PR002004

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

*Workplace Relations Act 1996*
s.113 applications for variations
s.108 references to Full Bench

**Australian Liquor, Hospitality and Miscellaneous Workers Union**

**THE HOSPITALITY INDUSTRY—ACCOMMODATION, HOTELS, RESORTS AND GAMING AWARD 1998**
(ODN C No. 389 of 1975)
[AW783479 Print P9138]
(C2003/6455)

**BUILDING SERVICES (VICTORIA) AWARD 2003**
(ODN C No. 21726 of 1992)
[AW822844 PR929372]
(C2003/6456)

**CHILD CARE INDUSTRY (AUSTRALIAN CAPITAL TERRITORY) AWARD, 1998**
(ODN C No. 3697 of 1985)
[AW772250CRA Print Q2724]
(C2003/6457)

**LAUNDRY INDUSTRY (VICTORIA) AWARD 1998**
(ODN C No. 21626 of 1992)
[AW787052 Print Q6887]
(C2003/6458)

**The Australian Workers' Union**

**HORSE TRAINING INDUSTRY AWARD 1998**
(ODN C No. 3039 of 1975)
[AW783476 Print R5058]
(C2003/2845)

**Textile, Clothing and Footwear Union of Australia and another**

**CLOTHING TRADES AWARD 1999**
(ODN C No. 696 of 1980)
[AW772144CRA Print S1147]
(C2003/2508)

**Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union**

**VEHICLE INDUSTRY—REPAIR, SERVICES AND RETAIL—AWARD 2002**
(ODN C No. 1339 of 1974)
[AW801827CRA PR931545]
(C2003/6563)

**VEHICLE INDUSTRY AWARD 2000**
(ODN C No. 1522 of 1979)
[AW801818 Print T3920]
(C2003/6570)

**METAL, ENGINEERING AND ASSOCIATED INDUSTRIES AWARD, 1998—PART I**
(ODN C No. 2568 of 1984)
[AW789529 Print Q2527]
(C2003/6741)

**GRAPHIC ARTS—GENERAL—AWARD 2000**
(ODN C No. 22956 of 1995)
[AW782505CAN Print S1716]
(C2003/6742)

**National Union of Workers**

**GROCERY PRODUCTS MANUFACTURE—MANUFACTURING GROCERS AWARD 2003**
(ODN C No. 1152 of 1985)
[AW820730 PR926383]
(C2003/6230)

**COMMERCIAL SALES (VICTORIA) AWARD 1999**
(ODN C No. 31107 of 1993)
[AW772623 Print R1382]
(C2003/6231)

**RUBBER, PLASTIC AND CABLE MAKING INDUSTRY—GENERAL—AWARD 1998**
(ODN C No. 1800 of 1982)
[AW794720 Print R4420]
(C2003/6232)

**STORAGE SERVICES—GENERAL—AWARD 1999**
(ODN C No. 32518 of 1992)
[AW796791 Print R1040]
(C2003/6233)

**Australian Municipal, Administrative, Clerical and Services Union**

**VICTORIAN LOCAL AUTHORITIES AWARD 2001**
(ODN C No. 36277 of 1989)
[AW811556 PR910776]
(C2003/6318)

**CLERICAL AND ADMINISTRATIVE EMPLOYEES (VICTORIA) AWARD 1999**
(ODN C No. 34749 of 1995)
[AW773032 Print S1367]
(C2003/6320)

**Transport Workers' Union of Australia**

**TRANSPORT WORKERS AWARD 1998**
(ODN C No. 1520 of 1982)
[AW799474CRN Print Q8693]
(C2003/6348)

**Shop, Distributive and Allied Employees Association**

**RETAIL AND WHOLESALE INDUSTRY—SHOP EMPLOYEES—AUSTRALIAN CAPITAL TERRITORY—AWARD 2000**
(ODN C No. 30030 of 1993)
[AW794740CRA Print T3309]
(C2003/6321)

**Construction, Forestry, Mining and Energy Union**

**TIMBER AND ALLIED INDUSTRIES AWARD 1999**
(ODN C No. 31 of 1950)
[AW800937 Print R5055]
(C2003/2846)

**Health Services Union of Australia**

**HEALTH SERVICES UNION OF AUSTRALIA (ABORIGINAL AND TORRES STRAIT ISLANDER HEALTH SERVICES) AWARD 2002**
(ODN C No. 32659 of 1990)
[AW819920 PR924564]
(C2003/6527)

Various industries

JUSTICE GIUDICE, PRESIDENT
VICE PRESIDENT ROSS
VICE PRESIDENT LAWLER
SENIOR DEPUTY PRESIDENT MARSH
SENIOR DEPUTY PRESIDENT LACY
COMMISSIONER LARKIN
COMMISSIONER GRAINGER MELBOURNE, 5 MAY 2004

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# LIST OF MAIN ABBREVIATIONS

In this decision the following abbreviations are used:

| | |
|---|---|
| AACS: | *Award and Agreement Coverage Survey 1999* |
| AAWI: | Average Annualised Wage Increases |
| ABARE: | Australian Bureau of Agricultural and Resource Economics |
| ABS: | Australian Bureau of Statistics |
| ACCER: | Australian Catholic Commission for Employment Relations |
| ACCI: | The Australian Chamber of Commerce and Industry |
| ACIRRT: | Australian Council for Industrial Relations Research and Training |
| ACOSS: | Australian Council of Social Service |
| Act: | *Workplace Relations Act 1996* |
| ACTU: | Australian Council of Trade Unions |
| AENA: | Average Earnings on a National Accounts Basis |
| AiG: | The Australian Industry Group and the Engineering Employers Association, South Australia |
| AWE: | Average Weekly Total Earnings |
| AWOTE: | Average Weekly Ordinary Time Earnings |
| CPI: | Consumer Price Index |
| DEAC: | Disability Employment Action Centre and the National Council on Intellectual Disability |
| DEWR: | Department of Employment and Workplace Relations |
| EEH Survey: | ABS Survey of *Employee Earnings and Hours, Australia* |
| GDP: | Gross Domestic Product |
| GOS: | Gross Operating Surplus |
| GSP: | Gross State Product |

| | |
|---|---|
| Lewis Report: | *A Report on the Effect of Raising Minimum Wages on Rural Businesses* |
| May 2000 decision: | *Safety Net Review—Wages May 2000* decision [Print S5000; (2000) 95 IR 64] |
| May 2002 decision: | *Safety Net Review—Wages May 2002* decision [PR002002; (2002) 112 IR 411] |
| May 2003 decision: | *Safety Net Review—Wages May 2003* decision [PR002003; (2003) 121 IR 367] |
| Metal Industries Award: | *Metal, Engineering and Associated Industries Award, 1998—Part I* [AW789529] |
| Minimum Wages Report: | *Minimum Wages in Australia: An Analysis of the Impact on Small and Medium Sized Businesses* |
| MPMSAA: | The Master Plumbers' and Mechanical Services Association of Australia |
| MYEFO: | Mid-Year Economic and Fiscal Outlook |
| National Motor Industry: | Victorian Automobile Chamber of Commerce, the Motor Traders' Association of New South Wales, the Motor Trades Associations of South Australia, Queensland, the Australian Capital Territory, the Northern Territory and Western Australia, and the Service Station Association of New South Wales |
| NFF: | National Farmers' Federation |
| NMI: | National Motor Industry |
| OECD: | Organisation for Economic Co-operation and Development |
| RBA: | Reserve Bank of Australia |
| SARS: | Severe Acute Respiratory Syndrome |
| SPRC: | Social Policy Research Centre, University of New South Wales |
| States and Territories: | States of New South Wales, Queensland, South Australia, Tasmania, Victoria, Western Australia and the Australian Capital Territory and Northern Territory |
| WCI: | Wage Cost Index |

# DECISION

## THE ACTU'S CLAIM

**[1]** The Australian Council of Trade Unions' claim for 2004, like those of the past five years, is for a flat dollar adjustment to the safety net award rates of pay. The amount of the claim is $26.60, with commensurate adjustments in wage-related allowances. Underpinning the claim are a number of union applications pursuant to s.113 of the *Workplace Relations Act 1996* (the Act) to vary certain awards. The applications were filed in November and December 2003.

**[2]** In support of its claim the Australian Council of Trade Unions (the ACTU) argued that, in the context of strong job growth, moderate growth in prices and wages and a growing economy, the amount of the increase is fair, both to employees and employers alike. More particularly, it was said that granting the claim will:

- have a negligible impact on aggregate earnings of 0.1 per cent;
- provide an average increase for full-time award workers of 4.5 per cent and an average increase for all award workers of 4.7 per cent;
- result in an average increase for award workers in the five-year period 2000 to 2004 (inclusive) of 3.4 per cent, the same as the average annual increase in the Wage Cost Index (WCI) for the period June 1999 to June 2003; and
- provide a real, but modest increase, which will help restore the relative value of after-tax wage income for the lowest paid award workers whose real after-tax wages have been essentially stagnant since 1999.

## OUTLINE OF RESPONSES TO THE CLAIM

### Employers

**[3]** With the exception of the National Farmers' Federation (NFF), each employer association, in opposing the ACTU's claim, conceded that a moderate increase in award rates of pay is appropriate. The Australian Chamber of Commerce and Industry (ACCI) identified a moderate increase as an amount of up to $10 per week in award rates up to and including the tradesperson classification — C10 ($542.20 per week) in the *Metal, Engineering and Associated Industries Award, 1998—Part I*[1] (the Metal Industries Award). The Australian Industry Group and the Engineering Employers Association, South Australia (jointly AiG) supported an increase of $10 per week in all award rates.

**[4]** The essence of the ACCI position is that the ACTU's claim ignores its economic impact, the plight of those without jobs and the liability of the employers for on-costs associated with wage increases. In support of its position ACCI contended

[1] AW789529.

that wages have been rising as a proportion of Gross Domestic Product (GDP) and profitability has been falling. According to ACCI, increases in interest rates and the value of the dollar are causing a contraction in manufacturing, while the rural sector is underperforming as a legacy of the remaining pockets of drought affected areas and the rising value of the dollar.

**[5]** In the alternative ACCI contended that if, contrary to its support for a capped increase of $10 per week, the Commission ordered an increase in all award rates and determined that a tiered increase was appropriate, then the cut-off point for the higher amount of the tier should be somewhat lower than the C2(a) rate in the Metal Industries Award. ACCI proposed also an alteration to Principle 8(a), the effect of which would be to defer for 28 days the operative date of a variation order to give effect to this decision.

**[6]** AiG's picture of the economic landscape is similar to that presented by ACCI. The ACTU's claim, it contended, is not sustainable because of weakening productivity growth, falling profits and deteriorating business competitiveness. AiG proposed a $10 per week increase in all award rates of pay, which, it said, would reflect the competitive pressures that industry faces in 2004 and accommodate the needs of the low paid.

**[7]** AiG proposed also that, as a matter of principle, unions be required to commit to continuous improvement in productivity, efficiency and flexibility as a condition precedent to the granting of an order in an application to give effect to this decision.

**[8]** NFF contended that the ACTU's claim is not justified. Its contention was made on the grounds that there is still a degree of uncertainty in the farm sector and, with the rising value of the dollar and a downturn in commodity prices, a generally gloomy forecast for the sector. NFF supported the ACCI proposal for an amendment to Principle 8(a).

**[9]** The Master Plumbers' and Mechanical Services Association of Australia (MPMSAA) expressed support for ACCI's submission and its position on an adjustment to minimum rates of pay.

**[10]** The Victorian Automobile Chamber of Commerce, the Motor Traders' Association of New South Wales, the Motor Trades Associations of South Australia, Queensland, the Australian Capital Territory, the Northern Territory and Western Australia and the Service Station Association of New South Wales (jointly the National Motor Industry) contended that the ACTU's claim is excessive. Its position was that the National Motor Industry (NMI) is comprised predominantly of small businesses and any increase in the safety net should be moderate. NMI said it would support an increase of $10 per week.

## Governments

**[11]** The Commonwealth opposed the ACTU's claim on the grounds of its magnitude and an anticipated adverse economic impact. However, the Commonwealth did not oppose an increase of up to $10 per week in award rates up to and including the tradesperson classification — C10 ($542.20) in the Metal Industries Award.

**[12]** The States of New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia and the Australian Capital Territory and Northern Territory (jointly the States and Territories) supported an increase of $20 per week in all award rates of pay.

## Other Interveners

**[13]** As in past safety net cases a number of community-based organisations made submissions in support of a safety net adjustment.

**[14]** The Australian Council of Social Service (ACOSS) supported substantial increases in minimum wages over time and contended that, in the short-term, the Commission should increase minimum wages to prevent them falling any further behind movements in average wage rates. ACOSS did not nominate an increase of any particular amount.

**[15]** The Australian Catholic Commission for Employment Relations (ACCER) renewed its 2003 claim that the Commission should set a benchmark or appropriate guidelines within which needs could be established. While supporting an increase of $26.60 per week in the federal minimum wage, an amount that it regarded as insufficient to provide a fair minimum rate of pay for award-only employees, ACCER said:

> *"[I]t does not support a uniform increase across all classifications because it believes that the increases should be directed to those who are most in need. The primary beneficiaries should be those at the lower paid classifications."*

**[16]** The Disability Employment Action Centre, a Commonwealth funded community legal centre, and the National Council on Intellectual Disability, a national body representing people with disabilities, (jointly DEAC) supported the ACTU's claim. DEAC also urged the Commission to introduce measures to secure the inclusion of the supported wage clause in all awards, to eliminate discrimination in awards and agreements and to establish a safety net of fair minimum wages and conditions for workers with disabilities.

# THE ECONOMY

## Overview of Economic Submissions

### The ACTU

**[17]** The ACTU submitted that the economic data point to a strong and robust economy with the near and medium-term outlook continuing to be positive. It further submitted that the economy is stronger than last year and predicted that the situation would continue to improve. The strength of the economy has occurred in an environment characterised by an abatement of factors such as SARS and the drought. In particular, drawing on national accounts and other statistical data, the ACTU submitted that:

- growth in domestic consumption and a strong rural sector contributed to strong growth (GDP) of 1.4 per cent seasonally adjusted (1.1 per cent trend) for the last quarter and a very solid 4.0 per cent seasonally adjusted (3.5 per cent trend) for the year. Non-farm GDP grew by 0.8 per cent for the December quarter to be 3.0 per cent higher over the year;

- company profits have continued to grow strongly reaching a 27.5 per cent increase over the year to the December quarter 2003. The Gross Operating Surplus (GOS) measure of company profits continued to grow sharply despite the slowdown in economic growth in the first half of 2003;

- inflationary pressures remained within the Reserve Bank of Australia's (RBA) target range for the medium-term. The all groups consumer price index (CPI) for the year ending December 2003 at 2.4 per cent was lower than that recorded for the same period in the previous year;

- there is evidence to support the forecast that the downward trend in inflation will continue before rising again in 2005 (RBA Statement on Monetary Policy);

- productivity growth has increased over the 12 months to the December quarter 2003, whether measured by GDP per hour worked throughout the economy (2.3 per cent) or GDP per hour worked in the market sector (3.3 per cent);

- the labour market remains strong with the total number of employees increasing by 1.8 per cent to January 2004; over 90 per cent of new employment has been in full-time jobs. Employment growth remained strong in the latest monthly data for January 2004. The unemployment rate has remained below 6.0 per cent for the last six months, reducing to 5.6 per cent for January 2004;

- wages growth has remained moderate with the WCI increasing 3.6 per cent for the year to December 2003. This is broadly consistent with previous yearly outcomes; and

- the external sector recorded an increase in the current account deficit largely as a result of the fall in exports which was a consequence of the drought and the appreciation of the Australian dollar. Australia also recorded a strong trade deficit in November 2003.

**[18]** The ACTU relied on the Mid-Year Economic and Fiscal Outlook (MYEFO) mid-year forecast to demonstrate a positive picture of the Australian economy over the foreseeable future. The drought has broken and there has been a marked improvement in the global economy which should boost Australia's economy and further alleviate some of the difficulties that have been incurred by exporters (due to the rising dollar) through an increase in demand for Australian exports. It relied on the Treasurer's comments following the release of the MYEFO forecasts set out in the review of the economic outlook later in this decision.[2]

[2] The Hon. Peter Costello, MP, Treasurer, 8 December 2003, *Press Release: 2003–04 MYEFO*, No. 074.

**[19]** It also relied on the Prime Minister's statement:

> *"The economy remains powerful and robust. There has been a tiny rise in the unemployment level, but there has been some reclassification carried out by the ABS. But it remains under six per cent. It has been so since September. We have a very strong employment outlook, fuelled and supported by a very strongly growing economy."*[3]

**[20]** The ACTU in reply said:

> *"Economic data released since the ACTU filed its original submissions confirms the ACTU's analysis of Australia's recent economic performance. The December quarter National Accounts show GDP growth in that quarter of 1.4 per cent (seasonally adjusted), giving Australia's economy an annualised growth rate in the last six months in excess of 5 per cent. Prices and wages growth have continued to be moderate with little change in either the CPI or the Wage Cost Index from the September quarter figures referred to in our original submissions. CPI is currently at 2.4 per cent and the most recent Wage Cost Index is 3.6 per cent in trend terms (3.7 per cent seasonally adjusted). Labour market conditions continue to be strong, unemployment remains at its lowest level for 22 years."*

**[21]** Table 1 sets out the comparison of key economic indicators for the past two years, together with forecasts for 2003–04.

**Table 1: Key Economic Indicators Comparison**

| | This time last year[(a)] | Most recent data[(a)] | MYEFO forecast (2003–04) |
|---|---|---|---|
| GDP (Trend) | 3.1 | 3.5 | 3¾ |
| GDP (Seasonally Adjusted) | 2.8 | 4.0 | |
| Inflation (CPI) | 3.0 | 2.4 | 2¼ |
| Employment Growth | 3.0 | 1.8 | 1½ |
| Unemployment | 6.1 | 5.7 | 5¾ |
| Wages | | | |
| WCI | 3.5 | 3.6 | n/a |
| AENA | 3.2 | 3.6 | 3¾ |

Notes:
(a) In the second and third columns trend figures have been used (except for CPI and GDP (Seasonally Adjusted)). GDP, CPI and WCI are year to December 2002 and 2003 respectively. Labour Force statistics are year to January 2003 and 2004 respectively.

*[Source: Exhibit ACTU 4, Table R1.1 at para R1.6.]*

[3] Transcript of Joint Press Conference, 11 March 2004, The Hon. John Howard, MP, Prime Minister of Australia with the Hon. Dr Brendan Nelson, MP, Minister for Education, Science and Training.

## The States and Territories

**[22]** The States and Territories submitted that the Australian economy continues to perform well and that the outlook is generally positive. They submitted that since the *Safety Net Review—Wages May 2003* decision[4] (the May 2003 decision) was handed down:

- a number of potential threats to the Australian economy (including the drought, the war in Iraq and the advent of SARS) have eased; and

- the Australian economy continues to improve — this is demonstrated by a range of economic forecasts.

**[23]** The States and Territories relied on and supported the ACTU's submissions. In summary, the States and Territories submitted that:

- expectations for economic growth range from 3.5 per cent to 4 per cent in 2003–04, an improvement in the performance from the previous year;

- the economy is estimated to grow by 3.5 per cent in 2004–05, with growth expected to come from exports, easing but solid consumption and business investment. Housing investment is expected to detract from growth;

- net exports are forecast to detract 1.5 percentage points from GDP growth in 2003–04 which is an improvement on the 3 per cent fall in net exports in the previous year. Rural exports are expected to recover and tourism to pick up. Offsetting these factors is the appreciation in the Australian dollar which is likely to stimulate import demand. Net export demand is forecast to rise in 2004–05 but not expected to add to economic growth;

- the recovery in farm production expected in 2003–04 of 27 per cent is expected to continue into 2004–05;

- employment and unemployment are expected to remain relatively stable;

- wage pressures are expected to remain moderate, balanced by increases in productivity;

- headline inflation for 2004–05 is expected to grow by around 2 per cent (year average). Although capacity utilisation is high, capacity constraints may not emerge in the coming year, although in New South Wales some employers are reporting labour shortages;

- the CPI may fall by mid 2004 but drift back by December 2004 and by mid 2005 be subject to upward pressure; and

- forecasts for world growth are strong, largely due to a United States-led recovery.

[4] PR002003; (2003) 121 IR 367.

**[24]** Risks for 2004 were identified as:

- slowdown in dwelling construction;
- higher interest rates;
- delay in major recovery of farm output; and
- re-emergence of major foreign security risks.

**[25]** Table 2 sets out the predictions for major economic indicators on a state and territory basis:

**Table 2: Summary of Outlook for the States and Territories for 2003–04**

| | % change | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | VIC | NSW | SA | WA | TAS | NT | QLD | ACT |
| GSP[(a)] | 3.25 | 3.5 | 4.0 | 4.5 | 3.5[(c)] | 1.6 | 4.25 | 3.1 |
| CPI | 2.25 | 2.25 | 2.75 | 2.5 | 2.3 | 2.1 | 2.50 | |
| Employment growth | 1.00 | 1.5 | 1.25 | 2.25 | 2.2 | 1.0 | 3.25 | 1.4 |
| Unemployment rate | 5.25 | 5.5 | | 5.75 | 8.4 | | 6.25 | |
| WCI[(b)] | 3.5 | 3.75 | | 3.25 | | | | |

Notes:
(a) Gross State Product.
(b) Wage Cost Index.
(c) Not comparable with ABS statistics.

*[Source: Derived from written submissions, see Exhibits G1 at paras 48, 59, 67, 73, 81, 88 and G2 at para 11.]*

## ACCI

**[26]** ACCI submitted that the Australian economy will continue to grow in 2003–04 and that economic conditions will be reasonable. However, economic growth will not be as strong as over the last 12 months because the momentum for sustained economic growth has dissipated, especially having regard to data on expectations of investment growth. The strong growth which the Australian economy has recently recorded has been fuelled by consumption expenditure and farm income. Given the negative household savings ratio, high increases in consumer demand cannot be sustained, nor can farm income which is volatile. ACCI also submitted that dwelling investment and new private business investment will grow less slowly than in the past year and that on the basis of actual and expected capital expenditure, there may be an actual contraction in investment relative to the level experienced in the current financial year.

**[27]** ACCI submitted that, whilst investment indicators were generally performing well, a number of circumstances impacting on investment indicators raise the question of whether the recent performances will be sustainable. These include:

- gross fixed capital formation;

- new non-dwelling construction;
- investment in machinery and equipment; and
- new private business investment.

**[28]** ACCI also submitted that the labour market was performing very well, particularly the growth in full-time employment, and the reduction in the unemployment rate to 5.6 per cent was a tremendous improvement to be below 6 per cent. However, ACCI warned that the rate of underemployment introduces a degree of concern when considering labour market outcomes.

**[29]** ACCI, whilst acknowledging that the growth in the inflation rate as measured by the CPI had declined, nevertheless cautioned that this rate of increase in the CPI could not be sustained at such moderate levels. This is because the contribution to that moderation by the appreciation of the Australian dollar may be reversed in the coming quarters. The effect of the rising dollar on dampening price increases is evident from a comparison of the rise in prices in the tradable and non-tradable goods sectors. The former, being exposed to international competition, has recorded zero price increases whilst the latter, with no such competition, recorded a 4.4 per cent increase in the year to the December quarter 2003.

**[30]** ACCI submitted that the RBA warned that the CPI may react in a volatile way with further falls followed by rises to an annual rate of around 2.5 per cent. The concern here is that with the deflationary impact of the dollar out of the picture, increased inflationary pressures may emerge as the price of imports increases. The RBA target rate of 2 to 3 per cent may be exceeded.

**[31]** ACCI submitted that exports have not grown in real terms since December 2003 largely due to the drought conditions in Australia. With imports rising there is a problem with international competitiveness since the gap between exports and imports cannot continue indefinitely.

**[32]** ACCI further submitted that the impact of the safety net adjustment decision is reflected in the WCI, which has spiked in the September quarter each year since its publication. This is evidence that in an aggregate sense the safety net adjustments have an economic impact. ACCI submitted that the real WCI demonstrates that since 1997 the level of wages has grown by 1 per cent a year or 5.9 per cent for the total period.

**[33]** ACCI acknowledged that labour productivity over the past year of 2.4 per cent has been quite healthy. ACCI's preferred measure of market sector productivity has grown by 3.3 per cent compared with a longer run average of 2.7 per cent. However, hours worked in the market sector have recorded very low growth since December 1999.

**[34]** ACCI recognised the change in rural conditions with the easing of the drought but submitted there are still weaknesses within the farm sector which are affecting the economy as a whole.

**[35]** On the basis of the latest Business Barometer, ACCI concluded that the economy is showing more strength than last year but there is no major acceleration taking place.

## AiG

**[36]** AiG submitted that in the past 12 months international competition has intensified such that Australia has experienced pressures arising out of high levels of imports, weaker exports and deteriorating business competition. The December quarter national accounts record no growth in the manufacturing sector in 2003 and a complete absence of export growth in manufacturing exports which have experienced their worst downturn in 40 years.

**[37]** Moreover, there has been a significant decline in manufacturing employment of 70 000 jobs. Profit growth has been non-existent since June 2003.

**[38]** The pressures on the manufacturing sector are described as:

- manufacturing production has gone into reverse;
- the sale price for Australian produced manufacturing goods has gone backwards;
- for the first time in many years the manufacturing sector has experienced a complete absence in exports growth; and
- exports have fallen.

**[39]** AiG submitted that the key factor relevant to an assessment of Australia's economic performance and outlook is the significant decline in business competitiveness. This has resulted from the sharp appreciation of the Australian dollar, the impact of global capacity and China's emerging industrial strength, together with an environment of increasing interest rates. These factors *"are encouraging the trifecta of higher import competition, weaker export competitiveness and deteriorating business competitiveness"*.[5]

**[40]** AiG emphasised the speed with which the Australian dollar has appreciated, particularly over the past 12 months (33 per cent) and the corresponding increase in the Australian trade weighted index, a key indicator of international competitiveness which has increased by 23 per cent. It identified major consequences of the higher Australian dollar — reduced earnings from exports and weakened competitiveness in key markets such as the United States; intensification of competition within the Australian market by making imports cheaper and more attractive to both business and the consumer; and import prices falling dramatically putting a hold on selling prices.

[5] Transcript at para 2501.

**[41]** In AiG's view international competition has resulted in an increasing number of exporters reporting an intention to move employment offshore — this trend is particularly apparent in the textile, clothing and footwear sector.

**[42]** AiG further submitted that the glut of excess capacity in global manufacturing was compounded by the rapid emergence of the Chinese economy which is characterised by manufacturing and construction. Over the past year the intensity of competition from China has accelerated due in large part, but not limited to, the appreciation of the Australian dollar.

**[43]** AiG submitted that a tough trading environment exists for manufacturing firms. It relied on the latest AiG quarterly survey of manufacturing to confirm that manufacturing activity has continued to ease, companies are struggling to lift profitability and there is slower production growth with signs of a softening in domestic demand. In short, the export and manufacturing sectors are under quite serious pressure:

> *"The data including the quarterly survey and the national accounts, demonstrates the point we have been making, namely that the export and manufacturing sectors are under quite serious pressure."*[6]

**[44]** AiG shared ACCI's concern for labour market outcomes by highlighting the level of underemployment.

**NMI**

**[45]** NMI submitted that the economy was growing strongly:

> *"[I]t is true that there have been record new vehicle sales in 2003, and good economic conditions, and that generally many observers would assume that the retail motor industry businesses have enjoyed several years of high profitability."*[7]

**[46]** It submitted however that the Commission should take into account the economic circumstances confronting small business, in particular the national motor industry. Despite record new vehicle sales in 2003 and good economic conditions the motor vehicle retail and services industry has recorded low profitability and low profit margins. In particular, profit margins have fallen for two consecutive quarters to stand at 1.9 per cent compared with 6.1 per cent for the all services industries within the Australian economy. In a joint AC Neilson Survey (November 2003) respondents recorded that almost half of retail motor industry businesses halved their business profitability with just over a half reporting poor or very poor profitability.

**[47]** NMI expressed concern over the Commission granting the ACTU's monetary claim arguing that the industry would become less efficient and less capable of responding to competition with more businesses being at risk of closure. The situation would be exacerbated in Victoria due to proposed changes in workers' compensation premium rates.

[6] Transcript at para 2628.
[7] Transcript at para 2712.

**[48]** Other negative factors facing the industry include the risks in rural Australia such as the ongoing severity of the drought, especially in New South Wales and Queensland, and the rising Australian dollar resulting in lower incomes in the retail sector. Further pressure is being put on the industry by skills shortages as competition pushes up wage rates. Sections of the industry, including farm machinery, service stations, body repairers and automobile repairers are facing specific challenges.

## NFF

**[49]** NFF submitted that the Commission should have particular regard to the farming sector and a less *"metro centric"* focus on the effects of the safety net adjustment. It submitted that uncertainty still exists for the farming sector in Australia.

**[50]** Despite a rebound in the farming sector, drought-declared areas in New South Wales and Queensland are extensive and have reappeared. The Australian Bureau of Agricultural and Resource Economics (ABARE) has predicted a tough outlook for agriculture in 2004–05, including falling farm incomes and farm output and prices received by farmers.

**[51]** NFF acknowledged that there has been an improvement from last year, particularly in the cropping sector, but the rebound has not been as strong as was hoped. Negative impacts are the appreciation of the Australian dollar and a downturn in commodity prices.

**[52]** NFF's submission stressed the impact of a *"cash drought"* which occurs during a drought recovery phase. The longer-term impact of the drought is still to be felt.

**[53]** NFF submitted that the appreciation of the Australian dollar has had a negative impact on the rural economy. It calculated that every 1 per cent appreciation in the Australian dollar against the United States dollar cuts annual farm increases by $115m.

**[54]** NFF highlighted the impact of the drought on employment levels which fell from 443 000 people employed in agriculture in the November quarter 2001, compared with 369 000 in the November quarter 2002 and 376 000 in the November quarter 2003.

## The Commonwealth

**[55]** The Commonwealth submitted that the economy is forecast to grow by 3¾ per cent in 2003–04. It submitted that:

> *"2.1 . . . The positive outlook is underpinned by expected robust growth in domestic demand and a stronger performance from the external sector while non-farm GDP is expected to grow solidly."*

and further submitted that:

> *"2.2 Employment growth should remain moderate with the unemployment rate remaining steady. The forecast for year-ended inflation in 2003–04 is 2¼ per*

*cent, reflecting the appreciation of the Australian dollar and continued moderate wages growth.*

*2.3 Near-term risks around the outlook have diminished over the course of 2003 and are now more evenly balanced. However, some medium-term risks around both the domestic and international outlooks have become more pronounced."* [8]

**[56]** In relation to the domestic forecast, the Commonwealth submitted that recent economic releases are consistent with MYEFO forecasts. Economic and employment growth have recovered since the final half of 2003 with over 109 000 jobs created in the six months to February 2004.

**[57]** Employment growth is forecast to grow around 1½ per cent in 2003–04 and 1¾ per cent in 2004–05. The unemployment rate is expected to remain at around, or a little below, 5¾ per cent over the forecast horizon.

**[58]** Inflation is expected to decline to around, or possibly below, the bottom of the target band of 2 to 3 per cent through the forecast horizon in line with modest growth in wages and solid productivity growth.

**[59]** Australia's low inflation rate is due in part to a decline in the price of imported goods as a result of the appreciation in the Australian dollar. The price of domestic goods and services has grown slightly over the year (due to cost pressures in some service industries, as well as increases in construction costs).

**[60]** In relation to the external economy, the pace of the global economic recovery has picked up consistent with MYEFO forecasts. However, a downside risk remains for the medium-term with the global recovery still over-reliant on US growth.

**[61]** The risks around the near-term outlook are evenly balanced. However, a number of issues weigh on prospects for stronger domestic growth and more broad-based investment growth over the medium-term, including:

- how the current housing cycle plays out;
- the trading conditions of some exporters and firms in import-competing industries being affected by the appreciation in the Australian dollar;
- failure of the rural economy to generate forecast increased farm production;
- over-dependence on the US for global recovery; and
- the high global price of oil.

**[62]** The Commonwealth submitted that the downside risks should be balanced in the short and medium-term by upside risks:

[8] Exhibit Commonwealth 4.

- the housing market may hold up longer than expected;

- ongoing momentum of domestic demand could produce stronger than anticipated growth; and

- global imbalances could unwind in an orderly fashion and global recovery could be stronger and more widespread than forecast.

# Indicators of Past Economic Activity

## Economic Growth

**[63]** On a quarterly basis the annual growth in GDP has improved from 2.9 per cent in September 2003 to 3.5 per cent in December 2003. This contrasts with 3.1 per cent annual increase in the year ended December 2002. The less reliable quarterly data show an increase for the December quarter 2003 of 1.1 per cent, the same as recorded for the September quarter 2003 and over double the 0.5 per cent increase in December 2002.

**[64]** Non-farm GDP recorded a 3 per cent annual increase to the December quarter 2003, lower than the annual growth figures recorded for each of the quarters since September 2001 and slightly lower than 3.7 per cent for the period March 1996 to December 2003. The quarterly figures demonstrate that the December quarter 2003 growth of 0.8 per cent was consistent with recorded increases over the past four quarters.

**[65]** Farm GDP grew by 21.1 per cent in the year ended December 2003. This contrasts with -2.6 per cent for the year ended September 2003 and -27 per cent for the annual figure to December 2002. The December quarter 2003 data recorded an 8.8 per cent increase building on strong growth which has occurred since June 2003.

**Table 3: Economic Growth—Real Gross Domestic Product Growth (Trend Estimates)**

| Quarter | Non-farm GDP | | Farm GDP | | Total GDP | |
|---|---|---|---|---|---|---|
| | % change | | % change | | % change | |
| | Over previous quarter | Over previous year | Over previous quarter | Over previous year | Over previous quarter | Over previous year |
| 2000 Dec | 0.1 | 2.2 | -1.5 | -3.2 | 0.1 | 2.1 |
| 2001 Mar | 0.4 | 1.5 | 0.8 | -2.6 | 0.4 | 1.4 |
| Jun | 1.1 | 1.9 | 1.9 | -0.3 | 1.1 | 1.8 |
| Sep | 1.3 | 3.0 | 2.3 | 3.5 | 1.2 | 2.8 |
| Dec | 0.9 | 3.8 | 1.9 | 7.0 | 1.1 | 3.8 |
| 2002 Mar | 0.8 | 4.2 | -0.2 | 5.9 | 1.0 | 4.4 |
| Jun | 1.0 | 4.1 | -5.7 | -1.9 | 0.8 | 4.2 |
| Sep | 1.2 | 4.0 | -11.4 | -15.0 | 0.7 | 3.7 |
| Dec | 1.0 | 4.1 | -12.5 | -27.0 | 0.5 | 3.1 |
| 2003 Mar | 0.7 | 4.0 | -6.0 | -31.2 | 0.5 | 2.6 |
| Jun | 0.7 | 3.7 | 5.6 | -23.0 | 0.8 | 2.6 |
| Sep | 0.8 | 3.2 | 12.1 | -2.6 | 1.1 | 2.9 |
| Dec | 0.8 | 3.0 | 8.8 | 21.1 | 1.1 | 3.5 |

Notes: Reference year for chain value measures is 2001–02. All figures are trend estimates.

*[Source: ABS Cat. No. 5206.0.]*

## Contribution to Growth

**[66]** The latest data show that total final consumption expenditure was a strong contributor to growth. The annual figures to the December quarter 2003 show a 3.8 percentage point contribution to GDP total growth of 3.5 percentage points. Whilst total gross capital formation contributed 2.2 percentage points, this was overwhelmingly from the private sector, particularly machinery and equipment. The strong consumption and investment growth was offset by a 3.3 percentage point subtraction in net exports, primarily reflecting stronger imports and lower exports.

## Table 4: Contributions to Growth in Gross Domestic Product

| Component | 2002–03 Sep | 2002–03 Dec | 2002–03 Mar | 2002–03 Jun | 2003–04 Sep | 2003–04 Dec | Dec Qtr 2001 to Dec Qtr 2002 | Sep Qtr 2002 to Sep Qtr 2003 | Dec Qtr 2002 to Dec Qtr 2003 |
|---|---|---|---|---|---|---|---|---|---|
| Final Consumption Expenditure | | | | | | | | | |
| Government | 0.2 | 0.2 | 0.1 | 0.1 | 0.1 | 0.1 | 0.7 | 0.6 | 0.5 |
| Private | 0.6 | 0.4 | 0.5 | 0.8 | 0.9 | 1.0 | 2.7 | 2.7 | 3.2 |
| Total final consumption expenditure | 0.8 | 0.6 | 0.7 | 0.9 | 1.1 | 1.1 | 3.3 | 3.3 | 3.8 |
| Gross Fixed Capital Expenditure | | | | | | | | | |
| Private | | | | | | | | | |
| Dwellings | 0.3 | 0.1 | 0.0 | 0.0 | 0.1 | 0.2 | 1.1 | 0.3 | 0.3 |
| Non-dwelling construction | 0.3 | 0.3 | 0.1 | 0.0 | 0.1 | 0.1 | 1.2 | 0.5 | 0.3 |
| Machinery and equipment | 0.2 | 0.2 | 0.2 | 0.4 | 0.4 | 0.2 | 1.0 | 1.1 | 1.2 |
| Real Estate transfer expenses | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.1 | 0.1 | 0.1 | 0.1 |
| Total private gross fixed capital formation | 0.8 | 0.6 | 0.3 | 0.5 | 0.6 | 0.6 | 3.3 | 2.1 | 2.2 |
| Public | | | | | | | | | |
| Total public gross fixed capital formation | 0.1 | 0.1 | 0.1 | 0.0 | 0.0 | 0.0 | 0.2 | 0.2 | 0.1 |
| Total gross fixed capital formation | 0.9 | 0.7 | 0.4 | 0.5 | 0.6 | 0.7 | 3.4 | 2.3 | 2.2 |
| Increase in Stocks | | | | | | | | | |
| Private non-farm | -0.1 | 0.1 | 0.4 | 0.4 | 0.0 | -0.2 | -0.2 | 0.9 | 0.6 |
| Farm | -0.1 | 0.1 | 0.1 | 0.0 | 0.0 | 0.1 | -0.2 | 0.2 | 0.2 |
| Total changes in inventories | -0.4 | 0.0 | 0.8 | 0.4 | 0.1 | -0.5 | -0.6 | 1.4 | 0.8 |
| Gross National Expenditure | 1.4 | 1.4 | 1.6 | 1.8 | 1.8 | 1.6 | 6.3 | 6.6 | 6.9 |
| Exports of goods and services | 0.1 | -0.1 | -0.3 | 0.3 | 0.0 | 0.1 | 0.1 | -0.7 | -0.5 |
| less Imports of goods and services | 0.7 | 0.6 | 0.6 | 0.7 | 0.7 | 0.7 | 3.0 | 2.7 | 2.8 |
| *Net Exports* | -0.6 | -0.7 | -0.9 | 1.0 | -0.8 | -0.6 | -2.8 | -3.4 | -3.3 |
| Statistical discrepancy | -0.1 | -0.2 | -0.2 | 0.0 | 0.1 | 0.2 | -0.4 | -0.3 | 0.1 |
| Gross Domestic Product | 0.7 | 0.5 | 0.5 | 0.8 | 1.1 | 1.1 | 3.1 | 2.9 | 3.5 |

Notes: Reference year for chain volume measures is 2001–02. All figures are trend estimates.

*[Source: ABS Cat. No. 5206.0.]*

## Consumption

**[67]** Private consumption expenditure increased by 5.4 per cent for the year ending the December quarter 2003 and the corresponding increase for the December quarter 2003 was 1.6 per cent. The annual growth in consumption expenditure is the largest recorded in the period set out in the table. This robust growth continues a trend of strong growth recorded throughout 2002 and 2003. The quarterly increase for December 2003 is the fourth consecutive increase and stands at twice the March 2003 increase.

**Table 5: Private Consumption**

| | % change | |
|---|---|---|
| | **Previous period** | **Year earlier** |
| **Year** | | |
| 1999–2000 | 4.1 | |
| 2000–2001 | 2.8 | |
| 2001–2002 | 3.4 | |
| 2002–2003 | 4.1 | 3.8 |
| **Quarter** | | |
| 2001 March | 0.6 | 2.7 |
| June | 0.6 | 2.6 |
| September | 0.7 | 2.7 |
| December | 0.9 | 2.9 |
| 2002 March | 1.3 | 3.6 |
| June | 1.2 | 4.3 |
| September | 0.9 | 4.5 |
| December | 0.7 | 4.2 |
| 2003 March | 0.8 | 3.8 |
| June | 1.3 | 3.9 |
| September | 1.5 | 4.5 |
| December | 1.6 | 5.4 |

*[Source: ABS Cat. No. 5206.0.]*

## Investment

**[68]** Growth in each component of investment remained solid during the December quarter 2003, notwithstanding very high rates of growth recorded in previous quarters particularly throughout 2002. The easing of quarterly growth is reflected in the annual figures to the December quarter 2003. The annual growth rates reflect strong growth across the board with the exception of dwelling investment with the anticipated cooling off of the housing market from the very strong growth previously recorded.

**[69]** Australian Bureau of Statistics (ABS) estimates of private new capital investment indicate that investment expectations are lower with a fall-off in investment being anticipated on the latest estimates for 2003–04. Early estimates for 2004–05 indicate that investment may actually fall.

**Table 6: Private Investment**

| | Other Buildings & Structures | | Machinery & Equipment | | Private Business Investment | | Dwellings Investment | |
|---|---|---|---|---|---|---|---|---|
| | % change | | % change | | % change | | % change | |
| **Quarter** | Quarter | Year to quarter | Quarter | Year to quarter | Quarter | Year to quarter | Quarter | Year to quarter |
| 2000 Dec | -4.8 | -21.2 | 1.2 | 7.7 | 0.5 | 1.8 | -13.0 | -19.1 |
| 2001 Mar | -0.6 | -17.3 | -0.3 | 4.5 | 0.1 | 1.3 | -4.6 | -27.6 |
| Jun | 2.3 | -9.5 | -0.2 | 2.7 | 0.4 | 1.6 | 6.2 | -21.4 |
| Sep | 2.7 | -0.5 | 0.9 | 1.6 | 0.8 | 1.8 | 7.2 | -5.5 |
| Dec | 4.0 | 8.6 | 2.6 | 3.1 | 2.3 | 3.7 | 6.8 | 15.9 |
| 2002 Mar | 6.8 | 16.7 | 4.3 | 7.8 | 4.2 | 7.9 | 6.3 | 29.2 |
| Jun | 8.5 | 23.8 | 4.7 | 13.1 | 4.8 | 12.6 | 5.5 | 28.4 |
| Sep | 8.8 | 31.2 | 3.9 | 16.4 | 4.4 | 16.7 | 4.7 | 25.4 |
| Dec | 7.4 | 35.5 | 2.5 | 16.2 | 3.3 | 17.8 | 2.3 | 20.1 |
| 2003 Mar | 4.1 | 32.0 | 2.0 | 13.6 | 2.4 | 15.8 | 0.3 | 13.3 |
| Jun | 2.5 | 24.7 | 3.4 | 12.3 | 3.0 | 13.8 | 0.8 | 8.2 |
| Sep | 3.1 | 18.1 | 3.8 | 12.3 | 3.5 | 12.8 | 1.9 | 5.3 |
| Dec | 3.3 | 13.6 | 3.0 | 12.8 | 3.3 | 12.8 | 2.6 | 5.6 |

*[Source: ABS Cat. No. 5206.0.]*

## Exports and Imports

**[70]** The value of exports in real terms remains stagnant but the latest quarterly data show an increase of 0.7 per cent, which reverses the negative growth recorded on a quarterly basis since the December quarter 2002, whilst the annual data on exports for the year ending December quarter 2003 was -2.2 per cent.

**[71]** Import growth is very strong, recording an increase in the December quarter 2003 of 2.9 per cent, which is the same order of magnitude as has occurred on a quarterly basis since late 2001. The import growth for the year to December 2003 is a high 12.0 per cent which reflects the continuation of the reversal in import growth since the start of calendar year 2002.

**Table 7: Exports and Imports (Trend)**

| | | Exports | | Imports | |
|---|---|---|---|---|---|
| | | % change | | % change | |
| | | Quarter | Year to quarter | Quarter | Year to quarter |
| 2000 | March | 3.0 | 11.1 | 2.6 | 14.2 |
| | June | 2.0 | 11.9 | 0.5 | 11.3 |
| | September | 1.0 | 10.1 | -1.2 | 5.8 |
| | December | 0.8 | 7.1 | -2.1 | -0.1 |
| 2001 | March | 1.1 | 5.1 | -1.8 | -4.5 |
| | June | 0.6 | 3.5 | -1.3 | -6.2 |
| | September | -0.3 | 2.2 | 0.2 | -4.9 |
| | December | -0.5 | 0.8 | 2.3 | -0.7 |
| 2002 | March | 0.0 | -0.3 | 3.7 | 4.9 |
| | June | 0.5 | -0.3 | 3.7 | 10.2 |
| | September | 0.5 | 0.5 | 3.2 | 13.4 |
| | December | -0.4 | 0.6 | 2.8 | 14.0 |
| 2003 | March | -1.5 | -0.9 | 2.6 | 12.9 |
| | June | -1.3 | -2.7 | 2.9 | 12.0 |
| | September | -0.2 | -3.4 | 3.0 | 11.9 |
| | December | 0.7 | -2.2 | 2.9 | 12.0 |

*[Source: ABS Cat. No. 5206.0.]*

## Manufacturing and Export Sector

**[72]** ABS manufacturing data show that whilst manufacturing production increased by 2.3 per cent in the 2002–03 financial year, growth in the year to the September and December 2003 quarters recorded 0.2 per cent and -1.3 per cent respectively. There have been three consecutive quarters of negative growth.

**Table 8: Manufacturing Production**

| | | | | % change on | |
|---|---|---|---|---|---|
| | | | **$ million** | **Previous period** | **Year earlier** |
| **Year** | 1999–2000 | | 72 820 | 0.9 | |
| | 2000–2001 | | 74 696 | 2.6 | |
| | 2001–2002 | | 76 726 | 2.7 | |
| | 2002–2003 | | 78 518 | 2.3 | |
| **Quarter** | 2000–01 | September | 18 768 | 0.3 | 5.8 |
| | | December | 18 663 | -0.6 | 3.8 |
| | | March | 18 601 | -0.3 | 1.2 |
| | | June | 18 664 | 0.3 | -0.3 |
| | 2001–02 | September | 18 870 | 1.1 | 0.5 |
| | | December | 19 115 | 1.3 | 2.4 |
| | | March | 19 316 | 1.1 | 3.8 |
| | | June | 19 425 | 0.6 | 4.1 |
| | 2002–03 | September | 19 495 | 0.4 | 3.3 |
| | | December | 19 630 | 0.7 | 2.7 |
| | | March | 19 724 | 0.5 | 2.1 |
| | | June | 19 669 | -0.3 | 1.3 |
| | 2003–04 | September | 19 532 | -0.7 | 0.2 |
| | | December | 19 377 | -0.8 | -1.3 |

Notes: Reference year for chain volume measures is 2001–02. All figures are trend estimates.

*[Source: ABS Cat. No. 5206.0.]*

**[73]** The March quarter 2004 Survey of Australian Manufacturing[9] showed a reduction in the number of firms experiencing an increase in production and employment. The survey indicated that *"the weakness in profit growth remains largely due to the strength of the exchange rate, which is contributing to weakness in exports, encouraging higher import penetration and intensifying the squeeze on margins"*.[10] The low net balance of firms experiencing an increase in selling prices records the fourth consecutive quarter of easing.

**[74]** The outlook is somewhat rosier when regard is had to forecasts for the June quarter 2004 with the net balance of firms expecting a lift in production and new orders and sales the highest since mid 2002. Exports are forecast to strengthen and profits to weaken. Investment is forecast to increase both in the period immediately ahead and in the next twelve months. Employment is forecast to remain steady in the June quarter 2004.

[9] AiG & PricewaterhouseCoopers, March 2004, *Survey of Australian Manufacturing*.
[10] Exhibit AiG 5 at p. 3.

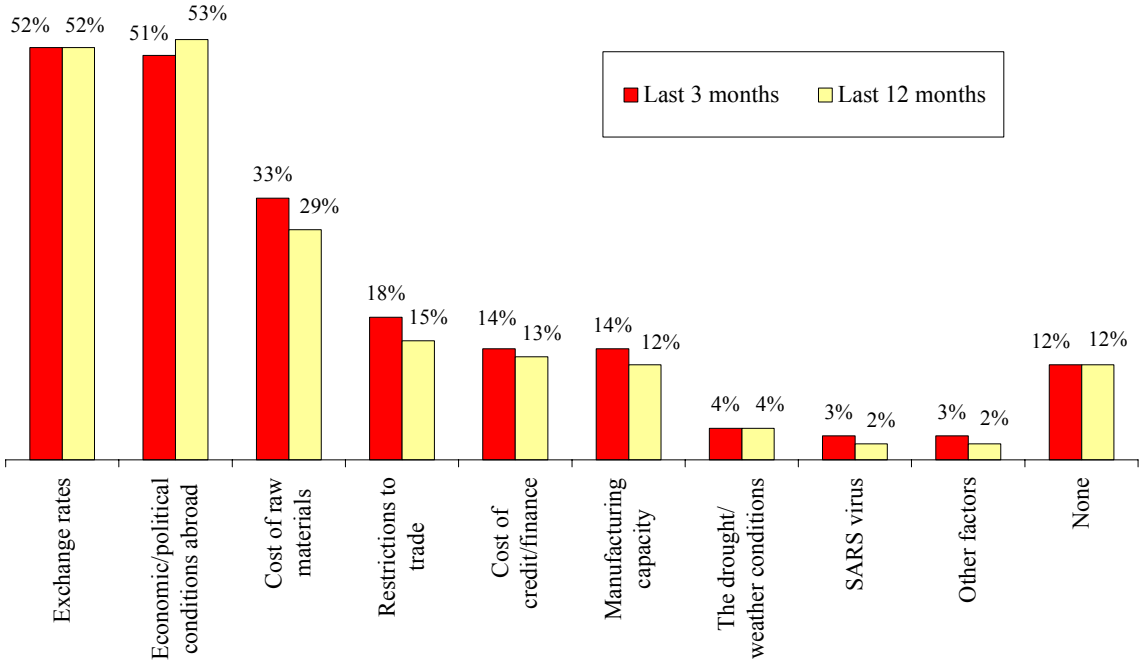
**Table 9: Net Balance of Firms Reporting Improvements in Selected Economic Indicators**

| | Actual | | | | | Forecast |
|---|---|---|---|---|---|---|
| | March 2003 | June 2003 | September 2003 | December 2003 | March 2004 | June 2004 |
| Production | 25 | 10 | 11 | 23 | 20 | 38 |
| Employment | 9 | 5 | 2 | 9 | 7 | 8 |
| Wages | 24 | 23 | 27 | 30 | 24 | 24 |
| Exports | 12 | 2 | -7 | 1 | 6 | 10 |
| Net profits | 0 | -8 | -9 | 2 | 3 | 18 |
| Selling prices | 16 | 10 | 3 | 2 | 1 | 9 |
| New plant and equipment | 15 | 15 | 8 | 13 | 11 | 16 |

*[Source: AiG & PricewaterhouseCoopers, Survey of Australian Manufacturing at p. 12.]*

**[75]** A new series known as the *DHL Export Barometer* is a survey of Australia's leading exporters aimed at providing insight into the factors impacting on Australia's export trade. The impact of the appreciation of the Australian dollar was one of the major negative factors identified by exporters. In the latest quarter and over the past 12 months, 52 per cent of exporters recorded the exchange rate as a negative factor. This factor broadly equates with the proportion of exporters viewing economic/political conditions abroad as a negative factor. At the other end of the scale very few reported SARS and the drought as negatives, whilst 12 per cent considered there were no negative factors.

**Chart 1: Past Negative Factors**




*[Source: DHL Export Barometer November 2003–April 2004.]*

**[76]** Looking to the future, two-thirds of exporters expect an increase in profitability over the next 12 months, whereas 31 per cent indicated the exchange rate would affect output and 28 per cent indicated that their future investment and business plans would be adversely affected.

## Prices

**[77]** Inflation, as measured by the CPI, increased for the December quarter 2003 by 0.5 per cent which fed into the annual increase of 2.4 per cent. This is the third consecutive fall in the CPI annual rate of increase. This is well within the RBA target range for inflation of 2 to 3 per cent.

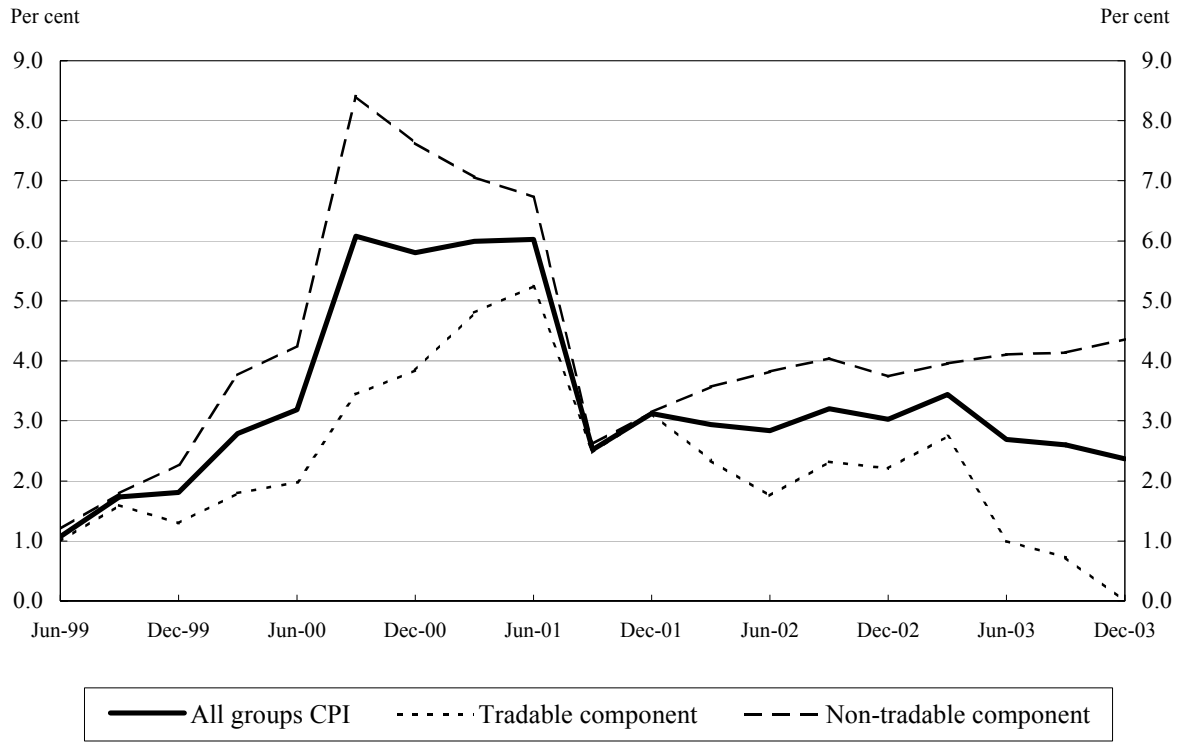
**Table 10: Consumer Price Index**

| | % change on | |
|---|---|---|
| | **Previous period** | **Year earlier** |
| **Year** | | |
| 1998–1999 | 1.2 | |
| 1999–2000 | 2.4 | |
| 2000–2001 | 6.0 | |
| 2001–2002 | 2.9 | |
| 2002–2003 | 3.1 | |
| **Quarter** | | |
| 2000–01 September | 3.7 | 6.1 |
| December | 0.3 | 5.8 |
| March | 1.1 | 6.0 |
| June | 0.8 | 6.0 |
| 2001–02 September | 0.3 | 2.5 |
| December | 0.9 | 3.1 |
| March | 0.9 | 2.9 |
| June | 0.7 | 2.8 |
| 2002–03 September | 0.7 | 3.2 |
| December | 0.7 | 3.0 |
| March | 1.3 | 3.4 |
| June | 0.0 | 2.7 |
| 2003–04 September | 0.6 | 2.6 |
| December | 0.5 | 2.4 |

*[Source: ABS Cat. No. 6401.0.]*

**[78]** The tradable component of the CPI has been stable over the 12 months to December 2003 except for falls in the index in the June and September quarters. This outcome reflects the impact of the appreciation of the exchange rate. In contrast, the non-tradable component of the CPI has increased by 4.4 per cent on an annual basis.

**Chart 2: Consumer Price Index—All Groups CPI, Tradable and Non-Tradable Components**




*[Source: ABS Cat. No. 6401.0.]*

**[79]** It is anticipated that once the effects of the appreciation of the Australian dollar are worked through, domestic factors may put upward pressure on the inflation rate.

## Earnings

**[80]** Average weekly ordinary time earnings (AWOTE) increased by 5.7 per cent for the year to December 2003 which is consistent with recorded annual data since 2000. The WCI which does not reflect the impact of compositional change evident in AWOTE data also demonstrates consistent increases on annual data which are slightly lower than the average increases of wages in federal agreements. The growth in wages in the agreement-covered workers sector has been at a consistent level, recording 3.9 per cent for the year to December 2003.

**Table 11: Measures of Wage Movements**

| | Annual increases in wages and earnings % | | |
|---|---|---|---|
| | **Average weekly ordinary time earnings** [(a)] | **Wage cost index** | **Current federal agreements** |
| **Annual** | | | |
| 1999–2000 | 3.6 | 2.9 | |
| 2000–2001 | 5.1 | 3.4 | |
| 2001–2002 | 5.6 | 3.3 | |
| 2002–2003 | 5.1 | 3.5 | |
| **Quarterly** — year to quarter shown | | | |
| 2002 March | 5.7 | 3.2 | 3.8 [(b)] |
| June | 5.4 | 3.2 | 3.8 [(b)] |
| September | 4.9 | 3.3 | 3.8 [(b)] |
| December | 4.8 | 3.5 | 3.8 [(b)] |
| 2003 March | 5.2 | 3.6 | 3.8 [(c)] |
| June | 5.6 | 3.6 | 3.8 [(c)] |
| September | 5.9 | 3.6 | 3.8 [(c)] |
| December | 5.7 | 3.6 | 3.9 [(d)] |

Notes:
(a) Relates to February, May, August, November.
(b) Source: May 2003 decision, Table 7 at p. 24.
(c) Source: Exhibit Commonwealth 4 at paras 3.15–3.17.
(d) Source: Exhibit Commonwealth 5 at para R3.5.

*[Source: ABS Cat. Nos 6345.0 and 6302.0.]*

**[81]** Table 12 shows a broad range of earnings data covering wide sections of the community for the latest year which shows a comparison with the 3.6 per cent increase recorded for the WCI.

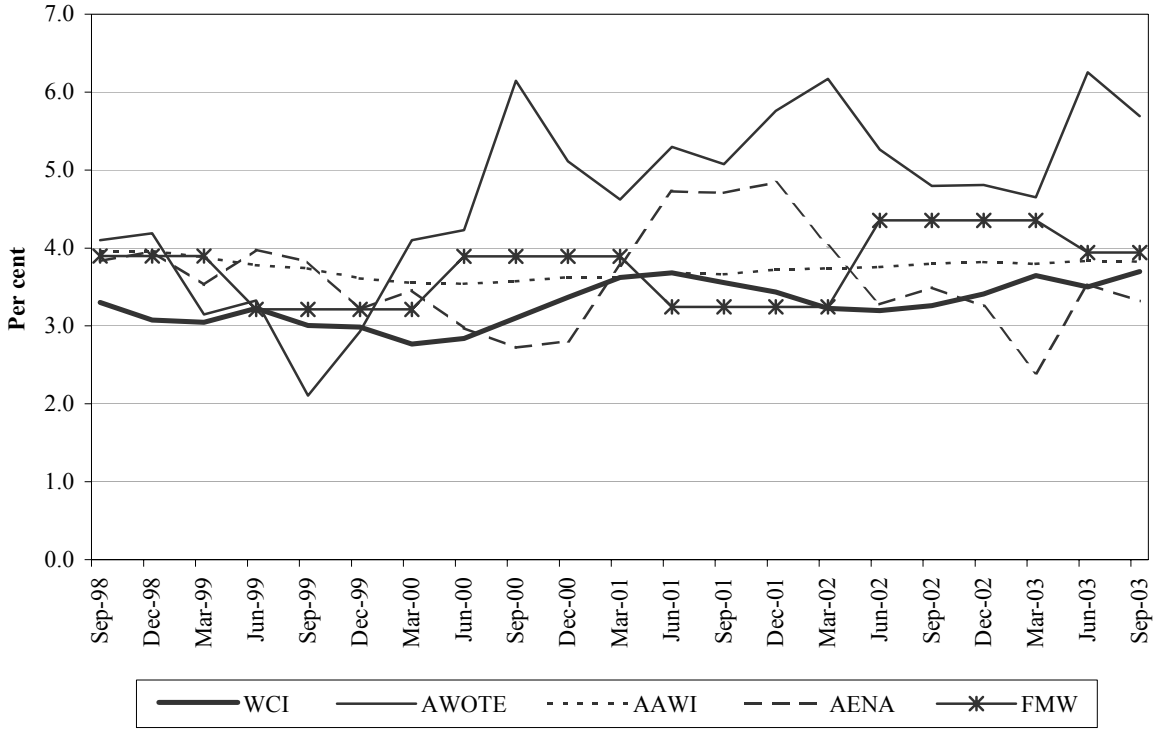
**Table 12: Comparisons of Various Wage Movements**

| % increases | | | | | | | |
|---|---|---|---|---|---|---|---|
| **AWOTE** | **AWE** Full-time adults | **AWE** All employees | **AENA** | **WCI** | **ADAM** | **DEWR** | **Mercer** |
| 5.7 | 6.1 | 5.6 | 3.6 | 3.6 | 4.5 | 4.1 | 4.5 |

*[Source: ABS Cat. Nos 6302.0, 5206.0 and 6345.0.]*

**[82]** Chart 3 shows a comparison of annual wages and earnings growth for a number of wages series including AWOTE, WCI and average annualised wage increases for employees covered by federal certified agreements (AAWI) which measures the wage increases in certified agreements.

**Chart 3: Annual Wages and Earnings Growth—Main Indicators**
**September 1998–September 2003**




*[Source: ABS Cat. Nos 6345.0, 6302.0 and 5206.0.]*

## The Labour Market

**[83]** Total employment has continued to reflect the strong growth which has been sustained for the last two years. The annual growth of 2 per cent to the December quarter 2003 has been achieved primarily through full-time employment growth of 2.3 per cent which has grown at almost double the part-time employment growth of 1.2 per cent. The unemployment rate for December 2003 of 5.6 per cent is the second consecutive monthly rate below 6 per cent.

**[84]** ACCI relied on ABS data on hours worked in the market sector which demonstrate that there has been virtually no increase since the end of 1999. The ACTU disputed the relevance of this data because the market sector, as defined by the ABS, is not a reliable proxy for the private sector since it accounts for only about 60 per cent of all employees and excludes 40 per cent of award-only employees.

**[85]** The latest data on underemployment indicate that in September 2003 there were 610 700 part-time workers who wanted to work more hours. This figure represents 23 per cent of all part-time workers and 6 per cent of people employed in Australia.

**Table 13: Employment and Unemployment**

| Quarter | | Employment | | | Unemployment |
|---|---|---|---|---|---|
| | | % change year earlier | | | % of workforce |
| | | Full-time | Part-time | Total | (seasonally adjusted) |
| 2001 | September | -1.4 | 5.6 | 0.5 | 6.8 |
| | December | -0.9 | 6.0 | 0.9 | 6.8 |
| 2002 | March | -0.3 | 6.6 | 1.5 | 6.6 |
| | June | 0.4 | 5.0 | 1.7 | 6.3 |
| | September | 1.0 | 4.3 | 1.9 | 6.2 |
| | December | 1.6 | 5.1 | 2.6 | 6.1 |
| 2003 | March | 2.1 | 5.0 | 2.9 | 6.1 |
| | June | 1.7 | 3.9 | 2.3 | 6.1 |
| | September | 1.9 | 2.5 | 2.0 | 5.9 |
| | December | 2.3 | 1.2 | 2.0 | 5.6 |

Notes: All figures are trend estimates. Annual and quarterly figures are averages of monthly data.

*[Source: ABS Cat. Nos 6202.0 and 6202.0.55.001.]*

## Employed Persons by Industry

**[86]** Employment growth in the year to February 2004 has been 1.3 per cent in both the market and the non-market sectors. The market sector has had strong annual increases in mining, construction, and transport and storage. The non-market sector has been fuelled by property and business services, and health and community services. Quarterly data show a mixed outcome with mining the clear growth industry across all sectors. Other industries recorded very low or negative growth. In particular, the zero quarterly growth in property and business services may be a reflection of the cooling-off of the property market.

**Table 14: Employed Persons by Industry—Trend Data**

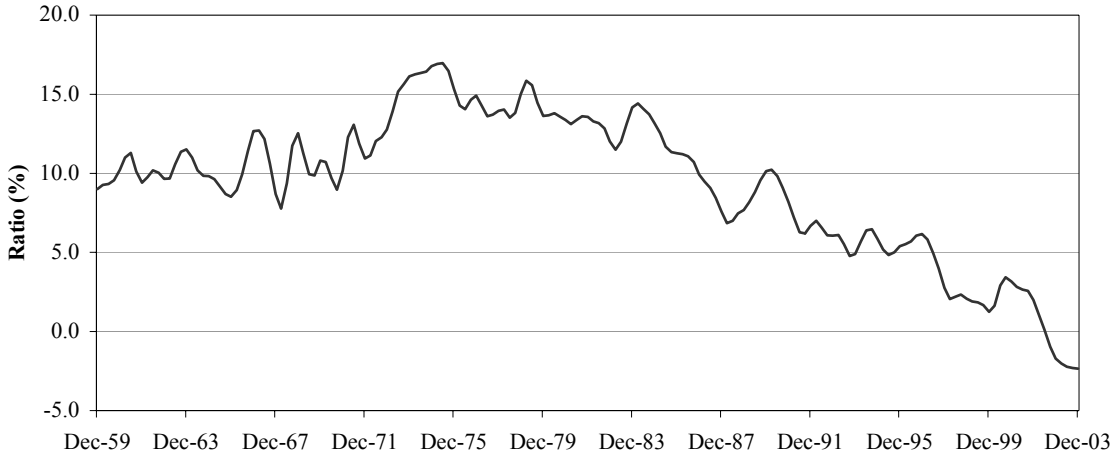
| | % change February 2004 | |
|---|---|---|
| | **Quarterly** | **Year ended** |
| **Market Sector** | | |
| Agriculture, forestry and fishing | -0.4 | 3.0 |
| Mining | 6.3 | 11.7 |
| Manufacturing | -0.6 | -5.8 |
| Electricity, gas and water supply | -1.5 | -3.4 |
| Construction | 0.6 | 7.0 |
| Wholesale trade | 0.5 | 0.4 |
| Retail trade | -0.2 | -0.6 |
| Accommodation, cafes and restaurants | 0.0 | 4.1 |
| Transport and storage | 0.7 | 6.6 |
| Communication services | -1.6 | -1.0 |
| Finance and insurance | 1.8 | 2.5 |
| Cultural and recreational services | 1.7 | 1.9 |
| Total employed market sector | 0.2 | 0.9 |
| Total employed | 0.3 | 1.3 |
| **Non-Market Sector** | | |
| Property and business services | 0.0 | 4.0 |
| Government administration and defence | -0.2 | 0.7 |
| Education | 0.7 | 2.7 |
| Health and community services | 2.0 | 3.4 |
| Personal and other services | -0.6 | -6.3 |
| Total employment non-market sector | 0.6 | 2.1 |
| Total employed | 0.3 | 1.3 |

*[Source: ABS Cat. No. 6291.0.55.001.]*

## Household Savings Ratio

**[87]** The level of household savings as a proportion of the level of disposable income recorded its sixth consecutive decline in the December quarter 2003. This reflects the long-term downward trend in savings. Since September 2002 the savings ratio has been negative. Although caution must be exercised in the accuracy of this data, it is clear that households are saving less income than previously.

**Chart 4: Household Savings Ratio**




*[Source: Exhibit ACCI 3, Chart 12.]*

## Productivity

**[88]** Market sector productivity for the financial year 2002–03 was somewhat lower than that recorded for 2001–02. For the year to December quarter 2003 the increase was 3.2 per cent, a substantial improvement on the year to September 2003. The latest quarterly data for both September and December 2003 reflect growth of 1.5 per cent following several quarters of low or negative growth.

**Table 15: GDP Per Hour Worked—Market Sector**

| Percentage growth | |
|---|---|
| **Annual** | **Year average** |
| 1996–1997 | 3.3 |
| 1997–1998 | 4.4 |
| 1998–1999 | 3.8 |
| 1999–2000 | 0.3 |
| 2000–2001 | 1.0 |
| 2001–2002 | 4.1 |
| 2002–2003 | 1.7 |
| **Quarterly** | **Change on previous quarter** |
| 2000 March | 0.5 |
| June | 0.0 |
| September | -0.4 |
| December | 0.2 |
| 2001 March | 1.0 |
| June | 1.6 |
| September | 1.1 |
| December | 0.7 |
| 2002 March | 0.7 |
| June | 0.9 |
| September | 0.6 |
| December | -0.1 |
| 2003 March | -0.4 |
| June | 0.6 |
| September | 1.5 |
| December | 1.5 |
| **Annual** | **Change on same quarter of previous year** |
| 2000 March | 0.2 |
| June | 0.6 |
| September | 0.5 |
| December | 0.3 |
| 2001 March | 0.8 |
| June | 2.4 |
| September | 4.0 |
| December | 4.5 |
| 2002 March | 4.2 |
| June | 3.5 |
| September | 2.9 |
| December | 2.1 |
| 2003 March | 1.0 |
| June | 0.7 |
| September | 1.6 |
| December | 3.2 |

*[Source: ABS Cat. No. 5206.0.]*

## Profits

**[89]** GOS data demonstrate strong growth of 2.3 per cent in the December quarter 2003 with the increase in the year to the December quarter at 8.1 per cent. The latest annual data reinforce very solid annual growth since the year ending December 2001.

**[90]** The GOS measure of company profits recorded an 8.1 per cent increase in the year ending December quarter 2003. This also demonstrates consistent strong growth for each financial year since 1998–99.

**[91]** The ACTU's preferred measure of profit share as a proportion of total factor income shows a record share at around 25 per cent in the year to the December quarter 2003. Profits as a share of total factor income has shown a very gradual increase since 1998–99.

**[92]** In recent years there has been a trend to incorporation among Australian businesses. The ACTU's measure of profit share excludes unincorporated enterprises measuring only the profit share for corporations. If gross mixed income, which includes the profits of unincorporated entities, is included in the measure of profit share a different picture emerges because gross mixed income has experienced a long-term downward trend.

**Table 16: Company Profits**

| | | Gross Operating Surplus (GOS) | | Profit share of total factor incomes |
|---|---|---|---|---|
| | | Change on previous quarter | Change on same quarter of previous year | Change on same quarter of previous year |
| **Year** | | | | |
| 1998–1999 | | 3.2 | | 23.2 |
| 1999–2000 | | 7.7 | | 23.8 |
| 2000–2001 | | 6.6 | | 24.0 |
| 2001–2002 | | 7.4 | | 24.4 |
| 2002–2003 | | 6.5 | | |
| **Quarter** | | | | |
| 1999–2000 | September | 1.4 | 2.3 | 22.9 |
| | December | 3.4 | 5.1 | 23.4 |
| | March | 4.7 | 9.9 | 24.2 |
| | June | 3.5 | 13.5 | 24.6 |
| 2000–2001 | September | 1.1 | 13.3 | 24.6 |
| | December | -0.6 | 9.0 | 24.1 |
| | March | -0.5 | 3.5 | 23.6 |
| | June | 1.3 | 1.3 | 23.6 |
| 2001–2002 | September | 2.8 | 3.0 | 23.9 |
| | December | 2.8 | 6.5 | 24.2 |
| | March | 2.6 | 9.8 | 24.6 |
| | June | 1.8 | 10.3 | 24.9 |
| 2002–2003 | September | 1.3 | 8.8 | 25.0 |
| | December | 0.9 | 6.8 | 24.9 |
| | March | 1.1 | 5.2 | 24.9 |
| | June | 2.0 | 5.5 | 25.1 |
| 2003–2004 | September | 2.4 | 6.6 | 25.3 |
| | December | 2.3 | 8.1 | 25.5 |

*[Source: ABS Cat. Nos 5651.0 and 5206.0.]*

**[93]** Chart 5 includes the gross mixed income in the calculation of the profit share.

**Chart 5: Movements in Profit and Wages Shares of Total Factor Income Including Gross Mixed Income**

*[Source: ABS Cat. No. 5206.0.]*

**[94]** When unincorporated businesses are included in the measure, it can be seen that the profit share has been stable at around 34 per cent of total factor income since 1990. This is a lower share than the 40 to 45 per cent experienced in the 1960s.

**[95]** The criticism of using this measure of profit share is that gross mixed income includes income received by the owner as a return to capital (profits) as well as the return to the owner's labour (income). As such it is not a pure measure of profits.

## Conclusions from Aggregate Data

**[96]** The Australian economy has continued to grow strongly over the course of 2003. The greatest contributors to growth have been private consumption and farm output, the latter reflecting a turnaround from the low base which resulted from the drought conditions and sluggish international growth. Private sector business investment growth remains solid with strong contributions being made across the board, notwithstanding a substantial cooling-off of the housing sector in line with predictions.

**[97]** The labour market remains buoyant with recent growth in employment being achieved primarily by growth in full-time employment. Unemployment is at the lowest level for over 20 years.

**[98]** The export and import competing sectors have felt the negative effects of the appreciation of the Australian dollar which is also reflected in high import growth.

**[99]** In the year to December 2003 productivity growth remains strong.

**[100]** Profit growth is strong and the profit share is at record levels on conventional measures although we note there is controversy over whether the conventional measure is still appropriate.

# Economic Outlook

**[101]** The most recently released and widely relied on forecasts of the economic outlook for Australia are the Treasury (MYEFO) forecasts for 2003–04.

**Table 17: MYEFO Domestic Economic Forecasts**[a]

| | Outcomes[b] 2002–03 year average | 2003–04 Budget Forecasts year average | 2003–04 MYEFO Forecasts year average |
|---|---|---|---|
| **Panel A—Demand and outcome**[c] | | | |
| Household consumption | 4.1 | 3¼ | 4½ |
| Private investment | | | |
| Dwellings | 16.0 | -5 | 3 |
| Total business investment[d] | 16.9 | 7 | 7 |
| Other buildings and structures[d] | 31.9 | 14 | 11 |
| Machinery and equipment[d] | 16.4 | 4 | 5 |
| Intangible fixed assets | 5.7 | 9 | 4 |
| Private final demand[d] | 6.8 | 3 | 5 |
| Public final demand[d] | 4.2 | 3¼ | 2¾ |
| Total final demand | 6.3 | 3 | 4½ |
| Change in inventories[e] | | | |
| Private non-farm | 0.1 | 0 | -¼ |
| Farm and public authorities[f] | -0.2 | ½ | ½ |
| Gross national expenditure | 6.2 | 3½ | 4¾ |
| Exports of goods and services | -0.6 | 6 | 3 |
| Imports of goods and services | 13.5 | 6 | 9 |
| Net exports [e] | -3.0 | -¼ | -1½ |
| Gross domestic product | 2.8 | 3¼ | 3¾ |
| Non-farm product | 4.0 | 2¾ | 3 |
| Farm product | -28.7 | 25 | 27 |

| | Outcomes[(b)] 2002–03 year average | 2003–04 Budget Forecasts year average | 2003–04 MYEFO Forecasts year average |
|---|---|---|---|
| **Panel B—Other selected economic measures** | | | |
| External accounts | | | |
| Terms of trade | 2.2 | 1¾ | 3¼ |
| Current account balance | | | |
| $ billion | -41.1 | -42¾ | -46 |
| Percentage of GDP | -5.5 | -5¼ | -5¾ |
| Labour market | | | |
| Employment (labour force survey basis) | 2.5 | 1¾ | 1½ |
| Unemployment rate (per cent) | 6.1 | 6 | 5¾ |
| Participation rate (per cent) | 63.9 | 64 | 63¾ |
| Prices and wages | | | |
| Consumer Price Index | 3.1 | 2¾ | 2¼ |
| Gross non-farm product deflator | 2.7 | 2¼ | 2¾ |
| Average earnings[(g)] | 3.1 | 4 | 3¾ |

Notes:
(a) Percentage change on preceding year unless otherwise indicated.
(b) Calculated using data.
(c) Chain Volume measure.
(d) Excluding transfers of second-hand asset sales between the public and private sectors.
(e) Percentage point contribution to growth in GDP.
(f) For presentation purposes, forecast change in inventories held by privatised marketing authorities. Included with the inventories of the farm sector and public marketing authorities.
(g) Average earnings (national accounts basis).

*[Source: Treasury, Mid-Year Economic and Fiscal Outlook, December 2003.]*

**[102]** In summary, it can be seen that the Australian economy is expected to continue to perform strongly throughout the 2003–04 financial year with gross domestic product forecast to increase by 3¾ per cent compared with the 3¼ per cent earlier budget estimate. Household consumption is forecast to grow at a slightly higher rate than in 2002–03 whilst total business investment is anticipated to grow at a slower rate than in the previous year, albeit at a healthy 7 per cent. Net exports are forecast to make a negative contribution to growth. The labour market is forecast to grow and unemployment to again fall. The CPI is expected to record a financial year average of 2¼ per cent increase, a reduction on the 3.1 per cent increase in the previous year. Earnings growth will be in line with last year's outcome.

**[103]** The Treasurer made the following comments on the MYEFO forecasts:

> *"The 2003–04 Mid-Year Economic and Fiscal Outlook (MYEFO) released today demonstrates the continued resilience of the Australian economy and reflects the Government's ongoing commitment to a strong economy through sustainable fiscal management.*
>
> *The Australian economy is forecast to grow by 3¾ per cent in 2003–04, an upward revision from the 3¼ per cent forecast at the 2003–04 Budget. The upward revision comes against a backdrop of improving sentiment about*

*domestic and external growth prospects. Generally the near term outlook for the Australian economy has brightened since the Budget with increasing signs of global recovery, particularly in the United States, and an easing of drought conditions over much of Australia.*

. . .

*The initial forecast for 2004–05 is for economic growth of around 3½ per cent. Domestic demand is expected to be solid and external conditions should be supportive of growth. Employment growth is forecast to be moderate and inflation is expected to fall a little further.*

*There are still risks around the outlook, particularly regarding the sustainability of the international recovery, but overall the near-term risks have diminished since Budget and are now more evenly balanced."*[11]

**[104]** In his Statement on Monetary Policy in February 2004, the Governor of the Reserve Bank provided an overview of the direction the economy was expected to take based on the MYEFO forecasts:

*"Overall, the growth of the economy has been driven by well-above-average growth in domestic spending, while the main factors that were holding back growth, particularly in the period up to around mid 2003, were the drought and the unfavourable international environment. These negative factors, however, are now being reversed. With improved rainfall in most areas, farm production is adding significantly to growth. Reflecting the strengthening international environment, Australia's export earnings have begun to increase gradually after their decline in the first half of 2003. In light of these trends and the more promising global outlook, the prospects are that the Australian economy will continue to grow at a strong pace during 2004. Exports are likely to continue their gradual recovery as a result of stronger trading-partner growth, even though progress in this area will be dampened to some extent by the higher exchange rate now prevailing, and also by capacity constraints in the resources sector. Domestic demand growth is likely to moderate a little but remain quite strong.*

*Australia's recent inflation performance has been marked by contrasting influences from domestic conditions and the exchange rate. In the December quarter the CPI increased by 0.5 per cent, and by 2.4 per cent over the year, down from an annual rate of around 3 per cent a year earlier. Inflation in the non-traded sector of the economy remains relatively high, at over 4 per cent, reflecting the overall strength of the domestic economy, strong demand conditions in the housing sector and continuing cost pressures in some service industries. At the same time, the overall inflation rate is being held down by the gradual pass-through of the exchange rate appreciation, with prices of tradable items in the CPI declining slightly in recent quarters.*

*The experience of recent years has been that these exchange rate effects have tended to be smaller than initially expected, but even so, it is likely that the*

[11] Costello, op. cit.

*dampening effect from the exchange rate still has some way to run. As a result, inflation is likely to decline further over the coming year, and could fall as low as 1½ per cent, before returning to around 2½ per cent in 2005 and then continuing on a gradually rising trajectory."*[12]

**[105]** The Organisation for Economic Co-operation and Development (OECD) underpinned the positive expectations for the Australian economy:

*"The projections are for an acceleration of economic growth, accompanied by a rebalancing of aggregate spending from domestic to foreign sources.*

. . .

*With the global economy recovering and the drought likely to break, exports are set to accelerate, narrowing the current external deficit from 6¾ per cent of GDP in mid-2003 to 4¾ per cent of GDP in 2005. The improved global environment should bode well for business investment, given existing high capacity utilisation, favourable company profitability and low corporate gearing. Inflation should remain within the Reserve Bank's 2 to 3 per cent target range, underpinned by the recent exchange rate appreciation, modest wage increases and a projected pick up in labour productivity."*[13]

**[106]** Despite positive predictions on the economic front, the Commission has been cautioned by some parties that strong positive aggregated outcomes may mask emerging or evident risks which should be taken into account in determining the monetary claim before us.

**[107]** Australia's immediate economic outlook is positive with support coming from both a strengthening domestic market and an improvement in the international economy which should obviate some earlier concerns that our growth rate may not be sustainable. There is every reason to believe that there will be further strength in the labour market with employment numbers on the increase and the favourably low levels of unemployment at least maintained.

**[108]** The recent trend in full-time jobs growth may alleviate the relatively high levels of recorded underemployment. A continuation of moderate wages and prices growth should not impede employment growth.

**[109]** The RBA anticipates that the inflation rate will continue to fall, but rise again beyond the 2003–04 financial year as the dampening affects from the rise in the Australian dollar work their way through the index. The RBA in its inflation forecasts has factored in the end of the deflationary effect of price changes on the tradables sector, which in recent times has recorded zero or negative price increases.

**[110]** The farm sector will continue to grow making a strong contribution from an abnormally low base as the negative effects of the drought recede, although the pace may be slower in some geographical areas.

[12] *Statement on Monetary Policy*, 5 February 2004, Reserve Bank of Australia at pp. 2–3.
[13] Exhibit ACTU 1 at para 5.79 and OECD, November 2003, *Economic Outlook, Preliminary Edition*, No. 74 at p. 111.

**[111]** The manufacturing sector has suffered in the past 12 months from the exchange rate, global overcapacity and rising interest rates which have manifested as a loss of 70 000 jobs. However, survey data indicate that there are strong expectations of an improvement in the performance of the sector.

**[112]** Despite the cooling-off of the domestic housing sector, capital expenditure by businesses is expected to grow but by a lower rate than the very high rises experienced in recent years. Notwithstanding preliminary expectations of a fall-off in investment growth to negative numbers, the lowering of the cost of imported capital equipment may be an offsetting factor to investment measured in real terms. In addition, a slowdown in the domestic housing market will have a favourable impact on further interest rate rises.

**[113]** Overall, there are grounds for optimism that the Australian economy will perform strongly in the immediate future. We do not foreshadow, on the material currently available, any major impediments to the realisation of the Treasury forecasts. Any downside risks should be counterbalanced by strong aggregate performance.

# COST OF THE CLAIM

**[114]** The ACTU submitted that its claim for a $26.60 increase in all award rates *"will have a negligible impact on aggregate earnings of 0.1 per cent"*. This statement was based on estimates of a net impact on aggregate wages of 0.1 per cent and a gross impact of 0.4 per cent. Seen in historical terms, the ACTU submitted, the gross impact of the current claim is the same as the combined effect of the increases in the superannuation guarantee charge and the safety net adjustments in 2000 and 2002. Furthermore, the cost of the claim is in the region of the cost of the safety net adjustments actually awarded by the Commission in recent years.

**[115]** The ACTU submitted that its claim is a moderate one in historical and absolute terms. It estimated that if granted the claim would result in an average award increase of 4.7 per cent. On that basis, the average annual increase in award rates from 2000 to 2004 would be 3.4 per cent for all award workers and 3.2 per cent for full-time award-only workers. Over the four years to June 2003 the average annual increase in the WCI was 3.4 per cent. The claim would produce a real average annual increase of 0.6 per cent for award-only workers and a real average annual increase of 0.4 per cent for award-only full-time workers over the last five years.

**[116]** The Commonwealth did not provide an estimate of the aggregate cost of the claim, preferring to concentrate on the cost impact in the award-reliant sectors of the economy. It nevertheless contended that the ACTU's costing understates the true cost. It relied on two matters in particular. First, it argued that the gross cost should be given more weight than the net cost. Secondly, it argued that the ACTU should have included an allowance for flow-on of the increase to employees who are in receipt of overaward payments or paid under certified agreements. In relation to the second matter, the Commonwealth relied on the Minimum Wages Report in submitting that safety net adjustments influence the wages of around 2.5 million employees who are paid overaward wages. (We refer to the Minimum Wages Report in detail below.)

**[117]** As in previous years ACCI provided an estimate of the cost of the ACTU's claim based on the cost to the private sector only, submitting that almost the whole

cost would be borne by that sector. ACCI estimated that if granted the claim would add 0.67 per cent to private sector costs, rising to 0.81 per cent when flow-on effects are added. It submitted that:

> *"Such an increase is not negligible, it adds substantially to costs of production, it increases inflationary pressures and it keeps the economy growing more slowly than would otherwise be the case."*[14]

**[118]** Like the Commonwealth, ACCI submitted that the Commission should be more concerned about the impact of any increase on the sectors of the economy in which award reliance is highest.

**[119]** NMI also made submissions about cost. Based on survey evidence, it submitted that a total of 46.7 per cent of employees in the retail motor industry would receive any safety net adjustment in full. The annual cost to the industry would be $184 million, without allowing for increases in non-wage costs. No estimate was given of the overall labour cost increase. An increase of the magnitude proposed *"with no requirement for an offsetting productivity improvement"* would reduce profitability and efficiency in the industry.

**[120]** The only economy-wide cost estimate is that provided by the ACTU. It was challenged on two substantive bases. The first issue is the assumption to be made about the extent to which any safety net adjustment would flow to employees who are not paid at the award rate. The second issue is whether the gross or the net cost should be given greater weight.

**[121]** In relation to the issue of flow-on, sometimes referred to as part of the indirect cost of a safety net adjustment, various parties provided estimates. We have noted the Commonwealth's reliance on the Minimum Wages Report for the conclusion that safety net adjustments influence the wages of 2.5 million employees who are paid overaward wages. For reasons discussed elsewhere, we are reluctant to place too much weight on the report.

**[122]** ACCI relied on the results of its latest survey in support of a submission that around 5 per cent of private sector employees who are not award dependent receive the safety net adjustment, in addition to 24.6 per cent who are award dependent. NMI, also relying on survey evidence, submitted that the safety net adjustment awarded last year was paid to some 18.5 per cent of employees in the industry, in addition to the 28.2 per cent who were paid exactly the award rate.

**[123]** Reliable economy-wide data on the indirect costs of safety net adjustments is hard to find. In previous safety net reviews the Commission has not relied too heavily on surveys like those which ACCI and NMI advanced in this case.[15] Data from the *Award and Agreement Coverage Survey 1999* (AACS), discussed in the *Safety Net Review—Wages May 2000* decision (the May 2000 decision), suggest that flow of safety net adjustments to employees in receipt of overaward payments or paid pursuant to certified agreements is limited.[16]

[14] Exhibit ACCI 2 at para 10.28.
[15] May 2003 decision at paras 131 and 132.
[16] Print S5000; (2000) 95 IR 64 at paras 62 and 65.

**[124]** In relation to the second issue, whether the gross or the net cost should be given greater weight, we think that both estimates are relevant. We approach the assessment in this case on the basis that if granted in full the ACTU claim would lead to an increase in aggregate labour costs of no less than 0.1 per cent in net terms and no less than 0.4 per cent in gross terms. The actual cost is likely to be more but it is not possible to be more precise about the issue.

# WAGES MOVEMENTS

**[125]** The ACTU relied on movements in various earnings measures including Average Weekly Total Earnings (AWE), Average Weekly Ordinary Time Earnings (AWOTE), Average Earnings on a National Accounts Basis (AENA) and the WCI. We were presented with historical data showing the growth in each of the measures over various periods. The Commonwealth contended that we should place more weight on the WCI which, it was submitted, accurately measures changes in wage rates for performing the same work at the same level. It submitted that the earnings measures, AWE and AWOTE, are growing faster because of the increasing proportion of workers in higher paying occupations and because earnings measures are affected by extraneous factors such as length of employment, skills and qualifications.

**[126]** The ACTU also submitted that award-only employees received an average increase of 3.1 per cent as a result of last year's decision and the rest of the community fared better. The Commonwealth took issue with this claim. It submitted that dissection of the WCI shows a range of increases above and below 3 per cent and that sizeable increases in the minimum wage and C10 since 1997 should be taken into account. In particular, movements in the minimum wage and C10 have kept pace with movements in the WCI over that period. The Commonwealth further contended that it should be borne in mind that award coverage is disproportionately concentrated among labourers and related workers and elementary, clerical, sales and service workers. Workers in those occupations tend to be relatively low paid whether paid pursuant to awards or agreements.

**[127]** The ACTU also relied on the level of wage increases in certified agreements. The average annual wage increase per employee for agreements certified in the four quarters to the September quarter 2003 averaged 4 per cent.[17] The average annual wage increase per agreement for agreements certified during the four quarters to the September quarter 2003 averaged 4.1 per cent.[18] It submitted that comparisons with earnings measures are appropriate when a consideration of living standards is apposite. The Commonwealth, on the other hand, cautioned against comparing average annual wage increases in certified agreements with movements in award wages. It pointed out, however, that the average annual wage increase for all agreements current as at 30 September 2003 was 3.8 per cent.

**[128]** The Commonwealth also contended that wage increases under agreements reflect the market and should not be used to adjust award rates. Average measures of wage increases, including increases achieved through bargaining, are an unreliable and inappropriate guide to fixation of safety net rates in awards. If the Commission were to grant the ACTU's claim the resulting increase would exceed the wage rises achieved

[17] DEWR, September 2003, *Trends in Enterprise Bargaining*.
[18] ACIRRT, December 2003, ADAM Database.

by many workers though federal agreements, particularly employees at the lower levels in industries such as accommodation, cafes and restaurants, and retail. Increases in the award safety net of the magnitude the ACTU proposes would reduce the incentive for employees in the award-reliant industries to bargain and decrease the opportunities for productivity improvement.

**[129]** The ACTU also pointed to various measures of increases in management and executive remuneration. On those measures management and executive remuneration has been growing at an average of between 4 and 4.5 per cent per annum. It also relied upon Remuneration Tribunal decisions providing for increases of a similar magnitude and in some cases considerably more. The Commonwealth, on the other hand, submitted that movements in management and executive remuneration and Remuneration Tribunal determinations relate to small, highly specialised segments of the community and are not a useful guide in adjusting the safety net. In the same way, ACCI alleged that the material is selective and disputed its relevance.

**[130]** Although we have considered all of the historical material, it seems to us that the indicators for the latest year are the most relevant. Each year for the last seven years the Commission has adjusted the safety net of minimum wages in light of the submissions and the data available at the time of the hearing. While it is helpful to some extent to compare increases in award rates with increases in other measures over the longer-term, it would not be appropriate, under that guise, to reopen past decisions. For similar reasons it would not be appropriate to place too much weight on average award increases expressed in percentages. Each safety net adjustment since 1997 has been a flat dollar adjustment rather than a percentage. On some occasions the increase has been higher at the lower classification levels although on one occasion the increase was lower at the lower levels and higher at the higher levels. The overall effect of these adjustments has been that wages at the lower classification levels have increased more in percentage terms than wages at the middle and higher levels. The ACTU has consistently sought flat dollar adjustments in recent years and again in this case. In the circumstances we think it would be inappropriate to pay too much attention to the average increase in award rates. It is also important to point out that in several safety net review decisions the Commission has emphasised that changes in relativities brought about by flat adjustments cannot form the basis for future claims.

**[131]** Furthermore, while all of the measures relied on by the ACTU are of some relevance, the broader measures are more helpful than those measuring changes in particular segments of the labour market, such as management and executive salaries. In relation to those broader measures, the most recent figures are shown in the following table:

**Table 18: Wages Measures**

| AWE[(a)] | AWOTE[(a)] | AENA[(b)] | WCI[(c)] |
|---|---|---|---|
| 6.1 | 5.7 | 3.6 | 3.6 |

Notes:
(a) Source: ABS Cat. No. 6302.0.
(b) Source: ABS Cat. No. 5206.0.
(c) Source: ABS Cat. No. 6345.0.

**[132]** It is accepted that the AWE and AWOTE data are affected by compositional changes in the workforce. While the AENA and WCI data both record the increase in wages for a given job, and therefore are not affected by compositional change, AENA includes some non-wage costs such as superannuation, redundancy payments and workers' compensation payments. We agree with the Commonwealth that the WCI data are the most direct measure of changes in wage costs for a particular position and therefore the most useful indicator for our purposes.

# AWARD EMPLOYEES AND AWARD INDUSTRIES

**[133]** The declining incidence of award-reliant employees in the workforce is evident from the ABS *Employee Earnings and Hours, Australia* survey (the EEH Survey).[19] Data from the May 2002 EEH Survey show that 20.5 per cent of employees, or about 1.6 million employees, were award-reliant in May 2002, the corresponding figure from the May 2000 survey, was 23.2 per cent.[20] The proportion of award-reliant employees in each industry is set out in Table 19 below:

**Table 19: Proportions of Award-Reliant Employees by Industry**

| **Industry** | **Proportion of award-only employees in industry** % |
|---|---|
| Mining | 5.9(a) |
| Manufacturing | 12.5 |
| Electricity, gas and water supply | 1.1(b) |
| Construction | 17.1 |
| Wholesale trade | 11.7 |
| Retail trade | 34.2 |
| Accommodation, cafes and restaurants | 61.2 |
| Transport and storage | 16.4 |
| Communication services | 2.4(b) |
| Finance and insurance | 4.9(b) |
| Property and business services | 18.1 |
| Government administration and defence | 6.0 |
| Education | 7.8 |
| Health and community services | 30.3 |
| Cultural and recreational services | 10.9 |
| Personal and other services | 22.2 |
| **Total** | **20.5** |

Notes:
(a) Estimate has a relative standard error greater than 50% and is considered too unreliable for general use.
(b) Estimate has a relative standard error of between 25% and 50% and should be used with caution.

*[Source: ABS Cat. No. 6306.0.]*

[19] ABS Cat. No. 6306.0.
[20] May 2003 decision at paras 99–100.

**[134]** Employees classified as "award only" had the main part of their pay set by an award and were not paid more than the award rate of pay.[21]

**[135]** Award-reliant employees are:

- generally paid less than the rest of the working community;[22]
- more likely to be women;[23]
- concentrated in three industry sectors: accommodation, cafes and restaurants, retail trade, and health and community services;
- overwhelmingly employed in the private sector;[24] and
- overwhelmingly employed in non-managerial occupations and concentrated in lower-skilled occupations.

**[136]** Table 19 shows that award-reliant employees are most heavily concentrated in the industry sectors of accommodation, cafes and restaurants, retail trade, and health and community services. It was submitted that these three sectors account for nearly 60 per cent of all award-reliant employees. About a quarter of all such employees are in the retail industry and more than 15 per cent in each of accommodation, cafes and restaurants, and health and community services.

**[137]** The ACTU contended that the economic performance of the most award-reliant sectors has been strong and in some key respects exceeds the average for all industries. In particular it is argued that the data show that:

- the three most award-reliant industries have performed better than all-industry averages in terms of growth in output and employment for the period 1996–2003;
- in the same industries, and for the same period, productivity growth has outpaced the growth in real award wages and as a result real unit labour costs have fallen;
- in the two most award-dependent industries profits have increased by more than 80 per cent for 1996–2003, while real award wages have grown by less than 9 per cent; and
- the recent performance of the three most award-reliant sectors has continued to be strong, with output and productivity growth for 2002–03 exceeding the all-industry average.

**[138]** We now turn to briefly consider each of these contentions.

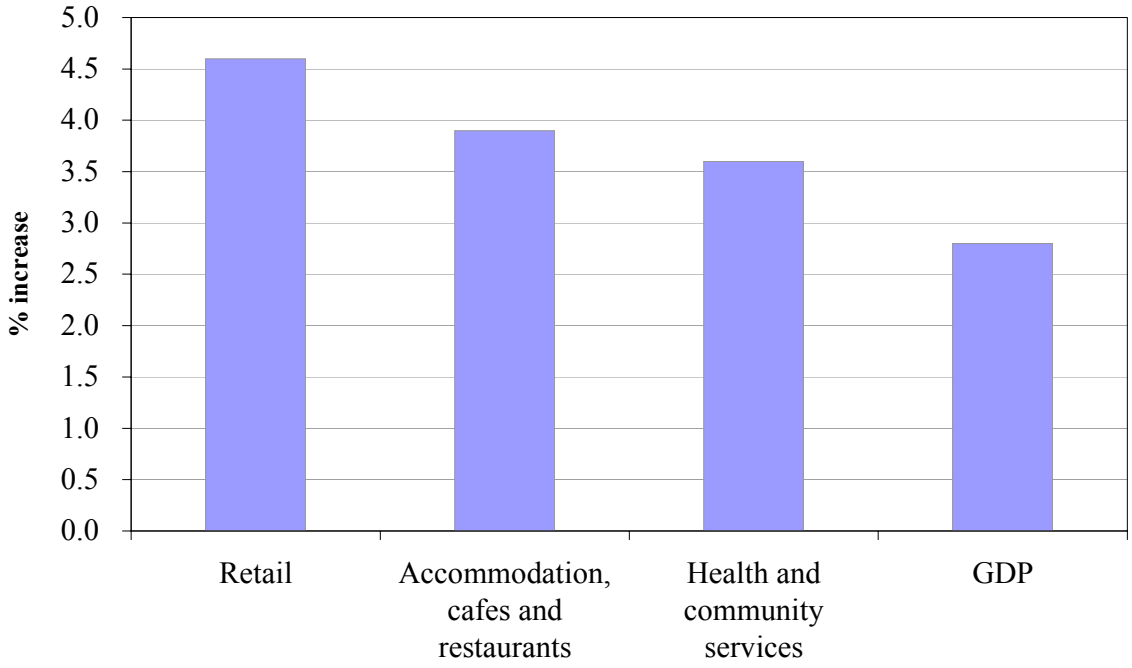
[21] ABS Cat. No. 6306.0 at p. 6.
[22] ibid., Table 30 at p. 52.
[23] ibid., Table 23 at p. 44.
[24] ibid., Table 22 at p. 42.

## Output

**[139]** The ACTU submitted that growth in output in the three most award-reliant industries has exceeded the all-industry average for the period June 1996 to June 2003.[25]

**[140]** Chart 6 shows that industry gross value added increased in accommodation, cafes and restaurants by 3.9 per cent, in retail trade by 4.6 per cent and in health and community services by 3.6 per cent, exceeding the overall growth in GDP of 2.8 per cent over the 2002–03 financial year.

**Chart 6: Output Growth—Award Dependent Industries 2002–03**




*[Source: Exhibit ACTU 1, Figure 2.1 at para 2.6.]*

**[141]** In its oral submissions, the ACTU argued that recent national accounts data for the year to December 2003 show growth in accommodation, cafes and restaurants of 8.3 per cent and in the retail trade of 7.4 per cent, compared to growth in GDP of 3.5 per cent, with growth in health and community services slightly lower at 3 per cent.[26]

## Profits

**[142]** The ACTU contended that in 2002–03 the increase in gross operating profits in two of the most award-reliant sectors — accommodation, cafes and restaurants (12.7 per cent) and retail trade (21.7 per cent) — exceeded the average increase for all industries (8.2 per cent).[27] The ABS does not measure gross operating profits for the health and community services sector.

[25] See Exhibit ACTU 1, Figure 2.4 at para 2.8.
[26] Transcript at para 1310.
[27] See ABS Cat. No. 5676.0.

**[143]** In the period 1996 to 2003 gross operating profits in the accommodation, cafes and restaurants sector increased by 82.1 per cent and by 99 per cent in retail trade.

**[144]** The Commonwealth criticised the profit measure relied upon by the ACTU on the basis that it only covers incorporated businesses with 20 or more employees and ignored unincorporated businesses. In the restaurant and catering component of the accommodation, cafes and restaurants sector — which accounts for about half of the sector's total employment — over 90 per cent of businesses have fewer than 20 employees. The Commonwealth contended that profit should be measured as GOS and gross mixed income, minus capital consumption, as a proportion of end-year net capital stock (the accounting rate of return as opposed to the economic rate of return).

**[145]** Based on the Commonwealth's data, average annual nominal profit growth from 1995–96 to 2002–03 was 1.0 per cent for retail trade, 6.6 per cent for accommodation, cafes and restaurants and 5.3 per cent for health and community services. The comparable figure for all industries was 5.9 per cent. In 2002–03 nominal profit growth was stronger than the national average for the three award-reliant sectors — particularly in retail trade where it increased by 14.3 per cent — reflecting a recovery in profit levels from previous years.

**[146]** A difficulty with the Commonwealth's suggested measure of profit is that gross mixed income not only captures returns to capital for unincorporated businesses, but returns to labour as well. The combination of GOS and gross mixed income provides a measure of profits in all businesses and returns to labour in unincorporated businesses.

**[147]** The second difficulty with the Commonwealth's approach concerns its measure of profit as a proportion of end-year net capital stock. The Commonwealth acknowledged the difficulty with using accounting rates of return and attempted to minimise the deficiencies by subtracting capital consumption from profits.[28]

**[148]** Even if it were accepted that the accounting rate of return was an appropriate measure of profits, the ABS publication *Business Operations and Industry Performance*, which covers all public trading and private employing businesses and provides a measure of profits as a proportion of assets, shows that the return on assets in the most award-dependent industries exceeded the all-industry average for the financial year ending June 2001. However, the ABS highlights the limitations of this measure due, in part, to differences in accounting policy and practice across businesses and industries.

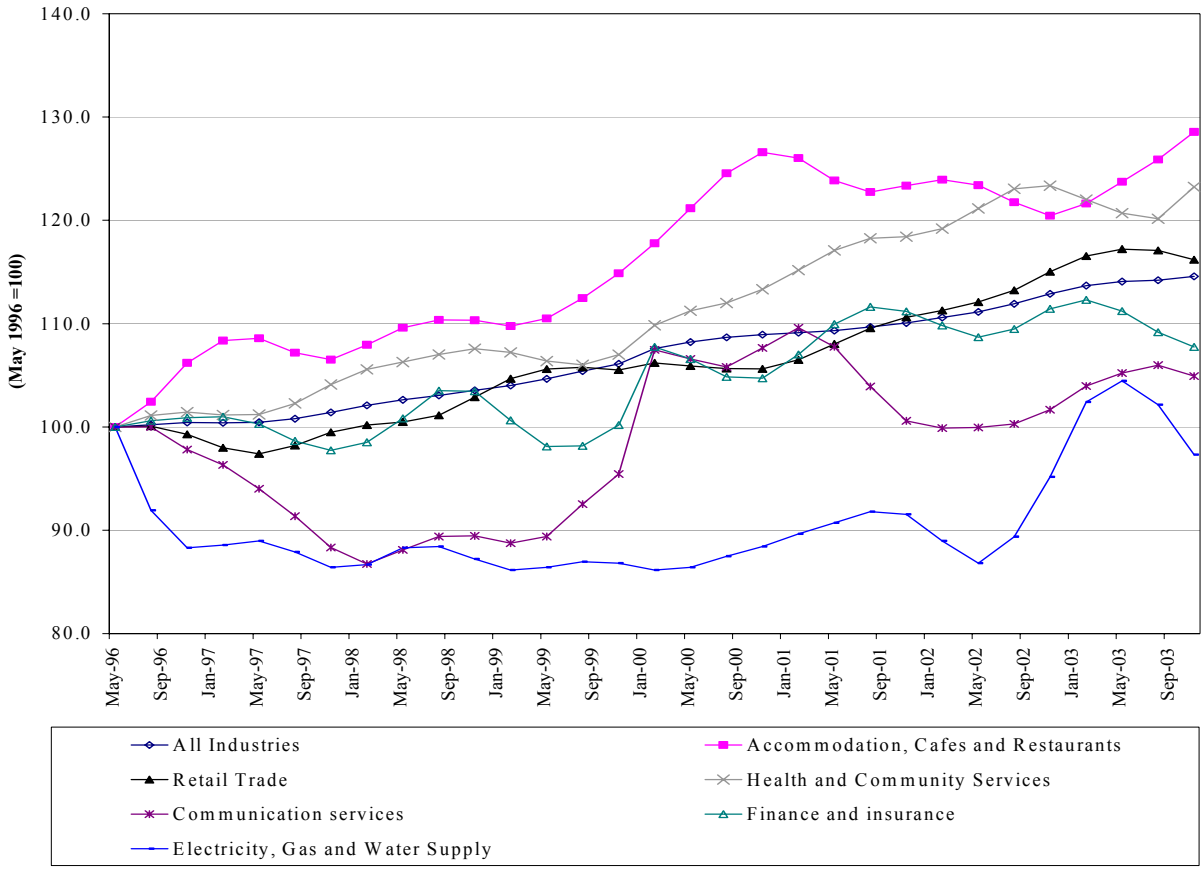
**[149]** Given the limitations in the data used by both the ACTU and the Commonwealth, the submissions made in relation to profit levels in the award-reliant sectors are of little assistance.

## Employment

**[150]** Chart 7 compares employment growth between the three highest award-reliant industries and the three least award-reliant industries since May 1996, using a common index base:

[28] Exhibit Commonwealth 5 at para R2.11.

**Chart 7: Employment Growth 1996–2003 (Selected Industries)**




*[Source: ABS Cat. No. 6291.0.55.001.]*

**[151]** Employment growth in the three most award-reliant industries over the period 1996–2003 has exceeded growth in the three least award-reliant industries and has exceeded the all-industry average. However, as the Commonwealth noted in its submission, a range of factors affect the rate of employment growth in an industry sector including productivity, changes in consumer preferences and industry output.[29] The Commonwealth also contended that it is too simplistic to conclude that because employment growth in the award-reliant industries has outstripped total employment growth, previous safety net adjustments have had no impact on employment.

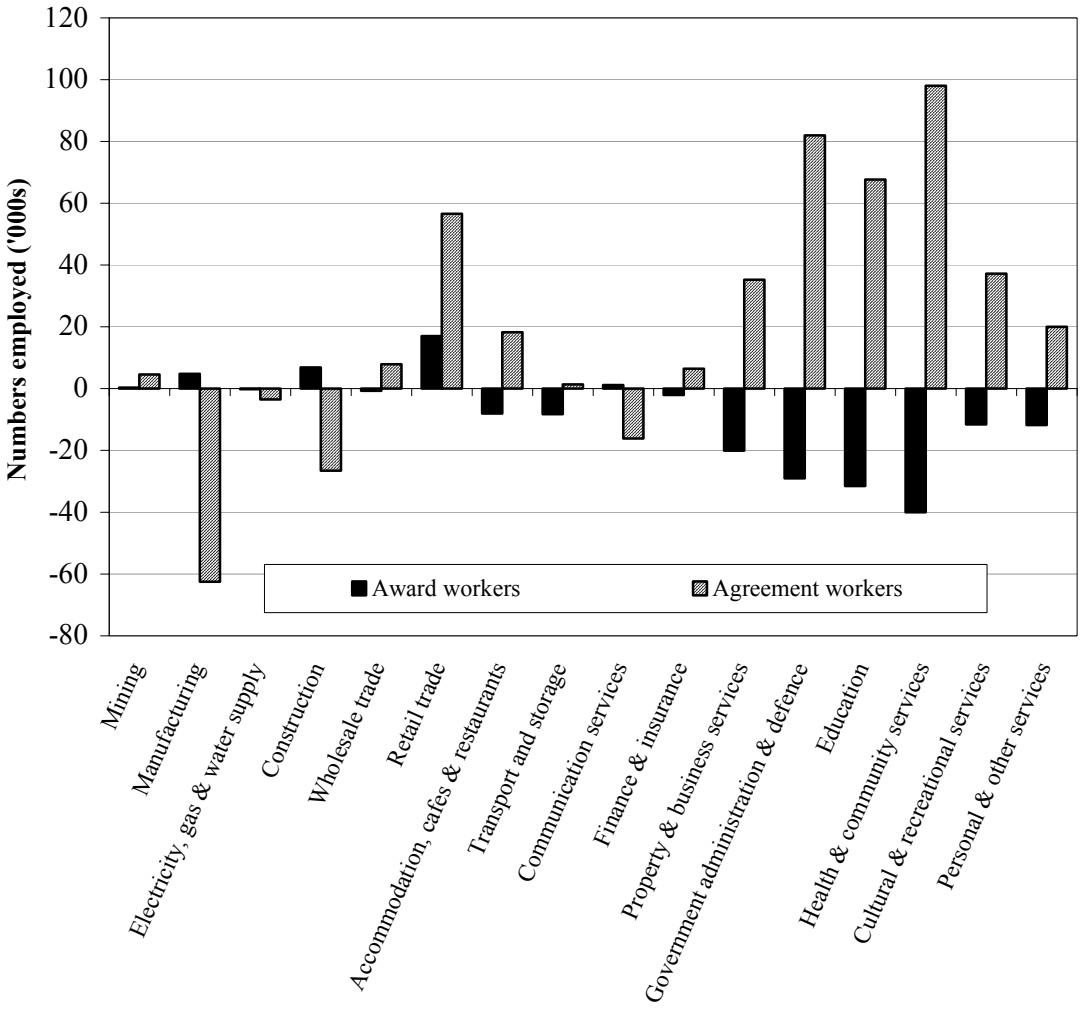
**[152]** AiG relied on the dispersion of growth in employment for different occupations ranked according to whether they are high or low paying as evidence that safety net adjustments have impacted adversely on employment. The data utilised are somewhat outdated — the latest yearly data is 2000 which is of no relevance to the safety net increases in recent years. The earlier data demonstrate that relative growth in hours was lower in the bottom decile in the period 1996–2000 than 1986–95. However, because the impact on employment of safety net adjustments has not been isolated as a discrete factor, we are unable to draw conclusions on the cause of the relative employment growth. This point was acknowledged by the Commonwealth's view that *"wage levels are just one of many variables that affect the rates of employment growth"*.[30]

[29] Transcript at para 3133.
[30] Exhibit Commonwealth 4 at para 5.36.

**[153]** The Commonwealth undertook an exercise of measuring the differential impact of increases in award wages upon employment by comparing changes in the employment of award-reliant and agreement-based workers within a sector. The approach adopted was said to help account for all the other factors which may affect the employment growth of industries which have confounded such analysis in the past.

**[154]** Chart 8 demonstrates that non-award employment increased in all but three industries with a net increase of 327 000 jobs. Award employment fell in all but five industries, with a net decline of 133 000 jobs. The Commonwealth concluded that because the increase in numbers in employment covered by agreements exceeded the decrease in numbers covered by awards *"it therefore seems reasonable to conclude that most new employees are engaged under agreements, not awards"*.[31]

**Chart 8: Change in Numbers Employed Under Agreements and Awards by Industry May 2000–May 2002**




*[Source: ABS Cat. No. 6306.0 and ABS, Supertables, E06.]*

**[155]** This could be so. It could also be the case that award-reliant employees are increasingly being covered by agreements. Such a conclusion would be consistent with the decline in the proportion of employees covered by awards. It would follow that increases in the safety net are not inhibiting the movement away from award coverage to agreement coverage.

[31] ibid. at para 5.41.

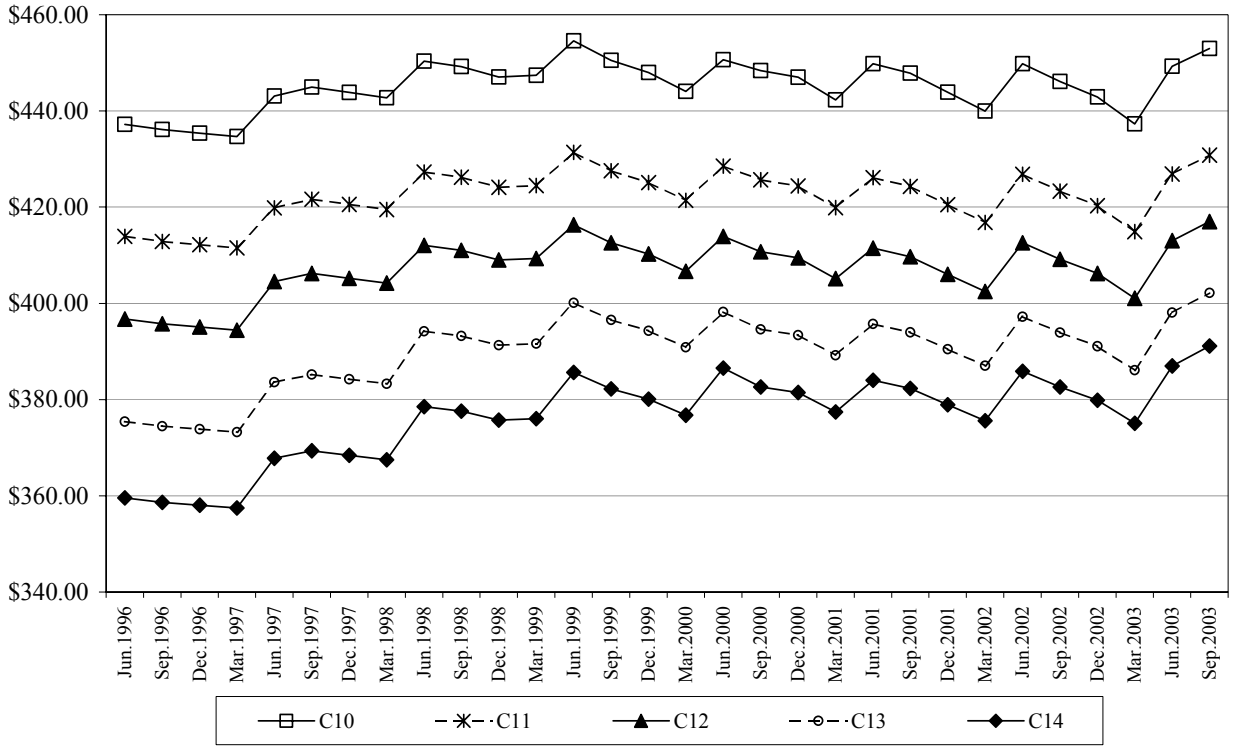
# Productivity

**[156]** The ACTU contended that labour productivity increased in major award-reliant industry sectors in 2002–03. Productivity growth in accommodation, cafes and restaurants was 5.9 per cent for that financial year, whilst in health and community services productivity increased by 2.0 per cent and in the retail trade by 1.1 per cent. In each case productivity growth in these heavily award-reliant sectors exceeds average productivity growth for all industries for the financial year 2002–03 of 0.8 per cent.

**[157]** In the period of safety net adjustments, real unit labour costs have fallen in each of the three most award-dependent sectors, that is the increase in productivity has outpaced the increase in real wages.

**[158]** This year the ACTU supplements its consideration of real increases in gross award wages with a consideration of real increases in after-tax award wages. Chart 9 shows the real after-tax wage for all wage rate classifications in the Metal Industries Award at or below the C10 level from June 1996 to September 2003. As the chart illustrates, the real after-tax wage for C14 has only increased slightly since 1999 and wage rates for C11 and C10 are currently worth less in real terms than they were in June 1999.

**Chart 9: Real After-Tax Wages**




Notes:
(a) All figures September 2003 dollars.
(b) After-tax wages includes low income tax off-set (where applicable) but excludes Medicare levy.

*[Source: Exhibit ACTU 1, Figure 1.1 at para 1.14.]*

**[159]** The real after-tax wage for an employee on the federal minimum wage (C14) in September 2003 was $391.12, just $5.47 more than the corresponding June 1999 figure, an increase of 1.4 per cent in over four years — an average annual real increase of 0.5 per cent. Award workers in the C11 and C10 classifications have suffered real declines in after-tax income in the period ($0.58 and $1.63 respectively) with workers at C12 and C13 essentially at the same position in September 2003 as they were in June 1999. (The real after-tax wage for C12 has increased $0.68 in the four-year period and for C13 has increased $2.04.)

**[160]** The Commonwealth conducted a series of regression analyses to test the relationship between productivity performance and award coverage. Its analysis of seven industries concluded that:

- nearly 60 per cent of the difference in the average annual rate of productivity growth between 1990–2003, between the seven industries modelled, is explained by the change in award coverage;

- different industries have different capacities for productivity growth. Both capital deepening and an industry's intrinsic capacity for productivity growth influence productivity outcomes;

- industries with high levels of award-reliance had lower productivity growth rates regardless of whether they can be considered intrinsically high or low productivity industries; and

- a reduction in award-reliance is associated with an increase in productivity. A 10 percentage point reduction in award-reliance in an industry between 1990 and 2002 was associated with an increase in the average annual productivity growth of 0.5 percentage points.

**[161]** The Commonwealth undertook a second regression analysis whereby it included service industries and disaggregated the retail and wholesale industry such that eleven industries were analysed.

**[162]** The analysis showed that:

- the level of award-reliance in 2002 was highly significant in explaining the differences in industries' productivity growth, even after taking into account the effects of capital deepening and the intrinsic capacity for productivity growth as measured by average levels of productivity; and

- a 10 percentage point reduction in award-reliance in 2002 in an industry was associated with a 0.6 percentage point rise in that industry's average annual productivity growth between 1990 and 2003.

**[163]** Professor W Mitchell, Professor of Economics and Director of the Centre of Full Employment and Equity at the University of Newcastle, in a critique included in the ACTU's reply submissions, raised a number of limitations in the methodology applied in regression analyses, including:

- failure to fully report diagnostic statistics;
- the number of observations were below the professionally accepted level of 30 in all but one of the models;
- measurement problems and error; and
- failure to control for factors which may affect both variables and produce bias and endogeneity problems.

**[164]** Given the technical limitations of the exercises undertaken, the correlations, which the Commonwealth regression analyses produce, do not allow us to reach any conclusions on the causes of the productivity growth in particular industries. In particular, we do not think it is safe to conclude that a reduction in award coverage resulted in higher productivity increases, or, as a corollary, that higher productivity increases arose out of a higher level of coverage in the enterprise bargaining sector within an industry.

**[165]** We accept the Commonwealth's submission that its analysis *"makes good use of the limited data available"*. However, in the absence of more reliable and appropriate data it is not possible to confidently reach conclusions about causality from these regression analyses.

**[166]** Based on the material before us, we adhere to the conclusion reached in the May 2003 decision that it has not been demonstrated that there is a negative association between safety net adjustments and productivity growth. There is no necessary association between award coverage, safety net adjustments and productivity growth.[32]

## General Conclusion

**[167]** Having regard to the range of material in respect of the economic performance of the most award-reliant industry sectors, we are unable to discern any negative impact from the safety net adjustments which have been awarded in recent years.

# ECONOMIC EFFECTS

## Academic Research

**[168]** As has been the case in previous safety net review proceedings, the parties relied on academic papers and other research material in support of their contentions. We now turn to deal with some of this material.

### The Minimum Wages Report

**[169]** In the May 2003 decision the Commission encouraged the parties, and in particular the Commonwealth, to give consideration to facilitating a comprehensive,

[32] See May 2003 decision at paras 180 and 182.

representative and technically robust survey to provide direct and contemporary information relevant to the Commission's task in adjusting the wages safety net.[33]

**[170]** The Commonwealth responded by commissioning research intended to provide answers to the following questions:

- How many businesses and employees have their wages adjusted through the annual safety net case and its flow-on effects?

- What is the effect of the annual safety net decision on wage setting and labour costs?

- What was the effect of the 2003 safety net adjustment on employment? and

- What is the effect of safety net adjustments on employment levels?

**[171]** Turning Point Research Pty Ltd was commissioned by the federal Department of Employment and Workplace Relations (DEWR) to undertake two tasks. The first was to design a questionnaire, to be included in the October–November 2003 Yellow Pages survey of small and medium sized businesses, that could provide information to help answer these research questions. The second task was to analyse the data collected from that survey.

**[172]** The resultant report titled *Minimum Wages in Australia: an analysis of the impact on small and medium sized businesses* (the Minimum Wages Report) was tendered during the course of the proceedings and one of the authors of the report, Dr Don Harding, gave evidence.

**[173]** The survey panel consisted of some 1800 businesses, being 1200 small businesses (i.e. those with 19 or fewer full-time employees) and 600 medium sized businesses (i.e. those with 20 to 200 full-time employees). The response rates to the survey, at 20 to 22 per cent, were lower than expected.[34] It took Sensis Pty Ltd (Yellow Pages), who administered the survey, 9887 business contacts to obtain the required 1800 interviews.

**[174]** The survey was piloted on seven firms in metropolitan New South Wales, but ultimately was only trialled with two of these firms because five of the firms contacted proved to either have no minimum award wage rate employees or so few such employees that they did not move beyond the screening questions in the survey.[35]

**[175]** Some of the key findings of the Minimum Wages Report are:

- About 1.8 million employees of small and medium sized businesses are paid minimum award rates.[36] A further 1.1 million employees are paid overaward wages and receive an automatic flow-on of the May 2003

[33] May 2003 decision at para 176.
[34] Exhibit Commonwealth 5.
[35] Exhibit Commonwealth 1 at para 7.15.
[36] ibid., Section 2.2, Table 2.4 at p. 33.

safety net adjustment to their wages[37] and an additional 1.4 million employees received or expected to receive, discretionary flow-on of the May 2003 safety net adjustment.[38] Hence the annual safety net adjustments to minimum award wage rates influence (directly or indirectly) about 4.3 million people employed by small and medium sized businesses.[39]

- Over a three-month period the short-run impact of the May 2003 safety net adjustments on employment demand was 14 000 fewer job places than would otherwise have been the case. This represents an elasticity of demand of about -0.2 per cent, that is, for every 1 per cent increase in award wages employment demand for award workers will fall by 0.2 per cent.[40] The estimate of 14 000 jobs was subsequently revised to a figure of *"almost 13,000"* in Dr Harding's supplementary statement of 15 April 2004.

- A guarantee that there would be no safety net adjustments awarded for a period of five years would result in an increase in employment demand of 245 000 jobs.[41]

**[176]** In his response to criticism of Dr Ian Gordon, Director, Statistical Consulting Centre, University of Melbourne, which formed part of the ACTU's reply, Dr Harding calculated confidence intervals. He concluded that almost 13 000 jobs were lost, or not created, because of the 2003 safety net adjustment. Applying confidence intervals he found that at the 95 per cent level the number of jobs lost was between 7067 and 18 807. Dr Harding concluded that the *"main point to emerge . . . is that the job loss is statistically significantly different from zero"* that is, a positive number of jobs were lost, or not created, as a result of the 2003 safety net adjustment.[42]

**[177]** The Commonwealth relied on the Minimum Wages Report in support of its contention that a cautious approach should be taken to adjusting minimum wages because of negative employment consequences.

**[178]** The ACTU contended that *"no weight whatsoever"* should be placed on the Minimum Wages Report because of a number of serious deficiencies in the methodology adopted. We do not propose to set out each of the points advanced by the ACTU in support of this contention. We need only deal with three of the points advanced.

**[179]** First, the accuracy of the survey responses is dependent on the extent to which respondents to the survey understood what a safety net adjustment is. Dr Harding agreed that without such an understanding a person could not meaningfully answer the key survey questions.

[37] ibid., Section 2.3, Table 2.13 at p. 39.
[38] ibid., Section 2.4, Table 2.18 at p. 42.
[39] Minimum Wages Report, Section 2.2, Table 2.4 at p. 33.
[40] ibid., Section 3.3, Table 3.3 at p. 49 and Exhibit Commonwealth 5 at para R5.10.
[41] Minimum Wages Report, Section 4.2, Table 4.2 at p. 60.
[42] Supplementary statement of Dr Harding at para 37. This conclusion was put in issue in the ACTU's further written reply.

**[180]** In his evidence Dr Harding dealt with this issue in these terms:

> *"[I]f you look at the preamble at the beginning of the report, the objective of the preamble is to make sure that people understand the context of the next set of questions that are coming. So it is put into — they are put into that context. People who are unsure of that context have an opportunity to say that they are unsure of that context, and they have opportunities through the report, to say, don't know.*
>
> *So that you can be assured that these are responses that the people who responded understood the context of the question that was asked."*[43]

**[181]** The preamble referred to is in the following terms:

> *"Federal Minimum award wages, often referred to as safety net wages, are set each year by the Australian Industrial Relations Commission and also passed on to State award wages. I would like to ask you some questions about how wages are determined in your business, about whether the increases in minimum award wages influence your business in any way."*[44]

**[182]** There is reason to doubt whether at least some of the survey respondents had a sufficient understanding of the concept of a safety net adjustment to enable them to accurately answer the questions put.

**[183]** In its May 2002 EEH Survey, the ABS asked questions regarding both overaward employees and the flow-on of safety net adjustments. The responses to these questions have not been published due to data quality concerns. The ABS has advised the ACTU as follows:

> *"A number of data items collected in EEH 2002 are not available for release as a result of data quality concerns. Included among the data items deemed not available for release are data on 'Award (paid more than the award rate)' and the 'Safety net wage adjustment'. For both of these data items, quality concerns were raised during the editing process and confirmed during the subsequent Post Enumeration Survey. Contact with providers gave a strong indication that there were frequent instances of incorrect reporting, usually resulting from a misunderstanding of the question or the associated notes and definitions. In particular, many respondents were identified as having incorrectly reported employees being paid by 'award (paid more than the award rate)' when there was either clearly no link between the employee's rate of pay and the relevant award rate, and/or some other form of agreement was in place which took precedence over the award. With respect to the safety net adjustment, it became apparent that this term and the associated concept were not widely understood by respondents. In addition to under reporting of entitlement to the safety net adjustment among award-only employees, there was frequent incorrect reporting of safety net entitlements among employees who had no link between their remuneration and an underlying award."*[45]

[43] Transcript at paras 493–4.
[44] Exhibit Commonwealth 4 at para 7.26 and Appendix C at p. 3.
[45] Exhibit ACTU 10.

**[184]** No party sought to challenge the accuracy of this advice.

**[185]** The EEH Survey has a significantly larger sample size than the Minimum Wages Report survey (8000 employer units representing 53 000 employees, as opposed to 1800 employer units) and has a response rate of 95 per cent.[46]

**[186]** The EEH Survey is a mail-out survey whereas the Minimum Wages Report questionnaire was administered by telephone interview. The wording of the explanation given for the relevant questions in the EEH Survey is not materially different from the preamble in the Minimum Wages Report survey, though the placement is different. In the Minimum Wages Report survey the preamble is read at the beginning of the relevant section of the questionnaire whereas, in the EEH Survey, it appears immediately before the questions which relate to the impact of the safety net adjustment. In our view these are not material points of difference.[47]

**[187]** In his oral evidence Dr Harding suggested that the EEH Survey, which was conducted in May 2002, took place at a different time in the public understanding of safety net adjustments. There was no other evidence to support the assertion that the public understanding of these issues has materially increased between May 2002 (when the EEH Survey was conducted) and October–November 2003 (when Sensis administered the relevant questionnaire).

**[188]** Dr Harding also said that the survey respondents were given every opportunity to reply "don't know" in respect of the questions put. But the difficulty with this proposition is that a survey respondent may believe that he or she knows what a safety net adjustment is, but their understanding may be incorrect. Nor is there any record of how many of the respondents said that they did not understand the preamble.

**[189]** There was no cross-check question in the Minimum Wages Report survey to check the respondent's understanding in this regard. Such questions were apparently not included due to budgetary constraints on the number of questions that could be asked. Nor was a post-enumeration survey conducted to check the veracity of the answers given. Further, as we have noted, the trial of the survey was very limited and the Commonwealth acknowledged that the trial *"provided less help than usual in fine tuning the design of the survey"*.[48]

**[190]** In considering the effect of these issues, it is important to bear in mind that the employment impact of the May 2003 decision suggested by the Minimum Wages Report is based on an extrapolation of the responses of just 37 firms who reported an adverse economic impact from the May 2003 safety net adjustment. Two of the 37 firms said that the effect was zero, thus 35 firms assigned a negative employment impact to the 2003 safety net adjustment.[49] Hence, if only some of the respondents answering on behalf of these 35 firms had a flawed understanding of what a safety net

[46] Transcript at paras 536–8.

[47] We note the points made in Dr Harding's supplementary statement of 15 April 2004 at paras 1 and 2 but we remain of the view that the differences between the surveys are not material.

[48] Exhibit Commonwealth 1 at para 7.15.

[49] We note that Dr Harding, in his supplementary statement, indicated by way of clarification that the fundamental unit of measurement in his report is closest to the concept of jobs held by persons. Some people will hold multiple part-time jobs thus accounting for part of the discrepancy between the Minimum Wages Report and ABS statistics on part-time employment.

adjustment is, this might have had a substantial effect on the estimate of the employment impact of the May 2003 decision.

**[191]** The second point to mention is that there are significant differences between a number of industry sector estimates extrapolated from the Minimum Wages Report questionnaire and those from established ABS surveys.[50] We briefly summarise some of these differences below:

**Table 20: Differences between Minimum Wages Report and EEH Survey**

| | Minimum Wages Report survey ('000) | ABS ('000) | Difference % |
|---|---|---|---|
| Part-time employment[51] | 788.1 | 561.0 | 40.5 |
| Award-only employees by industry sector[52] | | | |
| All sectors | 1826.2 | 1456.0 | 25.4 |
| Accommodation, restaurants and cafes | 335.2 | 247.6 | 35.3 |
| Retail trade | 526.1 | 369.2 | 42.5 |
| Cultural and recreational services | 158.4 | 88.4 | 79.2 |

**[192]** Given the robust nature of the ABS survey these discrepancies raise serious doubts about the reliability of the Minimum Wages Report.

**[193]** The third point relates to the low response rate. The response rate of the Minimum Wages Report survey was 20 to 22 per cent. In the opinion of Dr Gordon, a response rate lower than 30 per cent means that the survey must be regarded as unreliable due to possible response bias. As pointed out by Dr Gordon, response bias will arise when respondents to a survey have different opinions and characteristics to those who do not respond. Dr Gordon referred to the ABS examination of data pertaining to business surveys to establish whether response bias is a problem. The ABS concluded that:

> *"Overall, we can conclude that non-response bias can have significant detrimental effects on the accuracy of survey estimates. These effects can be reduced through higher response rates. From this, it is recommended that steps should be taken to ensure that the response rates achieved in any particular survey are as high as possible."*[53]

[50] Transcript at paras 842–915.

[51] Transcript at paras 643–729, 843–869 and Exhibits ACTU 11 and 12. We note that in para 12 of his supplementary statement Dr Harding stated that the difference between the ACTU figure on employees on awards and the estimate in the Minimum Wages Report could be partly accounted for by the stronger part-time than full-time growth in employment in the material to October–November 2003 which will increase the published number of employees closer to his estimate. We disagree. As pointed out in the section on economic indicators, full-time employment growth in recent periods has outpaced part-time employment growth.

[52] Transcript at paras 871–917 and Exhibit ACTU 14.

[53] Gordon, Ian, April 2004, *Commentary on a Survey Conducted in Relation to the Safety Net Case, 2004.*

**[194]** In summary, Dr Gordon stated that in the absence of a survey of non-respondents, there could be no certainty that non-response bias would not be present. There is no basis for the assertion that because the survey is stratified any biases between stratum may cancel out because they operate in different directions. It is possible that a non-response bias will operate across all strata and this will occur when the bias is not related to characteristics captured by the stratification.

**[195]** Dr Harding acknowledged that the response rate of the survey was low but relied on an article on low response rates in the economic literature to support his assertion that the survey results could be valid notwithstanding the low response rate. The article by Johnson and Owens, *Survey Response Rate in the Professional Literature*,[54] reported the results of a survey of editors of journals ascertaining policy positions held on publishing articles with low or non-reporting of response rates. The survey arose out of concern that response rates were declining yet they are viewed as the most widely compared statistic for judging the quality of a survey. They stated that *"many would argue that the issue of declining response rates is a growing crisis in the profession".* The survey results confirmed the authors' concerns because none of the journals had a minimum response rate standard. Most editors rely on the expertise of peer reviewers to determine whether information on response rates is necessary. In our view the article relied on by Dr Harding to justify the publication of the survey does little to overcome the conclusion that the response rate of his survey was at a level which means non-response bias may be present.[55]

**[196]** Having regard to the methodological limitations identified we think it would be unwise to place any reliance on the Minimum Wages Report.

## The New Zealand Minimum Wage Experience

**[197]** The ACTU relied on a paper by Hyslop and Stillman[56] to support its contention that increases in minimum wages do not harm employment.[57]

**[198]** The Hyslop and Stillman paper analyses the impact of the increases in minimum wages affecting youth workers in New Zealand since 2001. Prior to those increases the youth minimum wage, applying to 16–19 year olds, was set at 60 per cent of the adult rate. Two changes were made. The first lowered the eligible age for the adult minimum wage from 20 to 18 years, and resulted in a 69 per cent increase in the minimum wage for 18 and 19 year olds.

**[199]** The second change raised the minimum wage in two annual steps from 60 to 80 per cent of the adult minimum, and resulted in a 41 per cent increase in the minimum wage for 16 and 17 year olds over a two-year period.[58]

[54] Johnson, Timothy, & Owens, Linda, *Survey Response Rate in the Professional Literature*, Survey Research Laboratory, University of Illinois at Chicago.

[55] However, one editor indicated that it would be a "rare exception" to have a response rate of at least 60%. Several editors noted they make judgments on a case-by-case basis e.g. reviewers will note the response rate as one of evaluative criteria contributory to a decision to publish, in most instances 20% is too low and 80% is a default standard but there is a considerable grey area. The authors also cited the study on which Dr Harding relied, which recorded a 20% response rate and was published in a high quality professional journal.

[56] Hyslop, Dean & Stillman, Steven, February 2004, *Youth Minimum Wage Reform and the Labour Market*.

[57] Exhibit ACTU 1 at para 6.32.

[58] Hyslop and Stillman, op. cit. at Table 1.

**[200]** Using data from the New Zealand Household Labour Force Survey for the period 1997–2003, the authors examined changes in the labour market experiences of the two groups of teenagers directly affected by these changes (i.e. 16 and 17 year olds, and 18 and 19 year olds) and compared these with the changes experienced by young adults aged between 20 and 25.

**[201]** The paper concludes *"we find no consistent and robust evidence of any adverse effects of the changes on teenage employment"*.[59]

**[202]** For a number of reasons we have concluded that the Hyslop and Stillman paper has little relevance to the determination of the matter before us. Five points may be noted in this regard.

**[203]** First, the paper analyses the impact of increases in minimum wages in circumstances which are quite different to those which are before us. We think there are inherent limitations in comparing the impact of a single statutory minimum rate with an award system that sets minimum wages for a number of skill levels.

**[204]** The second point to note is that it may be premature to conclude that increasing the minimum wage for young workers in New Zealand will have no adverse effect on employment in that country. In that regard Hyslop and Stillman sound a note of caution in their concluding remarks *"given the recent increases, whether such benign effects continue going forward remains a moot point"*.[60]

**[205]** Third, there is a real issue about whether the minimum wage changes actually had an impact on the rate of pay of teenagers and as Burkhauser, Couch and Wittenberg observe in their 2000 paper *A Reassessment of the New Economics of the Minimum Wage Literature*:

> *"If changes in the minimum wage are to affect teenage employment, they must first have an impact on teenage wage rates."*[61]

**[206]** Although there were increases of 69 and 41 per cent in the statutory minimum wage for 18–19 and 16–17 year olds respectively, the actual increase in average real hourly rates of pay for these two groups was much less. Hyslop and Stillman also acknowledge that *"the pre-reform youth minimum wages were comparatively low"*.[62] At footnote 17 of their paper they state:

> *"[T]he post-reform average wage for 16–17 year-olds is 7 percent higher than the pre-reform average, while the increase for 18–19 year-olds is only 4 percent."*[63]

[59] ibid. at p. 22.
[60] ibid. at p. 23.
[61] Burkhauser, RV, Couch, KA & Wittenberg, DC, October 2000, *A Reassessment of the New Economics of the Minimum Wage Literature with Monthly Data from the Current Population Survey*, 18(4) Journal of Labour Economics 660.
[62] Hyslop and Stillman, op. cit. at p. 23.
[63] Also see Exhibit ACCI 9.

**[207]** The authors make the following comments about their results:

> *"This reform appears to have shifted the lower-end of the wage distribution to the right for both 16–17 and 18–19 year-olds relative to older adults. Also, the shift in the wage distribution is larger for 16–17 year-olds than for 18–19 year-olds, partly because the minimum wage reform was less binding on 18–19 year-olds' wages."*[64]

**[208]** The fourth point is that the study documents an increase in minimum wage non-compliance for teenage workers since the increases came into effect. The proportion of workers in each age group reporting sub-minimum wages increased substantially. In the 18–19 year old group the proportion increased from 1 per cent to 12 per cent in 2001 and 2002, and to 13 per cent in 2003. The proportion of 16–17 year olds receiving sub-minimum wages increased from 3 per cent in 2000 to 6 per cent in 2001, 9 per cent in 2002 and 8 per cent in 2003. The authors conclude that *"these increases imply a significant increase in non-compliance with the statutory minimum wage"*. As the Commonwealth suggested in its submission, increased compliance may come at the expense of employment.

**[209]** Finally, the Hyslop and Stillman results could have been affected by the fact that the unemployment rate in New Zealand declined from 7.5 per cent in 1998 to 5.4 per cent in 2003. As ACCI pointed out in its submission, the employment outcomes relied on by Hyslop and Stillman could have been due to other factors such as the general strengthening of the New Zealand economy or a tighter labour market.

## The Western Australian Minimum Wage

**[210]** A recent paper by Leigh[65] has sought to estimate the effect of raising the Western Australian statutory minimum wage on employment.

**[211]** Leigh looked at six statutory minimum wage increases between 1994 and 2001. By comparing employment rates before and after the increases, he sought to test the proposition that increases in minimum wages cost jobs. Leigh made use of a control group (the rest of Australia) to validate his "before" and "after" results. The before and after minimum wage increase difference in employment rates for Western Australia was calculated by subtracting the employment rate three months after a minimum wage increase from the employment rate which prevailed three months before. This was done for six occasions when minimum wage increases occurred in Western Australia between 1994 and 2001. The before and after differences were also calculated for the control group, i.e. the rest of Australia. Leigh then calculated the difference between the Western Australian figure and the figure for the rest of Australia.

**[212]** An example will serve to better illustrate the methodology used. In the case of the March 2001 increase (8.8 per cent) Leigh found that the employment rate in Western Australia fell by 0.037 per cent, while employment for the rest of Australia

[64] Hyslop and Stillman, op. cit. at p. 11.
[65] Leigh, Andrew, December 2003, *Employment Effects of Minimum Wages: Evidence from a Quasi-Experiment* in The Australian Economic Review, Vol. 36, No. 4 at pp. 361–373.

fell by a smaller amount (0.020 per cent). The relative change in Western Australia is the difference between these two numbers, i.e. 0.017 per cent.

**[213]** Leigh's overall finding was that a 1 per cent rise in the minimum wage leads to a 0.15 percentage point fall in employment.[66] Leigh's study has been trenchantly criticised by Professor Junankar[67] and Dr Watson[68] in separate papers. In his March 2004 paper, Dr Watson describes Leigh's study as fundamentally flawed, with major methodological and empirical weaknesses.

**[214]** We do not propose to canvass all of the criticisms made of the Leigh study. For present purposes we note four particular issues:

1. There is reason to doubt the appropriateness of using the rest of Australia as a control group, as the other Australian states have widely differing industry and employment characteristics to Western Australia. Leigh has not controlled for other factors that may be influencing the rate of employment growth in Western Australia versus the rest of Australia, such as different compositional structures in GDP and different policy settings.

2. The six minimum wage increases which Leigh examined averaged 6.3 per cent hence, on his own estimation, we are looking at employment losses of around 1300 persons. Given the month-to-month variability in employment it seems unlikely that such an impact would be discernable. Further, the ABS table of standard errors for Western Australian employment statistics shows that figures of about 1000 persons are subject to standard errors of 450 persons.[69]

3. In at least four of the minimum wage increases studied, the gap between the employment rate in Western Australia and the rest of Australia was already trending against Western Australia before the relevant increase in the minimum wage.

4. Leigh's results appear sensitive to a change in the months before and after the minimum wage increases which are analysed. The ACTU submitted that if a different time frame is chosen to analyse the effect, for example by comparing employment rates one month before an increase and three months after, then the results are quite different. On four of the 10 occasions when the statutory minimum wage increased, Western Australia had a better employment performance relative to the rest of Australia.

**[215]** In the circumstances we think that the appropriate course is not to place any weight on the study until it has been the subject of further debate. In any event we note that even if the methodological problems which have been identified are satisfactorily addressed, the study will only be of limited relevance. It focuses on the effect of

[66] This figure comes from Leigh's erratum in The Australian Economic Review, Vol. 37, No. 1.
[67] Junankar, PN, 22 January 2004, *A Preliminary Critique*, see Exhibit ACTU3 at Tab 7.
[68] Watson, I, March 2004, *A Needle in a Haystack. Do increases in the minimum wage cause employment losses?*, ACIRRT Working Paper 90, University of Sydney.
[69] ibid. at p. 13.

adjusting a minimum rate and, as we have noted, the circumstances we are dealing with are quite different.

## NFF Research

**[216]** NFF submitted that the Commission should consider a range of factors impacting across Australia to provide an overall determination of a fair outcome arising out of those proceedings.

**[217]** NFF commissioned a report entitled *A Report on the Effect of Raising Minimum Wages on Rural Businesses* by Professor Lewis, from the Centre of Labour Market Research at the University of Canberra (the Lewis Report).

**[218]** Professor Lewis considered a range of factors operating upon the rural sector including population and employment growth. Professor Lewis concluded:

- rural business statistics highlight the differential between rural and metropolitan sectors. In 1999–2000, the average revenue for rural businesses was only 76 per cent of the average for city businesses;
- rural businesses are not able to reap the economies of scale of urban businesses. Revenue streams are most likely to be limited by population size and growth in rural towns;
- average profit for rural businesses are 59 per cent of non-rural business profits;
- metropolitan businesses are less in debt than rural businesses;
- rural businesses are subject to greater seasonal fluctuations;
- rural businesses have greater input costs due to higher transportation costs;
- the welfare of rural businesses is critical to the welfare of rural towns; and
- farm businesses face declining terms of trade.

**[219]** NFF emphasised two key aspects arising out of the Lewis Report:

- the relative cost of living; and
- the effect of wages on demand for labour.

## Cost of Living

**[220]** NFF submitted that the cost of living for rural Australia is 4 per cent lower than metropolitan Australia. Professor Lewis compiled a basket of goods and services and weighted it to reflect the expenditure pattern for rural Australia. His results are shown in the following table:

**Table 21: Relative Cost of Goods and Services in Rural Australia**

| Good | Weight | Price |
|---|---|---|
| Food | 17.72 | 1.04 |
| Alcohol and tobacco | 7.41 | 1.04 |
| Housing | 19.75 | 0.69 |
| Petrol | 4.25 | 1.04 |
| Other transport | 11.00 | 1.01 |
| Other | 39.87 | 1.01 |
| **Value** | | 95.56 |

*[Source: Caltex Australia (2003), Commonwealth Bank—HIA (2003) and Queensland Office of Economic Statistical Research (2001).]*

**[221]** We make some brief observations about the conclusions reached:

- as the ACTU pointed out, the price index will depend on weights afforded the components in the index. A slight variation in the weight given to others to equate with the weight given to food, alcohol and tobacco, and petrol, rather than assigning the weight given to transportation, would reduce the differential from 4 per cent to 3 per cent;

- the resultant difference in the index is not out of kilter with the differences recorded in the level of the CPI for the capital cities. The level of the CPI varies for the December quarter 2003 by between 143.6 percentage points for Sydney and 138.5 percentage points for Darwin — a range of around 5 percentage points; and

- the level of the price index for the rural sector tells us just that — the level of prices. It does not record the rate of increase.

**[222]** NFF submitted that the Commission should take the lower cost of living in rural Australia into consideration in determining the level of a fair minimum wage.

## Effect of Wages on Demand for Labour

**[223]** In his report, Professor Lewis relies on a number of studies which have measured the relationship between wages and the demand for rural labour. In a recent paper Professor Lewis, together with Garnett, summarised the studies and the results are included in his report. He concluded that all the results unambiguously imply that a rise in wages results in a *"significant fall in employment"*. Lewis and Garnett also found that structural and technological change are important. They conclude that for hired labour the best estimate is that the effect of a 1 per cent rise in wages is a fall in employment of between 0.6 and 1.5 per cent.[70]

[70] Garnett, AM & Lewis, PET, (2002) *Estimating Farm Labour Trends in Australia*, The Centre for Labour Market Research, The University of Western Australia.

**[224]** We make some observations about the conclusions reached by Professor Lewis:

- Professor Lewis himself notes that many of the studies are *"somewhat dated"*.[71] The studies summarised by Professor Lewis were published over the time span 1974–87.

- As acknowledged by Professor Lewis, the results of the studies differ somewhat due to the differences in definitions of employment, the industry coverage and the period over which the elasticities are estimated. The results for long-run hired labour varied from -0.58 to -2.28 per cent.

- All the studies modelled aggregate wages, they do not measure award-only employees. The outcomes are of little relevance to the quantification of the employment effects of a safety net adjustment to the award structure. In addition, the periods over which the studies were conducted were characterised by very different wage fixing mechanisms from current wage settings.

- In his paper with Garnett, Professor Lewis identifies a number of methodological problems in some of the studies which they rely on to determine the range of elasticities.

## Other Academic Studies

**[225]** A number of academic studies relied on in previous years were again referred to, together with new research, which is primarily based on the effect of a change in teenage unemployment rates as a consequence of an increase in the minimum wage.

**[226]** For instance, ACCI relied on Burkhauser, Couch and Wittenburg's reworking of the Card and Krueger research by controlling for the effects of general economic conditions on employment to show that there were *"significant but modest negative effects on teenage employment"*.[72]

**[227]** The Card and Krueger study was criticised by the Commonwealth which relied on a recent study by Bazen and Marimoutou.[73] It is contended that this study overcomes deficiencies in early studies to successfully model teenage unemployment levels in the United States over a longer time frame. It finds a negative relationship between teenage employment and the minimum wage over the period 1954 to 1999. The resultant model shows that a 10 per cent increase in the minimum wage leads to a 1 per cent fall in teenage employment in the short-run, rising to a 2 to 3 per cent fall in employment in the longer run.

**[228]** The ACTU also relied upon a book by Professor Alan Manning, Professor of Economics and Director of the Labour Markets Program in the Senate for Economic Performance at the London School of Economics, titled *Monopsony in Motion* —

[71] ibid. at p. 9.
[72] Exhibit ACCI 3 at para R5.11.
[73] Bazen, S & Marimoutou, V, (2002) *Looking for a Needle in a Haystack? A Re-examination of the Time Series Relationship between Teenage Employment and Minimum Wages in the United States*, Oxford Bulletin of Economics and Statistics, Vol 64, Supplement.

*Imperfect Competition in Labour Markets*, in which he provides a theoretical basis under which employment might increase in response to an increase in minimum wages. This will arise where the employer has the power to determine the level of wages. If a minimum wage is set at a market clearing level, then employment may increase concurrently with increases in the minimum wage. Since the ACTU provided no empirical research which relates this theory to the fixation of award rates in Australia, we are not assisted by it.

## Conclusions on Academic Studies

**[229]** After yet another survey of the literature and other material on the economic effects of increases in minimum wages it has clearly emerged, once again, that most of the information is of very limited assistance. The research is either largely irrelevant, is limited in scope, or has serious methodological flaws.

**[230]** On the question of relevance, it is only necessary to point out, as we have done several times in the course of this decision, and has been pointed out by the Commission in previous safety net review decisions, that studies based on movements in a single minimum wage are unlikely to shed much light on the economic effects of safety net adjustments. This is because safety net adjustments apply to a range of minimum rates at various levels throughout the award system. In the same way, studies which model a single statutory minimum wage increase for a particular sector of the labour market, such as teenage employment, are of limited relevance in determining the effect of increases in award rates of pay across a range of skill levels. To take one issue, the employment effects of safety net adjustments, there may well be a range of elasticities of demand for labour throughout the award classification structures and the elasticities may differ at various points in time. We add that there seems to be a significant measure of agreement that much of the research is about the effects of increasing minimum wages in circumstances which are quite different to those which characterise the Australian industrial relations systems. Despite this apparent consensus we have again been presented this year with material of that kind.

**[231]** As to the scope of the material, studies which deal with employment effects should be treated with caution unless they also deal with countervailing effects which might be equally significant. That proposition is well expressed in this passage from Leigh's paper:

> *"Naturally, this study has focused only on the employment effect of raising the minimum wage. But this is of course only half the story. Policy makers must weigh the employment cost of minimum wage increases against the higher earnings that accrue to low-wage workers and their families. This involves learning more about those workers who hold minimum wage jobs, and how minimum wage increases affect household incomes — issues about which we currently know surprisingly little."*[74]

**[232]** To similar effect is this passage from Dr Watson's summary of the literature:

[74] Leigh, op. cit. at p. 371.

*"Obviously it is difficult to reach a firm theoretical conclusion about the impact of the minimum wage on employment. A great deal depends on numerous assumptions, including the composition of the workforce, the degree of competition in the labour market, and the impact of higher wages on consumer demand. In particular, the size of the minimum wage increase can be critical: below a certain threshold its impact may be insignificant."*[75]

**[233]** It is unnecessary to refer in detail to the methodological limitations which undermine confidence in much of the material. Those limitations have been explored in this and previous safety net review decisions. It is sufficient to refer to two persistent problems with surveys — unacceptably low response rates and lack of testing for non-response bias.

**[234]** We note that the Commonwealth has responded to concerns expressed by the Commission in the May 2003 decision about the lack of probative material in relation to the effect of safety net adjustments on employment. It commissioned the research referred to as the Minimum Wages Report. Unfortunately the utility of the report is severely restricted because of methodological limitations. Nevertheless we are encouraged by the Commonwealth's initiative in this area.

**[235]** We repeat what the Commission said in relation to the effect of safety net adjustments on employment in the May 2003 decision:

*"**[177]** Various parties have submitted that the employment effects of safety net adjustments should weigh more heavily in the Commission's deliberations. That submission would obviously be assisted by high quality research into those effects. Some degree of consultation, and hopefully agreement, between the major parties and interveners as to the scope, content and technical specification of any such research would enhance the value of the results."*[76]

**[236]** The material to which we have been referred does not undermine the conclusion expressed by the Commission in the May 2003 decision that there is a continuing controversy amongst academics and researchers about the employment effects of minimum wage improvements. There is nothing before us to indicate that the controversy has been resolved. We endorse the view expressed in that decision that:

*"**[161]** . . . Taking all of the research into account, it has not been established that moderate increases in the wages of the low paid, of themselves, will diminish aggregate employment outcomes, although some studies suggest that some negative effects might occur for employees receiving the minimum wage."*[77]

## Surveys

**[237]** ACCI and NMI relied on telephone surveys of their memberships which sought to provide data on the impact of the May 2003 decision on employment and other indicators of economic performance.

[75] Exhibit ACTU 5 at p. 40.
[76] May 2003 decision at para 177.
[77] ibid. at para 161.

## ACCI Survey

**[238]** ACCI as in previous years conducted a survey of its members in order to develop an understanding of the labour market consequences of the May 2003 decision. It sought to provide evidence on the proportion of firms which passed on the adjustment, whether employment losses occurred and consequences for prices and profits.

**[239]** The survey was modified to address a number of methodological concerns which the Commission raised in previous decisions.

**[240]** The survey was conducted by ACCI member organisations using a sample frame of its members nationwide. The five largest businesses in each of the ACCI member organisations were deliberately included in the sample but all other businesses were randomly chosen.

**[241]** ACCI received 289 survey results representing a 57.8 per cent response rate, a substantial improvement on last year's 30 per cent response rate.

**[242]** The survey results showed:

- 58.9 per cent of employers passed the May 2003 safety net adjustment on to at least one employee;

- 34.3 per cent of employers passed the adjustment on to other employees within the firm;

- 32.2 per cent of employers passed the adjustment on both directly and indirectly;

- 42.1 per cent of employees did not receive an increase in wages resulting from the safety net decision;

- 69.3 per cent of non-award or overaward employees did not receive an adjustment in wages;

- 92.4 per cent of employers stated that the increase did not result in a change in full-time employment; 2.0 per cent of employers indicated employment had increased; 4.8 per cent of employers indicated employment had decreased;

- 85.5 per cent of employers indicated that the number of part-time and casual employees had remain unchanged; 10 per cent of employers indicated that employment had decreased; 4.5 per cent of employers indicated that employment had increased;

- 19.3 per cent of employers indicated they had increased prices as a result of the adjustment; and

- 34.8 per cent of employers indicated that profitability had decreased.

**[243]** ACCI submitted that the results showed a *"small but definite reduction in employment"*. They also showed a *"larger and more insidious effect on price level"* and a *"much larger effect"* on the number of firms where profitability decreased.

**[244]** ACCI submitted that focusing on aggregate measures fails to take proper account of the damage caused to firms where the increase actually takes place.

**[245]** The conclusions to be drawn from the survey with respect to measuring the real impact of the safety net increase are limited by the parameters of the survey itself. Those limitations include:

- The survey results do not reveal the magnitude of any economic effects, whether adverse or otherwise. By recording the proportion of firms reporting particular effects, it is not possible to draw any conclusions with respect to numbers affected. To do so would require information on the size of a firm's workforce and numbers affected by the safety net increase.

- Similarly, we cannot draw any conclusions on the size of a price increase or a decrease in profitability which some employers reported.

- As pointed out by the ACTU in its reply submissions, the difference between estimates for responses to question 5 regarding increases and decreases in full-time employment is not statistically significant — the observed difference between the increase and decrease responses may be due to sampling variability rather than a "real" difference. With respect to question 6 regarding increases and decreases in part-time and casual employment, basing the statistics on the correct number of firms responding would produce a statistically insignificant result.

- The number of firms from which the proportions are calculated excludes some or all firms which did not pay safety net increases, thus producing higher proportions than if all firms were included in the survey results.

- In the absence of pre-testing the questionnaire, cross-check references and post-enumeration surveys, it may be that the ACCI survey suffers from the same deficiency as the Minimum Wages Report survey if the respondents failed to comprehend the concept of a safety net adjustment.

**[246]** For these reasons it would be inappropriate to attempt to extrapolate the survey results to provide an estimate of the effect of the safety net increase on numbers employed in Australia's workforce.

## NMI Survey

**[247]** NMI submitted that the direct and indirect flow-on of award safety net decisions has a comparatively large impact on the industry which is characterised by about 90 per cent being small businesses and close to half of which (43 per cent) are located in rural and regional Australia.

**[248]** NMI relied on the ABS November 2003 survey of retail motor industry businesses which were asked about the economic effects of the May 2003 award safety net adjustment.

**[249]** A summary of responses is set out in Table 22 as follows:

**Table 22: Effect of 2003 Safety Net Adjustment on Respondents' Business**

| | % Increase | % No change | % Decrease |
|---|---|---|---|
| The level of cash flow in the business | 4 | 69 | 27 |
| Selling price of products and services | 23 | 75 | 2 |
| The level of profitability of the business | 3 | 58 | 40 |
| The level of investment by the business | 6 | 83 | 10 |
| Total number of employment hours | 3 | 88 | 9 |
| Number of permanent employees | 1 | 89 | 9 |

*[Source: AC Nielsen National Wage Case Survey, November 2003.]*

**[250]** NMI acknowledged *"that it is difficult to directly link the impact of the safety net adjustment to changes in a respondent's business"*.[78] However, it concluded that the survey results identify profitability and cash flow as two key aspects of NMI business operations which were adversely affected by the May 2003 decision. It challenged the ACTU's view that safety net adjustments will not have adverse economic effects.

**[251]** As with the ACCI survey, care must also be taken in interpreting the results which are confined to businesses where the safety net adjustment was passed on. The survey results are not percentages of all businesses in the sector. The survey also shares another limitation with the ACCI survey in failing to quantify the effects.

**[252]** Notwithstanding these limitations, the survey shows that the total number of employment hours worked and the number of permanent employees both declined in 9 per cent of businesses, with 91 per cent recording no change or an increase. Much higher proportions of firms recorded a decrease in cash flow (27 per cent) and profitability (40 per cent). It is not possible to draw conclusions on the magnitude of these changes.

## Conclusion on Surveys

**[253]** The results of the ACCI and NMI surveys confirm the broad conclusions reached in the May 2003 decision:

> *"*
> - *there are employment effects of safety net increases with respect to some employers;*
> - *such effects operate differentially; and*

[78] Exhibit NMI 1 at para 5.13.

- *adverse employment effects are more evident in relation to those employers directly affected by safety net increases."*[79]

**[254]** This year's surveys also demonstrate that as a result of the May 2003 decision:

- some firms increased prices; and

- a larger number of firms experienced a decrease in profitability.

## ACCI Analysis of Safety Net Adjustments on Inflation

**[255]** ACCI produced data on award coverage by state and inflation by capital cities which it submitted demonstrate a positive correlation between the proportion of total employees whose pay is determined by award only and the rate of inflation. It also undertook a similar analysis on an industry basis which, it submitted, demonstrated that the percentage of employees in industries whose earnings are set by award only is positively correlated with the rate of inflation of prices for the goods produced in those industries.

**[256]** ACCI fairly acknowledged that this analysis was at a preliminary stage and more work was required to validate the conclusions arising from it. We agree but make a number of observations:

- Whilst acknowledging that in the material presented the two sets of data show a correlation between the extent of award coverage and the rate of inflation, it is not possible to draw any conclusions as to causality. There are a range of factors at work within a particular state or specific industry which may affect the level of inflation. Without controlling for these factors, it is not possible to draw inferences about the impact of award coverage on inflation.

- There are a number of methodological difficulties:

    - The award coverage data relate to May 2002 whilst the CPI data relate to the year ended December quarter 2003.

    - A small number of observations have been relied on. Earlier in this decision we referred to Professor Mitchell's comments on the validity of regression analyses which rely on less than thirty observations.

    - The exercise has an element of artificiality in it partly due to the need to develop industry equivalents from the CPI components of goods and services. For example, the ACTU in its reply submissions removed cultural and recreation services and added a proxy for accommodation, cafes and restaurants which was not included in ACCI's original regressions, and used the CPI measure for the September 2003 quarter which is the quarter when the safety net

[79] May 2003 decision at para 172.

adjustment had an impact. The regression resulted in a negative relationship between award coverage and inflation.

**[257]** The material in the form presented is of little assistance to us in explaining the role which the safety net adjustment has on the inflation rate award in reliant industries.

## THE NEEDS OF THE LOW PAID AND LIVING STANDARDS GENERALLY

**[258]** Sections 88A, 88B and 90 of the Act require the Commission to balance a number of competing interests. The Commission is not concerned purely with the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community and the needs of the low paid, the Commission must also have regard to economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment and the state of the national economy and the likely effects on the national economy of any award or order particularly any effects on inflation and the level of employment.

**[259]** It ought now be regarded as well established that the expression "low paid" in s.88B(2)(c) refers to the low paid in employment and does not extend to include the low paid who are not employed.[80]

**[260]** We agree with ACCI that there is no "statutory pre-eminence" accorded to the needs of the low paid in connection with the discharge of the Commission's functions pursuant to s.88B(2) of the Act. The Commission's primary obligation — indicated by the word "must" — is to *"ensure that a safety net of fair minimum wages and conditions of employment is . . . maintained"*. In discharging that obligation the Commission has always proceeded on the basis that each of the matters specified in ss.88B(2)(a), (b) and (c) are matters to which the Commission must have regard. The weight to be accorded to each of those matters will depend upon the evidence and the particular circumstances prevailing in relation to the application(s). ACCI's apparent concern that the Commission will engage in an "over-consideration" of needs is unwarranted.

**[261]** At this point it is appropriate to note that, in relation to the questions posed in the emphasised portions of the extract from the May 2003 decision set out at paragraph 263, ACCI stated that it *"does not necessarily accept the legitimacy of the questions raised by ACCER, nor that they constitute a complete range of considerations"*.[81] The Commission regards the questions as legitimate and relevant to its task under s.88B(2), albeit that they are not exhaustive of the considerations arising in connection with the needs of the low paid. To the extent that ACCI regards the questions as illegitimate, it has not articulated a basis for that contention. The Commission will always receive submissions as to the range of considerations that it ought to take into account in the discharge of its functions under s.88B(2).

[80] See, for example, May 2003 decision at para 220.
[81] Exhibit ACCI 2 at para 11.53.

**[262]** Referring to the Commission's statutory powers under s.88B of the Act, ACCER submitted that the Commission has a duty to provide for a fair minimum wage in the context of fair living standards generally prevailing in the Australian community. It submitted that the Commission should not fix a poverty wage and that it would be failing to carry out its statutory duty if it merely had regard to bare minimum standards in setting the federal minimum wage. ACCER submitted that the Commission ought to be setting benchmarks by which needs can be established.

**[263]** In the 2003 Safety Net Review, ACCER and ACOSS submitted that the Commission should conduct an inquiry into the needs of the low paid for the purpose of determining benchmarks. In the May 2003 decision the Commission dealt with those submissions in the following way:

> *"**[222]** Our rejection of the proposals for an inquiry should not be taken as a rejection of the utility of empirically determined 'benchmarks' such as the poverty line. Indeed, it seems to us that the use of such measures is relevant to an assessment of the needs of the low paid. In this context we also note that in their oral submissions ACCER argued that the Commission must ensure the minimum rates it sets (and in particular the federal minimum wage) do not fall below the poverty line. It was put that this task involved determining questions such as 'what are needs, who are the low paid, what is the poverty line, what is living in poverty and how does the federal minimum wage compare to the poverty line?' We acknowledge the relevance of the questions posed by ACCER and would be assisted by submissions and material directed to them. As we have already noted empirical studies dealing with these matters would be of more assistance to the Commission in addressing the specific matters mentioned in the Act than the type of illustrative evidence adduced by the ACTU in these proceedings. There is no impediment to ACOSS and ACCER, or any other party, bringing forward such material in any future safety net review. It is not, however, desirable for the Commission to establish a separate inquiry for that purpose particularly in view of the absence of any support for the proposal from any other party or intervener."* [emphasis added]

**[264]** In response to the emphasised comments above, the ACTU tendered evidence which it, and other parties, contended met the purpose identified by the Commission. In particular, ACCER now submits that the ACTU case in this safety net review has addressed these questions noting:

> *"[T]hey are important questions, but ultimately, their utility depends upon an ability to identify the kind of evidence needed, the compilation of that material and the preparedness of the Commission to discharge its statutory function on the basis of the evidence."*[82]

## Senate Poverty Inquiry Report

**[265]** At the time of the 2003 Safety Net Review, the Senate Community Affairs Committee was conducting an inquiry into poverty and financial hardship. The Committee's report was tabled on 11 March 2004. The ACTU sought, in its

[82] Exhibit ACCER 1 at para 27.

supplementary submission, to rely upon that report. The Committee divided on party lines. The Majority Report of the opposition and minor party senators noted:

> *"4.72 Severely limited opportunities are often part of the life experiences of low wage working poor individuals and their families. A lack of financial resources often has adverse flow-on effects for workers and their families. A lack of money can lead to reduced access to preventative health and other services; reduced educational opportunities for their children and a disincentive for them to participate in post-secondary education; and a reduced ability to participate in social activities and the wider society generally. Lack of financial resources also reduces a worker's asset base with more likelihood that their financial difficulties will persist in to old age . . .*
>
> *4.87 Minimum full-time wages have fallen well behind average wages over the last 20 years, especially in the early years of the shift to enterprise bargaining, before the present round of 'Living wage' cases was instituted in 1996. The minimum wage has now fallen to just 50 per cent of average earnings, a reduction of 15 per cent since 1983."*[83]

**[266]** The Majority Report included the following recommendation:

> *"Recommendation 6*
>
> *That the Australian Industrial Relations Commission establish a new minimum wage benchmark based on a wage level that enables a single full-time worker to achieve an adequate standard of living relative to contemporary community standards."*[84]

## Social Policy Research Centre Budget Standards

**[267]** In its May 2003 decision, the Commission rejected proposals by ACCER and ACOSS that the Commission conduct an inquiry into the needs of the low paid. As noted above, the Commission observed:

> *"**[222]** Our rejection of the proposals for an inquiry should not be taken as a rejection of the utility of empirically determined "benchmarks" such as the poverty line. Indeed, it seems to us that the use of such measures is relevant to an assessment of the needs of the low paid."*

**[268]** In response to that observation, the ACTU commissioned the University of New South Wales Social Policy Research Centre (SPRC) to provide a report on the incomes required by Australian working families to meet their needs in 2003. The SPRC report by Professor Saunders updates budget standards developed by the SPRC in the 1990s for the then Department of Social Security. The 2004 report reviews the Budget standards methodology and presents new estimates of a series of household budgets.[85] The report also seeks to address and take account of some of the criticisms of the

[83] Exhibit ACTU 6 at para S1.8.
[84] ibid. at para S1.9.
[85] Saunders, P, January 2004, *Updated Budget Standard Estimates for Australian Working Families in September 2003*, University of New South Wales Social Policy Research Centre.

original study including, in particular, criticisms by the joint governments made during the 1997 Safety Net Review. The SPRC report develops "Modest but Adequate" and "Low Cost" budget standards for a number of household configurations. The budget standards were developed for several defined households assumed to be living in the Hurstville local government area of Sydney.

**[269]** The Low Cost budget standard *"generally assumed that the adult household members are either unemployed or not in the labour force"* and is thus to be seen as a standard directed principally at the needs of social security recipients. The Low Cost budget standard is defined as a level of living which may require:

> *"[F]rugal and careful management of resources but would still allow social and economic participation consistent with community standards and enable the individual to fulfil community expectations in the workplace, at home and in the community."*[86]

**[270]** The "Modest but Adequate" standard was defined as one which:

> *"[A]ffords full opportunity to participate in contemporary Australian society and the basic options it offers. It is seen as lying between the standards of survival and decency and those of luxury as these are commonly understood. It attempts to describe the situation of a household whose living standard falls somewhere around the median standard of living experienced within the Australian community as a whole."*[87]

**[271]** The SPRC report states:

> *"In the original SPRC research, the comparator population included all families/households, as is appropriate when determining a minimum standard for the society as a whole. However, such a population is not relevant in the wage-setting context, since the population benchmark that is relevant when setting the wages of the low-paid covers only those who are employed. This is an important distinction, because both the low cost and modest but adequate standards are set conceptually relative to median income, which clearly varies according to how the population is defined (as will be demonstrated empirically later).*
>
> *While a case can be made for setting the minimum wage at the modest but adequate standard for the whole population, this argument is much weaker when the modest but adequate standard is linked to the median income of employed households only. It is also important to bear in mind that the original SPRC estimates were developed around the notion of median income for society as a whole. In contrast, the relevant population when assessing the needs of the low paid covers only those who are in employment and this has an important bearing on what adequacy means and where the median standard of living lies.*
>
> *Thus, while the arguments are by no means clear-cut, the SPRC low cost standard is too low for use in setting minimum wages and the modest but*

[86] ibid. at p. 80.
[87] ibid.

*adequate standard is probably too high, although a case can be made for using it if the median is defined relative to the entire population. However, in general which precise point to choose on the continuum that separates the two standards is a complex decision that involves judgment."*[88]

**[272]** The SPRC budget standards break down the cost of living for the specified household in a remarkable level of detail. The SPRC budget standards for various household types with a single wage earner receiving the federal minimum wage, as at September 2003, are summarised in the following table:

**Table 23: Budget Standards for Various Household Types**

| Household type | Net wage (after-tax) | Disposable Income (after-tax transfers) | SPRC "Low Cost" budget | SPRC "Modest but Adequate" budget | Difference between Disposable and "Low Cost" budget | Difference between Disposable and "Modest but Adequate" budget |
|---|---|---|---|---|---|---|
| | $ | $ | $ | $ | $ | $ |
| Single male | 383.71 | 383.71 | 360.10 | 450.30 | 23.61 | -66.59 |
| Couple, no children | 419.00 | 419.00 | 463.80 | 565.80 | -44.80 | -146.80 |
| Couple plus girl, 6 | 390.44 | 604.90 | 568.70 | 724.30 | 36.20 | -119.40 |
| Couple plus girl, 6 and boy, 14 | 390.44 | 687.64 | 708.70 | 867.90 | -21.06 | -180.26 |

Note: The additional income received by the household type as a result of social security benefits and other tax transfers is reflected in the column headed "Disposable Income".

*[Source: Exhibit ACTU 1 at Tables 7.3 and 7.4.]*

**[273]** The ACTU submitted:

*"[F]or all the chosen couple households the federal minimum wage (after tax) is not sufficient to finance a Low Cost standard of living. The level of the federal minimum wage is such that it is not sufficient for a family with children to achieve an acceptable standard of living without having access to government assistance."*[89]

Indeed, even after account is taken of tax transfer and social security payments, two of the specified couple households have a disposable income less than the low cost standard.

**[274]** We acknowledge that there are significant limitations in attempting to utilise the SPRC budget standards as a basis for determining the needs of the low paid. Indeed, a number of limitations were candidly acknowledged by the author of the SPRC research. The most obvious limitation arises from the fact that the SPRC budget standards are based on the cost of living in the Hurstville local government area in

[88] ibid. at p. 81.
[89] Exhibit ACTU1 at para 7.30.

Sydney. ACCI correctly identified Sydney as the most expensive city in Australia in which to live, particularly in terms of the cost of housing. NFF noted that consideration of the standard of living generally prevailing in the Australian community should not be confined to metropolitan Australia. Overall, the cost of living in rural Australia is lower than the cost of living in metropolitan Australia. NFF relied upon a report by Professor Lewis that compared the relative prices of a "basket of goods" in metropolitan and rural areas in each of the states.[90] Professor Lewis concluded that, with the exception of Western Australia, the cost of living in rural areas of each state was less than the cost of living in metropolitan areas. He concluded that, on a national basis, for each $100 of cost for the selected basket in a capital city, the same basket costs 4 per cent less ($95.56) in rural Australia.[91]

**[275]** One of ACCI's criticisms of the SPRC budget standards relates to the allegedly unrepresentative nature of the "household types" utilised by the ACTU for the purpose of comparison with the SPRC budget standards. In particular, ACCI noted that less than a quarter of couple families have a single wage earner *"the only scenario the ACTU brings forward to the Commission"*. It submitted that *"this selective approach renders [the ACTU's] material unrepresentative"*. We do not accept the premise implicit in that submission, namely, that only dual income couples are relevant in connection with any consideration of budget standards. Whilst a significant proportion of Australian families continue to rely upon a single wage as their sole source of income, the needs of single income families will continue to be relevant in connection with a consideration of the needs of the low paid.

**[276]** ACCER submitted that the SPRC Budget Standards Research:

> *"[C]omprises the best empirical material available to the Commission in its task of identifying the needs of the low paid. The transparency of the material enhances its ability to guide the Commission in the exercise of its statutory duty."*[92]

and also submitted that:

> *"ACCER believes that, despite its acknowledged limitations, the SPRC material is the best guide that the Commission now has in regard to the needs of the low paid. It is the best evidence in the identification of appropriate guidelines for the judging of needs. ACCER anticipates criticism of the SPRC material along the lines referred to by Professor Saunders in his statement. This will require debate between the parties and appropriate responses from the Commission. Any party that is opposed to this material should indicate its proposed method of establishing the needs of the low paid. For example, if it is said that the reference to a six year-old girl and a fourteen-year old boy is not representative or appropriate for the identification of the costs in a two-child family, it is incumbent upon the critic to identify more representative or appropriate pairs of siblings."*[93]

[90] Lewis, PET, December 2003, *A Report on the Effect of Raising Minimum Wages on Rural Businesses*, Centre for Labour Market Research, University of Canberra.
[91] ibid., Table 10 at para 63.
[92] Exhibit ACCER 1 at para 43.
[93] ibid. at para 48.

**[277]** As to the "poverty line" and how it compares to the federal minimum wage, ACCER further submitted:

> *"We now turn to the two remaining questions from last year's case. The answers to these questions are to be found in the SPRC material that is now before the Commission. It identifies and quantifies a relevant poverty line. The SPRC low cost budget is clearly the best empirical material available to the Commission for the purpose of identifying a bare minimum standard of socially perceived necessities. However, the bare minimum standard is not a sufficient standard for the purposes of wage-fixing. A fair minimum standard for workers and working families must be something in excess of that identified standard. It must recognise and reward the work performed by providing a higher standard. The material demonstrates a considerable gap between the current Federal Minimum Wage and its appropriate level. It supports the claim made by ACCER last year that the Federal Minimum Wage is manifestly inadequate. The claimed increase of $26.60 is a modest first step in the transition to a fair minimum wage as required by the Act."*[94]

**[278]** ACOSS continued to argue that it is imperative for the Commission to establish a benchmark for the adequacy of minimum wages that is objectively grounded in research into the living standards and income needs of low paid workers.

**[279]** ACOSS submitted:

> *"In the absence of such a benchmark, we respectfully argue that it is difficult to envisage how the Commission can fulfil its responsibilities under section 88B(2) of the Workplace Relations Act (1996) to establish and maintain a safety net of fair minimum wages, having regard to:*
>
> *'(a) the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;*
>
> *(b) when adjusting the safety net, the needs of the low paid.'"*[95]

**[280]** ACOSS further submitted that:

> *"[S]uch a benchmark should:*
>
> - *be objectively constructed using contemporary social research methods and tested against indicators of actual living standards;*
> - *set at a level that enables a single adult living alone to live in 'modest comfort' and participate fully in society in accordance with contemporary community standards (that is, a benchmark that is significantly above poverty levels).*
>
> *The benchmark should be based on the needs of a single person rather than a family. Although the original Basic Wage introduced following the Harvester*

[94] ibid. at para 50.
[95] Exhibit ACOSS 1 at p. 9.

*judgement was fixed at a level that was just sufficient to prevent a family of four from falling into hardship, minimum wages have not been set on this basis for many years. It is more appropriate in present-day conditions for the social security system to meet the additional costs of raising children in low-income families — 'provided' family income is underpinned by a minimum wage that is adequate to support the wage-earner."*[96]

**[281]** ACOSS referred to the budget standards research of the SPRC as providing *"valuable information which could inform the setting of an appropriate minimum wage benchmark"* but then submitted:

*"[W]hile no single benchmark on living standards should be relied upon exclusively for this purpose, this work could inform the development of appropriate benchmarks for a minimum wage."*[97]

**[282]** ACOSS acknowledged the difficulty of casting a third benchmark between the "Low Cost" and "Modest but Adequate" standards in the SPRC budget research. ACOSS concluded that:

*"[T]he most appropriate benchmark available 'at the present time' for fixing minimum wages is the '"Modest But Adequate" benchmark for a single person of workforce age living alone and earning privately'. Its current value stands at approximately $450 per week. This is a 'consumption' benchmark, and as such it corresponds more closely to 'disposable' income than gross income. The equivalent before-tax wage is approximately $550 per week.*

*Accordingly, ACOSS recommends that the Commission undertake an inquiry into living standards of low-paid workers with reference to those in the wider community, in order to arrive at an objective benchmark for a minimum wage for a single adult. We recommend that this inquiry be informed by the work undertaken by the Budget Standards Project and other relevant living standards research."*[98]

**[283]** We agree with the submissions of the Commonwealth, ACCI and other parties opposed to the ACTU's applications that there are significant difficulties in adopting the SPRC budget standards as an Australian benchmark. There is substance in a number of ACCI's criticisms of the SPRC budget standards. As noted earlier, the housing component of the budget, based as it is on the cost of rental in the Hurstville area of Sydney, cannot be generalised across Australia. Further, the very construction of the budgets ultimately turns on value judgments. ACOSS's submissions candidly acknowledged the deficiencies of the SPRC budget standards. On the material presently before the Commission, we do not think that we can responsibly attempt to establish such a benchmark.

**[284]** Nevertheless, in our opinion, the SPRC budget standards provide an indication that for certain household types, the federal minimum wage is significantly below the

[96] ibid. at p. 10.
[97] ibid.
[98] ibid. at pp. 11–12.

amount which is necessary to provide a modest living standard for those households in the context of living standards generally prevailing in the Australian community.

**[285]** ACCI criticised the ACTU's focus on the federal minimum wage in connection with its emphasis of the SPRC budget standards and in other respects. ACCI noted that only a relatively small number of federal award employees are employed on the federal minimum wage. Nevertheless, the Commission's obligation is to *"ensure that the safety net of fair minimum wages and conditions of employment is . . . maintained"* having regard to the matters specified in ss.88B(2)(a), (b) and (c). The federal minimum wage is part of the existing safety net review and is therefore subject to this obligation. It is not to the point that the federal award structure provides for many levels of wages significantly above the federal minimum wage.

**[286]** As noted above, ACOSS repeated the submission put in the 2003 Safety Net Review proceedings that the Commission *"undertake an inquiry to ascertain an appropriate benchmark for the adequacy of minimum wages"*.[99] As indicated in the May 2003 decision, the Commission is disinclined to conduct a separate inquiry of this sort. The Commission will receive and consider evidence directed at establishing an appropriate benchmark for the adequacy of minimum wages in the context of a future safety net review. If any party or parties are minded to pursue that course, this ought to be made clear at the first directions hearing so that proper consideration can be given to the proposal, including the potential impact on programming and allocation of adequate hearing time.

## Other Issues

**[287]** The Act makes no reference to a "poverty line" but rather focuses on the issue of the needs of the low paid. To the extent that the poverty line is a relevant consideration, ACCI noted that the concept remains "highly contested" and submitted that this precludes it as a measure to guide the Commission's action. The evidence before the Commission in the present application is inconclusive. However, we do not accept that the Commission could not rely upon a poverty line as a tool to assist it in determining the needs of the low paid if it had probative evidence by which a poverty line could be accurately identified.

**[288]** In addressing the question of who are the low paid, ACCI renewed its submission that the low paid *"extends well beyond those in employment, and that to a very real extent the very lowest paid and those in greatest need are those without any wages income"*.[100] That submission is incompatible with the established interpretation of the expression low paid, as it appears in the Act, as referring to the low paid in employment. The Commission has accepted ACCI's submission that award remunerated employment is not a proxy for, or interchangeable with, the low paid.[101]

**[289]** The States and Territories relied upon the Second Report from *The State of Working Victoria Survey* conducted by ACIRRT on behalf of Industrial Relations Victoria. That report, entitled *The Low-Paid in Victoria* provides a comprehensive analysis of the number and distribution of low paid workers in Victoria. For the

[99] ibid. at p. 1.
[100] Exhibit ACCI 2 at para 11.63.
[101] ibid. at para 11.62.

purpose of the survey, low pay was defined as a rate of less than $12.15 an hour ($461.70 per week). The findings in the report are usefully summarised in the States and Territories' submission:

- low paid workers were earning on average $10.42 per hour, with an estimated 285 000 Victorian workers earning less than the lowest federal minimum hourly rate;

- women are more likely to be low paid, as are young and older workers, and workers from non-English speaking backgrounds;

- workers' qualifications are aligned to employment status, with workers holding only a high school or vocational qualification more likely to be low paid;

- non-metropolitan workers are more likely to be low paid when compared to their metropolitan counterparts;

- low paid workers are more likely to be casual and less likely to be in a union;

- low paid workers are predominantly found in the private sector and concentrated in the industries of accommodation, culture, recreation and personal services, retail trade, construction and wholesale trade;

- the low paid in occupational groups are concentrated in elementary clerical, sales and services, or tradespersons and related workers occupational groupings;

- almost one-third of all low paid workers were employed with their current employer for less than one year, with only 6 per cent of low paid workers being employed for 10 years or more; and

- low paid workers find it harder to care about their jobs and are less likely to feel pride in their organisation.

**[290]** The report was the subject of criticism by other parties, particularly ACCI. We accept that differences between the economies and labour markets of several states and territories make it inappropriate to generalise directly from the report to other states and territories. In particular, there was considerable force in ACCI's submission that the employment regulation (and in particular, wages regulation) in Victoria was atypical so as to preclude generalisation of the results to Australia generally. We also accept that the relatively low response rate (29 per cent), in the absence of non-response testing, suggests that results should be approached with some caution and treated as indicative rather than absolute. Nevertheless, we think the report may provide some indication in relation to the matters it addresses that have relevance to this process.

**[291]** The ACTU once again relied upon statements from employees in a range of occupations to demonstrate the difficulties those employees had in affording what are,

in the context of living standards prevailing generally in the Australian community, basic necessities. Once again, it is apparent from the evidence of those employees that they struggle to make ends meet.

**[292]** In its May 2003 decision the Commission observed:

> *"It seems to us that this evidence [of this sort] is, at best, illustrative in a general qualitative sense, of some of the difficulties encountered by some low paid employees. It is not reasonable to extrapolate such material and draw general conclusions about the needs of the low paid."*[102]

We approach the ACTU's witness evidence in that same fashion on this occasion.

**[293]** Nevertheless, in the present matter, there is no reason to depart from the Commission's conclusion in the May 2003 decision that:

> *"It is generally acknowledged, and we accept, that many low paid employees experience difficulties in making ends meet and are unable to afford what are regarded as necessities by the broader Australian community."*[103]

**[294]** No party to the present applications sought to suggest that the needs of the lowest paid are fully met. Indeed, there appears to be a general acceptance that the lowest paid have difficulty meeting their needs. For example, ACCI submitted that it:

> *"[H]as consistently accepted that 'the distribution of incomes in the Australian labour market does encompass persons who experience financial adversity, including employees on award rates of pay'.*
>
> *To be clear, ACCI continues to recognise that some employed Australians can experience levels of financial adversity."*[104]

**[295]** ACOSS noted in its submission that:

> *"The Australian wage fixing system, together with our system of family payments, has been very effective in the past in insulating low-paid workers and their families from poverty. Although only a small proportion of wage-earning households live in poverty today, their number is steadily increasing, both in absolute terms and as a proportion to the population living in poverty.*
>
> *The most recent data from the National Centre for Social and Economic Modelling, published by the Smith Family, indicates that in 2000, among households whose main source of income was wages, 365,000 people lived in poverty. Although this represented just 3.2% of people living in such wage-earning households, it represented 15% of all people living in poor households.*
>
> . . .

[102] At para 200.
[103] ibid. at para 201.
[104] Exhibit ACCI 2 at paras 14.32–3.

*While it is true that Government transfer payments can be more precisely targeted towards low-income households at risk of poverty, decent minimum wages provide a critical 'floor' for the incomes of many low-income households. Without this floor, Governments would struggle to prevent widespread poverty among wage-earning households."*[105]

**[296]** The Commonwealth and various employer parties submitted that one of the needs of the low paid in employment is to remain in employment, such that a safety net adjustment which has a substantial adverse effect on the level of employment will be inimical to the needs of the low paid. Irrespective of whether the retention of employment is viewed as one of the needs of the low paid or as an issue arising more appropriately under s.88B(2)(b), the potential employment effects of any safety net adjustment is a matter to which we must have regard.

**[297]** ACCI provided a comparison of jobless households with households in which at least one adult is employed, based upon a recent ABS publication entitled *General Social Survey Summary Results of Australia 2002*. This document demonstrates that jobless households receive far lower income than households in which at least one adult is employed and that such households suffer a greater degree of financial stress. The comparison is of little utility in the context of the Commission's functions under s.88B(2) because the expression "low paid" in s.88B(2)(c) refers to the low paid in employment. Of course, the greater hardship associated with unemployment serves to emphasise the desirability of attaining a high level of employment, to which the Commission must have regard pursuant to s.88B(2)(b).

**[298]** In its written submission AiG once again emphasised the importance of the interaction between safety net adjustments and income tax and social security payments in considering the needs of the low paid.

**[299]** AiG referred to the *"erosion of wage increases granted by the Commission"* and the significant wedge between the total cost to employers and the cash-in-hand benefits to the low paid. Those matters were acknowledged in the May 2003 decision.[106] AiG placed particular emphasis on:

*"[T]he considerable contribution that income tax changes, increases in income support payments and the easing of income tests applying to income support payments have made to raising the disposable incomes, and in meeting the needs, of low paid workers in the past year."*[107]

**[300]** AiG referred to a paper by Dr Keating, who noted that:

*"[G]reater inequality of earnings and employment opportunities [over recent decades] seems to have translated into at most only a small increase in inequality of household 'disposable' incomes, mainly because governments have dramatically increased their income and other support to low income families."*[108]

[105] Exhibit ACOSS 1 at pp. 3–4.
[106] At para 227.
[107] Exhibit AiG 1 at para 5.4.
[108] Keating, Michael, (2004) *The Case for Increased Taxation*, Academy of the Social Sciences at p. 9.

**[301]** We agree with AiG that:

> *"[C]hanges in income tax and income support arrangements that improve disposable incomes of the low paid are clearly relevant to the questions of whether, and by how much, minimum wages should be increased to address the needs of the low paid."*[109]

**[302]** AiG's submissions detail changes in income tax and income support arrangements over the past year. However, it ought to be noted that in oral submissions no party contested the proposition that the increases in income support payments reflected only CPI adjustments. The reduction in income tax liabilities that took effect on 1 July 2003 was modest.[110]

**[303]** AiG submitted a series of tables that show the equivalent increase in household earned income (i.e. wages) represented by the increase in disposable income delivered by these income tax and income support changes. For a single wage earner, the equivalent increase in earned income is referable only to the tax cuts that took effect on 1 July 2003, which were equivalent to a wage increase of $9.78 at the level of the federal minimum wage. The equivalent increase in household earned income was significantly higher in the other household types. However, those increases are reflective of indexation of income support payments and thresholds.

**[304]** AiG submitted in conclusion that:

> *"The changes in the social safety net over the past year reinforce that a moderate increase of $10.00 in minimum award rates of pay, as proposed by Ai Group, will be sufficient to allow award reliant employees to increase current living standards."*[111]

**[305]** We acknowledge that these changes to the income tax and tax transfer system have had a beneficial impact on the disposable income of the low paid in employment.

**[306]** Whilst increasing the disposable income of low paid employees through adjustments to the tax transfer system may be more economically efficient than increasing the wages of those employees, ACOSS noted that there are real, if undefined, limits to the sustainability of such an approach.

**[307]** ACOSS challenged the contention that increasing minimum wages is a costly and inefficient way to reduce poverty and income inequality at the level of the household. ACOSS referred to the contention, based on empirical research by Richardson and Harding, that *"most low paid workers are second earners (either married women or young people) drawn from the top 50% of households"*.[112] ACOSS submitted that this conclusion only holds (if it does at all) if retired households are included in the income distribution and further submitted that:

[109] Exhibit AiG 1 at para 5.9.
[110] See Exhibit AiG 1, Attachment 3 at Chart 5.
[111] ibid. at para 5.30.
[112] Richardson, S, (1998) *Who Gets Minimum Wages?*, Centre for Economic Policy Research, Australian National University, Discussion Paper No. 386.

*"In any event, the argument that increasing transfer payments is a better way to prevent poverty among low-income working households than raising minimum wages incorrectly assumes that we face an 'either/or' choice between these two strategies. As ACOSS has argued in previous submissions, this is a false dichotomy. A sustainable reduction in poverty and income inequality requires a balanced approach. Wages should be sufficient for a single person living alone to live decently, and they should be supplemented by social security payments where a wage-earner supports dependents."*[113]

**[308]** As noted in the May 2003 decision, the Commission acknowledges that increases in award wages are a blunt instrument in addressing the needs of the low paid in employment. We accept that a significant number of households with minimum wage earners lie in the middle or high income bands. Moreover, we recognise that adjustments to award wages are a relatively inefficient means of increasing the disposable income of the low paid. On-costs mean that for every dollar awarded by the Commission, employers must spend more than $1, whereas the impact of tax and tax transfer arrangements means that, in many cases, the employee receives substantially less than $1 as additional disposable income. Nevertheless, increasing award wages is the only instrument that the Parliament has conferred upon the Commission in order to discharge its statutory obligation to maintain a system of enforceable awards that act as a safety net of fair minimum wages and conditions of employment in the context of living standards generally prevailing in the Australian community.[114]

## DEAC AND THE SUPPORTED WAGE

**[309]** The DEAC submission, while supporting the ACTU's claim to increase minimum rates in all awards, raised a number of other issues. The concerns raised by DEAC are similar to those raised before the Full Bench and discussed by it in the May 2003 decision.[115]

**[310]** The ACTU, ACCI and the Commonwealth acknowledged, as they did in the 2003 safety net review proceedings, the concerns of DEAC. Each supported the approach taken by the Full Bench in the earlier proceedings and submitted that the concerns, consistent with that approach, were being addressed by an Industry Consultative Council.

**[311]** We are of the view that the issues and concerns raised by DEAC are more appropriately dealt with in that forum.

**[312]** We simply reiterate our comments in the May 2003 decision. During the hearing of applications to vary awards to give effect to this decision, parties should give consideration to the inclusion of the model supported wage clause in the award. If the award already includes the model clause the level should be checked and if necessary varied to reflect the existing level of the supported wage — $60. Any application to increase the supported wage above $60 should be dealt with in accordance with the Principles.

[113] Exhibit ACOSS 1 at p. 7.
[114] May 2003 decision at para 230.
[115] May 2003 decision at paras 231–240.

# CONCLUSION ON THE ACTU'S CLAIM

**[313]** It is convenient to refer to the more pertinent provisions of the Act that govern the Commission's functions in these proceedings. In so doing we do not ignore the other provisions of the Act relevant to our present task. The Commission's power to settle industrial disputes by making or varying an award is conferred in Part VI. Section 88B(1) requires the Commission to perform its function under Part VI in a way that furthers the objects of the Act and, in particular, the objects of the Part. Section 88B(2) is important for present purposes:

> *"(2) In performing its functions under this Part, the Commission must ensure that a safety net of fair minimum wages and conditions of employment is established and maintained, having regard to the following:*
>
> > *(a) the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;*
> >
> > *(b) economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment;*
> >
> > *(c) when adjusting the safety net, the needs of the low paid."*

**[314]** The objects of Part VI of the Act are set out in s.88A. The following parts of s.88A are of particular significance:

> *"The objects of this Part are to ensure that:*
>
> > *(a) wages and conditions of employment are protected by a system of enforceable awards established and maintained by the Commission; and*
> >
> > *(b) awards act as a safety net of fair minimum wages and conditions of employment; . . ."*

**[315]** The principal objects of the Act are set out in s.3 and relevantly include:

> ***"3 Principal object of this Act***
>
> *The principal object of this Act is to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia by:*
>
> > *(a) encouraging the pursuit of high employment, improved living standards, low inflation and international competitiveness through higher productivity and a flexible and fair labour market; and*
> >
> > *. . .*
> >
> > *(d) providing the means:*

*(i) for wages and conditions of employment to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level, upon a foundation of minimum standards; and*

*(ii) to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment; and*

*(e) providing a framework of rights and responsibilities for employers and employees, and their organisations, which supports fair and effective agreement-making and ensures that they abide by awards and agreements applying to them; . . .”*

**[316]** Sections 90 and 90A of the Act impose further relevant requirements on the Commission:

*“**90 Commission to take into account the public interest***

*In the performance of its functions, the Commission shall take into account the public interest, and for that purpose shall have regard to:*

*(a) the objects of this Act and, in particular, the objects of this Part; and*

*(b) the state of the national economy and the likely effects on the national economy of any award or order that the Commission is considering, or is proposing to make, with special reference to likely effects on the level of employment and on inflation.*

*. . .*

***90A Commission to have regard to operation of Superannuation Guarantee legislation when making National Wage Case decision***

*In making a National Wage Case decision, the Commission must have regard to the operation of:*

*(a) the* Superannuation Guarantee Charge Act 1992*; and*

*(b) the* Superannuation Guarantee (Administration) Act 1992*.”*

**[317]** In relation to the requirements of s.90A, we note that the minimum employer superannuation contribution last increased on 1 July 2002 and is currently 9 per cent.

**[318]** The ACTU sought an adjustment of $26.60 in all award rates. All other employer parties and interveners opposed the claim. ACCI’s primary submission was that the Commission should award an increase of no more than $10 per week in all award rates up to and including the level of the C10 tradesperson’s rate in the Metal Industries Award. AiG proposed an increase of $10 per week in all award rates. Other employer parties supported increases of similar magnitude to those proposed by ACCI

and AiG respectively. The Commonwealth supported ACCI's position. All of the States and Territories supported an increase of $20 per week in all award rates. There were other proposals which we have referred to elsewhere in this decision.

**[319]** Since our last decision growth in non-farm GDP has remained strong. Farm GDP in the year to December 2003 grew by 21.1 per cent, reflecting the recovery in many areas of the rural economy from the drought conditions which had contributed to major declines in farm production over recent years. GDP overall increased by 3.5 per cent in the year to December 2003. During the last 12 months, private investment continued to grow strongly, with the exception of dwelling investment which is declining from the very high levels recorded in previous years. Imports continued to grow strongly and exports declined slightly. Inflation, as measured by the CPI, was 2.4 per cent in December 2003, down from 3 per cent in December 2002. Unemployment has crept steadily lower, standing at 5.6 per cent in December 2003. Employment, particularly full-time employment, showed encouraging growth. Productivity increased at satisfactory levels. GDP per hour worked in the market sector grew by 3.2 per cent during 2003. Profits remain at high levels. Despite differences between the parties concerning the proper method of measuring the profit share, no one suggested that the share of total factor incomes attributable to profits is a serious obstacle to a safety net adjustment.

**[320]** We have discussed movements in various earnings measures elsewhere. During the past year all of these measures recorded significant movement. Average annual wage increases per employee under certified agreements were around 4 per cent, on the most recent figures available at the time of the hearing. The most direct measure of changes in wage costs for a particular position, the WCI, increased by 3.6 per cent over the year.

**[321]** In relation to the economic outlook, the Australian economy is expected to continue to perform well throughout the 2003–04 financial year with GDP forecast to increase by 3¾ per cent compared with the budget estimate of 3¼ per cent. Household consumption is forecast to grow at a slightly higher rate than in 2002–03, while total business investment is anticipated to grow more slowly than in the previous year, albeit at the healthy rate of 7 per cent. Net exports are expected to make a negative contribution. It is expected that employment will continue to grow and unemployment will reduce further. There are some areas of risk including the potential inflationary effects of the rise in the Australian dollar, the pace at which parts of the rural economy recover from the drought, and the exposure of the manufacturing sector to exchange and interest rate movements and global capacity. Overall there are grounds for optimism that the economy will perform strongly in the immediate future.

**[322]** While activity in the domestic housing sector has reduced and is likely to reduce further, in light of the views expressed by the RBA on the dangers of overheating in that sector, we regard the overall effect of the slowdown as neutral.

**[323]** As the Commission has done in safety net review decisions in recent years, we have had regard to the fact that substantial safety net adjustments may have some negative effects on employment in those sectors of the economy in which a high proportion of the workers are award reliant. The Commission is obliged to take into account the desirability of attaining a high level of employment. While this is an

important issue we think that economic conditions generally, including the level of domestic demand, indicate that a significant increase is sustainable on this occasion. The limited arguments and materials advanced in this case for the proposition that past safety net adjustments have had a significant negative effect on employment were unconvincing. We also consider that any potential negative effects must be weighed against the real benefits of safety net adjustments for the employees who depend upon them for increases in wages, particularly low paid employees.

**[324]** We affirm the Commission's view, stated in the *Safety Net Review—Wages May 2002* decision (the May 2002 decision) and repeated in last year's decision, that in the normal course of reviewing the safety net the Commission should seek to maintain a safety net of fair minimum wages for all employees.[116] We are not persuaded that a departure from that course is warranted on this occasion on economic, equity or other grounds. We have decided not to cap the adjustment. Since no party sought a percentage adjustment we have determined to award a dollar amount at all classification levels. Last year a number of factors, including the persistent drought and the need to consider the needs of the low paid, led the Commission to award a two-tier increase of $17 and $15. On this occasion we see no need for a reduction in the dollar increase at any level.

**[325]** Several parties, in particular the Commonwealth, submitted that the ACTU claim ignores the requirement for the Commission to establish a genuine award safety net and encourage workplace bargaining. As the Commonwealth pointed out, in a previous decision the Commission has recognised that increases in award wages have the potential to influence the speed at which agreement-making is taken up.[117] This is a factor to be taken into account in assessing the parties' proposals. On the other hand, no one would suggest that all employees are capable of bargaining. Bargaining is not a practical possibility for employees who have no bargaining power. It is to be inferred from the statutory scheme that the award safety net should be adjusted with the interests of these employees in mind. Furthermore, the safety net adjustments in recent years have been accompanied by a steady growth in the number of employees covered by agreements. As we have noted elsewhere, data from the May 2002 EEH Survey show that 20.5 per cent of employees, or about 1.6 million employees, were award-reliant in May 2002, the corresponding figure from the May 2000 survey, was 23.2 per cent.

**[326]** Taking all of the material and submissions into account, including the material relating to costs, we have decided to award an increase of $19 per week in all award rates.

**[327]** The Commonwealth submitted that we should give consideration to delaying our decision until after the Commonwealth Treasurer's release of the Budget for 2004–05 on 11 May 2004. The purpose of the delay was said to be to enable the Commission to be informed by up-to-date Treasury information on the national economic outlook. The Commonwealth estimated that any delay in implementation of the decision would not be significant. As is now apparent we did not consider that course desirable on this occasion. We are not as confident as the Commonwealth that any delay would be short and of limited effect. Experience suggests that once submissions are reopened, delays

[116] May 2002 decision at para 159; May 2003 decision at para 248.
[117] May 2002 decision at para 162.

tend to be substantial because of the nature of the safety net reviews and the range of interests entitled to make submissions.

**[328]** We have dealt elsewhere with an ACCI proposal that the Statement of Principles be altered to provide that the operative date of any variation arising from a safety net review should be 28 days from the date the order is made. We have decided not to adopt the proposal.

**[329]** Implementation of the adjustment will be subject to the following conditions:

(a) the increase will be fully absorbable against all above-award payments;

(b) except where permitted by the Statement of Principles, the increase will be available from a date no earlier than 12 months after the increases provided for in the May 2003 decision in the award in question;

(c) the commencement of award variations to give effect to this decision will be no earlier than the date on which the award is varied, with phasing-in of increases permissible where circumstances justify it. Any application for phasing-in will be subject to Principle 10;

(d) by consent of all parties, and where the minimum rates adjustment has been completed, award rates may be expressed as hourly rates as well as weekly rates; in the absence of consent, a claim that award rates be so expressed may be determined by arbitration; and

(e) allowances which relate to work or conditions which have not changed and service increments are to be varied; the method of adjustment is to be consistent with the *Furnishing and Glass Industries Allowances Decision*.[118]

**[330]** Consistent with our decision the federal minimum wage will be increased by $19 to $467.40 per week.

# STATEMENT OF PRINCIPLES AND RELATED MATTERS

**[331]** This part of our decision deals with the submissions concerning the Statement of Principles and related matters.

**[332]** As with the May 2003 case, only a few changes to the principles were proposed. ACCI proposed a change to paragraph (a) of Principle 8 concerning the operative date of variation to an award to give effect to any safety net adjustment granted in these applications. AiG proposed a change requiring an additional commitment from each union party to the relevant award, to those now required by paragraph (d) of Principle 8.

[118] Print M9675; (1996) 40 AILR 3–399.

**[333]** ACCI sought an alteration to Principle 8(a), as follows:

> *"(a) The operative date of the variation will be a date not less than 28 working days after the date of the issuing of the order to vary the award."*

**[334]** ACCI, in support of its proposal, submitted that a revision of Principle 8 would provide additional scope for formal advice to members of employer organisations, which would tend to eliminate retrospectivity. It was submitted that retrospectivity caused a range of difficulties associated with payroll systems, whether computerised or non-computerised. There are also budgeting/cost implications in relation to back pay. The back pay issue, so it was said, was unsatisfactory for an employee also, from a taxation perspective.

**[335]** Witness statements from Mr Gregory, Victorian Employers Chamber of Commerce and Industry, and Mr Hargrave, Printing Industries Association of Australia, expressed support for the ACCI proposed amendment. Further, ACCI contended that the finalisation of orders for the variation of an award could take time. This, it was said, arose due to difficulties associated with disagreement as to how an award was to be varied and quality checking of the order to ensure there were no errors in calculation.

**[336]** ACCI submitted that its proposal was not advanced to delay finalising of orders, rather it *"is intended that the Commission and parties be in a position to accurately finalise orders and provide an opportunity for the employer associations to provide prospective wages advice to their members within 28 days"*. It was contended that the ACCI proposal did not constitute any derogation from Principle 8(a) and it was not intended *"to secure a '13th month'"*.

**[337]** AiG indicated support for the ACCI proposed change to the Principles. AiG submitted that backdated safety net adjustments were costly for employers and the ACCI proposal would minimise such costs.

**[338]** In reply, the ACTU submitted that the ACCI proposed change to the Principles should be rejected as it had *"the effect of creating delays in award workers receiving pay increases"*. The ACTU argued that the *"12 month rule",* as it stands in Principle 8, provided ACCI and its members with significant advance notice of the likely operative date of any increase.

**[339]** In its current form Principle 8(a) is in the following terms:

> *"The operative date will be no earlier than the date of the variation to the award."*

**[340]** We are not persuaded that the amendment as sought by ACCI is appropriate or warranted. There is insufficient material before us to support a principle of general application requiring a 28-day delay in the operative date of an order for the application of a safety net adjustment to rates in an award. On this point, we would agree with the ACTU's submission to the effect that Principle 8(b) provides that a period of at least 12 months has elapsed before an increase in award rates arising from the safety net review decision can apply, unless by consent under Principle 8(c).

However, in continuing Principle 8(a) in its current form, we do express the view that, having regard to the issues raised by ACCI, applications to vary awards to give effect to this decision ought to be made in a timely fashion.

**[341]** AiG proposed that the existing Principle 8(d) be deleted and replaced with the following:

> *"(d) At the time when the award is to be varied to insert the safety net adjustment, each union party to the award will be required to give the following specific commitments:*
>
> > *(i) A commitment as to the absorption of the increase. In particular, the acceptance of absorption of the safety net adjustment to the extent of any equivalent amount in rates of pay which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.*
> >
> > *(ii) A commitment to continuous improvement in productivity, efficiency and flexibility at workplaces covered by the award."*

**[342]** The AiG proposal involves an additional commitment to that already required by the existing principle in relation to absorption. The addition to the principle, as sought by AiG, would require that a commitment be given by each union party to the award to continuous improvement at workplaces covered by the award. AiG outlined the benefits it contended would be achieved by its proposed amendment to the principle.

**[343]** ACCI agreed with and supported the AiG proposed amendment to the Principles.

**[344]** The Commonwealth submitted that, while it held no particular view on the issue raised by AiG, it was not opposed to the AiG proposal. The Commonwealth suggested that in considering the AiG proposal the Commission might consider the way in which the proposal may or may not translate into workplace improvement and productivity.

**[345]** The ACTU submitted that the AiG proposed change to the Principles was not necessary. The ACTU contended that it had demonstrated that productivity in award-dependent sectors had increased throughout the period of safety net adjustments. It contended that the existing requirements of s.143(1B), the principal objects of the Act and the objects of Part VI were also relevant. The ACTU relied upon the May 2002 decision[119] to argue that the AiG proposed change did not *"paraphrase or reproduce any provision of the Act"*.

**[346]** AiG's proposed amendment to the Principles would effectively make a safety net adjustment conditional upon each union party to the award giving a commitment to

[119] May 2002 decision at para 171.

continuous improvement in productivity, efficiency and flexibility at the workplace covered by the award. There are a number of reasons why we reject the AiG proposal.

**[347]** First, AiG submitted that the change was necessary because of negative union attitudes to productivity improvements in enterprise bargaining. There is a dichotomy in the Act between the safety net award system dealt with in Part VI and the scheme for certified agreements dealt with in Part VIB. Under s.88A of Part VI, the Commission is required to ensure a system of enforceable awards which act as a safety net of fair minimum wages and conditions of employment.

**[348]** We do not believe that more is required than is currently provided for in the ss.88A(c), 143(1B) and 143(1C)(a) of the Act.

**[349]** Secondly, on the material before us productivity has improved in the three most award-dependent industries throughout the period of safety net adjustments. In addition, on the submissions of AiG, the manufacturing sector has enjoyed an unusually long period of strong and stable growth.

**[350]** Thirdly, with the introduction of the *Workplace Relations and Other Legislation Amendment Act 1996*, awards have been reviewed to address, amongst other things, the issue of efficient work performance and award provisions that have the effect of restricting or hindering productivity.

## ADDITIONAL MATTERS

**[351]** For reasons set out in its submissions, AiG proposed that the Commission should initiate a Victorian common rule award test case on its own motion in order to establish a Victorian common rule award safety net in a systematic way. It put forward various proposals as to how the safety net might be structured. We consider that these matters are best dealt with in the proceedings relating to various common rule applications currently before the Commission.

## ORDERS

**[352]** The orders necessary to give effect to this decision in the awards before us should be drawn and filed by the applicants. Commissioner Larkin will settle the orders with recourse to the Full Bench.

**ATTACHMENT A**

# STATEMENT OF PRINCIPLES

## 1. ROLE OF ARBITRATION AND THE AWARD SAFETY NET

Existing wages and conditions in the relevant awards of the Commission constitute the safety net which protects employees who may be unable to reach an enterprise or workplace agreement. The award safety net also provides the benchmark for the no-disadvantage test that the *Workplace Relations Act 1996* (the Act) requires be applied before agreements are certified.

As a result of the award simplification process, awards will, where necessary, be varied so that they:

- act as a safety net of fair minimum wages and conditions of employment (s.88A(b));
- are simplified and suited to the efficient performance of work according to the needs of particular workplaces or enterprises (s.88A(c)); and
- encourage the making of agreements between employers and employees at the workplace or enterprise level (s.88A(d)).

This evolving award system will remain the safety net referred to in the Act. It will, and is intended by the legislature to, change in response to economic, social and industrial circumstances.

## 2. WHEN AN AWARD MAY BE VARIED OR ANOTHER AWARD MADE WITHOUT THE CLAIM BEING REGARDED AS ABOVE OR BELOW THE SAFETY NET

In the following circumstances an award may, on application, be varied or another award made without the application being regarded as a claim for wages and/or conditions above or below the award safety net to:

(a) include previous National Wage Case increases in accordance with Principle 3;

(b) incorporate test case standards in accordance with Principle 4;

(c) adjust allowances and service increments in accordance with Principle 5;

(d) adjust wages pursuant to work value changes in accordance with Principle 6;

(e) reduce standard hours to 38 per week in accordance with Principle 7;

(f) adjust wages for arbitrated safety net adjustments in accordance with Principle 8;

(g) vary an award to include the federal minimum wage in accordance with Principle 9; and to

(h) make orders under Part VIA of the Act.

## 3. PREVIOUS NATIONAL WAGE CASE INCREASES

Increases available under previous National Wage Case decisions such as structural efficiency adjustments, minimum rates adjustments and previous arbitrated safety net adjustments will, on application, still be accessible.

## 4. TEST CASE STANDARDS

Test case standards involving allowable award matters (s.89A(2)) established and/or revised by the Commission may be incorporated in an award. Where disagreement exists as to whether a claim involves a test case standard or a non-allowable award matter, a party asserting that it does must make and justify an application pursuant to s.107. It will then be a matter for the President to decide whether the claim should be dealt with by a Full Bench.

## 5. ADJUSTMENT OF ALLOWANCES AND SERVICE INCREMENTS

(a) Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time where appropriate to reflect relevant changes in the level of such expenses.

(b) Adjustment of existing allowances which relate to work or conditions which have not changed and of service increments for monetary safety net increases will be determined in each case by the Full Bench dealing with the safety net adjustment.

(c) In accordance with the *Safety Net Review—Wages May 2004* decision (May 2004 decision) [PR002004] allowances which relate to work or conditions which have not changed and service increments will be adjusted as a result of the arbitrated safety net increase. (The method of adjustment is to be consistent with the *Furnishing and Glass Industries Allowances decision* [Print M9675; (1996) 40 AILR 3–399].)

(d) In circumstances where the Commission has determined that it is appropriate to adjust existing allowances relating to work or conditions which have not changed and service increments for a monetary safety net increase, the method of adjustment should be consistent with the *Furnishing and Glass Industries Allowances decision.* Such allowances and service increments should be increased by a percentage derived as follows: divide the monetary safety net increase by the rate of pay for the key classification in the relevant award

immediately prior to the application of the safety net increase to the award rate and multiply by 100.

(e) Existing allowances for which an increase is claimed because of changes in the work or conditions will be determined in accordance with the relevant provisions of the Work Value Changes Principle of this Statement of Principles.

(f) New allowances to compensate for the reimbursement of expenses incurred may be awarded where appropriate having regard to such expenses.

(g) Where changes in the work have occurred or new work and conditions have arisen, the question of a new allowance, if any, will be determined in accordance with the relevant principles of this Statement of Principles. The relevant principles in this context may be Work Value Changes or First Award and Extension to an Existing Award.

(h) New service increments may only be awarded to compensate for changes in the work and/or conditions and will be determined in accordance with the relevant parts of the Work Value Changes Principle of this Statement of Principles.

## 6. WORK VALUE CHANGES

(a) Changes in work value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification.

In addition to meeting this test a party making a work value application will need to justify any change to wage relativities that might result not only within the relevant internal award structure but also against external classifications to which that structure is related. There must be no likelihood of wage leapfrogging arising out of changes in relative position.

These are the only circumstances in which rates may be altered on the ground of work value and the altered rates may be applied only to employees whose work has changed in accordance with this Principle.

(b) In applying the Work Value Changes Principle, the Commission will have regard to the need for any alterations to wage relativities between awards to be based on skill, responsibility and the conditions under which work is performed (s.88B(3)(a)).

(c) Where new or changed work justifying a higher rate is performed only from time to time by persons covered by a particular classification, or where it is performed only by some of the persons covered by the classification, such new or changed work should be compensated by a special allowance which is

payable only when the new or changed work is performed by a particular employee and not by increasing the rate for the classification as a whole.

(d) The time from which work value changes in an award should be measured is the date of operation of the second structural efficiency adjustment allowable under the *August 1989 National Wage Case decision* (August 1989 National Wage Case) [Print H9100; (1989) 30 IR 81].

(e) Care should be exercised to ensure that changes which were or should have been taken into account in any previous work value adjustments or in a structural efficiency exercise are not included in any work evaluation under this Principle.

(f) Where the tests specified in (a) are met, an assessment will have to be made as to how that alteration should be measured in monetary terms. Such assessment will normally be based on the previous work requirements, the wage previously fixed for the work and the nature and extent of the change in work.

(g) The expression *"the conditions under which the work is performed"* relates to the environment in which the work is done.

(h) The Commission will guard against contrived classifications and over-classification of jobs.

(i) Any changes in the nature of the work, skill and responsibility required or the conditions under which the work is performed, taken into account in assessing an increase under any other principle of this Statement of Principles, will not be taken into account under this Principle.

## 7. STANDARD HOURS

In approving any application to reduce the standard hours to 38 per week, the Commission will satisfy itself that the cost impact is minimised.

## 8. ARBITRATED SAFETY NET ADJUSTMENTS

In accordance with the May 2004 decision awards may, on application, be varied to include an arbitrated safety net adjustment in this decision subject to the following:

(a) The operative date will be no earlier than the date of the variation to the award.

(b) That at least 12 months have elapsed since the rates in the award were increased in accordance with the *Safety Net Review—Wages May 2003* decision (the May 2003 decision) [PR002003; (2003) 121 IR 367].

(c) In awards where the variation for a safety net adjustment arising from the April 1999, May 2000, May 2001, May 2002, May 2003 or May 2004 decisions is by consent and does not result in an increase in the wage rates actually paid to employees or increase the wage costs for any employer, any applicable 12 months' delay between variations may be waived.

(d) At the time when the award is to be varied to insert the safety net adjustment, each union party to the award will be required to give a specific commitment as to the absorption of the increase. In particular, the union commitments will involve the acceptance of absorption of the safety net adjustment to the extent of any equivalent amount in rates of pay which are above the wage rates prescribed in the award. Such above-award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

(e) The following clause must be inserted in the award:

*"The rates of pay in this award include the arbitrated safety net adjustment payable under the Safety Net Review—Wages May 2004 decision [PR002004]. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above-award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.*

*Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments."*

The above clause will replace the offsetting clause inserted into awards pursuant to paragraph 8(e) of the Statement of Principles determined in the May 2003 decision.

(f) By consent of all parties to an award, where the minimum rates adjustment has been completed, award rates may be expressed as hourly rates as well as weekly rates. In the absence of consent, a claim that award rates be so expressed may be determined by arbitration.

(g) The safety net adjustment will only be available where the rates in the award have not been increased, other than by safety net adjustments, or as a result of the application of the Minimum Rates Adjustment or Work Value Changes Principles, since November 1991.

(h) The implementation of an arbitrated safety net adjustment in a converted paid rates award is governed by the principles set out in the *Paid Rates Review decision* [Print Q7661, 20 October 1998].

## 9. FEDERAL MINIMUM WAGE

In accordance with the May 2004 decision awards may, on application, be varied to provide for the federal minimum wage for full-time adult employees of $467.40 per week and, for junior, part-time and casual employees, proportionate amounts subject to the following:

(a) The operative date will be no earlier than the date of the variation to the award.

(b) The federal minimum wage is to be provided for in a separate clause as contained in *Re Textile Industry Award 1994* [Print P1741, 11 June 1997]. Where classification rates are below the federal minimum wage there should be an indication that the federal minimum wage applies to those classifications.

(c) The separate clause referred to in (b) is as follows:

*"**Federal Minimum Wage***

***1. The Federal Minimum Wage***

*No employee shall be paid less than the federal minimum wage.*

***2. Amount of Federal Adult Minimum Wage***

*(a) The federal minimum wage for full-time adult employees not covered by subclause 4 (special categories clause), is $467.40 per week.*

*(b) Adults employed under a supported wage clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage clause applicable to the employee concerned to the amount of the minimum wage specified in subclause 2(a).*

*(c) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause 2(a) according to the number of hours worked.*

***3. How the Federal Minimum Wage Applies to Juniors***

*(a) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause 3(b) is greater.*

*(b) The federal minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause 2.*

***4. Application of Minimum Wage to Special Categories of Employee***

*(a) Due to the existing applicable award wage rates being greater than the relevant proportionate federal minimum wage, this clause has no application to employees undertaking a National Training Wage Traineeship, an Australian Traineeship, a Career Start Traineeship, a Jobskills placement or an apprenticeship.*

*(b) [Leave reserved for other special categories.]*

***5. Application of Federal Minimum Wage to Award Rates Calculation***

*The federal minimum wage:*

*(a) applies to all work in ordinary hours;*

*(b) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and*

*(c) is inclusive of the arbitrated safety net adjustment provided by the Safety Net Review—Wages May 2004 decision [PR002004] and all previous safety net and national wage adjustments."*

(d) At the time when the award is to be varied to insert the federal minimum wage clause, each party to the award will be required to give a specific commitment as to absorption of any increase arising from the insertion of the federal minimum wage clause. In particular, the union commitments will involve the acceptance of absorption of any increase arising from the insertion of the federal minimum wage clause to the extent of any equivalent amount in rates of pay which are above the wage rates prescribed in the award. Such above-award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

(e) The following clause must be inserted into the award:

*"The rates of pay in this award include the federal minimum wage payable under the Safety Net Review—Wages May 2004 decision [PR002004]. Any increase arising from the insertion of the federal minimum wage clause may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above-award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.*

*Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the federal minimum wage."*

(f) Any disagreement as to the variation of an award to include the federal minimum wage (including whether the federal minimum wage should be phased-in) will be referred to the President to consider whether the matter should be referred to a Full Bench.

(g) Federal minimum wage clauses may be inserted in awards in which the minimum classification rate exceeds $467.40 per week.

Note: In determining whether an increase is payable because of the introduction of the federal minimum wage, the arbitrated safety net adjustment in this decision and all previous safety net and national wage adjustments are first to be taken into account.

## 10. MAKING AND VARYING AN AWARD ABOVE OR BELOW THE SAFETY NET

Any application to make or vary an award for wages or conditions above or below the safety net or for a date of operation of a safety net adjustment earlier than the date of the award may be dealt with by:

(a) a Full Bench; or

(b) a single member, provided the President has had an opportunity to consider whether the application should be dealt with by a Full Bench and has decided not to refer the application to a Full Bench.

## 11. FIRST AWARD AND EXTENSION TO AN EXISTING AWARD

Any first award or an extension to an existing award must be consistent with the Commission's obligations under Part VI of the Act.

In determining the content of a first award the Commission will have particular regard to:

(a) relevant minimum wage rates in other awards, provided the rates have been adjusted for previous National Wage Case decisions and are consistent with the decision of the August 1989 National Wage Case;

(b) the need for any alterations to wage relativities between awards to be based on skill, responsibility and the conditions under which the work is performed (s.88B(3)(a));

(c) section 89A and the need to ensure that it does not contain provisions that are not either allowable award matters, or both incidental to allowable award matters and necessary for the effective operation of the award; and

(d) the award simplification criteria in s.143 of the Act.

## 12. ECONOMIC INCAPACITY

Any respondent or group of respondents to an award may apply to, temporarily or otherwise, reduce, postpone and/or phase-in the application of any increase in labour costs determined under this Statement of Principles on the ground of very serious or extreme economic adversity. The merit of such application will be determined in the light of the particular circumstances of each case and any material relating thereto shall be rigorously tested. The impact on employment at the enterprise level of the increase in labour costs is a significant factor to be taken into account in assessing the merit of any application. A party making such an application must make and justify an application pursuant to s.107. It will then be a matter for the President to decide whether it should be dealt with by a Full Bench.

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

## 13. DURATION

This Statement of Principles will operate until reviewed.

*Appearances:*

*A Watson* for all applicant unions with *G Combet, M Gaynor* and *D Hristodoulos* for the Australian Council of Trade Unions and all applicant unions with *A Sachinidis* for the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union.

*P Anderson* with *S Barklamb, S Kates* and *C Harris* for the Australian Chamber of Commerce and Industry and for The Australian Retailers Association, the Victorian Employers' Chamber of Commerce and Industry, the Agribusiness Employers' Federation, Australian Business Industrial, the Confederation of ACT Industry, the Printing Industries Association of Australia, the Australian Hotels Association, The Restaurant and Catering Association of Victoria, the Metal Industries Association Tasmania, the Chamber of Commerce Northern Territory and with *M Weldon* for The Australian Retailers Association—Victoria.

*L Stewart* with *M Moir* for The Australian Industry Group and the Engineering Employers Association, South Australia.

*D Harris* for the National Farmers' Federation.

*ER Cole* for the Minster of Employment and Workplace Relations on behalf of the Commonwealth.

*G Martin SC* with *R Bancroft* for the States of New South Wales, Queensland, South Australia, Tasmania, Victoria, Western Australia and the Australian Capital Territory and Northern Territory.

*WJ Chesterman* for the Victorian Automobile Chamber of Commerce and for the Motor Traders' Association of New South Wales, the Motor Trades Associations of South Australia, Queensland, the Australian Capital Territory, the Northern Territory and Western Australia.

*PG Ryan* for the Australian Road Transport Industrial Organization.

*C Harnath* for The Master Plumbers' and Mechanical Services Association of Australia.

*K Wilson* with *M Hand* for the Disability Employment Action Centre, the National Council on Intellectual Disability and the Association of Workers With Disability.

*F Costigan QC* with *P O'Grady* for the Australian Catholic Commission for Employment Relations.

*Hearings details:*

2003.
Melbourne:
December 12.

2004.
Melbourne:
March 2, 22, 23, 24, 25 and 26.

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