



DECISION

Fair Work Act 2009
s.285 - Annual wage review

Annual Wage Review 2020–21 (C2021/1)

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT CATANZARITI
DEPUTY PRESIDENT ASBURY
COMMISSIONER HAMPTON
MR FERGUSON
PROFESSOR WOODEN
MS LABINE-ROMAIN

MELBOURNE, 16 JUNE 2021

Contents

		Paragraph
1.	The Statutory Framework	[1]
2.	The Review - Quantum	[12]
	2.1 The Panel's Approach - General	[12]
	2.2 Changing Circumstances	[17]
	2.2.1 This time last year	[17]
	2.2.2 Current economic outlook	[24]
	2.2.3 The Superannuation Guarantee Rate Increase	[56]
	2.3 Relevant Considerations	[73]
	2.3.1 Economic Considerations	[74]
	2.3.2 Social and other considerations	[134]
	2.4 Conclusion	[164]
3	The Review - Timing	[177]
4	Conclusion	[304]
	Appendix 1 – Index of material	

	Appendix 2 – Proposed Minimum Wages Adjustments	
	Appendix 3 – Charts	
	Appendix 4 – The COVID-19 Pandemic	
	Appendix 5 – As assessment of the economic effects of COVID-19 – Professor Jeff Borland (versions 1 to 5)	
	Appendix 6 – Poverty lines	
	Appendix 7 – Research for Annual Wage Reviews	
	Appendix 8 – List of Appearances	

Abbreviations

2017–18 Review	<i>Annual Wage Review 2017–18</i>
2018–19 Review	<i>Annual Wage Review 2018–19</i>
2019–20 Review	<i>Annual Wage Review 2019–20</i>
2020–21 Review	<i>Annual Wage Review 2020–21</i>
2021–22 Review	<i>Annual Wage Review 2021–22</i>
AAWI	average annualised wage increase
ABI	Australian Business Industrial and the NSW Business Chamber Ltd
ABS	Australian Bureau of Statistics
ACCER	Australian Catholic Council for Employment Relations
ACCI	Australian Chamber of Commerce and Industry
ACOSS	Australian Council of Social Service
Act	<i>Fair Work Act 2009 (Cth)</i>
ACTU	Australian Council of Trade Unions
Ai Group	Australian Industry Group
AQF	Australian Qualifications Framework
ARA	Australian Retailers Association
AWOTE	average weekly ordinary time earnings
C4	Engineering Associate/Laboratory Technical Officer Level 1
C10	Engineering/Manufacturing Tradesperson Level 1
C14	Engineering/Manufacturing Employee Level 1
Commission	Fair Work Commission
CPI	Consumer Price Index
FAAA	Flight Attendants' Association of Australia
GDP	gross domestic product
GVA	gross value added
HIA	Housing Industry Association
LCI	Living Cost Index
LMITO	low and middle income tax offset
Major Fast Food Chains	McDonald's, Hungry Jacks and Cravable Brands (Oportos, Red Rooster and Chicken Treat)
Miscellaneous Award	<i>Miscellaneous Award 2020</i>
MGA	Master Grocers Australia Limited
NFF	National Farmers' Federation
NMW	national minimum wage
NRA	National Retail Association

NTW	National Training Wage
Panel	Expert Panel for annual wage reviews
RBA	Reserve Bank of Australia
R&CA	Restaurant and Catering Industry Association
Review	Annual Wage Review
SAWIA	South Australian Wine Industry Association
SDA	Shop Distributive and Allied Employees' Association
SG	Superannuation Guarantee
Statistical report	<i>Statistical Report—Annual Wage Review 2020–21</i>
SWS	Supported Wage System
WAD	Workplace Agreements Database
WPI	Wage Price Index

The Annual Wage Review Decision

1. The Statutory Framework

[1] The *Fair Work Act 2009* (Cth) (Act) requires the Fair Work Commission (Commission), constituted by an Expert Panel for annual wage reviews (Panel), to conduct and complete a review of the national minimum wage (NMW) and modern award minimum wages in each financial year (the Review).

[2] The Review is conducted within the legislative framework of the Act, particularly the object of the Act in s.3, the modern awards objective in s.134(1) and the minimum wages objective in s.284(1).

[3] The Panel must make a NMW order and may set, vary or revoke modern award minimum wages. The NMW order applies to award/agreement free employees¹ and modern award minimum wages are the minimum wages contained in modern awards.² These tasks are undertaken by reference to the particular statutory criteria applicable to each function, particularly the minimum wages objective in s.284(1), the modern awards objective in s.134(1) and the considerations specified in s.578.

[4] In the *Annual Wage Review 2019–20* (2019–20 Review) decision the reasons of the majority gave detailed consideration to the legislative framework in Chapter 2 of the decision, including a consideration of what the Panel can and can't do in a Review.³ We adopt those observations and need not repeat them here.

[5] We note that in this Review, the Australian Catholic Council for Employment Relations (ACCER) submitted that the Panel's approach as described in paragraphs [204]–[210] of the 2019–20 Review decision does not give any content to the words 'a safety net' and thereby addresses only one half of the formulation of s.284.⁴ ACCER submitted that in the 2019–20 Review decision, the Panel failed to come to grips with the fundamental question asked by s.284, and that 'focusing on the question of fairness in isolation from the words *a safety net* risks jurisdictional error'.⁵

[6] ACCER's submission proceeds on an erroneous premise. Contrary to the submission put, the Panel has always accepted that the statutory direction to establish and maintain a 'safety net of fair minimum wages' is a composite expression.⁶

¹ The NMW order sets both the NMW and special NMWs for employees who are juniors, to whom training arrangements apply, or who have disabilities; and applies to award/agreement free employees. The NMW order additionally sets the casual loading for award/agreement free employees. An award/agreement free employee cannot be paid less than the rate of pay specified in the NMW order (see ss 294–299 of the Act). Further, if an enterprise agreement applies to an employee and the employee is not covered by a modern award, then the employee's base rate of pay under the enterprise agreement must not be less than the rate specified in the NMW order (s.206(3) of the Act).

² Including classification rates; wage rates for junior employees, employees to whom training arrangements apply and employees with a disability; casual loadings and piece rates.

³ See [2020] FWCFB 3500 at [211]–[270].

⁴ [ACCER submission](#), 26 March 2021 at para. 20.

⁵ *Ibid* at para. 37.

⁶ [2018] FWCFB 3500 at [23]–[24]

[7] A key contextual consideration in relation to the present proceedings is the statutory constraints regarding the conduct of Reviews. In particular, s.285(1) provides that the Panel ‘must conduct and complete an annual wage review in each financial year’ (emphasis added). It follows that 30 June 2021 provides the outer limit for the completion of the *Annual Wage Review 2020–21* (2020–21 Review).

[8] The Act also sets out some important procedural fairness requirements for the Review. The Panel must ensure that all persons and bodies (referred to collectively as parties) are given a reasonable opportunity to make and reply to written submissions (s.289(1)). The timetable for the Review and all of the submissions and research reports were published on the Commission’s website to ensure that all parties had a reasonable opportunity to participate. The Panel has considered all the material received from parties, the information in the *Statistical Report—Annual Wage Review 2020–21* (Statistical report) and the research referred to in the Research reference list in making its decision.

[9] As was the case last year, this Review is being undertaken during a global pandemic. The Review timetable was again extended to allow parties to provide submissions regarding the impacts of the pandemic as they have unfolded and to comment on the most recent available data. The Australian Bureau of Statistics (ABS) March Quarter 2021 *National Accounts* were released on 2 June 2021 and interested parties filed submissions in respect of these data on 4 and 8 June 2021.

[10] The Panel received submissions from the Australian Government, most state governments, parties that represent the interests of employers and employees, and other bodies. A list of the material filed is set out at Appendix 1. A summary of the positions advanced by the various parties is set out in Appendix 2.

[11] As a practical matter the Review decision had to be published mid-June 2021 in order to allow sufficient time for draft variation determinations to be published and for interested parties to submit corrections or other amendments to the draft determinations. Given these constraints, our decision has not sought to canvass all of the issues raised in the submissions. We have focussed on the issues which the Act requires that we take into account.

2. The Review - Quantum

2.1 *The Panel's Approach - General*

[12] The statutory tasks in ss 134 and 284 involve an 'evaluative exercise' which is informed by the considerations in s.134(1)(a)–(h) and s.284(1)(a)–(e). These statutory considerations inform the evaluation of what might constitute 'a fair and relevant minimum safety net of terms and conditions' and 'a safety net of fair minimum wages'. The Act requires the Panel to take into account all of the relevant statutory considerations.

[13] The Panel's approach to its statutory function is broadly reflected in the following extract from the *Annual Wage Review 2014–15* decision:

'In taking into account available economic and social data, the Panel's approach is broadly to assess the changes in these data from year to year and determine how they inform the statutory criteria. Put another way ... if there were no change in the relevant considerations from one year to the next then, all other things being equal, a similar outcome would result.'⁷

[14] Generally speaking, differently constituted Panels should evaluate the evidence and submissions before them in accordance with a consistent and stable interpretation of the legislative framework. Justice requires consistent decision making unless a difference can be articulated and applied.⁸ While we seek to explain our view of the circumstances (including forecasts or projections) prevailing in each Review in comparison with previous years, it is not feasible to quantify the weight given to particular factors in balancing the various considerations prescribed by the Act. Rather, we consider all information about the economic and social environment that is available to inform our decision.

[15] Our decision-making process in a Review should be as transparent as possible and accordingly we disclose the factors which are most relevant in a particular year, and we have done so in this decision.

[16] The most significant change in circumstances which pertained at the time of the 2019–20 Review decision has been in the economic environment and outlook.

2.2 *Changing Circumstances*

2.2.1 *This time last year*

[17] In last year's Review proceedings the COVID-19 pandemic cast a large shadow over the economic environment.

[18] While predominantly a public health issue, federal and state government-imposed restrictions to contain the spread of the virus had a profound economic impact.⁹ The restrictions included travel restrictions (both international and domestic) and social distancing

⁷ [2015] FWCFB 3500 at [7]

⁸ *Gala v Preston* (1991) 172 CLR 243 at [12]

⁹ See Fair Work Commission (2020), [Information note—Government responses to COVID-19 pandemic](#), 16 June.

rules. The social and economic consequences of these measures were unprecedented and led to business closures and job losses. All but ‘essential workers’ were forced to stop work or modify their work arrangements. These actions significantly reduced domestic activity and resulted in ‘a large and near-simultaneous contraction across the global economy.’¹⁰

[19] At the time of the 2019–20 Review, the Australian economy was going through a significant downturn and was almost certain to enter a technical recession (the first in almost 30 years) at the time the June 2020 quarter ABS *National Accounts* were released. It had been caused by an unprecedented health crisis and the impact of government measures to prevent the spread of the COVID-19 virus. Output, as measured by gross domestic product (GDP), fell by 0.3 per cent in the March quarter 2020 and increased by only 1.4 per cent over the year, the lowest result since the global financial crisis in the September quarter 2009 and well below the long-term average of 3.4 per cent. The March quarter 2020 outcome did not include the full effects of the most restrictive limitations on workplaces and social gatherings, which were implemented from late March.¹¹

[20] The shock to the labour market was unprecedented. The data for May 2020 showed that the unemployment rate increased by 1.9 percentage points in 2 months, to 7.1 per cent; while significant, it did not provide the full picture. The participation rate declined by 3.1 percentage points in 2 months, highlighting the fact that many people left the labour force. But for the decline in the participation rate, the unemployment rate would have been higher.¹²

[21] As described by the ABS, there was a larger percentage of employed persons who worked 0 hours in May 2020 than in previous years, as was also seen in April 2020. That the unemployment rate did not increase further is because these people were still defined as employed, in part because of the JobKeeper payment. In April 2020, the underemployment rate increased to 13.8 per cent, the highest rate on record, before declining to 13.1 per cent in May 2020.¹³

[22] The state of the Australian economy and the challenges that lay ahead at the time of last year’s Review were neatly encapsulated in the 2 June 2020 Statement by the Reserve Bank of Australia (RBA) Governor on the Board’s monetary policy decision:

‘The Australian economy is going through a very difficult period and is experiencing the biggest economic contraction since the 1930s. In April, total hours worked declined by an unprecedented 9 per cent and more than 600,000 people lost their jobs, with many more people working zero hours. Household spending weakened very considerably and investment plans are being deferred or cancelled.

Notwithstanding these developments, it is possible that the depth of the downturn will be less than earlier expected. The rate of new infections has declined significantly and some restrictions have been eased earlier than was previously thought likely. And there are signs that hours worked stabilised in early May, after the earlier very sharp decline. There has also been a pick-up in some forms of consumer spending.

¹⁰ [2020] FWCFB 3500 at [24]; RBA (2020), *Statement on Monetary Policy*, May, p. 1.

¹¹ [2020] FWCFB 3500 at [12]–[13]

¹² *Ibid* at [17]

¹³ *Ibid* at [18]

*However, the outlook, including the nature and speed of the expected recovery, remains highly uncertain and the pandemic is likely to have long-lasting effects on the economy. In the period immediately ahead, much will depend on the confidence that people and businesses have about the health situation and their own finances.*¹⁴

[23] At that time the form and shape of our pathway to recovery was uncertain and heavily contested. The pace of recovery beyond the June quarter 2020 was especially uncertain. As the RBA observed in its May 2020 *Statement on Monetary Policy*:

‘It is quite plausible that the current economic disruption will have some long-lasting effects, not only because it will take some time to restore workforces and re-establish businesses but also because it could also affect mindsets and the behaviours of consumers and businesses. This could result in structural change in the economy. Changes in the financial position of households and businesses could also have long-lasting effects.’¹⁵

2.2.2 Current economic outlook

[24] The Australian economy has recovered to a greater extent and more quickly than anticipated.

[25] At the time of the 2019–20 Review, forecasts for the remainder of 2020 predicted a significant contraction in economic activity and it was expected that improvement would come in the first half of 2021. The RBA forecast for GDP growth over the year to the December quarter 2020 was for a fall of 6 per cent and household consumption was expected to decline by 9 per cent. These forecasts proved too pessimistic, with improvement across most indicators recorded during the second half of 2020. Although the actual outcomes for GDP, household consumption and employment growth were still negative (Table 1), the fact that they outperformed forecasts underscores that the economic recovery in Australia has been better than expected.

Table 1: RBA forecasts and actual outcomes, annual growth rates for the December quarter 2020

	Forecast at 2019–20 Review	Outcome
Gross domestic product	–6	–1.1
Household consumption	–9	–2.7
Business investment	–13	–5.1
Real household disposable income	–8	4.4
Unemployment rate (quarterly)	9	6.8
Employment growth	–7	–0.9

¹⁴ Ibid at [22]; RBA (2020), *Statement by Philip Lowe, Governor: Monetary Policy Decision*, 2 June. Also see RBA (2020), *Minutes of the Monetary Policy Meeting of the Reserve Bank Board – 2 June 2020*, released 16 June.

¹⁵ [2020] FWCFB 3500 at [37]; RBA (2020), *Statement on Monetary Policy*, May, p. 87.

Wage Price Index	1½	1.4
Trimmed mean inflation	1¼	1.2
Consumer Price Index	¼	0.9

Source: [2020] FWCFB 3500 at [322], Table 3.1; RBA (2021), *Statement on Monetary Policy*, May, Appendix: Forecasts.

[26] Data for the early part of 2021 have continued to be positive, with GDP growing by 1.8 per cent, household consumption increasing by 1.2 per cent in the March quarter 2021, and the unemployment rate falling to 5.5 per cent in April 2021.¹⁶

[27] The domestic economy performed better than was expected in the second half of 2020, particularly in the December quarter, which caused the RBA to revise favourably several of its forecasts for 2021. The improved recovery was fuelled in large part by strong household spending and public demand, as well as better health outcomes and continued expansion of monetary and fiscal policy.¹⁷ The outcomes for GDP and the labour market were at least as good as the ‘upside’ scenarios forecast by the RBA in 2020.¹⁸

[28] In the September quarter 2020, GDP growth rebounded strongly and increased by 3.3 per cent. The return to growth was driven by the large rise in household consumption (7.9 per cent) as social-distancing requirements and other restrictions were eased across states and territories (with the exception of Victoria). The household saving ratio remained elevated (18.9 per cent) as household income also increased.¹⁹

[29] Similarly, the increase in GDP in the December quarter 2020 (3.2 per cent) was also driven in large part by a rise in household consumption (4.5 per cent), although it was still 2.6 per cent lower over the year.²⁰ The increase in consumption was reflected by a decline in the household savings ratio to 12.2 per cent, although it remains considerably above its 5-year average of 7.2 per cent.²¹ Despite this recovery, GDP still declined by 1.0 per cent over the year to the December quarter 2020 (Chart A1 – Appendix 3).

[30] The Minutes of the Monetary Policy Meeting of the Reserve Bank Board on 4 May 2021 summarise how well the domestic economy has improved recently:

‘... the Australian economy was transitioning from recovery to expansion earlier and with more momentum than previously anticipated. The unique features of the pandemic and the policy response had seen the economy rebound much faster than in previous downturns. GDP was expected to have returned to its pre-pandemic level in the March quarter and there were more people employed in March than before the onset of the pandemic.’²²

¹⁶ Statistical report (version 12), 15 June 2021, Overview; Chart 1.2.

¹⁷ RBA (2021), *Statement on Monetary Policy*, February, p. 61.

¹⁸ House of Representatives Standing Committee on Economics (2021), *Proof Committee Hansard*, Commonwealth of Australia, 5 February, p. 2.

¹⁹ ABS (2020), *Recovery tempered by second wave impacts – the September quarter 2020*, 14 December.

²⁰ ABS, *Australian National Accounts: National Income, Expenditure and Product*, March 2021.

²¹ Ibid; Statistical report (version 12), 15 June 2021, Overview.

²² RBA (2021), *Minutes of the Monetary Policy Meeting of the Reserve Bank Board*, 4 May.

[31] The RBA's *Statement on Monetary Policy* for May 2021 commented that 'GDP growth in the December quarter 2020 was stronger than expected and the recovery in activity and the labour market again exceeded expectations in the March quarter'.²³

[32] The National Accounts for the March quarter 2021 show that GDP grew by 1.1 per cent over the year, meaning that the level of GDP had exceeded the March quarter 2020 when the pandemic began. GDP per capita also increased over the year (0.8 per cent). Following a large fall in the June quarter 2020, household consumption increased over the next 3 quarters and was flat over the year, with the household saving ratio still high at 11.6 per cent.²⁴

[33] Stronger economic performance over the latter part of 2020 has improved the baseline forecast scenario published in the RBA's May 2021 *Statement on Monetary Policy*, even from the February 2021 *Statement*, including:²⁵

- *GDP growth revised up from 8 per cent to 9¼ per cent over the year to the June quarter 2021 and from 3½ per cent to 4¾ per cent over the year to the December quarter 2021.*
- *Household consumption revised up from 14 per cent to 15½ per cent over the year to the June quarter 2021 and from 4 per cent to 5½ per cent over the year to the December quarter 2021.*
- *The unemployment rate revised down from 6½ per cent to 5¼ per cent for June 2021 and from 6 per cent to 5 per cent for December 2021.*
- *The Consumer Price Index (CPI) revised up from 3 per cent to 3¼ per cent for the June quarter 2021 and from 1½ per cent to 1¾ per cent for December 2021. The increase was largely caused by the unwinding of government support measures, such as free child care.²⁶ Trimmed mean inflation was also revised up from 1¼ per cent to 1½ per cent for both the June and December quarters 2021.*
- *Growth in the Wage Price Index (WPI) revised up from 1 per cent to 1½ per cent for the June quarter 2021 and from 1½ per cent to 1¾ per cent for the December quarter 2021.*

[34] The Australian Government delayed the release of the 2020–21 Budget from May until October 2020 and therefore the 2020–21 Budget was not available at the time of the last Review. The Mid-Year Economic and Fiscal Outlook (MYEFO) was published in December 2020 and the Treasury made several revisions to its forecasts for 2020–21 between the Budget²⁷ and the MYEFO.²⁸ With the 2021–22 Budget released in May 2021, changes to

²³ RBA (2021), *Statement on Monetary Policy*, May, p. 71.

²⁴ ABS, *Australian National Accounts: National Income, Expenditure and Product*, March 2021.

²⁵ RBA (2021), *Statement on Monetary Policy*, February, Appendix: Forecasts; RBA (2021), *Statement on Monetary Policy*, May, Appendix: Forecasts.

²⁶ RBA (2021), *Statement on Monetary Policy*, February, p. 67.

²⁷ Commonwealth Treasury (2020), *Budget 2020–21*, Commonwealth of Australia, October.

²⁸ Commonwealth Treasury (2020), *Mid-Year Economic and Fiscal Outlook 2020–21*, Commonwealth of Australia, December.

forecasts of key economic indicators also underscore the improved assessment of the Australian economy over this time. In particular, there were improved forecasts over 2020–21 for:²⁹

- *real GDP growth, revised up from $\frac{3}{4}$ per cent to $1\frac{1}{4}$ per cent;*
- *household consumption, revised up from $\frac{1}{2}$ per cent to $1\frac{1}{4}$ per cent;*
- *non-mining business investment, revised up from -11 per cent to $-6\frac{1}{2}$ per cent;*
- *the CPI, revised up from $2\frac{1}{4}$ per cent to $3\frac{1}{2}$ per cent;*
- *employment growth, revised up from 4 per cent to $6\frac{1}{2}$ per cent; and*
- *the unemployment rate, revised down from $7\frac{1}{4}$ per cent to $5\frac{1}{2}$ per cent.*

[35] Forecasts for WPI growth ($1\frac{1}{4}$ per cent) were unchanged. Despite the improvement in economic forecasts, both the RBA and Treasury do not expect an increase in the rate of wages growth for some time. Information from the RBA’s business liaison program indicates that ‘temporary wage cuts have been unwound since December. However, wage freezes remain fairly widespread across industries, with a quarter of firms ... reporting that a freeze was in place in April.’³⁰

[36] The RBA forecasts a strong recovery in 2021, however, the level of GDP is still expected to remain below forecasts made before the pandemic, mostly due to lower population growth, with GDP per capita expected to be higher.³¹

[37] The RBA noted that the lower forecast unemployment rate is expected to put modest upward pressure on wages growth over time, while inflation is still expected to increase gradually, though slightly faster due to the improved outlook. The ‘spike’ in the CPI inflation forecast for the year to the June quarter 2021 is partly due to the effect of one-off price changes in the previous June quarter (such as free child care services) dropping out of the CPI calculation.³² Trimmed mean inflation is expected to be $1\frac{1}{2}$ per cent until the June quarter 2022.

Table 2: RBA economy forecasts, growth rates

²⁹ For MYEFO forecasts, see Statistical report (version 1), p. 74, Table 14.3.

³⁰ RBA (2021), *Statement on Monetary Policy*, May, p. 69.

³¹ *Ibid*, May, p. 71.

³² RBA (2021), *Minutes of the Monetary Policy Meeting of the Reserve Bank Board*, 4 May.

	Dec-20	Jun-21	Dec-21	Jun-22	Dec-22	Jun-23
Gross domestic product	-1.1	9¼	4¾	4	3½	3
Household consumption	-2.7	15½	5½	5¼	4	3
Dwelling investment	0.6	10¾	4½	-½	½	3¼
Business investment	-5.1	1¾	6	9	9	6
Public demand	6.3	5¼	4½	3¼	2	1¾
Gross national expenditure	-0.3	12	5¼	4¾	3¾	3
Imports	-9.6	16½	8¾	10½	10	6
Exports	-11.7	3¼	6	6¾	7½	5¼
Real household disposable income	4.4	-¾	1	2¾	1¾	1¼
Terms of trade	7.3	19¾	9	-7¾	-8	-5¼
Major trading partner GDP	1.9	11	4¼	4¾	4	3¾
Unemployment rate	6.8	5¼	5	4¾	4½	4½
Employment	-0.9	6¾	3	1¼	1¼	1¼
Wage price index	1.4	1½	1¾	2	2¼	2¼
Nominal (non-farm) average earnings per hour	5.8	-4½	-¼	1¾	2¼	2¼
Trimmed mean inflation	1.2	1½	1½	1½	1¾	2
Consumer price index	0.9	3¼	1¾	1¼	1½	2

Source: Statistical report (version 12), 15 June 2021, Table 14.4; RBA (2021), *Statement on Monetary Policy*, May, Appendix: Forecasts.

Note: Percentage changes are for the year-ended. *Average rate in the quarter. Forecasts finalised on 5 May. Forecast assumptions—trade-weighted index of 64, Australian dollar at US\$0.77, Brent crude oil price at US\$68 per barrel, population growth of 0.2 per cent over 2021 and 0.4 per cent over 2022; cash rate in line with market pricing out to 2022 (and held constant thereafter); and other elements of the Bank's monetary stimulus are in line with the announcement made following the February 2021 Board meeting. Forecasts are rounded to the nearest quarter point. Shaded regions are historical data.

[38] In his Budget speech, the Treasurer described the economic environment thus: 'Australia's economic engine is roaring back to life'.³³

[39] According to the Budget Papers, the strengthening in real GDP reflects the stronger outlook for household consumption, dwelling investment and new private business investment, though growth in household consumption is expected to moderate as the recovery stabilises. When the international border reopens, net exports are expected to weigh on growth—with outbound tourism activity more than offsetting that of inbound tourists—and demand for imported goods expected to increase. However, the gradual arrival of international students and migrants will support the economy, particularly for education services exports and consumption.³⁴

³³ Hon. Josh Frydenberg (2021), *Budget Speech 2021–22*, May.

³⁴ Australian Government (2021), *Budget 2021–22 Budget Paper No.1*, May, p. 45.

[40] Aggregate household consumption is expected to return to pre-pandemic levels in mid-2021 with increases reflecting strong household balance sheets, improved labour market conditions, continued easing of restrictions and robust consumer confidence.³⁵

[41] As to the labour market, the unemployment rate is expected to return to pre-pandemic levels in the December quarter 2021. However, wages growth is expected to remain moderate, reflecting the effects of the pandemic and continued spare capacity.³⁶

[42] The headline CPI is expected to peak over the year to the June quarter 2021, reflecting the rebound from the record fall in CPI in the June quarter 2020, but the increase is expected to be transitory.³⁷

³⁵ Australian Government (2021), *Budget 2021–22 Budget Paper No.1*, May, p. 46.

³⁶ *Ibid*, p. 61.

³⁷ *Ibid*, p. 62.

Table 3: 2021–22 Budget, domestic economy forecasts^(a)

	Outcomes ^(b)		Forecasts	
	2019–20	2020–21	2021–22	2022–23
Real gross domestic product	–0.2	1¼	4¼	2½
Household consumption	–3.0	1¼	5½	4
Dwelling investment	–8.1	2½	0	–1½
Total business investment ^(c)	–2.0	–5	1½	10
Mining investment	6.8	½	3	3½
Non-mining investment	–4.5	–6½	1½	12½
Private final demand ^(c)	–3.2	¾	4½	4½
Public final demand ^(c)	5.5	5¾	5	1¾
Change in inventories ^(d)	–0.3	¼	0	0
Gross national expenditure	–1.4	2½	4¾	3¾
Exports of goods and services	–1.8	–8	4	3
Imports of goods and services	–7.4	–4	6½	9½
Net exports ^(d)	1.2	–1	–¼	–1¼
Nominal gross domestic product	1.7	3¾	3½	2
Prices and wages				
Consumer price index ^(e)	–0.3	3½	1¾	2¼
Wage price index ^(f)	1.8	1¼	1½	2¼
GDP deflator	1.9	2½	–½	–½
Labour market				
Participation rate ^(g)	63.4	66¼	66¼	66
Employment ^(f)	–4.2	6½	1	1
Unemployment rate ^(g)	6.9	5½	5	4¾
Balance of payments				
Terms of trade ^(h)	0.9	10	–8	–10½
Current account balance (per cent of GDP)	1.8	3¾	1¼	–2¼

Source: Australian Government (2021), *Budget 2021–22 Budget Paper No.1*, May, p. 37.

Note: The detailed forecasts for the domestic economy are based on several technical assumptions. The exchange rate is assumed to remain around its recent average level — a trade weighted index of around 64 and a \$US exchange rate of around 77 US cents. Interest rates are assumed to move broadly in line with market expectations. World oil prices (Malaysian Tapis) are assumed to remain around US\$65/barrel. Population growth is around 0.1 per cent in 2020–21, 0.2 per cent in 2021–22 and 0.8 per cent in 2022–23.

(a) Percentage change on preceding year unless otherwise indicated.

(b) Calculated using original data unless otherwise indicated.

(c) Excluding second-hand asset sales from the public sector to the private sector.

(d) Percentage point contribution to growth in GDP.

(e) Through-the-year growth rate to the June quarter.

(f) Seasonally adjusted, through-the-year growth rate to the June quarter.

(g) Seasonally adjusted rate for the June quarter.

(h) The detailed forecasts are underpinned by price assumptions for key commodities: Iron ore spot price assumed to decline to US\$55/tonne free on board (FOB) by the end of the March quarter 2022; metallurgical coal spot price assumed to remain at US\$112/tonne FOB; and thermal coal spot price assumed to remain at US\$93/tonne FOB.

[43] The joint post-Budget submission by the Treasurer and Minister for Industrial relations highlights the ‘scale of improvement in economic conditions’, noting that this is ‘of particular significance for the Panel’:

‘As you are aware, the Australian Government’s 2021–22 Budget (the 2021–22 Budget) was handed down on 11 May 2021. The 2021–22 Budget provides the latest

macroeconomic and labour market forecasts, as well as setting out the new measures that will take effect from the 2021–22 financial year onwards.

Consistent with past practice, we write to draw your attention to updates in the 2021–22 Budget that the Expert Panel may wish to consider in making the 2020–21 Annual Wage Review decision.

Since the Government's initial submission to the 2020–21 Annual Wage review on 26 March 2021, there have been a number of economic data releases and the Government's forecasts have been updated. Given the scale of improvement in economic conditions this update is of particular significance for the Panel.

Real GDP is now forecast to grow by 1¼ per cent in 2020–21, by 4¼ per cent in 2021–22 and 2½ per cent in 2022–23. The near-term strengthening in real GDP is broad-based and reflects a stronger outlook for household consumption, dwelling investment and new private business investment. The labour market is forecast to continue strengthening over 2021–22 and 2022–23 with ongoing growth in employment, strong labour force participation and the unemployment rate falling to below 5 per cent by late 2022.³⁸

[44] While the economic recovery is well underway and the overall outlook is much more positive than it was last year, we acknowledge the risk of domestic outbreaks and on-going disruptions to other major economies. COVID-19 outbreaks necessitating further containment measures remain a significant risk and, as the Commonwealth submits ‘even localised outbreaks could have an impact on consumer and business confidence weighing on consumption and investment’.³⁹ As noted in the 2021–22 Budget:

‘Overall, the outlook remains positive, though considerable risks remain. The continued economic recovery will rely on the effective containment of COVID-19 outbreaks both here and abroad. This will be a key factor in the timing of the reopening of international borders, which could weigh on the outlook for the tourism and education sectors. More broadly, downside risks to the outlook for the global economy from ongoing outbreaks of the virus in major economies, including India, could also have implications for Australia’s economy.’⁴⁰

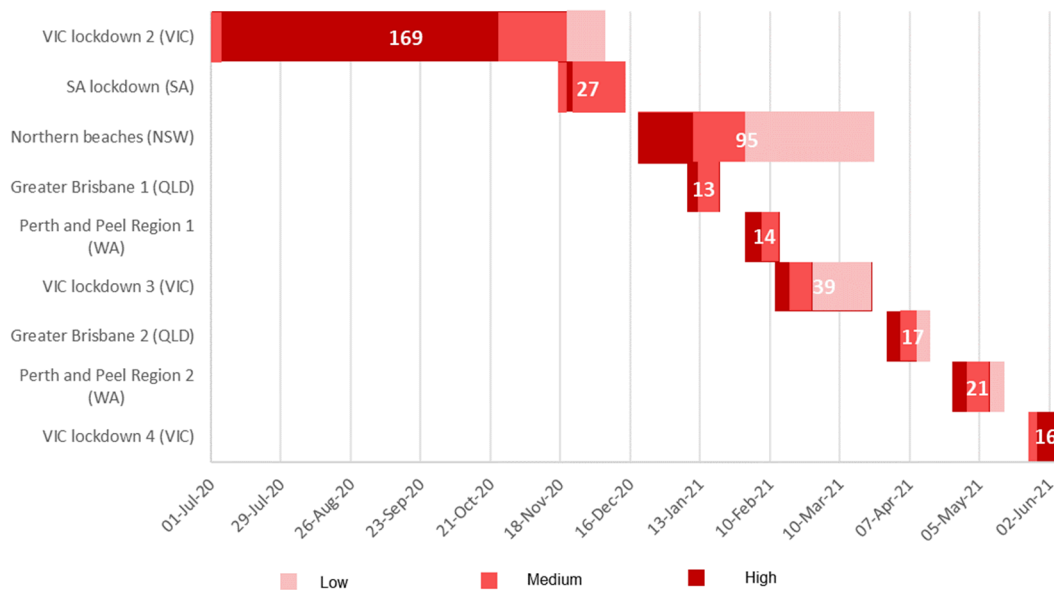
[45] The evolution of the COVID-19 pandemic is summarised in Appendix 4. Chart 1 shows the length of lockdowns since Victoria’s second wave of COVID-19 from the middle of 2020.

³⁸ [Joint Treasurer and Minister for Industrial Relations submission](#), 14 May 2021.

³⁹ Australian Government submission, 26 March 2021 at paras 4, 53.

⁴⁰ Australian Government (2021), *Budget 2021–22 Budget Paper No.1*, May, p. 35.

Chart 1: State Government lockdowns by severity, 1 July 2020 to 10 June 2021, duration in days



Source: Fair Work Commission (2021), *Information note - government responses to COVID-19 pandemic*, updated 11 June.

Note: Lockdown duration commences from when restrictions were first increased. High severity means very limited reasons to leave home. Medium severity involves some easing of restrictions with the ability to gather in limited numbers in homes, public or venues. Low severity involves relatively little restrictions but still more than before the lockdown commenced. A lockdown is considered to be finished when restrictions return to the same level or are comparable to pre-lockdown levels. Lockdowns are defined as those with restrictions that are considered high severity.

The second Victorian lockdown starts from 20 June 2020, but only data from 1 July 2020 are shown. However, the duration includes the days prior to 1 July 2020.

[46] From late June to late October 2020, Australia went through a second wave largely due to an outbreak in Melbourne, with daily cases peaking at 701 on 5 August 2020 (687 in Victoria).⁴¹ Consequently, Melbourne entered a Stage 4 lockdown and declared a state of disaster on 2 August 2020.⁴² The measures included a curfew between 8pm and 5am, and a stay-at-home order with only 4 reasons to leave the home. Case numbers declined throughout August and September and, on 19 October 2020, Victoria recorded no new cases for the first time since 8 June 2020 and restrictions began to ease.⁴³

⁴¹ Fair Work Commission (2021), *Information note – COVID-19 situation update*, updated 11 June.

⁴² Fair Work Commission (2021), *Information note – COVID-19 government responses to COVID-19 pandemic*, updated 11 June.

⁴³ Fair Work Commission (2021), *Information note – COVID-19 situation update*, updated 11 June.

[47] On a national level, after the Melbourne outbreak was contained, case numbers remained low until late December 2020 when an outbreak in Sydney occurred, peaking at 36 cases on 20 December.⁴⁴ The New South Wales Government implemented a number of restrictions, including a stay-at-home order except for essential reasons to leave the home.⁴⁵ By mid-January 2021, daily cases in New South Wales had declined to low levels (2 cases on 14 January 2021).⁴⁶

[48] The pattern in 2021 in respect to further cases of community transmission has seen comparatively brief lockdown periods comprised of stay-at-home orders generally localised to particular regions that have limited the reasons for people to leave their homes. Broadly, it has meant that only work deemed ‘essential’ has been allowed to operate during these periods. This has excluded many retail stores (unless able to operate ‘click and collect’) and jobs that do not accord with social distancing requirements, such as hairdressing and beauty services. These restrictions imposed in each state and territory, and nationally, have been documented in the Commission’s information note throughout the pandemic.⁴⁷

[49] The temporary lockdowns have included:

- *Adelaide in mid-November 2020 (3 days);*
- *Sydney’s Northern Beaches in late December 2020, with fewer restrictions for the rest of Greater Sydney (including Wollongong, Central Coast, and Blue Mountains) that lasted for several weeks;*
- *Brisbane in January and late March/early April 2021 (both for 3 days);*
- *Perth and surrounding regions in late January/early February (5 days) and late April 2021 (3 days); and*
- *Victoria in mid-February 2021 (5 days) and the most recent lockdown in late May/early June 2021 (14 days), with restrictions easing in regional Victoria after 1 week.*⁴⁸

[50] States and territories have also re-imposed border restrictions during these times.

[51] In this context we note that four of the key assumptions underpinning the economic forecasts in the 2021–22 Budget are:⁴⁹

- *During 2021, localised outbreaks of COVID-19 are assumed to occur but are effectively contained.*
- *While most domestic activity restrictions have been lifted, it is assumed that general social distancing restrictions and hygiene practices will continue until*

⁴⁴ Ibid.

⁴⁵ Fair Work Commission (2021), [Information note – COVID-19 government responses to COVID-19 pandemic](#), updated 11 June.

⁴⁶ Fair Work Commission (2021), [Information note – COVID-19 situation update](#), updated 11 June.

⁴⁷ Fair Work Commission (2021), [Information note – government responses to COVID-19 pandemic](#), updated 11 June.

⁴⁸ Fair Work Commission (2021), [Information note – COVID-19 situation update](#), updated 11 June.

⁴⁹ Australian Government (2021), [Budget 2021-22 Budget Paper No.1](#), Box 2.1, p. 36.

medical advice recommends removing them. The lifting of domestic activity restrictions will help support consumer and business activity.

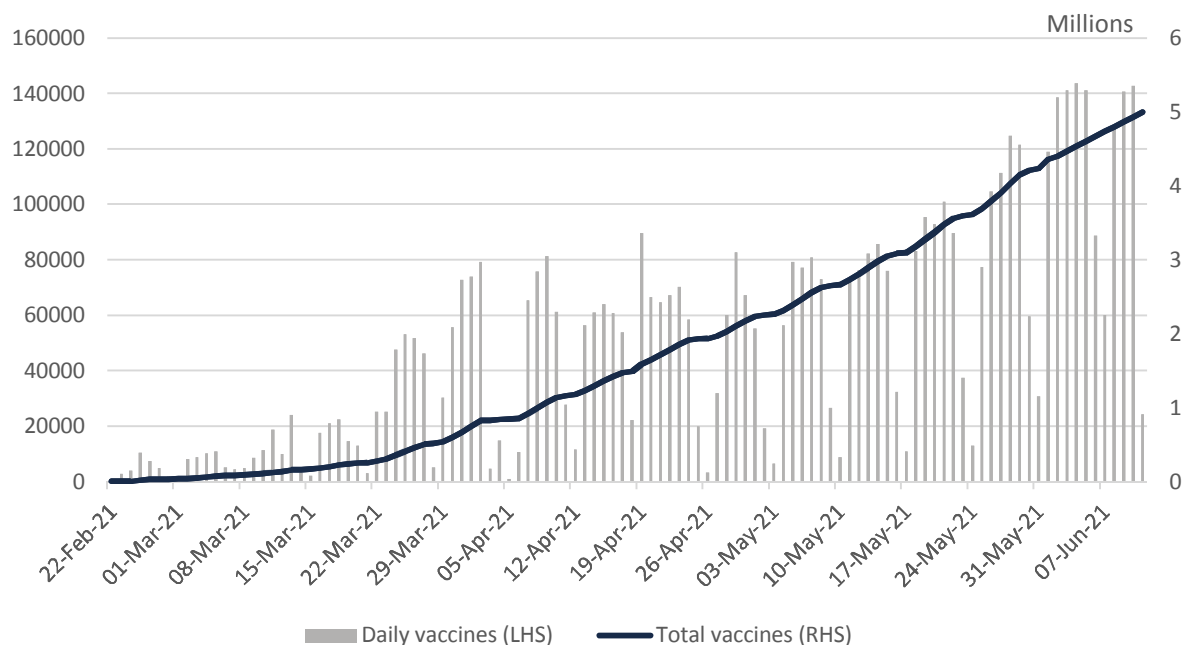
- *There are no extended or sustained state border restrictions in place over the forecast period.*
- *Inbound and outbound international travel is expected to remain low through to mid-2022, after which a gradual recovery in international tourism is assumed to occur.*

[52] Based on the broadly consistent pattern following Victoria’s second wave, when the state was locked down for many months, future lockdowns are likely to be of limited duration and localised, with most states locking down regions rather than the whole state.

[53] A key to the effective containment of COVID-19 is the pace of the vaccine rollout. A quick rollout of the vaccine increases the likelihood of an end to social distancing and density requirements, lockdowns and border restrictions, allowing businesses and employees to return to workplaces without uncertainty of the impact of future outbreaks to their business or employment.

[54] In early 2021, the target was to start vaccinating the Australian population at a rate of 80 000 people per week and to reach 4 million people by the end of March.⁵⁰ That target was not reached, though there has been a recent acceleration in vaccinations in response to the lockdown in Victoria from late May (Chart 2).

Chart 2: Daily and total vaccine doses reported, Australia



Source: Fair Work Commission (2021), [Information note – COVID-19 situation update](#), updated 11 June.

Note: Data collected via press conferences and media releases since late February 2021, and since late April 2021 from the Vaccine Operations Centre Weekly Operational Updates.

⁵⁰ Hon. Morrison S (2021), [Press conference – Australian Parliament House](#), 7 January.

[55] On 12 May 2021, in reference to the 2021–22 Budget, the Prime Minister clarified that ‘...there’s a general assumption of a vaccination program likely to be in place by the end of this year’ and that there is an understanding that over the course of this year the vaccination program will continue to roll out.⁵¹ According to the Budget papers, ‘[t]he first phase of Australia’s vaccination program, our COVID-19 Vaccine and Treatment Strategy, commenced in late February 2021 with most priority populations having been vaccinated. It is assumed that a population-wide vaccination program is likely to be in place by the end of 2021.’⁵²

2.2.3 *The Superannuation Guarantee Rate Increase*

[56] It is convenient to note here a further relevant change in circumstances, namely the scheduled 0.5 percentage point increase in the Superannuation Guarantee (SG) rate from 1 July 2021.

[57] The *Superannuation Guarantee (Administration) Amendment Act 2012* (Cth) amended the *Superannuation Guarantee (Administration) Act 1992* to increase the SG rate from 9 per cent to 12 per cent. The increase was to be phased in and increased by 0.25 percentage points on 1 July 2013 to be 9.25 per cent and on 1 July 2014 to be 9.5 per cent.⁵³ The planned increases were postponed following amendments provided in the *Minerals Resource Rent Tax Repeal and Other Measures Bill 2014* (Cth). The next increase is planned for 1 July 2021, where it begins to increase by 0.5 percentage points each year to reach 12 per cent by 1 July 2025.

[58] Consistent with the position taken in past Review decisions,⁵⁴ we have taken the 0.5 percentage point increase in the SG rate into account in determining the level of increase in minimum wages in this Review, but we have not applied a direct, quantifiable, discount to the minimum wage increase.

[59] The SG rate increase to apply from 1 July 2021 is a moderating factor in considering the adjustment that should be made to minimum wages. As a result, the increase in modern award minimum wages and the NMW we have awarded in this Review is lower than it otherwise would have been in the absence of the SG rate increase.

[60] We also note that the 2021–22 Budget proposed to remove the threshold of \$450 per month (before tax) under which employees do not need to be paid the SG by their employer. According to the Budget, the measure will have effect from the start of the first financial year after Royal Assent of the enabling legislation, which the Australian Government expects to have occurred prior to 1 July 2022. The Australian Government estimates this to impact around 300 000 individuals, 63 per cent of whom are women.⁵⁵

⁵¹ Prime Minister of Australia (2021), *Interview with Leigh Sales, 7:30*, 12 May.

⁵² Australian Government (2021), *2021–22 Budget Strategy and Outlook, Budget Paper No. 1*, 11 May, p. 36.

⁵³ [2013] FWCFB 4000 at [334]

⁵⁴ See *Ibid* at [358]–[360]; [2014] FWCFB 3500 at [285]

⁵⁵ Australian Government (2021), *2021–22 Budget Measures, Budget Paper No. 2*, 11 May, p. 26.

[61] The Australian Council of Trade Unions (ACTU) acknowledged that removing the threshold ‘will likely impose additional costs on some employers while also removing artificial incentives to the distribution of hours of work among casual workers in particular’.⁵⁶ However, it submitted that ‘it is not appropriate for the Panel to take it into account until the relevant legislation has passed and the costs to award reliant employers can be estimated’.⁵⁷ We agree.

[62] The 2021–22 Budget made several other announcements regarding changes to support businesses and to households.

[63] As the Panel has previously stated, it does not take into account proposed changes that have yet to be legislated. Only the extension of the low and middle income tax offset (LMITO) and the increase to the income-free area for a number of working-age payments have been legislated. We have not taken other proposed measures into account in this Review.

[64] The LMITO was introduced for the 2018–19 financial year and is paid as a lump sum after the lodging of income tax returns. For the 2018–19 year, the LMITO provided an offset of \$200 for those whose personal income is less than \$37 000, increasing to \$530 for incomes from \$37 000 to less than \$48 000 at a rate of 3 cents per dollar. The maximum LMITO of \$530 applied to incomes between \$48 000 and \$90 000. For incomes above \$90 000, the LMITO phased out at a rate of 1.5 cents per dollar.⁵⁸ The LMITO worked in conjunction with the low income tax offset (LITO), which applied to incomes of \$37 000 or less. The maximum LITO was \$445.⁵⁹

[65] In the 2018–19 Review, the Panel concluded that the introduction of the LMITO, and the increase to the Medicare levy’s low-income threshold, ‘will provide some tax relief for most NMW and award-reliant workers’ and ‘are a moderating factor on our assessment of the appropriate level of increase to the NMW and modern award minimum wages’.⁶⁰ We also concluded that, ‘it is not appropriate to apply a direct, quantifiable, discount to the increase in the NMW and modern award minimum wages we would have awarded in the absence of such changes in the tax-transfer system’.⁶¹

[66] In the 2019–20 Review, the Australian Industry Group (Ai Group) pointed out that ‘the amount of LMITO made available to taxpayers in respect of income earned in the 2018–19 year was larger than the LMITO factored into last year’s Review [the 2018–19 Review]’ and submitted that ‘the higher rate of LMITO be taken into account in this year’s decision [the 2019–20 Review]’.⁶²

[67] In considering this, the majority decision from the 2019–20 Review stated:

⁵⁶ ACTU post-Budget submission, 13 May 2021 at para 3.

⁵⁷ *Ibid* at para 3.

⁵⁸ Fair Work Commission (2019), *Information note—Changes to the tax-transfer system*, additional material for the 2018–19 Review, 3 April.

⁵⁹ *Ibid*.

⁶⁰ [2019] FWCFB 3500 at [50]–[51]

⁶¹ *Ibid* at [51]

⁶² [2020] FWCFB 3500 at [355]

‘Consistent with previous Reviews, we have taken account of the interaction between wages and the tax-transfer system in our consideration of ‘the needs of the low paid’, including the higher rate LMITO, and have had regard to various assistance packages introduced by the Australian Government in response to the COVID-19 pandemic. We affirm the position taken by the Panel in previous Review decisions, that it is not appropriate to apply a direct, quantifiable discount to the increase we would have awarded in the absence of such changes; but these changes are a moderating factor in our assessment of the appropriate level of the NMW and modern award minimum wages arising from this Review.’⁶³

[68] The 2020–21 Budget, announced in October 2020, brought forward tax cuts planned to start from 1 July 2022 to instead start from 1 July 2020. We have had regard to these tax cuts consistent with the view expressed by the majority in the 2019–20 Review. While the LMITO was scheduled to conclude when these tax cuts were originally planned to begin, it continued for the 2020–21 financial year.⁶⁴

[69] The ACTU argued that the retention of the LMITO for the next financial year means no change in the net position for impacted workers relative to the current state.⁶⁵ We accept the submission put.

[70] In the 2019–20 Review decision the majority concluded that there were ‘significant downside risks in the period ahead’ and that the economic considerations ‘weigh in favour of greater moderation in terms of the outcome of the Review’.⁶⁶ The majority concluded that:

‘The prevailing economic circumstances and the uncertainty surrounding the pathway out of recession have led us to adopt a cautious approach to both the quantum and the timing of an adjustment to the NMW and modern award minimum wages.’⁶⁷

[71] The present circumstances are very different. There was a broad consensus in the submissions before us that the current performance of the economy has exceeded expectations and that the economic recovery was well underway.⁶⁸

[72] We now turn to consider the various statutory considerations we are required to take into account.

2.3 Relevant Considerations

⁶³ Ibid at [357]

⁶⁴ Australian Government (2020), *Budget Strategy and Outlook Budget Paper No. 1 2020–21*, October, pp. 1-15–1-17.

⁶⁵ ACTU post-Budget submission, 14 May 2021 at para. 6.

⁶⁶ [2020] FWCFCB 3500 at [101]–[102]

⁶⁷ Ibid at [188]

⁶⁸ Australian Government submission, 26 March 2021 at paras 45, 51; Government of Western Australia submission, 23 April 2021 at para. 10; Victorian Government submission, 26 March 2021 at para. 40; ACTU submission, 26 March 2021 at paras. 4b–4c, 92, 98, 143; ACTU submission in reply, 23 April 2021 at paras 1, 20; ACTU post-Budget submission, 14 May 2021 at para. 47; ACCI submission, 26 March 2021 at paras 101–102, 104, 118; ACCI submission in reply, 23 April 2021 at para. 19; ACCI post-Budget submission, 14 May 2021 at para. 18; Ai Group submission, 26 March 2021 at p. 4; ABI supplementary submission, 4 June 2021 at p. 4; MGA submission, 26 March 2021 at paras 20, 51; NFF submission, 31 March 2021 at p. 11; SDA submission, 26 March 2021 at p. 5.

[73] The economic and social considerations required to be taken into account in relation to the minimum wages objective in s.284(1)(a)–(e) and in relation to the modern awards objective in s.134(1)(a), (b), (c), (d), (e), (f) and (h) are dealt with in this section. A discussion of the key economic and social indicators follows.

2.3.1 *Economic Considerations*

[74] As part of the research program for the 2020–21 Review, Professor Jeff Borland of the University of Melbourne undertook a series of reports that provided an assessment of the economic effects of COVID-19. The reports, updated throughout the Review, were published on 23 December 2020 (Version 1), 17 February 2021 (Version 2), 21 April 2021 (Version 3), 13 May 2021 (Version 4) and 4 June 2021 (Version 5). Appendix 5 summarises the reports.

[75] The domestic economy performed better than was expected in the second half of 2020, particularly in the December quarter, which caused the RBA to revise favourably several of its forecasts for 2021. The improved recovery was fuelled in large part by strong household spending and public demand, as well as better health outcomes and continued expansion of monetary and fiscal policy.⁶⁹ The outcomes for GDP and the labour market were at least as good as the ‘upside’ scenarios forecast by the RBA in 2020.⁷⁰

[76] We have already canvassed the broad economic environment and forecasts. We now turn to some specific indicators; noting that, as was the case last year, the current circumstances have made it difficult to assess underlying trends in the data. The various government support mechanisms impact on wages data and some components of the CPI will be difficult to measure as they have been impacted by the restrictions imposed to contain the virus; others have been impacted by various government initiatives.

(i) *The Labour Market*

[77] The labour market has been performing strongly following the effects of the first nationwide lockdown, when the unemployment rate peaked at 7.4 per cent in July 2020; lower than forecast by both the RBA and Treasury.⁷¹ The latest data show that the unemployment rate for April 2021 was 5.5 per cent, still 0.2 percentage points higher than in March 2020 but having fallen by at least 0.2 percentage points each month since November 2020. The trend in the unemployment rate appears to have tracked the success in containing the virus.

[78] Following a peak of 16.4 per cent in July 2020, the youth unemployment rate (15–24 years old) declined to 10.6 per cent in April 2021, which represents a decrease of 3.4 percentage points from the same period last year and a fall to its lowest level since the global financial crisis.⁷²

⁶⁹ RBA (2021), *Statement on Monetary Policy*, February, pp. 61–62.

⁷⁰ House of Representatives Standing Committee on Economics (2021), *Proof Committee Hansard*, Commonwealth of Australia, 5 February, p. 2.

⁷¹ ABS, *Labour Force, Australia*, April 2021; RBA (2021), *Statement of Monetary Policy*, February, Appendix: Forecasts; Senate Economics Legislation Committee (2021), *Proof Committee Hansard*, Commonwealth of Australia, 24 March, p. 11.

⁷² Statistical report (version 12), 15 June 2021, Chart 6.6; ABS, *Labour Force, Australia*, April 2021; ABS (2021), Media release, *Unemployment rate falls to 5.5% in April*, 20 May.

[79] The ACTU submitted that these data on youth unemployment and the broader labour market indicate that the labour market is recovering.⁷³ The Ai Group submitted that the ‘labour market recession’ experienced by Australian youth in 2020 appears to be shorter than previous recessions.⁷⁴ The Australian Business Industrial and the NSW Business Chamber Ltd (ABI) argued that youth employment in March 2021 was below its pre-pandemic level, while employment for older workers has increased.⁷⁵

[80] When considering up to the most recent period, Professor Borland’s analysis in his report (Version 5) suggests a recovery in youth employment and an improvement since the onset of the pandemic. Professor Borland found that the employment-to-population rate for 15–24 year olds was higher in April 2021 than in March 2020 and it was also comparatively higher than for older age groups. Professor Borland also noted that employment of young people has extended in recent months to those not attending full-time education, whose employment-to-population rate had previously appeared to have plateaued at below the level prior to COVID-19.⁷⁶

[81] The impact on unemployment from the initial lockdown was not fully realised due to a decline in the participation rate as people left the labour force. The participation rate fell by 3.3 percentage points between March and May 2020. The fall was reversed between May 2020 and March 2021 when the participation rate increased by 3.7 percentage points to be 66.3 per cent, a record high. Participation among females was also at a record high (61.9 per cent). The participation rate fell to 66.0 per cent in April 2021 (and 61.3 per cent for females).⁷⁷

[82] The underemployment rate peaked in April 2020 at 13.6 per cent but has since fallen to 7.8 per cent in April 2021; a fall of 5.8 percentage points and the lowest underemployment rate since May 2014.⁷⁸

[83] The Australian Government announced the JobKeeper Program on 30 March 2020. It consisted of a \$1500 fortnightly payment (before tax) per eligible employee, paid directly to businesses to subsidise the payment of their employees’ wages. It was designed to maintain the employment relationship between employers and employees. Payments commenced from 1 May 2020, and eligible employers were able to claim the payment from 30 March 2020 until 27 September 2020. Eligible employers were those who had suffered a significant reduction in revenue.⁷⁹

[84] On 21 July 2020, it was announced that the payment would be extended to 28 March 2021. The JobKeeper Payment Extension (JobKeeper 2) operated from 28 September 2020 to

⁷³ ACTU supplementary submission, 4 June 2021 at para. 18.

⁷⁴ Ai Group supplementary submission, 4 June 2021 at p. 10.

⁷⁵ ABI supplementary submission, 4 June 2021 at pp. 7, 10.

⁷⁶ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 5, a report to the Fair Work Commission, 4 June, p. 14.

⁷⁷ ABS, *Labour Force, Australia*, April 2021.

⁷⁸ Ibid.

⁷⁹ [2020] FWCFB 3500 at [348]–[350]; Fair Work Commission (2021), *Information note – Government responses to COVID-19 pandemic*, 11 June.

28 March 2021 and introduced a revised turnover test and a system of tiered payments. From 28 September 2020, the payment decreased to \$1200 per fortnight for employees who were averaging at least 20 hours per week (in the 4 weeks prior to 1 March 2020 or the 4 weeks prior to 1 July 2020) and \$750 for other employees. It again reduced on 4 January 2021 to \$1000 and \$650 per fortnight, respectively, for these groups of employees.⁸⁰

[85] Early research on the payment found that it reduced total employment losses by at least 700 000 people between April and July 2020.⁸¹

[86] The first JobKeeper payment (JobKeeper 1) covered approximately 3.6 million people.⁸² The number of eligible participants fell to 1.6 million in October 2020⁸³ following the transition to JobKeeper 2 and there were around 1 million people receiving the payment by January 2021.⁸⁴ The Australian Government submitted that just over 1 million people were covered by the scheme in March 2021.⁸⁵

[87] Early forecasts of employment losses following the conclusion of the JobKeeper Program were made by Treasury and the RBA in March 2021. Treasury's initial forecast was that some businesses would close and between 100 000 to 150 000 people receiving the JobKeeper subsidy would lose their employment, though the estimate carried 'a wide band of uncertainty'.⁸⁶

[88] The Treasury Secretary Dr Steven Kennedy noted that the loss of employment would not result in a 'commensurate increase in unemployment' as most people moving out of employment tend to leave the labour force altogether rather than become unemployed, and argued that people leaving employment due to JobKeeper would be within the normal flows of employment. While the unemployment rate could rise a little over the coming months, Dr Kennedy explained that the unemployment rate will resume its downward trajectory—remaining confident that there will continue to be a broad-based recovery in the labour market over 2021.⁸⁷

[89] The RBA took a similar view to the assessment of job losses after the withdrawal of JobKeeper payments. The RBA commented that available information at the time of its May *Statement on Monetary Policy* suggest 'only a muted effect on employment so far'.⁸⁸

[90] After the first set of payroll data following the end of the JobKeeper payment, Treasury downgraded their expectations of job losses to between 16 000 and 40 000.⁸⁹ The

⁸⁰ Fair Work Commission (2021), *Information note – Government responses to COVID-19 pandemic*, 11 June.

⁸¹ Bishop J & Day I (2020), *How many jobs did JobKeeper keep?*, Research Discussion Paper 2020-07, November.

⁸² Senate Select Committee on COVID-19 (2021), *Australian Government's response to COVID-19 pandemic*, 11 February.

⁸³ *Ibid*, 11 February.

⁸⁴ ACCI submission, 26 March 2021; The Hon Josh Frydenberg MP (2021), *Address to Australian Chamber of Commerce and Industry*, 24 February.

⁸⁵ Australian Government response to questions on notice, 11 June 2021 at p. 6.

⁸⁶ Senate Economics Legislation Committee (2021), *Proof Committee Hansard*, Commonwealth of Australia, 24 March, pp. 4–5.

⁸⁷ *Ibid*.

⁸⁸ RBA (2021), *Statement on Monetary Policy*, May, p. 30.

Weekly Payroll data show that the number of jobs for the week ending 27 March 2021 was 3.2 per cent higher than at 14 March 2020 but fell to 2.6 per cent by the week ending 22 May 2020.⁹⁰ The latest estimate from the Treasury is that around 56 000 former JobKeeper workers lost employment in the 4 weeks following the end of JobKeeper.⁹¹

[91] On 11 June 2021 the Australian Government provided an updated assessment of the employment losses associated with the end of JobKeeper stating that:

‘Early indicators suggest that, while there have been some job losses associated with the end of the program and there may be more in the future, the strength of the broader labour market has meant that many of these individuals are finding jobs... we would expect many of those who lost employment at the end of JobKeeper to regain employment in coming weeks.’⁹²

[92] In his final report for this Review, Professor Borland provided 2 estimates of the initial impact of the end of the JobKeeper program on employment. Using 2 different approaches, he suggested that the short-term impact of the end of this program led to employment losses in the range of 45 000 to 97 000 persons, but with the highest probability attached to estimates at the bottom of this range. Borland concluded from this that the impacts ‘are best interpreted as showing that the end of JobKeeper caused a temporary stalling, rather than constituting a major setback, to labour market recovery’.⁹³

[93] Part of the reason that the removal of the JobKeeper payment did not lead to a significant reduction in aggregate unemployment has been the strength of the demand for labour. This is shown in Chart 3 by the significant jump in the annual growth in job vacancies. Compared with February 2020, the number of job vacancies was around 27 per cent higher in February 2021, the highest growth in the last 5 years.

[94] In line with expectations of strong demand for labour throughout 2021, job vacancies as a proportion of the labour force are at historically high levels, at over 2 per cent. Several factors are behind the increase, according to the RBA, including the resumption of more standard job turnover patterns; the return of positions that were lost due to the pandemic; hiring ‘catch-up’ that was suspended during 2020; and hiring in new parts of the economy. Furthermore, job vacancies are high across a broad range of industries, even in those industries with employment levels below their pre-pandemic levels.⁹⁴ In addition, the ratio of unemployed people to vacancies reached its lowest level in over a decade in March 2021.⁹⁵

⁸⁹ Kennedy S (2021), *Emerging from the crisis: recovery and reform*, address to the Australian Business Economists, 18 May.

⁹⁰ ABS, *Weekly Payroll Jobs and Wages in Australia*, Week ending 22 May 2021.

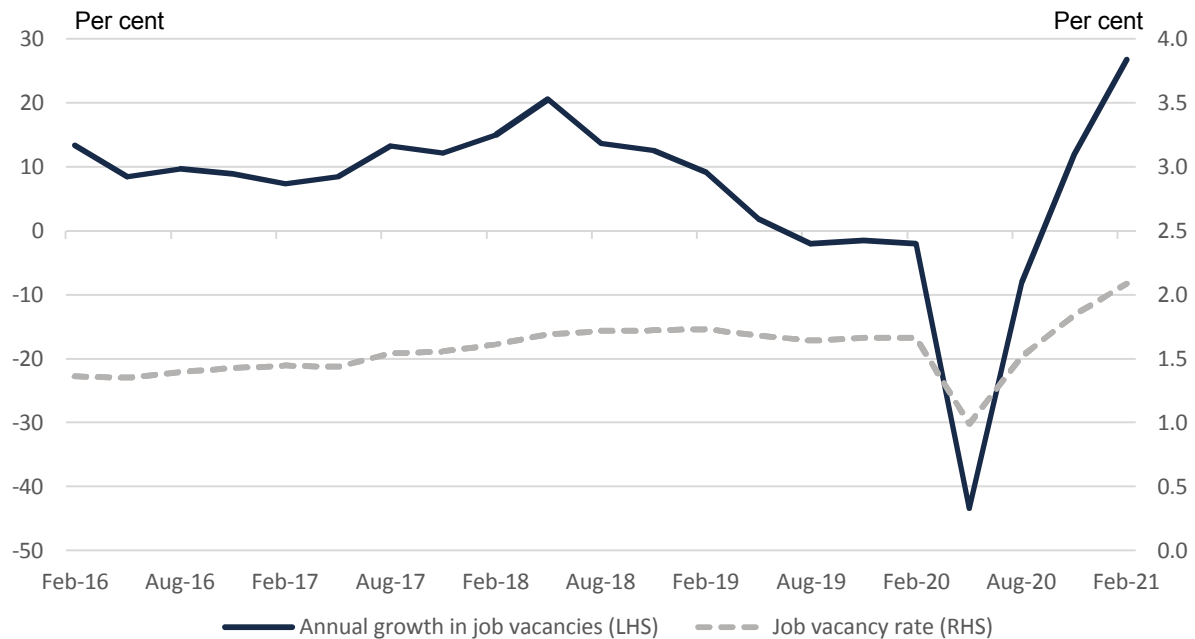
⁹¹ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 5, a report for the Fair Work Commission, 4 June, p. 6.

⁹² Australian Government response to questions on notice, 11 June 2021.

⁹³ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 5, a report for the Fair Work Commission, 4 June, p. 7.

⁹⁴ RBA (2021), *Statement on Monetary Policy*, May, p. 31.

⁹⁵ Australian Government (2021), *Budget 2021-22 Budget Paper No.1*, 11 May, p. 57.

Chart 3: Job vacancies, annual growth and job vacancy rate

Source: Statistical report (version 12), 15 June 2021, Chart 6.12; ABS, *Job Vacancies, Australia*, February 2021; ABS, *Labour Force, Australia*, April 2021.

Note: The ABS define the job vacancy rate as job vacancies as a proportion of the labour force.

(ii) Productivity

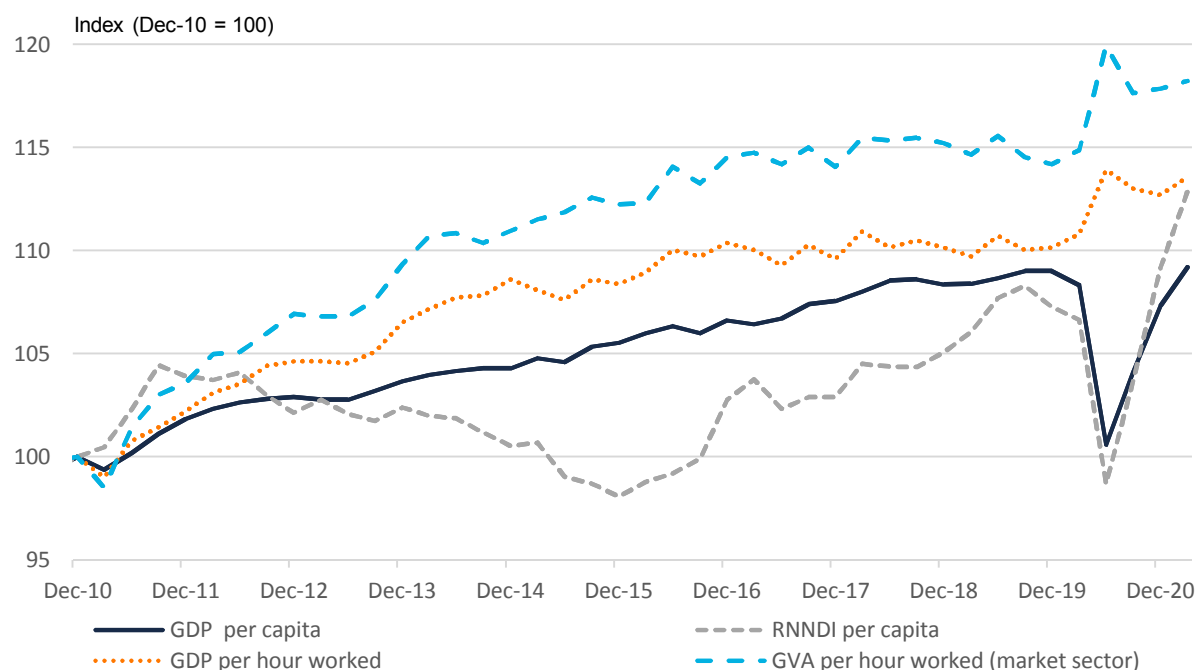
[95] As noted in last year's decision,⁹⁶ one indicator that is likely to be affected by significant shifts in other indicators is labour productivity. The impact of the pandemic on changes to output and employment have resulted in relatively large shifts in productivity throughout the year.

[96] Chart 4 shows that there was a large decline in the June quarter 2020 and improvement in the second half of the year. While GDP fell by 7.0 per cent in the June quarter 2020, the decline in hours worked was greater (-9.5 per cent), leading to a significantly large rise in labour productivity (2.8 per cent, and 4.4 per cent in the market sector). The rebound in hours worked in the September quarter 2020 was larger than output and this led to slight declines in both measures of labour productivity (-0.9 per cent and -1.8 per cent, respectively). Further increases to output and hours worked in the December quarter resulted in a slight decline in GDP per hour worked (-0.3 per cent) and a slight increase in gross value added (GVA) per hour worked (in the market sector) (0.1 per cent).

[97] Both measures of labour productivity improved over the year to the March quarter 2021. GDP per hour worked increased by 2.5 per cent and GVA per hour worked (in the market sector) rose by 2.8 per cent (Chart 4). These increases were due to an increase in output and declines in hours worked.

⁹⁶ [2020] FWCFB 3500 at [21]

Chart 4: Measures of productivity, indexes—Dec-10 = 100



Source: Statistical report (version 12), 15 June 2021, Chart 2.1; ABS, *Australian National Accounts: National Income, Expenditure and Product*, March 2021.

Note: Labour productivity is measured as real GDP per hour worked. Gross value added measures the value of output at basic prices minus the value of intermediate consumption at purchasers' prices. The market sector includes all industries except for Public administration and safety, Education and training and Health care and social assistance.

[98] In the last Review, the Panel stated that ‘labour productivity growth is ... likely to vary in a way that may not be indicative of its underlying trend’.⁹⁷ The fluctuations in productivity due to changes in hours worked and GDP highlight what the Panel has previously concluded, in that ‘labour productivity is best measured over the course of the productivity cycle’.⁹⁸ We adhere to that view.

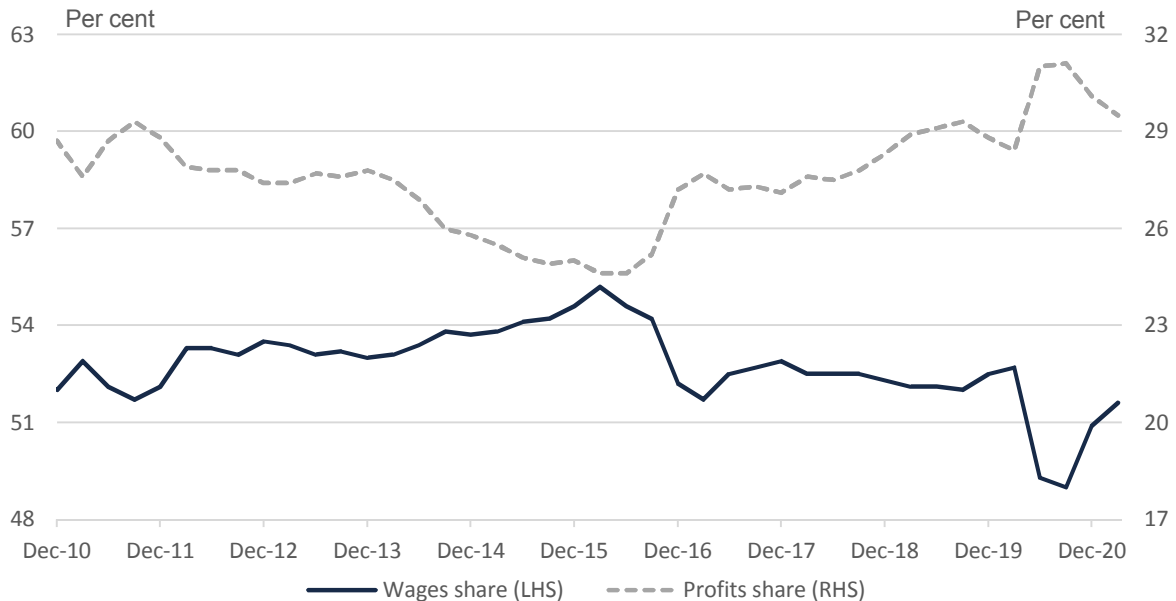
(iii) Profits

[99] Total company gross operating profits increased by 11.9 per cent over the year to the March quarter 2021, which is above the 10-year average but slightly below the 5-year average.⁹⁹ During 2020, the profits share rose sharply in the June quarter (from 28.4 per cent to 31.0 per cent) but has since fallen to 29.5 per cent in the March quarter 2021 (Chart 5).

⁹⁷ [2020] FWCFB 3500 at [279]

⁹⁸ [2019] FWCFB 3500 at [88]

⁹⁹ Statistical report (version 12), 15 June 2021, Table 3.3.

Chart 5: Profits and wages shares of total factor income

Source: Statistical report (version 12), 15 June 2021, Chart 3.1; ABS, *Australian National Accounts: National Income, Expenditure and Product*, March 2021.

Note: Profits share represents the returns to capital in the process of production, and is expressed as total corporation gross operating surplus as a proportion of total factor income. Wages share represents the returns to labour in the process of production, and is expressed as total compensation of employees as a proportion of total factor income.

[100] In his report for this Review, Professor Borland found that ‘[b]usiness profitability improved throughout 2020 and was higher in 2020 than previous years—in aggregate and almost universally across industry groups’.¹⁰⁰ He also found that every industry had higher profits in 2020 compared to the previous three years except for Finance and insurance services, although there was substantial variation between industries.¹⁰¹

[101] Professor Borland explained that benchmarking business profits against sales provided a further perspective on the improvement in profitability in 2020. Looking at the profit-to-sales ratio, which can be interpreted as showing the efficiency with which a business earns profits, Professor Borland found an improvement in all but one industry (Finance and insurance services)¹⁰² and commented that this could largely be explained by government support to business in response to the COVID-19 pandemic. Professor Borland found a positive relationship between the change in an industry’s profit-to-sales ratio and government support payments, in terms of JobKeeper and the Boosting Cash Flow to Business program, and regression analysis confirmed a strong association.¹⁰³

[102] The Panel was again provided results from surveys undertaken by employer groups of their members that assess business performance. ABI submitted results from the Business

¹⁰⁰ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 3, a report for the Fair Work Commission, 21 April, p. 20.

¹⁰¹ Ibid.

¹⁰² Ibid, p. 21.

¹⁰³ Ibid, pp. 22–23.

NSW Business Conditions Survey¹⁰⁴ and Master Grocers Association Limited (MGA) submitted its member survey in respect to this Review.¹⁰⁵ These survey results are of limited utility. The Panel has previously commented on the representativeness of such surveys.¹⁰⁶ The Business NSW survey is of around 1000 businesses in New South Wales, however no information is provided on the types of businesses that have responded, such as their industry or size. The MGA survey is of only 103 businesses.

(iv) *Investment*

[103] Business investment fell sharply in the middle of 2020 due to weak demand and the uncertainty related to the pandemic. However, policy support for firms stabilised business conditions and appears to have started the recovery in business investment.¹⁰⁷

[104] In the 2021–22 Budget, the Australian Government stated that improvement in business investment in the December quarter 2020 was driven by government policies such as the extension of the temporary full expensing and temporary loss carry-back, and improvements in firms' capital expenditure expectations.¹⁰⁸ In particular, machinery and equipment increased at its fastest rate in almost 7 years, driven by business tax incentives and favourable conditions in the agriculture sector. Stronger economic conditions in late 2020 has led to an improved outlook for new private business investment, with record business conditions, improved business confidence and the extension of tax incentives expected to bring forward activity.¹⁰⁹

[105] Although non-mining investment is 7 per cent lower than before the pandemic, the RBA expect it to be supported by strong growth in profits and an increase in capacity utilisation, but cautioned that it is uneven across sectors.¹¹⁰ It will also be supported by an increase in business confidence and a steady decline in uncertainty.¹¹¹

(v) *Wages*

[106] The ABS published new data on the contributions to the increases in the WPI by methods of setting pay between the June quarter 2018 and the March quarter 2021.¹¹² The data show that contributions from individual arrangements declined in the June quarter 2020, reflecting a more immediate response to the pandemic through wage freezes or reductions. By the September quarter 2020, wages among individual arrangements had returned to their previous levels. The contribution from enterprise agreements also fell in the June quarter 2020 but was still positive and returned to levels seen earlier in the period by the second half of 2020.

¹⁰⁴ ABI submission, 26 March 2021 at pp. 9–12

¹⁰⁵ MGA submission, 26 March 2021 at pp. 20–34.

¹⁰⁶ [2020] FWCFB 3500 at [312]; [2016] FWCFB 3500 at [14], [196]; [2015] FWCFB 3500 at [266]–[275]; [2014] FWCFB 3500 at [226]–[228]; [2013] FWCFB 4000 at [265], [438]–[442]; [2012] FWAFB 5000 at [203].

¹⁰⁷ RBA (2021), *Statement on Monetary Policy*, May, p. 35.

¹⁰⁸ Australian Government (2021), *Budget 2021–22 Budget Paper No. 1*, May, pp. 51, 54.

¹⁰⁹ *Ibid.*, p. 51.

¹¹⁰ RBA (2021), *Statement on Monetary Policy*, May, p. 35.

¹¹¹ *Ibid.*, p. 72.

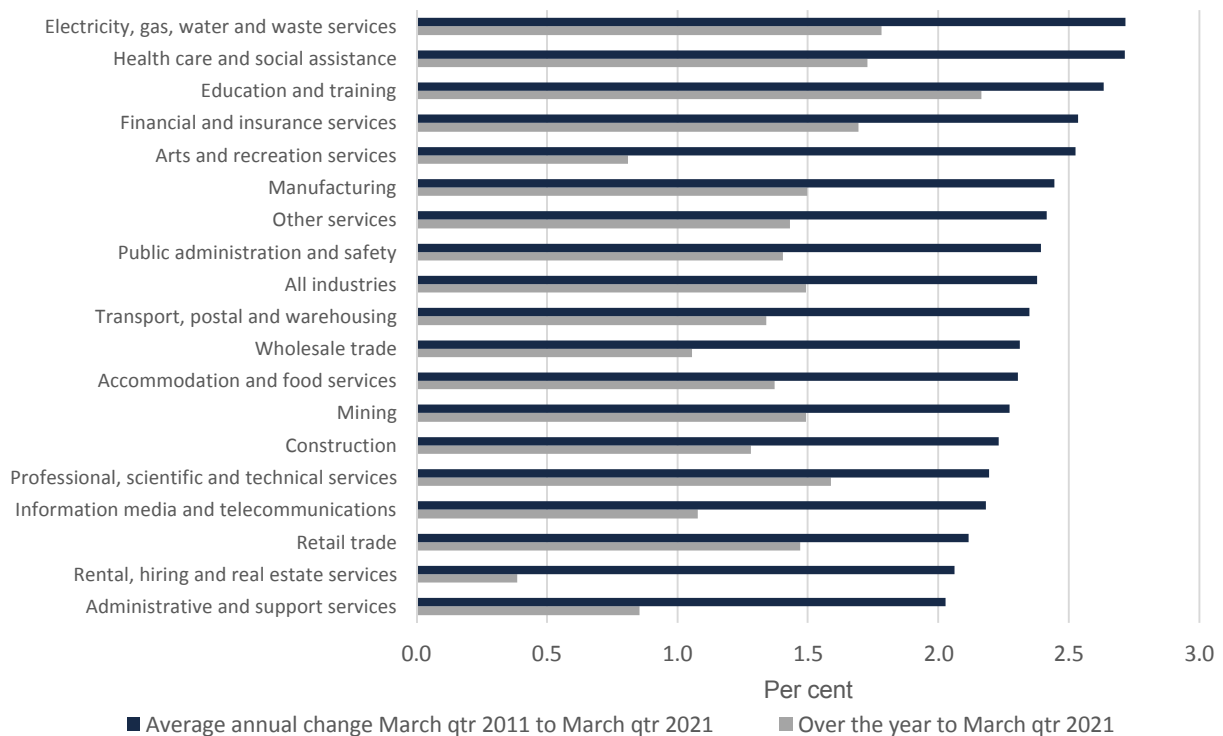
¹¹² ABS, *Wage Price Index, Australia*, March 2021.

[107] The contribution from increases to award wages is usually greatest in the September quarters of each year. The decision in the 2019–20 Review to increase modern award minimum wages in 3 industry groups led to the lower contribution from award wages in the September quarter 2020, with the largest contribution in the March quarter 2021.¹¹³

[108] WPI declined to an annual growth of 1.4 per cent for two consecutive quarters in the second half of 2020. The ABS explained that economic uncertainty, fewer wage reviews and the staggered implementation of the 2019–20 Review decision have all contributed to the historically low rate.¹¹⁴ The latest data show a slight improvement, increasing by 1.5 per cent over the year to the March quarter 2021.¹¹⁵

[109] Among industries, the largest annual rise in wage growth over the year to the March quarter 2021 was in Education and training (2.2 per cent) and the lowest was in Rental, hiring and real estate services (0.4 per cent). Of the award-reliant industries, WPI growth over the year to the March quarter 2021 in Health care and social assistance was 1.7 per cent, Retail trade increased by 1.5 per cent, and Accommodation and food services and Other services both increased by 1.4 per cent (Chart 6).

Chart 6: Wage Price Index by industry, average annual growth over decade and growth over year to March quarter 2021



Source: Statistical report (version 12), 15 June 2021, Chart 5.2; ABS, *Wage Price Index, Australia*, March 2021.

Note: Data are expressed in original terms.

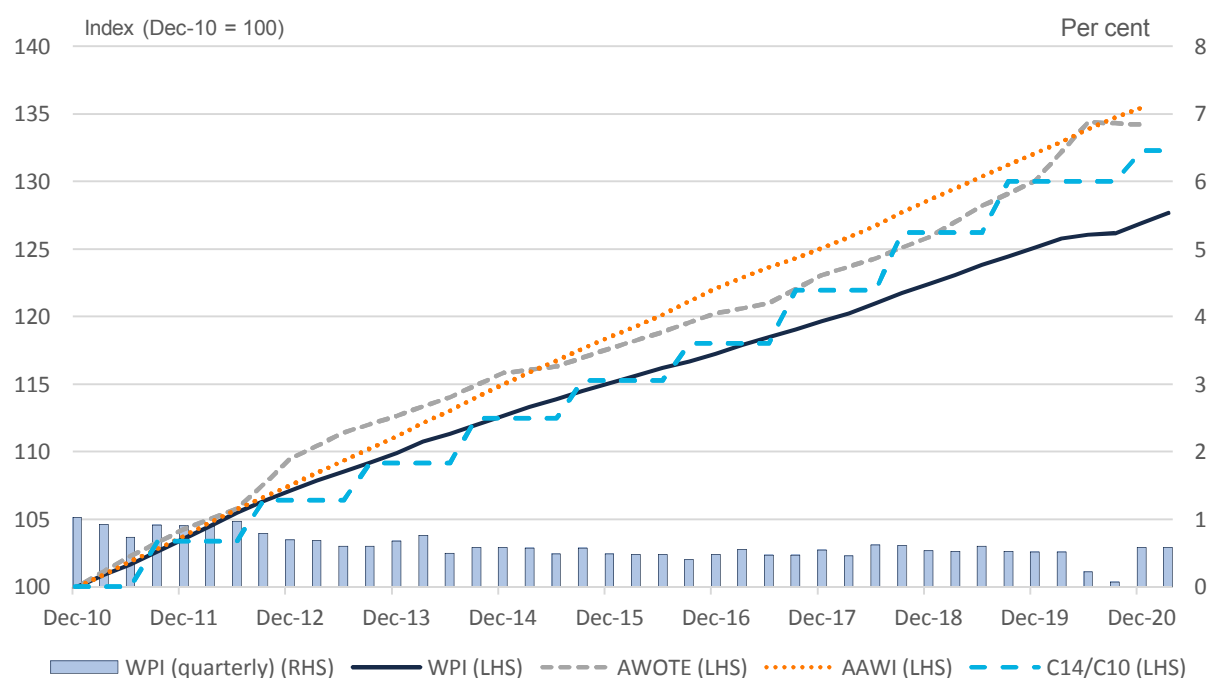
¹¹³ ABS, *Wage Price Index, Australia*, March 2021.

¹¹⁴ ABS, *Wage Price Index, Australia*, December 2020.

¹¹⁵ ABS, *Wage Price Index, Australia*, March 2021.

[110] Over the last 10 years, growth in average weekly ordinary time earnings (AWOTE) has been larger than the WPI, possibly as a result of compositional changes. Increases to the C14 and C10 rates have been between these two measures (Chart 7).

Chart 7: Measures of nominal wages growth, quarterly and cumulative growth rates, index



Source: Statistical report (version 12), 15 June 2021, Chart 5.1: ABS, *Average Weekly Earnings, Australia*, November 2020; ABS, *Wage Price Index, Australia*, March 2021; *Manufacturing and Associated Industries and Occupations Award 2010*; *Manufacturing and Associated Industries and Occupations Award 2020*.

(vi) *Inflation*

[111] The main measures of inflation that we consider are the CPI and underlying inflation. There are two measures of underlying inflation—the trimmed mean and weighted median. Only the trimmed mean is used in forecasts by the RBA.¹¹⁶ As discussed in the previous Review, underlying inflation is calculated to remove volatility in the quarterly price changes in the CPI due to large, irregular price movements to determine the underlying trend.¹¹⁷ Another similar measure is the Living Cost Index (LCI), that is designed to measure the effect of changes in prices on the out-of-pocket living expenses of employee households.

[112] The CPI has shown considerable volatility in the past 12 months. In the June quarter 2020, the CPI fell by 1.9 per cent primarily because of the introduction of free child care and the significant fall in automotive fuel, which together detracted 1.8 percentage points from

¹¹⁶ The RBA uses the trimmed mean for forecasting because it strips out extremes on both the high and low sides, and does not presume where the noise comes from.

¹¹⁷ [2020] FWCFB 3500 at [132]

quarterly CPI growth.¹¹⁸ When excluding these 2 items, the CPI would have fallen by only 0.1 per cent in the June quarter and *increased* by 1.6 per cent over the year.

[113] Price increases and the cost of living at the aggregate level can mask the lived experience of low-paid workers. The ABS has published 2 articles that have compared the price inflation of non-discretionary (essential) goods and services and those considered to be discretionary over time (non-essential).¹¹⁹ Non-discretionary items are considered to be goods or services which are purchased because they meet a basic need (e.g. food, shelter, healthcare), are required to maintain current living arrangements (e.g. car maintenance, school fees), or are a legal obligation (e.g. compulsory insurance, stamp duty). Spending on these items tends to be less responsive to changes in wealth, income or relative prices. Discretionary items are considered to be purchases of goods or services that are ‘optional’ (e.g. take away meals, alcohol and holidays) and are more responsive to changes in wealth, incomes or relative prices.

[114] In the most recent of these articles, the ABS found that prices of non-discretionary goods and services increased faster than prices for discretionary goods and services between around 2005–06 and the December quarter 2020. Non-discretionary inflation was around 44 per cent compared with discretionary inflation at around 32 per cent. Removing tobacco from the discretionary items finds that discretionary inflation was only 18 per cent over the period. Overall CPI inflation for the period was around 40 per cent.¹²⁰

[115] The CPI rebounded in the September and December quarters 2020, increasing by 1.6 per cent and 0.9 per cent, respectively. The removal of free child care was a significant driver—accounting for around half of the increase in each quarter. In contrast, trimmed mean inflation increased by only 0.3 per cent in the September quarter 2020 and 0.4 per cent in the December quarter 2020 to be 1.2 per cent higher over the year to the December quarter 2020.

[116] Quarterly CPI growth was weaker in the March quarter 2021, increasing by 0.6 per cent to be 1.1 per cent higher over the year, with much of the increase in the quarter due to higher fuel prices.¹²¹ The trimmed mean increased by 1.1 per cent over the year¹²² and annual growth in the LCI for employee households has been below the CPI since late 2019, with these differences increasing during the COVID-19 pandemic (Chart 8).

[117] Although there are no forecasts for the LCI for employee households, the RBA and the Australian Government expect the CPI to increase sharply over the year to the June quarter 2021. The Australian Government forecasts a rise of 3½ per cent, while the RBA forecasts are for an increase of 3¼ per cent (Chart 8).

[118] The RBA stated that the higher inflation reflects the unwinding of rent reductions and other government support measures such as free child care and utilities rebates.¹²³ However,

¹¹⁸ ABS, *Consumer Price Index, Australia*, June 2020, Spotlight: CPI exclusion-based measures.

¹¹⁹ ABS (2020), *Non-discretionary and discretionary inflation*, 11 November; ABS (2021), *Measuring non-discretionary and discretionary inflation*, 25 May.

¹²⁰ ABS (2021), *Measuring non-discretionary and discretionary inflation*, 25 May.

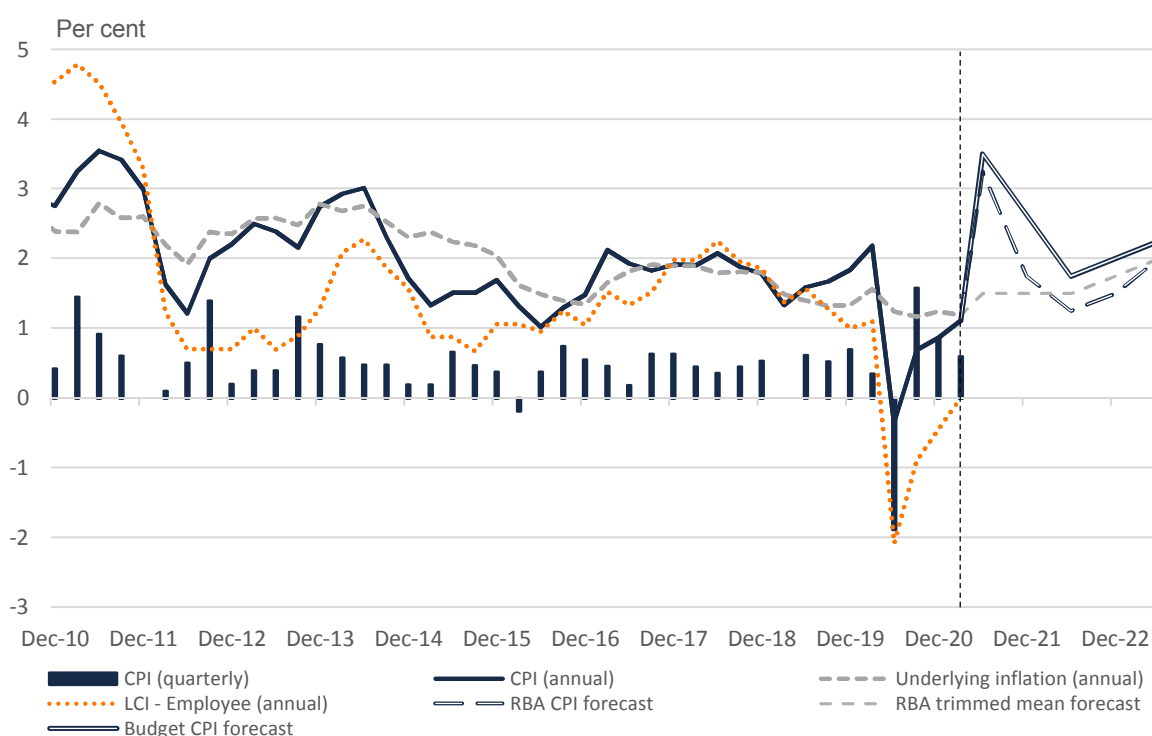
¹²¹ ABS, *Consumer Price Index, Australia*, March 2021.

¹²² ABS, *Consumer Price Index, Australia*, March 2021, *CPI rose 0.6% in the March 2021 quarter*, Media Release.

¹²³ RBA (2021), *Statement on Monetary Policy*, February, p. 67.

this increase is only expected to be temporary, with the RBA expecting annual CPI growth to fall over the second half of 2021, to 1¾ per cent in the December quarter 2021. The RBA forecast for the trimmed mean is more subdued, increasing by just 1½ per cent over the year to the June and December quarters 2021.

Chart 8: Measures of inflation—CPI, underlying inflation and LCI for employee households



Source: Statistical report (version 12), 15 June 2021, Chart 4.1; ABS, *Consumer Price Index, Australia*, March 2021; ABS, *Selected Living Cost Indexes, Australia*, March 2021; RBA (2021), *Statement on Monetary Policy*, May, Appendix: Forecasts; Australian Government (2021), *Budget 2021-22 Budget Paper No. 1*, May, p. 37.

Note: CPI measures quarterly changes in the price of a ‘basket’ of goods and services which account for a high proportion of expenditure by the CPI population group (i.e. metropolitan households). The LCI for employee households measures the change in the price of a ‘basket’ of goods and services which is based on the expenditure of employee households whose principal source of income comes from wages and/or salaries. CPI and LCI data are expressed in original terms. Underlying inflation is calculated as the average of the trimmed mean and weighted median. The trimmed mean is calculated by ordering the CPI expenditure class components by their price change in the quarter and taking the expenditure weighted average of the middle 70 per cent of these price changes. The weighted median is the price change of the component in the middle of this ordering.

Figures presented after the dotted vertical line represent current forecasts from the RBA and Australian Government. As there are no forecasts available for underlying inflation, forecasts for RBA trimmed mean inflation are presented.

[119] An information note published by Commission staff for the Review explained that a significant driver of changes in the LCI since the pandemic has been a fall in mortgage interest as a result of the RBA lowering the cash rate during the period. Mortgage interest is not considered in the calculation of the CPI, while it is included as part of the LCI. The information note also showed that low-paid employees are less likely to own a home or currently be paying off a mortgage.¹²⁴

¹²⁴ Fair Work Commission (2021), *Information note—Living costs, housing costs and low-income earners*, additional material, 13 May.

[120] Mortgage interest declined by 18.5 per cent over the year to the June quarter 2020 and while this fall had reduced by the March quarter 2021 (–15.1 per cent), it was still detracting from growth in the LCI. Without mortgage interest, annual LCI growth would have been the same as annual CPI growth in the March quarter 2021.

[121] Research from the RBA has shown that, compared with low-income households, high-income households tend to allocate a larger share of their spending to discretionary services such as travel and recreation, as well as to durable goods. In contrast, low-income households tend to allocate a larger share of spending to non-durable goods and rent.¹²⁵ That is, as the low paid are more likely to spend a higher proportion of their earnings on non-discretionary or ‘essential’ items, any relative price increases in non-discretionary items compared with discretionary items is likely to have a greater impact on the low paid.

[122] From the information before us we know that:

- *Non-discretionary items are likely to have a greater influence on overall CPI as these items comprise over 60 per cent of the percentage contribution to the All groups CPI.*¹²⁶
- *Over the longer term, prices for non-discretionary items have increased by more than discretionary items. This reflects an increase in prices for ‘essential’ items as opposed to ‘non-essential’ items.*
- *Price increases in non-discretionary purchases, such as rent and basic food staples and even child care are more likely to adversely affect the household budgets of the low paid.*
- *The decline in the prices of non-discretionary items in the June quarter 2020 (caused mainly by free child care) is likely to be only transitory and has since increased.*

(vii) *Employment effects of minimum wage increases*

[123] There has been no new Australian research on the employment effects of minimum wages since the research by Bishop (2018) was undertaken and discussed in the 2017–18 Review.¹²⁷ Many of the studies that examine the effects of increases in minimum wages on employment are largely international contributions.

[124] The ACTU provide a summary of some of this work and reference a study by Manning (2021) that focuses on the employment effects for American teenagers.¹²⁸ Manning provides a discussion of the experience in Australia, noting that while ‘the nature of the minimum wage variation in Australia does not lend itself to a high-quality research design

¹²⁵ Beech A, Dollman R, Finlay R & La Cava G (2014), [The Distribution of Household Spending in Australia](#), RBA Bulletin, March, p. 15.

¹²⁶ ABS (2021), [Measuring non-discretionary and discretionary inflation](#), 25 May.

¹²⁷ [2018] FWCFB 3500 at [230]–[232]

¹²⁸ ACTU submission, 26 March 2021 at para. 85; Manning A (2021), ‘The elusive employment effect of the minimum wage’, *Journal of Economic Perspectives*, Vol. 35, No. 1, Winter, pp. 3–26.

when it comes to investigating the impact of minimum wages on employment ... [t]he Australian experience is a useful counterpoint to the argument that all the countries with the highest minimum wages have a clear unemployment problem.’¹²⁹

[125] Ai Group referred to new research by Neumark and Shirley (2021) that explored the possible conclusions that can be drawn from the US literature. They note that the ‘study is not a new data set but a fresh examination of the results from this existing body of research.’¹³⁰

[126] The research concludes that ‘[t]here is clear preponderance of negative estimates in the literature’ and that the evidence of negative employment effects is found to be stronger among teens and young adults, as well as the less educated.¹³¹ According to Neumark and Shirley, the preferred estimates from these studies ‘paint a clear picture that is at odds with how this research is often summarized ... this body of evidence and its conclusions point strongly toward negative effects of minimum wages on employment of less-skilled workers, especially for the types of studies that would be expected to reveal these negative employment effects most clearly’.¹³²

[127] Ai Group submitted that, while they do not suggest the study is ‘definitive’, ‘it should give rise to a close re-examination of the existing interpretations of research that inform the considerations of the Panel [that] could give rise to a more nuanced view of the disemployment effects across different segments of the workforce and particularly among less skilled, low income employees’.¹³³

[128] The ACTU concurred with Ai Group’s view that the ‘study is not definitive’,¹³⁴ and referred to commentary by Professor Arindrajit Dube of the University Massachusetts, in which Professor Dube argues that ‘a key limitation of the Neumark and Shirley study is that it lumps together the elasticities of radically different groups, such as elasticities on aggregate employment and elasticities of only low wage workers. This makes the magnitudes of elasticities ‘uninterpretable’.’¹³⁵

[129] The Neumark and Shirley review concluded that the preponderance of US studies found negative employment effects from minimum wage increases. However, as the Panel has concluded in previous Reviews, research on the impact of increases of minimum wages on employment based on US evidence is of limited relevance in the Australian context.¹³⁶

¹²⁹ ACTU submission, 26 March 2021 at para. 85; Manning A (2021), ‘The elusive employment effect of the minimum wage’, *Journal of Economic Perspectives*, Vol. 35, No. 1, Winter, p. 17.

¹³⁰ Ai Group submission, 26 March 2021 at p. 41.

¹³¹ Neumark D & Shirley P (2021), *Myth or measurement: what does the new minimum wage research say about minimum wages and job loss in the United States?*, National Bureau of Economic Research, Working Paper 28388, January, p. 23.

¹³² *Ibid*, p. 4.

¹³³ Ai Group submission, 26 March 2021 at p. 41.

¹³⁴ ACTU submission in reply, 23 April 2021 at para. 96.

¹³⁵ *Ibid*.

¹³⁶ [2017] FWCFB 3500 at [523]

[130] While the Australian Government and ACCER provided a summary of some Australian and international studies on the employment effects of minimum wages,¹³⁷ much of the literature is dated and some has been addressed in previous Reviews. The Australian Government also submitted that ‘[i]ncremental and modest increases to the minimum wage have minimal employment impacts, as noted in the literature, however downturns may exacerbate the impact increasing the magnitude of the effect.’¹³⁸

[131] As we have noted, the single most important shift between this Review and the last Review has been the economic recovery. The economic effects of the pandemic have been compared with past severe economic shocks, with the RBA illustrating the differences between the two:

‘...the unique nature of the COVID-19 shock, the recent experience domestically and abroad has been that economic activity has snapped back after restrictions have been lifted. Indeed the speed of the recovery in activity and the labour market in Australia bears little resemblance to past downturns.’¹³⁹

[132] We agree with the RBA’s assessment and in light of the recent research remain of the view that moderate and regular increases in minimum wages do not result in significant disemployment effects.

[133] As discussed in last year’s Review, what constitutes a moderate increase, such that it does not have significant disemployment effects must be assessed in the present context.¹⁴⁰ The increase we propose to make to the NMW and modern award minimum wages in the present economic circumstances do not pose a significant risk of disemployment or a significant risk of adversely affecting the employment outcomes of low-skilled and young workers.

2.3.2 Social and Other Considerations

[134] The various economic considerations¹⁴¹ are not the only matters we are required to take into account. Both the minimum wages objective and the modern awards objective require the Panel to take into account:

- *relative living standards and the needs of the low paid;*¹⁴² and
- *the principle of equal remuneration for work of equal or comparable value.*¹⁴³

¹³⁷ Australian Government submission, 26 March 2021 at paras 266–292; ACCER submission, 26 March 2021 at paras 104–110.

¹³⁸ Australian Government submission, 26 March 2021 at para. 274.

¹³⁹ Jones B (2021), *Uncertainty and risk aversion – Before and after the pandemic*, keynote address at the Minerals Week Australia-Asia Investment Outlook, 2 June.

¹⁴⁰ [2020] FWCFB 3500 at [337].

¹⁴¹ *Fair Work Act 2009* (Cth) s.284(1)(a) and s.134(1)(d), (f) and (h).

¹⁴² *Ibid* at s.284(1)(c) and s.134(1)(a).

¹⁴³ *Ibid* at s.284(1)(d) and s.134(1)(e).

[135] In giving effect to the modern awards objective, we must also take into account ‘the need to encourage collective bargaining’.¹⁴⁴

[136] These statutory considerations we are required to take into account inform the evaluation of what might constitute ‘a fair and relevant minimum safety net of terms and conditions’¹⁴⁵ and ‘a safety net of fair minimum wages’.¹⁴⁶

(i) *Relative living standards and the needs of the low paid*

[137] The Panel has consistently adopted a threshold of two-thirds of median adult full-time ordinary earnings as the benchmark we use to identify who is ‘low paid’.¹⁴⁷

[138] Consistent with previous Review decisions, we accept that if the low paid live in poverty then their needs are not being met. In measuring poverty, we continue to rely on poverty lines based on a threshold of 60 per cent of median equivalised household disposable income and that those in full-time employment can reasonably expect to earn wages above a harsher measure of poverty.¹⁴⁸

[139] In the last Review, the majority of the Panel assessed that, while the relative living standards of NMW and award-reliant employees have improved over recent years, some low-paid award-reliant employee households have disposable incomes less than the 60 per cent of median income poverty line. Further, many household types are also likely to have disposable incomes that do not reach the threshold of the relevant minimum income for healthy living budget.¹⁴⁹

[140] The majority also acknowledged that there are limitations with measures of equivalised disposable household income when assessing poverty, as they are used to assess the circumstances of a selected household type, rather than individual circumstances. The poverty line essentially measures inequality at the lower end of the income distribution and does not measure observed needs or capacity to meet these needs, which is better indicated by measures of deprivation and financial stress.¹⁵⁰

[141] The position of a number of hypothetical household types at various wage rates declined over 2020 as their disposable income relative to the 60 per cent median income poverty line fell between December 2019 and December 2020. Any improvement in the position of the other hypothetical households was mainly as a result of temporary increases to transfer payments, such as a higher JobSeeker Payment (JSP), during the pandemic period.

[142] Table A2 in Appendix 6 compares the equivalised household disposable income for a range of hypothetical NMW-reliant households and selected modern award minimum wages with the threshold of 60 per cent of median equivalised household disposable income. The

¹⁴⁴ Ibid at s.134(1)(b).

¹⁴⁵ Ibid at s.134(1).

¹⁴⁶ Ibid at s.284(1).

¹⁴⁷ [2020] FWCFB 3500 at [359]

¹⁴⁸ Ibid at [360]

¹⁴⁹ Ibid at [384]

¹⁵⁰ Ibid at [107]

size and composition of households mean that these relative poverty lines differ between household types. As the Panel has previously observed, these differences mean that it is not feasible for minimum wages alone to ensure that all of the family types with a minimum wage employee working full time have incomes that exceed relative poverty levels. Differences arise due to some families receiving support from the welfare system.¹⁵¹ Further, the margin between the 60 per cent median income relative poverty line and the equivalised household disposable income represents, at best, a broad indicator of the extent to which the needs of the low paid are met.¹⁵²

[143] For the December quarter 2020, all households receiving the AWOTE had disposable incomes above the relative poverty line. This was also the case for households receiving the C4 rate, apart from single parents working part-time with 2 children. These results are the same as at the time of 2019–20 Review decision,¹⁵³ however, the ratio of disposable income to the 60 per cent median income poverty line declined for most household types since the last Review decision.

[144] The disposable incomes for some households showed a significant improvement on 2019. This is particularly the case for single-earner couple households receiving the NewStart Allowance (NSA)/JSP. This improvement in disposable income was a result of the Coronavirus Supplement that enabled eligible recipients to receive an additional \$550 per fortnight between 27 April 2020 to 24 September 2020, which reduced to \$250 per fortnight between 25 September 2020 to 31 December 2020, and then reduced again to \$150 per fortnight from 1 January 2021 to 31 March 2021.¹⁵⁴ The disposable income calculated in Table A2 in Appendix 6 uses the tax-transfer parameters at December 2020.

[145] From 1 April 2021, the rate of JSP (and other working age payments) increased by \$50 per fortnight, bringing the single JSP fortnightly rate to \$620.80. The income free area of JSP (and some other working age payments¹⁵⁵) was also increased to \$150 per fortnight, allowing recipients to retain more of what they earn while receiving income support. Mutual obligation requirements were also strengthened starting from early March 2021, with further staged strengthening planned until October 2021.¹⁵⁶

[146] Five of the 14 hypothetical household types receiving the C14 rate had disposable incomes below the 60 per cent median income relative poverty line. These are single parents with children working part time; single-earner couples not in receipt of NSA/JSP with no, 1 or 2 children, and is 1 less household type than in the 2019–20 Review.¹⁵⁷ These household types are shaded in Table A2 in Appendix 6. These same households at the C10 rate were below the poverty line, although a single-earner couple with 1 child had disposable income equivalent to the poverty line. In 2 of these households, the single parent is working part time and their income is therefore affected by the number of hours they work (in this case, it is assumed to be 19 hours per week).

¹⁵¹ Ibid at [363]; [2019] FWCFB 3500 at [324]

¹⁵² [2020] FWCFB 3500 at [363]; [2019] FWCFB 3500 at [325]

¹⁵³ [2020] FWCFB 3500 at [365]

¹⁵⁴ Fair Work Commission (2021), [Information note – government responses to COVID-19 pandemic](#), updated 11 June.

¹⁵⁵ Youth Allowance (other), Parenting Payment (Partnered) and related payments.

¹⁵⁶ Fair Work Commission (2021), [Information note – government responses to COVID-19 pandemic](#), updated 11 June.

¹⁵⁷ [2019] FWCFB 3500 at [367]

[147] Households in the lowest household income quintile have a higher propensity to consume and a lower propensity to save relative to other households.¹⁵⁸

[148] The Australian Council of Social Service (ACOSS) referred to its ‘Poverty in Australia 2020’ report in its initial submission.¹⁵⁹ The report quantifies the proportion of individuals in households that fall below measures of poverty and calculates the ‘poverty gap’ for people living below the poverty lines in order to provide information on the depth or severity of poverty. It uses a poverty line measured at 50 per cent of median income as this represents the ‘middle’ household disposable income and therefore compares the spending capacity with ‘middle Australia’. A poverty line set by 60 per cent of median income is also provided for comparison.¹⁶⁰ The ACOSS report finds that 13.6 per cent of people live below the 50 per cent median income poverty line and 21.0 per cent of people live below the 60 per cent median income poverty line (after adjusting for housing costs).¹⁶¹

[149] The Statistical report does not quantify the number of individuals in households that fall below measures of poverty. It compares the disposable incomes of selected hypothetical households earning various wage rates with the 60 per cent median income poverty line (Table A2 in Appendix 6).¹⁶²

[150] The calculation of poverty lines in the ACOSS report and the Statistical report also differ because of the following:

- *Estimates in the Statistical report do not adjust for housing costs, whereas the ACOSS report takes housing costs into account and calculates 2 sets of poverty lines—before and after housing costs.*
- *Households reporting zero or negative disposable incomes and self-employed households are removed from the survey sample analysed in the ACOSS report.*
- *The Statistical report calculates poverty lines based on the following 6 households: single adults; single parents with 1 child; single parents with 2 children; couples with no children; couples with 1 child; and couples with 2 children.*
 - *Disposable incomes are calculated for these household types that also consider a range of different assumptions on wage rates, hours worked, receipt of income support, partner status, number and age of children. In total, disposable incomes are calculated for 14 different household types.*

¹⁵⁸ [2020] FWCFB 3500 at [111]

¹⁵⁹ ACOSS submission, 26 March 2021 at p. 10; Davidson P, Bradbury B & Wong M (2020): [Poverty in Australia 2020: Part 2, Who is affected?](#), ACOSS/UNSW Poverty and Inequality Partnership Report No. 4.

¹⁶⁰ Ibid at pp. 20–21.

¹⁶¹ Ibid at p. 23.

¹⁶² These estimates do not adjust for housing costs.

- *The ACOSS report calculates poverty lines for 4 household types: lone person; couple only; sole parent with 2 children; and couple with 2 children. Dependent children are considered to be under 15 years.*¹⁶³

[151] Although there is no ‘official’ measure of the poverty line, the Panel continues to rely on poverty lines based on a threshold of 60 per cent of median equivalised household disposable income on the basis that those in full-time employment can reasonably expect to earn wages above a harsher measure of poverty.¹⁶⁴

[152] As was the case in last year’s Review, changes to tax-transfer settings impacting this Review are different to earlier Reviews due to the government responses to the COVID-19 pandemic. The relevant changes to the tax-transfer system were outlined in last year’s decision,¹⁶⁵ and also published in the Commission’s *Information note – Government responses to COVID-19 pandemic* which has been updated through this Review.

[153] Indicators show that households experienced higher rates of financial stress in the middle of 2020 but that it improved into early 2021 as restrictions were eased and the economy recovered. However, indicators before the pandemic showed that there was a modest increase in the proportion of low-paid employee households experiencing financial stress in 2019.¹⁶⁶ It is clear that some households, particularly low-paid households, were experiencing significant disadvantage and that despite some temporary assistance, would have endured hardship last year as they had less savings than other households. An increase in minimum wages would assist these employees to better meet their needs.

[154] Indicators of financial stress are derived from the ABS *Household Impacts of COVID-19 Survey* that provides recent data on indicators of financial stress collected throughout the COVID-19 pandemic. Between mid-June 2020 and January 2021, the proportion of respondents that could raise \$2000 within a week decreased, although it has improved since August 2020, when Victoria was experiencing its second wave of the pandemic (Table 4). This was also reflected in households’ abilities to pay bills on time.

¹⁶³ ACOSS submission, 26 March 2021 at p. 10; Davidson P, Bradbury B & Wong M (2020): [Poverty in Australia 2020: Part 2, Who is affected?](#), ACOSS/UNSW Poverty and Inequality Partnership Report No. 4.

¹⁶⁴ [2020] FWCFB 3500 at [360]

¹⁶⁵ [2020] FWCFB 3500 at [345]–[353]

¹⁶⁶ Statistical report (version 12), 15 June 2021, Table 12.2.

Table 4: Change in household financial stress, mid-June 2020 to January 2021

	Mid-June 2020 (%)	Aug-20 (%)	Jan-21 (%)	Mid-June 2020 to Jan-21 (ppt change)
Whether household could raise money for something important within a week				
Able to raise \$2000	87.5	77.4	80.0	-7.5
Able to raise \$500 but not \$2000	8.8	12.8	9.7	0.9
Unable to raise \$500	2.5	6.2	6.1	3.6
Don't know	1.3	3.5	4.2	2.9
Whether household was unable to pay bills on time due to shortage of money over a selected period^{#^}				
Was unable to pay bills on time	7.0	13.9	7.8	-
Was able to pay bills on time	93.0	84.0	90.3	-
Whether household expects to be able pay bills received in the next three months				
Yes	93.8	86.7	91.5	-2.3
No	2.6	2.0	1.1	-1.5
Don't know	3.7	11.3	7.4	3.7

Source: Statistical report (version 12), 15 June 2021, Table 12.5; ABS, *Household Impacts of COVID-19 Survey*, January 2021.

Note: [#] Proportion of those that don't know if unable to pay a bill they receive are not published. [^] The reference period for whether household was unable to pay bills on time varied in each survey. Persons were asked whether they could pay household bills since 1 March 2020 in the mid-June 2020 survey, in the last 12 months in the August 2020 survey and in the last 3 months in the January 2021 survey.

[155] A decision to grant no increase in this Review or to grant an increase in the order proposed by some of the employer organisations (e.g. 1.1 per cent) would mean that the living standards of some low-paid award-reliant employees would fall. The requirement to take into account relative living standards and the needs of the low paid supports an increase in the NMW and modern award minimum wages.

(ii) *Collective Bargaining*

[156] In making the NMW order, the Panel must give effect to the minimum wages objective. While the minimum wages objective does not refer to 'the need to encourage collective bargaining', one of the objects of the Act is to encourage collective bargaining and, on that basis, it is appropriate to consider that legislative purpose in making the NMW order.¹⁶⁷

[157] Information on enterprise agreements is analysed using data from the Workplace Agreements Database (WAD). Data on current agreements from the WAD capture employees covered by federal enterprise agreements that have not passed their nominal expiry date.¹⁶⁸

[158] The most recent data published in the Attorney-General's Department report on *Trends in Federal Enterprise Bargaining* show that wages growth as measured by the average annualised wage increase (AAWI) in 2020 has declined in both the public and private sectors (Chart A2 – Appendix 3). The AAWI for the private sector fell from 3.0 per

¹⁶⁷ *Fair Work Act 2009* (Cth), s.3(f).

¹⁶⁸ Attorney-General's Department (2020), [Trends in Federal Enterprise Bargaining Report](#), December quarter 2020, p. 48.

cent in the June quarter 2020 to 2.6 per cent in the December quarter 2020. The AAWI for the public sector is significantly below that, at 1.9 per cent.

[159] The number of federal enterprise agreements approved in the December quarter 2020 is significantly lower than the number approved a decade earlier in both the public and private sectors, though the decline is larger for the public sector. After peaking in 2019, the number of agreements approved for both sectors fell sharply in the following quarters. While there was a small increase in the December quarter 2020, the number of federal enterprise agreements approved in the quarter for the public and private sectors was only 30 per cent and 44 per cent of the agreements approved a decade earlier, respectively.¹⁶⁹

[160] Consistent with the views expressed by the majority in the 2019–20 Review decision, we accept that there has been a decline in current enterprise agreements, but a range of factors impact on the propensity to engage in collective bargaining, many of which are unrelated to increases in the NMW and modern award minimum wages.¹⁷⁰ Given the complexity of factors which may contribute to decision making about whether or not to bargain, we are unable to predict the precise impact of our decision on bargaining.

[161] The increases we have determined in this 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. We have taken this into account along with the other statutory considerations in determining the outcome in this Review.

(iii) *Equal remuneration*

[162] The consideration of the ‘principle of equal remuneration for work of equal or comparable value’ was comprehensively addressed in the 2017–18 Review decision and that discussion was adopted in the 2018–19 and 2019–20 Review decisions.¹⁷¹ We also adopt the observations in the 2017–18 Review decision.

[163] We also note that women are more likely to be in low-paid employment and to be paid at the award rate.¹⁷² Further, higher-paid award-reliant employees are more likely to be female (58.7 per cent) than male (41.3 per cent).¹⁷³

2.4 Conclusion

[164] We have determined that it is appropriate to increase the NMW. Having regard to the proposed NMW and the other relevant considerations, we also consider that it is appropriate to adjust modern award minimum wages.

[165] As to the form of the increase, past flat dollar increases in modern award minimum wages have compressed award relativities and reduced the gains from skill acquisition. A percentage increase will avoid further compression and will particularly benefit women

¹⁶⁹ Statistical report (version 12), 15 June 2021, Chart 10.1.

¹⁷⁰ [2020] FWCFB 3500 at [116]

¹⁷¹ [2020] FWCFB 3500 at [403]; [2019] FWCFB 3500 at [388]; [2018] FWCFB 3500 at [35]–[38]

¹⁷² Wilkins & Zilio (2020), *Prevalence and persistence of low-paid award-reliant employment*, p. 11, Table 3.

¹⁷³ *Ibid.*, p. 14, Table 7.

workers, because at the higher award classification levels women are substantially more likely than men to be paid the minimum award rate and are less likely to be subject to collective agreements.¹⁷⁴

[166] The Act does not compel the variation of modern award minimum wages in *all* modern awards. The Panel has a discretion to vary some or all modern award minimum wages in the context of a Review. However, in exercising that discretion considerations of fairness and stability tell against varying the quantum of any adjustment to modern award minimum wages on an award-by-award basis.¹⁷⁵

[167] These matters have led us to determine a uniform percentage increase. We now turn to the quantum of the increase.

[168] It is convenient to deal here with ACCER's submission that if the NMW order sets the NMW rate 'at such a level where persons fall into disadvantage or poverty, then it does not answer the statutory description contained in s. 284 of the FW Act', that is it would not provide 'a safety net of fair minimum wages'.¹⁷⁶ As has been noted in previous Review decisions, the Act requires that the Panel take all of the relevant statutory considerations into account, with the relative living standards and needs of the low paid but one of these considerations.¹⁷⁷ There is a degree of overlap between the various considerations which the Panel must take into account¹⁷⁸ and no particular primacy is attached to any of these considerations.¹⁷⁹ We acknowledged that a degree of tension exists between some of these considerations.¹⁸⁰ For example, the extent to which minimum wage increases are able to meet the needs of the low paid may, depending on the magnitude of the increase and the prevailing circumstances, be constrained by the potential impact of such increases on employment.

[169] In our view awarding an increase of the magnitude proposed by ACCER (and the ACTU) in the present economic circumstances would pose a real risk of disemployment and of adversely affecting the employment opportunities of low-skilled and young workers.

[170] We also acknowledge that awarding an increase which is less than increases in prices and living costs would amount to a real wage cut. Such an outcome would mean that many award-reliant employees, particularly low-paid employees, would be less able to meet their needs. For some households such an outcome would lead to further disadvantage and may place them at greater risk of moving into poverty.

[171] The Australian Chamber of Commerce and Industry (ACCI) submitted that '[t]here is no significant work for this Review to do on living standards and employee needs, save for

¹⁷⁴ Wilkins & Zilio (2020), *Prevalence and persistence of low-paid award-reliant employment*, p. 14, Table 7; [2019] FWCFB at [397]

¹⁷⁵ [2013] FWCFB 4000 at [77]

¹⁷⁶ ACCER submission, 26 March 2021 at paras 25–26.

¹⁷⁷ [2019] FWCFB 3500 at [11]

¹⁷⁸ See [2015] FWCFB 3500 at [88]–[91]; [2016] FWCFB 3500 at [116]; [2017] FWCFB 3500 at [115]; [129]

¹⁷⁹ See *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788 at [32]; [2017] FWCFB 3500 at [129]

¹⁸⁰ [2020] FWCFB 3500 at [105]; [2017] FWCFB 3500 at [129]

supporting businesses and jobs'.¹⁸¹ We disagree. As we have mentioned, the data in Table A2 in Appendix 6 show that for a number of hypothetical household types at various wage rates there was a decline in their disposable income relative to the 60 per cent median income poverty line between the December quarter 2019 and the December quarter 2020.¹⁸² Those households that improved were mainly as a result of temporary increases to transfer payments, such as a higher JobSeeker payment, during the pandemic period.

[172] As mentioned earlier, there was a broad consensus in the submissions before us that the current performance of the economy has exceeded expectations and that the economic recovery was well underway. We acknowledge and have taken into account that the impact of the pandemic and the extent of the recovery has varied between and within industry sectors.

[173] Taken overall, the change in circumstances—the markedly better economic environment, the scheduled SG increase and the tax-transfer changes—weigh in favour of a higher increase than was awarded in last year's Review.

[174] The factors we are required to take into account have led us to award an increase of 2.5 per cent. The NMW will be \$772.60 per week or \$20.33 per hour. The hourly rate has been calculated by dividing the weekly rate by 38, on the basis of the 38-hour week for a full-time employee. This constitutes an increase of \$18.80 per week to the weekly rate or 49 cents per hour to the hourly rate.

[175] The proposed NMW and the relevant statutory considerations have led us to increase modern award minimum wages by 2.5 per cent.

[176] We now turn to consider the timing of these adjustments.

¹⁸¹ ACCI submission, 26 March 2021 at para. 55.

¹⁸² Statistical report (version 12), 15 June 2021, Table 8.6.

3 The Review - Timing

[177] Absent exceptional circumstances, the Act provides that variations to a NMW order and modern award minimum wages arising from a Review are to operate from 1 July in the financial year following the Review.

[178] Pursuant to s.287(1), a NMW order:

‘that is made in an annual wage review comes into operation on 1 July in the next financial year (the *year of operation*).’ [Emphasis added]

[179] While a NMW order must come into operation on 1 July in the next financial year, the effect of some or all of its components may be delayed in ‘exceptional circumstances’.¹⁸³

[180] Section 286(1) provides that:

‘a determination (a *variation determination*) varying one or more modern awards to set, vary or revoke modern award minimum wages that is made in an annual wage review comes into operation on 1 July in the next financial year.’ [Emphasis added]

[181] Section 286(2) provides that if the Commission ‘is satisfied that there are exceptional circumstances justifying why a variation determination should not come into operation until a later day’ [emphasis added] the Commission may specify that later day as the day on which the variation determination comes into operation. If the Commission does so, the variation determination comes into operation on that later day (s.286(3)).

[182] In the 2019–20 Review, the majority of the Panel decided to increase modern award minimum wages in 3 groups based on industry clusters. Depending on the modern award and the industry cluster it was allocated, the increases to modern award minimum wages occurred on either 1 July 2020, 1 November 2020 or 1 February 2021.

[183] Using the ABS series *Weekly Payroll Jobs and Wages in Australia* and other data, the majority separated the 19 industries (according to the Australian and New Zealand Standard Industrial Classification) into 3 clusters based on the impact of the COVID-19 pandemic at the time.¹⁸⁴ The separation in these clusters was also supported by data on business expectations of how COVID-19 would adversely impact them over the next 2 months,¹⁸⁵ GVA and profits.¹⁸⁶ The modern awards aligned to the 3 industry clusters were as follows:

Group 1 Awards (1 July 2020)

- *Aboriginal Community Controlled Health Services Award 2020*
- *Aged Care Award 2010*

¹⁸³ *Fair Work Act 2009* (Cth), s. 287(4).

¹⁸⁴ [2020] FWCFB 3500 at [45]–[46]

¹⁸⁵ *Ibid* at [55]

¹⁸⁶ *Ibid* at [309]

- *Ambulance and Patient Transport Industry Award 2020*
- *Banking, Finance and Insurance Award 2020*
- *Cemetery Industry Award 2020*
- *Children's Services Award 2010*
- *Cleaning Services Award 2020*
- *Corrections and Detention (Private Sector) Award 2020*
- *Educational Services (Schools) General Staff Award 2020*
- *Educational Services (Teachers) Award 2010*
- *Electrical Power Industry Award 2020*
- *Fire Fighting Industry Award 2020*
- *Funeral Industry Award 2010*
- *Gas Industry Award 2020*
- *Health Professionals and Support Services Award 2020*
- *Medical Practitioners Award 2020*
- *Nurses Award 2010*
- *Pharmacy Industry Award 2020*
- *Social, Community, Home Care and Disability Services Industry Award 2010*
- *State Government Agencies Award 2020*
- *Water Industry Award 2020.*

Group 2 Awards (1 November 2020)

- *Aluminium Industry Award 2020*
- *Animal Care and Veterinary Services Award 2020*
- *Aquaculture Industry Award 2020*
- *Architects Award 2020*
- *Asphalt Industry Award 2020*

- *Australian Government Industry Award 2016*
- *Black Coal Mining Industry Award 2010*
- *Book Industry Award 2020*
- *Broadcasting, Recorded Entertainment and Cinemas Award 2010*
- *Building and Construction General On-site Award 2010*
- *Business Equipment Award 2020*
- *Car Parking Award 2020*
- *Cement, Lime and Quarrying Award 2020*
- *Clerks—Private Sector Award 2020*
- *Coal Export Terminals Award 2020*
- *Concrete Products Award 2020*
- *Contract Call Centres Award 2020*
- *Cotton Ginning Award 2020*
- *Dredging Industry Award 2020*
- *Educational Services (Post-Secondary Education) Award 2020*
- *Electrical, Electronic and Communications Contracting Award 2010*
- *Food, Beverage and Tobacco Manufacturing Award 2010*
- *Gardening and Landscaping Services Award 2020*
- *Graphic Arts, Printing and Publishing Award 2010*
- *Higher Education Industry-Academic Staff-Award 2020*
- *Higher Education Industry-General Staff-Award 2020*
- *Horticulture Award 2010*
- *Hydrocarbons Field Geologists Award 2020*
- *Hydrocarbons Industry (Upstream) Award 2020*

- *Joinery and Building Trades Award 2010*
- *Journalists Published Media Award 2020*
- *Labour Market Assistance Industry Award 2020*
- *Legal Services Award 2020*
- *Local Government Industry Award 2020*
- *Manufacturing and Associated Industries and Occupations Award 2020*
- *Marine Towage Award 2020*
- *Maritime Offshore Oil and Gas Award 2020*
- *Market and Social Research Award 2020*
- *Meat Industry Award 2020*
- *Mining Industry Award 2020*
- *Miscellaneous Award 2020*
- *Mobile Crane Hiring Award 2010*
- *Oil Refining and Manufacturing Award 2020*
- *Passenger Vehicle Transportation Award 2020*
- *Pastoral Award 2010*
- *Pest Control Industry Award 2020*
- *Pharmaceutical Industry Award 2010*
- *Plumbing and Fire Sprinklers Award 2010*
- *Port Authorities Award 2020*
- *Ports, Harbours and Enclosed Water Vessels Award 2020*
- *Poultry Processing Award 2020*
- *Premixed Concrete Award 2020*
- *Professional Diving Industry (Industrial) Award 2020*
- *Professional Employees Award 2020*

- *Rail Industry Award 2020*
- *Real Estate Industry Award 2020*
- *Road Transport (Long Distance Operations) Award 2020*
- *Road Transport and Distribution Award 2020*
- *Salt Industry Award 2010*
- *Seafood Processing Award 2020*
- *Seagoing Industry Award 2020*
- *Security Services Industry Award 2020*
- *Silviculture Award 2020*
- *Stevedoring Industry Award 2020*
- *Storage Services and Wholesale Award 2020*
- *Sugar Industry Award 2020*
- *Supported Employment Services Award 2020*
- *Surveying Award 2020*
- *Telecommunications Services Award 2010*
- *Textile, Clothing, Footwear and Associated Industries Award 2010*
- *Timber Industry Award 2010*
- *Transport (Cash in Transit) Award 2020*
- *Waste Management Award 2020*
- *Wool Storage, Sampling and Testing Award 2010.*

Group 3 Awards (1 February 2021)

- *Air Pilots Award 2020*
- *Aircraft Cabin Crew Award 2020*
- *Airline Operations-Ground Staff Award 2020*

- *Airport Employees Award 2020*
- *Alpine Resorts Award 2020*
- *Amusement, Events and Recreation Award 2020*
- *Commercial Sales Award 2020*
- *Dry Cleaning and Laundry Industry Award 2020*
- *Fast Food Industry Award 2010*
- *Fitness Industry Award 2010*
- *General Retail Industry Award 2010*
- *Hair and Beauty Industry Award 2010*
- *Horse and Greyhound Training Award 2020*
- *Hospitality Industry (General) Award 2020*
- *Live Performance Award 2010*
- *Mannequins and Models Award 2020*
- *Marine Tourism and Charter Vessels Award 2020*
- *Nursery Award 2020*
- *Professional Diving Industry (Recreational) Award 2020*
- *Racing Clubs Events Award 2010*
- *Racing Industry Ground Maintenance Award 2020*
- *Registered and Licensed Clubs Award 2010*
- *Restaurant Industry Award 2020*
- *Sporting Organisations Award 2020*
- *Travelling Shows Award 2020*
- *Vehicle Repair, Services and Retail Award 2020*
- *Wine Industry Award 2020.*

[184] The modern awards in Group 1 covered industries which were less affected by the pandemic than those covered in Groups 2 and 3. These included modern awards applying to ‘frontline’ health workers, teachers and childcare workers and employees engaged in other essential services. The majority was not satisfied that there were exceptional circumstances justifying the variation determinations in respect of these modern awards coming into operation on a day later than 1 July 2020.¹⁸⁷ The modern awards in Group 2 covered industries adversely impacted by the pandemic, but not to the same extent as the industries covered by the Group 3 awards. The modern awards in Group 3 covered industries which were most adversely affected by the pandemic. The majority was satisfied that there were exceptional circumstances justifying the variation determinations in respect of modern awards in Groups 2 and 3 coming into operation on a later date.¹⁸⁸

[185] The majority was *not* satisfied that there were ‘exceptional circumstances’ such as to justify the adjustment set by a NMW order taking effect on a day later than 1 July 2020.¹⁸⁹

[186] In the questions on notice published on 7 April 2021 all parties were invited to comment on how the Panel should deal with:

1. *The different operative dates from the 2019–20 Review.*
2. *Whether there should be any changes to the composition of the 3 industry clusters identified in the 2019–20 Review, giving consideration to movements in the change in employee jobs and total wages presented in the report by Professor Jeff Borland and the most recent data shown in the Fair Work Commission’s Statistical report—Annual Wage Review 2020–21.*

[187] The various employer interests generally submitted that exceptional circumstances justified later operative dates in respect of particular modern awards.

[188] Ai Group submitted that a delayed operative date for awards in Group 2 and Group 3 was warranted for two reasons:¹⁹⁰

1. *Some industry sectors have been extremely impacted by the pandemic and have not yet recovered to anything like pre-pandemic levels.*
2. *The delayed operative dates last year for award wage increases in particular sectors has resulted in the exceptional circumstance that employers would be required to pay two wage increases in close succession, unless a delayed increase is granted again this year.*

[189] Ai Group proposed that no changes be made to the composition of the respective groups but that the operative date for Group 2 awards to be 1 September 2021 and 1 January 2022 for Group 3 awards.¹⁹¹

¹⁸⁷ Ibid at [162]

¹⁸⁸ Ibid at [163]–[164]

¹⁸⁹ Ibid at [159]

¹⁹⁰ Ai Group responses to questions on notice, 23 April 2021 at p. 16.

¹⁹¹ Ibid at p. 17.

[190] Ai Group did not support Professor Borland’s recommendations for the adjustment of the industry clusters adopted by the majority in last year’s Review decision, for the following reasons:

- 1. The recovery has been very uneven in some sectors (e.g. retail) and Professor Borland’s analysis does not take this into account. Some sectors in some industries are clearly struggling due to the effects of the pandemic and this is disguised when only the overall data for entire industries are considered.*
- 2. Determining operative dates in accordance with Professor Borland’s classifications would fail to take into account the fact that some employers only paid the last Annual Wage Review increase in February 2021 (e.g. employers in the retail industry).*
- 3. Professor Borland’s analysis only uses data up to 8 May 2021 and therefore does not take into account the latest Victorian lockdown which will have a major impact on businesses in that State, nor does the analysis take into account the latest economic data.¹⁹²*

[191] ACCI took a different view to Ai Group, in respect of both the composition of the ‘clusters’ and the timing. ACCI mostly supported the changes to the industry clusters suggested by Professor Borland in Version 3 of his report, subject to Administrative and support services shifting to the upper cluster, Retail trade being in the central cluster and the *Electrical, Electronic and Communications Contracting Award 2020* be categorised with the construction awards and assigned to the central cluster.¹⁹³ We note that ACCI’s submission in respect of the clusters references Professor Borland’s earlier report (Version 3 published on 21 April 2021).

[192] All parties were invited to comment on Version 5 of Professor Borland’s report, published on 4 June 2021, in their reply submissions regarding the National Accounts March quarter 2021 to be filed on 8 June 2021.

[193] ACCI responded by reiterating comments made in its earlier submission and contending that Arts and recreation services remain in the ‘upper cluster’ (the lagging recovery classification); Administrative and support services be ‘uprated’ to the ‘upper cluster’ and Retail trade ‘remain in the middle cluster’ (the almost recovered classification). ACCI submitted:

‘As noted in ACCI’s 4th Submission, based on the ABS Weekly Payroll Jobs and Wages data for the fortnight ending 8 May 2021 employment in the Arts and Recreation sector remained down 2.3% below its level of 14 March 2020, while the National Accounts showed Gross Value Added (GVA) down 0.8% in March 2021 relative to March 2020. Given both employment and economic activity remain below their pre-COVID level, ACCI calls on the Expert Panel to retain the Arts and Recreation sector in the upper cluster/lagging recovery classification.

¹⁹² Ai Group supplementary submission in reply, 8 June 2021, at p. 4.

¹⁹³ ACCI responses to questions on notice, 23 April 2021 at paras 3, 8–11.

We also note that lockdown and restrictions in Victoria are leading to further losses in the Arts and Recreation Services sector, and that the impact of those losses is on the commerciality of tours across the country. Uncertainty as to further lockdowns makes it difficult to confirm further tours, events, concerts, showings etc which are the path back to commerciality and commercial and employment sustainability.

While employment in Administrative and Support Services was up 2.3%, economic activity in the sector remains severely depressed, with the National Accounts showing GVA down 10% year-on-year to March 2021. Given economic activity remains heavily depressed (in fact the slowest to recover of all sectors), the Administrative and Support Services sector should be uprated to the lagging recovery classification.

Employment in Retail Trade remained down 1.1%. Although GVA was up 3.6%, it needs to be recognised that there is a wide variation in the recovery of retail businesses. While many retail businesses in metropolitan and most regional areas are doing well on the strength of increasing household consumption, retail businesses in CBDs and some regional areas continue to struggle. Ongoing state-based health restrictions and people's reluctance to return to the office (work from home arrangements) continue to constrain retail activity in CBDs and national border closures and metropolitan restrictions in Victoria are choking retail trade in major tourist destinations.

Given this wide variation in recovery of retail businesses, the Panel should take a cautionary approach to the classification of the Retail Trade sector, leaving it in the central cluster/almost recovered classification, rather than down rating it to the fully recovered classification as Borland proposed.¹⁹⁴ [Footnotes omitted]

[194] We note that ACCI categorises Retail trade as ‘almost recovered’ and submits that it should ‘remain in the middle cluster’. In last year’s Review decision, the majority placed Retail trade in the ‘upper cluster’, not the central or middle cluster, and the variation of the relevant retail modern awards operated from 1 February 2021.¹⁹⁵

[195] In respect of the timing of any adjustment, ACCI initially suggested that there are 3 options available to the Panel:

1. *apply a zero increase in this Review and align the clusters from 1 July 2022;*
2. *stagger the increases at no less than 12 months after the last increase; or*
3. *apply an operative date of 1 January 2022 for all industries.¹⁹⁶*

[196] In the event that the Panel sought to realign all industry clusters to a single commencement date, then ACCI submitted that the commencement date should be 1 January 2022 for all industry sectors.¹⁹⁷

¹⁹⁴ ACCI supplementary submission in reply, 8 June 2021 at paras 15–19.

¹⁹⁵ See [2020] FWCFB 3500 at [71]–[78] and [180]–[187].

¹⁹⁶ ACCI response to questions on notice, 23 April 2021 at para. 17.

[197] In its final submission of 8 June 2021 ACCI did not support a single operative date for increases arising from this year's Review and submitted:

'If the Panel is to apply an increase in the minimum wage and award wages in 2021, staggered commencement dates should again be applied. Any wage increase should be applied no less than 12 months after the last increase, which for the upper cluster would see the increase being applied from 1 February 2022.'¹⁹⁸

[198] In its submission of 2 June 2021 ABI submitted:

'To avoid additional pressures on those businesses in the most badly affected sectors, ABI proposes an effective date for implementation of this year's Awards of 1 January 2022. This would also allow the Panel to reunite the separated clusters.'¹⁹⁹

[199] ABI submitted that the division of modern awards into multiple clusters with different operative dates had 'introduced additional complexity'²⁰⁰ and in support of this submitted:

'In the Business NSW Business Conditions Survey March 2021 quarter, almost 44 per cent of businesses with staff employed under multiple Awards reported that staggered dates had negatively impacted their business due to additional administrative complexity. The general view was that businesses had increased time spent on compliance as a result.'²⁰¹

[200] ABI also requested that the Panel 'set out how it intends to reunify the clusters going forward'.²⁰²

[201] The National Retail Association (NRA) submitted that the conclusion from the last Review regarding Group 3 modern awards remain 'apposite'²⁰³ and that the exceptional circumstances in those same modern awards remains appropriate in the context of the current Review.²⁰⁴ NRA submitted that any increase to awards in Group 3 be deferred until 1 November 2021, with increases to return to 1 July from the *Annual Wage Review 2021–22* (2021–22 Review), subject to any other exceptional circumstances.²⁰⁵

[202] NRA acknowledged 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, and that modern awards should return to the usual cycle in the 2021–22 Review.²⁰⁶

¹⁹⁷ Ibid at para. 17(c).

¹⁹⁸ ACCI supplementary submission in reply, 8 June 2021 at para. 26.

¹⁹⁹ ABI submission, 2 June 2021 at p. 11.

²⁰⁰ ABI submission, 26 March 2021 at p. 25.

²⁰¹ ABI supplementary submission, 2 June 2021 at p. 11.

²⁰² ABI submission, 26 March 2021 at p. 25.

²⁰³ NRA submission, 26 March 2021 at paras 5.1.1.

²⁰⁴ Ibid at para. 5.1.7.

²⁰⁵ Ibid at para. 5.1.10.

²⁰⁶ Ibid at paras 5.1.9–5.1.10.

[203] The ARA submitted that, for the retail industry, any increase take effect on 1 February 2022, being 12 months after the increase arising from last year’s Review decision.²⁰⁷

[204] The Restaurant and Catering Industry Association (R&CA) did not support aligning awards in Group 3 with the other groups and submitted that the *Restaurant Industry Award 2020*, *Hospitality Industry (General) Award 2020* and the *Fast Food Industry Award 2010* should be retained in Group 3²⁰⁸ and that any increase ‘should not occur until 1 February 2022 to ensure consistency with Commission’s timeline imposed by the Commission’s Annual Wage Review 2019–20.’²⁰⁹

[205] The South Australian Wine Industry Association (SAWIA) submitted that any increase for the *Wine Industry Award 2020* be delayed.²¹⁰ SAWIA submitted that the exceptional circumstances facing the national wine industry that were recognised by the Panel in the 2019–20 Review remain relevant and submit that any increase to this award should not become operative until 1 February 2022.²¹¹

[206] The Housing Industry Association (HIA) submitted that the ongoing impact of COVID-19 is an exceptional circumstance that would justify a deferred operative date to any minimum wage adjustment noting that ‘should an increase be awarded adopting the approach taken by the majority in the 2019–20 Annual Wage Review would seem sensible and appropriate’.²¹²

[207] The New South Wales Government supported an approach that has regard to the differential impacts of the pandemic across different industries.²¹³

[208] The ACTU proposed that all modern awards be increased from 1 July 2021,²¹⁴ a position which was supported by ACCER²¹⁵ and the Flight Attendants’ Association of Australia (FAAA).²¹⁶

[209] The ACTU also submitted that delays to wage increases in certain awards distorts award relativities and runs counter to the principal of equal remuneration so that employees with similar or comparable levels of skill receive different wages.²¹⁷

[210] The ACTU contended that the suggestions by employer groups to defer an increase in modern award minimum wages to particular awards fails to properly comprehend or address the statutory requirements to demonstrate exceptional circumstances, to identify the

²⁰⁷ ARA supplementary submission in reply, 8 June 2021 at p. 2.

²⁰⁸ R&CA response to questions on notice, 23 April 2021 at paras 22; 24; 29.

²⁰⁹ R&CA submission, 26 March 2021 at para. 26.

²¹⁰ SAWIA response to questions on notice, 23 April 2021 at p. 2.

²¹¹ SAWIA submission, 26 March 2021 at p. 11.

²¹² HIA submission, 26 March 2021 at p. 5.

²¹³ NSW Government submission, 26 March 2021 paras 16–17.

²¹⁴ ACTU submission, 26 March 2021 at para. 5.

²¹⁵ ACCER response to questions on notice, 23 April 2021 at para. 3.

²¹⁶ FAAA response to questions on notice, 22 April 2021 at para. 2.0.

²¹⁷ *Fair Work Act 2009* (Cth), ss.134(1)(e) & 284(1)(d).

‘particular situation to which those exceptional circumstances relate’ and to justify ‘why the exceptional circumstances support a delay or deferment of the default operative date.’²¹⁸

[211] The ACTU submitted that the grounds advanced by those seeking deferred operative dates in this Review are susceptible to the following criticism made by the Panel when it rejected requests seeking differential treatment in the *Annual Wage Review 2012–13* decision:²¹⁹

‘... the material provided in the submissions was predominantly in the form of reference to broad economic conditions said to be affect[ing] the industry concerned. There was no evidence setting out particularised, current, acute and definable circumstances (relevant to an industry or sector) that would justify different treatment in the particular sectors drawn to our attention’.²²⁰

[212] As to those industries which Professor Borland categorises as ‘lagging recovery’ the ACTU submits:²²¹

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 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 subdivision, 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 [but] that the deterioration in jobs from July 2020 onward is a product not only of COVID-19 but also of “longer run structural factors”.

[213] The ACTU also observed that:

²¹⁸ ACTU submission in reply, 23 April 2021 at para. 73.

²¹⁹ Ibid at para. 77.

²²⁰ Ibid at para. 77; [2013] FWCFB 3500 at [546]

²²¹ ACTU supplementary submission in reply, 8 June 2021 at para. 24.

‘... 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.’²²²

[214] The FAAA submitted that ‘the industry circumstances in which the cabin crew award operates have improved substantially since the initial categorisation’ of the industry clusters, while noting that the ‘vast majority of cabin crew are covered by enterprise agreements’.²²³

[215] We begin by making some general observations on the submissions.

[216] The Act displays a preference for consistent dates of effect of variation determinations and NMW orders,²²⁴ with these determinations and orders generally to take effect in relation to a particular employee at the start of the employee’s first full pay period that starts on or after 1 July in the next financial year. As mentioned earlier, absent exceptional circumstances, the Act provides that variations to a NMW order and modern award minimum wages arising from a Review are to operate from 1 July in the following financial year.

[217] Further, as the majority observed in last year’s Review decision,²²⁵ we acknowledge that consistency in the quantum and timing of changes to modern award minimum wages, the NMW and special NMWs may be said to make for a safety net that was in some sense easier to understand overall, but note that the Act clearly contemplates departures from consistency so as to accommodate exceptional circumstances.

[218] The statutory preference for consistency is subject to instances where the Commission is satisfied that there are exceptional circumstances justifying a later day of operation or effect for one or more variation determinations, an adjustment of the NMW, or adjustments of one or more special NMWs.

[219] No party contests the capacity of the Commission, to the extent justified by exceptional circumstances, to delay the variation of modern award minimum wages on an award-by-award basis. That said, as observed by the majority in the 2019–20 Review decision, the expression ‘exceptional circumstances’ is to be interpreted in the context of Part 2–6 and that a strong case must be made out in order to warrant the deferral of an increase in minimum wages.²²⁶

[220] We agree with the ACTU’s submission that the context in which the expression ‘exceptional circumstances’ appears in ss 286 and 287 of the Act is one which clearly requires a factual situation to present itself which can be examined and found to give rise to circumstances that are exceptional and which justify a departure from what is otherwise an

²²² ACTU supplementary submission in reply, 8 June 2021 at para. 25.

²²³ FAAA response to questions on notice, 22 April 2021 at para. 3.0.

²²⁴ [2012] FWAFB 5000 [261]

²²⁵ [2020] FWCFB 3500 at [146]

²²⁶ Ibid at [145]

immutable rule.²²⁷ We also accept differential operative dates across different award clusters temporarily distorts relativities and may result in employees with similar or comparable levels of skills being entitled to different minimum wages.

[221] We also broadly agree with the ACTU's critique of the various employer proposals for deferred operative dates; namely that they are not properly responsive to the requirement to demonstrate that there are exceptional circumstances justifying the operative dates they seek.

[222] As mentioned earlier, ABI contends that providing different operative dates in respect of clusters of modern awards has introduced administrative complexity and relies on results from the Business NSW Conditions Survey March 2021 to support that contention.

[223] We were not provided with the survey results, the questions put or, as noted at [102], any information about the types of businesses that have responded, such as their industry or size. In these circumstances the submission put is of little assistance and we are left with no persuasive evidence that different operative dates in respect of different modern awards gives rises to a significant degree of administrative complexity or regulatory burden.

[224] The submissions advanced by ACCI, Ai Group and some other employer interests are predicated on the proposition that either there should be a 'gap' of 12 months between modern award minimum wage increases or, as Ai Group put it, the delayed operative dates from last year's decision mean that unless a delayed increase is granted this year, some employers would be required to pay two wage increases in close succession. Ai Group contends the delayed operative dates from last year's Review decision is an 'exceptional circumstance', warranting delayed operative dates this year.

[225] Two things may be said about this.

[226] First, the mere fact of a deferred date of operation of an increase in last year's Review is not, in and of itself, an exceptional circumstance such as to warrant a deferral in this year's Review.²²⁸ It should not be presumed that differential treatment is appropriate for this year's decision merely because differential treatment was afforded by the majority in last year's Review decision.²²⁹ Accepting the premise of Ai Group's argument would create a self-perpetuating mechanism whereby the exception became the rule.²³⁰ However, we accept that the period of time between successive increases, together with other data, is relevant to an overall assessment of whether exceptional circumstances exist such as to warrant a delayed operative date.

[227] Second, the submission put ignores the fact that these employers had the benefit of a delayed operative date arising from last year's decision. Further, the delay is sought to be perpetuated with no analysis of the contemporary circumstances applying in the industries covered by the relevant awards.

²²⁷ ACTU submission in reply, 23 April 2021 at para. 75.

²²⁸ ACTU submission in reply, 23 April 2021 at para. 74.

²²⁹ Ibid at para. 65.

²³⁰ Ibid at para. 74.

[228] The discussion in support of the position put by ACCI seeks broad industry level exemptions based on generalised assertions. ACCI has failed to make its case.

[229] Ai Group's proposal for a two month delay in Group 2 awards and a six month delay for Group 3 awards is not supported by any analysis of the contemporary circumstances in the industries covered by the relevant awards. Other than the requirement to pay two wage increases in close succession, Ai Group fails to identify the actual circumstances it relies on as being exceptional and does not advance a proper mechanism for the identification of effected employees or employers.

[230] In the course of its oral argument during public consultations, Ai Group noted that 'the Commission itself has an extensive amount of data about [...] the issues in all of the relevant industry sectors, including the work that Professor Borland has done', but did not rely on any of that data to justify its proposal, instead submitting that 'it is an exceptional circumstances in its own right...that we had a delayed increase last year'.²³¹

[231] ACCI submitted that 'the Panel faces the same situation in 2021 as it did when it decided to apply a staggered approach to the wage increase for 2020'²³² and that '[a]ny wage increase should be applied no less than 12 months after the last increase, which for the upper cluster would see the increase being applied from 1 February 2022.'²³³ ABI contends that if the Panel decided to align all industry clusters to a single commencement date then that date should be 1 January 2022 for all sectors.²³⁴

[232] In our view, such outcomes would be inconsistent with the statutory framework. As we have said, absent exceptional circumstances, modern award minimum wage variations arising from a Review are to operate from 1 July in the following financial year. In relation to ABI's proposal, there are no exceptional circumstances such as to warrant, for example, a six month delay in respect of the Group 1 awards which were varied on 1 July 2020 as a result of last year's decision.

[233] Contrary to ACCI's submission, we are plainly *not* facing the same situation this year as when the majority applied a staggered approach last year. Indeed, ACCI acknowledged that 'there has been a notable improvement in employment and economic activity overall' and that 'sectors that were less impacted by the lockdowns and state-based health restrictions at the beginning of the crisis, now appear to be faring well, with employment and economic activity above February 2020 levels'.²³⁵

[234] Further, as Professor Borland observed in his report of 4 June 2021:

²³¹ Transcript, 19 May 2021 at PN87.

²³² ACCI response to questions on notice, 23 April 2021 at para. 13.

²³³ ACCI post-Budget submission, 14 May 2021 at para. 16.

²³⁴ ABI supplementary submission, 2 June 2021 at p. 11.

²³⁵ ACCI submission in reply, 23 April 2021 at paras 5, 13.

‘The updated information on changes in the numbers of jobs and on GVA and sales indicate a further need to reclassify industries between the clusters, initially defined in the majority decision of the Expert Panel in the Annual Wage Review 2019–20...’²³⁶

[235] It is clear from the available data that the impact of the COVID-19 pandemic has not been consistent across all sectors of the economy. In this regard it is important to note the terms of s.286(2):

‘(2) If the FWC is satisfied that there are exceptional circumstances justifying why a variation determination should not come into operation until a later day, the FWC may specify that later day as the day on which it comes into operation. However, the determination must be limited just to the particular situation to which the exceptional circumstances relate.

Note: This may mean that the FWC needs to make more than one determination, if different circumstances apply to different employees.’ (emphasis added).

[236] In our view, the data showing the differential impact of the pandemic on particular industry sectors and the import of s.286(2) of the Act does not support a general deferral of the type advocated by ABI and nor does it support the automatic adoption of the ‘clusters’ determined by the majority in last year’s Review decision. A more nuanced approach is required.

[237] We turn first to the NMW order. As mentioned by the majority in last year’s Review decision, very few employees have their wage set by the NMW order and there are no data as to the industries in which they work.²³⁷ The NMW order only applies to ‘award/agreement free employees’ (see s.294). Section 12 defines an award/agreement free employee to mean ‘a national system employee to whom neither a modern award nor an enterprise agreement applies’. The coverage of the *Miscellaneous Award 2020* (the Miscellaneous Award) means that there are very few (if any) employees whose wage rate is set at the NMW by the NMW order.

[238] We also adopt the majority’s view that very few employers would face additional complexity arising from different operative dates for the NMW order and any variations to modern award minimum wages because very few employees are covered by (and paid at the rates specified in) the NMW order.²³⁸

[239] The adjustment set by the NMW order arising from last year’s Review decision operated from 1 July 2020.

[240] We are not satisfied that there are ‘exceptional circumstances’ such as to justify the adjustments set by a NMW order taking effect on a day later than 1 July 2021. The NMW order will come into operation on 1 July 2021.

²³⁶ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 5, a report for the Fair Work Commission, 4 June, p. 9.

²³⁷ [2020] FWCFB 3500 at [158]

²³⁸ *Ibid* at [147].

[241] We now turn to the date of operation of the determinations varying modern award minimum wages.

[242] In the final report, published after the release of the March quarter 2021 National Accounts, Professor Borland surmised that, by April 2021, aggregate labour market activity in Australia had recovered to its pre-COVID level; based on data on employment and hours worked from the Labour Force Survey and the number of jobs from the Weekly Payroll series.²³⁹

[243] In his final analysis of employment changes by industry, Professor Borland suggested that the industry clusters identified in the 2019–20 Review can be reclassified based on outcomes in employment, jobs, GVA and sales. He has identified three groups of industries.²⁴⁰

- *fully recovered—industries where the number of jobs and activity has recovered to now be at or above the level prior to the onset of COVID-19;*
- *almost recovered—industries where the number of jobs and economic activity remain marginally below the level prior to the onset of COVID-19 (in the case of jobs, 1 to 2 per cent below the level prior to COVID-19); and*
- *lagging recovery—industries where the number of jobs and economic activity has not fully recovered or has progressively decreased to now be below the level prior to the onset of COVID-19 by a significant amount (in the case of jobs, 5 to 10 per cent below the level prior to COVID-19).*

[244] Table 6 in Professor Borland’s final report sets out his particular explanation for the classification of industries into these clusters (Table 5 below).

Table 5: Explanations of the classification of industries into clusters

Industry	Discussion of classification
Agriculture, forestry and fishing	<p><u>Jobs</u>: Consistently above 100 pre-April 2021; subsequent drop-away in April 2021 likely to be due to relatively long updating lag for this industry—see Appendix to Borland (2020).</p> <p><u>GVA</u>: Well above level in March 2020, although much of that increase is likely to be due to impacts of bushfire and drought on output prior to COVID.</p> <p><u>Recommendation</u>: Remain in fully recovered (lower) cluster</p>
Mining	<p><u>Jobs</u>: Has steadily increased over past several months to be at about the same level in April 2021 as prior to COVID-19.</p> <p><u>GVA/Sales</u>: GVA remains slightly below March 2020. But strong increase in sales from September 2020 to March 2021.</p> <p><u>Recommendation</u>: Shift to fully recovered (lower) cluster</p>
Manufacturing	<p><u>Jobs</u>: Has been relatively steady at 1–2 percent below March 2020. Trend in number of jobs prior to COVID-19 was slightly upwards. Hence, likely that current jobs outcome being below March 2020 mainly reflects impact of COVID-19.</p>

²³⁹ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 5, a report for the Fair Work Commission, 4 June, pp. 2–3.

²⁴⁰ *Ibid*, pp. 7–14.

Industry	Discussion of classification
Electricity, gas, water and waste services	<p><u>GVA/Sales:</u> Both show that extent of recovery has not yet matched initial decrease in activity.</p> <p><u>Recommendation:</u> Remain in almost recovered (central) cluster</p>
Construction	<p><u>Jobs:</u> Has been above level in March 2020 since onset of COVID-19.</p> <p><u>GVA/Sales:</u> Both show activity consistently below pre-COVID-19. Somewhat difficult to reconcile the different patterns in data on jobs and GVA/Sales—my recommendation is based on putting more weight on labour market data as an indicator for impact of COVID-19 on labour market outcomes and on how labour market data has consistently shown minimal impact of COVID-19.</p> <p><u>Recommendation:</u> Remain in fully recovered (lower) cluster</p> <hr/> <p><u>Jobs:</u> Has been at or above the number of jobs in March 2020 since late 2020. Subsequent decrease in April 2021 may be in part due to relatively long updating lag for this industry—see Appendix to Borland (2020). May also be some impact due to ending of Job Keeper.</p> <p><u>GVA/Sales:</u> Both show that extent of recovery has not yet matched initial decrease in activity. My recommendation is based on evidence of recovery in jobs being relatively recent, and consistent evidence from GVA/Sales of activity remaining below pre-COVID-19. But re-classifying this industry into the fully recovered (lower cluster) would also be a reasonable interpretation of the evidence.</p> <p><u>Recommendation:</u> Remain in almost recovered (central) cluster</p>
Wholesale trade	<p><u>Jobs:</u> At end of 2020 number of jobs reached same level as in March 2020 (partly likely to represent seasonal impact). But in 2021 number of jobs has been about 2 per cent below level in March 2020. Not an industry where updating of job numbers is likely to have a major impact in changing this comparison—see Appendix to Borland (2020). Number of jobs had been relatively steady prior to COVID-19. Hence, lower number of jobs in early 2021 is likely to reflect a continuing impact of COVID-19.</p> <p><u>GVA/Sales:</u> Both show recovery in economic activity much more than offsets initial decrease. Somewhat difficult to reconcile the different patterns in data on jobs and GVA/Sales—my recommendation is based on putting more weight on labour market data as an indicator for impact of COVID-19 on labour market outcomes and on how labour market data has consistently shown minimal impact of COVID-19.</p> <p><u>Recommendation:</u> Remain in almost recovered (central) cluster</p>
Retail trade	<p><u>Jobs:</u> In late 2020 appeared to have recovered to same level as in March 2020. But number of jobs in 2021 has been consistently below level in March 2020 by 1–2 per cent. Further decrease in April, perhaps due to ending of JobKeeper. Not an industry where updating of job numbers is likely to have a major impact in changing this comparison—see Appendix to Borland (2020).</p> <p><u>GVA/Sales:</u> Both show growth in activity during 2020–21.</p> <p>My recommendation is based on the strength of evidence from GVA/Sales, and that data on jobs had shown recovery for some time in late 2020.</p> <p><u>Recommendation:</u> Remain in fully recovered (lower) cluster.</p>
Accommodation and food services	<p><u>Jobs:</u> Continued gradual recovery in recent months. But in March 2021 number of jobs remained 7 per cent below in March 2020. Change in number of jobs in April also suggests that it is likely that ending of Job Keeper caused a decrease of 2–3 per cent.</p> <p><u>GVA/Sales:</u> Both show recovery in activity matching initial decrease. My recommendation is based on putting more weight on labour market data as an indicator for impact of COVID-19 on labour market outcomes and on how labour market data has consistently shown large negative impact of COVID-19.</p> <p><u>Recommendation:</u> Remain in lagging recovery (upper) cluster</p>
Transport, postal and warehousing	<p><u>Jobs:</u> Since mid-2020 number of jobs has remained consistently about 5 per cent below level in March 2020. Primarily due to persistent decrease in number of jobs in</p>

Industry	Discussion of classification
	<p>aviation and space transport of 25 per cent.</p> <p><u>GVA/Sales:</u> GVA shows activity remains below level prior to COVID-19; Sales show recovery in activity matching decrease. My recommendation is based on size and duration of decrease in number of jobs—and clear link to COVID-19-related restrictions on activity.</p> <p><u>Recommendation:</u> Shift to lagging recovery (upper) cluster</p>
Information, media and telecommunications	<p><u>Jobs:</u> Initially not in the group of worst affected industries. But had only minimal recovery in number of jobs from May to July 2020; and since then, number of jobs has slowly fallen. At end of March 2021 number of jobs was 8 per cent below level in March 2020. Negative effects concentrated in publishing; motion picture and sound recording; and broadcasting—hence likely to reflect continuing impact of COVID-19 and longer-run structural influences.</p> <p><u>GVA/Sales:</u> GVA shows extent of recovery in activity matches initial decrease. But sales show consistent decrease in activity in 2020–21.</p> <p><u>Recommendation:</u> Remain in lagging recovery (upper) cluster</p>
Financial and insurance services	<p><u>Jobs:</u> Initially no major negative impact of COVID-19; and since mid-2020 steady growth in number of jobs. At end of March 2021 number of jobs was 7 per cent above level in March 2020.</p> <p><u>GVA/Sales:</u> Both show increase in activity in 2020–21.</p> <p><u>Recommendation:</u> Remain in fully recovered (lower) cluster</p>
Rental, hiring and real estate	<p><u>Jobs:</u> By end of 2020 reached same level of jobs as in March 2020. Has recently again reached that level through March and April 2021. Also likely to be revised upward in subsequent releases—see Appendix to Borland (2020).</p> <p><u>GVA/Sales:</u> Both show extent of recovery larger than initial decrease.</p> <p><u>Recommendation:</u> Shift to fully recovered (lower) cluster</p>
Professional, scientific and technical services	<p><u>Jobs:</u> By end of 2020 reached same level of jobs as in March 2020. Has remained at same level during February to April 2021.</p> <p><u>GVA/Sales:</u> Both show extent of recovery larger than initial decrease.</p> <p><u>Recommendation:</u> Remain in fully recovered (lower) cluster</p>
Administrative and support services	<p><u>Jobs:</u> By end of 2020 had reached 3–4 per cent above level of jobs in March 2020. Has remained at same level during February to April 2021.</p> <p><u>GVA/Sales:</u> Recovery in activity only partly offsets initial decrease—both series remain in March 2021 about 10 per cent below pre-COVID-19. My recommendation is based on putting more weight on labour market data as an indicator for impact of COVID on labour market outcomes and on how labour market data has consistently shown little impact of COVID-19.</p> <p><u>Recommendation:</u> Remain in fully recovered (lower) cluster</p>
Public administration and safety	<p><u>Jobs:</u> By end of 2020 had reached 5–6 per cent above level of jobs in March 2020. By March 2021 number of jobs was over 10 per cent above level in March 2020.</p> <p><u>GVA:</u> Shows small increase in activity during 2020–21.</p> <p><u>Recommendation:</u> Remain in fully recovered (lower) cluster</p>
Education and training	<p><u>Jobs:</u> Has gradually recovered from number of jobs being about 5 per cent below March 2020 in mid-2020. By end of March 2021 number of jobs remained about 1 per cent below March 2020. Decrease in April 2021 likely to be mainly due to seasonal factor (school holidays). Lack of full recovery most likely attributable to decrease in number of international students due to COVID-19.</p> <p><u>GVA:</u> Small increase in activity during 2020–21. My recommendation is based on putting more weight on labour market data and that there is not yet evidence of complete recovery in jobs.</p> <p><u>Recommendation:</u> Remain in almost recovered (central) cluster</p>
Health care and social assistance	<p><u>Jobs:</u> By end of 2020 had reached 3–4 per cent above level of jobs in March 2020. By March 2021 number of jobs was over 5–6 per cent above level in March 2020.</p>

Industry	Discussion of classification
Arts and recreation services	<p data-bbox="501 275 959 302"><u>GVA</u>: Increase in activity during 2020–21.</p> <p data-bbox="501 309 1150 336"><u>Recommendation</u>: Remain in fully recovered (lower) cluster</p> <hr/> <p data-bbox="501 349 1422 501"><u>Jobs</u>: Initially one of the two worst affected industries. Had rapid growth in number of jobs with reopening of economic activity from May to July 2020; and since then a gradual recovery. By end of March 2021 number of jobs had returned to same level as March 2020. Change in number of jobs for April, however, may indicate negative impact of ending of Job Keeper.</p> <p data-bbox="501 508 1422 568"><u>GVA/Sales</u>: Both show that extent of recovery in activity has almost matched initial decrease.</p> <p data-bbox="501 575 1150 602"><u>Recommendation</u>: Shift to almost recovered (central) cluster</p>
Other services	<p data-bbox="501 618 1422 710"><u>Jobs</u>: By late 2020 and in early 2021 number of jobs has recovered to be 1–2 per cent above level in March 2020. Subsequent drop-away in April likely to be due to relatively long updating lag for this industry—see Appendix to Borland (2020).</p> <p data-bbox="501 716 1422 777"><u>GVA/Sales</u>: Both show increases in activity during recovery that are well above decreases.</p> <p data-bbox="501 784 1118 810"><u>Recommendation</u>: Shift to fully recovered (lower) cluster</p>

[245] Professor Borland’s categorisation of industry sectors into ‘fully recovered’; ‘almost recovered’ and ‘lagging recovery’, and the data on which that categorisation is based, is relevant to our assessment of whether, in respect of a particular modern award, there are exceptional circumstances such as to warrant a delayed operative date. However, we note that the categorisation by industry sectors is likely to mask significant variation at the modern award level; a point to which we shall return shortly.

[246] Three further matters are also relevant to our assessment of exceptional circumstances:

1. *Relevant industry specific data.*
2. *The period of time between successive Review increases.*
3. *The likelihood that future lockdowns will be of limited duration and localised; comprising of stay-at-home orders localised to particular regions with limited reasons for people to leave their home.*

[247] In relation to point 3 above, the expected pattern of future lockdowns is likely to adversely impact hairdressing and beauty services; gyms; retail stores (other than food/essential supply retailers and those able to operate ‘click and collect’); accommodation and hospitality businesses (other than those providing take away food services) and businesses operating in the tourism and entertainment/sport sectors.

[248] In last year’s Review decision, the majority concluded that there were exceptional circumstances which warranted an operative date of 1 February 2021 in respect of the modern awards aligned with the following sectors:

- *Accommodation and food services;*
- *Arts and recreation services;*

- *Aviation and tourism; and*
- *Retail trade.*

[249] Professor Borland’s categorisation would see Retail trade and Arts and recreation services move to ‘fully recovered’; and Transport, postal and warehousing move to the upper cluster or ‘lagging recovery’.

[250] As we have mentioned, Professor Borland’s industry level categorisation is likely to mask significant variation at the modern award level. Transport, postal and warehousing illustrates that point. The modern awards mapped to this sector are as set out below:²⁴¹

- *Road Transport and Distribution Industry Award 2020*
- *Passenger Vehicle Transportation Award 2020*
- *Rail Industry Award 2020*
- *Seagoing Industry Award 2020*
- *Marine Tourism and Charter Vessels Award 2020*
- *Air Pilots Award 2020*
- *Stevedoring Industry Award 2020*
- *Port Authorities Award 2020*
- *Coal Export Terminals Award 2020*
- *Marine Towage Award 2020*
- *Airline Operations – Ground Staff Award 2020*
- *Airport Employees Award 2020*
- *Storage Services and Wholesale Award 2020*
- *Transport (Cash in Transit) Award 2020*
- *Road Transport (Long Distance Operations) Award 2020*
- *Ports, Harbours and Enclosed Water Vessels Award 2020*
- *Aircraft Cabin Crew Award 2020*

²⁴¹ Fair Work Commission (2020), [Information note—Modern awards and industries](#), 30 March.

[251] The modern awards mapped to this sector include a number of aviation and tourism awards (which are highlighted)—the sectors that these modern awards cover have plainly been impacted by the pandemic. Indeed, Professor Borland notes that the employment impact in this sector is primarily due to the persistent 25 per cent decrease in the number of jobs in aviation and space transport.²⁴² It seems likely that the circumstances in the aviation awards have impacted on the economic data for the Transport, postal and warehousing sector as a whole. There is no award specific data before us in relation to the remaining awards mapped to this industry sector. These awards were all in the central cluster last year, with an operative date of 1 November 2020.

[252] The highlighted awards in [250] above align with the aviation and tourism sector. The other modern awards in the tourism sector are the *Alpine Resorts Award 2020* and the *Wine Industry Award 2020* (collectively the Aviation and Tourism Awards).

[253] Save for the highlighted awards, we are *not* persuaded that there are exceptional circumstances such as to warrant a later operative date than 1 July 2021 in respect of any of the other awards mapped to the Transport, postal and warehousing sector.

[254] The following modern awards are mapped to the Accommodation and food services industry:²⁴³

- *Hospitality Industry (General) Award 2020*;
- *Restaurant Industry Award 2020*;
- *Fast Food Industry Award 2010*; and
- *Registered and Licensed Clubs Award 2020*.

[255] Professor Borland recommends that the Accommodation and food services sector remain in the ‘lagging recovery’ (upper cluster).

[256] We are satisfied that there are exceptional circumstances justifying the variation determinations in respect of the Accommodation and food services sector (with the exception of the *Fast Food Industry Award 2010*) and the Aviation and Tourism Awards coming into operation on 1 November 2021. We consider that the combination of factors at [245] – [246] applying to these awards is exceptional and justifies a delay until 1 November 2021.

[257] We now turn to the *Fast Food Industry Award 2010*. At the outset we would observe that fast food businesses are, generally speaking, less likely to have been adversely affected by the pandemic than cafes and restaurants because the restrictions imposed to contain the virus have generally not prohibited take away food services.

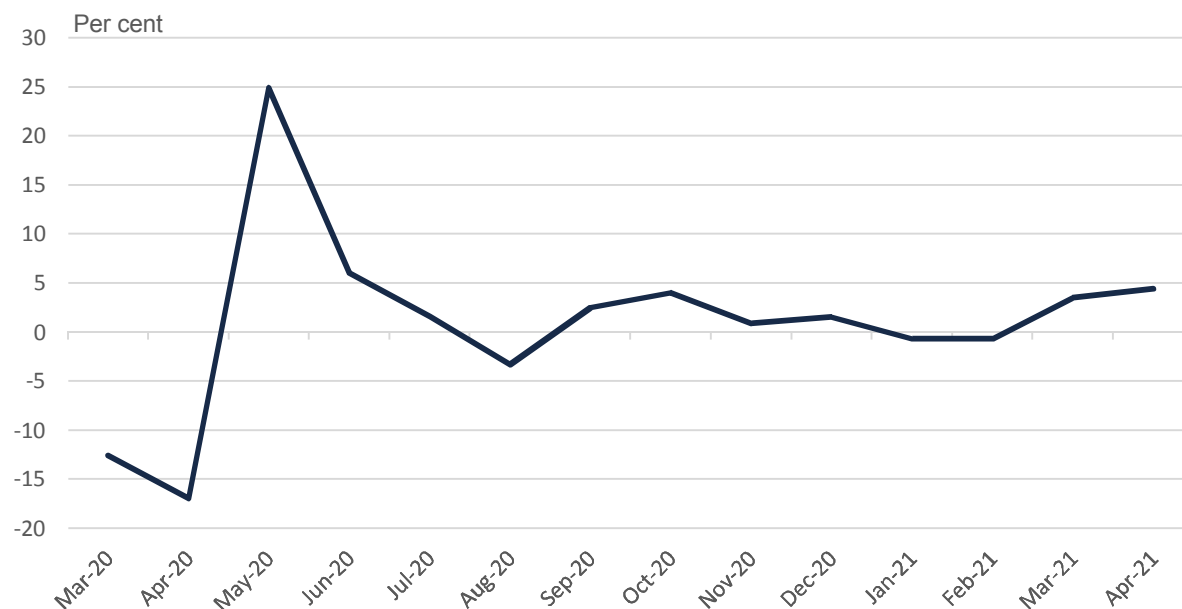
[258] Turnover in Takeaway food services increased by 4.4 per cent over the year to April 2021 (Chart 9). Following a significant decline in turnover for Takeaway food services in

²⁴² Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 5, a report for the Fair Work Commission, 4 June, p. 11.

²⁴³ [2020] FWCFB 3500 at [66]

March and April 2020, there was a rebound in May 2020 and another relatively strong outcome in the following month. Since then, monthly turnover has generally increased apart from a decline in August 2020 and the first 2 months of 2021.

Chart 9: Monthly turnover, Takeaway food services



Source: Statistical report (version 12), 15 June 2021, Chart 3.19; ABS, *Retail trade, Australia*, April 2021.

Note: Data are expressed in seasonally adjusted terms.

[259] Employment in the Fast Food sector is dominated by the Major Fast Food Chains. As observed in a Full Bench decision published on 20 February 2019,²⁴⁴ McDonald’s, Hungry Jacks and Cravable Brands (Oportos, Red Rooster and Chicken Treat) (the Major Fast Food Chains) employ a substantial majority (about three-quarters) of all Fast Food industry employees.²⁴⁵ There is no evidence before us from the Major Fast Food Chains regarding any adverse impact on the operations as a consequence of the restrictions imposed to contain the pandemic.

[260] We acknowledge that an operative date of 1 July 2021 will mean that businesses covered by the *Fast Food Industry Award 2010* will face two minimum wage increases in a 6 month period. But these businesses also had the benefit of no increase in minimum wages between 1 July 2020 and 1 February 2021. Further, the timing issue is, of itself, not sufficient to warrant a finding of exceptional circumstances in light of the turnover data. We are *not* persuaded that there are exceptional circumstances such as to warrant a later operative date than 1 July 2021 in respect of the *Fast Food Industry Award 2010*.

[261] We now turn to the Arts and recreation services sector. Professor Borland recommends that this sector shift from the upper cluster to the almost recovered (central) cluster and in so doing observes that by the end of March 2021 the number of jobs had

²⁴⁴ [2019] FWCFB 272 at [98]

²⁴⁵ *Ibid* at [37]

returned to the same level as March 2020 and that both GVA and sales show that the extent of the recovery in activity has almost matched the initial decrease.²⁴⁶

[262] In our view, Professor Borland’s analysis in respect of the Arts and recreation services sectors is also unlikely to be applicable to the circumstances of each of the modern awards mapped to this sector. The relevant awards are:

- *Amusement, Events and Recreation Award 2020*;
- *Live Performance Award 2020*;
- *Fitness Industry Award 2020*;
- *Sporting Organisations Award 2020*;
- *Racing Clubs Events Award 2020*;
- *Racing Industry Ground Maintenance Award 2020*;
- *Horse and Greyhound Training Award 2020*; and
- *Travelling Shows Award 2020*.

[263] Save for the *Horse and Greyhound Training Award 2020*, the businesses covered by these awards have also been adversely impacted by the pandemic and by the various government restrictions to restrict transmission. It is also likely that these will also be adversely impacted by the pattern of lockdowns/restrictions we are likely to see over the course of the next 12 months. The extent of that impact is difficult to quantify. The various racing industry awards serve to illustrate this point.

[264] The *Racing Clubs Events Award 2020* and *Racing Industry Ground Maintenance Award 2020* (the Racing Awards) have been impacted by crowd restrictions though in many instances the actual race took place albeit with limited or no crowds. While racing has other sources of income—television rights and gambling, for example—the lack of public attendance at events would have had an adverse impact on revenue. Further, an operative date of 1 July 2021 would mean that businesses covered by these awards would face two minimum wage increases in a 6 month period; but we note that they have had the benefit of no increase in minimum wages between 1 July 2020 and 1 February 2021.

[265] The combination of circumstances has persuaded us that there are exceptional circumstances such as to warrant an operative date of 1 November 2021 in respect of the awards set out at [262] above, save for the *Horse and Greyhound Training Award 2020*. We are satisfied that there are exceptional circumstances justifying the variation determinations in respect of these modern awards coming into operation on 1 November 2021.

²⁴⁶ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 5, a report for the Fair Work Commission, 4 June, p. 12.

[266] We now turn to the *Horse and Greyhound Training Award 2020*. This award covers employers in the horse and greyhound training industry. The ‘horse and greyhound training industry’ is defined to mean:

‘the business, calling or occupation of the training and preparation of animals for the thoroughbred, trotting, harness and greyhound racing industries and covers the functions of pre-training, grooming, feeding, handling, stabling and exercising of animals, the cleaning, care and maintenance of stables and associated training equipment and the care and leading in of horses at race meetings.’²⁴⁷

[267] There is no specific data before us about the impact of the pandemic on the employers covered by this award. While the horse racing industry has been affected by the restrictions imposed to contain the pandemic, in many instances, scheduled races took place, albeit with limited or no crowds. The restrictions on public attendance at race meetings would not have directly affected the businesses covered by this award—they train and prepare horses and greyhounds for racing.

[268] We acknowledge that the operative date of 1 July 2021 will mean that the businesses covered by the award will face two minimum wage increases in a 6 month period. But those businesses have also had the benefit of no increase in minimum wages between 1 July 2020 and 1 February 2021. The timing issue is, of itself, not sufficient to warrant a finding of exceptional circumstances.

[269] A strong case must be made out in order to warrant the deferral of a variation determination arising from a Review. We are not persuaded that such a case is made out in respect of the *Horse and Greyhound Training Award 2020*.

[270] We now turn to the remaining group of modern awards in respect of which the majority in last year’s Review decision concluded there were exceptional circumstances which warranted an operative date of 1 February 2021—the Retail trade awards.

[271] The modern awards which can be broadly characterised as relating to Retail trade are:

- *Commercial Sales Award 2020*;
- *Dry Cleaning and Laundry Industry Award 2020*;
- *General Retail Industry Award 2020*;
- *Hair and Beauty Industry Award 2010*;
- *Mannequins and Models Award 2020*;
- *Nursery Award 2020*; and
- *Vehicle Repair, Services and Retail Award 2020*.

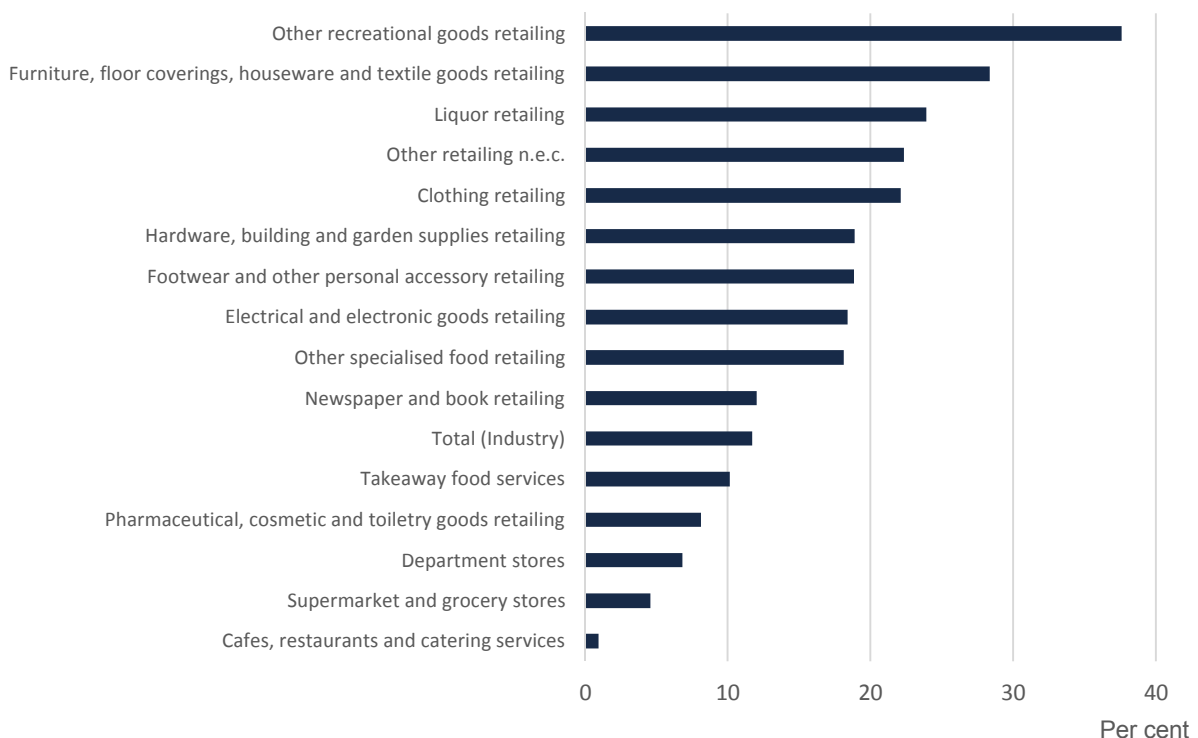
²⁴⁷ MA000008

[272] Professor Borland categorises Retail trade as being in the fully recovered cluster.

[273] This time last year retail turnover had risen sharply by 8.5 per cent (the largest monthly increase recorded) in March 2020, but the increase was not evident across all industry subgroups. It reflected significant increases in areas such as Other specialised food retailing (30.5 per cent); Liquor retailing (30.3 per cent); Supermarket and grocery stores (23.0 per cent); and Pharmaceutical, cosmetic and toiletry goods retailing (22.3 per cent). This coincided with the panic buying that preceded the implementation of a number of social distancing restrictions in March. However, this increase was temporary, with retail turnover declining by an unprecedented 17.7 per cent in April 2020 (the largest monthly decline on record), resulting in total turnover lower than the pre-COVID period. The largest declines in turnover were seen in Clothing retailing (−56.0 per cent); and Footwear and other personal accessory retailing (−49.3 per cent).²⁴⁸

[274] Monthly changes in retail turnover had returned to pre-pandemic rates by early 2021 and, in the latest data, rose by 1.1 per cent in April 2021.²⁴⁹ In terms of turnover, there is a considerable diversity across the various retail subgroups even when taken from a period before the impact of the pandemic (Chart 10).

Chart 10: Growth in retail turnover, by industry subgroup, February 2020 to April 2021



Source: Statistical report (version 12), 15 June 2021, Chart 3.21; ABS, *Retail Trade, Australia*, April 2021.

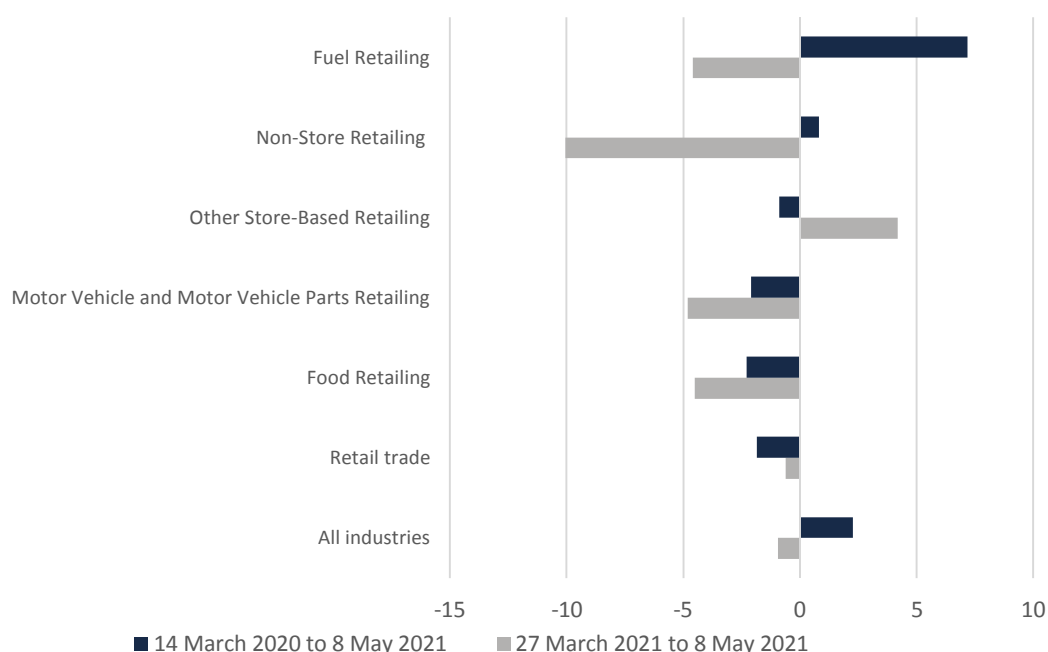
[275] Between 14 March 2020 and 8 May 2021, the number of employee jobs in Retail trade fell by 1.9 per cent compared with an increase of 2.3 per cent across all industries.

²⁴⁸ [2020] FWCFB 3500 at [73]

²⁴⁹ Statistical report (version 12), 15 June 2021, Chart 3.6; ABS (2020), *Retail Trade, Australia*, April 2021.

Employee jobs also fell across all subdivisions within Retail trade except for Fuel retailing, which increased by 7.2 per cent, and Non-store retailing (0.8 per cent). As with the turnover data, the jobs data vary across subdivisions within Retail trades as set out in Chart 11 below.

Chart 11: Change in employee jobs, by industry subdivisions within Retail trade, 14 March 2020 to 8 May 2021



Source: ABS, *Weekly Payroll Jobs and Wages in Australia*, Week ending 22 May 2021.

[276] A few things may be said about the data and the impact of the pandemic.

[277] First, fuel retailing does not appear to have been adversely impacted. Second, data on new car sales suggest signs of recovery within the industry, as the duration of state-wide or localised lockdowns reduce and state border restrictions ease, allowing holiday makers to travel more widely within Australia. The number of total new car sales in the first 5 months of 2021 were above the levels in 2020 and also the same or above levels in 2019 (particularly April and May). May 2021 marked the seventh month in a row of positive results after 31 months of decline in the lead up to and during the peak of the pandemic.²⁵⁰ On the basis of the data, we are not persuaded that there are exceptional circumstances such as to warrant a delayed operative date in respect of the *Vehicle Repair, Services and Retail Award 2020*.

[278] We acknowledge that an operative date of 1 July 2021 will mean that businesses covered by the *Vehicle Repair, Services and Retail Award 2020* will face two minimum wage increases in a 6 month period. But those businesses also had the benefit of no increase in minimum wages between 1 July 2020 and 1 February 2021. Further, the timing issues is, of itself, not sufficient to warrant a finding of exceptional circumstances in light of the turnover data.

²⁵⁰ Statistical report (version 12), 15 June 2021, Chart 3.20; Car advice, [VFACTS May 2021: New-car sales results continue to show signs of recovery](#), May 2021.

[279] Second, there are some businesses that can be broadly characterised as relating to the Retail trade sector which have plainly been impacted by the restrictions imposed to contain the virus, specifically:

- *Dry Cleaning and Laundry Industry Award 2020;*
- *Hair and Beauty Industry Award 2010;*
- *Mannequins and Models Award 2020; and*
- *Nursery Award 2020.*

[280] We are satisfied that there are exceptional circumstances justifying the variation determinations in respect of these modern awards coming into operation on 1 November 2021. We consider that the combination of factors at [245] – [246] applying to these awards is exceptional and justifies a delay until 1 November 2021.

[281] That leaves two Retail trade awards:

- *Commercial Sales Award 2020; and*
- *General Retail Industry Award 2020.*

[282] As to the *Commercial Sales Award 2020*, we note that the coverage of the award is set out Clause 4:²⁵¹

4.1 This occupational award covers employers throughout Australia with respect to Commercial Travellers, Merchandisers and Advertising Sales Representatives and those employees unless any other modern award contains classifications that apply to such persons, in which case the other modern award prevails.

[283] There is no specific data before us about the impact of the pandemic on the employers covered by this award. We accept that there is likely to have been some adverse impact resulting from the restrictions on movement imposed by various public health orders; but some of these businesses are also likely to have transitioned to online sales.

[284] We acknowledge that the operative date of 1 July 2021 will mean that the businesses covered by the award will face two minimum wage increases in a 6 month period. But those businesses have also had the benefit of no increase in minimum wages between 1 July 2020 and 1 February 2021. The timing issue is, of itself, not sufficient to warrant a finding of exceptional circumstances.

[285] A strong case must be made out in order to warrant the deferral of a variation determination arising from a Review. We are not persuaded that such a case is made out in respect of the *Commercial Sales Award 2020*.

²⁵¹ MA000083

[286] The *General Retail Industry Award 2020* covers, relevantly, employers in the ‘general retail industry’ throughout Australia.

[287] Clause 4.2 of the award defines ‘general retail industry’ to mean the retail sale or hire of goods or services for personal, household or business consumption including:

- *clothing; and*
- *food; and*
- *furniture and household goods; and*
- *personal and recreational goods; and*
- *bakery shops at which the predominant activity is baking products for sale on the premises; and*
- *the provision of repair services for household equipment; and*
- *the provision of customer information or assistance at retail complexes; and*
- ...
- *hair and beauty work undertaken in the theatrical, amusement or entertainment industries; and*
- *clerical functions performed away from a retail establishment...*²⁵²

[288] We accept that some businesses covered by the *General Retail Industry Award 2020* have not been adversely impacted by the pandemic to any significant extent and are performing well; for example, supermarkets and homeware businesses. But, as mentioned earlier, the turnover and jobs data shows a considerable diversity of experience across the subdivisions within Retail trade. It is likely that other businesses covered by the award have been substantially impacted.

[289] The degree of impact is likely to be influenced by location (CBD, metropolitan or regional), the subsector in which the business operates and the size of the business. Smaller businesses are less likely to have the resources to quickly pivot to online sales and more likely to operate in a limited number of locations.

[290] If such locations are in areas which have been subject to ‘hard lockdowns’ then they are likely to have been adversely affected.

[291] As we have mentioned, it is likely that future lockdowns will be of limited duration and localised. Such lockdowns are likely to have adverse consequences for some of the businesses covered by the *General Retail Industry Award 2020*.

²⁵² MA000004

[292] We are also conscious that an operative date of 1 July 2021 will mean that businesses covered by the *General Retail Industry Award 2020* will face two minimum wage increases in a 6 month period; but we note that they have had the benefit of no increase in minimum wages between 1 July 2020 and 1 February 2021.

[293] At an aggregate level, retail turnover had returned to pre-pandemic rates by early 2021 and GVA showed growth in activity during 2020–21.²⁵³ Job losses have recovered somewhat but fell across all subdivisions within Retail trade. Retail trade also had the largest share of underemployed workers in February 2021, at 17.7 per cent; followed by Accommodation and food services at 15.3 per cent.²⁵⁴

[294] We are satisfied that the combination of factors mentioned gives rise to exceptional circumstances justifying a later operative date for the variation determination in respect of the *General Retail Industry Award 2020*. However, those exceptional circumstances do not warrant a delay until 1 November 2021. We consider that the combination of factors applying to this award justifies a delay until 1 September 2021.

[295] In respect of the remaining modern awards we are not persuaded that there are exceptional circumstances such as to warrant a delayed operative date in the variation determinations arising from this Review. We acknowledge that an operative date of 1 July 2021 will mean that businesses covered by some of these modern awards will face two minimum wage increases within a 12 month period. But those businesses have had the benefit of the delayed operative date arising from the 2019–20 Review. The timing issue is, of itself, not sufficient to warrant a finding of exceptional circumstances. A strong case must be made out in order to warrant the deferral of a variation determination arising from a Review. We have considered the submissions advanced in respect of these modern awards and the factors at [245]–[246] and we are not persuaded that such a case has been made out in respect of the remaining modern awards.

[296] In reviewing modern award minimum wages, we are also required to review the minimum wages in modern enterprise awards and state reference public sector modern awards.²⁵⁵ In the 2019–20 Review decision, the majority allocated the modern enterprise awards and state reference public sector modern awards to the 3 ‘clusters’ based on their alignment with the modern awards in the 3 groups.²⁵⁶ We have decided to follow the same approach this year.

[297] Save for the *Airservices Australia Enterprise Award 2016*, the variation determinations in respect of all other modern enterprise awards and state reference public sector awards to give effect to our decision will operate from 1 July 2021. The variation determination in respect of the *Airservices Australia Enterprise Award 2016* will take effect on 1 November 2021.

²⁵³ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 5, a report for the Fair Work Commission, 4 June, p. 11.

²⁵⁴ Statistical report (version 12), 15 June 2021, Chart 6.14; ABS, *Labour Force, Australia, Detailed*, April 2021.

²⁵⁵ See Schedules 6 (at Item 17) and 6A (at Item 20) of the *Fair Work (Transitional Provisions and Consequential Amendments Act) 2009*.

²⁵⁶ [\[2020\] FWCFB 3500](#) at [165]

[298] In summary, the variation determinations in respect of the following modern awards and modern enterprise awards will come into operation on 1 November 2021:

- *Air Pilots Award 2020*
- *Aircraft Cabin Crew Award 2020*
- *Airline Operations – Ground Staff Award 2020*
- *Airport Employees Award 2020*
- *Airservices Australia Enterprise Award 2016*
- *Alpine Resorts Award 2020*
- *Amusement, Events and Recreation Award 2020*
- *Dry Cleaning and Laundry Industry Award 2020*
- *Fitness Industry Award 2020*
- *Hair and Beauty Industry Award 2010*
- *Hospitality Industry (General) Award 2020*
- *Live Performance Award 2020*
- *Mannequins and Models Award 2020*
- *Marine Tourism and Charter Vessels Award 2020*
- *Nursery Award 2020*
- *Racing Clubs Events Award 2020*
- *Racing Industry Ground Maintenance Award 2020*
- *Registered and Licensed Clubs Award 2020*
- *Restaurant Industry Award 2020*
- *Sporting Organisations Award 2020*
- *Travelling Shows Award 2020*
- *Wine Industry Award 2020.*

[299] The variation determinations in respect of the *General Retail Industry Award 2020* will come into effect on 1 September 2021.

[300] The decisions we have made about the operative dates of the variation determinations arising from this Review are based on the factors set out at [245]–[246] and a consideration of the submissions. We acknowledge the limitations of the data and accept that the categorisation we have adopted is imperfect. But, on the available information, we are satisfied that the operative dates we have determined are justified, consistent with the statutory framework and strike an appropriate balance between the interests of employers and employees.

[301] We conclude this section by addressing ABI’s request that the Panel ‘set out how it intends to reunify the clusters going forward’.²⁵⁷

[302] As we have mentioned, absent exceptional circumstances the Act provides that variations to a NMW order and modern award minimum wages arising from a Review are to operate from 1 July in the financial year following the Review. The expression ‘exceptional circumstances’ in ss 286(2) and 287(4) is to be interpreted in the context of Part 2–6 and a strong case must be made out in order to warrant the deferral of an increase in minimum wages.²⁵⁸

[303] It follows that the default or usual position is that variations to a NMW order and modern award minimum wage arising from a Review is to operate from 1 July in the financial year following the Review. Absent a case being made out that exceptional circumstances exist in respect of a particular modern award, any variations arising from next year’s Review will operate from 1 July 2022.

²⁵⁷ ABI submission, 26 March 2021 at p. 25.

²⁵⁸ [2020] FWCFB 3500 at [145]

4 Conclusion

[304] This Section sets out the outcome and other relevant matters to the Review.

[305] The national minimum wage order will contain:

- (a) *A national minimum wage of \$772.60 per week or \$20.33 per hour;*
- (b) *Two special national minimum wages for award/agreement free employees with disability: for employees with disability whose productivity is not affected, a minimum wage of \$772.60 per week or \$20.33 per hour based on a 38-hour week, and for employees whose productivity is affected, an assessment under the supported wage system, subject to a minimum payment fixed under the Supported Wage System (SWS) Schedule;*
- (c) *Wages provisions for award/agreement free junior employees based on the percentages for juniors in the Miscellaneous Award 2020 applied to the national minimum wage;*
- (d) *The apprentice wage provisions and the National Training Wage Schedule in the Miscellaneous Award 2020 for award/agreement free employees to whom training arrangements apply, incorporated by reference, and a provision providing transitional arrangements for first year award/agreement free adult apprentices engaged before 1 July 2014; and*
- (e) *A casual loading of 25 per cent for award/agreement free employees.*

[306] Modern award minimum wages will be increased by 2.5 per cent.

[307] The Panel is required to review and may make a determination varying a number of transitional instruments as part of the Review.

[308] The ACTU, ACCI and Ai Group submitted that the approach taken by the Panel in previous Reviews should be maintained, such that the rates in relevant transitional instruments be increased consistently with any increase determined for modern award minimum wages.²⁵⁹ Consistent with these submissions, the rates in relevant transitional instruments (which remain in operation) will be varied by the same percentage amount we have determined shall apply to modern award minimum wages from the first full pay period on or after 1 July 2021. We note that there is no requirement to publish determinations specifying those variations.

[309] The same approach will be taken in respect of copied State awards. These apply in relation to employees of non-national system State public sector employers who transfer their

²⁵⁹ ACTU submission, 26 March 2021 at para. 456; ACCI submission, 26 March 2021 at para. 288; Ai Group submission, 26 March 2021 at p. 61.

employment to a national system employer as part of a transfer of business.²⁶⁰ The Panel is required to review and, if appropriate, make a determination varying minimum wages in copied State awards.²⁶¹ In the 2017–18 Review decision, the Panel determined that the adjustment to the rates in modern awards determined in that Review would be applied to copied state awards.²⁶² This approach has been noted in various submissions in this Review²⁶³ and will be taken by us in this Review.

[310] In their submission to the 2019–20 Review, ACCI proposed that research be conducted on the ‘role and relevance’ of transitional instruments.²⁶⁴ We considered that there is merit in the observation made by ACCI and proposed that a conference would be convened to discuss the issue raised.²⁶⁵ A background paper will be published on this matter and a conference will be convened in due course.

[311] We have decided that the adjustment to modern award minimum wages will flow through to junior employees, employees to whom training arrangements apply in modern awards, including the rates under the National Training Wage (NTW) Schedule, employees with disability and piece rates.

[312] In making a NMW order, the Panel must set special NMWs for all award/agreement free employees in the following classes: junior employees, employees to whom training arrangements apply and employees with a disability.²⁶⁶

[313] We have again decided that the special NMW for award/agreement free junior employees and employees to whom training arrangements apply will be set by reference to the the Miscellaneous Award.

[314] Consistent with previous years’ approaches to these wages, we have decided to set 2 special NMWs for award/agreement free employees with disability. For award/agreement free employees with disability whose productivity is not affected, the wage will be set at the rate of the NMW. For award/agreement free employees with disability whose productivity is affected, the wage will be paid in accordance with an assessment under the SWS Schedule. The minimum payment will be fixed in accordance with the disability support pension income-free threshold.

[315] There are two final matters. One relates to junior rates. The ACTU referred to a recent Full Bench decision regarding junior rates in the *General Retail Industry Award 2020* and submitted that:

²⁶⁰ The *Fair Work (Transfer of Business) Amendment Act 2012* (Cth), which commenced on 4–5 December 2012, introduced Part 6–3A into the Act. A copied State award continues to operate under the national system for a period of five years, unless terminated or extended by regulation. See s.768AO of the *Fair Work Act 2009* (Cth).

²⁶¹ The provisions of the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* (Cth) dealing with the variation of Division 2B State awards in annual wage reviews also apply to copied State awards. See ss. 768BY and 768AW(b) of the *Fair Work Act 2009* (Cth).

²⁶² [\[2018\] FWCFB 3500](#) at [452]

²⁶³ For example, ACTU submission, 26 March 2021 at para. 456; ACCI submission, 26 March 2021 at para. 288.

²⁶⁴ ACCI submission, 29 March 2020 at para. 402.

²⁶⁵ [\[2020\] FWCFB 3500](#) at [413]

²⁶⁶ *Fair Work Act 2009* (Cth), s.294(1)(b).

‘Indeed, it may well be a convenient time to give consideration the equity issues raised at paragraphs [84] – [85] of the Full Bench decision [2020] FWCFB 6301, in relation to the application of junior rates to persons who are AQF [Australian Qualifications Framework] qualified (either through the completion of an apprenticeship or traineeship or otherwise) and engaged in a classification that requires that qualification.’²⁶⁷

[316] In the matter referred to, the Shop Distributive and Allied Employees’ Association (SDA) had sought to vary the award to limit the application of junior rates to level 1 employees as at that time there was no limit on who could be paid junior rates. The Full Bench decided to limit the application of junior rates to levels 1–3 and made the following observations (at [84]–[85]):

‘It seems to us that the application of junior rates to level 4 classification employees gives rise to an anomaly. It is conceivable that, depending on their age and service with their employer, a 20 year old tradesperson may only receive 90 per cent of the level 4 minimum rate. Such an outcome is inconsistent with the general approach adopted by the Commission to the proper fixation of minimum rates. As mentioned earlier, the tradespersons rate (level 4 in the Retail Award) should align with the C10 rate in the *Manufacturing and Associated Industries and Occupations Award 2020*; but that is not presently the case for junior employees under the Retail Award. As mentioned earlier, the concepts of uniformity and consistency underpin the fixation of minimum wages in modern awards. In a practical sense this means that the minimum wage rate for a tradesperson should be set consistently across the modern award system; this is not the case in the Retail Award because of the application of junior rates to level 4 employees.

*Further, the classification definitions associated with classification levels 5, 6, 7 and 8 all envisage the performance of work at a higher level than that performed by a level 4 employee. Accordingly, if junior rates are not applicable to level 4 employees it makes no sense to apply them to higher classification levels.*²⁶⁸

[317] Ai Group was the only other party to actively engage with this issue and submitted that:

‘The parties to the proceedings which resulted in the 20 November 2020 decision and subsequent proposed changes to the Retail Award were confined to those with a significant interest in the Retail Award and, as such, many interested groups have not expressed an opinion on the conclusions of the Full Bench in that decision. Any changes made in the context of the present Annual Wage Review would have a significant impact on junior rates across the award system.

Considering the differential treatment of junior rates across the modern award system, any applications to vary modern awards in such a way as to exclude AQF

²⁶⁷ ACTU submission, 26 March 2021 at para. 443.

²⁶⁸ *4 yearly review of modern awards – Award stage – General Retail Industry Award 2020* [2020] FWCFB 6301 at [84]–[85]

*qualified employees from receipt of junior rates should be made under s.157 of the FW Act and any proposed variation would need to be justified by work value reasons.*²⁶⁹

[318] We do not propose to deal with this issue in the Review. As noted by Ai Group, the issue may impact on a range of modern awards and the parties interested in those awards need to be accorded procedural fairness. The President will issue a statement in respect of this issue in the coming months.

[319] The second matter to mention relates to the 2019–20 Review where an issue arose in relation to the timing of the increases to the NTW rates as incorporated into the majority of modern awards from Schedule E to the Miscellaneous Award and the different operative dates for increases to rates in award Groups 1–3 determined in the 2019–20 Review decision.

[320] On 27 October 2020, a Full Bench of the Commission issued a Statement²⁷⁰ in relation to the NTW issue. In that Statement, the Full Bench set out variations to modern awards to ensure that NTW employees received increases at the same time as other employees in their industry or occupation. The same approach will be adopted for those awards where a variation determination arising from this Review takes effect from 1 September 2021 and 1 November 2021.

[321] A temporary note will be inserted into the NTW incorporation clause in the awards set out at [298]–[299]. The note will direct users to the rates in Schedule E to the Miscellaneous Award as at the date of the last increase in wages. These rates will be published on a separate webpage on the Commission’s website to ensure that they are easily accessible for award users. The temporary note is set out below:

‘NOTE: The minimum rates from 1 February 2021 for employees covered by this award undertaking traineeships are published on the Commission’s website. These rates will increase on [1 September 2021 or 1 November 2021].’

[322] When the wages in the modern award increase, the temporary note will be removed and the NTW incorporation clause will be amended to refer to Schedule E of the Miscellaneous Award as at the date of the increase to wages under the affected modern award as follows:

‘This award incorporates the terms of Schedule E to the *Miscellaneous Award 2020* as at [1 September 2021 or 1 November 2021]. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2020* is to be read as referring to the [award title] and not the *Miscellaneous Award 2020*.’

[323] The determinations necessary to give effect to the increase in modern awards will be made available in draft form shortly after this decision. Weekly wages in the NMW order and modern awards will be rounded to the nearest 10 cents and hourly wages will be calculated by dividing the weekly rate by 38, on the basis of the 38-hour week for a full-time employee.

²⁶⁹ Ai Group submission in reply, 23 April 2021 at p. 14.

²⁷⁰ [\[2020\] FWCFB 5676](#)

Determinations varying the modern awards will be made as soon as practicable and the modern awards including the varied wage rates will be published as required by the Act.

[324] The timetable for the 2021–22 Review will be announced in the third quarter of 2021.

[325] We wish to express our appreciation to the parties who participated in the Review for their contributions and to the staff of the Commission for their assistance.

PRESIDENT

Printed by authority of the Commonwealth Government Printer

<PR002021>

Appendix 1: Index of material

Organisation	Document	Date
Australian Business Industrial and the NSW Business Chamber Ltd	Initial submission	26 March 2021
	Supplementary submission	2 June 2021
Australian Catholic Council for Employment Relations	Initial submission	26 March 2021
Australian Chamber of Commerce and Industry	Initial submission	26 March 2021
	Submission in reply	23 April 2021
	Post-budget submission	14 May 2021
	Supplementary submission	4 June 2021
	Supplementary submission in reply	8 June 2021
Australian Chamber – Tourism	Supplementary submission	4 June 2021
Australian Council of Social Service	Initial submission	26 March 2021
Australian Council of Trade Unions	Initial submission	26 March 2021
	Submission in reply	23 April 2021
	Post-budget submission	14 May 2021
	Supplementary submission	4 June 2021
	Supplementary submission in reply	8 June 2021
	Initial submission	26 March 2021
Australian Government	Post-budget submission	14 May 2021
	Response to questions on notice	11 June 2021
	Initial submission	26 March 2021
Australian Industry Group	Submission in reply	23 April 2021
	Post-budget submission	14 May 2021
	Supplementary submission	4 June 2021
	Supplementary submission in reply	8 June 2021
	Submission in reply	23 April 2021
Australian Retailers Association	Post-budget submission	14 May 2021
	Supplementary submission in reply	8 June 2021
	Submission in reply	23 April 2021
Government of South Australia	Initial submission	22 March 2021
Government of Western Australia	Initial submission	23 April 2021
Housing Industry Association	Initial submission	26 March 2021
Leading Age Services Australia	Post-budget submission	14 May 2021

Organisation	Document	Date
Master Grocers Australia	Initial submission	26 March 2021
National Farmers' Federation	Initial submission	31 March 2021
National Retail Association	Initial submission	26 March 2021
	Submission in reply	23 April 2021
	Supplementary submission	4 June 2021
New South Wales Government	Initial submission	25 March 2021
Pharmacy Guild of Australia	Post-budget submission	14 May 2021
Queensland Government	Initial submission	17 March 2021
Restaurant & Catering Industry Association	Initial submission	26 March 2021
	Submission in reply	20 April 2021
Shop Distributive and Allied Employees' Association	Initial submission	26 March 2021
South Australian Wine Industry Association	Initial submission	26 March 2021
Victorian Government	Initial submission	26 March 2021

Appendix 2: Proposed Minimum Wages Adjustments

[1] The Panel received submissions from the Australian Government, most state governments, parties that represent the interests of employers and employees, and other bodies. While the majority of parties acknowledged that the economic recovery is underway, proposals with respect to the NMW and modern award minimum wages were again highly polarised. Several parties proposed substantial increases to the NMW and modern award minimum wages, while employer groups were divided between no increase above inflation and no increase at all to the NMW and modern award minimum wages.

[2] The Australian Government and the majority of state governments did not propose a quantum increase to the NMW and modern award minimum wages.²⁷¹

[3] The Australian Government advised the Panel to take a cautious approach, taking into account the importance of creating jobs and ensuring the viability of businesses. The New South Wales Government also submitted that the Panel take a cautious approach.²⁷²

[4] While the Queensland Government did not propose a specific quantum for the NMW and modern award minimum wages, it advised that maintaining the real value of wages in line with inflation should be a benchmark.²⁷³

[5] The Victorian Government proposed a 2 per cent increase to the NMW and modern award minimum wages.²⁷⁴

[6] The ACTU proposed a uniform increase of 3.5 per cent to the NMW and modern award minimum wages.²⁷⁵ This was supported by the SDA.²⁷⁶

[7] The Australian Catholic Council for Employment Relations (ACCER) submitted a 4 per cent increase to the NMW and a minimum of 4 per cent increase to the C13 to C10 rates.²⁷⁷

[8] The Australian Chamber of Commerce and Industry (ACCI) and the Australian Industry Group (Ai Group) proposed an increase of 1.1 per cent, set at the rate of CPI inflation over the year to the March quarter 2020.²⁷⁸ ACCI supported a continuation of the clusters and the staggering of operative dates.²⁷⁹ Ai Group requested the operative date of any

²⁷¹ See Australian Government submission, 26 March 2021; New South Wales Government submission, 25 March 2021; South Australian Government submission, 22 March 2021; Western Australian Government submission, 23 April 2021; Queensland Government submission, 17 March 2021.

²⁷² Australian Government submission, 26 March 2021 at para. 5; NSW Government submission, 25 March 2021 at para. 18.

²⁷³ Queensland Government submission, 17 March 2021 at p. 17.

²⁷⁴ Victorian Government submission, 26 March 2021 at para. 4.

²⁷⁵ ACTU submission, 26 March 2021 at para. 5.

²⁷⁶ SDA submission, 26 March 2021 at p. 2.

²⁷⁷ ACCER submission, 26 March 2021 at para. 7.

²⁷⁸ Ai Group post-Budget submission, 14 May 2021 at p. 2; ACCI post-Budget submission, 14 May 2021 at para. 14.

²⁷⁹ ACCI post-Budget submission, 14 May 2021 at para. 15.

increase for awards under cluster 2 to be 1 September 2021 and awards under cluster 3 to be 1 January 2022.²⁸⁰

[9] SAWIA²⁸¹ and NRA²⁸² proposed that an increase to the NMW and modern award minimum wages be no higher than inflation. NRA submitted that any increase to modern award minimum wages in Group 3 be deferred until 1 November 2021.²⁸³ The Australian Retailers Association (ARA) recommended an increase of no more than 1.1 per cent take effect on 1 February 2022 for the retail industry.²⁸⁴

[10] R&CA recommended no increase to Group 3 awards, however, if an increase is granted then any increase for Group 3 awards apply from 1 February 2022.²⁸⁵

[11] HIA²⁸⁶ submitted that the Panel consider the same approach as the 2019–20 Review, while NFF²⁸⁷ and MGA²⁸⁸ submitted that no increase be awarded. ABI recommended no increase,²⁸⁹ however later submitted an increase of 1.1 per cent to take effect from 1 January 2022.²⁹⁰

[12] ACOSS recommended that the Panel increase real minimum wages and that decisions on the levels of minimum wages be informed based on a benchmark of 60 per cent of full-time median wages.²⁹¹

²⁸⁰ Ai Group submission, 26 March 2021 at p. 59.

²⁸¹ SAWIA submission, 26 March 2021 at p. 11.

²⁸² NRA submission, 26 March 2021 at para. 1.1.1.

²⁸³ Ibid at para. 1.1.2.

²⁸⁴ ARA supplementary submission in reply, 8 June 2021 at p. 2.

²⁸⁵ RC&A submission in reply, 20 April 2021 at paras 30–31.

²⁸⁶ HIA submission, 26 March 2021 at p. 9.

²⁸⁷ NFF submission, 26 March 2021 at p. 26.

²⁸⁸ MGA submission, 26 March 2021 at para. 77.

²⁸⁹ ABI submission, 26 March 2021 at p. 2.

²⁹⁰ ABI supplementary submission, 2 June 2021 at p. 2.

²⁹¹ ACOSS submission, 26 March 2021 at p. 17.

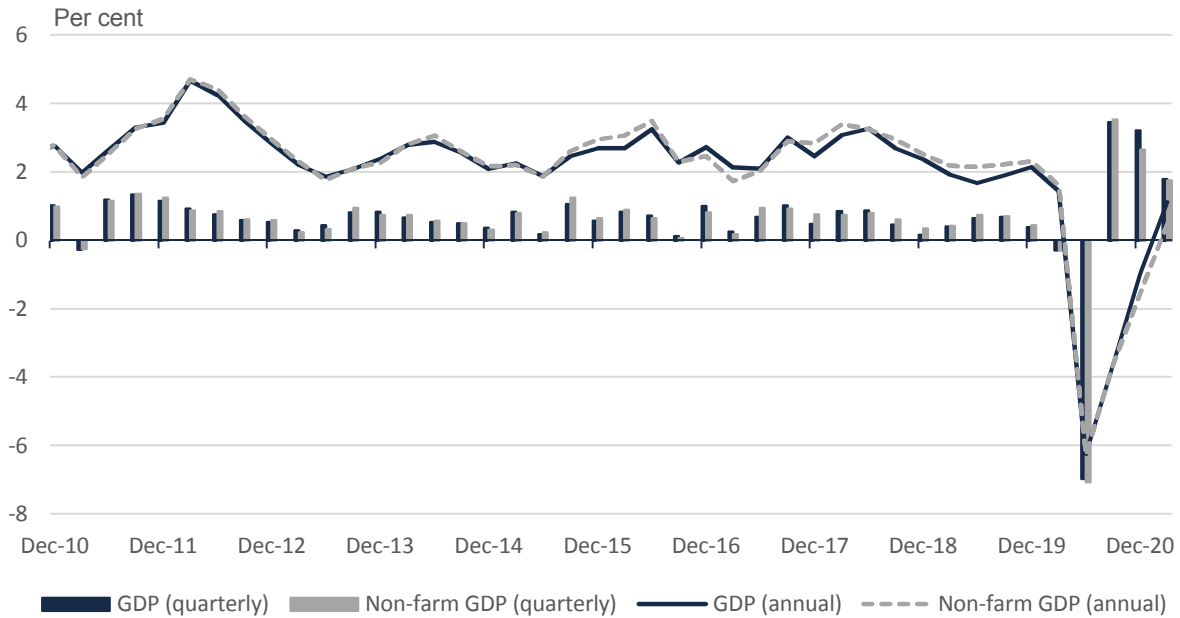
Table A1: Proposed Minimum Wages Adjustments

Submission	Proposal		
	National minimum wage	Modern award minimum wages	Exemption/ deferral sought
Australian Government	No quantum specified		
New South Wales Government	No quantum specified		
South Australian Government	No quantum specified		
Victorian Government	2 per cent increase, applicable to all		
Queensland Government	No quantum specified, however, no less than inflation		
Western Australian Government	No quantum specified		
Australian Council of Trade Unions	3.5 per cent increase, applicable to all		
Australian Industry Group	1.1 per cent increase, applicable to all		Defer increase in Group 2 modern awards to 1 September 2021 and Group 3 modern awards to 1 January 2022
Australian Chamber of Commerce and Industry	Maximum of 1.1 per cent increase, applicable to all		Modern award increases should be no sooner than 12 months after their last increase.
Australian Council of Social Service	No quantum specified, however, there should be an increase in real minimum wages informed by benchmark estimates (60 per cent of full-time median wages)		
Australian Catholic Council for Employment Relations	4 per cent increase	At least 4 per cent increase to C13 to C10 rates	
Australian Business Industrial and the New South Wales Business Chamber	1.1 per cent increase, applicable to all		Defer all increases to NMW and modern awards to 1 January 2022
Australian Retailers Association	No more than 1.1 per cent		Increase applied 12 months after previous increase
Housing Industry Association	No quantum specified		Take an approach consistent with 2019–20 Review
Leading Age Services Australia	No quantum specified		
Master Grocers of Australia	No increase		No increase should be applied to the General Retail Industry Award and the Timber Industry

Submission	Proposal		
	National minimum wage	Modern award minimum wages	Exemption/ deferral sought
			Award
National Farmers' Federation	No increase		
National Retail Association	Equal to the CPI		Defer increase in Group 3 modern awards to 1 November 2021
Pharmacy Guild of Australia	No quantum specified		
Restaurant & Catering Industry Association	No quantum specified		Defer increase in Group 3 modern awards to 1 February 2022
South Australian Wine Industry Association	If increase is granted, it should be no higher than inflation		Deferral of increase in the <i>Wine Industry Award 2020</i> to 1 February 2022
Shop Distributive and Allied Employees' Association	3.5 per cent increase, applicable to all		

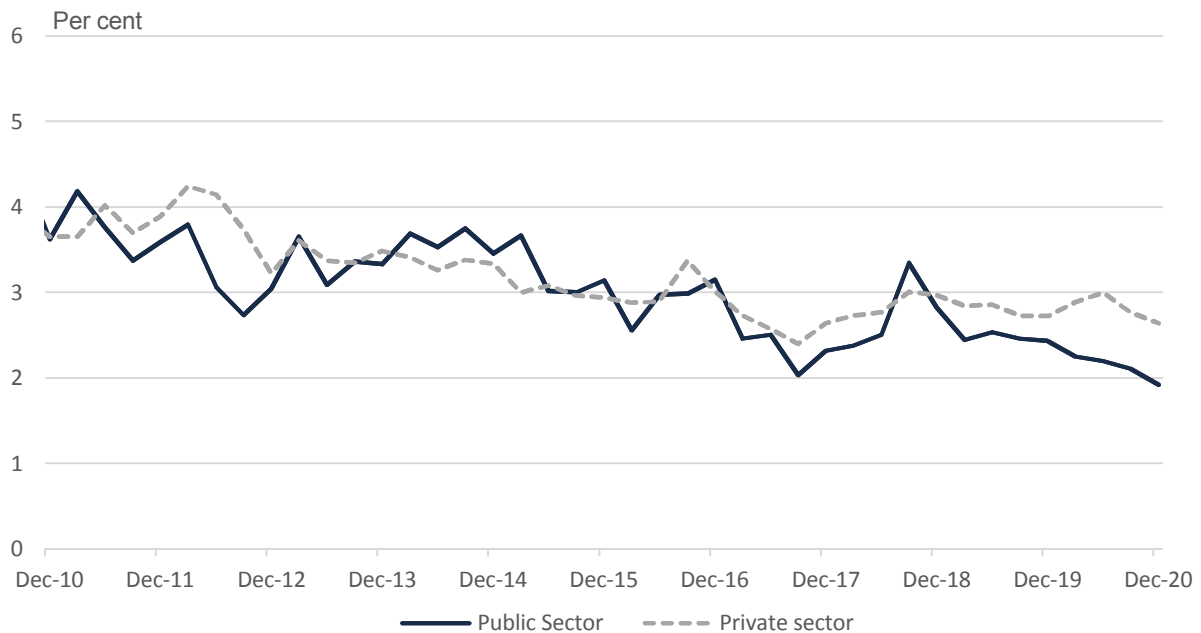
Appendix 3: Charts

Chart A1: Economic growth, annual and quarterly growth rates



Source: Statistical report (version 11), Chart 1.1; ABS, *Australian National Accounts: National Income, Expenditure and Product*, March 2021.

Chart A2: AAWI for agreements approved in the quarter by sector



Source: Statistical report (version 11), Chart 10.2; Attorney-General's Department, *Trends in Federal Enterprise Bargaining*, December quarter 2020, <<https://www.ag.gov.au/industrial-relations/enterprise-agreements-data/Pages/trends-in-federal-enterprise-bargaining.aspx>>.

Appendix 4: The COVID-19 Pandemic

[1] The first confirmed case of coronavirus in Australia was on 25 January 2020.²⁹² As case numbers increased during March, the Commonwealth and State governments agreed to implement a broad range of restrictions to slow the spread of the virus. Significant measures included restrictions on public gatherings, certain business activity, and a ban on all non-essential international travel. Daily case numbers peaked on 28 March 2020, and subsequently declined over the next month (7 cases on 22 April). Restrictions began to ease from late April.²⁹³

[2] From late June to mid-October 2020, Australia went through a second wave largely due to an outbreak in Melbourne, with daily cases peaking at 701 on 5 August 2020 (687 in Victoria).²⁹⁴ Consequently, Melbourne entered a Stage 4 lockdown and declared a state of disaster on 2 August 2020.²⁹⁵ The measures included a curfew between 8pm and 5am, and a stay-at-home order with only 4 reasons to leave the home. Case numbers declined throughout August and September and, on 26 October 2020, Victoria recorded no new cases for the first time since 9 June 2020 and restrictions began to ease.

[3] On a national level, after the Melbourne outbreak was contained, case numbers remained low until late December when an outbreak in Sydney occurred, peaking at 36 cases on 20 December 2020. The New South Wales Government implemented a number of restrictions, including a stay-at-home order except for essential reasons to leave the home.²⁹⁶ By mid-January 2021, daily cases in New South Wales had declined to low levels (2 cases on 14 January 2021).²⁹⁷

[4] Further cases of community transmission in other states have also led to brief lockdown periods comprised of stay-at-home orders, including in Adelaide in mid-November 2020 (peaking at 18 cases per day), Perth in late January to early February 2021 (peaking at 3 cases per day) and late April 2021 (peaking at 5 cases per day), Victoria in mid-February 2021 (peaking at 5 cases per day) and in late-May to early June 2021 (peaking at 12 cases per day), and Brisbane/Queensland in early January 2021 (peaking at 9 cases per day) as well as late March to early April 2021 (peaking at 10 cases per day).²⁹⁸ Daily cases numbers are shown below at Chart A3.

[5] At 10 June 2021, there were 127 cases nationwide, with 5 locally acquired and 11 acquired overseas in the last 24 hours.²⁹⁹

²⁹² Department of Health (2020), [First confirmed case of novel coronavirus in Australia](#), 25 January.

²⁹³ Fair Work Commission (2021), [Information note – COVID-19 government responses to COVID-19 pandemic](#), updated 11 June.

²⁹⁴ Fair Work Commission (2021), [Information note – COVID-19 situation update](#), updated 11 June.

²⁹⁵ Fair Work Commission (2021), [Information note – COVID-19 government responses to COVID-19 pandemic](#), updated 11 June.

²⁹⁶ Ibid.

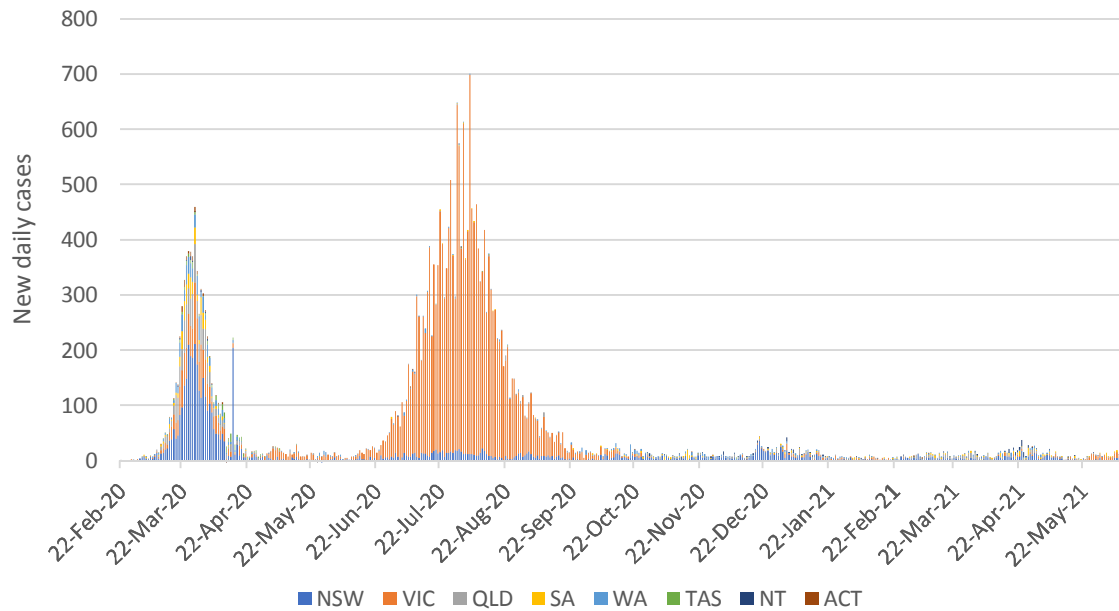
²⁹⁷ Fair Work Commission (2021), [Information note – COVID-19 situation update](#), updated 11 June.

²⁹⁸ Ibid.

²⁹⁹ Ibid.

[6] Australian’s international borders have been effectively closed since a ‘do not travel’ ban on Australian’s travelling overseas was implemented to help avoid travellers returning to Australia with coronavirus.³⁰⁰ As at 11 June 2021, there have been over 174 million cases reported globally and the number of deaths has been over 3.7 million.³⁰¹

Chart A3: New daily confirmed COVID-19 cases in Australia in states and territories



Source: Fair Work Commission (2021), [Information note – COVID-19 situation update](#), updated 11 June; [COVID-19 in Australia](#), covid19data.com.au, 11 June 2021.

Note: The data are obtained from a variety of [state and commonwealth sources](#). Chart shows gross new daily cases as announced (not net added to total) except for Victoria, which shows true daily cases. To understand the term 'true daily cases' and see a comparison.

³⁰⁰ Fair Work Commission (2021), [Information note – COVID-19 government responses to COVID-19 pandemic](#), updated 11 June.

³⁰¹ Fair Work Commission (2021), [Information note – COVID-19 situation update](#), updated 11 June.

Appendix 5: An assessment of the economic effects of COVID-19 – Professor Jeff Borland (versions 1 to 5)

[1] In the first report, Professor Borland commented that the evolution of economic activity and labour market outcomes in 2020 primarily reflect the impact of COVID-19 with the pattern of shutdown and recovery evident in the main macroeconomic data and at state-level data. He noted that:

‘The scale of the decrease output and income in a single quarter with the onset of COVID-19 is far in excess of what has happened historically. Equally striking is the recovery in economic activity, with a substantial share of lost output and income also being made up in a single quarter (at a time when the Victorian economy was still in shutdown).’³⁰²

[2] The large shifts in real GDP, real GDP per capita and real net national disposable income per capita are shown in Chart A1.

[3] Professor Borland noted that the patterns in GDP were driven by a large decrease in household consumption—and the bounce-back came about via an almost equivalent increase in household consumption in the September and December quarters. They did not reflect movements in household income, and so the household saving ratio increased in the June quarter 2020 and decreased in the September and December quarters.³⁰³

[4] Professor Borland commented that ‘[h]ouseholds voluntarily decreased their consumption of goods and services involving high levels of personal contact—such as eating out and attending public events—to avoid contracting COVID-19’.³⁰⁴ However, once it had been realised that there were no major outbreaks and restrictions were gradually eased, ‘the willingness of consumers to spend on activities with high levels of personal contact increased’.³⁰⁵

[5] The scale of the decrease in output and income in the June quarter 2020 was far in excess of historical outcomes. As COVID-19 was brought under control, a substantial share of lost output and income was made up in the September quarter. The decrease in GDP in the June quarter was caused mainly by a decrease in household consumption and investment, offset slightly by an increase in government consumption and improvement in the external balance (i.e. increase in net exports).³⁰⁶

[6] Professor Borland noted that ‘[s]o overwhelming and extensive was the impact of COVID-19 that no group of workers or type of jobs was immune from its effects; and

³⁰² Borland J (2020), *An assessment of the economic effects of COVID-19*, Version 1, a report for the Fair Work Commission, 23 December, p. 3

³⁰³ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 3, a report for the Fair Work Commission, 21 April, p. 5.

³⁰⁴ Borland J (2020), *An assessment of the economic effects of COVID-19*, Version 1, a report for the Fair Work Commission, 23 December, p. 3.

³⁰⁵ Ibid.

³⁰⁶ Ibid, pp. 4–5.

equally, all have benefitted from recovery'.³⁰⁷ In particular, Professor Borland showed that while COVID-19 caused a larger negative effect on female than male employment, female employment has grown stronger in the recovery. By March 2021, the female employment to population ratio was 0.47 percentage points higher than a year before, while for males it was 0.24 percentage points lower.³⁰⁸ Professor Borland commented that initial decreases in employment for females were larger as they were more likely to move out of the labour force or, if they remained employed, were more likely to have reduced hours (e.g., a disproportionate share of zero hours). By December 2020, the impact was relatively even.³⁰⁹

[7] Similar patterns occurred in part-time employment compared with full-time employment,³¹⁰ casual employees compared with permanent employees, and younger people (aged 15–24 years) compared with older age groups.³¹¹ Professor Borland found that outcomes were different for young people attending full-time education, for whom the employment to population ratio was 2 percentage points higher than a year earlier compared with those not attending full-time education, where it was 2.6 percentage points lower.³¹²

[8] Occupations with a low scope to be performed at home had the largest decreases in employment from February 2020 to May 2020, with the impact most pronounced for jobs that also involve a high level of social contact. However, increases in employment from May 2020 to November 2020 extended across all job categories.³¹³

[9] Professor Borland also identified that employment losses between February 2020 and February 2021 were concentrated in low-paying occupations while employment growth was concentrated in the highest-paying occupations.³¹⁴

[10] Professor Borland noted that business profits improved markedly in 2020 and were higher than in previous years. Profits increased in all industries except for Finance and insurance services. Professor Borland identified that many of the industries that had suffered most during the pandemic—such as Accommodation and food services and Arts and recreation services—had actually recorded the highest growth in profits over the period.³¹⁵

³⁰⁷ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 3, a report for the Fair Work Commission, 21 April, p. 15.

³⁰⁸ *Ibid*, p. 15.

³⁰⁹ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 2, a report for the Fair Work Commission, 17 February, p. 21.

³¹⁰ Early in the recovery, employers responded to gradual growth in demand by creating part-time jobs to match the amount of extra labour they needed.

³¹¹ For young people, the greater negative effect was due to them accounting for above-average shares of employment in the worst affected industries and being more likely to be in casual jobs for less than a year, and were therefore ineligible for the JobKeeper program

³¹² Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 3, a report for the Fair Work Commission, 21 April, p. 16.

³¹³ Borland J (2020), *An assessment of the economic effects of COVID-19*, Version 1, a report for the Fair Work Commission, 1/2021, 23 December.

³¹⁴ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 3, a report for the Fair Work Commission, 21 April, p. 18.

³¹⁵ *Ibid*, p. 21.

[11] In analysing why this might have occurred, Professor Borland compared the profit-to-sales ratio for industries in 2020 compared with the previous 3 years.³¹⁶ The analysis found that profits increased for 14 out of 15 industries in 2020 compared to 2017–19, however, sales grew for only 8 industries. The largest decreases in sales occurred in Accommodation and food services and Arts and recreation services, while the profit-to-sales-ratio for these industries increased by some of the highest—around 100 per cent. Other large increases in the profit-to-sales-ratio were in Other services and Administrative and support services. These significant increases in profit growth could be largely explained by government support, in particular, JobKeeper and the Boosting Cash Flow for Business packages.³¹⁷

[12] In the final report, published after the release of the March quarter 2021 National Accounts, Professor Borland surmised that, by April 2021, aggregate labour market activity in Australia had recovered to its pre-COVID level. This is based on data on employment and hours worked from the Labour Force Survey and the number of jobs from the Weekly Payroll series.³¹⁸ The report also found that while wages growth ‘virtually stopped for six months’, it re-gathered pace and the WPI increased by about the same as its pre-COVID-19 rate in the December quarter 2020 and March quarter 2021.³¹⁹

[13] The improvement in the labour market has been driven by the recovery in economic activity. In the March quarter 2021, both GDP and GDP per capita were about 1 per cent above the March quarter 2020, and real net national disposable income was almost 6 per cent higher (Chart A1). Borland described that the initial decline and subsequent recovery in GDP was caused primarily by changes to household consumption, while private gross fixed capital formation and government consumption are the main reasons for higher GDP over the year.³²⁰

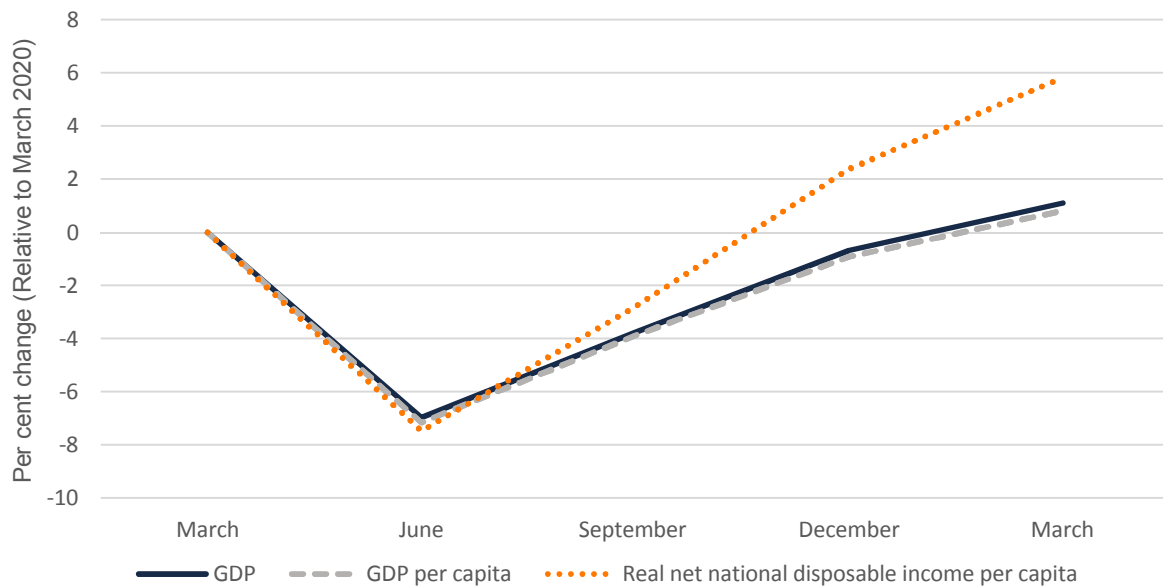
³¹⁶ The profit-to-sales ratio is a measure of the net income for a business generated by a dollar of sales. It can be interpreted as showing the efficiency with which a business earns profits.

³¹⁷ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 3, a report for the Fair Work Commission, 21 April, p. 22.

³¹⁸ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 5, a report for the Fair Work Commission, 4 June, pp. 2–3.

³¹⁹ *Ibid*, p. 3.

³²⁰ *Ibid*, p. 4.

Chart A1: Real output and income, per cent change relative to March quarter 2020

Source: Borland report (version 5), p. 4, Chart 3; ABS, *Australian National Accounts: National Income, Expenditure and Product*, March 2021.

Note: Data are seasonally adjusted.

[14] Professor Borland provided 2 estimates of the initial impact of the end of the JobKeeper program on employment. These 2 approaches suggest that the short-term impact of the end of this program led to employment losses in the range of 45 000 to 97 000 person, but with the highest probability attached to estimates at the bottom of this range. Borland concluded from this that the impacts ‘are best interpreted as showing that the end of JobKeeper caused a temporary stalling, rather than constituting a major setback, to labour market recovery’.³²¹

[15] Borland suggested that having industries categorised into 3 clusters remains a useful way to summarise the experience by industry, however, some industries can be re-classified since the 2019–20 Review, with differences in the impact of COVID-19 between the clusters narrowing.³²² In each report, an analysis and update of the industry clusters was provided.

[16] In his final analysis of employment changes by industry, Professor Borland suggested that the industry clusters identified in the 2019–20 Review can be reclassified based on outcomes in employment, jobs, gross value added and sales. He has identified three groups of industries.³²³

- Fully recovered—industries where the number of jobs and activity has recovered to now be at or above the level prior to the onset of COVID-19;

³²¹ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 5, a report for the Fair Work Commission, 4 June, p. 7.

³²² Borland J (2020), *An assessment of the economic effects of COVID-19*, Version 1, a report for the Fair Work Commission research report 1/2021, 23 December.

³²³ Borland J (2021), *An assessment of the economic effects of COVID-19*, Version 5, a report for the Fair Work Commission, 4 June, pp. 7–14.

- Almost recovered—industries where the number of jobs and economic activity remain marginally below the level prior to the onset of COVID-19 (in the case of jobs, 1 to 2 per cent below the level prior to COVID-19); and
- Lagging recovery—industries where the number of jobs and economic activity has not fully recovered or has progressively decreased to now be below the level prior to the onset of COVID-19 by a significant amount (in the case of jobs, 5 to 10 per cent below the level prior to COVID-19).

[17] The following groups are identified:

- Lagging recovery:
 - Accommodation and food services;
 - Transport, postal and warehousing;
 - Information, media and telecommunications;
- Almost recovered:
 - Manufacturing;
 - Construction;
 - Wholesale trade;
 - Education and training;
 - Arts and recreation services
- Fully recovered:
 - Agriculture, forestry and fishing;
 - Mining;
 - Electricity, gas, water and waste services;
 - Retail trade;
 - Financial and insurance services;
 - Rental, hiring and real estate services;
 - Professional, scientific and technical services;
 - Administrative support services;
 - Public administration and safety;
 - Health care and social assistance; and

- Other services.

Appendix 6: Poverty lines

Table A2: Ratio of disposable income of selected households earning various wage rates to a 60 per cent median income poverty line

	December 2015					December 2019					December 2020				
	60% median income PL (\$ pw)	Disposable income as a ratio of 60% median income PL				60% median income PL (\$ pw)	Disposable income as a ratio of 60% median income PL				60% median income PL (\$ pw)	Disposable income as a ratio of 60% median income PL			
		C14	C10	C4	AWOTE		C14	C10	C4	AWOTE		C14	C10	C4	AWOTE
Single adult	511.80	1.16	1.31	1.50	2.24	560.21	1.18	1.34	1.55	2.27	584.54	1.17	1.34	1.54	2.27
Single parent working FT, 1 child	665.34	1.29	1.41	1.54	1.95	728.27	1.28	1.39	1.53	1.90	759.90	1.25	1.38	1.52	1.89
Single parent working PT, 1 child	665.34	0.88	0.95	1.05	1.39	728.27	0.85	0.93	1.03	1.36	759.90	0.83	0.91	1.01	1.36
Single parent working FT, 2 children	818.88	1.19	1.28	1.40	1.72	896.33	1.16	1.26	1.37	1.65	935.26	1.14	1.24	1.35	1.64
Single parent working PT, 2 children	818.88	0.85	0.91	0.99	1.27	896.33	0.81	0.88	0.96	1.23	935.26	0.79	0.86	0.94	1.23
Single-earner couple (with NSA/JSP)	767.70	1.03	1.04	1.04	1.49	840.31	1.00	1.01	1.03	1.51	876.81	1.24	1.31	1.39	1.68
Single-earner couple	767.70	0.80	0.89	1.00	1.49	840.31	0.81	0.90	1.03	1.51	876.81	0.79	0.90	1.02	1.51
Single-earner couple, 1 child (with NSA/JSP)	921.24	1.07	1.08	1.11	1.41	1008.37	1.03	1.04	1.11	1.37	1052.17	1.17	1.24	1.31	1.37
Single-earner couple, 1 child	921.24	0.93	1.02	1.11	1.41	1008.37	0.92	1.00	1.11	1.37	1052.17	0.91	1.00	1.10	1.37
Single-earner couple, 2 children (with NSA/JSP)	1074.78	1.02	1.04	1.06	1.31	1176.43	0.97	0.99	1.05	1.26	1227.53	1.09	1.15	1.22	1.25
Single-earner couple, 2 children	1074.78	0.90	0.98	1.06	1.31	1176.43	0.88	0.96	1.05	1.26	1227.53	0.87	0.95	1.03	1.25
Dual-earner couple	767.70	1.20	1.37	1.58	2.35	840.31	1.23	1.40	1.62	2.38	876.81	1.21	1.39	1.60	2.38
Dual-earner couple, 1 child	921.24	1.22	1.32	1.44	1.96	1008.37	1.21	1.31	1.42	1.98	1052.17	1.19	1.30	1.40	1.99
Dual-earner couple, 2 children	1074.78	1.16	1.24	1.34	1.71	1176.43	1.13	1.21	1.30	1.70	1227.53	1.11	1.20	1.28	1.70

Source: Statistical report (version 12), 15 June 2021, Table.8.6; ABS, *Average Weekly Earnings, Australia*, November 2020; ABS, *Household Income and Wealth, Australia*, 2015–16 financial year; ABS, *Household Income and Wealth, Australia*, 2017–18 financial year; Fair Work Commission modelling; *Manufacturing and Associated Industries and Occupations Award 2010*; Melbourne Institute of Applied Economic and Social Research, *Poverty Lines: Australia*, December quarter 2020.

Appendix 7: Research for Annual Wage Reviews

Date	Title	Research report no.
June 2021	An assessment of the economic effects of COVID-19 – Version 5	5/2021
May 2021	An assessment of the economic effects of COVID-19 – Version 4	4/2021
April 2021	An assessment of the economic effects of COVID-19 – Version 3	3/2021
February 2021	Labour market transitions of workers during COVID-19	2/2021
February 2021	An assessment of the economic effects of COVID-19 – Version 2	1/2021
December 2020	An assessment of the economic effects of COVID-19 – Version 1	4/2020
February 2020	Prevalence and persistence of low-paid award-reliant employment	1/2020
February 2020	Budget standards: international measures and approaches	2/2020
February 2020	Modern Awards Database: an introduction	3/2020
February 2019	Overview of research to inform the Annual Wage Review 2018–19	
February 2019	Developments in wages growth	1/2019
February 2019	Insights into underemployment	2/2019
February 2018	Overview of research to inform the Annual Wage Review 2017–18	
February 2018	Employee and employer characteristics and collective agreement coverage	1/2018
February 2018	The characteristics of the underemployed and unemployed	2/2018
February 2018	Characteristics of workers earning the national minimum wage rate and of the low paid	3/2018
February 2018	Part I: Methods and limitations to undertaking analysis of the employment effects of minimum wage increases	4/2018
March 2018	Part II: Prospects for research on employment effects of minimum wages in Australia.	4/2018
March 2018	The UK evaluation of the impacts of increases in their minimum wage	
February 2017	Overview of research to inform the Annual Wage	

Date	Title	Research report no.
	Review 2016–17	
February 2017	Explaining recent trends in collective bargaining	4/2017
February 2017	Factors affecting apprentices and trainees	3/2017
February 2017	The youth labour market	2/2017
	Award-reliant workers in the household income distribution	1/2017
February 2016	An international comparison of minimum wages and labour market outcomes	1/2016
February 2015	Award reliance and business size: a data profile using the Australian Workplace Relations Study	1/2015
December 2013	Minimum wages and their role in the process and incentives to bargain	7/2013
December 2013	Award reliance	6/2013
February 2013	Accommodation and food services industry profile	5/2013
February 2013	Retail trade industry profile	4/2013
February 2013	Manufacturing industry profile	3/2013
February 2013	Labour supply responses to an increase in minimum wages: An overview of the literature	2/2013
February 2013	Higher classification/professional employee award reliance qualitative research: Consolidated report	1/2013
February 2012	Higher classification/professional employee award reliance qualitative research: Interim report	4/2012
February 2012	Award reliance and differences in earnings by gender	3/2012
February 2012	Analysing modern award coverage using the Australian and New Zealand Standard Industrial Classification 2006: Phase 1 report	2/2012
January 2012	Award-reliant small businesses	1/2012
February 2011	Australian apprentice minimum wages in the national system	6/2011
February 2011	Review of equal remuneration principles	5/2011
January 2011	Research framework and data strategy	4/2011
January 2011	Employees earning below the Federal Minimum Wage: Review of data, characteristics and potential explanatory factors	3/2011
January 2011	Relative living standards and needs of low-paid employees: definition and measurement	2/2011

Date	Title	Research report no.
January 2011	An overview of productivity, business competitiveness and viability	1/2011
June 2010	Consolidated Social Research Report	10/2010
June 2010	Administrative and Support Services Industry	9/2010
June 2010	Other Services Industry	8/2010
February 2011	Enterprise Case Studies: Effects of minimum wage-setting at an enterprise level	7/2010
June 2010	Minimum wage transitional instruments under the <i>Fair Work Act 2009</i> and the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>	6/2010
February 2010	Employees with disability: Open employment and the Supported Wage System	5/2010
February 2010	Earnings of employees who are reliant on minimum rates of pay	4/2010
February 2010	Social research—Phase one	3/2010
February 2010	Literature review on social inclusion and its relationship to minimum wages and workforce participation	2/2010
February 2010	An overview of compositional change in the Australian labour market and award reliance	1/2010

Appendix 8: List of Appearances

Appearances:

A Durbin for the Attorney-General's Department

D Mullaly and *L Berger-Thompson* for the Treasury

T Clarke, *M McKenzie* and *D Kyloh* for the Australian Council of Trade Unions

S Smith, *J Toth* and *P Burn* for Australian Industry Group

S Barklamb and *P Grist* for the Australian Chamber of Commerce and Industry

N Tindley for the Australian Retailers Association

J de Bruin for the Master Grocers of Australia

W Lambert for Restaurant and Catering Industry Association

C Massy for the Australian Catholic Conference for Employment Relations

Hearing details:

2021.

Melbourne

May 19