Reply to Supplementary Submissions
Annual Wage Review 2020-21

ACTU Submission, 8 June, 2021
ACTU D. No D27/2021

ACTU
australian council of trade unions

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1. REPLY TO SUPPLEMENTARY SUBMISSIONS

1. The supplementary submissions we respond to herein have been made by employer interests whom have sought to persuade the Panel that employees should have minimum wage increases deferred again this year. These arguments are highly unconvincing. There have been multiple opportunities provided to employers to refine claims for differential treatment both through questions from the Panel itself and by way reply to the specific criticisms in in our prior submissions. The final opportunity has now passed, with no serious attempt to engage with the principles the Panel has established for the determination of such claims.

2. The reliance by some on the circumstances of Victoria's recent lockdown as grounds for minimum wage moderation have an odour of rank opportunism and rely on the false premise that centralised minimum wage fixing is a lever for short term targeted industry assistance. There is a clear role for governments to address these needs and certainly in Victoria additional assistance for businesses was forthcoming promptly from the State government, while workers left without incomes received an announcement of a means tested payment for the second week only, amounting to a maximum of no more than two thirds of the federal minimum wage. It is clear that government policy targeted to managing pandemic issues is the appropriate response to events like the Victorian lockdown rather than seeking to leverage these issues to argue against an increase in the minimum wage and awards that is desperately needed by employees in the context of a well recognised long term stall in real wages. The clear responsibility for providing targeted business support measures during lockdowns lies with governments. Measures from the Victorian Government included payments of $5,000 to $7,000 to business, while workers were left with assistance that not only was late but was below the poverty line.

1.1 National Retail Association

3. The National Retail Association submits that lockdowns and their adverse effects need to be taken into account by the Panel. As we alluded to in our opening statement to the hearing on 19 May,

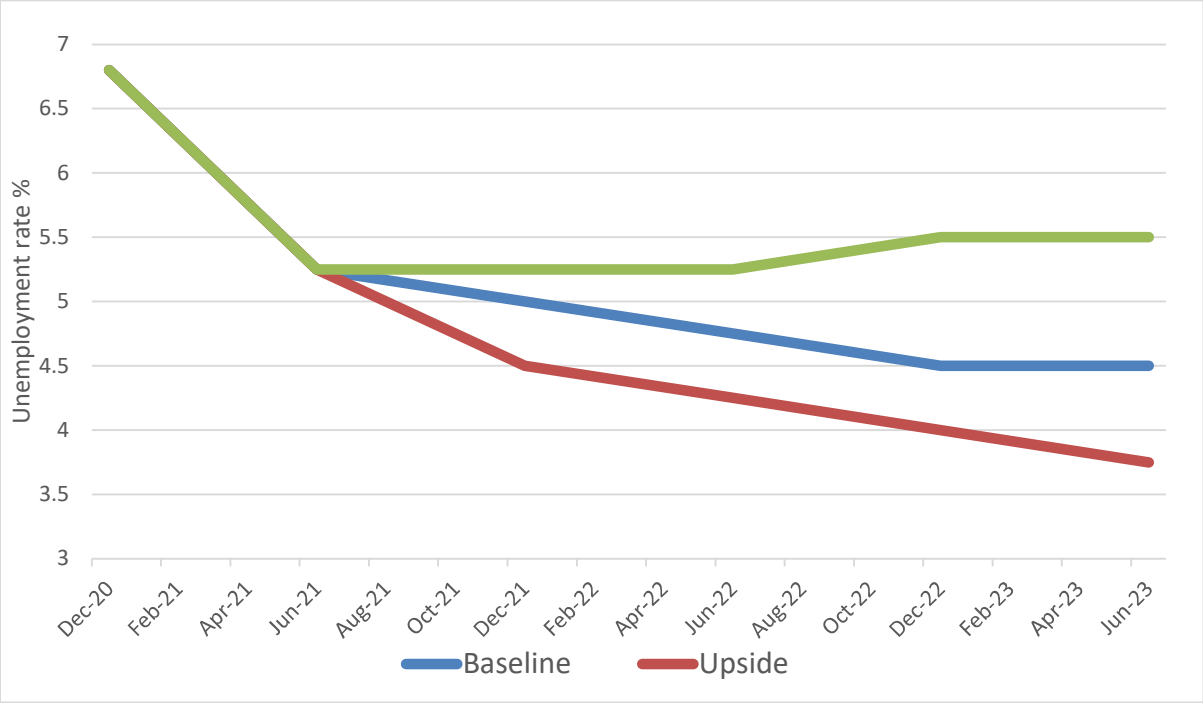
the exceptional recovery seen in the Australian Economy and labour market has co-existed with the imposition of lockdowns.

4. Furthermore, the encouraging forecasts provided by Treasury in the recent Budget have outbreaks of COVID-19 already 'baked in'. In Budget paper One, Box 2.1 outlines the key assumptions that underpin the economic forecasts. This includes that '*during 2021, localised outbreaks of COVID-19* are assumed to occur[1]'. However, the central economic forecasts from the government are still exceptionally strong, with the unemployment rate forecast to be 5% in 2021-22 and 4.75% in 2022-23 (an unemployment rate many economists would consider either full employment or close to it) and economic growth having recently been revised upwards to 5¼ per cent in 2021[2].

5. Similarly, the RBA, in its Statement on Monetary Policy for May 2021 under its central scenario have considered the risks of further outbreaks of COVID19 yet the overall macroeconomic forecasts remain strong. Figure One below reproduces the RBA's baseline, upside and downside forecasted scenarios for the unemployment rate to 2023. The baseline scenario sees an unemployment rate of just 5% by December and 4.5% by June 2023. Yet even under the downside scenario unemployment is lower than it is currently, falling to 5.25% in December 2021 – an unemployment rate that is significantly below where we were at the height of the crisis.

[1] Budget Paper One page 36
[2] June 2021 20 https://treasury.gov.au/speech/opening-statement-economics-legislation-committee-0 1 June 2021

Figure 1: RBA's forecasted scenarios for the unemployment rate 2020 - 2023



Source: RBA Statement on Monetary Policy, May 2021

6. Even with uncertainties in economic forecasting the Panel must make decisions based on the best available evidence to us at the time. The best available evidence from the RBA, the Treasury and the OECD all suggest economic growth will be strong over the next 12 months and that unemployment rate will be significantly lower than it is now.

7. Both the RBA and the Treasury are forecasting a lower unemployment rate than in 2017 when the unemployment rate was 5.7 per cent (April) and the Panel awarded an increase of 3.3% in in the NMW and modern award minimum wages[3]. Secondly, there has been a staggering decline in the unemployment rate since the height of the crisis. The economic recovery has variously been described as, a 'remarkable success' a 'red hot recovery' and 'astonishing'.

8. The ultimate position of the National Retail Association is that it continues to seek the outcome contended for in its initial submission of limiting wage increases to CPI and deferring until

[3] AWR 2106-17 Statement page 2

November any increases for the awards allocated to "Group 3" 12 months ago. That position was thoroughly critiqued and rejected in our Reply submission. The National Retail Association has made no attempt to address those criticisms despite numerous opportunities to do so.

1.2 Australian Chamber of Commerce and Industry

9. The Australian Chamber of Commerce and Industry provides some discussion of estimates of the economic costs of the Victorian lockdown, without reference to the business support measures announced by the Victorian government. As explained in our Supplementary submission, those measures include payments of $5,000 to $7,000 to business. By contrast, workers stood down or left without incomes over two weeks will receive a means tested benefit at a maximum of $500 (or $325 for those working less than 20 hours a week) from federal funding.

10. ACCI's discussion of the costs of the Victorian lockdown attributes a claim of "around $1 Billion in lost revenue for the accommodation and food services industry" to an article in *The Age* on June 2 which in in turn attributes the comment to the Chief Executive of the Restaurant and Catering Association. However, only a day later the Restaurant and Catering Association issued a Statement[4] describing its proposal for the Victorian Government to introduce "VicHospoSaver" policy ".. which would assist businesses within the Accommodation and Food Services Sector in Victoria in weathering the damaging effects of lockdowns and ongoing restrictions". The Statement estimated that meeting the demands of the Restaurant and Catering Industry Association by implementing the scheme would cost $90 million per week of lockdown, far short of figure referred to by ACCI. Interestingly, if one assumes that the count of "14,609 restaurants, cafes and catering businesses across Victoria" provided in the in the Statement by the Restaurant and Catering Industry is accurate, then $73 million would be provided to those businesses if they all qualified for only the lower level $5,000 grant for non-licensed venues unable to open, which already forms part of the Victorian Government's $460 million business support package. ACCI also states the Victorian lockdown ".. is likely to cost more than $2 billion in lost retail trade", which is $250 million *greater* than the whole of state economy cost figure which ACCI attributes to the KPMG modelling it refers to but does not provide. The claim regarding retail trade is attributed to

[4] https://www.rca.asn.au/news/media-release-rca-demands-more-support-victorian-hospitality-sector

a media release by the National Retail Association[5], which makes the claim only in its title and in its first sentence, without further elaboration.

11. ACCI's discussion of labour market data is not sensitive to seasonal variations nor does it articulate what continued impacts of the removal of JobKeeper should be of concern to the Panel. In our view, it seems clear that the labour market in aggregate is supporting transitions into paid work. Those transitions are occurring despite ongoing difficulties for impacted employees.

12. ACCI's separate correspondence concerning tourism related businesses seems to take some objection to comments we made at the hearing on 19 May. ACCI seem not to dispute that a very large and increasing share of tourism businesses are non-employing business (and therefore not directly impacted by the decisions of the Panel). ACCI do however disagree with our point that many businesses that were reliant on *foreign* tourism and have been without that source of income for 14 months are likely to have already adjusted to that reality and that, for remaining businesses in that category, the Panel's decision is not likely to be the determinant of their survival because the fact that borders will not re-open until next year is a more important factor. There is nothing outside of ACCI's mere disagreement to refute the logic of those propositions. We don't disagree with ACCI that there are range of experiences among tourism exposed operators depending on whether they are exposed more or less to international tourism demand. However, as we noted at paragraphs 123-125 and Table 3 our submission last year, the overwhelming majority of employing businesses in tourism are in Retail trade or Accommodation and food services where casual employment is a very large share of that employment and much of it also seasonal. This provides those employers with the flexibility to scale labour needs to demand rather than carry the cost of surplus labour during a downturn. The casual employees who have been let go during the downturn experienced periods of significant disadvantage, however as the research by Yuen and Cumming showed[6], before the year was out around two thirds of workers displaced in the downturn had regained in employment and the more recent labour market data suggests that position has continued to strengthen.

[5] https://www.retail.org.au/post/federal-support-needed-with-2b-in-lost-retail-trade-from-vic-lockdown

[6] Yuen K & Cumming P (2021), Labour market transitions of workers during COVID-19, Fair Work Commission Research Report 2/2021, February.

13. ACCI has not advanced any further arguments that are properly responsive to the requirement to demonstrate that there are exceptional circumstances justifying the alternative outcomes it seeks in this Review that involve delayed operative date to increases in modern award minimum wages.

1.3 Australian Business Industrial

14. Australian Business Industrial make the unfounded claim that there is "poor confidence in industry". Our prior submissions have shown rises in business confidence from reputable sources including the OECD[7], NAB[8], Roy Morgan[9] and Deloitte[10]. Australian Business Industrial have not even referred to their own surveys in support of this claim, notwithstanding that they do undertake such surveys and have referred to them in their earlier submissions to this year's Review.[11]

15. Like ACCI, Australian Business Industrial warn that the full impact of the cessation of JobKeeper remains unknown. It is not entirely clear what downside risks Australian Business Industrial are concerned about. On the labour market front, it is entirely reasonable given present performance to expect that employees displaced post JobKeeper face good prospects of re-employment. The latest issue of ANZ Australian Job Ads series, released on 7 June 2021, rose 7.9% month to month in May to be up 38.8% on the pre-pandemic level (see Figure 2 below). This points to continued rapid tightening in the labour market which ANZ Senior Economist, Catherine Birch, said was confirmed by other measures - the end of JobKeeper and the Victorian lockdown notwithstanding:

> 'ANZ Job Ads hit 12 straight months of gains in May, and is now consistent with an unemployment rate of around 5%.
>
> In May, we upgraded our labour market forecasts, and now expect an unemployment rate of 4.8% by the end of this year and 4.4% by end-2022. We think solid employment growth will drive this rapid improvement, notwithstanding near-term volatility post-JobKeeper.

[7] Supplementary submission at [62]
[8] Reply submission at [48]
[9] Reply submission at [50]
[10] Post budget submission at [30]
[11] See our critique at [112] of our Reply submission.

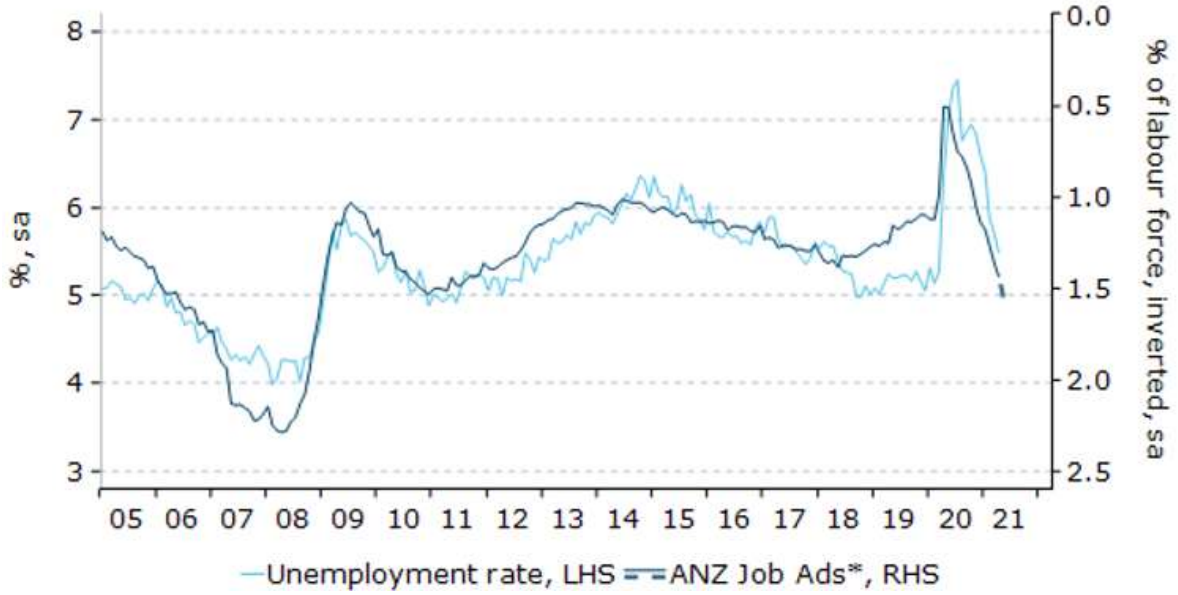
The Victorian lockdown is unlikely to derail the state's labour market recovery. Even if we see some employment losses in June, as long as restrictions start easing from 11 June as currently planned, workers should be reinstated or find new jobs quite quickly, given the underlying strength in the labour market.

In addition to ANZ Job Ads, NAB's employment index and capacity utilisation are signalling further solid employment gains, and the Westpac-Melbourne Institute's Unemployment Expectations Index has fallen to a decade low. While the strength in ANZ Job Ads and ABS job vacancies is unlikely to fully translate into employment, due to skills mismatches and restricted labour mobility (both domestically and due to closed international borders), we still think employment growth will be very strong, particularly given such low population growth.

Consequently, we expect both unemployment and underemployment to fall further…'

The ACTU recognises this offers another instance of the disconnect between employment changes and wages, leaving the increase in the minimum wage and awards to do the heavy lifting in improving workers' living standards and the needs of the low paid. This is in a context where the hardship of employees reliant on the minimum wage and awards has become manifest.

Figure 2: ANZ Job Ads



Source: ANZ Australian Job Ads

16. To the extent the Australian Business Industrial comments are directed to business viability rather than the risk of disemployment effects, we note that the strong labour market and vacancy data

is much more consistent with businesses being viable than not. In any event, at the margins at least there are businesses who may have been sustained by JobKeeper in circumstances where they were un-viable for a range or reasons predating or unrelated to the COVID-19 pandemic or the restrictions introduced. The prevailing business conditions and economic growth phase are unequivocally good. A business that finds its viability in those conditions wholly contingent on its labour costs being subsidised to the extent previously provided by JobKeeper is likely a business that is destined to fail in the immediate term for a myriad of reasons even if wages stay constant or indeed if they fall, which they have in net in real terms. It is not fair or appropriate for centralised minimum wage fixing to be determined on the basis that it should be a form of industry support. Its function is to provide a safety net of fair minimum wages.

17. Like ACCI, Australian Business Industrial discuss labour market data without reference to seasonal influences and adopt uncritically the designation of "clusters" of industries and "groups" of awards, devised by the Panel nearly a year ago on the grounds of data then available, in aid of an argument about uneven performance. The contention about uneven performance culminates in a request that *all* modern awards receive a delayed operative date for the minimal increase Australian Business Industrial propose. Whilst it is said that this "reunification of the clusters" would reduce administrative complexity, it carries with it the convenience for employers that the sectors which received *no* delay to their wage increase last year on the basis that they were minimally impacted by the pandemic as at the date of the decision (and in some cases had increased their employment levels) would also be subject to a wage freeze until 1 January 2022. Whilst we suspect that employees in those sectors would not see this administrative convenience as worth the sacrifice on their part, the argument in support of the deferral is entirely devoid of any content which could satisfy the Panel in accordance with the relevant principles that there were exceptional circumstances justifying that result. The Panel might take also note that the uneven employment growth effects apparent this year are in fact less than for instance the range of -10.3% to 17.6% between industries which presented in the 2017-18 Review which Australian Business Industrial footnote as an example of a more normal year.

18. Australian Business Industrial's discussion of living costs and it assertion that the 1.1% increase it proposes take effect in in 6 months' time "is capable of at least maintaining living standards" is ignorant of both the forecast 3.5% CPI for June quarter 2021 contained in the Budget and the

limitations of the LCI as a measure of living costs for low income workers as discussed at paragraph 113 of our reply submission, paragraph 60 of our post budget submission and in the Fair Work Commission information note dated 13 May. Even at current trend rates of inflation it amounts to a loss of earnings in real terms. The 1.1% increase proposed by Australian Business Industrial is inadequate and inappropriate in the circumstances.

1.4 Ai Group

19. Ai Group's submission makes the dubious claim that the pattern of labour demand since March 2021 has favoured higher skilled and higher wage employees, citing the Administrative and support services industry and the Health care and social assistance industry as examples of this. Aside from being insensitive to seasonal variations in the payroll jobs data, the reality is that the industry sectors of Administrative and support services and Health care and social assistance have significant award dependence, of 31.7% and 41.3% respectively[12]. This includes cleaners and aged care workers. Despite cleaners and aged care workers being some of the heroes of the crisis they are not high wage occupations by any means. They deserve a pay rise.

20. The Ai Group's contention that Annual Wage inflation of 1.5% remained stronger than price inflation of 1.1% completely ignores the impact of free childcare on price inflation as a one-off. Ai Group also suggests that increases in profits were to the "accounting effects of government transfers" but not in the sales data. Our analysis in our supplementary submission shows from the profits data including the March quarter that the transfers served to increase profits to abnormal levels, on top of sustained levels.[13] These profit levels remain at abnormally high levels even with the withdrawal of the subsidies.

21. Ai Group has not advanced any further arguments that are properly responsive to the requirement to demonstrate that there are exceptional circumstances justifying the outcome it seeks in this Review.

[12] Table 7.1 Statistical report 7.1 for 2018 (latest data available).

[13] At page 14.

2. FINAL REPORT BY PROFESSOR BORLAND

22. We concur with Professor Borland's observations that the end of JobKeeper caused a temporary stalling rather than major setback to labour market recovery; that aggregate labour market activity has recovered to its pre-COVID level and that there has been a strong increase in employment for younger workers (whose employment is often said by employers to be the most precarious in the face of regulated minimum wages).

23. It is important to note that Professor Borland's final report continues to involve comparisons of performance from March 2020 onward, rather than a comparison period that looks to a change in position from a point which coincides with the year in Review or is otherwise designed to avoid "double counting" the circumstances that were taken into account in and responded to in last year's decision.

24. Whilst the rationale for ranking industry performance into no more and no less than three groups remains elusive, three industries are identified as "lagging recovery" in this report, in a shift from the language of "most affected". The decline in employment required for an industry to qualify for inclusion in that category is 5% or more, which would have placed an industry in the "central cluster" if the Panel's methodology from last year were adopted. In relation to the industries recommended by Professor Borland to be marked as "lagging recovery":

    a. In the case of Accommodation and food services, it is noted that the extent of the recovery in gross value added and sales matches the initial decline and that the recommendation to rank the industry as "lagging recovery: puts "more weight on labour market data". In our view, the fact that employment growth has lagged behind sales and GVA recovery may suggest higher profits being shared among fewer business, higher productivity or both. In our view, further improvements particularly in the accommodation sub-division will be tied to the re-opening of international borders and not bound to reasonable movements in minimum wage levels.

    b. In the case of Transport, postal and warehousing, it is noted that sales have recovered (although by GVA has not) but that the recommendation to mark the sector as "lagging

recovery" is based on the size and duration of the decrease in jobs, which is in turn identified as being primarily due to persistent decrease in the number of jobs in aviation and space transport. We note that the Flight Attendant's Association of Australia provided some detail in its response to consultation questions as to level of enterprise agreement coverage in the sector as well as the level of demand for domestic and specialist domestic services, none of which has been disputed. Further, like the accommodation sub division, growth in employment in aviation is tied to the re-opening of international borders and not bound to reasonable movements in minimum wage levels.

c. In the case of Information media and telecommunications, it is noted that the recovery in GVA is complete by that the deterioration in jobs from July 2020 onward is a product not only of COVID-19 but also of "longer run structural factors".

25. Finally, we would observe that Professor Borland's reports do not amount to a request for any deferral of wage increases on the basis that it is justified by exceptional circumstances, nor has any participant in this Review sought to adopt his analysis in aid of any such request. Importantly, it does not answer the question of how the employees or employers covered by a particular award have been affected or would be affected by a deferred increase to modern award minimum wages at any level.

ADDRESS
ACTU
365 Queen Street
Melbourne VIC 3000

WEB
actu.org.au

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