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| [2020] FWCFB 1804 |
| STATEMENT |

Fair Work Act 2009

s.285—Annual wage review

Annual Wage Review 2019–20

(C2020/1)

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| Justice ross, presidentVice President CatanzaritiDeputy President Asbury Commissioner HamptonMr FergusonMr WoodenMs Labine-Romain | MELBOURNE, 6 APRIL 2020 |

TIMETABLE VARIATION

**1. Background**

1. A [Statement](https://www.fwc.gov.au/documents/wage-reviews/2019-20/decisions/2020-fwc-1544.pdf) published on 23 March 2020 varied the timetable for the Annual Wage Review 2019–20 (2019–20 Review) as follows:

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| **Date** | **Event** |
| 27 March 2020[[1]](#footnote-1) | Closing date for lodging submissions |
|  *Easter Break: 10 April–13 April 2020* |
| 23 April 2020 | Closing date for lodging reply submissions and any submissions relating to data published after 27 March 2020 |

1. It was also noted that the post-Budget consultations initially scheduled for 18 and 19 May 2020 would not proceed.
2. In taking into account the consequences of the COVID-19 pandemic, the March statement noted that further changes to the timetable would be necessary to provide parties with an opportunity to comment on a rapidly changing environment and relevant data as it emerges. The statement also outlined the proposal by [Ai Group](https://www.fwc.gov.au/documents/wage-reviews/2019-20/submissions/aig-sub-awr1920.pdf) to defer any decision until after the release of the Australian Bureau of Statistics’ (ABS) National Accounts for the March Quarter 2020 on 3 June 2020.[[2]](#footnote-2)
3. To settle the timetable as soon as practicable, parties were invited to file a short submission setting out their response to Ai Group’s proposal and other views that they had in relation to the timetable, by 4.00pm Wednesday 1 April 2020.

**2. Submissions**

1. Submissions were received from:
* the [Australian Government](https://www.fwc.gov.au/documents/wage-reviews/2019-20/timetable/australian-government-addsub-awr1920.docx);
* the [Australian Council of Trade Unions](https://www.fwc.gov.au/documents/wage-reviews/2019-20/timetable/actu-addsub-awr-1920.pdf) (ACTU);
* [Australian Industry Group](https://www.fwc.gov.au/documents/wage-reviews/2019-20/timetable/aig-addsub-awr-1920.pdf) (Ai Group);
* [Australian Chamber of Commerce and Industry](https://www.fwc.gov.au/documents/wage-reviews/2019-20/timetable/acci-addsub-awr-1920.pdf) (ACCI); and
* [Master Grocers Australia](https://www.fwc.gov.au/documents/wage-reviews/2019-20/timetable/mga-addsub-awr1920.pdf) (MGA)
1. Consistent with its proposal, Ai Group supported the postponement for the lodgement of reply submissions and submitted that one day of final consultations be scheduled to allow parties to make short oral submissions and address any further questions from the Expert Panel. It is proposed that this take place in June, shortly after the lodgement of the proposed submissions of 8 June 2020.[[3]](#footnote-3)
2. The Australian Government submitted that the Expert Panel ‘should utilise any available mechanisms that enhance its ability to consider all economic data and other information relevant to the impact of the coronavirus pandemic when making its decision.’[[4]](#footnote-4)
3. ACCI did not oppose the proposed timetable put forth by Ai Group, and also submitted that final consultations should still proceed.[[5]](#footnote-5)
4. MGA submitted that ‘any decision relating to the Annual Wage Review decision be delayed until after the March Quarter 2020 National Accounts have been released, with an opportunity to file further submissions by 8 June 2020.’[[6]](#footnote-6)
5. The ACTU supported Ai Group’s proposal that the Panel take into account the March Quarter National Accounts Data and accepted that it is necessary for the Panel to inform ‘itself of the best data and analysis available about the impacts of the COVID-19 pandemic on employees, employers and the economy.’[[7]](#footnote-7)

**3. Consideration**

1. There is a broad consensus that the Panel should take into account the March Quarter National Accounts released on 3 June 2020 and that interested parties be afforded a reasonable opportunity to make submissions about how the March Quarter National Accounts should be taken into account. It is also generally agreed that a day of final consultations should be scheduled to allow parties to make short oral submissions and address any further questions from the Panel.
2. There is no doubt that the Commission is bound to ‘act judicially’, which includes an obligation to afford parties procedural fairness. Further, s.289 provides, relevantly, that in relation to each Annual Wage Review the Panel must ensure that ‘all persons and bodies have a reasonable opportunity to make written submissions’ and to make comments on submissions filed.
3. The application and content of the doctrine of procedural fairness is determined by the context, as is what constitutes a ‘reasonable opportunity’ in s.289. As Mason J observed in *Kioa v West*:

‘What is appropriate in terms of natural justice depends on the circumstances of the case and they will include, inter alia, the nature of the inquiry, the subject matter, and the rules under which the decision - maker is acting.’[[8]](#footnote-8)

1. A key contextual consideration in relation to the present proceedings is the statutory constraints regarding the conduct of Annual Wage Reviews. In particular, section 285(1) provides that the expert Panel ‘must conduct and complete an annual wage review in each financial year’ (emphasis added). It follows that 30 June 2020 provides the outer limit for the completion of the 2019–20 Review.
2. It is apparent from the submissions filed that the statutory time constraints are well understood by the parties. As the Australian Government put it ‘the Government acknowledges the challenges presented to the Fair Work Commission by the statutory requirement that the Annual Wage Review 2019-20 be completed by 30 June 2020.’[[9]](#footnote-9) The ACTU submission also gave detailed consideration to the fixed outer limits prescribed by the legislation.[[10]](#footnote-10)
3. We also note that Ai Group[[11]](#footnote-11) and the ACTU[[12]](#footnote-12) propose that the Panel’s decision be handed down in mid-June and that ACCI submits that ‘it remains important … that there be a due period of notice prior to the commencement of any increase.’[[13]](#footnote-13)
4. Taking into account the submissions and the matters identified above we have decided to revise the timetable to:
* extend the date for the filing of reply submissions (from 23 April 2020 to 4 May 2020);
* provide an opportunity to file supplementary submissions by 29 May 2020;
* take into account the March Quarter National Accounts Data;
* provide parties with an opportunity to make submissions (and comment on submissions filed) in relation to the March Quarter National Accounts Data; and
* provide interested parties with an opportunity to make short oral submissions and to respond to Panel questions (at 2pm on 10 June 2020).
1. The revised timetable for the 2019–20 Review is as follows:

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| **Date** | **Event** |
| 9 April 2020 | Questions on notice published |
|  *Easter Break: 10 April–13 April 2020* |
| 4pm 4 May 2020 | Closing date for lodging reply submissions and any submissions relating to data published after 27 March 2020 and responses to questions on notice |
| 18 May 2020 | Supplementary questions on notice published |
| 4pm 29 May 2020 | Closing date for lodging supplementary submissions and any submissions relating to data or research published after 4 May 2020 and responses to supplementary questions on notice |
| 3 June 2020 | Release of the March Quarter 2020 National Accounts |
| 4pm 5 June 2020 | Closing date for lodging submissions in relation to the National Accounts data for the March Quarter 2020, responses to supplementary submissions and other data or research published after 29 May 2020 |
| 4pm 9 June 2020 | Reply submissions to submissions lodged on 5 June 2020 |
| 2pm 10 June 2020 | Consultations (via teleconference) |

1. We note Ai Group’s submission that there are ‘exceptional circumstances’ within the meaning of ss 286(2) and 287(4) which justify an operative date of 15 July 2020 (i.e. delaying the usual 1 July 2020 operative date by two weeks). We also note the ACTU’s opposition to the proposal. We do not propose to determine this question at this early stage in the proceedings. We will deal with the operative date question in our decision dealing with the 2019–20 Review taking into account all of the submissions, including the oral submissions made at the consultations on 10 June 2020.
2. For completeness we also note that the ABS are publishing additional data measuring the impact of COVID-19 on individuals and businesses that will be pertinent to this Review. The [Statistical report](https://www.fwc.gov.au/awards-agreements/minimum-wages-conditions/annual-wage-reviews/annual-wage-review-2019-20/statistical-reporting) presents the data released on *Business Impacts of COVID-19* and will be updated for future releases of this survey and other products used to measure the impact of COVID-19 as they are announced. Attached to this Statement is a calendar that outlines key dates and data releases from April to around mid-June 2020.

PRESIDENT

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**ATTACHMENT: Annual Wage Review 2019–20: key dates and data releases—6 April to 12 June 2020**

Data releases Submissions and Questions on notice Public holidays

| **Monday** | **Tuesday** | **Wednesday** | **Thursday** | **Friday** |
| --- | --- | --- | --- | --- |
| **6 April** | **7 April** | **8 April** | **9 April**Questions on notice published | **10 April**Easter |
| **13 April** Easter | **14 April** | **15 April**Monthly Leading Indicator of Employment, April 2020 | **16 April**Labour force survey, March 2020* Unemployment rate
 | **17 April** |
| **20 April**  | **21 April**Minutes of RBA Monetary Policy meeting | **22 April** | **23 April**Labour force detailed surveys, March 2020* reasons for working less hours
 | **24 April** |
| **27 April**  | **28 April** | **29 April**Data released on inflation, March 2020 | **30 April**For April release with no firm dates:* AAWI, IMF forecasts
 | **1 May** |
| **4 May**Closing date for lodging reply submissions and any submissions relating to data published after 27 March 2020 and responses to questions on notice | **5 May** | **6 May**Data released on retail turnover, March 2020and Living Cost Indexes, March 2020 | **7 May** | **8 May**RBA Statement on Monetary Policy and forecasts turnover |
| **11 May** | **12 May** | **13 May**Data released on WPI, March 2020 | **14 May**Labour force survey, April 2020* Unemployment rate
 | **15 May** |
| **18 May**Supplementary questions on notice published | **19 May**Minutes of RBA Monetary Policy meeting | **20 May** | **21 May**Labour force detailed survey, April 2020* reasons for working less hours
 | **22 May** |
| **25 May** | **26 May** | **27 May** | **28 May** | **29 May**Australian Industry 2018–19* Profit margins; small business data

Closing date for lodging supplementary submissions and any submissions relating to data or research published after 4 May 2020 and responses to supplementary questions on notice |
| **1 June** | **2 June**Data released on Business indictors, March 2020 | **3 June**Data released on National Accounts, March 2020* GDP/Productivity
* Consumption
 | **4 June**Data released on retail turnover, April 2020 | **5 June**Closing date for lodging submissions in relation to National Accounts data |
| **8 June**Queen’s birthday | **9 June**Reply submissions to submissions lodged on 5 June 2020 | **10 June****CONSULTATIONS 2PM**Labour Account, March 2020* Vacant/filled jobs
 | **11 June** | **12 June** |

**NAB Business confidence and conditions provide monthly.**

1. The Commonwealth was granted an extension to file their submission by 3 April. [↑](#footnote-ref-1)
2. [2020] FWC 1544 at [4]–[6]. [↑](#footnote-ref-2)
3. Ai Group, 1 April 2020 at pp. 2–3. [↑](#footnote-ref-3)
4. Australian Government submission, 1 April 2020 at para. 3. [↑](#footnote-ref-4)
5. ACCI submission, 1 April 2020 at pp. 1–2. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. ACTU submission, 1 April 2020 at paras 5–6. [↑](#footnote-ref-7)
8. (1985) 159 CLR 550 at [32]; see [[2015] FWCFB 210](https://www.fwc.gov.au/documents/decisionssigned/html/2015fwcfb210.htm#P449_70245). [↑](#footnote-ref-8)
9. Australian Government Submission, at [1] [↑](#footnote-ref-9)
10. ACTU submission at [7] [↑](#footnote-ref-10)
11. Ai Group submission, page 32 [↑](#footnote-ref-11)
12. ACTU submission at [10] and [16], it submits that the decision be issued on or before 9 June 2020. [↑](#footnote-ref-12)
13. ACCI submission at page 2 [↑](#footnote-ref-13)