



FAIR WORK COMMISSION

ANNUAL WAGE REVIEW 2020

NSW GOVERNMENT SUBMISSION

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Introduction

1. The NSW Government makes this submission to assist the Panel in the Annual Wage Review 2019-20.
2. This submission is being made at a time when Australia is facing many emerging economic challenges as a result of the global COVID-19 pandemic, which is having a significant impact both nationally and internationally.
3. In this Annual Wage Review, the Expert Panel is required to review the national minimum wage order and modern award minimum wages.¹ The Panel must then make a national minimum wage order, and may make one or more determinations varying modern awards to set, vary or revoke modern award minimum wages.²
4. In addition, the Panel must set special national minimum wages for all award/agreement free employees who are junior employees, employees to whom training arrangements apply, and employees with a disability, as well as setting the casual loading for award/agreement free employees.³
5. In arriving at its decision, the Panel must balance the economic, social and industrial considerations, relevantly provided for in the *Fair Work Act 2009* (Cth). These are:
 - the performance and competitiveness of the national economy, including productivity,
 - business competitiveness and viability, inflation and employment growth; and
 - promoting social inclusion through increased workforce participation; and
 - relative living standards and the needs of the low paid; and
 - the principle of equal remuneration for work of equal or comparable value; and
 - providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.⁴
6. In addition, the Panel is required to ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions.⁵

¹ Fair Work Act 2009 s285(1)

² Fair Work Act 2009 s285(2)

³ Fair Work Act 2009 s294

⁴ Fair Work Act s284(1)

⁵ Fair Work Act s134, also ss3(a), (b), (f) and (g)

Submission

7. The NSW Government believes that the minimum wage is an important safety net for low income households. It also plays a significant role in establishing a benchmark for many other awards and enterprise bargaining agreements in NSW and Australia more broadly. This is particularly important in NSW where significant numbers of workers are reliant on awards.⁶
8. Any approach to setting minimum wages must be balanced and sensitive to economic and labour market conditions to ensure minimum wage increases do not have a negative effect on employment.
9. New South Wales recorded growth of 1.9 per cent in 2018-19, following a four-year period of at or above-trend economic growth. At the time of half year review, growth was expected to be 1¾ per cent in 2019-20, before accelerating to 2¼ per cent in 2020-21 and returning to trend growth of 2½ per cent in 2021-22.
10. The outlook has shifted dramatically since then, following the global COVID-19 pandemic. The negative economic impact is expected to be significant, even after accounting for positive offsets from government stimulus, particularly as more stringent containment measures are put in place. The situation is evolving rapidly, and NSW Treasury is continuing to evaluate the extent of the impact.⁷
11. This builds on the recent impacts from bushfires. Disruption to business is expected to detract from economic growth in 2019-20, even after accounting for positive offsets such as donations and the government spending on emergency response services.
12. Any adjustment to the minimum wage should have regard to the need to support future economic and labour market performance.
13. The unemployment rate has remained low in New South Wales, which has encouraged an influx of workers (particularly women) into the labour market in recent years. However, the unemployment (and underemployment) rate are expected to spike higher in the coming months as COVID-19 containment measures across the world, including in Australia, have a significant impact on the labour market—some workers and businesses are likely to be disproportionately affected.
14. Ensuring that the employment impacts of the coronavirus are minimised should be of paramount importance, and the effects of the Panel's decision should ensure that the economic fallout is minimised.
15. As we have done in earlier submissions, the NSW Government therefore submits that the Panel should take a cautious approach to setting the minimum wage. Over the long term, Governments should seek to drive wages growth primarily through other available levers, such as lowering the tax burden, reducing red tape, and implementing other improvements to productivity which can contribute to increased wages.
16. In 2018, the NSW Government established the NSW Productivity Commission to examine ways to drive microeconomic reform, make it easier to do business, and lower the cost of living. Initiatives such as this are intended to identify the changes which can be introduced to help businesses save on costs and to have the opportunity to pass on higher wage increases to their employees. Community consultation around a Discussion

⁶ ABS, Employee Earnings and Hours, May 2014, Cat.No.6306.0

⁷ Treasury is currently evaluating the extent of the economic impacts of the COVID-19 outbreak.

Paper regarding priorities and policy options is ongoing⁸, with a Green Paper to be released in 2020.

17. In support of this submission, succeeding paragraphs provide relevant information regarding the performance of the NSW economy and the characteristics of award reliant employees, as well as comment regarding the promotion of social inclusion and the encouragement of collective bargaining.

Economic Outlook

18. Prior to the COVID-19 outbreak, The New South Wales economy was broadly on track to grow by 1¾ per cent over 2019-20 and was expected to see a return to trend growth of 2½ per cent in 2021-22. Recent shocks to the economy from bushfires, then the COVID-19 outbreak, means the situation has shifted dramatically.
19. The shut-down of some non-essential services in NSW will mean many businesses and households will see reductions in their incomes, or reduced cashflow to support daily necessities and fixed outgoings.
20. Across Australia there have been widespread reports of business closures, job shedding and panic buying. Preliminary retail spending data for February released by the ABS showed a sharp spike in supermarket sales, but with offsetting weakness in spending on many discretionary items.
21. Internationally, bond markets have been showing signs of dysfunction after experiencing a period of safe-haven flows. The risk of a dislocation in credit markets has increased, although central banks have stepped in with emergency liquidity measures to facilitate the normal functioning of financial markets.
22. The RBA has responded by cutting the official cash rate by 50bps in March and has begun quantitative easing—central banks around the world have also eased policy aggressively. The Australian Government has released a stage one fiscal stimulus package of \$17.6 billion, access to finance via the Australian Office of Financial Management worth \$15 billion, and an economic support package of \$66.1 billion. The first round of NSW stimulus measures amounted to \$2.3 billion.
23. Both the Australian and State economic stimulus packages have been designed to minimise the impact of COVID-19 by protecting jobs and supporting businesses so they can keep employees in current positions.
24. Assuming current containment measures persist (or are implemented more widely), some economists expect the economy could contract by a double-digit rate in the June quarter, pushing the unemployment rate sharply higher to levels not seen since the early 1990's recession. More extensive lockdowns could create even greater economic costs.
25. At the time of writing, the Labour Force Survey (LFS) for February did not show a deterioration in employment conditions. However, the Australian Bureau of Statistics stated that the LFS was taken early in February, before the onset of COVID-19-related disruptions. However, anecdotal observations of Centrelink website hits and line queues indicate that the economic impact from containment measures is going to be large, as many workers find themselves stood down or completely out of work.⁹

⁸ <http://productivity.nsw.gov.au/discussion-paper>

⁹ <https://www.smh.com.au/politics/federal/worst-since-1932-two-million-aussies-face-unemployment-queue-20200323-p54d14.html>

26. Even with economic stimulus, a recession seems inevitable. The national emphasis now is on protecting vulnerable households, including the newly unemployed, and preserving business structures so that firms can resume operations when the crisis passes.
27. As COVID-19 continues to unfold, it is difficult to predict the likely timing and trajectory for recovery. Once active cases start to see steady declines, economic modelling suggests that recovery could come soon after—implying stronger than expected growth in 2021. However, lingering damage to the global economy cannot be ruled out.

Award Reliance

28. As noted in paras 2 and 4 above, the Panel is required to review the national minimum wage order and modern award minimum wages, as well as considering relative living standards and the needs of the low paid.
29. In the 2019 Review, the Panel said:

[204] It is important to distinguish between employees on the NMW, award-reliant employees (that is, employees paid exactly an award rate) and low-paid employees generally. To some extent, these categories overlap¹⁰.

30. In terms of identifying low paid workers, in the 2019 Decision the Panel said that '[a] threshold of two-thirds of median earnings provides a suitable and operational benchmark for identifying who is low paid'¹¹. According to the most recent ABS Characteristics of Employment (CoE) survey¹², the full-time median wage as at August 2019 is \$1,375 leading to a low paid benchmark figure of \$917. The corresponding figures for NSW are \$1,400 and \$934.
31. Using EEH 2018 data, the Australian Government has estimated that 1.7 per cent (or around 180 200 employees) were paid the adult rate of the NMW in 2018¹³. The Australian Government also found that 1.25 million employees (11.8 per cent of all employees) were low paid. This is based on employees earning less than \$20.27 per hour as at May 2018¹⁴.
32. In relation to award reliant employees, the most recently available ABS data¹⁵ indicates that there are 10,647,200 employees in Australia, of which 9,916,500 are non-managerial. 22.5 per cent of non-managerial employees – 2,232,900 persons – are award reliant. This proportion of award reliant employees has decreased from the 2016 figure of 24.5 per cent.
33. In NSW, approximately 3.07 million employees are situated in the national industrial relations system. Of these, 28 per cent are award reliant¹⁶.
34. NSW has the highest numbers of award reliant employees (904,000) and the second highest on a proportionate basis (28.5%)¹⁷.

¹⁰ [2019] FWCFB 3500, at [204]

¹¹ [2019] FWCFB 3500, at [205], also [2017] FWCFB 1001, [2013] FWCFB 4000

¹² ABS Characteristics of Employment 6333.0 August 2019

¹³ Australian Government Submission AWR 2018-19 para 20

¹⁴ Ibid, Chart 2.1

¹⁵ ABS Employee Earnings and Hours May 2018

¹⁶ ABS Employee Earnings and Hours May 2018; NSW Public Service Commission *Workforce Profile Report 2019*

¹⁷ ABS Employee Earnings and Hours May 2018

35. The majority of award reliant employees are women – 60.9 per cent nationally, and the majority of female award reliant workers are part-time¹⁸.
36. Award reliance is particularly prevalent in the retail, health care and social assistance and accommodation and food services industries where around a third or more of employees are award reliant¹⁹.
37. Over 47 per cent of award reliant employees are casuals²⁰.
38. Low paid and award reliant employees display common characteristics such as gender and casual status²¹.

Promoting Social Inclusion

39. The Panel is required to take account, in giving effect to the minimum wage objective, 'promoting social inclusion through increased workforce participation'²².
40. In the 2018-19 Review, the Panel said:

[195] The recent research, and that discussed in previous Reviews, is consistent with the position adopted by the Panel that modest and regular minimum wage increases do not result in disemployment effects or inhibit workforce participation... The assessment of what constitutes a 'modest' increase has developed over time and the research and available evidence confirms that the increases granted by the Panel in the previous 2 Reviews, and as we have adopted in this Review, fall within that category. Further, the research is supportive of the notion that increases in minimum wages do increase the earnings of the low paid.²³
41. While higher minimum wages can provide incentives to workers not in the labour market to seek paid work, that needs to be balanced against potential negative impacts on the supply of jobs for low paid workers.
42. The NSW Government is investing \$97.3 billion on vital infrastructure across NSW over the next four years, supporting the construction of productivity enhancing assets to boost economic growth. Investment decisions have been made in relation to Sydney Metro West, Western Harbour Tunnel, Warringah Freeway Upgrade and the Sydney Fish Market, and initial funding has been allocated.
43. NSW Treasury forecasts²⁴ predict that the NSW economy will triple in size to be worth as much as two trillion dollars after 2040. This growth will be driven by the state's strong financial position, high levels of education, focus on innovation, and proximity to the booming Asian middle class.
44. The level of National Minimum wage and the magnitude of minimum award rates of pay will have a significant bearing on the success of these projects and these long-term goals. A stable wage environment is critical.

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

²¹ Yuen K, Ellis G & Nelms L (2018), *Characteristics of workers earning the national minimum wage rate and of the low paid*, FWC Research Report 3/2018.

²² FW Act s284(1)(b)

²³ [2019] FWCFB 3500, at [195], footnotes omitted

²⁴ NSW 2040 Economic Blueprint: <https://www.treasury.nsw.gov.au/nsw-economy/nsw-2040-economic-blueprint>

45. It is therefore the view of the NSW Government that the maintenance of a safety net of fair minimum wages must reflect general economic conditions and the needs of business.
46. The NSW Government has ensured that job performance remains strong with employment growing at double its long-run average in 2018-19, largely driven by full-time employment. NSW has the lowest unemployment rate across the States, and the NSW unemployment rate has now been equal to or lower than the national average for over six years. The NSW participation rate currently stands at 65.5 per cent. An additional 114,300 people managed to find work in 2018-19.
47. Minimum wage jobs provide employment for low skilled workers, function as an important stepping-stone for new entrants into the labour market, particularly young people, and provide opportunities to develop employability skills that facilitate progression to higher paying jobs.
48. The NSW Government submits that the best way of promoting increased workforce participation is to ensure that the level at which minimum wages are set is appropriately balanced with the continuing provision of employment opportunities.
49. In this context, it is also noted that the tax-transfer system plays a role in relation to the maintenance of an effective safety net for the low paid. The NSW government endorses the view expressed by the Panel in 2019 decision:

‘[242] Tax-transfer changes which have taken effect in the current Review period have, broadly speaking, provided a benefit to low-paid households. These changes are a moderating factor on our assessment of the appropriate level of increase to the NMW and modern award minimum wages arising from this Review.’
50. Minimum wages must not act as an impediment to affected workers securing and maintaining employment, or regaining employment once out of the workforce. Nor should a minimum floor be set such that it raises costs to a level that hinders an enterprise’s competitiveness.

Encouraging Collective Bargaining

51. While agreement reliant employees significantly outnumber their award reliant counterparts, however it is noted that the proportion of employees whose pay is set by awards has risen (from 20.6% in 2016 to 21.0% in 2018), while that whose wages are set by collective agreements has correspondingly fallen (from 38.5% in 2016 to 37.7% in 2018)²⁵
52. In NSW, the proportion of employees whose pay is set by awards has fallen from 32.2 per cent in 2016, to 28.5 per cent in 2018, however the corresponding figure for 2012 was 18.9 per cent. Collective agreements now cover 30.9 per cent of employees, much the same as the 2016 figure of 30.8 per cent, but significantly less than the 2012 figure of 40.5 per cent.
53. In the 2019 Review, the Panel concluded that:

[386] When the wide range of factors which impact on collective bargaining are taken into account, it is unlikely that the adjustments to wages made by the Panel in recent Reviews have discouraged collective bargaining, particularly in light of the increase in

²⁵ ABS Employee Earnings and Hours 2018

collective agreement coverage in at least some of the award-reliant industries. Further, the rate of the decline in collective agreement making from the peak around 2010 has not increased significantly to the extent where it could be concluded that wages outcomes from recent Reviews have discouraged collective bargaining.

[387] For the reasons given it is likely that an increase we have determined in a Review may impact on bargaining in different sectors in different ways and we cannot be satisfied that the increase we have determined will *encourage* collective bargaining.²⁶

54. The most recent available data from the Department of Jobs and Small Business²⁷ indicates that the number of agreements approved in the June 2019 quarter has increased to 1,581, from 1,330 in the previous quarter. However, the number of employees covered has fallen, from 367,700 in the March quarter to 195 300 in the June quarter.
55. Data from different sectors displays a mixed picture: construction agreements increased significantly (from 329 to 522 March – September), as did manufacturing (from 239 to 313) and transport postal and warehousing (from 117 to 191), however wholesale and retail trade agreements declined (from 67 to 18, 30 to 21 respectively), while other sectors such as accommodation and food services remained steady (unchanged at 9 approvals across the last two quarters).
56. Further, private sector agreements approved in the June quarter provided an average 2.8 per cent pay rise over 2.8 years, a reduction from 2.9 per cent in the March quarter and 3.0 per cent in the December and September 2018²⁸.
57. The data suggests that the recent decline in enterprise bargaining may have ceased, however further data releases are probably necessary before a definitive conclusion can be reached.
58. The NSW Government submits that it is critical that a sustainable safety net of minimum wages is one that supports enterprise bargaining at NSW workplaces. In particular, the Panel should continue to set minimum wages at a level that continues to maintain incentives for enterprise bargaining that rewards flexible and productive work practices.

COVID-19

55. As the global economic circumstances are changing rapidly, a further supplementary submission following the Commonwealth Budget may be required to address the implications of the COVID-19 pandemic on the economic outlook and the labour market as they become clearer.

Conclusion

56. The continuing economic success of NSW should not be jeopardised or inhibited by overly generous wage outcomes. On the other hand, it must be acknowledged that the national minimum wage is an important safety net for low income households, as well as being a significant benchmark for awards and enterprise agreements.

²⁶ [2019] FWCFB 3500, at [386], emphasis in original

²⁷ Trends In Enterprise Bargaining June Quarter 2019

²⁸ Ibid

57. The NSW Government submits that the correct approach to addressing these issues is for the Panel to take a cautious approach to this Review, on the basis that governments should seek to drive wages growth by means of a vigorous productivity agenda, including measures such as lowering the tax burden, reducing red tape, and implementing forward looking regulation to support competition and innovation.