



2010 Annual Wage Review

 AUSTRALIAN INDUSTRY GROUP

Ai GROUP SUBMISSION



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2010 ANNUAL WAGE REVIEW

Submission of the Australian Industry Group

1. Introduction

1. In this first Annual Wage Review under the Fair Work Act (“FW Act”), Fair Work Australia (FWA) needs to take a cautious approach in adjusting minimum wages.
2. While the economic recovery is underway and conditions are much improved on where they were at the time of the last minimum wage case, conditions are patchy and being too ambitious would risk the jobs of the very people that the Annual Wage Review is intended to help.
3. The global economy faces a number of important risks, notably in the key industrial economies.
4. Several indicators, including what appears to be caution on the part of employers to hire full-time workers in the face of uncertainty around the economic outlook, argue for caution in this year’s wages decision.
5. There are a number of issues complicating this Wage Review, including the impact of award modernisation upon employers, and these should be taken into account in getting the increase right.
6. Many employers have experienced increased costs as a result of award modernisation, and are facing more substantial cost increases over the period ahead as higher wage rates, loadings and penalties are phased-in.

7. The phased increases under the transitional provisions in modern awards apply from 1 July 2010 – the same day that the increase in award minimum wages will apply (unless FWA determines that exceptional circumstances exist which justify a later date). Unless addressed this situation will create hardship for many employers.
8. In making its decision, FWA is required to consider the impact of changes to minimum wage rates on workforce participation. In this regard, we submit that FWA should give overwhelming emphasis to the potential impacts of wage changes on the demand for labour. This should take precedence over the possibility that the incentive provided by higher minimum wages will stimulate an additional supply of labour on the part of people who are currently unemployed or underemployed. The Australian labour market is currently characterised by high rates of labour underutilisation, which illustrates an excess of supply of labour relative to demand.
9. If decisions about minimum wages give rise to a greater demand for labour, given existing levels of labour underutilisation, this would add to workforce participation and contribute positively to the objective of promoting social inclusion through increased workforce participation.
10. **Ai Group proposes that:**
 - The existing Transitional Standard Federal Minimum Wage be increased by \$0.32 per hour (ie. \$12.00 per week) to create a new National Minimum Wage of \$14.63 per hour (\$555.94), operative from 1 July 2010;
 - Award minimum wages for adults be increased by \$12.00 per week, operative from 1 July 2010;

- The exceptional circumstances provisions of the FW Act (s.286(2)) be invoked for employers in particular industries or parts of industries that are faced with large cost increases on 1 July 2010 as a result of award modernisation. For those employers, Ai Group proposes an operative date of 1 January 2011 for the \$12.00 increase in award minimum wages.
11. Ai Group's proposal regarding a \$12.00 minimum wage increase represents an increase in the National Minimum Wage of approximately 2.2%, but importantly when the 1 July 2010 income tax changes are taken into account, this amount increases to around \$13.08 per week or a 2.6% increase in disposable income. Higher benefits would result for low income families with children. For a single income family earning the National Minimum Wage, with two children, the increase in disposable income would be over \$22 per week or 3% after including changes to income tax and transfers.
 12. In past minimum wage decisions, both the Australian Industrial Relations Commission (AIRC) and the Fair Pay Commission have recognised the importance of considering all elements of the social safety net, including income tax and income support structures, in determining the level of increase in minimum wages. Changes to taxation and income support typically deliver far more cost effective and less economically risky benefits than increases to wages.
 13. The level of wage increase proposed by Ai Group would assist the low paid whilst not posing undue risks to the Australian economy.

2. The Legislative Context

Introduction

14. The role of ensuring that a safety net of fair minimum wages is established and maintained is central to the functions of FWA. This vesting of responsibility to regulate the minimum wages of employees in Australia in the same tribunal which is also responsible for the administration of the other aspects of the award safety net represents a revival of the former approach of enshrining these two important functions within the same statutory body.
15. Whilst the conferring of this responsibility upon FWA creates some synergies between the process of review and variation of minimum wages that now exists under the *Fair Work Act 2009* (“the FW Act”) and the Safety Net Review process which prevailed under the pre-Workchoices *Workplace Relations Act 1996* (“the pre-WorkChoices WR Act”) there are important and significant differences in the legislative schema.
16. Of much significance is the level of detail which is enshrined within the FW Act and which applies specifically to the annual wage review process. This prescription extends not only to the important considerations which must be weighed by FWA in any variation determination it makes, but also prescription in relation to the process of review and the composition of the Minimum Wage Panel.
17. Ai Group submits that such focus clearly reveals a legislative intention to more directly influence the conduct of the annual wage review and a primacy in the principles which are contained within those statutory provisions which apply specifically to the annual wage review above those overarching objectives which may apply either to modern awards or the FW Act in its entirety.

18. Also, Ai Group notes that the legislation identifies further obligations which apply exclusively to the 2010 annual wage review being the first such review to be conducted by FWA. These requirements are contained within the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (“the Transitional Act”) and consideration regarding the interplay between these provisions and those of the FW Act is necessary.

Review of Modern Award minimum wages

19. Section 285(1) of the *Fair Work Act 2009* (“the FW Act”) requires that FWA must conduct an Annual Wage Review in each financial year. The breadth of such a review is articulated in s.285(2) of the FW Act which provides:

“In an annual wage review, FWA:

(a) must review:

- (i) modern award minimum wages; and*
- (ii) the national minimum wage order.”*

20. The phrases “*modern award minimum wages*” and “*national minimum wage order*” are both given definition in ss.284(3) and 294(1) respectively. In turning first to consider the process for review of modern award minimum wages s.284(3) states that:

*“284(3) **Modern award minimum wages** are the rate of minimum wages in modern awards, including:*

- (a) wage rates for junior employees, employees to whom training arrangements apply and employees with a disability; and*
- (b) casual loadings; and*
- (c) piece rates.*

21. In conducting its review of modern award wages, FWA is not required to make a single determination which varies all modern awards. Instead it is empowered to make “one or more determinations¹” to vary, set or revoke modern award minimum wages. Ai Group contends that this expressed contemplation of multiple determinations within the modern award minimum wage review process is highly significant and allows FWA to consider the making of a variety of determinations should it be confronted with evidence that a particular award or group of awards requires differential treatment.
22. In identifying the circumstances in which more than one modern award variation determination may be warranted the legislation provides no expressed indication in relation to criteria. Whilst s.285(3) requires that any determination relating to modern award wages should be considered in the context of the national minimum wage, this obligation exists equally for any determination made under s.285(2)(b).
23. Ai Group submits that whilst the absence of expressed criteria in relation to multiple award determinations presents some uncertainty, there is clarity that the legislature did not intend that exceptional circumstances would need to be present to yield such a result (other than in respect of the operative date of a variation determination, if such operative date is later than 1 July). Ai Group advances this contention on the basis of an analysis of s.286 and its expressed reference to exceptional circumstances which is absent from the terms of s.285(2).
24. Section 286 is an important aspect of the provisions relating to the variation of modern award minimum wages also. Section 286(1) requires that:

*“286(1) A determination (a **variation determination**) varying one of more modern awards to set, vary or revoke modern award minimum wages that is made in an annual review comes into operation on 1 July in the next financial year.”*

¹ Fair Work Act 2009; section 285(2)(b)

25. This mandatory obligation however can be departed from in particular circumstances as section 286(2) states:

“286(2) If FWA is satisfied that there are exceptional circumstances justifying why a variation determination should not come into operation until a later day, FWA may specify that later day as the day on which it comes into operation. However, the determination must be limited just to the particular situation which the exceptional circumstances relate.”

26. Ai Group submits that expressed recognition of the possibility that circumstances may exist where FWA can and should make differential decisions in relation to the timing of a wage determination for an award, group of awards, or an industry sector is extremely significant. Whilst the concept of ‘economic incapacity to pay’ was a feature of the Pre-WorkChoices WR Act Safety Net Review process, such a concept was available only to specified employers on application. We contend that the new legislative provisions allow for a decision underpinned by similar themes to be made by FWA but on an award or industry sector basis.

National minimum wage orders

27. In addition to reviewing the minimum award wages, as part of the Safety Net Review under the Pre-WorkChoices WR Act, the Australian Industrial Relations Commission (AIRC) was charged with varying the Federal Minimum Wage. Under the FW Act, FWA has an equivalent responsibility although the term “Federal Minimum Wage” has been replaced with “National Minimum Wage”. Furthermore, there are various special national minimum wages which must be set by FWA as part of a national minimum wage order.
28. Section 285(c) requires FWA to make a national minimum wage order as a result of each annual wage review. Section 294(1) dictates those matters which must be included within a national minimum wage order. It provides:

“294(1) *A national minimum wage order:*

- (a) must set the national minimum wage; and*
- (b) must set special national minimum wages for all award/agreement free employees in the following classes:*
 - (i) junior employees;*
 - (ii) employees to whom training arrangements apply;*
 - (iii) employees with a disability; and*
- (c) must set the casual loading for award/agreement free employees.”*

29. Although these matters reflect mandatory content of a national minimum wage order, the Transitional Act identifies that in the first annual wage review FWA does not have to set a full range of special national minimum wages, specifically stating:

“4 First national minimum wage order does not have to set full range of special national minimum wages

4(1) *In its first annual wage review, FWA does not have to set a full range of special national minimum wages covering all the classes of employees referred to in paragraph 294(1)(b) of the FW Act.*

4(2) *However, FWA must set a special national minimum wage for a class or subclass of those employees in its first annual wage review if the transitional national minimum wage order sets a special national minimum wage order for those employees.*

Note: The transitional national minimum wage order is taken to have been made on the FW (safety net provisions) commencement day: see item 12.”

30. The Minimum Wage Panel in a Statement dated 19 February 2010 has already provided an indication in relation to the breadth of matters it will be considering as part of its national minimum wage order for 2010:

“[4] The transitional minimum wage order is comprised of the federal minimum wages set by the Australian Fair Pay Commission (AFPC) prior to 1 July 2009. The AFPC set a federal minimum wage for two classes of employees with a disability but did not set federal minimum wages for award/agreement free junior or award/agreement free employees to whom training arrangements apply. It follows that the transitional national minimum wage order does not set a special national minimum wage order for those two groups. Pursuant to items 4(1) and (2), therefore, Fair Work Australia is not required to include special national minimum wages for award free junior employees or award free employees to whom training arrangements apply in the national minimum wage order to be made in the 2009-2010 review.

[5] The Minimum Wage Panel has considered the breadth of the review and the scope of matters to be considered. We have reached the provisional view that we should not set special national minimum wages for award free juniors or award free employees to whom training arrangements apply. We consider that it would be more appropriate to give consideration to those wages in the latter period of 2010 with a view to including wages for those classes of employees in the national minimum wage order to be made in the 2010-2011 review. We stress this is a preliminary view. Persons wishing to persuade us to a different course should include all relevant arguments and material in their submissions.²”

31. Ai Group supports the decision to decline to set special national minimum wages for award free employees that are juniors or to whom training arrangements apply. We submit, as preliminarily determined by FWA, that these matters are more appropriately dealt with as part of the 2010-2011 review.

² Statement Annual Wage Review 2009-10, 19 February 2010 [2010 FWAFB 1224]

32. Beyond matters of content, the implementation of a national minimum wage order is largely on all fours with that which applies to modern award minimum wages. Specifically:

- National minimum wage orders made in an annual wage review³ come into operation on 1 July in the financial year immediately following the year it was made (s.287(1));
- Whilst generally the quantum and operative date of the national minimum wage, special national minimum wages and the casual loading for award/agreement free employees must be the same for all employees, where there are exceptional circumstances FWA may set different quantum and/or different operative dates to deal with particular situations as part of the national minimum wage order (ss.287(3) and 287(4));
- Any order is to take effect for a particular employee from the first full pay period to commence on or after 1 July or if a later date is specified in the order the first full pay period after that date (s.287(5)).

Other transitional matters

33. Under the Transitional Act a range of transitional minimum wage instruments were created at the point at which the WR Act was replaced by the FW Act.

34. On 1 January 2010 the transitional Federal Minimum Wage, any transitional special Federal Minimum Wages and the transitional default casual loading ceased to cover employees and FWA was deemed to have made a transitional national minimum wage order in accordance with Part 2 – 6 of the FW Act⁴ consistent with the terms of the transitional Federal Minimum Wage,

³ To remove ambiguity or uncertainty or to correct and error a national minimum wage order may be made other than as part of an annual wage review – Section 296

⁴ *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; Schedule 9 , s 12

transitional special Federal Minimum Wages and the transitional default casual loading.

35. This transitional national minimum wage order will be reviewed as a consequence of the operation of Part 2 – 6 of the FW Act. In addition, the Transitional Act allows FWA to make a determination varying a transitional APCS⁵.

Minimum wages objective

36. Whilst the provisions relating to implementation of variation determinations arising out of the annual wage review provide some indication in relation to thresholds for particular matters, most notably the presence of exceptional circumstances to allow for deviation from an operative date of 1 July, the performance of all of FWA's annual wage review responsibilities are guided by the minimum wages objective.
37. Section 284(2) requires that the minimum wages objective apply to all the functions and powers exercised by FWA in Part 2 – 6 of Chapter 2 of the FW Act which is devoted to the conduct of annual wage reviews.
38. The minimum wages objective is prescribed in s.284(1) of the Act as follows:

“284(1) FWA must establish and maintain a safety net of fair minimum wages, taking into account:

- (a) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth; and*
- (b) promoting social inclusion through increased workforce participation; and*
- (c) relative living standards and the needs of the low paid; and*

⁵ Fair Work (Transitional and Consequential Amendments) Act 2009; Schedule 9 - Clause 10

- (d) *the principle of equal remuneration for work of equal or comparative value; and*
- (e) *providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.”*

39. We submit that whilst the Object of the FW Act (s.3) is unquestionably relevant to the performance of FWA’s functions in respect of the annual review of wages, primacy must be given to the minimum wages objective, particularly where this objective reveals criteria not elsewhere found in the Act.

40. Whilst the minimum wages objective largely mirror a number of other ‘objects’ within the Act, most notably those that apply to modern awards⁶, there are two concepts contained within the minimum wages objective which are not contained in either the Object of the Act or those objects which apply to modern awards. The first is that which is provided for in sub-clause (e), that FWA must take into account:

“(e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.”

41. To the extent that this objective has relevance to those matters contained within the national minimum wage order, it has already been identified that provisionally FWA has decided to not seek to create special national minimum wages for award free junior employees or award free employees to whom training arrangements apply in this review. As stated above, Ai Group supports this decision.

⁶ *Fair Work Act 2009; s 134(1)*

42. In reference to how this objective should be achieved in respect of employees with a disability who are subject to the national minimum wage order or how sub-clause (e) should be applied to modern awards, our position is detailed in **Section 10** of this submission.
43. The second concept which is reflected within s.284(1) and which has no equivalent in the other objects found within the Act is contained within sub-clause (a) and relates specifically to the phrase “*business competitiveness and viability*”. Ai Group has reviewed the terms of the FW Act and has identified that the phrase “*business competitiveness and viability*” appears only once in the legislation and that is within the minimum wages objective.
44. Whilst the concept of competitiveness of the national economy or the performance of the national economy are phrases which find their way into other sections of the Act⁷, the specific inclusion of the phrase “business competitiveness and viability” within the description of those concepts in s.284(1)(a) illustrates, in Ai Group’s submission, a legislative intention to sharply focus the perspective of FWA on this issue. We submit that when performing its annual wage review function FWA must have particular regard for the effect that a minimum wage determination may have on business competitiveness or business viability, such concepts in our submission are narrower than considerations into the competitiveness of the national economy.
45. We further submit that such criteria also necessarily intertwines with any consideration of whether deferred operative dates or multiple determinations should be made in a given annual review.

⁷ *Fair Work Act 2009*; s3(a) and 134(1)(h)

Objects of the Act and modern awards

46. In the performance of all its functions, FWA is required to abide by the objects prescribed by the Act⁸. Additionally, whilst the objects enshrined within Part 2 – 6 of the Act are a mandatory consideration, the modern award objectives are also discreetly relevant to the performance of the Tribunal’s function in determining modern award minimum wages⁹.
47. Ai Group submits that the following extracts from ss.3 and 134(1) are particularly relevant to FWA’s annual wage review undertaking:

“3 Object of this Act

- (a) *providing workplace relations laws that are fair to working Australians, are flexible for businesses, promote productivity and economic growth for Australia’s future economic prosperity and take into account Australia’s international labour obligations; and*
- (b) *ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders;*
-
- (f) *achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action; and*
- (g) *acknowledging the special circumstances of small and medium-sized businesses.*

⁸ Fair Work Act 2009; s 578(a)

⁹ Fair Work Act 2009; s 134(2)(a)

134 The modern award objective

- (a) *relative living standards and the needs of the low paid; and*
- (b) *the need to encourage collective bargaining; and*
- (c) *the need to promote social inclusion through increased workforce participation; and*
- (d) *the need to promote flexible modern work practices and the efficient and productive performance of work; and*
- (e) *the principle of equal remuneration for work of equal value; and*
- (f) *the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and*
-
- (h) *the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.”*

3. Economic Conditions and Outlook

Economic assessment

48. In this economic assessment, the Australian Industry Group addresses the overall economic context which frames the outlook for employment over the next twelve months.
49. This wage case takes place in an economy that is likely to see a steady improvement in economic growth into 2010, albeit with some risks around that outlook. There is some significant downside risk for the world economy and the domestic economy continues to see patchiness in growth in particular sectors, notably the employment-intensive services sector.
50. The Australian labour market overall has partially recovered over recent months, reflecting the lift in economic growth experienced in the December quarter 2009. To date, however much of the improvement reflects rising part-time work rather than growth in full-time jobs and average hours worked have remained essentially stable. This indicates residual caution among employers who will need to see a sustained lift in economic growth before making the decision to begin a switch towards full-time employment.
51. The Australian economy is currently at an important juncture. It is as yet unclear whether the private sector, consumers and businesses, will take up the baton of economic growth which has been carried over the year to the December quarter 2009 by public sector consumption and investment.
52. Ai Group's own monthly indicators suggest that consumer-related sectors have seen some easing in growth impetus as the stimulus from fiscal policy has faded and the Reserve Bank has begun to raise the official cash rate.

53. The uncertainties around the persistence and strength of the recent recovery in economic growth argue for significant caution in determining wages outcomes in the near-term.

Global economic conditions

54. The most recent, January 2010, the International Monetary Fund (IMF) forecasts for global economic growth are as follows:

Table 1: IMF Economic Growth Forecasts (Annual percentage change)

	2010	2011
World	3.9	4.3
United States	2.7	2.4
Japan	1.7	2.2
Euro-area	1.0	1.6
China	10.0	9.7
Developing Asia (includes China and India)	8.4	8.4

Source: International Monetary Fund – World Economic Outlook update – January 2010

55. The major industrial economies have seen growth forecasts for 2010, including those of the IMF, revised up. However, a number of factors will constrain growth, making for weaker recoveries than usually occurs after a steep recession.
56. The lift in the pace of activity reflects the influence of temporary factors that are boosting output, particularly the inventory cycle and the highly stimulatory fiscal and monetary policy settings. For growth in the US, European and Japanese economies to strengthen further and be self-sustaining, a pick-up in the pace of private final demand growth that is not reliant on ongoing policy stimulus is critical.
57. However, the return to private sector growth is still hesitant in these major economies, including one of Australia's key trading partners – Japan. This hesitancy reflects the continuing impact of the global financial crisis (GFC).

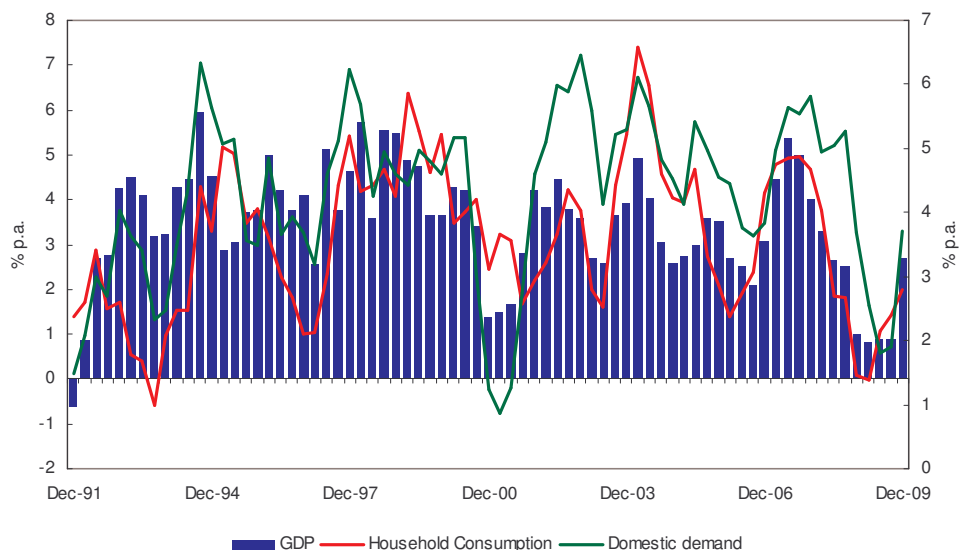
58. Many economies have seen a significant rise in excess capacity, which is retarding business investment and seen sharp rises in unemployment. In turn, the rise in unemployment, combined with difficult credit conditions and high household debt levels, is making consumers unwilling to lift spending significantly, despite very low levels of consumer interest rates.
59. The Japanese economy, like others in Asia, has seen growth in exports and industrial production in recent quarters, to a significant degree due to the strengthening in demand in China. However, weak machinery orders suggest that firms' investment plans remain weak, even though business investment has fallen by over 25 per cent since the early quarters of 2008. Business conditions surveys have also weakened over recent months after earlier improvements.
60. Recent weaker data from the United States, including data on consumer confidence, home sales and construction suggest that the risks to the US economy remain firmly on the downside.
61. Beyond this, a number of European economies, including Greece, are experiencing significant financial market concern in relation to high levels of current and projected debt. If these governments are not seen to be making efforts to restrain the growth in public sector deficits and debt, global interest rates may rise significantly causing a slower than expected improvement in global economic growth.
62. In Asia, where financial sectors have not been impaired and fiscal and monetary policy stimulus has been used extensively, growth has continued to be quite strong. This has supported Australia's recent improvement in growth. However, authorities in some countries, including China, Australia's key trading partner, are now seeking to reduce the degree of stimulus to their economies.

63. In terms of China, the desire of the authorities to reduce stimulus has assumed some urgency because of concerns that much of the stimulus which boosted the economy in the aftermath of the GFC has leaked into unprofitable excess capacity and into property and stockmarket bubbles.
64. As with the deflation of all bubbles and where there is significant excess capacity, tightening of policy runs a significant risk of slower than expected growth. China's role as a key supporter of incomes growth in Australia, through demand for commodities and consequently high commodity prices, makes this downside risk to China's growth an important factor in the risks around Australia's economic outlook.
65. This overall uncertainty on the risks surrounding a positive global outlook is an important reason for caution in FWA's decision.

Domestic economic conditions

66. The Australian economy has seen a significant improvement in annual growth rates over recent quarters, with annual GDP growth improving from 0.8% at its trough in the March quarter 2009 to 2.7% in the December quarter 2009.

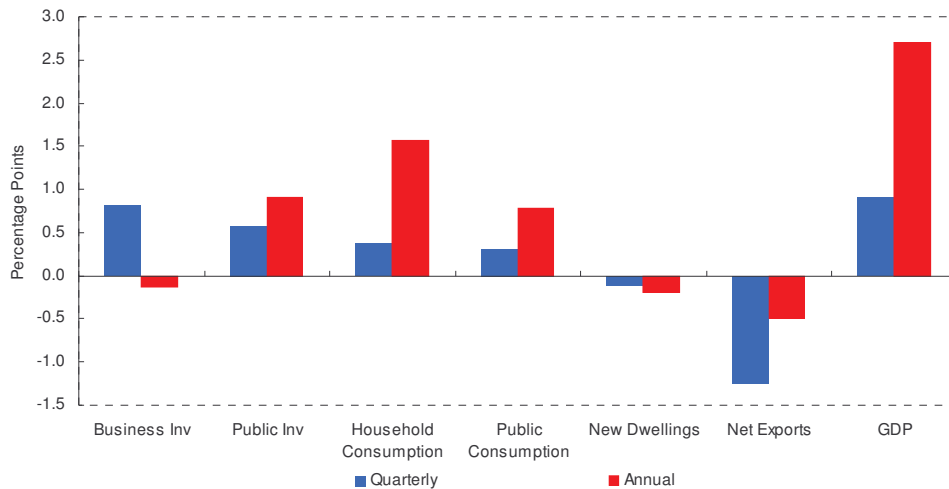
Chart 1: Australian economic growth to December quarter 2009



67. The partial recovery of growth over the past year has been largely driven by strong fiscal stimulus which boosted public sector consumption and investment.

68. This was reflected in infrastructure spending including the school building programme, and a strong increase in housing finance approvals for First Home Buyers. Household consumption also played a significant role as consumers continued to spend supported by low interest rates and consumer related government spending measures.

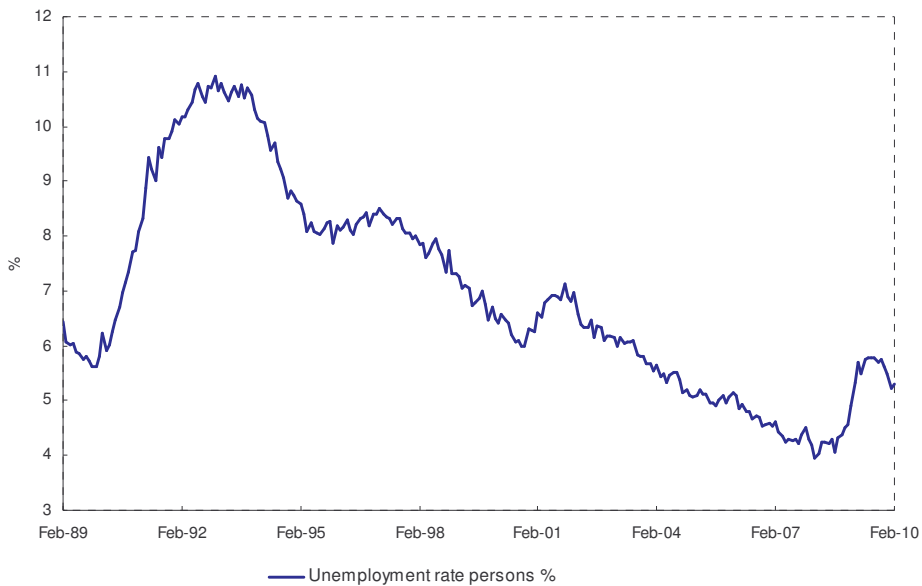
Chart 2: Key contributions to Australian economic growth: December quarter 2009



Source: Australian Bureau of Statistics

69. The slowdown in economic growth during 2009 has had a limited impact on the overall unemployment rate, which appears to have peaked in mid-2009 at, a lower than forecast, 6%. This strong performance relative to other industrial economies has helped to support household incomes and consumer demand.

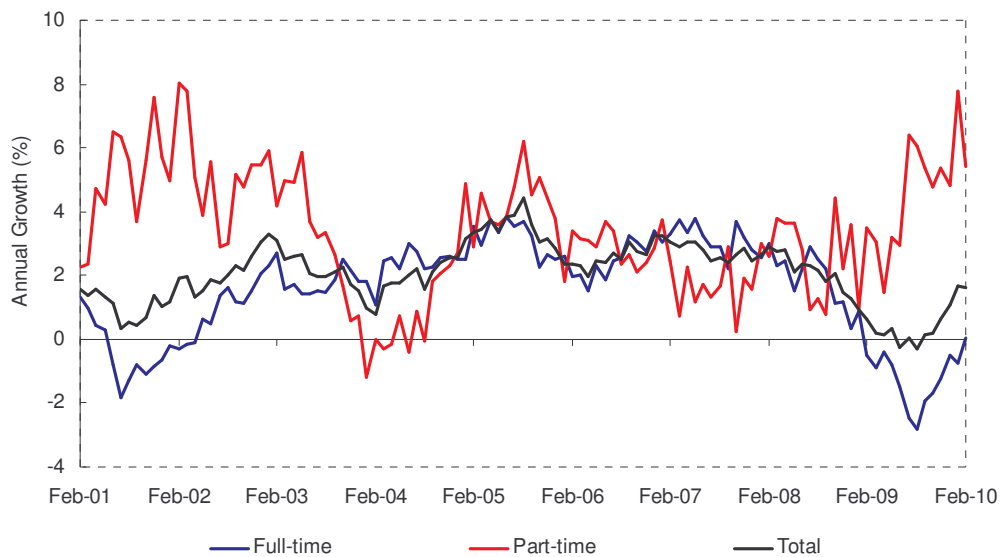
Chart 3: Australian unemployment rate to February 2010



Source: Australian Bureau of Statistics

70. Despite the economy failing to grow at an annual rate of 3% (the rate of growth generally seen as necessary to maintain a stable unemployment rate) for seven quarters, the resilience in employment has reflected stimulatory economic policy, lower real unit labour costs and firms' willingness to be flexible in terms of reducing hours worked / shifts rather than cutting jobs.
71. As a result of sharply slower demand growth, the downturn during 2009 saw a significant decline in full-time employment but this was largely offset by stronger part-time employment growth as illustrated in **Chart 4** below.

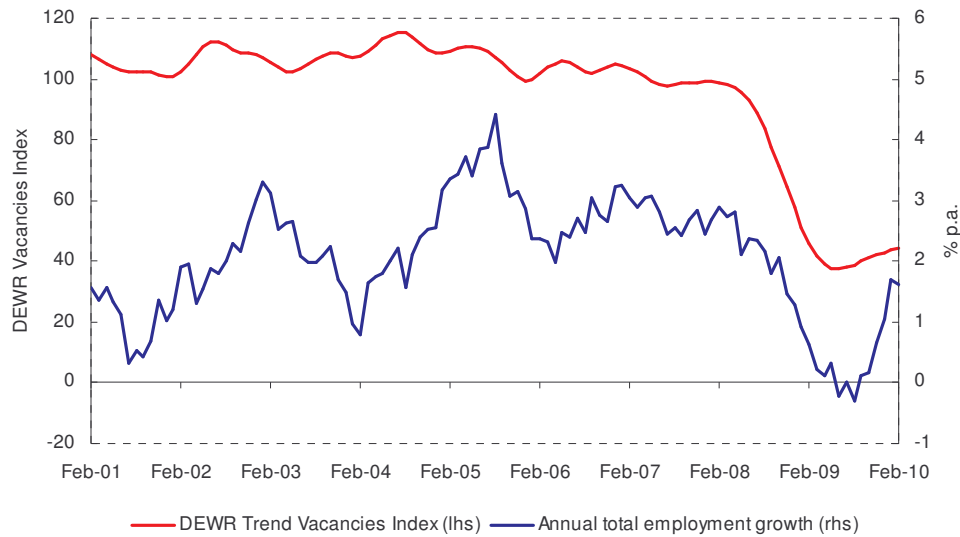
Chart 4: Australian annual employment growth to February 2010



Source: Australian Bureau of Statistics

72. The later months of 2009 and early 2010 have exhibited what appears to be the early stages of a reversal of the trends apparent during 2009. Growth in part-time employment has moderated while full-time employment has begun to recover. As yet though there appears to be caution among employers, in terms of waiting to see how solid the recovery in domestic demand is before taking on a significant number of full-time workers. At this stage, it appears more likely that output expansions will be met by increasing hours and shifts of existing workers.
73. An indication of the outlook for employment growth can be gained from job vacancies data. The Department of Education, Employment and Workplace Relations (DEEWR) skilled vacancy index shows a reasonable relationship with employment growth outcomes over the past year or so. The modest rise in vacancies since early 2009 has paralleled a degree of recovery in annual total employment growth; however the vacancy index has not yet recovered to the high levels experienced for much of the decade prior to 2008. This provides further evidence of ongoing caution among employers.

Chart 5: Australian job vacancies to February 2010

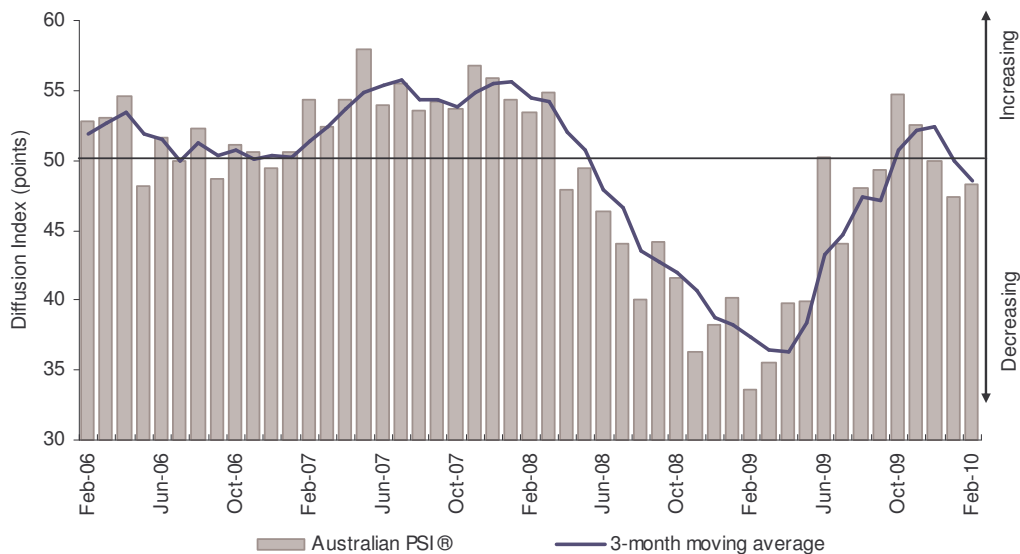


Source: Department of Education, Employment and Workplace Relations and Australian Bureau of Statistics Cat No. 6203.0

74. Though expectations for Australian economic growth are generally positive, some risks remain around the outlook, particularly reflecting patchiness across various sectors in the economy.
75. The key question for the outlook is how will recent and prospective increases in interest rates affect the momentum of the upswing? There is some evidence that the easing of the positive impact of low interest rates and expansionary fiscal policy has begun to have an impact in some sectors such as housing and services.
76. For example, the early months of 2010 have seen continued volatility in monthly retail sales data, though on average there has been a continuation of moderate improvement in retail sales. However there is some reason to remain cautious, as the bulk of the impact of the Government's consumer-focused stimulus has now passed. Much will depend on continued improvement in employment prospects supporting consumer willingness to spend.

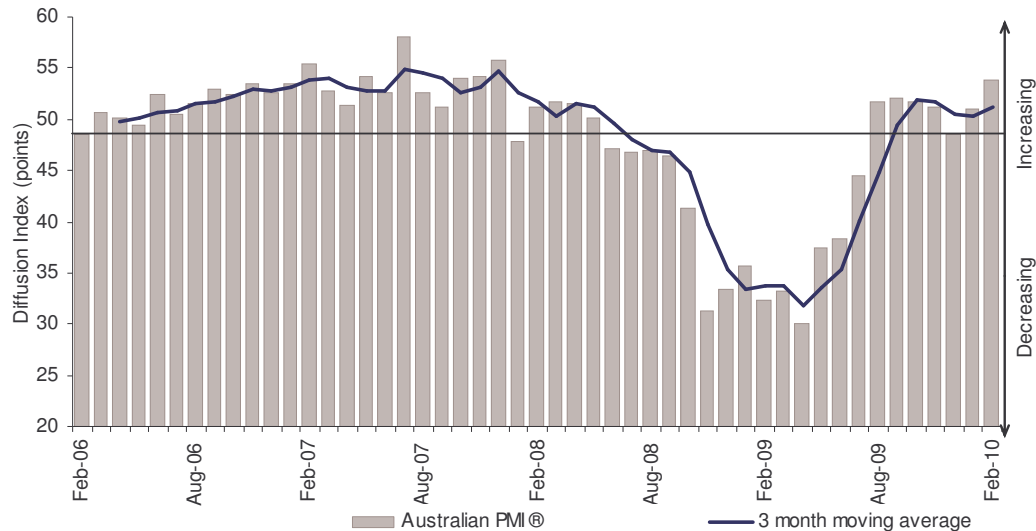
77. Improvements in the housing sector have formed a key basis of ongoing signs of improvement in the economy. This was largely due to the sharp reductions in home mortgage rates following the RBA's 425 basis point reduction in the official cash rate since September 2008 and the boost to the First Homebuyers' Grant. Australia's long-term deficit of housing stock has also played, and will continue to play, a role in supporting underlying housing construction.
78. However, there have been signs of an easing in demand for housing finance over recent months as interest rates have increased, with expectations of further rises, and the boost to the First Home Buyers subsidy has been wound down.
79. Overall, Ai Group's monthly sectoral performance indicators suggest that the services sector, a key employer, after seeing a return to modest growth in the second half of 2009, has experienced a softening of growth into early 2010, notably in consumer related sectors.

Chart 6: Australian Performance of Services Index (PSI®)



80. The manufacturing sector has continued to show an improvement in activity over the past six months or so as illustrated by **Chart 7**.

Chart 7: Australian Performance of Manufacturing Index (PMI®)



81. Within manufacturing, there is a dichotomy between those sub-sectors exposed to the resources and infrastructure sectors such as metals products, construction materials and those exposed to consumer demand such as food and beverages, textiles and clothing and footwear. Over recent months, the former sub-sectors have driven overall growth in manufacturing while the latter appear to have been constrained by the fading of fiscal policy stimulus and higher interest rates.

Industry outlook

82. According to Ai Group’s recent assessment of the outlook for manufacturing, services and construction carried out with Deloitte, *National CEO Survey – Industry in Recovery Mode in 2010*, this year is shaping up to be a year in which growth will be moderate rather than strong.

83. For businesses across the manufacturing, construction and services sectors, 2010 is looking to be an improvement on the weak, but better than expected, outcome for 2009.

84. 2010 is expected to see improvement in activity in all three sectors though it is likely to be stronger in the services and manufacturing sectors than in the construction sector. While improving, growth in manufacturing is coming from a low base following a sharp contraction during 2009.
85. Domestically, firm performance will reflect the impact of positive drivers such as improving consumer confidence in incomes growth and employment prospects, rising household wealth and exposure to strong growth in China. Offsetting these positives will be the fading of Government stimulus, the dampening impacts of the higher currency and rising interest rates.
86. Wages and prices growth in all sectors look set to remain modest, in line with the forecasts for overall activity outlined by the CEOs in this survey.
87. Manufacturing sales and employment are expected to improve in 2010, although the upturn follows a particularly tough year in 2009.
88. Manufacturers anticipate a 5.6% increase in the nominal value of sales in 2010, to around \$415 billion. The nominal value of manufacturing export sales is also expected to rise, by 4.1% to \$96 billion.
89. Employment in the sector is forecast to grow by 2.9% (29,000 jobs) to 1.02 million, only partly recovering the 80,000 manufacturing jobs lost in 2009.
90. Expenditure on new plant and machinery by the manufacturing sector is expected to decline again in 2010, although spending on research and development and training is expected to rise modestly.
91. Average manufacturing selling prices are forecast to increase by just 3.0% in 2010. Manufacturing wages growth is expected to remain broadly steady, easing from 3.6% in 2009 to 3.5%.

92. The outlook for construction remains relatively weak, with sales expected to rise by a modest 2.5% in 2010.
93. Following six years of strong employment growth, employment in construction grew by a modest 0.9% in 2008/09. Construction employment growth is again expected to be soft in 2010, rising by only 0.5%.
94. Expenditure on research and development and training by the construction sector is expected to rise marginally, following a sharp drop in 2008/09. Investment in plant and equipment is expected to rise strongly in 2010.
95. Average construction selling prices are forecast to increase by just 3.1% in 2010. Construction wages growth is expected to remain broadly steady, at 3.5%.

Summary

96. The global economy, though expected to grow solidly in 2010, faces a number of important risks, notably in the key industrial economies. While regional growth is expected to drive demand for Australia's key commodities including iron ore and coal, there are risks that tighter Chinese policy to pre-empt inflationary and asset price pressures will cause growth to be slower than currently expected.
97. Domestically, the central case scenario is for growth to recover but remain patchy during 2010. There are risks however, around this scenario. The key risk is that private sector demand impetus may falter as public sector stimulus fades and the RBA's interest rate increases take effect.
98. A number of indicators, including what appears to be caution on the part of employers to hire full-time workers in the face of uncertainty around the economic outlook, argue for caution in this year's wages decision.

4. Relative Living Standards and the Needs of the Low Paid

Introduction

99. The FW Act charges FWA with establishing and maintaining a safety net of minimum wages, taking into account, among other things, questions relating to “relative living standards and the needs of the low paid.”
100. Relative living standards and the needs of the low paid are shaped by a very wide variety of factors. These include wage rates, hours worked, continuity of employment and the family/household situation of low paid employees.
101. Critically, this range of factors also includes access to the broader social safety net. At its broadest the social safety net includes the public health, and public education systems and public-funding of child care. These elements of the social safety net are clearly relevant to relative living standards and the needs of the low paid.
102. Another, more tangible feature of the broader social safety net is Australia’s well-developed and highly-progressive income tax and transfer systems. The tax and transfer systems have a decisive impact on relative living standards and the needs of the low paid. Ai Group submits that as a general principle, changes to the social safety net and in particular the income tax and transfer systems should be taken into account in considering the role of minimum wage adjustments in addressing relative living standards and the needs of the low paid.
103. In this section we discuss the combined impacts of current-year changes to income tax and transfer payments and calculate the impact of these, together with a moderate increase in minimum wage levels, on the disposable incomes

of low-paid employees. We show that the combined impact of these changes will deliver affordable and effective increases in nominal disposable incomes.

104. Critically the transfer system is based on the family/household unit rather than on individuals. This is in recognition of the central role of financial and other interdependencies within families. Ai Group submits that because of this recognition the tax and transfer systems are much better suited as policy instruments to address relative standards of living and the needs of the low paid than are adjustments to minimum wages.
105. This is particularly the case when consideration is given to the risk that raising minimum rates of pay could have deleterious impacts on the employment of low-paid people.
106. In light of the favourable impacts on relative living standards and the needs of the low paid that will be delivered through the income tax and transfer systems, Ai Group submits that a moderate wage increase is a prudent course of action.

The income tax and transfer systems and the needs of the low paid

107. Entitlements to government-provided income support can have a very significant impact on the disposable income of low-paid people. This is particularly the case for parents of children who are eligible for Family Tax Benefit A (FTBA), Family Tax Benefit B (FTBB) and/or Rent Assistance (RA) which are the most common of the transfer payments available to low paid people. **Table 2** below sets out the current annual rates of these transfer payments.

Table 2 – Common Transfer Payments Available to Low-Paid Households

Transfer Payment		Conditions
Family Tax Benefit A (FTBA)		
	Annual maximum amount per child	FTBA is tax exempt and income tested on combined household income. Income testing currently begins to reduce entitlements as household income rises above \$44,165. Income testing reduces benefits by 20 cents for each dollar of income above this threshold for middle-income households.
Per child under 13 years	\$4,803.40	
Per child aged 13-15	\$6,033.45	
Per child aged 16-17	\$2,018.45	
Per child aged 18-24	\$2,467.40	
Rent Assistance (RA)		
Maximum amount paid for a family with less than three children	\$3,465.28	RA is a tax exempt, income tested payment available for families living in rental accommodation. Households eligible for FTBA are generally eligible for RA (if they pay rent). The level of RA can vary with the amount of rent paid. Income testing takes effect at comparatively high levels of household income.
Family Tax Benefit B (FTBB)		
Youngest child under 5	\$3,828.85	FTBB is a tax exempt, income tested payment available to families in which the primary income earner's income is below \$150,000. For an eligible couple, the payment is income tested on the income of the second earner with the benefit reducing by 20 cents per dollar above a threshold (currently \$4,672 pa).
Youngest child aged 5-15	\$2,774.00	

Source: *A Guide to Australian Government Payments: 20 March 2010.*

108. The contribution of these transfer payments to household disposable income for households with children can be very significant. The degree depends on the number and age of children, eligibility for RA and FTBB. For a single-income household, living in rental accommodation and earning a wage of \$550 per week, FTBA, FTBB and RA combined would make up over 38% of household disposable income. Put another way, the joint amount of these payments equates to 63% (almost two thirds) of the take home pay from wage income alone.

109. Whichever way it is expressed, the contribution of transfer payments can be very large and is a contribution that is clearly relevant to considerations relating to relative living standards and the needs of the low paid.
110. Over the past decade or so, first in the AIRC and then under the auspices of the Australian Fair Pay Commission, significant advances have been made in recognising the importance of taking into account income tax and transfer systems and their relevance to consideration of the needs of the low paid.
111. For example, in its 2005 minimum wage decision the AIRC (at 352) made the following statement:

“As a matter of logic if the tax transfer system is enhanced to the benefit of low-paid employees then it assists in meeting their needs. It would follow that such enhancements would be a factor to which we would have regard when considering the needs of the low paid pursuant to s.88B(2)(c). The converse also applies. If the tax transfer system operated to reduce the disposable income of low-paid employees then their needs would be greater.”

112. Making a similar point in its *Wage-Setting Decision and Reasons for Decision July 2009* (p.50), the Fair Pay Commission commented as follows:

“As stated in its 2008 general Wage-Setting Decision, the Commission does not favour a formulaic approach to balancing the respective contributions of tax/transfer changes and wage increases to disposable income. Nevertheless it considers that information on recent trends in the disposable incomes of households reliant on minimum wages, either solely or in combination with income transfers, is relevant to its deliberations. This is especially so at a time when wage increases are more likely to have an adverse impact on employment.”

Tax and transfer changes in 2010

113. By 1 July 2010 there will have been a number of changes to taxation and transfer arrangements over the previous year that will impact on the disposable income of low-income people including low-paid employees.
114. These include the following changes to income tax arrangements scheduled to take effect from 1 July 2010.
- A lift of over 11% in the Low Income Tax Offset (LITO) from \$1,350 to \$1,500. The LITO is a tax offset available to low and middle-income tax payers. It is available in full to taxpayers with taxable incomes of \$30,000 or less and it then phases out over an extended income range (at 4 cents in the dollar on income above \$30,000); and
 - A rise of 5.7% in the threshold at which the marginal tax rate increases from 15% to 30%.
115. For a person earning \$37,000 these changes would increase nominal disposable income by \$8.65 a week or in excess of 1.3%. Bearing in mind that additional wages would be subject to income tax, this change in transfer payments is equivalent to a nominal wage increase of \$13.11 a week or in excess of 1.8%.
116. By 1 July 2010 there will also have been further changes to the nominal value of transfer payments and the income tests that apply to them. These comprise the periodic adjustments as a result of adjustments for inflation.
117. To illustrate their relevance, consider a single-income, two-child family living in rental accommodation. The sum of the changes in FTBA, FTBB and RA entitlement for the period from 20 March 2009 to 20 March 2010 (to use the latest available annual increase) would total \$10.60 per week.

118. This extra income is free from tax and equates to a nominal pre-tax wage rise of \$16.05 a week. This family would also receive the same benefit from income tax as a single person earning \$37,000. Changes of this magnitude are significant considerations in the context of the needs of the low paid.
119. The following tables illustrate the impacts on nominal disposable incomes of these changes combined with a rise of \$12.00 a week in minimum wages (as proposed by Ai Group). **Table 3** illustrates the changes for a single income earner and **Table 4** illustrates the changes for a single income, two-parent family with two young children (but not receiving rental assistance).

Table 3 – Impacts of a \$12 pw Wage Increase and Income Tax Changes

(Single income earner)

Current wage income		New wage income*		Change in Disposable Income			
				Tax change only	Tax and Wage Change		
\$pw	\$pa	\$pw	\$pa	\$pw	%	\$pw	%
430.00	22,420	439.49	22,915	2.88	0.7%	10.94	2.7%
450.00	23,463	459.93	23,981	2.88	0.7%	11.32	2.7%
470.00	24,506	480.37	25,047	2.88	0.6%	11.69	2.6%
490.00	25,549	500.81	26,112	2.88	0.6%	12.07	2.6%
510.00	26,591	521.25	27,178	2.88	0.6%	12.44	2.6%
530.00	27,634	541.70	28,244	2.88	0.6%	12.82	2.6%
543.78	28,353	555.78	28,978	2.88	0.6%	13.08	2.6%
550.00	28,677	562.00	29,303	2.88	0.6%	13.08	2.6%
570.00	29,720	582.00	30,345	2.88	0.5%	12.81	2.4%
590.00	30,763	602.00	31,388	2.88	0.5%	12.60	2.3%
610.00	31,805	622.00	32,431	2.88	0.5%	12.60	2.2%
630.00	32,848	642.00	33,474	2.88	0.5%	12.60	2.2%
650.00	33,891	662.00	34,517	2.88	0.5%	12.60	2.1%
670.00	34,934	682.00	35,559	2.88	0.5%	12.60	2.1%
690.00	35,977	702.00	36,602	5.69	0.9%	15.41	2.5%
710.00	37,019	722.00	37,645	8.63	1.4%	16.55	2.6%
730.00	38,062	742.00	38,688	8.63	1.3%	16.55	2.6%
750.00	39,105	762.00	39,731	8.63	1.3%	16.55	2.5%
770.00	40,148	782.00	40,773	8.63	1.3%	16.55	2.5%
790.00	41,191	802.00	41,816	8.63	1.3%	16.55	2.4%
810.00	42,233	822.00	42,859	8.63	1.2%	16.55	2.4%
830.00	43,276	842.00	43,902	8.63	1.2%	16.55	2.3%
850.00	44,319	862.00	44,945	8.63	1.2%	16.55	2.3%
870.00	45,362	882.00	45,987	8.63	1.2%	16.55	2.2%

* For wage levels below the current Federal Minimum Wage, it is assumed that the increase in wages is of the same proportion as the increase to the FMW (for example if the person was working less than standard hours at the FMW wage rate).

120. The tables show that in combination, changes to income tax and transfer payment arrangements, together with a \$12.00 a week change in pre-tax wages would deliver changes in nominal disposable incomes of around 2.5% for single income earners and of between 2.5% and 3% for a single-income, two parent family with two young children.

Table 4 – Impacts of a \$12 pw Wage Increase and Income Tax and Transfer Changes

(Single-Income, two-parent family with two children)

Current Wage Income		New Wage Income*		Change in disposable Income			
				No change in wages		With change in Wages	
\$pw	\$pa	\$pw	\$pa	\$pw	%	\$pw	%
430.00	22,420	439.49	22,915	12.05	1.8%	20.11	3.1%
450.00	23,463	459.93	23,981	12.05	1.8%	20.49	3.0%
470.00	24,506	480.37	25,047	12.05	1.7%	20.86	3.0%
490.00	25,549	500.81	26,112	12.05	1.7%	21.24	3.0%
510.00	26,591	521.25	27,178	12.05	1.7%	21.61	3.0%
530.00	27,634	541.70	28,244	12.05	1.6%	21.99	3.0%
543.78	28,353	555.78	28,978	12.05	1.6%	22.25	3.0%
550.00	28,677	562.00	29,303	12.05	1.6%	22.25	2.9%
570.00	29,720	582.00	30,345	12.05	1.6%	21.98	2.8%
590.00	30,763	602.00	31,388	12.05	1.5%	21.77	2.7%
610.00	31,805	622.00	32,431	12.05	1.5%	21.77	2.7%
630.00	32,848	642.00	33,474	12.05	1.5%	21.77	2.6%
650.00	33,891	662.00	34,517	12.05	1.4%	21.77	2.6%
670.00	34,934	682.00	35,559	12.05	1.4%	21.77	2.5%
690.00	35,977	702.00	36,602	14.86	1.7%	24.58	2.8%
710.00	37,019	722.00	37,645	17.80	2.0%	25.72	2.9%
730.00	38,062	742.00	38,688	17.80	2.0%	25.72	2.9%
750.00	39,105	762.00	39,731	17.80	2.0%	25.72	2.8%
770.00	40,148	782.00	40,773	17.80	1.9%	25.72	2.8%
790.00	41,191	802.00	41,816	17.80	1.9%	25.72	2.7%
810.00	42,233	822.00	42,859	17.80	1.9%	25.72	2.7%
830.00	43,276	842.00	43,902	20.55	2.1%	28.47	3.0%
850.00	44,319	862.00	44,945	23.96	2.5%	29.48	3.0%
870.00	45,362	882.00	45,987	23.96	2.4%	29.48	3.0%

* For wage levels below the current Federal Minimum Wage, it is assumed that the increase in wages is of the same proportion as the increase to the FMW (for example if the person was working less than standard hours at the FMW wage rate).

121. Ai Group submits that in considering the needs of the low-paid, in its deliberations on changes to minimum wages, FWA should recognise the important contribution of changes to income tax and transfer payment arrangements to disposable incomes and to the needs of the low paid.

Low paid employees and household income

122. Many low-paid people are members of households where total disposable income is not low. Thus, for example, a woman working part-time on minimum or close to minimum wage rates may be the second earner in a household where the total disposable income is around or even above-average household income. In its 2006 decision (at p.68) the Fair Pay Commission expressed this point somewhat more strongly:

“Research on the household income status of low-paid employees has consistently found that, rather than being concentrated in low-income households, low paid employees can be found across the whole household income distribution.”

123. An implication of this is that adjustments to minimum wages are not necessarily well-targeted to addressing relative living standards. They are, in particular, less well suited to addressing relative living standards and the needs of the low paid than can be achieved by changes to the income tax and transfer systems discussed above.

124. This is particularly the case if account is taken of the risks to the employment prospects of the low-paid associated with increases in minimum wages.

Employment and the needs of the low paid

125. A critical consideration in relation to relative standards of living and the needs of the low paid is the availability of employment. This relates both to the availability of alternative employment in the event a low-paid person loses, or would like to change, his or her job and it relates to the scope to find additional hours of work – typically for part-time employees.

126. As discussed in **Section 5** of this submission on social inclusion and workforce participation, the Australian labour market is characterised by high levels of labour underutilisation. Labour underutilisation measures the excess of labour supply relative to the demand for labour.
127. In the presence of already-oversupplied labour markets, Ai Group maintains that it is appropriate to moderate rises in minimum wages in light of the risk that higher minimum wage levels will be associated with fewer alternative employment opportunities and/or fewer additional hours of work for part-time workers. Either of these outcomes would work to the detriment of relative standards of living and the needs of the low paid.
128. It is a consideration that Ai Group submits should be weighed carefully when considering the impacts of raising hourly rates of pay. There is a real risk that the potential benefits of higher hourly pay rates will be at least negated by a lower quantity of hours worked (relative to the level that would otherwise have occurred).
129. In light of the impacts on relative living standards and the needs of the low paid that will be delivered through the income tax and transfer systems, Ai Group submits that a moderate wage increase is a prudent course of action.

5. Promoting Social Inclusion through Increased Workforce Participation

Introduction

130. The FW Act charges FWA with establishing and maintaining a safety net of minimum wages, taking into account, among other things, the objective of “promoting social inclusion through increased workforce participation”.
131. In this section we argue that in considering the impact of changes to minimum wage rates on workforce participation, the FWA should give overwhelming emphasis to the potential impacts of such changes on the demand for labour. We suggest this should take precedence over the possibility that the incentive provided by higher minimum wages will stimulate an additional supply of labour on the part of people who are currently unemployed or underemployed.
132. We argue, in short, that the Australian labour market is characterised by high rates of labour underutilisation. This illustrates an excess of supply of labour relative to demand.
133. We argue that, in these circumstances, an additional supply of labour stimulated by higher minimum wages is unlikely to give rise to additional participation in paid work (“workforce participation”) but, rather, to a higher incidence of unemployment and underemployment. Such an outcome would not promote social inclusion through increased workforce participation.
134. In contrast, if decisions about minimum wages give rise to a greater demand for labour, given existing levels of labour underutilisation, this would add to workforce participation and contribute positively to the objective of promoting social inclusion through increased workforce participation.

135. We recognise that, even though the labour market as a whole may be oversupplied, that segments of the market can suffer from skill shortages. We argue that in these situations employers themselves will generally offer higher wages in an attempt to stimulate additional supply without the need for official adjustments in minimum rates of pay.

Workforce participation

136. In specifying the objective of promoting social inclusion “through increased workforce participation”, the Act firstly implicitly recognises the broader social and economic benefits that can derive from participation in paid work.

137. These are discussed in FWA’s research report (Research Report 2/2010 *Literature Review on social inclusion and its relationship to minimum wages and workforce participation*) where the point is made (p. 32) that:

“participation in paid work promotes social inclusion not only through a person’s inclusion in the labour market, but also potentially through other benefits from working such as increased resources, improved access to social networks and support, and better physical and mental health.”

138. The objective of “promoting social inclusion through increased workforce participation” also narrows considerations relating to social inclusion to those that are associated directly with increased workforce participation. So, for example, increased wage rates that are not associated with increases in workforce participation, are not relevant to achieving the objective of promoting social inclusion through greater workforce participation, even though they may be relevant to other aspects of social inclusion. (In any case the role of increased wage rates is already covered in other objectives and particularly in relation to the needs of the low paid.)

139. In this context and as an initial point of clarification we distinguish between “workforce participation” and the technical term “labour force participation”. We suggest it is useful to regard “increased workforce participation” as occurring if there is higher employment and/or a higher quantity of hours worked. In contrast, the technical term “labour force participation” refers to the potential workforce (including people who are employed and people who are unemployed) rather than to the actual workforce (people in paid employment).
140. In the context of considerations relating to social inclusion, there are two advantages of distinguishing the term “workforce participation” from the technical term “labour force participation”.
141. The first is that “labour force participation” does not capture the important dimension of greater or lesser numbers of hours worked - which is highly relevant to the promotion of social inclusion through increased workforce participation.
142. The second advantage relates to the fact that increased “labour force participation” can occur if the number of unemployed people rises (similarly measures of “labour force participation” do not change if people move from employment and unemployment). “Workforce participation” is, therefore, a more appropriate concept in relation to social inclusion.

Changes in minimum wages and workforce participation

143. With these issues clarified, we note that, at a conceptual level, a change in minimum wages may impact on workforce participation in two very different though related ways.
144. Firstly an increase in rates of pay may entice people who are not currently looking for work to do so. Alternatively it may entice people who are currently working part-time to look for more hours of work. This may lead to greater workforce participation.

145. Whether this “induced supply” impact does increase workforce participation depends on whether there is sufficient demand for labour from potential employers to satisfy the additional supply. If there is not a demand for the extra supply, the induced additional supply of labour would result in higher measures of official unemployment or underemployment (and also higher rates of “labour force participation” as discussed above) but with no extra workforce participation.

146. This point is recognised in FWA Research Report 2/2010 referred to above which states (p. 32) that:

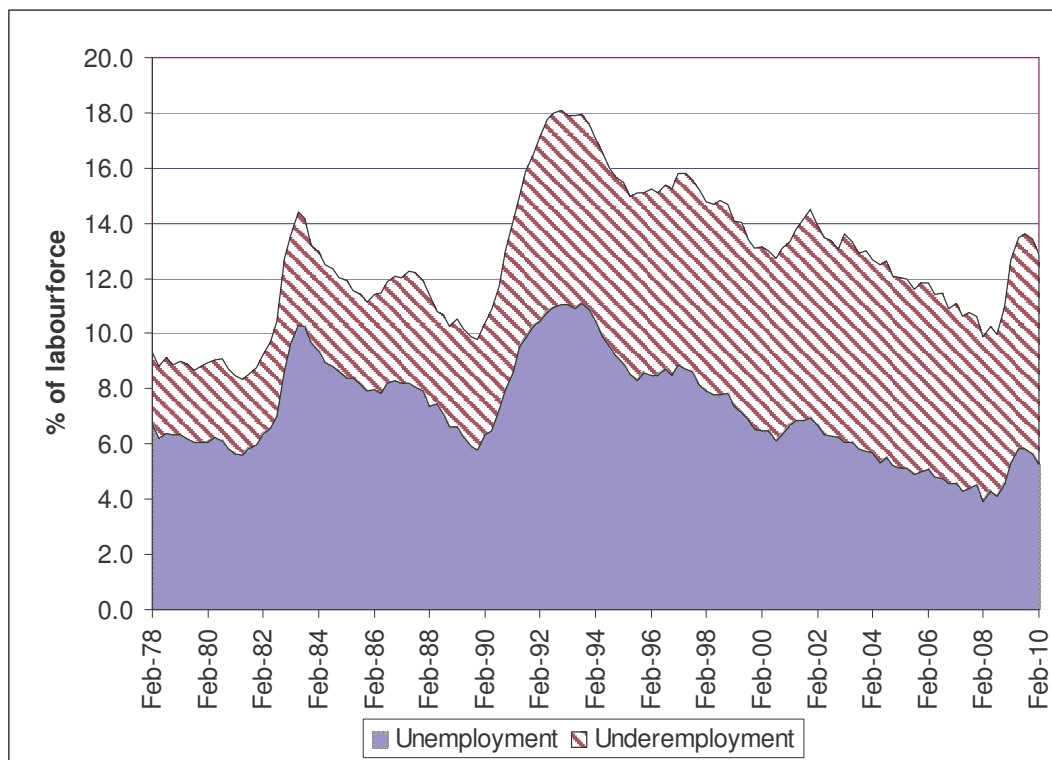
“All other things being equal, higher minimum wages raise the financial incentives for people who are otherwise jobless or underemployed to take up, or increase their hours of, employment. The strength of these incentives also depends upon the tax/transfer system—in particular how much extra income a person retains from working after taking into account their taxation liabilities and reductions in income transfers or benefits, such as a health care card. These in turn will depend upon the person’s household situation. Research has shown (e.g. Harding et al. 2006) that, in Australia, most people have a considerable financial incentive to seek employment in terms of the resultant increase in household income. However, there may be other factors apart from financial incentives (e.g. placing a high value on caring for one’s children) that determine whether a person ultimately decides to look for a job or increase their work hours.

While minimum wages may have a positive effect on how much labour people supply, the overall effect on the number of people in paid work also depends upon how much labour businesses demand.”

147. The second way that a change in minimum wages may impact on workforce participation is by stimulating (or dampening) the demand for labour.
148. Assuming there is an available supply to meet demand a decision that encourages greater demand for labour will increase workforce participation and promote social inclusion whereas a decision that inhibits the demand for labour will dampen workforce participation to the detriment of social inclusion objectives.
149. While these two different possible impacts – the impact on supply and the impact on demand – both have validity at the conceptual level, Ai Group submits that, in practice, the impact on the demand for labour is of overwhelming significance. There are two reasons for this.
150. For several decades the Australian labour market has been characterised by a rate of unemployment that is well in excess of a level that could be explained by frictions associated with people moving between jobs. In addition, and to an increasing extent in recent decades, the Australian labour market has been characterised by high rates of underemployment. Typically underemployment occurs when part-time employees are looking for more hours of work than are available in the market. The increase in the relative importance of underemployment has occurred alongside the growth in the proportion of part-time employees.
151. The combination of the rate of unemployment and the rate of underemployment is known as the rate of labour force underutilisation. **Chart 8** below shows the extent of labour underutilisation over the period since 1978. By recording its components, the Chart also shows the increase in the relative importance of underemployment over this period and particularly since the early 1990s.

152. It is instructive to note that since August 1982 there have only been three quarterly recordings which have seen the rate of labour force underutilisation drift below 10% of the workforce. More typically, notwithstanding the long period without the economy falling into a technical recession, around 12% of the labour force has been either unemployed or underemployed (this is around one in eight participants in the labour force). The latest (February 2010) measure is a labour force underutilisation rate of 12.8%.

Chart 8 – Unemployment and underemployment components of labour force underutilisation 1978-2010 (seasonally adjusted)



Source: ABS, 6202.0 Labour Force, Australia, March 2010.

153. The persistence of considerable levels of labour underutilisation is a clear record of an excess of labour supply relative to the demand for labour over an extended period.

154. This excess of supply of labour is the fundamental reason behind our submission that, in considering the impact of changes to minimum wages on workforce participation, the predominant emphasis should be given to the impact that changes to minimum wages may have on the demand for labour.
155. We submit that, in the presence of the extent of labour underutilisation that is evident in the Australian labour market, raising minimum wages to stimulate additional supply (by improving incentives to look for employment or to look for more hours of work) is not likely to add to aggregate workforce participation.
156. This is not to question the logic of the proposition that raising minimum wage rates is likely to encourage more people to look for work (or to look for more hours of work). Rather, we maintain that in the presence of the underutilisation of the existing supply of labour, additional supply is not likely to be absorbed into the workforce. Additional supply, may increase *labour force* participation by adding to unemployment and it may add to labour underutilisation by raising underemployment. We submit, however, that these outcomes are not likely to promote social inclusion.

Segments of the labour market that are undersupplied

157. Ai Group recognises that the labour market is a very complex one and that, while labour underutilisation may be evident across the labour market as a whole, this does not preclude the possibility that in some segments, the market is undersupplied.
158. This is more than a simply a possibility and, particularly prior to the recent downturn, skill shortages were reported across a wide range of occupations even though labour underutilisation rates remained high. Ai Group expects skill shortages to become more widespread as the economy gradually re-gathers momentum.

159. This gives rise to the question of whether minimum wages should be increased in order to address these specific areas of skill shortage.
160. While Ai Group is highly conscious of the importance of skill shortages, we do not regard raising minimum wages as an effective way of dealing with the issue. A central reason for this is that if any given level of minimum wages is an impediment to addressing skill shortages, employers themselves have an incentive to offer remuneration in excess of minimum levels.
161. This is not a contentious proposition and is simply a particular case of the widespread observation that, when labour markets are characterised by insufficient supply relative to demand, employers react by offering higher wages. The very high wages offered in remote mining and construction sites is an extreme example of this. More generally, the high incidence of above-award pay rates observed in many segments of the labour market is evidence that employers do not feel generally constrained from paying employees more than the relevant legal minima.
162. The high, and growing, incidence of above-award pay is reflected in findings relating to award reliance and reliance on minimum rates of pay in FWA Research Report 1/2010 (*An overview of compositional change in the Australian labour market and award reliance*), and FWA Research Report 4/2010 (*Earnings of employees who are reliant on minimum rates of pay*).
163. Research Report 1/2010, for example, makes the following point (page 52):
- “To give some indication as to how award reliance evolved during the 1990s and following the introduction of enterprise bargaining, another estimate of award coverage, based on the 1995 Australian Workplace Industrial Relations Survey, found that 33 per cent of employees were paid the award rate (Morehead et al 1997). According to the EEH surveys, the proportion of award reliant employees was around 23 per cent in May 2000 and subsequently*

decreased across each survey. Around 17 per cent of employees were reliant on an award or Pay Scale in August 2008.”

164. In line with this observation, Research Report 4/2010 (Table 1, page 8) indicates that, based on 2006 data, around 20 per cent of employees remained reliant on minimum rates of pay.
165. Put another way there is ample evidence of market forces taking over from minimum rates of pay.
166. In summary therefore, we submit that, If minimum wages are set too low to induce supply and so long as employers can at least cover their costs, employers will, without waiting to be prompted by a change in minimum wages, offer higher wages. This quintessential market adjustment will promote greater workforce participation and social inclusion without the need for an adjustment in minimum wage levels.

Conclusion

167. In this section we argue that in considering the impact of changes to minimum wage rates on workforce participation, FWA should give overwhelming emphasis to the potential impacts of such changes on the demand for labour. We suggest this should take precedence over the possibility that the incentive provided by higher minimum wages will stimulate an additional supply of labour on the part of people who are currently unemployed or underemployed.
168. We argue, in short, that the Australian labour market is characterised by high rates of labour underutilisation. This illustrates an excess of supply of labour relative to demand.

169. We argue that, in these circumstances, an additional supply of labour stimulated by higher minimum wages is unlikely to give rise to additional participation in paid work (“workforce participation”) but, rather, to a higher incidence of unemployment and underemployment. Such an outcome would not promote social inclusion through increased workforce participation.
170. In contrast, if decisions about minimum wages give rise to a greater demand for labour, given existing levels of labour underutilisation, this would add to workforce participation and contribute positively to the objective of promoting social inclusion through increased workforce participation.
171. We recognise that, even though the labour market as a whole may be oversupplied, that segments of the market can suffer from skill shortages. We argue that in these situations employers themselves will generally offer higher wages in an attempt to stimulate additional supply without the need for official adjustments in minimum rates of pay.

6. Impacts of Minimum Wage Increases on Small Businesses

172. Small businesses are vital to the Australian economy. As such, FWA should give specific consideration to the impacts of minimum wage increases on such businesses.
173. This issue has relevance for the minimum wages objective, and the requirement for FWA to take into account “the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth” (s.284(1)(a) of the FW Act).
174. Further, the Object of the Act specifically recognises the need for “acknowledging the special circumstances of small and medium-sized businesses” (s 3(g)).
175. The ABS estimates that in June 2006 there were 1,646,344 small business operators¹⁰.
176. A much higher proportion of the employees of small businesses are award-reliant than the employees of larger businesses.
177. **Table 5** below is drawn from ABS Cat. No. 6306¹¹. It shows that a much higher proportion of the employees of employers with up to 100 employees are award-reliant than the employees of employers with 100 or more employees.

¹⁰ ABS Cat. 8127.0. For the purpose of the publication, the term “small business operator” refers to an operator of a business with less than twenty employees. In addition, the publication excludes all small business operators who operate Agricultural businesses.

¹¹ Employee Earnings and Hours, August 2008, at p.32.

Table 5: Employees reliant on award or pay scale only, by employer size

Employer size	Proportion of employees (%)
Under 20 employees	24.4
20 – 49 employees	27.9
50-99 employees	22.2
100-499 employees	14.8
500-999 employees	11.9
1000 and over employees	4.9

178. **Table 6** below, which is also drawn from ABS Cat. No. 6306, highlights that award-reliant employees engaged by small businesses receive much lower average weekly total earnings than those employed by larger businesses.

Table 6: Average weekly total cash earnings, by employer size

Employer size	Average weekly total cash earnings (\$)	
	Award or Pay Scale Dependent Only	All Methods of Pay Setting
Under 20 employees	447.50	778.70
20 – 49 employees	491.70	885.70
50-99 employees	493.30	968.10
100-499 employees	510.30	1030.90
500-999 employees	585.20	1153.10
1000 and over employees	526.10	1053.70

179. As a result of this higher degree of award reliance, on average, small businesses are much more likely to be impacted by minimum wage increases than larger businesses.

180. In its *2005 Safety Net Review Decision*, the Full Bench of the AIRC said:¹²

“We accept that businesses employing up to 100 employees employ a larger proportion of award-reliant employees than larger businesses. We have had regard to the impact on small business of the safety net adjustment we propose to award.”

181. When making its decision in the Minimum Wages Review, it is vital that FWA not lose sight of the negative impacts that a large minimum wage increase would have on small businesses.

¹² PR002005 at [264]

7. Impacts of Minimum Wage Increases on Bargaining

182. The FW Act, like the *Workplace Relations Act*, emphasises the importance and primacy of agreement-making between employers and employees with regard to the determination of wages and working conditions. This is evident in:

- the Principal Object of the FW Act, which includes “achieving productivity and fairness through an emphasis on **enterprise-level** collective bargaining...” (s 3(f)); and
- the modern awards objective, which applies to FWA’s powers including the functions and powers relating to modern award minimum wages, which requires FWA to ensure that modern awards and the NES provide a fair and relevant minimum safety net of terms and conditions, taking into account “the need to encourage collective bargaining” (s 134(b)).

183. It is important that the level of increase in minimum wages determined by FWA not reduce the scope for bargaining over wages at the workplace level. This would conflict with the objects of the Act.

184. ABS statistics show that nearly 40% of employees have their pay set by collective agreements, making collective agreements a far more common method of pay setting than awards, upon which only 16.5% of employees are reliant.¹³ For larger businesses, collective agreements are particularly common. For businesses with 500 or more employees, the majority of employees rely on collective agreements for setting their pay.¹⁴

¹³ ABS, Employee Earnings and Hours, 6306.0, August 2008, at p.32.

¹⁴ For businesses with 500-999 employees, 54.9% of employees rely on collective agreements, whereas for business with 1000 or more employees, the figure rises to 82.2%.

185. According to the Department of Education, Employment and Workplace Relations' *Trends in Federal Enterprise Bargaining* report for the September Quarter 2009 (released 1 February 2010), average annualised wage increases for new agreements in the quarter were as follows:¹⁵

Table 7: AAWI Change, September Quarter 2009

	AAWI (%)	Change from previous quarter (%)
All industries	3.5	Up 0.4
Private sector	3.6	Down 0.3
All Manufacturing	3.5	No change
Non-metals manufacturing	3.7	Up 0.2
Metals Manufacturing	3.4	No change
Construction	4.8	Down 0.4

186. Ai Group submits that the encouragement of enterprise agreement-making needs to be a foremost consideration of FWA in adjusting minimum wages. The positioning of minimum wage increases needs to be at a level significantly below average enterprise agreement wage outcomes, so as not to detract from the important role of agreement making under the Act.

187. This view was shared by the Full Bench of the AIRC in its *2005 Safety Net Review* decision, in which it said:¹⁶

“We are conscious that increases in the award safety net have the potential to influence the pace at which bargaining, either formal or informal, is taken up at the enterprise level”.

188. The Fair Pay Commission also recognised the significance of encouraging workplace level bargaining, in adjusting minimum wages. In its *2006 Minimum Wages Review* decision, the Fair Pay Commission referred to an “..obligation to avoid creating disincentives to bargain at the workplace level as far as

¹⁵ The report is the first relating to enterprise agreements made under the Fair Work legislation. However, the report also covers workplace agreements made under the *Workplace Relations Act* which were approved in the September quarter.

¹⁶ Paragraph 300 of the *2005 Safety Net Review Decision*

possible.”¹⁷ The Fair Pay Commission said that “In particular, the decision to award a smaller increase to those employees earning above \$700 per week is partly based on the proposition that these employees are better equipped to reach workplace agreements themselves and should be encouraged to do so.”

189. Indeed, Ai Group submits that FWA should not only be wary of factors that may act as a disincentive to enterprise bargaining, but moreover as mandated by the modern award objectives, perform its functions in a manner that **encourages** enterprise bargaining. We contend that this proposition provides further support for the submission that FWA should adopt a cautious approach this year in reviewing wages.

¹⁷ AFPC Wage-Setting Decision October 2006, p.91.

8. Impacts of Award Modernisation

190. Award modernisation has been a massive but worthwhile exercise and the Tribunal deserves recognition and credit for achieving what looked virtually impossible when the process began in 2008.
191. However, despite the goals set in the Award Modernisation Request, of employers' costs not increasing and employees not being disadvantaged, it was inevitable that there would be increased costs for some employers.
192. As the Full Bench said in its Award Modernisation Decision of 3 September 2009:

“[4] The consolidated request also provides that the process is not intended to disadvantage employees or increase costs for employers – objectives which are potentially competing. The content of the awards we have formulated is a combination of existing terms and conditions in relevant awards and existing community standards. In order to minimise disadvantage to employees and increases in costs for employers we have generally adopted terms and conditions which have wide application in the existing awards in the relevant industry or occupation. However the introduction of modern awards applying across the private sector in place of the variety of different provisions in the Federal and State awards inevitably means that some conditions will change in some States. Some wages and conditions will increase as a result of moving to the terms which apply elsewhere in the industry. Equally some existing award entitlements will not be reflected in the applicable modern award because they do not currently have general application.

[5] Various parties have pointed to the impact of modern award provisions. The parties largely addressed this matter on the basis of a comparison between existing and proposed award obligations rather than the impact of the modern award on actual terms and conditions. Even so, it is clear that some award conditions will increase, leading to cost increases, and others will

decrease, leading to potential disadvantage for employees, depending upon the current award coverage. The creation of modern awards which will constitute the award elements of the safety net necessarily involves striking a balance as to appropriate safety net terms and conditions in light of diverse award arrangements that currently apply. It is in that context that the formulation of appropriate transitional provisions arises.”

193. Notwithstanding the equally weighted objectives of not increasing employers' costs and not disadvantaging employees, employers and employees are not treated equally under the *Fair Work* legislation or modern awards. The take home pay of employees is protected through legislative provisions and the transitional provisions in modern awards. In contrast, employers do not have a similar level of protection from cost increases, although Ai Group recognises that under most modern awards cost increases arising from changed wage rates, loadings and penalties are phased-in over the four year period between 1 July 2010 and 30 June 2014.
194. Some employers are experiencing substantial cost increases from award modernisation, both direct costs and compliance costs. It is essential that such cost increases be taken into account by FWA when determining the level of wage increase in this year's Annual Wage Review.
195. The phased increases under the transitional provisions in modern awards apply from 1 July 2010 – the same day that the increase in award minimum wages will apply, unless exceptional circumstances justify a later date to address a particular situation (as provided for in s.286(2) of the FW Act).
196. In addition to any award wage increase arising from the Annual Wage Review, on 1 July 2010 a large number of employers will be required to increase:
 - Adult wages, to phase in higher wage rates under the relevant modern award;
 - Junior wages, to implement different pay scales;

- Casual loadings, to phase in the 25% standard casual loading which the Tribunal has inserted into modern awards (NB. Many industries employ a high proportion of casuals who are currently paid a loading of 20% or less);
 - Weekend penalties;
 - Shift allowances; and
 - Overtime penalties.
197. Further, in addition to higher wage rates, loadings and penalties which are subject to phasing from 1 July 2010, many employers from 1 January 2010 have been required to increase allowances and implement other more generous conditions.
198. Ai Group submits that:
- FWA should award a more modest wage increase this year than would otherwise be the case, to take account of the increased costs which have arisen for employers as a result of award modernisation; and
 - If satisfied that employers in particular industries or parts of industries are faced with large cost increases on 1 July 2010 as a result of award modernisation, FWA should determine that exceptional circumstances exist for the purposes of s.286(2) of the FW Act and make the award wage increase in these industries operative from 1 January 2011. This date falls in the middle of the dates of 1 July 2010 and 1 July 2011 where these employers are required to implement higher wages, loadings and penalties under the phasing schedule in most modern awards.

There are exceptional circumstances in the fast food industry in QLD and WA justifying a later operative date

199. Ai Group has considerable involvement in the fast food industry. For example, Ai Group represented the industry in the award modernisation proceedings, including representing McDonald's Australia Ltd, Hungry Jacks Pty Ltd, Yum Restaurants Australia Pty Ltd (which incorporates KFC and Pizza Hut), Australian Fast Foods Pty Ltd (which includes Red Rooster and Chicken Treat), Collins Food Group (which operates KFC outlets and Sizzler Restaurants) and Eagle Boys Dial-A-Pizza Australia Pty Ltd.
200. The fast food industry employs over 250,000 people, a high proportion of which are young people who are particularly vulnerable to periods of unemployment. A high proportion of the workers in the industry are award-dependent and therefore any increases in minimum wages and conditions would have a direct and substantial negative impact upon employers and employees in the industry.
201. Employers in the fast food industry who are currently bound by the following NAPSA's are required to very substantially increase the rates paid to employees from 1 July 2010, as a result of the award modernisation process:
- *Quick Service Food Outlets (QSFO'S) Award - State 2004* – QLD NAPSA
 - *Fast Food Outlets Award 1990* - WA NAPSA
202. The increases are highlighted below:

Subject matter	QLD NAPSA	WA NAPSA	Fast Food Modern Award
Ordinary hours worked on a Saturday	0% - No penalties for time work by casuals and part-time employees A loading of 25% for full-time employees (SE QLD)	0% - No penalties for Saturday work	A loading of 25% for work on Saturdays
Ordinary hours worked on a Sunday	0% - No penalties for time work by casuals and part-time employees A loading of 25% for full-time employees (SE QLD)	0% - No penalties for Sunday work	A loading of 50% for work on Sundays
Ordinary hours worked at night	0% - No penalties for casuals for work up to 12.30am. An extra \$1.11 per hour for full time and part-time employees on Monday to Friday between 11pm and 12.30am. An extra \$1.92 per hour for full-time, part-time and casual employees on Monday to Friday between 12.30am and 5.00am.	0% - No Penalties for night work	A loading of 10% for time worked between 9.00pm and midnight A loading of 15% for time worked after midnight.

203. Notwithstanding the phasing-in of the new penalties and loadings, employers in the fast food industry in QLD and WA will face major cost increases from 1 July 2010 which are likely to create hardship for employers and reduce employment opportunities for employees.

204. For example, a casual employee working on a Saturday, Sunday or in the evening after 9.00pm on a Monday through Friday all receive substantial loadings where previously none applied to casual employees. In the case of Saturday work the additional loading is 25% and on Sundays the additional loading is 50%.

205. Ai Group submits that the employers bound by the abovementioned two NAPSAs should be the subject of a separate Variation Determination, delaying the implementation of any minimum wage increase awarded as a result of the 2010 Minimum Wage Review until 1 January 2011. We submit that “exceptional circumstances” exist in respect of these employers, for the purposes of s.286(2) of the FW Act.
206. A similar approach should be taken with any other classes of employers – whether in the fast food industry or any other industry – who are identified as facing substantial labour cost increases from 1 July 2010 as a result of award modernisation.
207. There is a recent precedent for delaying a minimum wage increase for an industry sector in exceptional circumstances. In its 2007 wage-setting decision, the Australian Fair Pay Commission recognised that farm businesses in regional Australia were experiencing genuine financial hardship due to the drought.¹⁸ The wage increase which resulted from the Fair Pay Commission’s decision was delayed for a maximum of 12 months on the basis that even a minor increase could increase financial strain and result in job losses.¹⁹
208. There are earlier precedents for reducing, postponing and/or phasing-in a minimum wage increase in the decisions of the Australian Industrial Relations Commission. The AIRC’s Economic Incapacity Principle stated:²⁰

“Any respondent or group of respondents to an award may apply to, temporarily or otherwise, reduce, postpone and/or phase-in the application of any increase in labour costs determined under this Statement of Principles on

¹⁸ This was determined by reference to whether the business was receiving an Exceptional Circumstances Interest Rate Subsidy which was available to primary producers in declared areas, on the basis that such farm businesses were the most severely affected by the drought and most likely to suffer detriment from rising labour costs: Australian Fair Pay Commission, 2007 Wage-setting Decision at p.81.

¹⁹ Australian Fair Pay Commission, 2007 Wage-setting Decision at p.77-81.

²⁰ Statement of Principles - Attachment A to the *Safety Net Review Wages June 2005 Decision* (PR002005).

the ground of very serious or extreme economic adversity. The merit of such application will be determined in the light of the particular circumstances of each case and any material relating thereto shall be rigorously tested. The impact on employment at the enterprise level of the increase in labour costs is a significant factor to be taken into account in assessing the merit of any application. A party making such an application must make and justify an application pursuant to s.107. It will then be a matter for the President to decide whether it should be dealt with by a Full Bench.

Any decision to temporarily reduce or postpone an increase will be subject to a further review, the date of which will be determined by the Commission at the time it decides any application under this Principle.”

209. The Economic Incapacity Principle remained within the AIRC’s wage setting system for transitional employees between 2006 and 2009. The Principle was the subject of submissions in the AIRC’s *Wages and Allowances Review 2006* and all parties supported its retention, including Ai Group, other employer representatives, the ACTU and the Commonwealth.

9. Minimum Wages for Adults

210. Ai Group proposes that:

- The existing Transitional Standard Federal Minimum Wage be increased by \$0.32 per hour (ie. \$12.00 per week) to create a new National Minimum Wage of \$14.63 per hour (\$555.94), operative from 1 July 2010;
- Award minimum wages for adults be increased by \$12.00 per week, operative from 1 July 2010;
- The exceptional circumstances provisions of the FW Act (s.286(2)) be invoked for employers in particular industries or parts of industries that are faced with large cost increases on 1 July 2010 as a result of award modernisation. For those employers, Ai Group proposes an operative date of 1 January 2011 for the \$12.00 increase in award minimum wages.

211. The proposed level of wage increase takes into account:

- The hopefully, non-adversarial nature of FWAs Annual Wage Review deliberations and the importance of avoiding “ambit” positions (see **Section 16**);
- The Minimum Wages Objective and other objects of the FW Act (see **Section 2**);
- The delivery of a fair wage increase to the low paid;
- The need for FWA to take a cautious approach this year in adjusting minimum wages given that, while the economic recovery is underway, conditions are patchy and the future is far from certain (see **Section 3**);

- The fact that many employers pass on minimum wage increases to their employees even when they pay over-award payments and are not required to do so, and hence, minimum wage increases have a broader impact on the economy than is typically recognised²¹;
- The importance of taking into account the interactions between different elements of the social safety net, including minimum wages, income taxation, income support and non-wage costs (see **Section 4**);
- The need to promote social inclusion through increased workforce participation, with the emphasis being put on the potential impact of wage increases on the demand for labour (see **Section 5**);
- The need to take into account the impact upon small businesses (see **Section 6**);
- The need for minimum wage increases to be positioned at a level substantially below average enterprise agreement wage outcomes in order to avoid diminishing the primacy which is given to enterprise agreement-making under the Act (see **Section 7**); and
- The importance of recognising that as a result of the phasing schedule in modern awards, many employers are required to substantially increase award wages and conditions on 1 July 2010 – that is, the same day as the wage increases arising from the Annual Wage Review will apply, unless exceptional circumstances justify a later date (see **Section 8**).

²¹ This factor was acknowledged in the AIRC's 2003 Safety Net Review Decision (PR002003 at [131]) and has been highlighted in various surveys conducted by Ai Group on the impact of minimum wage increases (eg. as reported in Ai Group's 2007 submission to the AFPC, pp.66-67).

The application of the proposed increase to all classifications

212. Ai Group proposes that the increase in minimum wages be applied to all classifications.
213. The relativities within skill-based classification structures in awards are already compressed due to the many flat dollar minimum wage increases which have been awarded by the AIRC and Fair Pay Commission over the past two decades, but the compression has not yet reached a stage where the relativities are meaningless.
214. Compression of relativities is not necessarily a problem because market factors and the incidence of over-award payments reduce the detrimental impact of compressed relativities between minimum rates.

The ACTU's proposal

215. The ACTU's proposed increase of \$27.00 is overly ambitious and economically unsustainable.
216. The idea of a minimum wage "catch up" increase is fanciful given the economic experience of the past 12 months, and the need to be cautious over the next 12 months to avoid hampering the economic recovery.

10. Minimum Wages for Juniors, Employees to whom Training Arrangements Apply and Employees with a Disability

Award/Agreement free employees

217. Under s.294(1) of the FW Act, FWA is required to set special minimum wages for all award/agreement free employees in the following classes:
- junior employees;
 - employees to whom training arrangements apply; and
 - employees with a disability.
218. Under Schedule 9 (Minimum Wages) of the Transitional Act, FWA is not required to set the full range of special minimum wages covering all the above employees in its first annual wages review. It is however required to set a special national minimum wage in relation to employees in the above classes who are covered by the transitional national minimum wage order.
219. Ai Group supports FWA's preliminary decision to postpone the setting of special national minimum wages for employees in the above classes who are not covered by the transitional national minimum wage order, being award free junior employees and award free employees to whom training arrangements apply.²² Ai Group looks forward to being involved in the proceedings in 2010/2011 to determine special national minimum wages for these classes of employees (assuming the Full Bench confirms its preliminary view).
220. As the Full Bench noted in its Statement of 19 February 2010, the Fair Pay Commission in 2006 set special minimum wages for two classes of employees with a disability. Ai Group has not detected any difficulties with the structures

²² FWA Full Bench Statement, [2010] FWAFB 1224 (19 February 2010).

established by the Fair Pay Commission for employees with a disability and supports their continuation through the inclusion of appropriate provisions in the national minimum wage order in 2010.

Employees covered by a modern award

221. The minimum wages objective states that FWA must establish and maintain a safety net of fair minimum wages, taking into account “providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability”. The situation regarding such employees who are award free is addressed above.

222. Ai Group’s submits that, in general, there is no need for FWA to issue specific variation determinations with respect to juniors, employees to whom training arrangements apply or employees with a disability who are covered by a modern award. Such classes of employees are comprehensively dealt with in modern awards, taking into account the following:

- **Junior employees:** Most modern awards contain junior rates of pay which are expressed by reference to an adult rate of pay. These junior rates will be automatically adjusted as a result of adjustments to adult rates of pay.
- **Employees to whom training arrangements apply:** Modern awards contain the National Training Wage Schedule and may also contain other trainee rates of pay as appropriate.
- **Employees with a disability:** Modern awards contain the Supported Wage System Schedule which applies to employees with a disability which impairs the employee’s productive capacity. Employees with a disability which does not impair their productive capacity would be entitled to the award rate for the relevant classification.

11. Allowances

223. The adjustment of allowances in awards should be simpler than in the past because:

- There are now fewer awards;
- Modern awards contain a formula for the automatic adjustment of wage-related allowances;
- Modern awards typically contain a clause which requires that expense-related allowances be adjusted at the same time as award wages are increased, and setting out the applicable index figure for each allowance.

224. Despite the above beneficial aspects, no doubt some complications will arise in particular awards.

225. To ensure that any issues are resolved before the varied awards are published Ai Group submits that the process which we propose in **Section 15** (Process for Varying Modern Awards) of this submission should be followed.

12. Casual Loading and the National Minimum Wage Order

226. The FW Act identifies that the national minimum wage order is required to set the casual loading for award/agreement free employees²³. In accordance with the transitional national minimum wage order, this casual loading is currently 20%. Ai Group opposes any increase in the casual loading beyond 20%. We are of the view that a loading of 20% for award / agreement free employees is appropriate for the foreseeable future.
227. The figure of 20% for award and agreement free employees is a figure that was derived from the default casual loading which existed under the Australian Fair Pay and Conditions Standard.
228. Whilst it is true that the standard casual loading in modern awards is 25%, where this represents an increase in the existing entitlement transitional provisions allow for a staggered increase in the loading in five instalments over the period between 1 July 2010 and 1 July 2014. A very large number of pre-modern awards and NAPSAs contain loadings of 19% or 20% and are subject to phasing.
229. Phasing mechanisms are not provided for in the FW Act for obligations under national minimum wage orders. Even an order delayed as a result of exceptional circumstances, must take effect prior to the expiry of the financial year to which it relates.
230. Increasing the casual loading to 25% in one step could be crippling for many businesses and would not support either the minimum wages objectives or the objects of the Act.

²³ *Fair Work Act 2009*; s 294(1)(c)

231. Ai Group's primary submission is that a casual loading of 20% is appropriate for award / agreement free employees.

232. If Ai Group's primary submission is not accepted, and FWA is of the view that a 25% loading should be implemented, Ai Group proposes that the casual loading be increased to 21% this year, with a further 1% increase implemented in each subsequent year (if the prevailing circumstances warrant it) until 25% is reached.

233. Ai Group proposes that the loading be expressed in the following manner:

"An award/agreement free casual employee must be paid, in addition to the national minimum wage, a casual loading which is at least equal to 20% of that wage."

13. Form of the National Minimum Wage Order

234. Beyond the subject matter to be included within a national minimum wage order as articulated in s.294(1), section 294(2) states that a national minimum wage order must require a range of matters. The form of expression within the statutory provision lends itself to the conclusion that the order itself must articulate the 'requirement' to do as follows:

“294(2) *The order:*

- (a) must require employers to pay employees to whom the national minimum wage applies a base rate of pay that at least equals the national minimum wage; and*
- (b) must require employers to pay to employee to whom a special national minimum wage applies a base rate of pay that at least equals that special national minimum wage; and*
- (c) must require employers to pay, to award/agreement free employees who are casual employees, a casual loading that at least equals the casual loading for award/agreement free employees (as applied to the employees' base rate of pay).”*

235. Additionally, s.295 of the FW Act identifies the form of expression for minimum wages and the casual loading under a national minimum wage order:

“295(1) *In a national minimum wage order:*

- (a) the national minimum wage, and the special national minimum wages, set by the order must be expressed in a way that produces a monetary amount per hour; and*
- (b) the casual loading for award/agreement free employees must be expressed as a percentage.*

Note: The means by which the national minimum wage or a special minimum national minimum wage may be expressed include:

- (a) a monetary amount per hour; or*
- (b) a monetary amount for a specified number of hours; or*
- (c) a method of calculating a monetary amount per hour”*

236. Ai Group supports the expression of the national minimum wage and special national minimum wages as monetary amounts per hour. This approach is consistent with the way that the Federal Minimum Wage is currently expressed and there is no valid reason for departing from this approach.

237. The expression of the national minimum wage and special national minimum wages as a monetary amount per hour will simplify calculations, reduce uncertainty and avoid the need for rounding the hourly rate (as might be required if the wages were set as a monetary amount for 38 hours). A weekly amount can be readily obtained by multiplying the relevant minimum wage by 38.

14. Form of the Variation Determinations for Modern Awards

238. Ai Group proposes that a single Variation Determination be issued for all modern awards which do not cover any employers or employees who are subject to the exceptional circumstances referred to in s.286(2) of the FW Act.

239. As set out in **Section 8** (Impacts of Award Modernisation) of this submission, Ai Group proposes that:

- if FWA is satisfied that employers in particular industries or parts of industries are faced with large cost increases on 1 July 2010 as a result of award modernisation, FWA should determine that exceptional circumstances exist for the purposes of s.286(2) of the FW Act and make the award wage increase in these industries operative from 1 January 2011. This date falls in the middle of the dates of 1 July 2010 and 1 July 2011 where these employers are required to implement higher wages, loadings and penalties under the phasing schedule in most modern awards.
- Employers and employees bound by the *Quick Service Food Outlets (QSFO'S) Award - State 2004* – QLD NAPSA and the *Fast Food Outlets Award 1990* - WA NAPSA should be the subject of a separate Variation Determination, delaying the implementation of any award wage increase awarded as a result of the 2010 Annual Wage Review until 1 January 2011, on the basis that “exceptional circumstances” exist for the purposes of s.286(2) of the FW Act.

240. The above proposal would appear to require that two Variation Determinations be issued for the Fast Food Modern Award - one applicable to employers and employees who were covered by the abovementioned two NAPSAs up to 31 December 2009 (with an operative date of 1 January 2011), and the other

applicable to the remaining employers and employees covered by the Fast Food Modern Award (with an operative date of 1 July 2010). Two Variation Determinations for this award appear to be necessary to implement Ai Group's proposal, because of s.286(4) of the FW Act which prevents a Variation Determination taking effect later than the day on which the Determination comes into operation.

15. Process for Varying Modern Awards

241. Once FWA makes its decision, it is important that the published versions of modern awards are updated as soon as possible to reflect the wage increase awarded and other consequential amendments. For example, expense-related allowances, which appear as monetary amounts in modern awards, will need to be updated. Also, some awards contain rates of pay for trainees, apprentices and/or juniors which will need to be calculated.
242. Ai Group submits that it is essential that representative bodies for employers and employees be involved in the process of determining the specific variations for each modern award to ensure that any issues, complications etc are brought to FWA's attention before the updated awards are published.
243. We propose the following process:
- That as soon as FWA hands down its Annual Wage Review Decision, exposure drafts of the updated awards are made available on the Tribunal's website;
 - That parties be given seven days to comment upon the draft amendments;
 - That the final updated awards are published.
244. The final awards need to be published with as much lead-time as possible before 1 July 2010 to enable employers to make the necessary payroll adjustments. There are substantial direct and administrative costs associated with the back-dating of wage and allowance increases.
245. Lead time is also necessary because employers rely upon industry associations, such as Ai Group, to advise them of wage rates and allowances payable under awards.

246. The calculation of wage-related allowances and the distribution of information on the new wage rates, wage-related allowances and expense-related allowances in modern awards will be a huge task for Ai Group, given that we have member companies covered by most of the 122 modern awards.

16. Conduct of the Proceedings in this Annual Wage Review and Future Reviews

247. Given the later than expected timing of the appointment by the Government of the Minimum Wage Panel Members, Ai Group understands that FWA has less flexibility this year in respect of the timetable and processes for conducting the Annual Wage Review, than it will have in future years.
248. Ai Group hopes that Annual Wage Reviews conducted under the FW Act will adopt the best elements of the previous AIRC and Australian Fair Pay Commission processes.
249. We hope that the following very worthwhile elements of the Fair Pay Commission's minimum wage reviews will be preserved under the new system:
- A greater degree of informality than previous AIRC safety net review proceedings;
 - Proceedings which are inquisitorial in nature rather than adversarial;
 - The commissioning of quality research.
250. Ai Group believes that there was great value in the process which the Fair Pay Commission adopted of organising meetings between the Members of the Fair Pay Commission and peak representative bodies such as Ai Group, ACCI and the ACTU. Typically, a team of four Ai Group staff attended these meetings comprising our Chief Executive plus our Directors responsible for workplace relations, economics, taxation and tax transfer policy areas. The meetings were conducted around a table and there was a free flowing exchange of views between all members of Ai Group's team and all Members of the Fair Pay Commission. Ai Group believes that it would be a retrograde step to abolish this approach and return to formal hearings, with formal submissions presented by industrial relations advocates.

251. We are bemused at the comments which the ACTU has made at various times about the alleged “secrecy” of the Fair Pay Commission’s meetings. The meetings that we attended were, not surprisingly, entirely focussed upon the submissions that we had made to the Fair Pay Commission. No doubt the meetings which the ACTU had with the Fair Pay Commission were similarly focussed upon the submissions made by the unions.
252. Ai Group urges FWA to look beyond the political comments which have been publicly made by the unions and to adopt a practical and modern approach in conducting Annual Wage Reviews. Even if a less than optimal approach needs to be implemented this year, given the timetable which has been set for the Annual Wage Review, we urge FWA to implement a more optimal approach in 2011.
253. Ai Group has no difficulty if notes are taken and published of the issues discussed at meetings convened by FWA during the Annual Wage Review, but we do not believe that such meetings should be conducted in public or be fully transcribed. To do so would inhibit free-flowing discussion and debate.
254. We are pleased and supportive of the approach which FWA has taken in relation to research, including:
- The establishment of a Minimum Wage Research Group, upon which Ai Group is represented;
 - The publishing of research reports ahead of the deadline for lodging submissions in the Annual Wage Review to enable parties to comment upon the research.

17. Request to take part in the Consultations with Members of the Minimum Wage Panel

255. In FWA's Statement of 21 December 2009, the Full Bench said:

“[3] There will also be an opportunity for consultations with the members of the FWA Minimum Wage Panel in the week commencing 17 May 2010. The consultations will be in Melbourne with the possibility of video links to other cities if required. Time will be limited and parties wishing to take part in the consultations should express their interest in doing so by 3 May 2010.”

256. Ai Group hereby advises that it wishes to take part in the consultations with the members of the Minimum Wage Panel in the week commencing 17 May 2010.



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