Reply Submission to the Annual Wage Review 2023-24

ACTU Submission, 29 April 2024
ACTU D. No 34/2024

CONTENTS

INDEX TO FIGURES

INDEX TO TABLES

1. INTRODUCTION

1. There is broad recognition throughout the submissions filed in this Review that the economy is slowing in expected ways, and that workers continue to face a cost of living crisis. The principal points of difference relate to the affordability of increases to employers and the level of emphasis placed on social considerations in reaching an overall position.

2. On the major economic questions raised in submissions, and in more recent data, this reply submissions notes that, in summary:
    a. Headline inflation growth continued to ease in March 2024, rising 3.6 per cent over the year, down from 4.1 per cent in the year to December 2023 and edging closer to the RBA's target band as expected. Despite this progress, workers continue to be under pressure, particularly with inflation for non-discretionary items at 4.2 per cent for March 2024.
    b. The ABS March Labour Force release indicates that the economy has tracked along better than expected, with the labour market remaining solid even as economic activity eases.
    c. Business conditions and capacity utilisation remain above pre-pandemic averages, consistent with the economy remaining resilient and profitability staying solid.
    d. Some parties are ignoring the lingering and disruptive effects of COVID-19 and related measurement issues when assessing productivity performance, as both the ACTU and the Productivity Commission have highlighted. The prospects for productivity to return to the longer-term trend are good.
    e. Some parties raise the risk of a wage price spiral if the ACTU claim is accepted. No credible evidence has been presented for this repeated and frequently debunked claim.

3. In this reply submission, we present some additional data which has become available since the initial submission was lodged, which we consider relevant to the Panel's decision making. We also highlight some areas of disagreement with the analysis offered by other parties in their initial submissions and suggest areas for further consideration. Where common issues have arisen among the submissions of other parties, we deal with them together in Chapter 3. Our response to specific issues raised by particular parties is contained in Chapter 4.

4. Accordingly, the ACTU remains committed to the claim of a 5 per cent increase to minimum and award wages as outlined in our initial submission – a claim that is affordable and fair in circumstances where workers have faced significant reductions in real wages over the past three years. Employer claims would see an unacceptable and further erosion in the real wages of award reliant workers.

5. In Chapter 5, we respond to the Stage 2 Gender Equity research and to employer submissions on gender equity specific matters and build on the preliminary view we offered in our initial submission about how Gender Equity issues may be addressed in this Review and beyond. Chapter 5 includes, among other things, some specific proposals to adjust particular modern award minimum wages beyond the 5% we otherwise recommend, to assist the Panel to discharge its responsibilities.[1]

6. The ACTU is seeking an initial lift of at least 9% in award rates for selected occupations, particularly in care and degree-qualified work, being our initial claim of 5% plus at least 4% to make progress towards gender pay equity. This is an interim measure pending a full assessment of the undervaluation of work on the basis of gender and ensuring increases preserve a fair system of relativities across classification structures. For female dominated occupations outside of those categories, we also put forward measures designed to commence the process of addressing gender pay equity considerations and which can be carried through to conclusion, if necessary, by Commission-initiated proceedings.

[1] [2023] FWCFB 3500 at [40], [120].

2. ADDITIONAL DATA

2.1 Consumer Price Index

7. Headline inflation growth continued to ease in March 2024, rising 3.6 per cent over the year, down from 4.1 per cent in the year to December 2023 and edging closer to the RBA's target band as expected (see Figure 1).

8. Both trimmed mean inflation and services inflation saw an easing in growth in March, with trimmed mean rising 4.0 per cent year on year, down from 4.2 per cent in December, and services rising 4.3 per cent year on year, down from 4.6 per cent in December.

9. Non-discretionary inflation also continued its downward trajectory, rising 4.2 per cent year on year in March, down from 4.8 per cent in December (see Figure 2). However, it remains elevated and suggests that cost of living pressures continue to weigh on households – and will do so for some time yet – putting pressure on the lowest paid workers as real wage levels are at decadal lows and household budgets become increasingly strained.

Figure 1: Headline inflation growth

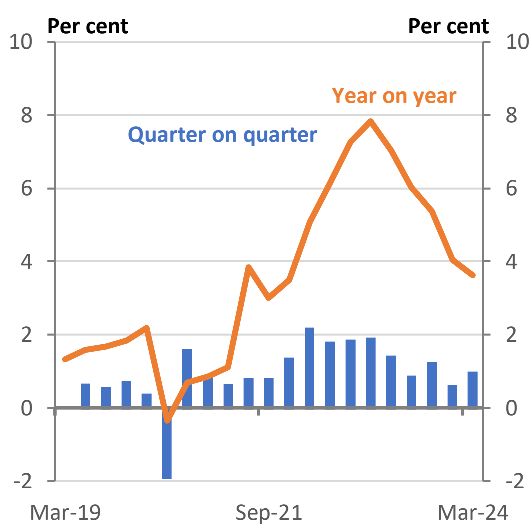
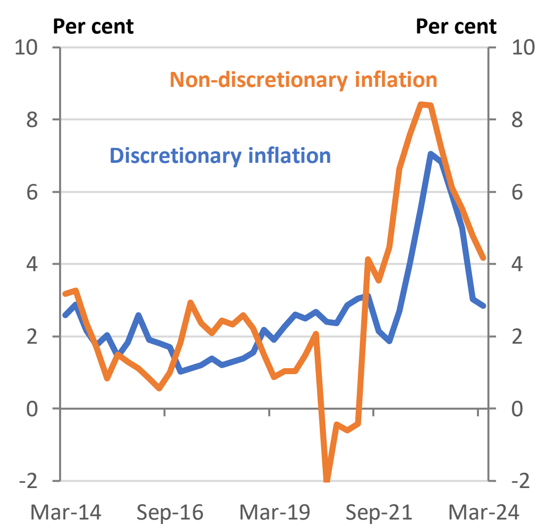


Figure 2: Discretionary and non-discretionary inflation growth



Source: ABS Consumer Price Index, Australia & ACTU calculations

10. Housing costs continue to be an issue for Australia's workers, particularly those on minimum and award wages. Rental prices were up 7.8 per cent, up from 7.3 per cent in December and according to the ABS growing at the faster rate in 15 years (see Figure 3).[2]

11. Other essential costs such as education fees are rising at high rates. Education prices showed the strongest quarterly rise since 2012 as pre-school and primary education school fees increased 4.3 per cent quarter on quarter and secondary school fees increase 6.1 per cent quarter on quarter in March 2024.

Figure 3: Rent price growth

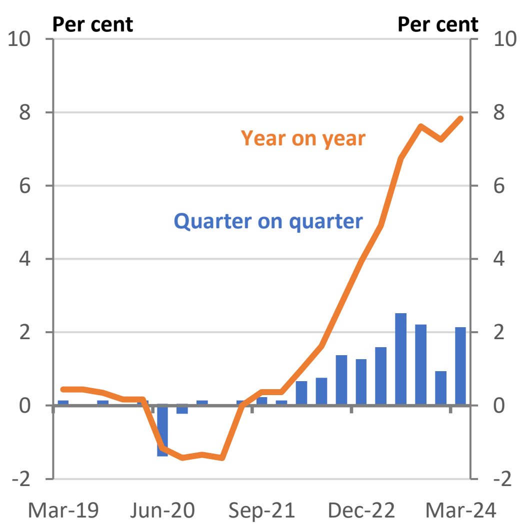
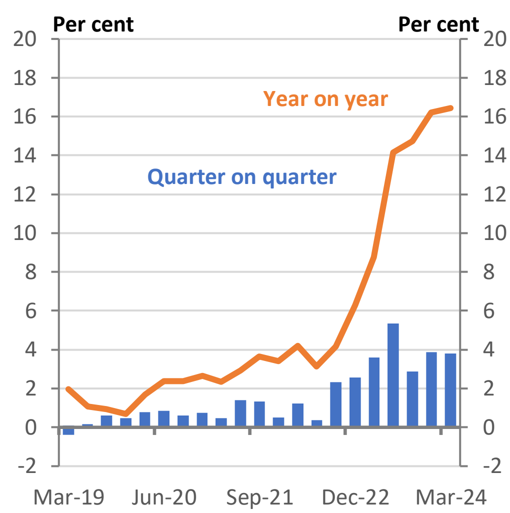


Figure 4: Insurance price growth



Source: ABS Consumer Price Index, Australia & ACTU calculations

12. The cost of insurance has also increased precipitously over the last two years, rising 16.4 per cent in March 2024, up from 16.2 per cent annual growth in December 2023 and the fourth consecutive quarter of double-digit annual growth.

13. Health costs also saw large increases in March, with prices for Medical and hospital services rising 2.3 per cent quarter and quarter and 4.5 per cent year on year as GPs and related health service providers revised up consultation fees.

[2] CPI rose 1.0per cent in the March 2024 quarter | Australian Bureau of Statistics (abs.gov.au)

14. The March quarter 2024 CPI data indicates that while inflation is easing as expected, workers remain under strain as the price of essential goods and particularly services weigh heavily on household budgets and drag on real incomes.

15. These outcomes reinforce the ACTU's claim which would go some way to alleviating cost of living pressures weighing on Australia's award-reliant and minimum wage workers.

2.2 NAB Business Survey

16. Capacity utilisation declined slightly in March 2024 to 83.2 per cent, consistent with the economy slowing in expected ways, although capacity utilisation in March was still above the 10-year pre-pandemic average of 81.0 per cent and has been since October 2021 (see Figure 5).

17. Business conditions also declined in March 2024 to 8.7 index points, down from 9.7 index points a month earlier, but still remain above the 10-year pre-pandemic average of 5.5 index points (see Figure 6).

Figure 5: Capacity utilisation

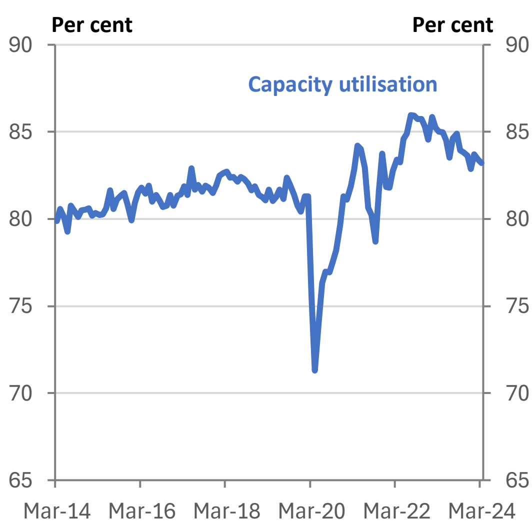


Figure 6: Business conditions

Source: NAB Business Survey

18. The NAB survey also indicated an easing in labour cost growth, which declined to 1.6 per cent, down from 2.0 per cent a month earlier, alongside a decrease in product price growth, which eased to 0.7 per cent, down from 1.2 per cent a month earlier.

19. The NAB business survey results for March 2024 are consistent with the argument advanced in the ACTU's initial submission that while slowing over the course of 2023, the economy has remained remarkably resilient, aided by a pick-up in investment and a rebound in net overseas migration and inbound tourism, which have combined to support business conditions and profitability even as Australia's workers endure a cost of living crisis precipitated by an outburst of inflation they had no hand in creating.

2.3 Labour Force, March 2024

20. The March Labour Force release indicates that the economy has tracked along better than expected, with the labour market remaining solid even as economic activity eases.

21. The unemployment rate ticked up slightly in March to 3.8 per cent, a small increase on the 3.7 per cent unemployment rate in February and only slightly above the average of the previous twelve months of 3.7 per cent (see Figure 7).

22. The underemployment rate ticked down slightly in March to 6.5 per cent, a marginal decrease from the 6.6 per cent underemployment rate in February and in line with the average of the previous twelve months of 6.5 per cent.

23. Both the unemployment rate and underemployment rate look to have stabilised around current levels as inflation has continued to ease (see section 2.1 above) and business conditions and capacity utilisation have remained solid. These outcomes suggest no significant disruptive effects of the previous two Review decisions over the past two years, with the economy remaining resilient due to solid profitability and labour demand supporting broad-based employment opportunities.

Figure 7: Measures of underutilisation

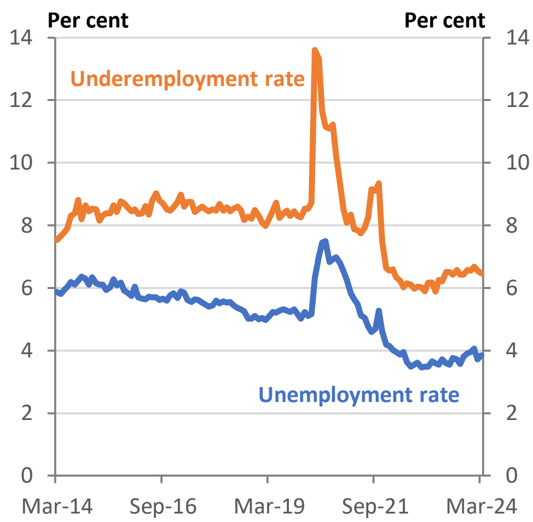
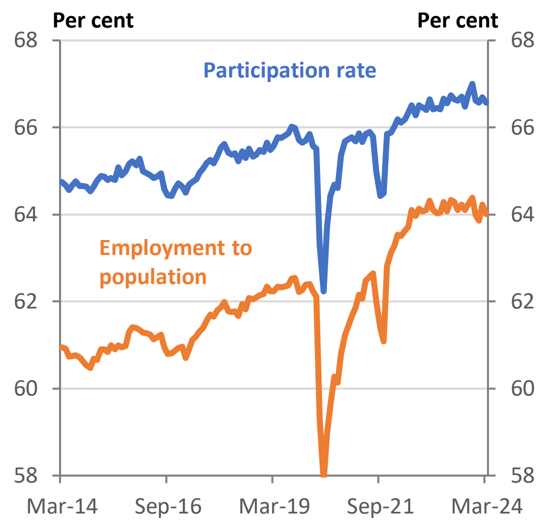


Figure 8: Measures of labour supply



Source: ABS Labour Force, Australia & ACTU Calculations

24. Alongside the small changes in labour underutilisation, labour supply continued to be solid in March 2024. The participation rate declined slightly to 66.6 per cent, only slightly below the average of the past twelve months of 66.7 per cent but still around record highs and above the 10-year pre-pandemic average of 65.1 per cent.

25. The employment to population rate also declined slightly in March, easing to 64.0 per cent, only slightly below the average of the past twelve months of 64.2 per cent but still above the 10-year pre-pandemic average of 61.6 per cent.

26. Full-time employment picked up slightly, with around 28,000 full-time jobs added in March, although this was offset by there being around 34,500 fewer part-time jobs in March (see Figure 9). Overall, employment was down by around 7,000 jobs, well below the around 117,600 jobs added in February.

27. Full-time employment is now 11.9 per cent above where it was in December 2019, having picked-up from a slight trough in December 2023 (see Figure 10). Full-time employment has also recovered as the main driver of employment over the March quarter 2024.

Figure 9: Level change in employment

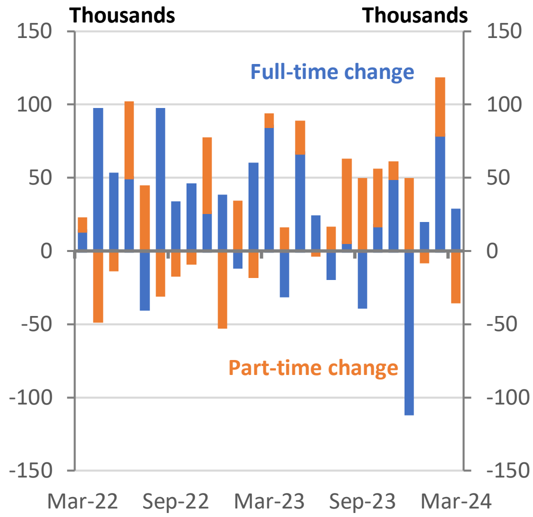
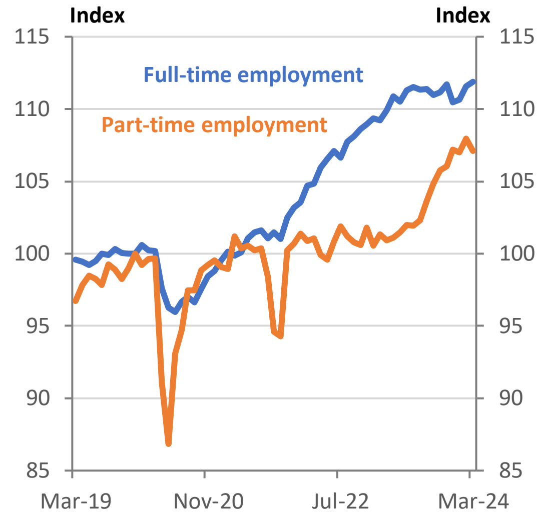


Figure 10: Index of employment by type



Source: ABS Labour Force, Australia & ACTU Calculations

28. Further to the broadly stable aggregate labour market conditions evident in the March 2024 release, outcomes for female workers have been stable over the last few years.

29. The female participation rate eased slightly to 62.6 per cent in March, down from 62.8 per cent a month earlier, while remaining around record highs and above the 10-year pre-pandemic average of 59.3 per cent (see Figure 11).

30. Female full-time employment also reached a record high in March 2024, with around 3.9 million women employed full-time and full-time employment 16.5 per cent higher than December 2019 levels, a solid continuation of the favourable outcomes for women following the rebound in economic activity after movement restrictions were eased (see Figure 12).

Figure 11: Participation rate by sex

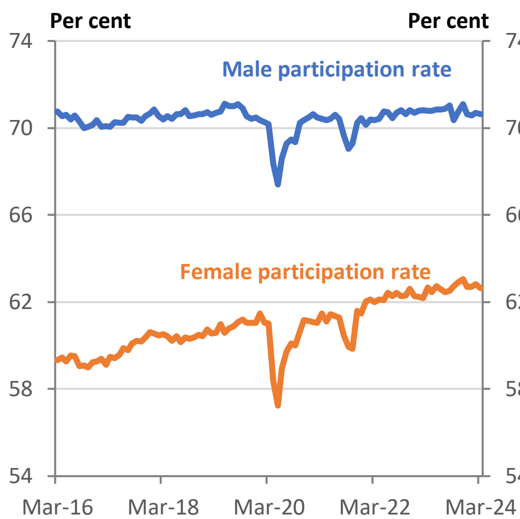


Figure 12: Index of female employment by type

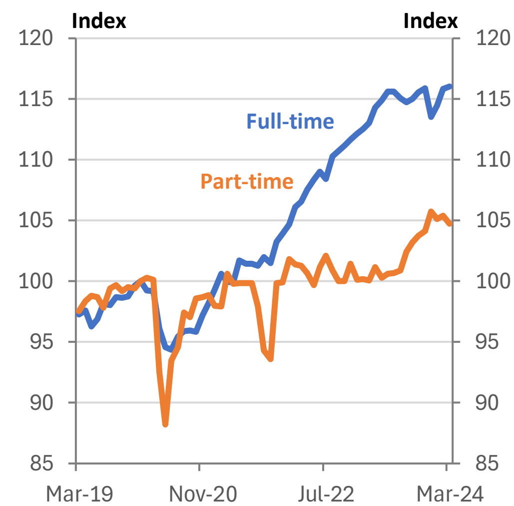


Figure 13: Unemployment rate by sex

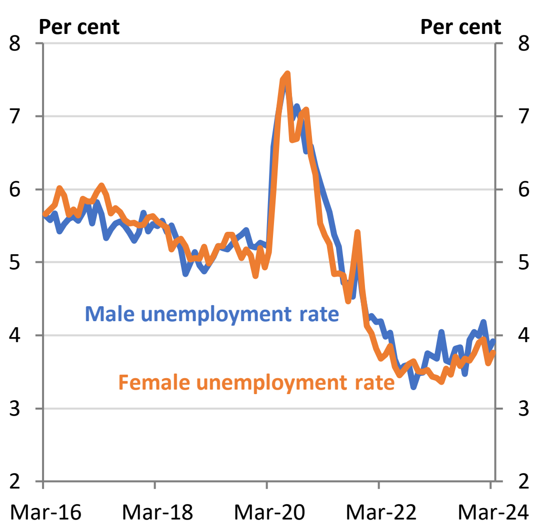
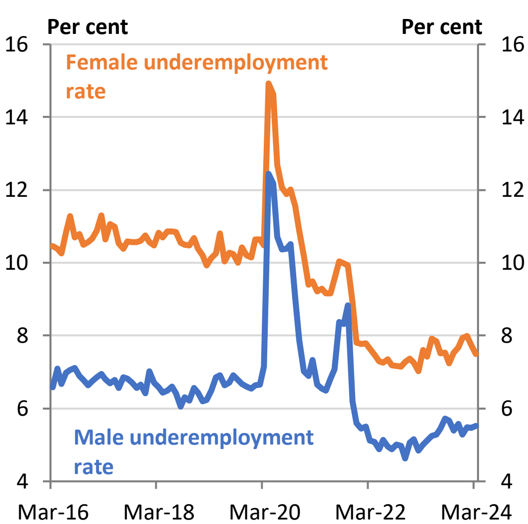


Figure 14: Underemployment rate by sex



Source: ABS Labour Force, Australia & ACTU Calculations

31. The female unemployment rate rose slightly to 3.8 per cent in March, up from 3.6 per cent a month earlier and slightly above the average of twelve months earlier of 3.6 per cent, although still below the 10-year pre-pandemic average of 5.6 per cent (see Figure 13).

32. The female underemployment rate declined to 7.5 per cent in March, down from 7.8 per cent a month earlier and below the average of the previous twelve months of 7.7 per cent, still staying below the 10-year pre-pandemic average of 10.0 per cent (see Figure 14).

33. Some employers have raised that increases to minimum and award wages in excess of their argued for position risks displacing women from the workplace and resulting in greater unemployment and underemployment.

34. While the labour market has eased, it has done so in expected ways and under the weight of a cost of living crisis and tighter monetary policy. Despite easing, the labour market for women has been solid and displayed record low levels of underutilisation and record high levels of full-time employment.

35. These good outcomes for women have continued for several years and have been punctuated by two years of strong increases in minimum and award wages, with no discernible dis-employment effects – a good indication being that the participation rate has remained above the pre-pandemic average and the unemployment rate below the pre-pandemic average.

36. These labour market outcomes for women alongside solid increases in minimum and award wages should cast doubt on any claims of dis-employment effects, given the lack of evidence for such an outcome.

3. COMMON ISSUES RAISED IN SUBMISSIONS

3.1 Productivity

37. Several of the employers' submissions have identified poor productivity outcomes over recent years as a consideration for the Panel in upwardly adjusting minimum and award wages.

38. As noted in the ACTU's initial submission (para. 230 & 231), the previous two years have been plagued by COVID-19 related factors disrupting the measurement of productivity. In brief, these include supply constraints and changes in the industry composition of output due to lockdowns.

39. While it may be tempting to suggest, as Ai Group does in its submission, that 2022-23 was a "normal" year because it lacked any movement restrictions, this is an unsophisticated view, and it would be strange to suggest that the end of movement restrictions meant the aftereffects of COVID-19 no longer impacted the economy in that year.[3]

40. Over 2022-23, hours worked was still in the process of normalising (see Figure 135 of the ACTU initial submission), and RBA analysis suggested that during the length of that financial year supply disruptions were making significant contributions to annual inflation growth.[4] Further, the capital-labour ratio was still unsettled as supply disruptions and a reorganisation of spending priorities by businesses during the pandemic had meant a backlog of investment that has only recently been addressed.

41. These are symptoms of what the Productivity Commission called the productivity bubble, which was driven in the main by COVID-related disruptions and is in the final stages of unwinding as of December 2023, bringing productivity back to the pre-pandemic trend.[5]

42. Instead of focusing on the most recent financial years, which as noted earlier have been beset by pandemic-related disruptions, it would be more enlightening to focus on prospects for productivity growth, which, as argued in the ACTU's initial submission, the Panel has good

---

[3] Australian Industry Group submission, p. 33.
[4] Estimating the Relative Contributions of Supply and Demand Drivers to Inflation in Australia | Bulletin – June 2023 | RBA
[5] December 2023 - Quarterly Bulletin - PC Productivity Insights

reasons to be optimistic about given the beginning of the normalisation of hours worked in recent quarters and the substantial investment that firms have undertaken.

43. It is also instructive to consider a longer-run view, as we did in our initial submission and which the Panel has previously indicated a preference for. That more reasonable and evidentially supported standpoint is that, over long stretches of time, productivity has:

a. on average grown more than either producer or consumer real wages; and

b. in total grown more than either producer or consumer wages.

44. A myopic focus on recent outcomes in productivity is both uninformative and unhelpful, as it indicates very little beyond the idea that COVID-19 was disruptive for the economy and made productivity hard to measure.

3.1.1 Restaurant and Catering Industry Association

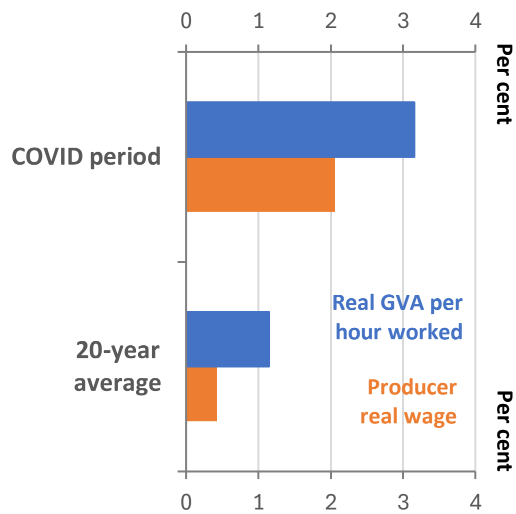
45. The Restaurant and Catering Industry Association of Australia identified lacklustre productivity growth as a relevant consideration for the Panel, including the necessity of labour productivity increasing to support a wage rise.[6]

46. Figure 15 shows average growth in Real gross value added per hour worked and real producer wages for the Accommodation and Food Services industry. On average, the industry has seen stronger growth in output per hour worked than it has seen for growth in wage costs across both the COVID-19 period and in the 20 years prior to financial year 2022-23.

47. This suggests that the industry is well positioned to manage an increase in minimum and award wages in the current Review and that the Panel can be untroubled by taking into consideration productivity growth in the sector when considering an increase in minimum and award wages.

[6] Restaurant & Catering Industry Association of Australia submission, p. 5.

Figure 15: Productivity and wage cost growth in Accommodation and Food Services



Source: ABS Australian System of National Accounts, ABS Labour Account Australia, ABS Labour Force, Australia, Detailed, Productivity Commission & ACTU calculations

48. The Restaurant and Catering Industry Association of Australia also suggested that profit growth has been lacklustre. As noted in the ACTU's initial submission (see paras. 138 to 140), the profit to income ratio has been broadly stable at around 8.5 per cent; unincorporated enterprises have seen an average of 17.5 per cent annual growth in profits in the previous twelve months; and companies have seen an average of 41.2 per cent annual growth in profits over the twelve months to December 2023, none of which is suggestive of lacklustre profit growth.

3.1.2 Australian Chamber of Commerce and Industry

49. ACCI claimed in its submission that consumer wages have tracked above productivity growth over the past thirty years, citing a 5-year Productivity Inquiry published by the Productivity Commission.[7]

[7] Australian Chamber of Commerce and Industry submission, p. 18 & [Volume 2 - 5-year Productivity Inquiry: Key to growth (pc.gov.au)]

50. The claim is based on an index beginning in the 1960s. Indexes are sensitive to the base year chosen and represent an increase relative to that base year. The claim also glosses over the significant changes in economic institutions that took place over that stretch of Australia's economic history, and it would be more appropriate to make some effort to precisely sub-divide the time into different policy and/or accumulation regimes (for example pre and post the floating of the dollar, or before and after the inflation targeting regime of monetary policy was introduced in the early 1990s).

51. Given the sensitivity of indexes to the base year chosen, in considering the relationship it would be more appropriate to examine the difference between labour productivity growth and (in this case) consumer real wage growth to give an indication of the extent to which consumer wages have tracked productivity growth.[8]

52. Figure 16 shows the extent of decoupling between labour productivity and consumer real wages between 1995-96 and 2022-23 for the whole economy. Figure 17 shows the same relationship but for the market sector excluding industries that export commodities, in line with the spirit of the Productivity Commission's note on wage decoupling.

53. In seventeen of the last twenty-eight years, economy-wide labour productivity has grown more strongly than consumer real wages, leading to wage decoupling in those years. In the non-commodities market sector, labour productivity has grown more strongly than consumer real wages in eighteen of the last twenty-eight years.

54. This represents total growth of 44.9 per cent for GDP per hour worked between FY95 to FY23, while consumer wages increased 35.6 per cent over the same period. For the non-commodity market sector, labour productivity has grown by 50.5 per cent between FY95 and FY23, while consumer wages have increased 34.7 per cent over the same period.

55. Given data availability on an industry basis, it is challenging to say whether the extent of wage decoupling of this sort extends further into the past than 1995-96. Nevertheless, the claim made

[8] Consumer real wages refer to compensation of employees per hour deflated by the consumer price index and give real wages from the perspective of workers, as distinct from wages costs of employers given by the producer real wage.

by ACCI is somewhat undermined by looking more directly at the relationship between growth in labour productivity and growth in consumer real wages.

Figure 16: Economy-wide wage decoupling

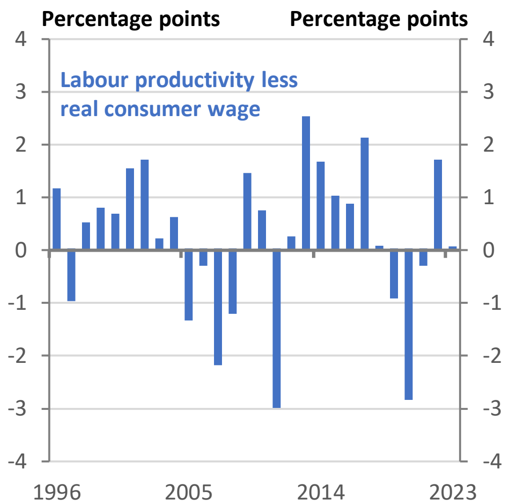
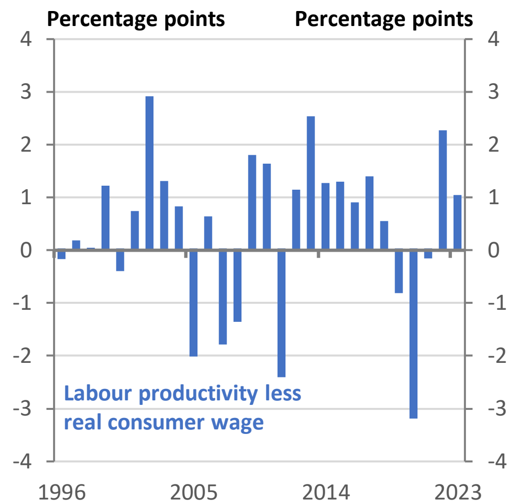


Figure 17: Non-commodities market sector wage decoupling



Source: ABS Australian System of National Accounts, ABS Labour Account Australia, ABS Consumer Price Index, Australia, ABS Labour Force, Australia, Detailed, Productivity Commission & ACTU calculations

56. If ACCI's claim made any sense, there would be decoupling in favour of wages in at least as many years as there was decoupling in favour of labour productivity. Given this is evidently not the case, the Panel should not put any weight behind ACCI's claim that consumer wages have tracked above productivity growth over the last few decades.

57. When considering the relationship between labour productivity growth and real wage growth, the Panel should be mindful that in most years across the last three decades, labour productivity has grown more strongly than consumer real wages, leading to extensive wage decoupling. The Panel should also be mindful of the use of particular analytical methods and how the choice of a base year in constructing an index can occasionally lead to misleading results if not appropriately handled.

58. Something should also be said about ACCI's prognostications on page 2 of its submission about productivity challenges arising from changes to industrial relations legislation. In short, the

predictions are pure conjecture and fail to identify particular reforms of concern let alone explain any theoretical or evidentiary connection between such reforms and the employers affected by the Panel's decisions. They should be given no weight in the Panel's determination.

3.2 Wage-price spiral

59. Several employer groups raised concerns around the possibility of a wage-price spiral of the type experienced during the 1970s, including the Australian Retailers Association, the Housing Industry Association, and Australian Business Industrial.[9]

60. The suggestion that an increase in minimum and award wages in the current economic context would trigger or presage a wage-price spiral is without merit and should not be accepted by the Panel.

61. At the time of the 1970s wage-price spiral[10], annual growth in average weekly earnings peaked at 28.1 per cent and averaged 18.6 per cent between September 1973 and June 1976. Since November 2019, just prior to the pandemic, the strongest growth in total average weekly earnings has been 5.4 per cent, nothing like the growth seen during the 1970s, and annual growth in the period after November 2019 has averaged 3.1 per cent.

62. Further, current economic institutions do not resemble those prevailing in the 1970s. The 1970s economy was characterised by strong protections for domestic manufacturing; industrial action that was widespread and orders of magnitude higher than prevails currently; the Conciliation and Arbitration Commission's decisions affected a significantly higher proportion of the workforce's wages; and increases in award wages routinely flowed through to the rest of the economy in short order. Each of these characteristics has since shifted dramatically since the 1970s, in large part due to restructuring undertaken in the 1980s and early 1990s. Accordingly, the suggestion that a wage-price spiral is likely to arise under the current constellation of economic institutions is fraught by either ignorance or a high degree of false equivalence.

---

[9] Australian Chamber of Commerce and Industry submission, pp. 1, 4, & 30; Housing Industry Association submission, p. 5; Australian Retailers Association, p. 7.

[10] It would be more appropriate to call the episode of the 1970s a price-wage spiral, as wage increases usually followed in response to increases in inflationary pressures and the initial trigger in 1973 arose from price increases in staple foods such as mutton, lamb, potatoes, and onions (see Barry Hughes, *Exit Full Employment*, 1980)

63. Further, a comparison of the GDP deflator in the 1970s and the current inflationary period also shows how different the drivers of upward price pressures are. Figure 18, which shows the GDP deflator decomposition for the 1970s, illustrates the large contribution of compensation of employees to economy-wide upward price pressures, a contribution which averaged around 54.1 per cent between September 1973 and June 1976. By contrast, in the current inflationary period, economy-wide price pressures have been in the main driven by gross operating surplus and import prices (see Figure 19). Compensation of employees has only picked up as a contributor in the most recent quarters and even then, with nothing like the magnitude seen in the 1970s.

64. Further, as argued in the ACTU's initial submission, productivity growth has on average and over long stretches of time outpaced growth in both consumer and producer real wages. This contrasts with the 1970s, when real wages were indeed outgrowing productivity by some magnitude, contributing to conditions conducive to a wage-price spiral. The discrepancy between productivity growth and wage growth that prevailed during the 1970s does not exist in the current period and should add to further scepticism that a wage-price spiral is likely to arise.

Figure 18: Factor income price drivers, 1970s period

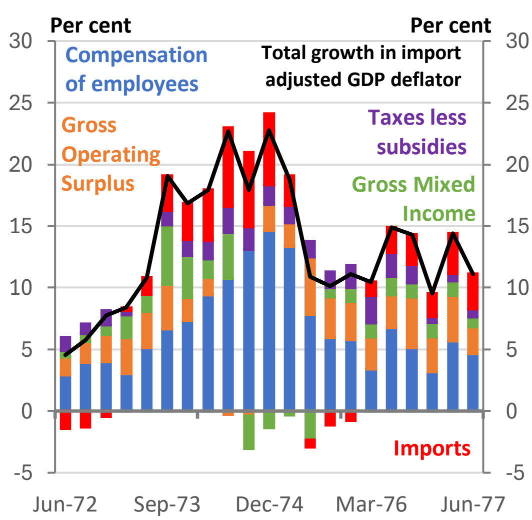
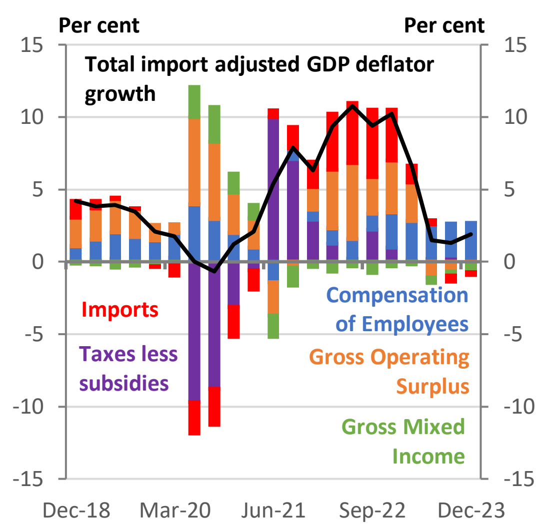


Figure 19: Factor income price drivers, 2020s period



Source: ABS National Accounts: Income, Expenditure and Product, ABS Balance of Payments and International Investment Position & ACTU calculations

65. In additional to this, analysis by the Centre for Future Work (Stanford and Jericho 2024)[11], argued that the 'impact of economy-wide prices of even a large increase in minimum and Award wages is negligible, due both to the limited coverage of Awards, and the relatively low starting level of Award wages.' Coverage such as this – a far cry from the centralised wage fixing of 50 years ago – does not suggest a wage-price spiral is a likely outcome. Consistent with this view, the Australian Government noted in its submission (para. 13) that the 'likelihood of a wage-price spiral is currently low, with medium-term inflation expectations remaining anchored within the inflation target band.'[12]

66. Treasury has assessed that there have been no signs of a wage price spiral since the Treasury Secretary spoke to the Senate Economics Legislation Committee on 30 May 2023, where he indicated that there 'are no signs of a wage-price spiral developing'[13], an assessment repeated consistently since then and appearing most recently in the 2023-24 *Mid-Year Economic and Fiscal Outlook*, published in December 2023.[14]

67. Given the repeated assessments by the Treasury and the total lack of evidence for the emergence of a wage-price spiral, the Panel should conclude that the warnings by employers of this risk are unjustified and should not be taken seriously.

3.3 Contributions to earnings growth and the potential dis-employment effects

68. The Australian Industry Group claimed in their submission that there has been a shift in the source of earnings from employment to wage rates, with increases in hours worked identified as the principal contributor to earnings growth in the first half of 2023, and income the dominant source in the second half. This claim is used in aid of an assertion that further strong growth in wage rates will have a dis-employment effect.[15]

---

11 The Irrelevance of Minimum Wages to Future Inflation | The Australia Institute's Centre for Future Work
12 Australian Government - AWR submissions (fwc.gov.au)
13 Opening statement to the Economics Legislation Committee | Treasury.gov.au
14 Mid-Year Economic and Fiscal Outlook 2023–24 (budget.gov.au)
15 Australian Industry Group submission, p. 38.

69. Figure 20 shows the relative contributions to year on year growth in average hourly income, while Figure 21 shows contributions to year on year growth in average income per person employed. Significantly, in both cases labour income growth has been the main driver of year on year growth for each average hourly income and average income per person employed and this has been the case since September 2021.[16]

Figure 20: Contributions to average income per hour worked

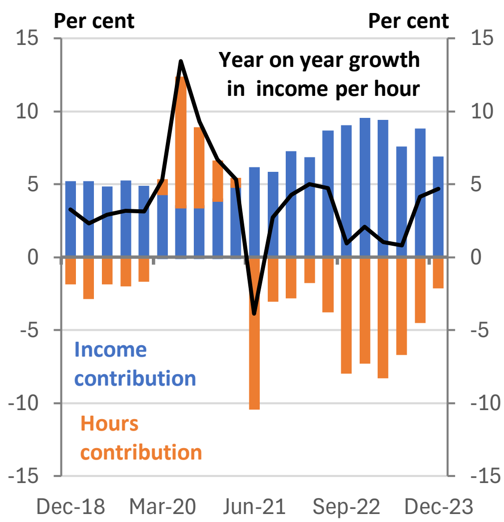
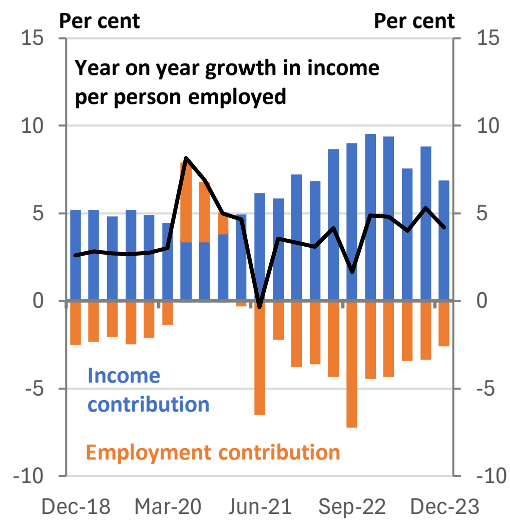


Figure 21: Contributions to average income per employed person



Source: ABS Labour Account Australia & ACTU Calculations

70. The strong contribution to average income over the previous three years has coincided with the labour market showing considerable strength, including solid growth in full-time employment, elevated job vacancies, and the lowest under- and unemployment rates in decades.

71. The Panel should be singularly untroubled by the notion that wage rates are driving growth in average income per hour worked and per person employed, as this has been the case for at least two and a half years and has coincided with appropriate increases in minimum and award wages with no dis-employment effects.

[16] Hourly income contributions are growth in income less growth in hours worked, such that a fall in hours worked contributes positively to hourly income growth.

3.4 Will the AWR decision drive inflation?

72. Several employer submissions claimed that increases in the minimum and award wages would drive inflation or otherwise make it challenging to return inflation to the target band.[17]

73. Quite apart from the fact that the institutional mandates of the FWC and RBA are distinct, the claim is an unusual one given that, as noted in the ACTU's initial submission (see Figure 69 and Figure 70), inflation has tracked below both the Treasury and the Reserve Bank's forecast path of return to target published prior to the last Review decision.

74. The forecasts of both the Treasury and the Reserve Bank of Australia were unmodified following the notable increase in minimum and award wages last year, with the timing of the return to target unchanged between forecasts published prior to the last decision and updated forecasts published after the decision.

75. The employer's submissions also placed undue emphasis on warnings around services inflation resulting from an increase in minimum and award wages. The submissions advanced a tedious argument that overlooks a) that annual growth in services inflation has eased at a brisk pace over the last two years, despite appropriately sized increases in minimum and award wages by the Panel and b) that the composition of inflation is important to the extent that services inflation has historically run above goods price inflation (see para. 51 of the ACTU initial submission).

76. Further, the increase in minimum and award wages flows through in the September quarter of each calendar year, with the size of the increase known in advance. This suggests that there would be a small and one-off level shift in prices each year that is concluded by the start of the next quarter and that has minimal flow-on effects thereafter.

[17] Australian Industry Group submission, p. 11; Australian Chamber of Commerce and Industry submission, p. 31; and Australian Business Industrial submission, p. 15.

77. Beyond even this, as noted in the ACTU's initial submission, analysis by the Centre for Future Work (Stanford and Jericho 2024)[18] suggests that this level shift will be minimal given the small increase in the wage bill that arises from the Review's decision each year.

78. Consistent with the analysis by the Centre for Future Work, the information note 'Award-dependent wages in the economy' notes that while the share of employees covered by modern awards is slightly higher than 2022, the share of the total wages bill and average wage are both slightly lower. The total compensation of employees covered by modern awards as a share of GDP is also lower than 2022.[19] This provides further evidence that an increase in minimum and award wages is unlikely to have any impact on inflation returning to the RBA's target band in line.

79. ACCI argued in its submission that the Panel's decisions in the last two years have underestimated minimum and award wages' contribution to inflation growth, pointing to revisions to the contributions to the Wage Price Index published by the ABS.

80. As noted in the ACTU's initial submission (para. 68), the contributions to growth series refers to quarterly growth in the original series of the Wage Price Index, which is not the widely reported seasonally adjusted series that is used by economists and commentators to take the pulse of wages growth. It is also not the main growth rate referenced in most economic analysis by market economists and official sector forecasters, with annual growth in the WPI most referred for this purpose.

81. As noted in the ACTU's initial submission, the ABS's seasonal adjustment process will smooth out a regular increase in award wages in the September quarter given the routine occurrence of the implementation of the Fair Work Commission's decision at this time.[20]

[18] The Irrelevance of Minimum Wages to Future Inflation | The Australia Institute's Centre for Future Work
[19] Information note—Award dependent wages in the economy (fwc.gov.au)
[20] Seasonal adjustment is the process of estimation and then removing from a time series influences that are systematic and calendar related. Observed data needs to be seasonally adjusted as seasonal effects can conceal both the true underlying movement in the series, as well as certain non-seasonal characteristics which may be of interest to analysts. Seasonal patterns are also reanalysed annually to reflect known changes to regular events.

82. The Panel should not be in anyway troubled by the routine undertaking of revisions in a particular analytical series by the ABS and nor should it take from those revisions any suggestion that increases in award wages are disproportionately driving wages growth.

3.5 Cumulative impact of AWR decisions

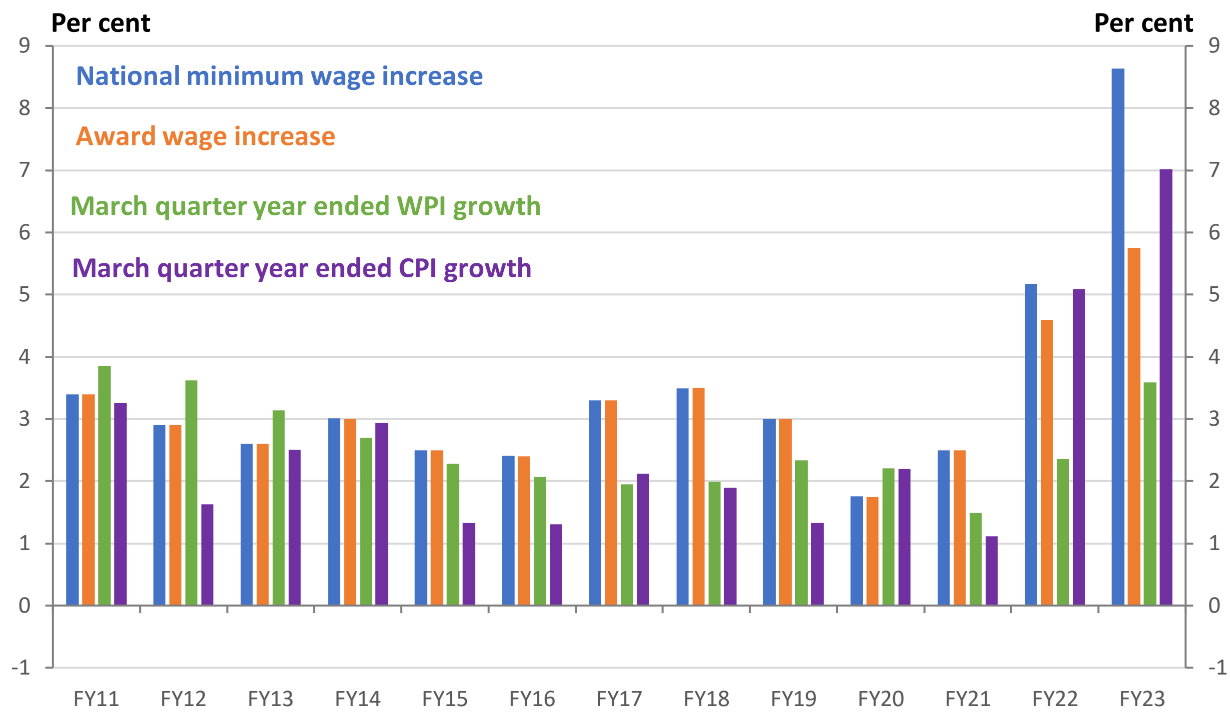
83. Both ACCI's and AiG's submissions claimed that the Panel increased minimum and award wages disproportionately as the increases were above economy-wide wage growth as measured by the Wage Price Index. AiG goes so far as to claim that it is not sustainable for minimum and award wage increases to track above broader wages growth for an extended period.[21]

84. Figure 22 shows increases in the national minimum wage, modern award minimum wages, March quarter annual growth in the Wage Price Index and March quarter annual growth in the Consumer price Index – March being the last available quarter of data before the decision is taken.

85. From 2013-14 onwards, excepting 2019-20 during the depths of the COVID-induced lockdowns, minimum and award wages have increased at a higher rate than economy-wide wages. This is an unsurprising circumstance given the safety net function of Panel's wage setting for the nation's lowest paid workers who axiomatically lack bargaining power.

[21] Australian Chamber of Commerce and Industry submission, p. 28; Australian Industry Group submission, p. 31.

Figure 22: Growth rates for the National Minimum Wage, Modern Award Wages, Wage Price Index and Consumer Price Index



Source: Fair Work Commission (various years), ABS Consumer Price Index, Australia, ABS Wage Price Index, Australia & ACTU calculations

86. It would be reasonable to suppose that nine of the last ten years constitute what AiG term an extended period. It is an inconvenient truth for the proponents of the unsustainability thesis that this extended period coincided with the longest run of uninterrupted economic growth in Australia's history – there not having been a recession after the early 1990s until the pandemic-induced recession of March and June 2020 – and a period of below-target inflation where former Reserve Bank Governor Philip Lowe famously identified a crisis in wages growth and called for stronger pay rises for workers.[22]

87. It is also unclear what AiG consider to constitute 'unsustainable' given the relatively stable economic conditions that arose in the years in which minimum and award wages were above economy-wide wage growth. Appeals to such an unserious and nebulous concept should carry

[22] Rise up and demand pay increases, Reserve Bank chief urges workers | Australia news | The Guardian

no weight in the Panel's decisions. In any event, the most recent period of increases in minimum and award wages have coincided with an uplift in the profit to income ratio.

88. As noted in the ACTU's initial submission, the non-mining profit to income ratio is above levels prevailing prior to the pandemic (see Figure 21 of ACTU initial submission), and while it has eased very slightly, it remains above the 10-year pre-pandemic average and has done so in the wake of both the previous Review decisions. Business profits are also 33.1 per cent higher than levels prevailing in December 2019, having been around 30 per cent higher than December 2019 levels since December 2022 (see Figure 22 of the ACTU initial submission).

89. Further, as noted in the ACTU's initial submission, there has been a pick-up in total businesses operating, with quarterly growth having been positive across calendar year 2023 alongside positive annual growth over the past twelve months (see Figure 2015 of ACTU initial submission). The exit rate for firms employing the lion's share of award-reliant employees has also been stable since 2019-20 (see Figure 216).

90. A fair finding of the "cumulative effects" of AWR decisions might be that, beyond personal income and distributional effects, minimum and award wages growing more strongly than economy-wide wages as measured by the Wage Price Index has no discernible impact on economic outcomes, employment outcomes or much of anything else.

3.6 Inflation catch-up

91. It is worth recalling in the context of employers' unhelpful and alarmist views about increases to award wages being unsustainable that for the last three years, award wage increases granted by the Review's decisions have been lower than inflation outcomes (see Figure 48 of the ACTU's initial submission), which has contributed to the cumulative decline in real wages for workers on awards.

92. The Panel noted that "the increases we have determined will mean a real wage cut for some award reliant employees" and that "this is an issue that can be addressed in subsequent reviews."[23]

93. Given the shifting balance of risks identified by the Australian Government in its submission (see para. 12)[24] towards the need to consider growth outcomes; the on-going cost of living crisis precipitated by the severe decline in real wages; and the evidence to date that the Panel's increases in minimum and award wages have had little effect on macroeconomic outcomes, the current Review would be an opportune time to make up lost ground for Australia's award reliant employees. Workers on awards are currently around $5,200 worse off relative to if award wages had increased in line with inflation. The ACTU claim would help workers meet current price rises and make up for this accumulated difference.

[23] [2022] FWCFB 3500 at [196].

[24] Australian Government - AWR submissions (fwc.gov.au)

4. COMMENT ON SPECIFIC SUBMISSIONS

4.1 National Farmers Federation

94. The agriculture sector is typically highly volatile, however what distinguishes a good year from a bad year typically has little to do with award wages. As noted in the NFF's submission, many farmers already voluntary pay above award rates in order to attract workers[25].

95. As the NFF readily admit in their submission, farmers' need for labour fluctuates[26] and labour is sourced heavily from contract and labour hire sources[27]. The declines in production to which the NFF refer[28] therefore need to be viewed against the capacity of the sector to scale its labour costs accordingly.

96. As is evident from the charts on page 9 and 10 of the NFF's submission, the agriculture sector is coming off the boil from exceptionally good years. Indeed, the ABARES report which the NFF's submission appears to draw heavily from[29] forecasts that most of the unfavourable circumstances referred to in the NFF's submission will improve through 2024/25, including:
    a. A 6 per cent rise in the value of agricultural production;
    b. A rebound in livestock prices to close to long term averages, driving a 12per cent increase in the value of livestock and livestock products;
    c. A 47 per cent increase in broadcare farm cash income; and
    d. A 2 per cent fall in input costs, in part because fertiliser and chemical price have declined to "now sit just above long term averages"[30].

97. We would caution against the Panel accepting the simplistic view expressed by the NFF concerning the impact of labour costs on access to international markets. Access to international

---

[25] At Page 14
[26] At Page 7
[27] At Page 12.
[28] At Page 9.
[29] ABARES, Agricultural Outlook March 2024
[30] Ibid.

markets is heavily influenced by trade policy and geopolitical considerations. Australia's top 10 export destinations for agricultural produce[31] are each parties to Free Trade Agreements with Australia (China-Australia FTA, Japan Australia FTA, Korea-Australia FTA, Indonesia-Australia CEPA, Australia-United States FTA, Australia-New Zealand CERTA, ASEAN-Australia-New Zealand FTA) which contain favourable terms for Australia's agricultural exports. In the case of China and Japan - our two biggest export destinations for agricultural produce - the relevant agreements provide incremental reductions to some agricultural tariffs over time. For example, the China-Australia FTA provides that from 1 January 2024, remaining tariffs on Australian beef cheese, butter, cheese, yoghurt and liquid milk will be eliminated.[32]

98. Labour costs and input costs more generally have been shown in a recent analysis by ORM Consulting (initially for the Australian Government's Grains Research and Development Corporation[33] in February 2024 and updated in April[34]) of Victorian cropping farms to have been remarkably stable as a share of Gross income over the last decade, notwithstanding input cost volatility, as show in Figure 23.

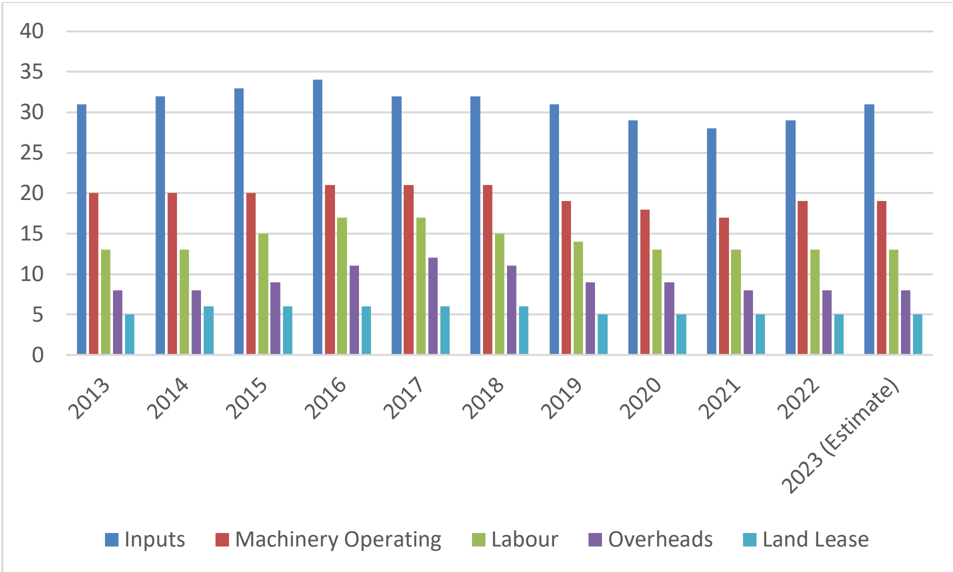
[31] Per ABARES Trade Dashboard: China, Japan, United States, Korea, Indonesia, Vietnam, New Zealand, Philippines, Malaysia, Thailand.

[32] Department of Foreign Affairs and Trade, ChAFTA fact sheet; Agriculture and processed food.

[33] Grains Research & Development Corporation, Are rising input costs the greatest threat to farm profitability?, February 2024

[34] ORM Consulting, The biggest threats to farm profitability, April 2024.

Figure 23: Selected input costs as a share of gross income, 2013-2023



Source: ORM Consulting

4.2 AUSVEG

99. AUSVEG report concerns about input costs rises (including labour, fertiliser, chemicals, diesel and energy), labour shortages, inability to raise prices and international competitiveness on wage costs. We refer to and repeat what we have said at paragraph 97 regarding the latter, while noting that perishability is a major barrier to international vegetable trade, particularly for a relatively geographically isolated island nation such as Australia. Indeed, in 2023-23, only 5.1 per cent of Australia's vegetable production (by volume) was exported and imports were less than 1 per cent (by volume) of domestic production.[35]

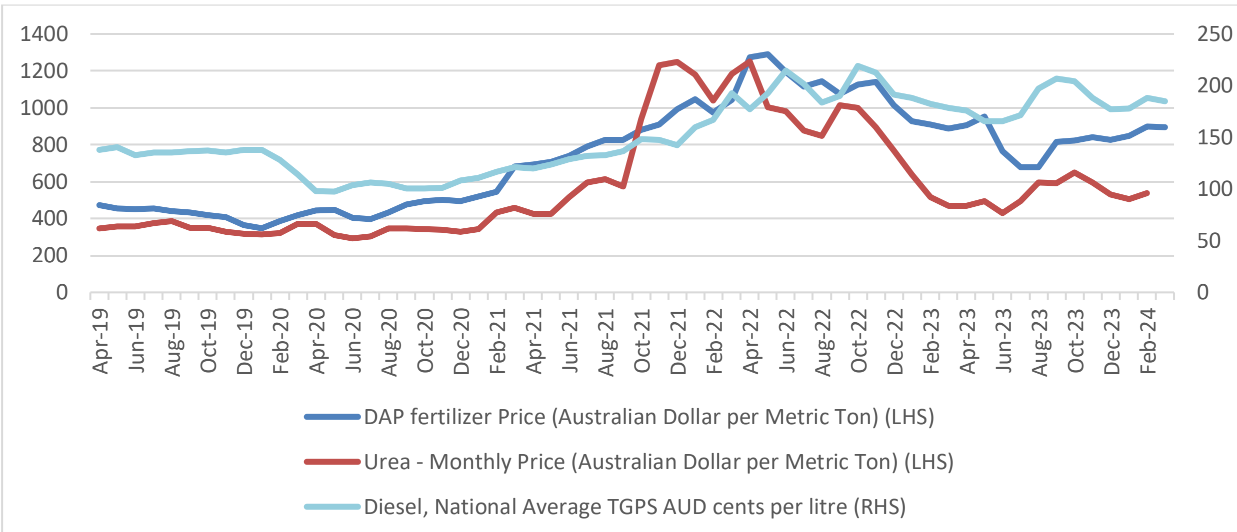
100. In relation to input costs generally, the data shown in Figure 23 tends to suggest that costs as a proportion of gross income have not varied greatly, however we acknowledge that these measures were not specific to vegetable farms. We also acknowledge that whilst businesses have a variety of energy purchasing options available to them, energy has become more expensive

[35] Hort Innovation, 2022/23 Australian Horticulture Statistics Handbook, at p 182.

and remained at particularly high prices since 2022. This is a burden borne not only by businesses, but also by households who rely on the wages set by the Panel.

101. As to other vegetable growing input costs more generally referred to by AUSVEG, these appear to have abated somewhat since their peaks, as seen in Figure 24.

Figure 24: Selected vegetable growing input costs, 2019-2024



Source: DAP (Diammonium phosphate) & Urea pricing from Indexmundi. Diesel Terminal Gate Price from Australian Institute of Petroleum.

102. As to AUSVEG's concerns about the market power of supermarkets in setting farm gate prices, we note that a Senate Select Committee Inquiry is underway in which this issue has been raised for consideration by AUSVEG, the NFF and others. In our view, it would be more appropriate for a policy approach to be adopted which targeted the source of unfair market pricing practices rather than placing a handbrake on safety net wages which would do nothing to prevent it.

4.3 South Australian Wine Association

103. We acknowledge challenges the Wine industry has faced particularly since the change in tariff policy in China in 2020 which drastically reduced wine imports from Australia. As widely reported in recent weeks, that policy position has now changed, with China's Ministry of

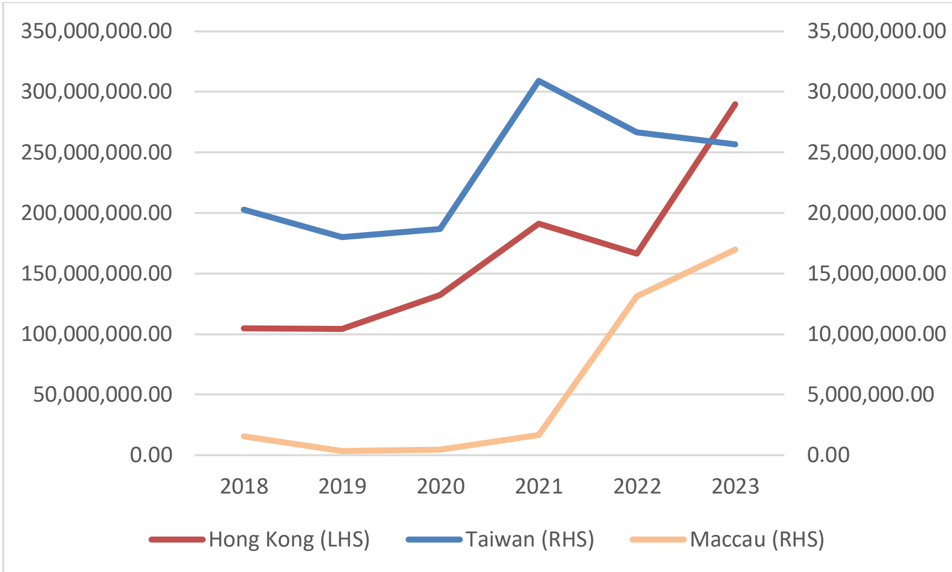
Commerce announcing that duties on Australian wine exported to mainland China will be removed effective 29 March 2024.[36]

104. Whilst we do not dispute the SA Wine Industry Association's core concern regarding global oversupply, we nonetheless have cause for optimism that the re-opening of the mainland China market will be of benefit to the Australian Wine Industry as whole and place it in a relatively better position than it would have been had that market remained restricted. The South Australian Wine Industry Snapshot for 2023[37] indicated that numerous export markets were being considered for diversification by producers including Asia (58 per cent), North America (28 per cent) and Europe (25 per cent), with 54 per cent also interested in re-entering (or entering) the China market in the (then hypothetical) event that import duties were lifted.

105. Whilst the SA Wine Industry Association expresses concern about re-entering the Chinese market owing to a decline in wine imports in that country more generally, the Panel should note that there are indications that Australian wine has not fallen foul of consumer preferences in China. In particular, there have been interesting movements in the value of Australian wine exports to Hong Kong, Taiwan and Macau after the tariff change in 2020 (Figure 25), suggesting either a booming appetite for wine on those islands or that some consumer demand in mainland China is being satisfied indirectly for those able to secure it via that route. The latter possibility provides reason to be optimistic that direct sales into China will be an important source of additional revenue for Australian producers as customers in China will be able to secure with less complexity and cost.

[36] Wine Australia, Export Market Guide - China
[37] South Australian Wine Industry Association, 2023 SA Wine Industry Snapshot

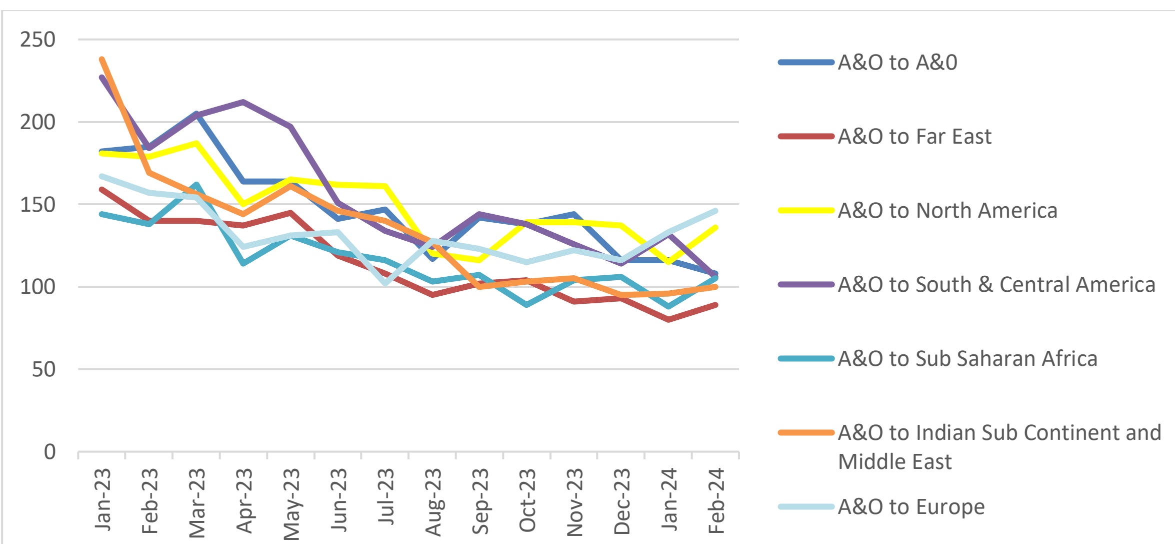
Figure 25: Total value of wine exports ($AUD), selected destinations, 2018-2023



Source: Wine Australia

106. To the extent that the South Australian Wine Industry Association rely on the costs of shipping wine for export (per pages 6-7 of their submission), we note that shipping cost indexes for major trade routes have generally declined through 2023 and into 2024, as shown below.

Figure 26: Shipping cost indexes, major trade routes ex Australia & Oceania



Source: CTS/Cedar Container Statistics. A&O = Australia and Oceania

4.4 Entrepreneurial and Small Business Women Australia

107. We strongly oppose the suggestion made at page 2 of the ESBWA submission that there should be a differential between award wages for employees in small business versus larger businesses. There is no cogent, evidence-based justification advanced by reference to the relevant statutory criteria in support of this proposal. Moreover, the submission fails to engage to with the impacts of the proposal on small businesses already competing for workers at a time of elevated job vacancies.

108. The generic grievances of ESBWA as to the difficulties faced by small business fail to draw any link between the award wages paid by those businesses and the difficulties complained of. No attempt is made to differentiate between the circumstances of non-employing business (60 per cent of all business[38]) and other small businesses. The Panel should note that the 2023 *Employee Earnings and Hours* data demonstrates that among businesses of under 20 employees, around two thirds of the employee workforce (that is employees excluding the owner managers themselves) do not have their pay set by an award.[39]

109. ESBWA asserts at page 3 of its submission that that the change in entries and exits in the December quarter of 2023 between employing versus non employing businesses suggests "that businesses are downsizing and struggling to maintain employment levels". Data concerning entries and exists, particularly over such a short period, are not an optimal foundation for making such a claim and our more detailed analysis in section 9.2 of Chapter 9 of our initial submission offers a strong rebuttal. The ABS longitudinal data on the *survivability* of businesses is also useful for examining the trajectory of employing versus non employing businesses, albeit being current only to June 2023. It shows that of businesses operating in June 2019, only 57.9 per cent of non-employing businesses survived to June 2023, compared to 74.9 per cent of employing businesses. Small businesses of 1-4 employees and 5-19 employees also had better survivability (72 per cent and 80.3 per cent respectively) than non-employing business[40]. The stronger survivability of employing business was also observed for businesses which *commenced*

[38] Australian Small Business and Family Enterprise Ombudsman, Small Business Matters, June 2023, at Chart 1.
[39] Data Cube 2, Table 7
[40] ABS 8165.0, Data Cube 1 Table 15.

operating in 2019/20, where 46.6 per cent of non-employing business survived compared to 63.1 per cent of employing businesses (1-4 employees 62.4 per cent, 5-19 employees 67.9 per cent).[41] To the extent that the requirement to pay wages is correlated at all with business survivability, it appears that the relationship is inverse to that contended for by ESBWA.

110. For completeness, we regard the recommendations of ESWBA at page 4 of its submission seeking tax cuts and energy subsidies for small businesses along with a suggestion to "find other ways to support low-income earners" (i.e. ways other than wage increases) as perhaps the most egregious example of rent seeking we have seen in any materials filed in an Annual Wage Review.

4.5 Housing Industry Association

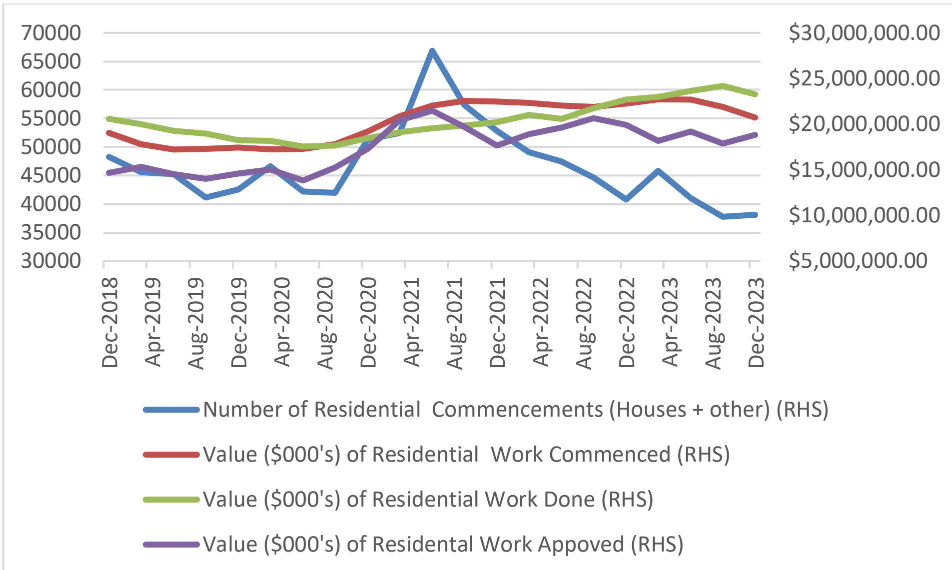
111. The ACTU does not dispute that activity in the residential building sector is affected by the impact of the RBA's cash rate on both the cost of borrowing and the costs of living generally. However, it is disappointing that the HIA choose not to acknowledge that at least some of the decline in lending and activity presented in their submission is likely to be related to the cessation of the Federal Governments *HomeBuilder* program, which was devised to "support confidence in the residential construction sector and encourage consumers to proceed with purchases or renovations"[42].

112. The *HomeBuilder* program provided (subject to further eligibility conditions) grants of $25,000 for residential building works where contracts were signed between 4 June 2020, or $15,000 where the contracts were signed between 1 January 2021 and 31 March 2021. There were further eligibility requirements, including that construction needed to commence within 18 months of contracts being signed. We suggest it is obvious that *a* reason for the peak in lending and activity seen from June 2020 (in the charts on page 3-4 of HIA's submission) is related to effect of that program; and that the cessation of the program likewise explains part of the decline from that peak.

[41] ABS 8165.0, Data Cube 1 Table 16.
[42] Australian Government (Treasury), HomeBuilder

113. The HIA's position on the recent *level* of activity in sector also needs to be contextualised by reference to the *value* of the work commenced, done or approved to be done. We provide this context in Figure 27 below.

Figure 27: Level and value of building work, 2018-2023



Source: ABS 8731, 8752. All data seasonally adjusted.

114. The above analysis tends to suggest that the values of building work commenced and performed remain above pre-pandemic levels and are yet to decline to comparable levels notwithstanding the reduction in building commencements. This may be due to the duration of the projects commenced at the peak, or a change in pricing. The high value of work approved also suggests a pipeline of income ahead as new projects commence.

115. We do not dispute the HIA's claim that the building and construction industry engages a significant proportion of apprentices and skilled trades. However, given the skills shortages cited by the HIA, we fail to see how a "conservative" approach by the Panel in this Review would assist the industry in meeting the challenges of that shortage. In any event, the labour of apprentices is among the cheapest allowable by the modern award system and falls below the *Budget Standards* by a considerable margin. To the extent that the HIA have sought to make out a case of differential treatment, it ought not be accepted by the Panel.

4.6 Australian Chamber of Commerce and Industry

116. At paragraph 41 of the submission, ACCI urge that the "…revised Stage 3 tax cuts, Energy Bill Relief Fund and increased Rent Assistance should be included in any consideration of household income of low-income employees". We don't disagree that the Panel should take into account tax and transfer settings, but the task in our view requires more rigour than listing a number of policy initiatives and asserting that they warrant wage moderation in the Panel's decisions. In particular:

   a. Rent Assistance is a benefit available only to persons who are in receipt of either an income support payment or Family Tax Benefit Part A at more than the base rate.[43] In 2020, Wilkins and Zilio estimated that 16 per cent of low-paid award reliant workers were in receipt of government welfare benefits.[44] Further, Family Tax Benefit Type A is limited to persons who, ignoring other requirements, are responsible for the care of children. Eligibility for the base rate varies according to number of children and household income.[45] In 2020, Wilkins and Zilio estimated that 40.2 per cent of low-paid award reliant workers were parents.[46] Rent Assistance is therefore not a payment available to all award reliant workers. In any event, the 15 per cent increase to rent assistance payments effected in September 2023 is not (subject to what might be announced in the budget) due to increase further other than by the usual indexation methodology. That is, there will be no change to existing policy for the level of rent assistance payable for the Panel to take into account in the year ahead. Moreover, as ACCI acknowledges in paragraph 40 of its submission, the 15 per cent increase in rent assistance was insufficient to eliminate rental inflation.

   b. The Energy Bill Relief Fund is due to conclude this financial year, subject to what may be announced in the budget. The eligibility requirements differed between States and Territories, and the rebate amounts were not uniform.[47] Because of this, not all award reliant workers would have benefited from these payments or benefited to the same extent. The most that can be said at this point, again subject to the 2024-25 budget, is

[43] See Services Australia, Who can get Rent Assistance?
[44] 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 9
[45] See Services Australia, Income test for FTB Part A
[46] 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 10.
[47] See paragraph 314 of our initial submission.

that those households who did receive it in the current financial year will lose that benefit in the year ahead, and to the extent that this is relevant, the Panel has addressed this last year. This does not assist ACCI's claim for moderation.

c. As to the Stage 3 tax changes, we have at paragraphs 303-313 of our initial submission demonstrated that this policy change will provide a lesser benefit to many award reliant workers than the LMITO which preceded it, yet the negative effect of the withdrawal of the LMITO does not seem to have been taken into account by the Panel. In those circumstances, and in light of the objective of the Stage 3 tax changes, it would not be appropriate to consider them as a moderating factor in this Review.

d. Further, the Centre for Future Work estimates that around 1.5 million workers, most of whom are on Award-dependent wages, earn less than the current tax free threshold and will therefore see no benefit from these changes. The Centre for Future Work concludes that to 'suggest that the Stage 3 tax cuts should offset some or all of this year's minimum wage increase would be especially unfair for nearly half of affected workers no receiving any tax cut.'[48]

117. ACCI's description of business profitability also lacks context in significant ways. ACCI's assertions at paragraphs 69-70 that the profit margins of most businesses are still very weak "particularly so for sectors with a highly award reliant workforce" is not proven by their discussion of profit levels or Figure 9 of their submission showing (we assume) profit growth. The most relevant observation that might be made about ACCI's Figure 9 is that of 6 Award reliant industries shown, 4 showed profit growth in 2023 whereas on an all industry basis (i.e. also taking into account non award reliant industries), profits in 2023 fell. Our initial submission seeks, at section 2.9, to provide a far more comprehensive account of business conditions, including profitability. Within that analysis, we show profit to income ratios for those industries (where available) which is indicative of margins and we also show profit levels as an index. In qualitative terms, these measures show that:

a. Margins in Accommodation and Food Services are around pre-pandemic levels and profit levels have increased, particularly for small businesses;

[48] Minimum-wage-and-inflation-2024-REVISED.pdf (futurework.org.au)

b. Margins in Administrative and support services are above pre-pandemic levels and profit levels have increased;
c. Margins in Retail trade are around pre-pandemic levels but overall profit levels have declined;
d. Margins in Arts and recreation services are industries have stabilised at below their pre-pandemic levels (although at above 10 per cent are high relative to other industries), whereas small business profit levels have risen while company profits are stabilising below their pre-pandemic levels; and
e. Margins as well as profit levels for companies and small businesses in Other services are well above pre-pandemic levels.

118. ACCI are evidently pre-occupied with any suggestion that business profits have had or are having any influence on inflation. Their precis of advice to the Treasurer "revealed through a freedom of information request"[49] fails to mention that the advice is dated 27 April 2023. Given the changing dynamics of inflation, this is a significant omission. ACCI also does not qualify its statement that "Treasury identified four key drivers of inflation" by reference to the fact that those are described in the advice as "key drivers of high *global* inflation" identified by the IMF (not Treasury itself). Nor do ACCI volunteer that the Treasury advice noted "increased opportunities for firms to pass on costs and *increase* margins in some global markets" and expressed a different view concerning the role of labour market tightness in Australia, being:

> "Unlike other advanced economies, an increase in labour supply in Australia meant that wages growth did not contribute to above target inflation"

More recently, the Australian Government noted in its submission to this Review (para. 13) that the 'likelihood of a wage-price spiral is currently low, with medium-term inflation expectations remaining anchored within the inflation target band.'[50]

119. ACCI's sensitivity regarding the drivers of inflation leads to an extraordinary slight at paragraph 75 on the ACTU and the inquiry it commissioned into price gouging, chaired by Professor Alan Fels. That inquiry made robust specific findings concerning particular pricing strategies and unfair pricing practices in particular industries.[51] ACCI is similarly dismissive of Government and

---

[49] At paragraph 81.
[50] Australian Government - AWR submissions (fwc.gov.au)
[51] ACTU, Inquiry into price gouging and unfair pricing practices final report, February 2024

Parliamentary inquiries examining, among other things, the price of food – despite this being a most obvious matter for the nation's elected representatives to concern themselves with in a cost of living crisis. ACCI's commentary on this issue reveals nothing more than a general disdain for scrutiny over pricing practices and is wholly uninformative as to any matter that the Panel is required to determine in this Review.

120. Our response to ACCI's commentary on productivity at pages 17-19 of its submission is dealt with in section 3.1 above. We do however have difficulty in comprehending the import of ACCI's commentary on "government-funded and regulated non-market services such as schools, aged care, childcare and disability support services" at paragraph 59 of their submission. The national economic (including productivity enhancing) and social significance of these industries and their expansion is not to be judged by the productivity performance of the labour engaged therein (which is notoriously difficult to measure). Moreover, ACCI's description of these industries as "non-market" and marked by "lack of competition and contestability" is not strictly correct. The fact that these industries receive government funding is not determinative of their character. Each of them allows for choice and providers do compete.

121. ACCI's reference on paragraph 85 to the NAB January Monthly business survey should be viewed in the context of comparatively better business conditions seen in February and March, as noted in section 2.2 above. In addition, NAB's Quarterly business survey generally points to a favourable start to 2024, with business conditions and trading indexes holding at their December Quarter 23 levels of +10 and +14 respectively; an improvement in the profitability index to +8 from +6 in the previous quarter, and an improvement in still weak business confidence from -6 to -2 over the quarter.[52]

122. At the conclusion of section 4.1.1 on Business Entries and Exits in its submission, ACCI invite the Panel to embark upon "a more granular level analysis of industries" than provided by "gross profits". We have endeavoured to provide this in our initial submission. ACCI's own treatment of business entries and exits however lacks the finesse it insists upon. We refer to paragraph 109 above, in which we demonstrate that business survivability has been better for employing

[52] National Australia Bank, NAB Quarterly Business Survey Q1 2024.

businesses (of any size) compared to non-employing businesses, including for businesses that commenced operations in the midst of the pandemic.

123. The Panel should not be distracted by ACCI's attempts at paragraphs 95-96 to imply that there will be a rapid transition in award reliant industries from the current state high levels of job vacancies to one of job shedding. The usual response to softening in demand is a re-assessment of hiring intentions and adjustments to hours of work, and indeed this is what is being reported through the RBA liaison unit.[53] With employment continuing to grow, vacancies still remaining elevated, and, at worst, hours worked normalising to pre-pandemic trends, there is no evidence of the drastic pivot ACCI warns of.

124. In paragraph 101 its submission, ACCI draws attention to evidence of strong wage growth in the September quarter 2023, attributing it to the influence of the AWR decision. While in a very narrow sense this is correct, ACCI leaves out important detail of the breadth of influences. The ABS noted in its press release for the September WPI release that:

> "In the private sector, higher growth was mainly driven by the Fair Work Commission's annual wage review, application of the Aged Care Work Value Case, labour market pressure, and CPI rises being factoring into wage and salary review decisions. The public sector was affected by the removal of stage wage caps and new enterprise agreements coming into effect following the finalisation of various bargaining rounds."[54]

125. Put into the context of the ABS' identification of contributing factor to wages growth in the quarter, ACCI's claim looks to be overemphasising one particular factor for narrative purposes, with the Review decision only one of six factors contributing to the rise. Elevating it above the others because it occurs first in a long list is hardly a sound basis for issuing the alarmist warning that ACCI does.

126. ACCI also suggests that the influence of the AWR decision is noteworthy in enterprise agreements. No evidence is presented beyond pointing to the Annual Average Wage Increase

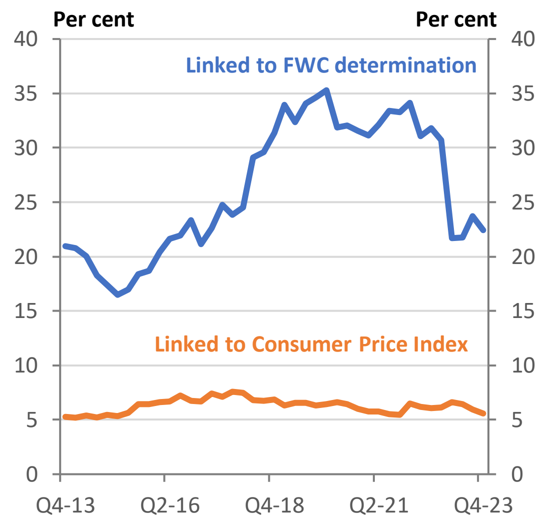
[53] See RBA, Statement on Monetary Policy February 2024, p. 22.
[54] Quarterly wages growth highest in WPI history | Australian Bureau of Statistics (abs.gov.au)

taken from the Department of Employment and Workplace Relations enterprise agreements data.

127. Given the unemployment rate is at near record lows and vacancies across most industries are above pre-pandemic levels, a more straightforward interpretation would be that wages are going up because the labour market is tight, rather than the nefarious influence of the Panel shaping wage claims by Australia's workers.

128. It is worth noting that the share of current private enterprise agreements linked to the Fair Work Commission's determination declined slightly to 22.4 per cent in the December quarter, down from 23.7 per cent in September 2023 and well below average of 32.5 per cent prevailing in the four quarters to September 2022 (see Figure 28).

Figure 28: Current private sector EBAs linked to Fair Work Commission determination and CPI



Source: Department of Employment Workplace Agreement Database & ACTU calculations
Note: Calculated as share of employees on EBAs

129. The Panel should not take seriously ACCI's overstatement of the Review's role in determining wages growth outside of minimum and award wages, given that prevailing labour market

conditions are still robust and the unemployment rate is below pre-pandemic levels and the share of enterprise agreements linked to the Review decision is falling.

130. We are surprised that ACCI continues to suggest in this Review, at paragraphs 138-144, that the Panel's decisions are not an "effective" way of addressing the needs of lower income households. Its continued repetition of this dogma is countered by its admission, at paragraphs 144 to 146, that all household types modelled in the FWC Statistical Report retained a benefit from the Panel's decision last year. ACCI offer no new analysis to refute the Panel's long held views that:

  a. low-paid workers, whose wages are likely to be affected by the NMW or modern award minimum wages, are disproportionately located in the lower deciles of equivalised household income distribution; and
  b. examining the distribution of low paid employees across *employee households* is a superior basis for assessing where the low paid fall within the distribution of household income, and their relative living standards and needs, than would be provided by an examination of their distribution across all households.[55]

In any event, on the last occasion such a distributional exercise was undertaken – which was by the Australian Government in 2022 using 2021 HILDA data – it was evident that 66.1 per cent of low paid employees were located in the lower 5 income deciles of income among employee households, and 54.9 per cent were located in in the lower 5 income deciles among all households.[56]

131. ACCI's observations regarding the living arrangements of students and part time work are seemingly ignorant of the prospect that, for some at least, these circumstances may be driven by necessity rather than choice. We also fail to see how the fact that "lower income groups are dominated by the unemployed and those outside the labour force"[57] has any bearing on the issue of the effectiveness of the Panel's decision at improving the living standards for minimum wage and award reliant employees.

[55] [2018] FWCFB 3500 at [272]-[276]
[56] Australian Government submission to the 2021-22 review, at p. 20-21.
[57] ACCI submission at paragraph 139©

132. In last year's decision, the Panel gave a considered view of the proper construction of amendments to the FW Act which introduced a reference to promoting "job security" into the object of the Act and a requirement to take into account "the need to improve access to secure work…" into the modern awards objective[58]. Consideration was also given to these issues in the Stage 1 Aged Care Work Value case[59]. ACCI's discussion at paragraphs 164-184 of its submission essentially seeks to persuade the Panel to re-determine these issues, without actually alleging any error in the reasoning provided in those decisions. There is no basis for doing so.

133. The discussion of collective bargaining in Part 3 of ACCI's submission is unpersuasive. To begin with it conflates the relevant specific requirement to take into account "the need to encourage collective bargaining" in section 134(1)(b) of the Act with the general object of the Act in section 3 to "…provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by…" (*inter alia*) "achieving productivity and fairness through an emphasis on enterprise - level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action". ACCI goes so far as to suggest that "Submissions which do not couch the need to encourage collective bargaining in the Act's inconvertible preference to this occurring at the enterprise-level should be accorded considerably less weight". Therein lies a second conflation – of "preference" (or perhaps even exclusivity) with "emphasis".

134. The "…emphasis on enterprise-level collective bargaining, underpinned by simple good faith bargaining obligations and clear rules governing industrial action" is largely implemented by Part 2-4 of the Act, which relevantly provides the following mechanisms and frameworks:

a. a system for permitting representation of employees and employers during bargaining, including by organisations and industrial associations;[60]
b. a jurisdiction for the FWC to resolve disputes that may arise during bargaining[61];

---

[58] At [28]-[30].
[59] [2023] FWCFB 93 at [171]
[60] s. 176-178A.
[61] s. 240

c. a jurisdiction for the FWC to determine, through an "intractable bargaining workplace determination", matters unresolved in bargaining where they remain unresolved notwithstanding the utilisation of the above jurisdiction;[62] and

d. good faith bargaining rules, and means to enforce them[63].

135. The third of these mechanisms is new, having been introduced by the *Secure Jobs Better Pay* Amendments. Each of the mechanisms have in common a pre-condition for their availability: They may be accessed (subject to their individual additional requirements) when bargaining is occurring between a single enterprise and its employees. Such bargaining may be commenced either by the employer(s) in the single enterprise initiating bargaining, or agreeing to bargain, or being compelled to do so by either operation of a determination of the FWC that a majority of the employees wish to do so[64]; or in some circumstances by the service of a notice in relating to bargaining for of an agreement to replace an extant agreement[65]. In particular:

a. The FWC jurisdiction to resolve disputes in bargaining may be activated by a bargaining representative without the consent of any other bargaining representative, where single enterprise bargaining has commenced.[66]

b. The FWC jurisdiction relating to the making of an "Intractable Bargaining Workplace Determination" can be validly invoked by the making of an application by a bargaining representative for a proposed single enterprise agreement, subject to a minimum bargaining period having elapsed;[67]

c. The good faith bargaining requirements may be enforced by a bargaining representative for a single enterprise agreement, provided that bargaining for such an agreement has actually commenced or is deemed to have commenced.[68]

136. However, should a participant in bargaining involving more than one enterprise wish to access any of these means of enabling collective bargaining in any circumstances outside of related employers who are essentially treated as a single enterprise[69], additional thresholds must met -

62 s. 234-235A, s. 269-275.
63 S. 229 – 233
64 s. 173(2), s. 236-237
65 s. 173(2A)
66 s.240(2)
67 S. 235(1)©, 235(5)-(6).
68 The requirements at section 230(2) are identical to those set out at section 173(2) for identifying a "notification time".
69 See s. 172(5A).

therein lies the *emphasis* on (but not exclusivity of or preference for) enterprise level collective bargaining, of which the objects of the Act at section 3 speak. The additional thresholds involve obtaining the authorisation for bargaining beyond the single enterprise level – either a single interest employer authorisation or a supported bargaining authorisation. The presence of either authorisation places a bargaining representative seeking to avail themselves of any of these options on an equal footing as a bargaining representative for a single enterprise agreement where bargaining has commenced.

137. This *emphasis* on enabling particular forms of bargaining is similarly reflected in the "clear rules governing industrial action" contained in Part 3-3 of the Act: such action can only lawfully be taken in the context of single enterprise level bargaining unless the wider level of bargaining has itself been authorised by either a single interest employer authorisation or a supported bargaining authorisation.[70]

138. Properly understood then, the requirement to take into account "the need to encourage collective bargaining" expresses no preference or exclusion as what level of bargaining may be encouraged or discouraged. Ultimately, ACCI's misguided stance on the constructional issue comes to nothing in that it adopts, at paragraph 206, the view that this particular requirement "is not a consideration which any significant weight should be given".

139. ACCI's subsequent statements as to what it "believes" or is "logical" ultimately advance no further than the generality of matters referred to in paragraph [154] of last year's decision and should be found to be of little assistance to the Panel.

4.7 Laundry Association Australia

140. The Laundry Association's submission makes two central arguments. Firstly, that the Panel needs to take into account business viability and capacity to pay, and secondly that the Panel's decisions need to be "linked" to productivity.

[70] See section 413(2) and the definition of "cooperative workplace agreement" at section 12.

141. As to the first, we have endeavoured to provide a comprehensive account of measures that are relevant to business viability and capacity to pay in our initial submission – principally in sections 2.3 and 2.9 of Chapter 2 and in Chapter 9. We consider these to be more informative to the Panel's task that the Laundry Association's assertion that "…gas prices have increased to as much as 300 per cent, importing equipment and textiles around 200 per cent, electricity, insurance, fuel, etc etc". It is not immediately apparent to us how this claim can be tested, given the failure to identify any reference points for the costs said to have increased. For example, with respect to electricity prices, they are said to have risen a "as much as 300 per cent", but of what, or over what period? We recognise that energy prices have risen for both businesses and consumers in recent years. But there are variabilities in these costs for business based on usage, entitlement to rebates, the type of contract, location, and other factors. The interplay of factors is highlighted in *Small and Medium Enterprise Retail Tariff Tracker* developed by Energy Consumers Australia[71], published in June and December. The most recent edition found, for the period October 2022-2023:

a. For businesses consuming 20,000 kWh per year, average annual electricity bills increased nationally by 8 per cent, <u>without</u> taking into account the effect of rebates.

b. In this period, electricity bills in the ACT and Tasmania decreased (but increased to varying degrees in all other States and the NT);

c. For businesses consuming 100GJ per annum gas, average bills increased in all jurisdictions to varying degrees leading to a national increase of 12 per cent average annual gas bills increased nationally by 12 per cent.

For comparison, the utilities component of CPI (which does take account of rebates) increased 12.6 per cent over the comparable period of September 2022-September 2023.

142. As to the second issue, we would reject that the legislation compels the Panel's decisions to be "linked" to productivity. We otherwise refer to our discussion of productivity in section 3.1.

4.7 National Retail Association

143. The National Retail Association's discussion of the performance of the sector over the Christmas period lacks context. Specifically, it fails to mention that the Westpac report it relies on noted

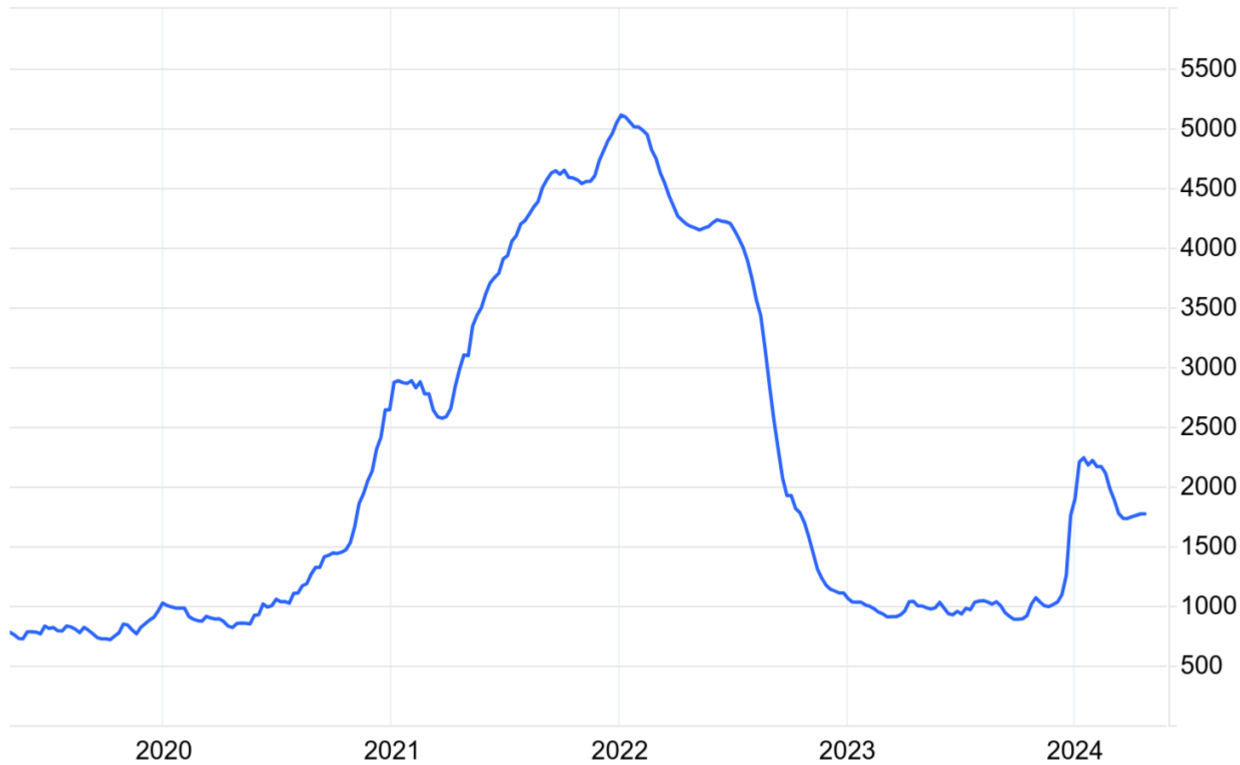
[71] Available from the Energy Consumer Australia website.

that a decline in December sales was expected owing to a substitution in spending patterns favouring "Black Friday" and "Cyber Week" in November which led to a 2.2 per cent year on year lift in November. We do not quarrel with the basic proposition that consumer spending is, as expected, responding to the costs of living crisis, however in our view the profitability of the retail sector has held up well. We discuss this, and the concern expressed about productivity in the sector, more fully in our response to the Australian Retailer's Association below.

144. The discussion of supply chain difficulties in the NRA submission in our view tends toward exaggeration. The specific drivers of concern in this respect identified by the NRA include domestic industrial action (presumably the DP World industrial action which has ended), and disruption to Red Sea trade routes. It is difficult to accept that trade routes through the Red Sea bound for Australia have much bearing on the activities of award reliant Australian Retailers. Associate Professor Sanjoy Paul of the University of Technology Sydney, explained in a piece for the Conversation that the Red Sea trade to Australia and Asia originates from Europe, and estimated that only approximately 16 per cent of Australia's total container imports are of European origin.[72] In addition, whilst re-routed trade through the Cape of Good Hope adds approximately 10 days to the journey and requires more fuel, the total costs of this adjustment need to be viewed in light of comparatively low freight rates and cargo demand, high availability of ships and the costs of shipping fuel nearly halving since their peak in 2022.[73] Meanwhile, imports from China, being Australia's largest shipping partner, have benefitted from a considerable retreat in shipping costs as measures by Trading Economics' Containerised Freight Index for container shipping from ports in China, as shown in Figure 29 below.

[72] Paul, S. "Attacks on cargo ships in the Red Sea threaten Australia's Trade", The Conversion, 9/1/2024.
[73] Wiggins, J, Greber, J, Jones, S and Mulligan, M., "Freight, oil climb as Red Sea attacks shut down shipping", AFR, 19/12/23.

Figure 29: Container Shipping prices from China ports, 2019-2024



Source: Trading Economics

145. The NRA's warnings concerning the increased costs of law reform, in particular the potential for flow on costs associated with the regulation of gig-economy delivery drivers, are alarmist conjecture, being based (at the ultimate source) on modelling which made a raft of assumptions of what forms of regulation the Fair Work Commission might ultimately determine to introduce. The Panel can place no weight on such warnings or make a credible estimation of any costs likely to arise.

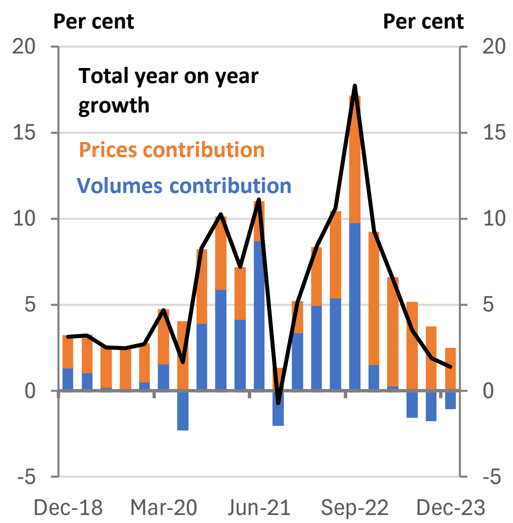
4.8 Australian Retailers Association

146. The Australian Retailer Association noted in its submission that retail businesses are trading primarily on prices instead of volumes and that costs are increasing.[74] The substance of the claim is true, with retail turnover driven mainly by prices, which has been the case since December 2022 (see Figure 30).

[74] Australian Retailers Association submission, p. 3.

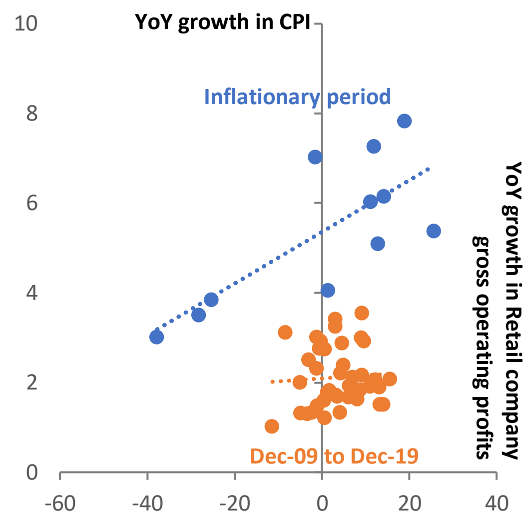
147. The ARA also mentions that its members have absorbed higher costs by reducing profit margins, although without making reference to the level of those profit margins. The sector-wide profit-to-income ratio for the retail sector (see Figure 98 of the ACTU initial submission) indicates that the implied profit margin has been elevated across the inflationary period from June 2021, above the pre-pandemic 10-year average of 5.9 per cent in every quarter from September 2021 onwards and until December 2023, where the ratio eased to at 5.8 per cent, settling around the 10-year average as inflation growth eased.

Figure 30: Annual growth in retail turnover



Source: ABS Retail Trade, Australia & ACTU calculations

Figure 31: Annual growth in Retail sector company operating profits versus annual growth in CPI



Source: ABS Business Indicators Australia & ACTU calculations

148. There also appears to have been a shift in the relationship between annual growth in retail sector company operating profits and annual growth in the consumer price index (see Figure 31). It would appear that annual growth in retail sector company operating profits now has a positive relationship with annual growth in the CPI, which could point to the notion that a reduction in profit growth in the retail sector could assist in lowering annual growth in CPI. Such a shift in the relationship would be consistent with the findings of Professor Alan Fels' recent inquiry, which found that some pricing practices in the retail sector have contributed to upwards pressure on inflation. These outcomes would reveal complaints about businesses trading on prices over

volumes as little more than a smokescreen for legitimating questionable pricing practices that evidence would suggest have contributed to the current inflationary challenge.

149. In respect of retail businesses facing increased costs, it is noteworthy that over the last ten years, between financial year 2012-23 and 2022-23, labour productivity in the Retail sector has increased 15.3 per cent while wage costs (measured by the real producer wage) have increased only 6.8 per cent. This would suggest that the Retail sector has some scope to absorb additional short-term costs given the discrepancy between productivity gains and increases in wage costs (see Figure 32).

150. In addition, in thirteen of the last twenty years, the Retail sector has seen wage decoupling (where wage decoupling means growth in labour productivity has been greater than growth in real producer wages), suggesting that in most years labour costs grow less than labour productivity (see Figure 33) and that therefore there is scope for the retail sector to absorb short-term costs without any detriment to its viability.

Figure 32: Retail sector real GVA per hour worked and real compensation per hour

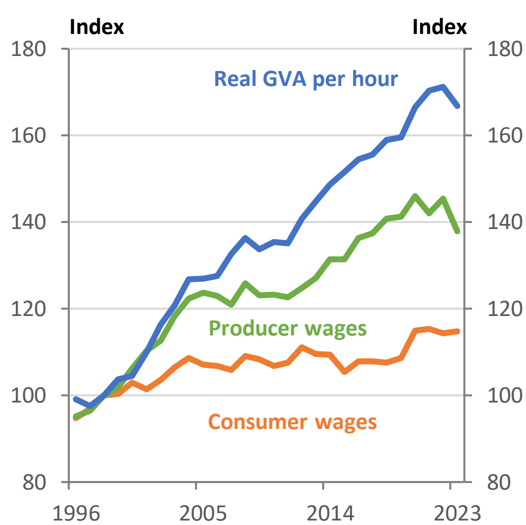
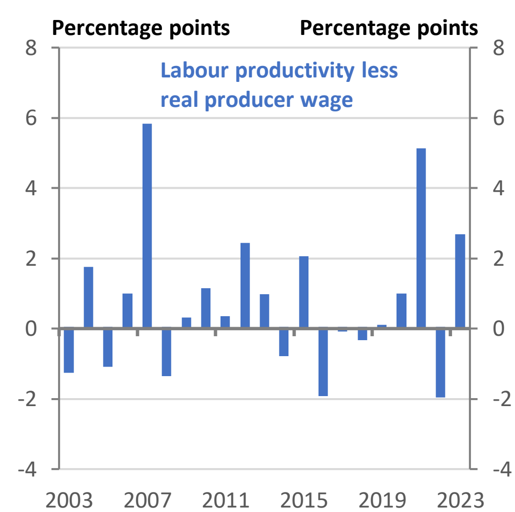


Figure 33: Wage decoupling in the Retail sector



Source: ABS Australian System of National Accounts, ABS Labour Account Australia, ABS Consumer Price Index, Australia, ABS Labour Force, Australia, Detailed, Productivity Commission & ACTU calculations
Note: Index base year is 1997-98, coinciding with the period after the introduction of the Workplace Relations Act 1996

151. The Panel should therefore treat with caution the ARA's complaints about declining profit margins and rising costs without an appropriate consideration of the level of those profit margins; the role that retail sector profit growth has played in exacerbating the current inflationary period; and the long-term relationship between productivity outcomes in the sector and increases in costs.

152. Furthermore, the Panel should not accept the formulaic approach recommended by the ARA of trimmed mean inflation minus increases to the superannuation guarantee. It is a poor and impermissible substitute for a considered weighing of the matters required to be taken into account by the Panel. For completeness, we not support the trimmed mean being treated as the only measure of inflation that Panel should take into account. Consistent with the Panel's previous observations on this matter, we hold the view that trimmed mean does not present an accurate picture of the cost of living pressures facing award reliant workers, and the low paid in particular.[75]

4.9 Master Grocers Australia

153. The submission by Master Grocers is based entirely on opinion and discussion of the results of its member survey. The ACTU submits that the Panel should give these survey results no weight for the following reasons:

   a. The survey likely suffers from significant selection and motive bias. While MGA do not explain the survey methodology, it has mostly likely been sent to members to fill in as part of the organisation's submission to the AWR, as has been the practice in previous years.[76] This introduces a significant selection bias: those members with a strong interest in opposing wage increases are likely to be more motivated to answer the survey. It also introduces a motive bias: the survey is a chance for members to complain about wage increases, rather than attempt to collect objective data.

   b. Secondly, and relatedly, the questions may have been framed to elicit negative answers about the impact of the previous AWR decision, given the publicly available survey

[75] See [2021] FWCFB 2500 at [47] and [2020] FWCFB 3500 at [132]

[76] MGA Annual Wage Review Survey 2018-19, 24 January 2019, https://www.mgatma.com.au/ma/industry-news/annualwage-review-survey-2018-19

questions from previous years.[77] For example, in question 2 from the 2018-19 survey, members are invited to select from a list of negative impacts caused by the July 2018 wage increase. A member could not tell that MGA about a positive impact, e.g. they found it easier to attract good staff, in the context of a tight labour market.

c. Thirdly, the answers are designed to be impressionistic, and therefore do not reflect the actual health of businesses in the MGA's areas of coverage. This is reinforced by contrary evidence from far more credible sources.

d. Fourthly, there appears to be a sleight of hand adopted in the way in which the MGA has presented its survey results. For example, MGA states that 33 per cent of respondents report an increase to the price of goods and 85 per cent of respondents report reduced profits as a result of shoplifting. These figures do not evidence an actual increase in goods prices (or even specify whether that increase is in the price they charge for goods or pay for goods) or a gross or net reduction in profits that isn't offset elsewhere, let alone the quantum by which there is such an increase or reduction. Nor do the results offer any useful insight into the existence (or for that matter non-existence) of any real nexus between increased prices or reduced profits and shoplifting, and the proportionality between those two things. Instead, the figures merely attribute an effect to a potentially unrelated cause. The same lack of any real evidence as to cause and effect is apparent in the MGA's purported survey findings in relation to energy costs, insurance and other matters.

4.10 Australian Industry Group

154. We not disagree with the Ai Group's central claim that the economy is slowing. However, as we have demonstrated through detailed analysis in our submission, that slowdown is expected and has been accompanied by growing output, growing profits and growing wages for most industries. These, to our mind are unquestionably good things, and show a remarkable degree of resilience.

155. Similarly, we do not disagree that the labour market has softened somewhat as Ai Group says, however evidence of this has been mixed at most and recent data tends to show relatively stable

[77] MGA Annual Wage Review 2018-19 Survey – effect on your business: https://www.surveymonkey.com/r/S72N9PJ

underutilisation measures at levels far below those which were considered normal before the pandemic. With 8 of the last 12 months seeing positive growth in Full Time employment (see Figure 9 in Chapter 2), we would disagree with Ai Group's description of full time job creation having "stalled".

156. As to the position of smaller businesses, Ai Group observe that they are "under particular pressure" by reference to profit growth measures for unincorporated businesses. A more complete picture of the position of unincorporate businesses, as we have presented in sections 2.3 and 2.9 of our initial submission, shows profit levels far in excess of what might be have been considered a normal growth trajectory prior to the pandemic for unincorporated businesses, both in aggregate and across most award reliant sectors.

157. The comments we have made at paragraph 132 above regarding ACCI's position on job security and access to secure work are equally applicable to the discussion provided by Ai Group at Chapter 11 of its submission.

158. We refer to and repeat what we have said paragraph 116 in response to Ai Group's comments on tax and welfare benefits in Chapter 7 of their submission.

159. As to the issue of collective bargaining, dealt with in Chapter 12 of the Ai Group submission, the position that is urged on the Panel is counterintuitive. Ai Group urges the Panel to accept that bargaining activity is likely to increase as result of recent law reforms. We agree. Even if one accepts (which we don't) that wage rises of significance in a Review will "axiomatically" disincentivise bargaining, the Panel would have considerably more headroom to implement significant increases without altering the overall balance of bargaining incentives given the impacts of the law reforms on bargaining behaviour. It cannot be said in those circumstances that the amendments should be viewed as "a further moderating factor".

4.11 Council of Small Business Organisations Australia

160. The comments we have made at paragraphs 117 and 156 above are equally applicable to the discussion by COSBOA in relation to the general conditions faced by small business.

161. The Panel should also note that Xero Small Business Index, relied on by COSBOA at page 1 of its submission to reflect the "burgeoning pressure" of "rising energy, rent, insurance, borrowing, transport and supply chain costs", does not in fact measure any of those metrics. Rather, it aggregates growth rates in the following measures: Sales, time to be paid, jobs and wages.[78] The March report relied on by COSBOA, attributed the decline in the index to two factors present in the last month of the quarter. Firstly, sales had declined in large part to only small growth (0.9 per cent) in the December year on year measure. As noted in paragraph 143, there has been a substitution in spending patterns favouring November over December. The second factor was wage growth – *low* wage growth (at 2.5 per cent in the year to December) had the effect of dragging the index down. It is quite ironic that a submission seeking wage moderation relies on this source.

4.12 Australian Government

162. The Australian Government cites the December Quarter CPI expenditure class for childcare as having decreased by 7.2 per cent. Whilst this is accurate, we ask the Panel to bear in mind the ACCC's finding in its Childcare Inquiry Final Report[79] that the affordability benefits of changes to child care subsidies are often quickly eroded by fee increases. Indeed, the Department of Education's most recent Childcare subsidy data report found that through the year to December, average hourly fees had risen 8.9 per cent[80]. Examination of the quarterly changes in the CPI childcare expenditure class reveals that the year on year decline reported by the Australian Government is entirely the result of a -13.2 movement in September Quarter, which has been followed by 3.2 per cent and 3.9 per cent movements in the December Quarter and March Quarter.[81]

[78] See Xero, Small Business Index Methodology.
[79] ACCC, Childcare Inquiry Final Report, December 2023, at section 2.5.2 in Chapter 2.
[80] Department of Education, Child Care Subsidy Data Report, December 2023.
[81] Refer ABS 6401.0, Table 11.

4.13 Australian Catholic Council for Employment Relations

163. ACCER's submission relevantly raises for re-consideration the utility of anchoring the Panel's decisions on a medium or longer term target. In ACCER's view, this should substantially take the form of eliminating poverty by reference to poverty line measures. The ACTU similarly adopts a policy position that the wages fixed by the Panel should be determined to living wages, having regard to:

    a. Properly constructed and regularly updated budget standards which measure the expenditures required to maintain a decent standard of living, as judged by contemporary norms and expectations of society at large;
    b. The need to reduce inequality, having regard to relative living standards and the adoption of relative income targets over the medium term, beginning with 60 per cent of median full time weekly earnings; and
    c. The need to prevent real wage cuts.

164. We note that, in last year's decision, the Panel expressed the view – without reference to its previous ruling on the utility or permissibility of adopting a target[82] - that "...in the medium to long term, it is desirable that modern award minimum wages maintain their real value and increase in line with the trend rate of national productivity growth"[83].

165. We would welcome the opportunity to contribute to a process tasked with identifying a medium or longer term target, if the Panel is open to considering one.

4.13 Victorian Government

166. We note that section 5.5 of Chapter 5 of its submission, the Victorian Government makes a recommendation that a series of options concerning apprentice and trainee wages be the subject of consultation and consideration in this Review or future reviews.

[82] [2017] FWCFB 1931
[83] [2023] FWCFB 3500 at [179]

167. We have long been concerned that the wages for apprentices and trainees fall well below those required for a decent standard of living. Whilst we appreciate that there are and have been a range of incentives and supports available, they have not always been consistent or effective at ensuring income adequacy.

168. We and our affiliates would keenly participate in any process to further examine or refine the options put forward by the Victorian Government in this regard. We suggest that an allowance for such a process be built into the timetable for next year's Review.

5. GENDER EQUALITY AND THIS REVIEW

169. In the ACTU's submissions dated 28 March 2024 (**March submissions**), we proposed that the Expert Panel in this Review may take a number of steps to rectify any gender-based undervaluation of work in modern awards. That proposal, which now takes into account the Stage 2 Gender Research report (**Stage 2 Report**), is summarised below:

(1) ***Group 1 Adjustments*** are interim increases for classifications in modern awards which cover female-dominated 'care' work, applying the SCHADS ERO benchmark.[84]

(2) ***Group 2 Adjustments*** are interim increases of degree-qualified rates in all modern awards to the C1(a) and C2(b) classifications in the *Manufacturing Award*, as applicable.[85]

(3) ***Group 3 Measures*** are measures designed to commence the process of addressing gender equity considerations with respect to rates of pay for employees in female-dominated occupations (which may not involve care work).[86] Group 3 Measures may be commenced as part of this Review, and carried through to conclusion, if necessary, by Commission-initiated proceedings.[87]

(4) ***Special Adjustments*** are interim adjustments intended to address clear anomalies in particular awards.

170. We are conscious that our proposals involve particular modern awards, and/or classifications or occupations within particular modern awards, being subject to more than one kind of adjustment. As made clear in the March submissions, these interim adjustments are not intended to address to finality issues of gender-based undervaluation of work in these awards, or to identify an outer limit of the adjustments that might be justified in the event of a comprehensive work value assessment. Further, any interim increases are intended to be additional to the increases we seek be applied to modern awards generally.

84 See March submissions, Section 5.1.2.
85 March submissions, Section 5.1.4.
86 March submissions, Section 5.1.3.
87 As suggested by the Expert Panel in the *Annual Wage Review 2022–2023* [2023] FWCFB 3500, [139].

171. In the submissions which follow, we make some general observations about the Stage 2 Gender Research Report (Part 5.1), explain in further detail the Groups 1, 2 and 3 Adjustments proposal above (Parts 5.2 to 5.4); address particular awards, most of which were the subject of the Stage 2 Report, and the adjustments and measure we propose may be taken in this Review including any Special Adjustments (Part 5.5); and finally, address any matters raised in submissions filed by the employer parties, to the extent they are not already addressed in this chapter (Part 5.6).

5.1. The Stage 2 Gender Research Report – General Observations

172. The Stage 2 Report set out the history of wage fixation and work value assessments in 12 of the 13 modern awards identified in the Stage 1 Gender Research Report (**Stage 1 Report**) used to set pay in the 29 highly feminised occupations identified within feminised industries (excluding the *Aged Care Award 2010*). It is evident from the Stage 2 Report that each of the subject awards demonstrate indicia of gender-based undervaluation of work, namely, a lack of work value exercise undertaken by the Commission, inadequate application of equal pay principles, and the making of consent awards and agreements.[88] The Expert Panel can be satisfied that it is appropriate to take steps in each of the priority awards identified in the Stage 1 Report to correct gender-based undervaluation of work in those awards.

173. In the March submissions, we noted the observations of:

a. The Full Bench in the Aged Care Stage 3 decision that "in practice, the implementation of the C10 Metals Framework Alignment Approach usually involved no more than identifying the 'key classification' in any award as that for which a Certificate III qualification under the AQF, or the equivalent, was required and then aligning that with the C10 classification rate in the *Metal Industry Award*".[89]

b. The Full Bench in the Aged Care Stage 1 decision that the alignment of pay and classifications against masculinised benchmarks in the *Manufacturing Award* either undervalued or failed to recognise skills practiced in feminised work.[90]

88 Per the President's Statement, 4 April 2024, *Gender Pay Equity Research – Stage 2 report published*, [8].
89 At [84].
90 Aged Care Stage 1 decision [2022] FWCFB 200 at [758(6)(iii)]; see also Aged Care Stage 3 decision [2024] FWCFB 150 at [19].

c. The Expert Panel in the *2023 Annual Wage Review* decision and the Full Bench in the Aged Care Stage 3 decision that the historical approach of aligning these masculinised benchmarks via the MRA across the award system likely involved "gender-based assumptions about relative work value",[91] and contributed to the "permeation of gender assumptions into the industrial arbitration system".[92]

174. The ACTU agrees with each of these observations, and consider that the Stage 2 Report has confirmed their correctness.

175. The ACTU has received considerable feedback from affiliates that the Stage 2 Report is an extremely valuable piece of research. It is challenging for smaller unions in particular, with limited resources and incomplete access to historical materials, to accurately and comprehensively track the history of award coverage. The Stage 2 Report exemplifies the value of an objective recitation of the historical facts concerning award rates and classifications. It is hoped that the Commission is open to providing additional research in respect of other awards considered as part of the Commission's task in identifying and eliminating gender-based undervaluation of work.

5.2 Group 1 Adjustments: Application of the SCHADS ERO benchmark and an interim increase

176. As stated in the March submissions, for modern awards which cover female-dominated 'caring' work, where rates in those awards are below the SCHADS ERO benchmark,[93] there is a compelling justification for the application of the SCHADS ERO benchmark identified in the Aged Care Stage 3 decision. Based on the Stage 1 Report, we identified the awards falling into this category as: the *Animal Care and Veterinary Services Award,* the *Children's Services Award* (***Children's Award***), the *Educational Services (Schools) General Staff Award* (***Schools Award***), the *Health Professionals and Support Services Award*, the *Nurses Award,* and the *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award* (**ATI Health Award**). We excluded the *Aged Care Award* and the *Educational Services (Teachers) Award* from this

91 *Annual Wage Review 2022–2023* [2023] FWCFB 3500 at [124].

92 See Aged Care Stage 3 decision [2024] FWCFB 150 at [96].

93 *Social, Community, Home Care and Disability Services Award 2010*, Level 2, pay point 2, applicable to employees in the social and community services stream (see Schedule B).

list as those awards have already been the subject of recent work value proceedings.[94] The *Nurses Award* should also be excluded from this list for the same reason (AM2024/11).

177. For the relevant classifications in the above awards, an interim increase reflecting the partial application of the new benchmark could be awarded in this Review. Any interim increase does not foreclose the need to conduct a work value analysis in order to comprehensively address any gender-based undervaluation of work.[95] As set out in the award-specific paragraphs which follow, we propose that any such interim increases allow the affected rates to move up in a coordinated way, and be no less than 4 per cent, in addition to any national minimum wage increase.

5.3 Group 2 Adjustments: Degree-qualified classifications

178. While not purely a gender issue, the ACTU proposes that the undervaluation of degree-qualified work in modern awards be addressed in this Review.

179. As set out in the March submission, the approach taken by the Full Bench in *Independent Education Union – Application for an Equal Remuneration Order* [2021] FWCFB 2051 (**Teachers decision**) to address the undervaluation of degree-qualified work involved aligning the rate of pay for a degree qualified teacher who is working in an unsupervised and autonomous way to the C1(a) classification, and for a degree qualified teacher who is working under supervision to the C2(b) classification in the *Manufacturing Award*. The Expert Panel observed in the *2022–2023 Annual Wage Review* that the non-alignment of employees with degree qualifications to the theoretical C1 classification in a number of modern awards had a "gender dimension".[96] Similar observations were made by the Full Bench in the Aged Care Stage 3 decision.[97]

180. In our view, the approach taken in the Teachers decision and endorsed in the Aged Care Stage 3 decision provides a sound basis to adjust degree-qualified rates in some or all modern awards,[98] on an interim basis in this Review.

---

94 March submissions, [387(a)], [388].
95 See March submissions, [387(d)].
96 [2023] FWCFB 3500, [136].
97 [2024] FWCFB 150, [94].
98 In the March submissions, the ACTU proposed that this adjustment could apply to all modern awards (at [402]), or as a preliminary measure, to the degree classifications in the 13 modern awards identified in the Stage 1 Report (at tables 5.1 and 5.2). A list of all modern awards with classifications which require undergraduate degrees is at Attachment A to the President's Statement – *Occupational Segregation and Gender Undervaluation,* dated 4 November 2022.

181. There are two caveats to our Group 2 Adjustment proposal.

182. First, as set out in the March submissions, the realignment of the classifications for degree-qualified professionals to the C1(a) and C2(b) classification is not a substitute for an assessment of work value, nor a comprehensive means of addressing gender-based undervaluation, for degree-qualified employees.[99] In particular, as the Full Bench in the Aged Care Stage 3 decision observed, the C10 alignment process (to the extent it was implemented), usually involved no more than identifying the qualifications and training required in respect of particular classifications, without otherwise considering work value factors.[100]

183. Second, a preliminary matter for the Panel to bear in mind when considering the Group 2 Adjustments proposal is the relationship between the Australian Qualifications Framework (**AQF**), rates of pay set in the SCHADS Award as adjusted by the ERO, and the applicable C10 rates in the *Manufacturing Award*:

Table 1: AQF and Benchmark rate comparison

AQF Level	ERO rate	C10 Framework Rate	% difference between ERO and C10 framework
1 (Certificate I)	-	$914.90 (C12)	
2 (Certificate II)	-	$945 (C11)	
3 (Certificate III)	$1,223.85 (SCS Level 2, Pay Point 1)	$995 (C10)	23%
4 (Certificate IV)	$1,262.23 (SCS Level 2, Pay Point 2)	$1,140.60 (C6)	10.7%
5 (Diploma)		$1,164.10 (C5)	N/A
6 (Advanced Diploma, Associate Degree)	$1,367.86 (SCS Level 3, Pay Point 1)	$1,257.90 (C3)	8.74%
7 (Bachelor Degree)	$1,437.28 (SCS Level 3, Pay Point 3 – 3 year degree) $1,466.77 (SCS Level 3, Pay Point 4 – 4 year degree)	$1,470.80 (C1(a))	-2.3% -0.3%
8 (Bachelor Honours, Graduate Certificate, Graduate Diploma)	-	-	
9 (Masters Degree)	-		
10 (PhD)	-		

99 March submissions, [405].
100 [2024] FWCFB 150, [84], [92].

184. The proximity between the ERO rate for degree qualified work (which is notionally assumed to have comprehensively addressed gender equity concerns) and the C1(a) rate (which merely applies a point in an underlying training standard found to not be responsive to gender equity concerns) suggests that the assumption that the ERO rate comprehensively addresses gender equity concerns is not a safe assumption. We recommend the issue be explored in such further award-specific proceedings as may arise following this Review or otherwise.

5.4 Group 3 Measures: Priority Awards

185. As stated in the March submissions, for modern awards which are partly or wholly female-dominated but do not prima facie involve 'care' work, the SCHADS ERO benchmark is not readily applicable, and it will be necessary to consider whether the C10 *Manufacturing Award* benchmark is appropriate, and if not, to identify a new benchmark.

186. Based on the Stage 1 Report, we identified the awards falling into this category as: the *General Retail Award,* the *Hair and Beauty Award*, the *Legal Services Award,* and the *Pharmacy Industry Award*.[101]

187. A limitation of the Stage 1 Report, as noted by the authors, was that in order to identify priority areas for the FWC, it excluded a significant number of female-dominated occupations from analysis.[102] The Stage 1 Report identified 144 detailed occupational classifications of any size which were over 60 per cent female (the conventional measure of gender-based occupational segregation), but selected for analysis only those occupations which (1) employed over 10,000 people; (2) were very highly feminised (over 80 per cent female); and (3) were located within feminised industry classes (over 60 per cent). Applying these filters, the number of occupational classifications analysed in detail by the Report was reduced from 144 to 29 (which figure includes several duplicates, meaning that of the 29 occupations listed in Table 5.1 of the Stage 1 Report, 22 are unique occupations).[103]

---

101 March submissions, [391].

102 Stage 1 Gender Research report, [3.2.1], [4.4].

103 Of the 29 occupations, 5 appear more than once (with the industry classes in brackets): Child Carers (Preschool Education, Child Care Services), Receptionists (General Practice Medical Services, Hospitals), Registered Nurses (General Practice Medical Services, Aged Care Residential Services, Hospitals), Education Aides (Primary Education, Secondary Education, and Combined Primary and Secondary Education) and Primary School Teachers (Primary Education and Combined Primary and Secondary Education).

188. To address this limitation, we proposed that the identification of priority awards include a modern award which covers a highly feminised workforce within its classification structure.[104] As a starting point to the identification of those additional priority awards, we suggested in the March submissions at [396] that the FWC could, using the data set deployed in the Stage 1 Report, (1) identify all occupations at the 4-digit ANZSCO level which comprise 70 per cent or more female employees; (2) cross-reference those occupations to the 4 digit ANZSIC code in the Census data for female employees; and (3) map those ANZSIC codes to modern awards based on the EEH data and the FWC's mapping exercise.

189. The identification of the priority awards cohort is the first step in the Group 3 Measures proposal. The next steps, as set out in the March submissions, are (2) targeted consultations concerning the utilisation of invisible skills in the priority awards, with the aim being to establish a consensus as to a common denominator of skills exercised, but not recognised, in the classification structure of the relevant awards; (3) an assessment of whether the C10 benchmark is appropriate and if not, identifying a replacement benchmark or benchmarks to enable proper valuation of that denominator or denominators; and (4) where steps (1)–(3) have identified gender-based undervaluation of work and the need for a new benchmark, an interim adjustment to minimum wages in the relevant classifications in those awards.

190. Further to (2) and (3), we observed in the March submissions that it should not be assumed that the occupations covered by the priority awards do not involve the application of 'invisible skills' that are occupation specific and have not been valued in setting wages in the past.[105] We considered that the Spotlight tool described in Professor Junor's report in the Aged Care Work Value Case,[106] as well as the Stage 1 and Stage 2 Reports, may assist in the identification of such skills.[107] We have addressed the observations made in the Stage 2 Report about specific awards in Part 5.5 below.

191. As to (4), any interim adjustment to minimum rates in a particular award may be justified where steps (2) and (3) have identified <u>previously invisible</u> skills used in the work covered by the award, or some of it. It follows from the prior invisibility of those skills that their value has not been

[104] March submissions, [395].
[105] March Submissions, [392].
[106] Report of Associate Professor Anne Junor filed in AM2020/99, AM2021/63 and AM2021/65 (Aged Care Work Value Case), dated 28 October 2021 (**Junor Report**), see [64]–[77].
[107] March submissions, [392], [393]–[394].

incorporated into the minimum rates of pay. However, any interim increase should not foreclose the need, as set out in the March submissions at paragraph 387(d), for a comprehensive work value analysis to be conducted, and for minimum rates of pay to be corrected above any interim increase awarded as part of this process. Any findings made as part of the interim process in the Group 3 Measures (eg, as to a common denominator or replacement benchmark), which are intended to provide an adequate foundation on which to award an interim increase, would operate as a starting point for the subsequent award-specific work value analysis.

192. As stated above, we consider that Group 3 Measures may be commenced as part of this Review, and carried through to conclusion, if necessary, by Commission-initiated proceedings.

5.5. Award-specific recommendations

193. As set out above, we recommend that the Expert Panel award an interim increase of not less than 4 per cent to all rates applicable to occupations involving 'care work' identified in the Stage 1 and Stage 2 Report as likely affected by gender-based undervaluation of work. Interim increases made as part of the proposed Group 1 Adjustments should be applied consistently across all such occupations in the identified awards.

5.5.1 *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020* – Dental Assistants

194. The Stage 2 Report established that the ATI Health Award has not been subject to any work value assessment of the work of dental assistants.[108]

195. The Stage 1 Report identified that employees working as dental assistants (ANZSCO code 4232) are 97.5 per cent female,[109] and that the *Medical and Other Health Care Services Award* and the *Health Professionals and Support Services Award* cover dental assistants (see also Part 5.5.7 below). Mapping by the FWC indicated that the ATI Health Award may also cover dental assistants.[110] While the Stage 1 Report does not reveal the proportion of dental assistants covered by the ATI Health

108 Stage 2 Report, [69].
109 Stage 1 Report, p 33.
110 Stage 1 Report, p 33.

Award who are female, there is no basis to consider that those rates might be lower, let alone significantly lower, than the occupational rate of 97.5 per cent female.

196. There are four classification streams in the ATI Health Award: health workers, administrative employees, dental employees, and ancillary employees. The dental employees stream covers dental assistants and dental therapists. Dental assistants are classified into grades 1–5, with progression referable to both competency and experience.[111] While there are formal qualifications available for dental assistants at both Certificate III and Certificate IV level,[112] the classification descriptors for dental assistants in the ATI Health Award make no distinction between these levels, referring only to "qualified" and "unqualified" dental assistants.

197. However, the classification descriptors of dental assistant Levels 2-5 state that "It is desirable that staff at this grade have Aboriginal and/or Torres Strait Islander knowledge and cultural skills – level 1."[113] Aboriginal and/or Torres Strait Islander knowledge and cultural skills – level 1 is a defined term in the award (see clause A.1.1):

> **Aboriginal and/or Torres Strait Islander knowledge and cultural skills—level 1** means:
>
> (a) an understanding, awareness and sensitivity to Aboriginal and/or Torres Strait Islander culture and lore, kinship and skin relationships, local cultural values, the ability to conduct oneself in a culturally appropriate manner and an understanding that Aboriginal and/or Torres Strait Islander culture is not homogenous throughout Australia;
>
> (b) where relevant, a knowledge of one or more relevant Australian Aboriginal and/or Torres Strait Islander language groups;
>
> (c) an ability to deliver or assist in the delivery of effective and appropriate services to an Aboriginal and/or Torres Strait Islander clientele through knowledge of the relevant Australian Aboriginal and/or Torres Strait Islander community, the ability to effectively communicate with Aboriginal and/or Torres Strait Islander people, and a knowledge of cultural conventions and appropriate behaviour;
>
> (d) an awareness of the history and role of Aboriginal and/or Torres Strait Islander organisations in the relevant region, an understanding of the organisations and their goals and the environment in which the organisations operate;
>
> (e) the ability to function effectively at work in an Aboriginal and/or Torres Strait Islander organisation; and

---

111 At clause 12.3, and see Schedule A, cl A.4.1–A.4.5.

112 See, eg, Victorian Government Skills Gateway, Dental Assistant.

113 Schedule A, cl A4.

(f) an understanding and/or awareness of the concepts of Aboriginal and/or Torres Strait Islander self-determination and Aboriginal and/or Torres Strait Islander identity.

198. It is self-evident that, consistent with its moniker, Aboriginal and/or Torres Strait Islander knowledge and cultural skills – level 1 involves both a knowledge and skills component. The skills component likely overlaps to some degree with at least two skills measured by the Spotlight tool,[114] being:

a. Awareness – of contexts and situations, of reactions and ways of shaping them, and of impacts; and

b. Communication and Interaction – managing boundaries, verbal and non-verbal communication, intercultural communication and inclusion.

199. The Level 4 dental assistant classification is the first of the five dental assistant levels to require that the dental assistant be "qualified". The rates of pay for Level 4 dental assistants are aligned to the C10/Certificate III rate. This suggests that no allowance is made in the classification for the exercise of the Aboriginal and/or Torres Strait Islander knowledge and cultural skills regarded as "desirable", let alone any Spotlight skills that might reasonably be expected to be incidents of caring work. The margin between the Dental Assistant Level 4 rate, and the SCHADS ERO benchmark rate applicable to Certificate III care work is 23 per cent.

200. As noted above, the dental employee stream also covers dental therapists. Although not referred to in the classification structure, the occupation of a dental therapist requires a Bachelor of Oral Health degree and professional registration.[115] There are two grades of dental therapist described in the classification structure, with Grade 1 applying to new graduates, and Grade 2 to more experienced practitioners.[116] Both descriptors state that "It is desirable that staff at this grade have Aboriginal and/or Torres Strait Islander knowledge and cultural skills—level 1". The weekly rate of pay for a Grade 1 Dental Therapist at Level 1 is $1,076.30, and for a Grade 2 Dental Therapist at Level 1 is $1,362.90, meaning increases of 36.65 and 7.92 per cent respectively would be required to those rates to reach C1(a). An increase of 25.03 per cent to Dental Therapist Grade 1 would be required to reach C2(b), which we accept as appropriate for a graduate requiring supervision or further accreditation.

114 See Junor Report, [8].
115 See Australian Dental Association, Dental Therapist.
116 Clause A.4.6(a) of Schedule A

201. In our view, it is appropriate to make Group 1 and Group 2 Adjustments to the dental employees stream in the ATI Health Award. In order to maintain internal relativities until the issues can be determined on a final basis. we suggest that adjustments be equal in magnitude, that is a minimum 4 per cent Group 1 Adjustment for dental assistants, and a minimum 4 per cent Group 2 Adjustment for dental therapists. Without limiting the issues to be examined, such further work value considerations under this award should include the following issues:

a. recognition, if appropriate, of Certificate III and Certificate IV level qualifications for dental assistants at appropriate levels in the classification structure; and

b. an appropriate method for progression from Dental Therapist Grade 1 to Dental Therapist Grade 2.

202. As to the other classification streams in this award:

a. we make no specific proposal concerning ancillary employees or administrative employees;

b. for the health workers stream, it is evident that the range of pay rates for Certificate III (health worker Grade 3) and Certificate IV (health worker Grade 4) employees broadly approximate the ERO rates for similarly AQF qualified work at certain pay points. However, the health worker Grade 3 entry pay point (3.1) is 10.58 per cent lower than the ERO rate, the second pay point is 5.09 per cent lower, and the highest pay point (3.3) is 0.22 per cent lower. These disparities, or some of them, may warrant some further consideration if and when the rates for dental employees are considered more comprehensively.

5.5.2 *Animal Care and Veterinary Services Award 2020* – Veterinary Nurses

203. The Stage 2 Report did not reveal any work value assessment of work performed by any employees covered by the *Animal Care and Veterinary Services Award*.

204. The Stage 1 Report identified Veterinary Nurses as a highly feminised occupation, comprising 96.4 per cent women. Veterinary Nurses are covered by the *Animal Care and Veterinary Services Award*.

205. The classification structure in the *Animal Care and Veterinary Services Award* contains three separate streams: Inspectors; Veterinary Surgeons; and Practice Managers, Veterinary Nurses, Receptionists, Animal Attendants and Assistants stream.

206. The Veterinary Nurse occupation is located in the Practice Managers, Veterinary Nurses, Receptionists, Animal Attendants and Assistants stream. There are five levels in this stream; four are available to veterinary nurses, and Level 5 is reserved for Practice Managers.[117]

207. Levels 3 and 4 in the Practice Managers, Veterinary Nurses, Receptionists, Animal Attendants and Assistants stream require possession of a Certificate III or Certificate IV. The rates of pay for Level 3 (Certificate III) employees is aligned to C10 at the Certificate III level.

208. We consider that the Level 3 and Level 4 classifications described in clauses A.2.4 and A.2.5 involve some degree of exercise of each of the three categories of skills measured by the Spotlight tool (in brief: Awareness, Communication and Interaction, and Coordination).[118] For example, employees at these levels are expected to have the ability to assist with animal care or provide veterinary nursing including with respect to anaesthesia, first aid, and pain management, and to provide grief counselling and support to animal owners. In our view, a Group 1 Adjustment is warranted in this Review of at least 4 per cent to each classification in this stream, on the basis that such an adjustment is comfortably below that which may be awarded in the event of a comprehensive work value adjustment, and to enable the rates for care work to move in tandem in this review as proposed in paragraph 177 above. Further, given that the classification descriptors in this stream, which explicitly require the exercise of care skills, do not distinguish between occupations in the stream (except at Level 5), we consider it is appropriate that a Group 1 Adjustment be applied to the classification stream as a whole. Practice Managers should be included in the Group 1 Adjustment both because the 'indicative tasks' of Practice Managers includes "those outlined in Level 4" (see cl A.2.6), and to preserve internal relativities. A separate process should be convened to carry out the required assessment to finality.

209. Veterinary surgeons are located in the stream of the same name. Registration as Veterinarian requires a recognised qualification at degree level (AQF 7) or above.[119] The occupation of veterinarian is identified in the Stage 1 Report as 67.1 per cent female.[120]

210. There are five pay levels in the Veterinary Surgeon stream.

---

117 See Schedule A.

118 See Junor Report, [8].

119 Australasian Veterinary Boards Council, [Qualifications Generally Recognised by AVBC.]

120 Stage 1 Report, p 90, Table A.5.

211. Level 1A is the entry rate. It provides for transition to Level 1B after six months and is described as "the commencement level for a graduate veterinary surgeon".[121] The appliable rate of pay is an annual salary of $60,082 or an hourly rate of $30.41, which approximates the $30.63 payable for C5 (Diploma/AQF 5) in the *Manufacturing Award*.

212. The Level 1B classification is also described as transitional, with "a competent Level 1B associate" expected to progress to Level 2 within two years of commencement, and potentially earlier.[122] The Level 1B classification has a minimum annual salary of $63,388 and hourly rate of $32.08, which approximates the C4 rate in the *Manufacturing Award* of $31.46 (which sits between the Diploma/AQF 5 and Advanced Diploma/AQF 6 levels).

213. Thereafter:

a. The Level 2 classification provides for "…professional work without detailed supervision but with guidance on unusual cases and/or procedures".[123] The minimum annual salary is $68,484 or $34.66 per hour, which approximates the C2(a) rate in the *Manufacturing Award* (Advanced Diploma (AQF 6) plus additional training).

b. The Level 3 classification provides that "the experienced veterinary surgeon conducts professional work including more difficult assignments requiring substantial professional experience and initiative".[124] The minimum annual salary is $75,237 or $38.08 per hour, which approximates the C1(a) rate of $38.70 per hour.

214. In our view, given that entry into the occupation of veterinary surgeon requires a minimum of degree (AQF 7) level qualification, there is a compelling case for either the Level 1A or Level 1B rate to be lifted to the C1(a) rate, even without having regard to skills which might become apparent in a comprehensive work value assessment. Even lifting the hourly Level 1A rate ($30.41) to the C2(b) rate ($35.41) would involve an increase of 16.4 per cent. On the basis of the clear disparity between the degree-qualified rates for veterinary surgeons in the *Animal Care and Veterinary Services Award*, we consider it is open to the Expert Panel to order a Group 2 Adjustment of at least 4 per cent to classifications in the Veterinary Surgeons stream on the basis that such an increase is comfortably

[121] Schedule A, cl A.3.1.
[122] Schedule A, cl A.3.2.
[123] At Schedule A, cl A.3.3.
[124] Schedule A, cl A.3.4.

below that which may be awarded in the event of a comprehensive work value assessment. An interim increase in this measure will also preserve the internal relativities to the Practice Managers, Veterinary Nurses, Receptionists, Animal Attendants and Assistants stream.

215. We are not in a position to make a recommendation as to the adjustment of the Inspectors stream. The Group 3 Measures process may identify the need for an interim adjustment and/or further review, and so positions in this stream should be included in that process.

5.5.3 *Children's Services Award 2010* – Child Carers

216. The Stage 2 Report establishes that the *Children's Award* and its predecessors have been subject to some work value analysis, including most pertinently, the 2005 *ACT Child Care Decision*. While that decision found that there had been a change in the value of child care work warranting an increase in minimum rates, the implementation of the decision involved an alignment of classifications in the relevant award to the C5 and C10 rates in the (then) *Metals Award* and nothing further. As the Full Bench in the Aged Care Stage 3 decision observed, the AIRC was constrained by the alignment process to undertake a proper valuation of the work.[125] Subsequently, in 2018, the Full Bench of the Fair Work Commission dismissed applications for equal remuneration orders by United Voice and the Australian Education Union for early childhood workers (including those covered by the *Children's Award*), largely on the basis of limitations in Part 2–7 of the FW Act as it then was. The Stage 2 Report establishes that the work of child carers suffers from the deficiencies in work value identified by the Full Bench and Expert Panels identified in paragraph 173 above.

217. The Stage 1 Report identified that the 'child carer' occupation (ANZSCO code 4211) had levels of feminisation of 97.2 per cent.[126] Child carers primarily work in two industries: preschools (ANZSIC code 8010, 97.6 per cent female) and child care services (ANZSIC code 8710, 96 per cent female),[127] and are covered by multiple awards including most prominently, the *Children's Award* and the *Schools Award*.[128] Insofar as the Stage 1 report suggests that child carers might be covered by the

125 See Stage 2 Report, [123].
126 Stage 1 Report, p 21, Part 4.3 and Table 5.2.
127 Stage 1 Report, p 25, Part 5.1; and see p 45, Part 10.
128 See Stage 1 Report, Table 5.2 which identified the *Children's Award* and the *Schools Award* as the relevant awards for occupation 4211. However, coverage under the *Schools Award* does not appear to have been addressed in Part 3.3 of the Stage 2 Report, which instead identified the *Teachers Award* as the award with coverage other than the *Children's Award*. See Stage 2 Report, [108], and below.

Teachers Award,[129] we suggest that the coverage exclusion at clause 4.4(c) of that award excludes that possibility. The Stage 1 Report identified that the 'child care services' industry comprised 94 per cent female employees.[130] Child carers working in the child care services industry (ANZSIC code 8710) are covered by the *Children's Award* and comprise 96 per cent female employees.[131] On any reading of the data, child carers working in any industry are overwhelmingly female.

218. The classification structure in Schedule B of the *Children's Award* covers two streams: the Support Worker Stream and the Children's Services Employee (**CSE**) stream. The 'child carer' occupation identified in the Stage 1 Report falls within the CSE stream. This stream also includes, at level 6, a classification linked to degree-qualified work. The support worker stream does not, on its face, appear to require care work (it applies to, eg, laundry, cooking, administrative services).

219. Both streams are currently aligned to the C10 framework at Certificate 3 level.

220. One approach to lifting pay in this award in the medium term would be to either:

   a. Apply the SCHADS ERO benchmark according to internal relativities throughout the CSE stream (i.e a 23 per cent increase across all CSE rates); or

   b. Split the CSE structure at the director level (level 6),[132] so that:

      i. degree qualified director rates are aligned to C1(a) (and aligned further up beyond level 6, on the basis of existing internal relativities to level 6.1 as the key classification. This would involve a 4.07 per cent increase to the weekly rate of pay for Level 6.1. Such increase would sensibly also be applied to Level 6A employees

[129] See Stage 1 Report, p 43, Part 9.2; and p 48, Part 10.2, where the *Schools Award* and the *Children's Services Award* were identified as the relevant modern awards, with the *Teachers Award* identified by the FWC's mapping of industries to modern awards as having "possible coverage".
[130] Stage 1 Report, fig 4.1. But cf. Stage 2 Report, [103], which states that "Preschool Education remains highly gender segregated, with women comprising 97.2 per cent of Child Care workers" [cited to the Stage 1 Report, p 45]. This reference is unclear, because as noted in the Stage 1 Report, child carers in the class of Preschool Education appear to be covered by the *Schools Award*, see footnote 128 above, which was expressly noted in the Stage 1 Report to be in a separate industry to the child care services industry, see footnote 18 of the Stage 1 Report.
[131] Stage 1 Report, p 43, Part 9.2.
[132] The Stage 2 Report, at the table following [101], on page 68 for the Children's Award level 6.1, identified the applicable AQF level as 5. However, employees at Level 6 of the Award hold either a degree, an Advanced Diploma, or a Diploma. We consider that the better AQF level for employees at Level 6 of the Award to be AQF level 7 (for degree-qualified employees), AQF level 6 (for employees with an Advanced Diploma), and AQF level 5 only for those employees with a Diploma.

on the basis of internal relativity to Level 6.1, given the equivalence of their duties as stipulated in clause B.1.9 of Schedule B of the Award; and

ii. lower classifications are aligned to the SCHADS ERO benchmark rate on the basis of their internal relativities.

221. We do not recommend either approach; both would produce anomalies. The approach in sub-paragraph (a) would result in a misalignment between the AQF level pay rates in the SCHADS ERO rates, and the pay rates for corresponding training levels in the *Children's Award*. The approach in sub paragraph (b) would see Directors paid less than some level 4 and all level 5 employees whose rates of pay had been internally aligned to the SCHADS ERO benchmark rate. These considerations suggest that review of the classification structure in the *Children's Services Award* is warranted. They do not however rule out taking some interim steps in this Review.

222. Specifically, we recommend making a Group 1 Adjustment to CSE levels 1-5 and a Group 2 Adjustment to CSE rates above level 5. In order to maintain the existing the relativities of the CSE stream pending further investigation and to avoid the introduction of pay anomalies, both the Group 1 and Group 2 interim Adjustments should be no less than 4 per cent. A Group 2 Adjustment of this order would have the effect of addressing the C1(a) alignment issue, although it should not be assumed that alignment to a training standard concludes the exercise of properly valuing work.

223. We do not have sufficient information to develop a specific proposal for the Support Worker stream. Specifically, we do not know if it is either female-dominated or undervalued. The consultation process and data exercise we have recommended as part of the Group 3 Measures may assist interested parties to develop a proposal that is appropriate for this stream.

5.5.4 *Educational Services (Schools) General Staff Award 2020* – Education Aides

224. The Stage 2 Report found that the *Schools Award* does not have a direct correlation to any pre-modern award. The award modernisation Full Bench observed that coverage of non-teaching staff in schools was "sporadic".[133] The minimum rates which ultimately found their way into the modern

133 See Stage 2 Report, [149].

Schools Award were not the product of any work value analysis, and the rates and classifications have not been subject to any work value assessment since modernisation.[134]

225. The Stage 1 Report identified that 92.9 per cent of primary school Education Aides and 82.1 per cent of secondary school Education Aides were female (a combined 88 per cent).[135]

226. The *Schools Award* has an 8-level classification structure with numerous pay points. The classifications apply to multiple different 'activities' with different 'dimensions' including competency, level of supervision required, exercise of judgment, and training level or qualifications. The activity streams are: (1) school operations services; (2) school administration services; (3) classroom support services; (4) preschool/childcare services; (5) curriculum/resources services; (6) boarding supervision services; (7) wellbeing services; (8) instructional services; and (9) nursing services. While neither the Stage 1 nor Stage 2 Reports identified which classification/s in the *Schools Award* align most conformably with the description of 'Education Aides' in the Stage 1 Report,[136] and there is no reference to that term in the *Schools Award*, it appears that likely that both the classroom support services stream and instructional services stream encompasses Education Aides, although there may be other applicable streams.

227. As noted in paragraph 217, the occupation of child carer is also associated with the *Schools Award* and such work is contemplated in the classifications and definitions of work in the preschool/childcare services stream.[137] In addition, work in the wellbeing stream clearly envisages caring work, contemplating the work of a "Youth welfare officer" at level 4[138] and the work of a "psychologist, speech therapist or occupational therapist"[139] at level 6 (professions which are each greater than 80% female[140]).

228. Minimum rates in the *Schools Award* are aligned to C10 at the Certificate III level at Level 3.[141] Level 5 provides for rates of pay for degree-qualified employees with no work experience, with rates increasing with experience through Levels 6 and 7, and Level 8 applying to employees with

134 Stage 2 Report, [157].
135 Stage 1 Report, Table 5.2.
136 See p 45.
137 See Schedule A, cl 2(f); and cll A.2.1(e)(ii), A.2.2.2(e)(iii), A.2.3(e)(iii), A.2.4.(e)(ii) and A.2.5(e)(ii).
138 See Schedule A, cl A.2.4(iv).
139 See Schedule A, cl A.2.6(ii).
140 See Stage 1 Report, p 88, Table A.3.
141 See Schedule A, cl A.2.3(d).

postgraduate qualifications. The weekly rates of pay of Level 5 employees are lower than the C2(b) rate in the *Manufacturing Award* ($1,345.70), and the weekly rates of pay of Level 6 employees are lower than the C1 rate in the *Manufacturing Award* ($1,470.80). There are no obvious anomalies in the classification structure requiring broader review, subject to the coverage of registered nurses under the *Schools Award* with a commencement rate of $1,236.90, which may be impacted by other proceedings on foot in the Commission.

229. There are two distinct information gaps with respect to gender considerations in this award. First, it should be confirmed that the occupation of 'Education Aides' identified in the Stage 1 Report as a priority occupation is akin to employees in the classroom support services stream in the *Schools Award*. Second, the extent to which the other streams are female-dominated should be confirmed. This information may be readily ascertainable from existing data sets; for example, the Stage 1 Report identified sales assistants and retail managers in school uniform shops covered by the *Schools Award* as predominantly female.[142]

230. Subject to the above matters, in our view, it is appropriate to apply a Group 1 Adjustment of no less than 4 per cent to at least the classroom support services, instructional services, preschool/childcare services and wellbeing services employees under this award. We also recommend the nursing services stream in this award be subject to further review pending the resolution of the ANMF's application (AM2024/11) concerning the *Nurses Award*.

231. Further, we recommend that a Group 2 Adjustment of no less than 4 per cent be applied to degree-qualified rates in recognition of their misalignment with the C1(a) rate in the *Manufacturing Award*.

5.5.5 *General Retail Industry Award 2020* – Clothing Retail Sales Assistants, Retail Manager

232. The *Retail Award* has a long and multifaceted origin story. Based on the Stage 2 Report, it appears that rates in the pre-modern awards were primarily the product of negotiations between the SDA and employers, and did not involve any work value assessment. The award modernisation process which produced the *Retail Award* adopted a proposal by the SDA to include classification structures based on the *Tasmania Retail Trades Award* which, according to the SDA, applied a proper skills-based career progression methodology to fixing a classification and wage rate structure, and which

142 See Table 5.2.

ultimately aligned the Retail Employee Grade 4 classification with the C10 rate.[143] Ultimately, however, the Stage 2 Report found that the final form of the *Retail Award* did not clearly identify the basis of many of the rates set,[144] and there has not been any work value assessment of occupations under this award since modernisation. Further, the prevalence of consent agreements on the setting of rates suggests that classifications in the *Retail Award* may be subject to gender-based undervaluation of work.

233. The occupations of Sales Assistants and Retail Managers were identified in the Stage 1 Gender Research report as female-dominated (85.5 and 80.9 per cent respectively). The classification structure is properly aligned at C10 at the Certificate 3 level (Retail Employee Level 4).

234. As foreshadowed in our March submissions, we presently have no basis for asserting that this work utilises 'care' skills such as to warrant the application of the SCHADS ERO benchmark, but given the presence of indicia in the award history indicative of gender-based undervaluation of work, we consider an interim adjustment may be appropriate following the consultations as part of the Group 3 Measures. To aid those consultations, we note the existence of research on the working conditions and skills exercised by retail workers, which may have been considered 'invisible', and therefore undervalued, which include customer service, communication, and emotional labour skills.[145]

5.5.6 *Hair and Beauty Industry Award 2020* – Hairdressers, Beauty Therapists

235. The Stage 2 Report demonstrated that the award history of the *Hair and Beauty Award* did not include any systemic work value assessment, has not been subject to any applications involving work value considerations since award modernisation, and that wages have largely been fixed by consent between interested parties. These indicia support a finding that the minimum rates in the *Hair and Beauty Award* are subject to gender-based undervaluation of work.

---

143 See Stage 2 Report, [232], [235].

144 See, eg, Stage 2 Report, [241], [246], [259], [263], [265].

145 Lipton, B., Vromen, A., Rutledge-Prior, S., Good, L., Cooper, R., & Foley, M. (2022) *Respect at Work in Retail*, University of Sydney Business School and Australian National University (see esp 21); Cooper, R., Foley, M., Good, L., Lipton, B., Rutledge-Prior, S., Tapsell, A., & Vromen, A. (2022) *Gendered Disrespect and Inequality in Retail Work: Summary of Findings*, University of Sydney Business School, and Australian National University; Vromen, A., Lipton, B., Cooper, R., Foley, M., Rutledge-Prior, S. (2021) *Pandemic Pressures: Job Security and Customer Relations for Retail Workers*, University of Sydney Business School and Australian National University.

236. The Stage 1 Report identified that the occupations of Beauty Therapists (97.2 per cent) and Hairdressers (83.5 per cent), the two classifications under the *Hair and Beauty Award 2020*, are overwhelmingly female-dominated.

237. The classification structure in the award is simple: there is a single stream (Hair and beauty employee), and six levels within that stream. The classification descriptions in the award merely identify the applicable level of training.[146] A Level 3 Hair and Beauty Employee means an employee who holds a Certificate III. Level 3 is properly aligned to C10 at Certificate III Level.

238. Whilst the minimal description of the work performed provided in the award itself offers no clues as to the skills involved in the work (including the extent to which employees exercise invisible skills and care skills), the Stage 1 Report referred to research that beauty therapists exercise skills in at least two of three skills measured by the Spotlight tool,[147] being skills of a type accepted in the Aged Care Stage 3 decision to be previously invisible and/or undervalued in traditional federal wage fixation process:[148]

a. Awareness – of contexts and situations, of reactions and ways of shaping them, and of impacts.; and

b. Communication and Interaction – managing boundaries, verbal and non-verbal communication, intercultural communication and inclusion.

239. Taking the above into account along with the absence of any work value assessment, and the overwhelmingly predominant female workforce, we consider this award is appropriate for a Group 1 Adjustment of a minimum of 4 per cent, which rate would remain comfortably below that which might be justified if and when a comprehensive work value assessment is undertaken. Alternatively, it may be appropriate to provide an interim increase of minimum rates under the *Hair and Beauty Award* as part of the Group 3 Measure process.

146 See Schedule A.
147 Stage 1 Report, pp 74–75, Part 14.5, and see March submissions, [393]–[394]. See also, Junor Report, [8].
148 At [156](1).

5.5.7 *Health Professionals and Support Services Award 2020* – Dental Assistants, Receptionists in Hospitals and in General Practice, Medical Technicians, Psychologists, General Clerks[149]

240. The Stage 2 Report revealed numerous indicia of gender-based undervaluation of work in this award and its predecessors, including "very little information to indicate how classifications and wage rates were set in the pre-reform instruments",[150] awards made by consent,[151] and the absence of any consideration of wages and the classification structure.[152]

241. The *Health Professionals and Support Services Award*, which essentially covers all health workers except for doctors and nurses,[153] contains two classification streams: Support Services and Professionals. The award was identified in the Stage 1 Report as female-dominated with respect to occupations which reside in both streams. In the Support Services stream are general clerks (89.8 per cent), receptionists in hospitals (92.4 per cent) receptionists in general practice (95.9 per cent), and medical technicians (85.3 per cent). In the Professionals stream are dental assistants (97.5 per cent) and psychologists (80.6 per cent).

242. The Support Services stream includes work in general and administrative services, food services, and technical and clinical work. Work in this stream includes work that may appropriately be described as care work, as well as some duties which are more administrative or clerical in nature and which support the delivery of health services. Clerical and administrative duties which support the delivery of Social and Community Services were likewise identified in the equal remuneration proceedings,[154] and this neither prevented the order from being made, nor excluded employees performing those duties from the order. Moreover, the employees who benefitted from the order included employees whose duties might be entirely devoid of direct care functions, being employees working in "organisations which primarily engage in policy, advocacy or representation on behalf of"[155] the organisations that actually deliver social and community services to the public. Indeed, the equal remuneration case was conducted entirely on the basis of characteristics

149 'General Clerks' appear to have been inadvertently omitted from the summary at page 8 of the Stage 1 Report, and the Stage 2 Report at [297]. This occupation is included as one of the 29 occupations in Table 5.2, and in the narrative at Part 6 of the Stage 1 Report.
150 Stage 2 Report, [299], [317].
151 See Stage 2 Report, [308], [319].
152 Stage 2 Report, [317]–[319].
153 Stage 2 Report, [295].
154 [2011] FWAFB 2700 at [35].
155 See SCHADS Award, cl 3.1 and Note 2 to cl 15.

pertaining to the social and community services *industry*, rather than a detailed analysis of each occupation performed within it.[156]

243. Level 4 of the Support Services stream is aligned to C10 at the Certificate III level (see cl A.1.4(a)(v)). The highest AQF level identified in the Support Services stream is AQF 5 (Associate Diploma), at Levels 6 and 7.[157]

244. The Professionals stream commences at Level 1 for entry level health professionals, with pay points commencing with a diploma qualification, and proceeding through three and four year undergraduate qualifications, masters degrees, and doctorates (pay points 1–5). The entry level pay point is associated with a UG2 level qualification, which is defined in cl 2 as an employee with a diploma or equivalent, and which is aligned to Associate Degree in the current AQF at Level 6.[158] The minimum weekly rate of pay for undergraduate degree-qualified professionals (AQF Level 7) is $1,084.10, which is 73.71 per cent of the C1(a) benchmark.[159]

245. The application of the SCHADS ERO benchmark to the benchmark rate in the Support Services stream in full (i.e. a 23 per cent increase to all classifications in this stream), would not address the counter intuitive relativity between the AQF 5 rate in the Support Services Stream (Level 6, see paragraph 243) and the AQF 6 (UG 2) and AQF 7 rates in the Professionals stream (Level 1, pay points 1-2), or the circumstances whereby some professionals who are PhD-qualified receive lower wages than less formally qualified employees in the Support Services stream (eg, Level 9). Employees in the Professionals stream have considerably further to travel, requiring a 35.7 per cent increase at the degree qualified level to reach parity with the C1(a) rate, and 20.5 per cent increase at the first pay point (UG2, AQF 6) to reach parity with the C3 rate.

246. On either view, there is considerable headroom to make an interim increase in this Review in the form of Group 1 and Group 2 Adjustments to each of the Support Services stream and the Professionals stream. In our view, and in light of what we submit above concerning the *Children's*

156 [2011] FWAFB 2700 at [238], [253]-[254] [276]-[281].

157 The Stage 2 Report, in the table below [296], identified that AQF level 4 was the appropriate qualification level for Level 6 and 7 employees under the Award. Given that employees at Levels 6 and 7 hold Associate Diplomas (Diplomas), we consider that AQF level 5 (Diploma) is the more appropriate level. The Australian Qualifications Framework, Equivalency of pre-AQF qualifications, identifies 'Associate Diploma' with AQF 5.

158 See Stage 2 Report, page 153, and see the Australian Qualifications Framework, Equivalency of pre-AQF qualifications. Under the current 'Associate Degree' AQF (ie, Level 6), ACAAE 1974–1984 identifies 'Diploma (UG2)' as equivalent to Associate Degree.

159 Stage 2 Report, p 153.

Services Award, we would recommend a Group 1 interim increase of no less than 4 per cent to all levels in the Support Services stream. This would allow the rates for non-degree qualified caring work between awards to move in tandem in this Review. We further recommend a Group 2 interim increase of greater than 4 per cent to begin the job of lifting the degree qualified professional rates.

247. This award should be the subject of further consideration in subsequent Reviews or separate proceedings to ensure a fair relationship between the rates for Level 7-9 of the Support Services stream with other rates in both classification streams.

5.5.8 *Legal Services Award 2020* – Conveyancers and Legal Executives

248. The Stage 2 Report did not reveal any work value assessment in respect of classifications and rates of pay in the *Legal Services Award*.

249. The Stage 1 Report identified that the occupations of conveyancers and legal executives under the *Legal Services Award* are predominantly female (83.4 per cent). The award has three classification streams: Legal, Clerical and Administrative employees (Levels 1–5), Law Graduate (Level 5 only) and Law Clerk (Level 6). Conveyancers and legal executives fall within the first stream.

250. There are a number of unusual features in the alignment of classifications and minimum rates in this award.

251. First, the Level 2 rate is remunerated at the C10 rate, but the corresponding qualification standard is "Year 11 standard".[160]

252. Second, the Level 5 rate in the award applies to classifications in two streams with different qualification requirements. Level 5 in the Legal, Clerical and Administrative stream identifies the qualifications as "part achievement of Associate Diploma at TAFE or tertiary level (or equivalent)".[161] 'Associate Diploma' has been superseded in the AQF by Diploma, at AQF Level 5, (although the Stage 2 Report identified the applicable AQF level as AQF level 4). The minimum weekly rate of pay for employees at Level 5 in the Legal, Clerical and Administrative stream is $1,148.40, which is higher

---

160 Schedule A, cl A.2.1(d).
161 Schedule A, cl A.5.1(d).

than the AQF Level 4 rate in the *Manufacturing Award* (C7, $1,085.60), but slightly lower than the AQF Level 5 rate (C5, $1,164.10).

253. By contrast, employees at Level 5 in the Law Graduate classification receive that same rate of pay yet have completed "a course of study which is recognised as an academic qualification for admission and a formal offer by the employer to the law graduate, the acceptance of that offer and registration and approval of all documentation required by the relevant governing bodies".[162] The relevant qualification that meets this description is a degree (AQF 7). Applying the approach in the *Teachers' Award*, the applicable benchmark is the C2(b) rate of $1,345.70.

254. Third, the Level 6 rate applies exclusively to Law Clerks. The classification descriptor for Level 6 states that "An indicative training and vocational educational level for this level is Associate Diploma at TAFE or tertiary level (or equivalent)",[163] i.e. AQF Level 5. But the minimum weekly rate is $1,217.30, higher than the C5 and C4 rates (and higher than the minimum rate payable to degree-qualified law graduates).

255. Finally, we note that the occupation of Conveyancer identified in the Stage 1 Report is associated with the Advanced Diploma of Conveyancing, an AQF Level 6 qualification, which is required for new entrants under licensing regimes in all states and territories but Queensland and the ACT. Paralegal related qualifications for Legal Executives are available at Advanced Diploma (AQF Level 6) and Diploma Level (AQF Level 5), as referenced in ANZSCO.[164]

256. If it is accepted, on the basis of the Stage 2 Report, that the intended coverage of the award was legal, clerical and administrative work at all levels below that of a lawyer admitted to practice, then it appears likely that there has been some undervaluation of the skills possessed and exercised by employees at higher levels, even setting aside any indica of gender-based undervaluation of work. We consider the following interim steps may be taken in this Review to address these anomalies:

   a. a Special Adjustment to lift the rate of pay for Level 5 employees in the Legal, Clerical and Administrative Level stream by 1.37 per cent, which would align it to the C5 (Diploma/AQF 5) rate in the *Manufacturing Award*;

162 Schedule A, cl A.6.1.
163 Schedule A, cl A.7.1(f).
164 See ABS, ANZSCO 5991.

b. a Special Adjustment to lift the rate of pay for Level 6 Law Clerk classification by 3.34 per cent, which would align it to the C3 (Advanced Diploma/ AQF 6) rate in the *Manufacturing Award*; and

c. A Special Adjustment to lift the rate of the Level 5 Graduate Lawyer by at least 4 per cent, to begin the task of aligning it to the C2(b) rate, which we believe is an appropriate rate for a degree qualified employee who requires additional supervision or further accreditation to be admitted into their profession (the total adjustment required to meet this target would be 17.2 per cent).

257. We recommend that this award be reviewed in a further process to refine its classification descriptions and fully assesses and address any residual gender-based undervaluation beyond the simple AQF alignment approach we have recommended in this Review.

5.5.9 *Nurses Award 2020* – Midwives, Registered Nurses, Enrolled and Mothercraft Nurses, Nurse Managers

258. The *Nurses Award* was identified in the Stage 1 Report as comprising very high levels of female employees in the occupations of midwives (98.9 per cent), enrolled and mothercraft nurses (89.9 per cent), registered nurses in hospitals (87.9 per cent) and in general practice (95.6 per cent) and nurse managers (86.6 per cent).

259. The position with respect to registered nurses working in aged care is being has been dealt with in the *Aged Care Stage 3* decision (AM2021/63). Further, there is a separate work value proceeding on foot (AM2024/11) to amend the classification structure and adjust minimum rates of pay in the *Nurses Award*. The next steps in each of those applications involve the preparation by the applicant of proposed new classification structures and submissions in support.[165] In these circumstances, we do not make a specific proposal for an interim adjustment to the *Nurses Award* in this Review.

5.5.10 *Pharmacy Industry Award 2020* – Pharmacy Sales Assistants

260. The Stage 2 Report reveals that pre-modern award and modern award history of the *Pharmacy Industry Award* was characterised by consent positions between the parties on classifications and

165 See Directions dated 4 April 2024.

rates of pay.[166] During the four yearly review of modern awards, APESMA applied to vary minimum rates of pay in the *Pharmacy Industry Award* on work value grounds for pharmacy interns and pharmacists, which resulted in a small increase to pharmacist minimum rates.[167] A further work value application was made by APESMA in 2022 with regard to pharmacy intern rates. The FWC recommended in June 2023 that the parties undertake a more holistic reconsideration of the classification structure in the Award to take, inter alia, work value matters into account.[168] We have addressed this further below.

261. Pharmacy sales assistants covered by the *Pharmacy Industry Award* were identified in the Stage 1 Report as comprising 87.6 per cent female.

262. The classification structure in the award is divided into streams for pharmacy assistants, pharmacy students, pharmacy interns, and pharmacists:

    a. Pharmacy sales assistants fall within the four-level assistant stream, which is aligned to C10 at the Certificate III level (Pharmacy Assistant Level 3, and see cl A.3). Progression through levels 2–4 is based on attainment of AQF Certificates II–IV. The rates of pay for the four levels of the pharmacy assistant stream align with the four levels of the pharmacy student stream, with progression through the latter determined by reference to progressive successful completion of years of study in a degree level qualification or higher.[169]

    b. A pharmacy intern has completed a degree and is undertaking practical training. Successful completion of the internship results in the award of a graduate certificate (AQF 8). It is necessary for graduates to pass further examinations before registration as a pharmacist is conferred.[170]

    c. Once registered, a pharmacist under the Award is entitled to a minimum rate of pay of $1,289.30. This rate would require an increase of 14.08 per cent to reach the C1(a) rate for

166 Stage 2 Report, [388], [397], [411].
167 See Stage 2 Report, [418]–[427].
168 See Stage 2 Report, [428]–[430].
169 Clause 16.3.
170 See Open Universities, How to become a Pharmacist.

a degree-qualified professional. The Stage 1 Report identified pharmacists as a female-dominated occupation (64.3 per cent).[171]

263. There has long been recognition by the Commission of issues in the *Pharmacy Industry Award* concerning the misalignment of rates of pay with AQF levels and the *Manufacturing Award*,[172] including most recently, an explicit recommendation by the Commission that interested parties undertake a more fundamental revision of the classification structure including in respect of changes to work value.[173] The application remains on foot, but with no timetable for further steps to be taken.

264. We concur that a detailed review of the classification structure in the award is required. In addition to the issues raised in the current work value application and the recommendations made in respect of it, there is a need to assess the work of all employees in the classification structure, including pharmacy sales assistants, to identify invisible skills which may have been previously overlooked. The need for a detailed review, however, ought not exclude consideration of whether Group 3 Measures are appropriate in respect of this Award.

5.5.11 *Social, Community, Home Care and Disability Service Industry Award 2010* – Aged and Disabled Carers

265. The SCHADS Award was, of course, subject to an equal remuneration order in 2012, and at least in respect of the ERO rates for Levels 2 and 3 social and community care stream employees, may be said to constitute rates that have been authoritatively determined to be rates which ensure equal remuneration for work of equal or comparable value" and "as being free of assumptions based on gender"[174] (although see paragraph 184 above).

266. The Stage 1 Report identified that 86.5 per cent of employees engaged as aged and disabled carers are female, albeit that the Stage 1 Report identified the relevant industry for this cohort of workers as the aged care *residential services* industry (ANZSIC code 8601), while acknowledging that the occupational definition (ANZSCO code 4231) referred to carers providing general assistance and

171 Stage 1 Report, p 90, Table A.5.
172 See [2018] FWCFB 7621; [2022] FWCFB 243.
173 See Recommendation, 9 June 2023.
174 Aged Care State 3 decision [2024] FWCFB 150, [172].

support for aged and disabled persons *in their own homes*.[175] While the Stage 1 Report identified that 'aged and disabled carers' in the 'Other Allied Health Services' industry comprised 85.1 per cent female employees, and that the 'Other Allied Health Services' industry comprised 81 per cent women, it did not otherwise address this occupational and industry category, presumably because there were less than 10,000 employees in that occupation and industry.[176]

267. The Stage 1 Report further identified that the 'carers and aides' occupational sub-major group (ANZSCO 2-digit) comprised the following occupations which may include home care workers providing direct care covered by the SCHADS Award:

   a. aged and disabled carers, 76.7 per cent female (ANZSCO code 4231);

   b. carers and aides (nfd), 76.4 per cent female (ANZSCO code 4200);

   c. personal carers and assistants (nfd), 76 per cent female (ANZSCO code 4230);

   d. special care workers, 70.1 per cent female (ANZSCO code 4234).[177]

268. The Aged Care Work Value Case found that, relevantly, the rates of pay for home care workers covered by the SCHADS Award who provide direct care to aged persons should be increased for work value reasons. However, the 'home care worker' classification in the SCHADS Award is presently expressed to cover the provision of care to aged persons *and* persons with a disability.[178] The Aged Care Stage 3 decision provides for pay increases and a revised classification structure for home care workers in the award only insofar as they are engaged in care for the aged. In doing so, the Full Bench acknowledged that "…having separate classifications and minimum rates of pay for aged and disability HCWs [home care workers] is an untenable situation given the functional overlap to which we have referred".[179]

269. In our view, home care workers providing disability care should be placed on a pathway toward rates of pay which are fairly equivalent to those providing aged care. Whilst we recognise that a proper evaluation and resolution of this issue is required, which may include some revisions to the

175 See Stage 1 Report, p 37, Part 8 and footnote 16. S

176 Stage 1 Report, p 92, Table B.2, entry 'Other Allied Health Services', 'Aged and Disabled Carers'; and p 18, Figure 4.1.

177 Stage 1 Report, p 89, Table A.4.

178 See cll 3.1 and 4.1(c).

179 at [186].

classification structure to ensure classifications are applied appropriately to work performed in the respective industries covered by the award, we recommend a Group 1 Adjustment for these employees of a minimum of 4 per cent. A far greater interim increase may be awarded if the interests of internal relativity between home care classifications between aged and disabled carers is considered more pressing than external relativities between the awards we have identified for interim increases in this Review.

5.5.12 *Clerks (Private Sector) Award 2020*

270. This award was not included in the Stage 2 research due to the exclusionary criteria adopted in the Stage 1 research. Nonetheless, the Stage 1 Report identified a number of highly feminised occupations falling within the coverage of this award:[180]

   a. personal assistants, 97.1 per cent female;

   b. personal assistants and secretaries (nfd), 96.3 per cent female;

   c. secretaries, 95.6 per cent female;

   d. receptionists, 93.5 per cent female;

   e. bookkeepers, 90.5 per cent female;

   f. practice managers, 89.7 per cent female;

   g. office managers, 89.4 per cent female;

   h. library assistants, 87.4 per cent female;

   i. payroll clerks, 86.7 per cent female;

   j. general clerks, 86.4 per cent female;

   k. keyboard operators, 82.1 per cent female;

[180] Taken from the 'Clerical and Administrative Workers' ANZSCO 1-digit Occupational Major Group in the Stage 1 Report at p 88, Table A.3 and p 89, Table A.4.

l. office and practice managers (nfd), 80.7 per cent female;

m. accounting clerks, 79.9 per cent female;

n. general clerical workers (nfd), 79.4 per cent female;

o. human resource clerks, 77 per cent female;

p. accounting clerks and bookeepers (nfd), 77 per cent female;

q. inquiry clerks and receptionists (nfd), 71.3 per cent female;

r. office managers and program administrators (nfd), 71 per cent female.

271. Given the exceptionally high levels of female employees in numerous occupations covered by this Award, it is appropriate for inclusion in the Group 3 Measures process. However, regardless of any interim steps that are able to be taken as part of these proceedings, we consider a review of the award is clearly required to address work value and gender based undervaluation.

5.5.13 *Aircraft Cabin Crew Award 2020*

272. Aircraft cabin crew are a highly feminised workforce, as noted at paragraph 396 of the March submissions, notwithstanding their exclusion from the FWC's gender equity research to date. This is a workforce that is required to be competent in aspects of security and crowd control, equipment operation, emergency response and customer service in a unique workplace. Having regard to the matters advanced in the FAAA's submission, we are of the view that the approach and outcome of award modernisation for aircraft cabin crew was highly unsatisfactory.

273. We refer to the submission of the FAAA which sets out some of the history of the Aircraft Cabin Crew Award, including evidence of indicia of gender-based undervaluation.

274. There are three classifications in the award: cabin crew member, supervisor, and manager. Formal qualifications are not stipulated in the award at any level and there is no identified path in the award for progression from 'member' to 'supervisor' or 'manager'. As the FAAA submission highlights, there are in fact training standards mandated by CASA for cabin crew, and a Certificate III level

course. The minimum weekly rate of pay for a cabin crew member is $975.60, thus would require an increase of $19.40 per week (2%) to equal the C10/Certificate III rate.

275. Given that the work of cabin crew members is prima facie skilled work which is at least equivalent to Certificate III work, we consider it appropriate for an immediate Special Adjustment to the cabin crew member rate of 2 per cent to align this rate to the C10 rate. The adjustment should also be flowed through to the cabin crew supervisor and manager minimum rates to maintain relatives. Attention should also be given to hourly rates to ensure the proper divisor is applied. It is also appropriate that this Award be included in the Group 3 Measures process.

5.6 Response to Employer Submissions

5.6.1 Gender Equality considerations

276. AI Group submit that the Panel's consideration of gender equality should not be limited to an assessment of remuneration levels between men and women, or the gender pay gap, but should also include other measures to achieve gender equality such as lifting women's workforce participation, sustaining the recent rise in full-time employment of women and encouraging the provision of additional hours of work to underemployed women.[181]

277. Whilst we agree that lifting women's workforce participation is a relevant consideration, consistent with ss 134(1)(ab), 134(1)(c) and 284(1)(b) of the FW Act, we refer to the Panel's commentary in the *Annual Wage Review 2022–2023* that s 134(1)(ab) is more likely to relate to conditions of work rather than rates of pay.[182]

278. The Panel should be cautious in accepting AI Group's submission that its task includes measures to achieve gender equality by "sustaining the recent rise in full-time employment of women" or "encouraging the provision of additional hours of work to underemployed women". Firstly, the Panel's task is to look at the need to achieve gender equality broadly, with specific consideration to be given to equal remuneration, gender-based undervaluation and gender pay gaps, which as the Panel has acknowledged, are the most relevant factors to setting minimum and award rates of pay. Secondly, we reject the argument by AI Group (and other employers) that wage increases in excess

181 AI Group submission at p 43.
182 See March submissions, [372].

of what they would recommend would undermine female workforce participation, as outlined below.

5.6.2 Wage increases will not undermine female workforce participation

279. At least two employer groups argued that increases to minimum and award wages in excess of their recommended increase risked displacing women from the workforce, may result in greater underemployment or increased reliance on casual/insecure employment, and therefore may have disproportionate unemployment impacts on women and undermine the consideration of facilitating women's full economic participation pursuant to s134(1)(ab).[183] We reject these arguments, and note that it was not supported by any data or source in the employer group submissions.

280. We refer to the analysis of new labour force data section 2.3 in Chapter 2 of this submission. Despite easing, the labour market for women has been solid, with record low levels of underutilisation and record high levels of full-time employment. These excellent outcomes for women workers have continued for several years, including two years of strong increases in minimum and award wages, with no discernible disemployment effects (indeed, the participation rate is above the pre-pandemic average and the unemployment rates is below the pre-pandemic average.) Further, as outlined in the March submission, a solid increase in award and minimum wages is potentially able to contribute to maintaining a lower unemployment and underemployment rate, rather than putting the current low unemployment rate in jeopardy.[184]

281. Given the lack of evidence for any disemployment effects arising from the Panel's previous decisions, the Panel should not be constrained by these arguments from awarding increases of the nature proposed by the ACTU, including increases that are necessary to begin to address gender-based undervaluation.

282. Previous Panels have also found, during an annual wage review, that the gender pay gap is a relevant consideration in respect of s 284(1)(b), because it may have effects on female participation in the workforce.[185] This has been interpreted as follows:

---

[183] See AI Group submission at p 44; ACCI submission at [192].
[184] March submission, [457].
[185] [2017] FWCFB 3500 at [643]; [2018] FWCFB 3500 at [36]

> We accept that our consideration of 'social inclusion' in the context of s 284(1)(b) is limited to increased workforce participation. On that basis, it is obtaining employment that is the focus of s 284(1)(b). This involves a consideration of the incentives that higher minimum wages can provide to those not in employment to seek paid work, balanced against potential impacts on the demand for low-paid workers hence the supply of low-paid jobs, from large increases in minimum wages.[186]

283. Higher wages can improve women's economic participation in the labour market, because, for women with caring responsibilities, higher wages make it easier for women to return to work and take on more hours by making childcare more affordable and making it less likely that women will take time out of work to undertake unpaid care.

284. Increases to the minimum wage also flow through to paid parental leave (**PPL**), increasing the income and living standards of women on parental leave commensurate with the quantum of that increase (whether or not those women are otherwise dependent on the minimum wage or award wages for their non-PPL remuneration). The evidence from comparable economies shows that when PPL is paid at, or close to full wage replacement rates, men increase their uptake of parental leave and unpaid care, which over time changes gender norms around the division of paid and unpaid work.[187]

285. Combined with the recent changes to the PPL scheme that allows parents to share PPL flexibly between them from 1 July 2023 (in contrast to the previous PPL scheme where fathers or 'secondary carers' were only entitled to two weeks paid leave at the NMW under the 'Dad and Partner Pay Entitlement'), an increase in the NMW will better incentivise more fathers and partners to access parental leave and assist with caring responsibilities. This could make a significant contribution towards gender equality by improving women's workforce participation, given that a key barrier to the take up of PPL by fathers and partners is the low rate of the NMW which is likely to represent a more significant pay cut for men than women.[188]

---

[186] [2013] FWCFB 4000 at [101].

[187] Patnaik, A. (2019) 'Reserving Time for Daddy: The Consequences of Fathers' Quotas', *The Journal of Labor Economics* 37(4): 1009-1330, cited in Baird and Hill (2022) (below).

[188] Baird, M. & Hill, E. (2022), Next Steps for Paid Parental Leave in Australia: A report commissioned by the Women's Economic Equality Taskforce, November 2022, The University of Sydney.

5.6.3 The Gender Pay Gap

286. AI Group argue that because the total earnings gender pay gap is significantly lower for award employees than for all employees, this demonstrates that "most of the gender pay gap results from gender wage dynamics facing higher paid workers outside the modern awards system" and conclude that "changes to minimum wages are thus unlikely to have a significant effect on the gender pay gap."[189] ACCI and the Australian Retailers' Association also argue that increases to minimum and award wages are incapable of having any material impact on the gender pay gap or women's economic equality more broadly.[190]

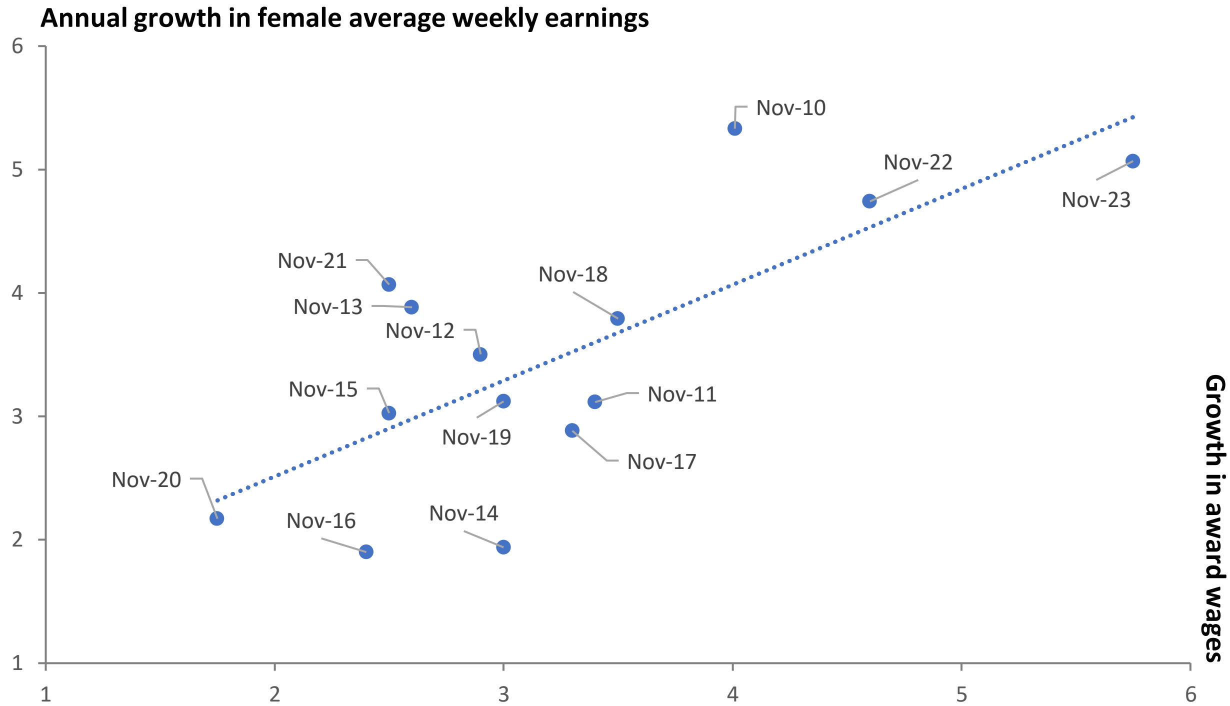
287. These arguments ignore the broader picture and are directly contrary to what the Panel has itself previously found. As has long been recognised by the Panel, because women are disproportionately award reliant, "any increase to modern award minimum wage rates will provide a disproportionate benefit to female workers, and may contribute to narrowing the aggregate gender pay gap across the entire employee workforce".[191]

288. As demonstrated in Figures 177 and 178 in our initial submission, there is an association between the maintenance and regular adjustment of modern award minimum wages and the levelling off and reduction of the gender pay gap, with a light pull factor on growth in female AWOTE from the Panel's decisions.

289. Figure 34 below charts the relationship between annual growth in female average weekly earnings and increases in award wages in Annual Wage Reviews and shows there is a strong positive correlation between these two variables. The strong positive correlation is consistent with the Panel's previous findings noted in paragraph 282 above and suggest that a solid increase in award wages would contribute to lowering the aggregate gender pay gap across the workforce.

189 Ai Group submission at p 45.
190 ACCI submission at [186]; ARA submission at p 8.
191 *Annual Wage Review 2022–2023* [2023] FWCFB 3500 at [9], [114]–[115], [117].

Figure 34: Relationship between annual growth in female average weekly earnings and increases in award wages in Annual Wage Reviews



Source: Fair Work Commission (various years), ABS Average Weekly Earnings, Australia & ACTU calculations

290. ACCI also argues that uniform increases to minimum and award wages do not effectively narrow the gender pay gap for the relevant employees, because uniform increases naturally maintain the previous gap.[192] Putting aside the point above that such increases do have an effect on the gender pay gap **overall,** we agree that uniform increases maintain the existing gap between the relevant groups of employees. This is why we have proposed award-specific adjustments to some modern awards in this Review, consistent with the consideration to ensure equal renumeration for work of equal or comparable value and eliminate gender-based undervaluation of work.

5.6.3 Submission of Australian Business Industrial and Business NSW

291. There are three points raised in paragraph 4.39 of the ABI/BNSW submission that we wish to respond to.

192 ACCI submission at [190]-[191].

292. First, the submission at [4.39(a)] raises the role that the C10 framework played in creating stability in the award system, and suggests that if the C10 framework is no longer fit for purpose, it should be replaced (as opposed to merely discarded), to maintain that stability. The proposal in our initial submission, developed further above, is a framework to enable some interim steps to be taken to address gender-based undervaluation of work, whilst also maintaining stability in the award system.

293. Second, the submission at [4.39(b)] urges the FWC to "operate with some sensitivity" where female dominated industries are utilising the (new) supported bargaining regime to lift wages, and should "place weight on the preference of the parties especially where no application has been made to vary a modern award." Whilst it is not entirely clear what is meant by this submission, the question of dealing with gender-based undervaluation in modern awards is entirely separate from what may be being pursued through collective bargaining. The modern awards and minimum wages objectives now compel the FWC to address gender-based undervaluation of work, regardless of other developments and processes. This is consistent with the need for the FWC to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions.

294. Third, the submission at [4.39(c)] expresses "anxiety about the possibility of female-dominated awards ultimately operating with higher minimum rates of pay than male-dominated awards", and that this could lead to "catch up claims or parity claims seeking restoration of historical relativities" that would have a material economic impact. The basis of any such claims is not clear, and in any event, the argument is hypothetical, speculative, and irrelevant to the task of the Panel, which is to assess how it might begin to address gender-based undervaluation of work through the Review.

address

ACTU

Level 4 / 365 Queen Street

Melbourne VIC 3000

phone

1300 486 466

web

ACTU Australian Unions