

2022-23 Annual Wage Review

Australian Government's Responses to Questions on Notice

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and

Treasury

Economic and labour market considerations

Question to the Australian Government

- 1. In Table 2.1 of the Australian Government submission, data on recent wage outcomes by various measures is provided, including wages growth by method of setting pay. As this data is unpublished, can the Australian Government provide the quarterly growth rates over the last 10 years?**

Response

See Attachment A for unpublished data on changes in the Wage Price Index by method of setting pay for the last 10 years.

These data have been provided by the Australian Bureau of Statistics (ABS). Please note that the quarterly and through-the-year changes for method of setting pay are average movement estimates rather than changes in an index series.

Relative living standards and the needs of the low paid

Question to the Australian Government

- 4. At paragraphs 97 and 104, the Australian Government refer to the definition of low paid used in the Household, Income and Labour Dynamics in Australia (HILDA) survey to provide characteristics of low-paid employees. Can the Australian Government provide the definition of low-paid used by HILDA?**

Response

The Government's submission does not adopt any specific definition of low paid, as this is a matter for the Fair Work Commission. The analysis contained in paragraphs 97 and 104 of the Australian Government submission utilises a definition of employees aged 21 years or older earning less than two-thirds of the median hourly wage. This analysis is based on data sourced from the Household, Income and Labour Dynamics in Australia (HILDA) survey.

Gender equity

Questions to all parties

8. In the Annual Wage Review 2017–18 decision, 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)?

Response

As set out in the Australian Government's initial submission to the Annual Wage Review 2022-23, the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* embedded the principle of gender equality in the Fair Work Commission's decision-making processes. The above proposition should be revisited in light of these reforms.

The minimum wages objective at s 284(1) now requires the Commission to establish and maintain a safety net of fair minimum wages, taking into account, inter alia:

(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;

Section 284(1)(aa) is significantly broader than the former s 284(1)(e) and the Commission must now take into account gender-based undervaluation of work and gender pay gaps when setting minimum wages. A corresponding amendment was also made to the modern awards objective at s 134(1)(ab).

Sections 284(1)(aa) and 134(1)(ab) could include consideration of the potential for increases to minimum wages to narrow the gender pay gap for women workers covered by particular modern awards or employed in particular classifications, having regard to levels of award reliance.

It would also be open to the Commission to consider the historical setting of wages in low paid, feminised industries and occupations as part of its consideration of gender-based undervaluation of work. These matters could be dealt with in the ordinary course of the review by the Expert Panel. Alternatively, the President could direct (in this or a subsequent Review) that an investigation be conducted and a report prepared pursuant to s 290 of the Act by one of the Expert Panel, an Expert Panel Member or a Full Bench.

The Commission is required to take into account all factors within the minimum wages objective and its capacity to consider these issues will ultimately depend on the material before the Commission.

The Commission's powers to issue equal remuneration orders (Part 2-7) and vary modern award minimum wages on work value grounds (s 157(2)) remain important means to improve gender

equality.¹ Like the minimum wages objective, these provisions were amended in the Secure Jobs, Better Pay reforms to include consideration of gender-based undervaluation of work, which could involve consideration of historical approaches to wage setting in modern awards depending on the matter before the Commission.

- 9. In paragraph [293(7)] (p.85) of the Aged Care Decision issued on 4 November 2022, 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 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?**

Response

The Government broadly supports the findings of the Full Bench in the *Aged Care Decision* set out above.

In that decision, the Full Bench agreed with the Commonwealth that aligning rates of pay in one modern award with classifications in other modern awards with similar qualification requirements supports a system of fairness, certainty and stability.² The Full Bench stated that the C10 Metals Framework Alignment Approach and the Australian Qualifications Framework are useful tools in this regard. However, the Full Bench also recognised the limitations of the C10 Metals Framework Alignment Approach and affirmed that alignment with external relativities is not a substitute for the Commission’s statutory task.³

The Full Bench went on, in its reasoning, to adopt the 3-step process set out in *Australian Liquor, Hospitality and Miscellaneous Workers Union re Child Care Industry (Australian Capital Territory) Award 1998 and Children’s Services (Victoria) Award 1998 – re Wages rates PR954938 [2005]* AIRC

¹ The Secure Jobs, Better Pay reforms included amendments to the Fair Work Act to establish new Expert Panels within the Commission for pay equity and the care and community sector. An Expert Panel will be required to be constituted to consider variations to modern award minimum wages outside the Annual Wage Review relating substantively to gender pay equity or the care and community sector, or when deciding whether to issue an equal remuneration order.

² [2022] FWCFB 200, [192].

³ [2022] FWCFB 200, [293], [758].

28 (the **ACT Child Care Decision**).⁴ This involved having regard to the C10 Metals Framework Alignment Approach.

On 23 December 2022, the Full Bench in the Aged Care Case published Background Document 10, which asked a number of questions of the parties relevant to the C10 Metals Framework Alignment Approach.⁵ The Commonwealth's response made a number of observations relevant to this Review.⁶

The Commonwealth's response to Background Document 10 stated that the considerations to be taken into account in step 3 of the C10 Metals Framework Alignment Approach are specific to the circumstances of a particular industry and must be assessed on an award-by-award basis. The Commonwealth submitted that the application of a 'premium' on C10 rates in the context of one award does not, by itself, justify increases to minimum wages in other awards.

This is consistent with the following conclusion drawn by Ross J in his Honour's Statement on Occupational Segregation and Gender Undervaluation issued on 4 November 2022:

*"Although the Commission can vary a modern award on its own motion pursuant to s.157, it is 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."*⁷

The Commonwealth's response to Background Document 10 stated that while the Commission is not bound to use the Manufacturing Award as a benchmark, departing from this traditional approach to wage fixing in this matter could give rise to uncertainty in the absence of a clearly articulated alternative approach.

To the extent the Commission may be minded to consider an alternative to the C10 Metals Framework Alignment Approach for addressing external relativities, the Commonwealth submits that this would require substantial consideration with stakeholders from across all industries being given an opportunity to make submissions. The Commonwealth considers it may not be practical for the Expert Panel to embark on a process of considering alternatives to the C10 Framework Alignment Approach in this year's Review proceedings without adversely affecting the timing of the Annual Wage Review Decision. Future Review proceedings (including a potential s 290 referral by the President) or other avenues under the Act (including those within the competency of the newly-established Pay Equity Panel) may be appropriate mechanisms to consider these questions more fully.

⁴ [2022] FWCFB 200, [960].

⁵ Background Document 10 – Stage 3 Outstanding Issues: <https://www.fwc.gov.au/documents/sites/work-value-aged-care/am202099-63-65-background-doc-no-10-231222.pdf>

⁶ Commonwealth's Response to Background Document 10. <https://www.fwc.gov.au/documents/sites/work-value-aged-care/am202099-63-65-sub-cth-070323.pdf>

⁷ Fair Work Commission, President's statement: Occupational segregation and gender undervaluation (4 November 2022), [16].

Average quarterly growth

Quarter	Award	EBA	Individual arrangements
2012q4	0.241455082	0.637424726	0.753499218
2013q1	0.262254856	0.743005576	0.483792877
2013q2	0.038161105	0.490564434	0.548594981
2013q3	1.991281644	0.988177417	0.771904939
2013q4	0.276315124	0.676581921	0.464219514
2014q1	0.394193797	0.922003816	0.508156269
2014q2	0.040373243	0.380791496	0.420183515
2014q3	2.117221415	0.850699417	0.773327105
2014q4	0.14916772	0.666903404	0.50424246
2015q1	0.234927219	0.660769015	0.299894201
2015q2	0.053519906	0.395227323	0.396181348
2015q3	1.873010711	0.966510158	0.639834209
2015q4	0.120076679	0.450433241	0.445871915
2016q1	0.201839478	0.589655352	0.268316122
2016q2	0.036862854	0.333253051	0.407224821
2016q3	1.813779932	0.85371791	0.502579232
2016q4	0.155054826	0.520233156	0.301188145
2017q1	0.221448747	0.567005248	0.345146809
2017q2	0.040912956	0.333797342	0.397768305
2017q3	2.344309011	0.798904527	0.630906853
2017q4	0.176500135	0.570636529	0.384544245
2018q1	0.312167362	0.507123753	0.336959232
2018q2	0.13571332	0.359827989	0.518092794
2018q3	2.508335242	0.933724068	0.687105616
2018q4	0.24404542	0.594353963	0.501407864
2019q1	0.302631807	0.529375428	0.366474182
2019q2	0.058535465	0.511282114	0.420565588
2019q3	2.394585622	0.79922985	0.688460518
2019q4	0.101220335	0.426199605	0.505666433
2020q1	0.304622713	0.574788453	0.326246358
2020q2	0.078730963	0.339165514	-0.223242169
2020q3	0.429877795	0.569902857	0.357238471
2020q4	0.442585235	0.364634494	0.578927667

Average through-the-year growth

Award	EBA	Individual arrangements
2.625932693	3.41451931	3.538682938
2.737251282	3.200511694	3.162043095
2.675274849	3.064208746	2.872395039
2.544785023	2.889306068	2.58211112
2.580446005	2.929339409	2.287581205
2.715435505	3.112222433	2.312381983
2.717706919	2.999585629	2.181717873
2.844543695	2.859369516	2.183160067
2.714139938	2.849481106	2.223867655
2.551192999	2.58325696	2.012050629
2.564669609	2.598009586	1.987667918
2.319388628	2.71582675	1.852566361
2.289667368	2.494950771	1.793412805
2.255901337	2.42254138	1.76136446
2.238877535	2.359315634	1.772558093
2.179434061	2.244967222	1.633758307
2.21513176	2.31601429	1.487363458
2.23513484	2.292975426	1.565128207
2.239274025	2.293530226	1.555562735
2.77202034	2.237934351	1.685234785
2.794025898	2.289199114	1.769741178
2.887073278	2.228292227	1.761437297
2.984570742	2.254814386	1.883396149
3.149622917	2.391581059	1.940294385
3.219172955	2.415727854	2.058969259
3.209361076	2.438402176	2.088990688
3.129814148	2.592993021	1.989939332
3.015374899	2.456287861	1.991311669
2.868601322	2.285021067	1.995633364
2.870643139	2.331227303	1.954752564
2.891406298	2.155994177	1.301108956
0.917165697	1.923580408	0.967871606
1.261313081	1.861097336	1.041469693

2021q1	0.969848687	0.495979498	0.449056157	1.932883978	1.781280518	1.165155053
2021q2	0.076909419	0.239052583	0.400403893	1.931028605	1.679728627	1.797479153
2021q3	1.440969869	0.799465453	0.868488282	2.957233667	1.911824584	2.316066027
2021q4	0.816914826	0.551083585	0.63404679	3.340934992	2.10114789	2.37213707
2022q1	0.091412441	0.55045223	0.575045001	2.441870213	2.156490803	2.500537872
2022q2	0.015302737	0.5048116	0.733228302	2.378807783	2.427333355	2.840324163
2022q3	3.464835923	0.969414562	1.507467175	4.421384811	2.600027084	3.491794348
2022q4	0.963113815	0.750264763	0.84611969	4.57281065	2.803267002	3.709889412

Note:

- the quarterly variables are the average quarterly movements of that method of setting pay, not quarterly index movements
- the through-the-year variables are the average through the year movements, not index movements