications can be deduced by examining countries with higher levels of inequality than ours. Australia should not aspire to the level of earnings inequality seen in the UK or Canada, much less the United States.

51. The level of inequality, of course, is not solely determined by the level of minimum wages. However, minimum wages play an important role. They are the only policy lever controlled by the Panel. Parliament has set the Panel the task of establishing and maintaining a safety net of fair minimum wages, taking relative living standards into account. We believe that a constantly-falling minimum wage bite is not consistent with the maintenance of a fair safety net.

[17] [2013] FWCFB 4000, [54] and [55]

The needs of the low-paid

52. As well as relative living standards, the Panel is also required to take into account the needs of the low-paid.[18]

53. It is difficult to quantify the ability of low-paid workers to meet their needs, as has been canvassed in previous reviews. Financial stress and deprivation indices provide one means; these suggest that low-paid workers are less able to meet their needs than other workers.[19]

54. While it is difficult to measure the extent to which the low-paid are able to meet their needs, it is somewhat easier to quantify the *change* in the ability of the low-paid to meet their needs. When nominal wages rise faster than the cost of living, it is likely that low-paid workers become more able to meet their needs.

55. In the year to the December quarter 2013, the CPI rose by 2.7% and the employee living cost index (LCI) rose by 1.3%. The Panel increased minimum wages by 2.6% with effect from 1 July. Minimum wages fell in real terms, when deflated by the CPI, and rose modestly when deflated by the LCI. We support the Panel's view, expressed in its 2012-13 decision, that "it is appropriate to have regard to each measure of inflation, noting the conceptual differences."[20]

56. We maintain our position that the employee LCI provides a conceptually preferable means of measuring changes in the cost of living for workers than the CPI. We accept that this means that the Panel's decision in the 2012-13 Review resulted in a modest improvement in the ability of low-paid workers to meet their needs.

57. This modest increase needs to be kept in proper perspective. Over the past five years, the National Minimum Wage has risen by 3.6%, after adjusting for changes in the cost of living as measured by the LCI. Over the same period, the real (LCI-adjusted) average full-time wage (AWOTE) rose by 12.2% and labour productivity (GDP per hour worked) rose 9%.[21]

58. The LCI-adjusted National Minimum Wage fell in 2007, 2008, and 2009. In 2010 and 2011, the NMW only just kept up with the cost of living. The rise in the real NMW over the past two years therefore comes after a prolonged period of decline and then stagnation. When adjusted by the LCI, the NMW is only $10 per week higher than it was in December 2006. This is a very modest rise in the purchasing power of the NMW, in the context of rising labour productivity and average wages.

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[18] *FW Act*, s.284(1)(c)

[19] Properly prepared budget standards, which set out a basket of goods that a household should be able to purchase if it is to attain a certain standard of living, can provide a measure of the adequacy of income in meeting needs. However, we accept that the 1997 standards prepared by the UNSW Social Policy Research Centre are now substantially out of date and of limited relevance, so we do not present them here.

[20] [2013] FWCFB 4000, [206]

[21] The GDP chain price index rose more rapidly than the employee LCI, explaining this difference in growth rates between AWOTE and labour productivity over the period.

Table 2: Annual change in inflation and the National Minimum Wage

	CPI inflation	LCI inflation	Nominal NMW growth	Real NMW growth (CPI)	Real NMW growth (LCI)	Real NMW (CPI)	Real NMW (LCI)
Dec-2003	2.4%	2.5%	3.9%	1.5%	1.4%	$591.10	$596.12
Dec-2004	2.5%	3.4%	4.2%	1.7%	0.8%	$601.02	$601.03
Dec-2005	2.8%	3.1%	3.6%	0.8%	0.5%	$605.79	$603.87
Dec-2006	3.3%	4.3%	5.7%	2.3%	1.3%	$619.43	$611.95
Dec-2007	2.9%	3.5%	2.0%	-0.9%	-1.5%	$614.12	$603.04
Dec-2008	3.7%	4.5%	4.1%	0.4%	-0.4%	$616.75	$600.87
Dec-2009	2.1%	0.3%	0.0%	-2.0%	-0.3%	$604.33	$598.92
Dec-2010	2.8%	4.5%	4.8%	2.0%	0.3%	$616.36	$600.48
Dec-2011	3.0%	3.3%	3.4%	0.4%	0.1%	$618.80	$601.05
Dec-2012	2.2%	0.7%	2.9%	0.7%	2.2%	$623.05	$614.22
Dec-2013	2.7%	1.3%	2.6%	-0.1%	1.3%	$622.22	$622.22

Source: ABS 6401, ABS 6467, historical minimum wage rates, and ACTU calculations.

Figure 20: Purchasing power of the NMW/C14 rate

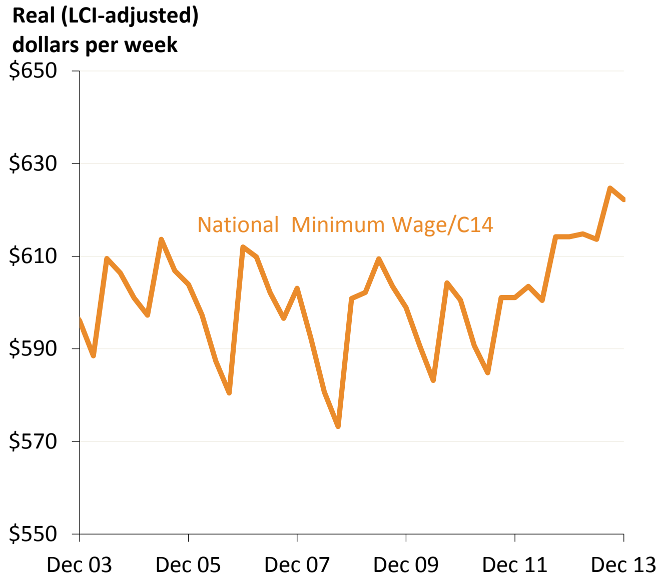
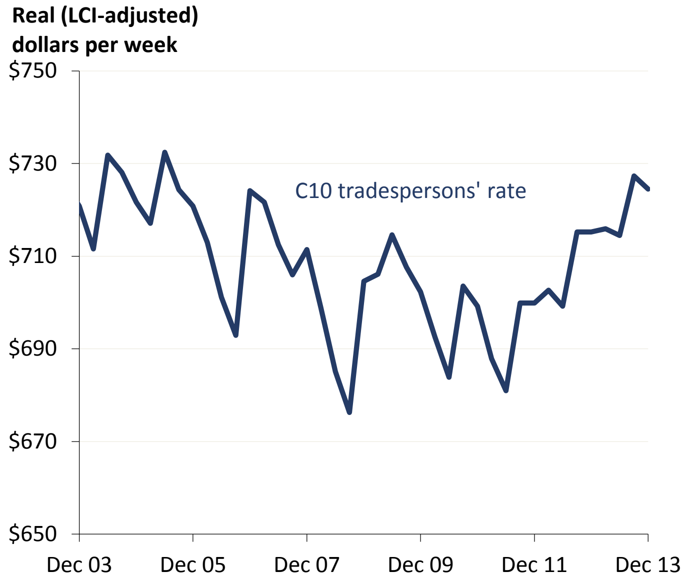


Figure 21: Purchasing power of the C10 rate



Source: Historical minimum wage rates, ABS 6467, and ACTU calculations.

59. The Panel should also be aware that, although the employee LCI is conceptually preferable to the CPI as a measure of the change in the cost of living, it is an average measure that pertains to employee households as a whole. Lower income households have tended to experience more rapid increases in the cost of living than higher income households, including in 2013, as they typically spend a larger proportion of their income on goods and services that have seen higher-than-average price rises.[22] For this reason, the employee LCI may understate the increase in the cost of living experienced by low-paid workers.

60. The Panel has preserved and modestly improved the real value of minimum wages; we submit that this is necessary but not sufficient to maintain a fair and relevant safety net, taking all the statutory considerations into account. We concur with the Panel in its 2012-13 decision, when it stated:

[22] : Phillips, B. 2013, *NATSEM Household Budget Report: Cost of Living and Standard of Living Indexes for Australia, September quarter 2013*, National Centre for Social and Economic Modelling, University of Canberra.

[I]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.[23]

61. A full-time adult minimum wage worker, living alone, has a disposable income 15% above the relative poverty line.[24] For most, though not all, household types, a full-time job at the NMW is sufficient to have a disposable income greater than the relative poverty line. We do not accept that this means that minimum wages enable an adequate standard of living, properly assessed. Full-time workers should be entitled to much more than a standard of living that merely clears the poverty line. The promotion of social inclusion through workforce participation necessitates, in our view, full-time earnings that are sufficient to enjoy a standard of living well above poverty levels. We concur with the Panel in its 2012-13 decision, where it asserted that:

Those in full-time employment can reasonably expect a standard of living that exceeds poverty levels.[25]

62. Financial stress and deprivation indices can provide some indication of the ability of the low-paid to meet their needs. The Statistical Report for this Review shows that households with low-paid adult employees[26] have experienced a rise in financial stress and deprivation between 2003-04 and 2009-10.[27] Over that period:

    a. the proportion that sought assistance from a welfare/community organisation nearly doubled, from 2.3% to 4.2%. Among households with only low-paid adult employees, the rise was even larger, from 2.4% to 6.5%;

    b. The proportion that could not raise $2000 for something important rose from 13.1% to 17.6%;

    c. The proportion that went without meals rose from 2.5% to 3.7%, with the proportion among households with only low-paid adult employees increasing from 3.5% to 6.8%;

    d. The proportion that could not afford a holiday for at least one week a year rose 25.7% to 31.4%, or from 33.7% to 38.4% among households with only low-paid adult employees; and

    e. A range of other financial stress and deprivation indicators also worsened.

63. This is important context for the Panel to consider. While real minimum wages increased very modestly in 2012 and 2013, this came after a period of stagnation, with the purchasing power of the NMW falling between 2004 and 2009 (when the stress and deprivation figures cited above were collected). The modest improvement in the ability of the low-paid to meet their needs has thus been a rise from a low base.

[23] [2013] FWCFB 4000, [219]
[24] See FWC Statistical Report 2013-14, Table 8.2.
[25] [2013] FWCFB 4000, [33]
[26] Defined as those whose hourly earnings are below two-thirds of median hourly earnings for full-time adult employees.
[27] FWC Statistical Report 2013-14, Table 11.4.

The relevance of taxes and transfers

64. The Panel noted in its 2013 decision that both minimum wages and the tax-transfer system are "relevant to the maintenance of an effective safety net for the low-paid".[28] The Panel again asked the parties to give some consideration to the way in which changes in the tax-transfer system are taken into consideration in Annual Wage Reviews.

65. We recognise the importance of tax-transfer policy. The ACTU is engaged in public policy advocacy in this area. We agree that it is appropriate for the Panel to have regard to taxes and transfers. The implications of a particular change to the tax-transfer system would depend on its effect on low-paid workers. Changes to government policy can improve, or erode, the relative and absolute living standards of low-paid workers.

66. There is no evidence that there are likely to be changes to tax or transfer policy that improve living standards this year. There is no change in the tax rates or thresholds currently legislated, nor is there due to be any change in transfer payments other than the usual indexation increases. Any improvement in the living standards of workers reliant on minimum wages will come only from the Panel's decision in this Review.

67. The Panel has a statutory obligation to establish and maintain a fair safety net of minimum wages. While it is appropriate that it is cognisant of tax and transfer policy when doing so, we submit that it would not be appropriate for the Panel to decline to increase minimum wages in a manner that was otherwise justified on the basis that doing so may encourage the Commonwealth at some future time to amend tax and transfer policies to improve the living standards of the low-paid. This would be an abrogation of the Panel's duties under s.284.

68. The Panel may properly have regard to changes to tax-transfer parameters that have occurred and those that are legislated and will occur during the course of the coming year. It should not award lower minimum wage increases in anticipation or expectation of some future compensating policy response by government. To do so, in our view, would be inconsistent with its obligations.

69. Minimum wages and tax-transfer policy both have a role to play in helping the low-paid meet their needs and improving their relative living standards. Parliament has recognised this in charging the Panel with the task of establishing and maintaining a fair safety net of minimum wages. The Panel recognised this in its 2012-13 decision, when it said:

> *We are aware however that the tax-transfer system has its own limitations, including its impact on incentives to work. It is for this reason, among others, that minimum wages must play their part in meeting the needs of the low-paid.*[29]

[28] [2013] FWCFB 4000, [56]
[29] [2013] FWCFB 4000, [60]

70. We do not accept the view that is sometimes put that minimum wages are a 'second best' solution to improving the living standards of low-paid workers. Policies such as an Earned Income Tax Credit (EITC) can help to boost living standards. However, we believe policies such as EITCs are complements to minimum wages, rather than substitutes.

71. In the absence of a binding minimum wage, the value of an in-work subsidy like an EITC will be partly captured by employers.[30] The existence of the subsidy would be expected to increase labour supply. This means that, at any given level of employment demand, wages will be lower. The reduction in wages will be larger where the elasticity of labour demand is relatively low, as we believe it to be. In this way, an EITC without a minimum wage can serve as an effective subsidy to the employers of low-paid workers, rather than the workers themselves. A fair minimum wage can ensure that the EITC has the intended effect of improving the living standards of low-paid workers, which is why we suggest they are substitutes rather than complements.

72. This view is shared by many economists. For example, Lee and Saez show that the optimal policy package combines both a minimum wage and transfers to low-wage workers, such as through an EITC, concluding that "the minimum wage and subsidies for low-skilled workers are complementary policies".[31] Dube describes the debate about the desirability of a higher minimum wage versus an expanded Earned Income Tax Credit as a "false dichotomy."[32]

73. Where Government has legislated for tax-transfer changes designed to improve the living standards of low-paid workers, it is appropriate for the Panel to consider these. In such a circumstance, we would put our view about the appropriate way in which those particular changes should be treated by the Panel. The proper approach, in our view, would depend on the nature of the change, including whether it would deliver a net improvement in living standards, or whether personal income tax was being cut in compensation for an increase in indirect taxation. In the absence of any anticipated change in living standards resulting from changes to taxes and transfers, the question of the way in which changes to taxes and transfers does not require consideration.

The effect of taxes and transfers on relative living standards

74. In its 2012-13 decision, the Panel said:

The tax-transfer system plays a significant role in alleviating the impact of earnings inequality and supporting the living standards of low -paid workers, and the evidence suggests that the tax-transfer

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[30] Evidence suggests that US wages are lower than they would be in the absence of the EITC. See, for example, Rothstein, J. 2010, 'Is the EITC as Good as an NIT? Conditional Cash Transfers and Tax Incidence', *American Economic Journal: Economic Policy,* vol. 2, no. 2, pp.177-208.

[31] Lee, D. and Saez, E. 2012, 'Optimal minimum wage policy in competitive labor markets', *Journal of Public Economics*, vol. 96, no.9-10, pp.739-749.

[32] Dube 2013, op. cit., p.18.

system has been effective in increasing the real level of disposable incomes for lower paid award -reliant families.[33]

75. The personal income tax and transfer systems are progressive, so it's accurate to say these reduce income inequality to some extent. The system "supports the living standards" of *some* low-paid workers through transfer payments. The transfer system does not support the living standards of low-paid workers in households that do not receive transfer payments, although it does narrow the gap in living standards between such households and higher-income households.

76. Earnings inequality has grown over time. The tax-transfer system has not become *more* progressive to the extent that would have been necessary to offset this rise in inequality. The fall in the earnings of minimum wage workers relative to workers on average wages has translated into a fall, of nearly the same magnitude, in the post-tax income of minimum wage workers relative to workers on average wages.

77. In 2013, the NMW was equal to 43.3% of the average full-time wage (AWOTE). After taking taxes into account, the disposable income of a worker on the NMW was $569.50 per week[34] – this is 51.3% of the disposable income of an AWOTE worker.[35] The gap in disposable incomes is smaller than the gap in gross earnings, so the tax system does reduce inequality between minimum wage workers and workers on average wages to some extent.

78. However, the gap in disposable incomes has been rising as the gap in gross earnings has risen. As noted above, in 2013 a full-time NMW worker's disposable income was 51.3% of an AWOTE worker's net income; in 2008 this figure was 53%. In 2003, it was 54.6%.

79. The effect of personal income tax on the incomes of full-time AWOTE and NMW workers is shown in Figure 22. Income tax reduces the income of an AWOTE worker by more than a NMW worker. However, the dotted lines in Figure 22 show that the gap between the net (ie. after tax) incomes of AWOTE and NMW workers has risen over time, just as the gap between their gross (ie. before tax) earnings has grown.

80. Figure 23 compares the minimum wage bite (NMW as a percentage of AWOTE) before tax and after tax. Both have fallen steadily in recent years. The decline in relative earnings of low-paid workers has translated into a decline in relative living standards. The rising pre-tax gap has translated into a rising post-tax gap.

81. The pre-tax bite has declined by a little more than the after tax bite, although both have declined steadily. This is shown in Figure 24, which depicts the gap between the pre-tax and post-tax minimum wage bites, measured in percentage points. The personal income tax rate paid by a NMW worker has fallen by a slightly

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[33] [2013] FWCFB 4000, [58]

[34] The FWC Statistical Report 2013-14 calculates this to be $569.71. The ratio of disposable incomes based on the Statistical Report calculations is still 51.3%.

[35] These calculations pertain to a single adult with no dependents who works full time and receives the NMW or AWOTE and has no other source of income and no tax deductions.

larger proportion than the rate paid by an AWOTE worker, so the gap between pre- and post-tax bites has risen slightly. This rise is quite small, less than two percentage points over the past two decades. This is far from sufficient to offset the fall in the pre-tax bite of over 10 percentage points over the same period.

Figure 22: Annualised real income of adult NMW and AWOTE worker, before and after income tax

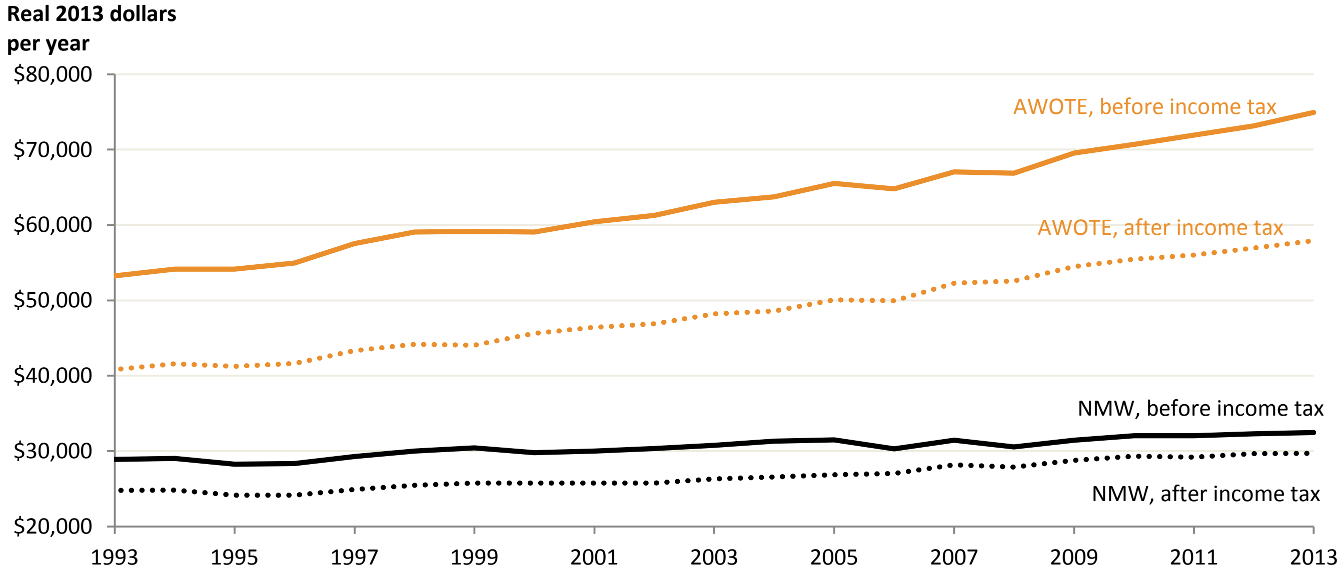


Figure 23: Minimum wage bite, before and after income tax (NMW as % of AWOTE)

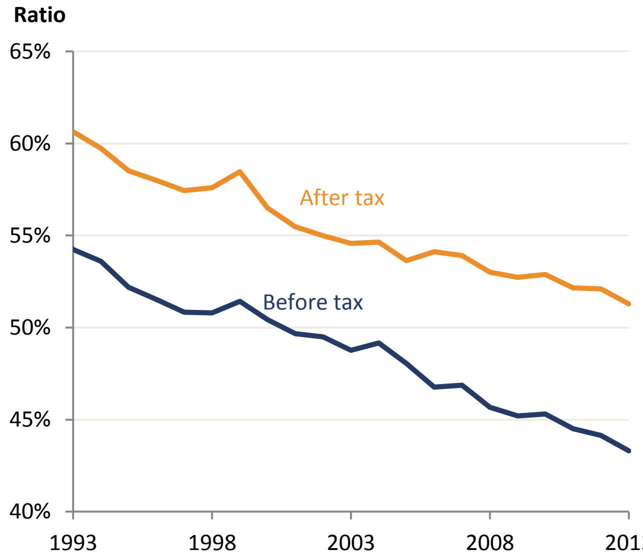
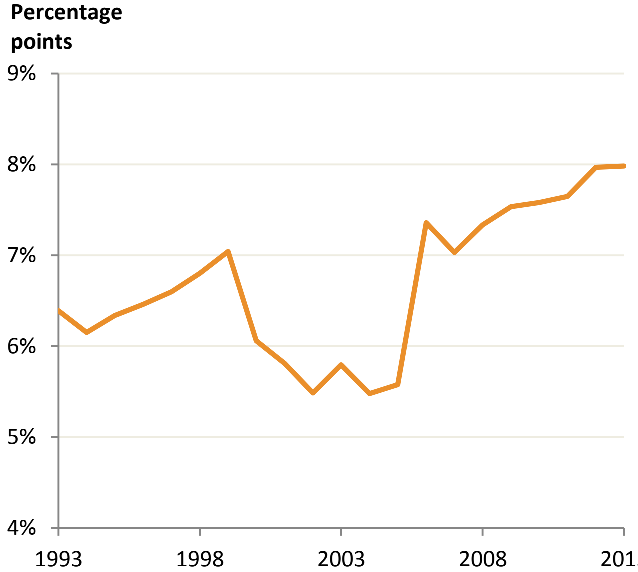


Figure 24: Effect of taxes on the minimum wage bite – difference between gross and net bites



Source: ACTU calculations based on AWOTE from ABS 6302, CPI from ABS 6401, historical personal income tax rates from the ATO, and historical minimum wage rates.

82. In 2013-14, the personal income tax scales remained unchanged from 2012-13. As a result, we estimate that the post-tax minimum wage bite fell by the same amount as the pre-tax bite. The pre-tax bite fell from 44.1% to 43.3%, a fall of 0.8 percentage points. We estimate that the post-tax bite fell from 52.1% to 51.3%, a decline of the same magnitude. The tax system did not offset any of the fall in pre-tax relative earnings.

83. The personal income tax system is progressive, as outlined above. However, most other elements of the tax system are not progressive and many are regressive, with low-income earners paying a larger share of their

income in indirect taxes (like the GST) than high income earners (see Figure 26). The effect of the tax system in reducing household income inequality is much smaller when indirect taxes are taken into account than it appears when only personal income tax is considered.

Figure 25: Average private income, cash transfers and taxes by household income quintile (2009-10)

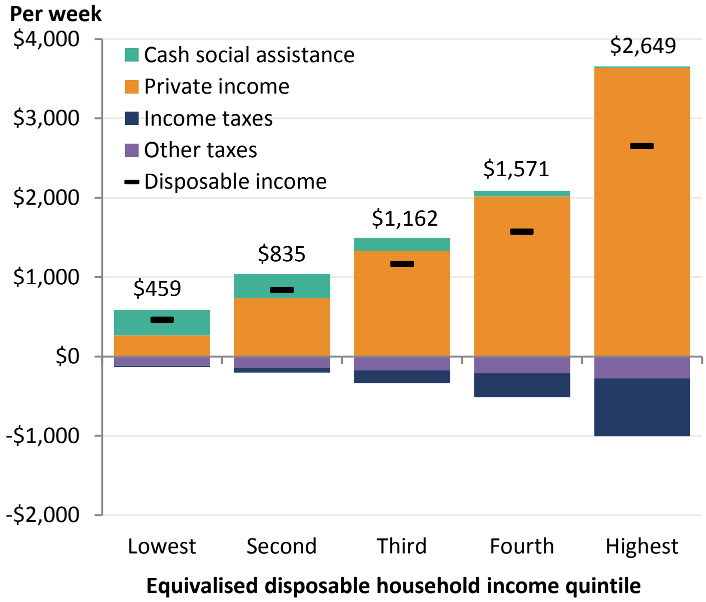
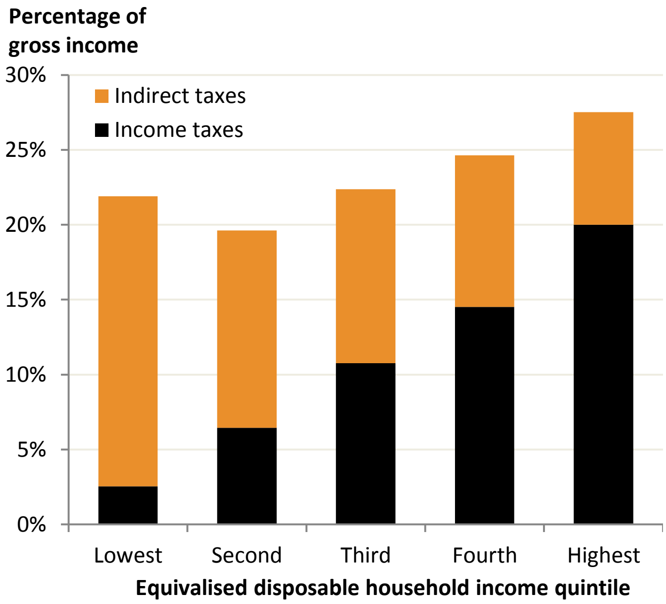


Figure 26: Taxes as a percentage of gross income by household income quintile (2009-10)



Source: ABS 6537 and ACTU calculations. Gross income includes private income and cash social assistance.

84. We are not aware of any material changes to the personal income tax system that are scheduled to take effect in 2014-15. As a result, we expect that a further fall in the pre-tax minimum wage bite as a result of the Panel's decision in this Review would translate into a decline in the post-tax bite of the same magnitude.

Conclusion

85. The earnings of low-paid workers have declined relative to the earnings of workers on average or median wages. This growing gap has not been offset by changes in the tax or transfer systems. As a result, the decline in relative earnings has translated into a decline in relative living standards.

86. If Australia's minimum wage bite continues to fall, earnings inequality and the incidence of low pay are likely to continue to rise.

87. The Panel is required to establish and maintain a safety net of fair minimum wages, taking into account relative living standards and the needs of the low-paid, among other considerations. Awarding our claim in this Review will arrest the decline in the relative living standards of the low-paid and commence the task of improving them.

What do minimum wages do?

88. In its decision in the 2012-13 Review, the Panel reiterated its position that "a modest increase in minimum wages has a very small, or even zero, effect on employment."[36] We submit that there is no new evidence that should cause the Panel to alter its position. Awarding our claim in this Review will promote social inclusion through workforce participation.

89. In this chapter we provide an overview of developments in economic theory that can explain repeated findings of small, nil, and positive employment effects from minimum wage increases in a range of countries. We also provide a summary of recent empirical evidence on the employment effects of minimum wages.

Theory: perfect competition vs dynamic monopsony

90. The Institute of Public Affairs (IPA), in its preliminary submission to this Annual Wage Review, stated that "economic theory is unequivocal about the effects of the minimum wages on unemployment."[37] This is not true. This statement is either deliberately misleading or is made in ignorance.

91. Similarly, ACCI in its submission to the 2012-13 Review stated that "the neoclassical theory of minimum wage increases is familiar."[38] This theory may be familiar, but its assumptions are implausible and its predictions are inconsistent with a range of empirically-observed facts about labour markets. The model of a perfectly competitive labour market does not fit the facts.

92. The perfectly competitive model, on which the IPA and ACCI rely, contains a number of strong assumptions. It assumes there are many identical firms and homogeneous labour. An increase in the total quantity of labour supplied requires an increase in the wage rate – the labour supply curve (for the market as a whole) therefore slopes upwards. As workers are added, each additional worker produces less than the preceding worker (ie. there is diminishing marginal product of labour), so the labour demand curve slopes downwards.[39] The intersection of these curves gives the equilibrium wage and quantity of labour employed. The equilibrium wage rate equals the marginal product of labour.

93. While the market labour supply curve slopes upwards, individual firms in the perfectly competitive model face a horizontal (ie. infinitely elastic) labour supply curve. This means it's assumed that firms can immediately fill all vacancies by paying the prevailing market wage. If a firm expands its workforce, the market wage does not change (as each firm is too small to affect the market outcome).

[36] [2013] FWCFB 4000, [464]
[37] Institute of Public Affairs 2014, *Summary of Submission to the Annual Wage Review 2014*, 25 February, p.1.
[38] ACCI 2013, *Submission to the 2012-13 Annual Wage Review*, para 220, p.69.
[39] Zavodny, M. 1998, 'Why Minimum Wage Hikes May Not Reduce Employment', *Economic Review,* Federal Reserve Bank of Atlanta, pp. 19-20.

94. The model of a perfectly competitive labour market assumes that employees face no costs of job search, have perfect information about all vacancies, and have homogeneous preferences. Competition among employers leads to a single wage for each type of worker (adjusted for non-financial benefits of the job). If any employer pays even slightly below the market wage, the firm will immediately lose all existing workers and will be unable to fill vacancies.[40]

95. Under the assumptions of the perfectly competitive model, the effect of a minimum wage set above the equilibrium rate is unambiguous. Labour supply will exceed labour demand at the minimum rate. Unemployment will thus result. However, the assumptions of the perfectly competitive model are implausible. The model does not accurately describe real-world labour markets.

96. The predictions of the perfectly competitive model are inconsistent with many empirically observed features of labour markets, such as: the existence of vacancies; substantial differences in wages across workers with similar characteristics and jobs; the differences in turnover between industries that pay high wages versus those that pay low wages; the fact that large firms tend to pay larger wages; the willingness of some employers to pay for general training rather than only the acquisition of firm-specific skills; the existence and persistence of racial and gender pay gaps; and the fact that minimum wages do not necessarily reduce employment.[41]

97. Other models of the labour market have been developed that feature more realistic assumptions and can explain these empirical regularities. A widely-used model is 'dynamic monopsony'.[42] In a model of this sort, the labour supply curve facing a firm slopes upwards (rather than being horizontal as in the case of perfect competition). This can occur because of any number of frictions, or deviations from the implausible assumptions of the perfectly competitive model. Workers may not have perfect information about all alternative positions and may therefore be cautious in changing jobs. Job search may be costly. Workers and jobs may be mismatched geographically, and changing jobs may involve greater transport costs. Workers may have heterogeneous preferences regarding jobs.

98. The 'dynamic' in dynamic monopsony models indicates that the market power held by employers in such models stems from frictions in the labour market, such as search. This distinguishes it from monopsony in the sense used by Stigler[43] and Robinson[44] in which a monopsonist is the sole purchaser of labour or a particular type of labour in a region or industry. An employer in a dynamic monopsony model need not be a monopolist

[40] Bhaskar, V., Manning, A. and To, T. 2002, 'Oligopsony and Monopsonistic Competition in Labor Markets', *Journal of Economic Perspectives,* vol. 16, no. 2, Spring, pp. 155-174.
[41] See Zavodny 1998 and Bhaskar, et al. 2002.
[42] Models of this sort are sometimes described as 'oligopsony' or 'dynamic monopsonistic competition'.
[43] Stigler, G.J. 1946, 'The Economics of Minimum Wage Legislation', *American Economic Review,* vol. 36, no. 3, pp.358-365.
[44] Robinson, J. 1969, *The Economics of Imperfect Competition, Second Edition,* Macmillan, London.

in the product market, nor the sole purchaser of labour in the region or industry. A single employer in a market with many employers can have monopsonistic power if workers bear costs of job search.[45]

99. A firm in a perfectly competitive market can expand employment at the prevailing market wage, ie. the labour supply curve to the firm is horizontal. By contrast, a firm with monopsony power that wishes to expand its workforce and fill vacancies may need to pay a higher wage than is paid to its existing workforce. If it offers the higher wage necessary to fill vacancies, it will need to increase the wage of existing employees. In this case, the firm faces an upward sloping demand curve rather than the infinitely elastic, horizontal supply curve envisaged by the perfectly competitive model, in which firms can hire an infinite number of additional employees at the prevailing wage. In a situation where firms have monopsony power and face an upward sloping demand curve, their profit-maximising level of employment and wages will both be lower than under perfect competition. [46]

100. A minimum wage, in such a model, can increase both employment and earnings. [47] If the minimum rate is set at or below the marginal product of labour, employment will not fall (and could rise) as a result of the imposition of the minimum rate. Monopsonistic models do not have an unambiguous prediction for the employment effects of a minimum wage. Bhaskar, et al. note that “a minimum wage set moderately above the market wage may have a positive effect or a negative effect on employment, but the size of this effect will generally be small.”[48]

101. Dube describes the effect of minimum wages as follows:

By reducing frictional wage inequality, an increased minimum wage reduces job-to-job transitions. Put simply, if McDonald’s pays a better wage, fewer of its workers will leave to take better paying jobs – say at the higher wage chain In-and-Out Burgers. A higher statutory minimum reduces vacancies at McDonald’s, and makes it more likely that the vacancy at the In-and-Out Burgers is filled from the ranks of the unemployed.[49]

102. Dynamic monopsony-style models of the labour market have become widely accepted. In Coles and Mortensen’s words, “the concept of monopsony in the labour market has achieved a new respectability among labour economists as a formulation of wage setting institutions in labour markets.”[50] Diamond, Mortensen and Pissarides jointly won the Nobel Prize in economics in 2010 “for their analysis of markets with

[45] Ashenfeler, O.C., Farber, H. and Ransom, M.R. 2010, ‘Modern Models of Monopsony in Labor Markets: A Brief Survey’, IZA Discussion Paper No. 4915, IZA, Bonn, Germany.
[46] Ashenfelter, et al. 2010, p.3.
[47] Ashenfelter, et al. 2010, p.4.
[48] Bhaskar, et al. 2002, p. 169.
[49] Dube, A. 2013, Statement before the US Senate Committee on Health, Education, Labor & Pensions Hearing on ‘Keeping up with a Changing Economy: Indexing the Minimum Wage’, March 14, p.15.
[50] Coles, M.G. and Mortensen, D.T. 2011, ‘Dynamic Monopsonistic Competition and Labor Market Equilibrium’, Preliminary draft paper. Available from: http://sam.univ-lemans.fr/IMG/pdf/Dale_Mortensen.pdf [Accessed 26 March 2014]

search frictions". Mortensen's work formalised the dynamic monopsony model.[51] Models with search and other frictions, in which employers have some monopsony power and face upward sloping supply curves, are respected, widely used, and can explain empirically-observed facts about the labour market more readily than implausible models of perfect competition.

103. There are many economic models of the labour market. There is no one 'true' model. Models in which employers have some labour market power, like dynamic monopsony, are more consistent with a range of observed facts about labour markets than the model of a perfectly competitive labour market. The Panel should not accept assertions that economic theory holds that binding minimum wages necessarily cost jobs.

104. The dynamic monopsony model is ambiguous on the question of whether a minimum wage increase would result in increased, unchanged, or reduced employment. One of the key figures in the development of dynamic monopsony theory, Professor Alan Manning of the LSE, argues that "the impact of minimum wages on employment should primarily be an empirical study and the results of these empirical studies should be used to inform policy".[52] We agree. We now turn to the available evidence.

Evidence of monopsony in Australia and elsewhere

105. The key feature of dynamic monopsony and related models is that the labour supply curve to the firm slopes upwards. Firms can offer lower wages without immediately losing their workforce. This is an empirically testable proposition.

106. Booth and Katic evaluate whether the Australian labour market displays signs of monopsony using the HILDA dataset.[53] They replicate Manning's[54] application of Burdett and Mortensen's dynamic monopsony model.[55] They find:

> *the Australian wage elasticity of labour supply to a firm is around 0.71, only slightly smaller than the figure of 0.75 reported by Manning (2003) for the UK. These estimates are so far from the perfectly competitive assumption of an infinite elasticity that it would be difficult to make a case that labour markets are perfectly competitive.*[56]

107. They also find:

[51] Burdett, K. and Mortensen, D.T. 1998, 'Wage Differentials, Employer Size, and Unemployment', *International Economic Review,* vol. 39, no. 2, pp. 257-273.
[52] Manning, A. 2003, *Monopsony in Motion: Imperfect Competition in Labor Markets,* Princeton University Press, New Jersey, p. 19.
[53] Booth, A.L. and Katic, P. 2010, 'Estimating the Wage Elasticity of Labour Supply to a Firm: What Evidence is there for Monopsony?', CAMA Working Paper 35/2010, Centre for Applied Macroeconomic Analysis, Crawford School of Public Policy, Australian National University, Canberra.
[54] Op cit.
[55] Burdett, K. and Mortensen, D.T. 1998, 'Wage Differentials, Employer Size, and Unemployment', *International Economic Review,* vol. 39, no. 2, pp. 257-73.
[56] Booth and Katic 2010, p.0.

[T]he female wage elasticity of separation is not significantly different from zero… [which suggests] Australian women are making decisions to leave a continuing job entirely on nonwage considerations… That there is not a larger increase in separations in response to lower wages suggests other factors are keeping workers at the firm… this is in accord with the assumptions of much of the 'new monopsony' theory – that there are labour market frictions, search costs and non-pecuniary factors keeping workers in a job and consequently allowing the employer to extract some rents.[57]

108. The dynamic monopsony model fits the facts in Australia. It also fits the facts elsewhere. Ashenfelter, et al. cite "remarkable evidence that labour markets are far from competitive. The evidence comes from a variety of countries and labour markets using a variety of econometric techniques and models."[58]

Australian evidence on the effect of minimum wages on employment

109. There are relatively few studies of the employment effects of minimum wage increases in Australia. One key reason for this is that Australia does not have geographic variation in minimum rates for the private sector (with the exception of a small number of unincorporated enterprises in Western Australia[59]), which precludes the use of econometric techniques that involve comparing similar regions with different minimum wages. Another reason is a lack of rich, frequent, high-quality microdata.

110. One recent empirical study in Australia is by Olssen.[60] He examined the effect of youth minimum wages in Australia on employment using data from the HILDA survey. The employment rates of those who are just older than a threshold for a higher minimum wage were compared with the employment rates who were just younger than the threshold. For example, the study compares the employment rates of those who are just under 19 or just over 19, where turning 19 entitles an employee to be paid a higher minimum rate than at age 18. The author finds "relatively strong evidence that higher award minimum wages have a positive effect on actual wages," finding that a 10% increase in award minimum wages "flows through to an average increase in actual wages of between 5% and 7%."

111. Olssen finds:

no evidence at all that award minimum wage have any short term causal impact on employment… mean hours worked is not statistically different for individuals in the higher award minimum wage group relative to those in the lower award minimum wage group.[61]

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[57] Booth and Katic 2010, pp.10-11.
[58] Ashenfelter, et al. 2010, p.9.
[59] Employers in Western Australia that are not constitutional corporations are obliged to pay at or above minimum rates that are set by the Western Australian Industrial Relations Commission. These are currently slightly higher than minimum rates in the national system.
[60] Olssen, A. 2011, 'The Short-Run Effects of Age-Based Youth Minimum Wages in Australia: A Regression Discontinuity Approach', Paper presented at New Zealand Association of Economists Annual Conference, Wellington, 29 June-1 July 2011. Paper available from: http://www.motu.org.nz/publications/detail/the_short-run_effects_of_age_based_youth_minimum_wages_in_australia_a_regre [Accessed 11 March 2014].
[61] Olssen, A. 2011, p.23 and p.27.

Olssen finds that these findings are unchanged by adding statistical controls and changing the estimation method.

112. Another relatively recent study is by Lee and Suardi.[62] They use time series data to identify the employment effect of minimum wage increases in Australia. They use quarterly time series data with a focus on Victoria, the ACT and the Northern Territory from 1997 onwards. These jurisdictions were chosen as they did not have a State industrial relations system over the period in question. The authors test for structural breaks in the time series data. They find:

> *The tentative conclusion is that the seven minimum wage increases in Australia from 1997 to 2003 appear to not have had any significant negative employment effects for teenagers. A possible explanation is that the increases have generally been moderate and predictable…*[63]

113. Over the period examined by Lee and Suardi, the C14 rate generally rose at around the same pace as the Wage Price Index. This suggests increases in minimum wages that keep up with aggregate wages growth are consistent with strong employment growth.

International evidence on the effect of minimum wages on employment

114. We acknowledge the Panel's view that the "relevance of overseas studies is reduced by the particular character of minimum wage fixation in Australia".[64] However, while such studies need to be approached with some care, they are not irrelevant.

115. As noted earlier at paragraph 34, as Australia's minimum wage has fallen relative to median and average wages, our system has become somewhat less distinctive when compared to other OECD countries. There has been a convergence between Australia's minimum wage bite and those of other OECD countries. For example, the UK National Minimum Wage is now around half its median wage, only slightly lower than Australia's as a proportion of the median.[65] In the past it has been argued that international studies are irrelevant when considering the Australian situation, as our minimum wage is much higher; this is less salient than in the past.

116. Furthermore, the fact that a range of studies from countries such as the US and UK find no significant employment effects from minimum wage increases at the very least supports the proposition that minimum wage increases *need not necessarily* reduce employment, contrary to the *a priori* assertions of some parties.

[62] Lee, W-S. and Suardi, S. 2011, 'Minimum Wages and Employment: Reconsidering the Use of a Time Series Approach as an Evaluation Tool', *British Journal of Industrial Relations,* vol.49, no.S2, pp. 376-s401.
[63] Lee, W-S. and Suardi, S. 2011.
[64] [2012] FWAFB 5000, [201]
[65] Low Pay Commission 2013, *National Minimum Wage: Report 2013,* Low Pay Commission, London, Table 2.1.

117. There have been significant methodological advances in the study of minimum wages in the past two decades. As Professor Michael Reich of UC Berkeley put, it: “economists today can provide more credible studies than in previous years. We have much-improved statistical tools, better data and more elaborated understandings of frictional labour markets.”[66]

118. Until the early 1990s, US studies generally used time series data to examine the correlation between changes in the US federal minimum wage and the national teen unemployment rate. This approach is now generally seen as flawed, as it does not take into account the many factors other than minimum wages that can cause changes in the unemployment rate.[67]

119. From the 1980s, the US began to experience much more variation in minimum wage rates across states. This enabled the application of new, more credible research techniques to the question of the employment effects of minimum wages. Two main approaches were taken. One was the state panel approach pioneered by Neumark and Wascher.[68] The other was the case study approach pioneered by Card and Krueger.[69] The state panel approach typically found negative, statistically significant employment elasticities, while the case study approach generally found elasticities that were not significantly different from zero (and were sometimes positive).

120. Both of these approaches represented an improvement on the time series approach, but are flawed in some respects. The state panel approach implicitly assumes that employment in low-wage sectors in states like Massachusetts and Oregon is following a parallel trend to low-paid employment in states like Texas and Georgia. This has been shown to be an implausible assumption.[70] The case study approach of Card and Krueger is limited in that it’s difficult to draw conclusive inference from single case studies; they typically evaluate employment effects over only short time periods; and it may be difficult to generalise from these results.[71]

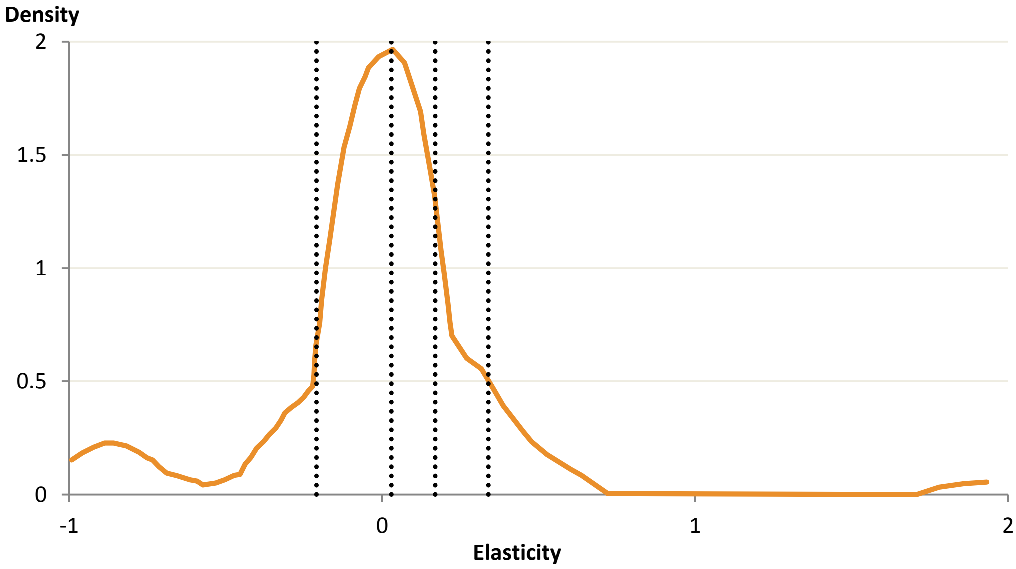
121. A new generation of empirical research builds and improves upon the state panel and case study approaches. Arindrajit Dube and co-authors, in an important series of papers, have combined elements of both.[72] They compare differences in employment across geographically-adjacent regions before and after one

[66] Reich, M. 2013, ‘Minimum Wage Policy After Seventy-Five Years: Historical and Contemporary Effects of the FLSA’, Presentation to the Committee on Health, Education, Labor and Pensions, US Senate, 25 June.
[67] Dube, A. 2013, Statement before the US Senate Committee on Health, Education, Labor & Pensions Hearing on ‘Keeping up with a Changing Economy: Indexing the Minimum Wage’, March 14, p.11.
[68] Neumark, D. and Wascher, W. 1992, ‘Employment Effects of Minimum and Subminimum Wages: Panel Data on State Minimum Wage Laws’, *Industrial and Labor Relations Review,* vol. 46, no. 2, pp.55-81.
[69] Card, D. and Krueger, A. 1994, ‘Minimum Wages and Employment: A Case Study of the new Jersey and Pensylvania Fast Food Industries’, *American Economic Review,* vol. 84, no. 4, pp. 772-793.
[70] Allegretto, S., Dube, A., Reich, M. and Zipperer, B. 2013, ‘Credible Research Designs for Minimum Wage Studies’, Discussion Paper No. 7638, IZA, Bonn, Germany.
[71] Dube 2013, op cit.
[72] See Table 3.

of the two regions adjusted its minimum wage[73] They use detailed county-level data that enable them to properly control for differing trends that are unrelated to changes in minimum wages. The approach in Dube, Lester and Reich essentially entails conducting 64 different Card-Krueger style natural experiments and pooling them together.[74] Unlike Card and Krueger's work, which considered only short-run changes in employment in response to minimum wage changes, the new studies consider long-term effects over a 17-year period. The finding of no statistically significant disemployment remains.

122. The distribution of estimated employment elasticities from the 64 natural experiments considered by Dube, Lester and Reich[75] is shown in Figure 27. The dotted lines show the estimates obtained by Neumark and Washer (2000) of -0.21; Dube, et al. (2007) of 0.03; Card and Krueger (2000) of 0.17; and Card and Krueger (1994) of 0.34. The elasticities are clustered around zero, indicating no employment effect of minimum wages.

Figure 27: Distribution of estimated employment elasticities in 64 natural experiments in the US



Source: Dube, Lester and Reich 2010. Figure 5. The dotted lines show the estimates obtained by Neumark and Washer (2000) of -0.21; Dube, et al. (2007) of 0.03; Card and Krueger (2000) of 0.17; and Card and Krueger (1994) of 0.34.

123. Dube and co-authors have "replicated these findings in 4 papers using 5 datasets and 6 different ways of accounting for comparability of areas".[76] They have examined two groups of interest: teens and restaurant workers. They repeatedly find no statistically significant effects of minimum wages on employment in the United States since 1990. They find strong and statistically significant effect of minimum wages on earnings (indicating that the minimum rates are 'binding'). While they do not find an effect on the *level* of employment, they do find that minimum wages cause a significant reduction in employment *flows*. This

[73] Allegretto, et al. (2013) contains a comprehensive rebuttal to criticism by Neumark, Salas and Wascher (2013) of the research methods employed in previous papers such as Dube, Lester and Reich (2010).
[74] Dube, A., Lester, T.W. and Reich, M. 2010, 'Minimum Wage Effects Across State Borders: Estimates Using Contiguous Counties', *The Review of Economics and Statistics,* vol. 92, no. 4, pp.945-964.
[75] Op. cit.
[76] Dube, A. 2013, p.13.

finding is consistent with the dynamic monopsony model. The findings of the four papers are summarised in Table 3.

Table 3: Estimated effect of a 10% increase in the US minimum wage

Paper:	Allegretto, Dube & Reich (2011)	Allegretto, Dube & Reich (2009)	Dube, Lester & Reich (2012)	Dube, Lester & Reich (2010)
Dataset:	Current Population Survey	American Community Survey/Census	Quarterly Workforce Indicators	Quarterly Census of Employment & Wages
Teens				
Earnings:	1.5% *	1.5% *	1.6% *	
Employment	0.5%	1.3%	-0.4%	
Turnover rate			-1.9% *	
Restaurant workers				
Earnings:			2.1% *	2.0%*
Employment			-0.6%	0.6%
Turnover rate			-2.6%*	

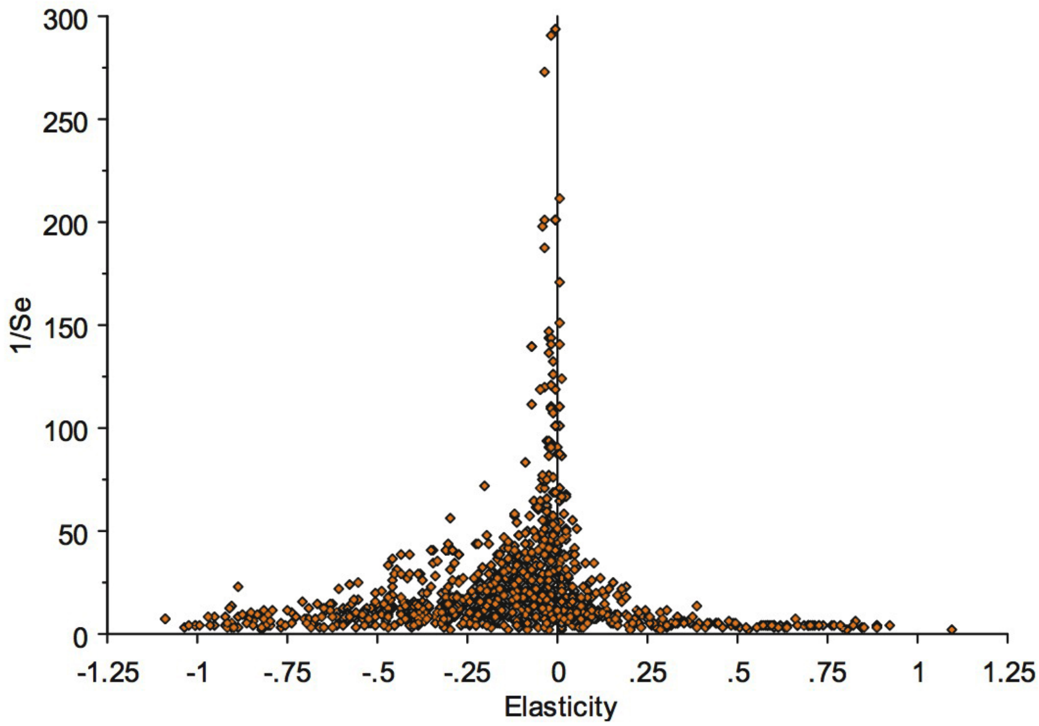
Source: Reproduced from Dube (2013), Table 2. An asterisk indicates an estimate that is statistically significant at the 5% level. The absence of an asterisk indicates that the estimate is not statistically significant (ie. cannot be statistically distinguished from zero).

124. Dube stated that "employment effects do not seem to vary by the phase of the business cycle or whether the state indexes its minimum wage to inflation."[77]

125. Doucouliagos and Stanley performed a meta-analysis of 64 studies of the employment effects of minimum wages in the US.[78] These studies included 1 424 estimates of the elasticity of employment with respect to the minimum wage. The key chart from this meta-analysis is reproduced as Figure 28. The horizontal axis shows the elasticity, where a negative result indicates that a minimum wage increase was found to reduce employment and a positive elasticity indicates the opposite. The vertical axis shows the precision of the estimate (measured as the inverse of the standard error).

[77] Dube, A. 2013, Statement before the US Senate Committee on Health, Education, Labor & Pensions Hearing on 'Keeping up with a Changing Economy: Indexing the Minimum Wage', March 14, p.11.
[78] Doucouliagos, H. and Stanley, T.D. 2009, 'Publication Selection Bias in Minimum-Wage Research? A Meta-Regression Analysis', *British Journal of Industrial Relations,* vol. 47, no. 2, pp.406-428.

Figure 28: 1 424 estimates of the elasticity of employment with respect to US minimum wage increases – illustrates publication selection bias & clustering of estimates around zero



Source: Doucouliagos and Stanley 2009, Figure 2

126. Doucouliagos and Stanley found evidence of publication selection bias in favour of studies with a negative employment elasticity. Figure 28 shows that even without correcting for this bias, the most common finding is of a small employment elasticity, close to zero. The most reliable elasticity estimates are clustered around zero. They found that when the results are adjusted to correct for the publication selection bias, the modal result is a zero elasticity.

127. The authors conclude that there are two scenarios consistent with their meta-analysis of the literature:

minimum wages may simply have no effect on employment… second, minimum-wage effects might exist, but they may be too difficult to detect and/or are very small… if there is some adverse employment effect from minimum-wage rises, it must be of a small and policy-irrelevant magnitude.[79]

128. Unlike Dube, et al. and Docouliagos and Stanley, a new survey of existing studies finds generally statistically significant negative employment elasticities. This new survey, by Belman and Wolfson finds a very small elasticity, in the range of -0.05 and -0.034.[80] They conclude that "there is a negative and generally statistically significant employment effect which is between small and vanishingly small."[81] The studies they survey include some that do not adequately control for regional heterogeneity in the manner described by Dube, et al.

[79] Ibid., p.423.
[80] Belman, D. ad Wolfson, P. 2014, 'Does Employment Respond to the Minimum Wage? A Meta-Analysis of Recent Studies from the New Minimum Wage Research', in D. Belman (ed.) *What Does the Minimum Wage Do?,* WE Upjohn Institute for Employment Research, Michigan.
[81] Ibid.

129. Addison, Blackburn and Cotti examined the increases in the US federal minimum wage arising from the US *Fair Minimum Wage Act 2007* using three different datasets – the Quarterly Census of Employment and Wages, the Current Population Survey, and the American Community Survey.[82] They find "material increases in the minimum wage – even when implemented during adverse market conditions – do not appear to have particularly strong effects in reducing employment among low-wage groups".[83] They note that their results are in line with much recent research, which has "failed to provide convincing evidence that increases in the minimum wage are associated with material reductions in employment".[84]

130. Another recent study by the same authors focused on the effect of minimum wages on employment in the restaurant and bar sector in the United States, using county-level data.[85] Their methodology uses "an econometric design that has more in common with Neumark and Wascher than with Card and Krueger"[86] in that it uses panel data with the ability to control for geographic-specific factors, yet they "fail to find statistically significant evidence that increasing the minimum wage reduces restaurant-and-bar employment".[87] Addison, et al. explain that their results differ from those of Neumark and Wascher principally because they use county-level data, rather than State-level, which allows for a more precise control for local economic factors.

131. Giuliano examined the effect of minimum wage increases on the earnings and employment of teenagers in a particular large retail firm in the United States.[88] The study found a negative, but statistically insignificant employment effect overall, but also found an increase in teenagers' relative wages led to an increase in teenage employment. The author notes this finding is consistent with models such as dynamic monopsony.

132. Hirsch, Kaufman, and Zelenska examined the impact of the increase in the US federal minimum wage between 2007 and 2009 on "quick-service restaurants" in Georgia and Alabama.[89] They found no significant effect of the minimum wage increases on employment or hours; they suggest that the increases were instead absorbed through a combination of "higher prices, lower profit margins, wage compression, reduced turnover, and higher performance standards".[90] The authors note that these findings are most compatible with institutional models of the labour market.

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[82] Addison, J.T., Blackburn, M.L., and Cotti, C.D. 2012, 'The Effect of Recent Increases in the US Minimum Wage: Results from Three Data Sources', Working Paper 12/58, The Rimini Centre for Economic Analysis, Italy.
[83] Ibid., p.21.
[84] Ibid., p.19.
[85] Addison, J.T., Blackburn, M.L. and Cotti, C.D. 2012, 'The Effect of Minimum Wages on Labour Market Outcomes: County-Level Estimates from the Restaurant and Bar Sector', *British Journal of Industrial Relations,* vol. 50, no. 3, pp.412-435.
[86] Ibid., p.413.
[87] Ibid, p.433.
[88] Giuliano, L. 2013, 'Minimum Wage Effects on Employment, Substitution, and the Teenage Labor Supply: Evidence from Personnel Data', *Journal of Labor Economics,* vol. 31, no. 1, pp.155-194.
[89] Hirsch, B.T., Kaufman, B.E. and Zelenska, T. 2011, 'Minimum Wage Channels of Adjustment', Discussion Paper No. 6132, Institute for the Study of Labor (IZA), Bonn, Germany.
[90] Ibid.

133. Sabia, Burkhauser and Hansen found a statistically significant negative employment elasticity (in the range of -0.1 to -0.3) associated with the 2004-06 minimum wage change in New York State.[91] However, Hoffman reevaluated the work of Sabia, Burkhauser and Hansen using the full Current Population Survey dataset rather than the subset of the data used by the original authors and found "no evidence whatsoever of a negative employment impact" in New York.[92] Hoffman also states that "when I repeat their analysis using three states and the District of Columbia that also had a substantial increase in the state minimum wage, I find evidence of a small positive employment effect."

134. Brochu and Green analyse data from the Canadian Labour Force Survey from 1978 to 2008 and find a higher minimum wage is associated with lower hiring rates and lower layoff rates, with these effects almost exactly offsetting one another, with no net impact on the overall employment rate. They conclude that "policy makers then face a choice between a high minimum wage regime where workers take longer to find a job but have greater job stability once they match with a firm versus a low minimum wage regime where workers move more quickly through both unemployment and employment spells."[93]

135. Draca, Machin and Van Reenen examine the impact of the introduction of the UK NMW on firm profitability.[94] They show that "minimum wages raise wages, but also significantly reduce profitability (especially in industries with relatively high market power)."[95] They find "no significant effects on employment or productivity in any sector."[96] Riley and Rosazza Bondinene also found some evidence that the NMW may have reduced firms' profitability, particularly over the longer run.[97]

136. New research for the UK Low Pay Commission found little evidence that the minimum wage affected employment retention before or during the recession.[98] The Low Pay Commission cites a number of studies to support its conclusion that "the research has found a small positive association between productivity and the minimum wage".[99] The UK LPC summarised its research as follows:

> [W]*e again conclude that the research in general finds little adverse impact of the minimum wage on employment. 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*

[91] Sabia, J., Burkhauser, R.V. and Hansen, B. 2012, 'Are the Effects of Minimum Wage Increases Always Small? New Evidence from a Case Study of New York State', *Industrial and Labor Relations Review,* vol. 65, no. 2.
[92] Hoffman, S.D. 2014, 'Are the Effects of Minimum Wage Increases Always Small? A Re-Analysis of Sabia, Burkhauser, and Hansen', Working Paper, Department of Economics, University of Delaware.
[93] Brochu, P. and Green, D.A. 2013, 'The Impact of Minimum Wages on Labor Market Transitions', *The Economic Journal,* vol. 123, no. 573, pp.1203-1235.
[94] Draca, M., Machin, S. and Van Reenen, J. 2011, 'Minimum Wages and Firm Profitability', *American Economic Journal: Applied Economics,* vol. 3, no. 1, pp.129-151.
[95] Ibid.
[96] Ibid.
[97] Riley, R. and Rosazza Bondibene, C. 2013, *The Impact of the National Minimum Wage on Firm Behaviour During Recession,* Research Report for the Low Pay Commission, February.
[98] Bryan, M., Salvatori, A. and Taylor, M. 2013, *The Impact of the National Minimum Wage on Employment Retention, Hours and Job Entry,* Research Report for the Low Pay Commission, February.
[99] Low Pay Commission 2013, p. 71.

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.[100]

137. Butcher, Dickens and Manning note that "research suggests that, at the levels set in countries like the US and the UK, minimum wages have no detectable impact on employment but they do seem to have sizeable impacts on wage inequality."[101] Manning, head of the Economics Department at the London School of Economics, found that the UK NMW has had "more pervasive effects [in reducing] wage inequality than one might expect… without any clear adverse effect on employment"[102].

International evidence on the effects of minimum wages on earnings above the minimum

138. Binding minimum wages do not just affect the earnings of those directly affected by them.[103] They tend to increase the earnings of some workers who earn more than the minimum wage. This can occur because employers wish to preserve skill-based relativities in their pay scales, or for efficiency-wage type reasons. These 'spillover' effects of minimum wages occur even in labour markets in which there is a single minimum wage, set at a relatively low level. The Panel, charged with maintaining a relevant safety net, should not regard these spillovers as problematic. They are desirable.

139. The proportion of workers paid exactly at a minimum rate is higher in Australia than elsewhere. Whereas 16.1% of Australian employees are paid at the NMW or an award rate, around 6.2% of UK workers are paid at the NMW[104], while 4.7% of US workers are paid at or below the federal minimum.[105] The larger proportion of Australian workers paid at a minimum rate is likely to be related to both the fact that our NMW is higher, as a proportion of the average or median, than the minima in the US and UK, and the fact that we have an array of higher minima in awards.

140. In each of these countries, the minimum rate(s) also affects the earnings of those paid above the minimum and the extent of earnings inequality in the lower half of the distribution. Lee found a sizeable spillover effect of the US minimum wage on wages higher up the ladder.[106] Autor, Manning and Smith find that the US "minimum wage has a statistically significant impact up through the 25th percentile or so for women, up through the 10th percentile for men, and up through the 15th percentile or so for the pooled wage

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[100] Low Pay Commission 2013, p. 74.
[101] Butcher, T., Dickens, R. and Manning, A. 2012, 'Minimum Wages and Wage Inequality: Some Theory and an Application to the UK', CEP Discussion Paper No. 1177, Centre for Economic Performance, London School of Economics.
[102] Manning, A. 2012, 'Minimum Wage: Maximum Impact', Resolution Foundation, London.
[103] By 'those directly affected', we mean meaning those who, in the absence of a minimum wage, would have earned less than the level at which the minimum is set.
[104] Resolution Foundation 2014, *More Than a Minimum: The Resolution Foundation Review of the Future of the National Minimum Wage: The Final Report,* Resolution Foundation, London, Figure 2, p.19.
[105] Bureau of Labor Statistics 2012, 'Characteristics of Minimum Wage Workers: 2012', *Labour Force Statistics from the*
[106] Lee, D.S. 1999, 'Wage Inequality in the United States During the 1980s: Rising Dispersion or Falling Minimum Wage?', *The Quarterly Journal of Economics,* vol. 113, no. 3, pp.977-1023.

distribution."[107] These are quite substantial impacts from a minimum wage that is very low, in absolute terms and relative to the US median, and is not accompanied by higher minimum rates as in the Australian award system.[108]

141. There is evidence that 'spillover' effects of the UK NMW extend up to the 25th percentile of the wage distribution.[109] The UK Workplace Employment Relations Study 2013 found that "31% of private sector employers considered the NMW as an influence on pay settlements".[110]

142. The Workplace Research Centre found in its *Award Reliance* report for this Review that 19% of Australian private sector employees in the federal industrial relations jurisdiction are paid exactly at the NMW or an award rate, while an award is used in some way to guide pay-setting for a further 21% of employees.

143. The direct effect of minimum wages in Australia on the earnings distribution is larger than elsewhere, due to the fact that our minimum rate is somewhat higher (relative to the median) and the fact that we have an array of skill-based minima. Internationally comparable estimates of the spillover effects of our minimum rates on the earnings of those paid above minimum wages are are not available.[111] The fact that Australia's system of minimum wages likely does more to reduce earnings inequality than the minimum wage in the US or UK should be regarded as a feature, not a drawback, of our present system. The Panel is required to maintain a system of minimum wages that is both fair and relevant.

Economists' views regarding minimum wages

144. The Booth School of Business at the University of Chicago periodically surveys a panel of high profile economists at top US universities regarding their views on various matters of public policy. The panel:

> *was chosen to include distinguished experts with a keen interest in public policy from the major areas of economics, to be geographically diverse, and to include Democrats, Republicans and Independents as well as older and younger scholars. The panel members are all senior faculty at the most elite research universities in the United States. The panel includes Nobel Laureates, John Bates Clark Medalists, fellows of the Econometric society, past Presidents of both the American Economics Association and American Finance Association, past*

[107] Autor, D.H., Manning, A. and Smith, C.L. 2010, 'The Contribution of the Minimum Wage to US Wage Inequality over Three Decades: A Reassessment', NBER Working Paper No. 16533, National Bureau of Economic Research, p.13.
[108] Autor, Manning and Smith (2010)'s estimates of the extent of spillovers from the US minimum wage are much smaller than those of Lee (1999), although Autor, Manning and Smith raise valid methodological concerns about Lee's estimation method.
[109] Butcher, T., Dickens, R. and Manning, A. 2012, *The Impact of the National Minimum Wage on the Wage Distribution*, Research Report for the Low Pay Commission, February.
[110] Low Pay Commission 2013, National Minimum Wage Report 2013, Presented to Parliament by the Secretary of State for Business, Innovation and Skills, p. 41.
[111] The estimates by Autor, Manning and Smith (2010) for the US and Butcher, Dickens and Manning (2012) for the UK use econometric techniques to estimate the 'latent' wage distribution – the distribution that would exist if there were no minimum rate in place. We are not aware of a comparable study for Australia.

Democratic and Republican members of the President's Council of Economics, and past and current editors of the leading journals in the profession.[112]

145. The panel of economists were recently asked their views about minimum wages. They were asked to respond to two questions, as shown in Figure 29 and Figure 30. Both questions pertained to a proposed increase in the US federal minimum wage from $US7.25 to $US9 per hour – a 24.1% nominal increase. The economists were more or less evenly divided on the question of whether this increase would make it noticeably harder for low-skilled workers to find employment. A plurality (47%) agreed that this would be a desirable policy. Only 11% disagreed. When weighted by their confidence, 62% agreed or strongly agreed that a 24.1% nominal increase and indexation to inflation would be desirable, while 16% disagreed or strongly disagreed. This is a remarkable consensus in favour of a fairly large (24.1%) increase in the US minimum wage.

Figure 29: Responses by economists to the statement "raising the federal minimum wage to $9 per hour would make it noticeably harder for low-skilled workers to find employment"

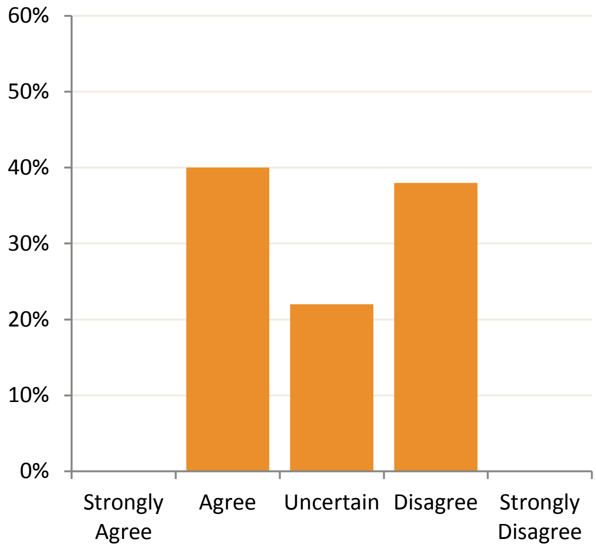
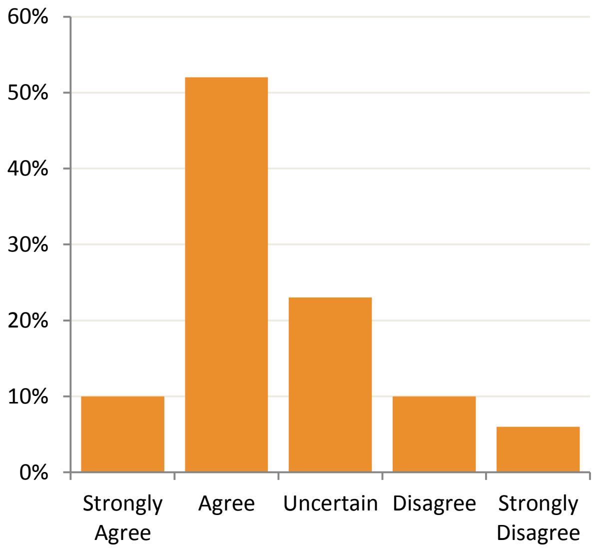


Figure 30: Responses by economists to the statement "the distortionary costs of raising the federal minimum wage to $9 per hour and indexing it to inflation are sufficiently small compared with the benefits to low-skilled workers who can find employment that this would be a desirable policy"



Source: IGM Booth School of Business, University of Chicago 2013. Responses weighted by each expert's confidence.

146. In January this year, an open letter from over 600 economists to US Congressional leaders in support of a $US10.10 minimum wage was released.[113] The signatories include seven Nobel laureates (Arrow; Diamond; Maskin; Schelling; Solow; Spence; and Stiglitz) and a number of past Presidents of the American Economic Association.[114]

[112] IGM Booth School of Business 2014, 'Economic Experts Panel', University of Chicago. Available from: http://www.igmchicago.org/igm-economic-experts-panel [Accessed 18 March 2014]

[113] 'Economists' Statement on the Federal Minimum Wage', Economic Policy Institute. Available from: http://www.epi.org/minimum-wage-statement/. [Accessed 14 March 2014].

[114] A rival letter was organised by the National Restaurant Association, although the involvement of that Association was not known to some signatories and was not initially disclosed when the letter was made public.

147. The letter states that a $10.10 minimum "would provide higher wages for close to 17 million workers" and indirectly benefit another 11 million. The economists note that:

> *In recent years there have been important developments in the academic literature on the effect of increases in the minimum wage on employment, with the weight of evidence now showing that increases in the minimum wage have had little or no negative effect on the employment of minimum-wage workers, even during times of weakness in the labo[u]r market.*[115]

148. The proposed increase to which these eminent economists have lent their support would see the US federal minimum wage rise by 39.3% in nominal terms. This would take it very close to the Australian NMW in purchasing power terms – the OECD estimates that the Australian minimum wage in 2013 was worth $US10.20 per hour when converted at purchasing power parity.[116]

149. Economists widely support a substantial increase in the US minimum wage, to lift the US rate close to Australia's. This reflects the substantial advances in both theory and evidence about the functioning of labour markets and the welfare-enhancing potential of fair minimum wages.

Conclusion

150. The Panel should not be persuaded to alter its view that "a modest increase in minimum wages has a very small, or even zero, effect on employment."[117] Awarding our claim, and thus arresting the decline in the relative living standards of the low-paid, is consistent with the promotion of social inclusion through workforce participation.

[115] Ibid.

[116] OECD Stat 2014. Available from: http://stats.oecd.org/Index.aspx?DataSetCode=RMW [Accessed 14 March 2014].

[117] [2013] FWCFB 4000, [464]

Who relies on minimum wages in Australia?

151. The ABS *Employee Earnings and Hours* (EEH) survey contains information regarding the characteristics of employees by method of pay setting. EEH is a survey of a representative sample of 8 400 employers, with adequate representation of each industry[118] and State/territory. The surveyed employers provide information regarding a random sample of their employees – approximately 55 000 employees contributed results to the 2012 EEH survey. The survey is only conducted every two years. The most recent survey was carried out in May 2012, with the results released in January 2013.

152. This chapter of the ACTU's submission draws upon the 2012 EEH survey. Much of this material was also presented in our submission to the Annual Wage Review 2012-13; it is reproduced here for the benefit of the Panel. The data remains relevant and there has been no update.

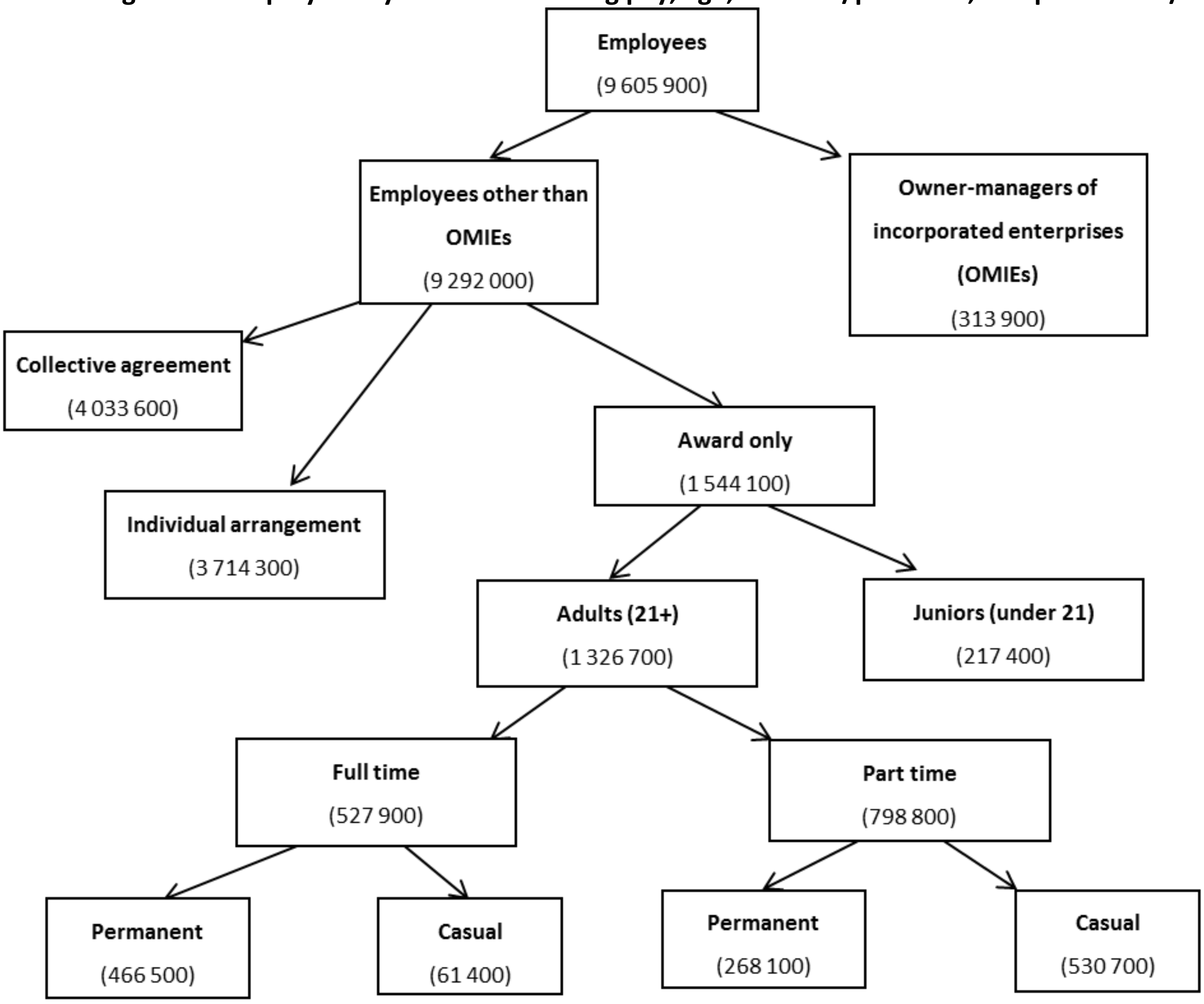
153. The EEH survey classifies employees to one of four categories based on how their pay is set. These categories are award only; collective agreement; individual arrangement; and owner-manager of incorporated enterprise. Employees are classified as 'award only' if they are paid at the rate of pay specified in an award and no more.[119]

Overview of the minimum wage workforce

154. There were 1 544 100 award only employees as at May 2012, comprising 16.1% of all employees. Figure 31 shows the number of employees classified to each method of setting pay.

[118] With the exception of the Agriculture, Forestry and Fishing industry, which is excluded from the survey's scope.
[119] It is our understanding that award-free employees paid the National Minimum Wage are classified as 'award only'. In this submission, 'award-reliant' and 'reliant on minimum wages' are used as synonyms for 'award only'.

Figure 31: Employees by method of setting pay, age, full time/part time, and permanent/casual



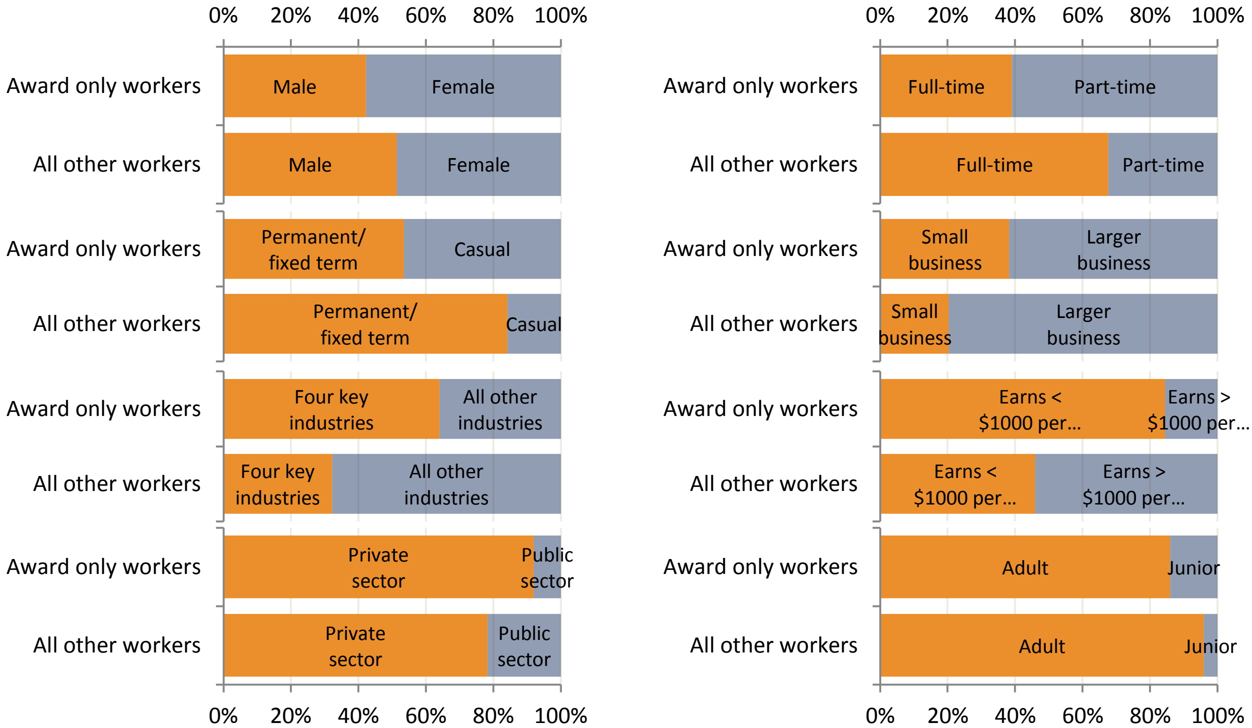
Source: ABS 6306, including unpublished data. 'Permanent' includes employees who are employed for a fixed term, but are entitled to accrue paid annual leave and sick leave.

155. Most award only workers are adults (85.9%) as are most other workers (95.9%), as shown in Figure 32. Compared to other workers, award only workers are:

a. more likely to be female (57.8% of award only workers are female vs 48.7% of other workers);
b. more likely to work part-time (60.9% vs 32.2%);
c. more likely to be casual rather than permanent or fixed term (46.5% vs 15.9), although a majority are still permanent;
d. more likely to work in small business (38.2% vs 20.3%), although a majority of award only workers are employed in businesses with more than 20 employees;[120]
e. more likely to be in the private sector (91.9% vs 78.3%);
f. more likely to have weekly cash earnings below $1000 (84.4% vs 46%).

[120] The 'all other workers' figure for business size excludes owner-managers of incorporated enterprises.

Figure 32: Characteristics of workers reliant on minimum wages and other workers



Source: ABS 6306 (May 2012) and ACTU calculations. 'Four key industries' = Retail Trade; Accommodation and Food Services; Health Care and Social Assistance; and Administative and Support Services.

156. Female casual employees represent 28% of all award only workers, compared to just 9.1% of other workers. Male casuals are similarly over-represented among the award only workforce, as shown in Table 4.

Table 4: Employees by method of setting pay, gender, and employment type

		Award only		All other employees	
		Thousands	**% of total**	**Thousands**	**% of total**
Male	Permanent/fixed term	365.7	23.7%	3593	44.6%
	Casual	286	18.5%	544.6	6.8%
Female	Permanent/fixed term	459.7	29.8%	3189.8	39.6%
	Casual	432.7	28.0%	734.4	9.1%
All persons	Total	1544.1	100.0%	8061.8	100.0%

Source: ABS 6306

Industry

157. As shown in Figure 32, most award only workers (64%) are employed in four key industries – Retail Trade, Accommodation and Food Services, Health Care and Social Assistance, and Administrative and Support Services. Nearly 20% of award only workers are employed in the Accommodation and Food Services industry alone, with award only employees comprising 44.8% of all employees in that industry.

Table 5: Award-reliant employees by industry

	Award-reliant employees in industry (thousands)	Total employees in industry (thousands)	Density of award-reliant workers (per cent)	Proportion of all award-reliant workers in industry (per cent)
Accommodation and food services	307.9	687.4	44.8%	19.9%
Retail trade	278.5	1088.3	25.6%	18.0%
Health care and social assistance	231.6	1217.7	19.0%	15.0%
Administrative and support services	170.4	587.5	29.0%	11.0%
Manufacturing	91.2	803.8	11.3%	5.9%
Other services	89	361.7	24.6%	5.8%
Construction	61.2	579.4	10.6%	4.0%
Education and training	60.8	896.7	6.8%	3.9%
Professional, scientific and technical services *	44.9	748.9	6.0%	2.9%
Public administration and safety *	43.4	627.8	6.9%	2.8%
Wholesale trade	35.6	437.8	8.1%	2.3%
Transport, postal and warehousing	33.9	463.6	7.3%	2.2%
Rental, hiring and real estate services	33.2	158.9	20.9%	2.2%
Arts and recreation services	30.2	153.6	19.7%	2.0%
Finance and insurance services *	16.9	362.2	4.7%	1.1%
Information media and telecommunications *	9.7	168.9	5.7%	0.6%
Electricity, gas, water and waste services *	4.7	109.7	4.3%	0.3%
Mining *	0.9	151.9	0.6%	0.1%
All Industries	1544.1	9605.9	16.1%	100.0%

Source: ABS 6306 and ACTU calculations. An asterisk indicates that the relative standard error of the number of award-reliant employees is between 25% and 50% and the ABS therefore advises that it be used with caution.

158. Both subdivisions of the Accommodation and Food Services Industry are highly award reliant, with award only workers comprising over 40% of employees in each part of the industry. The Health Care and Social Assistance industry has much more variation in the level of award-reliance among its subdivisions, ranging from 42.7% award reliance in the Social assistance services subdivision to 9.2% in Residential care services.

Table 6: Award-reliant employees by subdivisions of the most award-reliant industries

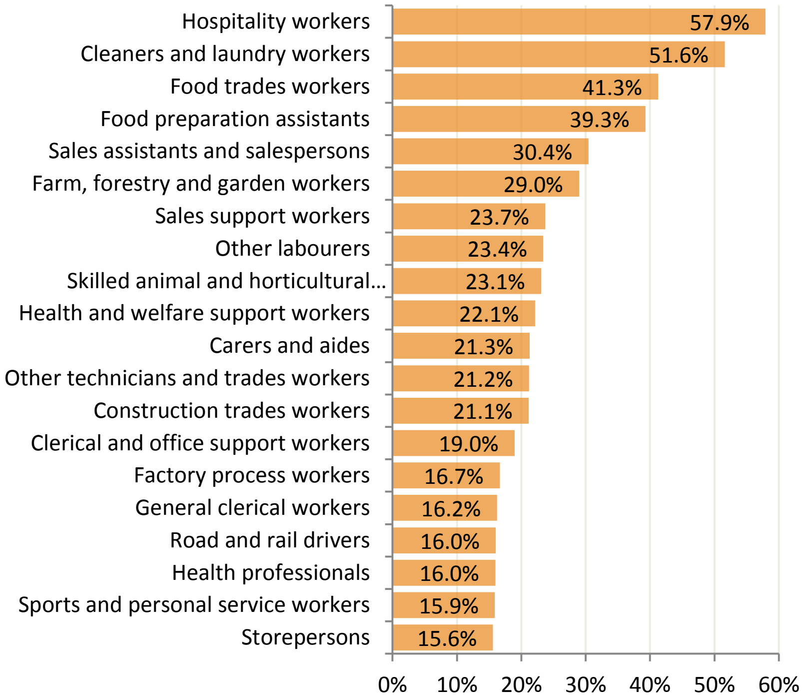
	Award-reliant employees in industry (thousands)	Total employees in industry (thousands)	Density of award-reliant workers (per cent)	Proportion of all award-reliant workers in industry (per cent)
Retail trade	**278.5**	**1088.3**	**25.6%**	**18.0%**
Motor vehicle and motor vehicle parts retailing	np	103.9	-	-
Fuel retailing	np	np	-	-
Food retailing	60.4	337.8	17.9%	3.9%
Other store-based retailing	191.9	618.0	31.1%	12.4%
Non-store retailing and retail commission-based buying and/or selling	-	np	-	-
Accommodation and food services	**307.9**	**687.4**	**44.8%**	**19.9%**
Accommodation	48.7	121.5	40.1%	3.2%
Food and beverage services	259.3	566.0	45.8%	16.8%
Administrative and support services	**170.4**	**587.5**	**29.0%**	**11.0%**
Administrative services	110.1	461.6	23.9%	7.1%
Building cleaning, pest control and other support services	60.2	125.9	47.8%	3.9%
Health care and social assistance	**231.6**	**1217.7**	**19.0%**	**15.0%**
Hospitals	83.3	514.7	16.2%	5.4%
Medical and other health care services	35.4	246.7	14.3%	2.3%
Residential care services	22.5	244.4	9.2%	1.5%
Social assistance services	90.5	212.0	42.7%	5.9%

Source: ABS 6306 (unpublished) and ACTU calculations. 'np' means that the number was not published by the ABS.

Occupation

159. There are four occupations[121] in which more than a third of employees are award-reliant. These are hospitality workers; cleaners and laundry workers; food trades workers; and food preparation assistants. The top twenty occupations, ranked by density of award only employees, are listed in Figure 33.[122]

Figure 33: Density of award only employees in most award-reliant occupations



Source: ABS 6306, unpublished data.

160. Table 7 provides information about the number, and density, of award only employees in each occupation. The bolded rows (eg. 'Managers') are major occupational groups (1 digit ANZSCO code), while the indented rows are more granular sub-major groups (2 digit ANZSCO code).

[121] Defined here as two-digit ANZSCO codes.
[122] 'Density' means 'proportion of employees in occupation that are award only'.

Table 7: Award only employees by occupation

	Award-reliant employees	Total employees	Density of award-reliant workers	Proportion of all award-reliant workers
Managers	**27.3**	**969.5**	**2.8%**	**1.8%**
Chief executives, general managers and legislators	np	122.2	-	-
Farmers and farm managers	np	2.5 *	-	-
Specialist managers	10.7	572.2	1.9%	0.7%
Hospitality, retail and service managers	15.6	272.5	5.7%	1.0%
Professionals	**136.5**	**1921.3**	**7.1%**	**8.8%**
Arts and media professionals	4.6 *	40.5	11.4%	0.3%
Business, human resource and marketing professionals	21.7	464.3	4.7%	1.4%
Design, engineering, science and transport professionals	8.8	244.2	3.6%	0.6%
Education professionals	15.5	480.7	3.2%	1.0%
Health professionals	65.6	411.2	16.0%	4.2%
ICT professionals	1.7 **	146.8	1.2%	0.1%
Legal, social and welfare professionals	18.6	133.6	13.9%	1.2%
Technicians and Trades Workers	**207.7**	**1182.5**	**17.6%**	**13.5%**
Engineering, ICT and science technicians	12.0 *	237.3	5.1%	0.8%
Automotive and engineering trades workers	44.7	315.3	14.2%	2.9%
Construction trades workers	35.3	167	21.1%	2.3%
Electrotechnology and telecommunications trades workers	22.8	152.9	14.9%	1.5%
Food trades workers	53.1	128.7	41.3%	3.4%
Skilled animal and horticultural workers	15.4	66.7	23.1%	1.0%
Other technicians and trades workers	24.3	114.6	21.2%	1.6%
Community and Personal Service Workers	**319.6**	**1110**	**28.8%**	**20.7%**
Health and welfare support workers	41.6	188.1	22.1%	2.7%
Carers and aides	88.4	415.6	21.3%	5.7%
Hospitality workers	158.4	273.4	57.9%	10.3%
Protective service workers	14.1	125.2	11.3%	0.9%
Sports and personal service workers	17.1	107.7	15.9%	1.1%
Clerical and Administrative Workers	**192.0**	**1680.6**	**11.4%**	**12.4%**
Office managers and program administrators	35.4	330.2	10.7%	2.3%
Personal assistants and secretaries	7.6 *	103.9	7.3%	0.5%
General clerical workers	60.1	370.5	16.2%	3.9%
Inquiry clerks and receptionists	37.8	276.7	13.7%	2.4%
Numerical clerks	16.3	295.1	5.5%	1.1%
Clerical and office support workers	13.5	71.2	19.0%	0.9%
Other clerical and administrative workers	21.2	233.0	9.1%	1.4%
Sales Workers	**284.2**	**1100.3**	**25.8%**	**18.4%**
Sales representatives and agents	11.0	165.9	6.6%	0.7%
Sales assistants and salespersons	234.4	770.7	30.4%	15.2%
Sales support workers	38.8	163.6	23.7%	2.5%
Machinery Operators And Drivers	**82.4**	**624.8**	**13.2%**	**5.3%**
Machine and stationary plant operators	14.5	184.6	7.9%	0.9%
Mobile plant operators	11.0 *	82.8	13.3%	0.7%
Road and rail drivers	38.2	238.1	16.0%	2.5%
Storepersons	18.6	119.2	15.6%	1.2%
Labourers	**294.4**	**1016.9**	**29.0%**	**19.1%**
Cleaners and laundry workers	108.7	210.7	51.6%	7.0%
Construction and mining labourers	11.3 *	137.2	8.2%	0.7%
Factory process workers	33.6	201.8	16.7%	2.2%
Farm, forestry and garden workers	14.4 *	49.7	29.0%	0.9%
Food preparation assistants	71.0	180.7	39.3%	4.6%
Other labourers	55.4	236.7	23.4%	3.6%
All occupations	**1544.1**	**9605.9**	**16.1%**	**100.0%**

Source: ABS 6306 (including unpublished data) and ACTU calculations of densities/proportions. * indicates a relative standard error between 25% and 50%.

Employer size

161. Small businesses[123] employ 590 600 award-only employees, 38.2% of the award-reliant workforce. The density of award-reliant workers is highest in small businesses. Nevertheless, most (51.8%) award only employees are employed in businesses with more than 20 employees, and nearly half (45.8%) are employed in businesses with 50 or more employees. This is shown in Table 8.

162. Table 8 also shows that award-only employees in smaller businesses are more likely to be employed on a casual basis than award-only employees in larger businesses.

Table 8: Employment of award-only employees by employer size (thousands and per cent of total)

Employer size	Permanent/ fixed term	Casual	Total
Under 20 employees	294.1	296.5	590.6
	19.0%	19.2%	38.2%
20 to 49 employees	110.2	136.8	247.0
	7.1%	8.9%	16.0%
50 to 99 employees	88.1	70.7	158.8
	5.7%	4.6%	10.3%
100 to 999 employees	196.8	165.3	362.1
	12.7%	10.7%	23.5%
1000 and over employees	136.3	49.4	185.7
	8.8%	3.2%	12.0%

Source: ABS 6306 (unpublished) and ACTU calculations of percentages.

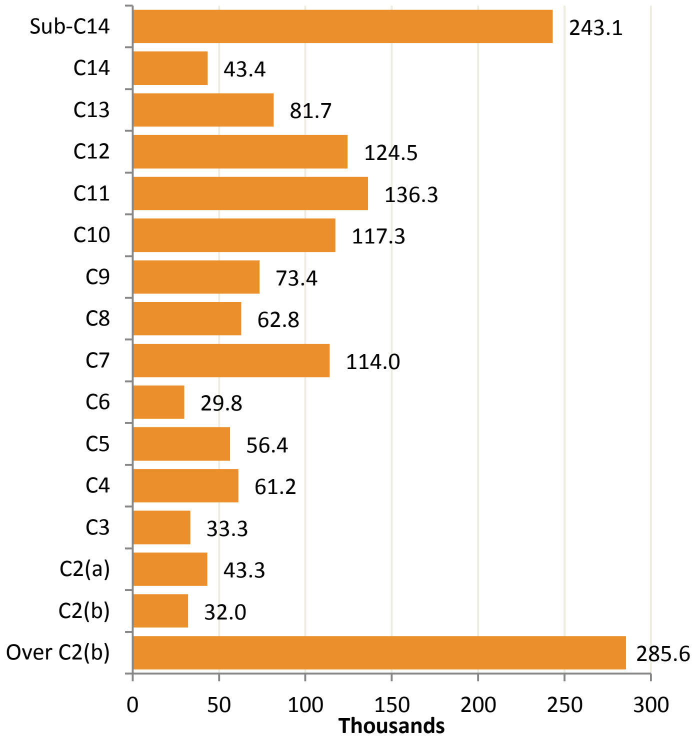
Classification and earnings

163. We estimate using EEH data that around half (48.5%) of award only employees are employed at or below the adult C10 rate of pay.[124] Our estimate of the number of award-only workers employed at each classification level is presented in Figure 34. Note that these figures include juniors, apprentices, trainees, and people on a supported wage arrangement.

[123] Defined as those with fewer than 20 employees.

[124] We arrive at this estimate using separate percentile distributions of the hourly ordinary time earnings of permanent/fixed-term and casual award-only non-managerial employees. The wages of the casual workers are deflated by a fifth to remove an assumed casual loading. The earnings of intra-percentile workers have been estimated using interpolation of the percentile data.

Figure 34: Non-managerial award-only workers by classification level, imputed using hourly earnings



Source: ACTU calculations based on ABS 6306 (unpublished). Classifications imputed based on average hourly ordinary time cash earnings. Casual employees' earnings have been deflated by a fifth to remove an assumed 25% casual loading. Each classification level includes employees employed at the relevant minimum and those earning up to and including one cent below the minimum for the classification above.

164. This estimate, based on 2012 EEH data, is similar to the one we obtained from 2010 EEH data. Using that data, we found that 45% of award-only non-managerial adult employees had hourly earnings at or below the C10 rate.

165. Our estimates are similar to those obtained by Bolton and Wheatley using 2006 EEH microdata.[125] Their research shows that 34.6% of adult permanent award-only employees and 63% of adult casual award-only employees had hourly earnings at or below the C10 rate of pay.[126] Their figures also show that casuals comprise 44% of the adult award-reliant workforce. Putting these figures together gives an estimate of 47.1% of award-reliant employees paid at or below the C10 rate in 2006. This is consistent with our estimates using 2010 and 2012 data.

166. The research report by Wright and Buchanan of the Workplace Research Centre ('WRC') commissioned by the Panel comes to a somewhat different conclusion. The WRC report found 75% of adult award-reliant employees are paid below the C10 rate of pay.[127] The report canvasses a range of reasons for differences between the ABS EEH results and the WRC results, including differences of scope and methodology. The report pertains to employees in all industries in the private sector in the national industrial relations

[125] Bolton, T. and Wheatley, T. 2010, 'Earnings of Employees Who Are Reliant on Minimum Rates of Pay', Research report 4/2010, Fair Work Australia, Melbourne.
[126] This includes those paid between the C10 and C9 rates, as per our estimates.
[127] Wright, S. and Buchanan, J. 2013, 'Award Reliance', Research Report 6/2013, Fair Work Commission, Melbourne, p.68.

jurisdiction, whereas EEH pertains to employees in all industries other than agriculture in both the public and private sectors in all jurisdictions.

167. We maintain that all employees paid according to an award or the NMW are low-paid, in the sense that they are paid the lowest rate that they may legally be paid. The WRC finding suggests that most award-reliant workers are also “low-paid” in another sense - they are paid less than two-thirds of median earnings. This is the official OECD definition of low pay.

168. ABS EEH data shows that the median average hourly ordinary time cash earnings of non-managerial adult employees in May 2012 was $27.80. Two-thirds of this figure is $18.63. The C10 rate of pay was $18.10 per hour in the first half of 2012 and $18.60 from 1 July. This means that any employee who had earnings at or below the C10 rate of pay in 2012 had earnings below two-thirds of the median.

169. The Panel stated the following in its decision in the 2012-13 Review:

> *The Panel… has paid particular regard to those receiving less than two-thirds of median adult ordinary-time earnings and to those paid at the C10 and C14 (NMW) rates in the Manufacturing Award.*[128]

170. The WRC report’s finding that 75% of award-reliant workers are paid below the C10 rate implies that 75% of award-reliant workers are paid less than two-thirds of the median. Most award-reliant workers are thus low paid in both the sense that they are paid the lowest rate that they may legally be paid and *also* in the sense that the meet the OECD definition of low pay.

Conclusion

171. A large and diverse number of Australian workers rely on award wages and the National Minimum Wage. The low-paid workforce is not easily stereotyped. Juniors are overrepresented among their ranks, but the overwhelming majority are adults. The majority are females, but many are men. They’re more likely than other workers to be casual, but most are permanent or fixed-term employees.

[128] [2013] FWCFB 4000, [34]

The state of the Australian economy

172. The increase in minimum wages we have proposed in this Review is entirely appropriate in the economic circumstances. This chapter shows that:

a. Economic growth is picking up, and is only slightly below its trend pace;

b. The Australian economy has grown much more rapidly than those of other OECD advanced economies in recent years, including in 2013;

c. The IMF estimates that the difference between Australia's 'potential' level of economic output and our actual output level is very small;

d. Real output grew in three of the four more award-reliant industries in 2013;

e. Growth in consumer spending picked up in 2013, with a large surge in retail turnover in the past six months or so;

f. Like retail, the housing sector is also accelerating, with rapid growth in housing approvals and finance commitments likely to presage a boom in residential construction;

g. Labour productivity grew by 1.9% in 2013, well above the average for the past decade of 1.1% annual growth. GDP per hour worked has increased by 5% over the past two years, the strongest period of productivity growth in over a decade. Australia's labour productivity growth has comfortably out-performed the OECD average and the G7 countries;

h. Labour productivity in three of the four more award-reliant industries grew more rapidly than the total economy average in 2012-13;

i. While productivity growth was strong, average earnings growth was very modest. As a result, real unit labour costs fell, to near their lowest level on record. This is equivalent to a fall in labour's share of national income;

j. The fall in labour's share of income since 2000 has been the second largest of any OECD country;

k. Labour's share of income has fallen in a broad range of industries, including Accommodation and Food Services and Retail Trade, indicating that real wages have not kept up with labour productivity in those industries;

l. Capital's share of national income has risen, and the business failure rate has fallen, particularly in the unincorporated business sector;

m. Inflation remains around the middle of the RBA's target band;

n. Wages growth has been very modest, although minimum wages still failed to keep up with average wages and the WPI in 2013; and

o. The average wage increase in collective agreements has fallen to its lowest level since the late 1990s, but this level (around 3.5%) is still around a percentage point higher than the wage increase received by workers reliant on minimum wages in 2013.

173. Our claim is entirely appropriate given the factors outlined above.

174. There are encouraging signs that growth is likely to continue to strengthen during 2014. The economic outlook is considered in the next chapter.

Economic growth

175. The Australian economy grew at slightly below its trend pace in 2013, with real gross domestic product (GDP) increasing by 2.8% in the year to the December quarter. The pace of growth picked up in the December quarter itself, with real GDP growing by 0.8% on the September figure. If sustained, a 0.8% quarterly growth rate would result in 3.2% annual growth, around the economy's trend pace.

176. As expected, the terms of trade fell a little (-1.2%) in 2013. This meant that real net national disposable income (RNNDI) again grew more slowly than real GDP, with RNNDI growing by 1.8% over the year. The divergence between real GDP and RNNDI growth was small relative to recent years. On this measure, 2013 was slightly better than 2012.

Figure 35: Real GDP growth per year

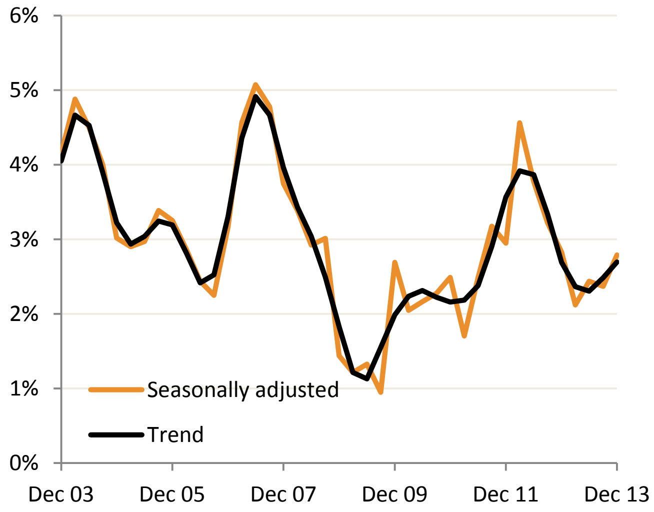
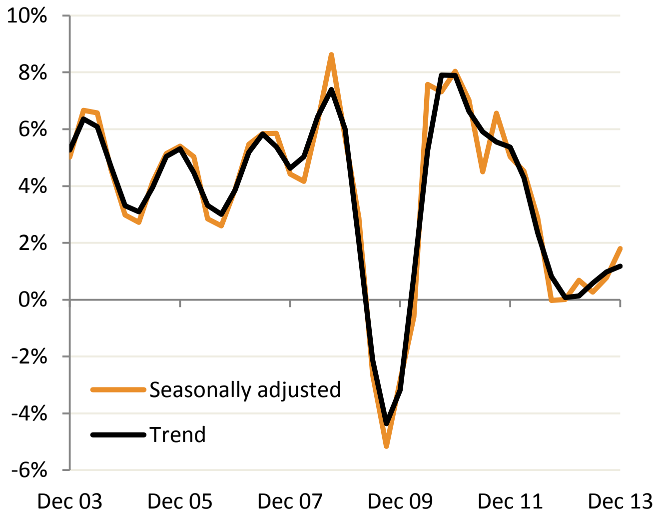


Figure 36: RNNDI growth per year



Source: ABS 5206 and ACTU calculations.

177. Although 2.8% growth is slightly below the economy's long-run trend pace, it represents a solid result and compares favourably to most OECD advanced economies, as shown in in Figure 37 and Figure 38. Real GDP growth picked up in the fourth quarter of 2013, and there are strong reasons to suspect that growth will continue to strengthen in 2014.

International comparisons of economic growth

178. Australia's economy has performed much better than those of almost every other advanced economy in the past five years. Since the first quarter of 2008, Australia's real GDP has grown by 14.7%. The total size of the OECD economies, taken together, has grown just 3.7% over the same period. The euro area and the UK economies remain smaller than they were at the start of 2008. In 2013, Australia's economy again grew faster than those of the US, UK, euro area, or the OECD as a whole.

Figure 37: Real GDP in OECD countries since 2008

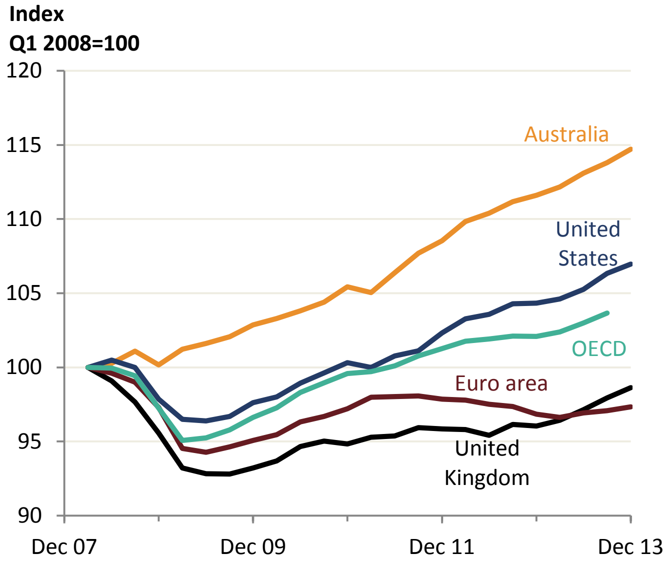
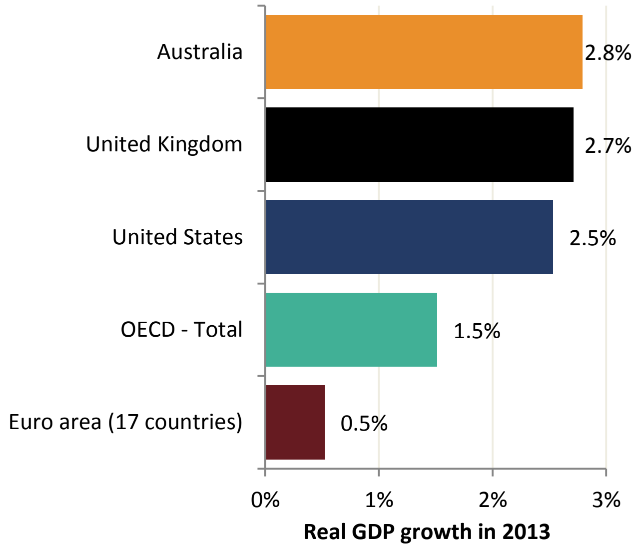


Figure 38: Growth in real GDP in 2013



Source: OECD Stat and ACTU calculations. OECD total growth figure is for the year to Q3 2013; all others are the year to Q4 2013.

179. It's astonishing that Australia's economy continues to grow more rapidly than those of most other advanced economies. Given the depth of the recession endured in most advanced economies over the past 5 years, it would generally be expected that growth in those countries would be stronger than average during the recovery phase. Australia, not having experienced a recession, would be expected to be temporarily outpaced by other countries experiencing post-recession catch-up growth. Comparing the growth rates in a particular year may therefore be somewhat misleading as to the state of the economy, given that many advanced economies will be experiencing above-average growth after a period of prolonged recession and stagnation.

180. One way to compare economies' performance that takes this into account is the 'output gap'. The output gap is the difference between the level of a country's real GDP and the level of real GDP that could potentially be attained given the country's labour supply, capital stock, and level of productivity. A negative output gap indicates that a country's economy is smaller than it could be, while a positive gap suggests it has grown at an unsustainable rate. A country that has experienced a large recession and is now growing at an above-average pace will have a negative output gap that is becoming less negative over time.

181. The IMF estimates that Australia's output gap in 2013 was -0.2% of potential GDP. Only two advanced economies fared better on this measure – New Zealand (in which real GDP was equal to its potential level)

and Norway (where GDP exceeded potential by 0.2%). The IMF forecasts that Australia will move even closer to its potential level of output in 2014, with the output gap halving to 0.1% of potential GDP.

Figure 39: Output gap in 2013: actual GDP minus potential GDP

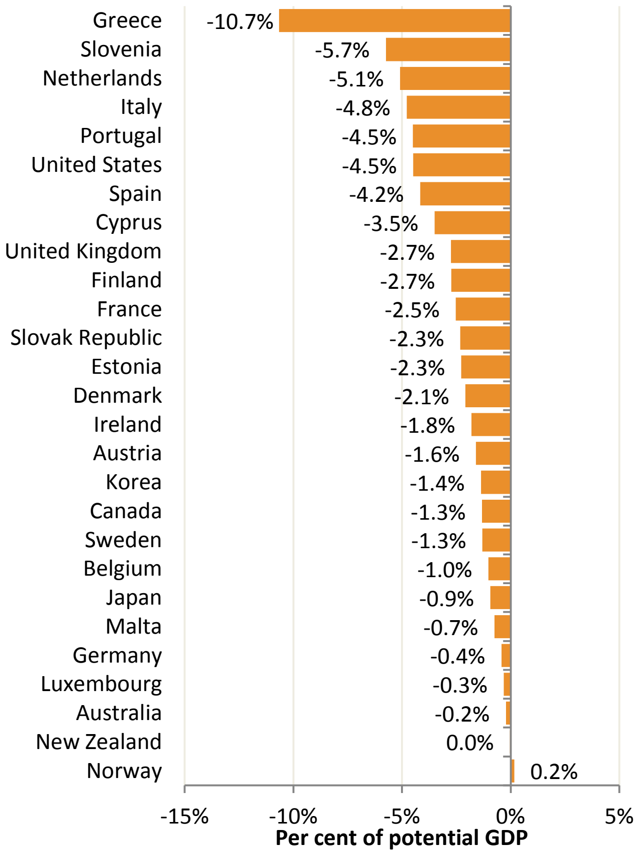
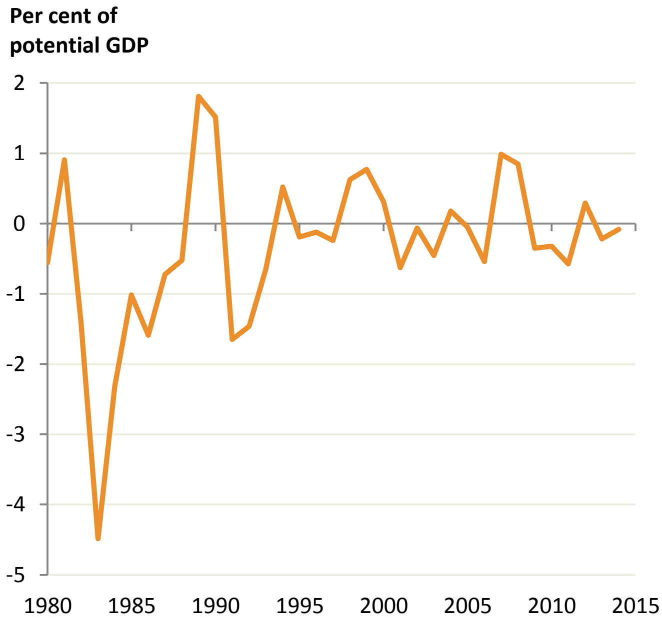


Figure 40: IMF estimate of Australia's output gap



Source: IMF World Economic Outlook database, October 2013

182. Potential GDP cannot be observed, it can only be estimated. This process of estimation is fraught with conceptual and methodological issues. There are wide confidence intervals around any estimate of potential output and thus the estimate of the output gap. For that reason, we do not put undue emphasis on this measure. However, as a first-order approximation of the cyclical state of an economy, the estimates are of some use. The comparison with other advanced economies in Figure 39 and with Australia's past in Figure 40 suggests that Australia's economy has performed well in recent years.

183. The Australian labour market has also performed well relative to other advanced economies. Australia's unemployment rate remains lower (Figure 41) and our employment-to-population ratio higher (Figure 42) than those of many other comparable countries.

Figure 41: Unemployment rates in the OECD

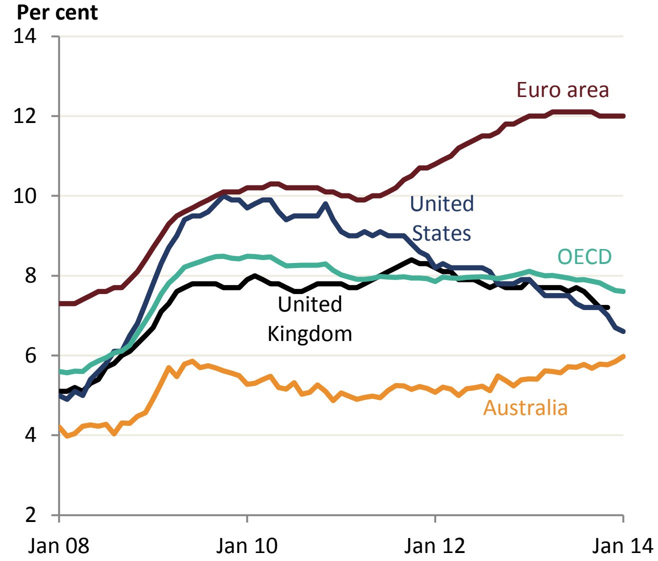
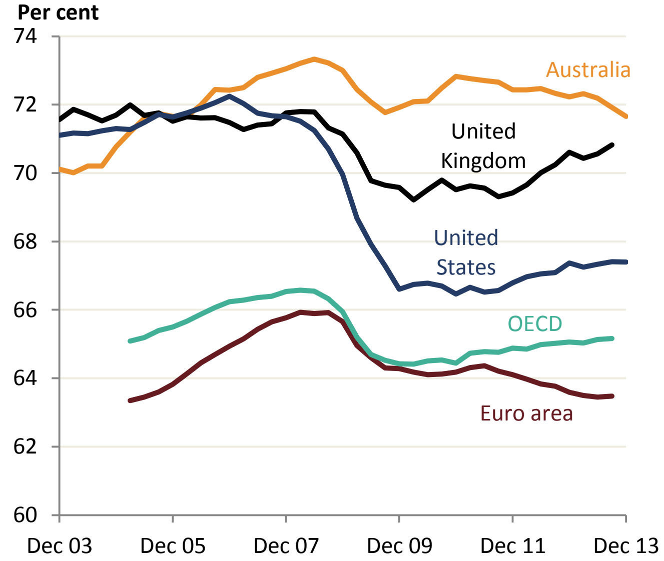


Figure 42: Employment-to-population ratio (15-64) in OECD countries

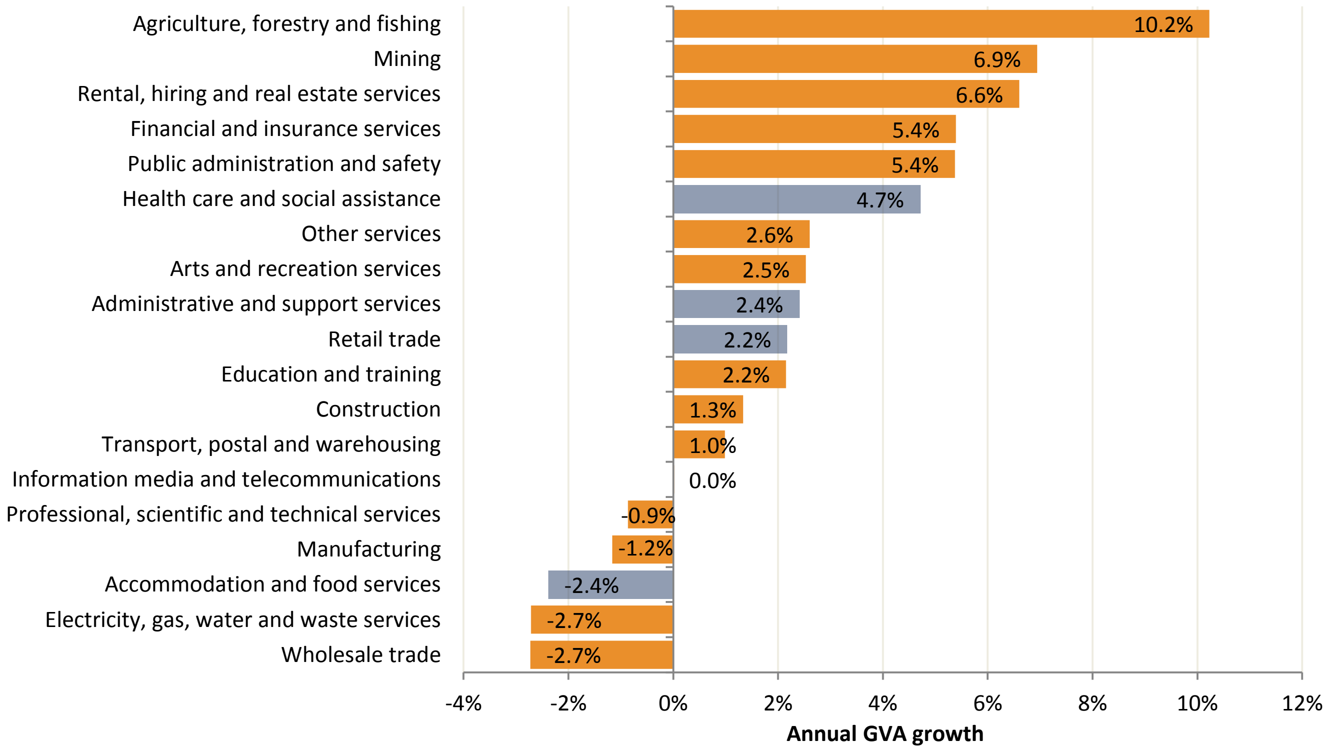


Source: OECD Stat.

Growth by industry

184. Economic output (gross value added) rose in three of the four more award-reliant industries in 2013, as shown in Figure 43. The dispersion between the growth rates of the various industries was around its average level.[129]

Figure 43: Growth in gross value added – year to December 2013



Source: ABS 5206.

[129] This is true whether dispersion is measured as the gap (in percentage points) between the highest and lowest growth rates, or by the unweighted standard deviation of industry growth rates.

185. Broad economic factors are responsible for the aggregate level of growth and the spread of growth rates across industries. We believe the Panel was correct in its decision in the 2012-13 Review when it stated the following:

> *The diversity in outcomes in respect of output, profits, employment, and wages between and within the award -reliant industries suggests that factors other than recent minimum wage increases have driven outcomes within those industries.*[130]

Consumer spending

186. Consumer spending grew at a solid pace in 2014. Household net incomes rose by 4% over the year to the December quarter, while household consumption spending rose by 5.4%.[131] The fact that consumption rose faster than incomes means that the household savings ratio declined, with savings falling from 10.9% of income to 9.7% over the year. The savings ratio remains higher than the levels of the mid-2000s; we agree with the Panel's assessment in its 2012-13 decision that those levels were abnormal.[132] In 2013, consumers were less 'cautious' than they had been in previous years.

Figure 44: Annual growth in consumption expenditure

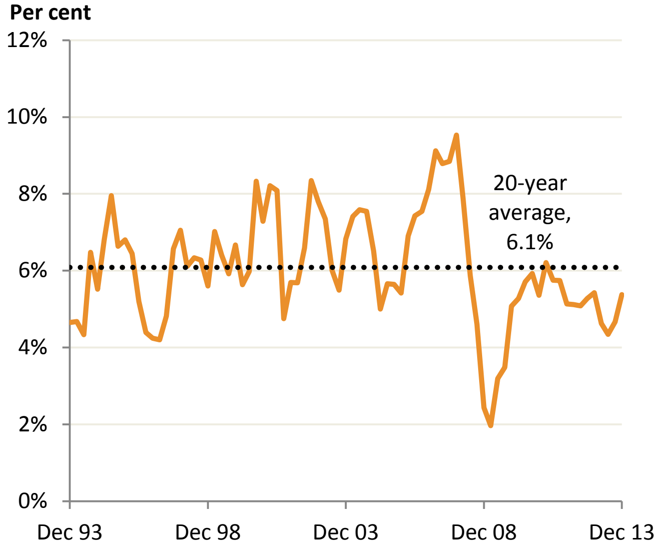
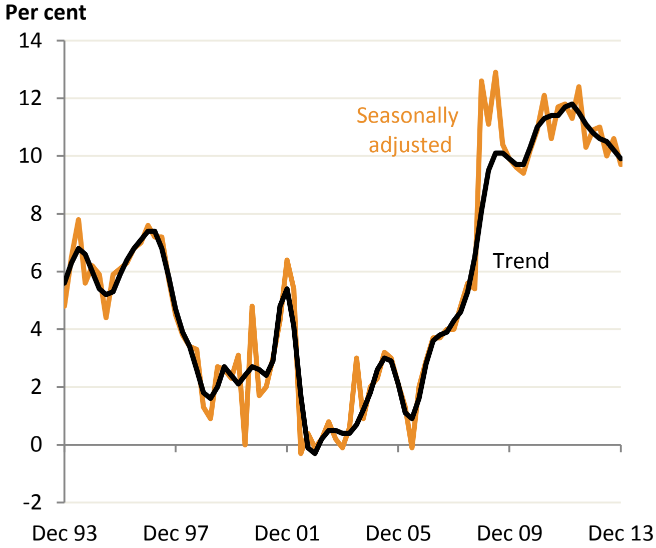


Figure 45: Household saving ratio



Source: ABS 5206 and ACTU calculations.

187. The monthly ABS Retail Trade statistics give a more up-to-date (albeit partial) perspective on consumer spending than the quarterly National Accounts. Retail trade figures have been very strong for the past six months. Turnover grew by 1.2% in January in seasonally adjusted terms, compared to a compound average monthly growth rate of 0.4% over the past decade. These seasonally adjusted estimates are volatile month to month. The smoother trend estimate of turnover rose by 0.7% in January, after rising by 0.7% in each of the previous four months, as shown in Figure 46. In trend terms, turnover rose 4.2% in the six months to January, which is the strongest 6-monthly growth in retail turnover since February 2004.

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[130] [2013] FWCFB 4000, [20]
[131] Net disposable income is gross disposable income less consumption of fixed capital (ie. depreciation).
[132] [2013] FWCFB 4000, [191]

188. Every industry group in the Retail Trade statistics recorded faster growth in the year to January than its average (CAGR) over the past five years (see Figure 48).

189. Turnover growth in the past 5 years has been quite strong in the cafes, restaurants and takeaway food industry group, and growth strengthened further in the past year as shown in Figure 48. Growth in food; and other retailing has been solid, and has also picked up in the past year. The household goods; department stores; and clothing, footwear and personal accessories groups have experienced less growth in recent years, but each of these has seen growth pick up in the past year.

Figure 46: Monthly growth in turnover

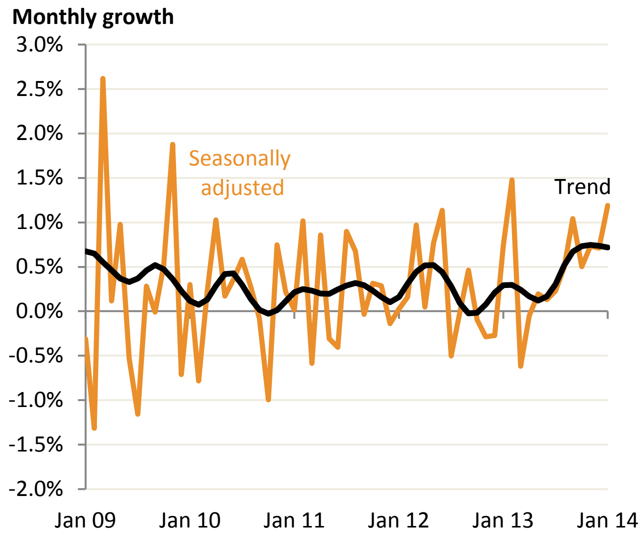


Figure 47: 6-monthly growth in turnover

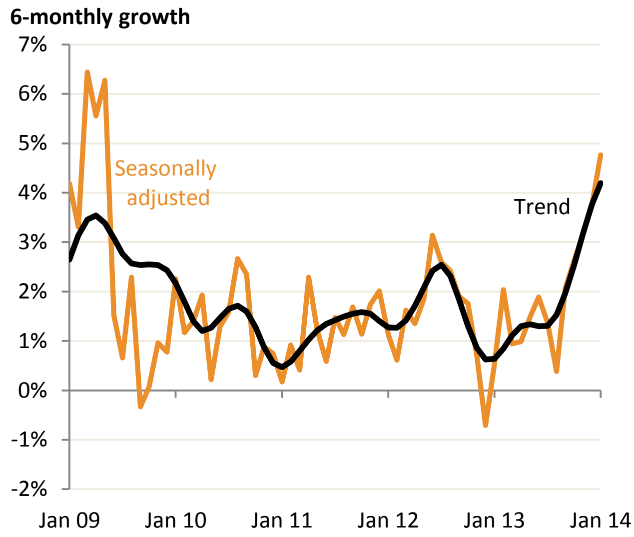


Figure 48: Turnover by industry group (Index: January 2009=100)

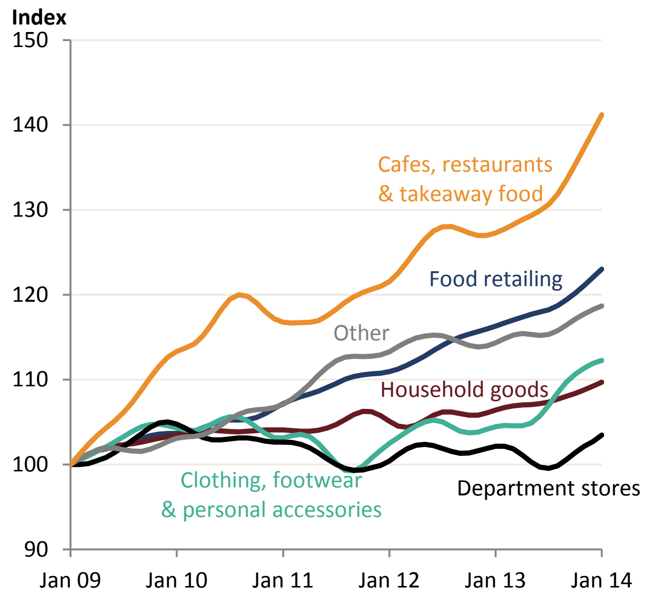
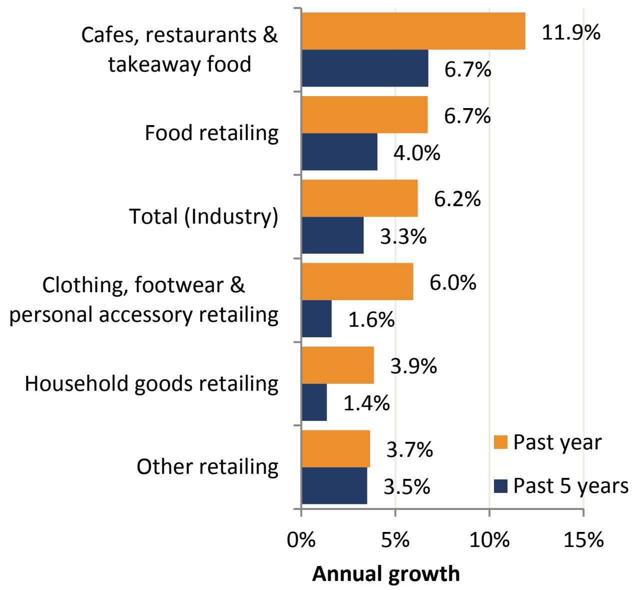


Figure 49: Growth in turnover by industry group: Year to January 2014 and CAGR over past 5 years



Source: ABS 8501 and ACTU calculations.

190. The Reserve Bank has repeatedly made it clear that the current stance of monetary policy is intended to facilitate a 'rebalancing' of economic activity away from mining construction-led growth towards other

sources, such as consumer spending and residential construction. The broadly-based rise in turnover suggests that low interest rates are having their intended effect.

The housing sector

191. As noted above, there are clear signs that the desired re-balancing in economic activity is occurring. There has been strong growth in housing approvals and in housing finance commitments, as shown below, which provides further evidence of this re-balancing. An increase in housing approvals and finance should result in a pickup in residential construction, which will help employment in that sector and will in turn serve to support economic growth more broadly. With the Reserve Bank signalling a "period of stability" in interest rates[133], the housing sector is likely to be a strong source of growth throughout 2014.

Figure 50: Annual growth in housing approvals

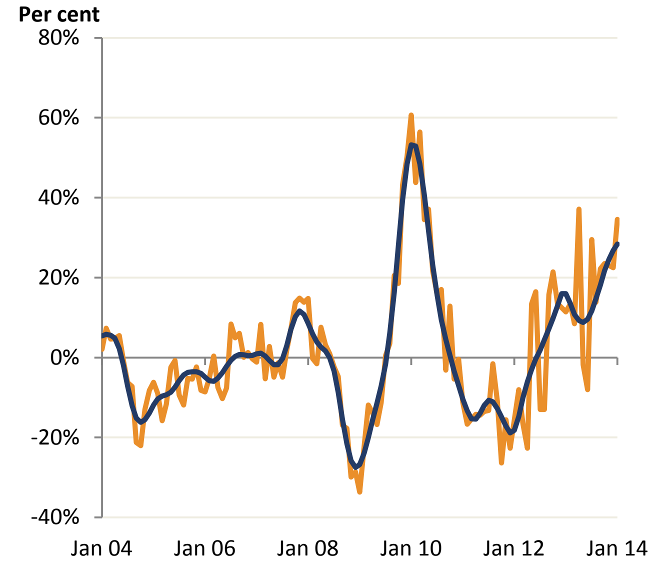
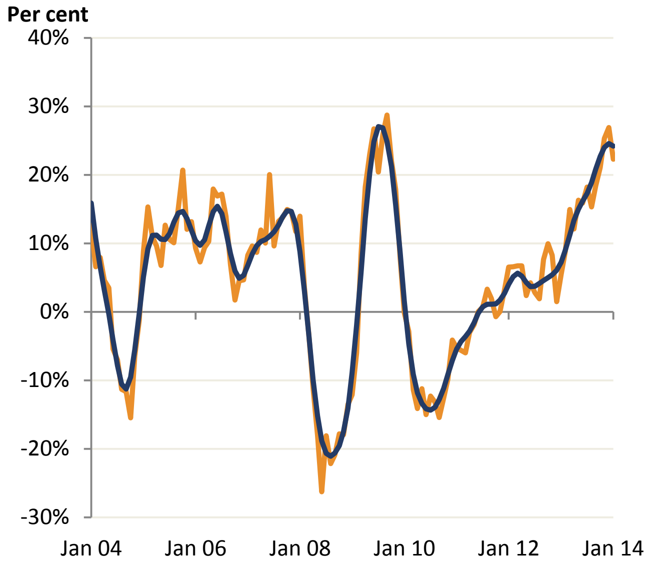


Figure 51: Annual growth in housing finance commitments



Source: ABS 5609, ABS 8731.

Productivity growth

192. Labour productivity growth was strong during the 1990s, fell in the 2000s, and has increased in recent years. Growth was above average in 2013, as it was in 2012 and 2011. GDP per hour worked increased by 1.9% in the year to the December quarter 2013, compared to a compound average growth rate of 1.1% over the past decade (Figure 52). Gross value added per hour worked in the market sector rose by 1.8% (Figure 53).

[133] RBA 2014, 'Minutes of the Monetary Policy Meeting of the Reserve Bank Board', 4 March. Available online: http://www.rba.gov.au/monetary-policy/rba-board-minutes/2014/04032014.html. [Accessed 24 March 2014]

Figure 52: Annual labour productivity growth (GDP per hour worked)

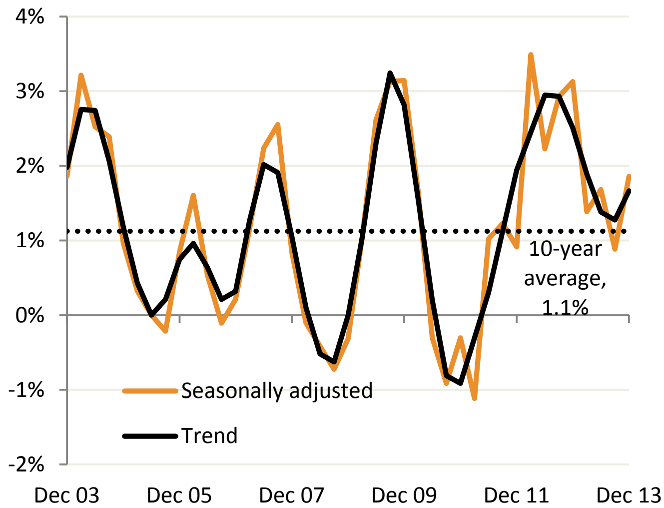
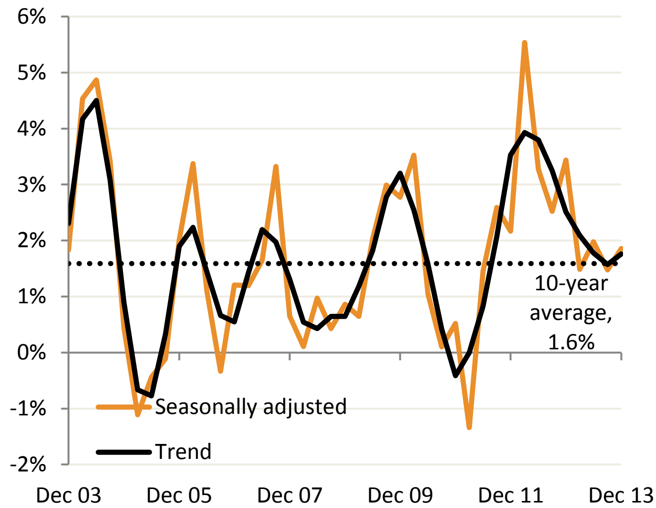


Figure 53: Annual labour productivity growth (GVA per hour worked in the market sector)



Source: ABS 5206 and ACTU calculations.

193. The year-to-year growth rates are volatile. Calculating growth rates over a longer period smooths out this volatility and gives a clearer picture of the underlying trend. Over the two years to the December 2013 quarter, GDP per hour worked rose by a total of 5%. That is the fastest growth in labour productivity in any two year period since 2000-2002.

Figure 54: Two-year labour productivity growth (GDP per hour worked)

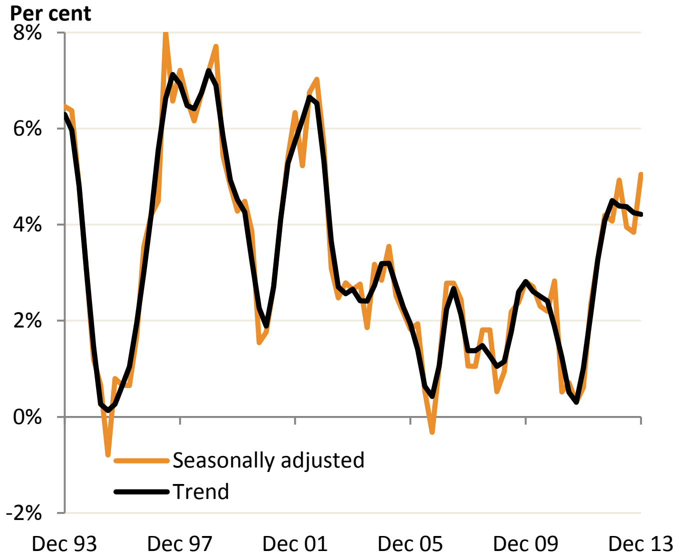
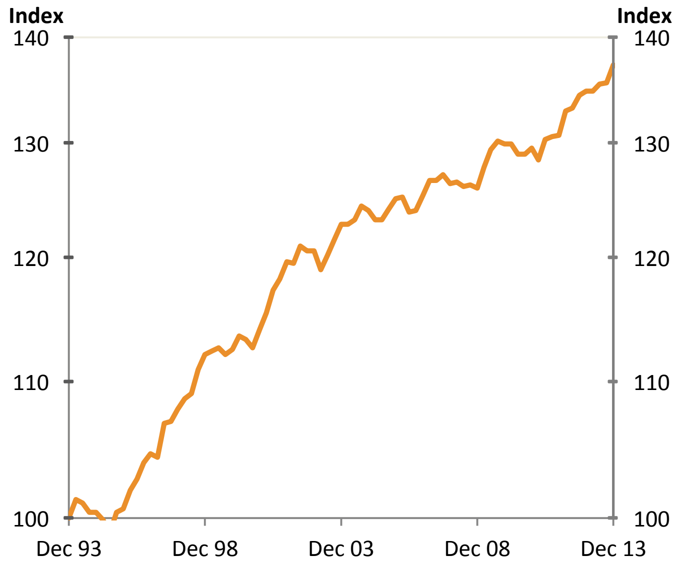


Figure 55: The level of labour productivity (GDP per hour worked – index, log scale)



Source: ABS 5206 and ACTU calculations.

194. Australian workers are among the most productive in the world. On average, Australian workers produce goods and services worth $US53 per hour, when converted to US dollars at purchasing power parity (when converted at market exchange rates, the figure is much higher). On average in OECD countries, $US46 is produced per hour of work. Australia's level of labour productivity is very close to that of the G7 countries and is above Canada, the UK and New Zealand. This is shown in Figure 56. Australia's labour productivity has grown more rapidly than most OECD countries in the post-financial crisis period, as shown in Figure 57.

Figure 56: Labour productivity (2012) in OECD countries in US dollars, converted at purchasing power parity

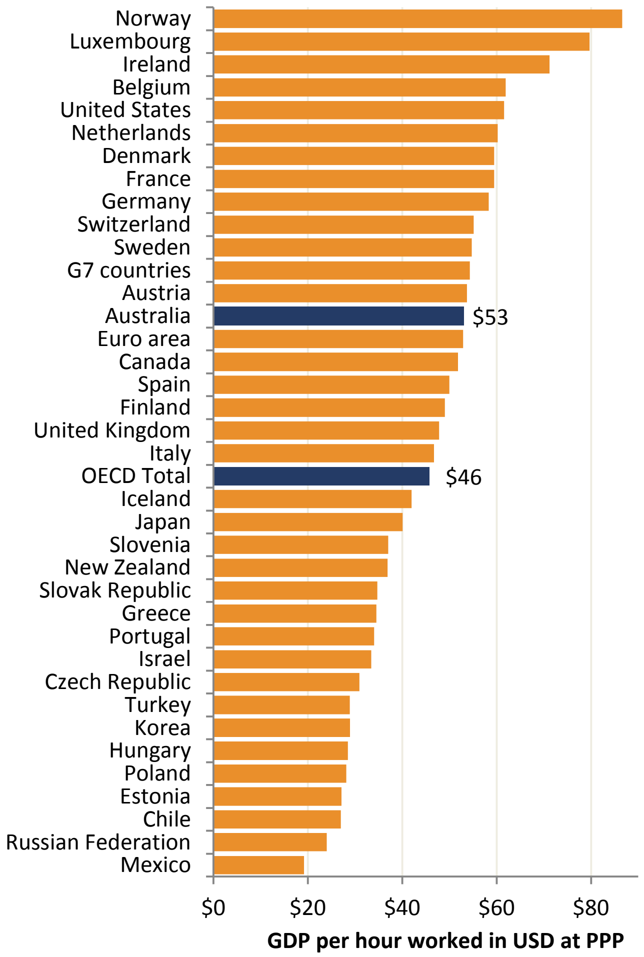
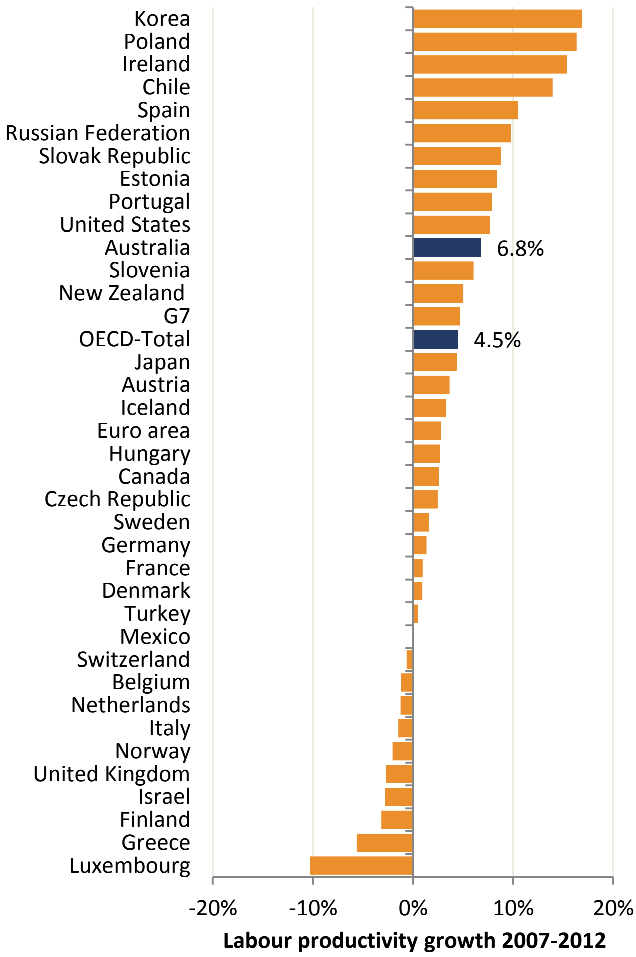


Figure 57: Total labour productivity growth (2007-2012) in OECD countries

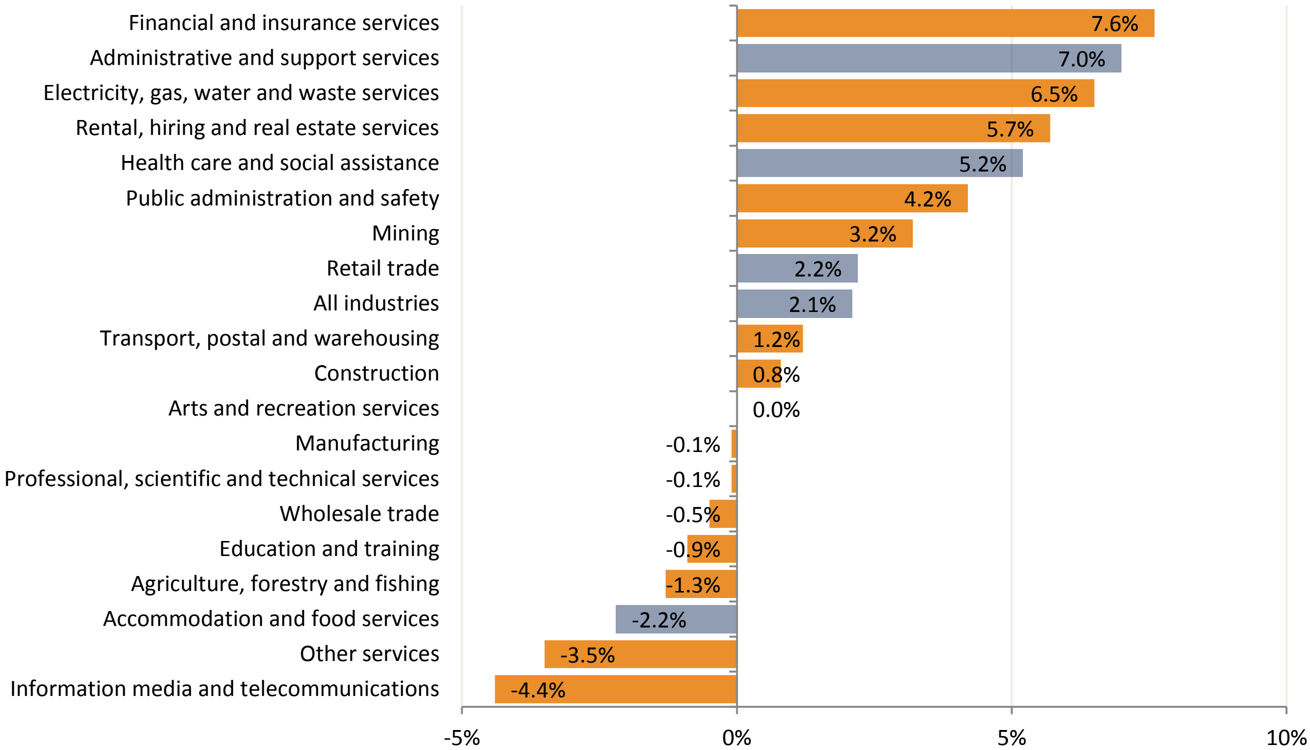


Source: [OECD Stat] and ACTU calculations.

195. Productivity growth in 2012-13 was strong in three of the four more award-reliant industries, as shown in Figure 58. Labour productivity rose 2.2% in Retail Trade; 5.2% in Health Care and Social Assistance; and 7% in Administrative and Support Services.

196. Part of the reason for the pick-up in recent productivity growth has been a lift in productivity in both the mining and utilities industries; after detracting from overall productivity growth for most of the past decade, these industries added to growth in 2012-13.

Figure 58: Labour productivity growth in 2012-13 by industry



Source: ABS 5204 and ACTU calculations.

197. Minimum wages have lagged behind productivity growth. Between 2002-03 and 2012-13, labour productivity grew by 12.3%. Over the same period, the real (CPI-adjusted) valued of the NMW rose by 3.4%.[134] Not only did the real value of minimum wages lag overall productivity growth, but it lagged behind labour productivity growth in all but one of the four more award-reliant industries.

Figure 59: Growth in labour productivity and the National Minimum Wage – June 2003 to June 2013

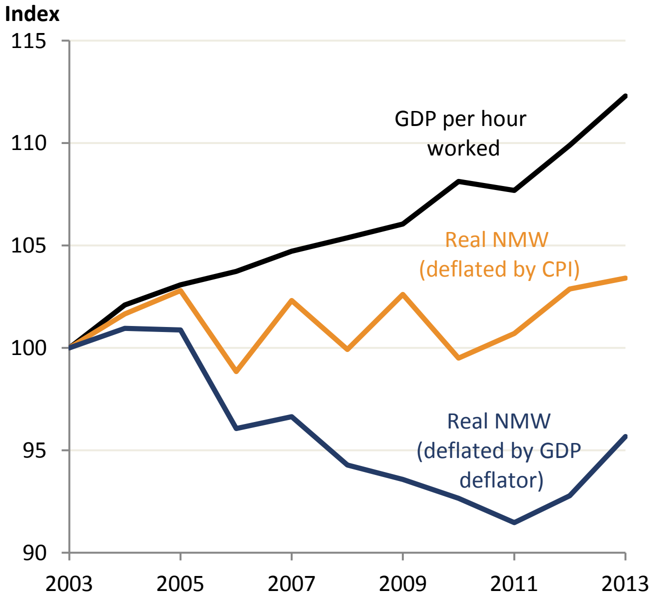
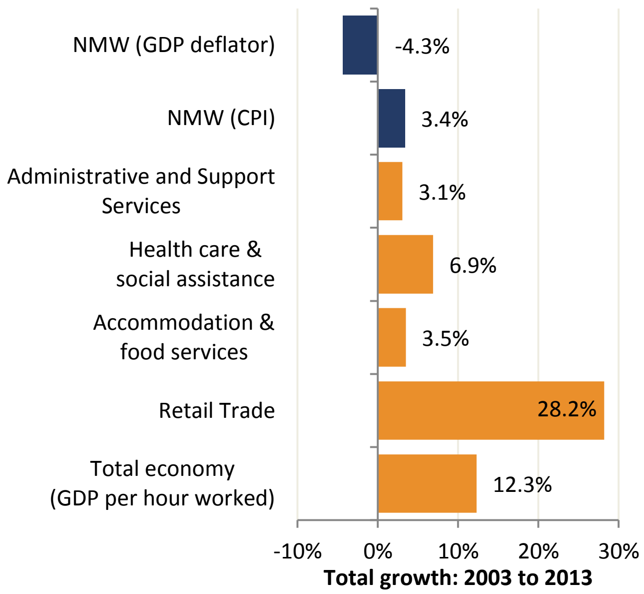


Figure 60: Growth in the NMW and labour productivity in the more award-reliant industries



Source: ACTU calculations based on labour productivity from ABS 5204, CPI from ABS 6401, historical minimum wage rates.

[134] Comparison is from the June quarter 2003 to the June quarter 2013.

198. In its 2013 decision, the Panel:

> *Our productivity performance as a nation underpins our standard of living. In this context labour productivity is relevant. As we have noted, there has recently been an increase in labour productivity. Short -term variations in productivity should be interpreted with some caution and whether the recent increase is sustainable remains to be seen. It is for that reason that we have not given greater weight to recent productivity outcomes in deciding to only award a modest increase in minimum wages in this Review. If sustained, the recent improvement in labour productivity could provide the capacity to address the declining relative position of the low-paid and for them to share in increasing community living standards.*[135]

199. We agree with the Panel that short-term variations in productivity should be interpreted with caution. We do not advocate a formulaic approach to setting minimum wages that ties the quantum awarded to recent productivity growth. The adjustment of minimum wages should take a longer term view. Productivity growth is nevertheless clearly a relevant consideration. The recent productivity figures support the granting of our claim in this Review.

200. The pick-up in productivity growth has now been sustained for several years in a row. Labour productivity rose by 5% in the two years to December 2013, the most rapid rise in a two-year period in over a decade (Figure 54). Three of the four more award-reliant industries experienced faster labour productivity growth in 2012-13 than the overall economy (Figure 58). Low-paid workers have not shared adequately in the benefits of this strong, sustained productivity growth. Awarding our claim will help to deliver some benefits from productivity growth to low-paid workers.

Unit labour costs and the labour share of income

201. Unit labour costs (ULCs) provide a link between the volume of goods and services produced, on average, by an hour of labour, and the average cost of employing a worker to perform that labour. Nominal unit labour costs rose by just 0.2% in the year to the December quarter 2013 (0.4% in trend terms), compared to an average annual growth rate of 3% per year over the past decade.[136] Productivity growth was solid, but growth in nominal hourly earnings was soft – 1.9% over year to the December quarter (see Figure 61). The net result of solid productivity growth and low growth in nominal earnings is that nominal ULCs barely grew (Figure 62).

[135] [2013] FWCFB 4000, [61]
[136] This is the compound annual growth rate (CAGR).

Figure 61: Annual growth in nominal average hourly earnings and labour productivity

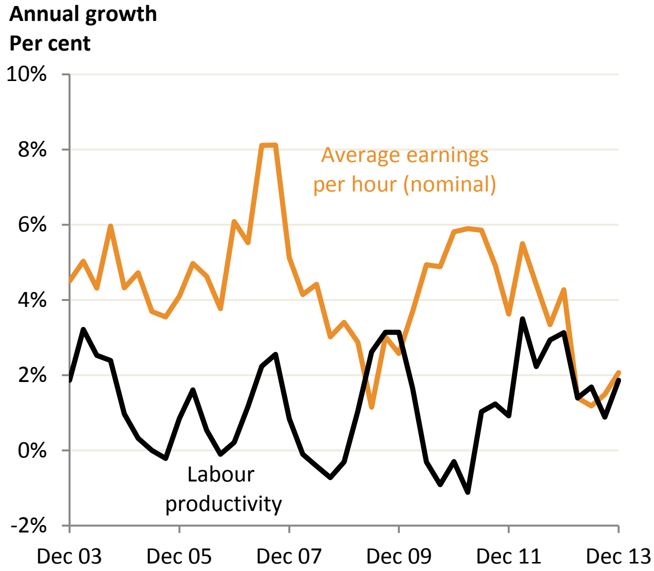
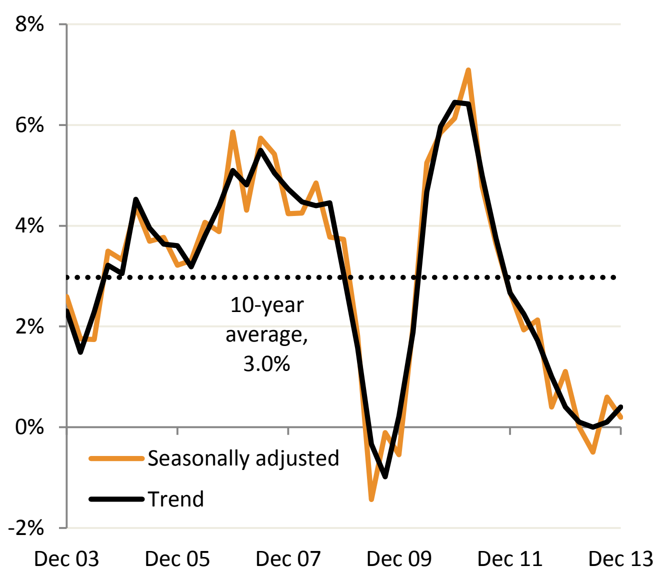


Figure 62: Annual growth in nominal unit labour costs



Source: ABS 5206 and ACTU calculations.

202. Inflation, as measured by the GDP chain price index, picked up in 2013, with output prices rising by 2.2% in the year to December 2013 after falling by 0.6% the previous year. With very low nominal ULC growth and an increase in the price level, the consequence is that real ULCs fell by 1.8% over the year.

203. Real unit labour costs are conceptually equivalent to labour's share of national income.[137] As the Panel noted in its 2012-13 decision, "if real unit labour costs remain constant, then the labour share of output will remain constant and the real cost of a unit of labour is rising at the same rate as labour productivity".[138] The fact that real ULCs fell in 2013 means that real hourly labour income rose more slowly than labour productivity.

204. Real ULCs are a preferable means of comparing the growth rates of labour productivity and average labour costs. The 'wages share' of income, which is the total compensation of employees divided by total factor income, does not provide an accurate picture of relative growth rates in costs and productivity and therefore does not provide an accurate picture of labour's share of income. This issue was canvassed extensively in the 2012-13 Review. The inadequacy of the 'wages share' relates to the treatment of the labour income of the self-employed.

205. Figure 63 compares the unadjusted wages share with a measure that properly accounts for the labour income of the self-employed. While this adjusted labour income share is larger than the unadjusted wages share, the decline has been much steeper. Figure 64 shows that the trend in real ULCs and the adjusted labour share are virtually identical.

[137] Minor measurement differences arise in practise between the ABS RULC and estimates of the labour share of income. This is because the ABS adds payroll tax and subtracts employment subsidies to employee compensation. The effect of including these is typically small, as shown in Figure 64.

[138] [2013] FWCFB 4000, [158]

206. The unadjusted 'wages share' is only slightly below its level from 2003 and 1993, as shown in Figure 64. By contrast, real ULCs have fallen steadily. Real ULCs fell sharply during the financial crisis and have remained near record low levels since that time.

Figure 63: Unadjusted wages share and adjusted labour share of national income

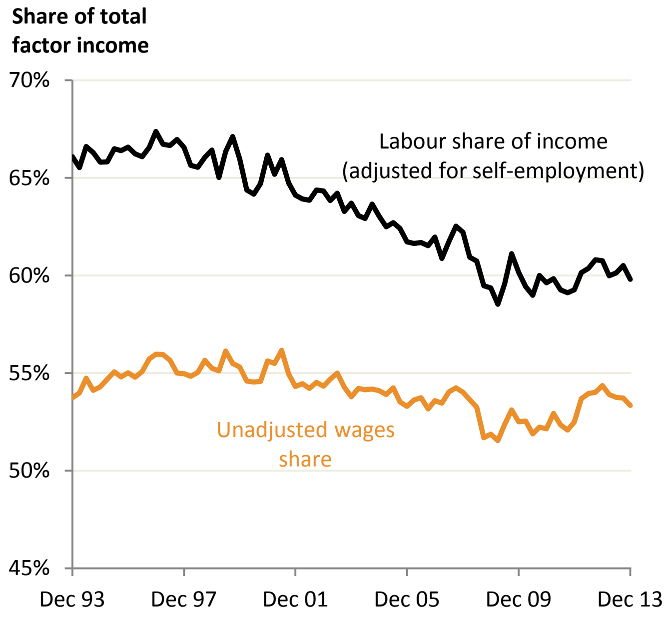
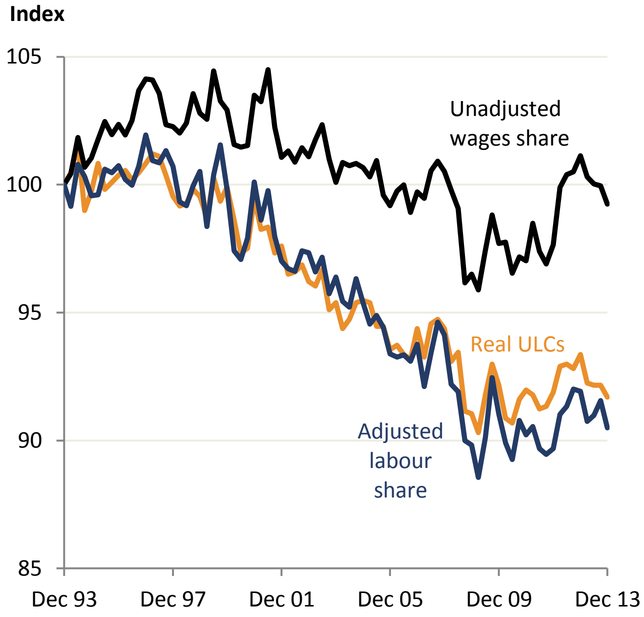


Figure 64: Unadjusted wages share, adjusted labour share, and RULCs (Index)



Source: ABS 5206, ABS 6291.0.55.001, and ACTU calculations.

207. Many, though far from all, OECD countries experienced a falling labour share of income in recent decades. The fall in Australia's labour share (or, equivalently, real ULC) has been larger than in most other OECD countries. Between 2000 and 2011 (the latest year for which the OECD has data, Australia's labour share fell 8.6%, the second largest fall of any OECD advanced economy. The fall in the labour share/real ULCs is not just a case of Australia following a trend that is common across the advanced world.

Figure 65: Labour share of income (real ULC) in OECD countries

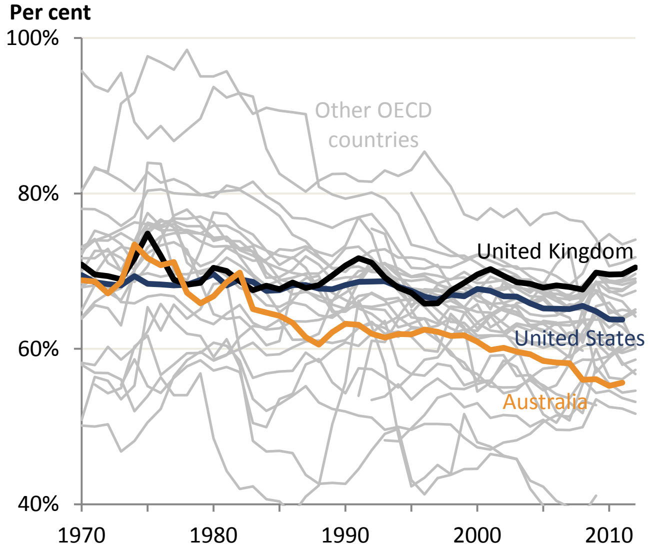
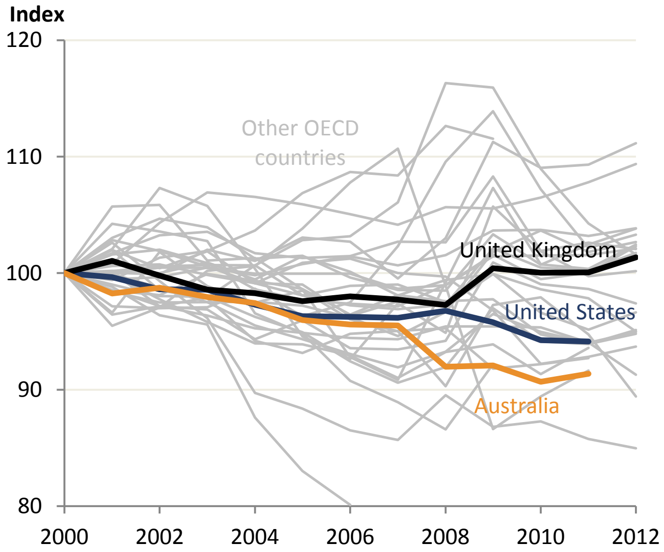
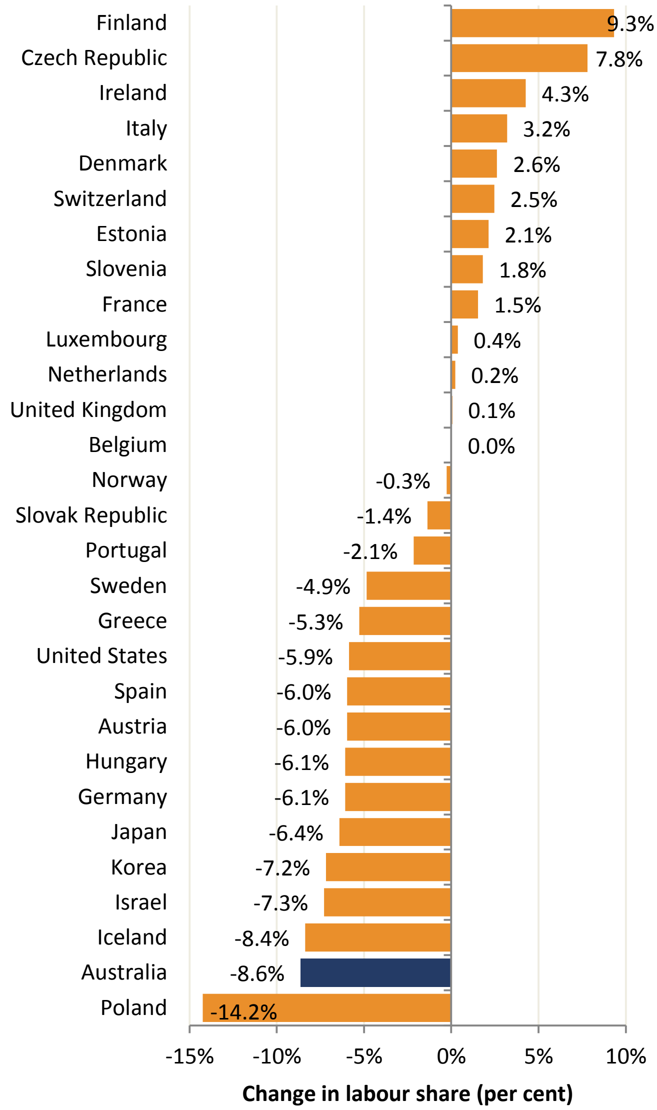


Figure 66: Labour share of income (real ULC) in OECD countries since 2000 (Index: 2000=100)



Source: [OECD Stat] and ACTU calculations.

Figure 67: Change in labour income share (real ULC): 2000 to 2011

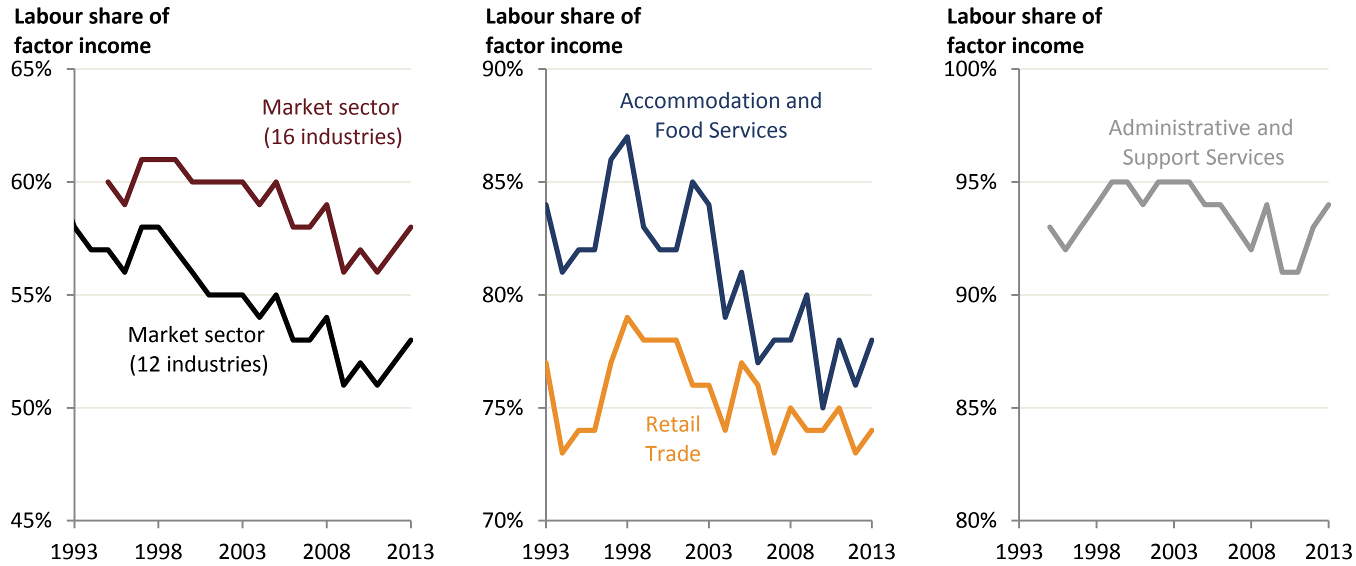


Note: New Zealand's labour share was 11.5% higher in 2009 than in 2000. Canada's was 2.5% smaller in 2008 than in 2000. OECD Stat does not contain more recent data for either country.

208. The fall in the labour share of income is partly, but far from entirely, caused by the mining boom. The labour share of income has fallen in a range of industries that have little to do with mining, including the more award-reliant industries.[139] The fall in the labour share has been particularly steep in Accommodation and Food Services, as shown in Figure 69 and Figure 69. This indicates that hourly labour income (wages plus non-wage compensation such as superannuation) has not grown as fast as labour productivity in the more award-reliant industries.

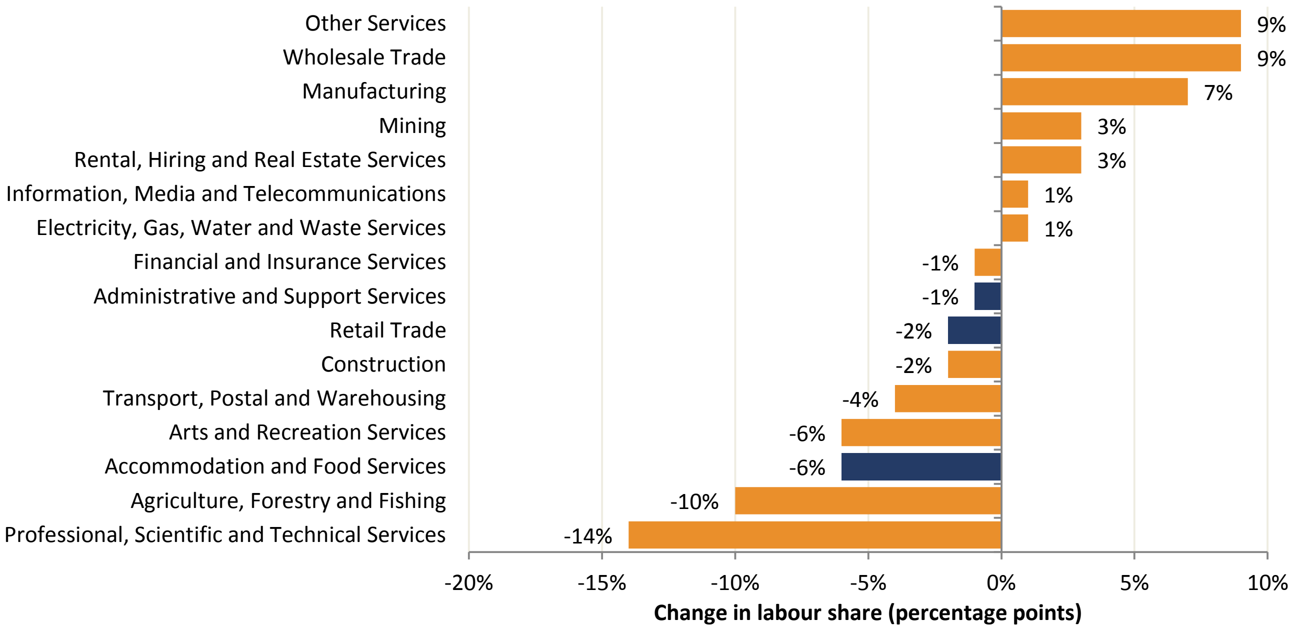
[139] The ABS publishes industry-level estimates of the adjusted labour income share only for 'market sector' industries. Health Care and Social Assistance is not part of the market sector, so figures are not available.

Figure 68: Adjusted labour share of income in market sector industries (ABS estimates)



Source: ABS 5260.0.55.002, Table 14. '1993' is the 1992-92 financial year, and so on. Estimates for the 16 industry market sector and the Administrative and Support Services industry are not available for years prior to 1994-95.

Figure 69: Change in labour share of income: 2002-03 to 2012-13



Source: ABS 5260.0.55.002, Table 14.

209. Labour's share of income can rise and fall for a range of reasons beyond the control of the Panel. Trends in average labour productivity, average labour costs, and output prices are all affected by factors much broader than the rate of increase in minimum wages. However, the failure of labour income to keep pace with labour productivity (as indicated by a fall in real ULCs) is relevant to the Panel's deliberations.

210. We believe the fall in labour's share of income is likely to have been caused, at least in part, by the fact that real minimum wages have not kept pace with productivity growth (see Figure 59 and Figure 60). The Panel's decision directly sets the pay of around a sixth of the workforce and indirectly affects a similar proportion. When the real wages of such a substantial proportion of workers lag behind productivity growth, this drags down the growth in average labour compensation and thus real ULCs. The effect is particularly large in the

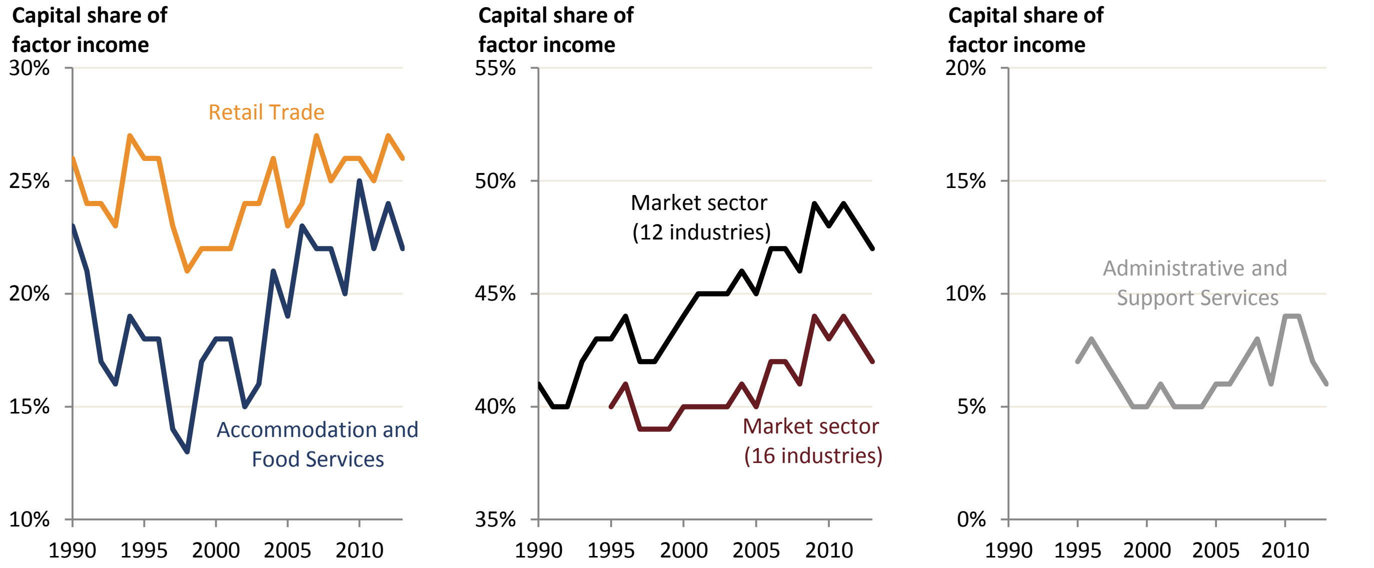
more award-reliant industries. 44.8% of workers in the Accommodation and Food Services industry are paid a minimum rate (see Table 5) – it would be implausible to believe that slow growth in real minimum wages was not a cause of the fall in the labour share/real ULC in that industry.

211. Awarding our claim in this Review will ensure that low-paid workers receive a modest real wage rise and thus share in some of the benefits of productivity growth.

Profitability and business competitiveness

212. Figure 68 showed that the labour share of income has fallen in the market sector, including in the Retail Trade, Accommodation and Food Services, and Administrative and Support Services industries. The corollary of this fall is that the capital share rose.[140] These means that the total gross real return to capital in these industries has grown faster than productivity.

Figure 70: Capital share of income in market sector industries (ABS estimates)



Source: ABS 5260.0.55.002, Table 14. '1993' is the 1992-92 financial year, and so on. Estimates for the 16 industry market sector and the Administrative and Support Services industry are not available for years prior to 1994-95.

213. The Reserve Bank recently noted that business conditions have improved in recent months:

Conditions have generally improved for businesses over the past six months, supported by increased spending by households, low business lending interest rates and the depreciation of the Australian dollar. This is reflected in business survey measures that indicate that conditions for both smaller and larger businesses are now around long-run average levels… This improvement has been broadly based across industries, although there are some industries where conditions are still some way below long-run average levels…

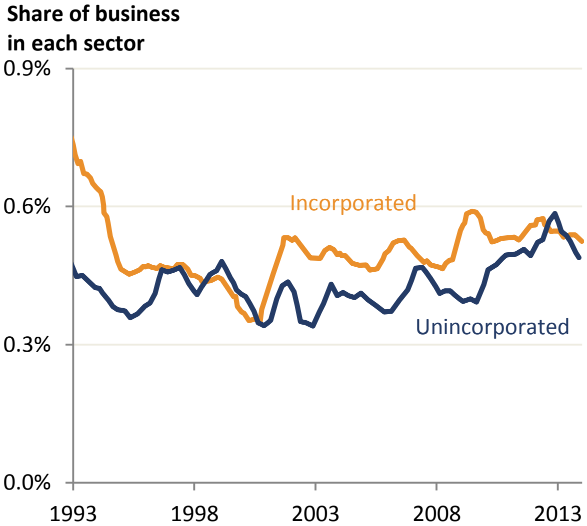
The early signs of improvement in the business sector's operating environment are reflected in some indicators of business stress. This is particularly evident for unincorporated businesses, for which the failure rate declined

[140] The capital share is gross operating surplus of corporations and the imputed return to capital in unincorporated enterprises. The imputation is performed by the ABS. The figures reported here are ABS figures.

in 2013, reversing a steady increase for several years prior. The rate for incorporated businesses has fallen steadily since early 2012.[141]

214. The RBA *Financial Stability Review* included a chart of business failures per year, reproduced as Figure 71. This shows that the business failure rate for incorporated enterprises has eased slightly and is around its typical level, while the rate for unincorporated enterprises has fallen sharply over the past year or so.

Figure 71: Business failures (annual)



Source: Reproduced from RBA *Financial Stability Review,* March 2014, Graph 3.10. Incorporated business failures are companies entering external administration. Unincorporated business failures include business-related personal bankruptcies and other administrations.

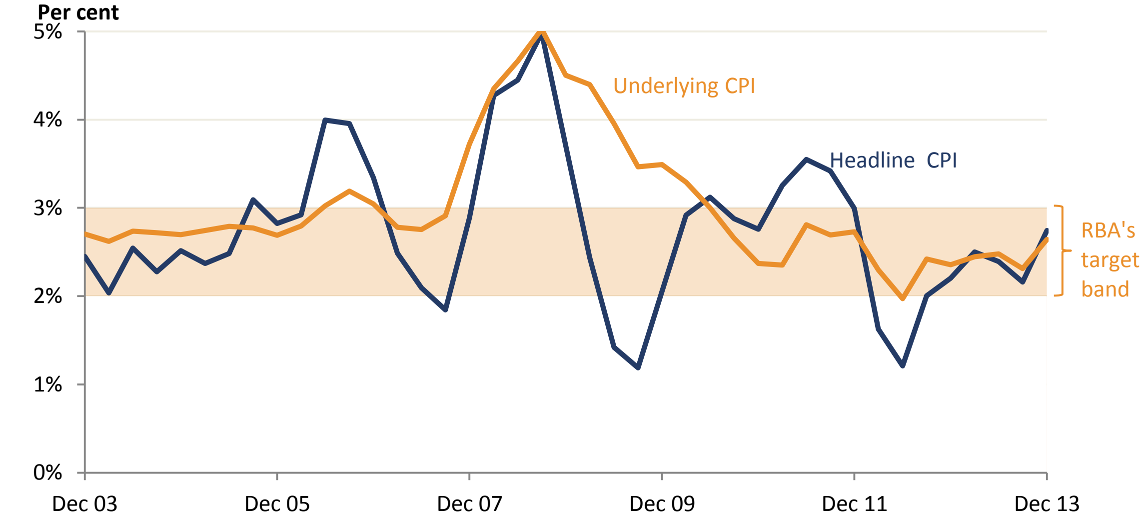
215. Business conditions have improved and are expected to continue to improve. A modest minimum wage increase, as per our claim in this Review, is appropriate in the circumstances.

Inflation

216. Inflation rose a little in 2013, with the CPI rising by 2.7% over the year to the December quarter. Underlying inflation (whether measured by the trimmed mean or weighted median) was 2.6%. The pace of inflation lifted towards the end of the year, as the headline CPI rose by 0.8% and underlying measures rose 0.9%.

[141] RBA 2014, *Financial Stability Review,* March, Reserve Bank of Australia, Sydney, pp. 40-1.

Figure 72: Inflation – annual change in the Consumer Price Index



Source: ABS 6401.

217. The living cost index (LCI) for employee households rose less rapidly than the CPI, with the LCI increasing by 1.3% over the year to the December quarter. Much of the difference in growth rates between the two series is explained by movements in interest rates – mortgage interest rates are included in the basket of goods for the employee LCI, but not the CPI. When interest rates are falling, the employee LCI tends to grow more slowly than the CPI, and the converse is true when interest rates are rising. Over the past ten years, the two series have grown at around the same average pace, with the CPI increasing by a total of 31.8% and the employee LCI rising 32.9%. If interest rates remain unchanged, the employee LCI and the CPI would be expected to grow at a similar pace. Financial markets currently anticipate that the RBA's cash rate will remain at 2.5% for the balance of 2015.[142]

Figure 73: Annual growth in CPI and employee LCI

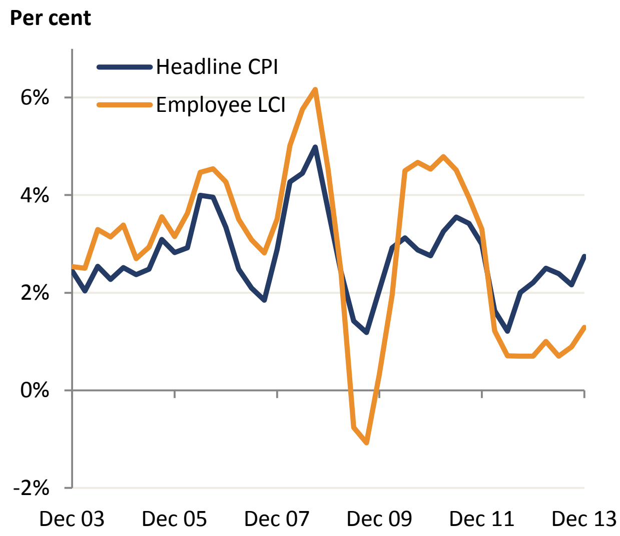
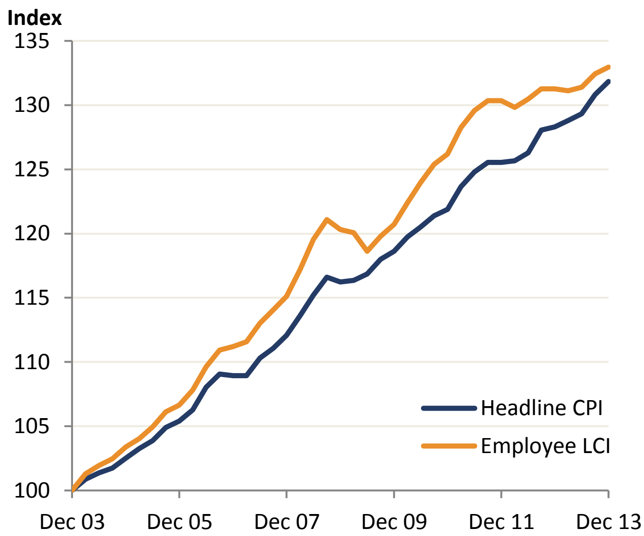


Figure 74: CPI & employee LCI since Dec 2003 (Index)



Source: ABS 6401, ABS 6467 and ACTU calculations.

[142] ASX 2014, 'RBA Rate Indicator – April 2014, Available from: http://www.asx.com.au/prices/targetratetracker.htm. [Accessed 26 March 2014]

Wages

218. Over the year to the December 2013 quarter, the Wage Price Index rose by 2.6%. That is the slowest growth in the WPI since the time series began in 1997. Both the public and private sector WPIs grew slowly in 2013.

Figure 75: Annual growth in Wage Price Index

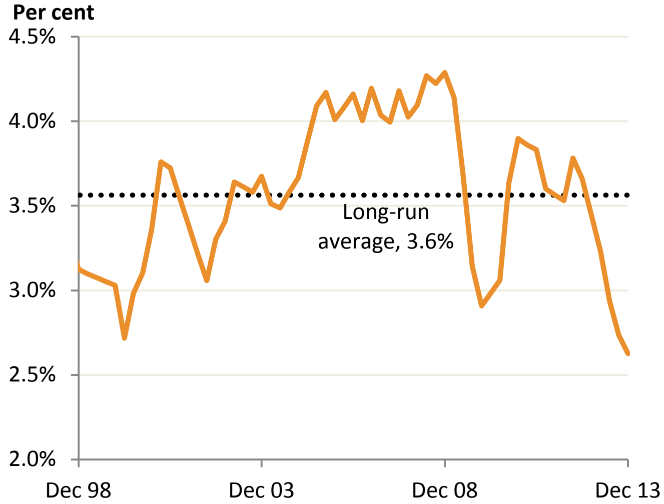
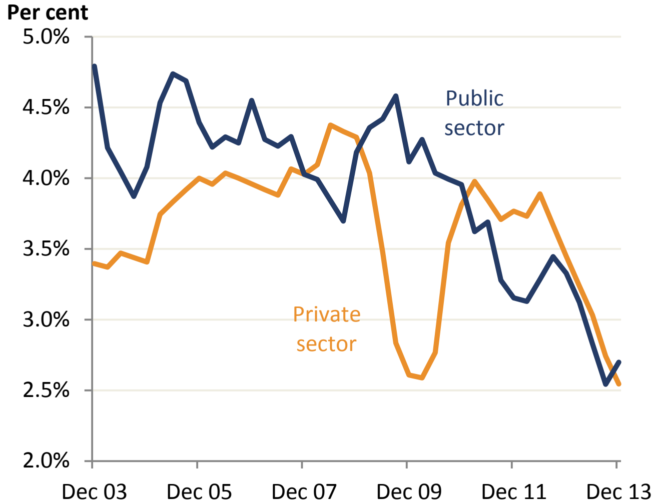


Figure 76: Growth in private and public sector WPI



Source: ABS 6345 and ACTU calculations.

219. The WPI rose by just 0.5% in the September quarter, with quarterly growth picking up to 0.7% in the December quarter. Although quarter-to-quarter movements are volatile and caution should be exercised in interpreting them, this may indicate that the nadir in WPI growth for this cycle may have been reached.

220. The slowdown in wages growth has been broadly-based. Each industry's WPI has grown more slowly than the long-run average for the industry. The dispersion of growth rates across industries has fallen markedly.

221. No state or territory experienced faster-than-average wages growth in 2013.

222. In the year to the September quarter 2013, which is when the Panel's decision in the 2012-13 Review took effect, the WPI rose 2.7%. Minimum wages were increased by 2.6%. Even in a period of record-low overall wages growth, minimum wage workers still lagged behind the WPI.

Table 9: WPI growth by state/territory and industry

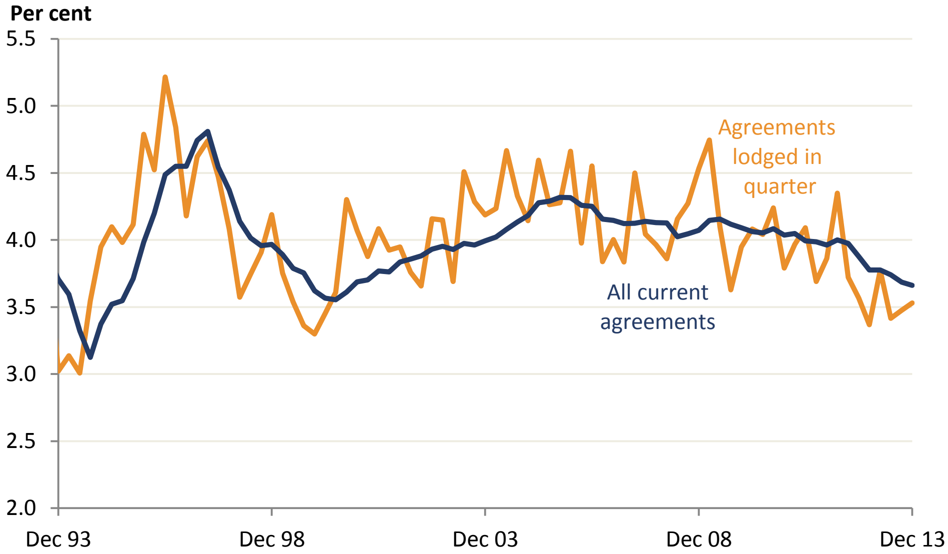
	Year-ended growth	Long-run average growth	Difference (percentage points)
States/territories			
SA	3.5%	3.5%	0.0%
WA	3.0%	3.9%	-0.9%
Australia	2.5%	0.0%	2.5%
Qld	2.5%	3.6%	-1.0%
Victoria	2.5%	3.5%	-1.0%
NSW	2.5%	3.5%	-1.1%
ACT	2.4%	3.6%	-1.2%
NT	2.3%	3.5%	-1.1%
Tas	2.2%	3.5%	-1.3%
Industries			
Electricity, gas, water and waste services	3.3%	4.1%	-0.9%
Mining	3.1%	4.1%	-1.0%
Education and training	2.9%	3.9%	-1.0%
Public administration and safety	2.9%	3.8%	-0.9%
Manufacturing	2.8%	3.5%	-0.6%
Construction	2.8%	3.9%	-1.1%
Rental, hiring and real estate services	2.8%	3.4%	-0.6%
Health care and social assistance	2.7%	3.6%	-0.9%
Retail trade	2.7%	3.1%	-0.4%
Financial and insurance services	2.6%	3.7%	-1.1%
Australia	2.5%	3.6%	-1.0%
Transport, postal and warehousing	2.5%	3.4%	-0.9%
Information media and telecommunications	2.4%	3.3%	-0.9%
Administrative and support services	2.4%	3.3%	-0.9%
Arts and recreation services	2.3%	3.2%	-0.9%
Accommodation and food services	2.2%	2.8%	-0.6%
Other services	2.2%	3.1%	-0.9%
Wholesale trade	2.1%	3.4%	-1.3%
Professional, scientific and technical services	1.6%	3.9%	-2.3%

Source: ABS 6345 and ACTU calculations.

223. In the year to the November quarter, the average weekly ordinary time earnings of full-time adults (AWOTE) rose by 2.9%, also outpacing minimum wages.

224. The average wage increase in enterprise agreements has also fallen. Agreements lodged in recent quarters have included an average annualised wage increase per employee of around 3.5%, down from around 4% in 2011 and 2012. Even though collective agreement wages have been rising more slowly than usual, they are still increasing by a percentage point or so more than minimum wages rose in 2013.

Figure 77: Average annual wage increase in federal enterprise agreements



Source: Department of Employment, *Trends in Federal Enterprise Bargaining*.

The state of the labour market

225. Economic growth was a little below its trend pace in 2013, as outlined above. As a result, the unemployment rate rose to 6%.

226. However, there are the labour market is beginning to follow other recent measures of economic activity in showing an improvement. Both employment and job advertisements grew strongly in February.

Employment and unemployment

227. Over the year to February 2014, the number of employed people rose by 69 800, of whom 42 700 were in full time work. This is relatively weak employment growth. However, most of the growth over the past 12 months was recorded in the month of February, with employment growing by a very large 47 300 in the month. This could indicate that the period of sluggish growth is coming to an end. Although this may be partially a result of measurement issues[143], the improvement in employment growth does coincide with an improvement in other timely indicators, such as job advertisements (as shown later in this chapter).

Figure 78: Change in employment between January 2014 and February 2014

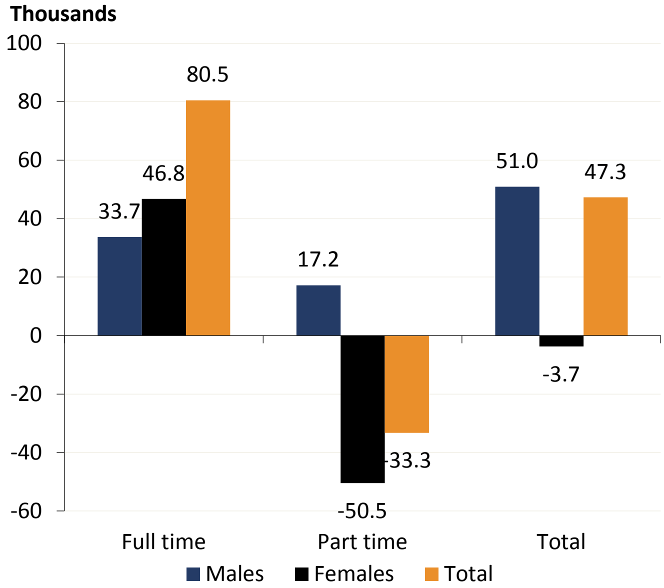
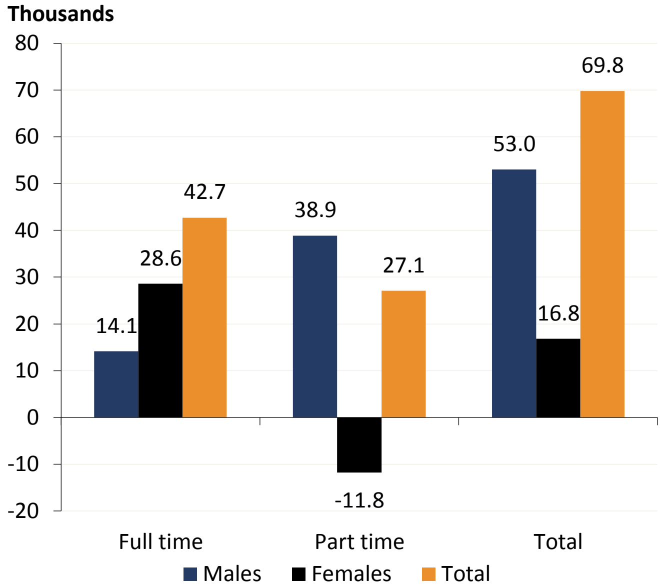


Figure 79: Change in employment between February 2013 and February 2014



Source: ABS 6202

228. Employment growth wasn't fast enough to keep up with population growth; as a result, the employment-to-population ratio fell over the year (from 61.7% to 60.9%) and the unemployment rate rose (5.4% to 6%). While the ACTU regards 6% unemployment as unacceptably high, this is nevertheless lower than the average for the past three decades. The employment-to-population ratio remains higher than it was at any time prior to mid-2005.

[143] The incoming sample rotation group for February had different characteristics to the outgoing group. This affected the February figures. The ABS in the February *Labour Force* publication advises that "the trend estimates provide a better measure of the underlying level and direction of the series especially when there are significant rotation group effects."

Figure 80: Unemployment rate

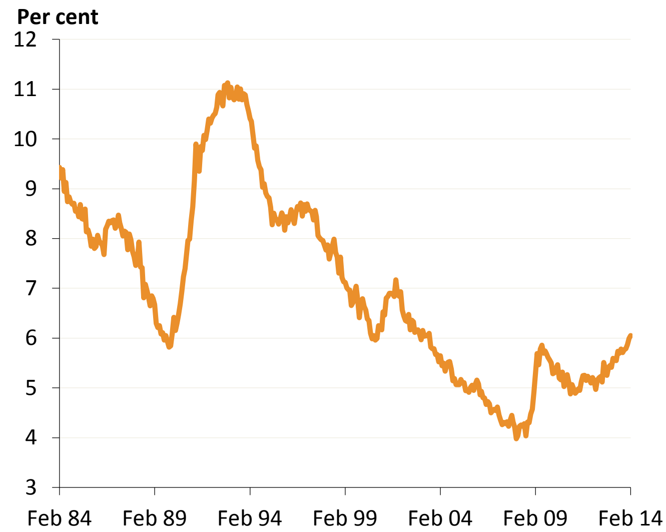
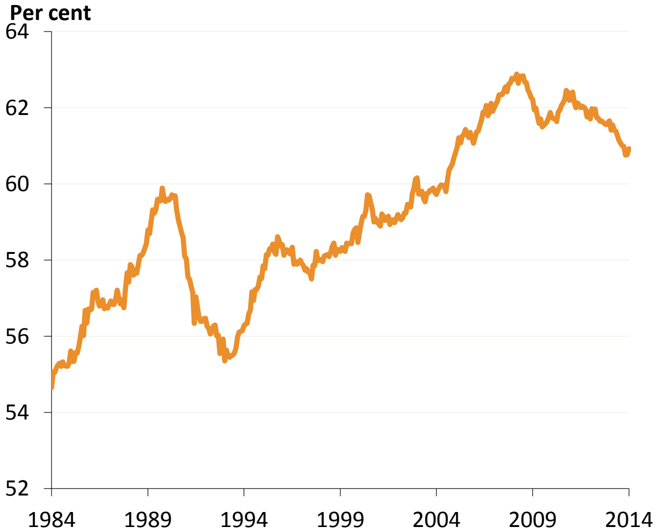


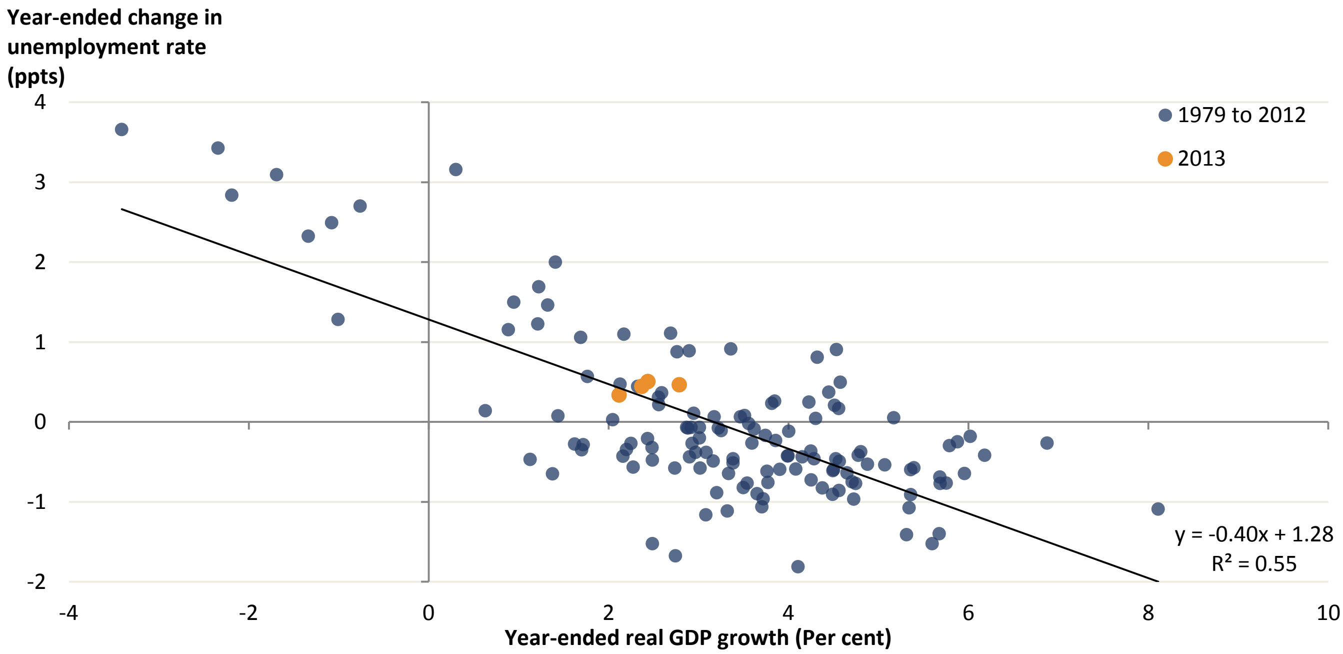
Figure 81: Employment-to-population ratio (15+)



Source: ABS 6202

229. The unemployment rate in Australia tends to rise when economic growth is less than 3.2%. On average, each percentage point of GDP growth below 3.2% is associated with a 0.4 percentage point increase in the unemployment rate. The rise in the unemployment rate over 2013 was almost exactly the size that would have been predicted based on this historical relationship between growth and unemployment, as shown in Figure 82. Unemployment has risen a little because growth has been slightly below-trend, and growth slowed due to broad factors such as the fall in mining investment and the effect of the elevated exchange rate on manufacturing and other trade-exposed industries.

Figure 82: Okun's Law – change in unemployment rate and economic growth



Source: ABS 6202, ABS 5206 and ACTU calculations.

230. The number of hours worked rose by 0.6% over the year to February, in line with employment growth, but the more reliable 'trend' estimate grew by 0.9%. This is an encouraging sign. The number of hours worked is more volatile than total employment, and hours tend to recover more quickly than employment as employers

use their existing workforce more intensively before taking on new staff. The underemployment rate fell by 0.2 percentage points between November and February, which gives further cause for optimism that the softening of the labour market may be coming to an end.

Figure 83: Underemployment rate

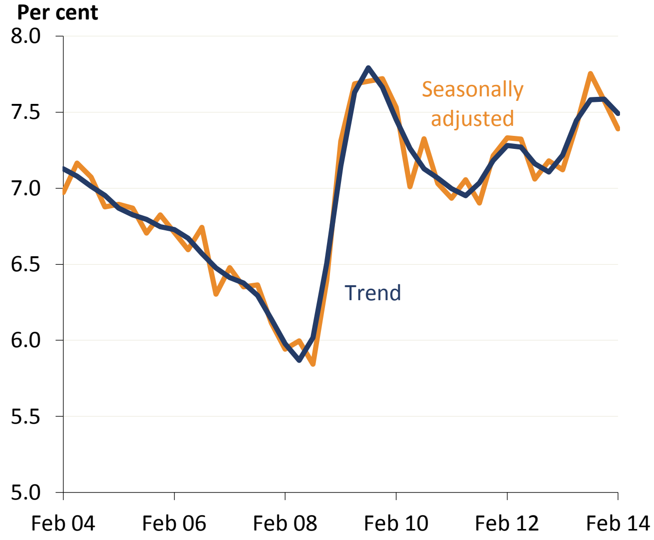
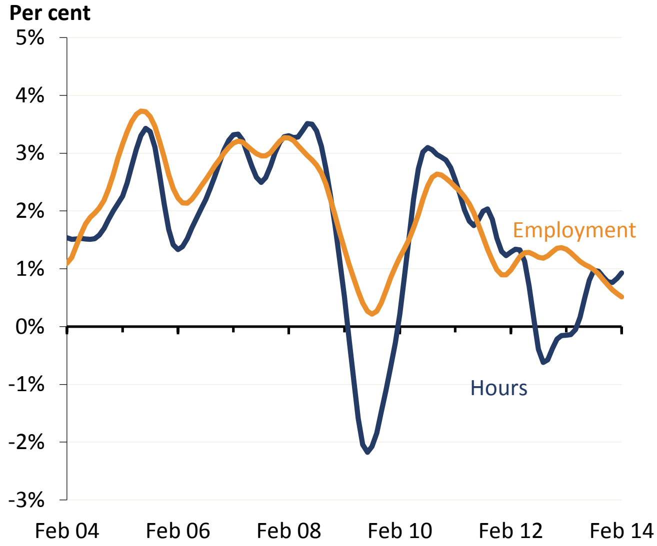


Figure 84: Annual growth in hours and employment (trend)



Source: ABS 6202 and ACTU calculations.

Regional dispersion of labour force conditions

231. When the unemployment rate is high, so is the dispersion between the unemployment rates of the states and territories. As unemployment falls, the gap between unemployment rates of the states and territories tends to fall too. The increase in unemployment over the past year or so has been accompanied by a rise in the gap between state unemployment rates. However, it’s important to know that the gap between the highest and the lowest unemployment rates of the states and territories remains below the pre-mining boom average, as shown in Figure 86.[144]

[144] The same trend is evidence when dispersion is measured by the standard deviation in state/territory unemployment rates rather than the gap between largest and smallest unemployment rates.

Figure 85: Range of unemployment rates in the states and territories

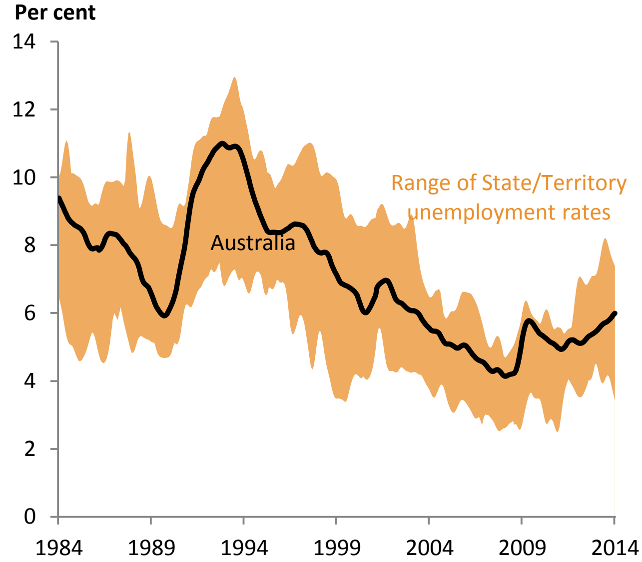
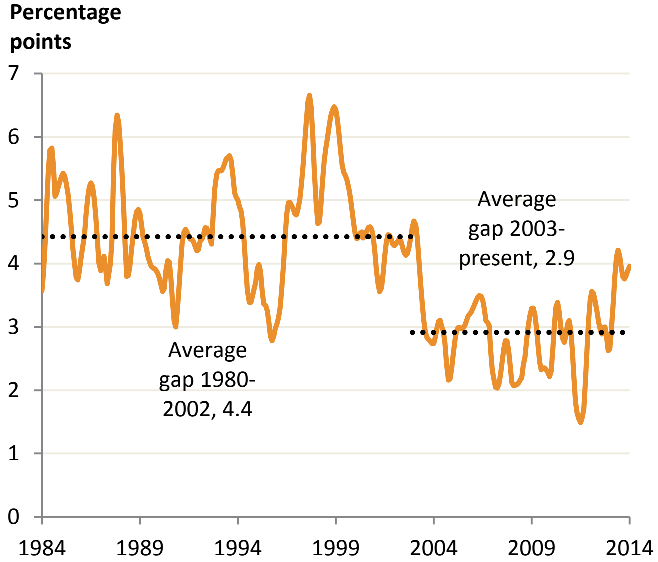


Figure 86: Gap between highest and lowest unemployment rates of the states and territories



Source: ABS 6202 and ACTU calculations.

232. The same trend is evident when the dispersion of unemployment rates is examined at the level of labour force regions, rather than states and territories. The ABS *Labour Force* survey divides Australia into 87 regions and reports an unemployment rate for each region. When the national unemployment rate is low, the unemployment rates of these 87 regions tends to converge; the gaps between them tend to rise as overall unemployment rises, as shown in Figure 87 and Figure 88.[145] Dispersion in unemployment rates across the labour force regions has risen in the past year or so as the unemployment rate has risen, but to levels that are relatively modest compared to most of the 2000s. This is shown in Figure 87.

[145] The same result was obtained using different data by Gruen, Li and Wong 2012, 'Unemployment disparity across regions', *Economic Roundup Issue 2,* The Treasury, Canberra.

Figure 87: The national unemployment rate and the dispersion of unemployment rates across 87 regions

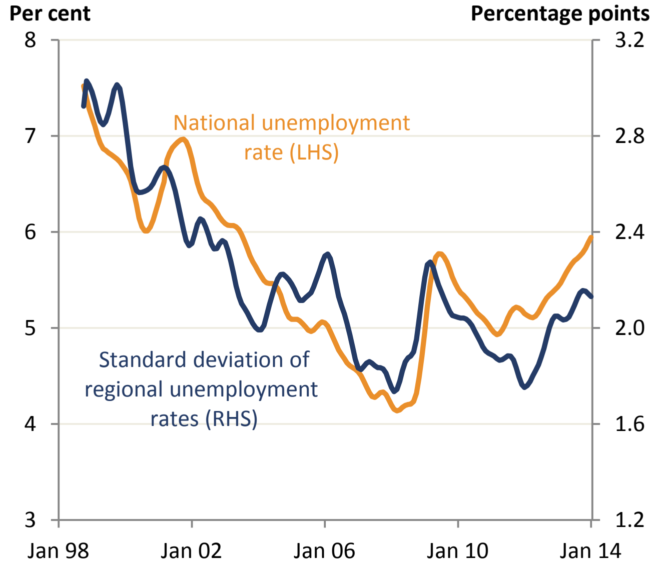
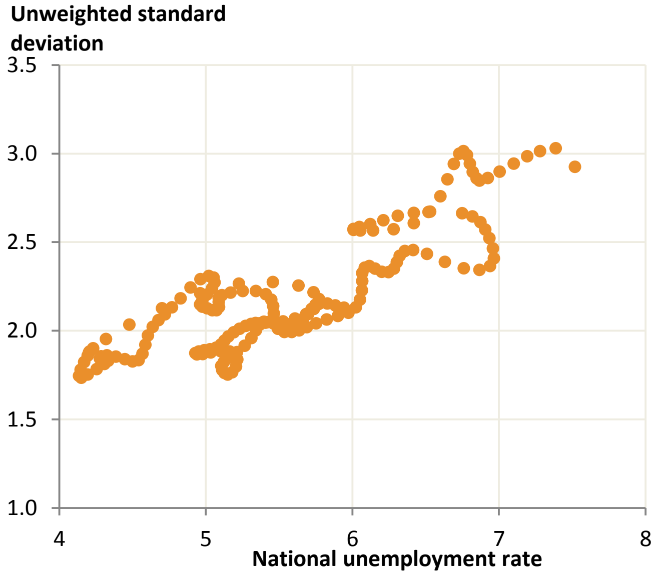


Figure 88: The national unemployment rate and the dispersion of unemployment rates across 87 regions



Source: ABS 6202, ABS 6291.0.55.001 and ACTU calculations. Standard deviation of regional unemployment rates is based on original data, which is then seasonally adjusted by the ACTU using X12-ARIMA.

233. The rise in the dispersion of unemployment is a matter for concern, as is the rise in overall unemployment. However, both have risen a little from relatively low levels.

Participation in the labour force

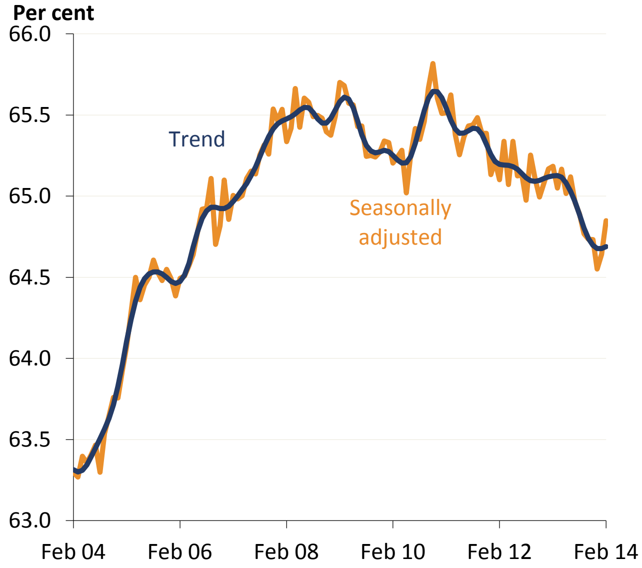
234. The labour force participation rate for all civilians aged 15 and over fell by 0.3 percentage points over the year to February, to 64.8% (see Figure 89). However, as discussed in the 2012-13 Review, the ageing of the population has contributed to the fall in participation in recent years. In last year's Review, the Panel accepted that:

> *[T]he proposition that the recent decline in the participation rate, when measured by reference to those aged 15 or over, is largely explained by the ageing population is correct.*[146]

235. Ageing remains a significant contributor to the decline in participation. However, since mid-2013 there has been a decline in participation rates *within* age groups that is indicative of a cyclical downturn in participation. A simple (though incomplete) way to discern the effect of ageing on participation is to compare the change in the participation rates for all persons aged 15+ and the rate for persons aged 15-64, as in Figure 90. The 15+ participation rate has fallen more or less continuously since peaking in late-2010. By contrast, the 15-64 rate in mid-2013 was only slightly below its peak. In the past 6 months or so, both have fallen by a similar amount.

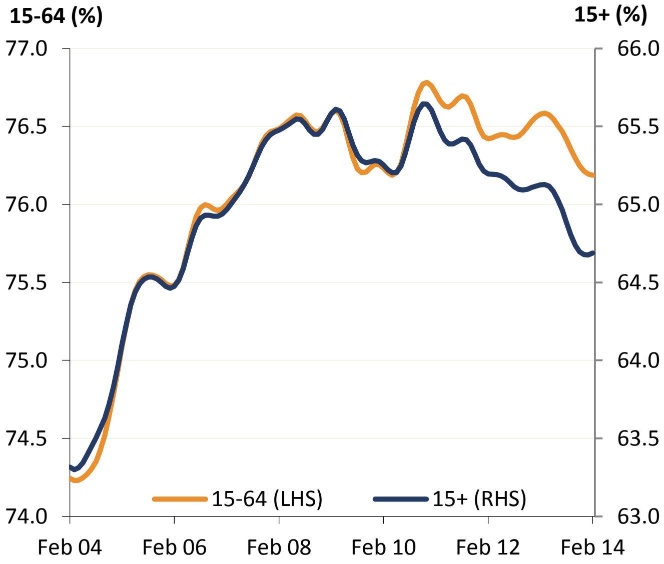
[146] [2013] FWCFB 4000, [244]

Figure 89: Participation rate (15+)



Source: ABS 6202.

Figure 90: Participation rate (15+ and 15-64)

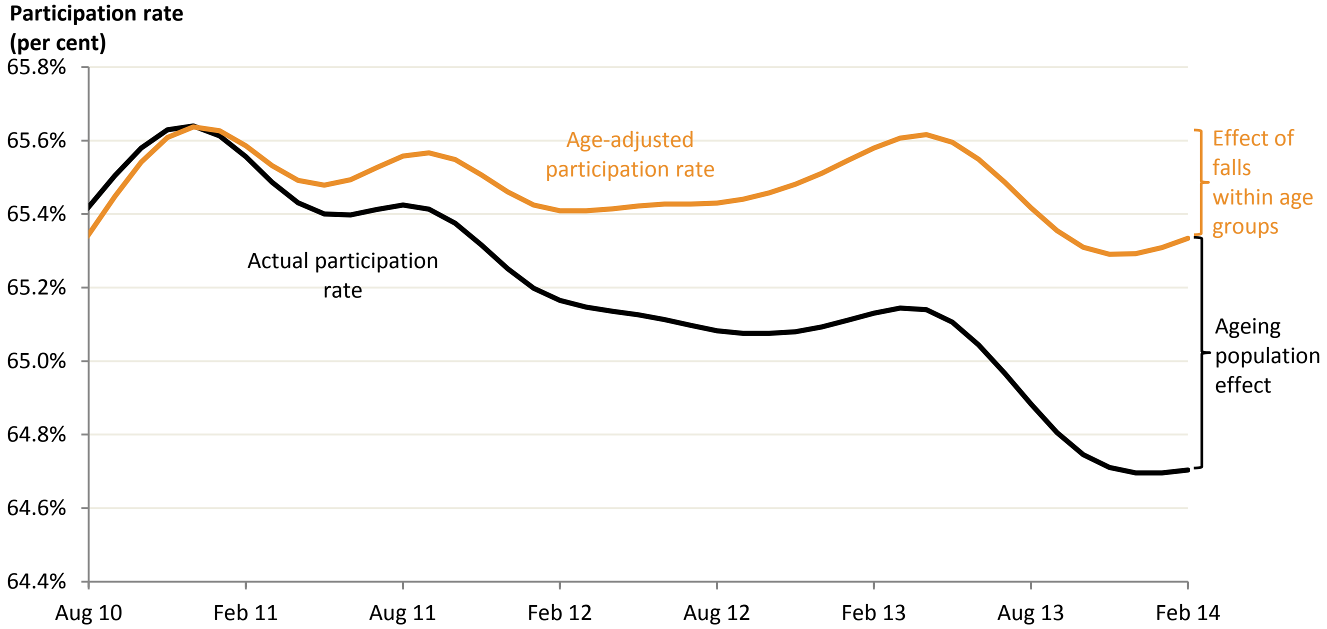


236. As the Panel noted in its decision last year, an age-adjusted participation rate provides a "more complete, but more complex" method of identifying the contribution of the ageing population to declining participation.[147] Using this method, we find that 0.3 percentage points of the 1 percentage point fall in the (trend) participation rate since December 2010 can be explained by the ageing of the population. If the demographic structure had remained intact from December 2010, we estimate that the participation rate in February 2014 would have been 65.3%, rather than 64.7%.[148] All of the fall in the 15+ participation rate between December 2010 and April 2013, we estimate, was due to ageing; most of the decline since April 2013 has been due to within-age group falls in participation.

[147] [2013] FWCFB 4000, [244]

[148] We use the decomposition method documented in Hotchkiss, J.L. 2009, 'Decomposing Changes in the Aggregate Labor Force Participation Rate', Working Paper 2009-6, Federal Reserve Bank of Atlanta, Atlanta. Available online: http://www.frbatlanta.org/filelegacydocs/wp0906.pdf. [Accessed 20 March 2014]

Figure 91: Age-adjusted participation rate



Source: ABS 6291.0.55.001 and ACTU calculations. Age-adjusted participation rate uses demographic weights as at December 2010. Chart uses original data, seasonally adjusted using X12-ARIMA.

237. We note that the Deputy Governor of the Reserve Bank, Dr Phillip Lowe, produced a similar chart during a recent speech.[149] Dr Lowe concluded that "around half of the decline [in participation] since late 2010 is due to ageing," a result close to the one we obtained above. Dr Lowe's speech predated the release of the February detailed labour force data from which the age-adjusted participation rate is constructed.

238. A softening in the labour market has clearly resulted in a fall in participation since mid-2013. However, over half of the fall since the peak in 2010 is due to the ageing of the population.

Employment by industry

239. Employment grew in two of the four more award-reliant industries in the year to February 2014 – Health Care and Social Assistance (+3.6%) and Retail Trade (+0.5%). Employment shrank in the Accommodation and Food Services and Administrative and Support Services industries, as shown in Figure 92. A longer term picture is shown in Figure 93, which shows employment in each industry as a share of total employment in February 2004 and 2014.

[149] Lowe, P. 2014, 'Demographic, Productivity and Innovation', Speech to the Sydney Institute, 12 March, Graph 6. Available from: http://www.rba.gov.au/speeches/2014/sp-dg-120314.html. [Accessed 20 March 2014]

Figure 92: Employment growth by industry – year to Feb 2014 quarter (trend)

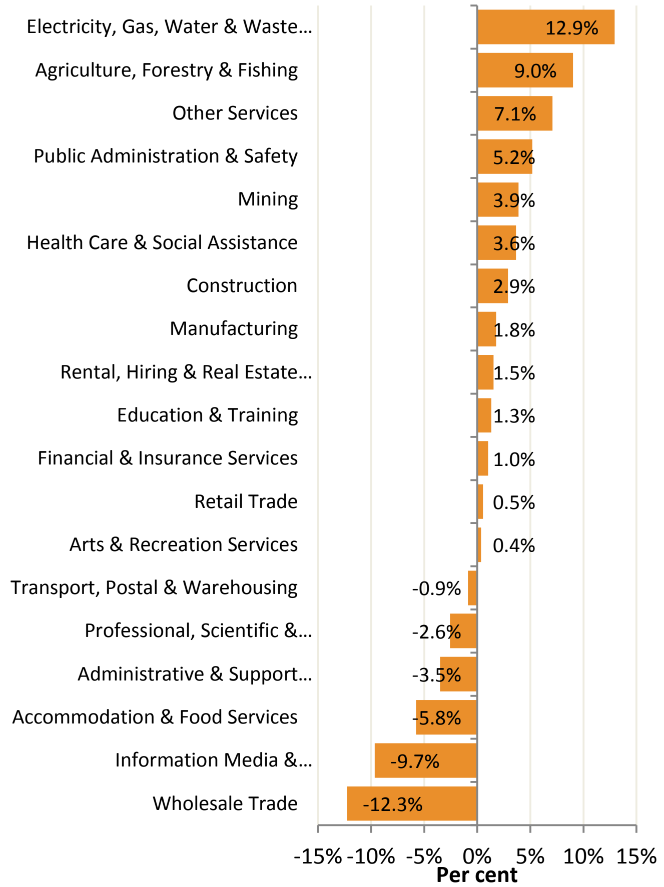
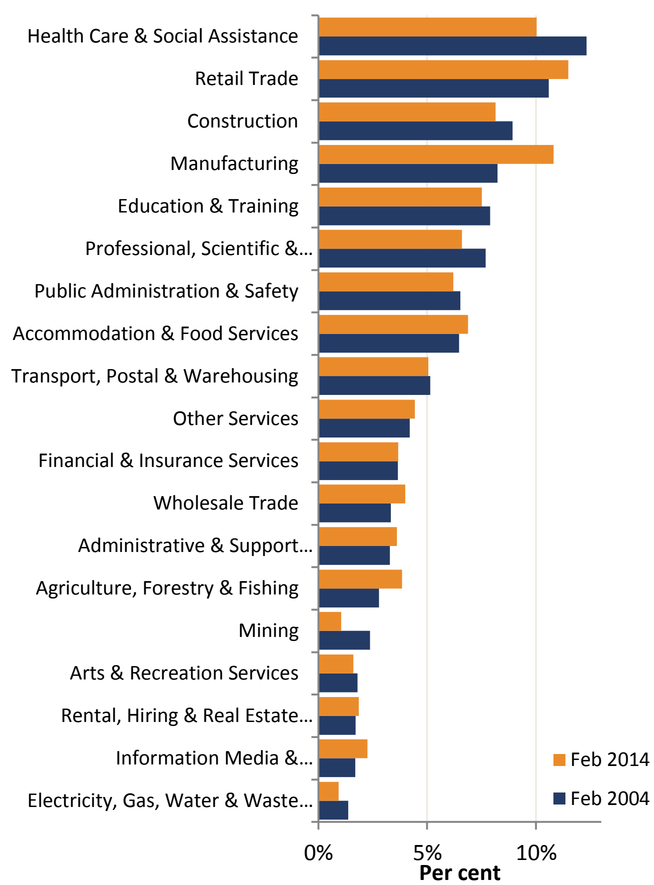


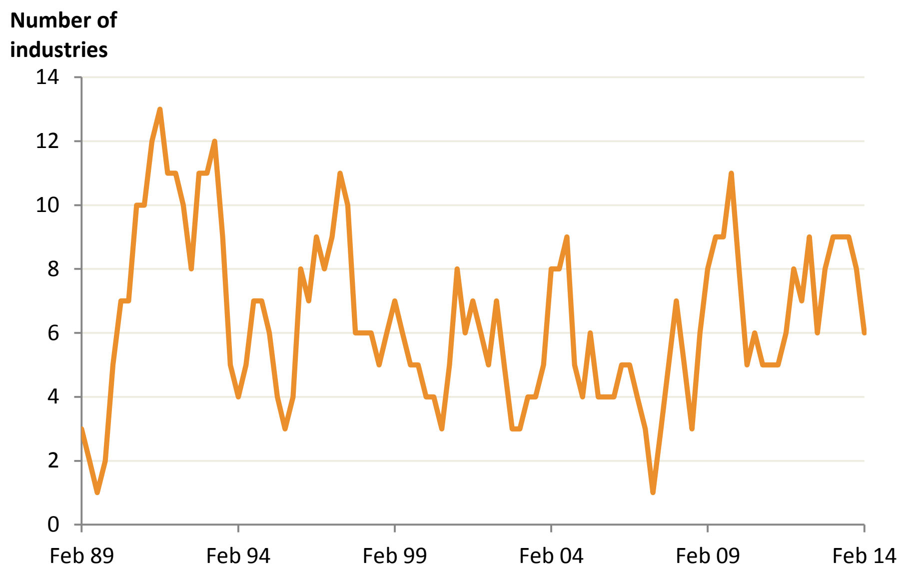
Figure 93: Employment share by industry – Feb 2004 and Feb 2014



Source: ABS 6291.0.55.003 (trend) and ACTU calculations.

240. Figure 92 shows that there were six industries in which employment fell over the year to February 2014. This is around the average for the past two decades, and represents an improvement from the year to February 2013, when 9 industries recorded falling employment. This is shown in Figure 94.

Figure 94: Industries with negative employment growth over the year



Source: ABS 6291.0.55.003 and ACTU calculations.

241. While employment fell in two of the more award-reliant industries over the year to February, the Panel should be aware that the employment growth figures at the industry level can be volatile from quarter-to-quarter, even when using the ABS trend estimates (as we have here). The figures below show annual employment growth in each of the four more award-reliant industries. Figure 96 shows that although employment fell in Accommodation and Food Services over the past year, it increased rapidly in the prior year.

Figure 95: Annual employment growth in Retail Trade

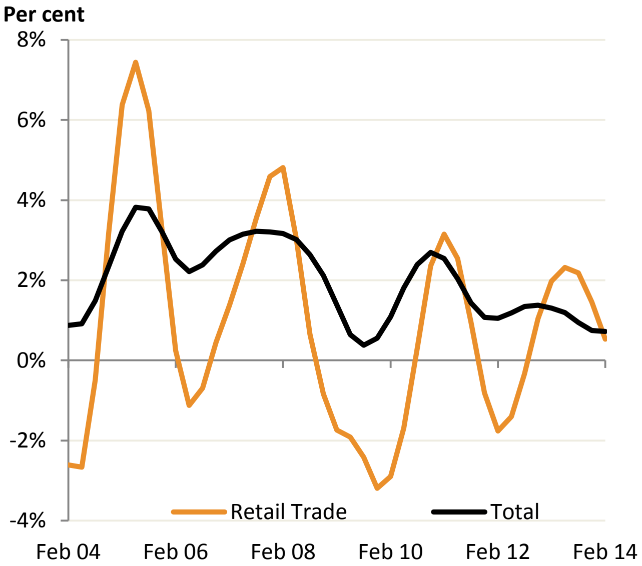


Figure 96: Annual employment growth in Accommodation and Food Services

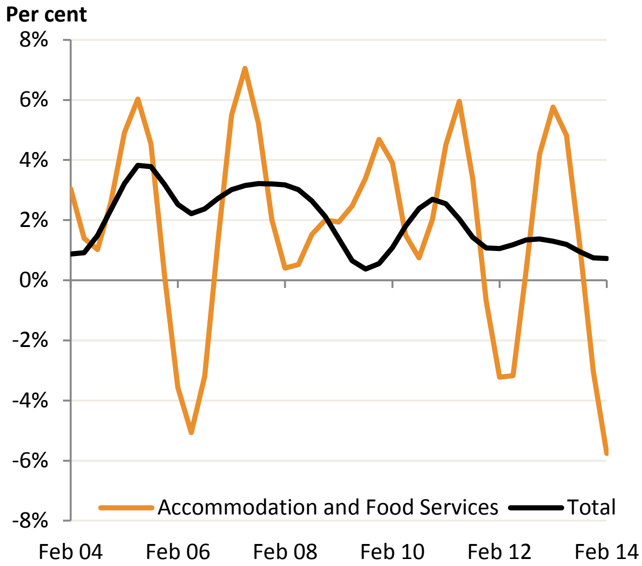


Figure 97: Annual employment growth in Administrative and Support Services

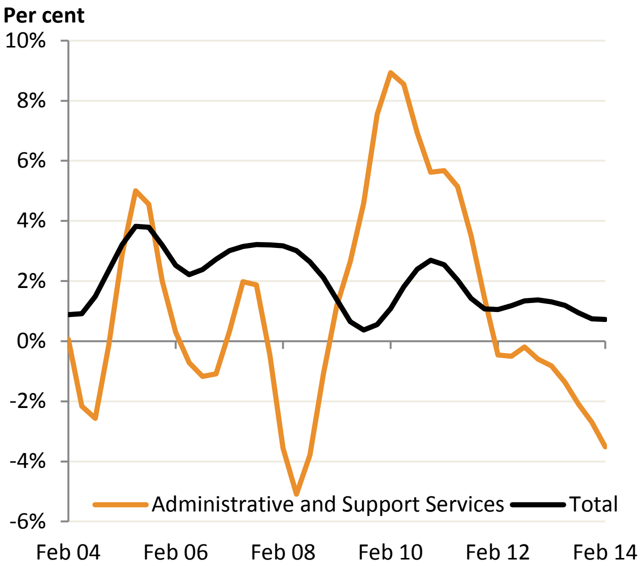
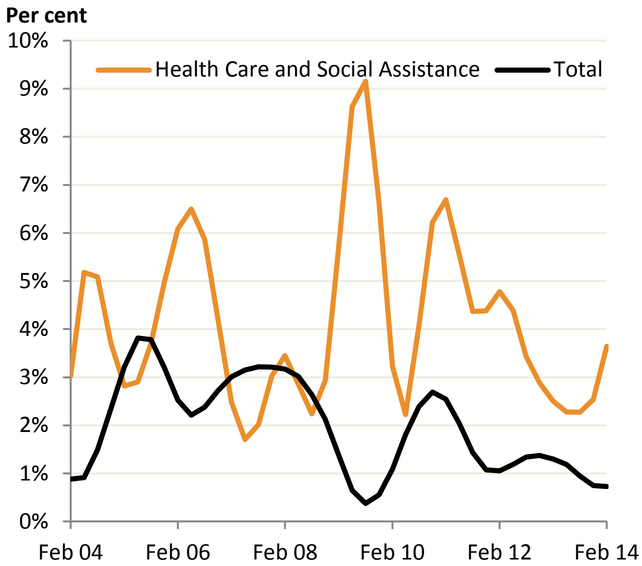


Figure 98: Annual employment growth in Health Care and Social Assistance



Source: ABS 6291.0.55.003 and ACTU calculations.

242. Employment shares provide a simple summary measure of the pace of growth in an industry relative to the labour market as a whole. As can be seen in Figure 93, the employment shares in both Accommodation and Food Services and Administrative and Support Services were more or less unchanged over the decade. The employment share of Retail Trade fell a little, while Health Care and Social Assistance rose. Figure 99 shows

the employment shares of the four more award-reliant industries over the course of the past decade. Taken together, the four industries have grown slightly as a share of total employment, as shown in Figure 100. Much of the decline in the employment share of retail trade occurred during the Work Choices period, including during 2009 when minimum wages were not increased, suggesting that this trend is driven by factors other than minimum wage adjustment.

Figure 99: Employment shares of more award-reliant industries

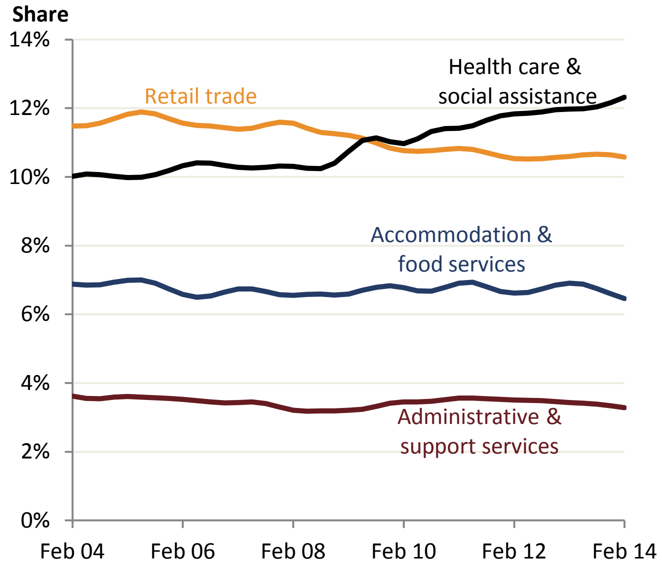
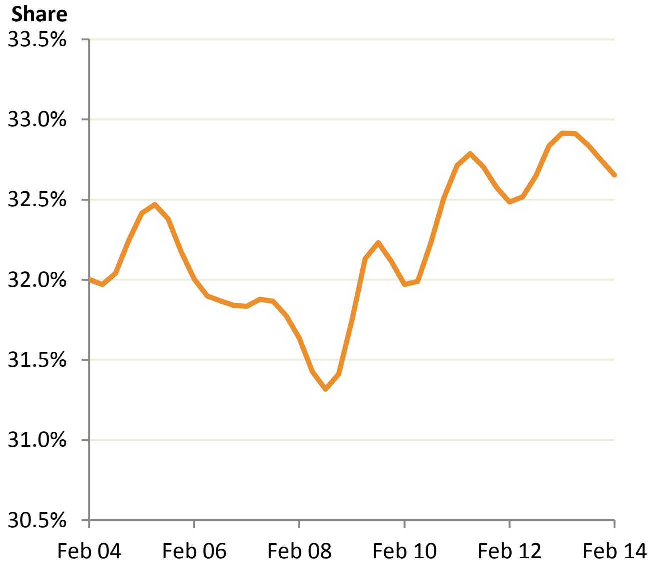


Figure 100: Total employment share of more award-reliant industries



Source: ABS 6291.0.55.003, trend.

243. Over the past six years, there has been a slight upward trend in employment in the more award-reliant industries as a share of total employment. This is because a rise in the employment share of Health Care & Social Assistance has more than offset the decline in Retail Trade. Employment in the other two more award-reliant industries has grown at around the same pace as total employment and thus their employment shares have remained more or less stable.

Labour market outcomes for young people

244. The Panel has shown a particular concern with youth unemployment in its decisions in previous Reviews. Youth unemployment rose a little in the past year, in line with the overall unemployment rate. The rise is due to macroeconomic factors, not minimum wage adjustment.

245. In the year to February 2014, the youth unemployment rate rose from 11.9% to 12.5%.[150] This rate fell a little in February from 12.6%, where it had been since September 2013. The youth unemployment rate and the overall rate are shown in Figure 101.

246. The rise in youth unemployment rate over the past year (0.6 percentage points) is just slightly above the rise in the unemployment rate for all persons aged 15+ (0.5 percentage points). This is in line with the historical

[150] 'Youth' refers to persons aged 15-24. We use the ABS trend estimates.

relationship between youth unemployment and overall unemployment, as shown in Figure 102. Each dot in the figure is a month in the past 20 years. The relationship is clear - when overall unemployment rises or falls, youth unemployment tends to rise or fall as well, by a slightly larger amount.

Figure 101: Unemployment rates: 15+ and 15-24

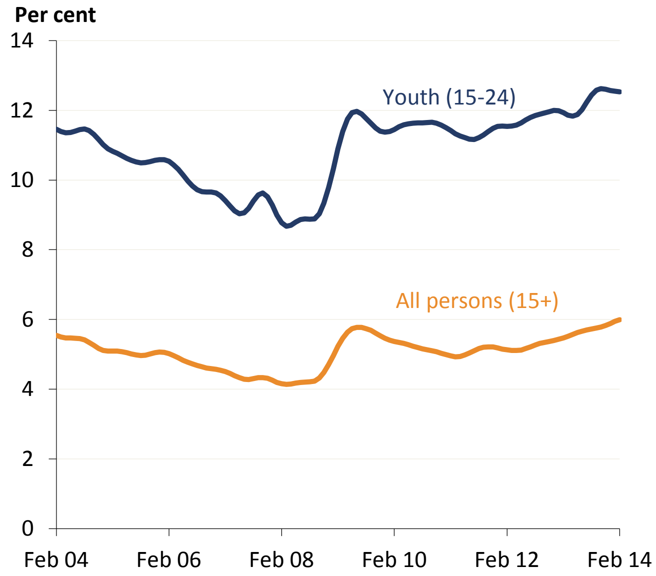
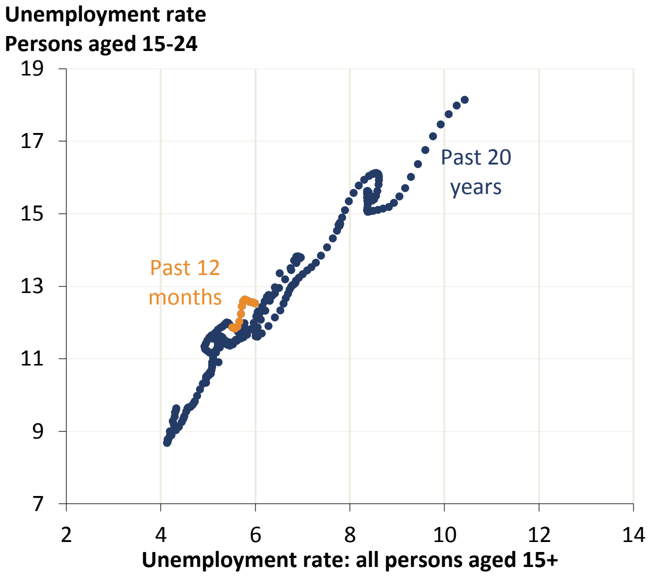


Figure 102: Unemployment rates: 15+ and 15-24



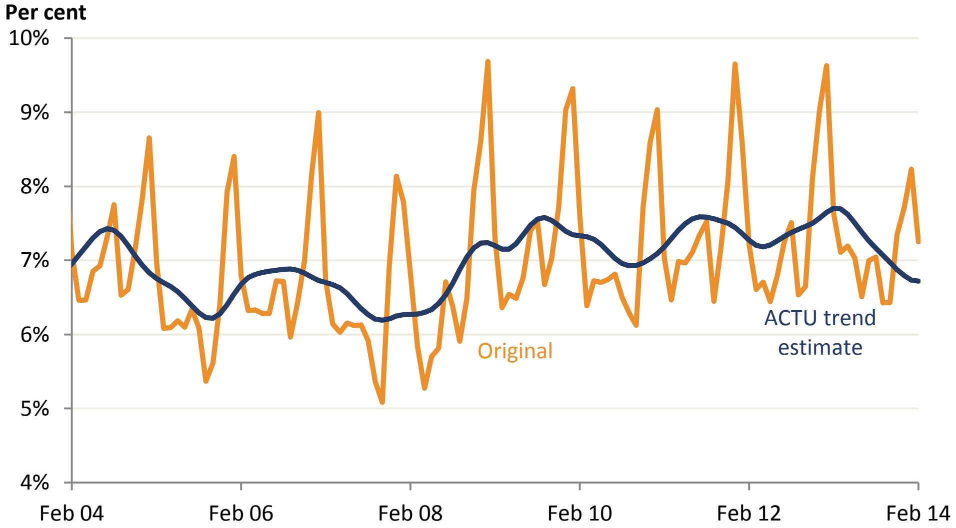
Source: ABS 6202.

247. We expect that this relationship will continue to hold and that youth unemployment will fall faster than overall unemployment as labour market conditions improve. The slight fall in the youth unemployment rate in February suggests this may already be occurring.

248. The number of young people who are not in the labour force and not attending full-time education has fallen over the past year. In February 2013, there were 235 800 young people who were neither in the labour force nor in full-time education; as at February 2014, this figure was 225 300.[151] Figure 103 shows the share of the youth population (people aged 15-24) that is not in the labour force and not in full-time education over time. The ABS does not provide these figures in seasonally adjusted form; the orange line shows the ABS original data. Our trend estimate is also shown. Both series indicate a clear decline in the share of the youth population not in work or study over the past year.

[151] These figures are not seasonally adjusted.

Figure 103: Share of the youth population (15-24) not in the labour force and not in full-time education



Source: ABS 6291.0.55.001 and ACTU calculations. Trend estimate is based on seasonal adjustment using X12-ARIMA.

Job advertisements and vacancies

249. The number of job vacancies declined in 2014, with the vacancy rate falling from 1.4% to 1.1% of the labour force.[152] The decline in the vacancy rate is around the magnitude that would have been expected given the rise in unemployment. In other words, there has not been an outward shift in the Beveridge curve, as shown in Figure 105. There has been a rise in the number of unemployed people per job vacancy; while this is worrying, the ratio has risen to a level that is still modest compared to the past several decades in Australia, as shown in Figure 104.

Figure 104: Unemployed people per job vacancy

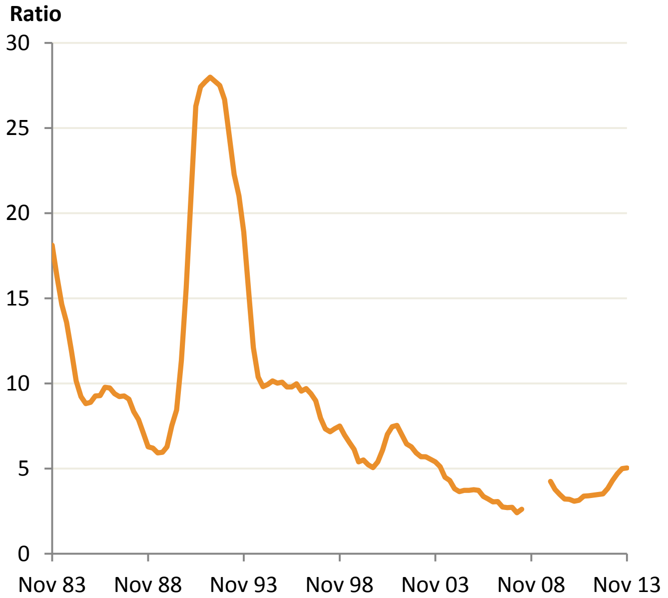
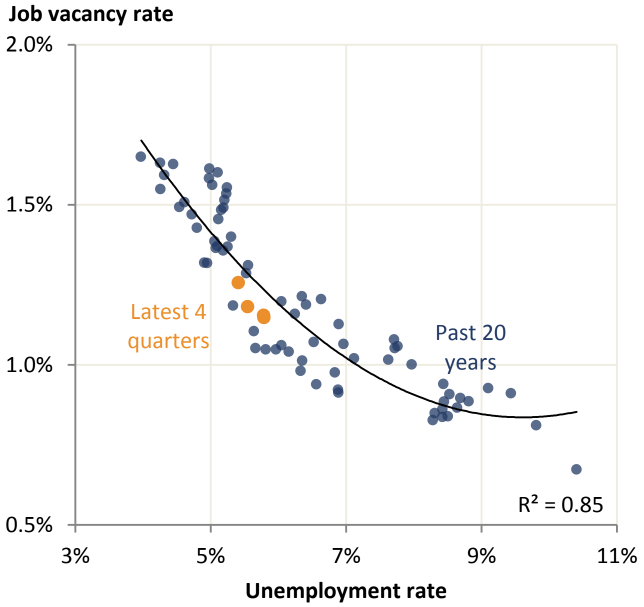


Figure 105: Beveridge curve: job vacancy rate and unemployment rate



Source: ABS 6354, ABS 6202 and ACTU calculations. The ABS job vacancy series was suspended for five quarters in 2008-09.

[152] The job vacancy rate is measured as the number of vacancies as a percentage of the labour force, where the labour force is the number of employed people plus the number of unemployed people.

250. The ABS data on unemployment by industry[153] show that the Retail Trade and Accommodation and Food Services industries had the largest number of unemployed people of any industry. However, these industries also have the largest number of job vacancies. The ratio of unemployed people to vacancies is middle of the range in these industries, as shown in Figure 107.

Figure 106: Unemployment and vacancies by industry

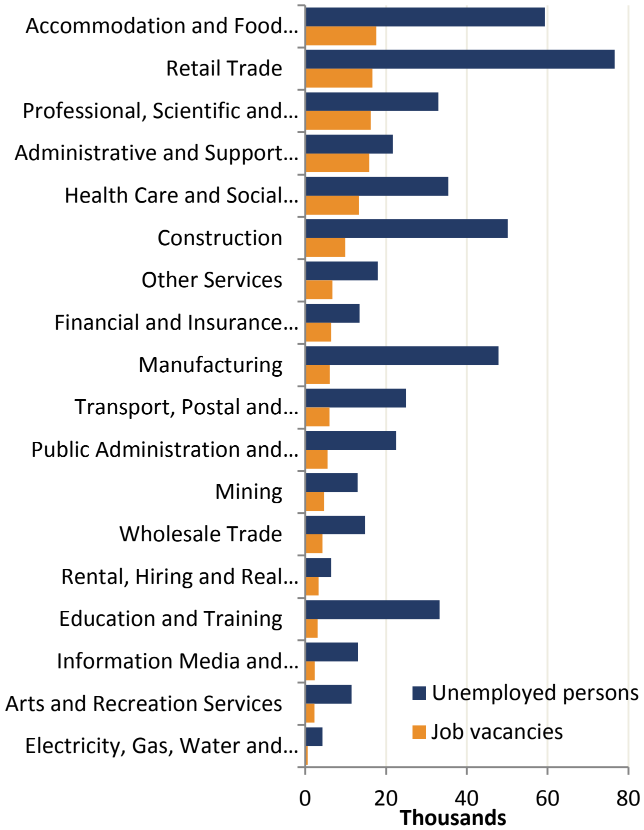
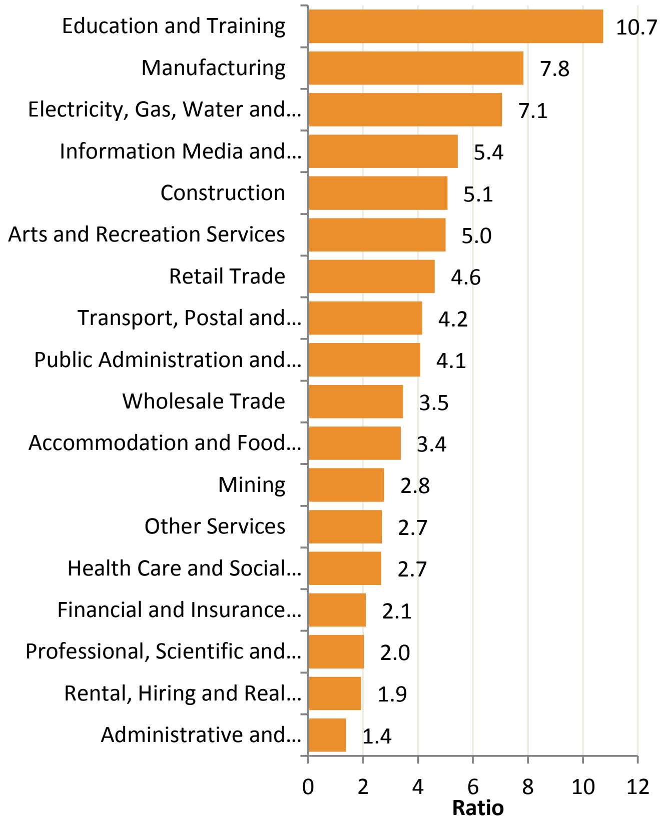


Figure 107: Ratio of unemployment to vacancies



Source: ABS 6354, ABS 6291.0.55.003, and ACTU calculations.

251. The job vacancies data is only released quarterly, with a lag of around two months. The ANZ job advertisements series provides a more timely indicator of labour demand. This series suggests the labour market has started to improve, giving weight to the strong February labour force figures. In February, the number of job advertisements rose by 5.1%, the largest rise in four years. The ANZ job advertisements series is highly correlated with the unemployment rate and with employment growth, as shown below. When advertisements rise, unemployment tends to fall and employment growth tends to increase.

[153] These figures are based on the industry of last job for unemployed people who had worked for two weeks or more in the last two years.

Figure 108: Unemployment rate and job ads

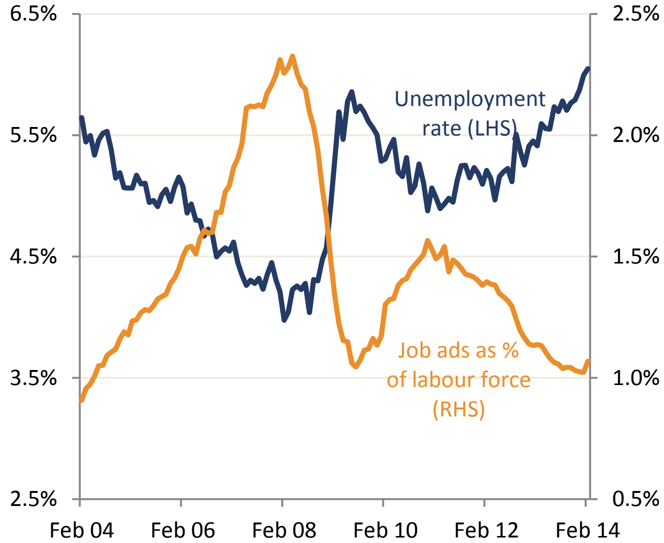
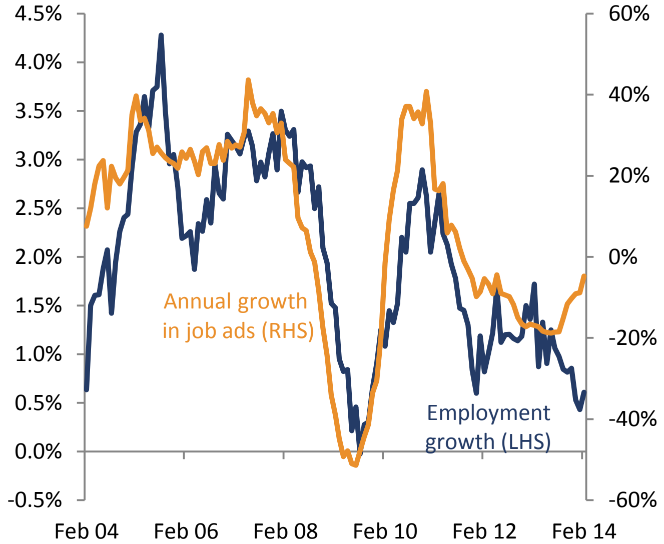


Figure 109: Annual growth in employment and job ads



Source: ANZ Job Advertisements series, ABS 6202.

252. Employment growth tends to lag economic growth. The strong December quarter National Accounts (with 0.8% growth in the quarter) indicate that real GDP growth has picked up from its mid-2013 lows. If that is the case, the labour market would be expected to improve in the first and second quarter of this year. The strong February employment numbers suggest this may be occurring. The job advertisements data provide further confirmation that an improvement in the labour market could be underway.

The economic outlook

253. We note the Panel's comments in its 2013 decision that it considers both actual economic indicators and forecasts, but "actual indicators tend to be the primary consideration". [154] We believe this is an appropriate approach. Nevertheless, forecasts remain relevant to the Panel's task. Although confidence intervals around forecasts are typically wide, and point-estimates of forecasts should not be given too much weight, the direction of change in key measures such as GDP growth is important information. Where growth is expected to accelerate, rather than fall, this can help to inform the Panel, even though the specific number that is forecast for GDP growth may be problematic given the degree of uncertainty.

254. The IMF has revised up its forecasts for global growth, with the outlook improving particularly among advanced economies. If the outcome is in line with the forecasts, this will help to support domestic economic activity.

255. The RBA has anticipated that low interest rates would facilitate a 're-balancing' in economic activity – as mining investment recedes, household consumption and residential construction will pick up. There are clear signs that this is beginning to occur, with strong consumption growth and retail turnover growth (as documented on page 53) and housing approvals and finance. The signs are mixed. Nevertheless, the central forecast is for growth to pick up over the course of 2014 and 2015.

The RBA's forecasts

256. Figure 110 shows the latest publicly-available forecasts for GDP growth by the RBA. Three things are evident in the chart:

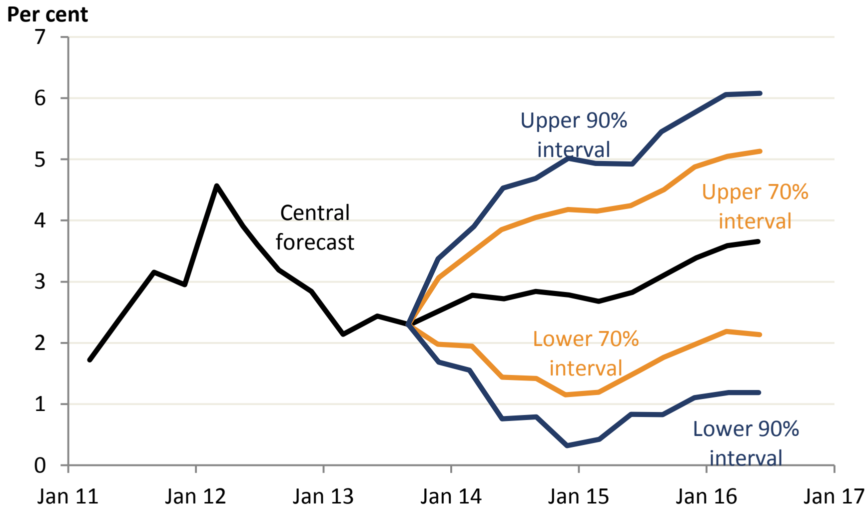
   f. The RBA expects GDP growth to remain slightly below trend for the next 18 months or so;

   g. The RBA expects growth to increase over the forecast period; and

   h. The confidence intervals around the RBA's forecasts are wide.

[154] [2013] FWCFB 4000, [7]

Figure 110: RBA's forecast for GDP growth



Source: Reproduced from RBA 2014, *Statement on Monetary Policy*, February, p.66.

257. The RBA's central forecast is for growth of 2.25% to 3.25% over the year to December 2014 and above-trend growth of 3% to 4% over the year to December 2015.

258. The forecasts in Figure 110 were completed prior to the release of the December quarter National Accounts. These showed that real GDP grew by 2.8% in 2013, rather than the 2.5% growth that the RBA anticipated in its February 2014 *Statement on Monetary Policy.* This better-than-expected performance, with acceleration in growth in the December quarter, gives cause for optimism about the near-term growth prospects for the Australian economy.

259. The minutes of the March meeting of the RBA's board provide confirmation that the Australian economic outlook is tentatively positive. The meeting took place the day prior to the release of the December quarter National Accounts, which were more positive than expected and included an upward revision to consumption in the third quarter of 2013. The minutes included the following summary of current conditions and the near-term outlook:

> *The pace of growth of Australia's major trading partners appeared to have remained around average. Domestically, timely indicators were consistent with some improvement in economic conditions over recent months, and there were further signs that the expansionary setting of monetary policy was having the desired effects. Indicators had been generally positive for consumption, housing investment, business conditions and exports. Mining investment had declined and was expected to fall further, while non-mining investment remained subdued and was expected to pick up gradually over time. Wage growth was at quite low rates, and if domestic costs remained contained some moderation in inflation for non-traded goods and services could be expected over time. These conditions would be expected to keep inflation consistent with the target even with lower levels of the exchange rate. While the labour market remained weak, forward-looking indicators of labour demand appeared to have stabilised.*

At recent meetings, the Board had judged that it was prudent to leave the cash rate unchanged, while noting that the cash rate could remain at its current level for some time if the economy was to evolve broadly as expected. Developments since the previous meeting had supported that assessment. There were further signs that low interest rates were providing support to activity, with improved economic conditions evident across a range of household and business indicators. While the labour market was expected to remain subdued for a while and wage growth had declined, the Board observed that this was consistent with conditions in the labour market usually lagging changes in economic activity. The decline in the exchange rate seen to date would assist in achieving balanced growth in the economy, though members noted that the exchange rate remained high by historical standards.[155]

260. The RBA Board's assessment, as outlined above, is that there are signs of improvement in economic activity and that the labour market can be expected to follow this improvement with a lag. Monetary policy is highly likely to remain accommodative, which will continue to facilitate the re-balancing in economic activity towards sectors dependent on household spending, such as retail, hospitality, and residential construction. The better-than-expected December quarter National Accounts, with strong quarterly real GDP growth and a noticeable pick up in consumption, will have lent weight to this assessment.

261. The RBA Governor, Glenn Stevens gave an optimistic assessment of the prospects for the Australian economy in 2014 and 2015 in a speech on 26 March. The Governor said:

There are some promising signs... Recent data shows stronger household consumption over the summer. The latest surveys and our own liaison confirm this, and suggest that retailers are more optimistic than they were a year ago. That said, we expect consumption spending to grow in line with income or perhaps a little faster, but not at the pace seen in the years prior to the financial crisis.

…

It is clear that dwelling construction activity will rise strongly over the period ahead. Over the past three months, approvals to build private dwellings were at the highest rate for at least three decades. This increase is welcome, certainly at an aggregate level, since on most estimates Australia's additions to the dwelling stock have been running at a rate below population growth over recent years.

Measures of business confidence have improved over the past six months. Businesses seem, so far, to be taking a cautious approach to investment, however: they are waiting for stronger, more persistent signals of improved conditions before committing to significant increases in capital expenditure. That's actually pretty normal in a cyclical upswing. In their hiring decisions there are some early promising signs of improvement, though it is too soon to see much in the way of concrete evidence of stronger gains in employment yet.

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[155] RBA 2014, 'Minutes of the Monetary Policy Meeting of the Reserve Bank Board', 4 March. Available online: http://www.rba.gov.au/monetary-policy/rba-board-minutes/2014/04032014.html. [Accessed 24 March 2014]

So there is encouraging early evidence that the so-called 'handover' from mining-led demand growth to broader private demand growth is beginning. Putting all this together, we think economic growth will continue, and may strengthen a little later this year and pick up further during 2015.[156]

Private sector forecasts

262. Private sector forecasters polled by *The Economist* magazine also expect solid economic growth in Australia in 2014 and 2015. The average forecast from these private sector organisations, mostly banks, is for 2.6% growth this year and 2.9% next year. That would place Australia's growth near the top of advanced economies in 2014, and at the top in 2015. Although the private sector forecasts for Australia are relatively optimistic, they are still below the RBA's forecasts (see paragraph 257 and Figure 110).

Figure 111: *The Economist* poll of forecasters - Real GDP growth in 2014

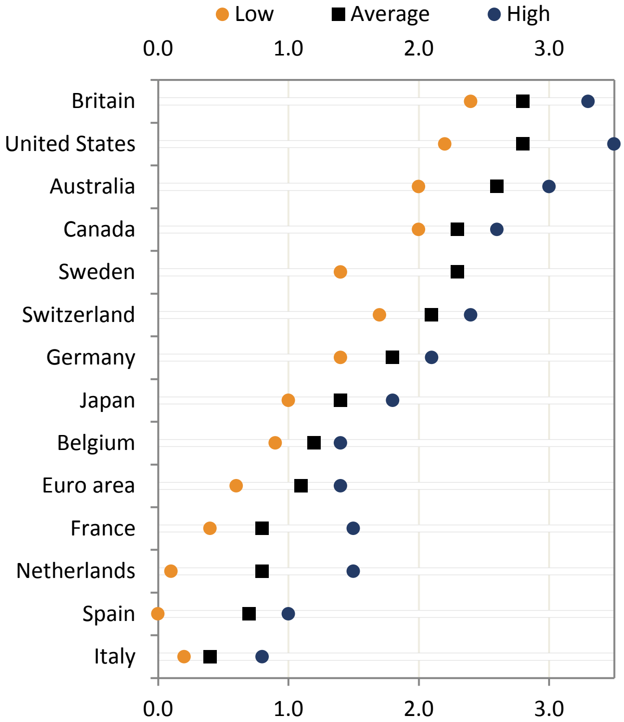
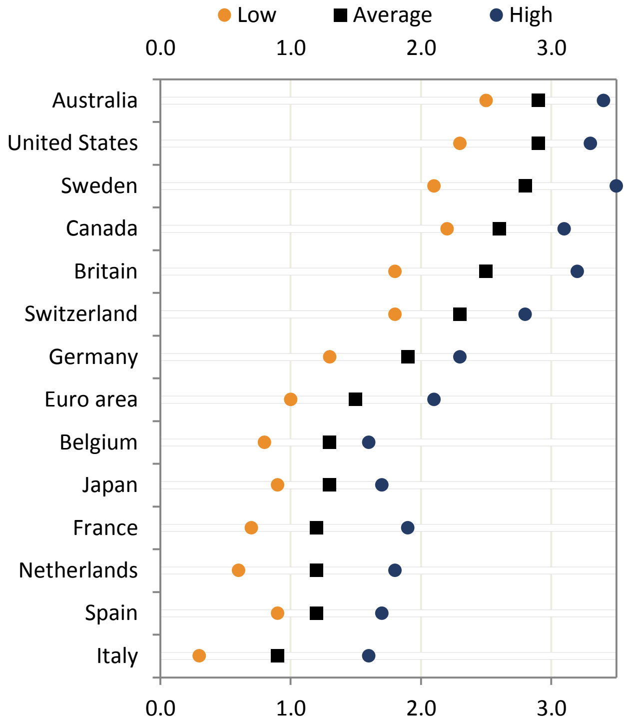


Figure 112: *The Economist* poll of forecasters – Real GDP growth in 2015



Source: *The Economist,* March 8 2014. Forecasts as at March 2014. Available online: http://www.economist.com/news/economic-and-financial-indicators/21598659-economist-poll-forecasters-march-averages [Accessed 26 March 2014]. Forecasters are: Bank of America; BNP Paribas; Citigroup; Commerzbank; Decision Economics; Deutsche Bank; Economist Intelligence Unit; Goldman Sachs; HSBC Securities; ING; JPMorgan Chas; KBC Bank; Morgan Stanley; RBC; RBS; Schroders; Scotia Capital; Société Générale, Standard Chartered, UBS.

Conclusion

263. In 2013, Australian economy grew slightly below its trend pace, albeit at a pace still higher than most other advanced economies. The expectation of the RBA and private sector forecasters is that growth will strengthen over the course of 2014 and 2015, facilitated by low interest rates and a somewhat lower exchange rate. Timely indicators of activity, such as retail turnover and housing approvals and finance, suggest this improvement is already occurring.

[156] Stevens, G. 2014, 'The Economic Outlook', Speech to the 17th Annual Credit Suisse Asian Investment Conference, Hong Kong, 26 March. Available online: http://www.rba.gov.au/speeches/2014/sp-gov-260314.html. [Accessed 26 March 2014]

Other matters

264. This chapter provides further details regarding the proposition contained in our preliminary submission of 25 February that the FW Act is beneficial legislation.

265. This chapter outlines the ACTU's claim in relation to a range of matters that the Panel is required to review. These include minimum wages for junior employees, employees to whom training arrangements apply, and employees with disability. This chapter also outlines our position in respect of casual loadings; piece rates; expense-related allowances; transitional instruments; and the national minimum wage order for award-free employees. It also outlines our position in relation to the increase in the superannuation guarantee and the promotion of enterprise bargaining.

Equal pay for men and women workers

266. The minimum wages objective (s.284) and the modern awards objective (s.134) of the FW Act require the Panel to take into account the principle of equal remuneration for men and women workers for work of equal or comparable value when adjusting minimum wages.

267. 58% percent of employees reliant on the award rate or national minimum wage (NMW) are women. While a fair and relevant safety net of minimum wages is not sufficient to eliminate gender pay inequity, we submit that it is necessary. By increasing the wages of low-paid workers the Panel can put downward pressure on the gender pay gap, however modest the effect might be.

268. The gender pay gap ('GPG') measures the difference between the average earnings of men and women. Among full-time workers, the GPG between men and women is 17.1%. Among all workers, the GPG is 35.3%, largely because women are much more likely to work part time or casual hours.

269. 2011 modelling conducted by the Fair Work Commission's minimum wages branch demonstrated that modest wage increases are consistent with improvements in the GPG. It found that a 4% increase in award rates of pay would reduce the GPG by an estimated 0.17 percentage points.[157]

[157] Pointon, M., Wheatley, T., Ellis, G. and MacDermott, K. 2012, 'Award Reliance and Differences in Earnings by Gender', Research Report 3/2012, Fair Work Commission, Melbourne.

Table 10: Measures of the gender pay gap in Australia

Source	Time of survey	Employees included	Wage measure and measurement period	Male	Female	GPG ($)	GPG(%)
ABS 6302	November Quarter 2013	Full time adult employees	Average weekly ordinary time earnings	$1532.10	$1270.50	$261.60	17.07%
		All employees	Average weekly total earnings	$1347.90	$872.60	$475.30	35.26%
ABS 6306	May 2012	Full time non-managerial adults	Average weekly cash ordinary time earnings	$1,356.30	$1,207.30	$149.00	10.99%
			Average weekly total cash earnings	1,471.70	$1226.40	$245.30	13.95%
			Average hourly cash ordinary time earnings	$35.50	$32.20	$3.30	9.3%
			Average hourly total cash earnings	$36.20	$32.30	$3.90	10.77%
		Al non-managerial adults	Average weekly cash ordinary time earnings	$1,226.30	$852.50	$373.8	30.48%
		All employees	Average weekly total cash earnings	$1342.50	$904.00	$438.50	32.66%

Source: ABS 6302, ABS 6306

270. Researchers from NATSEM have found that only 40% of the gender pay gap can be explained by observable differences between men and women workers, such as their levels of education and experience, leaving 60% unexplained.[158]

271. With the exception of the Health Care and Social Assistance industry, the more award-reliant industries have gender pay gaps that are smaller than the average among full-time non-managerial adults.

Table 11: Gender pay gap by industry among full-time workers

	AWOTE		Gap - $	Gap - %
	Men	Women		
Mining	$2,553.10	$1,998.30	$554.80	21.7%
Manufacturing	$1,332.70	$1,109.40	$223.30	16.8%
Electricity, Gas, Water and Waste Services	$1,661.40	$1,454.80	$206.60	12.4%
Construction	$1,487.80	$1,188.50	$299.30	20.1%
Wholesale Trade	$1,413.30	$1,312.00	$101.30	7.2%
Retail Trade	$1,090.60	$949.80	$140.80	12.9%
Accommodation and Food Services	$1,081.90	$993.70	$88.20	8.2%
Transport, Postal and Warehousing	$1,425.90	$1,244.60	$181.30	12.7%
Information Media and Telecommunications	$1,794.00	$1,460.70	$333.30	18.6%
Financial and Insurance Services	$1,954.40	$1,330.80	$623.60	31.9%
Rental, Hiring and Real Estate Services	$1,474.40	$1,107.60	$366.80	24.9%
Professional, Scientific and Technical Services	$1,920.60	$1,409.70	$510.90	26.6%
Administrative and Support Services	$1,323.60	$1,213.50	$110.10	8.3%
Public Administration and Safety	$1,584.00	$1,467.70	$116.30	7.3%
Education and Training	$1,639.50	$1,450.20	$189.30	11.5%
Health Care and Social Assistance	$1,747.10	$1,194.00	$553.10	31.7%
Arts and Recreation Services	$1,386.50	$1,189.30	$197.20	14.2%
Other Services	$1,136.10	$1,044.80	$91.30	8.0%
All Industries	$1,532.10	$1,270.50	$261.60	17.1%

Source: ABS 6302

[158] Cassells, R. Vidyattama, Y., Mirant, R. and McNamara, J. 2009, 'The Impact of a Sustained Gender Wage Gap on the Economy', Report to the Office for Women of the Department of Families, Community Services, Housing and Indigenous Affairs, NATSEM, University of Canberra. Available from: http://www.natsem.canberra.edu.au/storage/gender_wage_gap.pdf [Accessed 27 March 2014].

272. An important dimension of gender inequity is not just between men and women *within* an industry, but the gap *between* wages in low-paid industries (characterised by largely female, award-reliant employees) and higher-paid industries (characterised by gender segregated occupations regulated by enterprise agreements). This may particularly be the case for workers with higher levels of skill and educational attainment.

273. The WRC report commissioned by the Panel for this Review found that 25% of award-reliant employees were on higher classification levels. The two industries with the highest proportion of higher classification award-reliant employees were the female-dominated Education and Training and Health Care and Social Assistance industries.[159] Awarding our claim in this Review will help, however modestly, to reduce the gap between such employees and those who perform work of equal or comparable value in other industries.

274. The WRC report provided important new information that reveals that minimum wages have some influence over the pay of workers who are paid above minimum rates. The research found that 36% of non-award-reliant organisations referred to award rates of pay in their wage setting mechanisms and 30% of organisations passed on the AWR increases to their over-award employees.[160] Women are more likely to work in non-unionised small workplaces, in insecure part-time or casual jobs and in sectors which are not for profit and reliant on limited government funding. Consequently they enjoy less bargaining power to negotiate wages above the award or NMW rate.

275. Of the 24.4% of enterprise agreements containing wage clauses which relate to the AWR, the female dominated Accommodation and Food Services (68.3%), Retail Trade (66.7%) and Arts and Recreations Services (65.7%) workforces had a particularly high reliance on award rates.

276. In 2008, the OECD found that relying on 'market forces', the 'effluxion of time' or improvements in women's 'human capital' were not enough to remedy discrimination in employment terms and conditions.[161] Rather, the OECD report confirmed that "wage setting policies, mechanisms and institutional practices that affect overall wage distribution also influence the gender gap."[162] The OECD data confirmed that minimum wages (with respect to the median wage) are associated with narrower gender pay gaps.[163]

277. Despite a number of recent legislative amendments, including the Fair Work Act (FW Act) Equal Remuneration and Low Paid Bargaining provisions, the GPG has stubbornly hovered at around 17% over the last decade. It is widely acknowledged that a multi-faceted approach to reducing the GPG is required. A fair and relevant safety net of minimum wages remains vital.

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[159] Wright and Buchanan 2013, op cit.
[160] Wright and Buchanan 2013, op cit.
[161] OECD Employment Outlook 2008, Chapter 3, 'The Price of Prejudice: Labour Market Discrimination on the Grounds
[162] OECD 2012, *Closing the Gender Gap: Act Now*, OECD Publishing, p.172
[163] OECD 2012, *Closing the Gender Gap: Act Now*, OECD Publishing, p.172

Enterprise bargaining

278. In its 2012-13 decision, the Panel said:

> *The current evidence indicates that the level of increases in minimum award wages which have occurred over the last decade are compatible with the continuing encouragement of enterprise bargaining[164].*

279. There is no new evidence, including in the commissioned research reports, which should cause the Panel to adopt a different view in this Review.

280. Employees have significant incentives to bargain given the large difference between minimum rates and the wages paid in collective agreements. Employers have incentives to bargain due to the ability to negotiate for working conditions that best suit the enterprise. Awarding our claim in this Review will in no way detract from the incentive to bargain for either employees or employers.

Beneficial legislation

281. Legislation, either as a whole or provisions within it[165], may be regarded as beneficial. It is a well-established rule of construction that such legislation must be liberally interpreted.

282. During the Conference before the Expert Panel held in Melbourne on 4 March 2014, Justice Ross asked the ACTU to provide further details regarding the proposition contained in our submission filed on 25 February 2014 that the FW Act is beneficial legislation.

283. The written submission relevantly provided as follows:

> 13. The Panel is required to engage in an active intellectual process in which each of the factors in s284(1) receives genuine consideration. The use of the word "and" at the conclusion of each of factors (a)-(d) in s 284(1) requires that all factors must be considered. Further the use of the word "and" as a conjunction in relevant factor (c) obliges the Panel to specifically and distinctly consider the needs of the low-paid as well as relative living standards.
>
> 14. In the absence of any statutory or contextual indication of the weight to be given to factors to which a decision maker must have regard it is generally for him or her to determine the appropriate weight to be given to them.[166] There is nothing in s 248(1) which explicitly indicates that one or more of the factors is inherently more important than the others. Nor is there anything on the face of the Act which requires the Panel to give preliminary consideration to one criterion over the other. The Panel is therefore entitled to reach a conclusion based on the evidence that one or more considerations are of particular relevance to their decision.
>
> 15. Notwithstanding this, we submit that the overall analysis must proceed with some mindfulness of the broader context and purpose of the FW Act: it is beneficial legislation and

[164] [2013] FWCFB 4000, [43]
[165] *Nilant v. Macchia* [2000] FCA 1528 per Weinberg J at [39]-[41].
[166] *Minister for Aboriginal Affairs v Peko-Wallsend Ltd 1984* HCA 40; (1986) 162 CLR 24 at 41(per Mason J)

should generally be construed in a way which is favourable to those for whose benefit it has been enacted. The Annual Wage Review is the primary means by which minimum wages are set and adjusted. For national minimum wage-reliant and award-reliant workers this is their only opportunity to receive a wage increase. The matters set out in section 284(1)(c) are clearly fundamental considerations to achieving the over-riding objective of establishing and maintaining a fair and relevant minimum safety net[167] and should be given due weight. Indeed, as the Panel noted in its first Annual Wage Review decision[168]:

> [14] While it is not useful to make a detailed comparison between the minimum wages objective and the parameters which guided the AFPC, there are some important differences which should be noted. In particular s.284(1) contains a requirement that a safety net be established and maintained. <u>Therefore the principal consideration relates to the safety net rather than the "promotion of economic prosperity"</u>. We discuss in some detail later a number of other important considerations which the AFPC was not specifically required to take into account. They include promoting social inclusion through increased workforce participation and relative living standards and the needs of the low-paid.(emphasis added)

284. We reaffirm our submission that the FW Act is beneficial legislation and should be interpreted as such. We set out our reasons for this below.

Significance of a characterisation as beneficial legislation

285. There is a rule of construction that legislation, or provisions thereof, that are identified as beneficial or remedial,[169] must be liberally interpreted.

286. The High Court addressed the rule and the underlying principle illustratively in *IW v. City of Perth* (1997) 191 CLR 1, a case concerned with State Anti-Discrimination law:

> [Per Brennan C J and McHugh J at page 12]-
> "The injunction contained in s 18 of the Interpretation Act is reinforced by the rule of construction that beneficial and remedial legislation, like the Act, is to be given a liberal construction. It is to be given 'a fair, large and liberal' interpretation rather than one which is 'literal or technical'. Nevertheless, the task remains one of statutory construction. Although a provision of the Act must be given a liberal and beneficial construction, a court or tribunal is not at liberty to give it a construction that is unreasonable or unnatural."
>
> [Per Gummow J at page 39]-
> "There is ample authority that remedial legislation, such as that found here, is to be accorded "a fair, large and liberal" interpretation rather than one which is 'literal or technical'."
>
> [Per Toohey J (dissenting) at page 27]-
> "..the approach to be taken in the interpretation of any of the provisions of the Act is marked out. Preference is to be given to a construction that would promote its objects. The Act is remedial and should receive 'a generous construction'."

[167] S3 and s284, *FW Act.*
[168] <u>[2010] FWAFB 4000.</u>
[169] *Nilant v. Macchia* [2000] FCA 1528 per Weinberg J at [39]-[41].

[and per Kirby J (dissenting)]-

"…unless courts are willing to give such legislation the beneficial construction often talked about, it seems likely that the legislation will continue to misfire. That risk may be greatest when those who invoke the legislation comprise individuals or groups in minorities most in need of protection but least likely to strike a sympathetic chord."(at page 52)

…….

The purpose of anti-discrimination legislation, such as the Act, is to ensure that, within the areas prescribed by Parliament, equals are treated equally and human rights are not violated by reference to inappropriate or irrelevant distinctions. Especially where important human rights are concerned, protective and remedial legislation should not be construed narrowly lest courts become the undoers and destroyers of the benefits and remedies provided by such legislation. Courts will not unduly stretch the language of such legislation. But they will be very slow to find that the effect of something which is discriminatory falls outside the ambit of the legislation, given its purpose. This is especially so where a complainant, who can establish unequal treatment, falls within the category of persons for whom anti-discrimination legislation has apparently been enacted. It is legitimate in giving effect to such legislation, to keep in mind its broad purposes and, to the full extent that the text permits, to ensure that the Act achieves its objectives and is not held to have misfired. To the extent that, in legislation such as the Act, courts adopt narrow or pernickety approaches, they will force parliaments into expressing their purposes in language of even more detail and complexity. This will increase the burden and costs of litigation. It will obscure the broad objectives of such statutes and frustrate their achievement." (at page 58)

287. Consistent with the above, in *Nilant v. Macchia*, Weinberg J said:

"[40] The orthodox view of the approach to be adopted in relation to the interpretation of remedial legislation is that reflected in the dissenting judgment of Issacs J in Bull v The Attorney-General for New South Wales [1913] HCA 60; (1913) 17 CLR 370. His Honour said at 384:

"In the first place, this is a remedial Act, and therefore, if any ambiguity existed, like all such Acts should be construed beneficially ... This means, of course, not that the true signification of the provisions should be strained or exceeded, but that **it should be construed so as to give the fullest relief which the fair meaning of its language will allow**." (emphasis added)

[41] In D.C. Pearce and R.S. Geddes, Statutory Interpretation in Australia 4th ed 1996 the learned authors observe at par 9.3:

"If an Act is intended to benefit a particular person or class of persons, it is preferable for any ambiguity to be resolved in favour of the intended beneficiary. However, it must be clear that the provision is intended to achieve the beneficial purpose claimed."

288. It is to be noted, as alluded to in the joint judgment of Brennan CJ and McHugh J and in the judgment of Toohey J in *IW*, that the rule of construction concerning beneficial legislation is perfectly reconcilable with a statute based rule of construction that legislation be construed in a manner which promotes its underlying purpose or objects. Such a statute based rule (as it affected that case) was contained in section 18 of the *Interpretation Act* 1984 (WA). It also exists in section 15AA of the *Acts Interpretation Act* 1901 and is

somewhat reflected in section 578(a) of the FW Act, both of which are applicable to the conduct of the Annual Wage Review.

Classes of and classification as beneficial legislation

289. In the decision *In re the Will and Estate of McComb*[170] Warren J held that "A remedial or beneficial statutory provision is one that gives some benefit to a person and thereby remedies some injustice."[171]

290. The Courts have recognised a number of classes of legislation that fall within that category of beneficial legislation, including, for example, Occupational Health and Safety Legislation[172], Anti-Discrimination legislation[173], Aboriginal Land Rights legislation[174] and Consumer Protection Legislation[175].

291. It is elementary that the wages/work bargain involves benefits to both the employee and the employer. The employer benefits from employing the worker's labour, and the worker benefits by receiving wages. Absent regulation (and worker organisation), the power relationship underlying that bargain is inherently unequal; this is the mischief, unfairness or "injustice" (to use the expression in *McComb*), which is to be remedied. The FW Act relevantly proscribes that those wages must not be less than a certain amount, determined in accordance with its provisions. It does not proscribe that those wages must not exceed a particular amount. The minimum wage fixation powers contained in the FW Act are a deliberate intervention in what would otherwise be the distribution of market incomes, in favour of employees. It is irrefutable that the intended beneficiaries of those provisions are employees: the safety net of minimum wages is *for* those employees and must be fair *for* those employees.

292. Our conclusion that the FW Act is beneficial legislation is supported by authority. In *ACE Insurance Ltd. v. Trifunovski* [2011] FCA 1204, the Federal Court considered a claim of a number of former insurance salespeople who asserted that they were employees rather independent contractors. Part of their claim was for the payment of annual leave entitlements due to them as employees. The claim was, in part, defended on the basis that the salespeople were estopped from contending that they were employees by virtue of their written agreement and their belief (until receipt of legal advice to the contrary) that they were "independent contractors". It is instructive to provide a detailed account of how the Court addressed this defence, and to examine the parallels to the provisions regulating minimum wages in the FW Act.

293. Firstly, the Court described the source of one of the salesperson's entitlements:

> "Mr Perez's claim for annual leave entitlements rests upon the wording of Workplace Relations Act following the Work Choices Amendments in 2006. The critical provision was s 230 which

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170 *[1999] VSC 311 (27 August 1999)*
171 At 22
172 *Waugh v. Kippen* [1986] HCA 12
173 *IW v. City of Perth* (1997) 191 CLR 1
174 *Risk v. Northern Territory of Australia* [2000] FCA 1779
175 Accounting Systems 2000 (Developments) Pty Ltd. v, CCH Australia Ltd (1993) 42 FCR 470.

> erected the right to annual leave. Section 232 was part of Part 7 which was entitled 'The Australian Fair Pay and Conditions Standard'. Section 171(1) – with which the Part opened – provided at the outset that the 'purpose of this Part is to set out key minimum entitlements of employment'. Section 172(1) incrementally built upon this aspiration by providing that the 'Australian Fair Pay and Conditions Standard provides key minimum entitlements of employment for the employees to whom it applies'. It thus contemplated that it was possible for some employees not to have the benefit of the Standard. But in the case of annual leave it was made plain that the only employees exempted were casual employees: s 227. The Workplace Relations Act specifically dealt with attempts to circumvent the Standard for s 173 provided that a 'term of a workplace agreement or a contract has no effect to the extent to which it purports to exclude the Australian Fair Pay and Conditions Standard or any part of it'."

294. The FW Act is similarly concerned to provide a binding minimum standard. It may be observed that the opening provision in Part 2-6 the FW Act, the Part primarily concerned with minimum wages, proclaims that:

> "This Part provides for the FWC (constituted by an Expert Panel) to set and vary minimum wages *for* national system employees. For employees covered by modern awards, minimum wages are specified in the modern award. For award/agreement free employees, minimum wages are specified in the national minimum wage order.
> Division 2 provides for the minimum wages objective. This requires the FWC to establish and maintain a safety net of *fair* minimum wages, taking into account certain social and economic factors." (emphasis added)

Section 284 then requires that FWC "must establish and maintain a safety net of *fair* minimum wages…" (emphasis added). The mechanics of Part 2-6 proscribe that such establishment and thereafter maintenance is given effect to by a Review culminating in a National Minimum Wage Order and determinations to set, vary or revoke modern award minimum wages.[176] A National Minimum Wage Order must *inter alia* set the national minimum wage which applies to all national system employees to whom neither a modern award nor an enterprise agreement applies (except those who are junior employees, employees to whom training arrangements apply, or employees with a disability – different provisions of the National Minimum Wage Order apply to such persons). Section 293 of Part 2-6 provides that "An employer must not contravene a term of a national minimum wage order". Similarly, section 45 provides that "A person must not contravene a term of a modern award", such terms include the modern award minimum wages determined by the Review from time to time.[177] Section 206 provides deeming provisions which render ineffective any attempt in an enterprise agreement to set a base rate of pay below the minimum set in the Review. Section 206 requires that in such cases "…the agreement has effect in relation to the employee as if the agreement rate were" equal to either the relevant modern award rate, or, where there is no relevant modern award rate, the national minimum wage.

295. The Court in *Trifunofski* continued its analysis and examination of the authorities, as follows:

[176] Section 285
[177] Sections 284(3) and 285(2).

"A number of authorities have, of course, established that provisions of this kind operate to prevent parties contracting out of their entitlements: Josephson v Walker (1914) 18 CLR 691 at 700-701 per Isaacs J; Byrne v Australian Airlines Limited (1995) 185 CLR 410 at 421 per Brennan CJ, Dawson and Toohey JJ. The agents submitted that these cases also showed that principles of estoppel and waiver did not apply to such obligations but so far as I can see neither case contains any such statement. On the other hand, in Jackson v Monadelphous Engineering Associates Pty Ltd [1997] IRCA 281 Moore J considered that the approach in Josephson and Byrne should be extended to awards existing under the then Industrial Relations Act. His Honour approached the matter in a way which was consistent with Kok Hoong, that is to say, he sought to discern the purpose of the statutory prohibitions: 'I consider that Division 3 should be approached on the same footing having regard to the stated purpose of it. It is beneficial legislation...and intended to confer rights on employees.' Consequently, so his Honour reasoned, 'it is unlikely an estoppel precluding their enforcement can arise from the conduct of an employee'. He left open whether the same approach would be correct under the Workplace Relations Act. Why was this left open? Until the Workplace Relations Act all of the instruments under the legislation had been created through the process of industrial arbitration; under the Workplace Relations Act there was a shift towards instruments derived through consensual arrangements (at least in some circumstances). Moore J thought that this consideration might have some impact on the questions of estoppel and waiver.

Ultimately, the doubts of Moore J did not materialise. The first tentative answer came in Metropolitan Health Service Board where French J suggested, in obiter, that the position would be no different under the Workplace Relations Act to that which it had been under the Industrial Relations Act (that is, that estoppel and waiver would not be available): 'On the face of it though it does seem that, notwithstanding the emphasis of that Act on agreements rather than awards, awards are maintained as a "safety net" specifying minimum conditions on certain matters including rates of pay. The provisions of the Act under which they are made are likely therefore to be construed so as to continue to render ineffective attempts to contract out for lesser than minimum conditions' (at 107 [24]). Subsequently, in Textile, Clothing and Footwear Union of Australia v Givoni Pty Ltd (2002) 121 IR 250 Goldberg J reasoned (at 258 [32]) that these obiter remarks of French J should be applied and concluded that it was not possible to contract out of the benefit of an award under the Workplace Relations Act. He concluded at the same time that notions of estoppel and waiver could not be used to outflank that result.

The conclusions of French and Goldberg JJ apply to the Workplace Relations Act as it was prior to the passage of the Work Choices Amendments on 27 March 2006. The annual leave provisions relied upon by the agents are, of course, provisions which did not exist in that statute or of its predecessors at any time prior to 27 March 2006. The structure of the Standard contained in Part 7 of the form of the Workplace Relations Act as it was after the Work Choices Amendments on 27 March 2006 is radically different to the form of any Federal industrial statute theretofore. The utilisation by the Commonwealth Parliament of the power in s 51(xx) of the Constitution directly to regulate the industrial affairs of those corporations falling within its constitutional remit (and certain other employers falling within other heads of constitutional legislative power) transformed the nature of the regulation involved. It was no longer arbitral as it had been until the introduction of the original form of the Workplace Relations Act nor was it partly arbitral and partly consensual as it was after that legislation had been passed. From 27 March 2006 the Act operated (leaving aside its transitional arrangements) in the case of minimum conditions proscriptively for the vast bulk of employees in Australia (apart from those employed by the States other than Victoria).

I do not, however, think that that difference between the post-2006 form of the Workplace Relations Act and its pre-2006 form matters for the purposes of the law of estoppel or waiver. To the contrary, s 171 made plain that what was being put in place was a form of minimum standards connected to a prohibition in s 173 on contracting out. It is not possible to distinguish the situation thrown up by the post-2006 form of the Act from its earlier form; consequently, it must follow that estoppel and waiver cannot be set up against s 232.

The other claims for annual leave and long service leave, arising before 27 March 2006, depend on the operation of the Award.

The complexities attending its operation prior to 27 March 2006 have already been noted. The resolution of the estoppel issue turns on an analysis of the policy being sought to be achieved by the operation of those provisions in the legislation at that time prohibiting contracting out of awards (considered by French and Goldberg JJ). Although those provisions appear not to be continued after 27 March 2006 it is, I think, appropriate to conclude that if estoppel could not have been set up against the Award prior to 27 March 2006 it is unlikely that it can be set up against the pre-reform award which replaced it on that day. For reasons already given, I accept that an estoppel could not be set up against an award during those periods and I conclude therefore that an estoppel cannot be set up against the pre-reform award.

In an industrial context the conclusion that an estoppel may not be deployed against protective provisions is not new as the striking facts in Walsh v Commercial Travellers Association of Victoria [1940] VLR 259 show. In that case, a 24 year old man answered a job advertisement for 'lad 18 or 19 years as junior billiard maker' by lying to the prospective employer that he was 19. He obtained the position and was thereafter paid the rate due to a 19 year old billiard maker. He subsequently claimed the wages due to a 24 year old (his true age) to which the billiard maker pleaded an estoppel based on the man's fraudulent representation as to his age. That defence was rejected by the Full Court of Victoria: 'It would destroy in a large measure the operation of the statute to allow a plea of estoppel where the statement relied upon constituted the means employed to bring about a contract of employment although the contract itself can afford no defence' (per Mann CJ at 263).

The claim based on estoppel must therefore be rejected."

296. Far from being regarded as an abstract analysis of the general interaction of estoppel and statutory rights, the reasoning of the Court demonstrates that provision of a safety net is beneficial legislation intended to confer rights on, to, or "for" employees. The *consequence* of it being so regarded was that estoppel defence was unavailable – not because the legislation said so in explicit terms, but because it would defeat its beneficial purpose were that defence to be allowed. Likewise, in remedying an "injustice", by establishing a safety net a minimum safety net *for* employees, the FW Act need not spell out that when it refers to establishing and maintaining a safety net of *fair* minimum wages *for* employees, that safety net must be fair *to* employees.

297. More recently, and more generally, in *Fair Work Ombudsman v. Dawe* [2013] FMCA 94, the Federal Magistrates Court noted that it accepted submissions that orders can be made against an accessory without the necessity of joining the primary contravener to the proceedings (which was in liquidation), including a submission that "given the beneficial nature of the legislation, the potential operation and scope of the legislation should not be restricted and complicated in this manner unless the legislation clearly required this, which it does not." The Federal Magistrates' Court has on other recent occasions also recognised that the FW

Act is beneficial legislation[178] and that the FW Act is "clearly intended to be a remedial or beneficial statute".[179]

298. Further, and for completeness, a number of provisions on the FW Act (unrelated to those concerned with minimum wages) and its predecessors have been identified as being beneficial in nature and interpreted accordingly, such as provisions concerned with unfair dismissal[180] , unlawful termination[181] and freedom of association[182].

299. There are further textual indications that the provisions of Part 2-6 of the FW Act in particular should be considered beneficial legislation. The FW Act represents a change to the statutory system under which minimum wages are set. The Australian Fair Pay Commission (**AFPC**) was required under the *Workplace Relations Act 1996*[183] to consider the prosperity of the people of Australia when setting the Federal Minimum Wage as opposed to the specific group of national system employees who are covered by modern awards or who are award or agreement free. The differences between the wage setting considerations under Part 2-6 of the FW Act and the parameters that guided the AFPC are significant in that the focus is on doing something for an identified class of persons rather than Australians at large.

300. While we do not submit that the relevant provisions of the WR Act were not beneficial legislation, what we highlight is that there has been a conscious shift in the FW Act to ensure that Part 2-6 is interpreted in line with the rule of construction applicable to beneficial legislation. The provision of a benefit to national system employees who are covered by modern awards or who are award or agreement free has become the clear focus of the legislation.

301. We further note the matters to which the AFPC had to have regard included a "safety net for the low-paid" as just one of a number of considerations. This can be contrasted with s 284(1) (minimum wages objective) and s134(1) (modern awards objective) which ensure (as the Panel has previously observed) that 'the principal consideration' is the establishment and maintenance of a safety net of fair minimum wages. [184]

302. These deliberate changes in the structure of the wage setting criteria reinforce our submission that Part 2-6 is beneficial. In support of this submission we refer to *Fair Work Ombudsman v Ballina Island Resort Pty Ltd & Anor*[185] where it was held that "Any legislation that has taken to make a change in existing law or adopt new

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178 *Devonshire v Magellan Powertronics Pty Ltd & Ors* [2013] FMCA 207 at 68
179 *Fair Work Ombudsman v Ballina Island Resort Pty Ltd & Anor* [2011] FMCA 500 at 87
180 See *Hutchinson v Monash Health* [2013] FWC 8173 at 27, see also Commissioner Cambridge's statement in *Hillie v World Square Pub* [2012] FWA 6808 at 41 (noting that while this decision was overturned on appeal in *John Lucas Hotel Management Services T/A World Square Pub v Hillie* [2013] FWCFB 1198 the Full Bench noted that s 384(2) "exists to protect regular and systematic employees from being dismissed…" at 17.)
181 *See Ramsey Butchering Services Pty Ltd v Blackadder* [2003] FCAFC 20 at 29 and *Grout v Gunnedah Shire Council* [1994] IRCA 54 at p 22-23.
182 *Bowling v. General Motors Holding Ltd.* [1908] FCA 143, CFMEU v. State of Victoria [2013] FCA 445
183 S 23
184 [2010] FWAFB 4000, at 14
185 [2011] FMCA 500 at 87

provisions that are advantageous to an individual or the public is generally described as remedial or beneficial legislation”.

303. The Expert Panel therefore has an obligation to construe the provisions of s 284(1) and s134(1) having regard to the fact that the legislation is intended to benefit employees. After taking into account all of the relevant factors the Expert Panel is required to establish a safety net of fair minimum wages that gives the fullest relief to which the fair meaning of the statutory language will allow.

304. As per our submissions filed on 25 February, national system employees who are covered by modern awards or who are award or agreement free have only one annual opportunity to receive a wage increase. This one opportunity is through the annual wage review.

305. Minimum wages are to be varied for the benefit of national system employees who are covered by modern awards or who are award or agreement free.

Balancing of considerations not to detract from central purpose

306. When the Parliament creates rights or benefits for the benefit of a class of persons, to remedy a perceived injustice, it does not do so absolutely. It defines the scope and extent of the rights it creates and sets out exemptions, qualifications and limitations. The fact that a statute or a provision within it embodies a balancing of a number of considerations in so defining the extent of the rights its creates does not mean that it ought not be regarded as beneficial.

307. If the reverse were the case, all of the decisions relating to the recognised classes of beneficial legislation referred to in paragraph 290 above must necessarily be wrongly decided: there is no absolute provision that all forms conceivable discrimination are unlawful, and those that are unlawful are subject to exemptions; there is no absolute duty to eliminate risks of injury at work etc. The true position is that stated by Issacs J in *Bull* and approved in *Nilant v. Macchia*: essentially that beneficial legislation should be construed so as to give the fullest relief which the fair meaning of its language will allow, but without going so far as to strain or exceed the language actually used. To the extent that the *obiter* in *Minister Immigration v. Teo*[186] might be said to suggest otherwise, it ought not be followed.

308. For example, in the later decision of *Risk v. Northern Territory of Australia* [2000] FCA 1779 a Full Court of the Federal Court considered a traditional land claim under the *Aboriginal Land Rights (Northern Territory) Act* 1976 (Cth). In construing that Act, it said:

> “36. The beneficial purpose of the Land Rights Act is apparent from the events that led to its enactment, from its long title and from its terms. The first Aboriginal Land Commissioner, Toohey J, wrote in his Report on the Yingawunarii (Old Top Springs) Mudbura Land Claim, AGPS Canberra 1980 at par 70:

[186] (1995) 57 FCR 194

> "Essentially the object of the Act is to give standing, within the Anglo-Australian legal system to a system of traditional ownership that has so far failed to gain recognition by the Courts."

The Act provides for the restoration of some areas of land to Aboriginal control and gives legislative recognition to Aboriginal rights and interests in that land - R v Toohey; Ex parte Meneling Station Pty Ltd [1982] HCA 69; (1982) 158 CLR 327 at 355 (Brennan J). Its beneficial purpose is, however, limited to certain categories of land - R v Toohey; Ex parte Attorney-General of the Northern Territory [1980] HCA 2; (1980) 145 CLR 374 at 389. It necessarily involves the reconciliation of competing interests. It was not intended to interfere with existing estates and interests already obtained under the law by persons other than Aborigines - R v Kearney; Ex parte Northern Land Council [1984] HCA 15; (1984) 158 CLR 365 at 372 (Gibbs CJ). On the other hand, s 50 is not to be construed as though contained in "a textbook on traditional land tenure in the feudal system". Its context is the novel concepts and arrangements that entered into Australian law initially through the provision of statutory land rights - R v Toohey; Ex parte Attorney-General (NT) at 392 (Wilson J). Statutory land rights, while providing a legal framework within which traditional owners could exercise their rights under indigenous law and custom, did not operate as a model of such rights. Having regard to the nature of traditional ownership, described by Brennan J in Re Toohey; Ex parte Attorney-General (NT) as "primarily a spiritual affair rather than a bundle of rights" (358) they could not. Recognition of traditional ownership provided by statutory land rights was necessarily limited and qualified by the non-indigenous legal system from which they sprang. Even the recognition of customary native title at common law can never be more than a qualified and limited recognition which has to be accommodated within the framework or skeleton of the common law. The grant of statutory land rights potentially impacts on other interests and from the viewpoint of the legal system requires a degree of clarity and specificity in the definition of their limits. In the end statute law defines those limits on policy grounds which reflect the beneficial purpose of the Act and the interests of other land users.

….

39 To define "land" as used in s 50 of the Land Rights Act as covering the seabed of bays and gulfs within the limits of the Northern Territory **is artificially to extend the ordinary and ordinary legal meaning of the word**. In so concluding, it may be accepted that there may be examples when the word "land" is so extended in particular statutory contexts. **The history of the Act and its beneficial purpose must be recognised. But it must also be recognised that the Act applies only to certain categories of land and that it represents a balance of interests.** It is inconceivable that the Act was intended to extend to the seabed of bays and gulfs within the Territory and yet failed to make that explicit. Moreover there are express and limited references to waters which have already been canvassed. In our opinion, the Commissioner was correct in his conclusions and the application should be dismissed." (emphasis added)

The decision of the Full Court was upheld on appeal to the High Court.

309. Further, in *Accounting Systems 2000 (Developments) Pty Ltd v. CCH Australia Ltd*[187] a Full Court of the Federal Court considering the *Trade Practices Act* 1974 observed that:

[187] (1993) 42 FCR 470

> "As is the case with Pt IV of the ... Act, the evident purpose and policy underlying Pt V ... recommends a broad construction of its constituent provisions, the legislation being of a remedial character so that it should be construed so as to give the fullest relief which the **fair meaning of its language** will allow" (emphasis added)

These observations were referred to by Kirby in his dissenting judgment in *Qantas Airways Ltd v. Aravco Ltd* [1996] HCA 12. In that judgment, Kirby J said:

> "In my view, it can safely be left to the Parliament, where it so wishes, to restrict the application of the consumer protection provisions of the Act. It has already done so in a number of ways. It has adopted a particular definition of a "consumer", taking into account the price paid for, and the nature of, the goods and services in question. It has also provided for the avoidance of certain contractual terms which limit the liability of a supplier of goods or services, unless it is shown that it is not fair or reasonable for reliance to be had on such limitations.
>
> Where the Parliament has not so limited the consumer protections enacted by the Act, it is the duty of the courts, in accordance with well-established doctrine, to give effect to the protection. They do so by giving the provisions of the Act a beneficial construction. This is especially appropriate where the Act itself uses broad language designed to achieve a large social purpose far beyond the commercial circumstances of the present dispute."

The majority judgment did not put a contrary view, it found that the Appeal fell to be decided on the proper construction of the pleadings below, rather than the construction of the Act.[188]

310. In our submission, it would be erroneous to conclude that because the minimum wages objective requires consideration of a multitude of factors, or because the FW Act in other respects otherwise deals with or calls for the consideration of other interests, the FW Act or the provisions thereof that provide for minimum wages are not beneficial.

311. In conducting the Annual Wage Review, the Panel must bear in mind the overarching aims of Part 2-6 apparent from s282 (Guide to this Part), s284 (minimum wages objective) as well as s134 (modern awards objective). That is, *minimum* wages are to be set and/or varied *for* national system employees who are covered by modern awards or who are award or agreement free. This can scarcely be said to be straining the language (and in any event, there is no provision in the FW Act which provides or infers that minimum wages are also for the benefit of employers, or which sets maximum wages). Further, the other functions that the FW Act serves (such as collective bargaining, and the making of agreements, the regulation of industrial action, general protections and unfair dismissal) are discrete from and not intertwined with the wage fixation function – to the extent that these provisions accommodate the interests of employers they do so otherwise than in relation to their interests in the minimum wage.

312. The concept of the safety net in s 284(1) is such that it protects, or is for the benefit of, national system employees who are covered by modern awards or who are award or agreement free. The very concept of a

[188] At para 18-21.

safety net provides that said employees are safe and free from danger or risks.[189] The safety net is for the benefit of said employees and is not intended to protect or benefit employers.

313. Given that the overriding consideration is the safety net, it cannot be said that Part 2-6 represents a compromise between competing interests in any relevant sense. Section 284(1) provides that a number of factors must be taken into account. These factors do include a range of economic and social considerations, but none of them directly or exclusively relate to the interests of employers. Moreover, the requirement to take these matters into account does not alter the fundamental objective of establishing and maintaining a safety net or detract from the beneficial nature of the legislation for employees.

Penal provisions not to detract from central purpose

314. The fact that the FW Act provides for penalties in relation to certain conduct does not detract from its character as beneficial legislation or the requirement to interpret it as such.

315. In *Waugh v Kippen*[190] the High Court considered industrial safety legislation, which not only prohibited certain conduct "likely to cause risk of injury", but which made breach of that prohibition an offence. While noting that the legislation was beneficial legislation, the Court also referred to the rule of strict construction concerning penal provisions. It then stated:

> "In the course of argument, the question arose whether the two principles of interpretation to which we have referred come into conflict in the present case and if so, how the conflict is to be resolved. If such a conflict was to arise, the Court must proceed with its primary task of extracting the intention of the legislature from the fair meaning of words by which it has expressed that intention, **remembering that it is a remedial measure passed for the protection of the worker. It should not be construed so strictly as to deprive the worker of the protection which Parliament intended that he should have**: Harrison v. National Coal Board (1951) AC 639, per Lord Porter at p 650; John Summers & Son Ltd. v. Frost (1955) AC 740, per Viscount Simonds at p 751; McCarthy v. Coldair, Ltd. (1951) 2 TLR 1226, per Denning L.J. at pp 1227-1228. In such a context the strict construction rule is indeed one of last resort."

316. Provisions of FW Act have specifically been considered on this point, and it has been held that the presence of enforcement provisions do not detract from its beneficial character.

317. In *Fair Work Ombudsman v Ballina Island Resort Pty Ltd & Anor*[191]*,* the Federal Magistrates Court held that FW Act is beneficial legislation while also containing civil and criminal provisions "..intended to enforce the provisions and provide [sic] the individual covered by the Act so as to ensure that they receive the beneficial aspects which is the parliamentary intention."

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[189] The Concise Oxford Dictionary, 7th Edition.

[190] [1986] HCA 12 at 9 - 12

[191] [2011] FMCA 500 at 87 and 88

318. More recently, in *CFMEU v. State of Victoria*[192], the Federal Court considered the General Protections provisions in this way:

> The objects of Pt 3-1 reveal that the FW Act seeks to protect the rights conferred by the Part and to provide to persons on whom those rights are conferred effective relief from being discriminated against, victimised or otherwise adversely affected by reason of the holding or exercising of those rights. The rights protected under Pt 3-1 are:
>
> the workplace rights conferred by Div 3 (the "workplace rights");
>
> the rights of association and participation in the industrial activities conferred by Div 4 (the "industrial activities rights"); and
>
> anti-discrimination rights and other protections conferred by Divs 5 and 6.
>
> In interpreting a legislative provision, the Court is required to prefer a construction that "would best achieve the purpose or object of the Act" (whether or not that purpose or object is expressly stated in the Act): s 15AA of the Acts Interpretation Act 1901 (Cth).
>
> Provisions of the kind contained in Pt 3-1, and in particular those in Div 3 and Div 4, have long been regarded as remedial and beneficial in nature despite their penal aspect: Barclay v Board of Bendigo Regional Institute of Technical and Further Education (2011) 191 FCR 212 at [14]-[17] (Gray and Bromberg JJ); Kelly v Construction, Forestry, Mining and Energy Union (No.3) (1995) 63 IR 119 at 130 (Moore J); Australian Municipal, Administrative, Clerical and Services Union v Greater Dandenong City Council (2000) 101 IR 143 ("Australian Municipal, Administrative, Clerical and Services Union") at [75] (Madgwick J); National Union of Workers v Qenos Pty Ltd (2001) 108 FCR 90 at [48] (Weinberg J); Construction, Forestry, Mining and Energy Union v Pilbara Iron Co (Services) Pty Ltd (No 3) [2012] FCA 697 at [35] (Katzmann J); and see Waugh v Kippen (1986) 160 CLR 156 at 164–5 (Gibbs CJ, Mason, Wilson and Dawson JJ).
>
> Accordingly, the terms of the legislative provisions in question should be given "a fair and liberal interpretation in order that they achieve the Act's beneficial purposes": AB v Western Australia at [38] (the Court). The approach that should be taken to the construction questions is one that gives effect to the evident purpose of the legislation and is consistent with its terms: AB v Western Australia at [23] (the Court)."

319. Finally, it is to be noted that the enforcement mechanism in respect of minimum wages in any event is separate to Part 2-6 which establishes the Review as the means of setting those wages for national system employees who are covered by modern awards or who are award or agreement free.

Juniors

320. Modern awards contain minimum wages for junior employees not covered by formal training arrangements that are expressed as a percentage of the minimum rate for the relevant classification. Any minimum wage increases awarded as part of this Review should flow on to junior wages in modern awards.

321. The ACTU welcomes the recent decision of a Full Bench of the Fair Work Commission to vary the *General Retail Industry Award 2010* to ensure that adult 20 year old retail employees receive the full adult rate of pay

[192] [2013] FCA 445. The decision was overturned on appeal, for entirely unrelated reasons (namely that the Judge below had misconstrued a Deed)

provided that they have worked for the employer for more than six months.[193] The decision recognises that the discounted rate for 20 year old young adult retail employees did not provide a fair and relevant minimum safety net.

322. In reaching its conclusion, the Full Bench made a number of important findings regarding the retail industry:

We agree with the SDA's submission that a high proportion of employees in the retail industry are low paid. This categorisation of these employees is consistent with decisions made by the Minimum Wage Panel in Annual Wage Reviews. Persons on award rates, particularly those below the C10 trades rate are considered to be low paid in the sense in which that term is used in ss.134(1)(a) and 284(1)(c). 83 It is also consistent with the recent finding made by a Full Bench in the Modern Awards Review 2012 - Penalty Rates decision (Penalty Rates Decision).84 It is also accurate to describe 20 year olds, who do not receive the adult rate of pay, as being amongst the lowest paid.[194]

The evidence presented by both the SDA and the employers generally supports a conclusion that most junior retail employees achieve a satisfactory level of proficiency in their roles after about six months in employment. Further much of the evidence suggests that there is little difference in the duties and responsibilities assigned to 20 and 21 year old retail employees or in the level of supervision required in relation to those employees.[195]

There was little evidence to suggest a 20 year old, with some experience, required any supervision; certainly not close supervision such that may suggest an additional cost would be incurred by employers to engage persons to provide such supervision. In fact, as we have earlier noted, there was evidence that employees at 20 years of age or younger had supervised other employees.[196]

Having considered all of the evidence and submissions we are not persuaded the variation will be likely to have a negative impact on workforce participation. In those businesses with a collective or other employment arrangement whereby 20 year olds are already being paid the adult rate, it is unlikely to have any impact on the continuing workforce participation of these workers. … In the case of businesses where the award rate only is paid, we accept employers may consider whether to hire either a younger employee or an adult instead of a 20 year old. The evidence did not suggest it is a strong possibility they will decide to do so. Their current practice was not to prefer these other employees to an employee about to turn 21 years of age. That is understandable as they would be unlikely to do so particularly in the case of an employee with experience who understands the business and its customers.[197]

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193 [2014] FWCFB 1846, 21 March 2014 .
194 [2014] FWCFB 1846, [41].
195 Ibid, [171].
196 Ibid, [94].
197 Ibid, [140].

We assess the likely cost impact of the claim to be moderate. Further, that impact will be reduced as a consequence of the period of service requirement we have decided to introduce. We are not persuaded that the provision of adult rates to 20 year old retail employees will have a significant negative impact on business costs, nor on the viability of retail businesses. We are not persuaded it will have a discernible impact on employment growth.[198]

In varying the Award to give effect to the decision, we are mindful of the cost implications for some employers and the transitional arrangements that are still applicable under the Award. We have therefore decided that the Award should be varied so that the new rates for 20 year old employees in retail classifications will be phased in as follows: 95% of the adult rate to apply from the first pay period commencing on or after 1 July 2014; and 100% of the adult rate to apply from the first pay period commencing on or after 1 July 2015.[199]

323. In light of these findings, the ACTU submits that the cost implications associated with the increase in minimum wages for 20 year old retail employees are adequately addressed by the transitional arrangements contained in the decision.

324. The Panel should disregard any suggestion that it is appropriate to discount or offset the adjustment to modern award minimum wages on account of the increase in minimum wages for 20 year old retail employees. It is to be recalled that the Full Bench which awarded this increase was required to[200] and did have regard to the Minimum Wages Objective[201] in deciding to order the increase that it did.

Apprentices

325. Apprentice rates in modern awards are expressed as a percentage of the minimum rate for the relevant classification and will automatically adjust in line with modern award wages.

326. The Panel will be aware that the ACTU and affiliated unions filed applications in the 2012 Award Review seeking a range of improvements to apprentice wages and conditions in modern awards. The applications were heard before a Full Bench through the course of 2013. As with the Junior Rates matter referred to above, the Full Bench was required to[202] and did have regard to the Minimum Wages Objective[203] in determining the claims before it.

327. On 22 August 2013, the Full Bench issued its decision.[204] The key components of that decision in relation to apprentice wages were as follows:

198 Ibid, [164].
199 Ibid, [174].
200 Item 6(4) of Schedule 5 of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009
201 [2014] FWCFB 1846, [93], [115-167]
202 Item 6(4) of Schedule 5 of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009
203 [2013] FWCFB 5411, [74], [79], [170], [175], [222], [244], [253], [266], [301]
204 [2013] FWCFB5411

Increases to 'junior' apprentice rates

- A new first year apprentice rate of 55% of C10 or the equivalent trade rate for apprentices who have completed year 12, and 50% to those apprentices who have haven't completed year 12; and
- A new second year rate of 65% for apprentices who have completed year and 60% to those who haven't.

Adult apprentice rates

- Adult apprentice provisions to be inserted in modern awards where they don't currently exist
- The new rate for a first year adult apprentice will be 80% of the C10 rate, unless the award already provides for a higher rate
- The new rate for a second year adult apprentice will be the national minimum wage or the lowest adult classification rate in the award, whichever is the greater
- Unless the award already provides otherwise, an adult apprentice will be defined as an apprentice who is 21 years of age when they commence their apprenticeship

Existing worker adult apprentices

- Protection of minimum rates for existing workers who take up an adult apprenticeship with their current employer

Implementation and phasing arrangements

- The new rates (for both 'junior' and adult apprentices) will apply only to apprentices who commenced their apprenticeship on or after 1 January 2014
- The increases will be phased in as follows:

  If the relevant increase is equal to or less than a 5% increase in the relevant percentage of the award reference rate then the full increase applies from 1 January 2014

  If the relevant increase is more than a 5% increase in the relevant percentage of the award reference rate , then the percentage or rate increases by 5% from 1 January 2014, with the remainder of the increase taking effect from 1 January 2015
- The phasing arrangements apply to increases in apprentice rates of pay and to increases in first year adult apprentice rates in awards that already contain adult rates
- Where adult apprentice rates are being inserted in awards for the first time, the new rates will apply from 1 January 2014 with no phasing-in.

328. The ACTU submits that the adjustment to modern award minimum wages should be sufficient to provide employees engaged in training with a real increase in minimum wages.

329. The phasing arrangements outlined above ensure that the costs associated with establishing a fair and relevant safety net of apprentice wages are manageable.

Trainees

330. Modern award minimum wages for employees undertaking an approved traineeship are generally set by the National Training Wage Schedule ('NTWS'). A number of modern awards contain separate trainee rates.

331. The ACTU supports

a. a percentage increase to the NTWS that equates to the increase in the NMW in order to maintain the relativity of trainee wages to the NMW;

b. a $27 increase to separate trainee rates in modern awards that are equivalent to the C10 rate or less; and

c. a 3.7 % increase to separate trainee rates in modern awards that are in excess of the C10 rate.

Employees whose productivity is affected by disability

332. Employees in open employment whose productivity is affected by disability and who meet the eligibility criteria, receive pro-rata wage determination under the Supported Wage System Schedule (SWSS) subject to a fixed weekly minimum payment. Employees of supported employment services receive pro-rata wage determination pursuant to one of a number of approved wage assessment methods or tools.[205]

333. The Panel will be aware that a joint application has been made by United Voice and the Health Services Union to vary the *Supported Employment Services Award 2010* to remove ambiguity or uncertainty arising from the judgement of the Full Court of the Federal Court in *Nojin v Commonwealth of Australia* [2012]FCAFC 192 (21 December 2012), which held that the Business Services Wage Assessment Tool (BSWAT), one of the approved wage assessment tools, unfairly discriminated against workers with an intellectual disability.

334. The ACTU strongly supports the union application. If accepted the proposed variation would have the following effects:

(a) Deny employers access to wage assessment tools that contain discriminatory provisions of the kind identified by the Full Court in Nojin;

(b) Provide for the Supported Wage System to be the only wage assessment tool permitted for the assessment of the wages of employees reliant upon the award;

(c) Require employers who seek to use an alternate wage assessment tool to do so through enterprise bargaining, and satisfy the Commission that the wage assessment tool they select meets the Better Off Overall Test; and

(d) Provide that employers will have until 30 June 2014 to transition to the amended award regime.

[205] *Supported Employment Services Award 2010*, Cl 14.4.

335. Although the application is clearly linked to matters the Panel is required to consider, there is no need for the Panel to depart from the approach that it has adopted in previous Reviews with respect to employees whose productivity is affected by disability.

336. The minimum payment for SWS employees should be adjusted by reference to the annual CPI increase to the most recent March quarter in accordance with the adjustment mechanism established by Division 2-CPI indexation of the Social Security Act 1991('SSA'). [206]

337. The other wage assessment tools operate by reference to modern award minimum wages and will, if retained, continue to operate in the usual manner.

Piece rates

338. Piece rates in modern awards are fixed by reference to minimum weekly or hourly wages in those awards. Any adjustment in modern award minimum wages will automatically flow through to employees engaged on piece work. [207]

Modern award casual loading

339. The standard casual loading in modern awards should be maintained at 25%. The transitional arrangements in modern awards that phased in the casual loading will cease to operate on 1 July 2014.

Expense related allowances

340. Modern awards contain a standard clause which provides for the adjustment of expense related allowances at the time of any adjustment to the standard rate.[208] This provision requires that expense related allowances be adjusted on 1 July 2014 in line with percentage movement in the applicable index figure between the March quarter 2013 and the March quarter 2014.

National Minimum Wage Order

341. The National Minimum Wage Order ('NMWO') contains a number of provisions that apply to award-free employees.

342. The NMW and the special NMW for employees whose productivity is not affected by their disability should be increased to $649.20 per week or $17.08 per hour.

343. Minimum wages for award-free juniors, apprentices, trainees and employees covered by the SWSS should be increased in line with modern award minimum wages.

[206] For further information, see ACTU's submission to the 2012 Annual Wage Review, at [460].
[207] [2011] FWAFB 3400, [376].
[208] Cl. 15 - Adjustment of expense related allowances.

344. The default casual loading should be increased to 25% consistent with the standard casual loading contained in modern awards.

Transitional instruments

345. The *Fair Work (Transitional Provisions and Consequential Amendments) Act* established a number of different transitional instruments. There are three categories of transitional instruments which continue to operate with respect to national system employees.

346. The first category includes a subset of modernisable instruments derived from enterprise or public sector awards that are subject to a modernisation or termination application made between 1 July 2009 and 31 December 2013. [209] These instruments continue to operate until modernised or terminated by the Fair Work Commission and may be adjusted by the Panel.[210] Modernisable instruments that are not subject to an application automatically terminated on 31 December 2013.[211]

347. The second category of transitional instruments are Transitional Australian Pay Classification Scales (APCSs), State reference transitional instruments and Division 2B State awards preserved by the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* and transitional pay equity orders created by the Transitional Act. The Panel has observed that these instruments can be divided into two groups:

The first group relates to competency-based wage arrangements for trainees or apprentices, or provisions relating to the provision of tools for trainees or apprentices (principally in Queensland). They are excluded from the termination arrangements that generally apply under the Transitional Act and must be considered as part of the Panel's review.

The second group are a new category of transitional instruments created or varied by operation of modifications to the Transitional Act, called "transitional pay equity orders". The Panel must review, and may make a determination varying aspects of one of the transitional pay equity orders. This transitional pay equity order relates to Division 2B State awards for which base rates of pay were determined by a pay equity order made by a state Industrial Relations Commission, to the extent it is derived from certain Queensland awards.[212]

348. The third category of instruments is copied State awards. These instruments apply to employees of non-national system state public sector employers who transfer their employment to a national system employer

[209] *Transitional Act,* Sch. 6 and Sch. 6A.
[210] *[2013] FWCFB 4000*. [552].
[211] Transitional Act, items 5(2) and 9(4) of Sch.6 and item 5 of Sch. 6A.
[212] *[2013] FWCFB 4000*. [554]-[555].

as part of a transfer of business.[213] The Panel is required to review, and, if appropriate, make a determination varying minimum wages in copied State awards.[214]

349. The ACTU submits that any increase in modern award minimum wages should apply to transitional instruments which remain in operation, other than copied state awards.

350. In 2013 the Panel awarded a tiered increase that differentiated between copied state awards on the basis of when they came into effect in order to limit the impact of "double-dipping" where the relevant instrument contains rates that have been affected by state Industrial Relations Commission minimum wage determinations in the previous 12 months.

351. The ACTU submits that a similar approach should be adopted with respect to copied State awards (if any) that have come into operation since the 2013 Review as these instruments may include rates of pay that have been increased by State Industrial relations Commissions within the last 12 months.

352. We submit that the Panel distinguish in its determinations, as follows:

a. Copied State awards that came into operation on or before 1 July 2013 be adjusted in line with the increase to modern award minimum wages.

b. Copied state awards that were the subject of a state minimum wage decision that commenced after 1 July 2013 and before 1 January 2014 be adjusted by 50% of the increase provided to modern award minimum wages;

c. Copied state awards that were the subject of a state minimum wage decision that commenced on or after 1 January 2014 and before 1 July 2014 not receive any further increase in 2014.

Superannuation guarantee

353. The compulsory superannuation guarantee rate is scheduled to rise from 9.25% to 9.50% of earnings from 1 July 2014. The Commonwealth Government has introduced legislation to delay this increase. However, it appears unlikely that this legislation will be approved by Parliament before 1 July.

354. Our position in respect of the increase in the superannuation guarantee rate (if it occurs in 2014) is the same as in the 2012-13 Review. We submit that the Panel should not award a lower increase in minimum wages than it would have in the absence of this increase.

355. We provided material in our submission to last year's review that showed that non-wage labour costs declined between 2002-03 and 2010-11 as a proportion of total labour costs. Workers reliant on minimum

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[213] The *Fair Work (Transfer of Business) Amendment Act 2012*, which commenced on 4 December 2012, introduced a new Part 6.3 into the Act. A copied State award continues to operate under the national system for a period of five years, unless terminated or extended by regulation. See Fair Work Act, s. 768AO.
[214] *FW Act*, s.768BY and s.768AW(b).

wages did not receive an additional wage increase as a result of this fall in non-wage labour costs. Employers of the low-paid enjoyed a benefit from this decline in costs. We ask that the Panel not treat changes in non-wage labour costs (such as compulsory superannuation contributions or workers' compensation premiums) asymettrically, by reducing the wage rise it awards when costs rise but not increasing the wage rise it awards when costs fall.

Conclusion

356. This submission has outlined why the ACTU believes an increase of $27 per week to the NMW and lower award classification rates, and 3.7% at the higher rates, is appropriate.

357. An increase of this magnitude is necessary to stop the erosion of low-paid workers' relative living standards and to modestly improve them.

358. The increase we request in this Review is consistent with all the criteria that the Panel must take into account when making its decision, as outlined in this submission.

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