

# Response to consultation questions

## Response to Question 1.1

“The CCIQ has sought a deferral (by six months) of any increase in the NMW and modern award minimum wages on the basis of the January and February 2019 rainfall event in the Townsville region. The submission states that:

‘The proposed mechanism to determine which employers should receive the minimum wage deferral is to be guided by the Disaster Recovery Funding Arrangements 2018 (DRFA) and specifically the DRFA event – North and Far North Queensland Monsoon Trough, 25 January – 14 February 2019’.<sup>1</sup>

This has been clarified in supplementary submissions to confirm that the deferral is sought for all employers who are in receipt of the Special Disaster Assistance Recovery Grants (Special Recovery Grants) available under the relevant DRFA event assistance.<sup>2</sup>

To what extent do the eligibility criteria for the relevant Special Recovery Grants actually inform the Panel about exceptional circumstances that might warrant a deferral of NMW and modern award minimum wages?

Should the Panel be satisfied that relevant exceptional circumstances exist, how would it ensure that the Determination (the deferral) is limited just to the particular situation to which the exceptional circumstances relate—s.286(2) and s.287(4) of the *Fair Work Act 2009* (Cth)?

What factors (if any) differentiate the relevant DRFA event – *North and Far North Queensland Monsoon Trough, 25 January – 14 February 2019* from other DRFA events and other declared natural disasters and is this relevant to assessment of exceptional circumstances and/or the exercise of any discretion by the Panel to defer increases?”

## Response:

We have provided a detailed response to CCIQ’s request for a deferral in paragraphs 105-109 and 133 - 136 of our submission in reply. We rely on those comments and add the following:

- a) Even a cursory examination of the guidelines for eligibility for the *Special Disaster Assistance Recovery Grant*<sup>1</sup> and its associated application form<sup>2</sup> reveal that the payment is wholly directed toward the costs of repair of physical damage to property and goods (and some associated incidental expenses which flow from such physical damage). The payment is properly regarded as primarily directed to uninsured damage, given that recourse rights exist in respect of monies advanced under the program for losses which are ultimately accepted as

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<sup>1</sup> [http://www.qrida.qld.gov.au/\\_\\_data/assets/pdf\\_file/0012/8130/Guidelines-Special-Disaster-Assistance-Recovery-Grant-Small-Business.pdf](http://www.qrida.qld.gov.au/__data/assets/pdf_file/0012/8130/Guidelines-Special-Disaster-Assistance-Recovery-Grant-Small-Business.pdf)

<sup>2</sup> [http://www.qrida.qld.gov.au/\\_\\_data/assets/pdf\\_file/0014/8132/Application-Special-Disaster-Assistance-Recovery-Grant-Small-Business50.pdf](http://www.qrida.qld.gov.au/__data/assets/pdf_file/0014/8132/Application-Special-Disaster-Assistance-Recovery-Grant-Small-Business50.pdf)

claimable losses under the grant recipient's insurance policies.<sup>3</sup> More significant assistance with property and asset damage is available through concessional *Disaster Assistance Loans* of up to \$250,000.<sup>4</sup>

- b) The receipt of a *Special Disaster Assistance Recovery Grant* says nothing of the recipient's circumstances save that (a) they have satisfied the relevant Queensland Government decision makers that their business premises or other business property or goods were damaged and (b) that the costs of repairs to same (and associated incidentals) are being met (wholly or partly) by third parties. These facts alone simply cannot be regarded as creating any exceptional circumstances within the meaning of sections 286 or 287 of the Act:

"We are conscious of the hardship inflicted on many businesses, especially small businesses, by recent natural disasters. However, the declaration of natural disasters by government cannot, of itself, be regarded as constituting "exceptional circumstances" for the purpose of s.286. Information about the effect of the disaster event on different classes of employers and enterprises and the assistance provided by government are necessary elements in any case seeking to establish exceptional circumstances.

Further, any assessment of the effect of a natural disaster must necessarily include an assessment of the impact upon employees who would bear the cost of a deferral of a minimum wage increase. For example, in circumstances where the impact of flooding on an employer was limited to the cessation of trading for the duration of the flooding, that employer's employees might be stood down consistent with s.524(1)(c) of the Act or, if casual employees, not offered work. In both cases the employees concerned would sustain a loss of their normal income for the duration of flooding. The employer would suffer the loss of profits which would have been earned and would also need to meet fixed costs over the duration of the cessation of trading. The direct cost to both employers and employees would be relevant considerations in assessing whether a deferral of minimum wage increases should occur."<sup>5</sup>

- c) The CCIQ has contended that the criterion for accessing the deferral it seeks is receipt of the *Special Disaster Assistance Recovery Grant*. However, as the above extract from the 2011-2012 Review decision demonstrates, the inquiry into the impact on and level of government assistance available to employers, which is a necessary element in the Bench satisfying itself that there *is* any exceptional circumstance, cannot start and finish with the eligibility criteria for that grant. A proper inquiry may well demonstrate that the criterion chosen by CCIQ produces a vastly heterogeneous group. For example, it may include some employers who have chosen to avail themselves of the \$100,000 concessional loans (1.37%, 10 year terms, up to 2 years interest free) also available in the affected area for "*Disaster Assistance Loans (Essential Working Capital)*". These loans are specifically available to fund "paying wages and salaries", among other costs, where businesses have suffered a loss of income because of the flood.<sup>6</sup> Such intra group differences preclude the satisfaction of the mandatory requirement that any deferral determination that is issued "...must be limited to just the particular situation to which the exceptional circumstances relate" in sections 286(2) and 287(4)(b) of the Act. At the same time, the discretion to issue a deferral determination must carry with it some

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<sup>3</sup> See Option 1 in section 7 of the application form.

<sup>4</sup> <http://www.qrida.qld.gov.au/current-programs/Disaster-recovery/disaster-assistance/disaster-assistance-small-business>

<sup>5</sup> [2012] FWAFB 5000 at [266]-[267]

<sup>6</sup> [http://www.qrida.qld.gov.au/\\_\\_data/assets/pdf\\_file/0004/5908/Guideline-Cat-B-Essential-Working-Capital-Loans-SB.pdf](http://www.qrida.qld.gov.au/__data/assets/pdf_file/0004/5908/Guideline-Cat-B-Essential-Working-Capital-Loans-SB.pdf)

examination of the desirability of employees in the same locality doing the same work being subject to different safety nets.

- d) The mandatory requirement that any deferral determination that is issued “..must be limited to just the particular situation to which the exceptional circumstances relate” in sections 286(2) and 287(4)(b) of the Act must also involve ensuring that the duration of the deferral is limited to the duration of the exceptional circumstance. This, again, cannot be achieved in a heterogenous group.
- e) The only distinguishing feature of the *North and Far North Queensland Monsoon Trough* DFRA event, relative to other current DFRA events, is that it is the only such event in relation the which the *Special Disaster Assistance Recovery Grant* is available. All other current DFRA events for which small business assistance is available provide concessional loans only.

In addition, we wish to register our disappointment that the CCIQ has once again sought a wage penalty against Queensland workers. This too is far from an exceptional circumstance: this is the 10<sup>th</sup> Annual Wage Review under the *Fair Work Act* and the CCIQ have sought such a penalty in all bar the first.

### Response to Question 3.1

The submissions about the relative living standards and the needs of the low paid tend to focus on the level of the NMW, yet 95.8 per cent award-reliant workers paid the adult rate are paid above the level of the NMW.<sup>5</sup>

The available data suggest that 25 per cent of award-reliant workers live in households that are in the 2<sup>nd</sup> lowest quintile of the distribution of equivalised household disposable income, and a further 30 per cent are found in the 3<sup>rd</sup> (middle) quintile. These data are shown in Chart 1 below.

Analysis of award-reliant workers across the equivalised household disposable income distribution is presented in Chart 1 from Research report 1/2017, using data from the Household, Income and Labour Dynamics in Australia Survey for 2015.<sup>6</sup>

[chart not reproduced]

Chart 8.6 in the Statistical report also shows that over the period 2011–12 to 2015–16 (the latest data available) living standards fell for households in the middle (3<sup>rd</sup>) quintile, and rose only slightly for households in the 2<sup>nd</sup> (lowest) quintile.

Two propositions seem to follow from these data:

1. A substantial proportion of award-reliant workers paid above the level of the NMW live in households in the second and third quintiles of the distribution of equivalised household disposable income.
2. These award-reliant workers have received little growth in their real equivalised household disposable income in the period 2011-12 to 2015-16.

We ask the parties to comment on the above propositions.

#### Response:

We agree with these propositions.

Despite the preponderance of award reliant wage workers in the second and third quintiles, and the benefit of increases they have received in that period, the increases are not sufficient of themselves to override the impact of declines in net taxes and transfers on equivalized income.

We would add that a similar or related observation could be made about low paid employees, shown in Chart 8.7 of the Statistical Report. That is, a substantial proportion of low paid employees (around 45%) are concentrated in the second and third quintiles of household income distribution and as such have received little growth in their real equivalised household income over the period 2011-12 to 2015-16.

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