Ai GROUP SUBMISSION

Fair Work Commission

Annual Wage Review 2023-24
Initial Submission

28 March 2024

Contents

Abbreviations

2024 AWR	Annual Wage Review 2023 – 24
2023 AWR	Annual Wage Review 2022 – 23
ACTU	Australian Council of Trade Unions
ABS	Australian Bureau of Statistics
Ai Group	Australian Industry Group
AIRC	Australian Industrial Relations Commission
AWOTE	Average Weekly Ordinary Times Earnings
AWR	Annual Wage Review
Commission	Fair Work Commission
CPI	Consumer Price Index
DAAI	Direct Aggregation Across Industries
FTB	Family Tax Benefit
FW Act	*Fair Work Act 2009*
FWC-SR	*Statistical Report – Annual Wage Review 2022 – 23*, Version 2 (30 March 2023)
GDP	Gross Domestic Product
IMF	International Monetary Fund
LITO	Low Income Tax Offset
MAMW	Modern Award Minimum Wages
NMW	National Minimum Wage
OECD	Organisation for Economic Co-operation and Development
Panel	Expert Panel
PPI	Producer Price Index
RBA	Reserve Bank of Australia
SG	Superannuation Guarantee
WPI	Wage Price Indicator

1. Introduction

The Australian Industry Group urges the Panel to be conscious of the fact that anything more than a moderate increase in the NMW and MAMW would exacerbate employment risks facing the slowing Australian economy and labour market.

Further, a more moderate increase in the NMW and MAMW, by easing inflation pressures, will be more likely to bring forward the timing of an easing in interest rates with significant benefits for low paid employees.

In seeking to provide the maintenance of a fair safety net of minimum wages, as contemplated by the FW Act, the Panel must strike a fair balance between the equally important and inherently interconnected interests of employees and employers. In striking this balance this year, the Panel should pay particular regard to the deteriorating state of the Australian economy and the risks to employment this poses.

Australian GDP slowed markedly over 2023, as inflationary pressures, tight monetary policy and a weaker global economy dragged on macroeconomic performance. While inflation declined from its peak in late 2022, it remains elevated and is unlikely to return to the target range until mid-2025, at earliest. Official forecasts all point towards a continuing decline in growth in the first half of 2024, followed by below-average performance through 2025.

This slowing of the Australian economy has begun to impact industry. Industry performance declined markedly in 2023, with several industries including those which are award-reliant having already entered into contraction. The financial performance of small businesses – which employ a large proportion of award-reliant employees – is especially vulnerable. Wages growth has exceeded that of growth in business income and profits, increasing pressure on margins. An increase in the SG poses an additional financial impost on employers. Current productivity performance is especially poor, even by the relatively weak standards of Australia's most recent productivity cycle.

Business capacity to pay increases in minimum wages is significantly lower than in previous years that were characterised by strong post-pandemic growth.

The Australian labour market is also showing signs of weakness. Employment indicators began to moderate in the second half of 2023, undoing some of the gains in employment achieved during the post-pandemic recovery phase. While aggregate increases in unemployment have to date been moderate, there are pockets seeing significant employment reductions, particularly in award-reliant industries, in full-time employment, and for youth employees. By contrast, growth in wages and earnings have continued to accelerate in 2023 and are now increasing at the fastest rate in over a decade.

The principal risk for the Australian labour market over the coming year is not weak wages growth, but weak employment generation.

In this deteriorating economic context, the Panel must strike a careful a balance between the need to set fair minimum wages and the need to ensure employment levels are protected. It should also heed the productivity performance of the Australian economy, which provides the foundation for sustainable increases in real wages. A more than moderate increase in minimum wages, which is unsustainable for businesses facing increasing pressure and low productivity growth, will magnify existing risks to employment generation.

When setting the level of this year's minimum wage increase, the Panel should have regard to those areas of the labour market that are already fragile and thus at greatest risk from an excessive increase. Industries which are already reporting declining output and/or employment – particularly smaller businesses, and the award-reliant retail and accommodation and food industries – are especially vulnerable. Youth employment and full-time employment are additional areas with identified labour market weakness, where employment levels will be susceptible to minimum wage increases.

Minimum wages increases need to be set at a level which all employers can bear, to avoid employment losses that are likely to harm the most vulnerable individuals and households.

In advancing these submissions, Ai Group acknowledges the pressures that are currently bearing on low paid workers in lower-income households. We note that several forms of income support – including the changes to the Stage 3 income tax cuts and discretionary increases to income support programs - have in combination made a substantial contribution to low income households' incomes. The reprofiling of the Stage 3 income tax cuts is especially pertinent. We estimate it is equivalent in value to a 2.6% increase in pre-tax earnings for the average award-dependent employee and should be taken into account by the Panel when determining this year's increase.

Such matters must also be carefully balanced along with other matters that the statutory framework mandates must be taken into account, as well as relevant broader considerations. Crucially, the circumstances of employers struggling with deteriorating economic conditions must also be weighed. The proposition that previous declines in real wages due to high inflation must be *immediately* recovered is irresponsible in the current economic climate. A more responsible and moderate approach is required in the interests of all stakeholders.

The submission that follows addresses these relevant considerations that should guide the Panel. Having regard to inflationary pressures, adverse economic headwinds, ongoing volatility, low levels of productivity improvements and modest profit margins in many sectors, particularly among smaller employers, our view at this time is that any increase in the NMW and MAMW should not exceed a figure of 2.8 per cent.

In practical terms, this would deliver a real increase in the disposable incomes of many workers when the additional benefits from tax relief and increased levels of government support are taken into account. An increase of less than 2.8 per cent would lower the likelihood of negative impacts on employment and raise the likelihood of an earlier reduction in interest rates by lowering the inflationary pressures that would flow from a higher increase. Australia's future employment, inflation and interest rate paths will be at risk under the reckless ACTU proposal for a 5 percent increase. The Commission should also be very mindful of the cumulative impact of the unprecedently high increases to minimum wages granted over the past two years.

Ai Group's proposed increase may be adjusted in further submissions made during the AWR, depending on changing economic conditions as revealed in subsequent data releases and uncertainty over the approach that will be taken in the Commonwealth Budget to various matters, including any further measures that the Government may introduce to assist low-income households.

2. Statutory considerations

The FW Act requires that the Commission conduct an AWR each financial year. The AWR involves a review of the NMW and MAMW.

In conducting an AWR, the Commission is to be guided by the various relevant statutory considerations. These include the objects of the FW Act, the minimum wages objective and the modern awards objective.

The object of the FW Act is set out in s.3: (emphasis added)

> (3) The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:
>
> (a) providing workplace relations laws that are fair to working Australians, promote job security and gender equality, are flexible for businesses, promote productivity and economic growth for Australia's future economic prosperity and take into account Australia's international labour obligations; and
>
> (b) ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders; and
>
> (c) ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system; and
>
> (d) assisting employees to balance their work and family responsibilities by providing for flexible working arrangements; and
>
> (e) enabling fairness and representation at work and the prevention of discrimination by recognising the right to freedom of association and the right to be represented, protecting against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms; and
>
> (f) 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; and
>
> (g) acknowledging the special circumstances of small and medium-sized businesses.

The objects of the FW Act state that it is directed towards, *inter alia,* providing a *'balanced'* framework, that promotes *'national economic prosperity'* by providing laws that *'promote economic growth*', ensuring a *'fair'* safety net, emphasising *'enterprise-level collective bargaining'* and recognising the *'special circumstances of small and medium-sized businesses'*. The 2024 AWR should be conducted in a way that is consistent with these objects.

The minimum wages objective is central to the conduct of an AWR. It is in the following terms, at s.284(1) of the FW Act: (emphasis added)

(1) The FWC must establish and maintain a safety net of <u>fair minimum wages</u>, taking into account:

(a) <u>the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth;</u> and

(aa) the need to achieve gender equality, including by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and addressing gender pay gaps; and

(b) promoting social inclusion through <u>increased workforce participation</u>; and

(c) relative living standards and the needs of the low paid; and

(e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.

The minimum wages objective applies to the making of a national minimum wage order, as required by s.285(2)(a)(ii) of the FW Act.[1] It also applies to the review of MAMW.[2]

The modern awards objective is not expressly relevant to the making of a national minimum wage order.[3] It is, however, relevant to the review of MAMW.[4]

The modern awards objective is as follows: (emphasis added)

(1) The FWC must ensure that modern awards, together with the National Employment Standards, provide <u>a fair and relevant minimum safety net</u> of terms and conditions, taking into account:

(a) relative living standards and the needs of the low paid; and

[1] Section 284(2)(a) of the FW Act.
[2] Section 284(2)(b) of the FW Act.
[3] *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [6].
[4] Section 134(2)(b) of the FW Act.

(aa) the need to improve access to secure work across the economy; and

(ab) the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women's full economic participation; and

(b) <u>the need to encourage collective bargaining</u>; and

(c) the need to promote social inclusion through <u>increased workforce participation</u>; and

(d) the need to promote flexible modern work practices and the efficient and productive performance of work; and

(da) the need to provide additional remuneration for:

(i) employees working overtime; or

(ii) employees working unsocial, irregular or unpredictable hours; or

(iii) employees working on weekends or public holidays; or

(iv) employees working shifts; and

(f) <u>the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden;</u> and

(g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and

(h) <u>the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.</u>

Clearly, the modern awards objective requires a consideration of various matters relevant to employers, employees and the national economy.

In prevision decisions concerning AWRs, the Commission has made various observations about the statutory criteria that guide the Panel's decision in an AWR, which remain relevant. In particular:

(a) Generally speaking, differently constituted Panels should evaluate the evidence and submissions before them in accordance with a consistent and stable interpretation of the legislative framework. Justice requires consistent decision making unless a difference can be articulated and applied.[5]

[5] *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [119].

(b) The statutory tasks in s.134 and s.284 involve an *'evaluative exercise'* which is informed by the considerations in s.134(1)(a)–(h) and s.284(1)(a)–(e) of the Act, as well as the object in s.3.[6]

(c) The matters listed in s.134 and s.284 are broadly expressed and '*do not necessarily exhaust the matters which the Panel might properly consider to be relevant'*.[7]

(d) No particular primacy is to be given to any of the specific factors that the Panel must take into account.[8]

(e) There is often a degree of tension between the economic and social considerations which the Panel must take into account. A substantial wage increase may better address the needs of the low paid and improve the living standards of award-reliant employees relative to those employees who are not award reliant; but it may, depending upon the prevailing economic circumstances, adversely affect the performance and competitiveness of the national economy. A substantial wage increase may reduce the capacity to employ the marginalised and hence impact on employment growth or add to inflationary pressures.[9]

(f) The range of considerations that the Panel is required to take into account calls for the exercise of broad judgment rather than a mechanistic or decision rule approach to wage fixation. It is on this basis that some past AWR decisions have rejected proposals for the adoption of real wage maintenance; a medium-term target for the NMW; and the variation of modern award minimum wages based on trends in market wages.[10]

(g) The Panel's task is to consider relevant statutory matters in the context of the prevailing economic and social environment.[11]

(h) The considerations which the Panel is required to take into account do not generally set a particular standard against which a modern award or the *'safety net of fair minimum wages'* can be evaluated; many of them may be characterised as broad social objectives.[12]

(i) There is no justification to increase the NMW by a higher rate than modern award minimum wages. To do so would create a significant risk of disemployment effects—thus putting low-paid workers at risk of unemployment and poverty. Nor would it be fair to those on higher modern award minimum wages as it would erode the recognition of their higher skill and relative *'work value'.*[13]

---

[6] *Annual Wage Review 2022 – 23* [2023] FWCFB 3500 at [22].
[7] *Annual Wage Review 2022 – 23* [2023] FWCFB 3500 at [22].
[8] *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [8].
[9] *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [161].
[10] *Annual Wage Review 2017 – 18* [2018] FWCFB 3500 at [44].
[11] *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [4].
[12] *Annual Wage Review 2017 – 18* [2018] FWCFB 3500 at [15].
[13] *Annual Wage Review 2017 – 18* [2018] FWCFB 3500 at [105]; noting that in the 2023 AWR, the Commission adopted a different approach, by aligning the NMW to the C13 rate.

(j) The notion of *'fairness'* in the modern awards objective and minimum wages objective includes the perspective of employers and employees.[14]

(k) There are differences in the expression of the economic considerations that the Panel is required to take into account under the modern awards objective and the minimum wages objective. Nonetheless, the underlying intention of the various economic considerations referred to in s.134 and s.284 is that the Panel takes into account the effect of its decisions on national economic prosperity and in so doing gives particular emphasis to the economic indicators specifically mentioned in the relevant statutory provisions.[15]

(l) In order to identify *'low paid'* employees, the Commission has consistently adopted a threshold of two-thirds of median adult full-time ordinary earnings as the benchmark.[16]

(m) The relative living standards of employees are affected by the level of wages that they earn, the hours they work, tax-transfer payments and the circumstances of the households in which they live. It is therefore necessary to have regard to a range of measures applying to the relative living standards of the low paid and the household circumstances in which they live.[17]

(n) Even though the '*need to encourage collective bargaining'* is not an element of the minimum wages objective, it is one of the objects of the FW Act and, therefore, it is appropriate that it is considered in relation to the making of the national minimum wage order.[18]

(o) The Panel's decision-making process should be as transparent as possible and should disclose the factors which are most relevant in a particular year.[19]

[14] *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [18].
[15] *Annual Wage Review 2017 – 18* [2018] FWCFB 3500 at [10].
[16] *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [70].
[17] *Annual Wage Review 2015 – 16* [2016] FWCFB 3500 at [397].
[18] *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [80].
[19] *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [120].

3. The state of the economy and outlook

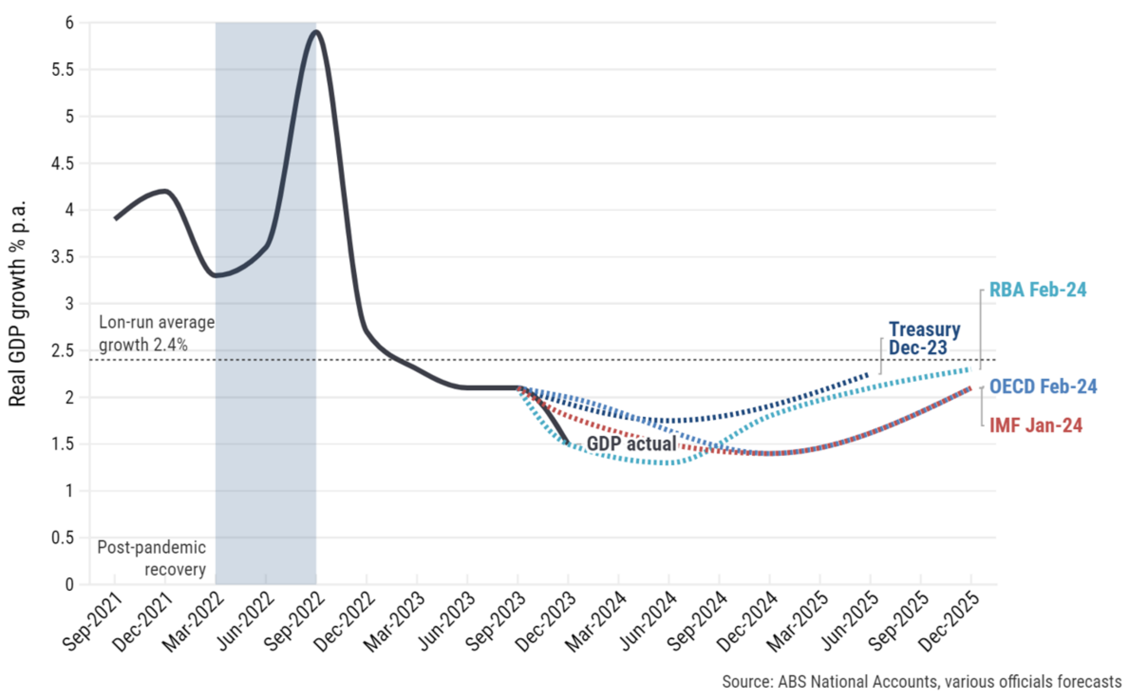
After three years of disruption during the pandemic and its subsequent recovery phase, the Australian economy began to slow in 2023. Growth in real GDP, household spending, value added in the industrial sector and employment all declined during the year. While inflationary pressures began to ease, both consumer and producer price inflation remain elevated on normal levels. The economic outlook for 2024 suggests further weakening in conditions should be expected. Current indicators point towards a continuing deceleration of GDP growth, easing but persistent inflation, weaker household spending, poor performance of some industries, and moderating global growth.

Slowing gross domestic product growth

Following a post-pandemic uptick in 2022, Australia's economic growth continued to slow across 2023. Real GDP growth fell from 2.7% p.a. in the December quarter of 2022 to only 1.5% p.a. in the December quarter of 2023. Outside of the pandemic-affected years, this was the lowest annual growth recorded since the December quarter of 2000.

Forecasts indicate that Australian growth is likely to remain sluggish for the remainder of 2024 (Chart 1). While the precise paths differ, all official forecasters expect real GDP growth of between 1.4% to 2.0% across the calendar year 2024. This is well below Australia's long run average of 2.4% over the last decade.

Chart 1: Australian GDP, 2021-2023 and forecasts



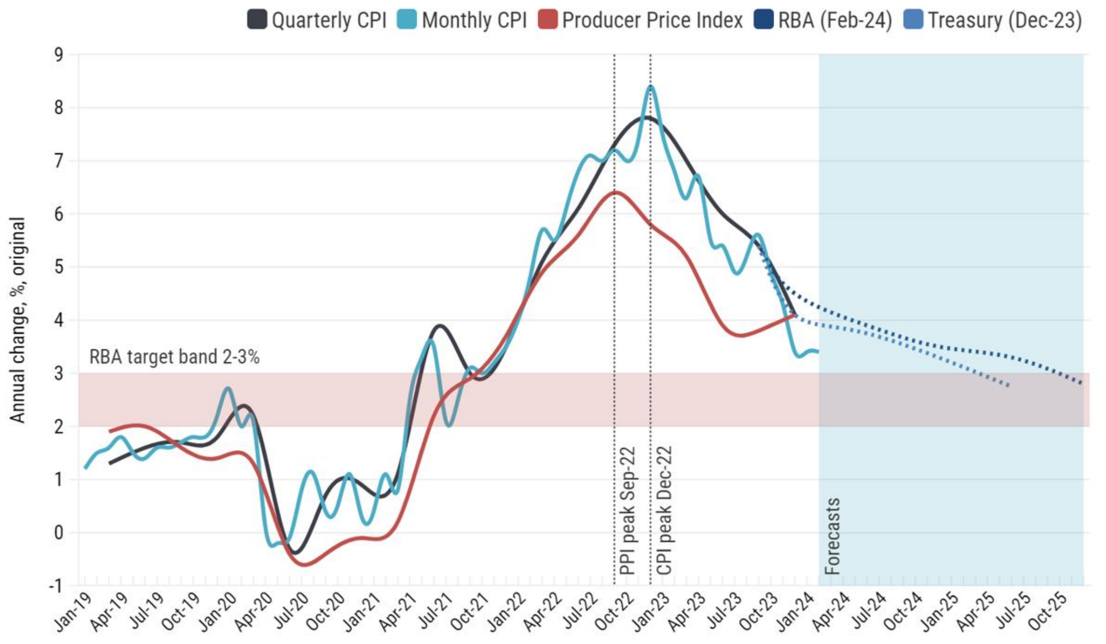
Inflation moderates, forecast to decline across 2024

After two years of elevated pressures, inflation started to ease in Australia in 2023. Across the year the CPI fell from 7.8% to 4.1% p.a., while the PPI declined from 5.8% to 4.1% p.a. (Chart 2). These reductions in Australian inflation measures reflect moderating global inflationary pressures, slowing Australian growth, and the RBA's tightening of monetary policy.

Current official forecasts expect inflation to continue to ease across 2024 and 2025. However, CPI is not expected to return to within the *'target band'* of 2-3% until either late 2024 (Treasury) or mid-2025 (RBA).

In response to these inflationary pressures, the RBA raised the cash rate target thirteen times, from 0.35% to 4.35%[20], between May 2022 and November 2023. It is currently expected that further increases cannot be ruled out but are unlikely to occur, and the first possible reductions in the cash rate could occur by late 2024 at the earliest.

Chart 2: Australian inflation measures, 2019-2023 and forecasts



Source: ABS CPI (A2325847F), ABS Monthly CPI (A128478318V), RBA SMP February 2024, Tresury Economic Outlook

Weak growth in household spending

Household spending growth slowed considerably in 2023. During the post-pandemic rebound in mid-2022, there was a marked increase in household spending as consumption patterns returned to normal (Chart 3). But as the economy slowed and high inflation eroded real household incomes, spending growth declined across 2023. In the year to January 2024, nominal household spending increased by only 3.0%, implying a modest fall in real spending given an annual rise in CPI of 3.4% over the same period[21]. Discretionary spending in nominal terms was flat (0.2%) across the year,

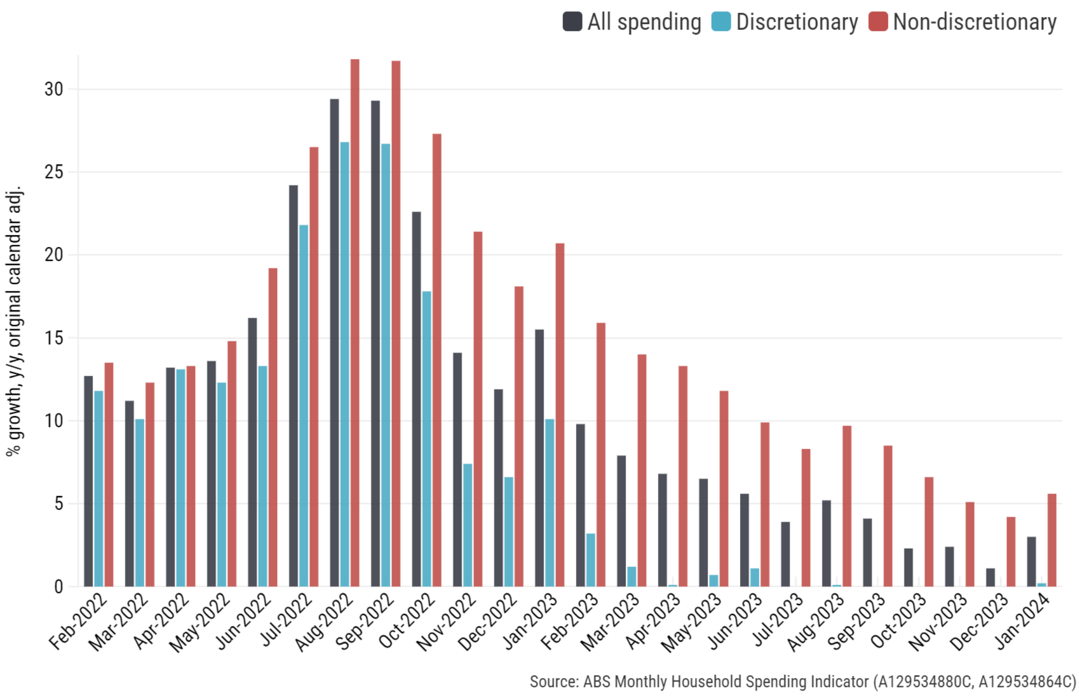
[20] Reserve Bank of Australia, *Cash Rate Target*, https://www.rba.gov.au/statistics/cash-rate/.
[21] ABS Monthly Consumer Price Index Indicator, January 2024.

while a 5.6% increase in non-discretionary spending was driven by rising prices for transport, food and health.

Slowing growth in household spending reflects falling real disposable incomes, which the RBA estimates has declined by 5.5% since early 2022. The factors behind this decline are high inflation, rising net interest payments and growing tax payable owing to nominal income growth and bracket creep[22].

The outlook for household spending is similarly weak. Forecasts for household consumption growth in 2023-24 are 0.8% (RBA) [23] and 0.5% (Treasury)[24], lifting only to the low 2% range for 2024-25.

Chart 3: Growth in household spending, 2022-2024



Mixed performance of industries in 2023

There were marked differences between the performance of Australian industries. Overall, real value-add in all industries excluding mining[25] grew by 2.7% in 2023 (Chart 4). This is a noticeable slowing from a rate of 4.9% in 2022. Some industries which had previously faced supply-side constraints – such as agriculture, transport, accommodation & food and construction – posted strong growth during the year. But much weaker results were seen in some industrial sectors

[22] Reserve Bank of Australia, Developments in Income and Consumption Across Household Groups, RBA Bulleting 25 January 2024, https://www.rba.gov.au/publications/bulletin/2024/jan/developments-in-income-and-consumption-across-household-groups.html.

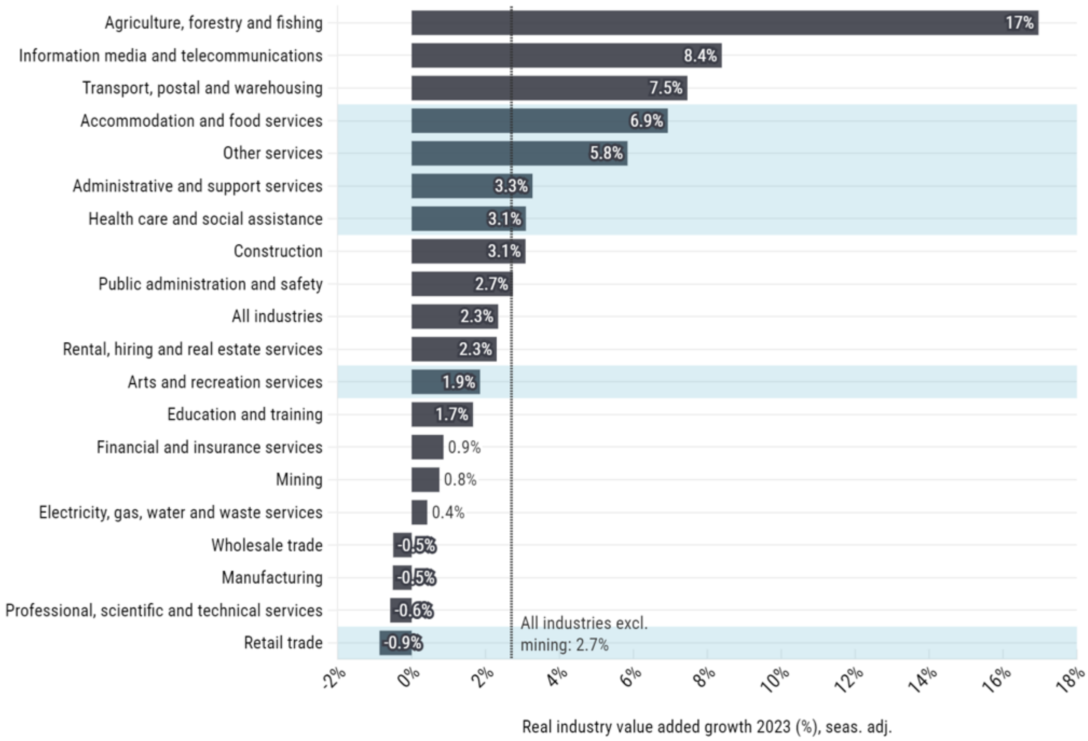
[23] Reserve Bank of Australia, Statement on Monetary Policy, February 2024, Table 3.1.

[24] Treasury, Mid-Year Economic and Fiscal Outlook 2023-24, Table 2.2.

[25] As the mining sector is predominantly export-oriented, and its value-add is strongly shaped by global commodity cycles, its performance is partially disconnected from and does not reflect that of the domestic Australian economy.

(manufacturing, utilities and wholesale trade), professional services, and retail. Four industries posted contraction in 2023, with retail the weakest performer at a -0.9% change in real value-add.

Chart 4: Growth in gross value added by industry, 2023



Source: ABS Australian National Accounts: National Income, Expenditure and Product (Table 6), Ai Group Research & Economics
Highlight denotes award-reliant industries (those with awards accounting for >30% of employees)

A slower global economic outlook for 2024

Australia's economic outlook is similar to its advanced economy peers. The consensus amongst the three official global forecasters (the IMF, World Bank and OECD) is for advanced economies' growth to slow moderately in 2024, before recovering moderately in 2025 (Table 1). Australia is expected to follow a similar pattern, performing better than the Euro Area but weaker than the US.

The IMF's assessment is that risks to Australia's growth outlook are balanced, with downside risks from faltering private consumption offset by upside risks stemming from strong immigration[26.]

The principal factors driving these forecasts are inflation and the resulting monetary policy settings. With inflation now falling faster than expected in most countries, the IMF argues that the likelihood of a global or regional hard landing has receded[27], while the OECD expects inflation to be back in target range in most G20 countries by the end of 2025[28]. However, the impact of geopolitical

[26] International Monetary Fund, IMF Executive Board Concludes 2023 Article IV Consultation with Australia, https://www.imf.org/en/News/Articles/2024/01/18/pr2413-australia-imf-executive-board-concludes-2023-article-iv-consultation.

[27] International Monetary Fund, *World Economic Outlook Update January 2024*, https://www.imf.org/en/Publications/WEO/Issues/2024/01/30/world-economic-outlook-update-january-2024.

[28] Organisation for Economic Development and Co-operation, OECD Economic Outlook, Interim Report February 2024 https://www.oecd.org/economic-outlook/february-2024/.

interruptions – for commodity prices, trade openness and supply-side factors more broadly – continue to pose downside risk. As a result, the World Bank projects the recovery in global trade in 2024 to be "*the weakest following a global recession in the past half century*'[29].

Table 1: Global economic forecasts, as of January 2024

		IMF (Jan-24)		WB (Jan-24)		OECD (Feb-24)	
	2023	2024	2025	2024	2025	2024	2025
Advanced economies	1.6%	1.5%	1.8%	1.2%	1.6%		
United States	2.5%	2.1%	1.7%	1.6%	1.7%	2.1%	1.7%
Euro Area	0.5%	0.9%	1.7%	0.7%	1.6%	0.6%	1.3%
Australia	1.8%	1.4%	2.1%			1.4%	2.1%
Emerging market and developing economies	4.1%	4.1%	4.2%	3.9%	4.0%		
China	5.2%	4.6%	4.1%	4.5%	4.3%	4.7%	4.2%
World	3.1%	3.1%	3.2%	2.4%	2.7%	2.9%	3.0%

Source: World Bank Global Economic Prospects January 2024, IMF World Economic Outlook Update January 2024, OECD Economic Outlook: Interim Report February 2024

[29] World Bank, *Global Economic Prospects January 2024*, https://www.worldbank.org/en/publication/global-economic-prospects.

4. The performance of the labour market

The Australian labour market weakened slightly in 2023 as economic growth slowed. Unemployment, under-employment and hours worked have all weakened moderately, though remain strong by longer-term standards. Wages growth remained strong in 2023 and was relatively even across industries. However, there are clear weaknesses emerging in some segments of the labour market, seen in terms of declining employment in some award-reliant industries, employment generation falling below the level required to absorb new labour market entrants, stalling full-time job creation and increasing youth unemployment.

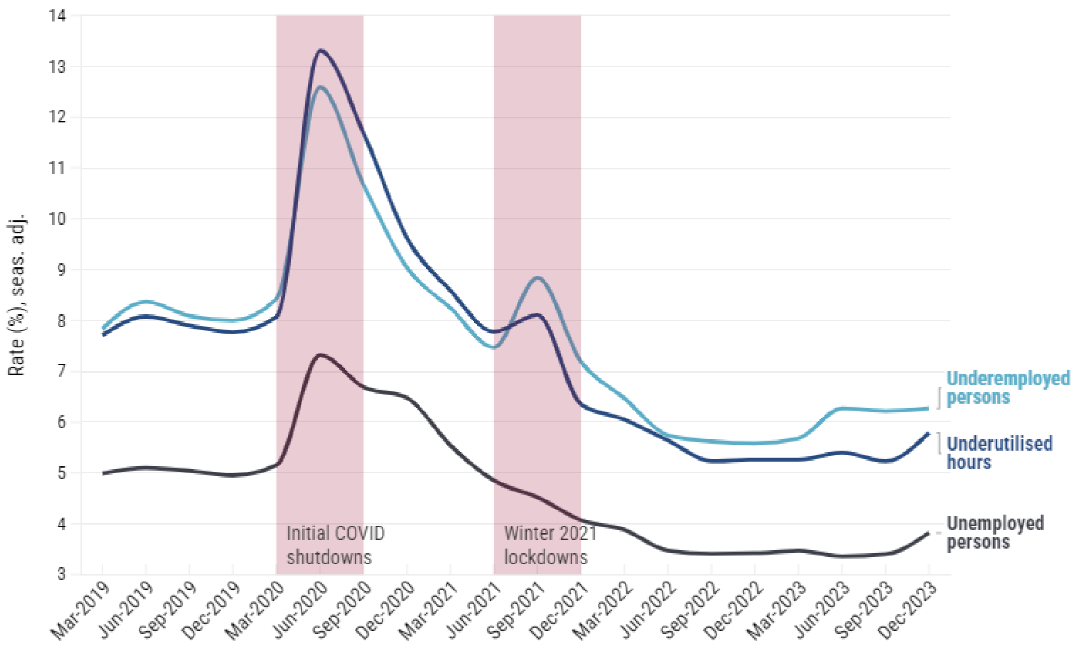
Labour market moderates in 2023

Following the disruptions of the pandemic period, Australia's labour market has been very tight. During 2022, the main indicators of unemployment declined to historically low levels (Chart 5), while employment generation surged rapidly (Chart 6). This reflected strong economic growth as Australia emerged from public health restrictions, as well as labour shortages resulting from reduced net overseas migration during the pandemic. During 2023, the labour market moderated as the economy slowed. In the year to the December quarter of 2023 in seasonally adjusted terms:

- The unemployment rate rose from 3.4% to 3.9%[30].
- The under-employment rate rose from 5.6% to 6.3%[31]
- The rate of under-utilised hours rose from 5.3% to 5.8%[32]
- The number of filled jobs grew by 2.8%, a decline from 4.6% growth in the year to December 2022
- The number of hours worked grew by 2.0%, a decline from 7.2% growth in the year to December 2022

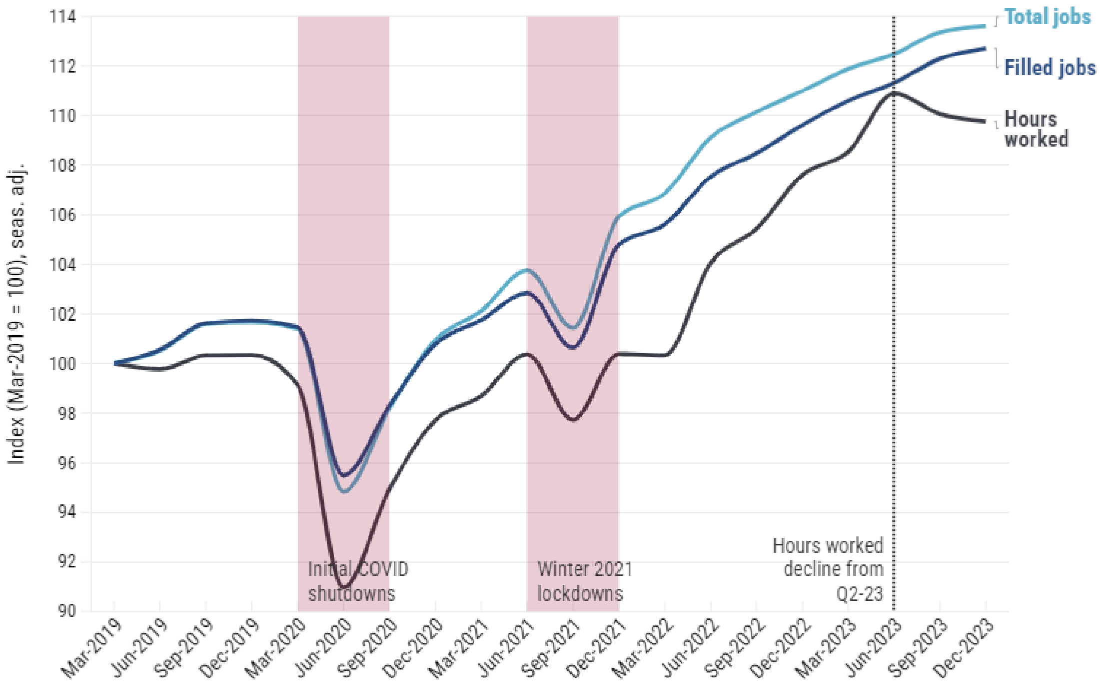
[30] Seasonally adjusted. *ABS Labour Account, December 2023*, Table 1, series A85389479T, A85389473C.
[31] Seasonally adjusted. *ABS Labour Account, December 2023*, Table 1, series A85389481C, A85389473C.
[32] Seasonally adjusted. *ABS Labour Account, December 2023*, Table 1, series A85389488V, A85389487T.

Chart 5: Unemployment indicators, 2019-23



Source: ABS Labour Account (A85389479T, A85389481C, A85389488V), Ai Group Research & Economics
"Underutilised hours" expresses hours sought but not worked as a share of hours worked

Chart 6: Employment indicators, 2019-23



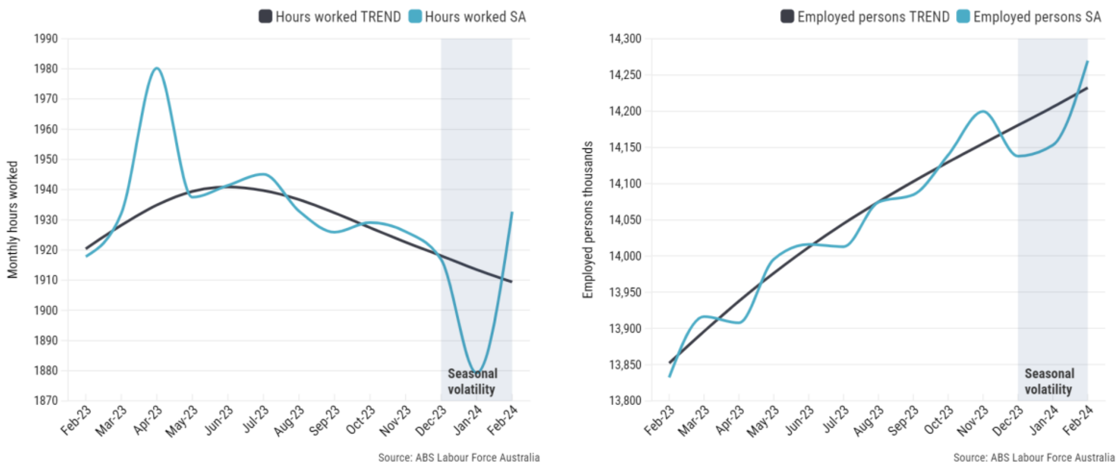
Source: ABS Labour Account (A85389483J, A85389464A, A85389467J), Ai Group Research & Economics

Labour market data for the early months of 2024 are challenging to interpret due to a high level of seasonal volatility. When measured using seasonally adjusted figures, there is an observed pattern of decline-below, then improvement-above trend for employed persons and hours worked indicators in the months surrounding the most recent Christmas and New Year period (Chart 7).

This volatility likely reflects changing patterns of seasonality around the holiday period. For example, the ABS notes there was a larger than usual number of people waiting to start or return to work during this period compared to previous years[33], producing a lag which delayed some flow into employment from December/January into February.

This increased seasonal volatility suggests caution should be exercised in interpreting monthly employment data for the early months of 2024. Future monthly and quarterly data, when available, will provide a more reliable measure of whether the labour market easing seen in 2023 continues into 2024.

Chart 7: Volatility in monthly employment indicators



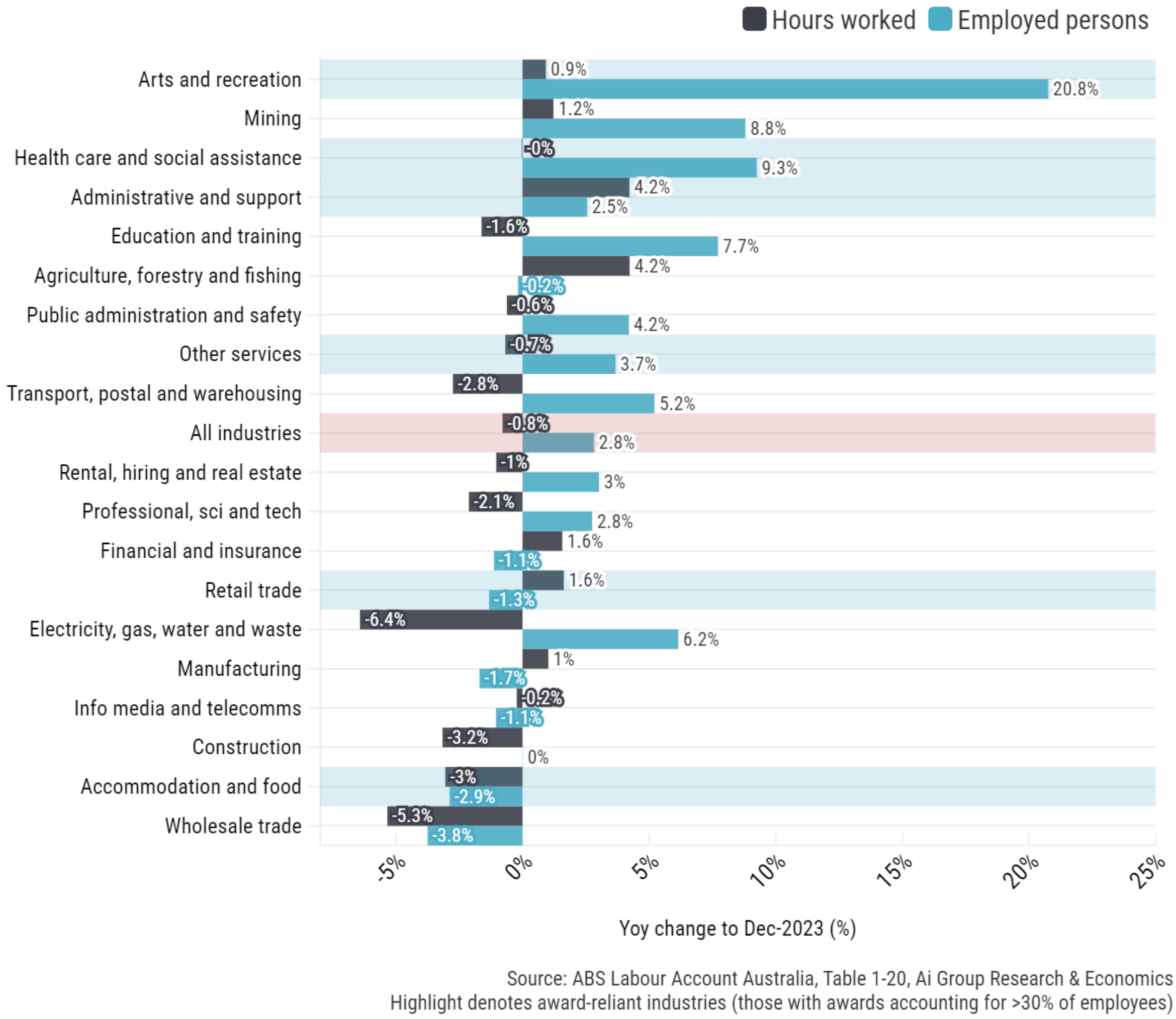
Declining employment in some award-reliant industries

The moderate easing of the labour market in aggregate terms during 2023 obscures significant declines in employment and labour use for certain industries. In the year to the December quarter of 2023, the number of employed persons increased by 2.8% and the number of hours worked by 0.8% across all industries (Chart 8). However, seven industries saw contraction in employment indicators across the year, reflecting labour shedding.

Of particular salience are the employment indicators for award-reliant industries. Amongst these, arts & recreation demonstrated a significant growth in employment as the industry continued to recover from its pandemic-era disruptions. However, retail trade had declining hours worked, while accommodation & food saw both employed persons and hours worked decline across the year.

[33] ABS, Unemployment rate falls to 3.7% as more people start work, 21 March 2024, https://www.abs.gov.au/media-centre/media-releases/unemployment-rate-falls-37-more-people-start-work.

Chart 8: Change in employment by industry, December 2023

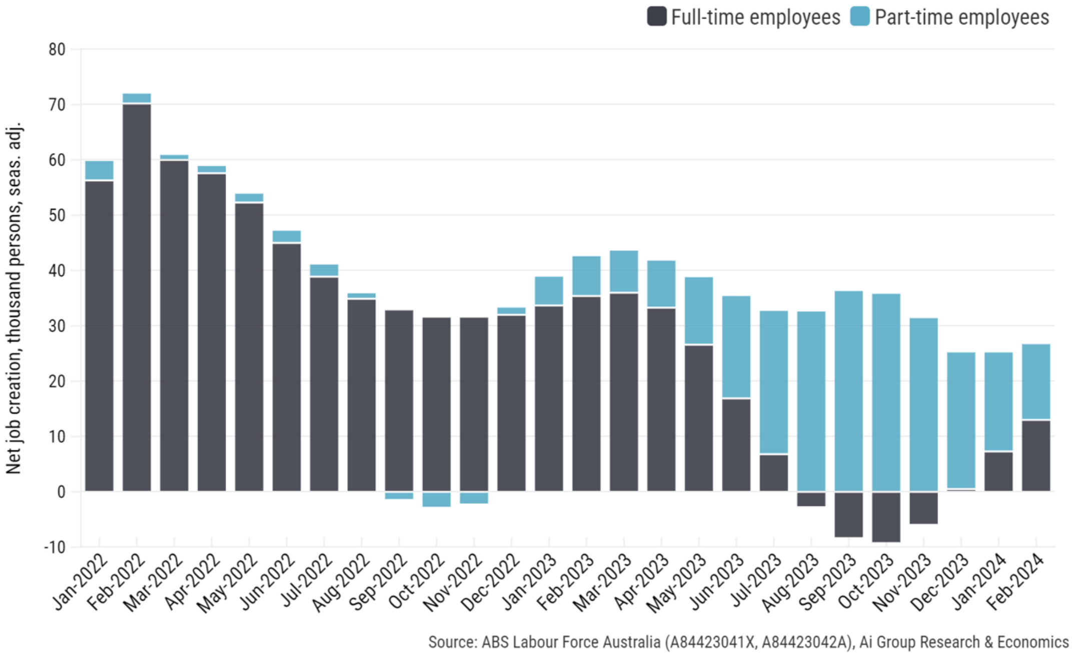


Job creation shifts to part-time roles, while full-time employment declines

During 2022 and the first half of 2023, job creation was dominated by full-time roles (Chart 9). Between January 2022 and June 2023, the number of full-time employees in Australia rose by 7.9% to 9,889,000, while part-time employment was flat at 4,187,000[34]. However, in the second half of 2023 this pattern reversed to instead favour part-time employment. Between June and December 2023, full-time employment fell by 1.0%, while part-time employment increased by 5.4%. This shift from full-time to part-time employment creation explains why hours worked have declined in the second half of 2023 despite continuing increases in total employment (see Chart 6).

[34] Seasonally adjusted. *ABS Labour Force Australia*, series A84423041X and A84423042A.

Chart 9: Full-time and part-time employment indices, 2022-2024

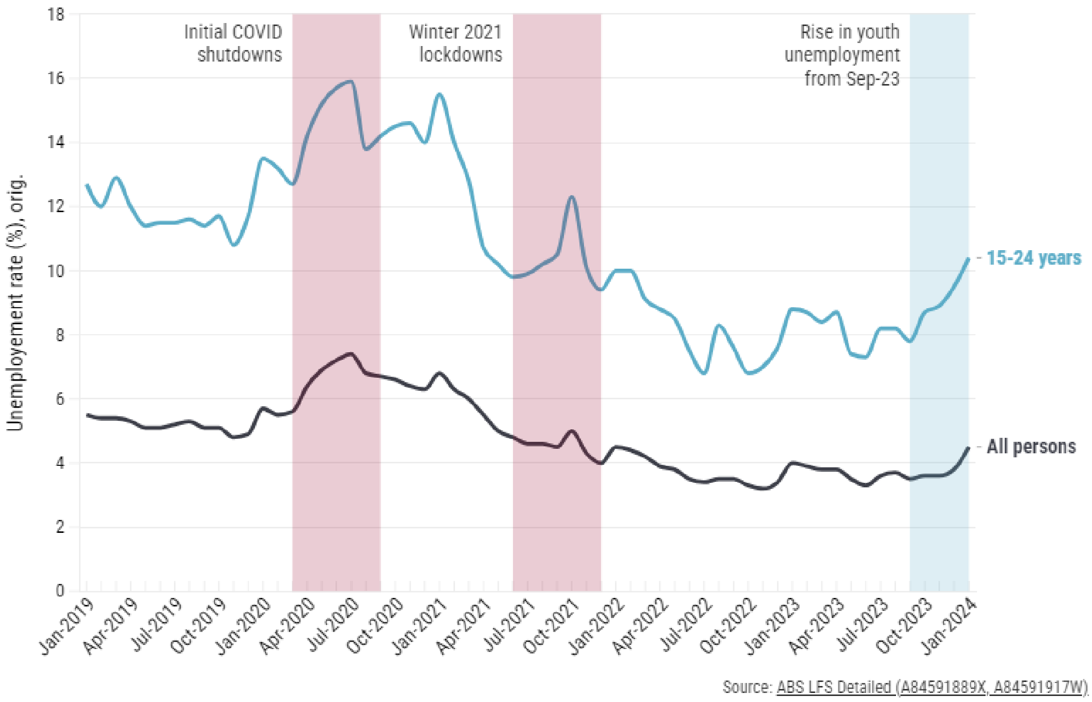


Youth unemployment increased in the second half of 2023

Youth unemployment improved strongly in the tight post-pandemic labour market, with the unemployment rate for 15-24 year olds falling from around 12% to around 8% by late 2022. But as the labour market weakened in the second half of 2023, youth unemployment began to rise again.

The unemployment rate for 15-24 year olds reached 10.4% in January 2024, its highest rate since the period of winter lockdowns in mid-2021 (Chart 10). The rise in youth unemployment has been steeper than for overall unemployment, with the gap between the two rates rising from 4.0% in June 2023 to 5.9% in January 2024. This indicates that youth employees have been more affected by the weakening of the labour market than average.

Chart 10: Youth unemployment in Australia, 2019-2024



Female outcomes remain strong despite moderating labour market

During the current labour market cycle, there has been a marked improvement in all indicators of female employment. Despite a weakening in several labour market indicators during 2023 noted above, this has yet to affect the strong labour market outcomes for women:

- **Participation rate:** Grew by 0.7% to 62.7% for females in the year to December 2023, compared to a 0.1% fall for males[35].

- **Employment to population ratio:** Was steady at a high 60.3% for females in the year to December 2023, compared to a 0.6% fall for males[36].

- **Full-time employment:** The number of females employed full-time increased by 1.2% over the year to December 2023, compared with an increase of 0.9% for males[37].

- **The *'participation gap'*** between male and female participation rates averaged 8.2 percentage across 2023, a reduction from 8.3 percentage points in 2022[38].

[35] Seasonally adjusted. *ABS Labour Force Australia*, Table 1, series A84423037J, A84423065T.
[36] Seasonally adjusted. *ABS Labour Force Australia,* series A84423040W, A84423068X.
[37] Seasonally adjusted. *ABS Labour Force Australia,* series A84423055L, A84423027C.
[38] Seasonally adjusted. *ABS Labour Force Australia,* series A84423037J, A84423065T.

Job vacancies started to moderate but remain elevated

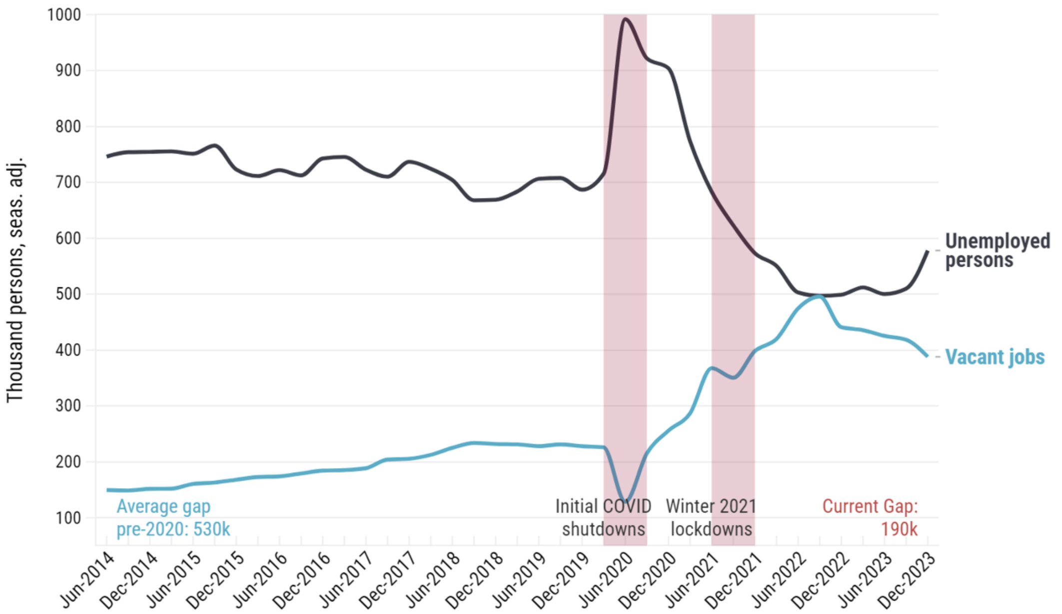
Job vacancies increased dramatically during the current labour market cycle. In December 2023, there were 387,900 vacant jobs in Australia, a 20.3% decline from the peak of 495,600 vacancies in September 2022 (Chart 11).

The national job vacancy rate is currently 2.4%. This is down from a peak of 3.1% in mid-2022, but well above the average of 1.4% in the decade prior to 2020[39].

The number of unemployed people was 578,000 in December 2023, a 15.2% increase from the low of 497,000 recorded in September 2022. As a result, the gap between unemployed people and vacant jobs widened slightly to 190,000.

However, as Chart 11 shows the gap remains much wider than normal levels, which averaged 530,000 in the decade prior to 2020. This indicates that a normal balance between demand and supply for employees in the Australian labour market has yet to be restored.

Chart 11: Unemployed persons and job vacancies, 2014-2023



Source: ABS Labour Account (A85389479T, A85389465C)

Higher wages and earnings growth continued in 2023

Given historically low levels of unemployment and high job vacancy rates, it is unsurprising that wages and earnings have grown rapidly in 2023. The WPI, a measure of nominal growth in hourly rates of pay, showed growth of 4.2% p.a. during 2023[40]. AWOTE, a measure of average total earnings, showed growth of 4.5% p.a. to November 2023[41].

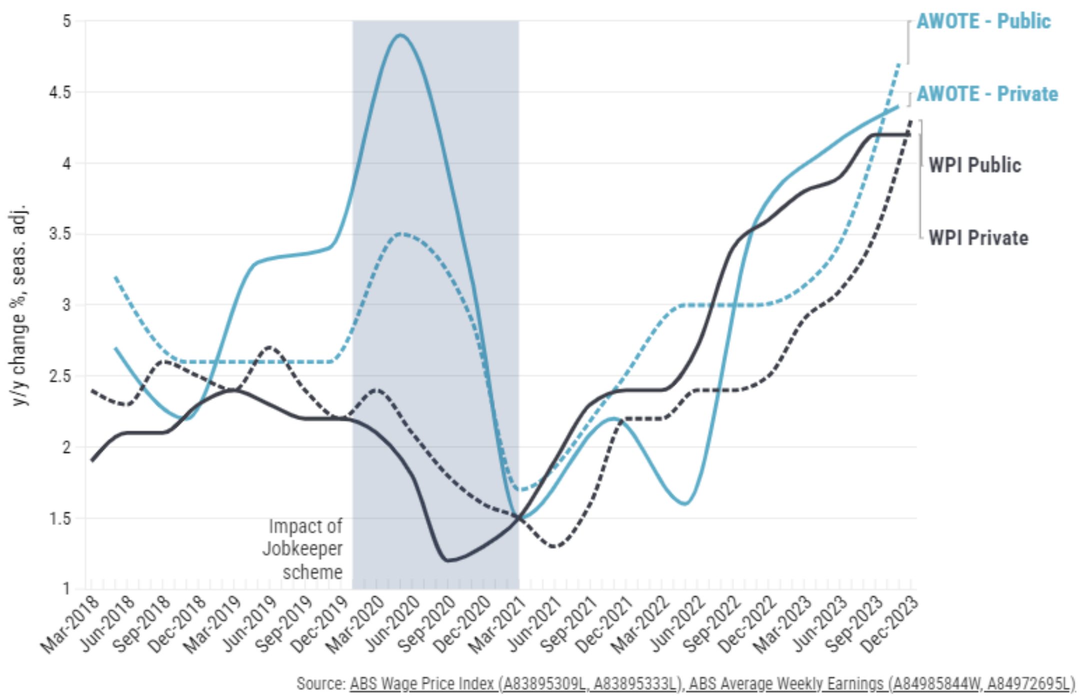
[39] Seasonally adjusted. *ABS Labour Account*, series A85389466F.
[40] Seasonally adjusted. *ABS Wage Price Indicator.*
[41] Seasonally adjusted. *ABS Average Weekly Earnings.*

The faster increase in total earnings than wages was due to an increase in hours worked, which grew 2.0% in the year to the December quarter of 2023. This points to the importance of both wage rates and hours worked in supporting growth in employee earnings.

Outside the period of the JobKeeper scheme during 2020-21, the current rates of nominal wages growth are the highest rates in Australia since 2009; while the current rate of earnings growth is the highest recorded since the AWOTE series commenced in 2012.

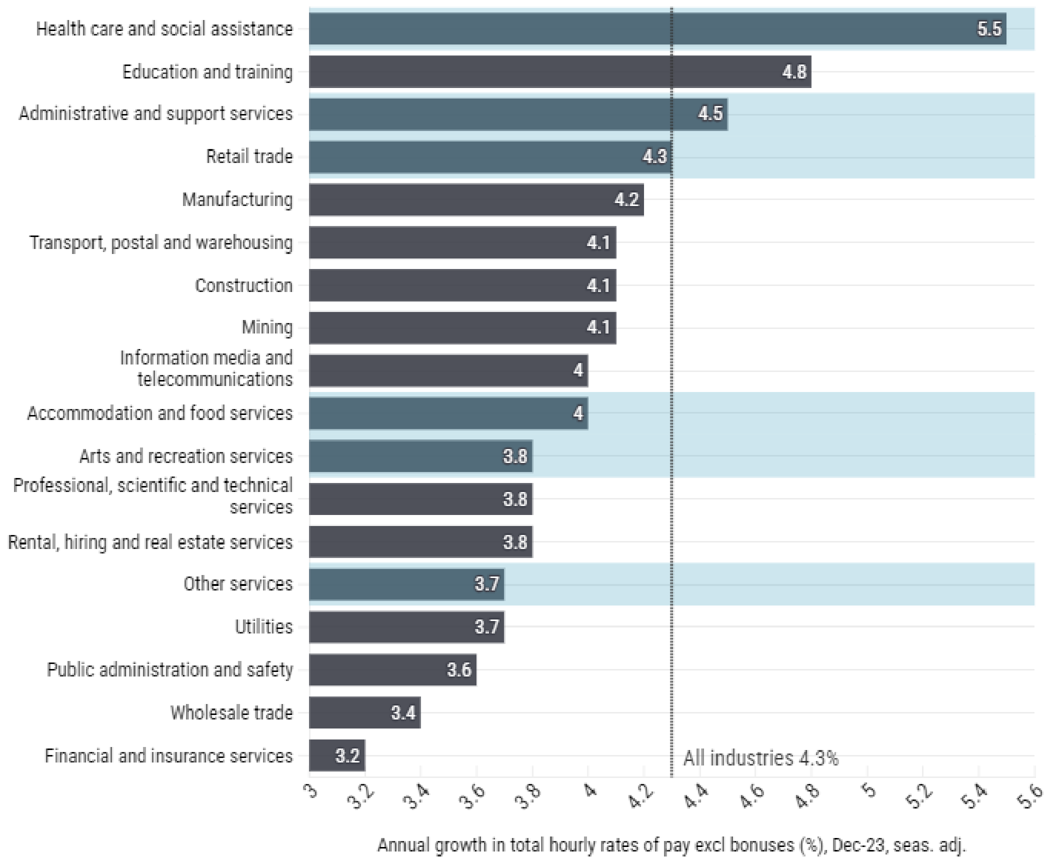
The gap between public and private sector wages growth closed during 2023. In 2022, private sector wages had grown at a faster rate than those of the public sector. This was arguably due to the lag effect introduced by enterprise agreements with longer-duration pay agreements, which are more common in the public sector. This gap subsequently closed in 2023, with public sector wage indicators achieving broad parity with those in the private sector (Chart 12).

Chart 12: Australian wages indicators, public and private sectors, 2018-2023



When disaggregated to the industry level, wages growth has been relatively evenly clustered. Most industries saw wages grow between a range of 3.8% and 4.3% during 2023 (Chart 13). Three award-reliant industries – health care and social assistance, administrative and support services, and retail trade – reported wages growth at the higher end of the distribution.

Chart 13: Wages growth by industry, 2023



Source: ABS Wage Price Index (Table 5b) • Highlight denotes award-reliant industries (those with awards accounting for >30% of employees)

5. The impact on business

The Panel should give careful consideration to the impact of any wage increases on business. Section 134(1)(f) of the Act expressly requires the Commission to do so in relation to MAMW. Further, both the minimum wages objective and the modern awards objective require the Commission to take into account the '*fairness*' of the safety net, which is to be assessed from the perspective of employers and employees.

As can be seen from the preceding two sections, various circumstances facing businesses render it essential that the Commission adopt a restrained and cautious approach to this year's AWR. Several factors – falling profitability in several industries and small businesses, high wage pressures, the impact of previous minimum wage increases, weak productivity performance and the increase in the SG – will all weigh on business' capacity to pay minimum wage increases.

Uneven financial performance, with weakness in several award-reliant industries and small business

The slowing of the Australian economy is currently impacting industries in different ways, leading to a broad spread in financial performance between industries (Chart 14). In 2023, business gross operating profits across all industries contracted by 2.9% on 2022 levels. However, this aggregate figure was skewed by both a large decline for the mining industry (due to falling commodity prices) and a large increase for financial and insurance services (which was recovering from a large fall in profits in 2022).

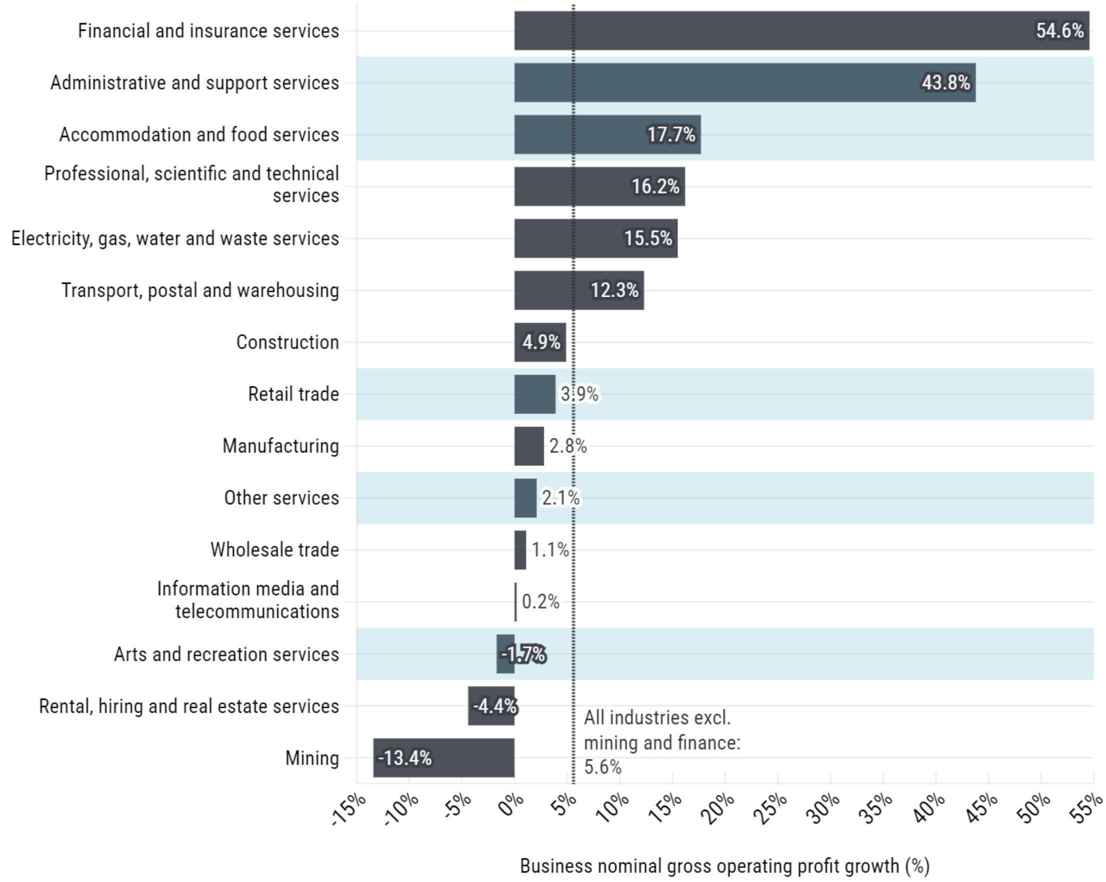
A more accurate picture of profitability performance is therefore given by the indicator for all-industries excluding mining and finance, which saw gross operating profits grow by 5.6% in 2023.

Nonetheless, this aggregate figure conceals wide industry-level differences. Gross operating profits growth varied between a high 54.6% through to a low of -13.4%, reflecting the differential business conditions being experienced across industries. This data cautions against drawing conclusions regarding the profitability and/or business capacity to pay of certain industries based on national-level aggregates.

The profitability of award-reliant industries provides a pertinent indicator of business capacity to pay increases in minimum wages. Among this group, retail trade (3.9%) and other services (2.1%) reported below average profits growth, while arts & recreation services posted a decline (-1.7%). These are labour-intensive industries which are particularly exposed to both slowing consumer spending and the large increases in minimum wages in over the last two financial years.

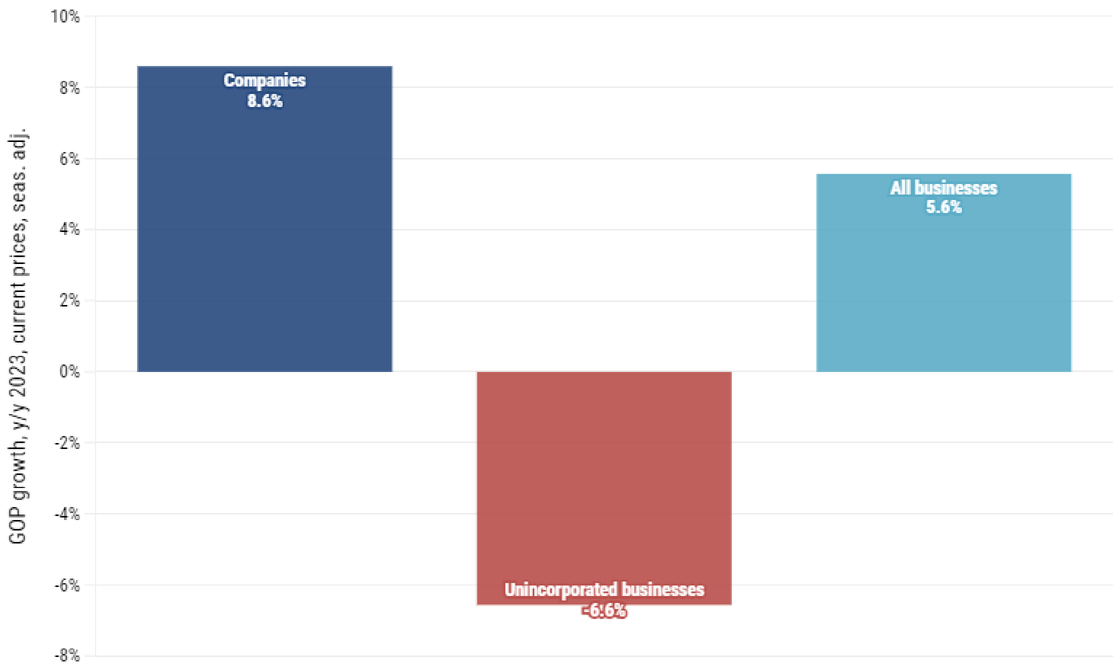
Smaller business as a group are also under particular pressure. While profits data is not available by business size, a useful proxy measure is provided by that for unincorporated businesses, which are typically smaller businesses. When mining and finance are excluded, in 2023 gross operating profits in unincorporated businesses fell by 6.6% (Chart 15). This compares to profits growth of 8.6% in companies (i.e. incorporated businesses), and 5.6% for all businesses.

Chart 14: Growth in nominal business gross operating profits by industry, 2023



Source: ABS Business Indicators (Table 15), Ai Group Research & Economics
Highlight denotes award-reliant industries (those with awards accounting for >30% of employees)

Chart 15: Growth in nominal gross operating profit by business type, excl. mining and finance industries, 2023



Source: ABS Business Indicators, Ai Group Research & Economics
Excludes mining (C) and finance and insurance (K) industry divisions

Table 2: Gross operating profits and wages growth by industry, 2022 and 2023

	Wages			Gross Operating Profits			Business income from sales		
	2022	**2023**	**% growth**	**2022**	**2023**	**% growth**	**2022**	**2023**	**% growth**
Mining	30.6	33.9	10.9%	295.1	255.4	-13.4%	510.4	487.0	-4.6%
Manufacturing	60.3	63.3	5.0%	49.1	50.5	2.8%	429.4	445.8	3.8%
Electricity, gas, water and waste services	6.6	7.2	9.8%	18.0	20.8	15.5%	102.6	106.1	3.4%
Construction	70.9	79.5	12.0%	36.4	38.2	4.9%	406.6	432.4	6.3%
Wholesale trade	45.2	48.1	6.4%	43.2	43.6	1.1%	693.2	699.0	0.8%
Retail trade	50.8	55.3	8.9%	33.1	34.3	3.9%	512.6	539.0	5.2%
Accommodation and food services	26.2	30.2	15.4%	10.2	12.0	17.7%	118.5	136.1	14.9%
Transport, postal and warehousing	32.7	36.8	12.5%	31.6	35.5	12.3%	167.3	183.5	9.7%
Information media & telecommunications	16.0	18.0	12.4%	18.4	18.4	0.2%	89.3	95.8	7.2%
Financial and insurance services	49.1	53.8	9.5%	4.0	6.2	54.6%	69.9	69.3	-0.8%
Rental, hiring and real estate services	17.1	18.0	5.2%	49.7	47.5	-4.4%	116.6	124.2	6.5%
Professional, scientific and technical services	90.4	98.4	8.9%	29.9	34.7	16.2%	256.2	264.6	3.3%
Administrative and support services	49.9	53.5	7.1%	6.3	9.0	43.8%	100.0	107.5	7.6%
Education and training	21.6	24.6	14.0%						
Health care and social assistance	69.5	77.1	11.0%						
Arts and recreation services	7.5	8.7	15.8%	4.7	4.6	-1.7%	39.4	42.5	7.8%
Other services	20.6	22.5	9.2%	10.8	11.0	2.1%	64.3	71.9	11.9%
All industries	**665.0**	**728.9**	**9.6%**	**640.2**	**621.8**	**-2.9%**	**3676.2**	**3804.8**	**3.5%**
All industries excl. mining	**634.5**	**695.0**	**9.5%**	**345.2**	**366.4**	**6.1%**	**3165.8**	**3317.8**	**4.8%**

Unit: AUD billions, seasonally adjusted, current prices. Source: ABS Business Indicators, Tables 6, 13 and 15.

Smaller businesses are a major employer of those receiving minimum wages. Small businesses (defined as 1-19 employees) accounted for 86.0% of employees directly receiving the NMW and 54.1% of those on a modern award[42]. For micro businesses (1-4 employees), these rates are 45.8% and 11.0% respectively. Most micro-businesses and a meaningful proportion of small businesses are likely to be unincorporated. These smaller businesses are already financially vulnerable and any reduced employment in this group stemming from more than moderate increases to minimum wages will impact minimum wage employees significantly.

Finally, it should be noted that the aforementioned figures all refer to nominal business income, which is that before interest charges and depreciation. Increases in borrowing costs associated with tightened monetary policy during 2022 and 2023 will mean that business post-interest financial performance will be weaker than these figures imply. While the effect of increased borrowing costs is fundamentally firm-specific, for many businesses it will further exacerbate weakening financial performance beyond that recognised by national accounts data.

High wage pressures, with wages growth exceeding income and profit growth in most industries

As documented in section 4, Australia's tight labour market in 2023 led to the fastest growth in both wage rates and employee earnings in a decade. This has led to rapidly increasing wages pressure on Australian employers (Table 2). During 2023, the total wages bill – which incorporates growth in both wage rates and employment – for all industries excluding mining grew by 9.5%.

This rate of wages growth exceeds that for other indicators of business performance. By comparison, business sales income grew by only 4.8% and business profits by 6.1%.

In 10 of 15 industries, wages growth exceeded profits growth in 2023, including in three award-reliant industries: retail trade, arts & recreation, and other services. The wages bill of Australian business is growing faster than either income or profitability, adding wages pressure to business margins at a time when the economy is slowing.

The cumulative impact of previous NMW and MAMW increases above broader economy-wide wages

The previous two Panel decisions have awarded increases to the NMW and MAMW which are high by recent historical standards. As noted in those decisions, the quantum of these increases reflected high prevailing rates of inflation at the time, and the Panel's desire to minimise the reduction in the real value of the incomes of employees on the NMW or MAMW.

However, this approach led to minimum wage increases which were high relative to the then-prevailing labour market conditions in Australia.

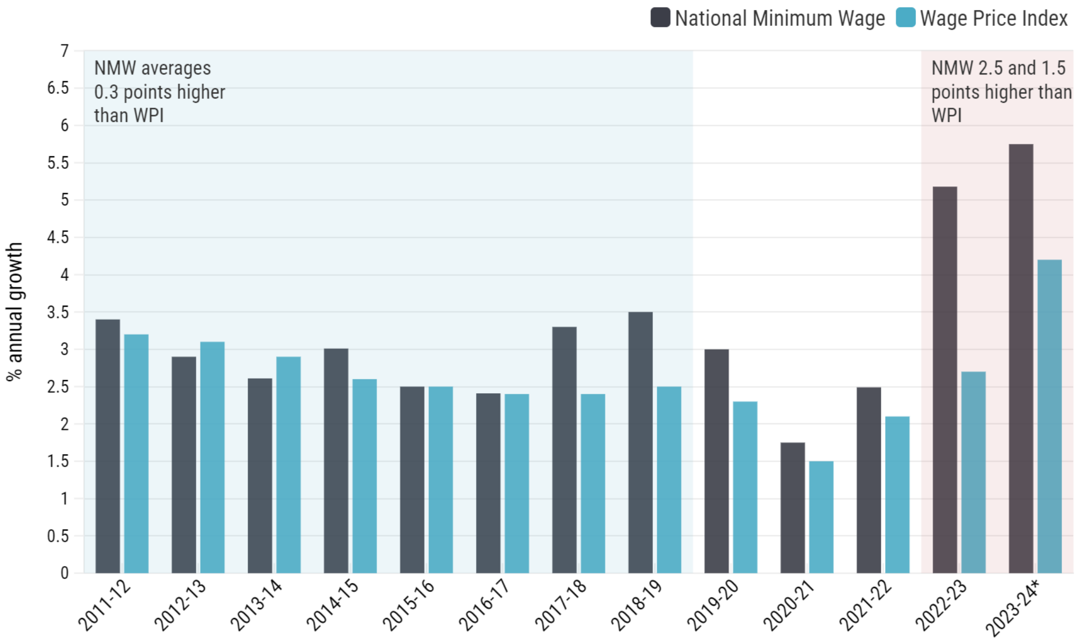
---

[42] Fair Work Commission (2024), *Characteristics of employees on the National Minimum Wage*, https://www.fwc.gov.au/documents/wage-reviews/2023-24/characteristics-of-employees-on-national-minimum-wage-2024-02-29.pdf.

Chart 16 shows the outcome of AWRs since 2011 - 2012, in respect of the NMW. This data also provides a broad proxy indicator for increases in MAMW, as these are typically (with exceptions in some years) increased by the same amount as the NMW.

In the years prior to the pandemic, the outcome of AWR decisions were closely correlated to growth in economy-wide wage rates. On average, the NMW increase was 0.3 percentage points higher than the WPI indicator for the period over which the increase applied, and the gap never exceeded 1.0 percentage points. However, the increase to the NMW and MAMW for the last two years has exceeded economy-wide wages growth by a much wider margin: 2.5 percentage points in in 2022-23 and 1.5 percentage points in 2023-24.

Chart 16: Growth rates for NMW and WPI, 2011-12 to 2023-24



Source: FWC National Minimum Wage Orders, ABS Wage Price Index • * WPI data for Q2/24
*Due to a decision to end alignment between the NMW and C14 modern award rate in 2023-24, the effective increase in the base NMW rate was 8.6% in that year.

It is not sustainable for NMW and MAMW increases to track above broader wages growth for an extended period. This will have the effect of compressing the wage relativities between employees receiving the NMW and MAMW, and other employees, at the margin creating a relative disincentive to demand for labour in those roles.

The cumulative impact of the prior two above-normal increases also raises the risk of future disemployment effects, particularly at a time when the economy is slowing and financial performance is weak in several industries. In 2023, employment began to contract in three award-reliant industries – retail trade, accommodation & food, and administrative & services (see Chart 8)

– each of which are highly exposed to increases in MAMW. These three industries account for 18.4% of total employment[43] and 44.5% of award employment[44].

Any additional reduction in employment in these industries resulting from a more than moderate increase in minimum wages would therefore have a larger effect on access to employment for NMW and award-reliant employees.

Below trend productivity performance nationally and in most industries

In its decision regarding the 2023 AWR at [10] the Panel wrote:

> **[10]** … The level of wage increase we have determined is, we consider, the most that can reasonably be justified in the current economic circumstances. We acknowledge that this increase will not maintain the real value of modern award minimum wages nor reverse the reduction in real value which has occurred over the last two years. 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. A <u>return to that path</u> is likely to be possible in future Reviews when there is a <u>reversion to a lower inflationary environment and trend productivity growth.</u>[45]

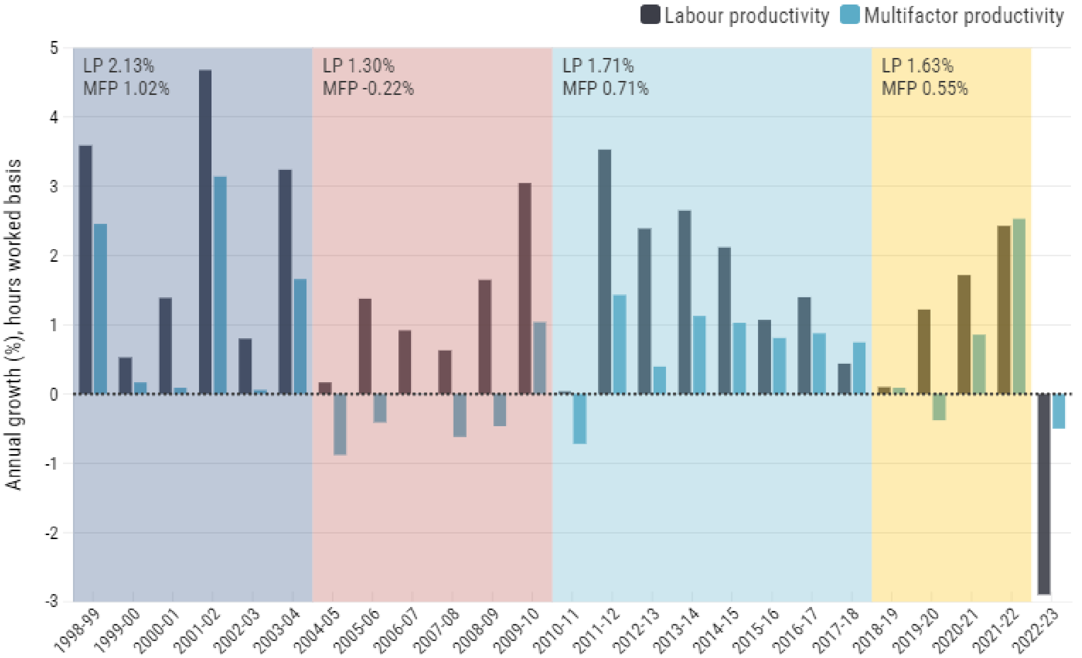
It is therefore important to assess how Australia's current productivity growth compares to its longer-term trend. When assessing productivity performance, it is common to take a 'growth cycles' rather than an annual approach. This approach, which averages annual performance over a cycle, minimises the impact of short-term fluctuations introduced by variations such as hours worked or capital utilisation.

Reflecting these considerations, the Commission has in past reviews placed greater weight on productivity changes measured using multi-year cycles than annual movements[46].

The most recent ABS estimates of growth cycle productivity (Chart 17) shows productivity growth in Australia has been weak in the current cycle. By both common measures, productivity declined significantly during the 2003-04 to 2009-10 cycle, and only weakly recovered in the subsequent 2009-10 to 2017-18 cycle. The most recent cycle – 2018-19 to 2021-22, which includes three pandemic-affected years – has seen even weaker performance, with labour productivity growth of 1.63% and multifactor productivity of 0.55%.

[43] *ABS Labour Force Australia Detailed*, Table 4, data for November 2023.
[44] *ABS Employee Earnings and Hours*, May 2023, Datacube 2. *'Award employment'* is defined here as employees who are identified as having an award govern their method of setting pay by the EEH survey.
[45] *Annual Wage Review 2022 – 23* [2023] FWCFB 3500 at [10].
[46] *Annual Wage Review 2022 – 23* [2023] FWCFB 3500 at [87].

Chart 17: Australian productivity growth cycles, 1998-99 to 2022-23



Source: ABS Estimates of Industry Multifactor Productivity, Tables 2 and 3

While annual changes in productivity should be interpreted with caution, data from 2022-23 is instructive and should be afforded due consideration. 2022-23 was the first 'normal' year - one not affected by the introduction, adjustment or removal of pandemic-era public health controls – since 2018-19. It showed a significant reduction in national productivity, with multifactor productivity falling 0.5% and labour productivity 2.9% in the market sector. The majority of industries also posted declines in both measures of productivity in 2022-23 (Table 3), with especially pronounced falls in the utilities, wholesale trade, and arts & recreation sectors.

Table 3: Productivity performance by industry, 2022-23

	Multifactor productivity growth %	Labour productivity growth %
Mining	-0.55	-4.09
Manufacturing	-1.33	-1.02
Electricity, gas, water and waste services	-4.26	-7.21
Construction	-0.79	-1.79
Wholesale trade	-7.17	-11.42
Retail trade	-1.39	-1.39
Accommodation and food services	2.27	-2.28
Transport, postal and warehousing	3.29	-1.15
Information, media and telecommunications	4.32	1.71
Financial and insurance services	0.32	-2.60
Rental, hiring and real estate services	-3.87	-5.29
Professional, scientific and technical services	2.14	2.99
Administrative and support services	0.44	0.17
Arts and recreation services	-6.43	-10.17
Other services	0.69	0.92
All market sector industries	**-0.50**	**-2.86**

Source: ABS Estimates of Industry Multifactor Productivity, Tables 1 and 6

Some of the decline in labour productivity in 2022-23 can be attributed to negative labour reallocation effects: where the shift of labour from higher- to towards lower-productivity industries reduces aggregate productivity performance. Recent growth in employment in some lower-productivity industries (such as accommodation & food and administrative & support services) has weighed on national performance.

Usefully, the extent to which this labour reallocation effect is occurring can be measured using the ABS's DAAI approach to productivity accounting. The DAAI allows labour productivity growth to be decomposed into two sources: *'direct'* (i.e. productivity changes occurring within industries) and *'hours reallocation'* (productivity changes associated with labour reallocation between industries). Table 4 shows the DAAI estimates for market sector industries in 2022-23.

Table 4: Contributions to market sector labour productivity by source, 2022-23

	Direct productivity	Hour reallocation
Agriculture, forestry and fishing	0.1	0.0
Mining	-0.8	0.9
Manufacturing	-0.1	0.0
Electricity, gas, water and waste services	-0.2	0.1
Construction	-0.2	-0.2
Wholesale trade	-0.7	-0.1
Retail trade	-0.1	-0.2
Accommodation and food services	-0.1	-0.8
Transport, postal and warehousing	-0.1	-0.1
Information, media and telecommunications	0.1	0.1
Financial and insurance services	-0.3	0.2
Rental, hiring and real estate services	-0.2	0.0
Professional, scientific and technical services	0.3	0.0
Administrative and support services	0.0	-0.2
Arts and recreation services	-0.1	-0.1
Other services	0.0	-0.2
Total contribution	**-2.3**	**-0.4**

Source: ABS Estimates of Industry Multifactor Productivity, Table 22

The direct effect was the main driver of falling labour productivity in 2022-23. Direct effects accounted for 2.3% of the fall recorded in the market sector. The hours reallocation effect was relatively small in comparison, contributing only 0.4% to the fall. This dynamic of falling within-industry productivity was also evident across most industries, with direct productivity falling in eleven of the sixteen market sector industries and rising in only three.

This data makes clear that a genuine fall in labour productivity *within industries*, rather than hours reallocation *between industries,* was the principal factor behind the dramatic fall in labour productivity in 2022-23.

When read together, the aforementioned productivity data show that Australia's productivity performance in 2022-23 was well below long-term trend. Notwithstanding caveats regarding the volatility of annual data, the figures for 2022-23 arguably reflect an underlying fall in productivity in the Australian economy, and most of its constituent industries, below the trend path. A return to trend productivity, previously identified by the Panel as an enabling condition for the maintenance of real minimum wages, has yet to be satisfied.

The Superannuation Guarantee

The SG will rise from 11.0% to 11.5% from 1 July 2024. Consistent with previous AWR decisions, this increase should be taken into account as a moderating factor in any increase in this year's decision, such that any increase should be lower than it would otherwise have been.

In its decision regarding the 2023 AWR at [176] the Panel wrote:

> **[176]** … The Superannuation Guarantee contribution rate will increase by 0.5 per cent, from 10.5 per cent to 11 per cent, effective from 1 July 2023. This will, in the broad sense, constitute an increase to employees' remuneration, albeit that it will not increase their disposable income. Perhaps more significantly, this increase will constitute a cost to employers which they will have to bear simultaneously with any minimum wage increases flowing from this Review.[47]

Ai Group submits that this year's increase in the SG will have the same effect on employers as in previous years: namely, an additional cost of employment which will have to be borne alongside minimum wage increases.

[47] *Annual Wage Review 2022 - 23* [2023] FWCFB 3500 at [176].

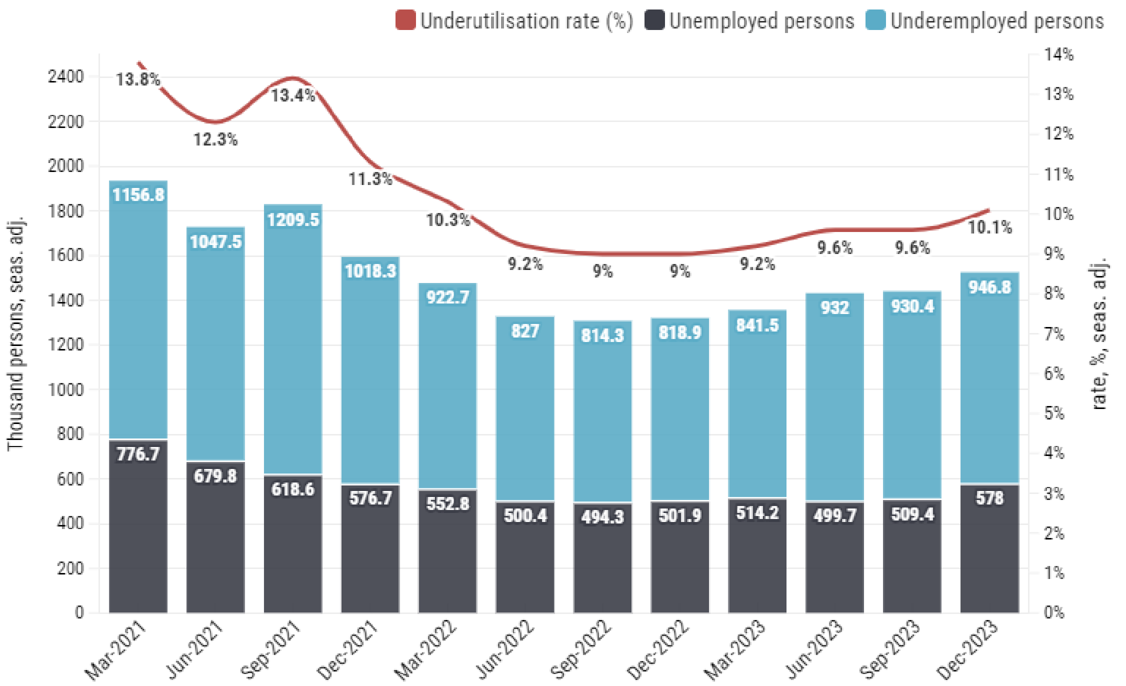
6. A fair and relevant minimum safety net

The Panel is tasked with determining and maintaining a fair and relevant safety net. Fairness is to be assessed from the perspective of both employers and employees. [48] Fairness to employers is dealt with in section 5 of this submission.

Fairness in relation to the employee safety net should consider both wage and non-wage changes to employment. Individuals' access to employment and the number of hours worked by those employed, is also of relevance, alongside wage rates. It is the combination of these that determines individuals' benefits derived from employment-related remuneration. In addition to remuneration from employment, income support and other forms of support provided by governments are also clearly relevant in determining a fair and relevant safety net.

The slowing labour market has seen an increase in the number of individuals without access to their desired amount of employment. During 2023, the number of employed persons in Australia increased by 2.8% or 381,000 individuals. This rate of growth was insufficient to absorb new entrants to the labour market, leading to an increase in the number of underutilised persons. The number of unemployed persons increased by 76,100, and the number of under-employed by 127,900 during 2023 (Chart 18). This saw the underutilisation rate – a measure of the share of the workforce who are under- or unemployed – rise from 9.0% to 10.1% across the year.

Chart 18: Indicators of access to employment



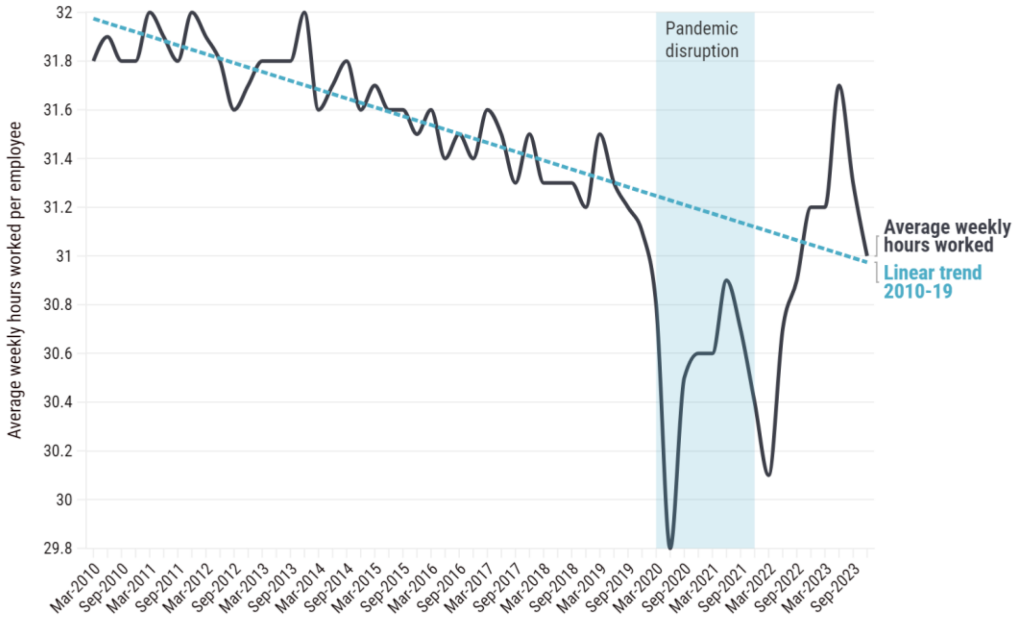
Source: ABS Labour Account (A85389479T, A85389480A, A85389481C), Ai Group Research & Economics

---

[48] *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [18].

There was also a marked decrease in hours worked per employee in the latter half of 2023. Average hours worked per employee recovered and then grew strongly across 2022 and early 2023. However, this indicator declined from 31.7 to 31.0 hours per week in the third and fourth quarter of 2023 (Chart 19). Outside of pandemic-interrupted years, this is a much steeper decline in per-employee hours worked than at any time in the preceding decade. It also returns hours worked per employee to approximately its longer-term (pre-pandemic) trend, erasing the above-trend gains in hours worked.

Chart 19: Hours worked per employee, 2010-2023



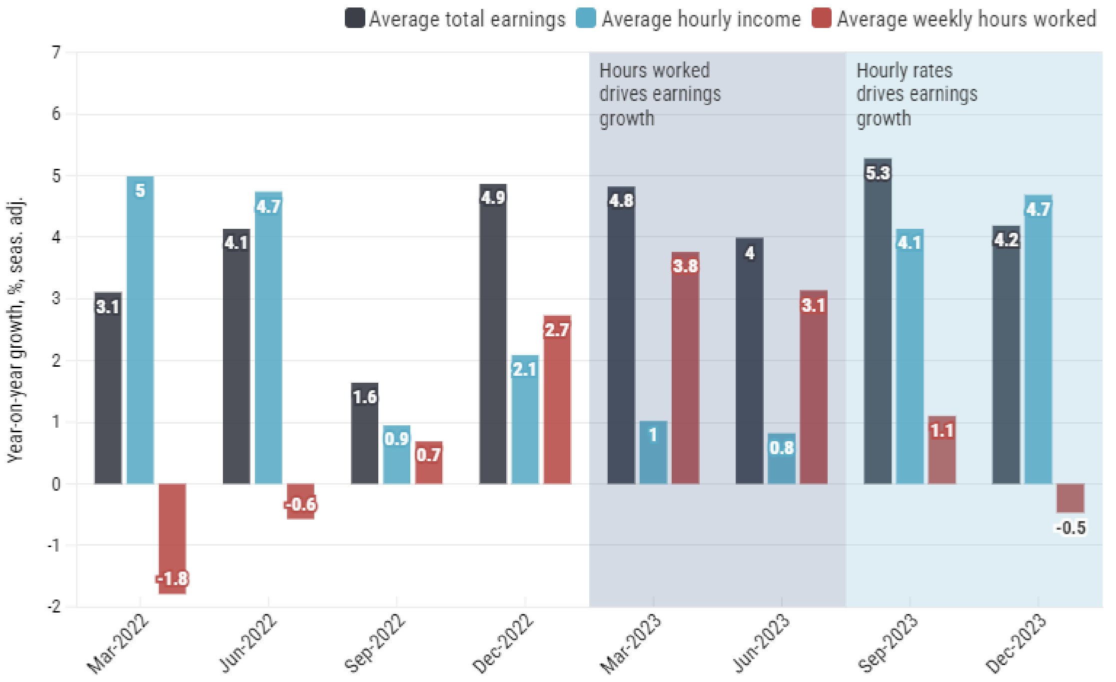
Source: ABS Labour Account (A85389463X), Ai Group Research & Economics

The reduction in access to employment is likely to be concentrated in lower-paid employee categories. Three award-reliant industries – retail, administrative & support and accommodation & food – saw declines in both total employment and hours worked in 2023 (Chart 8). Youth are also proportionately more affected, with the youth unemployment rate rising from 8.0% to 10.4% in the second half of 2023; much faster than the increase in overall unemployment (Chart 10).

Award and youth employees are the groups for whom the social safety net provided by employment is most important. They are also the groups for whom employment levels are likely to be more negatively affected by a more than moderate increase in minimum wages.

While access to employment has declined in 2023, employee earnings have continued to increase. As outlined in section 4, nominal hourly rates of pay (as measured by WPI) are growing at 4.2% p.a., while total earnings (AWOTE) is growing at 4.5% p.a. Outside of the period affected by the JobKeeper program, these are the highest rates of wages and earnings growth in Australia since 2012.

Chart 20: Growth in employee earnings, hourly income and hours



Source: ABS Labour Account (A84423041X, A84423042A, A85389456A), Ai Group Research & Economics

As a result, the relative contribution of employment and wage rate to growth in employee earnings has inverted (Chart 20). Since the fourth quarter of 2022, average total employee earnings have grown at a steady rate – between 4% and 5% y/y growth in each quarter. However, the source of earnings growth has shifted from employment to wage rates. Increases in hours worked were the principal contributor to earnings growth in the first half of 2023, whereas increases in hourly income (i.e. wage rates) became the dominant source in the second half.

The declines seen in access to employment in 2023 remain moderate for now. Rates of unemployment and underemployment, while rising, remain low by longer-term standards. However, if the labour market weakens faster, further falls in access to employment will undermine the employment component of the safety net and offset improvements in the safety net provided by any increase in minimum wages.

In considering the extent of wage increases in this year's decision, we urge the Panel to give considerable weight to the importance of minimising the recent decline in employment and hours worked. Employees in award-reliant industries with weaker performance are likely to be most vulnerable to the anticipated slowdown in economic activity over the year ahead. A more moderate wage increase in this year's decision is a critical step the Panel can take to ensure that post-pandemic gains in the safety net due to employment and hours of work are preserved or at least insulated from the likely downturn in activity in 2024-25.

7. The relative living standards and needs of the low paid

The Panel has a long-established practice of taking into account relevant change to taxation and income support arrangements in consideration of the needs of the low paid.

Reduced personal income tax due to Stage 3 reprofiling

On 25 January 2023, the federal Government announced changes to the *'Stage 3'* personal income tax reforms, which were due to take effect on 1 July 2024. These changes were described as intending to assist low and middle-income taxpayers with cost-of-living pressures.

In comparison to the original Stage 3 package, the newly *'reprofiled'* package introduced a number of changes, including:

- Reducing the 19 per cent tax rate to 16 per cent (for incomes between $18,200 and $45,000).
- Reducing the 32.5 per cent tax rate to 30 per cent (for incomes between $45,000 and the new $135,000 threshold).
- Retaining the 37 per cent tax rate that applies from $120,000 to $135,000.
- Increasing the threshold at which the 45 per cent tax rate applies from $180,000 to $190,000.

Overall, the effect of this reprofiling of rates and thresholds is to lower the personal income tax burden of the majority of lower- and middle-income taxpayers relative to the original Stage 3 package.

However, the value of the reprofiling for an individual taxpayer – particularly low-paid and/or award employees – is highly sensitive to their specific income level.

Ai Group has modelled the effects of the Stage 3 reprofiling for award employees[49] (Table 5 below). It compares the income tax liability, inclusive of the LITO, for decile groups of award employees under the original and reprofiled Stage 3 income tax changes. This analysis enables the value of the Stage 3 reprofiling for award employees to be expressed in terms of an equivalent increase in pre-tax earnings. May 2023 is the most recent period for which data is available on the distribution of earnings for award employees.

[49] *'Award employees'* is defined here as employees who are identified in the ABS Employee Earnings and Hours survey as having an award as their method of setting pay.

Table 5: Value of Stage 3 reprofiling for award employees

Income decile of award employees	Weekly total cash earnings	Annual earnings (pre-tax)	Income tax - Stage 3 original + LITO	Income tax - Stage 3 reprofiled + LITO	Reduction in income tax due to reprofiling (post-tax)	Increase in pre-tax income of equivalent value to Stage 3 reprofiling ($)	Increase in pre-tax income of equivalent value to Stage 3 reprofiling (% of pre-tax income)
10th Percentile	168.00	8760.00	0.00	0.00	0.00	0.00	0.0%
20th Percentile	316.00	16477.14	0.00	0.00	0.00	0.00	0.0%
30th Percentile	472.00	24611.43	518.17	325.83	192.34	237.46	1.0%
40th Percentile	612.00	31911.43	1905.17	1493.83	411.34	507.83	1.6%
50th Percentile (median)	768.00	40045.71	3577.94	2922.56	655.37	809.10	2.0%
60th Percentile	932.00	48597.14	5990.02	5096.09	893.93	1324.34	2.7%
70th Percentile	1,093.00	56992.14	8844.33	7740.52	1103.80	1635.26	2.9%
80th Percentile	1,286.00	67055.71	12260.11	10904.71	1355.39	2007.99	3.0%
90th Percentile	1,627.00	84836.43	18038.84	16238.93	1799.91	2666.53	3.1%
Average (mean)	864.40	45072.29	4791.57	3985.77	805.81	1193.79	2.6%

Source: ABS Employee Earnings and Hours, Datacube 3 Table 4

As Table 5 shows, the Stage 3 reprofiling represents as a significant reduction in the income tax liability of award employees. Expressed in gross terms, and in terms of its equivalence to an increase in pre-tax income:

- For the mean award employee, the reprofiling results in a $805.81 per annum tax saving, equivalent to a 2.6% increase in pre-tax earnings.

- For the median award employee, it results in a $655.37 per annum tax saving, equivalent to equivalent to a 2.0% increase in pre-tax earnings.

- It reduces the income tax liability of all but two deciles of award employees, with pre-tax income equivalents from between 1.0% (at the 30th percentile) to 3.1% (the 90th percentile).

Ai Group submits that this reduction in income tax liabilities, and their value in terms of equivalent pre-tax income increases, should be taken into account by the Panel in its consideration of the needs of the low paid.

Indexation and discretionary increase of income support payments

Many low paid employees live in households that are eligible for income support payments. These payments boost household incomes and should be taken into account when assessing the needs of the low paid.

Australia offers an extensive range of income support payments that can contribute to the incomes of households that include one or more low-paid employees. For instance, many older Australians work part-time and are eligible for an Age Pension payment; younger part-time employees looking for more work can be eligible for a JobSeeker payment; a single parent working part-time can be eligible for a Parenting Payment; and low- and middle-income families with dependent children are eligible for FTB Part A and FTB Part B. Further, low-income households in which there are one or more low-paid employees can also be eligible for a range of supplementary payments including Rent Assistance and the Energy Supplement.

Payment rates are adjusted over each year to reflect living cost increases. In addition, over the course of the past year, there have been discretionary above-indexation increases in JobSeeker and Rent Assistance payments. Changes in payment rates have a proportionally greater impact on lower income households because of the greater role that income support plays in the total incomes of these households.

The impact of changes in rates of payment of income support can be illustrated by considering the widely available FTB and the important availability of JobSeeker payments to part-time employees looking for additional hours of work.

In the March - June 2023 period, families with two children under 5 with a combined income from wages of up to $62,634 could have been eligible for FTB Payments (Part A and Part B) at an annual rate totalling $16,742.14. In the equivalent period this year (March 2024 – June 2024), families in the same situation would be eligible for FTB Payments (Part A and Part B) at an annual rate totalling $18,045.60. This is an increase in this form of income support of 7.78%.

While the FTB is not included in taxable incomes, the increase in household disposable incomes from the higher rates of FTB adds to the increases in disposable incomes achieved by the income tax cuts available from 1 July 2024. For instance, for a single-income family with the wage earner paid at the current NMW of $882.80 will experience an increase in disposable income of 3.7% due to the combination of the tax changes and the increases in FTB even in the absence of an increase in the NMW.

JobSeeker is paid to individuals who are looking for work and can be paid to employees where they are currently employed part-time if they are seeking additional work and meet the relevant means tests. In September 2023, the base rate for JobSeeker received an above-indexation increase of $40 per fortnight.

For instance, an employee working part-time, paid at the rate of the NMW who is eligible for JobSeeker could have experienced an increase in disposable income well above 6% due to the combination of indexation and above-indexation increases in the income support payment and the income tax cuts even in the absence of an increase in the NMW.

Ai Group submits that the indexation and discretionary increases in income support payments, and their greater importance for low-income employee households, should be taken into account alongside the income tax cuts by the Panel in its consideration of the needs of the low paid.

The prospect of further cost-of-living measures in the 2024-25 Budget

On a number of occasions, the federal Government has indicated its intention to provide some form of cost-of-living relief in the 2024-25 Budget, as moderating inflation offers greater room to support households. On 29 February 2024, the federal Treasurer is quoted as saying:

> Inflation is still our major concern, but at some stage the balance of risks in our economy and in the global economy is going to shift from inflation to growth... "If and when that happens, we'll make sure that our budget settings and our economic policies reflect the economic conditions as well....[50]

Ai Group will examine the Budget in detail in May and include in our final submission our views on the relevance of any measures that will have a bearing on the Panel's consideration of the needs of the low paid.

---

[50] Chalmers flags pre-election budget pivot from inflation to growth, *Australian Financial Review*, 29 February 2024. See https://www.afr.com/politics/federal/chalmers-flags-pre-election-budget-pivot-from-inflation-to-growth-20240229-p5f8nc.

8. The need to achieve gender equality

The 2023 AWR was the first time that ss.134(1)(ab) and 284(1)(aa) were considered in the context of an AWR.

Section 284(1)(aa) of the FW Act requires the Panel to take into account:

> (a) the need to achieve gender equality, including by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and addressing gender pay gaps

Section 134(1)(ab) requires the following matters to be considered as part of the modern awards objective: (emphasis added)

> (ab) the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and <u>providing workplace conditions that facilitate women's full economic participation</u>

In the submissions that follow, we deal with some of the matters contemplated by s.284(1)(aa) and s.134(1)(ab). We also note that as part of the 2023 AWR, the Panel referred to a research project considering gender pay inequality and potential undervaluation of work, which would inform future AWRs.[51] The report from Stage 1 of this process has been published by the Commission.[52] It is our intention to respond to it (as required) and the Stage 2 report once the latter has been published.[53]

The need to achieve gender equality

Both ss.284(1)(aa) and 134(1)(ab) require the Commission to take into account the *'need to achieve gender equality'*.

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. Rather, it should include other measures to achieve gender equality, such as the following three related matters:

(a) lifting women's workforce participation;

(b) sustaining the recent rise in full-time employment of women; and

(c) encouraging the provision of additional hours of work to underemployed women.

[51] *Annual Wage Review 2022 – 23* [2023] FWCFB 3500 at [133].

[52] UNSW Social Policy Research Centre, 'Gender-based Occupational Segregation: A National Data Profile', *Final Report*.

[53] *President's Statement – Gender pay equity research – Stage 2 research to be conducted,* 5 December 2023.

Section 284(1)(aa) does not exhaustively list the matters associated with gender equality that may be taken into account by the Commission and therefore, it is plainly open to the Commission to have regard to these considerations. Further, whilst s.134(1)(ab) is narrower in scope, we submit that these are nonetheless important discretionary considerations that the Commission should take into account in relation to its review of MAMW.

Each of the above outcomes would ensure that women have access to greater financial security and independence, including in retirement. They would result in employees having access to greater opportunities to engage in paid employment, including on a full-time basis. The capacity to maintain full-time employment earnings addresses a key driver to narrow the gender pay gap and thereby, improve gender equality.[54]

As outlined in Section 4, the recent tight labour market cycle has delivered strong outcomes for women's labour market engagement. Since 2019:

- Female <u>unemployment</u> has fallen from the low 5% range to 4.0% in January 2024
- Female <u>underemployment</u> has fallen from the 10% - 11% range to 8.3% in January 2024
- Female <u>participation</u> has risen from the low 61% range to 62.6% in January 2024
- The share of female employees in <u>full-time employment</u> has increased from the low 54% range to 56.4% in January 2024

While data for each of these four indicators softened slightly as the labour market eased in the second half of 2023, all remain at levels much stronger than before the most recent labour market cycle.

This trend of increased female workforce participation and full-time employment, alongside reduced female unemployment and underemployment, should be sustained and supported by the Panel's decision.

It is critical that any increase to minimum wages does not undermine female workforce participation, reduce the scope for their engagement on a full-time basis or result in employers not affording additional hours of work to underemployed employees. An excessive increase to minimum wages may displace women in the workplace, result in greater underemployment and / or engagement to a greater extent on casual or non-ongoing forms of employment.

Addressing the gender pay gap

Whilst the gender pay gap was not previously a matter expressly required to be taken into account by the Commission during an AWR, it was nonetheless a matter that was considered by the Panel. For instance, during the Annual Wage Review 2017 – 2018, the Panel said as follows: (emphasis added)

> **[36]** <u>But the broader issue of gender pay equity, and in particular the gender pay gap, is relevant to the Review</u>. This is so because it is an element of the requirement to establish a safety net that

[54] Workplace Gender Equality Agency, *Women's economic security in retirement* (February 2020) and Workplace Gender Equality Agency, *She's Price(d)less: the economics of the gender pay gap* (2022) at page 9.

is '*fair*.' It may also arise for consideration in respect of s.284(1)(b) ('promoting social inclusion through workforce participation'), because it may have effects on female participation in the workforce.

[37] The gender pay gap refers to the difference between the average wages earned by men and women. It may be expressed as a ratio which converts average female earnings into a proportion of average male earnings on either a weekly or an hourly basis. The *Statistical Report—Annual Wage Review 2017–18* (Statistical report) sets out three measures of the gender pay gap, ranging from 11.0 per cent to 15.3 per cent (see Table 4.1).

[38] As noted in the *Annual Wage Review 2015–16* decision (2015–16 Review decision), the causes of the gender pay gap are complex and influenced by factors such as: differences in the types of jobs performed by men and women; discretionary payments; workplace structures and practices; and the historical undervaluation of female work and female-dominated occupations. We accept that moderate increases in the NMW and modern award minimum wages would be likely to have a relatively small, but nonetheless beneficial, effect on the gender pay gap.[55]

The above observations are clearly relevant to the application of s.284(1)(aa) and s.134(1)(ab).

In addition, it is also relevant that, as previously found by the Commission, the gender pay gap is mostly driven by high paid workers.[56] This finding is borne out by the most recent (May 2023) data on employee earnings in Australia. Table 4 below calculates the gender pay gap by method of setting pay for full-time adult non-managerial employees.

It shows that the total earnings gender pay gap is considerably lower for award employees (2.0%) than for all employees (15.9%). It also shows that the gender pay gap for award employees is negative – i.e. favours women – when calculated on an hourly earnings basis. This data makes clear that most of the gender pay gap results from gender wage dynamics facing higher paid workers outside the modern awards system.

Changes to minimum wages are thus unlikely to have a significant effect on the gender pay gap.[57]

[55] *Annual Wage Review 2017 – 18* [2018] FWCFB 3500 at [36] – [38].
[56] *Annual Wage Review 2018 – 19* [2019] FWCFB 3500 at [391].
[57] *Annual Wage Review 2022 – 23* [2023] FWCFB 3500 at [166].

Table 4: Gender pay gap by method of setting pay, May 2023

	Average weekly total cash earnings	Average hourly total cash earnings
Award only	2.0%	-3.6%
Collective agreement	16.0%	7.2%
Individual arrangement	17.6%	12.2%
All methods of setting pay	15.9%	9.3%

Note: *Full-time non-managerial employees paid at the adult rate.* ***Source:*** *ABS Employee Earnings and Hours 2023, Datacube 7 Table 1.*

Providing workplace conditions that facilitate women's full economic participation

The full-economic participation of women can be facilitated through increasing their workforce participation, engagement in permanent ongoing forms of employment and fulfilling their desire to work additional hours, wherever relevant. This, again, calls for moderation in any wage increases to ensure that women do not suffer from the displacement effects that may flow from excessive increases.

9. Promoting social inclusion through increased workforce participation

Ai Group recognises the importance of participation in the paid workforce for social inclusion. Participation in the paid workforce can be closely linked to individuals' sense of self-worth and provide the financial means by which people can participate in many aspects of social life.

Labour force participation has reached record highs following the pandemic. The participation rate – the share of the civilian population over 15 years in the labour force – averaged 66.6% across 2023, 0.3 percentage points higher than in 2022[58]. Female participation has increased faster than for males over this period, which reduced the gender gap in participation rates to 8.2 percentage points across 2023, the lowest annual figure recorded[59].

Equally important is that this increase in labour force participation has been achieved without increases in unemployment. Across 2023, the monthly unemployment rate averaged 3.7%, the same rate as during 2022[60]. This indicates that the strong post-pandemic labour market has, in aggregate, been able to generate sufficient additional employment absorb increasing rates of workforce participation.

However, the prevalence of underemployment is one indicator that has weakened in 2023. The underemployment rate rose from an average of 6.2% across 2022 to 6.4% in 2023, with 974,500 people currently underemployed in February 2024[61]. With an increasing proportion of the labour force actively seeking additional work, Ai Group submits that there is no need to lift minimum wage rates to encourage additional labour supply.

Further, an increase to wages that is more than moderate may cause employers to offer fewer hours of work to existing employees than what might otherwise be the case, thus exacerbating the recent increase in the rate of underemployment. Whilst we acknowledge that this is not a matter that relates directly to the need to increase workforce participation, it is a relevant discretionary consideration, that should be taken into account by the Commission.

Further, in the context of the slowing business conditions expected over the remainder of 2024, the balance of risks is that more than a moderate increase in minimum wage rates will erode recent gains and be detrimental to workforce participation and social inclusion (relative to what would be the case in if there were to be a more moderate wage rise). Maintaining employment generation is essential to ensure that labour force participation, subsequent employment and the social inclusion benefits which these offer, can continue to rise.

[58] ABS Labour Force Australia, seasonally adjusted, series A84423051C.
[59] ABS Labour Force Australia, seasonally adjusted, series A84423037J and A84423065T.
[60] ABS Labour Force Australia, seasonally adjusted, series A84423050A.
[61] ABS Labour Force Australia, seasonally adjusted, A85255725J and A85255719L.

10. Providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability

We deal with the approach that should be adopted by the Panel in respect of junior employees, employees to whom training arrangements apply and employees with a disability in sections 13 – 16 and 18 – 20 of this submission.

In summary, we submit that:

(a) In respect of award / agreement free junior employees, employees to whom training arrangements apply and employees with a disability, the Panel should adopt the same approach as it has done in previous AWRs.

(b) In respect of award covered junior employees, employees to whom training arrangements apply and employees with a disability, any increases awarded in the 2024 AWR should flow on to them, through the operation of existing award provisions that prescribe the minimum wages payable to them.

Such an approach would ensure the continuation of a comprehensive range of fair minimum wages applying to the aforementioned cohorts of employees.

11. The need to improve access to secure work across the economy

Section 134(1)(aa) requires the Commission to take into account *'the need to improve access to secure work across the economy'*.

In the 2023 AWR, the Panel made the following observations in their decision: (emphasis added)

> **[28]** Job security is not a matter that has, in terms, been taken into account in previous Review decisions. In the award context, job security is a concept which is usually regarded as relevant to award terms which promote regularity and predictability in hours of work and income and restrict the capacity of employers to terminate employment at will. The award provisions which are likely to be most pertinent in this respect are those which concern the type of employment (full-time, part-time, casual or other), rostering arrangements, minimum hours of work per day and per week, the payment of weekly or monthly rather than hourly wages, notice of termination of employment and redundancy pay (noting that a number of these matters are dealt with in the NES).
>
> **[29]** Beyond the immediate award context, job security has a broader dimension and may be understood as referable to the effect of general economic circumstances upon the capacity of employers to employ, or continue to employ, workers, especially on a permanent rather than casual basis. In exercising the Commission's modern award powers, consequential effects of this nature arise for consideration under ss 134(1)(f) and 284(1)(a), and have always been taken into account on this basis in past Review decisions.
>
> **[30]** As set out above, paragraph 334 of the REM explains that the reference to promoting job security in s 3(a) recognises the importance of employees and job seekers 'having the choice' to be able to enjoy as much as possible 'ongoing, stable and secure employment that provides regular and predictable access to beneficial wages and conditions of employment'. We see no reason to consider that the expression 'secure work' in s 134(1)(aa) bears any substantially different connotation to 'job security' in s 3(a). <u>However, we consider that it is significant that s 134(1)(aa) refers to 'the need to improve access' to secure work rather than the general promotion of job security. The language of s 134(1)(aa) suggests that it is more tightly focused on the capacity of employees to enter into work which may be characterised as secure. This appears to reflect the REM's reference to the importance of employees being able to have a 'choice' to enter into secure employment. As such, the consideration in s 134(1)(aa) would appear to direct attention primarily to those award terms which affect the capacity of employees to make that choice.</u> This is not a matter likely to be of substantial relevance to the consideration of minimum award wages in the conduct of the Review except perhaps in respect of the casual loading. The fact that s 134(1)(aa) finds no equivalent in s 284(1), such that the secure work consideration has no application to the NMW, supports our conclusion in this respect. However, the broader dimension of job security to which we have referred will, of course, continue to be highly relevant in our consideration under ss 134(1)(f) and 284(1)(a).[62]

[62] *Annual Wage Review 2022-23* [2023] FWCFB 3500 at [28] – [30].

As the Expert Panel observed, s.134(1)(aa) is narrower in its scope and more limited in its focus than the recently added element to s.3(a) of the Act. In particular, it expressed the view that '*it is significant that s.134(1)(aa) refers to 'the need to improve access' to secure work rather than the general promotion of job security'*.[63]

We agree that the reference to the *'need to access'* secure work is significant and should be given meaning. In the circumstances, it would not be appropriate for broader notions of job security, or a desire to promote job security, to override or subsume the more narrowly described consideration at s.134(1)(aa). The statutory directive prescribed by s.134(1) requires the Commission to take into account the latter, not the former. That Parliament sought to make this distinction between the two parts of the Act, through the use of obviously distinguishable language, should not be overlooked or circumvented. We also note that nothing in the explanatory material concerning the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022* tells against this approach (including the Revised Explanatory Memorandum to the Bill). Indeed in respect of s.134(1)(aa), the explanatory memorandum does no more than to repeat the terms of the legislation.[64]

It is also relevant that whilst the revised s.3(a) refers to *'job security'*, s.134(1)(aa) refers to *'secure work'*. Respectfully, contrary to the comments of the Panel in last year's decision, we consider that these terms connote different meanings. The concept of a *'job'* is a wholistic one, that encompasses matters such as remuneration and other benefits that attach to it. *'Work'* on the other hand, is a narrower concept. It relates more specifically to the performance of certain tasks or activities. It is, again, telling that the two provisions of the Act, though related, utilise different verbiage.

Section 134(1)(aa) is, in effect, comprised of three composite parts:

(a) Its subject matter is 'secure work';

(b) More specifically, as observed above, it is about 'access' to such work; and

(c) It articulates the objective of 'improving' access.

We deal with each of these composite parts below. For the reasons that follow, s.134(1)(aa) is, in our view, directed towards the need to improve or enhance access to (including the availability of) employment that does not entail an inherent risk of being lost.

'Improve' Access to Secure Work

To *'improve'* is to *'bring into a more desirable or excellent condition', 'increase in … excellence'* or *'become better'*.[65] It is to enhance.

Further, the concept of improving is a relative one. To improve is to make better; it does not require the achievement of an absolute or to attain a particular goal.

---

[63] *Annual Wage Review 2022-23* [2023] FWCFB 3500 at [30].
[64] The Revised Explanatory Memorandum at [337].
[65] Macquarie Online Dictionary.

Thus, s.134(1)(aa) concerns *enhancing* access to secure work. It is not directed towards *guaranteeing* access to secure work. Further, trite though it may be, it bears noting that it does not concern the elimination of other forms of work or curtailing access to them.

***'Access'* to Secure Work**

In the context of s.134(1)(aa), the plain and ordinary meaning of *'access'* is *'way, means, or opportunity of approach or entry'* or the *'the act or privilege of coming; admittance; approach'*.[66]

Inherent to the notion of being able to *'access'* secure work is the extent to which such work is in fact available. Self-evidently, its accessibility will depend in part upon its availability.

The availability of such opportunities will in turn be contingent upon a raft of factors including:

(a) The degree to which awards in fact render it practicable for employers to engage employees in such work. The mere existence of award provisions that contemplate secure work is not of itself enough. Rather, awards must genuinely enable employers to offer such work in a way that is also consistent with their operational needs and demands.

(b) The existence of award-derived barriers to offering such work. Award terms that serve as unwarranted obstacles to offering secure work are contrary to the objective expressed by s.134(1)(aa). This includes provisions impose unsustainable costs.

(c) General economic conditions and business confidence levels. Various macroeconomic factors influence the capacity and willingness of employers to engage direct employees, especially permanent employees. In times of economic uncertainty or volatility, employers are, unsurprisingly, less inclined to adopt the risks associated with engaging direct permanent workers, if their ongoing employment is potentially unsustainable.

'Secure Work'

It is a well-established principle of statutory construction that the starting point is the ordinary meaning of the relevant words, having regard to their context and purpose.[67]

In s.134(1)(aa), *'secure'* is an adjective that describes *'work'*. Something is said to be *'secure'* if it is *'free from or not exposed to danger', 'safe', 'not liable to fall, yield, become displaced', 'sure', 'certain' or 'able to be counted on'*.[68]

Thus; secure work is, in our submission, work that does not entail an inherent risk of termination. It is secure because it is not exposed to an ongoing threat of being ended or lost.

Nothing in the plain meaning of s.134(1)(aa) states or suggests that it relates to factors such as employees' income, hours of work, access to leave and so on. Whilst the regularity of hours and /

[66] Macquarie Online Dictionary.
[67] *4 yearly review of modern awards – Penalty Rates* [2017] FWCFB 1001 at [96].
[68] Macquarie Online Dictionary.

or earnings may, in some cases, be an *incident* of secure work, they do not appear to constitute its defining features for the purposes of the aforementioned legislative provision. Rather, it is directed simply towards employment that does not involve an inherent risk of termination.

The Explanatory Memorandum says very little of substance about s.134(1)(aa). At paragraph [334], it says as follows in relation to the amendment to s.3(a) of the Act: (emphasis added)

> The reference to promoting job security recognises the importance of employees and <u>job seekers having the choice</u> to be able to enjoy, to the fullest extent possible, <u>ongoing, stable and secure employment</u> that provides <u>regular and predictable access to beneficial wages and conditions of employment.</u> …

To the extent that it is asserted that this is also relevant to the meaning of s.134(1)(aa); the Explanatory Memorandum must be approached with some caution. In particular, it cannot be relied upon to displace the meaning of the text found in ss.3(a) or 134(1)(aa), or to add or detract from the text of the provisions.[69] Further: (emphasis added)

> 71. Having regard to their provenance and to the circumstances of their creation, explanatory memoranda for Government Bills introduced into the Commonwealth Parliament can ordinarily be taken by courts to be reliable guides to the policy intentions underlying Government sponsored legislation. They can ordinarily be relied on by courts to explain the overall legislative design and the intended practical operation of provisions and combinations of provisions. Their use of examples of the contemplated operation of provisions can inform in both those respects. They can sometimes even yield insight into the precise grammatical sense in which words appear in the texts of provisions.
>
> 72. <u>Lacking both the force of law and the precision of parliamentary drafting, however, an explanatory memorandum cannot be taken to be an infallible and exhaustive guide to the legal operation of a provision.</u> Notoriously, explanatory memoranda sometimes get the law wrong. The potential for error in examples of the contemplated operation of provisions set out in explanatory memoranda is highlighted by the acknowledgement of the Parliament in s 15AD(b) of the Acts Interpretation Act that even an enacted example of the operation of a provision might get the legal operation of the provision wrong: "if the example is inconsistent with the provision, the provision prevails".[70]

Thus, notions of employee *'choice'* and the regularity and predictability of *'beneficial wages and conditions'* should not be improperly imported into the text of s.134(1)(aa), in circumstances where the plain and ordinary meaning of the provision clearly and expressly suggests the designation of a different meaning to it.

In any event, even if regard were to be had to the REM, we would observe that:

(a) Inherent to the notion of job seekers having the *'choice to be able to enjoy … ongoing, stable and secure employment'* is the availability of such opportunities. This, again, would require a consideration of the extent to which the regulatory environment facilitates the

[69] *Mondelez Australia Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union* (2020) 271 CLR 495) at [70] and *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 at [47].
[70] *Mondelez Australia Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union* (2020) 271 CLR 495 at [71] – [72].

creation and maintenance of such work. Unworkable and unsustainable employment costs would run counter to this notion.

(b) *'Ongoing, stable and secure employment'* would constitute *'secure work'* as we have conceived of it.

(c) Access to *'regular and predictable access to beneficial wages and conditions'* may in some contexts be a feature of *'secure work'* as per our proposed definition of it.

Viewed in this way, the definition we propose for *'secure work'* is not inconsistent with the REM in any event (to the extent that the Commission proposes to give it any significance).

The corollary of *'secure work'* is usually measured through three statistical indicators: the proportion of casual employees[71], labour hire employees, and employees on fixed-term contracts. Table 7 below presents indicators on the prevalence of these forms of employment in Australia between 2014 and 2023, drawn from relevant ABS labour surveys.

Table 7: Indicators of secure work, 2014 – 2023

	Labour hire employees		**Fixed-term contract employees**		**Casual employees^**	
ABS Survey	Labour Account survey		Characteristics of Employment survey		Labour Force survey	
Collection period	December months		December months		November quarters	
Source	ABS *Labour Hire Workers* (Table 1)		ABS *Working Arrangements* (Table 6)		ABS Labour Force Australia Detailed (A84631158X)	
Unit	'000s	% total employed	'000s	% total employed	'000s	% total employed
2014	217.1	1.84%	355.6	3.74%	2308	24.13%
2015	231.0	1.93%	383.5	3.95%	2367	24.47%
2016	231.3	1.89%	405.4	4.09%	2471	25.09%
2017	251.1	2.01%	399.9	3.94%	2530	25.06%
2018	302.7	2.36%	406.6	3.88%	2581	24.65%
2019	309.2	2.36%	389.3	3.64%	2570	24.09%
2020	267.0	2.13%	411.5	3.94%	2308	22.13%
2021	276.3	2.07%	401.0	3.74%	2427	22.58%
2022	267.1	1.92%	389.7	3.40%	2711	23.69%
2023	270.5	1.89%	345.4	2.92%	2661	22.42%

Notes: *For main job of employees. ^ Casuals are defined as employees without paid leave entitlements.*

[71] For the purposes of the relevant statistical data, casual employment is defined as a form of employment in which employees do not have paid leave entitlements.

In the year to 2023:

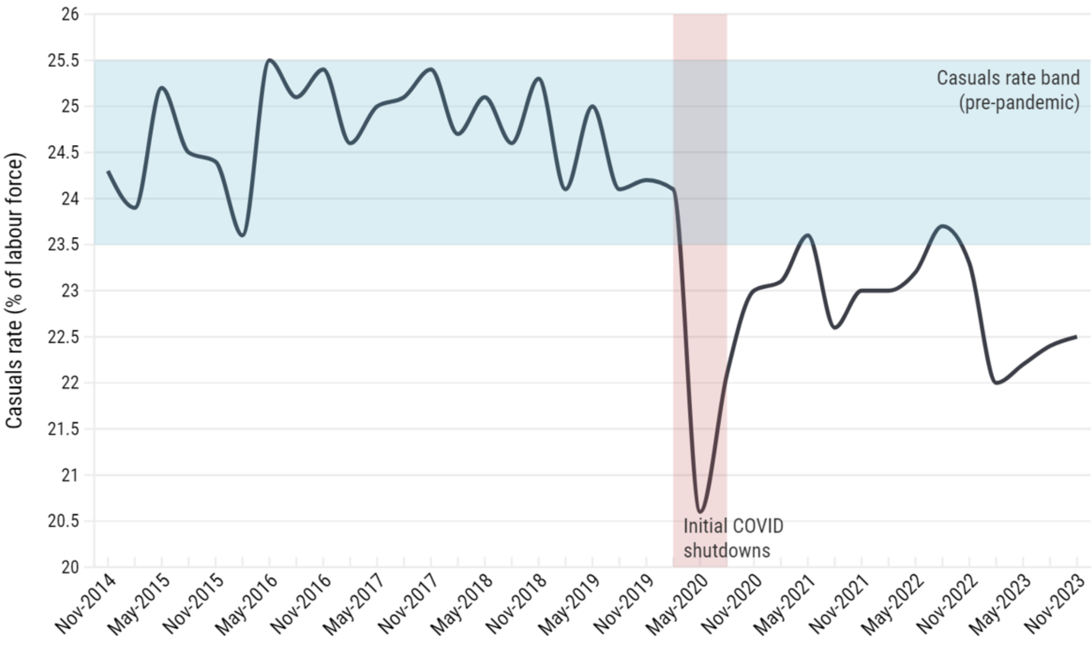
(a) Those employed via labour hire arrangements in their main job increased by 3,400 (+1.3%);

(b) Those employed on fixed-term contracts in their main job decreased by 44,300 (-11.4%);

(c) Those employed on a casual basis in their main job decreased by 50,000 (-1.8%)

The share of employees in casual, labour hire and fixed-term employment all declined in 2023 (Chart 21). The rates for all three forms of employment are at or very near their lowest levels in a decade.

Chart 21: Casual employment rate, 2014-2023



Source: Labour Force Detailed Australia (Table 13: A84630870K, A84631158X) • "Casuals" are defined as employees without paid leave entitlements

In order to sustain the recent increase in permanent ongoing employment, it is important that employers have the confidence to continue to engage employees on that basis. Uncertain economic conditions and / or disproportionately high labour costs may result in employers relying, to a greater extent, on casual employment, labour hire arrangements or fixed-term engagements.

A more than moderate wage increase would potentially undermine the objective of *'improving access to secure work'*. Employers may be less inclined to commit to engaging permanent ongoing staff, given the myriad of additional entitlements, obligations and inflexibilities associated with such forms of employment.

12. The need to encourage collective bargaining

Matters related to collective bargaining are relevant to the Panel's determination of an appropriate increase to both the NMW and modern award minimum wages.

As identified in the 2022 AWR decision, 'in making the NMW order, the Panel must give effect to the minimum wages objective. While the minimum wages objective does not refer to *'the need to encourage collective bargaining', one of the objects of the Act is to encourage collective bargaining and, on that basis, it is appropriate to consider that legislative purpose in making the NMW order'*.[72]

Similarly, s.134 requires, in the context of the modern awards objective, that the *'need to encourage collective bargaining'* is taken into account.

We acknowledge that there are a range of factors that impact on the propensity of parties to engage in collective bargaining, many of which are unrelated to increases in the NMW and modern award minimum wages. Given the complexity of these factors, it is further acknowledged that the Commission is unlikely to be able to predict the precise impact of any specific proposed decision on bargaining.

Nonetheless, it is axiomatic that a relatively high minimum wage will generally provide a greater disincentive to employers to engage in collective bargaining or, at the very least, a potential barrier to the making of a collective agreement, given the legislative framework generally requires, in effect, that employees are financially better off under any newly implemented agreement than they would be under an otherwise applicable award. Conversely, a higher increase can logically be expected to reduce the motivation for some employees, and by extension, their representatives or unions, to initiate collective bargaining.

A consideration of the need to encourage collective bargaining should have a moderating influence on the determination of the quantum of any increase to both the NMW and award wages more broadly.

Also relevant to the Expert Panel's deliberations regarding this consideration are the profound changes to the legislative scheme relating to collective bargaining that have commenced in the last 12 months.

The changes introduce various mechanisms that are intended to both increase the incidence of collective bargaining and increase wages. There are also various new provisions that can be utilised to force employers to engage in collective bargaining or to be subject to a collective agreement. Further, there are increased restrictions on the capacity of employers subject to enterprise agreements to bring applications before the Commission seeking that such instruments be terminated.

---

[72] *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [80].

It is particularly relevant that the legislative regime now incorporates measures that are specifically targeted at facilitating greater bargaining in low paid sectors that have not traditionally engaged in collective bargaining.

Any consideration of the impact that such legislative amendments will have in practice will necessarily involve a degree of speculation. However, that does not mean that such matters should be ignored. Indeed, in last year's AWR decision the Expert Panel accepted that the factor '*most likely*' to influence the extent of enterprise bargaining over the coming 12 months was the aforementioned legislative amendments.[73] Since the 2023 AWR, multiple applications have been made under the new legislative regimes.

Without suggesting that the Panel can demur from its task in the AWR, it is appropriate that collective bargaining is viewed as a preferential avenue for delivering higher wage increases to employees, including low paid employees, than the blunt approach of increasing minimum award wages, given its greater capacity to deliver outcomes that are tailored to the circumstances of particular enterprises, sectors or parts of the economy.

The amendments to the collective bargaining framework should be viewed as a further moderating factor in relation to the determination of the quantum of any increase to either the NMW or award minimum wages, unless the Panel forms the view that the reforms will not be effective in delivering the above cited objectives.

[73] *Annual Wage Review 2022 – 23* [2023] FWCFB 3500 at [155].

13. Special National Minimum Wage 1 and 2 – award/agreement free employees with disability

In the 2023 AWR, the Commission decided to maintain the approach it had adopted in previous years in respect of setting special minimum wages for award / agreement free employees with disability.[74]

This approach is twofold. For employees whose productivity is not affected, a special national minimum wage is set at the level of the National Minimum Wage (Special National Minimum Wage 1). For employees whose productivity is affected, a special national minimum wage is set in accordance with an assessment under the supported wage system (Special National Minimum Wage 2).

Ai Group does not oppose the continuation of the existing structures for award / agreement free employees with disability.

14. Special National Minimum Wage 3 – award / agreement free junior employees

In its decision concerning the 2010 – 2011 AWR, the Panel decided to use the scale in the *Miscellaneous Award 2010* (as it then was) to set the special national minimum wage for award/agreement free junior employees.[75] The Panel has followed this approach in subsequent AWR decisions.[76]

This approach remains appropriate for setting rates for award/agreement free junior employees.

[74] *Annual Wage Review Decision 2022-23* [2023] FWCFB 3500 at [207(b)].

[75] *Annual Wage Review 2011 – 12* [2012] FWCFB 3400 at [396].

[76] For example, *Annual Wage Review 2022-23* [2023] FWCFB 3500 at [207(c)].

15. Special National Minimum Wage 4 – award / agreement free apprentices

In the 2014 AWR, the Panel reached the following conclusions about the special national minimum wages for award / agreement free apprentices:

> **[613]** We have decided to adopt the provisions of the *Miscellaneous Award 2010* as the basis for the special national minimum wages for employees to whom training arrangements apply. The national minimum wage order will incorporate, by reference, the apprentice and NTWS provisions of that award.
>
> **[614]** We also accept Ai Group's submission that the adult apprentice NMW in the order should now be set in accordance with the *Miscellaneous Award 2010* which, since 1 January 2014, has specified a rate for adult apprentices. …[77]

The Panel adopted this approach in subsequent AWRs.[78] Indeed in the 2023 AWR, the Panel saw no reason to review this approach.[79] It remains appropriate for setting rates for award/agreement free apprentices.

16. Special National Minimum Wage 5 – award / agreement free employees to whom a training arrangement applies who are not apprentices

In the *National Minimum Wage Order 2011*, the Panel decided to adopt the minimum wage rates in the National Training Wage Schedule of the *Miscellaneous Award 2010* for the special national minimum wage for award / agreement free employees to whom training arrangements apply, other than apprentices. The Panel adopted the same approach in its subsequent AWR decisions.[80]

Ai Group supports the continuation of the above approach.

17. Transitional instruments

In the 2023 AWR, the Panel decided to maintain the approach taken by the Panel in previous AWRs, by increasing the rates in relevant transitional instruments consistent with any increase determined for modern award minimum wages.[81] Ai Group supports a continuation of this approach in the 2024 AWR.

---

[77] *Annual Wage Review 2013 – 2014* [2014] FWCFB 3500 at [613] – [614].

[78] For example, *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [449].

[79] *Annual Wage Review 2022 – 2023* [2023] FWCFB 3500 at [184].

[80] For example, *Annual Wage Review 2022 – 23* [2023] FWCFB 3500 at [207(d)].

[81] *Annual Wage Review 2022 – 23* [2023] FWCFB 3500 at [211].

18. Modern award minimum wages for junior employees

Consistent with previous AWR decisions, any minimum wage increase resulting from this year's AWR should flow apply to the minimum award wages of junior employees, through the operation of the relevant award provisions that prescribe their minimum rates.

19. Modern award minimum wages for employees to whom training arrangements apply

Consistent with previous AWR decisions, any minimum wage increase resulting from this year's AWR should flow through to the minimum award wages of employees to whom training arrangements apply, through the operation of the relevant award provisions relating to these employees.

20. Modern award minimum wages for employees with disability

Consistent with previous AWR decisions, any minimum wage increase resulting from this year's AWR should flow through to the minimum award wages of employees with disability, through the operation of the relevant award provisions relating to these employees.

21. Piece rates in modern awards

Ai Group supports a flow on of the outcome of the 2024 AWR to piece rates, consistent with the existing approach within modern awards for the calculation of piece rates.

22. Casual loadings in modern awards

Paragraphs 285(2)(a)(i) and 284(3)(b) of the FW Act requires that the Panel review casual loadings in modern awards.

In the *Metal Industry Casual Employment Case*,[82] a Full Bench of the AIRC decided to increase the casual loading in the *Metal, Engineering and Associated Industries Award 1998* from 20% to 25%.

[82] Print T4991, 29 December 2000.

After the *Metal Industry Casual Employment Decision* was handed down, the 25% quantum flowed into many other awards. During the Award Modernisation process in 2008-09, the Award Modernisation Full Bench of the AIRC in the *Priority Stage Award Modernisation Decision*[83] relevantly said:

> **[49]** In 2000 a Full Bench of this Commission considered the level of the casual loading in the Metal, Engineering and Associated Industries Award 1998 (the Metal industry award). The Bench increased the casual loading in the award to 25 per cent. The decision contains full reasons for adopting a loading at that level. The same loading was later adopted by Full Benches in the pastoral industry. It has also been adopted in a number of other awards. Although the decisions in these cases were based on the circumstances of the industries concerned, we consider that the reasoning in that case is generally sound and that the 25 per cent loading is sufficiently common to qualify as a minimum standard.
>
> **[50]** In all the circumstances we have decided to confirm our earlier indication that we would adopt a standard casual loading of 25 per cent. We make it clear that the loading will compensate for annual leave and there will be no additional payment in that respect. Also, as a general rule, where penalties apply the penalties and the casual loading are both to be calculated on the ordinary time rate.

The current standard casual loading in modern awards of 25% is already relatively high and should not be increased.

23. Casual loading for award / agreement free employees

Section 294(1)(c) of the FW Act requires that the Panel set the casual loading for award / agreement free employees.

The casual loading in the *National Minimum Wage Order 2023* is 25 per cent, and a similar loading should be reflected in the *National Minimum Wage Order 2024*.

24. The form of the National Minimum Wage Order

In Ai Group's experience, the form of the *National Minimum Wage Order 2023* did not lead to any difficulties. We suggest that the same model is used for the *National Minimum Wage Order 2024.*

[83] *Award Modernisation* [2008] AIRCFB 1000.

ABOUT THE AUSTRALIAN INDUSTRY GROUP

The Australian Industry Group (Ai Group®) is a peak employer organisation representing traditional, innovative and emerging industry sectors. We are a truly national organisation which has been supporting businesses across Australia for nearly 150 years.

Ai Group is genuinely representative of Australian industry. Together with partner organisations we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our members are small and large businesses in sectors including manufacturing, construction, engineering, transport & logistics, labour hire, mining services, the defence industry, civil airlines and ICT.

Our vision is for thriving industries and a prosperous community. We offer our membership strong advocacy and an effective voice at all levels of government underpinned by our respected position of policy leadership and political non-partisanship.

With more than 250 staff and networks of relationships that extend beyond borders (domestic and international) we have the resources and the expertise to meet the changing needs of our membership. We provide the practical information, advice and assistance businesses need. Our deep experience of industrial relations and workplace law positions Ai Group as Australia's leading industrial advocate.

We listen and we support our members in facing their challenges by remaining at the cutting edge of policy debate and legislative change. We provide solution-driven advice to address business opportunities and risks.

OFFICE ADDRESSES

NEW SOUTH WALES

Sydney
51 Walker Street
North Sydney NSW 2060

Western Sydney
Level 2, 100 George Street
Parramatta NSW 2150

Albury Wodonga
560 David Street
Albury NSW 2640

Hunter
Suite 1, "Nautilos"
265 Wharf Road
Newcastle NSW 2300

VICTORIA

Melbourne
Level 2 / 441 St Kilda Road
Melbourne VIC 3004

Bendigo
87 Wil Street
Bendigo VIC 3550

QUEENSLAND

Brisbane
202 Boundary Street Spring Hill
QLD 4000

ACT

Canberra
Ground Floor,
42 Macquarie Street
Barton ACT 2600

SOUTH AUSTRALIA

Adelaide
Level 1 / 45 Greenhill Road
Wayville SA 5034

WESTERN AUSTRALIA

South Perth
Suite 6, Level 3 South Shore Centre 85
South Perth Esplanade
South Perth WA 6151

www.aigroup.com.au