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2019-20 Annual Wage Review

Reply Submission / Answers to Questions on Notice Australian Chamber of Commerce and Industry

May 2020

Australian Chamber of Commerce and Industry

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1. INTRODUCTION

1. The Australian Chamber of Commerce and Industry (ACCI) appreciates the opportunity to make these further submissions to the 2019-20 Annual Wage Review.

2. In its initial submission ACCI highlighted that this year's Annual Wage Review takes place in the context of extraordinary circumstances, with the COVID-19 pandemic and the related measures to contain the spread of COVID-19 leading to a very rapidly changing economic environment, and to a massive negative impact on the sustainability of businesses and the jobs they provide.

3. Indications are that perhaps a million Australians have lost their jobs during the course of this review to date, with no clarity on when restrictions will be lifted or when the pandemic will abate, and absolutely no guarantees that lost jobs will be replaced or reactivated.

4. ACCI welcomes the Expert Panel's approach as outlined in its Statement of 6 April 2020 ([2020] FWCFB 1804) to afford all parties an opportunity to lodge additional supplementary submissions, including following the National Accounts data for the March Quarter 2020 being released in early June. This will be vital in assisting the Expert Panel in its consideration of the impact of the COVID-19 pandemic and providing a more accurate reflection of the matters which the Expert Panel must take into consideration in making its decision.

5. We caution however that the negative impact of the pandemic is clearly continuing well beyond March. It is far from clear that the economics and jobs curves have tracked the infection curve, and we cannot yet know how many jobs and business have been saved by the massive JobKeeper initiative from Government, which is time limited to the end of September.

6. We already find ourselves in a very different economic environment than we did at the time initial submissions were lodged in late March. Data is coming to light which is giving an early indication of some of the impacts of COVID-19 and more informed predictions are being made about the state of the economy and employment throughout the remainder of 2020 and 2021.

7. The information available thus far gives a very strong indication that the potential impacts of the COVID-19 pandemic, which continue to emerge, are having and are likely to continue to have a dire effect on our economy, and upon jobs, for quite some time. The RBA Governor Philip Lowe, for example, recently said Australia is likely to experience the biggest contraction in national output and income that we have witnessed since the Great Depression in the 1930s.[1]

8. The full extent of the economic impact however will depend on matters which are still largely unknown, including the spread of the virus (i.e. whether there will be a second or third wave of the pandemic, as some are predicting and as some countries are already experiencing), timing of lifting of restrictions, and the shape, pace and strength of recovery, with the exact profile depending not only upon when and how restrictions are lifted but also on resolving the uncertainty that various actors feel about the future.

9. It is also clear that despite an optimistic tinge to the national discussion in recent days, recovery, and the speed of recovery, cannot be taken for granted.

[1] RBA Governor, Philip Lowe, Speech – An Economic and Financial Update, 21 April 2020.

10. All signs increasingly point to the need for the Expert Panel to exercise a significant degree of caution and restraint when assessing the impacts and risks of whether to increase minimum wages in 2020 and the magnitude and timing of any increase.

1.1 Questions on Notice

11. On 9 April 2020, the Expert Panel published a series of five questions on notice to be addressed by various submitting parties, and some to all parties.

12. All interested parties were invited to comment on any of the questions, including those addressed to specific parties. ACCI has availed itself of this invitation and responds to each of the questions in the relevant sections below.

2. THE IMPACT OF THE COVID-19 PANDEMIC

2.1 Virus

13. ACCI outlined in chapter 2.3 of our initial submission the impact of the COVID-19 pandemic on the Australian economy and global economy more broadly, as it was then known.

14. Since there, further data and information on the impact of the COVID-19 have come to light, as outlined throughout this submission.

15. ACCI expects further clarity in relation to the impact of the COVID-19 pandemic will be available in the coming weeks and will address these in further supplementary submissions. This will include both domestic and global considerations, with the overall impact on our internationally integrated economy to also include global and trading partner impacts.

2.2 Question on Notice 1.1 – Government Responses to COVID-19

16. Question 1.1 of the Panel's questions on notice, is as follows:

> *The Federal and State governments have announced a number of initiatives to provide support for businesses, individuals and households affected by COVID-19. These are outlined in the Fair Work Commission's note on Government responses to COVID-19 pandemic and in the Australian Government submission.*[2]
>
> *Parties are invited to comment on the initiatives and discuss how the Expert Panel should take these into account.*

17. Governments, both federal and state, have announced and implemented a range of initiatives to provide support for businesses, individuals and households in the wake of the COVID-19 pandemic. These are usefully outlined in the Fair Work Commission's information note, and in the Australian Government's submission. ACCI welcomes the Government's economic response package, which has and will continue to provide much needed support for a limited period of time.

18. The Federal Government has categorised its response as providing support to individuals and households, to businesses, and supporting the flow of credit. While timely access to credit is vital for businesses to manage the impacts of COVID-19, in many cases it will simply delay the timeframe within which businesses need to make repayments – those repayment obligations will still ultimately remain. Measures such as the deferred loan repayments, the Coronavirus SME Guarantee Scheme and temporary exemption from responsible lending obligations for lenders providers, which make it easier for businesses to borrow money or delay repayments for a period of time, should not be a key consideration of the Expert Panel in making its decision in the Annual Wage Review.

19. These are temporary measures designed to provide businesses with access to working capital to help get them through the initial impact of COVID-19 and to assist with cash flow needs such as rent and staff expenses, so as to enable businesses to stay afloat in the immediate term. The measures are not intended to assist businesses meet the costs of a pay increase in the long term.

[2] Australian Government submission, 3 April 2020 at paras 39–40, 64–65.

20. We recall that any minimum wage increase will apply for all of the 2020-21 financial year, well beyond the application of any emergency style payments, and in fact to make the cost of employment more expensive as businesses are trying to recover to new normal in which consumers may change their spending behaviours, have lower incomes, or no longer have jobs. For pubs and restaurants, social distancing requirements and operating restrictions are likely to outlast the immediate pandemic period.

21. A notable inclusion of the Government's economic response package is the $130 billion JobKeeper scheme, aimed at preserving the employer/employee relationship while assisting businesses which have suffered a significant financial hit caused by the coronavirus.

22. While many employers will be eligible for the JobKeeper scheme, there are some who will miss out, including those who have had a significant downturn in turnover, but who do not reach the required 30% or 50% reduction in turnover, dependent on business size. With wages often the largest area of expenditure for many businesses, for those operating at a low profit margin to begin with, and an even lower (or no) profit during the COVID-19 pandemic, a drop of less than 30% can still be very significant and have a significant effect on the ability to sustain employment.

23. There are other small and medium sized employers, for example, who may not be eligible as they are part of global entities of greater than $1 billion, who, despite being a small business in Australia, would then need to reach a 50% reduction in turnover to be eligible for the JobKeeper scheme. While ACCI welcomes the scheme, the Expert Panel should be mindful of its limits.

24. Further, without discounting importance of JobKeeper and other measures, it is of course worth noting that they apply for a limited period only. For example, JobKeeper applies from 30 March to 27 September 2020.

25. As the Australian Government rightly put in its initial submission, there remains uncertainty as to how small businesses will fare during these economic challenges. This uncertainty remains even with the government's significant support. The Australian Government also noted (page 7):

> *Even before the advent of the coronavirus pandemic, the survival rate of firms in the small business sector was lower than that for larger businesses. 69.4 per cent of micro-sized businesses (1-4 employees) that were operating in June 2015 were still operating as at June 2019. For businesses employing 5-19 employees, this figure is 77.6 per cent. In contrast, the survival rate for medium and large businesses is above 80 per cent (ABS Counts of Australian Businesses, June 2015 to June 2019).*

26. There have been some estimates on the effect of government response initiatives. For example, without the JobKeeper payments, Treasury estimates that unemployment would have jumped to 15%.[3]

27. Further, the IMF confirmed that the wage subsidies were factored into its forecast of a 6.7 per cent contraction in Australia's economic output this year (the worst downturn since the Great Depression in 1931).[4]

[3] See John Kehoe, AFR, 'JobKeeper: IMF corrects Frydenburg', 16 April 2020.
[4] See John Kehoe, AFR, 'JobKeeper: IMF corrects Frydenburg', 16 April 2020.

28. However, the IMF mission chief for Australia, Harald Finger, rightly commented that there is very high uncertainty with respect to any economic forecasts at this stage given the uncertain trajectory of the virus.[5] This is reflective of the comments from others, including the RBA Governor.

29. We simply need more time to monitor the spread of COVID-19, the progression of lifting restrictions, and more time to assess the impact of the Government's responses to the COVID-19 pandemic. ACCI will provide further information in response to this question in supplementary submissions to this Review.

30. It is however important the emphasise at this point that any decision of this Panel not serve to counteract any of these measures or further damage the economy. Small businesses and award wage jobs are being lost regardless of JobKeeper, and businesses and jobs will remain highly vulnerable and precarious prior to and after the end of September.

31. Above all, to the extent ACCI can answer this question now, the Expert Panel should take account of Government initiatives to date and proceed with caution in making its determination for this year's Annual Wage Review. ACCI very strongly supports the announcements designed to keep businesses in business and Australians in jobs, but no one can yet know with certainty what effect they will have. They will save some businesses and jobs, but how many cannot be known at this stage of the infection curve, nor of the economic and labour market curves. What we can know with certainty is that this Expert Panel is preparing its Decision in an environment of rapid and massive job losses - worse than any wage setter has confronted in 90 years. The one certainty we do know is that from here there can only be more uncertainty, more negative impact on the considerations the Panel must have regard to, and more Australians losing jobs and businesses.

2.3 Question on Notice 1.2 – Sources of updated information

32. Question 1.2. of the Panel's questions on notice, is as follows:

> *Since most submissions have not had an opportunity to address the effects of COVID-19, in the Statement published on 6 April 2020 on the timetable variation, the Expert Panel has provided a date for submissions and reply submission regarding data from the Australian Bureau of Statistics' (ABS), Australian National Accounts data for the March quarter 2020. The Expert Panel has also noted that the ABS were publishing additional data measuring the impact of COVID-19 on individuals and businesses and that these products would be presented in the Statistical report.*
>
> *Parties are invited to comment on other sources of data or research that provide more timely information on the effects on COVID-19 to be considered in this Review.*

33. Throughout this submission, which is of an interim nature in what must be an ongoing dialogue across the extended period of this review, we provide various updated sources as they become available. In this unique review, notwithstanding the timetable framing the various stages of submissions, we intend to continue to bring pertinent, current information on the effects of the pandemic, before you and other parties.

[5] See John Kehoe, AFR, 'JobKeeper: IMF corrects Frydenburg', 16 April 2020.

34. This includes:

a. The ABS releasing two editions of a special issue survey on the business impact of COVID-19[6], which included reporting that:

i. The proportion of Australians who have a job fell by 3 percentage points between early March and early April.

ii. This equates to at least 540,000 people losing their jobs in less than a month.[7]

b. Regular comments from the Governor of the RBA, and his indication that "we're going to have a very significant economic contraction".[8]

c. As of 1 May, more than 500,000 businesses have registered for the JobKeeper package, for more than 3 million employees.[9] This means that COVID-19 has rendered such jobs precarious.

d. Treasury predicts unemployment to triple to 10% in the June quarter.[10]

e. If Australia records double digit unemployment, for the first time since April 1994, this would mean "almost 1.4 million people out of work, which would be a record."[11]

f. The IMF predicts a 6.7% contraction in the Australian economy[12], reflecting significant economic disruption from social distancing, lower commodity prices, and lower foreign demand-- a fall in external demand.[13]

35. Looking at what is coming to light in terms of research and information, indications universally point to two things:

a. Massive uncertainty on what coming weeks, months and years will hold for the health of Australians, for the sustainability of businesses, and for the sustainability of jobs. This is both an economy wide and very individual knowledge gap, and uncertainty is creating real stress and concern both across the Australian community but also for individuals and families.

b. The known knowns and the known unknowns both point to massive downside risks. As economic and labour information comes to light, it universally points to a materially worse economy and labour market, and to a U-turn in the Australian and global economies with unparalleled rapidity. Thus, where information is yet to come to light, the Panel has an ample and compelling basis to err on the side of assuming negative outcomes at this point. 2020 is one of those scenarios in which optimism should give way to pessimism and in which worst case, or negative case scenarios can and should be assumed.

[6] ABS 5676.0.55.003 - Business Indicators, Business Impacts of COVID-19, March 2020 – 26 March 2020
ABS 5676.0.55.003 - Business Indicators, Business Impacts of COVID-19, Week Commencing 30 March 2020 – 7 April 2020
[7] https://www.afr.com/policy/economy/540-000-jobs-lost-in-less-than-a-month-abs-20200420-p54lau
[8] https://www.afr.com/policy/economy/rba-warns-business-might-not-recover-without-reforms-20200420-p54lb4
[9] https://www.abc.net.au/news/2020-04-29/businesses-not-signed-up-jobkeeper-payments-coronavirus/12193698
[10] https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/jobkeeper-payment-supporting-millions-jobs
[11] https://www.afr.com/politics/federal/jobless-rate-to-hit-10pc-treasury-20200413-p54ja0
[12] https://www.sbs.com.au/news/imf-predicts-australia-s-coronavirus-stimulus-will-help-a-great-deal-as-country-faces-economic-blow
[13] https://www.imf.org/en/News/Articles/2020/04/16/tr041520-transcript-of-april-2020-asia-and-pacific-department-press-briefing

36. Above all, the inescapable conclusion must be that available data and research in Australia and globally points to the impact of COVID-19 on economies and jobs, and on the considerations which the Panel has regard to, being nothing short of dire.

37. The global dimensions are even worse. The ILO has moved rapidly to track the impact of COVID-19 on jobs. The results are again dire, and point to a serious risk of global recession, or worse, with the ILO observing / modelling:

    a. Global working hours declining in the first quarter of 2020 by an estimated 4.5% (equivalent to approximately 130 million full-time jobs).

    b. Global working hours in the second quarter expected to be 10.5% lower than in the last pre-crisis quarter, equivalent to the loss of 305 million full-time jobs,

    c. Taking together employers and own-account workers, around 436 million enterprises in the hardest-hit sectors worldwide are currently facing high risks of serious disruption.[14]

38. The IMF forecasts the worst global downturn since the Great Depression.[15]

39. Even absent the direct domestic impact of the pandemic, with the Australian economy being globalised and internationally integrated, such a massive global shock would provide grounds for a substantially different approach to minimum wage setting in 2020.

[14] https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_743146.pdf
[15] https://www.sbs.com.au/news/the-global-economy-is-now-facing-the-worst-recession-since-the-great-depression

3. REPLY - ECONOMIC CONSIDERATIONS

3.1 Economic Outlook

40. The extended period of economic growth experienced in Australia over the past 28 years has come to a dramatic end. In the shadow of the COVID-19 pandemic, the economic conditions and outlook at the end of 2019 is very different from the situation we now face.

41. Most of the initial submissions to the Annual Wage Review were lodged in early March, prior to the dramatic economic downturn and introduction of Government's COVID-19 stimulus and support measures. The economic outlook provided in these submissions was based on backward looking data available at the end of 2019, with then expectations of a moderate improvement in economic conditions in 2020.

42. At the end of 2019, the outlook for the Australian economy was generally positive, despite 2019 economic growth, at 1.9% in the year to December, falling well short of expectations. Modest growth was expected in 2020, with GDP growth forecasts of between 2¼% (MYEFO) and 2½% (RBA).[16] Inflation was expected to be at the very bottom end of the RBA target range, remaining around 1.9% to 2% over the next two years. Consumer confidence, a key factor holding back the economy in 2019 was expected to strengthen, underpinned by a recovering domestic housing market, with a flow on to household consumption expenditure, and retail spending. While private business investment was expected to remain subdued in 2020, Government spending would continue to support investment growth.

43. However, the COVID-19 crisis has dramatically changed economic conditions, such that these earlier expectations of a strengthening Australian economy through 2020 are no longer relevant, nor reliable for prospective decision making.

44. The Australian Government Submission was held back to 3 April 2020 to enable a better assessment of the evolving COVID-19 crisis to be taken into account in its economic outlook. Yet, the situation was continuing to evolve rapidly and the Australian Government submission (p.2) was inconclusive in its view as to what the full impact of the COVID-19 crisis on the economy, noting:

> *there remains considerable uncertainty around the potential economic implications of the coronavirus for the June quarter and beyond, but the economic shock will be significant.*

45. Due to this high level of uncertainty and the rapidly changing economic environment in the shadow of the COVID-19 crisis, the Australian Government has delayed the release of the Federal Budget until October 2020. As noted in the Australian Government submission (p.2) *the delay of the 2020-21 Budget reflects the significant challenges in making reliable, robust economic forecasts in the near future*.

46. The uncertainty stems from a lack of clarity around how long it will take to satisfactorily contain the virus and the duration of the social distancing and people movement restrictions. This will influence the magnitude of the downturn and the timing and the pace of the economic recovery.

[16] Commonwealth of Australia 2019 Mid-Year Economic and Fiscal Outlook 2019-20. December 2019
Reserve Bank of Australia 2020 Statement on Monetary Policy. February 2020

47. As noted in the Australian Government submission (p.2) (*t*)*here are a wide range of potential paths for the spread and containment of the virus. In addition, there is uncertainty around the impact on confidence, people's ability to work and business cash flow*.

48. It is no clearer today, how long it will take to contain COVID-19 and how long the restrictions must remain in place, than it was at the end of March. The inflection and fatality curves appear to be flattening, but restrictions remain in place, and the economic and labour market impacts are still being realised.

49. A recent speech by the Reserve Bank Governor, Dr Philip Lowe, painted a bleak picture for the Australian economy in the first half of 2020.[17] The RBA is expecting a severe contraction in national output as a result of the people movement restriction and economic uncertainty, in the first half of 2020. While cautious of putting an exact number on the magnitude of the contraction, the RBA expects:

    a. National output to fall by around 10% in the first half of 2020, with most of the decline in the June quarter.

    b. Employment to fall sharply with total hours worked likely to decline by 20% over the first half of the year.

    c. Unemployment to rise to around 10% by June 2020.

50. For the remainder of 2020, under the RBA's most likely scenario, the people movement restrictions are expected to begin to be progressively lessened by the middle of the year and are mostly removed by late in the year – with the exception of the restrictions on international travel.[18] Under this scenario, the RBA forecasts national output to contract by around 6% in 2020, before some recovery, with GDP growth of 6% to 7% growth in 2021. While the unemployment rate is expected to begin to settle back from a likely 10% peak in June, the RBA is forecasting that unemployment will remain above 6% *over the next couple of years*. Wages growth is expected to fall below 2% in 2020, before gradually picking up again in 2021. The RBA expects inflation to remain below 2% over the next couple of years.

51. At an international level, the International Monetary Fund (IMF) is projecting that the global economy will enter recession in 2020, with global growth contracting sharply, down -3.0% in 2020.[19] This is much worse than during the 2008–09 financial crisis, when the global economy contracted by -0.1%.

52. For advanced economies the decline will be severe, with GDP contracting by -6.1%. Emerging markets, excluding China, are expected to contract by -2.2%, with Chinese growth moderating to +1.2% and India also slowing to +1.9%.

53. The IMF's forecast for Australia suggests national output will contract by -6.7% in 2020, before a return to growth of 6.1% in 2021 (albeit GDP will remain below its level entering 2020).[20]

[17] Reserve Bank of Australia (2020) *An Economic and Financial Update.* Speech by RBA Governor Dr Philip Lowe, 21 April 2020
[18] Reserve Bank of Australia (2020) *An Economic and Financial Update.* Speech by RBA Governor Dr Philip Lowe, 21 April 2020
[19] International Monetary Fund (2020) World Economic Outlook Report: April 2020. Executive Summary https://www.imf.org/en/Publications/WEO/Issues/2020/04/14/weo-april-2020
[20] International Monetary Fund (2020) World Economic Outlook Report: April 2020. Statistical Appendix A and B. https://www.imf.org/en/Publications/WEO/Issues/2020/04/14/weo-april-2020

54. On other key indicators for Australia, the IMF is forecasting:

a. Inflation (consumer prices) to fall to 1.4% in 2020, before rising back to 1.8% in 2021

b. The current account balance to fall to -0.6% in 2020 and continue to decline to -1.8% in 2021

c. Unemployment to rise to 7.6% in 2020 and reach 8.9% in 2021.

55. Based on these forecasts, the Australian economy is suffering a severe downturn in 2020. While there may be a superficial rebound in economic growth in 2021, it will take some time for the economy to fully recover, with core indicators, such as inflation, employment and wages growth lagging over the next couple of years. These are important considerations for the Panel in in determining the NMW and award minimum wages for 2020-21 and in subsequent years.

56. The Expert Panel must be cognisant that increases in the NWM and award minimum wage in the current extremely fragile economic environment could exacerbate the economic downturn, slow the recovery, frustrate efforts to get people back into work, and risk further job losses.

3.2 Business Conditions

57. Over the past 2 months, the future of the economy has become increasingly uncertain. In the wake of the COVID-19 crisis, many businesses have been forced to close their doors as a result of social distancing and people movement restrictions, and parts of the economy are at a stand-still. Pubs and restaurants, venues and many shops are shuttered, with staff stood down.

58. The ABS recently released three editions of a special issue survey observing the business impact of COVID-19.[21] The ABS survey results of the first and second surveys are also presented in tables 3.6 to 3.10 and charts 3.7 to 3.13 of the Statistical Report (SR). The third survey was released on 4 May 2020.

59. The second of the ABS surveys indicated that two thirds of businesses reported their turnover and cashflow had reduced as a result of COVID-19. Businesses most affected to date include accommodation and food services, arts and recreation services, healthcare and social assistance, retail trade, wholesale trade and information and media services (SR Chart 3.8). These are sectors with the highest proportion of NMW and award minimum wage employment. The third survey indicates the situation is getting worse, with 72% of businesses expecting their cash flow to be reduced further over the next two months and 41% indicating they will have less capacity to pay operating expenses. The impact on cashflow is greatest for accommodation and food services (88%), education and training (88%), arts and recreation services (84%), construction (75%).

60. Nearly half of these businesses had made changes to their workforce arrangements in the last two weeks of March as a result of the COVID-19 restrictions, including job losses, stand downs, and hours reductions. Again, the sectors most affected are those with the highest proportion of NMW and award minimum wages workers, including accommodation and food services (78%), healthcare and social assistance (63%), construction (52%) and retail trade (47%) (SR Table 3.7).

[21] ABS 5676.0.55.003 - Business Indicators, Business Impacts of COVID-19, March 2020 – 26 March 2020
ABS 5676.0.55.003 - Business Indicators, Business Impacts of COVID-19, Week Commencing 30 March 2020 – 7 April 2020
ABS 5676.0.55.003 - Business Indicators, Business Impacts of COVID-19, April 2020 – 4 May 2020

61. While many businesses have been able to continue to operate, albeit at a much lower capacity, the survey indicates that around 10% of businesses have been forced to close their doors. The hardest hit sectors, with the highest proportion of businesses being forced to close their doors include retail trade (24%), accommodation and food services (31%), information and media services (35%) and arts and recreation services (53%) (SR Chart 3.10).

62. The third of the ABS Business Impact of COVID-19 surveys includes a focus on the JobKeeper scheme. This shows 61% of businesses applying for JobKeeper payments and 44% saying they are relying on it to retain staff. The sectors most reliant on JobKeeper payments to retain their employees include accommodation and food services, other services, construction, manufacturing and administration and support services the most reliant on it. Again, these are sectors with a high proportion of NMW and award minimum reliant employees.

63. Similarly, ACCI recently conducted a survey of its membership on the impact of the COVID-19 crisis on business conditions.[22] The survey involved 1,500 respondents, including small and medium sized businesses (as well as micro businesses and sole traders), across all states and territories and all industry sectors. The survey results show:

    a. Over one third of businesses had experienced a more than 80% fall in revenue in March, relative to what they would normally expect this time of year, with half experiencing a more than 50% decrease in revenue and three quarters experiencing a more than 25% decrease in revenue.

    b. Almost 20% of businesses surveyed were forced to close and mothball their operations, and a further third have been forced to strip back to only essential operations.

64. While the JobKeeper payments should enable many of these businesses to maintain a connection with their workforce and bounce back more quickly when the restrictions are lifted and business conditions improve, regrettably, many of these businesses may never reopen.

65. In the wake of the COVID-19 crisis, with business conditions deteriorating rapidly, resulting in a large proportion of businesses struggling to maintain cashflow and under a high level of financial stress, any increase in the NMW and award minimum wages would only intensify the problems being faced by these businesses and the worsen the implications for their employees.

3.3 Employment

66. The most recent Labour Force data release for March (seasonally adjusted) showed a slight increase in employment (5,900 or 1.8%) and only a very modest increase in unemployment (up 0.1% to 5.2%), with the participation rate unchanged (remaining flat at 66%).[23] The ABS noted that quality assurance of the data showed only some small, very early impact of COVID-19 on the Labour Force Statistics. The survey was undertaken between 1 and 14 March, before the global pandemic was declared and the Government introduced the more stringent social distancing and people movement restrictions on businesses, such as forcing cafes, bars, gyms, etc. to close their doors.

[22] ACCI 2020 *COVID-19 Business Conditions Survey Report.* https://www.australianchamber.com.au/wp-content/uploads/2020/04/ACCI-COVID-19-BUSINESS-CONDITIONS-SURVEY-REPORT.pdf
[23] ABS 6202.0 Labour Force Australia, March 2020 – 16 April 2020.

67. A recent special issue survey by the ABS on Weekly Payroll Jobs and Wages in Australia, gives a clearer picture of the impact to date of the COVID-19 crisis on employment.[24] The survey based on Single Touch Payroll (STP) data provided by the Australian Tax Office, indicates a 6% decrease in employee jobs and a 6.7% decrease in wages paid between 14 March and 4 April 2020, with almost all of this decline occurring in the week ending 4 April (5.5% of jobs and 5.1% of wages). Given the mandatory reporting of payroll data through the STP, this is more accurate real-time data.

68. The results of the survey as shown in Table 6.12 and 5.3 of the statistical report, indicate no sector has been spared, with employment and wages down across the board. Sectors most affected include accommodation and food services, with 25.6% decline in jobs and 30.1% decline in wages, and arts and recreation services, with jobs down 18.7% and wages down 15.7%. Other sectors experiencing significant declines include administrative and support services (jobs down 7.5%, wages down 5.8%), rental hiring and real estate services (8.0% and 8.5%), professional scientific and technical services (7.9% and 8.4%), other services (7.6% and 4.5%), information media and telecommunication (6.8% and 7.3%), construction (5.3% and 3.6%) and healthcare and social assistance (2.5% and 8.0%).

69. Research from ANZ shows that Australian Job Ads fell 53.1% in the month of April.[25] This was almost five times the previous record monthly fall of 11.3% in January 2009, during the Global Financial Crisis. The report found job ads fell progressively over the month, “adding to the evidence that the downturn in activity is impacting businesses and the labour market at an unprecedented speed”. Australian Job Ads were down 62.2% year on year.

70. As noted in the Australian Government Submission (p.3), (*r*)*esearch shows that the employment impacts of the minimum wage are most likely to be felt by vulnerable cohorts, such as youth and the low skilled, and that risks to employment from minimum wage increases are more pronounced during economic downturns*.

71. This was emphasised in the ABS COVID-19 special issues survey, which showed that those aged under 30 were more severely impacted.[26] For those aged under 20, 9.9% had lost their job and total wages decreased by 12.7%. For those aged between 20 and 29, 8.8% of jobs were lost and total wages declined 9.1%. Much lower rates of job losses and wage declines were observed in the 30-39 years (5.5% jobs, 6.5% wages), 40-49 years (4.3% jobs, 6.2% wages), 50-59 years (3.8% jobs, 5.5% wages) and 60-69 years (4.0% jobs, 5.7% wages) cohorts.

72. Given the COVID-19 crisis is having a substantially higher impact on the jobs and wages on younger employees, it would imply that any increase in the NMW and award minimum wages would further exacerbate the job losses and decline in total wages of younger employees.

3.4 Wages

73. Prior to the current crisis, expectations were that wages growth would remain stable over the next few years, with the WPI holding steady at around 2.3% and inflation within the range of 1.8% and 2% in 2020 and 2021 (i.e. a level of nominal wage growth across the economy).

[24] ABS 6160.0.55.001 - Weekly Payroll Jobs and Wages in Australia, Week ending 4 April 2020 – 21 April 2020.
[25] ANZ Australian Job Ads Series, April 2020.
[26] ABS 6160.0.55.001 - Weekly Payroll Jobs and Wages in Australia, Week ending 4 April 2020 – 21 April 2020.

74. Many initial submissions to the AWR were seeking an increase in the NMW and award minimum wages based on these earlier expectations of wages growth and inflation. Some were seeking a significant increase, suggesting that low paid workers not be 'left behind' as the economy strengthened in 2020. These included the ACTU, seeking an increase in the NMW and award minimum wages of between 4% and 6%, the Retail and Fast Food Workers Union seeking an increase to $25 per hour, the ACBC seeking an increase of 4%, and the Victorian Government seeking an increase of at least 3%. ACOSS and the Centre for Future Work, while not identifying a specific figure, are seeking a "substantial" or "healthy" increase in the NMW and award minimum wages. On the other side, others, including the ARA, NRA, RCIA, HIA, MGA/TMA, NFF, SA Wine Industry Association were seeking a modest increase or no increase at all, given the weak economic growth during 2019.

75. With the growing uncertainty around the initial emergence of COVID-19, several other submissions, including ACCI, Australian Business Industrial (Business NSW), the Australian Industry Group, NRA, NSW Government and Western Australian Government, were recommending the Expert Panel take a very cautious approach to the current AWR.

76. These submitting parties have not put a figure on any increase in the NMW and award minimum wages at this point in time, nor on the necessity for any increase in 2020, given the high level of uncertainty around the potential economic impact of the COVID-19 crisis.

77. Some maintain that real growth in NMW and award minimum wages in recent years has not deterred healthy growth in employment in 2019 and over the past five years.

78. The ACTU (p.9) contends *there is no basis for the Expert Panel to depart from its established viewed that modest and regular minimum wage increases do not result in disemployment effects or inhibit workforce participation*. ACCI, while not disagreeing that under normal circumstances this may be the case, questions what the Expert Panel and the ACTU would consider 'modest', even before we get to the particular challenges of 2020.

79. ACCI considers the increase in the NMW and award minimum wages provided in the Expert Panel's past three Decisions, of 3.3%, 3.5% and 3.0% – significantly higher than the increase in the WPI in these years of 2.1%, 2.3% and 2.2%, and above changes in the CPI – are well above what could be considered 'modest'. This is likely to have led to a slower rate of employment growth, relative to what it could have been if the increase in the NMW and award minimum wages was more consistent with growth in inflation and the WPI. These high increases in the NMW and award minimum wages have contributed to the persistent slack in the labour market, with unemployment at 5.2% - above the RBA's target for full employment of 4.5% - and underemployment at 8.7%, despite strong growth in employment and the participation rate in recent years.

80. The ACOSS submission (p.3) advances the view that the NMW and award minimum wage rates have only increased by 0.7% per annum in real terms over the past decade. However, this is a significant real increase in wages and higher than the growth in average wages over the decade, at 0.57%. ACOSS also overlooks the fact that the real rate of growth has been accelerating in recent years, with NMW and award minimum wages growing in real terms by 1.2% over the past 5 years and 1.5% over the past 3 years. This compares to the real growth in the WPI of 0.4% over the past 3 and 5 years.

81. Many of the arguments put forward by ACOSS (p.4), the ACTU (pp. 5, 145) and others in relation to weak GDP and wages growth as a reason for a substantial increase in the NMW and award minimum wages appear to be based on the false pretext that raising the NMW and award minimum wages will drive an increase in overall wages growth and lead to an increase in economic growth.

82. As discussed below in the response to question 2.2, the NMW and award minimum wages are not an effective tool to drive overall wages growth and or economic growth as the ACTU and ACOSS would like us to believe. Any increase in the NMW and award minimum wages above average wages growth is likely to come at a cost to other workers, who will receive a smaller wage increase than they would otherwise be entitled or have their wages frozen.

83. It is also important to recognise that the NMW is a safety net for low paid workers. It is not intended, nor it is able to drive wages and economic growth. The NMW should be set at a level that ensures that it grows in line with average wages growth, to ensure that low paid employees are not left behind. To be sustainable and not weigh down the economy, any wages growth must be driven by productivity and economic growth.

3.5 Response to COVID-19 and Implications for Wages Growth

84. In the wake of the COVID-19 crisis, earlier economic growth and inflation forecasts are no longer relevant. In terms of data and certainty about our economy and jobs, COVID-19 has all but wiped the slate clean. As such, the increases in the NMW and award minimum wages sought by many in the initial submissions are no longer reasonable or viable. It is not clear to ACCI that all of our fellow submitting interests in this review would have pursued the same outcome if they had their time again, and knew then what they know, and know they don't know, now.

85. As noted earlier, the RBA is forecasting wages growth to decline below 2% in 2020, with many businesses delaying or cancelling wage increases due to the severe decline in economic activity. However, as economic conditions improve through 2021, it is generally expected wages growth will continue to pick up again.

86. There would be risk to this however if further economic shocks follow the pandemic, and if recovery takes a non-linear course. There is also no clarity as yet on consumer spending behaviours coming out of the immediate pandemic. We don't yet know for example (a) what restrictions may remain on dining out, or (b) the appetite of Australians to do so who may be worried about their personal financial security.

87. Across our economy, in businesses of all sizes and in all industries, managers and staff are taking pay cuts, or no pay at all, for the duration of the COVID-19 crisis. At the high-profile level / reported end, examples include:

    a. At Qantas, CEO Alan Joyce will not take a salary for the remainder of the financial year, Group Executive management will take a 30% pay cut and the Board will take a 30% reduction in fees.[27]

[27] https://www.sbs.com.au/news/alan-joyce-gives-up-part-of-his-salary-as-qantas-slashes-overseas-flights

b. More than half of KPMG's 8,000 strong workforce have accepted a 20% pay cut.[28]

c. Staff at accounting firm Grant Thornton have agreed to cut hours and pay by 20%.[29]

d. Commonwealth Public Service wage rises have been delayed for 6 months pursuant to the Public Service (Terms and Conditions of Employment (General wage increase deferrals during the COVID-19 pandemic Determination 2020, while Western Australia and Queensland have also announced a wage freeze for public servants.[30]

88. In addition, the FWC has provisionally approved a joint application by Independent Schools Victoria and the Independent Education Union to change the award to insert a new schedule in the education services award to allow hours and wages to be reduced by up to 25% for non-teaching staff over the next 12 weeks.[31] Similarly, the FWC has backed a wage freeze in some enterprise agreements to deal with the COVID-19 crisis, approving a proposal by a construction contractor to waive a 3% pay rise for its staff under its enterprise agreement, due to serious economic pressures.[32] These are expected to be the first of many requests put to the FWC for flexibilities in enterprise agreements due to the COVID-19 crisis.

89. It is also likely that many non-award employees in sectors severely affected by the COVID-19 crisis, whose employer has experienced the required decline in turnover will require JobKeeper payment to continue their employment over the next 6 months, and may be required to reduce their hours and/or receive a pay cut, as their current wage is above the JobKeeper payment of $1,500 per fortnight. This might occur in circumstances where, for example, the employee cannot be usefully employed for the employee's normal days or hours because of changes to the business attributable to the COVID-19 pandemic or Government initiatives to slow the transmission of COVID-19.

90. With wages growth currently stalled or falling across many sectors of the economy:

a. Now is not the time for the substantial real increase in the NMW and award minimum wages being sought by the ACTU, the Retail and Fast Food Workers Union, the ACBC, ACOSS, the Centre for Future Work and the Victorian Government.

b. If ever circumstances dictated a different, more cautious or exceptional approach, guided primarily by job retention, it is in 2020.

91. As the Reserve Bank Governor noted in his recent speech wages growth across the broader economy has been heavily depressed by the measures put in place to stop the spread of COVID-19 and the recovery in wages growth will only be gradual over the next few years.[33] At a time of subdued wages growth, excessive increases in the NMW and award minimum wages risk amplified damage. It is important that NMW and award minimum wages remain broadly in line/ consistent with average wages growth observed trough the WPI. It is not the role of the NMW and award minimum wages to drive wages growth, particularly at a time of severe economic stress.

[28] https://www.afr.com/companies/professional-services/kpmg-ceo-praises-staff-as-less-than-50-opt-out-of-pay-cut-20200421-p54lqy
[29] https://www.afr.com/companies/professional-services/why-firms-are-requesting-staff-take-pay-cuts-20200419-p54l3z
[30] https://www.canberratimes.com.au/story/6717828/public-servant-wage-rises-delayed-for-six-months/
[31] https://www.theaustralian.com.au/nation/coronavirus-private-schools-to-slash-nonteaching-staff-hours/news-story/f095cca8ceebd0cbc16ff2661bffb6c9
[32] https://www.afr.com/work-and-careers/workplace/fair-work-agrees-to-axing-pay-rises-despite-jobkeeper-20200403-p54gom
[33] Reserve Bank of Australia (2020) *An Economic and Financial Update.* Speech by RBA Governor Dr Philip Lowe, 21 April 2020

92. Aggregate wages growth per se is not one of the considerations in s.284 of the Fair Work Act, but social inclusion and living standards considerations favour considerable weight being accorded to risks to jobs and livelihoods. In extreme circumstances such as those of 2020, one consideration – retaining and recovering jobs – can become the pre-eminent one in still taking into account the range of considerations under the minimum wages objective. In extremis, living standards, meeting needs, social inclusion, and economic considerations all hinge on maximising the proportion of Australians in work, and supporting a rapid return to work for those temporarily excluded.

3.6 Labour Productivity

93. ACCI agrees with Australian Business Industrial's view (p.19) that "(*r*)*eal wage increases that are not backed by productivity growth are unsustainable,* with (*a*)*ny real minimum wage increase beyond productivity gains contributed by award-reliant employees increasing labour costs and having broader consequences for firms, labour demand, and economic competitiveness*."

94. Labour productivity has been on a downward trend over the past business cycle, with labour and multifactor productivity negative in 2019. Labour productivity is expected to fall further in the wake of the COVID-19 pandemic, particularly as a result of the JobKeeper payments. While the JobKeeper payment scheme will enable employers to maintain a connection with their employees, it will contribute to a considerable decrease in output per employee, particularly for highly award reliant sectors such as accommodation and food services, arts and recreation and retail trade sectors where businesses have been forced to close their doors but will retain their employees. Put another way, when no or less work is being undertaken, productivity is going to fall. Further declines in productivity from an already very low level makes it very hard to justify an increase in NMW and award minimum wages.

95. As the ACTU submission notes (p.51) labour productivity lies below that of many comparable countries. At a rate of 0.4% in 2018, it was the slowest of all OECD countries and well below the OECD average of 1.8%. Although there was a slight positive increase in 2019, it has since turned down sharply to -0.2% in the latest data. Multifactor productivity was close to zero in the 4 more highly award reliant sectors.

96. As the Panel noted in the 2018-19 Decision "*labour productivity is best measured over the course of the productivity cycle*" [88][34], due to a high level of variability from year to year. The current cycle beginning in 2011-12 shows very weak and/or a declining trend in labour productivity for most sectors – compared with relatively stronger growth over earlier business cycles. It is not yet clear whether there is in fact a cycle with the disruption of COVID-19, or a new crisis and recovery cycle has been imposed by the virus.

97. In its initial submission, the ACTU has obscured the measures of labour productivity by basing the index at 1994-95 and observing the cumulative growth of the various measures of labour productivity and wages (Fig 53 p.106). The ACTU claim that "(*i*)*n all cases, the labour productivity indexes grow faster overall than the wage measures. Even with a different starting date for the indexes, the results would be very similar*." However, this is not the case if observed over the current business cycle, beginning 2012-13. When observed over the past 7 years, it is clear the NMW has been increasing at a faster rate than GDP per capita, GDP per hour worked, GVA per hour worked and AWOTE.

[34] See [2019] FWCFB 3500 at [88]

98. While the ACTU (p.101) offers its support for the RBA view that short term movements in productivity are hard to interpret due to cyclical effects, it adds that this makes any connection between minimum and award wages difficult to discern. However, it is not a reason for the Expert Panel to discard productivity as an important factor in determining the NMW and award minimum wages increase, as the ACTU is proposing.

99. The ACTU view is also at odds with the reference to productivity in section 284(1)(a). Would the ACTU have it that Parliament directed this Panel to consider something essentially undiscernible in these reviews?

100. As previous stated in the ACCI initial submission, research, both domestically and internationally observes a strong relationship between labour productivity and real wages growth, with the Productivity Commission finding that slower labour productivity growth explains **over half** of the fall in wages growth and the IMF finding that slow productivity growth can account for about **two-thirds** of the slowdown in nominal wage growth.[35]

101. Further, the AiG submission (p.25) highlights research by the Australian Treasury which shows '*an important link between individuals' wages and firm-level productivity over the period 2001-02 to 2015-16, consistent with the idea that firms share rents with their workers ….. an idiosyncratic shock to firm-level productivity of 10% is associated with an increase in wages of around 1%*.'[36]

102. Also, the Australian Government submission (p.10) notes, "(*i*)*n the United States, Clemens and Wither (2019)*[37] *show that the employment and incomes of low-skilled workers were negatively impacted by the minimum wage increases that occurred during the Great Recession, a period of depressed labour demand and slow productivity growth*."

103. Therefore, in the wake of the COVID-19 crisis, and the significant decline in productivity likely to result from it, any increase in the NMW and award minimum wages appears very difficult to justify at this time.

3.7 Small business

104. As the Australian Government submission notes (p.6), small businesses more commonly rely on award wage rates rather than enterprise agreements to set pay and conditions, thus are more likely to be impacted by (and have to find extra cash to pay) increases in the NMW and award minimum wages. Much of Government's financial assistance measures in response to the COVID-19 pandemic are targeted at small business given its importance to the economy and higher level of vulnerability, but as emphasised above, this will not save every small business or job (far from it), and small businesses experience some of the limitations on being able to access the JobKeeper payments for example.

105. Small businesses account for a larger share of total employment in industries that are highly award reliant, such as accommodation and food services, administrative and support services, other services, healthcare and social assistance and retail trade.

[35] Productivity Commission, Productivity Insights – Recent Productivity Trends. February 2020
Hong GE, Koczan Z, Lian W, Nabar M (2017) The disconnect between unemployment and wages. IMF blog 27 Sept 2017
[36] Andrews D., Deutscher N., Hambur J. and Hansell D. 2019, *Wage Growth In Australia: Lessons From Longitudinal Microdata*, Australian Treasury 2019-04 pp. 1-2.
[37] Clemens, J and Wither M 2019, '*The minimum wage and the Great Recession: evidence of effects on the employment and income trajectories of low-skilled workers*', Journal of Public Economics, vol.170, pp. 53-67

106. These are also sectors that are heavily impacted by the social distancing and people movement restrictions to prevent the spread of COVID-19 and are experiencing a very high level of financial stress as a result. There are no guarantees that all or even most small restaurants and shops will reopen, notwithstanding substantial government interventions.

107. While the ACTU points to higher profit margins for small business (p.51), this assessment is no longer valid. Small businesses are bearing the greatest share of the financial impact of the COVID-19 restrictions and the subsequent financial costs. Millions of small businesses are experiencing severe cash flow problems and are struggling to pay their employee's wages and other bills. These profits have been rapidly lost.

108. Small businesses also employ a much bigger proportion of award reliant workers. They are likely to be disproportionately affected by the COVID-19 pandemic, as they are more labour intensive and generally less diversified in their product offerings and customers.

109. Small businesses are also less equipped to deal with soft demand and have less flexibility in terms of meeting workplace operational requirements.

110. As the Australian Government submission notes, despite the substantial amount of government support provided to business in the wake of the COVID-19 crisis, 'there remains uncertainty regarding how small businesses will fare. Even before the coronavirus pandemic, the survival rate of firms in the small business sector was lower than that for larger businesses (based on ABS Counts of Australian Businesses, June 2015 to June 2019).

3.8 Question on Notice 2.1 - Economic and Labour Market Considerations

111. Question 2.2. of the Panel's questions on notice, is addressed to ACCI as follows:

> *ACCI's comment that the increase in the NMW and award minimum wages 'has come at a cost to other (experience, older, non-award) workers with employers appearing to be holding back increases in the wages of these other employees to provide the mandated increases to NMW and award minimum wage reliant employees' does not appear to be addressed in the response submitted to this question.*
>
> *ACCI are invited to provide more detail and evidence supporting the proposition that employers are 'holding back increases in the wages of these employees to provide the mandated increases to NMW and award minimum wage reliant employees'.*

112. It is not a question of holding back wage increases, but an inability of employers to increase the wages of other employees, due to excessive increases in the NMW and award minimum wages.

113. Taking the total wages bill and the total wage rise an employer is able to afford in a given year as a fixed basket of goods, if one group of employees receives an excessive wage increase, well beyond the amount the employer is able to afford for its entire workforce, then it is likely all other employees would receive a much smaller wage rise than they would otherwise be entitled to, with some likely to receive no wage rise at all.

114. Therefore, it stands to reason that the high real increases in the NMW and award minimum wage observed in recent years — well above inflation and the WPI and CPI — have come at a cost to other employees.

115. These other employees have received significantly lower growth in their wages than they would otherwise have received, or had their wages frozen, so that the employer can afford to pay the excessive increases in wages to NMW and award minimum wage employees. This is consistent with the thesis that it is middle Australia, and middle income earners not the award or agreement reliant, that have been most impacted by comparatively lower minimum wage growth in recent years.

116. This was observed in the research by Cassidy (2019), as described in ACCI's initial submission.[38] Cassidy (2019) showed 30% of all workers experienced no change in their nominal wages in 2017, and nearly one half of those people had experienced no wages growth for two years or more. In this year, the NMW and award minimum wages increased by 3.3%. Industries with a higher share of workers experiencing periods of no wages growth were most prevalent are in the retail and construction industries – i.e. industries with a high proportion of NMW and minimum award wage employees and most impacted by the slowing economy in 2017.

117. It appears that businesses in these industries were negotiating with their workers to delay wage increases to maintain jobs in response to weak demand. For these industries, it would appear, to accommodate the excessive increase in the NMW and award minimum wage delivered by the Expert Panel in recent years, non-award employees were going without a wage increase.

118. This is consistent with the discrepancy between the WPI increase in retail trade and the NMW and award minimum wages identified in ACCI's 2018-19 submission, as highlighted by the Panel.

119. Workers in some of the non-award agreement jobs in the retail industry received a very low or no wage increase in 2017-18 due to the discrepancy between the WPI and NMW and award minimum wage (i.e. the latter being much higher than the former). With NMW and award minimum wage employees in the retail trade gaining a wage increase of 3.5% in the 2017-18 financial year — well in excess the WPI which was only 1.5% — other employees in the retail sector had to be content with a much smaller increase in their wages, or had their wages frozen, to accommodate this excessive increase. With 30% of employees receiving a wage increase of 3.5% — more than double the average for the whole sector — the remaining 70% of employees were left to share an average wage increase of only 0.6% — less than half the average for the sector. It appears many non-award employees in the retail sector had their wages frozen or experienced a much lower wage increase in the 2017-18 financial year than they would otherwise be entitled to enable NMW and award minimum wage employees to receive their 3.5% wage increase.

120. Factors such as this are of greater importance in the current COVID-19 crisis where the revenue of many businesses across a broad range of sectors have been severely impacted. These businesses are struggling to meet their current wages bill, with many forced to stand-down or lay-off employees.

121. The Federal Government provided the JobKeeper payment for the express reason of enabling employers is sectors most impacted by the people movement and social distancing restrictions to maintain a connection with their employees, so that when conditions improve, they are able to reengage these employees and get their businesses back up and running quickly.

[38] Cassidy N. 2019 Low Wages Growth in Australia – An Overview. Reserve Bank of Australia

122. Many of the sectors most impacted by the people movement and social distancing restrictions — accommodation and food services, retail trade, arts and recreation, and administrative and support services — also have a highly award reliant workforce. In the current environment, another high real increase in NMW and award minimum wages, would counteract the actions of the Government to maintain employment in these sectors through the JobKeeper payment.

3.9 Question on Notice 2.2 - Increasing Minimum Wages as Stimulus

123. Question 2.2. of the Expert Panel's questions on notice, is addressed to the ACTU as follows:

> *The ACTU submitted that:*
>
> > *In the ACTU's view the current situation and the uncertainty surrounding how it progresses should not be a deterrent to an increase in the minimum wage and awards. On the contrary the minimum wage increase would both provide a stimulus and offer some long term certainty in regard to income flows, especially for the low paid. The ACTU notes that the government model of offering stimulus tranches is a recognition that stimulus works. Offering a decent minimum wage increase is particularly efficient in this regard as it both serves the current circumstance and offers better security of income in future. It delivers income particularly to lower paid workers who will spend it all. It improves sales for business. It improves employment.*
>
> *Given that many businesses have restrictions on opening, particularly businesses within Retail trade and Accommodation and food services (which are also award-reliant industries), how does increasing the minimum wage improve employment in these circumstances?*

124. Increasing NMW and award minimum wages under the cloud of the COVID-19 crisis would be counterproductive and damaging to vulnerable businesses and employees, particularly given that sectors most affected are also sectors that are the highly award reliant.

125. The majority of businesses in sectors with a highly award reliant workforce - accommodation and food services, retail trade, arts and recreation, and administrative and support services - are under dire financial stress due to the people movement and social distancing restrictions. Many of these businesses have no cashflow or their income has been severely curtailed and are facing the extremely difficult decision to stand down or lay off staff. For these businesses, the Panel's Decision to increase in the NMW and award minimum wage, or not, could mean the difference between closing their doors and laying-off workers, or being able to stay in business. It will also impact on confidence going forward.

126. In the current environment, an increase in the NMW and award minimum wage would not be stimulatory. On the contrary, the effect of an increase in the NMW and award minimum wage would be deflationary, as it would increase the financial stress on businesses and increase the number of employees businesses are forced to stand-down or lay-off. This is particularly so given the dramatic decline in productivity as a result of the social distancing and people movement restrictions. Australia cannot afford a further 'stimulus' to the Centrelink queues on top of the massive and rapid pandemic.

127. The Government has recognised the dire financial stress many businesses are facing in the wake of the COVID-19 crisis and are providing support to employers to retain their employees through the JobKeeper payment scheme. The JobKeeper scheme, which followed advocacy from ACCI, Ai Group and the ACTU, provides eligible employers with $1,500 per eligible employee per fortnight and is expected to support up to 6 million employees. For many employers in highly award reliant sectors, the JobKeeper payment scheme is likely to be the difference between retaining employees and being forced to stand-down or lay-off employees.

128. A recent ACCI survey of the impact of COVID-19 on business conditions, indicated almost 75% of small and medium-sized businesses are under financial stress and are likely to be eligible to receive the JobKeeper payment (available to businesses with a reduction in turnover of 30% or more).[39] These employers are simply unable to afford any increase in the NMW or award minimum wage, and the Panel should not be misled into mistaking JobKeeper for any ongoing capacity to sustain increased labour costs.

129. The current focus of the Government support measures is not on stimulating consumption demand, as the social distancing and people movement restrictions are constraining normal consumption behaviour. The Government's business support policies are focused on maintaining business viability during the shutdown and prevent workers being stood-down or laid-off, to avoid a surge in unemployment. The JobKeeper payment scheme, in particular, aims to maintain the connection between the employer and the employee, so that businesses can get back up and running quickly and employees have a job to go back to when the situation improves.

130. It is clear from the Government's policies, that it expects the direct impact associated with closing parts of the economy to extend at least until the end of September, with the fallout of this expected to continue well into 2021. Therefore the COVID-19 driven economic downturn is likely to extend through most of, if not all of the period covered by the 2019-2020 review decision – even if there is a rapid change in health restrictions.

131. The demand side stimulus the ACTU is seeking through a further large increase in the NWM and award minimum wage would be counterproductive, highly damaging, and inconsistent with the statutory framework for these matters. It would work against the JobKeeper payment scheme and other Government support measures. It would only lead to further job losses, as it would put further financial stain on businesses already struggling to stay in business.

132. Any increase in the NMW and award minimum wages would need to be affordable and not increase the financial stress on businesses struggling to stay afloat during the COVID-19 crisis. It would be unconscionable for the Expert Panel to increase NMW and award minimum wages if it came at the cost of substantial numbers of jobs and/or increased the risk of business failure. When small businesses fail, not only are investments and jobs lost, but lifetimes of work invested into business dreams are lost.

[39] ACCI 2020 *COVID-19 Business Conditions Survey Report.* https://www.australianchamber.com.au/wp-content/uploads/2020/04/ACCI-COVID-19-BUSINESS-CONDITIONS-SURVEY-REPORT.pdf

4. REPLY - LIVING STANDARDS / NEEDS

4.1 Living Standards

133. ACCI highlights the point made consistently in previous Decisions by the Expert Panel that, while there is no consensus on how to measure poverty, absolute poverty is not a relevant consideration in Australia for those in employment, at potential issue amongst other considerations is relative poverty.[40]

134. The Expert Panel has held in previous wage reviews, that those in full-time employment should *reasonably expect a standard of living that exceeds poverty levels.*

135. The NMW in Australia does afford those in full-time employment a decent standard of living in excess of poverty. As the highest minimum wage in the world, which has risen in real terms consistently since 2010, operating in the context of social transfers and a strong welfare safety net, child care subsidies, Medicare etc, it would be extraordinary if it did not.

136. We also stress yet again that the NMW is the exception not the rule, and that the effective minimum wage, and the median or representative award rate in award reliant industries is well in excess of the NMW which applies to only 180,000 employees / 1.7 % of all employment as noted in the Australian Government submission (p.3).

137. While the Expert Panel has previously taken the approach of setting a relative poverty line at the equivalised household disposable income derived from 60% of the median income, there does not appear to be a clear rational or consensus for setting the relative poverty line at this level. We understand this to be illustrative only, and to have been specifically rejected as a target or basis for minimum wage determination. This in no way should be taken to infer that ACCI agrees that this is the appropriate level for establishing or defining poverty.

138. Nevertheless, this threshold is achieved by the NMW at its current level. As shown in Table 8.6 of the Statistical Report, in 2019 most households types with the primary earner in receipt of the NMW (C14) had a disposable income that was greater than the arbitrary 60% median income poverty level used illustratively in these reviews.

139. As the ACBC notes in its example (p.9) *at January 2020 the NMW-dependent single adult was 71.0% of the median (for a single person) and the NMW-dependent family of four (couple parents with two children) was at 52.8% of the median calculation for a household of this size*. If 60% of the median wage is used as the threshold to determine a decent standard of living for a full-time employee, then the NMW achieves this for a single adult. While the income of the of single parent households and couple with children households were below the 60% arbitrary 60% median income threshold, ACCI maintains these household types are best supported through the tax and transfer system.

[40] [2019] FWCFB 3500 at [317].

140. Further, the ACBC's (p.10) illustration of the changes in household disposable income relative to the NMW, shows that for a single adult the NMW has steadily increased relative to the median household disposable income, such that a NWM-dependent single adult is better off in 2019 than they were in 2014. However, due to cuts to in family payment, the household disposable income of a NWM-dependent single parent with two children working part-time, is relatively less in 2019 than it was in 2014.

141. ACCI contends very firmly that it is not the role of the NMW to offset changes in the tax and transfer system.

142. In the 2019 Decision [63], the Expert Panel questions whether the minimum wage system is the appropriate instrument to address pockets of disadvantage. The Expert Panel quotes past Decisions, that *increases in minimum wages are a blunt instrument for addressing the needs of the low paid … [and] the tax-transfer system can provide more targeted assistance to low-income households and is a more efficient means of addressing poverty*.

143. Further, in the 2019 Decision [324] of the Expert Panel commented, that *because families differ in size, composition and the extent of employment, it is not feasible for the minimum wage to be set at a level that ensures all families with a full-time minimum wage worker have incomes that exceed the arbitrary poverty levels. Some larger families may need help from the welfare system*, and they do get that help.

144. This view is supported by the ACOSS submission (p.15), which stated the NMW should not be directly designed to cover the costs of children, because that role is best performed by the social security system. In assessing the living standards of low-paid workers and their families, ACOSS recommend the Commission take account of both minimum wages and social security payments, especially Family Tax Benefits.

145. Importantly, in any assessment of the appropriate level of the NMW and award minimum wages and whether minimum wage earners are forced to live in poverty, it is necessary to take into account the OECD data which shows Australia has the world's highest real hourly minimum wage (as measure by purchasing power parity), as highlighted in the Australian Government submission (p.3).

146. Given this, it can be argued that the substantial increases in the in the NMW and award minimum wages in recent years — at a much faster rate than the WPI and other measures of average wages — provide NMW-workers with a buffer that enables them to absorb a small or no increase in the NMW and award minimum wage at a time of massive financial crisis, while still maintaining a reasonable standard of living. Nine years of over the odds, real increases, give the Panel additional scope to reach an extraordinary decision for extraordinary circumstances in 2020

4.2 The Minimum Wage Bite

147. It is not appropriate to compare the minimum wage bite over a 45-year period, as presented by the ACTU (p.160). The economic situation in 1999-2000, let alone in 1974-75, was very different to that of today.

148. Observing the cumulative changes in the minimum wage bite over this extended period obscures the increase in recent years. As the ACTU submission (p.160) observes, the minimum wage bite has trended upwards since 2013, or over the current business cycle.

149. The growth in the minimum wage bite over the current business cycle is in stark contrast with the steady decline in productivity over this period, as discussed in Section 3.6 above. Any increase in the minimum wage bite, and wages growth in general, should reflect a commensurate increase in productivity.

150. While the ACTU notes that other countries, such as the United Kingdom, have experienced substantial increases in their minimum wage bite in recent years, it is important to view this in context. The minimum wage in the UK and other countries still lag well behind the minimum wage in Australia. They are also often very new minimum wages initially introduced at reasonable and cautious levels and then deliberately stretched through high increase that increase their bite.

151. As the Australian Government submission (p.3) noted, *'… the latest data from the Organisation for Economic Co-operation and Development (OECD) shows that Australia already has the highest real hourly minimum wages (in Purchasing Power Parity terms) in the OECD. This is a significant ranking when considering the importance of wage levels for business competitiveness and viability, as required by the Act.'*

4.3 Budget Standards

152. ACCI agrees with the ACTU that budget standards are one of many approaches to illustrate or indicate the needs of the low paid and should be approached with caution (p. 212). This is due to the challenge of maintaining its relevance to *reflect change in, among other things, the 'basket' of goods and services required to meet the relevant standard*. Similar to the ACTU, we also question the reliability of the methodology used to determine what is an acceptable consumption bundle and the characteristics of the reference households.

153. As the ACTU points out, Australians benefit from many vital intangibles such as digital access and public services such as childcare, health care, education, public transport and emergency services, disability and care support etc., which in addition to taxes and transfers lower the demand on the NMW to support a decent standard of living lower paid workers. Further discussion on budget standards is provided below in the next section (section 4.4) in response to the Expert Panel's Question on Notice 3.1.

4.4 Question on Notice 3.1 – Updating Budget Standards

154. Question 3.1 of the Panel's questions on notice, is addressed to ACBC as follows:

> *The Australian Catholic Bishops Conference (ACBC) discusses two ways that the budget standards could be updated from their original 2016 estimations. ACBC stated:*
>
> > *'… this may be done: either by an increase in the budgets reflecting increases in the CPI or by an amount that reflects changes in household disposable income. The former reflects the cost of the budget and the latter reflects the setting of the budget in a social context.'*

The ACBC and all parties are invited to provide comments on their preferred approach.

155. If budget standards are to have any place in determining NMW and award minimum wages, any update to the 2016 estimates of Budget Standards should be based on inflation, or the CPI, as this better reflects the changes in the cost of the items determined as required to achieve a particular standard of living and the income needed to purchase these items.

156. The Consumer Price Index (CPI) measures the change in the price of a range of goods and services which account for a high proportion of household expenditure, including food and non-alcoholic beverages; alcohol and tobacco; clothing and footwear; housing; furnishings, household equipment and services; health; transport; communication; recreation and culture; education; insurance and financial services.

157. The approach to determining budget standards closely aligns with the approach taken to calculate the CPI, as it takes a basket of goods determined as necessary to achieve a particular standard of living and identifies the income required to purchase these. Whether a top-down or bottom-up approach is used to determine the budget standard, it is still based on the income needed to purchase a specified basket of goods to achieve a particular standard of living. If the goods and services in the basket are not changing, then it is appropriate to update the budget standards by adjusting for any variation in the prices of the goods and services in the basket.

158. In calculating the CPI, the ABS disaggregates goods and services into 11 groups, which are then further disaggregated into numerous subgroups. Like items are grouped into 87 expenditure classes, with each expenditure class having its own weight relative to its importance. When updating the budget standards, a high level of accuracy can be achieved by observing any variation in prices of goods in each of the expenditure classes or subgroups and applying these changes at a more granular level to the items included in the basket for budget standards.

159. While this basket of goods may need to change over time, this change should be done through a more thorough review of the budget standards on a 5 or 10 year basis, with the budget standards updated using the CPI in the interim. This is similar to the approach taken by the ABS to update and re-weight the basket of goods and services used for the CPI.

160. It would not be appropriate to update the budget standards using household disposable income, as household disposable income doesn’t just take into account wages growth, it also reflects changes in the tax and transfer system. Therefore, adjusting the budget standard based on household disposable income would distort its value due to changes in the tax and transfer system.

161. Unlike the CPI, household disposable income bears no relationship to the items in the specific basket of goods and services observed by the budget standards. Therefore, any adjustment to the budget standard based on changes in household disposable income would be a very blunt approach. It would not provide an accurate reflection of the year-on-year change in the price of good and services determined as necessary to achieve a particular standard of living, or the income required to purchase the items.

162. ACCI is also concerned that updating the budget standards based on changes in household disposable income would result in the budget standards being adjusted to offset changes in the tax and transfer system.

163. Also of course as stressed throughout this submission, the economic shock of the pandemic calls into question whether the envisaged update could be relied upon in 2020. A user or decision maker may have the budget standards, and CPI data for 2019, but the economy of 2020 has been markedly changed and the available CPI data seems to have been rapidly overtaken by events.

164. There are increasing predictions of deflation in 2020[41], and the question needs to be asked whether in such a scenario the budget standards are therefore updated to become more adequate and could be an authority for moderating increases or not making an increase.

165. Data also indicates that:

    a. Some costs are rising, others falling – as Australians have seen in recent weeks at the petrol pumps.

    b. Deflation may be being masked by inflationary hangover effects of the initial panic buying phase of the pandemic.

[41] Michael Janda (2020-04-29) *Inflation data show how bushfires, drought and COVID-19 pushed up grocery costs*, ABC News Online

5. REPLY – OTHER MATTERS / SUBMISSIONS

166. The Panel received 25 initial submissions in this review. ACCI wishes to respond only to some of those not coming from our fellow employer bodies, and only then on a selected or partial, rather than line-by-line or exhaustive basis.

167. ACCI's non-engagement with any of the contentions of others in this submission / section should not be taken as any concession or acknowledgement of the veracity of their views and positions, and we would be pleased to address:

    a. Any further questions on notice raised by the arguments of other parties.

    b. Any questions or proposition testing in the 'live' consultations in June.

168. A number of the submissions are under informed by and not sufficiently sensitive to the massive change in circumstances created by the COVID-19 pandemic in 2020.

169. Too many of the submissions urge substantial wage increases, in excess of inflation, based on data across recent years from the former, pre-pandemic economy, and agendas based on pre-pandemic concerns.

170. This review is not and cannot be business as usual. Australian small businesses and employees are facing the most massive and damaging crisis in 90 years, if not ever. Unemployment has doubled, small retailers and restaurants have closed in simply alarming numbers. Government has taken massive and unprecedent countering action, and the fingers of the nation are collectively crossed that this works (along with our efforts to control the virus itself).

171. Submissions that could have been written in December or January, or that pursue long standing agendas for the minimum wage, are simply off point, and of very limited relevance and assistance to the Panel with the decision it must make in 2020, in the midst of a pandemic and resultant economic and jobs crisis.

172. We are facing extraordinary and extreme circumstances, not in living memory have so many jobs and so many businesses been rendered genuinely precarious in so short a period. Submissions that don't account for this, or that assert their core goal without proper engagement with the economic harm and unemployment of the pandemic are of no value to the Panel's determination.

5.1 ACTU

173. ACCI replies to a number of ACTU core contentions in the preceding sections. The ACTU submission is long and detailed, and we will further examine it throughout this process. To assist the Panel and keep this submission concise, we will reply in summary form at this stage.

174. **Ignoring pandemic reality**: This is another submission which could have been drafted before Christmas, and which would have the Panel proceed as though Australia was not facing its greatest peacetime crisis in living memory.

175. The ACTU seems to downplay the impact of the pandemic – although in fairness this may be a case of much of its submission having been prepared in advance of the impact of the crisis on jobs and businesses becoming clear (and it is not fully clear as yet and will not be until some months after the immediate medical crisis is over).

176. The ACTU has engaged with, and based its case on, data and circumstances which no longer apply. Its arguments are based on a different Australia. ACCI would love to confront the challenges the ACTU cites based on the strength of the 2019 economy, but that economy has been blown away by the health and economic crisis. The rise in unemployment the Panel must contend with is not 'minimal'[42], it is massive.

177. **Pandemic changes the impact**: Citing supposed paucity of impact following previous real increases cannot tell you what the impact would be in a damaged and raw economy and labour market still suffering trauma. The Panel has to be far more cautious than the ACTU would have you be, in assuming the impacts in 2020 will be the same as those of preceding years. Also of course, the ACTU is asking for the highest ever increase under the Fair Work Act. The Panel can for example have no confidence in the resilience of the labour market, which is different in mid-2020, than it was on Australia Day, and very different to that of late 2019.[43]

178. **Stimulus at the expense of small business and jobs is outrageous**: It is simply extraordinary that the ACTU could ask small business people in retail and hospitality to provide economic stimulus in the face of the pandemic. Small business people are facing the loss of homes and investments amassed across a lifetime of work, and risk personal bankruptcy.

179. The ACTU also fails to demonstrate:

a. How the stimulatory approach it seeks would be consistent with the statutory task and parameters for these reviews.

b. That such a stimulus would work.

c. That the negative impacts of such an approach do not outweigh its purposed benefits.

180. **Already rejected**: The Expert Panel has already unambiguously rejected the ACTU's call for a mathematical, multi-year target in 2017 and 2018.[44] Rejection is rejection – and the ACTU should not be asking the Panel to deliver by default what it has already found it cannot do under the Act. The Panel should reject 'making progress' towards a target it has explicitly refused as inconsistent with its statutory parameters.

181. **Support bargaining reform**: If the ACTU is concerned about too many people being on award rates[45], as ACCI is, then it should support policy change to restart the bargaining system, but that is not relevant to this panel in this review.

[42] ACTU, Initial Submission, [8(l)]
[43] ACTU, Initial Submission, [21]
[44] ACTU, Initial Submission, [2]
[45] ACTU, Initial Submission, [8(a)]

182. **Profit observations are baseless.** All the ACTU's observations on the profitability and sustainability of enterprises or employment effects of minimum wage increases have been overtaken by a new reality. The Panel can have no certainty on the longer term trends the ACTU relies upon, nor assume they will apply in 2020. There is a very solid basis to conclude these trends have been interrupted by the pandemic.

183. **This is not a redistributive process, it is safety net focussed.**[46]

184. **Arguing against itself.** Like others, the ACTU fails to confront a key logical fallacy. If 9 straight years of above inflation increases have not alleviated the poverty concerns it highlights, and poverty has become worse, then why would this be an argument for a further or higher increase in 2020? If inequality has not been alleviated by high minimum wage increases, and the world's highest or second highest minimum wage, why would that be an argument for the same course in 2020 (when there are clear and compelling arguments against such a course)?

185. If relative living standards have declined and continue to decline[47], and inequality is persistent[48], financial stress has increased[49] etc, why would this be an argument to pull the same lever yet again? It should really tell the ACTU that minimum wages cannot attain what it asks them to pursue.

186. **International experiences and reactions are not necessarily transplantable.**[50] New minimum wages, single minimum wages, minimum wages without strata of higher prescribed rates, and minimum wages that are not the world's highest or second highest do not make for ready or simplistic comparison to Australia. The UK, Germany, the US – each operates a different minimum wage system to that of Australia.

5.2 ACBC

187. **This submission is not updated for the crisis**: This is yet another submission that makes little, if any, reference to the massive crisis we are facing – it is yet another submission that could have been written prior to Christmas, and this should determine the weight accorded to it (which should be very little). Bringing the same agenda, arguments and position to a case in radically changed circumstances must carry even less weight.

188. ACBC fails to engage with the extent to which the statutory considerations it points to should be assessed in significantly changed circumstances. In particular it fails to engage with standards of living and poverty for those who risk losing their jobs or not regaining work in 2020.

189. The data cited are uncritically brought forward with no regard to how the economy and labour market have been changed by such a massive shock.

[46] ACTU, Initial Submission, [8(f)]
[47] ACTU, Initial Submission, [307]
[48] ACTU, Initial Submission, [308(a)]
[49] ACTU, Initial Submission, [308(f)]
[50] ACTU, Initial Submission, [8(m)]

190. ACBC attempt to credibly bring forward three-year old data[51]. This is incredible, in the sense of not being credible to inform the Panel's decision making.

191. In terms of **underpinning legal principles**[52], the fundamental context for the Fair Work Act must employment and Australians being in work. The context and purpose for the legislation has to commence with the fundamental importance of Australians being employed, and that is what has been so widely placed at risk by the pandemic.

192. We also note the various cases cited by ACBC seem at odds with its submission. Its proposal (a 4% increase) would elevate one purported consideration (needs) above others set out in the Act (and in the ILO Convention from which it is derived) – that's not what the authorities the ACBC cites stand for.

   a. What we can reliably know about needs will also have changed with the crisis, as with all other considerations.

   b. This means that even on the ACBC's incorrectly over-emphasised chosen consideration, its 'needs' material cannot be up to date or reliable. Again what we know we don't know must compel a greater level of caution than the ACBC would have the Panel exercise.

193. ACBC say at [11] that:

> *11. In order to properly construe ss. 284 and 285 of the FW Act (and s. 134), it is necessary to examine the scheme of the FW Act as a whole in so far as it relates to the terms and conditions afforded to employees.*

194. National economic prosperity and social inclusion are under threat as never before post-Great Depression. What is fair has changed with the level and pervasiveness of existential threat to jobs and businesses across recent weeks – as we say elsewhere in this submission – Australia is in extremis. The assessment under ss.284, 285 and 134 has changed, what a fair safety net would be has changed. Jurisdictional error[53] would lie in a business as usual or an expansionary approach as sought by the ACBC. It is hard to believe that a safety net could be fair, or indeed be a safety net, with a 4% wage increase in the face of massive losses and ongoing threats to businesses and jobs.

195. **Safety Net**: With respect, ACBC is reading the concept of a safety net[54] precisely wrongly and ignoring its established industrial meaning preceding the 2009 legislation. It is a circus analogy. The acrobats perform their tricks well above the net. The safety net is there to catch them if they fall. It is placed at a level well below the action, so as not to interfere or distract from the action.

196. In this case, the market and bargaining should regulate the actual rates of pay for as many people as possible, with a genuine safety net there for those who cannot, or cannot yet, negotiate higher wages and conditions.

[51] ACBC, Initial Submission, [41], p.9
[52] ACBC, Initial Submission, from p.3
[53] ACBC, Initial Submission, [16], p.3
[54] ACBC, Initial Submission, [21], p.5

197. To be clear, given the above inflation increases of the past 9 years, and the prospect of deflation in 2020-21, a minimum wage / award wages continuing at the levels set in 2019 could continue to be a safety net. ACBC's flawed analysis of that term does not compel or strengthen the case for awarding an increase in 2020 which would damage jobs and businesses.

198. ACBC submits that "*NMW and minimum wages provided for by modern awards do not create an effective safety net for the low paid*"[55]. That's a pretty extraordinary proposition for what is the world's highest or second highest minimum wage.

199. ACBC has exposed itself here, no minimum wage could ever be good enough or meet its self-determined definition of a safety net – its conception of the safety net is inherently aspirational (in addition to being unbalanced). The ACBC is also effectively saying that the Panel has been in error consistently since 2010 in these reviews, notwithstanding awarding 3.5% wage increases at near double the rate of inflation during this period. Again, this is not a credible contribution.

200. **ACBC is at odds with Australia's treaty obligations**: The entire thinking of ACBC ignores Australia's obligations under ILO Convention 131, which demands evaluation of both employee needs and economic factors[56], and upon which s.134 is clearly modelled. ACBC would have minimum wage setting determined solely by perceived needs (based on what is now clearly unreliable data). This is a more direct consideration and requirement than the International Covenant on Economic, Social and Cultural Rights elsewhere cited by ACBC[57]. ACBC's 'Consideration of the matters identified in S. 284(1)(a)-(e) of the FW Act' is cursory / throw-away.

201. The ACBC also places undue weight on minimum wages, ignoring that a mix of minimum wages, tax settings and social transfers determine living standards for the lowest paid.

202. **Not fair or legitimate under the statute to ignore small business people**: Again the ACBC seems entirely deaf to the concerns and limited capacities of small business people, in 2020 many of whom face closures, substantial losses and personal bankruptcy. ACBC seem to show a disconcerting certainty where the 'beneficial cause' lies in 2020[58] in the face of small business people losing houses, investments of lifetimes of work, and risking personal bankruptcy.

203. It is not good enough to have a single throw-away line saying that ACBC accepts that "increasing the NMW will have broader implications"[59]. Those implications include the livelihoods and careers of small business people and their staff, they include houses, retirement savings and careers.

204. **What is poverty**: ACBC attempt to redefine poverty and import new concepts and working into the Act which are not there.[60] The "Irish National Anti-Poverty Strategy - Sharing in Progress 1997" is not part of Australian law, and its conception of poverty cannot be blindly imported into Australia.

[55] ACBC, Initial Submission, [37], p.9
[56] ILO, Convention 131, Minimum Wage Fixing Convention, 1970, Article 4
[57] ACBC, Initial Submission, [23], p.6
[58] ACBC, Initial Submission, [24], p.6
[59] ACBC, Initial Submission, [86], p.17
[60] ACBC, Initial Submission, from [29], p.7

205. The Irish material predates the Fair Work Act by over a decade, and presumably if our Parliament has intended to define poverty as suggested, it would have done so (in fact the word 'poverty' does not appear in the Fair Work Act).

206. ACBC also attempt to make the 60% of median measure do more work than it has been accepted to provide in these reviews[61] – it is no more than illustrative, and should remain so. In fact, as ACBC well know, this has been specifically rejected as a minimum wage target. This ACBC call has already been rejected, and should be rejected again:

> *In order to answer the description of being "a safety net" any minimum wages order should ensure that every cohort of workers is in advance of at least the 60% poverty line.*[62]

207. **Real poverty will come from more lost jobs, and not getting Australians back into work**: Again, the ACBC fail to acknowledge that poverty is concentrated in the parts of the population that don't have any paid work. The ACBC ignores the real and immediate risk of poverty in 2020 for those who lose their job due to COVID-19 crisis, or who do not have work when the JobKeeper payment ends. The ACBC also ignores the additional risks of poverty its recommended course of action would lead to; failing to engage with the ramifications and impacts of increasing the price of employment in the face of such a massive crisis.

208. **Why haven't above the odds decisions alleviated poverty?** ACBC also fails a logical test. If the Panel has the power to alleviate poverty, and it has consistently increased minimum wages in excess of inflation for 9 years, why hasn't poverty been alleviated? When ACBC claims "*The conclusion to be drawn from these statistics in Poverty in Australia 2018 is that the Commission's decisions have the capacity to improve or reduce the living standards of more than 1.6 million Australians who are living in poverty and disadvantage*"[63] – why haven't we seen it? It is also difficult to ask that part time employment should alleviate poverty.

209. **Dated research:** ACBC also bring forward research that is very dated in a number of cases. With a massive and rapid change in circumstances in 2020, very little weight could be attached to much of the material the ACBC case is grounded in.

5.3 ACOSS

210. The ACOSS submission is another business as usual contribution to a review that is no longer being undertaken. That is, it seems to have been prepared in advance of the pandemic, to address concerns of the pre-crisis economy and labour market, and clearly plays insufficient regard to the massive change in circumstances in recent weeks.

211. It focuses on equity and comparative concerns which have been overtaken by existential ones. This is yet another submission that could have been written before Christmas and ignores the pandemic.

212. ACOSS is correct in asserting it has long shown an interest in these matters, but its expression of its role is telling.

[61] ACBC, Initial Submission, [35] – [36], p.8
[62] ACBC, Initial Submission, [36], p.8
[63] ACBC, Initial Submission, [77], p.10

213. Poverty and relative living standards are considerations for setting minimum wages, but caution needs to be exercised on the role of minimum wages in addressing society wide inequalities.

214. A real increase each year (in excess of prices) is not a given for any minimum wage, and any real increase needs to be funded by employers in excess of their incomings. ACCI maintains that it is not the role of minimum wages to be continuously growing in real terms, nor at any particular level. When ACOSS says 'the NMW has only increased in real terms by an average of 0.7% per annum over the last decade'[64], it misunderstands the role of minimum wages and the balance of considerations involved.

215. Also, if ACOSS included the last AFPC decision in 2009, preceding these reviews under the Fair Work Act (handed down in 2009) in its calculation then like would not be being compared with like. This should be clarified.

216. Genuine minimum wages are a safety net, underpinning bargaining. They will decline as a proportion of median wages if the system works as intended, and this is not inherently illustrative of any disadvantage or inadequacy.

217. The data on poverty where there is a wage earner in the household does not clarify whether this was a full or part time wage, nor the number of hours worked, nor the household types, nor the definition of poverty.[65] If *Poverty in Australia* is a forthcoming report[66], is it made available for scrutiny? If not – and others cannot examine it - it should not form part of the Panel's consideration.

218. Furthermore if poverty in households with a wage earner has increased since 2013, doesn't that show minimum wages are a very bad tool for addressing poverty? If the Panel has been putting up minimum wages by more than prices consistently throughout this time and things have become worse, then we need to ask whether the right lever is being pulled, not pull it harder.

219. We are also not clear on the extent to which underemployment may be playing a role in this data, which actually arguably favours a moderation in increases.

220. The points made in relation to the Centre for Future Work and deflation also appear pertinent to assessing various arguments from ACOSS.[67]

221. Above all, we cannot agree with ACOSS that "*minimum wage increases are likely to make a significant contribution to efforts to restore economic growth*". No, in 2020 increasing minimum wages risks costing jobs, leading more small businesses to close, diminish re-employment, and potentially delaying recovery.

222. We cannot stress strongly enough how much trouble huge numbers of small businesses are in as a result of this crisis, and how fragile the businesses and jobs in these businesses are, even with the very positive interventions of government.

[64] ACOSS, Initial Submission, p.3
[65] ACOSS, Initial Submission, p.4
[66] ACOSS, Initial Submission, p.10
[67] ACOSS, Initial Submission, p.4

223. Increasing minimum wages, particularly at the level key proponents are calling for, risks significantly endangering and delaying our return to economic growth and hurting low income families reliant on award and minimum wage employment.

224. We urge caution on this call from ACOSS "*Under these conditions, minimum wage increases can make a real contribution to efforts to restore economic growth*".[68] We are not under those conditions; we are in a massive jobs and economic crisis.

225. ACOSS makes various assertions about households with jobs living in poverty. A number of these households are now jobless and will remain so if increases to minimum wages disincentivise hiring in any restart or recovery. ACOSS' contentions regarding inflation, and rents cannot be assessed as we don't yet know the impact of the crisis on consumer prices, or housing prices. The one price we are all most aware of is fuel below a dollar a litre.

226. ACOSS has a long standing agenda to increase Newstart, but that is not within the remit of the Panel in this review. This is an important policy matter, again significantly intensified and probably changed by the crisis, but it is not a matter for this review. ACOSS comments on the adequacy Newstart in its submission must be irrelevant to your determination. It is analogous with ACCI members using this review to critique payroll tax; it may be entirely valid, but does not help the decision maker with the decision it needs to make.

227. ACOSS is also wrong to assert any relationship between minimum wages and social security[69], and we see no basis in the statutory parameters for these reviews to have any regard to downstream incomes for non-wage earners. We remind the Panel that it has previously rejected ACCI calls to have the living standards of those without work and in receipt of social security payments taken into account for assessing 'relative living standards'[70]; it would seem hard to credit that the unemployed or those on welfare could elsewhere carry any weight in the determination to be reached.

228. More importantly, employers cannot be asked to somehow make up for anyone's perception of inadequacy in any government payment. We are very concerned about this from ACOSS:

> *The experience of the last decade shows that governments cannot be consistently relied upon to supplement low pay for families with children, leaving them vulnerable to poverty in the absence of adequate increases in the NMW.*[71]

229. Where would ACOSS have this end – out of pocket costs of PBS medicines too high? – Cost shift to small businesses. Childcare out of pocket costs too high? - Cost shift to small businesses. That's not how public policy works – employers are not a substitute funder when anyone contests the adequacy of government transfers.

[68] ACOSS, Initial Submission, p.8
[69] ACOSS, Initial Submission, p.13
[70] Fair Work Act 2009, s.284(1)(c)
[71] ACOSS, Initial Submission, p.13

230. Finally, employers take particular issue with the following from ACOSS:

> *Under current economic conditions, there is both more scope and a greater need to substantially increase minimum wages. There is more scope to do so because the relationship between wage growth and inflation has changed in recent years and Australia is well short of 'full employment'. There is a greater need to do so because (in addition to wider concerns around poverty and living standards), Australia needs stronger wage growth to lift the economy from its present low-growth, low-inflation path.*[72]

231. It appears more than a million Australians are now out of work and that unemployment has at least doubled in a matter of weeks. Shuttered shops and dust gathering in restaurants attest to lifetimes of work and personal finances being lost for small business families. We are in a crisis of huge proportions, and it is not the time to be looking to what interests perceive the challenges of 2019 to have been.

232. The real concern for poverty and living standards in 2020 has to be job retention and job creation.

233. Jobs in Australia have not been at this level of risk since WWII, and submissions which ignore or downplay this risk are not properly assisting the Panel, nor are they in the interests of our community.

5.4 Centre for Future Work

234. **This is not an independent body**. The Centre comes before the Expert Panel claiming in its first paragraph that it is "independent and non-partisan"[73]. This does not accord with its activist and politicised stance on workplace relations, illustrated by the first paragraph on its website:

> *Despite enduring a heightened anti-union agenda, unions (headed up by ACTU) liaised early with government to secure the JobKeeper wage subsidy to prevent mass layoffs. Unions have negotiated with industry to adapt Awards and enterprise agreements (EAs) to new business conditions. The Coalition government has proceeded with significant changes to the Fair Work Act that could hamper efforts to drive an inclusive economic and labour market recovery. What's more, the Morrison government has indicated it will continue its pre-COVID agenda to further weaken representation rights and minimum labour laws.*

235. Its advisory board is dominated by union officials, academic critics of employers and the Coalition, and left aligned activists. Its director is a consistent critic of the Coalition and employers, with a background strongly linked to trade unions here and internationally.

236. A genuinely independent body does not seek to make a pre-emptive strike on an opponent the way the Centre attempts regarding the "predictable arguments from employer groups"[74].

237. Without undertaking a detailed deconstruction of its submission, we make the following points on the Centre's contribution and the weight that can be attached to it.

[72] ACOSS, Initial Submission, p.6
[73] Centre for Future Work, Initial Submission, p.3
[74] Centre for Future Work, Initial Submission, p.3

238. The Panel is not charged with ensuring aggregate or macro wage movements across the entire Australian economy; it is not charged with an AWOTE or WPI target the same way the RBA is in relation to prices. That the Expert Panel may or may not have moved aggregate wages growth at any point in recent years is not persuasive that it should deliberately attempt a task beyond its remit in 2020, nor that this should be a guiding factor in this review, at odds with the minimum wage considerations under Fair Work Act.

239. If Parliament had wanted to charge the Panel with attempting to chase (futilely and highly damagingly) an aggregate wages growth target, this would have been made clear in the legislation (although ACCI may have reacted by complaining to the ILO that this would have been inconsistent with Australia's obligations under ILO Convention 131).

240. **The Centre fails to show how under the Fair Work Act the Panel can or should attempt to drive aggregate wage outcomes in the macro economy.** An observation that this may have been occurring (which we do not concede) does not make this a valid role or goal for these reviews.

241. The Centre fundamentally misunderstands the statute, the role of the Panel and these reviews, as well as the massive economic and labour market crisis Australia faces in asking this Panel to "*use its power to help to restore regular and appropriate nominal wage increases*"[75].

   a. Employers don't need to say how Australia will return towards longer term trend wages growth – our point is that such a consideration is beyond the scope of this review.

   b. Frankly, when wages will return to trend levels of growth is one amongst many of the economic unknowns in 2020. It is unknowable, just as the full duration and economic impact of the pandemic remains unknowable at this point in time. The Panel needs to acknowledge the inescapable uncertainty in 2020, and be additionally cautious in the face of what it knows it cannot know at this point.

   c. However, we can say at this point that sustainable wages recovery will come with economic recovery, with a return to productivity and with labour market demand in a growing economy. ACCI wants to see Australia make a positive recovery from the pandemic and set foundations for sustainable and sustained economic growth based on productivity, efficiency and competitiveness – which maintains our living standards and status as a G20 economy, and provides a foundation to do better. It is in these circumstances and only in these circumstances, as businesses recover, jobs recover and communities recover, that wages growth can sustainably recover.

242. The impact of any attempt to counteract the impact of the pandemic on wages across the entire Australians economy, through inflating minimum wages during a time of massive crisis risks being disastrous. It risks crystallising and extending job losses, business closures, underemployment and compromising access to goods and services and the standards of living for Australians.

[75] Centre for Future Work, Initial Submission, p.7

243. The Centre is also quite wrong to ask the Panel to assume the role of the RBA and counteract risks of deflation.[76] Another statute attributes this role to another government body.

244. The Centre seems to have been less struck than the rest of the community by closed signs in shop windows, the for-let signs, and the queues outside Centrelink – and its views need to be assessed in that light. The Centre effectively urges the Panel to take a 'business as usual' approach in a time when it is plain to all that we are facing unique and massive challenges.

245. The Centre is also far too macro in focus, and it mistakes the nature (and impact) of the lever the Expert Panel has to pull in these reviews.

246. This is not 1975 when a highly centralised economy could be reasonably directly impacted by award wage variations. This is a diversified and decentralised economy in which minimum wage increases are disproportionately paid for small businesses and those who work for them, and it is an economy going through the greatest economic and employment shock in living memory.

247. The Centre comprehensively fails to address the effect of "a (so called) regular healthy increase in the minimum wage" would be in the circumstances of 2020[77], having regard to the factors the Panel must have regard to. It seems to comprehensively ignore the employment risks created by the COVID-19 pandemic and its impact on businesses and jobs, and ignores how the pandemic has rapidly changed our economy, labour market and prices for the worse.

248. The Centre also seems to show a disconcerting level of certainty regarding our economy and labour market; a level of certainty apparently denied Treasury, the RBA, the OECD, IMF etc.

249. The Centre also fails to appreciate that many wage increases commence with the start of the new financial year, well beyond award and minimum wage employment.[78] An equally plausible explanation for its apparent September quarter effect could be a greater proportion of wages being conditional on financial year performance beyond minimum / award wage earners.

250. The Centre seems to want to stave off stagnant prices / deflation by increasing the costs of employment in restaurants and pubs which are shut, which seem set to reopen only on a limited basis, and shops in retail sector mostly beset by stagnancy and closures.

251. Public sector wage outcomes[79] are completely irrelevant to this review, and frankly it is insulting to those in the private sector whose jobs and livelihoods are at genuinely and suddenly at risk through entirely exogenous factors, to raise outcomes for the very small minority with higher levels of job security at this time.

252. The sociocultural effects[80] of wage movements cited by the Centre need to be fitted to the statutory considerations the Panel has regard to, to even begin to be relevant and persuasive. The Centre does not do that.

[76] Centre for Future Work, Initial Submission, p.18
[77] Centre for Future Work, Initial Submission, p.3
[78] Centre for Future Work, Initial Submission, p.8
[79] Centre for Future Work, Initial Submission, p.6
[80] Centre for Future Work, Initial Submission, p.7

253. That said, ACCI agrees with concern for our culture and community during these times, but our pressing community and social concern keeping businesses in business and Australians in work to the maximum extent possible.

254. The Centre seems to ignore the socio-cultural impacts of more jobs being lost and people remaining out of work longer due to excessive wage costs to retain or enter work, and it also seems to pay insufficient regard to the socio-cultural risks of protracted unemployment or younger people not properly entering the workforce in the first place.

255. We ask the Centre a very simple and direct question at this point – what do you think Australians are most concerned about in mid-2020, the pace at which their wages are growing or having a job?

256. Now is not the time to use the wrong lever to be chasing aggregate outcomes, inconsistent with the Panel's statutory task, when that would seriously risk putting even more people out of work, and creating a price and confidence disincentive to recovery, reinvestment and rehiring.

257. Even if the Centre were somehow correct in arguing that the Panel can or should attempt to counteract slower aggregate wage growth, it fails to account for uncertainty, and what we know we don't yet know in this crisis. The Centre on the one hand says '*the labour market crisis resulting from the COVID-19 pandemic, and health orders which are effectively shutting down significant parts of Australia's economy, pose an unprecedented challenge to economic governance in all areas*'[81], but then ignores the factors compelling caution and moderation in the face of the unknown in 2020. Its position is simply too gung ho to be persuasive.

258. The Centre's submission is also ultimately highly impersonal, asking to sacrifice jobs, businesses, the assets of small business people in pursuit of macroeconomic outcomes beyond the remit of these reviews. There is simply insufficient engagement with the capacities or interests of small business people or their employees.

259. Pulling this down out of the clouds, does the Centre really think that small restauranteurs who have been paying rent on premises forced to close for months, who reopen with half the number of seats due to ongoing social distancing rules, and face reduced demand from customers worried about their jobs and their capacity for discretionary spending, are going to be able to sustain a 3% or more increase in labour costs?

[81] Centre for Future Work, Initial Submission, p.17

6. ABOUT THE AUSTRALIAN CHAMBER

The Australian Chamber of Commerce and Industry (ACCI) is the largest and most representative business advocacy network in Australia. We speak on behalf of Australian business at home and abroad.

Our membership comprises all state and territory chambers of commerce and dozens of national industry associations. Individual businesses are also able to be members of our Business Leaders Council.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, employing over 4 million Australian workers.

The Australian Chamber strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

OUR MEMBERS

Australian Chamber of Commerce and Industry

CHAMBER

- Business SA – Chamber of Commerce and Industry South Australia
- Canberra Business Chamber
- Chamber of Commerce Northern Territory
- CCIQ – Powering business potential
- Chamber of Commerce and Industry WA
- NSW Business Chamber
- TCCI – Invigorating Business
- Victorian Chamber of Commerce and Industry

INDUSTRY ASSOCIATION

- accord – hygiene, cosmetic & specialty products industry
- AMCA
- Animal Medicines Australia
- afa – Great advice for more Australians
- ais nsw
- Australia Arab Chamber of Commerce & Industry
- AADA
- Australian Beverages
- ADA – Australian Dental Association
- ADIA – Australian Dental Industry Association
- AFEI – Australian Federation of Employers & Industries
- Australian Gift & Homewares Association
- AHA
- aicm – Australian Institute of Credit Management
- Australian Made
- AMPC
- AMMA – Australian Resources & Energy Group
- AMTA – Australian Mobile Telecommunications Association
- apmf – Australian Paint Manufacturers' Federation Inc.
- ARIA – Australian Recording Industry Association
- ARITA
- Australian Retailers Association
- ARTA
- ASMI – Australian Self Medication Industry
- Australian Steel Institute
- ATEC – Australian Tourism Export Council
- ATIC – Australian Tourism Industry Council
- ATA – Australian Trucking Association
- AVA – Australian Veterinary Association
- BIC – Bus Industry Confederation – moving people
- Business Council of Co-operatives and Mutuals
- Caravan Industry Association of Australia
- Cement Concrete & Aggregates Australia
- Chemistry Australia
- CAA
- CMAA
- Consult Australia
- COPHE – Council of Private Higher Education
- CPA Australia
- CLIA Australasia
- Customer Owned Banking Association
- Direct Selling Australia
- Exhibition & Event Association of Australasia
- Fitness Australia
- Franchisee Federation
- HIA
- LFRA – Large Format Retail Association
- Live Performance Australia
- Master Builders Australia
- master plumbers – Expert. Committed. Professional.
- MTAA – Medical Technology Association of Australia
- Medicines Australia
- NALSPA
- NDS – National Disability Services
- neca – national electrical and communications association
- nesa – national employment services association
- National Fire Industry Association
- NRA – National Retail Association
- NRMA – MYNRMA.COM.AU
- NSW HCA – The voice of the Hire Car Industry
- NSW Taxi Council
- Outdoor Media Association
- The Pharmacy Guild of Australia
- ppca
- Primerus – The World's Finest Law Firms
- Printing Industries Association of Australia
- rcsa – Leading in the world of work
- Restaurant & Catering
- SAP
- The Tax Institute
- Think Brick Australia
- VACC – You're in good hands