Reply Submission to the Annual Wage Review 2020-21

ACTU Submission, 23 April, 2021
ACTU D. No D18/2021

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1. INFORMATION RELEASED SINCE 26 MARCH

1. We are pleased to report that the information which has become available since we filed our initial submission continues to show a strong economic and labour market recovery to date and predictions that this will continue. The gains made during the recovery are not however translating into meaningful wage growth, suggesting the outputs of the recovery are not being evenly shared between employers and employees and that market forces alone are not expected to correct this unfairness. Further, and consistent with the concerns we highlighted in our initial submission, additional evidence of financial stress among employees has also become apparent.

1.1 Labour market data

2. ABS released monthly Labour Force data for March 2021 on 15 April 2021. It shows a distinct improvement in the labour market. ABS in its key statistics stated:

> "Seasonally adjusted estimates for March 2021:
>
> - Unemployment rate decreased to 5.6%.
> - Participation rate increased to 66.3%.
> - Employment increased to 13,077,600.
> - Employment to population ratio increased to 62.6%.
> - Underemployment rate decreased to 7.9%.
> - Monthly hours worked increased by 38 million hours."[1]

3. The most recent ABS issue of *Weekly Payroll Jobs and Wages in Australia* week ending 27 March was released on 13 April. It showed that at the week ending 27 March 2021 (a day before the end of *JobKeeper*) jobs had increased to be one percent above the level at 14 March 2020. By contrast total wages had flattened out to be 2.1 percent above 14 March 2020. Total wages were back to the same level as 6 weeks earlier at 13 February. By contrast over the same 6 week period to 27 March 2021, jobs had increased by 1.1%, and had increased to one percent above the 14 March 2020 level.[2] This is shown in ABS Graph 1 presented in Figure 1.

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[1] Labour Force, Australia, March 2021 | Australian Bureau of Statistics (abs.gov.au) released 15 April 2021

[2] Weekly Payroll Jobs and Wages in Australia, Week ending 27 March 2021 | Australian Bureau of Statistics (abs.gov.au) for week ending 27 March 2021, released 13 April. "Care should be exercised when focusing on the most recent movements in payroll jobs and wages."

Figure 1 ABS Graph: Payroll jobs and total wages, indexed to week ending 14 March 2020

Source: [Weekly Payroll Jobs and Wages in Australia, Week ending 27 March 2021 | Australian Bureau of Statistics (abs.gov.au)] released 13 April, 2021

4. The industry level payroll jobs and wages data for the more award reliant industries provide no clear overall pattern, association or benefit arising from the different timing of wage increases in the more award reliant industries:

   a. Health care and social assistance which is mostly aligned to the in Group 1 Awards had 3.4% more jobs at 27 March 2021 compared with 14 March 2020, and 6.4% higher wages. Total wages did jump at the week ending 4 July 2020, but then fell back, while jobs increased more slowly and then flattened out. Some jobs in this industry were less affected by covid than others, some positively and some negatively. It is hard to see wages and jobs movements as being negatively affected by the increase awarded in July.

   b. Accommodation and food services have recovered to 9.5 percentage points below 14 March 2020 for jobs and 7.7 percentage points below for wages. These jobs fall mostly into Group 3 with the NMW increase delayed until 1 February 2021. Again it is hard to discern that the delay has in any way benefitted workers in the industry, with little movement discernible around the time the increase took effect.

c. Administrative and support services jobs are 3 per cent higher at 27 March 2021 than they were at 14 March 2020, while wages are 5.7 percent higher. These jobs appear to be scattered throughout all three Groups but aligned to Group 2. In any case it cannot be inferred that the very short-lived plunge in jobs and wages in December and January occurred because of the increase due to Group 2 on 1 November. We rather suspect that it was associated with increased leave and holidays over that period as noted in our initial submission.

d. Retail trade jobs are found in Group 3 Awards. Retail jobs have recovered at 27 March 2021 to 1.6 percentage points below 14 March 2020, while wages have recovered to 1.1 percentage points below. It is hard to discern that the recovery of that industry is in any way assisted by the delay in increase until 1 February 2021; indeed its recovery is likely to have been held up by the lower spending power due to delay. Employers are unlikely to have been encouraged to take on staff or have them work longer hours due to the delay in increase.

e. Other services jobs were 1.3 percentage points lower at 27 March 2021 compared with 14 March 2020, and wages were 5.0% higher. Jobs in other services appear to be in Groups 2 and 3 but aligned to Group 3. Again it is hard to see that delayed increases in February assisted this industry in any way.

5. The National Centre for Vocational Education and Research has released date on apprentice and trainee commencement, completions and cancellations withdrawals. Whilst there was an overall fall in numbers of apprentices and trainees in training from 86,265 in the June Quarter to 84,820 in the September Quarter, the number of commencements increased from 22,190 to 26,585 and the number of completions also increased from 14,770 to 16,845. There was a small increase in the number of cancellations and withdrawals from 15,065 to 16,990, but this remained the second lowest level of cancellations or withdrawals since December of 2015.

1.2 Retail Trade

6. The ABS released *Retail Trade, Preliminary*, for March 2021 on 21 April 2020, monthly release. The annual growth in retail trade for March 2021 was back to levels typical of 2019, at 2.3%, seasonally adjusted, over the year to March 2021. This was after an extraordinary

annual rise of 9.1% for February 2021. The monthly increase for March 2021 was 1.4% seasonally adjusted, after a fall in February of 0.8%. ABS said the rises were led by Victoria (4%) and WA (5.5%), both rebounding from lockdown restrictions in February. ABS said Cafes restaurants and takeaway food (6%) led the industry rises, which were driven by Victoria and WA. "Similarly, these states saw rises for Clothing, footwear and personal accessory retailing, and Department stores. These rises were offset by a 1% fall in Food retailing." [3]

1.3 Treasury Commentary

7. Treasury Secretary Dr Steven Kennedy appeared at the Senate Estimates, Economics Legislation Committee, on Wednesday, 24 March 2021 in Canberra. A transcript of the hearing was published on 31 March.

8. Dr Kennedy said that the government's fiscal package announced on 22 March 2020 worth $66 billion included a doubling of *JobSeeker*, payments to other welfare recipients and a $35 billion cash flow boost for small and medium sized businesses. Eight days after that the government announced *JobKeeper* at a cost of $130 billion, now likely to cost $90 billion. Dr Kennedy said direct fiscal support has been tapering off since September mainly due to workers and businesses "tapering off" *JobKeeper*. However, of the $251 billion in direct measures, $100 billion is yet to be provided or have its full effect.[4]

9. Commenting on forecasts, Dr Kennedy said that since MYEFO (released 17 December 2020) "global and domestic economies have outperformed expectations."[5] Dr Kennedy said that the US stimulus package of US$1.9 trillion amounting to 2% of global GDP has also led to more optimism. The Australian economy had grown 3.1% at the December quarter 2020, and had recovered 85% of its pre COVID level.

10. Regarding the labour market Dr Kennedy said "while outcomes to date have tended to surprise on the upside, there is still significant spare capacity in the labour market. The unemployment rate and average weekly hours worked remain well off their pre-COVID levels. Underemployment, consisting mainly of those who are available and would like to work more

[3] [Retail Trade, Australia, Preliminary, March 2021 | Australian Bureau of Statistics (abs.gov.au)]
[4] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra, p.6
[5] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra, p.5

hours than they did in the reference period, has returned to its pre-COVID level. This measure, though, had persistently trended higher in recent decades and remains elevated."[6]

11. Dr Kennedy said more than 3.5 million individuals were supported by *JobKeeper* in the first phase of *JobKeeper* from March to September 2020. This was reduced to 1.6 million individuals at the start of the second phase in September. 93% of those who transitioned off *JobKeeper* in September were still in employment in December. Treasury now estimate that 1.1 million individuals will be supported by *JobKeeper* in the March quarter, down from the MYEFO estimate of 1.37 million.[7]

12. Dr Kennedy said that in February there were 88,000 workers on zero or very low hours in J*obKeeper* firms which "provides an indication of the number of vulnerable workers in JobKeeper firms". Around 110,000 firms receiving *JobKeeper* in the December quarter experienced a fall in turnover of over 75% compared with the December quarter of the year before. [8]

13. Dr Kennedy said they believed around the order of 100,000 to 150,000 *JobKeeper* recipients may lose employment at the end of the program, with a wide band of uncertainty, but that it did not follow that there would be a commensurate increase in unemployment. Rather, he stated that the flows of people out of *JobKeeper* positions would be within the "normal flows of employment that we regularly observe". Flows in and out of employment amounted to 400,000 per month before the pandemic, with most of those leaving employment leaving the labour force altogether rather than becoming unemployed. [9]

14. In relation to wage increases, Dr Kennedy said: ".. I still think the consensus would be that we've got a long way to go to get back to generating wage pressures and inflation."[10] Mr Yeaman Treasury Deputy Secretary, Macroeconomic Group, said: "We want to see the unemployment rate come down to the lowest level that it can without driving unsustainable wage or inflationary pressures in the economy. We're a long way from that now."[11]

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[6] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra, p.5
[7] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra, p.6
[8] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra p.6
[9] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra , p.6
[10] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra, p.15
[11] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra, p.26

15. Ms Jenny Wilkinson, Treasury Deputy Secretary, Fiscal Group, commented in the hearing that according to the latest ASIC data, about 700 businesses went into administration every month. In the last quarter of 2020 it was an average of 350 per month. "So the amendments which were put forward last year to provide relief to businesses roughly halved the rate of businesses going into insolvency."[12]

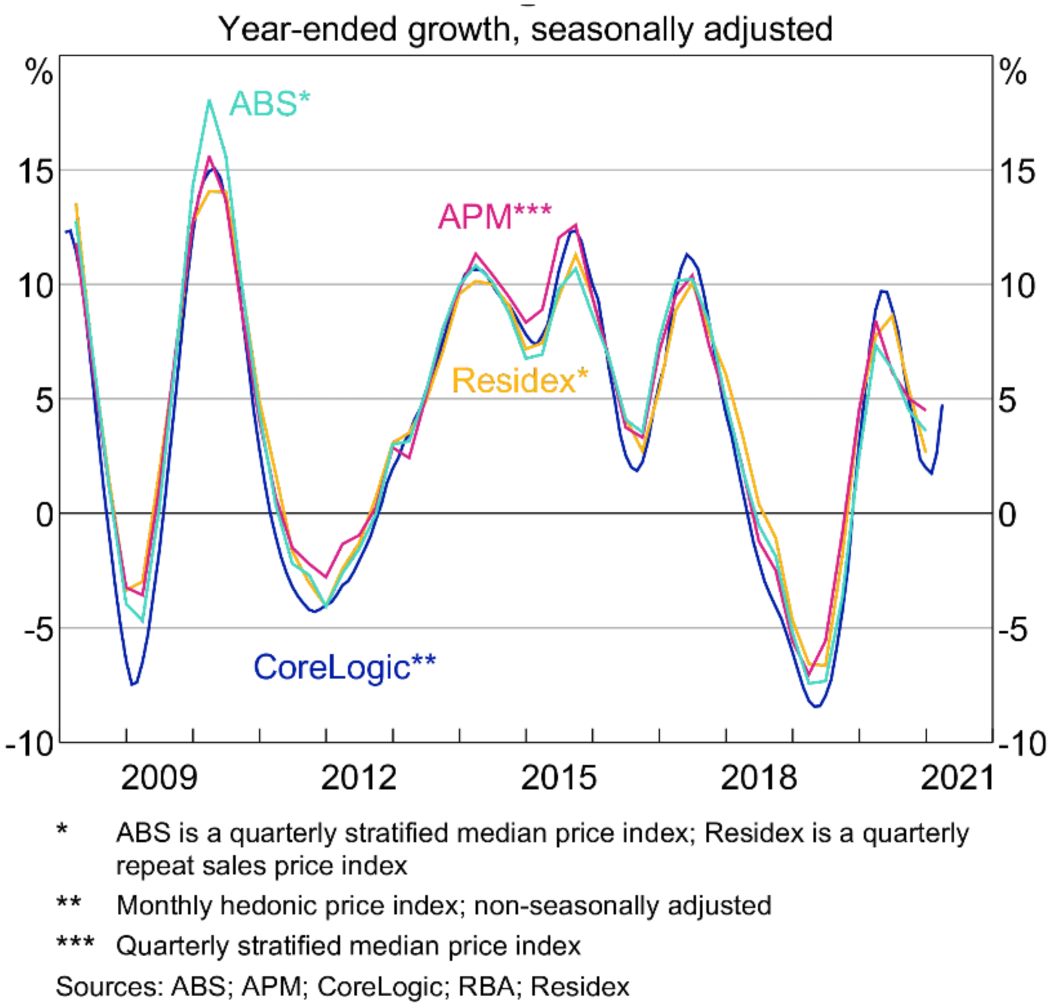
1.4 RBA Commentary and Forecasts

16. The Minutes of the Monetary Policy Meeting of the Reserve Bank Board of 6 April [the RBA Minutes] released 20 April 2021 said that a recurring theme of the members' discussion was that Australia had fared relatively well in terms of output levels and labour market outcomes. Australia's output for the December quarter had recovered to close to pre pandemic levels (at around 1 per cent less than December quarter 2019) whereas many other countries' GDP was still considerably below pre pandemic levels.[13] Australia also had a strong bounce back in the labour market. Australia's decline in population growth had been particularly steep with the reversal in overseas net migration. *JobKeeper* had contributed to profitability.

17. The RBA Minutes indicated that households smoothed their spending through a period where household income had declined, as subsidies were removed. Income and savings had increased "for most household groups" with most of the increase in savings being undertaken by high income households where more had been spent on discretionary services during the pandemic. Fiscal programs had also supported the incomes of self employed people and business proprietors.[14] The sharper increase and decline in unemployment than in previous downturns was likely to limit the longer-term scarring effects. Housing prices had increased as had advertised rents, as was clearly evident in the Chart Pack released a day later.

[12] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra, p.13
[13] 6 April 2021 | Minutes of the Monetary Policy Meeting of the Board | RBA released 20 April
[14] 6 April 2021 | Minutes of the Monetary Policy Meeting of the Board | RBA released 20 April

Figure 2 RBA Chart Pack: Housing prices



Source: RBA April 2021 [Household Sector | Chart Pack | RBA]

18. The RBA Minutes said: "Forward-looking indicators of labour demand had remained strong, with job vacancies and advertisements above pre-pandemic levels, and employment intentions trending higher. This partly reflected the need for firms to rehire for positions vacated during the pandemic and a period of catch-up in hiring that had been delayed in 2020. These indicators suggested that at least some of the job losses that were likely to follow the end of the JobKeeper program would be offset by new hiring. As a result, while the overall recovery in the labour market was expected to pause in the period ahead, this was expected to be only temporary."[15]

[15] 6 April 2021 | Minutes of the Monetary Policy Meeting of the Board | RBA released 20 April

19. The RBA Minutes said: "Despite these generally positive developments, wage and price pressures had remained subdued and were expected to remain so for several years." It would take time to reduce the considerable spare capacity in the labour market and the still too high unemployment enough to generate wage increases consistent with the inflation target. "It was likely that wages growth would need to be sustainably above 3 per cent, which was well above its current level." While the RBA expected a higher annual inflation of 3 percent around the middle of the year as a result of the reversal of some pandemic related price reductions, in underlying terms inflation was expected to remain below 2 per cent over both 2021 and 2022.[16]

20. In his Statement on the Monetary Policy Decision of 6 April 2021, RBA Governor Philip Lowe said the economic recovery was well under way and stronger than expected. The Statement left the monetary policy settings unchanged, with the cash rate remaining at 10 basis points (0.1%). Governor Lowe said: "The recovery is expected to continue, with above trend growth this year and next." [par] "Nevertheless, wage and price pressures are subdued and are expected to remain so for some years. It will take some time to reduce this spare capacity and for the labour market to be tight enough to generate wage increases that are consistent with achieving the inflation target." [17]

21. Governor Lowe said the RBA "Board is committed to maintaining highly supportive monetary conditions until its goals are achieved. The Board will not increase the cash rate until actual inflation is sustainably within the 2 to 3 per cent target range. For this to occur, wages growth will have to be materially higher than it is currently." The RBA does not expect the labour market conditions to be met for this "until 2024 at the earliest."[18]

22. Deputy Governor of the RBA, Dr Guy Debelle, also appeared at the Senate Estimates hearing on 24 March referred to above. He indicated that the RBA is not relying on falls in the unemployment rate to produce increased wages, remarking that "we are still not picking up any sign of any great upward wage pressure in the economy, notwithstanding the fact that the labour market has been better than we might have expected." Dr Debelle said "our view is still very much that wage pressures are likely to be subdued for some time yet" and notated

[16] 6 April 2021 | Minutes of the Monetary Policy Meeting of the Board | RBA released 20 April
[17] Statement by Philip Lowe, Governor: Monetary Policy Decision | Media Releases | RBA , 7 April 2021
[18] Statement by Philip Lowe, Governor: Monetary Policy Decision | Media Releases | RBA , 7 April 2021

that the RBA do not hear anything from their "fairly extensive business liaison contacts" to change that view. [19]

23. Dr Debelle said that while there was uncertainty around models: "What we do know is that before the pandemic arrived we had an unemployment rate of around five per cent and we weren't seeing much upward pressure on wages." Dr Debelle said other countries such as the US had got to unemployment rates much lower than that and lower than thought previously and in all likelihood it would be a number much lower than five per cent unemployment before upward wage pressure would be seen, and it would be great if it were "a number in the low fours or the high threes" as the Governor had said. [20]

24. Dr Debelle expressed some desire to see wages increase, but was did not identify what the source of that increase would be:

> "With any luck, we'll start to see a bit of upward pressure on wages before we get there [to low four or high three percent unemployment]. As the governor said earlier this month, we need wages a fair bit higher than where they are now before we get inflation up to a reasonable number which is consistent with our objective."[21]

He said that the RBA "have tried to look at a number of reasons to explain why at least pre-pandemic wages growth was as low as it was, and we've really struggled to find any major driver of that beyond the labour market not being tight enough."[22]

1.5 IMF Forecasts

25. The IMF in its World Economic Outlook of April 2021 projects Australia's real GDP growth to be 4.5% in 2021 and 2.8% in 2022.[23] The IMF projects consumer prices to increase 1.7% in 2021 and 1.6% in 2022. The IMF projects the unemployment rate to be 6.0 percent for 2021 and 5.5 percent in 2022.

26. The IMF presents its forecasts for real GDP growth and the inflation rate in Australia in Figure 3. It sees real GDP growth as picking up while inflation will decline.

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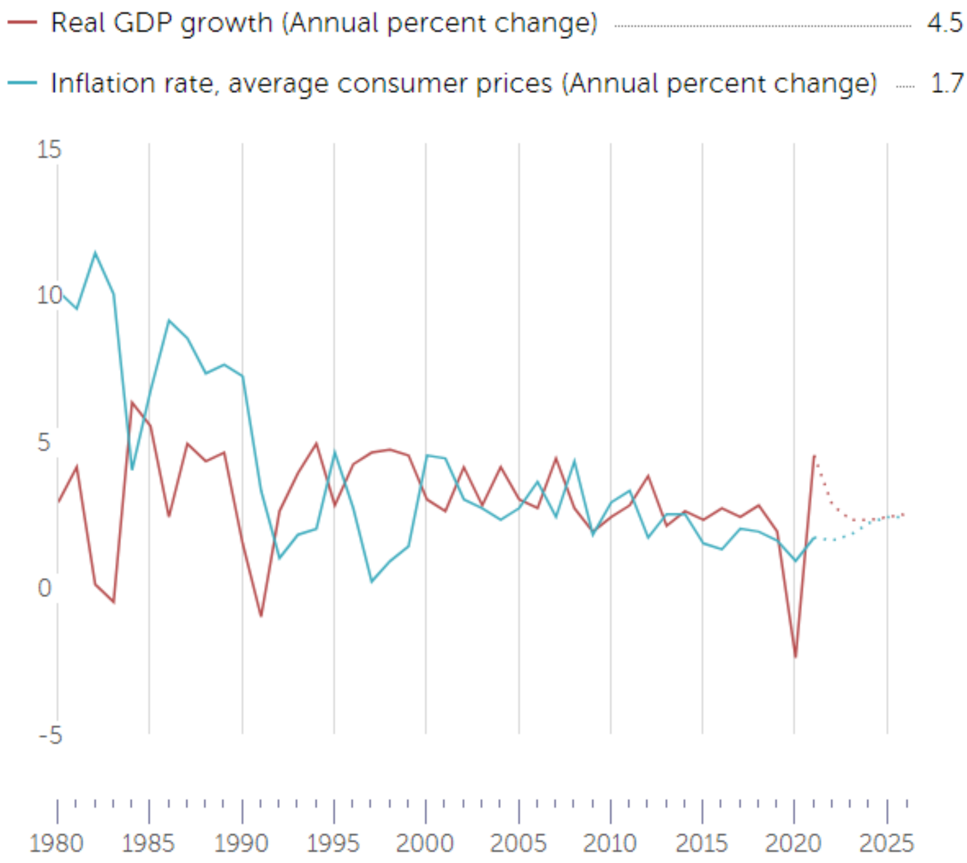
[19] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra, p.104
[20] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra, p.104
[21] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra, p.105
[22] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra, p.106
[23] IMF 2021 *World Economic Outlook: Managing Divergent Recoveries*, April, p.36 [World Economic Outlook, April 2021: Managing Divergent Recoveries (imf.org)]

Figure 3: Australia real GDP growth and inflation, annual, per cent



Source: IMF [Australia and the IMF](#) accessed 20 April 2021, IMF DataMapper April 2021

27. The IMF said that inflation pressure is to remain contained in most countries: "The subdued outlook reflects developments in the labor market, where subdued wage growth and weak worker bargaining power have been compounded recently by high unemployment, underemployment, and lower participation rates."[24]

[24] IMF 2021 *World Economic Outlook: Managing Divergent Recoveries*, April, p.12 World Economic Outlook, April 2021: Managing Divergent Recoveries (imf.org)

1.6 Private agency forecasts and commentary

1.6.1 Deloitte

28. Deloitte noted in its Weekly Economic Briefing of 20 April 2021 that the labour market had continued its 'remarkable recovery' and described Australia's labour market recovery as 'world leading'. Deloitte said the following:

> 'Data for March 2021 shows that the labour market has continued its remarkable recovery: employment and hours worked have both returned to (and surpassed) pre-COVID levels. The unemployment rate continues to fall, reaching 5.6% in March, the participation rate has increased to an historic high of 66.3%, while underemployment has also fallen to the lowest it's been since 2014 (7.9%).
>
> This increasing strength in the labour market is great news for the economy and provides reassurance that the end of JobKeeper last month may be less disruptive than previously expected. This is supported by positive forward indicators, with online job ads hitting a 12-year high in March, jumping nearly 20% in the month.
>
> It is also important to note that **Australia's labour market recovery is world-leading**. Employment in the US and Canada is still well below where it was in February last year. Australia has also outpaced Japan and the UK in recovery, even though both countries experienced significantly smaller employment shocks through 2020. It appears Australia's more restrictive COVID measures have sped up our return to normality, while other countries still grapple with ongoing heavy restrictions to mitigate COVID transmission.'[25]

29. In its *Business Outlook* of March 2021 released 12 April 2021, Deloitte said that 'a conga line' of things would need to happen to increase inflation and these would take a long time and "a whole lot of spending money". Deloitte said that " .. unemployment is going to take quite some time to get down to the point that it gooses wages, wage agreements will take time to reflect stronger bargaining power, and prices will take time to fully reflect faster wage momentum." [26]

30. The commentary on labour market performance in the *Business Outlook* was decidedly positive:

[25] Deloitte 2021 *Weekly Economic Briefing* - 20 April 2021
[26] Deloitte 2021 *Business Outlook* March 2021 released 12 April 2021, p.2

> "The job recovery is already really remarkable. Don't lose sight of that over the next few months: they'll be cloudy, with many stories of individual business closures and job losses amid the end to JobKeeper. Even so, we forecast overall jobs to hold up amid ongoing momentum in the wider economy. Unemployment is already under 6%. And although it won't fall further for some months now that JobKeeper has ended, we forecast it at 5.6% by late 2021, 5.3% by late 2022, and 5.1% by late 2023. That's not perfect, but it's still great."[27]

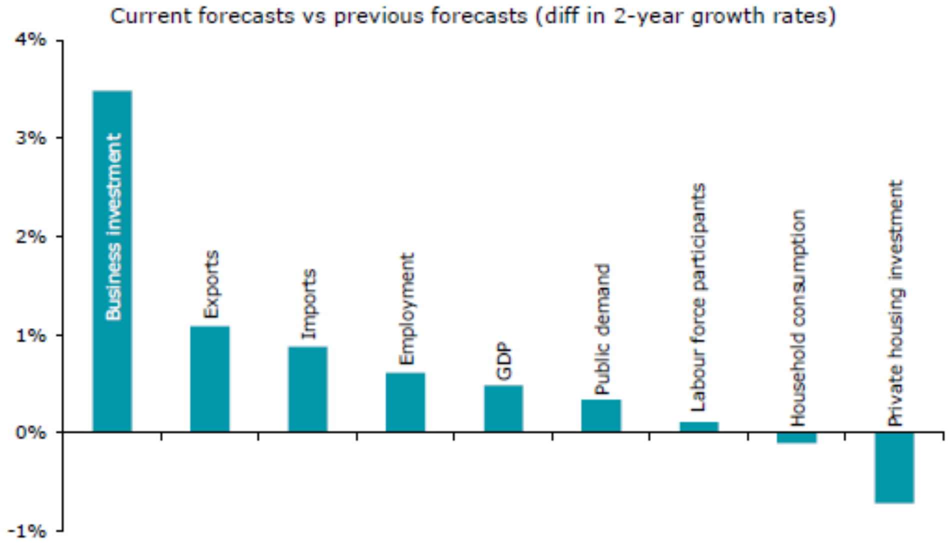
31. Regarding wages growth Deloitte said: 'Wage growth has been low over the past decade, and strikingly low over the past five years. So its further step down during the COVID crisis means that wage gains are already plumbing previously unexplored depths."[28]

32. In the ACTU's view Deloitte's comments regarding the US are relevant to Australia. Deloitte questions whether even a sharp fall in the unemployment rate in the coming year as a result of stimulus will necessarily boost inflation. It argues "the unemployment rate was very low just prior to the pandemic and the economy was assumed to be operating above capacity. And yet wage and price inflation was extremely tame. That could be true again given that the economy appears to be characterised by a disinflationary psychology."[29]

33. Deloitte compared its forecasts in its current Business Outlook of April 2021 with its previous forecast of three months ago, for growth over the two calendar years 2021 and 2022, showing the percentage point difference, in Figure 4. The forecast has become more optimistic for business investment, trade, employment and GDP growth, and less optimistic for household consumption and private housing investment.

[27] Deloitte 2021 *Business Outlook* March 2021 released 12 April 2021, p.2
[28] Deloitte 2021 *Business Outlook* March 2021 released 12 April 2021, p.99
[29] Deloitte 2021 *Business Outlook* March 2021 released 12 April 2021, p.17

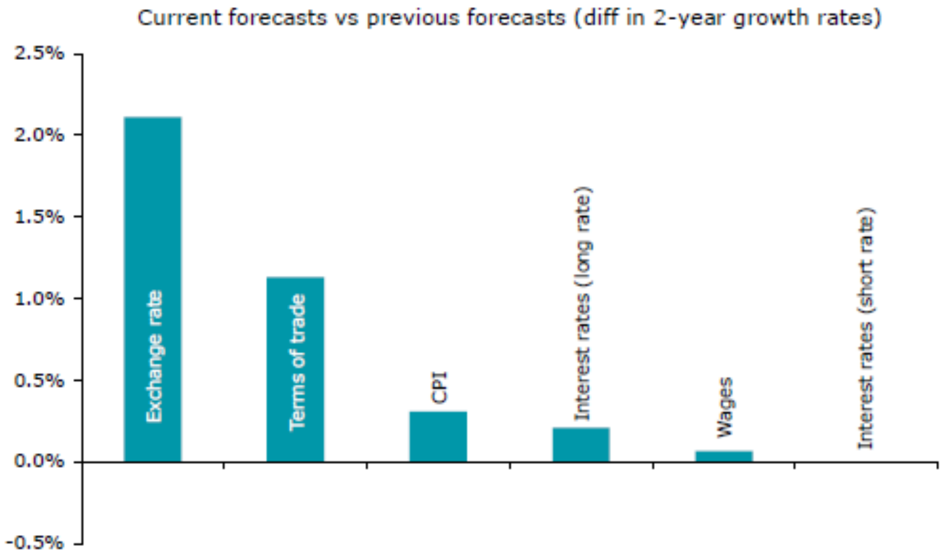
Figure 4: Deloitte's economic and job projections over the next two years – changes in Deloitte forecasts



Source: Deloitte 2021 *Business Outlook* March 2021 released 12 April 2021, p.38

34. Deloitte also presents the percentage point difference between the current forecast and that of three months ago for financial and 'nominal data variables' including wages, which suggests that this refers to a nominal measure of wages, in Figure 5. In any case the percentage point difference in forecasts for wages growth over two years amounts to a very small increase in forecast.

Figure 5 Deloitte: Wages, prices and financial market projections over the next two years – changes in Deloitte's forecasts



Source: Deloitte 2021 *Business Outlook* March 2021 released 12 April 2021, p.38

35. The change in Deloitte's wage forecasts of less than 0.1% up can be viewed in the context of its current forecast for Average Weekly Ordinary Time Earnings of -0.7% for 2021 and 1.7% for 2022 for a net 1.0% for two year growth. Headline cpi growth for the two years totals 2.3% in the current forecast, with about 0.25 percentage points up from the previous forecasts.[30]

36. Deloitte does not expect the end of *JobKeeper* at the end of March to hurt as much as people had been expecting and is "a bump in the recovery road": "The end of *JobKeeper* isn't as scary as you think – three-quarters of those who were getting *JobKeeper* were already off it when the scheme ended. And the remainder were already getting less dollars than they were. So the final withdrawal of *JobKeeper* support is a rather smaller deal than were the withdrawals that have already happened."[31]

37. Deloitte says that inflation is driven by wages and that is not likely: " ..wages drive prices – other factors matter, but wages really matter. So an ongoing rise in price inflation to worrying rates has to be preceded by an ongoing rise in wage growth to worrying rates. We don't think that's likely .."[32]

38. Deloitte says that the wage growth weakness has been a long-lasting phenomenon since the GFC and: "Measured using the Wage Price Index, wage gains were only a little over 2% when COVID hit, and we forecast they'll only return to that relatively sluggish rate by mid-2024."[33]

39. Deloitte recognises that because "job losses during lockdown fell mostly on low income workers" the loss of low income workers artificially raised many wage measures, apart from the WPI which abstracts away from compositional changes in the workforce.[34]

40. Deloitte suggests that wages would only have to increase at 0.14 % a year for a total of 4.4% more to keep the labour share of income the same over the last 30 years, and that this ignores the slowing of labour productivity growth that has occurred since then. Deloitte

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[30] Deloitte 2021 *Business Outlook* March 2021 released 12 April 2021, p.10, Key forecasts table
[31] Deloitte 2021 *Business Outlook* March 2021 released 12 April 2021, p.39
[32] Deloitte 2021 *Business Outlook* March 2021 released 12 April 2021, p.94, p.96
[33] Deloitte 2021 *Business Outlook* March 2021 released 12 April 2021, p.96
[34] Deloitte 2021 *Business Outlook* March 2021 released 12 April 2021, p.100

argues that if labour productivity growth had been maintained wages would be 27% higher today. Therefore it is argued that low wage growth is not just a question of employers not 'coughing up'. Rather, it is a question of the size of the total pie not increasing fast enough.[35] However in the ACTU's view this position begs two questions. One question is the source of productivity increases, which can be seen to be driven or at least assisted by wage increases, with the causality flowing that way. The corollary is that we do not see the much faster increase in profits than wages being translated into productivity increases. The other question is the mechanism for distributing productivity increases, in which the industrial relations framework is crucial. In the ACTU's view it is hard to see that businesses' unwillingness to part with wages is not central to the problem of wages growth.

41. Deloitte says that wage gains will not be seen until 2024 and official interest rates will not be increased until after that.[36] Deloitte indicates "notable lags" in the system, with a long way to go before unemployment reaches down to where it was at late 2019, and "unemployment is low enough" for employers and workers to have bargaining power. It sees employer bargaining power as relating to prices while workers' bargaining power relates to wages. It sees the process as slow at best, and "many wage bargains in Australia and globally are struck for a two- or three-year period."[37] It also sees public sector wage freezes and lower increases as limiting wage increases.[38]

1.6.2 NAB

42. On the 14th April 2021 the NAB released their publication '*The Forward View, April 2021: Healthy momentum leading into the JobKeeper wind up*'. They reported that the 'economic recovery continues to unfold at a brisk pace – and forward looking/high frequency indicators point to ongoing strength in activity and the labour market even as some fiscal support is wound back[39]'.

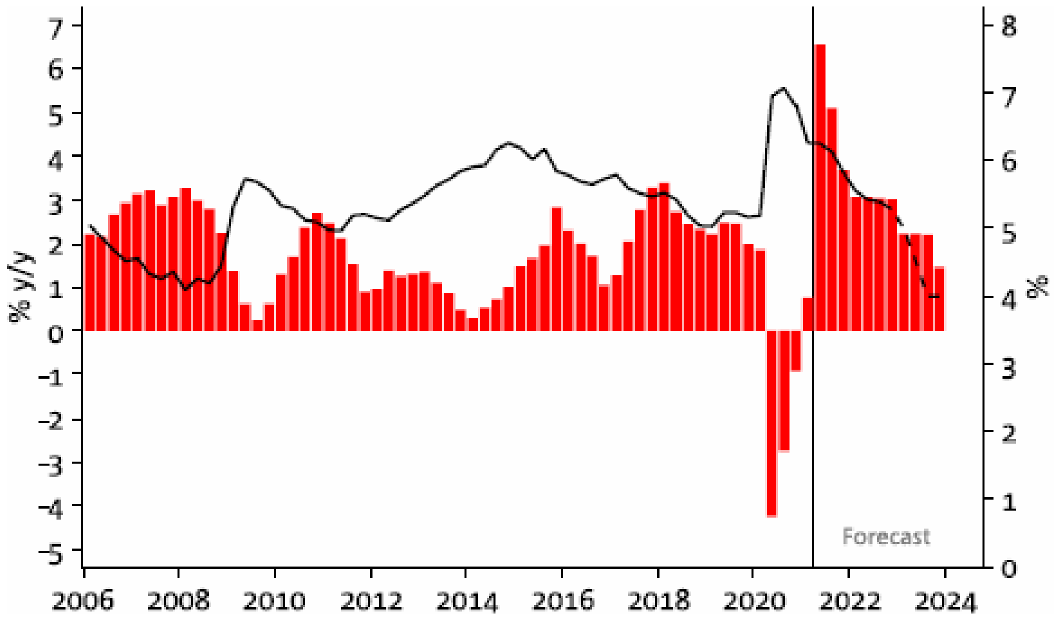
43. The NAB forecast the unemployment rate to be just 5.1% by the end of the year even with the wind up of the *JobKeeper* scheme. They stated the following:

[35] Deloitte 2021 *Business Outlook* March 2021 released 12 April 2021, p.101-102
[36] Deloitte 2021 *Business Outlook* March 2021 released 12 April 2021, p.106
[37] Deloitte 2021 *Business Outlook* March 2021 released 12 April 2021, p.107
[38] Deloitte 2021 *Business Outlook* March 2021 released 12 April 2021, p.170
[39] NAB '*The Forward View, April 2021: Healthy momentum leading into the JobKeeper wind up*', April 2021

'The end of the Government's JobKeeper wage subsidy scheme in late March is an immediate risk to the progress made to date. However, elevated job vacancies and employment conditions in the NAB survey suggest that an underlying improvement in the labour market remains on track. We have upgraded our outlook and now expect <u>unemployment to fall to 5.1% by end 2021</u> and to reach 4.4% by end 2023.[40]'

44. We can see below in Figure 6 the strong downward trajectory in the unemployment rate that has been forecast. We saw a dramatic fall in the unemployment rate of 0.5% to 5.8% over the month of January to February 2021 before a further fall of 0.2% to 5.6% in March. The unemployment rate has already decreased by 1.9 percentage points from July 2020 to March 2021. If the unemployment rate were to fall to 5.1% by the end of 2021, as forecasted by NAB, it would have fallen by a dramatic 2.4 percentage points from the height of the crisis in July 2020 (7.5% unemployment rate in July 2020).

Figure 6: NAB employment growth (left hand side) and Unemployment rate right hand side), quarterly forecasts



Source: National Australia Bank, Australia Bureau of statistics

45. When we look at past decisions made by the Panel, in the 2016-17 AWR decision, the NMW and modern award minimum wages increased by 3.3%, and it was noted that the '*the unemployment rate had been relatively stable, increasing slightly from 5.7 per cent in April*

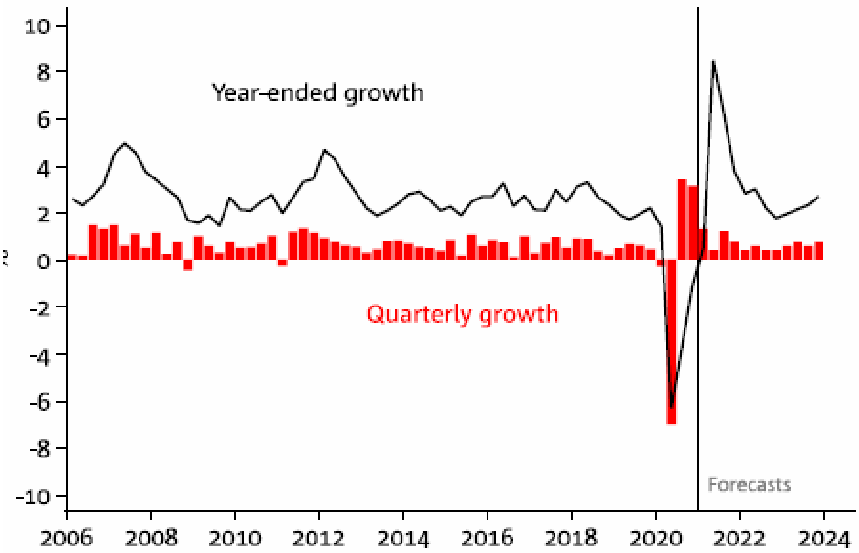
40 Ibid

2016 to 5.8% percent in April 2017[41]*'*. The current unemployment rate of 5.6%, as of March 2021, is already below the unemployment rate of April 2017. This suggests the economy has rebounded significantly and that our claim this year of 3.5% is modest and reasonable, given the increase of 3.3% in the NMW and modern award minimum wages at a higher unemployment rate in 2017.

46. The NAB also forecast real GDP growth (annual average) for 2021 to be 4.6%. It is clear from Figure 7 below that economic growth is forecasted to rebound strongly in 2021, well above the average growth rate over the last 15 years. Economic growth is expected to return normal rates of 2.4% in 2022 and 2.2% in 2023.

47. Since last year's decision the economy has continued to recover with economic growth increasing 3.1 per cent in the December quarter following the 3.4 per cent rise in September quarter. This was the first time in the over the 60-year history of the National Accounts data that GDP had grown by more than 3 per cent in two consecutive quarters. With NAB forecasting real GDP growth of 4.6% for 2021 it paints a strong picture of the Australian economy going forward.

Figure 7: NAB GDP forecasts, April 2021



Source: National Australia Bank, Australia Bureau of statistics

[41] AWR 2106-17 Statement page 2

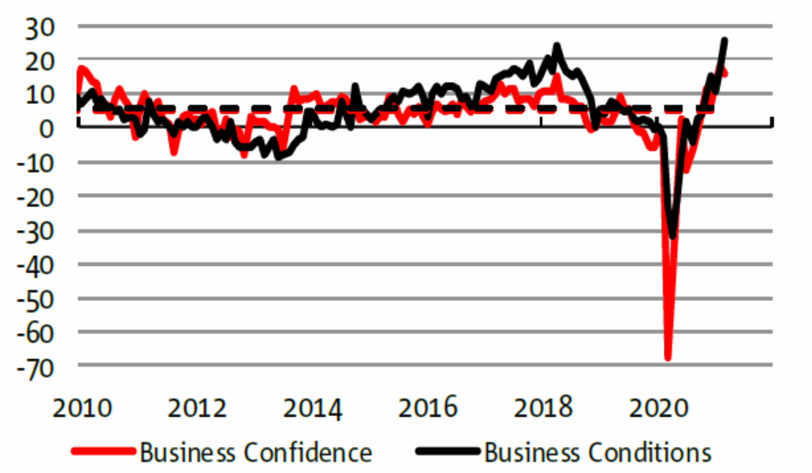
Table 1: NAB Economic Forecasts, April 2021

Economic Indicator	2020	2021 -F	2022 -F	2023 -F
Domestic Demand (a)	-2.5	6.1	3.5	2.6
Real GDP (annual average)	-2.4	4.6	2.4	2.2
Real GDP (year ended to Dec)	-1.1	3.7	1.7	2.6
Terms of trade (a)	0.2	7.1	1.6	-0.8
Employment (a)	1.7	3.7	3	1.9
Unemployment rate (b)	6.7	5.1	4.7	4.4
Headline CPI (b)	0.9	1.9	1.7	2
Core CPI (b)	1.3	1.4	1.8	2
RBA cash rate (b)	0.10	0.10	0.10	0.10
$A/US cents (b)	0.77	0.83	0.80	0.75

Source: National Australia Bank

48. NAB released their most recent Monthly Business Survey on the 13th April 2021. They reported that business conditions rose to a record high in March, driven by a strong increase in all sub components – which are also now at record highs[42]. The strength in conditions is evident across all states and industries. Forward orders – which also rose to record levels – points to ongoing strength in activity with the pipeline of work rising further[43].

Figure 8: NAB Business conditions reach a record high, April 2021

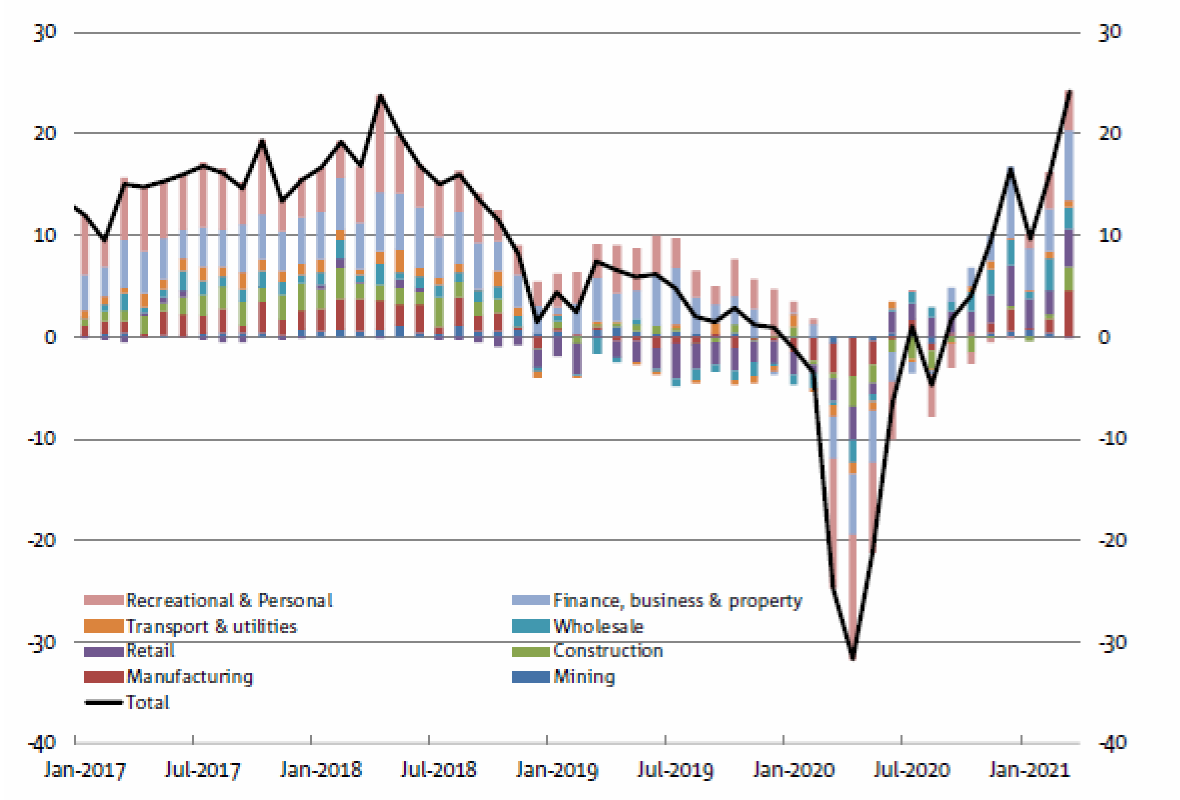


NAB 'Monthly Business Survey March 2021: Conditions Hit A Record High', April 13th 2021

[42] NAB 'Monthly Business Survey March 2021: Conditions Hit A Record High', April 13th 2021

[43] Ibid

Figure 9: NAB Business conditions, Net Balance, April 2021



NAB 'Monthly Business Survey March 2021: Conditions Hit A Record High', April 13th 2021

49. The strength of the survey in April is encouraging, given that businesses expect activity to continue strengthening – with confidence and forward orders also high. The high level of capacity utilisation also suggests that these gains are more than just a rebound from earlier disruptions, and that there is likely a solid underlying momentum in activity[44].

1.6.3 Roy Morgan

50. Roy Morgan released findings on business confidence on 30 March 2021, which found that Business Confidence was hitting a 7-year high "despite the impending end of JobKeeper", with "an increasing majority of 59.4% of businesses" saying that the next 12 months is a 'good time to invest'. Even more businesses, "61.2%, expect 'good times' for the Australian economy over the next 12 months". [45] Notably the Roy Morgan Business Confidence index

[44] NAB 'Monthly Business Survey March 2021: Conditions Hit A Record High', April 13th 2021

[45] [Roy Morgan Business Confidence hits 7-year high of 124 in March despite impending end of JobKeeper wage subsidy – 59.4% of businesses say the next 12 months is a 'good time to invest' - Roy Morgan Research]

exceeds its Consumer Confidence index for March. Business Confidence is 30.3% higher at March 2021 than it was at March 2020.

51. Roy Morgan found that over the year to March 2021 Business Confidence was amongst the most confident and increased in the award reliant industries of Retail by 43%, and Administrative and support services by 22.5%, also amongst the biggest increases by industry.[46] At the same time Business Confidence in the award reliant industry of Accommodation and food services was amongst the lowest in Business Confidence but still increased over the year.

52. Roy Morgan said: "Well over two-fifths of businesses, 44.3% (up 2.5ppts), said the business was 'better off' financially than this time a year ago (the highest figure for this indicator for three years since April 2018).. " and: "A growing majority of all businesses, 52.6% (up 6.6ppts), expect the business will be 'better off' financially this time next year .. ".[47]

1.7 Measures of Financial Stress

1.7.1 ABS

53. ABS released *Household Financial Resources* September 2020 on 21 April 2021.[48] It shows that while many employee households benefitted from the covid subsidies, others still faced increased hardship in 2020. At September 2020, 6,074,300 households, or 62.0% of all households, had employee income (including *JobKeeper*) as their main source of income, slightly up from 61.5% in September 2019. Of those with the main source of income as employee income, 5.5% reduced their home loan payments in 2020 compared with 2.6% in 2019, 10.9% drew on accumulated savings or term deposits compared with 7.7% in 2019, and 6.1% sold assets compared with 5.1% in 2019. This illustrates the ongoing need for minimum wage and awards increases to improve relative living standards and meet the needs of the low paid.

54. In the September 2020 quarter, households with a main source of income from employee sources experienced high rates of financial stress. Relative to the September quarter 2019

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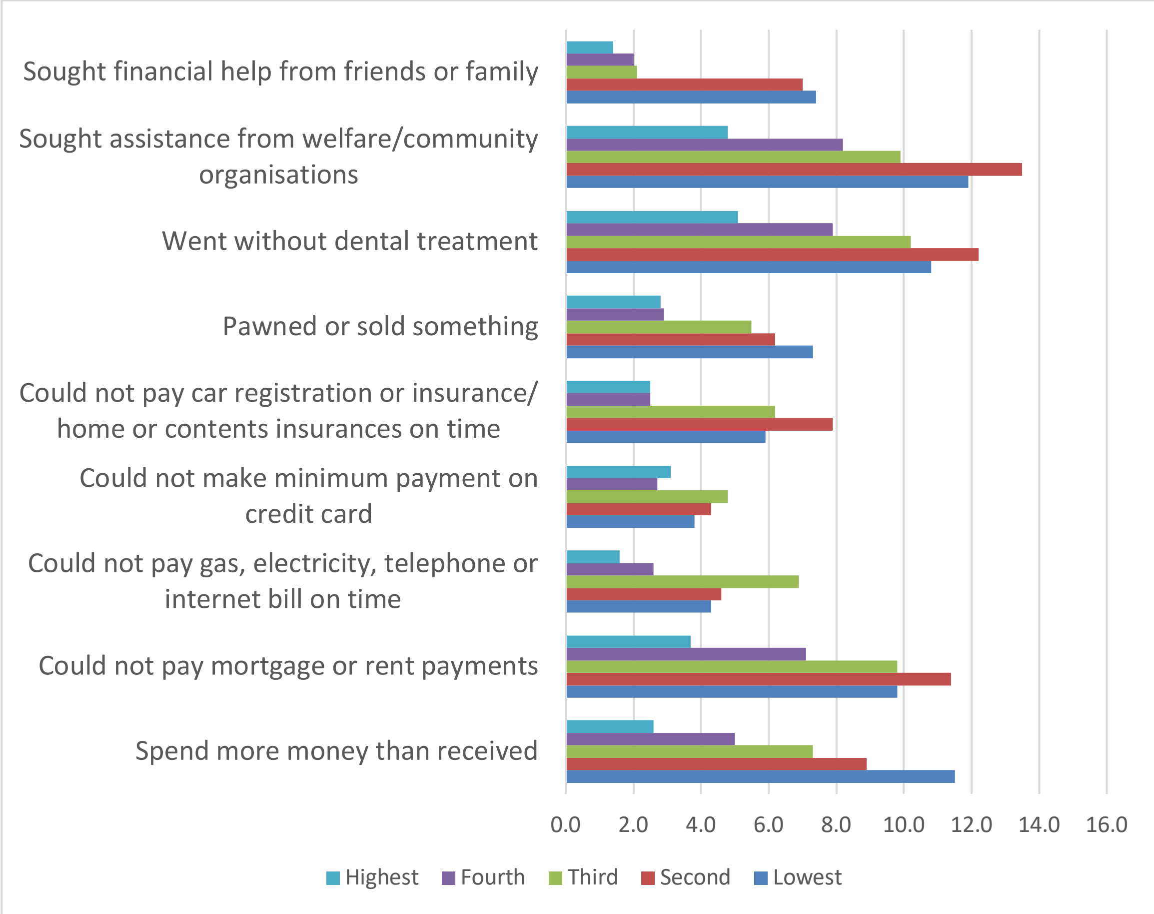
[46] Roy Morgan Business Confidence hits 7-year high of 124 in March despite impending end of JobKeeper wage subsidy – 59.4% of businesses say the next 12 months is a 'good time to invest' - Roy Morgan Research
[47] Roy Morgan Business Confidence hits 7-year high of 124 in March despite impending end of JobKeeper wage subsidy – 59.4% of businesses say the next 12 months is a 'good time to invest' - Roy Morgan Research
[48] Household financial resources, September 2020 | Australian Bureau of Statistics (abs.gov.au)

the proportion of these households reporting the following financial stress indicators increased;

a. Could not pay gas, electricity, telephone or internet bill on time (7.5% to 9%)
b. Being unable to raise $2,000 within a week for an emergency (from 14.7% to 16.7%)
c. Being unable to raise $500 within a week for an emergency (from 3.8% to 5.4%)
d. Went without dental treatment (8.2% to 9.2%)
e. Could not pay mortgage or rent payments (3.2% to 3.9%)
f. Could not pay car registration or insurance/ home or contents insurances on time (4.7% to 5.4%)
g. Pawned or sold something (3.7% to 4.4%)

55. The most prevalent indicators of financial stress and hardship amongst all lower income households recorded in this dataset was 'went without dental treatment' and 'sought assistance from welfare community organisations'. 10.8% in the lowest equivalised private income quintile and 12.2% in the second lowest income quintile went without dental treatment. While 11.9% in the lowest income quintile and 13.5% in the second lowest income quintile sought financial help from friends.

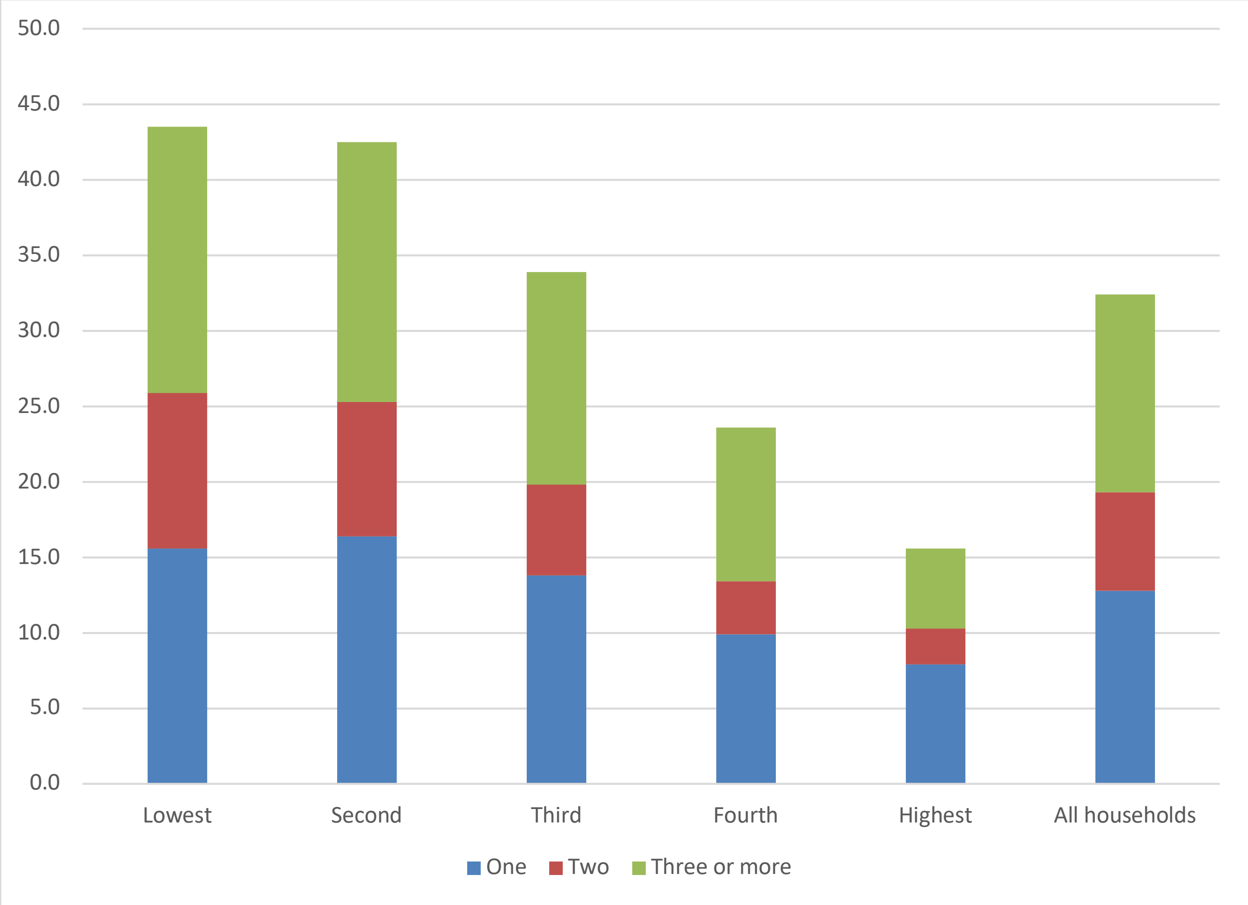
Figure 10: Indicators of Financial Stress by Equivalised Private Income Quintiles



Source: ABS Household Financial Resources survey, Septmber 2020

56. We can see in Figure 11 below that 43.5% and 42.5% of households in the lowest and second lowest income quintiles respectively reported at least one indicator of financial stress in September 2020. Over a third (33.9%) and 23.6% of households in third and fourth equivalised private income quintiles reported at least one indicator of financial stress. This suggests that many low paid workers face significant disadvantage.

Figure 11: Number of financial stress indicators reported by income quintile, September 2020



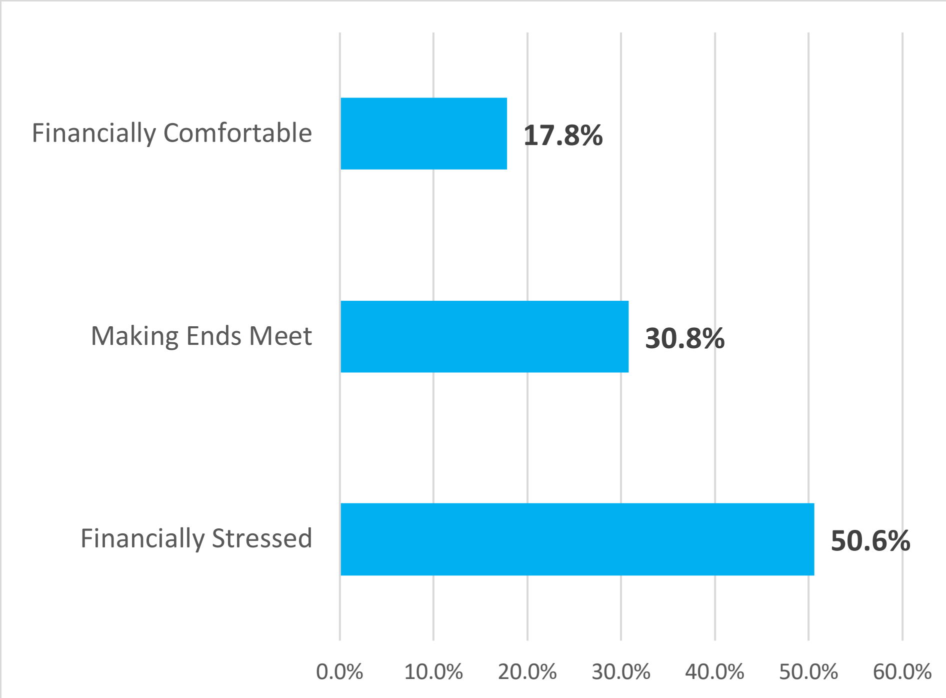
Source: ABS Household Financial Resources survey, Septmber 2020

1.7.2 Melbourne Institute

57. Further data from the '*Taking the Pulse of the Nation - Melbourne* Institute's *survey of the impact of COVID-19*' became available for April 2021. The aim of the weekly survey is to track changes in the economic and social wellbeing of Australians living through the effects of the coronavirus pandemic whilst adapting to various changes in Federal and State government policies. The survey contains responses from 1200 persons, aged 18 years and over each week. The sample is stratified by gender, age and location to be representative of the Australian population.

58. The April data shows the proportion of workers reporting financial stress (in terms of paying for essential goods and services) in the Accommodation, Food and recreation services was just over half (50.6%).

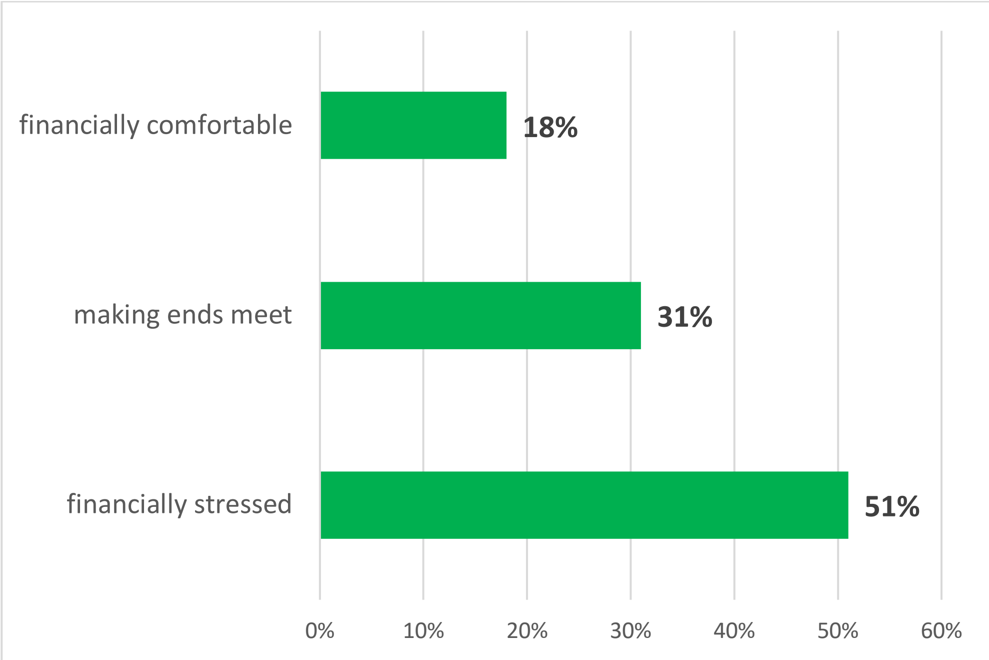
Figure 12: Proportion of Australians reporting financial stress in Accommodation, Food and recreation services, April 2021



Source: 'Taking the Pulse of the Nation - Melbourne Institute's survey of the impact of COVID-19',April, Wave 30 of the Survey

59. There were a slightly higher proportion of women working in Accommodation, Food and recreation services that reported financial stress (51%). The survey classifies those who report being 'financially stressed' and those as 'making ends meet' as being vulnerable to a negative income shock. Under this classification 81.4% of Australians working in Accommodation, Food and recreation services were vulnerable to a negative income shock., with again a slightly higher proportion of women (82%) being vulnerable.

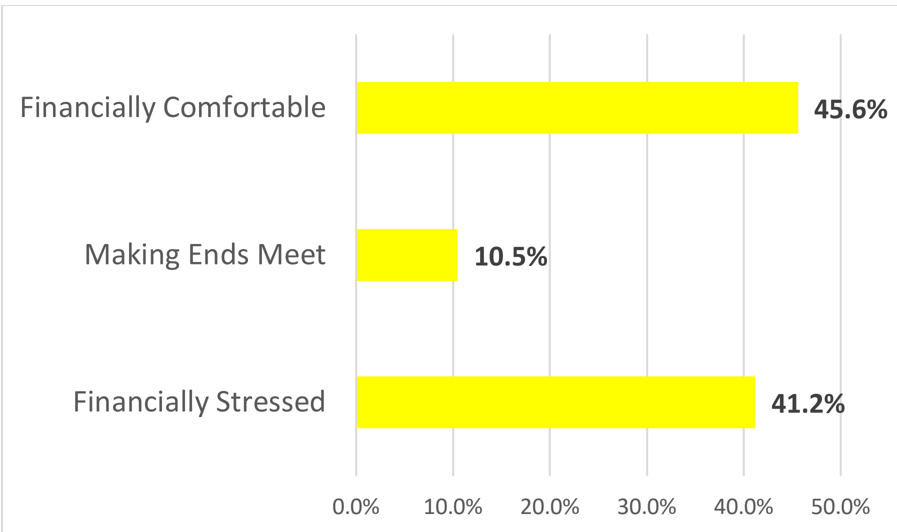
Figure 13: Proportion of Female Australians reporting financial stress in Accommodation, Food and recreation services, April 2021.



Source: 'Taking the Pulse of the Nation - Melbourne Institute's survey of the impact of COVID-19',April, Wave 30 of the Survey

60. In the Other Services sector, which is also heavily award reliant, 41.2% of workers reported financial stress (in terms of paying for essential goods and services).

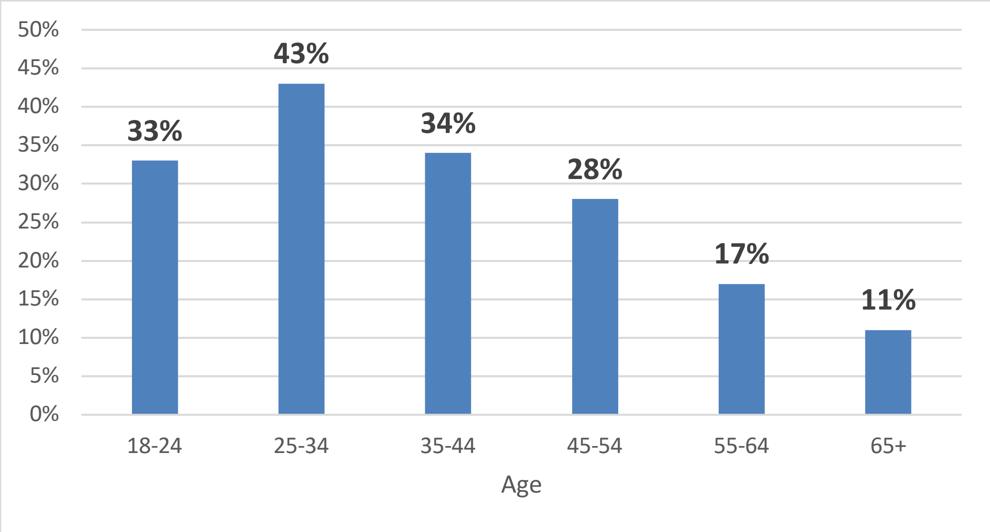
Figure 14: Proportion of Australians reporting financial stress in Other Services, April 2021



Source: 'Taking the Pulse of the Nation - Melbourne Institute's survey of the impact of COVID-19',April 2021, Wave 30 of the Survey

61. We can see Figure 15 below that 43% of the Australians who reported financial stress (in terms of paying for essential goods and services) were young – aged 25-34. Young people face the highest incidence of financial stress and are over-represented in low paid, award reliant work.[49]

Figure 15: Proportion of Australians reporting financial stress by Age, April 2021



Source: 'Taking the Pulse of the Nation - Melbourne Institute's survey of the Impact of COVID-19', April 2021, Wave 30 of the Survey.

1.7.3 Essential Services Commission

62. New data released on the 16th April 2021 from Victoria's Essential Services Commission shows the amount of household energy debt has escalated since the start of the pandemic. While the number of customers in debt to gas and electricity companies has slowly, but steadily increased, the amount owed has risen sharply and now stands at more than $103 million[50]. The Essential Services commission pointed to three areas of concern:

   a. Average arrears for residential customers is at its highest level since April 2020[51].

   b. The average number of households missing bill payments is at its highest level since April 2020[52].

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[49] See Wilkins R & Zilio F (2020), *Prevalence and persistence of low-paid award-reliant employment*, Melbourne Institute of Applied Economic and Social Research, Fair Work Commission Research Report 1/2020, February, at Table 2.
[50] Household Essential Services Commission, 16th April 2021 https://www.esc.vic.gov.au/media-centre/household-energy-debt-rising

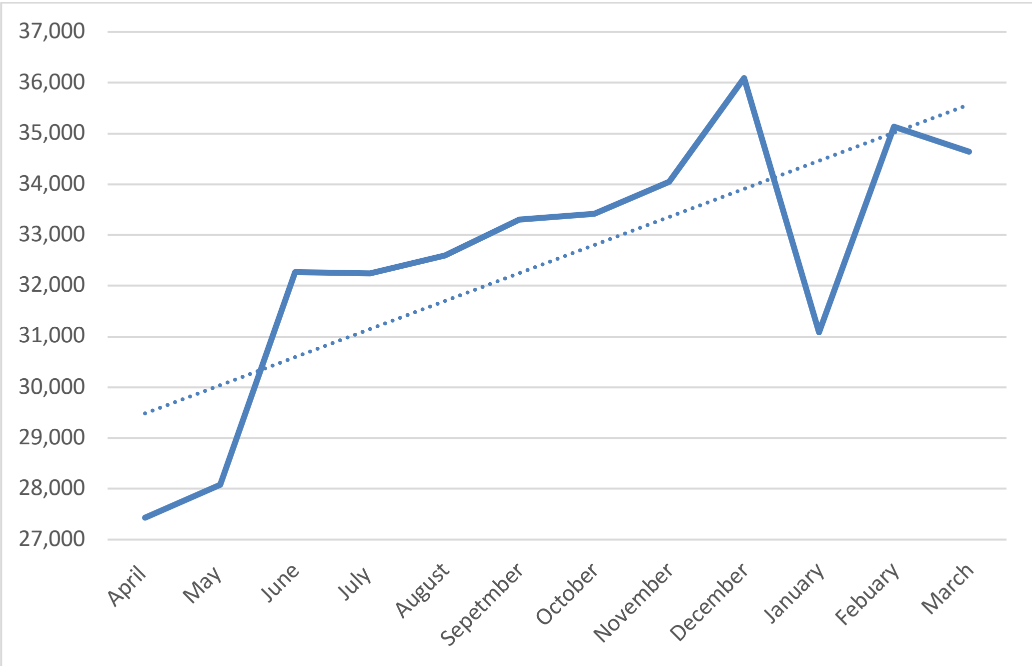
[51] Household Essential Services Commission, 16th April 2021 https://www.esc.vic.gov.au/media-centre/household-energy-debt-rising

[52] Ibid

c. The number of disconnections has risen sharply since the beginning of the year[53].

63. The Essential Services Commission highlighted the number of customers in debt has increased seven per cent, but the amount owing has gone up 35 per cent since April 2020. This evidence suggests there some households in Australia facing significant disadvantage.

Figure 16: Weekly Average of Residential customers who missed Bills, April 2020 -March 2021



Source: Essential Services Commission, April 2021

53 Ibid

2. RESPONSE TO QUESTIONS ON NOTICE

"In the Annual Wage Review 2019–20 (2019–20 Review), the majority decision of the Expert Panel was to increase modern award minimum wages in 3 groups based on industry clusters. Depending on the modern award and the industry cluster it was allocated, the increases to modern award minimum wages occurred on 1 July 2020, 1 November 2020 and 1 February 2021.

A number of parties have indicated how the Expert Panel should approach the different operative dates of increases to modern awards based on the 3 clusters in their initial submission to this Review.

All parties are invited to comment on how the Expert Panel should deal with:

1. the different operative dates from the 2019–20 Review; and
2. whether there should be any changes to the composition of the 3 industry clusters identified in the 2019–20 Review, giving consideration to movements in the change in employee jobs and total wages presented in the report by Professor Jeff Borland and the most recent data shown in the Fair Work Commission's Statistical report—Annual Wage Review 2020–21."

64. We had anticipated that the matters referred to in Panel's question would be live issues in this Review. We are among those who have put a position in our initial submission and we also devote considerable attention to this issue in reply in section 3.1 below. In addition to those matters, it is necessary that we make following observations in answer to the Panel's question.

65. Firstly, it is concerning that the Panel's question makes no reference to the requirement to demonstrate exceptional circumstances in order to secure a deferral. We have extracted relevant principles from the Panel's previous decisions concerning exceptional circumstances in section 3.1 below. Those principles operate in a context where claims for differential treatment, either by way of a deferral in some awards of the increase awarded generally to others, or alternately by way of a lesser increase in some awards than others, need to be closely scrutinised against considerations of fairness and stability in the system as a whole which underlie the legislative preference for consistency of treatment which the Panel has recognised[54]. As raised in our initial submission, differential treatment distorts award relativities and results in employees with similar or comparable levels of skill receiving different wages. Such differential treatment becomes particularly problematic given the

[54] [2017] FWCFB 3500 at [172]; [2012] FWAFB 5000 at [252], [257-[261]; [2014] FWCFB 3500 at [517]-[518].

requirement for the Panel to consider the principal of equal remuneration for work of equal or comparable value[55], in circumstances where Awards that are sought to have reduced or delayed wage increases cover a predominantly female workforce (such as those in the Retail Trade and Accommodation and Food Services industries) and given the Panel's previous finding that "women are significantly more likely to be paid at the award rate than are men at all levels of the award structure"[56]. These considerations are important because they should be at the forefront of the Panel's mind when considering "how the Panel should approach the different operative dates", as posed in the question above. For the reasons given in section 3.1 below, the fact that the Panel has once exercised it discretion to give effect to differential treatment does not give rise to any presumption that it ought to do so again this year, nor does it absolve the Panel from applying the established principles and presumptions to the facts before it.

66. Secondly, the "cluster" model produced by the Panel in last year's decision was not without its difficulties, both in terms of methodology and in terms of the manner in which the output of that methodology was applied. The methodology broadly involved:

a. defining ranked industry clusters (upper, lower and middle) on a preliminary basis by reference solely to payroll jobs and wages data; then
b. taking weighted averages of data on change in output (GVA) and change in profits for each cluster as already preliminarily defined to determine if the rankings of those weighted averages were the same (while noting that "this is not to say that industries in the in the same cluster had identical or even similar experiences"[57]); then
c. taking weighted averages of *anticipated* change in demand for goods and services, cash flow and ability to pay operating expenses for each cluster as already preliminarily defined to determine if the rankings of those weighted averages were also the same (while noting that "there was variation within the industry clusters with regard to the adverse impacts anticipated by industries"[58]; then
d. Mapping each industry cluster to modern award coverage; then
e. Supplementing awards included in the lower cluster with awards that where the employers and employees had "continued working during the pandemic, to provide essential services to the community"[59]; then

[55] s. 134(1)(e), s.284(1)(d); [2012] FWAFB 5000 at [258]
[56] [2016] FWCFB 3500 at [575]
[57] At [53]
[58] At [56]
[59] At [61]

f. Supplementing awards included in the upper cluster with those where it was "abundantly clear that the restrictions imposed have caused significant hardship for these businesses and their employees" such that they "may be characterised as the most affected by the COVID-19 pandemic"[60]; then

g. Further supplementing the awards included in the upper cluster with awards mapped to the Retail trade industry, largely on the basis of turnover and employment data.

67. It is apparent that the methodology gave greater significance to the payroll jobs and wages data than the GVA, profit and "anticipated change" data in the definition of the clusters. Industries were not independently ranked on each data set to examine if any clear "clustering" was apparent that could thereafter be matched between data series. The methodology also gave greater weighing to the qualitative factors in its final stages.

68. A further limitation is that the Panel's reasoning in last year's decision discloses very little consideration being given to the likely impact on employees of the "cluster" model it adopted for deferring wages. Whilst the Panel was clearly mindful of the *JobKeeper* policy and the coronavirus supplement and made generalised observations about financial stress and tax changes, it is unclear how or even if likely employee experiences were factored into the actual definition of the 3 clusters that used as the basis of deferring wage increases. Indeed, the Panel said:

> "As mentioned earlier we accept that that in relation to the timing of the increase we have awarded, the categorisation of awards into 3 groups is imperfect. There will be some employers covered the awards in Group in 1 who have been substantially impacted by the pandemic, just as there will be employers covered by the awards in Group 3 that have been impacted to a lesser extent than other businesses in that group. The approach we have taken seeks to aggregate the experiences of all employers covered by a particular award"[61]

69. In this Review, it is important to for the Panel to acknowledge that a worker who may be facing reduced hours of work will be doing so without any compensatory effect from *JobKeeper* or the coronavirus supplement (in the event they were partial income support recipients) and to also acknowledge that if they are stood down for a period they will be not be paid. In those circumstances, placing a worker in a position whereby they are also

[60] At [69]

[61] At [189]

receiving lesser wages than other workers of similar skill would be productive of greater unfairness and difficultly than might have been assumed to be the case last year. It is equally for the Panel, looking backwards, to acknowledge that not all workers whose employment was subject to the group 2 and group 3 awards were entitled to the government policy initiatives that the Panel took into account in a generalised was as above.

70. The output of the Panel's methodology was clearly intended to be a measure of the extent to which industries were impacted by the COVID-19 pandemic and the associated restrictions to date, and possibly also a predictor of the impact of restrictions in future.[62] The differential level of impact between "clusters" was, on any fair reading of the decision, what was found to constitute the exceptional circumstances. However, what was absent from the decision was any clear reasoning as to how those circumstances *justified* a deferral, let alone the particular deferrals adopted. The decision did say that the deferrals *were* justified by the exceptional circumstances[63], but did not disclose *why* that was so. In our view, it was necessary to give some consideration to the matters enumerated in sections 134 and 284 in reaching and expressing a view about whether the exceptional circumstances *justified* any deferral under consideration.

71. Having had the benefit of time to reflect on the methodology of the Panel and the evolving circumstances over the year, a party seeking a deferral in the Review should be expected to mount a strong case consistent with the principles referred to in section 3.1 below. Not only has no party done this, but their efforts to seek differential treatment have failed to even replicate and apply the Panel's methodology to contemporary data, let alone suggest a different one or adopt that provided by Borland (with or without modifications). In our view, the Panel should not be persuaded to depart from principle and do the employer's homework for them in this year's Review. The responses to the question posed by the Panel above and the replies to those responses in future submissions and consultations should, consistent with the procedural fairness requirements embodied in sections 289-91 of the Act, form the basis of the Panel's consideration of any claim for a deferral consistent with established principle.

[62] See [36]-[42].
[63] At [163]-[164], [166], [179], [187], [189]

3. MATTERS IN REPLY: COMMON ISSUES

72. Below we respond to a range of arguments and claims made generally in other parties' initial submissions. We do not respond to all the arguments with which we disagree. We rely on our previous submissions in respect of arguments that have been adequately addressed in earlier Reviews, particularly where the Panel has expressed firm views about such arguments.

3.1 "Exceptional" circumstances or a once and for all rule?

73. A number of employer interests suggest that it would be appropriate in this Review to defer an increase in modern award minimum wages to particular awards. In our view, these suggestions fail to properly comprehend or address the statutory requirements to demonstrate exceptional circumstances, to identify the "particular situation to which those exceptional circumstances relate" and to justify why the exceptional circumstances support a delay or deferment of the default operative date.

74. In many cases, the request for a deferred date of operation is supported by an argument that the mere fact of a deferred date of operation of an increase in last year's Review is a ground in itself for a deferral in this year's Review[64]. Accepting the premise of this argument would create a recursive or self perpetuating mechanism whereby the exception became the rule.

75. Notwithstanding the Panel's reference in last year's decision to a "hypothesis" advanced in its discussion paper concerning a singular meaning of "exceptional circumstances" throughout the Fair Work Act[65], the context in which the expression appears in sections 286 and 287 is with respect of central importance. That is a context which clearly requires a factual situation to present itself which can be examined and found to give rise to circumstances that are exceptional and which justify a departure from what is otherwise an immutable rule. This is the manner in which the issue was approached in the Panel's reasoning in last year's decision and is consistent with the principles established in previous Review decisions, including that:

[64] ACCI at [126], [154]; Ai Group at pages 57-59; HIA at page 4, NRA at [5.1.7]-[5.1.10], Restaurant & Catering Australia at [26].

[65] [2020] FWCFB 3500 at [259]

a. There is onus on a party seeking to demonstrate exceptional circumstances justifying a deferral, which requires a strong case to be made out.[66]

b. The case that needs to be made out must provide evidence capable of analysis and evaluation[67], address the need for a deferral to be limited to particular circumstances[68] and advance a mechanism for the proper identification of the employers and employees affected and to whom the exemptions should apply.[69]

c. Claims will rarely be successful in respect of a whole industry, owing to the diversity of experience in the sectors covered by an award.[70]

d. The declaration of natural disasters by government cannot, of itself, be regarded as constituting exceptional circumstances.[71]

e. Consideration needs to be given not only as to how employers are affected by a situation which gives rise to exceptional circumstances, but also how employees are affected – including for example by being stood down or, in the case of casual employees, not being offered work.[72]

f. There needs to be evidence of a reliable indicator of an incapacity to pay increased wages and consideration should be given of other forms of government assistance which might have been received.[73]

g. Consideration of differential increases or timing of minimum wage increases on the basis of exceptional circumstances should be directed to addressing temporary issues, rather than structural change or changed consumer behaviour[74].

76. The deferral of increases to modern award minimum wages certainly was "out of the ordinary course, or unusual, or special"[75] however it was also the intended consequence of and entirely inseparable from the legal effect of Panel's decision. The Panel's previous decisions are not factual situations or circumstances of the type contemplated by subsections 286(2) or 287(4) and compliance with the orders made in those decisions cannot be regarded as exceptional. Even if the content and legal effect of the Panel's decision in one

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[66] [2019] FWCFB 3500 at [447]; [2013] FWCFB 4000 at [494], [543]
[67] [2012] FWAFB 5000 at [254], [261]; [2013] FWCFB 4000 at [494], [543]
[68] [2019] FWCFB 3500 at [448]; [2017] FWCFB 3500 at [181]
[69] [2017] FWCFB 3500 at [181], [184]; [2012] FWAFB 5000 at [268]
[70] [2012] FWAFB 5000 at [254], [261], [272]; [2013] FWCFB 4000 at [494], [543], [546], [548]; [2014] FWCFB 3500 at [557].
[71] [2017] FWCFB 3500 at [181]; [2012] FWAFB 5000 at [266]
[72] [2019] FWCFB 3500 at [449]; [2017] FWCFB 3500 at [181], [182]; [2012] FWAFB 5000 at [264], [266]-[267]; [2014] FWCFB 3500 at [534]
[73] [2019] FWCFB 3500 at [450]; [2017] FWCFB 3500 at [181]; [2012] FWAFB 5000 at [264], [266]
[74] [2013] FWCFB 4000 at [526], [530], [536], [549];[2012] FWAFB 5000 at [278]
[75] [2020] FWCFB 3500 at [259].

year could be regarded as an exceptional circumstance by the Panel in the following year, such a circumstance could not of its own be a capable of justifying a deferral without a substantial departure from the longstanding principles referred to above.

77. The alternative grounds advanced for seeking a deferral in this Review should also be rejected. Those alternative grounds and our particular response to each them are outlined below, however in short we submit that grounds advanced are susceptible to following the criticism made by the Panel when it rejected requests seeking differential treatment in the 2012-2013 Review:

> "..the material provided in the submissions was predominantly in the form of reference to broad economic conditions said to be affected the industry concerned. There was no evidence setting out particularised, current, acute and definable circumstances (relevant to an industry or sector) that would justify different treatment in the particular sectors drawn to our attention"[76]

3.1.1 Australian Chamber of Commerce and Industry

78. It is not altogether clear whether ACCI are advocating for a deferral of any minimum wage increases that might be awarded, however for completeness we note that at paragraphs [121]-[126] of their initial submission they discuss "business conditions" and ultimately put a position that "It would be unreasonable for the Panel to introduce a further wage increase on businesses in sectors that continue to be impacted by COVID-19 restrictions and remain under considerable financial stress, only 5 months or 8 months after the previous increase."

79. The discussion in support of that position does not make out a case for exceptional circumstances to the requisite standard. Notably, it fails to mention employee experiences at all, seeks broad industry level exemptions based on generalised assertions, contains no discussion of government assistance and doesn't clearly nominate a mechanism for identifying affected employees or employers. Furthermore, the discussion is based solely on one data source, is far from balanced and draws conclusions with little basis. For example:

    a. It identifies accommodation and food services, arts and recreation services and administrative and support services as the sectors "experiencing the greatest impact" of COVID-19 restrictions, yet the data relied on in support of that assertion says nothing about the relative *depth* of impact on any industry – it relevantly merely

[76] At [546]

surveys business as to whether they do or not agree that COVID-19 restrictions are a factor significantly affecting them.

b. The discussion makes claims as to the particular types of restrictions that are having impacts on those business, without any basis in the data.

c. It asserts that cashflow and demand impacts experienced by business are the result of those particular restrictions, again without any basis in the data.

d. It asserts that businesses in accommodation and food services, arts and recreation services, administrative and support services, manufacturing, information and media telecommunications and retail trade "continue to be in a high level of financial stress" and that level of financial stress is being "compounded by the wage increases from the 2019-20 Annual Wage Review". Irrespective of whether it would be correct to say that businesses in a particular industry are in a high level of financial stress, there is nothing in the data that could support a conclusion that the level of financial stress was being compounded by the wage increases from last year's decision.

e. The discussion fails to mention that the data it relies on shows that:

    i. Against an all industry average of 17% of businesses reporting increased revenues in the last month, many of the industries it refers to have performed at average or above average levels (Arts & recreation 34%, accommodation and food services 26%, Manufacturing and Retail Trade both 17%).

    ii. Against an all industry average of 23% of businesses reporting expected increased revenues in the next month, administrative and support services (31%) and arts and recreation services (25%) reported above average results.

    iii. Against an all industry average of 8% of businesses reporting increased number of employees in the last month, accommodation and support services (16%), retail trade (13%) and manufacturing (16%) reported above average results.

    iv. Against an all industry average of 9% of business reporting expected increases in employment in the next month, arts and recreation services (15%), retail trade (13%) and administrative and support services (12%) reported above average results.

3.1.2 Ai Group

80. Ai Group assert that the industry sectors covered by the group 2 awards "remain adversely impacted by the pandemic" and proposes a two month delay in any increase to the wages in modern awards in that group. It asserts that the industry sectors in group 3 "remain highly

impacted" by the pandemic and that a 6 month delay is appropriate because "Requiring employers in these sectors to pay a minimum wage increase in 2021 would not be in the interests of employers, employees or the broader community".

81. In our submission, it is not in keeping with the principles developed by the Panel, as referred to in paragraph 75 above, to simply adopt the "groups" identified in last year's decision without any analysis. This is not a reliable indicator of an incapacity to pay increased wages over the 21-22 financial year. It is to be recalled that membership of such groups was initially defined some 10 months ago on the basis of rapidly changing data. Ai Group has not even bothered to attempt to re-apply the Panel's methodology to contemporary data, let alone identify "the economic data"[77] which supports its argument.

82. The approach Ai Group has taken fails to identify the actual circumstances it relies on as being exceptional, doesn't advance a proper mechanism for the identification of effected employees or employers and says nothing at all about the affected employees or government assistance.

3.1.3 Housing Industry Association

83. The HIA asserts that "if an increase is to be awarded, it would seem sensible to allow at least the usual 12 moth period between wage increases for the industry to adjust".[78] That which the HIA perceives as sensible falls well short of addressing the principles referred to at paragraph 75 above. HIA also assert that "the ongoing impact of COVID-19" is itself an exceptional circumstance[79], which in the absence of any further analysis also clearly fails the test.

3.1.4 National Retail Association

84. The National Retail Association seeks deferral of increases to Group 3 awards, on the basis that the "the exceptional circumstances which warranted a deferred operation of minimum wage increases in Group 3 awards continues in effect, and as such a deferred operation of minimum wage increases in those same modern awards remains appropriate in the context

[77] At page 59
[78] At page 4
[79] At page 5

of the current Review".[80] This approach suffers from the same difficulties as identified in relation to Ai Group's position above.

3.1.5 Restaurant and Catering Australia

85. Restaurant and Catering Australia likewise assert that Group 3 awards should have a deferred increase, with increases to be delayed until 1 February 2022. Like the position put by the Ai Group and the HIA, it merely adopts the grouping identified by the Panel on the last occasion. The RCA position is not at all responsive to the principles identified at paragraph 75 above and should be rejected on the same basis the position put by NRA and the Ai Group.

86. Additionally, the submission of Restaurant and Catering Australia does not grapple with the extent to which the experiences of the industry over the last 12 months may be signs of more permanent structural change, for example increased working from home impacting demand in central business districts or a changed consumer behaviour toward take away or delivered meals rather than table service (which the RCA appears to concede is a higher productivity and lower labour cost operating model). In keeping with the established principles referred to at paragraph 75 above, such changes do not present a sound basis for a claim for differential treatment.

3.1.6 South Australian Wine Industry Association

87. The South Australian Wine Industry Association explicitly states that the deferral it seeks is justified by the findings that were made in the Panel's decision last year. It is noted that many of the findings that the South Australian Wine Industry Association attributes to the Panel were in fact made in the minority decision. Again, its submission is not at all responsive to the principles identified at paragraph 75 above and must be rejected.

88. The South Australian Wine Industry Association additionally state that "wine industry businesses are still under significant restrictions, reducing the number of customers and patrons and adding additional compliance costs"[81]. Whilst their submission does at least set out its understanding of what the restrictions are (which is more than can be said for most), it fails to identify their effect. For example, whilst it is clear that the most common restrictions they cite are a density limit of one person per 2 square meters and a requirement

[80] At [5.1.5]
[81] At Page 9.

of 1.5 metres of social distancing, this is meaningless in the absence of any analysis showing how those limits have caused a reduction in overall patronage – the base case scenario is unknown. There is also cause for real doubt on the extent to which the compliance costs that it asserts are referrable to restrictions are ongoing costs rather than up-front costs which have already been met, such as a having a "COVID safe plan" and "COVID check-in" facilities, let alone how this singles their member's business operations out from others.

3.2 The end of *JobKeeper*

89. Some parties have referred in the submissions to the risks associated with the end of *JobKeeper*[82]. The impact of changes to and cessation of the *JobKeeper* policy is discussed in our initial submissions at paragraphs [20]-[28] and [52]-[61]. We have been candid in our assessment that the cessation of *JobKeeper* will result in job losses.

90. It is difficult to predict the extent of those losses, and even more difficult to predict the loss of employee jobs given that the small amount of data that is available does not distinguish between persons who receive the payment as an owner/manager working in a business versus those who receive it as employees. We would submit that it is the later group that is more relevant to the Panel's considerations. We are thankful that the Panel has requested information from the Australian Tax Office on this issue.

91. The most recent information we are aware of provides cause for optimism that the effects of the conclusion of *JobKeeper* will be short term. Whilst the most recent monthly labour force data did not cover the period after the cessation of *JobKeeper*, we submit that it is highly unlikely that *all* labour market transitions which are properly to considered to be caused by the withdrawal of *JobKeeper* will only be apparent in data collected beyond 28 March. Rather, we suspect that by the time the monthly data was collected in the first two weeks of March – and certainly by the 27th of March when the last round of Payroll Jobs figures were take - many employers would, in fairness to their employees, have made decisions about which jobs would not be retained and have communicated those decisions. This would predictably lead to some transitions having already been reflected in the data. The data at the macro level has, as shown in Chapter 1, been remarkably positive notwithstanding:

[82] Australian Business Industrial, Australian Chamber of Commerce and Industry, Restaurant & Catering Industry Association.

reductions in underemployment and unemployment coexisting with a rise in the participation rate are universally positive signs.

92. In addition, as also noted in Chapter 1:

    a. Treasury has indicated that 93% of persons who transitioned off *JobKeeper* in September 2020 were still in employment in December 2020;
    b. NAB commentary suggests improvement in the labour market is on track despite the impending end to *JobKeeper*. amid favourable businesses conditions, business confidence and strong vacancies;
    c. The RBA similarly note strong indicators of labour demand and suggest that at least some of the job losses that were likely to follow the end of the *JobKeeper* program would be offset by new hiring, leading only to a temporary pause in the strong recovery of the labour market seen to date;
    d. Treasury also predict a temporary effect, noting that the flows of people out of *Jobkeeper* positions are expected to be within the normal flows regularly observed and that "..the adjustment away from *JobKeeper* will be manageable .. employment will continue to increase over the course of this year, although the unemployment rate could rise a little over coming months before resuming its downward trajectory"[83];
    e. Deloitte is more confident, predicting little to no overall reduction in employment associated with the conclusion of *JobKeeper*, also amid record vacancies and business confidence;
    f. The NSW government comments in its initial submission that "while there is a risk of further deterioration once the *JobKeeper* program concludes in March, current momentum suggests any loss of jobs should be relatively contained."[84]

93. We note that, in discussing the end of *JobKeeper*, Australian Business Industrial draws attention to the fact that the "risk of JobKeeper ending" is not noted in the "key assumptions" provided in the Budget or MYEFO forecasts. We would ask the Panel to note that the conclusion of *JobKeeper* involves no risk or assumption – it is a policy choice that was mandated in law[85] prior to the announcement of either forecast. The views of Treasury on the likely impact of the cessation of *JobKeeper* are reflected in the comments of its Secretary, referred to above.

[83] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday 24 March 2021 in Canberra, p6.
[84] At page 14
[85] *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*, at r. 6(5)

94. We would also ask the Panel to consider that not all businesses who have been *JobKeeper* recipients were necessarily in need of the level of support it provided. This was clearly acknowledged by Senator Simon Birmingham, Minister for Finance when he was asked at Senate Estimates on 24 March about whether companies that receive *JobKeeper* should be paying dividends. The Minister said:

> "Businesses who have been in receipt of JobKeeper and are doing reasonably well should absolutely be mindful of their reputation and the support that has been provided. They should look at all opportunities to expand employment and grow their business and they should look at opportunities in wage discussions with their employees to support their employees further .. "[86]

The Minister said that there are a range of ways other than paying back dividends, "in supporting employment and supporting wages .. ".[87] When asked whether the government would seek to recover taxpayers' money, the Minister said: "I fully expect that those businesses ought to be looking at how they expand their operations to create more jobs for Australians; at how they ought to be expanding their support for their employees in terms of wages and support for those individuals .. "[88].

3.3 Employment impacts of minimum wage increases during a "recession or downturn"

95. The submissions of the Australian Government and the Australian Chamber of Commerce and Industry assert that there is a greater likelihood of negative employment effect from minimum wage rises during a recession, downturn or slowdown. In our view, the data and forecasts presented in the *Statistical Report* as well as in our initial submission and Chapter 1 of this submission are not consistent with the characterisation of the economy presently being in any of those states.

96. Ai Group place some reliance on research by Neumark and Shirley (2021)[89] concerning the impacts of minimum wages in the United States. We concur with the Ai Group's view that it "would not suggest the Neumark and Shirley study is definitive". However, we do not concur

[86] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra, p 47
[87] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra, p.47
[88] Hansard, Senate Economics Legislation Committee Estimates (public) Wednesday, 24 March 2021 in Canberra, p.60
[89] Neumark, D.& Shirley, P., "Myth or Measurement: What Does the New Minimum Wage Research Say About Minimum Wages and Job Less in the United States?", National Bureau of Economic Research, Working Paper 28388, January 2021.

that with their assertion that the Neumark and Shirley study should give rise to "..a more nuanced view of the disemployment effects across different segments of the workforce and particularly among less skilled, low income employees". Rather, as highlighted in what can best described as pointed commentary by Professor Arindrajit Dube of the University Massachusetts (an authoritative author and co-author of many empirically based papers on minimum wages in the US and elsewhere), a key limitation of the Neumark and Shirley study is that it lumps together the elasticities of radically different groups, such as elasticities on aggregate employment and elasticities of only low wage workers. This makes the magnitudes of elasticities "uninterpretable". A more informative measurement, in Professor Dube's opinion, is to calculate "own wage elasticities", which involves an "apples to apples" comparison of magnitudes whereby the employment effect is scaled by the wage effect. Professor Dube also notes that some "prominent recent papers" are not included among those reviewed in the Neumark and Shirley study.[90]

3.4 Wages, lockdowns, structural factors and swamping

97. Many of the submissions by other parties seem to suggest that raising minimum wages in the current context would threaten the survival of highly distressed business, or alternately assert that freezing wages for a period beyond July 2021 would improve business survival prosects.[91]

98. In our view, an increase to minimum wages in the order of that sought by us or in the range of those previously awarded by the Panel is likely to make very little difference to the survival prosects of any businesses that is already teetering on the edge of insolvency. The effect of increase in minimum wages is on businesses in highly precarious positions is in our view more likely to be swamped by the impact of other factors. A business that is highly reliant on *JobKeeper* to pay the wages of its employees will fail not because wages are determined to increase, but because the business was not able to stay viable funding its own payroll even at the pre-existing minimum rates. A business facing eviction from commercial premises for failure to catch up on several months rental payments cannot sensibly attribute its indebtedness or the loss of the premises to the rise in the price of labour. A CBD grocery store or café, typically using a flexible casual labour model, which faces reduced demand

[90] Public comments by Professor Arindrajit Dube, https://twitter.com/arindube/status/1353761409201541126?s=21, 26/1/2021.

[91] Australian Business Industrial at page 24, Australian Chamber of Commerce and Industry at [14], [78], Master Grocers at [56]-[57], Restaurant and Catering Association at [20]; South Australian Wine Industry at Page 6.

because inner city apartments are vacant and white collar workers from nearby offices have moved permanently to partial work from home arrangements cannot sensibly regard their predicament as influenced in any significant way by a small change in minimum wage rates. A business that relies on busloads of foreign tourists is similarly likely to have made decisions about its future already based on factors other than the potential for minimum wage rises. We agree with the assessment of the NSW Government that the re-opening of international borders is the "most significant COVID-19 containment measure remaining, in terms of economic impact".[92]

99. Whilst we concur with the view expressed by some parties that further lockdowns are possible and that the vaccine rollout is delayed, we would note that experience in the later part of 2020 and the early part of 2021 has been that the short, sharp lockdown of cities or areas within a State has been the preferred and clearly effective response. The link between the risk of such lockdowns and rising minimum wage costs is tenuous at best: whilst lockdowns do result in costs, wages are not one of them. In the absence of *JobKeeper* support, it is appropriate for the Panel to take into account the effect of such lockdowns may have on employees as well, rather than only the impacts on employers.

3.5 Increase to the Superannuation Guarantee

100. A number of parties urge the Panel to take into account the legislated increase in Superannuation Guarantee payments. There is no argument to be had against the proposition that it should be taken into account, the real issue is how.

101. Previous decisions of the Panel shed some light on the issue. These decisions establish that:

    a. It is appropriate to take increases in the Superannuation Guarantee into account, as doing so is consistent with the legislative requirements to take into the account the special circumstances of small and medium sized businesses; the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth[93];

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[92] At [24]
[93] [2013] FWCFB 4000 at [357]

b. Superannuation contributions constitute a cost to employers, but also a "deferred benefit" to employees, in the sense that is directed to enhancing living standards in retirement rather than in employment.[94];

c. A direct, quantifiable discount has not been applied in the past when the Superannuation Guarantee level has risen because the range of considerations the Panel takes into account call for the exercise of broad judgement rather than a mechanistic approach.[95];

d. An increase in the Superannuation Guarantee rate has resulted in the Panel awarding less of an increase that it would have in its absence. If there was no scheduled increase in Superannuation Guarantee, then, all other things being equal, the outcome of a review would be higher than it would be than if there was a scheduled increase.[96]

102. We do not urge the Panel to take any different approach here, we merely ask the Panel to take into account the range of considerations its is bound to and not overlook the following matters:

a. Government policy changes in the last year permitted persons to make withdrawals from their superannuation funds where they had experienced hardship as a consequence of COVID-19. The scheme was administered by the ATO, who report[97] that:

i. 4.55 million applications, covering 3.05 million people were approved, resulted in $37.8 billion being released.

ii. Of approved applications, 44% related to persons who had a reduction in working hours and 19% related to persons who were unemployed.

iii. In the FY 19/20 period of the early release scheme, 39% of approved applications were for people on incomes of $37,000 or less and 46% were on incomes in the range of $37,001-90,000. In the 20/21 period, 43% were on incomes of less than $45,000 and a further 43% were on incomes of $45,001-$120,000.

[94] [2013] FWCFB 4000 at [358]; [2014] FWCFB 3500 at [276]-[277]
[95] [2013] FWCFB 4000 at [357] at [359]; [2014] FWCFB 3500 at [278]
[96] [2015] FWCFB 3500 at [8]
[97] https://www.ato.gov.au/uploadedFiles/Content/SPR/downloads/covid19_early_release_of_super_report_infographic.pdf

This suggest that the extent of the "deferred benefit" of superannuation has depleted over the year for many workers, including low paid workers, who also suffered reduced incomes due to COVID-19. This is supported by independent analysis by Industry Superannuation Australia, which shows that the balances of at least 714,938 accounts were entirely cleared through the scheme, with 70% of those accounts belonging to persons under 30 – who ordinarily might have expected a long period of compounding returns on that investment during their working lives. These people will be rebuilding their "deferred benefit" from scratch.

b. There are a number of measures that were or are available to business – in some cases rather indiscriminately - that need to be taken into account in this years' Review. These include *JobKeeper*, direct cash transfers, apprenticeship subsidies, payroll tax relief, accelerated depreciation and *JobMaker*.

c. It is not correct to assert, as the Australian Chamber of Commerce and industry do, that .5% increase to the superannuation guarantee rate "results in the total wages bill rising by .5%"[98]. The age of the worker, how many hours they work in a given month and the designation of the hours worked as overtime are among the factors that can impact the extent of superannuation payable.

3.6 *Homebuilder*, the pipleline of construction work and the demand for skilled trades.

103. The Ai Group warn of a "high risk of a sudden drop in residential construction activity when the highly successful *HomeBuilder* program ends". Whilst we concur that *HomeBuilder* has stimulated residential construction, we disagree that the drop in residential construction activity is likely to be sudden. It would seem that the Housing Industry Association share our view.

104. The submission of Housing Industry Association says the "boom in detached home building make 2021 a record year" and forecast that almost 130,000 new detached homes will commence construction during 2021, securing the employment of half a million people in the sector and "tens of thousands of workers from across the rest of the economy" including in the manufacturing of building products. They further note that apprentice numbers are stable and that skilled trades are and will continue to be in high demand, suggesting that

[98] At [180]

"the price for skilled trades will inevitably increase". Whilst the number of multi-unit constructions has reduced, the Housing Industry Association does not assert this will lead to a loss of jobs but rather a shift in their employment toward detached housing construction. They do not predict a change of fortunes until 2023, following a fall in new home construction after the first half of 2022.

4. MATTERS IN REPLY: ADDITIONAL COMMENTS

105. As we indicated in our initial submission, hardship and unpredictability were lived experience for many workers and businesses throughout the year in review. We conducted what we consider to be a wide ranging and fair analysis of the relevant factors at play in our initial submission.

106. A number of submissions in this Review once again urge "caution" or "moderation"[99], with Australian Business Industrial going as far as to suggest that there was some equivalence between the Panel making no decision at all this year and making a decision to not increase any minimum wages.[100] In our view, providing for no increase or providing for a real wage cut is neither cautious nor moderate. It creates a substantial risk of low paid workers being left behind during what is proving to be a better than expected economic recovery.

107. Some positions put by those urging caution, moderation or no increases do refer to contemporary circumstances and we have dealt with these above. However, it seems that there is much in the way of generalised assertion that is neither helpful or particularly related to recent observations or trends which we suspect the Panel is more interested in. There are also some claims made which are quite dubious or which seem to misunderstand or reject the role of the Panel in its entirety.

4.1 Australian Business Industrial

108. Some of the observations which ABI direct the Panel's attention to are entirely unremarkable. ABI seem to assert that negative movement in the order of .6% in unemployment or .7% in monthly hours worked over a 12 month period is a novel observation[101], yet the unemployment rate rose from 5.8% to 6.4% between November 2013 and October 2014 and from 6.1% in January 2001 to 6.8% in April 2001 with the mean seasonally adjusted monthly unemployment rate being 6.8% from February 1978 to now[102], and hours of work deteriorated by .5% between October 2011 and October 2012, .6% between December 2013

[99] ABI at pages 8, 20, 25; ACCI at [26], [37]; Ai Group at page 3; Australian Government at [5], [272]; NRA at [3.2.5], [3.4.6], [4.1.1]; NSW Government at [18], [59]; South Australian Government at [3], [19] and [59];
[100] At page 3
[101] At page 2
[102] ABS 6202.0

and December 2014 and 1.6% between April 2013 and April 2014.[103] In addition, ABI note that employment growth across industries is uneven[104] and that many businesses are vulnerable to shocks such as floods[105], but neither of these circumstances are unusual.

109. ABI assert that there has been a significant worsening in the youth employment market compared to other age cohorts[106], yet the recovery in the unemployment rate, particularly for those under 20 years, has been very strong[107], payroll jobs indexes are barely different to where they were on 14 March 2020 for these groups[108] and there is no reference made by ABI to the availability of higher *JobMaker* subsidies for this group. ABI goes on to put the entirely unsubstantiated view that "any increase in the NMW" will "significantly impact labour demand for young workers" while at the same time conceding that "the relationship between a change to the minimum wage and the impact that it will have on youth labour demand is unknowable".[109]

110. ABI also predicts a protracted period of weakness in business investment, in reliance on statements made in the Budget[110]. Yet the statement it has relied on refers to "..a protracted period of weakness in busines investment which will act as a drag on growth in labour productivity *until there is recovery in business investment*" (emphasis added)[111]. In contrast, the Australian Government Submission refers to MYEFO forecasts of 7.5% growth in investment over the year ahead in non-mining business (and 5% overall).[112]

111. ABI's reference to 28% of businesses in February 2021 reporting revenue decreases in the last month is based on a data series which only commenced in March 2020 – the ABS *Business Conditions and Sentiments* Survey (previously titled "Business Impacts of COVID-19"). It is therefore difficult to make much of this statistic in the absence of historical data about the proportion of businesses that experience a monthly decline in revenue (of any extent). Perhaps the real story in the underlying statistics is the trend and recovery. Whilst we do not dispute that 28% of business reported a decrease in revenue of the last month

[103] *Statistical Report*, Table 6.1; ABS 6202
[104] At page 2
[105] At page 4
[106] At page 2
[107] See Chart 6.6 of the *Statistical Report*
[108] See Chart 6.10 of the *Statistical Report*
[109] At page 17
[110] At page 7
[111] Budget Paper No.1 at page 2-30.
[112] At [55]-[56].

when measured in February (falling to 22% in the March measurement), the first measurement of this metric, in May of 2020, showed that 72% of business had experienced a decline.

112. The Panel should be reluctant to draw negative conclusions about current business performance based on ABI's *Business Conditions* survey data discussed on pages 9-12 of its submission. The survey results in Chart 2 therein seems to suggest that profit growth has only been in seen in around 3 quarters over the last 7 years and are difficult to reconcile with the index of profit levels provided in Chart 1 of its submission. A decline in business in confidence is noted in March 2021 in Chart 1 yet levels still exceed all pre-pandemic levels seen since March 2019 and the levels of spending, staffing, and revenue are not dissimilar to those seen over the period March-19 to March 2020. The survey results shown in Table 6 of the submission and discussion thereof concerning the "potential impact of a minimum wage increase on business viability" suffers from the limitation that it does not identify any *level* of minimum wage increase which might be productive of the "potential" impacts it identifies. A failure to ask the question as part of the survey, or a failure to disclose the question asked, means little weight can be placed on these responses.

113. Finally, whilst ABI describes the ABS Living Cost Index as the "most accurate measure of living costs"[113], it does not highlight that the living cost index captures changes (including reductions) in mortgage interest (unlike CPI). ABS indicates that mortgage interest fell 15.1% over the year, and accounts for a 6.52% weighting in the employee household calculation[114]. Few low paid award reliant workers would be expected to have mortgages. Additionally, the ABS reports that impact of a $600 household electricity credit available only in Western Australia was responsible for a fall in housing costs in the national measure for employee households and all others[115].

4.2 Australian Chamber of Commerce and Industry

114. ACCI open their submission with an obvious contradiction: they assert that there is absence of critical information which would be required for them to form a view about what the Panel should do, yet ACCI is in a position to "unequivocally state" that any increase in excess of

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[113] At page 20
[114] https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/selected-living-cost-indexes-australia/latest-release
[115] *Ibid.*

inflation is "clearly not merited" and "would be inconsistent with the Expert Panel's statutory considerations".[116] This appears to leave very little room for ACCI to respond to the "critical information" it expects to receive in future.

115. ACCI's comments about the rise in company profits observed over 2020 assert that "there is strong basis to conclude that these were not realisable, bankable or re-investable profits".[117] We do not share the view that such a strong basis exists. We do not contest the basic mechanics of *JobKeeper* and other forms of government assistance being accounted for as revenue, however the fact remains that profits are a measure of net gains in position. The fact that *JobKeeper* and its associated flexibilities facilitated some businesses operating on the basis that the entirety of their salary and wage expenses were paid for by somebody else does not support a conclusion that no funds were left at the end of the day for the benefit of business owners who continued to operate their businesses while receiving that assistance. It does however suggest that some businesses would have operated with better margins than usual over the last year. That would include business that qualified for *JobKeeper* without ever experiencing an actual decline in turnover, as well as those who adjusted to lower cost operating models at times throughout the year (e.g. a take away service which requires less or no front of house staff and whose output is not constrained by venue capacity).

116. Whilst we do not dispute ACCI's claim that some businesses will be called upon to make good on delayed payments such as rent and loans as assistance and relief mechanisms unwind[118], the reality is that some employees are also facing similar challenges in terms of the withdrawal of temporary programs including rent relief, protection from eviction, removal of the coronavirus supplement and *JobKeeper*. The consequences of the reductions in benefits for employees will likely be significant for some and is a relevant consideration in the Panel's deliberations.

117. ACCI makes reference to GVA growth, particularly among award reliant industries[119]. Whilst it chooses only to discuss the results on a year to December basis, the quarterly figures presented in the chart it reproduces from the ABS National Accounts show that the most

[116] At [18]-[27].
[117] At [139]
[118] At [60]
[119] At [127]

award reliant industries, with the exception of Health Care and Social Assistance, are among the better performers on this measure. ACCI's commentary thus undersells the strength of the recovery in the second part of the year.

118. In discussing productivity, ACCI observes that "Given that labour productivity is extremely low and is likely to remain suppressed for some time, it is not appropriate to be raising wages in this environment."[120] As the Panel has previously observed, it is more appropriate to have regard to productivity performance over cycle rather short run measures. This is particularly important at present give than productivity measurements are not likely to be reflective of underlying conditions given the impact of policy responses to the pandemic. Moreover, ACCI's view seems to assume that the Panel's role is restricted to replicating the likely market movement in wages. ACCI express a similar sentiment in their discussion of market wage growth, where they state that "the Panel should keep an eye to average wage growth to be sure that minimum and award minimum wages don't move out of step with wages growth in the broader community"[121]. The Panel has rejected the view that its role is confined to replicating or predicting market outcomes.[122]

119. We note our disappointment at ACCI's apparent rejection of the Panel's function, process and legitimacy elsewhere in its submission. ACCI seeks that "minimum wages should be set at a level that encourages businesses to employ more workers and maximise the opportunity for new workers to enter the workforce", without qualification (and seemingly without regard to how this might be inconsistent with its desire see to increased labour productivity). It further submits that it is "not the role of the minimum wage" to provide "a safety net inflating in value, to a very small proportion of the workforce that are unable to transition from the minimum wage to higher paid work". Such statements fail to grapple with the range of considerations which the Panel is required to take into account in determining a fair outcome and tend to devalue the workforce that is dependent on the Panel's decisions. There is scant discussion of relative living standards and the needs of the low paid in ACCI's submission other than as a vehicle to reject both the Panel's low paid benchmark and the 60% relative poverty line and to assert, once again contrary to numerous iterations of the modelling shown at Table 8.5 of the *Statistical Report*, that minimum wage fixation is not

[120] At [134]
[121] At [164]
[122] At [2017] FWCFB 3500 [145]

effective in addressing the needs of lower income households. This baffling search for alternative facts is not at all helpful.

4.3 Ai Group

120. Ai Group's discussion of the withdrawal of temporary business supports[123] refers to deferred payment arrangements and insolvency regulations. In terms of the former, they state that the value of loans to small businesses which were on deferred payment arrangements had dropped from a high of 18% in May of 2020 to 2% at the end of 2020. Far from suggesting a future challenge, this would in our view tend to suggest that the worst has passed in aggregate, however we recognise that a comparison to normal levels is not possible on the data provided. In relation to insolvency rules, we acknowledge that the restoration of the $2,000 threshold for the issuing of statutory demands, extended debtor payment rules and the reinstatement of personal liability for insolvent trading will likely prompt some business to wind up. However, we would also point out, as Ai Group do not, that permanent reforms have been made to insolvency rules for small business which may increase the potential for stressed businesses to continue trading. These reforms, brought about by the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020*, provided for small businesses (with total debts of les than $1 million) to appoint a "Small Business Restructuring Practitioner" in an advisory capacity to restructure their debts, while continuing to trade. Additionally, it is important to appreciate that the temporary reforms that were introduced in 2020 may have had the effect of protecting some businesses which may well have failed even in the absence of the pandemic. This seems to be acknowledged in Ai Group's observation of "a sharp reduction in the number of businesses entering insolvency in 2020".

121. The impact of reduced population growth (owing to weak or negative net migration) on potential GDP is discussed in Ai Group's submission, as a factor that will curtail the overall level of achievable GDP.[124] Whilst this may well be a medium term consequence of subdued population growth, in our view this is a more remote consideration for the Panel than the more immediate consequence, not discussed by Ai Group, of tightening labour supply for typically award reliant work. This matter is discussed in our initial submission[125] and also in the research by Borland[126].

[123] At Page 21
[124] At page 22.
[125] At [77]-[78]
[126] At pages 31-32.

122. In discussing productivity, the Ai Group refer to research by Treasury in support of the orthodox contention that "productivity and wage growth are intrinsically linked". In our submission, of greater interest to the Panel in the Treasury research referred to is the estimate that if productivity at the firm level increases by 10%, only about 1% is reflected in wages - with the actual level influenced by factors including employee bargaining power. This minimal willingness of firms to voluntarily share economic rents, particularly with workers who have low bargaining power, in our view underscores the need for the Panel to continue to award pay increases to persons reliant on minimum wages.

123. Ai Group's discussion on the impacts of minimum wage increases[127] refers to research by Neumark and Shirley and also by the Productivity Commission. We respond to Ai Group's submission concerning the Neumark and Shirley in section 3.3 above. In relation to the findings of the Productivity Commission, we take issue with the Ai Group's assertion that those findings are consistent with minimum wages being causative of young workers accepting work with lower skills requirements. The Productivity Commission itself makes no such claim. Rather, it the Productivity Commission said:

> "..once we account for workers' education level, the picture changes significantly. Comparing to workers with similar qualifications, people of all ages are predominantly in lower scored occupations in 2018 than in 2001.
>
> This is consistent with the growth in supply of skilled people exceeding the growth in demand for their skills, resulting in an increased competition for high scored occupations. The growth in higher-scored occupations was not large enough to absorb the increased supply of high skilled workers. A person looking for a high scored occupation in 2018 faced a more competitive labour market, and is more likely to have ended up in a lower scored occupation than they would have in 2001.
>
> As workers move further and further down the 'jobs ladder', some workers find themselves in part-time and casual work in the service sector, which forms part of these low-score occupations. Firms offering these occupations could respond most flexibility to changing labour conditions by expanding employment at lower wages".[128]

If anything, the Productivity Commission's findings are more consistent with an expansion of employment in the types of work which are more typically award reliant, *despite* minimum wage increases over the relevant period. The Productivity Commission's finding of decreased

[127] At page 40-42

[128] Productivity Commission 2020, *Why did young people's incomes decline?,* Commission Research Paper, Canberra, at Page 148-150.

income from government transfers for this cohort of workers[129] does not suit the Ai Group's narrative elsewhere in its submissions and is conveniently ignored by them.

124. There is an inherent contradiction in the Ai Group's highlighting of the end of the *JobKeeper*, *HomeBuilder* and temporary insolvency relief programs as moderating factors in this Review while at the same time urging the panel not to take into account the cessation of household assistance measures. It is not reasonable to suggest that the cessation of these benefits will not be felt those who had previously received them. To the extent that the personal income tax changes are relied on by Ai Group as improving household incomes it should be noted that the modelling shown in Table 4 of their submission is consistent with the broad point we made in our initial submission that greater benefits are not received by those on the lowest incomes. In terms of award classifications, a worker would need to be in a role that is typically associated with Certificate IV or higher qualification to retain the maximum benefit. The submission from the Australian Government, at Table 2.2, provides a stark counterpoint as to where adult minimum wages (outside of introductory rates) generally sit in some award reliant industries. In addition, the Ai Group's modelling and discussion does not deal with incomes of workers who are part time or work unpredictable hours. Further, to the extent that it asserted that the benefits of tax changes are retained in future years, it would be disingenuous to assert that the same does not apply to the reductions in corporate income tax seen in recent years or the higher profits seen in 2020.

125. We would also note that Ai Group's discussion of the ABS Business Conditions and Sentiments survey[130] has been overtaken by more the more recent release of this data.

4.4 Australian Government

126. The submission of the Australian Government makes reference, as it has in previous years, to the "stepping stone" effect of low paid work.[131] Charts 7.1 and 7.2 in the Australian Government's submission shows, in the Australian Government's own words, "stability" in the extent to which low paid people remained in low paid employment for less than one year and in their transitions to high paid work versus their transitions to unemployment or leaving the labour force. This is despite the occurrence of the GFC in the measurement period 2002-

[129] *Ibid.* at page 89-92.
[130] At page 13
[131] At pages 68-70

2014. Over the same period of "stability", the national minimum wage increased 48.6% in nominal terms and 7.5% in real terms. These observations do not support a conclusion that minimum wage increases have hampered transitions into low paid work or out of low paid work into higher paid work. In the current context, if there were a wage related barrier to transitions into low paid work, one would expect the *JobMaker* program to make inroads into this.

127. The Australian Government's submissions regarding transitions from unemployment into paid work assert that the level of the minimum wage can influence decisions to look for work and that it is therefore important for the minimum wage to be set at a level which encourages people who are out of work to enter the workforce.[132] The government also notes that the level of the *JobSeeker* payment has been increased from 1 April 2021. The government does not specifically request the Panel to take into account the $50 per fortnight increase to *JobSeeker* as a factor which diminishes the premium of paid work over unemployment, although in our view it follows from the analysis that it should, if the basic premise of the submission is accepted. Whilst the Australian Government offers a counterpoint that the difference between an unemployed person's perceived level of productivity and their wage would rise as minimum wages rise[133], the real world implications of this are unverifiable given that the payment of wages below the statutory minimums is unlawful.

128. Like the Ai Group, the Australian Government comment on the drag that slow population growth may have on potential GDP.[134] As with the Ai Group, the commentary does not account for the tightening of the labour market for some forms of award dependent work which traditionally attract migrant workers. However, the Australian Government do acknowledge that employment is expected to increase faster than population growth through to June quarter 2022.[135]

129. It is not clear what is to be made of the Australian Government's comment that "In general, household income is a better proxy of economic wellbeing that individual income"[136]. In our view, this embodies an outmoded notion of economic wellbeing which is tied to financial dependence and somewhat incompatible with the principle that work should afford a

[132] At page 83
[133] At Page 71
[134] At page 23
[135] At page 25
[136] At page 19

sufficient income for a decent standard of living. In any event, the government's analysis of HILDA data once again shows that low paid workers are concentrated in the lower EHDI deciles of among employee households and indeed all households generally.

4.5 Master Grocers Association

130. It is incongruous for Master Grocers Australia and the Timber Merchants Association to be arguing for wage restraint or deferral in a context where the businesses they represent were, by their own admission[137], less affected by the social and economic restrictions experienced over the year in Review. It is telling that Master Groccers make no assertion (either on the basis of their survey or otherwise) about the extent to which the sectors they represent are (or even were) reliant on *JobKeeper*.

131. We would ask the Panel to place little weight on the survey evidence used in the submission. As evident from the survey results presented, there were a total of 103 responses. This cannot be assumed to be representative of the industry groupings concerned or even of the membership (the 2020 Annual Returns filed with the Registered Organisations Commission show 2102 members of Master Grocers). Most significantly, Master Grocers have included in their submission the text of the invitation to complete the survey that was sent to its members, which includes the following statements:

> "We need to demonstrate to the Commission that our Members cannot sustain a wage increase in the coming year"
>
> "We urge you to respond to our survey to help us provide the Commission with your views about the need to keep wages at a reasonable level in 2021"
>
> "We need your assistance to provide the Commission with valuable information that will help keep wages at a minimum level"

The circumstances in which the survey was distributed therefore raise real issues about whether the responses to it are biased, as it would seem they were intended to be.

4.6 National Farmers Federation

132. We would ask the Panel to note that there is some internal inconsistency in the positions advanced in the National Farmer's Federation submission, as well some inconsistency with public statements made by them.

[137] At [14]

133. Whilst the assertion is made that “the capacity of farmers to increase wages in marginal at best”[138], it is also said that “almost 70% of farmers responding the NFF Farm Workforce Survey in 2018 pay significantly about award rates”[139] and that “in an attempt to draw domestic workers from more populated areas, many farmers have offered very high wages and substantial bonus compensation”[140].

134. It seems that better view is that is not an incapacity to pay minimum wages in this sector generally. This is supported not only by anecdotal reports of increased wages and reliance on local workers in parts of the sector[141] and an admission by the NFF that it is “dangerous for Australia to be entirely dependent on foreign workers in food production”[142], but also by the industry’s offer to the Victorian Government to voluntarily contribute $2,500 per worker to cover quarantine costs when seeking to re-commence flow of seasonal workers from overseas[143] (although the amount finally agreed was $2,000 per worker[144]). The market for many farm produced goods has also been healthy, with beef prices as measured by the Eastern Young Cattle Indicator being strong from early in 2021 and hitting record prices April along with strong growth in prices for other varieties[145], a rise in the price paid to farmers by multiple producers for milk between December 2020 and March 2021 (up 10 cents per kilo of milk solids by Bega, Burra, Saputo and Bulla, up 13 cents per kilo of milk solids by Fonterra – estimated to add $15,000 per annum to average yield in Victoria)[146] and record winter grain crops being harvested in many parts of Australia while price growth has continued[147]. The recent reopening of live export markets for sheep and goat to Saudi Arabia[148] should also be welcome news for producers. At an industry wide level, the Australian Government Department of Agriculture reports that:

> “COVID-19 was a major event for Australia’s agricultural, forestry and fisheries sector in 2019–20, but the sector demonstrated an ability to adapt and transition to new

[138] At page 17
[139] At page 19
[140] At page 23
[141] “Local workers are taking up farm jobs as Queensland farmers are forced to pay higher wages”, Australian Broadcasting Corporation 31/1/21;
[142] “Workers offered bonus to pick fruit”, The Age, 17/2/21
[143] “Farmers lash Andrews over workers”, The Age, 20/1/20
[144] “Workers offered bonus to pick fruit”, The Age, 17/2/21
[145] “EYCI breaks 900¢ for the first time in history”, Meat and Livestock Australia, 15/4/21; “Record-high steaks: our beef with beef”, The Age, 10/1/21.
[146] “Pay rise for dairy farmers as Fonterra announces $32m half-year Australian profit”, Australian Broadcasting Corporation, 17/3/21.
[147] “Skip in step: Grain harvest revives towns”, The Age, 15/1/21.
[148] “Sheep and goat trade reopens to Saudi Arabia”, Meat and Livestock Australia, 15/4/21.

opportunities (Greenville, McGilvray & Black 2020). Because food is an essential good, demand does not fall significantly in times of crisis, although the types of goods being demanded through the pandemic shifted away from high-value products consumed typically in the hospitality sector (e.g. wine and seafood) to foods consumed at home. Disruptions to domestic and international food supply chains early in 2020 were largely resolved, allowing agricultural trade to remain resilient through the pandemic. International food processors continued to operate and demand Australian products as inputs; and the resurgence of international textile and wood products manufacturing strengthened export demand for these products throughout 2020–21."[149]

4.7 New South Wales Government

135. Aside from the NSW Government being among the chorus of interests urging "caution" in this Review, it puts a novel position that such caution is justified on the basis that driving wage growth is an issue for Government.[150] The NSW Government offers no insights into how the policy levers its asserts are at its disposal, such as "implementing forward looking regulation to support competition an innovation" and "lowering the tax burden, reducing red tape and implementing productivity enhancing reforms" will result in any wage increase to the population of workers who are paid, at the election of their employer, the lowest legal wage possible. To the extent that NSW Government submission advances a position that increases in minimum wages should be "stimulated" rather than *caused by* the Panel's decision making, it misunderstands the Panel's statutory mandate and should be rejected.

4.8 Restaurant and Catering Industry Association

136. The Restaurant and Catering Industry Association refers to data from the National Skills Commission to support its contention that the projected growth in in employment in the restaurant industry over the next 3 years would be threatened by "any significant increase in employees wages". Whilst no figure is given as to what would constitute a "significant" increase, it should be noted that the methodology the National Skills Commission adopts to make its projections involves in part trend models based on time series data from the ABS Labour Force data set.[151] To that extent (at least) it necessarily embeds some assumptions about wage growth because any relationship between wage growth and employment growth

[149] "ABARES Insights, Issue 2 2021", Australian Government Department of Agriculture, Water and the Environment, at page 9.
[150] At [18] and [59].
[151] https://lmip.gov.au/default.aspx?LMIP/GainInsights/EmploymentProjections

is reflected in the labour force data. Other inputs to the methodology include MYEFO forecasts and independent research. The Restaurant and Catering Industry Association fail to mention that the modelling to which they refer showed that the Accommodation and Food Services Industry was predicted to make the second largest contribution to employment growth over the forecast period (behind Health Care and Social Assistance).

137. There is some acknowledgement in the Restaurant and Catering Industry Association submission of a lower cost operating model brought about by take-away and delivery operations[152] and also of a tightening market for some skilled worked owing to a short supply of visa workers.[153] However, the submission is quite selective in its reliance on the RCA 2020 Benchmarking Report - which is publicly available.[154] The following important findings from that report have not been highlighted in the submission:

   a. The survey was open between October and November 2020 (i.e. after *JobKeeper* 2.0) and 29.6% of the business responding to it were based in Victoria (which experienced the longest lockdown);
   b. Skills shortages were rated as a more important issue facing business than COVID-19 restrictions;
   c. 95.7% of business indicated that “they were confident they would still be operating this time next year”;
   d. Around 75% of businesses expected their sales to either increase (≈50%) or stay the same;
   e. Around 75% of businesses expected their number of employees to either increase (≈47%) or stay the same;
   f. Around 95% of businesses expected their prices to either increase (≈55%) or stay the same;
   g. Around 72% of businesses expected their profitability to either increase (≈45%) or stay the same;
   h. Whilst the “inability to raise prices” was identified as the most important issue for businesses in the 2019 report, it had fallen to 4th place in the 2020 issue;
   i. Lack of international tourists was reported as the least important issue facing businesses; and

152 At [21]
153 At [24]
154 https://rca.asn.au/sites/default/files/uploaded-content/website-content/2020_industry_benchmarking_report_digital_version.pdf

j. There was no perceptible difference in the percentage of business reporting they had no staff vacancies in 2020 compared to 2018 (≈28%) and a majority that did have vacancies reported difficulty or extreme difficulty filling them (≈54%).

In our view, the overall picture presented by the report is more consistent with the industry having likely already experienced the bulk of the adjustment brought about by the COVID-19 related restrictions over the past 12 months.

138. It is also curious that the Restaurant and Catering Industry Association did not see fit to specifically comment on the Federal Government's *Boosting Apprenticeship Commencement* program, notwithstanding the public statement by the Association's President that the program "..would continue to support businesses in the restaurant, café and catering industry and encourage them to take on more apprentices as the sector recovers from the COVID-19 pandemic".[155]

4.9 South Australian Wine Industry Association

139. In our view the most relevant industry issue identified in the submission of the South Australian Industry Wine Industry Association is the trade tensions with China, which have resulted in high tariffs for Australian wine. We accept that China was, at the time the tariffs were imposed, the single largest export destination for Australian wines. However, it is unclear from the submission whether the suppliers that were most reliant on the Chinese market were the largest producers whom the South Australian Industry Wine Industry Association concede are bound by enterprise agreements, or the smaller producers who are more likely to be affected by the Panel's decision. A report prepared for Wine Australia by the Gillespie Economics and AgEconPlus in 2019[156] suggests that the smallest producers market their product via the cellar door, website and local restaurants rather than exporting. Whilst there may be a greater tendency for award pay and conditions to be applied to workers in grape growing and picking across all sizes of businesses, the seasonal and temporary nature of such work suggests that weaknesses in demand can be offset by the employer engaging fewer temporary workers in season or for a shorter period, rather than terminating permanent staff or forcing business closure.

[155] "Apprentice announcement delivers for restaurants, cafes & catering businesses", Restaurant and Catering Industry Association, 9/3/21.

[156] "Economic contribution of the Australian Wine Sector 2019", Gillespie Economics & AgEconPlus

ADDRESS
ACTU
365 Queen Street
Melbourne VIC 3000

WEB
actu.org.au

D No: 18/2021

ACTU Australian Unions