TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

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C2023/1

s.285 - Annual wage review

Annual wage review 2022-23 – public consultation hearing (C2023/1)

Sydney

9.47 AM, WEDNESDAY, 17 MAY 2023

PN1

JUSTICE HATCHER: Before we begin, as the parties are probably aware, later this morning there will be published by the ABS the updated Wages Price Index numbers and tomorrow we will receive further Labour Force numbers. We intend to take those publications into account in our decision-making process. So, in that respect, unless anybody wants to persuade me otherwise, any party that wants to make any further comment about those publications can do so in a submission not exceeding 20 A4 pages by close of business on Monday 22 May.

PN2

I won't call all the appearances now, I will just call the appearances in the order in which the parties are due to speak.

PN3

As I understand, we have the Australian Government first, so who is speaking on behalf of the Australian Government?

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MR MANNING: Thank you, your Honour, for the opportunity to participate in today's consultation hearing. My name is Greg Manning, I am from the Employment Conditions Division in the Department of Employment and Workplace Relations. Joining me from that department are Ms Jennifer Wettinger, also from the Employment Conditions Division, and Mr Stephen Still from our Workplace Relations Legal Division.

PN5

From Treasury, we have Ms Ineke Redmond from the Macroeconomic Conditions Division and Mr Brendan McKenna from the Labour Market Environment, Industry and Infrastructure Division.

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I will provide a brief introduction of the Australian Government's submission and then Ms Redmond will provide an update on the economic and labour market outlook.

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The government's submission recommends that the Fair Work Commission ensures the real wages of Australia's low paid workers do not go backwards. In assisting the Expert Panel to make its decision, the government submission provides the latest data and evidence, details of the current economic circumstances and highlights the need to manage macroeconomic risks.

PN8

The Australian Government notes that current economic circumstances are exceptional, challenging and expected to be temporary. While nominal wages growth is increasing, real wages fell by 4.5 per cent over the year to December 2022 and this fall in real wages has had the greatest impact on Australia's low paid workers and their families. Persistent declines in real wages for low paid workers would have a significant impact on their living standards, resulting in those low paid workers shouldering a disproportionate burden of the macroeconomic adjustment needed to lower inflation.

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As outlined in the government's submission, recent amendments to the Fair Work Act embedded the principles of job security and gender equality in the Commission's decision-making processes. The addition of gender equality to the minimum wages and modern awards objectives is designed to ensure that equal remuneration, eliminating gender-based undervaluation and addressing gender pay gaps, are considered in wage-related matters and the need to improve access to secure work across the economy has also been added to the modern awards objective.

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Reflecting these amendments, the government's submission notes that increase in minimum and award wages are likely to have a beneficial impact on the gender pay gap and will provide income boosts to those more likely to be in less secure forms of employment.

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Thank you, your Honour, I will now hand over to Ms Redmond.

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JUSTICE HATCHER: Yes, Ms Redmond.

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MS REDMOND: Thank you, your Honour, I am pleased to provide an opening statement outlining the economic outlook in the budget papers.

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The global economy is slowing due to persistent inflation, high interest rates and financial sector strains. Outside of the pandemic and the GFS, the next two years are expected to be the weakest for global growth in over two decades. Australia is well placed to navigate the expected slowdown. The unemployment rate is near 50-year lows of 3.5 per cent. Recent data is showing that wages growth is picking up. The recovery in migration is supporting strong growth in the tourism and the international education sectors and that is offsetting some of the expected slowdown at the aggregate level.

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However, we are already seeing signs of a slowdown in spending and the domestic economy. Households are experiencing high inflation and mortgage payments have risen sharply. This will be even more evident in the coming months as around 880,000 households roll off low fixed rate mortgages this year.

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As the economy slows, we expect employment growth to continue but at a more moderate pace. The unemployment rate is then expected to rise, peaking at around 4.5 per cent, but remaining low by historical standards. The cyclical softening of the labour market is expected to be gradual, given strong momentum, enabling the recent pick-up in wages growth to continue. The release of the

March quarter WPI outcome this morning that you noted will be of interest to gauge the pace of this momentum.

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By June 24, the Wage Price Index growth is expected to be 4 per cent. This would be the fastest wage growth since 2009. There is no evidence of a wage price cycle developing and inflation expectations remain well anchored. We expect headline inflation to return to the RBA's target band in 24/25. Domestic inflation peaked in late 2022, the December quarter. Supply constraints and the initial impact of Russia's invasion of Ukraine have begun to subside.

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The price of goods has decreased within some subcategories of the CPI and, despite the easing, inflation remains a near term pressure on households.

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Indexation of government payments will assist many households. The government's cost of living plan is expected to directly reduce the CPI in 23/24 and is not expected to add to broader inflationary pressures in the economy. The total size of that package, 3.6 billion in 23/24, is modest relative to the overall size of the economy.

PN20

With inflation moderating and wages picking up, we expect positive real wage growth to return in early 2024. This has improved since the October budget, but a large number of households will continue to experience falling real wages in the interim. Positive real wage growth and an expected increase in investment in new housing will support a gradual recovery in consumer spending and economic growth in 2024/25.

PN21

However, there are significant risks to the outlook. Further tightening of global monetary policy or a deterioration in global financial conditions could trigger a more pronounced slowing of the economy. Domestic inflation could prove more persistent, which would dampen household spending further through reductions in real incomes and higher for longer interest rates. Consumer spending could also soften more than anticipated if households become more cautious in the face of current cost of living pressures.

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I welcome any questions. Thank you.

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JUSTICE HATCHER: Ms Redmond, do the budget forecasts for the Wages Price Index and inflation have an assumption about what result may flow from this annual wage review?

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MS REDMOND: They make a technical assumption, yes.

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JUSTICE HATCHER: And what's that?

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MS REDMOND: For the purposes of our forecast and not wanting misses in that, for the WPI, we have made an assumption that broadly proxies your decision last year, so a targeted CPI-linked increase for national minimum wage workers with then a fixed dollar amount with a minimum increase of 4 per cent for other award workers.

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JUSTICE HATCHER: What was the reference to 4 per cent?

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MS REDMOND: A floor, so essentially the minimum increase would be 4 per cent and slightly above whatever the dollar equivalent amount is per hour for those in between the national minimum wage and other awards.

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JUSTICE HATCHER: Just so I understand that, the technical assumption is that the flat amount for lower paid persons would reflect what, the current CPI?

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MS REDMOND: The dollar equivalent for a minimum wage worker.

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JUSTICE HATCHER: At, what, 7 per cent inflation?

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MS REDMOND: Yes, the March quarter assumption. We had an expectation of 6.9 and it came in pretty much spot on at 7.

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JUSTICE HATCHER: Sorry, what was the number, 6 point?

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MS REDMOND: 6.9 was how we, at the time of printing the budget, but that's the same as 7, as the outcome emerged.

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JUSTICE HATCHER: Does it follow from that that an increase of that order is consistent with the forecast of reducing inflation over the next two years?

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MS REDMOND: Yes, and returning to the target band by June 25.

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JUSTICE HATCHER: All right, thank you.

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MR CULLY: Thank you, Judge, I do have a couple of questions, firstly to Mr Manning. You have made a statement that real wages do not go backwards and you have cited a figure of 4.5 per cent growth in 2022. I'm just kind of curious around how you measured that real wage decline, and let me go on to explain why.

PN39

Firstly, if we look at the CPI, we can make a division between CPI increases for discretionary items versus non-discretionary items and I think it's generally accepted, (a), that the discretionary measure of the CPI has gone up by more than 7 per cent over the year to the March quarter and that low paid award-reliant workers spend a higher fraction of their incomes on non-discretionary items and, secondly, the utility of the ABS's Living Costs Index, which captures, amongst other things that are not in the CPI, interest rate payments, and that shows a figure substantially higher than 7 per cent for the year ending the March quarter.

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MR MANNING: I will get Ms Wettinger to respond.

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MS WETTINGER: Thank you, Mr Cully. So the figure that we have quoted, as you correctly point out, it is a comparison between the Wage Price Index and the CPI certainly, and we note the research that the Commission has done as well on comparisons with other measures of inflation and, as you point out, the LCI also, I think for employees, is currently around - the latest figure, just from memory, but I can certainly find the exact figure, is around 9 per cent. So, I think it is certainly open to the Commission to compare a number of different factors that contribute to inflation and certainly, you know, as the government's submission points out, certain cost of living pressures are disproportionately impacting low paid workers, so it's certainly open to the Commission to consider a whole range of measures of inflation, but we have used the CPI in Mr Manning's opening speech.

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Thank you.

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MR CULLY: I have one other question, which is probably directed more at the Treasury people. Ms Redmond, you mentioned the 3.6 billion figure for the cost of living relief package. It's difficult to follow from the budget papers the extent to which that money - who it's targeted at and I wonder whether it's possible for you to address the extent to which it's targeted towards people who are currently in receipt of welfare payments versus people who are employees who are not in receipt of welfare payments.

PN44

MS REDMOND: We can come back to you with further detail. I will just take that on notice, other than to say that there are employee households not in receipt of government payments also facing cost of living pressures. A large contribution directly from that package is from the electricity price relief plan and that would also be - so all households benefit from the price caps in terms of the electricity bill offsets, but then there's also targeted household rebates for electricity and that is more aligned to concession card holders and people that would also be in receipt of government welfare benefits.

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MR CULLY: Thank you.

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JUSTICE HATCHER: Thank you for your submissions. You are excused and you are free to go.

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Next, Mr Clarke and Ms Peldova-McClelland for the ACTU.

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MR CLARKE: Are you content for us to remain on this bench?

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JUSTICE HATCHER: That's a matter for you, Mr Clarke.

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MR CLARKE: Thank you, your Honours and members of the Expert Panel, I appear with Ms Peldova-McClelland for the ACTU.

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An important question that the Panel asks itself in every review is: 'How is this year different to last year?' and, relatedly, 'What might we expect in the year ahead?' We are going to start with that.

PN52

In an overall sense, the labour market has strengthened with unemployment falling to 3.5 per cent even in the face of participation growing to 67 per cent. Wage growth has strengthened a little from 2.4 per cent over the year to March 2022 in last year's decision to 3.3 per cent in the year to December. Unemployment is expected to remain well below 5 per cent and participation to remain above 66 per cent through the forward estimates period, and there's an expectation that wage growth will strengthen to 4 per cent in the year ahead. Non-mining profits have grown a further 2.2 per cent to December of 2022 with profit to sales ratios in award-reliant industries above the pre-pandemic levels. The profits share of national income in the December quarter at 31.8 per cent has eclipsed even what was described as a peak in last year's decision of 31.1 per cent. Each of those observations is consistent, in our view, with a positive adjustment in the national minimum wage and modern award minimum wages.

PN53

More contested in this year's review is what to make of the changes in productivity, GDP growth, and in particular the consumption element of GDP growth, and, of course, inflation.

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In our submission, there's clear connections between these rooted in the overhanging effects of the pandemic and its recovery. Taken together, we don't regard these indicators as consistent with a need to suppress wages or bake in further real wage decline or to diminish the living standards of the lowest paid.

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We share the Panel's long-held view that productivity is best measured over a cycle. The rises and falls in productivity during the pandemic and the recovery are difficult to interpret and ultimately pointless to place much weight on in this year's review. The measures will stabilise over time and we note that the budget estimates that it will settle to grow around 1.2 per cent per annum.

PN56

Nobody would question that the recovery from the pandemic was swift and strong, but recovery cannot be sensibly followed by growth of the same pace experienced during that recovery for ever and ever and ever. Growth measures need to be understood in the context of coming off a high base. The 2.7 per cent GDP growth seen in the year to December is not objectively bad by any measure, but reflects lesser growth in the September and December quarter in particular as the tightening of monetary policy started to act in precisely the way it was intended to: it dampened consumer spending.

PN57

The bumper growth in consumption predicted in the budget of 5.3 and 4 per cent over to the end of this financial year, June 2023, that level of growth could not sensibly be repeated next year given current conditions. Consumption is predicted to grow far weaker, but grow nonetheless, off that high base by 1.5 per cent in the year ahead.

PN58

The inflation situation in Australia, similarly, has its roots in the pandemic and in subsequent world events, in particular the war in Ukraine, as reference was made to by Treasury this morning. Both resulted in supply shocks, which drove up prices, but, as we have demonstrated in our reply submission in particular, the input cost rises that those conditions provoked have begun to dissipate. At the same time, some households found they had more to spend during the pandemic, resulting in a surge in consumption and some demand-pull inflation. At the end of the day, as we show in our initial submission, any gains in savings accrued by the lowest income quintile of households in the pandemic were entirely lost by the end of 2022.

PN59

On the business side of the ledger, we are left, in our view, with some charging higher prices because they need to and some charging higher prices because they can. Profit margins have at worst stayed relatively stable and perhaps been given a bit of a nudge in some industries where input cost pressures have dissipated without any corresponding movement in the prices facing consumers. Based on the budget forecast of a negative GDP deflator over the year ahead, combined with an above target CPI forecast, we can only surmise that that corresponding downward movement isn't expected any time soon.

PN60

That's not to say inflation's not a problem. It is. CPI inflation at the time of last year's review was 5.1 per cent, a 20-year high, and it was predicted to peak at 5.9 per cent. The Employee Living Cost Index had also risen 3.8 per cent, which was then, at last year's decision, the highest in a decade. Both have risen further with CPI peaking at 7.8 before falling to 7 per cent and the Employee Living Cost Index rising to 9.6 per cent. These rising costs of living have deep and devastating effects on workers who rely on this tribunal for an annual adjust to their incomes.

PN61

We tend to generalise when we talk about the characteristics of modern award-reliant workers who rely on this tribunal's decision. We focus on their skill levels, the industries they work in, their gender, whether they are part time, are they full time, are they casuals. That helps to understand the population of modern award-reliant workers, how they are different to other groups, but it fails to capture the human element, the lived experience of low-paid work. It can lull you into dealing in averages and being ignorant of the circumstances of award-reliant workers who don't match the difficult profile and it can also obscure their most unifying feature, that they are paid the lowest legal pay possible for the work they do, for the contribution they make to the wealth of others and the wealth of the nation.

PN62

Some insight - some insight - into the human element is captured in the material we have presented in relation to the costs of living and financial stress, financial stress in particular from page 145 onwards of our initial submission. By any measure, the costs of living have rapidly outpaced the increases awarded by the Panel over the last two years and the very real effects of the deterioration in real wages are evident and widespread. Over 1.7 million employee households are experiencing food insecurity. 37 per cent of workers earning less than 52,000, which includes some people above C10 in the old language, are skipping meals. There are many more observations about that 52,000 income cut-off from page 145 of our initial submission.

PN63

And housing - a pretty fundamental need - has risen in costs so significantly while real wages have fallen. As we show in our reply submission, over 70 per cent of households with existing tenancies have experienced rent rises over the last 12 months and over 90 per cent of those who have moved have also done so with increases varying between 6.7 per cent to 14 per cent. Those with mortgages have faced 11 rate rises since April of 2022. Predictably, the household savings ratio is rapidly declining, and the budget notes it's going to go deeper, suggesting that even far more fortunate households are feeling that their circumstances have changed.

PN64

This anxiety is starkly evident from the perceptions of personal financial health measures that we show in our reply submission, which are at their lowest level since the GFC. Can you imagine what that deterioration in financial wellbeing might feel like if you are already low paid? How does it translate to lived experience? What if your rent has become unaffordable? Rental vacancies are at historically low levels. Where are you going to go? Changing will likely cost you more.

PN65

Even potatoes, rice, pasta and bread that you use to pad out the kids' meals so they can go to bed feeling full have risen so much over the year: 11.8 per cent for bread and cereals - basic stuff - 8 per cent for food generally. Electricity has gone up 15.5 per cent over the year and gas 26.2 per cent. So, you have cut back where you can, but now we're heading into winter, it's starting to get cold, you're going to have to turn the heaters on.

PN66

Non-discretionary goods and services have already risen 7.2 per cent over the year and wages, in real terms, have gone backwards.

PN67

All these pressures affect different people and different households in different ways to different degrees - we acknowledge that - but insofar as the functions of this tribunal are concerned, the goal is a fair and relevant safety net. That critical expression 'a safety net' needs to be given some work to do. It might well be that you can identify a sizeable subgroup of modern award-reliant workers who are better off than others in that group as a whole in terms of their living circumstances, or might be if some of the measures announced in the budget are legislated, but to look only to those circumstances and allow others to have insufficient protection doesn't fit the safety net objective. A safety net that lets anyone fall through isn't a safety net at all. For example, whilst we acknowledge that there are comparatively few workers receiving a national minimum wage, that doesn't mean you should dismiss their circumstances and their needs in the task before you, and this year we have credible research from the University of New South Wales to answer that very basic question, 'Is the minimum wage enough to live on?' and the answer is resoundingly 'No'.

PN68

In our submission, whilst much of the economy is riding out the wave of the post-pandemic boom towards a soft landing, the workers of Australia are still waiting for the recovery to come in real wages. The question we put is, 'If not now, when?' because the current pressures on low paid households are simply not sustainable.

PN69

The main lines of attack against restoring some fairness in real wages are that it will cost jobs and that it will be inflationary. Now, we have heard the one about disemployment effects often enough in this place. 'But, wait, there's more' say the employers because, in their view, the amendments to the Act concerning gender equality and secure jobs basically mean 'Be wary of the disemployment effects of minimum wage rises.' So, the argument goes, the Act now says the same thing three different ways in three different places. Now, that's a highly unattractive argument from a statutory construction point of view.

PN70

We have said all we need to say about the actual relationship between minimum wage movements and employment in our submissions, but I would just emphasise this: even if we are wrong about that, surely the argument would have a lot more currency when the labour market was weak, but it's not and it's not predicted to be any time soon. The suggestion that we would move from high vacancies and capacity constraints to job shedding at the flick of a switch is fanciful.

PN71

As to inflationary impacts, we have referred in our reply submission to a recent work by Jericho and Stanford that has attempted to quantify that and has come up with a 0.39 per cent contribution. Now, we note that the more detailed calculations provided by the Commission's research branch on Friday, or on Monday, demonstrate that even this modest impact is likely an overestimate because it's not sensitive to the lower hourly earnings and lower hours worked by employees on modern awards versus employees on awards generally.

PN72

We would also again highlight, as was alluded in the discussion this morning with Treasury, that the WPI forecasts from both Treasury and the RBA seem to leave some considerable room for growth from the Panel's decision, but simultaneously predict inflation to reduce quicker than was previously thought over the year ahead. So, in our submission, the suggestion that the claim we have put risks worsening inflation is also unconvincing.

PN73

That's my attempt to summarise the key issues that we raised in our material, but there's a lot of detail that lies behind that. Ms Peldova-McClelland I are happy to take any questions.

PN74

JUSTICE HATCHER: Mr Clarke, one of the perennial questions about the national minimum wages, who does it actually apply to? That is, we always see in the Australian Government's submissions this number that it applies to about 0.7 per cent of the workforce, but, speaking for myself, I have never been able to identify who these people are, what they do and what are the characteristics of either their employment or their household types. I assume you have got nothing to add on that score?

PN75

MR CLARKE: I don't have anything to add on that score. The best one can do with the existing data is to, you know, identify income levels and award coverage and make an assumption that those people must be paid the national minimum wage, except in the more detailed microdata where you might pick up perhaps a few awards that have a C14 equivalent rate. I would say that there may be a few less than was the case a few years ago, I think as a result of an alteration in the coverage terms of the Miscellaneous Award, which I think your Honour presided over, but I'm afraid I can't take that any further.

PN76

JUSTICE HATCHER: Just one further matter, Mr Clarke. There seems to be some distance between the positions of the Australian Government as we have heard it this morning and in their submissions and the perhaps slightly less direct message we are getting from the Reserve Bank about what sort of outcome from this review would be consistent with reducing inflation. Is there a risk, notwithstanding what the evidence you have referred to demonstrates about the extent to which the review contributes to the Wage Price Index and inflation, that a perceived high figure emanating from this review might encourage or cause the Reserve Bank to hike interest rates again and, for some households, leave them worse off than when they began?

PN77

MR CLARKE: All I can say about that, your Honour, is that there seem to be some assumptions based into their forecasts and we think that, based on what we have already said, those assumptions make allowances for something not far off what we're asking for in this review.

PN78

JUSTICE HATCHER: That's the Australian Government, but, reading the tealeaves, the Reserve Bank seem to be telling us that the increase should be the top of the inflation target band, 3 per cent, plus long-run productivity growth about 1 per cent. That comes to about 4. Whether their analysis is correct or not, it's the effect that it might have upon the interest rate setting mechanism for the next round.

PN79

MR CLARKE: Their long-run WPI forecasts are pretty much the same as Treasury's, so, on that aspect of how much contribution does it make generally to WPI is pretty much the same. Yes, wage growth has started to pick up, but there's no suggestion that the reason for it picking up is because the Panel went particularly hard last year in terms of its flow-on effects to a bargaining outside of that. You know, you can see, when you look at the evolution of the WPI, what actually happened first is that the bonuses kicked up and the discretionary payments kicked up and then gradually you sort of had a little bit of a flow-down into base rates. So, we are not concerned about those impacts.

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JUSTICE HATCHER: All right, thank you.

PN81

MR CLARKE: There were some matters that were addressed in the exchange with Mr Cully with Treasury. Shall I deal with that?

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JUSTICE HATCHER: If you want to.

PN83

MR CLARKE: Yes, just to point out that I think it was said by you, and I'm sorry if I'm mischaracterising it, that there was a general view that lower paid workers are more exposed to the rises in non-discretionary expenditure. For what it's worth, we agree and we agree with your assessment in relation to that.

PN84

In relation to the Living Cost Index, the Employee LCI, covering interest, financial products, we understand that, obviously, there's the interest rate on mortgages component of that, but it also covers personal financial debts, which is an important one to keep track of, particularly at a time when the household savings ratio is declining and, as we have seen from what I said about our initial submission, the lowest paid workers have already wound down anything they accrued during the pandemic, so assuming they are carrying a level of personal financial debt but don't have a mortgage, they are also exposed to that cost of financial product, or whatever it's called, component of the LCI. That's all I wanted to say about those matters.

PN85

PROFESSOR BAIRD: Thanks, Mr Clarke. I had one question, just to ask if you could elaborate on what impact the decision might have on closing the gender pay gap, so a shift in the minimum rates might have on closing the gender pay gap, please.

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MR CLARKE: Ms Peldova-McClelland will respond.

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PROFESSOR BAIRD: Thank you.

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MS PELDOVA-McCLELLAND: Thank you, Professor. We do outline this in our submission in some detail. Our general submission is that the review has a significant role to play in promoting gender equality, including by addressing the gender pay gaps. Gender pay gaps in the new minimum wages objective isn't defined and uses 'gaps' plural, so we say that should be given a broad interpretation in terms of looking at all of the different measures that are used, and we detailed what those measures should be in our response to the question on notice.

PN89

We say that national minimum wage and award wage increases provide a substantial and meaningful opportunity to reduce the gender pay gap because increases to award wages increase the value placed on women workers and the work they perform. This addresses systemic gender-based undervaluation of female-dominated work and higher wages can also reduce the gender pay gap by improving women's economic participation in the labour market, and this is because higher wages make it easier for women to return to work, take on more hours by making childcare, for example, more affordable and making it less likely that women will be the ones to take time out of work.

PN90

We also note that an increase to the national minimum wage will flow through to the Commonwealth Paid Parental Leave Scheme and that increasing that minimum rate should improve the incentives for men and partners to make better use of the scheme and promote shared parenting under the new provisions that allow them to do so because we know that one of the main barriers to men taking parental leave or partners taking parental leave is the low rate at which it is paid.

PN91

Is there anything else you would like to know, Professor?

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PROFESSOR BAIRD: I suppose if we dig a bit deeper, the increase will apply to both men and women, so is there a particular feature of the labour market that would mean that women will benefit more from an increase in the national minimum wage?

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MS PELDOVA-McCLELLAND: In our submission, we say that because women are over-represented in award-reliant and low paid industries and occupations that this will have a very positive impact on the gender pay gap and gender equality more broadly.

PN94

In terms of looking at specific industries, we have said that this review is not the place to do that and have suggested alternatives in our submissions and answers to the questions on notice, but we say that the approach the Panel has taken in the past in that the gender pay gap and equal remuneration are factors in favour of a positive increase to wages remain the same and are bolstered by the new explicit direction to address the gender pay gap.

PN95

PROFESSOR BAIRD: Thank you.

PN96

COMMISSIONER HAMPTON: Mr Clarke, this might be best directed at you. In our questions on notice, we raised the potential for the realignment of the national minimum wage. When I read the submissions in response to that, including from the ACTU, I think it's fair to say the ACTU wasn't exactly adopting the proposal or the suggestion. Is there anything more you want to say about that?

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MR CLARKE: I think I've said all I can about that. Yes, I don't think I can add to what we've put there.

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COMMISSIONER HAMPTON: The propositions are concerned about the impact on work value.

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MR CLARKE: Yes, particularly - I mean, if you have a look at the context we're in at the moment, we've got some amendments in the Act that are potentially going to encourage, through whatever process - and we have made some suggestions about what that process might be - a whole series of work value assessments, and there's also some item sort of tucked away somewhere in the budget that says something about an award review, to do something to do with the amendments that have been made to the Act, which we're all terribly excited about.

PN100

COMMISSIONER HAMPTON: You are speaking for yourself there, are you, Mr Clarke?

PN101

MR CLARKE: Yes. Well, look, you know, these policies are implemented to have these sorts of reviews, presumably, because there's an identified opportunity for improvement to the award system, but one would suspect again that there's going to be some kind of work value issue that might come up in that, and so if these types of questions of work value are going to start to be looked at in some kind of overall sense, we are concerned that just making this sort of haphazard adjustment now with the best of intentions for helping the lowest paid workers might have some flow-on effects.

PN102

COMMISSIONER HAMPTON: But there's always going to be a challenge, isn't there, trying to assess the work value of a group of workers that almost no one can actually identify where they are and what they do?

PN103

MR CLARKE: Yes, well, you know - - -

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JUSTICE HATCHER: I suppose the key point is that the C14 rate is almost universally an introductory rate, it's never intended to be a rate to apply permanently to anybody's employment, with a few rare exceptions, and therefore can it possibly be the basis for a national minimum wage?

PN105

MR CLARKE: I understand the appeal of that proposition and I have adopted that proposition, but, as I understand it, there are other proceedings kind of slowly making their way through the Commission at the moment concerning that very issue, so I don't want to be conclusionary about those in this proceeding, and that's another complication, if you like.

PN106

JUSTICE HATCHER: All right. Thank you, Mr Clarke and Ms Peldova-McClelland. Next we have the Australian Industry Group, so Mr Ferguson, Mr Burn and Mr Wilson.

PN107

MR FERGUSON: Thank you, your Honour. If the Expert Panel pleases, I will just note to begin with, we have obviously filed comprehensive material and I won't endeavour to summarise or repeat that. Just by way of explanation as to how we are going to handle this morning, I will just make some brief introductory comments. I will then turn to ask Ai Group's Director of Research and Economics, Dr Wilson, and the Ai Group's Chief Policy Advisor, Dr Burn, to make some brief observations on the key economic issues and amplify some of the major arguments that we think the Panel needs to grapple with.

PN108

By way of introductory comments, as we have detailed in our written submissions, and I think as was acknowledged in the oral submissions today of the government, Australia faces undeniably challenging economic conditions. In the context of present circumstances, we submit that it is particularly critical this year for the Expert Panel to adopt a cautious, responsible and balanced approach when adjusting minimum wages. This must, of course, include balancing the perspective and interests of employers with those of employees.

PN109

Crucially, we would emphasise that the quantum of any potential increase must this year be set having regard to a range of significant moderating factors. Those moderating factors include dramatically deteriorating economic conditions, frankly anaemic profitability and productivity growth across the economy and, importantly, the imperative to avoid fuelling inflation, which, of course, could lead to higher interest rates than would otherwise be necessary. Higher inflation and higher interest rates would have a particularly harsh impact on the low paid, in our submission.

PN110

We also make the point that, consistent with past practice, it would be appropriate for the Panel to take into account the half a per cent increase in the superannuation guarantee that will commence in July, and that's a further moderating factor, in our submission.

PN111

Ultimately, we propose in our post-budget submission that, having regard to all of the relevant considerations, it would be appropriate for the Expert Panel to grant a 3.8 per cent increase to the national minimum wage and minimum wages in awards.

PN112

Those are my comments. I will hand over, firstly, to Dr Wilson, if it pleases.

PN113

JUSTICE HATCHER: Dr Wilson.

PN114

DR WILSON: Through Ai Group's three sequential submissions to the Panel, we have presented a comprehensive review of official economic data to analyse the current performance and future trajectory of the Australian economy and labour market. The data clearly tells a story of an economy that's presently in a worrying transition from a period of strong growth and employment generation associated with the post-pandemic recovery to a period where headwinds are leading growth, investment, consumer spending and business activities to stall while inflationary pressures persist and wages continue to grow.

PN115

Unlike the context facing the Panel's decision last year, we confront a very different economic reality today, one in which current indicators and official forecasts all point towards a rapidly deteriorating economic outlook. Risks also remain skewed to the downside and the path to a soft economical landing in Australia is narrowing.

PN116

The Australian economy posted a very strong post-pandemic performance last year. With the remainder of pandemic era restrictions removed in early 2022, economic and social activity was able to return back towards normal patterns, and although slowing in the second half of the year, GDP growth still averaged a decent 2.7 per cent per annum in the December 22 quarter.

PN117

Importantly, this robust post-pandemic recovery delivered what is perhaps the strongest labour market outcome since in nearly a generation. In the labour market cycle from mid-2020 to the end of 2022, unemployment fell to 3.4 per cent at one point, the lowest rate since 1974, with gender-even results and very strong youth outcomes; underemployment stabilised at around 6 per cent, the lowest rate since the global financial crisis; participation raised to record highs, driven especially by strong participation uptake amongst women; record-level job creation occurred, particularly strong in award-reliant and/or feminised industries.

PN118

Within that job creation, full-time employment dominated over part-time employment and non-casual employment growth was much stronger than for casual forms of work; wages and earnings growth are at decade high rates and, at the moment, in aggregate in the WPI, are only being held back by fairly anaemic public sector wages, and higher wage growth for women within that category, leading to a narrowing of the gender pay gap, which now, according to the AWR measure, has fallen to the lowest level on record.

PN119

So, Australia's strong economic performance through to the middle of 2022, when the Panel last reviewed the national minimum wage, has produced labour market outcomes that have greatly benefited the lowest paid and women. We would also note that the total wages paid by non-mining industries grew by 12 per cent in 2022. This is five times higher than the growth of profits in those same non-mining industries, which, in comparison, grew by a fairly modest 2.2 per cent.

PN120

But, since the middle of 2022, Australia's economic performance has unfortunately started to turn. Record level inflation, peaking at 7.8 per cent in December, has required a consistent tightening of monetary policy by the Reserve Bank since May last year and, as other central banks around the world have done the same, growth in Australia and globally has begun to stall. National accounts show that GDP growth began to slow in the third quarter of 2022, dragged lower by moderating consumer spending, industrial production and declining business investment.

PN121

More recent economic indicators confirm that this economic slowdown has continued through the early months of this year. Retail turnover has begun to slow, while household spending growth is declining, particularly for discretionary items. Indeed, the only major macroeconomic indicators that remain clearly positive today are those about the labour market measures, with employment levels still strong and wages continuing to grow quickly.

PN122

The future outlook for the Australian economy is this slowdown is unfortunately going to continue. The IMF currently forecasts growth to fall to 1.6 per cent in calendar 2023, while Treasury and the RBA both forecast 1.5 per cent for the 2023/24 financial. These forecasts are all less than half the rate of the 3.9 per cent annual GDP growth we saw a year ago.

PN123

If we look to the detail of these forecasts issued by Treasury and the RBA, they both paint a very similar picture of what we should expect over the coming year. Both agencies expect growth in household consumption to roughly halve, business investment growth to roughly halve, while employment growth will also stall.

PN124

Risks to that outlook also remain to the downside, largely due to global factors. Global financial instability, sticky global inflationary pressures, falling commodity prices and/or geopolitical risks are all factors that could potentially pose a harder rather than softer landing for Australia.

PN125

In these deteriorating conditions, businesses are already under considerable pressure. In the second half of 2022, the period in which the economy has begun to slow, three-quarters of Australian industries had growth rates below their five-year pre-pandemic averages, and four industries had already entered into outright industrial contraction. In that same period, eight of 15 industries saw their profits contract, as did all industry profits, yet cost pressures on business are unfortunately not expected to ease in tandem.

PN126

As we have heard this morning, wages are forecast to grow at an annual rate of 4 per cent by the end of 2023, the fastest since 2009, and while inflation has now peaked, it is also likely to be persistent, not returning to normal levels, i.e. the 2 to 3 per cent target band, until late 2024 at the very earliest.

PN127

So, as the economy slows but inflation slows more slowly and wages keep rising, businesses find themselves caught in a vice between declining demand conditions on the one hand and persistent supply side costs and wages pressures on the other. Meanwhile, the productivity growth required to support and absorb rising wages is anaemic in Australia.

PN128

In the decade to 2020, annual average productivity growth was at its lowest level in 60 years, a performance the Treasurer has recently labelled woeful, and so, in these deteriorating economic circumstances, it remain critical for the Panel to adopt a cautious approach to adjusting minimum wages. An excessive increase will exceed business capacity to pay in the deteriorating economic environment of today, threatening disemployment effects. They would also contribute to inflation and require additional monetary policy tightening by the RBA than would otherwise be the case.

PN129

These are my comments and I will now hand to Dr Burn.

PN130

JUSTICE HATCHER: Before you go on, I think we learned in the discussion with the Australian Government that a 6.9 per cent increase to the national minimum wage is a flat amount to be applied to all grades to C10, if I understood it correctly, then 4.6 per cent above that is consistent with the forecasts in the budget, which are broadly in line with those of the RBA, about falling inflation and a still healthy labour market. Why do you say that anything we do within any reasonable bounds is going to have any effect on that, that is, that trajectory seems to be baked in and won't be budged much by anything we do?

PN131

DR WILSON: Well, that trajectory that Treasury gave this morning has been assumed in those forecasts.

PN132

JUSTICE HATCHER: Yes.

PN133

DR WILSON: A different outcome would produce a different set of forecasts in that circumstance. That is still a very high level, persistent inflation, not falling and returning to target band until the end of 2024, which imposes costs pressures on business on the supply side and households as well. We certainly wouldn't find that was an acceptable or normal or baked-in rate of inflation necessarily.

PN134

JUSTICE HATCHER: All right. I think Mr Clarke referred to it. We published a research note earlier in the week which indicates that the wage bill of the modern award-reliant only constitutes about 11 per cent of the total wages bill for the whole economy. Again that suggests that, again within reasonable bounds, any increase we order is not going to have any particular significant effect upon the Wage Price Index and then, in turn, on inflation. Do you want to comment on that?

PN135

DR WILSON: 11 per cent of total wages is still - - -

PN136

JUSTICE HATCHER: The wages bill.

PN137

DR WILSON: The wages bill.

PN138

JUSTICE HATCHER: So the statistic is that about 20.5 per cent of the employee workforce to be covered by modern awards and another 0.7 per cent covered by the national minimum wage, but because they have a high predominance of low paid casual and part-time workers, the actual contribution to the national wages bill is only about 11 per cent.

PN139

DR WILSON: To clarify, Ai Group's position is not that inflation is being driven by wages, but that wage increases contribute to the cost of inflation. We would also note that a national minimum wage acts as a floor price in the labour market that affects wages outside of that area as well. I believe it was in our reply submission we made this argument in response to the ACTU, which I understand, from memory, they had partially accepted in their post-budget submission as well. So, while that would be the direct effect of a national minimum wage rise, particularly in a tight labour market, that is going to spill over to other sectors where employers have to compete in what is presently a very tight labour market and that sets a floor price that rises all wages, not just those who are given the award.

PN140

JUSTICE HATCHER: Thank you.

PN141

DR WILSON: Thank you.

PN142

JUSTICE HATCHER: Mr Burn.

PN143

DR BURN: Your Honour and members, I build on the comments about the risks facing the Australian economy, the downside risks facing the Australian economy and, in that context, the risks of a high minimum wage increase in award rates. The risks are particularly significant, we think, for people in low income households, who are more likely to be disproportionately affected by reduced hours of work, fewer jobs and higher housing costs.

PN144

The expected slowdown in the labour market is set to detract from the social inclusion objective and there's a clear risk that a high increase in the national minimum wage and award rates will detract further by reducing participation in paid work.

PN145

Bearing in mind the insulation provided by the budget measures, the relief to households and the targeting of that to low and middle income households, we think that the risk can be balanced, the risk to low and middle income household can be balanced by awarding a more moderate increase in the national minimum wage and award rates.

PN146

Thank you. Those are the submissions.

PN147

JUSTICE HATCHER: Thank you for your submissions.

PN148

DR BURN: Thank you very much.

PN149

JUSTICE HATCHER: Next we have the Australian Chamber of Commerce and Industry, so we have Ms Tinsley, Mr Grist and Mr Farrow. Mr Grist, you are speaking first?

PN150

MR GRIST: Yes, thank you. I thank the Expert Panel for the opportunity to appear before you today. My name is Peter Grist. I am the principal economist at the Australian Chamber of Commerce and Industry and with me today are Ms Jess Tinsley and Mr Simon Farrow.

PN151

As with previous reviews, the Panel is again in an unenviable situation, facing a number of complex challenges from slowing economic activity, high inflation and continuing labour and skills shortages. I won't labour the economic analysis because it's already been very well covered by my colleagues at Ai G and also Treasury officials, but now is not the time to be making bold decisions. ACCI stress that genuine caution and moderation is warranted in setting minimum and modern award wages in this review.

PN152

I would like the opportunity to focus on three pertinent factors to the Panel's deliberations in this annual wage review: inflation, business profits and productivity.

PN153

There is an urgent need to get on top of inflation and quickly return it to the Reserve Bank's target range of 2 to 3 per cent so as not to extend the pain on Australian households and businesses any longer than is absolutely necessary. The threat of inflation remaining elevated due to significant increases in wages has been highlighted by the Reserve Bank governor. In voicing his concerns about the inflationary impacts of substantial wages growth, Dr Lowe noted a 3.5 per cent increase in wages is a good anchoring point and if wage increases become common in the 4 to 5 per cent range, it's going to be harder to return wages to 2.5 per cent; therefore, it's important - - -

PN154

JUSTICE HATCHER: Do you mean inflation or wages?

PN155

MR GRIST: It's going to be harder to return inflation to 2.5 per cent, yes, sorry. Therefore, it's important that a coordinated whole-of-economy effort is made in returning inflation to the 2 to 3 per cent target band.

PN156

There has been much debate over corporate profits in recent months, but it's important to place this in context. High global commodity prices stemming from the war in Ukraine have driven prices of iron ore, gas and coal to extraordinary highs, delivering the mining sector extraordinary profits. Yet it must be remembered that, in the mining sector, only 1.1 per cent of the workforce is award-reliant.

PN157

For this review, it is important to focus on the profits of industry sectors with a high share of award-reliant employees, such as accommodation and food services, administrative and support services and retail trade. In contrast to the mining sector, profits in these service industries has been low in recent years, severely impacted by the COVID disruptions. Businesses in these sectors have little capacity to absorb significant wage increases without being forced to raise prices.

PN158

Further, many stakeholders have claimed that businesses are increasing their margins to achieve extraordinarily high profits and this has been the core driver of the recent surge in inflation, yet that's not consistent with the data. Analysis by the Reserve Bank in their May 2023 statement on monetary policy includes a section that explicitly addresses the question 'Have business profits contributed to inflation?' This shows that, outside the mining sector, profit growth, particularly in the service industries which are the high share of award-reliant employees, has been weak over the past two years and remains below pre-COVID levels. There is little evidence of a broad-based increase in non-mining profits in Australia. The Reserve Bank analysis concludes that business profits are not contributing to inflation.

PN159

Finally, productivity. Increases in real wages can only be sustained if they are linked to gains in labour productivity. The recent Productivity Commission 5-Year Productivity Inquiry Report highlights that labour productivity has slowed considerably in recent decades. In the decade to 2020, average labour productivity growth in Australia was the slowest in 60 years, falling to just 1.1 per cent. This compares to an average of 1.8 per cent over the 60 years to 2020. Labour productivity has slowed even further due to the COVID disruptions over the past few years to an average of less than 1 per cent.

PN160

While ACCI agrees that labour productivity growth should be shared between business owners and employees, current labour productivity growth, averaging less than 1 per cent per year, does not support strong growth in wages.

PN161

In this annual review, the Panel must take note of the weak productivity growth and avoid decoupling wages growth from genuine productivity improvements. Given the weakness in productivity, an over-sized increase in minimum and modern award wages cannot be justified.

PN162

ACCI supports a fair, reasonable and responsible increase in minimum and award wages in 2023. We recognise that households are experiencing increasing pressures from high inflation, but it is impacting just as heavily on businesses by raising their operating costs.

PN163

In making its decision, the Expert Panel needs to be aware of what is affordable and what is not. If wage increases exceed moderate levels that balance what businesses can afford and community expectation, jobs and businesses will be lost.

PN164

ACCI supports an increase of minimum and modern award wages of 4 per cent, that is, 3.5 per cent plus the legislated 0.5 per cent increase in the superannuation guarantee in 2023/24. We consider this to be fair and reasonable and responsible in the current economic circumstances.

PN165

Our position is focused on containing inflation and returning it to the middle of the Reserve Bank's target range of 2 to 3 per cent as quickly as possible, as well as providing a reasonable allowance for workers to share the benefits of productivity growth, which, as noted earlier, is averaging less than 1 per cent per year.

PN166

We caution that any increase above 3.5 per cent plus the legislated 0.5 per cent superannuation guarantee increase would be irresponsible in the current economic environment.

PN167

I will refer to Ms Tinsley for any questions you may have on the statutory considerations, but I will leave it there and we thank the Panel for its considerations and are happy to answer questions you may have.

PN168

MR CULLY: I have one question, Mr Grist, just on your figures.

PN169

MR GRIST: Yes.

PN170

MR CULLY: And around the 3.5/4 per cent increase. I am wondering how that is consistent with your statement that sharing some of the productivity gains if, on the basis of the evidence submitted by the Australian Government that there's been a decline in real wages of 4.5 per cent, which is based on the difference between the growth in the Consumer Price Index and the growth in the Wage Price Index.

PN171

MR GRIST: Yes, well, as I said, we are focused on returning inflation to the target range of 2 to 3 per cent as quickly as possible.

PN172

MR CULLY: I understand that, but I don't understand your point about how it is sharing some of the productivity gains if your figure is 3.5 or 4 per cent, depending on how you treat the superannuation guarantee. It's still less than the decline in real wages is my point.

PN173

MR GRIST: Yes, we agree, but we recommend the Panel is forward-looking rather than back-looking in its analysis and, as I was saying before, it needs to be what's affordable for business as well as meeting the needs of low paid workers. So, if we are looking forward, then we can expect, as the Treasury officials were suggesting from the budget, inflation to be falling to about 3.5 per cent, or 3.25 per cent, sorry, by June 2023, so, for the year that the annual wage increase takes effect, and so, at 3.5 per cent, that's providing a real increase in minimum and modern award wages.

PN174

JUSTICE HATCHER: So, if we adopted that, that would result in a further real wage reduction for modern award-reliant employees? Do you accept that?

PN175

MR GRIST: We accept that, but I also noted that businesses have been experiencing just as much difficulty with inflation over the past 12 months and will be over the next 12 months, so that's important.

PN176

JUSTICE HATCHER: My question is: if we adopted that course, do you see an opportunity for award-reliant workers to recover that real wage loss in future reviews and in what circumstances might that be done?

PN177

MR GRIST: Yes. In our submission, we have talked about the cumulative impacts of the wage rises, and we had a 5.2 per cent increase for minimum wage employees and 4.6 for modern award wage employees in the last review and, if you look at the increases over the past decade, they have all been well above - well, they have all been real increases in wages.

PN178

JUSTICE HATCHER: Just answer my question 'Yes' or 'No'.

PN179

MR GRIST: Well, the question is - I suppose our answer is that, if you look at the cumulative gains over the past decade and you balance out over what's likely to be the next couple of years as well, then you will have positive gains in real wages.

PN180

JUSTICE HATCHER: That's a 'No', isn't it?

PN181

MR GRIST: Only temporarily and only focused on the current - - -

PN182

JUSTICE HATCHER: Well, that is you're saying, to the extent that that approach would result in a real wage reduction, that doesn't matter because it offsets real wage increases in award rates over the last decade and no subsequent correction is required?

PN183

MR GRIST: Well, that's true. It's important to focus on the cumulative impacts of wages growth and, overall, over a period, wages growth will continue - has been growing in real terms.

PN184

JUSTICE HATCHER: All right, thank you. Thank you for your submissions.

PN185

So we have the Australian Retailers Association, so Mr Zahra, and is Mr Tindley going to speak?

PN186

THE ASSOCIATE: He is on the screen.

PN187

JUSTICE HATCHER: All right. Mr Tindley, go ahead.

PN188

MR ZAHRA: Good morning, your Honours and members of the Expert Panel. Thank you for the opportunity for the Australian Retailers Association to appear today. I am joined on Teams here in Melbourne by our ARA Employment Relations Adviser, Mr Tindley, from FCB Workplace Law, and first up to say that the ARA does support a sustainable increase in the minimum wage.

PN189

We also believe in a contemporary workplace relations system that mutually benefits employees and employers alike. This system should enable retailers to maximise productivity, improve competitiveness and drive job creation while providing employees with sustainable wages growth and career pathways.

PN190

As Australia's oldest, largest and most diverse national peak body for the country's $400 billion sector, the ARA is uniquely placed to provide a whole-of-sector view of this year's annual wage review. Our members include Australia's largest retail brands and thousands of small and medium-sized businesses. They operate across the country and across all categories from food to fashion, hairdressing to hardware and everything in between.

PN191

We also appreciate the importance of the Panel's deliberations, given that our sector employees 1.3 million Australians, that is, one in 10 Australians work in the industry, making retail the largest private sector employer in the country. However, labour costs are one of the largest costs for our members and, unfortunately, unsustainable wages growth has the potential to impact margins and prices, risking a harmful wage price spiral. That is why we have tried to take a balanced approach in our recommendation to this year's annual wage review.

PN192

In making our recommendations around the minimum wage, we have used some key guiding principles. Any increase in wages should be based on the underlying rate of inflation at the time the Fair Work Commission hands down its decision using the Trimmed Mean Inflation rate, less the impact of increases in superannuation from July 2023 and then less the projected decrease in inflation through 2023 to 24, as forecast by the RBA. So, we have used quite a mathematical formula.

PN193

Based on data published by the Australian Bureau of Statistics on 26 April 2023, the ARA recommends an increase of 3.5 per cent to the minimum wage to take effect from 1 July.

PN194

We also believe that the recommendation is in line with the RBA's policy to return inflation to the target range of 2 to 3 per cent as quickly as possible. We also believe an increase of 3.5 per cent strikes the balance between an employer's ability to keep pace with the rising costs of doing business and sustain employment levels and ensuring employees can keep up with the cost of living.

PN195

On behalf of the ARA and the members, we thank you again for the opportunity to appear today.

PN196

JUSTICE HATCHER: Is Mr Tindley going to say anything?

PN197

MR ZAHRA: No.

PN198

JUSTICE HATCHER: Mr Zahra, that approach implies a forward-looking assessment of inflation rather than backwards-looking; is that right?

PN199

MR ZAHRA: Well, it uses the Trimmed Mean Inflation, which is backward, which is historic, and it is taking a forecasted view with inflation coming down.

PN200

JUSTICE HATCHER: All right.

PN201

PROFESSOR BAIRD: Mr Zahra, thank you.

PN202

MR ZAHRA: Yes.

PN203

PROFESSOR BAIRD: I might ask you also about the issue of gender equality, given that your sector does employ many women. How do you think is the best way we can address the issue of the gender pay gap within award-reliant groups of workers?

PN204

MR ZAHRA: From a frontline perspective, which is what the award predominantly covers, there is no - the gender pay gap is not - we pay by rate. The gender pay gap becomes more obvious as you go up the management hierarchy. I have a strong track record in diversity equality and inclusion. We have set up a DE&I advisory group within the association which is bringing all the large retailers together to address this specific issue. What we had done is we developed a gender equality statement and we are asking retailers to sign up for that to ensure that the pay gap is addressed over time. Now, when we compare ourselves to other industries, the gender pay gap is not as significant; however, we want no pay gap to exist.

PN205

PROFESSOR BAIRD: You raise that interesting question about as you go up the hierarchy.

PN206

MR ZAHRA: Yes.

PN207

PROFESSOR BAIRD: Out of interest, do you have data on the different pay rates for men and women on the hierarchy and who sits on the award rate and who doesn't?

PN208

MR ZAHRA: No, so management roles aren't on the award rate, so the award rate goes up to - and Nick, please jump in here if I've got any detail wrong.

PN209

PROFESSOR BAIRD: I was actually thinking of the hierarchy within the award rates as well.

PN210

MR ZAHRA: Within the award rate - Nick? Mr Tindley - - -

PN211

PROFESSOR BAIRD: Do you have data on who sits where?

PN212

MR TINDLEY: Apologies, Panel members, I didn't quite hear the question. Could you repeat that?

PN213

PROFESSOR BAIRD: I was curious about whether or not you have data or information on where men and women sit on the higher classifications within the award?

PN214

MR TINDLEY: I think Mr Zahra's response to that holds true across the classification levels. The award sets rates regardless of gender, but the difference or any gender pay gap would most likely be explained by the mix of - the number and mix of hours that are worked rather than the base rate itself. So, if a particular gender is available to work more hours or is available to work more hours where penalty rates apply, then they will naturally have a higher overall wage, but, to our knowledge, there's no available data that would demonstrate that there's a difference at the store level, which is what the General Retail Industry Award covers.

PN215

PROFESSOR BAIRD: Thank you.

PN216

JUSTICE HATCHER: All right. Thank you, Mr Zahra, thank you, Mr Tindley.

PN217

MR ZAHRA: Thank you.

PN218

MR TINDLEY: Thank you.

PN219

JUSTICE HATCHER: Next, Mr Manickam, you appear for the Restaurant and Catering Industry Association?

PN220

MR MANICKAM: Yes, thank you, your Honour, I am. Good morning, your Honour and the Panel. My name is Suresh Manickam. I am the CEO of the Restaurant and Catering Industry Association of Australia and I thank you for the opportunity to participate in the consultation and appear before the Expert Panel to obviously complement our written submission from the R&CA perspective with regard to the annual wage review.

PN221

RCA represents over 57,000 restaurants and catering businesses across the country. They are restaurants, cafes, catering businesses and the like and we are proud to advocate for and on behalf of their interests and contribute to the growth and prosperity of the industry.

PN222

The hospitality sector, which includes cafes, restaurants and catering businesses, does play a vital role in our economy. It generates over $35 billion in retail turnover annually and provides employment to approximately 580,000 individuals. R&CA is committed to ensuring that the industry thrives by addressing challenges that impact the operating environment that we are within.

PN223

In our written submission, R&CA respectfully requests that the Panel considers an increase of 3 per cent in the national minimum wage, aligned with the 0.5 increase in the superannuation guarantee from 1 July of this year.

PN224

R&CA welcomes the opportunity to contribute to the wage review and we believe that it is crucial to take into account the perspectives of the industry and, obviously, the businesses within. The decision by the Expert Panel will directly impact the viability of hospitality businesses in Australia and the future of gastronomy in our nation. Your decision will be the difference between encouraging entrepreneurial activities within the space or, of course, stifling it.

PN225

R&CA conducts an annual Industry Benchmarking Study for businesses and that provides us with a snapshot of our industry needs, the opportunities, the challenges that it faces. The report is conducted across all states and territories with a sample that is statistically relevant and comparable year upon year. Our most recent report reveals valuable insights into the challenges faced by operators within the hospitality industry. A significant proportion of the industry operators rely on wages provided by the modern award system, you know, various classification rates and levels.

PN226

It is important to note that any increase in the minimum wage will have repercussions beyond the basic rate itself and, of course, it will cascade and affect higher classifications, grades and levels, as well as penalty rates for weekends and public holidays, of which our industry, you know, serves.

PN227

In fact, our Benchmarking Report shows that 44.9 per cent of businesses - 45 per cent - have experienced a decrease in net profit, largely attributed to staffing costs. To cope with these challenges, approximately 40 per cent of business owners work 20 hours or more unpaid a week, so that's unpaid work that they are contributing.

PN228

JUSTICE HATCHER: Does that figure - was it 45 per cent have had a decrease in profits? Is that the figure?

PN229

MR MANICKAM: Yes, that's right.

PN230

JUSTICE HATCHER: Does that imply that 55 per cent have had increased profits?

PN231

MR MANICKAM: Sorry?

PN232

JUSTICE HATCHER: Does that imply that 55 per cent have had increased profits?

PN233
MR MANICKAM: Or the same.

PN234
JUSTICE HATCHER: Or the same. Thank you.

PN235
MR MANICKAM: Moreover, some of our businesses have chosen not to operate on Sundays and public holidays due to rising penalty rates. There has been an over 6 per cent annual increase in businesses choosing not to operate on both Sundays and public holidays. This demonstrates the nexus between unsustainable staffing costs that lead to higher rates of unemployment and underemployment.

PN236
The next challenge faced by our businesses, like many, is, of course, inflation. Inflation is currently the greatest challenge for hospitality businesses and an unsustainable wage increase will exacerbate these difficulties, leading to further reduced operating hours, decreased confidence in the sector and, we fear, job losses.

PN237
The industry faces ongoing challenges with operating costs and maintaining price competitiveness. Factors such as the recent increases in cash rate, inflationary pressures, rising energy costs and workers' compensation premiums have all contributed to a difficult economic environment and reduced business confidence.

PN238
Our Benchmarking Report reveals that total occupancy costs for business owners have doubled in the past five years. Additionally, regulatory requirements and supply chain disruptions as a result of COVID, rising energy prices and increased menu prices to offset inflation have challenged family and small businesses.

PN239
Major price hikes across the sector would become unavoidable, further impacting consumers. Our report found that 84.3 per cent - roughly 85 per cent - of operators are considering a further increase in menu prices, which is attributable to a potential increase in wage costs. This emphasises the risk of a wage price spiral that threatens the economic conditions and viability for the hospitality industry.

PN240
The impact of increasing employee costs on small businesses cannot be underestimated. Furthermore, the upcoming increases on the superannuation guarantee, which rises to 11 per cent from July 23, is a cost faced by businesses, which must be considered alongside any decision on minimum wages.

PN241

I would sort of just come back to the beginning of my speech and that is that the vast majority of businesses within the sector are small mum and dad operators, they are not, you know, large conglomerates.

PN242

Having said all of this and considering these key considerations, R&CA urges the Panel to consider a maximum increase of no more than 3 per cent in the national minimum wage, aligned with the 0.5 per cent increase in superannuation from July. We firmly believe that this is a balanced approach which will contribute to sustainability and stability of the industry while taking into account the broader economic context that we have.

PN243

We thank the Expert Panel for their time and consideration.

PN244

JUSTICE HATCHER: Thank you. Yes, Mr Cully has just one question.

PN245

MR CULLY: Mr Manickam, in your submission and in your presentation just now, your submission just now, you made reference to the State of the Global Hospitality Industry Report. I don't believe - I could be wrong - I don't believe we have seen a copy of that report included.

PN246

MR MANICKAM: No, we haven't provided it, but we certainly can provide that. There's no issue with that.

PN247

MR CULLY: Yes, the follow-on question - - -

PN248

MR MANICKAM: That wasn't part of our initial submission, correct.

PN249

MR CULLY: Just a further follow-on question about the study. It says that it's conducted by Lightspeed, 7200 owners, operators, managers and retail consumers across North America and Europe. I'm just kind of curious to know what the size of the Australian sample is you mentioned that it was representative of.

PN250

MR MANICKAM: I will just revert to Brendon Zhu on that one.

PN251

MR ZHU: Thank you. For that particular Lightspeed Report, we are happy to provide that on notice and send that to the Commission.

PN252

MR CULLY: Okay, thank you, and that will answer the question about the sample size, will it?

PN253

MR ZHU: That's correct, thank you.

PN254

MR CULLY: All right, thank you.

PN255

JUSTICE HATCHER: All right, thank you for your submissions.

PN256

MR MANICKAM: Thank you.

PN257

JUSTICE HATCHER: Next we have the Australian Catholic Council for Employment Relations. Mr Massy.

PN258

MR MASSY: May it please the Commission, I appear with Dr Barnes, instructed by Colin Biggers & Paisley.

PN259

Might I start with a procedural matter in explaining two documents which were filed on behalf of my client on Monday evening, and I think again refiled on Tuesday. The first was a corrected version of my client's original or initial submissions. There were some errors in respect of the figures which were quoted at paragraphs 73 and 74. They have been corrected and marked up in the version that was filed on Tuesday. The second document was a supplementary submission which updated two of the tables found in the initial submissions on the basis to update the position if the Expert Panel was to set the national minimum wage at the C13 level rather than the C14 level. So, it was simply to expand upon those tables so that the Panel could see the effect of such a decision.

PN260

For the purposes of today's consultation, I have proposed to break my submissions into three topics, firstly, some legal issues arising from my client's initial submissions and some of the criticisms of last year's Expert Panel about these matters. The second was to explain the corrections which were made to the initial submissions and also to attempt to address a question which His Honour the President asked Mr Lawrence from the ACTU about who precisely national minimum wage workers might be and what evidence there is about their make-up in the material, and the third was to respond to the questions on notice and, in particular, the question concerning setting the national minimum wage at the C13 level.

PN261

Dr Barnes then proposes to make some short submissions on some of the data contained in his report and answer any of the questions that the Expert Panel might have on those matters.

PN262

Can I deal with the first of those topics, which is the question of statutory construction. My client's submissions are set out in writing at paragraphs 12 to 35 of its initial submissions. Can I summarise them in this way. Section 284 provides the Commission must establish and maintain a safety net of fair minimum wages. In my submission, read in an orthodox way, section 284 has three parts: firstly, it requires the Commission to establish and maintain a safety net; secondly, it indicates what the safety net is to be comprised of, that is, fair wages; and the third part, being the last words of the chapeau and the subparagraphs, identifies the mandatory considerations which the panel must take into account when considering the order to be made.

PN263

Section 134 is expressed in slightly different terms. The chapeau to section 134 obliges the Commission to ensure that National Employment Standards and the modern awards provide a fair and relevant minimum safety net.

PN264

Can I just note that, in 2020, the annual review, the majority identified at paragraph 358 that there are other efficient levers available to government to address poverty and disadvantage for working people. With respect, that proposition can't be gainsaid. However, the correctness of that proposition doesn't detract from the statutory imperative which parliament has imposed on the Commission to establish a monetary safety net of fair wages.

PN265

Whilst parliament has identified a range of considerations to be taken into account, in my submission, read in an orthodox way, the product of those considerations or the ultimate product of the evaluative judgment still has to answer the description of being a safety net of fair minimum wages. That's very similar to the way in which Mr Lawrence put it this morning when he suggested that the word 'safety net' has to be given some work to do and that has to be considered in terms of the outcome of the order.

PN266

Last year, the Panel was critical of the submissions made on behalf of my client for two reasons. The first of those criticisms is identified at paragraph 14 of the decision and that was to note that even the increases sought by my client wouldn't be sufficient to lift all groups out of disadvantage which is identified in the material. The second criticism expressed at paragraph 17 was that my client's submission involved elevating one of the considerations in section 284 over the others. I might deal very briefly with those criticism in reverse, dealing with the second of them first.

PN267

JUSTICE HATCHER: Is this submission directed at us finding that the conclusion expressed in last year's decision was wrong?

PN268

MR MASSY: I am endeavouring to clarify the submission that my client makes about how the construction of the section should be approached.

PN269

JUSTICE HATCHER: So you are saying they misunderstood the submission?

PN270

MR MASSY: I think there might have been a misapprehension and that's what I seek to clarify.

PN271

The criticism at paragraph 17 involves a misapprehension. My client doesn't say that one of the considerations in the list needs to be elevated over the others. The submission is simply that the product of the evaluation has to answer the description in the first part of the section. The mere fact that, in the present circumstances, the extent of disadvantage suffered by people who are reliant on both the national minimum wage and C13 through C10 indicates that the needs of the low paid is a particularly relevant consideration doesn't mean that it is elevated over the others. That is simply our response to the application of the evaluative judgment to the circumstances. All that my client says is that the ultimate order made must answer those introductory words, being a safety net of fair minimum wages.

PN272

The second criticism made was that the quantum sought by my client wouldn't lift all of the groups identified in the material out of disadvantage. My client accepts that. However, the introductory words to section 284 require it to be a safety net of fair minimum wages. Repeated panels have found that fair minimum wages in that context means fair to both employers and employees, and we accept in the current context that an order which lifted all of those groups out of the disadvantage in one go would not answer that description because of the size that would be required. However, that is not to say, in my submission, that a continued or persistent order which doesn't answer the description is sufficient to discharge this statutory obligation.

PN273

The Panel will see from the substance of my client's submissions that it has advanced a contention that the disadvantage identified by those groups can be remedied in a relatively short period of time. With concerted effort, either within five years or within seven years, each of those groups could be lifted above the 60 per cent poverty line, and the adoption of that type of target is, in my submission, entirely consistent with section 284 and the task which is imposed on the Panel.

PN274

Unless there are any other questions, I hadn't proposed to say anything more to that and I wish to move on to identifying the clarification made or the correction made in the initial submissions and attempting to identify some of the evidence which connects the theoretical disadvantage identified in some of the statistical material with the actual lived experience.

PN275

The original submissions made on behalf of my client at A13 reproduce a table which emerges from the Commission's statistical analysis, I think at table 8.6, which identifies a number of household types and their disposable income on the C14 or the national minimum wage rate versus the 60 per cent poverty line and also on the C10 rate.

PN276

In my submission, the circumstances revealed by table A13 are not theoretical. Firstly, the household descriptions are not atypical or uncommon. It's a notion of a family with one or two children and one wage earner on a full-time basis with either the other not working or being on some form of government benefits. The Commission wouldn't, in my submission, think that those were atypical or unusual circumstances.

PN277

Secondly - and this is the passage which is dealt with in my client's initial submissions at paragraph 70 and following - there is a report from ACOSS entitled 'Poverty in Australia 2023: Who is Affected' and that found that there were 701,000 people in Australia living below the 50 per cent poverty line where there was full-time work in the household. That report didn't descend to the granular detail necessary to identify the classification levels of those persons. All we know is that they lived in a household where there was a person in full-time employment.

PN278

If one was to conservatively say that each of those households perhaps involved five people, that would suggest that there were somewhere in the order of 140,000 workers on a full-time basis not earning sufficient to keep their household above the 50 per cent poverty line. One could reasonably expect that number to be larger if the 60 per cent line was considered.

PN279

We know from the Australian Government submission that there are approximately 184,000 workers on the national minimum wage, whether it's through the C14 level or otherwise. We also know from table A13 that the disadvantage versus the 60 per cent poverty line persists from the C14 level all the way through until the C10 level for some households.

PN280

JUSTICE HATCHER: Well, if we look at those employees who are covered by an award and are on the C14 level, as was implicit, or perhaps not implicit, in the question on notice, the C14 rate for the vast majority of those is not an ongoing rate, it's merely an introductory rate and they usually move up to C13 and often into C12. So, there's that qualification.

PN281

The second qualification is that in modelling people on an award rate, whether it's C14 or something up to C10, the difficulty is that it simply assumes the weekly ordinary rate or 20 hours for the part-time person, but what it doesn't take into account is other benefits that are likely to be received through the award. For example, if that person works in hospitality or retail, which is very likely, they are going to get weekend penalty rates, they are going to get, in hospitality, probably evening penalty rates and there's likely to be some on, at least some occasions, access to overtime. So, when we take those matters into account for the award-covered people, how relevant really is this analysis?

PN282

MR MASSY: Well, what it shows - and when one looks at table A13, some of the shortfalls, and we have them for obviously the national minimum wage and then they exist for the C10 rate as well and, in the supplementary table which we have filed in the submissions, we have done that exercise for the C13 rate - the gap between the disposable income received by those persons and the 60 per cent poverty line is still significant, and in circumstances where there is evidence about a large number of people being below the 50 per cent poverty line in circumstances where there's full-time work in the household, it's a safe assumption, in my submission, to assume that those are persons falling in these categories which the analysis identifies would not be sufficient to meet the 60 per cent poverty line.

PN283

That is the purpose of the analysis, is to identify if there are this large group of actual people in poverty where there is full-time work in their household. It logically bears some correlation to this group of potential workers identified by table A13, and the point of the submission is just to say that that suggests that these data or these types of households are not merely theoretical but correlate with the lived experience.

PN284

Can I come now to the third topic, which is the questions on notice, and particularly the question concerning the C14 national minimum wage being set at the C13 level. My client's position is, unsurprisingly, that the premise implicit in the Panel's question is correct and that the national minimum wage should be set at the C13 level.

PN285

I accept that my client's submission diverges from the ACTU's in this regard. Your Honour observed earlier, in an exchange with Mr Lawrence, that of the modern awards which contain a C14 level, only six of them don't involve some transition based on time and, in my submission, what that means is that the increase in rates is not dependent upon any identifiable acquisition and skills or job performance or qualification but rather on the ordinary sort of human experience that performance of a task over a period of time enables a person to become more efficient at it and better.

PN286

JUSTICE HATCHER: Well, it's not even that. It's achieving, I think in some cases, the basic level of familiarity with the workplace, so the Manufacturing Award, it's 38 hours' work.

PN287

MR MASSY: Yes, that's right, I'm sorry, that's the point I was trying to make. The particular point is that there is no identifiable change in the employee's output or skills or qualifications necessary to achieve the advancement.

PN288

Contrary to the ACTU's submission, my client wouldn't describe the C14 rate as having a nominal work value; rather my client would say that it is the baseline of work value, which is inherent in all jobs. It is true that there is an increase in work value to the C13 level, but it is only because of that introductory period. Now, there is no logical reason to assume that national minimum wage jobs don't have the same value increase in them once the worker has become familiar with the job.

PN289

JUSTICE HATCHER: As was observed earlier, the problem is that because we know nothing about what work the national minimum workers actually do, it's pretty hard to say anything about their work value.

PN290

MR MASSY: That is true, save for the fact that it seems that the implicit assumption in the change from the C14 to the C13 level in those other awards, as your Honour observed, was simply a time-based function. There's no reason to think that the same increase wouldn't occur in other roles. That is just a matter of ordinary, common human experience, in my submission, and once that is accepted, the concern about a distortion in relativity largely dissipates. Indeed, as it is at the moment, the relativities are inversely out of proportion because you have people who are performing those roles on an ongoing basis who are being paid at the introductory rate.

PN291

Can I say, if the Panel was to increase the national minimum wage to the C13 level, that would improve the level of disadvantage that I spoke of before in respect of table A13. In the supplementary submissions, we have included, at page 4, a table A14 which represents Dr Barnes' best effort with his team to replicate the disposable income for the C13 level and it shows a narrowing of the gap between the 60 per cent poverty line, but it most certainly does not show it being bridged. So, it is a welcome start, but it would not, in the end, address the disadvantage that my client points to.

PN292

The other table which has been included is an updated version of a forecast table that is in Dr Barnes' report which looks, in retrospect over the past 10 years, at the annual increases to the minimum wage and the annual increases to the poverty line and forecasts those going forward to identify what type of increases would be necessary to bridge that gap. Unsurprisingly, the increases for the C13 level have matched the national minimum wage in the past, so, again, without the intervention which my client seeks, there will be no bridging of that gap between the C13 rates and the 60 per cent poverty line for those household types. In my submission, whilst it would be a welcome start in and of itself, it is not a solution to the problem which my client identifies.

PN293

Can I come to the questions on notice about gender pay inequity. My client endorses what has been said by the ACTU about the need for that to be addressed in a systemic way through a process outside of this review. We would also endorse, in circumstances where that larger body of work has not yet been done, the repeated observations that, because of the higher proportion of women occupying roles which are covered by modern award rates, an increase in the modern award rate and the minimum wage would go some way to addressing gender-based undervaluation, but no more than simply increasing the rates received by women workers rather than dealing with any systemic gender-based undervaluation of the work performed by them.

PN294

Unless the Panel had any other questions, I propose to hand over to Dr Barnes.

PN295

JUSTICE HATCHER: Yes, thank you, Dr Barnes.

PN296

DR BARNES: Thank you. I would just like to make three brief points, if I may: first of all, just to reiterate the rationale for our submissions; secondly, to talk a little more about the inflationary impacts of our proposal and, thirdly, to talk about the issue of employers' capacity to pay.

PN297

First of all with the rationale, I just want to reiterate that the logic behind this is, as Mr Massy discussed, bridging that gap between the poverty line and the national minimum wage, and we emphasise the benchmark of that for single parents or carers with two dependent children in our initial submission. I just reiterate the point that, to do that as a one-off measure in 2023, would require a 27.6 per cent increase in the national minimum wage, which is not something we are proposing but something that we are proposing as a series of incremental tasks that the Commission could undertake, beginning with the proposed 7.2 per cent increase.

PN298

The recent submission that Mr Massy referred to on Tuesday morning, the supplement that was filed there, also discusses that in relation to C13 and, while that would improve the situation, based on trend changes in the C13 rate over the last decade, that would not meet the poverty line for single parents with two dependent children.

PN299

The second point I would like to make is in relation to inflation. We accept that wage increases, including the wage increase that we are proposing, would have a contribution towards inflation, but, as has been mentioned by others today, wage increases have not been, and are highly unlikely to be, the key driver of inflation going forward, and we do this in our initial submission by disaggregating at an industry level, by looking in particular at sectors with a high proportion of minimum wage workers in relation to healthcare and social assistance, accommodation and food services and retail trade, for example.

PN300

So, if you would look, for instance, on page 23, figure 5 of our initial submission where we do that, for the Wage Price Index for those minimum wage-intensive sectors vis-à-vis changes in the CPI, I think that we demonstrate that there is almost no reasonable scenario in which the wage increase that we are proposing would mean that wage increases would become a key driver of inflation going forward.

PN301

I also would submit that, if we look at the impact of last year's increase in the national minimum wage, more or less at parity with headline inflation at the time, and if we compare that to employment growth in those minimum wage-dependent sectors, I would suggest there has been relatively impressive, by recent historical standards, employment growth in those sectors.

PN302

For example, if we look at the 12 months to the most recent dataset at the time of submission in November 2023, the 12 months to 2022, a 4 per cent increase in employment in retail trade, an 11 per cent increase in employment in the healthcare and social assistance sector, these changes come in a context in which there was last year's higher than previous increase in the national minimum wage, so the argument that a further significant rise in the minimum wage such as that we are proposing would have deleterious impacts on employment growth going forward, I think, doesn't follow.

PN303

The final point I would like to draw your attention to is capacity to pay. We make this argument in our initial submission vis-à-vis what is called the wage elasticity of labour demands, or, in other words, in plain English, the relative sensitivity of employment growth or labour demand in those minimum wage-dependent industries to changes in wages.

PN304

In our submission, that is discussed in our initial submission on pages 32 and 33, and we make the point in that submission that employment growth over the last 12 months has been relatively impressive, despite higher wage costs, so, therefore, vis-à-vis the capacity to pay issue, the 7.2 per cent increase that we are proposing, we believe would be affordable to employers in that sector and, by definition, therefore, a shift towards C13 as the determinant of the minimum wage would also be affordable, given that the difference between C13 and C14 is less than 3 per cent.

PN305

I will leave it there and I am happy to take any questions from your Honours.

PN306

JUSTICE HATCHER: Thank you.

PN307

VICE PRESIDENT ASBURY: Dr Barnes or Mr Massy, one of you might like to answer this. If I could just take you to the analogy you draw about the image of a safety net in paragraph 22 of your submission.

PN308

MR MASSY: Yes.

PN309

VICE PRESIDENT ASBURY: Isn't it also the case that, while, obviously, it is desirable that someone doesn't hit the ground, it's also desirable that the safety net isn't too close to where the people are performing so that they are not impeded by it? Is that also a consideration when one thinks of a safety net because, for my part, I don't think of it solely as catching people and preventing them from hitting the ground, I see it as perhaps having a reasonable upper limit as well.

PN310

MR MASSY: Well, the aspect that your Honour is talking about there might be informed by the notion of what it is comprised of, being fair minimum wages, and fairness there would most certainly intrude on - the types of considerations that your Honour is talking about would intrude there, but I think the ordinary connotations of a safety net in the context of minimum wages is concerned at the bottom end of the proposition. I would accept that it would be a safety net if it was set at $10,000 a week, but that wouldn't be fair minimum wages because it would be well over what was appropriate for each of the work which was being covered by it. So, we accept that it's a composite phrase and I think the concerns which your Honour is identifying are addressed through the notion of fair minimum wages rather than the safety net aspect of it, though.

PN311

VICE PRESIDENT ASBURY: Thank you.

PN312

JUSTICE HATCHER: All right. Thank you for your submissions.

PN313

I think that's everybody we had planned to hear from this morning. We will now adjourn and we will resume at 2 pm to deal with the issue of Copied State Awards.

ADJOURNED INDEFINITELY **[11.38 AM]**