

**JUNIOR RATES:
APPLICATION**

AM2024/24

RESPONSE

11 July 2025

BUSINESS NSW AND AUSTRALIAN BUSINESS INDUSTRIAL

Business NSW (**BNSW**) is New South Wales' peak business organisation with nearly 100,000 members, spanning most industry sectors and sizes. BNSW is a registered state industrial organisation under the *Industrial Relations Act 1996 (NSW)*, as well as a recognised organisation under the *Fair Work (Registered Organisations) Act 2009 (Cth)*.

Australia Business Industrial (**ABI**) is the industrial relations affiliate of BNSW. ABI is federally registered under the *Fair Work (Registered Organisations) Act 2009 (Cth)* and engages in policy advocacy on behalf of its membership as well as engaging in industrial advocacy in State tribunals and the Federal tribunal.

Introduction

1. On 6 June 2024, the Shop, Distributive and Allied Employees' Association (**SDA**) filed an Application to vary the:
 - (a) the General Retail Industry Award 2020 (**GRIA**)(MA00004);
 - (b) the Fast Food Industry Award 2020 (**FFIA**) (MA00003); and
 - (c) the Pharmacy Industry Award (**PIA**) (MA00012).

(the Awards, which are subject to the SDA Application)
2. BNSW-ABI has membership in each of the three Awards, with its primary interest in the GRIA and the FFIA.
3. The SDA Application seeks to vary 'junior rates' in the Awards in two ways:
 - a) firstly, it seeks to remove junior rates in the Awards for all employees aged 18 and over; and
 - b) secondly, it seeks to increase rates in the Awards for employees aged under 16 and employees aged 17.
4. The SDA filed its materials on 6 November 2024 and those materials were made available to parties in the proceedings by 5 February 2025.
5. This submission provides an outline of BNSW-ABI's response to the SDA Application.

Summary of BNSW-ABI's Position

6. BNSW-ABI's position can be summarised as follows:

- a) Junior rates are lawful, legitimate and specifically required by the *Fair Work Act 2009* (Cth) (**Act**).
- b) The Fair Work Commission (**FWC**) is required to provide a '*comprehensive range of fair minimum wages to junior employees*'.¹
- c) 21 years of age (rather than 18) is the appropriate and prevailing threshold for junior rates. If this is to change, it is a question for the legislature.
- d) Junior rates have long been accepted by industrial tribunals and the rationale and justification for junior rates remains relevant in 2025, particularly in industries where large amounts of juniors are employed.
- e) Junior rates have been, and can continue to be, justified on work value grounds related to the work performed by junior employees.
- f) Junior rates serve a vital social objective of incentivising employers to engage young workers who would otherwise struggle to compete with more experienced older workers in the labour market.
- g) Acceptance of the SDA Application will *significantly* increase pay rates for most employees receiving junior rates, particularly 17, 18 and 19 year olds.
- h) Acceptance of the SDA Application will remove the primary incentive to engage young people and this will lead to employers engaging less junior employees.
- i) Acceptance of the SDA Application will lead to employers modifying their rostering practices to align with the varied rate arrangements. Removing or significantly decreasing incentives to engage juniors will adversely affect juniors' work opportunities.
- j) The large proportion of junior employees in the FFIA and GRIA particularly will mean that the removal or increase of junior rates will have significant cost implications for employers and those industries more broadly.
- k) The large proportion and number of junior employees in the FFIA and GRIA will mean that any adverse employment effects on junior employees in these industries will have a material impact on employment opportunities for young people generally.

¹ See s 284(1)(e) of the Act.

Background

7. The issues raised by the SDA in these proceedings are not new.
8. The SDA Application is made against a backdrop of a *long* history of industrial tribunals regulating junior rates of pay.
9. A review of this history (including the material identified in the SDA Submission) confirms that industrial tribunals and the legislature in Australia have historically retained and endorsed the existence of junior rates.
10. A relatively comprehensive artefact of that history is the report (**Report**) prepared by the Australian Industrial Relations Commission pursuant to s 120B of the *Workplace Relations Act 1996* (Cth) following its inquiry into junior rates of pay in 1998–1999 (the **Inquiry**).
11. The Report was tabled in Federal Parliament on 24 June 1999. The purpose of the Inquiry was to assist the debate regarding the content of junior pay legislation and in particular to report on the feasibility of replacing junior rates.
12. These submissions commence with reference to the Inquiry and the Report because, in the submission of BNSW-ABI, the underlying purpose, rationale and utility of junior rates in 2025 remains as it was in the late 1990s.
13. The Inquiry examined the utility of junior rates, the consequences for youth employment of abolishing junior rates and the desirability and feasibility of replacing junior rates with non-discriminatory alternatives (i.e. alternatives based on something other than age progression). While this is not precisely the task facing this Full Bench, the nature of the exercise to set a fair and relevant safety net means that this Full Bench must have regard to the utility of junior rates, the role junior rates play in broader economy and the significant role junior rates play in development of young Australians.
14. Notwithstanding some variation in the legislative background, most of the considerable challenges faced by the Full Bench in these proceedings are all identified in the Report.
15. The Report referred to the history of junior rates in the following way:

... Age has been a wage reference for young people since before the advent of formal processes of conciliation and arbitration. From the 1960s to the present, the basis of the Commission's approach to the fixing of junior rates has been that of case by case. Inherent in that approach are the concepts of needs, work value and allocation of employment. The levels of youth employment have become a recurring factor. In keeping with social changes, needs, a concept influential at the beginning of the era, has come to be overshadowed by considerations of internal award relativity between entry level and training

contract classifications and application of the work value concept. Since 1985, national wage benches have generally confirmed the case by case approach as a form of response to general issues about junior rates raised by the parties. An exception to that approach in 1994 resulted in the adoption of the National Training Wage.²

16. Whilst the Full Bench was not required to make specific conclusions or recommendations, it supported the use of junior rates of pay by saying that such rates were simple to understand and administer and played a useful role in the youth labour market. The Full Bench noted that employment for youth is relatively scarce, increasingly casual and part-time, fragmented and dependent upon retail and service industries³ and commented that:

Well designed junior rate classifications, framed to reduce capacity to exploit the use of them, may justifiably be used for creating or protecting employment opportunities for young employees.⁴

17. In relation to junior rates of pay, the Full Bench said:

It is almost common ground, and it is also our assessment, that some degree of discounted pay rate for entry level work continues to be necessary. It seems needed, at least as an equal opportunity measure, in the areas in which employment under junior rate classifications is most concentrated. It is probably necessary also as a reflection of the 'true value' of the work to the employer, taking account of maturation factors.⁵

18. In relation to the effect of 'abolishing junior rates', the Full Bench said:

An effective removal and non-replacement of the existing discounts for age against adult wages would involve significant relative adjustments of some rates and especially the more heavily discounted rates. Some adjustments would be of a dimension that would result in significant disemploying effects for the corresponding class of employees now in receipt of junior rates, or to be in receipt of the substituted pay rates.⁶

19. BNSW-ABI consider that these findings remain sound and relevant.

² at Page.x, para [5](ii).

³ at Page.xiii, para [8](i).

⁴ at Page.xvi, para [9](v).

⁵ at Page 140, [4.4.4].

⁶ at Page xiv at (iv).

20. Despite changes in the detail of the legislation, the broad acceptance of distinct rates payable to workers under 21 years has also been endorsed by the FWC within the scope of the Act including as follows:⁷

[103] We consider that the rationale for junior rates of pay remains relevant and that discounted rates continue to be justified. This is particularly so in the retail industry given the large number of juniors who are employed in it.

[104] The productivity of young workers and value to employers being less than that of adult employees has been long accepted by Federal and State industrial tribunals. Junior rates reflect the general lack of experience of young employees and can act as an incentive or encouragement to employers to engage young persons, thereby allowing young persons to get a start or foothold in employment when they might otherwise struggle to compete against older applicants. Further, it is generally the case that the engagement of young persons will be associated with additional costs to the employer because of training and supervision needs.

21. Again, BNSW-ABI submits that the above remains true.

22. To the extent that the SDA intends to suggest that previous FWC Full Benches have erred in retaining junior rates, BNSW-ABI supports the previous views of the FWC.⁸

23. Outside the industrial tribunal space, the Productivity Commission in 2015⁹ also made a series of relevant findings:

Junior pay rates

- *Lower minimum pay rates for juniors should be retained given the risks to employment from raising wages. These risks are particularly steep for those who are not as productive as others and whose lifelong job prospects rely on early job experience.*

.....

Juniors' involvement with the labour market differs in some ways from that of adult workers. Many juniors live at home, are supported by their parents, and do not have dependents of their own. Many juniors (although again not all) have the discretion not to earn an income or may only work as a (part-time) adjunct to other activities, such as school or further education.

⁷ *Application by Shop Distributive and Allied Employees Association (SDA) [2014] FWCFB 1846 (21 March 2014) from [103].*

⁸ As dealt with later in these submissions, there does not appear to be any suggestion by any party that there has been a relevant change in the relevant work.

⁹ Productivity Commission, *Workplace Relations Framework* (Inquiry Report No 76, 30 November 2015).

....

Junior pay rates can also indirectly affect some people's long-term job prospects. If junior wage rates are high, they increase the willingness of young people to search for jobs (the supply side), but discourage employers from hiring them (the demand side). Excessively high wage rates are most likely to affect the least productive of young employees, and may be particularly adverse for those young people who relinquish education or for whom education produces lower returns. There is evidence that young people who have been unemployed find it harder to obtain steady work compared with those who have been working (Richardson 2002). Unemployment for these groups of the young is particularly problematic because holding down a job early can be a 'stepping stone' to employment in adulthood. Working can develop people's work-related knowledge, skills and habits, and signal general work aptitude to prospective employers.

.....

Across the Tasman, a series of significant changes to New Zealand's junior pay scales during the 2000s have provided useful experiments that have been studied by economists (box 5.5). While the picture is somewhat complicated, it appears that increasing the rates payable to juniors had some disemployment effects. The New Zealand evidence also suggests that increases in youth wages may also have enticed some juniors away from schooling (although whether that is an adverse outcome would require follow-up evidence on its long-run effects)

.....

The Productivity Commission sees good reasons for retaining some form of discounted wages for young workers. While there will be exceptions, young workers are likely to be less productive than adults. Without the scope for wage differences, employers would have a greater tendency to select only the most able juniors (who are the least likely to benefit from early job experience, as they intend to move onto subsequent study and higher-skilled jobs) or to employ adults. In effect, without discounted rates, many young workers would be priced out of the labour market, foregoing the benefits that some early employment, even if on a part-time basis, can bring. The net impact on overall employment is hard to estimate, but it is possible that discounted junior rates make viable some economic activities that could not proceed at adult rates. In light of this, consideration could be given to including junior pay rates in awards which currently do not have them.

....

Against this background, the Productivity Commission does not concur with an argument, put by the ACTU, that because the community treats people as adults when they turn 18 years they should be paid 'adult' rates from that time.

24. These sources, amongst others, suggest that these proceedings occur within a context where junior rates have consistently been found to represent a lawful and useful age-based distinction, serving a legitimate and well-recognised purpose. The considerable history of review and consideration of junior rates in the above processes (amongst others) also serves to cut against the proposition put by the SDA in its submissions that the acceptance and justification of junior rates '*has never been thoroughly reviewed in Australia*'.¹⁰

25. In the context of the appropriately conservative and incremental field of minimum wage adjustment (including through the AWR process) and given the prevailing text of the Act; the proposal of the SDA represents a radical departure from a long standing practice.

The Legislative Context

26. The Act presently:

- a) requires the FWC to '*establish and maintain a safety net of fair minimum wages, taking into account... providing a comprehensive range of fair minimum wages to junior employees...*';¹¹
- b) provides for the making of special national minimum wage orders for junior employees;¹² and
- c) provides that a term of a modern award or an enterprise agreement will not be taken to discriminate against an employee merely because it provides wages for junior employees or a class of junior employees.¹³

27. A 'junior employee' is defined to be a national system employee who is under 21 years of age.¹⁴

28. The minimum wages objective is set out as follows:

What is the minimum wages objective?

(1) The FWC must establish and maintain a safety net of fair minimum wages, taking into account:

(a) the performance and competitiveness of the national economy,

¹⁰ See SDA Submissions at [3].

¹¹ See s 284(1)(e) of the Act.

¹² See s 294(1) of the Act.

¹³ See ss 153(3) and 195(3) of the Act.

¹⁴ See s12 of the Act.

including productivity, business competitiveness and viability, inflation and employment growth; and

(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; and

(b) promoting social inclusion through increased workforce participation; and

(c) relative living standards and the needs of the low paid; and

(e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.

When does the minimum wages objective apply?

(2) The minimum wages objective applies to the performance or exercise of:

(a) the FWC's functions or powers under this Part; and

(b) the FWC's functions or powers under Part 2 - 3, so far as they relate to setting, varying or revoking modern award minimum wages.

Note: The FWC must also take into account the objects of this Act and any other applicable provisions. For example, if the FWC is setting, varying or revoking modern award minimum wages, the modern awards objective also applies (see section 134).

Meaning of modern award minimum wages

(3) Modern award minimum wages are the rates of minimum wages in modern awards, including:

(a) wage rates for junior employees, employees to whom training arrangements apply and employees with a disability; and

....

Meaning of setting and varying modern award minimum wages

(4) Setting modern award minimum wages is the initial setting of one or more new modern award minimum wages in a modern award, either in the award as originally made or by a later variation of the award. Varying modern award minimum wages is varying the current rate of one or more modern award minimum wages.

29. The relevant power of the Full Bench in these proceedings is set out in s 157 of the Act:

(2) The FWC may make a determination varying modern award minimum wages if the FWC is satisfied that:

(a) the variation of modern award minimum wages is justified by work value reasons; and

(b) making the determination outside the system of annual wage reviews is necessary to achieve the modern awards objective.

Note: As the FWC is varying modern award minimum wages, the minimum wages objective also applies (see section 284).

(2A) Work value reasons are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

(a) the nature of the work;

(b) the level of skill or responsibility involved in doing the work;

(c) the conditions under which the work is done.

(2B) The FWC's consideration of work value reasons must:

(a) be free of assumptions based on gender; and

(b) include consideration of whether historically the work has been undervalued because of assumptions based on gender.

(3) The FWC may make a determination or modern award under this section:

(a) on its own initiative; or

(b) on application under section 158.

30. The operation of the Act in relation to work value reasons has had significant recent consideration in the context of the 'gender undervaluation' proceedings.

31. These proceedings have confirmed that s157(2A) of the Act does not contain any requirement that the 'work value reasons' consist of identified changes in work value measured from a fixed datum point. However, in order to ensure there is no 'double counting', it is likely the Commission would adopt an appropriate datum point from which to measure work value change, where the work has previously been properly valued.¹⁵

32. Those proceedings also confirmed that s 157(2A) does not incorporate the test which

¹⁵ See [2022] FWCFB 200 at [170].

operated under wage fixing principles of the past, being that the change in the nature of work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification.¹⁶

33. In the context of junior rates, the assessment of the Full Bench will presumably focus on the % step increments by age scale as opposed closely examining the underlining classification rates.
34. This make this case different from recent work value proceedings which were focused on the underlying rates provided by certain modern awards.
35. In the submission of BNSW-ABI, for reasons including the relevant arbitral history¹⁷, there is no basis to suggest that relevant work under the Awards has not been previously properly valued, or that the % step increments should be varied.
36. Neither is it apparent (nor is it argued) that there has been a *change* in work value of the relevant work from some fixed datum point.
37. The SDA submissions at [3] state:

There can be little doubt that the age of 21 was adopted as the age to move from junior pay to adult pay (the 'exit age') by the same historical accident. Its acceptance and justification has never been thoroughly reviewed in Australian industrial jurisprudence, unlike, for example, "female rates" during the equal pay campaign. There is still no magic to the age of 21 years.

38. For the purposes of these proceedings, there is no need to identify a supernatural source for the identification of 21 as the appropriate age for junior rates. For present purposes, the source is far more mundane.¹⁸
39. The existence (and maintenance) of the statutory definition of a junior employee being an employee under 21 years of age significantly undermines the central basis of the SDA's case; that there is something industrially significant about the age of 18.
40. Legislatively, employees under 21 years of age *are* junior employees. The FWC has a responsibility under section 284(1)(e) of the Act to establish and maintain a safety net of minimum wages, taking into account the provision of a **comprehensive** range of such wages for junior employees and others.
41. While we do not go so far as to suggest that this requires the Commission to set different rates for *all* employees under 21 years of age, it provides a compelling reason to doubt the SDA's attempt to make 'equal pay' for all 18+ employees a self-evident proposition.

¹⁶ See [2022] FWCFB 200 at [155]-[163].

¹⁷ Including consideration of an application to remove Junior rates in the retail award as recently as [2020] FWCFB 6301.

¹⁸ See s 12 of the Act.

42. Of course, should the legislature seek to change the definition of a junior employee in the Act (as the legislature did with respect to the ‘age of majority’ as noted by the SDA Submissions at [2]), it would be a straightforward exercise to replace the number ‘21’ with the number ‘18’.
43. That change has not occurred.
44. Further, the existence of junior rates is expressly contemplated and permitted by both the Act and age discrimination legislation. Section 25 of the *Age Discrimination Act 2004* (Cth) states that differential treatment on the basis of age is not unlawful where it is authorised by a Commonwealth law; which includes the Act.
45. These provisions reflect the long-standing recognition by the contemporary Australian Parliament that junior wage rates are not a discriminatory relic of a bygone and prejudiced era (as appears to be the inference of the SDA submissions), but rather serve a legitimate and contemporary function and are worthy of retention.

The SDA Application

46. Each of the Awards currently provides for junior rates for employees under the age of 21. The current junior rates for each of the Awards are substantially the same.
47. Mirroring the Act, each Award defines ‘junior employee’ as an employee of less than 21 years of age (GRIA, clause 2; FFIA, clause 2; PIA, clause 16.2).¹⁹
48. The SDA seeks a variation of the tables which set out junior rates in each of the Awards so that, ultimately, employees 16 years of age and under are paid at the rate of 50% of the adult rate, employees 17 years of age are paid at 75% of the adult rate and employees 18 years of age and over are paid at the full adult rate.
49. If accepted, the variations will **considerably** increase junior rates in the Awards.
50. It is not apparent whether the *intent* of the proposals is to remove incentives to employ junior employees under the Awards in order to reduce the proportion of junior employees engaged under the Awards.
51. Our calculations suggest that the variations will result in the following increases (by way of indicative example, we have used the Level 1 casual rate by way of demonstration):

¹⁹ We note here that the granting of the SDA Application would likely warrant at least *consideration* of the variation of the definition of ‘junior employee’ in each of the Awards – noting the redundancy of identifying a requirement to pay 100% of the adult rate for 18, 19 and 20 year olds. A subsequent misalignment between the statutory definition of junior employee and the definition in the Awards would potentially be a further source of confusion tending against the granting of the Application.

GRIA

Current Permanent Adult Level 1 Rate = \$26.55								
Junior Wage Bracket	Current % of Adult Rate	Current Junior Casual Award Rate	Current Junior Permanent Award Rate	Proposed % of Adult Rate	Proposed Junior Casual Award Rate	Proposed Junior Permanent Award Rate	\$ Difference between current and proposed Junior Casual Rates of Pay	% Difference between current and proposed Junior Casual Rates of Pay
Under 16 years of Age	45%	\$14.94	\$11.95	50%	\$16.59	\$12.83	\$1.65375	11.07%
16 years of Age	50%	\$16.60	\$13.28	50%	\$16.59	\$12.83	No Change	No Change
17 years of Age	60%	\$19.91	\$15.93	75%	\$24.89	\$19.24	\$4.980625	25.02%
18 years of Age	70%	\$23.24	\$18.59	100%	\$33.19	\$25.65	\$9.9475	42.80%
19 years of Age	80%	\$26.55	\$21.24	100%	\$33.19	\$25.65	\$6.6375	25%
20 years of age and employed by the employer for 6 months or less	90%	\$29.88	\$23.90	100%	\$33.19	\$25.65	\$3.3075	11.07%
20 years of age and employed by the employer for more than 6 months	100%	\$33.19	\$26.55	100%	\$33.19	\$25.65	No change	No Change

52. As is apparent in the above table, the most significant increases sought by the Application in relation to the GRIA apply to 17, 18 and 19 year olds with 25%, 42% and 25% increases respectively. The 11% increases to 20 year olds at the start of their employment and under 16 year olds are also material.

53. On any view, these are significant increases.

FFIA

Current Permanent Adult Level 1 Rate = \$26.55									
Junior Wage Bracket	Current % of Adult Rate	Current Junior Casual Award Rate	Current Junior Permanent Award Rate		Proposed % of Adult Rate	Proposed Junior Casual Award Rate	Proposed Junior Permanent Award Rate	\$ Difference between current and proposed Junior Casual Rates of Pay	% Difference between current and proposed Junior Casual Rates of Pay
Under 16 years of Age	40%	\$13.28	\$10.62		50%	\$16.59	\$13.28	\$3.31	24.9529%
16 years of Age	50%	\$16.60	\$13.28		50%	\$16.59	\$13.28	No Change	No Change
17 years of Age	60%	\$19.91	\$15.93		75%	\$24.89	\$19.91	\$4.98	25.02%
18 years of Age	70%	\$23.24	\$18.59		100%	\$33.19	\$26.55	\$9.95	42.80%
19 years of Age	80%	\$26.55	\$21.24		100%	\$33.19	\$26.55	\$6.64	25%
20 years of age	90%	\$29.88	\$23.90		100%	\$33.19	\$26.55	\$3.31	11.07%

54. As is apparent in the above table, the most significant increases sought by the Application in relation to the FFIA apply to under 16s, 17, 18 and 19 year olds with 25%, 25%, 42% and 25% increases respectively. The 11% increase to 20 year olds at the start of their employment is also material.

55. On any view, these are significant increases.

PIA

Current Permanent Adult Level 1 Rate = \$26.55								
Junior Wage Bracket	Current % of Adult Rate	Current Junior Casual Award Rate	Current Junior Permanent Award Rate	Proposed % of Adult Rate	Proposed Junior Casual Award Rate	Proposed Junior Permanent Award Rate	\$ Difference between current and proposed Junior Casual Rates of Pay	% Difference between current and proposed Junior Casual Rates of Pay
Under 16 years of Age	45%	\$14.94	\$11.95	50%	\$16.59	\$13.275	\$1.65	11.07%
16 years of Age	50%	\$16.6	\$13.28	50%	\$16.59	\$13.275	No Change	No Change
17 years of Age	60%	\$19.91	\$15.93	75%	\$24.89	\$19.9125	\$4.98	25.02%
18 years of Age	70%	\$23.24	\$18.59	100%	\$33.19	\$26.55	\$9.95	42.80%
19 years of Age	80%	\$26.55	\$21.24	100%	\$33.19	\$26.55	\$6.64	25%
20 years of age	90%	\$29.88	\$23.90	100%	\$33.19	\$26.55	\$3.31	11.07%

56. As is apparent in the above table, the most significant increases sought by the Application in relation to the PIA apply to 17, 18 and 19 year olds with 25%, 42% and 25% respectively. The 11% increases to 20 year olds at the start of their employment and under 16 year olds are also material.

57. On any view, these are significant increases.

Evidence from Employers

58. BNSW-ABI understands that the Full Bench will be provided with evidence from individual employers of junior employees and by industry-specific employer associations.
59. This evidence can be taken to reflect the position of the BNSW-ABI membership.
60. We understand that this evidence will develop a position that employers:
- a) who engage junior employees play an important societal role in providing work opportunities, mentorship, training and experience for young people;
 - b) currently engage junior employees for reasons which no doubt include the cost advantages of engaging employees on lower rates;
 - c) experience specific challenges in relation to the engagement of junior employees generally which are different from older employees;
 - d) will experience financial impacts should the SDA Application be granted;
 - e) will be less likely to engage junior employees or otherwise will update rostering practices should the SDA Application be granted; and
 - f) consider the practical effect of granting the SDA Application will be to hurt junior employees, particularly 17, 18 and 19 year olds.
61. Aside from the public utility of junior rates, consistent feedback from BNSW-ABI membership is that younger workers *generally* are less mature, less world-wise, less skilled and confident in interacting with a range of customers, clients and staff than older workers. This is not a criticism of young workers but simply an observation about human experience.
62. The reality that younger workers become more productive as they age is recognised by the SDA Application in seeking to retain discounted rates for workers under the age of 18 in a 3 step scale.
63. Given the retention of junior rates, even on the SDA's Application, the question before the Full Bench is a simple one: at what age should junior rates increase?
64. For reasons already articulated, BNSW-ABI suggest the answer to that question is 21.
65. We intend to expand further on these submissions as the proceedings progress.

Initial Analysis of the Employee Evidence

66. The employee evidence of the SDA is yet to be tested.
67. While the SDA has (at least in comparison to the most recent junior rates proceedings in the GRIA) filed numerous witness statements, the nature of the task before the Full Bench means that this material can only take the parties so far.
68. The SDA has advanced evidence from employees who, in their view, perform work equivalent to employees who are not junior employees. It is difficult to argue against the proposition that this would be true in certain individual circumstances. It remains to be seen what the testing of this evidence will bring forward.
69. Evidence of the existence of an 18 year old junior employee (or even a number of junior employees) who performs work equivalent to an employee who was not a junior employee would not, in our submission, warrant the variation of Awards to remove junior rates for 18 year olds on the basis that 'adult work should get adult pay'.
70. For those aged under 18, the situation is slightly different as % *increases* are sought which would still leave those workers earning less than adult wages. This appears to somewhat contradict much of the SDA evidence and submissions which suggests that workers do precisely the same work regardless of age.
71. For those aged under 18, it is not clear in any sense that the SDA material makes out the case to:
 - a) increase the junior rate % by 5% in GRIA and PIA and 10% in FFIA for those under 16;
 - b) increase in junior rate % in the GRIA, PIA and FFIA by 15% for 17 year olds.
72. Even if it could be said that the evidence filed warranted an increase in rates in some form, the precise percentages sought are not quantified or justified in any meaningful way.
73. BNSW-ABI completely accepts that no wage setting exercise is perfect. However, the attempt by the SDA to justify the increases sought for under 16s and 17 year olds appears to be overly convenient to the point of arbitrary.
74. This reasoning (being 'under 16s do the same work as 16s', '17s do almost the same work as 18s' and '18s do the same work as all other adults') appears to be contradicted by the general theme of the evidence of the SDA which unintuitively suggests that all workers regardless of age perform the same work of the same value.
75. In our respectful submission, as it stands currently, the material put forward by the SDA could not provide comfort to the Commission that the long held views of industrial tribunals

(and industrial parties) as to the utility and necessity of junior rates no longer apply.

76. These views include that:

- a) *generally*, productivity of young workers and value to employers is less than that of adult employees, although productivity and value increase with age;
- b) junior employees generally have a lack of experience, which again, increases with age;
- c) junior rates provide an incentive or encouragement for employers to engage young persons, thereby allowing young persons to get a start or foothold in employment when they might otherwise struggle to compete against older applicants; and
- d) *generally*, the engagement of young persons will be associated with additional costs to the employer because of training and supervision needs.

77. We consider that these general propositions will remain intact following the hearing of the totality of the evidence filed in this case.

Initial Analysis of the Expert Evidence

78. The SDA has filed expert reports from Professors O'Brien and Borland.

79. BNSW-ABI's initial response to these reports is as follows.

Professor O'Brien's Report

Dominance of youth employment in the fast-food sector

80. According to Professor O'Brien's analysis, 70% of employees in the Takeaway Food Services sector, which is aligned with the FFIA, are under 21 years of age. This represents 148,744 employees, a substantial majority of the workforce in this industry.

81. Supplementary data provided in the report²⁰ suggests that there are between 802,923 and 1,039,500 employees aged 15 to 20 across Australia, based on estimates from the 2021 Census, the 2023 Characteristics of Employment Survey, and the 2024 Participation, Job Search and Mobility Survey. Using this data, this means that the fast-food sector accounts for between approximately 14.3% and 18.5% of all youth employment in Australia. This highlights the fast-food industry's critical role in offering approximately 1 in 7 early employment opportunities to young people, many of whom are entering the workforce for the first time.

82. Given this concentration, any structural change to wage arrangements for juniors is likely to have a disproportionate impact on junior job opportunities, with even very modest shifts in employment patterns affecting large numbers of those young persons who are in employment. For example, if just 10% of junior roles in fast food were no longer filled with junior workers as a result of changes to wage settings, based on the data in Professor O'Brien's report this would equate to nearly 15,000 lost job opportunities for people under 21.

Turnover an unreliable indicator of profitability

83. Professor O'Brien's report appears to use business turnover as a means of evaluating the profitability of those businesses operating in sectors aligned with the GRIA, FFIA and PIA.

84. In the retail, fast food, and pharmacy sectors, 'turnover' is a particularly blunt and unreliable indicator of actual profitability. While turnover reflects total revenue, it does not account for the costs associated with generating that revenue, nor does it reflect what the business actually retains as profit. In particular, the retail, fast food and pharmacy sectors share structural characteristics that distort the relationship between turnover and profit, including:

- a) high cost of goods sold often with tight or low profit margin;

²⁰ Supplementary question 13 at paragraph 62.

- b) substantial fixed operating costs to cover day to day business operations such as rent, utilities and insurance; and
- c) seasonal or fluctuating trade which can affect cash flow.

85. Consequently, relying on turnover alone, as Professor O'Brien does in his report, tends to present a misleading picture of business profitability.

Disproportionate number of small and micro business employing young workers

86. According to Professor O'Brien's analysis in the retail sector, the largest group of businesses employing workers in roles aligned with the GRIA are microbusinesses with 1 to 4 employees (34.6%), followed by small businesses with 5 to 19 employees (15.4%).²¹ This is the same in the fast food sector, where 40.7% are microbusinesses and 22.3% are small businesses, and in the pharmacy sector; 19.6% microbusiness and 35.2% small businesses.

87. This means that in all three sectors, the dominant share of employing business in Award aligned sectors are small or microbusinesses, which typically operate on smaller margins and have a limited capacity (if any) to absorb wage increases.

Issues with the use of the reports coverage data

88. While the questions posed to Professor O'Brien were directed at identifying the number of employees and businesses covered by the GRIA, FFIA, and PIA, the data presented in his report relies heavily on classifications based on ANZSIC industry and ANZSCO occupation codes to estimate the scope of each award. While this approach may provide a general indication of the size of the relevant industries, it does not establish whether employees are in fact covered by the modern award for the purposes of pay and conditions, or whether they are paid in accordance with the award's terms.

89. By way of illustration, the report estimates that the retail industry comprises 829,427 employees.²² The report then narrows in on youth employment in this industry, stating "*The number of employees aged under 21 years of age engaged in ANZSIC Classes aligned with the GRIA, and in ANZSCO Unit Groups aligned with Levels 1 to 3 of the Award, was 158,873, representing 19.3% of the industry.*"²³ This statement combines the industry classification data with occupational group alignment to estimate the number of young employees in entry-level positions, and could be interpreted as implicitly equating those positions with GRIA junior pay rates. However, no wage data is provided, and no evidence is offered to confirm that these workers are in fact being paid at award rates. In fact if we

²¹ At para 5 and 45.

²² At para 31.

²³ Page 32.

consider just two of the major retail employers in Woolworths and Coles which collectively employ more than 222,000 employees under enterprise agreements²⁴ it can already be concluded that over a quarter (26.76%) of employees in the retail sector are not paid award rates, highlighting the significant limitation in the use of industry classification data as an implicit proxy for actual award application in the report.

90. Given this limitation, the coverage data in the report should be treated as a broad estimate of industry scale at best, and any conclusions that rely on those figures as evidence of actual award application or employee earnings should be given minimal weight.

Professor Borland's Report

91. Professor Borland properly concedes that “*the impact of an increase in the minimum wage on employment is theoretically ambiguous*”.²⁵ However, his report appears not to practically ground those assertions in the Australian context. Instead of drawing on available domestic data or employer-level evidence, Professor Borland relies heavily on international studies, such as those from the United States, New Zealand and Portugal, which operate within different institutional frameworks and wage-setting and fixing mechanisms. The Full Bench should treat these conclusions cautiously given Australia's unique industrial relations system, where junior rates have been a longstanding feature.

92. The Full Bench should instead have regard to several past Australian inquiries that have directly examined the operation and potential abolition of junior wage rates and economic changes in youth employment *in Australia*, including the Inquiry,²⁶ the Productivity Commission's *Youth Wages and Employment* report (1998),²⁷ the 2015 *Workplace Relations Framework* review,²⁸ and the 2020 Productivity Commission report on *Youth Employment*.²⁹ These processes all considered the particular dynamics of the Australian labour market and acknowledged the importance of junior rates in supporting youth employment. Importantly, some of these reports also recognised the long-term scarring effects that underemployment and delayed labour market entry can have on young people, particularly on their lifetime earnings, skill development, and future job prospects. By relying on international precedent, BNSW-ABI suggests that Professor Borland's analysis has overlooked critical context that is central to a fair and evidence-based assessment of junior wage structures in Australia.

²⁴ Woolworths Australian Food Group Agreement 2024; Coles Retail Enterprise Agreement 2024.

²⁵ Jeff Borland, Minimum Wage Rates for Junior Employees: Report Prepared for the Shop, Distributive and Allied Employees' Association (SDA) (Report, 2024) para 21 (**Borland Report**).

²⁶ Australian Industrial Relations Commission, Junior Rates of Pay: Review Under Item 51 of Schedule 5 to the Workplace Relations and Other Legislation Amendment Act 1996 (Print R7371, 1998).

²⁷ Productivity Commission, Youth Wages and Employment (Research Report, March 1998).

²⁸ Productivity Commission, Workplace Relations Framework (Inquiry Report No 76, 30 November 2015).

²⁹ Productivity Commission, Youth Employment: Inquiry into the Economic and Social Implications of Youth Transitions (Research Paper, 10 July 2020).

Impact on the National Economy

93. Professor Borland's report identifies two potential effects of a minimum wage increase: "First, an increase in the minimum wage rate can affect the rates of wage and price inflation in Australia. Second, that impact on inflation can affect other aspects of national economic performance."³⁰ While this acknowledges that inflation influences economic performance through direct and indirect channels, it omits a critical factor in macroeconomic policy, the interaction between wages and productivity.
94. The Reserve Bank of Australia (RBA) has consistently warned that wage growth must be accompanied by productivity improvements to avoid persistently high inflation and to keep growth consistent with the 2–3% inflation target.³¹
95. Professor Borland's report also does not appear to model or assess what happens if junior wage rates are lifted in industries already under margin and productivity pressure (such as retail),³² where businesses have limited capacity to absorb higher costs than the national average.
96. Additionally, the RBA has observed that labour market conditions remain tight, with the unemployment rate steady at around 4.1%. This means that increasing junior pay in a standalone fashion without any adjustments in order to see it accompanied by productivity gains is likely to force employers to have to raise prices to address the increased cost in labour, further contributing to price inflation.

Literature review

97. Professor Borland's literature review provides a brief outline of the potential inflationary effects of minimum wage increases. He acknowledges that there can be both direct effects on wage inflation from those who receive the minimum wage and indirect effects through potential spillovers to other workers.
98. In considering wage spillover effects, Professor Borland's relies on *Deroncourt and Weil (2024)*³³ and *Bassier (2023)*³⁴ as evidence that wage spillover effects may be negligible. These sources examine the effects of voluntary wage floors set internally by large employers in the United States, so-called "*company minimum wages*" rather than changes to statutory or legislated minimum wage rates. These company-specific wage policies are not imposed or enforced by law and apply only within individual businesses, making them more analogous to enterprise agreements in the Australian context than to the regulated

³⁰ Borland Report para 29.

³¹ Reserve Bank of Australia, Statement on Monetary Policy, February 2025.

³² Australian Bureau of Statistics, *Estimates of Industry Multifactor Productivity, 2023–24*, ABS Catalogue No 5260.0.55.002 (22 January 2025)

³³ Deroncourt, Ellora and David Weil (2024), 'Voluntary minimum wages', mimeo.

³⁴ Bassier, Ihsaan (2024), 'Collective bargaining and spillovers in local labour markets', mimeo.

junior rates set by modern awards. The findings in both papers therefore do not provide reliable guidance for predicting the macroeconomic or inter-firm spill over wage effects that might arise from abolishing or materially increasing junior rates under Australia's national industrial relations system.

99. In his analysis, Professor Borland also references international literature from *Dube and Lindner (2024)*³⁵, to support the proposition that increases in minimum wages are commonly associated with increases in output prices, but that these price increases do not significantly reduce consumer demand. Professor Borland cites this literature to support the proposition that wage-driven price increases may not harm business viability.

100. Professor Borland's report overlooks an important macroeconomic finding from *Dube and Lindner* that is directly relevant to the Australian context. Specifically, their review of international evidence which indicates that minimum wage increases may lead to reallocation effects in the labour market, where smaller less productive firms are forced to exit and their workers are absorbed by larger, so called "more efficient" firms:

*Both studies show that in response to minimum wage increases, small, inefficient firms exited the market, and workers at these firms found employment at more productive firms.*³⁶

101. This is a significant negative second-order effect on both small business and consumer choice, particularly in sectors that are already highly concentrated, like fast food, retail, and pharmacy in Australia, which already exhibit significant dominance by large employers, including the supermarket duopolies and large multinational fast food and pharmaceutical chains. The potential for junior wage increases to disproportionately affect small employers forcing them to exit therefore raises concerns not only for employment diversity but also for consumer choice and long-term market competitiveness.

Analysis of economic impact as a result of changes to junior rates in the Awards

102. While Professor Borland asserts that the proposed changes would have a "small" or "miniscule" impact on wage and price inflation, in the submission of BNSW-ABI, this appears to underestimate of the broader economic ramifications of the SDAs proposal.

103. To estimate the impact on wage inflation, Professor Borland adopts a formula based on two components: one, the increase in wage costs in the affected industry, multiplied by the industry's share of total hours worked in the economy; and two, an assumed wage spillover effect to other industries. He applies this same analysis across the each of the

³⁵ Dube, Arindrajit and Attila Lindner (2024), 'Minimum wages in the 21st century', National Bureau of Economic Research, Working Paper no.32878 [Forthcoming in Handbook of Labor Economics, Volume 5].

³⁶ Dube, Arindrajit and Attila Lindner (2024), 'Minimum wages in the 21st century', National Bureau of Economic Research, Working Paper no.32878 [Forthcoming in Handbook of Labor Economics, Volume 5] page 58.

Awards. For GRIA, he estimates a 2.35% increase in wage costs, a 6.1% share of national hours, and a 50% spillover rate, producing a total impact on wage inflation of 0.21% (later corrected from an original estimate of 0.24%). Similarly, for the FFIA, he estimates a total wage inflation impact of 0.20%, and for the PIA, 0.015%. In all three cases, he concludes that the impacts are “*small*” or “*minuscule*.”

104. This conclusion is most unconvincing in the context of the fast-food sector, where the proposed abolition of junior rates according to Professor O’Brien’s analysis (which Professor Borland relies upon) will directly affect 70% of the workforce. It appears implausible to treat the proposal as a marginal or isolated change with limited economic impact on the fast-food sector when it affects the overwhelming majority of workers in that sector. Despite this, Professor Borland estimates the increase in total wage costs in fast food at just 11.8%, and the impact on national wage inflation at only 0.20%.³⁷ These numbers arise as a result of the dilution of the concentrated effect of the wage increase across the whole workforce and then across the entire economy.³⁸ For those employers who have extremely high proportions of junior employees, they will feel the wage costs directly, at a far greater proportion than 11.8%. BNSW-ABI note in any event that an 11.8% increase is still incredibly significant.

105. The formula used by Professor Borland in calculating the impact on the national economy assumes relatively small sectoral shares in national employment and significantly reduced average hours worked across the affected industries. For example, his calculations rely on a 2.1% national employment share for fast food and a 0.52 ratio of average hours worked, while similarly constrained figures are used for retail and pharmacy. However, these estimates are based on data from the 2021 ABS Census, a period severely impacted by COVID-19 lockdowns, mandatory trading restrictions, and mass casual stand-downs. These pandemic-era conditions led to widespread underemployment and typically low workforce participation. The Australian Bureau of Statistics itself has recognised the limitations of the 2021 Census data in that it reflected the disruption of normal working arrangements due to public health restrictions.³⁹ Independent academic research also documented elevated job insecurity and reduced hours across the retail and fast food industries during this period, disproportionately affecting younger frontline and casual workers.⁴⁰ Accordingly, while the figures used by Professor Borland may be statistically accurate for that extraordinary year, using them as the baseline for modelling long-term

³⁷ Borland Report para 95.

³⁸ Borland Report paras 79 – 82.

³⁹ Australian Bureau of Statistics, Employment in the 2021 Census (Article, 30 November 2022) <https://www.abs.gov.au/articles/employment-2021-census>

⁴⁰ University of Sydney and ANU, Pandemic Pressures: Job Security and Customer Relations for Retail Workers, 2021, page 10.

economic effects` appears to be methodologically flawed.

106. Moreover, Professor Borland's calculations assume no behavioural or employment response to the proposed wage increases. Despite recognising variables in his theory, his model for his calculations do not factor in employer responses such as reductions in junior hours, slower hiring, substitution toward older or more productive workers, or increased use of automation. Instead the analysis is static, assuming businesses will simply bear the extra cost without modelling the real-world behavioural responses of employers.

Downplaying the risk of negative employment outcomes for youth workers

107. Professor Borland's analysis does not meaningfully engage with the potential social and economic risks that the removal of junior rates may pose for young workers particularly those aged 17, 18 and 19 who are new to the workforce.

108. In discussing employer responses to wage increases, Borland writes that "*substitution could be: (i) labour-to-labour that is, an employer changes the mix of labour types used in production; or (ii) labour-to-capital that is, the employer increases the amount of capital used*" (para 17). He later explains that where one type of labour becomes relatively more expensive, such as youth workers with higher minimum wages, "*employment of group A will decrease (because it has become relatively more expensive than both other groups)*" (para 27(a)). Despite acknowledging these effects, Borland does not consider how such substitution may result in younger workers being pushed out of entry-level roles in favour of older or adult workers who are perceived as more productive, reliable or cost-effective.

109. In addition, Borland claims that the rise in junior rates may cause businesses to reduce employment to control costs, but then states this is actually a cost-saving strategy: "*When an employer decreases employment in response to an increase in the minimum wage rate this is done because it allows them to produce at lower cost than if they had made no change in employment*".⁴¹ He further explains that in such a case, "*total costs will increase by less than [the] upper bound*". This seemingly circular logic reframes a negative employment effect, being job losses and reduced hours, as a net positive for employer, without any assessment of the broader economic consequences of job losses, reduced hours, or labour force exclusion for young workers.

110. Discussion of labour market displacement, underemployment, or long-term scarring effects on youth earnings also appears to be absent from Professor Borland's assessment. His analysis is narrowly focused on employer economic impacts, overlooking the potential intergenerational consequences of removing junior rates for younger workers in the

⁴¹ Borland Report para 27(b).

employment market. Notably, the Productivity Commission's *Youth Transitions: From School to Work* (2020) report identified that extended periods of youth unemployment or underemployment can cause "wage scarring", a long-term earnings penalty where young people who experience early disadvantage in the labour market tend to earn less, even years later, compared to their peers with smoother workforce entry.⁴² Reinforcing the importance of protecting access to entry-level roles, particularly for school-aged and early-career workers in order to young workers to gain experience which makes them more valuable and higher paid in the market, which is in direct contradiction to the assumption in Professor Borland's analysis that youth exclusion from work has limited long-term economic consequence.

Literature review

111. In Professor Borland's literature review of the impact on total employment he places a heavy reliance on New Zealand's experience⁴³ as a proxy for assessing the SDA's proposal. As he acknowledges in his report, the abolition of youth rates in New Zealand between 2001 and 2008 applied universally across all industries,⁴⁴ unlike the SDA's proposal which targets specific award-based sectors such as retail, fast food, and pharmacy.

112. However in assessing the New Zealand experience Professor Borland fails to provide a complete picture of the New Zealand system following these reforms. In 2008 in place of youth rates, New Zealand introduced the new entrant minimum wage, this was subsequently replaced in 2013 with the starting-out wage and training minimum wages, which remain legislated and set at 80% of the adult minimum wage.⁴⁵ These lower-tier wage rates remain legislated and are designed to encourage the employment of younger, less experienced workers by lowering the cost to employers during the initial employment or training period.⁴⁶

113. Professor Borland's analysis suggests that these starting-out wage and training minimum wages, while retained, "*do not seem to be frequently used*" (citing Maré and Hyslop, 2021).⁴⁷ This characterisation is misleading. The starting-out and training wage categories in New Zealand are far narrower in scope than junior rates and therefore apply to only a limited number of individuals. This limitation is not because the wage structure is

⁴² Productivity Commission, *Why did young people's incomes decline?* (Research Paper, 18 July 2020) pages 5,80–81.

⁴³ Borland Report para 38 and 39.

⁴⁴ David C Mare and Dean R Hyslop, *Youth Minimum Wage Reform and the Labour Market* (Working Paper 04/03, New Zealand Treasury, March 2004) <https://www.treasury.govt.nz/publications/wp/youth-minimum-wage-reform-and-labour-market-wp-04-03>.

⁴⁵ Minimum wage order 2025 (NZ) clause 5 and 6; Minimum Wages Act 1983 (NZ) ss 4A and 4B; Employment New Zealand, 'Minimum wage rates and types' (Web Page, 1 April 2025) <https://www.employment.govt.nz/pay-and-hours/pay-and-wages/minimum-wage/minimum-wage-rates-and-types>.

⁴⁶ Explanatory note to the Minimum Wage (Starting-out Wage) Amendment Bill (2012) 69-1.

⁴⁷ Borland Report para 38.

irrelevant, rather, it a reflection of the highly specific eligibility criteria that apply. Workers aged 16–19 years are only eligible for the starting-out wage if they are undertaking at least 40 credits per year of industry training under their employment agreement for the purpose of becoming qualified in their occupation. Similarly, workers over 20 years old are only eligible for the training wage if they are undertaking at least 60 credits per year. These conditions make these sub-minimum youth wage rates more akin to an apprenticeship arrangement under modern award than a general youth or junior wage, as access is severely limited to a narrow cohort of vocational learners.

114. In addition, the New Zealand Government has consistently reviewed and retained the starting-out and training minimum wage rates as part of its annual minimum wage reviews. These decisions are based on concerns that the removal of these sub-minimum rates could negatively affect youth employment outcomes, particularly for more vulnerable groups. For example, the 2022 Minimum Wage Review noted that young people, especially Māori and Pacific peoples, are overrepresented in minimum wage employment and face additional barriers to labour market entry. It cautioned that changes to these wage rates could disproportionately affect these groups and recommended retention of the starting-out and training wages to ensure continued employment pathways for disadvantaged youth.⁴⁸

115. Further, Professor Borland acknowledges mixed evidence on the hours worked and some evidence of substitution between age groups as a result of the changes to youth minimum wages in New Zealand. Notably, he also concedes that “*firms reduced their hiring of youth workers*” in response to rising minimum wages,⁴⁹ a significant finding that he does not explore in relation to cumulative effects over time or broader implications for youth labour market entry in New Zealand.

116. Turning to Professor Borland’s analysis of other international literature on youth minimum wage adjustments. Professor Borland’s comparative reliance on international studies to assess the effects of changes to youth minimum wages overlooks critical distinctions in national wage-setting systems. The countries he examines, Portugal, Canada, and the Netherlands, do not operate under frameworks equivalent to Australia’s Modern Awards system. In Portugal, wage-setting is uniform and national, without sector-specific youth rates. In Canada, minimum wage structures are determined at the provincial level and do not mirror Australia’s award-based junior rates. The Netherlands also applies a national minimum wage structure by age, not sector. These structural disparities limit the applicability of international findings to the Australian industrial context.

⁴⁸ Ministry of Business, Innovation and Employment (NZ), Minimum Wage Review 2022 (Report, November 2022) 7–8 <https://www.mbie.govt.nz/dmsdocument/26179-minimum-wage-review-2022-pdf>.

⁴⁹ Borland Report para 39.

Analysis of employment impact

117. Professor Borland's analysis of the employment impacts across the Awards relies heavily on assumed substitution and scale effects. He concludes that any impact on employment would be minimal, largely because substitution would occur gradually through natural attrition and because the total increase in wage costs is relatively small.⁵⁰ However, his conclusions are not based on any empirical modelling or firm-level data, nor does he apply own wage elasticity estimates, the economic principle that when wages rise, demand for labour (especially low-skilled or youth labour) falls,⁵¹ to support his claims.

118. Borland's method does not attempt to estimate the substitution relationship or incorporate any historical data (for example, from Annual Wage Review decision) on how youth employment actually changes in response to wage increases. As a result, his conclusion that it would remain largely unaffected rests on a key assumption that is both untested and contradicted by the empirical data analysis and evidence of previous inquiries such as the 1998 Productivity Commission inquiry into *Youth Wages and Employment* which conversely used real world data from the Australian Workplace Industrial Relations Survey in order to directly estimate the relationship between youth wages and youth employment using log-log regression models. These models controlled for differences in firm size, industry, training levels, and other relevant variables, isolating the specific effect of wage increases on employment. The findings from this Productivity Commission report were striking in youth dominated industries like retail and hospitality, where it was found that an own-wage elasticity of between -2 and -5. Meaning that a 1% increase in youth wages could lead to between a 2% to 5% drop in youth employment.⁵² The absence of this metric appears to be a gap in Professor Borland's analysis of the impact on employment of the SDA's proposal.

Cost impact analysis

119. Professor Borland's report presents an estimate of the impact on employer costs arising from the SDA's proposed increases in junior wage rates in the GRIA. To achieve this, he calculates the cost impact under his own benchmark scenario, using the following assumptions:

- A perfectly competitive labour market
- No employment offset (i.e., no change in staffing levels)
- No spillovers to wages of other employees

⁵⁰ Borland Report paras 66 – 70; 89 – 93; 103 – 105.

⁵¹ Productivity Commission, *Youth Wages and Employment* (Staff Research Paper, AusInfo, 1998), pages 31 – 32.

⁵² Productivity Commission, *Youth Wages and Employment* (Staff Research Paper, AusInfo, 1998), Page 62.

- All junior employees receive the full percentage increase proposed by the SDA
 - Total employer cost increase = weighted average wage increase × share of labour costs in total expense.⁵³
120. Professor Borland then uses two weighting methods for calculating the wage impact:
- *Employee-weighted method*, which assumes equal weight per employee regardless of hours worked
 - *Hours-weighted method*, which adjusts for differences in average hours worked by age group.⁵⁴
121. After doing this Professor Borland concludes that the total cost impact for employee weights would be .59% and for the hour weights .34%. He concludes this means that “*there would be a small impact on total costs*” from the proposed increases to junior rates under the GRIA proposed by the SDA.⁵⁵
122. Professor Borland replicates this approach for his analysis of the cost impact in the FFIA and the PIA. Finding a moderate impact in the fast-food industry on cost of 3.82% for hour weighted and 4.75% for employee weighted.⁵⁶ For pharmacy, he finds again only a small impact of .66% employee weighted and .40% hours weighted.⁵⁷
123. There are a number of aspects of this analysis which warrant caution.
124. Firstly, it appears that Professor Borland’s wage increase analysis which uses average hours workers per week by age group to create his hours weighted cost estimate, is based solely on changes to employee base rates. According to his analysis, there is no indication that penalty rates, overtime, or casual loadings have been factored into the modelling. Given that junior employees are disproportionately engaged as casuals and often rostered to work hours that attract penalty rates such as evenings and weekends due to schooling commitments work the actual hourly cost increase could be amplified by the effect of these additional loadings on top of the proposed base rate increases. Therefore in the absence of any modelling to account for these common award entitlements, it appears that the cost impact presented may materially understate the real increase employers would face.
125. Secondly, Professor Borland applies a fixed industry-level ratio of labour costs to total expenses: “Share of total labour costs in total expenses = 0.146.”⁵⁸ This ratio is drawn from ABS data across ANZSIC subdivisions 41 (Food Retailing) and 42 (Other Store-Based Retailing). While this figure may provide a general industry-wide average, it appears to us

⁵³ Borland Report paras 51 to 58.

⁵⁴ Borland Report para 59 to 65.

⁵⁵ Borland Report para 65.

⁵⁶ Borland Report para 86 to 88.

⁵⁷ Borland Report para 100 to 102.

⁵⁸ Borland Report para 62; Supplementary Report at para 11.

to assume a uniform cost structure across all businesses, regardless of size, operating model, or labour intensity. This assumption therefore also appears to sit uncomfortably with Professor Borland's own acknowledgment that 53.5% of retail businesses have no employees, and only 0.2% have 200+ employees.⁵⁹ Applying a flat average cost structure in that context arguably misrepresents the likely cost impact for the sub-sector most exposed to changes in junior rates, namely, large-scale employers such as major supermarkets, large retail outlets, and department stores, where junior employees are concentrated and labour costs likely comprise a significantly higher proportion of total expenses than the 14.6% average. As a result, if this assumption is correct, the use of this broad industry average may in fact be materially diluting the cost effect on those employers most directly affected by the SDA proposal.

Further Submissions on Cost

126. BNSW-ABI intend to review and likely will rely on the evidentiary materials filed by other parties in these proceedings concerning cost increases for employers.

127. BNSW-ABI would encourage the Full Bench to consider the cost consequences in two ways.

128. Firstly, as will be canvassed fully by other employer interests, there exists large employers who *extensively* engage junior employees. The scale of their engagement of junior employees means that the cost consequences for those large employers will be larger, but also that any removal of the incentive to engage younger workers will have greater impact.

129. Secondly, small employers, including small regional employers, are the least able to accommodate cost increases. The consequence of these employers deciding against engaging junior employees will be particularly significant in regional areas, where employment opportunities are limited.

130. For the reasons developed above, there are good reasons to doubt these findings.

The Modern Awards Objective

131. The task of the Full Bench in these proceedings requires it to have regard to the modern awards objective in assessing the SDA's Application. In relation to this, BNSW-ABI submit as follows:

Overarching Consideration – A Fair and Relevant Safety Net

132. BNSW-ABI endorses the current rates in the Awards as an important part of a fair and

⁵⁹ Borland Report para 62; Supplementary Report at para 57.

relevant safety net.

133. Contrary to the submissions of the SDA, the rationale behind junior rates is not set by reference to '*arbitrary and outdated notions*' but rather is a standard that has been regularly reviewed and consistently endorsed over time.

134. It is conceded that junior rates are a relatively unique feature of the modern awards system however their role is significant and beneficial to all parties, including junior employees who are provided opportunities that they would not otherwise receive.

135. Indeed BNSW-ABI has serious concerns that the effect of the SDA's proposal will be to harm the very workers that it purports to benefit: young workers.

Relative living standards and the needs of the low paid

136. It is conceded by the SDA that many of the employees paid at junior rates do not necessarily live in low income households. The submission of BNSW-ABI, the Full Bench should be extremely cautious in correlating junior rates with lower relative living standards of those who earn them.

137. The Full Bench can have regard to the fact that young workers are:

- a) more likely to have no or lower housing costs, being more likely to live with their parents or family members;
- b) less likely to have dependents including spouses or children;
- c) less likely to have significant liabilities including mortgages or health related expenses.

138. These overarching considerations have informed and influenced previous consideration of these issues and in the submission of BNSW-ABI, this should continue.

139. Notwithstanding that junior employees are, by definition 'low paid', the Full Bench should have regard to the fact that their 'living standards' and 'needs' are very different to adult employees.

The need to improve access to secure work across the economy

140. The SDA's own evidence suggests that junior employees are often offered fewer shifts or 'moved on' as they age.⁶⁰

141. The only coherent explanation for this practice is that, within the current framework of junior rates, as an employee's pay rate rises, the less attractive the rostering of that

⁶⁰ See SDA Submission at [126].

employee becomes.

142. The SDA's submission that this limb would be a neutral factor in the Full Bench's consideration should not be accepted.

143. If accepted, the SDA's proposals will result in less job security for employees receiving higher rates of pay, particularly those in receipt of a significant increase (most notably 17 and 18 year olds). This tends against the granting of the claim.

The need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender - based undervaluation of work and providing workplace conditions that facilitate women's full economic participation

144. Neutral

The need to encourage collective bargaining

145. Neutral

The need to promote social inclusion through increased workforce participation

146. The mechanism of junior rates in incentivising the employment of junior employees is significant in relation to the promoting of social inclusion through increased workplace participation.

147. Providing an incentive for employers to engage junior employees (who would otherwise find it difficult to compete with older, more experienced, more trained and more capable older employees) is central to workforce participation of not only junior employees, but those same employees as they progress in the workforce.

148. The Full Bench should have regard to the fact that the skills and experience gained as a junior employee provides a foundation for employment throughout an employee's working life. BNSW-ABI is confident that this will be apparent in the evidence to be heard by the Full Bench.

149. Dealt with more fully earlier in these submissions, reducing the incentive to engage junior workers will lead to a reduction in opportunities for junior workers. Those same workers, when older and no longer juniors, may face increased challenges securing or performing adult work (at adult rates) without the training, skills and experience obtained during employment as a junior employee.

150. In assessing the likely impact of any variation on social inclusion through workforce participation, the Full Bench should also have regard to the current state of youth employment in Australia. Youth unemployment presently sits at approximately 9.0%, more

than double the general unemployment rate of 4.0%, as recorded by the Australian Bureau of Statistics in recent labour force data.⁶¹

151. It is counterintuitive to suggest that increasing labour costs for this already disadvantaged cohort will assist in improving their workforce participation. Rather, increasing the cost of engaging junior employees is likely to act as a further disincentive to employers, reducing opportunities for young people to gain the experience and skills necessary to transition into full adult participation in the labour market. This would undermine, not promote, social inclusion through employment.

The need to promote flexible modern work practices and the efficient and productive performance of work

152. To the extent that variation of junior rates will disincentivise the employment of junior workers, acceptance of the SDA's proposal has the potential to remove from the workforce some unskilled and inexperienced workers who would otherwise be engaged in paid employment.

153. Aside from that consideration, the replacement of junior workers with adults will lead to a less efficient system of engaging and upskilling young workers in the paid employment.

154. This is unlikely to promote efficiency or productivity.

The need to provide additional remuneration

155. Not Relevant

The likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden

156. The effect of the proposed variations will be significant and tell against the acceptance of the proposals.

157. We have addressed this limb in our response to the expert reports above and this will be addressed at hearing.

The need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards

158. While this is not a particularly relevant limb with respect to these proceedings, further departure from the legislative definition of junior employee is apt to create a less understandable modern awards system as well as Awards which identify the seemingly redundant obligation to pay most junior employees 100% of the adult rate.

⁶¹ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>

The likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

159. We have addressed this limb in our response to the expert reports above and will expand at hearing.

160. We appreciate the FWC's consideration of our submission.

Filed on behalf of Business NSW and Australian Business Industrial by

Australian Business Lawyers & Advisors