



Submission to the Annual Wage Review 2022-23

ACTU Submission, 31 March 2023
ACTU D. No 13/2023

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1. INTRODUCTION AND OVERVIEW.

1. The Australian Council of Trade Unions (ACTU) is the peak body for Australian Unions, with 42 affiliated unions together representing over 1.7 million workers. The ACTU submits that the Fair Work Commission Annual Wage Review should increase the National Minimum Wage and Award Wages by 7% from 1 July 2023. This rise would provide urgently needed cost of living relief for an estimated 2.67 million employees, many of them low paid, and all of them struggling to keep their head above water.
2. The claim would help workers with meeting the current level of inflation, which is between 7.4% on the quarterly CPI measure, and now 6.8% on the monthly CPI measure for February 2023.
If inflation drops further, as it seems to be, this claim would then also begin to address the record deep cuts to the real wages that low paid workers have suffered over the past two years.
3. It is a responsible claim: as this submission outlines, on every indicator of economic health, business can afford this, particularly in those industries with workers more reliant on awards for their pay. The labour market remains historically strong, and growth is above pre-pandemic levels.
4. Last year, business groups claimed that the \$40 a week rise for low paid workers awarded by the FWC would “add fuel to the inflation fire”.¹ It did no such thing. The key drivers of inflation were initially overseas, supply side pressures, but amplified by the price setting behaviour of firms, now responsible for an estimate 70% of inflation above the RBA’s target range as this submission details. Wage growth in Australia remains modest, and the AWR decision last year only contributed a small fraction – 0.29% - of the Wage Price Indexes modest growth of 3.3% last year. There has been no wage price spiral, as the RBA has acknowledged, and the FWC can be confident that this claim presents no risk in that regard.

¹ Ai Group (15 June 2022), “FWC’s Annual Wage Review Decision Adds Fuel to the Inflation Fire”.
<https://www.aigroup.com.au/news/media-centre/2022/fwcs-annual-wage-review-decision-adds-fuel-to-the-inflation-fire/>

5. The Parliament of Australia has recently amended the object, the modern awards objective and the minimum wages objective of the *Fair Work Act 2009* (FW Act) to now contain references to job security and gender equality considerations. Our claim also seeks to advance these critically important objectives.

6. This submission presents a considerable amount of data, research and commentary in support of our position. To assist the Panel, a summary of key points are as follows:
 - a. Since the last Review, labour market performance has further improved and continues to be strong. Current performance is broadly in line with expectations on unemployment, participation and employment growth, with strong growth in full time work resulting in a slight decline in the share of casual work. Long term unemployment has continued to decrease since the last review and youth unemployment remains at historically low levels.
 - b. Employment growth, hours worked and underemployment in the more modern award reliant industries appear not to have been sensitive to the Panel's decision last year, notwithstanding it being generous in nominal terms. The lack of a clear association in these measures is consistent with evidence from contemporary international research which shows a range of positive impacts from minimum wage increases but no clear disemployment effects. In our view, social inclusion through increased workforce participation would not be jeopardised by a significant increase in this review.
 - c. Despite predicted global economic headwinds, there are many reasons to be optimistic about the state of the national economy. Economic growth for 2022 was 2.7%, which, while lower than the post-lockdown highs of late 2021, is still above the pre-pandemic average of 2.4% from 2014 to 2019. Australia's growth over 2023 and 2024 is also projected to be higher than the average for advanced economies, due to its strong recovery and favourable terms of trade.
 - d. The economic health of Australian business is strong on every indicator:
 - i. Overall corporate profits were strong in 2022.
 - ii. The profit share of total factor income hit a record high in 2022.
 - iii. All industries have recorded strong growth in gross-value added when measured against pre-pandemic levels.

- iv. The overall number of businesses grew by 7% in the 2021-22 financial year, nearly doubling the rate of growth in the previous financial year, and the strongest performance in at least a decade.
 - v. Business bankruptcies are at a record low of just 0.2%.
 - vi. Levels of investment, sales turnover and sales to wages ratio are all encouraging.
- e. Within that picture, the economic health of award reliant industries is even more positive:
- i. Award reliant industries generally recorded healthy levels of gross corporate operating profits in 2022, especially the strong bounce-back of Accommodation and Food Services, and Retail growing by 57% and 18% respectively.
 - ii. Four of the seven most award reliant industries recorded growth rates of gross value added in 2022 above the national average including Accommodation and Food Services, Arts and Recreation, Administration and Support Services and Other Services.
- f. These positive results have occurred in the midst of inflation higher than expected during the previous Review, and the tightening of monetary policy in response to it. While this has played a role in bringing levels of growth almost back to the pre-pandemic average, inflation is now subsiding in early 2023, further lifting Australia's prospects of achieving a soft economic landing.
- g. Inflation has however resulted in dramatic cuts in the real value of wages. As the ACTU calculates, workers on minimum and award wages have faced effective cuts to their pay of between 5.43% to 6.04% because inflation has rapidly outpaced the increases awarded by the Panel over the past two reviews. This time the Panel is urged to consider making significant progress towards restoring these losses.
- h. The Panel should do so knowing that last year's Review decision had no discernible impact on inflation. As recent research shows, it has been the price setting behaviour of firms, and not modest wage growth, that has driven prices beyond the RBA's target range.
- i. It should also do so knowing that the levels of household savings and spending, have dropped dramatically over the past three months, particularly for lower income households as they deal with a cost of living crisis. Household final consumption expenditure (HFCE), the key driver of GDP growth as Australia emerged from the 2021

lockdowns, has also weakened considerably. A strong increase in minimum and award wages would also play a positive role in restoring savings and consumption, and aiding the national economy to achieve a soft landing.

- j. The relative earnings position of workers reliant on the Panel's decision has unquestionably improved. The long-term decline in the minimum wage bite has stabilised as result both of the Panel's decisions in the last decade and the weak general market wage growth in recent years. That said, there remains a significant disparity between the earnings of award reliant employees and employees generally, a far narrower distribution of earnings among the award reliant which remains out of step with market earnings for workers at similar skill levels, and Australia's ranking on its minimum wage bite compared to other nations has slipped. The actual living standards of modern award reliant workers however are better illustrated by measuring their capacity to meet their needs, noting the high inflation environment which has persisted since the last review.
- k. With inflation dramatically rising, the real pay of low paid workers has been eroded at unprecedented rates. As a wide range of evidence presented in this submission demonstrates, the low paid are facing an acute cost of living crisis. To say that their needs are not being met is an understatement.
- l. The National Minimum Wage (NMW) has not kept pace with relative poverty thresholds such as 60% of the median earnings, falling below that level in 1999 to now sit at 53.6%.
- m. Six of the 14 hypothetical household types earning the C14 rate have equivalised disposable incomes below the poverty line of less than 60% of median wage. Two additional household types sit exactly on that poverty line. Further, all of those 6 household types fall below the poverty line even if earning the C10 rate and 5 fall below even if earning the C4 rate.
- n. A broad range of indicators show a significant increase in financial stress for a range of workers particularly dependent on minimum and award wages, including the low paid, young workers, women, and award reliant.
- o. In particular, the Melbourne Institute's Taking the Pulse of the Nation survey has regularly asked employees about their levels of financial stress since February 2021. It now finds that:

- i. Workers on low incomes (up to \$50,000) experienced levels of stress well above other income cohorts, and that their levels of financial stress have trended upwards since early 2022.
 - ii. Financial stress has increased for all age groups since early 2022, but is especially pronounced for younger workers.
 - iii. Industries that are more Award reliant have large proportions of employee respondents exhibiting high and rising levels of financial stress.
 - iv. Financial stress for both genders has trended upwards since January 2022.
- p. The ACTU Attitudes, Sentiments and Knowledge (ASK) survey, running quarterly since the fourth quarter of 2021, is nationally representative, asks a wide range of questions about financial stress, and over its six waves to date, shows an undeniable increase in financial stress across all measures, and particularly for low paid and award reliant workers. The full results are annexed to this submission and summarised within it. The ACTU encourages the Panel to consider the results carefully.
- q. The COVID-19 Disaster Payment and Pandemic Leave Disaster Payment all ended during the current review year but the disease has not. The spikes in Covid cases throughout the current review period has seen hundreds of thousands more workers forced to take sick leave or less hours because of illness than did so prior to the pandemic. Many will be casual workers with no entitlement to paid sick leave and are more likely to be award reliant.
- r. People's assessment of their personal and family financial situation fell sharply at the start of the pandemic, rebounded strongly during the period of pandemic support payments and other measures, but has since fallen steeply since the latter parts of 2022 to levels far lower than any seen since the GFC.
- s. The ABS Living Cost Index for Employees, a more accurate measure of the inflationary pressures facing employee households, hit 9.3% for the year to December 2022, close to three times higher than the Wage Price Index at 3.3% for the same period.
- t. Inflation on non-discretionary items, which the low paid spend a greater proportion of their income on, outpaced inflation for discretionary items for the year to December 2022, 8.4% versus 7.1% respectively.
- u. The Fair Work Commission's own commissioned research by the UNSW Social Policy Research Centre's study, *Budget Standards for Low Paid Families*, shows that minimum and award wage workers in a range of household scenarios are not earning enough to meet their estimated modest household budget. The situation is bleakest for single

parents (whether they have 1 or 2 children) who fall well short of earning enough to satisfy their estimated household budget if earning the C4 rates.

- v. Housing costs have skyrocketed, aided by the RBA's raising of interest rates, and this affects the low paid whether or not they are homeowners with mortgages or renters. Groceries, electricity and childcare have all seen steep increases in prices.
- w. Food insecurity has rising rapidly since the last Review decision: the ACTU's ASK Survey data indicates that 25% of all workers have skipped meals and 37% of workers earning less than \$52,000 have skipped meals. The Foodbank Hunger Report 2022 estimates that about 3.3 million Australian households (54% of which have someone in paid work) experienced some form of food insecurity in the 12 months to October 2022.
- x. The statutory framework has significantly changed since the last Review pursuant to the *Same Jobs Better Pay (SJBPA) Amendments of 2022*. The object, the modern awards objective and the minimum wages objective now contain references to job security and gender equality considerations.
- y. The SJBPA amendments have considerably strengthened the object of the FW Act and the modern awards and minimum wages objectives. Together, they require the Panel to consider the need to achieve gender equality (and how to achieve it), and the need to promote job security. In relation to gender equality, the considerations the Panel is required to take into account have been considerably broadened. For example, the Panel is also now required to specifically consider the elimination of gender-based undervaluation of work, something it previously found it was not required to consider. These changes place job security and gender equality "at the heart of the FWC's decision-making"² and frame job security and gender equality as desirable ends in themselves. The principle of equal remuneration in the FW Act has also been amended and is now far more expansive in its operation.
- z. To best achieve the purpose of the FW Act and serve the minimum wages and modern awards objectives, there is a strong argument that Panel should set the NMW and modern award minimum wages at a higher rate than it might have otherwise done, in light of the positive impact that will have on workers in insecure employment and on women workers (who are disproportionately represented among award reliant, low paid and insecurely employed workers.)
- aa. Causes of the gender pay gap include the persistently high levels of occupational and industry segregation along gender lines; the historic undervaluation of work done in

² Revised Explanatory Memorandum at [330]

female-dominated industries and occupations; the disproportionate responsibility that women have for unpaid caring and domestic work and the workforce disruption this causes; lack of access to secure and flexible work, adequate paid parental leave and quality, affordable early childhood education and care (ECEC); and gender discrimination in hiring, promotion and pay decisions. These factors continue to undermine women's workforce participation and drive the gender pay and retirement income gaps.

- bb. Demonstrating this, modern award reliant employees are predominately female (and more likely to have time out of paid work); more likely to work less hours; more likely to be insecurely employed; more likely to be low paid and to have lower earnings (regardless of whether they are casual workers); and concentrated in occupations with lower qualification or skill requirements and in industries where paid work has been disrupted due to pandemic restrictions.
- cc. Gender has a clear impact on financial wellbeing - the ability to afford day-to-day living expenses without significant financial stress shows substantial differences across the genders, with women consistently expecting greater hardship across almost all measures (excluding childcare).³
- dd. Combined with the legislated changes to the Commonwealth Paid Parental Leave (PPL) scheme that will allow parents to share PPL flexibly between them from 1 July 2023, an increase in the NMW will also better incentivise more fathers or partners to access parental leave and assist with caring responsibilities. This could make a significant contribution towards gender equality, especially by improving women's workforce participation given that a key barrier to the take up of PPL by fathers and partners is the low rate of the NMW which is likely to represent a more significant pay cut for men than women.
- ee. With nearly three in five award reliant workers being female, and award reliant workers receiving higher pay increases in the period under review than the general labour force, last year's decision made an important contribution towards reducing the overall gender pay gap. There is a strong case for a significant increase this year due to the likely positive impact on gender equality, reducing the gender pay gap, addressing gender-based undervaluation, ensuring equal remuneration, and facilitating women's full economic participation.

³ ASK Survey Report at page 6

- ff. The Panel is required to consider whether its decision will encourage collective bargaining. The ACTU submits that the Panel should weigh this factor neutrally in the present review, unless it is able to *positively satisfy* itself that an increase to minimum wages will not encourage collective bargaining. Further, it is submitted that the Panel cannot be positively satisfied of this. Collective bargaining has recently increased following the Panel's most recent decision and will further pick up in response to reforms to bargaining under the FW Act.
 - gg. Our analysis of the relevant social and economic considerations we are required to consider has not identified any "exceptional circumstances" that justify a deferral of any of the increases we seek. We present a detailed analysis of the Panel's approach to the issue in the last Review and seek a more discerning approach should deferrals be sought and considered in future.
7. This review provides an urgent opportunity to address the cost of living crisis. The impact of our claim is set out in Table 1 below by reference to the classification structure in the Manufacturing and Associated Industries and Occupations Award 2020, and provides guidance as to impact our claim would have at multiple pay rates for similar or comparable classification levels in other modern awards.

Table 1: Impact of our claim

Award classification	Current rates		Proposed rates				
	Weekly	Hourly	Weekly	Hourly	% increase	Weekly \$ increase	Hourly \$ increase
NMW/C14/V1	\$ 812.60	\$ 21.38	\$ 869.48	\$ 22.88	7.0	\$ 56.88	\$ 1.50
C13/V2	\$ 834.80	\$ 21.97	\$ 893.24	\$ 23.51	7.0	\$ 58.44	\$ 1.54
C12/V3	\$ 865.20	\$ 22.77	\$ 925.76	\$ 24.36	7.0	\$ 60.56	\$ 1.59
C11/V4	\$ 893.60	\$ 23.52	\$ 956.15	\$ 25.17	7.0	\$ 62.55	\$ 1.65
C10/V5	\$ 940.90	\$ 24.76	\$ 1,006.76	\$ 26.49	7.0	\$ 65.86	\$ 1.73
C9/V6	\$ 970.40	\$ 25.54	\$ 1,038.33	\$ 27.33	7.0	\$ 67.93	\$ 1.79
C8/V7	\$ 999.90	\$ 26.31	\$ 1,069.89	\$ 28.15	7.0	\$ 69.99	\$ 1.84
C7	\$ 1,026.60	\$ 27.02	\$ 1,098.46	\$ 28.91	7.0	\$ 71.86	\$ 1.89
V8	\$ 1,029.40	\$ 27.09	\$ 1,101.46	\$ 28.99	7.0	\$ 72.06	\$ 1.90
C6/V9	\$ 1,078.70	\$ 28.39	\$ 1,154.21	\$ 30.38	7.0	\$ 75.51	\$ 1.99
C5/V10	\$ 1,100.80	\$ 28.97	\$ 1,177.86	\$ 31.00	7.0	\$ 77.06	\$ 2.03
C4/V11	\$ 1,130.30	\$ 29.74	\$ 1,209.42	\$ 31.82	7.0	\$ 79.12	\$ 2.08
C3/V12	\$ 1,189.50	\$ 31.30	\$ 1,272.77	\$ 33.49	7.0	\$ 83.27	\$ 2.19
C2(a)/V13	\$ 1,219.20	\$ 32.08	\$ 1,304.54	\$ 34.33	7.0	\$ 85.34	\$ 2.25
C2(b)/V14	\$ 1,272.50	\$ 33.49	\$ 1,361.58	\$ 35.83	7.0	\$ 89.08	\$ 2.34

8. We recommend our claim be adopted in full and express our interest in participating in the Panel's consultations on 17 May 2023.

2. SECURE JOBS, BETTER PAY

9. The FW Act requires the Commission, constituted by an Expert Panel for annual wage reviews (**Panel**), to conduct and complete a review of the national minimum wage (**NMW**) and modern award minimum wages in each financial year and make a NMW order (**the Review**).⁴
10. The Panel must conduct the Review within the legislative framework of the FW Act, particularly the object of the Act in section 3, the modern awards objective in s134(1), and the minimum wages objective in s284(1).⁵ The Panel’s task is to “consider the relevant statutory considerations in the context of the prevailing economic and social circumstances in arriving at its decision in a Review.”⁶
11. Since the last Annual Wage Review in 2021-2022, all of these parts of the FW Act have been amended by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (SJBPA Act)* to include new considerations that the Panel must take into account. These amendments significantly change the legislative framework in which the Review is conducted.
12. Sections 577(a) and (d) of the FW Act require the Panel to perform its functions and exercise its powers in a manner that is fair and just, and that promotes harmonious and cooperative workplace relations. Sections 578 (a) and (b) of the FW Act provide that in performing its functions and exercising its powers in relation to a matter, the Panel must take into account the objects of the Act (and the object of the relevant part of the Act), and equity, good conscience and the merits of the matter.⁷
13. Section 15AA of the *Acts Interpretation Act 1901 (Cth)* provides that in interpreting a provision of an Act, the interpretation that would best achieve the purpose of the object of the Act is to be preferred to other interpretations.

⁴ Division 3 of Part 2-6 FW Act; *Annual Wage Review 2021–22* [2022] FWCFB 3500 at [1]

⁵ *Annual Wage Review 2021–22* [2022] FWCFB 3500 at [4]

⁶ [2022] FWCFB 3500 at [4]

⁷ S 578 FW Act; *Annual Wage Review 2019–20* [2020] FWCFB 3500 at [204]; *Annual Wage Review 2021–22* [2022] FWCFB 3500 at [327]

14. Therefore, the Panel must exercise its powers in a manner which accords with the objects of the FW Act and the purpose of the legislative scheme, and to interpret the FW Act in a way that best achieves the objects.⁸

2.1 Approach taken by the Panel in previous Reviews

15. Previously, the Panel has found that the making of a NMW order and the review and variation of modern award minimum wages are separate but related functions. They are related because they both form part of the safety net and section 285(3) of the FW Act provides that the Panel must take into account the rate of the NMW it proposed to set in the Review when exercising its powers to set, vary or revoke modern award minimum wages. It follows from this that the Panel must first form a view about the rate of the NMW it proposes to set (taking into account the statutory considerations relevant to that discrete task) and then take that proposed NMW rate into account, along with the other relevant statutory considerations, in exercising its powers in relation to modern award minimum wages.⁹
16. The minimum wages objective and the object of the FW Act apply to the review and making of a NMW wage order. The modern awards objective is not relevant to the review and making of a NMW order, as the making of such an order does not involve the performance or exercise of modern award powers.¹⁰
17. Previous Panels have found that there is a substantial degree of overlap in the considerations required to be taken into account under the minimum wages objective and the modern awards objective, even though some are not expressed in the same terms.¹¹
18. The Panel has previously made the following observations:
 - a. The statutory tasks in sections 134 and 284 involve an evaluative exercise informed by the various social and economic considerations identified in those sections. These statutory considerations inform the evaluation of what might constitute ‘a fair and

⁸ See FW Act s 578; *Acts Interpretation Act 1901* (Cth) s 15AA; *Project Blue Sky v Australian Broadcasting Authority* [1998] HCA 28, *Four Yearly Review of Modern Awards* [2014] FWCFB 1788 at [14]; *Tickner v Bropho* (1993) 114 ALR 409 at 434

⁹ [2022] FWCFB 3500 at [3]

¹⁰ [2022] FWCFB 3500 at [6]

¹¹ *Annual Wage Review 2019–20* [2020] FWCFB 3500 at [205]; *Annual Wage Review 2014–15* [2015] FWCFB 3500 at [88]–[91]; *Annual Wage Review 2015–16* [2016] FWCFB 3500 at [116]; *Annual Wage Review 2016–17* [2017] FWCFB 3500 at [115], [129]

relevant minimum safety net of terms and conditions’ and ‘a safety net of fair minimum wages’.¹²

- b. ‘Fairness’ in the context of both objectives includes the perspective of employees and employers.¹³
 - c. The FW Act requires the Panel to take into account all of the relevant statutory considerations.¹⁴
 - d. The statutory considerations identified do not necessarily exhaust the matters which the Panel might properly consider to be relevant. The range of such matters must be determined by implication from the subject-matter, scope and purpose of the FW Act.¹⁵
 - e. No particular primary is attached to any of the considerations, and a degree of tension exists between some of the considerations.¹⁶
 - f. The weight to be attributed to a particular statutory consideration may vary from year to year depending on the social and economic context in a particular review.¹⁷
 - g. The range of considerations that the Panel is required to take into account calls for the exercise of broad judgment, rather than a mechanistic approach to minimum wage fixation.¹⁸
19. The statutory provisions relating to the variation of the NMW are remedial or beneficial provisions, as they are intended to benefit national system employees.¹⁹ This has implications for the approach to be taken to their interpretation. The following principles have been accepted by previous Panels as being relevant to the construction of beneficial provisions:²⁰
- a. “The court must proceed with its primary task of extracting the intention of the legislature from the fair meaning of words by which it has expressed that intention, remembering that it is a remedial measure passed for the protection of the worker. It

¹² *Annual Wage Review 2019–20* [2020] FWCFB 3500 at [208]

¹³ [2020] FWCFB 3500 at [208]; *Annual Wage Review 2018-19* [2019] FWCFB 3500 at [10]; *Annual Wage Review 2017-18* [2018] FWCFB 3500 at [21]

¹⁴ [2020] FWCFB 3500 at [208]; [2019] FWCFB 3500 at [11]

¹⁵ [2020] FWCFB 3500 at [209]; *Minister for Aboriginal Affairs and Another v Peko-Wallsend Limited and Others* (1986) 162 CLR 24 at [39]–[40]; *Penalty Rates Review Decision* [2017] FCAFC 161 at [48]

¹⁶ [2020] FWCFB 3500 at [210]; *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788 at [32]; [2017] FWCFB 3500 at [129]

¹⁷ [2022] FWCFB 3500 at [8]

¹⁸ *Annual Wage Review 2012-13* [2013] FWCFB 4000 at [359]

¹⁹ [2017] FWCFB 3500 at [134]

²⁰ [2017] FWCFB 3500 at [134] - [137]

should not be construed so strictly as to deprive the worker of the protection which Parliament intended he should have.”²¹

- b. Any ambiguity is to be construed beneficially to give the fullest relief that a fair meaning of its language will allow, provided that the interpretation adopted is restrained within the confines of the actual language employed that is fairly open on the words used.²²
- c. If the words to be construed admit only one outcome then that is the meaning to be attributed to the words. However if more than one interpretation is available or there is uncertainty as to the meaning of the words, such that the construction of the legislation presents a choice, then a beneficial interpretation may be adopted.²³

20. It is well established that the obligation to ensure that the safety net is ‘fair and relevant’ requires the Panel to consider the issue of gender pay equity, and in particular the gender pay gap, as part of its work in the Review.²⁴ The Panel has accepted that gender equity also arises for consideration in respect of promoting social inclusion through workforce participation, because increases in the minimum and award wages may have beneficial effects on women’s participation in the workforce.²⁵ The Panel has consistently found that because women are disproportionately represented among the low paid and award reliant, an increase in minimum wages is likely to promote gender pay equity and have a beneficial effect on the gender pay gap.²⁶

21. However, previously the Panel has found that the Review proceedings are of limited utility in addressing any systemic gender-based undervaluation of work, and that equal remuneration applications, work value applications and the 4 yearly review of modern awards provide more appropriate mechanisms for addressing such issues.²⁷

²¹ *Bowker and others v DP World Melbourne Limited T/A DP World, Maritime Union of Australia and others* [2014] FWCFB 9227 at [25]-[27]; *Waugh v Kippen* [1986] HCA 12; (1986) 160 CLR 156 at 164

²² *Bowker and others v DP World Melbourne Limited T/A DP World, Maritime Union of Australia and others* [2014] FWCFB 9227 at 26

²³ *Ibid* at 27

²⁴ *Annual Wage Review 2016–17* [2017] FWCFB 3500 at [77]-[79]; *Annual Wage Review 2018-19* [2019] FWCFB 3500 at [18]; *Annual Wage Review 2019–20* [2020] FWCFB 3500 at [405]

²⁵ [2017] FWCFB 3500 at [77] and [643]

²⁶ [2016] FWCFB 3500 at [75]; [2017] FWCFB 3500 at [639]- [678]; [2018] FWCFB 3500 at [38] and [436]; [2019] FWCFB 3500 at [71] and [399]; [2020] FWCFB 3500 at [405]; [2022] FWCFB 3500 at [87]

²⁷ *Annual Wage Review 2018-19* [2019] FWCFB 3500 at [18]; *Annual Wage Review 2017-18* [2018] FWCFB 3500 at [35].

22. The statutory framework has significantly changed since the last Review. The object, the modern awards objective and the minimum wages objective now all contain references to ‘gender equality’, and both objectives contain specific reference to ‘eliminating gender-based undervaluation of work’, as well as other specific considerations. This gives rise to the question of what role these new considerations have to play in the Review, their impact on the decision of the Panel, and how they may require the Review to be conducted differently.

2.2 Approach taken by the Panel in previous Reviews in relation to gender equality considerations

2.2.1 2015-16 Review

23. In 2015-16, the Panel concluded that there is a substantial and persistent gap in the average hourly and weekly pay of men and women in favour of men; that women are significantly more likely to be paid at the award rate than men at all levels of the award structure; workers paid at the award rate are much more likely to be low paid than are other workers; and at the highest rates in the award structure, women are heavily over-represented among those paid at the award rate.²⁸
24. The Panel observed that increases in the NMW and modern award wages could assist to address the gender pay gap in two ways: “The first is that it would raise the level of low pay rates relative to median pay rates, and hence particularly benefit women, who disproportionately receive low pay rates. The second is that an increase in the higher levels of award rates will particularly benefit women because, at the higher award classifications, women are more likely to be paid the award rather than the bargained rate than are men.”²⁹
25. These observations have been adopted by subsequent Reviews and remain relevant to this Review.

2.2.2 2016-17 Review

26. In 2016-17, the Panel made the following observations:³⁰
- a. In the context of the Panel’s minimum wage fixing function, the requirement to take into account the equal remuneration principle compels consideration of whether the

²⁸ [2016] FWCFB 3500 at [575]

²⁹ [2016] FWCFB 3500 at [75]

³⁰ See [2017] FWCFB 3500 at [639]- [678]

NMW and the modern award rates fixed by the Panel equally remunerate men and women doing work of equal or comparable value. Section 284(1)(d) was concerned with the principle as it applied only to the NMW and award minimum rates of pay, not with remuneration at large.³¹

- b. Consideration of the gender pay gap does not arise in connection with the equal remuneration principle, but it is a relevant consideration as it is an element of the requirement to establish a safety net that is fair and relevant. It may also arise for consideration in respect of s284(1)(b) (promoting social inclusion through workforce participation), because it may have effects on female participation in the workforce.
- c. Modern award minimum rates are structured to provide equal remuneration for work of equal or comparable value both within and across awards. If the NMW and award rates are lifted by a uniform percentage, the equal remuneration principle would not be offended because all rates would retain the same relativity to each other.
- d. There are a higher proportion of women reliant upon award wages at the lower end of the pay scale, and at the higher award classifications, women are more likely to be paid the award rather than the bargained rate than men are. The gender pay gap is the highest at the higher end of the pay scale among non-award reliant employees.
- e. Increases in minimum wages are likely to have some positive impact upon the gender pay gap and promote gender equity given women are disproportionately represented amongst the low paid.
- f. Increases in minimum wages, particularly percentage adjustments that might exceed increases evident through bargaining, are more likely to have a beneficial impact that is broader than would be the case if flat rate increases were applied to lower classification levels. This is because of the dispersion of women within award classification structures and the greater propensity for women to be paid award rates at all levels.
- g. Other mechanisms available under the Act, such as bargaining and equal remuneration provisions, also provide a further, more direct means of addressing this issue.
- h. The grant of a uniform percentage adjustment to the NMW and modern award wage rates would be the most consistent approach with the equal remuneration principle.
- i. The principle of equal remuneration and the gender pay gap consideration are factors in favour of an increase in minimum wages.

³¹ See also *Equal Remuneration Decision 2015* [2015] FWCFB 8200 at [276]–[277]

2.2.3 2017-18 Review

27. The consideration of the ‘principle of equal remuneration for work of equal or comparable value’ was comprehensively addressed in the 2017–18 Review.
28. The Panel referred to the definition of equal remuneration for work of equal or comparable value in s302(2) of the FW Act and to decisions interpreting that definition, and concluded that this definition also applied to the principle of equal remuneration found in sections 134 and 284.³² The Panel noted that in the *Equal Remuneration Decision 2015*,³³ the FWC found that the principle of equal remuneration for work or equal or comparable value is enlivened when an employee or group of employees of one gender do not enjoy remuneration equal to that of another employee or group of employees of the other gender who perform work of equal or comparable value – and that this was “essentially a comparative exercise in which the remuneration and the value of the work of a female employee or group of employees is required to be compared to that of a male employee or group of male employees.”³⁴
29. As a result, the Panel found that the application of the principle of equal remuneration for work of equal or comparable value was such that it is likely to be of only limited relevance in the context of a Review – and was only likely to arise if it were contended that particular modern award minimum wage rates were inconsistent with the principle, or if the form of a proposed increase enlivened the principle. The Panel found that Review proceedings were of limited utility in addressing any systemic gender undervaluation of work, and noted that equal remuneration applications, work value applications and the 4 yearly review of modern awards provided more appropriate mechanisms for addressing such issues.³⁵
30. The Panel confirmed the finding of previous Reviews that the broader issue of gender pay equity, and in particular the gender pay gap, is relevant to the Review, as it is a requirement of establishing a fair and relevant safety net and also may have effects on female participation in the workforce.³⁶

³² [2018] FWCFB 3500 at [33]

³³ Equal Remuneration Decision 2015 [2015] FWCFB 8200

³⁴ [2018] FWCFB 3500 at [34]; *Equal Remuneration Decision 2015* [2015] FWCFB 8200 at [290]

³⁵ [2018] FWCFB 3500 at [35]

³⁶[2018] FWCFB 3500 at [36]

31. The discussion in the 2017-18 Review regarding the equal remuneration principle has been adopted in all subsequent Reviews – namely in the 2018-19, 2019-20, 2020-21 and 2021-22 Review decisions.³⁷
32. The Panel made some general observations, including that: there are more women than men who are award-reliant; award-reliant workers are more likely to be low paid than other workers; women are significantly more likely to be paid at the award rate than are men at all levels of education and experience (except in the first year of work; and men are more likely to receive over-award payments or be subject to collective agreements with higher wages to the industry or occupation in which they work.³⁸ These observations have also been adopted in all subsequent Review decisions.
33. The Panel confirmed the finding of previous Reviews that given women are disproportionately represented among the low paid, an increase in minimum wages is likely to promote gender pay equity, and accepted that moderate increases in the NMW and modern award minimum wages would likely have a beneficial effect on the gender pay gap.³⁹

2.2.4 2018-19 Review

34. The 2018-19 Review adopted the observations as outlined above in the 2017-18 Review.⁴⁰ The Panel again accepted that increases in minimum wages are likely to have a beneficial impact on gender pay equity because of the dispersion of women within award classification structures, the greater propensity for women to be paid award rates, and because women are disproportionately represented among the low paid.⁴¹

2.2.5 2019-20 Review

35. The 2019-20 Review adopted the observations as outlined above in the 2017-18 Review.⁴² The Panel also noted that research commissioned for the 2019-20 Review found that women were more likely be award reliant, low paid and both low paid *and* award reliant, and that higher paid award reliant employees were significantly more likely to be female than male.⁴³

³⁷ [2019] FWCFB 3500 at [388]; [2020] FWCFB 3500 at [399] and [403]; [2021] FWCFB 3500 at [162]; [2022] FWCFB 3500 at [87]

³⁸ [2018] FWCFB 3500 at [435]

³⁹ [2018] FWCFB 3500 at [38] and [436]

⁴⁰ [2019] FWCFB 3500 at [388] and [397]

⁴¹ [2019] FWCFB 3500 at [399]

⁴² [2020] FWCFB 3500 at [399] and [403]

⁴³ [2020] FWCFB 3500 at [400]

The Panel again concluded that gender pay equity considerations favour an increase in minimum wages.⁴⁴

2.2.6 2021-22 Review

36. In the most recent Review in 2021-22, the Panel again adopted the observations of the Panel in the 2017-18 Decision and accepted that moderate increases in the NMW and modern award minimum wages would likely have a relatively small, but nonetheless beneficial, effect on the gender pay gap.⁴⁵

2.3 The Amended Object of the Fair Work Act

37. Section 3 of the FW Act provides that its object is to “provide a balanced framework for cooperative and productive relations that promotes national economic prosperity and social inclusion for all Australians”, and to so provide it “by” particular means. That is, there is an overarching objective which is to be served by the enumerated intermediated objectives listed thereunder. The object of the FW Act applies to the review and making of a NMW wage order, and the Panel’s powers in relation to modern award minimum wage rates.

38. The object of the FW Act has been amended by the SJBPA Act to include the promotion of job security and gender equality as means by which its overarching objective is to be delivered. The object now provides:

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...[emphasis added].

39. Gender equality and job security have been given the same emphasis as other pre-existing considerations such as fairness, productivity, economic growth, flexibility for business, and international labour obligations. Prior to the amendments made by the SJBPA Act, gender equality was only recognised indirectly as an object of the FW Act through the requirement

⁴⁴ [2020] FWCFB 3500 at [405]

⁴⁵ [2022] FWCFB 3500 at [87]

in s3(a) to consider Australia's international labour obligations and through its connection to social inclusion, and job security was not recognised at all save for its implicit connection to social inclusion.

40. The Revised Explanatory Memorandum explains that the reference to 'promoting job security' "recognises the importance of employees and job seekers having the choice to be able to enjoy, to the fullest extent possible, ongoing stable and secure employment that provides regular and predictable access to beneficial wages and conditions of employment."⁴⁶ The reference to 'promoting gender equality' "recognises the importance of people of all genders having equal rights, opportunities and treatment in the workplace, and in their terms and conditions of employment, including equal pay."⁴⁷ The phrase 'gender equality' includes both formal and substantive gender equality.⁴⁸
41. The ACTU submits that the effect of the amended object is that gender equality and job security are considerations in and of themselves that the Panel must take into account in the Review, not only in a general sense but because the legislation expresses the view that improving on both serves the overarching objective. Gender equality encompasses broader concepts than those which the Panel has previously had regard to, being only gender pay equity and the gender pay gap. This is reinforced through the various new statutory considerations contained in the modern awards and minimum wages objectives, which include ensuring equal remuneration, eliminating gender-based undervaluation of work, providing workplace conditions that facilitate women's full economic participation, and addressing gender pay gaps.
42. In line with the established principles of statutory construction outlined above, the Panel must exercise its powers in a manner which accords with the objects of the FW Act and the purpose of the legislative scheme, and must interpret the FW Act in a way that best achieves its purpose.⁴⁹ The existence of the purpose of a piece of legislation is ascertained by reference to the language of the statute, its subject matter and objects.⁵⁰ Gender equality

⁴⁶ Revised Explanatory Memorandum at [334]

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ *Acts Interpretation Act 1901* (Cth) s 15AA; *Project Blue Sky v Australian Broadcasting Authority* [1998] HCA 28, *Four Yearly Review of Modern Awards* [2014] FWCFB 1788 at [14]; *Tickner v Bropho* (1993) 114 ALR 409 at 434

⁵⁰ *Project Blue Sky v Australian Broadcasting Authority* [1998] HCA 28 per McHugh, Gummow, Kirby and Hayne JJ

and job security now form a key part of the purpose of the legislative scheme; as expressed in the Revised Explanatory Memorandum, the changes made by the SJB Act place these considerations "at the heart of the FWC's decision-making."⁵¹ Therefore, the Panel is required to interpret the FW Act and exercise its powers in a way that will promote gender equality and job security.

2.4 Changes to the principle of equal remuneration for work of equal or comparable value

43. The amended modern awards objective and minimum wages objective continue to refer to "equal remuneration for work of equal or comparable value". However, the SJB Act introduced changes to the principle of equal remuneration, which will significantly change its interpretation from that taken by the Panel in previous decisions. The SJB Act provides new guidance for equal remuneration cases, and outlines that, in deciding whether there is equal remuneration for work of equal or comparable value, the FWC may take into account:
- a. Comparisons within and between occupations and industries to establish whether the work has been undervalued on the basis of gender; or
 - b. Whether historically the work has been undervalued on the basis of gender; or
 - c. Any fair work instrument or State industrial instrument.⁵²
44. The new provisions also clarify that where the FWC takes into account a matter referred to in (a) or (b) above, the comparison is not limited to similar work, and does not need to be a comparison with an historically male dominated occupation or industry;⁵³ and the FWC is also not required to find discrimination on the basis of gender to establish that the work has been undervalued.⁵⁴ The definition of 'equal remuneration for work of equal or comparable value' in section 12 is now defined to include these new considerations, and as outlined in the Revised Explanatory Memorandum, "this would direct the reader to understand that wherever the definition of 'equal remuneration for work of equal or comparable value' is considered, the amendments to the equal remuneration provisions should also be taken into account."⁵⁵

⁵¹ Revised Explanatory Memorandum at [330]

⁵² FW Act s 302 (3A)

⁵³ FW Act s 302 (3B)

⁵⁴ FW Act s 302 (3C)

⁵⁵ Revised Explanatory Memorandum at [344]

45. These amendments were introduced specifically to remove some of the evidentiary burdens involved in establishing a successful equal remuneration application that had been imposed by previous decisions of the FWC – for example, the requirement of evidence of a reliable ‘male comparator’.⁵⁶ As outlined above, the Panel has relied on these decisions and the interpretation of the equal remuneration principle contained in them in previous Reviews. As a result of adopting this interpretation, the Panel has previously found that the application of the principle of equal remuneration was only of limited relevance in the context of a Review – and was only likely to arise if it were contended that particular modern award minimum wage rates were inconsistent with the principle, or if the form of a proposed increase enlivened the principle.
46. Previous Panels have found that modern award minimum rates are structured to provide equal remuneration for work of equal or comparable value both within and across awards, and therefore if NMW and award rates are increased by a uniform percentage, the equal remuneration principle cannot be offended because all rates retain the same relativity to each other. Previous Panels found that the equal remuneration principle might be enlivened if a Review resulted in a flat dollar increase (because of any differential gender dispersion across lower and higher paid award classifications), or ordered different outcomes in respect of different modern awards (because of any gender differences in the award reliant workforces covered by different awards with different pay outcomes).⁵⁷
47. However the assumptions underpinning these previous findings have fundamentally shifted. The changes to the equal remuneration principles in the FW Act mean that whilst the FWC **may** take into account comparisons with other industries and occupations to establish gender-based undervaluation, such comparisons are not limited to similar work or to historically male dominated work. The FWC can also take into account historical gender-based undervaluation. This means that the equal remuneration principle has a much broader scope, and should now play a larger and more expansive role in Reviews than it has previously. The Panel will therefore need to revisit its consideration of the equal remuneration principle and its application to the Review.

⁵⁶ Revised Explanatory Memorandum at [66], [207] and [351]. For example, see the decisions of *Application by United Voice & Australian Education Union* [2015] FWCFB 8200 at [290]; *Application by United Voice and the Australian Education Union* [2018] FWCFB

⁵⁷ [2017] FWCFB 3500 at [642]

48. Clearly, there are strong arguments to be made that gender-based undervaluation in female dominated industries and sectors has resulted in lower rates of pay in awards covering those industries and sectors. This could mean that particular modern award minimum wage rates are inconsistent with the equal remuneration principle and enliven the operation of that principle, and could justify different outcomes in respect of different modern awards (for example, higher increases for modern awards covering a majority of female employees).
49. Whether this approach should be adopted is addressed in section 2.7 below, and for the reasons outlined therein, the ACTU submits that a comprehensive award by award analysis of undervaluation should not be conducted as part of this Review. However we note that the former President of FWC, in a statement concerning occupational segregation and gender undervaluation dated 4 November 2022, identified 30 awards that may be affected by gender-based undervaluation due to their coverage of female dominated industries. We envisage that the Panel could have a role in continuing to progress this issue, as discussed below.

2.5 The Amended Minimum Wages Objective

50. The minimum wages objective provides that the FWC must ‘establish and maintain a safety net of minimum wages’ taking into account certain social and economic considerations identified in s284(1)(a)-(e).⁵⁸
51. The minimum wages objective applies to the performance or exercise of the FWC’s functions or powers under Part 2-6 and Part 2-3 (so far as they relate to setting, varying or revoking modern award minimum wages) of the FW Act.⁵⁹
52. In making the NMW order, the Panel must give effect to the minimum wages objective.⁶⁰
53. The SIBP Act amended the minimum wages objective to include new gender equality considerations that must be taken into account by the Panel. These considerations are included at s284(1)(aa) which provides:

⁵⁸ S284(1) FW Act; [2022] FWCFB 3500 at [5]

⁵⁹ S284(2) FW Act

⁶⁰ [2020] FWCFB 3500 at [207]; [2022] FWCFB 3500 at [7]

(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...

54. It is notable that “ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and addressing gender pay gaps” are identified, non-exclusively, as means or channels through which “the need to achieve gender equality” is to be addressed, when that need is taken into account in establishing and maintaining “a safety net of fair minimum wages”.
55. Whilst previous Panels were required to have regard to the principle of equal remuneration, and also found that gender pay equity and the gender pay gap were relevant considerations to take into account, they found that Review proceedings were of limited utility in addressing any systemic gender-based undervaluation of work. The Panel is now required to have regard to both the elimination of gender-based undervaluation of work and the addressing of gender pay gaps goals in and of themselves (rather than being merely relevant to other considerations).
56. Guidance on the kinds of principles the Panel should have regard to when considering gender-based undervaluation are contained in Chapter 7.3 of the Aged Care work value case,⁶¹ and are also included in the President’s Statement on Occupational segregation and gender undervaluation.⁶² These principles include that:
 - a. The valuation of work is influenced by social expectations and gendered assumptions;
 - b. Undervaluation occurs when work value is assessed with gender biased assumptions. Reasons for gender-based undervaluation in Australia include the continuation of occupational segregation, the weaknesses in job and work valuation methods and their implementation, and social norms, gender stereotypes and historical legacies.
 - c. Gender-based undervaluation in the employment context means that the skill level of occupations, work or tasks is influenced by subjective notions about gender roles in society, and skills are discounted or overlooked because of gender;
 - d. Gender based undervaluation of work arises from social norms and cultural assumptions that impact the assessment of work value. These assumptions are

⁶¹ Aged Care Work Value Case [2022] FWCFB 200

⁶² Fair Work Commission, President’s statement: Occupational segregation and gender undervaluation, 4 November 2022 at [7]

impacted by women's role in undertaking the majority of primary unpaid caring responsibilities, contributing to the invisibility and under recognition of particular skills; and,

- e. There are significant barriers and limitations to the proper assessment of work value in female dominated industries, including the approach taken to the assessment of work value by Australian tribunals and constraints in historical wage fixing principles.

57. These new broad gender equality considerations replace the previous bare reference to the principle of equal remuneration (which as discussed above, has also changed in meaning since the last Review). This has considerably strengthened the language of the minimum wages objective.

58. Although job security considerations are not included in the minimum wages objective, job security is still a relevant factor in the making of a NMW order. It is clear from section 3(a) and a reading of the FW Act as a whole that one of the purposes of the FW Act is to promote job security,⁶³ and it is therefore appropriate that the Panel takes that legislative purpose into account in setting the NMW rate. This is comparable to the approach the Panel has taken in the past to the question of whether the setting of the NMW rate requires consideration of the 'need to encourage collective bargaining.'⁶⁴ Even though the minimum wages objective makes no express reference to this consideration (unlike the modern awards objective), the Panel has previously found that this does not make much difference in practice to the Panel's task. This is because the Panel is required to consider the object of the Act and one of the stated means by which the object of the Act is given effect is 'through an emphasis on enterprise level collective bargaining.' Therefore, while not expressed in the same terms as the modern awards objective, previous Panels have found that "it is plain from s 3(f) and a reading of the Act as a whole that one of the purposes of the Act is to encourage collective bargaining"⁶⁵ and that therefore "it is appropriate that the Panel takes that legislative purpose into account in setting the NMW rate."⁶⁶

⁶³ For example, the new job security considerations in the modern awards objective, and the new provisions in the FW Act regarding fixed term contracts. See also Revised Explanatory Memorandum at [330]

⁶⁴ [2015] FWCFB 3500 at [134]–[135]; [2017] FWCFB 3500 at [118]

⁶⁵ [2017] FWCFB 3500 at [118]

⁶⁶ Ibid

2.6 The Amended Modern Awards Objective

59. The modern awards objective is to ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account the particular considerations identified in ss 134(1)(a)-(h).⁶⁷
60. The modern awards objective applies to the performance or exercise of the FWC’s modern award powers, which include the variation of modern award minimum wages pursuant to Part 2-6 of the FW Act as part of the Review.⁶⁸ As noted above, it is not relevant to the review or making of a NMW order.⁶⁹
61. The SJBPA Act amended the modern awards objective to include new job security and gender equality considerations that must be taken into account by the Panel when exercising its modern award powers. These considerations are included at s134(1)(aa) and (ab), which provide:
- (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...
62. These considerations have replaced the previous requirement that the FWC take into account “the principle of equal remuneration for work of equal or comparable value.”⁷⁰ This limited the ability of the FWC to take into account broader gender equality considerations,⁷¹ and was also a concept that was narrowly interpreted by the FWC.⁷² The new formulation frames “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” as the *exclusive* channels through which “the need to achieve gender equality in the workplace” is to be addressed, when that need is taken into account in ensuring “that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net”. This has parallels to the requirement to

⁶⁷ Hospitality Industry (General) Award 2010 [2020] FWCFB 1574

⁶⁸ FW Act s134(2); [2020] FWCFB 3500 at [204]

⁶⁹ [2022] FWCFB 3500 at [6]

⁷⁰ Previous s134(1)(e) FW Act

⁷¹ For example, see 4 yearly review of modern awards – Family and Domestic Violence Leave [2018] FWCFB 1691 at [297]

⁷² For example, see decision in *Application by United Voice & Australian Education Union* [2015] FWCFB 8200 at [290]

take into account “promoting social inclusion *through* increased workforce participation”⁷³ (emphasis added).

63. The new considerations are expressed in stronger terms than some of the pre-existing considerations in s134(1), which refer simply to a need to ‘promote’ or ‘encourage’ certain things. For example, s134(1) refers to “the need to encourage collective bargaining,”⁷⁴ the need to promote social inclusion through increased workforce participation”⁷⁵ and “the need to promote flexible modern work practices and the efficient and productive performance of work”⁷⁶ [emphasis added]. The FWC must now consider the need to “improve access to secure work”, and to “achieve gender equality in the workplace” [emphasis added]. The need to achieve gender equality refers to “ensuring equal remuneration”, “eliminating gender-based undervaluation of work”, and “providing workplace conditions that facilitate women’s full economic participation” [emphasis added]. The language used is stronger and more directive than in other parts of the modern awards objective.

64. On the current state of authority, the choice of more directive language does not translate to a statutory directive that access to secure work must be improved or that gender equality must be achieved, or that those considerations are elevated above all others. This follows from the decision of the Full Bench in the *Penalty Rates*⁷⁷ matter, which reasoned that the expression in section 134(1)(da) of “the need to provide additional remuneration for employees working overtime...” , construed in context, did not in fact *require* additional remuneration to be paid to the employees to whom it was directed:

“Section s.134(1)(da) is a relevant consideration, it is not a statutory directive that additional remuneration must be paid to employees working in the circumstances mentioned in paragraphs 134(1)(da)(i), (ii), (iii) or (iv). Section 134(1)(da) is a consideration which we are required to take into account. To take a matter into account means that the matter is a 'relevant consideration' in the Peko-Wallsend sense of matters which the decision maker is bound to take into account. As Wilcox J said in *Nestle Australia Ltd v Federal Commissioner of Taxation*:

'To take a matter into account means to evaluate it and give it due weight, having regard to all other relevant factors. A matter is not taken into account by being noticed and erroneously disregarded as irrelevant'.

⁷³ [2013] FWCFB 4000 at [101]-[102]

⁷⁴ S134(1)(b) FW Act

⁷⁵ S134(1)(c) FW Act

⁷⁶ S134(1)(d) FW Act

⁷⁷ [2017] FWCFB 1001

Importantly, the requirement to take a matter into account does not mean that the matter is necessarily a determinative consideration. This is particularly so in the context of s.134 because s.134(1)(da) is one of a number of considerations which we are required to take into account. No particular primacy is attached to any of the s.134 considerations. The Commission's task is to take into account the various considerations and ensure that the modern award provides a 'fair and relevant minimum safety net'.⁷⁸

It must be said that this reasoning, if applied here, supports at least in theory an outcome whereby gender based undervaluation of work was proven and deliberately not eliminated due to other countervailing factors being taken into account. That is an outcome that would, with respect, be offensive. If the Panel is not inclined to take a different view on the construction issue, it must at the very least acknowledge that the more recent amendments frame secure work and gender equality as desirable ends in themselves, and require the FWC when taking relevant matters into account to take proactive steps to identify and at least consider how it could mitigate or eliminate gender-based differentials.

65. In the context of this Review, the ACTU submits that the most directly relevant considerations to the varying of modern award minimum wages are ensuring equal remuneration and eliminating gender-based undervaluation of work. Improving access to secure work and providing workplace conditions that facilitate women's full economic participation are clearly also relevant to the variation of non-wage related terms and conditions in modern awards. However, these considerations are still relevant to the variation of minimum wages generally. For example, previous Panels have found that the gender pay gap is a relevant consideration in respect of section 284(1)(b) (promoting social inclusion through workforce participation), because it may have effects on female participation in the workforce.⁷⁹ Therefore, part of the provision of workplace conditions that facilitate women's full economic participation includes addressing and reducing gender pay gaps and ensuring well paid and secure work offsets out of pocket costs of early childhood education and care, which will make it more likely that women participate fully in the workforce (rather than making it more likely they will be the ones to take time out of work to undertake unpaid care and domestic work).
66. Similarly, improving access to secure work is relevant to the Panel's task in setting award minimum wages, as increasing minimum wages will have a positive impact on workers in insecure employment who are disproportionately represented amongst award reliant

⁷⁸ [2017] FWCFB 1001 at [195]-[196]

⁷⁹ [2017] FWCFB 3500 at [643]

workers. Whilst the increase of award minimum rates cannot change insecure jobs into secure jobs (this could be done through other means, like a review of terms and conditions in awards that impact job security), it will mean that workers who are insecurely employed have greater security generally due to the minimum wage rates being higher, and therefore having comfort that they are better able to meet their financial commitments, for example. Moreover, whilst we recognise that the modern award objective involves balancing many considerations, it would be wrong both in law and in theory to reason that improvements in wages rely on reductions in job security.

67. An assumption that there is an immutable and unconditional inverse relationship between levels of job security and employment is all but prohibited by the terms of section 3, which identifies the promotion of job security as a means through which an ultimate, overarching objective of “promoting social inclusion for all Australians” is intended to be delivered. The intermediate step in reasoning that increased job security necessarily *reduces* employment is to form a view that there is a fixed relationship between wages fixed by the FWC and employment, which the evidence presented in chapter 3 of this submission finds no support for. The statutory framework thus leaves very little room to argue that fair increases to minimum wages will reduce job security due to disemployment effects, let alone utilise that argument in support of more modest adjustments to minimum wages than those that have previously been determined by the Panel.
68. Even if one were to ignore what we argue to be confines of the language in section 3, an assumption that job security necessitates a wage offset is a dated one. Certainly, workers’ *perceptions* about their job security are related to their wages, with the RBA finding that workers’ higher perceived job security has a statistically significant positive relationship with their wage growth in the following year.⁸⁰ More broadly, a business transformation strategy has been built by the Good Jobs Institute in the United States, which has its roots in the work of Professor Zeynep Ton of MIT and popularised in her 2014 book ‘The good jobs strategy’. The central thesis, developed through decades of research and working with business, particularly in retail, is that unpredictable schedules, short shifts and poor remuneration and benefits combine to reduce skill through poor investments in training, reduce morale, reduce productivity and increase turnover and absenteeism.⁸¹ This “vicious cycle” is to be

⁸⁰ Foster, J. and Guttman, R., “perceptions of Job Security in Australia”, RBA Bulletin March 2018.

⁸¹ Ton, Z, “Why ‘Good Jobs’ are good for retailers”, Harvard Business Review, Jan-Feb 2012.

compared to a “virtuous cycle”, wherein predictable schedules, higher pay and benefits and fuller training and promotion opportunity result in lower turnover, better service, higher labour and asset productivity and the capacity to offer more competitive prices.⁸² This basic thesis is consistent with the well established negative effect of job insecurity on employee engagement, organisational performance and employee wellbeing.⁸³

2.7 Impact of SJBPA amendments on the Review

69. The SJBPA amendments have considerably strengthened the object of the FW Act and the modern awards and minimum wages objectives. Together, they require the Panel to consider the need to achieve gender equality (and how to achieve it), and the need to promote job security. In relation to gender equality, the considerations the Panel is required to take into account have been considerably broadened. For example, the Panel is also now required to specifically consider the elimination of gender-based undervaluation of work, something it previously found it was not required to consider. As stated in the Revised Explanatory Memorandum, these changes place the considerations of job security and gender equality “at the heart of the FWC’s decision-making.”⁸⁴
70. The SJBPA amendments have also significantly changed the principle of equal remuneration, meaning the approach the Panel takes to its interpretation will need to be revisited. It has previously been narrowly interpreted, and its expansion is consistent with the kinds of considerations that have been added to the object and objectives. For example, the equal remuneration principle now contemplates gender-based undervaluation without requiring the work to be compared to similar work in a male dominated industry in order to be considered ‘work of equal or comparable value.’
71. As the ACTU submitted to the Review last year, the Review proceedings have a significant role to play in addressing the systemic gender-based undervaluation of work.⁸⁵ The majority of low paid award-reliant workers are women. Therefore, increases to award wages, particularly those which exceed bargained outcomes, increase the value placed on women

⁸² Ibid.

⁸³ See for example the review in Aasfaw, A. and Chang, C. “The association between job insecurity and engagement of employees at work”, *Journal of Workplace Behavioural Health*, 2019:34(2), 96-110.

⁸⁴ Revised Explanatory Memorandum at [330]

⁸⁵ ACTU submission to the Annual Wage Review 2021-22 at [236]

workers and the work they perform, thereby contributing to addressing the systemic gender-based undervaluation of female-dominated work.

72. As part of the research published for this year's review, a profile of employee characteristics across modern awards⁸⁶ presents a range of employee characteristics using ABS microdata which, for the first time, enables analysis of employees across individual modern awards, focusing on employee, job and employer characteristics. Previous analysis of award-reliant employees was limited to examining the characteristics of those employees in aggregate or through approximation.⁸⁷ The report therefore provides more specific information on the employees receiving modern award minimum wages than has previously been available.
73. One of the three main findings of the report was that, compared to employees not reliant on modern awards, modern award-reliant employees are on average more likely to be female, younger, work fewer hours, earn lower wages, are far more often casually employed, and tend to work for smaller employers.⁸⁸
74. The report found the following:
- a. almost three in five employees across all modern awards were female (58.1 per cent), which is higher than for employees not on modern awards (48.5 per cent);⁸⁹
 - b. almost two-thirds of employees across all modern awards worked part-time hours (across all employees not on modern awards, the proportion is almost half that, at just over one-third of employees);⁹⁰
 - c. around half of employees on modern awards are casual employees, which is significantly higher than for employees not on modern awards (1 in 7 employees);⁹¹
 - d. average hourly total earnings for adult employees on modern awards was \$30.80 (unadjusted) and \$27.70 (adjusted), compared to average hourly earnings for employees not on modern awards which were much higher, at \$46.20 (unadjusted) and \$46.10 (adjusted)⁹²; and

⁸⁶ Yuen K & Tomlinson J (2023), A profile of employee characteristics across modern awards, Fair Work Commission Research Report 1/2023, March.

⁸⁷ Ibid, p. 38

⁸⁸ Ibid at p. 4

⁸⁹ Ibid at p. 18

⁹⁰ Ibid at p. 21

⁹¹ Ibid at p. 23

⁹² Ibid at p. 25

- e. over one-third of modern award-reliant employees could be considered as low paid - compared with less than 7 per cent across employees not on a modern award.⁹³
75. Table B1 in Appendix B of the report shows that out of the 43 modern awards analysed, 25 have greater than 50% of female workers.⁹⁴
76. National minimum wage and modern award wage increases therefore provide a significant and meaningful opportunity to reduce the gender pay gap and eliminate gender-based undervaluation to a degree, due to the relatively high number of women workers reliant on minimum wages.
77. As outlined above, the Panel has previously found in multiple Review decisions that the principle of equal remuneration and the gender pay gap consideration are factors in favour of an increase in minimum wages.⁹⁵
78. The ACTU submits that the amended object, objectives and equal remuneration principle significantly strengthen the case for a higher increase to the NMW and award minimum wages, given women are disproportionately represented amongst workers who are award reliant, low paid, working fewer hours and insecurely employed. A significant increase will help to achieve gender equality and promote job security, address gender pay gaps, eliminate gender-based undervaluation, ensure equal remuneration for work of equal or comparable value and facilitate women's full economic participation.
79. However, clearly a higher uniform increase will not in and of itself achieve these considerations, which require multifaceted responses. One large part of the problem is the occupational and industry gender segregation that exists in Australia, whereby female dominated industries and sectors have been undervalued and are subject to much lower pay.
80. There is detailed work to be done to address the gender-based undervaluation of work in those industries and sectors. Given the revised and strengthened object and objectives (which direct the Panel to the need to achieve gender equality and to eliminate gender-based

⁹³ Ibid at p. 26

⁹⁴ Ibid at pp.52-53

⁹⁵ For example, [2017] FWCFB 3500 at [678]; [2020] FWCFB 3500 at [405]

undervaluation of work in particular), arguably that work could be done in the context of this Review, by conducting an assessment of awards that addresses gender-based undervaluation of work in female dominated sectors and industries, and awarding different increases to different industries on this basis – for example, awarding higher increases in female dominated sectors and awards to address the historical and ongoing gender-based undervaluation of work in those industries. However, the ACTU submits that there are a few factors weighing against the Panel taking such a comprehensive approach in this Review.

81. Firstly, this work is likely to be detailed, intensive, and take significant amounts of time and evidence, as demonstrated by the approach taken by the FWC in the Aged Care Work Value case.⁹⁶ Establishing undervaluation in that case involved a significant amount of expert and lay witness evidence, with the applicants relying on evidence of 89 lay witnesses and 6 expert witnesses. In the President’s Statement on Occupational segregation and gender undervaluation,⁹⁷ former Fair Work President Justice Iain Ross emphasised that although the FWC can vary a modern award on its own motion pursuant to section 157, it was apparent from the Aged Care case that cases of this type require significant evidence from those with experience in relevant industries, supported by appropriate experts.⁹⁸ The Statement also observed that the FWC is available to facilitate discussions between parties who may consider making work value or equal remuneration applications to other modern awards in future, and listed 30 awards identified by WGEA and the FWC as covering female dominated sectors.⁹⁹

82. Secondly, the statutory constraints of the Review make it unlikely that such an exercise could be undertaken for each award or industry. Section 285(1) provides that the Panel must conduct and complete an annual wage review in each financial year. Consistent with previous decisions, it follows that 30 June 2023 provides the outer limit for the completion of the 2022-23 Review.¹⁰⁰ Given the number of issues that the Panel needs to consider in a Review, as a matter of practicality it would seem to present a significant challenge to the FWC’s resources and timeframes to undertake an assessment of gender-based undervaluation in all awards or industries as part of this Review.

⁹⁶ [2022] FWCFB 200

⁹⁷ Fair Work Commission, President's statement: Occupational segregation and gender undervaluation, 4 November 2022

⁹⁸ Ibid at [15]-[16]

⁹⁹ Ibid at [18] and [12]-[13]

¹⁰⁰ [2020] FWCFB 3500 at [202]

83. Thirdly, such an approach may not necessarily be consistent with the role of the newly established Expert Panels for pay equity and the care and community sector (**new Expert Panels**). If such work were to be done as part of this Review, it may cut across and pre-empt the work and analysis of the new Expert Panels, which will be assessing and deciding multiple different types of applications, including equal remuneration applications, work value applications (where substantive gender pay equity considerations apply) and award applications in the care and community sector. The fact that the new Expert Panels have been established specifically to do this work tends to suggest that a more comprehensive approach to gender-based undervaluation should not be taken by the Panel as part of this Review. As outlined in the Revised Explanatory Memorandum to the SIBP Act, the establishment of new Expert Panels would promote the right to just and favourable conditions of work, fair wages and equal remuneration by ensuring that matters relating to equal remuneration orders, Care and Community Sector award cases, and work value cases based on substantive gender pay equity matters are presided over by an Expert Panel that includes a majority of FWC members with specialist skills and knowledge.¹⁰¹ Additionally, the President's statement identified that some of the awards identified as affected by occupational segregation overlapped with those the subject of the currently inactive undergraduate qualifications review, which may involve broader work value considerations in addition to a gender-based undervaluation. Those broader work value considerations are mandatory considerations in an application to vary a modern award in section 157(2), which is not the case in annual wage reviews (hence the periodic awarding of increases that compress and distort relativities).
84. Finally, we note the comments of previous Panels regarding the application of the principle of equal remuneration. Previous Reviews have found that modern award minimum rates are structured to provide equal remuneration for work of equal or comparable value both within and across awards, and therefore if NMW and award rates are increased by a uniform percentage, the equal remuneration principle cannot be offended because all rates retain the same relativity to each other. However, previous Panels have found that the equal remuneration principle might be enlivened if a Review resulted in a flat dollar increase (because of any differential gender dispersion across lower and higher paid award classifications), or ordered different outcomes in respect of different modern awards (because of any gender differences in the award reliant workforces covered by different

¹⁰¹ Revised Explanatory Memorandum at [67] and [259]

awards with different pay outcomes).¹⁰² These observations made by previous Panels would militate against the awarding of increases which are not uniform.

85. However, as outlined above, the equal remuneration principle has significantly changed since previous Review decisions, and will therefore operate differently in Reviews from now on. Accordingly, observations made by previous Panels and previous decisions of the FWC will no longer offer accurate guidance on the interpretation of the equal remuneration principle and the role and interpretation of the equal remuneration principle in Reviews will need to be revisited.
86. The ACTU submits on balance that a more comprehensive approach to assessing gender-based undervaluation in different awards and industries should not form a part of this Review, given the statutory constraints and timeframes that necessitate the Panel completing the Review by 30 June 2023, and the potential for such an approach to cut across the work that it is envisaged the new expert panels will undertake.
87. This Review should however build on the identification of awards that may be affected by gender-based undervaluation (and therefore offend the equal remuneration principle) due to their coverage of female dominated industries, undertaken by former Fair Work President Justice Iain Ross in the President's Statement on Occupational segregation and gender undervaluation, which identified 30 awards covering female dominated sectors which could be subject to gender-based undervaluation.¹⁰³
88. Further, the ACTU submits that whether a more comprehensive approach should be taken is an open question which should be regularly revisited in future Reviews.¹⁰⁴ It is possible that it could become appropriate in future for a more expansive approach to be taken, depending on the future operation of the new expert panels, and the kind of work they are able to complete within certain timeframes. There may be a role for future Reviews to play, especially if they have the benefit of work and research undertaken by the new expert panels,

¹⁰² [2017] FWCFB 3500 at [642]

¹⁰³ Fair Work Commission, President's statement: Occupational segregation and gender undervaluation, 4 November 2022 at [18] and [12]-[13]

¹⁰⁴ For example, see discussion in [2017] FWCFB 3500 at [659], which noted that the material before the FWC at that time did not enable them to form a view about whether the same work was being paid at different rates, and the broader notion of comparable work value as discussed in the Equal Remuneration Decision 2015, and accordingly, this was an aspect they would consider revisiting in subsequent Reviews.

such as the extent of gender-based undervaluation in certain industries, and the development of case law on the interpretation of the revised equal remuneration principle. There could also potentially be a role for future Reviews to deal with the consequences flowing from the work of the new expert panels such as possible distortions or changes in relativities across awards. The ACTU submits that this question could be revisited in the 2023-2024 Review, potentially as a preliminary issue, if the Panel feels it is unable to give these suggestions due consideration at this stage in the proceedings this year.

89. In conclusion, for the purposes of this Review, the ACTU submits that it is possible to address gender-based undervaluation to some extent by significantly increasing the NMW and modern award minimum wage rate. To best achieve the purpose of the FW Act and serve the minimum wages and modern awards objectives, which now include the promotion of gender equality and job security, the Panel is permitted if not required (all other things being equal) to set the NMW and modern award minimum wages at a higher rate than it might have otherwise done, in light of the positive impact that will have on workers in insecure employment and on women workers, who we demonstrate in Chapter 5 of this submission are disproportionately represented among award reliant, low paid and insecurely employed workers. Some progress can be made towards achieving gender equality, and addressing gender pay gaps and gender-based undervaluation, without the Panel needing at this stage to investigate the question of the gender-based undervaluation in particular industries and awards that would necessitate a far more comprehensive analysis.

3. PROMOTING SOCIAL INCLUSION THROUGH INCREASED WORKFORCE PARTICIPATION.

90. Past decisions of the Panel have held that the obligation in sections 134(1)(c) and 284(1)(b) of the Act to “take into account.. the need to promote social inclusion through increased workforce participation” require the Panel to consider the potential employment impacts of any increase to the NMW and modern award minimum wages, and that broader consideration of social inclusion is required when assessing other criteria:

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

However, we also accept that modern award rates of pay impact upon an employee’s capacity to engage in community life and the extent of their social participation. These are matters that can be appropriately taken into account in our consideration of the legislative requirement to “maintain a safety net of fair minimum wages” and to take into account “the needs of the low paid” (s.284(1)(c)). Further, the broader notion of promoting social inclusion is also relevant to the fixation of minimum wages, quite apart from the more limited construct reflected in s.284(1)(b). One of the objects of the Act is to promote “ social inclusion for all Australians by” (among other things) “ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through...modern awards and national minimum wage orders” (s.3(b)).¹⁰⁵

91. In this Chapter, we review the performance of the labour market by reference to the usual indicators and comment on its likely influences. We additionally review research on the interaction between minimum wages and employment.
92. It is clear that labour market has continued to perform well, including in particular the more modern award reliant industries, notwithstanding a more significant increase to minimum

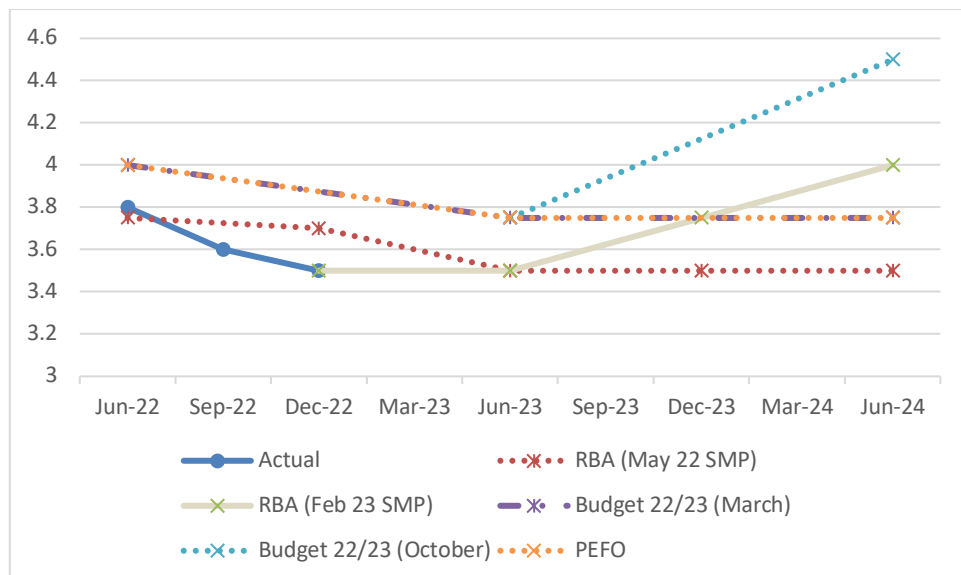
¹⁰⁵ [2013] FWCFB 4000 at [101]-[102]

wages in last year’s decision. This is unsurprising result given the state of international research. A decline in performance is predicted, reasonably, on the basis of forces outside the Panel’s remit. Whilst this trajectory would involve only weak employment growth, unemployment would remain below medium-term averages. In our view, social inclusion through increased workforce participation would not be jeopardised by a significant increase in this review.

3.1 Outlook and performance against forecasts

93. In last year’s decision, the Panel was confronted with a labour market that had “rebounded strongly from the impacts of the pandemic”¹⁰⁶ and had outperformed forecasts. This outperformance has continued. The unemployment rate was at 3.9% in the April 2022 figures that were referred to as current in that decision, prompting the Panel to remark that unemployment “..has not been this low since 1974”¹⁰⁷. The unemployment rate improved further since, as seen in Figure 1 below. The overall forecast on unemployment involves a different trajectory yet continues to be optimistic relative to medium- and long-term averages.

Figure 1: Unemployment rate (%) – performance against forecasts



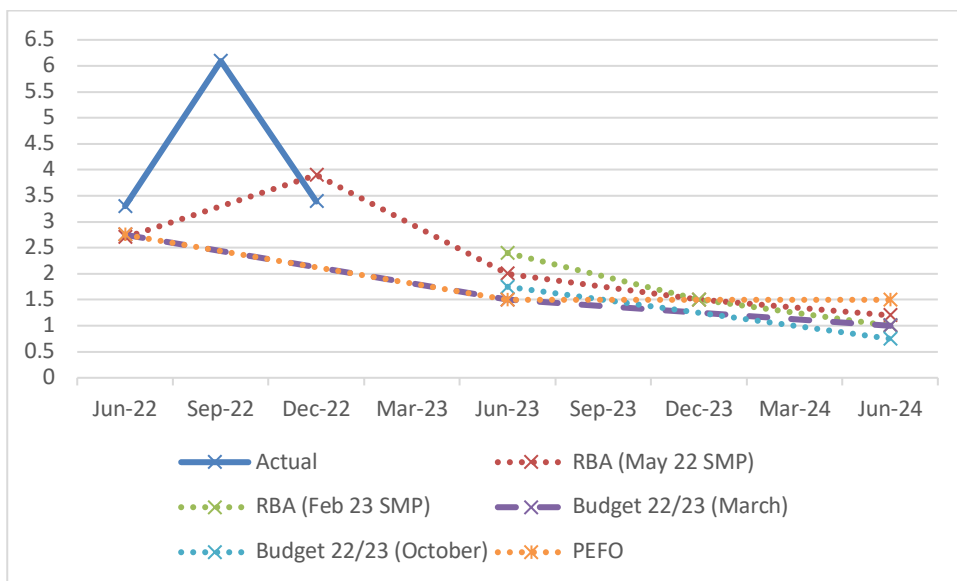
Source: ABS 6202 (seasonally adjusted), RBA, Treasury.

¹⁰⁶ [2022] FWCFB 3500 at [29]

¹⁰⁷ [2022] FWCFB 3500 at [29]

94. Unemployment is predicted by the RBA and Treasury to rise to between 4-4.5% in association with slowing growth generally, as can be seen in Figure 1 above. To put this in perspective, Australia has not experienced sub 5% unemployment rates in the last decade at all save for after July 2021 in association with the lifting of COVID restrictions and the associated rebound in economic activity.
95. The positive performance and outlook on unemployment is not at the cost of solid expectations and observations on participation. Between the March 2022 budget and the October 2022 budget, Treasury has upgraded its forecast for 2022-23 to 66.75% from an already high 66.5%. The 2021-2022 outcome of 66.6% was slightly above the 66.5% predicted in the March 2022 budget. These high levels of expected participation are set against the backdrop of the seasonally adjusted monthly participation rate between November 2020 and February 2023 only falling below 66% on three occasions, and not reaching such high levels in at least four decades prior to May 2019.
96. Year to year employment growth exceeded expectation for much of the first half of the financial year. Employment growth forecasts predict moderation, with the RBA slightly more optimistic than Treasury on more recent forecasts. It seems reasonable that the unevenness in employment growth through 2021 and 2022 will even out and that continued growth will remain positive but be weaker on the back of weaker economic growth generally.

Figure 2: Employment growth (%) – performance against forecasts



Source: ABS 6202 (seasonally adjusted), RBA, Treasury.

97. Similarly, the Department of Employment and Workplace Relations' leading indicator of employment has been falling for 11 months as at February 2023 and suggests a near term slowdown in annual growth in employment to below its long-term trend rate of 2.1%.¹⁰⁸

98. Ultimately, the trajectory for the labour market will be highly dependent on the RBA's success or otherwise at treading its "narrow path to achieve a soft landing" by bringing inflation closer to its target band without stalling the economy. There is no doubt that high inflation is having negative impacts on workers, particularly those on low incomes to begin with. However, for vulnerable workers, the "medicine" of nine successive rate rises also has unwelcome side effects, including on personal debts and housing. The RBA can be taken to be aware of this, noting that:

"Liaison contacts in community organisations have noted strong growth in demand for their services, particularly for financial stress relief, financial counselling, food bank and housing assistance. Those seeking assistance are primarily renters, who tend to be lower income households."¹⁰⁹

And, relatedly:

"The effects on the cash flows of the roughly one-third of households with mortgages generally comes through faster than the effect on the broader economy and inflation. The effects on households are also uneven. Some households have substantial savings buffers or are benefiting from the tight labour market and faster wages growth. Others, though, are experiencing a painful squeeze on their budgets due to higher interest rates and the rising cost of living."¹¹⁰

99. Nonetheless, the RBA works in aggregates, has a distinct mission and "...remains resolute in its determination to return inflation to target and will do what is necessary to achieve this".¹¹¹ The Panel however has its own distinct and broader objectives and is bound to consider inflation not only as a national economic condition, and the likely effects of its decision on that condition, but also consider the impacts that inflation has had and may have on the employees reliant on its decisions.¹¹² These broader interactions are explored in Chapters 4,5 and 6 of this submission.

¹⁰⁸ Department of Employment and Workplace Relations, [Monthly leading indicator of employment – February 2023](#).

¹⁰⁹ RBA, Statement on Monetary Policy – February 2023 at 34

¹¹⁰ RBA, Statement on Monetary Policy – February 2023 at 3

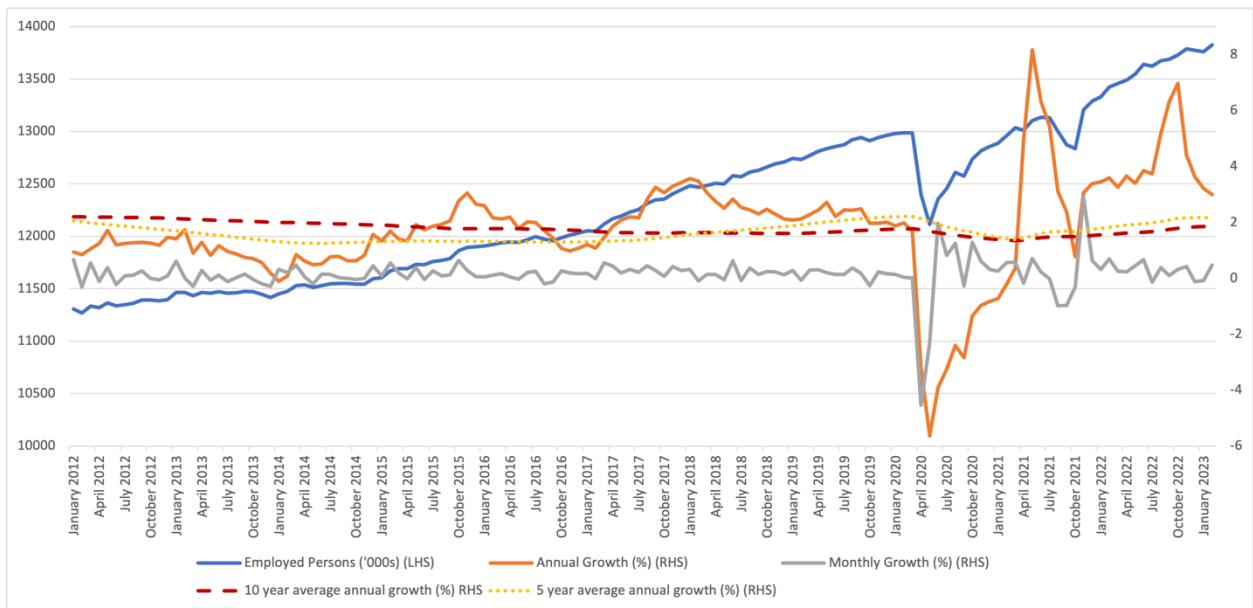
¹¹¹ Ibid.

¹¹² S. 134(1)(h), 134(1)(a), 284(1)(a), 284(1)(c).

3.2 Employment

100. Monthly employment growth has been mostly positive over the year in review, with variations from July 2022 well within long term bounds. On an annual basis, growth continues to be well above long term averages although clearly on trajectory toward more conventional levels.

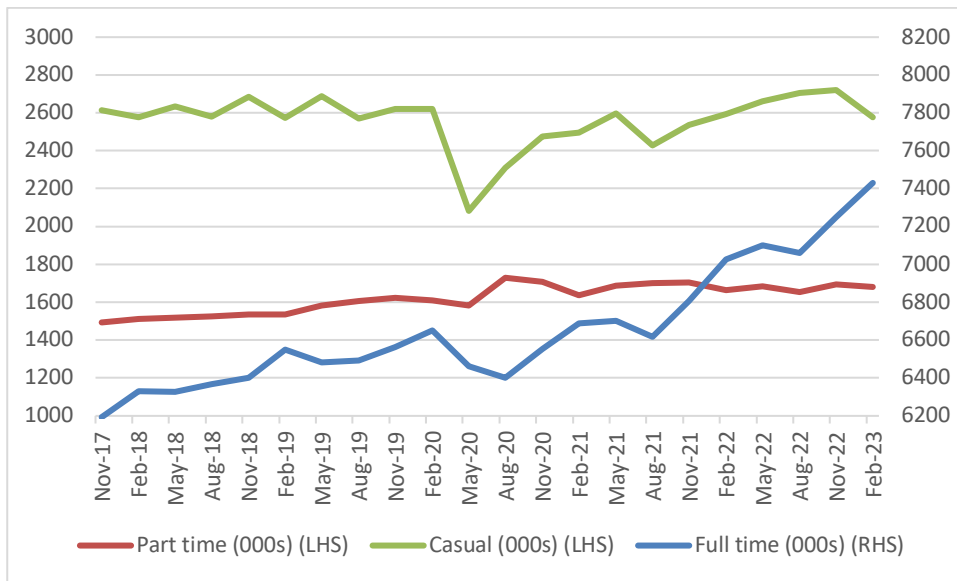
Figure 3: Growth in employment, monthly and annual, seasonally adjusted



Source: ABS Labour Force and ACTU calculations

101. The clear driver of employment growth in the second half of 2022 and into 2023 has been permanent employment, which rose very sharply - likely accounting for what might otherwise be casual jobs. Part time employment over the same period has been reasonably stable.

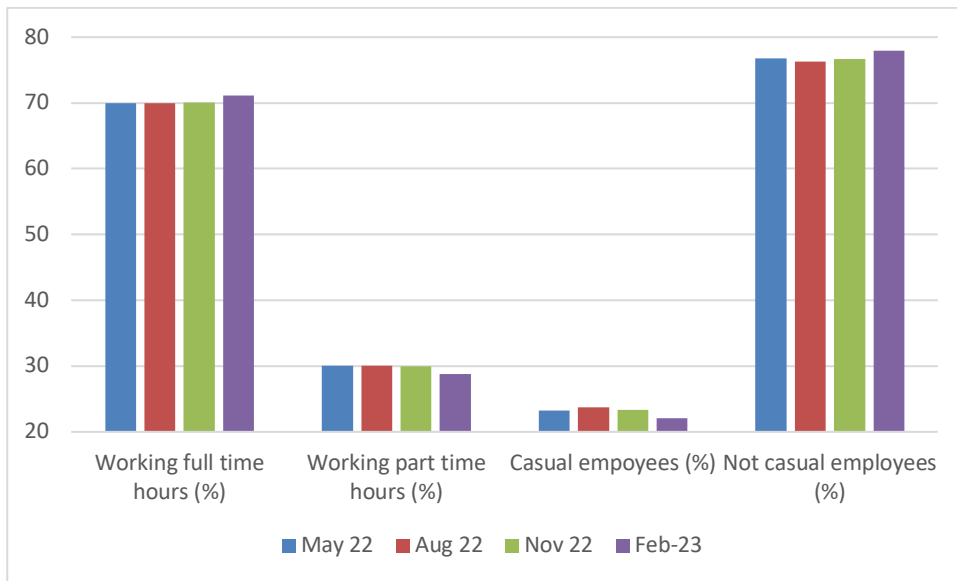
Figure 4: Forms of employment, Nov 2017-Feb23



Source: ABS Labour Force Detailed (Quarterly). ABS classification of “employee without paid leave entitlements” is used as a proxy for casual employment.

102. It is to be expected, consistent with Australia’s highly flexible labour market, that growth in full time employment will moderate and that part time hours (worked either on a permanent or casual basis) will grow as a share of the total labour force as demand responds to monetary policy tightening. On the most recent data however, this is not yet evident: the patterns of growth have been sufficient to maintain the overall shares of employees working full time hours and employees working casually until November 2022, with slight shift in share in favour of full time employment at the expense of casual employment in February 2023.

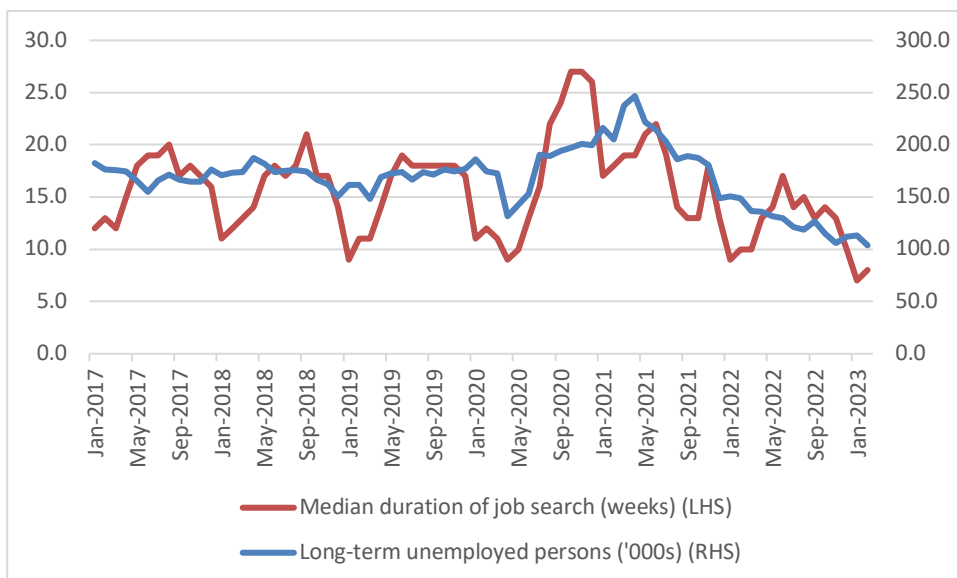
Figure 5: Shares of employed persons by form of employment, May 22-Feb 23



Source: ABS Labour Force Detailed (Quarterly). ABS classification of “employee without paid leave entitlements” is used as a proxy for casual employment.

103. Transitions into employment from unemployment are occurring at a rapid pace relative to the medium term and have improved further since the last year’s decision, as seen in Figure 6 below. This is consistent with persistent high levels of labour demand following the lifting of COVID related restrictions. Having regard to the very high levels of participation in the labour market and low aggregate levels of unemployment, Figure 6 is also suggesting an absence of persistent or severe scarring following the pandemic response.

Figure 6: Duration of job search and long-term unemployment, Jan 2017-Feb 2023

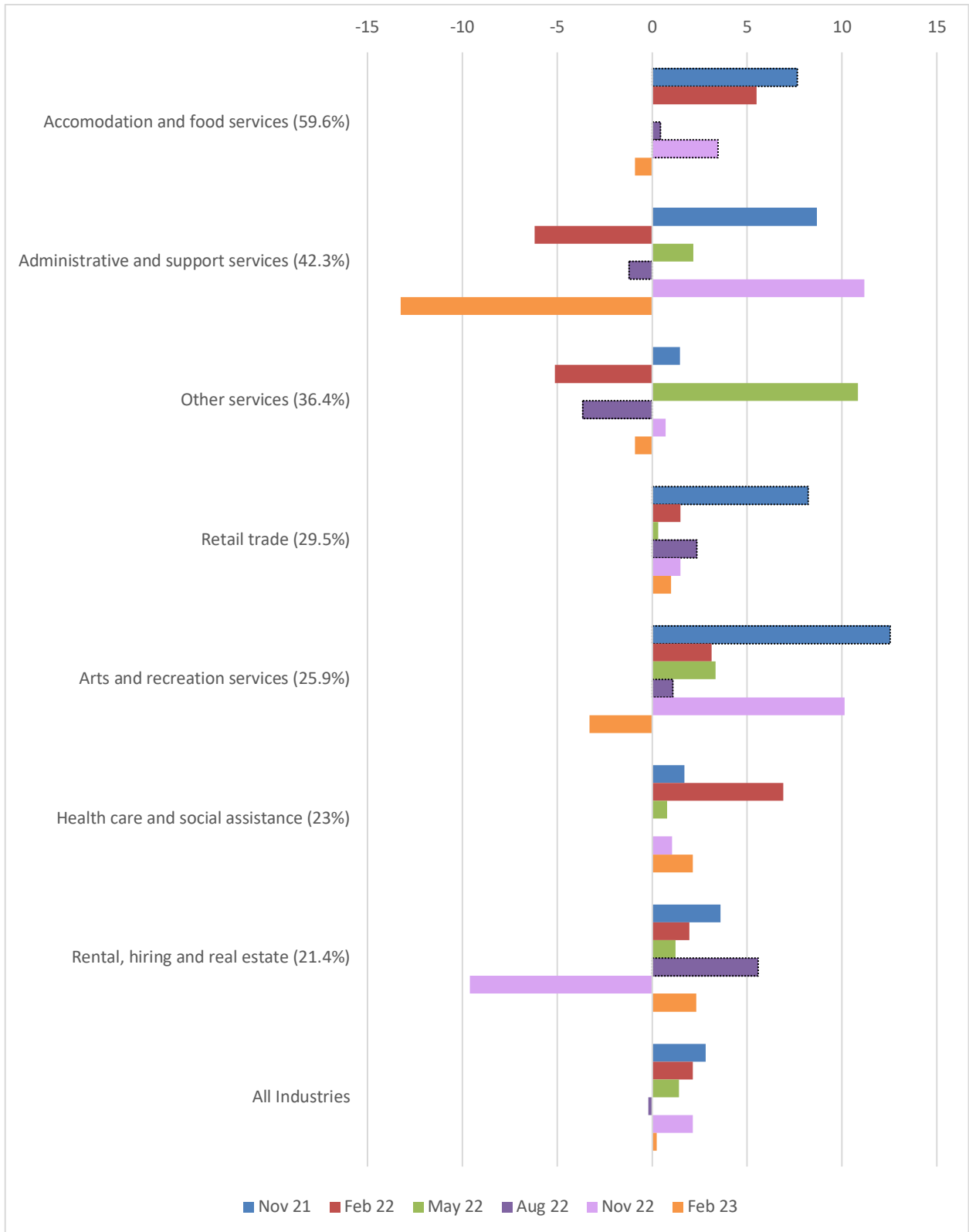


Source: ABS Labour force, detailed.

104. Examination of industry level changes in employment is assisted by Yuen and Tomlinson’s analysis of modern award reliance¹¹³. In Figure 7 below we show growth in employment between November 2021 and February 2023 for industries in which the density of modern award reliance is 20% or greater. We refer to these as the “more modern award reliant” industries. In Figure 8 we show the growth in employment among remaining industries over the same period. It to be expected that the industries in Figure 7 would be more sensitive to the employment effects of minimum wage increases, if such effects exist, particularly given that increase awarded last year was the most significant in nominal terms since modern awards commenced. A dotted line appears around each column corresponding to a measurement period where minimum wage increase applicable to the relevant industry occurred.

¹¹³ Yuen, K., and Tomlinson, J., “A profile of employee characteristics across modern awards”, FWC research report 1/2023.

Figure 7: Employment growth (%) in the most modern award reliant industries, Nov 2021-Feb23



Percentages in brackets relate to density of modern award reliance in each industry. Source: ABS Labour Force Detailed (Quarterly), ACTU calculations, Yuen & Tomlinson.

Figure 8: Employment growth (%) in less modern award reliant industries, Nov 2021-Feb23

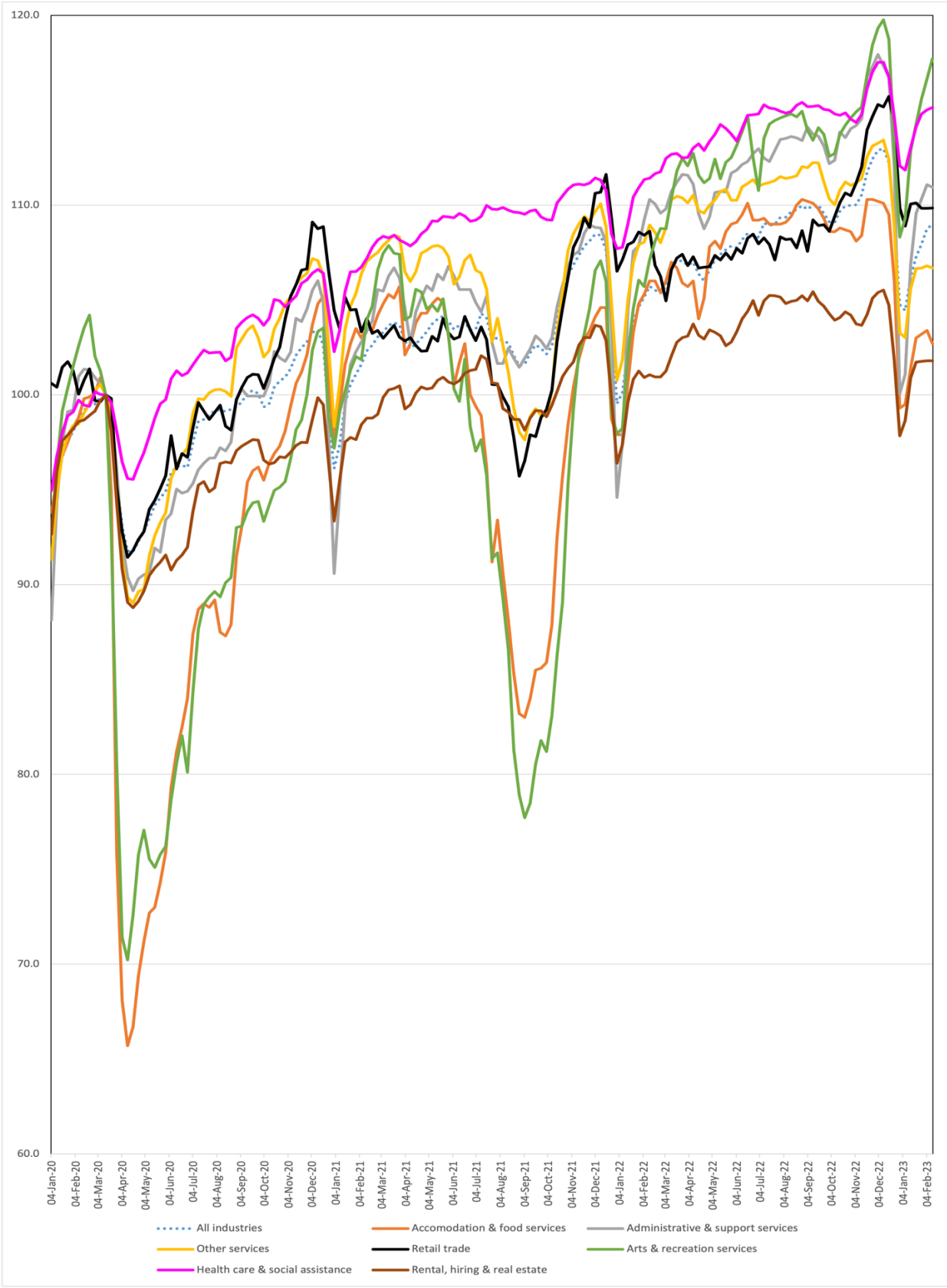


Percentages in brackets relate to density of modern award reliance in each industry. Source: ABS Labour Force Detailed (Quarterly), ACTU calculations, Yuen & Tomlinson.

105. Generally, the increase to modern award minimum wages from last year's decision would be expected to be seen in the change in employment in the August 2022 results. Yet, as can be seen from Figure 7 and Figure 8, the strongest declines in growth that period were those in industries where less than 8% of employees are reliant on the modern award. The decline in employment in that period across the labour force as a whole seems to have been led by the less award reliant industries, with only two of the more award reliant industries showing declines in that period. Where the more award reliant industries did show a decline in that period, it was to lesser extent to that seen in the less award reliant industries.
106. The industry with the highest level of modern award reliance is Accommodation and Food Services, which with 59.6% density of modern award reliance is the only industry where more than half its employee workforce is modern award reliant. The industry was impacted by a later effective dates of 1 November 2021 and 1 October 2022 for wage increases in the Restaurants Industry Award, the Hospitality Industry Award and the Registered and Licenced Clubs Award, however also impacted by the 1 July 2021 and 1 July 2022 effective date for increases to the Fast Food Industry Award. It would thus be reasonable to expect that employment effects, if present, would mostly be reflected in the November 2021 and November 2022 figures and somewhat reflected in the August 2022 figures. As can be seen in Figure 7, employment grew strongly in November of 2021 and 2022 (7.64% and 3.46% respectively) and weakly in August 2022 (0.43%). The growth seen in the industry in August 2022 is contrary to the decline in employment across the labour force as a whole over the same period. The only more modern award reliant industry to contain less employees in November 2022 than November 2021 is rental, hiring and real-estate (1.52% less), where 78.6% of employees are not modern award reliant. Out of 11 measurement periods shown which corresponded with a minimum wage increase in a more modern award reliant industry, 8 recorded employment growth. In the circumstances, the data does not support last year's significant increase having caused aggregate job losses in the industries most directly affected by it.
107. The ABS payroll jobs and wages series similarly lacks any obvious impacts from minimum wage impacts. Both the more modern award reliant (Figure 9) and the less modern award reliant industries (Figure 10) exhibited reasonable stability through July and August 2022 when minimum wage increases took effect. Accommodation and food services grew through October and November consistent with what appears to have been seasonality seen

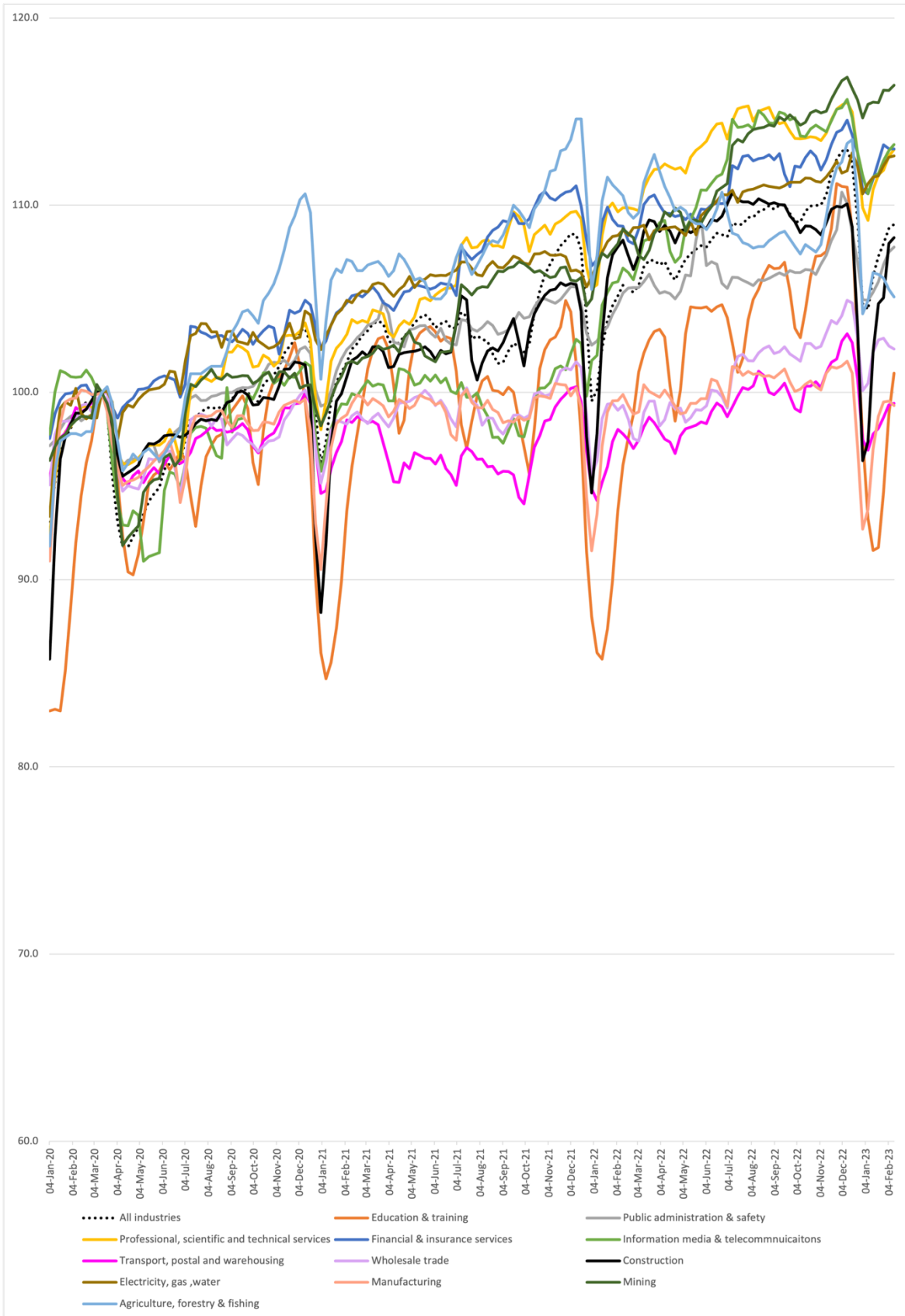
throughout most industries. Indeed, seasonality appears to be the most prominent effect in the data for all industries from late 2021 onwards.

Figure 9: Payroll jobs indexes, Jan 2020-Feb 2023, more modern award reliant industries.



Source: ABS Weekly Payroll Jobs and Wages

Figure 10: Payroll jobs indexes, Jan 2020-Feb 2023, less modern award reliant industries



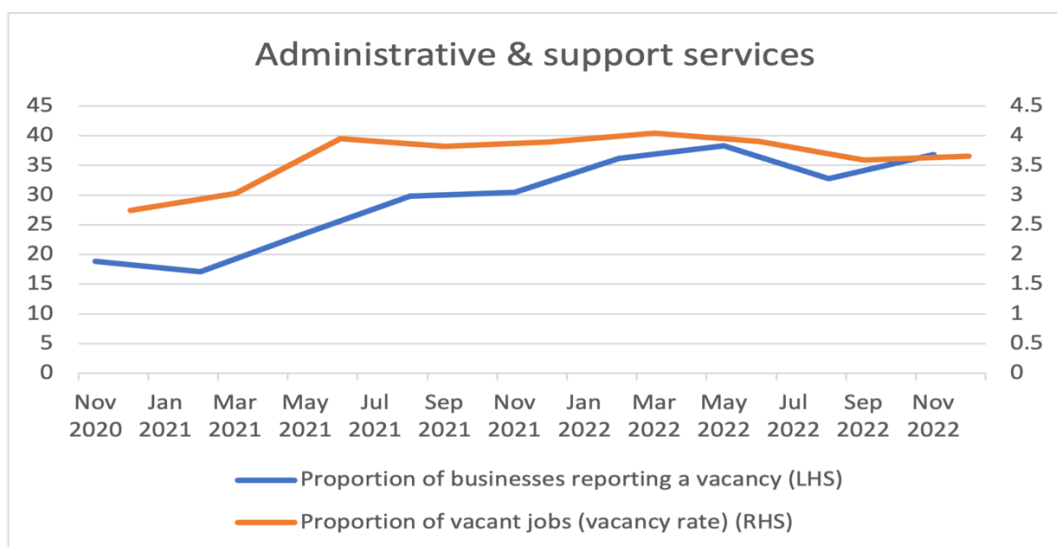
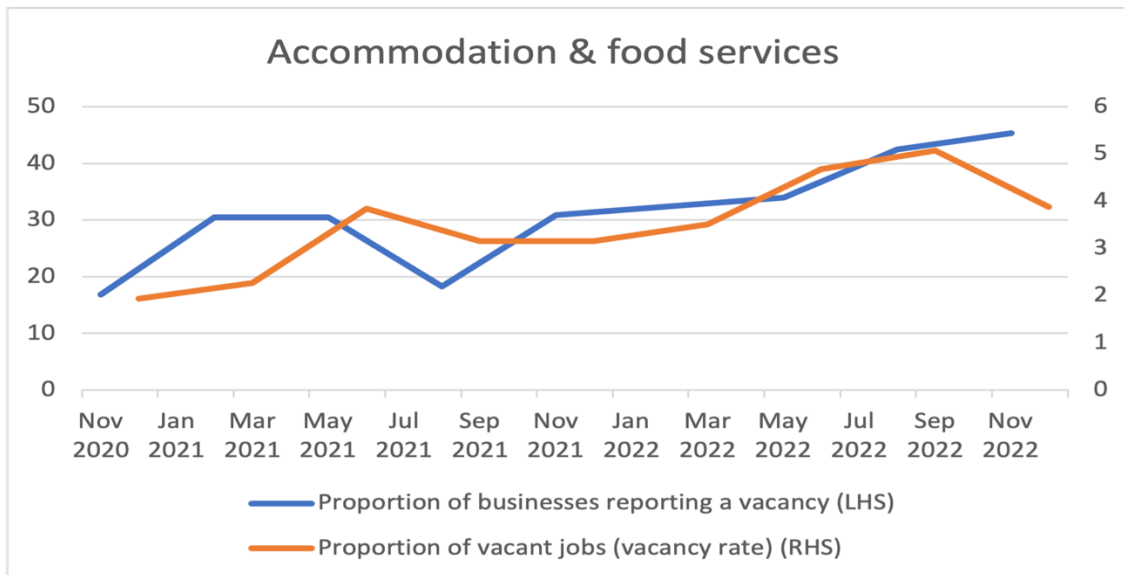
Source: ABS Weekly Payroll Jobs and Wages

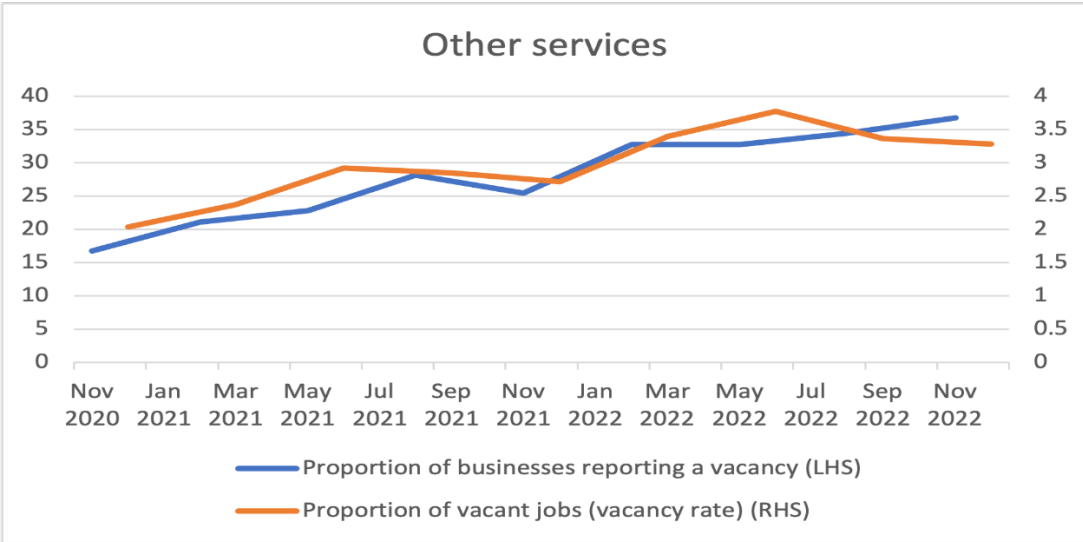
108. The panel of charts set out in Figure 11 below show both the vacancy rate and the proportion of business reporting a vacancy in the more modern award reliant industries, based on ABS job vacancy and labour account data. The job vacancies series counts only vacancies “for which recruitment action has been taken”¹¹⁴ and the labour account counts vacancies where “an employer has taken concrete steps to find a suitable person to carry out a specific set of tasks and would have recruited (entered into a job contract with) such a person if she/he had been available”¹¹⁵. Although the series are measured at different intervals, they follow a similar pattern. The more modern award industries show persistent levels of labour demand from early to mid 2021 with little sign of abatement until after around May of 2022, when many industries moderated somewhat. With the exception of Health care & social assistance and Administrative & support services, the vacancies are greater than was the case at the same time last year. It is unlikely that minimum wage levels have put a brake on recruitment intentions. Rather, heat in the labour market is consistent with wage pressures building through employers competing for staff.

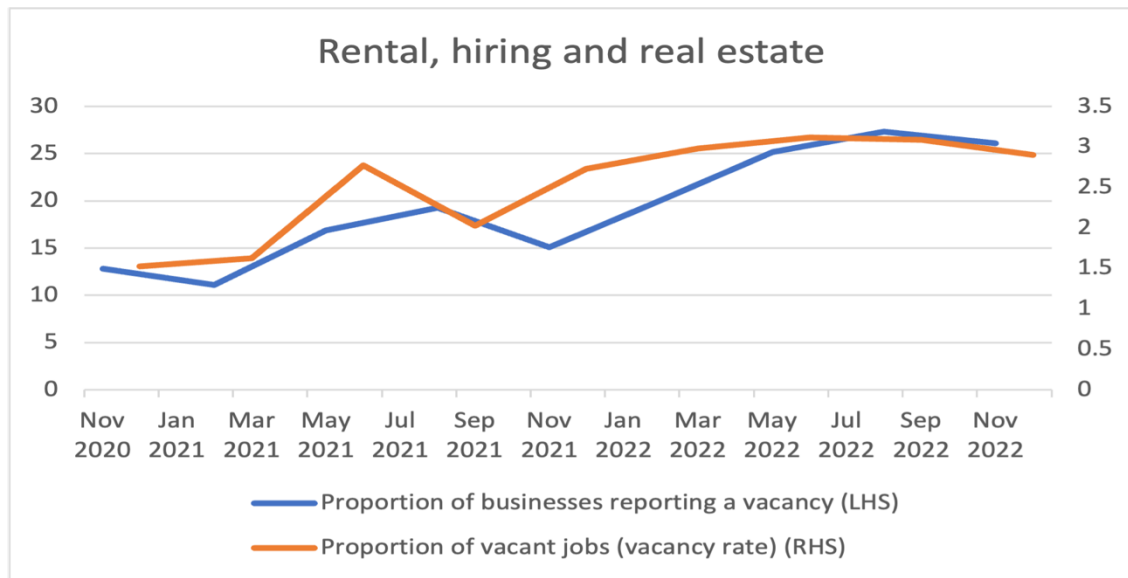
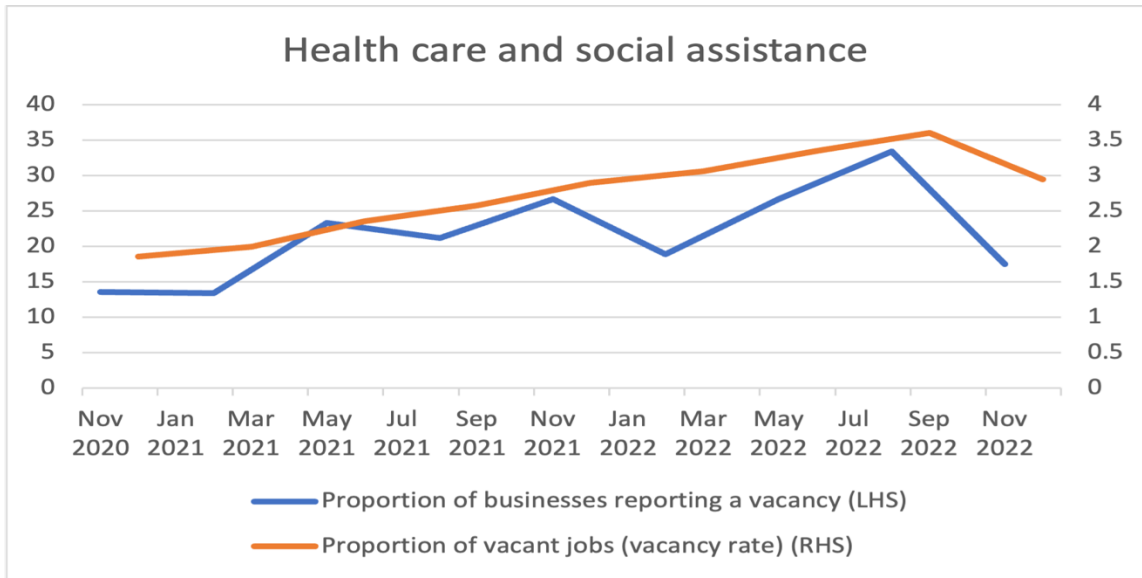
¹¹⁴ See ABS, [Job vacancies Australia methodology](#).

¹¹⁵ See ABS, [Labour account Australia methodology](#).

Figure 11: Job vacancies in more modern award reliant industries, Nov 2020-Dec 2022



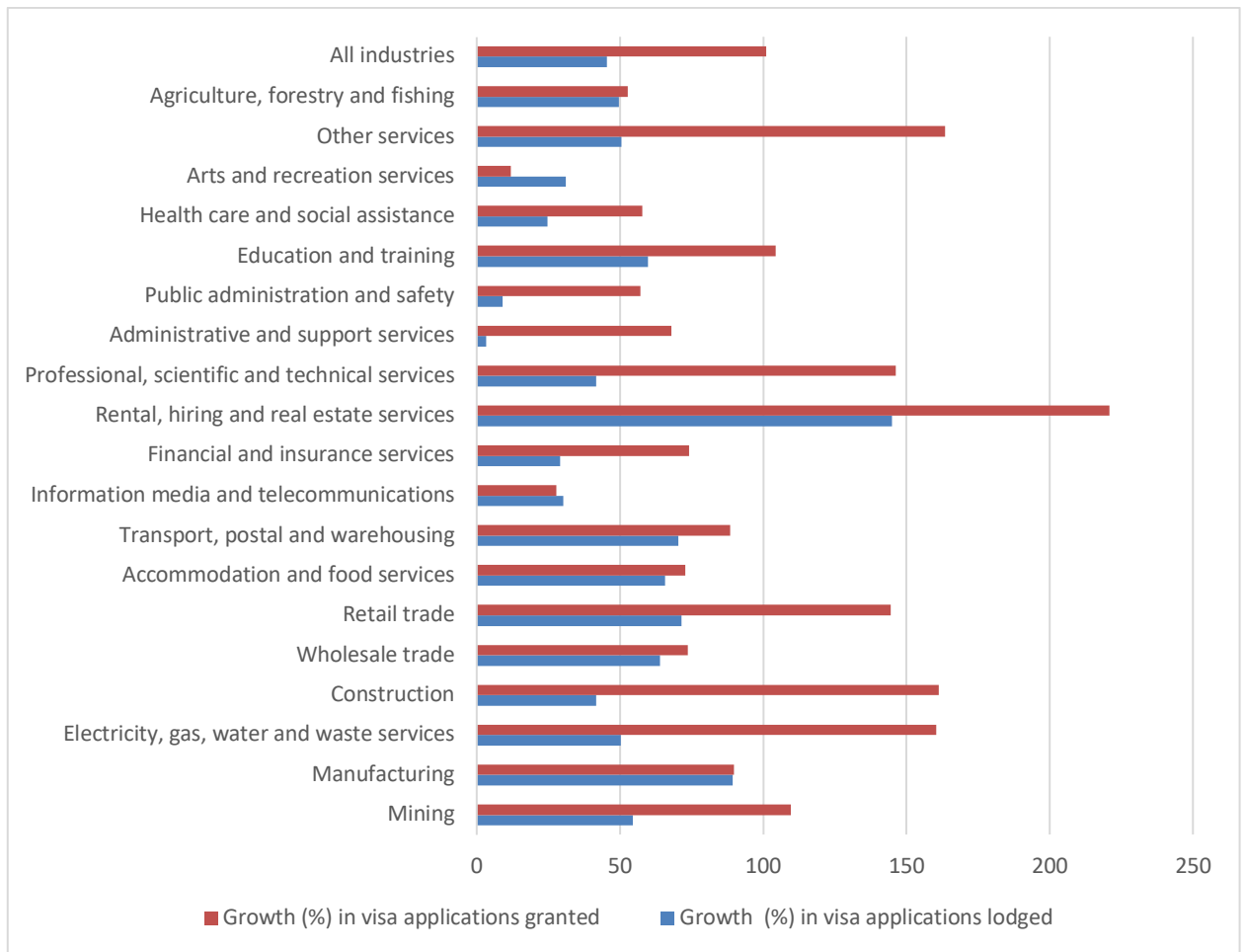




Source: ABS labour account, ABS Job Vacancies

109. Some softening in vacancies is to be expected as labour supply ramps up through the visa system given the re-opening of borders. Data from the Department of Home Affairs indicates that reduction in such of vacancies in the near future might be more associated with the alleviation of capacity constraints rather than the shedding of jobs, as there have been large increases in the numbers of skilled visa applications lodged and granted in the six months to December 2022 compared to the same period in the year before, including in some of the more modern award reliant industries.

Figure 12: Growth in skilled visa applications lodged and granted, H1 2021-22 v. H1 2022-23



Source: Department of Home Affairs, BR0008 at 31 December 2022

110. In addition, there has been a growing supply of workers on student visas, who can assist to meet residual demand for less skilled labour in award reliant sectors. The most current data from the Department of Home Affairs shows a 39% increase in student visas applied for and a 13% increase in student visas granted, comparing FY 2020-21 to 2021-22.¹¹⁶ The most recent job advertisement data from Job and Skills Australia’s Internet Vacancy Index suggests that demand for workers at lower skills levels has however reached its peak.

¹¹⁶ Department of Home Affairs report BR0097, as at 30 June 2022

Table 2: Job advertisements by skill level, January 2023

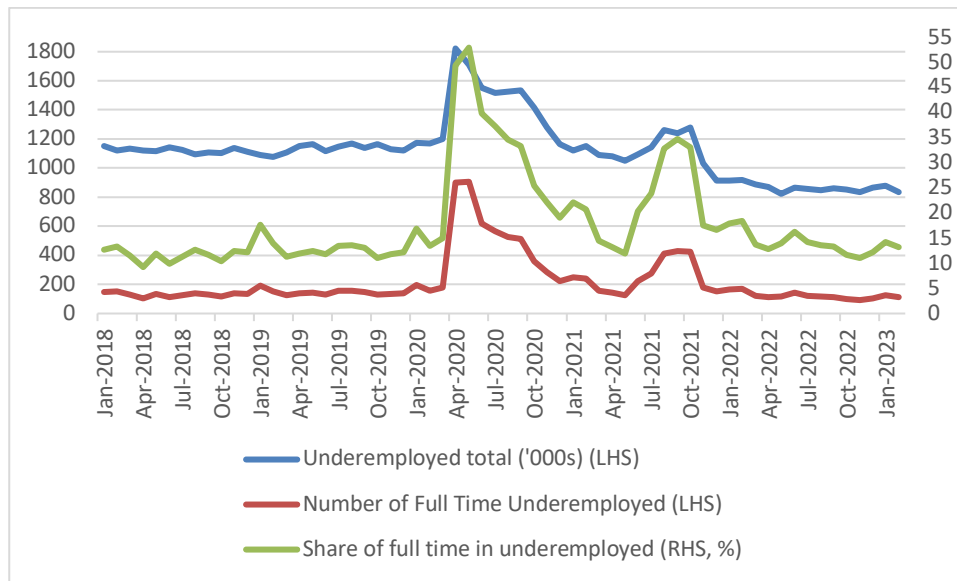
IVI by Skill Level - January 2023	Monthly change (%)	Monthly change (no.)	Annual change (%)	Annual change (no.)	Number of job advertisements
Skill Level 1 - Bachelor degree or higher	0.6%	640	7.3%	6,800	100,400
Skill Level 2 - Advanced Diploma or Diploma	3.9%	1,100	10.5%	2,900	30,100
Skill Level 3 - Certificate IV or III* (Skilled VET)	0.9%	370	4.2%	1,600	40,300
Skill Level 4 - Certificate II or III	3.1%	2,200	4.2%	3,000	73,800
Skill Level 5 - Certificate I or secondary education	4.0%	1,300	-7.0%	-2,600	33,900
Australia	2.0%	5,400	4.5%	12,000	278,700

Source: Jobs and Skills Australia, Vacancy report January 2023

3.3 Unemployment, underutilisation, and participation

111. Australia has continued to enjoy low unemployment of below 5% and indeed below 4% since the Panel's decision last year, reaching its low point of 3.4% in October of 2022, after the effects of the decision has flowed through to most sectors. The current level of 3.5% remains favourable on any view, particularly given that participation rate has held close to steady at between 66.5% and 66.7% (November 2022) throughout (currently 66.6%). Since the onset of the pandemic, the age adjusted participation rate and age adjusted employment to population ratio have continued to track further above their unadjusted counterparts, consistent again with diminishing underutilisation, as seen in Chart 6.2 of the Statistical report.
112. In 2020 and 2021, COVID related restrictions drove large rises in full time underemployment. As is seen in Figure 13 below, full time underemployment has returned to slightly below typical levels, accompanying persistently low levels of underemployment overall since late 2021. The slight uptick in the share of full time underemployed workers is January of 2023 is typical of that month.

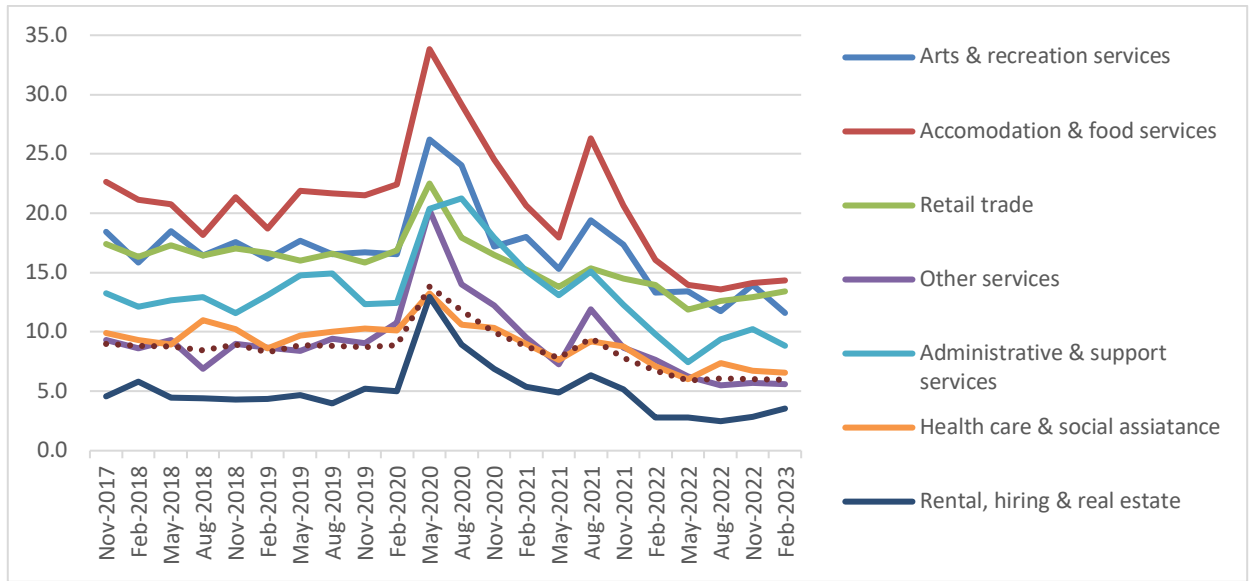
Figure 13: Full time underemployment 2018-2023



Source: ABS Labour Force, Labour Force Detailed; ACTU calculations. Full time underemployed=usually worked full time, worked fewer hours than usual due to “No work, not enough work available or stood down”.

113. In addition to being persistently low at an aggregate level, underemployment ratios in the more modern award reliant industries also appear to have generally fallen since mid 2021, before generally beginning to stabilise somewhat from early-mid 2022. The roll out of modern award increases, which would have been included in the August 2022 observations for most industries shown and in the November 2022 observations for Accommodation & food services, does not appear to have altered the general trajectory having regard to the levelling off the trend seen at the all industries level. The underemployment ratios for each industry shown are currently at levels below those that were typical immediately prior to the onset of COVID restrictions. It is likely that these have reached their lowest point given the general forecasts rereferred to in section 3.1 above. For completeness, we note the underemployment ratios at the industry level are original data and for the measurement period shown are marked by the ABS as subject to high degrees of sampling variability.

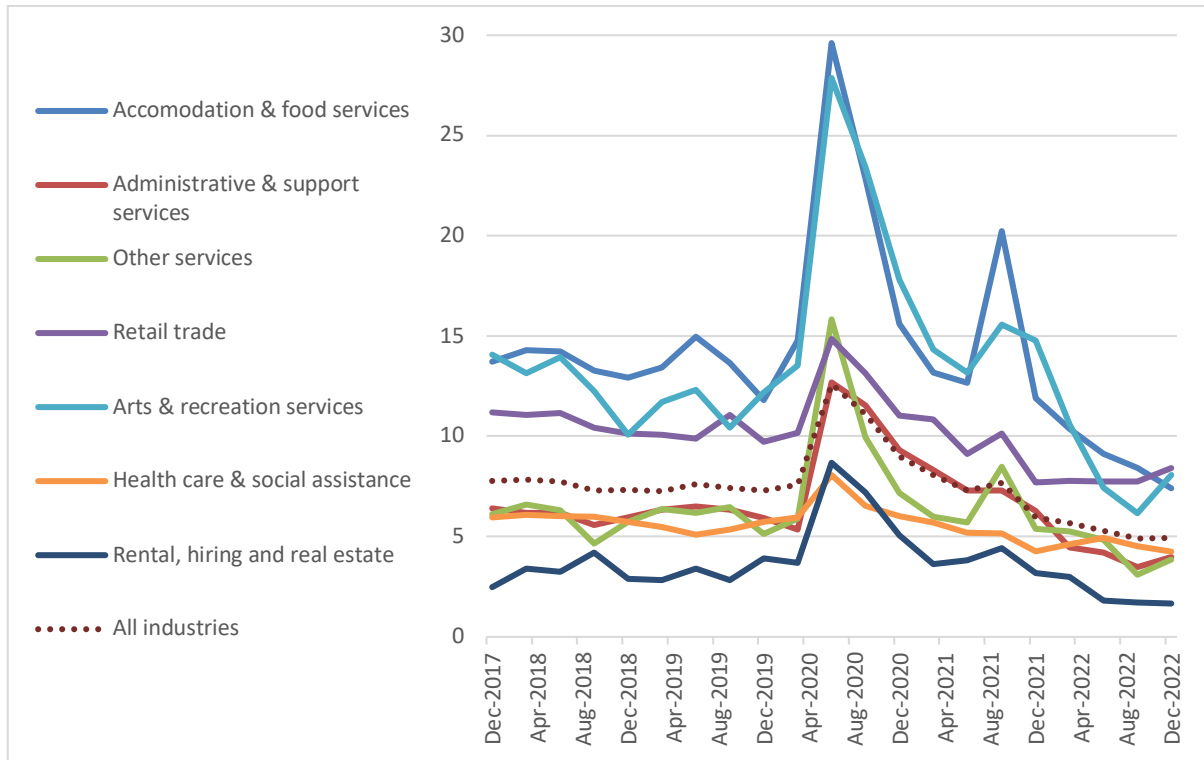
Figure 14: Underemployment ratios in more modern award reliant industries, 2017-2023



Source: ABS Labour Force Detailed

114. Accordingly, whilst underemployment appears to be more pronounced in some of the more modern award reliant industries in charts 6.8 and 6.9 of the statistical report, those industries are actually experiencing relatively low levels of underemployment compared to what might be considered the norm. Chart 6.9 in the statistical report ranks industries according to the extent of hours based underemployment, and appears based on combining labour account data with both published and unpublished data. We have attempted to replicate this analysis using publicly available data only and present it as a time series in Figure 15 below for the more modern award reliant industries. For the purposes of the analysis, we assume that each unemployed person assigned to the relevant industry in the labour account tables seeks 38 hours of work per week, and subtract that from the total “hours sought but not worked” in that industry to estimate the number of hours sought but not worked by underemployed people.

Figure 15: Hours based underemployment rate in more modern award reliant industries, Dec 2017-Dec 2022

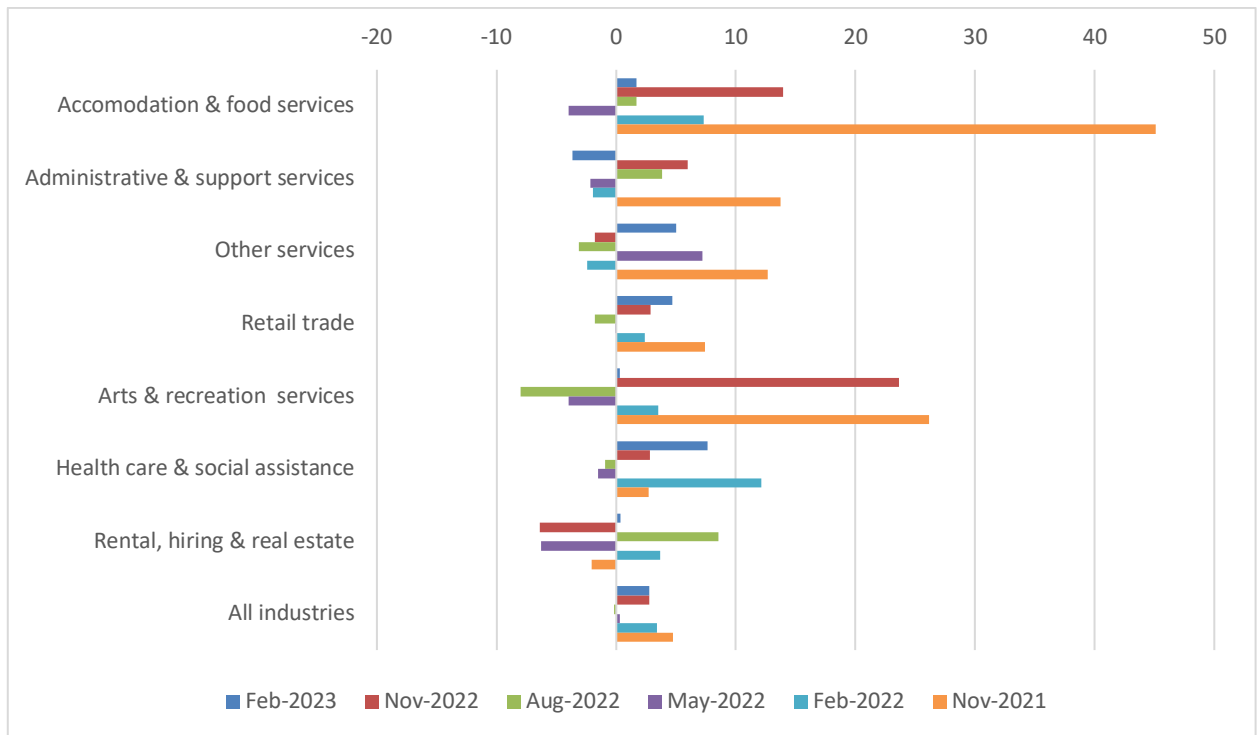


Source: ABS Labour Account

115. Figure 15 shows that, like the underemployment ratios shown in Figure 14, the extent of underemployment on this measure is also less than what might be considered normal prior to the onset of COVID restrictions.

116. Growth in hours of work for the more modern award reliant industries through most of the year to November 2022 is shown in Figure 16 below. Viewing the hours of work and underemployment data together, it seems that even where hours worked have fallen since May of 2022 and to November 2022 this has not been clearly associated with a greater share of workers having an undersupply of work to match their preferences. The more recent measure in February 2023 shows growth in hours worked in all but two of the more modern award reliant industries.

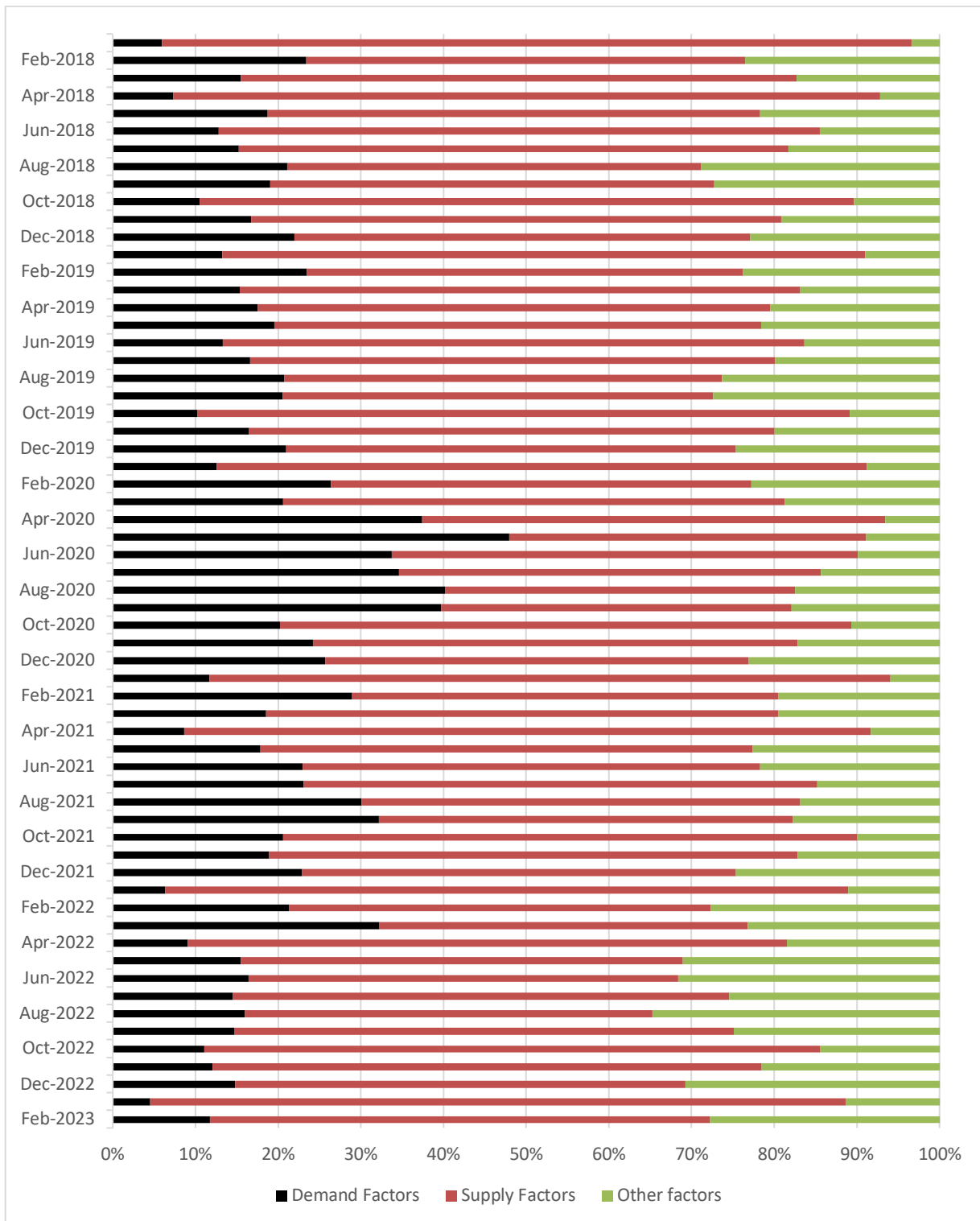
Figure 16: Growth in hours of work in the more modern award reliant industries, Nov 21-Feb23



Source: ABS Labour Force Detailed

117. Underemployment generally is a condition that concerns us due to its impact on the incomes of workers and their ability to meet their needs and enjoy improvements in living standards. However, Charts 6.8 and 6.9 of the statistical report do not suggest a present crisis in underemployment in the more modern award reliant industries when viewed in the context of Figure 13 - Figure 16 above. Rather they simply show that, since the cessation of COVID related restrictions on activity, full time underemployment has less overall impact on underemployment in total, meaning that the volume measure of underemployment has returned to being higher in industries where part time hours are more commonly worked.
118. When looking at hours worked at an aggregate level, it certainly appears that demand factors have, since mid 2022, generally been less of a driver of fewer hours being worked than might be considered typical prior to the imposition of COVID restrictions.

Figure 17: Share of factors contributing to persons working fewer hours, 2018-2023



Source: ABS Labour force detailed,. Employed persons who worked fewer hours than usual by hours actually worked in all jobs. Category definitions: Demand Factors= “No work, not enough work available or stood down” + “Bad weather or plant breakdown”; Supply factors= “Annual leave, holidays, flexitime or long service leave” + “Own injury or illness or sick leave” + “Personal reasons, study, caring for sick or injured family” + “Maternity, paternity or parental leave”; Other factors = “Began, left or lost a job during the week” + “Worked fewer hours than usual for other reasons” + “Standard work arrangements or shift work”.

3.4 Findings from recent Minimum Wage Research

119. Minimum wage policy has been applied more actively and ambitiously in jurisdictions around the world in recent years, and this policy activism has sparked a broad and voluminous literature on the effects of minimum wages on employment and other economic and social variables. In this section, we review the findings of selected recent contributions to that literature. There is abundant evidence that minimum wage increases can have important impacts in lifting wages and reducing inequality in lower-wage segments of the labour market and improve a range of other social outcomes. In most of this research, the impact of higher minimum wages on employment levels (the most common concern among many researchers and policymakers) is found to be small – in many studies, statistically indistinguishable from zero. In light of the general insignificance of proven disemployment effects, there is also a growing recognition among many researchers that future minimum wage research should be redirected to consider other relevant questions: including better understanding the other ways that employers respond to higher minimum wages (since predicted disemployment does not seem to be a significant outcome), and considering other impacts of higher minimum wages (including on job search, retention, and earnings inequality).

3.4.1 Germany

120. The introduction of the national minimum wage (NMW) in Germany in 2015 has led to a number of studies. Biewen M, Fitzenberger B & Rümmele M (2022)¹¹⁷ examined the impact on employment by considering sex, age, education, tenure, occupational position and occupation factor. They also considered firm-level characteristics such as collective agreements, firm size and whether the firm was associated to the public sector. This enabled them to account for employment changes that occurred due to factors other than the NMW and also to highlight where the changes (if any) occurred the greatest. They found that the introduction of the NMW had “no effects on working hours” and that there was no “significant shifts in the distribution of weekly working hours.” Their study however did find the NMW significantly reduced inequality. They found that “the minimum wage significantly reduced the Q90/Q10 ratio and also “that wage inequality significantly fell between 2014

¹¹⁷ Biewen M, Fitzenberger B & Rümmele M (2022), Using distribution regression difference-in-differences to evaluate the effects of a minimum wage introduction on the distribution of hourly wages and hours worked, IZA Discussion Paper No. 15534, September.

and 2018, and that this fall can be largely explained by the introduction of the minimum wage”.

121. Similarly, Link S (2022)¹¹⁸ found that following the introduction of the German NMW “affected firms, if anything, only weakly responded to the NMW introduction by decreasing the number of employees”. He did however find that firms “increased prices more frequently and at high speed to absorb the increase in the wage bill”. But crucially, given Australia’s context, he found that “price effect is strongest for firms in the least concentrated industries and insignificant for firms in the most concentrated industries”.

3.4.2 United Kingdom

122. A paper by Giupponi G, Joyce R, Lindner A, Waters T, Wernham T & Xu X (2022)¹¹⁹ considered the impact of the minimum living wage in the UK. A National Living Wage (NLW) was introduced in April 2016 with the goal of reaching two thirds of median wages by 2024. The NLW increased the minimum wage by 7.5% in real terms. In a case that has much in common with Australia, their paper estimated the impacts of the minimum wage on employment and wages in a context in which a single minimum wage policy applies to the entire country and no geographical variation in minimum wage rates is available. They found “substantial positive wage effects, including statistically significant spillovers up to around the 20th percentile of wages”. They found that on average, “each increase in the minimum wage for those aged 25+ between 2015 and 2019 led to a 5.43% fall of total employment for those earning below the NLW, but that crucially employment at, or within £0.25 of, the new minimum wage, increased by 4.04%”. They identified “statistically significant increases in the number of jobs at wages slightly higher than the NLW,” with spillovers stretching up to around £1.50 above it. The total employment effect was close to zero. They also found that the wages of under-25s were positively impacted by the introduction of the NLW and subsequent uplifts despite not being covered by it.

¹¹⁸ Link S (2022), The price and employment response of firms to the introduction of minimum wages, IZA Discussion Paper No. 15701, November.

¹¹⁹ Giupponi G, Joyce R, Lindner A, Waters T, Wernham T & Xu X (2022), The Employment and Distributional Impacts of Nationwide Minimum Wage Changes, Institute of Fiscal Studies, October 1.

123. Wang J (2022)¹²⁰ also examined the UK labour market with a focus on the impact of the minimum wage on 16-17 year olds. The paper concluded that the national minimum wage found merely a “positive but insignificant correlation between the National Minimum Wage and adolescent employment in the UK”. This suggested that “the national minimum wage has no effect on teenage employment and that teenage employment may be influenced by other factors.”
124. Xu L & Zhu Y (2022)¹²¹ found “a sizeable positive increase in employment after addressing the heterogeneity across local areas” In their examination of the UK labour market. The authors also concluded that “modest increases in the relatively low minimum wage in the UK may not bring further damage to the labour market which has already been massively damaged by the COVID”.

3.4.3 United States

125. Oka T and Yamada K (2023)¹²² conducted a study that focused on the impact of the minimum wage in the United States on reducing inequality, noting that “minimum wage workers are concentrated in particular demographic groups.” Approximately 90 percent of workers who earned at or below the minimum wage in the United States between the years 1979 and 2012 were high school graduates or less, younger than 25 years old, or female. They found that not only did a rise in the minimum wage increase the lowest wages uniformly across workers, the rise also “weakens the relationship of hourly wages with education, experience, and gender.”
126. Neumark D & Shirley P (2022)¹²³ conducted a meta-review of papers on the minimum wage in the US since 1992 and suggested that the review suggests negative effects of minimum wages on employment of less-skilled workers. However, Giotis and Mylonas (2022)¹²⁴ also conducted a review of papers in the voluminous minimum wage literature – including that of Neumark D & Shirley P. They found that prior to 2009, “The dominant point of view in the

¹²⁰ Wang J (2022), The Impact of the National Minimum Wage on Employment: A Case Study of the UK, The University of Leeds, Proceedings of the 2022 4th International Conference on Economic Management and Cultural Industry (ICEMCI 2022), December.

¹²¹ Xu L & Zhu Y (2022), Does the employment effect of national minimum wage vary by non-employment rate? A regression discontinuity approach, *The Manchester School*, Vol. 91, No. 1, pp. 18–36.

¹²² Tatsushi Oka, Ken Yamada (2023), “Heterogeneous Impact of the Minimum Wage: Implications for Changes in Between- and Within-Group Inequality” *Journal of Human Resources*, Volume 58, Number 1, January 2023, pp. 335-362.

¹²³ Neumark D & Shirley P (2022), ‘Myth or measurement: What does the new minimum wage research say about minimum wages and job loss in the United States?’, *Industrial Relations: A Journal of Economics and Society*, Vol. 61, Issue 4, pp. 384–417, October

¹²⁴ Giotis and Mylonas (2022), “Employment Effect of Minimum Wages”, *Encyclopedia 2022(2)* (mdpi.com), 1880-1892.

related literature was that minimum wage had a negative effect on employment.” Since then, however, new research has countered this view. One meta-study they cited (by Doucouliagos, H and Stanley T.D, 2009) found that “the empirical literature was contaminated by publication selection bias. Once this publication selection was corrected, the average impact was close to zero.” They conclude that “in light of the latest developments and meta-regressions, the literature does not provide a clear and definite sign of the relationship.”

3.4.4 Lithuania

127. Garcia-Louzao J and Tarasonis L (2023)¹²⁵ investigated the impact of the minimum wage in Lithuania, and found that increases in the minimum wage “significantly increased the earnings of low-wage workers.” They also discovered that the wage spillover effect reached up to median income workers. They found “no negative effects on the employment prospects of low-wage workers.”

3.4.5 Cross country studies

128. Novo-Corti et al (2022)¹²⁶ investigated the impact of the minimum wage on young workers across the OECD from 2007 to 2021. Their approach used aggregate data in order to highlight the need to consider various factors such as demographic groups or the situation of particular firms. It found that results varied with gender. The study of all young workers (15–24 years) showed positive correlation between minimum wage and employment rates. The correlations between minimum wages and employment rates were statistically significant for all years except for 2012, 2013, 2014, 2016, and 2017. For young women, however, the correlations are statistically significant for all years, and stronger than for young men.
129. Morgia (2022)¹²⁷ examined the impact of the minimum wage on productivity across the OECD. He found that “an increase of 1% in minimum wage corresponds to a raise of 0.058% in productivity.” Moreover, the introduction of a minimum wage helps firms to improve productivity: both at enterprise and aggregate level. This, he argues, occurs because at firm level workers are more motivated to improve performance (consistent with efficiency wage theory), and firms with higher pay can attract and retain more experienced workers.

¹²⁵ Garcia-Louzao, J. and Tarasonis, L. (2023), ‘Wage and Employment Impact of Minimum Wage: Evidence from Lithuania’.

¹²⁶ Novo-Corti et al (2022), Minimum Wage and Employment: Aggregate Analysis | SpringerLink.

¹²⁷ Morgia (2022) The effect of the minimum wage on employment and productivity: an empirical analysis – LuisThesis.

3.4.6 Evidenced based conclusions

130. The recent research findings do not contradict the Panel's established view that moderate and regular increases in minimum wages do not result in significant disemployment effects¹²⁸ and that modest and regular minimum wage increases do not result in disemployment effects or inhibit workforce participation¹²⁹. Our observations in sections 3.2 and 3.3 above, which give some context to what may be accepted as moderate or modest in light of the Panel's larger than usual increase last year, similarly do not contradict that view. The research findings do however expand somewhat on the Panel's view in important ways.
131. Debates over the effects of minimum wages on incomes, inequality, employment, and productivity will continue, and the enormous economics literature which has been sparked by these debates will only continue to grow as more researchers explore these issues, with a growing range of theoretical and methodological approaches. New research published in the last year, however, has not altered the general conclusions of previous surveys of the literature. Those conclusions include:
- a. There is little robust evidence of a negative employment effect from steady and gradual increases in minimum wages. Most studies find no significant employment effect; some identify a positive employment effect.
 - b. The reactions of firms to higher minimum wages include several channels which are economically and socially beneficial: including improvements in technique and productivity, greater retention of staff, and greater investments in capital equipment and technology.
 - c. The impact of higher minimum wages on realized incomes for low-wage workers and inequality are consistent and powerful.

¹²⁸ [2022] FWCFB 3500 [65]

¹²⁹ [2019] FWCFB 3500 at [73].

4. THE NATIONAL ECONOMY

132. The Panel is required to take into account the performance and competitiveness of the national economy, including by reference to specific measures, in conducting this review and considering the impacts of adjustments to minimum wages.¹³⁰ This chapter covers the state of the economy, both since the last review and current projections. There is some overlap between these matters and the separate requirement of the Panel to consider promoting social inclusion through increased workforce participation. Much of our commentary on labour market specific indicators and the impacts of minimum wages on employment is covered in chapter 3.

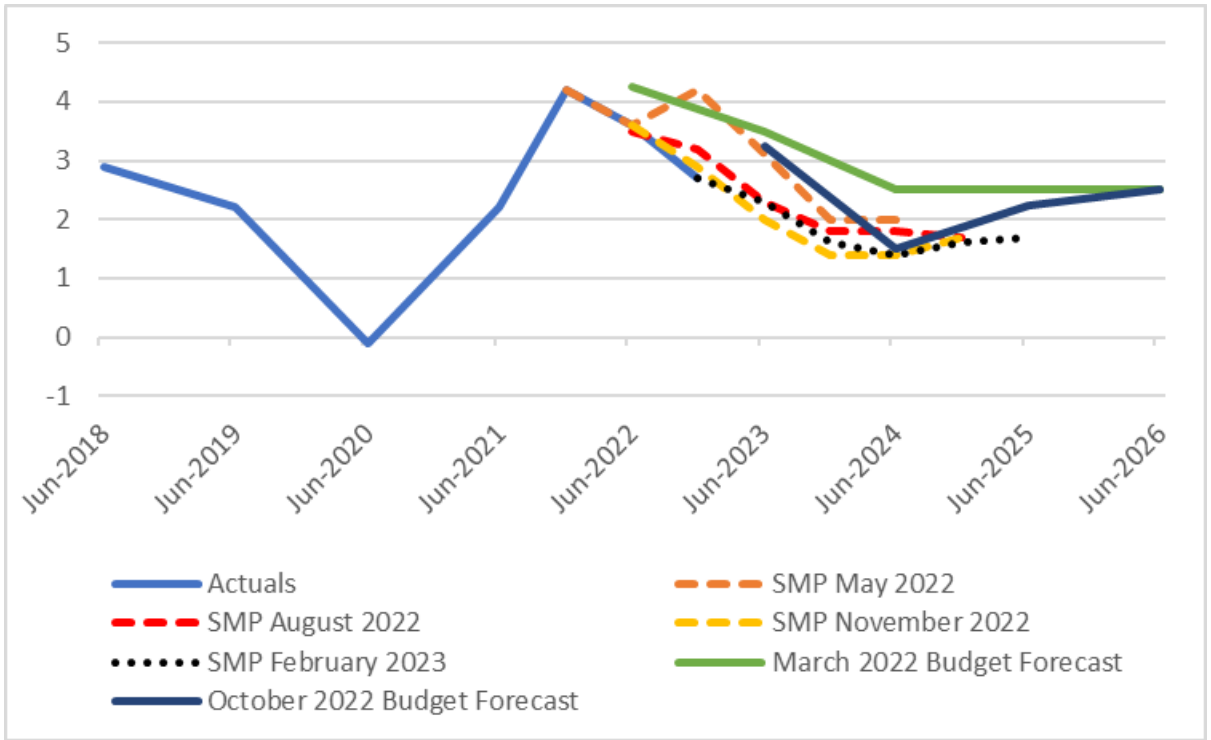
4.1 Economic Growth

133. When the Panel made its decision last year, it relied on forecasts from the RBA's May 2022 *Statement on Monetary Policy* that real GDP would grow by 3.6 per cent for the year to June 2022 and 4.2 per cent for the year to December 2022, before moderating to 3.1 per cent for the year to June 2023 and 2 per cent for the year to December 2023. While GDP performance in the year to June 2022 met those forecasts, it fell below expectations for the year to December 2022, growing by only 2.7 per cent. Tightening of monetary policy in response to higher than expected inflation, and a global slowdown have played a role here, but this level of growth is still above pre-pandemic averages of 2.4 per cent average annual growth in GDP from 2014 to 2019 and 2.6 per cent average annual growth from 2009 to 2019 (See Figure 19).¹³¹ Indeed, part of the slowdown is likely related to the post-lockdown rebound in growth rates simply returning back to long run trends.

¹³⁰ Sections 134(1)(h) and 284(1)(a) of the *Fair Work Act*

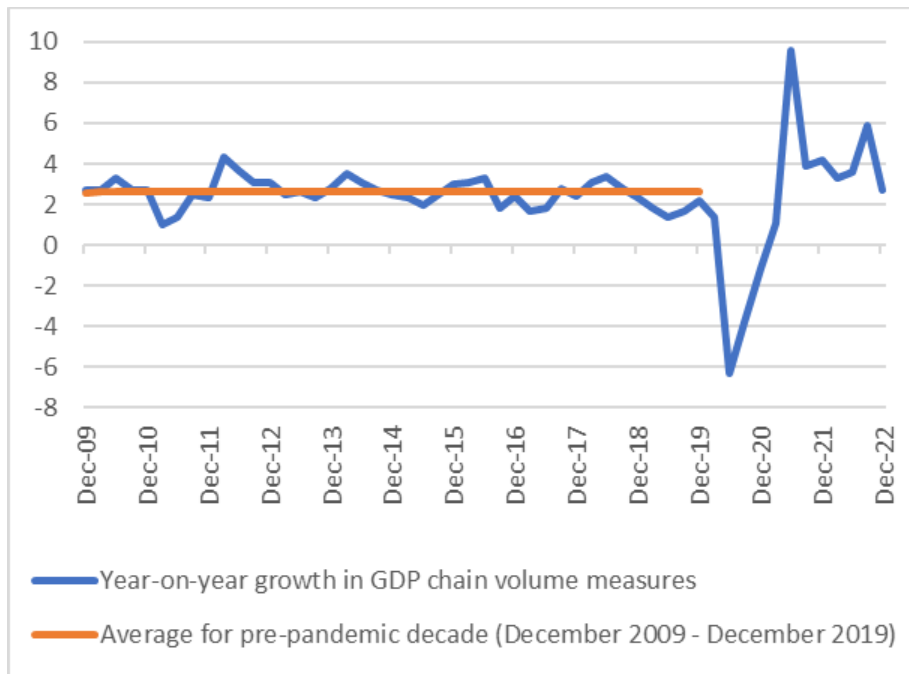
¹³¹ ABS National Accounts (December 2022)

Figure 18: Real GDP growth (per cent) performance against forecasts



Source: RBA, Treasury

Figure 19: Year-on-year growth in GDP (chain volume measures, seasonally adjusted)

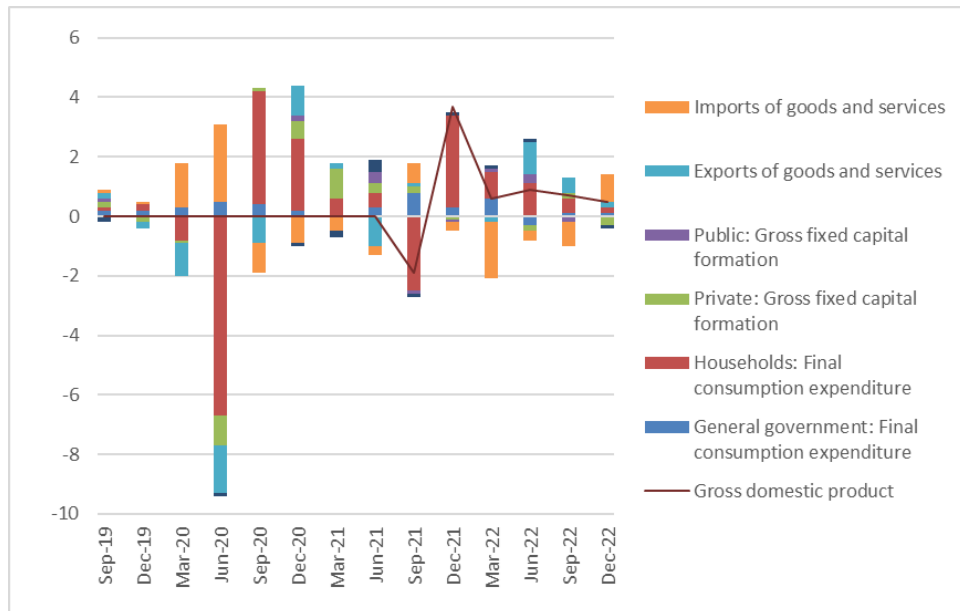


Source: ABS 5206.

134. Growth projections also show modest slowdowns over the upcoming 12 months. While the October 2022 Budget forecast real growth of 3.25 per cent for 2022-23, forecasts have since been downgraded, with the RBA now projecting 2.25 per cent growth for the current

financial year.¹³² Again, this is only dipping slightly below longer run trends. The two key drivers of growth since the end of lockdowns have been household consumption and a strong terms of trade performance.

Figure 20: Contribution to GDP growth, chain volume measures

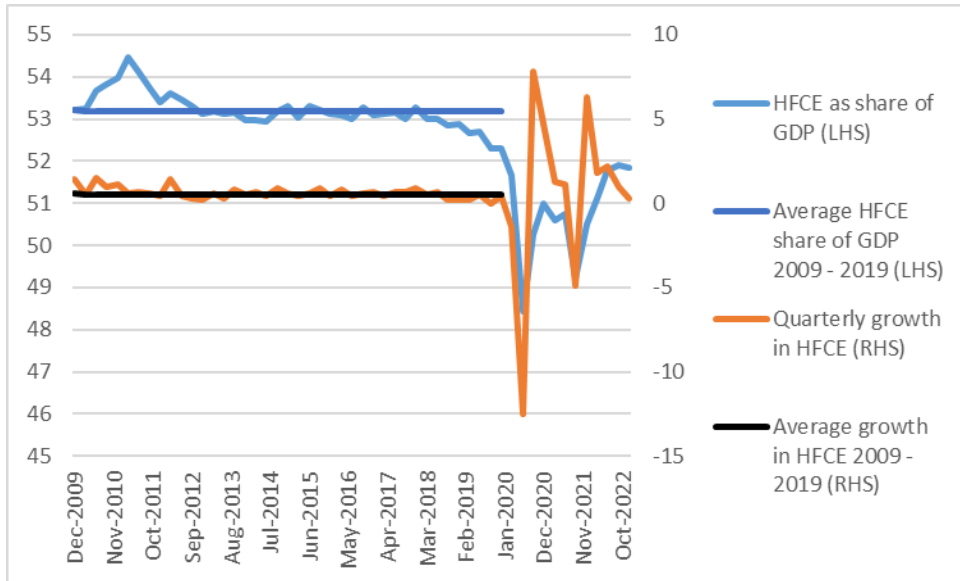


Source: ABS 5206

135. While strong household demand has led the post lockdown recovery in economic growth, its impact has softened as savings accumulated during lockdown have been run down in the face of both high inflation and rising interest rates. While final household consumption expenditure contributed 3.1 percentage points to GDP growth in the December 2021 quarter, it declined to just 0.2 per cent of GDP growth in the December 2022 quarter as shown in Figure 20 above. Similarly, in the December quarter 2022, both quarterly growth in household final consumption expenditure (0.3 per cent) and household final consumption expenditure as a share of GDP (51.8 per cent) were below their pre-pandemic averages for December 2009 to December 2019 (0.6 per cent and 53.2 per cent respectively).

¹³² RBA, *Statement of Monetary Policy* (February 2023), page 71

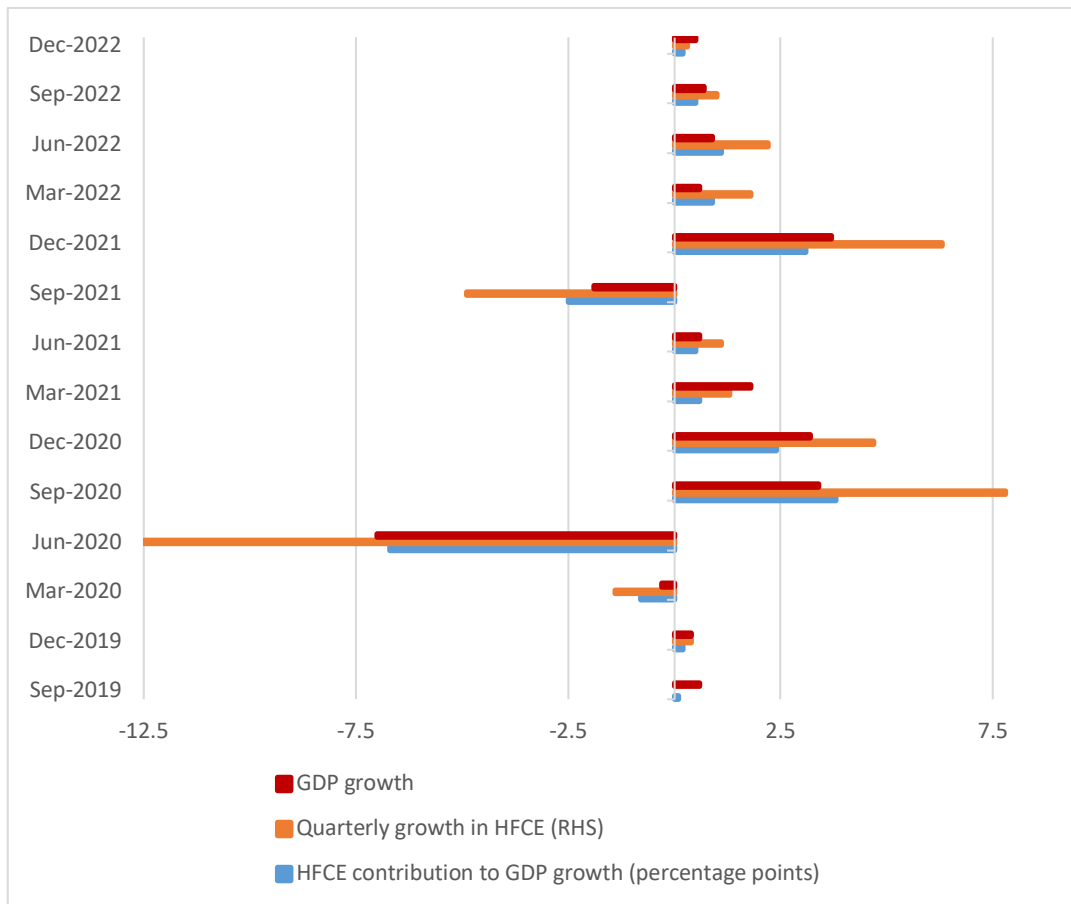
Figure 21: Household final consumption expenditure (HFCE) quarterly growth and HFCE's share of GDP 2009 – December 2022, and pre-pandemic averages (percentages, seasonally adjusted, chain volume measures)



Source: ABS 5206.0 Tables 1 and 8.

136. This is especially concerning when household final consumption has made an important contribution to GDP growth during the post-lockdown recovery (see Figure 22 below). A strong decision on the NMW and modern minimum award wages will therefore be necessary to help support household consumption in the face of global and domestic economic headwinds.

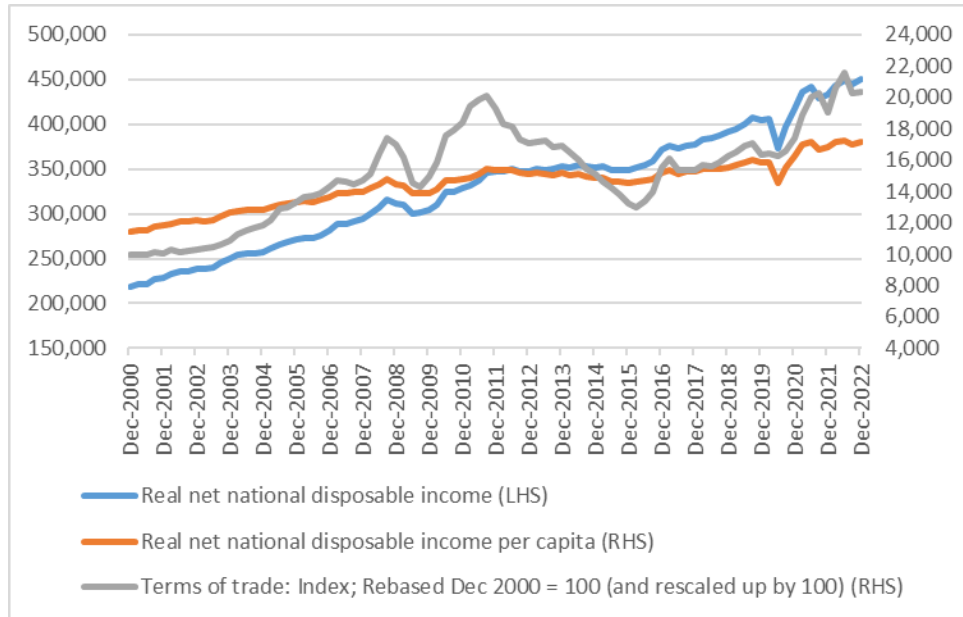
Figure 22: HFCE growth, GDP growth, and HFCE's contribution to quarterly GDP growth (percentage points), all seasonally adjusted and chain volume measures



Source: ABS 5206.0 Tables 1 and 8.

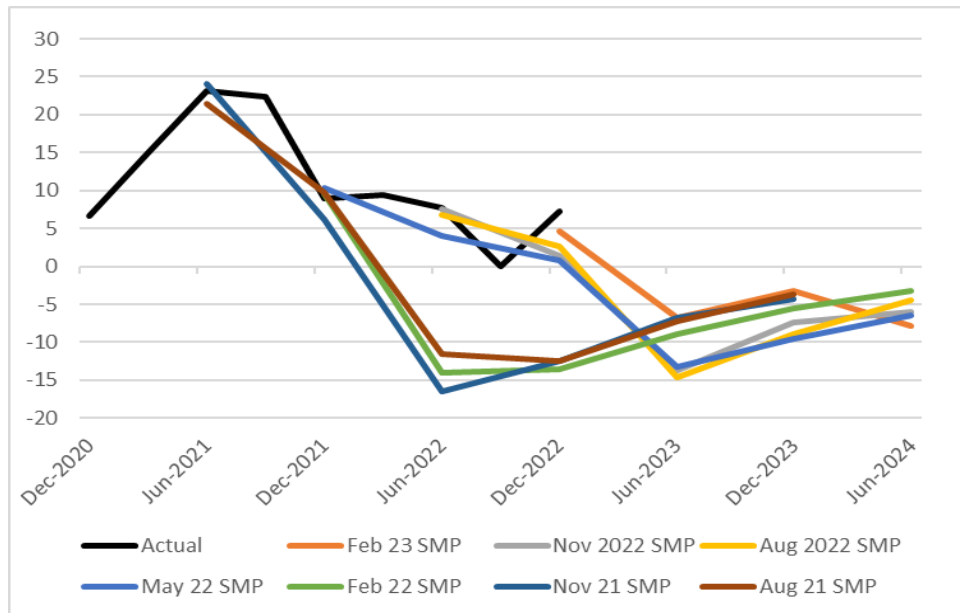
137. Helped by strong commodity prices, Australia's terms of trade have outperformed expectations significantly, pointing to a relatively strong position for the domestic economy, illustrated in Figure 23. While the RBA's February 2023 Statement on Monetary Policy forecasts the terms of trade to decline by 6.8 per cent in the year-to-June 2023, by 3.3 per cent in the year-to-December 2023 and by 7.8 per cent in the year-to-June 2024, the RBA's forecasts from each Statement on Monetary Policy from August 2021 onwards have proven to be consistently far too pessimistic for the June quarter 2022 and December quarter 2022. The terms of trade grew 7.2 per cent in the year-to-December 2022, significantly higher than the 4.6 per cent growth forecast by the RBA in the February 2023 Statement on Monetary Policy and the 1.4 per cent growth forecast in the November 2022 Statement. Figure 25 compares actual year-on-year growth in the terms of trade to the RBA's forecasts in each Statement from August 2021 onwards and includes the latest forecasts for the period to June 2024.

Figure 23: Quarterly RNNDI (LHS), chain volume \$ million, RNNDI per capita (RHS), chain volume \$ million, and terms of trade index (RHS) (2000 = 100), December 2000 – 2022



Source: ABS 5602.0, Table 1.

Figure 24: Comparison of actual terms of trade growth (year-on-year) with RBA forecasts



Source: RBA

4.2 International perspective

138. Within the global economy, Australia’s actual and projected growth continues to compare favourably. In 2022, Australia’s GDP growth was stronger than the G7 average both for the year and across each quarter.¹³³ Its annual GDP growth of 2.7% in 2022 was also the same as the average for all advanced economies.¹³⁴ As the IMF commented: “A strong post-pandemic recovery and favorable terms of trade have led Australia to a stronger cyclical position than most advanced economies.”¹³⁵ This led the institution to conclude that “...Australia’s economy is expected to come to a soft landing...”.¹³⁶
139. Looking forward, the IMF projects real GDP growth of 1.6% for Australia in 2023, lifting to 1.7% in 2024. This is higher than its projections for advanced economies, which come in at 1.2% and 1.4% for those years respectively.¹³⁷ Similarly, the latest OECD projections, published earlier in November 2022, predicted GDP growth for Australia of 1.9% in 2023, before easing to 1.6% in 2024.¹³⁸ Although slightly below our longer-term average, these figures are again, well above the projections for the OECD member states as a whole, which are projected to grow at only 0.8% and 1.4% in 2023 and 2024 respectively, including better than the EU, US and Japan.
140. Globally the IMF also projects 2.9% growth for the global economy in 2023 and 3.1% in 2024, higher projections than its earlier October 2022 forecasts, reflecting “greater than expected” resilience in numerous economies.¹³⁹ The likelihood that the global economy achieves a “soft landing” seems to be growing, as inflation is starting to decline, and employment is still relatively robust. More broadly, the IMF states that global headline inflation appears to have peaked in the third quarter of 2022, as prices of fuel and non-fuel commodities have declined.¹⁴⁰
141. Similarly, the OECD is becoming more optimistic about global growth forecasts, noting recently that:

¹³³ FWC *Statistical Report – Annual Wage Review – 2022-23*, Version 1, Chart 1.3

¹³⁴ IMF (January 2023), *World Economic Outlook Update*, page 6

¹³⁵ IMF (1 February 2023), *Article IV Consultation Report for Australia*, page 5.

¹³⁶ IMF (1 Feb 2023), “IMF Executive Board Concludes 2022 Article IV Consultation with Australia”, Media Release

¹³⁷ IMF (January 2023), *World Economic Outlook Update*, page 6

¹³⁸ OECD (November 2022) *Economic Outlook: Confronting the Crisis*

¹³⁹ IMF (January 2023), *World Economic Outlook Update*, page 3

¹⁴⁰ IMF (February 2023), *Ibid*, page 2

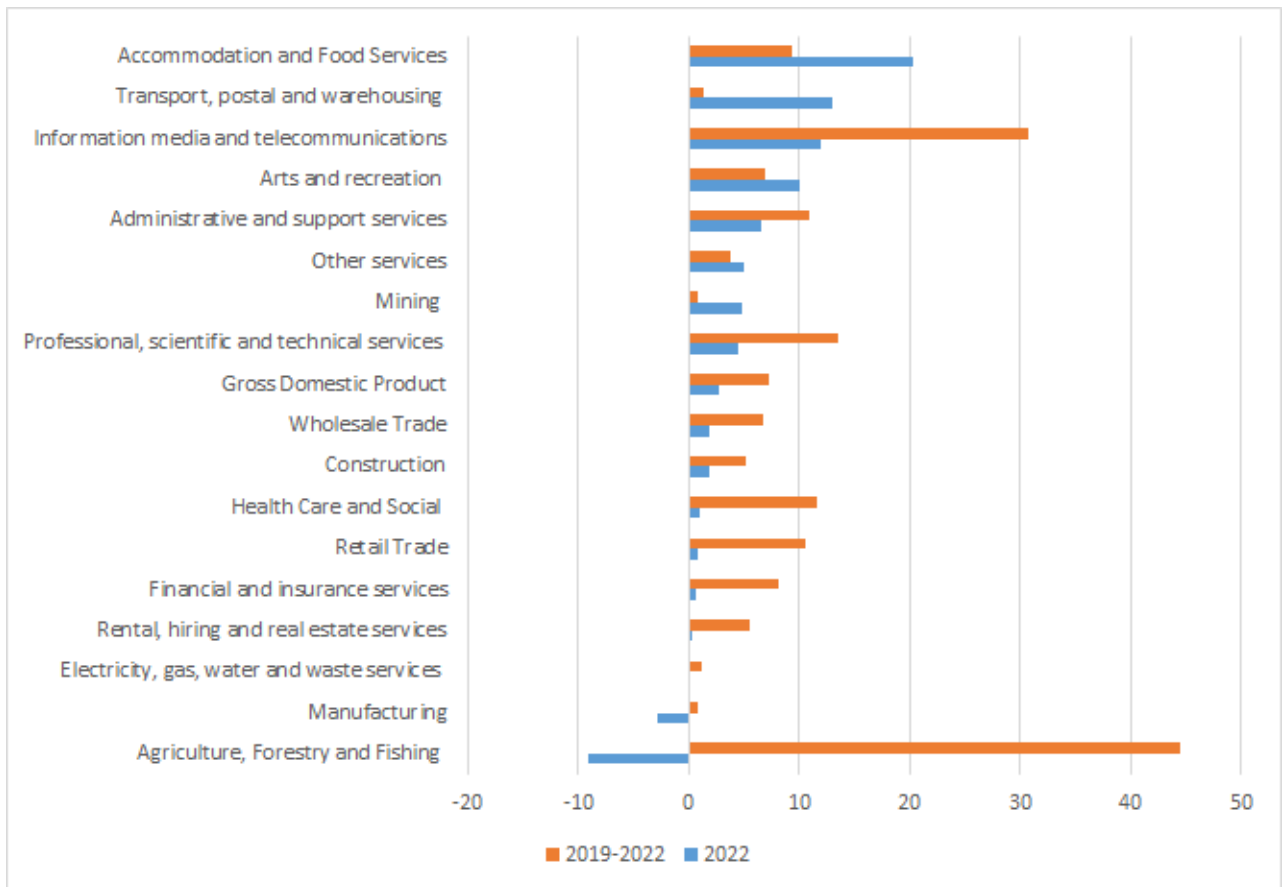
“More positive signs have now started to appear, with business and consumer sentiment starting to improve, food and energy prices falling back and the full reopening of China”.¹⁴¹

4.3 Growth by industry

142. All industries have recorded encouraging growth in gross value-added (GVA) when measured against levels immediately prior to the pandemic and up to the December quarter 2022 (See Figure 25). Growth in gross value-added in award reliant industries in 2022 was generally strong. Four of the seven of those industries posted growth rates in GVA in excess of GDP in 2022 lead by a strong rebound for Accommodation and Food Services of 20.3% as well as Arts and Recreation with 6.6%. For the other Award reliant sectors, both Retail and Health Care and Social Assistance have performed strongly when judged against levels of GVA immediately prior to the pandemic. The one exception is Rental, Hiring and Real Estate, which has still recorded steady growth over both time periods.

¹⁴¹ OECD (March 2023), *Economic Outlook, Interim Report, A Fragile Recovery*, page 3

Figure 25: Growth in Gross value-added (GVA) by industry



Source: ABS National Accounts

4.4 Consumption

143. As discussed earlier, pent up household savings have driven the post lockdown recovery in the Australia economy in late 2021 and early 2022. However by the end of 2022, the spike in inflation and the corresponding drop in real wages, combined with aggressive monetary policy to raise interest rates has seen the rate of household savings drop, and levels of household savings begin to decline.

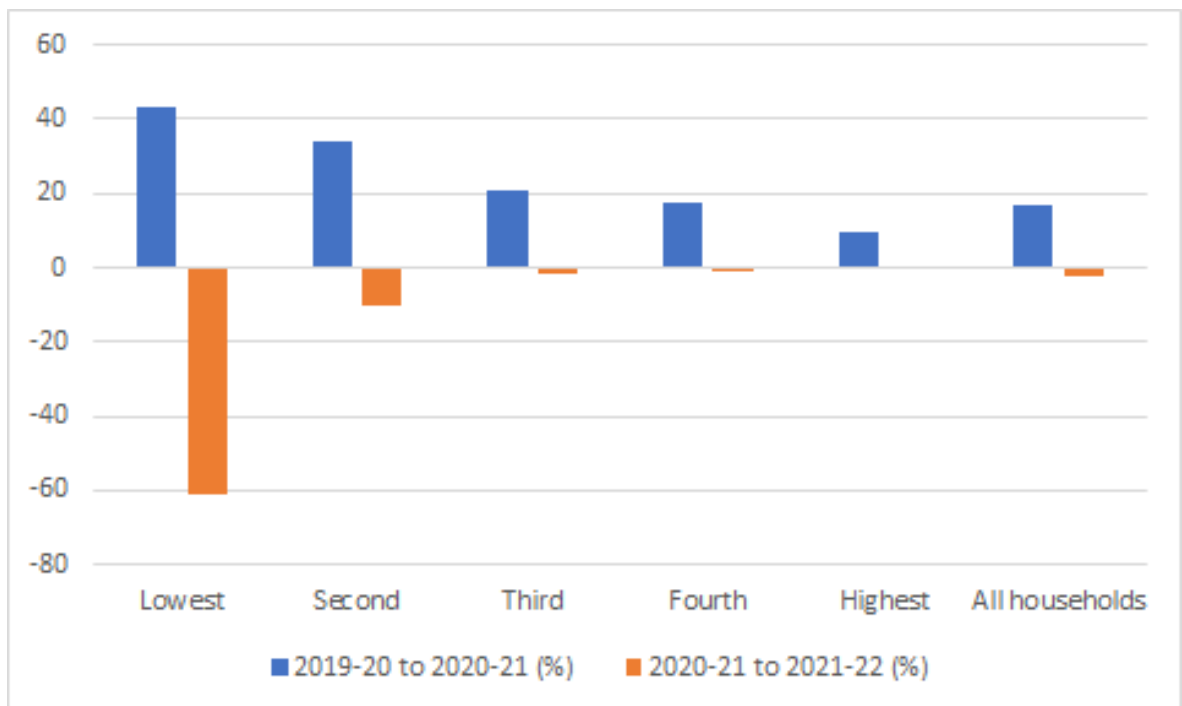
144. For the December 2022 quarter the rate of household savings dropped to just 4.5%, the lowest rate since September 2017, coming off the pandemic peak of 23.6% in June 2020.¹⁴²

145. Similarly, the change in gross savings by household income type shows significant impacts on lower income households across the lowest and second household income quintiles. Please

¹⁴² ABS National Accounts (December 2022)

note, this data is only until the end of the last financial year, when inflation was far from peaking and the RBA had only lifted the cash rate twice. The current situation is likely to be far more pronounced.

Figure 26: Change in gross saving by equivalised household income quintile 2020-2021 to 2021-2022 (%)



Source: ABS, Australian National Accounts: Distribution of Household Income, Consumption and Wealth (2020-2021).

146. Measures of household consumption showed a similar decline. Household consumption only grew by 0.3% for the December quarter 2022, a dramatic drop from 6.3% growth recorded in the previous December 2021 quarter. Growth in household discretionary consumption has also dropped rapidly to grow by just 0.4% in the December 2022 quarter, whereas twelve months earlier it was 15%.¹⁴³ The ABS index of household spending has also recently decline from a record high of 149.1 points in December 2022 down to 127 points in January this year.¹⁴⁴

147. Consumer confidence has taken a similar dive, dropping to a near record low of 78.5 per cent in both the February and March 2022 surveys of the Westpac Melbourne Institute Consumer

¹⁴³ ABS National Accounts (December 2023)

¹⁴⁴ ABS Monthly Household Spending Indicators, January 2023

Sentiment Index.¹⁴⁵ Concerningly, the index has only ever seen two months below 80 “during the late 1980s/early 1990s recession”.¹⁴⁶ Similarly, household disposable income also recorded the sharpest drop in real, year-ended growth (see Figure 27).¹⁴⁷

148. In conclusion, the tightening of monetary policy and inflation, and only modest wage growth is having a significant impact on the rate of savings, income and confidence, with levels of consumption also beginning to suffer. Nevertheless levels of business turnover (discussed below) are still robust suggesting that pent-up household savings throughout lockdowns have acted as a significant buffer for households. But as RBA Governor Philip Lowe has recently noted: “Some households have substantial savings buffers, but others are experiencing a painful squeeze on their budgets due to higher interest rates and the increase in the cost of living.”¹⁴⁸ It is likely the case that lower income households with award reliant workers are the ones already feeling this painful squeeze.

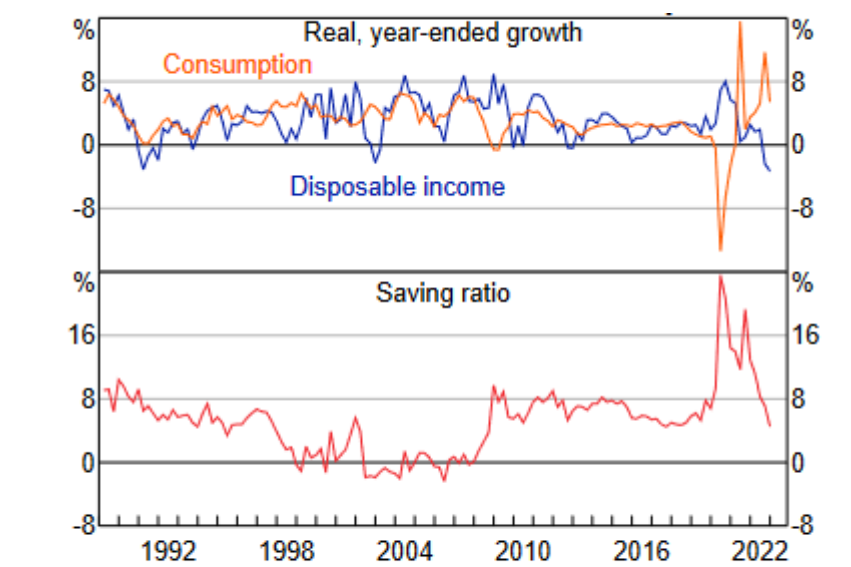
¹⁴⁵ Melbourne Institute, (14 March 2023), “Consumer sentiment falls back into deep pessimism”: <https://melbourneinstitute.unimelb.edu.au/publications/macroeconomic-reports/latest-news/index-of-consumer-sentiment>

¹⁴⁶ Ibid

¹⁴⁷ RBA (March 2023) *Chart Pack*, page 6

¹⁴⁸ Statement by Philip Lowe, Governor, RBA, Monetary Policy Decision, 7 March 2023.

Figure 27: Household Income and Consumption (real, year-ended growth)



Source: ABS; RBA. Note: Household sector includes unincorporated enterprises; disposable income is after tax and interest payments; saving ratio is net of depreciation.

4.5 Productivity

149. Given that productivity estimates from year to year are volatile, the Panel has recognised that labour productivity is best measured over the course of a productivity cycle.¹⁴⁹ There are sound reasons to be cautious of short-run productivity measurements in last year's data, given the distorting effect of the lockdowns in 2020 and 2021 which induced a decline in the hours worked, which impacted upon capital deepening. In 2022, a correction appears to have taken place, as hours worked has recovered significantly, outpacing GDP growth and therefore pulling down key measures of labour productivity. For example, GDP per hour declined by 3.5 per cent in 2022 because the number of hours worked grew by 6.5%, more than doubling growth in GDP at 2.7%¹⁵⁰, in part due to the unwinding of the distortionary impacts of COVID-19 on workforce composition, according to the ABS.¹⁵¹
150. Measured over the three years of the pandemic, labour productivity has grown by 0.8 percent overall. Measured within the current productivity cycle, the average annual growth in the market sector is 1.2 per cent from 2017-18 to 2021-2022.¹⁵² Award reliant industries in the market sector, nearly all have higher average annual productivity growth than the 1.1%

¹⁴⁹ See [2021] FWCFB at [98];

¹⁵⁰ FWC Statistical Report, table 2.2.

¹⁵¹ ABS (1 March 2023), "12 things that happened in the Australia economy during the last quarter."

¹⁵² FWC Statistical Report Chart 2.2

annual growth in market sector industries overall from 2016-2017 to 2021-2022, with only "Other Services" and Accommodation and Food Services" averaging 0.7% and 1% per annum respectively.¹⁵³

151. Treasury is now also projecting that the Australian economy will deliver labour productivity improvements of 1.2% per annum over the longer term.¹⁵⁴ Even these projections may be overly cautious given the new Government's significant investments that should make a positive contribution to productivity growth. These include:

- a. Expected improvements in childhood education and development and women's workforce participation as a result of the \$4.7 billion investment over four years in improved Child Care Subsidy rates for families, and improved paid parental leave which both come into effect on 1 July 2023.¹⁵⁵
- b. Better alignment of skills development with current and future industry needs as a result of the establishment of Jobs and Skills Australia and the industry-driven Jobs and Skills Councils.
- c. The establishment of the \$15 billion National Reconstruction Fund to invest in developing areas of the Australian economy to spur productivity and growth.

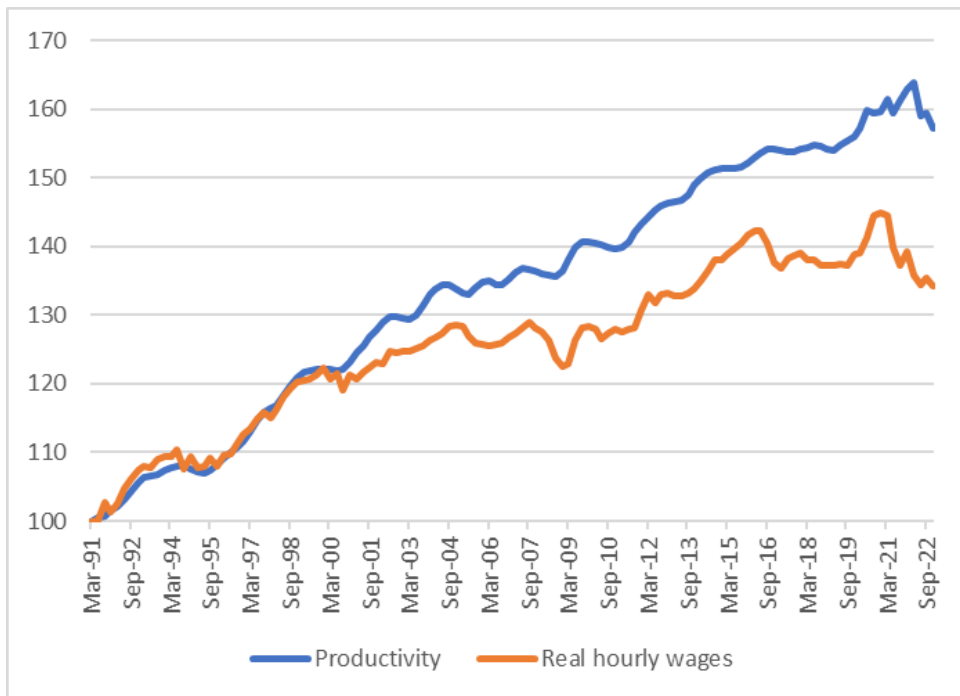
152. While productivity growth has been modest, it has still outstripped real wage growth over the past two decades, even ignoring the collapse in real wages since the current spike in inflation, as illustrated in Figure 28. Workers are not receiving the benefits of productivity improvements, with annual average growth in productivity consistently higher than annual average growth in real hourly wages in the past seven four-yearly blocks since 1995 (see Figure 29).

¹⁵³ FWC Statistical Report Table 2.3

¹⁵⁴ Commonwealth Treasury, *October Budget 2022-23, Budget Papers No. 1*, page 83

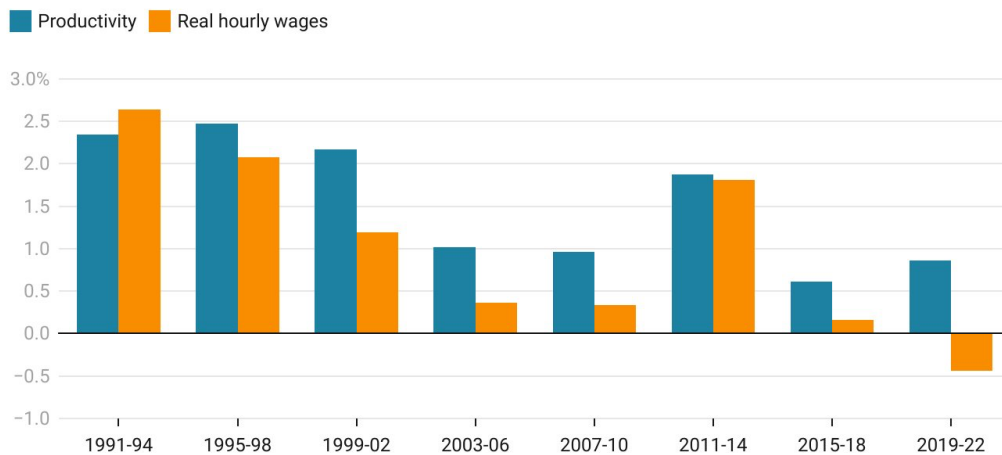
¹⁵⁵ Budget Papers No 1 Ibid. pages 59 to 62

Figure 28: Index of productivity and real wages, March 1991 – December 2022



Declined with GDP deflator, labour income per hour = compensation of employees, employee + OMIE hours, rolling 12-month average. Source: Jericho (2023), 'Productivity is all well and good, but what's in it for Australia's workers?', The Guardian Australia, 23 March. Data sourced from ABS.

Figure 29: Average annual growth (per cent) in productivity and real hourly wages, 1991 - 2022

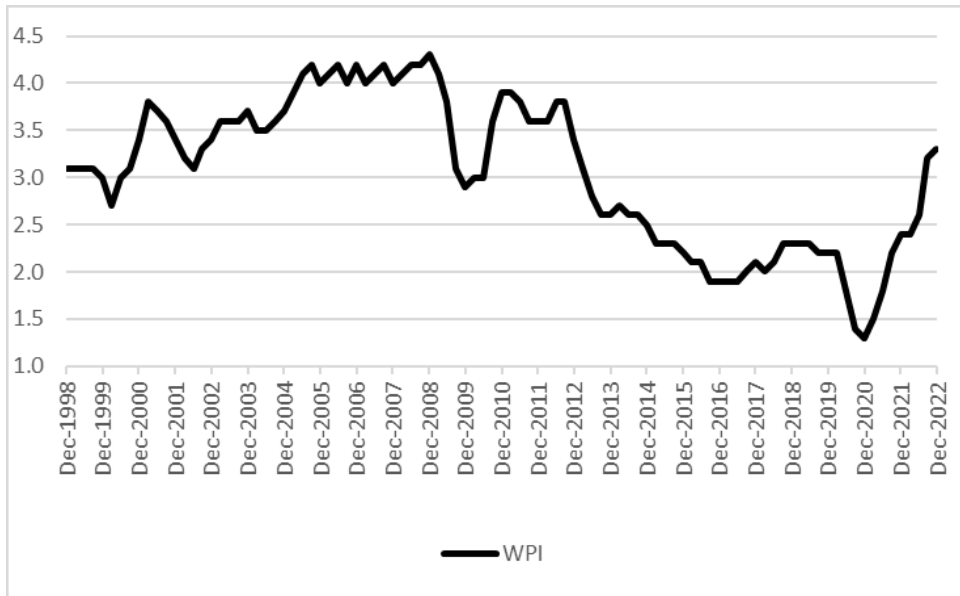


Hours = hours worked by employee + OMIE hours. Source: Jericho (2023), 'Productivity is all well and good, but what's in it for Australia's workers?', The Guardian Australia, 23 March. Data sourced from ABS.

4.6 Wages

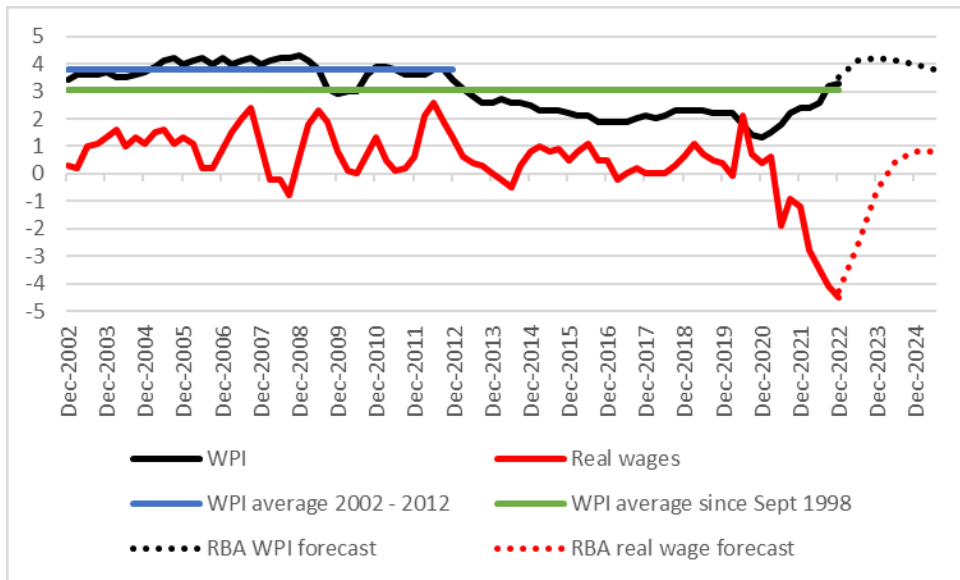
153. Wage growth has improved off record lows over the past six months, but has still been rapidly outpaced by inflation. The Wage Price Index reached 3.3% for the year to December 2022, more than doubled by the Consumer Price index which reached 7.8% over the same period. Real wages therefore effectively fell by 4.5 percentage points in 2022, the largest fall in recorded history. Furthermore, the highest nominal wages growth in a decade means little when that decade had the worst wage stagnation workers have ever experienced, with annual WPI growth averaging just 2.3 per cent in the decade to December 2022, significantly lower than the previous decade's average of 3.8 per cent (for the decade to December 2012) and well below the 3.1 per cent average since the beginning of the WPI series in September 1998.

Figure 30: Wage Price Index, all sectors (excluding bonuses), seasonally adjusted, year-on-year growth, 1997 to 2022



Source: ABS 6345.0, Table 1.

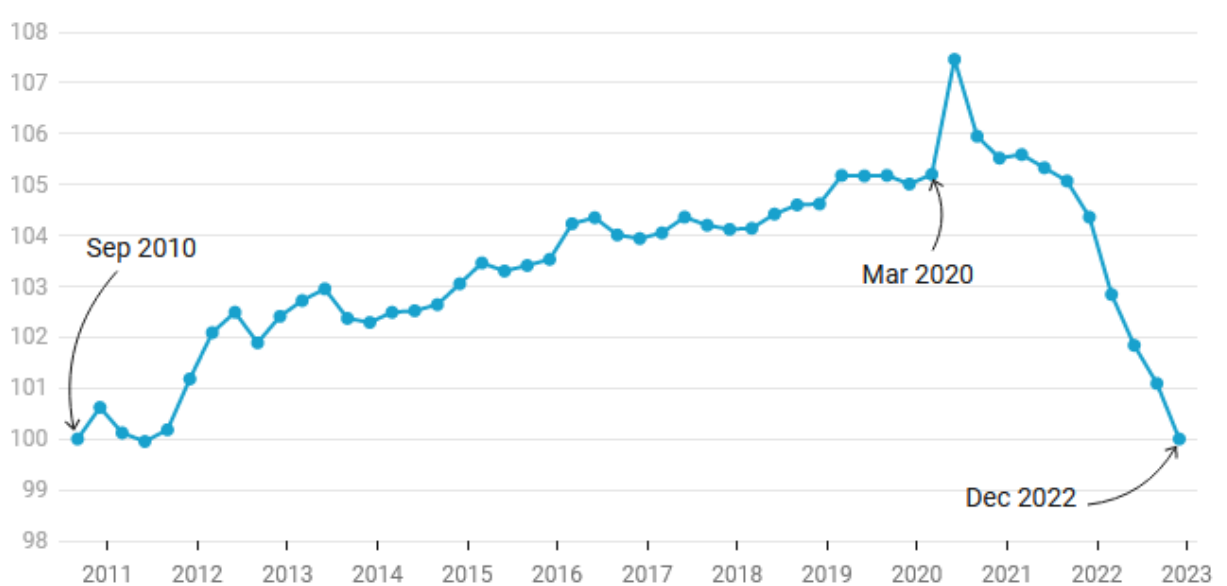
Figure 31: Growth rates from corresponding quarter of previous year for WPI, real wages (deflated by CPI growth from corresponding quarter of previous year), and average WPI growth rates, all seasonally adjusted



Source: ABS Wage Price Index, cat. 6345.0, Table 1, and ABS Consumer Price Index, cat. 6401.0, Table 8.

154. The rise in inflation in 2022 has seen wages go backwards to levels not seen since 2010, as Figure 32 illustrates.

Figure 32: Index of real wages (December 2022 = 100)

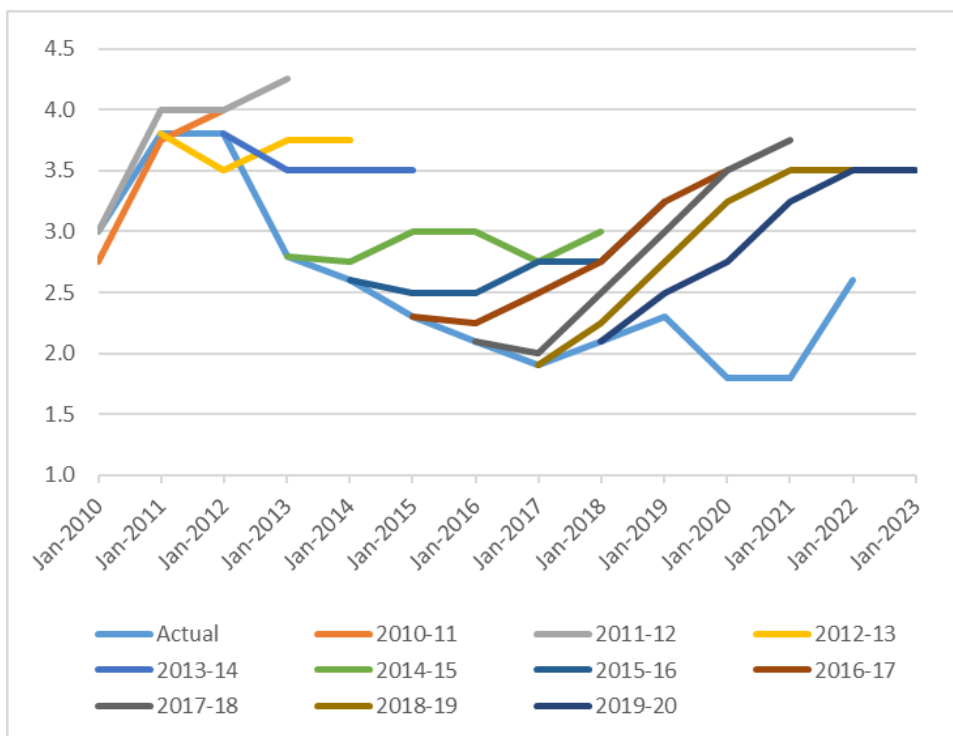


Source: Centre for Future Work

155. Moreover, the cost to workers of real wage declines will remain even if inflation subsides in the year ahead. The RBA's February 2023 Statement on Monetary Policy forecasts WPI to grow 4.1 per cent in the year-to-June 2023, 4.2 per cent in the year-to-December 2023, 4.1 per cent in the year-to-June 2024, 4 per cent in the year-to-December 2024, and 3.8 per cent in the year-to-June 2025. Given the RBA's forecasts for inflation are 6.7 per cent, 4.8 per cent, 3.6 per cent, 3.2 per cent and 3 per cent respectively, this suggests real wages will continue to fall for much of the period covered by the Panel's 2023-24 decision, with real wages falling 2.6 per cent in the year-to-June 2023, falling 0.6 per cent for the year-to-December 2023, and only rising in the year-to-June 2024 by a mere 0.5 per cent. It is also important to note that RBA WPI forecasts have nearly always proven to be too optimistic. For example, it recently forecast WPI to reach 3.5 % in the year to December 2022 yet it only reached 3.3%, actually registering slower growth in the December quarter than the preceding quarter.
156. WPI growth, while slightly stronger in the past few quarters, is still forecast to be well below inflation for 2023-24, just as it was in 2022-23.
157. Furthermore, both Treasury's and the RBA's forecasts for nominal wages growth have been consistently over-optimistic for the past several years. When considering the Reserve Bank's latest forecasts that nominal wages growth will lift above 4 per cent in the second half of

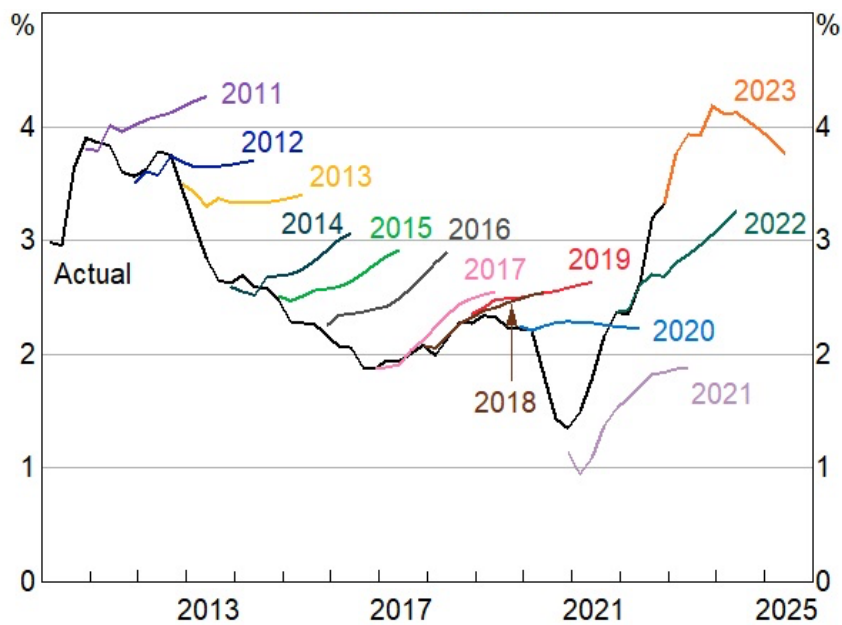
2023 and that real wages growth will recover rapidly to positive territory in 2024, we submit that these forecasts for nominal and real wages growth are likely to be similarly over-optimistic, that the Panel should assume that actual nominal and real wages growth are likely to considerably underperform expectations in the 12 to 18 months ahead, and that the Panel should disregard the RBA's and Treasury's optimistic forecasts based on their chronic underperformance. This is relevant to the Panel's decision this year because NMW and modern award minimum wage increases boost Wage Price Index growth (as observed last year) both directly and due to some "spillover effects". Therefore, to the extent to which a "soft landing" in the national economy relies on protecting household incomes, we submit that the Panel's decision has a role to play.

Figure 33: Treasury forecasts for annualised WPI growth (seasonally adjusted) at each of the 2010 to 2019 Budgets



Source: Treasury, Budgets 2010-11 to 2019-20.

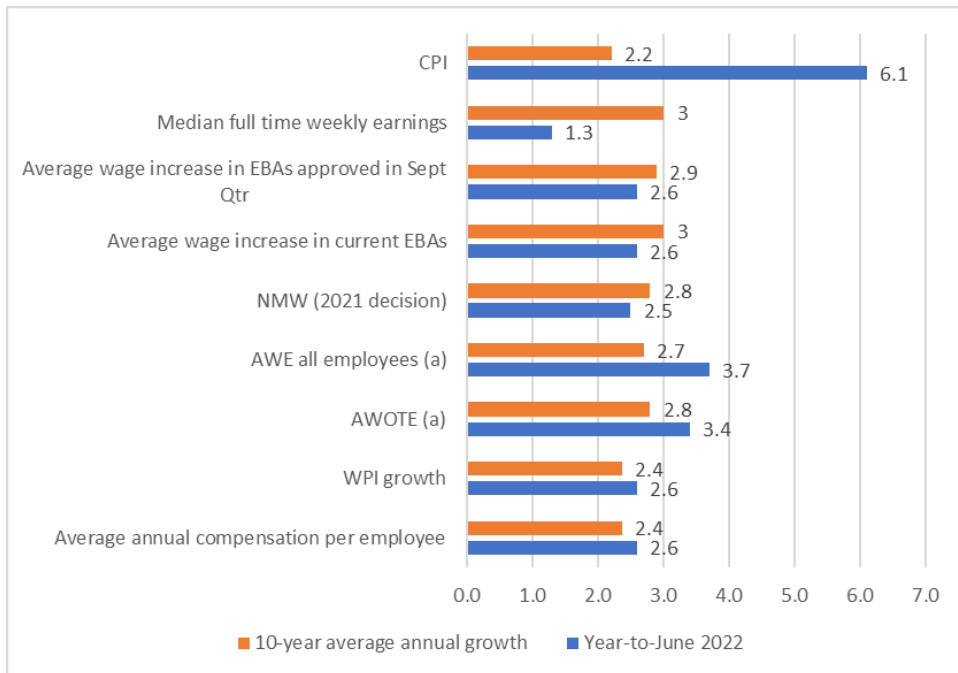
Figure 34: RBA forecasts for the Wage Price Index, year-ended growth



Sources: ABS; RBA February SMP forecasts

158. Figure 35 below compares various measures of wages growth for the year-to-June 2022, to align more closely with the Panel’s cycle. It is notable that inflation outstripped all measures of nominal wages growth (in a marked deterioration from the previous year, where real wages growth was observed in at least just one measure, namely median full-time weekly earnings). Workers are suffering real wage cuts, regardless of which measure of wages growth one uses. This gives a sense of just how much workers had lost coming into the 2022-23 financial year. Furthermore, many measures of wages growth were still below their 10-year averages, specifically median full time weekly earnings, average wage increases in both current EBAs and EBAs approved in the September quarter, and the National Minimum Wage (2021 decision).

Figure 35: Various measures of wages growth, year to June 2022 (%)



Source: ABS 5206, 6345, 6302, 633, 6401; Attorney-General’s Department.

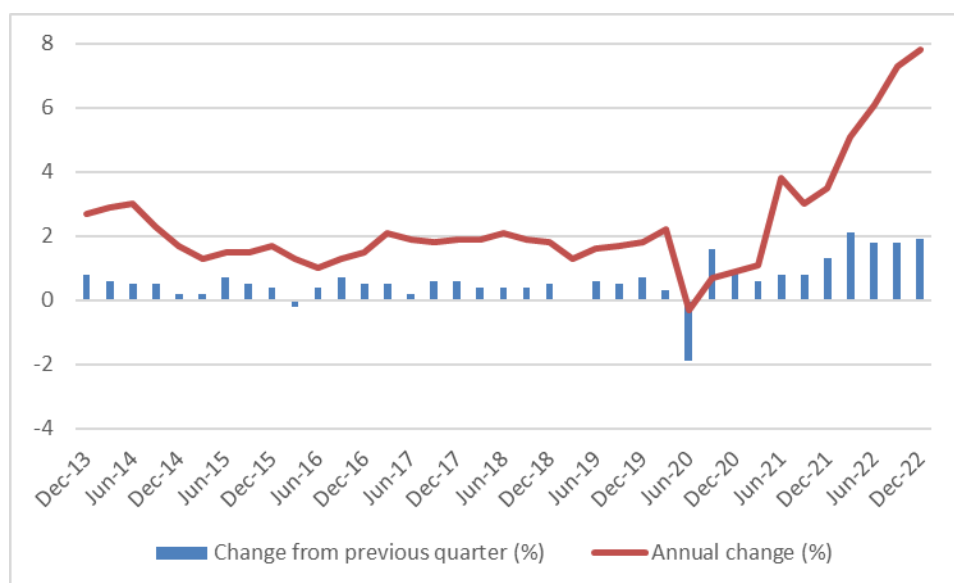
(a) AWOTE and AWE All Employees data is collected for May and November of each year. The year-to figures are for the year-to-November 2022 and the 10-year average is the average for the years-to-November.

(b) Median full-time weekly earnings are for the year-to-August.

4.7 Inflation

159. The rise in inflation was the single biggest change in economic circumstances identified in last year's review, but even then, it underestimated the extent of the rise. At the time of the Panel's 2021-22 decision, headline inflation was 5.1 per cent for the year-to-March 2022, and the RBA's most recent forecasts at the time (in the May 2022 Statement on Monetary Policy) forecast inflation of 5.5 per cent for the year-to-June 2022, 5.9 per cent for the year-to-December 2022, and 4.3 per cent for the year-to-June 2023. In the period since the Panel's 2021-22 decision, inflation has risen rapidly, far outstripping those forecasts. Inflation was 6.1 per cent for the year-to-June 2022, 7.3 per cent for the year-to-September 2022, and 7.8 per cent for the year-to-December. These rate rises have entirely eroded the modest real wage gains the Panel had intended for workers on the NMW and the lower rungs of the Award system.

Figure 36: Consumer Price Index, Original series



Source: ABS 6401.

160. Unfortunately this is the second year in a row that this has occurred. The Review decision for 2020-2021 awarded a 2.5 per cent increase when CPI and trimmed mean inflation were forecast at the time to grow by 1.25 percent and 1.5 per cent respectively, over the year to the June quarter 2022. Instead they hit 5.1 percent and 3.7 percent, resulting in a significant fall in real wages for award reliant employees as the Panel acknowledged last year.¹⁵⁶

¹⁵⁶ [2022] FWCFB 3500 at 135

161. The approach consistently taken by the Panel to forecasts and actual data outcomes is reflected in this observation from the 2012-13 Review decision:

“To the extent that the forecast economic indicators do not ultimately reflect the actual performance of the economy, this forms part of our broad assessment and our consideration of the actual indicators in subsequent reviews.”¹⁵⁷

162. If CPI for this review period comes in at 6.75% for the year to June 2023, as projected by the RBA, then award reliant workers will have faced deep cuts to their real wages over the past two review periods. As Table 3 illustrates, a worker on the National Minimum Wage will have seen a fall in the value of their wages of 5.43%. For a worker closer to the C10 rate in Awards, the cut is greater at 6.06%.

Table 3: Real wage growth and Review decisions 2020-21, 2021-22

	Growth in National Minimum Wage	Growth in C10 rate and above (%)	Growth in CPI
FY 2021-22	2.50	2.50	6.1
FY 2022-23	5.20	4.60	6.75 (*)
Cumulative growth	7.83	7.22	13.26
Real wage growth over period	-5.43	-6.04	

Source: Fair Work Commission, ABS CPI and (*) RBA SMP (February 2023) projection and ACTU calculations.

163. In practical terms, an employee on the NMW will earn \$2,134.62 less in this financial year than if their wages had grown by CPI over the past two years (1 July 2021 to 30 June 2023). For a worker at the low paid threshold of two thirds of the median wage, the difference is \$3,002.46.

Table 4: Effective real wage cut for award reliant workers since 1 July 2021

	Annual full-time wage if had grown at same rate as CPI since 1 July 21	Annual full-time wage if had grown by rate of Review decisions since 1 July 21	Difference
Employee on National Minimum Wage	\$44,524.25	\$42,389.64	\$2,134.62
Employee on two thirds median earnings	\$56,301.01	\$53,298.55	\$3,002.46

¹⁵⁷ [2013] FWCFB 4000 at [334]

Source: ABS CPI, Fair Work Commission, RBA SMP (February 2023) projections and ACTU calculations.

164. The Panel last year anticipated this challenge in its last Review Decision, observing that: “the increases we have determined will mean a real wage cut for some award reliant employees. This is an issue that can be addressed in subsequent reviews.”¹⁵⁸ The ACTU urges the Panel to address this in this Review by considering:
- a. The cumulative impact on award reliant employees of real wage cuts due to higher than predicted levels of inflation over the previous two Review decisions, and
 - b. Adopting an approach to future projections of inflation that reduces, as far as possible, the risk of real wage cuts continuing for these employees.
165. In the Annual Wage Review last year, employer organisations made the frequent claim that an increase in nominal wages above the positions they put would drive a wage-price spiral, entrenching or increasing inflation. Despite the Panel awarding a nominal wage increase above their proposed increases – and in some cases well above their positions - no such thing has happened. Even the Reserve Bank of Australia, which has frequently warned of a “wage price spiral”, was forced to concede in early March 2023 that: “at the aggregate level, wages growth is still consistent with the inflation target and recent data suggest a lower risk of a cycle in which prices and wages chase one another.”¹⁵⁹
166. The contribution of the AWR decision to overall wage growth is also modest. Award reliant employees, they typically work less hours and earn less pay than other employees. As a result, the average weekly total cash earnings of an award reliant worker was \$849.10 per week in May 2021, compared to \$1556.80 as the average for all other methods of setting pay.¹⁶⁰ As Table 5 below shows, the consequence, the effective contribution of award pay to the total amount of employee cash earnings is just 14%, despite award reliant employees. The impact of the Review decision is even less than that because firstly, Modern Awards only cover 20.5% of employees¹⁶¹, implying the effective contribution is closer to just 12.5%, and secondly, that is assuming the entire increase is passed on to all workers, i.e no underpayment is occurring.

¹⁵⁸ [2022] FWCFB 3500 at [196].

¹⁵⁹ RBA (7 March 2023), Statement by Philip Lowe, Governor: Monetary Policy decision.

¹⁶⁰ ACTU calculations from ABS Employee Earnings and Hours (May 2021).

¹⁶¹ Kelvin Yuen and Josh Tomlinson, *A profile of employee characteristics across modern awards*, Fair Work Commission, March 2023, page 13.

Table 5: Method of pay setting and effective contribution to total cash earnings (May 2021)

Method of pay setting	Average weekly total cash earnings (\$)	Proportion of total employees (%)	Effective contribution to total cash earnings of employees (%)
Award	\$849.20	23.0	14.0
Collective Agreement	\$1,450.20	35.1	36.5
Individual Arrangement	\$1,663.90	37.8	45.1
Owner Manager of Incorporated Enterprise	\$1,481.40	4.1	4.6

Source: ABS Employee Earnings and Hours, (May 2021), ACTU calculations.

167. Similarly, the Annual Wage Review decision makes a very modest impact on the Wage Price Index. Despite the highest annual nominal increase in minimum and award wages in over 25 years, Award wages only contributed 0.29 percent points to the WPI increase of 3.3% in 2022.¹⁶² While the WPI is not measuring the absolute growth in total wages, it is nevertheless an illustrative proxy.

168. Wages overall continue to make a negligible contribution to inflation, as central banks have been able to recently shed light on. The European Central Bank found that for the first three quarters of 2021, “Profits, not wages were main contributor to inflation, as firms pass on higher costs”.¹⁶³ It did this by examining the composition of the GDP deflator – the measure of the money price of all new, domestically produced goods and services in a year relative to the real value of them. Like Australia’s Consumer Price Index, it is a measure of price inflation or deflation. Branches of the US Federal Reserve conducted similar analyses and reached similar conclusions, finding that firm mark-ups were “a major contributor to inflation in 2021”.¹⁶⁴ Josh Bivens from the Economic Policy Institute, a US think tank, calculates that Unit Labor Costs contributed just 7.9% of the growth in unit prices in from the second half of 2020 to the end of 2021. In contrast corporate profits contributed 53.9%.¹⁶⁵

¹⁶² ABS Wage Price Index, December 2022. Note ABS data on the contribution of awards to WPI growth is only slightly affected by the inclusion of both state and federal awards.

¹⁶³ Isabel Schnabel (11 May 2022), *The Globalisation of inflation, Keynote speech* https://www.ecb.europa.eu/press/key/date/2022/html/ecb.sp220511_1~e9ba02e127.en.html at slide 9.

¹⁶⁴ Andrew Glover, Jose Mustre-del-Rio and Alice von Ende-Becker (12 January 2023), “How much have record company profits contributed to recent inflation?” Economic Review, First Quarter 2023, Federal Reserve Bank of Kansas City, <https://www.kansascityfed.org/research/economic-review/how-much-have-record-corporate-profits-contributed-to-recent-inflation/>

¹⁶⁵ Josh Bivens (21 April 2022), “Corporate profits have contributed disproportionately to inflation. How should policy makers respond?” Economic Policy Institute blog: <https://www.epi.org/blog/corporate-profits-have-contributed-disproportionately-to-inflation-how-should-policy-makers-respond/>

169. In Australia, The Centre for Future Work applied these methods to the September 2022 quarter national accounts, finding that:

“After making allowance for normal (target) inflation in unit costs for all factors of production, a total of \$181 billion in additional (excess) factor incomes can be associated with the run-up in inflation beyond target rates since early 2021. Of that total, 69% is due to the collection of extra corporate profits. 18% can be associated with increases in unit labour costs above and beyond the target 2.5% inflation rate. Excess small business profits account for another 14% of excess increases in the GDP deflator. Taxes net of subsidies, and factor incomes to the other smaller factors, have had little impact on above-target inflation.”¹⁶⁶

170. A 2023 paper by Weber and Wasner explains why this is occurring, using US data.¹⁶⁷ They argue that pandemic and post-pandemic inflation is “predominantly a sellers’ inflation that derives from microeconomic origins, namely the ability of firms with market power to hike prices.” The authors note that “such firms are price makers, but they only engage in price hikes if they expect their competitors to do the same. This requires an implicit agreement which can be coordinated by sector-wide cost shocks and supply bottlenecks.” Using firm-level data, they explain the role of profits in driving inflation as a process with multiple stages: firstly, price rises in “systemically significant” upstream sectors (due to either price rises for commodities or supply bottlenecks) lead to windfall profits and generate impetus for additional price rises. Secondly, downstream sectors propagate (or in cases of temporary monopolies caused by bottlenecks, amplify) those price pressures in order to protect their profit margins from rising input costs. Large firms are able to profit in a high inflation environment because under conditions of imperfect competition, rising sector-wide costs can create implicit (rather than explicit) agreements to coordinate price rises, “since all firms want to protect their profit margins and know that the other firms pursue the same goal, they can increase prices, relying on other firms to follow suit... if firms deviate from this price hike strategy, the threat of share sell-offs by financial investors can enforce compliance with such implicit agreements... bottlenecks can create temporary monopoly power which can even render it safe to hike prices not only to protect but to increase profits.” This explains

¹⁶⁶ Dr Jim Stanford (23 February 2023), “The Profit-Price Spiral: The Truth behind Australia’s Inflation, Centre for Future Work. <https://australiainstitute.org.au/wp-content/uploads/2023/02/Profit-Price-Spiral-Research-Report-WEB.pdf> page 13

¹⁶⁷ Weber, I.M. and Wasner, E. (2023) ‘Sellers’ Inflation, Profits and Conflict: Why can Large Firms Hike Prices in an Emergency?’, *University of Massachusetts Amherst Economics Department Working Paper Series*. Accessed at https://scholarworks.umass.edu/econ_workingpaper/343/.

why large firms have raised prices in the pandemic and post-pandemic periods, while having kept prices stable in previous decades.

171. In Australia, these findings seems particularly applicable given that “measures of market power have trended upwards in Australia since the mid 2000s”.¹⁶⁸
172. By contrast, much media speculation on the current inflation episode stems from the dominant interpretations of the 1970s, now encapsulated in one of two perspectives: the “New Keynesian” view of inflation driven by too much aggregate demand relative to aggregate supply, and the Monetarist view of inflation driven by excessive growth in the money supply. In both the New Keynesian and Monetarist views, the role of costs in driving inflation is limited to higher wages growth alone (caused by tight labour markets), with no role for corporate profits or firm-level price-setting power. Current inflation is therefore more akin to the post-war inflation of 1947 (which similarly saw emergent bottlenecks and strong profit growth) than the 1970s wage-price spiral.¹⁶⁹ Indeed, there is no evidence of a wage-price spiral in the current inflationary episode.
173. Inflation is expected to moderate throughout 2023, projected to reach 4.75% by the end of the year, before dropping further to 3.6% by the year to June 2023. There are early signs pointing to such moderation:
 - a. The ABS Monthly CPI indicator has dropped to 6.8% for the year to February 2023 on the relatively new ABS monthly CPI indicator, down from a high of 8.4% in December 2022.¹⁷⁰
 - b. Headline inflation began to drop in our major trading partners late last year, particularly in the US where the tightening of monetary policy began earlier, although core inflation is yet to move.¹⁷¹
 - c. Globally food and energy prices have fallen in recent months.¹⁷²
 - d. Tightening of monetary policy in Australia has had a significant impact with house prices dropping by 9 percent off their peak.¹⁷³ This is also reflected in the drop in price

¹⁶⁸ Treasury Round-up (October 2022), “Competition in Australia and its impact on productivity growth”: <https://treasury.gov.au/sites/default/files/2022-10/p2022-325290-productivity-growth.pdf>

¹⁶⁹ Weber, I.M. and Wasner, E. Ibid.

¹⁷⁰ ABS Monthly Consumer Price Index (February 2023)

¹⁷¹ OECD (March 2023) Ibid, page 11

¹⁷² OECD (March 2023) Ibid, page 8

¹⁷³ OECD (March 2023), Ibid, page 16

growth for new dwellings off a peak of 21.7% in June 22 down to 13% in February 2023.¹⁷⁴ The full effect of the rapid increase in interest rates will also only be felt in the coming months and the Board of the RBA seems to be committed to further rate rises.¹⁷⁵

- e. Household consumption growth has slowed due to the tighter financial conditions.
- f. Other key categories continue to see price growth slowing including automotive fuel, and food and non-alcoholic beverages.

174. However, there are also reasons to be cautious about the RBA’s projections of the decline in inflation: inflation remains broad based, and is yet to decline in a range of items within the CPI, especially across services. Further, international institutions are predicting Australia’s inflation to drop at slower rates than the RBA does as Table 6 below illustrates. Given the challenges in accurately predicting inflation, the Panel should place more weight on actual levels of inflation rather than projected ones.

Table 6: Headline inflation projections by institution

CPI projections	Dec 2023	Dec 2024
RBA – Feb 2023	4.8	3.2
OECD - March 2023	5	2.8
IMF – Feb 2023	5.5	3.2

Source: RBA February SMP, OECD March update, IMF Article IV consultation report.

175. While it seems clear that inflation is moderating, the pace at which it might do so is very unclear. Accordingly, the ACTU urges caution against overly optimistic predictions of the decline in inflation.

176. In conclusion, in considering the impact of inflation on its decision, the ACTU encourages the panel to consider:

- a. The worrying drop in real wages for low paid and award reliant workers over the past two review periods, given the significant differences between the projections of inflation that the Panel has relied upon, and the actual inflation then later realised.
- b. The negligible impact of the increase in minimum and award wages on the growth in prices across the economy.

¹⁷⁴ ABS Monthly Consumer Price Index (February 2023)

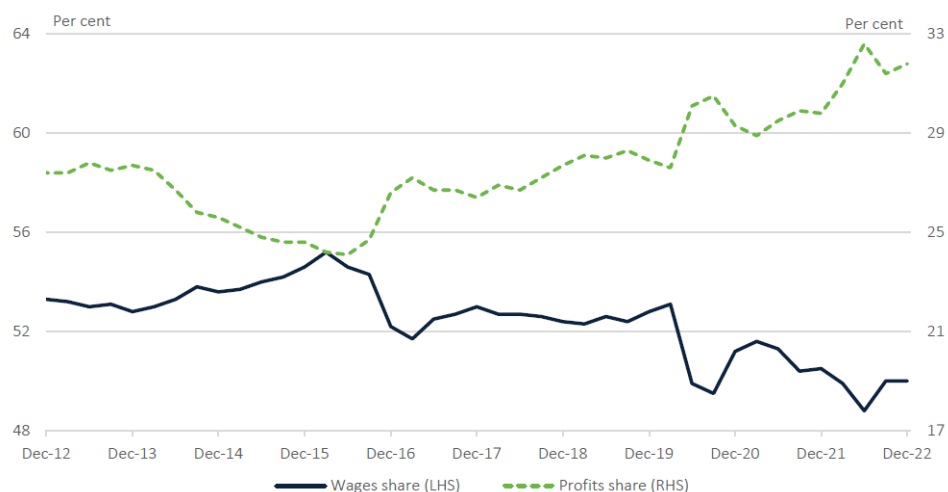
¹⁷⁵ RBA board decision (7 March 2023) <https://www.rba.gov.au/media-releases/2023/mr-23-07.html>

- c. The recent decline in inflation as a positive sign for the economy overall, but to exercise caution when relying on projections as to the timing and pace of further declines, and
- d. Finally, the impact of rising prices not inhibiting the ability of firms – and in many cases clearly enhancing that ability - to pay for reasonable wage increases as the next sections illustrate.

4.8 Profits

177. On a range of measures, overall corporate profits were strong in 2022, following the Covid-related disruptions of 2020 and 2021. In 2022, the profit share of total factor income hit a new high of 31.8% while the wage share hit a new low of 50%. This was driven by the 18.9% growth in total corporation gross operating surplus outpacing the 10.4% growth in total compensation of employees.¹⁷⁶

Figure 37: Profits and wages shares of total factor income



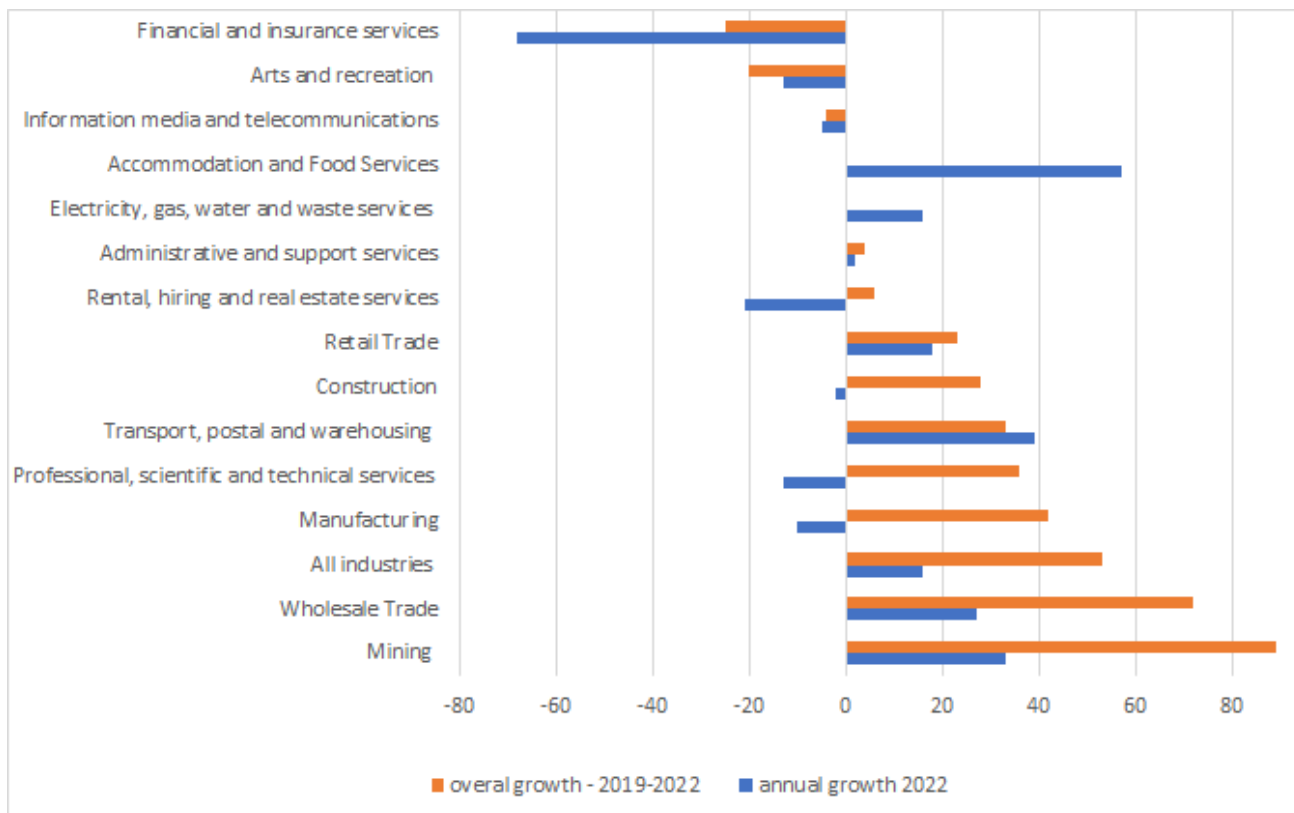
Source: Fair Work Commission (2023) 'Statistical Report', version 1, released 3 March, citing data from ABS 5620.0.

178. Examining profits by industry has been challenging throughout the pandemic, given the impact of lockdowns, especially on customer-facing businesses and government supports. A clearer picture however was emerging by the end of 2022. Award reliant industries generally recorded health levels of gross corporate operating profits in 2022, especially the strong bounce-back of Accommodation and Food Services, and Retail growing by 57% and 18%

¹⁷⁶ FWC Statistical Report Table 3.1

respectively. The two exceptions are Rental, Hiring and Real Estate Services and Arts and Recreation which recorded declines in 2022. For the real estate sector this comes after strong growth throughout the pandemic, leaving profits still 6% higher than the pre-pandemic measure of December 2019. This sector is also being impacted by a rapid increase in interest rates.

Figure 38: Growth in gross corporate operating profits by industry, 2022 and 2019-2022



Source: ABS National Accounts, Table 11.

179. Data examining profit margin by industry and by business size is only available for the 2020-21 financial year, so is affected by lockdowns and Covid-related supports, but it still tells a positive story. Despite the economic challenges of that financial year, five of the top seven award reliant industries posted profit margins better than their five-yearly average (which is calculated including that year). This holds true both for all businesses, and for small businesses, defined as those that employ less than 20 employees. Further, five of the seven award reliant industries recorded improvements in profits margins for all business better than the industry average. The only industry to underperform on these metrics is Rental, Hiring and Real Estate, but it is still sitting on the highest profit margins of all industries, at 54.5 percent and 43.4 percent for small and all businesses respectively. Similarly, while

private businesses in Health Care and Social Services faced a slight dip in profit margins, they still have the fourth highest margins of any industry at 20.7 percent.

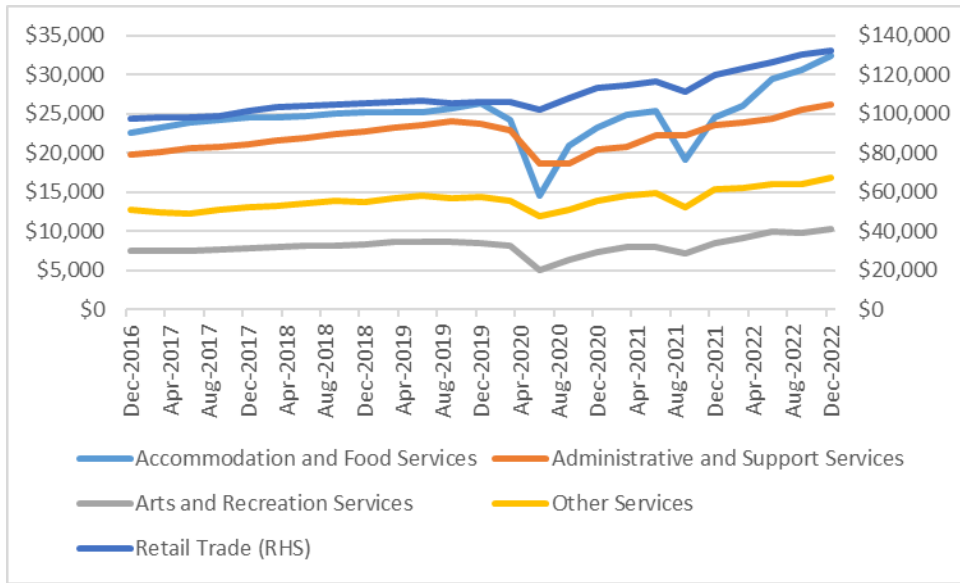
Table 7: Profit margins by industry and business size 2020-21 vs five years to 2020-21 (annualised)

Award reliant industry	Small business (%) 2020-21	All business (%) 2020-21	Change in small business (%) vs 5-year average	Change in all business margins (%) vs 5-year average
Accommodation and Food Services	7.7	8.2	0.9	0.8
Administrative and Support Services	19.0	9.6	1.7	1.4
Arts and Recreation	32.0	16.3	7.2	2.9
Health Care and Social Assistance (Private)	40.4	20.7	0.7	-1.6
Other Services	17.6	14.4	-0.6	0.8
Rental, Hiring and Real Estate Services	54.5	43.4	-3.0	-6.4
Retail Trade	9.2	6.2	1.7	1.5
Total selected industries	19.3	13.3	1.2	0.6

Source: ABS, Australian Industry, (FY2020-2021)

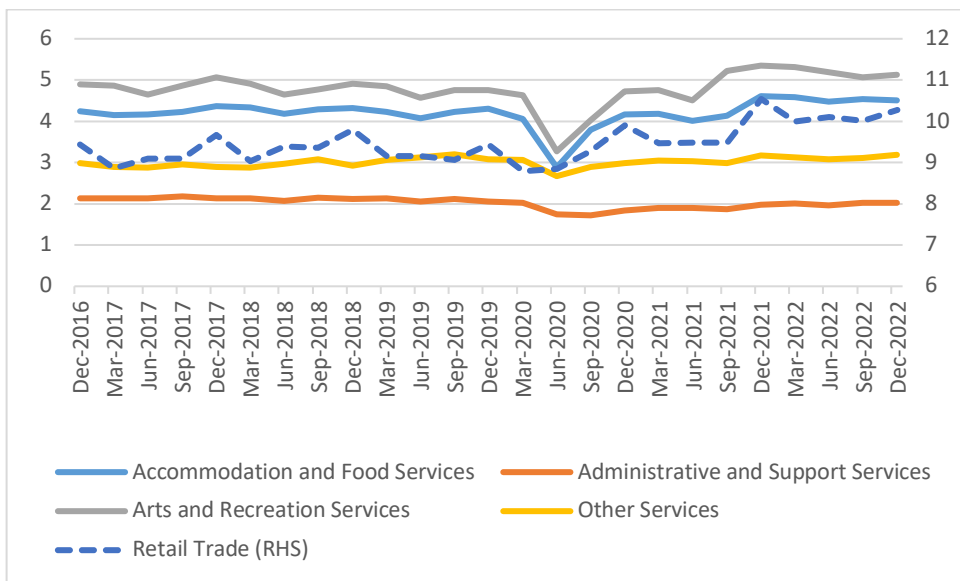
180. Figure 40 shows the recoveries in the sales to wages ratio in the December quarter 2020 and the December quarter 2021 have held firm across 2022 after the declines in the June and September quarters 2020 associated with COVID-19 lockdowns. While the sales to wages ratio for the Retail Trade sector and the Arts and Recreation Services sector declined slightly between December 2021 and September 2022, the ratio for the Retail Trade sector is still higher in December 2022 than at any time in the past six years bar December 2021 and is demonstrably higher than its pre-pandemic levels. The ratio for Arts and Recreation Services is equal or slightly greater than its pre-September 2021 heights (December 2016, December 2017 and December 2018). The ratio for Accommodation and Food Services is slightly above pre-pandemic levels, while the ratios for the Administrative and Support Services sector and the Other Services sector have broadly held steady, sitting at broadly the same levels in December 2022 as they were six years ago. These observations indicate that wage costs are not baking in lower profits or financial pressures in these sectors.

Figure 39: Income from sales of goods and services, current prices, quarterly December 2016-21, selected industries



Source: ABS 5676.

Figure 40: Sales to wages ratios, selected industries, quarterly December 2016-21

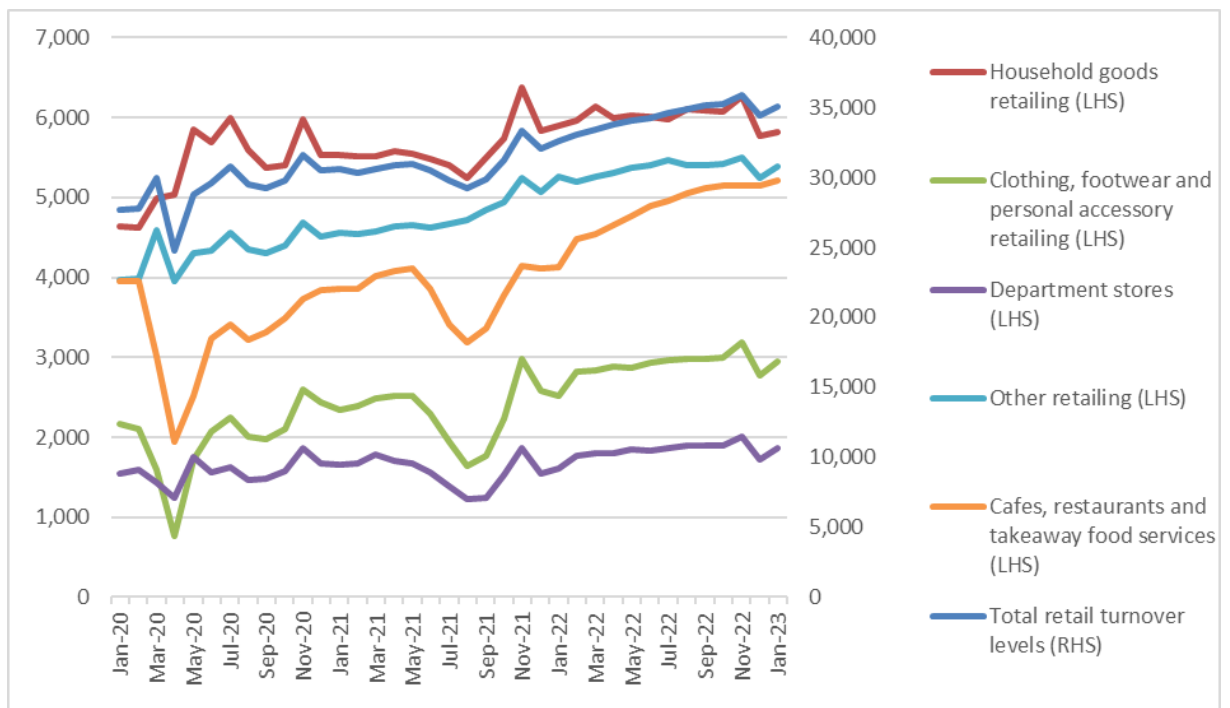


Source: ABS 5676. Data is expressed in original terms.

4.9 Retail performance

181. Retail performance is a relevant consideration of the Panel insofar as it serves as an indicator both of consumer spending as well as the revenue flowing to sectors that employ a relatively large share of award-reliant workers. Retail turnover continues to be strong, growing by 7.5% in the year to January 2023, picking up slightly from the 6.7% growth from the year to January 2022.¹⁷⁷ Quarterly data on income from sales of goods and services shows retail sales continue to recover strongly from the pandemic, with drops during key moments of the pandemic representing merely short-lived deviations from a strong long-run upward trend.
182. Examining the sectors within retail, it is clear that each of the major groups have not only recovered from their pandemic-era shocks, but are now experiencing turnover higher than their pre-pandemic levels. Indeed, monthly total retail turnover levels are \$7.37 billion higher in January 2023 than in January 2020. Monthly turnover is \$1.43 billion higher for Other Retail, \$1.26 billion higher for Cafes, Restaurants and Takeaway Food Services, \$1.9 billion higher for Household Goods Retailing, \$787.6 million higher for Clothing, Footwear and Personal Accessory Retailing, and \$321.4 million higher for Department Stores.

Figure 41: Total retail turnover levels and monthly turnover for individual retail sectors, 2020 – 2023, seasonally adjusted, current prices, \$ million



Source: ABS 8501

¹⁷⁷ ABS Retail Trade (January 2023).

4.10 Business entry, exist and bankruptcy

183. In a sign of strong economic environment for business, the overall number of businesses grew by 7% in the 2021-22 financial year, nearly doubling the rate of growth in the previous financial year, and the strongest performance in at least a decade.¹⁷⁸
184. Business entries, as a percentage of total businesses, reached a record high in the last financial year of 19.7%, jumping up from 15.8% in the financial year of 2021-22.¹⁷⁹ While there was a slight uptick in business exists from 12% in FY20-21 to 12.7% in FY21-22, the net entry rate was also at a record high of 7%.¹⁸⁰ Despite - or in many cases because of - rising input costs, Australian businesses are performing the best they have in a decade on these measures.
185. As Table 8 shows, Award reliant industries are faring well, with five of the seven industries registering overall growth rates (calculated as the difference between entry and exit rates) above the all-industry average, and three of those industries recorded the highest growth rates overall. They are also recording very strong entry rates.
186. Significantly, there was stronger business growth in every single industry in financial year 2021-22 than over the financial year for 2018-2019. This is especially true for award reliant industries where the level of growth was more than double for each of the seven industries of those comparison periods. Given this later reporting period would still include significant impacts from Covid-19 and lockdowns, this is particularly impressive.

¹⁷⁸ ABS, Counts of Australian Businesses including entry and exists, (June 2019 to June 2022)

¹⁷⁹ ABS, Counts of Australian Businesses including entry and exists, (June 2019 to June 2022)

¹⁸⁰ Net entry rate is the percentage growth in the number of businesses, also calculated by subtracting the percentage of exits from the percentage of entries.

Table 8: Overall business growth rates by industry 2021-2022

Industry	Overall growth in number of businesses 2021-2022 (%)	Overall growth in number of businesses – 2018-2019 (%)
Agriculture, Forestry and Fishing	1.3	-0.9
Mining	4.7	0.4
Manufacturing	5.5	0.8
Electricity, Gas, Water and Waste Services	6.0	4.8
Construction	8.1	2.3
Wholesale Trade	3.0	1.2
Retail Trade	7.1	1.4
Accommodation and Food Services	4.8	1.3
Transport, Postal and Warehousing	8.4	8.0
Information Media and Telecommunications	5.4	3.8
Financial and Insurance Services	6.2	2.8
Rental, Hiring and Real Estate Services	5.2	1.7
Professional, Scientific and Technical Services	5.3	3.4
Administrative and Support Services	14.7	5.4
Public Administration and Safety	8.1	1.1
Education and Training	9.2	5.1
Health Care and Social Assistance	9.1	4.7
Arts and Recreation Services	10.0	4.2
Other Services	13.0	4.1
All industries	7.0	2.7

187. Business bankruptcy rates have continued to drop from a high of 0.8 per cent in FY2012-13, now dipping below 0.2% for the first time (under the new definition adopted by the FWC), for FY 2021-22 financial year as calculated in the Statistical Report.¹⁸¹ Business survival rates are also close to record highs at 65% on the latest figures, measuring from June 2018 to June 2022.¹⁸² There is no negative impact of the pandemic, or the current episode of inflation on these rates.

4.11 Investment

188. Non-mining investment has not only held up, but improved markedly, since the last review period. In the two quarters recorded since the last decision (September 2022 and December

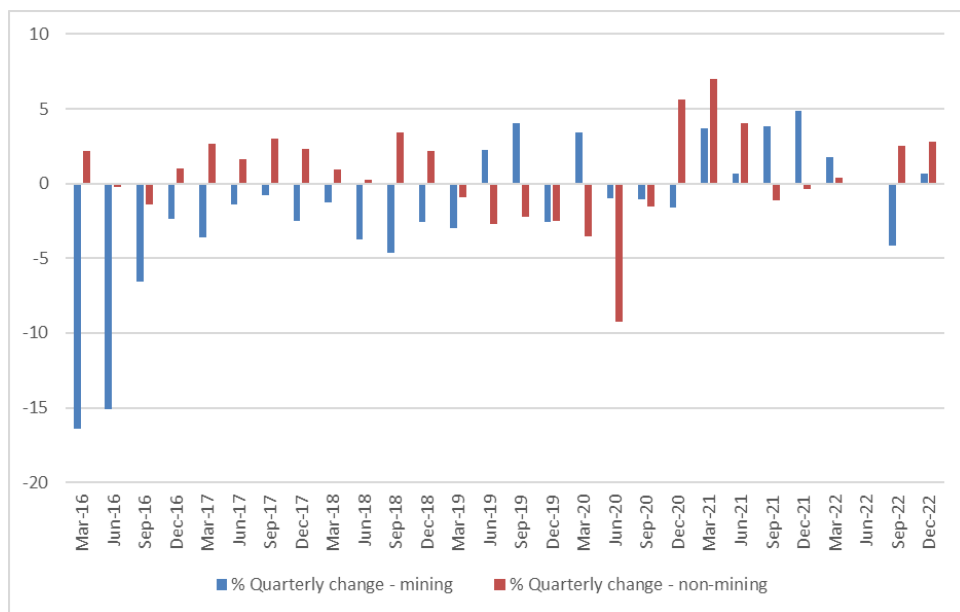
¹⁸¹ FWC Statistical Report Chart 3.4

¹⁸² FWC Statistical Report Chart 3.6

2022), seasonally adjusted quarterly private new capital (non-mining) expenditure grew by 2.52 per cent and 2.77 per cent respectively, in a notable improvement to the four quarters leading up to the Panel’s June 2022 decision (0.07 per cent for the June quarter 2022, 0.36 per cent for the March 2022 quarter, -0.38 per cent for the December 2021 quarter and -1.13 per cent for the September 2021 quarter)—see Figure 42 below. This is further indicated in the subsequent Figure, which illustrates both mining and non-mining investment held up in seasonally adjusted nominal dollar terms (\$ million), and the latter in fact saw an uptick in the September and December quarters of 2022.

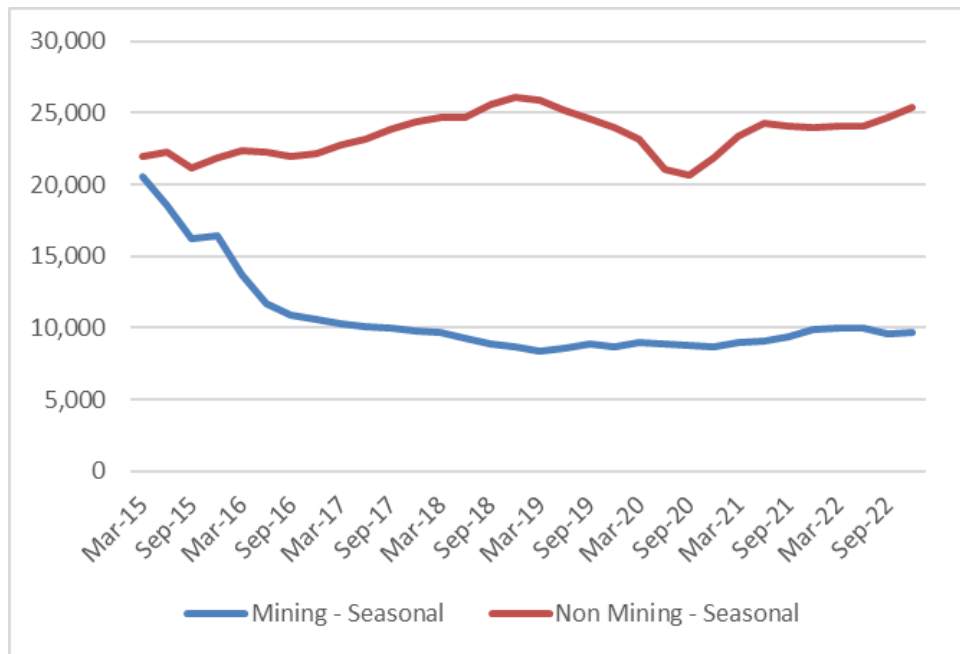
189. The rebound in quarterly capital expenditure growth in the September and December 2022 quarters suggests reasonably strong business confidence and an appetite to increase productive capacity (to meet strong consumer demand), despite warnings from some employer groups that the Panel’s 2022 decision would undermine investor confidence.

Figure 42: Quarterly growth rates in actual capital expenditures – mining versus non-mining, seasonally adjusted (2016 – 2022)



Source: ABS 56250.0.

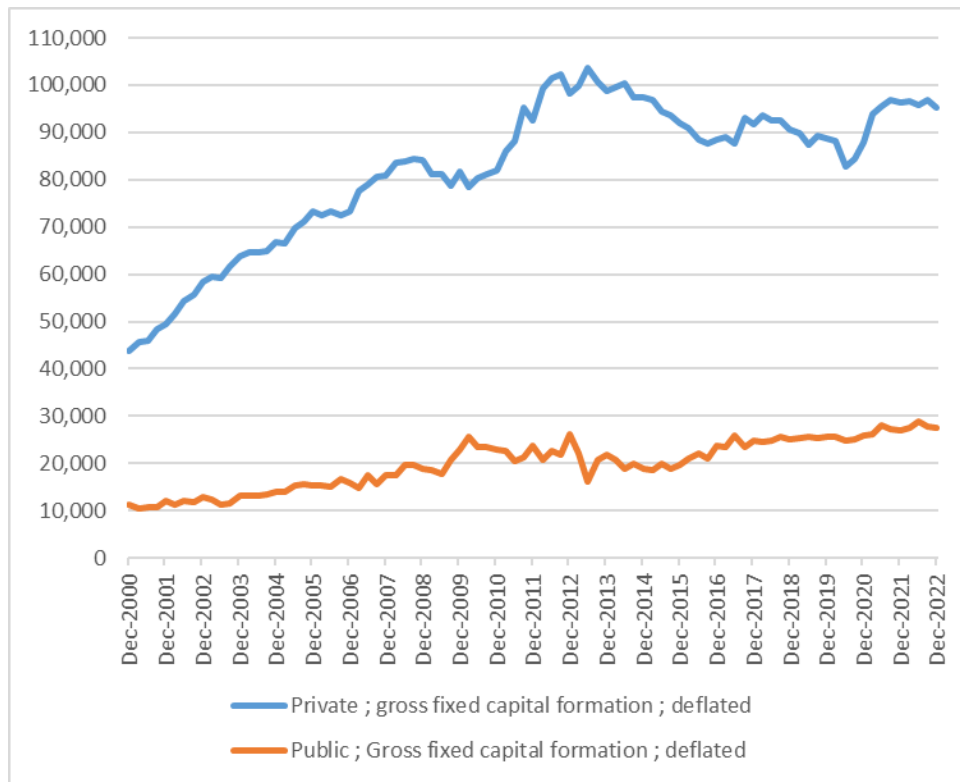
Figure 43: Mining and non-mining private investment, quarterly, seasonally adjusted (\$ millions), March 2015 to December 2022



Source: ABS 5625.0.

190. Even adjusted for inflation (using the relevant deflators for each indicator), both public and private gross fixed capital formation continued to hold steady across the review period, with private gross fixed capital formation remaining relatively constant even in the context of high inflation following the fall in early 2020 and subsequent recovery in 2021 (see figure below). This sustained gross fixed capital formation in the face of high inflation bodes well, all other things being equal, for future productivity growth and the economy's capacity to pay for reasonable wage increases.

Figure 44: Public and private gross fixed capital formation, quarterly, seasonally adjusted, real \$ millions



Source: ABS 5206001, 5206005, 5206012 and ACTU calculations. Private GFCF is nominal private GFCF deflated by private GFCF deflator, public GFCF is nominal total public GFCF deflated by public GFCF deflator.

5. RELATIVE LIVING STANDARDS

191. The minimum wage and modern award objectives require the Panel to consider the distinct but related concepts of “relative living standards” and “the needs of the low paid” when setting minimum rates of pay.¹⁸³ The Panel accepts that an appropriate to assessing relative living standards involves a comparison of the living standards of workers reliant on the NMW and modern award wages with those of other groups including workers and non-managerial workers.¹⁸⁴
192. Whilst the material we present in this Chapter is selected for its relevance to the issue of relative living standards, the Panel’s function requires it to be considered in the context of a broader consideration of what is necessary for a fair and relevant safety net. For example, an observed improvement in the *relative* living standards of NMW and modern award reliant workers could scarcely be said to be a moderating factor in adjusting the NMW and modern award rates of pay if the *absolute* position of such workers was such that they faced unacceptable levels of deprivation or social exclusion.
193. The contrast between movements in relative position in nominal terms as discussed in this chapter and the absolute position in real terms as discussed in Chapter 6 bears careful consideration in light of the cost of living crisis since the last review, particularly given that all of the household types modelled in Table 8.4 of the statistical report reached 1 July 2022 having already suffered a real cut to their disposable incomes over the prior 12 months, and half them having suffered such a reduction over the medium term from July 2016. Indeed, all minimum wage household types modelled fall below the carefully constructed budget standards contained in the report prepared by Bedford et al¹⁸⁵ for this Review, with only dual earner couples meeting that standard and then only if the small allowance for discretionary expenditure is excluded.¹⁸⁶

¹⁸³ [2020] FWCFB 3500 at [338].

¹⁸⁴ [2019] FWCFB 3500 at [197].

¹⁸⁵ Bedford, M., Bradbury, B., Naidoo, Y. (2023), “Budget Standards for Low-Paid Families”.

¹⁸⁶ See Tables 10 and 14 therein.

5.1 The employees most effected by the decision

194. In prior annual wage reviews, we have presented data from the ABS Survey of Employee Earnings and Hours (EEH), which was last conducted in May of 2021. Our analysis has not distinguished between types of what the ABS defines as “awards” for the purposes of the EEH, being “legally enforceable determinations made by Federal or State industrial tribunals or authorities that set the terms of employment (pay and/or conditions) usually in a particular industry or occupation”. As well as state and federal award types, they are also state and federal minimum wage instruments, all of which would fit the ABS definition. The ABS classifies employees as “award only” if they are “paid exactly at the rate specified in the award, and are not paid more than that rate of pay”. Yuen and Tomlinson¹⁸⁷ make a substantial contribution to an understanding of the employees most effected by the decision through their analysis of EEH microdata which identifies modern awards as a type of award within the ABS classification system. Whilst data is not available for all modern awards, their analysis indicates that almost 9 in 10 award reliant employees are modern award reliant.¹⁸⁸
195. We have commended Yuen and Tomlinson’s analysis during the minimum wage research group meeting in February and we echo those sentiments here. Accessing and analysing unpublished EEH data is a costly and technically challenging exercise. We would strongly support the Panel continuing to authorise such analysis on future releases of the EEH.
196. By comparing our analysis of award reliant employees relative to other employees (being employees on individual arrangements and employees on collective agreements) with Yuen & Tomlinson’s analysis of modern award reliant employees, we can present a snapshot of relative living standards as at May 2021, and some approximation of relative wage income earning shifts since that time.

5.1.1 Snapshot view

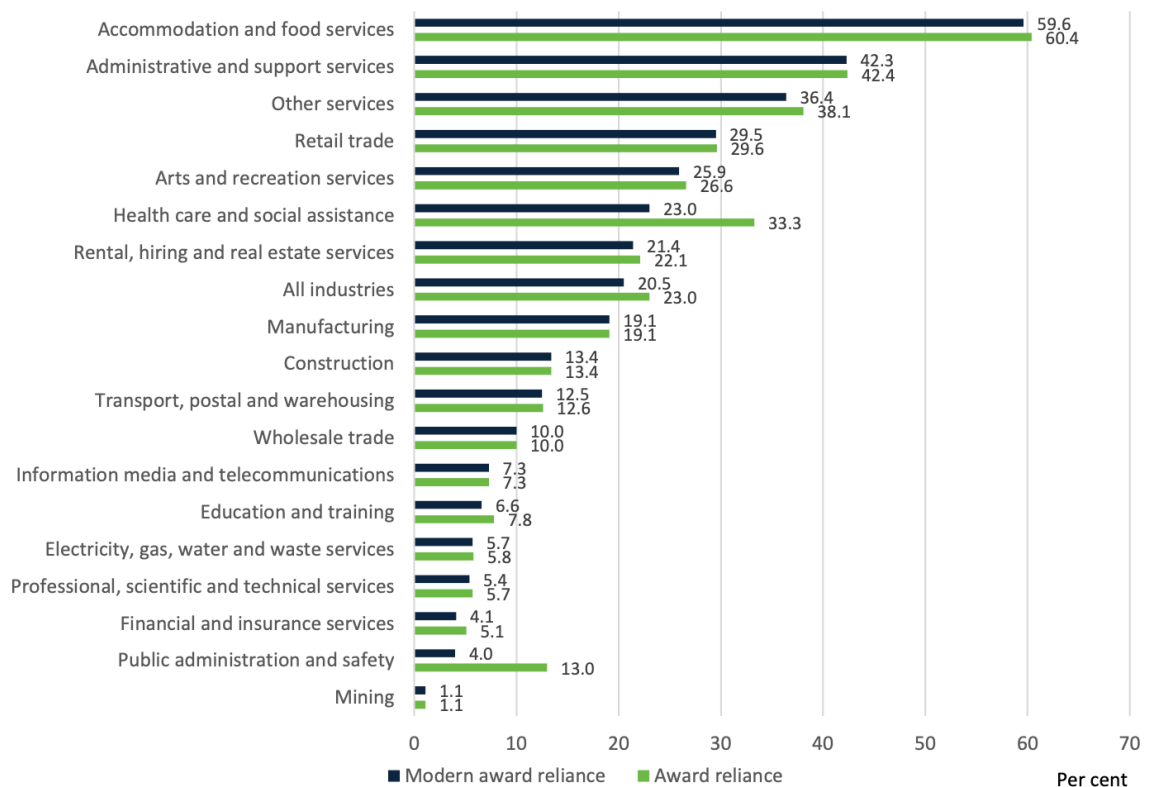
197. As is evident from Chart 3.1 of Yuen and Tomlinson (reproduced for convenience as Figure 45 below) , there is little difference in the industry density of award reliance compared to

¹⁸⁷ Yeun, K. and Tomlinson, J., “A profile of employee characteristics across modern awards”, Fair Work Commission, March 2023.

¹⁸⁸ At page 13.

modern award reliance, outside of the industries where one might expect state public sector employment (outside of Victoria at least) and perhaps some local government employment to exist beyond the reach of the federal industrial relations system (e.g. public services, schools, state disability services, hospitals & health services, state government superannuation and public finance).

Figure 45: Award reliant and modern award reliant employees within industry, 2021



Note: Estimates of award reliance and modern award reliance for Mining have a RSE of greater than 50 per cent and is considered too unreliable for general use.

Source: ABS, *Microdata: Employee Earnings and Hours, Australia*, May 2021.

198. There is some overlap between the industries that have above average density of modern award reliance and those that employ the largest *share* of modern award reliant employees. Chart 3.2 of Yuen and Tomlinson reveals that whilst modern award reliant employees are found in all industries, 72.9% of modern award reliant workers are employed in only 5 industries: Accommodation & food services (21.6%), Health care & social assistance (17.1%), Retail trade (14%), Administrative & support services (13.2%) and Other services (7%).
199. Yuen and Tomlinson analyse occupational distributions within the modern award reliant workforce on the basis of the share of employees within each occupational group that are award reliant. Table 9 below compares their findings with those for other methods of pay.

Table 9: Distribution of pay setting by occupation, 2021 (%)

	Modern Award Reliant	Other Award Reliant	Collective agreement	Individual arrangement	OMIE
Managers	4	0.9	14.6	59.5	21
Professionals	4	4.7	46.3	41.3	4
Technicians & trades workers	22.5	0.8	21.4	50.0	5
Community & personal service workers	40.5	3.9	40.3	15.1	0
Clerical & administrative workers	13.2	3.0	31.6	48.9	3
Sales workers	33.5	0.3	39.6	24.9	2
Machinery operators & drivers	19.5	0.2	38.0	38.4	4
Labourers	40.6	1.0	30.8	25.9	2

Source: ABS EEH, Yuen & Tomlinson, ACTU calculations. OMIE = Owner manager of an incorporated enterprise.

200. Table 9 illustrates that occupations with higher formal skill or qualification levels tend to be more closely associated with reliance on individual arrangements rather than a modern award or other award. Modern awards and other awards are more closely associated with occupations with lower formal skill or qualification levels. Only Professionals have a higher concentration of other award reliance compared to modern award reliance. The higher concentration of Professionals paid by other awards versus modern awards is presumably related to state based health and education systems. Generally speaking, other awards tend to expand most upon modern award reliance in occupational groupings with higher formal skill or qualification levels, with the Community & personal services and Clerical & administrative workers leading in this regard – presumably owing to the state public health and general state public service.

201. In considering broad averages of the characteristics of modern award reliant employees, it is important to appreciate that these averages are likely skewed by the characteristics of the workers in dominant industries or occupations. This is significant because the function of the Panel is to maintain a safety net – an expression which in itself implies universality. The needs of the *atypical* modern award reliant employee are not less relevant to the maintenance of a fair and relevant safety net merely because such persons may be few in

number, and perhaps the most striking feature of Yuen and Tomlinson’s analysis is its demonstration of heterogeneity among workers employed under different modern awards, across a number of characteristics.

202. With that limitation, it is evident that both modern award reliant workers and award reliant workers generally are predominantly female, (58.1% and 59% respectively), relative to an almost equal balance among non award reliant employees (49.6% female).¹⁸⁹ Accordingly, a wage increase to minimum wages which outpaced general market wage growth would be expected to place some downward pressure on the gender pay gap. Some other averages for general characteristics highlighted in Table B13 of Yuen and Tomlinson are reproduced in Table 10 below.

Table 10: Characteristics (AVG) of modern award reliant employees v. non modern award reliant employees, 2021

	Modern Award Reliant	Not Modern Award Reliant
Average Age (years)	34.8	41.5
Works full time hours (%)	34.8	66.2
Works part time hours (%)	65.2	33.8
Average hours paid for (hours)	26.2	33
Casual employees (%)	49.7	14.5
Average adult hourly earnings, inclusive of casual loading (\$)	30.80	47.10
Average adult hourly earnings, without casual loading (\$)	27.70	46.10
Proportion that are low paid, inclusive of casual loading (%)	14.8	5.4
Proportion that are low paid, without casual loading (%)	36.7	6.8

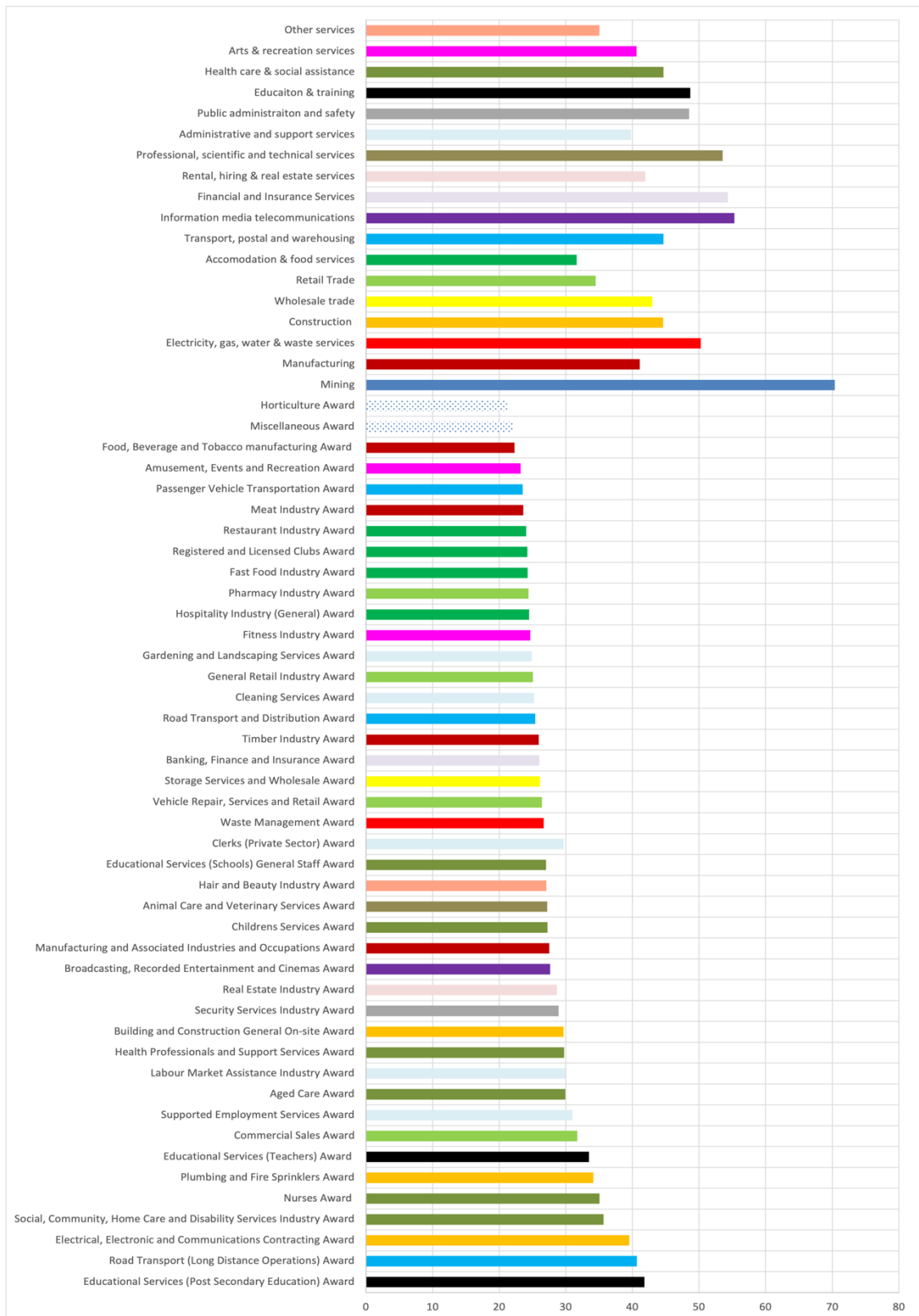
Source: ABS EEH, Yuen & Tomlinson

¹⁸⁹ Modern award reliant estimate is from Yuen and Tomlinson, Award and non-award reliant estimate calculated from ABS EEH.

203. On the subject of earnings, we merged Yuen and Tomlinson’s analysis of average hourly ordinary time earnings in Table B11 of their paper with ABS average weekly earnings data by industry, also from May 2021, in Figure 46 below. Average hourly ordinary time earnings were estimated by dividing the average weekly ordinary time earnings of full time employees by 38 from Table 10G of the ABS dataset¹⁹⁰. The colour coding is an attempt to relate industries to modern awards, on the basis of the FWC Information Note on Modern Awards and Industries of 30 March 2020.

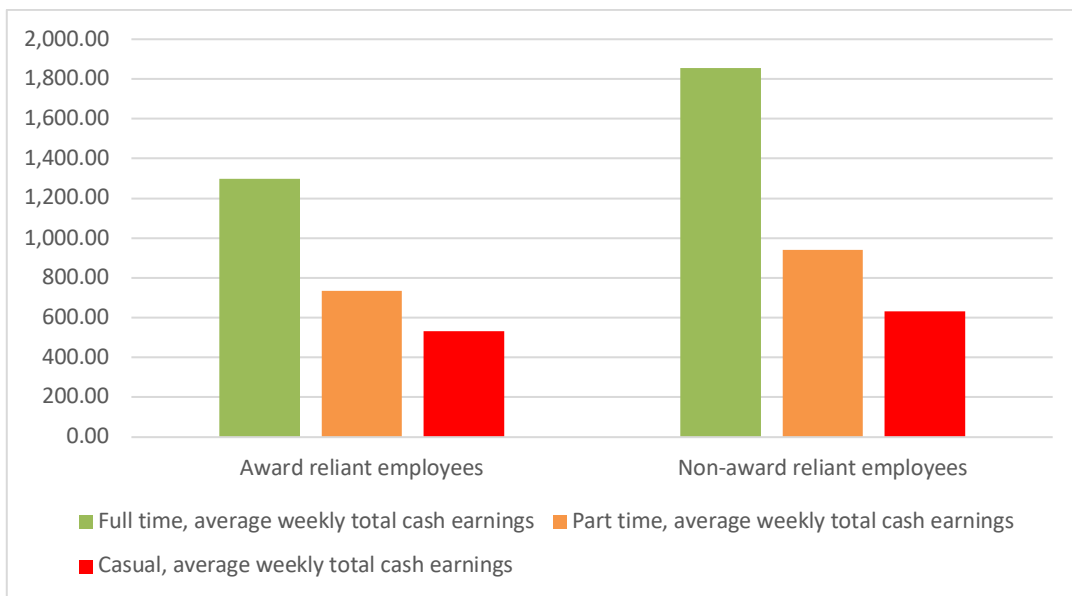
¹⁹⁰ Publicly released EEH data on ordinary time earnings by industry excludes managerial employees.

Figure 46: Average hourly ordinary time earnings (\$) within industry vs. for modern award reliant employees, 2021



204. Figure 46 illustrates both the stark difference between modern award and whole of sector pay rates, including by comparing industries where modern award coverage overlaps. Moreover, it shows a much greater dispersion in general market earnings relative to modern award earnings, which have a much narrower distribution. A more high-level analysis of pay disparity, using only EEH data and not distinguishing between modern award reliance and award reliance generally, similarly shows that average weekly incomes are lower for award reliant employees, and for casual and part time workers fall below the low paid threshold of 66% the median weekly earnings of full time workers, which was \$999.23 as at August 2021.¹⁹¹ In addition, around 22.5% of award reliant full time non-managerial employees paid at the adult rate (n=193,200) had weekly total cash earnings below that threshold.¹⁹²

Figure 47: Average weekly total cash earnings, by type of employment (2021)



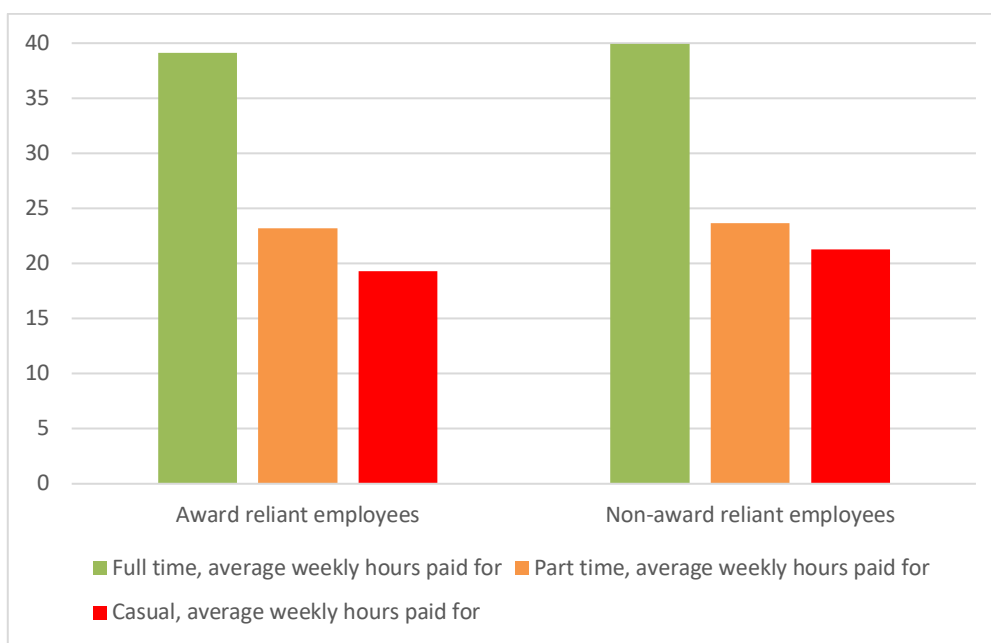
Source: ABS 6306, ACTU calculations. OMIEs and other managerial employees are excluded.

205. The disparity in earnings is clearly a function of rates of pay rather than hours worked alone, as the disparity between hours worked between award reliant and non-award reliant workers, while observable, is not as pronounced. This suggests that the penalty and loading type arrangements that are typical of award reliant work is insufficient to make up the pay premiums associated with paid being above award via a collective agreement or individual arrangement.

¹⁹¹ ABS 6333.

¹⁹² Derived from ABS 6306 DC 8, Table 3.

Figure 48: Average weekly hours paid for, by type of employment (2021)



Source: ABS 6306, ACTU calculations. OMIEs and other managerial employees are excluded.

206. In our view, the above discussion indicates that modern award reliant employees, like award reliant employees generally, are:

- a. Predominantly female (and thus more likely to have time out of paid work);
- b. More likely to work lesser hours and to do so in insecure work relative to non award reliant workers;
- c. More likely to be low paid and to have lower earnings than non-award reliant workers (irrespective of whether they are casual workers or not);
- d. Are concentrated in occupations with lower qualification or skill requirements;
- e. Are concentrated in industries where paid work has been disrupted due to pandemic restrictions in recent years.

Together, these factors suggest that on average the relative living standards which those workers are able to support on their employment incomes are lesser than those of other workers.

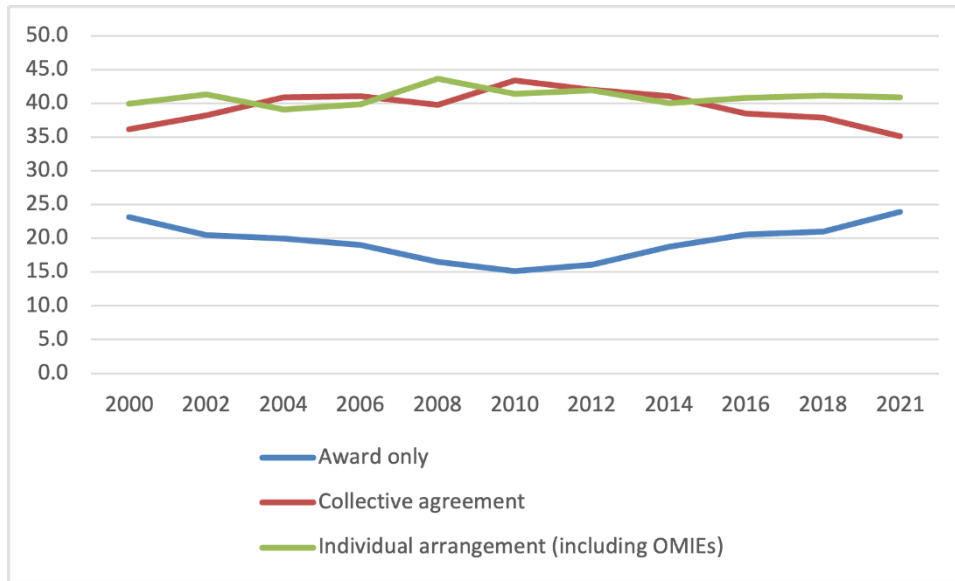
207. We accept that modern award reliant workers' ultimate living standards are also impacted by their household circumstances and the tax/transfer system and we discuss these matters further in section 5.3 below. We do not however accept that the availability of such other forms of support should act as a generalised moderating factor on the wage increases to be determined in this review. Allowing such a moderating effect cannot be justified in the absence of the Panel expressing the normative judgements about the responsibility of the

state to subsidise incomes and the social roles and responsibilities of parents and women. For our part, we are deeply concerned about the insecure living standards of workers in the modern awards identified in Yuen and Tomlinson's research and we note that it has debunked some of the prevalent stereotypes the Panel is often confronted with. Table B4 therein identifies that there is a higher concentration of casual employees in every modern award for which data is presented than is the case of employees who are not modern award reliant. Table B2 indicates only seven modern awards in which the average age is below 30, and Table B6 identifies only 1 modern award where employees on junior rates constitute the majority. Whilst there are no doubt modern award reliant young university students still living at home in supportive middleclass families, they are clearly the exception rather than the rule, and their living arrangements may be driven less by choice than necessity.

5.1.2 Change over time

208. The composition between pay setting methods (without differentiating between types of awards) has shown a small shift in the share of employees who are award reliant between the 2018 and 2021 EEH surveys, consistent with the direction of long term movements in this series, as shown in Figure 49 below. Given the dominance of modern award reliance within the award reliant category, this likely highlights the growing significance of the Panel's decision to workers in Australia. Deeper analysis of trends in modern award reliance as distinct from awards generally would require regular updating of the Yuen and Tomlinson analysis.

Figure 49: Proportion of employees by method of setting pay (%), 2000-2021



Source: ABS EEH. Figures for 2016 rely on indicate estimates provided by the ABS in conjunction with its 2018 release, which reverted categorisation changes introduced in the 2016 survey.

209. A basic (and admittedly imperfect) estimate of the change in relative wages since May of 2021 may be derived by applying the Panel’s decisions since May 2021 to the average ordinary time earnings data from Table B11 of Yuen and Tomlinson’s paper and comparing this to the November 2022 average weekly earnings data, to create a growth measure and comparison chart similar to that presented in Figure 46 above. We present this in Figure 50 and Figure 51 below. To produce these charts, AWR increases were applied to the average rates in Table B11 of Yuen and Tomlinson by firstly adding 2.5%, then adding \$40 weekly if the resulting weekly equivalent rate was less than \$869.60 or 4.6% if it was higher.

Figure 50: Estimated growth (%) in average hourly ordinary time earnings within industry vs. for modern award reliant employees, May 2021 - Nov 2022

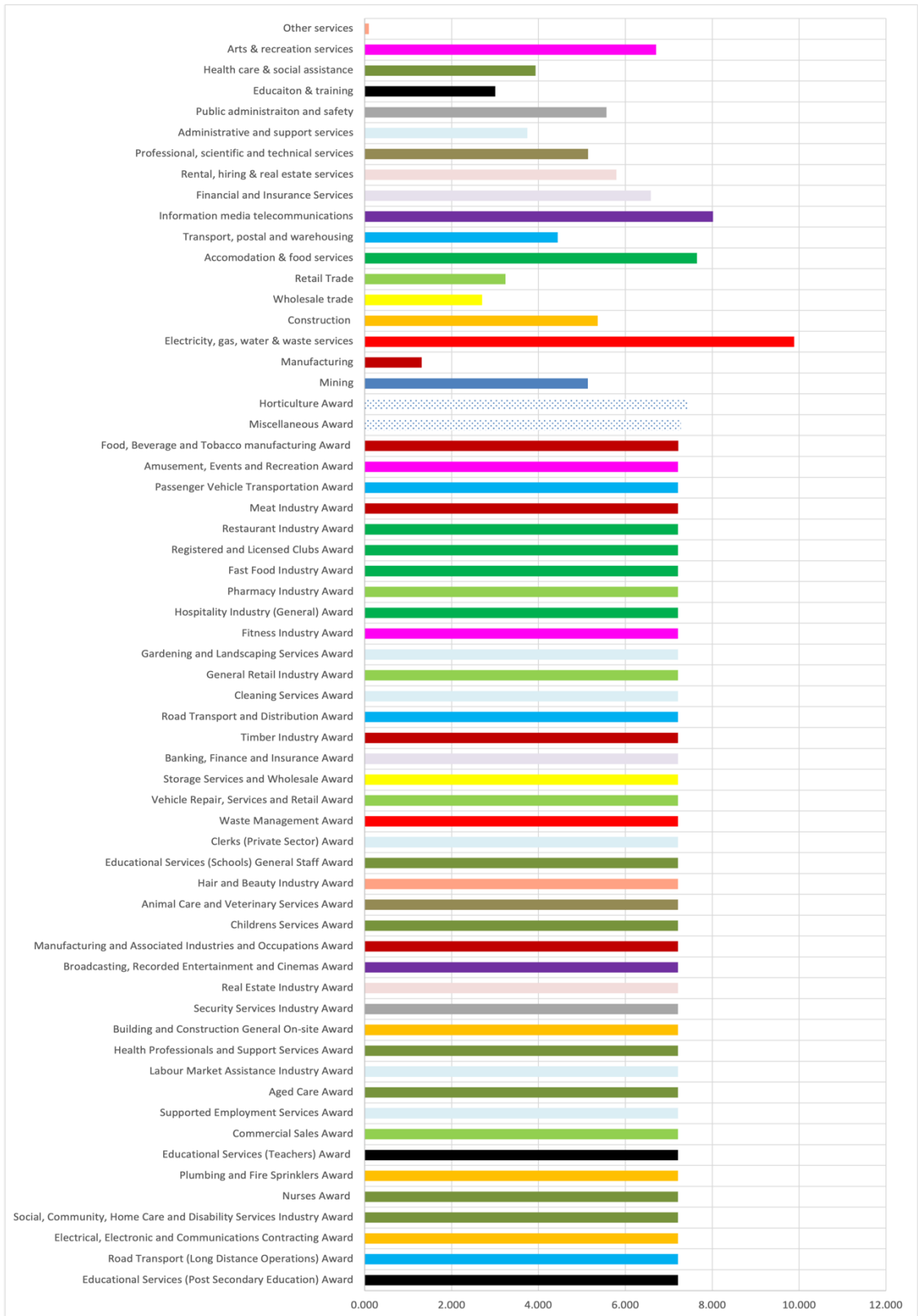
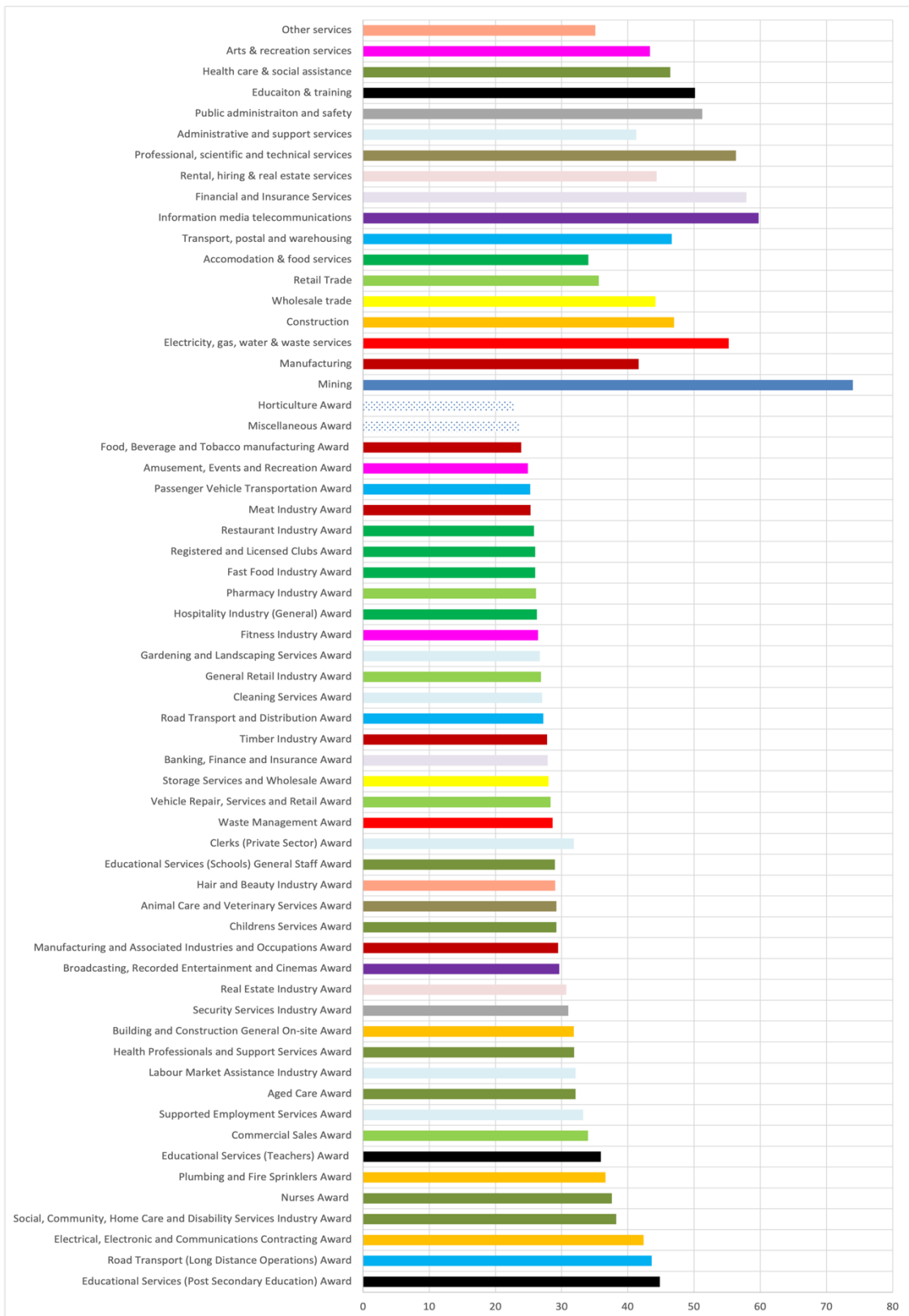


Figure 51: Estimated average hourly ordinary time earnings (\$) within industry vs. for modern award reliant employees, Nov 2022

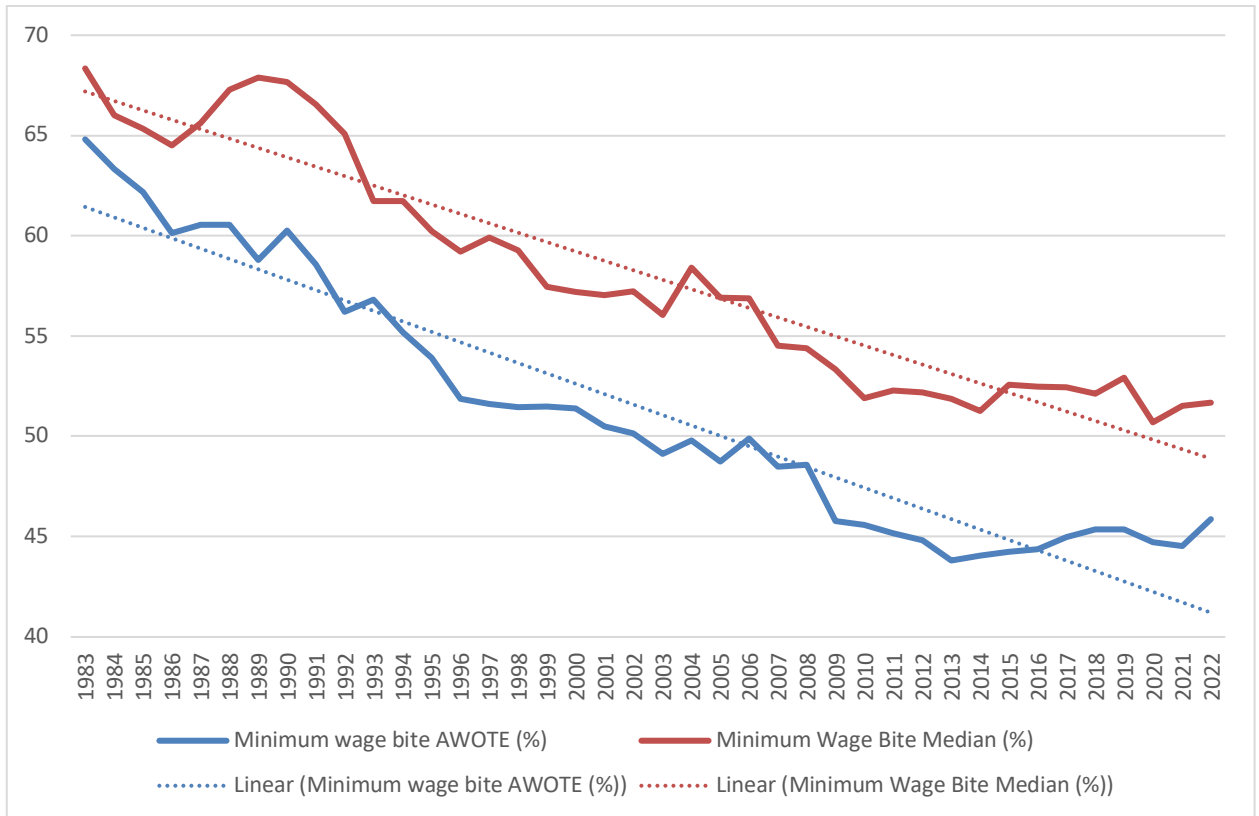


210. Figure 50 shows that growth in modern award average wages likely outstripped growth in all industry wages outside of those for Electricity, gas & water services, Information media & telecommunications and accommodation and food services. Based on the data in Chart 3.2 of Yuen and Tomlinson, this equates to around 22% of the award reliant workforce not improving on their relative position as to average wages. Whilst there was an overall improvement for the remainder, Figure 51 is an overall sense similar to the 2021 position shown in Figure 46 of a greater dispersion in general market earnings relative the much narrower distribution seen for modern award reliant workers. However, the ultimate significance of this change in relative position in wages needs to be interpreted in light of the fact that the CPI increase between May 2021 and November 2022 was 10.6% using the ABS' Monthly CPI Indicator.

5.2 Additional measures of relative earnings

211. The Panel's decision last year, combined with prolonged weak general market wage growth, has reversed the decline in the minimum wage bite, although relativity has not yet been restored to pre-GFC levels, as seen in Figure 52 below.

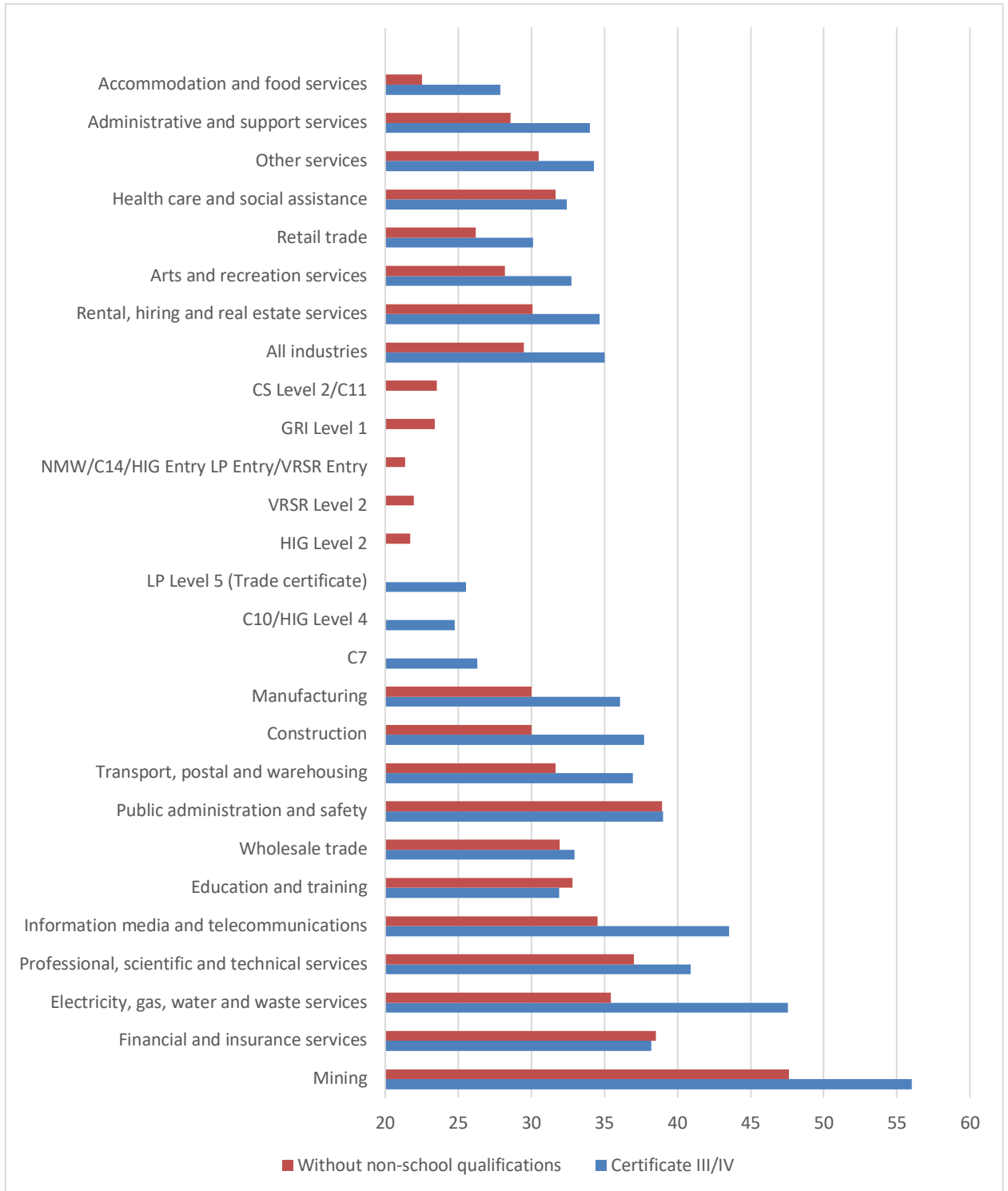
Figure 52: Minimum wage bites, ratio of the NMW to AWOTE and Median Full Time Earnings (%), 1983-2022



Source: AWOTE from ABS Average Weekly Earnings. Median weekly earnings (full time) from ABS Characteristics of Employment. NMW from Bray 2013 and FWC National Minimum Wage Orders.

212. Despite the improvement in the minimum wage bite, there remains a clear disparity between median hourly rates of pay in the market generally compared to those paid under modern awards, which is greater in nominal terms for skilled work. Figure 53 shows that while median hourly rates in all industries for the general market were between \$5.96 and \$8.10 more for persons with no non-school qualifications compared to key modern award rates, the difference was between \$8.69 and \$10.24 per hour in the general market compared to key modern award rates for certificate III and IV employees.

Figure 53: Median hourly earnings (\$) vs. selected minimum wages, August 2022



Source: ABS Characteristics of employment August 2022. Award/NMW rates are as at August 2022. HIG=Hospitality Industry General Award, GRI= General Retail Industry Award, CS=Cleaning Services Award, LP=Live Performance Award, VRSR=Vehicle Repair, Services & Retail Award.

213. The comparison in Figure 53 is limited by not taking into account whether the educational qualifications of the relevant workers are in fact related to and required for their

employment, and also by not excluding persons who might be paid junior rates. Nonetheless, it is striking that:

- a. In the five most modern award reliant industries (where density of modern award reliance is 30% or greater as per Figure 45) the median hourly earnings of certificate III or certificate IV qualified workers are below the median hourly earnings for workers in all industries for that level qualification, but above those for equivalent award classifications for similar skill levels;
- b. The C10/HI Level 4, C7 and LP level 5 rates are far lower than the median hourly rates actually earned by certificate III or IV workers in any industry;
- c. In four of the five most modern award reliant industries, the median hourly earnings for workers with no non-school qualifications are below the median hourly earnings for workers in all industries for that level of qualification;
- d. The CS L2 / C11 rate identified in Figure 53 above is the level at which, on full time work, a worker in a single person household would cross the threshold of meeting the Budget Standards constructed by Bedford et al (with \$2.60 per week to spare). This rate exceeds both the median hourly earnings for employees without non-school classifications in the highly modern award reliant Accommodation and food services industry and the level 2 rate in the Hospitality Industry General Award.

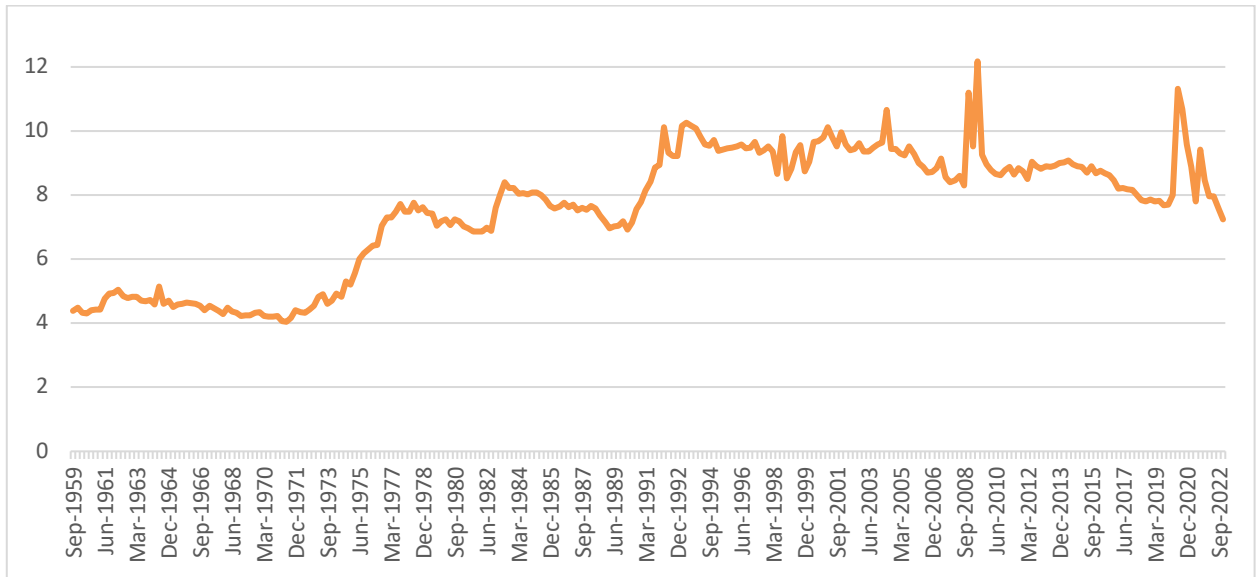
214. The Panel should take these observations into account in forming a view about the relative living standards of the modern award reliant workforce and in setting minimum wages that are fair and relevant.

5.3 Living standards and the tax/transfer system

215. The tax/transfer system interacts with decisions of the Panel in impacting household disposable incomes, particularly for that segment of the workforce that is reliant on partial income support. Previous research commissioned by the Panel indicated that approximately 16% of adult low paid award reliant workers receive such support, compared to 8.7% for higher paid award reliant adult workers and 5.6% of adult employees generally.¹⁹³ At a very high level, Figure 54 shows that the share of social assistance out of gross income has at December 2022 fallen to its lowest level since 1990.

¹⁹³ Wilkins, R. & Zilio, F (2020), Prevalence and persistence of low-paid award-reliant employment, Melbourne Institute of Applied Economic and Social Research, Fair Work Commission Research Report 1/2020, February at Table 9.

Figure 54: Social assistance as a share of gross income (%), 1959-2022

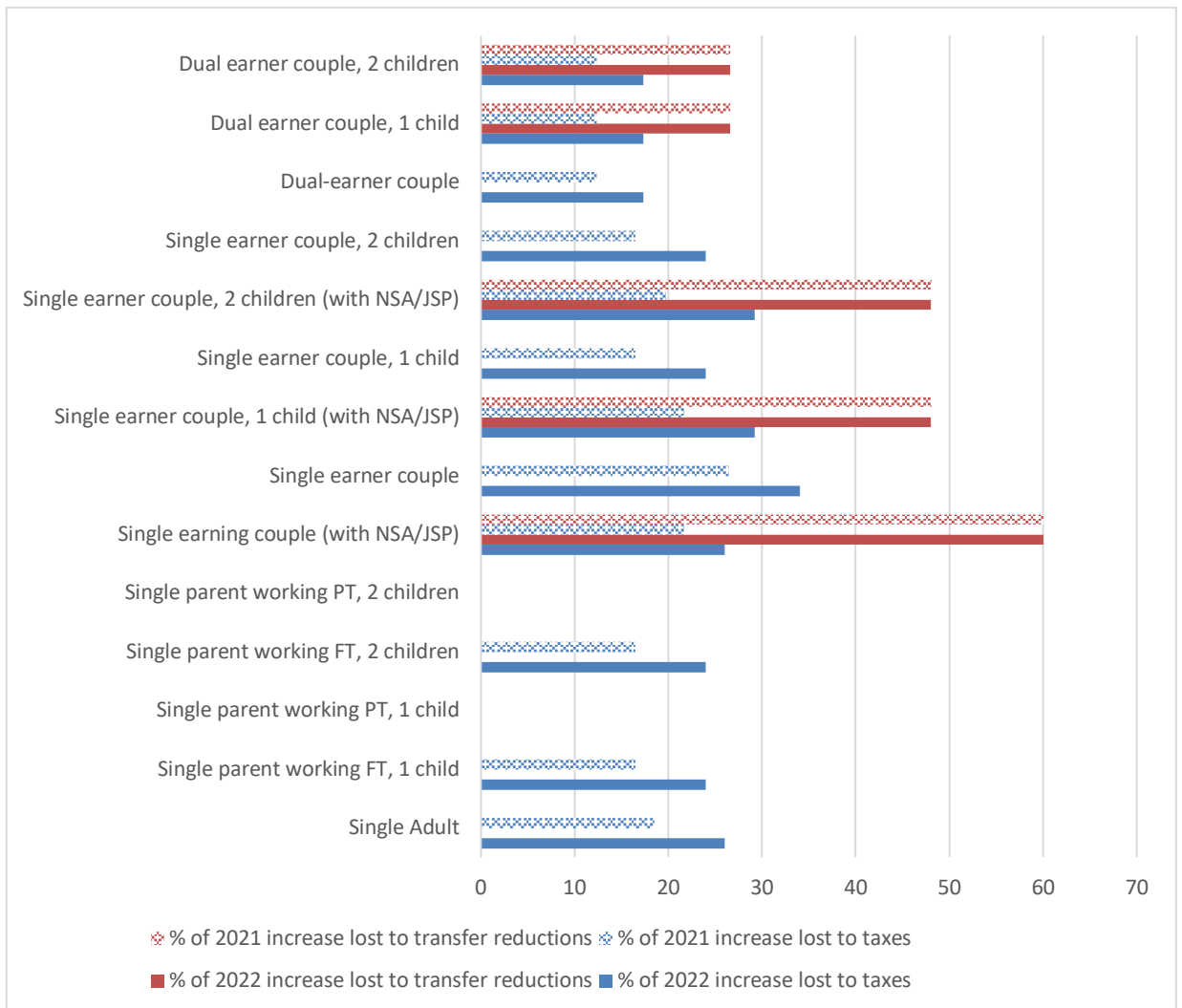


Source: ABS National Accounts (Table 20), ACTU Calculations.

216. Absent the temporary spikes in social assistance that were associated with the pandemic response in 2020 and 2021, it seems that the current position is re-establishing a trajectory of decline which set in almost a decade earlier.

217. The current low level of unemployment is necessarily a strong driver in the low share of spending on social assistance. However, by comparing the effect of tax and transfers on disposable incomes in the year to July 2021 and the year to 1 July 2022 for NMW reliant households, it can be seen that the transfers have certainly not become any more generous to NMW reliant households, notwithstanding the \$250 payments made to income support recipients in April 2022.

Figure 55: Tax and transfer impacts on 2021 and 2022 for selected NMW households



Source: FWC Statistical report 2022 v 11, 2023 v 1 @ Table 8.5, ACTU calculations

218. In its 2019/20 review, the Panel awarded a “markedly lower” increase than for the previous year; in part on the basis of changes to the tax-transfer system which it saw as benefitting low-paid households.¹⁹⁴ The Panel has also previously considered scenarios in which, during the review period, financial assistance available to low-income families has reduced.¹⁹⁵
219. In its 2022 Decision, and in past Panel decisions, the Panel has considered that the low and middle income tax offset (LMITO), low income tax offset (LITO) and 2022’s one-off \$250 cost

¹⁹⁴ [2020] FWCFB 3500 at [119]-[120], [139]

¹⁹⁵ [2017] FWCFB 3500 at [65]

of living payment all served to moderate the increase that would otherwise be awarded in their absence.¹⁹⁶

220. As of the 2022/23 financial year, the LMITO is no longer available¹⁹⁷, neither is the one-off cost of living payment. Accordingly, to the extent that these were factors moderating the quantum of NMW and modern award increases, their discontinuance militates towards lesser moderation. Moreover, the alteration of the position for the low-paid brought about by their removal suggests that greater increases are appropriate in the present year due to this factor.

221. The Panel takes into account the impacts of rises in the superannuation guarantee level, albeit on the basis that it imposes additional employment costs, rather than on the basis of the impact on living standards.¹⁹⁸ There is a lesser change to the superannuation system in this year relative to last year, where both the \$450 threshold was removed and superannuation guarantee was increased by .5%, thus the impost (and consequently degree of moderation) should be less. Further, whilst we recognise that the increase of the superannuation guarantee rate from 10.5% to 11% from 1 July 2023 must be treated as a moderating factor in this review on the basis of the Panel's past reasoning, there is new evidence relevant to the appropriate extent of such moderation, given both the need to rebuild the superannuation balances of a considerable number of workers and the widespread cost of living crisis. Whilst we discuss cost of living impacts in some detail in Chapter 6 and section 4.7 of Chapter 4, we offer the following in relation to superannuation balances:

a. We have previously reported to the Panel on the utilisation of the former government's policy to withdraw amounts of superannuation in two tranches in 2020.

The scheme was administered by the ATO, who report¹⁹⁹ that:

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

¹⁹⁶ [2022] FWCFB 3500 at [152] – [154]; [2020] FWCFB 3500 at [119]-[120], [139]

¹⁹⁷ The relevant provisions giving rise to the offset were repealed by Part 4 of Schedule 1 to the Treasury Law Amendment (A Tax Plan for the COVID-19 Economic Recovery) Act 2020 (as amended by the Treasury Laws Amendment (2021 Measures No. 4) Act 2021)).

¹⁹⁸ [2022] FWCFB 3500 at [146], [2013] FWCFB 4000 at [357].

¹⁹⁹

https://www.ato.gov.au/uploadedFiles/Content/SPR/downloads/covid19_early_release_of_super_report_infographic.pdf

- ii. Of approved applications, 44% related to persons who had a reduction in working hours and 19% related to persons who were unemployed.
 - iii. In the FY 19/20 period of the early release scheme, 39% of approved applications were for people on incomes of \$37,000 or less and 46% were on incomes in the range of \$37,001-90,000. In the 20/21 period, 43% were on incomes of less than \$45,000 and a further 43% were on incomes of \$45,001-\$120,000
- b. An available inference from the ATO findings is that the extent of the “deferred benefit” of superannuation has depleted over the year for many workers, including low paid workers, who also suffered reduced incomes due to the co-incident COVID-19 response. The depletion of benefits is supported by independent analysis by Industry Superannuation Australia, which shows that the balances of at least 714,938 accounts were entirely cleared through the scheme, with 70% of those accounts belonging to persons under 30 – who ordinarily might have expected a long period of compounding returns on that investment during their working lives.
- c. More information about the operation of this scheme and characteristics of the persons who utilised it has emerged from a detailed study by Hamilton et al.²⁰⁰ Their study was able to map financial circumstances and behaviour of users of this scheme through access to both the ABS Multi Agency Data Integration Project (which includes individual characteristics, personal tax records, single touch payroll data, super contributions and withdraws and welfare payments) and credit bureau data detailing bank transactions. Among other findings, Hamilton et al show:
 - i. Around three quarters of “withdrawers” in each round withdrew to the applicable \$10,000 limit. Among those who withdrew less than the limit in the first round, one third drained their account. Around three quarters of withdrawers who had some superannuation left after the first withdrawal withdrew a second time.
 - ii. There were clear differences in wages between those who withdrew compared to the sample generally. Around 73% of those who withdrew had pre-tax wage incomes of less than \$1500 per week, compared to 64% for the sample generally. Around 45% of those who withdrew had pre-tax wage

²⁰⁰ Hamilton, S., Liu, G., Sainsbury, S., [“Early pension withdrawal as stimulus”](#),

incomes of \$1000 or less per week, compared to 39% of the sample generally.²⁰¹

iii. Those who withdrew had lower wages during the month before the withdrawals, in the three years before and over their working lives to date. They also had a 54% lower saving rate, 62% lower bank balances relative to spending, a 23% higher probability of having an overdrawn account and 10% higher debt repayments than those who did not make withdrawals.

d. Hamilton et al observe that that those who did withdraw their super:

“...had a high intensity of demand for liquidity. They tended to withdraw as soon as possible, as much as possible and twice if funds were available, suggesting the vast majority remained constrained even after having withdrawn around half median annual wage income.”²⁰²

222. We recognise that the Panel does not apply a direct, quantifiable offset to the determinations it is otherwise minded to make on account of rises in the superannuation guarantee rate. In our submission, if such the Panel is inclined to apply any offset, it should be a minor one in the interests of fairness having regard to the above matters. Whilst the superannuation guarantee is an impost on employers, it is likewise an essential return to workers on their labour which has diminished in value most for those on lower incomes.

223. In November of 2022, the Government legislated²⁰³ a change to child care subsidy to take effect from 1 July 2023. The change impacts subsidy rates for the first child only and greatest level of subsidy will be 90%, for families earning \$80,000 or less (up from 85%). The most recent data from the Australian Government Department Education²⁰⁴ indicates that the hourly fee for child care (excluding in home care) rose 5.1% in the 12 months to the March Quarter 2022. It is therefore unclear at this stage whether the initiative will make any tangible improvement to living standards for workers in households which utilise these services, relative to the time of the Panel’s last decision.

224. We also ask the Panel to take into account a change in availability of subsidised health care in the form of bulk billed appointments with General Practitioners. It has been reported

²⁰¹ Estimates are derived from figure A5.

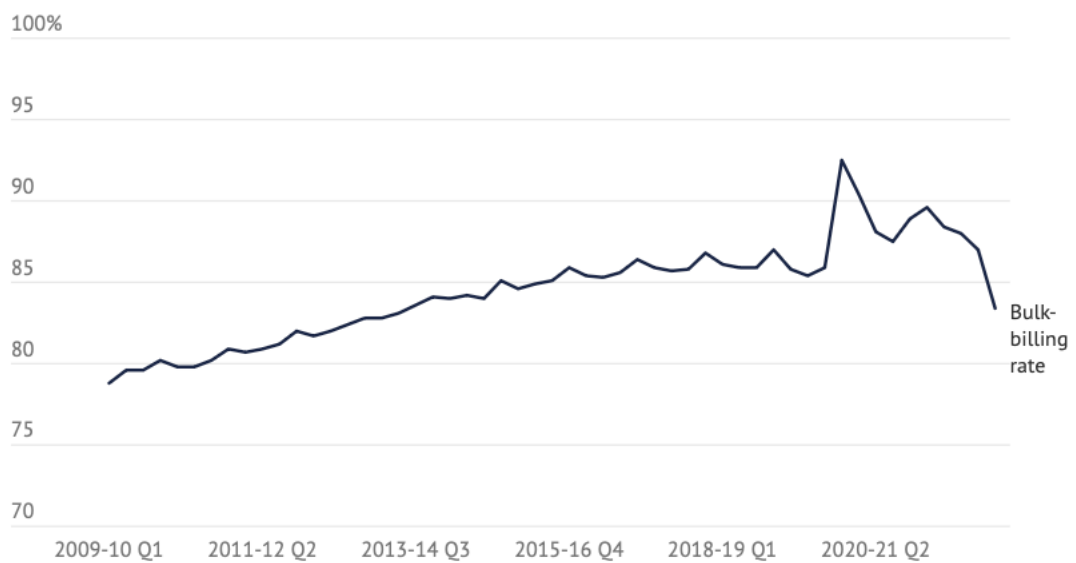
²⁰² At p 33.

²⁰³ Family Assistance Legislation Amendment (Cheaper Child Care) Act 2022.

²⁰⁴ Department of Education, [March Quarter 2022 report on usage, fees and subsidies](#)

that as at September Quarter of 2022, GP bulk billing rates were the lowest since December 2013, as seen in Figure 56 below, and that the average out-of-pocket cost for a standard level B consult (which is under 20 minutes), was \$40.70 in 2022, compared with an average Medicare rebate of \$39.26. Further, across all GP appointment types, the average gap fee is \$42.44, compared with \$28.12 a decade ago.²⁰⁵ The report by Bedford et al clearly illustrates at page 22-23 the central importance of access to bulk billed medical services among low income families and the impacts of being exposed to a gap payment.

Figure 56: Percentage of General Practitioners that bulk bill, 2009-2022



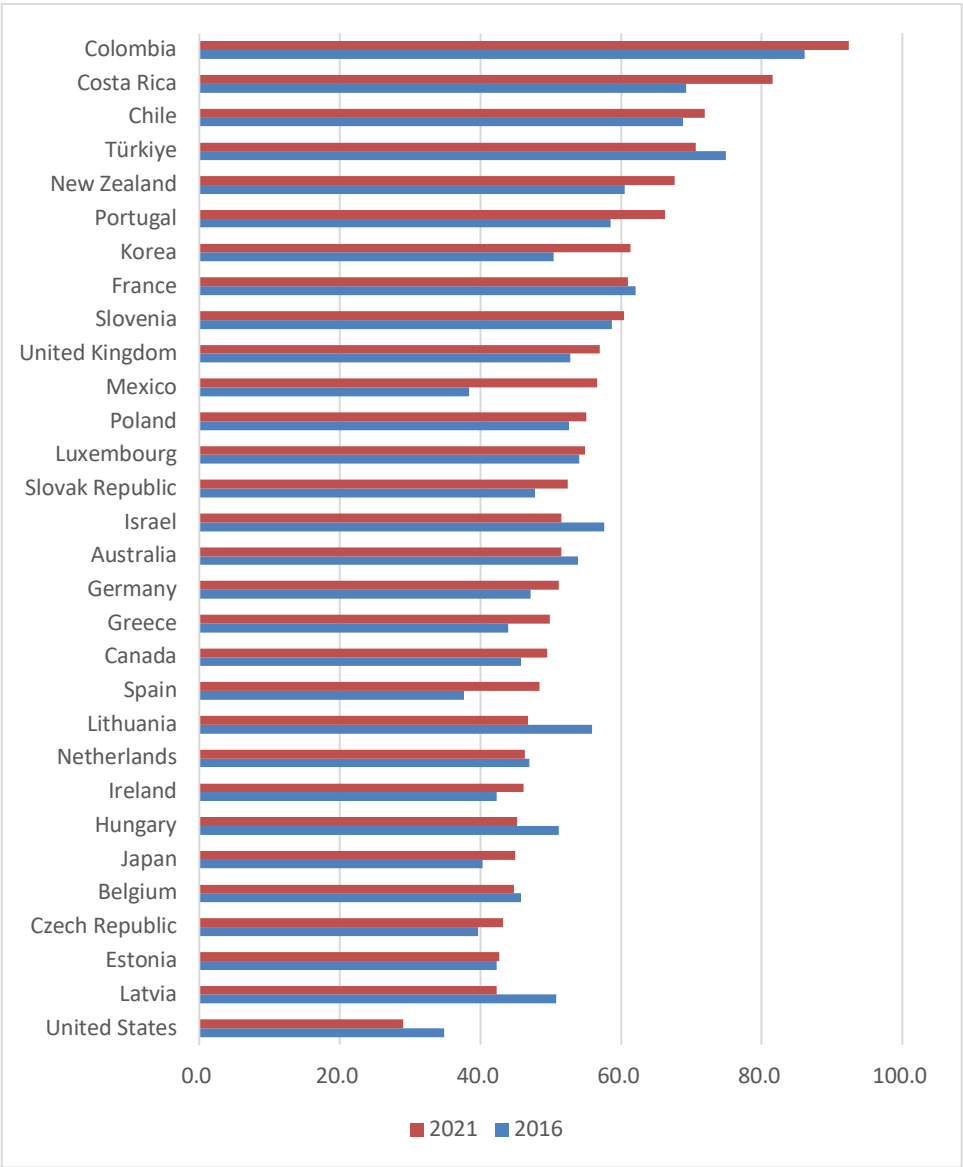
Source: Reproduced from Chrysantos, N., "[GP patient's out-of-pocket costs outstrip Medicare rebate as bulk billing falls to near-decade low](#)", SMH 13/1/2023. Attributed in original to Medicare quarterly statistics.

5.4 International comparison

225. Australia is one 10 of the OECD countries for which data is available which has experienced a decline in the minimum wage bite over the 5 years to 2021, as shown in Figure 57 below.

²⁰⁵ Chrysantos, N., "[GP patient's out-of-pocket costs outstrip Medicare rebate as bulk billing falls to near-decade low](#)", SMH 13/1/2023.

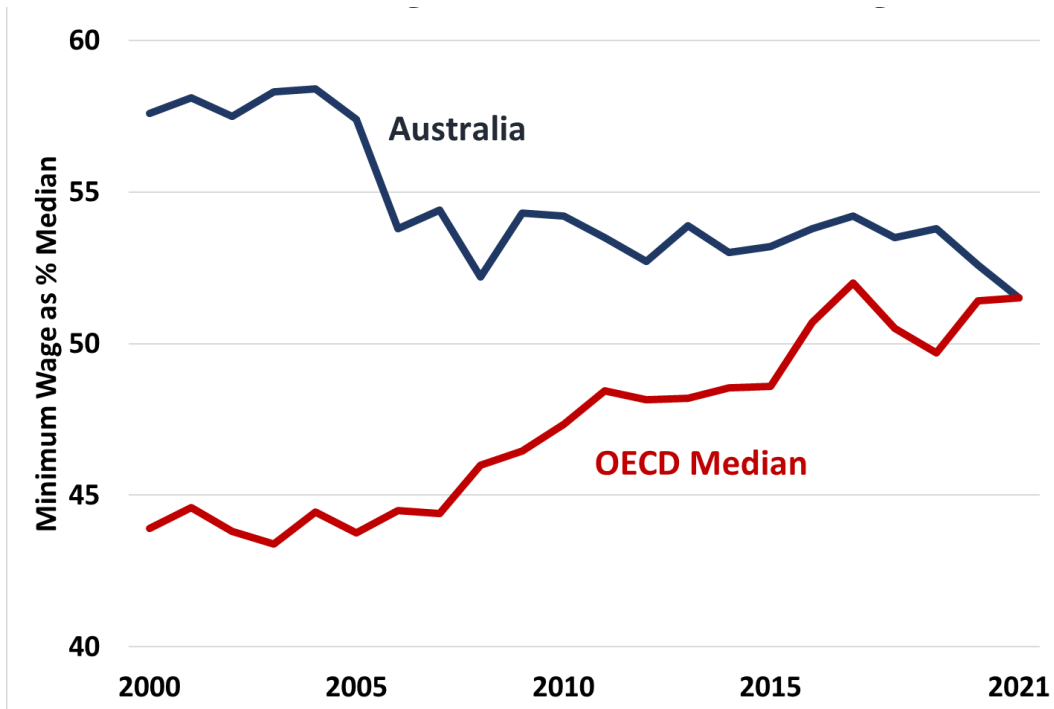
Figure 57: Minimum wage bite as a percentage of the median, OECD countries, 2016-2021



Source: OECD

226. Australia is currently around the middle of the pack for its minimum wage bite in 16th place as at 2021, whereas it was in 5th place a decade earlier in 2011 and in 2nd place in 2001 (behind only France). Australia’s change in overall position against the OECD median over the last two decades is shown in Figure 58.

Figure 58: Minimum wage as share of median wage, OECD vs. Australia, 2000-2021



Source: OECD

227. Australia’s minimum wage ‘bite’ fell from 58% in 2001, to 51.5% in 2021. The shift in Australia’s relative position during this period is a result of both Australia’s policy framework and those of other OECD nations. The latter have been much more ambitious in recent years in using higher minimum wages as a tool for economic and social progress, with the median ‘bite’ among OECD countries with a minimum wage increased substantially over this period: from 44% in 2000 to 51.5% by 2021. Figure 58 reveals that Australia in 2021 was *the* ‘median’ OECD country: our minimum wage bite in 2021 fell at the exact mid-point of the range of OECD countries (Australia shares that median position with Israel). The oft-heard claim from many business groups that Australia’s minimum wage is the ‘highest in the world’ is demonstrably false.

228. Since 2021, there have also been substantial movements in minimum wage policy in other countries. In Figure 59 below we show a comparison of statutory minimum wage movements in EU countries from 2010 and between January 2022 – January 2023.

Figure 59: Minimum wage movements in the EU in 2023

Country	Jan-2010 — Jan-2023	January-2022	January-2023	Year-on-year change
Belgium	€1,387 → €1,955	€1,691	€1,955	15.6%
Bulgaria	€123 → €399	€332	€399	20.0%
Cyprus	€885		€885	
Czechia	€302 → €717	€652	€717	10.0%
Germany	€1,403 → €1,981	€1,621	€1,981	22.2%
Estonia	€278 → €725	€654	€725	10.0%
Spain	€739 → €1,260	€1,167	€1,260	8.0%
France	€1,344 → €1,709	€1,603	€1,709	6.6%
Greece	€863 → €832	€774	€832	7.5%
Croatia	€385 → €700	€624	€700	12.0%
Hungary	€272 → €579	€542	€579	6.8%
Ireland	€1,462 → €1,910	€1,775	€1,910	7.6%
Latvia	€254 → €620	€500	€620	24.0%
Lithuania	€232 → €840	€730	€840	15.0%
Luxembourg	€1,683 → €2,387	€2,257	€2,387	5.8%
Malta	€660 → €835	€792	€835	5.4%
Netherlands	€1,408 → €1,934	€1,725	€1,934	12.0%
Poland	€321 → €746	€655	€746	13.0%
Portugal	€566 → €887	€823	€887	7.8%
Romania	€142 → €606	€515	€606	17.6%
Slovenia	€647 → €1,304	€1,164	€1,304	12.0%
Slovakia	€308 → €700	€646	€700	8.4%

Source: Eurofund. The data represent the minimum wage applicable on 1 January of the given reference year. Gross and nominal statutory minimum wages are expressed in euros and in monthly payments. Data for each country are from January 2010 to January 2023, except for Germany and Cyprus (which adopted a statutory minimum wage in January 2015 and January 2023 respectively). Rates for non-euro zone countries (Bulgaria, Czechia, Hungary, Poland, Romania) were converted to euro by applying the exchange rate applicable at the end of the previous reference month. Conversions were also carried out for Latvia, Lithuania, Estonia and Croatia for periods prior to accessing the euro zone. Rates for countries with more than 12 wage payments per year (Greece, Portugal, Spain, Slovenia) were converted by dividing the annual sum of the minimum wage by 12 calendar months. Rates for countries where the minimum wage is defined as an hourly rate (Germany, Ireland) were converted to monthly rates by applying the weekly working hours provided by Eurostat, corresponding to 38 hours for Germany and 39 hours for Ireland. The rate for Malta, where the minimum wage is defined at weekly frequency, was converted to a monthly rate considering 4.33 weeks per calendar month. The large increase in Bulgaria is explained by the fact that the new rate for 2022 (LEV 710 or €363) came into effect only in April 2022 (so the growth rate between January 2022 and January 2023 is taking into account both the 2022 and 2023 upgrades). As of January 2023, a new rate for 2023 is still being negotiated and not yet in effect in Spain. Austria, Denmark, Finland, Italy and Sweden are not included in this visualisation as they do not have a statutory minimum wage.

229. In commenting on these increases, Aumayr-Pintar and Vascas-Soriano²⁰⁶ have noted that the most recent increases to minimum wages are high by EU standards and have occurred in an environment of high inflation. Across the Member States (excluding Spain, where negotiations were still underway at the time of publication), the average nominal increase in 2023 was 12%, compared with around 6% last year (between January 2021 and January 2022). The median increase in 2023 is 11% so far, more than double the 5% of the previous year. The very high increase in Belgium was attributed to the implementation of 5 automatic indexation mechanisms from January 2022. France and Luxembourg also applied ad-hoc increases (2 and 1 respectively) in the 12 months before January 2023 as a result of automatic indexation measures. Non-automatic, ad-hoc increases were applied in Germany, the Netherlands and Greece outside of the usual practice.

230. It should be noted that further developments in EU minimum wages are likely in the medium term as a result of EU directive on minimum wages²⁰⁷, which was been agreed by the European Parliament in October of 2022 – approximately two years after it was first proposed. The new directive does not oblige member states to establish an institutional framework for statutory minimum wages, recognising that minimum wages are fixed by collective agreements in many. However, for member States where statutory minimum wages systems do exist, it sets out in some detail the process and criteria by which minimum wages are to be fixed, in terms which unequivocally preference income adequacy over the often unstated assumption in wage fixation mechanisms that improvements in minimum wages result in job losses or come at the cost of economic development on other measures. Article 5 of the Directive relevantly provides as follows:

²⁰⁶ Aumayr-Pintar, C. & Vacas-Soriano, C., "[Minimum wage hikes struggle to offset inflation](#)", Eurofund 2023.

²⁰⁷ Directive (EU) [2022/2041](#) Of the European Parliament and of the Council on adequate minimum wages in the European Union.

Procedure for setting adequate statutory minimum wages

1. Member States with statutory minimum wages shall establish the necessary procedures for the setting and updating of statutory minimum wages. Such setting and updating shall be guided by criteria set to contribute to their adequacy, with the aim of achieving a decent standard of living, reducing in-work poverty, as well as promoting social cohesion and upward social convergence, and reducing the gender pay gap. Member States shall define those criteria in accordance with their national practices in relevant national law, in decisions of their competent bodies or in tripartite agreements. The criteria shall be defined in a clear way. Member States may decide on the relative weight of those criteria, including the elements referred to in paragraph 2, taking into account their national socioeconomic conditions.
2. The national criteria referred to in paragraph 1 shall include at least the following elements:
 - (a) the purchasing power of statutory minimum wages, taking into account the cost of living;
 - (b) the general level of wages and their distribution;
 - (c) the growth rate of wages;
 - (d) long-term national productivity levels and developments.
3. Without prejudice to the obligations set out in this Article, Member States may additionally use an automatic mechanism for indexation adjustments of statutory minimum wages, based on any appropriate criteria and in accordance with national laws and practices, provided that the application of that mechanism does not lead to a decrease of the statutory minimum wage.
4. Member States shall use indicative reference values to guide their assessment of adequacy of statutory minimum wages. To that end, they may use indicative reference values commonly used at international level such as 60 % of the gross median wage and 50 % of the gross average wage, and/or indicative reference values used at national level.
5. Member States shall ensure that regular and timely updates of statutory minimum wages take place at least every two years or, for Member States which use an automatic indexation mechanism as referred to in paragraph 3, at least every four years.
6. Each Member State shall designate or establish one or more consultative bodies to advise the competent authorities on issues related to statutory minimum wages, and shall enable the operational functioning of those bodies.

231. The United Kingdom has also announced²⁰⁸ a significant 9.7% increase to the National Living Wage (payable to those aged 23 and older) effective from 1 April 2023. A higher 10.9% increase will apply to those aged 21-22 years old, and 9.7% will apply for 18-20 year olds. The junior rate and rate for persons in their first year of an apprenticeship will also rise 9.7%. The UK government has adopted a target for the National Minimum Wage to reach two thirds of median earnings by 2024.

232. Closer to home, in New Zealand, where statutory minimum wages are fixed by government, the minimum wage for adults, juniors and trainees will rise by 7.1% in April of this year, which

²⁰⁸ HM Treasury, "[Autumn Statement 2022](#)", November 2022

the Prime Minister stated was broadly in line both with inflation and existing wage growth across the economy.²⁰⁹

²⁰⁹ Media release on behalf of Prime Minister Rt Hon Chris Hipkins, "[Government takes new direction with policy refocus](#)", 8 February 2023; [employment.govt.nz](#)

6. THE NEEDS OF THE LOW PAID

6.1 Who are the low paid?

233. The Panel has consistently identified low paid workers by reference to the benchmark of two-thirds of the median adult full-time wage.²¹⁰
234. This is consistent with the practice of the OECD, who also use two-thirds of the median wage as their indicator of low pay.²¹¹
235. A further sub-set of the low paid live in poverty, which the Panel has previously considered to be indicated by a threshold of 60 per cent of median equivalised household disposable income.²¹²

6.2 The incidence of low pay

236. OECD data indicates that 15.46% of Australian workers are low paid. This is higher than the OECD total of 14% and significantly higher than in countries such as Finland (8.63%), France (9.46%) and Japan (10.66%).²¹³
237. The following table compares rates of pay in *the Manufacturing and Associated Industries and Occupations Award 2020* to the median wage (median full time employee earnings). It shows that workers in the C14 (NMW) to C8 classifications and remunerated according to the award, are low paid.

²¹⁰ [2022] FWCFB 3500 at [70], [105]

²¹¹ OECD (2023), Wage levels (indicator). doi: 10.1787/0a1c27bc-en (Accessed on 03 February 2023)

²¹² [2022] FWCFB 3500 at [71]

²¹³ OECD (2023), Wage levels (indicator). doi: 10.1787/0a1c27bc-en (Accessed on 10 February 2023)

Table 11: Selected Award rates as % of median weekly employee earnings

Award classification	Weekly Rate (\$)	Percentage of median
NMW/C14	812.60	53.60
C13	834.80	55.07
C12	865.20	57.07
C11	893.60	58.94
C10	940.90	62.06
C9	970.40	64.01
C8	999.90	65.96
C7	1026.60	67.72
C6	1078.70	71.15
C5	1100.80	72.61
C4	1130.30	74.56

Source: Manufacturing and Associated Industries Modern Award, ACTU calculations

238. The low paid are prevalent across our modern award system. Half of all workers hired under *the Fast Food Industry Award 2010* and over half of all workers hired under *the Hospitality Industry (General) Award 2020* are considered low paid.²¹⁴ This figure rises to 62.2% for *the Restaurant Industry Award 2020*, 63.7% for *the Pharmacy Industry Award 2020* and as high as 84% for *the Horticulture Award 2020*.²¹⁵

239. Table 8.6 of the Statistical Report measures 14 hypothetical household types earning award wages against the poverty line (equivalised household disposable income less than 60% of median wage).²¹⁶ It shows that 6 of those household types earning the C14 rate fall below the poverty line as at 2022 with two on the exact cusp. All of those 6 household types fall below the poverty line even if earning the C10 rate and 5 fall below even if earning the C4 rate. Single earner couples (with NSA/JSP) and single earner couples with one child are at the poverty line on the C14 rate and narrowly above it on the C10 and C4 rates.

²¹⁴ Yuen and Tomlinson, March 2023, *A profile of employee characteristics across modern awards*, Research Report 1/2023, Fair Work Commission, Table 12 <<https://www.fwc.gov.au/documents/wage-reviews/2022-23/profile-of-employee-characteristics-across-modern-awards-2023-03-03.pdf>>; note: earnings adjusted to remove casual loading

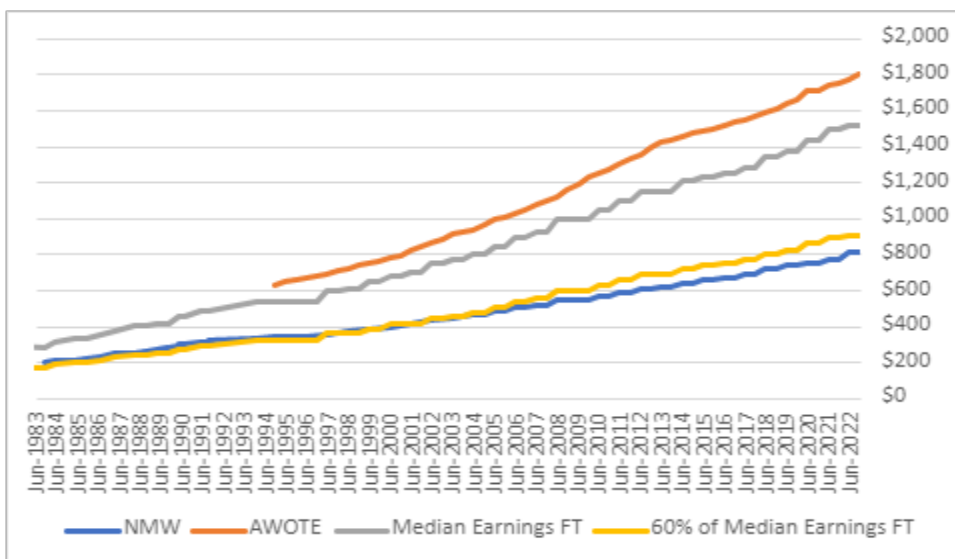
²¹⁵ Ibid

²¹⁶ FWC Statistical Report Version 1, Table 8.6, p74 <<https://www.fwc.gov.au/documents/wage-reviews/2022-23/statistical-report-version-%201-2023-03-03.pdf>>

240. Perhaps more disturbing is the trend that that data shows, which is that the ratio of equivalised household disposable income to 60% of the median wage – for all household types earning the C14 rate – has worsened between 2017 and now. That means those award wage earners already below the poverty line have fallen deeper into poverty, while those just above the poverty line have edged closer to it. This worsening situation is exemplified by the data for dual earner couples with two children on the C14 rate. In 2017 the ratio of household disposable income to median wage was 1.14, it is now 1.05 – a significant fall which places them narrowly above the poverty line.

241. The National Minimum Wage (NMW) has not kept pace with relative poverty thresholds such as 60% of the median earnings. It fell below that level in 1999 and now sits at 53.6%. Last year’s AWR decision, which awarded a larger increase than for previous years was an important and necessary first step towards raising living conditions for the low paid, however as this chapter will show, the subsequent increases to cost of living have meant that while the relative position of the low paid may have improved, their absolute position has unfortunately worsened. A comparison with Average Weekly Ordinary Time Earnings (AWOTE) is also a helpful measure of whether or not the NMW is keeping up.

Figure 60: National minimum wage, Average Weekly Ordinary Time Earnings, Median Earnings and 60% of Median Earnings, nominal (current) dollars 1983 – 20

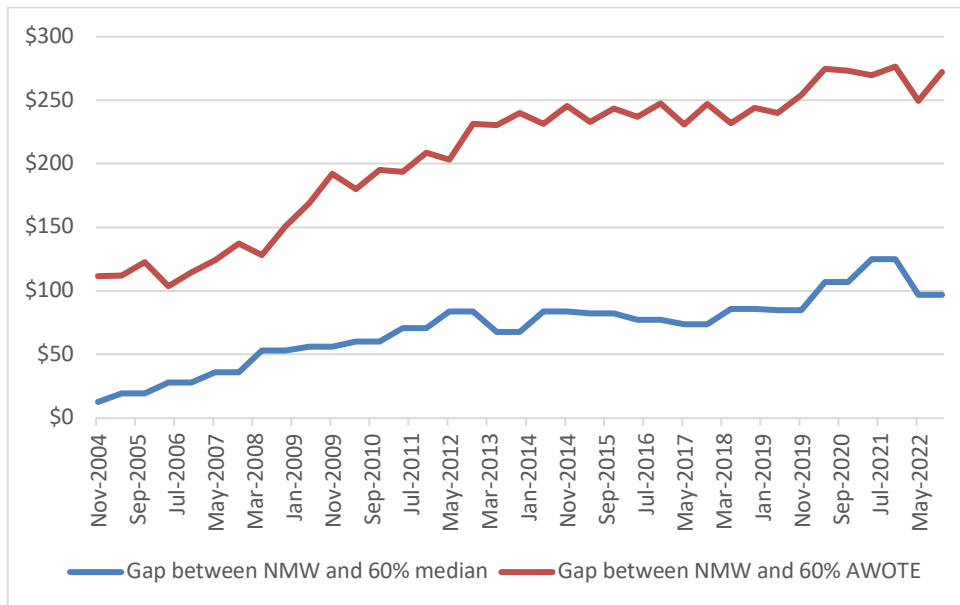


Source: ABS 6302003; 6310; 6333, Cowie and Jefferson (2010), 'Minimum wage estimates and adjustments in Australia since 1983' and ACTU collection on historical minimum wage decisions

242. As the following figure shows, the gap between the NMW and 60% of the median wage has grown steadily over time, as has the gap between the NMW and 60% of the AWOTE. In the

past year, the NMW's gap with the NMW eased slightly against 60% of the median wage but firmed against 60% of the AWOTE.

Figure 61: Gap between NMW and 60% AWOTE (nominal dollars)



Source: FWC Statistical Report Table 8.1, ABS 6302003, 6310, 6333, and ACTU calculations

243. That the NMW has gained some small ground against the median wage as a result of the Panel's last decision should not discount the reasons for a substantial increase in the current review for the following reasons:

- a. The reason for the slight contraction in the difference between the NMW and the median wage is due to recent growth in the NMW slightly outpacing wage growth in other parts of the labour force, this should not count against those on the NMW or the low paid;
- b. Both the NMW and wages more generally have failed to keep pace with the rising cost of living, discussed further below in this submission;
- c. The key question for the Panel to consider is the needs of the low paid, wage growth generally should not bear negatively on this consideration;
- d. That there has been some progress made toward narrowing the gap between the NMW and the two-thirds median wage is not a reason in favour of halting, or even slowing, further progress toward addressing the needs of the low paid.

6.3 A matter of rights

244. Australia has signed and ratified a number of international treaties which are relevant to considering the needs of the low paid. This includes, the ILO's *Minimum Wage Fixing*

Convention of 1970 (No. 131) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966.

245. The *Minimum Wage Fixing Convention* obliges parties to establish a system of minimum wages and machinery for setting those wages, taking into account factor such as the needs of workers and their families, the general level of wages and, cost of living.

246. *Prima Facie* it may be assumed that Parliament intends to give effect to its international obligations.²¹⁷ It is through the FW Act's provisions, including the establishment of this review process that the Parliament does so. The means by which the FW Act achieves its objects include:

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

247. It is submitted that the Panel should have regard to the nature of Australia's international obligations with respect to the establishment of minimum wages and their determination in this review.

248. As to the content of Australia's international obligations, the ICESCR provides further guidance:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

- (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

249. Accordingly, it is submitted that in exercising its review function and determining the NMW, the Panel should consider Australia's international obligations to provide a minimum wage

²¹⁷ Minister of State for Immigration and Ethnic Affairs v Ah Hin Teoh [1995] HCA 20 at [26]-[27] per Mason CJ and Dean J

which is fair, addresses the needs of workers, recognises increases to their costs of living and, provides for a decent living for workers and their families.

6.4 What are the needs of the low paid?

250. An assessment of the needs of the low paid requires an examination of the extent to which low-paid workers are able to purchase the essentials for a decent standard of living and to engage in community life, assessed in the context of contemporary norms.²¹⁸
251. The risk of poverty is also relevant in addressing the needs of the low paid.²¹⁹ The Panel has previously determined that if the low paid are living in poverty, then their needs are not being met.²²⁰ The Panel has further observed that full-time workers can reasonably expect to earn wages above a harsher measure of poverty.²²¹
252. This leaves us with two propositions:
- a. For the cohort of low paid workers who are living in poverty; their continuance in a state of poverty demonstrates that their needs are not being met; and
 - b. For the cohort of workers who are low paid but are not below the poverty line; their needs would approach being met by an increase in their capacity to purchase basic essential items and participate in community life, but would not be met to the extent that an increase to their wages falls short of realising this.

6.5 The Situation for the Low Paid

6.5.1 Overview

253. In its 2021/2022 decision, the Panel outlined its approach as follows:

[118] The Panel's approach to its statutory function is broadly reflected in the following extract from the *Annual Wage Review 2014–15* decision:

'In taking into account available economic and social data, the Panel's approach is broadly to assess the changes in these data from year to year and determine how they inform the statutory criteria. Put another way ... if there were no change in the

²¹⁸ [2019] FWCFB 3500 at [17].

²¹⁹ *Ibid.*

²²⁰ [2022] FWCFB 3500 at [70] - [71]

²²¹ [2022] FWCFB 3500 at [71]

relevant considerations from one year to the next then, all other things being equal, a similar outcome would result.’

254. The ACTU submits that there have been significant changes in the economic environment which affect the low paid. Inflation and increases in mortgage repayments and rents continue to run rampant, and prices of everyday items are skyrocketing. The financial situation of the low paid continues to deteriorate.
255. It is submitted that the worsening of the economic environment for low paid workers warrants a greater increase than has been awarded in previous years.

6.5.2 Financial Stress

256. The Panel has previously looked to indicators of financial stress.²²² In terms of financial stress for the low paid, there was an increase since 2020 in the number of households who reported that they could not: pay bills on time; pay their mortgage or rent on time; and, went without meals.²²³ Bear in mind that this data was gathered in late 2020 and early 2021 and that levels of financial stress on this measure would have likely increased since.
257. The National Australia Bank’s quarterly Household Financial Stress Index rose to a 3 year high in the December 2022 quarter.²²⁴ In the index, a score of “0” corresponds to “not all concerned about financial stress”, and “100” means someone is “extremely concerned”. The index rose in each component in the December 2022 quarter, climbing overall to 44.2 points, up from 41.3 points in the previous quarter and 40.3 points in December 2021.²²⁵ When asked if they were better or worse off financially than this time last year, the lowest income respondents had a net balance of 35% saying they were worse off.²²⁶
258. The Melbourne Institute started collecting data on the income levels of respondents in February 2021. It shows that workers on low incomes (up to \$50,000) experienced levels of

²²² [2022] FWCFB 3500 at [77]-[79]

²²³ FWC Statistical Report Version 1, Table 13.2, p 98 <<https://www.fwc.gov.au/documents/wage-reviews/2022-23/statistical-report-version-%201-2023-03-03.pdf>>

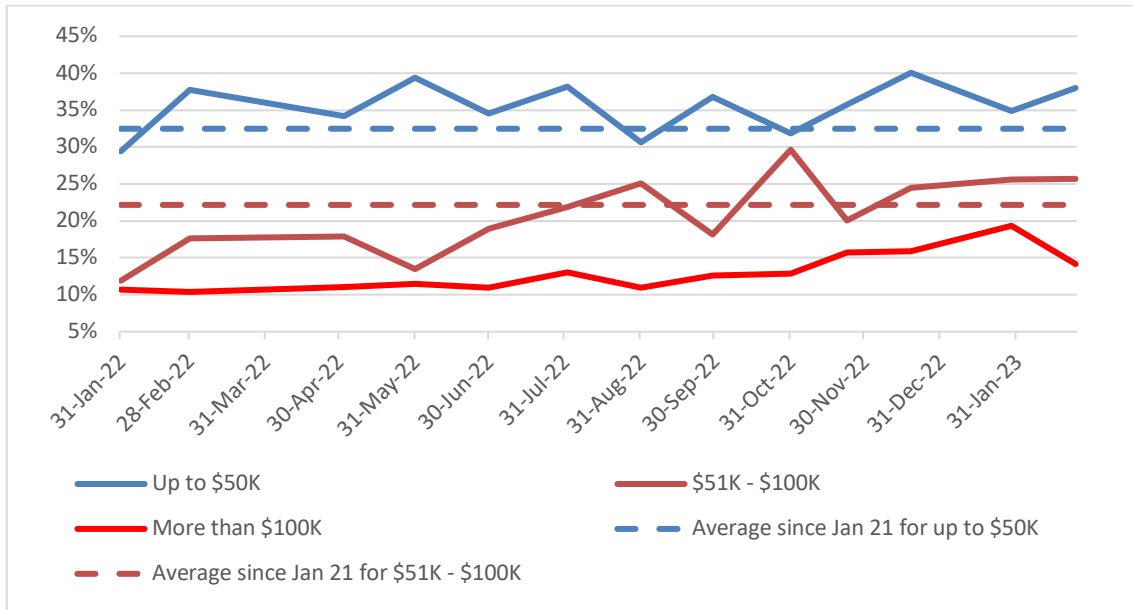
²²⁴ Pearson and De Lure (National Australia Bank), *NAB Australian Wellbeing Survey Q4 2022*, 8 <<https://business.nab.com.au/wp-content/uploads/2023/02/NAB-Australian-Wellbeing-Survey-Q4-2022-1.pdf>>

²²⁵ Ibid

²²⁶ Ibid

stress well above other income cohorts, and that their levels of financial stress have trended upwards since early 2022.

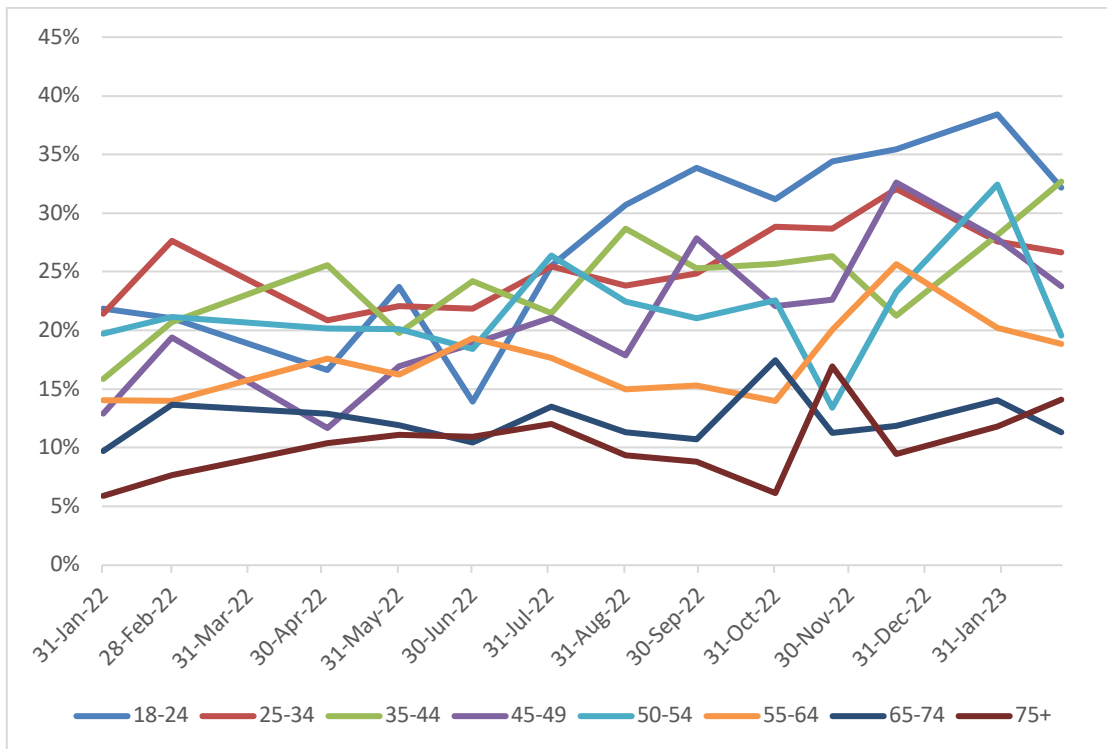
Figure 62: Financial Stress by Income Level



Source: Melbourne Institute, Taking the Pulse of the nation.

259. Younger respondents have faced significant levels of financial stress throughout the pandemic and above the levels faced by other age cohorts. Levels of financial stress for all age groups has trended upwards since early 2022 and this is more pronounced for younger workers. As noted in Chapter 5, award reliant workers are over-represented in the under-25 year age group.

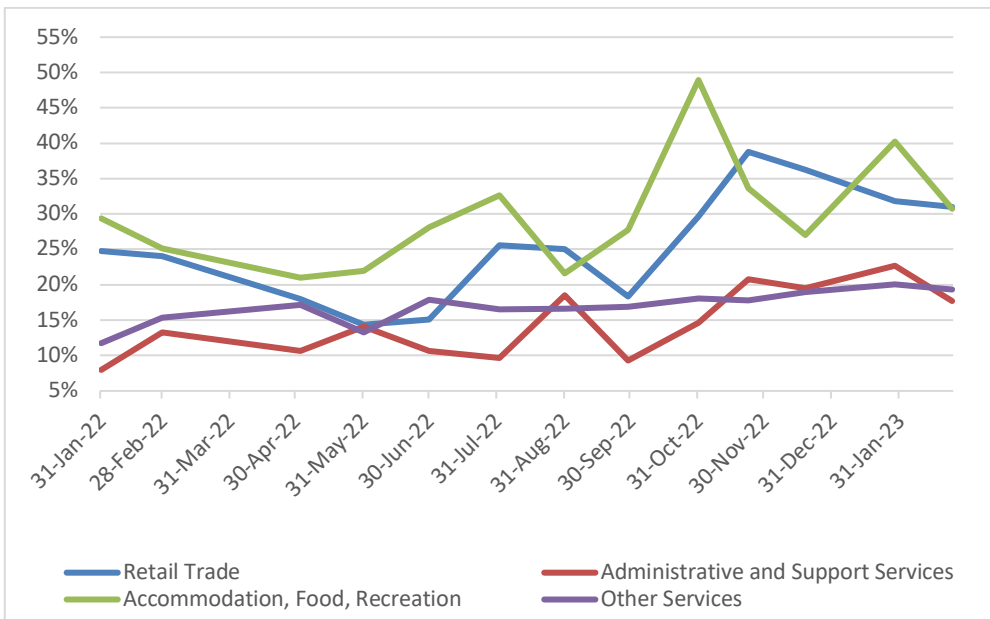
Figure 63: Financial Stress by Age



Source: Melbourne Institute, Taking the Pulse of the nation.

260. Industries that are more Award reliant have large proportions of employee respondents exhibiting high levels of financial stress throughout the survey period. Fluctuations during the survey period notwithstanding, by the end of survey period, the financially stressed employees amongst respondents from Administrative and Support Services; Health Care; Other Services remained either as high or almost as high as it was at the start of the survey, having trended upwards significantly since early 2022.

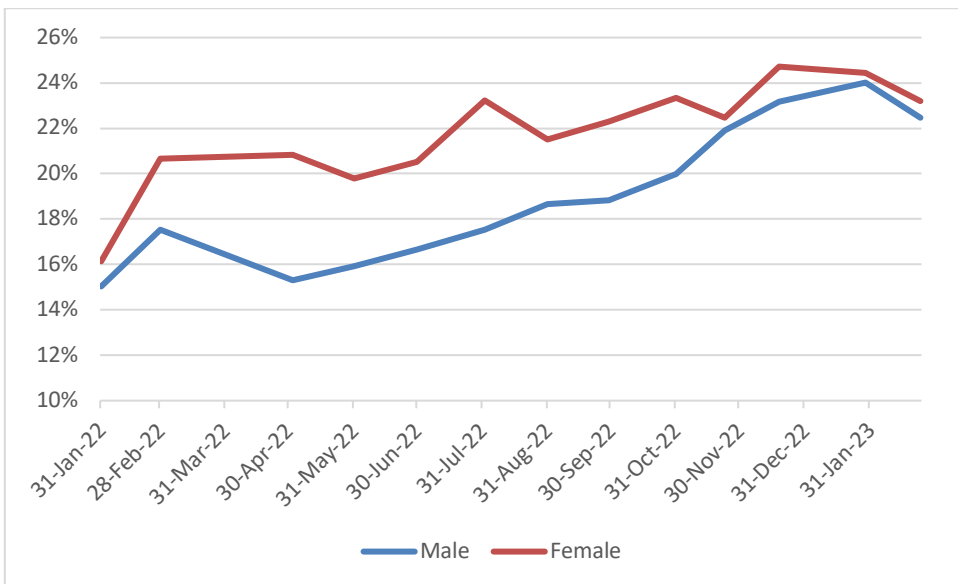
Figure 64: Financial Stress amongst workers with high levels of award reliance



Source: Melbourne Institute, Taking the Pulse of the nation.

261. Men generally experienced slightly higher levels of financial stress than women, but this changed during the COVID-19 pandemic. Financial stress for both genders has trended upwards since January 2022, with women facing higher levels of financial stress.

Figure 65: Financial Stress by Gender



Source: Melbourne Institute, Taking the Pulse of the nation.

262. The ACTU’s Attitudes, Sentiments and Knowledge (ASK) survey provides key insights into attitudes around financial wellbeing and cost of living. The ASK Survey is directed at understanding and tracking Australians’ perceptions and sentiments on a range of issues,

including financial wellbeing and employment. It is a nationally representative sample, with target quotas, which interlock age and gender and overlay location (state/territory). Since Q3 2022, target quotas have been proportionally based on results from the ABS 2021 Census, allowing for robust comparison over time.²²⁷

263. Results from the ASK survey are provided as Appendix A to this submission in the form of a report which contains several data tables (**ASK Survey Report**) and source data. In terms of financial wellbeing, the results show that 45% of workers surveyed disagree or strongly disagree that their household is better off financially now than at the same time last year.²²⁸ This increases to 49% for workers earning less than \$52,000 and 56% for casual workers.²²⁹ For each of these categories, more people disagree or strongly disagree with the proposition now than in Q3 2022. 17% of workers disagree or strongly disagree with the proposition that they earn enough to pay their bills.²³⁰ Workers in insecure (25%) or casual (31%) work are even more likely to indicate that they do not earn enough to pay their bills, as are workers earning less than \$52,000 (18%) and workers in award-reliant industries (19%).²³¹ Once again, this figure has increased since Q3 2022.

²²⁷ Note respondents are able to identify themselves as non-binary, other, or refuse gender identification

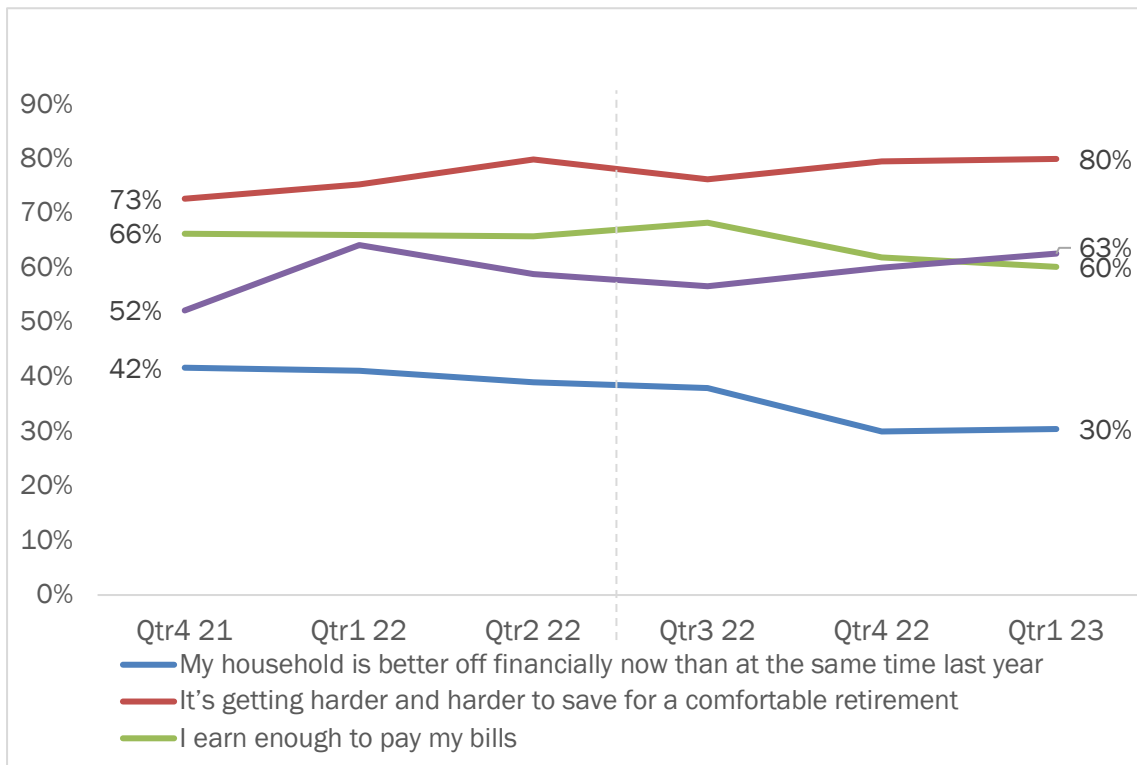
²²⁸ ASK Survey Report at [2]

²²⁹ ASK Survey Report at [2]

²³⁰ ASK Survey Report at [2], [5] (Table 2)

²³¹ ASK Survey Report at [2], [5] (Table 2), Topline Data Tables

Figure 66: Financial well-being of workers in award reliant industries (% agree)



Source: ACTU Attitudes, Sentiments and Knowledge Survey, Waves 1 to 6.

264. 89% of workers believed that cost of living had gotten worse in the past 12 months, and 84% of workers thought this with respect to electricity prices specifically.²³²

265. The ASK Survey data clearly shows that concern over inability to meet rising living costs has increased significantly during the review period. As at Q3 2022:²³³

- a. 34% of working respondents strongly disagreed or disagreed that their household was better off financially than at the same time 1 year ago (compared to 45% now);
- b. 40% of workers earning less than \$52,000 strongly disagreed or disagreed with the same proposition (compared to 49% now);
- c. 35% of workers in award-reliant industries strongly disagreed or disagreed with the same proposition (compared to 46% now);
- d. 13 percent of working respondents strongly disagreed or disagreed that they earned enough to pay their bills (compared to 17% now);
- e. 22% of workers earning less than \$52,000 strongly disagreed or disagreed with the same proposition (compared to 26% now); and

²³² ASK Survey Report at [2], Topline Data Tables

²³³ ASK Survey Report Topline Data Tables

- f. 13% of workers in award-reliant industries strongly disagreed or disagreed with the same proposition (compared to 19% now).

266. In terms of meeting specific living costs the proportion of workers who disagreed or strongly disagreed that they would be able to meet the following expenses without significant financial stress over the coming 12 months was:²³⁴

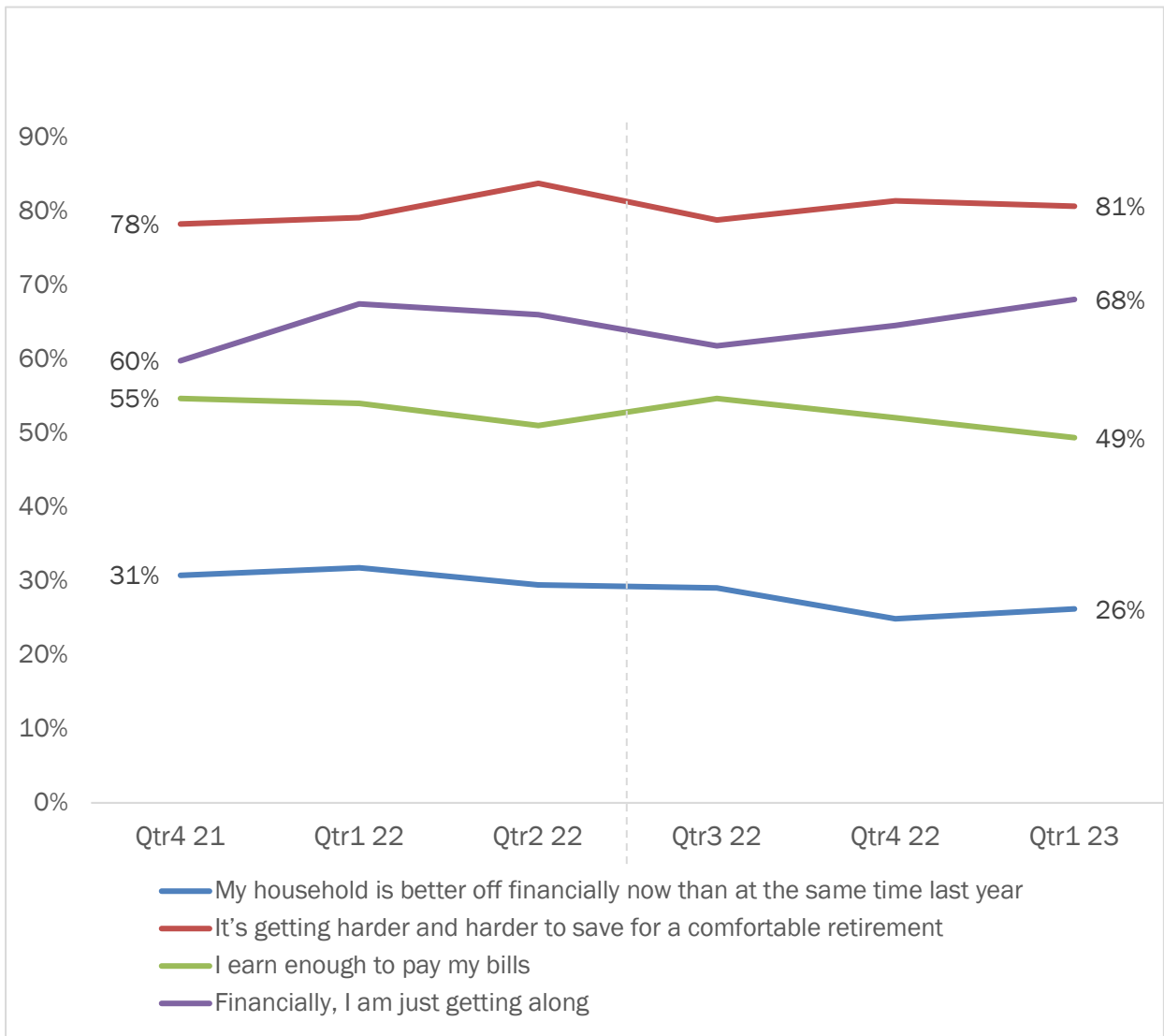
- a. 39% in relation to housing (and 43% of workers earning less than \$52,000), up from 31% for all workers and 38% of workers earning less than \$52,000 in Q3 2022;
- b. 33% in relation to utilities (and 37% of workers earning less than \$52,000). up from 27% for all workers and 34% of workers earning less than \$52,000 in Q3 2022;
- c. 33% in relation to medical expenses (and 40% of workers earning less than \$52,000), up from 25% for all workers and 33% of workers earning less than \$52,000 in Q3 2022;
- d. 32% in relation to fuel and transport (and 35% of workers earning less than \$52,000), up from 28% for all workers and the same as the 35% of workers earning less than \$52,000 in Q3 2022;
- e. 30% in relation to food and groceries (and 34% of workers earning less than \$52,000), up from 24% for all workers and 25% of workers earning less than \$52,000 in Q3 2022;
- f. 29% in relation to personal debt (and 35% of workers earning less than \$52,000), up from 21% for all workers and 26% of workers earning less than \$52,000 in Q3 2022; and
- g. 28% in relation to childcare (and 28% of workers earning less than \$52,000), up from 23% for all workers and 26% of workers earning less than \$52,000 in Q3 2022.

267. In all of the above categories, workers in award reliant industries were as - or more likely to consider that they would be - unable to meet these expenses without significant financial stress, as were casual employees and workers earning \$52,000 or less.²³⁵

²³⁴ ASK Survey Report at [6] (Table 3), Topline Data Tables

²³⁵ ASK Survey Report at [6] (Table 3), Topline Data Tables

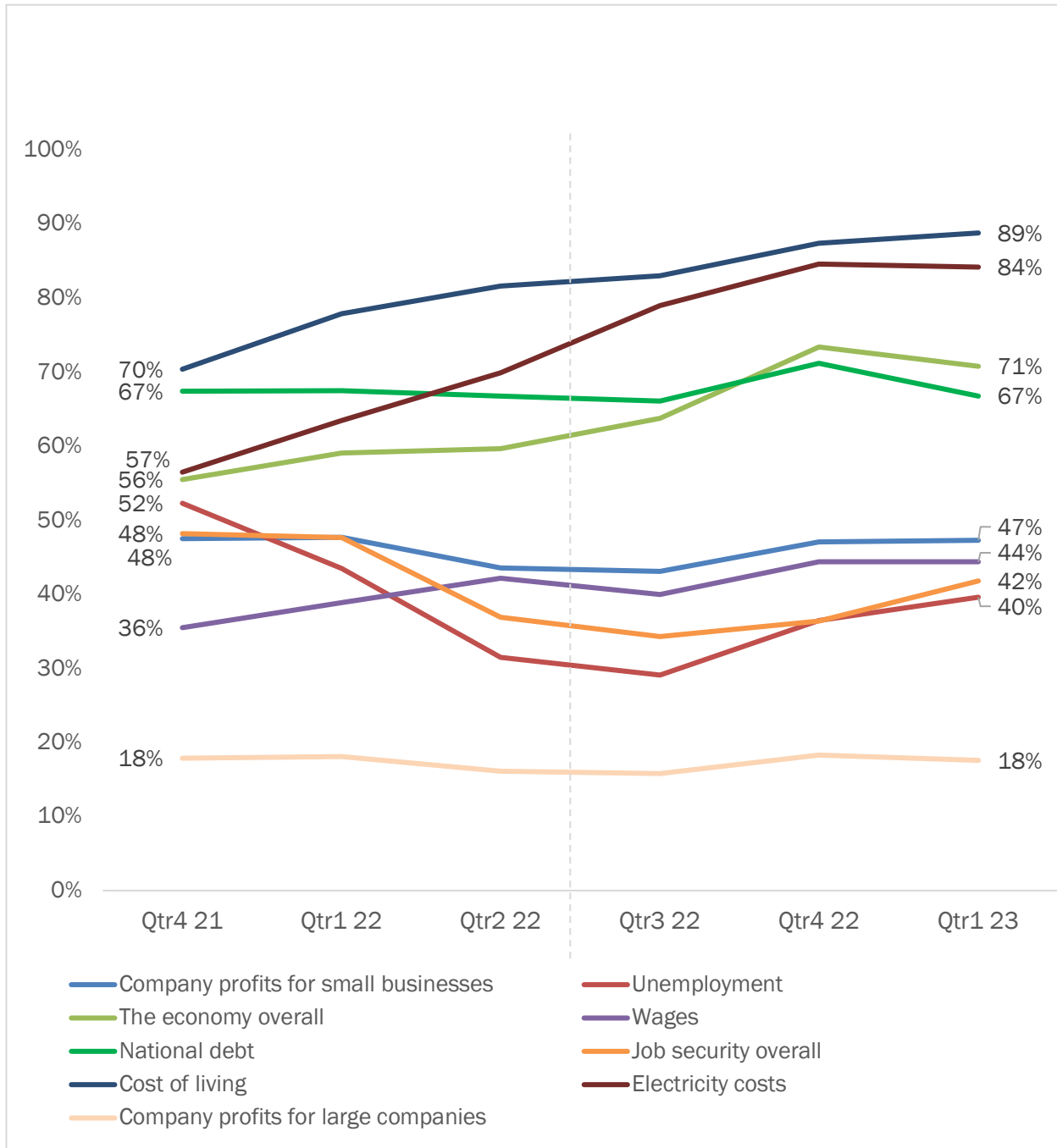
Figure 67: Financial wellbeing for workers earning less than \$52,000 (% agree)



Source: ACTU Attitudes, Sentiments and Knowledge Survey, Waves 1 to 6.

268. The above two figures clearly show that the number of award reliant workers and workers earning less than \$52,000 *per annum* who agree that their household is better off at the time of the survey than it was 12 months prior has fallen (from an already low proportion). A similar fall over time is seen with respect to the proportion of award reliant workers and low paid workers who believe that they earn enough to pay their bills.

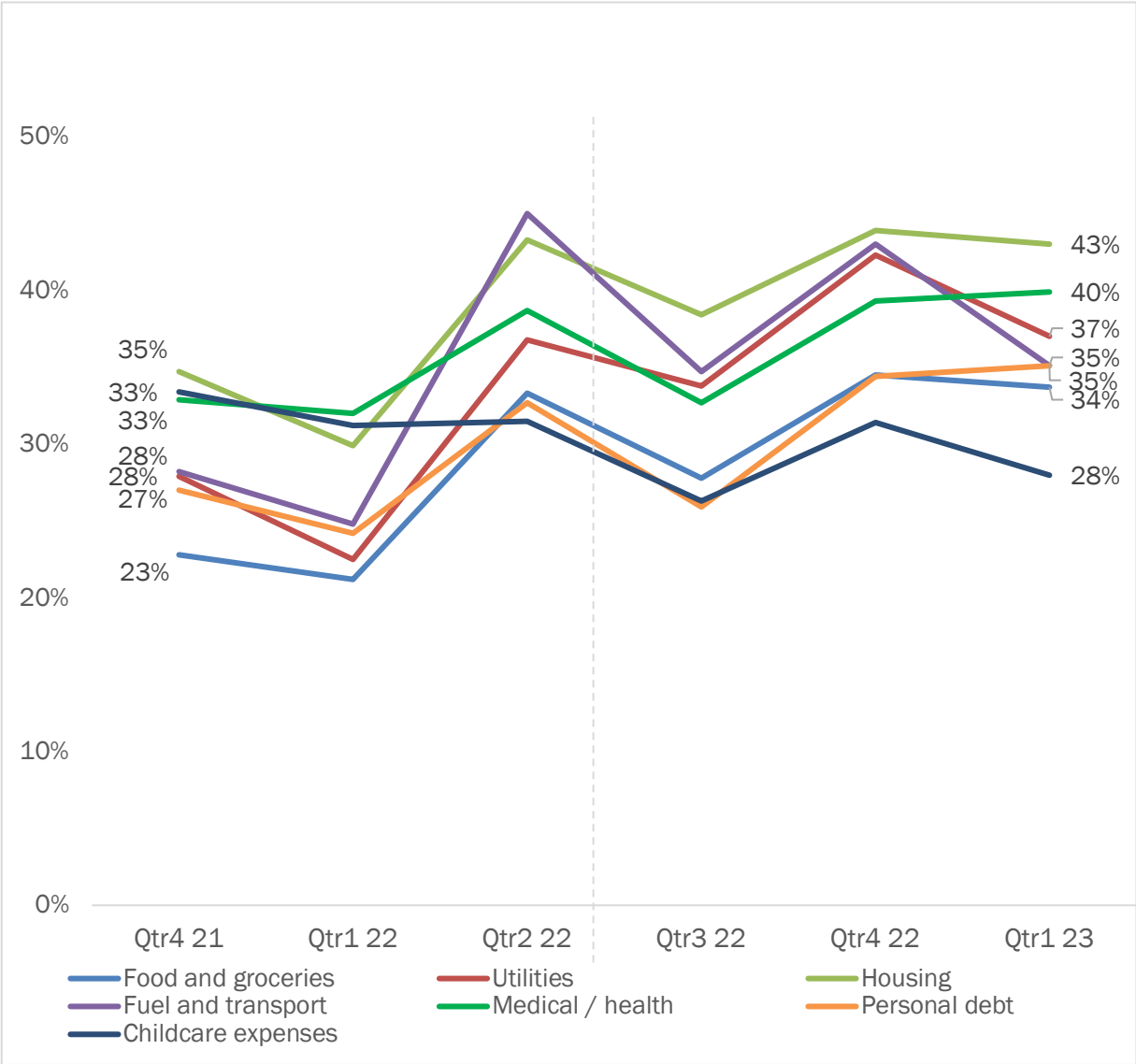
Figure 68: Better or worse compared to 12 months ago (% a lot or a little worse)



Source: ACTU Attitudes, Sentiments and Knowledge Survey, Waves 1 to 6.

269. Figure 68 above shows that sentiment amongst workers is clearly deteriorating – for example, the number of respondents who record that electricity costs have gotten worse has risen from 57% to 84% between Q4 2021 and Q1 2023.

Figure 69: ACTU ASK Survey – Ability to afford costs without significant stress – under \$52Kpa (disagree)

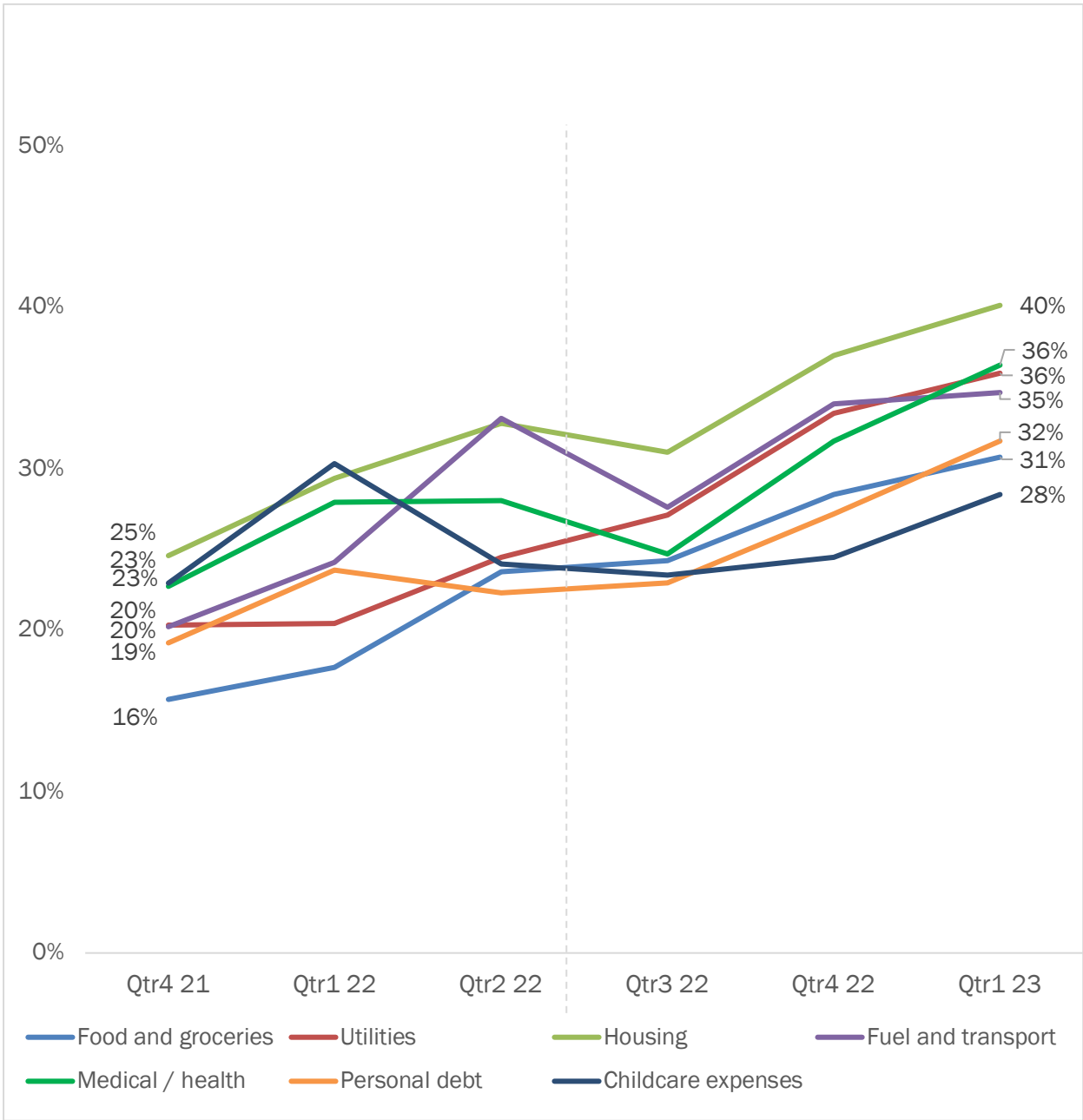


Source: ACTU Attitudes, Sentiments and Knowledge Survey, Waves 1 to 6.

270. Figure 69 above shows that working respondents with incomes of less than \$52,000 *per annum* have had a marked increase in the rate at which they disagree that they could meet certain living expenses without significant financial stress. The figure for food and groceries has increase from 23% to 34% over this period, while the figure for housing has risen from 35% to 43%.

271. As the following figure shows, concern about inability to meet specific expenses without significant financial stress has climbed even more sharply for workers in award reliant industries.

Figure 70: Ability to Afford costs without significant financial stress – Award Reliant (% disagree)



Source: ACTU Attitudes, Sentiments and Knowledge Survey, Waves 1 to 6.

272. Working respondents also reported the following responses to increased cost of living:²³⁶
- a. 57% had reduced spending on essential items (and 62% of workers earning less than \$52,000);
 - b. 15% had entered into debt (and 14% of workers earning less than \$52,000);
 - c. 25% had skipped meals (and 37% of workers earning less than \$52,000);
 - d. 23% had sold assets (and 29% of workers earning less than \$52,000);
 - e. 25% had been unable to pay bills or had fallen behind on bills (33% of workers earning less than \$52,000).
273. 22% of working respondents stated that they would be completely unable to raise \$3,000 in an emergency (a further 22% said that they could raise this amount, but would need more than 1 week to do so and/or additional support).²³⁷ The proportion completely unable to raise this amount was 28% for casual employees, 38% for workers earning less than \$52,000 and 25% for workers in award reliant industries.²³⁸
274. Alarming, a high proportion of working respondents reported that they had lost sleep worrying about their financial situation (43% for all workers and 49% for workers earning less than \$52,000), that their physical health had suffered (34% for all workers and 43% for workers earning less than \$52,000), that their mental health has suffered (47% for all workers and 54% for workers earning less than \$52,000), that their work performance (24% for all workers and 27% for workers earning less than \$52,000) has been negatively impacted that their home life (37% for all workers and 44% for workers earning less than \$52,000) has suffered.²³⁹
275. When asked for their top 5 priorities from a list of issues currently facing Australia, 64% of working respondents included reducing the cost of living and 39% included increasing wages.²⁴⁰
276. The report shows that all workers are struggling with increase cost of living pressures, and that this affects award-reliant and non-award workers.²⁴¹ However there are clearly

²³⁶ ASK Survey Report at [2]-[3], [7] (Table 4)

²³⁷ ASK Survey Report at [8] (Table 6)

²³⁸ ASK Survey Report at [8] (Table 6), Topline Data Tables

²³⁹ ASK Survey Report at [8] (Table 5)

²⁴⁰ ASK Survey Report at [3]

²⁴¹ ASK Survey Report at [3]

observable difference when the data is analysed by income, with those earning less than \$52,000 being affected more greatly than workers generally.²⁴²

277. Job security, gender and income level all have an effect on financial wellbeing, with those on lower incomes and/or in insecure work reporting lower levels of financial wellbeing.²⁴³
278. The above shows that the cost of living crisis is affecting the wellbeing of workers and the low paid in particular. All workers - and low paid, insecure and casual workers in particular – are increasingly aware that their earnings have been outstripped by inflation and are experiencing reduced optimism as to their ability to meet living costs. As chapter four shows, it is the bottom two quintiles by household income that have seen the most dramatic drops in their levels of gross savings in the past financial year.²⁴⁴ The very workers who see their weekly pay packets, and their weekly expenditure know that they are increasingly less likely to keep their heads above water financially. They are naturally highly concerned by this.

6.5.3 COVID-19 – Continuing without support

279. The COVID-19 pandemic remains, but many of the economic supports, particularly those on which low paid workers rely, have been removed.
280. The COVID-19 Disaster Payment and Pandemic Leave Disaster Payment all ended during the current review year. However, the pandemic did not. Daily COVID-19 infection rates continue in the thousands and tens of thousands, at times (such as January 2023) reaching above 150,000.²⁴⁵
281. There also continues to be a high number of Australians working less due to illness. In January 2023 2.2% of the workforce worked reduced or zero hours.²⁴⁶ At the peak of recently Covid waves across April to August 2022, between 750,000 to 768,500 people worked fewer hours each month due to injury or illness. This compares to just 437,000 to 538,900 working less hours over the same period in 2019.

²⁴² ASK Survey Report at [3]

²⁴³ ASK Survey Report at [4]

²⁴⁴ ABS, Australian National Accounts: Distribution of Household Income, Consumption and Wealth (2020-2021).

²⁴⁵ Commonwealth Department of Health and Aged Care, *Coronavirus (COVID-19) case numbers and statistics*, <<https://www.health.gov.au/health-alerts/covid-19/case-numbers-and-statistics#:~:text=COVID%2D19%20case%20notifications,of%202%2C587%20cases%20per%20day>>

²⁴⁶ ABS, January 2023, *Insights into hours worked*, <<https://www.abs.gov.au/articles/insights-hours-worked-january-2023>>

282. This leaves low paid workers once more in the precarious position of being exposed to COVID-19, being infected by COVID-19, but potentially having no income support (particularly in the case of casual low paid workers) if they are unable to work because of it. Award reliant employees are consistently more likely to be employed casually and therefore not have leave entitlements than other employees in their industries.²⁴⁷
283. Over this period, consumer confidence has unsurprisingly fallen. Underlying data from the ANZ-Roy Morgan consumer confidence rating shows that consumers' assessment of their personal and family financial situation fell sharply at the start of the pandemic, rebounded strongly (at about the time that certain pandemic support payments and other measures were introduced) and has fallen steeply since the latter parts of 2022 to current levels far lower than any seen since the GFC.²⁴⁸
284. It is submitted that the removal of these income supports should weigh in favour of a greater increase to the NMW and award wages in the present review.

6.5.4 The Tax Transfer System

285. In previous reviews, the Panel has treated changes which it viewed as benefitting low paid households as a moderating factor.²⁴⁹
286. It is submitted that in this year's review, changes to the tax transfer affecting the low paid in particular warrant a greater increase to the NMW and award wages. The reasons for this are provided in section 5.3 above.

6.5.4 Superannuation

287. Changes to the superannuation system, affecting low paid workers are set out above in section 5.3.
288. For the reasons set out in that section, it is submitted that less moderation should attach to changes to superannuation in the present review year, and that accordingly this should lead

²⁴⁷ FWC Statistical Report Version 1, Table 12.1, p93 <<https://www.fwc.gov.au/documents/wage-reviews/2022-23/statistical-report-version-%201-2023-03-03.pdf>>

²⁴⁸ ANZ Roy Morgan, *Weekly Consumer Confidence Rating* <[data file](#)> tabs PFSQ1, PFSQ2, FFS

²⁴⁹ See [2020] FWCFB 3500 at [119]-[120], [139]

to the awarding of a greater NMW increase in the present year, than was awarded for the previous year.

6.5.5 Inflation generally

289. In its 2021/2022 decision, the Panel observed:

[125] The main measures of inflation that we consider are the CPI and underlying inflation. There are two measures of underlying inflation—the trimmed mean and weighted median. As discussed in the 2019–20 Review decision, underlying inflation is calculated to remove volatility in the quarterly price changes in the CPI due to large, irregular price movements to determine the underlying trend.

[126] At the time of last year’s Review decision, the CPI and the trimmed mean measure of inflation both stood at 1.1 per cent over the year to the March quarter 2021. The comparable figures now stand at 5.1 per cent (for the CPI) and 3.7 per cent (for the trimmed mean).

290. The comparable figures now stand at 7.8% (CPI) (the highest annual increase since 1990) and 6.9% (trimmed mean) over the year to the December 2022 quarter.²⁵⁰ This represents a significant increase in the cost of living since the previous review period – which was itself considerably higher than the previous year. As at the December 2021 quarter, the comparable figures stood at 3.5% (CPI), 2.6% (trimmed mean). This rose to 6.1% (CPI) and 4.9% (trimmed mean) in the June 2022 quarter, and has continued to rise further since.²⁵¹

291. In last year’s review, the Panel awarded a 4.6% increase, subject to a minimum increase of \$40. This was in the context of rising inflation. It is submitted that in circumstances where CPI has risen even more greatly in the present review year, and faster than the Panel anticipated last year, the circumstances warrant an even greater increase than for previous years. As discussed in the chapter on the national economy, the current episode of inflation when measured by CPI against the past two increases awarded by the Panel, has seen the real value of minimum and award wages decline by 5.43 percent and 6.04 percent respectively over the past two review periods.²⁵² Put another way, a full time worker reliant on award wages and earning below the low income threshold would be earning between \$2,300 and \$3,000 more in this review period if their wages had kept up with inflation.

²⁵⁰ ABS, *Consumer Price Index*, <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>>

²⁵¹ Ibid

²⁵² Assuming that CPI declines to 6.75% for the year to June 2023, as the RBA currently projects.

292. The 2021/2022 Panel further observed:²⁵³

[130] The low paid are particularly vulnerable in the context of rising inflation.

...

[139] ...we are conscious that the low paid are particularly vulnerable in the context of rising inflation. Further, given the sharp rise in the cost of living since last year's Review, the increases awarded last year have resulted in a fall in the real value of the NMW and modern award minimum wages.

293. Notwithstanding the Panel's award of a greater increase in the 2021/2022 review than for the previous year, the same might still be said due to the even higher levels of inflation experienced in the present review period. That CPI and the trimmed mean are well above the 4.6% increase awarded in last year's review means that notwithstanding this increase, the real value of the NMW and modern award minimum wages has fallen over the current review period. Inflation generally is discussed in the national economy chapter of this submission.

294. Accordingly, it is submitted that the current level of inflation, and the impact that it has on the low paid warrants a greater increase than was awarded in the previous review – in part to address the current cost of living crisis, and in part to rectify the fall in real wages experienced by the low paid since the last review.

6.5.6 CPI for the low paid

295. In its 2021/2022 decision, the Panel Observed:²⁵⁴

Further, as noted in last year's Review decision, we accept that price increases and the cost of living at the aggregate level can mask the lived experience of low-paid workers. Price increases in non-discretionary purchases, such as rent and basic food staples, are more likely to affect the household budgets of the low paid

296. The Panel has previously had regard to the Living Cost Index for employee households, observing in the 2021/2022 review that that index had risen 1.4% in the March 2022 quarter and 3.7% over the year – “the highest since 2009”.²⁵⁵

²⁵³ [2021] FWCFB 3500 at [130] – [139]

²⁵⁴ [2021] FWCFB 3500 at [53]

²⁵⁵ [2022] FWCFB 3500 at [42]

297. The December 2022 quarter figures show an even greater increase in the Living Cost Index for employee households during the review period – a rise of 3.2% in the quarter and an annual increase of 9.3%.²⁵⁶ This suggests that amidst a cost of living crisis at large, the situation is even more dire for workers and the low paid in particular.
298. ANU’s Economic and Other Wellbeing Study finds that:²⁵⁷
- The largest relative decline in [real] income between February 2020 and October 2022 was for those in the bottom income quintile, with a 7.8 per cent decrease, or \$37 in February 2020 dollar equivalents.
299. In 2022, Yuen and Rozendez built an experimental estimate of CPI for low paid households by weighting items in the CPI based on expenditure patterns of low paid households, rather than based on the expenditure pattern of an average household (as the CPI does).²⁵⁸ This lead to their giving a greater weighting to items including: rents, automotive fuel, electricity, vegetables, medical and hospital services, secondary education and tertiary education.²⁵⁹
300. van Klints and Bruenig’s study - which reviews international studies - concludes that low-income households (defined as those in the bottom quintile of the income distribution) spend a higher proportion of their income on necessities while high income households spend more on transport, recreation and culture.²⁶⁰
301. Non-discretionary inflation was greater than discretionary inflation in the year to December quarter 2022, at 8.4% compared to 7.1%.²⁶¹
302. Accordingly, it is more difficult for the low paid to adjust spending patterns in the way that higher income households might – whereas a high income household might see the cost of

²⁵⁶ ABS, *Selected Living Cost Indexes, Australia* <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/selected-living-cost-indexes-australia/latest-release>>

²⁵⁷ Professors Nicholas Biddle and Matthew Gray, 3 November 2022, *Economic and Other Wellbeing in Australia – October 2022*, ANU Centre for Social Research and Methods

²⁵⁸ Kelvin Yuen and David Rozenbes, 2022, Experimental estimates for a Consumer Price Index for low-paid employee households, Fair Work Commission <<https://www.fwc.gov.au/documents/wage-reviews/2021-22/correspondence/lowpaidcpi.pdf>>

²⁵⁹ Ibid

²⁶⁰ M van Kints & R Bruenig, 2021, Inflation variability across Australian households: implications for inequality and *indexation policy*, *Economic Record*, Vol. 97, Issue 316, pp 1-23.

²⁶¹ ABS, 25 January 2023, *Consumer Price Index, Australia (December Quarter)*, <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/dec-quarter-2022>>

entertainment increasing and refrain from discretionary spending, a lower income household cannot so easily make a similar adjustment with respect to their household budget. It is more palatable to refrain from theatre tickets than from groceries.

303. The UNSW Social Policy Research Centre's study, *Budget Standards for Low Paid Families*, shows that a single worker on the NMW earns less than their estimated modest household budget.²⁶² The same worker earns far less than is needed to support a non-working partner, much less a child; the same is true even if the worker earns the C4 rate.²⁶³ Dual earning couples fare slightly better, earning narrowly above their estimated household budget for a couple with 2 children.²⁶⁴ The situation is most bleak for single parents (whether they have 1 or 2 children) who fall well short of earning enough to satisfy their estimated household budget if earning the C4 rates.²⁶⁵ For workers on the NMW, only dual earning couples come closest to meeting household budgets (earning 91% of the disposable income required).²⁶⁶
304. It is submitted that on the basis of significantly increased cost of living when compared to the previous review period and the disproportionate effect this has on the low paid, the Panel should award an increase in the current review that is significantly greater than for recent previous years.

²⁶² Associate Professor Bruce Bradbury et. al. 2023, *Budget Standards for Low Paid Families*, UNSW Social Policy Research Centre, Table 10

²⁶³ Ibid.

²⁶⁴ Associate Professor Bruce Bradbury et. al. 2023, *Budget Standards for Low Paid Families*, UNSW Social Policy Research Centre, Table 10, Table 11

²⁶⁵ Associate Professor Bruce Bradbury et. al. 2023, *Budget Standards for Low Paid Families*, UNSW Social Policy Research Centre, Table 11

²⁶⁶ Associate Professor Bruce Bradbury et. al. 2023, *Budget Standards for Low Paid Families*, UNSW Social Policy Research Centre, Table 14

6.5.7 Mortgage Stress and the Rental Crisis

305. At 1 July 2022, the RBA's cash target rate stood at 0.35%. As at March 2023 it is now 3.60%. This means that repayments on an average mortgage of \$604,000 on variable rates have risen by 54% or about \$1200 per month since the RBA began raising its cash target rate in May 2022.²⁶⁷
306. Many working Australians will experience the impact of this in sudden fashion during 2023. For working Australians who fixed the rate of their mortgage when interests were low, the increase in rates will be felt sharply (i.e. in the example above, a sudden increase of \$1200 per month to repayments) when the fixed rate period ends.²⁶⁸ Economists estimate that as many as 880,000 Australians are affected by this.²⁶⁹
307. Even if a low paid worker does not own a home and have a mortgage, the effect of rising interest rates, coupled with other factors such as scarcity, has contributed to a rental crisis in which availability is low and prices are high.
308. The weighted average housing cost in the 8 capital cities rose by 1.9% in the December quarter and 10.7% in the year to December.²⁷⁰ An index of weekly rents in capital cities shows that in this review period alone, average weekly rents have grown since July 2022 from \$481 for all units and \$665 for all houses to \$568 for all units and \$746 for all houses in March 2023.²⁷¹ That is an increase of 18% and 12% respectively in 9 months. This is part of a broader explosion in rental costs since the low point in 2020 when average weekly rents stood at \$408 (December) for all units and \$534 (July) for all houses.²⁷²

²⁶⁷ Shane Wright, 8 March 2023, *Housing affordability crumbles as mortgage repayments hit record level* (Sydney Morning Herald, online) <<https://www.smh.com.au/politics/federal/housing-affordability-crumbles-as-mortgage-repayments-hit-record-level-20230308-p5cagj.html>>

²⁶⁸ See Daniel Jeffrey, 16 February 2023, *What is the fixed rate mortgage cliff, and how is it going to impact the Australian economy?* (9News, online) <<https://www.9news.com.au/finance/interest-rate-rises-australia-fixed-rate-mortgage-cliff-home-loans-cost-of-living-explainer/a8c4e8a7-de03-41ed-9a86-33cbbafab193>>

²⁶⁹ Chris Kohler, 23 March 2023, *Worse to come for many households as 'mortgage cliff' looms* (9news, Online) <<https://www.9news.com.au/national/reserve-bank-australia-interest-rate-worst-to-come-for-many-households-as-mortgage-cliff-looms/4b3a0f24-50fb-4c06-855a-b8d1554905fb>>

²⁷⁰ ABS, 25 January 2023, *Consumer Price Index, Australia (December Quarter)*, <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/dec-quarter-2022>>

²⁷¹ SQM Research, *Weekly Rents All Capital Cities*, <<https://sqmresearch.com.au/weekly-rents.php?avg=1&t=1>>

²⁷² Ibid

309. The number of rental properties advertised at less than \$400 per week now sits at 17.6% or all properties advertised.²⁷³ This is less than half the number of properties at this price point advertised in May 2020.²⁷⁴
310. This means that many low paid workers will miss out on finding a property within their available budget and will have no choice but to pay more than \$400 per week for accommodation. The Taking the Pulse of the Nation survey indicates that most (64.9%) Australians who are in a financially precarious situation expected to have to spend more on housing as at October 2022.²⁷⁵
311. In summary, housing costs are skyrocketing and this affects the low paid whether or not they are home owners with mortgages or renters. It is submitted that these circumstances warrant a greater increase than was awarded in the previous review.

6.5.8 Food insecurity and the rising cost of groceries and essential items.

312. Groceries recorded an annual increase of between 8.2% (meat and seafood) to 14.9% (dairy and related) as at the December quarter 2022.²⁷⁶
313. It is estimated that more than 1 in 12 low income workers has been found to go without meals.²⁷⁷ However, among the financially stressed cohort, 5.2% had skipped at least one meal, 22.9% were eating less and 35% had both skipped meals and were eating less.²⁷⁸ The ACTU's ASK Survey data indicates that 25% of all workers have skipped meals and 37% of workers earning less than \$52,000 have skipped meals. 56% of people are purchasing cheaper food options.²⁷⁹

²⁷³ Anjelica Silva, 7 March 2023, *Higher interest rates aren't just affecting home owners — fewer cheap rentals are available* (ABC News, online) <<https://www.abc.net.au/news/2023-03-07/interest-rate-rise-affecting-renters-proprack-report-australia/102061538>>

²⁷⁴ Ibid.

²⁷⁵ Melbourne University, February 2023, *Is inflation starting to bite financially precarious Australians?*, *Research Insights* 1(23), p3 (Table 1) <https://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0003/4498014/ri2023n01.pdf>

²⁷⁶ ABS, 25 January 2023, *Consumer Price Index, Australia (December Quarter)*, <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/dec-quarter-2022>>

²⁷⁷ Alan Duncan (BankWest Curtin Economic Centre), March 2022, *Behind the Line: Poverty and disadvantage in Australia 2022, Focus on the States Series*, 9(22), p52 <<https://bcec.edu.au/assets/2022/03/BCEC-Poverty-and-Disadvantage-Report-March-2022-FINAL-WEB.pdf>>

²⁷⁸ Melbourne Institute, *Taking the Pulse of the Nation, High rates of food insecurity, but few Australians getting help*, Figure 3 <<https://melbourneinstitute.unimelb.edu.au/data/taking-the-pulse-of-the-nation-2022/food-insecurity>>

²⁷⁹ Melbourne Institute, *Taking the Pulse of the Nation, Australians using various measures to deal with higher cost of living* <<https://melbourneinstitute.unimelb.edu.au/data/taking-the-pulse-of-the-nation-2022/cost-of-living>>

314. The Foodbank Hunger Report 2022 estimates that about 3.3 million Australian households (54% of which have someone in paid work) experienced some form of food insecurity in the 12 months to October 2022.²⁸⁰ Of these, over 2 million households experienced severe food insecurity during that period.²⁸¹ By contrast, Foodbank’s 2021 survey showed that a lesser proportion of respondent’s had experienced some form of food insecurity – 1,203 (or 41.81%) out of 2,877 respondents.²⁸² While increased cost of living (64% of food insecure households) was given as the most common reason for food insecurity in 2022, followed by reduced or low income or benefits (42%), over half of respondents in food insecure households cited multiple compounding reasons for their experiencing food insecurity.²⁸³ This helps to locate food insecurity as part of a much broader cost of living problem brought on by a combination of high prices (for food and other items) and low wages.

6.5.9 Skyrocketing Fuel Prices

315. Petrol prices rose 2.2% in the December 2022 quarter, rising 13.2% over the year to December.²⁸⁴ In part this is due to the ending of a temporary fuel excise reduction during the review period.²⁸⁵

316. Electricity costs rose 8.6% in the December quarter alone,²⁸⁶ and by 17.2% for the year to February 2023 under the ABS Monthly CPI Indicator.²⁸⁷ 37% of people are using less energy at home.²⁸⁸

²⁸⁰ Miller and Li, *Foodbank Hunger Report 2022*, Foodbank, pp1, 5 <<https://reports.foodbank.org.au/wp-content/uploads/2023/03/Foodbank-Hunger-Report-2022.pdf>>; for definition, see United States Department of Agriculture Economic Research Service, *Measurement* <<https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/measurement/#measurement>>

²⁸¹ Miller and Li, *Foodbank Hunger Report 2022*, Foodbank, p5 <<https://reports.foodbank.org.au/wp-content/uploads/2023/03/Foodbank-Hunger-Report-2022.pdf>>

²⁸² *Foodbank Hunger Report 2021*, Foodbank, p29 <<https://reports.foodbank.org.au/foodbank-hunger-report-2021/?state=au#download>>

²⁸³ Miller and Li, *Foodbank Hunger Report 2022*, Foodbank, p15 <<https://reports.foodbank.org.au/wp-content/uploads/2023/03/Foodbank-Hunger-Report-2022.pdf>>;

²⁸⁴ ABS, 25 January 2023, *Consumer Price Index, Australia (December Quarter)*, <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/dec-quarter-2022>>

²⁸⁵ Colin Packham, 2 December 2022, Gas bills to rise in January as energy retailers pass on higher costs (Australian Financial Review, online) <<https://www.afr.com/companies/energy/energyaustralia-agl-to-raise-victorian-gas-bills-by-more-than-20pc-20221202-p5c35y>>

²⁸⁶ ABS, 25 January 2023, *Consumer Price Index, Australia (December Quarter)*, <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/dec-quarter-2022>>

²⁸⁷ ABS Monthly CPI Indicator (February 2023)

²⁸⁸ Melbourne Institute, Taking the Pulse of the Nation, *Australians using various measures to deal with higher cost of living* <<https://melbourneinstitute.unimelb.edu.au/data/taking-the-pulse-of-the-nation-2022/cost-of-living>>

317. Gas prices continue to increase due to the “global energy crunch” brought on in part by the continuing invasion of Ukraine.²⁸⁹ One retailer has increased default gas prices by 22% for Victorian customers and between 5% and 9% for other customers in the eastern seaboard.²⁹⁰

6.5.10 Unaffordable Early Childhood Education and Care

318. Early childhood education and costs have increased significantly, by 41% over the past 8 years.²⁹¹ The extent of the increase is such that the Commonwealth Government has directed the ACCC to investigate the increased costs.²⁹² From June 2022 to December 2022 alone, early childhood education costs rose by 5.75%.²⁹³

319. One major provider has passed on double digit price increases to working parents since January 2022.²⁹⁴ As noted in the previous chapter, the most recent data from the Australian Government Department Education²⁹⁵ indicates that the hourly fee for childcare (excluding in home care) rose 5.1% in the 12 months to the March Quarter 2022.

6.6 Impact of a Delay

320. In circumstances where the needs of the low paid are not being met at present, any delay is in essence a further period of time in which their needs are not being met, and in which no progress is made towards their needs being met. In our view, claims for a deferral require a greater degree of scrutiny than was applied in last years review, as discussed in Appendix B to this submission.

²⁸⁹ Colin Packham, 2 December 2022, Gas bills to rise in January as energy retailers pass on higher costs (Australian Financial Review, online) <<https://www.afr.com/companies/energy/energyaustralia-agl-to-raise-victorian-gas-bills-by-more-than-20pc-20221202-p5c35y>>

²⁹⁰ Ibid

²⁹¹ Government asks ACCC to investigate child care cost increases, provide interim report before subsidy change (ABC News, online) <<https://www.abc.net.au/news/2022-09-21/government-accs-investigate-child-care-cost-increases/101461220>>

²⁹² Competition and Consumer (Price Inquiry— Child Care) Direction 2022 <<https://www.accc.gov.au/system/files/Terms%20of%20reference%20-%20childcare%20inquiry.pdf>>

²⁹³ ABS, 25 January 2023, *Consumer Price Index, Australia (December Quarter)*, <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/dec-quarter-2022>>, Table 9 (data 6), ACTU calculations.

²⁹⁴ Liam Walsh, 11 January 2023, *Childcare giant whacks parents with double-digit fee rises* (Australian Financial Review, online) <<https://www.afr.com/companies/healthcare-and-fitness/unreasonable-childcare-giant-whacks-double-digit-annual-fee-hike-20230111-p5cbte>>

²⁹⁵ Department of Education, [March Quarter 2022 report on usage, fees and subsidies](#)

6.7 Conclusion – the needs of the low paid

321. As this chapter has shown, the current economic environment features a dramatic increase in the cost of living, affecting the low paid in particular.
322. The situation for the low paid warranted a significant increase in last year's review and has deteriorated further since. Non-discretionary items such as groceries and utilities are now much costlier. Housing costs have also increased significantly. Australian families are skipping meals, and they're not keeping up with the bills.
323. It is submitted that the present situation warrants an even greater increase than was awarded last year, on the basis of exponential increases to cost of living which mean that – notwithstanding the increase awarded last year – low paid workers have experienced a real wages decline.
324. The low paid need to be able to buy groceries; they need to be able to pay for petrol so they can get to work; they need to heat their homes in winter; they need to have a home to heat; they need to support themselves, their families and partners and tell their children that they can afford school lunches; they need to earn enough to participate in life as valued members of society entitled to a decent standard of living. They need to not live in poverty. As this chapter has shown, some of them cannot do these things and many more will struggle to do so throughout the year. It is perverse that any working person cannot earn enough from their labour to live their life.
325. The most straightforward answer to the question of what the low-paid need is that they need to not be low paid. Granting the ACTU claim in this year's AWR ACTU will represent a step towards this. A lesser step – particularly one which would leave some low paid workers continuing to experience poverty and others unable to purchase essential items – would not only fail to meet the needs of the low paid, it would entrench their situation by allowing them to fall further below a real wage which would meet their needs.

7. GENDER EQUALITY AND DIVERSITY

326. As outlined in Chapter 2 of this submission, the gender equality considerations that the Panel must have regard to as part of the Review have significantly changed and expanded since the last Review. The object of the FW Act now includes the promotion of job security and gender equality as means by which its overarching objective is to be delivered. The minimum wages objective has been amended to include the broad 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. The modern awards objective has been amended to include the need to improve access to secure work across the economy, and 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. Finally, the principle of equal remuneration in the FW Act has also been amended, to clarify that any comparisons that may be made by the FWC within and between occupations and industries to establish gender-based undervaluation are not limited to comparisons to similar work or to male dominated work, dispensing with the previous requirement that there be evidence of a reliable 'male comparator.'
327. These new considerations are expressed in strong and directive terms and frame job security and gender equality as desirable ends in themselves, and require the FWC, when taking relevant matters into account, to identify and at least consider how it could mitigate or eliminate gender-based differentials.
328. The Panel has previously found that as women are disproportionately represented among the low paid and award reliant, an increase in minimum and award wages is likely to promote gender pay equity and have a beneficial effect on the gender pay gap.²⁹⁶ Previous Panels have found that increases in the NMW and modern award wages can address the gender pay gap in two key ways – firstly, because it raises the level of low pay rates relative to median pay rates and hence particularly benefits women who disproportionately receive low pay rates; and secondly, an increase in the higher levels of award rates will particularly benefit

²⁹⁶ [2019] FWCFB 3500 at [71]

women because, at the higher award classifications, women are more likely to be paid the award rather than the bargained rate than are men.²⁹⁷

329. The Panel has previously determined that a uniform percentage increase to the national minimum wage and award wage rates (as opposed to a flat rate increase) is most consistent with the equal remuneration principle (s.134(1)(e) and s.284(1)(d)). This is because percentage adjustments (particularly those that exceed increases won through bargaining) have a broader beneficial impact than flat rate increases applied to lower classification levels, because of 'the dispersion of women within award classification structures and the greater propensity for women to be paid award rates at all levels.'²⁹⁸

330. The ACTU submits that Review proceedings have a significant role to play in promoting gender equality - including by addressing gender pay gaps, addressing the systemic gender-based undervaluation of work, ensuring equal remuneration, and facilitating women's full economic participation. As demonstrated in Chapter 5 of this submission, women are disproportionately represented among award reliant, low paid and insecurely employed workers. NMW and award wage increases therefore provide a substantial and meaningful opportunity to reduce the gender pay gap. Further, increases to award wages, particularly those which exceed bargained outcomes, increase the value placed on women workers and the work they perform, thereby contributing to addressing the systemic gender-based undervaluation of female-dominated work and ensuring equal remuneration. Finally, higher wages can also reduce the gender pay gap by improving women's economic participation in the labour market. This is because higher wages make it easier for women to return to work and take on more hours by making childcare more affordable and making it less likely that women will be the ones to take time out of work to undertake unpaid care. With the Commonwealth Paid Parental Leave scheme paid at the national minimum wage, increasing it can also improve incentives for men to make better use of the scheme and promote shared parenting.

331. Consistent with our previous submissions, the ACTU submits that the obligation to ensure that the safety net is 'fair and relevant' also requires the Panel to consider broader equity and diversity issues, including the need to prevent discrimination on the basis of race,

²⁹⁷ [2016] FWCFB 3500 at [75]

²⁹⁸ [2017] FWCFB 3500 at [77] and [99]

disability, sexual orientation, gender identity, intersex status, and national extraction or social origin (s 578). This requires – to the extent the data allows – an assessment of the impact of the national minimum wage on different groups. However, there is a significant data gap in Australia regarding the impact of factors such as race, disability and migrant status on wages and employment. There are some efforts underway to address these shortcomings. The review undertaken in 2021 into the effectiveness of the Workplace Gender Equality Agency (WGEA) recommended that WGEA lead a piece of qualitative research on the best way to collect more diversity data (in addition to gender data) to improve reporting on issues such as Aboriginal and Torres Strait Islander background, cultural and linguistic diversity, and disability.²⁹⁹ The ACTU has previously called for WGEA to report diversity data where it is provided on a totally voluntary basis by employees, including data on cultural and linguistic diversity, temporary visa or migrant status, disability, LGBTIQ+ status, and Aboriginal and Torres Strait Islander status.³⁰⁰ We submit that future research programs undertaken by the Fair Work Commission should give detailed consideration not only to the relationship between minimum wages and gender, but also factors such as race and disability. Given the lack of Australian data currently available on other equity issues, this chapter will focus on gender equality considerations.

7.1 COVID-19 – Continuing impact on women’s employment

332. As the Panel has previously considered, COVID-19 had a disproportionate impact on women in a range of ways. Women were more likely to experience the early job losses associated with lockdowns, particularly as they were and are more likely to be in casual employment. They also took on more hours of unpaid care than men. They also worked, and continued to work, disproportionately in front line in industries facing significant work intensification during lockdowns, particularly in health and education. While levels of employment and participation for women and men have largely returned to pre-pandemic levels, there is some evidence of potential longer term career effects, particularly the larger fall in women’s participation in education.³⁰¹

²⁹⁹ Department of the Prime Minister and Cabinet, WGEA Review Report - Review of the Workplace Gender Equality Act 2012, December 2021 at pp45-46

³⁰⁰ ACTU (2021) Submission to the Workplace Gender Equality Agency Review 2021, at p29; ACTU submission to the Senate Finance and Public Administration Committees on the Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023 at pages 16-17

³⁰¹ Risse, L. (2023), The Economic Impacts of the COVID-19 Pandemic in Australia: A Closer Look at Gender Gaps in Employment, Earnings and Education. The Australian Economic Review, 56: 91-108. <https://doi.org/10.1111/1467-8462.12502>

7.2 Causes of the gender pay gap

333. There is a significant body of research highlighting and describing the causes of the gender pay gap. Relevantly to the Review, one of the primary causes is the persistently high levels of occupational and industry segregation along gender lines, and the historic undervaluation of work done in female-dominated industries and occupations. Another key contributing factor is the disproportionate responsibility that women have for unpaid caring and domestic work and the workforce disruption this causes, compounded by a lack of access to secure and flexible work, adequate paid parental leave and quality, affordable early childhood education and care (ECEC). Finally, gender discrimination continues to play a large role, including in treating women less favourably in hiring, promotion, access to training, and pay decisions.³⁰²
334. As outlined in Chapter 5 of this submission, when compared to non-award reliant workers, modern award reliant employees are predominately female (and more likely to have time out of paid work); more likely to work less hours; more likely to be insecurely employed; more likely to be low paid and to have lower earnings (regardless of whether they are casual workers); and concentrated in occupations with lower qualification or skill requirements and in industries where paid work has been disrupted due to pandemic restrictions.
335. These factors continue to undermine women's workforce participation and drive the gender pay and retirement income gaps. In the 2019-20 financial year, the median superannuation balances of people aged 65 years and older was \$168,000 for women compared to \$208,200 for men.³⁰³

7.2.1 Gender segregation, award reliance and low pay

336. The Australian workforce has always been, and remains, highly gender segregated. Despite female participation in the paid workforce steadily increasing over the past 35 years, high industry and occupational gender segregation persists in Australia,³⁰⁴ and summary measures of occupational segregation have shown little change in that time.³⁰⁵ Women are largely working in the same jobs they did 35 years ago, and female employment actually

³⁰² See for example KPMG, *She'd Priced(less): The economics of the Gender Pay Gap*, 2019; WGEA (2022) [WGEA Scorecard 2022: The state of gender equality in Australia](#).

³⁰³ ABS (2022) *Household Income and Wealth, Australia (2019-20 financial year)*

³⁰⁴ Committee for Economic Development of Australia (2023), *Occupational Gender Segregation*

³⁰⁵ Borland J (2022), *The persistence of occupational segregation in Australia*, University of Melbourne, pages 1-2

became more concentrated in female-dominated occupations between 1986-87 and 2021-22.³⁰⁶ The majority of Australian employees continue to work in industries dominated by one gender. Only 46.5% of employed Australians work in 'gender mixed' industries,³⁰⁷ and over 60% of total hours worked still happen in jobs that can be classified as male or female dominated.³⁰⁸ Whilst some professional and managerial jobs have shifted from being male dominated to a more balanced distribution of work, there are few examples of female dominated jobs becoming more balanced.³⁰⁹

337. This is a key cause of inequality,³¹⁰ as female-dominated sectors are historically under-valued due to discriminatory and gendered assumptions about the skill-level and value of the work, and women are under-represented in managerial and leadership roles. Industries and occupations dominated by women are characterised by high levels of award dependency, lower wages and fewer protections.³¹¹ Many female dominated, lower paid sectors include those workers who carried our community through the pandemic, including frontline workers in Healthcare, Social Assistance, Education, Community Services, Retail and Hospitality.³¹²

338. As noted in Chapter 5 of this submission, Chart 3.2 of Yuen and Tomlinson shows that 72.9% of modern award reliant workers are employed in only 5 industries: Accommodation & food services (21.6%), Health care & social assistance (17.1%), Retail trade (14%), Administrative & support services (13.2%) and Other services (7%).³¹³ Similarly, Table 7.1 of the Statistical Report lists these industries as the five most award reliant industries – with 60.4% of employees in Accommodation and food services being award reliant, 42.4% of employees in Administrative and support services, 38.1% of employees in Other services, 33.3% of employees in Health care and social assistance, and 29.6% of employees in Retail trade.

³⁰⁶ Ibid, Table 1a and page 1; Committee for Economic Development of Australia (2023), Occupational Gender Segregation 2023, page 9

³⁰⁷ WGEA (2019) [Gender Segregation in Australia's Workforce](#)

³⁰⁸ Borland J (2022), The persistence of occupational segregation in Australia, University of Melbourne, Table 1a and page 6

³⁰⁹ Ibid Table 1a and page 1

³¹⁰ WGEA (2022) [WGEA Scorecard 2022: The state of gender equality in Australia](#).

³¹¹ Wilkins R & Zilio F (2020), Prevalence and persistence of low paid award-reliant employment, Fair Work Commission Research Report 1/2020, pp 11 and Table 3; Barbara Broadway and Roger Wilkins, Working Paper Series: Probing the Effects of the Australian System of Minimum Wages on the Gender Wage Gap, December 2017

³¹² WGEA (2022) [WGEA Scorecard 2022: The state of gender equality in Australia](#).

³¹³ Yuen K & Tomlinson J (2023), A profile of employee characteristics across modern awards, Fair Work Commission Research Report 1/2023, Chart 3.2

339. Table 11.2 and Chart 11.2 in the Statistical Report demonstrate that most of these industries are female dominated, and especially so in relation to employees who are award reliant. For example, Accommodation and food services has 61.4% women workers who are award reliant in that industry; Health care and social assistance has 79.3%; Administrative and support services has 56.1%; Other services has 72.2%; and Retail trade has 57.6%. The lowest paid full-time workers on average are in the Accommodation and food services (\$1,294) and Other services (\$1,333) industries.³¹⁴
340. Chart 11.1 shows that some of those female dominated industries have very high gender pay gaps (based on full time AWOTE) – for example health care and social assistance has the second highest gender pay gap at around 21%; and administrative and support services has a gender pay gap of around 19%. Chart 11.3 demonstrates a measure of occupational gender segregation, being that women are far more likely to be employed as clerical and administrative workers (over 70%) and far less likely to be employed as managers (under 40%). Men still disproportionately hold managerial and leadership positions even in female dominated industries.³¹⁵ The non-managerial workforce has gender parity (52% women and 48% men) while the managerial workforce is 41% women and 59% men.³¹⁶
341. Further, both modern award reliant workers and award reliant workers generally are predominantly female, (58.1% and 59% respectively, compared to just over 40% of men), relative to an almost equal balance among non-award reliant employees (49.6% female).³¹⁷ Table 8.8 of the Statistical Report shows that women also make up 54.4% of low paid employees, compared to 45.6% of men. This is all consistent with observations of the Panel in many previous Reviews – that women are more likely than men to be both low paid and award reliant.³¹⁸ Accordingly, a wage increase to minimum wages which outpaced wage growth across the labour force would place downward pressure on the gender pay gap, and address gender-based undervaluation to a degree.

³¹⁴ ABS (2023) Average Weekly Earnings Australia, November 2022

³¹⁵ Committee for Economic Development of Australia (2023), Occupational Gender Segregation 2023, page 8; Workplace Gender Equality Agency (2022), Australia's Gender Equality Scorecard, December, page 25

³¹⁶ Workplace Gender Equality Agency (2022), Australia's Gender Equality Scorecard, December, page 25

³¹⁷ Modern award reliant estimate is from Yuen K & Tomlinson J (2023), A profile of employee characteristics across modern awards, Fair Work Commission Research Report 1/2023, at page 18; Award and non-award reliant estimate calculated from ABS (2021) Employee Earnings and Hours, Australia, May 2021

³¹⁸ For example, [2016] FWCFB 3500 at [575]; [2017] FWCFB 3500 at [639]- [678]; [2018] FWCFB 3500 at [435]-[436]; [2019] FWCFB 3500 at [399]; [2020] FWCFB 3500 at [115], [127] and [400]

342. In Chapter 5 and Chapter 6 of this submission, we explain the range of factors impacting on the living standards of the low-paid workforce, including high inflation and low wages growth, combining to form a decline in real terms. While these impacts affect all low-paid workers, women workers are disproportionately affected. Award reliant female dominated industries have lower levels of Average Weekly Ordinary Time Earnings than others.³¹⁹ This is demonstrative of widening, and gendered, inequality.
343. As outlined in Chapter 6 of this submission, the ACTU's Attitudes, Sentiments and Knowledge (ASK) survey provides key insights into attitudes around financial wellbeing and cost of living. Results and underlying data from the ASK survey are provided in Appendix A (ASK Survey Report).
344. The ASK Survey Report demonstrates that gender has a clear impact on financial wellbeing.³²⁰ The ability to afford day-to-day living expenses without significant financial stress shows substantial differences across the genders, with women consistently expecting greater hardship across almost all measures (excluding childcare).³²¹ For example:
- a. Women are more likely to disagree that they are better off financially now than they were a year ago than male workers (54% of women compared to 38% for men), and that they earn enough to pay their bills (21%, compared to 13% of men).³²²
 - b. There is a notable difference between men and women on activities undertaken, with women much more likely to say they have reduced spending and dipped into savings.³²³
 - c. More than half of women (54%) and workers on less than \$52k (54%) reported that their mental health suffered because of cost of living pressures.³²⁴

7.2.2 Insecure, part-time and underemployment

345. Women are also disproportionately affected by the trend towards insecure work and underemployment, and are far more likely to work part time than men. On average, women

³¹⁹ ABS (2023) Average Weekly Earnings Australia, November 2022

³²⁰ ASK Survey Report at page 4

³²¹ ASK Survey Report at page 6

³²² ASK Survey Report at page 4

³²³ ASK Survey Report at page 7

³²⁴ ASK Survey Report at page 8

work 32.5 hours per week compared to 39.3 for men.³²⁵ Australia has the third highest rate of women working part-time in the OECD.³²⁶

346. 57.32% of underemployed Australians are women.³²⁷ 23.4% of all women employed have been employed on a casual basis, without leave entitlements (compared with 20.7 % of men).³²⁸ 52.6% of casual employees are women,³²⁹ while women continue to comprise around 49.6% of the employee workforce.³³⁰ Much of the long-term growth in employment has occurred in part-time employment in award dependent industries: women account for 70.4% of the part-time workforce³³¹ and 59% of award reliant workers.³³² 40.8% of employed women work part-time hours, compared to 17% of employed men.³³³ In 2021-22. About 58% of women were employed part-time or casually, and only two out of five full time employees in Australia were women.³³⁴

347. Chart 6.8 of the statistical report shows that the five industries with the highest rates of underemployment are all female dominated – retail trade, health care and social assistance, accommodation and food services, education and training and administrative and support services.

348. As shown in Chart 7.3 of the Statistical report, award reliant employees are far more likely to be employed casually than those reliant on collective agreements or individual arrangements – casuals make up 45% of award reliant employees. Combined with workers employed on fixed term arrangements, nearly 50% of award reliant employees are employed insecurely. Table 8.7 of the Statistical Report also shows that casual employees also make up 50% of low paid employees.

7.2.3 Workforce participation, and the intersection of work and care

349. The impact of women’s disproportionate responsibility for unpaid care work and the resulting work/care collision has been thoroughly examined over many years, with evidence

³²⁵ ABS (2023) Labour Force Australia, February 2023

³²⁶ Committee for Economic Development of Australia (2023), Occupational Gender Segregation 2023, pages 10-11, Figure 6

³²⁷ ABS 6202.0 Table 22, February 2023.

³²⁸ 6291.0.55.001 - EQ04, March 2023

³²⁹ 6291.0.55.001 - EQ04, March 2023

³³⁰ 6291.0.55.001 - EQ04, March 2023

³³¹ 6291.0.55.001 - EQ04, March 2023

³³² ABS 6306 Employee Earnings and Hours May 2021 most recent

³³³ ABS (2022) [Labour Force Australia, Table 1, Labour force status by Sex](#), December 2022.

³³⁴ Workplace Gender Equality Agency (2022), Australia’s Gender Equality Scorecard, page 8

demonstrating that for women, the effect is ‘curtailed career aspirations, reduced life-time earnings, and inadequate superannuation.’³³⁵ The propensity of women with care responsibilities to end up in ‘poorly remunerated and insecure work without training and promotion opportunities, and with continuing clashes between work and care responsibilities’ has also been well-documented over many years.³³⁶ To balance unpaid care and work with paid employment, women end up working in part time, insecure and lower paid jobs, making it less likely for them to advance due to less time in the labour market.³³⁷ The legal and policy framework continues to entrench gendered norms regarding work and care.

350. Women do significantly more unpaid care work than men do.³³⁸ Despite increasing female workforce participation over recent decades, women’s workforce participation rate remains significantly lower than men’s, at 62.2% compared to 71.2%.³³⁹
351. The high cost of early childhood care and education (ECEC) is a significant barrier to women’s workforce participation, and often exacerbates the pressures on a young mother not to re-enter the labour force. As a share of family income, the costs of early childhood education and care (ECEC) in Australia are among the highest in the developed world.³⁴⁰
352. Whilst changed childcare subsidies will come into effect from 1 July 2023, as noted in Chapter 5 of this submission, in light of the consistently increasing costs of ECEC (including a 5.1% rise to March of 2022)³⁴¹, it is unclear whether these changes will have any tangible impact on living standards for workers who use these services, or on women’s workforce participation.
353. Analysis by the Productivity Commission in its Report on Government Services shows that the median price of child care services (before subsidies) for centre based care in capital cities rose between 2021 and 2022 by \$25 dollars (in 2021-22) dollars, effectively 4.39% in real terms.³⁴² The current maximum benefit from the child care rebate is 85% of the lower of the

³³⁵ See for example Chapman. A, *Industrial Law, Working Hours, and Work, Care and Family*, Monash University Law Review (Vol 36, No 3), 190-216

³³⁶ *Ibid* at 201 and 202, and references

³³⁷ Committee for Economic Development of Australia (2023), *Occupational Gender Segregation 2023*, page 10

³³⁸ Australian Bureau of Statistics (2020-21), [How Australians Use Their Time](#), ABS Website, accessed 24 March 2023.

³³⁹ ABS (2023) *Labour Force Australia*, Table 1, Labour Force status by Sex, February 2023

³⁴⁰ Centre for Policy Development (November 2021) ‘Starting Better: A guarantee for young children and families’

³⁴¹ Department of Education, [March Quarter 2022 report on usage, fees and subsidies](#)

³⁴² Productivity Commission [Data Table 3](#), Table 3A.22

hourly rate cap (currently \$12.74 per hour for centre based care) or of a lower fee actually charged by the centre.³⁴³ The childcare system accordingly imposes higher “gap” payments as the retail cost of services increases. After taking into account the child care subsidy, the Productivity Commission estimate that the cost of 30 hours of child care, expressed as a percentage of gross disposable income has grown between 2021 and 2022: by 0.2% for households with less than \$35,000, and 0.1% for households up to \$95,000.³⁴⁴ The disposable income ranges are expressed in nominal terms over time and potentially fail to take account of household level substitutions of expenditure brought about by the decline in real wages over the last 12-18 months in particular. As at 2022, the Productivity Commission estimates that 21.4% (±5.4%) of persons not in the labour force due to responsibilities for the care of children have that status due to cost.³⁴⁵

354. Prior to the changes to Australia’s paid parental leave scheme (PPL) brought about by the *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Act 2023* (Cth) (PPL Act) Australia had the second-worst paid parental leave scheme in the developed world, being just 18 weeks paid at the national minimum wage, with no compulsory superannuation paid on top. Australia ranked 40th of 41 comparable EU and OECD countries on paid parental leave provided to mothers — providing the full-time average wage equivalent of only eight weeks paid leave — and 27th on the amount of parental leave provided to fathers, providing the full-time average wage equivalent of 0.8 weeks paid leave.³⁴⁶ Men account for only 6.5% of all primary carer’s leave taken, with the vast majority of paid parental leave undertaken by women.³⁴⁷

355. The impact of this is that mothers end up doing the lion’s share of parenting for a newborn, both in terms of the initial leave taken, and then by taking on part-time work to balance care and work responsibilities. While men rarely take more than a couple of weeks to look after a newborn and return to full-time work, women’s careers are often put on hold. It is at this point that the participation and pay gaps between women and men start to widen the most - across the first five years of parenting their first child, women’s earnings are reduced by

³⁴³ See explanatory material from Services Australia

³⁴⁴ Productivity Commission Data Table 3, Table 3A.23

³⁴⁵ Productivity Commission Data Table 3, Table 3A.38

³⁴⁶ Yekaterina Chzhen, Anna Gromada and Gwyther Rees (2019) Are the world’s richest countries family friendly? Policy in the OECD and EU, UNICEF Office of Research, Florence; OECD Family Database (2020), Table PF2.1, <https://www.oecd.org/els/family/database.htm>

³⁴⁷ WGEA (2017) Towards gender balanced parental leave – Australian and International Trends – Insight Paper

55% on average while men's earnings are unaffected.³⁴⁸ The reduction in earnings is more severe for women who have multiple children, does not recover significantly even after children start school, and is matched by an increase in childcare and other unpaid work.³⁴⁹

356. The PPL Act makes important changes that will see PPL become more flexible, more accessible and gender neutral, and which will expand Australia's PPL scheme to 26 weeks by 2026, starting with 20 weeks from 1 July 2023 and increasing by 2 weeks per year. Notwithstanding this, the delay to the increase to 26 weeks will disproportionately impact low-income workers and families, for whom the length of paid leave available largely dictates the amount of time in total that they can take as parental leave to care for children.³⁵⁰
357. Further, even once the PPL reforms are fully implemented, and the scheme is expanded to 26 weeks from 1 July 2026, Australia will still rank in the bottom third of paid parental leave entitlements offered internationally.³⁵¹ In fact, the changes, which would lift the payment from about 8 weeks of full-time average wage equivalent up to 10.3 weeks, only lifts Australia from the 2nd worst position in the OECD, up to the 4th worst position based on 2022 figures.³⁵² Compounding this inadequacy, the superannuation guarantee is still not applicable during either paid or unpaid parental leave.
358. The rate of payment of PPL at the NMW is likely to impede high take up rates by fathers and partners for several reasons, including due to the gender pay gap - the loss of family income tends to be less when women take parental leave as on average they earn less than men.³⁵³ Research from comparable economies shows that when paid at, or close to full wage replacements rates, men increase their uptake of parental leave and unpaid care, which over time changes gender norms around the division of paid and unpaid work.³⁵⁴

³⁴⁸ Committee for Economic Development of Australia (2023), Occupational Gender Segregation 2023, page 4, 10; Bahar, E., Bradshaw, N., Deutscher, N., & Montaigne, M. (2022) Children and the gender earnings gap, Canberra: Australian Department of Treasury

³⁴⁹ Committee for Economic Development of Australia (2023), Occupational Gender Segregation 2023, page 10; Australian Bureau of Statistics (2022) How Australians Use Their Time, 2020-21 financial year

³⁵⁰ Shop, Distributive and Allied Employees Association, "Submission to the Community Affairs Legislations Committee Inquiry into the Paid Parental Leave (Improvements for Families and Gender Equality) Bill 2022", at p13-14

³⁵¹ Marian Baird and Elizabeth Hill (2022) Next Steps for Paid Parental Leave in Australia

³⁵² https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf

³⁵³ Marian Baird and Elizabeth Hill (2022) Next Steps for Paid Parental Leave in Australia

³⁵⁴ Marian Baird and Elizabeth Hill (2022) Next Steps for Paid Parental Leave in Australia

359. Increases to the minimum wage will flow through to PPL, increasing the income and living standards of women on parental leave commensurate with the quantum of that increase (whether or not those women are otherwise dependent on the NMW or the Award wage system in terms of their non-PPL remuneration).
360. Combined with the legislated changes to the PPL scheme that will allow parents to share PPL flexibly between them from 1 July 2023 (in contrast to the current PPL scheme where fathers or 'secondary carers' are only entitled to 2 weeks paid leave at the NMW under the 'Dad and Partner Pay Entitlement'), an increase in the NMW will also better incentivise more fathers or partners to access parental leave and assist with caring responsibilities. This could make a significant contribution towards gender equality, especially by improving women's workforce participation given that a key barrier to the take up of PPL by fathers and partners is the low rate of the NMW which is likely to represent a more significant pay cut for men than women.

7.3 Measuring the gender pay gap

361. Despite the principle of equal pay being embedded in federal industrial law over 50 years ago,³⁵⁵ on all measures a significant gender pay gap persists. At present, the most commonly cited measure is the gender gap in average weekly ordinary full-time earnings which stands at 13.3%.³⁵⁶ This is the lowest on record, falling 0.6 percentage points from the pre-pandemic level of 13.9% in November 2019. It also marks a return to just below the level three years ago, when the gender pay gap was 13.4%.³⁵⁷ However, prior to this improvement, the pay gap had been stagnant or getting worse for five years, particularly during the COVID-19 pandemic.³⁵⁸
362. The gap in fulltime earnings has hovered between 17.7% and 13.3% for over two decades, resulting in a net reduction of only 4.4 percentage points. However this measure excludes part-time employees and overtime earnings. The true gender pay gap, factoring in hours worked and all pay earned, is 28.1%.³⁵⁹

³⁵⁵ *Australasian Meat Industry Employees Union v Meat and Allied Trades Federation of Australia* (1969) 127 CAR 1142 ('Equal Pay Case'); *National Wage and Equal Pay Case* (1972) 147 CAR 172

³⁵⁶ ABS (2023) Average Weekly Earnings, Australia, November 2022, Gender Pay Gap Measures

³⁵⁷ WGEA, [Gender pay gap data](#) (accessed 27 March 2023)

³⁵⁸ Risse (2023) *Ibid.* Page 100

³⁵⁹ ABS (2023) Average Weekly Earnings, Australia, November 2022, Gender Pay Gap Measures

363. The Workplace Gender Equality Agency (**WGEA**) also publishes annual gender pay gap data each November, based on their annual employer census which collects employee remuneration data from employers with 100 or more employees. This data set uses total remuneration (including superannuation overtime, bonuses and other additional payments) and includes part time and casual employees. The latest data published by WGEA reported a 22.8% gender pay gap in November 2022, unchanged from 2021.³⁶⁰
364. Over the 16-year period from 2006 to 2022, Australia has fallen from 15th to 43rd in the World Economic Forum Gender Gap Report - well below most other OECD countries.³⁶¹ This is however an improvement on the position in 2021, when Australia was ranked 50th.³⁶²
365. Figure 71 shows movement in gender pay gap measures over time by taking the gap in men's and women's earnings as a percentage of men's, based on three different measures of average weekly earnings. These are: Adult average weekly ordinary time earnings; Adult average weekly full time earnings including overtime and bonuses, and Average weekly total earnings (linear trend lines are also shown). Based on Adult Average Weekly Ordinary Time Earnings (**AWOTE**), women working full-time earn \$255.40 a week less than men working full-time.³⁶³ It is important to note that this measure does not capture overtime or bonuses, and excludes those who work less than full-time hours (who are predominantly women performing unpaid and caring work). The gap in average total weekly earnings between all men and women is \$474.40³⁶⁴— equivalent to well over half the current weekly minimum wage.

³⁶⁰ WGEA (2022), 'Australia's Gender Equality Scorecard Key results from the Workplace Gender Equality Agency's Employer Census 2021-22', Workplace Gender Equality Agency

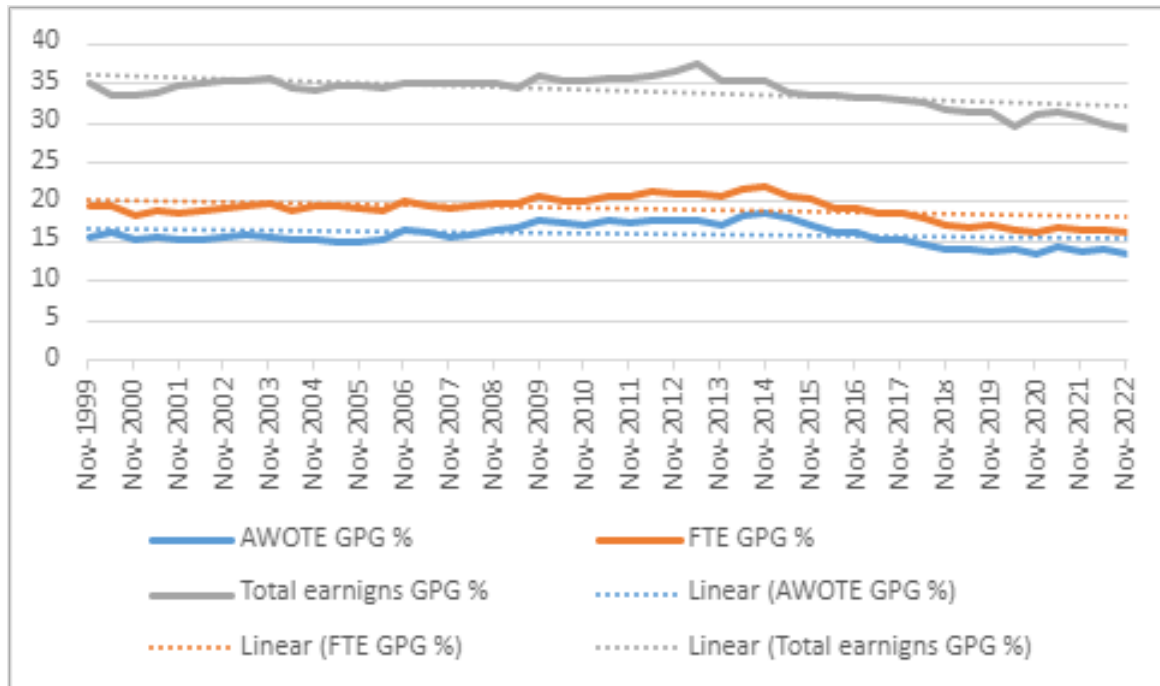
³⁶¹ World Economic Forum (July 2022) [Global Gender Gap Report 2022](#)

³⁶² World Economic Forum (March 2021) [Global Gender Gap Report 2021](#)

³⁶³ ABS (2023) Average Weekly Earnings, Australia, November 2022

³⁶⁴ ABS (2023) Average Weekly Earnings, Australia, November 2022

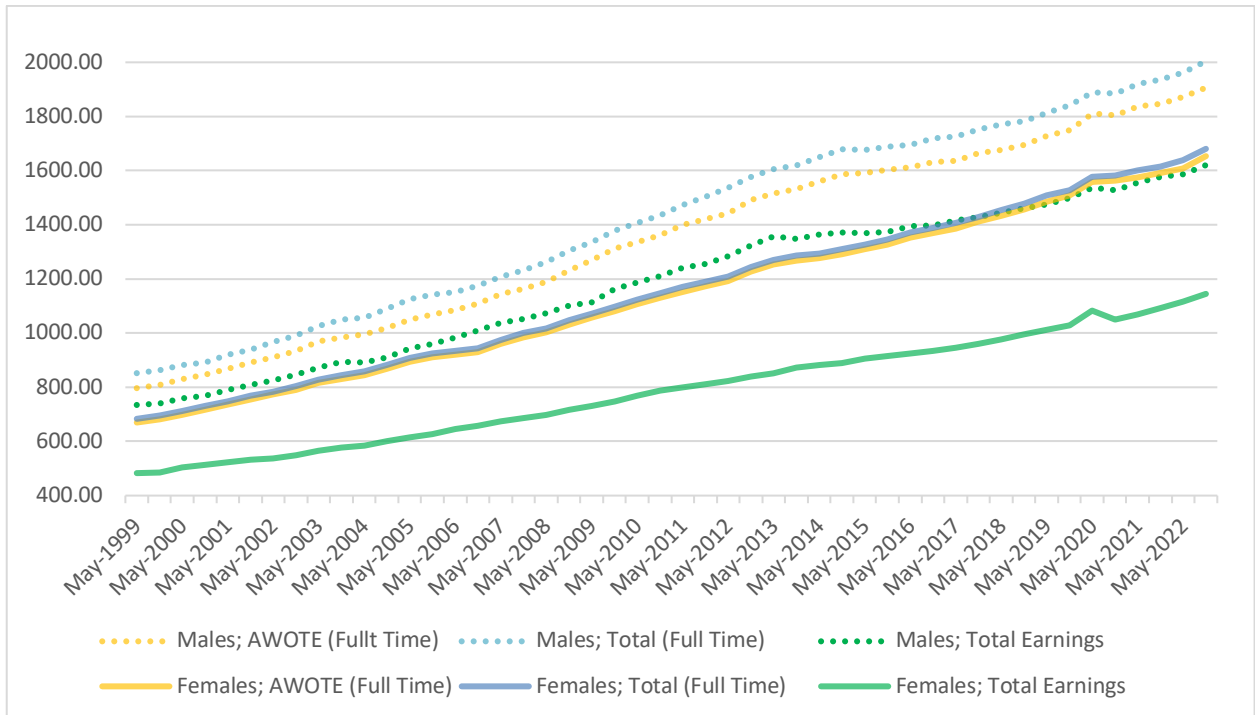
Figure 71: Gender Pay Gaps for Average Weekly Ordinary Time Earnings, Full Time Earnings and total earnings



Source: ABS Average Weekly Earnings, November 2022

366. Figure 72 shows the three measures of weekly earnings for men and women. It shows that the very small percentage point reductions in the gender pay gaps after 2013 (as charted in Figure 1) are due to men's average earnings flattening out, largely due to reductions in top earnings after the mining boom, and not due to other measures to close the gender pay gap, or significant increases in women's wages. Minimum wage increases which help to sustain women's earnings may have also played a role in the small percentage point reductions in the gender pay gap since 2013.

Figure 72: Average Weekly Full Time Earnings, Total Full Time Earnings and Total earnings, female and male, 1999-2022



Source: ABS Average Weekly Earnings (November 2022), ABS 6302 (May 2012)

367. In our submission to the 2021-22 Review, the ACTU noted that this trend continued, as men’s earnings increased by only \$25 per week between May 2021 and May 2022, and women’s earnings increasing by only \$17.³⁶⁵ Men’s earnings increased by \$35.90 per week between May 2021 and May 2022, compared to a lower increase of \$33.50 per week for women in the same period.

368. There is a different trend this year, with the percentage change for men in average weekly ordinary time earnings being 3.1%; and for women 3.8%. For average weekly total earnings, the difference was even more marked: there was a 2.8% increase for men and a 4.7% increase for women.³⁶⁶

369. Similarly, as Table 12 shows, looking at the data by sector and gender shows that women in the private sector saw their average weekly ordinary time earnings increased by 4.6% from November 2021 to November 2022, outpacing wage growth for men in the private sector (at 3.4%), and women and men in the public sector, recording growth of 3.2% and 3.0%

³⁶⁵ ACTU Submission to the Annual Wage Review 2021-22 at [257]

³⁶⁶ ABS (2023) Average Weekly Earnings, Australia, November 2022

respectively. The modest increase in women’s private sector wages is one contributing factor to the recent modest decline in the Gender Pay Gap.

Table 12: Gender pay gap, AWOTE, public v. private sector, Nov 2021-22

	Nov-21	Nov -22	\$ change	% change
Private Sector:				
All persons	\$1,706.40	\$1,768.00	\$61.60	3.6%
Male	\$1,812.30	\$1,874.40	\$62.10	3.4%
Female	\$1,504.50	\$1,574.10	\$69.60	4.6%
Public Sector:				
All persons	\$1,907.50	\$1,965.00	\$57.50	3.0%
Male	\$2,030.20	\$2,090.40	\$60.20	3.0%
Female	\$1,801.80	\$1,859.20	\$57.40	3.2%

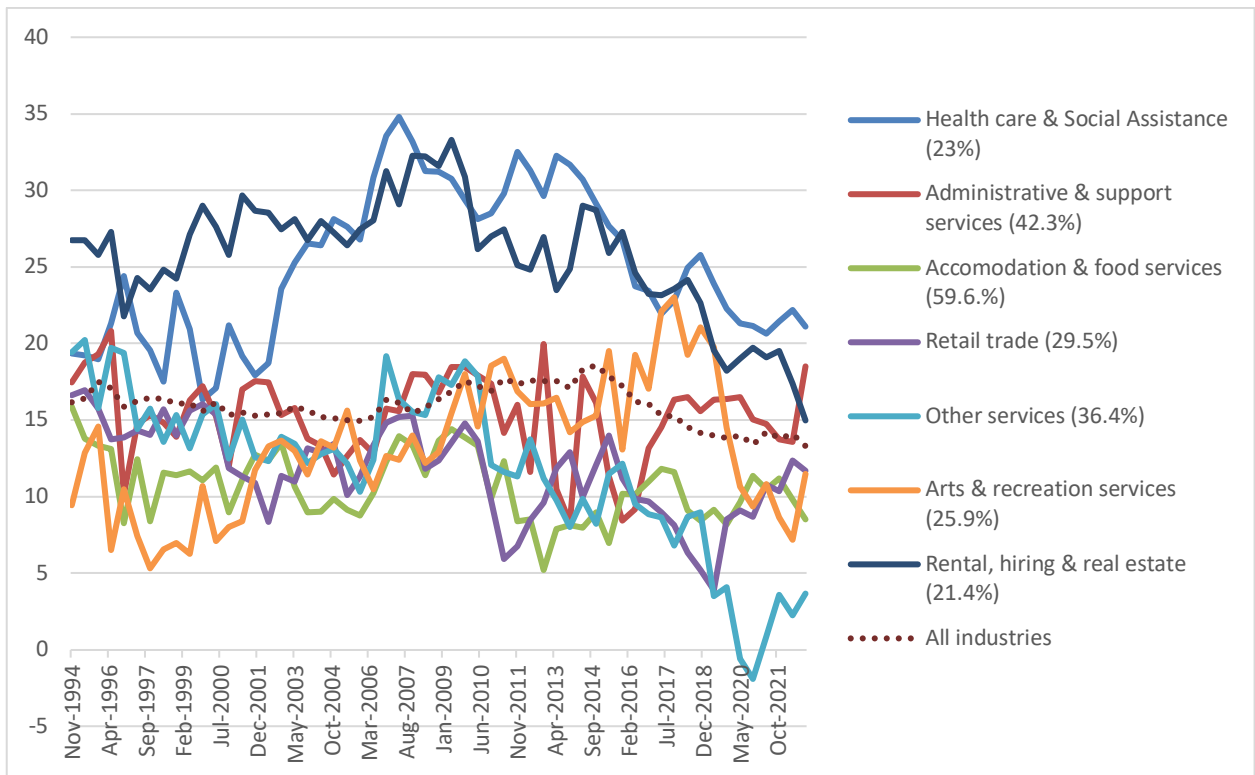
Source: ABS Average Weekly Earnings

370. With nearly three in five award reliant workers being female, and award reliant workers receiving higher pay increases in the period under review than the general labour force, last year’s decision would have made an important contribution towards reducing the overall gender pay gap. In the absence of more timely and detailed survey data, it is difficult however to determine the exact impact.³⁶⁷

371. Figure 73 shows the gender pay gaps for the more modern award reliant industries. Such a gap persists in all such industries, but to different degrees. Four of the seven more modern award reliant industries have gender pay gaps below the all industries level. Three of the more modern award reliant industries have seen a trend decline in the gender pay gap since the commencement of the FW Act which appears stronger than that for all industries, however three also see a rebound in gender pay gaps associated with the recovery from COVID restrictions.

³⁶⁷ The ABS Employee Earnings and Hours survey would provide enough data to better answer this question but is only run once every two years, with the last survey running in May 2021.

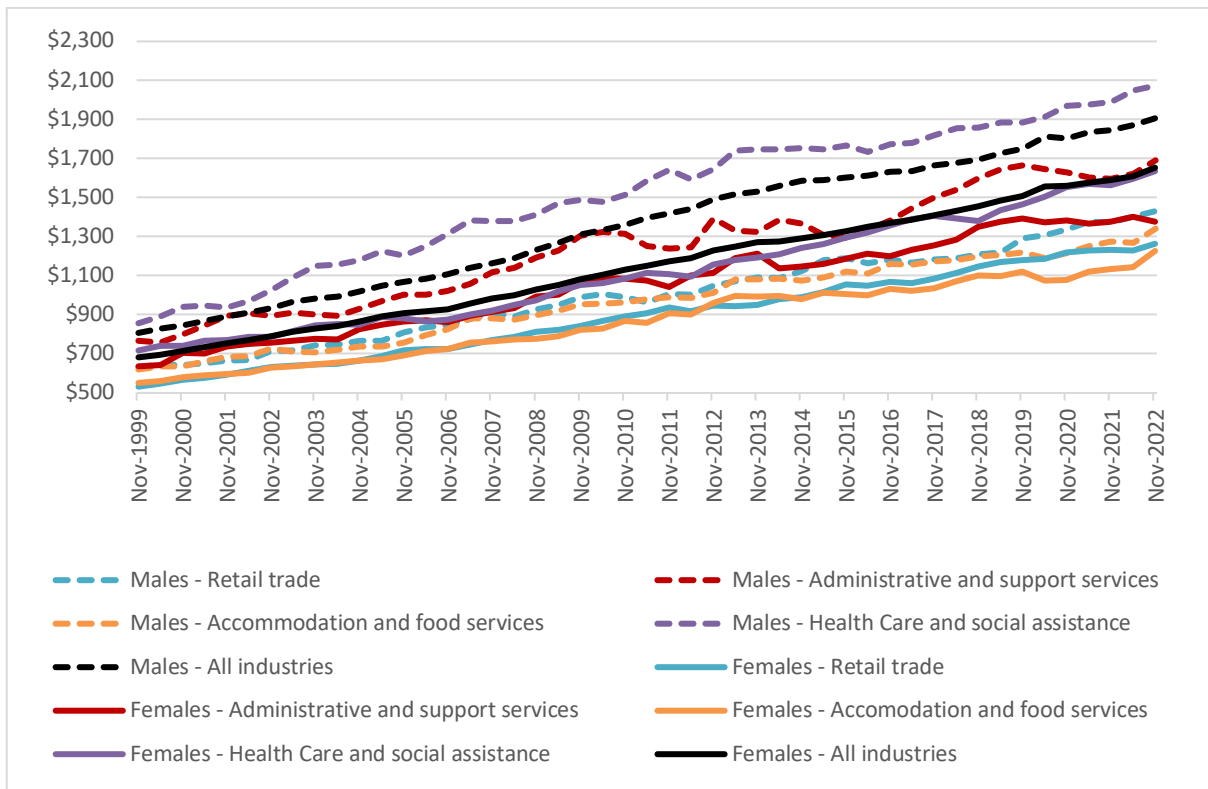
Figure 73: Gender pay gap for AWOTE, more award reliant industry sectors and for all industries, percent of male earnings,1994-2022



Source: ABS Average Weekly Earnings, November 2022 Tables 10A and 10D (original data). Percentages in parenthesis are the density of modern award reliance from Yuen & Tomlinson (2023).

372. Figure 4 shows adult AWOTE for females (solid lines) and males (dotted lines) in the more award reliant industries. In all cases, women in award reliant industries consistently earn less than the 'all industry' average, except for Health Care and social assistance, where over time, women have variously earned less than the all-industry average, or at best, the same. Figure 4 shows how an increase in the minimum wage for these industries would directly benefit the lowest paid and women in particular. An increase in real terms, as is proposed in our claim, would make an even more tangible difference.

Figure 4: Adult Average Weekly Ordinary Time Earnings, male and female, more award-reliant industries and total industry



Source: ABS 63020010a, 63020010d, and 6401, and ACTU calculations.

7.4 Conclusion

373. As outlined in Chapter 2 of this submission, the gender equality considerations that the Panel must have regard to as part of the Review have been significantly strengthened by the SJBPA Act. The ACTU submits that the amended object, objectives and equal remuneration principle significantly strengthen the case for a higher increase to the NMW and award minimum wages, given women are disproportionately represented amongst workers who are award reliant, low paid, working fewer hours and insecurely employed. A significant increase will help to achieve gender equality and promote job security, address gender pay gaps, eliminate gender-based undervaluation, ensure equal remuneration for work of equal or comparable value and facilitate women's full economic participation.

8. THE NEED TO ENCOURAGE COLLECTIVE BARGAINING

374. In previous years, the Panel has considered that it is obliged to consider whether its decision will encourage collective bargaining.
375. The Panel has identified two sources of its obligation to consider encouraging collective bargaining in the course of an Annual Wage Review. The first is the obligation in section 134 of the Act to “...ensure that modern awards, together with the National Employment standards, provide a fair and relevant safety net of terms and conditions, taking into account... the need to encourage collective bargaining”.³⁶⁸ The second is a reference in the object of the Act to “...provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by...achieving productivity and fairness through an emphasis on enterprise level collective bargaining...” in conjunction with a consideration of the purpose of the Act as a whole.³⁶⁹
376. It is uncontroversial that a corollary of the above considerations is that Panel must take into account the extent to which (if any) its decision might discourage collective bargaining.
377. The Panel has previously concluded that:
- a. The rate of the decline in collective agreement making from its peak in 2010 has not decreased so as to support a conclusion that NMW decisions have discouraged collective bargaining.³⁷⁰
 - b. Where there has been a decline in current enterprise agreements, this has likely been caused by ‘a range of factors [which] impact on the propensity to engage in collective bargaining, many of which are unrelated to increases in the NMW and modern award minimum wages’.³⁷¹

³⁶⁸ [2022] FWCB 3500 at [67] – [68]; [2021] FWCFB 3500 at [135]; [2020] FWCFB 3500 at [206]; [2019] FWCFB 3500 at [7]; [2018] FWCFB 3500 at [11]

³⁶⁹ [2022] FWCB 3500 at [80]; [2021] FWCFB 3500 at [156]; [2020] FWCFB 3500 at [207]; [2019] FWCFB 3500 at [7], [364]; FWCFB 3500 at [11]

³⁷⁰ [2019] FWCFB 3500 at [386]

³⁷¹ [2019] FWCFB 3500 at [69]

- c. The NMW decision impacts on different industries in different ways and previous NMW decisions have been considered not to discourage collective bargaining 'in the aggregate'.³⁷²
- d. Taking into account the wide range of factors impacting collective bargaining, it is unlikely that past NMW decisions have discouraged collective bargaining.³⁷³

378. It is submitted that in the present review, there is no reason to depart from the above findings. It remains then, to consider whether the Panel's decision would encourage collective bargaining, and the significance of that.

379. In its 2019 decision, the Panel observed that:³⁷⁴

'We do not detect anything in these data to suggest that past Review decisions have impacted on collective agreement coverage. We see nothing to change the view expressed in previous Review decisions that the extent of enterprise bargaining is likely to be impacted by a range of factors.'

380. In its 2021 decision, the Panel observed:

Consistent with the views expressed by the majority in the 2019–20 Review decision, we accept that there has been a decline in current enterprise agreements, but a range of factors impact on the propensity to engage in collective bargaining, many of which are unrelated to increases in the NMW and modern award minimum wages. Given the complexity of factors which may contribute to decision making about whether or not to bargain, we are unable to predict the precise impact of our decision on bargaining.

381. However, in its 2022 decision, the Panel found that its inability to be satisfied that an increase in minimum wages would encourage collective bargaining weighed against an increase to minimum wages.³⁷⁵

382. It is submitted that the Panel should weigh this factor neutrally in the present review, unless it is able to *positively satisfy* itself that an increase to minimum wages will not encourage collective bargaining. Further, it is submitted that the Panel cannot be positively satisfied of this.

³⁷² [2018] FWCFB 3500 at [96]

³⁷³ [2020] FWCFB 3500 at [397]; [2019] FWCFB 3500 at [386]

³⁷⁴ [2019] FWCFB 3500 at [372]

³⁷⁵ [2022] FWCB 3500 at [143]

383. The present review occurs amidst a changing statutory landscape, particularly with respect to collective bargaining. Amendments to the FW Act brought about by *the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* are designed to encourage bargaining by:

- a. Making multi-employer bargaining more available and effective;
- b. Allowing for unions to initiate bargaining in certain circumstances;
- c. Removing or reducing barriers to bargaining.

It is submitted that in these circumstances, it is less likely that increasing minimum wages will have a negative effect on collective bargaining.

384. Moreover, whether and how there is a causal connection, collective bargaining appears to be increasing following the Panel's decision last year – in which it awarded a greater increase than for previous years.

385. DEWR's September 2022 quarter *Trends in Federal Enterprise Bargaining* report shows that agreements approved in each quarter fell in each quarter from September 2021 (1,271) to June 2022(943) before picking back up again in September 2022 (1,088).³⁷⁶ Newly reported data from the FWC indicates a strong increase in collective bargaining during the latter part of 2022.³⁷⁷ 316 agreement approvals were lodged during the fortnights ending in July, covering 39,170 workers. These figures remained broadly steady, recording some increases until November 2022, during which month 340 agreements were lodged covering 124,187 workers. In December (containing 3 fortnights ending) 675 agreements were lodged for approval covering 130,190 workers. Few agreements lodged in January and February likely largely reflects unfinished business from the previous year, rather than an underlying systemic decline in the velocity of agreements being made.

386. The strong rate of enterprise bargaining in the second part of 2022 – following the Panel's most recent decision – suggests that the Panel's decision had no or little effect in braking enterprise bargaining.

³⁷⁶ DEWR, September 2022 quarter, *Trends in Federal Enterprise Bargaining*, Table 3, p 16

³⁷⁷ Fair Work Commission, Statistical reports on enterprise agreements data, Spreadsheet of enterprise agreement data <<https://www.fwc.gov.au/documents/resources/enterprise-agreements-data.xlsx>>

387. Amidst circumstances where a new bargaining framework enters into effect on 6 June 2023 and is both intended and likely to cause a greater upswell in the rate of collective bargaining, it is submitted that the Panel should not reduce the quantum of any wage increase it would otherwise determine, on the basis of the need to encourage collective bargaining.

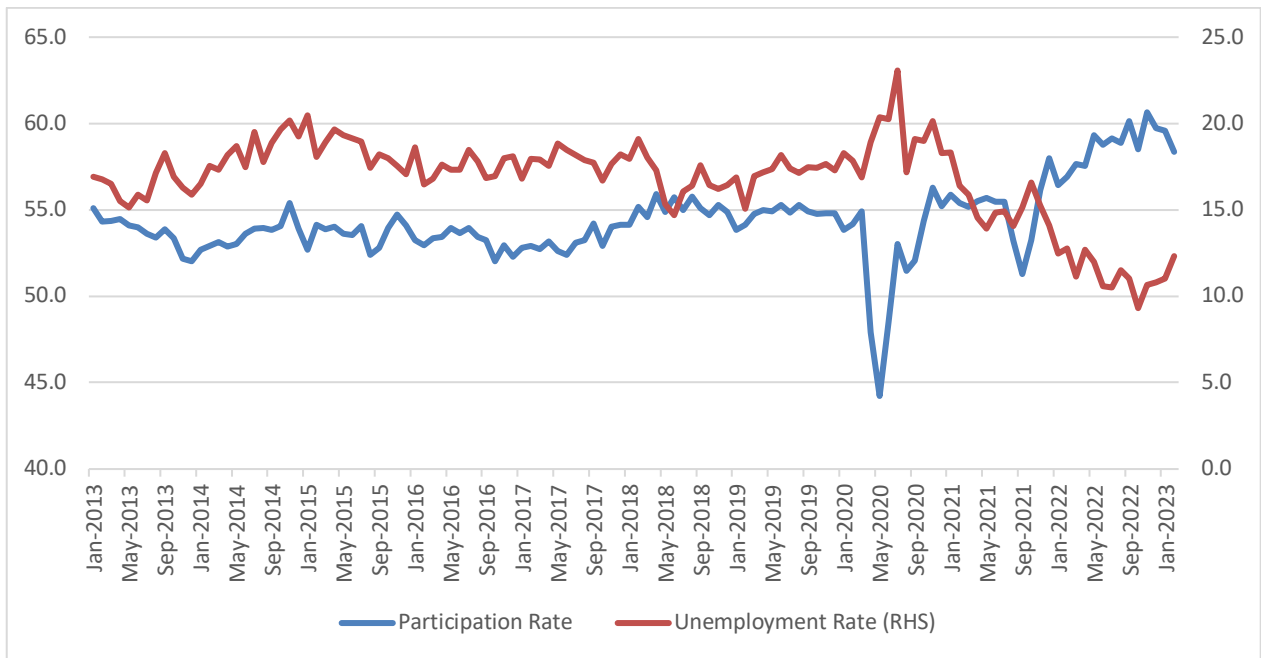
9. OTHER MATTERS

388. The National Minimum Wage Order made as a consequence of the Review must set the National Minimum Wage as well as special national minimum wages for award/agreement-free employees who are junior employees, employees to whom a training arrangement applies, and employees with a disability. It must also set the casual loading for award/agreement-free employees.
389. The Panel's review of modern award minimum wages encompasses casual loadings and piece rates in modern awards, as well as modern award minimum wages for junior employees, employees to whom a training arrangement applies and employees with a disability.
390. This chapter sets out our position on how these various minimum wages and modern award minimum wages ought to be adjusted in this Review.

9.1 Juniors

391. Chart 6.7 of the Statistical Report shows the traditional volatility and overall higher level of youth unemployment relative to adult unemployment. In terms of unemployment, the 15–19-year-old cohort (which aligns closely with the cohort to which junior rates apply) has traditionally fared the worst in absolute terms and continues to do so relative to the other groups. However, the level of youth unemployment is presently remarkably low, consistent with the broad-based high demand for labour evident from the analysis provided in Chapter 3. Figure 74 shows that, post the lifting of pandemic related restrictions, participation is high and unemployment low for this cohort relative to earlier times. Compared to the same time last year, the participation rate has fallen by 1.53% to 58.3% and unemployment has also fallen slightly by .2% from 12.5% to 12.3%.

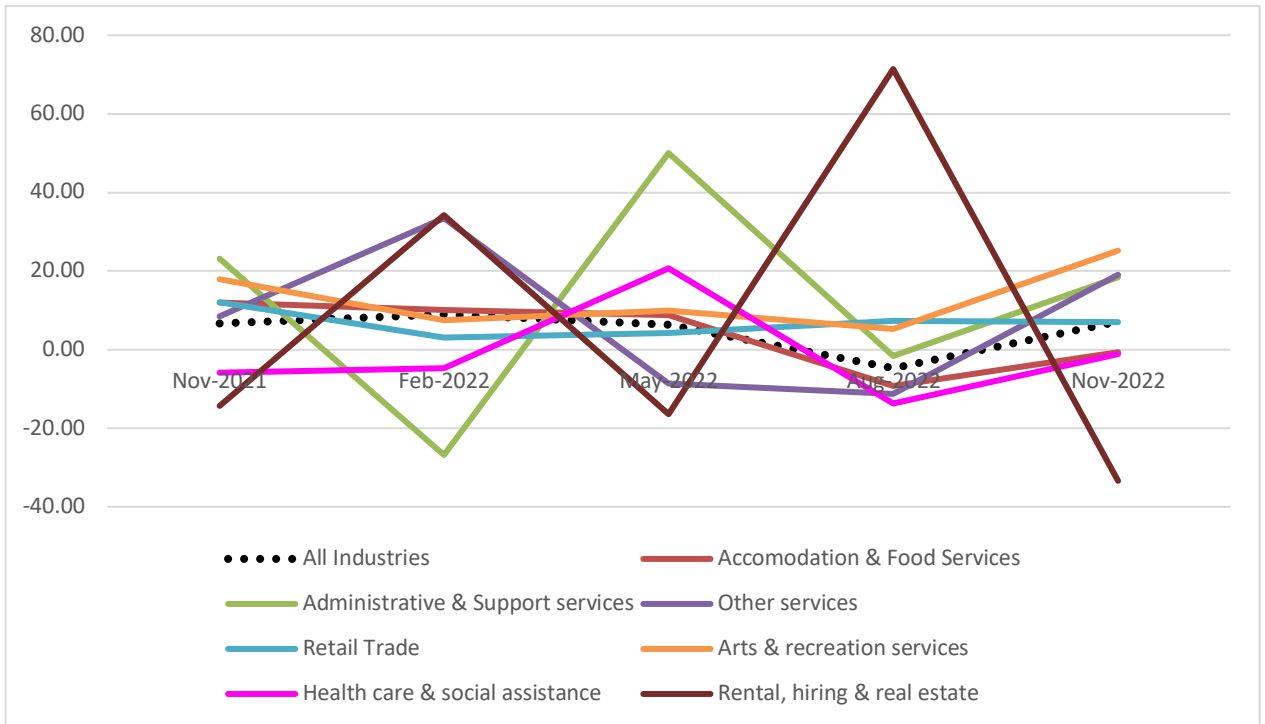
Figure 74: Unemployment and participation rates, 15-19 years, 2013-2023



Source: ABS Labour force

392. Comparing the more modern award reliant industries to industries generally, there do not appear to be clear effects on employment growth for 15-19 year olds coincident with Panel's decision last year. As seen in Figure 75 below, the movements in employment growth between the more modern award reliant industries were not uniform between November 2021 and November 2022 in the quarters where no minimum wage increases took effect (February and May 2022), consistent with the obvious point that numerous factors are at play in determining employment levels. Where minimum wage increases took effect in the August 2022 quarter for all industries shown (i.e. all but Accommodation and Food Services), employment for this age cohort across all industries in total fell, but grew for three of the more award reliant industries shown. Accommodation and Food Services, where the effects of minimum wage increases would be expected to be seen in November 2022 and (to a lesser extent) in the November 2021 measurements, recorded close to stable employment in November 2022 (-0.59) at time when two other modern award reliant industries, not affected by a wage increase at that time, declined more prominently. It also grew 12.01% in the November 2021 measurement period, notwithstanding minimum wage increases taking effect from 1 November 2021. Retail trade, which was subject to a minimum wage increase in the November 2021 and August 2022 measurement periods, recorded growth in both quarters.

Figure 75: Employment growth for 15-19 year olds, more modern award reliant industries, Nov 2021-2022



Source: ABS Labour Force Detailed

393. In our view, the prospects of a 15-19 year old finding a job in modern award reliant industries, and industries generally, are presently good and there is no suggestion that continuing the path of proportionately adjusting junior rates poses a risk to youth employment.

9.2 Apprentices and Trainees

394. Support available to employers in 2022-23 came from phase one of the Australian Apprenticeships Incentive System, which provides subsidies and transfers to employers depending on location and skills demand as follows:

Table 13: Australian Apprenticeships Incentive System

Circumstance	Assistance available
Employer hires a new or recommencing Australian apprentice <u>not</u> in a priority occupation.	\$3,500 (total) paid in two equal six monthly installments.
Employer hires a new or recommencing Australian apprentice in a rural regional location, in a priority occupation.	15% of wages for first year apprentices, capped at \$2,250 per quarter. 10% of wages for second year apprentices, capped at \$1,500 per quarter. 5% of wages for third year apprentices, capped at \$750 per quarter.
Employer hires a new or recommencing Australian apprentice outside of a rural regional location, in a priority occupation.	10% of wages for first year apprentices, capped at \$1,500 per quarter. 5% of wages for second- and third-year apprentices, capped at \$750 per quarter.

Source: [Department of Education, Skills and Employment](#)

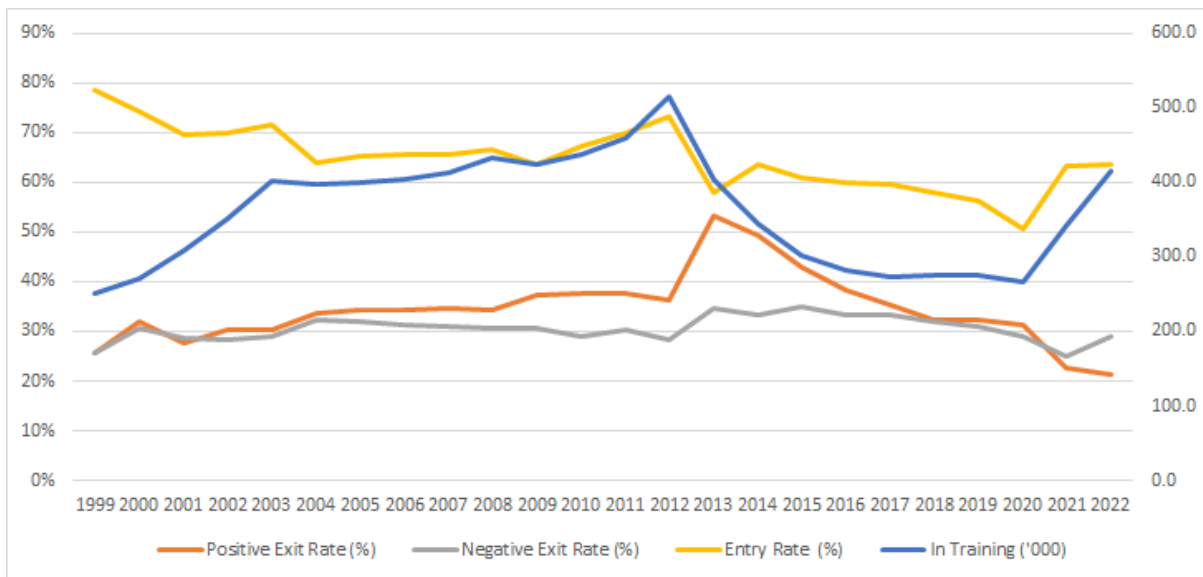
395. Assistance is also available directly to apprentices, in the form of six-monthly payments of \$1,250 for the first two years of an apprenticeship and a living away from home allowance for those not already living independently (\$77.17 per week in the first year, \$38.59 in the second and \$24 per week in the third). Applications may also be made for trade support loans, depending on occupation and other factors.³⁷⁸

396. The aggregate level of persons in training conducting an apprenticeship or traineeship are shown in Figure 76 below, along with the following measures:

³⁷⁸ Commonwealth Treasury, "Budget 2022-23 – Budget Paper No. 2", page 76, Department of Education Skills and Employment [Fact Sheet](#).

- a. *Positive exit rate*: the number of completions as a share of the persons in training, expressed as a percentage
- b. *Negative exit rate*: the number of cancellations or withdrawals as a share of the number of persons in training, expressed as a percentage.
- c. *Entry rate*: the number of persons commencing training as a share of the persons in training, expressed as a percentage.

Figure 76: Apprenticeship and trainee entry and exit, June Quarter 1999-2022



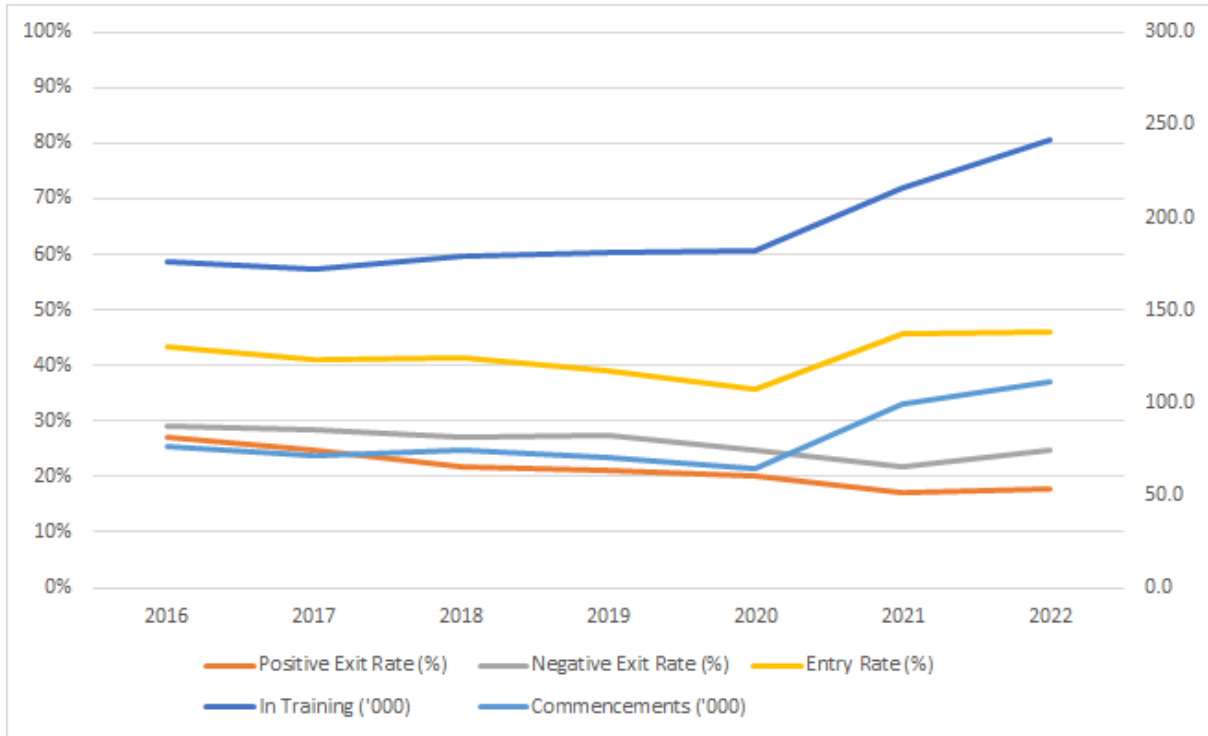
Source: NCVET, ACTU calculations

397. The stabilisation of the drop in the entry rate which began to appear in 2021-22 is an encouraging sign. It would have been more positive to see some more significant improvement in that rate as all forecasts seem to indicate that a substantial increase in skilled worker demand is likely over the medium to long term – requiring a commensurate recovery and increase in entry rate compared to historical figures. In the market context, even short-term skills shortages would create some pressure for wage increases which, by definition in award-reliant work, are not offered voluntarily by employers.

398. An increase in the negative exit rate signals further concerns – given that it indicates a higher proportion of entry is being ‘wasted’ through cancellations and withdrawals. The continued decline in the positive entry rate reinforces that retention remains a significant issue. Why this might be the case is difficult to tell from these figures, but it would represent a concerning trend for the availability of skilled workers if this trend, which began to appear in the 2021-22 figures, continues in future quarters. Unlike previous years this trend appears

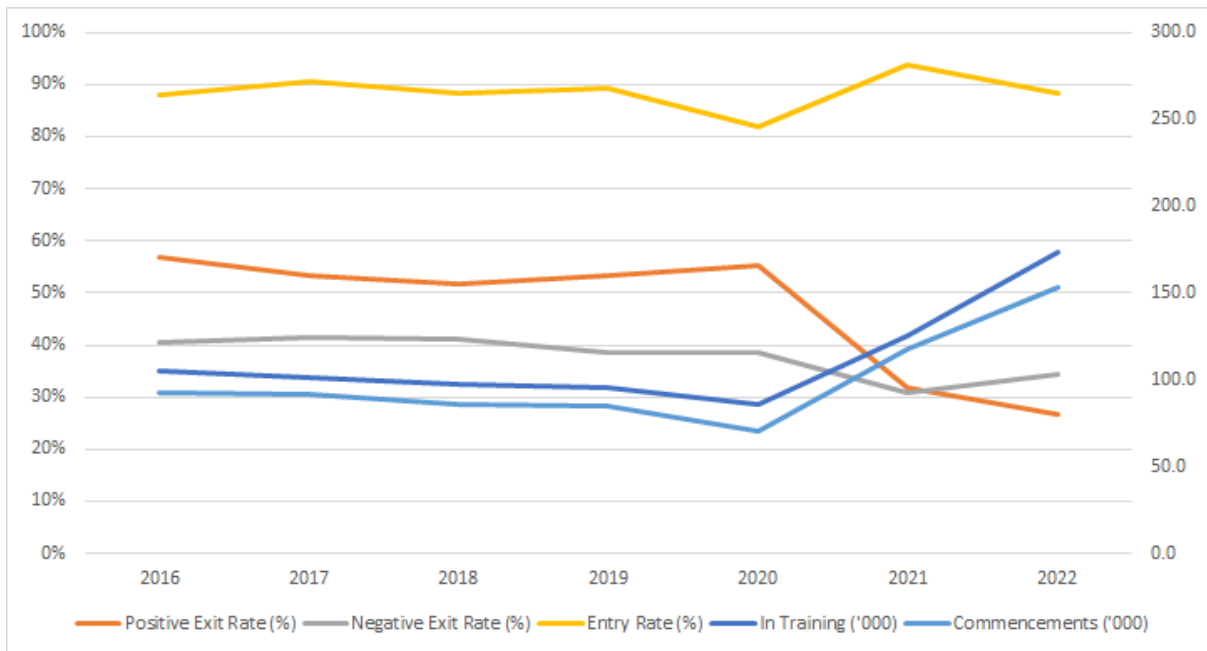
across both apprentices and trainees – likely indicative of a systemic issue. The NCVER groups data according to “Trades” and “Non-Trades,” which is an appropriate differentiator between apprenticeships and trainees in our view.

Figure 77: Apprenticeship entry and exit, June Quarter 2016-2022



Source: NCVER, ACTU calculations

Figure 78: Trainees entry and exit, June Quarter 2016-2022



Source: NCVET, ACTU calculations

399. Figure 77 and Figure 78 above, shown at similar scale, indicate marginally more substantial movements with respect to apprentices than trainees, particularly with regard to a concerning jump in the negative entry rate for apprentices. Trainees, however, have experienced a slight drop in entry rate, compared to marginally positive growth in entry rate for apprentices.
400. While commencement numbers appear to be heading away from negative territory, high rates of cancellation and withdrawal remain a concern – particularly for apprentices. It remains appropriate for apprentice and trainee wages to be lifted in the usual way to attract new entrants, recognise increased demand, and maintain rather than worsen the level of consistency in treatment in the system. The apprentice and trainee rates set out in the *Miscellaneous Award* should continue to form the basis for apprentice and trainee rates expressed in the National Minimum Wage Order.
401. With regard to the issue of the passing on of wage increases to adult apprentices, the ACTU supports the submission made by the Electrical Trades Union, and any others made by our affiliated unions, arguing that adult apprentices should receive the full value of any increase – as well as the full value of any past increases.

9.3 Employees with a disability

402. Special National Minimum Wage 1 should continue to be set at the same level as the National Minimum Wage, as varied in this Review. Setting of a lesser minimum wage for workers with a disability solely as a consequence of their having a disability – could lead to an outcome that is at odds with s. 153 of the FW Act.
403. Special National Minimum Wage 2 should continue to be set by reference to the National Minimum Wage, as varied in this review, in conjunction with Supported Wage System assessments.
404. Employees with a disability which affects the employee’s productivity who are covered by an award other than the Supported Employment Services Award should continue to be remunerated according to the minimum wages as varied in this review and the Supported Wage System schedules in those awards, subject to the minimum payment set by reference to the income test free area of the disability support pension.³⁷⁹ This is currently \$95 per week but will be indexed on 1 July to CPI based on March Quarter CPI³⁸⁰, which we understand will be published on 26 April .
405. Employees with a disability whose disability affects their productivity may find pathways into employment through Disability Employment Services. The 2022-23 Budget contained an announcement that Restart Wage Subsidies (up to \$10,000) will remain available over 2022-23 and 2023-24 for employers who employ mature aged Disability Employment Services Participants (50 years or over).³⁸¹ This will contribute to meeting the costs of the wages adjusted in this review.
406. The current terms of the Supported Wages System Schedule that forms part of the *Supported Employment Services Award* does not require the separate adjustment of a minimum weekly payment. However, the minimum hourly rate expressed in clause D.4.1.(b) does require updating and it appears that the rate was fixed at 12.5% of the Grade 2 rate in that award³⁸². In this Review it should be updated to represent 12.5% of the Grade 2 rate as varied. The

³⁷⁹ See [2021] FWCFB 3500 at [314]

³⁸⁰ *Social Security Act 1991* s. 117, s. 1064, s. 1064-E4, s.1190 at Item 20, s. 1191 at Item 14.

³⁸¹ Commonwealth Treasury, “Budget 2022-23 – Budget Paper No. 2”, page 74. See also Disability Employment Services [Factsheet](#).

³⁸² [2022] FWCFB 203 at [253]

adjustment of the minimum rates expressed in the *Supported Employment Services Award* is otherwise sufficient to flow the effects of the current decision on to employees covered by that Award.

9.4 Casual loading

407. The casual loading should be maintained at 25% in this review.

9.5 Piece rates

408. The adjustments to modern award minimum wages should flow through to piecework rates in the usual way.

9.6 Other instruments

409. The adjustments to modern award minimum wages should flow through to any transitional instruments in the usual way. Our position in relation to copied state awards is set out in our separate submissions filed for the purposes of the preliminary issues hearing.

Appendix A



ACTU ASK Research

Report of key insights into financial wellbeing
& the cost of living

Ref: J012

March 2023



Report of key insights into financial wellbeing & the cost of living

Prepared for: Sunil Kemppi, Senior Legal & Industrial Officer, ACTU

Prepared by: ACTU Insights Team:

Date: 28 March 2023

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Report overview

This report is focused on two key questions:

1. What insights about Australian workers can be drawn from the ACTU's research in relation to financial wellbeing, the cost of living, and the ability to meet living expenses?
2. What impact do the key demographic factors of age, gender, job security, income, and industry have on these results, with a specific focus on workers on lower incomes?

Executive summary

The ASK research clearly demonstrates that Australian workers are currently facing a broad range of financial difficulties, exacerbated by what is widely seen as a cost of living crisis.

The research shows that an overwhelming 93% of workers think that Australia currently has a cost of living crisis, and that for many, this is not only affecting their financial wellbeing but also has a direct impact on their physical and mental health.

- Less than a third (31%) of workers feel that their household is better off now that it was at the same time last year. This declines to just 26% of workers with an income below \$52,000 per year and 23% of casual workers.
- In contrast, 45% of workers *disagree* that they are better off financially now, and this rises to more than half (56%) of casual workers. Female workers (54%) are much more likely to disagree they are better off financially than this time last year than male workers (38%).
- 64% of workers agree they earn enough to pay their bills, dropping to 51% of those in insecure work. Among casual workers, 31% *disagree* that they earn enough to pay their bills, compared with 17% of workers overall.
- 69% of workers expect economic conditions in Australia will get worse over the next 12 months, with women (75%) more likely to say this than men (63%).
- 89% of workers say that the cost of living became worse in the last 12 months.

There are many everyday costs causing financial stress for workers. When asked about the ability of their household to afford specific costs in the next 12 months, *without significant financial stress*:

- 39% of workers *disagree* that they can afford housing costs without significant financial stress.
- 33% of workers *disagree* that they can afford medical / health costs without significant financial stress.
- 33% of workers *disagree* that they can afford utilities like electricity & water without significant financial stress.
- 30% of workers *disagree* that they can afford food and groceries without significant financial stress.

The actions that are being taken by Australian workers because of the cost of living crisis also demonstrate the impact this is having on financial wellbeing and the quality of life. These actions include:

- 53% dipping into their savings to pay for current expenses.
- 48% of permanent PT (part time) workers and 62% of casual workers trying to get additional hours of work.
- 25% skipping meals.
- 25% being unable to pay bills or falling behind on bills (rising to a third of those earning less than \$52k per year).
- 23% have sold assets to help them get by (29% for those in insecure work)

Furthermore, as a result of cost of living pressures:

- 47% say their mental health has suffered.
- 43% of workers say they have lost sleep worrying about their financial situation.
- 37% say their home life has been negatively affected.
- 34% say their physical health has suffered.

There have also been notable changes since mid-2022. Comparing results in Quarter 1, 2023 against Quarter 3, 2022 (since the last decision on wages, and following notable increases in inflation and RBA interest rates), we see that:

- The proportion of workers who *disagree* that their household is better off financially now than at the same time last year has increased from 34% to 45%.
- The proportion of workers who *disagree* that they earn enough to pay their bills has increased from 13% to 17%.
- The proportion of workers who anticipate that economic conditions in Australia will get a lot or a little worse in the next 12 months has increased from 58% to 69%.
- More workers are selecting reducing the cost of living (from 57% to 64%) and increasing wages (from 34% to 39%) in their top five priorities from a list of issues Australia is currently facing.
- 89% of workers think the cost of living has become worse in the last 12 months (from 83%).
- 84% of workers think electricity costs have become worse in the last 12 months (from 79%).
- Across all categories measured, workers are consistently more likely to *disagree* that they can afford key household costs without financial stress. The largest changes are:
 - The proportion of workers who *disagree* that they can afford housing costs without significant financial stress has risen from 31% to 39%.
 - The proportion of workers who *disagree* that they can afford medical / health costs without significant financial stress has risen from 25% to 33%.
 - The proportion of workers who *disagree* that they can afford their personal debt without significant financial stress has risen from 21% to 29%.
 - The proportion of workers who *disagree* that they can afford food and groceries without significant financial stress has risen from 24% to 30%.

Given these results, it is perhaps unsurprising that 64% of workers select 'reducing the cost of living' as one of their top five priorities in the issues facing Australia today. This overwhelmingly leads the list of issues, with the next most selected being 'increasing wages' (39%) and addressing housing affordability' (35%).

This data was also reviewed comparing workers in award-reliant industries with those who are not in award-reliant industries. Results were generally similar across these groups, reflecting that all workers are struggling. One notable difference is amongst those who 'tried to increase the hours I work' [Asked of those currently working but not full time only]. This was higher amongst those in award-reliant industries (22%) compared with those not in award-reliant industries (12%).

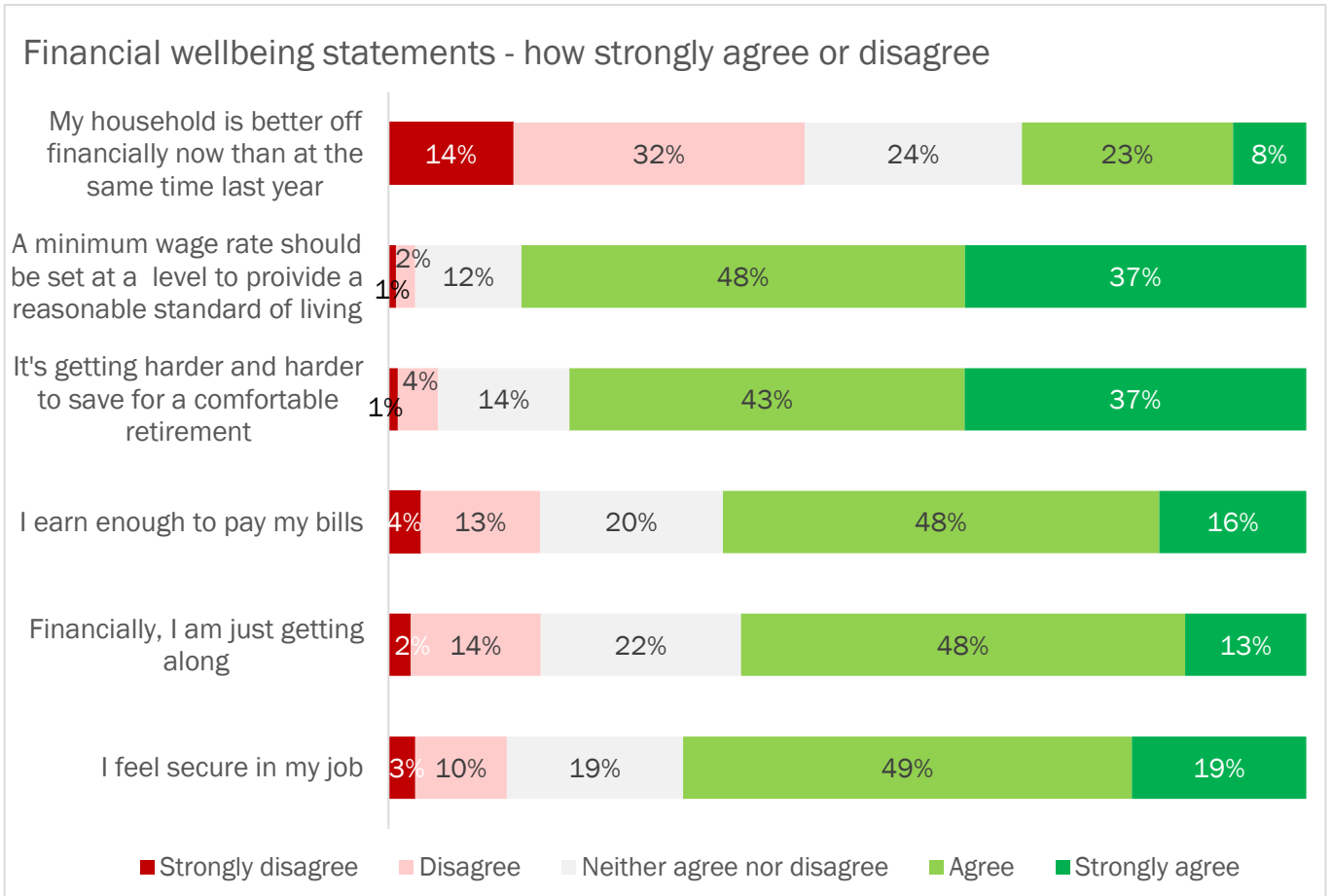
There were, however, clear distinctions when comparing workers on lower incomes and those in insecure work. Both of these groups show greater levels of financial hardship and a greater impact from the cost of living crisis overall (as outlined in this report and in associated tables).

Key findings

Workers are much more likely to disagree (45%) than agree (31%) that their household is better off financially now than at the same time last year.

In total, 17% of Australian workers disagree that they earn enough to pay their bills.

Chart 1: Financial wellbeing



Reference: WQ1. For each of the following statements, please indicate how strongly you agree or disagree...
 Base: All respondents (workers). See data tables for sample sizes and definitions. NA removed.
 Source: ACTU ASK, Qtr 1 2023.

Job security, gender, and income level all have a clear impact on financial wellbeing.

Women are more likely to disagree that they are better off financially now than they were a year ago (54%, compared to 38% for men), and that they earn enough to pay their bills (21%, compared to 13% of men).

Those with lower incomes and those in insecure work also have lower levels of financial wellbeing.

Table 1: Financial wellbeing – Better off financially now than at the same time last year

My household is better off financially now than at the same time last year [Workers]	Total	In secure work	In insecure work	Women	Men	Income below \$52k	Income \$52k- <\$104k	Income \$104k+
n=	2,011	1,707	304	950	1,054	488	884	522
Strongly disagree	14%	14%	14%	17%	11%	14%	16%	10%
Disagree	32%	31%	36%	37%	27%	35%	30%	31%
Neither agree nor disagree	24%	24%	24%	21%	27%	25%	24%	22%
Agree	23%	24%	19%	19%	27%	19%	23%	26%
Strongly agree	8%	8%	8%	7%	9%	7%	7%	11%
Nett: Total disagree	45%	45%	49%	54%	38%	49%	46%	42%
Nett: Total agree	31%	32%	27%	26%	36%	26%	31%	36%

Reference: WQ1. For each of the following statements, please indicate how strongly you agree or disagree...
 Base: All respondents (workers). See data tables for definitions. NA removed.
 Note: not all categories shown; sub-categories may not sum to 100%.
 Source: ACTU ASK, Qtr 1 2023.

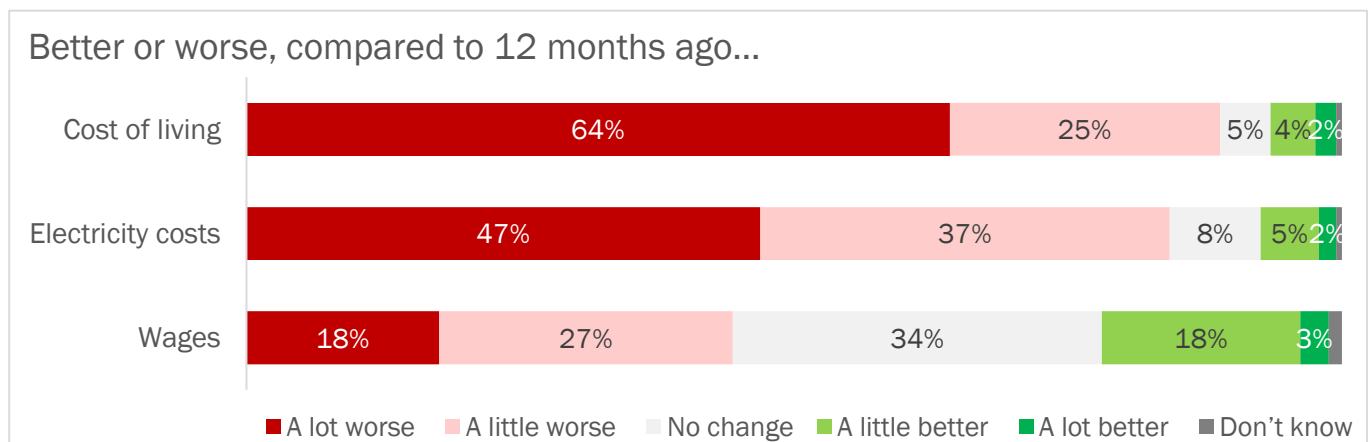
Table 2: Financial wellbeing – I earn enough to pay my bills

I earn enough to pay my bills [Workers]	Total	In secure work	In insecure work	Women	Men	Income below \$52k	Income \$52k- <\$104k	Income \$104k+
n=	2,007	1,704	303	949	1,051	488	881	522
Strongly disagree	4%	4%	4%	4%	3%	5%	4%	1%
Disagree	13%	12%	21%	17%	10%	22%	13%	6%
Neither agree nor disagree	20%	19%	25%	20%	20%	24%	18%	18%
Agree	48%	50%	34%	47%	48%	40%	49%	52%
Strongly agree	16%	16%	16%	12%	20%	10%	16%	23%
Nett: Total disagree	17%	15%	25%	21%	13%	26%	18%	7%
Nett: Total agree	64%	66%	51%	59%	68%	49%	65%	76%

Reference: WQ1. For each of the following statements, please indicate how strongly you agree or disagree...
 Base: All respondents (workers). See data tables for definitions. NA removed.
 Note: not all categories shown; sub-categories may not sum to 100%.
 Source: ACTU ASK, Qtr 1 2023.

89% of workers think cost of living has become a lot or a little worse compared to 12 months ago. This is higher among insecure workers (91%), women (93%), older workers (93% among those aged 45-59 and 95% among those 60+, workers with an income below \$52k (92%) and workers in award reliant industries (91%). (Note: these figures are not charted; see demographic cuts available in the data tables).

Chart 2: Change over last 12 months



Reference: WQ2. Do you think the following have become better or worse, compared to 12 months ago...? Labels not shown where <2%.

Base: All respondents (workers). See data tables for sample sizes and definitions.

Source: ACTU ASK, Qtr 1 2023.

The ability to afford day-to-day living expenses without significant financial stress shows substantial differences across the genders, with women consistently expecting greater hardship across almost all measures (excluding childcare).

Those with an income below \$52k are also much more likely to disagree they can afford these costs without significant financial stress, than those on higher incomes.

Table 3: Affordability – Ability to afford costs without significant financial stress [% disagree]

% disagree - My household can afford the following costs without significant financial stress [Workers]	Total	In secure work	In insecure work	Women	Men	Income below \$52k	Income \$52k- <\$104k	Income \$104k+
Housing	39%	38%	44%	45%	32%	43%	41%	32%
Utilities	33%	33%	38%	38%	29%	37%	35%	28%
Medical / health	33%	33%	36%	40%	28%	40%	35%	26%
Fuel & transport	32%	31%	38%	36%	28%	35%	33%	27%
Food & groceries	30%	30%	33%	36%	25%	34%	31%	26%
Personal debt	29%	28%	33%	35%	24%	35%	31%	22%
Childcare	28%	28%	28%	28%	28%	28%	31%	24%

Reference: WQ4. Thinking about your costs/expenses in the next 12 months, to what extent do you agree or disagree that your household will be able to afford the following costs without significant financial stress...?

Base: All respondents (workers). See data tables for sample sizes and definitions. NA removed.

Note: not all categories shown; sub-categories may not sum to 100%.

Source: ACTU ASK, Qtr 1 2023.

A large proportion of workers are changing their behaviours because of the cost of living crisis, with the most common being reducing or stopping spending on non-essential items (69%).

There is a notable difference between men and women on activities undertaken, with women much more likely to say they have reduced spending and dipped into savings.

Table 4: Activities undertaken because of the cost of living crisis

% undertaking activity because of the cost of living crisis [Workers]	Total	In secure work	In insecure work	Women	Men	Income below \$52k	Income \$52k- <\$104k	Income \$104k+
n=	1,968	1,667	301	949	1,011	445	787	597
Reduced or stopped my spending on non-essential items	69%	69%	70%	79%	60%	75%	73%	62%
Reduced my spending on essential items	57%	57%	56%	67%	47%	62%	63%	46%
Used my savings to pay for current expenses	53%	52%	55%	61%	45%	59%	58%	43%
Postponed or stopped planning a holiday	49%	50%	49%	55%	44%	52%	55%	42%
Tried to get an additional job / side gig	41%	39%	54%	48%	35%	49%	45%	33%
Changed my job or started looking for a new job	27%	26%	37%	30%	25%	33%	29%	24%
Skipped meals	25%	24%	30%	29%	21%	37%	26%	17%
Been unable to pay bills or fallen behind on bills	25%	25%	25%	28%	21%	33%	27%	18%
Sold assets to help me get by	23%	22%	29%	25%	20%	29%	23%	19%
Borrowed money from friends or family	20%	20%	22%	21%	19%	29%	22%	13%
Moved or looked for more affordable accommodation	17%	17%	17%	16%	17%	19%	19%	14%
Taken out a new personal loan or other debt	15%	15%	12%	15%	14%	14%	17%	13%
[Non FT workers] Tried to increase the hours I work **	17%	11%	48%	23%	12%	40%	12%	7%

Reference: CLQ1. Which of the following, if any, have you done because of the cost of living crisis? Questions asked only of those who believe there is a cost of living crisis, rebased to the total population to give a clearer, easier to interpret picture of the true proportion involved across the entire population. Shows % who have done the outlined activity.

Base: All respondents (workers). See data tables for definitions. NA removed.

** Asked of those currently working but not full time only. Please see data tables to see results filtered by specific work type.

Note: not all categories shown; sub-categories may not sum to 100%.

Source: ACTU ASK, Qtr 4 2022.

Nearly half of all workers (47%) report that their mental health has suffered because of cost of living pressures. More than half of women (54%) and workers on less than \$52k (54%) have felt mental health impacts. Over a third (34%) have seen their physical health suffer, again more evident among those with an income below \$52k per year (43%).

Table 5: Impact of cost of living pressures

% feeling impact as a result of cost of living pressures [Workers]	Total	In secure work	In insecure work	Women	Men	Income below \$52k	Income \$52k- <\$104k	Income \$104k+
n=	1,968	1,667	301	949	1,011	445	787	597
My mental health has suffered	47%	46%	47%	54%	40%	54%	51%	38%
I have lost sleep worrying about my financial situation	43%	43%	43%	51%	35%	49%	47%	35%
My home life has been negatively affected	37%	37%	35%	42%	32%	44%	37%	33%
My physical health has suffered	34%	34%	34%	37%	30%	43%	36%	27%
My performance at work has been negatively impacted	24%	25%	23%	26%	23%	27%	27%	20%

Reference: CLQ2. Which of the following, if any, would you say applies to you as a result of cost of living pressures? Questions asked only of those who believe there is a cost of living crisis, rebased to the total population to give a clearer, easier to interpret picture of the true proportion involved. Shows % who have experienced impact.

Base: All respondents (workers). See data tables for definitions. NA removed.

Note: not all categories shown; sub-categories may not sum to 100%.

Source: ACTU ASK, Qtr 4 2022.

More than one in five workers (22%) would not be able to access \$3,000 if they had an unexpected emergency and needed access to \$3,000, and a further 22% would need longer than a week or more support.

Among those with an income below \$52k, 38% would not be able to access \$3,000 in an emergency.

Table 6: Ability to deal with emergency

Ability to immediately access \$3k for an unexpected emergency [Workers]	Total	In secure work	In insecure work	Women	Men	Income below \$52k	Income \$52k- <\$104k	Income \$104k+
n=	1,968	1,667	301	949	1,011	445	787	597
I could access \$3,000 within a week	56%	56%	53%	53%	58%	40%	52%	72%
I could access \$3,000 but would need more time or support	22%	23%	21%	22%	22%	23%	25%	19%
I would not be able to access that amount	22%	21%	26%	25%	20%	38%	23%	9%

Reference: CLQ3. If you faced an unexpected emergency and needed to immediately access \$3,000, which of the following best describes you...?

Base: All respondents (workers). See data tables for definitions. NA removed.

Note: not all categories shown; sub-categories may not sum to 100%.

Source: ACTU ASK, Qtr 4 2022.

About the research

All data referenced in this report is sourced from the J012 ACTU ASK Research, which aims to understand and track Australians' perceptions and sentiments on a range of issues, including financial wellbeing and employment.

All base module questions are repeated from wave to wave to ensure consistency over time and to ensure comparability to previous waves of data. This allows for trend series data to determine any changes over time.

Data is drawn from the most recent waves of the research, as available.

- Most results from all ongoing tracker metrics are sourced from the most recent wave (Wave 6, Quarter 1 2023), with fieldwork conducted between 14-21 February 2023. Some data in this report has been compared to the Quarter 3, 2022 data to show changes over time.
- Additional insights have been drawn from a one-off cost of living module asked in Wave 5, Quarter 4 2022, with fieldwork conducted between 31 October to 14 November 2022.

ASK Methodology

The ASK research consists of a 15-minute online survey, which includes ongoing tracking and topical question modules.

The survey has target quotas, which interlock age x gender and overlay location (state/territory). Targets are proportionally based on results from the ABS 2021 Census. Note that respondents are able to identify themselves as non-binary, other, or refuse gender identification, which may cause some fluctuations in quota cells.

This research is conducted in accordance with The Research Society's Code of Professional Behaviour.

Sample

The ASK Research is conducted with a robust sample of $n \approx 3,000$ per wave (bar the second wave, Quarter 1, 2022, which had $n=800$ responses). Surveys are conducted with people in Australia aged 18+, using sample from an accredited online panel sample provider (Pure Profile).

Notes on interpreting the data

When interpreting the results, it should be noted that online panel samples represent a broad spectrum of the population but are opt in and may have some distinct characteristics from the overall population. However, sample is balanced to proportionally represent key demographics such as age, gender and location, to align with the overall population.

Statistical tests based on random samples do not technically apply to research using panel sample but provide a broad guide to expected confidence and survey variability levels. For ASK, the expected accuracy levels for a random sample of $n=3,000$ would be $\pm 2\%$ at the 95% confidence level, based on a proportion of 50% for the population of 20.1 million people aged 18+ in Australia.

Supporting data tables

This report is supported by a comprehensive set of data tables for Quarters 3 and 4 in 2022 and for Quarter 1 in 2023, also provided. This gives a full breakdown of the metrics reported across all data breaks, as well as details on elements like question wording, sample sizes, and key definitions. Please refer to these tables for further information.



PLEASE CONTACT THE ACTU INSIGHTS TEAM IF YOU HAVE ANY
QUESTIONS OR WOULD LIKE ANY FURTHER DETAIL
INSIGHTS@ACTU.ORG.AU



ACTU ASK Tracker

About the research

All data shown is from J012 ACTU ASK Tracking Research, conducted by ACTU Insights on behalf of the ACTU.

The objective of the research is to understand and track Australians' perceptions and sentiments on a range of issues, including financial wellbeing and

This data is provided for research purposes only and caution should be used when interpreting results.

Methodology

The ASK research consists of a 15 minute online survey, which includes ongoing tracking and topical question modules. Data in this report is sourced

Quarter 3, 2022 (Wave 4) fieldwork was conducted between 12-22 Aug 2022.

Quarter 4, 2022 (Wave 5) fieldwork was conducted between 31 Oct to 14 Nov 2022.

Quarter 1, 2023 (Wave 6) fieldwork was conducted between 14-21 Feb 2023.

The ASK Research is conducted with a sample of ~n=3,000 per wave (except for the second wave, which had n=800 responses).

Surveys are conducted with people in Australia aged 18+, using sample from an accredited online panel sample provider (Pure Profile).

When interpreting the results, it should be noted that online panel samples represent a broad spectrum of the population but are opt in and may not represent key demographics such as age, gender and location, to align with the overall population. Statistical tests based on random samples do not account for confidence and survey variability levels. For ASK, the expected accuracy levels for a random sample of n=3,000 would be $\pm 2\%$ at the 95% confidence level in Australia.

The survey has target quotas, which interlock age x gender and overlay location (state/territory). Targets are based on results from the ABS 2021 Census.

Note that respondents are able to identify themselves as non-binary, other, or refuse gender identification and there may be fluctuations in quota coverage.

The ACTU is a client partner of The Research Society and all members of the ACTU Insights Team are full members of the Research Society. Three of

The ASK research is conducted in accordance with The Research Society's Code of Professional Behaviour.

All members of the ACTU Insights Team have a minimum of 18 years experience up to 23 years experience working in the field of research and insights.



J012 ASK Tracking Research - Data Tables

Changes in last twelve months
Data collected Quarter 3, 2022 to Quarter 4, 2023 (Waves 4,6)

Table with 10 columns: Total, Return to work, All workers, Workers in secure work, Workers in insecure work, Permanent FT part workers, Permanent PT part workers, Casual part workers, FT head term contract part workers, Independent contractors, Workers - Women, Workers - Men, Workers aged 18-25, Workers aged 26-44, Workers aged 45-64, Workers aged 65+, Workers in NSW/ACT, Workers in QLD, Workers in SA, Workers in VIC/SA, Workers in WA/NT, Workers with income below \$24k, Workers with income \$25k to \$49k, Workers with income \$50k+, Workers preferring not to say, Workers in award-related industries, Workers in non-award-related industries

Cells are shown where n=25. Please use the data included where shown and may not be in the order of 100% due to rounding and some categories being hidden due to low counts.
Data available: Return to work and Workers aged 18-25.
Note: All percentages are based on the number of workers, compared with 12 months ago.
Note: All percentages. Single number. Includes 0%

Table for 'Compare growth for small businesses' with columns for Total, Return to work, All workers, Workers in secure work, Workers in insecure work, Permanent FT part workers, Permanent PT part workers, Casual part workers, FT head term contract part workers, Independent contractors, Workers - Women, Workers - Men, Workers aged 18-25, Workers aged 26-44, Workers aged 45-64, Workers aged 65+, Workers in NSW/ACT, Workers in QLD, Workers in SA, Workers in VIC/SA, Workers in WA/NT, Workers with income below \$24k, Workers with income \$25k to \$49k, Workers with income \$50k+, Workers preferring not to say, Workers in award-related industries, Workers in non-award-related industries

Table for 'The economy overall' with columns for Total, Return to work, All workers, Workers in secure work, Workers in insecure work, Permanent FT part workers, Permanent PT part workers, Casual part workers, FT head term contract part workers, Independent contractors, Workers - Women, Workers - Men, Workers aged 18-25, Workers aged 26-44, Workers aged 45-64, Workers aged 65+, Workers in NSW/ACT, Workers in QLD, Workers in SA, Workers in VIC/SA, Workers in WA/NT, Workers with income below \$24k, Workers with income \$25k to \$49k, Workers with income \$50k+, Workers preferring not to say, Workers in award-related industries, Workers in non-award-related industries

Table for 'Risks' with columns for Total, Return to work, All workers, Workers in secure work, Workers in insecure work, Permanent FT part workers, Permanent PT part workers, Casual part workers, FT head term contract part workers, Independent contractors, Workers - Women, Workers - Men, Workers aged 18-25, Workers aged 26-44, Workers aged 45-64, Workers aged 65+, Workers in NSW/ACT, Workers in QLD, Workers in SA, Workers in VIC/SA, Workers in WA/NT, Workers with income below \$24k, Workers with income \$25k to \$49k, Workers with income \$50k+, Workers preferring not to say, Workers in award-related industries, Workers in non-award-related industries

Table for 'Economic aid' with columns for Total, Return to work, All workers, Workers in secure work, Workers in insecure work, Permanent FT part workers, Permanent PT part workers, Casual part workers, FT head term contract part workers, Independent contractors, Workers - Women, Workers - Men, Workers aged 18-25, Workers aged 26-44, Workers aged 45-64, Workers aged 65+, Workers in NSW/ACT, Workers in QLD, Workers in SA, Workers in VIC/SA, Workers in WA/NT, Workers with income below \$24k, Workers with income \$25k to \$49k, Workers with income \$50k+, Workers preferring not to say, Workers in award-related industries, Workers in non-award-related industries

Table for 'Work by sex' with columns for Total, Return to work, All workers, Workers in secure work, Workers in insecure work, Permanent FT part workers, Permanent PT part workers, Casual part workers, FT head term contract part workers, Independent contractors, Workers - Women, Workers - Men, Workers aged 18-25, Workers aged 26-44, Workers aged 45-64, Workers aged 65+, Workers in NSW/ACT, Workers in QLD, Workers in SA, Workers in VIC/SA, Workers in WA/NT, Workers with income below \$24k, Workers with income \$25k to \$49k, Workers with income \$50k+, Workers preferring not to say, Workers in award-related industries, Workers in non-award-related industries

Table for 'Work by age' with columns for Total, Return to work, All workers, Workers in secure work, Workers in insecure work, Permanent FT part workers, Permanent PT part workers, Casual part workers, FT head term contract part workers, Independent contractors, Workers - Women, Workers - Men, Workers aged 18-25, Workers aged 26-44, Workers aged 45-64, Workers aged 65+, Workers in NSW/ACT, Workers in QLD, Workers in SA, Workers in VIC/SA, Workers in WA/NT, Workers with income below \$24k, Workers with income \$25k to \$49k, Workers with income \$50k+, Workers preferring not to say, Workers in award-related industries, Workers in non-award-related industries

Table for 'Work by industry' with columns for Total, Return to work, All workers, Workers in secure work, Workers in insecure work, Permanent FT part workers, Permanent PT part workers, Casual part workers, FT head term contract part workers, Independent contractors, Workers - Women, Workers - Men, Workers aged 18-25, Workers aged 26-44, Workers aged 45-64, Workers aged 65+, Workers in NSW/ACT, Workers in QLD, Workers in SA, Workers in VIC/SA, Workers in WA/NT, Workers with income below \$24k, Workers with income \$25k to \$49k, Workers with income \$50k+, Workers preferring not to say, Workers in award-related industries, Workers in non-award-related industries

Table for 'Compare growth for large companies' with columns for Total, Return to work, All workers, Workers in secure work, Workers in insecure work, Permanent FT part workers, Permanent PT part workers, Casual part workers, FT head term contract part workers, Independent contractors, Workers - Women, Workers - Men, Workers aged 18-25, Workers aged 26-44, Workers aged 45-64, Workers aged 65+, Workers in NSW/ACT, Workers in QLD, Workers in SA, Workers in VIC/SA, Workers in WA/NT, Workers with income below \$24k, Workers with income \$25k to \$49k, Workers with income \$50k+, Workers preferring not to say, Workers in award-related industries, Workers in non-award-related industries

J012 ASK Tracking Research - Data Tables

Cost of Living - Ad hoc topical module
Data collected Quarter 4, 2022 (Wave 5)

Cost of Living	Total	Work status	Work security (workers)	Work type (workers)	Gender (workers)	Age (workers)	Location (workers)	Personal annual pre-tax income (workers)	Industry type (workers)
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Data not shown where n<30. Please note that data is included to one decimal place and may not sum to the total or 100%, due to rounding and some categories being hidden due to low sample.
Please note: data is shown rebased to % of overall population or relevant subset of population where applicable, as outlined. Where relevant, questions are asked only of those who agree there is a crisis to understand activities & impact caused by cost of living increases, but are rebased to the total population to give a clearer, easier to interpret picture of the true proportion involved.
See About the Research and Definitions pages for more information about this data.
Respondents included people living in Australia aged 18+, with sub-sets as outlined.

CLQ1. Overall, do you think Australia currently has a cost of living crisis?

	Total	Not currently working	All workers	Workers in secure work	Workers in insecure work	Permanent FT paid workers	Permanent PT paid workers	Casual paid workers	FT fixed term contract paid workers	Independent contractors	Workers - Women	Workers - Men	Workers aged 18-29	Workers aged 30-44	Workers aged 45-59	Workers aged 60+	Workers in NSW/ACT	Workers in QLD	Workers in WA	Workers in VIC/TAS	Workers in SA/NT	Workers with income below \$52k	Workers with income \$52k to less than \$104k	Workers with income \$104k+	Workers preferring not to say income	Workers in award reliant industries	Workers not in award reliant industries
n=	3,002	1,034	1,968	1,667	301	1,271	396	285	37	55	949	1,011	484	706	546	232	718	366	283	556	145	445	787	597	139	932	1,036
Yes	92%	90%	93%	92%	94%	92%	93%	95%	89%	93%	90%	90%	93%	92%	93%	91%	91%	94%	93%	93%	92%	95%	94%	91%	86%	94%	92%
No	8%	10%	8%	8%	6%	8%	7%	5%	11%	7%	5%	10%	7%	8%	7%	9%	9%	6%	7%	7%	8%	5%	6%	9%	14%	6%	9%

CLQ1. Which of the following, if any, have you done because of the cost of living crisis? [Questions asked only of those who believe there is a cost of living crisis, rebased to % of all Australians 18+]

	Total	Not currently working	All workers	Workers in secure work	Workers in insecure work	Permanent FT paid workers	Permanent PT paid workers	Casual paid workers	FT fixed term contract paid workers	Independent contractors	Workers - Women	Workers - Men	Workers aged 18-29	Workers aged 30-44	Workers aged 45-59	Workers aged 60+	Workers in NSW/ACT	Workers in QLD	Workers in WA	Workers in VIC/TAS	Workers in SA/NT	Workers with income below \$52k	Workers with income \$52k to less than \$104k	Workers with income \$104k+	Workers preferring not to say income	Workers in award reliant industries	Workers not in award reliant industries
n=	3,002	1,034	1,968	1,667	301	1,271	396	285	37	55	949	1,011	484	706	546	232	718	366	283	556	145	445	787	597	139	932	1,036
Used my savings to pay for current expenses	51%	48%	53%	52%	55%	51%	58%	54%	49%	60%	61%	45%	62%	54%	48%	44%	50%	56%	50%	51%	65%	59%	58%	43%	42%	55%	51%
Reduced my spending on essential items	56%	54%	57%	57%	56%	56%	60%	59%	49%	56%	67%	47%	58%	61%	54%	46%	54%	60%	58%	55%	61%	62%	63%	46%	49%	59%	54%
Reduced or stopped my spending on non-essential items	68%	65%	69%	69%	70%	68%	73%	73%	65%	67%	79%	60%	67%	72%	69%	64%	65%	74%	75%	69%	72%	75%	73%	62%	60%	70%	68%
Taken out a new personal loan or other debt	12%	8%	15%	15%	12%	15%	14%	12%	8%	16%	15%	14%	20%	16%	11%	6%	15%	16%	13%	14%	17%	14%	13%	13%	9%	14%	15%
Skipped meals	24%	23%	25%	24%	30%	23%	24%	29%	27%	22%	29%	21%	35%	27%	18%	18%	24%	27%	22%	26%	37%	30%	27%	17%	15%	23%	23%
Changed my job or started looking for a new job [Asked of those currently working only]	18%	-	22%	20%	37%	26%	26%	40%	41%	26%	30%	25%	38%	31%	20%	11%	26%	30%	23%	27%	37%	33%	29%	24%	18%	28%	26%
Tried to increase the hours I work [Asked of those currently working but not full time only]	11%	-	17%	11%	48%	-	48%	62%	-	36%	23%	12%	23%	15%	15%	14%	15%	19%	21%	16%	25%	40%	12%	7%	12%	22%	12%
Tried to get an additional job / side gig [Asked of those currently working only]	27%	-	41%	39%	54%	38%	41%	56%	46%	51%	48%	35%	57%	44%	33%	19%	38%	45%	42%	41%	46%	49%	45%	33%	30%	43%	40%
Postponed or stopped planning a holiday	46%	39%	49%	50%	49%	49%	51%	47%	49%	51%	55%	44%	51%	55%	45%	39%	45%	53%	49%	50%	61%	52%	55%	42%	41%	52%	47%
Borrowed money from friends or family	19%	18%	20%	20%	22%	18%	26%	23%	16%	22%	21%	19%	32%	22%	13%	8%	20%	22%	23%	18%	21%	29%	22%	13%	12%	21%	20%
Moved or looked for more affordable accommodation	14%	9%	17%	17%	17%	17%	15%	16%	11%	18%	16%	17%	28%	17%	9%	7%	17%	20%	15%	16%	12%	19%	14%	8%	8%	18%	16%
Sold assets to help me get by	21%	18%	23%	22%	29%	21%	26%	30%	16%	33%	25%	20%	31%	26%	16%	13%	22%	28%	25%	19%	25%	29%	23%	19%	19%	25%	21%
Been unable to pay bills or fallen behind on bills	24%	21%	25%	25%	25%	23%	30%	24%	19%	29%	28%	21%	31%	27%	20%	15%	23%	26%	26%	25%	26%	33%	27%	18%	13%	25%	24%

CLQ2. Which of the following, if any, would you say applies to you as a result of cost of living pressures? [Questions asked only of those who believe there is a cost of living crisis, rebased to % of all Australians 18+]

	Total	Not currently working	All workers	Workers in secure work	Workers in insecure work	Permanent FT paid workers	Permanent PT paid workers	Casual paid workers	FT fixed term contract paid workers	Independent contractors	Workers - Women	Workers - Men	Workers aged 18-29	Workers aged 30-44	Workers aged 45-59	Workers aged 60+	Workers in NSW/ACT	Workers in QLD	Workers in WA	Workers in VIC/TAS	Workers in SA/NT	Workers with income below \$52k	Workers with income \$52k to less than \$104k	Workers with income \$104k+	Workers preferring not to say income	Workers in award reliant industries	Workers not in award reliant industries
n=	3,002	1,034	1,968	1,667	301	1,271	396	285	37	55	949	1,011	484	706	546	232	718	366	283	556	145	445	787	597	139	932	1,036
I have lost sleep worrying about my financial situation	41%	37%	43%	43%	43%	41%	47%	44%	41%	40%	51%	35%	47%	47%	37%	32%	42%	45%	35%	42%	48%	49%	47%	35%	30%	43%	42%
My physical health has suffered	32%	29%	34%	34%	34%	32%	37%	36%	35%	29%	37%	30%	43%	37%	25%	23%	32%	36%	24%	35%	42%	43%	36%	27%	22%	35%	32%
My mental health has suffered	43%	36%	47%	46%	47%	46%	50%	49%	43%	46%	54%	40%	55%	53%	38%	29%	44%	48%	43%	49%	52%	43%	51%	38%	35%	47%	46%
My performance at work has been negatively impacted [Asked of those currently working only]	16%	0%	24%	25%	23%	25%	22%	24%	27%	18%	26%	23%	31%	27%	20%	10%	23%	26%	19%	25%	32%	27%	27%	20%	19%	25%	24%
My home life has been negatively affected	36%	34%	37%	37%	35%	36%	40%	39%	32%	27%	42%	32%	41%	42%	32%	22%	37%	37%	28%	38%	42%	44%	37%	33%	28%	36%	37%

CLQ3. If you faced an unexpected emergency and needed to immediately access \$3,000, which of the following best describes you..?

	Total	Not currently working	All workers	Workers in secure work	Workers in insecure work	Permanent FT paid workers	Permanent PT paid workers	Casual paid workers	FT fixed term contract paid workers	Independent contractors	Workers - Women	Workers - Men	Workers aged 18-29	Workers aged 30-44	Workers aged 45-59	Workers aged 60+	Workers in NSW/ACT	Workers in QLD	Workers in WA	Workers in VIC/TAS	Workers in SA/NT	Workers with income below \$52k	Workers with income \$52k to less than \$104k	Workers with income \$104k+	Workers preferring not to say income	Workers in award reliant industries	Workers not in award reliant industries
n=	3,002	1,034	1,968	1,667	301	1,271	396	285	37	55	949	1,011	484	706	546	232	718	366	283	556	145	445	787	597	139	932	1,036
I could access \$3,000 within a week	55%	53%	56%	56%	53%	59%	47%	48%	65%	60%	53%	58%	47%	53%	61%	69%	55%	57%	60%	54%	55%	40%	52%	72%	55%	52%	58%
I could access \$3,000 but would need more time or support	19%	13%	22%	23%	21%	22%	25%	24%	22%	11%	22%	22%	26%	26%	18%	15%	24%	22%	15%	25%	17%	23%	25%	19%	20%	23%	22%
I would not be able to access that amount	26%	34%	22%	21%	26%	19%	29%	28%	14%	29%	25%	20%	27%	21%	21%	17%	21%	21%	25%	22%	28%	38%	23%	9%	25%	25%	20%

ACTU ASK Tracker

Definitions

Banner sections

Total
 Work status
 Work security (workers)
 Work type (workers)
 Gender (workers)
 Age (workers)
 Location (workers)
 Personal annual pre-tax income (workers)
 Industry type (workers)

Definition

All respondents (Australians 18+), with question filters as outlined.
 Currently in paid work, or not (see banner categories for further detail).
 Whether in secure or insecure work (see banner categories for further detail).
 Current main work status. Please note that not all options are included in the banner categories due to low sample sizes (i.e. gig workers & PT fixed term paid contract workers not shown).
 Self identified gender. Please note that not all options are included in the banner categories due to low sample sizes (i.e. refused & non-binary / intersex / own identity not shown).
 Grouped into categories (age ranges) shown.
 State based on postcode and grouped into categories shown.
 Personal annual pre-tax income. Note that respondents may choose to not give this information.
 Whether in award reliant work, or not (see banner categories for further detail).

Banner categories

Total
 Not currently working
 All workers (Workers)
 Workers in secure work
 Workers in insecure work
 Permanent FT paid workers
 Permanent PT paid workers
 Casual paid workers
 FT fixed term contract paid workers
 PT fixed term contract paid workers
 Gig workers
 Independent contractors
 Workers - Women
 Workers - Men
 Workers - Other/refused gender
 Workers aged 18-29
 Workers aged 30-44
 Workers aged 45-59
 Workers aged 60+
 Workers in NSW/ACT
 Workers in QLD
 Workers in WA
 Workers in VIC/TAS
 Workers in SA/NT
 Workers with income below \$52k
 Workers with income \$52k to less than \$104k
 Workers with income \$104k+
 Workers preferring not to say income

Definition

All respondents answering question.
 Main work status is retired or not currently working/not being paid.
 Main work status is currently in paid work. Includes FT permanent paid work, PT permanent paid work, casual paid work, FT fixed term contract paid work, PT fixed term contract paid work, gig work, independent contractors.
 Currently in FT or PT permanent paid work.
 Workers who are not currently in FT or PT permanent paid work (i.e. casual paid work, FT fixed term contract paid work, PT fixed term contract paid work, gig work, independent contractors).
 Selected category as current main work status.
 Selected category as current main work status.
 Selected category as current main work status.
 Selected category as current main work status.
 Selected category as current main work status.
 Selected category as current main work status.
 Selected category as current main work status.
 Selected category as current main work status.
 Current workers who self-identify as female.
 Current workers who self-identify as male.
 Current workers who do not self-identify as female or male (i.e. refused / non-binary / intersex / own identity).
 Current workers in nominated age range.
 Current workers in nominated age range.
 Current workers in nominated age range.
 Current workers in nominated age range.
 Current workers in nominated location.
 Current workers in nominated location.
 Current workers in nominated location.
 Current workers in nominated location.
 Current workers in nominated location.
 Current workers who gave their personal annual pre-tax income in the outlined bands.
 Current workers who gave their personal annual pre-tax income in the outlined bands.
 Current workers who gave their personal annual pre-tax income in the outlined bands.
 Current workers who refused to provide their personal annual pre-tax income.

Workers in award reliant industries

Current workers who are mainly working in 'award reliant' industries, i.e. administration & professional services / community & disability services / entertainment, arts & recreation / health / hospitality, tourism & food services / retail.

Workers not in award reliant industries

Current workers who are not mainly working in 'award reliant' industries, i.e. agriculture, forestry & fishing / construction / education / finance, banking & insurance / manufacturing / media & communications / mining / property & other services / public services / transport / utilities / warehousing & logistics / trades & trades assistants.

APPENDIX B – EXCEPTIONS AND RULES.

1. In last the last Review, the Panel decided to defer the commencement of wage increases for employees covered by particular modern awards. The Panel’s reasons for doing so are set out at paragraphs [198]-[262] of the Panel’s decision.

2. The sole reference therein to the conditions precedent for such a deferral are contained at paragraph [202]:

“No party contests the capacity of the Commission, to the extent justified by exceptional circumstances, to delay the variation of modern award minimum wages on an award-by-award basis. That said, the expression ‘exceptional circumstances’ is to be interpreted in the context of Part 2-6 and a strong case must be made out in order to warrant the deferral of an increase in minimum wages.”

The Panel has given more detailed consideration to its discretion to delay increases where justified by exceptional circumstances in earlier decisions.

3. In order for the Panel to order that a determination to vary modern award minimum wages take effect after 1 July, it must be satisfied both that exceptional circumstances exist and that those exceptional circumstances justify a particular later operative date. So much is clear from subsection 286(2) of the *Fair Work Act 2009*:

“If the FWC is satisfied that there are exceptional circumstances *justifying* why a variation determination should not come into operation until *a later day*, the FWC may specify *that later day* as the day on which it comes into operation. However, the determination *must be limited to just the particular situation* to which the exceptional circumstances relate.”
(emphasis added)

4. The requirement for a connection between particular exceptional circumstances and a particular operative date was implicitly recognised by the Panel in the 2020-21 Review, wherein it stated:

“We also broadly agree with the ACTU’s critique of the various employer proposals for deferred operative dates; namely that they are not properly responsive to the requirement to demonstrate that there are exceptional circumstances *justifying the operative dates they seek*.”¹ (emphasis added)

¹[2021] FWCFB 3500 at [221]

Such a connection was also acknowledged by the majority decision in the 2019-20 Review, in accepting a submission from the Australian Catholic Bishop's Council that "...the circumstances do not just have to be exceptional, they have to be exceptional and *justify* the delay or deferment of the Order"² (emphasis in original).

5. The Panel has previously accepted our submission that the context in which section 286 (and section 287) appear "...clearly requires a factual situation to present itself which can be examined and found to give rise to circumstances that are exceptional and which justify a departure from what is otherwise an immutable rule".³ Consideration of section 286 and section 287 in previous Reviews has established the following principles:
 - a. There is an onus on a party seeking to demonstrate exceptional circumstances justifying a deferral, which requires a strong case to be made out.⁴
 - b. The case that needs to be made out must provide evidence capable of analysis and evaluation⁵, address the need for a deferral to be limited to particular circumstances⁶ and advance a mechanism for the proper identification of the employers and employees affected and to whom the deferral should apply.⁷
 - c. Claims will rarely be successful in respect of a whole industry, owing to the diversity of experience in the sectors covered by an award.⁸ Relatedly, the note to section 286(2) foreshadows that "This may mean that the FWC needs to make more than one determination, if different circumstances apply to different employees".
 - d. The declaration of natural disasters by government cannot, of itself, be regarded as constituting exceptional circumstances.⁹
 - e. Consideration needs to be given not only as to how employers are affected by a situation which gives rise to exceptional circumstances, but also how employees are affected – including for example by being stood down or, in the case of casual employees, not being offered work; or if the deferral sought "...would place some of the burden of adjustment on the lowest paid in the community, who might themselves be in difficult financial

² [2020] FWCFB 2000 at [261]-[262].

³ [2021] FWCFB 3500 at [220]

⁴ [2019] FWCFB 3500 at [447]; [2013] FWCFB 4000 at [494], [543]

⁵ [2012] FWAFFB 5000 at [254], [261]; [2013] FWCFB 4000 at [494], [543]

⁶ [2019] FWCFB 3500 at [448]; [2017] FWCFB 3500 at [181]

⁷ [2017] FWCFB 3500 at [181], [184]; [2012] FWAFFB 5000 at [268]

⁸ [2012] FWAFFB 5000 at [254], [261], [272]; [2013] FWCFB 4000 at [494], [543], [546], [548]; [2014] FWCFB 3500 at [557].

⁹ [2017] FWCFB 3500 at [181]; [2012] FWAFFB 5000 at [266]

circumstances because of the effects [of the situation giving rise to exceptional circumstances] upon themselves and their families”.¹⁰

- f. There needs to be evidence of a reliable indicator of employer’s incapacity to pay increased wages and consideration should be given to other forms of government assistance which might have been received.¹¹
- g. Consideration of differential increases or timing of minimum wage increases on the basis of exceptional circumstances should be directed to addressing temporary issues, rather than structural change or changed consumer behaviour¹².

6. In assessing whether exceptional circumstances exist in connection with the COVID-19 pandemic, the Panel has focused on identifying which industries have been most affected during the COVID-19 pandemic¹³, the extent of their recovery relative to other industries¹⁴ and “industry specific data, the period of time between successive Review increases and the likelihood that future lockdowns will be of limited duration and localised.”¹⁵ It is unclear to us how, or even if, the *particular* post 1 July operative dates the Panel selected as operative dates for particular modern awards were justified by the exceptional circumstances which it found to exist in 2020 and 2021.¹⁶ Further, in our view, the decision last year similarly does not clearly articulate such a rationale.

7. In considering exceptional circumstances in the 2019-2020 Review, the Panel directed attention primarily to the impacts of the pandemic at the industry level¹⁷, whereas in the 2020-21 and 2021-22 Reviews it also considered the extent of recovery from the pandemic and the likelihood of future lockdowns¹⁸. The view we expressed in the 2021-22 review was that the passage of time will make it increasingly difficult to isolate or distinguish recovery from the pandemic from “structural change or changed consumer behaviour” as referred to in paragraph 5g above. Independently of our submission, the information note prepared by the Commission that was

¹⁰ [2019] FWCFB 3500 at [449]; [2017] FWCFB 3500 at [181], [182]; [2012] FWAFFB 5000 at [264], [266]-[267]; [2014] FWCFB 3500 at [534]

¹¹ [2019] FWCFB 3500 at [450]; [2017] FWCFB 3500 at [181]; [2012] FWAFFB 5000 at [264], [266]

¹² [2013] FWCFB 4000 at [526], [530], [536], [549]; [2012] FWAFFB 5000 at [278]

¹³ [2020] FWC 3500 at [155]-[189], [299]-[310]

¹⁴ [2021] FWCFB 3500 at [242]-[245], [2022] FWCFB 3500 at [234]-[260].

¹⁵ [2021] FWCFB 3500 at [246]. See also [2022] FWCFB 3500 at [209] and [234]-[260].

¹⁶ Pandemic related “lockdowns” in different parts of the country were instituted in March 2020, July 2020, November 2020, December 2020, January 2021, February 2021 May 2021, June 2021, August 2021, October 2021.

¹⁷ [2020] FWCFB 3500 at [162]-[166].

¹⁸ [2021] FWCFB 3500 at [245]-[247]. [2022] FWCFB 3500 at [209] and [234]-[260].

relied on extensively in last year’s decision contained commentary from Professor Borland which warned:

“With a bit over two years now having elapsed since the onset of COVID-19, it is important to be aware that other factors are also likely to be affecting industry level outcomes, such as longer-run structural change in the industry composition of output and employment. Hence what I refer to as the extent of recovery from COVID-19 will reflect whether outcomes are still being affected by COVID-19 related factors but also other influences on the economy and the labour market”¹⁹

8. Notwithstanding this, the reasoning of the Panel suggests that it found that exceptional circumstances existed in:

- a. The “aviation and tourism sector”²⁰, which it recognised as a subset of the Transport, postal and warehousing industry²¹, being an industry that was illustrative of the point that “categorisation by industry sectors is likely to mask significant variation at the modern award level”.²²; and
- b. The Accommodation and food services industry.²³

9. The decision to defer increases to particular awards was expressed to be related to their alignment to these industrysectors.²⁴ The actual exceptional circumstances as stated were:

- a. In respect of the aviation and tourism awards, the fact that they were a part of the Transport, postal and warehousing industry which was “lagging recovery” compared to other industries and had a deferred increase in the previous Review²⁵; and
- b. In respect of the Accommodation and food services awards “The combination of factors applying to these awards, the material set out in the information note and the operative date arising from last years’ Review”.²⁶ The Panel decided that the Accommodation and food services sector was in the “lagging recovery” when compared to other industries.²⁷

¹⁹ Fair Work Commission, “Information note-Industry analysis”, 26 May 2022.

²⁰ [2022] FWCFB 3500 at [254]

²¹ [2022] FWCFB 3500 at [253]

²² [2022] FWCFB 3500 at [251]

²³ [2022] FWCFB 3500 at [256]-[259]

²⁴ [2022] FWCFB 3500 at [254], [256], [259].

²⁵ [2022] FWCFB 3500 at [245], [251], [254]

²⁶ [2022] FWCFB 3500 at [259]

²⁷ [2022] FWCFB 3500 at [258]

10. It is clear that the contents of the Information Note carried significant weight in the Panel’s reasoning, however there was no attempt to reconcile those contents with the principles referred in in paragraphs 3– 5 above. In particular:

- a. How were the *particular* operative dates for determinations affecting *particular* awards justified by the *particular* situation or circumstances?
- b. If the premise was that exceptional circumstances were that particular industries were “lagging recovery” from the pandemic, did the evidence in support of that address the need for a deferral to be limited to those particular circumstances in light of the fact that Professor Borland acknowledged that the data also likely reflected circumstances other than recovery from the pandemic?
- c. If it is accepted that those other circumstances and the extent of their influence were known unknowns, and given that it was accepted that the data “mask significant variation at the modern award level”, can it fairly be said that anyone who relied on that data advanced a mechanism for the proper identification of the employers and employees affected and to whom the deferral should apply?
- d. Who bore and discharged the relevant onus to make out a strong case?
- e. If it is acknowledged that claims will rarely be successful in respect of an entire industry, what set these “claims” (if they may be called that) apart, and who were the employees and employers affected by the relevant circumstances?
- f. Where was the consideration of the effect on employees?
- g. Which indicator was a reliable indicator of any employer’s capacity to pay? And if there was one, to what extent were they balanced against other factors? For example, the definition of a “job vacancy” in the labour account data would exclude situations where there was no capacity to pay to fill a particular job.²⁸

11. In our view, there is considerable tension in reconciling the Panel’s approach of relying on industry level data with the requirement in section 286(2) to be satisfied both that exceptional circumstances exist and that those exceptional circumstances justify a particular later operative date. This is highlighted by Yuen & Tomlinson research prepared for this year’s review, which

²⁸ See [Glossary](#) in ABS, Labour Account Australia methodology.

identifies that in respect of 37 modern awards, the ABS is unwilling to disclose to anyone if it has identified any award reliant employees (and hence their employers) – this includes the *Air Pilots Award*, *Aircraft Cabin Crew Award* and *Airline Operations-Ground Staff Award*²⁹ which were subject to deferred operative dates in last year’s decision. The mechanism provided in section 286(2) is much better suited to particular individuals or classes thereof seeking differential treatment on the basis of facts known to them.

12. In the 2017-18 Review, the Panel said:

“We pay particular attention to trends, because of the volatility in some of the economic indicators and routinely look to developments over the medium and long term, as well as to changes over the past year”³⁰

Whilst we recognise that exceptional circumstances may present not as a trend but as a shock, there is due reason to be concerned about data volatility, and it seems that some of the data contained in the information note relied on in last year’s review is volatile or at best sufficiently unstable to be subject to major revision. We have attempted to replicate Tables 1, 2 and 5 of that information note comparing the historical data sets used at the time it was produced, as well as the data entries for the identical periods in later issues of the same datasets. It is clear that the data has been revised. In some cases the revisions are minor, in some case they are not: growth observations for particular variables may be twice as high in revised data, and some growth figures are negative rather than positive. We set the replicated tables out in full at the conclusion of this Appendix. Table 1 -Table 3 below set out the relevant observations for the Transport, postal and warehousing sector and the Accommodation and Food Services Sector. Improvements in the revised data are shown in green text, declines are shown in red.

²⁹ Yuen, K & Tomlinson, J (2023), “A profile of employee characteristics across modern awards”, Fair Work Commission Research Report 1/2023, March, at p10-11 and Table A1.

³⁰ [2018] FWCFB 3500 at [47]

Table 1: Growth measures from Information Note Table 1, selected industries

	Payroll Jobs, 3 July 2021-16 April 2022		Employment, May Quarter 2021 - February Quarter 2022		Hours actually worked, May Quarter 2021 - February Quarter 2022	
	Using Payroll Jobs Week Ending 16 April 2022	Using Payroll Jobs Week Ending 11 February 2023	Using Labour Force Detailed, March 2022	Using Labour Force Detailed, March 2023	Using Labour Force Detailed, March 2022	Using Labour Force Detailed, March 2023
Accommodation & food services	-9.87	4.68	1.58	0.96	1.33	2.19
Transport, postal and warehousing	-1.29	2.30	3.85	4.77	7.60	7.65

Source: ABS Payroll Jobs and Wages in Australia (Table 4) - Week ending 16 April 2022 & Week Ending 11 February 2023; ABS Labour Force Detailed (Table 4 Seasonally adjusted & Table 11) – March 2022 & March 2023.

Table 2: Growth measures from Information Note Table 2, selected industries

	Gross Value Added, June Quarter 2021 to December Quarter 2021		Income from goods & services, June Quarter 2021 to December Quarter 2021		Company Gross Operating Profits, June Quarter 2021 to December Quarter 2021	
	Using December Quarter 2021 National Accounts	Using December Quarter 2022 National Accounts	Using Business Indicators December 2021	Using Business Indicators December 2022	Using Business Indicators December 2021	Using Business Indicators December 2022
Accommodation & food services	-6.1	-7.04	-5.83	-6.60	-22.69	-21.41
Transport, postal and warehousing	-0.3	1.35	-4.52	-3.10	10.81	10.78

Source: ABS National Accounts (Table 6, Seasonally adjusted) – December Quarter 2021 & December Quarter 2022. ABS Business Indicators (Table 4, Seasonally adjusted & Table 11, Seasonally adjusted)- December Quarter 2021 & December Quarter 2022.

Table 3: Growth measures from Information Note Table 5, selected industries

	Number of filled jobs, 14 March 2020 to 16 April 2022		Vacancy rate, March Quarter 2020 to December Quarter 2021		Gross Value Added, March Quarter 2020 to December Quarter 2021	
	Using Payroll Jobs Week Ending 16 April 2022	Using Payroll Jobs Week Ending 11 February 2023	Using Labour Account December Quarter 2021	Using Labour Account December Quarter 2022	Using December Quarter 2021 National Accounts	Using December Quarter 2022 National Accounts
Accommodation & food services	-12.45	-1.22	2.35	2.38	-4.12	-1.59
Transport, postal and warehousing	-7.31	-1.11	0.91	0.94	-6.01	-6.46

Source: ABS Payroll Jobs and Wages in Australia (Table 4) - Week ending 16 April 2022 & Week Ending 11 February 2023; ABS Labour Account (Industry Summary Table, Seasonally adjusted) -December Quarter 2021 & December Quarter 2022.

13. The use of the then contemporaneous data compared to the current data clearly has some impact. The basis for the revision of the data is not clear, but both the fact of its occurrence and its extent calls into question its suitability for the distinctions it was relied upon to illustrate. The different data releases also have some significance for the overall ranking of industries on individual variables, as can be seen in Table 4 below. The relative importance of the particular variables is not expressed in the Panel's decision.

Table 4: Ranking of selected industries on Information Note variables.

		Accommodation & Food Services	Transport, postal warehousing
Payroll Jobs, 3 July 2021-16 April 2022	Original release	19/19	14/19
	Revised release	6/19	14/19
Employment, May Quarter 2021-February Quarter 2022	Original release	8/19	6/19
	Revised release	11/19	6/19
Hours actually worked, May Quarter 2021-February Quarter 2022	Original release	10/19	5/19
	Revised release	10/19	5/19
Gross value added, June Quarter 2021-December Quarter 2021	Original release	19/19	15/19
	Revised release	19/19	11/19
Income from goods & services, June Quarter 2021 – December Quarter 2021*	Original release	15/15	14/15
	Revised release	15/15	14/15
Company Gross Operating Profits, June Quarter 2021-December Quarter 2021*	Original release	14/15	6/15
	Revised release	14/15	6/15
Number of filled jobs, 14 March 2020-16 April 2022	Original release	19/19	18/19
	Revised release	18/19	17/19
Vacancy rate, March Quarter 2020-December Quarter 2021	Original release	1/19	12/19
	Revised release	1/19	12/19
Gross value added, March Quarter 2020 to December Quarter 2021	Original release	18/19	19/19
	Revised release	17/19	19/19

* Data was not published (in either release) for the following industries: Education & training; Agriculture, forestry & fishing; Public administration & safety; Health care & social assistance. Sources as per Table 1 - Table 3 above.

14. The exercise of the discretion to defer wage increases otherwise deemed to be appropriate has relative and real life effects on our affiliate’s members, particularly in the context of the rising cost of living that has been experienced over more than a year. It is a discretion that should in our view be exercised more sparingly and discerningly than it was in last year’s decision. To the extent claims for deferrals are again advanced on the basis of the ongoing effects of the COVID pandemic, the Panel should consider the following additional matters:

- a. There is a logic in drawing parallels between the current legislative requirement to be satisfied of “exceptional circumstances” which “justify” a deferral and the Economic Incapacity Principle developed during national wage cases under previous frameworks, as the Panel has consistently done³¹. Ultimately, the inquiry as to whether there are exceptional circumstances and whether those circumstances justify a particular deferral needs to be grounded in whether there is an incapacity to pay higher wages by the person

³¹ [2012] FWA FB 5000 at [254]–[256], [2019] FWCFB 3500 at [447] and [450], [2013] FWCFB 400 at [494]

or class of persons seeking a deferral. To depart from this would be to ignore the requirement that a particular deferral be “justified”, in a context where the only immediate effect of *not* deferring an increase on that person or class would be to raise wage costs.

- b. There is, in our submission, some tension between the Panel’s statement that “the mere fact of a deferred date of operation of an increase in last year’s Review is not, in and of itself, an exceptional circumstance such as to warrant a deferral in this year’s Review”³² and its acceptance that “the period of time between successive increases, together with other data, is relevant to an overall assessment of whether exceptional circumstances exist such as to warrant a delayed operative date”³³. Whilst we accept that a combination of facts can be such as to create exceptional circumstances which justify a deferral, compliance with an order of the Commission which was crafted in order to *assist* employers to meet past exceptional circumstance ought not predispose a finding of exceptional circumstance to any degree in a subsequent review. Strictly speaking, it is not the period of time between successive increases which is relevant, or exceptional, in our view. To allow the period of time between successive increases to cast such a shadow over future proceedings would be inconsistent with previous Review decisions which refused to decline to vary particular modern award minimum wages and refused to defer the operative dates of variations in particular modern awards where such differential treatment was sought on the basis of the impacts of award modernisation, with the Full Bench stating that those impacts “have already been taken into account by the AIRC in deciding upon the transitional provisions and operative dates in modern awards”³⁴.
- c. Based on what we have said in paragraphs 3 - 4 and 6 above, a general sense that “more” time will assist employers in particular industries falls short of the level of justification demanded by the statutory provisions. Rather, there must be some basis for reasoning that the operative date actually determined is justified and limited to the particular situation to which the exceptional circumstances relate. Repeated claims of “uncertainty” concerning the future are inconsistent with satisfying the Panel that a particular date is justified.

³² [2021] FWCFB 3500 at [261], [2022] FWCFB 3500 at [252].

³³ *Ibid.*

³⁴ Where no variation was sought: [2012] FWAFB 5000 at [270]. Where a deferral was sought: [2010] FWAFB 4000 at [345].

d. In the 2019-20 and 2020-21 Reviews, the claims actually advanced by participants in the Review for deferrals were rejected³⁵, with the Panel nonetheless finding exceptional circumstances justifying the deferrals it ordered based on other information. In the case of the 2019/20 Review, the Panel satisfied itself of exceptional circumstances justifying a deferral largely on the basis of statistical analysis developed by its internal staff, whereas in the 2020/21 the analysis predominantly relied on was performed by Professor Borland under contract to the Commission and in the 2021/22 the Panel relied both additional staff research and commentary by Professor Borland. Whilst that factual material was made available to the parties in all three reviews, in none was there a successful submission from any party applying the law on section 286 to the facts ultimately relied on by the Panel for its findings, being a submission which parties had been afforded an opportunity to comment on in accordance with section 289. In our submission this approach is inconsistent with what the Panel previously described as an “onus” on a party to make out strong case for a deferral³⁶. Further, it begs the question as to how a party might meaningfully resist the case ultimately advanced under subsection 286(2) where it is advanced for the first time in the reasons for decision.

15. We will consider, and respond to, any claims for a deferral on their merits.

³⁵ [2020] FWCFB 3500 at [156], [177], [2021] FWCFB 3500 at [221]-[236].

³⁶ [2019] FWCFB 3500 at [447]; [2013] FWCFB 4000 at [494], [543]

Data Tables Used in Appendix B

Table 5: Growth measures, updated from Table 1 of the FWC Information Note

	Payroll Jobs, 3 July 2021-16 April 2022		Employment, May Quarter 2021 - February Quarter 2022		Hours actually worked, May Quarter 2021 - February Quarter 2022	
	Using Payroll Jobs Week Ending 16 April 2022	Using Payroll Jobs Week Ending 11 February 2023	Using Labour Force Detailed, March 2022	Using Labour Force Detailed, March 2023	Using Labour Force Detailed, March 2022	Using Labour Force Detailed, March 2023
Accommodation & food services	-9.87	4.68	1.58	0.96	1.33	2.19
Transport, postal and warehousing	-1.29	2.30	3.85	4.77	7.60	7.65
Information media and telecommunications	3.07	7.58	16.95	16.52	16.10	16.99
Manufacturing	-0.75	2.27	-6.11	-7.10	-7.90	-7.24
Construction	-3.15	4.92	0.05	1.38	-1.58	-0.48
Wholesale trade	0.12	1.30	-11.34	-9.69	-13.53	0.01
Education and training	3.06	-0.77	0.44	0.31	-0.44	-0.12
Arts & recreation services	10.79	14.55	-11.12	-10.92	-5.53	-5.36
Agriculture, Forestry & fishing	-1.47	3.20	-3.84	-2.33	-2.68	-1.41
Mining	5.11	5.66	-0.44	3.87	-0.64	-0.57
Electricity, gas, water and waste services	0.15	2.29	14.14	13.05	10.14	10.46
Retail trade	0.67	3.82	-2.03	-1.07	-1.79	-1.05

	Payroll Jobs, 3 July 2021-16 April 2022		Employment, May Quarter 2021 - February Quarter 2022		Hours actually worked, May Quarter 2021 - February Quarter 2022	
	Using Payroll Jobs Week Ending 16 April 2022	Using Payroll Jobs Week Ending 11 February 2023	Using Labour Force Detailed, March 2022	Using Labour Force Detailed, March 2023	Using Labour Force Detailed, March 2022	Using Labour Force Detailed, March 2023
Financial and Insurance Services	1.29	4.37	14.31	14.36	15.34	14.93
Rental, hiring and real estate services	-3.32	1.80	13.95	13.79	5.99	6.97
Professional, scientific and technical services	3.26	6.31	1.25	2.30	4.24	4.58
Administrative & support services	1.57	4.66	-1.78	-0.76	1.84	2.57
Public Administration and Safety	2.31	2.74	2.12	3.52	2.66	3.36
Health care & social assistance	2.32	4.02	9.41	9.63	9.60	10.09
Other services	-4.12	3.15	-3.50	-2.44	-4.11	-3.94

Source: ABS Payroll Jobs and Wages in Australia (Table 4) - Week ending 16 April 2022 & Week Ending 11 February 2023; ABS Labour Force Detailed (Table 4 Seasonally adjusted & Table 11) – March 2022 & March 2023.

Table 6: Growth measures, updated from Table 2 of the FWC Information Note

	Gross Value Added, June Quarter 2021 to December Quarter 2021		Income from goods & services, June Quarter 2021 to December Quarter 2021		Company Gross Operating Profits, June Quarter 2021 to December Quarter 2021	
	Using December Quarter 2021 National Accounts	Using December Quarter 2022 National Accounts	Using Business Indicators December 2021	Using Business Indicators December 2022	Using Business Indicators December 2021	Using Business Indicators December 2022
Accommodation & food services	-6.1	-7.04	-5.83	-6.60	-22.69	-21.41
Transport, postal and warehousing	-0.3	1.35	-4.52	-3.10	10.81	10.78
Information media and telecommunications	4.5	7.71	3.57	6.75	7.51	6.68
Manufacturing	0.6	0.39	-0.06	0.16	35.12	32.61
Construction	0.9	1.41	-1.84	-1.09	17.36	14.73
Wholesale trade	-2.2	-1.32	-1.70	-0.55	2.23	1.41
Education and training	0.8	0.58	n/a	n/a	n/a	n/a
Arts & recreation services	1.0	2.60	0.65	3.26	-3.89	-3.62
Agriculture, Forestry & fishing	12.7	21.55	n/a	n/a	n/a	n/a
Mining	0.6	0.36	-2.87	-0.17	0.11	5.19
Electricity, gas, water and waste services	-1.0	-0.58	-4.34	-0.28	-2.44	-3.35
Retail trade	3.8	3.64	0.94	0.22	0.11	-1.10
Financial and Insurance Services	2.3	1.33	18.60	17.40	74.25	87.32
Rental, hiring and real estate services	2.3	1.32	2.26	1.26	19.67	23.52
Professional, scientific and technical services	4.7	4.36	5.07	4.88	18.44	20.91

	Gross Value Added, June Quarter 2021 to December Quarter 2021		Income from goods & services, June Quarter 2021 to December Quarter 2021		Company Gross Operating Profits, June Quarter 2021 to December Quarter 2021	
	Using December Quarter 2021 National Accounts	Using December Quarter 2022 National Accounts	Using Business Indicators December 2021	Using Business Indicators December 2022	Using Business Indicators December 2021	Using Business Indicators December 2022
Administrative & support services	3.3	3.38	3.26	4.25	-36.71	-31.07
Public Administration and Safety	2.5	1.69	n/a	n/a	n/a	n/a
Health care & social assistance	3.5	3.33	n/a	n/a	n/a	n/a
Other services	-0.3	2.19	-0.37	0.98	-2.09	-1.54

Source: ABS National Accounts (Table 6, Seasonally adjusted) – December Quarter 2021 & December Quarter 2022.
ABS Business Indicators (Table 4, Seasonally adjusted & Table 11, Seasonally adjusted)- December Quarter 2021 & December Quarter 2022.

Table 7: Growth measures, updated from Table 5 of the FWC Information Note

	Number of filled jobs, 14 March 2000 to 16 April 2022		Vacancy rate, March Quarter 2020 to December Quarter 2021		Gross Value Added, March Quarter 2020 to December Quarter 2021	
	Using Payroll Jobs Week Ending 16 April 2022	Using Payroll Jobs Week Ending 11 February 2023	Using Labour Account December Quarter 2021	Using Labour Account December Quarter 2022	Using December Quarter 2021 National Accounts	Using December Quarter 2022 National Accounts
Accommodation & food services	-12.45	-1.22	2.35	2.38	-4.12	-1.59
Transport, postal and warehousing	-7.31	-1.11	0.91	0.94	-6.01	-6.46
Information media and telecommunications	0.05	7.19	0.89	0.74	7.86	11.16
Manufacturing	-3.94	0.05	1.87	1.72	1.08	2.21
Construction	3.71	6.16	1.33	1.18	1.74	3.81
Wholesale trade	-2.15	0.80	0.87	0.98	5.28	4.11
Education and training	3.62	-1.87	0.36	0.30	2.12	3.72
Arts & recreation services	7.19	3.71	1.54	1.88	-0.28	-0.18
Agriculture, Forestry & fishing	4.50	3.49	0.36	0.33	49.48	63.15
Mining	8.33	7.31	1.30	1.07	-1.76	-3.13
Electricity, gas, water and waste services	6.36	3.05	1.18	1.24	-0.84	2.92
Retail trade	2.70	3.35	0.70	0.69	8.47	7.55

Financial and Insurance Services	6.63	3.92	1.15	0.98	5.03	6.51
Rental, hiring and real estate services	-2.89	2.88	1.83	1.63	6.43	5.53
Professional, scientific and technical services	9.00	7.63	1.02	0.91	5.78	7.91
Administrative & support services	5.45	3.27	0.49	0.76	-2.07	5.87
Public Administration and Safety	3.27	1.59	0.54	0.52	5.06	3.71
Health care & social assistance	11.92	4.96	1.32	1.30	10.50	10.68
Other services	0.20	1.57	1.04	1.02	2.64	3.36

Source: ABS Payroll Jobs and Wages in Australia (Table 4) - Week ending 16 April 2022 & Week Ending 11 February 2023; ABS Labour Account (Industry Summary Table, Seasonally adjusted) -December Quarter 2021 & December Quarter 2022.

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