



DECISION

Fair Work Act 2009
s.285 - Annual wage review

Annual Wage Review 2019–20 (C2020/1)

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT CATANZARITI
DEPUTY PRESIDENT ASBURY
COMMISSIONER HAMPTON
MR FERGUSON
PROFESSOR WOODEN
MS LABINE-ROMAIN

MELBOURNE, 19 JUNE 2020

Contents

		Paragraph
1.	Reasons for Decision of Justice Ross, Vice President Catanzariti, Deputy President Asbury, Commissioner Hampton, Mr Ferguson and Ms Labine-Romain The Decision	[1]
2.	The Legislative Framework	[193]
3.	Economic and Labour Market Considerations	[272]
4.	Relative Living Standards and the Needs of the Low Paid	[338]
5.	Other Relevant Considerations	[386]
6.	Transitional Instruments and Other Matters	[406]
7.	Conclusion	[464]
8.	Reasons for Decision of Professor Wooden	[476]

Abbreviations

2011–12 Review decision	<i>Annual Wage Review 2011–12</i> decision
2012–13 Review decision	<i>Annual Wage Review 2012–13</i> decision
2014–15 Review decision	<i>Annual Wage Review 2014–15</i> decision
2015–16 Review decision	<i>Annual Wage Review 2015–16</i> decision
2016–17 Review decision	<i>Annual Wage Review 2016–17</i> decision
2017–18 Review decision	<i>Annual Wage Review 2017–18</i> decision
2018–19 Review decision	<i>Annual Wage Review 2018–19</i> decision
AAWI	average annualised wage increase
ABI	Australian Business Industrial and the NSW Business Chamber Ltd
ABS	Australian Bureau of Statistics
ACBC	Australian Catholic Bishops Conference
ACCI	Australian Chamber of Commerce and Industry
ACCS	Additional Child Care Subsidy
ACOSS	Australian Council of Social Service
Act	<i>Fair Work Act 2009</i> (Cth)
ACTU	Australian Council of Trade Unions
Ai Group	Australian Industry Group
APCSs	Australian Pay and Classification Scales
<i>April Statement</i>	[2020] FWCFB 1804
ATO	Australian Taxation Office
AWOTE	average weekly ordinary time earnings
AWU	Australian Workers' Union
C4	Engineering Associate/Laboratory Technical Officer Level 1
C10	Engineering/Manufacturing Tradesperson Level 1
C14	Engineering/Manufacturing Employee Level 1
CCS	Child Care Subsidy
Commission	Fair Work Commission
CPI	Consumer Price Index
<i>Discussion paper</i>	Fair Work Commission (2020), <i>What can and can't be done in the Annual Wage Review 2019–20</i> , Discussion Paper, 13 May.
EEH	Survey of Employee Earnings and Hours

FCIA	Federal Chamber of Automotive Industries
GDP	gross domestic product
GVA	gross value added
HILDA	Household, Income and Labour Dynamics in Australia
IMF	International Monetary Fund
LCI	Living Cost Index
LMITO	low and middle income tax offset
Manufacturing Award	<i>Manufacturing and Associated Industries and Occupations Award 2020</i>
MGA	Master Grocers Australia Limited
NCVER	National Centre for Vocational Education Research
NMW	national minimum wage
NNDSS	National Notifiable Diseases Surveillance System
NSA	Newstart Allowance (now JobSeeker)
NTWS	National Training Wage Schedule
OECD	Organisation for Economic Co-operation and Development
Panel	Expert Panel for annual wage reviews
Rail Award	<i>Rail Industry Award 2020</i>
Rail Employers	Aurizon, Australian Rail Track Corporation, Brookfield Rail Pty Ltd, Sydney Trains and V/Line Passenger Pty Ltd
RBA	Reserve Bank of Australia
R&CA	Restaurant and Catering Industry Association
Review	Annual Wage Review
RNNDI	real net national disposable income
RTBU	Australian Rail, Tram and Bus Industry Union
SDA	Shop Distributive and Allied Employees' Association
SES Award	<i>Supported Employment Services Award 2020</i>
Statistical report	<i>Statistical Report—Annual Wage Review 2019–20</i>
SWS	Supported Wage System
Transitional Act	<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>
UK	United Kingdom
US	United States of America
VET	Vocational Education and Training
VMRSR Award	<i>Vehicle Manufacturing, Repair, Services and Retail Award 2010</i>
WAD	Workplace Agreements Database
WPI	Wage Price Index

The Annual Wage Review Decision

Reasons for Decision of Justice Ross, Vice President Catanzariti, Deputy President Asbury, Commissioner Hampton, Mr Ferguson and Ms Labine-Romain

1. The Decision

[1] The *Fair Work Act 2009* (Cth) (Act) requires the Commission, constituted by an Expert Panel for annual wage reviews (Panel), to conduct and complete a review of the national minimum wage (NMW) and modern award minimum wages in each financial year (the Review). The Panel must make a NMW order and may set, vary or revoke modern award minimum wages. The NMW order applies to award/agreement free employees¹ and modern award minimum wages are the minimum wages contained in modern awards.²

[2] This Review is being undertaken during a global pandemic. The outbreak of the coronavirus, COVID-19, and the measures put in place to contain the spread of the virus have led to significant shifts in the way work and society is conducted, with substantial economic consequences. Variations have been made to the Review timetable to allow parties to provide submissions regarding the impacts of the pandemic as they have unfolded and to comment on the most recent available data.

[3] The Australian Bureau of Statistics (ABS) March Quarter *National Accounts* were released on 3 June 2020 and interested parties filed submissions in respect of these data on 5 and 9 June 2020. Final public consultations took place on 10 June 2020.

[4] A key contextual consideration in relation to the present proceedings is the statutory constraints regarding the conduct of Reviews. In particular, section 285(1) provides that the Panel ‘must conduct and complete an annual wage review in each financial year’ (emphasis added). It follows that 30 June 2020 provides the outer limit for the completion of the 2019–20 Review.

[5] As a practical matter our decision had to be published by 19 June 2020, in order to allow sufficient time for draft variation determinations to be published and for interested parties to submit corrections or other amendments to the draft determinations. Given these constraints our decision has not sought to canvass all of the issues raised in the submissions. We have focussed on the issues which the Act requires that we take into account.

[6] This Chapter summarises the matters we have considered, our reasoning, the rates we have set for the NMW order and the determinations we have made regarding modern award minimum wages. Chapter 2 deals with the statutory framework and with what we can and

¹ The NMW order sets both the NMW and special NMWs for employees who are juniors, to whom training arrangements apply, or who have disabilities; and applies to award/agreement free employees. The NMW order additionally sets the casual loading for award/agreement free employees. An award/agreement free employee cannot be paid less than the rate of pay specified in the NMW order (see ss 294–299 of the Act). Further, if an enterprise agreement applies to an employee and the employee is not covered by a modern award, then the employee’s base rate of pay under the enterprise agreement must not be less than the rate specified in the NMW order (s.206(3) of the Act).

² Including classification rates; wage rates for junior employees, employees to whom training arrangements apply and employees with a disability; casual loadings and piece rates.

can't do in a Review. Chapters 3–6 deal with the statutory considerations we are required to take into account. The views expressed in this Chapter should be seen in the context of our decision as a whole.

The Panel's Approach

[7] We accept that our decision-making process in a Review should be as transparent as possible and that we should disclose the factors which are most relevant in a particular year, and we have done so in this decision.

[8] While we seek to explain our view of the circumstances (including forecasts or projections) prevailing in each Review in comparison with previous years, it is not feasible to quantify the weight given to particular factors in balancing the various considerations prescribed by the Act. Rather, we consider all information about the economic and social environment that is available to inform our decision. The Panel's approach to its statutory function is encapsulated in the following extract from the *Annual Wage Review 2014–15* decision (2014–15 Review decision):

‘In taking into account available economic and social data, the Panel’s approach is broadly to assess the changes in these data from year to year and determine how they inform the statutory criteria. Put another way ... if there were no change in the relevant considerations from one year to the next then, all other things being equal, a similar outcome would result.’³

[9] Broadly speaking, differently constituted Panels should evaluate the evidence and submissions before them in accordance with a consistent and stable interpretation of the legislative framework. Justice requires consistent decision making unless a difference can be articulated and applied.⁴

The Economic Environment

[10] Table 1.1 compares some of the latest major economic indicators with the data at the time of the last Review. As the Commonwealth Budget for 2020–21 is yet to be released, we have used the Reserve Bank of Australia’s (RBA) baseline forecasts.

³ [\[2015\] FWCFB 3500](#) at [7].

⁴ *Gala v Preston* (1991) 172 CLR 243 at [12].

Table 1.1: Budget forecasts and actual outcomes for selected economic indicators, per cent

Indicator	Information at time of 2018–19 Review			Information at time of 2019–20 Review		
	Data at time of 2018–19 Decision	Budget forecast for 2018–19	Budget forecast for 2019–20	Latest data	RBA forecast for 2019–20	RBA forecast for 2020–21
Gross domestic product	2.3 (Dec qtr 2018)	2¼	2¾	1.4 (Mar qtr 2020)	–8	7
Consumer Price Index	1.3 [^] (Mar qtr 2019)	1½	2¼	2.2 [^] (Mar qtr 2020)	–1	2¾
Wage Price Index	2.3 (Mar qtr 2019)	2½	2¾	2.1 (Mar qtr 2020)	2	1½
Unemployment rate	5.1 [#] (April 2019)	5	5	7.1 (May 2020)	10	8½
Employment growth	2.5 [#] (April 2019)	2	1¾	–5.4 (May 2020)	–7	4

Source: [2019] FWCFB 3500 at [28]; ABS, *Australian National Accounts: National Income, Expenditure and Product, Mar 2020*, Catalogue No. 5206.0; ABS, *Consumer Price Index, Australia, Mar 2020*, Catalogue No. 6401.0; ABS, *Wage Price Index, Australia, Mar 2020*, Catalogue No. 6345.0; ABS, *Labour Force, Australia, May 2020*, Catalogue No. 6202.0; RBA (2020), *Statement on Monetary Policy*, May, Appendix: Forecasts.

Note: Data in seasonally adjusted terms unless otherwise indicated. RBA forecasts are percentage changes over the year to the June quarter and are based on the ‘baseline scenario’. [^]Data in original terms. [#]Data in trends terms.

[11] Some of the key changes to the economy evident in this Review include:

- gross domestic product (GDP) growth is lower and GDP is expected to fall significantly over 2019–20 before a forecasted strong rebound;
- real net national disposable income (RNNDI) increased by 2.4 per cent over the year to the March quarter 2020 compared with 3.7 per cent over the year to the December quarter 2018;⁵
- the profits share of total factor income increased by 0.4 percentage points, from 28.6 per cent in the December quarter 2018 to 29.0 per cent in the March quarter 2020;⁶
- labour productivity increased by 1.4 per cent over the year, higher than at the time of the last Review (0.8 per cent);⁷
- the unemployment rate is higher, (7.1 per cent compared to 5.1 per cent in trend terms at the time of the last Review). Hours worked reduced by 9.5 per cent between March and April, which was double the decrease in employment (4.7 per cent). The decline in hours worked slowed in May, with hours worked reducing by 0.7 per cent, while employment fell by 1.8 per cent.⁸

⁵ [2019] FWCFB 3500 at [29].

⁶ Statistical report (version 13), 17 June 2020, Chart 3.1.

⁷ [2019] FWCFB 3500 at [29].

⁸ ABS, *Labour Force, May 2020*, Catalogue No. 6202.0.

- the age-adjusted participation rate also declined significantly compared with the time of the last Review;⁹
- headline inflation increased significantly, particularly due to effects from the drought and bushfires, as well as COVID-19.¹⁰ Underlying inflation also increased to a lesser extent (the trimmed mean increased from 1.6 per cent over the year to the March quarter 2019, to 1.8 per cent over the year to the March quarter 2020);¹¹ and
- wages growth, as measured by the Wage Price Index (WPI), declined slightly.

[12] The Australian economy is going through a significant downturn and is almost certain to enter a technical recession upon the release of the June quarter ABS *National Accounts*, the first in almost 30 years. It has been caused by an unprecedented health crisis and the impact of government measures to prevent the spread of the COVID-19 virus. There was also some indication of slowing in the economy before the pandemic, as a result of the bushfires experienced in parts of Australia.

[13] Output, as measured by GDP, fell by 0.3 per cent in the March quarter 2020, and increased by only 1.4 per cent over the year,¹² the lowest result since the global financial crisis in the September quarter 2009 and well below the long-term average of 3.4 per cent.¹³ The March quarter outcome does not include the full effects of the most restrictive limitations on workplaces and social gatherings, which were implemented from late March. However, the March quarter data does reflect some of the impact of measures announced in early March, and restrictions on international arrivals from some locations in February, including China, that would have impacted the tourism and education sectors, as well as the impact of the bushfires.

[14] Company gross operating profits rose 1.1 per cent in the March quarter 2020 and by 1.5 per cent over the year, considerably lower than the average over the last 5 years (8.3 per cent). Annual growth was underpinned by mining profits which rose by 3.1 per cent; non-mining profits only increased by 0.5 per cent.¹⁴

[15] Household consumption fell, particularly on services and discretionary items.¹⁵ Consumer confidence, which began to fall from late February, bottomed out in late March,

⁹ Ibid.

¹⁰ ABS, 'Main contributors to change', *Consumer Price Index, Australia, March 2020*, Catalogue No. 6401.0.

¹¹ [2019] FWCFB 3500 at [29].

¹² Statistical report (version 13), 17 June 2020, Chart 1.1.

¹³ ABS, 'Analysis', *Australian National Accounts: National Income, Expenditure and Product, Mar 2020*, Catalogue No. 5206.0.

¹⁴ Statistical report (version 13), 17 June 2020, Table 3.3.

¹⁵ ABS, 'Key tables', *Australian National Accounts: National Income, Expenditure and Product, Mar 2020*, Catalogue No. 5206.0.

and by early June had recovered most of its losses, though it was still significantly below where it had been at the beginning of the year.¹⁶

[16] Similarly, business conditions and confidence dropped significantly in March and had only partially recovered by May.¹⁷ Business investment continued its decline, particularly in the non-mining sector.¹⁸

[17] The shock to the labour market is unprecedented. The latest data, for May 2020, show that the unemployment rate increased by 1.9 percentage points in 2 months, to 7.1 per cent,¹⁹ while significant, it does not provide the full picture. The participation rate declined by 3.1 percentage points in 2 months, highlighting the fact that many people left the labour force.²⁰ But for the decline in the participation rate, the unemployment rate would have been higher.

[18] As described by the ABS, there was a larger percentage of employed men and women who worked 0 hours in May 2020 than in previous years, as was also seen in April 2020.²¹ That the unemployment rate did not increase further is because these people were still defined as employed, in part because of the JobKeeper payment, and it is likely to increase further as the JobKeeper payment unwinds. Given this, the underemployment rate becomes the more relevant labour market indicator. In April 2020, it increased to 13.8 per cent, the highest rate on record, before declining to 13.1 per cent in May 2020.²²

[19] A more detailed assessment of changes in the labour market, on a weekly basis, shows a dramatic fall in the number of jobs between late March and mid-April, before stabilising.²³ These data confirm that at around late March to mid-April, economic activity, the labour market and confidence was at its lowest. We have seen some improvement or stabilisation in these data since late April, but they are still well below pre-COVID-19 levels.

[20] The current circumstances have also made it difficult to assess underlying trends in the data. The ABS has suspended its Labour Force trend series; the WPI is likely to be affected by JobKeeper payments and some components of the Consumer Price Index (CPI) will be difficult to measure as they have been impacted by the restrictions imposed to contain the virus (e.g. changes in the price of international and domestic travel).

[21] One indicator that is likely to be affected by significant shifts in other indicators is labour productivity. The fact that the fall in the number of hours worked was greater than the fall in GDP led to an increase in labour productivity (measured by GDP per hour worked), in the March quarter 2020.²⁴ Due to the implications of the easing of government restrictions on

¹⁶ ANZ-Roy Morgan (2020), *Australian consumer confidence rating*, weekly, 10 June.

¹⁷ NAB (2020), *NAB monthly business survey*, May.

¹⁸ ABS, 'Key tables', *Australian National Accounts: National Income, Expenditure and Product, Mar 2020*, Catalogue No. 5206.0.

¹⁹ Statistical report (version 14), 18 June 2020, Chart 6.1.

²⁰ Statistical report (version 14), 18 June 2020, Chart 6.1.

²¹ ABS, 'Insight into hours worked', *Labour Force, May 2020*, Catalogue No. 6202.0

²² Statistical report (version 14), 18 June 2020, Chart 6.1.

²³ Statistical report (version 13), 17 June 2020, Table 6.12.

²⁴ Statistical report (version 13), 17 June 2020, Table 2.2.

the labour market and a likely significant fall in GDP in the June quarter, labour productivity growth will probably vary in a way that is unlikely to be indicative of its underlying trend.

[22] The current state of the Australian economy and the challenges that lie ahead are neatly encapsulated in the 2 June 2020 Statement by the RBA Governor on the Board's monetary policy decision:

‘The Australian economy is going through a very difficult period and is experiencing the biggest economic contraction since the 1930s. In April, total hours worked declined by an unprecedented 9 per cent and more than 600,000 people lost their jobs, with many more people working zero hours. Household spending weakened very considerably and investment plans are being deferred or cancelled.

Notwithstanding these developments, it is possible that the depth of the downturn will be less than earlier expected. The rate of new infections has declined significantly and some restrictions have been eased earlier than was previously thought likely. And there are signs that hours worked stabilised in early May, after the earlier very sharp decline. There has also been a pick-up in some forms of consumer spending.

However, the outlook, including the nature and speed of the expected recovery, remains highly uncertain and the pandemic is likely to have long-lasting effects on the economy. In the period immediately ahead, much will depend on the confidence that people and businesses have about the health situation and their own finances.’²⁵

The COVID-19 Pandemic

[23] The COVID-19 pandemic casts a large shadow over the current economic environment.

[24] While predominantly a public health issue, federal and state government-imposed restrictions to contain the spread of the virus, have had a profound economic impact.²⁶ The restrictions have included travel restrictions (both international and domestic) and social distancing rules. The social and economic consequences of these measures have been unprecedented and have led to business closures and job losses. All but ‘essential workers’ were forced to stop work or modify their work arrangements. These actions have significantly reduced domestic activity and resulted in ‘a large and near simultaneous contraction across the global economy.’²⁷

[25] The restrictions imposed by Federal and State governments; and the range of packages to support households and businesses, are detailed in Appendix 1.

[26] The objective of the measures implemented to contain the virus is to flatten the epidemiological curve (or transmission curve). The ‘curve’ is based on modelling and shows

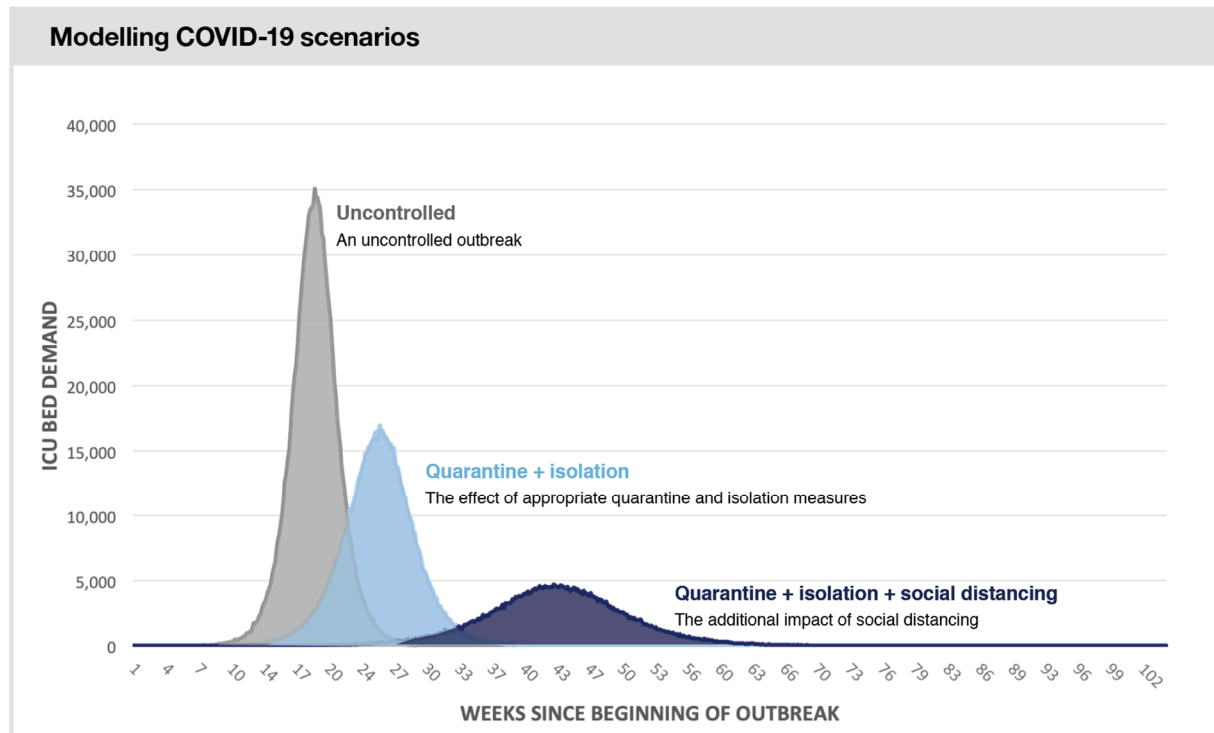
²⁵ RBA (2020), *Statement by Philip Lowe, Governor: Monetary Policy Decision*, 2 June. Also see RBA (2020), *Minutes of the Monetary Policy Meeting of the Reserve Bank Board – 2 June 2020*, released 16 June.

²⁶ See Fair Work Commission (2020), *Information note—Government responses to COVID-19 pandemic*, 16 June.

²⁷ RBA (2020), *Statement on Monetary Policy*, May, p. 1.

the likely number of people who will be infected by COVID-19 over a period of time. Chart 1.1 is derived from the Australian Government publication *Impact of COVID-19: Theoretical modelling of how the health system can respond*.

Chart 1.1: Modelling COVID-19 scenarios



Source: Department of Health (2020), *Impact of COVID-19: theoretical modelling of how the health system can respond*, Commonwealth Government of Australia, 7 April.

[27] The theoretical modelling finds that an uncontrolled COVID-19 pandemic scenario would overwhelm our health system for many weeks. Quarantine measures and social distancing slows the rate of transmission—which flattens the epidemiological curve.

[28] The restrictions have been successful at flattening the curve and slowing the spread of COVID-19. Most cases in Australia appear to be from people with recent overseas travel (over 60 per cent),²⁸ with most cases that are locally-acquired able to be linked back to a confirmed case. The fatality rate in Australia remains low (1.4 per cent) compared to the WHO globally-reported rate of 6.5 per cent.²⁹ As of 14 June 2020, Australia did not have widespread community transmission of COVID-19.³⁰ New cases are at a significantly lower level than at the peak in late March.

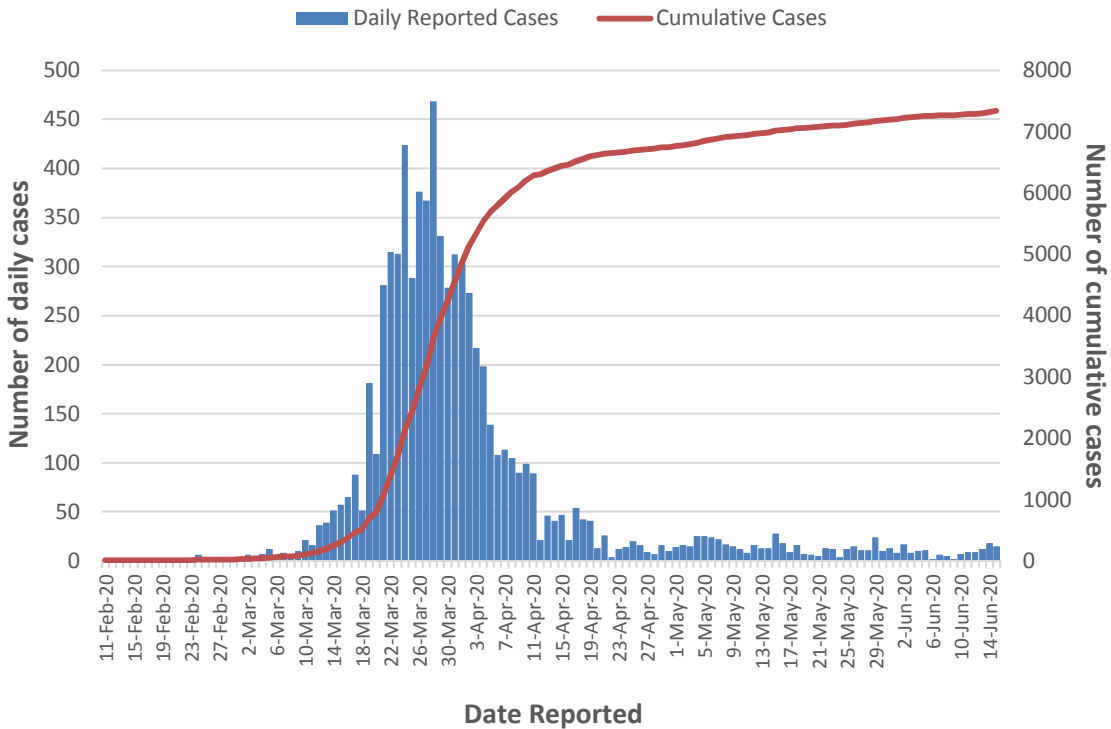
²⁸ Department of Health (2020), *Coronavirus (COVID-19) health alert: Current status*, Commonwealth Government of Australia, 14 June.

²⁹ COVID-19 National Incident Room Surveillance Team (2020), *COVID-19, Australia: Epidemiology Report 17: Reporting week ending 24 May Communicable Diseases Intelligence, Volume 44*, 5 June.

³⁰ Department of Health (2020), *Coronavirus (COVID-19) health alert: Current status*, Commonwealth Government of Australia, 14 June.

[29] Chart 1.2 shows how Australia has been able to more quickly and sustainably flatten the transmission curve.

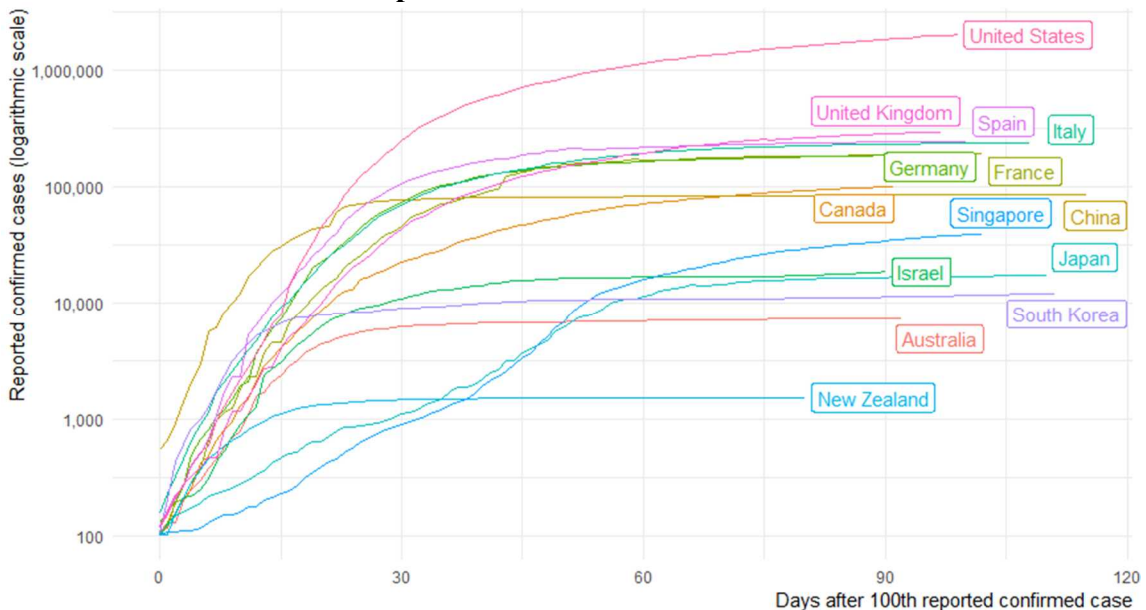
Chart 1.2: New and cumulative confirmed COVID-19 cases



Source: Department of Health (2020), *Coronavirus (COVID-19) current situation and case numbers*, Commonwealth Government of Australia, 14 June.

[30] Chart 1.3 shows the trend of reported confirmed cases of COVID-19 following the 100th reported confirmed case for selected countries. The chart has a logarithmic scale in order to better visualise the flattening of the curve, as the COVID-19 pandemic exhibits exponential growth.

Chart 1.3: International comparison of COVID-19 confirmed cases



Source: Fair Work Commission modelling, Johns Hopkins University Center for Systems Science and Engineering, 11 June 2020.

Note: Data generated using the tidycovid19 R code written by Joachim Gassen.

[31] The COVID-19 pandemic has been compared with different periods of economic downturns,³¹ but the causes and potential consequences are very different. As described by the Commonwealth Treasury Secretary, Dr Steven Kennedy, this shock is different to the depression of the 1930s and our path to recovery is different:

‘Depression is a very different shock. For this sort of disease-led shock, the nature of the recovery is related to how well we manage the disease, which is hard to predict, but in Australia we’ve obviously done extremely well, which means there is the capability for other countries to do well as well. Then it’s very much the flow-on consequences of the fact that you take economies and then you create this big hole in income for a quarter or two. Depressions are usually more thought of as long, drawn-out periods of very high unemployment, very low growth and dysfunctional credit markets. I’m not predicting a V-shaped recovery in any sense, but the way we enter this and the nature of this shock gives me some hope that if governments respond well, particularly through their fiscal levers, we needn’t have what’s called the L-shaped recovery, and I guess that’s probably what people would think of as more depression type economics.’³²

[32] The speed of the economic recovery is dependent on the health outcomes which in turn affects the ability of governments to remove restrictions. The strictest limitations to contain the spread of the virus were imposed from late March, as the number of confirmed cases increased. Some states and territories began easing these restrictions from late April. By mid-May, all states and territories had begun to reduce the limitations on work and social gatherings, although border controls for most states and territories remain.

[33] In terms of easing restrictions, the Commonwealth Government announced a 3-step plan³³ which aims to have a sustainable ‘COVID safe’ Australia by July 2020. The specific implementation and timeline of the easing of restrictions are decided by state and territory premiers and chief ministers.

[34] In broad terms, step 1 relaxes various baseline restrictions including allowing gatherings of up to 10 people outside and in businesses, having up to 5 people visit at home, some local and regional travel, and people working from home if it suits both workers and their employers. On 29 May, following a National Cabinet meeting, it was announced that the success of the health system in reducing transmission meant states and territories had plans in place to move to Step 2.³⁴ Step 2 allowed gatherings of 20 in homes, businesses and public places, gyms, beauty therapy, cinemas, galleries and amusement parks to open, caravan or camping grounds to open and some interstate travel. Step 3 will be further developed with the

³¹ For example, ACCI submission, 29 March 2020 at paras 22–24, 32, 35, 71; ACTU submission in reply, 4 May 2020 at para. 15.

³² Senate Select Committee on COVID-19 (2020), *Proof Committee Hansard*, Commonwealth of Australia, 21 May, p. 5.

³³ Department of Prime Minister and Cabinet (2020), *Roadmap to a COVIDSafe Australia: A three-step pathway for easing restrictions*, Commonwealth Government of Australia.

³⁴ The Hon Scott Morrison MP, Prime Minister (2020), *Update following National Cabinet Meeting*, Media release, 29 May.

specific easing of restrictions being informed by the success of steps 1 and 2 and expert medical advice. Step 3 provisionally allowed gatherings of up to 100 people, return to workplaces, opening up of nightclubs, food courts and saunas and resumption of interstate travel. On 12 June 2020, the Prime Minister updated step 3 and stated that we are on track to complete the 3-step process in July.³⁵ The updated step 3 removes the cap of 100 persons for indoor gatherings and is replaced by a 4 square metre rule for those premises (applying to each room). For outdoor events, a capacity of 25 per cent of the capacity of the stadium will be allowed.

[35] Despite the success in flattening the curve, health experts and the Commonwealth Government have advised that some level of restrictions on movement and gatherings, as well as border controls and social distancing measures, are likely to continue for some time,³⁶ possibly until a vaccine is developed.³⁷ The highly infectious nature of COVID-19 and concerns about a second wave of infections add to the uncertainty.³⁸

[36] The form and shape of our pathway to recovery is uncertain and heavily contested. However, it is generally accepted that the pathway to recovery is largely dependent on how well the spread of the virus is contained, which will affect the extent to which restrictions can be eased with a consequent impact on business and consumer confidence.

[37] The pace of recovery beyond the June quarter 2020 is especially uncertain.³⁹ As the RBA observes in its May 2020 *Statement on Monetary Policy*:

‘It is quite plausible that the current economic disruption will have some long-lasting effects, not only because it will take some time to restore workforces and re-establish businesses but also because it could also affect mindsets and the behaviours of consumers and businesses. This could result in structural change in the economy. Changes in the financial position of households and businesses could also have long-lasting effects.’⁴⁰

[38] The RBA’s May *Statement on Monetary Policy* presents various scenarios, reflecting what it describes as the ‘incredibly uncertain’ outlook.⁴¹ A ‘plausible baseline scenario’ sees restrictions mostly removed by the end of September, apart from international travel. With the spread of the virus ‘limited’, growth is considered ‘to turn around in the September quarter

³⁵ The Hon. Scott Morrison MP, Prime Minister (2020), *Transcript: Press Conference*, Commonwealth Government of Australia, 12 June.

³⁶ The Hon. Scott Morrison MP, Prime Minister (2020), *National Cabinet Statement*, Commonwealth Government of Australia, 29 March.

³⁷ The Hon. Scott Morrison MP, Prime Minister (2020), *Transcript: Interview with Samantha Maiden*, news.com.au, Commonwealth Government of Australia, 6 May.

³⁸ Leung K, Wu J T, Liu D, & Leung G M (2020), *First-wave COVID-19 transmissibility and severity in China outside Hubei after control measures, and second-wave scenario planning: a modelling impact assessment*, *The Lancet*, Volume 395, Issue 10233, 25 April–1 May, pp. 1382-1393; Xu S & Li Y (2020), *Beware of the second wave of COVID-19*, *The Lancet*, Volume 395, Issue 10233, 25 April–1 May, pp. 1321–1322.

³⁹ RBA (2020), *Statement on Monetary Policy*, May, p. 87.

⁴⁰ *Ibid.*

⁴¹ Senate Select Committee on COVID-19 (2020), *Proof Committee Hansard*, Commonwealth of Australia, 28 May, p. 2.

and the recovery would strengthen from there.⁴² The RBA comments that ‘[t]he duration of the lockdowns and how quickly they are eased will affect the size of the economic contraction and the speed of the subsequent recovery.’⁴³

[39] In the RBA’s baseline scenario, GDP growth is forecast to recover in the second half of 2020, led by consumption, although the very large declines in the March and June quarters would still produce a year-ended decline over 2020. Growth is expected to be stronger over 2021 as business and dwelling investment gradually recover, although the level of GDP by mid-2022 is anticipated to still be below the level expected at the time of the RBA’s February *Statement on Monetary Policy*. Based on these conditions, the RBA expects the unemployment rate to decline substantially from its June 2020 peak of around 10 per cent but to remain above its pre COVID-19 level in 2 years’ time. Underlying inflation is expected to remain below 2 per cent over the next couple of years.⁴⁴ The RBA’s baseline forecasts are summarised in Table 1.2.

Table 1.2: Output growth and inflation baseline forecasts, year-ended, per cent^{a,b}

	Dec 2019	Jun 2020	Dec 2020	Jun 2021	Dec 2021	Jun 2022
GDP	2.2	–8	–6	7	6	5
(previous)	(2)	(2)	(2 ³ / ₄)	(3)	(3)	(3)
Unemployment rate ^c	5.2	10	9	8½	7½	6½
(previous)	(5.2)	(5¼)	(5)	(5)	(4¾)	(4¾)
CPI	1.8	–1	¼	2¾	1¼	1½
(previous)	(1.8)	(1¾)	(1¾)	(1¾)	(2)	(2)
Trimmed mean	1.6	1½	1¼	1¼	1¼	1½
(previous)	(1.6)	(1¾)	(1¾)	(1¾)	(2)	(2)
Year-average						
	2019	2019/20	2020	2020/21	2021	2021/22
GDP growth	1.8	–1	–5	–3	4	6
(previous)	(1¾)	(2)	(2¼)	(2¾)	(3)	(3)

Source: RBA (2020), *Statement on Monetary Policy*, May, p. 89, Table 6.1.

Note: (a) The cash rate is assumed to remain at its current level, with other elements of the RBA’s monetary stimulus package, including the 0.25 per cent target for the 3-year government bond yield, assumed to remain consistent with current settings. Other technical assumptions include the TWI at 57, A\$ at US\$0.64 and Brent crude oil price at US\$35 per barrel; shaded regions are historical data; figures in parentheses show the corresponding forecasts in the February 2020 *Statement on Monetary Policy*. (b) Rounding varies: Activity to the nearest whole number; unemployment to the nearest half point; wages and prices to the nearest quarter point. (c) Average rate in the quarter.

[40] Based on the declining infection rate and earlier easing of restrictions, the RBA Governor has observed that since the above forecast scenario was published, conditions have

⁴² RBA (2020), *Statement on Monetary Policy*, May, p. 85.

⁴³ Ibid, p. 9.

⁴⁴ Ibid, pp. 88–89.

been ‘perhaps fractionally better than the baseline’ scenario⁴⁵ and that ‘it is possible that the depth of the downturn will be less than earlier expected’.⁴⁶

[41] The impact of the COVID-19 pandemic has been felt across the economy; but the extent of its impact has not been consistent across all sectors of the economy. While some industries have been substantially affected, other sectors have been affected to a much lesser extent.

[42] Using administrative data from the Australian Taxation Office (ATO) and published by the ABS, Charts 1.4 and 1.5 show the percentage changes in the number of payroll jobs and total wages for the 19 industries based on the Australian and New Zealand Standard Industrial Classification (ANZSIC). The industries are presented at the division or 1-digit level as more detailed data for both jobs and wages are not available. Reference is made to these data in Ai Group’s reply submission.⁴⁷

[43] The size of each circle reflects the total number of filled jobs in each industry—collected using ABS Labour Accounts data from the March quarter 2020. Industries with a larger number of jobs will be represented by larger circles. For example, Health care and social assistance has the largest number of filled jobs (1.96 million) and is represented by the largest circle, while Electricity, gas, water and waste services (124 700 filled jobs) has the smallest circle.⁴⁸

[44] The decline in jobs is indicated along the horizontal axis. The change in wages is indicated by the vertical axis, though this data is less informative because of the effects of the JobKeeper scheme. The period covered is between 14 March 2020, when the 100th case of COVID-19 was confirmed in Australia, and 30 May 2020.

[45] The decline in total jobs fall broadly into 3 industry clusters (Chart 1.4):

- Upper cluster—where total jobs fell by 29.1 per cent in Accommodation and food services and by 26.3 per cent in Arts and recreation services (a weighted average⁴⁹ of –28.6 per cent);
- Central cluster—where job losses range from 10.5 per cent in Information media and telecommunications to 4.0 per cent in Manufacturing (a weighted average of –5.9 per cent); and
- Lower cluster—where the impact on jobs range from an increase 0.4 per cent in Electricity, gas, water and waste services to an increase of 0.5 per cent in Finance and insurance services (a weighted average of 0.5 per cent).

⁴⁵ Senate Select Committee on COVID-19 (2020), *Proof Committee Hansard*, Commonwealth of Australia, 28 May, p. 2.

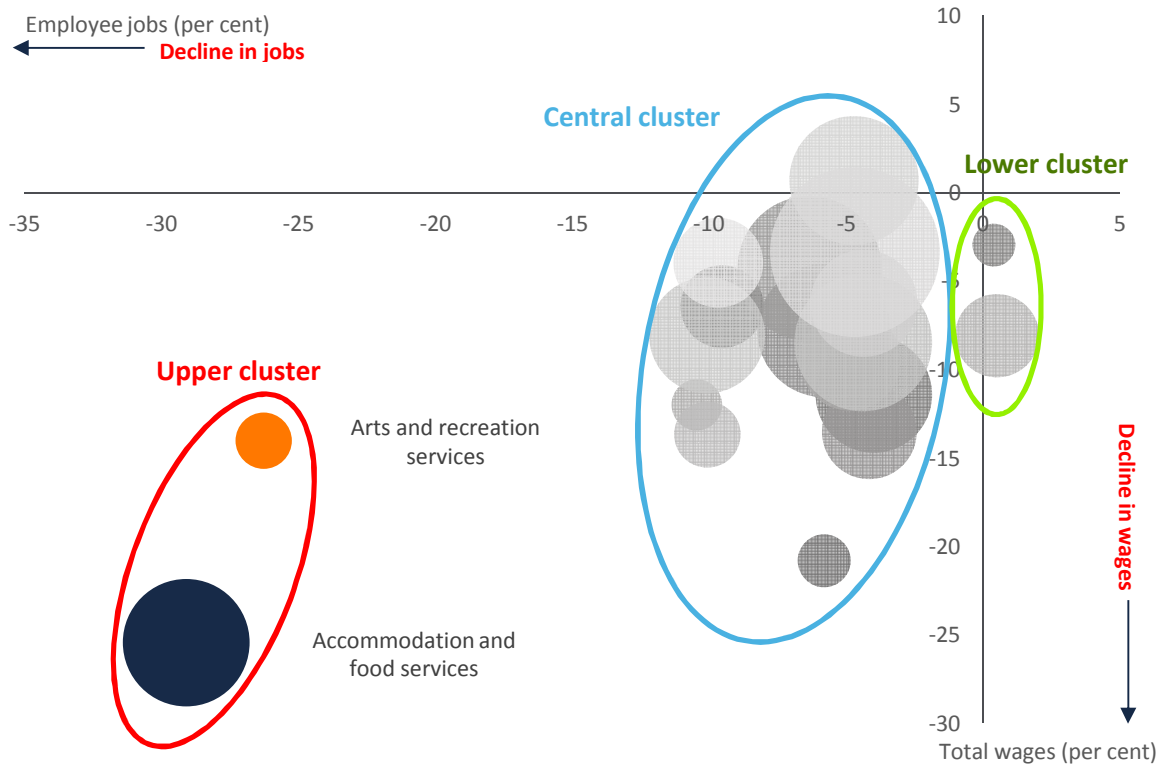
⁴⁶ Lowe P (2020), *Statement by Philip Lowe, Governor: Monetary Policy Decision*, 2 June.

⁴⁷ Ai Group submission in reply and responses to questions on notice, 4 May 2020 at pp. 18–20.

⁴⁸ ABS, *Labour Account Australia, March 2020*, Catalogue No. 6150.0.55.003.

⁴⁹ Based on the number of filled jobs.

Chart 1.4: Change in employee jobs and total wages between 14 March and 30 May 2020, by industry clusters



Source: Statistical report (version 13), 17 June 2020, Chart 6.10; ABS, *Weekly Payroll Jobs and Wages in Australia, Week ending 30 May 2020*, Catalogue No. 6160.0.55.001; ABS, *Labour Account Australia, March 2020*, Catalogue No. 6150.0.55.003.

Note: Circle size reflects number of filled jobs (i.e. larger circles represent industries with higher number of filled jobs).

[46] The impact on the industry sectors in the central and lower clusters is shown more clearly in Chart 1.5.

- Rental, hiring and real estate services;
- Administrative and support services;
- Information media and telecommunications; and
- Other services.

[48] We acknowledge that these aggregate numbers mask considerable intra sectoral variance.

[49] We deal with the industries in the ‘lower cluster’ later.

[50] The ‘clusters’ identified in Charts 1.4 and 1.5 are consistent with other data.

[51] In the March quarter 2020, total industry output or Gross Value Added (GVA) declined by 0.3 per cent and gross operating profits rose by 1.1 per cent, while over the year total GVA increased by 1.4 per cent and profits rose by 1.5 per cent. The change in output and profit growth⁵⁰ varied significantly between each of the industry clusters.

[52] Industries in the lower cluster had the highest growth in GVA and profits in the March quarter 2020, while industries in the upper cluster experienced the largest declines, broadly consistent with the decline in jobs and wages.

[53] While the weighted average change in GVA and profits in each cluster are broadly consistent with the changes observed in jobs and wages—that initially defined each cluster—this is not to say industries in the same cluster had identical or even similar experiences in the March quarter 2020.

[54] GVA and profit data are current up to the March quarter 2020, and only capture the early impacts of COVID-19 related restrictions and effects, while data on total jobs and wages capture the effects to late May 2020.

[55] Other data produced by the ABS to capture the effects of the COVID-19 pandemic on businesses also provide some insights. For example, businesses were asked how they expected COVID-19 to adversely impact them over the next 2 months. Between 22 April 2020 and 28 April 2020, 69 per cent of businesses that were currently trading reported that ‘reduced demand for goods and services’ were expected to have an adverse impact, while 72 per cent anticipated ‘reduced cash flow’, and 41 per cent anticipated a ‘reduced ability to pay operating expenses’.⁵¹ Similar to the indicators already discussed, the weighted average change in these anticipated adverse impacts varied across industry clusters:

- Upper cluster—83.8 per cent of businesses reported that they anticipated reduced demand for goods and services, 87.3 per cent anticipated reduced cash flow, and

⁵⁰ Profit estimates are only for industries in the market sector.

⁵¹ Statistical report (version 13), 17 June 2020, Table 3.11; ABS, *Business Indicators, Business Impacts of COVID-19, April 2020*, Catalogue No. 5676.0.55.003.

70.2 per cent anticipated a reduced ability to pay operating expenses, all well above the all industries average;

- Central cluster—68.9 per cent reported that they anticipated reduced demand for goods and services, 71.8 per cent anticipated reduced cash flow, and 40.9 per cent anticipated a reduced ability to pay operating expenses, around the all industries average; and
- Lower cluster—41.6 per cent reported that they anticipated reduced demand for goods and services, 44.0 per cent anticipated reduced cash flow, and 18.8 per cent anticipated a reduced ability to pay operating expenses, all below the all industries average.⁵²

[56] These data show that industries in the lower cluster had the lowest proportion of businesses reporting anticipated adverse impacts, while industries in the upper cluster reported the highest proportion of businesses expected to be adversely impacted (broadly consistent with the decline in jobs and wages across industries). However, as with GVA and profit outcomes, there was variation within the industry clusters with regard to the adverse impacts anticipated by industries.

[57] Modern awards can be ‘mapped’ to the industry sectors identified in Charts 1.4 and 1.5. This exercise of mapping modern awards to industries is based on a project undertaken by Commission staff in 2012 to assist with statistical analysis of modern awards.⁵³ We turn first to the modern awards in the ‘lower cluster’ of industries, least impacted by the pandemic (in terms of job losses and fall in wages).

(i) *The ‘lower cluster’*

[58] The ‘lower cluster’ consists of the following industries:

- Financial and insurance services; and
- Electricity, gas, water and waste services.

[59] The following modern awards correspond to the industries in the lower cluster:

- *Banking, Finance and Insurance Award 2020*;
- *Electrical Power Industry Award 2020*;
- *Gas Industry Award 2020*; and
- *Water Industry Award 2020*.

⁵² Statistical report (version 13), 17 June 2020, Table 3.11. Average proportions have been weighted based on the total number of filled jobs in each industry.

⁵³ Preston M, Pung A, Leung E, Casey C, Dunn A & Richter O (2012), *Analysing modern award coverage using the Australian and New Zealand Industrial Classification 2006: Phase 1 report*, Research Report 2/2012, Fair Work Australia.

[60] To the modern awards set out at [59] above we would add the following awards covering frontline health care and social assistance workers, teachers and child care workers, and other essential services:

- *Aboriginal Community Controlled Health Services Award 2020*;
- *Aged Care Award 2010*;
- *Ambulance and Patient Transport Industry Award 2020*;
- *Cemetery Industry Award 2020*;
- *Children's Services Award 2010*;
- *Cleaning Services Award 2020*;
- *Corrections and Detention (Private Sector) Award 2020*;
- *Educational Services (Schools) General Staff Award 2020*;
- *Educational Services (Teachers) Award 2010*;
- *Fire Fighting Industry Award 2020*;
- *Funeral Industry Award 2010*;
- *Health Professionals and Support Services Award 2020*;
- *Medical Practitioners Award 2020*;
- *Nurses Award 2010*;
- *Pharmacy Industry Award 2020*;
- *Social, Community, Home Care and Disability Services Industry Award 2010*; and
- *State Government Agencies Award 2020*.

[61] The employers and employees covered by these modern awards have continued working during the pandemic, to provide essential services to the community.

[62] In relation to the *Cleaning Services Award 2020* the current pandemic has put increased focus on personal hygiene as well as cleaning of facilities, workplaces and public spaces, and the demand for cleaning services is likely to increase.⁵⁴ For example, several state governments have announced initiatives to increase cleaning, including:

- the NSW Government in late April 2020 announced a cleaners' package to improve the cleaning of public facilities such as schools and transport, where cleaning efforts have increased by 83 000 hours across the transport network;⁵⁵

⁵⁴ Borland J (2020), *Labour Market Snapshot, #56*, 21 April.

⁵⁵ NSW Government (2020), *\$250 million cleaning stimulus package to help stop the spread of COVID-19*, Media release, 29 April.

- the Victorian Government in early May 2020 announced a program that, together with several councils across Victoria, would support jobs and the redeployment of workers including into cleaning crews;⁵⁶ and
- the South Australian Government announced in mid-March 2020 that it would increase cleaning schedules across public transport, including extra cleaning crews.⁵⁷

[63] We have therefore regarded cleaners as part of the frontline response in preventing the spread of COVID-19 and in the present circumstances can be considered an essential service.

[64] We now turn to the ‘upper cluster’ of industries—those most affected by the pandemic (in terms of job losses and wage falls).

(ii) *The ‘upper cluster’*

[65] Chart 1.4 identifies 2 industry sectors in the ‘upper cluster’:

- Accommodation and food services; and
- Arts and recreation services.

[66] The following modern awards are mapped to the Accommodation and food services industry:

- *Hospitality Industry (General) Award 2020*;
- *Restaurant Industry Award 2020*;
- *Fast Food Industry Award 2010*; and
- *Registered and Licensed Clubs Award 2010*.

[67] The modern awards relating to the Arts and recreation services industry are:

- *Amusement, Events and Recreation Award 2020*;
- *Live Performance Award 2010*;
- *Fitness Industry Award 2010*;
- *Sporting Organisations Award 2020*;
- *Racing Clubs Events Award 2010*;
- *Racing Industry Ground Maintenance Award 2020*;
- *Horse and Greyhound Training Award 2020*;
- *Hospitality Industry (General) Award 2020*; and
- *Travelling Shows Award 2020*.

⁵⁶ Pakula M (2020), *Local jobs boom in cleaning and maintenance blitz*, Media release, 10 May.

⁵⁷ Marshall S (2020), *Increasing cleaning on public transport*, Premier of South Australia, Media release, 16 March.

[68] The modern awards mapped to Accommodation and food services and Arts and recreation services do not necessarily constitute all modern awards that could be considered to be most affected by the COVID-19 outbreak.

[69] It is plain that some businesses and employees within the Transport, postal and warehousing industry (in the ‘central cluster’) have been substantially impacted by the restrictions imposed in response to the COVID-19 pandemic. The government enforced measures to reduce the spread of the virus have had a substantial impact on the aviation sector with restrictions likely to be maintained for some time. Unfortunately, the impact on both jobs and wages within this sector cannot be identified from the available data at the ANZSIC 1-digit level. However, it is abundantly clear that the restrictions imposed have caused significant hardship for these businesses and their employees. The same observation may be made in relation to the tourism and events sectors and in some other services, such as dry cleaning and beauty therapy. Accordingly, these sectors along with Accommodation and food services and Arts and recreation services may be characterised as the ‘most affected’ by the COVID-19 pandemic.

[70] The relevant aviation and tourism sector modern awards are:

- *Air Pilots Award 2020*;
- *Aircraft Cabin Crew Award 2020*;
- *Airline Operations-Ground Staff award 2020*;
- *Airport Employees Award 2020*;
- *Alpine Resorts Award 2020*;
- *Marine Tourism and Charter Vessels Award 2020*;
- *Professional Diving Industry (Recreational) Award 2020*; and
- *Wine Industry Award 2010*.

[71] A case can also be made for the inclusion of Retail trade in the cluster of sectors most affected by the pandemic.

[72] Retail trade has seen varied effects of the COVID-19 pandemic, some of which can be seen in the more recent data on turnover, output, profits and changes in the number of jobs. While COVID-19 has provided a positive impact in turnover on some parts of the retail industry, other parts of the industry have experienced dramatic declines.

[73] While retail turnover rose sharply by 8.5 per cent (the largest monthly increase recorded) in March 2020,⁵⁸ the increase was not evident across all industry subgroups. It reflected significant increases in areas such as Other specialised food retailing (30.5 per cent); Liquor retailing (30.3 per cent); Supermarket and grocery stores (23.0 per cent); and Pharmaceutical, cosmetic and toiletry goods retailing (22.3 per cent). This coincided with the panic buying that preceded the implementation of a number of social distancing restrictions in March. However, this increase was temporary, with retail turnover declining by an

⁵⁸ Statistical report (version 13), 17 June 2020, Chart 3.6; ABS, *Retail Trade, Australia, Apr 2020*, Catalogue No. 8501.0.

unprecedented 17.7 per cent in April 2020 (the largest monthly decline on record), resulting in total turnover lower than the pre-COVID period.⁵⁹ The largest declines in turnover were seen in Clothing retailing (-56.0 per cent); and Footwear and other personal accessory retailing (-49.3 per cent).⁶⁰

[74] Output in Retail trade increased in the March quarter 2020, while total output declined.⁶¹ Gross operating profits also increased in the March quarter 2020 above the all industries average.⁶² However, the relatively positive results in output and profits likely reflect the temporary spike in turnover in March 2020, driven by increases in some sub-sectors (particularly Food retailing), and not necessarily growth across the wider industry.

[75] This variation within Retail trade is also shown in the jobs data. Between 14 March 2020 and 30 May 2020, total jobs in Retail trade fell by 9.8 per cent. At the 2-digit subdivision level, Fuel retailing was the only subdivision to experience an increase in jobs (6.1 per cent), while the decline in Food retailing (-7.2 per cent) and Motor vehicle and motor vehicle parts retailing (-6.1 per cent) was smaller than the Retail trade average. Larger declines were in Other store-based retailing (-12.4 per cent); and Non-store retailing and retail commission based buying and/or selling (-15.1 per cent).⁶³

[76] In its supplementary submission, the Australian Retailers Association (ARA) refer to data on retail turnover and note that retailers in discretionary categories are facing significant challenges.⁶⁴ As we have shown, industries that were subject to forced closures such as Footwear and other personal accessory retailing saw significant falls in turnover. However, other subsectors less subject to closures (such as Fuel retailing) have generally performed better.

[77] The modern awards which can be broadly characterised as relating to Retail trade are:

- *Commercial Sales Award 2020*;
- *Dry Cleaning and Laundry Industry Award 2020*;
- *General Retail Industry Award 2010*;
- *Hair and Beauty Industry Award 2010*;
- *Mannequins and Models Award 2020*;
- *Nursery Award 2020*; and
- *Vehicle Repair, Services and Retail Award 2020*.

⁵⁹ ABS, *Retail Trade, Australia, Apr 2020*, Catalogue No. 8501.0.

⁶⁰ Statistical report (version 13), 17 June 2020, Chart 3.18.

⁶¹ Ibid, Chart 1.5.

⁶² Ibid, Chart 3.17.

⁶³ ABS, 'Jobs by Industry sub-division', *Weekly Payroll Jobs and Wages in Australia, Week ending 30 May 2020*, Catalogue No. 6160.0.55.001.

⁶⁴ ARA response to supplementary submission, 5 June 2020, p. 2.

[78] In relation to the *Vehicle Repair, Services and Retail Award 2020*, a Full Bench of the Commission varied this award on 11 May 2020 to insert a new schedule containing a number of measures designed to mitigate the impact of COVID-19 on the employers and employees covered by the award. In its decision the Full Bench referred to data released by the Federal Chamber of Automotive Industries (FCIA) on 6 May 2020 which show that:

- A total of 38 926 new vehicle sales were recorded in Australia for the month of April. This figure represents a fall of 48.5 per cent over the same period last year (April 2019 saw 75 550 sales).
- The fall in April 2020 sales represents the largest single decrease in sales in any month since sales data collection was commenced by FCIA in 1991.
- Year to date new vehicle sales for 2020 have totalled to 272 287 sales, down from 344 088 in 2019. This equates to a 20.9 per cent decline.⁶⁵

[79] We deal later with the modern awards which align with the ‘central cluster’ of industries.

The Submissions

[80] The Panel received submissions from the Australian Government, several state governments, bodies that represent the interests of employees and employers, other entities and individuals. These proposals are set out in Appendix 2. The proposals in respect of the adjustment of the NMW and modern award minimum wages were sharply polarized. Some parties proposed significant increases to the NMW and modern award minimum wages, well in excess of the current and expected inflation rate, while the various employer parties proposed that there be no increase at all to the NMW or to modern award minimum wages.

[81] The Australian Government, most state governments, the Housing Industry Association (HIA) and the Centre for Future Work did not propose a specific quantum increase to the NMW and modern award minimum wages.⁶⁶

[82] The Australian Government urged the Panel to take a cautious approach in light of the continuously emerging and wide-ranging potential impacts of the COVID-19 pandemic and to prioritise keeping Australians in jobs and maintaining the viability of businesses.⁶⁷

[83] Whilst the Australian Council of Social Services (ACOSS) did not recommend a specific increase, it argued that the minimum wage should be set well above poverty levels, with an appropriate benchmark being the full-time median wage and a reasonable goal being to restore the NMW level to 60 per cent of the full-time median wage.⁶⁸

⁶⁵ [2020] FWCFB 2367 at [20].

⁶⁶ See Australian Government submission, 3 April 2020; New South Wales Government submission, 27 March 2020; South Australian Government submission, 11 March; Western Australian Government submission, 20 March 2020; HIA submission, 20 March 2020; Centre for Future Work submission, 27 March 2020.

⁶⁷ Australian Government submission, 3 April 2020 at para. 5.

⁶⁸ ACOSS submission, 20 March 2020 at p. 15.

[84] The Australian Council of Trade Unions (ACTU) proposed a uniform increase of 4 per cent to the NMW and modern award minimum wages.⁶⁹

[85] The Australian Catholic Bishops Conference (ACBC) proposed an increase of 4 per cent in the NMW and a minimum 4 per cent increase to the C13 and C10 rates provided for in modern awards.⁷⁰

[86] Although the Shop Distributive and Allied Employees Association (SDA) did not propose a specific quantum, they supported the supplementary submission of the ACTU⁷¹ and argued that if an increase in minimum wages was deferred so too should the scheduled reduction in Sunday penalty rates.⁷²

[87] The Victorian Government proposed an increase of at least 3 per cent to the NMW and ‘a fair and reasonable increase to all other [modern] award minimum wages’.⁷³

[88] The Australian Chamber of Commerce and Industry (ACCI),⁷⁴ Australian Industry Group (Ai Group),⁷⁵ National Retail Association (NRA),⁷⁶ National Farmers Federation (NFF),⁷⁷ Restaurant and Catering Industry Association (R&CA)⁷⁸ and ARA⁷⁹ proposed that there be no increase to the NMW and modern award minimum wages.

[89] ACCI submitted that if there were to be an increase, a common approach should be taken to the NMW and modern award minimum wages as much as possible and that any increase should be ‘genuinely moderate’ and should not take effect from 1 July 2020.⁸⁰ ARA also proposed a delayed operative date for retail businesses until 1 February 2021, if the Panel determines that an increase in wages should occur.⁸¹ ARA also submitted that should an increase be awarded, that it be no more than the CPI for the preceding 12 months.⁸²

[90] Master Grocers Australia Limited (MGA) submitted that no increase be awarded, however, if the Panel saw fit to provide an increase that any increase be postponed.⁸³

⁶⁹ ACTU submission, 20 March 2020 at para. 5.

⁷⁰ ACBC submission, 19 March 2020 at para. 6.

⁷¹ SDA supplementary submission, 29 May 2020 at para. 1.

⁷² SDA supplementary submission, 29 May 2020 at paras 6; 9.

⁷³ Victorian Government submission, 13 March 2020 at para. 8.3.

⁷⁴ ACCI supplementary submission, 29 May 2020 at para. 7.

⁷⁵ Ai Group supplementary submission, 29 May 2020 at pp. 3; 11.

⁷⁶ NRA submission, 27 March 2020 at pp. 1; 4.

⁷⁷ NFF submission, 27 March 2020 at p. 6.

⁷⁸ R&CA submission, 19 March 2020 at paras 8–9.

⁷⁹ ARA supplementary submission, 29 May 2020 at p. 2.

⁸⁰ ACCI supplementary submission, 29 May 2020 at para. 35.

⁸¹ ARA supplementary submission, 29 May 2020 at p. 1.

⁸² ARA supplementary submission, 29 May 2020 at p. 2.

⁸³ MGA supplementary submission, 29 May 2020 at p. 5.

[91] The South Australian Wine Industry Association (SAWIA) did not advocate for an increase in minimum wages but submitted that if the Panel was minded to award an increase it should be a flat dollar increase no higher than the national inflation rate.⁸⁴

Consideration

[92] As we have mentioned, ACCI, Ai Group and other employer organisations submit that arising from this Review, there should be no increase to the NMW or to modern award minimum wages. We accept that the economic considerations we are required to take into account weigh in favour of greater moderation in terms of the outcome of the Review.

[93] The very high level of underemployment warrants more weight being given to the potential impact of increasing minimum wages on hiring and re-employment. Further, in a recession, when aggregate demand is weak, the employment effects of increases in minimum wages are likely to be more significant and the capacity of employers to absorb wage increases or to pass them on to consumers in the form of higher prices is more limited. However, there are some countervailing considerations.

[94] The ACTU contends that:

‘[a]s restrictions begin to lift, it is hoped that conditions improve for all Australians that have been affected. In our view, a real lift to minimum wages will help rather than hinder that transition’.⁸⁵

[95] Further, in its supplementary submission the ACTU states:

‘Wages play two different roles in the economy. While they are a key cost to employers, they are also a major source of income for consumers. If the real incomes of all or a significant proportion of consumers are reduced, aggregate demand for goods and services will decline. As a result, the demand for labour curve of the individual enterprise moves down to the left (a reduction in demand). The Panel is required to take into account the impact of its decision on the Australian economy. The decision must therefore take into account the macroeconomic impact...’

If real wages were to fall for the low paid even further as result of the Commission decision (i.e. less than rate of inflation over the coming year) there would be negative macroeconomic consequences and we would be repeating the mistakes of the Great Depression.’⁸⁶

[96] The essence of the submission put is that increasing minimum wages is likely to increase aggregate demand.

[97] This issue was discussed in the *Annual Wage Review 2016–17* decision (2016–17 decision) and *Annual Wage Review 2017–18* decision (2017–18 decision). In those decisions

⁸⁴ SAWIA submission, 20 March 2020 at p. 8.

⁸⁵ ACTU supplementary submission, 29 May 2020 at para. 3.

⁸⁶ ACTU supplementary submission, 29 May 2020 at paras 36–37.

the Panel found that the impact of an increase in minimum wages was ‘not likely to be comparable to that of a public sector macroeconomic stimulus’⁸⁷ but was ‘likely to have some effect on consumer demand that needs to be taken into account’.⁸⁸

[98] We accept that the impact of an increase in minimum wages on aggregate demand, albeit modest, is relevant because we are obliged to take into account the likely impact of any exercise of modern award powers on, relevantly, the performance of the national economy (s.134(1)(h)).

[99] The ACTU also contends that economic conditions are improving. The ACTU’s position is encapsulated in the following extract from its response to supplementary submissions of 5 June 2020:

‘Whilst the situation continues to evolve, there are indications that performance of the economy has been better than expected when measures were first being developed and implemented to respond to the pandemic, and that the recovery is beginning...

In our submission, it would be damaging to the national economy and particularly damaging to businesses offering low value/high turnover goods and services like restaurants, cafés and shops, to lock down wages ... Anything less than an increase that accounts for rises in prices and living costs would result in a fall in real consumer income growth and purchasing power. In circumstances where key economic need is to rebuild domestic demand for goods and services, a real wage cut is the least favourable option.’⁸⁹

[100] We acknowledge that there are some indications that the economy is beginning to recover. There has been some improvement, or at least stabilisation, in the labour market data since late April, though the performance of the labour market is still well below pre COVID-19 levels. But we do not wish to overstate the significance of these matters. As noted in the 2 June 2020 Statement by the RBA Governor on the Board’s Monetary Policy decision, ‘...the outlook, including the nature and speed of the expected recovery, remains highly uncertain and the pandemic is likely to have long lasting effects on the economy’.⁹⁰

[101] In our view there are significant downside risks in the period ahead. These include that the international outlook remains highly uncertain, the future of fiscal support to the domestic economy (including through JobKeeper) is unknown and there is the risk of a second wave of COVID-19 infection and the reimposition of extensive restrictions. As to the last point, the June 2020 OECD Economic Outlook (Preliminary Version) notes in regard to Australia that:

‘... should widespread contagion resume, with a return of lockdowns, confidence would suffer and cash-flow would be strained. In that double-hit scenario, GDP could fall by

⁸⁷ [2017] FWCFB 3500 at [528].

⁸⁸ [2018] FWCFB 3500 at [248].

⁸⁹ ACTU response to supplementary submissions, 5 June 2020 at paras 44; 56.

⁹⁰ RBA (2020), *Statement by Phillip Lowe, Governor: Monetary Policy Decision*, 2 June.

6.3% in 2020. Even in the absence of a second outbreak, GDP could fall by 5% in 2020'.⁹¹

[102] In sum, the economic considerations weigh in favour of greater moderation in terms of the outcome of the Review. But, as we set out in Chapter 2, the various economic considerations⁹² are not the only matters we are required to take into account. Both the minimum wages objective and the modern awards objective require the Panel to take into account:

- promoting social inclusion through increased workforce participation;⁹³
- relative living standards and the needs of the low paid;⁹⁴ and
- the principle of equal remuneration for work of equal or comparable value.⁹⁵

[103] In giving effect to the modern awards objective, we must also take into account ‘the need to encourage collective bargaining’ (s.134(1)(b)).

[104] These statutory considerations we are required to take into account inform the evaluation of what might constitute ‘a *fair* and relevant minimum safety net of terms and conditions’ and ‘a safety net of *fair* minimum wages’. Fairness in this context includes the perspective of employees and employers,⁹⁶ and the Act requires the Panel to take into account *all* of the relevant statutory considerations.⁹⁷

[105] A degree of tension exists between some of the considerations we are required to take into account. For example, the extent to which minimum wage increases are able to meet the needs of the low paid may, depending on the magnitude of the increase and the prevailing circumstances, be constrained by the potential impact of such increases on employment. This is particularly relevant in the present context.

[106] We deal with ‘relative living standards and the needs of the low paid’ in Chapter 4. Our overall assessment is that while the relative living standards of NMW and award-reliant employees have improved over recent years, some low-paid award-reliant employee households have disposable incomes less than the 60 per cent of median income poverty line. Further, many household types are also likely to have disposable incomes that do not reach the threshold of the relevant minimum income for healthy living (MIHL) budget.

[107] We also acknowledge that there are limitations with measures of equivalised disposable household income when assessing poverty, as they are used to assess the

⁹¹ OECD (2020), *OECD Economic Outlook*, Volume 2020 Issue 1, June, p. 136.

⁹² *Fair Work Act 2009* (Cth) s.284(1)(a) and s.134(1)(d), (f) and (h).

⁹³ *Ibid* at s.284(1)(b) and s.134(1)(c).

⁹⁴ *Ibid* at s.284(1)(c) and s.134(1)(a).

⁹⁵ *Ibid* at s.284(1)(d) and s.134(1)(e).

⁹⁶ [2019] FWCFB 3500 at [10].

⁹⁷ *Ibid* at [11].

circumstances of a selected household type, rather than individual circumstances.⁹⁸ The poverty line essentially measures inequality at the lower end of the income distribution and does not measure observed needs or capacity to meet these needs, which is better indicated by measures of deprivation and financial stress.⁹⁹

[108] In support of its proposal that we award no increase in the Review, ACCI relies on the increases in the NMW and modern award minimum wages in recent Reviews, noting that they have increased at a faster rate than the WPI and other measures of average wages. ACCI contends that the increases from recent Review decisions:

‘... provide NMW-workers with a buffer that enables them to absorb a small or no increase in the NMW and award minimum wage at a time of massive financial crisis, while still maintaining a reasonable standard of living.’¹⁰⁰

[109] Further, in its supplementary submission, ACCI submits:

‘The Panel can make the no increase decision in 2020 we propose safe in the knowledge that employees will not be worse off, as the strong growth in purchasing power over the past three years has created a buffer that should allow a 12 month period with no increase balanced on the weight of considerations to be taken into account.’¹⁰¹

[110] The suggestion that recent Review decisions have created a ‘buffer’ such that low-paid employees will not be worse off if we grant no increase seems to presume that these employees have put aside a portion of the recent increases against the eventuality of more difficult times. We doubt that this is so.

[111] The ABS *Australian National Accounts: Distribution of Household Income, Consumption and Wealth, 2003–04 to 2017–18*, provide data on disposable income, consumption, and savings by household income quintiles in 2017–18. That data show that while household consumption and savings rise with income, consumption rises by less than income, which means that savings increase as income rises. The lowest income quintile spent more than they earned on average and did not achieve any savings.¹⁰²

[112] These data show that households in the lowest household income quintile have a higher propensity to consume and a lower propensity to save relative to other households.¹⁰³

[113] Further, the latest year for which data are available show that the proportion of low-paid households experiencing financial stress has increased. Some low-paid households are plainly experiencing significant disadvantage. Research commissioned for this Review found that there was a higher proportion of employees who are low-paid, both low-paid and award-

⁹⁸ [2019] FWCFB 3500 at [329].

⁹⁹ [2018] FWCFB 3500 at [332].

¹⁰⁰ ACCI reply submission, 4 May 2020 at para. 146.

¹⁰¹ ACCI supplementary submission, 29 May 2020 at para. 11(d).

¹⁰² Statistical report (version 13), 17 June 2020, Chart 8.8.

¹⁰³ ABS, *Australian National Accounts: Distribution of Household Income, Consumption and Wealth, 2003–04 to 2017–18*, Catalogue No. 5204.0.55.001.

reliant or higher-paid and award-reliant, reporting financial difficulties compared with higher-paid and non-award employees.¹⁰⁴ An increase in minimum wages would assist these employees to better meet their needs.

[114] Contrary to ACCI's submission, a decision to grant no increase in this Review would mean that the living standards of low-paid award-reliant employees would fall. The requirement to take into account relative living standards and the needs of the low paid supports an increase in the NMW and modern award minimum wages.

[115] Gender pay equity also favours an increase in minimum wages. Women are more likely to be in low-paid employment and are more likely to be paid at the award rate.¹⁰⁵ Further, higher-paid award-reliant employees are more likely to be female (58.7 per cent) than male (41.3 per cent).¹⁰⁶

[116] As we have mentioned, one of the matters we are required to take into account is 'the need to encourage collective bargaining.' We accept that there has been a decline in current enterprise agreements, but a range of factors impact on the propensity to engage in collective bargaining, many of which are unrelated to increases in the NMW and modern award minimum wages. Given the complexity of factors which may contribute to decision making about whether or not to bargain, we are unable to predict the precise impact of our decision on bargaining.

[117] The increases we have determined in this Review may impact on bargaining in different sectors in different ways and we cannot be satisfied that the increase we have determined will *encourage* collective bargaining. We have taken this into account along with the other statutory considerations in determining the outcome in this Review.

[118] A number of other matters are relevant to the outcome of the Review.

[119] In addition to minimum wages, the tax-transfer system also has a significant role to play in alleviating earnings inequality and assisting low-paid workers to meet their needs. Before the onset of COVID-19, tax-transfer changes which had taken effect in the current Review period have, broadly speaking, provided a benefit to low-paid households. The various economic assistance packages introduced by the Australian Government in response to the COVID-19 pandemic have also benefitted low-paid households. We discuss these changes in more detail in Chapter 4.

[120] These changes are a moderating factor on our assessment of the appropriate level of the NMW and modern award minimum wages arising from this Review. But, as determined in previous Review decisions, it is not appropriate to apply a direct, quantifiable, discount to the increase in the NMW and modern award minimum wages we would have awarded in the absence of such changes in the tax-transfer system.¹⁰⁷

¹⁰⁴ Wilkins R & Zilio F (2020), *Prevalence and persistence of low paid award-reliant employment*, Fair Work Commission Research Report 1/2020, pp. 23–24, Table 9.

¹⁰⁵ *Ibid* at p.11, Table 3.

¹⁰⁶ *Ibid* at p.14, Table 7

¹⁰⁷ [2019] FWCFB 3500 at [242].

[121] In its supplementary submission in reply, the SDA submits:

‘If the Panel is minded to agree with the NRA that employees in the sector ought to have no wage increase, there would nonetheless be a reasonable basis for the Commission to initiate a proceeding to consider similarly deferring any further reduction in Sunday penalty rates.’¹⁰⁸

[122] The penalty rate reductions to which the SDA refers form part of the broad context in which the Review is conducted but we have not given them significant weight. Further, 3 specific points may be made about the SDA’s submission.

[123] First, the Panel cannot defer a reduction in penalty rates under an award in the course of a Review. To ‘defer’ a reduction in penalty rates, the award terms specifying the reduced penalty rates and when they apply would have to be varied and the Panel is confined to reviewing ‘modern award minimum wages’ and making determinations ‘varying modern awards to set, vary or revoke modern award minimum wages’. ‘Modern award minimum wages’ are defined in s.284(3) as the ‘rates of minimum wages in modern awards, including ... wage rates for junior employees ... casual loadings ... and piece rates.’ ‘Modern award minimum wages’ do not include ‘penalty rates’. The two are separately dealt with in ss.139(1)(a) and (e) of the Act and were distinguished by the Full Bench in the *Penalty Rates Decision*.¹⁰⁹

[124] Second, the *Penalty Rates Decision*¹¹⁰ provides for the phased reduction of Sunday penalty rates in certain awards in the hospitality and retail sectors which will reduce the employment costs of some employers covered by the modern awards affected by the decision.¹¹¹ However, as noted by the Panel in last year’s Review decision, the *Penalty Rates decision* only applies to a small number of modern awards.¹¹²

[125] Finally, we would also observe that there have also been other changes to modern awards that have *increased* employment costs. It is particularly relevant to note that in addition to the Sunday penalty rate reductions highlighted by the SDA, a subsequent Full Bench *increased* the penalty rates for casuals for Saturday work and for evening work on Monday to Friday.¹¹³

[126] We have determined that it is appropriate to increase the NMW. Having regard to the proposed NMW and the other relevant considerations, we also consider that it is appropriate to adjust modern award minimum wages.

[127] As to the form of the increase, past flat dollar increases in modern award minimum wages have compressed award relativities and reduced the gains from skill acquisition. A

¹⁰⁸ SDA supplementary submission, 29 May 2020 at para. 6.

¹⁰⁹ [2017] FWCFB 1001 at [637].

¹¹⁰ See *Penalty Rates decision* [\[2017\] FWCFB 1001](#) and [\[2017\] FWCFB 3001](#).

¹¹¹ See generally [\[2017\] FWCFB 3500](#) at [18]–[30].

¹¹² [2019] FWCFB 3500 at [68]; Ai Group submission, 15 March 2019 at p. 62.

¹¹³ [2018] FWCFB 5897 and [2018] FWCFB 6665.

percentage increase will avoid further compression and will particularly benefit women workers, because at the higher award classification levels women are substantially more likely than men to be paid the minimum award rate and are less likely to be subject to collective agreements.¹¹⁴

[128] The Act does not compel the variation of modern award minimum wages in *all* modern awards. The Panel has a discretion to vary some or all modern award minimum wages in the context of a Review. However, in exercising that discretion considerations of fairness and stability tell against varying the quantum of any adjustment to modern award minimum wages on an award by award basis. As the Panel observed in the *Annual Wage Review 2012–13 decision* (2012–13) Review decision:

‘If differential treatment was afforded to particular industries this would distort award relativities and lead to disparate wage outcomes for award-reliant employees with similar or comparable levels of skill ... It is also relevant that in establishing and maintaining the minimum wages safety net, the Panel must take into account the principle of equal remuneration for work of equal or comparable value. Such a principle supports the determination of consistent minimum rates for work of equal or comparable value. The maintenance of consistent minimum wages in modern awards and the need to ensure a stable and sustainable modern award system would be undermined if the Panel too readily acceded to requests for differential treatment.’¹¹⁵

[129] These matters have led us to determine a uniform percentage increase. We now turn to the quantum of the increase.

[130] In our view awarding an increase of the magnitude proposed by the ACTU (and ACBC and the Victorian Government) in the present economic circumstances, would pose a real risk of disemployment and of adversely affecting the employment opportunities of low-skilled and young workers.

[131] We acknowledge that any increase we award which is less than increases in prices and living costs would amount to a real wage cut. Such an outcome would mean that many award-reliant employees, particularly low-paid employees, would be less able to meet their needs. For some households such an outcome would lead to further disadvantage and may place them at greater risk of moving into poverty.

[132] The main measures of inflation are the CPI and underlying inflation. There are 2 measures of underlying inflation—the trimmed mean and weighted median. Underlying inflation is calculated to remove volatility in the quarterly price changes in the CPI due to large, irregular price movements to determine the underlying trend.

[133] The outbreak of COVID-19 and the related containment measures are likely to reduce inflation in the near term.¹¹⁶

¹¹⁴ Wilkins & Zilio (2020), p. 14, Table 7; [2019] FWCFB at [397].

¹¹⁵ [2013] FWCFB 4000 at [77].

¹¹⁶ RBA (2020), *Statement on Monetary Policy*, May, p. 77.

[134] The RBA only publishes forecasts for the CPI and the trimmed mean. The outcomes and forecasts for these indicators are presented in the *Statistical Report—Annual Wage Review 2019–20* (Statistical report).¹¹⁷ As updated forecasts are yet to be released by the Commonwealth Treasury, the only official forecasts available are from the RBA, which are set out in Table 1.3.

Table 1.3: RBA forecasts for inflation, year ended

Indicator	Dec 2019 (%)	Jun 2020 (%)	Dec 2020 (%)	Jun 2021 (%)	Dec 2021 (%)	Jun 2022 (%)
CPI	1.8	–1	¼	2¾	1¼	1½
Trimmed mean	1.6	1½	1¼	1¼	1¼	1½

Source: Statistical report (version 13), 17 June 2020, Table 14.4; RBA (2020), *Statement on Monetary Policy*, May, p. 89, Table 6.1.

[135] The CPI is forecast to increase by only ¼ per cent over the year to the December quarter 2020 before increasing to 2¾ per cent over the year to the June quarter 2021. The trimmed mean is expected to increase by 1½ per cent over the year to the June quarter 2020. It is forecast to then fall to 1¼ per cent in the second half of 2020 and in 2021.

[136] Because of the uncertainty around forecasts, the RBA has produced 3 sets of scenarios. Table 1.3 reflects the RBA’s ‘baseline scenario’. The RBA’s second scenario envisages a faster recovery, in which it is anticipated that ‘the stronger recovery would be consistent with a faster pick up in inflation over the next few years, albeit from a low starting point’.¹¹⁸ In the third scenario, a slower recovery, the RBA expects that inflation would remain low for longer.¹¹⁹

[137] A related but conceptually different measure for assessing price changes is the ABS Living Cost Index (LCI). The LCI is used to assess changes over time in the purchasing power of the after-tax incomes of households. It is therefore concerned with measuring the impact of changes in prices on the out-of-pocket expenses incurred by households to gain access to consumer goods and services.¹²⁰ While this is derived for a number of different household types, we focus on that for employee households (i.e. whose principal source of income is from wages and salaries).

[138] The latest outcomes for each indicator are presented in Table 1.4. The highest increase in the March quarter 2020 was in the trimmed mean and weighted median, however, the CPI increased by more over the year. The outcome for the LCI for employee households was lower than the CPI and measures of underlying inflation in the March quarter 2020 and over the year.

Table 1.4: Quarterly and annual changes in measures of prices and living costs, March quarter 2020

¹¹⁷ Statistical report (version 13), 17 June 2020, Chart 4.1, Table 14.4.

¹¹⁸ RBA (2020), *Statement on Monetary Policy*, May, p. 93.

¹¹⁹ *Ibid* at p. 94.

¹²⁰ ABS, *Selected Living Cost Indexes, Australia, Mar 2020*, Catalogue No. 6467.0.

Indicator	Quarterly (%)	Annual (%)
CPI	0.3	2.2
Trimmed mean	0.5	1.8
Weighted median	0.5	1.7
LCI (employees)	0.1	1.1

Source: ABS, *Consumer Price Index, Australia, March 2020*, Catalogue No. 6401.0; ABS, *Selected Living Cost Indexes, Australia, March 2020*, Catalogue No. 6467.0.

[139] We have decided to award a substantially lower increase this year than that awarded last year due to the marked change in the economic environment and the tax-transfer system and other changes which have taken effect in the current Review period which have benefitted low-paid households. The increases we have awarded are likely to maintain the real value of the wages of NMW and award-reliant employees.

[140] The factors we are required to take into account have led us to award an increase of 1.75 per cent. The NMW will be \$753.80 per week or \$19.84 per hour. The hourly rate has been calculated by dividing the weekly rate by 38, on the basis of the 38-hour week for a full-time employee. This constitutes an increase of \$13.00 per week to the weekly rate or 35 cents per hour to the hourly rate.

[141] The proposed NMW and the relevant statutory considerations have led us to increase modern award minimum wages by 1.75 per cent.

[142] We now turn to consider the timing of these adjustments.

[143] ACCI argues that if we were to award an increase in minimum rates (contrary to its arguments) then '[e]mployers would want to see as common an approach to the NMW and award rates as possible, and ideally the same increases from the same dates.'¹²¹ In short, ACCI submitted that 'synchronisation is important'.¹²² In support of its position, ACCI asserts that:

- i. There is a substantial risk of confusion and non-compliance if the system sets a different NMW increase and award wage increase, and they are not synchronised in their commencements. This is a recipe for non-compliance, overpayment and underpayment.
- ii. This may not be consistent with s.134(1)(g) and the need for an easy to understand safety net.'¹²³

[144] In our view ACCI's concern for synchronisation is overstated. Clearly, the Act displays a preference for consistent dates of effect of variation determinations and NMW

¹²¹ ACCI supplementary submission, 29 May 2020 at para. 35.

¹²² Ibid at para. 34.

¹²³ Ibid at para. 35.

orders,¹²⁴ with these determinations and orders generally to take effect in relation to a particular employee at the start of the employee's first full pay period that starts on or after 1 July in the next financial year.

[145] However, the consistency is subject to the Commission being satisfied that there are exceptional circumstances justifying a later day of operation or effect for one or more variation determinations, an adjustment of the NMW, or adjustments of one or more special NMWs. That said, as the Panel has observed in previous Reviews, a party seeking exemption from or deferral of an increase on the basis of exceptional circumstances must make out a strong case.

[146] We acknowledge that consistency in the quantum and timing of changes to modern award minimum wages, the NMW and special NMWs may be said to make for a safety net that was in some sense easier to understand overall, but it could not be the case that any departure from consistency made so as to accommodate exceptional circumstances would be inconsistent with s.134(1)(g). Obviously, the potential for additional complexity to result from the Commission accepting that exceptional circumstances had been made out, would depend upon the particular circumstances, including the scope of the situation giving rise to the exceptional circumstances and the relief sought. Whether a particular employer would face any additional complexity in practice, would in turn depend upon whether or in what ways the relief granted by the Commission affects that employer and the systems the employer has in place to keep itself informed of and to implement the outcomes of Reviews.

[147] In our view very few employers would face additional complexity arising from different operative dates for the NMW order and any variations to modern award minimum wages because very few employees are covered by (and paid at the rates specified in) the NMW order. This is particularly so as a consequence of the variation to the coverage of the *Miscellaneous Award 2020*, effective from 1 July 2020.¹²⁵

[148] While ACCI does not advocate a deferred date of operation, if contrary to its 'primary approach' of no increase, the Panel decided to award an increase in minimum wages, then it submits the increase should not take effect until 1 January 2021.¹²⁶ ACCI also considers that s.286(2):

'... does not preclude a finding that a crisis or exceptional circumstances are of such far reaching breadth that all industries and all workplaces are impacted, or that the differential nature of the impact is so minor and isolated that it cannot usefully be differentiated ...

There must be some scope to assess 'exceptional circumstances' in the broad without the proof points and particularisation charted in the preceding decisions. There must at some point be a scale of disaster or challenge that is of such magnitude that particularisation and local evidence is not required.'¹²⁷

¹²⁴ [2012] FWAFB 5000 [261].

¹²⁵ [2020] FWCFB 1589.

¹²⁶ ACCI supplementary submission, 29 May 2020 at para. 35.

¹²⁷ ACCI supplementary submission, 29 May 2020 at paras 47–49.

[149] Ai Group takes a similar position and submits that ‘[g]iven the obvious “exceptional circumstances” that exist at the current time’, ‘the Expert Panel should not award a minimum wage increase in this year’s Review’, but ‘[i]f, despite Ai Group’s submissions, the Expert Panel decides to award a minimum wage increase, the increase should not be operative before 1 January 2021 (emphasis added)’.¹²⁸ Further, in Ai Group’s view:

‘Given the widespread negative impacts of the Pandemic on businesses in all industry sectors, it is not appropriate for the Expert Panel to award a different level of increase to businesses that are, or are not, eligible for the Jobkeeper Scheme, or businesses in different sectors.’¹²⁹

[150] In short, if an increase is awarded then ACCI submits it should not be operative before 1 January 2021; whereas Ai Group submits (in essence) that it should operate after 1 January 2021.

[151] ARA also does not support an increase to minimum wages, but submits that if the Panel determines an increase should occur, it should be delayed for retail businesses until 1 February 2021.¹³⁰

[152] While proposing a 4 per cent increase the ACBC accepts that:

‘the current restrictions on movement and opening of most businesses constitutes an “exceptional circumstance” ... Accordingly, the ACBC would not oppose a deferred implementation date of any increases to the National Minimum Wage until a period later in the year, to accommodate the lifting of restrictions.’¹³¹

[153] During the course of the final consultations on 10 June 2020 counsel for the ACBC clarified the submission put. The ACBC does not oppose the deferred implementation of the NMW order and any increases in modern award minimum wages until ‘later in the year’.¹³²

[154] The ACTU opposes any deferral and contends that the ‘exceptional circumstances’ which would create the basis for the deferral of an increase in any minimum wage contained in a NMW order or a determination to vary modern award minimum wages, have not been made out.¹³³

[155] As mentioned earlier, the impact of the COVID-19 pandemic has not been consistent across all sectors of the economy. As shown in Charts 1.4 and 1.5, while some industries have been substantially affected, other sectors have been affected to a much lower extent. In our

¹²⁸ Ai Group supplementary submission, 29 May 2020 at p. 3.

¹²⁹ Ibid.

¹³⁰ ARA response to supplementary questions on notice, 29 May 2020, pp. 1–2. [On p. 2 it says ‘mid-2021’, so we have taken that as what was intended earlier].

¹³¹ ACBC response to supplementary questions on notice, 29 May 2020 at para. 17.

¹³² Transcript 10 June 2020 at [109]–[112].

¹³³ ACTU response to supplementary submission, 5 June 2020, at para. 49.

view these data do not support a general deferral of the type advocated by ACCI and Ai Group. In this regard it is important to note the terms of s.286(2):

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

Note: This may mean that the FWC needs to make more than one determination, if different circumstances apply to different employees.’ (emphasis added).

[156] In our view the data showing the differential impact of the pandemic on particular industry sectors and the import of s.286(2) of the Act warrants a more nuanced approach than that advocated by ACCI and Ai Group.

[157] We turn first to the NMW order. As mentioned earlier, the case for synchronisation with the implementation of any increases in modern award minimum wages is overstated. In any event we have decided to defer the determination in respect of some modern awards so the opportunity for synchronisation does not arise.

[158] It is also relevant to observe that, as mentioned earlier, very few employees have their wage set by the NMW order and there are no data as to the industries in which they work. The NMW order only applies to ‘award/agreement free employees’ (see s.294). Section 12 defines an award/agreement free employee to mean ‘a national system employee to whom neither a modern award nor an enterprise agreement applies’. Recent amendments to the coverage of the *Miscellaneous Award 2020* mean that there are very few (if any) employees whose wage rate is set at the NMW by the NMW order.

[159] We are not satisfied that there are ‘exceptional circumstances’ such as to justify the adjustments set by a NMW order taking effect on a day later than 1 July 2020. The NMW order will come into operation on 1 July 2020.

[160] We now turn to the date of operation of the determinations varying modern award minimum wages.

[161] For the reasons set out below we have decided to determine different operative dates for different groups of modern awards, as follows:

Award Group	Operative Date
Group 1 Awards	1 July 2020
Group 2 Awards	1 November 2020
Group 3 Awards	1 February 2021

[162] The modern awards in Group 1 cover industries which have been less affected by the pandemic than those covered in Groups 2 and 3, and includes modern awards applying to ‘frontline’ health workers, teachers and childcare workers and employees engaged in other essential services, who have continued working throughout the pandemic, to keep the community safe; to protect the vulnerable and those at risk; and to keep the economy functioning. The variation determinations in respect of these awards will come into operation

on 1 July 2020. We estimate that about 25 per cent of non-managerial award-reliant employees are covered by the modern awards in Group 1.¹³⁴

[163] The modern awards in Group 2 cover industry sectors adversely impacted by the pandemic, but not to the same extent as the sectors covered by the Group 3 awards. These are the awards in the central cluster. We are satisfied that there are exceptional circumstances justifying the variation determinations in respect of these modern awards coming into operation on 1 November 2020. We estimate that about 40 per cent of non-managerial award-reliant employees are covered by the modern awards in Group 2.¹³⁵

[164] The modern awards in Group 3 cover the industry sectors which have been most adversely affected by the pandemic. These are the modern awards that mostly apply to employers and employees that operate within industries located in the upper cluster. We are satisfied that there are exceptional circumstances justifying the variation determinations in respect of these modern awards coming into operation on 1 February 2021. We estimate that just over one third of non-managerial award-reliant employees are covered by the modern awards in Group 3.¹³⁶

[165] In reviewing modern award minimum wages we are also required to review the minimum wages in modern enterprise awards and state reference public sector awards.¹³⁷ We have allocated the modern enterprise awards and state reference public sector awards to the modern award groups based on their alignment with the modern awards in the 3 groups. The full list of awards in each grouping is set out in Chapter 7.

[166] The categorisation of modern awards into the 3 groupings set out above is based on the data set out earlier; the restrictions imposed to contain the COVID-19 virus (set out in detail in Appendix 1); and the submissions. We acknowledge the limitations of the data and accept that the categorisation is imperfect. But on the information available we are satisfied that the operative dates we have determined are justified.

The Group 1 Awards

[167] Earlier we categorised the following modern awards as being in the ‘lower cluster’, consisting of industries and sectors less affected by the pandemic and those covering frontline workers and other essential services:

- *Aboriginal Community Controlled Health Services Award 2020*;
- *Aged Care Award 2010*;
- *Ambulance and Patient Transport Industry Award 2020*;
- *Banking, Finance and Insurance Award 2020*;

¹³⁴ See ABS, *Employee Earnings and Hours, Australia, May 2018*, Catalogue No. 6306.0.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ See Schedules 6 (at Item 17) and 6A (at Item 20) of the *Fair Work (Transitional Provisions and Consequential Amendments Act) 2009*.

- *Cemetery Industry Award 2020*;
- *Children’s Services Award 2010*;
- *Cleaning Services Award 2020*;
- *Corrections and Detention (Private Sector) Award 2020*;
- *Educational Services (Schools) General Staff Award 2020*;
- *Educational Services (Teachers) Award 2010*;
- *Electrical Power Industry Award 2020*;
- *Fire Fighting Industry Award 2020*;
- *Funeral Industry Award 2010*;
- *Gas Industry Award 2020*;
- *Health Professionals and Support Services Award 2020*;
- *Medical Practitioners Award 2020*;
- *Nurses Award 2010*;
- *Pharmacy Industry Award 2020*;
- *Social, Community, Home Care and Disability Services Industry Award 2010*;
- *State Government Agencies Award 2020*; and
- *Water Industry Award 2020*.

[168] As we have mentioned, these modern awards include those awards which frontline health care and social assistance workers, teachers and childcare workers and employees engaged in other essential services, who have continued working during the pandemic, to keep the community safe; to protect the vulnerable and those at most risk; and to keep the economy functioning.

[169] Some of these modern awards cover significant numbers of low-paid female employees. For example, the *Aged Care Award 2010* covers over 240 000 workers,¹³⁸ who are predominantly female (around 85 per cent), award reliant and low paid.¹³⁹

[170] We also note that in response to COVID-19 the Australian Government has provided significant financial support to NDIS providers (covered by the *Social, Community, Home Care and Disability Services Industry Award 2010*) and to the Aged Cared Sector (covered by the *Aged Care Award 2010*). The Commonwealth has provided the following additional support specifically for NDIS providers:

- Facilitating a one-off advance payment, totalling \$666.1 million to more than 5,000 registered NDIS providers to support them with immediate cash flow to retain their staff and deliver supports to participants.

¹³⁸ Fair Work Commission (2020), *Information note—Health industry Awards*, Health sector awards – pandemic leave, 9 April.

¹³⁹ [2019] FWCFB 5078 at [29].

- Applying a 10 per cent increase to NDIS provider price limits for support items such as assistance with social and community participation and improved daily living skills at an estimated cost of \$512 million over 6 months.
- Access to Personal Protective Equipment (PPE) through the National Medical Stockpile, including an allocation of more than 500,00 [stet] masks, for disability providers and self-managing participants where essential services require close physical contact and there is heightened risk of Covid-19 infection.
- New Supported Independent Living (SIL) support items for cleaning services and higher intensity support. If a participant is diagnosed with COVID-19, SIL providers will be able to claim:
 - \$300 for a one-off professional deep clean of a residence; and
 - up to \$1200 per day for higher intensity support including staffing increase, PPE, professional laundering and any ancillary costs directly related to the participant's diagnosis.

Providers can continue to claim usual SIL costs while a participant diagnosed with COVID-19 is in hospital or isolated in alternative accommodation. Alternative accommodation will also be claimable through the short term accommodation support item.¹⁴⁰

[171] In relation to the aged care sector the Minister for Aged Care and Senior Australians announced a ‘funding boost of \$101.2 million’ on [11 March 2020](#) and additional funding of \$444.6 million was announced on [20 March 2020](#).¹⁴¹

[172] We are not satisfied that there are exceptional circumstances justifying the variation determinations in respect of these modern awards coming into operation on a day later than 1 July 2020. The variation determinations in respect of these awards will come into operation on 1 July 2020. In accordance with s.286(5) the increases we have determined will take effect, in relation to particular employees, from the start of the employee’s first full pay period that starts on or after 1 July 2020.

[173] In determining the operative date in respect of these modern awards we have considered, and rejected, Ai Group’s initial proposal for a 15 July 2020 operative date.

[174] As mentioned earlier, the timetable for the conduct of the Review was adjusted to provide parties with an opportunity to comment on the March Quarter National Accounts data. In advancing a submission in support of the adjusted timetable Ai Group also sought a delayed operative date, in respect of any increase awarded by the Panel:

¹⁴⁰ [Correspondence](#) from the Hon Stuart Robert MP, Minister for the National Disability Insurance Scheme published in relation to matter number AM2020/18.

¹⁴¹ Colbeck R (2020), *Funding boost for aged care set to strengthen defence against COVID-19*, Media release, 11 March; Colbeck R (2020), *Measures to support Senior Australians and those who care for them*, Media release, 20 March.

‘A 15 July 2020 operative date will enable the Commission to hand down the *Annual Wage Review 2019-20 Decision* in mid-June and enable the Commission to make the *National Minimum Wage Order 2020* and the determinations varying each modern award by 30 June 2020.

A 15 July 2020 operative date will also provide sufficient time for employers and employees to be notified of the new wage rates and allowances before they come into operation. There are substantial direct and administrative costs associated with back-paying wage and allowance increases.’¹⁴²

[175] We appreciate that Ai Group has since revised its position and now proposes that we award no increase in minimum wages; or, in the event we decide to award an increase, that the increase not operate before 1 January 2021.¹⁴³ However, for completeness, we propose to deal with Ai Group’s submission advanced in support of a 15 July 2020 operative date.

[176] The ACTU opposed Ai Group’s proposal, on the following basis:

‘... to the extent that the Ai Group’s submission seeks to meet the “exceptional circumstances” threshold by reference to allowing employers sufficient time to administratively prepare to implement the minimum wage and modern award minimum wages determined by the Panel (which appears to be the position put on page 32 of the initial submission), it is misconceived. The Panel has been required to consider “exceptional circumstances” numerous times and it has never held that the occasioning of such inconvenience could satisfy that threshold...the Panel has consistently required a strong, targeted case to be made, the Ai Group submission merely asserts that the matter speaks for itself: “if exceptional circumstances are not held to exist this year, it is hard to see what circumstances would be sufficient to convince the Panel that such circumstances exist”.

What does speak for itself is that it simply cannot be the case that the lateness of the Panel’s decision can constitute an “exceptional circumstance” which determines its outcome. Exceptional circumstances, as explained in the Panel’s decisions to date¹⁰, provide a basis for *differential* treatment between identified classes of employers (and their employees) affected by modern award minimum wages or minimum wages in national minimum wage orders. To seek to use the “exceptional circumstances” provision as means to bring about consistency of treatment for all of those disparate (but unidentified) classes, as the Ai Group does, is antithetical to the very notion of exceptional.’¹⁴⁴

[177] We agree with the ACTU. The only substantive argument in support of Ai Group’s contention that exceptional circumstances warrant a 15 July 2020 operative date is that it would ‘provide sufficient time for employers and employees to be notified of the new wage rates and allowances before they come into operation’. In our view the argument advanced

¹⁴² Ai Group submission, 13 March 2020 at p. 32.

¹⁴³ Ai Group supplementary submission, 29 May 2020 at pp. 3; 11.

¹⁴⁴ ACTU submission re timetable variation, 1 April 2020 at paras 12–13.

does not justify a finding of ‘exceptional circumstances’ within the meaning of s.286(2) or s.287 of the Act.

The Group 2 Awards

[178] We now turn to the modern awards which are mapped to the industries identified in the central cluster in Charts 1.4 and 1.5, which do not fall within Groups 1 and 3. The modern awards in this grouping are:

- *Aluminium Industry Award 2020*;
- *Animal Care and Veterinary Services Award 2020*;
- *Aquaculture Industry Award 2020*;
- *Architects Award 2020*;
- *Asphalt Industry Award 2020*;
- *Australian Government Industry Award 2016*;
- *Black Coal Mining Industry Award 2010*;
- *Book Industry Award 2020*;
- *Broadcasting, Recorded Entertainment and Cinemas Award 2010*;¹⁴⁵
- *Building and Construction General On-site Award 2010*;
- *Business Equipment Award 2020*;
- *Car Parking Award 2020*;
- *Cement, Lime and Quarrying Award 2020*;
- *Clerks—Private Sector Award 2020*;
- *Coal Export Terminals Award 2020*;
- *Concrete Products Award 2020*;
- *Contract Call Centres Award 2020*;
- *Cotton Ginning Award 2020*;
- *Dredging Industry Award 2020*;
- *Educational Services (Post-Secondary Education) Award 2020*;
- *Electrical, Electronic and Communications Contracting Award 2010*;
- *Food, Beverage and Tobacco Manufacturing Award 2010*;
- *Gardening and Landscaping Services Award 2020*;
- *Graphic Arts, Printing and Publishing Award 2010*;
- *Higher Education Industry-Academic Staff-Award 2020*;

¹⁴⁵ This award is mapped to the Information media and telecommunications industry and on that basis aligns with other awards in the ‘central cluster’ such as the *Electrical, Electronic and Communications Contracting Award 2010* and the *Journalists Published Media Award 2020*.

- *Higher Education Industry-General Staff-Award 2020;*
- *Horticulture Award 2010;*
- *Hydrocarbons Field Geologists Award 2020;*
- *Hydrocarbons Industry (Upstream) Award 2020;*
- *Joinery and Building Trades Award 2010;*
- *Journalists Published Media Award 2020;*
- *Labour Market Assistance Industry Award 2020;*
- *Legal Services Award 2020;*
- *Local Government Industry Award 2020;*
- *Manufacturing and Associated Industries and Occupations Award 2020;*
- *Marine Towage Award 2020;*
- *Maritime Offshore Oil and Gas Award 2020;*
- *Market and Social Research Award 2020;*
- *Meat Industry Award 2020;*
- *Mining Industry Award 2020;*
- *Miscellaneous Award 2020;*
- *Mobile Crane Hiring Award 2010;*
- *Oil Refining and Manufacturing Award 2020;*
- *Passenger Vehicle Transportation Award 2020;*
- *Pastoral Award 2010;*
- *Pest Control Industry Award 2020;*
- *Pharmaceutical Industry Award 2010;*
- *Plumbing and Fire Sprinklers Award 2010;*
- *Port Authorities Award 2020;*
- *Ports, Harbours and Enclosed Water Vessels Award 2020;*
- *Poultry Processing Award 2020;*
- *Premixed Concrete Award 2020;*
- *Professional Diving Industry (Industrial) Award 2020;*
- *Professional Employees Award 2020;*
- *Rail Industry Award 2020;*
- *Real Estate Industry Award 2020;*
- *Road Transport (Long Distance Operations) Award 2020;*
- *Road Transport and Distribution Award 2020;*
- *Salt Industry Award 2010;*
- *Seafood Processing Award 2020;*

- *Seagoing Industry Award 2020*;
- *Security Services Industry Award 2020*;
- *Silviculture Award 2020*;
- *Stevedoring Industry Award 2020*;
- *Storage Services and Wholesale Award 2020*;
- *Sugar Industry Award 2020*;
- *Supported Employment Services Award 2020*;
- *Surveying Award 2020*;
- *Telecommunications Services Award 2010*;
- *Textile, Clothing, Footwear and Associated Industries Award 2010*;
- *Timber Industry Award 2010*;
- *Transport (Cash in Transit) Award 2020*;
- *Waste Management Award 2020*; and
- *Wool Storage, Sampling and Testing Award 2010*.

[179] We are satisfied that there are exceptional circumstances justifying the variation determinations in respect of these awards coming into operation on 1 November 2020. In accordance with s.286(5) the increases we have determined will take effect, in relation to particular employees, from the start of the employee's first full pay period that starts on or after 1 November 2020.

The Group 3 Awards

[180] We now turn to the industry sectors which have been most adversely affected by the pandemic (the industries in the 'upper cluster'). Earlier we identified the following modern awards as corresponding to the most adversely affected industries:

- *Amusement, Events and Recreation Award 2020*;
- *Alpine Resorts Award 2020*;
- *Fast Food Industry Award 2010*;
- *Fitness Industry Award 2010*;
- *Horse and Greyhound Training Award 2020*;
- *Hospitality Industry (General) Award 2020*;
- *Live Performance Award 2010*;
- *Racing Clubs Events Award 2010*;
- *Racing Industry Ground Maintenance Award 2020*;
- *Restaurant Industry Award 2020*;
- *Registered and Licensed Clubs Award 2010*.
- *Sporting Organisations Award 2020*; and

- *Travelling Shows Award 2020*; and
- *Wine Industry Award 2010*.

[181] We have also said that there is a compelling case for including the aviation and tourism related awards in the ‘most adversely affected’ cluster and have also indicated that there is a case for including the following Retail awards:

- *Commercial Sales Award 2020*;
- *Dry Cleaning and Laundry Industry Award 2020*;
- *General Retail Industry Award 2010*;
- *Hair and Beauty Industry Award 2010*;
- *Mannequins and Models Award 2020*;
- *Nursery Award 2020*; and
- *Vehicle Repair, Services and Retail Award 2020*.

[182] In its supplementary submission, the SDA submits:

‘Segments of the retail industry (eg supermarkets) dealt with increased work intensity during the COVID-19 pandemic and a failure to hand down an AWR increase would be a failure to recognise these essential workers and every other Australian worker who has contributed or suffered during the pandemic.’¹⁴⁶

[183] The ARA rejects the submission advanced by the SDA, as follows:

‘Maintaining existing minimum wages does not preclude businesses who have been less affected by COVID-19 from passing on wage increases to their employees or from recognising their valued team members through other financial incentives. For example, on 2 June 2020, the Woolworths Group announced that it would be awarding more than 100,000 of its team members in Australia and New Zealand with company shares worth a total \$57 million as a recognition of their hard work during this unprecedented time. Coles also recently awarded 100,000 of its employees with a special one-off bonus up to \$750 to recognise their efforts during the months of March and April when supermarkets were experiencing heightened levels of demand. There are other examples within the industry of retailers paying above award payments however, they have chosen not to make this public.’¹⁴⁷

[184] We acknowledge that parts of the Retail sector have continued to operate, in order to provide essential services to the community. But, there is a diversity of experience in the Retail sector.

¹⁴⁶ SDA supplementary submission, 29 May 2020 at para 8.

¹⁴⁷ ARA response to supplementary submissions, 5 June 2020 at p. 2.

[185] As mentioned earlier, retail turnover rose sharply in March 2020 (by 8.5 per cent), coinciding with the panic buying associated with the implementation of restrictions. But the increase was temporary and retail turnover declined by an unprecedented 17.7 per cent in April 2020. The jobs data show considerable variation within the Retail trade sector. It is apparent that a substantial part of the sector has been adversely affected by the pandemic. We have decided to include the Retail awards set out at [181] in the Group 3 modern awards.

[186] The complete list of modern awards covering employers and employees substantially impacted by the pandemic is as follows:

- *Air Pilots Award 2020;*
- *Aircraft Cabin Crew Award 2020;*
- *Airline Operations-Ground Staff award 2020;*
- *Airport Employees Award 2020;*
- *Alpine Resorts Award 2020;*
- *Amusement, Events and Recreation Award 2020;*
- *Commercial Sales Award 2020;*
- *Dry Cleaning and Laundry Industry Award 2020;*
- *Fast Food Industry Award 2010;*
- *Fitness Industry Award 2010;*
- *General Retail Industry Award 2010;*
- *Hair and Beauty Industry Award 2010;*
- *Horse and Greyhound Training Award 2020;*
- *Hospitality Industry (General) Award 2020;*
- *Live Performance Award 2010;*
- *Mannequins and Models Award 2020*
- *Marine Tourism and Charter Vessels Award 2020;*
- *Nursery Award 2020;*
- *Professional Diving Industry (Recreational) Award 2020;*
- *Racing Clubs Events Award 2010;*
- *Racing Industry Ground Maintenance Award 2020;*
- *Registered and Licensed Clubs Award 2010;*
- *Restaurant Industry Award 2020;*
- *Sporting Organisations Award 2020;*
- *Travelling Shows Award 2020;* and
- *Vehicle Repair, Services and Retail Award 2020.*

[187] We are satisfied that there are exceptional circumstances justifying the variation determinations in respect of these modern awards coming into operation on 1 February 2021. In accordance with s.286(5) the increases we have determined will take effect, in relation to particular employees, from the start of the employee's first full pay period that starts on or after 1 February 2021.

Concluding Remarks

[188] The prevailing economic circumstances and the uncertainty surrounding the pathway out of recession have led us to adopt a cautious approach to both the quantum and the timing of an adjustment to the NMW and modern award minimum wages.

[189] As mentioned earlier, we accept that in relation to the timing of the increase we have awarded, the categorisation of awards into 3 groups is imperfect. There will be some employers covered by the awards in Group 1 who have been substantially impacted by the pandemic; just as there will be employers covered by the awards in Group 3 that have been impacted to a lesser extent than other businesses in that group. The approach we have taken seeks to aggregate the experiences of all employers covered by a particular award. Despite these limitations we are satisfied that the increases and operative dates we have determined are justified, consistent with the statutory framework and strike an appropriate balance between the interests of employers and employees.

[190] For completeness we note that we invited parties to consider whether participation in the JobKeeper Scheme would serve as a means of identifying employers and employees for whom a deferral of an increase in modern award minimum wages may be justified by exceptional circumstances. We discuss this issue in more detail in Chapter 2. Suffice to say that no party supported such an approach, for various reasons. In these circumstances we have decided not to provide for an exemption or deferral based on the JobKeeper Scheme.

[191] We also acknowledge that the provision of an individualised incapacity to pay mechanism would provide a more targeted means of dealing with some of these issues. But, as we explain in Chapter 2, our powers are limited and we cannot provide such a mechanism. The Panel has drawn attention to this deficiency in the statutory framework in numerous past Review decisions. This is an issue for the Parliament.¹⁴⁸

[192] Finally, we also acknowledge that the different operative dates we have determined for the 3 award clusters may have implications for the timing of any variation in modern award minimum wages in the 2020–21 Review.

¹⁴⁸ See [2012] FWA FB 5000 at [34]–[35]; [2013] FWCFB 4000 at [96]–[98]; [2015] FWCFB 3500 at [115]–[116] and [2016] FWCFB 3500 at [139].

2. The Legislative Framework

[193] The Panel must make a NMW order and may set, vary or revoke modern award minimum wages. The NMW order applies to award/agreement free employees¹⁴⁹ and modern award minimum wages are the minimum wages contained in modern awards.¹⁵⁰

[194] The Panel is required to conduct each Review within the legislative framework of the Act, particularly the object of the Act in s.3, the modern awards objective in s.134(1) and the minimum wages objective in s.284(1).

[195] The review and variation of modern award minimum wages is a separate, though related, function to the review and making of the NMW order. In exercising powers to set, vary or revoke modern award minimum wages, we ‘must take into account the rate of the national minimum wage that [we propose] to set in the Review.’¹⁵¹ Therefore, as part of our decision-making process, we first form a view about the rate of the NMW we propose to set, and then take that proposed NMW rate into account (along with the other relevant statutory considerations) in exercising our powers to set, vary or revoke modern award minimum wage rates.¹⁵²

[196] As part of the Review, we consider both the setting of the NMW rate and whether to make any determinations to set, vary or revoke modern award minimum wages. These tasks are undertaken by reference to the particular statutory criteria applicable to each function.

[197] The Act sets out some important procedural fairness requirements for the Review. The Panel must ensure that all persons and bodies (referred to collectively as parties) are given a reasonable opportunity to make and reply to written submissions (s.289(1)) for consideration in the Review.

[198] In this Review, adjustments were made to the initial timetable to provide parties an opportunity to comment on a rapidly changing environment and any relevant economic data as it emerged, in response to the COVID-19 pandemic.¹⁵³

[199] As outlined in the Statement issued on 6 April 2020 (the *April Statement*), there was a broad consensus that the Panel should take into account the March Quarter National Accounts data released on 3 June 2020 and that interested parties be afforded a reasonable opportunity to make submissions about how the March Quarter National Accounts should be taken into

¹⁴⁹ The NMW order sets both the NMW and special NMWs for employees who are juniors, to whom training arrangements apply, or who have disabilities; and applies to award/agreement free employees. The NMW order additionally sets the casual loading for award/agreement free employees. An award/agreement free employee cannot be paid less than the rate of pay specified in the NMW order (see ss 294–299 of the Act). Further, if an enterprise agreement applies to an employee and the employee is not covered by a modern award, then the employee’s base rate of pay under the enterprise agreement must not be less than the rate specified in the NMW order (s.206(3) of the Act).

¹⁵⁰ Including classification rates; wage rates for junior employees, employees to whom training arrangements apply and employees with a disability; casual loadings and piece rates.

¹⁵¹ *Fair Work Act 2009* (Cth), s.285(3).

¹⁵² See [\[2015\] FWCFB 3500](#) at [87]; [\[2016\] FWCFB 3500](#) at [5]; [\[2017\] FWCFB 3500](#) at [108]; [\[2018\] FWCFB 3500](#) at [43]; [\[2019\] FWCFB 3500](#) at [28].

¹⁵³ [\[2020\] FWC 1544](#) at [4].

account. It was also generally agreed that a day of final consultations would be scheduled following the release of these data to allow parties to make short oral submissions and address any further questions from the Panel.¹⁵⁴

[200] The ACTU¹⁵⁵ proposed that the Panel's decision be handed down on or before 19 June, while ACCI submitted that 'it remains important ... that there be a due period of notice prior to the commencement of any increase.'¹⁵⁶

[201] The timetable for the Review and all of the submissions, transcripts, research reports, and some additional material were published on the Commission's website to ensure that all parties had a reasonable opportunity to participate. The Panel considered all the material received from parties, the information in the Statistical Report and the research referred to in the Research reference list in making its decision.

[202] The *April Statement* discussed the statutory constraints regarding the conduct of annual wage reviews. In particular, section 285(1) provides that the Panel 'must conduct and complete an annual wage review in each financial year'. It follows that 30 June 2020 provides the outer limit for the completion of the 2019–20 Review.

[203] The statutory time constraints were well understood by the parties. As the Australian Government put it, 'the Government acknowledges the challenges presented to the Fair Work Commission by the statutory requirement that the Annual Wage Review 2019–20 be completed by 30 June 2020.'¹⁵⁷ We return to these statutory constraints shortly.

Relevant considerations

[204] The minimum wages objective applies to the exercise of functions and powers under Part 2–6 of the Act (which includes the Review).¹⁵⁸ The modern awards objective applies to the performance or exercise of the Commission's 'modern award powers'¹⁵⁹ (which are defined to include the variation of modern award minimum wages as part of the Review).¹⁶⁰ Further, s.578(a) of the Act provides that the Panel must take into account the objects of the Act in performing its functions or exercising its powers in a Review.

[205] There is a substantial degree of overlap in the considerations we are required to take into account under the minimum wages objective and the modern awards objective, though some of these considerations are not expressed in the same terms.¹⁶¹ Both the minimum wages objective and the modern awards objective require the Panel to take into account:

¹⁵⁴ [2020] FWCFB 1804 at [11].

¹⁵⁵ ACTU submission re timetable variation, 1 April 2020 at paras 10, 16.

¹⁵⁶ ACCI submission re timetable variation, 1 April 2020 at p. 2.

¹⁵⁷ Australian Government submission re timetable variation, 1 April 2020 at para. 1.

¹⁵⁸ *Fair Work Act 2009* (Cth), s.284(2)(a).

¹⁵⁹ *Ibid* at s.134(2)(a).

¹⁶⁰ *Ibid* at s.134(2)(b).

¹⁶¹ See [2015] FWCFB 3500 at [88]–[91].

- promoting social inclusion through increased workforce participation;¹⁶²
- relative living standards and the needs of the low paid;¹⁶³
- the principle of equal remuneration for work of equal or comparable value;¹⁶⁴ and
- various economic considerations.¹⁶⁵

[206] In giving effect to the modern awards objective, we must take into account ‘the need to encourage collective bargaining’ (s.134(1)(b)).

[207] In making the NMW order, the Panel must give effect to the minimum wages objective. While the minimum wages objective does not refer to ‘the need to encourage collective bargaining,’ the object of the Act in s.3 is to be met through an ‘emphasis on enterprise-level collective bargaining’,¹⁶⁶ and it is appropriate to consider that legislative purpose in making the NMW order.

[208] The statutory tasks in ss 134 and 284 involve an ‘evaluative exercise’ which is informed by the considerations in s.134(1)(a)–(h) and s.284(1)(a)–(e). These statutory considerations inform the evaluation of what might constitute ‘a *fair* and relevant minimum safety net of terms and conditions’ and ‘a safety net of *fair* minimum wages’. Last year, we reaffirmed our view¹⁶⁷ that ‘fairness’ in the context of the modern awards objective and the minimum wages objective includes the perspective of employees and employers,¹⁶⁸ and that the Act requires the Panel to take into account *all* of the relevant statutory considerations.¹⁶⁹

[209] The considerations in s 134(1)(a)-(h) and s 284(a)-(e) do not necessarily exhaust the matters which the Panel might properly consider to be relevant. The range of such matters ‘must be determined by implication from the subject-matter, scope and purpose’ of the Act.¹⁷⁰

[210] As we have mentioned, there is a degree of overlap between the various considerations which the Panel must take into account¹⁷¹ and, as noted in previous Review decisions, no particular primacy is attached to any of these considerations.¹⁷² A degree of tension exists between some of these considerations.¹⁷³ For example, the extent to which minimum wage

¹⁶² Fair Work Act at s.284(1)(b) and s.134(1)(c).

¹⁶³ Ibid at s.284(1)(c) and s.134(1)(a).

¹⁶⁴ Ibid at s.284(1)(d) and s.134(1)(e).

¹⁶⁵ Ibid at s.284(1)(a) and s.134(1)(d), (f) and (h).

¹⁶⁶ Ibid at s.3(f).

¹⁶⁷ See [2019] FWCFB 3500 at [10]–[11]; [2018] FWCFB 3500 at [21].

¹⁶⁸ [2019] FWCFB 3500 at [10].

¹⁶⁹ Ibid at [11].

¹⁷⁰ *Minister for Aboriginal Affairs and Another v Peko-Wallsend Limited and Others* (1986) 162 CLR 24 at [39]–[40]; *Penalty Rates Review Decision* [2017] FCAFC 161 at [48].

¹⁷¹ See [2015] FWCFB 3500 at [88]–[91]; [2016] FWCFB 3500 at [116]; [2017] FWCFB 3500 at [115]; [129].

¹⁷² See *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788 at [32]; [2017] FWCFB 3500 at [129].

¹⁷³ [2017] FWCFB 3500 at [129].

increases are able to meet the needs of the low paid may, depending on the magnitude of the increase and the prevailing circumstances, be constrained by the potential impact of such increases on employment. This is particularly relevant in the present context.

What the Panel can and can't do in a Review

[211] Division 3 of Part 2–6 of the Act provides for the Commission, as constituted by the Panel, to conduct annual wage reviews.

[212] Pursuant to s.285(1) the Commission ‘must conduct and complete an annual wage review in each financial year’. Section 285(2) provides that in conducting and completing an annual wage review, the Commission:

- ‘(a) must review:
 - (i) modern award minimum wages; and
 - (ii) the national minimum wage order; and
- (b) may make one or more determinations varying modern awards to set, vary or revoke modern award minimum wages; and
- (c) must make a national minimum wage order.’ [Emphasis added]

[213] The Act has particular provisions relating to the variation of modern awards and the making of the NMW order.

[214] Pursuant to s.286(1) and subject to the Commission finding ‘exceptional circumstances’:

- ‘a determination (a ***variation determination***) varying one or more modern awards to set, vary or revoke modern award minimum wages that is made in an annual wage review comes into operation on 1 July in the next financial year.’ [Emphasis added]

[215] Section 286(2) provides that if the Commission ‘is satisfied that there are exceptional circumstances justifying why a variation determination should not come into operation until a later day’ [emphasis added] the Commission may specify that later day as the day on which the variation determination comes into operation. If the Commission does so, the variation determination comes into operation on that later day (s.286(3)).

[216] Pursuant to s.286(4) the Commission:

- ‘cannot provide for the effect of a variation determination on modern award minimum wages to be deferred to a day that is later than the day on which the determination comes into operation.’

[217] Section 286(5) provides that a variation determination:

- ‘does not take effect in relation to a particular employee until the start of the employee’s first full pay period that starts on or after the day the determination comes into operation.’

[218] Where the Commission makes one or more variation determinations in an annual wage review, s.292 requires the Commission to publish the award wage rates as varied: in the case of wage rates in modern awards other than enterprise awards and state reference public sector modern awards—before 1 July in the next financial year; and in the case of wage rates in modern enterprise awards and state reference public sector modern awards—as soon as practicable.

[219] Section 135 in Part 2–3 of the Act has the effect of prohibiting variation of modern award minimum wages outside an annual wage review, except where justified by work value reasons (under s.157(2)), to remove ambiguity or uncertainty or to correct errors (under s.160), or on referral from the Australian Human Rights Commission (under s.161).

[220] Further, the Commission’s general power under s.603 to vary or revoke a decision or an instrument made pursuant to a decision,¹⁷⁴ cannot be used to vary or revoke an annual wage review decision, or a variation determination or NMW order made in an annual wage review (s.603(3)(d)).

[221] Pursuant to s.287(1), a NMW order:

‘that is made in an annual wage review comes into operation on 1 July in the next financial year (the *year of operation*).’ [Emphasis added]

[222] While a NMW order must come into operation on 1 July in the next financial year, the effect of some or all of its components may be delayed in ‘exceptional circumstances’.¹⁷⁵

[223] Section 287(4) provides that if the Commission ‘is satisfied that there are exceptional circumstances justifying the adjustment taking effect’ ‘on a specified day in the year of operation that is later than 1 July’ (and the adjustment is limited to the particular situation to which the exceptional circumstances relate, in accordance with s.287(4)(b)) then the NMW order may provide that an adjustment of the NMW, casual loading for award/agreement free employees or a special NMW, set by the NMW order takes effect on the specified later day.

[224] Pursuant to s.287(5) a NMW order:

‘takes effect in relation to a particular employee from the start of the employee’s first full pay period that starts on or after 1 July in the year of operation’

or in the case of an adjustment that the NMW order provides is to take effect on a specified later day, the adjustment takes effect from the start of the employee’s first full pay period that starts on or after the specified day.

[225] Section 601(4) requires the Commission to publish a NMW order as soon as practicable after making it.

¹⁷⁴ See s.598(2).

¹⁷⁵ [2014] FWCFB 3500 at [498].

[226] Section 296(3) prohibits variation of a NMW order except to remove ambiguity or uncertainty or to correct error (under s.296(1)) and prohibits revocation of a NMW order.

[227] On 13 May 2020, the Commission published a paper prepared by staff of the Commission (the *Discussion paper*).¹⁷⁶ The purpose of the *Discussion paper* was to promote consideration of the legislative framework governing the timing of the 2019–20 Review and the operation of determinations varying modern awards to vary minimum wages (variation determinations) and of the NMW order.

[228] The *Discussion paper* canvassed some more or less tentative conclusions as to the Commission’s capacity to delay the effect of variation determinations and NMW adjustments, to provide staged or contingent variations of award minimum wages and NMW adjustments, and to provide differential outcomes for different employers and employees in terms of exemptions from or the quantum of variations of modern award minimum wages and NMW adjustments.

[229] On 13 May 2020, the Panel invited interested parties to comment on a set of supplementary questions on notice. These included four questions in respect of the *Discussion paper*, as follows:

1. Are any of the observations at [1] – [57] of the discussion paper contested and, if so, on what basis?
2. Are any of the observations at [58] (‘What the Commission can’t do’) contested and, if so, on what basis?
3. Are any of the observations at [59] (‘What the Commission can do’) contested and, if so, on what basis?
4. As to the mechanism to identify the employers and employees to whom a deferral should apply: (at [59](ii) dot point 4)
 - 4.1 Does the Panel have the power to determine a deferred date of operation in respect of employers that have qualified for the JobKeeper Scheme and have notified the Commissioner of Taxation in accordance with s.6(1)(e) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* that they elect to participate in the JobKeeper scheme?
 - 4.2 What do the parties say about the merit of such a proposal?
 - 4.3 If it is accepted that such a course is open to the Panel, what deferred date of operation is proposed and in respect of which awards?
 - 4.4 In the event that the Panel decided to provide a deferred date of operation of any increase granted, in respect of some or all modern awards, on the basis of participation in the JobKeeper Scheme (as set out in 4.1 above), how should such a term be drafted? We particularly invite the Commonwealth to respond to this question. Parties are asked to submit a draft term to give effect to any such proposal.

¹⁷⁶ Fair Work Commission (2020), *What can and can’t be done in the Annual Wage Review 2019–20*, Discussion Paper, 13 May.

[230] Eight parties lodged responses to one or more of the above questions. These responses are discussed below.

[231] Regarding the timing of this Review, the *Discussion paper* made observations to the effect that:¹⁷⁷

- any variation determinations and a NMW order must be made before the end of the 2019–20 financial year;¹⁷⁸
- a variation determination must come into operation on or after 1 July 2020 and must take effect on or after its date of operation;¹⁷⁹
- the NMW order must come into operation on 1 July 2020 and the elements of it¹⁸⁰ must take effect on or after that date;¹⁸¹ and
- a variation determination and the NMW order cannot be ‘revisited’ either during the 2019–20 financial year or subsequently (other than to remove ambiguity or uncertainty or to correct error).¹⁸²

[232] None of the parties that responded to the supplementary questions contested the above points. Further to the last point, the *Discussion paper* extracted the views of the Panel in the *Annual Wage Review 2011–12* decision that:

‘The current legislative restrictions effectively mean that employers wishing to seek relief from a variation determination are obliged to run their case before the outcome of the Review is known. This creates obvious practical difficulties. It also means that employers who face significant financial adversity as a result of circumstances which arise *after* the Review decision is completed have no means of seeking relief on the basis of economic incapacity ...’¹⁸³

[233] ACCI submitted that if this was the view of the Panel in this Review, then:

‘this strengthens the case for an overall finding that on the balance of considerations under the Act, no increase should be awarded ... If the Panel cannot address incapacity after handing down a decision, it should conclude that it must moderate the decision at the general level as per our position and the statutory considerations.’¹⁸⁴

¹⁷⁷ *Discussion paper* [17]

¹⁷⁸ See *Fair Work Act 2009* (Cth) s.285(1).

¹⁷⁹ See *Fair Work Act 2009* (Cth) s.286

¹⁸⁰ The national minimum wage, special national minimum wages and casual loading for award/agreement free employees

¹⁸¹ See *Fair Work Act 2009* (Cth) s.287.

¹⁸² See *Fair Work Act 2009* (Cth) ss.135, 296 and 603(3)(d)

¹⁸³ [2012] FWAFB 5000 [283], extracted at *Discussion paper* [18].

¹⁸⁴ ACCI supplementary submission, 29 May 2020 at paras 29–30.

[234] Regarding the capacity of the Commission to delay the effect of variation determinations and NMW adjustments, the *Discussion paper* made observations to the effect that, in this Review:¹⁸⁵

- the Commission may make multiple variation determinations that operate from 1 July 2020 or (to the extent justified by exceptional circumstances) from a later date or various later dates (with any such determination taking effect in relation to a particular employee at the start of the employee’s first full pay period that starts on or after the day it comes into operation);¹⁸⁶ and
- the NMW order made by the Commission must operate from 1 July 2020, but (to the extent justified by exceptional circumstances) may provide for the adjustments of its various elements to take effect in relation to some or all employees from a later date or various later dates in the 2020–21 financial year (with each adjustment taking effect in relation to a particular employee at the start of the employee’s first full pay period that starts on or after the day it takes effect).¹⁸⁷

[235] Again, none of the parties that responded to the supplementary questions contested the above points. ACCI concurred with the further observation in the *Discussion paper* to the effect that there is no express limit on how much later than 1 July 2020 the ‘later date’ of operation of a variation determination could be,¹⁸⁸ but ACCI was concerned:

‘... if [the *Discussion paper*] is indicating that the NMW must vary from 1 July, even if award rates could vary later (perhaps 1 January). ... This is confusing. Fundamentally this strengthens an argument for no increase generally, or for as clear a position on minimum wages as possible. ... If however it were possible to have a [NMW order] increase the NMW from some date after 1 July, and variations to award rates at the same time that may have some clarity. However, synchronisation is important.’¹⁸⁹

[236] ACCI appears to have overlooked the technical point that the Act deals differently with the operation and effect of variation determinations and NMW orders respectively. The *Discussion paper* observed that the Commission in this Review could make multiple variation determinations with, to the extent justified by exceptional circumstances, a date or dates of operation later than 1 July 2020 (see s.286). Such a determination would take effect in relation to a particular employee at the start of the employee’s first full pay period that starts on or after its delayed date of operation. In contrast, the NMW order must operate from 1 July 2020 but, to the extent justified by exceptional circumstances, the Commission could provide for the adjustments under the order to take effect from a date or dates later than 1 July 2020 in the 2020–21 financial year. Such an adjustment would take effect in relation to a particular employee at the start of the employee’s first full pay period that starts on or after its delayed date of effect (see s.287). In short, the Act would permit the Commission to align delayed

¹⁸⁵ *Discussion paper* [29].

¹⁸⁶ See *Fair Work Act 2009* (Cth) ss.285(2)(b) and 286.

¹⁸⁷ See *Fair Work Act 2009* (Cth) s.287.

¹⁸⁸ As observed in the *Discussion paper* [22], in contrast, the effect of an adjustment under a NMW order could not be delayed beyond the end of the 2020–21 financial year (see Act ss.286(2) and 287(4)).

¹⁸⁹ ACCI supplementary submission, 29 May 2020 at paras 32–34.

dates of effect of variation determinations and the elements of a NMW order where this was justified.

[237] We dealt with ACCI's 'synchronisation' submission in Chapter 1 and concluded that ACCI's concern for synchronisation is overstated.

[238] The *Discussion paper* expressed a tentative view that, to the extent justified by exceptional circumstances, the Commission may be able to provide staged variations of modern award minimum wages and/or staged adjustments of the elements of a NMW order. For example, if justified by exceptional circumstances that the Commission may be able to make one variation determination increasing minimum wages in a modern award that comes into operation on 1 July 2020 and a second determination further increasing those minimum wages that comes into operation on 1 December 2020.¹⁹⁰

[239] The Australian Government urged caution in any consideration of staged variations, noting the existence of multiple possible legal interpretations¹⁹¹ and submits that:

'While it is clear that the Commission may make multiple determinations varying modern award minimum wages in an annual wage review (eg. for different cohorts of employees), it does not necessarily follow that the Commission can make multiple determinations, coming into effect at different times, dealing with the one group of employees. Making multiple determinations with different dates of operation could be argued to achieve essentially the same result that s 286(4) prohibits.'¹⁹²

[240] The Australian Government also submits:

'Generally, the [Act] anticipates that an adjustment to modern award minimum wages will take effect on a single date – that is, in the first full pay period on or after 1 July in the financial year following completion of the annual wage review (ss 286(1) and (5) of the [Act]). This timing of adjustments was designed to 'ensure certainty and predictability for employers and employees'.¹⁹³

[241] In view of our decision in the present Review it is not necessary to determine whether or not the Panel can provide staged variations of modern award minimum wages and staged adjustments of the elements of a NMW order. However, we acknowledge that there is some force in the Australian Government's observation and a cautious approach to this issue is appropriate.

[242] The *Discussion paper* expressed a tentative view that the Commission probably cannot make a determination varying modern award minimum wages, or a NMW order, the effect of which is contingent upon subsequent economic or other developments. The *Discussion paper* gave as an example of a contingent variation, a variation providing an increase in modern

¹⁹⁰ *Discussion paper* [37] and [59(iii)]

¹⁹¹ Australian Government response to supplementary questions on notice, 1 June 2020 at pp. 2–3.

¹⁹² *Ibid.*

¹⁹³ *Ibid* at p. 2; Explanatory Memorandum, *Fair Work Bill 2008* (Cth), p. 181.

award minimum wages for retail employees that was contingent upon an improvement in trading conditions in the second half of 2020.¹⁹⁴

[243] Possible legislative obstacles to such an approach include the requirement under s.292(1) of the Act that after making determinations varying modern award minimum wages, the Commission ‘must publish the rates of those wages as so varied’ [emphasis added] before 1 July in the next financial year (or in the case of modern enterprise awards or State reference public sector modern awards, ‘as soon as practicable’). To similar effect, s.295(1)(a) of the Act requires that in a NMW order, the NMW and the special NMWs be ‘expressed in a way that produces a monetary amount per hour’.¹⁹⁵

[244] The *Discussion paper* also suggested that if the legislation did permit such an approach, there would likely be practical difficulties in formulating such a contingent variation or order with sufficient particularity, including so as to limit it ‘just to the particular situation to which the exceptional circumstances relate’ as required by ss.286(2) and 287(4).¹⁹⁶

[245] Ai Group submits in response that the Panel may ‘in the context of the Annual Wage Review proceedings, make determinations varying modern award minimum wages and make a [NMW order] which contains elements that depend upon the occurrence of a future event/s.’¹⁹⁷ Ai Group considers that the Panel’s power to ‘set’ or ‘vary’ modern award minimum wages encompasses setting ‘a method for calculating the manner in which such wages are to be determined’, and that ‘[s]uch a calculation may be expressed in such a way as to take into account future economic considerations which are readily accessible, such as CPI adjustments.’¹⁹⁸ Ai Group also considers that the requirement to publish varied rates of pay ‘should not be read as hindering the Expert Panel’s powers to provide for contingent increases.’¹⁹⁹

[246] Ai Group further submits that the practical difficulties involved in formulating a contingent variation or order ‘are no different from those which the Expert Panel is confronted with in making any determination or [NMW order] adjustment that is to provide rates of pay which are appropriate throughout the financial year.’²⁰⁰ Indeed, Ai Group suggests that:

‘A contingent increase may decrease the burden on the Expert Panel in making an appropriate determination or adjustment on the basis of projections and allow more

¹⁹⁴ *Discussion paper* [43] and [58(iii)]

¹⁹⁵ As the ACTU suggests, the question is whether any wage rate is disclosed if the order is to the effect that the rate ‘might be x or might be y’ depending on the contingency; see ACTU response to supplementary submission, 5 June 2020 at para. 66.

¹⁹⁶ *Discussion paper* [44] and [58(iii)]

¹⁹⁷ Ai Group supplementary submission, 29 May 2020 at p. 16.

¹⁹⁸ *Ibid* at p. 16.

¹⁹⁹ *Ibid* at p. 17.

²⁰⁰ *Ibid* at p. 17.

appropriate orders to be made which avoid unfair outcomes when future economic circumstances are uncertain.²⁰¹

[247] Ai Group did not advocate a particular form of contingent variation; nor did any other party.

[248] Given the absence of support for a particular form of contingent variation and in view of the decision we have reached in the present Review it is not necessary to determine whether or not the Commission can make determinations varying modern award minimum wages, or a NMW order, the effect of which is contingent upon subsequent economic or other developments.

[249] In respect of the capacity for the Commission to provide differential award minimum wage and NMW outcomes, having presented the relevant statutory framework and views expressed in previous annual wage reviews, the *Discussion paper* at paragraph 51 suggested that:

- subject to a party establishing the case for differential treatment ... the Commission has discretion to exempt some employers and employees from modern award minimum wage increases or to reduce the amount of the increase for some employers and employees; and
- to the extent justified by exceptional circumstances, the Commission has discretion to exempt some employers and employees from increases to the NMW wage or a special NMW, or to reduce the amount of the increase for some employers and employees.²⁰²

[250] The *Discussion paper* observed that while it is clear from the terms of s.287 of the Act that, to the extent justified by exceptional circumstances, the various wages and loadings set by a NMW order may be different for different employees, the Act does not expressly provide for differential outcomes in determinations varying modern award minimum wages.²⁰³

[251] In its response to the supplementary questions on notice, the ACTU asserts that in a Review the Panel cannot exempt just some employers and employees from minimum wage increases made to a particular award, reduce the amount of such an increase for just some employers and employees, or defer the date of the increases for just some employers and employees.²⁰⁴ In short, the ACTU contends that the only modern award terms that the Expert Panel may vary in an annual wage review are the terms constituting ‘modern award minimum wages’ as defined in s.284(3) of the Act as ‘the rates of minimum wages in modern awards’.²⁰⁵ It follows that:

²⁰¹ Ibid at p. 18.

²⁰² *Discussion paper* [51].

²⁰³ Ibid [45].

²⁰⁴ ACTU supplementary submission, 29 May 2020 at paras 57–74.

²⁰⁵ Ibid at paras 57; 59.

‘a particular modern award minimum wage will always cover (or apply to) the entirety of the employers and employees who it is expressed to cover by the terms of the award and the Panel cannot distinguish classes of employers (or employees) from this through any determination varying modern award minimum wages in a Review.’²⁰⁶

[252] According to the ACTU’s view:

‘even if a case for differential treatment were made out on the basis of the principles developed in the economic incapacity cases, it could not lead to a result whereby the Panel permitted employers bound by the same award to pay different modern award minimum wages to employees engaged in the same work.’²⁰⁷

[253] The SDA supports the supplementary submission of the ACTU generally.²⁰⁸

[254] We find the ACTU’s submissions in this regard unconvincing. Pursuant to s.285(2)(b) of the Act the Panel in a Review has discretion to make one or more determinations ‘varying modern awards to set, vary or revoke modern award minimum wages’ [emphasis added]. The Commission’s discretion is not confined in terms to ‘varying modern award minimum wages’ as the ACTU suggests.

[255] Section 286(2) of the Act provides:

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

Note: This may mean that the FWC needs to make more than one determination if different circumstances apply to different employees.’

[256] If the ACTU’s view was accepted, it would render largely nugatory the Commission’s capacity under s.286(2) to accommodate exceptional circumstances that applied to only some of the employers and employees throughout Australia covered by a particular award. For example, on the ACTU’s view, in response to a natural disaster giving rise to exceptional circumstances the Commission could only defer an increase in minimum wage rates under a particular modern award, if it did so for all employers and employees covered by those minimum wage rates nationally. However, if the impact of the natural disaster was confined to only some employers and employees (for example, employees within a particular geographic region), the second sentence in s.286(2) would seem to preclude the Commission deferring the increase for all of those employers and employees nationally. We also observe that the note under s.286(2) seems to contemplate that in such circumstances, the Commission could make a separate variation determination with a deferred date of operation applying to just some of the employers and employees.

²⁰⁶ Ibid at para. 58.

²⁰⁷ Ibid at para. 72.

²⁰⁸ SDA supplementary submission, 29 May 2020 at para. 1.

[257] Pursuant to the terms of s.287, to the extent justified by exceptional circumstances, the Commission can make a NMW order that sets a different NMW or special NMW for different classes of employees and/or that defers the date of effect of an adjustment of the NMW or a special NMW for some or all employees covered by that NMW or special NMW. On the ACTU's view, the Commission would have no equivalent capacity in the face of exceptional circumstances to vary modern awards to provide differential minimum wage outcomes or defer variations. We do not share the ACTU's view that such a 'key difference' would be 'unsurprising'.²⁰⁹

[258] The Australian Government considers 'the Panel does have the power to determine a deferred date of operation in respect of a specified cohort of employers'²¹⁰ and Ai Group shares this view.²¹¹ However, as no party in the present Review has advocated differential treatment for some employers and employees in respect of a modern award minimum wage increase, it is not necessary at the present time to determine the issue.

[259] As to what may constitute 'exceptional circumstances' for the purposes of Part 2-6 of the Act and deferral of modern award minimum wage and NMW adjustments in particular, the *Discussion paper* observed that situations that may give rise to exceptional circumstances clearly are not confined to the natural disasters that have given rise to exemption or deferral claims in previous annual wage reviews. The *Discussion paper* proposed that:²¹²

'Construing the meaning of 'exceptional circumstances' in Part 2-6 may begin from the 'sensible working hypothesis' that it has the same meaning in Part 2-6 as in other parts of the Act. In considering the meaning of 'exceptional circumstances' as it appears in Part 3-1 of the Act, the Commission has found:

'the expression "exceptional circumstances" has its ordinary meaning and requires consideration of all the circumstances. To be exceptional, circumstances must be out of the ordinary course, or unusual, or special, or uncommon but need not be unique, or unprecedented, or very rare ... Exceptional circumstances can include a single exceptional matter, a combination of exceptional factors or a combination of ordinary factors which, although individually of no particular significance, when taken together are seen as exceptional.'²¹³

[260] ACBC submits that the proper construction of 'exceptional circumstances' in Part 2-6 of the Act must be informed by its context in Part 2-6:

'In that context, what is considered exceptional will be more exacting or demanding than might otherwise fall within the meaning of those words. To that end, the

²⁰⁹ ACTU supplementary submission, 29 May 2020 at para. 70.

²¹⁰ Australian Government response to supplementary questions on notice, 1 June 2020 at p. 3. See also ACBC response to supplementary questions on notice, 29 May 2020 at para. 9.

²¹¹ Ai Group supplementary submission, 29 May 2020 at pp. 18; 19.

²¹² *Discussion paper* [57].

²¹³ [2011] FWAFB 975 [13] (summarising *Ho v Professional Services Review Committee No 295* [2007] FCA 388 [23]–[27]) and [2018] FWCFB 901 [15]–[17].

circumstances must be more than out of the ordinary course or unusual, or special or uncommon. The circumstances have to be sufficient to justify, contrary to the statutory scheme and ordinary notions of human dignity, that persons who receive the NMW should not receive an increase, despite such an increase being necessary to ensure they are kept out of poverty.²¹⁴

[261] ACBC submits ‘it should also be remembered that the circumstances do not just have to be exceptional, they have to be exceptional and *justify* the delay or deferment of the Order.’²¹⁵

[262] We agree with this aspect of ACBC’s submission. The expression ‘exceptional circumstances’ is to be interpreted in the context of Part 2–6 which leads us to conclude that a strong case must be made out in order to warrant the deferral of an increase in minimum wages.

[263] As discussed earlier, the ACTU contests the reference to ‘some or all employers and employees’ in paragraph 59(ii) of the *Discussion paper*. On its view the Commission could not, for example, defer an increase in one or more minimum wage rates in a modern award in respect of just some of the employers and employees covered by those rates.²¹⁶

[264] No party contests the capacity of the Commission, to the extent justified by exceptional circumstances, to delay the variation of modern award minimum wages on an award-by-award basis.

[265] The last of the supplementary questions on notice was directed to paragraph 59(ii) dot point 4 in the *Discussion paper* (at paragraph [229]). It invited parties to consider whether participation in the JobKeeper Scheme could serve as a means to identify employers and employees for whom deferral of an increase in modern award minimum wages may be justified by exceptional circumstances arising from the COVID-19 pandemic (see question 4 at paragraph [229]).

[266] Consistent with its view discussed earlier, the ACTU submitted that the Commission did not have power to identify employers to whom a deferral of an increase in modern award minimum wages might apply on the basis of participation in the JobKeeper scheme (although deferral of an adjustment of the NMW or a special NMW on this basis would potentially be permissible).²¹⁷

[267] The Australian Government,²¹⁸ Ai Group²¹⁹ and ACBC²²⁰ submitted that the Commission has such power. However, no party supported an approach based on the JobKeeper scheme on merit.

²¹⁴ ACBC response to supplementary questions on notice, 29 May 2020 at paras 2–8.

²¹⁵ ACBC response to supplementary questions on notice, 29 May 2020 at para. 7.

²¹⁶ ACTU supplementary submission, 29 May 2020 at paras 73; 76.

²¹⁷ *Ibid* at para. 74.

²¹⁸ Australian Government response to supplementary questions on notice, 1 June 2020 at p. 3.

²¹⁹ Ai Group supplementary submission, 29 May 2020 at p. 19.

²²⁰ ACBC response to supplementary questions on notice, 29 May 2020 at para. 9.

[268] The Australian Government²²¹ and ACTU²²² raised shortcomings with such an approach and Ai Group,²²³ ACCI,²²⁴ ARA,²²⁵ NRA²²⁶ and ACBC²²⁷ opposed it on merit. Their reasons for doing so included variously that:

- ineligibility for the JobKeeper scheme is not a reliable indicator of employers that would be in a stronger position to sustain higher minimum wages than those eligible for JobKeeper;
- the class of participating employers would not be fixed as at 1 July 2020;
- not all businesses that qualify for the scheme have elected to participate and not all businesses that have suffered a significant downturn qualify for the scheme;
- a deferral based on the JobKeeper scheme would not be limited to exceptional circumstances arising from the COVID-19 pandemic;
- participation would not be a reliable indicator of businesses that continue to suffer a decline in turnover;
- a business may continue to participate even if a turnover subsequently recovers; and
- there is insufficient data to justify a conclusion that participating employers are entitled to a deferral.

[269] In these circumstances we do not propose to give any further consideration to an exemption based on the JobKeeper scheme.

[270] We would conclude by observing that the provision of an individualised incapacity to pay mechanism would provide a more targeted means of dealing with some of these issues. But, our powers are limited and we cannot provide such a mechanism. The Panel has drawn attention to this deficiency in the statutory framework in numerous past Review decisions. This is an issue for the Parliament.²²⁸

²²¹ Australian Government response to supplementary questions on notice, 1 June 2020 at pp. 3–4.

²²² ACTU submitted that it would be premature to comment on merit unless or until the relevant ‘exceptional circumstances’ had been defined, and also made a number of observations about the operation of the JobKeeper scheme that go to merit; see ACTU supplementary submission, 29 May 2020 at paras 75–85.

²²³ Ai Group supplementary submission, 29 May 2020 at p. 20.

²²⁴ ACCI supplementary submission, 29 May 2020 at paras 56–61. While ACCI doesn’t actually say it opposes it—because it opposes deferral—this is a fair reading of its submissions.

²²⁵ ARA response to supplementary questions on notice, 29 May 2020 at p. 1.

²²⁶ NRA supplementary submissions, 29 May 2020 at p. 3.

²²⁷ ACBC supplementary submission, 29 May 2020 at para. 10.

²²⁸ See [2012] FWA FB 5000 at [34]–[35]; [2013] FWCFB 4000 at [96]–[98]; [2015] FWCFB 3500 at [115]–[116] and [2016] FWCFB 3500 at [139].

[271] We now turn to some of the particular considerations which we are required to take into account.

3. Economic and labour market considerations

General approach

[272] The economic and labour market considerations required to be taken into account in relation to the minimum wages objective in s.284(1)(a) and (b) and in relation to the modern awards objective in s.134(1)(c), (d), (f) and (h) are dealt with in this chapter. In addition, the Panel also considers a range of other relevant indicators. In doing so we examine information presented in the Statistical report, in submissions from parties, and in research published or referenced in the Research reference list by the Commission.

The Australian economy

[273] In early March 2020, RBA Deputy Governor Guy Debelle provided the following assessment of the economy ahead of the onset of COVID-19:

‘The December quarter national accounts confirmed our assessment that the Australian economy ended 2019 with a gradual pick-up in growth. Growth over the year was 2¼ per cent, up from a low of 1½ per cent. Consumption growth was a little stronger in the quarter, although still subdued. We had estimated that the bushfires will subtract around 0.2 percentage points from growth across the December and March quarters, but besides that, economic growth was set to continue to pick up supported by low interest rates, the lower exchange rate, a rise in mining investment, high levels of spending on infrastructure and an expected recovery in residential construction.

... Since then, there is no doubt that the outbreak of the virus has significantly disrupted this momentum.’²²⁹

[274] While predominantly a public health issue, federal and state government-imposed restrictions to contain the spread of the virus, have had a profound economic impact.²³⁰ These actions have significantly reduced domestic activity and resulted in ‘a large and near-simultaneous contraction across the global economy.’²³¹ The Australian economy is now in the midst of a significant downturn which is almost certain to become a recession, the first in almost 30 years.

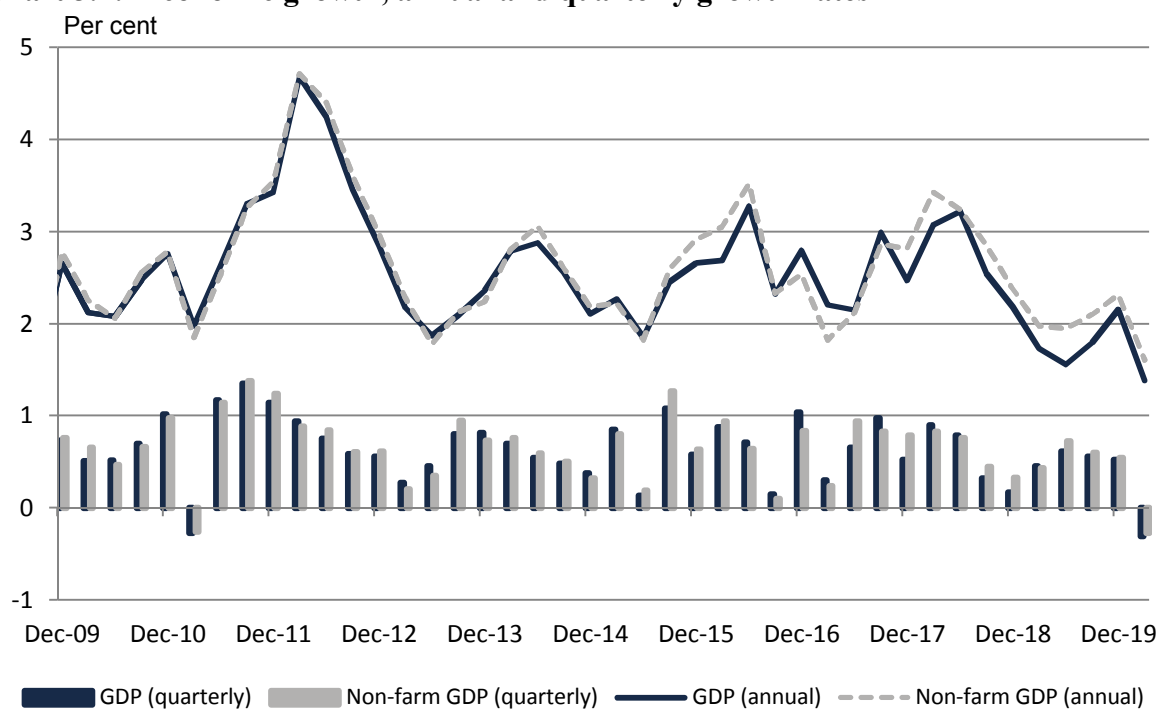
[275] Output, as measured by GDP, fell by 0.3 per cent in the March quarter 2020, increasing by only 1.4 per cent over the year (Chart 3.1). The March quarter outcome does not include the full effects of the most restrictive limitations on workplaces and social gatherings that were implemented from late March. However, it does reflect some of the impact of measures announced in early March, and restrictions on international arrivals from some locations in February, including China, that would have impacted the tourism and education sectors, as well as the impact of the bushfires.²³²

²²⁹ Debelle G (2020), *The virus and the Australian economy*, keynote address at the Australian Financial Review Business Summit, 11 March, Sydney, p. 1.

²³⁰ See Information note—*Government responses to COVID-19 pandemic 16 June 2020*.

²³¹ RBA (2020), *Statement on Monetary Policy*, May, p. 1.

²³² Kennedy S (2020), *Opening statement—March 2020 Senate Estimates*, Secretary to the Treasury, 5 March.

Chart 3.1: Economic growth, annual and quarterly growth rates

Source: Statistical report (version 13), 17 June 2020, Chart 1.1; ABS, *Australian National Accounts: National Income, Expenditure and Product, Mar 2020*, Catalogue No. 5206.0.

[276] The National Accounts show that household consumption fell considerably in the March quarter (–1.1 per cent), which was larger than the fall over the year (–0.2 per cent).²³³ This was impacted by both the bushfires and the COVID-19 virus.²³⁴ Declines were particularly high for services (–2.4 per cent) and discretionary items (–3.9 per cent).²³⁵

[277] Trying to understand patterns of consumer spending, particularly following the outbreak of COVID-19, has been difficult because most ABS data are backward-looking. Some submissions referred to additional surveys that are regularly provided by banks.²³⁶ For example, the weekly ANZ-Roy Morgan Australian consumer confidence rating, constructed from a sample of over 1000 people, fell to an all-time low of 65.3 at 28 March 2020. It has since steadily increased and by 8 June 2020 had rebounded to 97.0—still a 3.0 per cent decline from 14 March 2020.²³⁷

²³³ Statistical report (version 13), 17 June 2020, Chart 1.2.

²³⁴ ABS, ‘Household consumption behaviour in response to COVID-19’, *Australian National Accounts: National Income, Expenditure and Product, Mar 2020*, Catalogue No. 5206.0.

²³⁵ ABS, ‘Key tables’, *Australian National Accounts: National Income, Expenditure and Product, Mar 2020*, Catalogue No. 5206.0.

²³⁶ For example, Ai Group supplementary submission, 29 May 2020 at pp. 8–9; ACTU supplementary submission, 29 May 2020 at para. 39.

²³⁷ ANZ-Roy Morgan (2020), *Australian consumer confidence rating*, weekly, 10 June.

[278] Total private investment declined by 0.8 per cent in the March quarter 2020.²³⁸ This was due to a fall in business investment (−0.4 per cent), particularly in the non-mining sector (−1.7 per cent).²³⁹ The NAB Monthly Business Survey provides an indication of business conditions since the COVID-19 outbreak. It shows that both business conditions and confidence dropped significantly in April and had only partially recovered by May.²⁴⁰

[279] One indicator that is likely to be affected by significant shifts in other indicators is labour productivity. Measured by GDP per hour worked, the larger falls in the number of hours worked (−0.8 per cent in the March quarter according to the National Accounts)²⁴¹ than GDP led to an increase in labour productivity in the March quarter 2020.²⁴² Due to the implications from the easing of government restrictions on the labour market and forecasts of GDP to fall much more dramatically in the June quarter before potentially rebounding later in 2020, labour productivity growth is also likely to vary in a way that may not be indicative of its underlying trend.

[280] The RBA Governor, Philip Lowe, provided the following description of the state of the Australian economy in early June:

‘The Australian economy is going through a very difficult period and is experiencing the biggest economic contraction since the 1930s. In April, total hours worked declined by an unprecedented 9 per cent and more than 600,000 people lost their jobs, with many more people working zero hours. Household spending weakened very considerably and investment plans are being deferred or cancelled.

Notwithstanding these developments, it is possible that the depth of the downturn will be less than earlier expected. The rate of new infections has declined significantly and some restrictions have been eased earlier than was previously thought likely. And there are signs that hours worked stabilised in early May, after the earlier very sharp decline. There has also been a pick-up in some forms of consumer spending.

However, the outlook, including the nature and speed of the expected recovery, remains highly uncertain and the pandemic is likely to have long-lasting effects on the economy. In the period immediately ahead, much will depend on the confidence that people and businesses have about the health situation and their own finances.’²⁴³

[281] The form and shape of our pathway to recovery is heavily contested. However, it is generally accepted that the pathway to recovery is largely dependent on how well the spread

²³⁸ Statistical report (version 13), 17 June 2020, Chart 1.2.

²³⁹ ABS, ‘Key tables’, *Australian National Accounts: National Income, Expenditure and Product, Mar 2020*, Catalogue No. 5206.0.

²⁴⁰ NAB (2020), *NAB monthly business survey*, May.

²⁴¹ ABS, ‘Hours worked in the national accounts’, *Australian National Accounts: National Income, Expenditure and Product, Mar 2020*, Catalogue No. 5206.0

²⁴² Statistical report (version 13), 17 June 2020, Overview.

²⁴³ Lowe P (2020), *Statement by Philip Lowe, Governor: Monetary Policy Decision*, 2 June. Also see RBA, *Minutes of the Monetary Policy Meeting of the Reserve Bank Board - 2 June 2020*, released 16 June.

of the virus is contained, which will in turn ease further government-imposed restrictions and rebuild business and consumer confidence.

Labour market

[282] The shock to the labour market is unprecedented. The total impact is yet to be observed in the ABS Labour Force Surveys, however, we can observe the effects of the initial restrictions imposed during March.

[283] The Labour Force Survey for April 2020 is the first of the monthly surveys to capture the impacts of the COVID-19 pandemic. It was undertaken in the first 2 weeks of the month, after the implementation of restrictions to contain the spread of the coronavirus and the announcement of the JobKeeper payment scheme.

[284] The trend series has been suspended from April 2020 until more certainty can be determined in the underlying trend in the labour market. The data presented are seasonally adjusted.

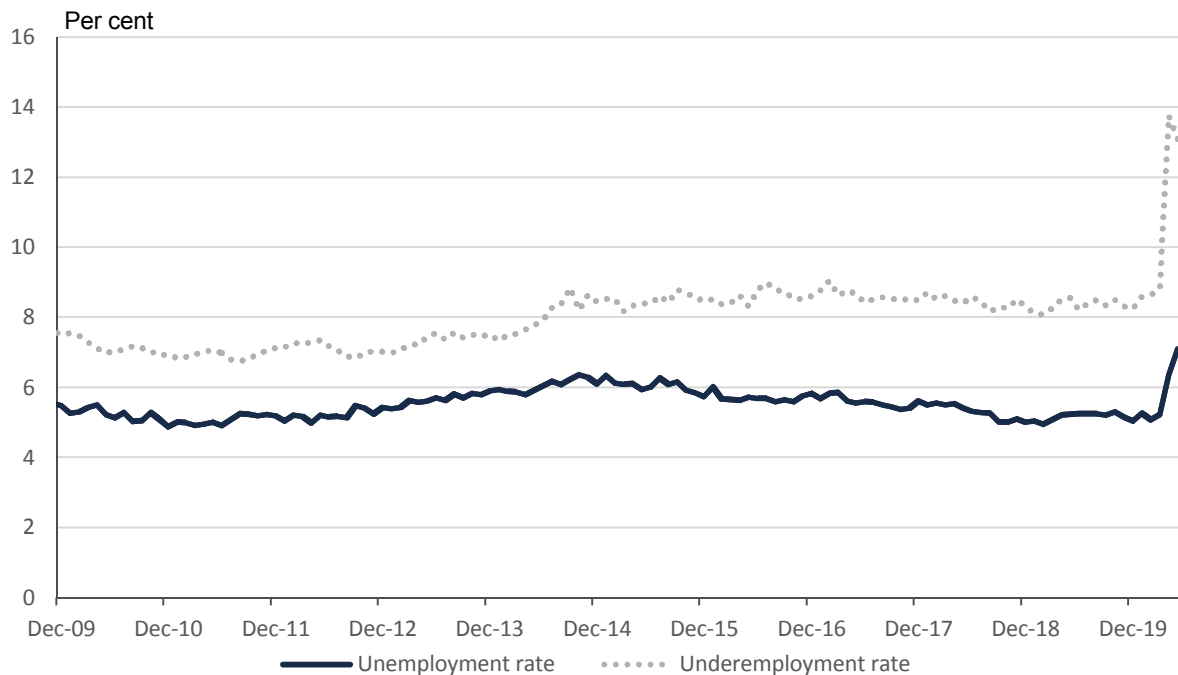
[285] We are aware that the data are affected by the JobKeeper payment scheme. People who are paid through the JobKeeper scheme are likely classified as employed regardless of the hours they work or whether they have been stood down. People who receive the JobSeeker or other similar payments are not automatically classified as unemployed, as people in receipt of the JobSeeker payment may already have a job, and they are also not required to look for work and are therefore counted as ‘not in the labour force’.²⁴⁴

[286] While the increase in the unemployment rate is significant (Chart 3.2), it does not provide the full picture. The number of hours worked fell by more than the fall in employment between March and May 2020. The impact on the unemployment rate is not as significant as it could have been because the participation rate declined by 3.1 percentage points over this period, highlighting that many people left the labour force.²⁴⁵ Given this, the underemployment rate becomes the more relevant labour market indicator. In April 2020, it increased to 13.8 per cent, the highest rate on record, before declining to 13.1 per cent in May 2020.

²⁴⁴ ABS, ‘Classifying people during the COVID-19 period, *Labour Force, Australia, Apr 2020*, Catalogue No. 6202.0.

²⁴⁵ Statistical report (version 14), 18 June 2020, Chart 6.1.

Chart 3.2: Unemployment and underemployment rates



Source: Statistical report (version 14), 18 June 2020, Chart 6.1; ABS, *Labour Force, Australia, Apr 2020*, Catalogue No. 6202.0.

Note: Due to a temporary suspension in the trend series, data are expressed in seasonally adjusted terms.

[287] The youth unemployment rate increased by 4.5 percentage points to 16.1 per cent between March and May 2020.²⁴⁶ The youth unemployment rate was higher than both the 5-year average (12.4 per cent), and at the time of the previous Review (11.8 per cent).²⁴⁷ Being unemployed can have longer-term effects on earnings, particularly for young people entering the labour market.

[288] The current circumstances have also made it difficult to assess underlying trends in the data. As mentioned, the ABS has suspended its Labour Force trend data series and it is likely that other data series we rely on, such as the WPI, will be affected by JobKeeper payments, while some components of the CPI will be difficult to measure as they have been impacted by the restrictions imposed to contain the virus (e.g. changes in the price of international and domestic travel).

[289] The impact of the COVID-19 pandemic has been felt across the economy; but the extent of its impact has not been consistent across all sectors of the economy. While some industries have been substantially affected, other sectors have been affected to a much lesser extent.

[290] As part of a suite of data provided by the ABS to capture changes in the labour market during the COVID-19 outbreak, the new *Weekly Payroll Jobs and Wages in Australia* tracks the change in jobs and employee wages using Single Touch Payroll administrative data from

²⁴⁶ ABS, *Labour Force, Australia, May 2020*, Catalogue No. 6202.0.

²⁴⁷ [2019] FWCFB 3500 at [148]; Statistical report (version 14), 18 June 2020, Overview.

the Australian Taxation Office (ATO) to provide ‘real time’ information to complement the monthly Labour Force statistics. These data cover a very large sample of employers, including around 99 per cent of employers with 20 or more employees and 71 per cent of employers with 19 or less employees.²⁴⁸

[291] The data show a dramatic fall in the number of jobs between late March and mid-April, before stabilising.²⁴⁹

- From 14 March 2020, when Australia had 100 confirmed cases of COVID-19, to 30 May 2020, the number of jobs fell by 7.5 per cent.
- Using the number of filled jobs estimated from the ABS *Labour Accounts* for the March quarter 2020 (14.5 million jobs²⁵⁰), this equates to over 1 million jobs.
- The decline in the number of jobs for males (–6.3 per cent) was lower than for females (–8.0 per cent).

[292] The data show that the largest decline in jobs (around half) occurred towards the end of March and into early April, particularly the week of 28 March–4 April. This follows the announcement from the Commonwealth Government to further increase restrictions on social gatherings and aligns with the data from the Labour Force Survey (undertaken from 29 March to 11 April). Since then, the number of jobs has fallen, though the decline appears to be slowing, and actually increased from the week ending 25 April.

[293] Between 14 March 2020 and 30 May 2020, all industries except for Financial and insurance services (0.5 per cent) and Electricity, gas, water and waste services (0.4 per cent) experienced declines in the number of jobs, with a large proportion of losses occurring in the week ending 4 April 2020.

[294] The largest declines occurred in Accommodation and food services (–29.1 per cent), and Arts and recreation services (–26.3 per cent). The smallest declines were in Manufacturing (–4.0 per cent); Wholesale trade (–4.1 per cent); Public administration and safety (–4.3 per cent); and Professional, scientific and technical services (–4.4 per cent).

[295] Across all age groups, the decline in jobs accelerated markedly in the week ending 4 April 2020 before recovering from mid-April. Age groups that experienced the largest declines in jobs between 14 March 2020 and 30 May 2020 were among the youngest and oldest age groups. The largest declines were for people aged under 20 years (–16.5 per cent); 70 years and above (–12.5 per cent); and people aged 20 to 29 years (–12.2 per cent).

[296] The decline in total wages (–8.3 per cent) was larger than the fall in the number of jobs between 14 March 2020 and 30 May 2020.²⁵¹ The most significant decline occurred in the

²⁴⁸ ABS, *Weekly Payroll Jobs and Wages in Australia, Week ending 30 May 2020*, Catalogue No. 6160.0.55.001.

²⁴⁹ Statistical report (version 13), 17 June 2020, Table 6.12.

²⁵⁰ ABS, *Labour Account Australia, March 2020*, Catalogue No. 6150.0.55.003.

²⁵¹ Statistical report (version 13), 17 June 2020, Table 5.3.

week ending 11 April 2020. However, in contrast to the number of jobs, total wages declined more for males (–9.8 per cent) than for females (–5.9 per cent) over this period.

[297] Between 14 March 2020 and 30 May 2020, 18 of the 19 industries experienced declines in total wages, with the largest declines occurring in Accommodation and food services (–25.4 per cent); Mining (–20.8 per cent); Arts and recreation services (–14.0 per cent); Rental, hiring and real estate services (–13.7 per cent) and Wholesale trade (–13.5 per cent). The only industry that experienced an increase in total wages over the period was Education and training (0.7 per cent).

[298] Total wages fell most for those aged between 40 and 49 years (–9.5 per cent), between 50 and 59 years (–8.6 per cent), and between 30 and 39 years (–8.3 per cent). Total wages increased by 5.4 per cent for those aged under 20 years, despite this group experiencing the largest decline in jobs. This is most likely due to the high prevalence of part-time workers within this age group, who may have experienced an increase in their total wages due to the JobKeeper payment.

[299] We can use these data on changes in total jobs and employee wages to determine which industries have been most affected during the COVID-19 pandemic.²⁵²

[300] Charts 3.3 and 3.4 show the percentage change in the number of employee jobs and total wages across industries between 14 March 2020 and 30 May 2020. The size of each circle reflects the total number of filled jobs in each industry using the ABS Labour Accounts data for the March quarter 2020.²⁵³

[301] The decline in total jobs fall broadly into 3 industry clusters (Chart 3.3):

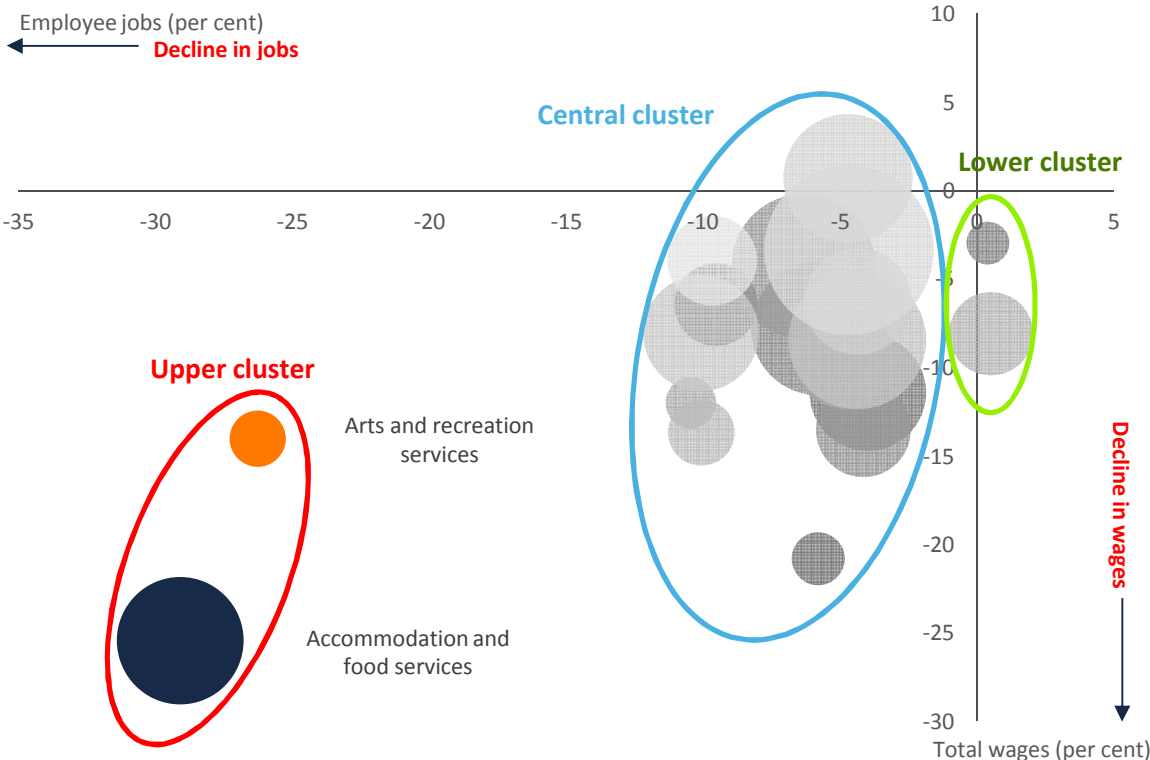
- Upper cluster—where total jobs fell by 29.1 per cent in Accommodation and food services and by 26.3 per cent in Arts and recreation services (a weighted average²⁵⁴ of –28.6 per cent);
- Central cluster—where job losses range from 10.5 per cent in Information media and telecommunications to 4.0 per cent in Manufacturing (a weighted average of –5.9 per cent); and
- Lower cluster—where the impact on jobs range from an increase 0.4 per cent in Electricity, gas, water and waste services to an increase of 0.5 per cent in Finance and insurance services (a weighted average of 0.5 per cent).

²⁵² Although the change in jobs is provided by the ABS at the 2-digit industry subdivision level, this is not available for wages.

²⁵³ ABS, *Labour Account Australia, March 2020*, Catalogue No. 6150.0.55.003.

²⁵⁴ Based on the number of filled jobs.

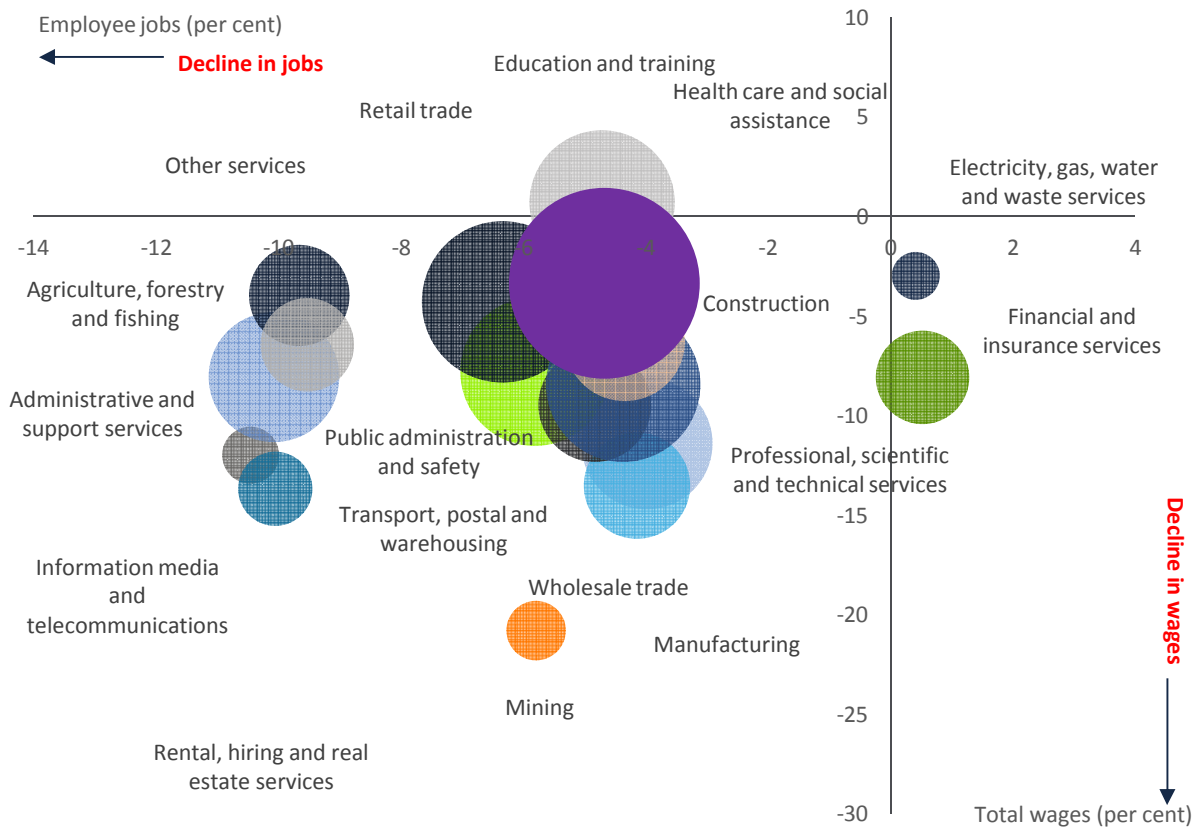
Chart 3.3: Change in employee jobs and total wages between 14 March and 30 May 2020, by industry clusters



Source: Statistical report (version 13), 17 June 2020, Chart 6.10; ABS, *Weekly Payroll Jobs and Wages in Australia, Week ending 30 May 2020*, Catalogue No. 6160.0.55.001; ABS, *Labour Account Australia, March 2020*, Catalogue No. 6150.0.55.003.

Note: Circle size reflects number of filled jobs (i.e. larger size represents industries with higher number of filled jobs).

Chart 3.4: Central and lower industry clusters – change in employee jobs and total wages between 14 March and 30 May 2020



Source: Statistical report (version 13), 17 June 2020, Chart 6.10; ABS, *Weekly Payroll Jobs and Wages in Australia, Week ending 30 May 2020*, Catalogue No. 6160.0.55.001; ABS, *Labour Account Australia, March 2020*, Catalogue No. 6150.0.55.003.

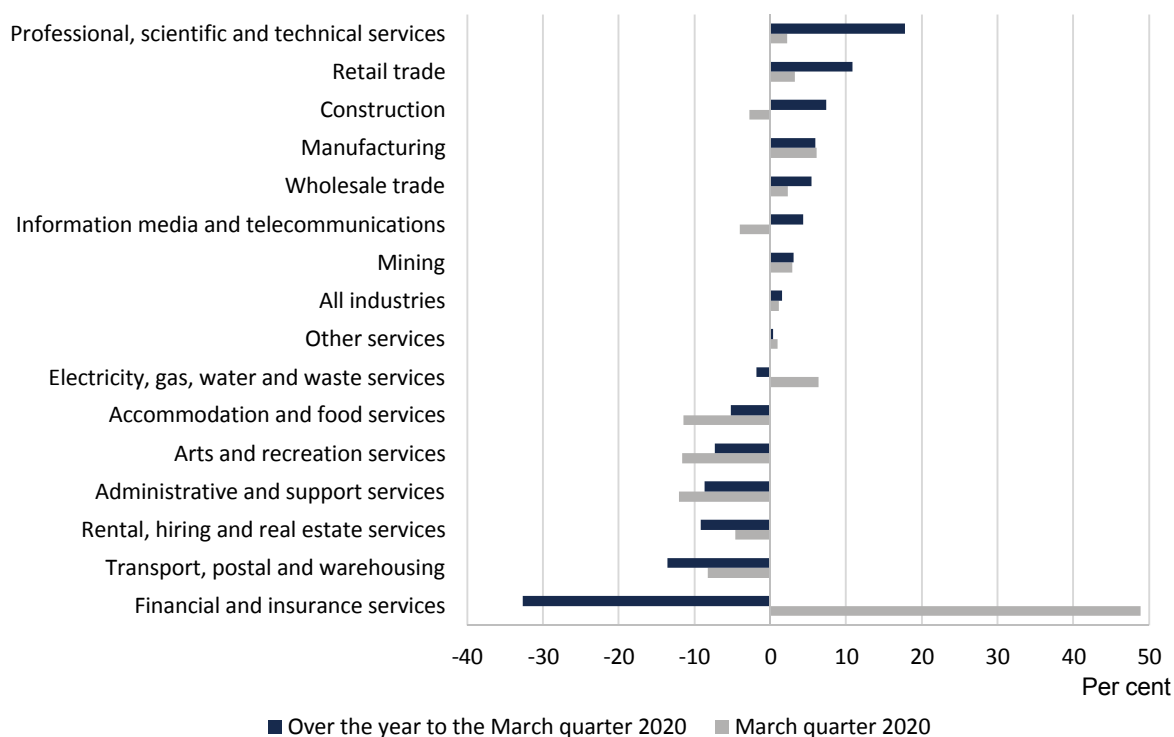
Note: Circle size reflects number of filled jobs (i.e. larger circles represent industries with higher number of filled jobs). Chart excludes Accommodation and food services, and Arts and recreation services.

[302] Data from the ABS *Business Indicators, Business Impacts of COVID-19* survey show that while 90 per cent of businesses across all industries were operating over the period from 30 March to 3 April 2020, soon after the most restrictive measures on social gatherings were enforced, less than half of businesses in Arts and recreation services were operating (the lowest proportion of across all industries) and only 69 per cent of businesses in Accommodation and food services were still trading.²⁵⁵

[303] Business profits declined for Accommodation and food services and Arts and recreation services in the quarter and over the year to the March quarter 2020. The decline in quarterly profits growth was larger than the decline over the year, highlighting the significant impact of the pandemic on these industries (Chart 3.5).

²⁵⁵ Statistical report (version 13), 17 June 2020, Chart 3.10; ABS, 'Trading Status of Australian Businesses', *Business Indicators, Business Impacts of COVID-19, Week Commencing 30 March 2020*, Catalogue No. 5676.0.55.003.

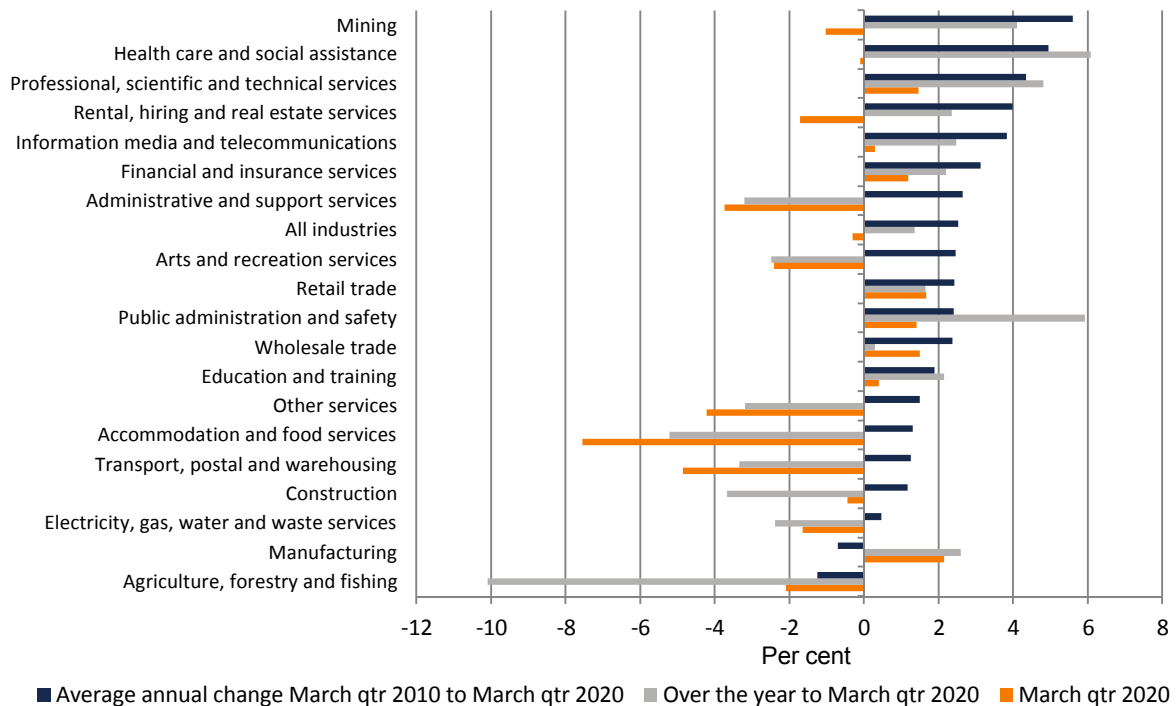
Chart 3.5: Growth in gross operating profits, current prices, by industry



Source: Statistical report (version 13), 17 June 2020, Chart 3.17; ABS, *Business Indicators, Australia, Mar 2020*, Catalogue No. 5676.0.

[304] In terms of output, GVA for both Accommodation and food services and Arts and recreation services declined in the March quarter 2020 and over the year, as Australians stayed at home to avoid the bushfires and the virus. The quarterly decline in Accommodation and food services (-7.6 per cent) was again larger than the annual decline (-5.2 per cent) and for both industries GVA growth was significantly lower than the all industries average (-0.3 per cent in the quarter and 1.4 per cent over the year) (Chart 3.6).

Chart 3.6: Gross value added by industry, average annual growth over decade, growth over year to March quarter 2020 and growth in the March quarter 2020



Source: Statistical report (version 13), 17 June 2020, Chart 1.5; ABS, *Australian National Accounts: National Income, Expenditure and Product, Mar 2020*, Catalogue No. 5206.0.

[305] Data on Retail trade paints a different picture. While the COVID-19 pandemic had a positive impact on some parts of the retail industry, other parts of the industry have been severely impacted.

[306] For example, retail turnover rose sharply by 8.5 per cent (the largest monthly increase recorded) in March 2020,²⁵⁶ but the increase was not evident across all subgroups. It reflected significant increases in areas such as Other specialised food retailing (30.5 per cent); Liquor retailing (30.3 per cent); Supermarket and grocery stores (23.0 per cent); and Pharmaceutical, cosmetic and toiletry goods retailing (22.3 per cent). This coincided with the panic buying that preceded the implementation of a number of social distancing restrictions in March. However, this increase was temporary, with retail turnover declining by an unprecedented 17.7 per cent in April 2020 (the largest monthly decline recorded), resulting in levels of turnover markedly lower than the pre-COVID period. The largest declines in turnover were seen in Clothing retailing (-56.0 per cent); and Footwear and other personal accessory retailing (-49.3 per cent).

[307] Further, output in Retail trade increased in the March quarter 2020, while total output declined. Gross operating profits also increased in the March quarter 2020, recording growth above the all industries average. However, the relatively positive results in output and profits likely reflect the temporary spike in turnover in March 2020, which was driven by increases in some sub-industries, such as Fuel retailing and not necessarily broader growth within the industry.

²⁵⁶ Statistical report (version 13), 17 June 2020, Table 7.2; ABS, *Retail Trade, Australia, Apr 2020*, Catalogue No. 8501.0.

[308] The number of total jobs in Retail trade was still 6.3 per cent lower in the week ending 30 May 2020 compared to 14 March 2020, but it was not as large a fall as that experienced across all industries (-7.5 per cent). However, the full impact on Retail trade is yet to be realised and is, in any event, substantially different within the sector, as discussed at [74].²⁵⁷

[309] Further data are consistent with the grouping of industries into these 3 clusters as evidenced by the weighted average change in output and profits growth²⁵⁸ which varied significantly between each of the industry clusters:

- Upper cluster—GVA declined by 6.2 per cent in the March quarter 2020 to be 4.5 per cent lower over the year. Profits fell by 11.6 per cent in the quarter and by 6.1 per cent over the year.
- Central cluster—GVA declined by 0.3 per cent in the quarter but was 1.5 per cent higher over the year. Profits rose by 0.8 per cent in the quarter and were 2.7 per cent higher over the year.²⁵⁹ and
- Lower cluster—GVA rose by 0.6 per cent in the quarter and was 1.2 per cent higher over the year. Profits rose 12.8 per cent in the quarter but were 10.0 per cent lower over the year.²⁶⁰

[310] As observed earlier, this is not to say that industries in the same cluster had identical or similar experiences in the March quarter 2020.

[311] As in previous Reviews, parties have relied on results drawn from member surveys, particularly those trading in Retail, to provide insight into their experiences since the last decision was handed down.²⁶¹

[312] The Panel has previously provided guidance on how surveys can be considered to be representative of the broader business community and the deficiencies in the quality of evidence so that it may be improved.²⁶² Respondents to surveys should be selected on a random basis so they are representative, even for a membership base.²⁶³ While these surveys can provide detail and depth to our understanding, the Panel has previously suggested that it considers such survey material as a form of anecdotal information as it cannot be confident

²⁵⁷ Statistical report (version 13), 17 June 2020, Table 6.12.

²⁵⁸ Profit estimates are only for industries in the market sector.

²⁵⁹ Does not include profits in Agriculture, forestry and fishing.

²⁶⁰ Statistical report (version 13), 17 June 2020, Chart 1.5; Chart 3.17.

²⁶¹ Ai Group submission in reply, 4 May 2020 at p. 12; ACCI submission in reply, 4 May 2020 at para. 63; ABI submission, 13 March 2020 at pp. 22–23; ARA submission, 20 March 2020 at pp. 10–11; MGA/MTA submission, 13 March 2020 pp. 27–113; NRA submission in reply, 6 May 2020 at p. 5; R&CA submission, 19 March 2020 at paras 20–21; SAWIA submission, 20 March 2020 at pp. 5–6; ARA response to supplementary questions on notice, 29 May 2020 at p. 1.

²⁶² [2016] FWCFB 3500 at [14], [196]; [2015] FWCFB 3500 at [266]–[275]; [2014] FWCFB 3500 at [226]–[228]; [2013] FWCFB 4000 at [265], [438]–[442]; [2012] FWAFB 5000 at [203].

²⁶³ [2013] FWCFB 4000 at [441].

that the survey results are a reliable representation of those it surveys and of broader economic conditions.²⁶⁴

[313] In its submission to this Review, MGA provided a survey of its members conducted between 24 October and 20 November 2019. The survey consisted of grocers, grocers that also sell liquor and a small number of hardware/timber stores.²⁶⁵ The purpose of the survey was to enable retailers to record the difficulties they experienced over the past three years relating to wage increases, and what is likely to happen in the future if another 3 per cent increase is awarded in 2020. We note that the increase we have decided to award is substantially lower than the anticipated 3 per cent increase the respondents to the MGA survey were asked to comment on. This significantly limits the relevance of the survey results.

[314] We do, however, acknowledge that while parts of the Retail sector have continued to operate, in order to provide essential services to the community, other parts of the sector have been substantially impacted by the pandemic.

Forecasts

[315] In previous Reviews, the Panel has referred to the economic forecasts from the Commonwealth Treasury. In a Ministerial Statement, the Treasurer provided a summary of its forecasts.²⁶⁶

- GDP to fall by over 10 per cent in the June quarter which would represent our biggest fall on record;
- the unemployment rate to reach around 10 per cent, or 1.4 million unemployed, in the June quarter;
- household consumption to be around 16 per cent lower;
- business investment to be around 18 per cent lower with falls concentrated in the non-mining sector; and
- dwelling investment is also expected to be around 18 per cent lower.

[316] With the 2020–21 Budget delayed until later in 2020, the forecasts relied on are those from the RBA.

[317] RBA Governor Philip Lowe stated that ‘economic forecasting is difficult at the best of times... It is even harder at times like this when we are experiencing a once in a lifetime event’.²⁶⁷ An additional difficulty to forecasting has been the uncertainty surrounding the review of the JobKeeper scheme.

[318] The pace of recovery beyond the June quarter 2020 is uncertain and depends on the extent to which activity and the labour market are affected by government enforced

²⁶⁴ [2014] FWCFB 3500 at [226].

²⁶⁵ MGA submission, 13 March 2020 at pp. 27–113.

²⁶⁶ Frydenberg J (2020), *The economic impact of the crisis*, Ministerial Statement on the Economy, Parliament House, Canberra, 12 May.

²⁶⁷ Lowe P (2020), *An Economic and Financial Update*, RBA Speech, 21 April.

restrictions to manage the current health crisis.²⁶⁸ In its May *Statement on Monetary Policy*, the RBA observes:

‘It is quite plausible that the current economic disruption will have some long-lasting effects, not only because it will take some time to restore workforces and re-establish businesses but also because it could also affect mindsets and the behaviours of consumers and businesses. This could result in structural change in the economy. Changes in the financial position of households and businesses could also have long-lasting effects.’²⁶⁹

[319] The RBA’s May *Statement on Monetary Policy* presents various scenarios, reflecting what it describes as the ‘incredibly uncertain’ outlook.²⁷⁰ A ‘plausible baseline scenario’ sees restrictions mostly removed by the end of September, apart from international travel. With the spread of the virus ‘limited’, growth is considered ‘to turn around in the September quarter and the recovery would strengthen from there.’²⁷¹ The RBA comments that ‘[t]he duration of the lockdowns and how quickly they are eased will affect the size of the economic contraction and the speed of the subsequent recovery.’²⁷²

[320] In the RBA’s baseline scenario, GDP growth is expected to start recovering in the second half of 2020, led by consumption, although the very large contraction in the March and June quarters would still result in a year-ended decline over 2020. Growth would then be stronger over 2021 as business and dwelling investment gradually recover, although the level of GDP by mid-2022 would still be below the level expected at the time of the RBA’s February *Statement on Monetary Policy*.²⁷³

[321] Under these conditions, the RBA expects the unemployment rate to decline substantially from its June 2020 peak of around 10 per cent but to remain above its pre COVID-19 level in two years’ time.²⁷⁴ Treasury Secretary Dr Steven Kennedy commented in early June that the forecast for the unemployment rate is ‘in the order’ of 8 per cent at around September 2020.²⁷⁵

[322] In underlying terms, inflation is expected to remain below 2 per cent over the next couple of years. The RBA’s baseline forecasts are summarised in the table below.

²⁶⁸ RBA (2020), *Statement on Monetary Policy*, May, p. 87.

²⁶⁹ Ibid.

²⁷⁰ Senate Select Committee on COVID-19 (2020), *Proof Committee Hansard*, Commonwealth of Australia, 28 May, p. 2..

²⁷¹ Ibid, p. 85.

²⁷² Ibid, p. 9.

²⁷³ Ibid, p. 88.

²⁷⁴ Ibid, p. 88–89.

²⁷⁵ Senate Select Committee on COVID-19 (2020), *Proof Committee Hansard*, Commonwealth of Australia, 9 June.

Table 3.1: RBA forecasts, baseline scenario, annual growth rates

	Dec-19*	Jun-20	Dec-20	Jun-21	Dec-21	Jun-22
Gross domestic product	2.2	-8	-6	7	6	5
Household consumption	1.2	-15	-9	13	9	5
Dwelling investment	-9.7	-17	-13	2	6	10
Business investment	-1.2	-8	-13	-6	4	8
Public demand	4.7	5	2	0	2	3
Gross national expenditure	1.2	-9	-7	7	7	5
Imports	-1.5	-14	-11	13	13	6
Exports	3.4	-10	-7	14	12	4
Real household disposable income	1.8	-8	-8	6	8	6
Terms of trade	-0.6	-4	-7	-9	-2	-2
Major trading partner (export-weighted) GDP	3.2	-6	0	10	5	4
Unemployment rate (quarterly, %)	5.2	10	9	8½	7½	6½
Employment	2	-7	-7	4	6	5
Wage price index	2.2	2	1½	1½	1¾	2
Nominal (non-farm) average earnings per hour	3.1	7¾	-¼	-5¾	2½	4
Trimmed mean inflation	1.6	1½	1¼	1¼	1¼	1½
Consumer price index	1.8	-1	¼	2¾	1¼	1½

Source: Statistical report (version 13), 17 June, Table 14.4; RBA (2020), *Statement on Monetary Policy*, May, Appendix: Forecasts.

Note: Percentage changes are for the year-ended. *Actual values. The cash rate is assumed to remain at its current level, with other elements of the Bank's monetary stimulus package, including the 0.25 per cent target for the 3-year government bond yield, assumed to remain consistent with current settings. Other technical assumptions include the TWI at 57, A\$ at US\$0.64 and Brent crude oil price at US\$35 per barrel; shaded regions are historical data. Rounding varies: economic activity variables rounded to the nearest whole number; unemployment rate to the nearest half point; wages and prices variables to the nearest quarter point

[323] The forecasts for 2020 are significantly different to that presented in the last Review.²⁷⁶ The forecast for GDP growth over the year to the June and December quarters was 2¾ per cent in the *Annual Wage Review 2018–19* decision (2018–19 decision) and is now -8 per cent and -6 per cent, respectively. Like the International Monetary Fund (IMF), the RBA forecasts a rebound in 2021, and by 7 per cent over the year to the June quarter 2021.

[324] The forecasts show significant falls in many other economic indicators such as household consumption, business investment, real household disposable income and the terms of trade. Except for business investment, these are forecast to rebound in the first half of 2021. These variations in growth are much higher than during normal circumstances.

²⁷⁶ [2019] FWCFB 3500 at [185].

[325] Growth is expected to be stronger over 2021 as business and dwelling investment recover, but the level of GDP by 2022 is still expected to be below the level forecast prior to the widespread outbreak of the coronavirus.²⁷⁷

[326] Household consumption is expected to decline by around 15 per cent with reduced spending due to social distancing measures accounting for more than half of the decline. The effect of reducing social distancing measures on consumption is expected to occur over several quarters.²⁷⁸

[327] Headline inflation is expected to fall over the year to the June quarter 2020 and then increase by only $\frac{1}{4}$ per cent over the year to the December quarter 2020. It is then expected to peak at $2\frac{3}{4}$ per cent over the year to the June quarter 2021. Underlying inflation, as measured by the trimmed mean, is expected to remain relatively steady, increasing by $1\frac{1}{2}$ per cent over the year to the June quarter 2020 before declining to $1\frac{1}{4}$ per cent until the end of 2021. Deflationary effects from spare capacity in the labour market and the economy more generally are expected to be the dominating driver of inflation.²⁷⁹

[328] Wage growth is expected to be lower over the next year due to wage freezes and, to a lesser extent, cuts to hourly wages. Businesses will also adjust labour costs through reducing hours worked and the number of employees. Wage growth is expected to gradually pick up over 2021, with the speed of the recovery depending on whether there are catch-up increases in wages, award wage determinations and the amount of spare capacity in the labour market.²⁸⁰ Real household disposable income is expected to decline by 8 per cent over 2020 but also rebound in 2021.

[329] In its February *Statement on Monetary Policy*, the RBA stated that the current period of low wages growth implies spare capacity in the labour market but also a prolonged period of low inflation and wages growth that may have led firms and workers to reduce their wage expectations.²⁸¹ Chart 3.7 shows wages growth over the last 10 years.

²⁷⁷ RBA (2020), *Statement on Monetary Policy*, May, p. 9.

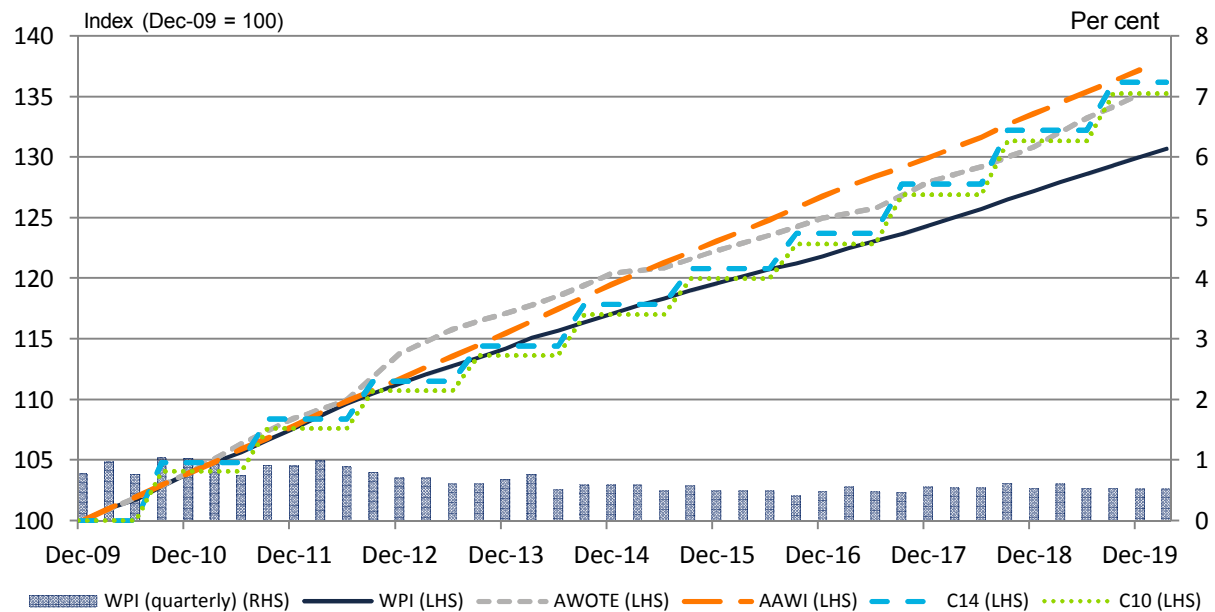
²⁷⁸ Ibid, pp. 86; 90.

²⁷⁹ Ibid, pp. 5, 92.

²⁸⁰ Ibid, p. 92.

²⁸¹ RBA (2020), *Statement on Monetary Policy*, February, p. 68.

Chart 3.7: Measures of nominal wages growth, quarterly and cumulative growth rates, index



Source: Statistical report (version 13), 17 June 2020, Chart 5.1; ABS, *Average Weekly Earnings, Australia, Nov 2019*, Catalogue No. 6302.0; ABS, *Wage Price Index, Australia, Mar 2020*, Catalogue No. 6345.0; Attorney-General’s Department, *Trends in Federal Enterprise Bargaining*, December quarter 2019, <<https://www.ag.gov.au/industrial-relations/enterprise-agreements-data/Pages/trends-in-federal-enterprise-bargaining.aspx>>; *Manufacturing and Associated Industries and Occupations Award 2010*.

[330] The unemployment rate is expected to reach its peak of 10 per cent in the June quarter yet is projected to remain above its pre-COVID-19 level through to mid-2022. The decline in the unemployment rate is expected to be quicker than in most previous recoveries because the downturn has been driven by health-related restrictions and not economic factors, and industries experiencing the largest number of job losses typically have higher rates of labour turnover, so recruiting may take less time.²⁸²

[331] According to the RBA’s upside scenario, a faster recovery is possible if further gains in controlling the virus are achieved and most containment measures are phased out over coming months. An important precondition is that households and businesses expect a sustained economic recovery over coming months, underpinned by a high degree of confidence in the ongoing management of health outcomes. The scenario is consistent with a faster pick-up in inflation over the next few years, albeit from a low starting point.²⁸³

[332] In the downside scenario, a slower recovery would occur if the lifting of restrictions is delayed, restrictions are reimposed or household and business confidence remains low. In this scenario it is assumed that many restrictions remain in place until closer to the end of 2020 and international travel restrictions are in place well into next year. A slower recovery in economic activity would be consistent with inflation remaining low for longer. A more protracted period of low inflation outcomes could also lead businesses and consumers to

²⁸² RBA (2020), *Statement on Monetary Policy*, May, p. 90.

²⁸³ *Ibid*, pp. 92–93.

adjust down their inflation expectations, which would make the subsequent pickup in inflation more gradual.²⁸⁴

[333] Based on the declining infection rate and earlier easing of restrictions, the RBA Governor has observed that since the forecast scenarios were published in early May, conditions have been ‘perhaps fractionally better than the baseline’ scenario²⁸⁵ and that ‘it is possible that the depth of the downturn will be less than earlier expected’.²⁸⁶

[334] The RBA expects major advanced economies to contract by 3 to 7 per cent in 2020 (in year-average terms), with peak-to-trough declines of 10 to 15 per cent in GDP.²⁸⁷

[335] The IMF expects Australian GDP to contract by 6.7 per cent over 2020 before rebounding by 6.1 per cent in 2021 (Table 3.2). The decline in Australian GDP is estimated to be more severe than the aggregate decline for advanced economies, however, the rebound is expected to be greater. The fall in world GDP is expected to be more moderate, at 3.0 per cent, yet will be significantly larger than the fall of 0.1 per cent during the global financial crisis in 2009.

Table 3.2: IMF real GDP growth forecasts

	2019	2020 (estimates)	2021 (projections)
Australia	1.8	-6.7	6.1
Advanced economies	1.7	-6.1	4.5
World	2.9	-3.0	5.8

Source: Statistical report (version 13), 17 June, Table 14.2; IMF (2020), *World Economic Outlook*, April.

Note: Year-on-year percentage changes shown. World and domestic economy growth rates are calculated using GDP weights based on PPP.

[336] In previous Reviews, the Panel has commented on the impact of increases in minimum wage increases upon employment levels and workforce participation. This is relevant because the Panel is required to have regard to the promotion of social inclusion through workforce participation.²⁸⁸ In the 2018–19 Review, the Panel stated:

‘The recent research, and that discussed in previous Reviews, is consistent with the position adopted by the Panel that modest and regular minimum wage increases do not result in disemployment effects or inhibit workforce participation. The assessment of what constitutes a ‘modest’ increase has developed over time and the research and available evidence confirms that the increases granted by the Panel in the previous 2 Reviews, and as we have adopted in this Review, fall within that category. Further, the

²⁸⁴ Ibid, pp. 93–94.

²⁸⁵ Senate Select Committee on COVID-19 (2020), Proof Committee Hansard, Commonwealth of Australia, 28 May, p. 2.

²⁸⁶ Lowe P (2020), *Statement by Philip Lowe, Governor: Monetary Policy Decision*, Media release, 2 June.

²⁸⁷ RBA (2020), *Statement on Monetary Policy*, May, p. 9.

²⁸⁸ *Fair Work Act 2009* (Cth), s.134(1)(c) and s.284(1)(b).

research is supportive of the notion that increases in minimum wages do increase the earnings of the low paid.²⁸⁹

[337] Consistent with this approach, what is moderate and what is sustainable without causing disemployment effects must be assessed in the present context. In our view awarding an increase of the magnitude proposed by the ACTU (and ACBC and the Victorian Government) in the present economic circumstances, would pose a real risk of disemployment and of adversely affecting the employment opportunities of low-skilled and young workers.

²⁸⁹ [2019] FWCFB 3500 at [195].

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

[338] The minimum wage and modern award objectives require us to consider the distinct but related concepts of ‘relative living standards and the needs of the low paid’ when setting minimum rates of pay.²⁹⁰

[339] The consideration of relative living standards requires comparing the living standards of NMW-reliant workers and award-reliant workers with the wage rates of other relevant groups, particularly non-managerial workers, and to changes in average and median earnings of the broader labour force.²⁹¹ As in past Reviews, we have published these data in the Statistical report.²⁹² While this information is taken into account, we note that much of it is based on data that precedes the COVID-19 outbreak and hence is not reflective of current circumstances.

[340] However, we observe that as a result of the COVID-19 pandemic, there is likely to be some further moderation in community wage increases due to various factors including some employers applying to delay or remove scheduled wage increases in enterprise agreements.

Relative earnings and income inequality

[341] The minimum wage bite is an indicator of relative earnings that compares the value of the NMW with various measures of median earnings.²⁹³ Between 2018 and 2019, most measures of the minimum wage bite using median hourly earnings declined slightly.²⁹⁴ For full-time employees, the weekly minimum wage bite slightly increased to be 53.7 per cent.²⁹⁵

[342] Income inequality includes consideration of disposable income, that is, the interaction of earnings with the tax-transfer system. The Gini coefficient is a commonly used indicator for measuring inequality and is calculated from equivalised household disposable income. New data has been released since the last Review which shows a slight increase in the Gini coefficient from 0.323 in 2015–16 to 0.328 in 2017–18.²⁹⁶ An increase in the value of the Gini coefficient suggests higher inequality.

Household disposable income and the tax-transfer system

[343] The full effect of increases to the NMW and modern award minimum wages is not often reflected in changes to household disposable income because of the operations of the tax-transfer system. This is due to the impact of taxation and the fact that many transfer payments are means-tested.

²⁹⁰ [2019] FWCFB 3500 at [196].

²⁹¹ [2018] FWCFB 3500 at [31]; [2019] FWCFB 3500 at [197].

²⁹² For example, see Statistical report (version 13), 17 June 2020, Charts 8.1 and 8.2.

²⁹³ [2019] FWCFB 3500 at [248]; [2018] FWCFB 3500 at [311].

²⁹⁴ Statistical report (version 13), 17 June 2020, Chart 8.3.

²⁹⁵ *Ibid*, Table 8.1.

²⁹⁶ *Ibid*, Chart 8.5.

[344] Changes to tax-transfer settings impacting this Review are different to previous Reviews due to the government responses to the COVID-19 pandemic.

[345] One-off Economic Support Payments of \$750 were provided to selected income support recipients, including those in receipt of the JobSeeker Payment (formerly Newstart Allowance), and Family Tax Benefit Parts A and B. Eligible recipients were only limited to one payment even if they qualified under multiple eligible income support payments. The payment is tax-free and does not qualify as income for social security means-testing purposes. Recipients received the first payment from 31 March 2020.²⁹⁷

[346] Further assistance for households came in the form of a temporary Coronavirus Supplement of \$550 per fortnight from 27 April 2020 for at least 6 months. Both existing and new Jobseeker Payment, Youth Allowance, Sickness Allowance, Parenting Payment, Austudy, ABSTUDY, Partner Allowance, Widow Allowance, Farm Household Allowance and Special Benefit recipients are eligible.²⁹⁸

[347] A second payment of \$750 will also be paid to recipients who were eligible for the first one-off payment of \$750 and continue to remain eligible as of 10 July 2020, to be paid from 13 July 2020. Recipients of the \$550 Coronavirus Supplement, however, are not eligible for the second \$750 payment.²⁹⁹

[348] The largest assistance package was the JobKeeper Payment, consisting of a \$1500 fortnightly payment (before tax) per eligible employee, paid directly to businesses to subsidise the payment of their employees' wages. It is designed to maintain the employment relationship between employers and employees. The payments commenced from 1 May 2020, and eligible employers are able to claim the payment from 30 March 2020 until 27 September 2020.

[349] Eligibility is dependent on employers having suffered a significant reduction in revenue—15 per cent for non-profit charities, 30 per cent for businesses with turnover of up to \$1 billion and 50 per cent for businesses with turnover of over \$1 billion.

[350] Eligible employees are full-time workers; part-time workers, sole traders, casuals who have been with their employer for 12 months or more, not for profit entities, New Zealand nationals on 444 visas, and migrants who are eligible for JobSeeker Payment or Youth Allowance (Other). Employees that were stood down by their employer from 1 March 2020 are also eligible. Under the 'one in, all in' principle, if an employer decides to participate in the JobKeeper scheme then they must ensure that all eligible employees are covered (including employees still working for the employer and those that have been stood down).³⁰⁰

²⁹⁷ Commonwealth Treasury (2020), *Economic Response to the Coronavirus*, Australian Government, 31 March.

²⁹⁸ Ibid.

²⁹⁹ Ibid; Department of Social Services (2020), *Coronavirus (COVID-19) information and support*, Australian Government, March.

³⁰⁰ Australian Taxation Office (2020), *JobKeeper Payment: Your eligible employers*, updated 14 May.

[351] In addition, the Early Childhood Education and Care Relief package was designed to ensure around 1 million families receive free child care during the COVID-19 pandemic. The subsidy is paid in lieu of the usual Child Care Subsidy (CSS) and Additional Child Care Subsidy (ACCS) payments and means-testing does not apply to the new payment. From 6 April 2020, the Government paid 50 per cent of services' fee revenue up to the existing hourly rate cap according to certain criteria.

[352] The payment is made directly to early childhood education and care services on a weekly basis and is based on the number of children who were in care during the fortnight leading into 2 March (whether attending services at the time or not). The Government has also made payments of higher amounts in exceptional circumstances, such as where greater funding is required due to an increase in enrolments to meet demand to address the needs of essential workers or vulnerable children.³⁰¹ The new system is scheduled to finish on 12 July 2020.

[353] From 13 July 2020, the CCS and ACCS will return, along with new transitional measures designed to support the sector and parents as they move back to the previous arrangements. JobKeeper payments will cease from the sector from 20 July 2020, with all approved early childhood education and care services receiving a Transition Payment of 25 per cent of free revenue or the existing hourly rate cap (whichever is lower) in the relevant reference period. This replaces the JobKeeper Payment.³⁰²

[354] Some measures that were first implemented last year remain in place, including the low and middle income tax offset (LMITO) and an increase in the Medicare levy low-income thresholds for singles, families, and seniors.³⁰³

[355] Ai Group point out that 'the amount of LMITO made available to taxpayers in respect of income earned in the 2018-19 year was larger than the LMITO factored into last year's Review'³⁰⁴ and urged that 'the higher rate of LMITO be taken into account in this year's decision'.³⁰⁵

[356] Ai Group also submitted that support for household incomes has been predominately targeted to lower-income households and middle-income households with children, highlighting the two Economic Support Payments and the Coronavirus Supplement. They argued the pattern of distribution of the income support measure will boost the relative living standards of lower income households. They further argued that the temporary nature of the additional support does not mean it should be overlooked in this Review as it is relevant to the relative living standards and needs of the low paid for the current year.³⁰⁶

³⁰¹ Department of Education Skill and Employment (2020), *Coronavirus (COVID-19): Information for early childhood education and care providers and services on Early Childhood Education and Care Relief Package payments from 6 April 2020*, Australian Government, 8 June.

³⁰² Department of Education Skill and Employment (2020), *Transition arrangement for the end of the Early Childhood and Care Relief Package*, Australian Government, 8 June.

³⁰³ [2019] FWCFB 3500 at [226]

³⁰⁴ Ai Group submission, 13 March 2020 at p. 40.

³⁰⁵ Ibid at p. 42.

³⁰⁶ Ai Group submission in reply, 4 May 2020, pp. 9–10.

[357] Consistent with previous Reviews, we have taken account of the interaction between wages and the tax-transfer system in our consideration of ‘the needs of the low paid’,³⁰⁷ including the higher rate LMITO, and have had regard to various assistance packages introduced by the Australian Government in response to the COVID-19 pandemic. We affirm the position taken by the Panel in previous Review decisions, that it is not appropriate to apply a direct, quantifiable discount to the increase we would have awarded in the absence of such changes;³⁰⁸ but these changes are a moderating factor in our assessment of the appropriate level of the NMW and modern award minimum wages arising from this Review.

[358] We also affirm the Panel’s previously expressed view that the tax-transfer system can provide a more targeted and efficient approach to addressing poverty among low-income individuals, increasing low-paid households’ disposable incomes and sustaining their relative living standards.³⁰⁹ However, while minimum wage increases are not fully reflected in household disposable income, minimum wages continue to play a large role in improving household income for low-income minimum wage families.³¹⁰

Needs of the low paid

[359] A threshold of two-thirds of median adult full-time ordinary earnings is the benchmark we use to identify who is ‘low paid’ within the meaning of ss 134(1)(a) and 284(1)(c).³¹¹

[360] Assessing the needs of the low paid involves analysing the extent to which low-paid workers are able to purchase the essential items necessary for achieving a decent standard of living for them and their families, and to allow them to participate in community life, assessed against contemporary norms. The risk of poverty is also relevant in addressing the needs of the low paid. Consistent with previous Review decisions, we accept that if the low paid live in poverty then their needs are not being met. In measuring poverty we continue to rely on poverty lines based on a threshold of 60 per cent of median equivalised household disposable income and that those in full-time employment can reasonably expect to earn wages above a harsher measure of poverty.³¹²

[361] As there is no single contemporary measure of the needs of the low paid, we use a variety of measures. These include budget standards, comparisons of hypothetical low-wage families with customary measures of poverty, both before and after taking account of the tax-transfer system, and survey evidence of financial stress and material deprivation among low-paid households.³¹³

[362] The single-adult household provides the starting point for our assessment of relative living standards and needs. Such a worker receives no assistance from the transfer system,

³⁰⁷ [2019] FWCFB 3500 at [203].

³⁰⁸ [Ibid: [2018] FWCFB 3500 at [301].

³⁰⁹ [2017] FWCFB 3500 at [437].

³¹⁰ [2018] FWCFB 3500 at [297].

³¹¹ [2019] FWCFB 3500 at [205].

³¹² Ibid at [53].

³¹³ Ibid at [201].

indeed their disposable income is *reduced* by the operation of the tax system. But we also accept that we must take into account the needs of the low paid, without limitation. Accordingly, we also give consideration to the needs of other types of families, including single-income families with dependants.

Poverty and poverty lines

[363] Table 4.1 compares the equivalised household disposable income for a range of hypothetical NMW-reliant households and selected modern award minimum wages with the threshold of 60 per cent of median equivalised household disposable income. The size and composition of households mean that these relative poverty lines differ between household types. As the Panel has previously observed, these differences mean that it is not feasible for minimum wages alone to ensure that all of the family types with a minimum wage employee working full time have incomes that exceed relative poverty levels. Differences arise due to some families receiving support from the welfare system.³¹⁴ Further, the margin between the 60 per cent median income relative poverty line and the equivalised household disposable income represents, at best, a broad indicator of the extent to which the needs of the low paid are met.³¹⁵

[364] We also acknowledge that there are limitations with measures of equivalised household disposable income when assessing poverty, as they are used to assess the circumstances of a selected household type, rather than individual circumstances.³¹⁶ The poverty line essentially measures inequality at the lower end of the income distribution and does not measure observed needs or capacity to meet these needs, which is better indicated by measures of deprivation and financial stress.³¹⁷

³¹⁴ [2019] FWCFB 3500 at [324]; [2018] FWCFB 3500 at [330], [336].

³¹⁵ [2019] FWCFB 3500 at [325]; [2018] FWCFB 3500 at [334].

³¹⁶ [2019] FWCFB 3500 at [329].

³¹⁷ [2018] FWCFB 3500 at [332].

Table 4.1: Ratio of disposable income of selected households earnings various wage rates to a 60 per cent median income poverty line

	December 2014					December 2018					December 2019				
	60% median income PL (\$ pw)	Disposable income as a ratio of 60% median income PL				60% median income PL (\$ pw)	Disposable income as a ratio of 60% median income PL				60% median income PL (\$ pw)	Disposable income as a ratio of 60% median income PL			
		C14	C10	C4	AWOTE		C14	C10	C4	AWOTE		C14	C10	C4	AWOTE
Single adult	520.09	1.12	1.27	1.45	2.17	543.40	1.19	1.35	1.56	2.27	555.17	1.19	1.35	1.56	2.29
Single parent working FT, 1 child	676.12	1.24	1.36	1.49	1.89	706.42	1.29	1.40	1.55	1.92	721.72	1.29	1.40	1.55	1.92
Single parent working PT, 1 child	676.12	0.85	0.92	1.01	1.36	706.42	0.86	0.94	1.04	1.37	721.72	0.86	0.94	1.04	1.37
Single parent working FT, 2 children	832.14	0.95	1.03	1.12	1.39	869.43	1.17	1.27	1.39	1.66	888.27	1.17	1.27	1.38	1.66
Single parent working PT, 2 children	832.14	0.82	0.88	0.96	1.24	869.43	0.82	0.89	0.97	1.24	888.27	0.82	0.89	0.97	1.24
Single-earner couple (with NSA)	780.13	1.00	1.01	1.02	1.45	815.10	1.02	1.03	1.04	1.52	832.75	1.01	1.02	1.04	1.52
Single-earner couple	780.13	0.77	0.86	0.97	1.45	815.10	0.81	0.91	1.04	1.52	832.75	0.81	0.91	1.04	1.52
Single-earner couple, 1 child (with NSA)	936.16	1.03	1.05	1.07	1.37	978.11	1.04	1.05	1.12	1.38	999.30	1.04	1.05	1.12	1.39
Single-earner couple, 1 child	936.16	0.90	0.98	1.07	1.37	978.11	0.93	1.01	1.12	1.38	999.30	0.93	1.01	1.12	1.39
Single-earner couple, 2 children (with NSA)	1092.19	0.99	1.01	1.03	1.27	1141.13	0.99	1.00	1.06	1.27	1165.86	0.98	0.99	1.05	1.27
Single-earner couple, 2 children	1092.19	0.87	0.95	1.03	1.27	1141.13	0.89	0.97	1.06	1.27	1165.86	0.89	0.97	1.05	1.27
Dual-earner couple	780.13	1.16	1.32	1.52	2.29	815.10	1.24	1.41	1.63	2.38	832.75	1.24	1.42	1.63	2.40
Dual-earner couple, 1 child	936.16	1.18	1.28	1.39	1.91	978.11	1.22	1.32	1.45	1.99	999.30	1.22	1.32	1.43	2.00
Dual-earner couple, 2 children	1092.19	1.12	1.20	1.29	1.66	1141.13	1.14	1.22	1.33	1.70	1165.86	1.14	1.22	1.31	1.71

Source: Statistical report (version 13), 17 June 2020, Table 8.6; ABS, *Average Weekly Earnings, Australia, Nov 2019*, Catalogue No. 6302.0; ABS, *Household Income and Income Distribution, Australia, 2013–14*, Catalogue No. 6623.0; ABS, *Household Income and Wealth, Australia, 2017–18*, Catalogue No. 6523.0; Fair Work Commission modelling; *Manufacturing and Associated Industries and Occupations Award 2010*; Melbourne Institute of Applied Economic and Social Research, *Poverty Lines: Australia, December quarter 2019*.

[365] Table 4.1 shows that, for the December quarter 2019, all households receiving the AWOTE had disposable incomes above the relative poverty line. This was also the case for households receiving the C4 rate, apart from single parents working part time with 2 children. These results are the same as in the 2018–19 Review decision.³¹⁸

[366] Households receiving the C14 or C10 rates with equivalised household disposable income below the relative poverty line were: single parents with children working part time; single-earner couples without children not in receipt of NSA; and single-earner couples with 2 children with or without NSA. In addition, single-earner couples with 1 child not in receipt of NSA receiving the C14 rate were also below the relative poverty line.

[367] Six of the 14 hypothetical household types receiving the C14 rate are below the 60 per cent median income relative poverty line; 1 more household than in the last Review.³¹⁹ The additional household type is the single-earner couple with 2 children (with NSA). These household types are shaded in Table 4.1. In 2 of these households, the single parent is working part time and their income is therefore affected by the number of hours they work (in this case it is assumed to be 19 hours).

Budget Standards

[368] Budget standards are generally used to estimate the income levels required to achieve a particular standard of living for particular family types at a particular point in time and have been considered in previous Reviews to assess the needs of the low paid.³²⁰

[369] In 2017, the Social Policy Research Centre at the University of New South Wales published new budget estimates (the 2017 Budget Standards Report) based on the Minimum Income for Healthy Living (MIHL) standard developed in the United Kingdom (UK) public health literature.³²¹ The MIHL are designed to provide individuals with enough income to achieve levels of consumption and participation consistent with a healthy living.³²² That research updated the value of items collected in 2013 for relevant changes in the CPI to June 2016 ‘to maintain their relevance’.³²³ The budgets presented in the 2017 Budget Standards Report have been revised to take account of movements in prices³²⁴ by movements in the corresponding component of the CPI to the March quarter 2020. The revised standards are set out in Table 4.2.

[370] The table shows that, in March 2020, the revised budget standard for a low-paid single adult is \$618.75. This is lower than the disposable income of single adult employees on the NMW of \$663.00, as shown in Table 8.4 of the Statistical report.

³¹⁸ [2019] FWCFB 3500 at [326].

³¹⁹ Ibid at [330].

³²⁰ Ibid at [277]–[315].

³²¹ Saunders P & Bedford M (2017), *New minimum income for healthy living budget standards for low-paid and unemployed Australians*, SPRC Report 11/17, Social Policy Research Centre, UNSW Sydney.

³²² [2019] FWCFB 3500 at [279].

³²³ Saunders & Bedford (2017), at pp. 2; 7–11; 73.

³²⁴ [2019] FWCFB 3500 at [284]; [307].

Table 4.2: Updated budget standards estimates, low-paid single person (per week)

Budget category	Budget priced at latter half of 2013		Budget updated using CPI June 2016			Budget updated using CPI March 2020		
	\$	Index [^]	\$	Index [^]	% change from 2013	\$	Index	% change from 2016
Food	60.19	101.1	61.80	103.8	2.7	66.98	112.5	8.4
Clothing and footwear	11.05	100.2	10.81	98.0	-2.2	10.45	94.8	-3.3
Household goods and services	77.11	101.9	79.23	104.7	2.7	79.76	105.4	0.7
Transport	81.59	103.1	77.71	98.2	-4.8	84.24	106.5	8.5
Health	6.40	109.5	7.33	125.5	14.6	8.20	140.3	11.8
Personal Care	14.99	104.4	15.59	108.6	4.0	16.74	116.6	7.4
Recreation	28.49	101.1	29.04	103.1	2.0	30.00	106.5	3.3
Education	0.00	108.8	0.00	124.6	14.5	0.00	139.6	12.0
Budget standards	279.82	–	281.51	–	0.6	296.36	–	5.3
Weekly rental costs*	nd	–	315.80	110.2	–	322.39	112.5	2.1
Grossed-up budget standards	nd	–	597.31	–	–	618.75		3.6

Source: Statistical report (version 13), 17 June 2020, Table 13.1; Saunders P & Bedford M (2017), *New Minimum Income for Healthy Living Budget Standards for Low-Paid and Unemployed Australians*, SPRC Report 11/17, Social Policy Research Centre, UNSW Sydney, Table 5.7; ABS, *Consumer Price Index, Australia, March 2020*, Catalogue No. 6401.0.

Note: Data for March quarter 2020 are updated based on indexes from June quarter 2016. [^]Based on CPI indexes at Table B.2 in Saunders P & Bedford M (2017). *March quarter 2016 rent figures used in Saunders & Bedford (2017: 87). The index figure for the March quarter 2020 is inflated from the March quarter 2016. nd = not derived.

[371] As noted in the last Review, there were some errors in the calculation of the ‘safety net’ income of the other family types in Table 5.17 of the 2017 Budget Standards Report which resulted in an over-estimation of the disposable income for some families.³²⁵ It was therefore difficult to draw any firm conclusion about whether the disposable income of the selected family types presented in the 2017 Budget Standards Report is above or below the estimated budget standard. However, based on other available data on the nominal disposable income of selected NMW-reliant households, some reasonable inferences can be drawn. Table 4.3 below compares the MIHL budget standard for certain family types (as at June 2016) with the nominal disposable income of those family types, as at July 2019 (from Table 8.4 of the Statistical Report).

[372] Although the measures of disposable income in the Statistical report do not perfectly match the family types and assumptions discussed in the 2017 Budget Standards Report, such as the age of the children in the households,³²⁶ it was concluded in the last Review that the

³²⁵ [2019] FWCFB 3500 at [309].

³²⁶ See for further discussion on assumptions: [2019] FWCFB 3500 at [311]–[313].

family types presented in the Statistical report more closely align with those in the Budget Standards report than those submitted by the Australian Government in last year's Review.³²⁷

Table 4.3: Budget standards and measures of household disposable income, \$ per week

	MIHL Budget ⁽¹⁾	Nominal disposable income, Statistical report ⁽²⁾
	June 2016	July 2019
Single-earner couple, no children	833.24	677.72 838.34 (with NSA)
Single-earner couple, 1 child	969.90	928.62 1031.34 (with NSA)
Single-earner couple, 2 children	1173.38	1036.42 1140.44 (with NSA)
Sole parent working PT, 1 child	827.70	621.21

Source: (1) See Table 5.14 of the 2017 Budget Standards Report. (2) See Statistical report (version 13), 17 June 2020, Table 8.4.

[373] These figures show that the nominal disposable income of all but 2 of the family types is still *below* the relevant budget standard (the 2 family types are the single-earner couple with no children and with 1 child both receiving NSA). This is the case 3 years after the budget standards were calculated and are likely to be higher now with price changes over time.

[374] If the Panel were to award no increase to the NMW and modern award minimum wages, these household types would be further disadvantaged.

[375] Indicators of financial stress are derived from responses to relevant questions in the HILDA survey for each year from 2014 to 2018. The Statistical report presents the results for these indicators for both low-paid households and all employee households. Table 4.4 presents the results for low-paid households, however, our analysis also includes a comparison with the results for all employee households.³²⁸

³²⁷ Ibid at [314].

³²⁸ Statistical report (version 13), 17 June 2020, Table 12.1.

Table 4.4: Financial stress experienced by low-paid households

Financial stress indicators	2014	2015	2016	2017	2018
	(%)	(%)	(%)	(%)	(%)
Unable to raise \$3000 in a week for something important	13.7	11.9	11.3	12.3	12.6
Could not pay electricity, gas or telephone bills on time	13.9	14.4	13.6	14.2	15.0
Could not pay the mortgage or rent on time	8.3	8.0	6.5	5.5	7.5
Pawned or sold something	4.3	4.4	5.2	4.3	4.9
Went without meals	5.1	4.2	3.1	2.7	3.8
Could not afford to heat home	2.6	4.2	2.9	3.3	3.6
Sought assistance from welfare/community organisation	3.4	2.8	2.3	2.8	3.6
Sought financial help from friends or family	16.7	15.8	13.5	11.2	13.4
Any stress	31.3	30.9	28.4	27.0	28.2
Low stress (1–2)	21.3	22.4	19.5	19.1	17.7
Moderate stress (3–4)	7.9	5.8	6.8	6.1	7.9
High stress (5 or more incidences of financial stress)	2.0	2.8	2.0	1.8	2.6
Observations	913	896	963	1014	1000

Source: Statistical report (version 13), 17 June 2020, Table 12.2; HILDA Survey, Waves 14–18.

Note: Employee households are those households whose main source of income is from wages or salary. Both partners in a couple family household, the lone parent in a lone parent household and the lone person of a lone person household must report financial stress for that particular household to be considered as such. Observations from multi-family households, other related family households and group households are excluded. Low-paid employee households are defined as those households in the bottom quintile of equivalised disposable household income for employee households. Disposable household income is equalised using the 'modified OECD' method where each person in the household is given a score (1 for the first adult, 0.5 for subsequent adults and 0.3 for each child under the age of 15) and the income is divided by the sum of these scores.

[376] Compared with 2017, a higher proportion of low-paid households reported any stress, particularly at high and moderate levels. A higher proportion also reported financial stress across each of the indicators. The most common indicators identified were:

- could not pay electricity, gas or telephone bills on time;
- sought financial help from friends or family; and
- unable to raise \$3000 in a week for something important.

[377] Compared with all employee households,³²⁹ almost twice as many low-paid households reported any stress, with more than twice as many reporting high or moderate stress levels. Low-paid households were more than twice as likely to report that they were unable to raise \$3000 in a week for something important, as well as could not afford to heat

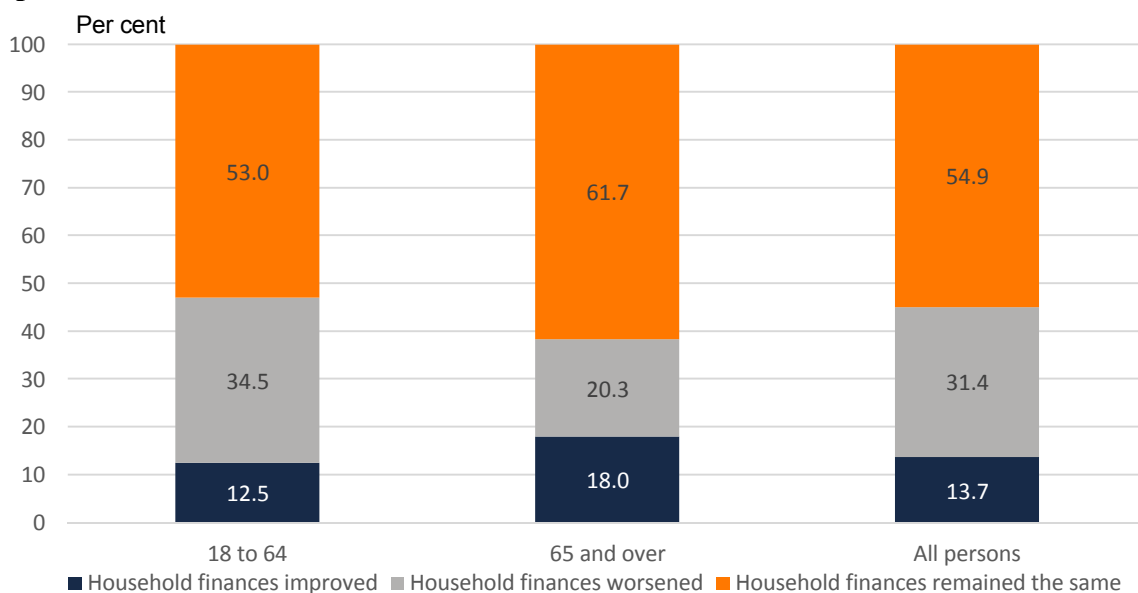
³²⁹ Statistical report (version 13), 17 June 2020, Table 12.1.

home or sought assistance from welfare/community organisation, however, these proportions were relatively small.

[378] A recent, new ABS survey of households is designed to provide a snapshot about how people are faring in response to the changing social and economic environment caused by the COVID-19 pandemic. The *Household Impacts of COVID-19 Survey* collects data on, among other things, household financial stress, from around 1000 persons aged 18 years and over. Participants who took part in the first survey were asked to respond to a series of ongoing surveys to create a panel dataset.

[379] Almost one-third of respondents (31.4 per cent) reported that their household finances had worsened between mid-March and mid-April due to COVID-19, while over half (54.9 per cent) reported that their household finances remained unchanged. People aged 18 to 64 years were more likely to have reported that their household finances had worsened (Chart 4.1).

Chart 4.1: Changes to household finances due to COVID-19 by age, mid-March to mid-April



Source: Statistical report (version 13), 17 June 2020, Chart 12.1; ABS, *Household Impacts of COVID-19 Survey, 14-17 Apr 2020*, Catalogue No. 4940.0.

[380] Most respondents (81.4 per cent) reported that their household could raise \$2000 for something important within a week (Table 4.5), which is lower than the 84 per cent reported in 2014.³³⁰ Fewer than 1 in 10 respondents (7.5 per cent) reported that their household was unable to pay 1 or more selected bills due to a shortage of money, particularly for those aged 18 to 64 years (9 per cent) compared with those aged 65 years and over (2 per cent). Around 1 in 6 respondents (17.4 per cent) reported that their household took 1 or more financial actions to support basic living expenses between mid-March and mid-April, with those aged 18 to 64 years (19.6 per cent) more likely to take financial actions to support basic living expenses relative to those aged 65 years and over (9.3 per cent).

³³⁰ ABS, 'Key findings', *Household Impacts of COVID-19 Survey, 14-17 Apr 2020*, Catalogue No. 4940.0. The ABS *General Social Survey* was undertaken in 2014.

Table 4.5: Household financial stress due to COVID-19, mid-March to mid-April

	18 to 64 years (%)	65 years and over (%)	Persons (%)
Able to raise \$2000 for something important within a week	np	np	81.4
Household could raise \$500 but not \$2000 for something important within a week	np	np	11.6
Household could not raise \$500	np	np	5.1
Household was unable to pay one or more selected bills on time over the period due to a shortage of money	9.0	2.0	7.5
Household took one or more financial actions to support basic living expenses	19.6	9.3	17.4
Drawing on accumulated savings or term deposits	11.6	5.0	10.2
Reducing home loan payments	3.7	0.6	3.1

Note: np Not available for publication but included in totals where applicable, unless otherwise indicated. Data on other categories of financial actions were unavailable.

Source: Statistical Report (version 13), 17 June 2020, Table 12.3; ABS, *Household Impacts of COVID-19 Survey, 14-17 Apr 2020*, Catalogue No. 4940.0.

[381] The Melbourne Institute of Applied Economic and Social Research's weekly *Survey of the impact of COVID-19 in Australia* tracks how Australians are adapting to various changes in Federal and state government policies as the COVID-19 pandemic evolves. The survey contains 1200 responses from persons aged 18 years and over and has been undertaken on a weekly basis. Nine surveys have been undertaken between early April and early June 2020. In the most recent survey (Wave 9), data are captured for the week 1–6 June 2020 and reflect easing of restrictions for restaurants and gatherings in public spaces.³³¹ Some of the key findings from the latest survey are:

- 55 per cent expect the impact on economic activity to be for more than 12 months;³³²
- around one-fifth reported being financially stressed (in terms of paying for essential goods and services) which is the lowest proportion reported in the 9 waves of the survey,³³³ and
- 19 per cent of workers in Accommodation and food services and 15 per cent in Retail trade reported being financially stressed.³³⁴

³³¹ Melbourne Institute of Applied Economic and Social Research (2020), *Research Insights: Taking the Pulse of the Nation*, 1–6 June at p. 2.

³³² Statistical report (version 13), 17 June 2020, Chart 12.2; Melbourne Institute of Applied Economic and Social Research (2020), *Research Insights: Taking the Pulse of the Nation*, 1–6 June.

³³³ Ibid.

[382] In an earlier survey undertaken between 20–23 April, results showed that those aged 18–44 years were the largest proportion to report being financially stressed, while there was a fall in the proportion aged 45–65 years that reported being financially comfortable from earlier that month (6–11 April).³³⁵

[383] The proportion of low-paid households experiencing financial stress has increased over the latest year for which data are available. Some low-paid households are plainly experiencing significant disadvantage. An increase in minimum wages would assist these employees to better meet their needs.

[384] Our overall assessment is that while the relative living standards of NMW and award-reliant employees have improved over recent years, some low-paid award-reliant employee households (namely single-earner couples with and without children and where the non-earning partner is not seeking employment, and single-earner couple with 2 children (with NSA)) have household disposable incomes less than the 60 per cent of median income relative poverty line. Many household types are also likely to have disposable incomes that do not reach the threshold of the MIHL budget standard.

[385] The requirement to take into account relative living standards and the needs of the low paid is a factor which weighs in support of an increase in the NMW and modern award minimum wages.

³³⁴ Statistical report (version 13), 17 June 2020, Chart 12.4; Melbourne Institute of Applied Economic and Social Research (2020), *Research Insights: Taking the Pulse of the Nation*, 1–6 June.

³³⁵ Statistical report (version 13), 17 June 2020, Chart 12.3; Melbourne Institute of Applied Economic and Social Research (2020), *Research Insights: Taking the Pulse of the Nation*, 20–23 April.

5. Other relevant considerations

[386] The remaining considerations that we must take into account are discussed in this Chapter, namely the need to encourage collective bargaining and the equal remuneration principle.

Encouraging Collective Bargaining

[387] In giving effect to the modern awards objective, we must take into account ‘the need to encourage collective bargaining’ (s.134(1)(b)). In making the NMW order, the Panel must give effect to the minimum wages objective. While the minimum wages objective does not refer to ‘the need to encourage collective bargaining’, one of the objects of the Act is to encourage collective bargaining and on that basis it is appropriate to consider that legislative purpose in making the NMW order.³³⁶

[388] Information on enterprise agreements are analysed using data from the Survey of Employee Earnings and Hours (EEH) and the Workplace Agreements Database (WAD). The EEH captures the proportion of employees covered by collective agreements, while data on current agreements from the WAD captures employees covered by federal enterprise agreements that have not passed their nominal expiry date.³³⁷ The most recent release of the biennial EEH was for data collected in May 2018, and these data were discussed in the 2018–19 Review decision.³³⁸

Trends in federal enterprise agreements

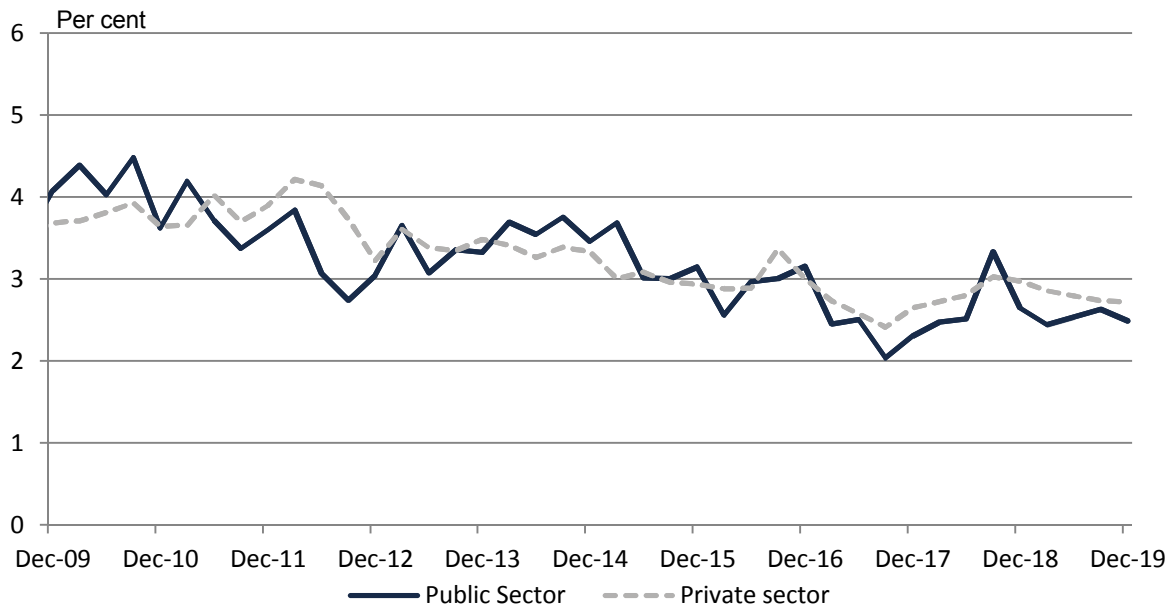
[389] The most recent data published in the Attorney-General’s Department report on *Trends in Federal Enterprise Bargaining* show that the rebound in wages growth as measured by the average annualised wage increase (AAWI) in 2018 has not been sustained (Chart 5.1). The private sector AAWI had increased to 3.0 per cent in the September quarter 2018 but has since fallen to 2.7 per cent in the December quarter 2019. The AAWI for the public sector is below that, at 2.5 per cent.

³³⁶ *Fair Work Act 2009* (Cth), s.3(f).

³³⁷ [2019] FWCFB 3500 at [365].

³³⁸ *Ibid* at [366]–[372].

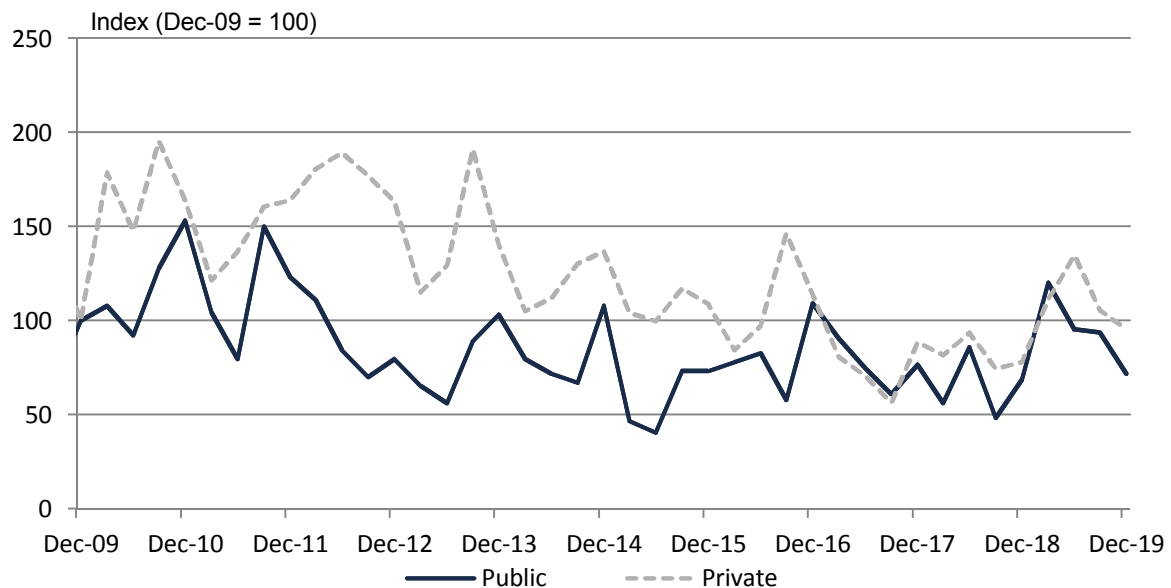
Chart 5.1: AAWI for agreements approved in the quarter by sector, December quarter 2009 to December quarter 2019



Source: Statistical report (version 13), 17 June 2020, Chart 10.2; Attorney-General’s Department, *Trends in Federal Enterprise Bargaining*, December quarter 2019.

[390] An index on the number of federal enterprise agreements approved per quarter is shown in Chart 5.2. In the private sector, the number of federal enterprise agreements approved in the most recent quarter (December 2019) is similar to the number approved a decade earlier, after peaking in the June quarter 2019. The number of federal enterprise agreements declined in the public sector and was lower than levels a decade earlier.

Chart 5.2: Number of agreements approved in the quarter by sector, indexes



Source: Statistical report (version 13), 17 June 2020, Chart 10.1; Attorney-General’s Department, *Trends in Federal Enterprise Bargaining*, December quarter 2019.

[391] In its initial submission, the ACTU submitted that the number of workers covered by enterprise agreements (both current and approved) is trending upwards.³³⁹ ACCI disagreed and stated that it is unlikely that the rate of bargaining is going to increase.³⁴⁰

Implications of these trends for the setting of the NMW and minimum award wages

[392] The RBA has commented that there has been an increase in wage outcomes in federal enterprise agreements that are linked to Review decisions.³⁴¹ Analysis of the WAD shows that 2.8 per cent of employees were covered by current federal enterprise agreements directly linked to Review decisions in the December quarter 2014. This increased to 8.5 per cent (or 190 600 employees) in the December quarter 2019 (Chart 5.3). Most of the increase occurred in the June quarter 2018 following the approval of the Coles enterprise agreement (covering around 83 000 employees).³⁴² This has further increased over the second half of 2019 driven by the approval of the BigW (15 900 employees), Just Group Retail (5546 employees), and BWS federal enterprise agreements (4125 employees) in the September quarter,³⁴³ and the approval of the Kmart (32 039 employees), Hungry Jack's (16 311 employees), and Flight Centre (6455 employees) federal enterprise agreements in the December quarter.³⁴⁴

³³⁹ ACTU submission, 20 March 2020 at para. 512.

³⁴⁰ ACCI submission, 29 March 2020 at para. 379.

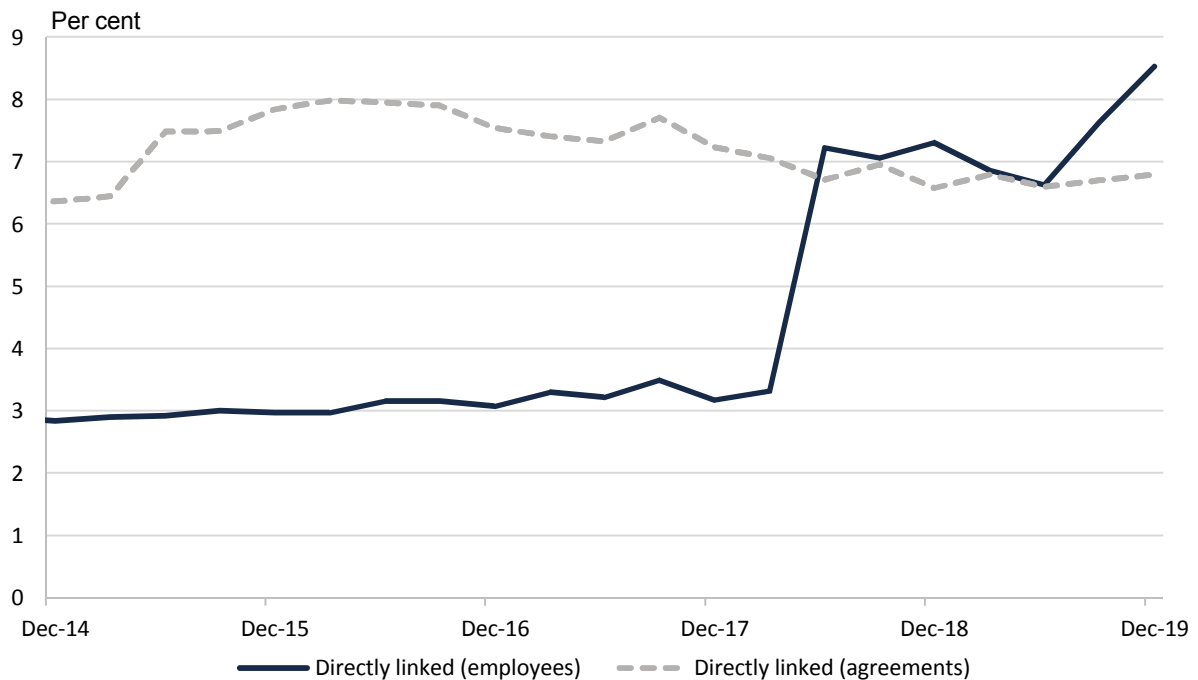
³⁴¹ RBA (2020), *Statement on Monetary Policy*, February, p. 69.

³⁴² [2019] FWCFB 3500 at [371].

³⁴³ Attorney-General's Department, *Trends in Federal Enterprise Bargaining Report*, September quarter 2019, Attachment A.

³⁴⁴ Attorney-General's Department, *Trends in Federal Enterprise Bargaining Report*, December quarter 2019, p. 12.

Chart 5.3: Proportion of employees covered by current agreements which are directly linked to the Annual Wage Review decision



Source: Statistical report (version 13), 17 June 2020, Chart 10.3; Attorney-General’s Department, *Trends in Federal Enterprise Bargaining*, December quarter 2019.

[393] The ACTU argued, in effect, that employers who choose to increase wages according to the Review are not concerned by being tied to a large wage increase and are willing to accept any wage quantum determined by the Panel.³⁴⁵ Whilst employers in these circumstances are bound to apply Review outcomes, the balance of this particular proposition is largely speculative and does not assist to determine whether there should be an adjustment or of what order. The increased reliance on Review outcomes is also likely to be related to the resurgence in enterprise agreements in the retail industry and it is difficult to speculate about any wider implications of this trend for present purposes beyond the fact that Review decisions will also have a direct impact upon an increased number of parties in the bargaining stream.

[394] The impact of the gap between modern award minimum wages and bargained wages on the extent of collective bargaining is difficult to quantify.

[395] In previous Reviews, the Panel has indicated³⁴⁶ that a range of factors impact on the propensity to engage in collective bargaining, many of which are unrelated to increases in the NMW and modern award minimum wages. This view is broadly supported by submissions, with some caveats.³⁴⁷ Further, the Panel has found³⁴⁸ that the gap between modern award

³⁴⁵ ACTU submission, 20 March 2020 at para. 523.

³⁴⁶ See [2019] FWCFB 3500 at [379]–[385].

³⁴⁷ See for example ACTU submission, 20 March 2020 at para. 531; ACCI submission, 29 March 2020 at para. 388; Ai Group submission, 16 March 2020 at p. 49.

minimum wages and bargained wages, to the extent that it can be identified with any precision, has not reached a level where it is encouraging or discouraging collective bargaining. We retain this view.

[396] ACCI submitted that:

‘In the current climate, we do not yet know what rapidly increasing uncertainty and downside risk may do to bargaining behaviours/propensity to bargain in 2020, nor do we know how a real or contextually high minimum wage increase may combine with the wider economic and social climate to impact on bargaining. This therefore is a further factor warranting genuine caution and moderation in the unique circumstances of this case.’³⁴⁹

[397] When the wide range of factors which impact on collective bargaining are taken into account, it is unlikely that the adjustments to wages made by the Panel in recent Reviews have discouraged collective bargaining, particularly in light of the increase in collective agreement coverage in at least some of the award-reliant industries. It is also likely that the impact of the COVID-19 pandemic will be felt in the extent and nature of bargaining in the immediate future, although the precise impact is difficult to predict with any certainty at this juncture.

[398] For the reasons given, it is likely that an increase we determine in a Review may impact on bargaining in different sectors in different ways and we cannot be satisfied that the increase we have determined will *encourage* collective bargaining. We have taken this into account along with the other statutory considerations in determining the outcome in this Review.

Equal remuneration

[399] The modern awards objective and the minimum wages objective is that the Panel must take into account the ‘principle of equal remuneration for work of equal or comparable value’ (ss 134(1)(e) and 284(1)(d)). This consideration was comprehensively addressed in the 2017–18 Review decision and was also adopted in the 2018–19 Review decision.³⁵⁰ That observation continues to be relevant in our consideration of this matter and the related and broader issue of gender equity.

[400] Research commissioned for this Review found that women were more likely to be award reliant, low paid, and both low paid *and* award reliant. In fact, higher paid award-reliant employees are more likely to be female (58.7 per cent) than male (41.3 per cent).³⁵¹ This is relevant for our decision.

[401] The gender pay gap is the difference between the average hourly or full-time weekly wages earned by men and women as a ratio of average male earnings. Two measures of wages are shown in Table 5.1, one based on the average weekly ordinary time earnings of full-time

³⁴⁸ [2019] FWCFB 3500 at [386].

³⁴⁹ ACCI submission, 29 March 2020 at para. 387.

³⁵⁰ [2019] FWCFB 3500 at [388]; [2018] FWCFB 3500 at [35]–[38].

³⁵¹ Wilkins & Zilio (2020), p. 14, Table 7.

adult employees (AWOTE) and the other based on the hourly ordinary time earnings for both full-time and part-time employees (from the EEH). Based on both measures the gender pay gap is calculated at around 14 or 15 per cent. Using the AWOTE measure the gap has reduced slightly, using the EEH measure it has increased over time.³⁵²

Table 5.1: Estimates of the gender pay gap

Measure	Male earnings (\$)	Female earnings (\$)	Gender pay gap (%)
AWOTE (Nov 2019)	1750.80	1508.00	13.9
EEH adult hourly ordinary time cash earnings (May 2018)*	42.07	35.66	15.2

Source: Statistical Report (version 13), 17 June 2020, Table 11.1; ABS, *Average Weekly Earnings, Australia, Nov 2019*, Catalogue No. 6302.0; ABS, *Microdata: Employee Earnings and Hours, Australia, May 2018*, Catalogue No. 6306.0.55.001.

Note: AWOTE refer to full-time adult employees. The gender pay gap is calculated as the difference between female's and male's earnings, expressed as a percentage of male's earnings. * Earnings are deflated by a casual loading of 25 per cent.

[402] As we concluded last year, the causes of the gender pay gap are complex and influenced by factors such as: differences in the types of jobs performed by men and women; discretionary payments; workplace structures and practices; the degree to which occupations involve majority female employment; and the historical undervaluation of female work and female-dominated occupations.³⁵³

[403] The observations made by the Panel in the 2017–18 and 2018–19 Review decisions are still relevant. They are:

- there are more women than men who are award-reliant;
- award-reliant workers are more likely to be low paid than other workers;
- women are significantly more likely to be paid at the award rate than are men at all levels of education and experience (except in their first year of work); and
- men are more likely to receive over-award payments or be subject to collective agreements (with higher wages) due to the industry or occupation in which they work.³⁵⁴

[404] These factors inform the nature and extent of the role that the Review might play in addressing the gender pay gap. It is also the case, as Ai Group pointed out in its submission, that past Review decisions have concluded that moderate increases in the NMW and modern award minimum wages would be likely to have a relatively small, but nonetheless beneficial,

³⁵² [2019] FWCFB 3500 at [389]–[390].

³⁵³ Ibid at [396].

³⁵⁴ Ibid at [397]; [2018] FWCFB 3500 at [435].

effect on the gender pay gap.³⁵⁵ However, as ACCI submitted, this needs to be considered in 2020 against more general and labour market considerations raised by the COVID-19 pandemic:

‘There must be a tipping or critical point at which any uprating in minimum wages that seeks to take into account gender pay disparity, may risk adding to underemployment or reducing hours and jobs to the lower paid, which would disproportionately negatively impact women, and perversely serve to reduce incomes and opportunities.’³⁵⁶

[405] Gender pay equity considerations favour an increase in minimum wages. Women are more likely to be in low-paid employment and are more likely to be paid at the award rate.³⁵⁷ Further, higher-paid award-reliant employees are more likely to be female (58.7 per cent) than male (41.3 per cent).³⁵⁸

³⁵⁵ Ai Group submission, 16 March 2020 at p. 45; [2018] FWCFB 3500 at [38].

³⁵⁶ ACCI submission, 29 March 2020 at para. 396(b).

³⁵⁷ Wilkins & Zilio (2020), p. 11, Table 3.

³⁵⁸ Wilkins & Zilio (2020), p. 14, Table 7.

6. Transitional Instruments and Other Matters

Transitional Australian Pay and Classification Scales, Division 2B State awards and other transitional instruments

[406] The Panel is required to review and may make a determination varying a number of transitional instruments as part of the Review. Transitional instruments include:

- Transitional Australian Pay and Classification Scales (APCSs);³⁵⁹
- State reference transitional awards, which include:
 - Division 2A State reference transitional awards;³⁶⁰
 - Division 2A State reference transitional enterprise awards;
 - Division 2A State reference public sector transitional awards;
 - Division 2B State reference transitional awards;³⁶¹
 - Division 2B State reference public sector awards; and
 - Division 2B State awards.³⁶²
- Transitional Pay Equity Orders;³⁶³
- Certain copied State awards.³⁶⁴

[407] The content and coverage of most of these instruments was discussed in the *Annual Wage Review 2009–10* decision,³⁶⁵ and in Fair Work Australia’s Research Report

³⁵⁹ *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), s.22; Note [\[2013\] FWAFB 4000](#) at [550]–[553] clarifies these are different categories of transitional instruments.

³⁶⁰ Some Division 2A State reference transitional awards may still operate such as where they are related to awards that have not been terminated under the termination of instruments process.

³⁶¹ Some Division 2B State reference transitional awards may still operate such as where they are related to awards that have not been terminated under the termination of instruments process.

³⁶² Some Division 2B State awards may still operate such as where they cover: employees also covered by enterprise instruments; or State reference public sector awards.

³⁶³ Two transitional pay equity orders currently operate, created under item 43 of Sch. 3, and item 30A of Sch. 3A, of the Transitional Act respectively. The Panel must review and may make a determination varying the transitional pay equity order created under sub item 30D(1) of Sch. 3A, to the extent that it is derived from the *Queensland Community Services and Crisis Assistance Award – State 2008* (Regs 3A.01B).

³⁶⁴ See discussion further for whom these instruments apply [\[2013\] FWCFB 4000](#) at [550]–[561].

³⁶⁵ [\[2010\] FWAFB 4000](#) at [370]–[396].

6/2010.³⁶⁶ Further background in relation to these various instruments was provided in the *Annual Wage Review 2016–17 Preliminary decision*.³⁶⁷

[408] Transitional instruments also include those award-based transitional instruments subject to modernisation processes which continue to operate, and those preserved by operation of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (Transitional Act). Most transitional instruments have been terminated or have ceased to operate; however, some continue to operate subject to the conclusion of the modernisation process. These instruments include, but are not limited to:

- transitional instruments that cover employees also covered by enterprise instruments,³⁶⁸
- transitional instruments that cover employees also covered by State reference public sector transitional awards which have not been terminated by the Commission or replaced by a State reference public sector modern award;³⁶⁹ and
- transitional instruments that were not terminated as part of the termination of modernisable instruments process which commenced in 2010.³⁷⁰

[409] Transitional instruments preserved by the Transitional Act include: Transitional APCs; State reference transitional instruments and Division 2B State awards preserved by operation of the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*; and transitional pay equity orders created by the Transitional Act.³⁷¹ These instruments may be considered as part of the Panel’s review.³⁷² Transitional APCs and State reference transitional awards operate until the Commission makes an order to terminate them,³⁷³ or they terminate pursuant to legislative provisions.³⁷⁴ A number of transitional instruments covering employees also covered by the *Social, Community, Home Care and Disability Industry Award 2010* and the *Social, Community and Disability Services Industry Equal Remuneration Order 2012* (ERO) have not been terminated by the Commission³⁷⁵ and

³⁶⁶ Dunn A & Bray G (2010), *Minimum wage transitional instruments under the Fair Work Act 2009 and the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, Research Report 06/2010, Fair Work Australia, June 2010.

³⁶⁷ [\[2017\] FWCFB 1931](#) at [81].

³⁶⁸ *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), items 5(1)–(5) and 9(4) of Sch. 6.

³⁶⁹ *Ibid* at items 5(3), 6 and 10(1) of Sch. 6A.

³⁷⁰ For example, certain instruments that covered employees who were also covered by the *Social, Community, Home Care and Disability Industry Award 2010* were preserved by the *Award Modernisation – Termination of Modernisable Instruments* decision [\[2010\] FWAFB 9916](#) at [44]. As at the date of this decision, they have not been terminated.

³⁷¹ A more detailed outline of these instruments can be found at [\[2013\] FWCFB 4000](#) at [553]–[559]; and [\[2017\] FWCFB 1931](#) at [81].

³⁷² *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), items 10 and 20 of Sch. 9, items 7 and 12A(5) of Sch. 3.

³⁷³ *Ibid* at items 7–8 of Sch. 9, and item 3(2) of Sch. 5.

³⁷⁴ For example, *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), item 20(1) of Sch. 3.

³⁷⁵ [\[2010\] FWAFB 9916](#) at [41]–[44].

the Panel must review and may make a determination varying these instruments.³⁷⁶ In the 2016–17 Review decision, the Panel concluded that the Act does not authorise us to terminate transitional instruments in the course of conduct of the Review.³⁷⁷ Accordingly, we do not propose to terminate any transitional instrument.

[410] The ACTU, ACCI and Ai Group submitted that the approach taken by the Panel in previous Reviews should be maintained, such that the rates in relevant transitional instruments be increased consistently with any increase determined for modern award minimum wages.³⁷⁸ Consistent with these submissions, the rates in relevant transitional instruments (which remain in operation) will be varied by the same percentage amount we have determined shall apply to modern award minimum wages. We note that there is no requirement to publish determinations specifying those variations.

[411] The same approach will be taken in respect of copied State awards. These apply in relation to employees of non-national system State public sector employers who transfer their employment to a national system employer as part of a transfer of business.³⁷⁹ The Panel is required to review and, if appropriate, make a determination varying minimum wages in copied State awards.³⁸⁰ In the 2017–18 Review decision, the Panel determined that the adjustment to the rates in modern awards determined in that Review would be applied to copied state awards.³⁸¹ This approach has been noted in various submissions in this Review³⁸² and will be taken by us in this Review.

[412] Research to be conducted on the ‘role and relevance’ of transitional instruments was proposed by ACCI:³⁸³

‘After 10 years, it would seem ... opportune to better understand the role and relevance of the transitional instruments, any work still being done by them, and who they apply to, in which numbers.’³⁸⁴

[413] There is merit in the observation made by ACCI and a conference will be convened to discuss the issue raised.

³⁷⁶ *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), item 10(1) of Sch. 9 and item 12A of Sch. 3.

³⁷⁷ [2017] FWCFB 3500 at [697].

³⁷⁸ ACTU submission, 20 March 2020 at para. 550; ACCI submission, 29 March 2020 at para. 401; Ai Group submission, 16 March 2020 at p. 48.

³⁷⁹ The *Fair Work (Transfer of Business) Amendment Act 2012* (Cth), which commenced on 4–5 December 2012, introduced Part 6–3A into the Act. A copied State award continues to operate under the national system for a period of five years, unless terminated or extended by regulation. See s.768AO of the *Fair Work Act 2009* (Cth).

³⁸⁰ The provisions of the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* (Cth) dealing with the variation of Division 2B State awards in annual wage reviews also apply to copied State awards. See ss. 768BY and 768AW(b) of the *Fair Work Act 2009* (Cth).

³⁸¹ [\[2018\] FWCFB 3500](#) at [452].

³⁸² For example, ACTU submission, 20 March 2020 at para. 550; ACCI submission, 29 March 2020, at para 401.

³⁸³ ACCI submission, 29 March 2020 at para. 403.

³⁸⁴ *Ibid* at para. 402.

Modern award minimum wages for junior employees, employees to whom training arrangements apply, employees with disability and piece rates

[414] The Panel is required to review modern award minimum wages, including wages for junior employees, employees to whom training arrangements apply, employees with disability, and piece rates.³⁸⁵

Juniors

[415] The Victorian Government submitted that lower wage and employment levels negatively affect social, economic and health outcomes of young people.³⁸⁶ The Victorian Government supported a ‘fair and reasonable increase’ to modern award minimum wages,³⁸⁷ submitting that as young people make up a significant part of the Victorian workforce working at an award or minimum wage, an increase to the minimum wage and corresponding increase to award wages could encourage more young job entrants.³⁸⁸

[416] While ABI and MGA submitted that youth unemployment continue to be a significant national concern,³⁸⁹ ABI also added that underemployment had more than doubled for younger workers.³⁹⁰ Ai Group submitted that the industries that have been hit hardest and earliest by COVID-19—hospitality, retail, and arts and recreation—have the highest proportions of young people in their workforces.³⁹¹ ABI submitted that higher minimum wages may contribute to businesses potentially substituting youth employees with more experienced older workers in pursuit of lower unit labour costs.³⁹² MGA submitted that any increase to the General Retail Industry Award above CPI increases will lead to more junior and casual employees losing more hours of work.³⁹³

[417] We understand these submissions to be directed at whether there should be any adjustment to modern award minimum wages arising from this Review, rather than seeking the quarantining of junior rates. We have taken the prevailing conditions in these industries into account in determining both the extent of the adjustment to minimum wages and the timing of that adjustment.

[418] The ACTU, ACCI, Ai Group, ACOSS and R&CA expressly supported flowing on any Review decision to junior rates of pay in modern awards.³⁹⁴

³⁸⁵ *Fair Work Act 2009* (Cth), ss.284(3), 285(2)(a)(i).

³⁸⁶ Victorian Government submission, 13 March 2020 at para. 6.2.7.

³⁸⁷ *Ibid* at para. 8.3.

³⁸⁸ *Ibid* at paras 6.1.1-6.2.12.

³⁸⁹ ABI and NSWBC submission, 13 March 2020 at pp. 14-15; MGA submission, 13 March 2020 at pp. 15-16.

³⁹⁰ ABI and NSWBC submission, 13 March 2020 at pp. 14-15.

³⁹¹ Ai Group submission in reply, 4 May 2020 at p. 29.

³⁹² ABI and NSWBC submission, 13 March 2020 at p. 26.

³⁹³ MGA submission, 13 March 2020 at p. 6.

³⁹⁴ ACTU submission, 20 March 2020 at para. 537; ACCI submission, 29 March 2020 at para. 406; Ai Group submission, 16 March 2020 at p. 49; ACOSS submission, 13 March 2020 at p. 16; RCA submission, 19 March 2020 at para. 9.

[419] We have decided that the adjustment to modern award minimum wages will flow through to the operation of provisions for calculating junior rates in modern awards.

[420] The 2018–19 Review decision³⁹⁵ discussed an issue raised by the AWU regarding certain junior rates of pay in the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* (VMRSR Award) that were lower than the rates of pay for award-free junior employees covered by the Special National Minimum Wage 3 (special NMW3) in the NMW order 2018.³⁹⁶ A background paper³⁹⁷ regarding the matter was prepared by the Commission; the background paper identified that this issue affected junior rates in 19 modern awards. A conference with interested parties was conducted in May 2019.³⁹⁸

[421] In the 2018–19 Review decision, the Panel noted that the broader issue concerning junior rates was only raised late in the consultation process, with the result that interested parties were not afforded a full opportunity to contribute to the Panel’s consideration of the matter.³⁹⁹ The Panel stated that any interested party needed to agitate this matter as part of the 2019–20 Review to allow for it to be given proper consideration, and directed any interested party wishing to pursue a variation of junior rates in the 19 modern awards relating to special NMW3 as part of the 2019–20 Review to advise the Commission on or before 30 September 2019.⁴⁰⁰

[422] No submissions were received in relation to this matter; however, the Australian Rail, Tram and Bus Industry Union (RTBU) sought to pursue a variation in apprentice rates in the *Rail Industry Award 2020* (Rail Award).⁴⁰¹ This is discussed in the next section.

[423] Additionally, it is observed that in its submission to this Review, the ACTU raised concerns with existing relativities between adult rates and junior rates in particular awards, ‘given the outcome [of adjusting modern award minimum wages via a uniform percentage increase] is that some award covered junior employees are entitled to lower hourly rates of pay than would be the case if the National Minimum Wage order applied to them.’⁴⁰² However, the ACTU submitted that:

‘Notwithstanding these matters, we did not elect to further pursue an adjustment of modern award minimum wages for junior employees. We will give the matter further consideration once the reviewed modern awards are in operation and following the conclusion of other matters which might impact modern award minimum wages more generally.’⁴⁰³

³⁹⁵ [\[2019\] FWCFB 3500](#) at [409]–[420].

³⁹⁶ AWU submission, 18 March 2019 at para. 3.

³⁹⁷ Background paper – Annual Wage Review 2018–19 — Junior rates of pay in modern awards, 8 May 2019.

³⁹⁸ [Notice of listing](#) – 15 May 2019.

³⁹⁹ [\[2019\] FWCFB 3500](#) at [416].

⁴⁰⁰ *Ibid* at [419].

⁴⁰¹ RTBU [submission](#), 11 July 2019.

⁴⁰² ACTU submission, 20 March 2020 at paras 533-534.

⁴⁰³ *Ibid* at para. 537.

[424] In respect of the VMRSR Award, in the 2018–19 Review decision, the Panel decided that the junior rates issue could be addressed as part of the 4 yearly review of modern awards in the context of the transfer of the manufacturing stream of the VMRSR Award into the Manufacturing Award.⁴⁰⁴

[425] Given the views expressed about this issue by the previous Panel,⁴⁰⁵ and in the absence of any particular proposals or engagement by the parties, we do not propose to deal with this aspect further as part of this Review.

Apprentices and Trainees

[426] The Victorian Government submitted that a strong minimum wage contributes to the economic wellbeing of apprentices,⁴⁰⁶ and supported a ‘fair and reasonable increase’ to award minimum wages.⁴⁰⁷

[427] ACCI, ARA and HIA submitted their concerns over apprentice and trainee commencement, completion, cancellation and withdrawal rates, citing National Centre for Vocational Education Research (NCVER) data showing an increase in apprentice attrition.⁴⁰⁸ HIA also noted a decline in government Vocational Education and Training (VET) funding,⁴⁰⁹ and submitted that the majority of apprentices in the residential building industry are employed by employers with an annual turnover of less than \$500 000.⁴¹⁰ HIA submitted that increased apprentice rates have rendered employing apprentices ‘financially unviable’ for some firms.⁴¹¹

[428] ACCI submitted that in situations of economic downturn, apprentices and trainees are usually the first workers to be laid off, as recognised by the Federal Government in their COVID-19 economic stimulus package, which provides employers with a 50 per cent wage subsidy for each of their apprentices and trainees until 30 September 2020.⁴¹² ACCI submitted that ‘it is important the Panel take into consideration the vulnerability of these workers in the 2020 Decision.’⁴¹³ Similarly, HIA submitted an increase to apprentice wages during the COVID-19 pandemic would be ‘untimely, if not inappropriate.’⁴¹⁴

⁴⁰⁴ [2019] FWCFB 3500 at [420].

⁴⁰⁵ Ibid at [417].

⁴⁰⁶ Victorian Government submission, 13 March 2020 at para. 6.1.1.

⁴⁰⁷ Ibid at para. 8.3.

⁴⁰⁸ ACCI submission, 29 March 2020 at paras 280–282 citing National Centre for Vocational Education Research, *Historical time series of apprenticeships and traineeships in Australia from 1963 to 2019*, 12 December 2019 at <https://www.ncver.edu.au/research-and-statistics/data/all-data/historical-time-series-of-apprenticeships-and-traineeships-in-australia-from-1963-to-2019>; ARA submission, 20 March 2020 at pp. 8-9 citing National Centre for Vocational Education Research, *Historical time series of apprenticeships and traineeships in Australia from 1963 to 2019*, 12 December 2019; HIA submission, 20 March 2020 at pp. 6–7, citing NCVER 2019, *Australian vocational education and training statistics: apprentices and trainees 2019 — June quarter*, NCVER, Adelaide.

⁴⁰⁹ HIA submission, 20 March 2020 at p. 7.

⁴¹⁰ Ibid at p. 8.

⁴¹¹ Ibid at p. 8.

⁴¹² ACCI submission, 29 March 2020 at para. 283.

⁴¹³ Ibid at para. 284.

⁴¹⁴ HIA submission, 20 March 2020 at p. 8.

[429] The ACTU submitted in reply that the HIA's submission was 'contradictory insofar as it is critical of the costs of employing apprentices yet at the same time argues that the Government's recent announcement of [a] subsidy for up to 50% of apprentice wages, which reduces those costs, is a positive reason not to increase their wages.'⁴¹⁵

[430] The ACTU, ACCI, Ai Group, ACOSS and RCA supported flowing on any Review decision to modern award minimum wages for employees to whom training arrangements apply through the National Training Wage Schedule (NTWS) under the relevant awards.⁴¹⁶

[431] We have decided that the adjustment to modern award minimum wages will flow through to employees to whom training arrangements apply in modern awards, including the rates under the NTWS.

[432] In the 2018–19 Review, the RTBU indicated that certain apprentice rates in the Rail Award fall below the apprentice rates in special NMW4.⁴¹⁷ On 11 July 2019, the RTBU wrote to the Commission expressing their intention to 'pursue a variation in apprentice rates in the *Rail Industry Award 2010* and for it to be considered during the 2019–20 Wage Review.'⁴¹⁸

[433] The RTBU submitted that it was not appropriate that any apprentice rates in the Rail Award be less than the equivalent apprentice rates provided for award-free employees under the special NMW4.⁴¹⁹ It submitted that the current apprentice rates in the Rail Award were 'insufficient to meet community expectations of a reasonable standard of living... [and]... are not a sustainable way for the apprenticeship system to continue.'⁴²⁰ The RTBU sought the following determinations:

- (a) Vary the apprentice rates percentages in the Rail Award to the same percentages for apprentices under the Miscellaneous Award.
- (b) Vary clause 14.3(d) to apply to all apprentices regardless of commencement date of apprenticeship.
- (c) Vary clause 14.3(e)(i) and (ii) to apply to all apprentices regardless of commencement date of apprenticeship.
- (d) Remove clause 14.3(c) which contains the pre-2014 apprentice rates of pay.⁴²¹

⁴¹⁵ ACTU submission in reply, 4 May 2020 at para. 33.

⁴¹⁶ Ibid at para. 543; ACCI submission, 29 March 2020 at para. 408; Ai Group submission, 16 March 2020 at p. 49; ACOSS submission, 13 March 2020 at p. 16; R&CA submission, 19 March 2020 at para. 12; Ai Group submission in reply, 4 May 2020 at p. 7.

⁴¹⁷ RTBU [submission](#), 14 May 2019 at p. 1.

⁴¹⁸ RTBU [submission](#), 11 July 2019.

⁴¹⁹ RTBU [submission](#), 20 February 2020 at para. 8.

⁴²⁰ Ibid at para. 9.

⁴²¹ Rail, Tram & Bus Union Australia [submission](#), 20 February 2020 at para. 13.

[434] Ai Group submitted that the Act does not require that the minimum wage rates for award-covered apprentices be equal to or higher than the wage rates for award/agreement free apprentices.⁴²² Ai Group submitted that varying the Rail Award to address only those rates which are currently lower than special NMW4 would ‘disrupt existing relativities’, since ‘the scale of rates in each modern award is designed to reflect an appropriate graduated scale of rates for the relevant industry.’⁴²³ Ai Group suggested that it would be more appropriate for the RTBU to pursue an application under s.157 of the Act.⁴²⁴

[435] Aurizon, Australian Rail Track Corporation, Brookfield Rail Pty Ltd, Sydney Trains and V/Line Passenger Pty Ltd (the Rail Employers) supported the position of Ai Group.⁴²⁵ The Rail Employers further submitted that the RTBU’s proposed ‘blanket increase’ failed to acknowledge the distinction in qualifications between junior apprentices who have completed year 12 and those who have not, whereas the Rail Award recognises such a distinction in different rates of pay based on possession of this qualification.⁴²⁶ The Rail Employers also submitted that a blanket increase to the percentages for junior apprentices in clause 14.3(d) of the Rail Award for consistency with the Miscellaneous Award will have the practical effect of increasing the rate of pay for junior apprentices on a Level 3 Operations rate to a level above the weekly rate in the Miscellaneous Award, and that ‘such a generalised approach should not be adopted in the absence of a substantive application brought pursuant to s. 157 of the FW Act.’⁴²⁷

[436] The matter was listed for conference on 27 February 2020, before Commissioner Hampton.⁴²⁸ On 3 March 2020, the RTBU wrote to the Commission requesting that the Panel deal with this issue during the 2019–20 Review.⁴²⁹ Following this, Commissioner Hampton published a report on the matter to the Panel⁴³⁰ to assist the Panel in assessing how this matter should be considered.

[437] In his Report, Commissioner Hampton observed that ‘any consideration of the relationship between the award rates for apprentices under the Rail Award and special NMW4 as the reference point, would have indirect consequences for all 19 modern awards discussed in the 2018-19 Review Decision.’⁴³¹ Commissioner Hampton noted that under the Modern Awards Review process, the review of the Rail Award is nearing completion, and the issue of

⁴²² Ai Group [submission](#), 24 February 2020 at p. 2.

⁴²³ Ibid at p. 2.

⁴²⁴ Ibid at p. 3.

⁴²⁵ Aurizon, Australian Rail Track Corporation, Brookfield Rail Pty Ltd, Sydney Trains and V/Line Passenger Pty Ltd [submission](#), 26 February 2020 at p. 1.

⁴²⁶ Aurizon, Australian Rail Track Corporation, Brookfield Rail Pty Ltd, Sydney Trains and V/Line Passenger Pty Ltd [submission](#), 26 February 2020 at p. 2.

⁴²⁷ Aurizon, Australian Rail Track Corporation, Brookfield Rail Pty Ltd, Sydney Trains and V/Line Passenger Pty Ltd [submission](#), 26 February 2020 at p. 2.

⁴²⁸ [Notice of Listing](#) – 27 February 2020.

⁴²⁹ Rail, Tram & Bus Union Australia [correspondence](#), 3 March 2020.

⁴³⁰ [\[2020\] FWC 1104](#).

⁴³¹ [\[2020\] FWC 1104](#) at [24].

apprentice rates and conditions in the Rail Award has not be agitated by any parties during the review.⁴³²

[438] Commissioner Hampton also considered work value considerations under s. 157 of the Act, and stated that:

‘Based upon present indications, it appears that the RTBU’s proposition remains firmly centred upon the relationship between the modern award rates and special NMW4, rather than expressly upon a broader work value foundation or the particular circumstances of the Rail Award.’⁴³³

[439] In its submission to this Review, the ACTU expressed support of the RTBU’s position on this matter.⁴³⁴ In its submission in reply, Ai Group maintained the view that any consideration of apprentice rates in the Rail Award should take into account work value considerations as mandated under the Act.⁴³⁵ Ai Group also observed that the Commission had already undertaken major reviews of apprentice rates in modern awards in the Modern Awards Review 2012 and in the 4 yearly review of modern awards.⁴³⁶

[440] The Panel made the following statement in the 2018–19 Review decision:

‘As has been noted in previous Reviews, the review and variation of modern award minimum wages is a separate, though related, function to reviewing and making a NMW order. In exercising its powers to set, vary or revoke modern award minimum wages, the Panel “must take into account the rate of the national minimum wage that it proposes to set in the Review”, but there is no mandated relationship between wage rates set by a NMW order and modern award minimum wages and certainly no requirement that any particular modern award minimum wage rate be no less than a NMW rate.’⁴³⁷

[441] This means that any review of the specific apprentice rates in the Rail Award (or any other modern award) of the kind posited by the RTBU, including through the Review, must be based upon the merit of any proposal advanced and not simply upon the relationship between the award rates and the NMW rate. Further, some consideration of the relationship between the rates under review and those set in other modern awards, the basis upon which they had been set and any changes that have occurred relevant to that basis, and an assessment of the consequences of any change, would all need to be undertaken. In this Review, no substantial material has been advanced to support the outcome sought by the RTBU and we are not in a position to make the necessary merit-based assessment.

[442] As a result, we do not propose to further examine the apprentice rates in the Rail Award as part of this Review.

⁴³² Ibid at [25].

⁴³³ Ibid at [28].

⁴³⁴ ACTU submission, 20 March 2020 at para. 544.

⁴³⁵ Ai Group submission in reply, 4 May 2020 at p. 7.

⁴³⁶ Ibid at p. 7.

⁴³⁷ [\[2019\] FWCFB 3500](#) at [417].

Employees with disability

[443] The ACTU, ACCI, Ai Group and ACOSS supported a flow on of any Review decision to the modern award minimum wages for employees with disability.⁴³⁸

[444] The Victorian government observed that people with disability are more likely to be on the minimum wage than people without disability, and often incur higher living expenses. It submitted that a strong minimum wage is ‘critical to the economic inclusion and participation of people with disability.’⁴³⁹

[445] We have decided that the adjustment granted in this Review will flow through to employees with disability through the operation of the Supported Wage System (SWS) Schedule and that the minimum payment in the SWS Schedule will be adjusted consistent with the approach adopted in previous Reviews.⁴⁴⁰ It will also flow through to employees covered by the *Supported Employment Services Award 2020* (SES Award) through the variation of the wage rates in clause 15.2 of that modern award and the operation of the SWS Schedule and other wage assessment tools referred to in clause 18.2.

[446] We note that on 3 December 2019, the Commission issued a decision⁴⁴¹ in the 4 yearly review of modern awards proceedings relevant to the SES Award, which determined that the existing wage assessment tools should be phased out, the SES Award classification structure should be redesigned and that there should be a new wages structure for employees with disability.⁴⁴² The Full Bench in those proceedings has determined to conduct a trial concerning the new wages structure and further evidence and submissions will be received following the completion of that trial.⁴⁴³

[447] The ACTU submitted that the outcome of the 2019–20 Review should be taken into account in varying the proposed new classification structure in the SES Award that is proposed to be trialled this year.⁴⁴⁴

Piece rates

[448] The ACTU, ACCI and Ai Group supported a flow on of any Review decision to piece rates.⁴⁴⁵ The ACTU submitted that while piece rates in modern awards generally did not require separate adjustment, specified piece rates, such as those found in Schedule E of the *Timber Industry Award 2010* and in the *Pastoral Award 2010* will require adjustment on the

⁴³⁸ ACTU submission, 20 March 2020 at paras 545-546; ACCI submission, 29 March 2020 at para. 409; Ai Group submission, 16 March 2020 at p. 51; ACOSS submission, 13 March 2020 at p. 16.

⁴³⁹ Victorian Government submission, 13 March 2020 at para. 6.4.6.

⁴⁴⁰ [\[2019\] FWCFB 3500](#) at [425]; [\[2018\] FWCFB 3500](#) at [464]; [\[2017\] FWCFB 3500](#) at [714]; [\[2016\] FWCFB 3500](#) at [608].

⁴⁴¹ [\[2019\] FWCFB 8179](#).

⁴⁴² [\[2019\] FWCFB 8179](#) at [368].

⁴⁴³ See [\[2019\] FWCFB 8179](#) and [\[2020\] FWCFB 343](#) at [1].

⁴⁴⁴ ACTU submission, 20 March 2020 at para. 547.

⁴⁴⁵ Ibid at para. 549; ACCI submission, 29 March 2020 at para. 411; Ai Group submission, 16 March 2020 at p. 51.

basis of the percentage increase otherwise determined as appropriate for those modern awards.⁴⁴⁶

[449] The calculation of piece rates in modern awards will not be altered.

Casual loadings under modern awards and the casual loading for award/agreement free employees

[450] The Panel is required to review casual loadings in modern awards and to include a casual loading for award/agreement free employees in the NMW order.⁴⁴⁷ The casual loading for award/agreement free employees must be expressed as a percentage.⁴⁴⁸

[451] The ACTU, ACCI, Ai Group and R&CA submitted that the casual loading in modern awards and for award/agreement free employees should be maintained at 25 per cent.⁴⁴⁹

[452] We have decided that the casual loading for award/agreement free employees should be maintained at 25 per cent. We have also decided that the casual loading in modern awards should remain at 25 per cent.

[453] In the 2014–15 Review decision, the Panel noted that the casual loading in the *Business Equipment Award 2010* (Business Equipment Award), at 20 per cent, was inconsistent with the standard 25 per cent casual loading introduced by the Australian Industrial Relations Commission in 2008 across all other modern awards.⁴⁵⁰ As this issue arose relatively late in those proceedings, it was dealt with the following year,⁴⁵¹ and in the *Annual Wage Review 2015–16* decision (2015–16 Review decision), the Panel decided to increase the casual loading in the Business Equipment Award incrementally by 1 per cent from 1 July 2016 and each subsequent year until it reached 25 per cent.⁴⁵²

[454] In the current Review, the ACTU and Ai Group submitted that the casual loading in the Business Equipment Award should be adjusted to 25 per cent, in line with the Panel's phasing-in approach.⁴⁵³

[455] Consistent with the phasing-in approach outlined by the Panel in its *2015–16 Review* decision, we have decided to increase the casual loading in the *Business Equipment Award 2020* to 25 per cent. We note that this now completes the phasing-in of the casual loading in this award.

⁴⁴⁶ ACTU submission, 20 March 2020 at para. 549.

⁴⁴⁷ *Fair Work Act 2009* (Cth), ss.284(3), 285(2)(a); 294(1)(c).

⁴⁴⁸ *Fair Work Act 2009* (Cth), s.295(1)(b).

⁴⁴⁹ ACTU submission, 20 March 2020 at para. 548; ACCI submission, 29 March 2020 at para. 413; Ai Group submission, 16 March 2020 at p. 52; RCA submission, 19 March 2020 at para. 15.

⁴⁵⁰ [\[2015\] FWCFB 3500](#) at [560].

⁴⁵¹ *Ibid* at [565].

⁴⁵² [\[2016\] FWCFB 3500](#) at [640].

⁴⁵³ ACTU submission, 20 March 2020 at para. 548; Ai Group submission, 16 March 2020 at p. 52.

Special National Minimum Wages

[456] In making a NMW order the Panel must set special NMWs for all award/agreement free employees in the following classes: junior employees, employees to whom training arrangements apply and employees with a disability.⁴⁵⁴

Award/agreement free junior employees

[457] The ACTU, ACCI and Ai Group supported the Panel's previous approach in using the junior wage percentage scale in the Miscellaneous Award to set the special NMW for award/agreement free junior employees.⁴⁵⁵

[458] We have again decided that the special NMW for award/agreement free junior employees will be set by reference to the junior wage percentage scale in the Miscellaneous Award.

Award/agreement free apprentices and trainees

[459] The ACTU, ACCI and Ai Group submitted that, consistent with the previous Review decision, the Panel should adopt the wage rates in the Miscellaneous Award for award/agreement free apprentices and trainees.⁴⁵⁶

[460] We have again decided to adopt the provisions of the Miscellaneous Award as the basis for the special NMWs for employees to whom training arrangements apply. The NMW order will incorporate, by reference, the apprentice and NTWS provisions of that award.

Award/agreement free employees with disability

[461] In the 2018–19 Review decision, consistent with previous years' approaches, the Panel decided to set 2 special NMWs for award/agreement free employees with disability.⁴⁵⁷ The first, for employees with disability whose productivity is not affected (special NMW1), was set at the rate of the NMW. The second, for employees with disability whose productivity is affected (special NMW2), was to be set in accordance with an assessment under the SWS Schedule attached to the NMW order, with the minimum payment fixed in accordance with the disability support pension income-free threshold.

⁴⁵⁴ *Fair Work Act 2009* (Cth), s.294(1)(b).

⁴⁵⁵ ACTU submission, 20 March 2020 at para. 537; ACCI submission, 29 March 2020 at para. 414; Ai Group submission, 16 March 2020 at p. 47.

⁴⁵⁶ ACTU submission, 20 March 2020 at para. 543; ACCI submission, 29 March 2020 at para. 415; Ai Group submission, 16 March 2020 at p. 48.

⁴⁵⁷ [\[2019\] FWCFB 3500](#) at [445].

[462] The ACTU, ACCI and Ai Group submitted that special NMW1 should continue to be set at the same level as the NMW and that special NMW2 should continue to be adjusted in accordance with the methodology under the SWS Schedule.⁴⁵⁸

[463] Consistent with previous years' approaches to these wages, we have decided to set 2 special NMWs for award/agreement free employees with disability. For award/agreement free employees with disability whose productivity is not affected, the wage will be set at the rate of the NMW. For award/agreement free employees with disability whose productivity is affected, the wage will be paid in accordance with an assessment under the SWS Schedule. The minimum payment will be fixed in accordance with the disability support pension income-free threshold.

⁴⁵⁸ ACTU submission, 20 March 2020 at para. 545; ACCI submission, 29 March 2020 at para. 416; Ai Group submission, 16 March 2020 at p. 47.

7. Conclusion

[464] This Chapter sets out the outcome and other relevant matters to the Review.

[465] The national minimum wage order will contain:

- (a) A national minimum wage of \$753.80 per week or \$19.84 per hour;
- (b) Two special national minimum wages for award/agreement free employees with disability: for employees with disability whose productivity is not affected, a minimum wage of \$753.80 per week or \$19.84 per hour based on a 38-hour week, and for employees whose productivity is affected, an assessment under the supported wage system, subject to a minimum payment fixed under the SWS Schedule;
- (c) Wages provisions for award/agreement free junior employees based on the percentages for juniors in the *Miscellaneous Award 2020* applied to the national minimum wage;
- (d) The apprentice wage provisions and the National Training Wage Schedule in the *Miscellaneous Award 2020* for award/agreement free employees to whom training arrangements apply, incorporated by reference, and a provision providing transitional arrangements for first year award/agreement free adult apprentices engaged before 1 July 2014; and
- (e) A casual loading of 25 per cent for award/agreement free employees.

[466] The outcome of this Review in relation to modern award minimum wages is as follows:

1. The modern award minimum wages in the awards listed below will be increased by 1.75 per cent from the start of the first full pay period on or after 1 July 2020.

<i>Modern awards</i>	
Aboriginal Community Controlled Health Services Award 2020	MA000115
Aged Care Award 2010	MA000018
Ambulance and Patient Transport Industry Award 2020	MA000098
Banking, Finance and Insurance Award 2020	MA000019
Cemetery Industry Award 2020	MA000070
Children's Services Award 2010	MA000120
Cleaning Services Award 2020	MA000022
Corrections and Detention (Private Sector) Award 2020	MA000110
Educational Services (Schools) General Staff Award 2020	MA000076

Educational Services (Teachers) Award 2010	MA000077
Electrical Power Industry Award 2020	MA000088
Fire Fighting Industry Award 2020	MA000111
Funeral Industry Award 2010	MA000105
Gas Industry Award 2020	MA000061
Health Professionals and Support Services Award 2020	MA000027
Medical Practitioners Award 2020	MA000031
Nurses Award 2010	MA000034
Pharmacy Industry Award 2020	MA000012
Social, Community, Home Care and Disability Services Industry Award 2010	MA000100
State Government Agencies Award 2020	MA000121
Water Industry Award 2020	MA000113
<i>Modern enterprise awards and state reference awards</i>	
Australian Capital Territory Public Sector Enterprise Award 2016	MA000146
Australian Federal Police Enterprise Award 2016;	MA000142
Christmas Island Administration Award 2016	MA000149
Reserve Bank of Australia Award 2016	MA000140
Northern Territory Public Sector Enterprise Award 2016	MA000151
Nurses and Midwives (Victoria) State Reference Public Sector Award 2015	MA000125
Nurses (ANMF – Victorian Local Government Award) 2015	MA000131
Victorian Government Schools Award 2016	MA000155
Victorian Government Schools – Early Childhood – Award 2016	MA000152
Victorian Local Government (Early Childhood Education Employees) 2016	MA000150
Victorian State Government Agencies Award 2015	MA000134

2. The modern award minimum wages in the awards listed below will be increased by 1.75 per cent from the start of the first full pay period on or after 1 November 2020.

<i>Modern awards</i>	
Aluminium Industry Award 2020	MA000060
Animal Care and Veterinary Services Award 2020	MA000118
Aquaculture Industry Award 2020	MA000114
Architects Award 2020	MA000079
Asphalt Industry Award 2020	MA000054
Australian Government Industry Award 2016	MA000153
Black Coal Mining Industry Award 2010	MA000001
Book Industry Award 2020	MA000078
Broadcasting, Recorded Entertainment and Cinemas Award 2010	MA000091
Building and Construction General On-site Award 2010	MA000020
Business Equipment Award 2020	MA000021
Car Parking Award 2020	MA000095
Cement, Lime and Quarrying Award 2020	MA000055
Clerks—Private Sector Award 2020	MA000002
Coal Export Terminals Award 2020	MA000045
Concrete Products Award 2020	MA000056
Contract Call Centres Award 2020	MA000023
Cotton Ginning Award 2020	MA000024
Dredging Industry Award 2020	MA000085
Educational Services (Post-Secondary Education) Award 2020	MA000075
Electrical, Electronic and Communications Contracting Award 2010	MA000025
Food, Beverage and Tobacco Manufacturing Award 2010	MA000073
Gardening and Landscaping Services Award 2020	MA000101
Graphic Arts, Printing and Publishing Award 2010	MA000026
Higher Education Industry-Academic Staff-Award 2020	MA000006
Higher Education Industry-General Staff-Award 2020	MA000007
Horticulture Award 2010	MA000028

Hydrocarbons Field Geologists Award 2020	MA000064
Hydrocarbons Industry (Upstream) Award 2020	MA000062
Joinery and Building Trades Award 2010	MA000029
Journalists Published Media Award 2020	MA000067
Labour Market Assistance Industry Award 2020	MA000099
Legal Services Award 2020	MA000116
Local Government Industry Award 2020	MA000112
Manufacturing and Associated Industries and Occupations Award 2020	MA000010
Marine Towage Award 2020	MA000050
Maritime Offshore Oil and Gas Award 2020	MA000086
Market and Social Research Award 2020	MA000030
Meat Industry Award 2020	MA000059
Mining Industry Award 2020	MA000011
Miscellaneous Award 2020	MA000104
Mobile Crane Hiring Award 2010	MA000032
Oil Refining and Manufacturing Award 2020	MA000072
Passenger Vehicle Transportation Award 2020	MA000063
Pastoral Award 2010	MA000035
Pest Control Industry Award 2020	MA000097
Pharmaceutical Industry Award 2010	MA000069
Plumbing and Fire Sprinklers Award 2010	MA000036
Port Authorities Award 2020	MA000051
Ports, Harbours and Enclosed Water Vessels Award 2020	MA000052
Poultry Processing Award 2020	MA000074
Premixed Concrete Award 2020	MA000057
Professional Diving Industry (Industrial) Award 2020	MA000108
Professional Employees Award 2020	MA000065
Rail Industry Award 2020	MA000015
Real Estate Industry Award 2020	MA000106

Road Transport (Long Distance Operations) Award 2020	MA000039
Road Transport and Distribution Award 2020	MA000038
Salt Industry Award 2010	MA000107
Seafood Processing Award 2020	MA000068
Seagoing Industry Award 2020	MA000122
Security Services Award 2020	MA000016
Silviculture Award 2020	MA000040
Stevedoring Industry Award 2020	MA000053
Storage Services and Wholesale Award 2020	MA000084
Sugar Industry Award 2020	MA000087
Supported Employment Services Award 2020	MA000103
Surveying Award 2020	MA000066
Telecommunications Services Award 2010	MA000041
Textile, Clothing, Footwear and Associated Industries Award 2010	MA000017
Timber Industry Award 2010	MA000071
Transport (Cash in Transit) Award 2020	MA000042
Waste Management Award 2020	MA000043
Wool Storage, Sampling and Testing Award 2010	MA000044
<i>Modern enterprise awards and state reference awards</i>	
Aboriginal Legal Rights Movement 2016	MA000139
Australia Post Enterprise Award 2015	MA000137
Australian Broadcasting Corporation Enterprise Award 2016	MA000147
Australian Bureau of Statistics (Interviewers) Award 2016	MA000143
Australian Nuclear Science and Technology Organisation (ANSTO) Enterprise Award 2016	MA000144
Australian Public Service Enterprise Award 2015	MA000124
Chullora Printing Award 2015	MA000127
CSIRO Enterprise Award 2016	MA000148
GrainCorp Country Operations Award 2015	MA000138
Metropolitan Newspapers (South Australia and Tasmania) Printing Award	MA000130

2015	
Northern Territory News Award 2015	MA000129
Note Printing Australia Award 2016	MA000156
Optus Award 2015	MA000133
Parliamentary Departments Staff Enterprise Award 2016	MA000145
Printing Industry – Herald & Weekly Times – Production Award 2015	MA000126
Queensland Newspapers Pty Ltd Printing (Murrarie) Award 2015	MA000128
Telstra Award 2015	MA000123
Victorian Local Government Award 2015	MA000132
Victorian Public Service Award 2016	MA000135
Viterra Bulk Handling and Grain Storage, Pulses and Minerals Award 2015	MA000136

3. The modern award minimum wages in the awards listed below will be increased by 1.75 per cent from the start of the first full pay period on or after 1 February 2021.

<i>Modern awards</i>	
Air Pilots Award 2020	MA000046
Aircraft Cabin Crew Award 2020	MA000047
Airline Operations-Ground Staff Award 2020	MA000048
Airport Employees Award 2020	MA000049
Alpine Resorts Award 2020	MA000092
Amusement, Events and Recreation Award 2020	MA000080
Commercial Sales Award 2020	MA000083
Dry Cleaning and Laundry Industry Award 2020	MA000096
Fast Food Industry Award 2010	MA000003
Fitness Industry Award 2010	MA000094
General Retail Industry Award 2010	MA000004
Hair and Beauty Industry Award 2010	MA000005
Horse and Greyhound Training Award 2020	MA000008
Hospitality Industry (General) Award 2020	MA000009
Live Performance Award 2010	MA000081
Mannequins and Models Award 2020	MA000117
Marine Tourism and Charter Vessels Award 2020	MA000093
Nursery Award 2020	MA000033
Professional Diving Industry (Recreational) Award 2020	MA000109
Racing Clubs Events Award 2010	MA000013
Racing Industry Ground Maintenance Award 2020	MA000014
Registered and Licensed Clubs Award 2010	MA000058
Restaurant Industry Award 2020	MA000119
Sporting Organisations Award 2020	MA000082
Travelling Shows Award 2020	MA000102
Vehicle Repair, Services and Retail Award 2020	MA000089
Wine Industry Award 2010	MA000090

<i>Modern enterprise awards and state reference awards</i>	
Airservices Australia Award 2016	MA000141

[467] The increases to the NMW and modern award minimum wages are made to weekly wages. After the increase has been applied, the NMW or the modern award minimum weekly wage is rounded to the nearest 10 cents. To obtain an hourly wage, the weekly wage is divided by 38, on the basis of a 38-hour week for a full-time employee.

[468] The increase applies to modern award minimum wages for junior employees, employees to whom training arrangements apply and employees with disability, and to piece rates, through the operation of the methods applying to the calculation of those wages. Wages in the NTWS will be increased by 1.75 per cent.

[469] The casual loading in modern awards will remain at 25 per cent. The casual loading in the *Business Equipment Award 2010* will be increased to 25 per cent, consistent with the phasing-in approach. This is the final step of the phasing-in schedule originally proposed by Ai Group.

[470] The adjustment will flow through to employees with disabilities through the operation of the SWS Schedule and that the minimum payment in the SWS Schedule will be adjusted consistent with the approach adopted in previous reviews.

[471] In relation to transitional instruments, from the first full pay period on or after 1 July 2020, wages in those instruments will be varied by 1.75 per cent per week, with commensurate increases in hourly rates based on a 38-hour week. Copied State awards will be varied on the basis discussed in Chapter 6 of this decision.

[472] The determinations necessary to give effect to the increase in modern awards will be made available in draft form shortly after this decision. Weekly wages in the NMW order and modern awards will be rounded to the nearest 10 cents and hourly wages will be calculated by dividing the weekly rate by 38, on the basis of the 38-hour week for a full-time employee. Determinations varying the modern awards will be made as soon as practicable and the modern awards including the varied wage rates will be published as required by the Act.

[473] The timetable for the 2020–21 Review will be announced in the third quarter of 2020.

[474] We intend to give consideration to a research program for the 2020–21 Review and invite interested parties to lodge research proposals by 31 July 2020.

[475] We wish to express our appreciation to the parties who participated in the Review for their contributions and to the staff of the Commission for their assistance.

PRESIDENT

Printed by authority of the Commonwealth Government Printer

<PR002020>

8. Reasons for Decision of Professor Wooden⁴⁵⁹

General principles

[476] As stated in the Act, the only objective of the Fair Work Commission (FWC) in setting minimum wages is to “establish and maintain a safety net of fair minimum wages”. In reaching a decision the FWC is required to take into account “the performance and competitiveness of the national economy”, “promoting social inclusion” and “relative standards and needs of the low paid”.⁴⁶⁰

[477] Regardless of their merits, arguments for raising minimum wages to meet other objectives, such as to raise inflationary pressures in the economy or stimulate consumer demand, are irrelevant. These are not objectives that are provided for in the Act.

[478] My presumption is that what is meant by a “safety net” is the income that minimum award wage workers earn from paid employment. This is a function of being employed, the number of weeks employed, the number of hours worked each week, and the hourly wage rate attached to that job. The FWC can only directly affect the latter.

[479] Changes in the required hourly wage rate, however, can affect both employment and hours worked. Given a downward sloping demand curve for labour, increases in wages will (all other things held constant) result in a reduction in the demand for labour, and hence either a reduction in employment or in the number of paid hours worked (or both). Thus, in setting minimum award wage rates, the FWC must take into account the magnitude of this tradeoff between the wage rate and hours / employment.

[480] Critical is the caveat “all other things held constant”. While a wage rise will reduce demand for paid working hours within affected firms, at the economy-wide level overall employment and hours can still grow if aggregate demand is increasing. The overall state of the economy is thus central in determining aggregate employment outcomes.

GDP growth

[481] While the data to confirm it have not yet arrived, there can be little doubt that Australia has entered its first economic recession since the early 1990s. Further, all indications are that it will be the most severe economic contraction since the 1930s, an assessment also made by the Reserve Bank Governor in his statement accompanying the June Monetary Policy Decision.⁴⁶¹

⁴⁵⁹ See reference list at Appendix 5.

⁴⁶⁰ The Act also directs the FWC to take into account the principle of equal remuneration of work of equal value and providing fair minimum wages to junior employees, employees on training arrangements, and employees with a disability.

⁴⁶¹ To quote: “The Australian economy is going through a very difficult period and is experiencing the biggest economic contraction since the 1930s.” <https://www.rba.gov.au/media-releases/2020/mr-20-15.html>

[482] The latest National Accounts figures (released in early June) show that real GDP declined by 0.3 per cent in the March quarter (and real GDP per capita declined by 0.7 per cent).

[483] Household consumption fell by 1.1 per cent and removed 0.6 points from GDP growth. Capital formation also declined, removing 0.2 percentage points from GDP growth. These negative factors were partly offset by increases in government expenditure and by the decline in imports exceeding the decline in exports.

[484] While the bushfires from January and February will have contributed negatively, the bigger factor is COVID-19 and the associated social distancing measures. These social distancing restrictions, however, were only introduced in mid-March and hence a much larger effect on output will be felt in the second quarter of 2020.

[485] This is already evident in the steep fall (8.0 per cent) in working hours over the year recorded in the April Labour Force Survey (Table 6.2, Statistical Report). The June quarter national accounts will thus reveal a second quarter of consecutive decline in GDP—the conventional definition of an economic recession adopted in Australia.

[486] Over the 2020 calendar year (i.e., year ended 4th quarter 2020) the International Monetary Fund has forecast that real GDP in Australia will contract by 7.2 per cent in 2020 (IMF 2020, Table A2).⁴⁶² The Reserve Bank of Australia is more optimistic and is forecasting a decline of 6 per cent (RBA 2020; see also Table 14.4, Statistical Report).

[487] Such rates of contraction would mean Australia is currently in the midst of its most severe economic downturn since the 1930s. During the recession of the early 1980s, for example, year-ended GDP at its worst declined by 3.4 per cent (June 1983) and in the recession of the early 1990 by at most only 1.4 per cent (June 1991). And during the global financial crisis the worst we could do was to *grow* the economy by 1.4 per cent (year ended September 2009), though it is true that over this same period real GDP *per capita* did fall (by 0.5 per cent).^{463,464}

[488] The economy is expected to rebound in 2021, but even if all of the loss in aggregate output is recovered in 2021 (as is being forecast by the RBA) this would still mean that, over the two years ended December 2021, there will have been no growth at all in real GDP. By contrast, prior to the COVID-19 panic the RBA (in its February Monetary Statement) had been forecasting growth over these two years of 5.75 per cent.

[489] Given continued growth in population (albeit at rates far more subdued than in the past), GDP per capita will be lower than it was two years earlier. In short, Australians can expect a protracted period of falling real living standards.

⁴⁶² Table 14.2 of the Statistical Report reports a figure of only –6.7 per cent for 2020. This, however, relates to average year-on-year change, which is different to change over the calendar year (i.e., over the year ended December).

⁴⁶³ But the annual declines in real GDP per capita were still more severe in 1983 (–4.7 per cent) and 1991 (–2.7 per cent).

⁴⁶⁴ All figures come from the Australian Bureau of Statistics, but sourced from RBA Statistical Table, Gross Domestic Product and Income – H1.

Employment and hours of work

[490] The decline in output will also be associated with a severe decline in employment and hours worked. As already noted, this is evident in the ABS Labour Force Survey data from May (Table 6.1, Statistical Report).⁴⁶⁵

[491] The proportion of persons aged 15 years or older who reported being in paid employment for at least one hour during the survey week (the E/P ratio) was 58.7 per cent in May 2020. This compares with 62.5 per cent in March 2020 and 62.9 per cent one year earlier in May 2019.

[492] In seasonally adjusted terms, aggregate employment declined by 835 100 in two months (or by 6.4 per cent).

[493] Many persons in employment are also working far fewer hours than previously, in part because the JobKeeper program, by providing a subsidy to the wage costs of the most severely affected firms, has enabled workers in some businesses that are either not trading or trading at a reduced capacity to continue to pay many of its workers.

[494] In seasonally adjusted terms, aggregate monthly hours worked in May 2020 fell by 10.2 per cent compared with March 2020. The decline in demand for labour has thus been around 60 per cent larger than the decline suggested by the fall in employment.

[495] As with the expected decline in output, the decline in hours worked in 2020 will be larger than at any other time recorded in the data. Indeed, over the period covered by the monthly hours data (since July 1978) there has never been a decline in hours anywhere near as precipitous or as large as that recorded in April 2020 (–9.5 per cent). Even the decline over the year ended May 2020 (–9 per cent) far exceeds the worst drop in the recessions of both the early 1980s (–4.9 per cent over the year ended April 1983) and early 1990s (–5.1 per cent over the year ended April 1991).

[496] Reflecting on these trends in hours, there has been a marked surge in the number of underemployed workers—essentially part-time workers working fewer hours than desired and who are available to work additional hours. The underemployment rate rose by 4.3 percentage points between March and May—from 8.8 per cent to 13.1 per cent (seasonally adjusted)—with the underemployment rate reaching a record high in April (13.8 per cent) since the series commenced (in February 1978).

[497] Combined with unemployment, the total labour underutilisation rate in May 2020 was 20.2 per cent (seasonally adjusted). This compares with previous cyclical peaks of 14.5 per cent in May 1983, 18.2 per cent in November 1992, and 13.5 per cent in May 2009.⁴⁶⁶

⁴⁶⁵ The reference weeks for this survey was 3–16 May 2020.

⁴⁶⁶ This measure is based on a count of heads. A superior measure of underutilisation would be based on the difference between usual hours worked and hours desired. Such volume-based measures of labour underutilisation are constructed by the ABS (see *Labour Force, Australia, Detailed, Quarterly*, ABS cat. no. 6291.0.55.003, Table 23a), but are only available on a quarterly basis. In May 2020 this rate was 11.9 per cent (not seasonally adjusted). This compares with the non-adjusted headcount rate at this time of 19.8 per cent. Thus, a count of heads significantly overstates the extent to which labour is truly underutilised. Nevertheless, the volume-based measure has also experienced the same surge in recent months, rising by 4.6 percentage points between February and May.

[498] A feature of the current recession is that the unemployment rate is not especially high yet—just 7.1 per cent in May (seasonally adjusted). This, in part, reflects the effect of JobKeeper, with most Jobkeeper recipients likely recorded as employed (but probably also underemployed). However, it also reflects a decline in the labour force participation rate, with many job losers ceasing job search entirely in April. This has been facilitated by a suspension of mutual obligation requirements (i.e., job search requirements) by Centrelink (until 9 June) and by the introduction of the Coronavirus Supplement, which has (temporarily) greatly reduced the gap between in and out of work income for Jobseeker Payment recipients.

[499] According to the ABS (2020c), if the labour force participation rate in May had remained the same as in March (65.9 per cent instead of 62.9 per cent), and employment levels were as measured in May, there would be around an additional 623 600 persons measured as unemployed. Treating such persons as unemployed would cause the unemployment rate to jump from 7.1 per cent to 11.3 per cent, and the underutilisation rate to rise to a staggering 23.8 per cent.

Productivity

[500] The Act makes specific mention of productivity as an economic factor that must be taken into account, with productivity growth a factor that enables business to support wage increases. As Federal Labor MP, Andrew Leigh, has recently observed, “without rising productivity, wages will eventually stagnate and living standards will stop rising” (Leigh 2019) (though presumably he meant real wages here rather than nominal wages).

[501] Prior to the pandemic, productivity growth in Australia had stalled. In the year to December, GDP per hour worked had grown by just 0.4 per cent and gross value added per hour worked in the market sector by just 0.2 per cent (Table 2.2, Statistical Report). Further, such low rates of productivity growth were not peculiar to 2019—they have been similarly low for the two preceding years. Indeed, GPD per hour worked in June 2019 was barely any different to the level in June 2017.⁴⁶⁷

[502] The pandemic can be expected to further impede any improvement in productive capacity. Most obviously, private sector business investment, which has been relatively weak for a number of years now—private business investment declined by 1.3 per cent in the year to December 2019 (ABS 2020a)⁴⁶⁸—can be expected to decline further. For example, private new capital expenditure in the year to March 2020 declined by 6.1 per cent and, more importantly, businesses are revising downwards their expectations about future capital expenditure (ABS 2020b). Productivity benefits from capital deepening in the private sector will thus be absent.

[503] What will happen to measured labour productivity going forward is less clear. If hours worked decline by more than output, then measured labour productivity will rise. Conversely,

⁴⁶⁷ ABS, *Australian National Accounts: National Income, Expenditure and Product* (ABS cat no. 5206.0). Table 34. Key Aggregates and analytical series, Annual.

⁴⁶⁸ The long-term decline is mainly due to the reduction in investment in the mining sector. This, however, is far less of a factor in 2020.

if during the recovery, hours rise faster than output, then measured labour productivity declines. But such cyclical variations in productivity are not of any large interest. What matters is whether there will be any fundamental shift in our underlying productivity growth path. There were already clear signs prior to the pandemic that productivity growth had been stalling (see Leigh 2019). Business responses to the pandemic will likely only make a turnaround in Australia's recent productivity slowdown more distant.

Business costs

[504] The COVID-19 pandemic has not only adversely affected the demand for output in many sectors, but may also be increasing the cost structures of many businesses. Many businesses may be required, or feel required, to make their work and customer spaces COVID-19 proof. Occupational health and safety requirements, for example, will be one consideration here. This could require significant changes in the way businesses operate, diverting business energy and investment (especially over the next year) to supporting restructuring and re-organisation of business processes and physical premises, rather than towards growing their businesses.

The impacts will be long-lasting

[505] Economic restrictions are now being gradually eased and lifted and thus it follows that the recovery process has already begun. Nevertheless, a return to "normality" would still appear to be a long way off.

[506] Unrestricted international travel is not yet being seriously considered (except to New Zealand), with obvious implications for all businesses servicing travel and tourism related activity.

[507] Ongoing concerns about the fear of infection and the need for social distancing will likely continue to impact negatively on many types of business activities, from restaurants, to retail trade, to entertainment and major events.

[508] The crisis may also have created changes in behaviour and preferences (e.g., for working from home) or accelerated trends in other areas (e.g., online shopping, dining in), which will have other long-term impacts on the demand for labour.

[509] The pandemic is still far from over in many other countries, and thus some supply chains will likely continue to be interrupted and overseas demand for exports will be weaker than otherwise.

[510] While the 2020 recession is different from previous recessions in that it was initiated, in large part, by a forced shutdown of many sectors of the economy, the experience of previous recessions suggests that a return to pre-recession employment levels can take a very long time.

[511] In the 1980s it took six years for the unemployment rate to fall from a high of 10.5 per cent to a low of 5.8 per cent (still around half a percentage point above the pre-recession low).

[512] Following the recession of the early 1990s, it was more than 10 years before the unemployment rate fell below its pre-recession low.

[513] There is thus the distinct possibility that many Australians who lose their jobs in 2020, or who are entering the labour market in 2020, will be consigned to a future of long-term unemployment and / or permanently reduced career earnings.

The impacts will not be felt evenly

[514] Like all recessions, the economic impacts of this recession will not impact all Australians equally.

[515] While there are very few industries (if any) that have not been touched by COVID-19 and the associated social distancing measures, it seems likely that the industries where award reliant workers are most prominent have generally been more heavily affected than others.

[516] Evidence for this is provided by the simple correlation between award reliance by industry division (as measured by the ABS Survey of Employee Hours and Earnings, May 2018: Table 7.1 Statistical Report) and the change in employment by industry division over the period 14 March to 30 May (as measured by the ABS from payroll data: Table 6.12, Statistical Report). The simple correlation is -0.63 , far from perfect, but nevertheless indicating a quite strong association between these two variables.

[517] Within industries it can also be expected that those most at risk of job loss are casual employees, more inexperienced and hence young workers, and those with the fewest skills. These are all characteristics associated with workers in low-paid occupations, and as the research by Wilkins and Zilio (2020) shows, with workers on minimum award wages.

[518] Award-reliant workers are also more likely to be at risk of underemployment. Evidence for this can be seen in the simple correlation across major industries in the level of award reliance (as measured in the ABS Survey of Employee Hours and Earnings) and the extent of underemployment (as measured in the HILDA Survey).⁴⁶⁹ I find a large positive correlation of 0.75 using data from 2018. While this tells us nothing about causality, it clearly suggests a strong association: underemployment rates are, on average, much higher in industries where award-reliant workers are more common.⁴⁷⁰

[519] Casual employees are obviously at greatest risk of both job loss and underemployment given, by definition, their hours are most easily varied. Further, most casual employees have been excluded from the protections provided by the JobKeeper scheme.

[520] Young people are another group that has long been recognized as a group at high risk during recessions (Wooden 1999). As documented by Borland (2020a), since the global financial crisis there has been substantial deterioration in employment outcomes for the young in Australia. The COVID-19 pandemic will only make this worse (Borland 2020b).

⁴⁶⁹ Following Rozenbes and Farmakis-Gamboni (2017), underemployment here is defined as persons who usually work part-time hours (in all jobs) and who prefer more hours. ABS data on underemployment by industry would be preferred, but while such data are clearly collected in the Labour Force Survey, they do not appear to be easily accessible from the ABS website.

⁴⁷⁰ There is also a positive, but weaker, association between change in underemployment rates and award reliance— 0.59 when correlating the change in underemployment between 2008 and 2018 and award reliance in 2018.

[521] At is also expected that small businesses will find it more difficult to remain financially viable given lesser access to credit and a lesser ability to diversify risk, and again award-reliant workers are over-represented in small firms.

[522] Some evidence for this can be seen in the very high proportion of small businesses (those with fewer than 20 employees) reporting being eligible for the JobKeeper Scheme.⁴⁷¹ At the same time, enrolling in the JobKeeper scheme may be more problematic and costly for small businesses.

[523] US research also suggests that small and young firms are generally more sensitive to the business cycle (e.g., Fort et al. 2013; Gertler and Gilchrist 1994; Hancock and Wilcox 1998).

[524] The differential impact of the recession matters not just because of immediate equity concerns, but more importantly (and as noted previously), because of the potential for long-term scarring effects.

[525] International research, for example, has consistently shown that entering the labour market during a recession has significant damaging impacts on future employment prospects and earnings (e.g., Kahn 2010, Oreopoulos et al. 2012, Altonji et al. 2016, Liu et al. 2016).

Needs of the lowest paid

[526] Given the primary objective of the FWC is to establish a “safety net” the concept of needs looms large. But needs differ widely across different workers according to factors such as family composition and where people choose to live. Minimum wages, however, with a few notable exceptions (such as age and disability), can only vary with someone’s job classification, which has little to do with need.

[527] Perhaps all the FWC can do is focus on the average circumstances of those on the lowest wage—the NMW.⁴⁷² This, however, is a very small group—just 2.1 per cent of all non-managerial, non-agriculture employees paid at the adult rate in 2016 were paid the NMW according to Yuen et al. (2018). Most award wage workers are thus on pay rates above the NMW.

[528] The large majority of this NMW group (77 per cent) are employed part-time (Yuen et al. 2018, Table 2.1). It thus surely follows that the main reason why these workers would have relatively low incomes is the lack of work (i.e., paid hours) and not their relatively low hourly rate of pay.

]

[529] Table 8.6 of the Statistical Report is also instructive here. If we accept for the moment that 60 per cent of median disposable income defines where relative income poverty ends, then this table shows that households where the only wage earner is a NMW worker working

⁴⁷¹ See: ABS, *Business Indicators, Business Impacts of COVID-19, April 2020* (ABS cat no. 5676.0.55.003).

⁴⁷² There are likely many workers who are being paid at rates below what are specified in awards, and for whom minimum wages are therefore no protection.

part-time hours will all be living in relative poverty. What Table 8.6 does not reveal is how many households are in this situation. I expect most part-time NMW workers to be living in households with other income earners.

[530] Full-time NMW workers only represent 0.5 per cent of all employees, and my expectation is that most of these full-time NMW workers will be single adults, and hence have lesser needs than families with children. According to Table 8.6, single adult full-time NMW worker households have incomes well above the 60 per cent of median disposable income poverty line.

[531] In contrast, Table 8.6 shows that couple families with just one earner who is receiving the full-time NMW will be living just below the poverty line (98 per cent of that line in December 2019). But again, what Table 8.6 does not reveal is how many households are in this situation. Simple arithmetic says it cannot be very many—the size of the group of full-time workers on the NMW is just too small to reach any other conclusion.

[532] In summary, it is very unlikely that there are many full-time workers receiving the NMW who are living in poverty, at least when poverty is defined as less than 60 per cent of median disposable household income and is measured at a single point in time. When measured over longer periods (like a year), the likelihood of falling into poverty increases, but only because of the likelihood of that worker experiencing periods of joblessness or reduced hours (i.e., underemployment). It is the inability to maintain full-time employment that is the main factor driving poverty among worker households where the prime-earner is receiving the NMW.

Minimum wage setting in a recession

[533] In recent Annual Wage Review decisions, the Commission has taken the view that modest changes to award wages have not had noticeable effects on employment. And when the economy is growing at a reasonably healthy and predictable rate, this is a reasonable position (at least with respect to job losses). But as should be obvious from the data presented in Sections 2 and 3, the economic environment in 2020 is far different from that in any previous year during the life of the FWC. The FWC thus needs to consider whether approaches taken in, and arguments supporting, previous decisions apply equally in 2020.

[534] When the economy is strong and aggregate demand is growing, the likelihood that modest wage increases will be accompanied by net employment losses is low, with increases in aggregate product demand typically more than offsetting any adverse effects coming through higher labour costs. In a recession, however, demand is weak and, as a result, there are not the same upward pressures on aggregate demand to offset the negative employment effects of award wage increases.

[535] The ability of employers to absorb wage increases or to pass them on to consumers in the form of higher product prices is also much reduced during a recession.

[536] Businesses that have been most impacted by the COVID-19 pandemic will have already seen their profit margins seriously eroded. Indeed, many are now surviving on cheap credit. And the need to “coronavirus proof” many businesses will likely only erode profit margins further.

[537] The ability to simply raise prices also tends to be less effective during a recession given, by definition, consumers are less willing to spend.

[538] These factors, together with the very high rates of labour underutilisation, augur for giving far more weight to the potential impact of wage increases on hiring and re-employment (rather than focussed so much on potential job losses).

[539] It might be argued that considerations about relative living standards require that minimum award wages be increased at least in line with the cost of living, and possibly with the level of average wages growth in the economy. I would argue, however, that considerations about relative living standards are best judged over the longer term, and not solely on a year by year basis. Thus, minimum wage adjustment might follow a pro-cyclical course, and be increased by more than prices and general wage levels in the good years (when economic growth is above trend) and by less in the poor years (when economic growth is relatively weak). What then matters for households is their position over a number of years (or over an economic cycle).

[540] As shown in Table 1 below, minimum wage increases over the last decades have been considerably above rates of growth in both prices (as measured by the CPI) and in average wages (as measured by the Wage Price Index [WPI]).

[541] If a zero increase were awarded this year, that would still mean a National Minimum Wage that is 29.9 per cent higher than it was ten years earlier (on July 2010).

[542] By comparison, it is estimated that consumer prices over the 10 years ended June 2021 (using RBA forecasts for future CPI growth) will have risen by just 17.7 per cent.⁴⁷³

[543] Prices are not necessarily the best measure of the cost of living. They do not, for example, include the interest costs of servicing housing mortgages, and nor do they necessarily reflect the mix of goods and services that different types of households purchase. An alternative, and arguably superior, measure of changes in the cost of living is, as its name suggests, the Living Cost Indexes (LCI) produced by the ABS. This measure suggests that, for ‘employee households’ (those households where the principal source of income is wages and salaries), cost of living pressures are typically less than that suggested by the CPI, rising by just 1.1 per cent in the year ended March (compared with a headline CPI rate of 2.2 per cent and an underlying price inflation rate of 1.7 per cent over the same period; Table 4.1, Statistical Report).

[544] Average wage levels, as measured by the WPI, have generally risen by more than both the LCI and the CPI. Over the 9 years since June 2011, the WPI is expected to have risen by 23.8 per cent. Given it is very unlikely that average wage levels will rise much in the year ahead, we can also confidently state that the overall level of the National Minimum Wage relative to average wages will be higher than what it was ten years earlier.

⁴⁷³ The headline CPI rate, according to the RBA, is set to become highly volatile, declining by 1 per cent over the year to June 2020 but then rising by 2.75 per cent in the year to June 2021. For forecasting purposes, it may be better to use their projected rate of trimmed mean inflation, which is a lot more stable – 1.5 per cent in year to June 2020 and 1.25 per cent in year to June 2021. This, however, makes little difference to the argument presented here, raising price inflation to just 18.5 per cent over the 10-year period.

[545] For illustrative purposes, I have assumed, in Table 1, growth in the WPI of just 1.5 per cent for the year ended June 2021. There is, of course, considerable uncertainty around this, with the ultimate outcome depending heavily on the extent to which employers, and especially Government employers, successfully pursue variations to previously agreed wage rises in enterprise agreements.

[546] But my key point is simply that the growth in the WPI in 2020/21 would have to be implausibly large (almost 5 per cent) for total wage growth over the last decade to match the rise in minimum wages over that same period.

Table 1: Growth in the National Minimum Wage compared to growth in prices and average wages

	<i>National Minimum Wage, 1 July (\$)</i>	<i>Annual change in NMW (%)</i>	<i>CPI growth (%) (ye June qtr)</i>	<i>WPI growth (%), excluding bonuses (ye June qtr)</i>
Hypothetical 2020–21	19.49	0.0	2.75 ^a	1.5
2019–20	19.49	3.0	-1.0 ^a	1.7 ^b
2018–19	18.93	3.5	1.6	2.4
2017–18	18.29	3.3	2.1	2.1
2016–17	17.70	2.4	1.9	1.9
2015–16	17.29	2.5	1.0	2.1
2014–15	16.87	3.1	1.5	2.3
2013–14	16.37	2.6	3.0	2.6
2012–13	15.96	2.9	2.4	2.9
2011–12	15.51	3.4	1.2	3.7
2010–11	15.00	4.8	3.5	3.8
Decade to 2019–20		36.2	18.6 ^c	28.6 ^c
Decade to 2020–21 (projected)		29.9	17.7	25.7

Notes: a As forecast by the Reserve Bank of Australia, *Statement of Monetary Policy, May 2020* (Table 6.1).

b Projection (half a point less than the reported figure for year ended March 2020).

c Incorporates projected forecasts for June quarter 2020.

Sources: ABS, *Consumer Price Index, Australia, Mar 2020*, Catalogue No. 6401.0; ABS, *Wage Price Index, Australia, Mar 2020*, Catalogue No. 6345.0.

Summary

[547] Australia has almost certainly entered its most severe economic recession since the 1930s. The scale of the contraction is likely to be far worse than the recession of the early 1980s and early 1990s. This can already be seen in measured labour underutilisation rates jumping to levels not previously observed, and this is before accounting for the many persons (~623 600) that dropped out of the labour force entirely. Indeed, my best estimate is that in

April 2020, 23.8 per cent of all workers and potential workers in Australia were either without any job or working part-time in a job providing fewer hours than preferred.

[548] The employment impacts are likely to be most acutely felt by workers in lower paid jobs (and hence more likely to be award reliant) and / or by new entrants to the labour market.

[549] For those most affected, the impacts can be serious, with permanent reductions in future employment prospects and future earnings.

[550] During a recession, and especially one as severe as the current one, what is most critical for the incomes of workers and their families is securing a paid job that provides adequate hours. In my opinion, the requirement to provide an adequate safety net for workers means the FWC should, in the current environment, be prioritizing jobs and hours over a wage increase.

[551] A modest increase in the hourly wage rate will have at most a commensurately small effect on any individual worker's total income. And it will have far smaller effects (and possibly negative effects) if that increase is offset by reductions in hours of work or job loss.

[552] A modest wage increase does nothing for the many thousands of workers who are not in paid work.

[553] The risks here are weighted in one direction. A zero change to the minimum wage will do little damage to workers. It is, for example, very unlikely that it is going to tip any additional households into poverty. In contrast, an increase in award wages will add very little to a worker's disposable income, while at the same time reducing the likelihood of existing businesses hiring new workers or of new employing businesses commencing operation.

[554] When viewed over a longer period, previous generous minimum wage increases mean that a zero increase this year will still leave minimum award wage workers far better off than they were a decade ago. By raising award minimum wages by rates well ahead of rates of growth in consumer prices and of the cost of living in previous years when the economy was expanding, the FWC has put itself in a good position to defend a zero wage increase in a year when many employers have been forced to restrict (or even temporarily cease) operation and / or are facing declining demand for their output.

Appendices:

1. The COVID-19 Pandemic
2. Proposed Minimum Wage Adjustments
3. Index of Material
4. Research for Annual Wage Reviews
5. Professor Wooden's Reference List

Appendix 1: The COVID-19 Pandemic

Health impact and government responses

[1] This Appendix discusses the timeline of the outbreak of the COVID-19 pandemic, the health implications and summarises the responses of governments in Australia to curb the spread of the virus.

[2] On 31 December 2019, a cluster of pneumonia cases of unknown origin were detected in Wuhan, the capital city of the Hubei province in the People's Republic of China.⁴⁷⁴ On 7 January 2020, the disease was identified as a novel coronavirus.⁴⁷⁵

[3] On 20 January, Australia's Department of Health activated the National Incident Room (NIR) in response to the COVID-19 outbreak. Then, on 30 January the Australian Health Protection Principle Committee (AHPPC), made up of the chief medical officers from the Commonwealth and each state and territory, commenced daily meetings. The AHPPC provides advice directly to government regarding public health response measures.⁴⁷⁶

[4] The outbreak was declared a Public Health Emergency of International Concern by the World Health Organization (WHO) on 30 January 2020.⁴⁷⁷ This was mainly due to concerns that the virus could spread to countries whose health care systems are not prepared to deal with the health crisis that comes with the spread of coronavirus.

[5] On 1 February 2020, the Commonwealth Government banned foreign nationals (excluding permanent residents) in mainland China from being able to enter Australia for 14 days from the time they left or transitioned through mainland China.⁴⁷⁸

[6] On 11 February 2020, the WHO named the new coronavirus: COVID-19.⁴⁷⁹

[7] On 18 February 2020, the Commonwealth Government released the *Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19)*, designed to guide the Australian Health Sector response to the COVID-19 outbreak, including provisions for the outbreak becoming a pandemic.⁴⁸⁰ On 27 February 2020, the Commonwealth Government announced that expert medical advice suggested the world would soon enter into a pandemic.

⁴⁷⁴ World Health Organization (2020), *Pneumonia of unknown cause – China*, 5 January.

⁴⁷⁵ World Health Organization (2020), *Novel Coronavirus (2019-nCoV): Situation report – 1*, 21 January.

⁴⁷⁶ Senate Select Committee on COVID-19 (2020), *Proof Committee Hansard*, Commonwealth of Australia, 23 April.

⁴⁷⁷ World Health Organization (2020), *Rolling updates on Coronavirus disease (COVID-19)*, 11 June; World Health Organisation (2020), *Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV)*, 30 January.

⁴⁷⁸ Office of Prime Minister of Australia (2020), *Updated travel advice to protect Australians from the novel coronavirus*, Media release, Commonwealth Government of Australia, 1 February.

⁴⁷⁹ World Health Organization (2020), *Rolling updates on Coronavirus disease (COVID-19)*, 11 June.

⁴⁸⁰ Department of Health (2020), *Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19)*, Commonwealth Government of Australia, last updated 7 February.

As a result, the Government initiated the implementation of the *Australian Health Sector Emergency Response plan for Novel Coronavirus (COVID-19)*.⁴⁸¹

[8] On 11 March 2020, the WHO declared COVID-19 a global pandemic.⁴⁸²

[9] On 13 March 2020, following the meeting of the Council of Australian Governments, the Commonwealth Government formed the National Cabinet, an intergovernmental decision-making forum whose members include the Prime Minister and the premiers and chief ministers of the states and territories.⁴⁸³ The National Cabinet was formed out of the National Partnership on COVID-19 Response in order to ensure a coordinated and consistent national response to COVID-19.⁴⁸⁴

[10] On 18 March 2020, under Section 475 of the *Biosecurity Act 2015*, and due to the risks to human health as a result of the COVID-19 pandemic, the Governor-General of Australia made the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020*. The Act allows that such an emergency may be declared where the Commonwealth Health Minister is satisfied that a listed disease poses an immediate and significant threat or is causing harm to human health on a nationally significant scale.⁴⁸⁵

[11] The WHO released interim clinical management guidance on 13 March 2020 which addressed that, whilst the majority of cases of COVID-19 result in patients recovering, more severe cases can lead to serious health problems and in some cases to death. It has been estimated by WHO that approximately 15 to 20 percent of people who catch COVID-19 become seriously ill and develop difficulties breathing. Older people and those with pre-existing medical issues appear to be more likely to develop serious illness.⁴⁸⁶

[12] As of 14 June 2020, the WHO report that there have been 7 690 708 cases of COVID-19 around the world and a total of 427 630 deaths. As of 14 June 2020, 216 countries have at least one confirmed case of COVID-19.⁴⁸⁷

[13] Many countries with close social, cultural and economic ties with Australia have been especially affected by the pandemic, including China (84 729 confirmed cases and 4645 deaths), the US (2 032 524 confirmed cases and 114 466 deaths), the UK (290 147 confirmed cases and 41 128 341 deaths). New Zealand has been relatively less impacted (1154

⁴⁸¹ The Hon. Scott Morrison: Prime Minister (2020), *Press Conference transcript*, Commonwealth Government of Australia, 27 February.

⁴⁸² World Health Organization (2020), *WHO Director-General's opening remarks at the media briefing on COVID-19 – 11 March 2020*, Geneva Switzerland, 11 March.

⁴⁸³ The Hon. Scott Morrison MP, Prime Minister (2020), *Media release: Advice on Coronavirus*, Commonwealth Government of Australia, 13 March.

⁴⁸⁴ Council of Australian Governments (2020), *National Partnership on COVID-19 Response*, 13 March.

⁴⁸⁵ General, the Hon David Hurley (2020), *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020*, Commonwealth Government of Australia, 18 March.

⁴⁸⁶ World Health Organization (2020), *Q&A on coronaviruses (COVID-19): What are the symptoms of COVID-19?*, Geneva Switzerland, 17 April; World Health Organization (2020), *Clinical management of severe acute respiratory infection (SARI) when COVID-19 disease is suspected* Geneva Switzerland, 13 March; World Health Organization (2020), *Clinical management of COVID-19: Interim guidance*, 27 May.

⁴⁸⁷ World Health Organization (2020), *Coronavirus disease (COVID-19) pandemic*, Geneva Switzerland, 14 June.

confirmed cases and 22 deaths) with more limited local transmission more in line with the experience of Australia.⁴⁸⁸

[14] As of 14 June 2020, there had been 7320 confirmed cases of COVID-19 reported in Australia. Of these confirmed cases, 102 people have died and 6838 people have recovered. Over 1 800 000 tests have been conducted in Australia.⁴⁸⁹

Health impacts and response

[15] The National Plan for Pandemics includes modelling of possible scenarios for the spread of COVID-19 through the Australian population. The plan informs the actions of the Australian Government, under the advice of medical experts, to slow the spread of the disease and to ensure the health care system is prepared.⁴⁹⁰

[16] The AHPPC has been issuing health information and updates regarding the COVID-19 outbreak via the Commonwealth Department of Health website since 29 January 2019⁴⁹¹ and commenced daily meetings from 30 January.⁴⁹² AHPPC advice has been relied upon to guide restrictions on gatherings and undertakings, elaborated on later in this section, to reduce the rate of transmission of COVID-19 in Australia.

Modelling the pandemic and health system preparedness

[17] The Commonwealth Department of Health has undertaken scenario modelling in order to inform how Australia prepares its health system and to inform how the government takes action to slow the spread of COVID-19.⁴⁹³ The modelling did not initially reflect the actual spread of COVID-19 or the decisions made by governments to slow the spread through the National Cabinet. From 7 April 2020, the National Cabinet requested that future modelling reflect the experience in Australia, taking account of the health measures put in place.

[18] Initial modelling showed:

- a scenario of an uncontrolled outbreak: where peak daily ICU bed demand is 35 000, greatly exceeding Australia's expanded capacity of 7000 ICU beds;
- with isolation and quarantine, demand would be reduced to 17 000 ICU beds at peak;

⁴⁸⁸ World Health Organization (2020), *Coronavirus disease 2019 (COVID-19): Situation Report – 143*, Geneva Switzerland, 14 June.

⁴⁸⁹ Department of Health (2020), *Coronavirus (COVID-19) at a glance*, Commonwealth Government of Australia, updated 14 June.

⁴⁹⁰ Department of Health (2020), *Impact of COVID-19 in Australia - ensuring the health system can respond*, Commonwealth Government of Australia, 7 April.

⁴⁹¹ Department of Health (2020), *Australian Health Protection Principal Committee (AHPPC)*, Commonwealth Government of Australia, 11 June.

⁴⁹² Senate Select Committee on COVID-19 (2020), *Proof Committee Hansard*, Commonwealth of Australia, 23 April, pp. 1–2.

⁴⁹³ Department of Health (2020), *Modelling how COVID-19 could affect Australia*, Commonwealth Government of Australia, 7 April.

- with isolation, quarantine and social distancing, the daily demand would be below 5000.⁴⁹⁴

[19] The transmissibility of a disease can be measured by the effective reproduction number, which is the average number of secondary infections caused by an infected individual, taking account of the public health system. Once the effective reproduction number is below 1, each infected person infects fewer than 1 other individual, which would lead to a decline in the number of new cases on average.⁴⁹⁵

[20] Modelling from various health institutions and universities provided estimates of the symptomatic case detection rate⁴⁹⁶ in Australia. As at 9 April 2020, the symptomatic case detection rate in Australia was 93 per cent and the estimate for each state and territory were all greater than 80 per cent.

[21] The analysis indicates that the COVID-19 epidemic in Australia was being successfully suppressed to achieve an effective reproduction rate of less than 1. It also suggests that if measures at the time of analysis were sustained indefinitely, and there was a continued absence of imported cases or localised outbreak clusters, that local elimination may be achievable.⁴⁹⁷ This could take months to achieve and would be dependent on the initial number of cases in each jurisdiction.

Pandemic Nowcasting

[22] On 16 April 2020, the AHPPC announced that the next phase of modelling had commenced, using nowcasting. Nowcasting uses data from the previous 14 days to more accurately understand and present the current state of the epidemic. This allows forecasts to make projections for the next fortnight based on the current rate of epidemic growth.⁴⁹⁸ The AHPPC confirmed that Australia continued to have an effective reproduction rate of less than 1. Nowcasting would continue with the expectation that the rate of epidemic growth in Australia will change over time as public health measures are tightened or loosened as appropriate.⁴⁹⁹

⁴⁹⁴ Department of Health (2020), *Impact of COVID-19: theoretical modelling of how the health system can respond*, Commonwealth Government of Australia, 7 April.

⁴⁹⁵ Price DJ, Shearer FM, Meehan M, McBryde E, Golding N, McVernon J & McCaw JM (2020), *Technical Report: Estimating the case detection rate and temporal variation in transmission of COVID-19 in Australia*, Victorian Infectious Diseases Laboratory Epidemiology Unit at The Peter Doherty Institute for Infection and Immunity, The University of Melbourne and Royal Melbourne Hospital, 14 April.

⁴⁹⁶ Refers to the proportion of all symptomatic cases of COVID-19 that are detected in a jurisdiction. The authors of this study applied the method developed at the London School of Hygiene and Tropical Medicine that uses the Crude Fatality Rate in a region (adjusted for cases with known outcomes) to provide a symptomatic case detection rate in Australia.

⁴⁹⁷ Price et al (2020), p. 4.

⁴⁹⁸ Department of Health (2020), *Australian Health Protection Principal Committee (AHPPC) coronavirus (COVID-19) statement on 16 April 2020*, Commonwealth Government of Australia, 17 April.

⁴⁹⁹ Ibid.

[23] The Australian Government released updated modelling results on 24 April⁵⁰⁰ and 1 May 2020,⁵⁰¹ showing that the total number of cases had flattened.

Doherty Institute modelling

[24] Drawing on clinical pathway models previously developed in preparation for influenza pandemics, researchers at the Doherty Institute estimated Australia's health care requirements for COVID-19 patients in the context of broader public health measures.⁵⁰²

[25] Modelling of the COVID-19 infection transmission was used to simulate an unmitigated epidemic, varying parameters to reflect the uncertainty regarding estimates of transmissibility and severity. This was overlaid with different public health measures such as case isolation, quarantining of contacts as well as social distancing measures.⁵⁰³

[26] The modelling shows that an unmitigated COVID-19 epidemic would significantly exceed the current capacity of the Australian health system over an extended period of time and would overwhelm the health sector.⁵⁰⁴

[27] The paper referred to evidence from Europe and Hong Kong that suggests that broad based social distancing is effective at achieving generalised transmission reduction. The modelling suggested that social distancing measures would effectively suppress the spread of the reproduction of the virus. For example, combining quarantining and isolation measures with social distancing measures to constrain the spread by 25 per cent and 33 per cent resulted in a reduction in reproduction numbers to 1.90 and 1.69, respectively. This is down from an initially estimated reproduction number of 2.53.⁵⁰⁵

[28] The research highlighted that Australia's early imposition of stringent border measures, high levels of testing, active case-finding and quarantining of case contacts had reinforced public health and clinical capacity. However, by the end of March 2020, community transmission had been established in several Australian states.⁵⁰⁶

Commonwealth Department of Health COVID-19 data reporting

[29] Within the Commonwealth Department of Health, the COVID-19 National Incident Room Surveillance Team has been releasing regular Epidemiology reports since the week of 26 January to 1 February 2020, based on data extracted from the National Notifiable Diseases

⁵⁰⁰ Department of Health (2020), *Update: Modelling the current impact of COVID-19 in Australia*, Commonwealth Government of Australia, 24 April.

⁵⁰¹ *Ibid*, 1 May.

⁵⁰² Moss R, Wood J, Brown D, Shearer F, Black A J, Cheng A C, McCaw J M & McVernon J (2020), *Modelling the impact of COVID-19 in Australia to inform transmission reducing measures and health system preparedness*, draft manuscript Modelling and Simulation Unit, Melbourne School of Population and Global Health, The University of Melbourne, 7 April.

⁵⁰³ *Ibid*, p. 2.

⁵⁰⁴ *Ibid*, p. 6–7.

⁵⁰⁵ *Ibid*, p. 5.

⁵⁰⁶ *Ibid*, p. 3.

Surveillance System (NNDSS).⁵⁰⁷ The latest of these reports, covering the fortnightly reporting period ending 24 May 2020, found that:⁵⁰⁸

- reductions in international travel, domestic movement, social distancing measures and public health action have likely slowed the spread of COVID-19;
- most new detected cases in Australia are among people with recent overseas travel and, amongst cases that are locally acquired, most of these can be traced back to a confirmed case;
- the crude case fatality (CFR) rate in Australia remains low (1.4 per cent) compared to the WHO's globally reported 6.5 per cent;
 - the comparatively lower CFR rate in Australia is likely due to the high case ascertainment in Australia, including the detection of mild cases;
- the number of new cases continues to decrease indicating a reduction in disease transmission; and
- the rate of new cases declined in all states and territories.

Government responses

Public health measures

[30] Due to the highly infectious nature of COVID-19,⁵⁰⁹ the fact that many cases present with mild or no symptoms and because there is no vaccine, drug or treatment available to treat the virus, the response by governments around the world has been to restrict gatherings and movement. This has included limitations on travel, quarantining or self-isolation requirements and social distancing rules. Restrictions were imposed in order to 'flatten the curve' so that the health system would not be overrun.

[31] The Commission has published and updated an information note on the Government responses to the health crisis, summarising the restrictions implemented by all levels of government in Australia.⁵¹⁰ These restrictions began with foreign nationals entering Australia and Australian citizens and permanent residents travelling overseas (with some exemptions available).⁵¹¹ These included:

⁵⁰⁷ Department of Health (2020), *Coronavirus disease (COVID-19) epidemiology reports, Australia, 2020*, Commonwealth Government of Australia, 12 June.

⁵⁰⁸ COVID-19 National Incident Room Surveillance Team (2020), *COVID-19, Australia: Epidemiology Report 17: Reporting fortnight ending 24 May 2020*, Communicable Diseases Intelligence Volume 44, 5 June.

⁵⁰⁹ Department of Health (2020), *Information for Clinicians: Frequently Asked Questions*, Commonwealth Government of Australia.

⁵¹⁰ Fair Work Commission (2020), *Information note – Government responses to COVID-19 pandemic*, 16 June.

⁵¹¹ Department of Home Affairs (2020), *COVID-19 and the border*, Commonwealth Government of Australia.

- Following advice from the AHPPC to substantially reduce the volume of travellers coming from mainland China, additional measures were implemented and from 1 February 2020 Australia denied entry to anyone who had left or transited through mainland China (with exceptions for Australian citizens, permanent residents and their immediate family and air crew who have been using appropriate personal protective equipment).⁵¹²
- On 1 March 2020, the Commonwealth Government imposed travel restrictions on foreign nationals who were in Iran on or after 1 March.
- On 5 March 2020, the Government imposed travel restrictions on foreign nationals who were in the Republic of Korea on or after 5 March.
- On 11 March 2020, travel restrictions were imposed on foreign nationals who were in Italy on or after 11 March.
- On 15 March, the Prime Minister announced that all travellers arriving in Australia would be required to self-isolate for 14 days from the time of arrival in Australia.⁵¹³

[32] On 13 March 2020, the Commonwealth, state and territory governments provided public advice against holding non-essential, organised public gatherings of more than 500 people from 16 March 2020.⁵¹⁴

[33] On 18 March 2020 the Commonwealth Government further announced that all non-essential gatherings of more than 100 people would no longer be permitted and that outdoor events with more than 500 people attending may not take place.⁵¹⁵

[34] On 20 March 2020, in addition to earlier restrictions, it was announced that all non-essential indoor gatherings of fewer than 100 people must have a density of no more than 1 person per 4 square metres of floor space.⁵¹⁶

[35] On 22 and 24 March 2020, the Commonwealth Government implemented further restrictions on various facilities opening and/or limits on the number of people gathering in certain facilities and for certain purposes, including

⁵¹² Department of Health (2020), *Australian Health Protection Principal Committee (AHPPC) novel coronavirus statement on 1 February 2020*, Commonwealth Government of Australia, 1 February; COVID-19 National Incident Room Surveillance Team (2020), *COVID-19, Australia: Epidemiology Report 3: Reporting week ending 26 April 2020*, Communicable Diseases Intelligence Volume 44, 20 February.

⁵¹³ The Hon. Scott Morrison MP, Prime Minister (2020), Transcript: *Press Conference*, Commonwealth Government of Australia, 15 March.

⁵¹⁴ The Hon. Scott Morrison MP, Prime Minister (2020), *Media release: Advice on Coronavirus*, Commonwealth Government of Australia, 13 March.

⁵¹⁵ The Hon. Scott Morrison MP, Prime Minister (2020), *Media release: Update on coronavirus measures*, Commonwealth Government of Australia, 18 March.

⁵¹⁶ The Hon. Scott Morrison MP, Prime Minister (2020), *Media release: Update on coronavirus measures*, Commonwealth Government of Australia, 20 March.

- Gyms and indoor sporting venues;
- Entertainment venues, night clubs, casinos and Cinemas;
- Cafes and restaurants restricted to takeaway or home delivery;
- Pubs and licensed venues (excluding bottle shops);
- Religious gathering and places of worship or funerals (in enclosed spaces and other than very small groups and subject to 1 person per square metre rule);
- Amusement parks and arcades;
- Indoor and outdoor play centres;
- Personal training limited to 10 people;
- Swimming pool & sporting based activities;
- Social activities;
- Health clubs, fitness centres, barre, yoga, spin facilities, wellness centres, boot camps, saunas, community and recreation centres;
- Nail salons, beauty therapy, tattoo parlours, tanning, waxing;
- Libraries, galleries, museums, historic sites, national institutions, community centres, non-essential and community facilities (e.g. halls);
- Auctions and open house inspections;
- Food courts in shopping centres (take away still allowed);
- Weddings can occur, limited to five people and funerals limited to 10 people (with both subject to social distancing rules).
- Indoor and outdoor markets to be addressed by states and territories.

[36] From 29 March 2020, further restrictions were announced by the National Cabinet, including:

- limiting both indoor and outdoor gatherings to two persons only (excluding existing rules for funerals and weddings and for people of the same household going out together);
 - individual states and territories may choose to mandate and/or enforce strong guidance from National Cabinet to stay home unless for:
- strong guidance to all Australians to stay home unless for:
 - shopping for necessary food and supplies;
 - medical, health or care need (including compassionate requirements);
 - exercise (in compliance with existing public gathering requirements);
 - work and study if you can't work or learn remotely.⁵¹⁷

⁵¹⁷ The Hon. Scott Morrison MP, Prime Minister (2020), Media Statement: *National Cabinet Statement*, Commonwealth Government of Australia, 29 March.

[37] From late April, states and territories began to ease restrictions.⁵¹⁸

[38] On 8 May 2020, the Commonwealth Government announced a 3-step plan⁵¹⁹ which outlined the easing of restrictions and aimed to have a sustainable ‘COVIDsafe’ Australia by July 2020. The specific implementation and timeline of the easing of restrictions to be announced and decided by state and territory premiers and chief ministers.

[39] From 8 May 2020, step 1 relaxed various baseline restrictions including allowing gatherings of up to 10 people outside and in businesses, having up to 5 people visit at home, some local and regional travel, and people working from home if it suits both workers and their employers. On 29 May following a National Cabinet meeting, it was announced that the success of the health system in reducing transmission meant states and territories had plans in place to move to Step 2. Step 2 allowed gatherings of 20 in homes, businesses and public places, work from home if it works for workers and their employer, gyms, beauty, cinemas, galleries and amusement parks to open, caravan or camping grounds to open and some interstate travel. Step 3 will be further developed with the specific easing of restrictions being informed by the success of steps 1 and 2 and expert medical advice. Step 3 required further refinement but provisionally allowed gatherings of up to 100 people, return to workplaces, opening up of nightclubs, food courts and saunas and resumption of interstate travel. As at 12 June 2020, the Prime Minister updated step 3 and stated that we are on track to complete the 3-step process in July.⁵²⁰ The updated step 3 removes the cap of 100 persons for indoor gatherings and is replaced by a 1 person per 4 square metre rule for premises (applying to each room). For outdoor events, a capacity of 25 per cent of the capacity of stadia will be allowed.

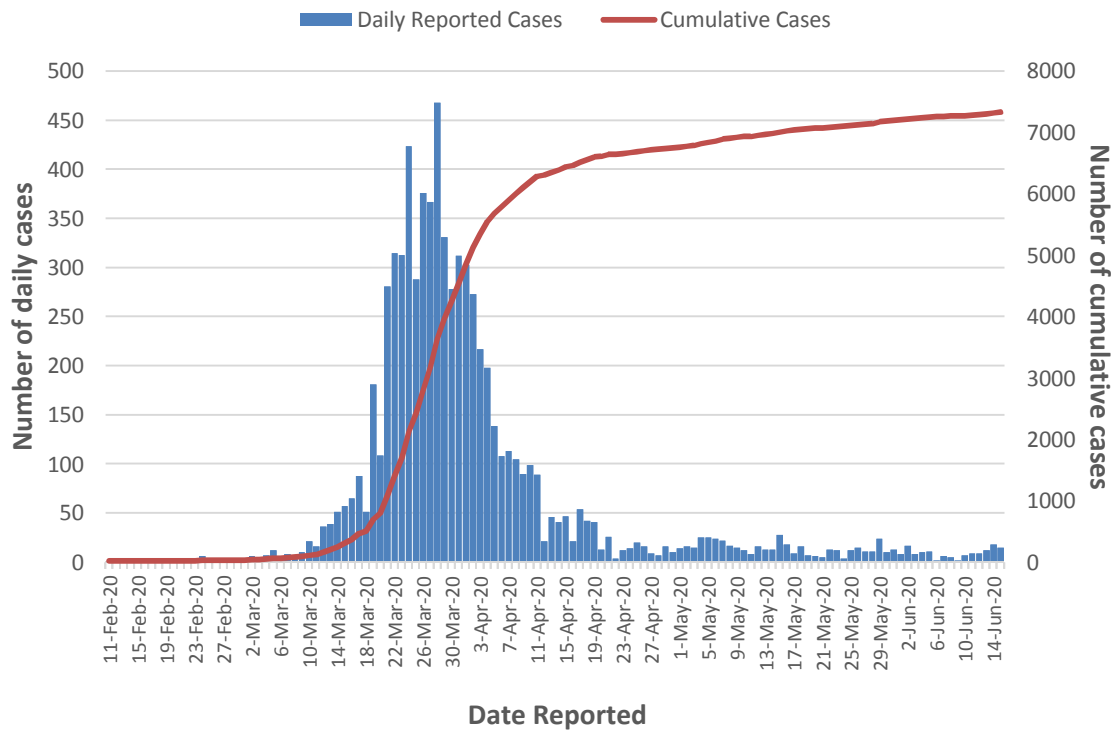
[40] The above restrictions have been successful at flattening the curve and slowing the spread of COVID-19. New cases are at a significantly lower level than at the peak in late March as show in Chart A.1.

⁵¹⁸ For example, New South Wales Government (2020), *Update on COVID-19 restrictions*, media release, 28 April.

⁵¹⁹ Department of Prime Minister and Cabinet (2020), *Roadmap to a COVIDSafe Australia: A three-step pathway for easing restrictions*, Commonwealth Government of Australia.

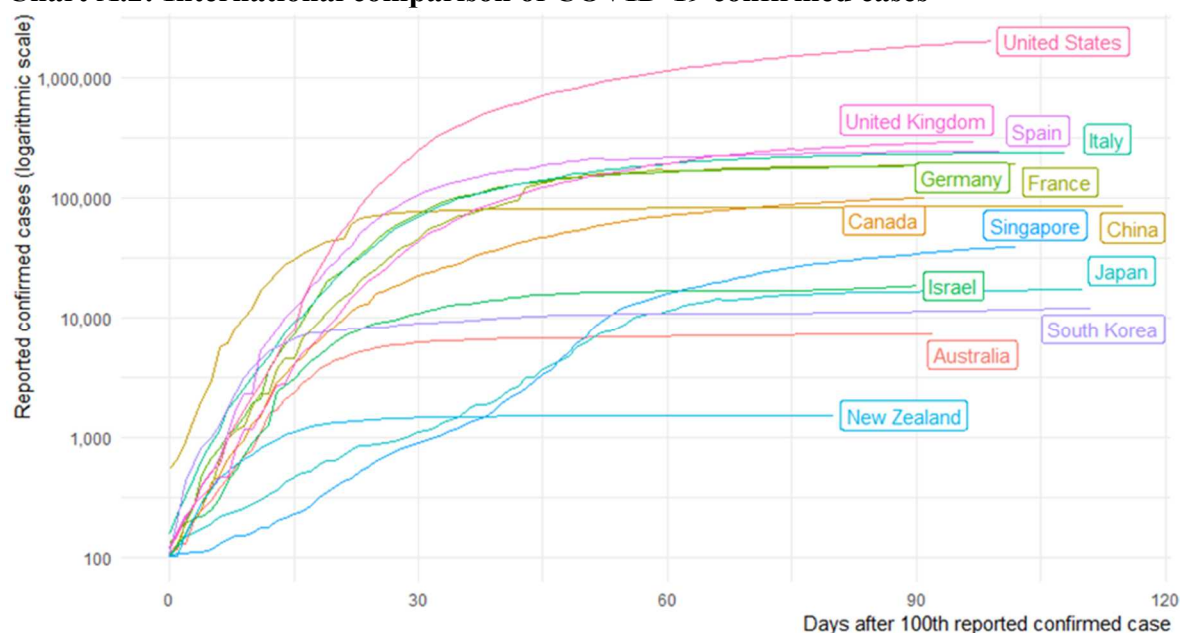
⁵²⁰ The Hon. Scott Morrison MP, Prime Minister (2020), *Media Statement: Update on Coronavirus measures*, Commonwealth Government of Australia, 12 June.

Chart A.1: New and cumulative confirmed COVID-19 cases



Source: Department of Health (2020), *Coronavirus (COVID-19) current situation and case numbers*, Commonwealth Government of Australia, 14 June.

[41] Chart A.2 shows the trend of reported confirmed cases of COVID-19 following the 100th reported confirmed case for selected countries. The chart has a logarithmic scale in order to better visualise when the curve is being flattened, as the COVID-19 pandemic exhibits exponential growth. It shows how Australia has been able to more quickly and sustainably flatten the transmission curve compared to many other countries.

Chart A.2: International comparison of COVID-19 confirmed cases

Note: Data generated using the tidyCovid19 R code written by Joachim Gassen

Source: Johns Hopkins University Center for Systems Science and Engineering, 11 June 2020.

[42] Despite the success in flattening the curve, health experts and the Government have advised that some level of restrictions on movement gatherings and activities, as well as border controls and social distancing measures, are likely to continue for some time⁵²¹, possibly until a vaccine is developed.⁵²² They also remain necessary due to the highly infectious nature of COVID-19, leading to concerns of a second wave of infections.⁵²³

[43] On 26 April 2020, the Government announced that existing efforts by health officers to test and trace the contact of individuals testing positive to COVID-19 would be boosted by the introduction of the COVIDSafe app. The COVIDSafe app is a voluntary application that once downloaded allows early notification and increased tracking of people who have been diagnosed as positive. It allows tracking of people with COVID-19 have had extended contact with and is also designed to help protect health workers and prevent the spread of COVID-19 through the health system. The application has been downloaded over 6.1 million times.⁵²⁴ The Government has emphasised the importance of the upload and use of the COVIDSafe app in allowing restrictions to be lifted over time.⁵²⁵

⁵²¹ The Hon. Scott Morrison MP, Prime Minister (2020), *National Cabinet Statement*, Commonwealth Government of Australia, 29 March.

⁵²² The Hon. Scott Morrison MP, Prime Minister (2020), *Transcript: Interview with Samantha Maiden*, news.com.au, Commonwealth Government of Australia, 6 May.

⁵²³ Leung K, Wu JT, Liu D, & Leung GM (2020), *First-wave COVID-19 transmissibility and severity in China outside Hubei after control measures, and second-wave scenario planning: a modelling impact assessment*, *The Lancet*, Vol. 395, Issue 10233, 25 April–1 May, pp. 1382–1393; Xu, S, & Li Y (2020), *Beware of the second wave of COVID-19*, *The Lancet*, Volume 395, Issue 10233, 25 April–1 May, pp. 1321–1322.

⁵²⁴ Senate Select Committee on COVID-19 (2020), *Proof Committee Hansard*, Commonwealth of Australia, 2 June.

⁵²⁵ The Hon. Scott Morrison MP, Prime Minister (2020), *Transcript: Press conference*, Commonwealth Government of Australia, 29 April.

Government assistance to households and business in response to COVID-19

[44] There have been both significant direct impacts on Australia's economy as well as forecasts of significant secondary effects onto other parts of the economy due to decreases in employment, wages, consumer confidence and consumption as a result of the measures taken by governments to slow the spread of COVID-19. Below is a summary of the measures announced in response to the economic impact of COVID-19. Unlike many recessions, the disease and necessary public health protection measures have caused a severe downturn and can continue to subdue activity until such time that the health crisis allows the loosening of restrictions on movement and gatherings.⁵²⁶

[45] On 12 March 2020, the Australian Government announced an initial stimulus package to support the Australian economy following the outbreak of COVID-19. The package, to be paid from 31 March 2020, included:

- one-off payments of \$750 stimulus to selected income support recipients;
- assistance for businesses to invest through increasing the instant asset write-off and accelerating depreciation deductions;
- payments for small to medium-sized businesses making less than \$50 million in turnover;
- assistance for small business employing trainees and apprentices by supporting 50 per cent of apprentice/trainee wages for 9 months; and
- assistance for regions most significantly affected by COVID-19.

[46] A second stimulus package from the Commonwealth Government was announced on 22 March 2020. It included:

- boosts to cashflow for eligible small and medium-sized businesses of between \$10 000 and \$50 000;⁵²⁷
- increasing the instant asset write-off threshold to \$150 000 and expanding access businesses with up to an annual turnover of up to \$500 million;⁵²⁸
- a temporary increase in the threshold at which creditors can issue a statutory demand on a company; a 15-month investment incentive that will accelerate depreciation deductions for businesses with turnover of less than \$500 million;⁵²⁹

⁵²⁶ Cassells R, Duncan A, Dockery M, Kilby D & Mavisakalyan, A (2020), *Potential Job Losses in the COVID-19 Pandemic*, Bankwest Curtin Economics Centre Research Brief #2, p. 4, 30 March.

⁵²⁷ Department of Treasury (2020), *Fact sheet: Cash flow assistance for businesses*, Commonwealth Government of Australia.

⁵²⁸ Department of Treasury (2020), *Fact sheet: Delivering support for business investment*, Commonwealth Government of Australia.

⁵²⁹ Department of Treasury (2020), *Fact sheet: Delivering support for business investment*, Commonwealth Government of Australia; Department of Treasury (2020), *Fact sheet: Temporary relief for financially distressed businesses* Commonwealth Government of Australia.

- additional support up to \$21 000 for businesses employing trainees and apprentices per eligible apprentice or trainee;⁵³⁰
- \$1 billion of support to regions most significantly affected by the Coronavirus pandemic; assistance to the airline industry of up to \$715 million in tax relief;⁵³¹ and a guarantee of 50 per cent to SME lenders to help support new short-term unsecured loans.⁵³²

[47] On 22 March and 25 March 2020, the Commonwealth Government further announced:

- eligibility for the first \$750 payment extended to those receiving an eligible payment on any day from 12 March to 13 April 2020;
- temporarily expanding eligibility for income support payments and establishing a new, temporary Coronavirus supplement, paid at \$550 per fortnight from 27 April 2020 for at least 6 months;
 - Both existing and new Jobseeker Payment, Youth Allowance Jobseeker, Parenting Payment, Farm Household Allowance and Special Benefit recipients are eligible;⁵³³
- a second \$750 economic assistant payment. Made to social security, veterans and other income support recipients and eligible concession card holders, to be made from 13 July 2020;⁵³⁴
- employees who have been stood down but are ineligible for the JobKeeper payment will be eligible, as long as they are already in receipt of a benefit or are a new income support recipient; and
- individuals to access up to \$10 000 of their superannuation in 2019–20 and \$10 000 in 2020–21 without needing to pay tax on the amounts released.⁵³⁵

[48] On 27 March 2020, the Commonwealth Government announced that part of their plan to tackle both the health and economic crises due to COVID-19 would be to hibernate parts of the economy, with the plan that effected business and workers would be able to start again on the other side.⁵³⁶

⁵³⁰ Department of Treasury (2020), *Fact sheet: Cash flow assistance for businesses*, Commonwealth Government of Australia.

⁵³¹ Department of Treasury (2020), *Fact sheet: Assistance for severely affected regions and sectors*, Commonwealth Government of Australia

⁵³² Department of Treasury (2020), *Economic Response to the Coronavirus: Coronavirus SME Guarantee Scheme – supporting the flow of credit*, Commonwealth Government of Australia, 14 June.

⁵³³ Department of Treasury (2020), *Fact sheet: Payments to support households*, Commonwealth Government of Australia.

⁵³⁴ Service Australia (2020), *More financial support for people affected by coronavirus*, Commonwealth Government of Australia, 25 March.

⁵³⁵ Department of Treasury (2020), *Fact sheet: Early access to superannuation*, Commonwealth Government of Australia; Social Security (Coronavirus Economic Response—2020 Measures No. 2) Determination 2020 (Cth).

⁵³⁶ Hon. Scott Morrison MP, Prime Minister (2020), *Press conference: Transcript*, Commonwealth Government of Australia, 27 March.

[49] Initially announced on 30 March 2020, the JobKeeper payment passed parliament on 8 April 2020. This is a \$1500 fortnightly payment per eligible employee, paid directly to businesses who then use this payment to subsidise their employees' wage. It is paid directly to employees and designed to maintain the employment relationship between employers and employees until the pandemic is over. The payment is available for a maximum of 6 months to employers who have suffered a substantial decline in projected turnover due to COVID-19. Full-time workers, part-time workers, sole traders and long-term casuals are eligible for the payment, including employees who have been stood down since 1 March 2020. The JobKeeper payment is scheduled to end 27 September 2020.

[50] On 2 April 2020, the Commonwealth Government announced the Early Childhood Education and Care Relief package, designed to ensure around 1 million families have access to free child care during the COVID-19 pandemic, to support the early childhood education and care sector, and to ensure that childcare facilities remain open during the pandemic.⁵³⁷

[51] On 24 April 2020, the Government announced further details of the JobKeeper program⁵³⁸, including:

- providing an alternate decline in turnover tests for employees employed through a special purpose entity rather than an operating entity (linked to the combined GST turnovers of related entities using the services of the employer entity);
- charities (other than schools or universities) can exclude government funding from the JobKeeper turnover test;
- payments will be able to be made to religious institutions in respect of religious practitioners (who may not be 'employees' of their religious institutions);
 - introducing a 'one in, all in principle' whereby if an employer decides to participate in the JobKeeper scheme, then the employer must ensure that all eligible employees who have agreed to be nominated by the employer are included in the scheme.⁵³⁹

[52] As of 23 April 2020, Services Australia has processed 587 686 JobSeeker and related applications.⁵⁴⁰

[53] To support impacted businesses including those who may be hibernating, on 7 April the Commonwealth Government announced the mandatory Code of Conduct⁵⁴¹, to be implemented by state and territory governments, imposing a set of good faith leasing

⁵³⁷ Hon. Scott Morrison MP, Prime Minister (2020), *Media release: Early childhood education and care relief package*, Commonwealth Government of Australia, 2 April.

⁵³⁸ The Hon. Josh Frydenberg MP, Treasurer (2020), *Media release: JobKeeper Update*, Commonwealth Government of Australia, 24 April.

⁵³⁹ Australian Taxation Office (2020), *JobKeeper Payment: Your eligible employees*, Commonwealth Government of Australia, 5 June.

⁵⁴⁰ Hon. Scott Morrison MP, Prime Minister (2020), *Press conference: Transcript*, Commonwealth Government of Australia, 23 April.

⁵⁴¹ Commonwealth Government of Australia (2020), *National Cabinet Mandatory Code of Conduct: SME commercial leasing principles during COVID-19*, 3 April.

principles for application to commercial tenancies between landlords and tenants. The code applies to small and medium sized businesses and businesses eligible for the Commonwealth Government's JobKeeper program. The code coexists with specific implemented state and territory laws and regulations and aims to manage the cashflow and financial risk on a proportional basis by balancing the interests of commercial tenants and landlords.⁵⁴² States and territories have passed various rules and regulations in line with the Code of Conduct to assist commercial landlords and tenants.⁵⁴³

[54] States and territories have also provided assistance to businesses, including waiving or deferring of payroll tax, raising threshold limits and waiving or deferring fees and charges and commercial tenancy relief through the implementation of laws and regulations in alignment with the National Cabinet Mandatory Code of Conduct for commercial leasing principles.⁵⁴⁴

[55] In addition to the government measures, the RBA has made decisions to lower funding costs across the economy and support the provision of credit (especially to small and medium-sized businesses), including reducing the cash rate target to 0.5 per cent on 3 March 2020 and then to 0.25 per cent on 19 March 2020.⁵⁴⁵

⁵⁴² Hon. Scott Morrison MP, Prime Minister (2020), *National Cabinet Statement*, Commonwealth Government of Australia, 29 March.

⁵⁴³ Department of Premier and Cabinet (2020), *Supporting Tenants and Landlords Through Coronavirus*, Victorian Government, 15 April; Hon. McGowan M & Hon. Quigley J (2020), *New laws to provide support for commercial and residential tenants and landlords*, Government of Western Australia, 14 April; Barr A & Ramsay G (2020), *More information to support tenants and landlords*, Government of the ACT, 15 April.

⁵⁴⁴ Fair Work Commission (2020), *Information note – Government responses to COVID-19 pandemic*, 16 June.

⁵⁴⁵ RBA (2020), *Statement by Phillip Lowe, Governor: Monetary Policy Decision: 2020–06*, 3 March; RBA (2020), *Statement by Philip Lowe, Governor: Monetary Policy Decision*, Media release, 19 March.

Appendix 2: Proposed Minimum Wages Adjustments

Submission	Proposal		
	National minimum wage	Modern award minimum wages	Exemption/deferral sought
Australian Government	No quantum specified		
New South Wales Government	No quantum specified		
South Australian Government	No quantum specified		
Victorian Government	Increase by at least 3 per cent	No quantum specified, state similar increase to the NMW	
Western Australian Government	No quantum specified		
Australian Council of Trade Unions	4 per cent, applicable to all		
Australian Industry Group	No increase		If increase awarded, defer operative date to at least 1 January 2021
Australian Chamber of Commerce and Industry	No increase		If increase is awarded, defer operative date to at least 1 January 2021
Australian Council of Social Service	No quantum specified, however, recommend decisions should be informed by benchmark estimates (60 per cent of full-time median wages)		
Australian Catholic Bishops Conference	4 per cent increase	A minimum 4 per cent increase to the C13 to C10 rates provided for in modern awards. Priority should be given to granting an increase to the non-trade qualified classifications in all modern awards.	Would not oppose a deferred implementation date of any increases to the National Minimum Wage until a period later in the year, to accommodate the lifting of restrictions.
Australian Business Industrial and the New South Wales Business Chamber	No increase		
Australian Retailers Association	No increase		If increase awarded, it should not exceed CPI, and defer operative date until 1 February 2021 for retail businesses
Housing Industry Association	No quantum specified		Defer the commencement of any minimum wage increase
Master Grocers of Australia Limited	No increase		Defer the commencement of any minimum wage increase
National Farmers' Federation	No increase		

Submission	Proposal		
	National minimum wage	Modern award minimum wages	Exemption/ deferral sought
National Retail Association	No increase		
Restaurant & Catering Industry Association	No increase		
Retail and Fast Food Workers Union	Increase to \$25 per hour	Replace hourly rates below \$25 in the Retail, Miscellaneous, and Fast Food Awards to \$25, including those paid to employees such as juniors, apprentices, trainees, and workers on supported wages.	
Shop Distributive and Allied Employees' Association	4 per cent, applicable to all		
South Australian Wine Industry Association	Flat dollar increase no higher than inflation		Deferral of operative date to 15 July 2020
Centre for Future Work	No quantum specified		
Australian Swim Schools Association	No quantum specified	No increase to rates in the <i>Fitness Industry Award 2010</i>	
Paturzo-Elliot, R	No quantum specified		
Payton, B	No quantum specified		
Stergiou, K	No quantum specified		

Appendix 3: Index of Material

Organisation	Document	Date
Australian Business Industrial and the NSW Business Chamber Ltd	Initial submission	13 March 2020
	Response to supplementary submissions	5 June 2020
Australian Catholic Bishops Conference	Initial submission	19 March 2020
	Response to questions on notice	4 May 2020
	Response to supplementary questions on notice	29 May 2020
	Supplementary submission in reply	10 June 2020
Australian Chamber of Commerce and Industry	Initial submission	29 March 2020
	Submission re timetable variation	1 April 2020
	Submission in reply	4 May 2020
	Supplementary submission	29 May 2020
	Response to supplementary submissions	5 June 2020
	Response to question from consultations	10 June 2020
Australian Council of Social Service	Initial submission	13 March 2020
Australian Council of Trade Unions	Submission re draft timetable	10 October 2019
	Initial submission	20 March 2020
	Submission re timetable variation	1 April 2020
	Submission in reply	4 May 2020
	Supplementary submission	29 May 2020
	Response to supplementary submissions	5 June 2020
	Australian Government	Submission re timetable variation
Initial submission		3 April 2020
Response to supplementary questions on notice		1 June 2020
Australian Industry Group	Initial submission	16 March 2020
	Submission re timetable variation	1 April 2020
	Submission in reply	4 May 2020
	Supplementary submission	29 May 2020
	Response to supplementary submissions	5 June 2020
	Supplementary submission in	9 June 2020

	reply	
Australian Retailers Association	Initial submission	20 March 2020
	Supplementary submission	29 May 2020
	Response to supplementary submissions	5 June 2020
Centre for Future Work	Initial submission	27 March 2020
Government of South Australia	Initial submission	11 March 2020
Government of Western Australia	Initial submission	20 March 2020
Housing Industry Association	Initial submission	20 March 2020
Master Grocers Australia	Initial submission	13 March 2020
	Submission re timetable variation	1 April 2020
	Supplementary submission	29 May 2020
National Farmers' Federation	Initial submission	27 March 2020
National Retail Association	Initial submission	27 March 2020
	Submission in reply	6 May 2020
	Supplementary submission	29 May 2020
	Response to supplementary submissions	5 June 2020
New South Wales Government	Initial submission	27 March 2020
Paturzo-Elliott, R	Initial submission	5 March 2020
Payton, B	Supplementary submission	15 May 2020
Restaurant & Catering Industry Association	Initial submission	19 March 2020
Retail and Fast Food Workers Union Incorporated	Initial submission	20 March 2020
Shop Distributive and Allied Employees' Association	Initial submission	20 March 2020
	Supplementary submission	29 May 2020
South Australian Wine Industry Association	Initial submission	20 March 2020
Stergiou, K	Supplementary submission	19 May 2020
Victorian Government	Initial submission	13 March 2020
	Supplementary submission	29 May 2020

Appendix 4: Research for Annual Wage Reviews

Date	Title	Research report no.
February 2020	Prevalence and persistence of low-paid award-reliant employment	1/2020
February 2020	Budget standards: international measures and approaches	2/2020
February 2020	Modern Awards Database: an introduction	3/2020
February 2019	Overview of research to inform the Annual Wage Review 2018–19	
February 2019	Developments in wages growth	1/2019
February 2019	Insights into underemployment	2/2019
February 2018	Overview of research to inform the Annual Wage Review 2017–18	
February 2018	Employee and employer characteristics and collective agreement coverage	1/2018
February 2018	The characteristics of the underemployed and unemployed	2/2018
February 2018	Characteristics of workers earning the national minimum wage rate and of the low paid	3/2018
February 2018	Part I: Methods and limitations to undertaking analysis of the employment effects of minimum wage increases	4/2018
March 2018	Part II: Prospects for research on employment effects of minimum wages in Australia.	4/2018
March 2018	The UK evaluation of the impacts of increases in their minimum wage	
February 2017	Overview of research to inform the Annual Wage Review 2016–17	
February 2017	Explaining recent trends in collective bargaining	4/2017
February 2017	Factors affecting apprentices and trainees	3/2017
February 2017	The youth labour market	2/2017
	Award-reliant workers in the household income distribution	1/2017
February 2016	An international comparison of minimum wages and labour market outcomes	1/2016
February 2015	Award reliance and business size: a data profile using the Australian Workplace Relations Study	1/2015
December 2013	Minimum wages and their role in the process and incentives to bargain	7/2013
December 2013	Award reliance	6/2013
February 2013	Accommodation and food services industry profile	5/2013
February 2013	Retail trade industry profile	4/2013
February 2013	Manufacturing industry profile	3/2013
February 2013	Labour supply responses to an increase in minimum wages: An overview of the literature	2/2013
February 2013	Higher classification/professional employee award reliance qualitative research: Consolidated report	1/2013

Date	Title	Research report no.
February 2012	Higher classification/professional employee award reliance qualitative research: Interim report	4/2012
February 2012	Award reliance and differences in earnings by gender	3/2012
February 2012	Analysing modern award coverage using the Australian and New Zealand Standard Industrial Classification 2006: Phase 1 report	2/2012
January 2012	Award-reliant small businesses	1/2012
February 2011	Australian apprentice minimum wages in the national system	6/2011
February 2011	Review of equal remuneration principles	5/2011
January 2011	Research framework and data strategy	4/2011
January 2011	Employees earning below the Federal Minimum Wage: Review of data, characteristics and potential explanatory factors	3/2011
January 2011	Relative living standards and needs of low-paid employees: definition and measurement	2/2011
January 2011	An overview of productivity, business competitiveness and viability	1/2011
June 2010	Consolidated Social Research Report	10/2010
June 2010	Administrative and Support Services Industry	9/2010
June 2010	Other Services Industry	8/2010
February 2011	Enterprise Case Studies: Effects of minimum wage-setting at an enterprise level	7/2010
June 2010	Minimum wage transitional instruments under the <i>Fair Work Act 2009</i> and the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>	6/2010
February 2010	Employees with disability: Open employment and the Supported Wage System	5/2010
February 2010	Earnings of employees who are reliant on minimum rates of pay	4/2010
February 2010	Social research—Phase one	3/2010
February 2010	Literature review on social inclusion and its relationship to minimum wages and workforce participation	2/2010
February 2010	An overview of compositional change in the Australian labour market and award reliance	1/2010

Appendix 5: Professor Wooden's Reference List

- Altonji JG, Kahn LB, Speer JD. 2016. Cashier or consultant? Entry labor market conditions, field of study, and career success. *Journal of Labor Economics*, 34(S1): S361–S401.
- Australian Bureau of Statistics (ABS). 2020a. *Australian National Accounts: National Income, Expenditure and Product, Dec 2019* (ABS cat. no. 5206.0).
- Australian Bureau of Statistics (ABS). 2020b. *Private New Capital Expenditure and Expected Expenditure, Australia, Mar 2020* (ABS cat. no. 5625.0).
- Australian Bureau of Statistics (ABS). 2020c. ABS, *Labour Force, Australia, May 2020*, Catalogue No. 6202.0, People who lost a job or were stood down: flows analysis.
- Borland J. 2020a. *Hard times for the young in the Australian labour market*. Labour Market Snapshot March 2020.
https://drive.google.com/file/d/1TJ8IVzerfgGXrsrDwWJfa_Gw1SVIh7cf/view
- Borland J. 2020b. The next employment challenge from coronavirus: how to help the young. *The Conversation*, 15 April. <https://theconversation.com/the-next-employment-challenge-from-coronavirus-how-to-help-the-young-135676>
- Fort T, Haltiwanger J, Jarmin RS, Miranda J. 2013. How firms respond to business cycles: the role of the firm age and firm size. *IMF Economic Review*, 61(3): 520–59.
- Gertler M, Gilchrist S. 1994. Monetary policy, business cycles, and the behavior of small manufacturing firms. *Quarterly Journal of Economics*, 109(2): 309–40.
- Gruen D, Clark C. 2009. *What have we learnt? The Great Depression in Australia from the perspective of today*. 19th Annual Colin Clark Memorial Lecture, Brisbane, 11 November.
https://treasury.gov.au/sites/default/files/2019-03/03_Colin_Clark_speech.pdf
- Hancock D, Wilcox JA. 1998. The ‘credit crunch’ and the availability of credit to small businesses. *Journal of Banking and Finance*, 22: 983–1014.
- International Monetary Fund (IMF). 2020. *World Economic Outlook, April 2020: The Great Lockdown*. <https://www.imf.org/en/Publications/WEO/Issues/2020/04/14/weo-april-2020>
- Kahn LB. 2010. The long-term labor market consequences of graduating from college in a bad economy. *Labour Economics*, 17(2): 303–316.
- Leigh A. 2019. A progressive agenda for Australia's productivity crisis. *Inside Story* 28 July.
<https://insidestory.org.au/a-progressive-agenda-for-tackling-australias-productivity-crisis/>
- Liu K, Salvanes KG, Sørensen EØ. 2016. Good skills in bad times: Cyclical skill mismatch and the long-term effects of graduating in a recession. *European Economic Review*, 84: 3–17.
- Oreopoulos P, Von Wachter T, Heisz A. 2012. The short-and long-term career effects of graduating in a recession. *American Economic Journal: Applied Economics*, 4(1): 1–29.
- Reserve Bank of Australia (RBA). 2020. *Statement on Monetary Policy*, May 2020.
<https://www.rba.gov.au/publications/smp/2020/may/pdf/statement-on-monetary-policy-2020-05.pdf>
- Rozenbes D, Farmakis-Gamboni S. 2017. *The Characteristics of the Underemployed and Unemployed, Part I*. Fair Work Commission Research Report 2/2017, February.
- Wilkins R, Zilio F. 2020. *Prevalence and Persistence of Low-Paid Award-Reliant Employment*. Fair Work Commission Research Report 1/2020.

Wooden M. 1999. *Impediments to the Employment of Young People*. National Centre for Vocational Education Research, Adelaide.

Yuen K, Ellis G, Nelms L. 2018. *Characteristics of Workers Earning the National Minimum Wage Rate and of the Low Paid*. Fair Work Commission Research Report 3/2018, February.

Appendix 6—List of appearances

Appearances:

A Durbin, A Breen, and K Quek for the Attorney-General's Department

S Smith, J Toth and P Burn for Australian Industry Group

S Mackie and R Hilton for Australian Catholic Bishops Conference

T Clarke, M McKenzie and D Kyloh for the Australian Council of Trade Unions

S Barklamb and P Grist for the Australian Chamber of Commerce and Industry

L Berger-Thompson, N Loan and A Hawkins for the Treasury

Hearing details:

2020.

Melbourne

June 10