Ai GROUP SUBMISSION

Fair Work Commission

Annual Wage Review 2022-23
Reply Submission

28 April 2023

Ai GROUP

Contents

Abbreviations

2014 AWR	Annual Wage Review 2013 – 2014
2022 AWR	Annual Wage Review 2021 – 2022
2023 AWR	Annual Wage Review 2022 – 2023
ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
Ai Group	Australian Industry Group
AIRC	Australian Industrial Relations Commission
Australian Bureau of Statistics	ABS
Australian Government	Government
AWOTE	Average Weekly Ordinary Times Earnings
AWR	Annual Wage Review
CoE	Compensation of Employees
CPI	Consumer Price Index
FTB	Family Tax Benefit
FW Act	*Fair Work Act 2009*
FWC	Fair Work Commission
FWC-SR	*Statistical Report – Annual Wage Review 2022 – 23*, Version 2 (30 March 2023)
IMF	International Monetary Fund
Initial Submission	Ai Group's initial submission in the 2023 AWR, dated 31 March 2023
LMITO	Low and Middle Income Tax Offset
Manufacturing Award	*Manufacturing and Associated Industries and Occupations Award 2020*
NMW	National Minimum Wage
OECD	Organisation for Economic Co-operation and Development
Panel	Expert Panel

RBA	Reserve Bank of Australia
Secure Jobs Better Pay Act	*Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*
SG	Superannuation Guarantee
WPI	Wage Price Indicator

1. Introduction

On 31 March 2023, Ai Group filed its Initial Submission in the 2023 AWR.

In this reply submission, we address changes that have occurred in the economic environment since our Initial Submission. We also address the Panel's Questions on Notice, as published on 21 April 2023; various matters raised in the submission of the ACTU and the submission of the Government.

Since we filed our Initial Submission, updated Australia economic data has been released regarding inflation, retail turnover, household spending, and total wages; while new global economic forecasts have been issued by the IMF. The RBA has enacted a pause in its monetary policy tightening cycle while it awaits further data on the global and domestic economic outlook. All of these indicators point toward deteriorating economic conditions in Australia.

In line with these deteriorating economic circumstances, it remains critical for the Panel to adopt a responsible approach to adjusting wages that balances both the immediate needs of relevant employees with the equally relevant and important perspective of employers facing costs pressures, whilst also weighing the negative consequences for all parties of an unsustainable increase.

An excessive minimum wage increase would add additional fuel to inflation as well as inflationary expectations and put pressure on the RBA to raise interest rates further. In the face of significant economic headwinds, slowing growth, already weak business profitability across most of the economy and entrenched low productivity growth, there is a clear risk of disemployment effects.

Reduced employment growth, higher unemployment and higher underemployment would reverse some of the strong recent gains that have been made in workforce participation and labour market performance more broadly. These gains have added to improved nominal wages to augment incomes from labour and assist households meet the unquestionable challenges of higher inflation.

Extending the period of high inflation while the economy is slowing, raising the likelihood of an upwards shift in inflation expectations, putting upwards pressure on interest rates and raising the likelihood of lower employment outcomes would have a particularly harsh impact on the low paid and women.

Simplistic calls for the quantum of any increase to follow or exceed the rate of inflation cannot responsibly be accepted. A more nuanced approach is necessitated by the statutory task required of the Panel.

The ACTU has proposed a wage increase of 7%. Such an increase would be reckless. It would add substantially to the risks of entrenching inflation and greater increases in interest rates and would have adverse impacts on the economy, on unemployment, on underemployment and on sentiment. Such outcomes would be a setback for many low-income households.

As indicated in our Initial Submission, Ai Group will address the specific quantum of any wage increase that should be granted pursuant to the Panel's decision following the release of the Budget by the Government.

2. Economic Developments and Issues

In this section we examine recent economic developments both domestically and globally. We also respond to a number of economic arguments raised in the initial ACTU submission.

2.1 Inflation and Monetary Policy Developments

The major domestic economic developments since the initial submissions to the Panel are the decrease in inflation indicators seen in ABS data released in late April, and the RBA's monetary policy decision of 4 April.

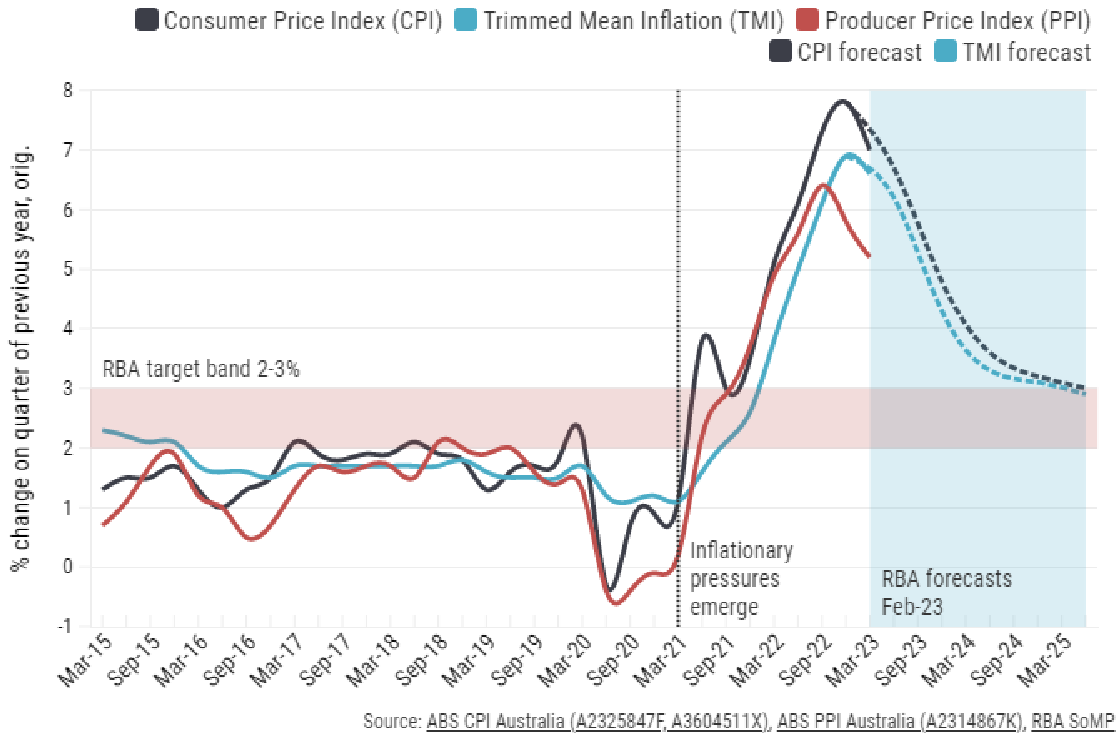
At its monetary policy meeting on 4 April 2023, the RBA decided to leave the cash rate target unchanged at 3.6%. This 'pause' in monetary policy tightening follows ten sequential increases since May 2022, which had raised the cash rate from 0.1% to 3.6%.

The minutes of the monetary policy meeting reveal the RBA weighed two countervailing considerations in deciding to pause tightening in April[1]. On one hand, inflation remains too high, unemployment is very low, and surveyed business conditions remained strong. On the other, there were signs that tighter monetary policy had contributed to a slowing of the housing market, slowing consumption growth, and financial pressure on segments of households. As lags in the transmission of monetary policy mean the full effect of previous tightening was yet to be observed, the RBA determined to leave rates on hold, awaiting further inflation data, other economic data and updated forecasts which would all be available in May.

On 26 April 2023, the ABS released new consumer price inflation data for the first quarter of 2023 (Chart 1). The data shows that consumer inflation in Australia has now peaked, and inflationary pressures are easing but remain persistently high. The CPI fell from 7.8% to 7.0%, while trimmed mean inflation – a measure of 'core' inflation – declined from 6.9% to 6.6%. These movements are broadly in line with the forecasts issued by the RBA in February. They predict that inflation will slowly decline over the next two years, returning to within the target 2% - 3% band by the middle of 2025.

[1] Minutes of the monetary policy meeting of the Reserve Bank Board, April 4 2023, https://www.rba.gov.au/monetary-policy/rba-board-minutes/2023/2023-04-04.html.

Chart 1: Australian inflation measures, 2015 - 2022 and forecasts



These important developments support the proposition that the Panel should take a cautious and moderate approach in the 2023 AWR.

While persistent high inflation has led to calls for large wage increases, these calls ignore the risks that excessive wage increases will put upwards pressure on inflation. If acted on, this would leave the RBA with little choice but to increase interest rates by more than they would if wage rises were more moderate. In contrast, a further period of wage moderation would help contain inflationary pressures, and reduce the likelihood of a sharp deterioration in labour market conditions as the economy slows over the coming year.

New economic forecasts for Australian GDP, wages and inflation outlooks will be issued by the RBA in its Statement on Monetary Policy on 5 May 2023, and the Commonwealth Treasury in the 2023-24 Budget on May 9 2023. When released, these updated forecasts will provide a firmer understanding of how key macroeconomic variables can be expected to develop through the year.

2.2 Domestic Economic Indicators

Several economic indicators released since initial submissions to the Panel shed light on some of the current weaknesses in the Australia economy.

Retail Turnover

The latest retail data shows retail turnover grew by a modest 0.2% in February (seasonally adjusted). This shows evidence of slowing from the post-pandemic trend of comparatively strong growth in retail turnover (Chart 2) and is evidence of moderating consumer spending.

Retail turnover data for March will be available on 3 May 2023.

Chart 2: Australian retail turnover, 2018 - 2023

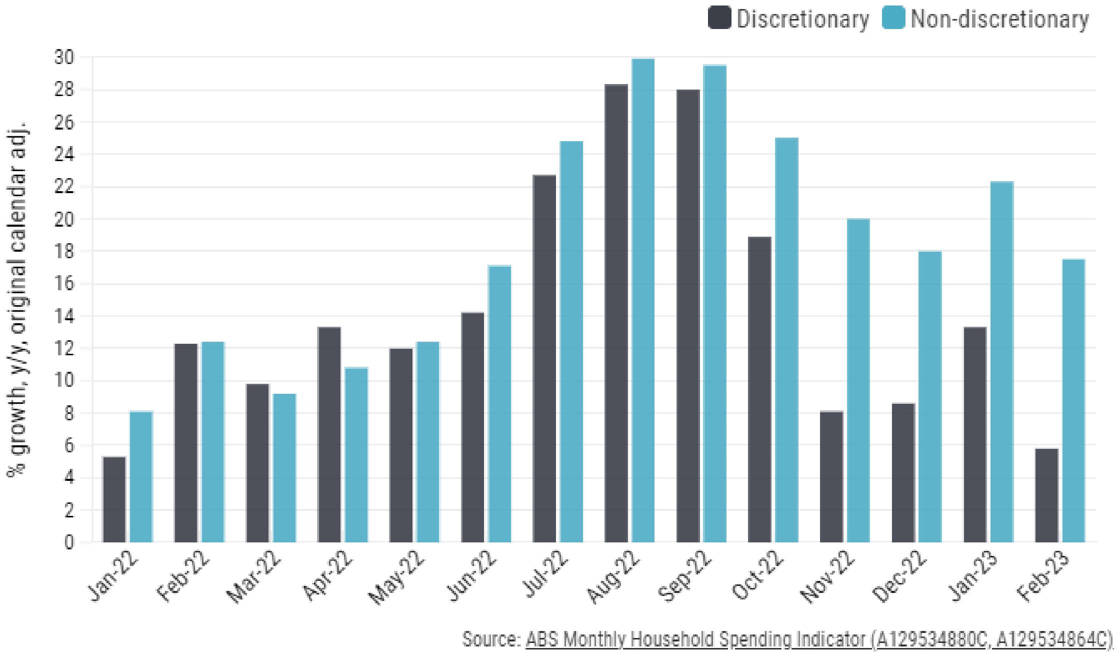
Source: ABS Retail Trade Australia

Household Spending

The latest household spending indicator shows slowing growth (Chart 3), which has fallen from very high levels seen during the pandemic recovery phase of mid-2022. While growth in non-discretionary spending has softened, discretionary spending growth is falling much faster. This is an indicator weakening spending behaviour, and will initially affect retail and services industries providing discretionary products.

Household spending data for March will be available on 9 May 2023.

Chart 3: Household spending, January 2022 - February 2023



Total Wages

In the month to the week ending 11 March 2023, total wages paid in Australia fell by 1.8% (Table 1). Falls were recorded in 14 of 19 industries; and three of the five industries showing growth were public sector dominated (education and training, healthcare and social assistance, and public administration and safety). This fall in total wages is considerably weaker than the recent months and may be an indicator of falling employer demand for labour.

Total wages data for April will be released on 11 May 2023.

Table 1: Total wages paid, percent change in specified month

	Month to 13-Aug-22	Month to 17-Sep-22	Month to 15-Oct-22	Month to 12-Nov-22	Month to 11-Feb-23	Month to 11-Mar-23
Agriculture, forestry and fishing	-3.5	0.9	1.0	-0.6	-3.5	-1.0
Mining	-0.3	-0.3	0.0	0.4	10.2	1.3
Manufacturing	-1.2	-0.2	-0.7	-0.5	6.3	1.1
Electricity, gas, water and waste services	-1.1	-0.4	-0.8	-0.6	3.9	-0.6
Construction	-2.9	-0.5	0.9	-0.8	5.6	-4.5
Wholesale trade	-1.2	-0.1	-0.8	0.6	5.5	-0.9
Retail trade	-0.7	1.4	0.9	2.3	-1.6	-4.0
Accommodation and food services	-1.5	-0.1	-1.9	0.4	-2.5	-2.0
Transport, postal and warehousing	-0.3	-1.0	-0.9	0.7	6.5	-4.8
Information media and telecommunications	-2.0	-0.3	-0.7	-0.1	7.4	-6.8
Financial and insurance services	-0.5	-0.5	0.3	-0.9	5.5	-7.1
Rental, hiring and real estate services	-1.5	-0.2	-0.5	0.2	2.2	-6.7
Professional, scientific and technical services	-1.4	1.1	-0.3	-0.1	3.2	-3.2
Administrative and support services	-0.5	-0.2	-0.6	2.3	8.3	-2.9
Public administration and safety	-0.3	0.7	0.0	0.6	-1.4	0.7
Education and training	2.3	2.0	-1.6	3.5	8.4	3.2
Health care and social assistance	-0.4	0.1	0.2	-0.1	-1.8	0.1
Arts and recreation services	-0.2	-1.3	-0.2	0.5	1.9	-0.9
Other services	-3.1	0.3	-0.9	-0.3	0.9	-2.7
All industries	-0.8	0.3	-0.3	0.7	3.3	-1.8

Source: ABS Weekly Payroll Jobs and Wages in Australia, week ending 11 March 2023

2.3 Deteriorating Global Economic Outlook

Since the initial submissions to the panel, the IMF has updated its global economic outlook forecasts in April 2023. In comparison to its previous forecasts (issued in January 2023), the IMF has:

(a) Downgraded its forecast for the world economy (from 2.9% to 2.8% GDP growth in 2023);

(b) Upgraded its forecast for advanced economies (from 1.2% to 1.3% GDP growth in 2023); and

(c) Maintained its forecast for Australia (of 1.6% GDP growth in 2023).

These quantitative IMF forecasts for 2023 are broadly similar to those made in January. However, in April, the IMF now notes that indications the world economy could achieve a soft landing in 2023 are receding, due to stubbornly high inflation and recent financial sector turmoil. The IMF also cautions that *'risks to the outlook are heavily skewed to the downside, with the chances of a hard landing having risen sharply'*[2].

[2] *IMF World Economic Outlook April 2023*, page xvi.

The most recent global economic forecasts from major international agencies are presented in Table 2 below. As noted in our Initial Submission, the IMF, World Bank and OECD all forecast moderating global growth, and sharply slowing growth in advanced economies, during 2023. The IMF and RBA both forecast that economic growth in Australia will decline from 2.7% to 1.6% in 2023, while the OECD forecasts 1.8%.

Table 2: Global economic forecasts, as of April 2023

		WB (Jan 2023)		OECD (Mar 2023)		IMF (Apr 2023)	
	2022	**2023**	**2024**	**2023**	**2024**	**2023**	**2024**
Advanced economies	2.7%	0.5%	1.6%			1.3%	1.4%
United States	2.1%	0.5%	1.6%	1.5%	1.0%	1.6%	1.1%
Euro Area	3.5%	0.0%	1.6%	0.8%	1.5%	0.8%	1.4%
Australia	2.7%			1.8%	1.5%	1.6%	1.7%
Emerging market and developing economies	4.0%	3.4%	4.1%			3.9%	4.2%
China	3.0%	4.3%	5.0%	5.3%	4.9%	5.2%	4.5%
World	3.2%	1.7%	2.7%	2.6%	2.9%	2.8%	3.0%

Source: World Bank Global Economic Prospects January 2023, IMF World Economic Outlook April 2023, OECD Economic Outlook: Interim Report March 2023

2.4 Responses to the ACTU

The ACTU's initial submission to the Panel presents an overly optimistic account of the current economic outlook. The 7% increase proposed by the ACTU is incompatible with the current economic circumstances, particularly given persistent inflationary pressures, the slowdown of the economy, and business' capacity to pay.

2.4.1 Expectations for slowing Australian economic growth

The ACTU argues that the economic slowdown which began in the second half of 2022 is *'the post-lockdown rebound in growth rates simply returning back to long run trends'*[3]. They further argue that *'[g]rowth projections also show modest slowdowns over the upcoming 12 months'*, which are *'only dipping slightly below longer run trends'*[4]. Neither argument is supported by currently available economic data.

The composition of GDP growth in the December quarter of 2022 is not consistent with an economy moderating back towards pre-pandemic long-run trends. Household consumption grew only 0.3% in the December quarter, the lowest quarterly increase since 2012 (if pandemic affected quarters are excluded)[5]. Total private investment fell by 1.7% in the quarter, and business investment by 1.4%[6]. These data are not indicative of a fast-growing economy moderating back to a normal pace,

[3] ACTU submission, page 73.
[4] ACTU submission, pages 74 – 75.
[5] ABS, Australian National Accounts: National Income, Expenditure and Product, December 2022, A2304127T.
[6] ABS, Australian National Accounts: National Income, Expenditure and Product, December 2022, A2304161W and A2304151T.

but an economy that is rapidly slowing.

The ACTU's claim that the slowdown in growth is forecast to be *'modest'* is based on cited Budget and RBA forecasts for the 2022 – 2023 financial year. However, the appropriate time period to evaluate Australia's future economic outlook is either the 2023 calendar year or 2023 - 2024 financial year.

These forecasts tell a very different story. The RBA's most recent (February) forecast is for 1.6% real GDP growth in the 2023 calendar year, and 1.4% in the 2023 – 2024 financial year. With real GDP growth of 2.7% in the 2022 calendar year, these forecasts predict a significant fall in growth across the next 12 months.

As noted in Table 2 above, the current RBA forecasts are broadly in line with those currently offered by the OECD and IMF for Australia, both of which are cited elsewhere in the ACTU submission[7].

Newer GDP forecasts will be issued by the RBA and Commonwealth Treasury in early May 2023, which will provide a more up-to-date outlook on expectations for future growth.

2.4.2 The balance of risks for Australia's economic outlook and forecasts

The ACTU claims that the IMF expects the Australian economy to *'come to a soft landing'* in the current macroeconomic cycle[8]. This claim removes important context from the 1 February IMF statement from which it quotes.

The ACTU selectively quotes the IMF at reference 136 in their initial submission, by omitting the second clause of the IMF's sentence which references downside risk. Reproduced in full, the quoted sentence reads: *'From its strong cyclical position, Australia's economy is expected to come to a soft landing in 2023, although risks are skewed significantly to the downside.'*[9]

Elaborating on these downside risks to a soft landing, the IMF explains: *'Downside risks to the economic outlook dominate, with significant uncertainty regarding global growth, commodity prices, and domestic developments surrounding wages, housing prices, and the effect of tighter monetary conditions.'*[10].

When read in full, the IMF statement of 1 February clearly argues that there are significant downside risks to Australia achieving a soft economic landing, pointing to a range of global and domestic economic risks that may lead to worse than forecast outcomes.

[7] ACTU submission, page 79.
[8] ACTU submission, page 79.
[9] IMF, IMF Executive Board Concludes 2022 Article IV Consultation with Australia, 1 February 2023, https://www.imf.org/en/News/Articles/2023/01/26/pr2316-imf-executive-board-concludes-2022-article-iv-consultation-with-australia.
[10] Ibid.

Since its 1 February statement on Australia, the IMF has issued a new set of global economic forecasts in April 2023. This newer forecast has downgraded earlier forecasts for global growth to 2.8% in 2023, but left its forecast for Australia steady at 1.6%. The IMF notes this is the lowest medium-term global growth forecast in decades, and yet risks remain heavily skewed to the upside. It argues that *'[t]entative signs in early 2023 that the world economy could achieve a soft landing—with inflation coming down and growth steady—have receded amid stubbornly high inflation and recent financial sector turmoil.'*[11]

2.4.3 Performance of gross value add by industries

The ACTU argues that *'all industries are recording encouraging growth in gross value added in 2022'* when compared to pre-pandemic levels. It further argues that growth in gross value-add in award reliant industries was *'generally strong'*; and that retail and healthcare & social assistance have *'performed strongly'* compared to pre-pandemic levels.[12].

These claims are not supported by a fair reading of GVA data from the most recent National Accounts.

Claims regarding the strength of current versus pre-pandemic growth rates are highly sensitive to the time period that is chosen for comparison. In order to draw fair temporal comparisons, Table 3 below presents GVA growth rates for each of Australia's industries in each of the five years prior to the pandemic (2015 - 2019), as well as for the full year and second half of 2022. The data shows:

(a) In the 2022 calendar year, nine of 19 industries had lower GVA growth than the 5-year pre-pandemic average.

(b) In the second half of 2022 – the period during which the Australian economy has begun to slow – 14 of 19 industries had lower GVA growth than 5-year pre-pandemic average.

(c) In 2022, retail trade and healthcare & social assistance grew slower than the 5-year pre-pandemic average. A third award reliant industry – administrative & support services – grew slower in the second half of 2022 than the pre-pandemic average.

Contrary to the ACTU's claims, this data shows that around half of Australian industries had slower growth in 2022 than their pre-pandemic averages. This share rises to three-quarters of industries if the second half of 2022 is used as the current comparator. It also shows that three of the five award-reliant industries are currently growing slower than before the pandemic.

This data is consistent with the argument made by Ai Group in its Initial Submission, which stated there is *'clear evidence of a 'multi-speed economy' in Australia in 2022'*[13].

[11] *IMF World Economic Outlook April 2023,* page xvi.
[12] ACTU submission, page 80.
[13] Initial Submission, page 15.

Table 3: Growth in gross value add by industry, pre-pandemic vs 2022

	Pre-pandemic years						2022	
	2015	2016	2017	2018	2019	5yr av.	Full year	H2
Agriculture, forestry & fishing	-8.2%	11.5%	-10.7%	-4.8%	-6.3%	-3.7%	-9.1%	-4.7%
Mining	5.2%	2.2%	2.7%	5.8%	5.2%	4.2%	4.8%	5.7%
Manufacturing	-2.6%	-0.3%	1.0%	0.4%	-0.5%	-0.4%	-2.9%	-2.7%
Electricity, gas, water and waste services	4.0%	-0.8%	2.1%	0.3%	-1.3%	0.9%	0.2%	-4.7%
Construction	-1.9%	-5.1%	6.0%	-0.7%	-2.7%	-0.9%	1.8%	0.8%
Wholesale trade	3.3%	6.6%	0.4%	1.4%	0.6%	2.5%	1.9%	0.6%
Retail trade	3.8%	1.1%	2.7%	1.1%	0.4%	1.8%	0.9%	0.2%
Accommodation and food services	4.8%	-0.5%	5.3%	-0.6%	5.1%	2.8%	20.3%	4.3%
Transport, postal and warehousing	3.2%	2.4%	1.8%	2.0%	2.3%	2.3%	13.0%	3.4%
Information media and telecommunications	10.5%	1.2%	10.0%	3.0%	2.9%	5.5%	9.2%	4.8%
Financial and insurance services	2.1%	2.6%	0.0%	2.5%	0.3%	1.5%	0.6%	0.2%
Rental, hiring and real estate services	10.0%	3.3%	0.9%	0.5%	5.7%	4.1%	0.3%	0.9%
Professional, scientific and technical services	5.0%	7.5%	4.7%	3.8%	5.8%	5.4%	4.4%	0.4%
Administrative and support services	2.4%	1.8%	7.3%	6.5%	5.1%	4.6%	6.6%	4.5%
Public administration and safety	2.8%	1.8%	0.4%	4.8%	3.6%	2.7%	0.8%	1.5%
Education and training	2.8%	1.1%	1.4%	2.7%	0.2%	1.6%	1.4%	0.8%
Health care and social assistance	2.6%	5.0%	5.6%	7.6%	7.9%	5.7%	1.0%	-0.6%
Arts and recreation services	2.7%	1.7%	2.4%	5.0%	3.8%	3.1%	10.1%	1.0%
Other services	5.3%	5.1%	-1.8%	2.2%	2.7%	2.7%	5.0%	3.4%
GROSS DOMESTIC PRODUCT	2.7%	2.7%	2.4%	2.4%	2.2%	2.5%	2.7%	1.2%

Seasonally adjusted. Source: ABS Australian National Accounts: National Income, Expenditure and Product December 2022, Table 6.

2.4.4 The impact of current macroeconomic variables on income, consumption and savings

Summarising the impacts of macroeconomic variables on indicators on the financial conditions of individuals and households, the ACTU argues: ‘*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.’*[14]

These claims are not consistent with currently available data.

[14] ACTU submission, page 83.

Contrary to the ACTU's claim, employee income is not currently falling. The December National Accounts show that CoE rose by 10.2% across 2022, one of the highest rates of CoE growth on record[15]. Since the current labour market cycle began, growth in COE has consistently been above long-run trends (Chart 4), with the exception of a weaker quarter in September 2021 caused due to the reinstatement of COVID lockdowns in NSW and Victoria.

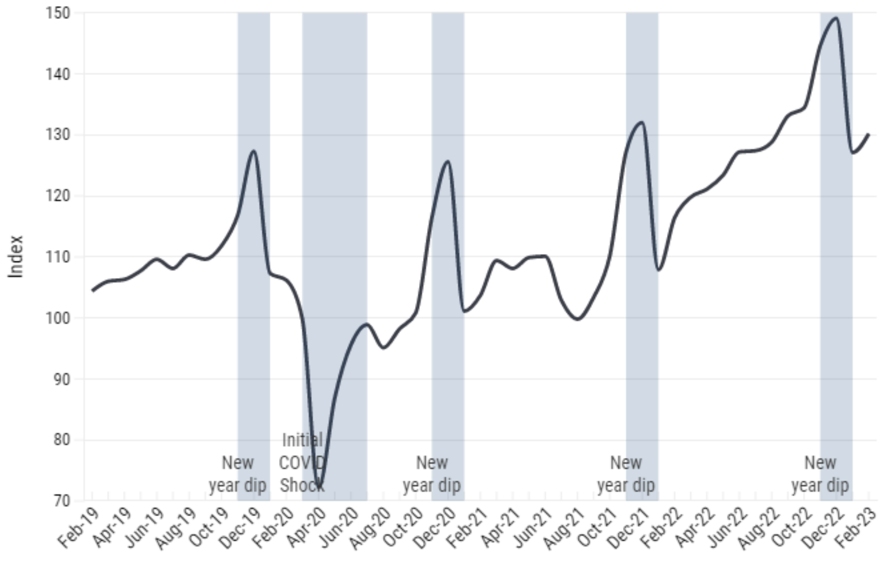
Chart 4: Growth in Compensation of Employees, 2013 - 2022

Source: ABS Australian National Accounts: National Income, Expenditure and Product (A2303389X)

The ACTU claim that household consumption in Australia is falling is based on a misreading of the ABS Monthly Household Spending Indicator. This indicator did fall by 14.8% in January 2023. However, this indicator always falls in January, due to seasonality in consumer spending associated with the Christmas/new year period. The January 2023 fall was in fact the lowest January fall recorded since this indicator has been published. And the indicator subsequently grew again by 2.4% in February 2023, consistent with its long run pattern (Chart 5 below).

[15] *ABS Australian National Accounts: National Income, Expenditure and Product* (December 2022).

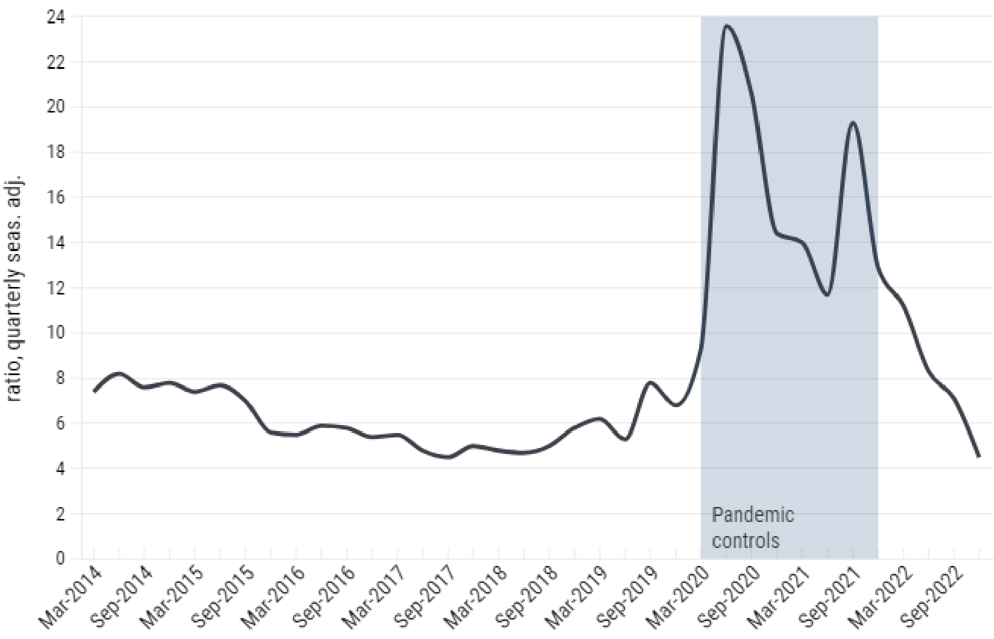
Chart 5: ABS Household spending indicator



Source: ABS Monthly Household Spending Indicator

The ACTU also draws attention to a reduction in the household savings ratio – to 4.5% in the December quarter 2022 – as evidence of financial stress upon households. However, this simply reflects a fall to more normal levels, after a period of abnormally high household savings rates caused by the pandemic-era controls of 2020 – 2021 (Chart 6). The current ratio is around the levels seen in years following the end of the mining boom in 2014. It is likely that the ratio will continue to decline across 2023 as the economy slows while inflationary pressures remain acute. However, it is yet to fall to abnormally low levels which would indicate financial stress upon households in aggregate.

Chart 6: Household savings ratio, 2014 - 2022



Source: ABS Australian National Accounts: National Income, Expenditure and Product (A2323382F)

2.4.5 Current real and nominal wages growth in long-run context

The ACTU correctly notes that recent increases in nominal wage growth have failed to keep pace with inflation. However, in asserting that *'[the last decade] had the worst wage stagnation workers have ever experienced'*[16], it fails to put recent wage dynamics in a proper long-run context.

Chart 7 below presents quarterly changes in nominal (WPI) and real (CPI-adjusted WPI) wages since 1999, when the WPI series began. The data shows that:

(a) Real wages have consistently grown in Australia over the long run, and only turned negative in the June quarter of 2021 when CPI inflation first rose over 3.0%;

(b) In the decade prior to the June quarter of 2021, real wages increased in 36 of 40 recorded quarters, and averaged 0.6% growth; and

(c) The only other period of sustained negative real wages growth occurred between the GST-impacted period between March 2000 and June 2001. This was the only other period where CPI inflation rose over 3.0%.

This data shows that the long-term trend in Australia is for consistently growing real wages, with real wage falls only occurring during periods of above-target inflation. Containing inflationary pressures in the current cycle is imperative to ensuring a prompt return to real wage growth.

Chart 7: Nominal and real wages growth, 1999 - 2022

[16] ACTU submission, page 87.

2.4.6 Contribution of minimum wages to economy-wide wage rises

The ACTU argues that the contribution of minimum wages to overall wage growth is *'only modest'*, citing the relatively low direct impact of wages set by awards to statistical indicators of wages (specifically the ABS's EEH and WPI indicators)[17]. For example, award wages directly contributed only a twelfth - 0.07% of 0.82% - of the rise in the WPI indicator in the December 2022 quarter[18].

However, this ignores the broader 'flooring' effect of the NWM in terms of alternate methods of setting pay. Enterprise agreements wage increases are generally directly or indirectly linked to minimum wages prescribed by awards. Wage setting in both individual agreements and enterprise agreements is also done with reference to minimum wages, particularly when employers compete for the same pool of workers in award-reliant industries or roles.

This indicates that there is an indirect effect of the NWM on alternate methods of setting pay which must also be considered when evaluating its effect on economy-wide wage levels.

2.4.7 Corporate profitability in aggregate and between industries

The ACTU argues that *'overall corporate profits were strong in 2022'* when compared to the disruptions during the pandemic period. It further argues that award reliant industries *'generally recorded health* [sic] *levels of gross corporate operating profits in 2022'*[19].

The pandemic-interrupted years of 2020 and 2021 are a poor comparator for evaluating current profit performance by industry. These years were affected by complex and sometimes countervailing shock factors, including lockdowns, supply chain disruptions and the effects of non-recurrent government transfer payments such as JobKeeper.

It is more appropriate to evaluate current corporate profits with respect to levels occurring prior to the shock-affected years of the pandemic. Table 4 below presents corporate profit growth rates for each of Australia's industries in each of the five years prior to the pandemic (2015 - 2019), as well as for the full year and second half of 2022. The data shows:

(a) In the 2022 calendar year, seven of 15 industries saw profits decline.

(b) In the second half of 2022 – the period during which the Australian economy has begun to slow – eight of 15 industries saw profits decline.

(c) By contrast, only one industry showed a very minor profit decline in the 5-year period prior to the pandemic.

(d) Total corporate profits rose by 16.0% across all industries in 2022, boosted by very strong mining profits in the first half of the year. But as mining profits declined in the later part of

[17] ACTU submission, pages 99 - 100.
[18] ABS Wage Price Index Australia, December 2022.
[19] ACTU Submission to the Annual Wage Review, 31 March 2023, page 100.

the year, the all-industry growth in profit rates turned negative (-2.1%) in H2 2022.

(e) In two of the more award reliant industries – accommodation & food services and retail trade – profit growth was strong in 2022. These are industries which enjoyed rebound recoveries following crippling pandemic-era restrictions. However, by the second half of 2022, profit growth in retail trade had stalled with the slowing consumer economy.

(f) In the award-reliant administrative & support services industry, profits grew at an anaemic 2.5% in 2022. In the award-reliant arts & recreation industry, profits fell by 12.5% in 2022.

Contrary to the ACTU's claims, this data shows that nearly half of Australian industries saw gross profits fall in 2022, a far greater number than during the pre-pandemic era. Overall profitability turned negative in the second half of 2022, with the slowing economy. Only two of the more award-reliant industries could be considered to have strong profit growth in 2022, and one of those (retail) has already started to slow.

This data is consistent with the argument made by Ai Group in its Initial Submission, which stated that there is *'clear evidence of a 'multi-speed economy' in Australia in 2022'*[20].

Table 4: Growth in corporate profits by industry, pre-pandemic vs 2022

	Pre-pandemic years						2022	
	2015	**2016**	**2017**	**2018**	**2019**	**5yr av.**	**Full year**	**H2**
Mining	-16.1%	78.2%	2.4%	28.2%	8.0%	20.1%	33.2%	-7.7%
Manufacturing	3.1%	6.8%	9.0%	-3.5%	-0.2%	3.1%	-10.5%	-11.7%
Electricity, gas, water and waste services	4.9%	4.8%	31.0%	21.2%	-6.1%	11.2%	15.9%	7.3%
Construction	-12.0%	6.2%	-12.1%	28.9%	3.5%	2.9%	-2.5%	-0.3%
Wholesale trade	11.6%	0.4%	27.3%	-10.8%	3.8%	6.5%	27.3%	11.6%
Retail trade	3.6%	-1.0%	10.9%	0.8%	8.2%	4.5%	17.9%	1.7%
Accommodation and food services	7.9%	-14.7%	7.0%	19.2%	2.9%	4.5%	57.0%	87.9%
Transport, postal and warehousing	6.2%	10.9%	-1.6%	11.7%	-2.1%	5.0%	39.1%	11.7%
Information media and telecommunications	-0.4%	-1.9%	-1.6%	-13.1%	14.9%	-0.4%	-5.1%	-2.4%
Financial and insurance services	44.5%	53.0%	31.2%	-24.8%	-44.1%	12.0%	-67.6%	-25.5%
Rental, hiring and real estate services	14.2%	18.4%	-0.1%	2.4%	-14.8%	4.0%	-20.9%	-10.7%
Professional, scientific and technical services	-13.6%	77.4%	-10.0%	4.5%	24.5%	16.5%	-13.4%	37.6%
Administrative and support services	-22.1%	16.7%	46.8%	6.3%	17.5%	13.0%	2.5%	31.0%
Arts and recreation services	-11.0%	-2.2%	1.6%	24.2%	-6.8%	1.2%	-12.5%	-8.6%
Other services	-14.9%	80.4%	-18.0%	18.3%	-3.2%	12.5%	24.4%	12.9%
All INDUSTRIES	-3.0%	27.7%	4.9%	11.6%	3.7%	9.0%	16.0%	-2.1%

[20] Initial Submission, page 15.

Seasonally adjusted. Source: ABS Business Indicators Australia December 2022, Table 11.

2.4.8 Profit margin and sales-to-wages ratio data

The ACTU cites data on profit margins[21] and sales-to-wages ratios[22] to argue that business enjoys positive financial conditions.

The most up-to-date profit margins data currently available is for the 2020 - 2021 financial year, which the ACTU acknowledges was affected by pandemic-era distortions. Ai Group further argues that 2020 - 2021 data is also now out of date, and does not reflect more recent changes in the Australian economy.

Ai Group argues that sales-to-wages ratios are not an appropriate indicator of the financial health of business. They can be a rough indicator of a businesses' *operational* performance, but not *financial* performance (which is affected by a much wider range of factors, including changes in non-wage costs such as interest expenses, and non-sales sources of revenue). It is the financial performance of business which determines capacity to pay, and the extent to which increases in wage costs will lead to disemployment effects.

2.4.9 Business entries and exits data

The ACTU cites data on business entries, exits and bankruptcies for the 2021 - 2022 financial year as evidence of the strong economic environment for business[23].

Ai Group argues that it is unsurprising these data are strong, given that real GDP growth in the 2021 - 2022 financial year was a very strong 3.6% p.a. However, GDP growth has since fallen to 2.7% p.a. across the 2022 calendar year, and is currently forecast to fall to 1.6% p.a. in the calendar year of 2023. As the economy slows over the coming year, it is expected that business entries will decline, and business exits and bankruptcies will increase.

Newer data on business entries and exits (for the 2022 - 2023 financial year) will not be available until August 2023, after the 2023 AWR is completed.

2.4.10 Productivity growth in Australia

Unfortunately, the COVID pandemic has impacted the computation of recent productivity statistics in Australia. The introduction then removal of public health controls led to sudden changes in hours worked between industries, which distorted statistical measurement. The ABS notes that both labour and multifactor productivity measures were affected by the introduction of public health controls, which as a result may diverge from their conceptual definitions during the pandemic-affected years.

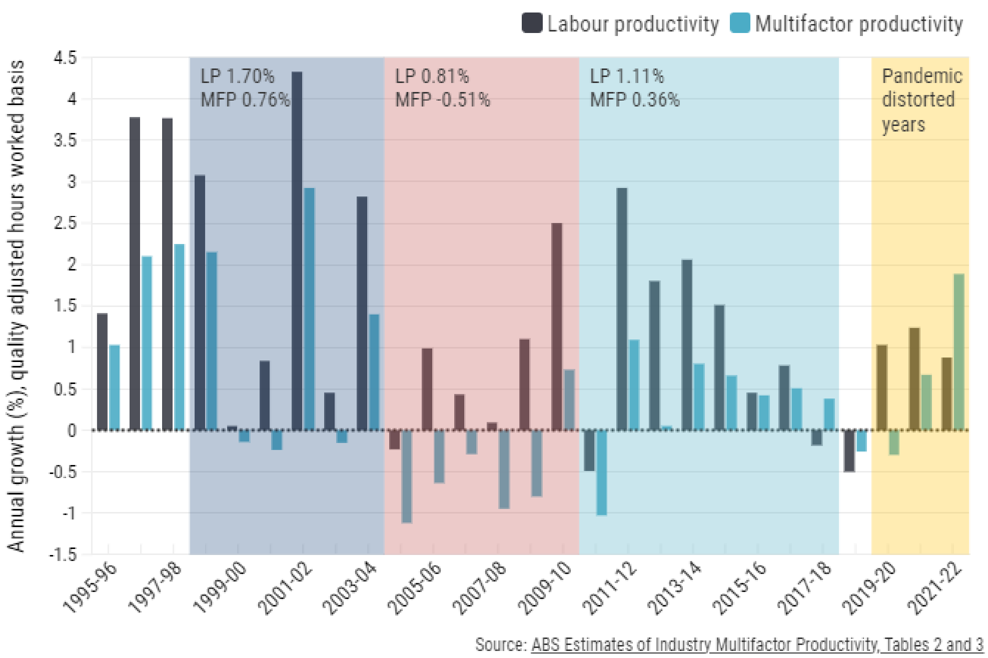
[21] ACTU submission, page 101.
[22] ACTU submission, page 102.
[23] ACTU submission, page 105 - 106.

As the ABS cautions: *'Care should be taken when interpreting year to year productivity growth for the market sector and by industry. Users are encouraged to continue viewing productivity growth through growth cycles'*[24].

The ACTU argues that during the period of 2017 - 2018 to 2021 – 2022, all but two of the more award reliant industries demonstrated labour productivity growth exceeding that of the average for market sector industries[25]. However, in light of the distortive impact of the pandemic this data should be interpreted with caution. Three of the six years in this period were affected by pandemic-era controls, which has an outsized impact on the more award-reliant industries such as retail, accommodation & food services, and arts & recreation services. Ai Group argues that industry-level data on productivity during the pandemic is very likely to misrepresent underlying productivity trends.

When following the ABS to take a longer-term *'growth cycles'* view, it becomes clear that productivity growth in Australia has been unhelpfully weak over an extended period. As Chart 8 shows, productivity growth declined significantly during the 2003 - 2004 to 2009 – 2010 cycle, and only weakly recovered in the more recent 2009 - 2010 to 2017 - 2018 cycle. The Productivity Commission has found that over the decade to 2020, annual average productivity growth was at its lowest level in 60 years[26], a performance the Treasurer has recently labelled '*woeful*'[27]. There is no doubt that low productivity growth in Australia has dragged materially on living standards, and its future improvement is required to enable sustainable wage increases.

Chart 8: Productivity growth in Australia



[24] ABS, Productivity measurement in the time of a pandemic, https://www.abs.gov.au/articles/productivity-measurement-time-pandemic.
[25] ACTU submission, page 84.
[26] Productivity Commission, *Advancing Prosperity*, https://www.pc.gov.au/inquiries/completed/productivity/report.
[27] Treasurer, Turning headwinds into tailwinds – Australia's productivity challenge, 16 March 2023, https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/speeches/address-ceda-brisbane.

3. The Relative Living Standards and Needs of the Low Paid

In Ai Group's Initial Submission, considerable emphasis was placed on the role of the increased hours of work achieved over the past year. This increase in hours worked is a significant element in the sharp increase (of 10.2% across 2022) in Compensation of Employees discussed above in section 2.4.4 of this submission. A large proportion of the growth in hours worked was due to the very strong growth in full-time employment of women. This increase in hours worked contributed positively to the wellbeing of low-income households in the circumstances of the sudden rise in inflation.

In the slowing economy we now confront, there is a heightened risk that the recent gains in employment and the inroads into underemployment will be reversed, or partly reversed, to the detriment of relative living standards and the capacity of low-income households to meet their needs.

In contrast, in its submissions on relative living standards and the needs of the low paid, the ACTU has a near-total focus on relativities in wage rates applying to individual employees. While this focus uncovers a favourable reduction in measures of the *'real wage bite'* in recent years[28], it fails to consider the positive benefits for low-income households stemming from the reductions in unemployment and underemployment that have been the standout feature of recent labour market strength.

Ai Group submits that this year's decision should give particular weight to the increase in hours worked in its assessment of the position of low-income households in the present circumstances. We also submit that in this year's decision, very close consideration should be given to the vulnerability of low-income households to a reduction in hours worked and the heightened probability that a large increase in wage rates at a time when the economy is slowing will be associated a significantly larger reduction in hours worked than if the increase in minimum wages were moderate.

[28] ACTU submission, Figure 52 on page 124.

4. The Need to Achieve Gender Equality & Improve Access to Secure Work

The ACTU has advanced detailed submissions regarding the amendments made to the objects of the FW Act, the modern awards objective and the minimum wages objective concerning gender equality and *'secure work'*. It relies on those submissions to advance the following central propositions:

(a) A significant increase to minimum wages will help achieve gender equality, 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.

(b) Although a detailed examination of gender-based undervaluation of work in certain industries and occupations is warranted, it should not form part of the 2023 AWR.

(c) Increasing minimum wages will positively impact workers in insecure employment. It would result in such employees having *'greater security generally due to the minimum age rates being higher'*.

We respond to the ACTU's submissions as follows.

First, we agree that an examination of issues concerning gender-based undervaluation cannot properly be undertaken in the context of the 2023 AWR and therefore, should not occur at this time. We deal with this issue further at section 12 of this submission, in response to question 9 posed by the Commission.

Second, the ACTU's submissions in respect of the principle of *'equal remuneration for work of equal or comparable value'*, which is contemplated by both s.134(1)(ab) and s.284(1)(aa) of the FW Act, are, with respect, somewhat circular.

The ACTU relies on the amendments made to s.302 by the Secure Jobs Better Pay Act to contend that they will *'significantly change'* the interpretation previously adopted by the Commission of the aforementioned term.[29] It then goes on to submit that gender-based undervaluation *'could justify different outcomes in respect of different modern awards'*[30]*,* however *'a comprehensive award by award analysis of undervaluation should not be conducted as part of [the 2023 AWR]'*.[31]

It appears unnecessary to deal with the ACTU's arguments concerning the interpretation and application of the principle of *'equal remuneration for work of equal or comparable value'* given the conclusion it ultimately reaches. In any event, we continue to rely on our Initial Submission in relation to the meaning of the phrase.[32]

[29] ACTU submission at [42].
[30] ACTU submission at [48].
[31] ACTU submission at [49].
[32] Initial Submission, pages 38 – 41.

Third, Ai Group strongly opposes any suggestion that the new s.134(1)(aa), s.134(1)(ab) and / or s.284(1)(aa) of the FW Act constitute statutory *'directives'* to achieve certain outcomes in the context of AWRs (or any other type of proceedings to which they might apply).[33] They are no more than factors that must be taken into account by the Commission and balanced against the various other competing considerations enumerated by the relevant statutory provisions. The use of *'more directive language'*[34] in the relevant subsections does not alter the nature of the Commission's task, as described by s.134(1) and s.284(1).

The following passage from the Commission's decision in the 2022 AWR is pertinent:

> ***[7]*** *The statutory tasks in ss 134 and 284 involve an 'evaluative exercise' which is informed by the considerations in s.134(1)(a)–(h) and s.284(1)(a)–(e).*
>
> ***[8]*** *As the Panel has observed in previous Review decisions, there is a degree of overlap between the various considerations which the Panel must take into account and a degree of tension is evident between some of these considerations. No particular primacy is attached to any of these considerations. Further, 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. It is this complexity that has led the Panel to reject a mechanistic or decision-rule approach to wage fixation.*[35]

Further, when the modern awards objective was amended to introduce s.134(1)(da) of the FW Act, the Commission made similar observations in the context of major proceedings concerning proposals to vary penalty rates in a number of awards. In particular, the Commission said as follows:

> ***[47]*** *Section 134(1)(da) speaks of the 'need to provide additional remuneration' for employees performing work in the circumstances mentioned. We note that the minority in the Restaurants 2014 Penalty Rates decision made the following observation about s.134(1)(da): '…the objective requires additional remuneration for working on weekends'.*
>
> ***[48]*** *To the extent that the above passage suggests that s.134(1)(da) 'requires additional remuneration for working on weekends', we respectfully disagree. We acknowledge that the provision speaks of 'the need for additional remuneration' and that such language suggests that additional remuneration is required for employees working in the circumstances identified in paragraphs 134(1)(da)(i) to (iv). But the expression must be construed in context and the context tells against the proposition that s.134(1)(da) requires that each modern award must provide additional remuneration for working in the identified circumstances.*
>
> *…*

[33] ACTU submission at [63] – [64].
[34] ACTU submission at [64].
[35] *Annual Wage Review 2021-22* [2022] FWCFB 3500 at [7] – [8].

> ***[195]** 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 93sense 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'.*
>
> ***[196]** 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'.*[36]

The Commission should adopt the same approach in relation to s.134(1)(aa), s.134(1)(ab) and s.284(1)(aa) of the FW Act.

Fourth, the ACTU's submissions seek to minimise the relevance of the potential disemployment effects that would result if its proposed wage increase was adopted. It also ignores the substantial risk that an increase of that magnitude may undo some of the recent gains made in, for example, the growth of full-time employment amongst women. We dealt with these matters in our Initial Submission and again in this submission at section 5.

Fifth, s.134(1)(aa) requires the Commission to take into account the *'need to improve access to secure work'*. As appears to be accepted by the ACTU, its submissions at [66] are not in fact relevant to this consideration. The relevant statutory provision concerns improving *'access to'* secure work; not improving the circumstances of employees engaged in *'insecure'* work.

[36] *4 yearly review of modern awards – Penalty Rates* [2017] FWCFB 1001 at [47] – [48] and [195] – [196].

5. Promoting Social Inclusion through Increased Workforce Participation

In its submissions about the promotion of social inclusion through increased workforce participation, the ACTU puts forward a benign outlook for the labour market should a large increase in minimum wage rates be awarded in the 2023 AWR. This is despite the slowdown in activity and the strong prospect of further slowing over the period ahead as a consequence of determined policy action to combat inflationary pressures.

The labour market outcomes over the period since the easing of pandemic-related restrictions have unquestionably been strong. The strength of the labour market has furthered the objective of promoting social inclusion through increased workforce participation. This is reflected in unemployment, underemployment and participation data and supported by unusually high, though easing, vacancy rates and the frequency of reports from businesses of labour and skill shortages.

However, Ai Group submits that the risks of a sharp deterioration in labour market conditions over the coming year to the detriment of the recent gains towards improving social inclusion are substantially greater than implied by the ACTU.

Labour Market Outcomes and Award Reliance

One element of the ACTU's assessment is its examination of labour marker outcomes across industries with different degrees of award reliance[37]. In summary, the ACTU's argument is that, although there was a greater increase in award rates in the 2022 AWR than in rates of pay for non-award employees; labour market outcomes as reflected in unemployment, hours worked and underemployment have not been distinctly worse in more award-reliant industries than industries with less award-reliance. This claim is used to suggest that there is little risk that a high increase to minimum rates in this year's decision will be to the detriment of social inclusion.

There are fundamental weaknesses in this element of the ACTU's submission.

Part of the reason for this weakness is that the analysis is based on a small sample of outcomes in what has been a very unusual period of uneven industry adjustment in the short period since the pandemic and the still shorter period since the 2022 AWR.

A further and more fundamental shortcoming is that the degree of award reliance even in the most award reliant industries is far too low to establish that award reliance is a major factor related to the observed labour-market outcomes at the industry level. Table 5 below sets out the most award reliant industries as contained in Figure 7 of the ACTU's submission[38] which itself is drawn from the FWC-SR. Table 5 includes the proportion of employees who are not award reliant.

[37] ACTU submission at [104] – [118].

[38] ACTU submission, page 51.

Table 5: Award Reliance and Non-Award Reliance in the Seven Most Award-Reliant Industries

	Modern award-reliant employees	Award-reliant employees	Non award-reliant employees
Accommodation and food services	59.6%	60.4%	**39.6%**
Administration and support services	42.3%	42.4%	**57.6%**
Other services	36.4%	38.1%	**61.9%**
Retail trade	29.5%	29.6%	**70.4%**
Arts and recreation services	25.9%	26.6%	**73.4%**
Health care and social assistance	23%	33.3%	**66.7%**
Rental, hiring and real estate services	21.4%	22.1%	**77.9%**

As Table 5 shows, in only one of the seven most award-reliant industries - accommodation and food services - is the degree of award-reliance greater than 50%. In four of the seven most award-reliant industries, over 60% of employees are not award reliant.

To the extent that near-term labour market outcomes for employees in this group of industries reflect changes in wage rates, they are more likely to reflect changes in the wages of the majority of employees who are not award-reliant rather than those of award-reliant employees.

The ACTU's analysis of short-term industry-level employment outcomes graded by the degree of award reliance should not be used as support for the proposition that the outlook for employment and social inclusion is benign and that the labour market is able to withstand the impacts of a large increase in award wage rates.

Minimum Wages and Unemployment

A second element of the ACTU's submission relating to the social inclusion objective is its discussion of minimum wage research.[39] The ACTU examined *'selected recent contributions'*[40] to the literature on the relationships between changes in minimum wages and employment outcomes.

The leading conclusion from the ACTU's examination of its selection of new literature is:

> *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.*

[39] ACTU submission at [119] – [131].
[40] ACTU submission at [119].

The claims that this supports its suggestion that the increase in minimum wages it proposes will not adversely impact on the recent gains in employment, unemployment and underemployment.

Putting aside any questions of interpretation of the selected studies, a key consideration about the usefulness of this conclusion for the current wage case is that the ACTU is not proposing an increase in minimum wages that could reasonably be described as either small or gradual. Rather, its proposal for a 7% increase in minimum wages is large and, particularly when combined with the increases arising from the 2022 AWR and the latest increases in the mandated rate of superannuation contributions, will see employers confronted with a far-from-gradual increase in employee remuneration over a period of barely more than 12 months.

Including the ACTU's proposal for a 7% increase, the two 0.5 percentage point increases in the rate of superannuation contributions and the increases in minimum wages from the 2022 AWR, employers would face a total increase in minimum rates of pay of between 13.2% and 12.6%. On no account could increases in wage costs of anything approaching these magnitudes be considered to be steady or gradual. Rather they would represent large increases which are a sharp departure from rates of wages growth over an extended period.

The ACTU's selective analysis of new literature on the relationships between increases in minimum wages and impacts on unemployment does not justify the acceptance of any assertion that the outlook for employment and social inclusion is benign and that the labour market is in a position to withstand the impacts of a large increase in wage rates.

In a slowing economy, increases in wage costs of anywhere near the magnitude proposed by the ACTU have a high likelihood of being associated with a much steeper deterioration in the labour market than would otherwise occur. Such a deterioration would be to the detriment of the recent gains in employment, workforce participation and underemployment and, therefore, social inclusion.

6. The Government's Submission

The central propositions advanced by the Government are summarised in the following paragraphs of its submission:

> 2. *The Australian Government recommends that the Fair Work Commission ensures the real wages of Australia's low-paid workers do not go backwards.*
>
> 3. *This submission does not suggest that across-the-board, wages should automatically increase with inflation, nor that inflation should be the only consideration in determining wages. However, the current economic circumstances are exceptional, challenging and expected to be temporary. Over the longer term, the Government acknowledges the need to increase productivity to drive real wages growth. …*

Ai Group agrees that inflation should not be the *'only consideration in determining wages'*. It is critical that the impact of inflationary pressures on households is weighed against their impact on business, as well the raft of other microeconomic and macroeconomic considerations we have addressed in this submission and the Initial Submission. We also agree that the current inflationary pressures are *'expected to be temporary'*.

Nevertheless, the Government's submission appears to suggest that the Commission should adopt differing approaches between the wages of *'low-paid workers'* and those of other employees. It might reasonably be inferred from their submission that the Government is proposing that the Commission determine different outcomes for different categories of employees.

As acknowledged by the Panel in the 2022 AWR[41], the approach proposed by the Government risks disturbing long-standing relativities between classification levels. Specifically, it could cause a compression of the existing differentials between the wages prescribed for *'low paid'* employees and other employees. The extent to which this would in fact eventuate would of course depend on the specific increases determined by the Commission.

The table below sets out the minimum weekly rates presently prescribed by the Manufacturing Award. We have also calculated the difference between successive weekly rates in percentage terms. Alongside this, by way of illustration, we have applied the increase sought by the ACTU (7%) to the C14 – C11 levels; those being the classification levels that were the subject of a flat $40 increase in the 2022 AWR. To the remaining classification levels, we have applied an increase of 3.5% (as proposed by some employer interests, such as ACCI).

The analysis demonstrates that if the Commission adopted a two-tiered approach to minimum wage adjustments and it delineated between the first and second tiers in the same way as last year, the aforementioned increases would substantially compress the difference between the C11 and C10

[41] *Annual Wage Review 2021-22* [2022] FWCFB 3500 at [194].

rates, in absolute and proportionate terms. Indeed, the difference between those rates would transform from being the largest in proportional terms, to being the smallest.

Table 6: Manufacturing Award – Analysis of Relativities

Classification Level	Current Weekly Rate	Difference between preceding weekly rate ($)	Difference between preceding weekly rate (%)	Increased Weekly Rate (7% for C14 - C11 & 4% for C10 onwards)	Difference between preceding weekly rate ($)	Difference between preceding weekly rate (%)
C14	812.60			869.48		
C13	834.80	22.20	2.7	893.24	23.75	2.7
C12	865.20	30.40	3.6	925.76	32.53	3.6
C11	893.60	28.40	3.3	956.15	30.39	3.3
C10	**940.90**	**47.30**	**5.3**	**973.83**	**17.68**	**1.8**
C9	970.40	29.50	3.1	1004.36	30.53	3.1
C8	999.90	29.50	3.0	1034.90	30.53	3.0
C7	1026.60	26.70	2.7	1062.53	27.63	2.7
C6	1078.70	52.10	5.1	1116.45	53.92	5.1
C5	1100.80	22.10	2.0	1139.33	22.87	2.0
C4	1130.30	29.50	2.7	1169.86	30.53	2.7
C3	1189.50	59.20	5.2	1231.13	61.27	5.2
C2(a)	1219.20	29.70	2.5	1261.87	30.74	2.5
C2(b)	1272.50	53.30	4.4	1317.04	55.17	4.4

The adoption of a two-tiered approach may give rise to various problematic outcomes.

First, the compression of wage rates may disincentivise employees from acquiring the relevant skills and competencies that are required in order to be classified at a higher level.

Second, the disruption to relativities caused by the outcome of the 2022 AWR would be compounded by the outcome of the 2023 AWR. The rates would reflect the cumulative effect of the Commission twice adopting a two-tiered approach.

Third, if the gap between minimum rates for certain classification is narrowed, this would give rise to the prospect of future leapfrogging. This might eventuate if, for example, the Commission decided to increase the lower of the two rates on work value grounds or in the context of a subsequent AWR, it decided again to adopt distinct approaches for different classification levels.

Whilst the proposal advanced by the Government, in the abstract, has some logical force, the potential implications of its practical operation may be undesirable. This cautionary submission should not be construed as support for granting a large increase across the board. Rather, the application of a uniform moderate increase, which is expressed as a percentage, would be more appropriate, consistent with the various other arguments advanced in our Initial Submission and this submission.

7. Questions on Notice – Question 3

The Commission has posed the following question to Ai Group:

> *The Ai Group state that 'current levels of unemployment show there is still considerable underutilisation of the labour available at current wage rates'.[42] Can the Ai Group identify the evidence which it considers supports this?*

The clearest evidence of considerable underutilisation of labour at current wage rates is the ABS data on the number of people who are either unemployed or underemployed.

The latest data on unemployment and underemployment (for March 2023) are summarised in Table 7 below. They show that there were 1,402,700 members of the Australian labour force who were either unemployed or underemployed in March 2023. This was 9.7% of the total labour force in that month.

Table 7: Labour Force Underutilisation, March 2023

	Number	% of labour force
Employed persons	13,884,400	96.5%
Unemployed persons	507,000	3.5%
Underemployed persons	895,600	6.2%
Underutilised persons	1,402,700	9.7%

Source, ABS, Labour Force, Australia, March 2023.

The definitions of *'unemployed'* and *'underemployed'* used by the ABS, make it clear that both categories only include people who are ready for work at current wage rates. Those definitions are as follows:[43]

- *'Unemployed people are defined as all those of working age who were not in employment, carried out activities to seek employment during a specified recent period and were currently available to take up employment given a job opportunity.'*
- *'The ABS underemployment framework classifies persons who are not fully employed according to whether they are looking for and/or available to start work with more hours.'*

Notwithstanding the reductions in unemployment and the inroads into underemployment in the period since the depths of the COVID pandemic, at present 9.7% of Australia's labour force would like to work, or would like to work more hours, at current pay rates. This is strong evidence that increasing wage rates is not required to encourage additional labour force participation.

[42] Initial Submission, page 42.
[43] ABS, Directory of Statistical Sources by Topic, (see here).

8. Questions on Notice – Question 7

The Commission has posed the following question to all parties:

> *The National Minimum Wage (NMW) has, since the first Review*[44] *conducted under the Fair Work Act 2009, been aligned with the C14 rate in the (now) Manufacturing and Associated Industries and Occupations Award 2022. Given that the C14 rates exists in only 45 modern awards and, in all but 7 of these, operates only as an introductory rate for a specified time-limited or other transitional period:*[45]
>
> *(i) Is the C14 rate an appropriate benchmark to set the NMW?*
>
> *(ii) Should the NMW be set by reference to the C13 rate or some other benchmark?*

The C14 rate found in modern awards should remain the benchmark for setting the NMW.

The proposition that the C14 rate is found in only 45 modern awards is not new, or reflective of a material change in circumstances since the first AWR was conducted, such that it might constitute cogent reasons for adopting a different approach. It remains appropriate that the NMW equates to, and is no more than, the lowest minimum rate prescribed by the modern awards system.

At the very least, any change to the way in which the NMW aligns with the modern awards system must not be effected absent a detailed and forensic examination of the circumstances in which the NMW is payable, the impact that any re-alignment would have on employers and the potential macroeconomic consequences. It is axiomatic that if the NMW is re-aligned to a higher level, it will result in an increase to that rate, which will in turn increase employers' labour costs. For the various reasons articulated in this submission, and our previous written submission, the Commission should take a cautious and restrained approach to adjusting the NMW in the 2023 AWR. By extension, it should not re-align the NMW to a higher classification level.

[44] *Annual Wage Review 2009-10* [2010] FWAFB 4000 at [339].

[45] See [2020] FWC 6647 at [4].

9. Questions on Notice – Question 8

The Commission has posed the following question to all parties:

> *In the Annual Wage Review 2017–18 decision,[46] the Commission said:*
>
> > *We agree with the observations of a number of parties that Review decisions are of limited utility in addressing any systemic gender undervaluation of work. It seems to us that proceedings under Part 2-7 and applications to vary modern award minimum wages for 'work value reasons' pursuant to ss 156(3) and 157(2) provide more appropriate mechanisms for addressing such issues.*
>
> *Does the above proposition remain valid in light of the new s 284(1)(aa)? If not, what weight should be given in this Review to the new s 284 (1) (aa)?*

The above proposition remains relevant, notwithstanding the introduction of s.284(1)(aa) of the FW Act.

We refer to, and continue to rely upon, Initial Submission at pages 36 – 41.

[46] [2018] FWCFB 3500.

10. Questions on Notice – Question 9

The Commission has posed the following question to all parties:

In paragraph [293(7)] (p.85) of the Aged Care Decision issued on 4 November 2022,[47] the Full Bench found that 'expert evidence supports the proposition that the alignment of feminised work against masculinised benchmarks (such as in the C10 Metals Framework Alignment Approach) is a barrier to the proper assessment of work value in female-dominated industries and occupations'. A similar conclusion was expressed in paragraph [758(6)] (p.210), which also stated more broadly that '[t]he approach taken to the assessment of work value by Australian industrial tribunals and constraints in historical wage fixing principles have been barriers to the proper assessment of work value in female dominated industries and occupations.' Given that the C10 Metals Framework Alignment Approach and previous wage fixing principles are historically foundational to the minimum wage rates prescribed in a significant number of modern awards:

(i) Do these findings imply that modern awards covering female-dominated industries and occupations[48] may have been subject to systemic gender undervaluation?

(ii) Are these matters required to be taken into account in the Review by virtue of new ss 134(1)(ab) and 284(1)(aa)?

(iii) If so, how should they be taken into account in the Review and how, if at all, should they affect the outcome?

It would be wholly inappropriate for the Commission to proceed, in the context of these proceedings (or any other), on the basis that awards covering all female-dominated industries and occupations have been the subject of gender-based undervaluation.

The Commission should not find that the wage rates contained in any modern award have been subject to gender-based undervaluation absent a detailed examination of all matters relevant to such an assessment in the context of that particular award; including, the manner in which the relevant rates have been set and adjusted over the years, the factors that influenced the setting and adjustment of those rates, any prior arbitral consideration of the value of the work undertaken by employees in the relevant industry or occupation, the value of the work now undertaken by employees covered by the relevant award, etc. No assumption should be made, or inference be drawn, about any award, in relation to these matters. The implications of any such findings are potentially significant and therefore, should be made cautiously and only after a proper consideration of the relevant issues.

[47] [2022] FWCFB 200.

[48] Including those modern awards identified in paragraph [13] of the former President's Statement concerning occupational segregation and gender undervaluation published on 4 November 2022.

The AWR, by its very nature, does not enable issues associated with systemic gender-based undervaluation to be appropriately ventilated. In the interests of observing procedural fairness, and for the purposes of ensuring that the Panel is properly assisted by the parties in its consideration of these issues, interested parties would need to be afforded an opportunity to file detailed submissions, documentary material and any evidence upon which they seek to rely. As is evident from recent proceedings concerning work value and equal remuneration in the context of specific awards, the conduct of such proceedings may require many months to complete, can give rise to complex award-specific issues and typically involve extensive expert and lay witness evidence. Self-evidently, the AWR does not lend itself to facilitating such a process.

11. Questions on Notice – Question 10

The Commission has posed the following question to all parties:

> *How and to what extent might the 'gender pay gaps' referred to in s 284(1)(aa) be addressed in the Review process?*

We refer to and rely on our Initial Submission at pages 40 – 41.

12. Questions on Notice – Questions 11 & 12

The Commission has posed the following question to all parties:

> *For the gender pay gaps to be closed, which measure or measures are the most appropriate indicator of progress? For example, hourly wages or average weekly full-time wages?*
>
> *For ongoing assessment, should different measures be used for different gender pay gap assessments? For example, over award payments, bonuses?*

For the purposes of the AWR, considerations associated with the *'gender pay gap'* must be taken into account by the Panel, as required by s.284(1)(aa) of the FW Act.

The Act does not define the concept of the *'gender pay gap'*. It is critical to note that the term is used in the context of the Commission's functions that are associated with the setting of minimum wages. By extension, indicators that include over-award payments, or other terms and conditions that do not form part of the safety net, may not be appropriate or particularly helpful measures for the purposes of setting minimum wages. Put another way, such measures are of limited utility in the context of the exercise of the Commission's discretion in the AWR.

For example, the Workforce Gender Equality Agency (**WGEA**) defines the gender pay gap as:

> *… a measure of how we value the contribution of men and women in the workforce.*
>
> *Expressed as a percentage or a dollar figure it shows the difference between the average earnings of women and men.*[49]

Similarly, the Commission made the following observations in its decision concerning the 2022 AWR:

> ***[86]*** *The gender pay gap refers to the difference between average wages earned by men and women. It may be expressed as a ratio which converts average female earnings into a proportion of average male earnings on either a weekly or an hourly basis. The Statistical Report sets out 3 measures of the gender pay gap, ranging from 8.8 per cent to 15.2 per cent.*[50]

It is trite to observe that the *'average earnings of men and women'* are not confined to amounts earned by employees who are safety-net-reliant; that is, they include over-award payments.

Further, the *'average earnings of men and* women' are influenced by a broad range of matters, such as:

(a) disproportionately high levels of female employment in some occupations or industries vis-à-vis others;

[49] See https://www.wgea.gov.au/the-gender-pay-gap.
[50] *Annual Wage Review 2021-22* [2022] FWCFB 3500 at [86].

(b) the number of hours worked by men vis-à-vis women; and

(c) the extent to which women are employed in full-time positions vis-a-vis part-time or casual positions.

The above factors are, to some extent, a product of various social and economic variables, such as access to childcare, as well as societal and cultural expectations regarding unpaid caring responsibilities and domestic work.

The Commission's functions in the AWR do not extend to directly addressing any of the aforementioned matters, which have a bearing on the *'gender pay gap'*. Accordingly, and for the reasons articulated earlier in this submission and our previous written submission, the AWR is, with respect, a blunt instrument for addressing the gender pay gap (however defined). The FW Act provides other, more appropriate, vehicles for addressing such issues, to the extent that they can be addressed through the safety net.

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

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