



Summary of Decision

Annual Wage Review 2022-2023

C2023/1

[2023] FWCFB 3501

Introduction

[1] In the annual wage review (Review) conducted pursuant to s 285 of the *Fair Work Act 2009* (Cth) (FW Act), the Fair Work Commission (Commission) is required to:

- review, and make, the national minimum wage (NMW) order; and
- review modern award minimum wages, and may vary modern awards to change or revoke modern award minimum wages.

[2] The Commission must be constituted by an Expert Panel (Panel) for the purpose of conducting a Review and making a NMW order or a determination in the Review. The FW Act requires the Panel to take into account specific considerations in conducting the Review in respect of the NMW. These are set out in s 284(1) of the FW Act and, in relation to modern award minimum wages, also in s 134(1) of the FW Act. The Panel is also required to take into account the object of the FW Act in s 3. Important amendments have been made to ss 3, 134(1) and 284(1) of the FW Act by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (Amending Act) requiring the Panel to give greater emphasis to the issues of gender equality and job security.

[3] The NMW order applies only to persons in the national industrial relations system who are not covered by a modern award or an enterprise agreement. The NMW order sets the NMW, special NMWs applying to employees who are juniors, to whom training arrangements apply and persons with disability, and the casual loading for employees who are award/agreement free. The NMW order does not apply to employees covered by a modern award or enterprise agreement and the NMW does not set a floor for minimum wage rates in modern awards.

[4] There are 121 modern awards which apply to employees in the national industrial relations system in various industries and occupations. There are also a small number of modern enterprise awards which apply to specific business enterprises. Each modern award sets minimum wage rates for employees working in the industry, occupations or enterprise covered

by the award. These are usually expressed as yearly, weekly and/or hourly rates for specific work classifications.

[5] The Panel has emphasised in its decision that the direct effect of the Review upon the Australian employee workforce is limited. The NMW only applies to a very small proportion of the workforce: only 0.7 per cent of employees are paid the NMW. Approximately 20.5 per cent of employees are paid in accordance with minimum wage rates in modern awards. There are some additional categories of employees who are also affected by the Review in a less direct way by Review outcomes being ‘flowed on’ by various means. However, these categories of employees are small in number. The Panel’s decision will therefore operate upon the wages of about a quarter of the Australian employee workforce.

[6] The Panel also noted that the characteristics of the workforce which rely on modern award minimum wage rates and are thus directly affected by the Review decision, are significantly different to the workforce as a whole. They predominantly work part-time hours, are predominantly female, and almost half are casual employees. They are also much more likely to be low paid, paid junior rates, and work for a small business. The characteristics of part-time hours and low (or lower) pay further restrict the broader economic effect of Review decisions. Research for this Review calculated that the total wages cost of the modern award-reliant workforce constitutes about 11 per cent of the national ‘wage bill’, and the wage increases awarded in the 2021-22 Review decision directly contributed less than 10 per cent of the total wages growth for calendar year 2022. Furthermore, the modern award-reliant workforce is predominantly employed under a relatively small number of modern awards covering specific industries or occupations, so that the effect of the Review decision differs markedly between industry sectors.

[7] The Panel has consulted with a range of stakeholders, including peak councils (the Australian Chamber of Commerce and Industry, the Australian Council of Trade Unions (ACTU) and the Australian Industry Group), registered employer and employee organisations, other employment groups, individual employers and employees, the Australian Government and State governments. Each of these have been given the opportunity to make written submissions and submissions in reply in accordance with s 289 of the FW Act, and to make oral submissions at a hearing conducted on 17 May 2023.

[8] A number of parties advanced specific proposals for wage adjustments, which are summarised in the decision. However, the Panel emphasised that the Review process is not one of adjudication between competing proposals. While the Panel has taken the submissions made into account, ultimately its statutory task is to make its own assessment of what constitutes a safety net of fair minimum wages having regard to the prescribed considerations.

[9] The Panel said that the current combination of economic circumstances, namely low unemployment, falling real wages and high inflation, is very unusual and presents a particular challenge in this year’s Review. A further challenge is the expected sharp slowdown in economic growth over the next year.

[10] In its consideration, the Panel has placed significant weight on the impact of the current rate of inflation on modern award-reliant employees. The Panel found that the decline in real wages amongst the modern award-reliant has had significant adverse effects on the low paid,

causing a decline in living standards, financial pressure on households and, for some household types, a likely incapacity to meet basic budgetary needs. Because of the make-up of the modern award-reliant cohort, these adverse effects of the high rate of inflation will have disproportionately affected female employees and employees in less secure employment.

[11] While inflation has been stronger and more persistent than forecast, the Panel concluded that there was no evidence in Australia of a wage-price spiral *despite* a very tight labour market. Increases in award minimum wage rates have had only a modest impact on the WPI, contributing 8.1 per cent of the increase in the WPI. This is consistent with the evidence showing that the wages of modern award-reliant employees constitute around 11 per cent of the aggregate wage bill. The Panel was unaware of any concrete evidence that increases to modern award minimum wage rates have had a material spillover impact on pay-setting behaviour for those whose pay is set by enterprise agreements or individual negotiation. The Panel's view was that pay in these settings is largely determined by prevailing labour market conditions. In circumstances where labour market conditions appear to be softening, the Panel does not foresee any broader consequences for nominal wages growth arising from its decision.

[12] The Panel's decision has been made in advance of the release of the March quarter 2023 set of National Accounts; however, a range of indicators point to a slowing of economic activity since the start of this year. This includes falling retail sales volumes, a decline in new dwelling investment, and deteriorating business conditions and consumer sentiment. Official forecasts by both the RBA and the Australian Government are for economic growth to slow substantially in 2023-24 to 1.4 per cent and 1.5 per cent, respectively, well below long-run trend levels. As the population is forecast to grow by more than that, the inference is that living standards are likely to fall.

[13] Consistent with the slowing in economic activity, the Panel noted there are indications that the labour market is at a turning point. The number of job vacancies came close to matching the number of unemployed persons in mid-2022 but have since fallen. Forecasts by the RBA and in the Budget are for employment growth to fall to around 1 per cent over 2023-24 and for the unemployment rate to increase to around 4.2 per cent by this time next year and settle around 4.5 per cent beyond that. The participation rate is also expected to ease somewhat. However, this forecast deterioration in the labour market needs to be seen in the longer-run context: prior to 2021, the unemployment rate had not been below 5 per cent on a sustained basis since the 1970s.

[14] The Panel also acknowledged that gender pay gaps remain a significant issue in the Australian labour market. The issue of any gender pay gap amongst modern award-reliant employees, and the associated issue of potential gender undervaluation underlying modern award minimum wage rates applying to female-dominated industries and occupations, are capable of being addressed by this Panel, but a further body of research and evidence must be undertaken to permit this to occur. The Commission is undertaking research that will identify occupations and industries in which there is gender pay inequity and potential undervaluation of work and qualifications. Once completed this research will underpin the consideration and determination of the identified issues. The finalisation of these matters may, depending upon the timing, occur as part of or in association with the 2023-24 Review.

The NMW and modern award minimum wages

[15] The Panel has decided to take two steps in relation to the NMW. *First*, the Panel has decided to end the alignment between the NMW and the C14 wage rate in modern awards – an alignment which has existed since 1997 – noting that there is no requirement in the FW Act for the NMW to align with the lowest modern award adult rate, nor does the NMW operate as a floor to modern award minimum wage rates. The C14 rate is the lowest modern award minimum wage rate but was only ever intended to constitute a transitional entry rate for new employees. As such, the Panel determined that it does not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment. *Second*, the Panel has decided to further increase the rate of the NMW by 5.75 per cent having regard to current circumstances relevant to the considerations in s 284(1). These increases will take effect from the first full pay period on or after 1 July 2023. Having regard to the negligible proportion of the workforce to which the NMW applies, the Panel considered that the outcome will not have discernible macro-economic effects.

[16] The Panel has also decided to increase all modern award minimum wage rates by 5.75 per cent, effective from the first full pay period on or after 1 July 2023. In determining this amount, the Panel has placed significant weight on the impact of the current rate of inflation on the ability of modern award-reliant employees to meet their basic financial needs. Inflation is reducing the real value of these employees' incomes and causing households financial stress.

[17] The Panel also considered the recent robustness of the labour market, and the fact that increases to modern award minimum wage rates will provide a disproportionate benefit to female workers and may contribute to narrowing the aggregate gender pay gap.

[18] Moderating factors that the Panel have taken into account include the forthcoming increase to the Superannuation Guarantee contributions rate, from 10.5 per cent to 11.0 per cent, the effect that an expected weakening in the labour market may have on casual employees and particular industries which have a higher proportion of modern award-reliant employees, the need to avoid entrenching high inflation expectations by taking a perceived wage indexation approach, and the recent weak performance in productivity growth.

[19] The Panel also took into account that, in the aviation, hospitality and tourism sectors, the 2021-22 Review modern award minimum wage increases were operative from 1 October 2022, not 1 July 2022 as for all other industry sectors.

[20] The Panel considered that the level of wage increase determined is the most that can reasonably be justified in the current economic circumstances. It acknowledged that this increase will not maintain the real value of modern award minimum wages nor reverse the reduction in real value which has occurred over the last two years. The Panel stated that it is desirable that, in the medium to long term, modern award minimum wages maintain their real value and increase in line with the trend rate of national productivity growth. A return to that path is likely to be possible in future Reviews when there is a reversion to a lower inflationary environment and trend productivity growth.

[21] Draft variation determinations and a draft NMW order will be published later this month. Interested parties will be required to submit any corrections or amendments by no later than 4.00 pm (AEST) on 16 June 2023 to awards@fwc.gov.au.

[2023] FWCFB 3501

This statement is not a substitute for the reasons of the Fair Work Commission nor is it to be used in any later consideration of the Commission's reasons.

- ENDS