

**2018 STATE WAGE ORDER PURSUANT TO SECTION 50A OF THE ACT  
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

**CITATION** : 2018 WAIRC 00363

**CORAM** : CHIEF COMMISSIONER P E SCOTT  
SENIOR COMMISSIONER S J KENNER  
COMMISSIONER T EMMANUEL  
COMMISSIONER D J MATTHEWS

**HEARD** : WEDNESDAY, 23 MAY 2018, WEDNESDAY, 6 JUNE 2018

**DELIVERED** : WEDNESDAY, 13 JUNE 2018

**FILE NO.** : APPL 1 OF 2018

**BETWEEN** : ON THE COMMISSION'S OWN MOTION

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**CatchWords** : State Wage order – Commission's own motion – Minimum wage for employees under *Minimum Conditions of Employment Act 1993* – Award rates of wage – Award minimum wage – Signs of future economic improvement – WPI preferred to AWOTE – CPI not disaggregated – Monopsonist power considered – State wage principles – Statement of Principles amended

**Legislation** : *Industrial Relations Act 1979* (WA) s 26(1)(c), s 26(1)(d)(vii), s 29A, s 36A, s 37, s 40, s 40B, s 50A(3), s 50A(3)(a)(v), s 50A(3)(d)

*Minimum Conditions of Employment Act 1993* (WA) s 12, s 13

*Workplace Gender Equality Act 2012* (Cth)

**Result** : 2018 State Wage order issued

**Representation:**

Mr B Entrekin on behalf of the Hon. Minister for Commerce and Industrial Relations

Mr K Black on behalf of the Chamber of Commerce and Industry of Western Australia (Inc)

Dr T Dymond on behalf of UnionsWA

Mr C Twomey on behalf of the Western Australian Council of Social Service Inc

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*Reasons for Decision*

- 1 The *Industrial Relations Act 1979* (the Act) requires the Commission to make a General Order, the State Wage order, before 1 July each year. That Order is to set out the State Minimum Wage (SMW) applicable under s 12 of the *Minimum Conditions of Employment Act 1993* (the MCE Act) to employees 21 years of age and over, and to apprentices and trainees. The State Wage order is also to adjust rates of wages paid under awards and make consequential changes to awards.
- 2 The State Wage order also sets out a statement of principles to be applied and followed in relation to the exercise of jurisdiction under the Act to set the wages, salaries, allowances and other remuneration of employees, or the prices to be paid in respect of their employment (s 50A(1)(d)).
- 3 This matter was commenced on the Commission's own motion on 2 January 2018. The Commission published notices inviting submissions:
  - (1) on the Commission's website on 13 March 2018;
  - (2) in the *Western Australian Industrial Gazette* on 28 March 2018 (98 WAIG 111);
  - (3) in *The West Australian* newspaper on 31 March 2018 and 4 April 2018; and
  - (4) in *WA Business News* on 9 April 2018.
- 4 Written submissions and submissions in reply were received from the following persons and organisations:
  - (1) the Hon. Minister for Commerce and Industrial Relations (the Minister);
  - (2) the Chamber of Commerce and Industry of Western Australia (Inc) (CCIWA);
  - (3) UnionsWA;
  - (4) the Western Australian Council of Social Service Inc (WACOSS);
  - (5) the Australian Hotels Association (WA) (AHA); and
  - (6) three individuals.
- 5 The Commission convened on 23 May 2018 to hear submissions and receive evidence. Once again, the Commission had the considerable benefit of hearing from Mr David Christmas, Director of the Economic and Revenue Forecasting Division within the Western Australian Department of Treasury. Mr Christmas addressed the state of the Western Australian economy by reference to:
  - (a) the global and national context;
  - (b) the labour market;
  - (c) wages;
  - (d) inflation; and
  - (e) risks to the outlook.

- 6 We are grateful for those submissions and acknowledge the research and effort taken by those who made submissions.
- 7 The Commission reconvened on 6 June 2018 after the Fair Work Commission (FWC) issued its Annual Wage Review decision (AWR) (*Annual Wage Review 2017-18* [2018] FWCFB 3500) on 1 June 2018, dealing with the National Minimum Wage (NMW).

### Impact on the State Wage order

- 8 As the Minister notes, there is no definitive data on how many employers and employees are covered by the Western Australian industrial relations system and how many are affected by the State Wage order.
- 9 The Department of Mines, Industry Regulation and Safety (DMIRS) previously estimated that between 22 and 36 per cent of Western Australian employees are covered by the State industrial relations system.
- 10 The Australian Taxation Office information indicates that it covers a maximum of 35.4 per cent of private sector employers in Western Australia (Minister's submission [55]).
- 11 Sixteen point four per cent of non-managerial employees in Western Australia are likely to be paid entirely in accordance with a State or national award. Award reliance in Western Australia has increased in recent years from 14.6 per cent of all non-managerial employees in 2014, to 16.4 per cent in 2016, compared with national award reliance at 20.4 per cent and 24.5 per cent, respectively.
- 12 The DMIRS has provided details of the five most commonly accessed private sector award summaries on its website. They are:

	Award
1	Restaurant, Tearoom and Catering Workers' Award
2	Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977
3	Building Trades (Construction) Award 1987
4	Metal Trades (General) Award
5	Clerks (Commercial, Social and Professional Services) Award

- 13 The top five private sector awards discussed with employers and employees who contact Wageline are:

Rank	Award
1	Building Trades (Construction) Award 1987
2	Hairdressers Award 1989
3	Restaurant, Tearoom and Catering Worker's[sic] Award
4	Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977

Rank	Award
5	Metal Trades (General) Award

- 14 The Minister says that this suggests that the awards in hospitality, retail, construction, hairdressing, clerical and metal trades industries are amongst the most widely utilised in the Western Australian system.
- 15 UnionsWA refers to the *Ministerial Review of the State Industrial Relations System Interim Report* (the Interim Report) for estimates of numbers of employees covered by the State system, as being between 21.7 per cent and 36.2 per cent of the employees in the State. It estimated that approximately 23.8 per cent of employees are in the unincorporated sector, being approximately 318,777 employees.
- 16 The Interim Report also refers to data from the Wageline contact centre of the Private Sector Labour Relations Division of the DMIRS, showing the number of calls received each year. For 2016-17, of the calls that pertain to the State system:
- a) 20 per cent related to award free employees;
  - b) 14 per cent concerned the *Building Trades (Construction) Award*;
  - c) 11 per cent concerned the *Restaurant, Tearoom and Catering Workers' Award*;
  - d) 9 per cent concerned the *Hairdressers Award*; and
  - e) 8 per cent concerned the *Shop and Warehouse (Wholesale and Retail Establishments) Award*.

(The Interim Report, Attachment 7B [1])

- 17 UnionsWA also notes that the Interim Report provides a list of over 60 award-free classifications in the State system that are reliant on the MCE Act.
- 18 CCIWA refers to comments by the Productivity Commission about the award-reliance of employees in the accommodation and food services, administrative and support services, retail trades, other services, and health care and social assistance industries. Such employees are more likely to be female, and are younger and less skilled on average than other groups (Productivity Commission Inquiry Report No. 76, *Workplace Relations Framework* (Volume 1) (30 November 2015) 308).
- 19 CCIWA also notes (emphasis in original):
- For the private sector small businesses under the State system, there is significant reliance upon the SMW and award wages and conditions as industrial agreements are not a practical or viable option. As the Productivity Commission stated, *'increasing the wages of the low paid through minimum wages and conditions is a better method of income redistribution than the tax transfer system'*. It was further noted that no system of re-distribution is perfectly targeted and that many households that receive award wages are not in the lowest-income households.

(CCIWA's submission [231])

- 20 Employees in accommodation and food services; administrative and support services; retail trade, and rental, hiring and real estate services account for nearly 40 per cent of all award-reliant employees, and small businesses in those industries account for a large share of employment.

21 In 2016, we noted that:

- 144 There are varying views on the basis for calculating the number of employees and employers covered by the State industrial relations system and affected by the State Wage order. In the private sector, they are employees of sole traders, partnerships, some trusts and incorporated businesses which are not trading or financial corporations. In addition, there are State public sector employees.
- 145 We note that the State Wage Order deals not merely with the minimum wage for award free employees but also award covered employees and also award rates. It will directly affect some and will have indirect effects on others. It covers the rates for juniors, apprentices and trainees, and sets out the Principles to be applied to a range of types of claims which might come before the Commission, so as to guide the parties in pursuing, and the Commission in deciding, those claims.
- 146 While the State Wage order deals with more than the minimum wage, this is its most direct effect, along with setting the increase for award rates. Therefore, its most direct effect is on award free and award covered employees and their employers. It also provides a floor and, what some have described as, a signalling effect to those not directly covered, for their wage setting. So while the numbers actually covered or directly affected by the minimum wage is difficult to determine, it is clearly of significance to many employers and employees, either directly or indirectly.
- 147 Those employees dependent on the minimum wage are more likely to be employed in small businesses.
- 148 As UnionsWA submits, it is likely that vulnerable groups of employees are overrepresented within the private sector of the state industrial relations system, partly due to them being employed in small private sector businesses.
- 149 In terms of low income households, UnionsWA refers to the Productivity Commission's report, noting that:

Employees in the lowest income groups are more likely to be on the minimum wage than those in higher income groups (and by more than a fivefold factor) (figure 4.8). So, while most people in the lowest quintile are not in work (and therefore do not receive any wages), almost half of those who are in work are paid at a minimum rate.

*(2016 State Wage Case [2016] WAIRC 00358; (2016) 96 WAIG 636)*

22 This remains the situation, that the number of employers and employees affected by the State Wage order is significant. Award-reliance has increased in recent years, and enterprise bargaining has declined, as we discuss later in these reasons. In those circumstances, the State Wage order is important to many employers and employees in this State.

### **Proposed outcomes**

- 23 Western Australia's current SMW is \$708.90.
- 24 The Minister submits that a flat dollar increase of \$19.20 represents a fair and sustainable amount that would provide a meaningful increase to minimum and award wage earners. This represents an increase of 2.7 per cent, taking the SMW to \$728.10 per week. A flat dollar increase to award rates would provide the greatest benefit to the lowest paid.
- 25 UnionsWA submits that an increase of \$50 per week in the SMW and in award wages, or 6.2 per cent, whichever is greater, will meet the considerations set out in s 50A(3) of the Act. For the lower award rates from C14 – C10, this would equate to \$50 per week and for C9 – C5,

a percentage increase would assist in alleviating the compression of relativities by providing between \$51.63 and \$58.48 respectively for those higher classifications.

- 26 CCIWA says that it supports responsible and sustainable wage growth through the SMW and that an increase in the SMW and award wages of no more than 1.2 per cent would meet the requirements of the Act. It says considerable weight ought to be given to the requirement on the Commission to consider the capacity of employers as a whole to bear the costs of increased wages, salaries and other remuneration as set out in s 50A(3)(d). To apply such weight is necessary to facilitate viable and sustainable businesses capable of meeting future conditions.
- 27 According to WACOSS, an increase to the SMW and minimum award rates of \$50 per week would be consistent with the need to maintain a fair system of wages and conditions in the current Western Australian context, and would be a very reasonable increase which takes into account current economic conditions. WACOSS's particular focus is the adequacy of living standards and quality of life of Western Australians living on low incomes.
- 28 The AHA submits that an increase of 1 per cent to the SMW and award wages is appropriate given the particular factors facing its industry.
- 29 In respect of the three submissions received from individuals, Patricia Carmichael says that '[t]he Minimum wage pay rise must be kept in line with Politicians' annual pay rise[s]'.  
 30 Two submissions were made by persons who provided their names but did not want them published. The first contends that the current SMW is too low by contemporary standards given the current costs of living; is at poverty level; does not provide a fair and equitable level of income, and does not meet the needs of the low-paid. This person says that the criteria used by the Western Australian Salaries and Allowances Tribunal would appear more equitable. This submission says that the SMW should be set at \$25 per hour or \$950 per week.
- 31 The final individual submission says that the adult rate of pay should apply to all employees from 18 years of age, rather than 21 years of age.

### **Section 50A(3) – the issues to be considered**

- 32 Section 50A(3) of the Act sets out a range of social, labour market and economic matters the Commission is required to consider in making the State Wage order. They are:
- (a) the need to —
    - (i) ensure that Western Australians have a system of fair wages and conditions of employment; and
    - (ii) meet the needs of the low paid; and
    - (iii) provide fair wage standards in the context of living standards generally prevailing in the community; and
    - (iv) contribute to improved living standards for employees; and
    - (v) protect employees who may be unable to reach an industrial agreement; and
    - (vi) encourage ongoing skills development; and
    - (vii) provide equal remuneration for men and women for work of equal or comparable value;
- and

- (b) the state of the economy of Western Australia and the likely effect of its decision on that economy and, in particular, on the level of employment, inflation and productivity in Western Australia; and
- (c) to the extent that it is relevant, the state of the national economy; and
- (d) to the extent that it is relevant, the capacity of employers as a whole to bear the costs of increased wages, salaries, allowances and other remuneration; and
- (e) for the purposes of subsection (1)(b) and (c), the need to ensure that the Western Australian award framework represents a system of fair wages and conditions of employment; and
- (f) relevant decisions of other industrial courts and tribunals; and
- (g) any other matters the Commission considers relevant.

33 The Commission is also to have regard to the matters set out in s 26(1)(c) of the Act.

34 The legislation does not specify whether any of these matters is to take precedence or is to carry greater weight. Rather, each of them is to be considered and their relative weight will depend on the circumstances prevailing at the time. Some of those matters appear to be in conflict, while others overlap. Therefore, it is appropriate to look at them in a holistic rather than segmented way, and to assess and balance them.

35 The concept of fairness is common to a number of the matters to be considered. Fairness is to be viewed from a broad, not narrow, perspective. It requires consideration of what is fair to both parties to the employment relationship – to employers *and* employees. Therefore, in considering the appropriate level of the SMW and award wage increases, some compromise of each party's interests is necessary. The Commission is also required to have regard for the interests of the persons immediately concerned whether directly affected or not and, where appropriate, for the interests of the community as a whole, and those other matters set out in s 26(1)(c).

36 A useful starting point, and a way of setting the context and background for consideration of these issues, is to examine the state of the Western Australian economy generally, of particular industries, and how they affect and reflect the labour market. It is then appropriate to examine the fairness considerations and the effect on our decision.

### **The state of the economy of Western Australia**

37 The Minister produced a useful snapshot of some essential economic indicators from the 2018-19 State Budget.

<b>Indicator</b>	<b>2016-17 Actual</b>	<b>2017-18 Estimated Actual</b>	<b>2018-19 Budget Forecast</b>	<b>2019-20 Forward Estimate</b>	<b>2020-21 Forward Estimate</b>
<b>Gross State Product</b>	-2.7%	2.5%	3.25%	3.75%	3.0%
<b>State Final Demand</b>	-7.2%	-0.25%	-0.25%	3.75%	3.75%
<b>Employment Growth</b>	-0.9%	2.25%	1.5%	2.0%	2.25%
<b>Unemployment Rate</b>	6.2%	5.75%	5.75%	5.5%	5.25%
<b>Wage Price Index</b>	1.4%	1.5%	1.75%	2.75%	3.0%

Indicator	2016-17 Actual	2017-18 Estimated Actual	2018-19 Budget Forecast	2019-20 Forward Estimate	2020-21 Forward Estimate
Consumer Price Index	0.6%	1.0%	1.5%	2.0%	2.5%

(Minister's submission [13])

Table 1: Economic forecasts – major economic aggregates, WA)

- 38 This demonstrates that the Western Australian economy has improved in the last 12 months with further strengthening forecast in the forward estimates to 2020-21. However, Western Australia is at or near the bottom of the economic downturn since the difficult economic environment following the end of the resources boom. It is entering a period of economic transition, during which growth is expected to be gradual.
- 39 Western Australia's 2.7 per cent decline in Gross State Product (GSP) was the only decline amongst all states and territories. Net exports are forecast to increase by 10.0 per cent in 2017-18 and 12.5 per cent in 2018-19. Net exports are a significant contributor to Gross State Product, which as a consequence is expected to rise by 3.25 per cent in 2018-19.
- 40 The Western Australian Government expects that household consumption will take over from exports as the major driver of growth from 2019-20.
- 41 State Final Demand (SFD) fell by 7.2 per cent in 2016-17 and again was the only such decline in SFD amongst all states and territories.
- 42 SFD is forecast to decline by a further 0.25 per cent in 2017-18 and 2018-19 before returning to positive growth of 3.75 per cent in 2019-20.

### The Western Australian labour market

- 43 Total employment growth in Western Australia is described by the Minister as robust, with an annual average increase of 2.2 per cent to March 2018 following a fall of 1.4 per cent to March 2017. This year's growth is the strongest in almost five years. However, unemployment is still relatively high (6.2 per cent in 2016-17 and the forecast average for 2017-18 is 5.75 per cent). Job vacancies have grown by 24.7 per cent with a 16.6 per cent increase in the Internet Vacancy Index. This is ahead of increases in all other states and territories.
- 44 Full-time employment in Western Australia has gone from greater than -1.0 per cent a year ago to 2.8 per cent in March 2018. Part-time employment has increased by 1.1 per cent in that period.
- 45 Total employment in Western Australia fell by 0.9 per cent in 2016-17 but is now forecast to increase by 2.25 per cent in 2017-18, 1.5 per cent in 2018-19 and 2.0 per cent in 2019-20.
- 46 Employment growth in Western Australia in the year ended February 2018 varied between industries.

Industry	Change ('000)
Health care and social assistance	23.4

Industry	Change ('000)
Education and training	14.3
Arts and recreation services	10.0
Professional, scientific and technical services	7.8
Manufacturing	7.8
Construction	7.2
Agriculture, forestry and fishing	7.0
Electricity, gas, water and waste services	3.3
Accommodation and food services	1.2
Information media and telecommunications	0.6
Mining	-1.1
Transport, postal and warehousing	-2.8
Public administration and safety	-4.6
Wholesale trade	-4.7
Financial and insurance services	-4.8
Rental, hiring and real estate services	-7.7
Administrative and support services	-8.1
Retail trade	-15.8

(Figures taken from Minister's submission (page 8),  
Table 2 – Employment by industry in WA (000s), February 2017 – February 2018)

- <sup>47</sup> Unemployment is declining from a 16-year high. It has gone from 6.2 per cent in 2016-17 to 5.9 per cent in the year to March 2018, with forecasts of 5.75 per cent in both 2017-18 and 2018-19. The national unemployment rate is 5.5 per cent.
- <sup>48</sup> The Minister points out that while the seasonally adjusted unemployment rate in Western Australia has increased from 6.1 per cent to 6.9 per cent, it needs to be noted that the participation rate has grown from 68.1 per cent to 68.7 per cent, representing nearly 13,000 additional people entering the labour market.

- 49 In the last five years, total monthly working hours in all jobs in Western Australia has fallen 2.27 per cent compared to a national increase of 7.47 per cent. Western Australia is the only state to have had a decline in monthly working hours over that period.
- 50 Youth unemployment has steadily increased in recent years from 6.0 per cent in June 2008 to over 16 per cent in April 2018. It has exceeded the national average for at least the last nine months. Outside of the Perth metropolitan area, it is around 16.6 per cent in Mandurah and 14.8 per cent in the Wheatbelt.
- 51 There has been argument about the rates of pay for juniors and apprentices and whether increases in the SMW will lead to the loss of jobs and job opportunities for this group.
- 52 CCIWA refers to the Australian Government's submission to AWR that low-paid jobs are an important pathway into the workforce. It is through low-paid jobs that people build skills and experience to gain higher-paid work in the future.
- 53 CCIWA expresses concern that youth unemployment has remained persistently high, and is deteriorating. Every avenue available must be used to encourage entry-level opportunities. It says care must be taken to avoid pricing low-skilled youth out of entry-level jobs through large increases in award wages. It is critical that young people enter and remain in the workforce.
- 54 In respect of both youth unemployment and the need to provide a fair system of wages, WACOSS says that although s 13 of the MCE Act provides for juniors to be paid percentages of the adult rate, junior rates are an anachronism. It says that there is no evident correlation between youth unemployment rates and minimum wage rises in Australia. The international research is said to support this.
- 55 Further, WACOSS says that the arguments supporting proportionate youth wages suggest that their labour is worth less, and this runs counter to the principle of equal remuneration for work of equal value.
- 56 WACOSS referred to an article by P N Junanker, *The Impact of the Global Financial Crisis on Youth Labour Markets*, (The Economic and Labour Relations Review, Vol 26, No. 2) as support for the proposition that there is no evident correlation between youth unemployment and minimum wage rises in Australia.
- 57 Junanker notes that the labour market for youth is unique due to a number of factors including school leaving age; education and training options; switching between education and training and work, and the process of finding suitable work. The youth labour market is more volatile than the adult labour market.
- 58 In the conclusions, Junanker notes:

We showed that the youth labour market was significantly different from the adult labour market and more likely to be more volatile. Unemployment rates for youths increase more rapidly during a recession due to the fact that many young people are working in cyclically sensitive sectors, working in part-time casual employment. As a result, when a recession hits, employers stop hiring new entrants (the youths) and begin to fire youths as they are in vulnerable employment. We showed that the high youth unemployment could not be explained by high youth wages, by the minimum wage, or by so-called generous unemployment benefits.

If we would like to lower youth unemployment rates it is important to create increased growth, particularly in the industries that are the main employers of young people, namely, construction, manufacturing, retail trade and accommodation and food services for males, and retail trade, accommodation and food services, and health care and social assistance for females. Since

manufacturing has been on a declining trend for decades, the main industries that would help young people would be a stimulus to (say) tourism that helps retail trade, accommodation and food services.

...

To summarise, if the growth rate of the economy was stimulated it would decrease youth unemployment rates.

(P N Junanker, The impact of the global financial crisis on youth labour markets (Institute for the Study of Labor Discussion Paper Series, DP No. 8400, August 2014)

### **Underemployment and under-utilisation**

- 59 Underemployment has increased in recent years but fallen in the past 12 months, from 10.6 per cent in February 2017 to 8.8 per cent in February 2018, seasonally adjusted, and has risen again by 0.2 per cent to March 2018.
- 60 CCIWA notes that an International Monetary Fund (IMF) working paper in March 2018 (*More Slack Than Meets The Eye? Recent Dynamics in Advanced Economies*) states that nominal wage growth remains markedly slower in most advanced economies than it was before the GFC. IMF research of a range of possible contributing factors identified the bulk of global wage deceleration was to be accounted for by ongoing spare capacity, lower inflation expectations and weak trends in productivity growth.
- 61 CCIWA also draws attention to the comments of the Reserve Bank of Australia Governor, Philip Lowe, before the Commonwealth Standing Committee on Economics, that Australia is currently 'in a position where there is still spare capacity in the labour market. It's important to have strong employment growth in order for the employed labour to grow stronger than the rate of population, or the rate of the labour force growth, in order that you can start absorbing some of that spare capacity to get to the point at which wage growth starts to pick up'.
- 62 Mr Lowe added that the most important component is the growth in jobs, and that 'the main thing ... to improve income equality is jobs generation ... what we can do is promote a strong economy, which promotes strong jobs growth and ultimately wages growth'.
- 63 In November 2017, Reserve Bank of Australia Assistant Governor (Economics) Luci Ellis said that workforce 'participation can and is increasing average income and living standards'. In *Where is Growth Going to Come From?*, Ms Ellis added:
- It is usually presumed that ageing of the population will reduce participation. Older workers have increased their participation in the workforce as the trend to early retirement has abated. Mixed in with this is the cohort effect related to the increasing participation of women more generally. Each generation of women participates in the workforce at a greater rate than the previous generation at the same age ...
- 64 Importantly, Ms Ellis said 'greater participation raises the level of living standards'.
- 65 The Western Australian participation rate, a measure of the share of the working age population either working or looking for work, is increasing. Trend participation in Western Australia rose 1.0 per cent to March 2018 to 68.4 per cent, compared with the national increase of 0.8 per cent to 64.8 per cent.
- 66 The female participation rate in Western Australia of 62.7 per cent is historically high, and is also the highest nationally.

### Wage trends – the low wage phenomenon

- 67 The Minister presented a view of the complex causes and effects of low wages growth which has persisted in developed economies around the world, including Australia. Such factors include spare capacity and labour under-utilisation; the changing nature and structure of the workforce; low inflation and real wages, including that real wages growth has decreased to almost zero; employee bargaining power and pay setting methods, including the erosion of employees' bargaining power; 'flexible' labour market practices; increased award reliance, and replacement enterprise agreements simply replicating existing awards or slightly above award rates.
- 68 The Minister draws attention to the International Labor Organization's (ILO) *Global Wage Report 2016-17* and its recognition of 'the need to monitor wage trends and implement sustainable wage policies that prevent wage stagnation, raise the levels of pay for millions of working poor around the world, ensure fair distribution, reduce excessive wage and income inequalities, and buttress consumption as a key pillar of sustainable economies' (Minister's submission [148]).

### Measures of wages growth

- 69 UnionsWA maintains that the SMW requires a significant increase to address the reduced 'bite' of average full-time weekly earnings measured by Average Weekly Ordinary Time Earnings (AWOTE). This means that the low paid have experienced a decline in relative living standards. Western Australia's SMW has gone from 49 per cent of AWOTE in 2006 to 40.60 per cent in 2014. It has recovered a small part of that gap to 41.30 per cent in May 2017. UnionsWA says that as the economy recovers, there is a risk that this gap will resume growing.
- 70 Full-time AWOTE in Western Australia rose 2.3 per cent in the year to November 2017, from \$1,703.20 to \$1,742.80.
- 71 It should be noted, though, that Western Australia has the highest AWOTE (for males at \$1,883.00 and for females at \$1,458.50) of all the states and territories except the Australian Capital Territory. This has persisted even after the end of the resources investment boom in 2014.
- 72 UnionsWA refers to the AWOTE as being an appropriate measure of wages growth and for comparison purposes in respect of wage inequality.
- 73 The Commission notes that the FWC's 2018 AWR decision contains *Chart 3.4: Growth in C14 and C10 relative to AWOTE, AWE and WPI, index* ([2018] FWCFB 3500 [315]). This charts the changes in various measures of wages growth between 2009 and 2017. The chart itself demonstrates one of the virtues of the Wage Price Index (WPI), that it is a less volatile measure than the other measures contained in that assessment of wages growth. The Note which follows the chart describes the differences between the various measures.
- 74 In 2012 (*2012 State Wage Case* [2012] WAIRC 00346; (2012) 92 WAIG 557 [50] – [53]), the Commission noted that '[w]e continue to have reservations regarding linking the setting of the minimum wage to Average Weekly Ordinary Time Earnings', and dealt with effects on that measure of an increase in wages in positions in the higher paid industries of mining, oil and gas, which at that time were high and pushing average rates upwards. The Commission said that such 'high-wage sectors such as mining ... are not likely to be representative of wages and living standards generally prevailing in the community' [50]. As a consequence, the Commission was not 'persuaded by UnionsWA's submission that the setting of the WA

minimum wage should be significantly influenced by its past or present relativity to AWOTE' [52]. The Commission noted also that UnionsWA acknowledged 'that at least the WPI should also be considered in order to give a more complete picture' [53].

- 75 In 2013, UnionsWA sought that the Commission revisit that conclusion. The matter was considered, and the Commission concluded that '[t]o significantly influence setting of the WA minimum wage by reference to AWOTE to the exclusion of the requirements of s 50A(3) would not properly give effect to the Act': [2013] WAIRC 00347; (2013) 93 WAIG 467 [76].
- 76 We reaffirmed in 2016 ([2016] WAIRC 00358; (2016) 96 WAIG 636 [167]) and in 2017 ([2017] WAIRC 00330; (2017) 97 WAIG 693 [214]) that the WPI is regarded as less volatile than AWOTE and the most useful indicator of wage inflation. We note, however, that AWOTE plays a part in consideration of wages movement and measures of relative wages.
- 77 Wages growth has slowed significantly in recent years, both nationally and in Western Australia. The WPI had only a marginal increase of 1.5 per cent in year-end terms in 2017. At a national level, WPI growth was 2.0 per cent. The slowing of growth in the WPI in Western Australia over the last five years coincides with the end of the mining-led investment boom.
- 78 Western Australia's WPI has declined from being the highest of all states in 2013 to the lowest in 2017-18.



(CCIWA's submission [125])

Chart 11: Wage Price Index – States, All Sectors, 2013 – 2017)

- 79 The WPI growth in Western Australia reached its lowest level of increase, of 1.0 per cent, in the March and June quarters 2017. It increased to 1.5 per cent in the December quarter 2017. However, it is below the 2.0 per cent recorded in December 2014.
- 80 Wages growth has varied by industry from a maximum of 2.1 per cent in education and training, with the remaining identified industries (except professional, scientific and technical services at 0.1 per cent) being between 1.1 per cent and 1.7 per cent.
- 81 Annual average wages growth is expected to be subdued with forecasts of 1.5 per cent and 1.75 per cent in 2017-18 and 2018-19 respectively, and up to 3.0 per cent by 2020-21.

## Productivity

- 82 CCIWA says that wage increases arising from the State Wage Case have exceeded Consumer Price Index (CPI) growth for a number of years. The same applies to wages growth measured by private sector WPI. This has resulted in a real increase in disposable incomes.
- 83 The Fair Work Commission said in its AWR 2016-17 that it 'continues to support a conclusion that increases in minimum wages are more likely to stimulate productivity measures by some employers directly affected by minimum wage increases rather than inhibit productivity' ([2017] FWCFB 3500 [227]).
- 84 CCIWA refers to the multifactor measure of productivity recognised by the Productivity Commission. The annual average growth of 0.8 per cent between 2011-12 and 2016-17 is weak. Labour productivity has grown comparatively strongly compared with multifactor productivity from 2011-12 to 2015-16, but both have tapered off in the last year.
- 85 We conclude from all that we have before us, that an increase of the amount we propose will assist in promoting productivity at least partly for reasons we identify in relation to employers' responses to increases in labour costs.

## Other measures

- 86 CCIWA's March 2018 *Survey of Business Confidence* indicates a continuation of the increasing confidence of Western Australian businesses, with short term (three months) and medium term (12 months) confidence at pre-boom levels.
- 87 Consumer confidence measured by CCIWA's March 2018 *Survey of Consumer Confidence* shows cautious growth in consumer confidence, being at its highest level in four years.
- 88 Household consumption growth is subdued. It is expected to remain that way consistent with projections for household income, population growth and spare capacity in the labour market.
- 89 Business investment continues to fall, predicted to stabilise in 2019-20.
- 90 Retail sales contracted from March 2017 to March 2018 by 0.5 per cent. Western Australia is the only state or territory with negative growth, although national average growth was less than 1 per cent. CCIWA says this demonstrates the need for caution due to the unstable confidence in this area of the economy.
- 91 Dwelling investment declined by around 20 per cent in 2016-17, the first such decline since the peak of the resources boom. This is because:
- (1) population growth is gradually coming out of a trough;
  - (2) residential property prices in Perth are still declining; and
  - (3) interest rates are low.
- 92 Dwelling investment is forecast to decline by a further 6.25 per cent in the current financial year before returning to modest growth in 2018-19 and beyond.
- 93 The median house rent has fallen 7.7 per cent and the median unit rent has fallen by 7.1 per cent in the year to March 2018.
- 94 The excess in housing stocks and high vacancy rates explain these figures.
- 95 UnionsWA notes that while the labour market in Western Australia has 'moved into the less labour-intensive production phase of the major resource projects, hiring levels have been

supported by a growing services sector workforce (with the largest single increase being in the Accommodation and food services industry). This has also been occurring in the context of rising business confidence and job advertisements' (UnionsWA's submission [5.13]).

### Operating conditions for Western Australian businesses

- 96 Employer capacity as a whole to bear the cost increases, and the likely effect on the economy and employment levels, are significant considerations.
- 97 CCIWA's March 2018 *Survey of Business Confidence* records that the barriers businesses see to their growth are:
- (a) rising operating costs (40 per cent);
  - (b) weak demand (36 per cent); and
  - (c) foreign and online competitors (36 per cent).
- 98 The capacity of employers to bear increases in wage and other employment costs is part of balancing the various considerations with a view to setting an appropriate SMW and award wages. We conclude that firstly, it is important that businesses generally are sustainable in the interests of the employees they employ. Although we do not accept that there is generally a risk to employment from moderate and regular increases in the SMW and award wages, as pointed out by Bishop, '[t]here will always be some point at which a minimum wage adjustment will begin to reduce employment' (James Bishop, *the Effects of Minimum Wage Increases on Wages, Hours Worked and Job Loss*, Reserve Bank of Australia RDP 2018-06, 16).
- 99 Secondly, it is not in the interests of businesses and their owners and operators that otherwise viable businesses be jeopardised, nor that struggling businesses be pushed beyond the brink.
- 100 Thirdly, it is detrimental to the economy for businesses to fail when reasonable levels of increases in rates would make a difference to their survival.
- 101 Gross Operating Surplus (GOS) plus Gross Mixed Income (GMI) is used as a proxy for business profitability at the state level. Across all industries GOS and GMI increased by 8.2 per cent in 2016-17, following a decline of 6.3 per cent in 2015-16. However, the results vary across industries.

Industry	Annual Increase (%)
Mining	37.8
Agriculture, forestry and fishing	29.2
Administrative and support services	3.2
Retail trade	1.1
Health care and social assistance	1.1
Wholesale trade	0.2

Industry	Annual Increase (%)
Financial and insurance services	-1.0
Professional, scientific and technical services	-3.0
Education and training	-3.2
Arts and recreation services	-7.9
Electricity, gas, water and waste services	-8.7
Manufacturing	-8.9
Rental, hiring and real estate services	-9.1
Transport, postal and warehousing	-10.9
Information media and telecommunications	-15.0
Public administration and safety	-19.0
Other services	-20.7
Accommodation and food services	-22.4
Construction	-34.3
Total all industries	8.2

(Figures taken from Minister's submission (page 15),  
Table 6: Gross Operating Surplus (GOS) and  
Gross Mixed Income (GMI) by industry, current prices, 2016 and 2017)

- 102 This demonstrates that some industries have turned the corner as predicted last year. For example, the Mining and Agriculture, forestry and fisheries industries have gone from -16.9 per cent and -17.6 per cent in 2015-16 to 37.8 per cent and 29.2 per cent respectively in 2016-17.
- 103 However, this reversal has not found its way into other industries, particularly those where minimum wage and award-reliant employees and employers exist. In 2015-16, the Retail trade showed an increase in GOS and GMI of 2.3 per cent but in 2016-17, it has contracted to 1.1 per cent.
- 104 The Accommodation and food services industry was -4.7 per cent, but it has contracted significantly since then to -22.4 per cent in 2016-17. Transport, postal and warehousing has gone from 8.0 per cent to -10.9 per cent.
- 105 The range of change in the previous year was from a maximum of 11.3 per cent to a minimum of -17.6 per cent. In 2016-17, it is 37.8 per cent through to -34.3 per cent.

- 106 We note, too, that the Retail trade had a contraction in employment of 11.9 per cent in the year ended February 2018, while Accommodation and food services increased at a modest 1.3 per cent. Transport, postal and warehousing contracted by 4.3 per cent.
- 107 Therefore, it can be seen that some major industries, reliant on the minimum and award wages, may be less able to bear the costs of increases than last year, so caution is required.
- 108 Further, the increase we are directed by the legislation to determine has a flow-on effect beyond the base rate of wage to other costs, including allowances, superannuation, leave costs and overtime rates.
- 109 CCIWA says that the trading environment for businesses is highly competitive, with compressed margins and cost management pressures. This is particularly so for those smaller businesses and award reliant employers who operate in the State system and are subject to the State Wage order.
- 110 CCIWA notes, by reference to ABS, Cat. No. 8165.0, *Counts of Australian Businesses 2016-17* that Western Australia had 77,846 businesses employing between one and 19 employees, and 6,213 businesses employing between 20 and 199 employees. Small business contributed \$39.7 billion to the Western Australian economy in 2014-15, accounting for 19.7 per cent of Western Australia's GSP (*The Engine Room for Growth?* BankWest Curtin Economics Centre, May 2017, viii).
- 111 Local businesses compete for the low levels of household discretionary spending, not only amongst themselves but with other larger businesses both locally and internationally. Online retailing continues to expand rapidly, increasing by 14.1 per cent last year.
- 112 CCIWA examined the Australian Bureau of Statistics data relating to small businesses in Australia. It notes their corporate structures, turnover, numbers of employees, survival rates and importance to the economy. Their indebtedness and liquidity, sources of funding, and the operating conditions for small businesses have been extremely challenging due to the economic conditions, as well as competition from within the State, nationally and internationally. International retail businesses are entering the local market more frequently. Those local businesses relying on discretionary household spending are particularly vulnerable to such competition. The rapid expansion of online retailing also threatens small business.
- 113 The small business sector is the principal provider of entry-level employment opportunities in Western Australia. However, those in the State system have a higher minimum wage than the NMW – it may be more expensive for them to provide jobs.
- 114 Small businesses have neither the capital nor the ability to absorb costs in the way larger businesses do (ABS, Cat. No. 8167.0, *Selected Characteristics of Australian Business 2015-16*).
- 115 Survival rates for small businesses are lower than larger businesses, at 69.0 per cent for micro-businesses (employing 1 – 4 persons), 77.8 per cent for businesses with between 5 and 19 persons, and 83.7 per cent for large businesses employing more than 200 persons (ABS Cat. No. 8155, *Australian Industry*, 2015-16).
- 116 CCIWA says that due to the period of weak trading conditions of the previous four years, small businesses remain cautious in spite of encouraging business conditions. This caution is particularly marked in their engagement of additional labour.

- 117 CCIWA also notes that Asia-Pacific Economic Cooperation (APEC) has identified small and medium enterprises as the 'engines of growth and innovation' in the APEC region.
- 118 It also notes that, speaking in February 2018 to the Commonwealth Standing Committee on Economics, Reserve Bank Governor, Philip Lowe, commented that 'strong competition from new entrants and changes in retailing business models are putting downward pressure on prices of many consumer durables and groceries', adding that 'many firms are wary of adding to their cost base in the current environment'.
- 119 Reserve Bank Assistant Governor (Economic), Luci Ellis, said in a speech in February this year that:
- ... even when facing strong demand and rising cost pressures, firms seem reluctant to raise their prices. They appear to believe that competition is so intense that they would lose too much business if they did so. So they are especially reluctant to grant wage rises because this would increase one of their most important costs. ... Despite firms' reluctance to raise prices, margins cannot be squeezed forever ... Australia has seen a marked increase in the number of major retail players. Foreign retailers ... [have] also induced the existing players to reduce their cost to stay competitive...
- 120 CCIWA says that after four years of depressed economic and business trading conditions, small and micro-businesses are not capable of sustaining any significant increase in labour costs to their businesses. It cites the Australian Bureau of Statistics Employee Earnings and Hours (EEH) data from May 2016 as indicating that award reliance has increased and that the small business cohort under the State system are predominantly award-reliant. The reasons why small business paid award rates of pay were 'affordability' (26.2 per cent); 'don't want to pay more' (20.7 per cent); and 'appropriate/fair remuneration' (18.9 per cent).
- 121 Small businesses reported that their short-term responses to increases in costs would be to implement strategies to manage or reduce their wage bill (69.4 per cent). This included:
- (1) reducing hours of casual staff (71.8 per cent);
  - (2) work more hours themselves (69.3 per cent);
  - (3) reduce the number of employees by attrition (63.1 per cent);
  - (4) reduce the length of shifts (54.3 per cent); and
  - (5) reduce overtime (50.7 per cent).
- 122 This is consistent with the evidence given to the Commission in 2013 by Professor Rowena Barrett. Other responses related to reducing other business costs.
- 123 In the cost containment strategies set out above, small business owners may substitute their own labour, reducing staff working hours. This has an impact on the health and wellbeing of those business owners. CCIWA also notes the negative impacts on the physical and mental wellbeing of work-related stress by more than 50 per cent of small business owners.
- 124 We note the submission of the AHA as to the capacity of the hospitality industry to bear an increase beyond 1 per cent. It refers to findings by the FWC in the *4 Yearly Review of Modern Awards – Penalty Rates* ([2017] FWCFB 1001 [742]) about this industry:
- ... that employers were relatively more likely to be characterised by:
- small and medium businesses;
  - lower profit margins;

- higher wages and salaries as a proportion of total expenses;
- lower survival rates;
- strong or intense competition; and
- operating 7 days a week.

- 125 According to the AHA, the 'combination of higher levels of Award reliance, long operating hours and small profit margins indicates that anything more than a modest increase in the State minimum wage will place substantial pressure on' its members. This cost pressure is said to be 'likely to lead to lower employment and higher rates of insolvency amongst small business' (AHA's submission [10]).
- 126 The AHA refers to two particular factors affecting its members covered by the State system, compared with their competitors covered by the national system. The first is that the SMW is higher than the NMW and that the national system employers enjoy lower penalty rates. Penalty rates have a strong impact on its State system members because the hospitality businesses customarily trade at times that attract penalty rates – weekends and public holidays.
- 127 Secondly, there has been a decline in tourism spending in regional Western Australia where the majority of its State system members operate. Tourism WA's statistics released in March 2018 show a decline in tourism spending in 2017 in the North West by 36.1 per cent, the Goldfields and Greater Southern by 24.4 per cent and the Coral Coast by 1.9 per cent. The number of nights international visitors spend in Western Australia decreased by 7.7 per cent and the amount spent declined by 5.5 per cent.
- 128 We conclude that the ability of small businesses to absorb increased costs is limited, as is their ability to increase prices in such a highly competitive market.
- 129 We also note that the GOS plus GMI for the Accommodation and food services industry generally declined by 22.4 per cent in 2016-17, and that employment in that industry for the year ended February 2018 grew by 1.3 per cent, compared with the growth in full-time employment generally to March 2018 of 2.8 per cent and part-time employment by 1.1 per cent. The Accommodation and food services industry is highly award-reliant.

### **Section 50A(3)(a) considerations**

- 130 These considerations require an assessment of measures of fairness and social inclusion, and to provide means for employees to enjoy fair living standards through income, employment and training opportunities.
- 131 The particular considerations are a need to ensure an award framework that represents a system of fair wages and conditions of employment. This means fairness to employees in terms of reasonable and equitable recompense for their work, by reference to standards of income and living standards generally. It also means fairness in maintaining and improving employment and training opportunities.
- 132 There is a need to meet the needs of the low paid. These employees are generally on the SMW and on the lower levels of award and agreement rates.
- 133 As we noted earlier, it also means fairness to employers in their being able to afford to pay a wage that meets all of the other criteria, without an undue burden or risk to the wellbeing of the business or its owners.

134 UnionsWA notes that a sense of shared prosperity and the avoidance of a wide variance in economic conditions are important. It refers to the Reserve Bank Governor, Philip Lowe's comments on 1 May 2018 that:

... it is difficult to see how a continuation of 2 per cent growth in wages is compatible with us achieving the midpoint of the inflation target – 2½ per cent – on a sustained basis. So from that perspective alone, a pick-up in wages growth over time would be welcome. Perhaps more importantly, sustained low wages growth diminishes the sense of shared prosperity that we have in Australia.

(UnionsWA's submission [2.5])

135 UnionsWA refers to the Australian Council of Trade Unions' (ACTU) submission to the 2018 AWR which noted the requirements of Article 3 of the 1970 ILO Convention 131 on *Minimum Wage Fixation* which gives consideration to, on one hand, the needs of workers and their families and on the other, economic factors. It goes on to note that these two as competing factors are no longer as important as assessing what is fundamentally about 'the common good'.

136 UnionsWA says that the lowest paid are more likely to be:

- (1) in precarious employment; and
- (2) in the service industries of retail, accommodation and food services.

137 These employees are said not to have received 'their fair share of WA's recent strong economic growth, nor from its recent economic recovery' (UnionsWA's submission [2.5]). This is said to be demonstrated by measures of inequality such as:

- the gender pay gap;
- the disparity between the SMW and average weekly earnings; and
- household income inequality.

138 UnionsWA challenges the cliché that 'getting a job regardless of pay is better than no job', that 'the best form of welfare is work'. It cites research by Butterworth and others (*The psychosocial quality of work determines whether employment has benefits for mental health*), that 'unemployment and inadequate jobs (salary below the poverty line) were associated with significantly greater levels of depression than optimal jobs, so too were poor quality jobs that combined adverse psychosocial (low decision latitude, high job demands, low social support) conditions'. The quality of the job is important for the well-being of workers, not merely being paid enough to cover immediate living costs.

139 UnionsWA urges the Commission to take the lead in reversing what it says is 'the erosion of relative living standards of low wage workers in order to maintain a fair system of wages and conditions', and should inject an increase in aggregate demand into the State economy through an increase in the SMW and award wages of the magnitude it recommends.

140 UnionsWA notes that the WA economy has moved from a labour-intensive phase of major resource projects. However, hiring levels have been supported by significant growth in the services sector, in particular the accommodation and food services industry. This is in the context of rising business confidence and job advertisements.

141 Reference is made to the Deputy Governor of the Reserve Bank of Australia, Guy Debelle's comments in *The Outlook for the Australian Economy* (15 May 2018), that current wage outcomes of 2 per cent will remain lower than historical experience would suggest. He noted that the 3 to 4 per cent range in the years 2002 to 2014 are unlikely to return in the near term.

He said, '[t]here is a risk that it may take a lower unemployment rate than we currently expect to generate a sustained move higher than the 2 per cent focal point evident in many wage outcomes today'.

- 142 Without minimum wage increases, UnionsWA says there would be very little pressure for wages growth at all in Australia.

### **Demand impacts of UnionsWA's claim**

- 143 UnionsWA refers to research undertaken for the FWC AWR 2017-18 that found that half of low-paid adult employees were partners in a couple household, with the next highest proportion being those with a non-dependent child. There were similar proportions of low-paid couples with children under 15 or with no children.
- 144 The Australian Government's submission to the AWR showed the impact on disposable income for various household types following the 2017 NMW increase of 3.3 per cent. The difference between the households was that the percentage of the increase retained varied based on the type of transfer payments received by the household.
- 145 The ACTU examined the likely stimulatory effect of the AWR granting the increase proposed by it of \$50 per week as being an increase in employment of between 50,000 and 57,000 in the first year after the increase, and 30,000 in the second year after the increase. This is based on calculations of the propensity of low-income households to spend all of the increase rather than save it.
- 146 While the stimulatory effect on the Western Australian economy is not as readily estimated, UnionsWA says that in principle, this argument supports a stronger real SMW increase.

### **Minimum wages and monopsonist power**

- 147 In relation to the relationship between minimum wage increases and employment, as in its 2017 State Wage Case submissions, UnionsWA raised the issue of the monopsonist power of employers in the labour market and the impact of any increase in the SMW on monopsonist behaviour. As an overarching submission, UnionsWA contends that 'the WA Commission has been warned year after year about the potentially dangerous impacts on employment of raising the SMW by 'too much'. It says 'these have never come to pass, and are based on seriously outdated economic theories' (UnionsWA submission [5.1]).
- 148 UnionsWA argues that a labour market characterised by monopsony, as opposed to a competitive labour market, is one in which there may be one or a few employers that dominate the market for labour, as well as for goods and services. It is argues that the theory extends more generally into diverse labour markets, where employers have various sizes and characteristics (See discussion by Kuhn P 'Is Monopsony the Right Way to Model Labour Markets? A Review of Alan Manning's *Monopsony in Motion*' *Int. J. of the Economics of Business*, Vol.11, No.3, November 2004, 369-378).
- 149 In a competitive labour market, it is assumed that the price of labour will be a function of the intersection of supply and demand, resulting in the 'equilibrium wage'. Consequently, as the theory goes, an increase in the costs of labour from higher wages will lead to a fall in demand for labour and hence, reduced levels of employment.
- 150 The monopsonist employer will be a price setter and not a price taker. On this approach, the theoretical underpinning is that the employer, demonstrating monopsonist behaviour, when faced with a job vacancy, due to their superior bargaining power, may choose to not fill it.

UnionsWA in its written submissions (at [5.16]), referred to academic commentary and observed that 'Professor Krueger in 'The Rigged Labour Market' (*Milken Institute Review* 28 April 2017), points out that if a government *requires* monopsonist employers to pay an increased wage through a minimum wage increase, the monopsonist's marginal cost of labour (i.e. the change in total labour costs from employing one extra worker) falls, because:

... without a minimum wage the monopsonist operates with vacancies, unwilling to raise the wage it offers to hire additional workers because it would have to pay that higher wage to existing workers as well. However, with a binding minimum wage – that is, a minimum wage above the rate the monopolist [sic] was already paying – a monopsonist can fill its vacancies without worrying about having to increase everybody else's wages, because that was already required by the minimum wage.'

- 151 It further contends that there may be an increase in the level of employment in response to an increase in the SMW, under the monopsonist model.
- 152 In support of its submissions in relation to the employment effect of minimum wage increases, UnionsWA refers to a recent literature review by Belman D and Wolfson P (2014) 'The New Minimum Wage Research' *Employment Research* 21(2):4-5. This review of the literature focusses on research in several countries, but mainly the United States. It found that there were no or only statistically insignificant employment effects of minimum wage increases. In this respect also, UnionsWA referred to the article to the effect that the 'idealised' version of a perfectly competitive labour market, hardly ever corresponds with reality.
- 153 Additionally, various public statements and commentary from the Reserve Bank of Australia in relation to low wages growth were referred to by UnionsWA in its written submissions. Whilst acknowledging tightening in some sectors of the labour market, UnionsWA contends that without minimum wage increases, there would be little, if any, pressure for wages growth at all.
- 154 In the 2017 State Wage Case (at [253]), we considered similar arguments, including the approach of Professor Krueger, as to the effect of minimum wage setting in the United States. We concluded on that occasion that the features identified in Professor Krueger's article, that being, widespread collusive practices amongst employers and low minimum wage levels in the United States, made direct comparisons with the Australian and Western Australian contexts problematic. We referred to an article by Manning A 'The Elusive Employment Effect of the Minimum Wage' (2016) June *Washington Centre for Equitable Growth* 14 – 15. In this article, referring principally to United States research, the author noted the position in Australia, that the effect of its unique award wages system is a multitude of minimum wages. Furthermore, it was also noted in the same article that because of the wage setting system in Australia, modelling the employment effects of increases in minimum wages is difficult and the available research was limited.
- 155 As to the application of the monopsony theory to labour markets generally, we note that the theory itself has not been without its critics (See Kuhn P *op cit*).
- 156 UnionsWA's submission raises some interesting issues. However, in relation to the application of these principles to the Western Australian labour market specifically, we are cautious in reaching any conclusions, without a more substantial evidentiary case, as to whether employers within the State jurisdiction demonstrate monopsonistic characteristics in the local labour market context.

157 We were also referred by WACOSS in its submissions, and adopted by UnionsWA in its approach, to a research discussion paper by James Bishop referred to earlier. In the paper, the author modelled the impact of minimum wage increases flowing from NMW cases in two sample periods, 1998-2008 and 2002-2008. The focus of the research was on the impact of minimum wage increases on wages, hours of work and job destruction rates. In the concluding section of the paper under the heading 'Discussion', the author notes at pages 15 – 16 as follows (emphasis added):

There is widespread interest in understanding the effects of minimum wage increases. I add to the evidence base by using an identification strategy uniquely suited to Australia and a dataset that provides several advantages over those used previously in the literature. I provide the first causal estimates of the effect of minimum wages on wages in Australia, and one of the few credible estimates of the effects on hours worked and job loss. *I find that small, incremental adjustments to awards are mostly passed on to wages in award-reliant jobs. These adjustments appear to have little adverse effect on hours worked or job loss. These findings are consistent with the international evidence and the FWC's (2017) current assessment of that evidence base.*

There are several things to keep in mind when interpreting these findings. Firstly, as discussed earlier, my results are for adult employees only and do not include juniors. *Secondly, the results may not necessarily generalise to large, unanticipated changes in award wages. There will always be some point at which a minimum wage adjustment will begin to reduce employment.* Thirdly, my paper studies fairly tight windows around FWC decisions, and thus gives valid estimates of the effect of the minimum wage on hours worked and job loss only if employers take less than six months to adjust to changes in the award wage (Borland 2018). *Finally, although I find no statistically significant evidence of an effect of award adjustments on job destruction, this does not rule out an adverse effect on employment. For instance, the adverse consequences of higher wage floors may be borne by job seekers, rather than job holders.* Evidence from the Productivity Commission tentatively supports this possibility.

158 Overall, based on the materials considered by us in the 2017 State Wage Case; the work undertaken for the Commission by the late Professor David Plowman in 2006, *Report Prepared for the Western Australian Industrial Relations Commission: State Minimum Wage Review, May 2006*; observations of the FWC in its AWRs; and the above research, our opinion remains that moderate, regular increases in the SMW do not lead to negative employment consequences. What is 'moderate' will depend on the circumstances at the time. As we have noted previously, minimum wage increases in the past in this State have exceeded increases in the NMW, in times when the State's economy was very strong and had the capacity to support them. Increases in the SMW over the last five years of between \$13 and \$20 per week can be considered as moderate. The highest such rise was \$29 per week in 2008 during very different economic circumstances. There has been no submission or evidence that any of these increases, in the context of the particular times, have had any adverse employment effects.

### **Income inequality and living standards**

159 WACOSS says that it has been many years since a minimum wage decision delivered a demonstrable improvement in living standards for low-wage employees. It says that this has resulted in those on the lowest wages falling further behind community expectations and standards.

160 WACOSS points to:

- the lack of availability of affordable housing;
- soaring utility prices and disconnections at historically high levels;

- precarious employment;
- household financial hardship;
- flat wages growth for an extended period, and its impact on the health of the economy; and
- expectations of improved business performance into the future.

<sup>161</sup> It says that '[i]ncreasing the adequacy of the minimum wage is arguably one of the most effective means of stimulating the economy, reducing inequality within our community, and maintaining community living standards' (WACOSS's submission, page 4).

<sup>162</sup> WACOSS provided a detailed submission about the elements of cost of living pressures for families in Western Australia. This included:

- (1) Rental affordability based on Anglicare's *2017 WA Rental Affordability Snapshot* and Australian Bureau of Statistics (2017) *Household Expenditure Survey 2015-16*.
- (2) Food costs, including that Australian Bureau of Statistics *Household Expenditure Survey 2015-16* data shows that households in the lowest quintile spend an average on \$144.15 each week on food and non-alcoholic beverages, that is 23.8 per cent of their income. This is in contrast with those in the third and fourth income quintile spending less than 15 per cent of their income and those in the highest quintile spending less than 10 per cent. Foodbank's *Rumbling Tummies: Child Hunger in Australia 2018* report found that 32 per cent of parents living in food-insecure households are employed full-time and 17 per cent are employed part-time; that is, almost 50 per cent of food-insecure households have full-time or part-time work.
- (3) Utilities and household fees, and State Government charges, including fixed electricity charges, have increased well beyond inflation. Residential electricity and gas disconnections increased to the highest levels, as well as significant numbers of households seeking help to pay their bills. Western Australia has gone from having the lowest electricity disconnection rate prior to 2016-17 to having the highest rate.

Low income earners tend to be in households where their accommodation, whether public or private, is not insulated. Households with higher incomes who own their own homes are increasingly investing in solar energy and battery storage to reduce their electricity costs. The electricity network needs to maintain itself and so increases costs to those lower income households who are reliant on the system.

WACOSS also notes the adverse health outcomes for low income earners due to poor nutrition, housing and environment control compared with those who do not endure such conditions.

Increases in water, sewerage and drainage fees, the Emergency Services Levy and motor vehicle fees well beyond the inflation rate disproportionately affect low income households.

- (4) Those living in regional Western Australia, particularly in the north of the State, experience higher costs than those in the city in a range of items. Electricity and water costs are particularly higher.

<sup>163</sup> WACOSS points out that the community as a whole suffers when those in low income households or in financial trouble cut back on primary health care, having to consume poorer quality food, and cut back on recreational activity. It leads to higher rates of chronic disease,

greater demands on hospitals and health care services, reduced productivity and life expectancy.

- 164 WACOSS refers to various studies on the impact of income equality on society as a whole, such as social cohesion, and on the economy.
- 165 WACOSS is concerned at the rate of growth between the SMW and median pay levels reflected in AWOTE. Between November 2005 and November 2017, AWOTE has grown by 71.2 per cent while the SMW has increased by only 46 per cent. An increase of \$50 per week would bring the SMW up to 43.5 per cent of Western Australian AWOTE, still 2.5 per cent lower as a proportion of AWOTE in November 2005.
- 166 WACOSS also notes the greater propensity of low-wage earners to spend every extra dollar received. A significant increase in pay for low-wage earners will be spent, thus boosting the economy.
- 167 WACOSS refers to the commitment made by Australia to the United Nations *Sustainable Development Goals* in 2015. It says this requires progress to achieving and sustaining income growth for the bottom 40 per cent of the population at a higher rate than the national average by 2030 (WACOSS's submission, page 24).
- 168 WACOSS cites living costs and poverty analysis and reports dealing with the impacts of low income and poverty. Children raised in impoverished households have greater long-term difficulties than others. For example, participation rates for young people who were in poverty while in the family home are lower than their counterparts who do not live in poverty. The probability of them not being in the labour force at 19 years of age is 60 per cent compared to 20 per cent for other households (R Cassell (2018) *Economic and Social Outlook for Western Australia*, BankWest Curtin Economics Centre (presentation)). Young people in those circumstances are much more likely to receive and rely on 'income from minimum wage positions, often moving in and out of short-term and precarious work' (WACOSS's submission, page 29).
- 169 WACOSS draws attention to the detailed study it produces in September each year, based on Australian Bureau of Statistics figures, in its *Cost of Living Report 2017*. It says that this report shows 'an appreciable improvement during 2016-17 coming off tougher times associated with the local economic downturn' (WACOSS's submission, page 5). However, WACOSS says the analysis is based on the bare essentials of a basic standard of living. It makes little or no allowance for:
- (1) families to save;
  - (2) for a single parent to undertake training to improve their employment prospects; or
  - (3) to enable a family to respond to unexpected costs or crises.
- 170 It assumes a single family does not have any health or home and contents insurance, and makes no provision for birthday presents, school excursions or other non-essential items.

### **The cost of living in Western Australia**

- 171 We note the submissions of UnionsWA and WACOSS about cost of living issues for the low paid, including increases in utilities charges and issues related to poverty. We must consider the question of the living standards and cost of living generally, and the needs of the low paid. The CPI is the best and most consistent guide to increases in costs.

- 172 Perth's CPI is the lowest of all capital cities in the year to March 2018, at 0.9 per cent, having had the highest growth of all capitals except Darwin in 2014.
- 173 We note that CPI involves the collection and assessment of a wide range of costs. The categories are set out in ABS Cat. No. 6461.0 – *Consumer Price Index: Concepts, Sources and Methods*. Those categories are:
- Food and non-alcoholic beverages;
  - Alcohol and tobacco;
  - Clothing and footwear;
  - Housing;
  - Furnishings, household equipment and services;
  - Health;
  - Transport;
  - Communications;
  - Recreation and culture;
  - Education; and
  - Insurance and financial services.
- 174 Each of those categories has sub-groups. For example, the food category includes a range of bread and cereal products, meat and seafood, dairy and related products. An example of the last sub-group includes milk, cheese, ice cream and other dairy products. Eggs are divided into caged and free-range.
- 175 In the housing category, the sub-groups include rents (including private and government landlords, including housing authorities, and by furnished and unfurnished premises). It includes maintenance and repairs to a range of materials, products and services as well as property rates and charges such as state and council property rates.
- 176 The utilities category includes water supply and sewerage charges, electricity, mains and bottled gas, and firewood costs.
- 177 The CPI is a thorough and complex tool for identifying costs and measuring change. The weighting of particular items cannot be subject to particular interests in a particular year.
- 178 To isolate particular costs in any year would be unhelpful to our overall examination and assessment of the increase in the cost of living. It would encourage arguments based on the increase or decrease of particular items according to the interests of the party making the submission, that is, it would distort a proper consideration of all costs.
- 179 Therefore, we reiterate our view expressed over a number of years that it is not appropriate to disaggregate the CPI.

### **Insecure work**

- 180 We note that the Australia Institute, Centre for Future Work, in its 'The Dimensions of Insecure Work: A Factbook' (29 May 2018) says that work is becoming less secure. Part-time work has grown and many part-time workers are underemployed and work very short or irregular hours. Casual employment has grown. Earnings for workers in insecure jobs are low and have

declined in real terms. Fewer workers are protected by enterprise agreements, and reliance on modern awards for minimum wages and conditions has expanded. There have been declining opportunities for permanent, stable work and increased insecure work since 2012. Part-time employment grew from 29.7 per cent in 2012 to 31.7 per cent in 2017, the highest level of part-time employment in Australian history. Between 2012 and 2017, 57 per cent of all net new jobs in Australia were part-time. Part-time work has grown twice as fast for men as for women in the five-year period.

- 181 WACOSS says increasing casualisation, part-time employment and underemployment result in financial hardship, stress and poor mental health, high credit card debt and 'pay day' borrowing at high interest rates. We note these circumstances and include them in our considerations.

### **Impact on specific cohorts**

- 182 The community sector plays an important role in supporting vulnerable members of the Western Australian community. Many of the sector's own workforce rely on the award system. According to WACOSS, the sector's employees are 'significantly underpaid' compared with public sector employees undertaking similar work. The sector's wages support the Western Australian economy and include the multiplier effect. The industry is also a large provider of employment for women.
- 183 WACOSS says that investment in the care industry brings significant economic and social benefits by increased employment, social infrastructure including health services, and education. Compared with investment in the construction industry, more jobs are created.

### **Tax and transfer system**

- 184 CCIWA examines the tax and transfer systems used to redistribute income to support those on low incomes. It cites the Productivity Commission's Working Paper, *Tax and Transfer Incidence in Australia*, October 2015. This noted:

... in analysing the tax and transfer system as a whole, it is also important to keep in mind that taxes and transfers can have separate and sometimes competing objectives. While the redistribution of income is a key role shared by the tax system and the transfer system, the primary role of the tax system is to raise revenue to fund public expenditure, of which transfer expenditure is just a subset.

(CCIWA's submission [259])

- 185 The Australian Government's submission to the FWC's 2017-18 AWR notes that 'Government direct transfer payments can account for a significant proportion of a minimum wage household's income' ([2018] FWCFB 3500 [272]).
- 186 There are variations because of the impact of taxes and transfers targeted at particular types of households arising from the application of government policies. This affects the extent to which any increase in the minimum wage might have a stimulatory effect. The Commission therefore needs to be cautious about making assumptions about the impact of the increase in the SMW due to the different types of households and their disposable income affected by the tax and transfer system.
- 187 We also note that the FWC in its 2017-18 AWR decision agrees with the Australian Government's submission that '[i]ncreases in the minimum wage are not fully reflected in household disposable income, although it plays a large role in improving household income for low-income, minimum wage families' [297].

- 188 CCIWA also cites the benefits to low-income earners to be derived from the Low Income Tax Offset announced in the 2018 Federal Budget. We do not think it is appropriate to take this matter into account at this stage. This is because it has yet to be legislated for.
- 189 CCIWA says that in providing a fair system of minimum wages and conditions that meet the needs of the low-paid, it needs to be borne in mind that employment provides benefits to individuals, their families and communities. The private sector small business employers in Western Australia and their employees are substantially award-reliant. 'The award framework should be appropriate to the circumstances of the small businesses that are award reliant employers' [277].
- 190 We have considered the issues of income equality and find that the *Household Income and Labour Dynamics Australia* (HILDA) Survey, Australian Bureau of Statistics and the Gini coefficient provide data which demonstrate the level of income inequality in Australia. Together, they show that Australia's income inequality has been relatively stable over at least the last four years.
- 191 The HILDA Survey shows that from 2001 to 2015, Perth has had the highest growth in median household equivalised income (52.4 per cent) of the capital cities, with Brisbane second (34.8 per cent).

### **Enterprise bargaining**

- 192 We are required to consider the need to protect employees who are unable to reach an industrial agreement (s 50A(3)(a)(v)) and to have regard to the need to encourage employers, employees and organisations to reach agreements appropriate to the needs of enterprises and the employees in those enterprises (s 26(1)(d)(vii)).
- 193 The Commission's records identify that in those areas that are subject to the State Wage order, employers and employees do not generally bargain for an enterprise agreement. Only 53 applications were made to register industrial agreements in the 2016-17 financial year (see Report of the Chief Commissioner of The Western Australian Industrial Relations Commission 2016-17, page 17-18):
- ... 33 of these relate to independent schools, and the remainder relate to not for profit organisations including political parties and community and legal centres. Three relate to one particular unincorporated private hospital.
- 194 The trend at the national level and the lack of any real level of agreement-making amongst State system employers and unions confirms the significance of the State Wage order to State system private sector employees.
- 195 Those covered by awards have not received pay increases through those awards other than from the State Wage order (see the 2016-17 Annual Report of the Chief Commissioner, page 18).
- 196 UnionsWA says that it is most likely that increases in the SMW will act as a spur to bargaining, particularly for award-free employees where a signal is needed as to what constitutes an acceptable wage. It refers to studies by the Commonwealth Department of Employment and the evidence before us by Professor Rowena Barrett in 2013.
- 197 In last year's decision ([2017] WAIRC 00330; (2017) 97 WAIG 693), we found that 'in particular industries and industrial pay negotiations, the increases awarded through the State Wage Case are used as guides or signals for increases in rates of pay to significant numbers of employees beyond those directly covered by the State Wage order. In many industries, the

award is not merely the safety net above which actual rates of pay are negotiated, but may constitute the actual rates paid' [200]. This situation is reinforced this year, and particularly given the absence of a discernible level of industrial agreement negotiation in the sectors and awards where most low-paid work is found.

198 In light of this material, we conclude that an overwhelming proportion of State system private sector employees receive an increase in their rate of pay only by one of three methods:

- (1) the SMW contained in the MCE Act through the State Wage Case;
- (2) the increase in award rates of pay through the State Wage order; or
- (3) the signalling effect of those increases.

### **Encouraging ongoing skills development**

199 UnionsWA again says that falling commencements in apprenticeships and traineeships is a consequence of the failure to make undertaking training pay off for trainees and apprentices. They need to survive through the period of low pay to be able to obtain the benefits of the training. Many do not complete the training. Award rates for first year apprentices are often below the poverty line. UnionsWA refers to the Final Report of the Expert Panel (January 2011) '*A shared responsibility – Apprenticeships for the 21<sup>st</sup> Century*', 89) in which nearly half of apprentices said they would not recommend an apprenticeship because of the low level of pay.

200 The Minister refers to data from the Department of Training and Workforce Development regarding apprenticeship and traineeship commencements. It shows a decline of 37.9 per cent in apprenticeship commencements generally between a peak in 2010 (at 10,355) and in 2017 (at 6,431). These included significant drops in those in construction trades; metals manufacturing and services trades, electrical and automotive trades. However, automotive trades, and metals, manufacturing and services trades increased by 22.3 per cent and 18.7 per cent respectively in 2017.

201 Traineeship commencements have declined 44 per cent since 2012, and 10.6 per cent between December 2016 and December 2017.

202 The drivers for these trends are the levels of demand for key trade categories in the industries which benefit and suffer respectively from economic activity, subject to lags in the demand being developed.

203 The overall demand in the resource sector is expected to remain lower for some years than during the peak of the sector's growth five years ago. Those industries not so directly affected by the resource boom's peaks and troughs, such as hospitality and tourism, and primary industry traineeships, have remained steady in recent years.

204 The Minister says there are also many non-economic factors that affect the willingness of employers to put on apprentices and trainees and prospective apprentices/trainees to pursue those paths.

205 One factor referred to by the Minister was the FWC's decision in 2013 to increase the first-year apprentice rate from 42 per cent of the adult rate to 60 per cent (*Modern Awards Review 2012 – Apprentices, Trainees and Juniors* [2013] FWCFB 5411 (*the Apprentices decision*)). It is said to have encouraged prospective apprentices and acted as a disincentive to employers to hire apprentices. However, in its 2018 AWR, the FWC said (at [205]):

The Panel concluded from this research (Karmel T, *Factors affecting apprenticeships and traineeships, research commissioned by the Fair Work Commission, Research Report 3/2017, Part II, February, p. 71*) that although both the removal of government subsidies and the *Apprentices decision* contributed to a decline in commencement rates, the *Apprentices decision* only had a minor effect. The latter conclusion was supported by the occurrence of over-award payments to apprentices and the lack of uniformity in commencement trends across industries. Nothing advanced in the submissions in this Review would cause us to reach any different conclusion.

- 206 Studies about the perceptions of apprentices and their families indicate that these play a role in decisions about whether to seek or enter an apprenticeship. Perceptions of such factors as skills shortages; rising tradespersons wages; future potential rates of pay, conditions and career potential; rising apprenticeship vacancies; awareness of rising labour demand resulting from demographic change; job security; the nature of some trades' work, and a lack of knowledge about apprenticeships and traineeships, coloured the views of potential apprentices, trainees and their families.
- 207 The FWC's *Research Report 3/2017: Factors affecting apprenticeships and traineeships* also identified that stronger economic conditions can also encourage apprentices to exit their training or forego entry into an apprenticeship, to pursue short term financial gains, such as experienced in the Western Australian resource boom period.
- 208 Lower population growth in the state's 15 to 24 year old cohort between 2014 and 2017 was also a supply side factor.
- 209 Higher fees and training costs have also acted as a disincentive to potential apprentices and trainees.
- 210 UnionsWA also refers to the National Centre for Vocational Education Research (NCVER) study (*The Cost of Training Apprentices, 25*) that concluded employers' costs for wages 'effectively being neutralised by apprentice productivity'.
- 211 CCIWA says apprenticeships and traineeships are important entry points, and are essential to the labour market having the skills needed to support future productivity, sustainability and growth. It is important that they remain a viable option for employers.
- 212 We conclude from the material before us that the causes of the low commencement and completion rates for apprentices and trainees are multi-faceted and complex. However, we also conclude that it is necessary for the rates of pay of apprentices to:
- (a) be sufficient to enable apprentices and trainees to have a reasonable standard of living while they train;
  - (b) take account of them being trainees requiring supervision and instruction to be provided by other employees; and
  - (c) make apprenticeships and traineeships attractive to employers, so that they will offer apprenticeships and traineeships, as noted by the FWC's Research Report 3/2017.
- 213 Apprenticeships and traineeships are important not only to the apprentices and trainees, but also to their employers and their industry, and to the economy as a whole, to ensure that the skills necessary are held by employees.

### Equal remuneration for work of equal or comparable value

- 214 As with previous years, submissions regarding this issue focussed almost exclusively on the gender pay gap. The gender pay gap is the difference between women's and men's average weekly full-time base salary earnings.
- 215 AWOTE shows a decline in the gender pay in Western Australia of 1.4 per cent and nationally of 0.7 per cent. Western Australia remains the state with the highest gender pay gap of 22.5 per cent compared with the national average of 15.4 per cent.
- 216 The Minister says women are more reliant on award rates of pay than men, and a high proportion of female employees are currently being paid in accordance with the award, that is in May 2016, 28.9 per cent of female non-managerial employees in Australia were paid in accordance with an award compared to 19.6 per cent of male non-managerial employees.
- 217 The Minister also refers to the causes of the gender pay gap by reference to the Workplace Gender Equality Agency (WGEA) assessments. Those causes include:
- a) a number of interrelated work, family and societal factors, including stereotypes about the work women and men 'should' do, and the way women and men 'should' engage in the workforce;
  - b) a lack of women in senior positions, and a lack of part-time or flexible senior roles. Women are more likely than men to work part-time or flexibly because they still undertake most of society's unpaid caring work and may find it difficult to access senior roles;
  - c) women's more precarious attachment to the workforce (largely due to their unpaid caring responsibilities);
  - d) differences in education, work experience and seniority;
  - e) discrimination, both direct and indirect.

(Minister's submission [46])

- 218 The Minister says regular increases to the minimum and award wages play an important role in helping to reduce gender pay inequality, particularly given that awards directly affect a larger proportion of female employees than male employees.
- 219 *Gender Equity Insights 2017: Inside Australia's gender pay gap*, the WGEA, (BankWest Curtin Economics Centre (2017)) says that:
- At a macroeconomic level, gender pay gaps can depress economic growth and productivity. At an individual level, it slows down the rate of wealth accumulation by women relative to men. The ramifications reverberate across the life course, with women bearing greater exposure to poverty and disadvantage at every age. Within the context of an ageing population in which women are disproportionately represented, gender pay gaps and gender wealth gaps not only pose significant risks for the economic wellbeing of Australian women, they also have important implications for social equity and fiscal sustainability.
- 220 WACOSS says that while increases in the SMW alone will not fix the gender pay gap, they are an important component in reducing the gap. WACOSS refers to findings by the ILO (Monitoring the effects of minimum wages: Effects on gender pay-gaps (2018)) and research for the Australian Fair Pay Commission that support this proposition.
- 221 WACOSS also refers to the paper by B Broadway and R Wilkins (2017) 'Probing the Effects of the Australian System of Minimum Wages on the Gender Pay Gap' (Melbourne Institute Working Paper No. 31.17, Melbourne Institute of Applied Economic and Social Research).

This paper found that female employees are significantly more likely than men to be paid an award wage (18.5 per cent compared to 12.4 per cent).

- 222 CCIWA points to data from the WGEA to demonstrate what has occurred in respect of those businesses that are required to report under the *Workplace Gender Equality Act 2012* (Cth). This looks at the variety of mechanisms put in place to address inequity. It notes that the base salary gender pay gap had decreased in Australia by 1.7 per cent in the two years 2015-16 and 2016-17.
- 223 It also notes that the average gender pay gap in OECD countries is 15.5 per cent. In Australia, the full-time gender pay gap in February 2018 was 15.3 per cent. Western Australia had the largest gap at 22.5 per cent in November 2017, down from 23.9 per cent in November 2016.
- 224 The widest gap occurs in the three resource sector dominant states, with the mining and construction sectors reflecting the traditionally high earnings and low representation of women.
- 225 CCIWA also notes that the gender pay gap varies from industry to industry, with the financial and insurance services industry being 26.1 per cent and the retail trade 8.1 per cent.
- 226 The 'gender pay gap typically increases with occupational hierarchy' as noted by the WGEA Gender Insights 2018 report. However, the gap in all managerial occupations narrowed in the three years to 2016-17.
- 227 CCIWA says the WGEA data demonstrates the increased focus by business and progress being made on addressing pay equity. However, the data is sourced from medium to large national system employers as they are the business covered by the *Workplace Gender Equality Act*, rather than the private sector employers in the Western Australian system which are small and micro-businesses that are predominantly sole traders, unincorporated partnerships and unincorporated trusts.
- 228 CCIWA says the WGEA found the gender pay is wider when pay is set by individual agreements compared with pay set by awards or collective agreements. The award system and award classifications are said to 'support and enforce the principle of equal pay for work of equal value'. The Productivity Commission noted that 'awards appear to have reduced gender wage inequality'.
- 229 The Commission has previously examined the issue of equal remuneration and the gender pay gap. We concluded that an increase in the SMW and award rates will have a limited effect on the gender pay gap but may assist in those industries where women are dependent on minimum award rates. However, the gender pay gap 'is not the same as, or a proxy for, equal remuneration for work of equal or comparable value' ([2016] WAIRC 00358 (2016) 96 WAIG 636 [203]). We maintain this view.

### **Relevance of the AWR and the national economy**

- 230 Western Australia is the only state not to have referred industrial relations powers for the private sector to the Commonwealth. It is the only state having a minimum wage and award wages applicable to its non-constitutional corporation sector. This is, of course, mainly the small business private sector. Western Australia's small businesses compete with their national system counterparts. In that context, the NMW may have relevance to their costs of labour.
- 231 The *Fair Work Act's* requirements for the NMW review relate to the national economy. The national economy is a composite of individual state and territory economies. Each has

different characteristics including industries, market sectors and labour markets. There are significant disparities between the economic performances of the various states and territories.

- 232 The Commission is required by the legislation to examine the narrower context of the conditions in Western Australia as well as any relevant decisions of other courts and tribunals, and to the extent that it is relevant, the state of the national economy.
- 233 The major indicators for the purposes of the Commission's determination are not as advantageous as those for the national average, except AWOTE where Western Australia has remained the highest since 2012.
- 234 Given the state of the Western Australian economy, and its situation relative to the national economy, the last three State Wage orders have delivered rates of increase lower than the national increases, although the SMW still exceeds the NMW by \$14 per week.
- 235 We note that the increase awarded by the FWC on 1 June 2018 was 3.5 per cent, or \$24.30, taking the NMW to \$719.20 ([2018] FWCFB 3500 [101]).

### **Conclusion**

- 236 We conclude that the economic circumstances of Western Australia appear to have reached the bottom of the cycle and there are signs of improvement for the future.
- 237 As the State Government notes, Western Australia's economy is yet to trough with expected declines in State Final Demand out to 2018-19 mainly due to falls in business investment, and to contract for a fifth consecutive year, and again next year.
- 238 Western Australia has come back to a more normal and average situation in a number of, but not all, measures since the end of the investment boom four years ago.
- 239 While employment has risen in Western Australia over the last year, part-time employment continues to outstrip full-time jobs by a significant margin.
- 240 Inflation is low at 0.9 per cent (March 2018). Gross State Product has improved from -2.7 per cent to 2.5 per cent this year. State Final Demand has also improved from -7.2 per cent to -0.25 per cent.
- 241 Household consumption is at a low level. Unemployment is improving overall, taking account of the increased participation rate.
- 242 Therefore, Western Australia's economy is at the point where there is cause for cautious optimism after four years of contraction following the end of the resources investment boom in 2014.
- 243 Western Australia's small businesses in particular are facing the prospect of improved trading conditions but they have not yet developed. It is these businesses that employ the bulk of the employees covered by the State Wage order and by State awards.
- 244 The Western Australian economy does not compare favourably with other states and territories, or with its own recent past. The continuing improvement requires a cautious and moderate response to ensure that the improvements become entrenched.
- 245 We accept that in an environment of such a low wage increases and low household disposable incomes, wage increases to the lowest paid may have a stimulatory effect. However, once again a moderate response is necessary. It cannot be assumed that low income households who receive the greatest benefit from a significant increase to the SMW and award wages will use

that increase to boost the turnover and profits of the sector that employs them and needs to have the resources to pay them.

- 246 In those circumstances, the increase in the SMW and award wages needs to be able to be borne by the private sector small businesses in the State system. It needs to work as a means of enhancing employment and training opportunities, not of threatening them.
- 247 We conclude that a moderate increase in the SMW and award wages can achieve that balance. It can provide for fairness to both sides and in the interests of the community as a whole.
- 248 As in previous years, we referred to the WPI as being the best available indicator of wage movements. This is useful for the purpose of considering the relative position of the low paid as an indicator of living standards generally prevailing in the community. It is also relevant to consider the relative position of the SMW and award wages from the perspective of the fairness of the Western Australian system of wages and conditions of employment.
- 249 The need to improve living standards for employees must be considered. To improve their living standards, employees need fair pay, stable employment and opportunities for training and skills development.
- 250 We recognise that moderate increases to the SMW and award wages improves the prospects of providing equal remuneration for men and women for work of equal or comparable value as those increases generally favour award-free and low wage, award-reliant employees where women are concentrated.
- 251 The comparison with the state of the national economy is quite stark. The Fair Work Commission's 2018 AWR decision refers to the national economy and labour market being unequivocally healthy. Full-time employment grew by 3.1 per cent compared with 2.8 per cent in Western Australia. The FWC described business conditions as 'generally robust', compared with Western Australia's economy that is described by Treasury as being in its fifth consecutive year of contraction (Exhibit Minister 1 – Economic Outlook), albeit that it is at a turning point.
- 252 Some sectors of the economy, particularly the retail trade, where employment has contracted by 11.9 per cent, are not robust, although others such as health care and social assistance which has had employment growth of 15.9 per cent, are doing well.
- 253 When the circumstances have indicated that it was appropriate, past increases have exceeded the increases in the cost of living by a good margin. Even last year, we awarded an increase which was above the CPI increase.
- 254 We also note that in assessing the issue of living standards, it is difficult to determine the effect of particular levels of net benefit to particular employees and households due to the effects of the tax and transfer system on different types of households.
- 255 The higher unemployment rate for youth and the significant decline in apprenticeships and traineeships are of concern. We note the decision of the FWC that significant increases in apprentice wages in 2013 'may have played a role, but it seems that any effect appears minor' ([2018] FWCFB 3500 [204]). There are difficulties both with supply and demand for apprenticeships.
- 256 It is clear that the decline in apprenticeships and traineeships is not as simple as the rates of pay being unattractive or that life on those rates is unsustainable. It is far more complex than that.

However, the rates of pay need be a compromise between there being a wage that sustains the apprentice or trainee and one that is affordable for the employer.

- 257 The proportion of the adult rates for junior employees are prescribed by MCE Act s 13, and we are not able to adjust them.
- 258 We are of the view that an increase of \$18.00 per week to the SMW will achieve the requirements set out in the Act. It will result in the SMW being \$726.90 per week.
- 259 The increase to be awarded this year is, once again, higher than the Perth CPI. However, on balance, it is a moderate increase that ought to be sustainable for industry as a whole, and not lead to adverse results for employment generally or for employers. It is an increase appropriate to the matters the Act requires to be considered. It takes account of the interests of employees, their employers and the community generally.
- 260 In comparison with the increase granted by the FWC, dealing with an economic environment quite different to that in Western Australia, it is modest. It also further reduces the difference between the minimum wage applying to employers and employees at State and national level from \$14 per week to \$7.70 per week.
- 261 We have determined that a flat dollar increase is appropriate to the SMW and to award wages. We have done so taking account of two particular matters. The first is the need to provide the greatest benefit to the lowest paid. The second is that we awarded a percentage increase to higher level rates last year and while we note the effect of a flat dollar increase on relativities within awards, award wages are increased, as noted earlier, only by the State Wage order. There have been no applications for increases to any awards to overcome any compression of relativities for a number of years.

### **The Statement of Principles**

- 262 The Commission invited submissions regarding the Statement of Principles as they had not been addressed for some years and there have been significant developments in that time. We received a number of submissions proposing changes, although CCIWA submits that in light of the Ministerial Review of the State Industrial Relations System considering and making recommendations about a number of matters covered by the Statement of Principles, any changes to them ought to await the Review's outcome.
- 263 The Minister submits that several of the Principles could provide clearer information for employers and employees and better reflect the contemporary safety net that currently exists. The Minister also draws attention to a number of particular matters including:
- (a) Equal remuneration. The Minister notes that Principle 10 provides for claims in such matters but that no such claim has yet been brought. Nor is there particular legislative guidance or principles. The Minister supports the inclusion of a particular principle to deal with equal remuneration and would welcome the opportunity to participate in a process to develop such a principle.
- According to UnionsWA, it is open to the Commission to develop a principle specifically dealing with equal remuneration for men and women for work of equal or comparable value. This would ensure a clear process for the parties with guides on what the Commission could consider. UnionsWA advocates consideration of the Queensland Equal Remuneration Principle.

We intend to bring on an application of our own motion for the making of a General Order under s 50 of the Act. Its purpose will be to provide a mechanism for the development of a principle dealing with equal remuneration for men and women for work of equal or comparable value. We intend to then convene a conference of the s 50 parties and other interested persons and organisations, with a view to facilitating the development of a principle by agreement.

(b) Principle 8 – Total Minimum Rate Adjustments

This Principle was established some years ago. Many but not all awards have completed the Minimum Rate Adjustments process and have subsequently been amended to consolidate the separate rates into a total rate. Others have not. Where they have not done so, *Principle 4 – Previous State Wage Case Increases* is still available. Alternatively, an amendment can be made to the award without it being above or below the safety net as it would simply be an administrative change for ease of application.

Principle 8 could be deleted without adverse effects because the processes are still available under Principle 4.2.

We intend to amend the Principles by deleting Principle 8 in its entirety, and to make consequential amendments to other Principles.

(c) Principle 9 – Minimum Adult Award Wage

It was agreed amongst the Minister, CCIWA, UnionsWA and WACOSS that this principle ought to be amended in the following ways:

- (1) To reflect that the minimum wage employees working under awards that provide for other than a 38 hour week, that the hourly rate is determined by using a divisor of 38, not the number of hours provided in the award;
- (2) To clarify that junior employees cannot be paid less than the applicable rate under the MCE Act; and
- (3) To replace reference to a specific training program, the Australian Government's 'Jobskills', which no longer exists, with a generic term, 'government approved work placements program'.

<sup>264</sup> We agree that these changes are appropriate. The Statement of Principles will be amended accordingly.

### **Award review and updating**

<sup>265</sup> The Minister says that s 40B of the Act allows awards to be reviewed at any time and more than once, and that s 40 enables award parties to apply to amend awards to ensure that they remain contemporary and meet the needs of employees and employers.

<sup>266</sup> UnionsWA says that a wholesale updating of awards is unnecessary, but that the Commission ought to adopt a targeted approach. UnionsWA says that it is important for many award-free employees in the State to have award coverage. This could be achieved by the extension of the

scope and resendency of existing awards, and could be initiated by the Commission of its own motion.

- 267 CCIWA says that the issue of reviewing and updating awards ought to await the finalisation of the Ministerial Review of the State Industrial Relations System and the Government's consideration of it.
- 268 We have considered those views. In respect of awaiting the final outcome of the Review, we are of the view that where an issue is raised and the Commission has the capacity to deal with it, the Commission has an obligation to deal with it unless circumstances are against it.
- 269 In this case, the outcome of the Review is not known. The Government's response and the possible establishment of a new award regime may take considerable time. In the circumstances, we see no good reason to delay.
- 270 We are of the view that a large number of awards need to be reviewed to deal with discrepancies regarding the 40 hour week.
- 271 In relation to the 40 hour week issue, rather than deal with the particular awards as part of the State Wage Case, we intend to deal with them pursuant to s 40B. The Commission is able to review awards again even though a number were previously reviewed, or their reviews were discontinued when the union and employer parties found the process of a wholesale review onerous. We do not at this stage intend such a wholesale review, but will adopt a targeted approach to deal with the issue of the 40 hour week.
- 272 We also note UnionsWA's submission that there are large numbers of employees who are award-free. We observe, though, that to date, no applications have been brought by unions to expand the scope of existing awards to cover award-free employees, but rather it proposes that the Commission deal with this of its own motion. We will deal separately with the question of extending the scope of particular awards to cover award-free employers and employees where appropriate. However, issues of the Commission's powers in dealing with the scope of an award will need attention given the provisions of s 29A, s 36A and s 37 of the Act.
- 273 For those purposes, as with the issue of an Equal Remuneration Principle, the Commission will call these matters on of its own motion, by separate applications.

*EDITOR'S NOTE:*

*[106] and [223] edited in accordance with Corrigendum 15 June 2017 [2018] WAIRC 00366.*