



Reply Submission to the Annual Wage Review 2021-22

ACTU Submission, 8 May, 2022
ACTU D. No 19/2022

CONTENTS

INDEX TO FIGURES	ii
INDEX TO TABLES	ii
1. Introduction	3
2. Additional Relevant Information	4
2.1 Labour market.....	6
2.2 Consumption and turnover.....	16
2.3 Costs of living	23
2.3.1 Measuring the cost of living for safety net purposes	26
3. Submission in reply – Common Issues.....	33
3.1 A “shadow lockdown”	33
3.2 Productivity, business costs, wage rises and inflationary impacts	34
3.3 Contextualising “caution”	42
3.4 Exceptional Circumstances	43
3.4.1 The deferral claim advanced by ABI	49
3.4.2 The deferral claim advanced by ACCI	51
3.4.3 The deferral claim advanced by Ai Group	52
3.4.4 The deferral claim advanced by RCA	55
3.4.5 The deferral claim advanced by ACCI-T	56
3.4.6 The deferral claim advanced by HIA	57
4. Submission in reply to individual parties	58
4.1 ABI.....	58
4.2 ACCI.....	59
4.3 Ai Group	63
4.4 ARA	65
4.5 Australian Government.....	66
4.6 Master Grocers	70
4.7 National Farmers Federation	73
4.8 NRA	74
4.9 NSW Government.....	75
4.10 RCA.....	76
4.11 South Australian Wine Industry Association.....	77
4.12 Victorian Government	77
4.13 NSW bus industry employers.....	78
5. Response to Questions on Notice	79
5.1 Economic and labour market considerations	79
5.2 Relative living standards and needs of the low paid.....	79
ANNEX A: Forecast in Statement of Monetary Policy February 2022 vs. May 2022	80

INDEX TO FIGURES

Figure 1: Payroll jobs index, week ending 14 March 2022	8
Figure 2: Total wages index, week ending 14 March 2022.....	9
Figure 3: DESE's Monthly Leading Indicators of Employment, April 2022.....	10
Figure 4: Labour Market Indicators	11
Figure 5: Job vacancies by industries during the month of February 2022	13
Figure 6: Job vacancies by industry, Original.....	14
Figure 7: Reasons for vacancies February 2020 – February 2022	15
Figure 8: Proportions of businesses reporting vacancies	16
Figure 9: Monthly Retail Turnover, current \$millions, seasonally adjusted, Jan 2020 - Mar 2022	17
Figure 10: Change in retail turnover, current, \$millions, seasonally adjusted	18
Figure 11: Monthly household spending, current price, calendar adjusted, through the year percentage change	19
Figure 12: Monthly business turnover, seasonally adjusted, current \$.....	20
Figure 13: Total Arrivals and Total Departures, All Visa Types, Original.....	21
Figure 14: Total arrivals and Total Departures, Apr 2020 - Mar 2022, All Visa Types, Original	22
Figure 15: Arrivals and Departures by Visa Type, Jan - Mar 2022	23
Figure 16: Business turnover indicator, selected industries.....	50

INDEX TO TABLES

Table 1: Selected Living Cost Indexes	25
Table 2: Expenditure weights, household type by commodity group(a)(b)	27

1. INTRODUCTION

1. This submission highlights developments since our last submission on 1 April, responds to matters raised in the submissions of other participants in this review and responds to the Panel's questions on notice.
2. Many of the themes identified in our initial submission remain key features of the current environment, including a strong labour market and indicators of continued labour demand, growing consumption and business turnover and rising living costs. In relation to the latter, it is clear that previous forecasts underestimated the extent of change. These rapidly rising costs are broadly based, they are not transitory, and they are placing significant pressure on the household budgets of award reliant employees, and especially on the low paid. Such is the extent of this cost of living crisis that we consider it appropriate to revise our claim in this review. Accordingly, to ensure that the 2.67 million workers who rely on award wages do not face a significant decline in their living standards, we now seek a 5.5% increase to the National Minimum Wage (NMW) and modern award minimum wages.
3. We have considered the submissions of other participants in the review and have not been persuaded by arguments for "wage restraint" or real wage cuts. Similarly, no compelling argument has been made in our view for deferrals to operative dates of any modern award minimum wage increases.
4. We look forward to our participation in consultations with the Panel on 18 May 2022.

2. ADDITIONAL RELEVANT INFORMATION

5. In this section we present and comment on data and other information which has become available since we filed our initial submission on 1 April 2022.
6. The most up-to-date overview of current macroeconomic and labour market conditions and forecasts was provided in the RBA's May Statement on Monetary Policy (SMP) released on 6 May 2022. The Statement describes an economy whose expansion is already underway and where further growth is expected to continue, despite the slowdown in the global economy. High commodity prices are expected to boost national income and growth in private consumption and investment. High inflation is expected to weigh on GDP growth, as real income and consumption growth slows to more typical rates. The Statement's business liaison report also notes that wage growth is set to pick up in the coming quarters as more than half of firms surveyed expect to pay wage increases above 3% and only a small proportion of firms expect to pay wage increases below 2%. The Statement further notes that: "Despite low unemployment rates, wages growth has not kept pace with inflation, so real wages have declined – in some cases noticeably".¹
7. Other observations made in the Statement which are relevant to this review include the prognosis that: "In tight labour markets and given high and rising inflation, workers might seek larger wage increases to compensate for the loss of purchasing power; however, it is difficult to predict how successful these efforts will be and, if they are, how quickly that could occur" and that "Wages growth was subdued through 2021, recovering to the low rates seen before the pandemic." It should be noted that the 'low' rates of growth that wages are recovering to is on the back of wages growth that was subdued.
8. In his speech on the Monetary Policy Decision of 3 May 2022, RBA Governor Lowe shared the following:

"As things have turned out, **the economy has been much more resilient than was expected**, which is clearly a welcome development. The combination of fiscal and monetary support has worked and the development of vaccines in record time has allowed our society to return to more normal functioning earlier than was thought possible. **Australians have also proven to**

¹ Reserve Bank of Australia, Statement of Monetary Policy, 6 May 2022, page 1.

be resilient and have adapted to the changed circumstances. As a result of these developments, **unemployment has come down quickly.** The unemployment rate now stands at 4 per cent. It is expected to decline further to around 3½ per cent over the course of this year, which would be the lowest level in nearly 50 years. Labour force participation has also risen to a record level and a higher share of working-age Australians has jobs than ever before. The economy is expected to grow strongly this year, with our central forecast being for GDP growth of a little above 4 per cent.”² (emphasis added)

9. The Governor further stated that:

“The evidence that we have received since then on inflation is clear. It was high. And higher than expected. On labour costs, while the various data on labour costs for the March quarter compiled by the ABS are yet to be released, other evidence received over the past month through our business liaison and various business surveys has indicated that there is now stronger upward pressure on labour costs and that this is likely to continue. We expect to see this in the ABS data in the period ahead. In a tight labour market, **some** firms are paying higher wages to attract and retain staff. This is especially so given that **inflation is high and workers are experiencing cost of living pressures.** There is still considerable inertia in the wages system from multi-year enterprise agreements and current public sector wages policies, but the direction of change is now clear.”³

10. Support for the Governor’s comments that “some” firms are paying higher wages is provided in the NAB Quarterly Business Survey 2022 Q1⁴, which noted that attention is now closely focused on whether wage growth will begin to accelerate in the current tight labour market. The survey indicates that some wage pickup is likely but that so far, signs are limited. The survey further reported that the share of firms expecting wages to be unchanged has come down to around levels seen in 2019 and that the share expecting either moderate or substantial wage growth has increased to more than 30% of firms. NAB’s long-running series on firm’s expectation for changes in average wages per employee for each financial year shows that this has returned to pre-Covid levels, but remains below the level seen in 2000s and early 2010s when the annual growth rate was above 3%. The report further noted:

^{2, 3} RBA Governor’s Speech on Monetary Policy Decision 03 May 2022, <https://www.rba.gov.au/speeches/2022/sp-gov-2022-05-03.html>

⁴ <https://business.nab.com.au/wp-content/uploads/2022/03/NAB-Quarterly-Business-Survey-March-2022.pdf>

“Together, these measures indicate firms are finding it increasingly difficult to find workers, and may be beginning to adjust their expectations for wage growth in recognition of the need to pay higher wages to attract staff. However, **there is still some way to run** before wage expectations reach historical highs.” (emphasis added)

11. Australia now has a low unemployment rate with Treasury and the RBA forecasting its lowest rate in almost 50 years amid strong economic growth. Against this positive economic backdrop and anticipated wages growth elsewhere in the economy by *some* employers, we submit that minimum and Award wages must grow to ensure that award reliant households can both meet the rising cost of living pressures facing them and enjoy their fair share of productivity growth. Yet employees are facing a rate of inflation almost twice that of anticipated wage growth by the end of 2022 according to the RBA. And it is the low paid who have been hit the hardest. Given these conditions, the Panel needs to deliver shared prosperity for the award reliant who number nearly 1 in 4 employees in Australia.
12. In what follows we examine in detail some of the key recent indicators measuring current conditions and their likely trajectory.

2.1 Labour market

13. The ABS Labour Force survey and Labour Force, Detailed for March 2022 were released on 14 April and 21 April respectively. The unemployment rate, participation rate, and employment-to-population ratio all remained constant from the previous month's figures, at 4 per cent (1.3 pts below March 2020), 66.4 per cent, and 63.8 per cent respectively⁵. Although we are yet to see relatively low unemployment translate into higher wage growth, the 2022-23 Budget forecasts the unemployment rate to fall further to 3.75 per cent in September and remain there for some time before slowly rising to the NAIRU (estimated to be above 4 per cent), whereas the RBA forecasts a reduction to around 3.5% starting from earlier 2023.
14. Employment grew by 0.1 per cent (from February 2022), resulting in the number of employed persons rising by 17,900 to reach 13,389,900, which is 3% higher than in March 2020. The underemployment rate fell to 6.3% and youth unemployment decreased by 1 percentage point to 8.3%, 3.3 pts below March 2020. A decline in hours worked by 10 million appears to be due

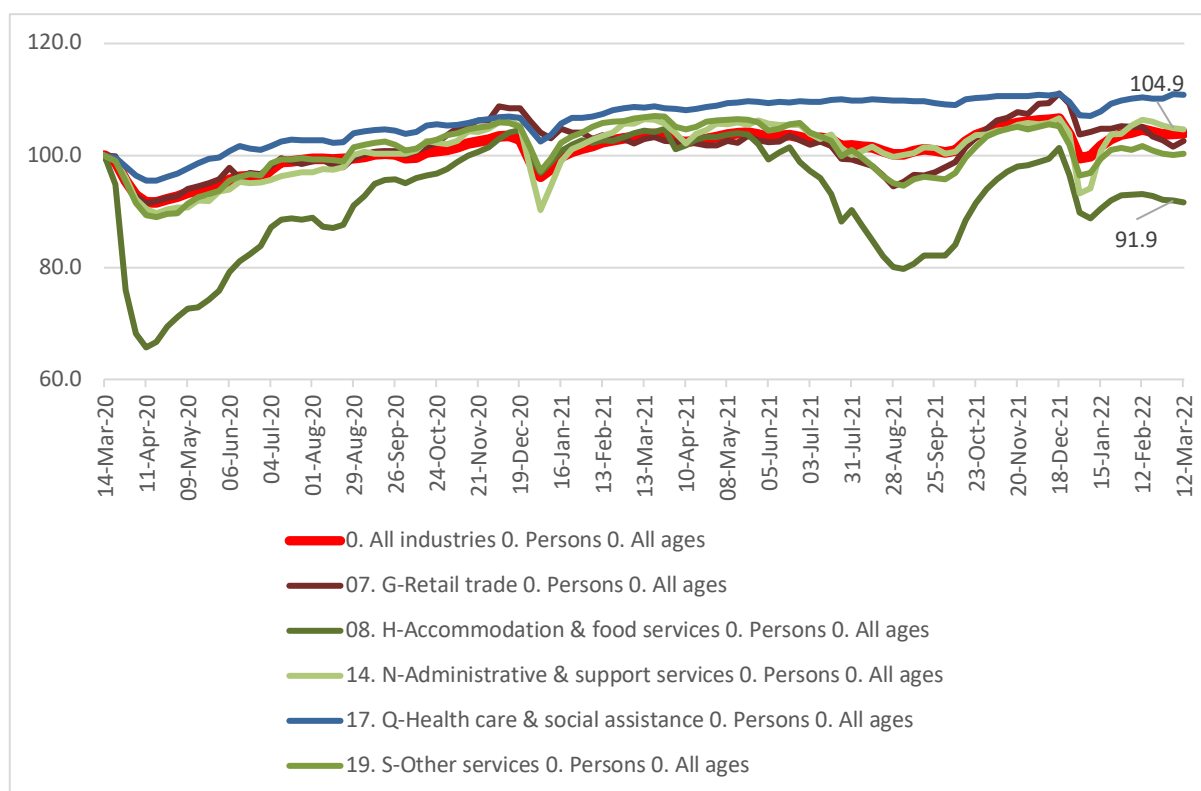
⁵ ABS (2022) 'Labour Force, Australia', released 14 April, and ABS (2022) 'Labour Force, Australia – Detailed', released 21 April.

to absences caused by illness/sick leave and extreme weather in parts of New South Wales and Queensland, according to analysis by the ABS.⁶ Overall, the labour force figures continue to reveal high demand for labour.

15. The ABS Weekly Payroll Jobs and Wages Index tracks movement in the number of paid payroll jobs and the movement in total wages paid by employing enterprises, since 14 March 2020. Unlike data from the Labour Force survey whose focus is on the number of people that are employed, unemployed or not in the labour force, the focus of the Payroll Jobs and Wages series is on the change in jobs and wages.
16. All but one of the five most award-reliant industries have seen payroll jobs recovered to either at or above the pre-pandemic level. Only Accommodation and Food Services as at 14 March 2022 sits 8% below its 14 March 2020 payroll jobs level. All 19 industries in the aggregate are now almost 5% above the level at the start of the pandemic. This suggests movement of labour between industries, rather than a net loss in payroll jobs.
17. Any drop in payroll jobs however may ignore an increase in hours worked per worker. The Payroll Jobs data series draws on Single Touch Payroll (STP) data provided to the Australian Taxation Office (ATO) by businesses that have STP-enabled payroll or accounting software and is collected fortnightly when businesses run their payroll. The data enables identification of age, sex, industry and region of employees engaged in paid jobs. Employees can hold multiple jobs but each job is counted separately. Data is not available on whether employees work full-time or part-time or whether they are employed on a casual or permanent basis. On that basis, if an 8-hour assignment that was previously carried out by two people is now carried out by one person, there would be a drop in one payroll job, but not the hours required for assignment.

⁶ <https://www.abs.gov.au/articles/insights-hours-worked-march-2022>

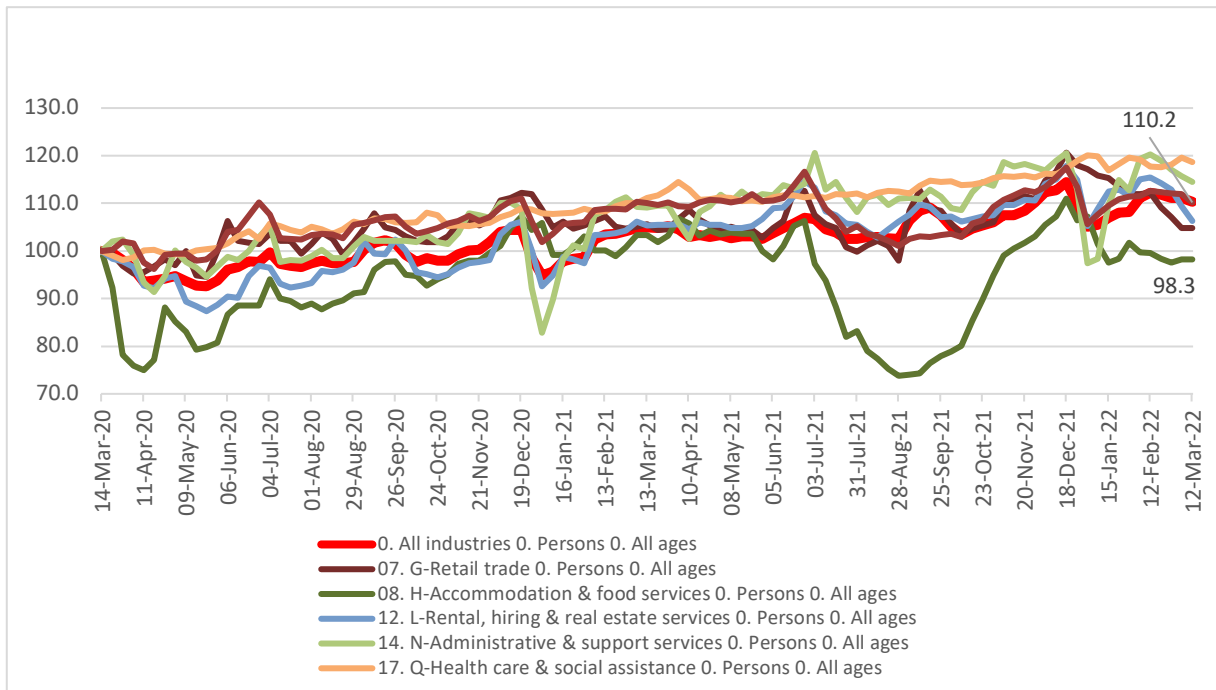
Figure 1: Payroll jobs index, week ending 14 March 2022



Source: ABS, [Weekly Payroll Jobs and Wages in Australia](#).

18. The Total Wages Index now sits 10% above its 14 March 2020 level. This upside growth is also observed in four of the five most award-reliant industries, except for Accommodation and Food Services which remains around 2% below the level on 14 March 2020. As the 8% drop in the number of payroll jobs noted above is larger than the drop in the Total Wages Index of 2%, this could potentially signal that each payroll job is now paid a wage that was higher than that of the 14 March 2020 level. The same applies for all industries in the aggregate: there was an increase of 5% in payroll jobs and an increase of 10% in total wages. There is however no clear indication whether higher wages paid per payroll job was due to higher wage rates or due to higher number of hours per payroll job, or a combination of both.

Figure 2: Total wages index, week ending 14 March 2022

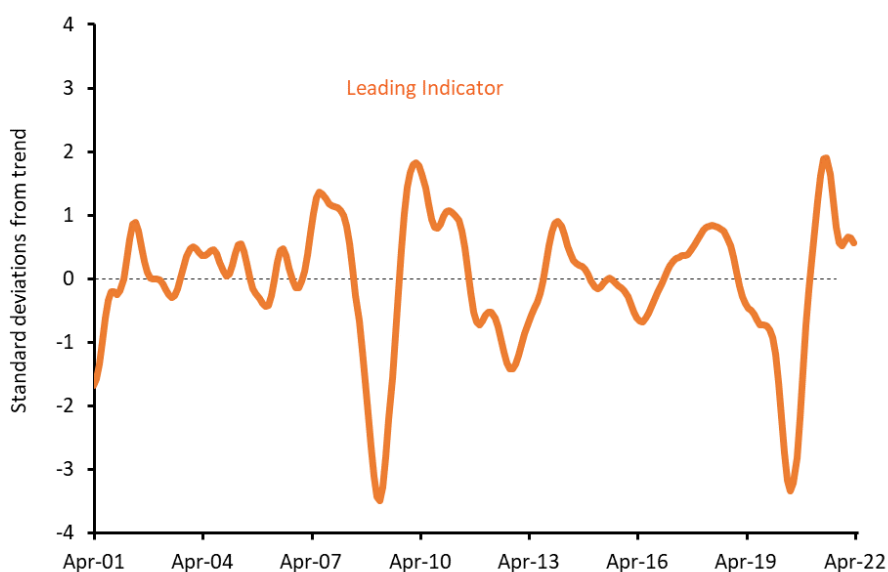


Source: ABS, [Weekly Payroll Jobs and Wages in Australia](#).

19. The April 2022 release of Monthly Leading Employment Indicators⁷ issued by the Department of Employment, Skills and Employment recorded a fall of 0.137 for the month of April 2022. Revisions have also seen declines recorded for February and March 2022. The series has been fluctuating over its 22-year period, but currently remains at an elevated level notwithstanding the recent updates and revisions. The release also cautions “With the recent increase in data volatility, more time is needed to discern the trajectory of the Indicator”.

⁷ <https://www.dese.gov.au/employment-research-and-statistics/leading-indicator-employment-monthly-reports/leading-indicator-employment-latest-release>

Figure 3: DESE's Monthly Leading Indicators of Employment, April 2022



Source: An extract from DESE's Monthly Employment Leading Indicators of Employment

20. It is not clear what forecast timeframe the leading indicators were predicting, when it was released on 13 April 2022. However, Reserve Bank Governor Philip Lowe's speech of 3 May 2022 upon the announcement of a rise in interest rates painted a picture of an Australian economy that is:

"more resilient than expected. Australians have also proven to be resilient and have adapted to the changed circumstances.... Unemployment has come down quickly...is expected to decline further to around 3½ per cent over the course of this year, which would be the lowest level in nearly 50 years.... The economy is expected to grow strongly this year, with our central forecast being for GDP growth of a little above 4 per cent".

21. It is worth noting that "the 3½ per cent over the course of this year" of unemployment as announced by the Governor on 3 May, was revised back up to 3¾ in the Statement of Monetary Policy released 3 days later on 6 May, but is to be followed by a 3½ per cent of unemployment rate forecast for early 2023, which is a downward revision, of 0.25 percentage points, from 3¾ for early 2023, as previously forecast in the February Statement of Monetary Policy .⁸ According to the Governor, the labour market is set to become tighter than the February forecast.

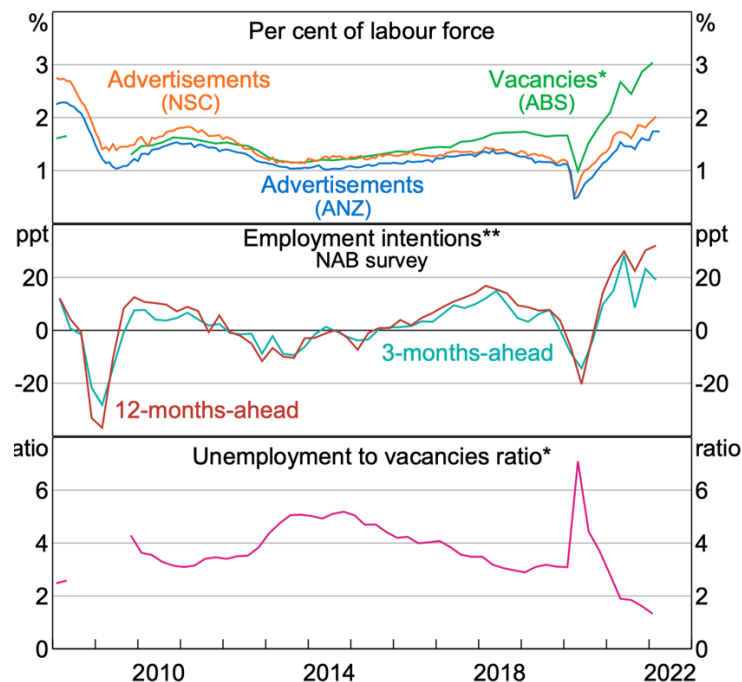
⁸ <https://www.rba.gov.au/publications/smp/2022/feb/economic-outlook.html>

22. The RBA's May Statement on Monetary Policy similarly expressed confidence in the labour market continuing to strengthen, noting that:

“Leading indicators of labour demand point to a further tightening in the labour market in the period ahead (Graph 2.5). The ratio of the number of unemployed people to the stock of vacancies fell further in February to a record low of around 1 ½ unemployed persons per vacancy. Job advertisements also remained elevated in recent months and point to continuing strong growth in employment. Around three-fifths of firms in the Bank’s liaison program intend to increase headcount over coming months”⁹

23. Graph 2.5 referred to by the RBA in the above extract is reproduced as Figure 4 below. In addition, we have provided a chart showing the difference between the two forecasts from the SMP statement released in February 2022 and May 2022 in Annex A.

Figure 4: Labour Market Indicators



* ABS Vacancies Survey was suspended between May 2008 and November 2009.

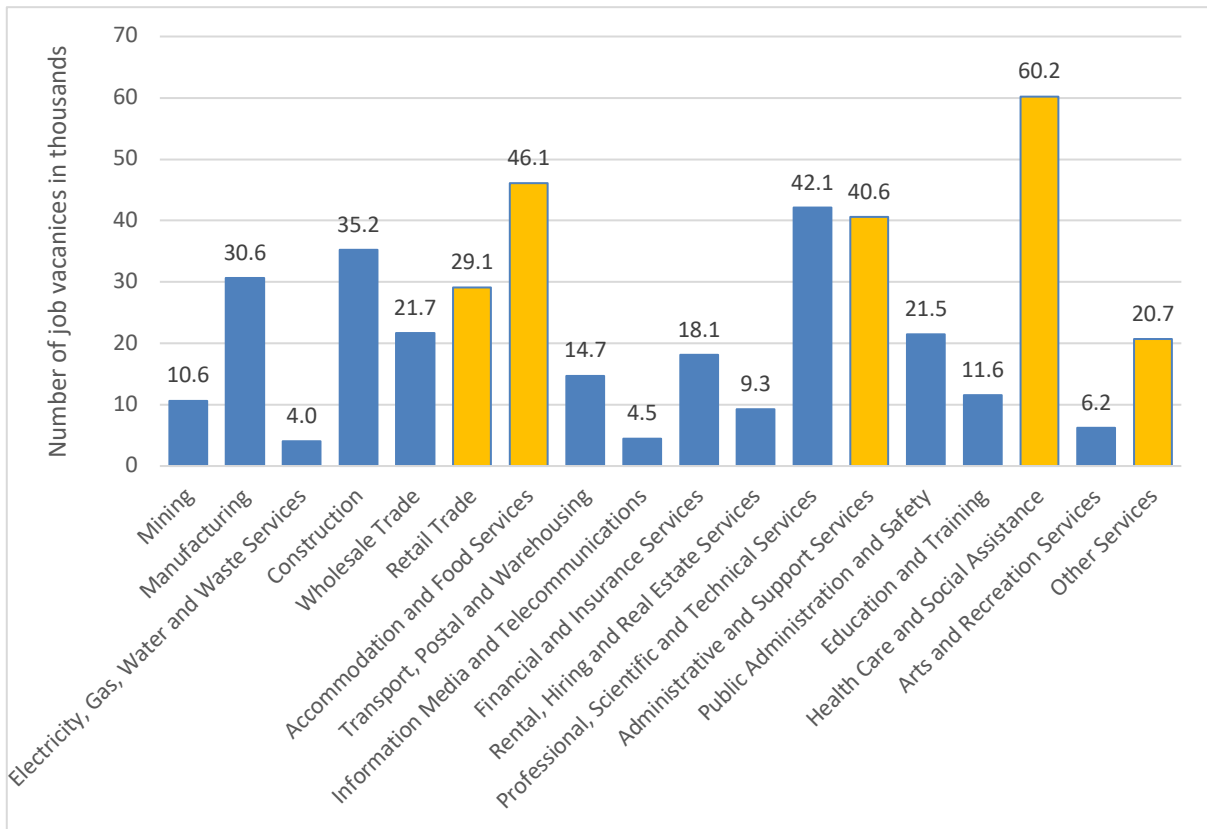
** Net balance for the following period; deviation from average; 12-months-ahead measure seasonally adjusted by the RBA.

Sources: ABS; ANZ; NAB; National Skills Commission (NSC); RBA

⁹ RBA, Statement on Monetary Policy May 2022, at page 24.

24. Noting that the revisions to the leading indicator of employment included a downgrading of the February and March measures, and in light of more confident predictions from the RBA, we have carried out further data analysis on job vacancies data. Paragraph 31 and Figure 12 of our initial submission provided insights into the job vacancies data against the proportion of businesses reporting vacancies. There was a time lag between the two: vacancies data is up to February 2022 whereas the proportion of businesses reporting vacancies data is up to November 2021. In this submission, with updated data on the proportion of businesses reporting vacancies now running up to February 2022, we seek to provide further analysis below.
25. The latest available ABS data suggests that job vacancies have been strengthening, picking up from the dip in May 2020. Australia now has 426,000 job vacancies as of February 2022. The most award-reliant industries as highlighted in orange below have high numbers of job vacancies (unadjusted for industry size), suggesting strong business confidence in those sectors. Labour market signals are even more bullish when the job vacancies level is considered in conjunction with the low unemployment rate of 4% from February 2022 Labour Force survey.

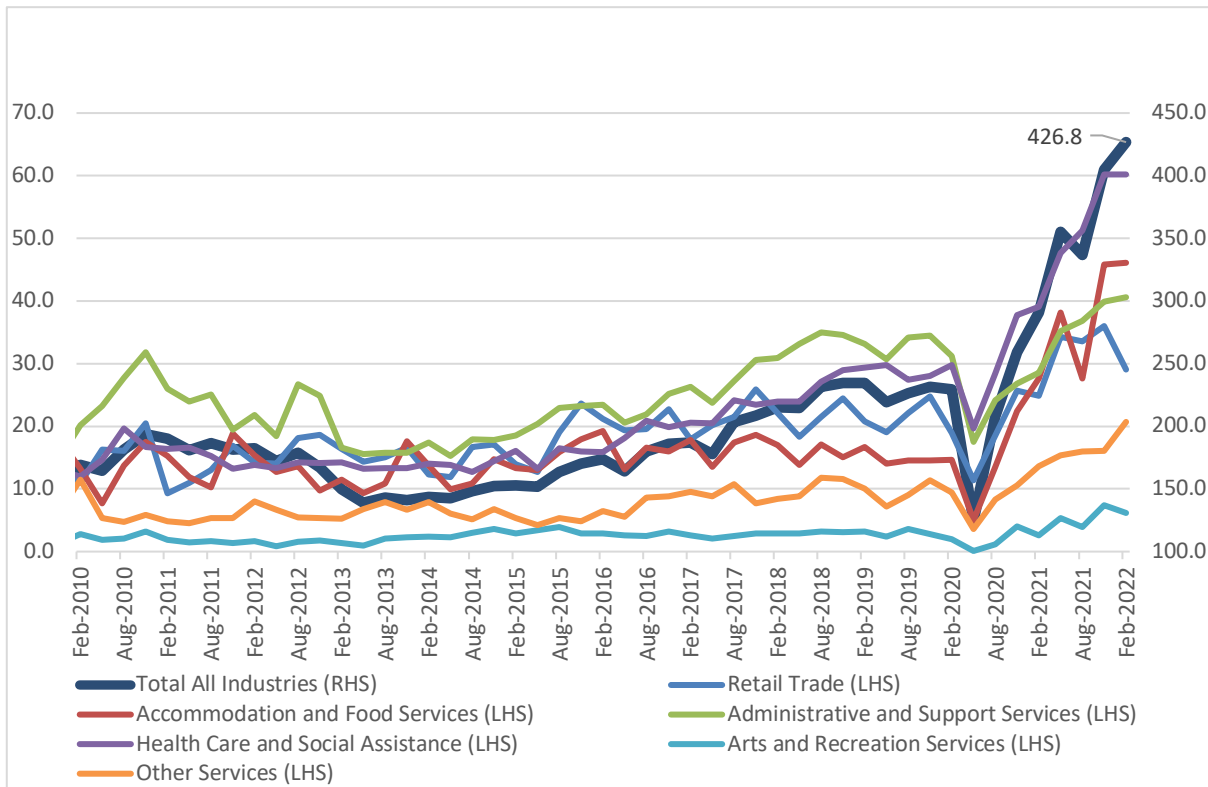
Figure 5: Job vacancies by industries during the month of February 2022



Source: ABS 6354

26. Across a longer time horizon, for the majority of award-reliant industries and for all industries as a whole, the level of job vacancies in February 2022 is at their highest since 2010.

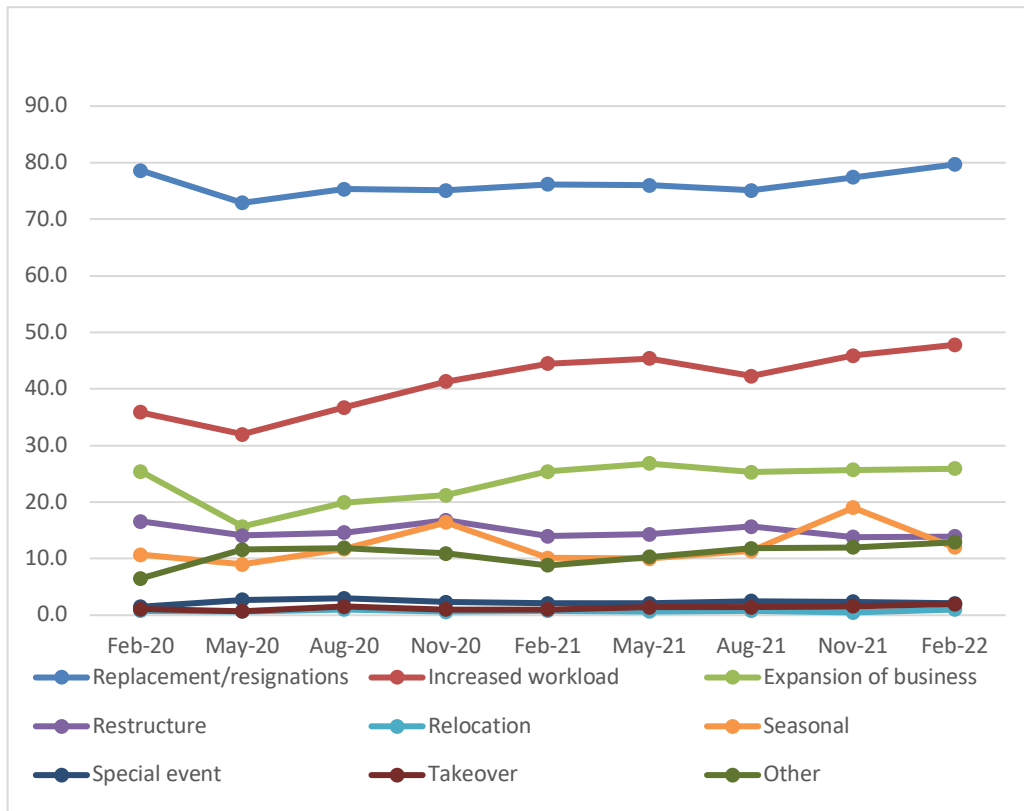
Figure 6: Job vacancies by industry, Original



Source: ABS 6354

27. The most popular reasons for job vacancies are replacement/resignations, suggesting that there are reshuffles, with workers either switching employers or industries (as predicted in our discussion of payroll jobs data above); increased workload; and, for approximately 26% of businesses, the vacancies are being put out to meet with business expansion plans. It should be noted that businesses may have multiple reasons for reporting job vacancies and the proportions are calculated based on the number of businesses that reported at least one job vacancy.

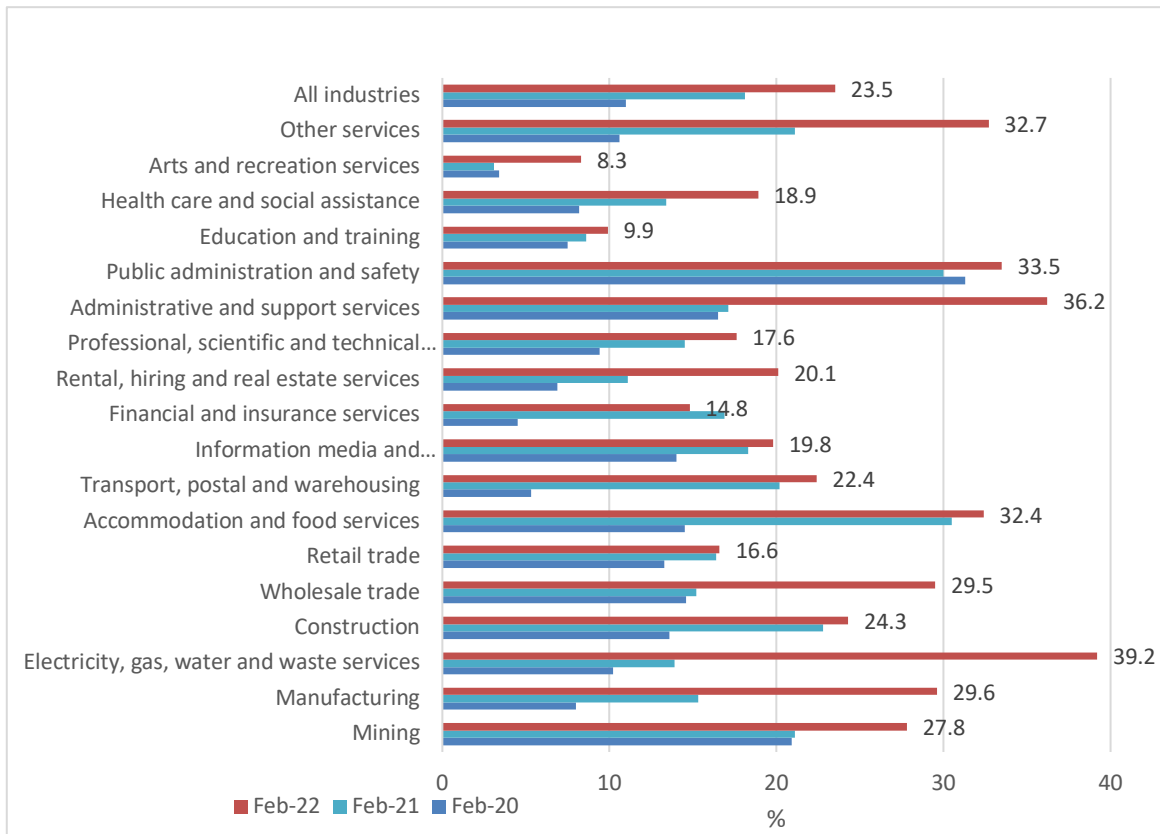
Figure 7: Reasons for vacancies February 2020 – February 2022



Source: ABS, [Job Vacancies, Australia](#)

28. Comparing the proportion of business reporting job vacancies in February 2022 with that of February 2020, a clear trend emerges that a larger proportion of businesses are reporting job vacancies over the same time period than they were two years earlier, with the exception of financial and insurance services, which had more vacancies in February 2021 than they did in February 2022, and retail, with the same proportion of businesses reporting vacancies. This tells us the proportion of businesses in need of workers (rather than the level of workforce needed by them) and signals their confidence in the continuity of their businesses.

Figure 8: Proportions of businesses reporting vacancies



Source: ABS, [Job Vacancies, Australia](#)

29. In our view, the position with respect to job vacancies together with the RBA’s recent commentary and analysis provides a compelling basis to question the recent downward movements and revisions of the leading indicator of employment.

2.2 Consumption and turnover

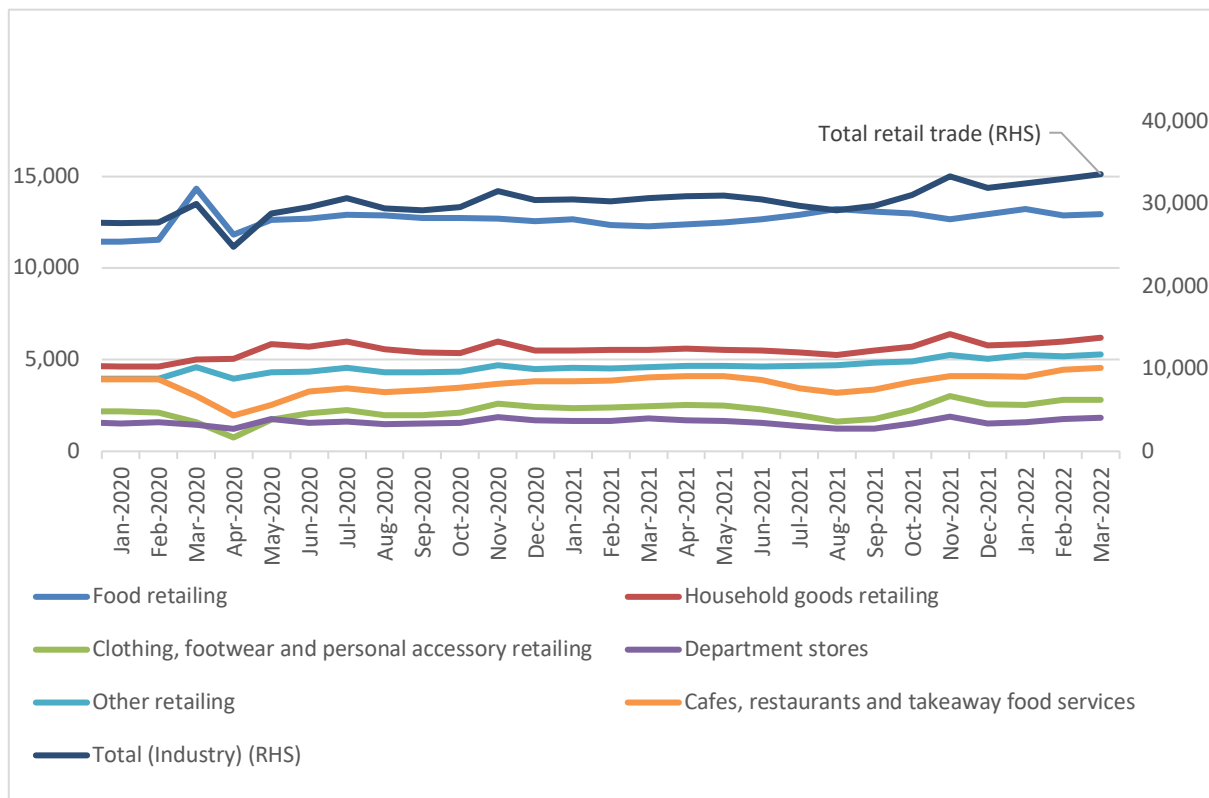
30. The retail trade continues its strong performance with sales reaching a “record level” in March, according to the ABS. It states:

“Rising prices, combined with the continued easing of restrictions across the country has led to rises in turnover in all three months of the March quarter. Consumer spending rose across both discretionary and non-discretionary industries. Following flooding in late February and early March along the east coast, impacted businesses regained lost turnover from forced closures as consumers restocked pantries.”¹⁰

¹⁰ ABS Media Release (4 May 2022), “Retail sales at record level, up 1.6% in March”.

31. Continuing the strong results of the sector as reported in our initial submission, the latest data for March 2022 shows a monthly increase of 1.6% for the industry, with department stores leading the rise with a 4.1% increase, followed by household goods retailing at 3.4%; 2% in other retailing; 2% growth in cafes, restaurants and takeaway food services; and 0.5% for food retailing and clothing, footwear and personal accessory retailing, respectively.

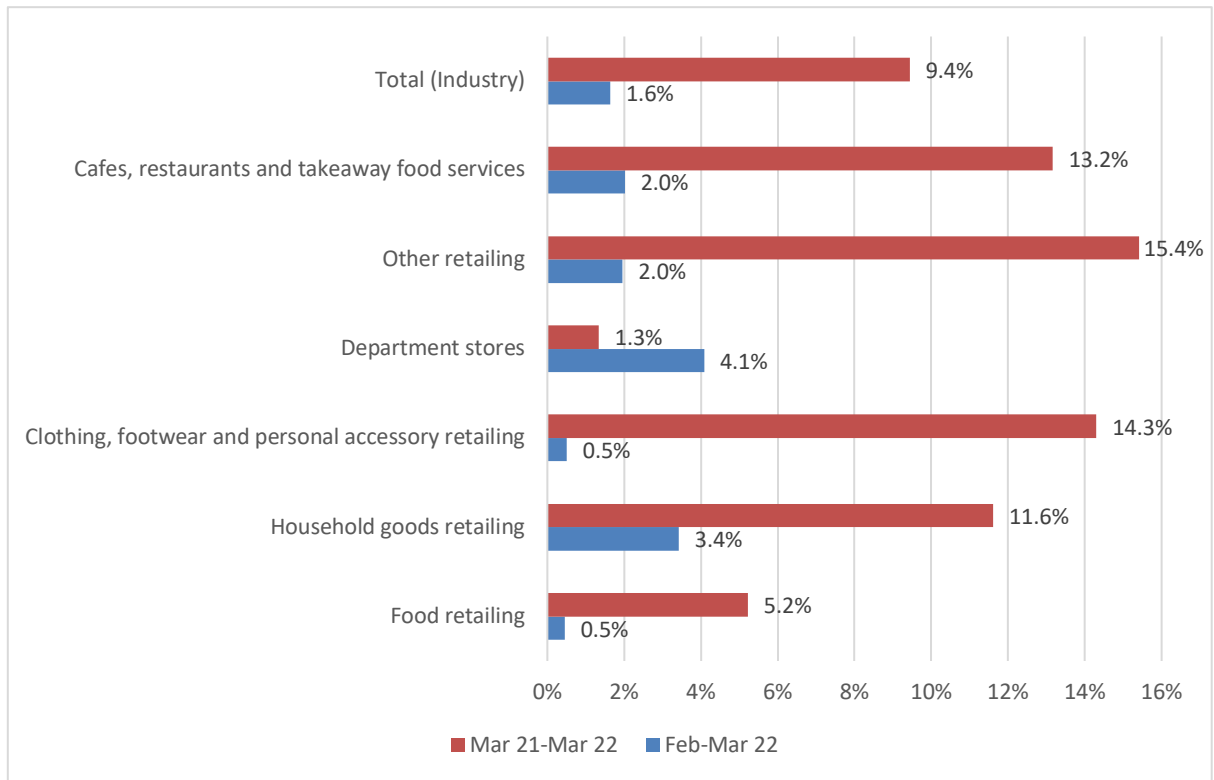
Figure 9: Monthly Retail Turnover, current \$millions, seasonally adjusted, Jan 2020 - Mar 2022



Source: ABS 850101

32. Comparing the performance of March this year against March 2021, an even stronger result emerges. Year-on-year growth for total industry stands at 9.4%; 15.4% for other retailing; 14.3% for clothing, footwear and personal accessory retailing; 13.2% for café restaurants and takeaway food services; 11.7% for household good retailing, 5.2% for food retailing, and 1.3% for department stores.

Figure 10: Change in retail turnover, current, \$millions, seasonally adjusted

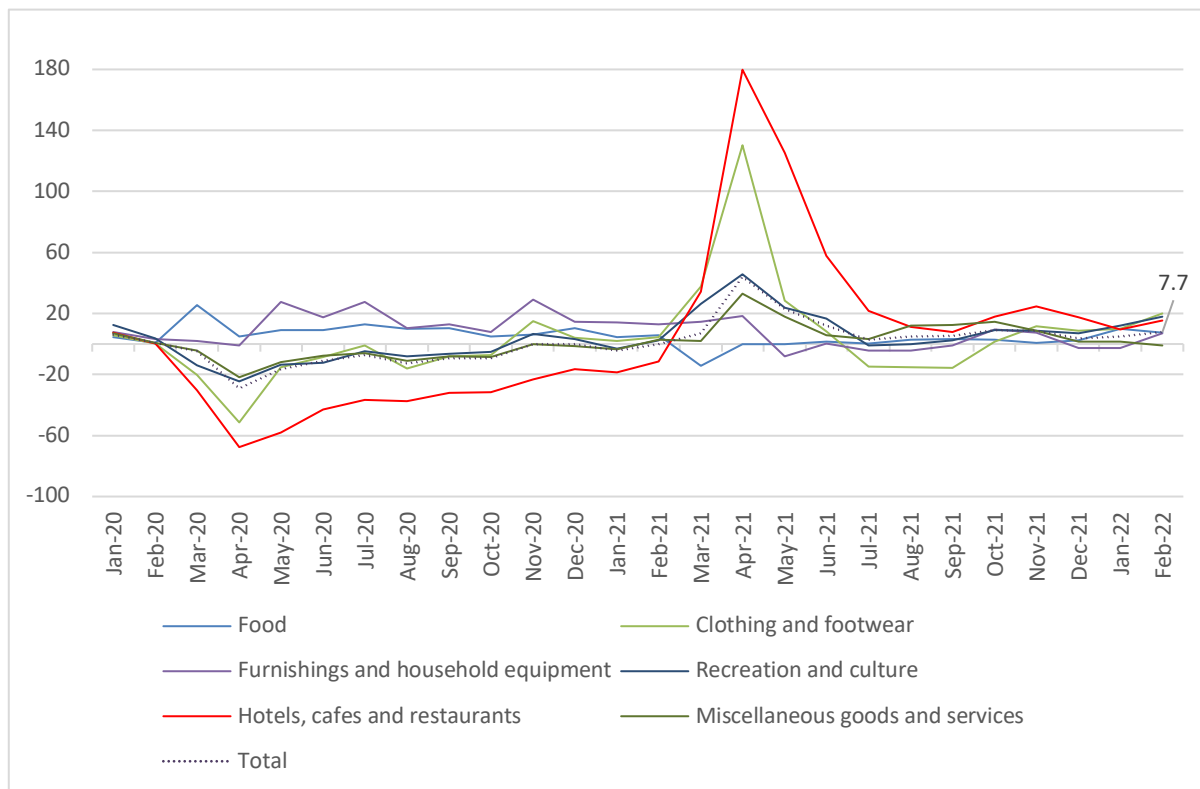


Source: ABS 850101

33. The data used in this analysis comes from the current price series. The extent to which growth is resulting from a price effect versus a quantity effect will not be clear until the volume measure becomes available. But two observations need to be made: one, that customers are back spending and businesses are benefiting from it; and two, whether growth is a price effect or a quantity effect, wages of workers in the sectors should also grow in the interest of fairness.

34. Monthly household spending rose by 7.7% over the year to February 2022. The largest increases were 20.2% for clothing and footwear, 17.8% for recreation and culture, 15.6% for hotels, cafes and restaurants, and 7% for food. This should provide us with encouraging evidence to assuage the concerns expressed in some submissions surrounding arts and recreation as well as food and accommodation services.

Figure 11: Monthly household spending, current price, calendar adjusted, through the year percentage change



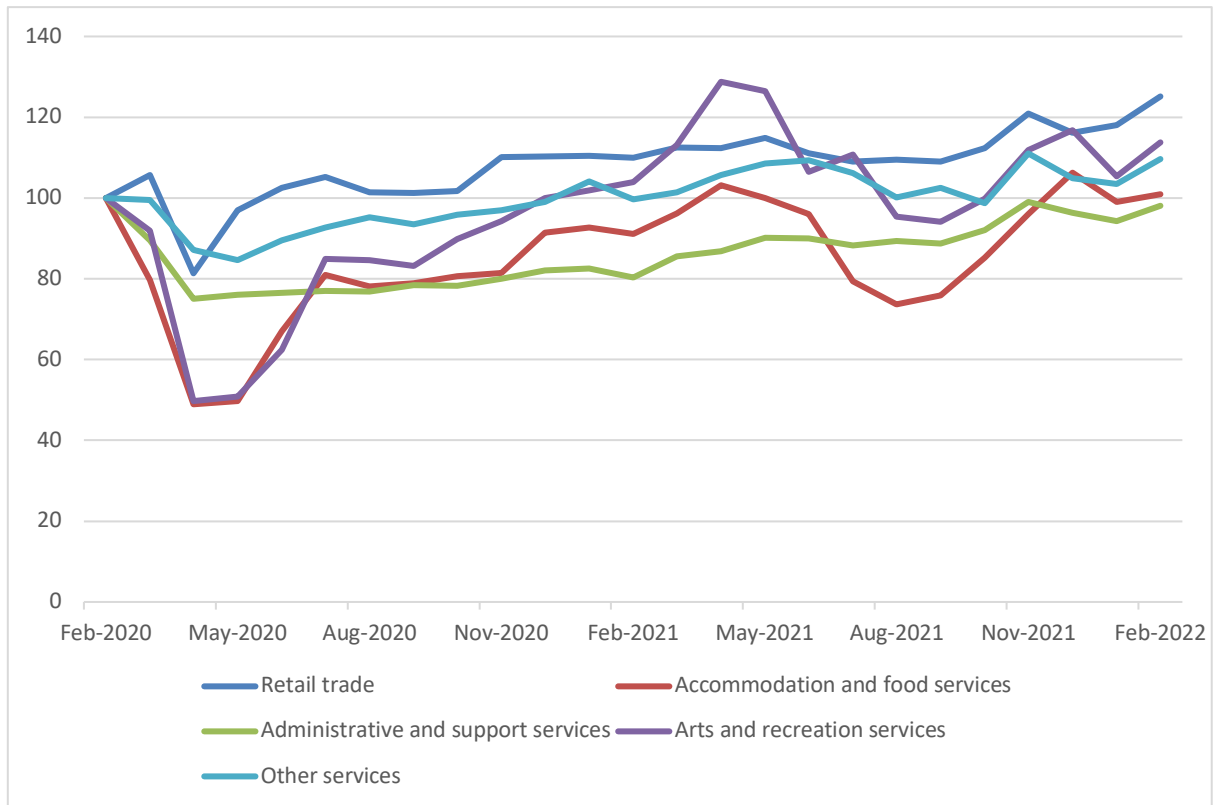
Source: ABS Experimental estimates of Household Spending, Australia, released 19 April 2022

35. Since the start of 2022, monthly business turnover for most award reliant industries¹¹ has risen. Monthly growth over the period Jan-Feb 2022 is observed in all five most award reliant industries. Compared to business turnover in January, arts and recreation services took the lead with an 8% increase, followed by a 5.9% increase in retail, 5.8% in other services, 4% in administrative and support services, and 2% in accommodation and food services. Looking one year back, the year-on-year growth for February turnover is even stronger: 13.8% growth for business turnover in retail trade, 9.4% for arts and recreation services, 9.9% for other services, 22.1% for administrative and support services, and 10.8% for accommodation and food services. Compared to pre-pandemic levels, a clear picture of recovery has emerged. Three industries have been well above their pre-pandemic level, in the range of 9%-25% growth (retail trade, arts and recreation services and other services). Accommodation and food services is around 1% above its pre-pandemic level of February 2020, the month before the first lock-down; administrative and support services, as of February 2022, is only 2% behind its pre-pandemic level. Looking over the past years, administrative and support

¹¹ Health care and social assistance is not published under this data series.

services has made tremendous progress from its lowest point of 75% of February 2020 level, shouldering through a number of lockdowns in between and now at an encouraging 98% of its pre-pandemic level.

Figure 12: Monthly business turnover, seasonally adjusted, current \$



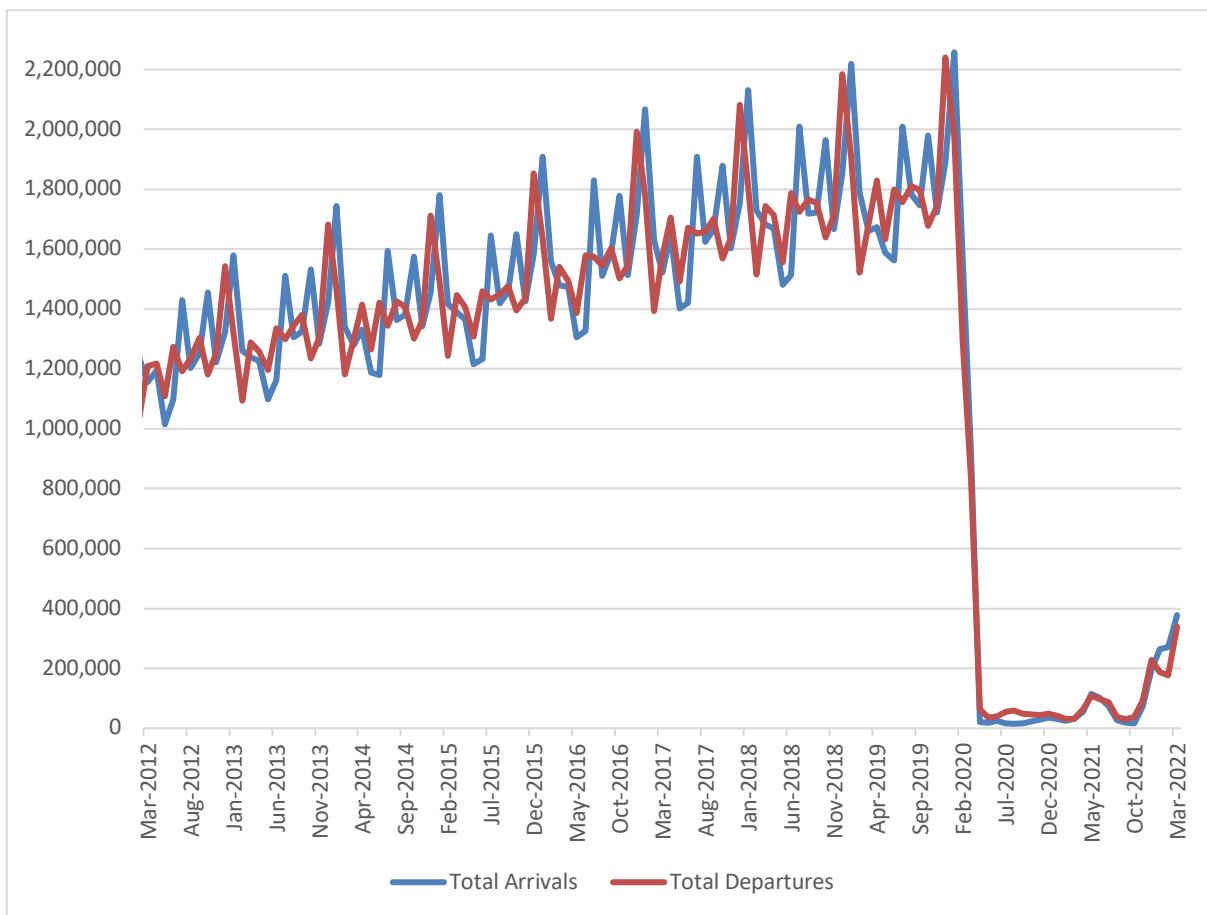
Source: ABS 5681.0, Tables 6, 7, 11, 12, 13

36. Economic theory makes a distinction between stated preference, what is expressed by the economic agents and revealed preferences, what is observed to be carried out by the economic agents. Looking back at Figure , where over the same month of February 2022, 40.6 thousand job vacancies could be found under administrative and support services, and in Figure above, where 36.2% of businesses in administrative and support services reported job vacancies, an inference can be made that business turnover might be constrained by staff capacity rather than lack of demand. In other words, business is constrained by their ability to supply in meeting greater market demand. This wage review would be a good opportunity for the Panel to help lift business constraints through a wage increase as per our proposal, one that accounts at least for both productivity growth and rising living costs. This wage rate will

then signal and guide businesses to the new reality of a fair minimum wage rate that they need to accept in order to relieve themselves of business constraints.

37. The debate on the impact of immigration on the labour market remains inconclusive: it is not clear whether the net effect of immigration is one that creates higher demand for labour, thus creating more jobs or shifting the labour supply curve to the right or moving along the supply curve, thus competing for the number of available jobs. What is clear for now is that Australia started to see a positive net stock of arrivals, after a sharp drop from around 2,000,000 arrivals or departures following border closure during the pandemic. These arrivals might be expected to add to overall consumption.

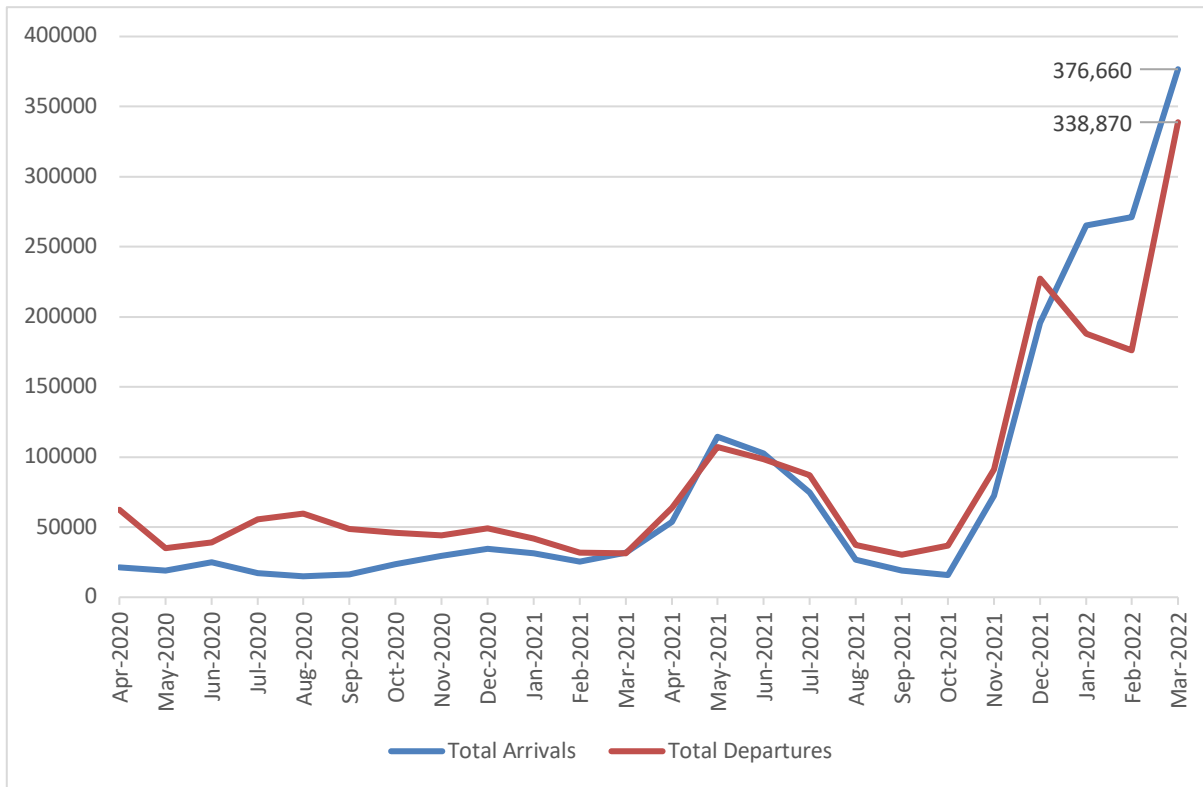
Figure 13: Total Arrivals and Total Departures, All Visa Types, Original



Source: ABS 3401.0

38. Starting from December 2021, the number of total arrivals overtook that of total departures, resulting in a net positive number of arrivals. Though this remains far below the pre-pandemic level of 2,000,000, the emerging trend is that arrivals are on the upward trajectory.

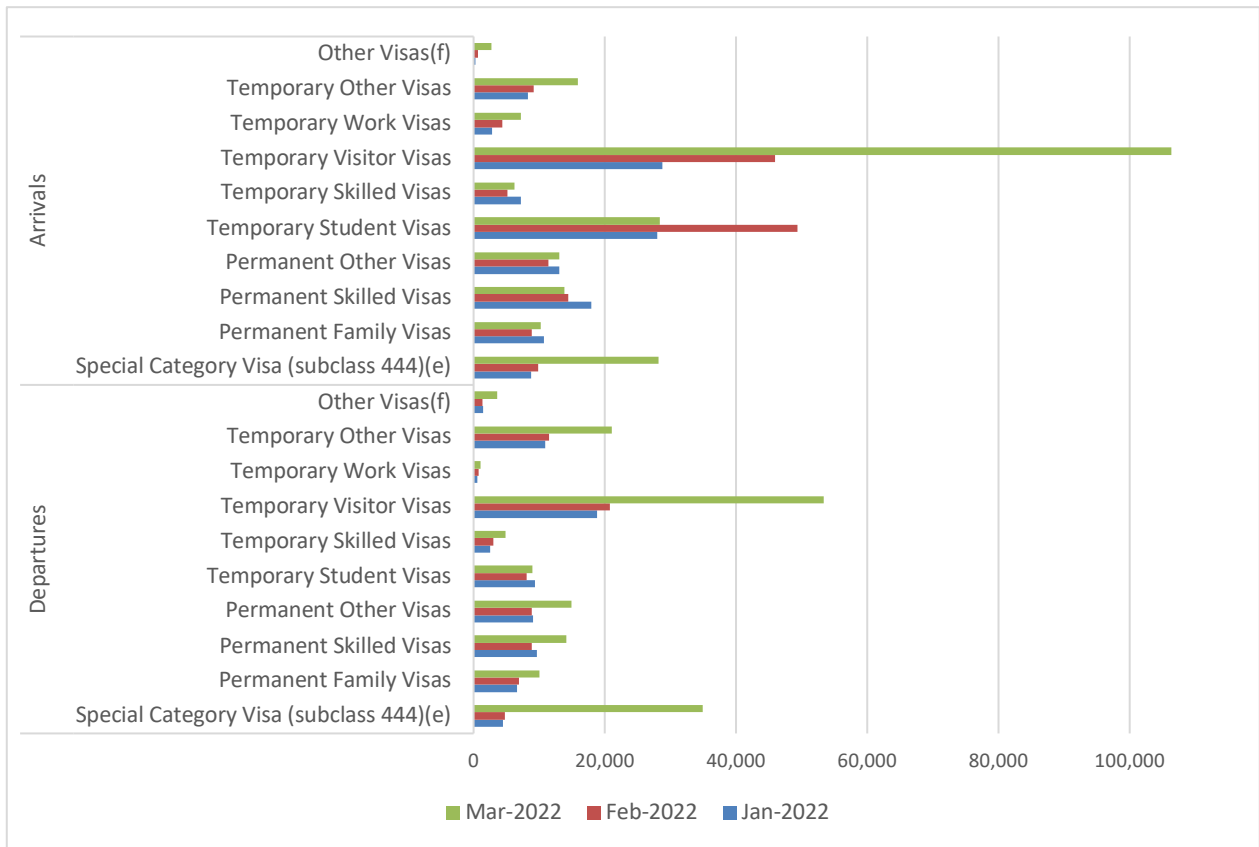
Figure 14: Total arrivals and Total Departures, Apr 2020 - Mar 2022, All Visa Types, Original



Source: ABS 3401.0

39. As of March 2022, the most popular visa types for arrivals are Temporary Visitor Visas, Special Category Visa, and Temporary Other Visa. Temporary Student Visas were more popular in February 2022, apparently driven by study schedule. As student visas carry with them some work rights, it might be expected that labour supply constraints could ease slightly as a result, at least in metropolitan areas.

Figure 15: Arrivals and Departures by Visa Type, Jan - Mar 2022



Source: ABS 3401.0

2.3 Costs of living

40. The Consumer Price Index (CPI) rose 2.1 per cent in the March quarter and 5.1 per cent for the year-to-March 2022. The ABS notes this is the largest quarterly and annual rise in headline inflation since the introduction of the GST in 2001. Both the quarterly and 12-monthly figures are higher than either the Government or private sector commentators had forecast. Moreover, CPI is forecast by the RBA to rise to 5.9% by the end of 2022 in the latest SMP. This means workers with an average weekly household spend of \$1,425¹² will require an additional \$85.5 a week to maintain the same level of consumption.

41. Non-discretionary inflation was 3 per cent for the quarter and 6.6 per cent for the year to March, while discretionary inflation was only 0.8 per cent for the quarter and 2.7 per cent for the year-to-March, suggesting a disproportionate impact on lower paid households because they spend a higher proportion of their income on non-discretionary items than is weighted

¹² <https://www.abs.gov.au/statistics/economy/finance/household-expenditure-survey-australia-summary-results/latest-release> (This is a very conservative estimate as the number is from FY2015-2016)

for in the CPI.¹³ For those households who are responsible for servicing a mortgage, the announcement by the RBA, just after the release of CPI figures, to lift the cash rate for the first time since 2010 also has significant implications for their living standards. An owner-occupier with an average loan of \$595,873¹⁴ will need an additional \$28 a week to meet their interest payment following the pass-through of these initial increases to lending rates. The RBA's May Statement on Monetary Policy indicates that banks have already announced that these pass-throughs will occur¹⁵ and signals "...a further lift in interest rates over the period ahead".¹⁶ The RBA is assuming that the cash rate will rise to 1.5 to 1.75 percent by December this year and keep rising to 2.5 per cent over 2023.¹⁷

42. Underlying inflation rose 1.4 per cent in the March quarter (the strongest movement since the beginning of the series in 2002), and it rose to 3.7 per cent for the year to March (up from 2.6 per cent for the year-to-December 2021), the highest since 2009. This accelerating underlying inflation and the RBA forecasts are consistent with the view expressed in paragraphs 94-95 of our initial submission regarding the broad based and non-transitory nature of recent price increases. Notably, the Statement observed, variously, that:

"...inflationary pressures broadened further in the March quarter, with price increases picking up for many grocery items and a number of market services. Around 70% of the CPI basket had an annual inflation rate above 2.5 per cent in the quarter, which is comparable to the levels seen during the period of elevated inflation in Australia prior to the global financial crisis"¹⁸

"A significant share of firms in the Bank's liaison program have increased prices or expect to increase their prices over coming months"¹⁹

"The outlook for inflation is much stronger than anticipated a few months ago. In the near term, underlying inflation is forecast to be significantly boosted by the pass-through of upstream cost pressures to consumers, continuing the pattern observed in recent quarters"²⁰

"Inflation in Australia and internationally is now forecast to be elevated for much of the forecast period"²¹

¹³ Yuen K & Rozenbes D (2022), Experimental estimates of a Consumer Price Index for low- paid employee households, Fair Work Commission Research Report 1/2022, February, at page 23, 34-35.

¹⁴ <https://www.abs.gov.au/statistics/economy/finance/lending-indicators/latest-release>

¹⁵ RBA, Statement on Monetary Policy May 2022, at page 40.

¹⁶ *Ibid.* at page 3.

¹⁷ Australian Financial Review, 3 May 2022, "Cash rate rises the RBA has to have".

¹⁸ *Ibid.* at page 49-50.

¹⁹ *Ibid.* at page 61.

²⁰ *Ibid.* at page 65.

²¹ *Ibid.* at page 67.

43. Following the release of CPI figures, the ABS released its Selected Living Cost Indexes for the March quarter. These show that the employee household index rose 1.7 per cent over the quarter and 3.8% over the year, representing its largest annual increase for over a decade. The ABS commentary accompanying the release remarked that:

“Employee households had the lowest annual increase (+3.8%), mainly due to Mortgage interest charges falling over the year. Excluding Mortgage interest charges, the index for this household type would have risen 4.3%”²²

Whilst this observation has some significance given the recent lift in and likely trajectory of interest rates, it also puts the spotlight on the aggregation methods used in calculating cost of living inflation, which we discuss in section 2.3.1 below. The living cost indexes published by the ABS are reproduced below.

Table 1: Selected Living Cost Indexes

	Dec Qtr 2021 to Mar Qtr 2022	Mar Qtr 2021 to Mar Qtr 2022
Weighted average of eight capital cities, All groups	% change	% change
Selected Living Cost Indexes (LCIs) - Household type:		
Pensioner and beneficiary LCI (PBLCI)	2.2	4.6
Employee LCI	1.7	3.8
Age pensioner LCI	2.3	4.9
Other government transfer recipient LCI	2.1	4.3
Self-funded retiree LCI	1.8	4.4
Consumer Price Index (CPI)	2.1	5.1

Source: Australian Bureau of Statistics, Selected Living Cost Indexes, Australia March 2022

44. The recent increase in the cost of living, including the interest rate rises, will mean that households facing real wage cuts will have very little room to cut consumption in those sectors of the economy currently experiencing high inflation. Real wage cuts of the kind advocated by employer groups in their initial submissions will do little to reduce what demand-pull inflationary pressure the economy faces, if any. Meanwhile, the absence of labour cost-push pressures in the March CPI figures reinforces an argument made in the ACTU’s initial submission: real wage cuts will do nothing to address the drivers of inflation.

²² <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/selected-living-cost-indexes-australia/latest-release>, accessed 04 May 2022

2.3.1 Measuring the cost of living for safety net purposes

45. The ABS Selected Living Cost Indexes provide different indexes for different household types. Looking at the expenditure weights by each household type, we found that employee households have the highest expenditure weight, compared to other household types, under insurance and financial services, at 9.5% of their expenditure basket, compared with a weight of 5.8% in the CPI. It should be noted that the headline calculation of this item in the CPI excludes interest charges and calculates general insurance on a different basis to the SLCIs. The employee LCI as shown in the table below, of 3.8%, however, was calculated with the inclusion of insurance and financial services, under which mortgage interest charges would appear. Exclusion of mortgage interest charges in the employee LCI would bring the inflation rate 0.5% higher, to 4.3%, as commented by the ABS earlier.

Table 2: Expenditure weights, household type by commodity group(a)(b)

	Pensioner and beneficiary LCI	Employee	Age pensioner	Other government transfer recipient	Self-funded retiree	CPI
Commodity group	%	%	%	%	%	%
Food and non-alcoholic beverages	19.38	18.13	20.38	18.65	17.35	16.76
Alcohol and tobacco	10.19	9.90	7.27	12.70	9.14	9.01
Clothing and footwear	3.21	3.64	3.00	3.41	2.86	3.33
Housing(c)	22.94	15.10	20.34	25.27	13.26	23.24
Furnishings, household equipment and services	8.64	9.80	9.60	7.89	10.81	9.16
Health	7.73	6.64	12.17	4.40	12.66	6.47
Transport	9.24	10.84	9.59	9.08	11.49	10.58
Communication	3.31	2.53	2.76	3.26	2.87	2.41
Recreation and culture	7.14	9.13	7.91	6.51	12.06	8.64
Education	1.96	4.80	0.15	3.49	1.38	4.63
Insurance and financial services(d)	6.27	9.48	6.84	5.34	6.11	5.80
All groups	100.00	100.00	100.00	100.00	100.00	100.00

(a) Based on 2015-16 Household Expenditure Survey (HES) data and 2020-21 Household Final Consumption Expenditure (HFCE) data.

(b) Figures may not add up due to rounding.

(c) House purchases are included in the CPI but excluded from the population subgroup indexes.

(d) Includes interest charges and general insurance. Interest charges are excluded from the CPI and general insurance is calculated on a different basis.

Source: Australian Bureau of Statistics, Selected Living Cost Indexes, Australia methodology March 2022

46. As the earlier discussion shows, the decision to include or exclude a particular expenditure item can mean a 0.5 percentage points difference, depending on their relative weight in the basket and the price movement within the period. Further, the *Information note—Living costs, housing costs and low-income earners*, released by the FWC in May 2021, noted that “changes to mortgage interest detracted between 1.0 percentage point and 1.4 percentage points in

annual LCI growth between the June quarter 2020 and the March quarter 2021”.²³ This illustrates that the drag of low mortgage interest rates on the employee LCI has been a factor for some time.

47. Much of the methodological discussion around CPI and Selected Living Cost Indexes (SLCIs) has focused on the approaches taken to construct a consumer price index, for instance, the acquisition approach vs. the cost of use approach vs. the outlays approach, or around the choices of index number formula, for example, the Fisher’s ideal index vs. Laspeyres index vs. Paasche index. We would like to bring attention to another aspect of the CPI: the aggregation approaches in determining expenditure weights in price index, namely the plutocratic approach—also known as “one dollar one vote” weighting scheme and the democratic approach—also known as “one household one vote” weighting scheme.

48. Under the plutocratic weighting method, expenditure groups that draw a larger budgetary share in richer households receive more weight, while those that take a relatively larger budget share of poorer households are assigned relatively less weight. This means that goods preferred by richer households tend to get larger weights in the plutocratic method than goods that are necessities and are preferred by poorer households. The plutocratic weighting method has been called a “one dollar one vote” weighting scheme to emphasise the fact that households with larger expenditures tend to skew the relative weights of expenditure groups in favour of their own expenditure patterns. An alternative approach, the democratic weighting method, obtains weight from the average household budget shares on each commodity. The weight that a commodity is assigned in the consumer price index can therefore be obtained from the average of the households’ budget share that each household devotes to the commodity. Under this approach, the pattern of each household’s consumption counts equally in calculating the weight assigned to a commodity.²⁴

49. There has been scant information on what aggregation method the ABS adopts in its CPI or SLCIs series. It is also not clear to us what aggregation method was employed in the “Experimental estimates of a Consumer Price Index for low-paid employee households”²⁵

²³ [Living costs, housing costs and low-income earners \(fwc.gov.au\)](https://www.fwc.gov.au/living-costs-housing-costs-and-low-income-earners)

²⁴

[https://www.ajol.info/index.php/boje/article/view/60208/48456#:~:text=Plutocratic%20weighting%20method%20has%20been,expenditure%20patterns%20\(Kokoski%202000\).](https://www.ajol.info/index.php/boje/article/view/60208/48456#:~:text=Plutocratic%20weighting%20method%20has%20been,expenditure%20patterns%20(Kokoski%202000).)

²⁵ <https://www.fwc.gov.au/documents/wage-reviews/2021-22/correspondence/lowpaidcpi.pdf>

published by FWC.²⁶ The report does however note that “Low-paid employee households are assumed to spend the same proportion of their total expenditure on financial services as all households in the CPI”. In our view, there is merit in revisiting the measurement approach and calculation, in light of a rising interest rate that will only keep on rising and a highly competitive rental market. We also echo the points made in our initial submission concerning the need to review and update the FWC’s proposed index for low paid employee households (see paragraphs 209 to 218).

50. A paper on “Inflation and Cost of Living”²⁷ in the RBA March 2014 Bulletin notes that the ABS’s ALCIs series followed the plutocratic basis in its calculation. Using the democratic approach in its calculation, the RBA paper (published in 2014) comments:

“There have been differences in inflation for households with different levels of income. Over the past decade²⁸, low-income households have experienced slightly higher rates of inflation than high-income households. Low-income households tend to spend proportionately more on items that are relatively ‘essential’ in their nature, particularly housing and food, which has resulted in them being more exposed to relatively large increases in utility prices over this period (Graph 7). In addition, high-income households spend proportionately more on items that are relatively ‘discretionary’, such as recreation and consumer durables. They have consequently benefited more from the relatively slow pace of inflation in items such as motor vehicles, overseas travel and clothing over this period.” (Graph 7 refers to graph in the referenced paper.)

51. A conference paper *The calculation of higher-level indices in the CPI – a practical guide*²⁹, published as part of a Group of Experts on Price Indices workshop in May 2014 helpfully summarizes the differences and weaknesses in the two aggregation approaches:

“Standard practice within NSOs³⁰ is to derive index weights for the CPI using a ‘plutocratic’ scheme, whereby household expenditures on individual products are aggregated and the aggregates used to derive proportional weights. The weakness in this method, as stated earlier,

26 Fair Work Commission, (February 2022), Experimental estimates of a Consumer Price Index for low-paid employee households. <https://www.fwc.gov.au/documents/wage-reviews/2021-22/correspondence/lowpaidcpi.pdf>

²⁷ <https://www.rba.gov.au/publications/bulletin/2014/mar/pdf/bu-0314-4.pdf>

²⁸ This was mentioned in the paper as the period between December 2003 to December 2013.

²⁹ The paper can be accessed via

https://unece.org/fileadmin/DAM/stats/documents/ece/ces/ge.22/2014/WS5/WS5_3_ref_paper_1_Calculation_of_higher_level_indices_final.pdf

³⁰ NSOs: National Statistical Offices

is that the expenditures of the highest earners will have the greatest influence on the weights and, if their expenditures are atypical, which is certainly plausible, they will distort the results. An alternative to the plutocratic method is the democratic method, whereby each individual household's expenditure shares are calculated independently and expenditure shares on similar products are averaged across the whole population of households. This results in all households having equal influence on the weights. Consider the simple case of two products and two households presented below.

Product \ Household	Expenditure		Household Exp Share		
	A	B	A	B	
X	1	1	0.5	0.5	
Y	1	7	0.125	0.875	
			0.31	0.69	Average
Population Exp Share	0.2	0.8			

Let us assume that product 'A' is a 'necessity' and 'B' a 'luxury' and further assume that household 'Y' is a high earner. The derivation of plutocratic weights (lighter blue) obviously sees household Y dominating the weights through its expenditure on the luxury good, whereas the democratic approach (darker blue), in allowing for equal representation of each household, produces a set of weights less widely dispersed. In instances where income inequality is particularly prevalent, a democratic weighting scheme could be deemed more appropriate."

52. HILDA Survey Wave 19 found that 50.5% of low-paid employee households own a home or are currently paying off a mortgage. In comparison, the proportion of higher-paid employee households owning or paying off a mortgage is 68.3%. Separately, the ABS Survey of Income and Housing for the 2017–18 financial year found that 60.2% of lower-income households—which are households containing persons in the bottom 4 deciles of equivalised disposable household income—owned their homes, while 37.5% were renting. Amongst homeowners in this group, 64.6% owned their homes without a mortgage. Amongst renters, 73.1% rented from a private landlord.³¹ Research conducted by Wilkins and Zilio for the FWC's 2019/20 Annual Wage Review estimated that 45.6% of low-paid award reliant households were renting and 52.3% owned their home.³²

³¹ [Living costs, housing costs and low-income earners \(fwc.gov.au\)](https://www.fwc.gov.au/living-costs-housing-costs-and-low-income-earners)

³² Wilkins, R. & Zilio, F. (2020), *Prevalence and persistence of low-paid award-reliant employment*, Melbourne Institute of Applied Economic and Social Research, Fair Work Commission Research Report 1/2020, February.

53. Anglicare Australia's annual survey³³ on rental affordability for low-income households published in April 2022 found that rental affordability has deteriorated for low-income earners. Using 'affordable' and 'suitable' as evaluation criteria, where 'affordable' means no more than 30% of household budget and 'suitable' means appropriate for the number of people or the family type, the survey found that a single parent working full-time can afford only 0.7% of the rental listings during the snapshot weekend, compared with 1.6% last year. Families with both parents working full-time minimum wage jobs can afford only 15.3% of listed properties, compared with 30% in 2012. The position is likely worsening for renters, with the RBA observing in its May Statement on Monetary Policy that rents increased 0.6% in the March quarter, the strongest quarterly outcome since September 2014.³⁴ Further, even this figure masks significant movements in rental prices in Australian capital cities outside of Sydney and Melbourne. Brisbane (+1.4%), Perth (+2.3%) Hobart (1.4%), Adelaide (1%) Darwin (3.1%) and Canberra (+2.2%) all experienced increases in rents well above the national average in the March quarter.
54. As noted at the outset of this discussion, the difference between the inflation rate and mortgage interest rates is 0.5 percentage points. Whilst this may seem negligible from a statistical point of view, for low-income households, every dollar counts. The HILDA survey as discussed above, showed that 50.5% of low-paid employee households either own a home or are paying off a mortgage. For the non-mortgage households amongst this group, the 'excluding mortgage interest charges' series would better reflect their expenditure basket. For the mortgage households in this group, with interest rates now starting to go up, the headline employee LCI which does include mortgage interest charges is set to change for them in the coming days. Amongst low-income households who are renting, an expenditure basket that fully reflects the weights of their rental expenditure would better inform decisions that could insulate them against an overheated rental market.
55. The above serves to demonstrate that there are various choices for measuring living cost inflation, with varying degrees of sensitivity to particular household circumstances. Given the heterogeneous demographics of award-reliant workers on the basis of housing tenure, family structure and life stage - with some of them being renters competing in an overheated rental market, some of them being owner-occupiers facing an increasing interest rate - it would be hard to quantify a single optimal inflation rate that could be adopted to fully and fairly insulate

³³ [Rental-Affordability-Snapshot-National-report.pdf \(anglicare.asn.au\)](https://www.anglicare.asn.au/rental-affordability-snapshot-national-report.pdf)

³⁴ RBA, Statement on Monetary Policy May 2022, at page 54.

the differing cost of living baskets from rising inflation. In our view, a broad range of indicators should be considered by the Panel given that it is entrusted to maintain a safety net for all award and minimum wage reliant workers including those who are least able to mitigate the inflation risks most relevant to their particular circumstances.

3. SUBMISSION IN REPLY – COMMON ISSUES

56. This section provides responses to issues that are common in multiple employer submissions.

3.1 A “shadow lockdown”

57. Australian Business Industrial (‘ABI’), the Australian Chamber of Commerce and Industry (‘ACCI’) and the National Retailers Association (‘NRA’) refer to a “shadow lockdown” associated with the Omicron wave in early 2022. We are strongly of the view that the use of the word “lockdown” is highly inappropriate in characterising the impacts of the Omicron wave during that period. The severity and nature of the impacts on the labour market and the economy generally are not comparable to the legally mandated lockdowns in 2020 and 2021 which required businesses to close and people to limit their movements or remain in their homes.

58. Whilst it is reasonable to wait until the March quarter national accounts become available to make any conclusive comments on the extent of the impacts of the Omicron wave in early 2022, what is clear at this stage is that there is no indication that demand for goods and services generally fell to a level that resulted in labour demand falling. In its May 2022 Statement on Monetary Policy, the RBA said that “Household consumption remained resilient in the March quarter despite the Omicron outbreak”³⁵. Concerning the labour market, there were no negative impacts on employment or utilisation save for supply side impacts on hours worked as a result of illness and isolation requirements (with other decreases in hours of work largely associated with weather). The number of persons working less than their usual hours for economic reasons had by March 2022 fallen to the lowest it had been since February of 2020. It is likewise clear, as referred to in section 2.2 above, that retail turnover grew overall in both January and February and the small declines seen in some categories in January (Clothing, footwear and personal accessories down 1.2% month on month, Café’s restaurants and takeaway food services down 0.5% month on month) more than reversed in February (11.2% and 9.7% month on month growth respectively) and that growth in all categories was seen in March. Relatedly, the Ai Group on page 10 of its submission refers to growth in its Performance of Services index, with the linked source referring to “robust expansion in February” and stating that “Activity was strongest in the consumer-oriented sectors: retail trade & hospitality recorded a large increase in activity as did personal, recreational & other

³⁵ RBA, Statement on Monetary Policy May 2022, at page 62

services". The submissions by the Australian, Victorian and NSW governments don't highlight concerns over lasting labour market effects of the Omicron wave during this period and NSW and Victoria also suggest business confidence did not suffer.³⁶

59. The NRA describes "shadow lockdowns" (plural) as "now-infamous" and "often necessitating business closures"³⁷, while providing no description of when the multiple alleged shadow lockdowns took place and seemingly basing their comment regarding business closures on a survey response about *store* closures in response to "COVID-19 restrictions"³⁸ (emphasis added) from October 2021 – a month during which parts of NSW and Victoria were actually in lockdown. ACCI describe "shadow lockdowns" or alternatively "customer driven lockdowns" as conditions under which Australians are exercising considerable caution in re-entering the community and consumer life³⁹, felt mainly by "customer facing" businesses – suggesting some overlap with the sectors studied and identified as well performing at the relevant time in Ai Group's materials.⁴⁰ Whilst ABI do not define their reference to a "shadow lockdown", they describe "future shadow lockdowns" as risks in the year ahead⁴¹, as do ACCI⁴². In our view, an expectation of general economic and labour market conditions in the year ahead matching those experienced in the beginning of 2022 bodes well for businesses and continued employment, based on the information presently available.

3.2 Productivity, business costs, wage rises and inflationary impacts

60. Many employer groups claimed in their initial submissions that inflation was transitory, and that therefore minimum wage increases above the then level of inflation (3.6%) was unnecessary. As discussed earlier, CPI results for the March 2022 quarter show that inflation is clearly not transitory. Underlying inflation is now at 3.7 per cent (for the year to March 2022) and well above the Reserve Bank's target band. Headline inflation is at 5.1% for the year to March 2022 and more than a full percentage point above Treasury predictions in the 29 March 2022 Budget. These levels are here to stay for the medium term. As the Governor of the Reserve Bank Philip Lowe's said after the Board raised the target case rate from 0.1 per cent to 0.35 per cent on 3 May 2022, underlying inflation is not expected to decline to the top of

³⁶ See Australian Government submission at paragraphs 58 and 72, Victorian Government submission at paragraph 27, NSW Government submission at paragraph 62 and 77.

³⁷ At para 3.6

³⁸ At para 3.11

³⁹ At para 49

⁴⁰ At para 14

⁴¹ At page 2

⁴² At page 44

the target band until the middle of 2024 even assuming further interest rate increases. Furthermore, the RBA expects “a further increase in the inflation rate as the effects of global developments wash through the year-ended figures...” predicting the headline rate to reach 5.9% by the end of 2022.⁴³

61. The RBA's May Statement of Monetary Policy (SMP) released on 6 May 2022 further confirmed that inflation is now broadly across the economy and is not transitory. The SMP noted that “while petrol prices and other global factors contributed significantly to the [March] quarterly outcome, the sources of inflation are broadening... The outlook for inflation is also materially higher than envisaged three months ago.”⁴⁴ The SMP states “a strong expansion in the Australian economy is underway and inflation will increase further”, with the RBA now expecting headline inflation to peak at 5.9 per cent for the 2022 calendar year, given higher global petrol prices and costs for new dwellings, while underlying (trimmed mean) inflation is forecast to peak at 4.75 per cent for the same period, because “the upstream cost pressures that have boosted the prices of consumer durables and new dwellings since the latter part of 2021 are now expected to persist for longer than previously anticipated.”⁴⁵ The RBA does not expect either headline or underlying inflation to fall to the top of the target band (3 per cent) until 2024. Meanwhile, commodity price rises are expected to deliver a record high terms of trade in the 2022 June quarter, raising national income.⁴⁶

62. The minimum wage and the modern award objectives direct the Panel to take into account productivity, inflation and business viability (among other matters) in reviewing the NMW and modern award minimum wages, with the overall objective of maintaining fair and relevant minimum wages⁴⁷. Wages, business costs, productivity and the price of goods and services clearly interact in the market economy, and conditions can exist whereby wage costs become inflationary. Whilst the balancing act entrusted upon the Panel does not prevent an outcome that has inflationary effects, our claim has no such risks. The submissions of many employer representatives express concerns about such risks arising even with very minimal nominal wage rises, that in all cases are highly likely to be real wage cuts. We are of the view that those concerns are misconceived, or overstated at best.

⁴³ Reserve Bank of Australia (2022), ‘Speech - Today’s Monetary Policy Decision’, transcript, 3 May.

⁴⁴ Reserve Bank of Australia (2022), ‘Statement on Monetary Policy’, 6 May, p. 1.

⁴⁵ Reserve Bank of Australia (2022), ‘Statement on Monetary Policy’, 6 May, p. 60 - 61.

⁴⁶ Reserve Bank of Australia (2022), ‘Statement on Monetary Policy’, 6 May, p. 60.

⁴⁷ Fair Work Act 2009, s 134(1)(e), 134(1)(h), 284(1)(a).

63. Mainstream economics tells us nominal wage increases that match inflation and productivity growth allow workers to both meet the rising cost of living and gain their fair share of rising national prosperity without placing pressure on prices.⁴⁸ This is because improvements in productivity are, by definition, expanding the productive capacity of the economy to produce goods and services. An increase in wages that matches such an expansion of potential economic output will not put additional pressure on prices. In contrast to employer representatives' claims that nominal wage increases equal to or greater than inflation would be unsustainable, both the Governor of the Reserve Bank and the Secretary of the Treasury have publicly supported this position: that nominal wages can grow at a rate equal to the sum of the inflation rate and the productivity growth rate before they begin to put upward pressure on headline inflation.

64. On 16 February 2022, Treasury Secretary Dr Steven Kennedy testified before the Senate Economics Legislation Committee that:

“If we can achieve productivity growth of 1.5 per cent [and assuming inflation growth of 2.5%], then nominal wages can grow at four per cent and put no pressure on inflation. However, on the other hand, if productivity is only 0.5 per cent, then wages can only grow at three per cent before they begin to put pressure on inflation”.⁴⁹

65. On 9 August 2018, Reserve Bank Governor Dr Philip Lowe testified before the Standing Committee on Economics that wages should be increasing at the rate of labour productivity growth plus the rate of inflation, saying:

“I think wages in Australia should be increasing at three point something. The reason I say that is that we are trying to deliver an average rate of inflation of 2½ per cent. I'm hoping labour productivity growth is at least one per cent—and I'm hoping we can do better than that—but 2½ plus one equals 3½.”⁵⁰

66. In contrast no evidence is presented by employer organisations that so-called "wage push" inflation is genuine, especially in the current context, and with real unit labour costs declining

⁴⁸ See e.g. Mankiw, G (2018), *Principles of Economics*, Cengage Learning: Boston, USA, 8th Edition, p. 373 – 374.

⁴⁹ Senate Economics Legislation Committee Transcript, 16 February 2022.

⁵⁰ Standing Committee on Economics Transcript, 9 August 2018.

by 0.3 per cent for the year according to the latest National Accounts.⁵¹ In the current context the key drivers of inflation are international oil prices, global supply chain disruptions (including congested ports and shipping from major manufacturers like China), and a domestic shortage of building materials such as timber. Productivity grew by 2 per cent in 2021 according to the Fair Work Commission's Statistical Report, and by 1.07 per cent in the 2020-21 financial year according to the Productivity Commission.⁵² It has averaged about 1 per cent over the past decade. Given headline inflation for the 12 months to March 2022 was 5.1 per cent, (and that the RBA is now projecting inflation will reach 5.9% by the end of 2022) then according to the formula quoted by the Treasury and the Reserve Bank, nominal wages should be able to comfortably grow by at least our claim for 5.5% without putting any upward pressure on inflation.

67. The claims of many employer groups that a wage increase above the levels advocated in their submissions (for example 2 per cent for the Australian Industry Group, 3 per cent for the National Retail Association, and 3.7 per cent for the Australian Retail Association) would be inflationary are simply inconsistent with mainstream economics and the statements of both the Treasury and the Reserve Bank. Even if the Budget's 3 per cent forecast for inflation for 2022-23 had held, Ai Group's 2 per cent wage claim would have represented a 1 per cent real wage cut with no compensation for labour productivity growth, and would have been a full 3 percentage points below the maximum sustainable real wage rate inferred from the Budget of 2 per cent. With headline inflation now forecast to be 4.25 per cent in 2022-23 according to the RBA Statement, the fall in real wages implied by Ai Group's 2 per cent nominal wage claim has blown out from 1 per cent to 2.25 per cent. The wage claim submitted by the Ai Group would result in a significant reduction in real terms pay for Award-reliant workers for 2022-23.

68. The Australian Retail Association's ('ARA') initial submission recommended the Panel raise minimum wages "in line with underlying inflation at the time the Annual Wage Review is handed down, factoring in the impact that the July 2022 increase in the superannuation rate

⁵¹ ABS (2022), 'Australian National Accounts: National Income, Expenditure and Product – December 2021'. Accessed at <https://www.abs.gov.au/statistics/economy/national-accounts/australian-national-accounts-national-income-expenditure-and-product/dec-2021>.

⁵² Fair Work Commission (2022), 'Statistical report—Annual Wage Review 2021-22', Version 4, 22 April 2022. Accessed at <https://www.fwc.gov.au/documents/wage-reviews/2021-22/statisticalreportv4.pdf>; Productivity Commission (2022), 'Australia's Productivity Performance'. Accessed at <https://www.pc.gov.au/research/ongoing/productivity-performance> on 5 May 2022.

will have on wages.”⁵⁴ While this is a better position than other employer organisations it still assumes employees should not share in any gains in productivity through wage increases, or that there will be no productivity growth at all in the economy.

69. Wages are not pushing up inflation and there is ample room for positive real wage growth without adding to inflationary pressures. Real unit labour costs fell 0.3 per cent last year according to the National Accounts for December 2021, and by 0.7 per cent in the three months to December alone. The National Accounts for the March quarter are due to be released on 1 June. We do not expect significant real unit labour cost growth in the March national accounts.
70. Businesses can afford a minimum wage increase above headline inflation. Profits grew at an extremely robust and healthy 13 per cent (seasonally adjusted) over the year according to ABS’ latest Business Indicators, as firms continue to recoup higher input costs through higher prices charged to their consumers. The same ABS release shows wages and salaries grew only 5.5 per cent (seasonally adjusted) for the same 12 months to December 2021.⁵³ Employer claims regarding firms’ incapacity to pay would hold more weight if there were any evidence of significant falls in profits, when in fact profits are rising.
71. The ACTU agrees productivity growth should be factored into the Panel’s assessment of the sustainable rate of minimum wage growth above inflation – the minimum wage objective and the modern awards objective both require productivity to be taken into account, as we have observed. The ACTU’s revised wage claim is broadly consistent with the underlying inflation forecast by the RBA for the 2022-23 financial year (3.5 per cent) plus productivity growth (2 per cent for the 2021 calendar year).⁵⁴
72. The ACCI submission asserts “Given that any increase in minimum and award wages would not be supported by productivity growth across recent years, it would be imprudent for the Panel to ‘bake in’ strong wages growth in the 2021-22 Annual Wage Review, knowing that productivity remains weak and a substantial increase does not appear to be sustainable over the longer term.”⁵⁵ This is a strange and incorrect claim, as the Fair Work Commission’s own

⁵³ ABS (2022), ‘Business Indicators, Australia – December 2021’, released 28 February. Accessed at <https://www.abs.gov.au/statistics/economy/business-indicators/business-indicators-australia/dec-2021>

⁵⁴ Reserve Bank of Australia (2022), ‘Statement on Monetary Policy’, 6 May, p. 60.

⁵⁵ Australian Chamber of Commerce and Industry (2022), ‘Submission to the Annual Wage Review’, p. 11.

Statistical Report found productivity grew by 2 per cent for the year to December 2021.⁵⁶ This figure applies to both GDP per hour worked and Gross Value Added per hour worked (market sector). ACCI concludes by arguing "it is essential that in this year's Annual Wage Review decision, the Panel does not further decouple wages growth from genuine productivity improvements."⁵⁷ Real wage growth was, in fact, decoupled from productivity improvements in the year to December 2021. Productivity grew 2 per cent, while real wages fell by 1.2 per cent (seasonally adjusted WPI growth of 2.3 per cent deflated by CPI growth of 3.5 per cent).

73. Whilst the statutory framework guiding the Panel's decision is permissive of a range of outcomes depending on the prevailing circumstances, ACCI contends that the Panel's minimum wage decision this year, once adjusted for inflation, should be equal to productivity improvements. The outcome we seek should therefore meet with their approval.

74. ACCI has argued that "labour productivity was artificially boosted [during the pandemic] by a reallocation of labour toward higher productive industries as less productive industries experienced larger falls in hours worked during the lockdowns", in contrast to "a steadily declining trend [in labour productivity growth] from 2.94 per cent in 2011-12 [over the past business cycle] to a contraction of 0.63 per cent in 2018-19," implying the Panel should expect lower productivity growth and avoid a higher minimum wage decision.⁵⁸ There are several problems with this argument. Firstly ACCI is selectively quoting a peak and trough of productivity growth data rather than looking at trends in productivity growth. Secondly, ACCI's outlook for productivity in 2022-23 is purely speculative. Secondly, if the Panel were to take the approach of holding off on awarding productivity-based real wage increases for a given year until the exact productivity gains for that period are known (that is to say, after the fact), then productivity growth for the given year must be factored into the following year's minimum wage decision. Consistency requires the same logic to be applied to this year's decision, delivering workers the real wage increase they earned--but did not receive--last year by productivity increases.

⁵⁶ Fair Work Commission (2022), 'Statistical report—Annual Wage Review 2021-22', Version 4, 22 April 2022. Accessed at <https://www.fwc.gov.au/documents/wage-reviews/2021-22/statisticalreportv4.pdf>.

⁵⁷ Australian Chamber of Commerce and Industry (2022), 'Submission to the Annual Wage Review', p. 21.

⁵⁸ Australian Chamber of Commerce and Industry (2022), 'Submission to the Annual Wage Review', p. 20.

75. ACCI states that Australia must "drive higher wage increases...through increasing productivity, as a reward for doing things better and growing our businesses and economy as a whole."⁵⁹ The problem is workers are not being rewarded for their efforts to increase productivity with commensurate and proportionate real wage increases. This undermines incentives for further labour productivity increases and should be viewed with deep concern.
76. Similarly, the Ai Group's submission compares Australia's high ranking on minimum wages among OECD economies with Australia's relatively low ranking for labour productivity among OECD economies.⁶⁰ This would be concerning if real minimum wages were growing faster than labour productivity, however the problem is in fact the reverse. The Ai Group argues "labour costs are not necessarily representative of Australia's productivity performance." This is correct, although not in the sense the Ai Group means. Workers' real wages are not representative of their productivity. Giving workers financial incentives (such as commensurate real wage increases) for raising productivity will be important for lifting Australia's productivity ranking in the OECD.
77. The Victorian Government submission suggests "higher wage growth, some disruption to global supply chains, higher oil prices, and labour shortages in some industries will all likely put some upward pressure on inflation."⁶¹ However, it is not clear how real wage growth equal to or less than productivity growth would be inflationary in and of itself.
78. The Ai Group's submission argued the effects of present macroeconomic circumstances on wage growth are unpredictable, stating "the situation is further complicated by the opening of international borders, highlighting concerns around high wage push inflation."⁶² This is a confusing argument, as the reopening of international borders and expansion in labour supply is expected to *reduce* labour cost pressures in the short run. Ai Group's submission also misrepresents the views of the RBA Governor, claiming that the RBA Governor "also noted that there is a risk for Australia in an ill-timed manoeuvre" and going on to quote the Governor's remarks regarding "uncertainties about the future growth of labour costs."⁶³ The "ill-timed manoeuvre" the Governor referred to was a hypothetical premature interest rate rise, not the impending minimum wage decision of the Panel.

⁵⁹ Australian Chamber of Commerce and Industry (2022), 'Submission to the Annual Wage Review', p. 30.

⁶⁰ Australian Industry Group (2022), 'Submission to the Annual Wage Review', p. 23 - 26.

⁶¹ Victorian Government (2022), 'Submission to the Annual Wage Review', p. 8.

⁶² Australian Industry Group (2022), 'Submission to the Annual Wage Review', p. 31.

⁶³ Australian Industry Group (2022), 'Submission to the Annual Wage Review', p. 31.

79. The arguments advanced by these employer interests fail to correctly diagnose the cause of present inflation. Inflation is being driven largely by international cost-push factors such as the war in Ukraine (which has contributed to petrol prices rising 11 per cent in the March quarter) and global supply chain constraints (particularly in shipping), while significant domestic pressures, such as price rises for newly-built dwellings, are being driven by non-labour costs stemming from shortages of building materials, particularly timber in the wake of the 2020 bushfires. To quote the logic from University of Newcastle Professor William Mitchell's commentary on raising interest rates, a decision to keep minimum wage growth below CPI growth "will do nothing to grow forests more quickly... [nor] to make ships deliver goods more quickly."⁵

80. ACCI argues that the legislated increase in the Superannuation Guarantee (SG) from 10 per cent to 10.5 per cent due to take effect on 1 July 2022 "will flow through to labour on-costs, raising the cost of doing business and further fuelling inflationary pressure."⁶⁴ ACCI provides no reliable evidence or analysis for this contention. In fact, because superannuation contributions are saved and consumed later, rather than immediately used to lift current household disposable incomes, the SG increase is highly likely to have less effect on demand-pull factors than a wage increase. Instead, ACCI misleadingly quotes the Reserve Bank's Minutes of the Monetary Policy Meeting in March⁶⁵ in a brazen effort to imply the RBA agrees the SG increase will cause businesses to pass on higher costs to consumers. In truth, the RBA Board was explicitly referring to *non-labour* input cost pressures, as the full quotation in context from the Minutes of the Monetary Policy Meeting makes clear:

"Members [of the RBA Board] concluded their discussion of domestic economic conditions by noting that non-labour input cost pressures remained widespread across industries, but were most acute for goods-importing industries. Information from the Bank's business liaison program had suggested that firms were increasingly prepared to pass these higher costs onto their customers, particularly in the construction, manufacturing and retail industries, where upstream cost pressures had been most acute."⁶⁶

⁶⁴ Australian Chamber of Commerce and Industry (2022), 'Submission to the Annual Wage Review', p. 32.

⁶⁵ RBA (2022), 'Minutes of the Monetary Policy Meeting of the Reserve Bank Board', 1 March 2022, cited in Australian Chamber of Commerce and Industry (2022), 'Submission to the Annual Wage Review', p. 32.

⁶⁶ RBA (2022), 'Minutes of the Monetary Policy Meeting of the Reserve Bank Board', 1 March 2022

81. Having misrepresenting the RBA Board's comments, ACCI concludes "Overall, this results in a zero-sum gain for award reliant employees, with the cost of higher wages passed on to the consumer through higher prices, such that rising inflation offsets any increase in wages."⁶⁷ ACCI provides no evidence to support this claim. And as argued earlier, these claims ignore productivity growth. Nominal wages growth above the rate of inflation is widely accepted as sustainable so long as the difference is no larger than the rate of productivity growth.

3.3 Contextualising "caution"

82. Many employer organisations have drawn the Panel's attention to the uncertain outlook of the COVID-19 pandemic and thus the economy for the coming financial year. These uncertainties and downside risks include the possibility of new variants emerging. It must be emphasised however that restrictions are largely gone in Australia's two largest states, and Treasury's model underlying the Budget's projections suggests a return to normality, particularly with national plans in place to transition out of pandemic-era policy settings. The Panel is obligated to make an assumption about Australia's macroeconomic and labour market trajectory, and it is worth noting some employer groups such as ABI have pointed out "this year's Annual Wage Review is conducted against a backdrop of recovery and greater certainty than last year's Review."⁶⁸

83. Other employer organisations, however, have argued this uncertainty regarding the outlook for the pandemic in the coming financial year demands the Panel exercise "caution" when deciding upon this year's increase. Caution in this context means awarding a very modest increase in wages to avoid raising firms' nominal labour costs. However, such an approach – especially in a period of rising inflation – is not cautious for low paid workers, but damaging to their living standards. A cleaner on \$44,387.20 per year under the Cleaning Services Award 2010 (Level 2) will have suffered a real pay cut of \$1,332 if inflation hits 5.5 per cent for the 2021-22 financial year as the RBA now predicts. The Panel does not exercise "caution" by placing the risks inherent in its decision entirely on the shoulders of on award reliant workers. If the Panel was persuaded that it should exercise "caution" in this year's Review, it could do so by delivering a decision that did no more than predict or approximate a balanced market

⁶⁷ Australian Chamber of Commerce and Industry (2022), 'Submission to the Annual Wage Review', p. 32.

⁶⁸ Australian Business Industrial (2022), 'Submission to the Annual Wage Review', p. 25.

outcome, whereby minimum wage increases are approximately equal to inflation plus productivity growth.

84. Employer groups have argued for minimum wage increases dramatically below the balanced point of inflation plus productivity growth, characterising such low increases as “exercising caution”. An unbalanced outcome that delivers falling real wages amid rising labour productivity is radical and risky, not “cautious.”
85. The RBA’s Statement on Monetary Policy also notes “despite low unemployment rates, wages growth has not kept pace with inflation, so real wages have declined—in some cases noticeably. Consumer sentiment has fallen significantly in many advanced economies, with concerns about declining real incomes and the cost of living frequently cited as the reason for this.”⁶⁹ A wage decision which delivers ongoing real wage cuts will continue to hurt consumer sentiment and undermine Australia’s economic recovery.
86. As employer groups call for real wage cuts, labelling them “caution”, it is worth noting a personal care worker on \$46,228 per annum under the Aged Care Award 2010 (Grade 2) will suffer a real pay cut of \$1,387 if inflation hits 5.5 per cent for the financial year 2021-22. The ACTU would ask what further caution such a worker can reasonably take in reducing their consumption of essentials such as fuel and groceries in such circumstances.

3.4 Exceptional Circumstances

87. A delayed operative date for any increase to modern award minimum wages determined as part of this Review is sought by ABI, the Australian Chamber Tourism (‘ACCI-T’), ACCI, Ai Group, the Housing Industry Association (‘HIA’) and the Restaurant and Catering Industry Association (‘RCA’). Employer interests that have not sought any such delay are ARA, Master Grocers Australia (‘MGA’) and NRA. What the claims have in common is their reliance on what they express to be impacts of the COVID-19 pandemic. No claim is advanced on the basis of the extreme weather recently experienced in NSW or QLD, the retail turnover impacts of which

⁶⁹ Reserve Bank of Australia (2022), ‘Statement on Monetary Policy’, 6 May, p. 1.

have already “reversed” in the view of the ABS.⁷⁰ In light of the following arguments, we submit that each of the claims for a deferral of wage increases must be rejected.

88. In order for the Panel to order that a determination to vary modern award minimum wages take effect after 1 July 2023, it must be satisfied both that exceptional circumstances exist and that those exceptional circumstances justify a particular later operative date. So much is clear from subsection 286(2) of the *Fair Work Act 2009*:

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

89. The requirement for a connection between particular exceptional circumstances and a particular operative date was implicitly recognised by the Panel in last year’s Review, wherein it stated:

“We also broadly agree with the ACTU’s critique of the various employer proposals for deferred operative dates; namely that they are not properly responsive to the requirement to demonstrate that there are exceptional circumstances *justifying the operative dates they seek*.”⁷¹ (emphasis added)

Such a connection was also acknowledged by the majority decision in the 2019-20 Review, in accepting a submission from the Australian Catholic Bishop’s Council that “...the circumstances do not just have to be exceptional, they have to be exceptional and *justify* the delay or deferment of the Order”⁷² (emphasis in original).

90. The Panel has previously accepted our submission that the context in which section 286 (and section 287) appear “...clearly requires a factual situation to present itself which can be examined and found to give rise to circumstances that are exceptional and which justify a departure from what is otherwise an immutable rule”.⁷³ Consideration of section 286 and section 287 in previous Reviews has established the following principles:

- a. There is an onus on a party seeking to demonstrate exceptional circumstances justifying a deferral, which requires a strong case to be made out.⁷⁴

⁷⁰ ABS Media Release, “[Retail sales at record level, up 1.6% in March](#)”, 4 May 2022.

⁷¹ [2021] FWCFB 3500 at [221]

⁷² [2020] FWCFB 2000 at [261]-[262].

⁷³ [2021] FWCFB 3500 at [220]

⁷⁴ [2019] FWCFB 3500 at [447]; [2013] FWCFB 4000 at [494], [543]

- b. The case that needs to be made out must provide evidence capable of analysis and evaluation⁷⁵, address the need for a deferral to be limited to particular circumstances⁷⁶ and advance a mechanism for the proper identification of the employers and employees affected and to whom the deferral should apply.⁷⁷
- c. Claims will rarely be successful in respect of a whole industry, owing to the diversity of experience in the sectors covered by an award.⁷⁸
- d. The declaration of natural disasters by government cannot, of itself, be regarded as constituting exceptional circumstances.⁷⁹
- e. Consideration needs to be given not only as to how employers are affected by a situation which gives rise to exceptional circumstances, but also how employees are affected – including for example by being stood down or, in the case of casual employees, not being offered work; or if the deferral sought “...would place some of the burden of adjustment on the lowest paid in the community, who might themselves be in difficult financial circumstances because of the effects [of the situation giving rise to exceptional circumstances] upon themselves and their families”.⁸⁰
- f. There needs to be evidence of a reliable indicator of employer’s incapacity to pay increased wages and consideration should be given to other forms of government assistance which might have been received.⁸¹
- g. Consideration of differential increases or timing of minimum wage increases on the basis of exceptional circumstances should be directed to addressing temporary issues, rather than structural change or changed consumer behaviour⁸².

These principles should be applied by the Panel in scrutinising the claims before it.

91. In assessing whether exceptional circumstances exist in connection with the COVID-19 pandemic, the Panel has focused on identifying which industries have been most affected during the COVID-19 pandemic⁸³, the extent of their recovery relative to other industries⁸⁴ and “industry specific data, the period of time between successive Review increases and the

⁷⁵ [2012] FWAFFB 5000 at [254], [261]; [2013] FWCFB 4000 at [494], [543]

⁷⁶ [2019] FWCFB 3500 at [448]; [2017] FWCFB 3500 at [181]

⁷⁷ [2017] FWCFB 3500 at [181], [184]; [2012] FWAFFB 5000 at [268]

⁷⁸ [2012] FWAFFB 5000 at [254], [261], [272]; [2013] FWCFB 4000 at [494], [543], [546], [548]; [2014] FWCFB 3500 at [557].

⁷⁹ [2017] FWCFB 3500 at [181]; [2012] FWAFFB 5000 at [266]

⁸⁰ [2019] FWCFB 3500 at [449]; [2017] FWCFB 3500 at [181], [182]; [2012] FWAFFB 5000 at [264], [266]-[267]; [2014] FWCFB 3500 at [534]

⁸¹ [2019] FWCFB 3500 at [450]; [2017] FWCFB 3500 at [181]; [2012] FWAFFB 5000 at [264], [266]

⁸² [2013] FWCFB 4000 at [526], [530], [536], [549]; [2012] FWAFFB 5000 at [278]

⁸³ [2020] FWC 3500 at [155]-[189], [299]-[310]

⁸⁴ [2021] FWCFB 3500 at [242]-[245]

likelihood that future lockdowns will be of limited duration and localised.”⁸⁵ It is unclear to us how, or even if, the *particular* post 1 July operative dates the Panel selected as operative dates for particular modern awards were justified by the exceptional circumstances which it found to exist in 2020 and 2021.⁸⁶

92. Before dealing with some additional specific matters advanced in the submissions by employer groups in respect of exceptional circumstances and deferral in this Review, we invite the Panel to consider the following comments about its approach in respect of these issues in the context of the COVID-19 pandemic to date and the approach it may take to the claims before it in this Review:

- a. There is a logic in drawing parallels between the current legislative requirement to be satisfied of “exceptional circumstances” which “justify” a deferral and the Economic Incapacity Principle developed during national wage cases under previous frameworks, as the Panel has consistently done⁸⁷. Ultimately, the inquiry as to whether there are exceptional circumstances and whether those circumstances justify a particular deferral needs to be grounded in whether there is an incapacity to pay higher wages by the person or class of persons seeking a deferral. To depart from this would be to ignore the requirement that a particular deferral be “justified”, in a context where the only immediate effect of *not* deferring an increase on that person or class would be to raise wage costs.
- b. There is, in our submission, some tension between the Panel’s statement that “the mere fact of a deferred date of operation of an increase in last year’s Review is not, in and of itself, an exceptional circumstance such as to warrant a deferral in this year’s Review”⁸⁸ and its acceptance that “the period of time between successive increases, together with other data, is relevant to an overall assessment of whether exceptional circumstances exist such as to warrant a delayed operative date”⁸⁹. Whilst we accept that a combination of facts can be such as to create exceptional circumstances which justify a deferral, compliance with an order of the Commission which was crafted in order to *assist* employers to meet past exceptional circumstance ought not predispose a finding of exceptional circumstance to any degree in a subsequent review. Strictly

⁸⁵ [2021] FWCFB 3500 at [246].

⁸⁶ Pandemic related “lockdowns” in different parts of the country were instituted in March 2020, July 2020, November 2020, December 2020, January 2021, February 2021, May 2021, June 2021, August 2021, October 2021.

⁸⁷ [2012] FWA 5000 at [254]–[256], [2019] FWCFB 3500 at [447] and [450], [2013] FWCFB 400 at [494]

⁸⁸ [2021] FWCFB 3500 at [261]

⁸⁹ *Ibid.*

speaking, it is not the period of time between successive increases which is relevant, or exceptional, in our view. To allow the period of time between successive increases to cast such a shadow over future proceedings would be inconsistent with previous Review decisions which refused to decline to vary particular modern award minimum wages and refused to defer the operative dates of variations in particular modern awards where such differential treatment was sought on the basis of the impacts of award modernisation, with the Full Bench stating that those impacts “have already been taken into account by the AIRC in deciding upon the transitional provisions and operative dates in modern awards”⁹⁰.

- c. Based on what we have said in paragraphs 88 - 89 and 91 above, a general sense that “more” time will assist employers in particular industries falls short of the level of justification demanded by the statutory provisions. Rather, there must be some basis for reasoning that the operative date actually determined is justified and limited to the particular situation to which the exceptional circumstances relate. Repeated claims of “uncertainty” concerning the future course of the pandemic are inconsistent with satisfying the Panel that a particular date is justified.
- d. In the last two Reviews, the claims actually advanced by participants in the Review for deferrals were rejected⁹¹, with the Panel nonetheless finding exceptional circumstances justifying the deferrals it ordered based on other information. In the case of the 2019/20 Review, the Panel satisfied itself of exceptional circumstances justifying a deferral largely on the basis of statistical analysis developed by its internal staff, whereas in the 2020/21 the analysis predominantly relied on was performed by Professor Borland under contract to the Commission. Whilst that factual material was made available to the parties in both cases, in neither was there a successful submission from any party applying the law on section 286 to the facts ultimately relied on by the Panel for its findings, being a submission which parties had been afforded an opportunity to comment on in accordance with section 289. In our submission this approach is inconsistent with what the Panel previously described as an “onus” on a party to make out strong case for a deferral⁹². Further, it begs the question as to how a party might meaningfully resist the case ultimately advanced

⁹⁰ Where no variation was sought: [2012] FWA FB 5000 at [270]. Where a deferral was sought: [2010] FWA FB 4000 at [345].

⁹¹ [2020] FWCFB 3500 at [156], [177], [2021] FWCFB 3500 at [221]-[236].

⁹² [2019] FWCFB 3500 at [447]; [2013] FWCFB 4000 at [494], [543]

under subsection 286(2) where it is advanced for the first time in the reasons for decision.

- e. In considering exceptional circumstances in the 2019/2020 Review, the Panel directed attention primarily to the impacts of the pandemic at the industry level⁹³, whereas in the 2020/21 Review it also considered the extent of recovery from the pandemic and the likelihood of future lockdowns⁹⁴. Two things may be said about this:
 - i. In our view, the passage of time will make it increasingly difficult to isolate or distinguish recovery from the pandemic from “structural change or changed consumer behaviour” as referred to in paragraph 90g above. Businesses, workers and consumers have adapted through the pandemic in multiple ways as a result of what has been experienced. Work from home has become far more common, impacting retail foot traffic in business centres as well as office occupancy rates.⁹⁵ Hospitality venues have embraced take-away food and beverage provision and implemented “more resilient business models”⁹⁶. Consumers have become increasingly more accepting of making purchases online rather than in person since the pandemic, even outside of lockdown conditions, for both food and other purchases.⁹⁷ These underlying changes suggest a period of adjustment with differential experiences *within* industries, which is relevant given the Panel’s usual and considered reluctance to award deferrals on an industry-wide basis as referred to in paragraph 90c above.
 - ii. As to the likelihood of future lockdowns, whilst it is not possible to be categorical about this given policies may change in the face of changing circumstances, National Cabinet has agreed to a “National Plan to transition Australia’s National COVID-19 Response”⁹⁸ which outlines a phased reduction of restrictions leading ultimately to “Phase D” wherein lockdowns no longer form part of the policy response (from Phase C were lockdowns would be “Highly targeted only”). On March 11 the Prime Minister announced that “Australia has largely transitioned to Phase D of the National Plan, with states and territories and the Commonwealth considering removing the remaining restrictions in the coming months, subject to continued public health

⁹³ [2020] FWCFB 3500 at [162]-[166].

⁹⁴ [2021] FWCFB 3500 at [245]-[247]

⁹⁵ Waters, C., “Heritage back as David Jones eyes future”, *The Age*, 29/4/2022.

⁹⁶ Restaurant & Catering Australia, “2021 Benchmarking Report Released”, 17 January 2022.

⁹⁷ See “Online Retailing” commentary in ABS, [Retail Trade Australia](#), 29 March 2022

⁹⁸ Available from the [Department of Prime Minister and Cabinet](#) website

advice”⁹⁹. International borders are open to all countries¹⁰⁰, there are multiple occupational and visa based requirements allowing non-vaccinated persons to enter Australia¹⁰¹ and State and Territory governments have been reducing mask and close contact quarantine arrangements in recent weeks. Despite higher overall case numbers in connection with the Omicron wave commencing in late 2021, there have been no lockdowns in response to it and more than 95% of the eligible population are fully vaccinated and 69.2% of the eligible population have received a booster.¹⁰²

3.4.1 The deferral claim advanced by ABI

93. ABI seeks that the operative dates for determinations to vary modern award minimum wages be the same as what they were last year. The arguments advanced in favour of the outcome it seeks are that there continues to be significant variation in the performance of industries, that the “industries identified by the Panel last year as lagging recovery continue to lag in terms of Gross Value Added, Income from sales of goods and services and Gross operating profits” and that “international borders and government restrictions are only just starting to ease”.
94. First and foremost, nothing raised by ABI provides anything near the analysis required to demonstrate exceptional circumstance and it doesn’t even assert that any employers in the industries it highlights (whether some or all of them) have an incapacity to pay wages. As to the reliance on gross value added, income from sales and gross operating profits, we refer to the discussion at paragraphs 105-108 and 79-82 of our initial submission and the discussion of retail turnover in section 2.2 above. Further, the ABS Monthly Business Turnover indicator by the ABS, has continued to improve for the sectors identified by the ABI as lagging recovery. Notably, the index for Accommodation and Food Services has rarely fallen below March 2020 levels at all for more than two years, as seen in Figure 16 below.

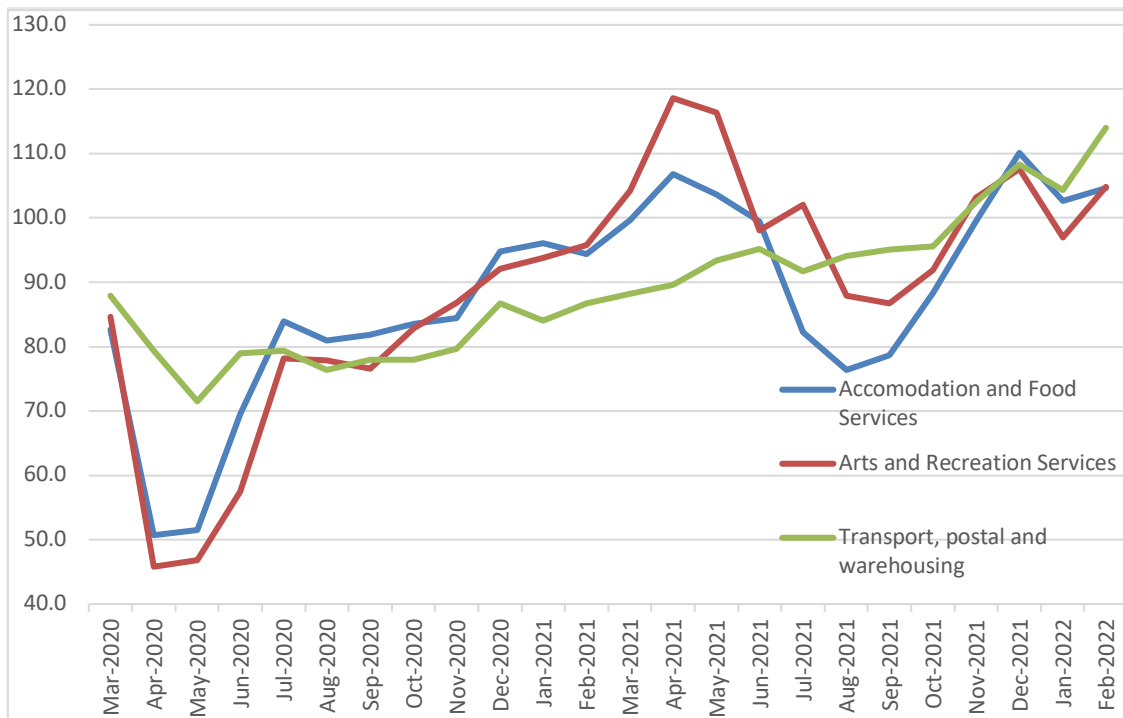
⁹⁹ Prime Minister’s Media Statement, 11 March 2022.

¹⁰⁰ See ["Smartraveller" government advisory re Travel Zones](#)

¹⁰¹ See Department of Home Affairs – [Travel exemption process to enter Australia.](#)

¹⁰² See Department of Health, [COVID-19 Vaccination Roll-out](#), 28 April 2022

Figure 16: Business turnover indicator, selected industries



Source: ABS 56810, Seasonally Adjusted, Index is based to July 2019.

95. Regarding the alleged business incapacity to pay, we refer to our discussion of employment, hours worked and underemployment and job vacancies at paragraphs 26-38 of our initial submission and section 2.1 above. At an aggregate level the demand for labour in these sectors has been rising, suggesting an overall capacity to pay wages. Were it to be argued that the high levels of labour demand in these sectors masked variation within the sectors themselves, then the approach of determining and responding to exceptional circumstances on the basis of the overlaps between ANZSIC classifications and award coverage would not be appropriate as it would lack the specificity demanded by section 286, referred to in paragraphs 90b, 90c and 90f above.

96. No reason given at all by ABI as to why the particular operative dates it advances are justified for particular awards. No analysis or evidence is given as to how the Panel's deferral of increases in previous decisions actually assisted employers covered by particular awards. There is also no consideration of the impact of government assistance for employers or of the relative position of employees versus employers over the year in review, or in the year ahead if the deferrals it seeks are granted. Our initial submission described the declining support available to employees over the year in review and identified its deficiencies as well as identifying low paid industries and the issue of relativity in earnings between industries.

Employees who were unable to work during lockdowns in the second half of 2021 were not paid by their employers save to the extent that they had paid leave entitlements, which many award reliant employees in these sectors did not. ABI's submission does not even mention the additional industry assistance available during the year in Review that was not taken into account in last year's decision. In NSW this included turnover linked fortnightly payments of up to 40% of payroll costs with no obligation to pass any funds on to employees (unlike JobKeeper before it).¹⁰³ In Victoria this included monthly payments of \$4,800 (or more in some months) unlinked to turnover assessments and likewise, with no requirement to pass funds on to employees¹⁰⁴. Pre-existing business measures, including transfers and interest free loans are likewise not mentioned by ABI. The necessary analysis as referred to in paragraphs 90e and 90f above has not been undertaken.

97. As to ABI's argument that restrictions have only recently been lifted, it does not identify which particular restrictions were having adverse effects or who was impacted by them. We suspect that the restrictions of most concern were lifted many months ago. With respect to international borders, the ABS estimates that international arrivals increased by more than 100,000 in March following the opening of international borders in only the last week of February, which is an early sign that recovery in international tourism is commencing.

3.4.2 The deferral claim advanced by ACCI

98. While ACCI bemoans the absence of Commission-funded research on which to base its foreshadowed claim for deferrals, it asserts that “things have not got any better” for “businesses with employees in modern awards in the 2021 upper cluster”. To assert that things have not got *any* better—particularly in respect of such a large class of employers—is bold to say the least and necessitates detailed supportive analysis and evidence. ACCI seems to recognise this, stating “*It could be argued* the current situation for these industries and the outlook is far worse than it was at the time the Panel made its decision in 2021” (emphasis added), yet no such argument, evidence or analysis is advanced. To the contrary, ACCI later says that “Key award reliant industries...have experienced some recent improvement” and predicts “GDP growth strengthening on the back of a recovery in services industries most affected during the Omicron outbreak”. Whilst ACCI is keen to highlight the “burdens of proof and evidence” falling on those who might support “an inflated level of increase” in this Review,

¹⁰³ See “JobSaver Payment Guidelines” from [Services NSW](#)

¹⁰⁴ See Business Victoria, [Business Costs Assistance Program](#)

it seems not to hold itself to the same standard even in respect of the only provisions in Part 2-6 of the Act which explicitly require the Panel to be “satisfied” that a particular course of action is “justified”.

99. We recognise that ACCI wish to give further consideration to their claim for exceptional circumstances and deferred operative dates so we will deal with any further detail they provide should that eventuate. However, ACCI ought not be permitted to disavow itself of the positions it has already put when its claim is considered. Specifically, ACCI labour the point on future uncertainty throughout their submission. For example, ACCI states:

“This volatility in economic activity and variability across industry sectors is a product of significant exogenous shocks to the Australian economy, having a disproportionate effect on many award-reliant industries. In contrast to previous economic downturns, such as the Global Financial Crisis in 2008-09, today’s variability is more widespread and less predictable across key macroeconomic variables. Macroeconomic forecasts have become less reliable due to the greatly increased risks and uncertainties. These uncertainties are increasing rather than dissipating, as the risks of possible new variants of COVID-19 (particularly leading into winter), are compounded by flooding across broad stretches of the Australian east coast, increasing geopolitical tensions in our region and the conflict in Ukraine. Uncertainty is being added to uncertainty...”¹⁰⁵

If, on its own analysis, the variability in industry outcomes which constitutes exceptional circumstances is the product of multiple unpredictable forces, then it stands to reason, having regard to what we have said at paragraph 92c above, that such uncertainty militates against the Panel being satisfied that any particular operative date is justified.

3.4.3 The deferral claim advanced by Ai Group

100. Ai Group submit that the deferred operative dates determined in respect of particular Awards last year “...is one of the factors that should be taken into account in finding that for businesses covered by those awards, an operational date of 1 July 2022 would cause considerable hardship”.¹⁰⁶ In response, we refer and repeat what we have said at paragraph 92b above and add the following:

- a. If Ai Group’s expressed position on page 60 is that the delayed operated dates ordered in the past have resulted in a “difficult situation” for employers, this suggests that those delays were not effective at addressing exceptional circumstances they were

¹⁰⁵ At para 15-16

¹⁰⁶ At page 61

intended to address, and tell against delayed operative dates being “justified” in this Review, at least to the extent that similar exceptional circumstances (COVID impacts and the extent of recovery therefrom) are relied on;

- b. Irrespective of what the Panel makes of our submission at paragraph 92b above, a mere assertion that an operative date in line with the statutory default of 1 July “would cause considerable hardship” is an insufficient basis for a claim having regard to the remaining matters raised at paragraphs 88-92 above.

101. Ai Group notably do not actually identify what operative dates it is seeking in respect of particular awards, and consequently fail to make out a case as why a particular date is justified for any of those awards. In terms of the more specific claims made by Ai Group in support of its claim, the following may be said:

- a. Ai Group presents some data about the “aviation and tourism” industry and appears to be arguing for the awards identified as part of that industry (and granted deferred operative in last year’s Review) to again be granted deferred operative dates. That is a relatively small group of awards in relation to which more specific evidence could have been brought than the broad tourism industry data and arrival/departure information presented. In relation to the *Alpine Resorts Award*, it was found by the Commission in [2018] FWCFB 4984 to be characterised by highly seasonal and casual employment and flexible working arrangements. This enables the employers in the industry to scale their labour costs according to demand. However, for those who do work in the industry on a seasonal basis, the impact of deferrals in past decisions has been to effectively put them at “last years’ wages” for each snow season in which they worked. In relation to the *Air Pilots Award* and the *Aircraft Cabin Crew Award*, these awards are clearly most relevant to the domestic aviation sector, to the extent that the sector is not covered by enterprise agreements.¹⁰⁷ International aviation operations that are covered by the Fair Work Act 2009 in relation to their engagement of employees covered by those awards are more likely to be covered by enterprise agreements. There is no doubt that conditions for domestic aviation have progressively improved, with the Qantas group reporting that it was operating at 110% of its pre-COVID capacity over the easter weekend, and Virgin Australia on Easter Monday reporting its busiest day since March 2020 while flying 30% more passengers than on any day over

¹⁰⁷ See the response of the FAAA to questions on Notice in the 2020/21 Review.

the last 2 years.¹⁰⁸ Employers to whom the *Airline Operations-Ground Staff Award* or the *Airport Employees Award* applies have likewise experienced improving conditions as passengers increased following the removal of the final interstate border restrictions and the re-opening of international borders. The employees employed pursuant to these awards have been subjected to reductions in hours of work, stand downs and periods of unemployment through the pandemic. Having said that, changes in business travel behaviour which may be dampening activity in the aviation sector are likely permanent structural changes. The *Airservices Australia Award* has always been a curious inclusion given that it is an enterprise award for an employer engaged extensively in enterprise bargaining. The *Marine Tourism Award and Charter Vessels Award* may also be expected to benefit from both growing international and domestic tourism. An indicative example regarding the latter is the announcement by Capricorn Enterprise (a tourism industry association) reporting that, in the year ending September 2021 the Southern Great Barrier Reef Region experienced 39.4% growth in overnight visitor expenditure, representing growth of 6.8% on the pre-COVID year to September 2019 result.¹⁰⁹ Similarly, the Great Barrier Reef Marine Park Authority reports that whilst full day visits in 2021 grew by 14% compared to 2020 levels and remained below those seen in 2019, part day visits grew by 104% and surpassed the pre-COVID 2019 figures.¹¹⁰ Strong growth was also seen in vessel visits in different management areas of the park in 2021, varying between 28% to 132% compared to 2020 levels, with the Far Northern area also recording more vessel visits than in 2019.¹¹¹ These observations merely serve to indicate that even with minimal interrogation, it is apparent that conditions have improved and a “whole of industry” repeat of last year’s deferral outcome is not justified.

- b. The other weakness in relying on tourism industry data is that the performance of the tourism industry is not represented wholly within any one ANZSIC classification but is rather made up of sub groupings between many of them, including accommodation and food services, transport, postal and warehousing, and arts and recreation services¹¹². Tourism spending flows into other industries and therefore consumption

¹⁰⁸ Curran, A., “[Can Be Done: Australia’s Airports & Airlines Handle A Bumper Easter Monday](#)”, Simple Flying, 19/4/2022.

¹⁰⁹ Capricorn Enterprise, “[Record Holiday makers and Overnight Visitor Spend to Southern Great Barrier Reef destination to year ending September 2021](#)”, 22 December 2021.

¹¹⁰ Source: [Great Barrier Reef Marine Park Authority](#), ACTU calculations.

¹¹¹ *Ibid.*

¹¹² See ABS [Appendix to Tourism Satellite Account Methodology](#).

or turnover measures for those industries may be indicative of revenue but not of cost base (such as flexible labour) or overall profitability. The comments we have made above in response to ABI's submission are equally relevant in responding to the Ai Group's arguments in respect of tourism, arts and recreation services and accommodation and food services. We would also draw attention to the state of retail turnover and the sub-groups thereof in section 2.2 above.

- c. Ai Group characterises the present conditions in the industries it makes its claim on behalf of (Retail Trade, Accommodation and Food Services, Arts & Recreation Services) as those where labour demand exceeds labour supply. Such characterisation is logically inconsistent with the Panel concluding that there is an overall incapacity to wages in those industries. It is notable, in respect of retail trade, that neither of the two retail industry employer associations who have contributed to the Review have advanced a claim for exceptional circumstances justifying a deferral.

3.4.4 The deferral claim advanced by RCA

102. The RCA do not advance anything approaching the level of analysis or evidence required to make out its claim and fail to even assert that exceptional circumstances exist in the industries in which its members operate. The only relevant information in support of a deferral is attributed to RCA's Benchmarking report, a survey result which apparently indicated 59% of its members requested a deferral. This is hardly definitive and tends to undermine their position having regard to paragraph 90c above as does the level of disunity among members about the appropriate date, with two options identified by RCA as the *most* popular alternatives.

103. The Benchmarking report, on which the RCA claim is based and which it has not provided, was apparently based on a survey "...open during September, October and November 2021"¹¹³. It is striking, given when the survey was undertaken relative to the looming operative date of 1 November 2021, that no insights are provided by RCA about the extent to which its members felt they were actually assisted by the deferred operate date to take effect that year compared to what would have been the case had they been required to comply with an adjustment on 1 July. Whether this is because relevant questions were not

¹¹³ RCA Media Release "2021 Benchmarking Report Released", 17 January 2022.

asked in the survey, or because any answers to such questions were not cited in the submission, remains a mystery.

3.4.5 The deferral claim advanced by ACCI-T

104. ACCI-T likewise fails to advance any argument that the previous deferrals of operative dates have been of any benefit to its members. It seeks a non-specific operative date of “no earlier than 1 November 2022” for awards mapped to “Aviation and Tourism, the Accommodation and food services sector as well as the Arts and recreation services sector, as identified and determined in last year’s review”. ACCI-T relies on a “combination of factors” for the whole of industry deferrals it seeks. As is evident from our submissions above, a more nuanced approach is required in advancing a proper claim. Much of what we say in answer to Ai Group’s submission at paragraph 101 is relevant to addressing the weaknesses in the claim advanced by ACCI-T.
105. The Panel should note that ACCI-T concedes that Australian is already at Phase D of the National Plan¹¹⁴ and that the opening of the international border on 21 February 2021 will have a positive impact on businesses in the tourism sector¹¹⁵. The data and discussion concerning booking trends on page 9 of its submission suggests a change in booking behaviour which results in income for the sector with less of a lag that was the case pre-pandemic; that is, an immediate improvement in cash flow. The forecasts it presents reveal a period of growth ahead, including a projection (attributed in the referenced source material to a member of Panel¹¹⁶) of international arrivals increasing to 76% of 2019 numbers by the end of this year. Further, the Tourism Research Australia source material relied on for ACCI-T’s claims concerning domestic tourism indicates that the 2021-2022 visitor night forecast it provides is impacted by lockdowns in July-October of 2021 and expects a return to pre-pandemic levels in 2022-23¹¹⁷ and states that “tourism expenditure is forecast to recover sooner than the number of trips or visitor nights”¹¹⁸.
106. It should also be noted that the position put by ACCI-T concerning “Tourism Industry Employment” needs to be viewed have regard to the highly seasonal, casualised and

¹¹⁴ At page 15

¹¹⁵ At page 8

¹¹⁶ See Deloitte website “[Tourism and Hotel Market Outlook 20201 – Edition 2](#)”

¹¹⁷ Tourism Research Australia, [Domestic Tourism Forecasts 2021-22 to 2025-26](#) at page 5

¹¹⁸ Tourism Research Australia, [Domestic Tourism Forecasts 2021-22 to 2025-26](#) at page 6

secondary nature of many tourism jobs¹¹⁹ as well as the very high prevalence of non-employing business in the sector who would not be impacted by the Panel's decision. Non-employing businesses in tourism as at June 2020 constituted 49% of tourism businesses and the trend toward non-employing businesses had been increasing prior to that, with non-employing businesses constituting 43% in 2015 and 2016, 44% in 2017, 47% in 2018 and 49% in 2019¹²⁰. Employment in tourism-reliant businesses is likely to increase as demand increases, again on the basis of seasonal, secondary and flexible arrangements, as the industry continues to recover and grow. The beginnings of this can already be seen with small drop in the share of non-employing businesses to 45% in 2021 and an overall growth of 9,400 tourism businesses, surpassing pre-COVID levels in 2019 by 13,800.¹²¹

3.4.6 The deferral claim advanced by HIA

107. HIA agree that there is strong demand for housing, skilled labour and apprentices. The increased project costs it references are clearly being passed on to consumers as is evident from the recent price movements in housing sub-group of CPI, prompting the ABS to comment that "Continuing strong demand for housing construction enabled builders to pass through increases in costs for both materials and labour"¹²². The HIA's claim for an unidentified deferred operative date, for unidentified awards, based entirely on "the ongoing impact of COVID-19 and supply chain pressures" falls a long way short of what is required to mount an arguable, let alone compelling, case.

¹¹⁹ ABS commentary 'Tourism employment estimates' in [Australian National Accounts: Tourism Satellite Account, 2020-21 financial year](#).

¹²⁰ Tourism Research Australia, "[Tourism businesses in Australia: June 2015 to 2020](#)"

¹²¹ Tourism Research Australia, "[Tourism businesses in Australia: June 2016 to 2021](#)"

¹²² ABS commentary on Housing group CPI, in [Consumer Price Index Australia, March 2022](#)

4. SUBMISSION IN REPLY TO INDIVIDUAL PARTIES

108. In this section we respond to particular matters raised in submissions by other participants in this Review which we have not already addressed in preceding sections.

4.1 ABI

109. ABI's submission relies heavily on survey evidence of a nature that the Panel has previously described as having "limited utility."¹²³ Its weight is further limited by Chart 1 in its submission, titled "Business Conditions", which appears to be a reproduction of a measure of "Business Confidence" from an out of cycle survey conducted with the explicit (and evidently successful) purpose of supporting "requests of government to extend commercial rent relief, a re-visit of JobSaver and subsidised RAT tests for small business".¹²⁴ This raises the prospect that survey participants may have been influenced by the purpose of the survey. In any event, actual measures of business conditions including the NAB index PSI measure referred to at page 10-11 of the Ai Group's submission paint a very different picture. The other issue with ABI's survey results is questions are not consistent across waves, making comparisons over time problematic. For example, It appears from the source document that some questions in the survey specifically asked about the Omicron variant and/or asked for comparisons to be drawn with earlier outbreaks.¹²⁵ In our view, sections 3.4-3.5 and 3.9-3.13 of the submission provides a more accurate summary of current business conditions than do the matters raised by ABI relying on its survey.

110. In relation to pay in aged care, as discussed in ABI's submission, we note that other Fair Work Commission proceedings are more likely to be significant to the overall labour costs in the aged care sector. In addition, the imminent shift in funding models for aged care from the Aged Care Funding Instrument to the Australian National Aged Care Classification in October 2022 will increase funding by \$33 per bed per day, incorporating indexation of basic subsidies in the existing model from 1 July 2022 (which reflect a blend of both CPI and the decision of the Panel) and other improvements.¹²⁶ Further, should there be a change to a Labor government following the election, it is notable that the Labor Party has announced it will

¹²³ [2021] FWCFB 3500 at [102].

¹²⁴ Business NSW, "[NSW Business Conditions – The Omicron surge](#)", January 2022. Chart 1 in the ABI submission appears to be a reproduction of Figure 1 in the linked report.

¹²⁵ See for example page 5 and page 7 of the report.

¹²⁶ See Department of Health, "[Transitioning from ACFI to AN-ACC – Frequently asked questions](#)", March 2022, at page 4.

“...back a real pay rise for aged care workers” and will “...support workers’ call for better pay at the Fair work Commission [and] fund the outcome of this case”.¹²⁷ Although the current Government has stopped short of supporting a pay rise for aged care workers, it has stated that it would do so if ordered to by the Fair Work Commission.¹²⁸ Having regard to this, it is misleading to claim that there is no commitment from either the Government or the opposition to respect an order from the Fair Work Commission.

111. ABI’s claim that business has a low capacity to pass on costs in light of volatile demand is contradicted by recent movements in CPI and underlying inflation and more recent trends in retail turnover. In identifying insurance costs as the greatest concern for NSW business, it fails to mention such costs are tax deductible and relies on an extract from a report which in fact explains that the costs of insurance peaked in the fourth quarter of 2020, that premium increases had moderated in the first half of 2021 and that this was expected to continue, citing, in particular, changes to continuous disclosure laws reducing pricing of directors and officers' insurance.¹²⁹
112. We also note the ABI’s presentation of profit data in Table 3 of its submission uses time intervals that reflect the influx and removal of government assistance, such as JobKeeper, rather than a consistent time scale, and provides little insight into the actual current profitability of business in the industries it refers to.

4.2 ACCI

113. ACCI make multiple references to the levels of debt that some businesses are facing as evidence of the fragility of the recovery¹³⁰, which it fails to provide any data for. Its complaints about debt are inconsistent with the position put by the Australian Government¹³¹ and the Victorian Government¹³². In addition, the ABS commentary on liabilities for private non-financial corporations for the December Quarter national accounts noted that:

“The debt to equity ratio is at its lowest level since March 2005, as businesses have deleveraged to strengthen their balance sheet positions. Businesses have maintained strong liquidity

¹²⁷ [ALP Policy on aged care](#)

¹²⁸ The Guardian, 1 April 2022, "Coalition would support aged care pay rises, but can't say who would pay".

¹²⁹ See March Asia Pacific, “Mid-Year Insurance Market Update 2021”, available free [on request](#) from the author.

¹³⁰ E.g. see paragraphs 6, 39, 47.

¹³¹ At paragraph 52.

¹³² At paragraph 19.

buffers through continued deposit growth since the onset of the pandemic. This was supported by strong gross operating surplus for businesses as economic activity and consumption increased following the easing of COVID-19 related restrictions and resumption of interstate travel during the quarter.”¹³³

114. ACCI argues that the current tightness of the labour market justifies wage restraint. It does so by arguing that increasing wages will not add to the pool of labour supply because “many award reliant industries simply can’t obtain labour at any price”¹³⁴ and by observing that “employees are increasingly looking to change jobs to secure higher wages”¹³⁵. In our view, award reliant employers, by definition, do not offer to purchase labour at anything below the minimum legal price and an increase in that price is likely to help them attract staff as well as assisting to fulfil another important objective of lifting low paid workers’ living standards. ACCI’s attempts to characterise present underutilisation as “absolutely (and unacceptably) high” and representing “considerable potential slack in the labour market”¹³⁶ are most unconvincing given even its own analysis of improvements over the year elsewhere in section 6.4 of its submission. Ultimately one is left confused as to whether ACCI believes the supply of labour is constrained or not.

115. We note that ACCI’s discussion of inflation in paragraph 20 of its submission attributes inflation to “external factors” and suggests that increased prices will be transitory. Whilst it is correct that automotive fuel and housing costs have been significant contributors to CPI, it is equally true that other CPI groups, particularly those relating to non-discretionary costs, have seen notable increases and that underlying inflation has escalated in the last three quarters. The RBA’s May Statement on Monetary policy leaves no doubt that high levels of inflation will persist for some time, with underlying inflation forecast to remain above the target band until December 2023. The RBA’s commentary on the breadth, extent and duration of current inflationary conditions is far from equivocal:

“While petrol prices and other global factors contributed significantly to the quarterly outcome, the sources of inflation are broadening”¹³⁷

“...pressures have now broadened to affect the prices of other items”¹³⁸

¹³³ ABS Commentary on [Australian National Accounts: Finance and Wealth, December 2021](#)

¹³⁴ At paragraph 19

¹³⁵ At paragraph 18

¹³⁶ At paragraph 211

¹³⁷ RBA, Statement on Monetary Policy May 2022, at page 1.

¹³⁸ *Ibid.* at page 49.

“...inflationary pressures broadened further in the March quarter, with price increases picking up for many grocery items and a number of market services. Around 70% of the CPI basket had an annual inflation rate above 2.5 per cent in the quarter, which is comparable to the levels seen during the period of elevated inflation in Australia prior to the global financial crisis”¹³⁹

“Measures of underlying inflation were also very strong in the March quarter. Trimmed mean inflation was 3.7 per cent over the year and 1.4 per cent in the quarter- the strongest quarterly outcome since the inflation targeting era began in 1993”¹⁴⁰

“Consumer durables inflation increased at its fastest pace in more than three decades”¹⁴¹

“Reports of non-labour input cost pressures remain widespread across goods-related firms. These pressures are likely to persist for longer than previously expected”¹⁴²

“Grocery prices have also picked up strongly over recent months as supermarkets passed through supplier cost increases and reduced discounting...Grocery prices (excluding fruit & vegetables) increased by 2.8% in the quarter – the strongest quarterly outcome since 1983 – with prices 4.9 per cent higher than a year ago”¹⁴³

“Prices of fruit and vegetables increased by 2.3 per cent in the quarter to be 6 ¾ per cent higher over the year”¹⁴⁴

“Inflation in the prices of market services, which account for a little over one-fifth of the CPI basket, picked up further in the March quarter to be 2.8 per cent higher over the year – the fastest annual increase since 2013”¹⁴⁵

“Rents – accounting for around 6 per cent of the CPI basket – increased by 0.6 per cent in the March quarter, after increasing by .1% in the previous quarter. This is the strongest quarterly outcome since the September quarter of 2014”¹⁴⁶

“A significant share of firms in the Bank’s liaison program have increased prices or expect to increase their prices over coming months”¹⁴⁷

“The outlook for inflation is much stronger than anticipated a few months ago. In the near term, underlying inflation is forecast to be significantly boosted by the pass-through of upstream cost pressures to consumers, continuing the pattern observed in recent quarters”¹⁴⁸

“Inflation in Australia and internationally is now forecast to be elevated for much of the forecast period”¹⁴⁹

¹³⁹ *Ibid.* at page 49-50.

¹⁴⁰ *Ibid.* at page 54

¹⁴¹ *Ibid.* at page 52.

¹⁴² *Ibid.* at page 52.

¹⁴³ *Ibid.* at page 53.

¹⁴⁴ *Ibid.* at page 53.

¹⁴⁵ *Ibid.* at page 53.

¹⁴⁶ *Ibid.* at page 54.

¹⁴⁷ *Ibid.* at page 61.

¹⁴⁸ *Ibid.* at page 65.

¹⁴⁹ *Ibid.* at page 67.

116. The current nature of inflation is difficult to describe as transitory, particularly in the context of an *annual* review process. In our view, whilst it is appropriate for the Panel to have regard to the real value of wages both in the year in review and their likely course over the year ahead, the notion that award reliant workers have over two decades amassed a buffer to protect them against price increases currently being experienced as is suggested in section 4.4 of ACCI's submission should be rejected.
117. We take issue with ACCI's characterisation of supply chain difficulties and employee availability in its discussion of the ABS *Business Conditions and Sentiments* survey for February. Whilst ACCI states that "two in five (37%) business continue to be *significantly* impacted by supply chain disruptions"¹⁵⁰ (emphasis added), this is wrong. The ABS survey shows that the 37% figure relates to the proportion of business that were reporting *any* supply chain disruptions. The issue of the *extent* to which those supply chain disruptions were affecting business is dealt with in a separate question. Answers to that question reveal that the majority (69%) of those reporting any supply disruptions felt such disruptions affected the businesses to "as small extent" (with a prompt in the questionnaire: "e.g. some delays but little impact on revenue"), with 3% reporting that the disruptions did not affect the business at all and 28% reporting that the disruptions affected the business to "a great extent".¹⁵¹ This latter group equates to approximately 10.4% of the overall sample. Whilst this has risen to around 13.1% of the overall sample in the April 2022 survey, it remains well below the level claimed by ACCI. In relation to what ACCI say about staffing shortages, it is important to note that the figures that ACCI cites concerning "insufficient employee numbers" are related to responses to the question "Based on current operations, does the business have a sufficient number of employees" and based on responses to questions about COVID-19 impacts on staff availability. As such the responses reflect labour demand, rather than labour supply issues.¹⁵²
118. ACCI seems to advance contradictory points when urging the Panel to place little weight on wealth inequality¹⁵³ while at the same time asserting that small business proprietors should be "included in any analysis for determining the NMW and award minimum wage rates" and "relative living standards".¹⁵⁴ Small business owners may receive a blend of labour and

¹⁵⁰ At paragraph 101

¹⁵¹ See the ABS [commentary](#) on Business Conditions and Sentiments, February 2022 and the [questionnaire](#).

¹⁵² *Ibid.*

¹⁵³ At paragraph 254

¹⁵⁴ At paragraph 266

capital income, in the form of wages, profits and/or return on investments all referable to their ownership and control of an asset (and a tradable one at that). It is unclear whether ACCI seek that the Panel take into account all sources of income and the value of the business when assessing the position of its proprietor, but any true assessment of relative position would need to take all those matters into account and there is no warrant for the comparison to be limited to small business owners as opposed to the whole range of asset owners in the economy (including the “billionaires” referred to in the submission of Adam Bandt MP). In our view, while the Fair Work Act calls for an assessment of business viability, competitiveness, costs and the like, it does so having regard to business as an entity. We remain of the view that comparisons between employees are most appropriate when assessing relative living standards, for the reasons previously given by the Panel.¹⁵⁵

119. ACCI also suggests that higher modern award minimum wages lift the floor against which the better off overall test must be applied, making bargaining unattractive to employers.¹⁵⁶ However, the evidence presented in paragraphs 141-142 and 160-161 of our initial submission concerning the significant earnings gap between award pay and other methods of setting pay suggests that this effect is not at play at present levels of award wages.
120. Most fundamentally, we disagree with ACCI’s assertion that it is not the role of the minimum wage to provide “a safety net inflating in value to a very small proportion of the workforce that are unable to transition from the minimum wage to higher paid work”.¹⁵⁷ Our view is that the safety net should increase in value consistent with social and economic development and the notions of fairness reflected in the modern awards objective and the minimum wages objective. The need for a safety net to be maintained in this way does not reduce merely because it applies to a minority of the workforce. Furthermore, the statutory objectives do not make or enforce value judgments about the individuals reliant on the minimum wage.

4.3 Ai Group

121. Ai Group asserts that “minimum wage increases need to be set at a level that employers in all industries can bear”¹⁵⁸. Whilst the Panel is required to take business viability into

¹⁵⁵ [2013] FWCFB 4000 at [275], [269].

¹⁵⁶ At para 274.

¹⁵⁷ At para 215

¹⁵⁸ At page 4

account, this is a consideration that is required to be balanced with all other relevant considerations in arriving at a fair and relevant safety net. To do as Ai Group proposes would be to allow business, irrespective of their competitiveness, to effectively determine the safety net by placing their interests above all others.

122. The formulaic rationale for Ai Group’s preferred increase in minimum wages would deliver a significant real wage cut to award reliant workers, and its attempts to justify the “equivalent pre-tax remuneration” to those workers is unconvincing and inconsistent with its own recognition that “mechanistic or decision rule”¹⁵⁹ approaches to wage fixation are inappropriate. The 0.5% increase in the superannuation guarantee relied upon by the Ai Group does not result in an immediate increase in disposable incomes. Similarly, the final Low and Middle Income Tax Offset (LMITO) payable at the end of this financial year is not recurrent income that can sensibly be allocated to a material change in living standards over the year ahead. Further, there is a logical inconsistency between Ai Groups complaints of wages being a “blunt instrument” that do little to for “individuals and household who are most in need of assistance”¹⁶⁰ while at the same time contending that “the needs of the low paid are being relatively better met because of the increase in hours worked and the proportion of full-time workers”¹⁶¹ and recognising that “causals really felt the brunt of the labour market disruptions”¹⁶² of the restrictions associated with Delta outbreaks in 2021. While Ai Group asserts that a “moderate” increase in the form of a cut to real wages will itself promote further gains in employment and hours worked¹⁶³, it provides no evidence in support of this proposition. We suspect consumer demand and disposable incomes are more effective at promoting such gains in employment as well as meeting Modern Award and Minimum wage objectives of supporting the living standards of the low paid.

123. Ai Group’s efforts to portray labour market slack by reference to the numbers of recipients of JobSeeker and Youth Allowance are unconvincing because the data it presents shows a decreasing number of recipients over the last 12 months. This trend has continued according to more recent data¹⁶⁴ with JobSeeker recipients falling by a further 27,547 persons between January and March 2022 and Youth Allowance recipients falling by a further 2,052 over the

¹⁵⁹ At paragraph 11.

¹⁶⁰ At page 4-5

¹⁶¹ At page 27.

¹⁶² At page 20.

¹⁶³ At Page 5

¹⁶⁴ Available from data.gov.au

same period. One potential reason why allowance numbers remain elevated relative to their pre-pandemic figures (there are 62,966 more JobSeeker recipients in March 2022 than March 2020, although the number of Youth Allowance recipients in March 2022 is 13,896 below the March 2020 figure) is because a larger share of persons working part time on low incomes are new entrants or re-entrants to the labour force and entitled to partial income support. Its efforts to identify workers who are at “high risk of job loss in 2022”¹⁶⁵ is compromised by grouping together those who worked less than their usual hours for economic reasons with those who worked less than their usual hours for other reasons in January 2022.¹⁶⁶ The category “other reasons” is not informative about labour demand, and by January 2022 there were more workers who gave “other reasons” rather than “economic reasons” as the reasons for working less than usual (478,900 vs 397,500). Furthermore, the number of workers not working for economic reasons was by January 2022 in fact *less* than it was pre-pandemic in January 2020 (385,800).

124. The Ai Group also argues that minimum wage increases should be less than enterprise agreement wage increases to avoid “crowding out” collective bargaining. We note that the ILO report relied on by AiG to support this point refers to this risk being due to both the complexity and of minimum wages being too high relative to collective agreement wages in absolute terms. As noted above, our analysis in paragraphs 141-142 and 160-161 of our initial submission shows that the disparity between award earnings and other methods of setting pay remains significant.

125. We are unable to verify the figures provided by Ai Group on page 12 of its submission concerning supply chain disruptions but re-iterate our point made above that it is the extent of impact of supply chain disruptions which is relevant rather than disruptions in and of themselves.

4.4 ARA

126. Whilst ARA are to be commended for their transparency in adopting a “principles-based approach” to the claims they advance in wage fixation, we respectfully do not share their view and we recognise that any claim (whether principled or not) must be capable of being

¹⁶⁵ At page 18

¹⁶⁶ The analysis refers to ABS “Insights into hours worked” for January 2022, which is in turn extracted from Data Cube EM2a of the detailed labour force release from that month.

accommodated with the statutory criteria set for the Review. For completeness, there is in our view some tension between accepting that wage growth should keep pace with higher costs of living but measuring those costs only with the trimmed mean measure of inflation. The current cost of living situation is an example of this, with more recent rises being disproportionately driven first by fuel costs - which workers are exposed to whether or not they are volatile – and later by those costs interacting with supply chains to raise the costs of goods and services (such as food). In any event, the ARA’s prediction that underlying inflation will remain “at or below current levels” as at the date of its initial submission has proven to be incorrect.

127. Whilst we do not regard the ARA’s survey of its members as to the costs of doing business as representative (consistent with our comments in relation to ABI’s survey), the disparity of estimates of cost impacts revealed in that survey, together with ARA’s position that there are uneven impacts of the pandemic across the retail sector in other respects.¹⁶⁷ This provides an interesting contrast to the claims by other parties that the retail industry broadly requires a deferred operative date of any increase to modern award minimum wages on account of exceptional circumstances.

4.5 Australian Government

128. The Australian Government’s efforts in section 2.1.3 of its submission to downplay the significance of the minimum wage bite are unpersuasive. As alluded to above in response to ACCI’s submission, the importance of a minimum wage safety net is not diminished by the fact that only a comparatively small number of persons directly rely on it. Further, the Australian Government artificially reduces the size of the group by excluding introductory rates from Table 2.2 of its submission. Such omissions are likely of greater significance in the current circumstances where employment is growing generally and among young workers in particular. It is notable that even with the excision of these introductory rates, each of the rates of pay presented in Table 2.2 are still below the low pay threshold of 60% of median earnings adopted by Panel, as are the classifications it indicates it has mapped to the C10 level in paragraph 28.

¹⁶⁷ At page 3 and page 5.

129. In its discussion in section 2.2.1 of the households where low paid workers live, the Australian Government alerts the Panel at note 10 to a potential understatement of the number of low paid workers who are responsible for supporting children, which may have implications for the calculation for the distribution of low-paid employees by equivalised household disposable income presented in chart 2.2. Notwithstanding, chart 2.2 clearly shows that low paid workers are disproportionately represented in lower income deciles, particularly in the more relevant comparison involving employee households. This clear inequality in earnings serves as a counter point to claims made by others as to the tax and transfer system's effectiveness.
130. Table 4.2 in the Australian Government submission refers to ABS Labour Force Detailed (February 2022) measures of employment by skill level and indicates that employment at skill level 5, which is said to be commensurate with "Certificate I or secondary education" shows a decline of 112,000 jobs from February 2020 down to 1,941,900 in February 2022. However, detailed labour force statistics for February 2022¹⁶⁸ for employment at "Year 12 or equivalent" alone were 2,287,000 up 7,400 from 2,279,600 seen in February 2020. We are unable to determine the reason for the discrepancy.
131. The Australian Government's discussion of small business in section 5 of its submission relies on some dated sources which provide no real basis for the panel to draw conclusions about the capacity of small business to employ award reliant workers. The aggregation of labour cost shares among employing versus non-employing businesses in the data presented is not informative. We suggest demand for the goods and services produced by a small business is a better indicator of propensity to employ than cost of employment alone. We also question – in relation to small businesses in non-tradeable sectors (e.g. hairdressing, child care, take away meals)– how demand for goods and services may be diminished either by higher wage costs or lower labour productivity. In any event, the NAB employment index presented in chart 5.5 shows current levels are merely returning to a more normal state following a peak period. Whilst the Australian Government relies on the Xero Small Business Insights report for the purposes of showing a small decline in small business jobs growth in early 2022, it does not consider the report's positive findings concerning small business sales. It reports a rise of 15.2% in sales figures compared to the previous year, with the highly award reliant

¹⁶⁸ Data cube LQ1.

administrative and support services and hospitality sectors achieving the “strongest” growth at 24.6% and “solid” growth at 6.8% respectively.¹⁶⁹

132. Prior to discussing the “stepping stone” effect in section 7 of its submission, the Australian Government mischaracterises the function of the Panel by asserting that the legislation “requires the national minimum wage rate and modern award wages be set at a rate that will promote the performance and competitiveness of the national economy” (emphasis added)¹⁷⁰, whereas the true position is that such performance and competitiveness are matters to be taken into account in serving the broader objectives of fairness and relevance. This mischaracterisation is used in aid of an argument that supporting employment growth involves providing opportunities for at risk groups to enter the labour market and progress to higher paid work. Its submission goes through the well-rehearsed intricacies of the stepping stone effect, including that between a fifth and a quarter of low paid workers, on the numbers presented, transition out of work altogether after a period of low paid employment while others (more than 10% on the numbers presented) may remain in low paid employment for between 2-5 years. The Australian Government’s detailed exploration of the impact of COVID-19 on the stepping stone effect concludes with an observation that it had no major effect. The corollary of this is that the deferrals to operative dates of increases likewise had no discernible effect in providing additional opportunities for at risk workers to enter into low paid work or transition out of low paid work into higher paid work.

133. In its consideration of the latest international evidence on the impact of minimum wages on employment, the Australian Government uncritically cites the study of Neumark and Shirley who conclude that “the majority of recent literature shows a negative employment effect when minimum wages increase”. The ACTU has previously provided a critique of this study in last year’s review as follows:

“Rather, as highlighted in what can best be described as pointed commentary by Professor Arindrajit Dube of the University of Massachusetts (an authoritative author and co-author of many empirically based papers on minimum wages in the US and elsewhere), a key limitation of the Neumark and Shirley study is that it lumps together the elasticities of radically different groups, such as elasticities on aggregate employment and elasticities of only low wage workers. This makes the magnitudes of elasticities “uninterpretable”. A more informative measurement, in Professor Dube’s opinion, is to calculate “own wage

¹⁶⁹ Xero Small Business Insights “Xero Small business Index Australia Monthly Update”, February 2022.

¹⁷⁰ At para 228.

elasticities”, which involves an “apples to apples” comparison of magnitudes whereby the employment effect is scaled by the wage effect. Professor Dube also notes that some “prominent recent papers” are not included among those reviewed in the Neumark and Shirley study.”¹⁷¹

134. The ACTU also provides a more comprehensive review of the latest international research on the effect of minimum wages in our initial submission (at paragraphs 39 to 56) where we conclude that:

“...the Panel cannot be satisfied that a minimum wage increase of the order sought in this review will have any measurable disemployment effect. The Panel can however be satisfied that lifting minimum wages may encourage adaptive strategies at the firm or industry level that increase productivity and efficiency (such as may be achieved through bargaining), may remove distortions in labour demand attributable to monopsony power and will reduce the gender pay gap and contribute to aggregate demand.”¹⁷²

135. The Australian Government submission also claims (at paragraph 263) that the impact of the introduction of the relatively high minimum wage in Germany in 2015 resulted in “small negative employment effects and a decrease in working hours”. This is a selective review of the relevant literature which is contested. For example, one study published earlier this year instead found that “the minimum wage significantly increased the wages of low-wage workers without lowering their employment prospects”.¹⁷³ The authors also found that the unexpected benefit of “a reallocation of workers from smaller to larger establishments, from lower-paying to higher-paying establishments, and from less to more productive establishments, thereby helping to improve the quality of establishments operating in the economy”.

136. The discussion of taxes and transfers in sections 8.4 and 8.5 of the Australian Government’s submission serve to highlight the point that all minimum wage workers, regardless of household type, derive a benefit from minimum wage increases but some receive no transfer payments. It also identifies at section 8.1 that earnings inequality has essentially returned to pre-pandemic levels. Both these points in our view provide some justification for an

¹⁷¹ See ACTU (23 April 2021), Reply Submissions to the Annual Wage Review 2020-21 page 41.

<https://www.fwc.gov.au/documents/wage-reviews/2020-21/submissions/actu-replysub-awr2021.pdf>

¹⁷² ACTU (2022), Submission to the Annual Wage Review 2021-22, paragraph 56

<https://www.actu.org.au/media/1449949/d12-actu-submission-to-the-awr-2021-22.pdf>

¹⁷³ Dustmann C, Lindner A, Schonberg U, Umkehrer M & vom Berge P (2022), ‘Reallocation effects of the minimum wage’, *The Quarterly Journal of Economics*, Vol. 137, Issue 1, February, pp. 267–328.

increase in minimum wages, particularly in the face of rising costs of living and of essential items in particular.

4.6 Master Grocers

137. Master Grocers claim that there should be no increase at all to minimum wages in *the General Retail Industry Award* or the *Timber Industry Award* is highly unpersuasive, and inconsistent with its admission in paragraph 9 of its submission that independent retailers “have managed to remain viable despite the many challenges faced in the past year”. MGA utterly fails to make out its case that “there will be further job losses and increased underemployment and store closures, should award wages increase”¹⁷⁴.

138. We take issue with MGA’s broad characterisation of the prevailing circumstances as an “economic downturn”¹⁷⁵ with “a high underemployment rate”¹⁷⁶. As detailed extensively in our initial submission, the pace and extent of Australia’s recovery from the COVID-19 pandemic has been impressive, having recorded only one negative quarter of growth in the last five and 4.2% over the year to December. Labour market performance also continues to be impressive both objectively and relatively to what has become the norm with the underemployment falling again in March 2022, to a decade low level. Our analysis of industry level underemployment in paragraphs 36-37 of our initial submission shows that there is less underemployment now than is typical for the industry and the situation has been improving.

139. The pursuit by the MGA of a wage freeze, citing COVID impacts appears to come from a different universe to the one inhabited by Metcash CEO Jeff Adams, who had the following to say in the Metcash 2021 Annual report:

“Strong sales growth was delivered in all States, particularly Victoria where demand was elevated by extended COVID-related lockdowns. The overall IGA network had a very strong year, resulting in an improvement in the financial health of our independent retailers, with like-for-like sales up 10.5% even with the impact of the panic buying period March and April of last year. When comparing against FY19, sales were up nearly 19% for the year. Our IGA retailers continued to benefit from the shift

¹⁷⁴ At Paragraph 28

¹⁷⁵ At paragraph 20

¹⁷⁶ At paragraph 21

in consumer behaviour including an increased preference for local neighbourhood shopping, migration from cities to regional areas, more flexible working and cooking at home and the success of our MFutures initiatives to retain new and returning customers gained through COVID”.¹⁷⁷

We suspect that these observations, based on visibility of the entirety of the IGA network, are more representative than the views of 23 of the MGA’s members captured in the survey MGA relies on in its submission.

140. Many of the assertions made in the MGA’s submission are found to be exaggerated or inaccurate when scrutinised. For example:

- a. Despite the content of our reply submission last year, MGA has again asserted that its members are unable to implement online ordering systems¹⁷⁸. Online ordering is plainly available for some of the brands identified in its submission as brands under which its members trade (including Foodworks, IGA, Mitre 10 and Home Timber and Hardware) as advertised on their respective websites.
- b. The claim that “*any further increases in costs..will have a severe adverse impact on the financial stability of independent business and their ability to maintain employment levels*” (emphasis added) is clearly unjustified. It should be noted that employment levels in retail trade have grown overall between Feb 2020 and Feb 2022 as shown in Table 6.3 of the statistical report, as have the number of jobs as measured by payroll jobs data presented in section 2.1. The unqualified nature of MGA’s assertion is such as to render job losses a foregone conclusion given that costs in an economy generally do rise over time. Curiously, whilst the MGA identifies the cost of compliance with COVID-19 restrictions as an impost in recent years, it does not identify the unwinding of those restrictions as a corresponding saving.
- c. The categorical and unqualified assertion that “it will be impossible” for small retailers affected by natural disasters to rebuild “if they are faced with higher wage costs” may be easily disproven, given that the sector faced deferred increased wage costs on 1 September 2021. Those deferred wage costs apparently didn’t prevent the SPAR branded independent supermarket¹⁷⁹ in Lismore being recovered and re-opening after the recently floods.¹⁸⁰

¹⁷⁷ Metcash Annual Report 2021, CEO Report at page 7.

¹⁷⁸ At paragraph 38, 11

¹⁷⁹ SPAR was established by independent retailers and now operates a franchise, see <https://www.spar.com.au/sparaustralia>

¹⁸⁰ See Flynn, L., “[Lismore’s first supermarket opens after the flood](#)”, Lismore APP, 21 March 2022.

- d. The claim that retailers absorb the increased costs of essential goods purchased from supermarkets¹⁸¹ is plainly inconsistent with recent movement in the CPI for food and the ABS measurement of annual and quarterly change in prices for grocery products in the March 2022 CPI release.¹⁸²

141. In addition, there are some contradictory points raised:

- a. On the one hand, independent retailers “operating in regional, rural or remote communities” are said to be “disproportionately affected by wage increases”¹⁸³, while later in the submission it is asserted that “the stores that have taken the biggest hit are those that are located in metropolitan CBD’s and tourist areas”¹⁸⁴
- b. The repeated claims of underemployment, even “rampant underemployment”¹⁸⁵, in the retail industry in particular alongside the complaint that employers “constantly find themselves unable to provide additional hours of work to employees”¹⁸⁶ are logically at odds with the claims of staff shortages¹⁸⁷ also advanced in the submission. Notably, the MGA’s related claim that “Increased award rates negatively impact the ability of employers to provide sufficient hours of work” is at odds with the improving position concerning underemployment in the retail industry after September 2021.
- c. MGA asserts that their member’s capacity to maintain high employment levels “will be greatly assisted by not awarding any wage increase”¹⁸⁸ yet it identifies that their staff are “enticed away by the offer of above award rates provided by larger national ‘chains’”¹⁸⁹

142. Whilst we accept that many young workers work in retail, we do not regard current conditions as a barrier to their continued engagement in that sector. We note even in the very small sample of members contained in MGA’s survey, close to half volunteered in Question 5 that they had hired additional junior workers, when asked what the impact of the most recent increase in award wages was. In terms of employment in the sector generally,

¹⁸¹ At paragraph 79

¹⁸² See ABS, “[Price growth recorded across all grocery products](#)” in Consumer Price Index, Australia, March 2022.

¹⁸³ At paragraph 9

¹⁸⁴ At paragraph 38.

¹⁸⁵ At paragraph 44.

¹⁸⁶ At paragraph 43.

¹⁸⁷ At paragraph 9, 80.

¹⁸⁸ At paragraph 52.

¹⁸⁹ At paragraph 57.

while the MGA refer to overseas labour as a potential solution¹⁹⁰ we agree with the NSW Government position that “The elevated level of job vacancies is expected to work to limit job losses in the very near term as firms will be reluctant to shed staff given the difficulty many forms were having in finding suitable labour through the course of 2021”.¹⁹¹ Whether the labour demand is for local youth or overseas labour, it is clearly inconsistent with the argument advanced by MGA that any increase in wages will result in less employment.

143. Finally, the Panel should be influenced by the MGA’s implicit request that the (unquantified) costs of workers’ compensation should offset or reduce to zero the level of increase in modern award minimum wages.¹⁹² There is no support for such approach in the statutory criteria.

4.7 National Farmers Federation

144. The National Farmers Federation (‘NFF’) invite the Panel to look beyond the prevailing macroeconomic conditions (which they describe in favourable terms) in this review and consider the “farmers and other small businesses operating on narrow margins in already challenging times”¹⁹³. The statutory criteria direct attention to the performance of the national economy and also allow consideration of industry circumstances. However, much of what the NFF actually articulates does not support the employers they represent being singled out for differential treatment in terms of low or lower wage increases.

145. The NFF do not go as far as to say that they do not support any wage increase, or indeed there is lack of capacity to absorb a wage increase. In relation to labour generally, their principal complaint is of staff shortages, in relation to which they observe that “Farmers are having to pay above and beyond just to attract enough staff just to continue operating”¹⁹⁴ and cite 2018 research (prior to any COVID impacts) that suggests that 70% of farmers were already “paying significantly above award rates”¹⁹⁵. In relation to general economic conditions facing their members, the furthest they go is to point to “volatility” and recognise that same “may create some additional opportunities for Australian exports”¹⁹⁶. Further,

¹⁹⁰ At paragraph 59

¹⁹¹ At paragraph 85.

¹⁹² At paragraph 74.

¹⁹³ At page 7.

¹⁹⁴ At page 9 and 11.

¹⁹⁵ At page 11.

¹⁹⁶ At page 12.

they predict that increases in wages “will naturally follow”¹⁹⁷ the observed movements in general labour market and economic conditions. These concessions run contrary to and undermine the general position put forward by NFF.

4.8 NRA

146. The material advanced by the NRA does not prove its central premise that any wage increase greater than 3% will have a negative impact on employment growth and workforce participation in the retail industry and fails to appreciate that the retail industry in particular might be particularly sensitive to widespread real wage cuts of the type it advocates for.
147. The NRA’s characterisation of the retail industry as “beginning to recover”¹⁹⁸ from impacts of the COVID-19 pandemic are at odds with ABS data that shows that retail turnover now exceeds February 2020 levels for each retail group and has rebounded from the Delta lockdowns strongly. In particular:
- a. Food retailing never fell below February 2020 levels since the onset of the pandemic;
 - b. Household goods retailing never fell below 2020 levels since the onset of the pandemic;
 - c. Clothing, footwear and personal accessory retailing exceeded February 2020 levels in July 2020, October 2020-June 2021, and from October 2021 to the most recent measurement in March 2022;
 - d. Department store retailing exceeded February 2020 levels in May 2020, November 2020 -May 2021 and has grown strongly this year to exceed February 2020 levels in both February and March 2022;
 - e. Café, restaurant and takeaway food retailing exceeded February 2020 levels in March-May 2021 and November 2021-March 2022;
 - f. Other retailing never fell below 2020 levels since the onset of the pandemic.
148. The NRA advances no evidence in support of its contention that labour force participation in the retail industry is being limited at present.¹⁹⁹ The fact the number of employees in the industry in February 2022 exceeds that in February 2020 and that underemployment has been reducing tends to suggest otherwise. Further, as noted in response to the MGA

¹⁹⁷ At page 12

¹⁹⁸ At paragraph 3.3

¹⁹⁹ At paragraph 5.5

submission above by reference to the NSW government submission, one would expect there to be pressures within the retail industry to retain staff given the shortages experienced in recent times. We would urge the Panel not to place any weight on the NRA's member survey on these issues, the discussion of which reveals neither the methodology, sample size or population size from which the sample was drawn.

4.9 NSW Government

149. We agree with the NSW government's characterisation that the main impact on the economy of COVID is via the disruptions to the supply of labour.²⁰⁰ Whilst some effect on confidence is possible, as the NSW Government suggests, we are yet to see any data suggesting reductions in spending as a result.
150. The NSW government warns of "potential negative impacts on the supply of jobs for low paid workers"²⁰¹ associated with higher minimum wages. As noted in our initial submission, such association is not proven. Moreover, the current conditions of constrained labour supply, low youth unemployment and high job vacancies tend to suggest little opportunity for this potential to be realised, even if one accepted the underlying premise of the argument. If there are any further outbreaks or variants necessitating additional restrictions, which the NSW government (and others) identify as a risk, it is entirely unclear how higher minimum wage rates would make such transition more difficult.
151. The NSW government asserts that minimum wages "must not" act as an impediment to workers securing, maintaining or regaining employment and should not raise costs to a level that hinders an enterprise's competitiveness.²⁰² Whilst we agree that these are conditions that the statutory criteria seek to avoid, they are not cast as objectives to be pursued at all costs. The maintenance of a fair and relevant safety net may legitimately erect barriers to entry to both businesses and the labour market for some where the balance of considerations supports such a compromise.
152. While we agree with the NSW government that "governments should seek to drive wages growth by means of a vigorous productivity agenda"²⁰³, we doubt that lowering the tax

²⁰⁰ At paragraph 14, 21.

²⁰¹ At paragraph 34

²⁰² At paragraph 44.

²⁰³ At paragraph 57.

burden and reducing red tape as the NSW government proposes are the most direct means of meeting that objective. Policy reform in the areas of skills, research and development, job security, competition and industry policy are more likely to translate into productivity gains in our view. In any event, on the NSW government's analysis, the fact that award reliant workers exist at all tends to indicate the limits of government policy rather than its successes and it is not open to the Panel to simply refuse to carry out its statutory function on the basis of the NSW government's plea that it not interfere. Indeed, it is disappointing that the NSW government advocates inaction by the Panel while at the same time identifying that households who are likely to spend a greater share of their income on essential goods and services "...have experienced a larger increase to their costs of living that headline figures would otherwise suggest".²⁰⁴

4.10 RCA

153. RCA's submission is of minimal utility to the Panel's deliberations. Its complaints about penalty rates are misplaced and its characterisation of its selected clerical, medical and restaurant award hourly rates as "comparable"²⁰⁵, notwithstanding differences of up to 12% or \$3.13 per hour, casts doubt over its position that there must be no change minimum wages in this review.
154. RCA selectively cites its "Industry Benchmarking Report" which it has not provided, in its section on "The Industry and Employment Costs". Whilst the RCA's submission indicates that menu prices "are to rise over the next 12 months", it does not disclose that the Industry Benchmarking Report also indicates, according to the media statement which accompanied its release, that menu prices have already increased, customer demand has increased, food and occupancy costs as a share of revenue had dropped slightly compared to the previous year and that "many operators have seen the current crisis as an opportunity to pivot their businesses to only to survive the pandemic but to create more resilient business models to thrive in 2022."²⁰⁶ The limited data provided by RCA regarding profitability makes it impossible to assess the change in position over time, nor does it provide the basis causal connection to closures on Sundays and Public Holidays, as claimed in paragraph 18 of the submission.

²⁰⁴ At paragraph 100.

²⁰⁵ At paragraph 13.

²⁰⁶ RCA, "RC&A Benchmarking Report Released", 17 January 2022.

4.11 South Australian Wine Industry Association

155. The South Australian Wine Industry Association ('SA Wine') position that the Panel award an increase of no more than 2% is not consistent with the "Snapshot" report it references which indicates that labour costs are less of concern at present than they have been at any time since 2017.²⁰⁷
156. Whilst we accept that reduced exports to China is a concern for and constraint on the wine industry, this is not a new development in this Review and the "Snapshot" report indicates that "there are positive signs of growth: and that "Business models have adapted to provide for greater sales through e-commerce and building export relationships without the ability to travel".²⁰⁸
157. SA Wine asserts that the wages negotiated in wine industry enterprise agreements "demonstrate that the employees and employers understand the need to contain labour costs and reflect the current challenges that the industry is facing"²⁰⁹. We do not concur that the agreement reached on wage increases during bargaining is informative as to the basis of any such consensus or compromise. Even if that were the case, SA Wine distinguishes employers in the industry by their size, describing them as "Australia's largest wine companies"²¹⁰. The "Snapshot" report indicates that "The loss of international customers is having the greatest effect on large businesses"²¹¹.

4.12 Victorian Government

158. Whilst we agree with the Victorian Government that an increase in the NMW and modern award minimum wages would have a positive impact on the lives of marginalised groups, we do not support its proposal that higher increases should be granted to particular sectors. Whilst the proposal appears to be motivated by a desire to reduce the gender pay gap and provide a mechanism for a catch up in award wages, it would distort relativities. In our view,

²⁰⁷ Bentleys SA & SAWIA, "2021 South Australian Wine Industry Snapshot", at page 24.

²⁰⁸ *Ibid.*, at page 4.

²⁰⁹ At page 8.

²¹⁰ *Ibid.*

²¹¹ Bentleys SA & SAWIA, "2021 South Australian Wine Industry Snapshot", at page 9.

a catch up achieved by awarding a meaningful increase across the NMW and modern awards would serve the same objectives without further distorting relativities.

4.13 NSW bus industry employers

159. A position has been advanced in relation to particular copied state awards relevant to the NSW bus industry, being instruments that are derived from awards made by of the NSW Industrial Relations Commission. The claims are advanced in submissions made by and on behalf of Transit Systems West Services, Busways North West, Keolis Downer and Transdev Australia.

160. We support the position put by our affiliate unions in response, both in relation to the appropriate increase to be awarded in this Review and in relation to the lack of jurisdiction and justification for varying the past decisions of the Panel.

5. RESPONSE TO QUESTIONS ON NOTICE.

5.1 Economic and labour market considerations

161. In response to the Panel’s question to us, we note that the presented extract from paragraph 21 of our initial submission is preceded with the sentence “There were some declines in employment during periods of 2021 associated with COVID lockdowns, however it is clear that the scale of job losses never reached anything like the degree experienced in 2020, as shown in Figure 4 below”. This opening sentence of the paragraph fixed the context of the discussion as being concerned with employment reductions associated with lockdowns. The blue line in the figure we presented demonstrates that employment decreased by around 400,000 over 3 months, between July and October of 2021, while Delta lockdowns were in place. It recovered by approximately the same amount only one month later. Conversely, in 2020 approximately 900,000 jobs were lost to lockdown over a period of only two months between March and May 2020 and employment did not recover to March 2020 levels until approximately January 2021. In this respect, Delta lockdowns caused less of a reduction in employment than those initial lockdowns. The reduction that they did cause took longer to reach their lowest point, and pre-lockdown employment levels returned more quickly.

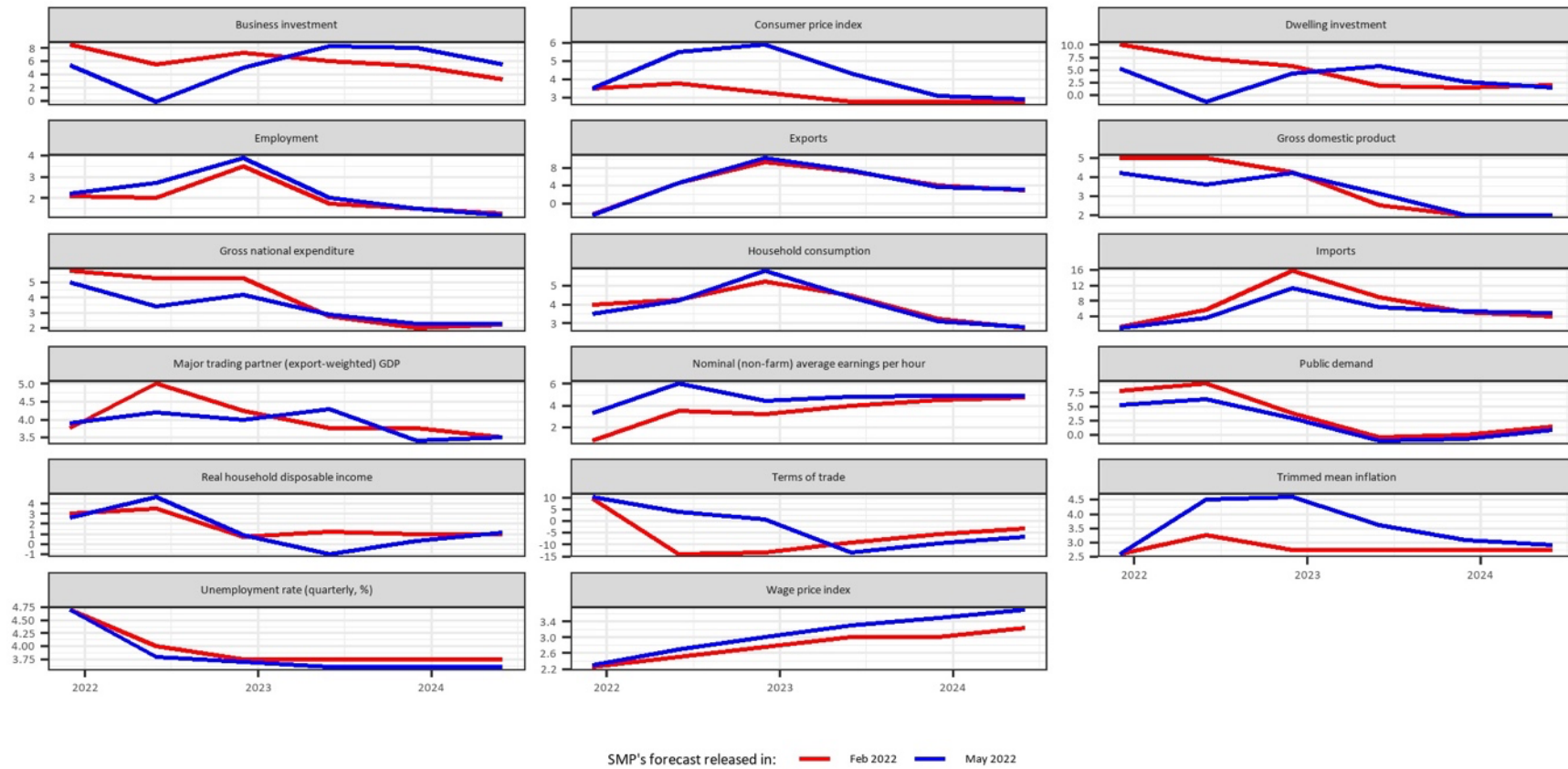
162. In response to the Panel’s question to MGA, we refer to section 4.6 above.

5.2 Relative living standards and needs of the low paid

163. We have discussed the significance and relevance of the matters announced in the budget in the relevant sections of our initial submission. We had understood that we were expected to do so in light of the revisions to the timetable foreshadowed in [2022] FWC 82 and confirmed in [2022] FWC 263.

164. In response to the Panel’s question to ACCI, we refer to section 3.4.2 above.

ANNEX A: FORECAST IN STATEMENT OF MONETARY POLICY FEBRUARY 2022 VS. MAY 2022



Source: RBA's Statement of Monetary Policy issued in February 2022 and May 2022

address

ACTU
Level 4 / 365 Queen Street
Melbourne VIC 3000

phone

1300 486 466

web

actu.org.au
australianunions.org.au