



DECISION

Fair Work Act 2009
s.285—Annual wage review

Annual Wage Review 2023–24 (C2024/1)

JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT ASBURY
DEPUTY PRESIDENT HAMPTON
DEPUTY PRESIDENT O’NEILL
MS LABINE-ROMAIN
PROFESSOR BAIRD
MR CULLY

SYDNEY, 3 JUNE 2024

Annual Wage Review 2023–24.

Contents

Section	Paragraph
1.	Overview of the decision
1.1	Introduction [1]
1.2	The decision [8]
1.3	Structure of this decision [11]
2.	Scope and effect of the Review
2.1	Employees reliant on the NMW [14]
2.2	Modern award-reliant employees [29]
2.3	Effect of AWR decisions [36]
3.	Economic, labour market and business considerations [40]
3.1	Inflation and monetary policy [41]
3.2	Economic growth [51]

Section		Paragraph
	3.3 The labour market	[56]
	3.4 Business conditions and outlook	[62]
	3.5 Productivity	[68]
4.	Relative living standards and the needs of the low paid	[72]
5.	Gender equality	
	5.1 Gender pay gaps	[85]
	5.2 Ensuring equal remuneration for work of equal or comparable value and eliminating gender-based undervaluation	[88]
	5.3 Female participation in the workforce	[130]
6.	Job security	[133]
7.	Collective bargaining	[136]
8.	Consideration	
	8.1 General conclusions	[140]
	8.2 The NMW	[151]
	8.3 Modern award minimum wage rates	[154]
	8.4 The gender equality agenda	[162]
9.	Conclusion	[173]
Appendix: Proposed minimum wage adjustments		

Abbreviations and defined terms

Abbreviation / defined term	Definition
AAWI	Average annual wage increase
ABI/BNSW	Australian Business Industrial and Business NSW
ABS	Australian Bureau of Statistics
ACC Award	<i>Aircraft Cabin Crew Award 2020</i> [MA000047]
ACCI	Australian Chamber of Commerce and Industry
<i>ACT Child Care decision</i>	<i>Application by Australian Liquor, Hospitality and Miscellaneous Workers Union</i> [2005] AIRC 28, PR954938
ACTU	Australian Council of Trade Unions
AENA	Average Earnings National Accounts
Aged Care Award	<i>Aged Care Award 2010</i> [MA000018]
Ai Group	The Australian Industry Group
ANMF	Australian Nursing and Midwifery Federation
ANMF work value application	Application AM2024/11 by the ANMF to increase wages for all nurses covered by the Nurses Award on work value grounds
ANZSCO	Australian and New Zealand Standard Classification of Occupations
ANZSIC	Australian and New Zealand Standard Industrial Classification
AWOTE	Average weekly ordinary time earnings
<i>AWR 2023 decision</i>	<i>Annual Wage Review 2022–23</i> [2023] FWCFB 3500 , 323 IR 332
C10 Metals Framework Alignment Approach	See definition of MRA
COE	<i>Characteristics of Employment</i> statistics published by the ABS
CPI	Consumer Price Index
CS Award	<i>Children’s Services Award 2010</i> [MA000120]
ECEC	Early childhood education and care
EEH	<i>Employee Earnings and Hours</i> statistics published by the ABS
ERO	Equal remuneration order PR525485 applicable to social and community service employees under the SCHADS Award; see also [2012] FWAFB 1000 , 208 IR 446 and [2012] FWAFB 5184 , 223 IR 410
EST Award	<i>Educational Services (Teachers) Award 2020</i> [MA000077]
FAAA	Flight Attendants’ Association of Australia
FW Act	<i>Fair Work Act 2009</i> (Cth)
GDP	Gross domestic product
General Retail Award	<i>General Retail Industry Award 2020</i> [MA000004]
Hair and Beauty Award	<i>Hair and Beauty Industry Award 2020</i> [MA000005]

Abbreviation / defined term	Definition
HPSS Award	<i>Health Professionals and Support Services Award 2020</i> [MA000027]
LCI	Employee Living Cost Index
Manufacturing Award	<i>Manufacturing and Associated Industries and Occupations Award 2020</i> [MA000010]
Metal Industry Award	<i>Metal Industry Award 1984</i> [AW819234], Print F8925 , later the <i>Metal, Engineering and Associated Industries Award, 1998 – Part I</i> [AW789529], Print Q2527
MIHL	Minimum Income for Healthy Living (standard)
Miscellaneous Award	<i>Miscellaneous Award 2020</i> [MA000104]
MRA	Minimum rate adjustment, a process established by the <i>National Wage Case August 1989</i> [1989] AIRC 525, 30 IR 81, Print H9100 to align key classifications in awards with classifications in the Metal Industry Award; also known as the ‘C10 Metals Framework Alignment Approach’
NMW	National minimum wage
NMW Report	Josh Tomlinson, Characteristics of employees on the National Minimum Wage (Fair Work Commission Research Report No 1/2024, February 2024)
Nurses Award	<i>Nurses Award 2020</i> [MA000034]
OECD	Organisation for Economic Co-operation and Development
Pharmacy Award	<i>Pharmacy Industry Award 2020</i> [MA000012]
PPI	Producer Price Index
RBA	Reserve Bank of Australia
Review	Annual wage review
RNNDI	Real net national disposable income
RSE	Relative standard error
SCHADS Award	<i>Social, Community, Home Care and Disability Services Award 2010</i> [MA000100]
SDR	Special drawing right
Secure Jobs, Better Pay Act	<i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i>
<i>Stage 1 Aged Care decision</i>	<i>Aged Care Award 2010; Nurses Award 2020; Social, Community, Home Care and Disability Services Industry Award 2010</i> [2022] FWCFB 200 , 319 IR 127
Stage 1 report	Natasha Cortis et al, UNSW Social Policy Research Centre, Gender-based Occupational Segregation: A National Data Profile (Final Report, 6 November 2023)
Stage 2 report	Fair Work Commission, Stage 2 report — Gender pay equity research — Annual Wage Review 2023–24 (Report, 4 April 2024)
<i>Stage 3 Aged Care decision</i>	<i>Aged Care Award 2010; Nurses Award 2020; Social, Community, Home Care and Disability Services Industry Award 2010</i> [2024] FWCFB 150

Abbreviation / defined term	Definition
SWS	Supported Wage System
<i>Teachers decision</i>	<i>Application by Independent Education Union of Australia</i> [2021] FWCFB 2051
UWU	United Workers' Union
WPI	Wage Price Index
Yuen and Tomlinson 2023 Report	Kelvin Yuen and Josh Tomlinson, <i>A profile of employee characteristics across modern awards</i> (Fair Work Commission Research Report No 1/2023, March 2023)

The Annual Wage Review Decision 2023–24

1. Overview of the decision

1.1 Introduction

[1] Section 285 of the *Fair Work Act 2009* (Cth) (FW Act) requires the Fair Work Commission to conduct an annual wage review (Review). An Expert Panel consisting of full-time Commission members and part-time members with expertise in areas relevant to the Review is constituted for the purpose of conducting the Review.

[2] The Review has two main functions. The first is to review, and make, the national minimum wage (NMW) order. The NMW order applies *only* to persons in the national industrial relations system who are not covered by a modern award or an enterprise agreement. The order sets the NMW and also sets special NMWs for employees who are juniors, trainees and persons with disability and the casual loading for employees who are award/agreement-free.¹ As we explain in section 2 of this decision, the practical application and effect of the NMW is very limited. In last year’s *Annual Wage Review 2022–23* decision² (*AWR 2023 decision*), the Expert Panel estimated that only 0.7 per cent of all employees are actually paid the NMW. Further data analysis carried out since that decision suggests that the proportion of the workforce that is paid the NMW in accordance with the FW Act is in fact much smaller.

[3] The second and more significant function is to review modern award minimum wages and consider whether they should be adjusted. There are currently 121 modern awards which set minimum wages, expressed on a yearly, weekly and/or hourly basis, and conditions for a wide range of industries and occupations. Approximately 20.7 per cent of all employees are paid at the applicable minimum wage rates in modern awards and will thereby be directly affected by this decision. As was found in the *AWR 2023 decision*,³ the characteristics of this cohort of employees are significantly different to those of the workforce as a whole: they predominantly work part-time hours and are female; almost half are casual employees; and compared to the general workforce they are disproportionately low paid, paid junior rates and employed by a small business. Primarily because of the part-time and low paid characteristics of the modern award-reliant cohort, the wages paid to them constitute less than 11 per cent of the national ‘wage bill’. The *AWR 2023 decision*⁴ awarded an increase of 5.75 per cent to modern award minimum wages, which was significantly higher than the general rate of wages growth for the workforce as a whole, albeit still less than the rate of inflation at the time. However, this increase only accounted for approximately 15 per cent of wages growth across the entire workforce for the year to March 2024.

[4] Accordingly, the direct effect of the Review on wages growth for the Australian workforce, considered in aggregate, is limited. However, its effect in particular sectors which are significantly more award-reliant is more marked. For example, the four sectors with the

¹ *Fair Work Act 2009* (Cth) s 294(1) (‘FW Act’).

² *Annual Wage Review 2022–23* [2023] FWCFB 3500, 323 IR 332 (‘*AWR 2023 decision*’).

³ *Ibid* [5].

⁴ *Ibid* [9], [178].

highest numbers of award-reliant employees, namely Accommodation and food services, Health care and social assistance, Retail trade and Administrative and support services,⁵ account for over 65 per cent of all modern award-reliant employees, and 10 out of the total of 121 modern awards apply to over 63 per cent of all modern award-reliant employees.⁶ In other sectors such as Mining, award reliance is negligible.⁷

[5] The Review is required to be conducted in accordance with the statutory framework of the FW Act. In particular, it is necessary for us to take into account the considerations specified in the ‘minimum wages objective’ in s 284(1) of the FW Act and, in relation to modern award minimum wages, the ‘modern awards objective’ in s 134(1). These considerations include, among other things, the performance and competitiveness of the national economy, the need to achieve gender equality, promoting social inclusion through increased workforce participation, and relative living standards and the needs of the low paid. In considering these matters, we have taken into account data available up to 28 May 2024.

[6] The relevant aspects of the statutory framework including ss 134(1) and 284(1), and the principles concerning their application, were the subject of detailed analysis in the *AWR 2023 decision*.⁸ We adopt that analysis for the purpose of this decision. It is not necessary to repeat the conclusions of that analysis save to say that the discharge of the Commission’s functions in the Review is an evaluative exercise requiring a complex balancing of the prescribed and other relevant considerations, rather than any mechanistic approach.⁹

[7] In our conduct of this Review, we have received and considered written submissions from a wide range of interested parties including the peak councils — the Australian Chamber of Commerce and Industry (ACCI), the Australian Council of Trade Unions (ACTU), the Australian Industry Group (Ai Group) and the Council of Small Business Organisations Australia — registered unions and employer organisations, other employer and employee interest groups, and the Australian Government and State governments. We also conducted a hearing on 22 May 2024 at which parties were given the opportunity to make oral submissions and answer questions from the Expert Panel. In a number of parties’ submissions, specific proposals have been advanced as to the quantum of the wage adjustments we should order in this Review. These are summarised in the appendix to this decision. We have taken these proposals into consideration. However, as was stated in the *AWR 2023 decision*,¹⁰ it is necessary to emphasise that the Review process is not one of adjudication between competing proposals.

⁵ Kelvin Yuen and Josh Tomlinson, *A profile of employee characteristics across modern awards* (Fair Work Commission Research Report No 1/2023, March 2023) Chart 3.2 (‘Yuen and Tomlinson 2023 Report’).

⁶ Ibid Chart 3.3: *General Retail Industry Award 2020* [MA000004] (11.0%), *Social, Community, Home Care and Disability Services Award 2010* [MA000100] (10.5%), *Hospitality Industry (General) Award 2020* [MA000009] (9.5%), *Fast Food Industry Award 2020* [MA000003] (7.9%), *Restaurant Industry Award 2020* [MA000119] (5.4%), *Children’s Services Award 2010* [MA000120] (4.8%), *Clerks—Private Sector Award 2020* [MA000002] (3.9%), *Health Professionals and Support Services Award 2020* [MA000027] (3.8%), *Vehicle Repair, Services and Retail Award 2020* [MA000089] (3.5%) and *Cleaning Services Award 2020* [MA000022] (3.2%); *AWR 2023 decision* [2023] FWCFB 3500, 323 IR 332 [50], Chart 1.

⁷ *AWR 2023 decision* [2023] FWCFB 3500, 323 IR 332 [51], Table 2.

⁸ Ibid [12]–[45].

⁹ Ibid [22].

¹⁰ Ibid [7].

Rather, our statutory task is to make our own assessment of what constitutes a safety net of fair minimum wages having regard to the prescribed and other relevant considerations.

1.2 *The decision*

[8] We have decided to increase the National Minimum Wage and all modern award minimum wage rates by 3.75 per cent, effective from 1 July 2024. In determining this level of increase, a primary consideration has been the cost-of-living pressures that modern award-reliant employees, particularly those who are low paid and live in low-income households, continue to experience notwithstanding that inflation is considerably lower than it was at the time of last year's Review. Modern award minimum wages remain, in real terms, lower than they were five years ago, notwithstanding last year's increase of 5.75 per cent, and employee households reliant on award wages are undergoing financial stress as a result. This has militated against this Review resulting in any further reduction in real award wage rates. At the same time, we consider that it is not appropriate at this time to increase award wages by any amount significantly above the inflation rate, principally because labour productivity is no higher than it was four years ago and productivity growth has only recently returned to positive territory. We have taken into account that the labour market and business profit growth overall remain strong, but the picture is less positive in some of the industry sectors which contain a large proportion of modern award-reliant employees. We have also taken into account that modern award-reliant employees will shortly receive the benefit of the Stage 3 tax cuts and the Budget cost-of-living measures, which are projected to increase real household disposable incomes over the next 12 months. We have treated the forthcoming increase to the Superannuation Guarantee contribution amount as a moderating factor.

[9] The increase of 3.75 per cent which we have determined is broadly in line with forecast wages growth across the economy in 2024 and will make only a modest contribution to the total amount of wages growth in 2024. We consider therefore that this increase is consistent with the forecast return of the inflation rate to below 3 per cent in 2025.

[10] We have also determined to establish a program for the timely resolution of gender undervaluation issues arising in respect of certain modern awards. A gender equity research project which was undertaken following the decision in last year's Review has now been completed, and this has permitted us to identify priority areas for attention. Modern awards and classifications applicable to early childhood education and care workers, disability home care workers and other social and community services workers, dental assistants, medical technicians, psychologists, other health professionals and pharmacists will be the subject of Commission-initiated proceedings to examine and address gender undervaluation. These proceedings will commence shortly after the issue of this decision and we intend that they will be completed by the time of next year's Review, which will then move on to the consideration of other gender undervaluation issues.

1.3 *Structure of this decision*

[11] This decision is structured in the following way. In section 2 of the decision, we make some observations about the practical scope and effect of annual wage reviews and this decision. In sections 3–7, we deal with the mandatory considerations in ss 134(1) and 284(1) of the FW Act grouped into the following categories:

3. Economic, labour market and business considerations: ss 134(1)(c), (d), (f) and (h); ss 284(1)(a) and (b).
4. Relative living standards and the needs of the low paid: s 134(1)(a); s 284(1)(c).
5. Gender equality: s 134(1)(ab); s 284(1)(aa).
6. Job security: s 134(1)(aa).
7. Collective bargaining: s 134(1)(b).

[12] The consideration in s 134(1)(da) concerns the need to provide for additional remuneration by way of penalty rates and loadings for work performed in particular circumstances. The consideration in s 134(1)(g) concerns the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards. We do not think either of these is relevant to the Review and we give them neutral weight in our consideration.

[13] In section 8 we set out our reasons for the outcomes we have determined in this Review. This includes our consideration concerning s 284(1)(e), which requires us to take into account the provision of a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability. Section 9 sets out a summary of orders and determinations we intend to make. Finally, the appendix contains a summary of the proposed minimum wages adjustments, if any, proposed by parties in their submissions.

2. Scope and effect of the Review

2.1 *Employees reliant on the NMW*

[14] In the *AWR 2023 decision*, it was estimated that 0.7 per cent of the Australian employee workforce is reliant on the NMW — that is, the NMW sets their actual rate of pay — and thus would be directly affected by any adjustment made to the NMW. This estimate was taken from a submission made by the Australian Government that approximately 79,200 employees are NMW-reliant.¹¹ However, we consider that this estimate now requires significant downward revision.

[15] Section 294(3) of the FW Act provides that the NMW which is set by the national minimum wage order applies to ‘all award/agreement free employees’ who are not junior employees, employees to whom training arrangements apply, or employees with a disability. Section 12 provides that an ‘award/agreement free employee’ is a national system employee to whom neither a modern award nor an enterprise agreement applies. A modern award includes a modern enterprise award and a State reference public sector modern award. A modern award ‘applies’ to an employee if it ‘covers’ the employee, is in operation, and no other provision of the FW Act provides that the award does not apply to the employee (s 47(1)). A modern award

¹¹ Australian Government submission to the *Annual Wage Review 2022–23* (31 March 2023) Chart 4.1.

‘covers’ an employee if the award is expressed to cover the employee (s 48(1)). The FW Act relevantly provides that an award will not apply to an employee who is covered by the award if:

- the employee is a ‘high income employee’ (currently, an employee who has a guarantee of annual earnings exceeding \$167,500 on a full-time basis):¹² s 47(2); or
- an enterprise agreement applies to the employee’s employment at the relevant time: s 57(1).

[16] There are currently 120 modern awards in operation which cover a wide range of specified industries and occupations. The classifications in these awards generally capture all employees up to the supervisory or sub-managerial level, and in some cases cover professional and lower-level managerial employees. In addition, the *Miscellaneous Award 2020*¹³ (as varied effective from 1 July 2020) (Miscellaneous Award) covers employers throughout Australia and their employees in the classifications for which the award provides who are not covered by any other modern award (clause 4.1), except, relevantly, for:

- (1) managerial employees and professional employees such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists (clause 4.2); and
- (2) employees excluded from award coverage by the FW Act (clause 4.3).

[17] The classifications in the Miscellaneous Award cover entry-level employees in the first three months of employment (Level 1), employees without specified qualifications generally (Level 2), trade-level employees (Level 3) and employees with advanced trade qualifications or sub-professional employees (Level 4). The lowest minimum rate in the award is currently \$859.30 per week (\$22.61 per hour) and the highest is \$1085.60 per week (\$28.57 per hour).

[18] In relation to the second category of exception from the coverage of the Miscellaneous Award, s 143(7) of the FW Act provides:

Employees not traditionally covered by awards etc.

- (7) A modern award must not be expressed to cover classes of employees:
 - (a) who, because of the nature or seniority of their role, have traditionally not been covered by awards (whether made under laws of the Commonwealth or the States); or
 - (b) who perform work that is not of a similar nature to work that has traditionally been regulated by such awards.

Note: For example, in some industries, managerial employees have traditionally not been covered by awards.

¹² FW Act ss 329 and 333; *Fair Work Regulations 2009* (Cth) reg 2.13.

¹³ [MA000104](#).

[19] Employees who are ‘award/agreement free’ under the FW Act, and to whom the NMW may therefore apply, are therefore likely to consist of employees in three categories. The first category is those who are ‘high income employees’ exempted under s 47(2). However, by definition, such employees do not rely on the NMW to set their actual rate of pay.

[20] The second category consists of those managerial and professional employees who are not covered by any of the 120 industry or occupational awards and do not fall within the coverage of the Miscellaneous Award because they do not fall within any of the classifications in that award and/or because they fall within the exemption in clause 4.2. However, due to the typical pay levels of employees in this category, it is in practical terms highly unlikely that they encompass anybody who is NMW-reliant.

[21] The third category consists of those who are not covered by any modern award, including the Miscellaneous Award, because they fall within the prohibition on award coverage in s 143(7). It is theoretically possible that this category includes low paid employees who are NMW-reliant but who have not traditionally been covered by awards. The difficulty is, as observed in the *AWR 2023 decision*, that no party has been able to identify any actual occupation or industry in which employees in this category are employed. The State and federal arbitral systems in Australia have traditionally set award wages for all categories of low paid employees, and the exclusion in s 143(7) would appear to have little or no application to low paid employees unless there is some recently-emerged new low paid occupation of which we are unaware.

[22] As stated above, the Australian Government submitted in last year’s Review that, based on the results of the *Employee Earnings and Hours* (EEH) survey conducted by the Australian Bureau of Statistics (ABS) in May 2021, approximately 0.7 per cent of the workforce is NMW-reliant. EEH data is drawn from a survey of employers concerning employee earnings and hours that is conducted biennially in May. The published EEH statistics do not actually identify the number of employees, or the proportion of the workforce, to whom the NMW applies and who are paid the NMW rate. The Australian Government’s submission in this respect appears to have been founded on an inference that, in the survey for May 2021, where an employer responded in respect of an employee that the employee’s pay was not set by a collective agreement or an award but rather by ‘an individual agreement or individual contract’, and the employee was paid an ordinary-time amount which approximated the amount of the NMW, the employee was a NMW-reliant employee.¹⁴

[23] One difficulty with this inference is that, while a respondent employer may reasonably be presumed to know whether a collective agreement of an enterprise-specific nature applies to an employee, it is less safe to assume that the employer will know whether any modern award applies to an employee. Award coverage and application is determined by the combined legal operation of the provisions of the FW Act referred to above and the coverage and classification provisions of relevant modern awards. It is not a matter of employer opinion or choice (absent an employer decision to enter into a collective agreement). Therefore, the fact an employer’s survey response indicates that an employee’s pay is not set by an award does not necessarily

¹⁴ ABS, ‘[Employee Earnings and Hours, Australia methodology — May 2021](#)’ (19 January 2022).

mean that a modern award does not ‘apply’ to the employee within the meaning of the FW Act such as to make the NMW applicable.

[24] A research report undertaken by the Commission for the purpose of this Review¹⁵ (NMW Report) has examined the microdata from the May 2021 EEH survey to identify, among other things, the characteristics of ‘employees who do not have their earnings set by an award or a collective agreement and are earning the NMW’.¹⁶ Relevantly, this included their industry and occupational characteristics. The analysis of the EEH microdata in the NMW Report disclosed that the most common industries and occupations in which such employees were employed were as set out below.

Table 1: Most common industry subdivisions and major occupations across NMW employees on an individual arrangement

Industry subdivision:	%
Food and beverage services	20.8*
Personal and other services	9.7*
Professional, scientific and technical services (except computer system design and related services)	8.0*
Other store-based retailing	7.8*
Construction services	7.2*
Adult, community and other education	6.6*
Administrative services	3.7*
Sports and recreation activities	1.5*
Rental and hiring services (except real estate)	1.0*
Occupation sub-major group:	
General Clerical Workers	10.1
Sales Assistants and Salespersons	7.1*
Other Labourers	6.8*
Numerical Clerks	5.3*
Sports and Personal Service Workers	4.9**
Cleaners and Laundry Workers	4.8*
Inquiry Clerks and Receptionists	2.8*

Note: * Estimate has a relative standard error (RSE) of between 25 per cent and 50 per cent and should be interpreted with caution. ** Estimate has a RSE of greater than 50 per cent and is considered too unreliable for general use. Hourly earnings are adjusted for casual loading, such that those receiving a casual loading have their earnings lowered in line with the magnitude of the 25 per cent casual loading.

Source: NMW Report Table C1.

¹⁵ Josh Tomlinson, *Characteristics of employees on the National Minimum Wage* (Fair Work Commission Research Report No 1/2024, February 2024) (‘NMW Report’).

¹⁶ Ibid 4.

[25] It is important to note that Table 1 is concerned with employees paid at or around the NMW who, according to the May 2021 EEH survey responses, were on ‘individual arrangements’. As far as we can identify, all of the industries and occupations identified in Table 1 are, in respect of national system employees, the subject of comprehensive modern award coverage (except, in some cases, with respect to managerial and professional employees). There is no indication in Table 1 of any ‘emerging’ industry or occupation not traditionally covered by awards. Accordingly, this data tends to indicate that (at least) a substantial proportion of employer EEH survey responses identifying employees paid at around the NMW rate as not having their pay set by an award are likely to be incorrect. It is possible that what this data discloses instead is award non-compliance.

[26] The NMW Report also considered whether there are new and emerging occupations which may fall into gaps in award coverage and, by reference to National Skills Commission data published in 2020, identified Solar Installers, Social Media Specialists and Hazardous Materials Labourers (with employment estimates for each at 6,000, 11,000, and 2,000 employees for 2019, respectively) as the lowest paid new and emerging occupations. At least in respect of Solar Installers and Hazardous Material Labourers, without stating any definitive conclusion, we consider it likely that they are covered by modern awards. In any event, the NMW Report states that these three occupations have weekly earnings well above the NMW, and thus they cannot be NMW-reliant. This is consistent with their non-appearance in Table 1.

[27] In its submissions to this Review, the Australian Government estimates on the basis of the May 2023 EEH statistics that there are 32,100 employees (representing about 0.25 per cent of the entire employee workforce) who are NMW-reliant.¹⁷ The methodology for this is not expressly stated but we assume it is the same as for the Government’s 2023 submission. No explanation is suggested for the very large drop (almost 60 per cent) in the estimated number of NMW-reliant employees in the space of only two years.

[28] Having regard to the industry and occupational characteristics data in the NMW Report and the inability of any party to identify any occupation or industry in which NMW-reliant employees are employed, our conclusion in the absence of any evidence to the contrary is that the number of NMW-reliant employees is much lower than the Australian Government estimates (including its current estimate based on the May 2023 EEH statistics) and is likely to be very small. The upshot of this is that the NMW has very limited practical effect in the Australian industrial relations landscape notwithstanding its role in the statutory annual wage review scheme.¹⁸ We discuss the implications of this conclusion later in this decision.

2.2 *Modern award-reliant employees*

[29] The May 2021 EEH data, referred to in the *AWR 2023 decision*, showed that 23.0 per cent of the employee workforce was award-reliant — that is, paid in accordance with the minimum rate in an applicable federal or State award. Of this, it was calculated that 20.5 per

¹⁷ Australian Government submission (28 March 2024) Chart 4.1.

¹⁸ The rate of the NMW is used to set the amount of parental leave pay under the Commonwealth Government’s Paid Parental Leave Scheme: *Paid Parental Leave Act 2010* (Cth) ss 4, 65(2). However, that does not make the NMW applicable to employees utilising this scheme, and consideration of this consequential effect of setting the NMW does not arise under ss 134(1) or 284(1) of the FW Act.

cent of the workforce was modern award-reliant.¹⁹ The May 2023 EEH data showed that the award-reliant proportion of the workforce had increased slightly to 23.2 per cent. It is not possible to calculate the proportion of modern award-reliant employees (that is, those under federal awards) from the May 2023 EEH statistics because the microdata will not be released until after the date of this decision. However, an estimate of about 20.7 per cent of the workforce as being modern award-reliant (in line with the increase to the total of all award-reliant employees) appears to be sound.

[30] The *AWR 2023 decision*²⁰ contained an analysis of the composition and characteristics of the modern award-reliant workforce based on the May 2021 EEH data. In summary, modern award-reliant employees:

- are predominantly female (58.1 per cent);
- predominantly work part-time hours (65.2 per cent);
- are disproportionately casual employees (49.7 per cent), with almost half (48.3 per cent) of all casual employees in the workforce being modern award-reliant;
- are younger (34.8 years average age) than the workforce as a whole (40.1 years);
- are more likely to be employed by a small business (35.6 per cent) than for the workforce as a whole (25.7 per cent); and
- are more likely to be low paid (36.1 per cent) than for the workforce as a whole (12.1 per cent), and their average hourly wage (\$28.60) is significantly lower than for the rest of the workforce (\$46.20).

[31] The 2023 EEH statistics contain the equivalent compositional data for all award-reliant employees but, again, it is not yet possible to obtain the data for *modern* award-reliant employees because the microdata is not yet available. However, two significant changes in the available data may be identified. First, the proportion of all award-reliant employees who work part-time hours has increased from 62.6 per cent in May 2021 to 66.7 per cent in 2023.²¹ Second, the proportion of casual employees has increased from 45.5 per cent to 48.3 per cent over the same period.²² Since State awards are primarily ‘paid rates’ public sector awards, we consider that this very significant growth in the proportion of employees working part-time hours and casual employees is likely to have principally occurred amongst employees under federal modern awards.

[32] Almost two-thirds of all modern award-reliant employees are covered by 10 modern awards, namely:

- *General Retail Industry Award 2020*²³ (General Retail Award): 11.0 per cent.
- *Social, Community, Home Care and Disability Services Award 2010*²⁴ (SCHADS Award): 10.5 per cent.

¹⁹ Yuen and Tomlinson 2023 Report 13.

²⁰ [\[2023\] FWCFB 3500](#), 323 IR 332 [46]–[54].

²¹ *Statistical Report — Annual Wage Review 2023–24* (Fair Work Commission, 16 May 2024) Table 7.6.

²² *Ibid.*

²³ [MA000004](#).

²⁴ [MA000100](#).

- *Hospitality Industry (General) Award 2020*:²⁵ 9.5 per cent.
- *Fast Food Industry Award 2020*:²⁶ 7.9 per cent.
- *Restaurant Industry Award 2020*:²⁷ 5.4 per cent.
- *Children’s Services Award 2010*²⁸ (CS Award): 4.8 per cent.
- *Clerks—Private Sector Award 2020*:²⁹ 3.9 per cent.
- *Health Professionals and Support Services Award 2020*³⁰ (HPSS Award): 3.8 per cent.
- *Vehicle Repair, Services and Retail Award 2020*:³¹ 3.5 per cent.
- *Cleaning Services Award 2020*:³² 3.2 per cent.³³

[33] The proportion of employees within each industry division which is modern award-reliant varies greatly. In seven industry divisions, more than 20 per cent of employees are modern award-reliant:

- Accommodation and food services: 59.6 per cent.
- Administrative and support services: 42.3 per cent.
- Other services: 36.4 per cent.
- Retail trade: 29.5 per cent.
- Arts and recreation services: 25.9 per cent.
- Health care and social assistance: 23.0 per cent.
- Rental, hiring and real estate services: 21.4 per cent.

[34] At the other end of the scale, only about 1.1 per cent of employees in Mining are modern award-reliant. The above data indicates that particular consideration must be given to the circumstances of industry sectors which are, by proportion or number of employees, highly modern award-reliant.³⁴ The four industry sectors which contain the largest proportions of all modern award-reliant employees are Accommodation and food services (21.6 per cent), Health care and social assistance (17.1 per cent), Retail trade (14 per cent) and Administrative and support services (13.2 per cent).³⁵ These sectors therefore account for almost two-thirds of all modern award-reliant employees.

[35] This section of the decision describes those employees, and their employers, who are directly affected by annual wage review decisions. In addition, there are other categories of employees and employers who are indirectly affected because they have wage rates linked to

²⁵ [MA000009](#).

²⁶ [MA000003](#).

²⁷ [MA000119](#).

²⁸ [MA000120](#).

²⁹ [MA000002](#).

³⁰ [MA000027](#).

³¹ [MA000089](#).

³² [MA000022](#).

³³ *AWR 2023 decision* [\[2023\] FWCFB 3500](#), 323 IR 332 [50], Chart 1.

³⁴ *Ibid* [51], Table 2.

³⁵ Yuen and Tomlinson 2023 Report Chart 3.2.

annual wage review decisions by various mechanisms.³⁶ The most notable of these are enterprise agreements which provide for wage increases in line with annual wage review outcomes. The Australian Government submission identifies that 74,079 employees (representing approximately 0.6 per cent of the employee workforce) are covered by agreements of this nature.³⁷ We note that, after this submission was filed, the *Coles Retail Enterprise Agreement 2024* was approved by the Commission on 3 May 2024.³⁸ This agreement, which will take effect on 4 October 2024, provides for pay increases in line with annual wage review decisions and covers over 92,000 employees.

2.3 Effect of AWR decisions

[36] Because approximately two-thirds of the modern award-reliant workforce works part-time hours, and the modern award-reliant workforce is disproportionately low paid, the direct effect of AWR decisions on aggregate national labour costs and wages growth is limited. In the *AWR 2023 decision*,³⁹ the contribution of the wages of modern award-reliant employees to the economy-wide aggregate wage bill, based on the May 2021 EEH data, was estimated to be 11.2 per cent. This figure has been recalculated, based on the May 2023 EEH data, to be 10.6 per cent for 2023.

Table 2: Award-dependent wages in the total economy, modern award-reliant employees, 2023

	Number	Share total (%)	Share GDP (%)
Workers covered by modern awards (millions, 2023)	2.60	20.7*	-
Average wage, modern award-reliant employees (\$ per week, 2023)	762.6	51.2	-
Wage bill covered by modern award-reliant employees (\$billion per year, 2023)	103.2	10.6	-
Total compensation covered by modern award-reliant employees (\$billion per year)	128.0	-	4.9

Note: Total compensation of employees and gross domestic product (GDP) is based on the June quarter 2023, annualised, as per Greg Jericho and Jim Stanford, 'The Irrelevance of Minimum Wages to Future Inflation' (Briefing Paper, Centre for Future Work, The Australia Institute, March 2024). *Same proportion of modern award-reliant to total award-reliant employees applied from 2021 as number of modern award-reliant employees is not yet known for 2023.

Source: *Information note—Award-dependent wages in the economy*, Fair Work Commission additional material for the *Annual Wage Review 2023–24*, 16 April 2024.

[37] The ABS Wage Price Index (WPI) data available at the time of the *AWR 2023 decision* indicated that the contribution of award wage increases, including the outcome of the 2022 annual wage review decision,⁴⁰ to the total increase (original) to the WPI for the 12 months to

³⁶ *AWR 2023 decision* [2023] FWCFB 3500, 323 IR 332 [56].

³⁷ Australian Government submission (28 March 2024) Chart 4.1.

³⁸ [2024] FWCFB 250.

³⁹ [2023] FWCFB 3500, 323 IR 332 [49], Table 1.

⁴⁰ *Annual Wage Review 2021–22* [2022] FWCFB 3500, 315 IR 367.

the March quarter 2023 was 8.1 per cent.⁴¹ In the ABS WPI release for the September quarter 2023, released on 15 November 2023, the ABS advised that it had adjusted its methodology for calculating the analytical series ‘Contribution to wages growth by method of setting pay’. The result of this was that the revised series provided for ‘an increased contribution to Awards jobs, most notably in the September quarters when Award wages are typically adjusted based on decisions by the Fair Work Commission’,⁴² with offsetting decreases in the size of the contributions of Enterprise Agreements and Individual Agreements to the WPI. Based on the revised analytical series, the figure for the award contribution to the WPI increase for the four quarters to the March quarter 2023 was 16.0 per cent.⁴³ We note that this represents the contribution for all awards, including State awards, and therefore does not solely represent the contribution of the 2022 Review decision.

[38] Table 3 shows the contributions to WPI by method of setting pay for the 12 months to the March quarter 2024.

Table 3: Contributions to the WPI, by method of setting

	Enterprise agreement (%)	Individual arrangement (%)	Award (%)	Total increase (original) (%)	Total increase (seasonally adjusted) (%)
June 2023	0.22	0.35	0.00	0.6	1.0
September 2023	0.66	0.74	0.63	1.9	1.2
December 2023	0.45	0.39	0.12	0.9	1.0
March 2024	0.21	0.34	0.02	0.6	0.8
Sum over year	1.54	1.82	0.77	4.1	4.1

Source: *Statistical Report — Annual Wage Review 2023–24* (Fair Work Commission, 16 May 2024) Table 5.3; ABS, ‘[Wage Price Index, Australia — March 2024](#)’ (15 May 2024).

[39] The *AWR 2023 decision* increased all minimum wage rates in modern awards by 5.75 per cent effective from 1 July 2023. In addition to this, a 15 per cent interim pay increase for direct care staff in the aged care sector arising from separate work value proceedings took effect on 30 June 2023. The combined effect of these two decisions is shown in the award contribution for the September quarter 2023 of 0.63 per cent. This constituted 15.3 per cent of the total increase (original) to the WPI for the four quarters to March 2024. The contribution of the *AWR 2023 decision* was therefore slightly less than this.

3. Economic, labour market and business considerations

[40] The current economic circumstances which have priority in our consideration in this year’s Review include a rate of inflation that remains above the Reserve Bank of Australia’s

⁴¹ *AWR 2023 decision* [2023] FWCFB 3500, 323 IR 332 [77]–[78].

⁴² ABS, ‘[Wage Price Index, Australia methodology — March 2024](#)’ (15 May 2024).

⁴³ ABS, ‘[Wage Price Index, Australia — March 2024](#)’ (15 May 2024).

(RBA's) target range of 2–3 per cent, the RBA's policy response to this by way of a progressive tightening of monetary policy, the effect this policy response is likely to have for economic growth and labour markets, and the uncertain outlook for productivity growth. We set out in this section of the decision the economic, labour market and business circumstances which we consider to be of primary relevance to the considerations in ss 134(1)(c), (d), (f) and (h) and ss 284(1)(a) and (b) of the FW Act.

3.1 *Inflation and monetary policy*

[41] Inflation has eased considerably since the time of last year's annual wage review but remains the most significant challenge currently facing the Australian economy. The headline Consumer Price Index (CPI) rate for the 12 months to the March quarter 2024 was 3.6 per cent, down from 7.0 per cent for the equivalent period last year. The March quarter 2024 CPI increase was 1.0 per cent, which was higher than expected and represented an increase from the December quarter 2023 result of 0.6 per cent. The trimmed mean, which measures underlying inflation, remains higher at 4.0 per cent annually, down from a revised 6.5 per cent 12 months ago. The Employee Living Cost Index (LCI), which unlike the CPI takes into account changes in mortgage interest rates, has increased at a significantly higher rate — 6.5 per cent — than the CPI for the 12 months to the March quarter 2024. The equivalent figure 12 months ago was 9.6 per cent.

Table 4: CPI, underlying inflation, LCI for employee households, index and growth rate over the year

Quarter	CPI (% change)	Trimmed mean (% change)	Weighted median (% change)	Employee LCI (% change)
Mar-14	2.9	2.7	2.4	2.1
Mar-15	1.3	2.3	2.4	0.9
Mar-16	1.3	1.7	1.5	1.1
Mar-17	2.1	1.7	1.6	1.5
Mar-18	1.9	1.7	2.0	2.0
Mar-19	1.3	1.6	1.5	1.4
Mar-20	2.2	1.7	1.6	1.1
Mar-21	1.1	1.1	1.2	0.0
Mar-22	5.1	3.8	3.5	3.8
Mar-23	7.0	6.5	5.9	9.6
Mar-24	3.6	4.0	4.4	6.5

Note: CPI and LCI data are expressed in original terms. Percentage change is calculated in relation to the corresponding quarter in the previous year. Source: ABS, '[Consumer Price Index, Australia — March Quarter 2024](#)' (24 April 2024); ABS, '[Selected Living Cost Indexes, Australia — March 2024](#)', (1 May 2024).

[42] The CPI subgroup which makes the highest contribution to the CPI is Housing, at 21.7 per cent of the total.⁴⁴ The cost of rental accommodation, which is included in the Housing

⁴⁴ [Statistical Report — Annual Wage Review 2023–24](#) (Fair Work Commission, 16 May 2024) Table 4.2.

subgroup, increased by 7.8 per cent in the 12 months to the March quarter 2024. This was the highest rate of increase since 2009 and was the main contributor to the annual rise in the Housing subgroup. Services inflation (4.3 per cent) is now higher than goods inflation (3.1 per cent), a reversal of the position of 12 months ago, but both have reduced. Annual inflation for non-tradables was 5.0 per cent for the 12 months to the March quarter 2024 and 0.9 per cent for tradables, compared to 7.5 and 6.1 per cent respectively for 2022–23.⁴⁵ This indicates that the principal driver of the inflation rate has switched from international to domestic factors over that period.

[43] The Producer Price Index (PPI), which measures the change in prices received by domestic producers for their output, rose 4.3 per cent in the 12 months to the March quarter 2024, compared to a revised 4.9 per cent for the equivalent period last year.

[44] The policy response of the RBA to a rate of inflation which has been above its target range since mid-2021 has been to significantly increase interest rates beginning in May 2022. There have now been 13 consecutive interest rate increases, the most recent being in November 2023.

Table 5: Interest rate decisions

Effective date	Cash rate — %	Change — % points
8 November 2023	4.35	+0.25
7 June 2023	4.10	+0.25
3 May 2023	3.85	+0.25
8 March 2023	3.60	+0.25
8 February 2023	3.35	+0.25
7 December 2022	3.10	+0.25
2 November 2022	2.85	+0.25
5 October 2022	2.60	+0.25
7 September 2022	2.35	+0.50
3 August 2022	1.85	+0.50
6 July 2022	1.35	+0.50
8 June 2022	0.85	+0.50
4 May 2022	0.35	+0.25
6 April 2022	0.10	0.00

Source: ‘[Cash Rate Target](#)’, Reserve Bank of Australia (Web Page).

[45] In its May 2024 Statement on Monetary Policy, released before the 2024–25 Budget, the RBA revised its CPI forecasts upward in light of the higher than expected CPI result for the March quarter 2024 and a stronger than expected labour market (which we discuss further below). It does not project inflation to fall within its target band until the second half of 2025, with no fall in CPI inflation occurring this calendar year. The RBA forecasts do not incorporate any effect of the Budget’s cost-of-living relief measures on inflation.

⁴⁵ ABS, ‘[Consumer Price Index, Australia — March Quarter 2024](#)’, (24 April 2024).

Table 6: RBA inflation forecasts

	Year ended				
	Jun 2024	Dec 2024	Jun 2025	Dec 2025	Jun 2026
CPI Inflation (previous)	3.8 (3.3)	3.8 (3.2)	3.2 (3.1)	2.8 (2.8)	2.6 (2.6)
Trimmed mean inflation (previous)	3.8 (3.6)	3.4 (3.1)	3.1 (3.0)	2.8 (2.8)	2.6 (2.6)

Source: Reserve Bank of Australia, [Statement on Monetary Policy](#) (May 2024). ‘Previous’ refers to forecasts made in the RBA’s February 2024 Statement.

[46] The RBA’s assessment concerning future inflation and interest rates is as follows:

Inflation is expected to be higher in the near term than anticipated at the time of the February *Statement*. Services inflation has declined by a little less than expected, the labour market is assessed as being tighter than previously thought and the outlook for the labour market is slightly stronger. Higher petrol prices and the legislated end of energy rebates will also lift headline inflation in the near term.

The forecasts assume that the cash rate is higher for longer. The staff forecasts are conditioned on the assumption that the cash rate target remains around its current level until mid-2025 before gradually declining over the remainder of the forecast period. This path is about ½ percentage point higher from 2025 onwards than in the February *Statement*.⁴⁶

[47] However, the RBA has not ruled out at least one further interest rate increase:

The outlook remains uncertain. The path of inflation on its return to target is unlikely to be smooth. The path of interest rates that will best ensure that inflation returns to target in a reasonable timeframe remains uncertain and the Board is not ruling anything in or out. The Board will rely upon the data and the evolving assessment of risks and remain vigilant to the risks of inflation remaining too high.

...

Market participants revised up cash rate expectations in response to stronger-than-expected Australian inflation and labour market data. Market pricing implies there is some chance of one more rate increase in Australia this year, with no reduction in the cash rate expected until 2025. Indeed, market participants expect policy to be eased more gradually and noticeably later than previously anticipated.⁴⁷

[48] In the Budget, the Australian Government announced a range of measures to mitigate increases to the cost of living. The Government had previously legislated for modified ‘Stage 3’ tax cuts via the *Treasury Laws Amendment (Cost of Living Tax Cuts) Act 2024* which, effective from 1 July 2024, will reduce the 19 per cent tax rate to 16 per cent and the 32.5 per cent rate to 30 per cent and increase the annual income threshold for the 37 per cent rate from \$120,000 to \$135,000 and for the 45 per cent rate from \$180,000 to \$190,000.⁴⁸ The Budget announcement of principal significance to inflation is the energy rebate, whereby a rebate on

⁴⁶ Reserve Bank of Australia, [Statement on Monetary Policy](#) (May 2024) 4.

⁴⁷ Ibid 1–2.

⁴⁸ The *Treasury Laws Amendment (Cost of Living—Medicare Levy) Act 2024* also increased the Medicare levy low-income thresholds.

electricity bills of \$300 for households and \$325 for small businesses will operate from 1 July 2024. In addition, the Budget increases the maximum rate of Commonwealth Rent Assistance by 10 per cent. These two measures are expected to directly reduce the CPI by around a half percentage point over 2024–25.

[49] Taking this into account, the Budget’s forecasts for inflation are significantly lower than those of the RBA:

Table 7: Budget inflation forecasts

	2023–24	2024–25	2025–26
Consumer price index	3½%	2¾%	2¾%

Source: Commonwealth of Australia, [Budget 2024–25: Budget Strategy and Outlook](#) (Budget Paper No. 1, 14 May 2024) Table 2.2.

[50] However, the Budget identifies ‘substantial risks to the domestic outlook’ including that inflation could prove more persistent than forecast, with possible implications for policy settings and growth, and that if productivity does not pick up as expected, price pressures may be more persistent, with potential implications for unemployment and the real economy.⁴⁹

3.2 Economic growth

[51] Economic growth has slowed, principally as a result of subdued domestic demand in response to rising interest rates and the higher cost of living. The National Accounts for the December quarter 2023 show that GDP grew by 0.2 per cent for the quarter and by 1.5 per cent over the calendar year 2023, compared to 2.4 per cent for 2022. Due to high population growth, per capita GDP actually declined in 2023 by 1.0 per cent. Real net national disposable income (RNNDI) rose by 1.6 per cent over the year, but fell by 0.9 per cent on a per capita basis.

Table 8: Key national accounts aggregate, percentage changes

	Quarter					Year
	Sep–Dec 2022	Dec 2022 – Mar 2023	Mar–Jun 2023	Jun–Sep 2023	Sep–Dec 2023	Dec 2022 – Dec 2023
GDP	0.8	0.6	0.5	0.3	0.2	1.5
GDP per capita	0.3	-	-0.2	-0.5	-0.3	-1.0
Gross value added market sector	0.6	0.7	0.6	0.1	0.1	1.5
Real net national disposable income	0.6	1.6	-0.9	-0.5	1.4	1.6

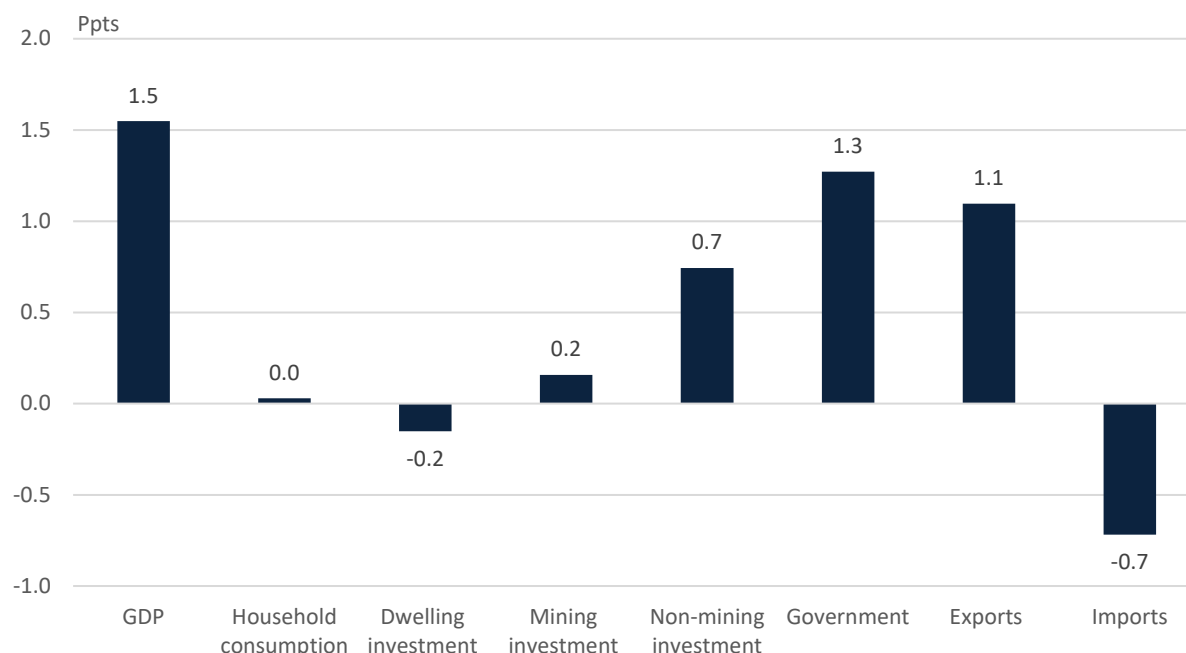
⁴⁹ Commonwealth of Australia, [Budget 2024–25: Budget Strategy and Outlook](#) (Budget Paper No. 1, 14 May 2024) 51.

	Quarter					Year
	Sep–Dec 2022	Dec 2022 – Mar 2023	Mar–Jun 2023	Jun–Sep 2023	Sep–Dec 2023	Dec 2022 – Dec 2023
Real net national disposable income per capita	0.1	1.0	-1.5	-1.2	0.8	-0.9

Source: ABS, [‘Australian National Accounts: National Income, Expenditure and Product — December 2023’](#) (6 March 2024).

[52] The primary contributors to economic growth in 2023 were government expenditure, exports and non-mining investment. Household consumption was subdued, reflecting the effect of monetary policy on discretionary expenditure.

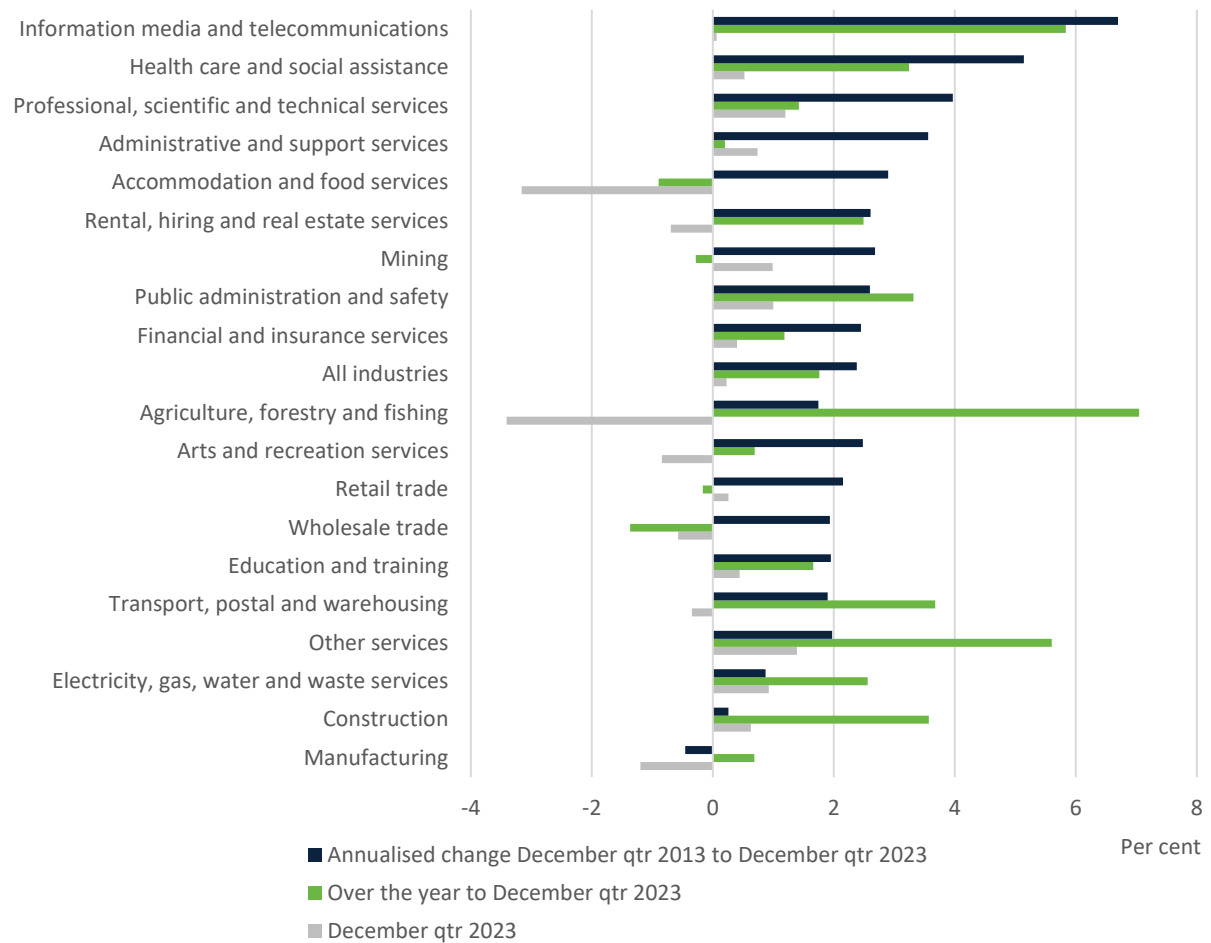
Chart 1: Contributions to GDP growth, year ended December 2023



Source: ABS, [‘Australian National Accounts: National Income, Expenditure and Product — December 2023’](#) (6 March 2024); RBA, *Chart Pack*, Contributions to GDP Growth, 2023.

[53] Annual growth in 2023 varied greatly amongst the most modern award-reliant industry sectors. There was strong growth in Health care and social assistance, weak growth in Administrative and support services, and Accommodation and food services and Retail trade both contracted.

Chart 2: Change in gross value added by industry, December quarter 2023



Source: [Statistical Report — Annual Wage Review 2023–24](#) (Fair Work Commission, 16 May 2024) Chart 1.4; ABS, [‘Australian National Accounts: National Income, Expenditure and Product — December 2023’](#) (6 March 2024).

[54] The RBA forecasts weak economic growth, with subdued household consumption for the balance of the calendar year. It sees higher growth and consumption in 2025 as growth in real incomes supports increases in household spending. The Budget forecasts are broadly comparable, with growth to remain subdued, but with a recovery in household consumption supported over the next financial year by higher wages growth, the forecast moderation in inflation, continuing employment growth and the Stage 3 tax cuts. It identifies recent strength in business investment, net exports and public investment as also supporting economic growth.⁵⁰

⁵⁰ Ibid.

Table 9: RBA and budget forecasts of growth rates in GDP and household consumption

	June 2024	Dec 2024	June 2025	Dec 2025	June 2026
Gross domestic product					
RBA	1.2	1.6	2.1	2.3	2.4
Budget	1¾		2		2¼
Household consumption					
RBA	0.1	1.3	2.6	2.8	2.7
Budget	¼		2		2¾

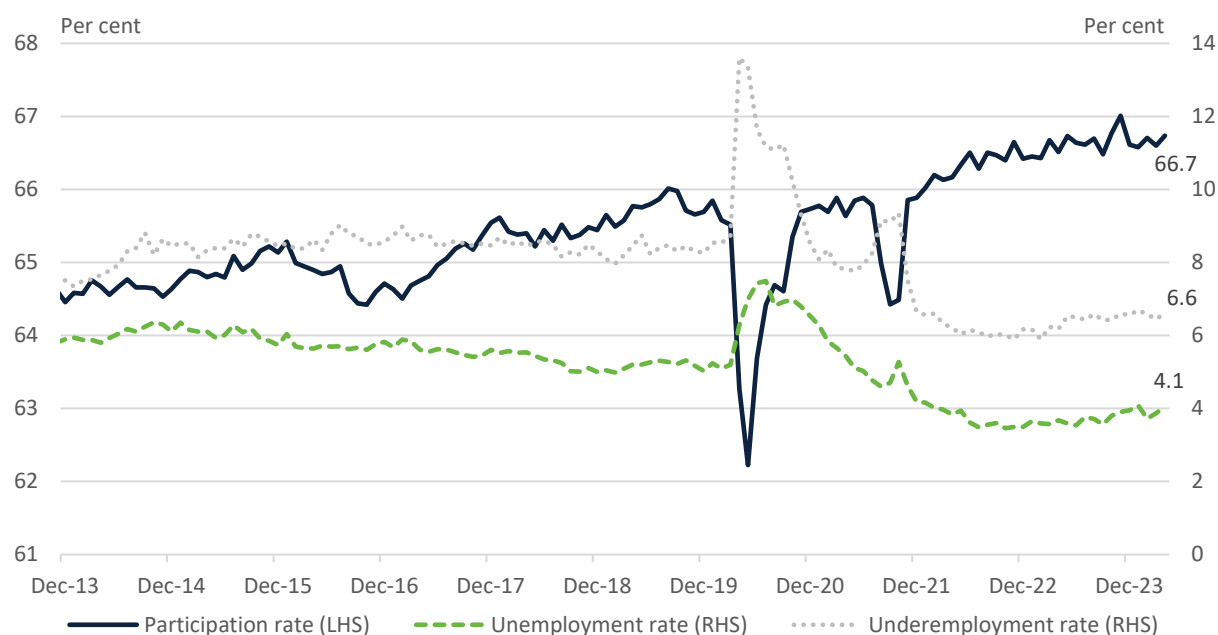
Source: Commonwealth of Australia, *Budget 2024–25: Budget Strategy and Outlook* (Budget Paper No. 1, 14 May 2024) 53; Reserve Bank of Australia, *Statement on Monetary Policy* (May 2024) 51.

[55] The International Monetary Fund forecasts 1.5 per cent growth for 2024 and 2.0 per cent for 2025.⁵¹

3.3 *The labour market*

[56] The labour market has slightly weakened since last year’s annual wage review, but has remained resilient over the course of 2023–24 notwithstanding further tightening in monetary policy and weakened economic growth. Seasonally adjusted, the unemployment rate for April 2024 increased slightly to 4.1 per cent, but employment growth remains strong. Employment increased by 2.8 per cent over the year, but hours worked were 0.8 per cent lower across the year. The underemployment rate is 6.6 per cent, higher than last year’s 6.2 per cent (revised). The participation rate remains at a near-historic high of 66.7 per cent, as does the employment-to-population ratio of 64.0 per cent.

⁵¹ *Statistical Report — Annual Wage Review 2023–24* (Fair Work Commission, 16 May 2024) Table 14.2.

Chart 3: Participation, unemployment and underemployment rates

Source: *Statistical Report — Annual Wage Review 2023–24* (Fair Work Commission, 16 May 2024) Charts 6.1–6.3; ABS, ‘*Labour Force, Australia — April 2024*’ (16 May 2024).

[57] However, the position is somewhat more mixed in the industry sectors with the most modern award-reliant employees, with both employment and hours worked having fallen in Accommodation and food services and employment having fallen in Retail trade over the year to December 2023.

Table 10: Filled jobs and hours actually worked in industries with the most modern award-reliant employees, growth over the year to the December quarter 2023

Industry	Annual growth in filled jobs	Annual growth in hours worked
Retail trade	-1.3	0.3
Accommodation and food services	-2.9	-5.8
Administrative and support services	2.5	6.9
Health care and social assistance	9.2	9.2

Source: ABS, ‘*Labour Account Australia — December 2023*’ (8 March 2024).

[58] Notwithstanding that the labour market overall has performed somewhat more strongly than expected 12 months ago, wages growth has remained broadly within expectations. Table 11 shows that wages growth is at elevated levels compared to most of the last decade, but appears to have reached or perhaps passed its peak. The WPI increased by 0.8 per cent, seasonally adjusted, in the March quarter 2024, lower than for the four preceding quarters.

Table 11: Measures of nominal wages growth, growth rate over the year

Year ended (Quarter)	WPI (% change)	AWOTE [^] (% change)	C10 (% change)	AAWI (% change)	AENA ^{^^} (% change)
Dec-13	2.6	2.9	2.6	3.4	3.2
Dec-14	2.5	2.8	3.0	3.4	1.9
Dec-15	2.2	1.6	2.5	3.0	0.6
Dec-16	1.9	2.2	2.4	3.1	0.3
Dec-17	2.1	2.4	3.3	2.5	2.0
Dec-18	2.3	2.3	3.5	2.9	2.3
Dec-19	2.2	3.3	3.0	2.7	3.3
Dec-20	1.3	3.2	1.8*	2.2	3.6
Dec-21	2.4	2.2	2.5	2.6	4.7
Dec-22	3.3	3.4	4.6	3.0	3.8
Dec-23	4.2	4.5	5.7**	4.3	5.0
Mar-24	4.1	n/a	5.7**	n/a	n/a

Note: * Actual increase from the Annual Wage Review 2019–20 was 1.75 per cent. ** Actual increase from the Annual Wage Review 2022–23 was 5.75 per cent. Increase calculated from wage rates rounded to the nearest cent. ^ Average weekly ordinary time earnings data are presented for November of each year. ^^ Average Earnings National Accounts = Compensation of employees / Total number of employees.

Source: [Statistical Report — Annual Wage Review 2023–24](#) (Fair Work Commission, 16 May 2024) Table 5.1.

[59] The Commission’s own data concerning the average annual wage increase (AAWI), where ascertainable, provided for in enterprise agreements which are the subject of applications to the Commission for approval tends to confirm that wages growth has passed its peak. Table 12 shows the average AAWI, weighted for the number of employees covered by each agreement, for 2024 (to the fortnight ending 19 April) compared with each half of 2023.

Table 12: Average AAWI for enterprise agreements, 2023–2024

Period	Average AAWI
1 January – 30 June 2023	3.5%
1 July – 31 December 2023	4.0%
1 January – 19 April 2024	3.8%

[60] Currently, the biggest driver of wages growth in the economy is individual arrangements in the private sector. Across industry sectors, with the exception of Health care and social assistance, there was not a significant degree of difference in wages growth compared to the national figure for the year to March 2024. The more highly modern award-reliant Retail trade, Accommodation and food services and Administrative and support services sectors experienced wages growth of 4.4, 4.0 and 4.3 per cent respectively compared to all industries growth of 4.1 per cent, notwithstanding the 5.75 per cent increase awarded in the *AWR 2023 decision*. The 5.3 per cent increase in the Health care and social assistance sector likely reflects the 15 per cent minimum pay increase for direct care workers in aged care which took effect on 30 June 2023 and was in addition to the 5.75 per cent increase.

[61] The RBA and Budget forecasts for employment growth and unemployment are broadly similar and indicate a softening but, in historical terms, still robust labour market. Consistent with this, they forecast a moderation of wages growth, but to a level which remains relatively high by recent standards and, on their respective forecasts for inflation, would result in modest real wages increases over 2024–25. The Budget’s forecast for the WPI for 2024–25 is somewhat lower than the RBA’s. The Budget forecasts that, as a result of increasing real wages together with the Stage 3 tax cuts, real household disposable income will increase by 3.5 per cent in 2024–25.

Table 13: RBA and Budget forecasts for employment and wages

	June 2024	Dec 2024	June 2025	Dec 2025	June 2026
Employment growth %					
RBA	2.1	1.4	1.2	1.3	1.4
Budget	2¼		¾		1¼
Unemployment rate %					
RBA	4.0	4.2	4.3	4.3	4.3
Budget	4		4½		4½
Wage Price Index %					
RBA	4.2	3.8	3.6	3.4	3.3
Budget	4		3¼		3¼

Source: Commonwealth of Australia, [Budget 2024–25: Budget Strategy and Outlook](#) (Budget Paper No. 1, 14 May 2024) 53; Reserve Bank of Australia, [Statement on Monetary Policy](#) (May 2024) 51.

3.4 Business conditions and outlook

[62] Total business profits declined by 5.4 per cent in the 12 months to the December quarter 2023, but this was the result of a large decline of 14.5 per cent in mining profits linked to a 15.4 per cent fall in commodity prices over the year.⁵² In non-mining sectors, profits grew by 4.2 per cent, higher than for 2022. This result was somewhat lower than the annualised growth rates over the last 5- and 10-year periods, but we note the distortion produced by the unusual level of profits growth in the first year of the COVID-19 pandemic in 2020.

Table 14: Company gross operating profits, mining and non-mining industries, growth rates

Quarter	Mining (%)	Non-mining (%)	Total (%)
Dec-13	37.0	1.3	11.3
Dec-14	-20.5	1.3	-6.2
Dec-15	-16.0	2.4	-3.0
Dec-16	78.3	10.7	27.8
Dec-17	2.5	6.3	5.0
Dec-18	28.6	3.0	11.8
Dec-19	8.5	1.0	3.9
Dec-20	3.7	24.0	15.6
Dec-21	37.4	0.8	14.3
Dec-22	33.0	2.1	15.8

⁵² In SDR (special drawing right) terms: ‘[Index of Commodity Prices – April 2024](#)’, Reserve Bank of Australia (Web Page, 1 May 2024).

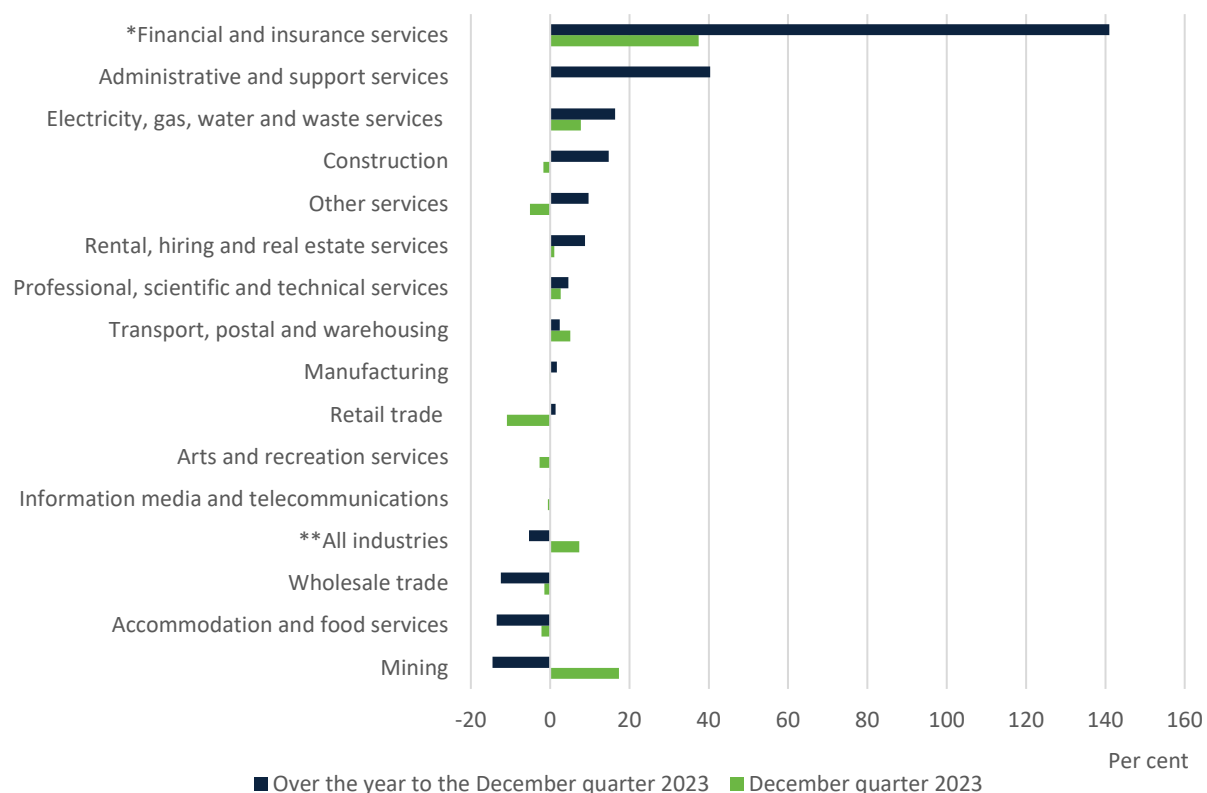
Quarter	Mining (%)	Non-mining (%)	Total (%)
Dec-23	-14.5	4.2	-5.4
5 years to Dec-23*	11.9	6.0	8.5
10 years to Dec-23*	10.7	5.4	7.5

Note: *Annualised growth rates.

Source: ABS, '[Business Indicators, Australia — December 2023](#)' (4 March 2024).

[63] The picture for profits was mixed for industry sectors which have a high degree of modern award reliance. Most notably, there was a substantial decline in profits in the Accommodation and food services sector, in which about 22 per cent of modern award-reliant employees are located. Profits in the Retail trade sector and in Arts and recreation services were also flat. This likely reflects reductions in discretionary spending by consumers in the face of higher interest rates. However, profits growth in Administrative and support services, Other services and Rental, hiring and real estate services was healthy, albeit less so in the December quarter 2023.

Chart 4: Growth in gross operating profits, current prices, by industry



Note: * Data for Financial and insurance services encompasses only the Auxiliary finance and insurance services subdivision.
 **All industries includes only the private sector (excluding Public administration and safety, Education and training and Health care and social assistance) and excludes Agriculture, forestry and fishing.

Source: [Statistical Report — Annual Wage Review 2023–24](#) (Fair Work Commission, 16 May 2024) Chart 3.2; ABS, '[Business Indicators, Australia — December 2023](#)' (4 March 2024).

[64] For the year to June 2023 (the latest available data), business entry rates exceeded business exit rates, and there was a large increase in the number of businesses in the higher turnover range.⁵³ The latest available data for the business bankruptcy rate, for 2022–23, shows that the bankruptcy rate has increased slightly but remained well below the rate experienced for most of the past decade.⁵⁴ Total retail turnover, seasonally adjusted, increased by 0.8 per cent in the 12 months to March 2024, but there are significant variations in turnover change between different retail sectors, and total turnover declined in the March quarter 2024 largely because of a significant decline in Household goods retailing.⁵⁵

[65] Private business investment growth has been strong over the last 18 months, and grew by 8.2 per cent (5.9 per cent in Mining and 8.9 per cent in Non-mining) during 2023. It is forecast to continue to grow in 2024, albeit at a slower rate.⁵⁶

[66] Business surveys give mixed reports. The NAB Quarterly Business Survey for the March quarter 2024, published on 18 April 2024, shows an increase in business confidence compared to the December quarter 2023 and the March quarter 2023, but remains in negative territory.⁵⁷ Business conditions are assessed as having ‘stabilised at above-average levels’, but are lower than for 12 months ago. Business activity overall is assessed as ‘resilient’, with positive outcomes for expected forward orders, capacity utilisation and capital expenditure. In respect of the labour market, expectations for employment have eased but remained positive, and 78 per cent of firms reported availability of labour as a constraint on output. The rate of labour cost growth slowed slightly to 1.2 per cent in the March quarter 2024, but expectations are for this to reduce significantly to 0.9 per cent in the next three months and for expected average wage growth to be 2 per cent for 2023–24. Nonetheless, wage costs remain the top issue affecting business confidence. Purchase cost growth, final product price growth and retail price growth are all expected to reduce over the next three months. The NAB survey projects that ‘price growth measures are now tracking around a rate that, if maintained, would be consistent with inflation easing towards the top of the RBA’s target range’⁵⁸ by the end of 2024.

[67] The ACCI–Westpac Survey of Industrial Trends is focused on manufacturing. The survey conducted in the period from 15 February to 11 March 2024⁵⁹ indicated a deterioration in conditions in the manufacturing sector in the March quarter 2024 with a decline in new orders, a fall in output, and a reduction in overtime and in staff numbers. However, manufacturers’ expectations are more positive, indicating that ‘the weakness in conditions coming back from summer holidays may be relatively short-lived, or at least somewhat overstated’.⁶⁰ Sentiment about the general business situation has deteriorated over the last two

⁵³ *Statistical Report — Annual Wage Review 2023–24* (Fair Work Commission, 16 May 2024) Chart 3.5; ABS, ‘[Counts of Australian Businesses, Including Entries and Exits — July 2019 to June 2023](#)’ (22 August 2023).

⁵⁴ *Statistical Report — Annual Wage Review 2023–24* (Fair Work Commission, 16 May 2024) Chart 3.4.

⁵⁵ Ibid Charts 3.6 and 3.7; ABS, ‘[Retail Trade, Australia — March 2024](#)’ (28 May 2024).

⁵⁶ ABS, ‘[Australian National Accounts: National Income, Expenditure and Product — December 2023](#)’ (6 March 2024); Statement on Monetary Policy, *Reserve Bank of Australia* (May 2024) 26; *Statistical Report — Annual Wage Review 2023–24* (Fair Work Commission, 16 May 2024) Tables 14.3, 14.4.

⁵⁷ National Australia Bank, *NAB Quarterly Business Survey Q1 2024* (18 April 2024) 1.

⁵⁸ Ibid.

⁵⁹ Australian Chamber of Commerce and Industry and Westpac Banking Corporation, *ACCI–Westpac Survey of Industrial Trends* (Report No 250, March 2024) 1.

⁶⁰ Ibid 3.

years because of increases in costs and interest rates, and ‘continued to move deeper into pessimistic territory’ in the March quarter 2024.⁶¹ Investment intentions remain robust, but capacity utilisation has declined. In respect of the labour market, firms are now reporting that labour is now ‘easier to find’ than in the December quarter 2023, but expect further upward pressure on wages (notwithstanding an easing in actual wages growth in manufacturing to 4.2 per cent in the December quarter 2023).⁶²

3.5 Productivity

[68] Australia’s long run rate of productivity growth over the last 15 years (measured to 2022) has been lower than it was in the 1990s and the early 2000s. However, this has been an international phenomenon and, on average over this 15-year period, productivity growth in Australia has been higher than in most comparable economies.

Table 15: Labour productivity growth in Australia, New Zealand, G7 countries and the OECD,⁶³ 2022

	Annual, 2022 (%)	15-year annualised (%)
Australia	-2.0	1.1
United States	-1.6	1.2
United Kingdom	1.0	0.4
France	-1.9	0.3
Germany	0.5	0.7
Italy	-0.3	0.2
Canada	-0.8	0.8
Japan	0.9	0.8
New Zealand	0.1	0.8
OECD average	-0.7	0.9

Source: Fair Work Commission, *Information note—Labour productivity*, additional material for the Annual Wage Review 2023–24, 6 May 2024; OECD, ‘[Level of GDP per capita and productivity](#)’, *OECD.Stat* (Web Page, viewed 9 April 2024).

[69] What is unusual, as Table 15 shows, is the disruption to productivity growth caused by the COVID-19 pandemic and its aftermath in Australia. Labour productivity, as measured by GDP per hour worked, increased during the pandemic phase by 2.4 per cent in 2020 and 2.5 per cent in 2021. This above-average rate of growth has been explained on the basis that the industry sectors which were most affected by lockdowns and other restrictions on public movement, such as hospitality and retail, were those which typically had lower levels of labour productivity. When these sectors shed labour to a disproportionate extent during the pandemic phase, average labour productivity across the economy grew as a consequence. This effect reversed itself in the recovery phase, when the same sectors fully reopened and employment and hours worked grew rapidly, supported by the resumption of immigration. In addition to the full resumption of operations in sectors with lower labour productivity levels, productivity

⁶¹ Ibid.

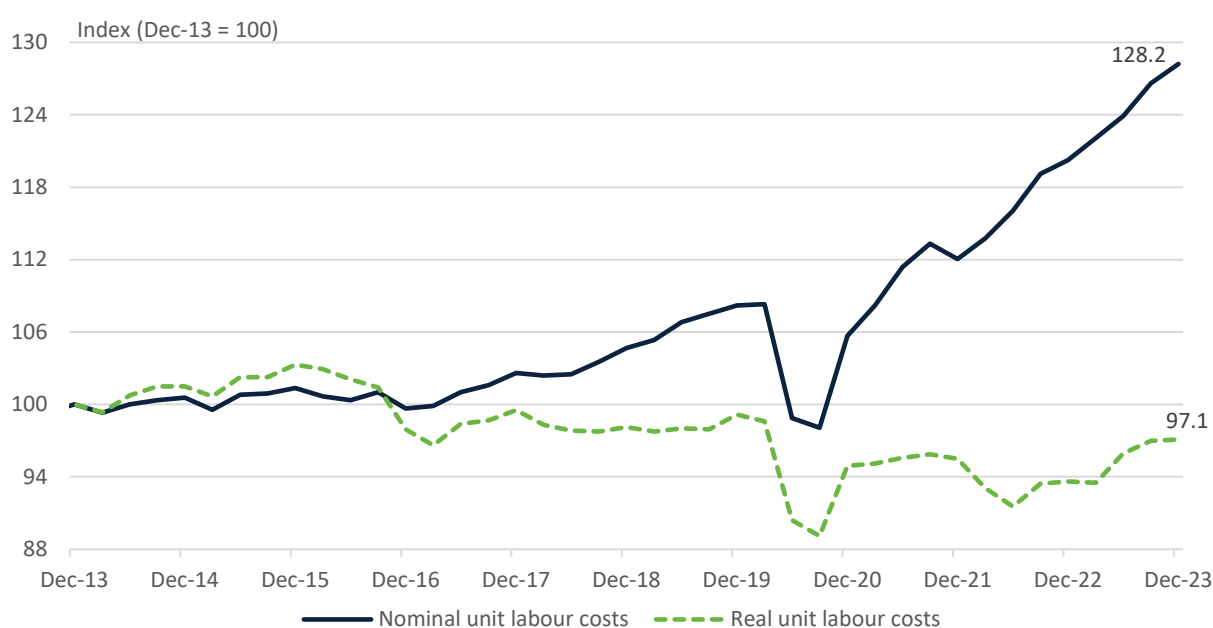
⁶² Ibid 7.

⁶³ Organisation for Economic Co-operation and Development.

performance was further affected by the extent of the use of inexperienced workers to meet demand and the fact that employment growth outpaced growth in capital stock, meaning less capital was deployed per unit of labour.⁶⁴

[70] The result has been that productivity fell by 4.5 per cent to the December quarter 2022 and 0.4 per cent to the December quarter 2023,⁶⁵ meaning that there has been no overall growth in productivity since March 2018 (or, in the market sector, June 2020). This is clearly abnormal both in the context of Australia's post-war economic history and in the international context (as Table 15 makes clear). In the *AWR 2023 decision*,⁶⁶ this poor productivity performance was a moderating factor in the determination of the quantum of minimum wage increases awarded. Combined with relatively high wages growth, the reduction in productivity over 2022 and 2023 has caused a significant increase in nominal unit labour costs.

Chart 5: Unit labour costs, index



Source: *Statistical Report — Annual Wage Review 2023–24* (Fair Work Commission, 16 May 2024) Chart 2.3; ABS, ‘*Australian National Accounts: National Income, Expenditure and Product — December 2023*’ (6 March 2024).

[71] There have been some signs that the Australian economy is moving past this post-pandemic phase and may be reverting to its long run rate of productivity growth. Productivity (GDP per hour worked) increased by 1 per cent in the September quarter 2023 and 0.5 per cent in the December quarter 2023. The strong growth in business investment will presumably yield productivity dividends at some stage. The RBA's forecast is for productivity growth of 1.8 per cent for 2023–24 and 1.3 per cent for 2024–25. However, in its Statement on Monetary Policy for May 2024, the RBA said that ‘substantial uncertainty remains around the [productivity]

⁶⁴ Reserve Bank of Australia, *Statement on Monetary Policy* (May 2024) 40; Luci Ellis, ‘*The Laptop Warrior, the Barista and the Governor*’, *Westpac IQ* (Web Page, 27 March 2024); Productivity Commission, *Quarterly productivity bulletin — December 2023* (December 2023) 3.

⁶⁵ *Statistical Report — Annual Wage Review 2023–24* (Fair Work Commission, 16 May 2024) Table 2.1.

⁶⁶ [2023] FWCFB 3500, 323 IR 332 [176(4)].

outlook’, and downgraded its productivity growth forecast for 2023–24.⁶⁷ The Budget does not contain an explicit forecast for productivity. It states that productivity ‘is expected to continue to pick up as economic conditions improve’,⁶⁸ but later goes on to say:

While productivity has grown for two consecutive quarters, the extent to which productivity growth will recover remains uncertain. A slower recovery in productivity growth could have implications for both inflation and growth.⁶⁹

4. Relative living standards and the needs of the low paid

[72] Sections 134(1)(a) and 284(1)(c) require consideration of the ‘relative living standards and the needs of the low paid’. ‘Relative living standards’ is plainly a comparative concept. In past annual wage review decisions, ‘the low paid’ have also been defined in a comparative way in that the measure adopted has been those employees whose ordinary-time earnings are below two-thirds of median adult ordinary-time earnings of all full-time employees. There are two measures of this benchmark. The first is derived from the ABS *Characteristics of Employment* (COE) data. Based on the COE data for August 2023, the benchmark is \$1066.67 per week. The second is derived from the ABS EEH data, and as at May 2023 is \$1131.33 per week.⁷⁰

[73] On the COE benchmark, every modern award minimum weekly rate of pay up to and including the C8 classification rate⁷¹ is below the low paid threshold. On the EEH benchmark, it is every modern award rate up to and including the C7 rate. However, other award ordinary-time pay entitlements such as industry and other allowances, shift loadings, evening and weekend penalty rates payable on ordinary time, and the casual loading where applicable, also need to be taken into account in assessing employees’ earnings for the purpose of comparison with the low paid benchmark. Thus, while the majority of modern award base pay rates are below the benchmark, only a minority, albeit a substantial minority (36.1 per cent) of modern award-reliant employees (on adult rates of pay) are actually low paid.⁷² Using the comparative measure referred to, it is *their* needs which must be taken into account insofar as modern awards are concerned. This group constitutes approximately 6.2 per cent of the total employee workforce.⁷³

[74] In respect of the NMW, because an employee to whom the NMW applies is, by definition, not entitled to any of the additional ordinary-time pay entitlements which may apply to award-reliant employees, any such employee is necessarily low paid using the measure described above. However, for the reasons set out earlier in this decision, we are not satisfied that the number or proportion of employees in this category are other than very small.

[75] Not all low paid workers live in low-income households. Approximately one-third of low paid employees reside in employee households in the top five income deciles, measured by

⁶⁷ Reserve Bank of Australia, *Statement on Monetary Policy* (May 2024) 44–45.

⁶⁸ Commonwealth of Australia, *Budget 2024–25: Budget Strategy and Outlook* (Budget Paper No. 1, 14 May 2024) 40.

⁶⁹ *Ibid* 61.

⁷⁰ *Statistical Report — Annual Wage Review 2023–24* (Fair Work Commission, 16 May 2024) Table 8.2.

⁷¹ See *Manufacturing and Associated Industries and Occupations Award 2020* [MA000010] cl 20.1(a).

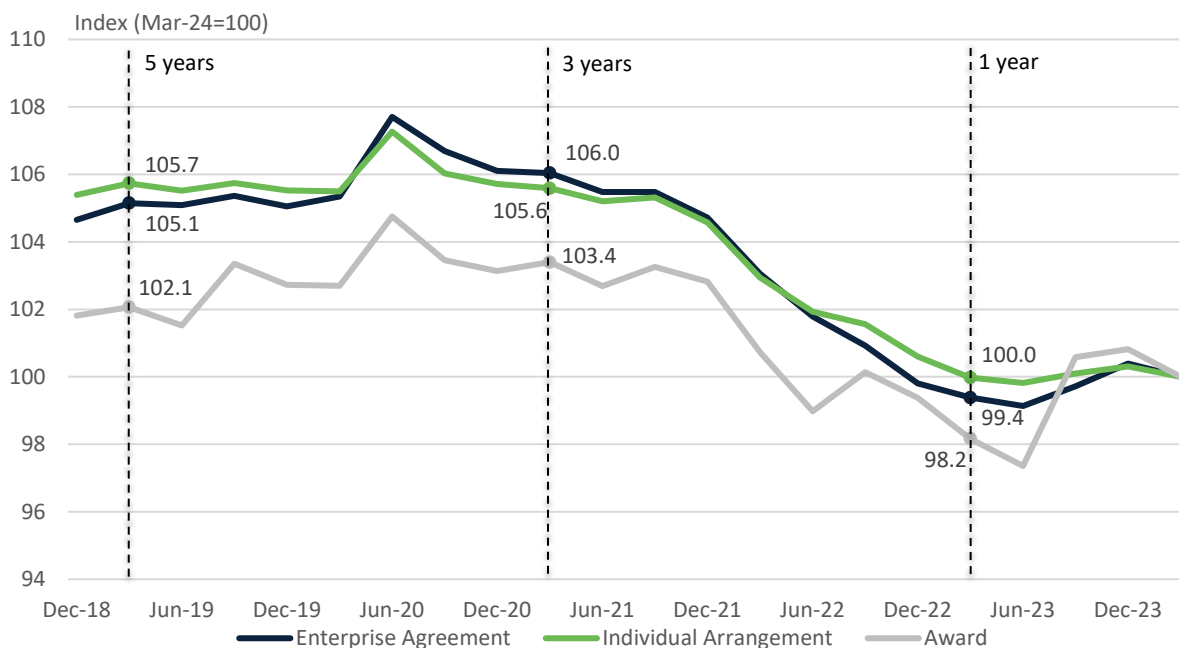
⁷² *Statistical Report — Annual Wage Review 2022–23* (Fair Work Commission, 18 May 2023) Table 7.4.

⁷³ ABS, ‘*Microdata: Employee Earnings and Hours, Australia — May 2021*’ (10 June 2022).

equivalised household disposable income.⁷⁴ Their needs, and relative living standards, are therefore not the main focus of our consideration, which is rather upon those low paid workers who reside in low-income households.

[76] For such workers, their immediate need is to maintain their living standards in the face of the significant increase in the cost of living. The effect of relatively high inflation over the past three years has been to reduce the real wages of modern award-reliant employees, notwithstanding that last year's increase of 5.75 per cent was the largest national wage increase for approximately forty years and that their nominal wage rates have grown more than the WPI over the period.

Chart 6: Real WPI growth by method of setting pay—1, 3 and 5 years



Note: Data are in original terms.

Source: Fair Work Commission; ABS, '[Wage Price Index, Australia — March 2024](#)' (15 May 2024); ABS, '[Consumer Price Index, Australia — March Quarter 2024](#)' (24 April 2024).

[77] The NMW has not, however, declined in real terms over this period because the *AWR 2023 decision*⁷⁵ discontinued the traditional alignment of the NMW with the C14 rate and instead aligned the NMW with the higher C13 rate. The 5.75 per cent increase was then applied to this realigned rate (currently \$882.80 per week or \$23.23 per hour). The result of this is that the ratio of the NMW to median earnings is at its highest point (55.2 per cent) for a decade.⁷⁶

[78] For low paid NMW and modern award-reliant workers, the cost-of-living situation they face is likely worse than Chart 6, which deflates wage rates by the headline CPI, indicates. The CPI rate of inflation for non-discretionary goods such as food, automotive fuel, housing and health costs was 4.2 per cent over the 12 months to the March quarter 2024, higher than the

⁷⁴ Australian Government submission to the *Annual Wage Review 2021–22* (1 April 2022) [42], Chart 2.2.

⁷⁵ [2023] FWCFB 3500, 323 IR 332 [8], [172]–[173].

⁷⁶ *Statistical Report — Annual Wage Review 2023–24* (Fair Work Commission, 16 May 2024) Table 8.1.

headline CPI rate of 3.6 per cent.⁷⁷ The LCI for employee households, which takes into account increased mortgage costs, is higher still: over the same period, it was 6.5 per cent.⁷⁸ We therefore conclude that low paid NMW- and modern award-reliant employees in low-income households are continuing to experience financial stress and a decline in living standards because of inflation.

[79] The Stage 3 tax cuts which will take effect from 1 July 2024 will provide some relief from cost-of-living pressures for modern award-reliant workers. However, low paid workers will not benefit from these tax cuts to the same degree as those earning around median incomes. For an employee earning wages at the COE-derived low paid benchmark of \$1066.67 per week, the tax cut will be worth about \$20.50 per week compared to about \$33.85 per week for an employee on the COE measure of median earnings.⁷⁹ Further, we note that, from a longer-term perspective, the tax cuts will mostly but not fully reverse the effects of bracket creep over the last 12 years for low-income earners.⁸⁰

[80] Low paid workers will obtain some further relief from a number of the measures announced in the Budget to assist with the cost of living. All households will benefit from the energy bill rebate. The 10 per cent increase in the maximum rate of Commonwealth Rent Assistance will be of benefit to some low paid workers who rent their accommodation — generally, low-income households with dependent children who are eligible for Family Tax Benefit Part A at more than the base rate, and low paid workers who receive other types of Commonwealth income support payments. Other Budget measures potentially relevant to low paid workers are:

- A one-year freeze on indexation of the maximum Pharmaceutical Benefits Scheme (PBS) patient co-payment for everyone with a Medicare card.
- A reduction of indexation amounts for debts incurred under the Higher Education Loan Program. However, this is not likely to be of short-term assistance to any low paid workers under this scheme, since no debt repayments are required until annual earnings exceed \$54,434 (for 2024–25) and repayments are calculated based on income levels, not the size of the debt.

[81] In the *AWR 2023 decision*, the Expert Panel referred to the budget standards report published by the Commission in March 2023 which, among other things, analysed disposable incomes when receiving the then-C14 rate, to which the NMW was then aligned, on a full-time basis relative to budgets constructed according to the Minimum Income for Healthy Living (MIHL) standard for 14 household types. This showed that, excluding discretionary spending, 12 of those 14 household types earned less than the budget amounts necessary to meet the MIHL standard and, if discretionary spending was included, none of them did.⁸¹

⁷⁷ Ibid Table 4.1, Chart 4.5.

⁷⁸ Ibid Table 4.1.

⁷⁹ Australian Government, ‘[Estimate Your Tax Cut](#)’, *Tax Cuts for Every Taxpayer* (Web Page); *Statistical Report — Annual Wage Review 2023–24* (Fair Work Commission, 16 May 2024) Tables 8.1–8.2; ABS, ‘[Characteristics of Employment Australia — August 2023](#)’ (13 December 2023).

⁸⁰ Paul Tilley, ‘[Stage 3 Tax Cuts v Bracket Creep: Time to Index the Personal Income Tax Rate Scale](#)’ (Policy Brief No 4/2024, Tax and Transfer Policy Institute, Crawford School of Public Policy, Australian National University, March 2024) Figure 5.

⁸¹ *AWR 2023 decision* [\[2023\] FWCFB 3500](#), 323 IR 332 [101].

[82] However, we do not consider that this analysis can be given significant weight in our consideration of relative living standards and the needs of the low paid for three reasons. First, as already stated, the *AWR 2023 decision* changed the alignment of the NMW from the C14 rate to C13. Second, because it is not possible to identify anyone to whom the NMW actually applies, we do not know which, if any, of the household types is relevant to NMW-reliant employees. The third is that, as foreshadowed in the *AWR 2023 decision*,⁸² a review of those modern awards containing the C14 rate has now substantially been completed. This Review was widened in scope following the *AWR 2023 decision* to include any modern awards containing a classification rate below the C13 level and ultimately encompassed 70 modern awards (including a number of modern enterprise awards). In a decision issued on 16 April 2024,⁸³ the Full Bench conducting the review determined that the lowest adult rate in any modern award applicable to ongoing employment should be at least the C13 rate, and that any rate below the C13 rate (including but not limited to the C14 rate) must be an entry-level rate which operates only for a limited period not exceeding six months and provides a clear transition to the next classification rate (which must not be less than the C13 rate).⁸⁴ The Full Bench's decision outlined, on a provisional basis, the variations to be made to each relevant award with an operative date of 1 January 2025. Although the Full Bench prescribed a maximum period of six months for any employee to remain on a classification rate that is below the C13 rate, in the large majority of proposed award variations the actual period is three months or less. We can reasonably anticipate therefore that, by the time of next year's annual wage review, any award rate below the C13 rate will simply be a temporary stepping stone to a rate at the C13 level or higher. In these circumstances, we do not consider it useful to continue to analyse relative living standards or the needs of the low paid by reference to the C14 rate.

[83] The *AWR 2023 decision* also presented an equivalent analysis of disposable incomes at higher classification levels compared to the MIHL budgets formulated for the 14 household types. At the C10 level, this showed that the budget amount was in excess of income for nine household types if discretionary expenditure was excluded, and 13 household types if included.⁸⁵ However, the analysis assumes that an employee at the C10 level receives only the minimum rate of pay for ordinary time and does not receive any additional allowances, loadings or penalty rates for ordinary time. Nor does the analysis take into account any overtime earnings. For that reason, it is not possible to say that, for any household type, the analysis presents a realistic picture of disposable income for an employee classified at C10.

[84] We consider that further research is necessary to gain a better understanding as to the modern awards and classification levels which predominantly apply to modern award-reliant employees who are low paid, and the earnings which employees can realistically expect to obtain at various award classification levels inclusive of additional payments such as allowances, loadings and penalty rates. The Commission will explore opportunities for a research project after the completion of this Review. We note that in the *AWR 2023 decision*⁸⁶ the Expert Panel said that there should be a comprehensive review of the NMW by reference to the budget standards research and other relevant material to arrive at a NMW amount which is

⁸² Ibid [103], [173].

⁸³ *Review of C14 and C13 rates in modern awards* [2024] FWCFB 213.

⁸⁴ Ibid [7], [30].

⁸⁵ *AWR 2023 decision* [2023] FWCFB 3500, 323 IR 332 [109], Table 15.

⁸⁶ Ibid [108].

set having proper regard to the needs of the low paid and the other considerations in s 284(1) of the FW Act. However, as already stated, we have now come to the view that it is not currently possible to identify persons to whom the NMW actually applies, and the number of such persons is likely to be very small. In light of this, unless any evidence to the contrary emerges, we do not consider that such a review would be a practical proposition.

5. Gender equality

5.1 Gender pay gaps

[85] As explained in the *AWR 2023 decision*,⁸⁷ s 284(1)(aa) of the FW Act identifies ‘addressing gender pay gaps’ as one of the means by which ‘the need to achieve gender equality’ may be achieved. The gender pay gap may be measured in different ways and for different workforce segments (thus making it apt to refer to gender pay *gaps*). Using the same measures of the gender pay gap used in previous Reviews, Table 16 shows that the gap has reduced to some degree over the last two years.

Table 16: Estimates of the gender pay gap, 2021 and 2023

Measure	2023			2021		
	Male earnings (\$)	Female earnings (\$)	Gender pay gap (%)	Male earnings (\$)	Female earnings (\$)	Gender pay gap (%)
<i>Weekly</i>						
AWOTE (<i>November</i>)	1982.80	1744.80	12.0	1846.50	1591.20	13.8
EEH adult ordinary time cash earnings, non-managerial full-time (<i>May</i>)	1911.80	1725.60	9.7	1809.10	1617.10	10.6
<i>Hourly</i>						
EEH adult total cash earnings, non-managerial full-time (<i>May</i>)	50.50	46.20	8.5	47.50	43.30	8.8
EEH adult ordinary time cash earnings, non-managerial full-time (<i>May</i>)	49.70	46.00	7.4	47.10	43.10	8.5

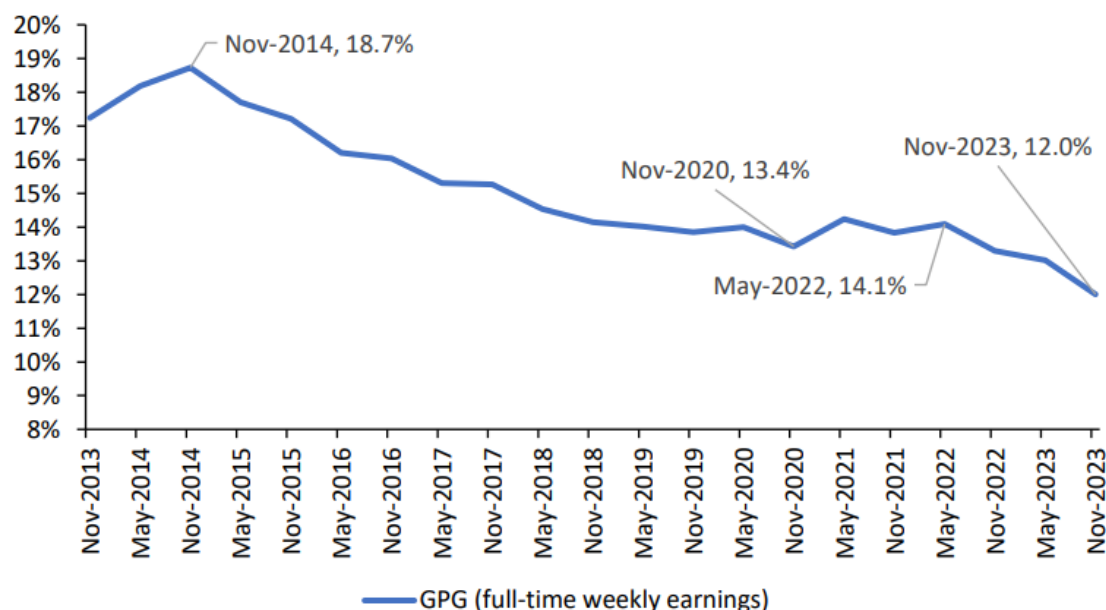
Note: AWOTE refer to full-time adult employees. The gender pay gap is calculated as the difference between female’s and male’s earnings, expressed as a percentage of male’s earnings. * Adult refers to employees paid an adult rate.

Source: ABS, ‘[Average Weekly Earnings, Australia — November 2023](#)’ (22 February 2024); ABS, ‘[Employee Earnings and Hours, Australia — May 2023](#)’ (24 January 2024); ABS, ‘[Average Weekly Earnings, Australia — November 2021](#)’ (24 February 2022); ABS, ‘[Employee Earnings and Hours, Australia — May 2021](#)’ (19 January 2022).

⁸⁷ Ibid [45].

[86] This continues a trend of a steady reduction in the gender pay gap over the last decade, shown in Chart 7.

Chart 7: Gender pay gap, AWOTE, November 2013 to November 2023



Source: ABS, '[Average Weekly Earnings, Australia — November 2023](#)' (22 February 2024), reproduced from Australian Government submission, 28 March 2024, Chart 6.1.

[87] While s 284(1)(aa) refers to *addressing* gender pay gaps, it was observed in the *AWR 2023 decision*⁸⁸ that the aggregate gender pay gap (whatever measure is used) cannot be 'addressed' in the sense of being wholly or substantially closed by increasing minimum wage rates in the NMW and modern awards by any reasonable amount. As stated earlier in this decision, the modern award-reliant workforce constitutes only about 20.7 per cent of the entire workforce and 10.6 per cent of the national wage bill, so that the wage rates of most of the workforce remain out of reach of the modern award system. Further, for that proportion of the workforce which is modern award-reliant, the gender pay gap is significantly smaller (1.8 per cent).⁸⁹ Accordingly, while a uniform increase to modern award minimum rates of pay which exceeds market rates of wage increase will likely have the effect of narrowing the gender pay gap by reason of modern award-reliant workers being predominantly female, this effect will be small. While weighing in favour of an increase of this order, this effect would not alone constitute a major justification for it.

5.2 *Ensuring equal remuneration for work of equal or comparable value and eliminating gender-based undervaluation*

[88] Ensuring equal remuneration for work of equal or comparable value and eliminating gender-based undervaluation are referred to in ss 134(1)(ab) and 284(1)(aa) of the FW Act as

⁸⁸ Ibid [118]–[119].

⁸⁹ Ibid [2023] FWCFB 3500, 323 IR 332 [119]; [Statistical Report — Annual Wage Review 2022–23](#) (Fair Work Commission, 18 May 2023) Table 11.2.

means by which gender equality in the workplace may be achieved. Gender undervaluation, considered in the award context, refers to a situation where the minimum rates of pay in an award have been established based on an undervaluation of the relevant work that has occurred for gender-related reasons.⁹⁰ ‘Equal remuneration for work of equal or comparable value’ is defined in s 302(2) of the FW Act to mean ‘equal remuneration for men and women workers for work of equal or comparable value’. The inclusion of ‘ensuring equal remuneration for work of equal or comparable value’ and ‘eliminating gender-based undervaluation of work’ as part of the mandatory gender equality consideration in the minimum wages objective⁹¹ means that it is necessary for us to consider whether the existing NMW and modern award minimum wage rates constitute a properly-valued and non-gender-biased foundation upon which to make any wages adjustment in the conduct of this Review.⁹² In the context of award wage fixation, these are related and overlapping concepts and we will refer to both concepts under the general rubric of ‘gender undervaluation’ in this part of our decision.

[89] In the *AWR 2023 decision*, the Expert Panel identified two ‘potential gender-related difficulties’ in the way in which award wages had historically been set.⁹³ The first was that the *National Wage Case April 1991*⁹⁴ effectively foreclosed retrospective reconsideration of work value in any federal award. This inhibited any review in accordance with contemporary standards of rates of pay in female-dominated awards which were fixed pre-1990 and may consequently have been influenced by the gender-based assumptions about work value which were then prevalent. The second was that the classification benchmarks for the minimum rate adjustment (MRA) process established by the *National Wage Case August 1989*⁹⁵ (elsewhere referred to as the ‘C10 Metals Framework Alignment Approach’) were derived solely from awards covering male-dominated occupations and industries, and their application to female-dominated awards may have involved gender-based assumptions about relative work value. The Expert Panel said that the identified issues:

...indicate that that there may be a systemic problem, of pre-FW Act origins, concerning the way in which modern award minimum wages in female-dominated industries have been set which involves gender undervaluation and unequal remuneration for work of equal or comparable value.⁹⁶

[90] An additional work value issue with potential implications for the minimum wage rates of modern award-reliant women in higher award classifications was also identified, namely that the alignment of classifications requiring the holding of an undergraduate degree with the C1

⁹⁰ *Equal Remuneration Decision 2015* [2015] FWCFB 8200, 256 IR 362 [292]; *AWR 2023 decision* [2023] FWCFB 3500, 323 IR 332 [37]–[38]; *Aged Care Award 2010*; *Nurses Award 2020*; *Social, Community, Home Care and Disability Services Industry Award 2010* [2024] FWCFB 150 [16] (‘*Stage 3 Aged Care decision*’).

⁹¹ FW Act s 284(1)(aa).

⁹² *AWR 2023 decision* [2023] FWCFB 3500, 323 IR 332 [40].

⁹³ *Ibid* [124].

⁹⁴ [1991] AIRC 281, 36 IR 120, [Print J7400](#).

⁹⁵ [1989] AIRC 525, 30 IR 81, [Print H9100](#).

⁹⁶ *AWR 2023 decision* [2023] FWCFB 3500, 323 IR 332 [133].

classification in the Metal Industry Award⁹⁷ was never implemented in most awards.⁹⁸ The Expert Panel said:

[136] The gender dimension of this issue is apparent in two related ways. First, women are more award-reliant than men and there is evidence that the proportion of women in the award-reliant workforce is at its highest level at higher-paid classifications including those requiring undergraduate qualifications. That is, 58.7 per cent of higher-paid award-reliant employees are women; by contrast, 41.3 per cent of higher-paid award-reliant employees are men. Second, as was pointed out in the Gender undervaluation statement, there is a considerable overlap between the 29 modern awards containing undergraduate classifications and those applying to female-dominated industries.

(footnote omitted)

[91] The Expert Panel said that the issues it had identified were ‘obviously too broad and complex to be resolved within the limited timeframe of [the 2022–23] Review, and their resolution will require a body of research to support it’.⁹⁹ The *AWR 2023 decision* foreshadowed that the Commission would conduct a two-stage research project to identify occupations and industries in which there is gender pay inequity and potential undervaluation of work and qualifications. Stage 1 of this project was to identify occupations and industries in which gender-based occupational segregation is prevalent and the modern awards which covered those occupations and industries. Stage 2 was to report on the extent to which the modern awards covering the gender-segregated occupations and industries identified in Stage 1 have associated indicia that suggest they may be subject to gender undervaluation.¹⁰⁰ The Panel concluded:

[139] Once this research project has been completed and the research reports have been published, Commission proceedings will be initiated to consider and, if necessary, address the outcomes of the research project. Depending upon the timing, this may occur as part of or in association with the 2023–24 Review.¹⁰¹

The research project

[92] This research project has now been completed. The Stage 1 report,¹⁰² which was prepared by the Social Policy Research Centre at the University of New South Wales, was published on the Commission’s website on 15 November 2023. The Stage 1 report identified 29 occupations covered by 13 modern awards which were:

- large (containing over 10,000 people);
- very highly feminised (over 80 per cent female); and
- located within feminised industry classes (over 60 per cent female).

⁹⁷ *Metal Industry Award 1984* [AW819234], [Print F8925](#), later the *Metal, Engineering and Associated Industries Award, 1998 – Part I* [AW789529], [Print Q2527](#).

⁹⁸ *AWR 2023 decision* [2023] FWCFB 3500, 323 IR 332 [134].

⁹⁹ *Ibid* [137].

¹⁰⁰ *Ibid* [137]–[138].

¹⁰¹ *Ibid*.

¹⁰² Natasha Cortis et al, UNSW Social Policy Research Centre, [Gender-based Occupational Segregation: A National Data Profile](#) (Final Report, 6 November 2023) (‘Stage 1 report’).

[93] The following table¹⁰³ sets out these occupations and industries, the proportion of female workers, the total numbers employed and the relevant modern award.

Table 17: Large, very-highly-feminised occupations in feminised industry classes

Occupation Unit Group	Industry class	Female (%)	Total employees	Award identified via EEH or FWC
Sales Assistants (General)	Clothing Retailing	85.5	46,906	<i>General Retail Industry Award 2020</i> ¹⁰⁴
Retail Managers	Clothing Retailing	80.9	17,758	<i>General Retail Industry Award 2020</i> ¹⁰⁵
Pharmacy Sales Assistants	Pharmaceutical, Cosmetic and Toiletry Goods Retailing	87.6	33,420	<i>Pharmacy Industry Award 2020</i>
Conveyancers and Legal Executives	Legal Services	83.4	12,853	<i>Legal Services Award 2020</i>
Veterinary Nurses	Veterinary Services	96.4	12,094	<i>Animal Care and Veterinary Services Award 2020</i>
Early Childhood (Pre-primary School) Teachers	Preschool Education	97.6	13,116	<i>Educational Services (Teachers) Award 2020</i>
Child Carers	Preschool Education	97.2	49,446	<i>Children's Services Award 2010</i>
Education Aides	Primary Education	92.9	49,520	<i>Educational Services (Schools) General Staff Award 2020</i>
Primary School Teachers	Primary Education	85.4	135,851	<i>Educational Services (Teachers) Award 2020</i>
Education Aides	Secondary Education	82.1	20,846	<i>Educational Services (Schools) General Staff Award 2020</i>
Education Aides	Combined Primary and Secondary Education	88	14,754	<i>Educational Services (Schools) General Staff Award 2020</i>
Primary School Teachers	Combined Primary and Secondary Education	84	19,288	<i>Educational Services (Teachers) Award 2020</i>
Midwives	Hospitals ¹⁰⁶	98.9	17,017	<i>Nurses Award 2020</i>
Receptionists	Hospitals	92.4	18,338	<i>Health Professionals and Support Services Award 2020</i>
Enrolled and Mothercraft Nurses	Hospitals	89.9	23,129	<i>Nurses Award 2020</i>
General Clerks	Hospitals	89.8	18,804	<i>Health Professionals and Support Services Award 2020</i>

¹⁰³ Derived from Table 5.2 of the Stage 1 report.

¹⁰⁴ In addition, the *Educational Services (Schools) General Staff Award 2020* [MA000076] covers school uniform shops.

¹⁰⁵ See footnote above.

¹⁰⁶ All references to Hospitals in this table exclude psychiatric hospitals.

Occupation Unit Group	Industry class	Female (%)	Total employees	Award identified via EEH or FWC
Registered Nurses	Hospitals	87.9	176,597	<i>Nurses Award 2020</i>
Nurse Managers	Hospitals	86.6	15,312	<i>Nurses Award 2020</i>
Receptionists	General Practice Medical Services	95.9	27,723	<i>Health Professionals and Support Services Award 2020</i>
Registered Nurses	General Practice Medical Services	95.6	12,167	<i>Nurses Award 2020</i>
Medical Technicians	Pathology and Diagnostic Imaging Services	85.3	13,738	<i>Health Professionals and Support Services Award 2020</i>
Dental Assistants	Dental Services	97.5	23,400	<i>Health Professionals and Support Services Award 2020; Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020 (for dental services which are Aboriginal community controlled)</i>
Psychologists	Other Allied Health Services	80.6	14,205	<i>Health Professionals and Support Services Award 2020</i>
Registered Nurses	Aged Care Residential Services	88.3	34,393	<i>Nurses Award 2020</i>
Nursing Support and Personal Care Workers	Aged Care Residential Services	87.2	59,367	<i>Aged Care Award 2010</i>
Aged and Disabled Carers	Aged Care Residential Services	86.5	62,122	<i>Social, Community, Home Care and Disability Services Industry Award 2010; Aged Care Award 2010</i>
Child Carers ¹⁰⁷	Child Care Services	96	84,074	<i>Children's Services Award 2010</i>
Beauty Therapists	Hairdressing and Beauty Services	97.2	28,182	<i>Hair and Beauty Industry Award 2020</i>
Hairdressers	Hairdressing and Beauty Services	83.5	51,530	<i>Hair and Beauty Industry Award 2020</i>

[94] In total, the above occupations employ over 1.1 million workers, constituting over 9 per cent of all employees.

[95] The Stage 1 report refers to Australian and international research which demonstrates that gender segregation is a driver of the undervaluation of women's work and gender pay gaps. In particular, the research referred to indicates that industrial and occupational segregation has been estimated to account for 24 per cent of the hourly gender pay gap and that wage penalties for women emerge where occupations are more than 60 per cent feminised,¹⁰⁸ with women

¹⁰⁷ 'Child Carers' encompasses employees within the Levels 2, 3 and 4 classifications in the *Children's Services Award 2010*.

¹⁰⁸ Stage 1 report 13.

having the potential to earn more in male dominated occupations. The research also explains¹⁰⁹ that gender segregation drives the undervaluation of women’s work in the following ways (the ‘Five Vs’):

- **Visibility:** skills used in female jobs are not properly identified;
- **Valuation:** skills are defined in terms of masculine norms such as technical skills, strength, and responsibility, not soft skills relating to communication and care;
- **Vocation:** women’s skills are treated as natural, derived from women’s roles as mothers and carers, and work is assumed to be done for intrinsic reward, not pay;
- **Value-adding:** women’s jobs are concentrated in labour intensive occupations (such as care) where scope for productivity improvement and profit are limited;
- **Variance:** women’s jobs do not conform to male norms of full-time work, with part-time work being regarded as less skilled and less productive.

[96] A number of the highly-feminised occupations in Table 17 above, within certain industry subdivisions, are identified in the Stage 1 report as significantly reliant upon award rates of pay for pay setting. The following occupations have more than 15 per cent of the workforce using an award as the only method of setting pay:¹¹⁰

Table 18: Very-highly-feminised occupations that are significantly award-reliant

Occupation	Industry subdivision	Method of setting pay — award only — % of employees
Pharmacy Sales Assistants	Other Store-based Retailing	82.2
Child Carers	Social Assistance Services	75.2
Hairdressers	Personal and Other Services	69.8
Beauty Therapists	Personal and Other Services	69.7
Child Carers	Preschool and School Education	51.4
Receptionists	Medical and Other Health Care Services	43.0
Medical technicians	Medical and Other Health Care Services	42.1
Sales Assistants (General)	Other Store-based Retailing	40.9
Registered nurses	Medical and Other Health Care Services	39.6
Dental assistants	Medical and Other Health Care Services	33.5
Aged and Disabled Carers	Residential Care Services	19.2
Retail Managers	Other Store-based Retailing	17.5

[97] The Stage 2 report,¹¹¹ which was prepared by the Commission’s own research staff and published on 4 April 2024, examines the history of wage fixation in 12 of the 13 modern awards which cover the large and very-highly-feminised occupations located in feminised industry

¹⁰⁹ By reference to Damian Grimshaw and Jill Rubery, ‘[Undervaluing Women’s Work](#)’ (Working Paper No 53, European Work and Employment Research Centre, University of Manchester, 2007).

¹¹⁰ Derived from Tables 7.2, 8.2, 9.2, 10.2, 12.2 and 13.2 of the Stage 1 report.

¹¹¹ Fair Work Commission, [Stage 2 report — Gender pay equity research — Annual Wage Review 2023–24](#) (Report, 4 April 2024) (‘Stage 2 report’).

classes identified in the Stage 1 report. The *Aged Care Award 2010*¹¹² (Aged Care Award) was not included because it was being dealt with concurrently in the aged care work value proceedings. The relevant history of wage fixation for the *Nurses Award 2020*¹¹³ (Nurses Award) was also dealt with in the *Stage 3 Aged Care decision*¹¹⁴ and that analysis was adopted in the Stage 2 report.

[98] In respect of the remaining 11 awards, the analyses in the Stage 2 report are summarised in Table 19 below by reference to whether, in respect of the wage rates for the female-dominated occupations identified in Table 17 above, any of the following three potential indicia of gender undervaluation are identified:

- (1) The wage rates are not the product of a proper work value assessment.
- (2) The classification structure and wage rates have been constructed on the basis of the alignment of a key classification with the C10 rate on the basis of a requirement for an Australian Qualifications Framework Level 3 qualification or equivalent.
- (3) Wage rates for employees requiring an undergraduate qualification have not been aligned with the C1 rate.

[99] Table 19 demonstrates that these 11 awards are subject to most or all of the above indicia of gender undervaluation, as relevant to each award. In particular, apart from aged carers under the SCHADS Award who have been the subject of the ongoing aged care work value proceedings, none have been subject to a work value assessment that has been free of gender assumptions.

Table 19: Potential indicia of gender undervaluation in 11 modern awards covering very-highly-feminised occupations

Award	Work value assessment?	Alignment with C10?	Alignment with C1?
<i>Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020</i> Dental Assistants	No	Yes	N/A
<i>Animal Care and Veterinary Services Award 2020</i> Veterinary Nurses	No	Yes	N/A
<i>Children's Services Award 2010</i> Child Carers	Yes* *but constrained by C10 Metals Framework Alignment Approach	Yes	N/A
<i>Educational Services (Schools) General Staff Award 2020</i> Education Aides	No	Yes	N/A

¹¹² [MA000018](#).

¹¹³ [MA000034](#).

¹¹⁴ [\[2024\] FWCFB 150](#).

Award	Work value assessment?	Alignment with C10?	Alignment with C1?
<i>Educational Services (Teachers) Award 2020</i> Early Childhood (Pre-primary School) Teachers	Yes	N/A	Yes
Primary School Teachers	Yes	N/A	Yes
<i>General Retail Industry Award 2020</i> Retail Managers	No	Yes	N/A
<i>Hair and Beauty Industry Award 2020</i> Beauty Therapists	No	Yes	N/A
Hairdressers	No	Yes	N/A
<i>Health Professionals and Support Services Award 2020</i> Receptionists	No	Yes	N/A
General Clerks	No	Yes	N/A
Medical Technicians	No	Yes	No
<i>Legal Services Award 2020</i> Conveyancers and Legal Executives	No	No	No
<i>Pharmacy Industry Award 2020</i> Pharmacy Sales Assistants	No	Yes	N/A
<i>Social, Community, Home Care and Disability Services Industry Award 2010</i> Disabled Carers	No	Yes	N/A
Aged Carers	Yes	No	N/A

The Stage 3 Aged Care decision

[100] The *Stage 3 Aged Care decision*¹¹⁵ was published on 15 March 2024. This decision, apart from issues of phasing in, operative date and classification definitions, finalised the wages outcome for the work value proceedings initiated by the Health Services Union, the Australian Nursing and Midwifery Federation (ANMF) and others in 2020 and 2021, except in respect of registered and enrolled nurses. Seven conclusions stated in the decision are relevant to our consideration of gender equality issues in this Review.

[101] *First*, in a general review of the history of award wage fixation at the federal level in Australia, the decision identified that the principle of ‘equal pay for work of equal value’ established by the *National Wage and Equal Pay Cases 1972*,¹¹⁶ which contemplated the conduct of broad-ranging work value inquiries including comparisons of work value between female classifications in awards covering female-dominated occupations with female or male classifications in different awards, was never properly implemented.¹¹⁷

[102] *Second*, the *Stage 3 Aged Care decision* affirmed the proposition that the C10 Metals Framework Alignment Approach constrained the proper work value assessment of female-dominated work by requiring, as at least the *prima facie* position, alignment with the

¹¹⁵ Ibid.

¹¹⁶ [1972] CthArbRp 1420, 147 CAR 172.

¹¹⁷ *Stage 3 Aged Care decision* [2024] FWCFB 150 [62]–[75].

classifications for male-dominated work in the Metal Industry Award based on a bare comparison of training qualifications.¹¹⁸

[103] *Third*, the decision also affirmed that the failure to properly implement the C1 classification rate for employees requiring an undergraduate degree particularly disadvantaged female workers because women are more award-reliant than men, the proportion of female award reliance is at its largest at higher-paid award classifications, including those requiring undergraduate qualifications, and there is a considerable overlap between those awards containing classifications requiring an undergraduate degree and those applying to female-dominated industries.¹¹⁹

[104] *Fourth*, the rates of pay for personal care workers, home care workers and assistants in nursing in the aged care sector covered by the Aged Care Award, the SCHADS Award and the Nurses Award had been the subject of historic gender undervaluation because they had been established on the basis of an alignment with the C10 rates based on a bare comparison of qualifications without any assessment of the work value of such workers ever having been carried out prior to the aged care work value proceedings the subject of the *Stage 3 Aged Care decision*.¹²⁰ As a result, the ‘invisible’ caring skills of interpersonal and contextual awareness, verbal and non-verbal communication, emotion management and dynamic workflow coordination ‘were effectively disregarded by the simplistic use of the masculinised C10 benchmark as the basis for the award pay structures for PCWs, HCWs and AINs’.¹²¹

[105] *Fifth*, the rates of pay for registered and enrolled nurses covered by the Nurses Award were also found to have been the subject of historic gender undervaluation. The pay rates for registered nurses are not properly fixed minimum rates because they have never been aligned with the C1 rate. Nursing has undergone a revolutionary transformation from an occupation which in 1958 was equated to a trade to a recognised profession for which a university degree is required for entry. However, the federal award system has failed to set minimum award rates of pay which properly recognise the addition to work value effected by this transformation. Because the rates of pay for enrolled nurses have been set on the basis of established relativities with registered nurses, this historic undervaluation has also applied to enrolled nurses in the aged care sector under the Nurses Award.¹²² Further, the same analysis would indicate that the work of all registered and enrolled nurses covered by the Nurses Award, not just those employed in the aged care sector, have been subject to a failure to properly apply the C10 Metals Framework Alignment Approach and gender undervaluation.¹²³

[106] *Sixth*, the minimum rate established by the SCHADS Award operating in conjunction with the equal remuneration order¹²⁴ (ERO) applicable to Certificate III-qualified social and

¹¹⁸ Ibid [92].

¹¹⁹ Ibid [94].

¹²⁰ Ibid [96]–[110], [134].

¹²¹ Ibid [156(1)]. PCW, HCW and AIN stand for personal care worker, home care worker and assistant in nursing respectively.

¹²² Ibid [111]–[135], [156(2)].

¹²³ Ibid [207(2)].

¹²⁴ *Equal Remuneration Case — Australian Municipal, Administrative, Clerical and Services Union and others* [PR525485](#); see also *Equal Remuneration Case* [\[2012\] FWAFB 1000](#), 208 IR 446 and *Equal Remuneration Case* [\[2012\] FWAFB 5184](#), 223 IR 410.

community service employees — currently \$1223.90 per week (rounded to the nearest 10 cents) — is appropriate to serve as a benchmark rate for Certificate III-qualified personal care workers, home care workers and assistants in nursing in the aged care sector since it has authoritatively been determined to be a rate which ensures equal remuneration for work of equal or comparable value and can be relied upon as being free of assumptions based on gender.¹²⁵ In addition, this benchmark rate:

...provides appropriate guidance as to the rectification of historic gender undervaluation in respect of female-dominated ‘caring’ work. The adoption of such a benchmark rate for work of this nature, in replacement of the C10 rate, would provide a stable anchor point for a modern award system which ensures gender equality in the valuation of work.¹²⁶

[107] *Seventh*, the proper application of the C10 Metals Framework Alignment Approach in a manner free from gender assumptions and consistent with the principles stated by the Full Bench in the *Teachers decision*¹²⁷ would result in the wage rate for a four-year-degree-qualified registered nurse in aged care being set at \$1470.80 per week, with this becoming the benchmark rate for the fixation of minimum wages for registered nurses in aged care. The fixation of this rate could confidently be regarded as one free from gender assumptions since it approximately equates to the rate (currently \$1466.77 per week) for a four year degree-qualified social and community services employee under the SCHADS Award and the ERO.¹²⁸

Other developments

[108] Two other developments which have occurred since the *AWR 2023 decision* are relevant to our consideration of the gender equality considerations. The first concerns the commencement of multi-enterprise bargaining via the new supported bargaining mechanism established by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) in the early childhood education and care (ECEC) sector covered by the CS Award and the *Educational Services (Teachers) Award 2020*¹²⁹ (EST Award). On 27 September 2023, a Full Bench of the Commission issued a decision¹³⁰ in which it granted an application made jointly by the United Workers’ Union (UWU), the Australian Education Union and the Independent Education Union of Australia for a supported bargaining authorisation under s 242(1) of the FW Act applicable to 64 employers operating in the ECEC sector. All 64 employers consented to the making of the authorisation. In its consideration of whether it was appropriate to make the authorisation sought under s 243(1)(b), the Full Bench said:

[55] The second matter is that over 90 per cent of the workforce in the ECEC sector is female, and there is no evidentiary basis to conclude that the position is any different in respect of the workforce of the employers who would be covered by the proposed multi-enterprise agreement. Having regard to our earlier finding that low rates of pay prevail in the ECEC sector, granting

¹²⁵ *Stage 3 Aged Care decision* [2024] FWCFB 150 [158]–[172].

¹²⁶ *Ibid* [173].

¹²⁷ *Application by Independent Education Union of Australia* [2021] FWCFB 2051 (*‘Teachers decision’*).

¹²⁸ *Stage 3 Aged Care decision* [2024] FWCFB 150 [204].

¹²⁹ MA000077.

¹³⁰ *Application by United Workers’ Union, Australian Education Union and Independent Education Union of Australia* [2023] FWCFB 176.

the authorisation applied for would open the prospect of improving rates of pay of a female-dominated workforce, which would be consistent with that part of the object of the FW Act in s 3(a) concerned with the promotion of gender equality. This weighs in favour of the making of the authorisation.¹³¹

[109] Bargaining facilitated by the Commission pursuant to the authorisation has proceeded since the above decision. The Australian Government has participated intensively in the bargaining process since it is recognised that it will need to be the primary funding source for any wage increases that result from the bargaining. The Budget has confirmed that the Australian Government is ‘committ[ed] to providing funding towards a wage increase for early childhood education and care workers, with details to be settled following Fair Work Commission processes’.¹³² No specific amount of funding is identified. The Budget notes that this support ‘builds on ... changes to the Fair Work Act to consider gender equality’.¹³³

[110] The second development is that, on 9 February 2024, the ANMF made an application¹³⁴ to increase wages for all nurses covered by the Nurses Award on work value grounds (ANMF work value application). The key aspect of the application is that the minimum rate of pay for a degree-qualified Registered Nurse Level 1, Pay Point 1 is sought to be increased to \$1472.60 per week — an amount virtually the same as the benchmark rate proposed in the *Stage 3 Aged Care decision* for a four-year-degree-qualified RN which, as explained in that decision, is in turn the same as the minimum rate for a four-year-degree-qualified and registered teacher under the EST Award and almost the same as for a four-year-degree-qualified social and community services employee under the SCHADS Award and the ERO. The ANMF’s application was one of the reasons why the Full Bench in the *Stage 3 Aged Care decision* determined not to finalise the pay rates and classification structure for registered and enrolled nurses in aged care as part of that decision. Those matters will be the subject of a separate hearing yet to be programmed.

Priorities in eliminating gender undervaluation in awards

[111] Considered together, the Stage 1 and Stage 2 reports, the *Stage 3 Aged Care decision* and the other developments described above make it possible to identify the priority areas for attention in eliminating gender undervaluation in modern awards. We can exclude from priority consideration for present purposes 10 of the 29 occupations set out in Table 17 above which are large and highly feminised:

- (1) Early Childhood (Pre-primary School) Teachers, Primary School Teachers (Primary Education) and Primary School Teachers (Combined Primary and Secondary Education) covered by the EST Award were recently the subject of a full assessment of work value in the 2021 *Teachers decision*. The rate for a four-year-degree-qualified and registered teacher now aligns with the C1 rate and also with the rate for a four-year-degree-qualified social and community services employee under the SCHADS award and the ERO. As a result, as the Stage 2 report shows, there are no indicia of gender undervaluation for the award rates of pay for these occupational categories.

¹³¹ Ibid.

¹³² Commonwealth of Australia, *Budget 2024–25: Budget Strategy and Outlook* (Budget Paper No. 1, 14 May 2024) 31.

¹³³ Ibid.

¹³⁴ Matter [AM2024/11](#).

- (2) Nursing Support and Personal Care workers in Aged Care and Residential Services covered by the Aged Care Award have been the subject of a comprehensive work value assessment in the aged care work value proceedings, culminating in the *Stage 3 Aged Care decision*. The pay rates determined for such employees in that decision establish, as discussed earlier, a benchmark rate for female-dominated caring work at the Certificate III level.
- (3) Registered Nurses in Aged Care and Residential Services have been the subject of a full work value assessment in the aged care work value proceedings. As discussed above, a benchmark rate has been identified, with the finalisation of a new classification structure being the outstanding issue. Midwives, Enrolled and Mothercraft Nurses, Registered Nurses and Nurse Managers in Hospitals, and Registered Nurses in General Practice Medical Services are the subject of the ANMF work value application which is, broadly speaking, founded on the same benchmark rate. These matters will be separately programmed for hearing, as earlier explained.

[112] Of the remaining occupation categories, the results of the Stage 1 and Stage 2 reports make apparent that there are seven categories covered by four awards which merit priority attention in our consideration of the elimination of gender undervaluation. First, Child Carers in Preschool Education and Child Care Services covered by the CS Award are comprised of 133,520 employees who are 96–97 per cent female. Of these employees, 51.4 per cent in Preschool and School Education and 75.2 per cent in Social Assistance Services have their rates of pay set in accordance with the minimum rates of pay in the CS Award. This means that, if the rates of pay in the CS Award undervalue the work of Child Carers for gender-related reasons, that undervaluation directly affects approximately 88,000 employees, nearly all of whom are women.

[113] The Stage 2 report shows that the C10 Metals Framework Alignment Approach has been applied to the CS Award on the basis that the initial rate of pay for a Certificate III-qualified Children’s Services Employee is aligned with the C10 rate in the *Manufacturing and Associated Industries and Occupations Award 2020*¹³⁵ (Manufacturing Award) (currently \$995.00 per week or \$26.18 per hour), and the rate for a diploma-qualified Children’s Services Employee is aligned with the C5 rate in the Manufacturing Award. For the reasons explained in the *Stage 1 Aged Care decision*,¹³⁶ the *Stage 3 Aged Care decision* and the *AWR 2023 decision*, that is an indicium of gender undervaluation. The rates of pay in the modern CS Award were primarily derived from the pre-modern *Children’s Services (Australian Capital Territory) Award 2005* and the *Children’s Services (Victoria) Award 2005*. The rates of pay in these pre-modern awards were the subject of a work value assessment in the 2005 *ACT Child Care decision*.¹³⁷ The fact that this work value assessment has taken place should, *prima facie*, be a negative indicator of gender undervaluation. However, as explained in the *Stage 3 Aged Care decision*:

¹³⁵ [MA000010](#).

¹³⁶ *Aged Care Award 2010; Nurses Award 2020; Social, Community, Home Care and Disability Services Industry Award 2010* [2022] FWCFB 200, 319 IR 127 (‘*Stage 1 Aged Care decision*’).

¹³⁷ *Application by Australian Liquor, Hospitality and Miscellaneous Workers Union* [2005] AIRC 28, [PR954938](#) (‘*ACT Child Care decision*’).

[92] A Full Bench of this Commission observed in *Application by United Voice and the Australian Education Union* that the *ACT Child Care decision* only considered the qualifications and training required and did not purport to otherwise compare the nature of the work or the level of skill and responsibility involved in performing the work. This is, we consider, illustrative of the way in which the C10 Metals Framework Alignment Approach constrained the proper work value assessment of female-dominated work by requiring, as at least as the *prima facie* position, alignment with the classifications for male-dominated work in the Metal Industry Award based on a bare comparison of training qualifications. The Full Bench in the *ACT Child Care decision* made it tolerably clear, in our view, that unconstrained by the C10 Metals Framework Alignment Approach it would have assessed the key classifications in the early childhood education and care awards under consideration as having higher work value than the identified equivalents in the Metal Industry Award.

[114] Indeed, the *ACT Child Care decision* made it explicit¹³⁸ that it was applying the approach to the fixation of minimum rates established by the *National Wage Case August 1989*¹³⁹ and confirmed in the *Paid Rates Review decision*.¹⁴⁰ Thus, the constraint effected by the C10 Metals Framework Alignment Approach upon the work value assessment conducted in the *ACT Child Care decision* is an indicator of gender undervaluation.

[115] As stated above, an important feature of the findings concerning the work value of personal care workers, home care workers and assistants in nursing in the *Stage 1 Aged Care decision* and the *Stage 3 Aged Care decision* was that they performed caring work involving the exercise of ‘invisible’ skills.¹⁴¹ This might otherwise be described as work which is subject to the ‘Five Vs’ indicators of gender undervaluation. It is probable that the work performed by Child Carers covered by the CS Award likewise involves the exercise of ‘invisible’ caring skills. It is sufficient for present purposes to refer to evidence accepted in the *ACT Child Care decision* that the role of a Child Carer includes:

- Providing a nurturing environment and interacting with the children in such a way that each individual child's emotional needs are met.
- Providing environments and experiences which are appropriately stimulating and engaging and interacting with the children in such a way that each child's cognitive, language, and creative development is stimulated.
- Providing experiences and environments that are supportive of children’s social development and facilitating the interactions of children in such a way that their social development in a diverse environment is encouraged.
- Supporting the needs of children and families from socially, culturally and linguistically diverse backgrounds, facilitating understanding of that diversity and providing an environment where all children and families feel valued and included.
- Observing babies and children sensitively and accurately and using a developmental analysis of those observations to assist in planning and caring appropriately for each child.

¹³⁸ Ibid [142]–[155].

¹³⁹ [1989] AIRC 525, 30 IR 81, [Print H9100](#).

¹⁴⁰ [1998] AIRC 1413, 123 IR 240, [Print Q7661](#).

¹⁴¹ See, eg, *Stage 1 Aged Care decision* [\[2022\] FWCFB 200](#), 319 IR 127 [759]–[857], [893]–[896]; *Stage 3 Aged Care decision* [\[2024\] FWCFB 150](#) [156].

- Planning appropriate programs for individual children and groups of children for all areas of their development and well-being.
- Guiding children's behaviour and managing situations where a child's behaviour is difficult and challenging.
- Communicating appropriately and sensitively with families in a way that is supportive of the child's well-being and development.¹⁴²

[116] Without making any finding about the issue at this stage, it is in our view apparent that consideration needs to be given to whether the benchmark rate for female-dominated 'caring' work identified in the *Stage 3 Aged Care decision* (see paragraph [106] above) should be applied to the CS Award. We also take into account that the Budget has allocated contingency funding for pay increases in the ECEC sector relating to the gender equality objectives of the FW Act.

[117] The second priority occupation for consideration is that of disability workers under the SCHADS Award. They are identified in the Stage 1 report as part of the occupation of 'Aged and Disabled Carers' covered by the Aged Care Award and the SCHADS Award. Insofar as aged carers are concerned, they have as earlier discussed been the subject of a comprehensive work value assessment in the aged care work value proceedings. The subcategory of such workers covered by the SCHADS Award is 'Home Care Employee—aged care', and the outcome of the *Stage 3 Aged Care decision* is that they will have a classification structure, and pay rates, equivalent to those of personal care workers in residential facilities covered by the Aged Care Award.¹⁴³ Prior to the interim 15 per cent wage increase awarded to aged care workers as a result of the *Stage 1 Aged Care decision*, the SCHADS Award made no distinction between home care workers servicing aged care clients and those servicing disability clients; there was a single classification stream of 'Home care employee'. The award of the interim increase for aged care workers required this classification stream to be split up between those involved in aged care and those in disability care.

[118] The result is plainly anomalous. In the *Stage 1 Aged Care decision* and the *Stage 3 Aged Care decision*, the work of home care workers in aged care covered by the SCHADS Award was found to have been the subject of gender undervaluation having regard to the female domination of that occupation, the existence of the indicia of gender undervaluation in their history of award regulation and the nature of the 'invisible' caring skills exercised in their work. As the Stage 1 and Stage 2 reports indicate, there is no reason to think that the position of home care workers servicing disability clients is any different. Indeed, as found in the *Stage 3 Aged Care decision*, some employers and employees covered by the SCHADS Award undertake a mixture of aged and disability home care services. In our view, that warrants a priority consideration of whether the classifications and rates of pay for Home Care Employees—Disability Care under the SCHADS Award should return to alignment with those for Home Care Employees—Aged Care on the basis of the outcome determined in the *Stage 3 Aged Care decision*.

[119] Indeed, we consider that a broader review of all classifications in the SCHADS Award is timely. As the Stage 2 report demonstrates, the development of the SCHADS Award during

¹⁴² [2005] AIRC 28, [PR954938](#) [211].

¹⁴³ [\[2024\] FWCFB 150](#) [199]–[201].

the award modernisation process involved an amalgam of provisions from various pre-modern and State awards covering various different parts of the social services sector. This resulted in the SCHADS Award containing three different classification streams, which has itself caused difficulty in the application of the award at the workplace level. This has been exacerbated by the operation of the ERO rates upon one of the streams and now the application of the aged care wage increases on part of one of the other streams. In our view, consideration needs to be given to whether the classifications in the SCHADS Award can be integrated, or at least aligned, on the basis that the whole of the coverage of the award is female-dominated and is likely to involve the exercise of ‘invisible’ caring skills. This would require consideration as to whether the ERO rates should be incorporated into the SCHADS Award and the ERO itself revoked.

[120] The third priority area we identify is made up of the occupations of Medical Technicians, Dental Assistants and Psychologists covered by the HPSS Award and also Dental Assistants covered by the *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020*.¹⁴⁴ The Stage 2 report identified indicia of gender undervaluation in respect of these two awards, and there are a range of other overlapping issues arising under these awards including the possibility that some degree of caring-type work is involved and the non-application of the C1 alignment to classifications requiring an undergraduate degree. A consideration of the HPSS Award may also need to involve an examination as to whether the professional classifications in that award generally (not just psychologists) should be aligned with the C1 rate in accordance with the methodology adopted in the *Teachers decision* and the *Stage 3 Aged Care decision*.

[121] Independent of the Stage 1 and Stage 2 reports, we consider that there is a fourth priority occupation for consideration, namely Pharmacists covered by the *Pharmacy Industry Award 2020*¹⁴⁵ (Pharmacy Award). Almost two-thirds of pharmacists are female.¹⁴⁶ In connection with the issue of the potential gender undervaluation of award classifications requiring an undergraduate degree due to a failure to align such classifications with the C1 rate in the metal industry framework, the *AWR 2023 decision* stated:

... it was observed in the [2018] Pharmacy Decision that the minimum wage rate for a degree-qualified pharmacist was (at the time of the decision in 2018) less than the C3 classification rate in the Manufacturing Award payable for an employee holding an Advanced Diploma or equivalent training, with the Full Bench stating that this constituted a potential work value issue.¹⁴⁷

[122] On 20 December 2022, the Association of Professional Engineers, Scientists and Managers, Australia lodged an application to vary the Pharmacy Award to increase the rates of pay for pharmacy interns. The application was the subject of conferences conducted by the presiding member on 28 February and 5 June 2023. On 9 June 2023, the presiding member published a recommendation in respect of the matter which referred to the discussion of the C1 alignment issue in the *AWR 2023 decision*, including the specific reference to the Pharmacy Award, and went on to state:

¹⁴⁴ [MA000115](#).

¹⁴⁵ [MA000012](#).

¹⁴⁶ Stage 1 report Table A.5: 64.3 per cent.

¹⁴⁷ [\[2023\] FWCFB 3500](#), 323 IR 332 [134].

[11] ... my *recommendation* is that the parties engage in a more holistic reconsideration of the classification structure in the Award involving the coordinated resolution of three intersecting issues:

- (1) The establishment of a benchmark classification for a four-year degree qualified, fully practising pharmacist with a properly-fixed rate of pay aligned with the notional C1 classification in the Metal Industry Award classification scale. The Full Bench decision in *Application by Independent Education Union of Australia* ... provides the methodology for this exercise.
- (2) The recognition of any work value changes likely to arise as a result of pharmacists being authorised to prescribe certain medicines.
- (3) The establishment of an appropriate relativity between the Pharmacist or benchmark classification and the Pharmacy Intern classifications.¹⁴⁸

[123] There has been no advice received that any action has been taken in response to the above recommendation. Because the work value issue concerning pharmacists was identified as far back as 2018 and has gender implications, we consider that the matters identified in the presiding member's recommendation must now be addressed.

[124] We set out our conclusions about the appropriate course of action to be taken in respect of these priority areas later in this decision.

[125] The ACTU, in response to the Stage 1 and Stage 2 reports, made a detailed submission concerning what steps should be taken in this Review concerning the issue of gender undervaluation. The submission identifies a number of occupational groups covered by modern awards which, in the ACTU's view, require priority attention. To a significant extent, the ACTU's proposed priority awards overlap with those we have identified above. However, the ACTU priorities also include the following:

- Veterinary Nurses and Veterinary Surgeons covered by the *Animal Care and Veterinary Services Award 2020*.¹⁴⁹
- Education Aides covered by the *Educational Services (Schools) General Staff Award 2020*.¹⁵⁰
- Clothing Retail Assistants and Retail Managers covered by the General Retail Award.
- Hairdressers and Beauty Therapists covered by the *Hair and Beauty Industry Award 2020*¹⁵¹ (Hair and Beauty Award).
- Receptionists and General Clerks covered by the HPSS Award.

[126] The Flight Attendants' Association of Australia (FAAA) submitted that, notwithstanding that it was not dealt with in the Stage 1 or Stage 2 reports, the *Aircraft Cabin*

¹⁴⁸ [AM2022/34 Recommendation](#), 9 June 2023.

¹⁴⁹ [MA000118](#).

¹⁵⁰ [MA000076](#).

¹⁵¹ [MA000005](#).

*Crew Award 2020*¹⁵² (ACC Award) should be the subject of review on the basis that it was subject to indicia of gender undervaluation, including that it had not been the subject of work value consideration for many decades, contains low rates of pay, arose from a previous history of gender-based award coverage, and covers a workforce which is female-dominated. The FAAA also submitted more specifically that the classification of ‘Cabin Crew Member’ in clause 14.2 of the ACC Award, for which a Certificate III qualification is required, has a minimum weekly award rate of pay (\$975.60) that is less than the C10 rate (\$995.00). In this respect, it submitted that we should award a 2 per cent increase as part of this Review to rectify this.

[127] Professor Meg Smith and Dr Michael Lyons of Western Sydney University also made an independent submission that it is highly likely that the minimum rates of pay for Education Aides under the *Educational Services (Schools) General Staff Award 2020* are subject to gender-based undervaluation due to the application of the C10 Metals Framework Alignment Approach and the lack of any past work value assessment. They pointed to the making of a new award for public sector school administrative and support staff in NSW by the Industrial Relations Commission of NSW in 2019 pursuant to the equal remuneration principle applicable in that jurisdiction which involved a restructuring of classifications and significant pay increases.

[128] We do not consider that the additional occupational categories identified by the ACTU, the FAAA, and Professor Smith/Dr Lyons warrant the same degree of priority consideration as the occupations we have earlier identified. It is less apparent that employees in the above categories exercise ‘invisible’ caring skills of the same kind or degree as those considered in the *Stage 3 Aged Care decision*. However, that should not be taken as constituting the expression of any view as to whether the award rates of pay for the above occupations have been the subject of gender undervaluation. In the case of Education Aides and aircraft cabin crew covered by the ACC Award, the level of modern award reliance is not high. These occupations may arise for further consideration once the priority matters we have identified have been dealt with.

[129] We emphasise that our identification of priority matters is not intended to constrain the capacity of any party with standing under s 158 of the FW Act to make an application to vary the minimum rates of pay in any of the above modern awards outside of the annual wage review process on work value grounds. In the case of the matters raised by the FAAA, the Commission will undertake a research project concerning the history of the ACC Award which might assist in informing any future proceedings to vary that award.

5.3 Female participation in the workforce

[130] The female participation rate has increased slightly since the *AWR 2023 decision*, and has remained at a historically high level. This has caused the overall participation rate to also increase slightly, together with a smaller increase in the male participation rate. This represents a continuation of the trend over the last decade whereby the male participation rate has remained largely stable or fallen but the female participation rate has continually increased and been the main driver of increases to the overall participation rate.

¹⁵² [MA000047](#).

Table 20: Participation rate by gender, seasonally adjusted

	Males (%)	Females (%)	Persons (%)
April 2014	71.0	58.5	64.7
April 2023	70.7	62.4	66.5
April 2024	70.8	62.8	66.7

Source: ABS, '[Labour Force — April 2024](#)' (16 May 2024).

[131] However, it is clear that there remain significant impediments to the fuller participation of women in the workforce. The gap between male and female participation rates remains significant. Moreover, women are far more likely to work part-time hours than men, with 43.4 per cent of women working part-time hours compared to only 19.9 per cent of men.¹⁵³ That this is not simply a matter of gender preference is demonstrated by the underemployment rate: the rate is 8.0 per cent for women compared to 5.3 per cent for men (with an overall rate of 6.6 per cent).¹⁵⁴ This is to be compared to the unemployment rate, where the female rate is lower than the male rate.¹⁵⁵

[132] In the *AWR 2023 decision*,¹⁵⁶ the Expert Panel said that because the cohort of modern award-reliant employees is female-dominated, it is possible that increases to modern award minimum wages which exceed those produced by the labour market generally may attract more women into those award-reliant industries and occupations. We consider that this effect is more likely if, through rectification of gender undervaluation in award minimum rates of pay, occupational groups which are feminised to a very high degree and are significantly award-reliant receive higher wage increases than workers generally.

6. Job security

[133] In the context of this Review, the relevance of the consideration concerning the need to improve access to secure work across the economy (s 134(1)(aa)) is primarily whether the review outcome might affect the capacity of employers in the future to continue to offer, or maintain permanent employment.¹⁵⁷ As discussed earlier, the labour market remains healthy, albeit not quite as strong compared to the position at the time of last year's Review. However, the composition of growth in employment has shifted away from a predominance of full-time jobs to one of part-time jobs.

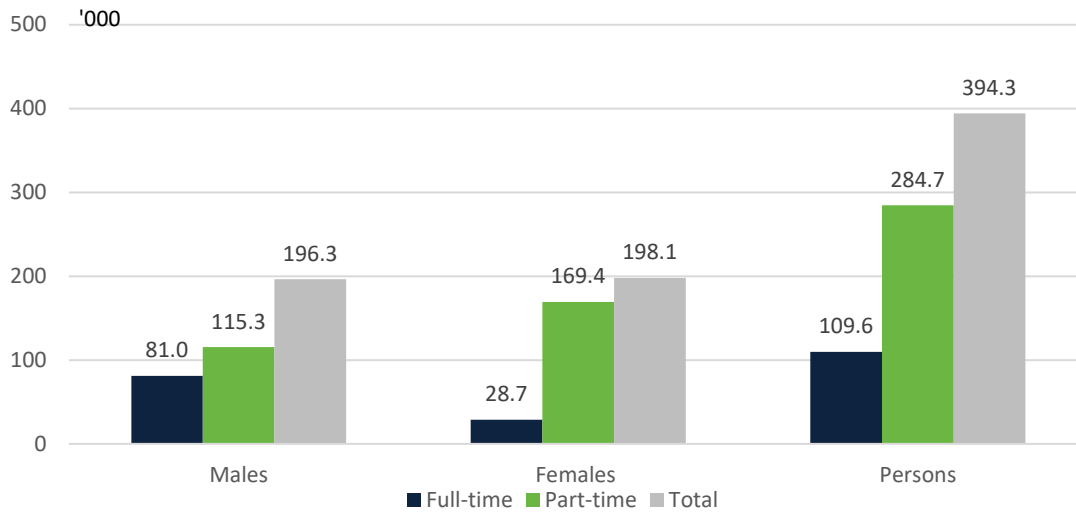
¹⁵³ [Statistical Report — Annual Wage Review 2023–24](#) (Fair Work Commission, 16 May 2024) Chart 6.8.

¹⁵⁴ *Ibid* Chart 6.3.

¹⁵⁵ *Ibid* Chart 6.2.

¹⁵⁶ [\[2023\] FWCFB 3500](#), 323 IR 332 [141].

¹⁵⁷ *Ibid* [142].

Chart 8: Change in full-time, part-time and total employment by gender, April 2023 to April 2024

Source: [Statistical Report — Annual Wage Review 2023–24](#) (Fair Work Commission, 16 May 2024) Chart 6.10; ABS, [Labour Force — April 2024](#) (16 May 2024).

[134] This has not led to any significant change in the proportion of the workforce overall who are casual employees, which has only increased slightly from 22.1 per cent in February 2023 to 22.4 per cent in February 2024.¹⁵⁸ However, as we earlier observed, there appears to have been a significant increase in the proportion of award-reliant employees who are casuals over the most recently measured two-year period (May 2021 – May 2023).¹⁵⁹ Because this data predates the *AWR 2023 decision*, it obviously cannot be the result of the increase awarded in that decision. One possible explanation may be that, because of the strength in the labour market in the period measured, permanent employees have had a greater capacity to move to above-award wage levels.

[135] The disproportionate extent of insecure casual employment amongst award-reliant employees requires sensitivity to the possibility that a higher level of increase to minimum award wage rates arising from this Review, in the context of a weakening labour market, may affect the number of hours of work assigned to such employees and thus diminish their income security. However, the main factor bearing upon the strength of the labour market, and hence the job security of employees, will continue to be the direction of monetary policy and the consequences this has for economic growth.

7. Collective bargaining

[136] Insofar as, in respect of modern awards, we are required to consider the need to encourage collective bargaining (s 134(1)(b)), this requires attention to be given to whether the exercise of modern award powers may affect the extent to which enterprise bargaining is occurring.¹⁶⁰ The trend since 2012 has been a reduction in enterprise bargaining, measured in terms of the number of enterprise agreements approved each quarter by the Commission, the

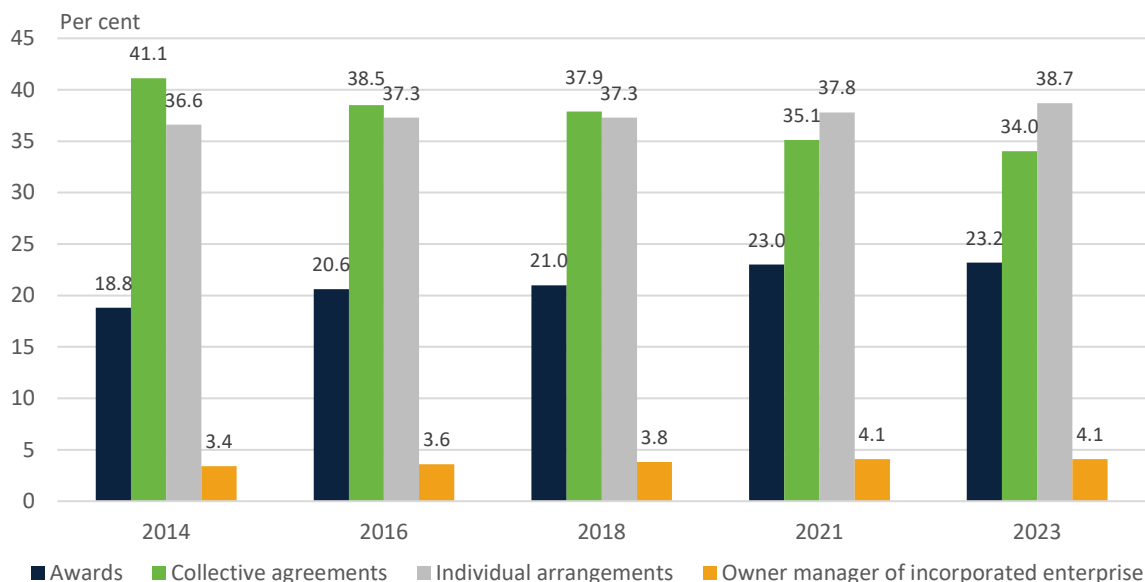
¹⁵⁸ [Statistical Report — Annual Wage Review 2023–24](#) (Fair Work Commission, 16 May 2024) Chart 12.1.

¹⁵⁹ *Ibid* Table 7.5.

¹⁶⁰ *AWR 2023 decision* [\[2023\] FWCFB 3500](#), 323 IR 332 [148].

number of employees covered by agreements, and the proportion of the workforce which has its pay set by a collective agreement.¹⁶¹ In relation to the last measure, the proportion has, according to EEH data, declined from 41.1 per cent in May 2014 to 34.0 per cent in May 2023.

Chart 9: Method of setting pay



Source: *Statistical Report — Annual Wage Review 2023–24* (Fair Work Commission, 16 May 2024) Chart 7.1.

[137] The number of enterprise agreements approved, and the number of employees covered, were disrupted by the COVID-19 pandemic, but in 2022–23 stabilised at levels broadly comparable to 2018–19.

Table 21: Number of enterprise agreements and employees covered, 2018 to 2023

	Number of enterprise agreements approved	Employees covered ('000s)
2018	3864	668.5
2019	5283	933.3
2020	3281	521.5
2021	4363	546.7
2022	4166	837.6
2023	4108	836.0

Source: *Statistical Report — Annual Wage Review 2023–24* (Fair Work Commission, 16 May 2024) Table 10.1; Department of Employment and Workplace Relations, *Trends in Federal Enterprise Bargaining*, December quarter 2023.

[138] More recently, the Commission’s own data concerning the number of applications for approval of enterprise agreements shows that there was a significant increase in the number of such applications in the December quarter 2023 and the March quarter 2024 compared to the equivalent quarters in the year before and the five-year average for those quarters.

¹⁶¹ Ibid [149]–[151].

Table 22: Number of applications for approval of enterprise agreements

Quarter	2023–24	2022–23	5-year average	% difference — previous year	% difference — 5-year average
September	1,131	1,138	1,155	-0.6	-2.1
December	1,542	1,267	1,328	+ 21.7	+ 16.1
March	909	696	737	+ 30.6	+ 23.3

[139] We affirm the view stated in the *AWR 2019 decision*,¹⁶² the *AWR 2021 decision*¹⁶³ and the *AWR 2023 decision*¹⁶⁴ that the long-term decline in enterprise bargaining is likely to be the result of the impact of a range of factors but that the available data does not establish a causal link between this decline and annual wage review decisions over the last decade. No party in this Review advanced any analysis based on the data that suggests we should revisit this conclusion. Nonetheless, various parties in various ways submitted that the need to encourage enterprise bargaining supported an increase to minimum award wage rates that was significantly less than the CPI. Most notably, the ACCI submitted that ‘...further increases in the minimum and modern award wages above the rate of average wage growth will disincentiv[ise] enterprise bargaining...’.¹⁶⁵ We take this to be a reference to the *AWR 2023 decision*, which did increase the NMW and modern award wage rates by an amount above the rate of average wage growth. The data in Table 22 above, which suggests that a significant increase in enterprise bargaining has occurred since the *AWR 2023 decision*, does not support the ACCI’s submission. In the *AWR 2023 decision*, the Expert Panel said that the major amendments to the enterprise bargaining and enterprise agreement approval provisions of the FW Act effected by the Secure Jobs, Better Pay Act constituted ‘[t]he factor most likely to influence the extent of enterprise bargaining over the next 12 months’.¹⁶⁶ We consider that this factor is a plausible explanation for the data in Table 22, but we emphasise that it is too early to tell whether the trend exhibited in that data will be sustained.

8. Consideration

8.1 General conclusions

[140] Our overall assessment of economic conditions is that the Australian economy is ending 2023–24 with good prospects of realising a ‘soft landing’: avoiding a recession while lowering inflation and preserving the labour market at or near full employment. A sharp tightening in monetary policy commenced in May 2022, with the official cash rate target rising from 0.10 to 4.35 per cent. While interest rates have not risen as much in Australia as in comparable economies, the effect of monetary policy is more pronounced here because of comparatively high levels of household debt and the high proportion of that debt which is subject to variable interest rates.¹⁶⁷

¹⁶² *Annual Wage Review 2018–19* [2019] FWCFB 3500, 289 IR 316 [372].

¹⁶³ *Annual Wage Review 2020–21* [2021] FWCFB 3500, 307 IR 203 [160].

¹⁶⁴ [2023] FWCFB 3500, 323 IR 332 [152]–[154].

¹⁶⁵ Australian Chamber of Commerce and Industry submission (28 March 2024) 2.

¹⁶⁶ [2023] FWCFB 3500, 323 IR 332 [155].

¹⁶⁷ International Monetary Fund, *World Economic Outlook: Steady but Slow: Resilience amid Divergence* (Report, April 2024) 54–5, Figure 2.12.

[141] Higher interest rates have forced many households to reappraise their financial circumstances and find means of containing or reducing their spending. During 2023, household consumption growth steadily fell and is forecast to be near zero over 2023–24, which is notable when set against a backdrop of very high population growth. Weak consumption growth is the main factor that explains the slowdown in economic activity, from 2.4 per cent in 2022 to 1.5 per cent in 2023. This slowdown is likely to have reached a trough in the first half of 2024, with forecasts of a pick-up in economic activity in 2024–25.

[142] Whether the monetary policy tightening cycle has peaked depends upon the trajectory of inflation over coming months. Annual inflation reached a high of 7.8 per cent over the year ending December 2022, its highest rate since 1990, and has since fallen each quarter to reach 3.6 per cent over the year ending March 2024. While inflation has fallen by more than half from its peak, it remains above the RBA’s target band of 2–3 per cent. There are some concerns that it may persist above the band for longer than set out in official forecasts. The government is forecasting that the CPI could reach 3 per cent or lower by the end of 2024, assisted by Budget measures which lower the out-of-pocket costs to consumers of electricity and renters in receipt of Commonwealth Rent Assistance. However, we note that the RBA’s latest forecast made ahead of the Budget is that inflation will persist above its target band for longer.

[143] A falling rate of inflation for goods has been countered by persistently high inflation for services. Rising nominal labour costs, the highest in many years, have been a major factor contributing to higher services inflation. That said, the concern expressed by some commentators that Australia was heading for a wage-price spiral episode did not eventuate, and recent evidence is that wages growth may have peaked. In aggregate, wage increases have lagged inflation until very recently, with annual wage growth nudging above inflation only in the past two quarters. Most workers have experienced a steep decline in real wages whether covered by awards, collective or individual agreements, and irrespective of their position in the wage distribution.

[144] In normal circumstances, the inflationary impact of increases in labour costs are attenuated by productivity growth, but recent productivity patterns have been abnormal. There were solid gains in GDP per hour worked during 2020 and 2021, but these were more than fully eroded over the course of 2022 and 2023, returning productivity levels to what they had been prior to the pandemic. The pandemic explains some of this abnormal pattern, as lockdowns saw a reduction in hours worked by lower-productivity workers pushing up productivity growth, which was then thrown into reverse as restrictions were lifted. More recently, the spurt in population growth following the reopening of the borders to migrant workers has made the economy less capital-intensive, lowering productivity. Official forecasts are for productivity growth to return toward its long run trend of 1.2 per cent a year, but there is a greater degree of uncertainty around these forecasts than is common.

[145] The slowdown in economic activity has, to date, not come at the cost of appreciably higher unemployment. There has been some softening in labour market conditions, with the adjustment coming in the form of a decline in hours worked — 0.8 per cent less over the year ending April 2024 — rather than in jobs. Employment has grown at a similar rate to the labour force — 2.8 per cent and 3.2 per cent, respectively. As a consequence, the unemployment rate has drifted up slowly to reach 4.1 per cent in April 2024. There are, as always, differences across industries, with some industries that are more award-reliant than others having seen a

sharper drop in labour demand. There were cuts to employment as well as hours in Accommodation and food services, and a decline in employment in Retail trade. These two sectors alone employ over a third of all modern award-reliant employees. Official forecasts are for employment growth to slow in 2024–25, with the unemployment rate to drift up further but remain at a rate near full employment.

[146] Many workers and many households have seen a deterioration in their disposable incomes in the past couple of years. Inflation has outpaced increases in wages, loan repayments have risen for many homeowners with a mortgage, rents and energy costs have risen sharply, and many workers paid more income tax. There are clear signs of a return to positive income growth in the coming year. As mentioned, wages are now rising slightly faster than inflation, and are expected to continue to do so. All households will benefit from the government’s energy rebate, and all income taxpayers will face lower average tax rates than they did in 2023–24. It is this rise in real disposable income that is expected to be the basis of the pick-up in economic activity in 2024–25.

[147] Despite the increase of 5.75 per cent to modern award minimum wage rates in the *AWR 2023 decision*, the position remains that real wages for modern award-reliant employees are lower than they were five years ago. This has undoubtedly placed financial stress upon such employees who, as earlier explained, are disproportionately casual, part-time, low paid and female and are therefore most vulnerable to adverse changes in economic circumstances. The NMW was increased by a higher amount in 2023 and, as a result, to the extent that there are any employees paid in accordance with the NMW, they have not suffered the same decline in real wages over the last five years.

[148] Against the economic backdrop we have described, a number of the parties which have made submissions to this Review have advanced specific proposals for wage adjustments. The quantum of wage increases proposed vary widely. Although, as earlier stated, it is not our task to adjudicate between the competing positions, it is appropriate for us to make some brief comments about the main proposals. The ACCI proposed that there be a uniform increase to the NMW and modern award minimum rates of no more than 2 per cent, which it characterised as amounting to 2.5 per cent once the increase in the Superannuation Guarantee contribution rate effective from 1 July 2024 is taken into account. This proposal would result in a further significant real wage cut for modern award-reliant employees in circumstances where such employees are already subject to financial stress for the reasons earlier explained. The ACCI’s justification, as articulated at the hearing before us on 22 May 2024, was that ‘all parts of the economy must play their role’¹⁶⁸ in order for inflation to return to the RBA’s target range of 2–3 per cent. The principal difficulty with this proposition is that it would require modern award-reliant employees, who are by definition the lowest-paid group of employees in each industry sector or occupation in which they are employed, to be required to take a real wage cut over the forthcoming year. By contrast, it is forecast that wages growth in aggregate will exceed inflation over the next 12 months. Because the wages of modern award-reliant employees constitute less than 11 per cent of the national wage bill, the adoption of the ACCI’s proposal would have no significant effect on the WPI or, as a consequence, on lowering the rate of inflation. Further, the effect of the proposal would be to wholly or substantially negate the benefit of the cost-of-living measures announced in the Budget which are intended to mitigate financial stress upon

¹⁶⁸ Transcript, 22 May 2024 PN 322.

households. Thus, we consider that the ACCI's proposal gives inadequate weight to 'relative living standards and the needs of the low paid' (ss 134(1)(a) and 284(1)(c)) and would not maintain 'a safety net of fair minimum wages' (s 284(1)). Proposals advanced by other employer bodies, including the Ai Group, most of which involved increases of less than 3 per cent, suffer from the same difficulty.

[149] The ACTU's proposal for a 5 per cent increase to the NMW and modern award wage rates is directed at restoring losses in real wages in recent years and continuing progress towards returning the NMW to being a 'living wage'.¹⁶⁹ However, an important aspect of the ACTU's claim is that the increase it proposes, which is well above the current and forecast rates of inflation, would not be inflationary because labour productivity has returned to or exceeded pre-pandemic levels and will be sustained because of strong growth in business investment and the Australian Government's productivity agenda.

[150] We do not consider that there is a sound basis at this time to award wage increases that are significantly above the CPI, which remains higher than the RBA's target range. The position concerning productivity growth remains highly uncertain, as the RBA and the Budget emphasise. To date, there have only been two successive quarters of positive productivity growth since the contraction which occurred in 2021–22 and 2022–23. As previous annual wage review decisions have stated, productivity changes are best considered over multi-year cycles since this tends to even out short-term fluctuations in the number of hours worked.¹⁷⁰ The position is that there has been no net growth in labour productivity for four years.

8.2 *The NMW*

[151] We have set out earlier in this decision the way in which we have taken into account the matters prescribed by s 284(1) of the FW Act. Our conclusion is that the NMW should be increased by 3.75 per cent in order to maintain a safety net of fair minimum wages. This is an amount which will retain the real value of the enhanced NMW established in the *AWR 2023 decision* and will thus appropriately address the relative living standards and needs of those low paid employees to whom the NMW may apply (s 284(1)(c)). As explained above, further research undertaken since the *AWR 2023 decision* leads us to infer that the number of NMW-reliant employees is significantly less than the 0.7 per cent of the workforce estimated in that decision and also lower than the Australian Government's current estimate of 0.25 per cent of the workforce. That means that the increase we have decided to award will not have any discernible macroeconomic effects or affect the level of workforce participation, thus rendering the matters in ss 284(1)(a) and (b) of neutral weight in our consideration of the NMW. If the gender balance of those employees who are NMW-reliant reflects that of modern award-reliant employees, it is likely that the increase will disproportionately benefit women. However, for the purpose of s 284(1)(aa), the practical effect upon the achievement of gender equality will be negligible.

[152] In respect of s 284(1)(e), the special NMWs applicable to junior employees, employees to whom training arrangements apply and employees with a disability who are award/agreement free will be as set out in section 9 of this decision. The casual loading for award/agreement free

¹⁶⁹ Australian Council of Trade Unions submission (28 March 2024) [4].

¹⁷⁰ *AWR 2023 decision* [2023] FWCFB 3500, 323 IR 332 [87].

employees will remain at 25 per cent. Consistent with s 287 of the FW Act, the NMW order we make by this decision will come into operation on 1 July 2024.

[153] In the *AWR 2023 decision*, it was envisaged that the NMW would be the subject of further review having regard to, among other things, the budget standards research referred to in that decision. As explained in paragraph [84] above, we do not consider that such a review is practicable in the absence of anything which permits the identification of the categories and characteristics of NMW-reliant employees, if any. We invite parties in next year's annual wage review to present any evidence or other material which might advance our understanding of the practical scope of application of the NMW.

8.3 Modern award minimum wage rates

[154] The *AWR 2023 decision* stated the principle that '... in the medium to long term, it is desirable that modern award minimum wages maintain their real value and increase in line with the trend rate of national productivity growth'.¹⁷¹ We affirm that principle, which operates subject to the implicit qualification that in the immediate circumstances of particular annual wage reviews it may not be possible to adhere to that objective.

[155] In this Review, the cost-of-living pressures continuing to be experienced by modern award-reliant employees, especially those who are low paid and live in low-income households, is a primary consideration even though inflation is considerably lower than it was at the time of last year's Review. Modern award minimum wage rates remain lower, in real terms, than what they were five years ago, notwithstanding the 5.75 per cent increase which resulted from last year's Review, and this has caused financial stress in employee households. The current CPI rate, as we have earlier stated, does not fully capture the extent of this financial stress, since the CPI inflation rate for non-discretionary goods is 4.2 per cent and the LCI rate for employee households is 6.5 per cent. This weighs strongly against there being any further reduction in real modern award wage rates resulting from this Review.

[156] At the same time, however, we do not consider that the current economic circumstances provide a basis for a level of wage increase significantly above the CPI. In the *AWR 2023 decision*, the Expert Panel stated:

Future Reviews, if conducted in a lower inflationary environment, are likely to provide an opportunity to make up the loss of real value in modern award minimum wages rates which has occurred and return to the path of real growth which prevailed prior to the COVID-19 pandemic.¹⁷²

[157] We do not consider that the opportunity referred to has yet arisen. Inflation remains above the RBA's target range and, as we have explained in respect of the ACTU's submission, there are as yet insufficient grounds for confidence that productivity growth has returned to its pre-pandemic average level. The position for inflation and productivity remains somewhat uncertain, and this calls for a degree of caution on our part. We also take into account that, on the premise that there is no reduction in real wages for modern award-reliant employees

¹⁷¹ Ibid [179].

¹⁷² Ibid.

resulting from this decision, their real household disposable incomes will increase over the next 12 months because of the Stage 3 tax cuts and the Budget cost-of-living measures.

[158] There is no basis to conclude that the increase of 5.75 per cent award in the *AWR 2023 decision* had any discernible disemployment effects. The slight weakening in a still-strong labour market over the last 12 months, and the more marked weakening in employment in the Accommodation and food services and Retail trade sectors, is primarily attributable to the tightened monetary policy maintained by the RBA and its effect on household spending. Accordingly, we have no reason to consider that any amount of increase to modern award minimum wage rates within reasonable parameters will detrimentally affect the labour market having regard to the RBA and Budget forecasts for employment growth, unemployment and participation. However, because of the extent to which modern award-reliant employees are casual or work part-time hours, it is necessary to pay close attention to any reduction in hours worked in the sectors in which such employees are concentrated. The current circumstances in the Accommodation and food services and Retail trade sectors have operated as a moderating factor in our determination of the increase to be awarded.

[159] The solid profit growth in non-mining industries might suggest that the cost to business overall of any reasonable increase flowing from this Review would not present as a major concern. However, it is necessary to take into account two additional matters. First, profits fell in the Accommodation and food services sector and were flat in the Retail trade sector in 2023 which, again, was a product of the reduction in discretionary household spending. Second, the Superannuation Guarantee contribution rate will increase by a further 0.5 per cent effective from 1 July 2024, bringing the total contribution rate to 11.5 per cent. This is a cost to employers which, if they employ modern award-reliant workers, they will have to bear simultaneously with the cost of modern award minimum wage increases flowing from this Review. We have treated these matters as moderating factors.

[160] Having regard to and appropriately weighing the matters we are required to take into account under ss 134(1) and 284(1) of the FW Act, the object of the FW Act in s 3, and the rate of the NMW we have set, we have decided that all minimum wage rates in modern awards shall be increased by 3.75 per cent. In accordance with s 286, the variations to modern awards to increase minimum wage rates by this amount will come into operation on 1 July 2024.

[161] The increase we have determined to award is broadly consistent with projected wage growth for the economy generally across 2024. Based on the analysis in paragraphs [36]–[39] above, we estimate this increase will contribute approximately 0.4 of a percentage point to the WPI for the 12 months to March 2025. This is consistent, in our view, with the forecast return of inflation to the RBA’s target range in 2025.

8.4 *The gender equality agenda*

[162] Having earlier identified what we consider to be the priority areas for consideration in respect of ‘the need to achieve gender equality’ (ss 134(1)(ab) and 284(1)(aa) of the FW Act), it remains necessary for us to determine how these priorities should appropriately be actioned.

[163] The ACTU submitted that, as part of this Review, an interim wage increase of 4 per cent (additional to the 5 per cent general increase to the NMW and all modern awards it proposes) should be awarded in the following two categories of awards:

- (1) ‘Group 1’ adjustments to awards which cover female-dominated ‘caring’ work, as an initial step in the application of the benchmark rate for such employees identified in the *Stage 3 Aged Care decision* (see paragraph [106] above).
- (2) ‘Group 2’ adjustments to awards containing classifications requiring an undergraduate degree, as an initial step to aligning such classifications with the C1(a) and C2(b) rates in the C10 Metals Framework, as per the approach taken in the *Teachers decision* and endorsed in the *Stage 3 Aged Care decision* (see paragraph [107] above).

[164] The ACTU also proposed that, separate to this Review, the Commission should initiate a work value assessment process to consider whether the C10 rate in the Manufacturing Award is appropriate to be retained as the benchmark for female-dominated occupations that do not *prima facie* involve ‘care’ work and, if not, to identify a new benchmark. The ACTU identified the General Retail Award, the Hair and Beauty Award, the *Legal Services Award 2020*,¹⁷³ and the Pharmacy Award as awards falling into this category. It contemplates that process would involve four steps. The first would be to identify priority awards by using data from the Stage 1 report to identify occupations at the 4-digit ANZSCO¹⁷⁴ level comprising 70 per cent or more female employees, cross-referencing to the 4-digit ANZSIC¹⁷⁵ code in the Census data for female employees, and mapping ANZSIC codes based on EEH data and the Commission’s mapping exercise. The second step would involve targeted consultations concerning the utilisation of invisible skills in the priority awards, with the aim being to establish a consensus as to a common denominator of skills exercised, but not recognised, in the classification structure of the relevant awards. The third step would be to assess whether the C10 benchmark is appropriate and, if not, to establish (a) replacement benchmark(s) for proper valuation. The final step would be to award interim adjustments to minimum wages based on the new benchmark(s) where gender-based undervaluation is identified in steps 1–3.

[165] The UWU similarly submitted that the Stage 2 report had found indicia of gender-based undervaluation in 12 awards and that, to deal with this, we should initially award an interim increase to minimum rates in awards relating to the ‘care sector’ where there is evidence of gender pay inequity, and then map out a process for addressing complex undervaluation beyond the timeline of the Review.

[166] The employer organisations which made submissions to the Review generally opposed the proposal advanced by the ACTU and the UWU that interim wage increases be awarded in this Review as an initial step in rectifying gender-based undervaluation in modern awards. In particular, the ACCI submitted that any re-examination of the appropriateness of the C10 Metals Framework Alignment Approach should occur separately to the Review to allow for a thorough examination of its impacts and to consider whether changes are necessary, since a

¹⁷³ [MA000116](#).

¹⁷⁴ Australian and New Zealand Standard Classification of Occupations.

¹⁷⁵ Australian and New Zealand Standard Industrial Classification.

lack of available data and resources makes it unclear whether that approach embedded gender-based undervaluation across all awards. The ACCI also submitted that the Commission has, as a result of the Secure Jobs, Better Pay Act, been empowered to make equal remuneration orders on its own motion as well as upon application and, as such, the Review was not the appropriate mechanism to address gender-based undervaluation issues that should rather be dealt with on an industry-by-industry basis. The ACCI is amenable to these issues being dealt with in a ‘truncated process’ that might be completed within a period of 12 months.¹⁷⁶

[167] The Ai Group accepted that gender-based undervaluation and consideration of ‘caring’ work are issues of significance for the Commission following the legislative change effected by the Secure Jobs, Better Pay Act but submitted that the Review is not the appropriate forum to resolve these issues. The Ai Group submitted that differences in terms and conditions in awards do not alone establish gender-based undervaluation of work but are more likely to reflect the varying operational circumstances of employers. Addressing gender-based undervaluation of work requires factual findings upon which to proceed and, in the absence of evidence, the Commission will not be able to make factual findings. The Ai Group submitted that it would be inappropriate to make any adjustment to minimum rates without parties being afforded a reasonable opportunity to advance evidence and that it would be more appropriate to consider gender-based undervaluation issues holistically and comprehensively in separate proceedings.

[168] Australian Business Industrial and Business NSW (ABI/BNSW) submitted that the proposition that certain awards may involve ‘caring’ work or may be affected by gender-based undervaluation is not enough on its own to enable the identification in this Review of the extent of the wage increase required to achieve the modern awards objective and the minimum wages objective, and that it is unclear how that question could be answered without evidence for each sector or modern award group. ABI/BNSW also submitted that the *Stage 3 Aged Care decision* did not set a benchmark for Certificate III-qualified employees that could automatically be applied elsewhere. The *Stage 3 Aged Care decision* involved a work value assessment of very particular work in the aged care sector, and assuming its findings were automatically transferable to all ‘caring’ or female-dominated industries might conflict with the statutory requirements of the FW Act. ABI/BNSW accepted that, having regard to the findings in the *Stage 3 Aged Care decision* and the Stage 2 report, it appears that rates have not been properly set in certain modern awards because they have been ‘infected by gender-based undervaluation and the slavish application of the C10 framework’.¹⁷⁷ They proposed that this should be addressed by way of the Commission establishing own-motion inquiries.

[169] As we have earlier related, the step taken in the *AWR 2023 decision*¹⁷⁸ to address the potential gender undervaluation issues identified in that decision was to undertake the two-stage research project, with the intention that the outcomes of that project would be considered and, if necessary, addressed, in either this Review or other Commission-initiated proceedings depending on the timing. The publication of the Stage 2 report on 4 April 2024 has allowed the parties to make some submissions concerning the conclusions in that report and the Stage 1 report, but we are concerned that there has not been a full opportunity for interested parties to adduce evidence, and make submissions on the basis of that evidence, which might be necessary

¹⁷⁶ Transcript, 22 May 2024 PNs 346, 353.

¹⁷⁷ Australian Business Industrial and Business NSW submission (29 April 2024) [2.65].

¹⁷⁸ [\[2023\] FWCFB 3500](#), 323 IR 332 [139].

for us to properly afford procedural fairness and to proceed on a sound evidentiary foundation. In relation to the proposals advanced by the ACTU and the UWU for interim wage increases, we are particularly concerned that the publication date of the Stage 2 report has meant that these proposals were advanced only in reply submissions filed on 29 April 2024, which has limited the capacity for these proposals to be addressed and considered fully in the Review program. While we accept that the proposals advanced by the ACTU and the UWU have substantial merit on the basis of the conclusions of the Stage 1 and Stage 2 reports, the *Teachers decision*, the *AWR 2023 decision*, the *Stage 1 Aged Care decision* and the *Stage 3 Aged Care decision*, we do not consider that we can fairly or appropriately consider those proposals in the absence of any proper opportunity for affected parties to call evidence concerning issues such as any relevant distinctions that might exist between the work in question and the work considered in the *Teachers decision* or the *Aged Care decisions*, the capacity of employers to pay wage increases, and any related issue of government funding.

[170] The ACTU’s approach of seeking interim wage increases in this Review as a first step to implementing a benchmarked wage rate also raises a wider question concerning the capacity under the FW Act to move towards a targeted wage rate in particular modern awards over a number of annual wage reviews. If we were to form a final conclusion in this Review that, in respect of particular awards, we should implement staggered wage increases over a period of time to reach the benchmark wage rates established in the *Teachers decision* and the *Stage 3 Aged Care decision*, that conclusion could not bind Expert Panels in future annual wage reviews or serve as a ‘hard target’ because the FW Act requires consideration of the modern awards objective and the minimum wages objective in each Review in the context of the circumstances applying at the time.¹⁷⁹ By contrast, in a proceeding under s 157 of the FW Act, the Commission may, by a single decision, proceed to vary a modern award to provide for a final wage outcome to be reached in stages over an extended period of time, provided the relevant statutory criteria specified in s 157 are satisfied (see s 166). That means that the implementation of a benchmarked wage rate of the type identified in the *Teachers decision* and the *Stage 3 Aged Care decision* may be achieved in a single proceeding conducted under s 157.

[171] Accordingly, we do not propose to award the interim wage increases proposed by the ACTU and the UWU in this Review. Instead, in respect of the four priority categories of occupations/awards identified in section 5 of this decision (paragraphs [112]–[123], the Commission will immediately after the conclusion of this Review initiate proceedings pursuant to s 157 of the FW Act to consider whether the minimum wage rates for the relevant classifications in identified awards should be increased on work value grounds in order to remedy potential gender undervaluation. This will give interested parties a proper opportunity to adduce evidence in respect of all relevant issues. However, we emphasise two matters. *First*, it is not intended for these matters to go forward as if they are a blank slate. They will proceed on the gender undervaluation premises established in the Stage 1 and Stage 2 reports, the *Teachers decision*, the *AWR 2023 decision*, the *Stage 1 Aged Care decision* and the *Stage 3 Aged Care decision*. *Second*, consistent with the priorities we have given them and the imperatives of ss 134(1)(ab) and 284(1)(aa) of the FW Act, they will be dealt with to completion in a time-critical manner. We certainly intend that they will be completed by the time of next year’s annual wage review such as to permit that Review to move on to the consideration of any further gender undervaluation issues.

¹⁷⁹ *Annual Wage Review 2016–17 Preliminary Decision* [2017] FWCFB 1931 [45]–[60].

[172] We consider that the approach we intend to be taken to resolve the priority gender undervaluation issues identified in section 5 of this decision gives appropriate weight to the considerations in ss 134(1)(ab) and 284(1)(aa) of the FW Act, and no other consideration in ss 134(1) or 284(1) weighs against this approach.

9. Conclusion

[173] This section sets out the outcome of this Review and other relevant matters.

[174] The NMW order will contain:

- (a) A national minimum wage of \$915.90 per week or \$24.10 per hour;
- (b) Two special national minimum wages for award/agreement free employees with a disability: for employees whose productivity is not affected, a minimum wage of \$915.90 per week or \$24.10 per hour based on a 38-hour week, and for employees whose productivity is affected, an assessment under the Supported Wage System (SWS), subject to a minimum payment fixed under Schedule A to the order;
- (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
- (e) A casual loading of 25 per cent for award/agreement free employees.

[175] The NMW order will operate from 1 July 2024, and will take effect in relation to a particular employee from the start of the employee's first full pay period on or after 1 July 2024.

[176] Modern award minimum wages will be increased by 3.75 per cent. The variation determinations in respect of all modern awards, modern enterprise awards and State reference public sector awards will operate from 1 July 2024 and take effect in relation to a particular employee from the start of the employee's first full pay period on or after 1 July 2024.

[177] The determinations necessary to give effect to the increase in modern award minimum wage rates will be made available in draft form shortly after this decision. 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 FW Act.

[178] Our determination in this Review is that the wage rates in all remaining transitional instruments and copied State awards are also increased by 3.75 per cent. This determination comes into operation on 1 July 2024 and takes effect in relation to a particular employee from the start of the employee's first full pay period on or after 1 July 2024. The Commission is not

required to publish the rates of the wages in the relevant transitional instruments or copied State awards as so varied, and accordingly we will not do so.

[179] In relation to the gender undervaluation conclusions stated in paragraphs [112]–[123] and [169]–[172] above, the Commission will shortly initiate proceedings on its own initiative pursuant to s 157 of the FW Act concerning the following awards:

- *Children’s Services Award 2010*;
- *Social, Community, Home Care and Disability Services Industry Award 2010*;
- *Health Professionals and Support Services Award 2020*;
- *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020*; and
- *Pharmacy Industry Award 2020*.

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



PRESIDENT

Appearances:

M Cowgill, J Wettinger, I Redmond and J Bullen for the Australian Government.

K Burke, counsel, with *T Greenwell, T Clarke and S Peldova-McClelland* for the Australian Council of Trade Unions.

L Harrison for the United Workers’ Union.

C Massy, counsel, with *M Kavanagh and T Barnes* for the Australian Catholic Council for Employment Relations.

P Grist, J Tinsley and J Morrish for the Australian Chamber of Commerce and Industry.

B Ferguson and J Wilson for the Australian Industry Group.

Hearing details:

2024.

Sydney:
22 May.

Appendix: Proposed minimum wage adjustments

Party	Proposal
Australian Government	No quantum specified (ensuring the real wages of low-paid workers do not go backwards)
New South Wales Government	No quantum specified
Queensland Government	No quantum specified
South Australian Government	No quantum specified
Victorian Government	No quantum specified
Western Australian Government	No quantum specified
Australian Council of Trade Unions	5 per cent increase, and at least 9 per cent for selected occupations, particularly in care and degree-qualified work
Australian Industry Group	Should not exceed 2.8 per cent, applicable to all
Australian Chamber of Commerce and Industry	Increase no more than 2.0 per cent, applicable to all
Australian Council of Social Service	No quantum specified
Australian Catholic Council for Employment Relations	4.9 per cent increase and a minimum 4.9 per cent increase to the C13 to C10 rates
Australian Business Industrial and Business NSW	2.5 per cent increase, applicable to all
Australian Retailers Association	3.1 per cent increase, applicable to all
AUSVEG	No quantum specified
Council of Small Business Organisations Australia	Between 2 to 3 per cent, applicable to all
Entrepreneurial & Small Business Women Australia	No quantum specified
Housing Industry Association	No quantum specified
Laundry Association Australia	No increase. If an increase is awarded, 2 per cent applicable to all
Master Grocers Australia Limited	2.7 per cent increase in the <i>General Retail Industry Award 2020</i> and the <i>Timber Industry Award 2020</i>
National Farmers' Federation	No quantum specified
National Retail Association	Increase no more than 2.5 per cent, applicable to all
Restaurant & Catering Association	Increase no more than 2 per cent to the NMW
South Australian Wine Industry Association	Increase no greater than 3.5 per cent for the wine industry

Party	Proposal
Australian Services Union	5 per cent increase, applicable to all
Flight Attendants' Association of Australia	Supports the ACTU's approach and calls for an immediate increase of 2 per cent in the <i>Aircraft Cabin Crew Award 2020</i> , to bring it to 100 per cent of the C10 rate (with internal award relativities maintained)
Shop Distributive and Allied Employees' Association	5 per cent increase, applicable to all
United Workers' Union	Increase of at least 5 per cent applicable to all and, in addition, an interim increase to minimum rates in awards relating to the 'care sector'
Retail and Fast Food Workers Union Incorporated	Replace all rates currently lower than a 'living wage' (60 per cent of AWOTE) with a minimum base hourly rate of at least \$29.82 and a minimum base weekly rate of \$1133.28, 'including in any retail, miscellaneous and fast food Awards', and junior, trainee, apprentice and supported wage rates.
Professor Meg Smith and Doctor Michael Lyons	No quantum specified

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