

26 March 2021

Fair Work Commission
Annual Wage Review 2019-20
GPO Box 1994
Melbourne VIC 3001

By email: awr@fwc.gov.au

Dear Members of the Expert Panel,

Annual Wage Review 2020-21
Submissions of the National Retail Association Limited, Union of Employers

In accordance with the timetable of the Annual Wage Review 2020–21 the National Retail Association Limited, Union of Employers (**NRA**) makes the **attached** submissions.

The NRA advises that having regard for the continuing COVID-19 pandemic, the NRA reserves the right to depart from these submissions if changes in circumstance necessitate doing so.

Yours sincerely,



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National Retail Association Limited
Union of Employers
C2021/1 – Annual Wage Review 2020-21
Initial Submissions

March 2021

1. SUMMARY

1.1. Position advanced by the NRA

- 1.1.1. The NRA submits that the appropriate level of any increase to minimum wages is **equal to CPI**.
- 1.1.2. The NRA further submits that, in the case of those modern awards described as being in Group 3 in the Annual Wage Review 2019-20 (**the Previous Review**), any increase to minimum wages in those modern awards ought to be **deferred until 1 November 2021**.

2. LEGISLATIVE FRAMEWORK

2.1. Requirement to conduct annual wage review

- 2.1.1. Pursuant to s 285(1) of the *Fair Work Act 2009* (Cth) (**FW Act**) the Fair Work Commission (**FWC**) must conduct an annual wage review (**the Review**) each financial year. Section 617(1) of the FW Act requires that the FWC be constituted by an Expert Panel (**the Panel**) for the purposes of the Review.

2.2. Matters to be taken into account

- 2.2.1. In undertaking the Review, the Panel must have regard for the **minimum wages objective** as set out in s 284(1) of the FW Act, in particular when determining the form of the National Minimum Wage Order (**NMWO**) required to be made pursuant to s.285(2)(c). The Panel must also have regard for the overall objective of the FW Act as set out in s.3 thereof and, when determining the setting, varying or revoking of modern award minimum wages, the **modern awards objective** as set out in s.134 of same.¹
- 2.2.2. While the Panel must have regard for each of the matters listed as forming the minimum wages objective, the modern awards objective, or the overall objective of the FW Act (as the case may be), the weight to be afforded each consideration, in the absence of any statutory indication, is for the Panel to determine at its discretion.²

2.3. Powers of the Panel in conducting the Review

- 2.3.1. Section 285(2) of the FW Act provides that during the Review, the Panel *must* make a NMWO and *may* set, vary or revoke modern award minimum wages.³
- 2.3.2. In this respect, although the Panel *must* conduct the Review, and *must* make a NMWO, it is not compelled to make any determination setting, varying or revoking modern award minimum wages.⁴
- 2.3.3. Although the discretion of the Panel to make, or not make, one or more determinations setting, varying or revoking modern award minimum wages appears to be substantially unfettered, s.285(3) requires that in exercising its powers under s.285(2)(b) the Panel must also take into account the NMWO it proposes to set in the Review.

¹ [2020] FWCFB 3500 at [194]

² *Shop, Distributive and Allied Employees' Association v Australian Industry Group & Ors* [2017] FCAFC 151 at [95]; see also *Bat Advocacy NSW Inc v Minister for Environment Protection, Heritage and the Arts* [2011] FCAFC 59 at [44]

³ [2020] FWCFB 3500 at [193]

⁴ [2020] FWCFB 3500 at [128]

2.3.4. This necessarily affects the appropriateness of the Panel proposing or declining to exercise its discretion under s.285(2)(b).⁵

2.4. Commencement of variations to minimum wages

2.4.1. Sections 286(1) and 287(1) of the FWO provide that, in the ordinary course of events, any determination varying modern award minimum wages and the NWMO (respectively) made by the Panel as a result of the Review takes effect from 1 July in the next financial year.

2.4.2. A limited exception to this general proposition is provided in ss.286(2) and 287(4), which permit variations under these instruments to be deferred to a later date if the Panel is satisfied that there are **exceptional circumstances** which justify such deferral. A strong case demonstrating exceptional circumstances is required in order to justify such a deferral.⁶

3. INDUSTRIAL CONTEXT

3.1. General obligation to consider wider industrial context

3.1.1. The minimum wages objective and the modern awards objective both acknowledge that the Review is not undertaken in a vacuum removed from the practicalities of the wider economy, with both expressly requiring the Panel to consider the wider socio-economic context in which the Review is undertaken.

3.1.2. Past Reviews have also affirmed the proposition that the wider industrial context is a relevant to the broad context in which the Review is undertaken, noting that matters such as scheduled changes to penalty rates are relevant but subject to weighting at the discretion of the Panel.⁷

3.1.3. The extent to which these matters are considered by the Panel, and the weight given to them, is of course a matter of discretion, however the NRA submits that the matters explored below should not be weighted lightly, but given reasonable consideration and weight given the relatively unique circumstances of the preceding 12-month period and the ongoing COVID-19 pandemic.

3.2. Effects of Annual Wage Review 2019-20 yet to be fully realised

3.2.1. The outcome of the Previous Review was relatively unique in the history of the Panel's wage-setting functions under the FW Act, representing the first instance under that legislation in which increases to minimum wages were deferred in some industries.

3.2.2. In the usual course of the Review process, wage increases take effect from the first full pay period commencing on or after 1 July. In the Previous Review, this practice was departed from with the Panel determining the mandated increase to occur to specific modern awards at different times.

3.2.3. As a consequence, the increase to minimum wages arising from the Previous Review occurred on 1 July 2020, 1 November 2020, or 1 February 2021 depending on the relevant modern award. Critically, industries subject to this increase only from 1 February 2021 include the retail, fast food, restaurant, hospitality and air transport sectors, these comprising approximately 2,176,600 workers as at December 2020.

⁵ [2020] FWCFB 3500 at [195]; see also [2015] FWCFB 3500 at [87]; [2016] FWCFB 3500 at [5]; [2017] FWCFB 3500 at [108]; [2018] FWCFB 3500 at [43]; [2019] FWCFB 3500 at [28]

⁶ [2020] FWCFB 3500 at [262]

⁷ [2020] FWCFB 3500 at [122]

- 3.2.4. Out of a total labour force of approximately 12,909,000 as at December 2020, this cohort represents just over 16%.
- 3.2.5. Given the short period between the increase to minimum wages in these sectors and initial submissions in this Review, this means that there is very limited data available that demonstrates the effect of the Previous Review on these industries.
- 3.2.6. While this data may well become available as the Review progresses, the full impact of the Previous Review in these industries will likely not be fully realised, or fully reported and analysed, until after the conclusion of the Review.
- 3.2.7. As such, the NRA recommends that the Panel ought to approach its deliberations with caution, noting that it is operating in an atypical paradigm and with less relevant data than it normally has available.

3.3. Cessation of wage subsidies to have a real impact

- 3.3.1. The end of the JobKeeper program on 28 March 2021 will likely have a significant effect on employment outcomes over the last quarter of the 2020-21 financial year.
- 3.3.2. It is unfortunate that there is a dearth of data about the current status of the JobKeeper program, including the number of businesses and jobs that depend on the wage subsidy to remain in operation. However, the NRA expects that in the short – to medium-term, the impact on small and medium businesses will be significant.
- 3.3.3. In the retail sector, this is exacerbated by the increase to minimum wages from 1 February 2021, with the unit cost of labour necessarily increasing mere weeks before government assistance to meet that cost is lost.
- 3.3.4. The NRA anticipates a slow down, if not a decline, in employment outcomes in March – April 2021 as businesses deal with the new paradigm. We also expect that, barring the highly unlikely event of a sudden return to pre-COVID circumstances nation-wide, such a slump in employment outcomes would continue for the foreseeable future.
- 3.3.5. In such a situation, a significant increase to minimum wages less than six months after the previous increase, in circumstances where trade remains unpredictable at best and absent at worst, and in the absence of government assistance to meet employment costs, would have a significant adverse impact on both employment outcomes and business survivability.

3.4. Ongoing consideration of structural wage reform in key modern awards

- 3.4.1. Also relevant to the Panel's considerations is the ongoing consideration of several proposals currently being considered by the FWC in relation to wage structures in several key modern awards.
- 3.4.2. Specifically, there presently exist several proposals to vary the *General Retail Industry Award 2020* to introduce flexible part-time employment, together with exemption rates for managerial employees.
- 3.4.3. There is also under consideration a proposal to alter the classification structure in the *Restaurant Industry Award 2020* which will, in turn alter the wage structure under that modern award, as well as to extend existing exemption rate provisions under the *Registered and Licensed Clubs Award 2010*.
- 3.4.4. Separate proposals are also currently being contemplated to introduce loaded rates into the *Hospitality Industry (General) Award 2020*.

3.4.5. As such, not only is the economic data in relation to these sectors outdated due to the belated implementation of the increase from the Previous Review, the wage structures to which any increase to minimum wages will be applied in these sectors may well be subject to further variation.

3.4.6. In such a situation, a cautious approach to the setting of minimum wages is to be commended.

3.5. Impact of legislative reform yet to be fully realised

3.5.1. Concurrent with the Review and the abovementioned proposals to vary certain modern awards, Parliament recently passed the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (Omnibus Bill)*.

3.5.2. The Omnibus Bill was the subject of significant amendment in the course of its progression through the political arena, with all almost all major reforms barring amendments to casual employment being removed by the Senate.

3.5.3. Of the reforms proposed by the Omnibus Bill, only those pertaining to casual employment will become law once assent is given. Of these, the most likely to have an impact on the employment arrangements of Australian businesses moving forward is the positive obligation on employers to offer permanent employment to casual employees who have been engaged on a regular pattern of hours after a total of 12 months' service.

3.5.4. Previously, casual conversion provisions in the modern awards typically required the employee to initiate the process by requesting conversion; there was no positive obligation on employers to offer conversion.

3.5.5. The experience of NRA's members has been that unless the employer proactively makes an offer of conversion, the incidence of employees making the request of their employer is minimal.

3.5.6. It would therefore appear that a legislative change imposing a positive obligation on employers to offer conversion to permanent employment to casuals could have a profound effect on the labour costs of employers, be they for better or for worse.

3.5.7. As it stands, it is highly unlikely that there will be any meaningful data available for the Panel to rely upon to understand the economic impact of this legislative change before the conclusion of the Review.

3.5.8. As the effects of this change will only become evident after the conclusion of the Review, the NRA grants that it will be difficult to determine with any precision what the impact of this change could be. However, the NRA submits that the potential for a change in workforce composition towards more permanent employment as a result of this change is a relevant factor that ought to be considered, and given reasonable weight, by the Panel in undertaking the review.

4. THE IMPACT ON PROSPECTIVE MINIMUM WAGES

4.1. Performance and competitiveness of the national economy

4.1.1. The NRA submits that the continuing impact of the COVID-19 pandemic on the national economy merits a cautious approach to any potential increase to minimum wages.

- 4.1.2. Although strictly not in recession since the September quarter, the Australian economy has not returned to pre-COVID levels, contracting by 1.1% over the 12 months from December 2019 to December 2020.⁸
- 4.1.3. This follows a contraction of -0.2% in real GDP in the 2019-20 financial year, with the Federal Government estimating GDP growth for the 2020-21 financial year to be a modest 0.75%.⁹ The Reserve Bank of Australia is less optimistic, predicting no year-average GDP growth in 2020-21.¹⁰
- 4.1.4. The retail industry has seen perhaps the most volatile turnover figures in recent memory. From February 2019 to February 2020, 12-month retail turnover rose no higher than 3.4% (in March 2019) and no lower than 1.9% (in January and February 2020).¹¹
- 4.1.5. However, since March 2020 12-month retail turnover has oscillated wildly from peaks of 10% (March 2020), 12% (July 2020) and 13.2% (November 2020) to lows of -9.1% (April 2020), and currently estimated at 8.7% for February 2021.¹²
- 4.1.6. Figure 1 shows the relative volatility of retail trade in the period February 2020 to January 2021 compared to the equivalent time period in 2018-19 and 2019-20, as derived from the relevant ABS data.

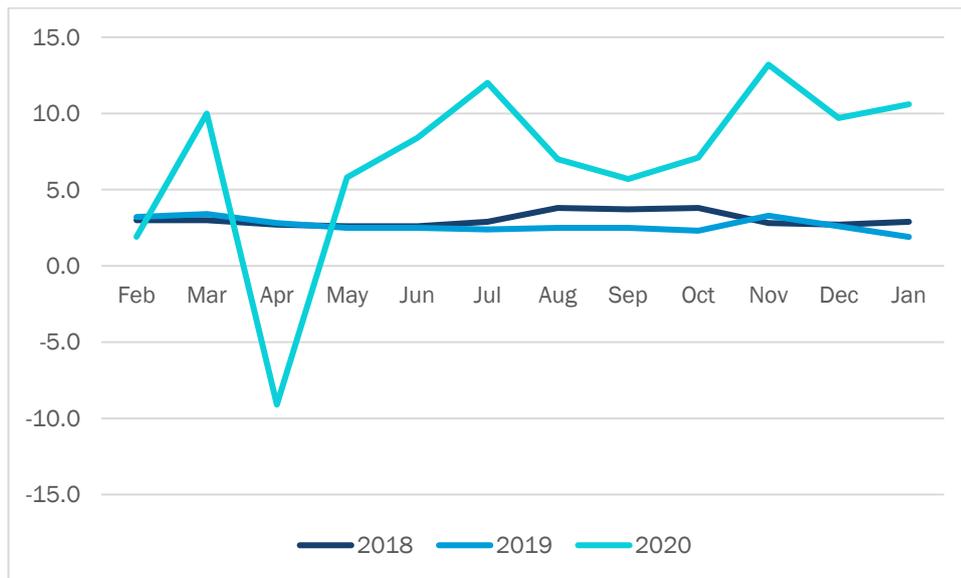


Figure 1: Retail Trade – 12-month percentage change, February to January - Comparative

- 4.1.7. Retail turnover has also proven to be highly sensitive to government action in response to the COVID-19 pandemic. This is demonstrated by:

⁸ Ibid

⁹ Commonwealth of Australia, *Mid-Year Economic and Fiscal Outlook 2020-21*, Table 1, page 3

¹⁰ Reserve Bank of Australia, *Statement on Monetary Policy*, 5 February 2021, Table 5.1, page 63

¹¹ Australian Bureau of Statistics (2021) [Retail Trade, Australia, Preliminary, February 2021](#), ABS Website, accessed 22 March 2021

¹² Ibid

- (a) retail turnover in Queensland for January 2021 declining by 1.5% in response to the three-day Greater Brisbane lockdown;¹³ and
- (b) preliminary estimates of declines in February 2021 of -4% in Victoria and -6% in Western Australia in reaction to lockdowns in those States.¹⁴

- 4.1.8. The effect of the volatility of retail turnover is exacerbated by the variability in real prices of retail products. Although headline CPI remained positive, albeit low, at 0.9% in the 12 months to December 2020, the group CPI for retail goods and services leaned largely, with some exceptions, to the negative.¹⁵
- 4.1.9. The food and non-alcoholic beverages group rose by 2.3% over the year, driven at least in part by ongoing higher domestic demand in response to the COVID-19 pandemic.¹⁶
- 4.1.10. The alcohol and tobacco group similarly saw an increase over the 12 months to December 2020 of 9.3%, driven in large part by the increase in excises from 1 September 2020.¹⁷
- 4.1.11. Clothing and footwear fell by 1.3% over the 12 months to December, with the main sub-category driving this decline being in women's garments (3.3% fall over the 12 months to December).¹⁸
- 4.1.12. Furnishings, household equipment and services rose by 3.6% over the 12 months to December, driven largely by increases in furniture (5.2%). In the December quarter, the overall increase of 3.4% was driven largely by increases to child care costs; if child care is removed, CPI for this group actually fell by 0.7% in the December quarter.¹⁹
- 4.1.13. While businesses with diverse offerings are likely to be able to balance these disparate outcomes, boutique-style retail businesses particularly in the clothing and footwear sector are required to turnover greater volume at lower prices to maintain viability.
- 4.1.14. Unless and until a sustainable, long-term solution to the COVID-19 pandemic is implemented on a wide scale, similar lockdowns and their adverse impact on the Australian economy, particularly the retail sector, will be a feature of the economic landscape that must be accounted for in the Panel's considerations.
- 4.1.15. The vulnerability of businesses, particularly small businesses and retail businesses, to sudden changes in retail trade is demonstrated by the lack of cash on hand to cover operating expenses should revenue streams decline. Among retail businesses, 52% reported that they had insufficient cash on hand to cover more than three months of operations.²⁰ Across all sectors, 42% of small businesses reported cash on hand sufficient to cover less than three months of operations. 41% of

¹³ Australia Bureau of Statistics (2021) [Retail Trade, Australia, January 2021](#), ABS Website, accessed 24 March 2021

¹⁴ Supra, note 11

¹⁵ Australian Bureau of Statistics (2021) [Consumer Price Index, Australia, December 2020](#), ABS Website, accessed 22 March 2021

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid

²⁰ Australian Bureau of Statistics (February 2021) 'Table 8: Length of time cash on hand could cover business operations, by employment size, by industry' [time series spreadsheet], [Business Conditions and Sentiments, February 2021](#), accessed 24 March 2021

small businesses had cash on hand sufficient to cover more than three months of operations, and 17% were unsure.²¹

- 4.1.16. This vulnerability is emphasized when it is considered that, in February 2021, only 17% of retail businesses reported an increase to revenue, with 47% reporting no change and 35% reporting a decrease in revenue.²² Only 21% expected revenue to increase over the following month, with 61% expecting revenue to remain stagnant and 13% expecting a decline.²³
- 4.1.17. Within this context, it must be recalled that pursuant to s.19(2) of the *Superannuation Guarantee (Administration) Act 1992* (Cth) (**SGA Act**), the minimum superannuation contributions required to be paid by employers is due to increase from 9.5% to 10% on and from 1 July 2021.
- 4.1.18. The consequence of this is that the total labour costs for employers, per ordinary hour of work, will increase by a minimum of 0.5% from 1 July 2021, independent of the outcome of the Review.
- 4.1.19. The Panel has previously accepted that increases to compulsory superannuation contributions by employers are a non-wage labour cost which is relevant in determining the extent of any minimum wage increase.²⁴
- 4.1.20. In these previous decisions, the Panel has noted that it is inappropriate to quantify the impact of increases to superannuation, but acknowledged that the increase to superannuation places downward pressure on the extent of any increase to minimum wages.²⁵
- 4.1.21. The NRA submits that it is appropriate for the Panel to adopt a similar approach when undertaking the current Review reduce the extent of any increase to minimum wages it would have awarded having regard for the increase to superannuation.
- 4.1.22. The NRA also submits that the matters traversed at paragraphs 3.3.1 to 3.3.5 require a conservative approach to the setting of minimum wages be taken, particularly in respect of Group 3 modern awards.
- 4.1.23. The NRA further submits that in circumstances where the Australian economy, particularly the retail sector, remains on uncertain footing and subject to the risk of significant changes at short notice, a conservative approach ought to be adopted by the Panel in order to ensure business survivability and national economic competitiveness and recovery.

4.2. Promoting social inclusion through increased workforce participation

- 4.2.1. The NRA notes that the unemployment rate returned to pre-COVID levels in February 2021 in seasonally adjusted terms, despite the winding-back of government subsidy programs.²⁶

²¹ Ibid

²² Australian Bureau of Statistics (February 2021) 'Table 1: Change in business revenue over the last month, by employment size, by industry' [time series spreadsheet], [Business Conditions and Sentiments, February 2021](#), accessed 24 March 2021

²³ Australian Bureau of Statistics (February 2021) 'Table 2: Expected change in revenue over next month, by employment size, by industry' [time series spreadsheet], [Business Conditions and Sentiments, February 2021](#), accessed 24 March 2021

²⁴ [2013] FWCFB 4000 at [334] to [360]; [2014] FWCFB 3500 at [273] to [285]

²⁵ [2013] FWCFB 4000 at [360]

²⁶ Australian Bureau of Statistics (2021) [Labour Force, Australia, February 2021](#), ABS Website, accessed 24 March 2021

- 4.2.2. There is insufficient information at this stage to ascertain what the impact of increases to minimum wages as a result of the Previous Review, effective from the first full pay period commencing on or after 1 February 2021, will have on employment outcomes moving forward.
- 4.2.3. The NRA submits that it is likely that adverse employment outcomes will flow from the inopportune occurrence of wage increases in the retail sector less than two months before the end of government wage subsidies.
- 4.2.4. The NRA further submits that any significant increases to minimum wages less than six months after the previous increases come into effect, together with increases to compulsory superannuation costs as mentioned above, will likely have further adverse effects on employment outcomes.
- 4.3. Relative living standards and the needs of the low paid**
- 4.3.1. The NRA accepts the Panel’s previously-accepted benchmark of two-thirds median adult full-time ordinary earnings for the purposes of identifying who is “low paid”.²⁷
- 4.3.2. Based on a median weekly full-time earnings as at August 2020 were \$1,433.00 per week,²⁸ the benchmark of who is “low paid” is approximately \$955.33 per week.
- 4.3.3. The NRA accepts that employees engaged pursuant to a modern award will generally fall within the ambit of persons who are “low paid”.
- 4.3.4. The NRA further accepts that an increase to minimum wages will assist in ensuring that employees who are low paid will be able to meet their needs.
- 4.3.5. However, the NRA submits that as overall headline CPI remains quite low (0.9%), a significant increase to minimum wages is not required in order to ensure that such persons remain able to adequately meet their needs.
- 4.3.6. The NRA further submits that wages have continued to grow in the retail sector since the conclusion of the Previous Review despite the absence of a mandatory increase to minimum wages.
- 4.3.7. In seasonally adjusted terms, the Wage Price Index (**WPI**) rose by 1.4% in the 12 months to December 2020, despite minimal increases of 0.6% in the December quarter and 0.1% in the September quarter.²⁹
- 4.3.8. Despite these minimal gains overall, wages growth in the retail sector has not been as sluggish, with an increase to industry WPI of 1.0% in the 12 months to December 2020 and an increase of 0.7% in the December quarter itself.³⁰
- 4.3.9. Wages in the retail sector also grew relatively well, all things considered, when viewed through the ABS’s exclusion-based measures, resulting in a 0.1% increase in the June quarter, a 0.2% increase

²⁷ [2020] FWCFB 3500 at [359]

²⁸ Australian Bureau of Statistics (August 2020) ‘Table 1a.1: Median weekly earnings for employees by sex, state and full-time or part-time, 2004-2020’ [time series spreadsheet], [Employee earnings](#), accessed 24 March 2021

²⁹ Australian Bureau of Statistics (2021) [Wage Price Index, Australia, December 2020](#), ABS Website, accessed 22 March 2021

³⁰ Ibid

in the September quarter and a 0.6% increase in the December quarter compared to the national 0.4% in the September quarter and 0.3% in the December quarter.³¹

- 4.3.10. It is likely that further increases to wages in the retail sector will flow from the 1 March 2021 increase, however there is as yet insufficient data to determine the extent of this effect.
- 4.3.11. The December 2020 quarter gave rise to a curious situation of salaries and wages in the retail sector rising by 2.9% in seasonably adjusted terms, while company gross operating profits (CGOP) fell by 13%. Across all industries, salaries and wages rose by 1.4% while CGOP fell by 6.6%.³²
- 4.3.12. Median weekly earnings for employees in the retail sector also increased from August 2019 to August 2020, despite there being a mandated increase to minimum wages in this period, rising by 7.14% from \$700 per week to \$750 per week.³³
- 4.3.13. Median hourly earnings for employees in the retail sector increased by a similar amount, rising by 7.2% from \$25.00 per hour to \$26.80 per hour from August 2019 to August 2020.³⁴
- 4.3.14. The the median weekly earnings for persons engaged as sales workers (across all industries) rose by 12.5% from \$600 to \$675 in the same period, while the median hourly earnings of the same cohort rose by 5.2% from \$25.00 per hour to \$26.30 per hour.³⁵
- 4.3.15. Although we acknowledge that the data utilised by the ABS referred to at paragraphs 4.3.12 to 4.3.14 does not exclude amounts paid consequential to the JobKeeper program, it is worth noting that the greatest increase in median wages was observed along the 10th percentile. The median weekly wage of that cohort rose by 17.6% from \$347 per week to \$408 per week.³⁶ This would indicate that while JobKeeper may have had an impact on median wages, the increase to median wages is not wholly attributable to that scheme.
- 4.3.16. Average full-time adult weekly ordinary time earnings in the retail sector rose from \$1,259.80 in May 2020 to \$1,289.30 in November 2020, an increase of 2.34%. Although not the largest increase in average weekly ordinary time earnings across the end of the financial year that the retail industry has ever experienced, it is interesting to note that second-highest increase to average full-time adult ordinary time earnings in the retail industry since 2015 occurred in a period where there was no mandated increase to minimum wages. Table 1 below sets out a comparison of the relevant data.³⁷

³¹ Ibid

³² Australian Bureau of Statistics (2021) [Business Indicators, Australia, December 2020](#), ABS Website, accessed 22 March 2021

³³ Derived from Australian Bureau of Statistics (August 2020) 'Table 6.1: Median weekly earnings for employees by industry, occupation and educational qualification' [time series spreadsheet], [Employee earnings](#), accessed 24 March 2021, and Australian Bureau of Statistics (August 2019) 'Historical data – Table 6.1: Median weekly earnings for employees by industry, occupation and educational qualification' [time series spreadsheet], [Employee earnings](#), accessed 24 March 2021

³⁴ Ibid

³⁵ Ibid

³⁶ Australian Bureau of Statistics (2021) [Employee Earnings](#), ABS Website, accessed 24 March 2021

³⁷ Australian Bureau of Statistics (November 2020) 'Table 10G: Average Weekly Earnings, Industry, Australia (Dollars) - Original - Persons, Full Time Adult Ordinary Time Earnings' [time series spreadsheet], [Average Weekly Earnings, Australia, November 2020](#), accessed 22 March 2021

Table 1: Average full-time adult weekly ordinary time earnings – original – retail trade

Year	May	November	Difference	Percent
2020	\$1,259.80	\$1,289.30	+ \$29.50	+ 2.34%
2019	\$1,200.10	\$1,249.30	+ \$49.20	+ 4.10%
2018	\$1,161.30	\$1,184.90	+ \$23.60	+ 2.03%
2017	\$1,124.30	\$1,142.60	+ \$18.30	+ 1.63%
2016	\$1,114.90	\$1,133.90	+ \$19.00	+ 1.70%
2015	\$1,101.40	\$1,127.50	+ \$26.10	+ 2.37%

- 4.3.17. It should be noted that this increase to average full-time adult weekly ordinary time earnings was not felt across all industries, with the change across all industries being a decline of 0.13% from May to November 2020.³⁸
- 4.3.18. This would appear to be offset by a decrease in total average weekly cash earnings of 5.21% (from \$797.10 to \$755.60),³⁹ however this may be the result of a reduction in the number of casual hours being worked as compared to hours being offered to permanent employees, with permanent employees being preferred over casual employees for the allocation of hours in November 2020.⁴⁰
- 4.3.19. The NRA submits that the data indicates that a conservative increase to minimum wages will not have significant adverse consequences on low paid workers, or at least not so significant as to outweigh the other statutory considerations.

4.4. Equal remuneration for work of equal or comparable value

- 4.4.1. The NRA accepts the formulation, adopted in the Previous Review, that gender pay equity considerations favour an increase to minimum wages.⁴¹
- 4.4.2. The NRA submits that this consideration does not outweigh the other factors that the Panel is required to take into account in the Review.

5. DEFERRAL OF INCREASE FOR GROUP 3 AWARDS

5.1. The case for deferral

- 5.1.1. The NRA submits that the conclusions of the Panel in the Previous Review in relation to the delayed operation of increases to minimum wages in Group 3 modern awards remain apposite.⁴²
- 5.1.2. As of the date of these submissions, a state of emergency in relation to the COVID-19 continued in force in all States and Territories, and some form of restriction on personal and business activities remained in place.

³⁸ Ibid

³⁹ Australian Bureau of Statistics (November 2020) 'Average Weekly Cash Earnings, by Industry, Australia (Dollars) – Original (May 2010 to Nov 2020)' [data set], [Average Weekly Earnings, Australia, November 2020](#), accessed 22 March 2021

⁴⁰ Australian Bureau of Statistics (2021) [Insights into casual employment, occupation and industry, February 2021](#), ABS Website, accessed 22 March 2021

⁴¹ [2020] FWCFB 3500 at [405]

⁴² See [2020] FWCFB 3500 at [180] to [192]

- 5.1.3. More importantly in prospective terms, the ability for governments to quickly impose restrictions on the movement and gathering of persons, and on business activities, remains in effect in all States and Territories.
- 5.1.4. Localised lockdowns in January (Queensland) and February (Victoria and Western Australia) demonstrate that governments remain ready, willing and able to utilise these powers if necessary to respond to the changing circumstances of the COVID-19 pandemic, particularly in light of emerging variants of the disease.
- 5.1.5. The impact of these “circuit breaker” lockdowns is disproportionate to their brevity, with the impact of the Queensland, Victoria and Western Australia lockdowns on retail turnover noted at 4.1.7 above. The impact of the Victorian lockdown in particular is as yet uncertain, as economic forecasts prior to this event predicted a strong recovery for that State’s economy; whether these predictions remain accurate is as yet unknown.
- 5.1.6. Additionally, the Full Bench has recently accepted that ongoing support for businesses is necessary to assist in dealing with the impact of the COVID-19 pandemic, albeit in the context of variations to modern awards. However, the Full Bench noted that its observations as to the impact of the COVID-19 pandemic and the nature of assistance appropriate to be provided, as at April 2020, “remained apposite”.⁴³
- 5.1.7. As such, the NRA submits that the exceptional circumstances which warranted a deferred operation of minimum wage increases in Group 3 modern awards continues in effect, and as such a deferred operation of minimum wage increases in those same modern awards remains appropriate in the context of the current Review.
- 5.1.8. However, the NRA acknowledges that the economic situation is not as severe as it was at the time of the Previous Review, and further acknowledges that the roll-out of vaccines may well provide a for a more stable economy, as and when a sufficient proportion of the population are able to be vaccinated.
- 5.1.9. The NRA also accepts that it is not sustainable for a select group of modern awards to be the subject of a deferred increase to minimum wages on an ongoing basis.
- 5.1.10. With the above matters in mind, the NRA submits that in all of the circumstances it is appropriate for any increase to modern award minimum wages in Group 3 modern awards to be deferred until **1 November 2021**, with a view towards minimum wage increases in these modern awards returning to the usual 1 July cycle in the Annual Wage Review 2021-22 subject to any other exceptional circumstances.

⁴³ [2021] FWCFB 1601 at [14]