

Ai GROUP SUBMISSION

Fair Work Commission

Annual Wage Review 2022-23 Initial Submission

31 March 2023



Contents

	Section	Page
1.	Introduction	5
2.	Statutory considerations	7
3.	The state of the economy and outlook	12
4.	The performance of the labour market	17
5.	The impact on business	26
6.	A fair and relevant minimum safety net	28
7.	The relative living standards and needs of the low paid	32
8.	The need to achieve gender equality	36
9.	Promoting social inclusion through increased workforce participation	42
10.	Providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability	44
11.	The need to improve access to secure work across the economy	45
12.	The need to encourage collective bargaining	47
13.	Special National Minimum Wages 1 and 2 – award / agreement free employees with disability	49
14.	Special National Minimum Wage 3 – award / agreement free junior employees	50
15.	Special National Minimum Wage 4 – award / agreement free apprentices	51
16.	Special National Minimum Wage 5 – award / agreement free employees to whom a training arrangement applies who are not apprentices	53
17.	Transitional instruments	54
18.	Modern award minimum wages for junior employees	55
19.	Modern award minimum wages for employees to whom a training arrangement applies	56
20.	Modern award minimum wages for employees with disability	57
21.	Piece rates in modern awards	58

	Section	Page
22.	Casual loadings in modern awards	59
23.	Casual loading for award / agreement free employees	60
24.	The form of the National Minimum Wage Order	61

Abbreviations

2014 AWR	Annual Wage Review 2013 – 2014
2022 AWR	Annual Wage Review 2021 – 2022
2023 AWR	Annual Wage Review 2022 – 2023
Australian Bureau of Statistics	ABS
Ai Group	Australian Industry Group
AIRC	Australian Industrial Relations Commission
AWOTE	Average Weekly Ordinary Times Earnings
AWR	Annual Wage Review
CPI	Consumer Price Index
FTB	Family Tax Benefit
FW Act	<i>Fair Work Act 2009</i>
FWC	Fair Work Commission
FWC-SR	<i>Statistical Report – Annual Wage Review 2022 – 23, Version 2 (30 March 2023)</i>
LMITO	Low and Middle Income Tax Offset
NMW	National Minimum Wage
Panel	Expert Panel
Secure Jobs Better Pay Act	<i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i>
SG	Superannuation Guarantee
WPI	Wage Price Indicator

1. Introduction

Ai Group advances this submission in relation to the 2023 AWR, which encompasses a review of the NMW and modern award minimum wages, as well as the making of a National Minimum Wage Order by the Commission, as required by the FW Act.¹

It is glaringly obvious that, this year, the Panel has before it a particularly difficult task. Moreover, it is a task that, in the current highly challenging and precarious economic conditions, is of paramount importance to employees that are directly reliant upon the outcome of the decision, the employers that engage them and the broader Australian economy.

This submission deals in detail with the relevant statutory context governing the conduct of the AWR. Such matters have been extensively traversed in previous AWR decisions. The task entails a consideration of the relevant statutory considerations in the context of the prevailing economic and social considerations. This includes the mandatory matters that must be taken into account pursuant to the minimum wages objective and the modern awards objective. It is salient to here observe that there is a degree of tension between some of the specified considerations and that there is not a particular primacy is not attached to any of these considerations.²

In seeking to provide *'a fair and relevant minimum safety net'* and *'the maintenance of a fair safety net of minimum wages'* as contemplated by the FW Act, the Panel must strike a fair balance between the equally important and inherently interconnected interests of Australian employees and their employers.

The Panel must strike such a balance in the context of the well-ventilated challenges of historically high inflationary pressures, which have manifested as cost pressures on both employers and employees, as well as a slowing 'multi-speed' Australian economy, a weak global economic outlook, anaemic and indeed declining profitability in major industries and a labour market that has recently delivered positive outcomes for many groups of employees in terms of robustly improved employment opportunities as well as accelerating wage increases. It must also do so in a manner that avoids undermining such positive outcomes in the face of the foreseeable continued slowing of the economy.

Crucially, the Commission must be mindful that, in the context of a domestic economy beset by high inflation, coupled with notoriously low levels of productivity improvement, it does not entrench or extend the pain that such inflationary pressures impose upon both industry and households by granting excessive or unsustainable wage increases.

In advancing these submissions, Ai Group acknowledges the particular pressures that are currently bearing on low paid workers in lower-income households. Such matters must be carefully balanced along with other matters that the statutory framework mandates must be taken into account, as well as relevant broader considerations. Crucially, the circumstances of employers struggling with

¹ Sections 285(2)(a)(i)-(ii) and 285(2)(c).

² *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [8].

cost pressures, must also be weighed. A simplistic adherence to a proposition that wages must follow, or indeed exceed, current inflation levels cannot be accepted. A more nuanced, responsible and moderate approach is required in the interests of all stakeholders.

The submissions that follow address the relevant considerations that should guide the Panel. We have not at this stage advanced a specific quantum of any proposed increase. It is premature to do so, given the turbulent economic conditions and uncertainty over the approach that will be taken in the Commonwealth Budget to various matters, including any measures that the Government may introduce to assist low-income households.

2. Statutory considerations

The FW Act requires that the Commission conduct an AWR each financial year. The AWR involves a review of the NMW and modern award minimum wages.

In conducting an AWR, the Commission is to be guided by the various relevant statutory considerations. These include the objects of the FW Act, the minimum wages objective and the modern awards objective.

The object of the FW Act is set out in s.3: (emphasis added)

- (3) The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:
 - (a) providing workplace relations laws that are fair to working Australians, promote job security and gender equality, are flexible for businesses, promote productivity and economic growth for Australia's future economic prosperity and take into account Australia's international labour obligations; and
 - (b) ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders; and
 - (c) ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system; and
 - (d) assisting employees to balance their work and family responsibilities by providing for flexible working arrangements; and
 - (e) enabling fairness and representation at work and the prevention of discrimination by recognising the right to freedom of association and the right to be represented, protecting against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms; and
 - (f) achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action; and
 - (g) acknowledging the special circumstances of small and medium-sized businesses.

The objects of the FW Act state that it is directed towards, *inter alia*, providing a ‘balanced’ framework, that promotes ‘national economic prosperity’ by providing laws that ‘promote economic growth’, ensuring a ‘fair’ safety net, emphasising ‘enterprise-level collective bargaining’ and recognising the ‘special circumstances of small and medium-sized businesses’. The 2023 AWR should be conducted in a way that is consistent with these objects.

The minimum wages objective is central to the conduct of an AWR. It is in the following terms, at s.284(1) of the FW Act: (emphasis added)

- (1) The FWC must establish and maintain a safety net of fair minimum wages, taking into account:
 - (a) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth; and
 - (aa) the need to achieve gender equality, including by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and addressing gender pay gaps; and
 - (b) promoting social inclusion through increased workforce participation; and
 - (c) relative living standards and the needs of the low paid; and
 - (e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.

The minimum wages objective applies to the making of a national minimum wage order, as required by s.285(2)(a)(ii) of the FW Act.³ It also applies to the review of modern award minimum wages.⁴

The modern awards objective is not expressly relevant to the review and making of a national minimum wage order.⁵ It is, however, relevant to the review of modern award minimum wages.⁶

³ Section 284(2)(a) of the FW Act.

⁴ Section 284(2)(b) of the FW Act.

⁵ *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [6].

⁶ Section 134(2)(b) of the FW Act.

The modern awards objective is as follows: (emphasis added)

- (1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:
 - (a) relative living standards and the needs of the low paid; and
 - (aa) the need to improve access to secure work across the economy; and
 - (ab) the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women's full economic participation; and
 - (b) the need to encourage collective bargaining; and
 - (c) the need to promote social inclusion through increased workforce participation; and
 - (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
 - (da) the need to provide additional remuneration for:
 - (i) employees working overtime; or
 - (ii) employees working unsocial, irregular or unpredictable hours; or
 - (iii) employees working on weekends or public holidays; or
 - (iv) employees working shifts; and
 - (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
 - (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
 - (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

Clearly, the modern awards objective requires a consideration of various matters relevant to employers, employees and the national economy.

In previous decisions concerning AWRs, the Commission has made various observations about the statutory criteria that guide the Panel's decision in an AWR, which remain relevant. In particular:

- (a) Generally speaking, differently constituted Panels should evaluate the evidence and submissions before them in accordance with a consistent and stable interpretation of the legislative framework. Justice requires consistent decision making unless a difference can be articulated and applied.⁷
- (b) The statutory tasks in s.134 and s.284 involve an '*evaluative exercise*' which is informed by the considerations in s.134(1)(a)–(h) and s.284(1)(a)–(e) of the Act.⁸
- (c) The matters listed in s.134 and s.284 '*do not necessarily exhaust the matters which the Panel might properly consider to be relevant*'.⁹
- (d) No particular primacy is to be given to any of the specific factors that the Panel must take into account.¹⁰
- (e) There is often a degree of tension between the economic and social considerations which the Panel must take into account. A substantial wage increase may better address the needs of the low paid and improve the living standards of award-reliant employees relative to those employees who are not award reliant; but it may, depending upon the prevailing economic circumstances, adversely affect the performance and competitiveness of the national economy. A substantial wage increase may reduce the capacity to employ the marginalised and hence impact on employment growth or add to inflationary pressures.¹¹
- (f) The range of considerations that the Panel is required to take into account calls for the exercise of broad judgment rather than a mechanistic or decision rule approach to wage fixation. It is on this basis that past AWR decisions have rejected proposals for the adoption of real wage maintenance; a medium-term target for the NMW; and the variation of modern award minimum wages based on trends in market wages.¹²
- (g) The Panel's task is to consider relevant statutory matters in the context of the prevailing economic and social environment.¹³
- (h) The considerations which the Panel is required to take into account do not generally set a particular standard against which a modern award or the '*safety net of fair minimum wages*' can be evaluated; many of them may be characterised as broad social objectives.¹⁴

⁷ *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [119].

⁸ *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [7].

⁹ *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [5].

¹⁰ *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [8].

¹¹ *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [161].

¹² *Annual Wage Review 2017 – 18* [2018] FWCFB 3500 at [44].

¹³ *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [4].

¹⁴ *Annual Wage Review 2017 – 18* [2018] FWCFB 3500 at [15].

- (i) There is no justification to increase the NMW by a higher rate than modern award minimum wages. To do so would create a significant risk of disemployment effects—thus putting low-paid workers at risk of unemployment and poverty. Nor would it be fair to those on higher modern award minimum wages as it would erode the recognition of their higher skill and relative *'work value'*.¹⁵
- (j) The notion of *'fairness'* in the modern awards objective and minimum wages objective includes the perspective of employers and employees.¹⁶
- (k) There are differences in the expression of the economic considerations that the Panel is required to take into account under the modern awards objective and the minimum wages objective. Nonetheless, the underlying intention of the various economic considerations referred to in s.134 and s.284 is that the Panel takes into account the effect of its decisions on national economic prosperity and in so doing gives particular emphasis to the economic indicators specifically mentioned in the relevant statutory provisions.¹⁷
- (l) In order to identify *'low paid'* employees, the Commission has consistently adopted a threshold of two-thirds of median adult full-time ordinary earnings as the benchmark.¹⁸
- (m) The relative living standards of employees are affected by the level of wages that they earn, the hours they work, tax-transfer payments and the circumstances of the households in which they live. It is therefore necessary to have regard to a range of measures applying to the relative living standards of the low paid and the household circumstances in which they live.¹⁹
- (n) Even though the *'need to encourage collective bargaining'* is not an element of the minimum wages objective, it is one of the objects of the FW Act and, therefore, it is appropriate that it is considered in relation to the making of the national minimum wage order.²⁰
- (o) The Panel's decision-making process should be as transparent as possible and should disclose the factors which are most relevant in a particular year.²¹

¹⁵ *Annual Wage Review 2017 – 18* [2018] FWCFB 3500 at [105].

¹⁶ *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [18].

¹⁷ *Annual Wage Review 2017 – 18* [2018] FWCFB 3500 at [10].

¹⁸ *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [70].

¹⁹ *Annual Wage Review 2015 – 16* [2016] FWCFB 3500 at [397].

²⁰ *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [80].

²¹ *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [120].

3. The state of the economy and outlook

As the remainder of pandemic-era restrictions were removed, the Australian economy grew strongly in 2022. However, the economic outlook for 2023 is precarious.

The Australian economy has faced significant inflationary pressures, which have raised cost pressures for businesses and eroded real incomes for households. High inflation has necessitated a rapid tightening of monetary policy by the RBA since May 2022. GDP growth began to slow in the September quarter of 2022, and is forecast to slow further across 2023 due to higher interest rates and lower global growth. Australia faces a narrow path to a soft-economic landing, with downside risks to domestic demand and the terms of trade.

Strong GDP growth in 2022

The Australian economy continued its strong post-pandemic performance. With the remainder of pandemic-era restrictions removed early in 2022, economic and social activity could return towards normal patterns. Although slowing over the year, GDP growth averaged 2.7% in the year to the December quarter of 2022²², driven by strong household consumption, exports and public investment²³. Australia enjoyed a stronger growth performance than the G7 major economies across most quarters throughout 2022²⁴.

Record inflationary pressures, forecast to persist across 2023

Record-level inflation accompanied this growth. Like most economies, Australia struggled with accelerating inflation from the middle of 2021. By the December quarter of 2022, the CPI had reached 7.8% annual growth – well in excess of the RBA’s 2-3% target band (Chart 1). The Producer Price Index, a measure of inflation for producer goods and services, peaked at 6.4% in the September quarter before declining slightly.

According to the most recent RBA forecasts, inflation is likely to have peaked in late 2022. Most recently, the monthly CPI indicator rose 6.8% in the year to February 2023. This was lower than the 7.4% annual rise reported in January 2023 and 8.4% rise reported in December 2022.²⁵ Nonetheless, consumer inflation is currently anticipated to remain well-above normal levels as it slowly declines over the next two years.

²² FWC-SR, Chart 1.1.

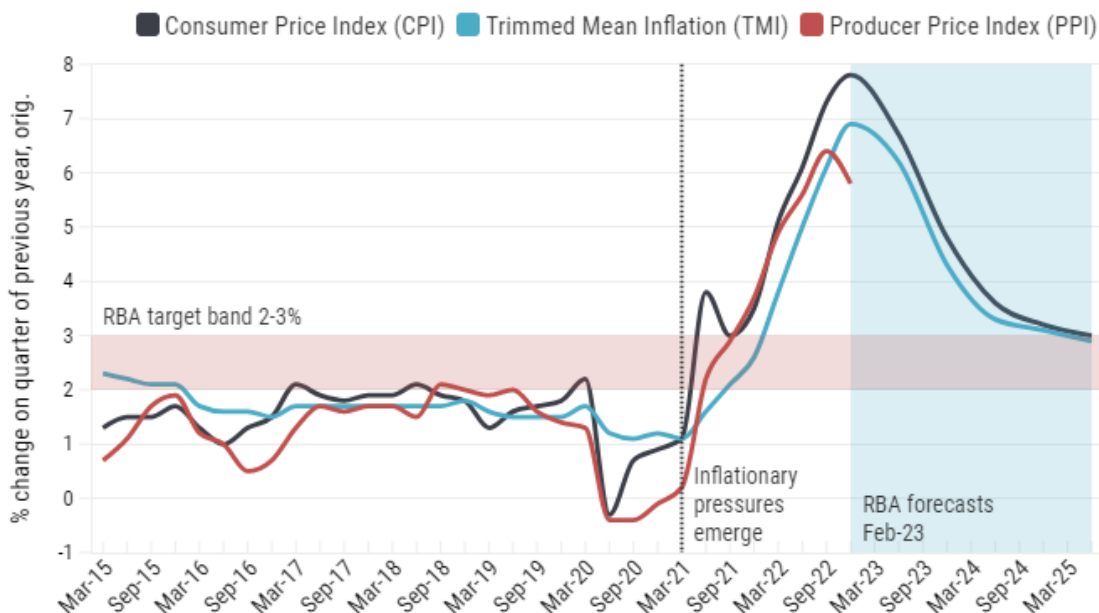
²³ FWC-SR, Chart 1.2.

²⁴ FWC-SR, Chart 1.3.

²⁵ ABS, *Monthly Consumer Price Index Indicator*, February 2023.

In response to inflationary pressures, the RBA has raised the cash rate target ten times, from 0.35% to 3.6%²⁶, since May 2022. It is expected that further rate rises could be required in the current monetary policy cycle over the coming months. This will depend critically on wage outcomes and price setting behavior of businesses and governments, which the RBA has indicated it is monitoring closely.

Chart 1: Australian inflation measures, 2015 – 2022 and forecasts



Source: ABS CPI Australia (A2325847F, A3604511X), ABS PPI Australia (A2314867K), RBA SoMP

The Australian economy will slow in 2023

In the face of tightening monetary policy, the Australian economy began to slow from mid-2022. GDP growth declined in both the September and December quarters²⁷, dragged lower by moderating consumer spending and industrial production, as well as declining private housing and business investment.

The RBA forecasts that real GDP growth will fall rapidly over the coming year – from 2.7% in 2022 to 1.6% in 2023. The IMF also forecasts 1.6% real GDP growth for Australia in 2023²⁸, while the OECD forecasts growth of 1.8%²⁹. The factors driving these lower growth forecasts include global economic uncertainty, the effects of tighter monetary policy on consumer spending, risks to the Australian housing market, and falling commodity prices.

²⁶ Reserve Bank of Australia, *Cash Rate Target*, <https://www.rba.gov.au/statistics/cash-rate/>.

²⁷ FWC-SR, Chart 1.1.

²⁸ International Monetary Fund, *IMF Executive Board Concludes 2022 Article IV Consultation with Australia* (1 February 2023).

²⁹ Organisation for Economic Co-operation and Development, *OECD Economic Outlook: Interim Report March 2023*.

A weak global economic outlook for 2023

Australia’s economic outlook is similar to that of its advanced economy peers. The IMF, World Bank and OECD all forecast moderating global growth, and sharply slowing growth in advanced economies, during 2023 (Table 1). Growth is expected to be especially weak in Europe due to the effects of high energy prices, while it will recover in China as the country transitions out of ‘COVID-zero’ policy settings in 2023.

The principal factors driving these lowered growth forecasts are record level inflation, tightening monetary policy, interruptions resulting from Russia’s invasion of Ukraine, and financial risks as a result of debt distress and downwards asset valuations associated with higher interest rates. The IMF cautions that *‘the balance of risks remains tilted to the downside’*³⁰ in 2023, while the World Bank warns that *‘the global economy is perilously close to falling into recession’*³¹.

Table 1: Global economic forecasts, as of January 2023

	IMF (Jan 2023)			WB (Jan 2023)		OECD (Mar 2023)	
	2022	2023	2024	2023	2024	2023	2024
Advanced economies	2.7%	1.2%	1.4%	0.5%	1.6%		
United States	2.1%	1.4%	1.0%	0.5%	1.6%	1.5%	1.0%
Euro Area	3.5%	0.7%	1.6%	0.0%	1.6%	0.8%	1.5%
Australia	2.7%	1.6%				1.8%	1.5%
Emerging market and developing economies	3.9%	4.0%	4.2%	3.4%	4.1%		
China	3.0%	5.2%	4.5%	4.3%	5.0%	5.3%	4.9%
World	3.2%	2.9%	3.1%	1.7%	2.7%	2.6%	2.9%

Source: World Bank Global Economic Prospects January 2023, IMF World Economic Outlook Update January 2023, OECD Economic Outlook: Interim Report March 2023

Given Australia’s favourable terms of trade, it is in a stronger cyclical position than other advanced economy peers to weather the global downturn. However, lower global growth will cut into domestic demand in 2023, while uncertainty regarding commodity prices presents downside risk to nominal GDP, exports and fiscal receipts. China’s transition out of COVID-zero settings, and its growth rate in 2023, will be an important factor shaping Australia’s macroeconomic performance.

³⁰ International Monetary Fund, *World Economic Outlook Update January 2023*, <https://www.imf.org/en/Publications/WEO/Issues/2023/01/31/world-economic-outlook-update-january-2023>.

³¹ World Bank, *Global Economic Prospects January 2023*, <https://www.worldbank.org/en/publication/global-economic-prospects>.

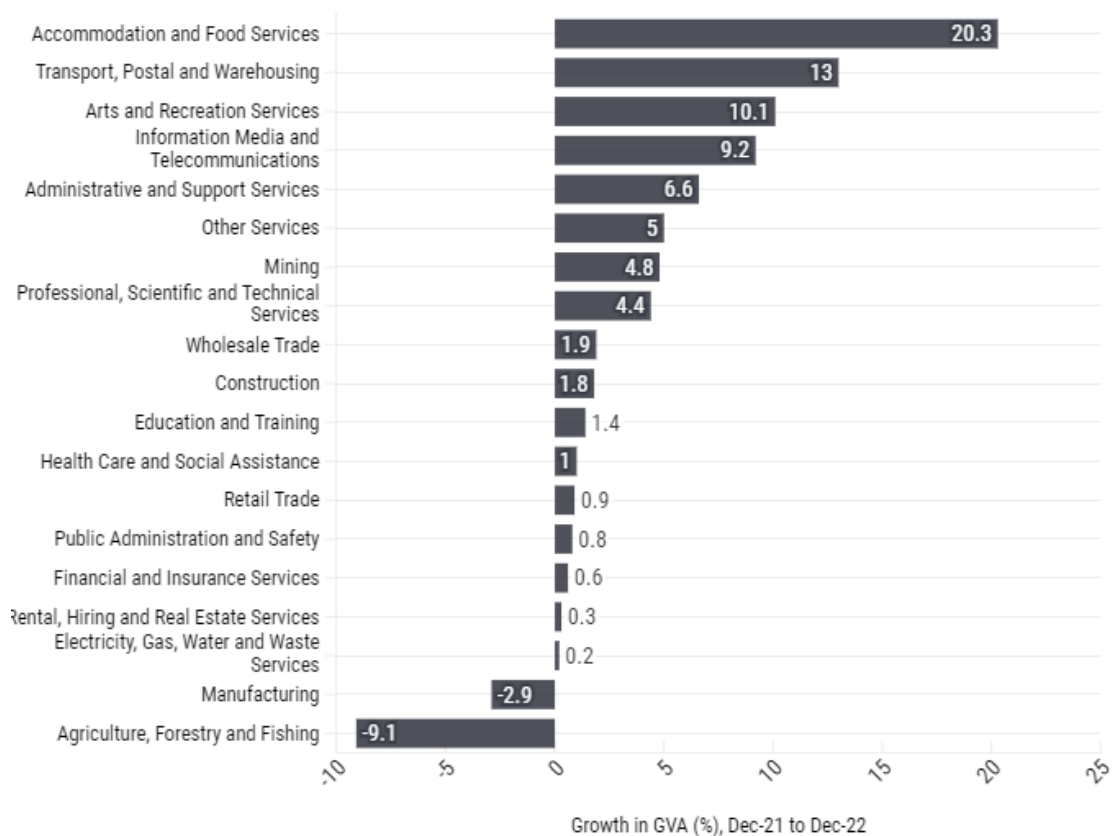
Businesses face strong cost pressures

Businesses are facing strong cost pressures due to inflationary and wages pressures and higher interest rates. The retail industry is already experiencing weakening demand, and more will face the same as the economy slows in 2023. While mining profits have surged due to record-level global commodity prices, profit growth across the rest of the economy is low, and in many industries is already falling. Across non-mining industries, total wages growth was five times faster than total profit growth in 2022.

Business faces a multi-speed economic recovery

Despite strong aggregate growth in 2022, there are marked differences in the current performance of Australia's industries (Chart 2). Industries which had previously been constrained by public health controls – such as arts & recreation, accommodation & food and transport – rebounded very quickly in 2022. But far more modest growth was seen in sectors such as wholesale trade, retail trade and construction; while the manufacturing and farm sectors contracted over the year³². There is clear evidence of a 'multi-speed economy' in 2022 as Australia has adjusted to the removal of pandemic-era controls.

Chart 2: Gross value added by industry, y/y growth to December 2022



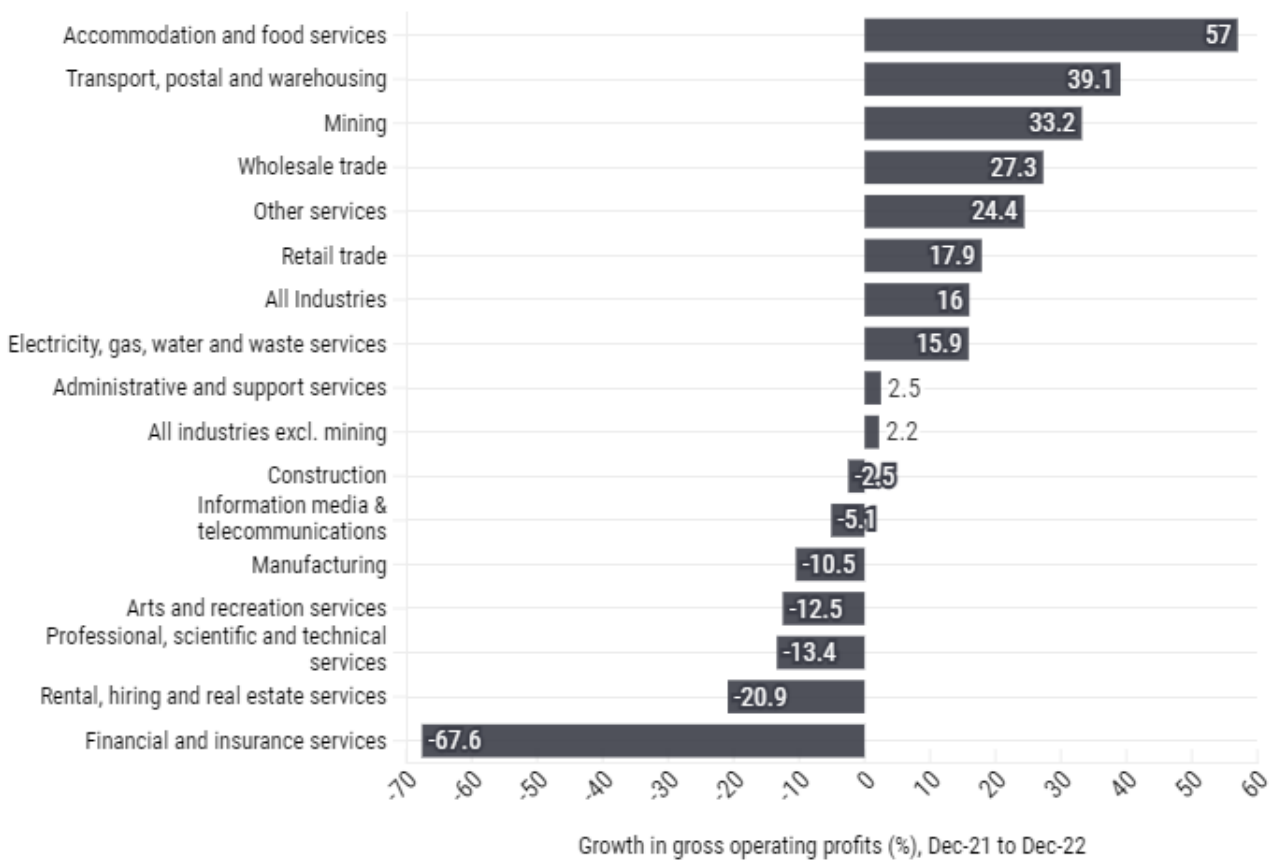
Source: ABS Australian National Accounts: National Income, Expenditure and Product (Table 6)

³² FWC-SR, Table 1.1.

A 'profitless boom' for many industries

Differential industry performance is also revealed in movements in gross operating profits (Chart 3). During 2022, all-industry gross operating profits grew at a robust 16.0% pace. However, this was primarily accounted for by a rapid 33.2% rise in mining profits, driven by an upswing in global commodity prices following Russia's invasion of Ukraine. When mining profits are excluded, gross operating profits in all other industries grew by an anemic 2.2% in nominal terms. Profits declined in seven of 15 industries during the year, in spite of otherwise robust macroeconomic conditions.

Chart 3: Gross operating profits by industry, y/y growth to December 2022 (current prices)



Source: [ABS Business Indicators \(Table 11\)](#)

4. The performance of the labour market

The Australian labour market weakened considerably during the short ‘COVID recession’ in the first half of 2020. But as the economy recovered from the September quarter of 2020, the labour market has entered into one of its strongest cycles in a generation. This has driven significant job creation, and growth in nominal wages and earnings. Very strong employment and wages outcomes have been delivered in terms of full-time job creation, and for low-paid workers, women and youth.

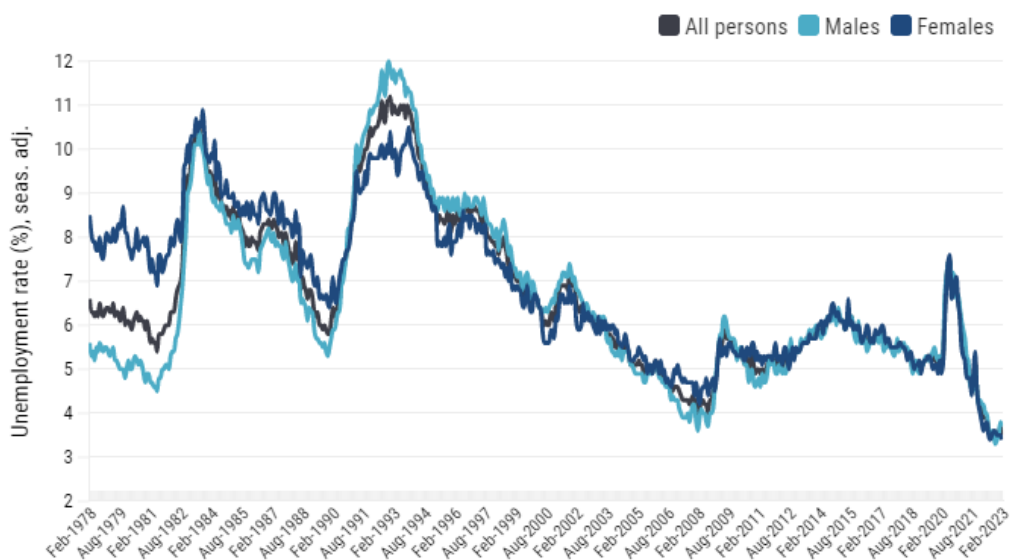
Lowest unemployment in a generation

After a rapid increase to 7.5% in the first half of 2020, unemployment has been on a steady downward trend for the subsequent two and a half years (Chart 4). The national unemployment rate fell to 3.5% in February 2023, with an estimated 507,500 people unemployed. This is the lowest unemployment rate in Australia since September 1974.

Gender-even improvements in unemployment

Female unemployment is at 3.4 % in February 2023, its lowest level since March 1974. The current labour market cycle has also delivered gender-even improvements to unemployment results. In previous cycles of falling unemployment – such as those between 1983 - 1989 and 2001 - 2008 – male unemployment has tended to fall faster and further. In the current cycle, it has fallen at a very similar rate for females and males (Chart 4).

Chart 4: Australian unemployment rates, 1978 – present



Source: ABS Labour Force Australia (A84423050A, A84423036F, A84423064R)

Significant improvement in youth unemployment

Youth unemployment has fallen dramatically during the current labour market cycle. Unemployment amongst 20 – 24 year olds has fallen from a range of ~8-10% to ~5-6%, while amongst 15 – 19 year-olds from ~15-20% to ~10-12%. The gap between youth and aggregate unemployment is significantly lower than it has been for the last decade³³.

Lowest underemployment since the Global Financial Crisis

Throughout 2022, the underemployment rate has stabilised at approximately 6.0 % (+/- 0.2 %). The current period has seen underemployment sustained below 7.0% for the first time since 2008, prior to the Global Financial Crisis. At 6% the unemployment rate is 2.4 percentage points lower than the pre-pandemic underemployment rate, which averaged 8.4% between 2014 and 2019³⁴.

Participation at record highs, driven by strong female participation

Labour force participation is at historic highs, and has been sustained above 66.0% since November 2021³⁵. This increase was primarily driven by female participation, which has increased at a much faster rate than male participation during the current cycle. Indicators of relatively stronger female labour market outcomes during 2022 include:

- **Participation rate:** Grew by 0.7% for women (to 78.2%, a record high), versus 0.5% growth for men³⁶.
- **Employment to population ratio:** Grew by 1.0% for women (to 76.1%, a record high), versus 0.9% growth for men³⁷.
- **Full-time employment to population ratio:** Grew by 2.7% for women (to 47.3%, a record high), versus 1.8% growth for men³⁸.
- **The ‘participation gap’** between males and females has been between 8.4 to 9.1% since January 2022. This is the longest sustained period of a <10 % gender participation gap on record³⁹.

³³ FWC-SR, Chart 6.7.

³⁴ Seasonally adjusted. *ABS Labour Force Australia*, February 2023, series A85255725J.

³⁵ FWC-SR, Chart 6.1.

³⁶ FWC-SR, Table 6.9.

³⁷ FWC-SR, Tables 6.7 and 6.8.

³⁸ FWC-SR, Tables 6.7 and 6.8.

³⁹ Seasonally adjusted. *ABS Labour Force Australia*, February 2023, series A84423037J and A84423065T.

Record-level jobs creation, with particularly strong growth in low-paid and/or feminized industries

The Australian economy added 588,000 filled jobs in 2022, taking the total number of filled jobs to 15.1 million⁴⁰. This was the highest calendar year of job creation on record. The number of employed people increased by 523,000 to 14.1 million in 2022⁴¹.

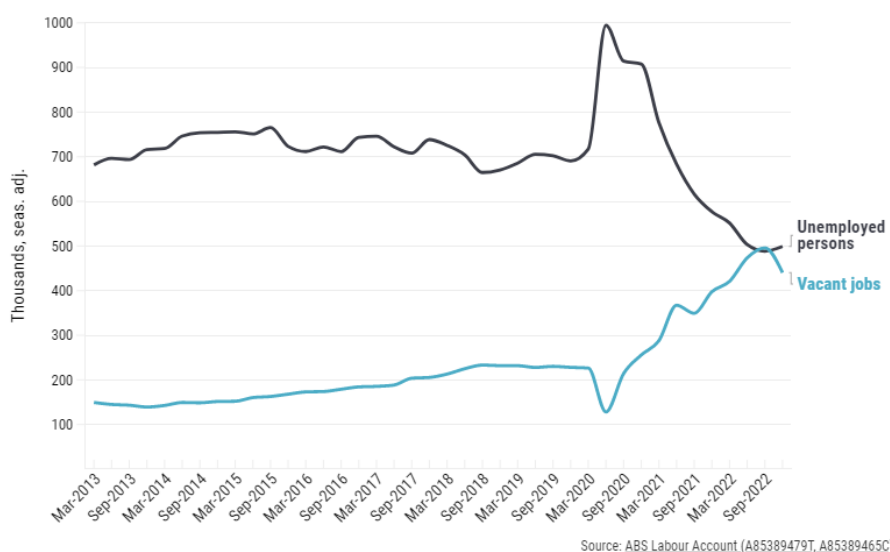
Job creation was especially strong in several lower-paid and/or feminised industries. During 2022, filled jobs increased by 11.9% in accommodation & food services, 10.6% in administrative and support services, 11.9% in wholesale trade, and 14.2% in arts & recreation services. Job creation in these industries was well above the national average of 4.1%⁴².

Record-level job vacancies, limited supply of workers

Although they have declined in the most recent months, job vacancies increased dramatically during the earlier phase of the current labour market cycle. In December 2022 there were 440,000 vacant jobs, more than double the pre-pandemic level (Chart 5). 2.8% of all jobs were vacant in December, compared to normal pre-pandemic rates of between 1.2% to 1.6%⁴³. Job vacancies remain particularly acute in the mining, accommodation & food, and health & social care industries⁴⁴.

By contrast, the number of unemployed people has fallen dramatically. In December 2022 there were 499,000 unemployed people in Australia; approximately 200,000 fewer than prior to the pandemic (Chart 5). As a result, the gap between unemployed people and vacant jobs has closed dramatically. In the September quarter of 2022, prior to the recent decline in vacancies, there were more vacant jobs recorded than unemployed people in Australia, for the first time since this data has been collected.

Chart 5: Unemployed persons and job vacancies, 2013 – 2022



⁴⁰ Seasonally adjusted. ABS Labour Account Australia, December 2022, series A85389467J.

⁴¹ Seasonally adjusted. ABS Labour Account Australia, December 2022, series A85389474F.

⁴² Seasonally adjusted. ABS Labour Account Australia, December 2022, Industry summary table.

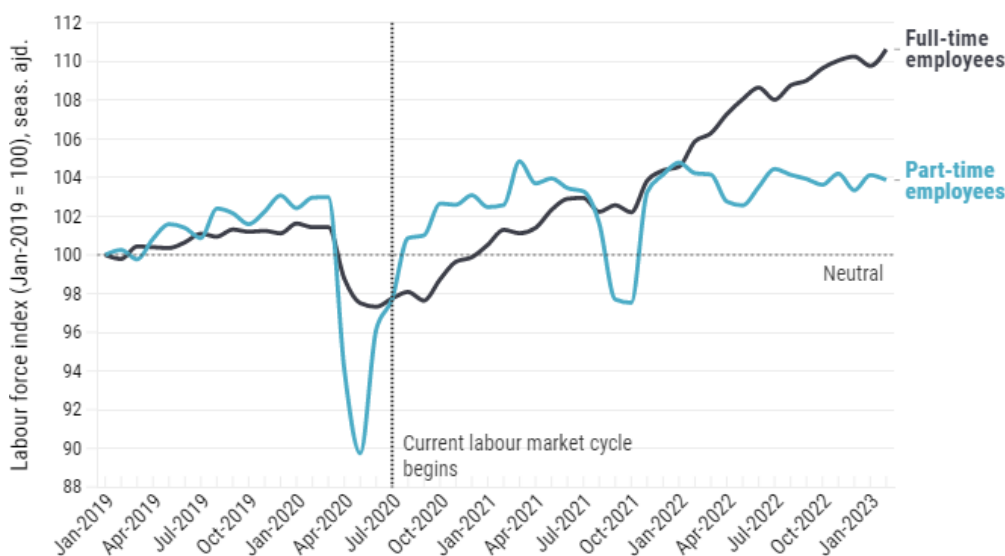
⁴³ Seasonally adjusted. ABS Labour Account Australia, December 2022, A85389466F.

⁴⁴ FWC-SR, Chart 6.11.

Job creation is concentrated in full-time roles, driven by women shifting to full-time work

Job creation in the current labour market cycle has mostly occurred in full-time roles (Chart 6). Full-time employment increased by 416,000 in the year to February 2023, while part-time employment decreased by 14,200⁴⁵. The shift to full-time employment creation is especially pronounced for women, where part-time employment decreased by 50,400, while full-time employment increased by 206,900⁴⁶. By contrast, male part-time employment increased during the same period. This indicates a large number of female employees have shifted from part-time to full-time roles.

Chart 6: Full-time and part-time employment indices, 2019 – 2023



Source: ABS Labour Force Australia (A84423041X, A84423042A)

Permanent ongoing jobs have dominated employment creation

In the early months of the pandemic, the number of employees ‘without paid leave entitlements’ – a proxy for casual employment – fell rapidly. This was due to employment losses during the COVID recession of early 2020 disproportionately affecting casual roles (Chart 7).

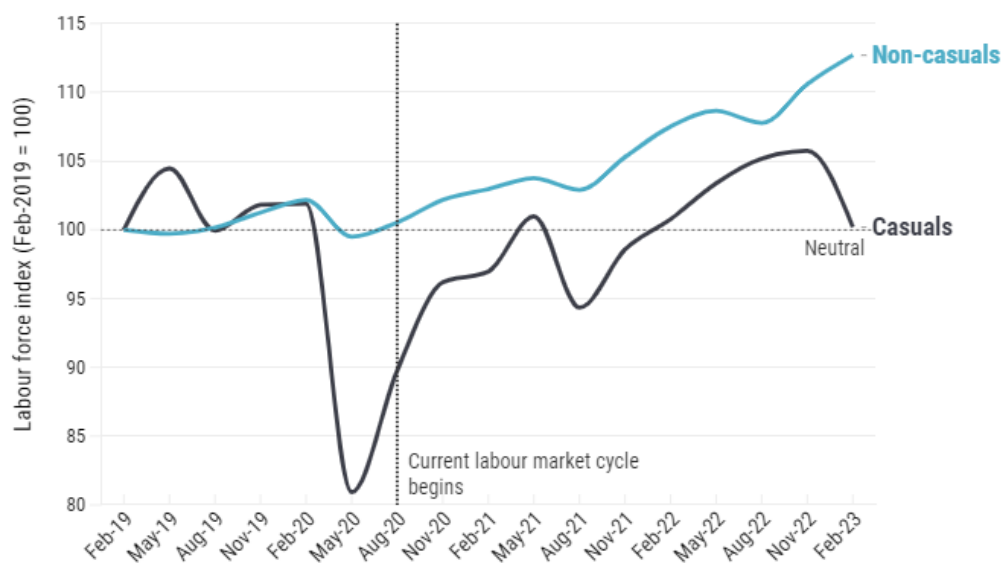
In the current labour market cycle, employment growth has been entirely driven by non-casual roles. The number of casual employees has subsequently recovered to approximately its pre-pandemic level (between 2.5 and 2.7 million employees). By contrast, the number of non-casual employees has grown by 12.7 % to 9.1 million employees⁴⁷.

⁴⁵ FWC-SR, Chart 6.6.

⁴⁶ FWC-SR, Chart 6.6.

⁴⁷ Original, ABS Labour Force Australia Detailed, A84631062F and A84631158X.

Chart 7: Casual and non-casual employment indices, 2019 – 2023

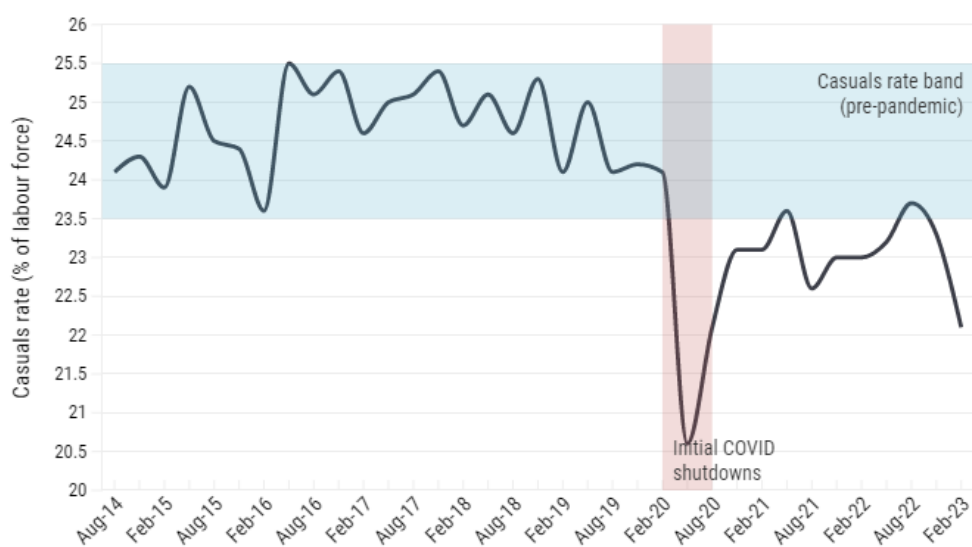


Source: ABS Labour Force Australia Detailed (A84631062F, A84631158X) • "Casuals" are defined as employees without paid leave entitlements

As a consequence, the rate of casual employment has fallen dramatically during the current labour market cycle. In February 2023, 22.1 % of the Australian workforce was employed on a casual basis (Chart 8). This is the lowest rate of casual employment since August 1995⁴⁸, and well below the rate's pre-pandemic band of 23.5 to 25.5 %.

Similarly, the share of employees on fixed term contracts (3.4 % in August 2022⁴⁹) and the share of employees in labour supply services (2.3 % in June 2022⁵⁰) are both below their pre-pandemic levels.

Chart 8: Casual employment rate, 2014 – 2023



Source: Labour Force Detailed Australia (A84630870K, A84631158X) • "Casuals" are defined as employees without paid leave entitlements

⁴⁸ Original. ABS Working Arrangements August 2022.

⁴⁹ FWC-SR, Chart 12.2.

⁵⁰ FWC-SR, Chart 12.3.

Decade-high wages and earnings growth in 2022

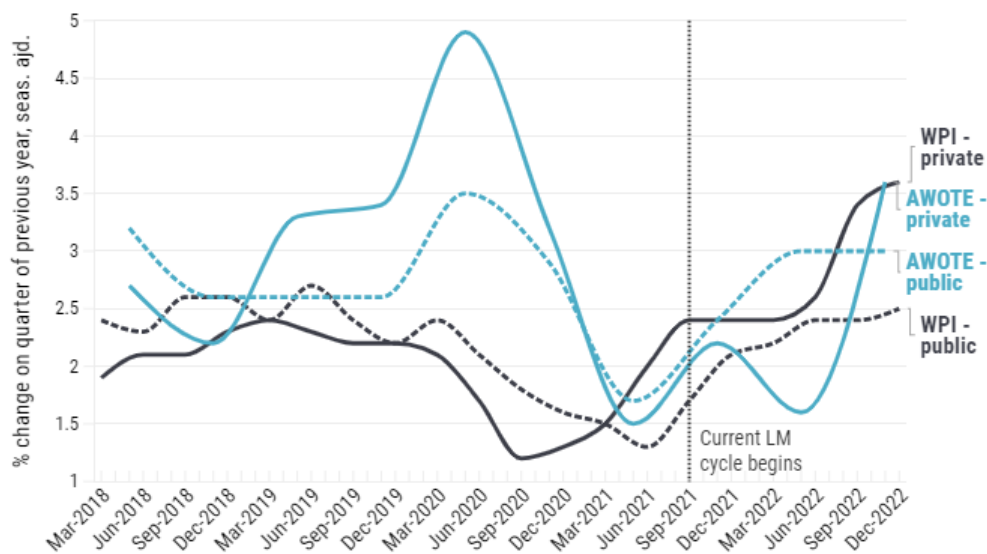
Given the strong performance of Australian labour market since the pandemic, it is unsurprising that wages and earnings have grown rapidly. The WPI, a measure of nominal growth in hourly rates of pay, showed growth of 3.3% p.a. during 2022⁵¹. AWOTE, a measure of average total earnings, showed growth of 3.4% p.a to November 2022.⁵² These are the highest rates of nominal wages and earnings growth in Australia since 2012.

Private sector drives wages and earnings growth

In the current labour market cycle, private sector wages and earnings have grown faster than those in the public sector (Chart 9).

- For wages, the private sector WPI was at 3.6% in December 2022, considerably higher than 2.5% for public sector jobs.
- For earnings, the private sector AWOTE was at 3.6% and public sector AWOTE at 3.0% in November 2022.

Chart 9: Australian wages indicators, public and private sectors, 2018 – 2022



Source: ABS Wage Price Index (A83895309L, A83895333L), ABS Average Weekly Earnings (A84985844W, A84972695L)

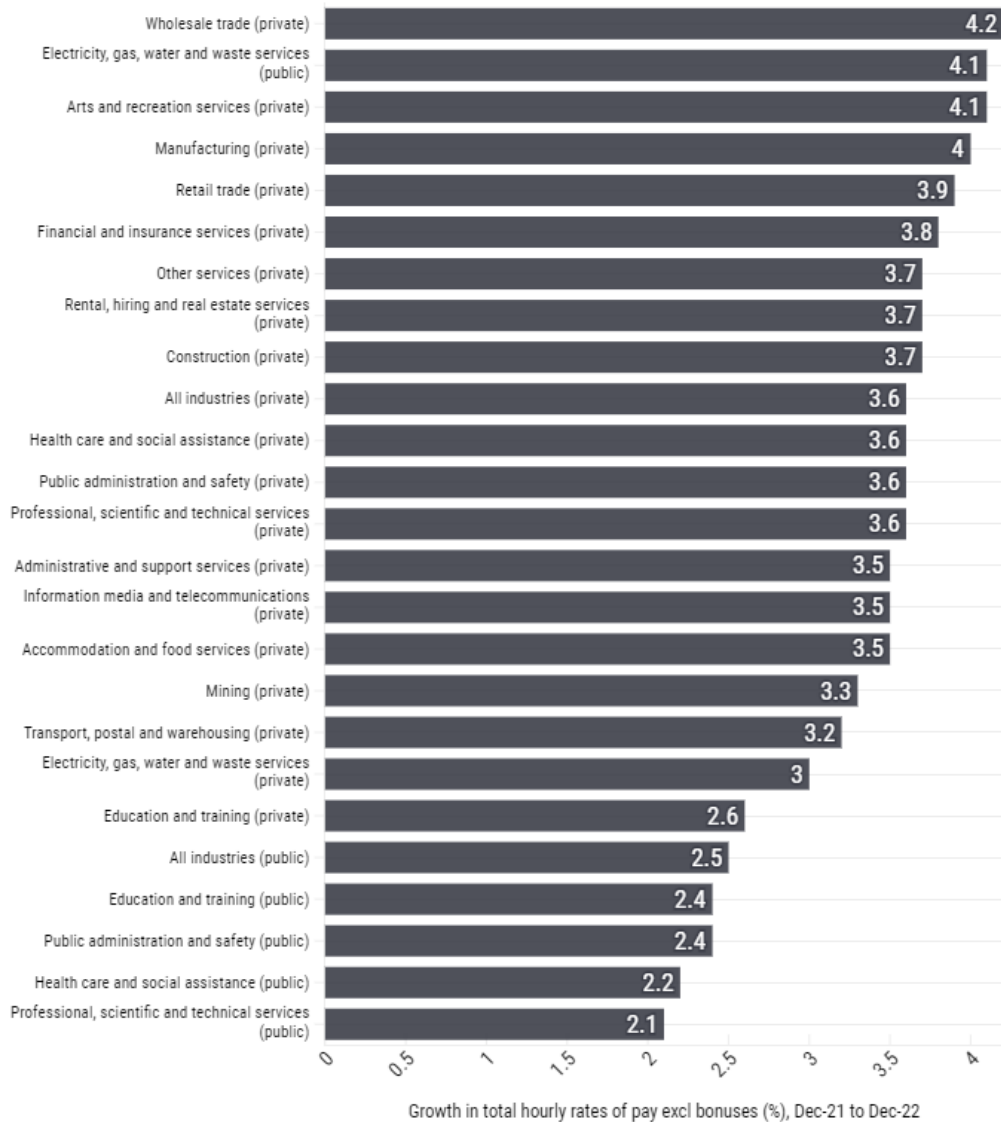
⁵¹ Seasonally adjusted. ABS Wage Price Indicator December 2022.

⁵² Seasonally adjusted. ABS Average Weekly Earnings November 2022.

Balanced strong wages growth across industries, with low outliers in the public sector

When disaggregated to the industry level, wages growth has been relatively evenly clustered during the current cycle. Almost all industries saw WPI increases of between 3.3% and 4.0% during 2022⁵³. This reflects the generalized nature of labour shortages and elevated vacancy rates, which are presently affecting all industries. The industries with lowest wages growth are public sector-dominated.

Chart 10: Wages growth by industry, y/y growth to December 2022



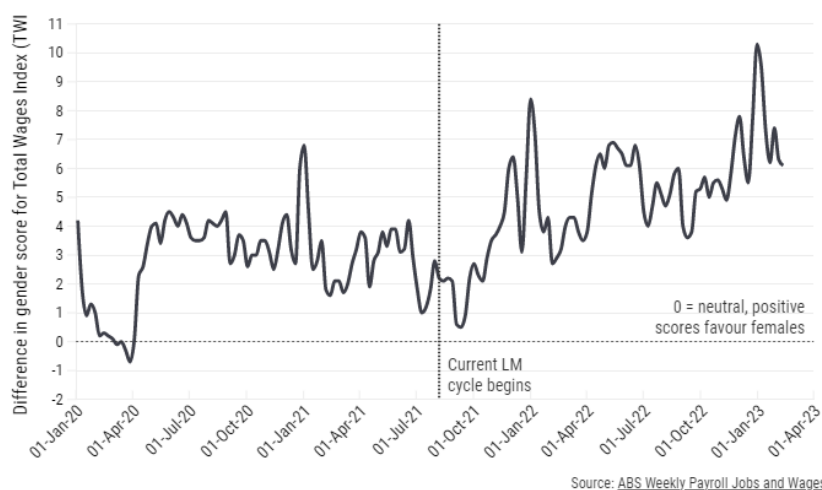
Source: [ABS Wage Price Index \(Table 5b\)](#)

⁵³ FWC-SR, Chart 5.2.

Stronger wages growth for women, gender pay gap narrows

Wages have grown more strongly for women during the current labour market cycle. The ABS Total Wages Index – a weekly index of payroll wages – shows a growing gender divergence in favour of females since the middle of 2021 (Chart 11). Strong wages growth for women have also seen the gender pay gap in Australia fall to 13.3% by November 2022, the lowest figure on record⁵⁴.

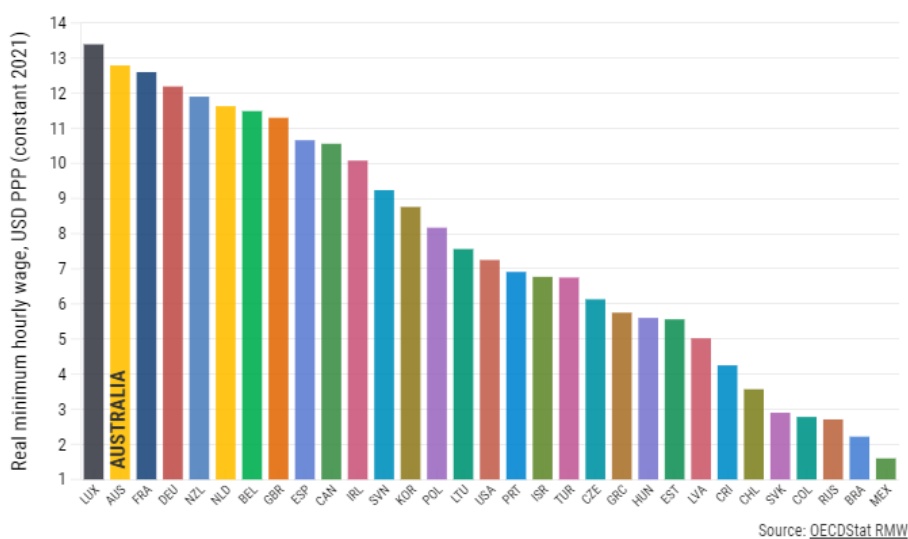
Chart 11: Gender differential in ABS Total Wages Index, 2020 – present



Australia’s minimum wage remains second highest in OECD

According to the most-recent data, Australia retains its position as having the second highest real minimum wages in OECD (Chart 12). In 2021, Australia’s real hourly minimum wages were USD 12.79, expressed in 2021 purchasing power parity terms. This real minimum wage is second only to Luxembourg, and 77 % higher than those in the United States.

Chart 12: Real minimum wages in the OECD, 2021



⁵⁴ When measured by AWOTE, the only statistical measure of the gender pay gap presently available for the current labour market cycle. See FWC-SR, Table 11.1.

Total wages have grown faster than total profits in the non-mining economy

In 2022, company gross operating profits, a nominal measure, rose by 16.0%, while wages increased by 11.6% (Table 2). However, abnormally high profit growth in the mining sector – due to global commodity price rises caused by Russia’s invasion of Ukraine – skewed the data for national aggregates. Table 2 disaggregates profit and wages data by industry, to enable a comparison of the mining and non-mining sectors of the economy. It reveals that:

- (a) Non-mining gross operating profits rose modestly by 2.2% in 2022, compared to 33.2% growth in the mining sector
- (b) In the non-mining economy, wages rose by 12.0% in 2022, five times faster than profits growth;
- (c) Total wages growth exceeded total profits growth in ten of fifteen industries; and
- (d) All 15 industries delivered increased total wages, including in seven industries which saw reduced total profits.

Table 2: Gross operating profits and wages by industry, 2021 and 2022

	Gross Operating Profits			Wages		
	Dec-21	Dec-22	% growth y/y	Dec-21	Dec-22	% growth y/y
Mining	56490	75245	33.2%	7233	7931	9.7%
Manufacturing	12505	11198	-10.5%	14391	15273	6.1%
Electricity, gas, water and waste services	3949	4577	15.9%	1597	1697	6.3%
Construction	7017	6843	-2.5%	16061	18784	17.0%
Wholesale trade	8580	10926	27.3%	10619	11661	9.8%
Retail trade	5568	6566	17.9%	11776	13377	13.6%
Accommodation and food services	1204	1890	57.0%	5418	7337	35.4%
Transport, postal and warehousing	5921	8235	39.1%	7324	8919	21.8%
Information media & telecommunications	4680	4442	-5.1%	3275	3751	14.5%
Financial and insurance services	2098	679	-67.6%	11968	12804	7.0%
Rental, hiring and real estate services	7175	5673	-20.9%	4277	4366	2.1%
Professional, scientific and technical services	7980	6911	-13.4%	21607	23673	9.6%
Administrative and support services	1413	1448	2.5%	12009	13004	8.3%
Arts and recreation services	1092	955	-12.5%	1616	2071	28.2%
Other services	1725	2146	24.4%	4799	5277	10.0%
All Industries	127398	147734	16.0%	155438	173408	11.6%
All industries excl. mining	70907	72489	2.2%	126737	141994	12.0%

Unit: AUD millions, seasonally adjusted, current prices. Source: ABS Business Indicators, Tables 11 and 17.

5. The impact on business

The Panel should give careful consideration to the impact of any wage increases on business. Section 134(1)(f) of the Act expressly requires the Commission to do so in relation to modern award minimum wages. Further, both the minimum wages objective and the modern awards objective require the Commission to take into account the *'fairness'* of the safety net, which is to be assessed from the perspective of employers and employees.⁵⁵ In any event, it is a critical discretionary consideration that should influence the Commission's decision.

As can be seen from the preceding two sections of this submission, various circumstances facing businesses render it is essential that the Commission adopt a restrained and cautious approach to this years' AWR. These include the following:

- (a) Employers are facing substantially higher costs, due to inflationary, wages and interest rate pressures.
- (b) Consumer demand has been declining and is expected to decline further.
- (c) Profit growth across the economy, with the exception of the mining industry is low and in many industries, is falling. During 2022, gross operating profits in industries other than mining grew by only 2.2% in nominal terms. Profits declined in seven of 15 industries during the year. Across non-mining industries, total wages growth was five times faster than total profit growth in 2022.⁵⁶
- (d) Many industries experienced modest, if any, growth during 2022. For instance, the manufacturing industry contracted by 2.9%, retail trade grew by 0.9% and construction grew by 1.8%.⁵⁷

Any increase to wages should be moderate. Employers have, over the last 3 – 4 years faced numerous challenges, including the COVID-19 pandemic, post-pandemic recovery, high inflation, substantially higher costs, increasing labour costs and low profit growth (in absolute terms and relative to wages growth).

The impending increase to the SG from 1 July 2022 by 0.5% and the impact this will have on labour costs should also be borne in mind. Further, from 1 July 2022, the previously applicable monthly threshold of \$450 for employee eligibility to the SG was removed, thereby expanding both the cohort of employees who are entitled to the SG and the cost impacts of the higher SG on businesses.

⁵⁵ *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [18].

⁵⁶ Table 2.

⁵⁷ Chart 2.

Due to ongoing inflationary pressures and slowing consumer demand, businesses are facing fragile conditions. An excessive wage increase will further reduce business confidence. Employers will potentially implement spending cuts by, for example, lowering spending on investments and labour. The consequential impact this would have on employees and employment is self-evident.

The wage increase determined by the Commission should enable employers to operate and grow in a sustainable way. Employers should not be placed in the unenviable position of having to reduce the size of their workforces, withhold employment opportunities, limit the hours of work they can offer, refrain from engaging in enterprise bargaining or affording wages and other benefits that exceed the minimum safety net.

6. A fair and relevant minimum safety net

The Panel is tasked with determining and maintaining a fair and relevant safety net for employees working in Australia. Fairness is to be assessed from the perspective of both employers and employees.⁵⁸ We have dealt with fairness to employers in the preceding section of this submission.

Clearly, fairness in relation to employees should consider not just wage rates, but also non-wage elements of remuneration and changes to employment and hours worked. It is the combination of these that determines individuals' benefits derived from employment-related remuneration. In addition to benefits from remuneration, income support and other forms of support provided by governments are also clearly relevant in determining a fair and relevant safety net. In the rest of this section, we examine changes in employment and hours worked and the sometimes apparently paradoxical impacts these changes have on variations in average earnings. In section 7, we examine the contributions of non-wage remuneration and the broader social safety net to the safety net considerations of the Panel.

Table 3 summarises ABS data on the changes to hours worked and numbers employed between November 2021 and November 2022⁵⁹. This period is chosen to align with the most recent data on average weekly earnings (for November 2022, released in February 2023) examined further below.

**Table 3: Changes in hours worked and numbers of people employed (trend series)
(November 2021 to November 2022)**

	Monthly hours worked	Number employed
	% change from November 2021 to November 2022	
Persons		
In all jobs	4.2	3.9
Full time	5.2	5.6
Part Time	-0.5	0.0
Males		
In all jobs	4.0	3.8
Full time	4.3	4.5
Part Time	0.8	1.1
Females		
In all jobs	4.6	3.9
Full time	6.8	7.5
Part Time	-1.2	-0.5

Source: ABS, *Labour Force, Australia*, March, 2023.

⁵⁸ *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [18].

⁵⁹ ABS, *Labour Force Australia*, February 2022.

The period saw very strong growth in the number of people employed: 3.9% overall comprised of a 3.8% increase in the number of men employed and a 3.9% increase in the number of women employed. This extra employment has impacted positively on Australian household incomes and has boosted the capacity of employee households to meet rising consumer prices and mortgage payments. These increases in incomes and affordability are in addition to those arising from changes in wage rates and non-wage remuneration.

The key component of the increase in employment was the particularly strong growth in full-time employment. Full-time employment grew by 5.6%; comprised of a 4.5% rise in full-time employment of men and a 7.5% rise in full-time employment of women.

Of the total increase in employment of 510,500 people between November 2021 and November 2022, no less than 99.9% (509,900 people) was in extra full-time employment. The proportion of full-time jobs in total extra employment of men was 94.6%, with a relatively small increase of 14,300 in part-time employment of men. The number of women employed in part-time positions fell by 13,700, alongside a rise of 244,600 in total employment of women - a figure less than the 258,300 rise in full-time employment of women.

The extraordinary growth in full-time employment was the dominant factor in the somewhat higher growth in total hours worked compared with the growth in total employment.

The higher rates of growth in hours worked relative to the growth in numbers employed across the labour force, occurred even though hours worked in each of part-time and full-time employment for men and women grew by lesser proportions than the proportionate growth of people employed (hours worked in part-time positions for women declined by more than the reduction in part-time employment of women). The lower rises in hours worked in each of these categories compared with the rises in the numbers employed in the same categories indicate a fall in average hours worked per employee in each of these categories.

The compositional change in full-time and part-time employment in the November 2021 to November 2022 period was also the dominant factor in changes in earnings over the same period as provided by the most recent ABS data on average earnings.⁶⁰ Key average earnings data are set out in Table 4. In examining the data set out in Table 4, it is important to note that, because the proportional changes relate to average earnings across the larger number of people employed, and like the data on change in wage rates, they do not capture the increase in employees' and employee-households' earnings due to the rise in total employment.

⁶⁰ ABS, *Average Weekly Earnings, Australia*, November 2022.

**Table 4: Change in Average Weekly Earnings (trend series)
November 2021 to November 2022**

	%
Persons	
Full-time adult average weekly total earnings	3.4
All employees average weekly total earnings	3.7
Males	
Full-time adult average weekly total earnings	3.4
All employees average weekly total earnings	2.8
Females	
Full-time adult average weekly total earnings	3.9
All employees average weekly total earnings	4.7

Source: ABS, *Average Weekly Earnings*, February 2023.

The full-time adult persons' series shows a rise of 3.4% in full-time adult average total earnings. This is a smaller rise than for the all-employees average total earnings for persons of 3.7%. Given that part-time hours per person employed on a part-time basis declined somewhat (as did average hours worked in full-time positions), in addition to changes in occupational composition, the higher rise in the all-employees total earnings reflects the extent of the increased proportion of people and particularly women employed on a full-time basis.

However, for men, while average full-time adult earnings also grew by 3.4%, all-employees average weekly total earnings for men rose by a smaller proportion (2.8%). In addition to any changes in occupational composition over the period, the smaller rise in all-employees average total earnings reflect both the small decline in average hours worked in part-time positions and the increased number of men working in part-time positions.

In contrast, for women, the rise in the all-employees average total earnings, at 4.7%, was higher than the full-time adult average weekly total earnings (of 3.9%). In addition to occupational composition changes, and despite the decline in average hours worked, this reflects the fact that the rise in total employment of women was less than the rise in full-time employment of women (i.e. the fall in the number of women working on a part-time basis).

In summary, the very strong growth in the number of people employed represents a substantial improvement in the safety net provided by Australia's labour market. This improvement, which is not reflected in changes in wage rates and which is indirect and heavily disguised in the data on average earnings, has had a material and positive impact on the ability of employee-households to meet the challenges presented by higher consumer prices and mortgage payments. We urge the Panel to take this substantial factor into account in its consideration of the adequacy of the safety net of minimum wages.

In considering the extent of wage increases in this year's decision, we urge the Panel to give considerable weight to the importance of maintaining, or at least minimising, the erosion of these gains in employment and hours worked.

These recent gains in employment, particularly at the margin of new full-time jobs and additional hours of work for part-time employees, are likely to be most vulnerable to the anticipated slowdown in economic activity over the year ahead. A more moderate wage increase in this year's decision is a critical step the Panel can take to ensure that the gains in the safety net due to higher employment and increased hours of work are preserved or at least insulated from the very likely downturn in activity in 2023 – 2024.

7. The relative living standards and needs of the low paid

The Panel has a long-established practice of taking into account relevant changes to superannuation, taxation and income support arrangements in its consideration of the needs of the low paid.

In this section, Ai Group outlines key changes in these areas that are relevant to this year's decision. We examine below the further increase in the SG from 10.5% to 11% from 1 July 2023; the positive impacts of the Government's Energy Price Relief Plan on many low-income employee households, including those with dependent children; the removal of the LMITO; and the indexation of income support arrangements including the FTB. We also note the possibility that further measures assisting low-income households could be announced in the May Budget.

The Superannuation Guarantee

The SG will rise from 10.5% to 11% from 1 July 2023. Consistent with previous AWR decisions, this increase should be taken into account in this year's decision and should be a moderating factor in any increase in modern award minimum wages and the NMW, such that any increase should be lower than it would otherwise have been.

In its decision regarding the 2022 AWR at [157], in addressing Ai Group's suggestion that the Panel should take the higher rate of SG into account, the Panel wrote:

[157] ... the SG rate increase is a *deferred* benefit; it does not assist low-paid employees to meet their current needs and cost of living pressures.⁶¹

We acknowledge the Panel's observation that the increase in the SG is a 'deferred benefit'. In our respectful submission, however, it is more than a deferred benefit for three reasons.

First, the higher SG provides employees with an additional assurance from the time it is paid by their employers that their standard of living in retirement will be higher than would otherwise be the case. This assurance can be seen as a current benefit, even though it relates to future consumption possibilities.

⁶¹ *Annual Wage Review 2021 - 22* [2022] FWCFB 3500 at [157].

Second, the higher SG may also have the impact of raising current consumption possibilities. Among a wide variety of approaches under which current consumption could be raised, this could occur if an employee household decided to repay its mortgage at a slower pace than otherwise in light of the higher SG payment and associated higher superannuation balance on retirement. This calls into question any suggestion that the increase in the SG has no scope to assist employees in meeting their current needs and addressing current cost of living pressures.

Third, the likely amount of the increase in post-retirement consumption possibilities is significantly greater than the amount of the deferred benefit. This arises because of the likelihood that the additional SG will be invested by an employee's superannuation fund and increase in value by a significant amount between the time of the entitlement to the additional deferred benefit and the time it is available for future consumption.

Ai Group submits that the Panel's consideration of the benefit of the extra SG should take into account not only its impact on increased future consumption possibilities but also the current benefits derived from the higher future consumption possibilities; the fungibility of future and present consumption; and the benefits of deferral in the form of the likely additional superannuation income from the compounding earnings over time generated by the initial deferred benefit.

Energy Price Relief Plan

On 9 December 2022, the Commonwealth Government announced its Energy Price Relief Plan that included targeted assistance for eligible households to help meet higher electricity costs. The relief was to be provided to households receiving income support including pensioner households and households that are recipients of FTB A and B.⁶²

Subsequently, on 17 December 2022, the *Treasury Laws Amendment (Energy Price Relief Plan) Act 2022* (Cth) took effect, providing \$1.5 million to the States and Territories on the basis that they match the Commonwealth's funding to provide temporary relief on energy bills to eligible households.

In its 9 December Media Release, the Commonwealth Government undertook to provide further details of this element of the Energy Price Relief Plan by March 2023.

The assistance provided by the Energy Price Relief Plan is clearly relevant to the needs of eligible low-income employee-households with children and any other low-income employee households which are eligible for this assistance. As such, it is also relevant to the Panel's consideration of the needs of the low paid.

Complete information about the working of the Energy Price Relief Plan is not yet available; in part because it is to be delivered in different forms and amounts by the various States and Territories that subscribe to the Plan.

⁶² Prime Minister, Treasurer, Minister for Climate Change and Energy, *Media Release*, 9 December 2022.

Ai Group is confident that more complete information will be available prior to the due date for subsequent submissions to the 2023 AWR. We intend to provide this information for the Panel's consideration in our subsequent submissions.

The Low and Middle Income Tax Offset

The LMITO has been paid in the financial year tax refunds were paid in respect of taxable incomes received in the previous financial year. For instance, LMITO of up to \$1,440 was available in 2022 – 2023 in respect of taxable income received in the 2021 – 2022 year.

The LMITO was introduced as a temporary measure as part of an initial stage of a three-stage reworking of personal income tax arrangements and was extended several times including, most recently, in the first of the two 2022 – 2023 Budgets. It is currently scheduled not to apply in respect of income earned in the 2022 – 2023 year, so it would not be reflected in income tax refunds received in 2023 – 2024.

The fact that it has been extended a number of times is a caution against assuming the LMITO will not be extended again. This is something that will be confirmed or otherwise in the 2023 – 2024 Budget.

Indexation of Income Support Payments

Wage earning families earning low and middle incomes can be eligible for income support payments in the form of FTB A and B.

The proportionate importance of FTB in total household income is higher at lower income levels; both because non-FTB income is lower and because at lower levels of income, FTB is paid in full whereas at higher incomes, households with children receive lower FTB payments.

For lower income families, the indexation of FTB has a proportionally high contribution to the potential increase in total household income and the indexation of these payments has a more material impact on their ability to manage the higher costs of living.

Ai Group submits that the indexation of FTB payments and its greater importance for low-income employee households should be taken into account by the Panel in its consideration of the needs of the low paid.

The prospect of further measures in the 2023-24 Budget

On a number of occasions, the federal Government has indicated its intention to provide some form of cost of living relief in the 2023 – 2024 Budget. For instance, in an article in *The Australian* on 23 March 2023, the federal Treasurer is quoted as saying:

We're still working to find the best balance of near-term and longer-term priorities, the best combination of relief, repair and restraint ...⁶³

Ai Group will examine the Budget in detail in May and include in our final submission our views on the relevance of any measures that will have a bearing on the Panel's consideration of the needs of the low paid.

⁶³ *Treasurer Jim Chalmers flags 'substantial' upgrade to tax take in budget and migration spike*, *The Australian* 23 March 2023.

8. The need to achieve gender equality

The minimum wages objective was amended by the Secure Jobs Better Pay Act, by repealing s.284(1)(d) and creating a new s.284(1)(aa). The amendment became operative on 7 December 2022 and therefore applies in the 2023 AWR.

The FW Act's previous s.284(1)(d) required the Panel to consider *'the principle of equal remuneration for work of equal or comparable value'*. The new s.284(1)(aa) provides for additional matters that the Panel is to consider. Specifically, s.284(1)(aa) requires the Panel to take into account:

- (a) the need to achieve gender equality, including by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and addressing gender pay gaps

Similarly, the Secure Jobs Better Pay Act amended the modern awards objective, by inserting a new s.134(1)(ab), in the following terms: (emphasis added)

- (ab) the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women's full economic participation

Section 134(1)(ab) is in similar terms to the new s.284(1)(aa), save for the following important differences:

- (a) The modern awards objective requires the Commission to take into account the need to achieve gender equality *'in the workplace'*, rather than the need to achieve gender equality at large, as appears to be contemplated by the minimum wages objective.
- (b) Section 134(1)(ab) requires that the Commission is to take into account the need to achieve gender equality through the subsequent exhaustive list of objectives. By contrast, the minimum wages objective requires the Commission to take into account the need to achieve gender equality *'including'* through the list of measures that follow. That is, the requisite consideration does not exhaustively identify how gender equality is to be achieved.
- (c) Section 134(1)(ab) does not expressly require that any consideration be given to addressing gender pay gaps.
- (d) Unlike s.284(1)(aa), s.134(1)(ab) requires the Commission to take into account the need to achieve gender equality by *'providing workplace conditions that facilitate women's full economic participation'*.

In the submissions that follow, we deal with each of the matters expressly contemplated by s.284(1)(aa) and s.134(1)(ab).

The need to achieve gender equality

Section 284(1)(aa) requires the Commission to take into account the *'need to achieve gender equality'*, whilst the modern awards objective specifies the same objective in relation to *'the workplace'*⁶⁴.

The Panel's consideration of gender equality should not be limited to an assessment of remuneration levels between men and women, or the gender pay gap. Rather, it should include other measures to achieve gender equality, such as the following three related matters:

- (a) lifting women's workforce participation;
- (b) sustaining the recent rise in full-time employment of women; and
- (c) encouraging the provision of additional hours of work to underemployed women.

Section 284(1)(aa) does not exhaustively list the matters associated with gender equality that may be taken into account by the Commission and therefore, it is plainly open to the Commission to have regard to these considerations. Further, whilst s.134(1)(ab) is narrower in scope, we submit that these are nonetheless important discretionary considerations that the Commission should take into account in relation to its review of modern award minimum wages.

Each of the above outcomes would ensure that women have access to greater financial security and independence, including in retirement. They would result in employees having access to greater opportunities to engage in paid employment, including on a full-time basis. The capacity to maintain full-time employment earnings addresses a key driver to narrow the gender pay gap and thereby, improve gender equality.⁶⁵

Tables 6.8 and 6.9 of the FWC-SR show a general increase in full-time female work participation levels since 2012, despite a slight reduction in January 2023. Specifically, the overall workforce participation rate for women in table 6.9 has dropped in January 2023 to the pre-covid levels recorded in 2019, while the proportion of women working full-time has similarly dropped in January 2023 to 45.7%, from 47.3% recorded in December 2022, notwithstanding that the proportion working full-time remains higher than pre-covid periods ending in 2019.

The general trend of increased women's workforce participation and women's full-time employment should be sustained and supported by the Panel's decision.

⁶⁴ Section 134(1)(ab) of the FW Act.

⁶⁵ Workplace Gender Equality Agency, *Women's economic security in retirement* (February 2020) and Workplace Gender Equality Agency, *She's Price(d)less: the economics of the gender pay gap* (2022) at page 9.

The same can be said of underemployment. As set out earlier in this submission, recent data reveals a period of sustained low unemployment levels. Nonetheless, as at February 2023, 59.1% of underemployed part-time employees are women⁶⁶ and 67.8% of part-time employees are women⁶⁷.

It is critical that any increase to minimum wages does not undermine women's workforce participation, reduce the scope for their engagement on a full-time basis or result in employers not affording additional hours of work to underemployed employees. An excessive increase to minimum wages may displace women in the workplace, result in greater underemployment and / or engagement to a greater extent on casual or non-ongoing forms of employment. These issues are developed further in sections 6, 9 and 11 of this submission.

Ensuring equal remuneration for work of equal or comparable value

The need to ensure equal remuneration for work of equal or comparable value is not new to the minimum wages objective or the modern awards objective. Both have required the Commission to take this objective into account in the context of AWRs since the FW Act commenced operation. However, as a product of the Secure Jobs Better Pay Act, the FW Act now prescribes more detailed parameters around the concept of '*equal remuneration for work of equal or comparable value*'. Relevantly:

- (a) Section 302(2) continues to define the term as meaning '*equal remuneration for men and women workers for work of equal or comparable value*'.
- (b) By virtue of the new s.302(3A), in deciding whether there is equal remuneration for work of equal or comparable value, the Commission may take into account:
 - (i) comparisons within and between occupations and industries to establish whether the work has been undervalued on the basis of gender. Such comparisons are not limited to similar work and do not need to involve a comparison with a historically male-dominated occupation or industry.⁶⁸
 - (ii) whether historically the work has been undervalued on the basis of gender.
 - (iii) any fair work instrument or State industrial instrument.
- (c) If the Commission takes into account any of the matters identified at paragraph (b) above, it is not required to find discrimination on the basis of gender to establish the work has been undervalued.⁶⁹

⁶⁶ ABS *Labour Force Australia February 2023*, series A85254552C and A85254812L.

⁶⁷ ABS *Labour Force Australia February 2023*, series A85254547K and A85254807V.

⁶⁸ Section 302(3B) of the FW Act.

⁶⁹ Section 302(3C) of the FW Act.

- (d) In deciding whether there is equal remuneration for work of equal or comparable value, the Commission must take into account orders and determinations made by the Commission in annual wage reviews and the reasons for those orders and determinations.⁷⁰
- (e) Section 302 of the FW Act does not limit the considerations the Commission may take into account in deciding whether there is equal remuneration for work of equal or comparable value.

In the 2017 – 2018 AWR, the Commission said as follows about the equal remuneration elements of the minimum wages and modern awards objectives: (emphasis added)

[34] In the *Equal Remuneration Decision 2015* the Full Bench concluded that the expression ‘work of equal or comparable value’ in s.302(1) refers to equality or comparability in ‘work value.’ We agree and, further, the same meaning should be attributed to this expression in ss 134(1)(e) and 284(1)(d). As explained in the *Equal Remuneration Decision 2015*, the principle of equal remuneration for work of equal or comparable value is enlivened when an employee or group of employees of one gender do not enjoy remuneration equal to that of another employee or group of employees of the other gender who perform work of equal or comparable value. Further, as the Full Bench observed:

‘This is essentially a comparative exercise in which the remuneration and the value of the work of a female employee or group of female employees is required to be compared to that of a male employee or group of male employees.’

[35] The application of the principle of equal remuneration for work of equal or comparable value is such that it is likely to be of only limited relevance in the context of a Review. Indeed it would only be likely to arise if it were contended that particular modern award minimum wage rates were inconsistent with the principle of equal remuneration for work of equal or comparable value; or, if the form of a proposed increase enlivened the principle. We agree with the observations of a number of parties that Review proceedings are of limited utility in addressing any systemic gender undervaluation of work. It seems to us that proceedings under Part 2-7 and applications to vary modern award minimum wages for ‘work value reasons’ pursuant to ss 156(3) and 157(2) provide more appropriate mechanisms for addressing such issues.⁷¹

These comments were endorsed by the Commission in each of the four AWRs that have since followed.⁷²

⁷⁰ Section 302(4) of the FW Act.

⁷¹ *Annual Wage Review 2017 – 2018* [2018] FWCFB 3500 at [34] – [35].

⁷² *Annual Wage Review 2018 – 19* [2019] FWCFB 3500 at [388], *Annual Wage Review 2019 – 20* [2020] FWCFB 3500 at [399], *Annual Wage Review 2020 – 21* [2021] FWCFB 3500 at [162] and *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [87].

Despite the elaboration now found in the FW Act regarding the concept of *'equal remuneration for work of equal or comparable value'*, the above observations remain apposite. Specifically, in our submission:

- (a) The notion of equal remuneration for work of equal or comparable value is of limited relevance to the 2023 AWR;
- (b) The 2023 AWR is of limited utility in addressing any systemic gender undervaluation of work; and
- (c) Other parts of the FW Act are more appropriate mechanisms for addressing such issues.

Minimum wage increases are, respectfully, a blunt instrument for addressing any circumstances in which the safety net does not provide for equal remuneration for work of equal or comparable value, unless the increase ordered took on a different form to that which has been adopted by the Panel in previous AWRs. In any event, the nature of these review proceedings do not lend themselves to a detailed examination of the issues relevant to determining whether there is equal remuneration for work of equal or comparable value. It is not practicable for such matters to be determined in this forum.

Consistent with the previously adopted approach, the Commission should reach the same conclusions as those articulated in paragraph [35] extracted above.

Gender-based undervaluation of work

The elimination of gender-based undervaluation of work, while a mandatory consideration under s.284(1)(aa), is also a concept that is used and has a purpose elsewhere in the FW Act, specifically in reference to equal remuneration orders under s.302(3A) and s.154 regarding work value matters.

Before adjusting minimum wages to eliminate gender-based undervaluation of work, the Commission would first need to be satisfied that current wages reflect gender-based undervaluation. To do so would require a process of substantial inquiry, which is not practicable or appropriate in the context of an AWR. It is more appropriate that any such matters are dealt with through provisions of the FW Act concerning equal remuneration orders and / or work value matters.

Addressing the gender pay gap

Whilst the gender pay gap was not previously a matter expressly required to be taken into account by the Commission during an AWR, it was nonetheless a matter that was considered by the Panel. For instance, during the AWR 2017 – 2018, the Panel said as follows: (emphasis added)

[36] But the broader issue of gender pay equity, and in particular the gender pay gap, is relevant to the Review. This is so because it is an element of the requirement to establish a safety net that is *'fair.'* It may also arise for consideration in respect of s.284(1)(b) ('promoting social inclusion

through workforce participation'), because it may have effects on female participation in the workforce.

[37] The gender pay gap refers to the difference between the average wages earned by men and women. It may be expressed as a ratio which converts average female earnings into a proportion of average male earnings on either a weekly or an hourly basis. The *Statistical Report—Annual Wage Review 2017–18* (Statistical report) sets out three measures of the gender pay gap, ranging from 11.0 per cent to 15.3 per cent (see Table 4.1).

[38] As noted in the *Annual Wage Review 2015–16* decision (2015–16 Review decision), the causes of the gender pay gap are complex and influenced by factors such as: differences in the types of jobs performed by men and women; discretionary payments; workplace structures and practices; and the historical undervaluation of female work and female-dominated occupations. We accept that moderate increases in the NMW and modern award minimum wages would be likely to have a relatively small, but nonetheless beneficial, effect on the gender pay gap.⁷³

The above observations are clearly relevant to the application of s.284(1)(aa) and 134(1)(ab).

In addition, it is also relevant that, as previously found by the Commission, the gender pay gap is mostly driven by high paid workers.⁷⁴ Table 11.1 of the FWC-SR shows that for award-reliant employees, the gender pay gap for total cash earnings is 1.8% in contrast to the AWOTE rate of 13.3%, being the figure currently cited as Australia's gender pay gap.

Thus, addressing the gender pay gap does not support anything more than a moderate increase to minimum wages.

Providing workplace conditions that facilitate women's full economic participation

The full-economic participation of women can be facilitated through increasing their workforce participation, engagement in permanent ongoing forms of employment and fulfilling their desire to work additional hours, wherever relevant. This, again, calls for moderation in any wage increases to ensure that women do not suffer from the displacement effects that may flow from excessive increases.

⁷³ *Annual Wage Review 2017 – 18* [2018] FWCFB 3500 at [36] – [38].

⁷⁴ *Annual Wage Review 2018 – 19* [2019] FWCFB 3500 at [391].

9. Promoting social inclusion through increased workforce participation

The FW Act charges the Commission with establishing and maintaining a safety net of minimum wages, which requires consideration of, among other things, the objective of *'promoting social inclusion through increased workforce participation'*.

Ai Group recognises the importance of participation in the paid workforce for social inclusion. Participation in the paid workforce can be closely linked to individuals' sense of self-worth and it can signal the contributions people make to the well-being of the broader community. In addition, of course, participation in paid work can provide the financial means by which people can participate in many aspects of social life.

Over the course of the last couple of years, workforce participation has reached record highs, as post-pandemic participation of women has resumed the steady climb evident over several decades and as workforce participation by men which, in the years prior to the pandemic, began to stem its long-term decline, has resumed the more recent trend post-pandemic and is currently higher than it was at the end of 2019.

Because workforce participation rates include people who are working in the paid workforce and people who are unemployed but seeking to work, the growth in the number of people employed and the very low level of unemployment in recent times mean that the current high rates of workforce participation are associated with high rates of participation in paid work. Clearly, it is actual participation in paid work that is most fundamental to the promotion of social inclusion. Being unemployed is much less likely to be associated with improved social inclusion.

While as discussed in greater detail in sections 4 and 6 above, there has been a very strong labour market performance in the recent past, current levels of unemployment show there is still considerable underutilisation of the labour available at current wage rates. With large numbers of people actively seeking work, Ai Group submits that there is certainly no need to lift minimum wage rates to encourage additional labour supply.

Further, in the context of the slowing business conditions expected over 2023-24, to the extent to which employers would restrain additional employment and/or reduce current employment if wages were to rise more rapidly, the balance of risks is that more than a moderate increase in wage rates will erode recent gains and be detrimental to workforce participation and social inclusion (relative to what would be the case in if there were to be a more moderate wage rise).

The same observations can be made about hours of work. Current levels of underemployment demonstrate that large numbers of employees are willing to perform more hours of work at current wage rates and this in turn supports the conclusion that it is not necessary to increase minimum wages to encourage additional labour supply. Further, an increase to wages that is more than moderate may cause employers to offer fewer hours of work to existing employees than what might otherwise be the case, thus eroding the recent reductions in the rate of underemployment. Whilst

we acknowledge that this is not a matter that relates directly to the need to increase workforce participation, it is a relevant discretionary consideration, that should be taken into account by the Commission.

10. Providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability

We deal with the approach that should be adopted by the Panel in respect of junior employees, employees to whom training arrangements apply and employees with a disability in sections 13 – 16 and 18 – 20 of this submission.

In summary, we submit that:

- (a) In respect of award / agreement free junior employees, employees to whom training arrangements apply and employees with a disability, the Panel should adopt the same approach as it has done in previous AWRs (save for the maintenance of transitional arrangements applying to adult apprentices).
- (b) In respect of award covered junior employees, employees to whom training arrangements apply and employees with a disability, any increases awarded in the 2023 AWR should flow on to them, through the operation of existing award provisions that prescribe the minimum wages payable to them.

Such an approach would ensure the continuation of a comprehensive range of fair minimum wages applying to the aforementioned cohorts of employees.

11. The need to improve access to secure work across the economy

Section 134(1)(aa) of the FW Act requires the Commission to take into account the need to improve access to *'secure work'* across the economy.

The term *'secure work'* is not defined in the FW Act. For the purposes of this submission, and without endorsing the veracity of their approach as a basis for conceiving of *'secure work'* for the purposes of s.134(a)(aa), we observe that the unions typically refer to the corollary of *'secure work'* by reference to casual employment⁷⁵, labour hire employment, and employees on fixed-term contracts. Table 5 below presents indicators on the prevalence of these forms of employment in Australia between 2014 and 2022, drawn from relevant ABS labour surveys.

Most recently, between mid-2019 and mid-2022:

- (a) Those employed via labour hire arrangements in their main job fell by 43,000 (-13.9%);
- (b) Those employed on fixed-term contracts in their main job remained broadly stable at 389,000 (-0.3%);
- (c) Those employed on a casual basis in their main job increased by 135,000 (+5.2%); and
- (d) The total labour force increased by 748,000 employees (+7.0%).

The share of employees in casual, labour hire and fixed-term employment was at or near the lowest rates recorded in ABS surveys in mid-2022⁷⁶.

At the time of writing, more recent ABS data is only available for casual employment. It shows that casual employment has declined further in terms of both the absolute number of casual employees and the relative prevalence of casual employment by the February quarter of 2023 (see Table 5). The share of employees in casual employment is now the lowest it has been since 2014⁷⁷. It is likely that fixed-term and labour hire employment has similarly declined since mid-2022.

The relative decline of these forms of employment, accompanied by an overall growth of the labour force, reflects the strength of the Australian labour market in its current cycle. With strong demand for labour and record-level vacancies, employers have moved towards offering more work on a permanent or ongoing basis. Such forms of employment have dominated newly created jobs.

⁷⁵ For the purposes of the relevant statistical data, casual employment is defined as a form of employment in which employees do not have paid leave entitlements.

⁷⁶ With the exception of casual employment rates, which were artificially suppressed during 2020 and 2021 by COVID restrictions.

⁷⁷ This is on par with the proportion casual employees in 2021.

In order to sustain the recent increase in permanent ongoing employment, it is important that employers have the confidence to continue to engage employees on that basis. Uncertain economic conditions and / or disproportionately high labour costs may result in employers relying, to a greater extent, on casual employment, labour hire arrangements or fixed-term engagements. A more than moderate wage increase would potentially undermine the objective of *'improving access to secure work'*. Employers may be less inclined to commit to engaging permanent ongoing staff, given the myriad of additional entitlements, obligations and inflexibilities associated with such forms of employment (for example, the entitlement of permanent employees to severance pay if their employment is terminated by reason of redundancy).

Table 5: Indicators of secure work, 2014 – 2022

	Labour hire employees		Fixed-term contract employees		Casual employees [^]		Total employed persons
Survey	Labour Account survey		Characteristics of Employment survey		Labour Force survey		
Collection period	June months		August months		August quarters		
Source	ABS <i>Labour Hire Workers</i> Table 1		ABS <i>Working Arrangements</i> Table 6		ABS <i>Labour Force Australia Detailed</i> (A84631158X and A84630870K)		
Unit	'000s	% total employed	'000s	% total employed	'000s	% total employed	'000s
2014	217.1	1.8%	355.6	3.7%	2307.5	24.1%	9564.1
2015	231.0	1.9%	383.5	4.0%	2367.5	24.5%	9675.1
2016	231.3	1.9%	405.5	4.1%	2471.5	25.1%	9852.0
2017	251.1	2.0%	401.1	4.0%	2530.9	25.1%	10097.9
2018	302.8	2.4%	407.1	3.9%	2581.9	24.6%	10474.2
2019	309.3	2.4%	390.2	3.6%	2571.5	24.1%	10670.4
2020	267.2	2.1%	414.0	4.0%	2310.2	22.1%	10438.8
2021	276.7	2.1%	405.4	3.8%	2427.5	22.6%	10747.1
2022	266.2	1.9%	389.1	3.4%	2706.3	23.7%	11419.2
Memo: Feb Quarter 2023	NA		NA		2578.1	22.1%	11689.3

Notes: For main job of employees. [^] Casuals are defined as employees without paid leave entitlements.

12. The need to encourage collective bargaining

Matters related to collective bargaining are relevant to the Panel's determination of an appropriate increase to both the NMW and modern award minimum wages.

As identified in last year's AWR decision, 'in making the NMW order, the Panel must give effect to the minimum wages objective. While the minimum wages objective does not refer to *'the need to encourage collective bargaining'*, one of the objects of the Act is to encourage collective bargaining and, on that basis, it is appropriate to consider that legislative purpose in making the NMW order'.⁷⁸

Similarly, s.134 requires, in the context of the modern awards objective, that the *'need to encourage collective bargaining'* is taken into account.

We acknowledge that there are a range of factors that impact on the propensity of parties to engage in collective bargaining, many of which are unrelated to increases in the NMW and modern award minimum wages. Given the complexity of these factors, it is further acknowledged that the Commission is unlikely to be able to predict the precise impact of any specific proposed decision on bargaining.

Nonetheless, it is axiomatic that a relatively high minimum wage will provide a greater disincentive to employers to engage in collective bargaining or, at the very least, a potential barrier to the making of a collective agreement, given the legislative framework generally requires, in effect, that employees are financially better off under any newly implemented agreement than they would be under an otherwise applicable award. Conversely, a higher increase can logically be expected to reduce the motivation for some employees, and by extension, their representatives or unions, to initiate collective bargaining.

A consideration of the need to encourage collective bargaining should have a moderating influence on the determination of the quantum of any increase to both the NMW and award wages more broadly.

Also relevant to the Expert Panel's deliberations are the profound changes to the legislative scheme relating to collective bargaining that have commenced, or will commence, prior to the implementation of any increase ordered as a product of the 2023 AWR.

The changes introduce various mechanisms that were intended to both increase the incidence of collective bargaining and increase wages. There are various new provisions of the regulatory regime that will be able to be utilised to force employers to engage in collective bargaining or to be subject to a collective agreement. There will also be new and greater restrictions on the capacity of employers subject to enterprise agreements to bring applications before the Commission seeking that such instruments be terminated.

⁷⁸ *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [80].

It is particularly relevant to consider that the legislative regime will incorporate measures that are specifically targeted at facilitating greater bargaining in low paid sectors that have not traditionally engaged in collective bargaining.

Any consideration of the impact that such legislative amendments will have in practice will necessarily involve a degree of speculation. That does not mean that such matters should be ignored. If the often-cited and variously described objectives of the Secure Jobs Better Pay Act of increasing the level of collective bargaining and of getting wages moving are likely to be achieved, there will be less reliance of employees, including low paid employees, on minimum award rates. At the very least, the changes will deliver an expanded framework of avenues through which parties can seek to implement a collective agreement.

Without suggesting that the Panel can demur from its task in this AWR, it is appropriate that collective bargaining is viewed as a preferential avenue for delivering higher wage increases to employees, including low paid employees, than the blunt approach of increasing minimum award wages, given its greater capacity to deliver outcomes that are tailored to the circumstances of particular enterprises, sectors or parts of the economy.

The amendments to the collective bargaining framework should be viewed as a further moderating factor in relation to the determination of the quantum of any increase to either the NMW or award wages minimum wages, unless the Panel forms the view that the reforms will not be effective in delivering the above cited objectives.

13. Special National Minimum Wage 1 and 2 – award/agreement free employees with disability

In the 2022 AWR, the Commission decided to maintain the approach it had adopted in previous years in respect of setting special minimum wages for award / agreement free employees with disability.⁷⁹

This approach is twofold. For employees whose productivity is not affected, a special national minimum wage is set at the level of the National Minimum Wage (Special National Minimum Wage 1). For employees whose productivity is affected, a special national minimum wage is set in accordance with an assessment under the supported wage system (Special National Minimum Wage 2).

Ai Group does not oppose the continuation of the existing structures for award / agreement free employees with disability.

⁷⁹ *Annual Wage Review Decision 2021-22* [2022] FWCFB 3500 at [449].

14. Special National Minimum Wage 3 – award / agreement free junior employees

In its decision concerning the 2010 – 2011 AWR, the Panel decided to use the scale in the *Miscellaneous Award 2010* (as it then was) to set the special national minimum wage for award/agreement free junior employees.⁸⁰ The Panel has followed this approach in subsequent AWR decisions.⁸¹

This approach remains appropriate for setting rates for award/agreement free junior employees.

⁸⁰ *Annual Wage Review 2011 – 12* [2012] FWCFB 3400 at [396].

⁸¹ For example, *Annual Wage Review* [2022] FWCFB 3500 at [449].

15. Special National Minimum Wage 4 – award / agreement free apprentices

In the 2014 AWR, the Panel reached the following conclusions about the special national minimum wages for award / agreement free apprentices:

[613] We have decided to adopt the provisions of the *Miscellaneous Award 2010* as the basis for the special national minimum wages for employees to whom training arrangements apply. The national minimum wage order will incorporate, by reference, the apprentice and NTWS provisions of that award.

[614] We also accept Ai Group’s submission that the adult apprentice NMW in the order should now be set in accordance with the *Miscellaneous Award 2010* which, since 1 January 2014, has specified a rate for adult apprentices. ...⁸²

The Panel adopted this approach in subsequent AWRs.⁸³ It remains appropriate for setting rates for award/agreement free apprentices.

In a statement issued on 14 October 2022, the Panel sought interested parties’ views about the ongoing inclusion of transitional arrangements in the national minimum wage order that apply to adult apprentices who ‘*were engaged before 1 July 2014 and are in the first year of their apprenticeship*’. Specifically, the Panel is considering whether the provision ‘*still applies to any adult apprentices, with a view to remov[ing] the clause if it is no longer applicable*’.⁸⁴

The relevant provision appears to have been intended to apply to award / agreement free adult apprentices who were engaged before 1 July 2014 and were in the first year of apprenticeship when the *National Minimum Wage Order 2014* applied. In the 2014 AWR decision, the Panel said as follows:

[614] Award/agreement free adult apprentices engaged before 1 July 2014 and who are in Year 1 of their apprenticeship will continue on the rate set in the National Minimum Wage Order 2013 until they reach Year 2 of their apprenticeship, at which time they will transition to the adult apprentice rate in the *Miscellaneous Award 2010*.⁸⁵

⁸² *Annual Wage Review 2013 – 2014* [2014] FWCFB 3500 at [613] – [614].

⁸³ For example, *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [449].

⁸⁴ *Annual Wage Review 2022 – 23* [2022] FWC 2756 at [4].

⁸⁵ *Annual Wage Review 2013 – 2014* [2014] FWCFB 3500 at [614].

During the subsequent AWR, the Panel decided to maintain the transitional arrangement; however, it acknowledged that it may apply to only a small number of apprentices.⁸⁶ Similar observations were again made in the Panel's decision regarding the 2015 – 2016 AWR: (emphasis added)

[644] Given the time that has passed it is likely that very few, if any, adult apprentices engaged before 1 July 2014 would remain in the first year of their apprenticeship. The gap between the rate set in the *National Minimum Wage Order 2014* and the adult apprentice rate in the Miscellaneous Award has also closed. Accordingly, we propose that this will be the last year in which a transitional arrangement for adult apprentices is included in the NMW order. If any party contends this should not occur they should set out their reasons in submissions to the 2016–17 Review.⁸⁷

Despite the Panel's intimation that it did not intend to include the relevant transitional arrangements in the following year's national minimum wage order, it did so.⁸⁸ The Panel's decision did not deal expressly with the matter. It appears that all subsequent national minimum wage orders since have included similar transitional arrangements and express consideration has not been given to its relevance or application.

The provision is, in our assessment, extremely unlikely to be of any ongoing practical application. We would not oppose its removal.

⁸⁶ *Annual Wage Review 2014 – 15* [2014] FWCFB 3500 at [568].

⁸⁷ *Annual Wage Review 2015 – 16* [2016] FWCFB 3500 at [644].

⁸⁸ PR593544.

16. Special National Minimum Wage 5 – award / agreement free employees to whom a training arrangement applies who are not apprentices

In the *National Minimum Wage Order 2011*, the Panel decided to adopt the minimum wage rates in the National Training Wage Schedule of the *Miscellaneous Award 2010* for the special national minimum wage for award / agreement free employees to whom training arrangements apply, other than apprentices. The Panel adopted the same approach in its subsequent AWR decisions.⁸⁹

Ai Group supports the continuation of the above approach.

⁸⁹ For example, *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [449].

17. Transitional instruments

In the 2022 AWR, the Panel decided to maintain the approach taken by the Panel in previous AWRs, by increasing the rates in relevant transitional instruments consistent with any increase determined for modern award minimum wages.⁹⁰ Ai Group supports a continuation of this approach in the 2023 AWR.

⁹⁰ *Annual Wage Review 2021 – 22* [2022] FWCFB 3500 at [270].

18. Modern award minimum wages for junior employees

Consistent with previous AWR decisions, any minimum wage increase resulting from this year's AWR should flow apply to the minimum award wages of junior employees, through the operation of the relevant award provisions that prescribe their minimum rates.

19. Modern award minimum wages for employees to whom training arrangements apply

Consistent with previous AWR decisions, any minimum wage increase resulting from this year's AWR should flow through to the minimum award wages of employees to whom training arrangements apply, through the operation of the relevant award provisions relating to these employees.

20. Modern award minimum wages for employees with disability

Consistent with previous AWR decisions, any minimum wage increase resulting from this year's AWR should flow through to the minimum award wages of employees with disability, through the operation of the relevant award provisions relating to these employees.

21. Piece rates in modern awards

Ai Group supports a flow on of the outcome of the 2023 AWR to piece rates, consistent with the existing approach within modern awards for the calculation of piece rates.

22. Casual loadings in modern awards

Paragraphs 285(2)(a)(i) and 284(3)(b) of the FW Act requires that the Panel review casual loadings in modern awards.

In the *Metal Industry Casual Employment Case*,⁹¹ a Full Bench of the AIRC decided to increase the casual loading in the *Metal, Engineering and Associated Industries Award 1998* from 20% to 25%.

After the *Metal Industry Casual Employment Decision* was handed down, the 25% quantum flowed into many other awards. During the Award Modernisation process in 2008-09, the Award Modernisation Full Bench of the AIRC in the *Priority Stage Award Modernisation Decision*⁹² relevantly said:

[49] In 2000 a Full Bench of this Commission considered the level of the casual loading in the Metal, Engineering and Associated Industries Award 1998 (the Metal industry award). The Bench increased the casual loading in the award to 25 per cent. The decision contains full reasons for adopting a loading at that level. The same loading was later adopted by Full Benches in the pastoral industry. It has also been adopted in a number of other awards. Although the decisions in these cases were based on the circumstances of the industries concerned, we consider that the reasoning in that case is generally sound and that the 25 per cent loading is sufficiently common to qualify as a minimum standard.

[50] In all the circumstances we have decided to confirm our earlier indication that we would adopt a standard casual loading of 25 per cent. We make it clear that the loading will compensate for annual leave and there will be no additional payment in that respect. Also, as a general rule, where penalties apply the penalties and the casual loading are both to be calculated on the ordinary time rate.

The current standard casual loading in modern awards of 25% is already relatively high and should not be increased.

⁹¹ Print T4991, 29 December 2000.

⁹² *Award Modernisation* [2008] AIRCFB 1000.

23. Casual loading for award / agreement free employees

Section 294(1)(c) of the FW Act requires that the Panel set the casual loading for award / agreement free employees.

The casual loading in the *National Minimum Wage Order 2022* is 25 per cent, and a similar loading should be reflected in the *National Minimum Wage Order 2023*.

24. The form of the National Minimum Wage Order

In Ai Group's experience, the form of the *National Minimum Wage Order 2021* did not lead to any difficulties. We suggest that the same model is used for the *National Minimum Wage Order 2023*.

ABOUT THE AUSTRALIAN INDUSTRY GROUP

The Australian Industry Group (Ai Group®) is a peak employer organisation representing traditional, innovative and emerging industry sectors. We are a truly national organisation which has been supporting businesses across Australia for nearly 150 years.

Ai Group is genuinely representative of Australian industry. Together with partner organisations we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our members are small and large businesses in sectors including manufacturing, construction, engineering, transport & logistics, labour hire, mining services, the defence industry, civil airlines and ICT.

Our vision is for thriving industries and a prosperous community. We offer our membership strong advocacy and an effective voice at all levels of government underpinned by our respected position of policy leadership and political non-partisanship.

With more than 250 staff and networks of relationships that extend beyond borders (domestic and international) we have the resources and the expertise to meet the changing needs of our membership. We provide the practical information, advice and assistance businesses need. Our deep experience of industrial relations and workplace law positions Ai Group as Australia's leading industrial advocate.

We listen and we support our members in facing their challenges by remaining at the cutting edge of policy debate and legislative change. We provide solution-driven advice to address business opportunities and risks.

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