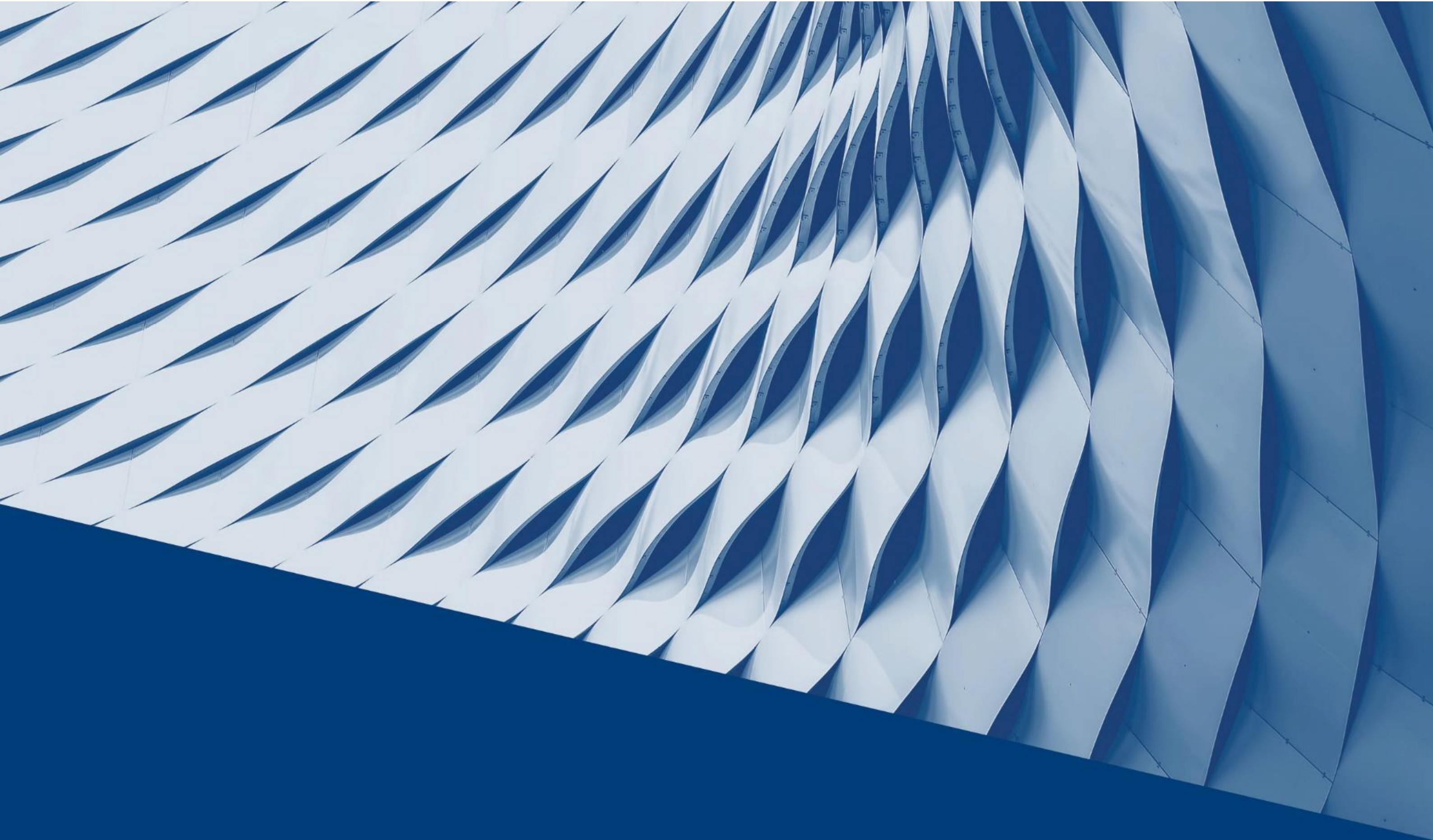

Post Budget Submission to the Annual Wage Review 2020-21

ACTU Submission, 14 May, 2021
ACTU D. No D23/2021

australian council of trade unions

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1. FEDERAL BUDGET

1. The federal budget suggests a very strong economic and labour market recovery in all respects save for wages, which are expected to decline in real terms. Meanwhile, many budget initiatives which the Panel can assume will be implemented over the next financial year will generally contribute to business investment and lower operating costs, including some direct wage subsidies.

1.1 Initiatives announced

2. There are a number of initiatives announced in the federal budget with potential relevance to the living standards of workers and the costs of doing business over the forward estimates period. In keeping with previous authority, we do not urge the Panel to take into account initiatives announced in the budget which require legislation in order to come into effect, or which will come into effect only after the next Annual Wage Review is conducted.[1]

3. We are pleased that the government intends to remove the $450 monthly income threshold for the making of employer superannuation contributions.[2] The monthly threshold is one of the factors contributing to women's lower retirement savings and tends to impact part time and casual workers, including multiple job holders. The removal of the threshold will likely impose additional costs on some employers while also removing artificial incentives to the distribution of hours of work among casual workers in particular. As this initiative requires legislative amendment, it is not appropriate for the Panel to take it into account until the relevant legislation has passed and the costs to award reliant employers can be estimated.

4. Similarly, the budget foreshadows an intention to raise the level of child care subsidy for a second child onward from 85% to 95% and to abolish the cap on subsidies for higher income earners.[3] These reforms are not proposed to commence until 1 July 2022 and would require amendments to be made to Schedule 2 of the *A New Tax System (Family Assistance) Act 1999.*

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[1] [2012] FWAFB 5000 at [175]; [2015] FWCGB 3500 at [68], [258]-[260]

[2] Budget Paper No.2 | Budget 2021-22 at p26

[3] Budget Paper No.2 | Budget 2021-22 at p81, see also Ministerial Press Release, 2 May 2021

5. The wage costs for employers of apprentices will be continue to subsidised through an expansion of the Boosting Apprenticeships Commencement program. In its current state, the program was due to close to new apprentices and trainees on 30 September 2021 and was capped at 100,000 participants. The budget has extended that closing date to 31 March 2022 and removed the cap on participants. The subsidy remains at the level of up to 50% of the apprentice or trainee's wage up to a maximum of $7,000 per quarter. [4] The lifting of the rate of job subsidy from $6,500 to $10,000 for youth (25-29 years), parents and the long term unemployed through the jobactive, transition to work and ParentsNext programs was also announced, with funding of $15.6 million commencing in 2021-22.[5]

6. The budget has announced the government's intention to retain the low and middle income tax offset for the next financial year, meaning no change in net position on this issue for impacted workers relative to the current state. The low and middle income tax offset is governed by Subdivision 61-D of the *Income Tax Assessment Act* 1997.

7. The announced lifting of Medicare Levy threshold amounts is intended to take effect from 1 July 2020[6] and may provide a small benefit at tax time for a some part time award dependent workers ($425 lifting in the threshold for a single person) . However, as the level of the relevant thresholds is fixed by the *Medicare Levy Act 1986*, it ought not be taken into account unless the relevant amendments are made prior to the Panel's decision being issued. In addition, the announced change to allow the first $250 of expenditure of on prescribed courses of education is due to be available only in the first year financial year after legislation is passed.[7] The initiative effectively only applies to up skilling toward an additional formal qualification in a current occupation, rather than re-skilling[8]. It is difficult to assess its value against the value of any hours of work forgone through the necessity to study.

8. Temporary full expensing for businesses with turnover under $5 billion has been modified. The $17.6 billion policy works by allowing businesses to purchase assets and then claim the costs of

[4] Budget Paper No.2 | Budget 2021-22 at p88-89
[5] Budget Paper No.2 | Budget 2021-22 at p89
[6] Budget Paper No.2 | Budget 2021-22 at p24
[7] Budget Paper No.2 | Budget 2021-22 at 26
[8] https://www.ato.gov.au/Individuals/Income-and-deductions/Deductions-you-can-claim/Self-education-expenses/#Eligiblecourses1

those assets as a deduction in the income year in which it first used or installed, provided that occurs before the end date of the policy.[9] The change announced is to extend the end date of the policy from 30 June 2022 to 30 June 2023. This may provide business with additional confidence to invest in medium term asset renewals and assist in driving productivity improvements. It is bolstered by the extension to the loss carry back scheme, in the sense that tax losses generated through full expensing may provide a basis to offset profits taxed from 2018-19 onwards.[10]

9. Employers in hospitality, tourism and agriculture industries experiencing staff shortages may benefit from the decision to allow student visa holders to work more than the usual 40 hours per fortnight.[11] It is not clear at this stage how many hours those students will be permitted to work. Changes to visa conditions such as the work rule applicable to subclass 500 visas can be given effect to via amendments to Schedule 8 of the *Migration Regulations* 1994. It is unclear at this stage whether the change will be given effect to in that way or merely via non-enforcement of the existing requirement. We recognise that access to additional work will assist persons on student visas to meet their needs. However, we ask the Panel to be mindful that increasing the supply of visa workers to these sectors will do nothing to stimulate market driven wage increases. Rather, such workers will be heavily reliant on the minimum wages determined by the Panel.

10. A number of funding arrangements have been made in relation to aged care. In our experience non-nursing staff in particular in this sector are generally not covered by enterprise agreements. Whilst most are targeted initiatives which may not contribute to meeting the standard operating costs (including labour costs) of aged care facilities, the $10 additional funding per resident likely will, whereas the 30% increase to the viability supplement likely will with respect to residential care and home care in rural and remote areas.[12] It is not clear to us when this additional funding will become available, although the current schedule of fees and supplements published by the Department of Health indicates the current amounts are applicable only until 30 June 2021.[13]

[9] Budget Paper No.2 | Budget 2021-22 at p29, see further ATO resources: https://www.ato.gov.au/Business/Depreciation-and-capital-expenses-and-allowances/Temporary-full-expensing/#Workingoutyourdeduction
[10] Budget Paper No.2 | Budget 2021-22 at p30.
[11] Budget Paper No.2 | Budget 2021-22 at p9.
[12] Budget Paper No.2 | Budget 2021-22 at p102.
[13] https://www.health.gov.au/sites/default/files/documents/2021/03/schedule-of-subsidies-and-supplements-for-aged-care-schedule-from-20-march-2021.pdf

11. We note that community pharmacies – a section of retail trade that tends to be award reliant – will be one of the beneficiaries from the allocation of $777.8 million in connection with the administration of COVID-19 vaccinations.[14]

12. The budget also includes 10 pages of funding to State and Territory infrastructure projects totalling $13.2 billion over the forward estimates period, which should contribute to employment of skilled trades.[15]

13. Finally, a number of fee relief and funding arrangements have been announced for the education sector which should provide some reduction in operating costs and relief in recognition of the decline in international students. These include an automatic waiver of $17.7 million in fees charged to over 3,500 providers by the Commonwealth Register of Institutions and Courses for Overseas Students, the Tertiary Education Quality and Standards Agency and the Australian Skills Quality Agency until 31 December 2021 and $26.1 million funding to around 100 non-university higher education providers to fund an additional 5,000 short course places for domestic students.[16]

1.2 Budget forecasts and observations

14. The federal *Budget Paper*s for 2021-22 released 11 May 2021 at are upbeat about the recovery and direction of the economy.[17] The Treasury forecasts have generally improved from the Budget 2020-21 of 6 October 2020 to MYEFO of 11 December to the Budget of 2021-22. The Treasury's forecasts for the Budget 2021-22 assume that everyone in Australia is vaccinated by end 2021 and there are only localized outbreaks of covid which are contained in 2021. Distancing and hygiene restrictions are assumed to continue, with no sustained border restrictions and with the gradual return of temporary and permanent migrants from mid 2022, and low international travel until mid 2022. The Budget Papers said that under these circumstances consumer and business activity should continue to improve.[18]

[14] Budget Paper No.2 | Budget 2021-22 at p108
[15] Budget Paper No.2 | Budget 2021-22 at p151-160
[16] Budget Paper No.2 | Budget 2021-22 at p7-8; Ministerial Press Release 30 April 2021
[17] Budget documents | Budget 2021-22 released 11 May 2021, Budget Paper No. 1 | Budget 2021-22
[18] Budget Paper No. 1 | Budget 2021-22 Statement 2, Box 2.1 p.36

15. The Treasury said it expects a lower fiscal deficit for 2020-21 at $160 billion instead of $213 billion expected at the 2020-21 Budget of 6 October 2020[19], mainly due to a higher than expected tax take. In the ACTU's view higher than anticipated income and spending would have assisted the higher tax take.

16. The Treasury's forecast for the Budget 2021-22 is that GDP will grow 1 ¼% for 2020-21 (compared with MYEFO ¾ %), 4 ¼% for 2021-22 (MYEFO 3 ½ %), and 2 ½ % for 2022-23. Household consumption is forecast to grow by 1 ¼% in 2020-21 (MYEFO ½ %), by 5 ½% in 2021-22 (MYEFO 3 ½ %), then by 4% in 2022-23. In the Budget of 11 May 2021 non mining investment is to fall by 6 ½ % in 2020-21 (MYEFO -11%), increase by 1 ½ % for 2021-22 (7 ½ % in MYEFO) and by 12 ½% by 2022-23. The accelerated depreciation and other business tax relief measures are intended to increase business investment, but in the ACTU's view these cannot work to increase investment without expectations of increased demand for the output of the production for which the investments is undertaken in the first place.

17. The forecasts for wage growth in the Budget have not improved however. The forecasts in the Budget Papers are for WPI growth of 1 ¼ % for 2020-21 (same as MYEFO), below the high CPI increase forecast of 3 ½% (MYEFO 2 ¼%) for 2020-21. The Treasury forecasts WPI of 1 ½ % in 2021-22 (MYEFO 1 ¼ %), compared with CPI of 1 ¾ % in 2021-22 (MYEFO 1 ½%). In 2022-23 the WPI and the CPI are both forecast to increase 2 ¼% and both are expected to rise to 2½% for the remainder of the forward estimates period. With the poor prognosis for wage growth it remains a mystery to the ACTU as to where wage increases would come from if not for the minimum wage and awards increase. The Panel should in our view be concerned about what a base case of a real wage cut for two years followed by mere indexation would mean for the living standards of working people. The forecasts for growth in household consumption of 5½% in 2021 and 4% in 2022-23 seem somewhat optimistic in light of the real wage declines that are expected over this period.

[19] Budget Paper No. 1 | Budget 2021-22 Statement 1, Overview, p.1

18. Employment is forecast to grow by 6 ½% over 2020-21 in the Budget, up from 4% in MYEFO. Employment is forecast to grow 1% in 2021-22, moderated from 1 ¾ % in MYEFO. The Budget said employment is 75,000 more at March 2021 than it was at March 2020.[20] The Budget forecasts 5 ½% unemployment for 2020-21 (7 ½ % in MYEFO),5% in 2021-22 (6 ¼ % in MYEFO) and 4 ¾ % in 2022-23.

19. The Budget Paper no 1 said unemployment had fallen faster than in the recessions of the 1980s and the 1990s. Unemployment should reach its pre pandemic level in the December quarter 2021 and within the NAIRU estimated band by the June quarter of 2022. "Overall, the outlook for wage growth is expected to remain moderate over the forecast period. This reflects both the severe impacts of the pandemic and the continued spare capacity in the labour market in the near term. The wage growth outlook also reflects a modest downwards revision to Treasury's estimate of the NAIRU"[21] In the ACTU's view this does not suggest that an increase in the minimum wage and awards would be an impost on business. Nor does the Treasury appear to recognise any specific means by which wages can increase, not even a healthy economy.

20. The Budget Paper no 1 Statement 2 said:

> "The Government's significant fiscal policy response has been central to Australia's economic performance throughout the pandemic, with the total economic support response now amounting to $291 billion. Initial temporary, targeted support measures, including JobKeeper, JobSeeker and Boosting Cash Flow for Employers helped to limit uncertainty, shielded households and businesses from the worst effects of the pandemic, and enabled Australia to respond to the health crisis."[22]

21. The Budget Paper no 1 Statement 2 also said: "The conclusion of the JobKeeper Payment is not expected to interrupt the recovery in the labour market, nor hinder growth in the broader economy."[23] JobKeeper had supported over 3.8 million individuals from March to September 2020 with two million transitioning off then. "In the March quarter of 2021, the JobKeeper Payment

[20] Budget Paper No. 1 | Budget 2021-22 Statement 2, p.57
[21] Budget Paper No. 1 | Budget 2021-22 Statement 2, p.61, citing Ruberl H, Ball M, Lucas L and Williamson T (2021), 'Estimating the NAIRU in Australia', Treasury Working Paper 2021-01, 29 April 2021.
[22] Budget Paper No. 1 | Budget 2021-22 Statement 2, p.44
[23] Budget Paper No. 1 | Budget 2021-22 Statement 2, p.45

supported around 1.1 million individuals and around 385,000 organisations. This is around 650,000 fewer individuals than was estimated in the 2020-21 Budget, consistent with a faster than expected labour market recovery."[24]

22. The Budget Paper no 1 Statement 2 also said:

> "The faster-than-anticipated recovery in the labour market will provide support to households, as emergency fiscal support concludes. The JobKeeper Payment provided critical support to household incomes over the course of the crisis and household gross disposable income remained almost 5 per cent higher through the year to the December quarter of 2020. This occurred despite the reduction in JobKeeper assistance, which roughly halved in the quarter, and the reduction in the Coronavirus Supplement. The household saving ratio declined in the quarter and, though it remains elevated at around 12 per cent, it is expected to decline further with improving confidence and greater consumption options."[25]

In the ACTU's view this implies that business would be well able to absorb an increase in the minimum wage and awards.

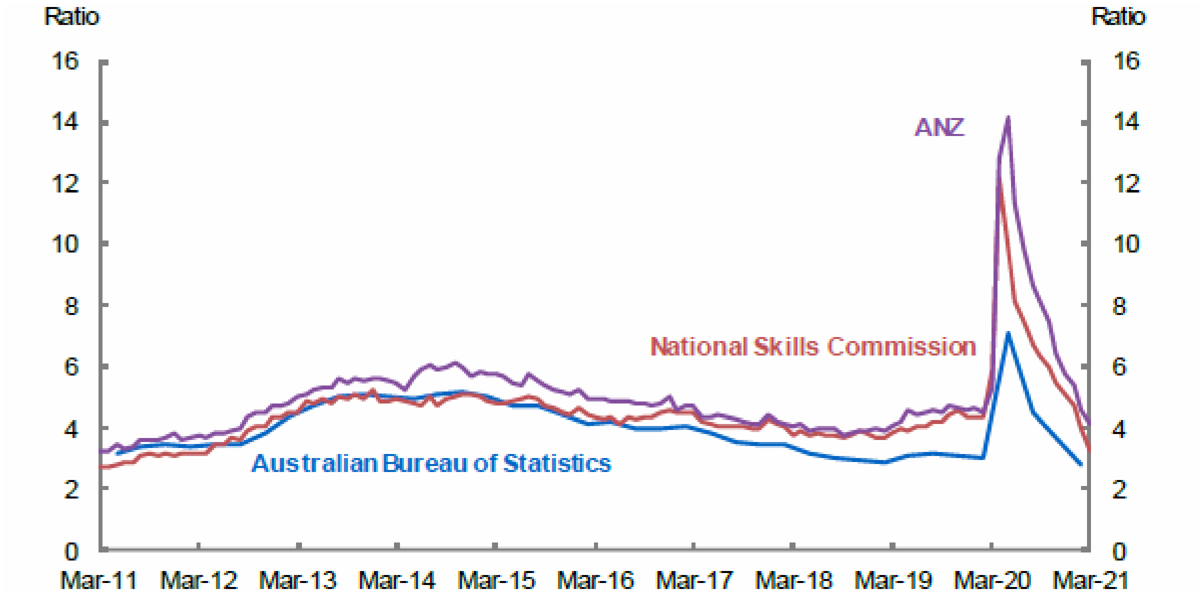
23. Budget Paper no 1 also expected increases in labour demand:

> "Over the four weeks to 30 April, immediately following the conclusion of JobKeeper, the number of people on the JobSeeker Payment and Youth Allowance (other) has fallen by approximately 105,000. Recent data for job advertisements, a key leading indicator for employment growth, have significantly surpassed pre-pandemic levels. ABS Job Vacancies reached a record high in February 2021. In March 2021, ANZ Job Ads were at their highest level since November 2008, before increasing further in April 2021 to be 28 per cent higher than their pre-pandemic level. The ratio of unemployed people to vacancies is now at its lowest level in over a decade."[26]

24. The Budget Paper presents the ratio of unemployed people to vacancies by various measures in Chart 2.14.[27] This is replicated in Figure 1 below.

[24] Budget Paper No. 1 | Budget 2021-22 Statement 2, p.60
[25] Budget Paper No. 1 | Budget 2021-22 Statement 2, p.47
[26] Budget Paper No. 1 | Budget 2021-22 Statement 2, p.57
[27] Budget Paper No. 1 | Budget 2021-22 Statement 2, p.58, Chart 2.14

Figure 1: Ratio of unemployed to vacancies and advertisements



Source: ABS Labour Force, ABS Job Vacancies, National Skills Commission Internet Vacancy Index and ANZ Job Ads.

Source: Budget Paper No.1, Budget 2021-22

25. Hours worked have increased by 1.2% over the year to March 2021: "Though short, localised lockdowns continue to have an effect, the number of people working zero hours for economic reasons is now lower than it was before the pandemic. The extent of recovery remains different across industries, with employment in several industries having declined over the year to February 2021. Sectors impacted by restrictions, international border closures and reduced tourism remain the most affected."[28] Nonetheless, over the year to March 2021, "full time employment has returned to pre pandemic levels, while part time employment is 1.9% higher than March 2020". Youth employment is still 2% below pre pandemic levels, while female is 1.9% higher. [29]

2. INFORMATION RELEASED SINCE 23 APRIL

2.1 Treasurer's Pre-Budget Economic and Fiscal Strategy Speech

26. On the 29th of April 2021, the Treasurer delivered a pre-budget speech on the Governments economic and fiscal strategy. In this speech the Treasurer stated that the early data indicates the

[28] Budget Paper No. 1 | Budget 2021-22 Statement 2, pp.58-59
[29] Budget Paper No. 1 | Budget 2021-22 Statement 2, p.59

labour market has remained resilient and continued to strengthen. He noted that over the fortnight to 16th April immediately following the conclusion of JobKeeper the number of people on income support had actually fallen by approximately 46,000 and as JobKeeper concluded the number of job ads rose to reach an all time high. He also noted that the number of job seekers for every vacancy fell to its lowest level in a decade. Below is the full quote from the Treasurer's speech:

> 'Despite many doomsday predictions of what JobKeeper's end would mean for the economy, early data indicates the labour market has remained resilient and continued to strengthen. Over the fortnight to 16 April, immediately following the conclusion of JobKeeper, the number of people on income support has actually fallen by approximately 46,000. And as the JobKeeper program concluded in March, job ads rose to reach an all-time high and the number of job seekers for every vacancy fell to its lowest level in over a decade[30].'

27. The Treasurer went on to note that beyond all expectations after the first recession in early 30 years employment has not only returned to its pre pandemic levels, but it has surpassed it. He noted there were more Australians in work today than ever before and that there is now strength across a range of economic indicators that suggest ongoing momentum in the boarder economy. Including that consumer confidence has recovered beyond its pre pandemic levels and sits at an 11-year high, business conditions are their highest on record and capital investments are at their strongest since 1994. We can see in the quote below that he notes there are all very positive signs:

> 'Unemployment in March, at 5.6 per cent, is below the most optimistic Treasury forecasts and well below the forecast of 7.5 per cent in the March quarter predicted in the 2020-21 MYEFO. This represents around 200,000 more Australians in work than we expected just over four months ago. There is now strength across a range of indicators that suggest ongoing momentum in the broader economy. Consumer confidence has recovered beyond its pre-pandemic level and sits at an 11 year high. Business conditions are at their highest on record. Capital investment intentions for the next 12 months are at their strongest since 1994. Investment in machinery and equipment, like vehicles and harvesters, was up 8.1 per cent in the most recent December quarter data – the largest quarterly increase in nearly seven years. All very positive signs[31]'

[30] Pre-Budget Economic and Fiscal Strategy Speech' 29th of April 2021'
[31] Ibid

2.2 Deloitte Access Economics

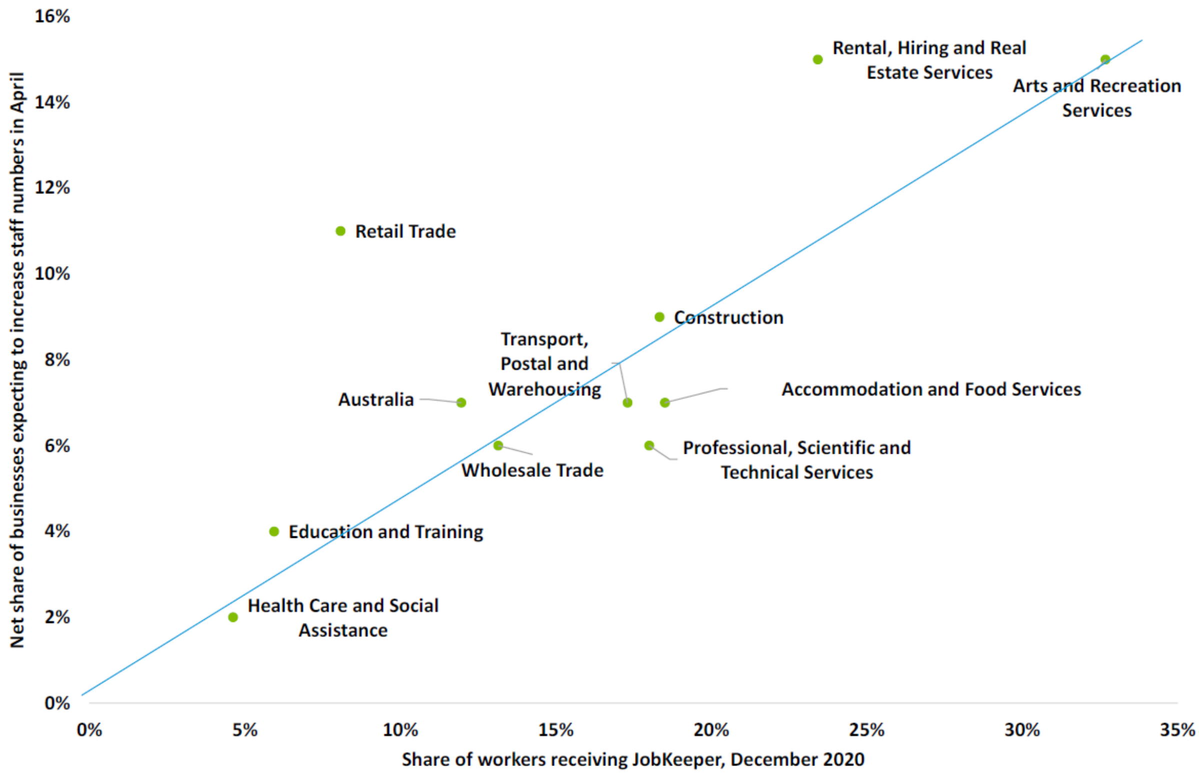
28. Deloitte Access Economics released its *Budget Monitor: Red hot recovery drives budget repair* on 3 May 2021.[32] Deloitte has described the job recovery as 'remarkable' and suggests that the removal of Job Keeper will not be a major story in terms of overall jobs numbers:

> "However you cut it, the job recovery to date has been remarkable – and it gives cautious optimism that the recent removal of JobKeeper won't be a major story in terms of overall job numbers. Adding to that optimism are the favourable movements in the number of employees working zero hours for economic reasons. At its peak in April 2020, 6% of employees weren't working any hours as a result of being stood down or a lack of available hours. Now that figure is just 1% nationally"

29. In addition, and as Figure 2 below shows, there is a welcome correlation between reliance on JobKeeper and the likelihood of new hiring. Many of the award sectors and others such as arts and recreation are expecting to be to be hiring new staff.

[32] Deloitte Access Economics 2021 *Budget Monitor: Red hot recovery drives budget repair*, Issue #99, May 2021, 3 May

Figure 2: Reliance on JobKeeper mapped against likelihood of new hiring



Source: Deloitte Access Economics 2021 *Budget Monitor: Red hot recovery drives budget repair*, Issue #99, May 2021, 3 May

30. Deloitte also described the jobs recovery as a 'remarkable success' and expects for the overall jobs number to hold up despite JobKeeper pointing to job vacancies at a nine year high;

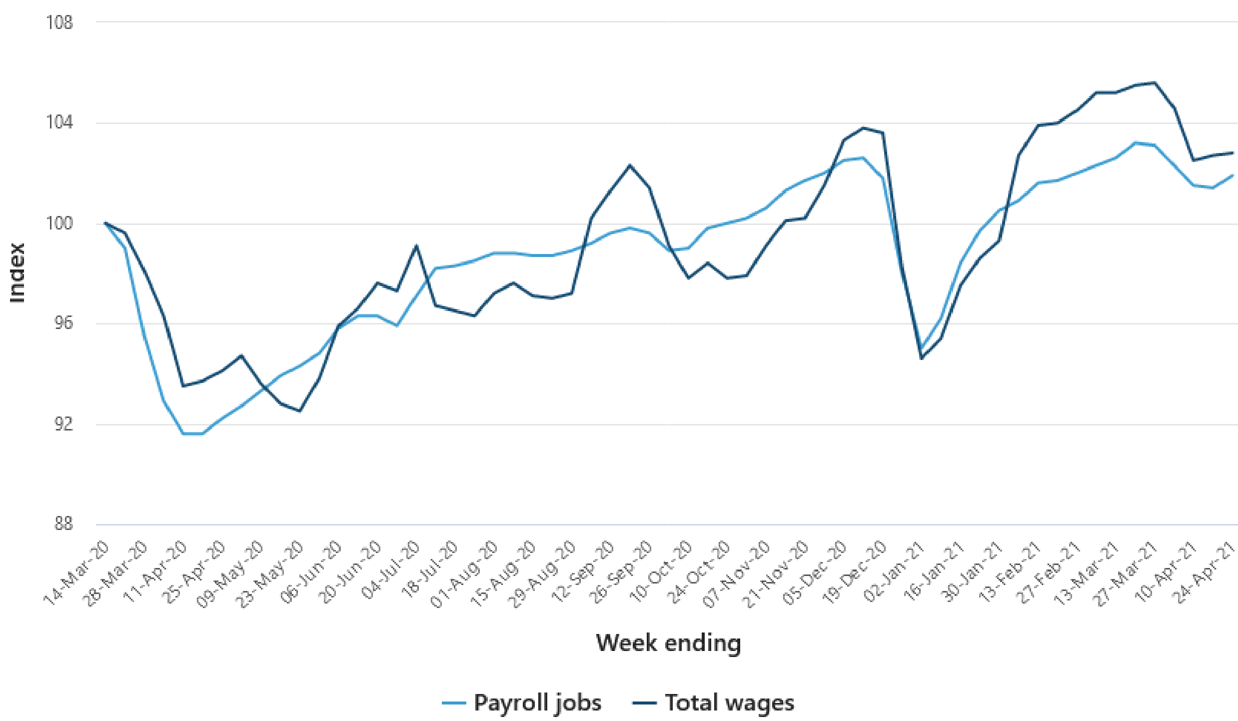
> ' And the job recovery is already a remarkable success. Don't lose sight of that over the next few months: they'll be cloudy, with many stories of individual business closures and job losses amid the end to JobKeeper …….we forecast overall jobs to hold up amid momentum in the wider economy. And the upshot? Job vacancies are (remarkably) at nine year highs, confidence is already back …..[33]'

[33] Deloitte Access Economics 2021 *Budget Monitor: Red hot recovery drives budget repair*, Issue #99, May 2021, 3 May

2.3 ABS Payroll Jobs and Wages

31. The ABS released on 28 April 2021 *Payroll Jobs and Wages* for the fortnight up to the week ending 10 April 2021 and on 11 May 2021 for the week ending 24 April 2021.[34] Between the weeks ending 10 April and 24 April 2021, payroll jobs increased by 0.4% and total wages paid increased by 0.3% according to figures released by the Australian Bureau of Statistics (ABS). It should also be noted that at 24 April 2021, payroll jobs worked by women were 1.4 per cent above pre-pandemic levels, compared with 0.1 percent below for men. The current ABS data up to the week ending 24 April are presented in Figure 3.

Figure 3 ABS Payroll jobs and total wages, indexed to the week ending 14 March 2020.



Source: Weekly Payroll Jobs and Wages in Australia, Week ending 24 April 2021 | Australian Bureau of Statistics (abs.gov.au)

[34] Weekly Payroll Jobs and Wages in Australia, Week ending 24 April 2021 | Australian Bureau of Statistics (abs.gov.au) released 11 May 2021

32. Payroll jobs at 24 April 2021 were 1.9% above 14 March 2020, the start of the series', and total wages were 2.8% above.[35] An ABS press release accompanying the publishing of the data[36] attributed the following comments to Bjorn Jarvis, head of Labour Statistics:

> "Seasonality around Easter in the previous fortnight makes it difficult to gauge any effect of the end of the JobKeeper wage subsidy on 28 March. The latest fortnight of payroll jobs data continues to show some of the seasonality around school holidays.
>
> "Nationwide pandemic restrictions were in place over the same period a year ago, which makes it difficult to determine what are usual changes in payroll jobs during April. However, the seasonal pattern seen in the latest month of payroll jobs data is similar to what we saw during the Spring 2020 school holiday period."

33. The ABS also noted that while school holidays commence at different times around the country, all states and territories had one week of holidays in common in the last month, which was also the case in the Spring 2020 school holiday period. At that time, payroll jobs fell by almost 1 per cent in the common week of school holidays, remained relatively flat in week three, then rose to near pre-holiday levels in week four. Payroll jobs are not seasonally adjusted, which generally require at least three years of data. It is clear the seasonal changes should be accounted for in the longstanding Labour Force statistics series should be considered when interpreting recovery in employment statistics through the COVID period.

34. The most recent payroll jobs and wages data was also considered by Borland in version 4 of his report on the economic effects of COVID-19.[37] Professor Borland's commentary and analysis suggests the more recent data is consistent with the labour market recovery being stronger than was evident in previous releases:

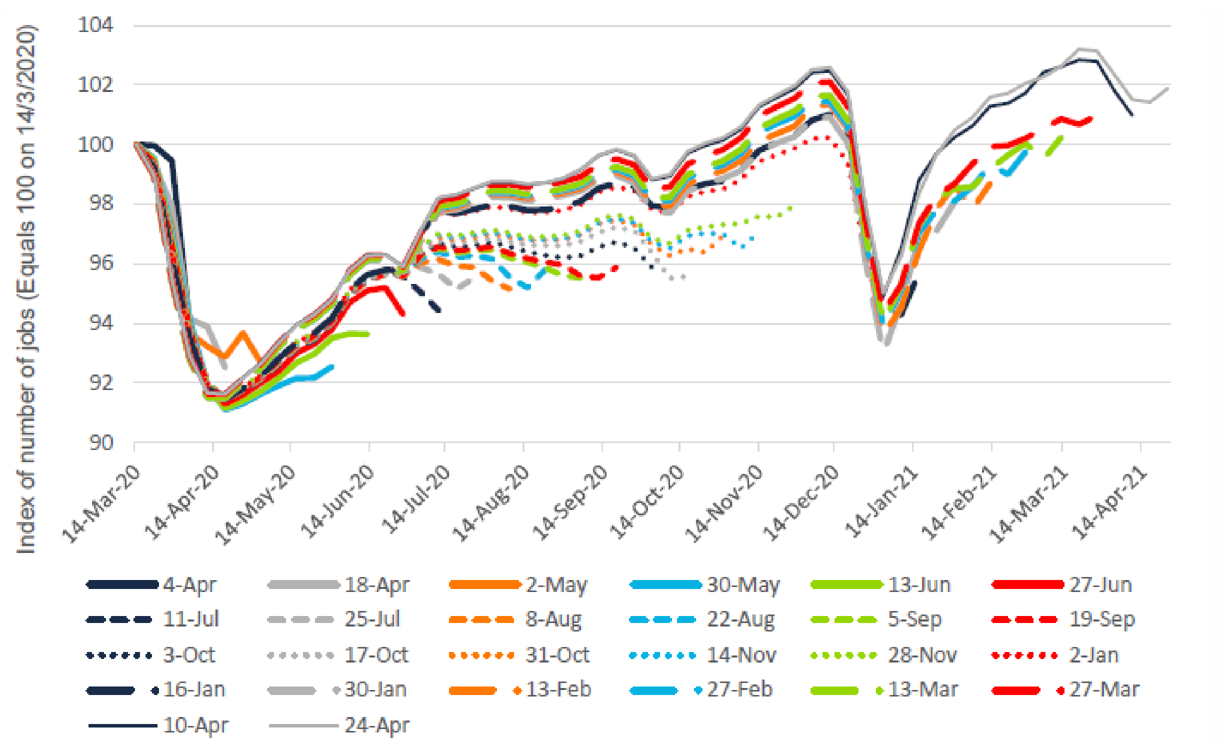
> 'Data on the number of jobs from the recent releases of the ABS Payroll series suggest that the Australian labour market had recovered even more strongly by February and March 2021 than was evident from previous releases. Chart 1 shows changes in the number of jobs in Australia from 14 March 2020 onwards—including data from each individual release of the ABS Payroll series to give

35 [Weekly Payroll Jobs and Wages in Australia, Week ending 24 April 2021 | Australian Bureau of Statistics (abs.gov.au)]
36 https://www.abs.gov.au/media-centre/media-releases/payroll-jobs-rise-after-seasonal-fall
37 https://www.fwc.gov.au/documents/wage-reviews/2020-21/research/rr42021.pdf

a feel for how subsequent updating might affect the series. It can be seen how the number of jobs in February and March 2021 was subject to a large upward revision in the most recent releases. For example, in the release for the week ending 27 March 2021,the number of jobs in the week ending 13 March 2021 was 0.9 per cent higher than a year earlier. But in the release for the week ending 24 April 2021, that number has been revised upward to show the number of jobs to be 2.6 per cent higher than a year earlier.'

The Chart referred to in the above extract is reproduced as Figure 4 below.

Figure 4: Change in the number of jobs, 14th March 2020 to 24 April 2021



Source: Jeff Borland paper 'Research report 4/2021An assessment of the economic effects of COVID-19–Version4'

35. While the end of JobKeeper on 30 March may have been a factor in the 10 April figures, the ACTU notes that over the period in which JobKeeper was paid there were many instances of falls of similar scale to those of the week ending 10 April, particularly in the more volatile total wage series. For instance total wages fell in a similar manner in the week ending 11 July, the three weeks ending 10 October, and the three weeks ending 2 January 2021. Total wages particularly tracked the fall in payroll jobs in the three weeks ending 2 January, before recovering fully by 27 March

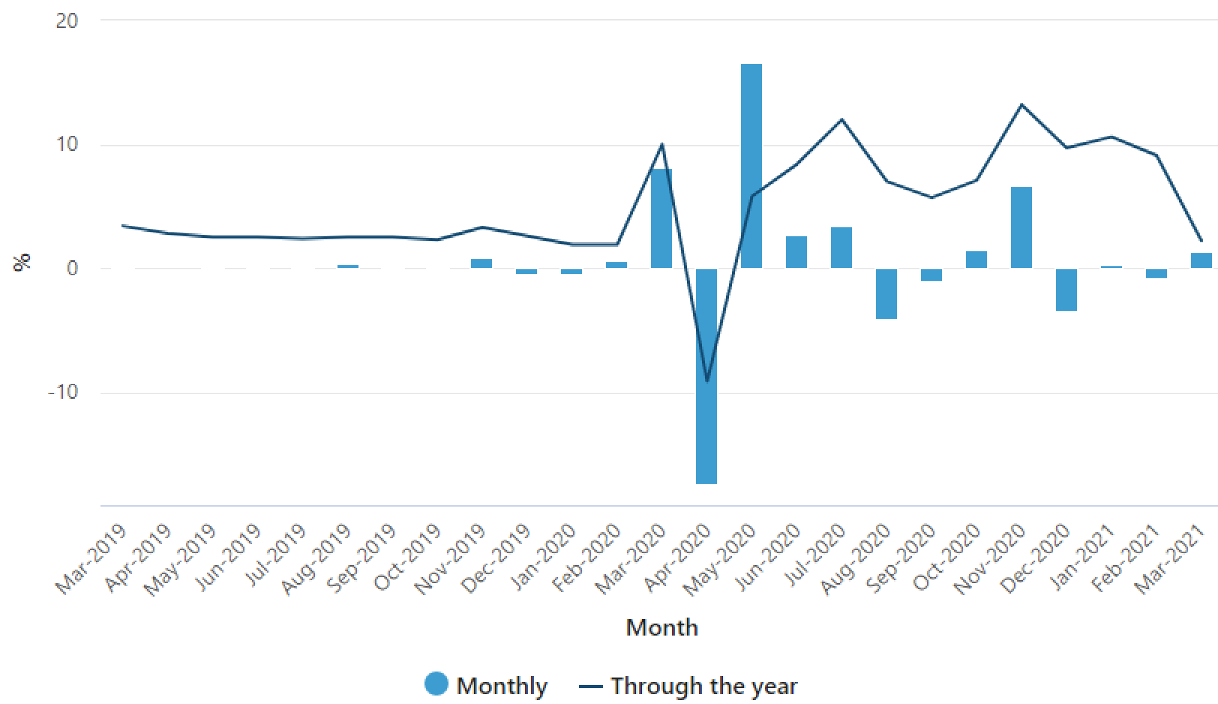
2021. This is shown in Figure 3. In any event, as was observed by Borland, the Payroll jobs data series at present likely overstates the extent of the decline of jobs to date following the cessation of JobKeeper.[38]

2.4 ABS Retail Trade

36. The ABS released Retail Trade for the month of March 2021 on 10 May 2021, thereby allowing real quarterly data for the March quarter 2021 to be provided.[39] Retail turnover at current prices in seasonally adjusted terms increased 1.3% from February 2021 to March 2021, amounting to an increase of 2.2% for March 2021 over March 2020. This returns retail turnover growth in current terms seasonally adjusted back to rates prior to the pandemic, for instance an annual 1.9% in February 2020 as shown in Figure 5.

[38] Borland, Jeff (2021), 'An assessment of the economic effects of COVID-19 – Version 4', Report prepared for the Fair Work Commission, May 2021, at page 3-4
[39] Retail Trade, Australia, March 2021 | Australian Bureau of Statistics (abs.gov.au) released 10 May 2021

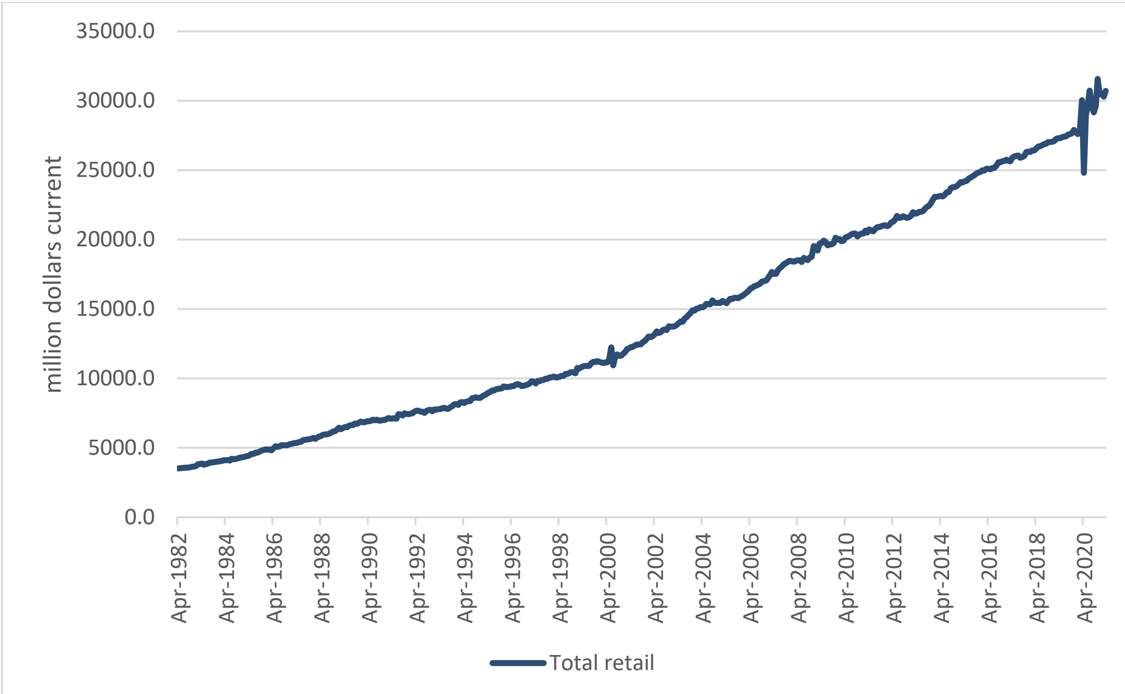
Figure 5 Retail trade growth: ABS Chart: Monthly turnover, current prices – seasonally adjusted estimate



Source: ABS [Retail Trade, Australia, March 2021 | Australian Bureau of Statistics (abs.gov.au)]

37. The extraordinary volatility and recovery of retail turnover from 2020 onwards is shown in Figure 6 and Figure 7.

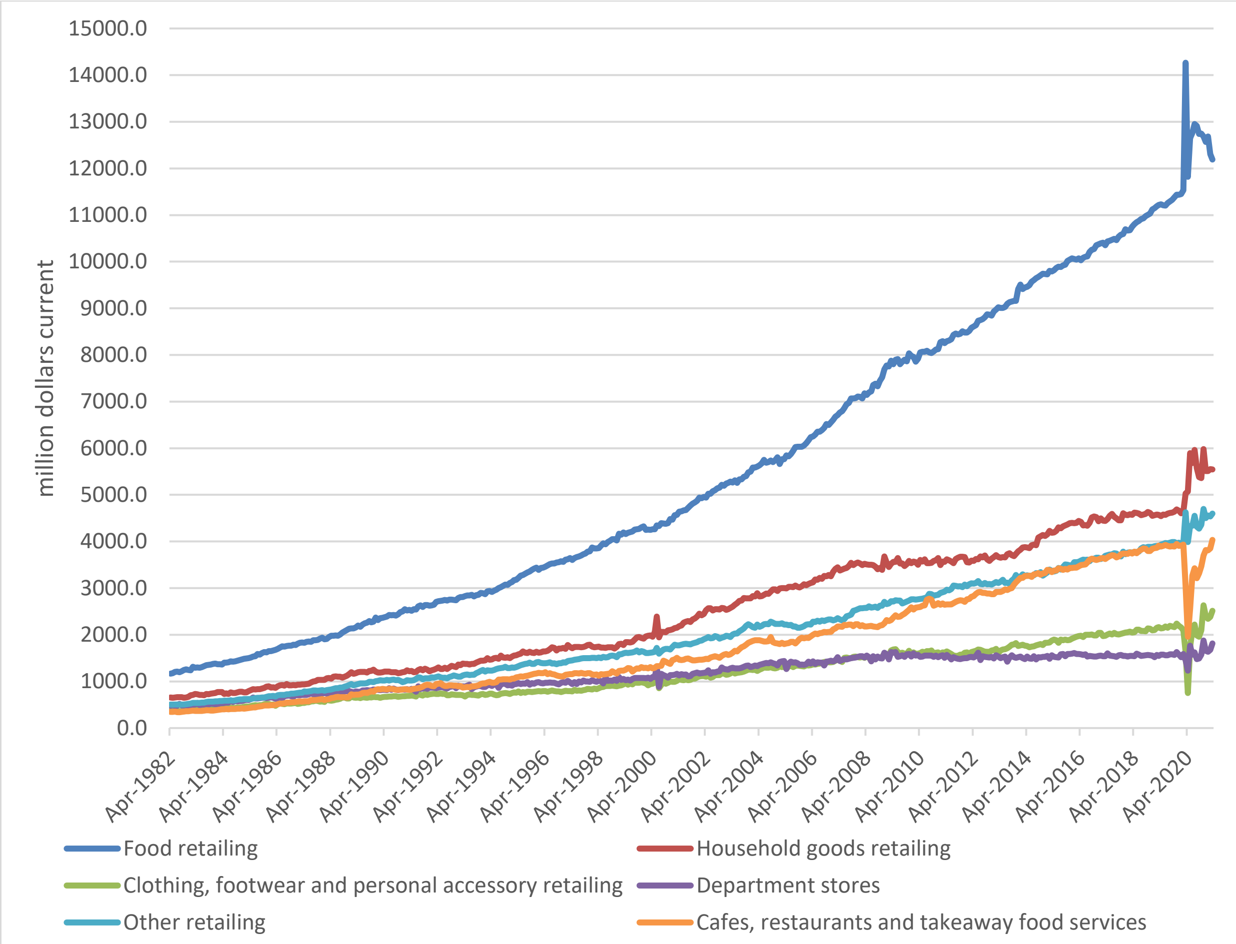
Figure 6: Monthly retail turnover, current prices – seasonally adjusted, million dollars



Source: ABS 850101

38. Monthly nominal spending in all the retail industry sectors has returned to trend levels or above as shown in Figure 7, even cafes restaurants and takeaway services.

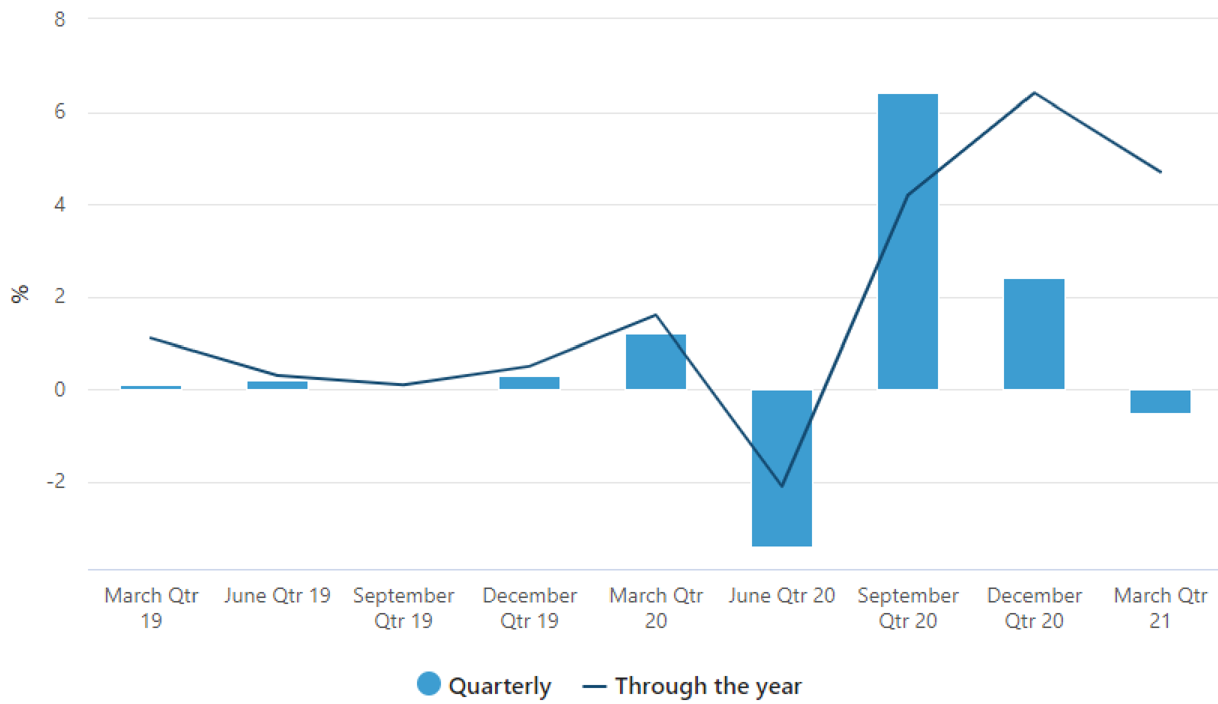
Figure 7 Monthly turnover, retail industry sectors, current prices – seasonally adjusted, million dollars



Source: ABS 850101

39. In the quarterly volume terms seasonally adjusted, the March quarter 2021 fell 0.5% from the December quarter 2020. At the same time retail trade in volume terms for the March quarter 2021 was 4.7% higher than it was in the March quarter 2020, compared with 1.6% for the March quarter 2020 over the March quarter 2019. The extent of this recovery is seen in Figure 8.

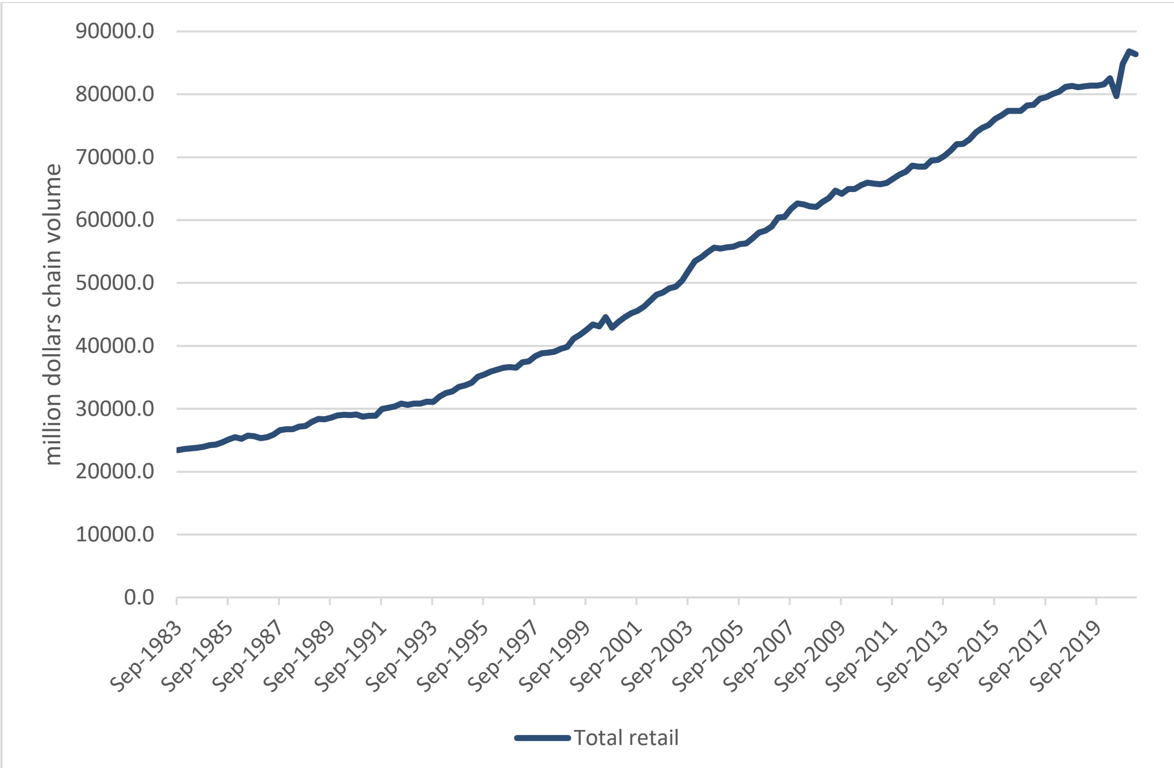
Figure 8 Retail trade growth: ABS Chart: Quarterly turnover, in volume terms – seasonally adjusted estimate



Source: ABS [Retail Trade, Australia, March 2021 | Australian Bureau of Statistics (abs.gov.au)]

40. When retail trade volume is looked at in the longer term we see that the slight fall in total retail trade volume in the March quarter 2021 serves to move it back down towards trend level as shown in Figure 9. The data suggest that the government subsidies for the pandemic strongly contributed to retail spending after the June quarter 2020, especially when compared with the flat quarterly spending volumes from September 2018 to December 2020.

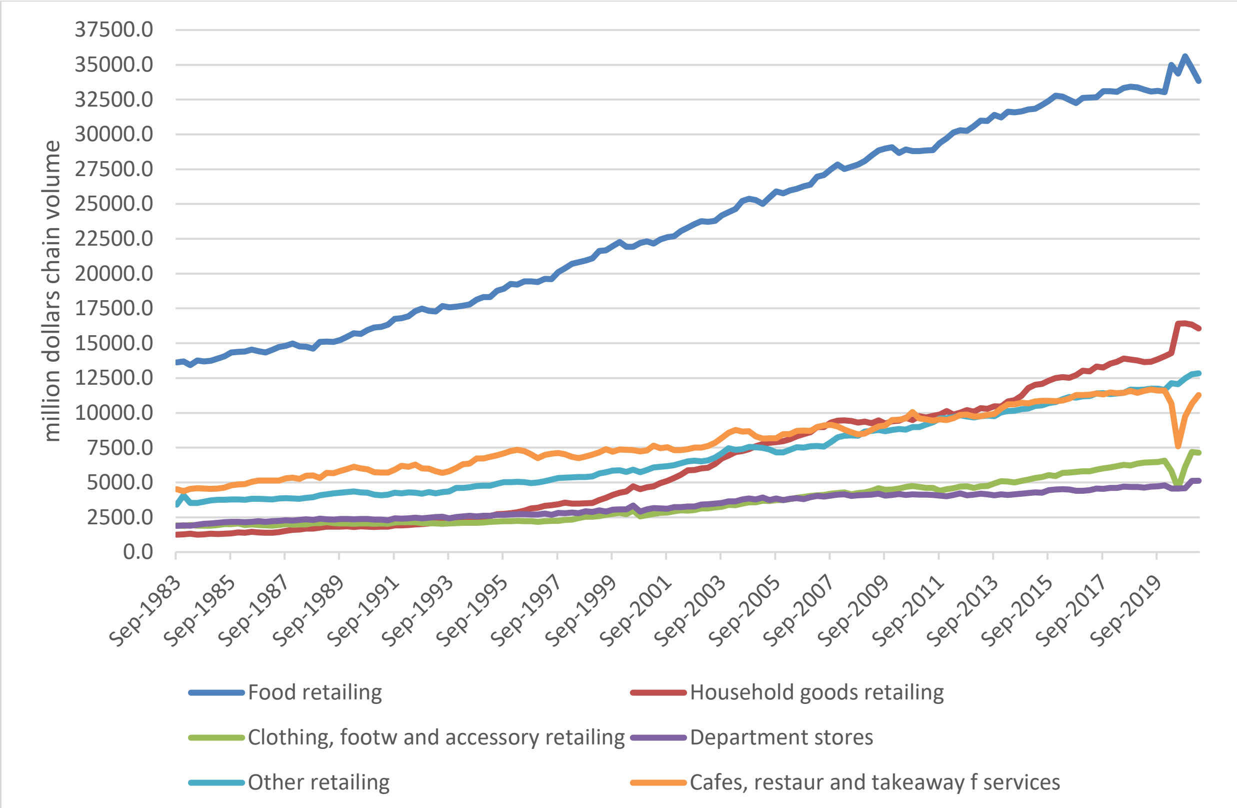
Figure 9: Total quarterly retail volume– seasonally adjusted, million dollars chain volume



Source: ABS 850107

41. Figure 10 shows the recovery of quarterly volumes by retail industry sector after the pandemic.

Figure 10 Retail industry sectors quarterly volume– seasonally adjusted, million dollars chain volume



Source: ABS 850107

42. From the December quarter 2019 over the *five* quarters to March 2021, Food retailing volume had increased by 2.4%, household goods by 14.3%, clothing and footwear by 8.9%, Department stores by 6.7%, Other retailing by 10.3%, with only Cafes restaurants and takeaway food falling by 2.7%, for a total retail trade increase of 5.9%, seasonally adjusted.

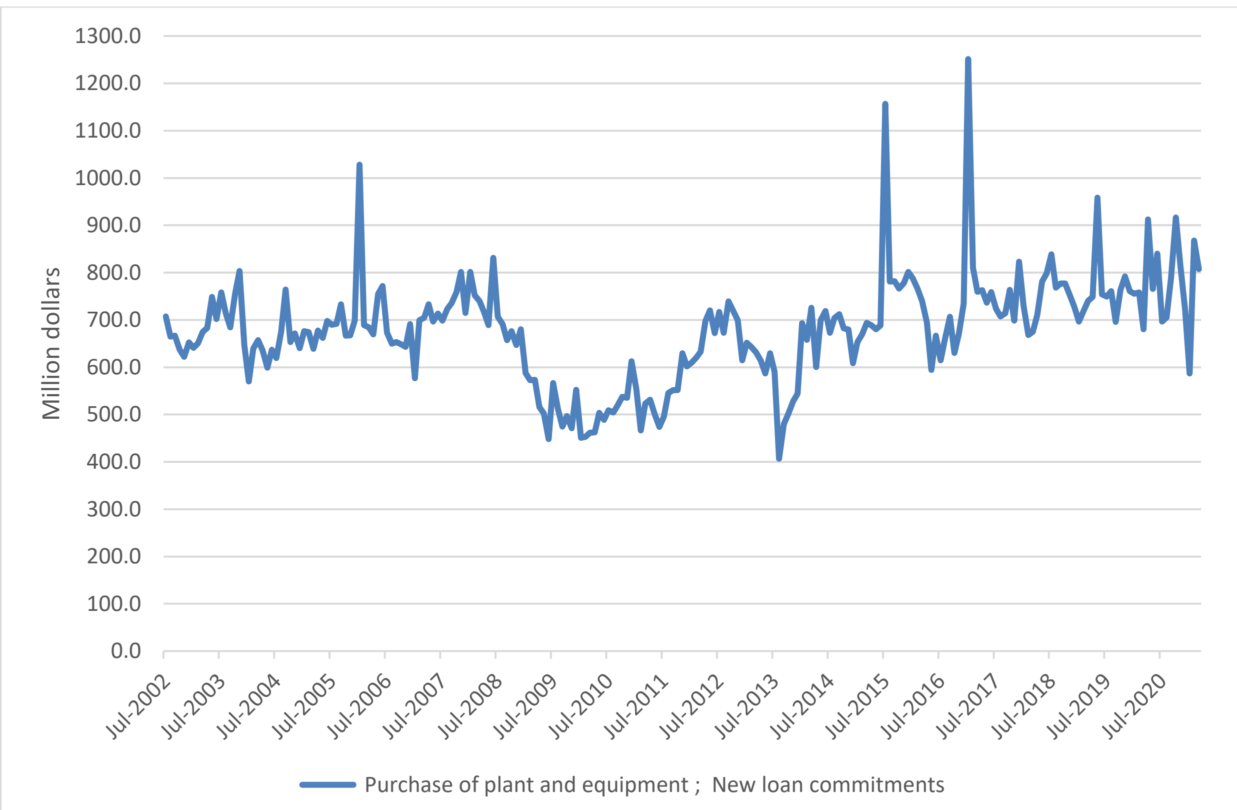
43. From the March quarter 2020 to the March quarter 2021 food retailing fell 3.2% but the March quarter 2020 was a period in which panic buying was taking place. Over the same period retail volume in household goods rose by 12.5%, clothing footwear and accessories by 22.4%, Department stores by 12.4%, Other retailing by 5.9%, and Cafes restaurants and takeaway food by 5.7%, for a total retail trade increase of 4.7%, seasonally adjusted.

44. In the ACTU's view these most recent data do not suggest that the retail sector is struggling overall, with retail sector volumes above pre pandemic levels in all cases except cafes restaurants and takeaway food which has still bounced back close to pre pandemic levels from the biggest fall over the pandemic.

2.5 ABS Lending Indicators

45. ABS released *Lending Indicators* for March 2021 on 4 May 2021.[40] Total loans for plant and equipment have averaged less than a billion dollars each month since the start of the published series at July 2002.

Figure 11: Business new loan commitments for purchase of machinery and equipment



Source: ABS 560129

[40] [Lending Indicators methodology, March 2021 | Australian Bureau of Statistics (abs.gov.au)] released 4 May 2021

46. Figure 11 shows new loan commitments by business for purchase of plant and equipment. While it appears that volatility has increased in the monthly series, loans to business for plant and equipment in nominal terms have remained well above the lowest point of August 2013. Notwithstanding the volatility, the uptick in the more recent observations is welcome. ABS also reports a 6.7% increase in monthly business construction loans and an 11% monthly increase in business loans for the purchase of property. These flows of business investment are consistent with rising levels of business confidence noted elsewhere.

2.6 RBA commentary and forecasts

47. The *Statement by Philip Lowe Governor: Monetary Policy Decision* of 4 May said "the economic recovery in Australia has been stronger than expected and is forecast to continue. This recovery is especially evident in the strong growth in employment, with the unemployment rate falling further to 5.6 per cent in March and the number of people with a job now exceeding the pre-pandemic level."[41] Governor Lowe said the RBA has revised up further its central scenario for GDP growth, expecting 4¾% over 2021 and 3½% over 2022. It expected the unemployment rate to "continue to decline, to be around 5 per cent at the end of this year and around 4 ½ per cent at the end of 2022. Inflation pressures remain subdued: "A pick-up in inflation and wages growth is expected, but it is likely to be only gradual and modest."

48. The RBA quarterly *Statement on Monetary Policy* (SMP) May 2021 released 6 May revised up GDP growth in June 2021 from 8% in the February 2021 SMP to 9 ¼ %. The May 2021 SMP revised December 2021 GDP growth up from 3 ½ % to 4 ¾ % and June 2021 GDP growth up to 4% from 3½ % in the February 2021 SMP. The May 2021 SMP revised unemployment down to 5 ¼% from 6 ½ % in the February SMP for June 2021. It revised CPI at June 2021 up slightly from 3% to 3 ¼%.

49. Table 1 below replicates '*Table 5.1: Output Growth and Inflation Forecasts'* contained within the RBA quarterly *Statement on Monetary Policy* for May. It shows that the RBA is forecasting what many economists and the Treasury would classify as full employment by June 2022 - an unemployment rate of just 4.75%. Given the RBA is forecasting what many economists and Treasury would regard as full employment within the year that this year's decision on the

[41] Statement by Philip Lowe, Governor: Monetary Policy Decision | Media Releases | RBA

minimum wage and award rates will apply, it is an indication that the fundamentals of the Australian economy are strong, and the ACTU's claim of an 3.5% increase is fair, modest and reasonable.

Table 1: RBA Output Growth, Unemployment, and Inflation Forecasts

	Year-ended					
	Dec 2020	June 2021	Dec 2021	June 2022	Dec 2022	June 2023
GDP growth	−1.1	9¼	4¾	4	3½	3
(previous)	(−2)	(7¾)	(3½)	(3¼)	(3½)	(3)
Unemployment rate(b)	6.8	5¼	5	4¾	4½	4½
(previous)	(6.8)	(6½)	(6)	(5½)	(5½)	(5¼)
CPI inflation	0.9	3¼	1¾	1¼	1½	2
(previous)	(0.9)	(3)	(1½)	(1½)	(1½)	(1¾)
Trimmed mean inflation	1.2	1½	1½	1½	1¾	2
(previous)	(1.2)	(1¼)	(1¼)	(1½)	(1½)	(1¾)
	Year-average					
	2020	**2020/21**	**2021**	**2021/22**	**2022**	**2022/23**
GDP growth	−2.4	1	5¼	5	4	3¼
(previous)	(−2¾)	(¼)	(4)	(3¾)	(3¼)	(3¼)

(a) Forecasts finalised on 5 May. Forecast assumptions (February Statement in parenthesis): TWI at 64 (63), A$ at US$0.77 (US$0.76), Brent crude oil price at US$68bbl (US$56bbl), population growth of 0.2 per cent over 2021 (0.2 per cent) and 0.4 per cent over 2022 (0.4 per cent); cash rate in line with market pricing out to 2022 (and held constant thereafter); and other elements of the Bank's monetary stimulus are in line with the announcement made following the February 2021 Board meeting. Forecasts are rounded to the nearest quarter point. Shading indicates historical data, shown to the first decimal point.

(b) Average rate in the quarter

Source: RBA Statement on Monetary Policy, May 2021

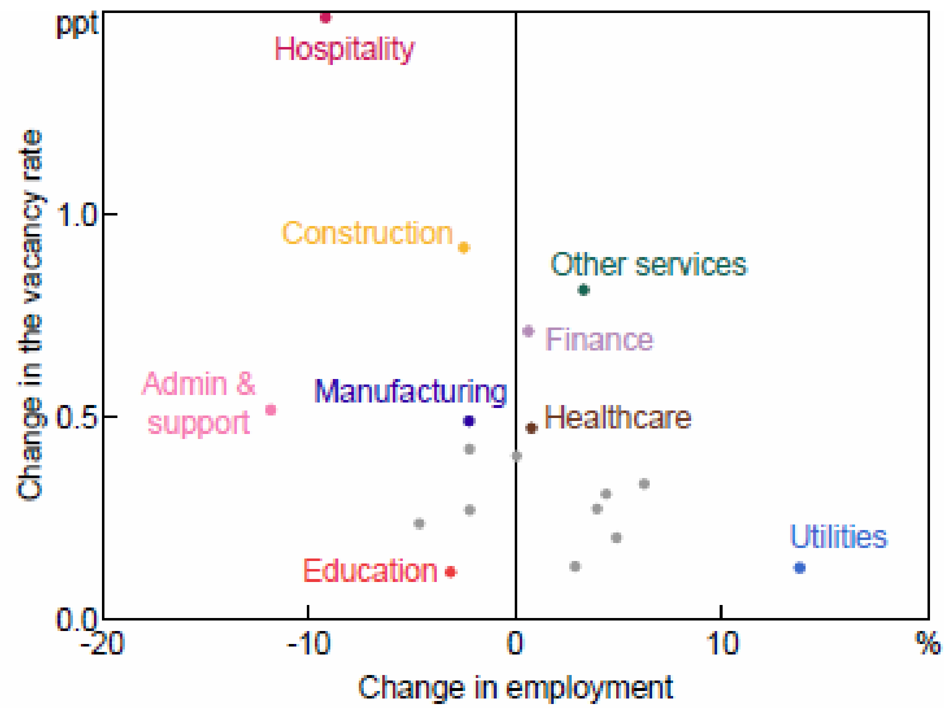
50. The RBA have noted any job losses from the withdrawal of JobKeeper are expected to be more than offset by demand for labour elsewhere in the economy.

> 'The withdrawal of JobKeeper at the end of March is likely to result in some job losses over the course of the June quarter. However, these job losses are expected to be more than offset by demand for labour elsewhere in the economy. In particular, forward-looking indicators suggest strong demand for labour over coming months. As a share of the labour force, job vacancies and advertisements are at historically elevated levels and employment intentions have continued to pick up. A number of factors have been contributing to this, including a return to more usual patterns of job turnover, the re-filling of positions

that were cut during the pandemic, 'catch-up' of hiring that was put on hold last year, and new hiring in parts of the economy experiencing strong demand[42].'

51. The RBA notes that vacancies are high in most industries, including those where employment is still below pre-pandemic levels and in industries where employment has risen over the past year[43]. A high level of vacancies points to a positive near-term outlook for employment growth in these industries[44]. We note the particularly high change in the vacancy rate for the hospitality sector.

Figure 12: Vacancies and Employment by industry, change since February 2020



Source: RBA Statement on Monetary Policy, May 2021

52. The RBA statement on monetary policy describes the 'rapid' decline in unemployment and that the end of the JobKeeper program in March has had only a muted effect on employment so far. The full quote from the RBA statement on Monetary policy is below;

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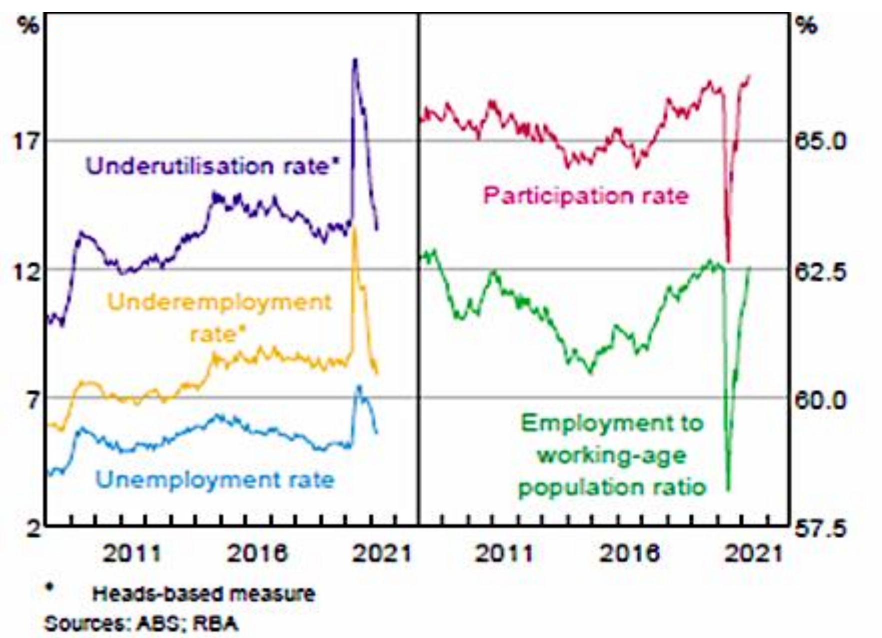
[42] RBA Statement on Monetary Policy, May page 31
[43] RBA Statement on Monetary Policy, May
[44] Ibid

'The unemployment rate has declined rapidly over recent months to reach 5.6 per cent in March. This is almost 2 percentage points below the peak in July last year, but ½ percentage point above the pre-COVID level. The decline in the unemployment rate has been faster than expected at the time of the previous Statement, as activity and employment have grown more strongly than anticipated'

53. We can see in Figure 13 below the rapid decline in the unemployment rate, the underemployment rate and subsequently the underutilisation rate from the peak of the crisis. We can also see a rapid increase in the participation rate and the employment to working age population ratio. This has been unlike any other recession Australia has faced because we have snapped back faster than anyone expected. This is because the fundamentals of the Australian economy are strong.

Figure 13: RBA Seasonally Adjusted Labour Market Measures



Source: RBA Statement on Monetary Policy, May 2021

2.7 Treasury and Parliamentary Budget Office Reports

54. The Treasury Working / Technical paper 'Estimating the NAIRU in Australia' was published on 29 April (Ruberi et al 2021).[45] The ACTU understands that the concept of the NAIRU or non accelerating inflation rate of unemployment was developed in the 1970s. The NAIRU assumes there is a relationship that can be observed between wage growth or inflation and the rate of unemployment in the economy. This relationship is obtained by estimation of a model which may include other variables which inform expectations, enabling prediction of the NAIRU as the unemployment rate at which the rate of wage growth or inflation is constant. The findings for the relationship between unemployment and inflation or wage growth vary widely depending on the time period over which estimation is applied and what variables are included. The model in the past focused on the implication that a rate of unemployment below the NAIRU would result in accelerating inflation or wage growth. The direction of causation and the wide range of underlying explanations including the role of expectations remain contested.

55. In the past policy in Australia aimed at controlling inflation based on the NAIRU meant that a high rate of unemployment became acceptable in policy terms when it was estimated to correspond to a predicted NAIRU. However when persistent low inflation and low wage growth over the last eight years became recognised policy concerns, the question then became how much lower does the unemployment rate need to in order to bring about increased wage growth.

56. The Treasury paper Ruberi et al (2021) produces new estimates for the NAIRU which incorporate more elaborate measures of expectations including the wage growth response to productivity changes and a structural break which allows for a changing relationship between the unemployment gap and wage growth in the 1990s. Ruberi et al (2021) finds that these estimates update the NAIRU down from 5 per cent to around 4.5 to 5 per cent.

57. The findings of Ruberi et al (2021) imply that more expansionary policy is called for to increase wage growth than previously thought. The conclusions of Ruberi et al (2021) accordingly support a bigger increase in the minimum wage as part of the strategy to achieve higher wage growth. The

[45] Heather Ruberl, Meika Ball, Larissa Lucas and Thomas Williamson 2021 Estimating the NAIRU in Australia Treasury Working / Technical Paper 29 April [Estimating the NAIRU in Australia - Treasury working paper]

findings also imply that businesses should be in an excellent position to pay the relevant wage increases.

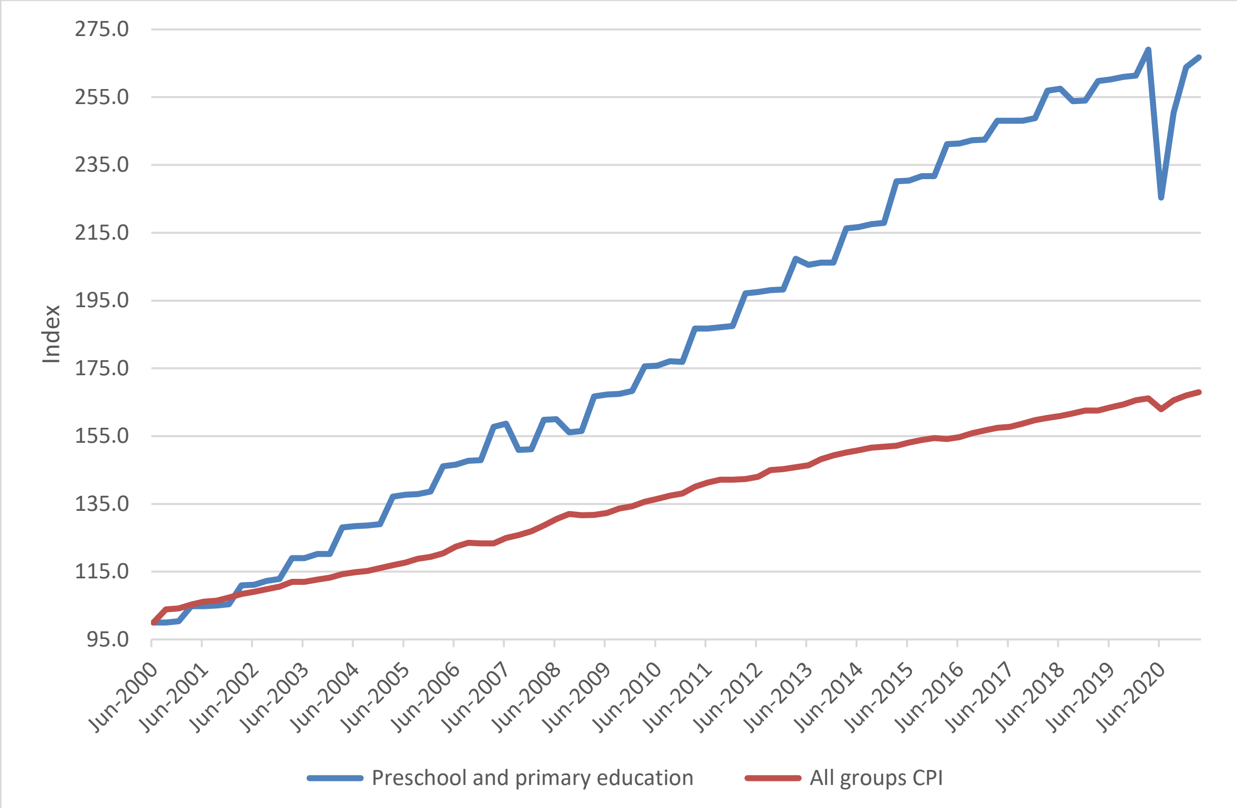
58. The Parliamentary Budget Office (PBO) research report *Fiscal Sustainability* of 28 April 2021 indicates that government debt need not be a concern as long as the growth rate of GDP exceeds the interest rate in the medium term. Budget deficits are able to be sustained under circumstances of a growing economy and a surplus is not only not required but may be counterproductive.[46] The PBO provides a range of scenarios in which Australia's fiscal position is sustainable. In the ACTU's view this implies that any debt arising from deficits incurred over the pandemic and subsequently does not offer cause for concern where there is ongoing need for stimulus to the economy. In the ACTU's view a wage increase would strengthen the fiscal position by increasing the tax take as incomes rise, and lower the requirements for welfare expenditure thereby feeding the built in stabiliser mechanism.

2.8 ABS CPI and other measures of living costs

59. ABS released CPI for March quarter 2021 on 28 April.[47] Figure 14 shows the impact of free childcare on the June quarter 2020. Figure 14 shows how central the costs of childcare are preschool and primary education, and in turn the singular contribution of that to all groups CPI as reflected in the impact on the June quarter.

[46] Fiscal sustainability – Parliament of Australia (aph.gov.au) released 28 April 2021
[47] Consumer Price Index, Australia, March 2021 | Australian Bureau of Statistics (abs.gov.au) released 28 April 2021

Figure 14 CPI all groups, and preschool and primary education, June 2000=100



Source: ABS 640105

60. Greater insights into living costs are available in the Information Note published by the Fair Work Commission on 13 May 2021 concerning living costs, housing costs and low-income earners.[48] The information gives important quantitative detail to the observation made in paragraph 113 of our reply submission about the impact of mortgage interest charges on the employee living cost index and the limited relevance of that to low paid award reliant workers. Further, it shows that some of the faster recent increases in living expenses have been seen in essential spending categories such as transport and health. It also adds important contemporary information concerning rental affordability for low income households which is of relevance to the Panel's consideration of relative living standards and the needs of the low paid, inclusive of the treatment of housing costs in Budget Standards which we have raised as a concern on many occasions. We do however have some concerns about reliance on Table 4 of the research an estimate of the extent to which low paid award reliant workers own their own homes, as the "lower income

[48] https://www.fwc.gov.au/documents/wage-reviews/2020-21/lcihousingnote.pdf

household” group referred to is of “all households” (based on EDHI) rather than just “employee households”. The group may therefore contain retirees who may have had a range of incomes during their working lives that enabled them to achieve home ownership and/or other assets.

3. TIMING AND QUANTUM: REPLY SUBMISSIONS AND RESPONSES TO QUESTIONS ON NOTICE

61. Many of the reply submissions and responses to the Panel's questions on notice again agitate for a deferral of increases to particular awards. Each of the proposals is in some way linked to the Panel's initial definition of lower, middle and upper clusters of industry sectors based on the impacts of COVID-19 and corresponding groups of awards linked to each cluster. A description of the Panel's methodology for defining clusters and corresponding award groups was provided in paragraphs 66-67 of our reply submission. As we observed, the methodology gave greater significance to payroll jobs and wages data than other measures.

62. An issue that none of the reply submissions or responses has addressed is where the starting point of any similar analysis or methodology should be, in circumstances where the purpose of the Panel's methodology was to identify and thereafter address "exceptional circumstances". This is of significance in the sense that it is legitimate to question whether the exceptional circumstances which have already been taken account of and addressed in last year's decision can or should be considered as exceptional and justifying a deferral of increase in a subsequent decision. Whilst it is true that expectations (for example in relation to changes in demand, cash flow and ability to pay operating expenses) played a role in the Panel's methodology, it also true that some events within an identifiable measurement period were relied upon. For example, the payroll jobs and wages data the Panel examined was current to the week ending 30 May 2020. If payroll jobs and wages data were now re-indexed to that week and the change over the period to the most recent data release were visualised, the first step of the Panel's analysis would likely yield very different results. Table 2 and Table 3 below do not re-index the data (as the data underlying the published indexes is not available) but merely show the direction and extent of change in the indexes between 14 March 2020 and 24 April 2021 versus between 30 April 2020 and 24 April 2021. They clearly show, as does the analysis in Table 1 of version 4 of Professor's Borland's report[49] and the discussion at paragraphs 37-41 of our initial submission, that extent and direction of change shown depends greatly on the chosen starting point.

[49] Borland, Jeff (2021), 'An Assessment of the economic effects of COVID-19 – Version 4', Report prepared for the Fair Work Commission, May 2021.

Table 2: Change in payroll jobs to 24 April 2021

Industry	Change in payroll jobs between 14 March and 30 May 2020	Change between 14 Mar 2020 and 24 Apr 2021	Change in payroll jobs between indexes for 30 May 2020 and 24 April 2021
Agriculture, Forestry and Fishing	-9.50%	-2.30%	7.20%
Mining	-5.80%	1.10%	6.90%
Manufacturing	-4.00%	-2.10%	1.90%
Electricity, Gas, Water and Waste Services	0.40%	3.20%	2.80%
Construction	-5.80%	-0.50%	5.30%
Wholesale Trade	-4.10%	-1.60%	2.50%
Retail Trade	-6.30%	-1.10%	5.20%
Accommodation and Food Services	-29.10%	-10.30%	18.80%
Transport, Postal and Warehousing	-4.80%	-6.80%	-2.00%
Information Media and Telecommunications	-10.50%	-6.70%	3.80%
Financial and Insurance Services	0.50%	7.70%	7.20%
Rental, Hiring and Real Estate Services	-10.10%	-0.90%	9.20%
Professional, Scientific and Technical Services	-4.40%	1.60%	6.00%
Administrative and Support Services	-10.10%	2.00%	12.10%
Public Administration and Safety	-4.30%	10.30%	14.60%
Education and Training	-4.70%	-1.70%	3.00%
Health Care and Social Assistance	-4.70%	4.90%	9.60%
Arts and Recreation Services	-26.30%	-1.50%	24.80%
Other Services	-9.70%	-1.10%	8.60%
All Industries	-7.50%	1.90%	9.40%

Source: ABS Weekly Payroll Jobs and Wages in Australia

Table 3: Change in payroll wages to 24 April 2021

Industry	Change in total wages between 14 March and 30 May 2020	Change in total wages between 14 Mar 2020 and 24 Apr 2021	Change in total wages between indexes for 30 May 2020 and 24 April 2021
Agriculture, Forestry and Fishing	-6.40%	4.00%	10.40%
Mining	-20.80%	-16.60%	4.20%
Manufacturing	-11.40%	-2.40%	9.00%
Electricity, Gas, Water and Waste Services	-3.00%	-1.50%	1.50%
Construction	-7.80%	-0.30%	7.50%
Wholesale Trade	-13.50%	-2.90%	10.60%
Retail Trade	-4.30%	0.90%	5.20%
Accommodation and Food Services	-25.40%	-5.90%	19.50%
Transport, Postal and Warehousing	-9.50%	-5.80%	3.70%
Information Media and Telecommunications	-12.00%	1.20%	13.20%
Financial and Insurance Services	-8.10%	0.40%	8.50%
Rental, Hiring and Real Estate Services	-13.70%	3.50%	17.20%
Professional, Scientific and Technical Services	-8.40%	4.00%	12.40%
Administrative and Support Services	-8.10%	6.10%	14.20%
Public Administration and Safety	-6.30%	8.00%	14.30%
Education and Training	0.70%	-0.10%	-0.80%
Health Care and Social Assistance	-3.40%	9.10%	12.50%
Arts and Recreation Services	-14.00%	0.90%	14.90%
Other Services	-4.00%	6.30%	10.30%
All Industries	**-8.30%**	**2.80%**	**11.10%**

Source: ABS Weekly Payroll Jobs and Wages in Australia

63. In our view, no clear separate clusters can be identified on the basis of the above analysis. In the absence of the identification of clear clustering at the first step, the subsequent steps in the Panel's methodology would not be pursued if the same approach were taken this year.

64. We do not raise this to suggest that the Panel should adopt any particular methodology this year or independently search for exceptional circumstances that might justify a deferral. Our view

continues to be that a participant seeking such a deferral ought to make their case to the relevant standard in accordance with the principles identified in our reply submission. The issue of the economic impact of the pandemic on top line ANZISC divisions or investigation of how the degree of impact can be used to separate top line ANZSIC divisions into no more and no less than three groups or clusters are somewhat remote from the critical requirement for a participant to mount a strong case that there are exceptional circumstances justifying why an increase to any particular modern award minimum wages should be delayed. The above merely serves the general point that, to the extent the various positions advanced by employer interests can fairly be characterised as adopting the clustering methodology used in last year's decision in place of any fresh assessment, they have failed to address an issue of some significance as to the continued appropriateness of that methodology in light of particular exceptional circumstances which have been dealt with and merged into the disposition of last year's Review.

65. In what follows we offer some specific commentary the position advanced by employer interests in their reply submissions and responses to the Panel's questions on notice as to the magnitude and timing of increases to minimum wages.

3.1 Restaurant and Catering Industry Association

66. The Restaurant and Catering Industry Association ('RCA') continues to seek a deferral of wage increases to Group 3 Awards. The reasons provided for this approach are variously that it would be unreasonable to increases wages in July give there was an increase in February, that *any increase at all* in July will cause "immense economic pressure" for the restaurant and hospitality industry, that it would be "excessive" and "punitive" to increase wages while the employers covered by the Group 3 Awards continue to feel disproportionate effects from the pandemic and making the timing of wage increases consistent with last year's decision would promote business confidence and certainty.

67. The RCA does not develop its reasons with anything approaching the level of analysis that would be required to satisfy the Panel of exceptional circumstances justifying differential treatment. Whilst we do not disagree that closing State borders for short periods to some persons will continue for some time and that this impacts trade in restaurants and café's, this is also true of

other industries. The industries that the RCA represents however have highly flexible labour models that are able to adjust to fluctuations in consumer demand rapidly. The "increased operational costs and bureaucratic burdens" it refers to are not quantified and include many items where costs were either negligible to begin with or negligible as ongoing costs, such as understanding public health orders, adjusting to takeaway options for food delivery and enforcing "check in" requirements. In describing those developments as "operational requirements" which have "permanently changed", RCA takes them outside the scope of temporary issues that are amenable to consideration as exceptional circumstances in any event. Further, RCA self evidently views the deferred increase provided to Group 3 Awards in last year's decision not on the basis that it was spared the impost of a wage increase for seven months but on the basis that it had to fund it only for five. On the seemingly critical issue of what the impost of a wage increase actually is, was, or is likely to be, no evidence is provided. Not only are the needs of and impacts on employees ignored in the submission, but the Panel is left in no position to identify the precise circumstances weighing on the industry and how a deferral of a minimum wage increase would address them. To the extent that the RCA relies on consistency with last year's decision, we refer to and repeat paragraph 74 of our reply submission.

68. Overall, the RCA's submission lacks the nuance of the public position advanced by its CEO (and signatory to its submission) in print media, as quoted in print media on 7 May:

> "Restaurant and Catering Association chief executive Wes Lambert said while <u>overall spending on restaurants and cafes had recovered to levels not seen since 2019</u>, the inner cities were being left behind. '' Suburban and regional areas are booming , they are seeing sales unlike they've ever seen,'' Mr Lambert said. ''[But] the CBDs are getting a quadruple whammy, they're missing workers, international tourists, business events and international students and working holidaymakers, so CBDs are suffering immensely.''[50] (emphasis added)

69. In our view, there is likely some substance to the point about geographical differences and in particular central business district trade being diminished relative to some other locations, but the RCA has not presented any analysis in its submission to develop this point. In our view, the lack of international business for 14 months has likely already taken its ultimate toll on the businesses

[50] https://www.smh.com.au/business/the-economy/cbd-shops-eateries-face-struggle-for-survival-amid-quadruple-whammy-20210505-p57p5h.html

most reliant on international custom. With respect to city based workers, there is reason to believe that the reduction in numbers has moved beyond a temporary situation based purely on mandated working from home arrangements to a more permanent one based on preference. A Fair Work Commission survey of employers covered by the *Clerks – Private Sector Award* in November of last year found that 69% of employers surveyed would permit their employees to work from home at least some of the time even if they were not required to by a public health order or other regulation.[51] Structural change of this nature is not appropriately regarded as giving rise to an exceptional circumstance justifying a deferral.

3.2 Australian Chamber of Commerce and Industry

70. The Australian Chamber of Commerce and Industry ('ACCI') outlines three options for the Panel, of which 2 involve implementation dates of later that 1 July 2021. Neither of those options make a compelling case having regard to relevant principles as set out in section 3.1 of our submission in reply.

71. The first deferral option favoured by ACCI is one which is subject to the rigid overriding rule set out at paragraph 17(b)(iv) of its submission that no employer can be required to pay increased minimum wages within 12 months of the last increase. This has the result that the methodology to assign awards to clusters becomes irrelevant if the result of the methodology would be to assign an award to a less effected cluster than it the one it had been assigned to last year. Indeed it is not at all obvious what methodology ACCI are advancing for identifying exceptional circumstances or the ensuring that the deferrals it seeks are appropriately targeted and justified.

72. The second deferral option favoured by ACCI is one which sees all sectors have an unspecified increase to minimum wages on 1 January 2022, on the basis that this "should enable sufficient time for employment and economic activity in all industry sectors to have recovered, ensuring that businesses in the upper cluster are not too greatly disadvantaged". This approach of deferring increase in all sectors on the basis of a guess about what a line of best fit might look like

[51] Fair Work Commission, *Survey Analysis for the Clerks – Private Sector Award 2020 Work from home case*, February 2021. At page 13-14

is no substitute for a properly developed submission responsive to the relevant principles concerning the demonstration of exceptional circumstances.

73. Perhaps the greatest difficulty with the positions advanced by ACCI is the failure to reconcile them with their apparent awareness that all the industry sectors it refers to are currently growing rather than contracting. The evident widespread recovery is in stark context to the contextual factors set out paragraphs [12]-[41] of last year's decision which led the Panel to embark upon the methodology that resulted in the definition of clusters and corresponding groups of awards that received delayed implementation of the 1.75% increase.

3.3 Ai Group

74. Ai Group's justification for delayed wage increases this year equally falls short of the requisite standard. The argument on the merits of differential treatment doesn't rise above a generalised argument that "some industry sectors have been extremely impacted by the pandemic and have not yet recovered to anything like pre-pandemic levels". A secondary justification is said to be that employers being forced to pay two wage increases in close succession would itself constitute exceptional circumstances. We have dealt with that argument in section 3.1 of our reply submission.

75. Ai Group's argument for retention of the 3 clusters as initially defined can also be disposed of on the basis of the matters raised at the commencement of this chapter and in section 3.1.2 of our reply submission. The Panel should take note that whilst the Ai Group appear to bid against themselves in arguing why Professor Borland's definition of industry clusters should not be relied on (in defining exceptional circumstances or justifying any response to same), they propose no alternative.

3.4 National Retail Association

76. The National Retail Association relies on its initial submission in support of its claim for deferred wage increase to group 3 awards. We dealt with that submission in paragraph 84 of our reply submission.

3.5 South Australian Wine Industry

77. The response presented by the South Australia Wine Industry ('SAWIA') does not add anything of substance to its request for a deferred increase as set out in its initial submission. It should be rejected for reasons given in our initial submission. The Panel is in no position to identify the exceptional circumstances relied on by the SAWIA to the requisite standard, let alone how any circumstances *justify* a deferral in terms of how such a deferral would impact employers or employees.

3.6 Australian Retailers Association

78. The Australian Retailers Association ('ARA') advance a position that is both incoherent and incapable of being accommodated by the Panel. The Panel is required by law to complete the Review by 30 June 2021[52] , yet the ARA seeks that the Panel make no decision until November. The ARA argues that the need to wait until November arises from the need to review GDP data for the September quarter and retail trade figures up to the end of September. However, it also asserts that the decision that the Panel makes at that later time must be capped at CPI – irrespective of what the data available at that time reveals. This is a highly artificial and unmeritorious constraint.

79. Notwithstanding that the Panel is unable to accommodate the ARA's ultimate position, we note that many of the arguments raised in support of it are unpersuasive or have been overtaken by more recent events. As referred to above, the events prior to the Panel's decision of last year, which were addressed by the Panel's finding of exceptional circumstances in that year, are of lesser relevance to the Panel's decision making than the current trends being experienced in the retail industry. Whilst we do not contest the general point that retail performance was notably uneven across subsectors during 2020, the two sectors which the ARA seem most concerned about – *Clothing Footwear & personal accessories* and *Cafes, restaurants and takeaway food* have performed strongly in the Retail Trade turnover figures for March 2021 (5.4% and 4.8% month on month growth respectively) notwithstanding also being among the stronger performers in the February monthly growth figures. Department stores, also presumably within the category of

[52] Fair Work Act 2009 s. 285

discretionary spending referred to by the ARA, have also seen decent month on month growth of 2.2% and 8.5% in February and March. ARA's assertion that there has been no bounce back in consumer confidence is inconsistent with commentary from the Treasurer set out in paragraph 27 above and also inconsistent with the view expressed by Westpac's chief economist Bill Evans last month in describing the 6.2% jump in the Westpac-Melbourne Institute Index of consumer confidence as "an extraordinary result" with the index "now at its highest level since August 2010 when Australia's post-GFC rebound and mining boom were in full swing".[53]

80. As we have mentioned in our prior submissions, we have no doubt that the pandemic has resulted in the permanent closure of some business and that the withdrawal of *JobKeeper* will result in the closure of some others. However, the harsh reality is that the future level of minimum wages will not influence decisions about business closure that have already been made. To the extent that remaining businesses are already "on the brink" due to the direct and indirect effects of the pandemic, we consider that it would be highly artificial and speculative to attribute decisions the about ongoing survival of those businesses to the level of minimum wages determined in this Review. In some retail markets, it is likely that business closures have resulted in some reduced competition, with spending divided among fewer businesses.

81. Whist we tend to agree with the ARA that is likely to be less foot traffic in central business districts and that this has impacted some retail businesses in those areas, we would not attribute that only to reduced tourism and international students, having regard to the findings from the survey conducted by the Commission for the purposes of the Clerks Award referred to above. The reduction in foot traffic in those areas is likely to persist from some time and there is likely a permanent component to it, requiring some adjustment to the number of businesses. It would be alarming if the bulk of that adjustment had not already occurred.

82. As referred to generally above, we are not of the view that having to fund a wage increase from February 2021 has placed the Retail Industry at any special disadvantage, given the positive movements in turnover clearly evident across all sub-groups in the second half of 2020 and in some cases earlier.

[53] Westpac Bulletin: "Consumer sentiment sources to 11 year high", 14/04/21

4. RESPONSE TO COMMENTARY ON THE ACTU'S INITIAL SUBMISSION

83. Ai Group and ACCI provide some general comments on issues raised in our initial submission. These can be dealt with in short order.

4.1 Wages as stimulus

84. Both ACCI and Ai Group take some objection to matters raised briefly at section 3.1.7 of our initial submission. Both seem to ignore the possibility that the initial cost of wage increases at the firm level may not involve a substitution of business spending but rather a redistribution of earnings from the firm. They also fail to appreciate the spillover effects of minimum wage decisions on other forms of wage setting and ignore the current context being one of growth rather than decline. Aside from that, Ai Group's additional point seems to be that the net quantum of money received by a worker from a wage increase is less than the amount of the increase itself. We accept this to be the case.

4.2 Enterprise bargaining

85. Both Ai Group and ACCI group agree with us that there a multiple influences on bargaining behaviour. In our submission we noted the ongoing decline in enterprise bargaining and suggested that 2020 was an atypical year in which there may have been some substitution toward variation of agreements or reliance on flexibilities associated with the *JobKeeper* scheme and that such substitutions ought not be viewed as a decline in bargaining that was attributable to the Panel's decisions. The Ai Group and ACCI disagree that there was any such substitution, but do not assert that the lower level of bargaining seen through 2020 was the result of the Panel's decisions.

4.3 Junior rates

86. Ai Group disagree that it would be appropriate for the Panel to consider the equity issues we identify at paragraph 443 of our initial submission. They do not dispute those equity issues exist.

4.4 State based health restrictions and border closures

87. ACCI fails to appreciate that our analysis of State and Territory restrictions concluded in February of 2021. ACCI seems to wish to make a submission about the ongoing impact of restrictions on particular industries. It cannot rely on our submission to make a such a submission for it.

4.5 Changes in personal income tax rates

88. ACCI attributes to us the view that changes in personal income tax should not be taken into account in this Review. This is not a position we advance. Our position on this issue is evident from paragraph 124 of our reply submission and sections 3.1.2 and 4.4 of our initial submission.

4.6 Gender Pay Gap

89. ACCI and ourselves agree that increasing minimum wages reduces the gender pay gap. We differ only on the appropriate adjective to use in describing the extent of the impact.

4.7 Minimum wage bite

90. ACCI urges the Panel to ignore the long term decline in the minimum wage bite, because most of the decline occurred before the *Fair Work Act* took effect and because it is a "structural trend". In our view, the long term deterioration in the minimum wage is a relevant consideration when assessing relative living standards.

4.8 Small business

91. It is not entirely clear to us what point ACCI is seeking to make in reply to our uncontroversial acceptance of the fact that smaller business are more likely to be award reliant than larger firms. It may be an unfortunate consequence of the language of *reliance* implying that smaller businesses cannot afford to pay any more than awards rates. We do not seek to imply that. ACCI's assertion that small business typically run on smaller margins is not substantiated by the measures of relative margins of small businesses versus business generally set out in Table 3.4 of the *Statistical Report* for this Review and many of its predecessors.

4.9 Productivity

92. ACCI wrongly attribute to us a view that productivity is a measure of aggregate demand.

4.10 Food insecurity

93. Whilst ACCI seem to accept that casual workers and international students went without food for periods of time during 2020, they seek to persuade the Panel that those lived experiences are irrelevant to the Panel's decision making, in part because those effects were the consequences of government policy. We take the view that those lived experiences are relevant to the assessment of relative living standards and the needs of the low paid.

4.11 International Minimum Wage Comparisons

94. We are unable to discern how ACCI has taken the view that we want the Panel to outsource its responsibilities and decision making to foreign governments. We merely regard it as relevant for the Panel to consider that numerous other governments and the EU Commission are considering or have implemented increases to minimum wages during, notwithstanding and some cases as a conscious response to the pandemic and its varying degree of impact across those relevant jurisdictions. We regard it as an informative counterpoint to the view that the only appropriate response to prevailing circumstances is to freeze wages or delay any increase to them, which ACCI and others espouse as orthodoxy.

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