FairWork Commission

DECISION

Fair Work Act 2009
s 285—Annual wage review

Annual Wage Review 2022-23
(C2023/1)

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

SYDNEY, 2 JUNE 2023

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Abbreviations and defined terms

Term	Abbreviation/defined term
2023-24 Budget	Budget
4 yearly review of modern awards – Pharmacy Industry Award 2010 [2018] FWCFB 7621, 284 IR 121	*Pharmacy Decision*
Characteristics of Employment	COE
Employee Earnings and Hours	EEH
Aged Care Award 2010	Aged Care Award
Aged Care Award 2010; Nurses Award 2020; Social, Community, Home Care and Disability Services Industry Award 2010 [2022] FWCFB 200, 319 IR 127	*Aged Care Decision*
Annual Wage Review	Review
Australian Bureau of Statistics	ABS
Australian Business Industrial and the NSW Business Chamber	ABI
Australian Chamber of Commerce and Industry	ACCI
Australian Council of Trade Unions	ACTU
Australian Industrial Relations Commission	AIRC
Australian Industry Group	Ai Group
Australian Liquor, Hospitality and Miscellaneous Workers Union re Child Care Industry (Australian Capital Territory) Award 1998 and Children's Services (Victoria) Award 1998 – re Wages rates PR954938 (13 January 2005), [2005] AIRC 28	*ACT Child Care Decision*

Term	**Abbreviation/defined term**
Average annualised wage increase	AAWI
Average weekly ordinary time earnings	AWOTE
Busways North West Pty Ltd	Busways
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia	CEPU
Construction, Forestry, Maritime, Mining and Energy Union	CFMMEU
Consumer Price Index	CPI
Convention on the Elimination of All Forms of Discrimination against Women	UN Convention
Convention concerning Discrimination in Respect of Employment and Occupation (No 111)	ILO Convention
Copied State awards	CSAs
Expert Panel	Panel
Fair Work Commission	Commission
Fair Work Act 2009 (Cth)	FW Act
Fair Work (Transitional Provisions and Consequential Amendments) Act 2009	Transitional Act
Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth)	Amending Act
Federal Minimum Wage	FMW
Gross domestic product	GDP
JobSeeker Payment	JSP
Living Cost Index	LCI
Manufacturing and Associated Industries and Occupations Award 2020	Manufacturing Award

Term	Abbreviation/defined term
Metal Industry Award 1984 – Part I	Metal Industry Award
Minimum Income for Healthy Living	MIHL
Minimum Rates Adjustment	MRA
National minimum wage	NMW
National Employment Standards	NES
New South Wales	NSW
Newstart allowance	NSA
Organisation for Economic Co-operation and Development	OECD
President's statement: Occupational segregation and gender undervaluation	*Gender undervaluation statement*
Producer Price Index	PPI
Reserve Bank of Australia	RBA
revised explanatory memorandum for the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022*	REM
Social, Community, Home Care and Disability Services Award 2010	SCHADS Award
Transdev Australasia Pty Ltd	Transdev
Wage Price Index	WPI

The Annual Wage Review Decision 2022-23

1. Overview of the decision

[1] In the annual wage review (Review) conducted pursuant to s 285 of the *Fair Work Act 2009* (Cth) (FW Act), the Fair Work Commission is required to:

- review, and make, the national minimum wage (NMW) order; and
- review modern award minimum wages, and may vary modern awards to change or revoke modern award minimum wages.

[2] The statutory framework is described in more detail in section 2 of this decision. In summary, the NMW order applies only to persons in the national industrial relations system who are not covered by a modern award or an enterprise agreement. The NMW order sets the NMW, special NMWs applying to employees who are juniors, to whom training arrangements apply and persons with disability, and the casual loading for employees who are award/agreement free. The NMW order does not apply to employees covered by a modern award or enterprise agreement and the NMW does not set a floor for minimum wage rates in modern awards.

[3] There are 121 modern awards which apply to employees in the national industrial relations system in various industries and occupations. There are also a small number of modern enterprise awards which apply to specific business enterprises. Each modern award sets minimum wage rates for employees working in the industry, occupations or enterprise covered by the award. These are usually expressed as yearly, weekly and/or hourly rates for specific work classifications.

[4] The direct effect of the Review upon the Australian employee workforce is limited, as we explain in section 3 of this decision. The NMW only applies to a very small proportion of that workforce: only 0.7 per cent of employees are paid the NMW. As for modern awards, approximately 20.5 per cent of employees are paid in accordance with minimum wage rates in modern awards. There are some additional categories of employees who are also affected by the Review in a less direct way because, for example, they work under an enterprise agreement which provides for wage increases in line with Review outcomes or they work under State awards to which Review outcomes are 'flowed on'. However, these categories of employees are small. Our Review decision will therefore operate upon the wages of about a quarter of the Australian employee workforce.

[5] It is also important to note that the characteristics of that part of the workforce which relies on modern award minimum wage rates, and are thus directly affected by our Review decision, are significantly different to the workforce as a whole. They predominantly work part-time hours, are predominantly female, and almost half are casual employees. Compared to the general workforce, they are also much more likely to be low paid, paid junior rates, and work for a small business. The characteristics of part-time hours and low (or lower) pay further restrict the broader economic effect of Review decisions: the total wages cost of the modern award-reliant workforce constitutes about 11 per cent of the national 'wage bill', and the wage increases awarded in the 2021-22 Review decision, for example, directly contributed less than

10 per cent of the total wages growth for calendar year 2022.[1] Furthermore, the modern award-reliant workforce is predominantly employed under a relatively small number of modern awards covering specific industries or occupations, so that the effect of the Review decision differs markedly between industry sectors.

[6] The FW Act requires us to take into account specific considerations in conducting our review functions in respect of the NMW. These are set out in s 284(1) of the FW Act and, in relation to modern award minimum wages, also in s 134(1) of the FW Act. We deal specifically with these considerations in sections 3-8 of this decision. We are also required to take into account the object of the FW Act in s 3. Important amendments have been made to ss 3, 134(1) and 284(1) by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (Amending Act) requiring us to give greater emphasis to the issues of gender equality and job security. We discuss those amendments and how these issues are to be taken into account in section 2.2 of this decision.

[7] In discharging our Review functions, we have consulted with a range of stakeholders, including peak councils (the Australian Chamber of Commerce and Industry (ACCI), the Australian Council of Trade Unions (ACTU) and the Australian Industry Group (Ai Group)), registered employer and employee organisations, other employment groups, individual employers and employees, the Australian Government and State governments. Each of these have been given the opportunity to make written submissions and submissions in reply in accordance with s 289 of the FW Act, and to make oral submissions at a hearing before us conducted on 17 May 2023. A number of parties have advanced specific proposals for wage adjustments. These proposals are summarised in the Appendix to this decision. However, we emphasise that the Review process is not one of adjudication between competing proposals. While we have taken the submissions made into account, ultimately the statutory task is for us to make our own assessment of what constitutes a safety net of fair minimum wages having regard to the prescribed considerations.

[8] We have decided to take two steps in relation to the NMW. *First*, for the reasons set out in section 5 of this decision, we have decided to end the alignment between the NMW and the C14 classification wage rate in modern awards – an alignment which has existed since 1997. The C14 rate is the lowest modern award minimum wage rate but was only ever intended to constitute a transitional entry rate for new employees. As such, it does not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment. A wider review, including supporting research, concerning the needs and circumstances of low-paid award/agreement free employees is required, but the interim step we have decided to take in this Review is to align the NMW with the current C13 classification wage rate, which in nearly all relevant awards is the lowest modern award classification rate applicable to ongoing employment. *Second,* we have decided to further increase the rate of the NMW by 5.75 per cent having regard to current circumstances relevant to the considerations in s 284(1). These increases will take effect from 1 July 2023. Having regard to the negligible proportion of the workforce to which the NMW applies, this outcome will not have discernible macro-economic effects.

[9] All modern award minimum wage rates will be increased by 5.75 per cent effective from 1 July 2023. In determining this amount, we have placed significant weight on the impact of the current rate of inflation on the ability of modern award-reliant employees to meet their basic financial needs. Inflation is reducing the real value of these employees' incomes and causing households financial stress. We have also taken into account the recent robustness of the labour market, and the fact that increases to modern award minimum wage rates will provide a disproportionate benefit to female workers and may contribute to narrowing the aggregate gender pay gap across the entire employee workforce. Moderating factors we have taken into account include the forthcoming increase to the Superannuation Guarantee contributions rate, the effect that an expected weakening in the labour market may have on casual employees and particular industries which have a higher proportion of modern award-reliant employees, the need to avoid entrenching high inflation expectations by taking a perceived wage indexation approach, and the recent weak performance in productivity growth.

[10] The level of wage increase we have determined is, we consider, the most that can reasonably be justified in the current economic circumstances. We acknowledge that this increase will not maintain the real value of modern award minimum wages nor reverse the reduction in real value which has occurred over the last two years. In the medium to long term, it is desirable that modern award minimum wages maintain their real value and increase in line with the trend rate of national productivity growth. A return to that path is likely to be possible in future Reviews when there is a reversion to a lower inflationary environment and trend productivity growth.

[11] We have identified in section 6 of this decision that there are significant issues concerning the potential undervaluation of work in modern award minimum wage rates applying to female-dominated industries and occupations. The scope of the present Review has prevented these gender equality issues being addressed to finality. However, the imperative of the amendments to the FW Act concerning gender equality made by the Amending Act is that these issues must be resolved in future Reviews or other Commission proceedings. The Commission will soon commence a research project to identify occupations and industries in which there is gender pay inequity and potential undervaluation of work and qualifications, and once completed this will underpin the consideration and determination of the identified issues. The finalisation of these matters may, depending upon the timing, occur as part of or in association with the 2023-24 Review.

2. The statutory framework

2.1 General principles

[12] The FW Act provides that, each financial year, the Commission must conduct and complete a Review in which the Commission:

- must review modern award minimum wages;
- must review the NMW;
- may make one or more determinations varying modern awards to set, vary or revoke modern award minimum wages; and
- must make a NMW order.[2]

[13] The Commission must be constituted by an Expert Panel (Panel) for the purpose of conducting a Review and making a NMW order or a determination in the Review.[3] An Expert Panel must consist of seven Commission members and must include the President of the

Commission and three Expert Panel Members who have knowledge of, or experience in, workplace relations, economics, social policy, or business, industry or commerce.[4]

[14] The NMW order applies to award/agreement free employees only. The NMW order must set:

- the NMW;[5]
- special NMWs which apply to employees who are juniors, to whom training arrangements apply or with a disability;[6] and
- the casual loading for award/agreement free employees.[7]

[15] An award/agreement free employee cannot be paid less than the applicable rate of pay specified in the NMW order.[8]

[16] The making of a NMW order and the review and variation of modern award minimum wages are separate, but related, functions. They are related because they both form part of the 'safety net of fair, relevant and enforceable minimum terms and conditions' referred to in the object of the FW Act in s 3(b). Additionally, s 285(3) of the FW Act provides that, in exercising its powers to set, vary or revoke modern award minimum wages, the Commission 'must take into account the rate of the national minimum wage that it proposes to set in the [R]eview'. Consequently, it is necessary for the Commission in its conduct of the Review to first reach a conclusion about the rate of the NMW it proposes to set so that it may then take that proposed NMW rate into account in exercising its powers to set, vary or revoke modern award minimum wage rates.

[17] The minimum wages objective set out in s 284(1) applies to the conduct of the Review, both in respect of the NMW and modern award minimum wages. Under s 284(1), the Commission is required to 'establish and maintain a safety net of fair minimum wages', taking into account the matters specified in paragraphs (a)-(e) of that subsection. The Amending Act amended s 284(1) to remove the existing paragraph (d) and add an additional matter requiring consideration as follows:

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

[18] We give specific consideration to s 284(1)(aa) below.

[19] In respect of modern award minimum wages (but not the NMW),[9] the modern awards objective in s 134(1) also applies to the Review. The modern awards objective requires the Commission to ensure that modern awards, together with the National Employment Standards (NES), provide a 'fair and relevant minimum safety net of terms and conditions', taking into account the particular matters identified in paragraphs (a)–(h) of the subsection. The Amending Act has also amended s 134(1) by removing paragraph (e), which referred to 'the principle of equal remuneration for work of equal or comparable value', and adding two matters for consideration as follows:

> (aa) the need to improve access to secure work across the economy; and

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

[20] We also deal with these new matters in further detail below.

[21] Section 578(a) of the FW Act requires the Commission, in performing its functions or exercising its powers, to take into account the objects of the FW Act and any part of the FW Act. Section 3 of the FW Act provides that the Act's object is to 'provide a balanced framework for cooperative and productive relations that promotes national economic prosperity and social inclusion' by the means specified in subsections (a)-(g). Of most relevance to the conduct of the Review in this context is s 3(b), which refers to 'ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through… modern awards and national minimum wage orders'. Also likely to be of relevance to the Review is s 3(a), which refers among other things to the promotion of 'job security and gender equality' and 'productivity and economic growth for Australia's future economic prosperity', and s 3(g), which refers to 'acknowledging the special circumstances of small and medium-sized businesses'. We note that the reference to 'job security and gender equality' was added by the Amending Act.

[22] The discharge of the Commission's statutory functions under s 285 involves an evaluative exercise which is informed by the considerations in ss 284(1)(a)-(e) and 134(1)(a)-(h) (as applicable) and the object in s 3. The statutory objectives are very broadly expressed and do not necessarily exhaust the matters which the Panel might properly consider to be relevant. The range of such matters 'must be determined by implication from the subject-matter, scope and purpose' of the FW Act.[10] There is a degree of overlap between the various considerations which must be taken into account under ss 284(1) and 134(1)[11] and also a degree of tension between some of these considerations. No consideration is assigned any particular primacy and the relevance of and weight to be assigned to the considerations will vary depending upon the social and economic context and other facts and circumstances of the particular Review.[12] The complex balancing exercise which is required has led the Commission in previous Reviews to eschew a mechanistic approach to wage fixation.[13]

[23] The matters which the Commission must take into account in its conduct of the Review contain some common elements. In past Review decisions, the Panel has grouped the matters of direct relevance to the Review into three broad categories, namely economic considerations, social issues, and collective bargaining. This categorisation requires modification in light of the amendments made to ss 134(1) and 284(1), which we discuss further below. We will deal with the mandatory considerations in the modern awards and minimum wages objectives in the following broad categories:

- Economic, labour market and business considerations: s 134(1)(c), (d), (f) and (h); s 284(1)(a) and (b).
- Relative living standards and the needs of the low paid: s 134(1)(a); s 284(1)(c).
- Gender equality: s 134(1)(ab), s 284(1)(aa).
- Job security: s 134(1)(aa).
- Collective bargaining: s 134(1)(b).
- Other considerations: s 134(1)(da) and (g); s 284(1)(e).

2.2 New considerations – job security and gender equality

The amendments and the Revised Explanatory Memorandum

[24] The amendments to ss 3(a), 134(1) and 284(1) of the FW Act were effected by Part 4, *Objects of the Fair Work Act* of Schedule 1 of the Amending Act. Part 4 is discussed in paragraphs 330-343 of the revised explanatory memorandum (REM) for the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022*. The REM gives an 'overview' of Part 4 which commences as follows:

> 330. This Part would introduce job security and gender equality into the object of the FW Act. It would place these considerations at the heart of the FWC's decision-making, and support the Government's priorities of delivering secure, well-paid jobs and ensuring women have equal opportunities and equal pay.

[25] Paragraph 331 of the REM refers to the principle of statutory interpretation which requires the FW Act to be interpreted in a way that would best achieve its object wherever possible, and to the requirement in s 578(a) for the Commission to take into account the objects of the FW Act when performing functions or exercising powers under the FW Act. Paragraph 332 states:

> 332. This Part would also introduce improved access to secure work and gender equality into the modern awards objective in section 134 of the FW Act as matters the FWC would be required to take into account when setting terms and conditions in modern awards. This Part would also introduce gender equality into the minimum wages objective in section 284 of the FW Act as a matter the FWC would be required to take into account when setting minimum wages.

[26] Specifically in relation to the amendment to s 3(a), the REM states:

> 333. The existing paragraph 3(a) sets out one of the means by which the object of the FW Act is achieved. This item would amend that means to add job security and gender equality as considerations.
>
> 334. The reference to promoting job security recognises the importance of employees and job seekers having the choice to be able to enjoy, to the fullest extent possible, ongoing, stable and secure employment that provides regular and predictable access to beneficial wages and conditions of employment. The reference to promoting gender equality recognises the importance of people of all genders having equal rights, opportunities and treatment in the workplace and in their terms and conditions of employment, including equal pay. The intention of the references to 'gender equality' in each of these provisions is to use language that is consistent with the Convention on the Elimination of All Forms of Discrimination against Women and ILO Convention concerning Discrimination in Respect of Employment and Occupation (No 111). It is also intended to reflect the policy objective of both formal and substantive gender equality.
>
> 335. Job security and gender equality would sit alongside existing considerations in the object of the FW Act, such as providing workplace relations laws that are flexible for business, assisting employees to balance their work and family responsibilities, and achieving productivity and fairness (see existing paragraphs 3(a), (d) and (f)).

[27] In relation to new ss 134(1)(aa) and (ab), paragraph 338 of the REM relevantly confirms that the Commission will be required to take the specified factors into account when exercising its functions under Pt 2-6 of the FW Act (that is, the Review functions) in respect of modern award minimum wages. Paragraph 338 explains that s 134(1)(e) is repealed because the consideration of the principle of equal remuneration for work of equal or comparable value is included 'as part of' the new s 134(1)(ab). In relation to the new s 284(1)(aa), paragraph 342 relevantly confirms that the Commission will be required to take the new factor into account when exercising its functions under Pt 2-6 of the FW Act, and paragraph 343 confirms that the previous s 284(1)(d) is repealed because the consideration of the principle of equal remuneration for work of equal or comparable value is 'included as part of' the new s 284(1)(aa).

Job security

[28] Job security is not a matter that has, in terms, been taken into account in previous Review decisions. In the award context, job security is a concept which is usually regarded as relevant to award terms which promote regularity and predictability in hours of work and income and restrict the capacity of employers to terminate employment at will. The award provisions which are likely to be most pertinent in this respect are those which concern the type of employment (full-time, part-time, casual or other), rostering arrangements, minimum hours of work per day and per week, the payment of weekly or monthly rather than hourly wages, notice of termination of employment and redundancy pay (noting that a number of these matters are dealt with in the NES).

[29] Beyond the immediate award context, job security has a broader dimension and may be understood as referable to the effect of general economic circumstances upon the capacity of employers to employ, or continue to employ, workers, especially on a permanent rather than casual basis. In exercising the Commission's modern award powers, consequential effects of this nature arise for consideration under ss 134(1)(f) and 284(1)(a), and have always been taken into account on this basis in past Review decisions.

[30] As set out above, paragraph 334 of the REM explains that the reference to promoting job security in s 3(a) recognises the importance of employees and job seekers 'having the choice' to be able to enjoy as much as possible 'ongoing, stable and secure employment that provides regular and predictable access to beneficial wages and conditions of employment'. We see no reason to consider that the expression 'secure work' in s 134(1)(aa) bears any substantially different connotation to 'job security' in s 3(a). However, we consider that it is significant that s 134(1)(aa) refers to 'the need to improve access' to secure work rather than the general promotion of job security. The language of s 134(1)(aa) suggests that it is more tightly focused on the capacity of employees to enter into work which may be characterised as secure. This appears to reflect the REM's reference to the importance of employees being able to have a 'choice' to enter into secure employment. As such, the consideration in s 134(1)(aa) would appear to direct attention primarily to those award terms which affect the capacity of employees to make that choice. This is not a matter likely to be of substantial relevance to the consideration of minimum award wages in the conduct of the Review except perhaps in respect of the casual loading. The fact that s 134(1)(aa) finds no equivalent in s 284(1), such that the secure work consideration has no application to the NMW, supports our conclusion in this respect. However, the broader dimension of job security to which we have referred will, of course, continue to be highly relevant in our consideration under ss 134(1)(f) and 284(1)(a).

Gender equality

[31] It is clear that new ss 134(1)(ab) and 284(1)(aa) involve broader concepts of gender equality than the previous ss 134(1)(e) and 284(1)(d). The previous provisions were confined to the consideration of 'the principle of equal remuneration for work of equal or comparable value'. That expression 'equal remuneration for work of equal or comparable value' was, and is, defined in s 302(2) to mean 'equal remuneration for men and women workers for work of equal of comparable value'. That definition was regarded as applicable to ss 134(1)(e) and 284(1)(d).[14] In the 2017-18 Review decision,[15] the Commission discussed ss 284(1)(d) and 134(1)(e) as follows:

> [34] In the Equal Remuneration Decision 2015 ([2015] FWCFB 8299) the Full Bench concluded that the expression 'work of equal or comparable value' in s.302(1) refers to equality or comparability in 'work value' (at [280]). We agree and, further, the same meaning should be attributed to this expression in ss 134(1)(e) and 284(1)(d). As explained in the Equal Remuneration Decision 2015, the principle of equal remuneration for work of equal or comparable value is enlivened when an employee or group of employees of one gender do not enjoy remuneration equal to that of another employee or group of employees of the other gender who perform work of equal or comparable value…
>
> [35] The application of the principle of equal remuneration for work of equal or comparable value is such that it is likely to be of only limited relevance in the context of a Review. Indeed it would only be likely to arise if it were contended that particular modern award minimum wage rates were inconsistent with the principle of equal remuneration for work of equal or comparable value; or, if the form of a proposed increase enlivened the principle…

[32] The definition of 'equal remuneration for work of equal or comparable value' in s 302(2) has been indirectly modified by the new sub-ss 302(3A), (3B) and (3C) introduced by the Amending Act, which identify matters which the Commission may take into account, and the analytical approach which may be taken, in deciding whether there is equal remuneration for work of equal or comparable value. It remains the case that the conception is clearly not confined to modern award minimum wage rates and is applicable both at the individual and collective level to any arrangement produced by the labour market whereby there is a gender inequality in remuneration for work of equal or comparable value. To the extent that it is applicable to a modern award minimum wage rate, it implies that such a wage rate may have been founded on an historic undervaluation of the work to which the rate applies based on gender – a matter which the new s 302(3A) authorises the Commission to take into account. In this way, equal remuneration for work of equal or comparable value intersects with the concept of gender undervaluation, which we discuss further below.

[33] As paragraphs 338 and 342 of the REM tend to confirm, the repeal of ss 134(1)(e) and 284(1)(d) and the text of the new ss 134(1)(ab) and 284(1)(aa) indicate that the concept of 'equal remuneration for work of equal of comparable value' has been subsumed into a broader mandate to take into account 'the need to achieve gender equality', with 'equal remuneration" being only one of a number ways specified in each provision by which 'gender equality' may be achieved. We note that in s 134(1)(ab), but not s 284(1)(aa) or s 3(a), the words 'in the workplace' follow 'gender equality'. However, given that the object and subject matter of the FW Act concerns workplace relations, we do not think that these additional words in s 134(1)(ab) are intended to give the expression 'gender equality' a narrower meaning in that provision than it bears in s 3(a) or s 284(1)(aa) or that they operate to displace the presumption that 'gender equality' has the same meaning where used throughout the FW Act.[16] No contrary indication is apparent in the REM.

[34] As set out above, the REM explains the concept of 'gender equality' by reference to the United Nations *Convention on the Elimination of All Forms of Discrimination against Women* (UN Convention) and the ILO *Convention concerning Discrimination in Respect of Employment and Occupation (No 111)* (ILO Convention). Article 11(1) of the UN Convention concerns the elimination of gender discrimination in employment, and provides:

> States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
>
> (a) The right to work as an inalienable right of all human beings;
>
> (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
>
> (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
>
> (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
>
> (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
>
> (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

[35] The substantive provision of the ILO Convention is Article 2, which provides:

> Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

[36] The key concepts which may be derived from the UN Convention and the ILO Convention, as potentially relevant to the Commission's NMW and modern award powers, are ensuring equality as between men and women of employment opportunity (including equality as to the right to work, selection for employment, promotion and access to training) and equality of treatment in employment (including equality as to remuneration and other benefits of employment, and as to the treatment of work of equal value and the evaluation of the quality of work). This is consistent with the statement in paragraph 334 of the REM that the reference to promoting gender equality in s 3(a) recognises the importance of people of all genders 'having equal rights, opportunities and treatment in the workplace and in their terms and conditions of employment, including equal pay'. On its ordinary meaning, the expression 'gender equality', once placed in the framework of workplace relations established by the chapeau to s 3 and the overall subject matter of the FW Act, comfortably carries the connotations which may be derived from the UN Convention, the ILO Convention and the REM.

[37] In addition to 'equal remuneration for work of equal or comparable value', ss 134(1)(ab) and 284(1)(d) both identify 'eliminating gender-based undervaluation of work' as a means by which gender equality may be achieved. Although express reference to gender-based undervaluation of work is novel in the context of the modern awards and minimum wages objectives, it is a well-established industrial conception. The Full Bench decision in the *Equal Remuneration Case 2015*[17] traced in detail the history and development of this concept in the NSW, Queensland and federal jurisdictions.[18] The Full Bench determined that the power to make an equal remuneration order under s 302 of the FW Act, as it then was, required a comparator group of the opposite gender, but went on to say:

> [292] Our conclusion that Part 2–7 requires a comparator group of the opposite gender does not exclude the capacity to advance a gender-based undervaluation case under the FW Act. We see no reason in principle why a claim that <u>the minimum rates of pay in a modern award undervalue the work to which they apply for gender-related reasons</u> could not be advanced for consideration under s.156(3) or s.157(2). Those provisions allow the variation of such minimum rates for 'work value reasons', which expression is defined broadly enough in s.156(4) to allow a wide-ranging consideration of any contention that, <u>for historical reasons and/or on the application of an indicia approach, undervaluation has occurred because of gender inequity</u>. There is no datum point requirement in that definition which would inhibit the Commission from <u>identifying any gender issue which has historically caused any female-dominated occupation or industry currently regulated by a modern award to be undervalued</u>. The pay equity cases which have been successfully prosecuted in the NSW and Queensland jurisdictions and to which reference has earlier been made were essentially work value cases, and the equal remuneration principles under which they were considered and determined were likewise, in substance, extensions of well-established work value principles. It seems to us that cases of this nature can readily be accommodated under s.156(3) or s.157(2). Whether or not such a case is successful will, of course, depend on the evidence and submissions in the particular proceeding.
>
> (underlining added)

[38] The underlined parts of the above passage set out the core components of the concept gender-based undervaluation, namely that the minimum rates in an award have been established based on an undervaluation of the relevant work that has occurred for gender-related reasons. This concept is now articulated in the FW Act itself as a result of the amendments effected by the Amending Act. New subsection (2B) has been added to s 157 to add the following requirement concerning the Commission's consideration of 'work value reasons' in connection with the variation of minimum award wages under s 157(2). The new subsection provides:

> (2B) The FWC's consideration of work value reasons must:
>
> (3) be free of assumptions based on gender; and
>
> (b) include consideration of whether historically the work has been undervalued because of assumptions based on gender.

[39] In the 2017-18 Review decision,[19] the Commission said:

> We agree with the observations of a number of parties that Review decisions are of limited utility in addressing any systemic gender undervaluation of work. It seems to us that proceedings under Part 2-7 and applications to vary modern award minimum wages for 'work value reasons'

pursuant to ss 156(3) and 157(2) provide more appropriate mechanisms for addressing such issues.

[40] In light of the amendments to s 284(1), the above proposition is no longer sustainable since we are now commanded to take into account ‘eliminating gender-based undervaluation of work’ as part of our consideration concerning ‘the need to achieve gender equality’ in applying the minimum wages objective in the conduct and determination of the Review. The reference to the elimination of gender undervaluation in paragraph (aa) adds an important new dimension to the Review. In previous years, the Commission has approached the Review on the implicit premise that the task of establishing and maintaining a safety net of fair minimum wages involves determining the adjustment that should be made to the NMW and modern award minimum wage rates as they exist at the relevant time. However, the requirement to now take into account the elimination of gender-based undervaluation of work in the conduct of the Review itself necessarily requires us to consider whether the existing NMW and modern award minimum wage rates constitute a properly valued and non-gender biased foundation upon which to make any wages adjustment. We set out how we propose to go about this task later in this decision.

[41] Section 134(1)(ab), but not s 284(1)(aa), refers to ‘providing workplace conditions that facilitate women’s full economic participation’. ‘Conditions’ is an expression which, in the industrial context, usually connotes terms of employment other than those relating to rates of pay. We consider that it bears that meaning in s 134(1)(ab), since it is difficult to identify how a minimum award rate of remuneration could facilitate women’s full economic participation. This is more likely to relate to conditions such as flexible working hours, access to stable part-time employment and special types of leave such as family and domestic violence leave. That this consideration was included in the modern awards objective, but not the minimum wages objective, tends to confirm this.

[42] Section 284(1)(aa), but not s 134(1)(ab), refers to ‘addressing gender pay gaps’. Although the gender pay gap did not arise for consideration under the repealed s 284(1)(d) other than in a limited way, it has been taken into account in previous Reviews in connection with other considerations. For example, in the 2017-18 Review decision,[20] the Commission said:

> [36] But the broader issue of gender pay equity, and in particular the gender pay gap, is relevant to the Review. This is so because it is an element of the requirement to establish a safety net that is ‘fair.’ It may also arise for consideration in respect of s.284(1)(b) (‘promoting social inclusion through workforce participation’), because it may have effects on female participation in the workforce.
>
> (citations omitted)

[43] The gender pay gap has been regarded as relevant to the setting of the NMW and modern award minimum wages in past Reviews because of the historical position that women are significantly more likely to be paid at the award rate than are men at all levels of the award structure, that workers paid at the award rate are much more likely to be low paid than are other workers, and that, at least at the highest rates in award classification structures, women are heavily overrepresented among those who are paid at the award rate. In the 2015-16 Review decision,[21] the Commission identified the significance of these matters in the following way:

> [75] An increase in award rates of pay relative to other wages would reduce the gender pay gap in two ways. The first is that it would raise the level of low pay rates relative to median pay rates, and hence particularly benefit women, who disproportionately receive low pay rates. The

second is that an increase in the higher levels of award rates will particularly benefit women, because at the higher pay scales, women are substantially more likely to be paid the award rather than the bargained rate than are men.

[44] The Commission concluded that this was a factor weighing in favour of an increase in the NMW and modern award minimum wages.[22] As discussed later in this decision, the latest available data confirms that it remains the case that women are disproportionately award-reliant, and the imperative in s 284(1)(aa) to take the gender pay gap into account in the context of the consideration of gender equality means that this remains a factor weighing in favour of an increase to the NMW and modern award minimum wages. Indeed, for the reasons explained in the above passage from the 2015-16 Review decision, it is a factor weighing in favour of an increase in excess of the wage increases being produced by the labour market, since only an increase of this nature would operate to reduce the gender pay gap.

[45] Finally, we note that s 284(1)(aa) (unlike s 134(1)(ab)), by the use of the word 'including', specifies three means to achieve gender equality (by ensuring equal remuneration for work of equal of comparable value, eliminating gender-based undervaluation of work and addressing gender pay gaps) in a non-exhaustive way. Therefore, as a matter of statutory construction, specific consideration of these three matters may not necessarily be all that is required to 'tak[e] into account … the need to achieve gender equality'. Further relevant considerations in this respect might include, among other things, women's participation in the workforce (although this would overlap with the considerations in ss 134(1)I and 284(1)(b)) and job security issues specific to women (overlapping with s 134(1)(aa)).

3. Practical scope of the Review — size and characteristics of the NMW- and modern award-reliant workforce

[46] As earlier explained, the Review involves two fundamental aspects: review of the NMW and review of modern award minimum wage rates. In order to understand the legal and economic consequences which will flow from the Review, it is necessary to describe the extent of the workforce to which the NMW and modern awards minimum wage rates apply.

[47] The proportion of the Australian employee workforce which is award/agreement free and to which the NMW wage rate applies ('NMW-reliant') is small. Based on 2021 data, it appears that only 0.7 per cent of the employee workforce falls into this category and thus would be directly affected by any adjustment made to the NMW.[23] Beyond this data, it is difficult to identify in practical terms any occupations or industries in which NMW-reliant employees are engaged. In previous Commission proceedings, parties have been unable to identify with precision any such award free employees.[24] Further, the number of such low-paid, award free employees is likely to have diminished since the coverage of the *Miscellaneous Award 2020* was adjusted effective from 1 July 2020.[25] Accordingly, it cannot be concluded that any adjustment to the NMW considered in isolation will have discernible macroeconomic effects. Further, although any adjustment to the NMW is likely to have an effect upon a small segment of employers and employees, we are not in a position to be able to identify any particular characteristics of such employers and employees beyond stating that any employee reliant on the NMW will (as we discuss later) necessarily be low paid and likely to be experiencing difficulty in meeting day-to-day living expenses.

[48] As at May 2021, 20.5 per cent of the employee workforce was paid at rates specified in the Commission's modern awards ('modern award-reliant').[26] The proportion of employees who are 'award reliant' (paid at rates specified in any awards, including modern awards and awards of State industrial tribunals) grew from 16.1 per cent in 2012 to 23.0 per cent in 2021.[27]

[49] Employees who are modern award-reliant earn, on average, considerably less than other employees: their average hourly wage is lower ($28.60 compared to $46.20) and they work on average fewer hours per week (26.2 compared to 33.0).[28] As shown in Table 1, the effect of this is that these employees account for a much smaller fraction of the economy-wide aggregate wage bill, an estimated 11.2 per cent in 2021.

Table 1: Award-dependent wages in the total economy, modern award-reliant employees

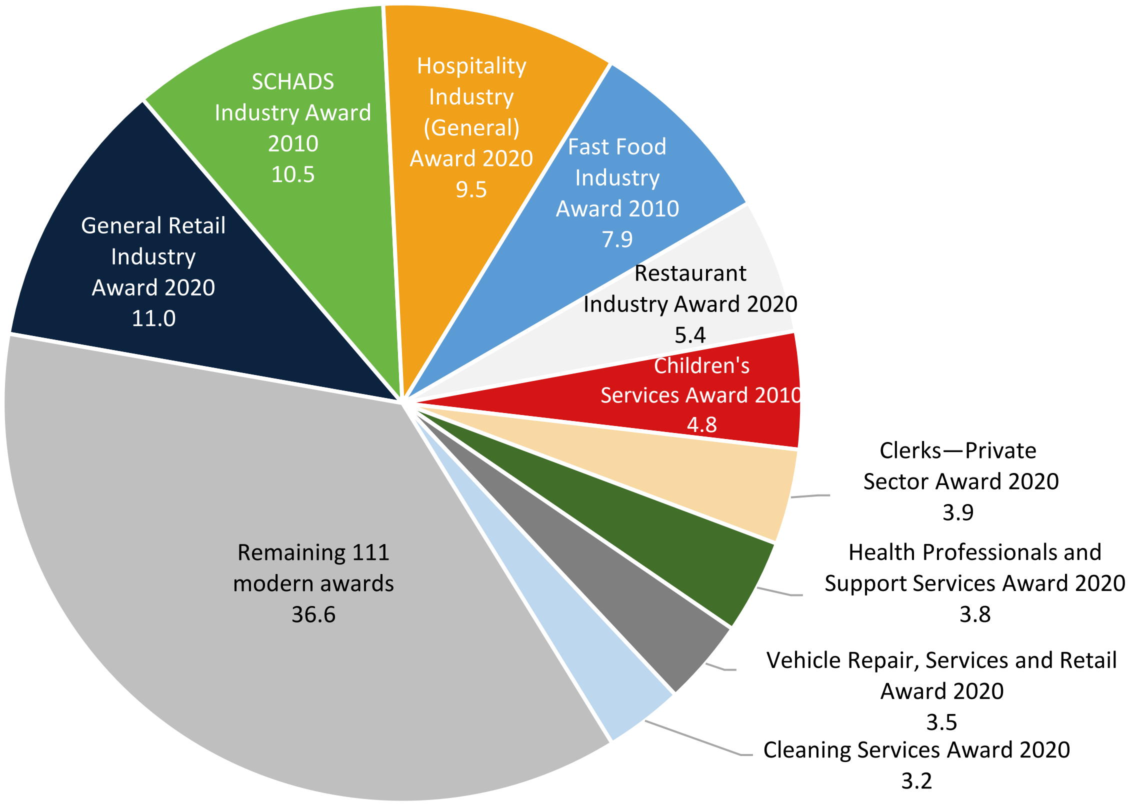
	Number	**Share total**	**Share GDP**
		(%)	**(%)**
Workers covered by modern awards (millions, 2021)	2.37	20.5	-
Average wage, modern award-reliant employees ($ per week, 2021)	749.2	53.7	-
Wage bill covered by modern award-reliant employees ($billion per year, 2021)	94.3	11.2	-
Total compensation covered by modern award-reliant employees ($billion per year, 2022)	123.6	-	5.0

Note: Total compensation of employees and GDP are based on the sum of the four quarters for calendar year 2022.

Source: 'Information note – Replicating Table 1 from Jericho & Stanford (2023)', *Fair Work Commission* (15 May 2023).

[50] Modern award-reliant employees are not spread evenly across the workforce but are disproportionately covered by a small number of modern awards. Chart 1 below shows that almost two-thirds of modern award-reliant employees are covered by the ten most common modern awards and almost half are covered by six of these awards. Conversely, many of the Commission's 121 modern awards cover only a negligible proportion of modern award-reliant employees. For example, at least 37 modern awards each cover less than 1 per cent of all modern award-reliant employees.[29]

Chart 1: Top 10 most common modern awards, 2021, per cent



Note: SCHADS Industry Award refers to the *Social, Community, Home Care and Disability Services Award 2010*.

Source: Kelvin Yuen and Josh Tomlinson, *A Profile of Employee Characteristics Across Modern Awards* (Fair Work Commission Research Report No 1/2023, March 2023) Chart 3.3.

[51] Correspondingly, there are significant differences between industry sectors as to the proportion of employees who are modern award-reliant. Table 2 shows the proportion of employees in each industry division who are modern award-reliant, in descending order:

Table 2: Modern award reliance by industry division, 2021

Industry division	**Proportion of employees in industry that are modern award-reliant (%)**
Accommodation and food services	59.6
Administrative and support services	42.3
Other services	36.4
Retail trade	29.5
Arts and recreation services	25.9
Health care and social assistance	23.0
Rental, hiring and real estate services	21.4
Manufacturing	19.1
Construction	13.4
Transport, postal and warehousing	12.5
Wholesale trade	10.0
Information, media and telecommunications	7.3
Education and training	6.6
Electricity, gas, water and waste services	5.7
Professional, scientific and technical services	5.4
Financial and insurance services	4.1
Public administration and safety	4.0
Mining	1.1*
All industries#	20.5

Note: * Estimate of modern award reliance for Mining has a relative standard error of greater than 50 per cent and is considered too unreliable for general use. # All industries excludes Agriculture, forestry and fishing, which is out of scope of the EEH survey.

Source: Kelvin Yuen and Josh Tomlinson, *A Profile of Employee Characteristics Across Modern Awards* (Fair Work Commission Research Report No 1/2023, March 2023) Chart 3.1.

[52] The Panel has, in the past, not accepted submissions that the different levels of award reliance between industries means that macroeconomic data is unlikely to be useful in the Review because it takes a high-level view of the economy, and that the primary consideration should be on the parts of the economy most affected by Review decisions. In the 2017-18 Review decision,[30] the reasons for not accepting such submissions included that all industries contained a proportion of modern award-reliant employees, the requirement to set the NMW required a national decision, all modern awards were required to be reviewed, and s 284(1)(a) required the national economy to be taken into account.[31] The Commission nonetheless went on to accept that it was necessary to 'pay close attention to developments in the most award-reliant industries'.[32] We continue to take such an approach in this Review.

[53] It is also necessary to take into account that the modern award-reliant workforce has significantly different characteristics to the employee workforce as a whole. Table 3 shows that the modern award-reliant employee workforce predominantly works part-time rather than full-time hours, is highly casualised, is on average younger than the workforce as a whole, is predominantly female, and contains a high proportion of low-paid workers. It also has significantly higher proportions of employees paid junior rates or employed by small businesses.

Table 3: Characteristics of modern award-reliant employees

	Modern award-reliant employees	**Employees not modern award-reliant**	**All employees**
Full-time hours (%)	34.8	66.2	59.8
Part-time hours (%)	65.2	33.8	40.2
Casual (%)	49.7	14.5	21.1
Permanent/fixed term (%)	50.3	85.5	78.9
Average age (years)	34.8	41.5	40.1
Junior rates of pay (%)	10.5	2.1	3.8
Employed by small business (1–19 employees) (%)	35.6	23.2	25.7
Female (%)	58.1	48.5	50.4
Low paid[33] (%)	36.1	6.8	12.1

Source: Kelvin Yuen and Josh Tomlinson, *A Profile of Employee Characteristics Across Modern Awards* (Fair Work Commission Research Report No 1/2023, March 2023) Appendix Tables B2–B4; ABS, *Employee Earnings and Hours, Australia*, May 2021; ABS, *Microdata: Employee Earnings and Hours, Australia*, May 2021; *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Tables 7.4–7.5.

[54] The differences pertaining to part-time hours, casualisation and age are likely to be associated with the concentration of modern award-reliant employees in industry sectors such as retail, hospitality, fast food and restaurants. Their identification provides further assistance in understanding the practical scope of the Review. For example, it can be identified that only 11.9 per cent of the full-time workforce is modern award-reliant, whereas almost half of all casual employees (48.3 per cent) are modern award-reliant.[34] This informs our understanding of the potential national economic implications of the Review and the extent of its impact on the Australian employee workforce.

[55] The other significant characteristics of the modern award-reliant workforce, namely that it is predominantly low paid and female, are dealt with later as part of our consideration of relative living standards and needs of the low paid and gender equality respectively.

[56] Apart from the direct legal effect of the outcome of the Review upon NMW-reliant and modern award-reliant employees and their employers, there are additional indirect effects which may operate to amplify the effect of a Review decision. These include the following:

(1) Some enterprise agreements require the prescribed wage rates to increase in line with Review decisions. However, this applies to only about 0.6 per cent of the Australian employee workforce.[35]

(2) Some enterprise agreements which remain in operation (usually older, expired agreements) may contain base rates of pay which have fallen below those in the modern award which covers the employees to which the agreement applies.

Section 206(2) of the FW Act operates in this situation to require that the agreement's rates of pay have effect as if they were equal to the modern award rates of pay. Similarly, in respect of employees not covered by a modern award, if the rates of pay in an enterprise agreement fall below the NMW, s 206(4) operates to require that the agreement's rates of pay have effect as if they were equal to the NMW. Therefore, an increase to modern award minimum wage rates or the NMW as a result of a Review decision will lead to an increase to the rates of any employees covered by such agreements by virtue of the operation of s 206, notwithstanding that they are not modern award- or NMW-reliant. It is not possible to quantify the proportion of all employees falling into this category, but it is likely to be very small.

(3) Some (but not all) State industrial tribunals have adopted a practice of 'flowing on' wage increases determined in the Commission's Review decision to State awards.[36] However, only about 2.5 per cent of all employees are covered by State awards,[37] and employees benefitting from the flow-on of Review wage increases would only constitute a subset of this employee group (noting that, in NSW, the current legislative scheme[38] does not permit a flow-on of this nature).

[57] Even taking the above matters into account, it is clear that Review decisions will operate upon the wage rates of about a quarter of the employee workforce. More broadly, and particularly in the context of the current strong labour market, it is possible that the Review wages outcome may send a 'signal' to the labour market concerning expectations for wage increases which may influence the outcome of current or future enterprise bargaining and individual employment contract negotiations. This is a matter which we will take into account in relation to economic and labour market considerations.

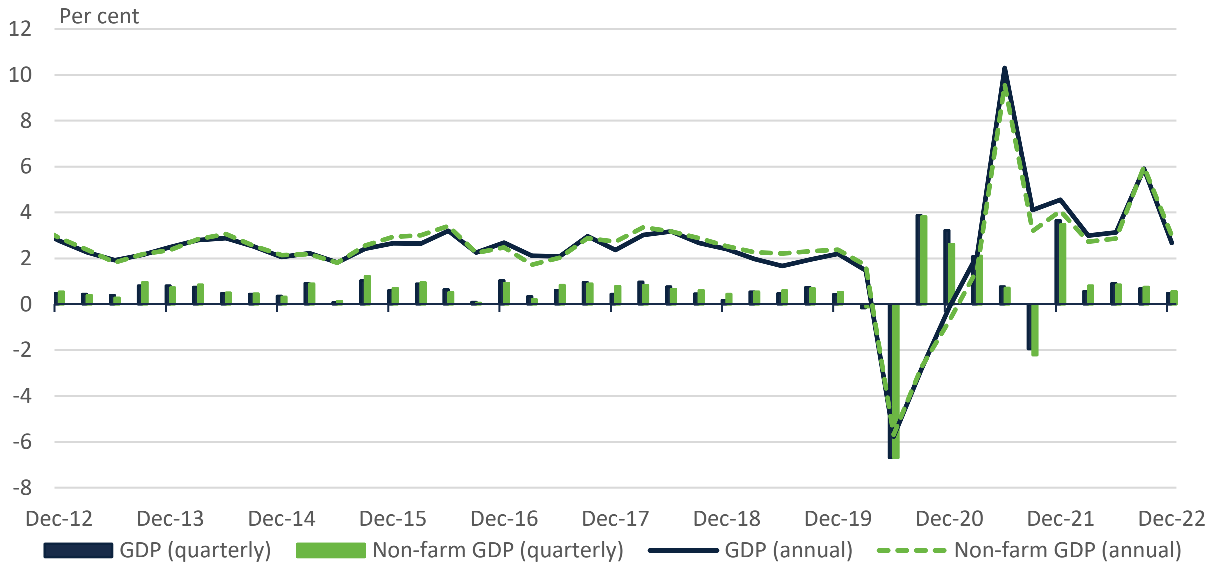
4. Economic, labour market and business considerations

[58] The current combination of economic circumstances, namely low unemployment, falling real wages and high inflation, is very unusual and presents a particular challenge in this year's Review. A further challenge is the expected sharp slowdown in economic growth over the next year. We detail these circumstances as relevant to s 134(1)(d), (f) and (h) and s 284(1)(a) and (b) in this part of our decision.

4.1 Economic growth

[59] The most recently published National Accounts for the December quarter 2022 show that gross domestic product (GDP) grew by 0.5 per cent in the quarter and by 2.7 per cent over the calendar year 2022, with growth slowing somewhat in the second half of the year and falling below forecasts made this time last year[39] (Chart 2). This rate of growth is lower than for 2021 (4.6 per cent), although this was boosted by an unusually high result for the December quarter in that year (3.7 per cent) associated with the end of COVID-19 lockdowns in NSW, Victoria and the ACT.[40] Per capita GDP growth over 2022 was 0.8 per cent, significantly lower than for the previous year (4.0 per cent). The difference in growth rates between GDP and GDP per capita reflects higher population growth as a result of the resumption of immigration in 2022.[41] However, real net national disposable income grew by 4.0 per cent over the year, principally as a result of strong prices for commodity exports.[42] This was in line with the previous year's growth of 3.8 per cent.

Chart 2: Economic growth, annual and quarterly growth rates

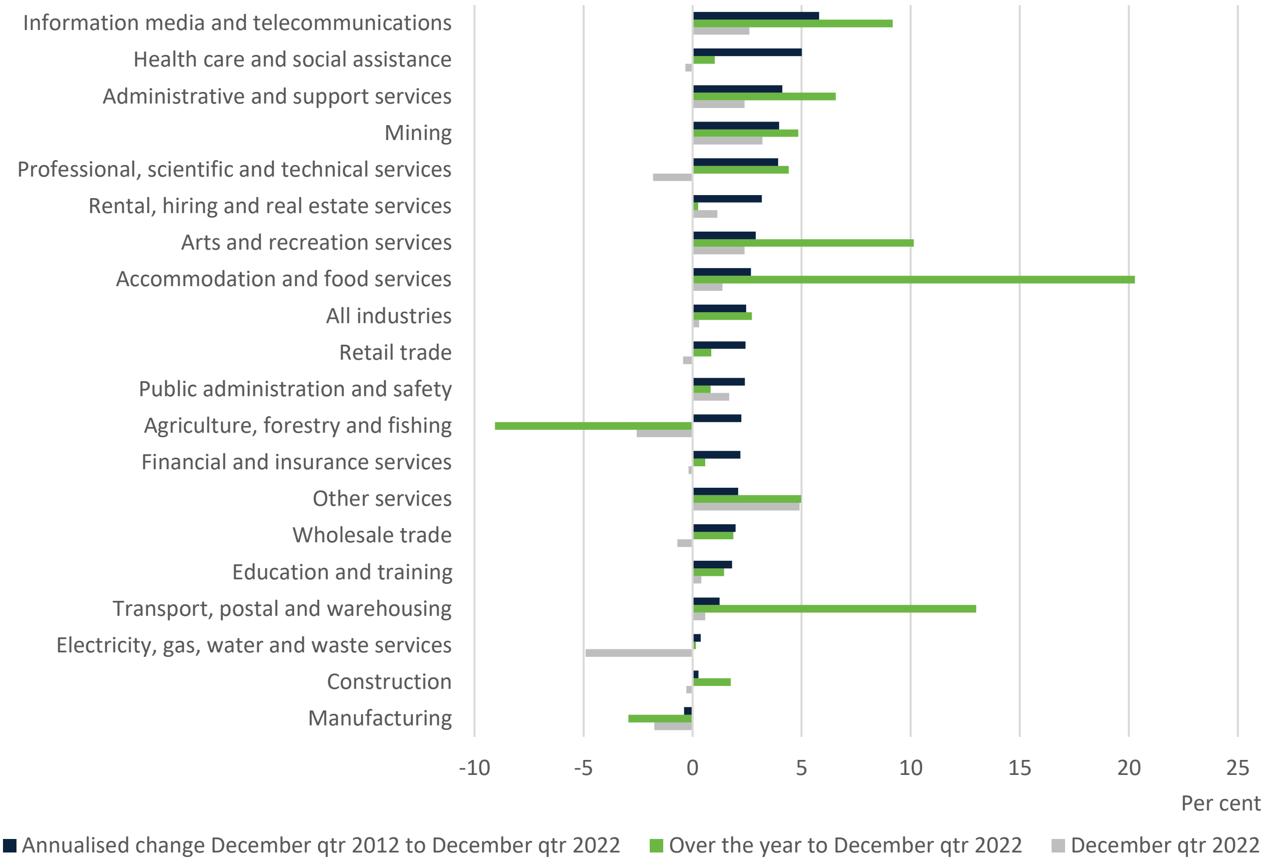


Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 1.1; ABS, *Australian National Accounts: National Income, Expenditure and Product*, December 2022.

[60] The main contributors to economic growth over 2022 were an increase to household consumption (accompanied by a reduction in the household savings ratio) and improvement in net trade resulting from growth in exports and a reduction in imports.[43] However, growth in household spending slowed to 0.3 per cent in the December quarter 2022.[44]

[61] On an industry basis, annual growth — partly reflecting differences in the speed of recovery from COVID-19 — was strongest in Accommodation and food services, Transport, postal and warehousing, Arts and recreation services, Information, media and telecommunications, and Administrative and support services. Gross value added fell in Agriculture, forestry and fishing and Manufacturing (Chart 3). In the former case, this is primarily a result of flooding events occurring in the December quarter 2022. These events also negatively affected a number of sectors, including mining and food manufacturing.[45]

Chart 3: Gross value added by industry, average annual growth over decade, growth over year to the December quarter 2022 and growth in the December quarter 2022



Source: ABS, *Australian National Accounts: National Income, Expenditure and Product*, December 2022.

[62] A further slowing in economic growth, substantially associated with the Reserve Bank of Australia's (RBA's) tightening of monetary policy to combat inflation, is forecast over this year and into 2024. Since last year's Review, the RBA has increased the cash rate target a further nine times, taking it from 0.85 per cent to 3.85 per cent, the first tightening of monetary policy since 2009-10.[46] The RBA forecasts for annual growth in GDP and household consumption are set out in Table 4.

Table 4: RBA forecast of growth rates in GDP and household consumption

	June 2023	Dec 2023	June 2024	Dec 2024	June 2025
Gross domestic product	1.7	1.2	1.4	1.7	2.1
Household consumption	1.8	1.3	1.8	2.1	2.4

Source: 'Statement on Monetary Policy', *Reserve Bank of Australia* (May 2023) Appendix: Forecasts.

[63] The May 2023-24 Budget forecast has growth slowing sharply to 1½ per cent in 2023-24, well below pre-pandemic trend levels. This is attributed to the global economic slowdown and an easing in domestic demand in response to rising interest rates and high inflation.[47] Population growth is forecast to be 1.7 per cent in 2023-24, which implies a fall in GDP per capita. Table 5 shows the Budget forecasts for the domestic economy:

Table 5: 2023–24 Budget, domestic economy forecasts[(a)]

	Outcomes	Forecasts		
	2021–22	**2022–23**	**2023–24**	**2024–25**
Real gross domestic product	3.7	3¼	1½	2¼
Household consumption	3.7	5¾	1½	2½
Dwelling investment	2.9	–2½	–3½	–1½
Total business investment[(b)]	6.1	3	2½	2
Mining investment	8.4	0	2	1½
Non-mining investment	5.4	4	2½	2
Private final demand[(b)]	4.3	4	1	2¼
Public final demand[(b)]	6.5	1¾	1½	2
Change in inventories[(c)]	0.1	0	0	0
Gross national expenditure	5.1	3¼	1	2¼
Exports of goods and services	–0.3	8	6	3½
Imports of goods and services	7.0	9	4	3½
Net exports[(c)]	–1.3	0	½	0
Nominal gross domestic product	11.0	10¼	1¼	2½
Prices and wages				
Consumer price index[(d)]	6.1	6	3¼	2¾
Wage price index[(d)]	2.6	3¾	4	3¼
GDP deflator	7.0	7	–¼	¼
Labour market				
Participation rate[(e)]	66.6	66½	66¼	66¼
Employment[(d)]	3.6	2½	1	1
Unemployment rate[(e)]	3.8	3½	4¼	4½
Balance of payments				
Terms of trade[(f)]	11.9	1½	–13¼	–8¾
Current account balance (per cent of GDP)	2.0	¾	–2½	–3½
Net overseas migration[(g)]	184 000	400 000	315 000	260 000

Note: The exchange rate is assumed to remain around its recent average level — a trade-weighted index of around 60 and a $US exchange rate of around 67 US cents. Interest rates are informed by the Bloomberg survey of market economists. World oil prices (Malaysian Tapis) are assumed to remain around US$87/barrel. Population growth is forecast to be 2.0 per cent in 2022–23, 1.7 per cent in 2023–24 and 1.5 per cent in 2024–25.

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

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

(c) Percentage point contribution to growth in GDP.

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

(e) Seasonally adjusted rate for the June quarter.

(f) Key commodity prices are assumed to decline from current elevated levels over four quarters to the end of the March quarter 2024: the iron ore spot price is assumed to decline from a March quarter 2023 average of US$117 per tonne to US$560 per tonne; the metallurgical coal spot price is assumed to decline from US$342 per tonne to US$140 per tonne; the thermal coal spot price is assumed to decline from US$260 per tonne to US$70 per tonne; and the LNG spot price is assumed to decline from US$16 per tonne to US$610/mmBtu. All bulk prices are in free-on-board (FOB) terms.

(g) Net overseas migration is forecast to continue at 260 000 in 2025–26 and 2026–27.

Source: Australian Government (2023), *Budget 2023–24, Budget Paper No. 1,* May, 58.

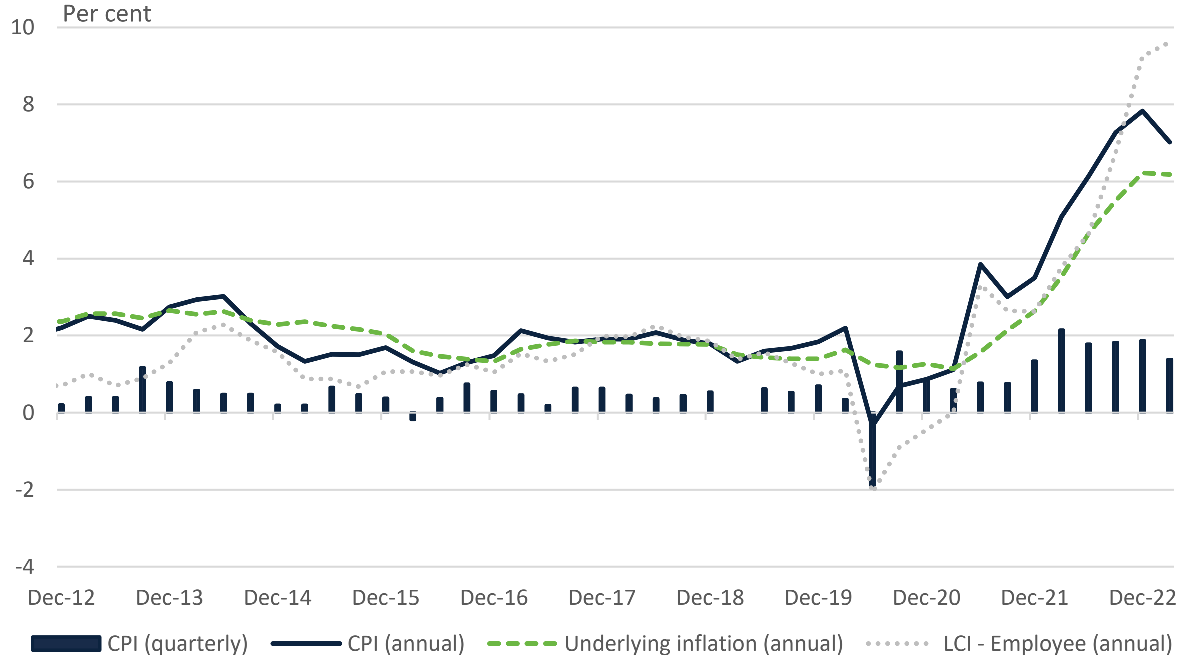
[64] The International Monetary Fund forecasts are for annual GDP growth in Australia of 1.6 per cent in 2023 and 1.7 per cent in 2024.[48]

4.2 Inflation

[65] Inflation has accelerated since the last Review decision, when the Consumer Price Index (CPI) had increased by 5.1 per cent over the year ending March quarter 2022.[49] Inflation appears to have peaked in the December quarter 2022 with an annual increase of 7.8 per cent. This represented a 30-year high.[50] The March quarter 2023 has seen a slight moderation in inflation, with a quarterly CPI increase of 1.4 per cent and an annual increase of 7.0 per cent (Chart 4). Underlying inflation as measured by the trimmed mean also moderated somewhat in the March quarter 2023, rising 1.2 per cent for the quarter and 6.6 per cent annually compared to 1.7 per cent and 6.9 per cent, respectively, for the December quarter 2022.[51]

[66] The Living Cost Index (LCI) for employee households which, unlike the CPI, includes mortgage interest rates in its calculation, is running at a higher rate than the CPI. For the December quarter 2022, the LCI rose 3.2 per cent for the quarter and 9.3 per cent annually. This is the highest rate of annual increase in the LCI since the first annual LCI data was published in 1999.[52] The LCI can be expected to stay at a higher rate than the CPI if the RBA were to continue to increase interest rates.

Chart 4: Measures of inflation—Consumer Price Index, underlying inflation and Living Cost Index for employee households, growth rates



Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 4.1; ABS, *Consumer Price Index, Australia*, March Quarter 2023; ABS, *Selected Living Cost Indexes, Australia*, March 2023.

[67] The main contributors to inflation for the March quarter 2023 were housing, food and non-alcoholic beverages, health and education. We note that, in its March quarter 2023 publication, the Australian Bureau of Statistics (ABS) has attributed the 0.8 per cent quarterly increase in the Meals out and take away foods sub-group to 'elevated operating costs and minimum wage increases'. This sub-group contributed only 0.07 percentage points (or 3.9 per cent) towards the total March quarter 2023 CPI increase.[53] On an annual basis, this sub-group saw price increases of 7.3 per cent compared to the all-groups price increase of 7.0 per cent, making it unlikely that the increases to modern award minimum wages in this sector from the 2021-22 Review has had any material impact on the overall CPI level.

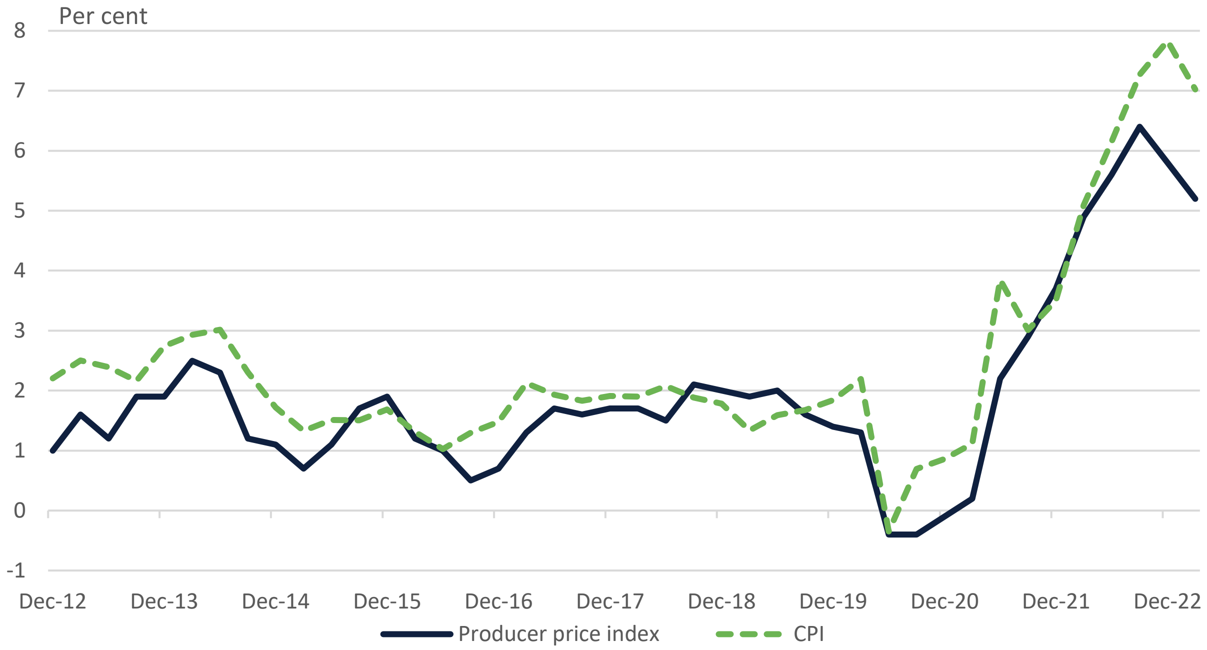
Table 6: Contributions to the CPI index

CPI subgroup/ expenditure class	June quarter 2022	September quarter 2022	December quarter 2022	March quarter 2023
Food and non-alcoholic beverages	16.8	17.2	17.0	17.1
Alcohol and tobacco	8.8	7.9	7.8	7.8
Clothing and footwear	3.3	3.4	3.4	3.3
Housing	23.6	22.3	22.3	22.4
Furnishings, household equipment and services	9.1	8.9	8.9	8.7
Health	6.3	6.3	6.2	6.3
Transport	11.0	11.0	11.0	10.9
Communication	2.3	2.3	2.3	2.2
Recreation and culture	8.5	10.8	11.2	11.1
Education	4.6	4.4	4.4	4.5
Insurance and financial services	5.7	5.6	5.6	5.6
Total	**100.0**	**100.0**	**100.0**	**100.0**

Source: ABS, *Consumer Price Index, Australia*, March Quarter 2023.

[68] The Producer Price Index (PPI) is an industry-focused measure of price rises that measures the change in prices received by domestic producers for their output. Recent changes to the PPI also point to moderating inflation, with growth peaking at an annual rate of 6.4 per cent in the September quarter 2022 and since easing to 5.2 per cent in the March quarter 2023 (Chart 5).

Chart 5: Producer Price Index (final demand) and CPI, annual growth



Note: Producer Price Indexes measure price change from the perspective of the industries that produce goods and services. Other measures, such as the CPI, measure price change from the perspective of consumers. Final demand measures the price change of products (goods and services) consumed with no further processing,

Source: ABS, *Producer Price Indexes, Australia*, March 2023; ABS, *Consumer Price Index, Australia*, March Quarter 2023.

[69] In his Statement concerning the RBA's Monetary Policy Decision issued on 2 May 2023, the RBA Governor characterised the current inflation outlook as follows:[54]

> While the recent data showed a welcome decline in inflation, the central forecast remains that it takes a couple of years before inflation returns to the top of the target range; inflation is expected to be 4½ per cent in 2023 and 3 per cent in mid-2025. Goods price inflation is clearly slowing due to a better balance of supply and demand following the resolution of the pandemic disruptions. But services price inflation is still very high and broadly based and the experience overseas points to upside risks. Unit labour costs are also rising briskly, with productivity growth remaining subdued.

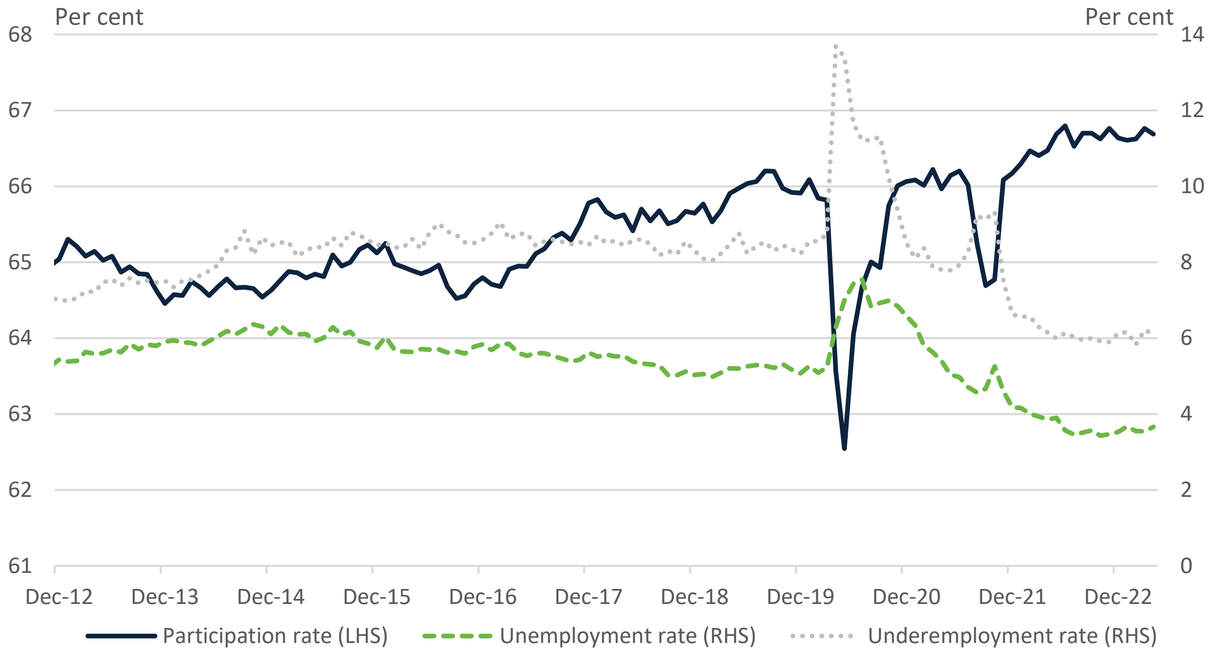
[70] The RBA forecast is for the CPI to increase by 6.3 per cent over the year to the June quarter 2023, 3.6 per cent over the year to the June quarter 2024 and 3.0 per cent over the year to the June quarter 2025.[55] The Budget expects inflation to reduce more quickly, increasing by 6 per cent in 2022-23, 3¼ per cent in 2023-24 and 2¾ per cent in 2024-25.[56] This is a direct result of Budget measures to alleviate cost-of-living pressures.[57]

4.3 The labour market

[71] The labour market remains close to its strongest point in about 50 years[58] but has begun to show signs of weakening. The unemployment rate for April 2023 is 3.7 per cent, compared to 3.9 per cent at the time of the last Review (May 2022). The participation rate (66.7 per cent) and the employment-to-population ratio (64.2 per cent) are at near-historic highs.

Underemployment and underutilisation rates remain historically low at 6.1 per cent and 9.8 per cent respectively (Chart 6).

Chart 6: Participation, unemployment and underemployment rates



Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 6.1; ABS, *Labour Force, Australia*, April 2023.

[72] The number of employed persons increased by 2.9 per cent in the year to April 2023, down from growth of 3.3 per cent for the year ending March 2023. The number of monthly hours worked in all jobs increased by 7.4 per cent in the year to April 2023, reflecting that employment growth has been primarily full-time. For the year to February 2023, growth in employment and hours worked has been strong in the industry sectors containing the highest numbers of modern award-reliant employees (Accommodation and food services, Retail trade, and Health care and social assistance).[59] The level of job vacancies has declined over the three months to February 2023 but remains at a high level, confirming the position described by many parties concerning labour shortages in a number of industries.

[73] It is likely that strength in the labour market has peaked, with slowing economic growth depressing demand for labour and increased immigration increasing supply. The RBA's forecast is for employment growth to slow to 1.1 per cent over the year ending June 2024, with the unemployment rate to increase to 3.6 per cent in the June quarter 2023 and 4.2 per cent for the June quarter 2024. The Budget forecast is similar, at 3.5 per cent and 4.25 per cent, respectively.[60]

4.4 Wages growth

[74] Growth in wages, as measured by the Wage Price Index (WPI), has reached its highest level for a decade. The WPI rose by 0.8 per cent in the March quarter 2023 and 3.7 per cent over the year, the highest quarterly results since the December quarter 2012.[61] This represents a significant pick-up in wages growth since the last Review decision, when the annual increase was 2.4 per cent (March quarter 2022).[62] Wages growth is higher in the private sector (3.8 per cent) than in the public sector (3.0 per cent) as a result of government policies capping or restraining public sector wage rises.[63]

[75] Growth in average weekly ordinary time earnings (AWOTE) for full-time adult employees in the year to November 2022 was 3.4 per cent. The most recent data for wage increases in approved federal enterprise agreements published by the Department of Employment and Workplace Relations was for the December quarter 2022 and showed the average annualised wage increase (AAWI) for agreements containing quantifiable wage increases was 3.0 per cent. The Commission's own fortnightly published data concerning new enterprise agreements lodged with the Commission for approval shows that the AAWI each fortnight has been between 3.1 per cent and 4.4 per cent over the first eight fortnightly periods in 2023.[64] In addition, a small proportion of enterprise agreements lodged for approval have wages indexed to the CPI, which is likely to produce higher wage increases for employees covered by these agreements, at least in the short term.[65]

Table 7: Measures of nominal wages growth, growth rate over the year

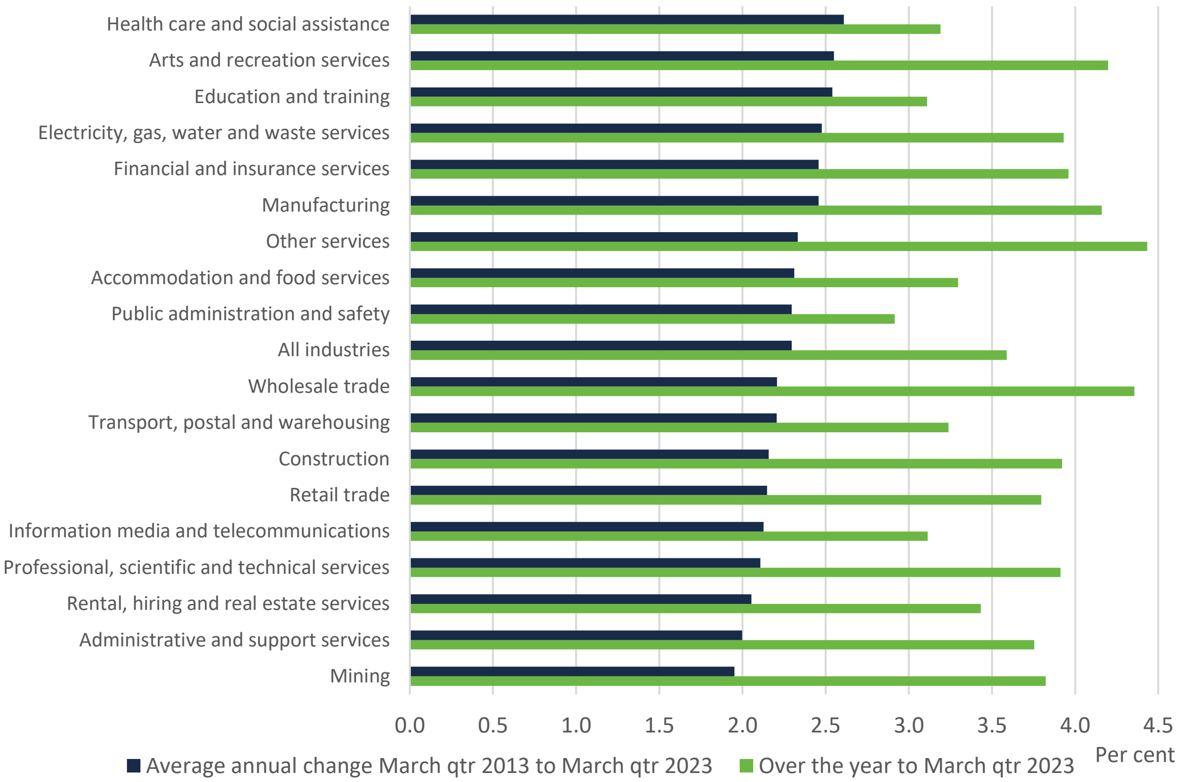
Year ended	WPI	AWOTE^	C14	C10	AAWI	AENA
(Quarter)	(% change)	(% change)	(% change)	(% change)	(% change)	(% change)
Dec-12	3.4	5.0	2.9	2.9	3.2	1.9
Dec-13	2.6	2.9	2.6	2.6	3.4	3.2
Dec-14	2.5	2.8	3.0	3.0	3.4	2.0
Dec-15	2.2	1.6	2.5	2.5	3.0	0.6
Dec-16	1.9	2.2	2.4	2.4	3.1	0.3
Dec-17	2.1	2.4	3.3	3.3	2.5	2.0
Dec-18	2.3	2.3	3.5	3.5	2.9	2.2
Dec-19	2.2	3.3	3.0	3.0	2.7	3.2
Dec-20	1.3	3.2	1.8*	1.8*	2.2	3.7
Dec-21	2.4	2.2	2.5	2.5	2.6	3.0
Dec-22	3.3	3.4	5.2	4.6	3.0	4.4
Mar-23	3.7	n/a	5.2	4.6	n/a	n/a

Note: * Actual increase was 1.75 per cent. ^Data are presented for November of each year.

Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 5.1; ABS, *Average Weekly Earnings, Australia*, November 2022; ABS, *Wage Price Index, Australia*, March 2023; Department of Employment and Workplace Relations, *Trends in Federal Enterprise Bargaining*, December quarter 2022; *Manufacturing and Associated Industries and Occupations Award 2010*, *Manufacturing and Associated Industries and Occupations Award 2020*; ABS, *Australian National Accounts: National Income, Expenditure and Product*, December 2022.

[76] Chart 7 shows increases in the WPI by industry for the year to the March quarter 2023 compared to annualised wage growth over the past decade. This shows that wages growth has accelerated significantly in all industry sectors except Information media and telecommunications, Education and Training and Public administration and safety. In the latter two industries, wages growth remains restrained as a result of federal and State government wage-capping policies.

Chart 7: Wage Price Index by industry, annualised growth over decade and growth over year to March quarter 2023



Note: Data are expressed in original terms.

Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 5.2; ABS, *Wage Price Index, Australia*, March 2023.

[77] The main contribution to increases in the WPI has come from jobs covered by individual arrangements. Table 8 shows the contributions of individual arrangements, enterprise agreements and awards to increases to the WPI for the four quarters to the March quarter 2023. This data is presented in original terms and does not add up to the total increase in seasonally adjusted terms.

Table 8: Contributions to WPI, by method of setting pay

	Enterprise agreement	Individual arrangement	Award	Total increase (original)	Total increase (seasonally adjusted)
	(%)	(%)	(%)	(%)	(%)
June 2022	0.21	0.38	0.00	0.59	0.86
September 2022	0.39	0.80	0.21	1.40	1.07
December 2022	0.29	0.46	0.07	0.82	0.85
March 2023	0.36	0.40	0.01	0.77	0.84
Sum over year	1.25	2.04	0.29	3.58	

Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 5.3; ABS, *Wage Price Index, Australia*, March 2023.

[78] The contributions to the WPI made by award increases in the September and December quarters 2022 substantially reflect the 2021-22 Review decision, which awarded an increase to the NMW of 5.2 per cent and increases to modern award minimum wages rates in the range of 4.6 per cent to 5.2 per cent, with the increases operative from 1 July 2022 or, in the case of modern awards in the aviation, hospitality and tourism sectors, from 1 October 2022. Over the year to the March quarter 2023, Table 8 indicates that award wage increases (which would predominantly have been made up of wage increases awarded in the 2021-22 Review) directly contributed only 8.1 per cent of the total increase (original) to the WPI.

[79] On an industry-by-industry basis, the quarterly effect of the 2021-22 Review decision was more marked. In the December quarter 2022, the highest WPI increase was for Accommodation and food services, at 1.7 per cent.[66] Accommodation and food services has the highest proportion of modern award-reliant employees of any industry (see Table 2 above), and the 2021-22 Review minimum wage increases for three of the four modern awards mapped to this industry (the *Hospitality Industry (General) Award 2020*, *Restaurant Industry Award 2020* and the *Registered and Licensed Clubs Award 2020*) took effect in the December quarter 2022. However, over the course of the whole year, it is difficult to identify that the 2021-22 Review decision had any discernible differential effect upon the WPI for particular industries. Chart 7 above shows that the annual WPI increases for those industries with the highest proportion of modern award-reliant employees (see Table 2 above) did not significantly depart from the private sector WPI of 3.8 per cent. For example, the annual WPI change for Accommodation and food services was 3.3 per cent and for Retail trade was 3.8 per cent.

[80] The RBA forecasts a pick-up in growth in the WPI in this year and next year to around 4 per cent (Table 9). The Budget similarly forecasts faster WPI growth. Despite the recent pick-up in growth, wages will have declined in real terms from the September quarter 2020,[67] and are forecast to decline further through to the end of 2023, before starting to recover in the first half of 2024.

Table 9: Forecasts of growth rates in WPI

	June 2023	Dec 2023	June 2024	Dec 2024	June 2025
RBA	3.8	4.0	3.9	3.8	3.7
Budget	3.75		4.0		3.25

Source: 'Statement on Monetary Policy', *Reserve Bank of Australia* (May 2023) Appendix: Forecasts; Australian Government (2023), *Budget 2023–24, Budget Paper No. 1,* May, 58.

4.5 Business conditions and outlook

[81] Total annual growth in business profits, to the December quarter 2022, has improved to 16.0 per cent compared to 14.2 per cent for the previous year (Table 10). This is above the five- and 10-year averages to the December quarter 2022. However, these outcomes were substantially the result of an increase in profits in the mining sector of 33.2 per cent, which is the result of high export mineral prices.[68] In the non-mining sector, growth was 2.2 per cent, which was higher than for the previous year but below the five- and 10-year averages.

Table 10: Company gross operating profits, mining and non-mining industries, growth rates

	Mining (%)	Non-mining (%)	Total (%)
Dec-12	–27.1	3.5	–7.4
Dec-13	37.0	1.3	11.2
Dec-14	–20.5	1.3	–6.2
Dec-15	–16.1	2.4	–3.0
Dec-16	78.2	10.7	27.7
Dec-17	2.4	6.3	4.9
Dec-18	28.2	2.9	11.6
Dec-19	8.0	0.9	3.7
Dec-20	3.6	23.5	15.3
Dec-21	37.3	0.7	14.2
Dec-22	33.2	2.2	16.0
5 years to Dec-22*	21.3	5.7	12.1
10 years to Dec-22*	15.9	5.0	9.1

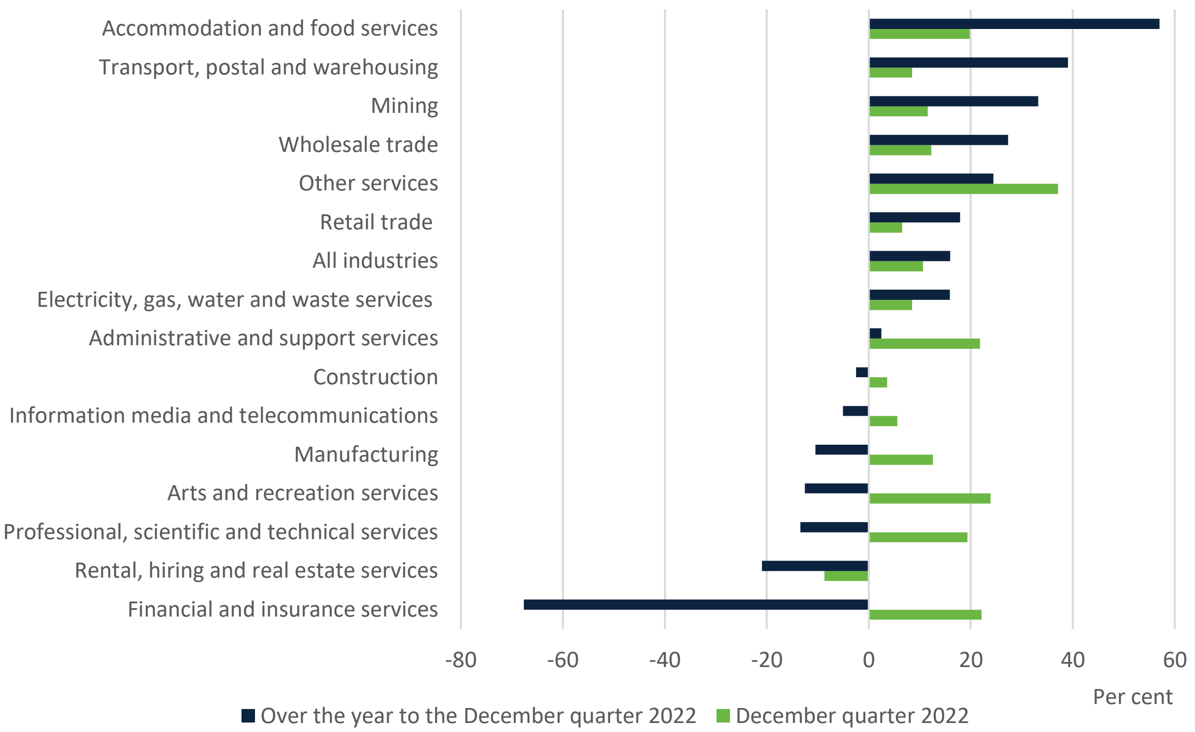
Note: *Annualised growth rates.

Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 3.3; ABS, *Business Indicators, Australia,* December 2022.

[82] Growth in gross operating profits has generally been healthy in private sector industries which have the highest proportions of modern award-reliant employees. Of the 11 highest industries with 10 per cent or more modern award-reliant employees (see Table 2 above), all but one increased profits in the December quarter 2022 and six have increased profits over 2022. This includes substantial increases in profits in Accommodation and food services and

Retail trade divisions, which alone correspond with private sector modern awards applying to approximately one-third of all modern award-reliant employees[69] (see Chart 1 above).

Chart 8: Growth in gross operating profits, current prices, by industry



Note: Excludes Agriculture, forestry and fishing. Data are only for the private sector and are not available for Public administration and safety, Education and training and Health care and social assistance.

Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 3.2; ABS, *Business Indicators, Australia*, December 2022.

[83] The available data to June 2022 shows that business bankruptcy rates continue to decline,[70] the business entry rate (both for all businesses and employing businesses) remains well in excess of the exit rate,[71] and business survival rates (both for all businesses and employing businesses) measured over a rolling 4-year period are at, or very close to, the highest point in the last decade (notwithstanding the COVID-19 pandemic).[72] Insolvency statistics published by the Australian Securities and Investment Commission show a recent increase in insolvency numbers, but only to pre-pandemic levels.[73]

[84] Business surveys indicate that while business conditions and leading indicators remain relatively firm, business confidence has fallen and costs pressures remain difficult. The NAB Quarterly Business Survey in March 2023 showed that:[74]

- business conditions continued to show ongoing resilience, edging lower in March but remaining well above the long-term average;
- trading conditions remain very elevated, indicating that businesses continue to experience strong demand, and conditions are generally strong across States and sectors;

- business confidence appears to have stabilised, following earlier falls, but remains below long run averages with deeper negatives in retail and wholesale; and
- labour cost growth for the quarter was 1.4 per cent (down from 1.6 per cent in the December quarter 2022) and purchase cost growth was 1.5 per cent (down from 1.8 per cent in the December quarter 2022).

[85] The ACCI-Westpac Survey of Industrial Trends (conducted from 13 February 2023 to 6 March 2023), which focuses on manufacturing, indicates a somewhat more pessimistic outlook.[75] It reports that in the March quarter 2023, growth in new orders marginally recovered, having stalled in the previous quarter, with only a small positive net balance of survey respondents anticipating a rise in the next quarter.[76] Manufacturers' investment expectations have moderated, consistent with an expected downturn and survey respondents report continuing costs and competitiveness pressures leading to a general business sentiment which the survey describes as 'deeply pessimistic'.[77] Labour shortages remain 'intense', albeit eased somewhat over the past six months as the economy has slowed and immigration numbers lifted.[78]

4.6 Productivity

[86] The principal measure of productivity is GDP per hour worked. On this measure, productivity fell by 3.5 per cent over the year to the December quarter 2022. This was a result of the number of hours worked during the course of the year increasing significantly more than GDP. It reversed the experience of the previous two years, where GDP figures were ahead of hours worked as a result of lockdowns and other restrictions during the COVID-19 pandemic.

Table 11: Productivity growth and its components, growth rate over the year

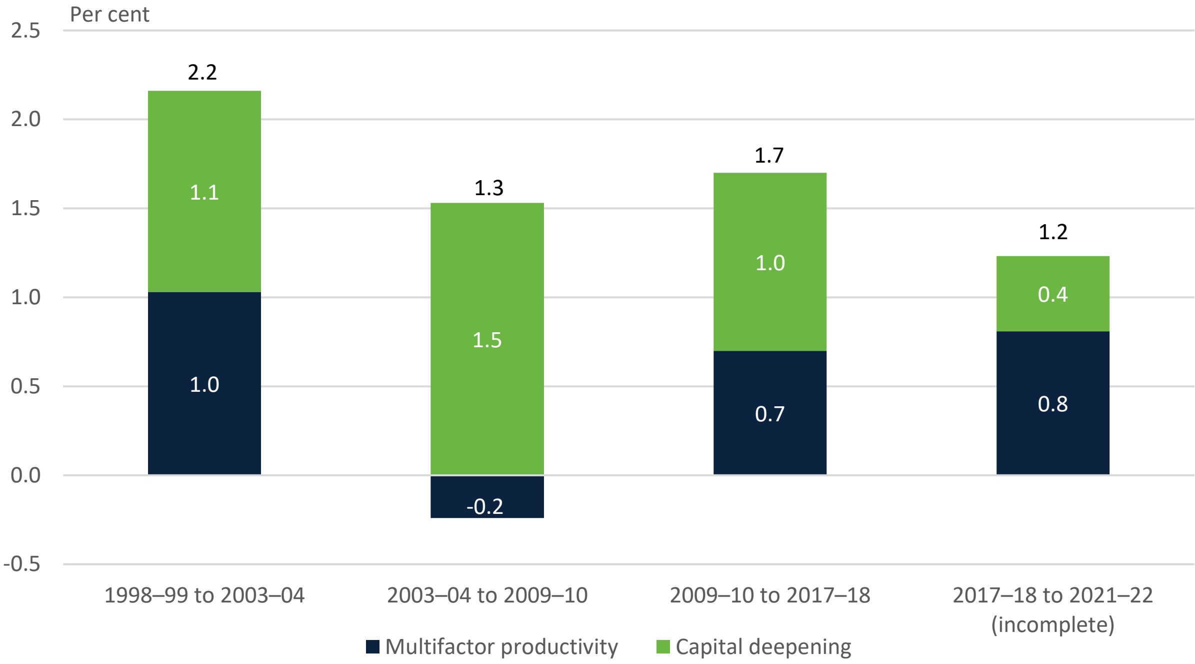
	National Accounts						Labour Force
	Total			Market Sector			
Quarter	**GDP**	**Hours worked**	**GDP/ hour worked**	**GVA**	**Hours worked**	**GVA/ hour worked**	**Hours worked (quarterly)**
	(% change)	**(% change)**	**(% change)**	**(% change)**	**(% change)**	**(% change)**	**(% change)**
Dec-12	2.8	0.8	2.1	3.6	–0.1	3.7	0.5
Dec-13	2.5	0.4	2.0	2.4	0.3	2.0	0.5
Dec-14	2.1	0.3	1.7	2.2	–0.2	2.5	0.2
Dec-15	2.7	2.5	0.2	2.6	2.0	0.6	2.7
Dec-16	2.7	0.8	1.8	2.1	–0.1	2.1	0.9
Dec-17	2.4	3.2	–0.8	2.5	3.8	–1.2	3.2
Dec-18	2.4	1.7	0.7	2.0	0.6	1.4	1.8
Dec-19	2.2	1.4	0.7	1.9	1.5	0.4	1.5
Dec-20	–0.1	–2.3	2.4	–1.2	–4.1	3.1	–2.0
Dec-21	4.6	2.4	2.0	5.3	2.7	2.5	2.5
Dec-22	2.7	6.5	–3.5	3.2	8.9	–5.2	6.7

Note: The percentage changes are calculated in relation to the corresponding quarter of the previous year.

Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 2.2; ABS, *Australian National Accounts: National Income, Expenditure and Product*, December 2022; ABS, *Labour Force, Australia*, April 2023.

[87] In assessing productivity, the Commission in past Reviews has usually placed greater weight on productivity changes over multi-year cycles, since this tends to even-out short-term fluctuations in the number of hours worked. Chart 9 shows that during the current (albeit incomplete) cycle, labour productivity has grown at 1.2 per cent annually. This continues the long-term trend of annual productivity growth averaging somewhat above 1 per cent a year, lower than the growth achieved in the 1990s.[79]

Chart 9: Productivity cycles, average annual growth in the market sector

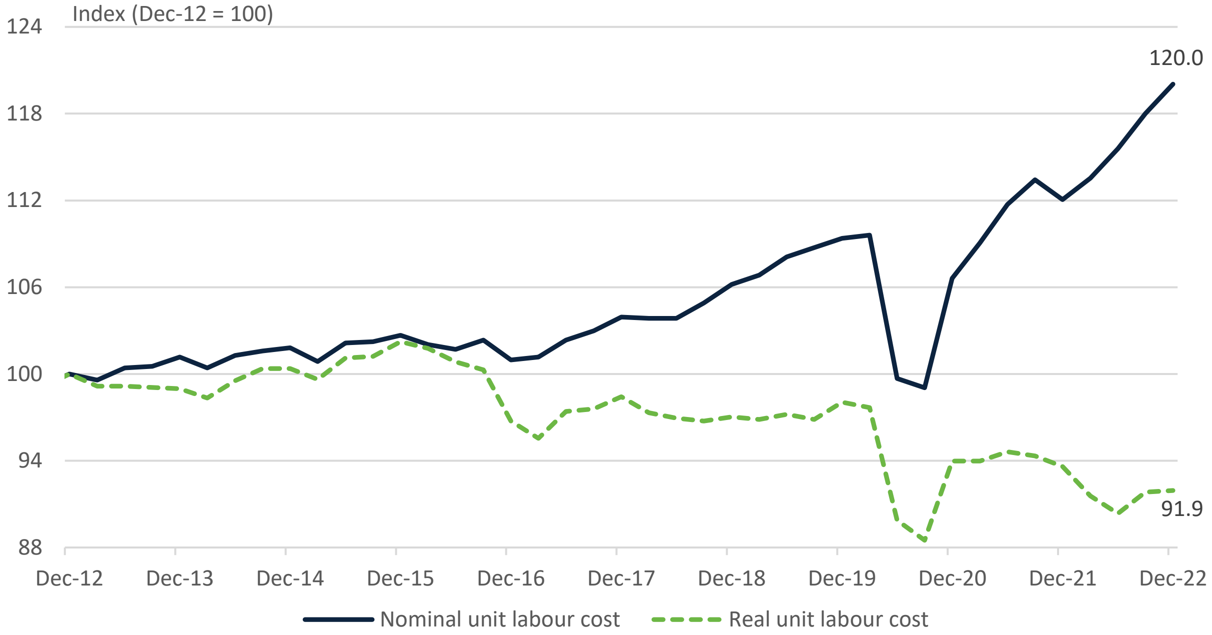


Note: Multifactor productivity is measured as output per combined unit of labour and capital. Capital deepening is the component of labour productivity growth which is due to the increase in the amount of capital that each unit of labour has to work with. Labour productivity is represented by the numbers above the bars and is the sum of multifactor productivity and capital deepening. Due to rounding, the sum of multifactor productivity and capital deepening may not equal labour productivity. The current productivity cycle from 2017–18 is incomplete.

Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 2.2; ABS, *Australian System of National Accounts*, 2021–22 financial year; ABS (2023), *Estimates of Industry Multifactor Productivity*, 2021–22 financial year.

[88] The decline in labour productivity in 2022 along with the pick-up in nominal wages growth has resulted in a surge in nominal unit labour costs, up by 7.1 per cent. However, the decline in real wages more than offset the decline in productivity to result in a fall of 1.8 per cent in real unit labour costs.[80] Real unit labour costs are well below pre-pandemic levels (Chart 10).

Chart 10: Unit labour costs, index



Source: ABS, *Australian National Accounts: National Income, Expenditure and Product*, December 2022; *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 2.3.

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

[89] For the purpose of this consideration, we will continue the approach taken in previous Review decisions whereby the 'low paid' are defined as persons whose ordinary-time earnings are below two-thirds of median (adult) ordinary-time earnings of all full-time employees.[81] There are two different measures of median earnings by which this threshold may be calculated:

(1) Based on ABS *Characteristics of Employment* (COE) data published in August 2022, the low paid threshold is $1016.67.[82]

(2) Based on ABS *Employee Earnings and Hours* (EEH) data published in May 2021, the threshold is $1062.00.[83]

[90] The COE threshold would nominally encompass the minimum weekly rates for all classifications at C8 or below in the *Manufacturing and Associated Industries and Occupations Award 2020* (Manufacturing Award), while the EEH threshold would nominally encompass minimum weekly rates for all classifications below C4. However, because median weekly earnings include penalty rates paid on ordinary hours, it is not necessarily the case that a person who is classified below C8 in the former case or C4 in the latter will fall below the threshold. This qualification is important in respect of the modern award-reliant workforce because, in a number of the industries in which modern award-reliant employees are concentrated (in particular, Accommodation and food services and Retail trade), it is highly likely that employees would earn penalty rate payments for ordinary time worked in unsociable hours from Monday to Friday and on weekends and public holidays.

[91] As we have earlier discussed, the proportion of low-paid employees among modern award-reliant employees is higher than among other employees. On the basis that hourly earnings of casual employees are deflated for the casual loading (which is paid in lieu of a range of NES and other entitlements which employees, including low-paid employees, would otherwise receive), 36.1 per cent of modern award-reliant employees are low paid, compared to 6.8 per cent of employees not reliant on modern awards (see Table 3). In four of the five most common modern awards, the proportion of low-paid employees is significantly higher:[84]

Restaurant Industry Award 2020:	62.2 per cent
Hospitality Industry (General) Award 2020:	52.2 per cent
Fast Food Industry Award 2010:	50.0 per cent
General Retail Industry Award 2020:	47.9 per cent

[92] Of all low-paid employees, 56.2 per cent are modern award-reliant.[85]

[93] In previous Review decisions, a benchmark of 60 per cent of median equivalised household disposable income has been used to measure the poverty line. Subject to the qualifications stated below, we will continue to use this benchmark.

[94] Modelling of disposable incomes for 14 selected household types earning the NMW or C14 wage rate, the C10 wage rate and the C4 wage rate compared to the poverty benchmark shows that a number of household types fall below that benchmark (Table 12).

Table 12: Ratio of disposable income of selected households earning various wage rates to a 60 per cent median income poverty line, December 2022

	60% median income PL	**Disposable income as a ratio of 60% median income PL**			
Household type	**($ pw)**	**C14**	**C10**	**C4**	**AWOTE**
Single adult	638.35	1.12	1.26	1.45	2.11
Single parent working FT, 1 child	829.86	1.21	1.30	1.44	1.79
Single parent working PT, 1 child	829.86	0.82	0.88	0.97	1.28
Single parent working FT, 2 children	1021.36	1.10	1.18	1.28	1.55
Single parent working PT, 2 children	1021.36	0.77	0.83	0.90	1.16
Single-earner couple (with NSA/JSP)	957.53	1.01	1.02	1.03	1.43
Single-earner couple	957.53	0.76	0.84	0.97	1.43
Single-earner couple, 1 child (with NSA/JSP)	1149.03	1.01	1.02	1.04	1.29
Single-earner couple, 1 child	1149.03	0.87	0.94	1.04	1.29
Single-earner couple, 2 children (with NSA/JSP)	1340.54	0.96	0.97	0.98	1.18
Single-earner couple, 2 children	1340.54	0.83	0.90	0.98	1.18
Dual-earner couple	957.53	1.17	1.32	1.52	2.24
Dual-earner couple, 1 child	1149.03	1.15	1.23	1.33	1.87
Dual-earner couple, 2 children	1340.54	1.07	1.14	1.21	1.60

Note: Poverty lines are based on estimates of median equivalised household disposable income in 2019–20 for, adjusted for movements in household disposable income per head as calculated by the Melbourne Institute of Applied Economic and Social Research and for household composition using the modified OECD equivalence scale. AWOTE data are expressed in original terms. For assumptions see Table 8.6 in Statistical Report.

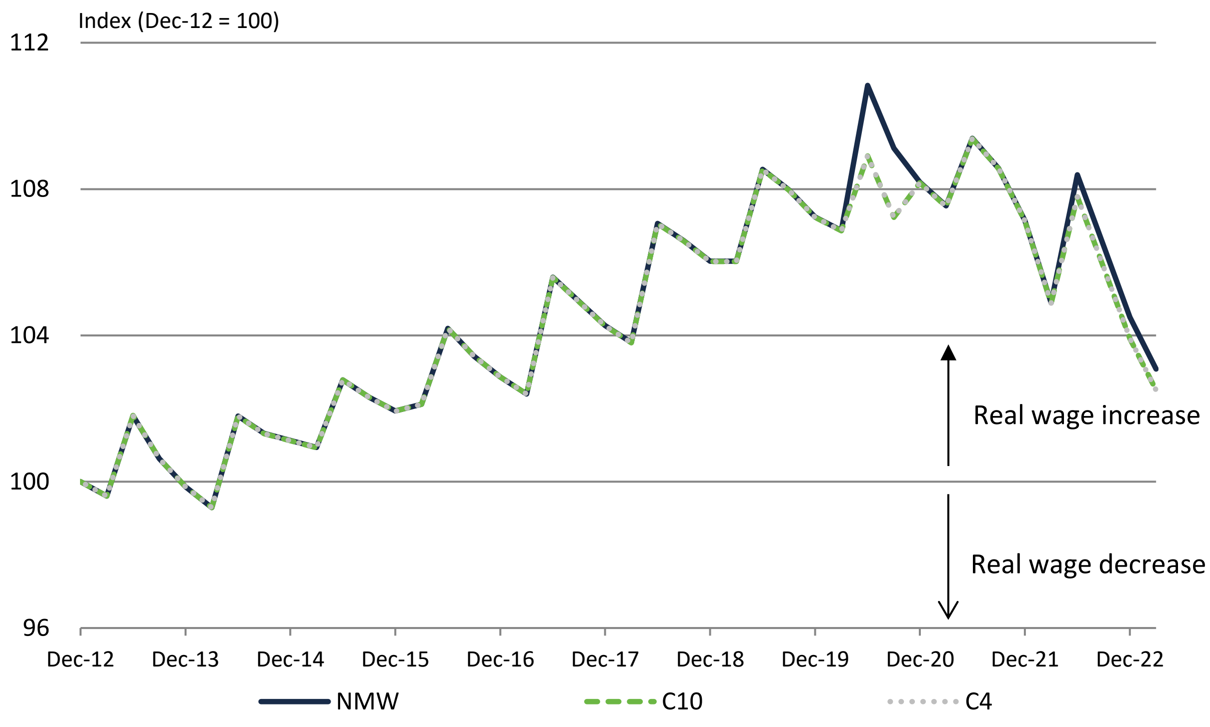
Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 8.6; ABS, *Average Weekly Earnings, Australia*, November 2022; ABS, *Household Income and Wealth, Australia*, 2019–20 financial year; Fair Work Commission modelling; *Manufacturing and Associated Industries and Occupations Award 2020*; Melbourne Institute of Applied Economic and Social Research, *Poverty Lines: Australia*, December quarter 2022; *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 8.6.

[95] At the C14 rate, six household types fall below the poverty benchmark. The same six household types fall below the poverty benchmark at the C10 rate, and five of them fall below at the C4 rate.

[96] As was recognised in the 2021-22 Review decision, there are limitations upon the extent to which this type of modelling can be used to guide minimum wage-setting for the low paid. The poverty line benchmark is itself essentially a measure of inequality at the lower end of the income distribution rather than necessarily a measurement of deprivation or financial stress.[86] Further, some of the outcomes identified in Table 12 above are a result of the operation of the tax-transfer system and cannot realistically be remedied by adjustments to minimum wages alone.[87]

[97] As more direct indicators of deprivation and financial stress amongst low paid NMW or modern award-reliant employees and their households, we take into account two matters. *First*, it is clear that there has been a reduction in such employees' real wages over the last two years, which has resulted in a reversal of steady progress made in earlier Review decisions to improve the real wages of low-paid workers (Chart 11).

Chart 11: Real value of the NMW and selected award rates of pay, index



Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 9.1; ABS, *Consumer Price Index, Australia*, December Quarter 2022; Fair Work Australia/Fair Work Commission decisions.

[98] Calculated on the NMW, the reduction in real wages was 1 per cent over the year to the December quarter 2021 and a further 2.5 per cent over the year to the December quarter 2022.[88] We expect there will have been a further reduction in the real NMW in the calendar year 2023 to date. This position is exacerbated by the fact that CPI inflation in non-discretionary goods (such as food, automotive fuel, housing and health costs) has been higher than that for discretionary goods (Table 13).

Table 13: Non-discretionary and discretionary inflation, growth rates over the year

Quarter	**Non-discretionary (% change)**	**Discretionary (% change)**	**Discretionary excluding tobacco (% change)**
Dec-12	3.4	0.6	0.3
Dec-13	3.1	1.9	1.4
Dec-14	1.7	1.7	0.7
Dec-15	1.1	2.6	1.7
Dec-16	1.8	1.0	–0.1
Dec-17	2.4	1.2	0.1
Dec-18	1.5	2.2	1.2
Dec-19	1.5	2.5	1.5
Dec-20	–0.6	2.9	1.2
Dec-21	4.5	1.9	2.0
Dec-22	8.4	7.1	7.2
Mar-23	7.2	6.8	7.0

Note: The ABS define non-discretionary expenditure as goods or services that are purchased because they meet a basic need (food, shelter, healthcare), are required to maintain current living standards, or are a legal obligation. Discretionary expenditure includes goods or services that could be considered as 'optional' purchases.

Source: ABS, *Consumer Price Index, Australia*, March Quarter 2023; *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 4.3.

[99] The picture is worse for mortgage-holders having regard to the increase in the LCI earlier discussed. It can readily be inferred from the above data that households dependent on the earnings of low-paid, modern award-reliant employees are experiencing financial stress as a result of the high rate of inflation.

[100] *Second*, the updated budget standards research report published in March 2023 by the Commission[89] demonstrates, by reference to 14 household types, that households dependent upon low-paid, modern award-reliant employees will have difficulty in meeting their basic financial needs. The core budgetary concept upon which the report proceeds is the Minimum Income for Healthy Living (MIHL) standard, which is designed to achieve levels of consumption (of food, clothing, medications, transportation, personal care, and the like) and participation (in lifestyle, exercise and social activities) that are consistent with healthy living. The budgets constructed in the report reflect the minimum amounts necessary to achieve the MIHL standard. In addition, the report has constructed a supplementary budget covering some common discretionary expenditures not included in the 'basic needs' budget concept.[90]

[101] Table 14 below, which reproduces Table 14 in the report, analyses disposable incomes when receiving the NMW on a full-time basis relative to the budgets formulated for each of the 14 household types. It demonstrates that, even after excluding discretionary spending, 12 out of the 14 household types earn less than the budgeted amounts necessary to meet the MIHL standard. If discretionary spending is included, none of the household types meets the formulated budget amount.

Table 14: Disposable income when receiving minimum wage, relative to budget

	Disposable income when receiving minimum wage (July 2022)	Budget			MW disposable income as % of budget	
		Excluding housing & discretionary	Housing	Discretionary	Including Housing	Including housing & discretionary
Single adult	$717	$377	$426	$89	89	80
Single parent, FT, 1 child	$1000	$579	$461	$96	96	88
Single parent, PT, 1 child	$673	$559	$461	$87	66	61
Single parent, FT, 2 child	$1115	$756	$495	$109	89	82
Single parent, PT, 2 child	$788	$719	$495	$100	65	60
Single-earner couple (JSP for second adult)	$942	$608	$461	$165	88	76
Single-earner couple	$728	$596	$461	$156	69	60
Single-earner couple, 1 child (JSP for second adult)	$1139	$814	$461	$167	89	79
Single-earner couple, 1 child	$1000	$762	$461	$158	82	72
Single-earner couple, 2 children (JSP for second adult)	$1260	$998	$495	$178	84	75
Single-earner couple, 2 children	$1115	$888	$495	$169	81	72
Dual-earner couple	$1124	$608	$461	$165	105	91
Dual-earner couple, 1 child	$1312	$814	$461	$167	103	91
Dual-earner couple, 2 children	$1427	$998	$495	$178	96	85

Note: Minimum wage disposable income calculation following the assumptions of in the Statistical report, updated to 1 July 2022. Wage for full-time (FT) workers is $812.60 per week; part-time (PT) is 50 per cent of this. Dual-earner couples have one partner working full time and one partner working part time. Taxes and benefits as at 1 July 2022. Single parents assumed not looking for work and hence not eligible for JobSeeker. Second earners are looking for work and hence eligible for JobSeeker where indicated. Full rate Rent Assistance assumed for those eligible. Budgets for single earner couples where the second person is eligible for JobSeeker (i.e. looking for work) are set at the level of dual-earner couples.

Source: Megan Bedford, Bruce Bradbury and Yuvisthi Naidoo, *Budget Standards for Low-Paid Families* (Fair Work Commission Research Report, March 2023) at 49.

[102] The analysis above does not include measures announced in the 2023-24 Budget intended to deliver targeted cost of living relief to support Australians facing pressure from high inflation and interest rates, and to lower inflation. The measures are primarily directed at those in receipt of welfare payments, some of whom will be low-paid workers.

[103] It may be acknowledged that the above analysis is likely to be representative of only a very small proportion of the adult NMW- and modern award-reliant employee workforce directly affected by this Review. As earlier discussed, NMW-reliant employees only constitute about 0.7 per cent of the Australian employee workforce. The C14 rate, which is the same amount as the NMW, applies to a further 0.8 per cent of the workforce (or 3.3 per cent of the award-reliant workforce).[91] However, in the large majority of modern awards in which the rate appears, the rate applies merely for a transitional period for new employees, with employees then proceeding to a higher rate of pay. The small number of modern awards which fall in the exceptional category are currently the subject of review (C14 review), which we anticipate will result in them likewise only applying the C14 rate for a transitional period.[92]

[104] The above analysis also takes no account of casual employees in receipt of the 25 per cent loading (noting that casual employees constitute almost half of the modern award-reliant cohort). To the extent that the analysis may be applied to modern award-reliant employees on the C14 rate, it does not account for additional earnings by way of award penalty rates payable for ordinary-time work (such as evening or weekend penalty rates) or award overtime penalty rates, which are common incidents of modern award-reliant employment.

[105] Nonetheless, at least for those employees of the NMW who do conform to any of the household types, the NMW cannot be said to constitute a 'living wage' which meets the basic MIHL standard. During the period of operation of the FW Act, it does not appear that the NMW has ever been set with this purpose in mind. The first Review decision made under the FW Act was the 2009-10 Review decision.[93] Although the Minimum Wage Panel in that decision considered various measures of poverty and then-available budget standards research,[94] it did not set the NMW by reference to any such material. Instead, it first determined that modern award minimum weekly wages should be increased by $26, then noted that the NMW, as transitionally established under Schedule 9 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Transitional Act), was currently set at the minimum wage for the C14 classification in the Manufacturing Award, and concluded: 'That position should continue.'[95] The effect of this approach was simply to continue the way in which the previous federal minimum wage (FMW) had been set under the provisions of the *Workplace Relations Act 1996*.

[106] The FMW had its origin in the *Safety Net Review – Wages – April 1997* decision of a Full Bench of the Australian Industrial Relations Commission (AIRC).[96] The Full Bench majority determined to establish, for the first time, a FMW set, for full-time adult employees, at $359.40 per week (with proportionate amounts for junior, part-time and casual employees). This was to be implemented by way of an award clause which provided that no employee should be paid less than the FMW. As to the quantum, the Full Bench majority said:[97]

> The federal minimum wage, adjusted from time to time, will be an important part of the award safety net of fair minimum wages. Its maintenance will ensure a secure minimum level in award classification structures.
>
> The ACTU sought the introduction of a minimum award rate of $380 per 38 hour week. There were various submissions supporting a minimum rate, but at a lower level than proposed by the ACTU. For example, ACCI submitted that the Commission should consider reviving the minimum wage (which is about $260 per week), granting a modest increase to it and reviewing it in the next review of principles. The BCA, in the context of a single minimum wage, submitted that there were strong arguments for making such a wage about $9.19 per hour, which is the C14 rate in the Metal Industry Award (currently $349.40 per week). Both ACOSS and The Brotherhood of St. Laurence supported the concept of a minimum wage.
>
> For reasons given in Chapter 7.6, <u>we have decided not to link the level of the federal minimum wage with any defined benchmark of needs</u>. We think that the most appropriate course to follow now is to equate the federal minimum wage with the minimum classification rate in most federal

> awards; that is, the rate of the C14 classification in the Metal Industry Award. This approach (which is consistent with the proposal of the BCA), in our view, lends industrial realism to the minimum wage we have set because it is linked to the classification structure established by the Commission as a result of the August 1989 decision. The Commission, in deciding to establish minimum classification rates in the metal and building industries, said:
>
>> 'Subject to what we say later in this decision, we have decided that the minimum classification rate to be established over time for a metal industry tradesperson and a building industry tradesperson should be $356.30 per week with a $50.70 per week supplementary payment. The minimum classification rate of $356.30 per week would reflect the final effect of the structural efficiency adjustment determined by this decision.' [Print H9100 at p.12]
>
> As a result of this decision, minimum awards were varied, over a period of time, to reflect the relativities so decided, leading to the C14 rate in the Metal Industry Award becoming the minimum classification rate in most federal awards.
>
> (emphasis added)

[107] In short, the FMW was not established by reference to the needs of the low paid. It was simply aligned with the lowest classification rate established for what was then the *Metal Industry Award 1984 – Part I* (Metal Industry Award). The C14 classification which then appeared in the Metal Industry Award, and remains in the Manufacturing Award today, has only ever applied to an employee undertaking '[u]p to 38 hours induction training' and was never intended to apply on an ongoing basis to a person's employment. Consistent with the approach taken in the *Safety Net Review – Wages – April 1997* decision, the quantum of the FMW remained aligned with the C14 classification rate while the *Workplace Relations Act 1996* (Cth) remained in effect and, by virtue of the 2009-10 Review decision, it was carried through when the FW Act came into operation. This approach has remained unchanged in every Review decision since.

[108] We do not consider that the position whereby the NMW is simply set by reference to the C14 rate should continue. This is particularly the case when almost all modern awards which contain a classification with a C14 rate prescribe a limit on the period employees can be classified and paid at that level, after which employees move automatically to a higher classification and pay rate. Further, an employee classified at the C14 rate under a modern award may be entitled to a range of additional earnings-enhancing benefits such as weekend penalty rates, overtime penalty rates, shift loadings and allowances to which an employee on the NMW will not be entitled. A comprehensive review of the NMW should be undertaken by reference to the budget standards research and other relevant material to arrive at a NMW amount which is set having proper regard to the needs of the low paid and the other considerations in s 284. That is beyond the scope of the current Review, but we discuss later the interim measure we intend to take in this Review having regard to all the mandatory considerations in the minimum wages objective.

[109] The application of the budget standards model to modern award classifications above C14 may also raise questions about whether modern award minimum wage rates are meeting the needs of the low paid. For example, Table 15 applies the model to the C10 rate.

Table 15: Disposable income when receiving C10, relative to budget

	Disposable income when receiving C10 (July 2022)	Budget			C10 disposable income as % of budget	
		Excluding housing & discretionary	Housing	Discretionary	Including Housing	Including housing & discretionary
Single adult	$805	$377	$426	$89	100	90
Single parent, FT, 1 child	$1079	$579	$461	$96	104	95
Single parent, PT, 1 child	$728	$559	$461	$87	71	66
Single parent, FT, 2 child	$1201	$756	$495	$109	96	88
Single parent, PT, 2 child	$842	$719	$495	$100	69	64
Single-earner couple (JSP for second adult)	$953	$608	$461	$165	89	77
Single-earner couple	$805	$596	$461	$156	76	66
Single-earner couple, 1 child (JSP for second adult)	$1152	$814	$461	$167	90	80
Single-earner couple, 1 child	$1079	$762	$461	$158	88	78
Single-earner couple, 2 children (JSP for second adult)	$1274	$998	$495	$178	85	76
Single-earner couple, 2 children	$1201	$888	$495	$169	87	77
Dual-earner couple	$1264	$608	$461	$165	118	102
Dual-earner couple, 1 child	$1405	$814	$461	$167	110	97
Dual-earner couple, 2 children	$1520	$998	$495	$178	102	91

Note: C10 disposable income calculation following the assumptions as in Table 14.

Source: Megan Bedford, Bruce Bradbury and Yuvisthi Naidoo, *Budget Standards for Low-Paid Families* (Fair Work Commission Research Report, March 2023) at 50; *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 8.9.

[110] Although the qualifications expressed in paragraph [104] above apply equally to the analysis in Table 14, we consider nonetheless that it may require further consideration in future Reviews.

6. Gender equality

6.1 Gender pay gaps

[111] The term 'gender pay gap' refers to the 'difference in the earnings of men and women'.[98] The gender pay gap can be measured in different ways and in different workforce segments, giving rise to the notion of gender pay *gaps* (e.g. adult average weekly ordinary time earnings; adult average weekly full time earnings including overtime and bonuses, average weekly total earnings; hourly earnings, industry pay gap or occupation pay gap). It is usually expressed either as a ratio of female to male wages (e.g. females earn 87 per cent of male wages) or the difference between male and female wages (e.g. 13 per cent). Table 16 shows the extent of the gender pay gap across the entire employee workforce according to various measures:

Table 16: Estimates of the gender pay gap

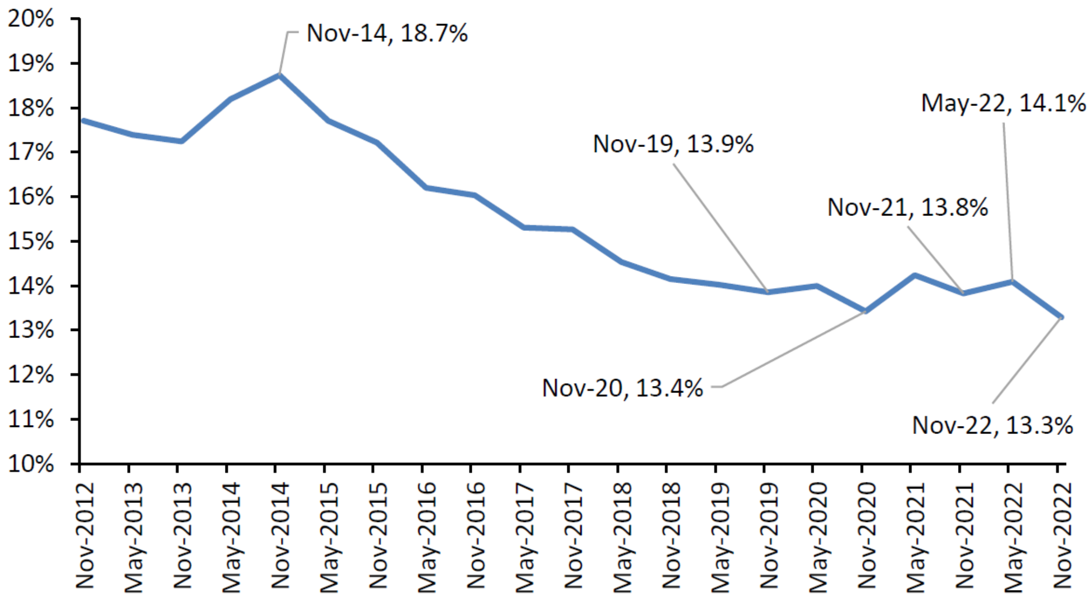
Measure	**Male earnings ($)**	**Female earnings ($)**	**Gender pay gap (%)**
Weekly			
AWOTE *(November 2022)*	1906.20	1650.80	13.3
EEH adult ordinary time cash earnings, non-managerial full-time *(May 2021)*	1809.10	1617.10	10.6
Hourly			
EEH adult ordinary time cash earnings, adjusted for casual loading* *(May 2021)*	45.50	39.42	13.4
EEH modern award-reliant employees, total cash earnings, adjusted for casual loading*# (*May 2021)*	28.05	27.55	1.8

Note: AWOTE refer to full-time adult employees. The gender pay gap is calculated as the difference between female's and male's earnings, expressed as a percentage of male's earnings. * Adult rate of pay employees with earnings deflated by a casual loading of 25 per cent. # Total cash earnings include overtime.

Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 11.1; ABS, *Average Weekly Earnings, Australia*, November 2022; ABS, *Microdata: Employee Earnings and Hours, Australia*, May 2021; ABS, *Employee Earnings and Hours, Australia*, May 2021.

[112] Chart 12, taken from the Australian Government's submissions,[99] shows that the gender pay gap (as measured by AWOTE) narrowed slightly in the period to 2018 but has remained at approximately the same level over the last five years and continues to be significant:

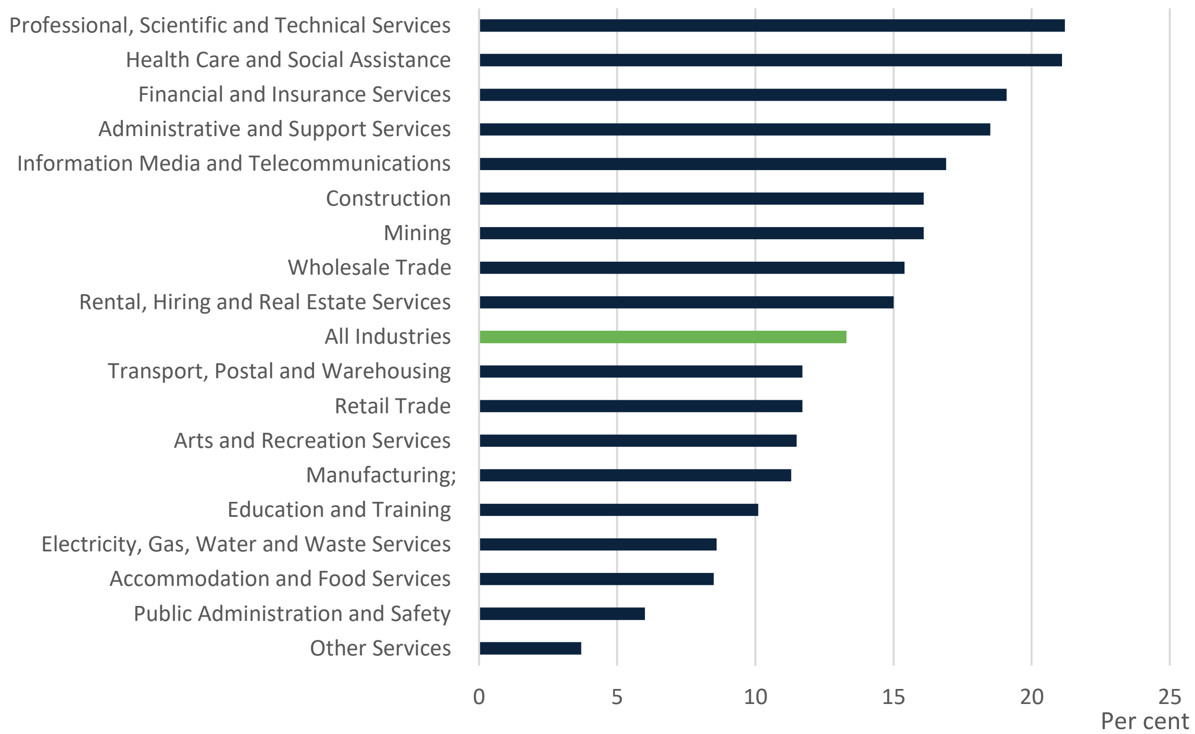
Chart 12: Gender pay gap, November 2012 – November 2022



Source: ABS, *Average Weekly Earnings, November 2022*

[113] The data can be disaggregated to identify industry-level pay gaps. Chart 13 shows the gender pay gap by AWOTE in each industry division.

Chart 13: Gender pay gap by industry, AWOTE, November 2022



Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 11.1; ABS, *Average Weekly Earnings, Australia*, November 2022.

[114] Modern award-reliant employees are disproportionately female compared to non-modern award-reliant employees and the workforce as a whole, as shown in Table 17.[100]

Table 17: Percentage of female employees in workforce categories

Employee category	**Percentage that are women (%)**
Modern award-reliant	58.1
Not modern award-reliant	48.5
All employees	50.4

[115] The position is accentuated in respect of the 10 awards which cover the largest number of modern award-reliant employees. Table 18 shows that nine of these are female-dominated (with a proportion of 60 per cent or more female employees). The proportion of employees who are women is highest in the *Children's Services Award 2010* and *Health Professionals and Support Services Award 2020* at 96.1 per cent and 91.2 per cent, respectively.[101]

Table 18: Women employees across 10 most common modern awards, May 2021

Modern award	**Number of employees who are women (No.)**	**Proportion of employees who are women (%)**
General Retail Industry Award 2020	174,300	67.0
Social, Community, Home Care and Disability Services Industry Award 2010	172,300	69.3
Hospitality Industry (General) Award 2020	148,600	65.8
Fast Food Industry Award 2020	113,900	60.8
Children's Services Award 2010	108,500	96.1
Health Professionals and Support Services Award 2020	83,000	91.2
Restaurant Industry Award 2020	79,300	61.4
Clerks – Private Sector Award 2020	73,900	80.8
Cleaning Services Award 2020	45,200	60.0
Vehicle Repair, Services and Retail Award 2020	22,900	27.8

Source: Australian Government submission, 31 March 2023 at para 111, Table 5; *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 11.7.

[116] The position above is however partly counter-balanced by the fact that modern award-reliant employees under some other modern awards are predominantly, if not almost exclusively, male. For example, the proportion of modern award-reliant men covered by the Manufacturing Award and the *Building and Construction General On-site Award 2020* is in each case over 93 per cent.[102]

[117] A consequence of the disproportionality of women in the modern award-reliant workforce is that, as found in the 2015-16 Review decision[103] (see paragraph [43] above), if Review decisions increase modern award minimum wage rates of pay relative to median wage rates produced by the labour market, then this is likely to reduce the gender pay gap to some degree. In this Review, the consideration in s 284(1)(aa) concerning the need to achieve gender equality including by, relevantly, addressing gender pay gaps would therefore weigh in favour of increasing modern award minimum wage rates by a percentage amount in excess of the WPI.

[118] However, the aggregate gender pay gap cannot be closed simply by adjustments to NMW and modern award minimum wage rates, primarily because the wages of more than three-quarters of the workforce is determined other than in accordance with NMW and modern award minimum wage rates. Indeed, the extent to which it can even be narrowed by this means (assuming NMW and modern award minimum wage increases within the range of reasonableness) is very limited.

[119] The gender pay gap across all modern award-reliant employees (difference between average hourly total cash earnings of females and males) is 1.8 per cent[104] but varies markedly by industry. Further research is required to gain a better understanding of how to compare female and male award-reliant earnings. It is unlikely that this pay gap, however measured, can be addressed by uniform percentage wage increases to modern award minimum wages, since this will not improve the position of female modern award-reliant employees relative to male modern award-reliant employees. This pay gap may better be addressed in the context of a consideration as to whether modern award minimum wage rates in female-dominated industries and occupations are undervalued relative to male-dominated industries and occupations.

6.2 Equal remuneration for work of equal or comparable value and eliminating gender-based undervaluation of work

[120] For the reasons earlier discussed, we consider that as a result of the amendments to ss 134(1) and 284(1) made by the Amending Act, any issues of unequal remuneration for work of equal or comparable value or gender undervaluation relating to modern award minimum wage rates can no longer be left to be dealt with on an application-by-application basis outside the framework of the Review process. Such issues, insofar as they may be identified, should now be dealt with in the Review process or in other Commission-initiated proceedings between Reviews.

[121] There is some basis to think that, across modern awards, there is an issue as to whether minimum wage rates for female-dominated work are equal to minimum wage rates for male-dominated work of equal or comparable value or are based on a valuation of work that is free from gender considerations. In the decision in *4 yearly review of modern awards – Pharmacy Industry Award 2010*[105] (*Pharmacy Decision*), a Full Bench outlined the history of the process by which, following on from the *National Wage Case August 1988*[106] and the *National Wage Case February 1989 Review*,[107] a system of standard cross- and intra-award relativities was implemented by the AIRC for federal awards. The key step in this was the establishment in the *National Wage Case August 1989*[108] of a benchmark rate for metal industry and building industry tradespersons. The classification for the metal industry tradesperson in the Metal Industry Award which embodied this benchmark rate later became known as the C10 classification. The AIRC said:

> Minimum classification rates and supplementary payments for other classifications throughout awards should be set in individual cases in relation to these rates on the basis of relative skill, responsibility and the conditions under which the particular work is normally performed. The

> Commission will only approve relativities in a particular award when satisfied that they are consistent with the rates and relativities fixed for comparable classifications in other awards.[109]

[122] To assist in this task, the AIRC then assigned indicative percentages of the benchmark (C10) rate to four other metal industry classifications (subsequently known as C11, C12, C13 and C14), as well as truck driving and storeman/packer classifications.[110] As part of this process, the AIRC introduced as part of its wage-fixing principles a new Minimum Rates Adjustment (MRA) principle, which allowed for phased-in wage increases to allow award classifications to reach the appropriate relativity level. The MRA principle was later characterised by the AIRC as having been 'designed to establish a consistent pattern of minimum rates in awards covering similar work thereby removing inequities and providing a stable foundation for enterprise bargaining.'[111] To establish a measure of finality to this new system of relativities, the wage-fixing principles established by the *National Wage Case April 1991*[112] required that minimum classification rates, 'once reviewed and fixed in an appropriate relationship', could only be changed if warranted on the basis of changes in work value occurring after the date of the second structural efficiency wage adjustment allowable in accordance with the *National Wage Case August 1989*.[113] The only exception to this was that if there were 'extraordinary circumstances' demonstrated in special case proceedings. As to this new requirement, the Full Bench in the *Pharmacy Decision*[114] observed:

> [156] Subject only to the narrow exception provided by the capacity to mount a "special case", the effect of this modification was that, once an award had been subject to the structural efficiency process in which, among other things, classification in minimum rates awards were to be fixed in appropriate relativities with other classifications within the award and in other awards, no adjustment on work value grounds was permissible other than on the basis of changes to work which occurred after the structural efficiency exercise had been completed. Importantly, the new paragraph (d) in the Work Value Changes Principle prevented any "double-counting" not only of work changes which were taken into account in the structural efficiency exercise, but those which *should have been* taken into account, whether they actually were or not. This meant, for example, that the full work value assessment of awards covering female-dominated areas of work which was sought by various women's groups in the *National Wage Case 1983* was permanently foreclosed (subject again only to the limited capacity to advance a special case).

[123] The proper fixation of minimum award rates was, consequent upon the implementation of the MRA process, characterised in the *ACT Child Care Decision*[115] as involving the following three steps:[116]

> 1. The key classification in the relevant award is to be fixed by reference to appropriate key classifications in awards which have been adjusted in accordance with the MRA process with particular reference to the current rates for the relevant classifications in the *Metal Industry Award*. In this regard the relationship between the key classification and the Engineering Tradesperson Level 1 (the C10 level) is the starting point.
>
> 2. Once the key classification rate has been properly fixed, the other rates in the award are set by applying the internal award relativities which have been established, agreed or maintained.
>
> 3. If the existing rates are too low they should be increased so that they are properly fixed minima.

[124] Two potential gender-related difficulties may readily be identified in this process. *First*, as identified in the *Pharmacy Decision*,[117] the *National Wage Case April 1991*[118] effectively foreclosed retrospective reconsideration of work value in any federal award. This operated, at least until the advent of the FW Act, to prevent any review in accordance with contemporary standards of rates of pay in female-dominated awards which were fixed pre-1990 and may consequently have been influenced by the gender-based assumptions about work value which were then prevalent. *Second*, the benchmarks for the MRA process were derived solely from male-dominated occupations and industries, and their application to female-dominated awards may have involved gender-based assumptions about relative work value.

[125] The modern awards made by the Commission in 2009 as a result of the award modernisation process initiated under Part 10A of the *Workplace Relations Act 1996* (Cth) generally continued the rates of pay contained in the pre-existing awards of the AIRC. Thus, to the extent that the MRA process suffered from the gender-based difficulties described, that has been carried forward into the modern awards system.

[126] A 2017 study by Broadway and Wilkins concerning the effects of the award wages system on the gender wage gap,[119] which analysed data from the Household, Income and Labour Dynamics in Australia (HILDA) Survey, identified that there was a 'femaleness penalty' associated with award-reliant employees with lower educational attainments working in female-dominated industries. They concluded:[120]

> To summarise, it appears that there is indeed a strong penalty associated with working in an industry that is typically female. This penalty is found for male and female employees alike, and suggests that the award system sets systematically lower minimums the more heavily an industry employs women. However, due to the higher returns to university education in such industries, this effect applies only to less educated employees. Moreover, we do not find any evidence that the award wage system rewards experience in female Industries any less well than it does in male industries. Instead, we find strong differences in returns to experience by individual gender: individual career progression is faster for men than it is for women, rather than being faster in male-dominated industries than in female-dominated ones. Since the award system has no way of tailoring wages to an individual's gender, this cannot plausibly be caused by the award system.
>
> . . .
>
> For award-reliant employees, there is a penalty for working in a female-dominated field compared with working in a male-dominated field, but only for those with medium or lower levels of educational attainment. However, because award wages are less likely to be binding the more highly skilled is the employee, a large percentage of award-reliant employees has low education levels. In our sample, 31.9% of all male award-reliant employees and 29.2% of all female award-reliant employees were in our lowest educational attainment category (had not completed high school).
>
> (citations omitted)

[127] The study analysed difference in average hourly wage rates for the most common male and female-dominated industries and occupations, and said:[121]

> Overall, the femaleness penalty for low-educated, award-reliant workers seems to stem to a large degree from lower wages in retail, hospitality and personal care compared to workers in construction and road transport. There are many potential reasons for this disparity. To the degree that the minimum wage level set by the industrial court is informed (however indirectly) by 'typical' wages in the industry or a general perception of an "appropriate" wage level, male-

dominated fields might have benefited from a long history of strong unionisation that led to higher average wages—a history not shared by service jobs—which may contribute to female-dominated fields falling behind.

It is also possible that minimum wages include compensation for certain non-monetary job characteristics, such as the dirtiness or dangerousness of a job. If these job characteristics are correlated with the share of women working in an occupation, a spurious correlation of hourly wages with the femaleness of an occupation or industry could be the result. For example, the $4.08 hourly wage premium for mobile plant operators relative to child carers might be compensation for higher rates of work accidents, noisy environments, the requirement to perform outdoor work in often unfavourable weather conditions, or other non-monetary job characteristics. However, this argument seems less compelling in a comparison of, for example, the average wage for truck drivers ($21.65) with that of hospitality workers ($15.97), where the latter group of employees would often perform physically demanding work in hot and/or loud environments.

[128] As to the causation of the 'femaleness penalty' identified, the study said:[122]

It is not immediately clear whether this job-femaleness penalty in the low-skill sector of the labour market can be interpreted as discrimination against women, and this paper does not attempt to determine conclusively whether the minimum wages as set by the Fair Work Commission are "justified" or not. In principle, the job-femaleness penalty could result from the Commission taking into account factors other than the required skill level, such as 'dirtiness' and 'danger', in determining the minimum wage of a job. If true, and typical male jobs tend to have less desirable traits than typical female jobs, the observed job-femaleness penalty would result.

There is in fact little evidence that such non-skill factors are considered in Fair Work Commission decisions; there is certainly no transparent, data-driven process for the setting of minimum wages in place that could establish a direct link between the job-femaleness penalty and objective job characteristics. We therefore doubt that the observed job-femaleness penalty is actually derived from compensating differentials determined by the Fair Work Commission. Rather, what seems more likely is that the award-wage decisions have been influenced by observed "typical" wages in industries and occupations, and male-dominated fields have benefited from a long history of strong unionisation that led to higher average wages.

In any case, irrespective of whether non-skill-related differences in award wages are justified by other job characteristics, what is clear is that the gender wage gap among minimum-wage employees is greater than it would be were award wages neutral with respect to the gender composition of jobs. Indeed, the gender wage gap within the award system would probably be negative if minimum wages depended only on the skill requirements of jobs, since the observed human capital of female minimum-wage employees is on average greater than the observed human capital of male minimum-wage employees.

[129] The issues raised in the above study were further traversed in the proceedings before a Full Bench in 2022 concerning applications to increase the minimum wages of workers in the aged care sector covered by the *Aged Care Award 2010* (Aged Care Award), the *Nurses Award 2020* and the *Social, Community, Home Care and Disability Services Award 2010* (SCHADS Award) (matters AM2020/99, AM2021/63 and AM2021/65). These applications were heard following the tabling of the Final Report of the Royal Commission into Aged Care Quality and Safety[123] on 1 March 2021. The Royal Commission found that there was a shortage of appropriate staff in the aged care sector, that such staff 'are poorly paid for their difficult and important work',[124] and that the 'bulk of the aged care workforce does not receive wages and enjoy terms and conditions of employment that adequately reflect the important caring role they play.'[125] To address this pay issue, the Royal Commission made the following recommendation:[126]

> **Recommendation 84: Increases in award wages**
>
> Employee organisations entitled to represent the industrial interests of aged care employees covered by the *Aged Care Award 2010*, the *Social, Community, Home Care and Disability Services Industry Award 2010* and the *Nurses Award 2010* should collaborate with the Australian Government and employers and apply to vary wage rates in those awards to:
>
> a. reflect the work value of aged care employees in accordance with section 158 of the *Fair Work Act 2009* (Cth), and/or
>
> b. seek to ensure equal remuneration for men and women workers for work of equal or comparable value in accordance with section 302 of the *Fair Work Act 2009* (Cth).

[130] The Full Bench issued an initial decision on 4 November 2022[127] (*Aged Care Decision*). In that decision, the Full Bench found that the evidence before it established that the existing minimum rates of pay for direct care workers in the aged care sector did not properly compensate employees for the value of the work they perform.[128] The Full Bench awarded an interim pay increase of 15 per cent based for such workers under the Aged Care Award and the SCHADS Award on work value grounds pursuant to s 157(2) of the FW Act, with the final amount for the relevant classifications in these awards to be determined in a later stage of the proceedings.

[131] Two aspects of the *Aged Care Decision* are of relevance to the wider gender considerations arising in this Review. *First*, in paragraph [293], the Full Bench referred to the outline of the AIRC's development of the system of cross- and intra- award classification relativities referred to in the *Pharmacy Decision*[129] and made the following finding:

> Having regard to relativities within and between awards remains an appropriate and relevant exercise in performing the Commission's statutory task in s.157(2). Aligning rates of pay in one modern award with classifications in other modern awards with similar qualification requirements supports a system of fairness, certainty and stability. The C10 Metals Framework Alignment Approach and the AQF are useful tools in this regard. However, such an approach has its limitations, in particular:
>
> - alignment with external relativities is not determinative of work value
> - while qualifications provide an indicator of the level of skill involved in particular work, factors other than qualifications have a bearing on the level of skill involved in doing the work, including 'invisible skills' as discussed in Chapter 7.2.6
> - the expert evidence supports the proposition that <u>the alignment of feminised work against masculinised benchmarks (such as in the C10 Metals Framework Alignment Approach) is a barrier to the proper assessment of work value in female-dominated industries and occupations</u> …, and

- alignment with external relativities is not a substitute for the Commission's statutory task of determining whether a variation of the relevant modern award rates of pay is justified by 'work value reasons' (being reasons related to the nature of the work, the level of skill and responsibility involved and the conditions under which the work is done).[130]

(underlining added)

[132] *Second*, in paragraphs [958]-[960] of the *Aged Care decision*, the Full Bench found that the existing benchmark rates in the Aged Care Award did not represent a proper valuation of the work to which they applied notwithstanding that these rates were properly aligned with the C10 rate in the Manufacturing Award (being the modern award descendant of the former Metal Industry Award). The Full Bench said:

> [958] In respect of the Aged Care Award, the Joint Employers submit that 'Aged Care Level 4' is the key classification level. PCW grade 3 (with a minimum qualification requirement of a Certificate III) sits within this level. The minimum rate for an Aged Care Level 4 employee is $940.90 per week, which is aligned with the current minimum rate for a C10 level under the Manufacturing Award (as does the minimum qualification of Certificate III).
>
> [959] In respect of the SCHADS Award, the Joint Employers submit that Home Care Employee level 3 is the key classification. That classification requires the employee to either be the holder of a relevant Certificate III qualification or to have knowledge and skills gained through on-the-job training commensurate with the requirements of the work at that level. The minimum rate for that classification is also $940.90, which is consistent with the minimum rate for a C10 level under the Manufacturing Award.
>
> [960] It follows that in terms of step 1 in the 3-step process set out in the ACT Child Care Decision, the key classifications in the Aged Care and SCHADS Awards are properly aligned with the C10 Metals Framework, insofar as the requisite qualifications are concerned. But, of course, that is not the end of the story... Insofar as the Joint Employers are to be taken to suggest that it would be enough for the Commission to simply align existing rates with the C10 Metals Framework, we reject that proposition. Plainly, it is necessary for the Commission to consider whether there have been changes in work value, or a historic undervaluation of the work, which constitute work value reasons which justify an increase in minimum rates.[131]

(underlining added)

[133] The issues raised by the *Pharmacy Decision*,[132] the Broadway and Wilkins study and the findings made in the *Aged Care Decision* indicate that that there may be a systemic problem, of pre-FW Act origins, concerning the way in which modern award minimum wages in female-dominated industries have been set which involves gender undervaluation and unequal remuneration for work of equal or comparable value. The specific issue concerning undervaluation of work in the aged care sector will be resolved to finality in the foreshadowed further stage of those proceedings, but we consider that any wider issue should, for the reasons already stated and as discussed further below, be resolved in or in association with the Review process.

[134] There is a further work value issue which may also have implications for the minimum wage rates of modern award-reliant females on higher award classifications, particularly those which apply to persons holding undergraduate degrees. We have earlier described the process whereby across-award relativities were established by reference to the classification structure in the then Metal Industry Award. Under this structure, employees with degree qualifications were meant to be aligned with a theoretical C1 classification, with relativities to C10 in the range of 180-210 per cent. However, for most degree-qualified classifications in awards, this process was never carried through and they were never placed in the appropriate relativity to C10. For example, it was observed in the *Pharmacy Decision* that the minimum wage rate for a degree-qualified pharmacist was (at the time of the decision in 2018) less than the C3 classification rate in the Manufacturing Award payable for an employee holding an Advanced Diploma or equivalent training, with the Full Bench stating that this constituted a potential work value issue.[133] Similarly, the Full Bench in its 2021 decision in *Application by Independent Education Union of Australia*[134] (*Teachers Decision*) found that the then minimum commencement wage rate for a 4-year degree qualified teacher under the *Educational Services (Teachers) Award 2020* (Teachers Award) was equivalent only to the C4 rate in the Manufacturing Award (80 per cent towards an Advanced Diploma or equivalent), and at no level of seniority did modern award minimum wage rates for teachers reach the C1 relativity.[135] This finding contributed to the Full Bench's conclusion that the minimum wage rates in the Teachers Award were not properly fixed minimum rates.[136] The Full Bench ultimately established a new classification structure and pay rates for the Teachers Award founded upon an alignment between the new Proficient Teacher classification and the notional C1 classification.[137]

[135] Consequent upon the *Pharmacy Decision*, the then-President of the Commission issued a Statement on 27 August 2019[138] in which he identified 29 modern awards containing classifications requiring an undergraduate degree and expressed the provisional view that they should be the subject of a review. However, in a subsequent Statement issued by the then President on 4 November 2022[139] concerning Occupational segregation and gender undervaluation (*Gender undervaluation statement*), the President indicated that no further steps would be taken in respect of the contemplated review on the Commission's own initiative at that time and observed that it would be preferable for undergraduate classifications to be reviewed in the context of work value applications in respect of specific awards.

[136] The gender dimension of this issue is apparent in two related ways. First, women are more award-reliant than men and there is evidence that the proportion of women in the award-reliant workforce is at its highest level at higher-paid classifications including those requiring undergraduate qualifications. That is, 58.7 per cent of higher-paid award-reliant employees are women; by contrast, 41.3 per cent of higher-paid award reliant employees are men.[140] Second, as was pointed out in the *Gender undervaluation statement*, there is a considerable overlap between the 29 modern awards containing undergraduate classifications and those applying to female-dominated industries.

[137] The issues we have identified are obviously too broad and complex to be resolved within the limited timeframe of this Review, and their resolution will require a body of research to support it. As foreshadowed in the President's statement of 3 February 2023 in relation to expert panels for pay equity and the Care and Community Sector, the Commission is undertaking a research project to identify occupations and industries in which there is gender pay inequity and potential undervaluation of work and qualifications.[141] This research will inform future Reviews. The research will take place in two stages. Stage 1 of the research project will soon commence. It involves an evidence-based process to identify occupations and industries in which gender-based occupational segregation is prevalent, including at the classification level if possible. This stage is expected to identify:

- the modern awards that cover those occupations and industries;
- whether employees in those occupations and industries are predominantly award-reliant or receive above-award rates of pay by virtue of enterprise agreements or other wage arrangements;
- any common characteristics of employment in the relevant occupations and industries (including whether employment is insecure due to the prevalence of casual and/or non-ongoing employment); and
- whether employees within particular modern award classifications are more likely to receive award rates of pay than those classified at other levels within the same award.

[138] A final report on that stage is expected by September of this year. Stage 2 of the research will build on the above expected findings by reporting on the extent to which the gender-segregated occupations, industries and classifications (including undergraduate classifications) identified in Stage 1 have associated indicia that suggest they may also be subject to gender undervaluation.

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

6.3 Female participation in the workforce

[140] The female participation rate has significantly increased over the last decade, both in absolute terms and relative to men. The overall growth in the participation rate over this period is entirely attributable to the increase in female participation. The female participation rate has continued to grow over the year to April 2023, albeit accompanied by similar growth in the male participation rate (Table 19). However, the gap between the male and female participation rates remains large, indicating that impediments to female participation in the workforce remain.

Table 19: Participation rate by gender, seasonally adjusted

	Males	**Females**	**People**
	(%)	**(%)**	**(%)**
April 2013	71.5	59.0	65.1
April 2022	70.9	62.2	66.5
April 2023	71.1	62.4	66.7

Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Charts 6.1, 6.1a; ABS, *Labour Force, Australia*, April 2023.

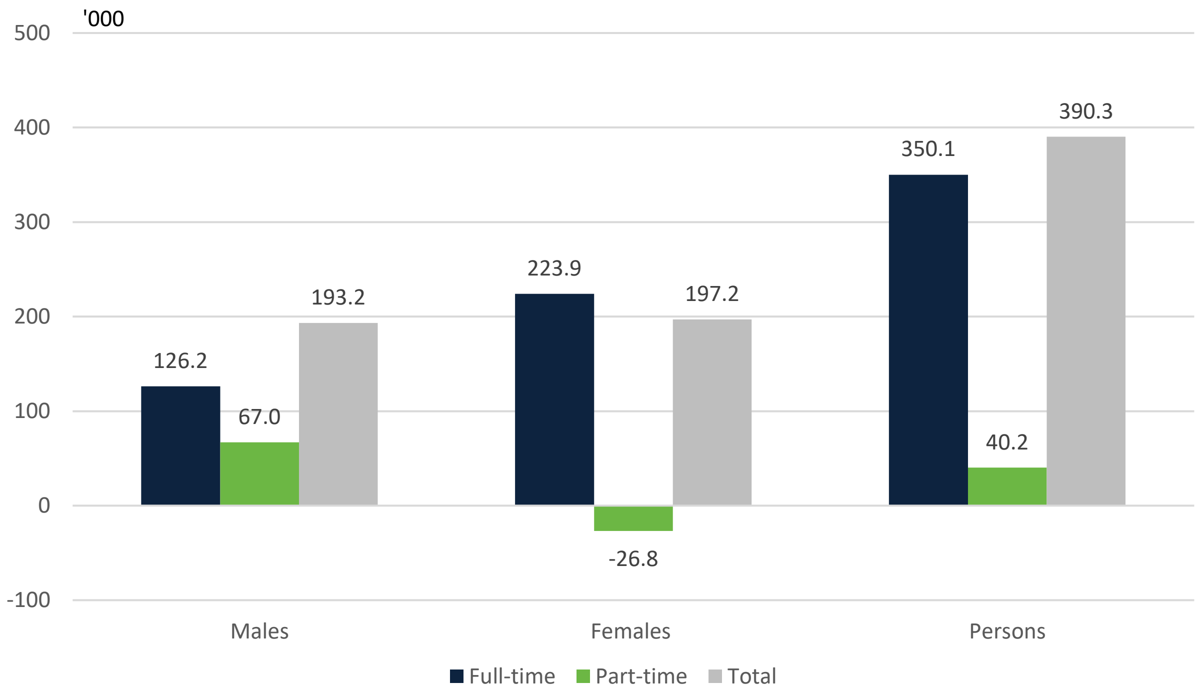
[141] Because the cohort of modern-award reliant employees is female dominated, as are the employees covered by most of the 10 most common modern awards, it is possible that increases to modern award minimum wages which exceed those produced by the labour market generally may attract more women into those award-reliant industries and occupations.

7. Job security

[142] We have earlier discussed the limited relevance that s 134(1)(aa) is likely to have in the context of the Review. The outcome of this Review will not affect those legal incidents of employment which may enhance or detract from job security (noting that no party has suggested any alteration to the NMW or standard modern award casual loading of 25 per cent). The Review outcome will only affect the capacity of employees to have access to secure work across the economy to the extent that it promotes or diminishes the capacity of employers to offer permanent employment.

[143] We have already dealt with the current state of the labour market. Having regard to the growth in employment and the historically low unemployment and underemployment rates and high participation rate, it is clear that the capacity of persons to obtain employment over the last 12 months has been at its highest point since the 1970s.[142] Moreover, most of the job growth in the past 12 months has been in full-time employment (Chart 14).

Chart 14: Change in full-time, part-time and total employment by gender, April 2022 to April 2023



Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 6.6; ABS, *Labour Force, Australia*, April 2023.

[144] The composition of the job growth over the last 12 months has led to a reduction in the proportion of casual employees in the employee workforce. The proportion was 22.1 per cent in February 2023, down from 23.0 per cent in February 2021 and from a peak of 25.5 per cent in May 2016. Except for the COVID-19 lockdown-affected period in mid-2020, this is the lowest proportion of casual employees, based on quarterly data, since August 2014.[143] This data suggests that the capacity of persons to access secure employment across the economy is currently at its highest for the last decade.

[145] However, as earlier discussed, the composition of the NMW and modern award-reliant workforce is significantly different to that of the employee workforce as a whole, with casual employees making up almost half of the modern award-reliant cohort. In this cohort, although there has been a decline in the proportion of casual employment in recent years, there is no consistent trend over the last decade, and the proportion of full-time employees has fallen (Table 20).

Table 20: Characteristics of award-reliant employees, 2012 to 2021

	2012	2014	2016*	2018	2021
	(000s)	(000s)	(000s)	(000s)	(000s)
Full time	603.0	758.9	941.5	845.4	994.0
Part time	941.1	1101.9	1334.6	1387.5	1665.4
Permanent or fixed term	825.4	1031.0	1252.6	1171.0	1449.3
Casual	718.7	829.7	1023.5	1061.9	1210.2
Total	**1544.1**	**1860.7**	**2276.1**	**2232.9**	**2659.4**
	(%)	(%)	(%)	(%)	(%)
Full time	39.1	40.8	41.4	37.9	37.4
Part time	60.9	59.2	58.6	62.1	62.6
Permanent or fixed term	53.5	55.4	55.0	52.4	54.5
Casual	46.5	44.6	45.0	47.6	45.5
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

Note: Data for 2018 from Tablebuilder may not sum total. * Available for non-managerial employees only.

Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 7.6; ABS, *Employee Earnings and Hours, Australia*, various; ABS, *TableBuilder: Employee Earnings and Hours, Australia*, May 2018.

[146] As at August 2022, around 25 per cent of all females were casual (i.e. without paid leave entitlements) compared with around 21 per cent of males. Further, female casuals are more likely to be employed on a part-time basis (20 per cent of all female employees are casuals working part-time hours) than full-time (6 per cent of all female employees are casuals working full-time hours). For males, the picture is different and more evenly split, with 12 per cent of all male employed part-time and casual, and 10 per cent employed full-time and casual.[144]

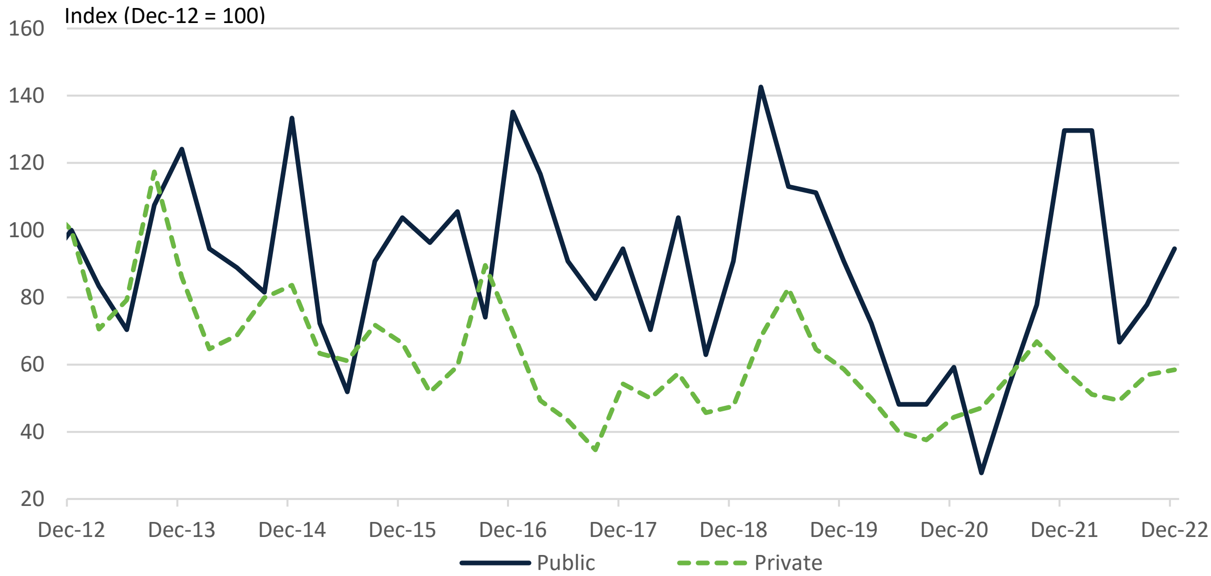
[147] Tightening monetary policy and a slowing economy are likely to be the main factors bearing upon job security in the most general sense in the coming year. It is unlikely that any uniform percentage increase to the NMW and modern award minimum wages, at least within a reasonable range, will negatively impact the capacity of individual employers to employ, or continue to employ, workers on a permanent rather than casual basis.

8. Collective bargaining

[148] The requirement in s 134(1)(b) to take into account ‘the need to encourage collective bargaining’ focuses attention on the consequential relationship, if any, between the exercise of modern award powers and the extent to which enterprise bargaining is occurring or may occur. It is not concerned with the outcome of enterprise bargaining.

[149] The long-term trend since the enactment of the FW Act has been a decline in the number of enterprise agreements approved by the Commission. This trend is most marked in the private sector (Chart 15).

Chart 15: Number of agreements approved in the quarter by sector, index



Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 10.1; Department of Employment and Workplace Relations, *Trends in Federal Enterprise Bargaining*, December quarter 2022.

[150] In the last five years, there was a decline in enterprise bargaining during the COVID-19 pandemic restrictions (2020), but in 2022 the numbers of agreements approved and the number of employees covered returned to 2018-19 levels (Table 21).

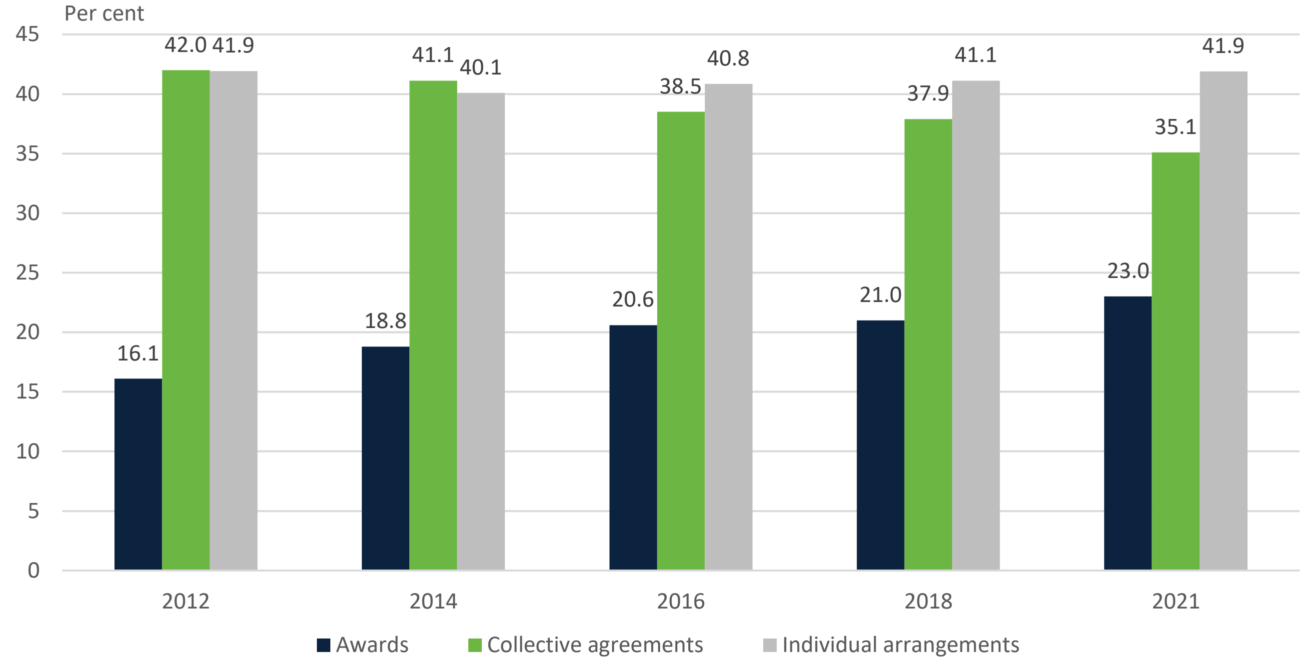
Table 21: Number of enterprise agreements and employees covered, 2018 to 2022

	Number of enterprise agreements approved	**Employees covered ('000)**
2018	3864	668.5
2019	5284	933.7
2020	3281	521.5
2021	4362	546.7
2022	4166	913.6

Source: *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 10.1; Department of Employment and Workplace Relations, *Trends in Federal Enterprise Bargaining*, December quarter 2022.

[151] As a consequence of the long-term reduction in the number of agreements being made and approved, the proportion of employees whose pay is set by an enterprise agreement fell from 42.0 per cent in 2012 to 35.1 per cent in 2021, with a corresponding rise in the proportion of employees whose pay is set by an award (Chart 16).

Chart 16: Method of setting pay



Note: Awards refers to the proportion of employees in an industry that are paid exactly the award rate and are not paid more than that rate of pay. As defined by the ABS, individual arrangements include registered or unregistered individual agreements and owner managers of incorporated businesses. Estimates of the proportion of employees on awards and collective agreements in 2016 have been revised on the basis of the 2018 conceptual treatment of these methods of payment. Owner managers of incorporated businesses comprised the following proportion of all employees: 2012 = 3.3%; 2014 = 3.4%; 2016 = 3.6%; 2018 = 3.8%; 2021 = 4.1%.

Source: ABS, 'A Guide to Understanding Employee Earnings and Hours Statistics', Feature Article, in *Employee Earnings and Hours, Australia*, May 2018; ABS, *Employee Earnings and Hours*, Australia, various; *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 7.1.

[152] There is no consensus as to why this has occurred. In previous Review decisions, the Commission has been unable to identify any causal relationship between the decline in enterprise bargaining and increases to the NMW and modern award minimum wages arising from past Reviews. For example, in the 2018-19 Review decision, the Commission said:

> We do not detect anything in these data to suggest that past Review decisions have impacted on collective agreement coverage. We see nothing to change the view expressed in previous Review decisions that the extent of enterprise bargaining is likely to be impacted by a range of factors.[145]
>
> (citations omitted)

[153] Similarly, in the 2020-21 Review decision, the Commission said:

> Consistent with the views expressed by the majority in the 2019–20 Review decision, we accept that there has been a decline in current enterprise agreements, but a range of factors impact on the propensity to engage in collective bargaining, many of which are unrelated to increases in the NMW and modern award minimum wages.[146]
>
> (citations omitted)

[154] No party in the current Review advanced a submission which sought to revisit these findings or identify a causal relationship between Review decisions since 2010 and the long-term decline in enterprise bargaining. Nonetheless, some parties submitted that it was 'axiomatic'[147] or 'incontrovertible'[148] that relatively higher minimum wages would operate to discourage enterprise bargaining because it would make it harder to satisfy the better off overall test for approval of enterprise agreements and would reduce the motivation or incentive for employees and their representatives to bargain. While, at a high level of generality, this proposition has a degree of plausibility at least in respect of the minority of employees who are NMW- or modern award-reliant, it is of little assistance in determining whether a particular level of increase will discourage enterprise bargaining. Nor does it take into account the countervailing influences likely to affect the propensity to bargain which may be operative at any given time.

[155] Over the last 12 months, the number of enterprise agreements made has, broadly speaking, returned to the position immediately before the COVID-19 pandemic. There has been no decline in the number of agreements lodged for approval following the 2021-22 Review decision, notwithstanding that this decision awarded the highest nominal increase to the NMW and modern award minimum wage rates since the FW Act commenced. The factor most likely to influence the extent of enterprise bargaining over the next 12 months is the major amendments to the enterprise bargaining and enterprise agreement approval provisions of the FW Act effected by the Amending Act. We have no sound basis to consider that, within a reasonable range, any increase we order to the NMW and modern award minimum wage rates will either encourage or discourage enterprise bargaining. Accordingly, this is not a matter to which we give any significant weight in reaching our decision in this Review.

9. Consideration

9.1 General conclusions

[156] In overview, the Australian economy has weathered multiple shocks over the past few years, including containing the spread of COVID-19 and associated lockdowns and other restrictions, the disruption of supply chains as global demand for goods rose, and the global surge in energy and food prices following the Russian invasion of Ukraine. Record levels of government support allowed households and businesses to mostly ride out these shocks. The level of annual GDP was 7.1 per cent greater in real terms in 2022 than in 2019, while real GDP per capita was 4.4 per cent higher.[149] It is clear, however, that reverberation effects from these shocks and government responses to them continue to be felt across the economy, with employment patterns and labour productivity, and costs and prices, all adjusting to changed circumstances, often sharply. Indeed, the current constellation of high inflation, low unemployment and falling real wages is unprecedented in contemporary Australian economic history.

[157] Since April 2022, the RBA has tried to curtail inflation by raising the target cash rate from 0.10 per cent to 3.85 per cent (as of May 2023). Monetary policy tends to operate with a lag and the full effect of this tightening cycle on the economy is not yet apparent.[150] Our decision was made in advance of the release of the March quarter 2023 set of National Accounts. A range of indicators, however, point to a slowing of economic activity since the start of this year. This includes falling retail sales volumes, a decline in new dwelling investment, and deteriorating business conditions and consumer sentiment. Official forecasts by both the RBA and the Australian Government are for economic growth to slow substantially in 2023-24 to 1.4 per cent and 1.5 per cent, respectively, well below long-run trend levels. As the population is forecast to grow by more than that, the inference is that living standards are likely to fall.

[158] Real wages have been in decline since the middle of 2020 and are forecast to fall further this calendar year, before beginning to slowly recover in the first half of 2024. The scale of the decline in real wages is affected by the circumstances that individual workers find themselves in. For those who are NMW- or modern award-reliant, their wages growth is determined by Review decisions, while the prices they pay are determined by their own 'basket' of goods and services. Such workers have seen their wages rise by 7.8 per cent since 2020 if working full-time on the NMW/C14 rate, or by 7.2 per cent if on the C10 rate or a higher award classification rate. It is well-established that NMW- and modern award-reliant workers spend a higher proportion of their income on goods and services such as food, housing, energy and healthcare.[151] Prices for these non-discretionary items have risen faster than the 15.9 per cent increase in prices as a whole since June 2020.[152]

[159] The decision last year to award a 5.2 per cent increase to those on the NMW and 4.6 per cent increase to those on the C10 rate or a higher classification was intended to alleviate the fall in real wages. The decision was made in the context where inflation was forecast to peak below 6 per cent in 2022 and then begin to fall to near the top of the RBA's target range over the course of 2023, implying that any further decline in real wages would be modest. Inflation has instead risen more sharply than forecast, peaking at an annual rate of 7.8 per cent in the December quarter 2022 and is now not expected to return to the RBA's medium-term target range of 2-3 per cent until mid-2025.

[160] Indications of a downward trajectory in inflation are now evident, with the March quarter 2023 CPI increasing by 1.4 per cent, the smallest quarterly rise since the December quarter 2021.[153] Nonetheless, there is a reasonable probability that inflation will remain somewhat 'stickier' than forecast over the coming year, which may further erode real wages.

[161] While inflation has been stronger and more persistent than forecast, there is no evidence in Australia of a wage-price spiral *despite* a very tight labour market. Growth in nominal wages has begun to pick up, with the WPI rising by 3.7 per cent over the year ending March quarter 2023, the highest rate of growth for a decade. Increases in award wage rates have had only a modest impact on the WPI, contributing 8.1 per cent of the increase in the WPI. This is consistent with the evidence to which we have earlier referred showing that the wages of modern award-reliant employees constitute just 11.2 per cent of the aggregate Australian wage bill. We are unaware of any concrete evidence that increases to modern award minimum wage rates have had a material spillover impact on pay-setting behaviour for those whose pay is set by enterprise agreements or individual negotiation. Our view is that pay in these settings is largely determined by prevailing labour market conditions. In circumstances where labour market conditions appear to be softening, we do not foresee any broader consequences for nominal wages growth arising from our decision.

[162] A return to full employment has been a very welcome feature of the Australian economy in the past couple of years. Employment has grown consistently and strongly since October

2021. Over the year to April 2023, employment has increased by more than 390,000 people (or 2.9 per cent), pushing down the rates of unemployment and underemployment.[154] Employment growth has drawn more people from outside of the labour force into work, pushing up the participation rate to record highs.[155]

[163] Consistent with the slowing in economic activity, there are indications that the labour market – which always tends to lag other changes in the economy[156] – is at a turning point. The number of job vacancies came close to matching the number of unemployed persons in mid-2022 but have since fallen. While it is unwise to read too much into a single month's figures, the April 2023 Labour Force release does suggest that employment growth is weakening at the same time as workforce growth is rising. Forecasts by the RBA and in the Budget are for employment growth to fall to around 1 per cent over 2023-24 and for the unemployment rate to increase to around 4.2 per cent by this time next year and settle around 4.5 per cent beyond that. The participation rate is also expected to ease somewhat. However, this forecast deterioration in the labour market needs to be seen in the longer-run context: prior to 2021, the unemployment rate had not been below 5 per cent on a sustained basis since the 1970s.[157]

[164] The sluggish growth in productivity is a significant concern. Ideally, real wages would increase over time in line with productivity growth, which has been averaging 1.2 per cent per annum in the current cycle. However, there has been no growth in labour productivity since the March quarter 2020.[158] Over the course of 2022 there was a surge in *nominal* unit labour costs, a function of a pick-up in nominal wage growth and a fall in labour productivity in that period. However, *real* unit labour costs fell in 2022 and are well below pre-pandemic levels. This fall solely reflects the decline in real wages since the onset of the pandemic. It is likely that the multiple shocks to the economy since 2020 have disrupted working patterns and the organisation of work and these will take some time to settle into new norms and return the economy to trend productivity growth.

[165] The decline in real wages amongst the modern award-reliant has had significant adverse effects on the low paid, causing a decline in living standards, financial pressure on households and, for some household types, a likely incapacity to meet basic budgetary needs. Because of the make-up of the modern award-reliant cohort, these adverse effects of the high rate of inflation will have disproportionately affected female employees and employees in less secure employment.

[166] Gender pay gaps remain a significant issue in the Australian labour market, both in aggregate across the entire employee workforce and amongst the modern award-reliant. The extent to which the former phenomenon can be addressed through the Review process is limited because of the modest proportion of the workforce which receives wage increases as a result of the Review. However, it remains the case that an increase to the NMW and modern award minimum wage rates which is above the general wage outcomes produced by the labour market will disproportionately benefit female employees and may make some contribution to narrowing the aggregate gender pay gap. The issue of any gender pay gap amongst modern award-reliant employees, and the associated issue of potential gender undervaluation underlying modern award minimum wage rates applying to female-dominated industries and occupations, are capable of being addressed by the Commission, but a further body of research and evidence must be undertaken to permit this to occur.

[167] We now turn to the various wage proposals advanced by parties which have made submissions in this Review. Although, as stated earlier, the Review is not a process of adjudicating between competing positions, we consider that it is useful before setting out our conclusions to briefly outline why we do not intend to adopt any of those proposals.

[168] The proposal advanced by the ACTU that we should adjust the NMW and modern award minimum wages by 7 per cent[159] in line with the current CPI places, in our view, too little weight on the considerations in ss 284(1)(a) and 134(h). We are concerned, in particular, that the adoption of a simple wage indexation approach may engender or entrench high inflation expectations in that it might be taken as an indication that the Panel is willing to respond to any level of inflation with a matching increase to the NMW and modern award minimum wages. This may cause inflation to remain higher or 'stickier' than it otherwise would have been, with negative consequences for national economic and business competitiveness and relative living standards (s 284(1)(a) and (c); s 134(1)(a) and (h)).

[169] The approach proposed by the Australian Government would, as we understand it, involve a similar approach to that in the 2021-22 Review whereby there would be a flat dollar increase to the NMW and the lower-paid award classifications which would preserve the level of their real wages, and a percentage increase for higher-paid classifications which would not necessarily match the CPI increase. We note that the Budget forecast for wages growth involves a technical assumption about the outcome of this Review which appears to align with the Australian Government's submissions, namely that there would be a CPI-matching wage increase to the NMW and the C14 award rate, an equivalent flat dollar wage increase to classifications up to the C10 award rate, and a 4 per cent increase to award rates at C10 and above.[160] The adoption of that technical assumption is consistent with the Budget forecasts of falling inflation over the next two years.[161]

[170] While this approach would protect the interests of low-paid workers and thus give significant weight to the considerations in ss 284(1)(c) and 134(1)(a), the continuing adoption of the mechanism of awarding proportionately higher, flat dollar wage increases to lower-paid award classifications raises problems in respect of the consideration in s 134(1)(g), namely the stability and sustainability of the modern award system. The effect of flat dollar increases in the longer term is to compress relativities between award classifications, which distorts the relationship between classification rates and relative work value and diminishes the incentive for workers to upskill and move to higher classifications. Such an approach was adopted in Safety Net Reviews and Reviews across the period from 1993 through to 2010 and resulted in a very significant compression of classification relativities, to the extent that it was found in the *Pharmacy Decision* that the relativity of a degree-qualified Pharmacist to the C10 rate had declined from 140 to 123 per cent.[162] As further explained in the *Pharmacy Decision*[163] and also in the *Teachers Decision*,[164] it becomes very difficult to unwind this type of compression of relativities at any future time. Accordingly, while there were special circumstances justifying the award of a flat dollar increase to lower-paid classifications in the 2021-22 Review, we do not propose to continue this approach.

[171] Most employer groups which advanced any specific proposal for wage increases proposed that the increase should be 3 per cent or more but less than 4 per cent. The adoption of wage increases in this range would, we consider, give insufficient weight to the considerations concerning relative living standards and the needs of the low paid (s 284(1)(c) and s 134(1)(a)). As set out in Chart 11 above, the real value of the NMW and modern award minimum wage rates has significantly reduced since 2019, reversing a long period of steady real wage increases. The employer proposals would further reduce the real value of NMW and modern award minimum wages to a significant degree in a context in which low-paid workers are clearly experiencing financial stress for the reasons discussed in section 5 of this decision. The submissions to the effect that this reduction can simply be set off against the earlier period of growth in the real value of the NMW and modern award minimum wages cannot be accepted, since that growth in broad terms reflected trend productivity growth of 1.2 per cent per year. Further, the employers' proposals give insufficient weight to the current strength of the labour market which, despite a weakening economy, will remain at historically low levels of unemployment and high levels of participation. They also involve levels of increases below the RBA and Budget forecasts for the WPI over the forthcoming year, which is unjustifiable having regard to the state of the labour market and would worsen the relative living standards of the NMW- and modern award-reliant workforce.

9.2 The NMW

[172] There are two aspects to our consideration of the NMW. *First*, for the reasons set out in section 5 of our decision, we consider that the historic alignment between the NMW and the C14 rate should cease. We note in this connection that there is no requirement in the FW Act for the NMW to align with the lowest modern award adult rate, nor does the NMW operate as a floor to modern award minimum wage rates.

[173] A wider review of the NMW in light of the budget standards research, the finalisation of the C14 review (which we anticipate will be completed later this year and will result in all C14 award classifications becoming genuinely transitional in nature) and other relevant matters (including the research being conducted as to gender segregation and undervaluation) is required. That wider review cannot be undertaken within the timeframe of the current Review. It is necessary therefore to identify an interim step that can be taken in this Review which gives appropriate weight to the needs of the low paid (s 284(1)(c)) but also balances this with the other mandatory considerations in the minimum wages objective. The step we will take is to align the NMW with the current C13 rate, which is the lowest award rate which, apart from exceptions in a small number of awards, may apply to employees in respect of ongoing employment. This will result in a modest wage adjustment of 2.7 per cent.

[174] *Second*, having regard to all the matters in s 284(1), we will increase the NMW by a further 5.75 per cent. The total increase to the NMW which will result will slightly exceed the current rate of inflation, although it will not make good the reduction in the real value of the NMW which has occurred since 2019. However, it is the maximum amount we consider that can responsibly be awarded in the current circumstances to address the needs of those low paid workers to whom the NMW applies. Having regard to our analysis in section 3 of this decision, the increase is also likely to disproportionately benefit female employees. The consideration in paragraphs (aa) and (c) of s 284(1) therefore weigh significantly in favour of the outcome we have determined. Because the NMW only applies to 0.7 per cent of the employee workforce, the increase awarded will not have any discernible macro-economic effects or affect the level of workforce participation, and the matters in paragraphs (a) and (b) of s 284(1) therefore have neutral weight in our consideration of the NMW. As to s 284(1)(a), the special NMWs applicable to junior employees, employees to whom training arrangements apply and employees with a disability who are award/agreement free will be as set out in section 10 of this decision. The casual loading for award/agreement free employees will remain at 25 per cent. Consistent with s 287, the NMW Order we make by this decision will come into operation on 1 July 2023.

9.3 Modern award minimum wage rates

[175] We have taken three matters as the starting point for our consideration as to the extent to which minimum wage rates in modern awards should be increased. *First*, the high rate of inflation has reduced, and is continuing to further reduce, the real value of modern award minimum wage rates, and is causing significant financial stress to modern award-reliant employees, especially the low paid. A relatively high increase to modern award minimum wages is necessary to alleviate this. *Second*, assessed in the longer-term context, the labour market is robust and will remain so notwithstanding the relative weakening evidenced by the April 2023 Labour Force results and the RBA and Budget forecasts for employment growth, unemployment and workforce participation. This creates room for a relatively large increase. *Third*, because the cohort of modern award-reliant employees is female-dominated, increases to modern award minimum wage rates above the level of general wages growth in the labour market generally will disproportionately benefit women and are likely to make some contribution to a narrowing of the aggregate gender wage gap in Australia.

[176] However, there are a number of matters which we have taken into account which we consider favour a moderation of the increase to modern award minimum wage rates which we might otherwise award. They are as follows:

(1) The Superannuation Guarantee contribution rate will increase by 0.5 per cent, from 10.5 per cent to 11 per cent, effective from 1 July 2023.[165] This will, in the broad sense, constitute an increase to employees' remuneration, albeit that it will not increase their disposable income. Perhaps more significantly, this increase will constitute a cost to employers which they will have to bear simultaneously with any minimum wage increases flowing from this Review.

(2) While we have earlier stated that the turning point in the labour market demonstrable in the April 2023 labour market figures should be seen in the context of forecasts of continued historically low levels of unemployment and high levels of participation, it is necessary to be sensitive to the particular circumstances of

employees who are modern award-reliant and their employers. Two related matters have weight in this context. First, a large proportion of modern award-reliant employees work in sectors which would likely be significantly affected by a reduction in discretionary expenditure associated with an economic slowdown – particularly the Accommodation and food services sector and the Retail trade sector. Thus, a weakening labour market may disproportionately affect those sectors. Second, casual employees are likely to constitute the category of employees most immediately and significantly affected by any decline in demand for labour via a reduction in their hours of work, and almost half of all modern award-reliant employees are casually employed.

(3) As stated above in relation to the ACTU's wages proposal, we are concerned that an increase to modern award minimum wage rates which attempts to track the current rate of inflation might be perceived as an indication of the Commission adopting a wage indexation approach that will be applied regardless of the rate of inflation, with the risk that this will adversely affect inflation expectations.

(4) Australia's productivity performance remains poor, with there having been no productivity growth over the past three years. While this is likely a reflection of the disruptive effects of the COVID-19 pandemic and a return to trend productivity growth might reasonably be expected over the coming years, it nonetheless calls for a degree of caution in the current environment.

[177] We also take into account that, in the aviation, hospitality and tourism sectors, the 2021-22 Review modern award minimum wage increases were operative from 1 October 2022, not 1 July 2022 as for all other industry sectors.

[178] Taking into account and balancing the matters we are required to take into account under ss 134(1)[166] and 284(1), the object of the FW Act in s 3, and the rate of the NMW we have set, we have decided that all minimum wage rates in modern awards shall be increased by 5.75 per cent. Consistent with s 286, the variations to modern awards to increase minimum wage rates by this amount will come into operation on 1 July 2023. Because, as we have earlier explained, the total wages of modern award-reliant workers constitute a limited proportion of the national wage bill and, over the past year, increases to modern award minimum wage rates have only made a modest contribution to the WPI, we are confident that the increase we have determined will not cause or contribute to any wage-price spiral.

[179] It is necessary to acknowledge that the increase to minimum wage rates in modern awards in this Review will not maintain the real value of award wages or reverse the earlier reduction in real value which has occurred. That result has pertained because of the requirement in the FW Act to balance the prescribed matters in ss 134(1) and 284(1) and because the establishment of a safety net of fair minimum wages requires us to take employer interests and the national economic interest into account as well as employee interests. We accept that, in the medium to long term, it is desirable that modern award minimum wages maintain their real value and increase in line with the trend rate of national productivity growth. However, it is not possible to achieve that objective in the immediate circumstances of the current Review. Future Reviews, if conducted in a lower inflationary environment, are likely to provide an opportunity to make up the loss of real value in modern award minimum wages rates which has occurred and return to the path of real growth which prevailed prior to the COVID-19 pandemic.

[180] It is also not possible in this Review to address to finality the potential underlying gender-related problems in modern award minimum wage rates which we have identified in section 6 of this decision. However, parties should be aware that these issues are firmly on the Commission's agenda and will be dealt with in future proceedings, including future Reviews, in the way contemplated in section 6 of this decision.

9.4 Adult apprentices and trainee wages

[181] There is an outstanding issue concerning adult apprentice and trainee wages arising from the 2021-22 Review. In the 2021-22 Review decision,[167] the Panel awarded a two-tier increase to modern award minimum wage rates, comprised of $40 to weekly rates below $869.60 per week and 4.6 per cent to weekly rates above that amount. In response to an opportunity for interested parties to submit corrections or amendments prior to the determinations giving effect to the decision being issued, the ACTU, the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU), and the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) made submissions raising an issue concerning the application of the flat dollar component of the increase to wage rates for adult apprentices and trainees. The issue identified was that some rates fixed by reference to a percentage of another classification in an award (or underlying rate) would receive an increase below $40 per week, while those with wages expressed as 100 per cent of the lowest non-apprentice/trainee classification would receive the full $40 increase. The ACTU and the other union parties contended that, to give proper effect to the 2021-22 Review decision, the determinations should have provided for all adult rates in modern awards (including those applicable to apprentices and trainees) to be increased by $40 per week. The CEPU also submitted that certain junior apprentices covered by the *Electrical Power Industry Award 2020* or the *Electrical, Electronic and Communications Contracting Award 2020* should also have received the full $40 increase.

[182] In a Statement issued on 28 June 2022[168], the Panel for the 2021-22 Review concluded that the determinations should not be amended as sought by the ACTU for reasons including that they reflected the historical approach to adjusting apprentices and trainee rates and preserved the relativities between those rates. The Panel observed that the issues could be raised in submissions to the 2022-23 Review and the Commission would issue a background paper dealing with the issues prior to the commencement of the 2022-23 Review. The contemplated Background Paper on adjustment of adult apprentice and trainee wages was published on 10 March 2023.

[183] In its submission to the 2022-23 Review, the CEPU maintained the position it advanced in the 2021-22 Review and sought the application of the $40 2021-22 Review minimum wage increase to adult apprentices and trainees and certain junior apprentices.

[184] We do not consider that the application of the minimum wage increases determined in the 2021-22 Review to apprentices and trainees should be revisited in this Review. As stated in the 28 June 2022 Statement, the approach taken was consistent with the approach historically taken in respect of flat dollar increases, and we see no reason to review this approach now. This is particularly the case because, as explained above, we do not intend to continue the approach of awarding flat dollar increases to lower-paid classifications and accordingly the issue does not arise in this Review.

9.4 Transitional instruments

[185] As earlier stated, we are required to review and may make one or more determinations varying wages in a number of transitional instruments as part of the Review. Those transitional instruments are transitional Australian Pay and Classification Scales, State reference transitional awards, Division 2B State awards and transitional pay equity orders, insofar as they remain in operation.[169] For convenience, we refer to these transitional instruments as 'relevant transitional instruments'.

[186] The content, coverage, operation and termination of transitional instruments was discussed in the 2009-10 Review decision[170] and in Fair Work Australia's Research Report 6/2010.[171] Further background on these instruments was provided in the *Annual Wage Review 2016-17 Preliminary decision*.[172]

[187] The ACTU and the Ai Group both submitted that the approach taken in previous Reviews should be maintained, such that the rates in the relevant transitional instruments are increased consistently with any increase determined for modern award minimum wages.[173] Consistent with this position, we have decided that the wage rates in the relevant transitional instruments will be varied by the same percentage amount we have determined shall apply to modern award minimum wages.

[188] As was observed in the 2021-22 Review decision, most transitional instruments have been terminated or have ceased to operate.[174] However, some continue to operate. These instruments include, but are not limited to:

- transitional instruments that cover employees also covered by enterprise instruments;[175]
- transitional instruments that cover employees also covered by State reference public sector transitional awards which have not been terminated by the Commission or replaced by a State reference public sector modern award;[176] and
- transitional instruments that were not terminated as part of the termination of modernisable instruments process which commenced in 2010.[177]

[189] The Transitional Act confers power upon the Commission to terminate certain categories of transitional instruments.[178] The principal power to terminate transitional instruments is contained in item 3 of Schedule 5 of the Transitional Act.[179] However, in the 2016-17 Review decision, it was concluded that the FW Act does not authorise the termination of transitional instruments in the course of conduct of the Review.[180] Accordingly, we do not propose to terminate any transitional instruments in this Review. It will be necessary to establish a separate process to consider the status of transitional instruments and whether they have been, or can be, terminated by the Commission.

9.5 Copied State awards

Background

[190] Copied State awards (CSAs) are federal instruments which come into existence and apply when employees of non-national system State public sector employers transfer employment to a national system employer. Amendments to the FW Act which established the legislative scheme for CSAs came into effect from 5 December 2012. The scheme largely reflects the transfer of business provisions in Part 2-8 of the FW Act. Under that scheme, the requirement in s 285 of the FW Act to review modern awards minimum wages and the power to vary them as part of the conduct of the Review apply equally to wage rates in CSAs.[181] A detailed overview of the statutory framework applying to CSAs and how they have been dealt with in previous Reviews was set out in Chapter 6 and Appendix 5 of the 2021-22 Review decision.[182] We rely upon, but do not repeat, that overview. Since the 2016-17 Review, the adjustment to modern award minimum wage rates determined in each Review has been applied to copied State awards except in specially-identified cases.

[191] In the 2021-22 Review, a number of employers involved in the conduct of privatised bus operations in NSW submitted that Review minimum wage increases should no longer automatically apply to CSAs and that, instead, wage rates in CSAs should be considered on a case-by-case basis and only upon application. In its decision in the 2021-22 Review, the Panel determined not to adjust the wage rates in the CSAs applying to those specific employers (which included Busways North West Pty Ltd (Busways) and Transdev Australasia Pty Ltd, but increased the wage rates in all other CSAs in line with the increases to modern awards. However, the Panel left for further consideration in this Review the general question as to ‘how copied State awards should be dealt with in future [Reviews]’ and proposed a program for submissions as to this question.[183]

The current Review

[192] In the current Review, submissions by employer parties fell into two categories. *First*, there were submissions again made about the specific position of two employers operating privatised bus operations in NSW, namely Busways (represented by Australian Business Lawyers and Advisors) and Transdev John Holland Buses (NSW) Pty Ltd (Transdev) (represented by the Ai Group). Busway employs transferring employees covered by CSAs with terms derived from three awards of the NSW Industrial Relations Commission,[184] while Transdev employs transferring employees covered by a CSA with terms derived from one of these awards[185] (collectively, NSW Bus CSAs). *Second*, Australian Business Industrial and the NSW Business Chamber (ABI), the ACCI and the Ai Group all made submissions about the general approach to be taken to CSAs in this and future Reviews. The ACTU responded to all these submissions.

[193] The cases respectively advanced on Busways and Transdev involved the same essential propositions, namely:

- the rates in the NSW Bus CSAs, which were derived from paid-rates State awards, significantly exceed comparable rates in modern awards;
- their contracts with the NSW Government give them little capacity to adjust fees to cover wage increases;

- they are currently engaged in enterprise bargaining, and the award of an increase in this Review would adversely affect the negotiations by disincentivising employees from making an enterprise agreement on appropriate terms; and
- consequently, the wage rates in their CSAs should not be increased by this Review.

[194] Mr Robert Gibson, the Workplace Relations Manager of Busways, gave evidence concerning Busways' position via a witness statement. He described the relevant terms of Busways' contract with the NSW Government, and also gave evidence that it is his and Busways' expectation that a new enterprise agreement will be implemented this year which provides for wage increases from 1 January 2023 for drivers and senior salaried officers and from 1 April 2023 for maintenance staff. Busways submitted on the basis of this evidence that if wages under the NSW Bus CSAs are subject to further increases, operating under an enterprise agreement will be significantly less attractive and economically viable since the 'fair and reasonable starting wages position' from which they have commenced bargaining will be undermined.[186]

[195] Ms Rachel Spencer, the Managing Director of Transdev, gave evidence about difficulties recruiting bus drivers and said that Transdev does not set or control fares charged to the public for services. Ms Spencer also gave evidence in relation to the enterprise bargaining process for bus maintenance workers currently underway involving Transdev, the Australian Manufacturing Workers' Union and the CEPU. She said that wages are a contentious issue and that, if the Review results in increased rates in the NSW Bus CSAs, it would be unlikely that employees would agree to an increase less than that awarded in the Review and hence Transdev's bargaining position would be undermined. Transdev submitted that most of the reasons for which the Commission decided not to vary the CSA applying to Transdev in the 2021-22 Review remained relevant and that, in the absence of cogent reasons, the Panel should not depart from the approach it adopted last year.

[196] The general submission advanced by the ACCI, ABI and the Ai Group was that no increases should be applied to CSAs in the absence of a specific application to do so. It was variously submitted that:

- a cautious approach was required in circumstances where it was difficult to identify what CSAs were in existence and in order to avoid the risk of creating 'double dipping' effects in respect of CSAs that might already be the subject of wage increases;

- without examining each individual CSA and the relevant surrounding circumstances, including how each CSA's rates compare with minimum wages prescribed by modern awards that would cover the relevant employees, recent and likely wage adjustments, when each CSA will terminate and whether the employer under the CSA is engaged in (or intends to engage in) enterprise bargaining, the Commission could not be satisfied that a safety net of minimum rates has been maintained;

- the existing approach to wages adjustments under CSAs unfairly imposes a burden on employers to apply for exemption, and requires employers to be aware of and understand the implications of the Review for CSAs as well as to participate in the Review process;

- NSW businesses will be disproportionately disadvantaged by Review decisions since it is the State in which most privatisation is likely to occur in the future, thereby creating the most CSAs; and

- increasing wage rates in CSAs may discourage enterprise bargaining because, as was stated in the 2021-22 Review decision, 'an upward adjustment to wage rates in these copied State awards could act as a disincentive to bargaining, in circumstances where employers are already paying above modern award rates of pay.'[187]

[197] The ACTU submitted that the Review wage increase should be applied to all CSAs, consistent with the practice of the Commission in recent years, noting that the net result of any approach to CSAs must not be that workers who are covered by them are left worse off than would be the case if they had remained in their respective State systems. The ACTU also proposed applying a 'top up' approach to CSAs which already provide for wage increases in the year of a Review to address the issue of 'double dipping'. The ACTU pointed to the fact that, outside of the Review, there is no capacity to adjust wages in CSAs, and submitted that the enactment of Part 6-3A of the FW Act and consequential amendments were designed to provide continuation and maintenance of the wages safety net provided in CSAs at an individual level, for a limited period of time and absent a normative re-evaluation against modern awards. It submitted that the employers' position that CSAs should be ignored in the Review absent a moving party contending for a particular adjustment was wholly inconsistent with the statutory requirement to 'review' CSAs. The ACTU rejected the assertion that an upward adjustment to wage rates in CSAs might act as a disincentive to bargaining in circumstances where the employers are already paying above modern award rates of pay, submitting that CSAs have a limited period of operation, a factor which is likely to motivate employees to participate in bargaining.

[198] Specifically in relation to Busways and Transdev, the ACTU submitted that where a State government seeks to divest assets or outsource in circumstances that give rise to transfer of business, all national system employers that are bidders for the same work face the same labour cost and compete on a level playing field. The ACTU further submitted that neither employer made any mention or allowance for the fact that CSAs apply only to transferring employees in discussing their potential impact. As to enterprise bargaining, the ACTU submitted that this constitutes a 'ready tool for managing unplanned increases in labour costs',[188] and the evidence that bargaining is proceeding undermines the employers' contention that bargaining will be negatively impacted.

Consideration and conclusions

[199] The submissions advanced by employers in relation to CSAs generally are founded on a number of premises that we do not accept. First, the proposition that, in the absence of any specific application to do so, we can simply take no action in the Review with respect to CSAs is not consistent with the statutory requirement to 'review' the minimum wages provided for in CSAs. The requirement to 'review' CSA wages implies that we must consider whether they should be adjusted in light of the material before us in the Review bearing upon the applicable considerations in the minimum wages objective and the modern awards objective. Absent the identification of any specific circumstances which might cause us to take a particular approach with respect to particular CSAs, it is open for us to apply the general conclusions reached in this Review to CSAs. This is the approach which has been taken in past Reviews, including the 2021-22 Review. We do not accept that this approach is unfair or unduly burdensome for employers to which CSAs apply. As for all employers under any instrument that is the subject of the Review, it is necessary to identify the exceptional circumstances which might justify departure from the general outcome of the Review for a special case.

[200] Second, the previous approach to dealing with 'double-dipping' has been confined to ensuring that employees do not receive two increases from different sources referable to the same period. This approach has arisen because CSAs may contain in-built wage increase mechanisms or have been subject to wage increases from a State tribunal before they come into operation. It has never been the case that the 'double-dipping' addressed by these approaches encompasses any margin between CSA rates and minimum rates in comparable modern awards. The effect of a CSA coming into existence under the FW Act is that the rates in the CSA become the minimum wages safety net for the employees covered, and this is so regardless of jurisdictional differences applying to the State instrument from which the CSA terms were derived. No issue of 'double dipping' arises in this context.

[201] Third, the proposition that the imposition of the general Review outcome on employers under CSAs might be unfair because it is unforeseen and therefore commercially untenable cannot be accepted. It is the action of an employer successfully tendering for work previously performed by a State government enterprise, and employing persons who undertook that work, that results in a CSA coming into operation. In such circumstances, it can reasonably be presumed that the employer would undertake a process of due diligence in respect of its obligations under the FW Act in relation to transferring employees. There can therefore be no reasonable basis for employers contracting to undertake work previously performed by a State public sector employer to be ignorant of the potential interaction between CSAs and increases arising from Reviews given the length of time that CSAs have existed.

[202] We do not accept that, because we cannot necessarily identify all CSAs currently in operation, this is a basis for not applying the Review increase to those instruments. In the absence of any specified contraindication, our consideration of the matters we are required to take into account under ss 134(1) and 284(1) may be taken to apply equally to employment under CSAs. The presumption that CSAs should move in line with Review wage increases unless a basis for an exception is made out is more closely aligned with our positive obligation to review CSAs and to maintain a safety net of fair minimum wages than the employer proposal that we disregard CSAs unless an application is made to flow on an increase. It is also the case that Reviews are the only mechanism to adjust wages in CSAs, which supports increases applying to CSAs unless a basis for exemption is established on application.

[203] In relation to Busways and Transdev specifically, we are not persuaded that they should be exempted from the minimum wage increases to apply as a result of this Review. The exemption granted to Busways and Transdev in the 2021-22 Review was based on considerations including that the relevant CSAs provided for wage increases on dates early in 2022 and did not provide for any further increases beyond those dates.[189] The Panel also noted

Busways' statement that it had commenced or intended to commence bargaining for enterprise agreements to replace the CSA terms and that 'there is every likelihood that enterprise agreements will be in place … by the end of 2022.'[190] It was also observed by the Panel that Transdev had made an enterprise agreement with employees covered by one CSA which was awaiting approval, and had commenced bargaining for agreements with employees covered by the two other CSAs.[191] On this basis, the Panel was satisfied that the current wage rates in the CSAs applying to Busways and Transdev provided a safety net of fair minimum wages,[192] and decided that the minimum wage increase generally applicable to modern award wages should not be applied to CSAs covering employees of Busways and Transdev 'on this occasion'.[193] However, the Panel decided that the Review increase should flow on to all other CSAs.

[204] In the current Review, the position is that no CSA applicable to Busways or Transdev provides for any further wage increases referable to the current Review period. Additionally, despite the exemption for a 12-month period obtained in the 2021-22 Review, Busways has not finalised an enterprise agreement, and Transdev has not finalised its contemplated agreement. As for Busways' and Transdev's commercial position under the contracts they have entered into with the NSW Government, they had no basis to assume that minimum wage increases arising from Reviews conducted by this Commission would not apply to employees who transferred to their employment from the NSW public sector. A basic review of the provisions of the FW Act relating to CSAs, including the application of ss 284 and 285 to CSAs, and the past history of Review decisions applying wage increases to CSAs, would have indicated the probability of Review increases applying to transferring employees.

[205] However, we consider that there are grounds for delaying the operation of the Review wage increases in respect of Busways and Transdev. Section 286(1) of the FW Act requires that determinations in relation to minimum wages in modern awards operate from 1 July in the next financial year, but s 286(2) provides that if the Commission is satisfied that there are exceptional circumstances justifying why a variation determination should not come into operation until a later day, the Commission may specify that later day as the day on which the variation determination comes into operation. If the Commission does so, the variation determination comes into operation on that later day (s 286(3)). We are narrowly persuaded, on the basis of the evidentiary cases advanced by Busways and Transdev, that the Review wage increases should take effect in the NSW Bus CSAs from a date later than 1 July 2023. It is highly desirable from all perspectives that these employers enter into enterprise agreements which allow them and their transferring employees to exit the CSA regime.[194] Applying the minimum wage increases from 1 July 2023 would, we accept, disrupt the current bargaining and perhaps create a disincentive for transferring employees to make an agreement. Some further space is required to allow the successful conclusion of bargaining. Accordingly, we have decided that the increases to the wage rates in the NSW Bus CSAs will be deferred until 1 January 2024. For all other CSAs, rates of pay will be adjusted in line with the increases to minimum rates in modern awards in this Review and will operate from 1 July 2023.

10. Conclusion

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

[207] The NMW order will contain:

(a) A national minimum wage of $882.80 per week or $23.23 per hour;

(b) Two special national minimum wages for award/agreement free employees with disability: for employees with disability whose productivity is not affected, a minimum wage of $882.80 per week or $23.23 per hour based on a 38-hour week, and for employees whose productivity is affected, an assessment under the supported wage system, subject to a minimum payment fixed under the Supported Wage System (SWS) Schedule;

(c) Wages provisions for award/agreement free junior employees based on the percentages for juniors in the *Miscellaneous Award 2020* applied to the national minimum wage;

(d) The apprentice wage provisions and the National Training Wage Schedule in the *Miscellaneous Award 2020* for award/agreement free employees to whom training arrangements apply, incorporated by reference; and

(e) A casual loading of 25 per cent for award/agreement free employees.

[208] The NMW order will operate from 1 July 2023, and will take effect in relation to a particular employee on the start of the employee's first full pay period on or after 1 July 2023.

[209] Modern award minimum wages will be increased by 5.75 per cent. The variation determinations in respect of all modern awards, modern enterprise awards and State reference public sector awards will operate from 1 July 2023 and take effect in relation to a particular employee on the start of the employee's first full pay period on or after 1 July 2023.

[210] The determinations necessary to give effect to the increase in modern award minimum wage rates will be made available in draft form shortly after this decision. Determinations varying the modern awards will be made as soon as practicable and the modern awards including the varied wage rates will be published as required by the FW Act.

[211] Our determination in this Review is that the wages in all relevant transitional instruments are also increased by 5.75 per cent. This determination comes into operation on 1 July 2023 and takes effect in relation to a particular employee on the start of the employee's first full pay period on or after 1 July 2023. The Commission is not required to publish the rates of the wages in the relevant transitional instruments as so varied, and accordingly we will not do so.

[212] With regard to CSAs, our determination in this Review is that the wage rates in all CSAs are increased by 5.75 per cent. For all CSAs other than the NSW Bus CSAs, this determination comes into operation on 1 July 2023 and takes effect in relation to a particular employee on the start of the employee's first full pay period on or after 1 July 2023. For the NSW Bus CSAs, this determination comes into operation on 1 January 2024 and takes effect in relation to a particular employee on the start of the employee's first full pay period on or after 1 January 2024. The Commission is not required to publish the rates of the wages in the relevant CSAs as so varied, and accordingly we will not do so.

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

PRESIDENT

Appearances:

G Manning, *J Wettinger*, *S Still*, *I Redmond* and *B McKenna* for the Australian Government.

T Clarke and *S Peldova-McClelland* for the Australian Council of Trade Unions.

B Ferguson, *R Bhatt*, *J Wilson* and *P Burn* for the Australian Industry Group.

P Grist, *J Tinsley* and *S Farrow* for the Australian Chamber of Commerce and Industry.

P Zahra and *N Tindley* for The Australian Retailers Association.

S Manickam and *B Zhu* for the Restaurant and Catering Industry Association of Australia.

C Massy of counsel, *T Barnes*, *C Collman* and *M Kavanagh* for the Australian Catholic Council for Employment Relations (on behalf of the Australian Catholic Bishops' Conference).

M Dunstan and *A Rodriguez* for the Australian Nursing and Midwifery Federation – NSW Branch.

L Izzo and *T Lawrence* for Australian Business Industrial, the NSW Business Chamber and Busways North West Pty Ltd.

R Bhatt for Transdev Australasia Pty Ltd.

Hearing details:

2023.

Sydney:
13 April.

Sydney with video links using Microsoft Teams:
17 May.

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Appendix: Proposed minimum wages adjustments

Submission	Proposal
Australian Government	No quantum specified
Government of South Australia	No quantum specified
Queensland Government	No quantum specified
Victorian Government	No quantum specified
Western Australian Government	No quantum specified
Australian Council of Trade Unions	7 per cent increase, applicable to all
Australian Industry Group	3.8 per cent increase, applicable to all
Australian Chamber of Commerce and Industry	3.5 per cent increase, applicable to all
Australian Council of Social Service	No quantum specified
Australian Catholic Council for Employment Relations	7.2 per cent increase to the NMW and, at a minimum, to the C13 to C10 rates
Australian Automotive Dealer Association	No quantum specified
Australian Business Industrial and Business NSW	3.5 per cent increase, applicable to all
Australian Foodservice Advocacy Body Board	No more than 3.8 per cent increase, applicable to all
Australian Retailers Association	3.5 per cent increase applicable to all
Drycleaning Institute of Australia	No quantum specified. The increase should not exceed nominal wages growth as measured by the WPI and AWOTE
Housing Industry Association	No quantum specified
Laundry Association Australia	No increase
Master Grocers Australia Limited	3.5 per cent increase in the *General Retail Industry Award 2020* and *Timber Industry Award 2020*
National Farmers' Federation	No quantum specified

Submission	**Proposal**
National Retail Association	Increase should not exceed 3.25 per cent
Restaurant & Catering Industry Association of Australia	No more than a 3 per cent increase
South Australian Wine Industry Association	No higher than 3.5 per cent increase, applicable to all
Australian Services Union	7 per cent increase, applicable to all
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union	7 per cent increase, applicable to all. In addition, apprentices should receive the full $40.00 increase from the 2021-22 Review
Retail and Fast Food Workers Union	NMW to increase to at least $28 per hour and all rates lower than this in the retail, miscellaneous and fast food awards be increased to at least $28 per hour
Shop Distributive and Allied Employees' Association	7 per cent increase, applicable to all
United Workers' Union	7 per cent increase, applicable to all
Kaptich, F	Variation to the *Corrections and Detention (Private Sector) Award 2020*
Thompson, B	No quantum specified. Increase should be less than the rate of inflation
Wingent, S	No quantum specified

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[1] As measured by the Wage Price Index: see section 4.4 of this decision.

[2] *Fair Work Act 2009* (Cth) ss 285(2)(a)(i)-(ii), (b), (c).

[3] Ibid ss 617(1), (2).

[4] Ibid s 620(1).

[5] Ibid s 294(1)(a).

[6] Ibid s 294(1)(b). While, under s 294(4), a special NMW may apply to a 'specified class of … those employees', no NMW order to date has applied to such a specified class.

[7] Ibid s 294(1)(c).

[8] Ibid s 294(2).

[9] See ibid s 134(2).

[10] *Minister for Aboriginal Affairs and Another v Peko-Wallsend Limited and Others* [1986] HCA 40, 162 CLR 24 at 39-40; *Penalty Rates Review Decision* [2017] FCAFC 161, 253 FCR 368, 272 IR 88 at [48].

[11] See *Annual Wage Review 2014-15* [2015] FWCFB 3500, 252 IR 119 at [88]-[91]; *Annual Wage Review 2015-16* [2016] FWCFB 3500, 258 IR 201 at [116]; *Annual Wage Review 2016-17* [2017] FWCFB 3500, 267 IR 241 at [115], [129].

[12] See *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788, 241 IR 189 at [32].

[13] *Annual Wage Review 2016-17* [2017] FWCFB 3500, 267 IR 241 at [129].

[14] *Annual Wage Review 2017-18* [2018] FWCFB 3500, 279 IR 215 at [33].

[15] Ibid at [34]-[35].

[16] See *Registrar of Titles (WA) v Franzon* [1975] HCA 41, 132 CLR 611 at 618 (Mason J).

[17] [2015] FWCFB 8200, 256 IR 362.

[18] Ibid at [256]-[274].

[19] *Annual Wage Review 2017-18* [2018] FWCFB 3500, 279 IR 215 at [35].

[20] Ibid at [36].

[21] *Annual Wage Review 2015-16* [2016] FWCFB 3500, 258 IR 201.

[22] Ibid at [76].

[23] Australian Government submission, 31 March 2023 Chart 4.1.

[24] [2020] FWCFB 754, 292 IR 373 at [39]-[40]; [2020] FWCFB 1589 at [14]-[16].

[25] [2020] FWCFB 754, 292 IR 373; [2020] FWCFB 1589; PR717774.

[26] Kelvin Yuen and Josh Tomlinson, *A Profile of Employee Characteristics Across Modern Awards* (Fair Work Commission Research Report No 1/2023, March 2023) at 13.

[27] *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 7.1.

[28] Kelvin Yuen and Josh Tomlinson, *A Profile of Employee Characteristics Across Modern Awards* (Fair Work Commission Research Report No 1/2023, March 2023) Table B13.

[29] Ibid Table A1.

[30] *Annual Wage Review 2017-18* [2018] FWCFB 3500, 279 IR 215.

[31] Ibid at [111]-[113].

[32] Ibid at [114].

[33] ‘Low paid’ is defined as those earning less than 2/3 of median average hourly ordinary time earnings, adjusted to remove casual loading, across employees on adult rates of pay only.

[34] *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 7.4.

[35] Australian Government submission, 31 March 2023, Chart 4.1.

[36] See, eg, *Declaration of General Ruling (State Wage Case 2022)* [2022] QIRC 340.

[37] Kelvin Yuen and Josh Tomlinson, *A Profile of Employee Characteristics Across Modern Awards* (Fair Work Commission Research Report No 1/2023, March 2023) at 13.

[38] *Industrial Relations Act 1996* (NSW) s 146C.

[39] *Statistical Report – Annual Wage Review 2021-22* (Fair Work Commission, 8 June 2022) Table 14.4.

[40] ABS, *Australian National Accounts: National Income, Expenditure and Product*, December 2022.

[41] ‘Statement on Monetary Policy’, *Reserve Bank of Australia* (May 2023), 23; Australian Government (2023), *Budget 2023–24, Budget Paper No. 1*, May, 78.

[42] *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Overview.

[43] Ibid Chart 1.2.

[44] ABS, *Australian National Accounts: National Income, Expenditure and Product*, December 2022.

[45] ABS, Impacts of flooding in December quarter 2022, 1 March 2023.

[46] See ‘Minutes of the Monetary Policy Meeting of the Reserve Bank Board’, *Reserve Bank of Australia* (5 July 2022 to 2 May 2023).

[47] Australian Government (2023), *Budget 2023–24, Budget Paper No. 1*, May, 39.

[48] *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 14.2.

[49] *Annual Wage Review 2021-22* [2022] FWCFB 3500, 315 IR 367 at [42].

[50] ABS, *Consumer Price Index, Australia*, March Quarter 2023.

[51] Ibid.

[52] ACTU post-Budget submission, 12 May 2023 at [17].

[53] ABS, *Consumer Price Index, Australia*, March Quarter 2023.

[54] Reserve Bank of Australia, *Statement by Philip Lowe, Governor: Monetary Policy Decision* (Media Release 2023-10, 2 May 2023).

[55] *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 14.4.

[56] Ibid Table 14.3.

[57] Australian Government (2023), *Budget 2023–24, Budget Paper No. 1,* May 2.

[58] ABS, *Labour Force, Australia*, April 2023.

[59] *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 6.4 and Table 6.3.

[60] Ibid Tables 14.3 and 14.4.

[61] Ibid Chart 5.1.

[62] *Annual Wage Review 2021-22* [2022] FWCFB 3500, 315 IR 367 at [35].

[63] ABS, *Wage Price Index, Australia*, March 2023.

[64] 'Statistical Reports on Enterprise Agreements Data', *Fair Work Commission* (Web Page).

[65] For example, *Statistical report – Enterprise agreements & other bargaining data: 8 April–21 April 2023* (Fair Work Commission, 22 May 2023), Table 1.1.

[66] ABS, *Wage Price Index, Australia*, March 2023.

[67] *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 9.2.

[68] ABS, *Business Indicators, Australia*, December 2022.

[69] *General Retail Industry Award 2020*, *Hospitality Industry (General) Award 2020*, *Fast Food Industry Award 2010* and *Restaurant Industry Award 2020.*

[70] *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 3.4.

[71] Ibid Charts 3.5 and 3.5a.

[72] Ibid Chart 3.6.

[73] Ibid Table 3.7; Australian Securities & Investments Commission (2023), *Australian insolvency statistics*.

[74] *NAB Quarterly Business Survey* (Q1 2023)

[75] *ACCI-Westpac Survey of Industrial Trends* (Report No 246, March 2023)

[76] Ibid at 5.

[77] Ibid at 3.

[78] Ibid at 7.

[79] Philip Lowe (2022), *Inflation, productivity and the future of money*, address to the Australian Strategic Business Forum 2022, Governor, Reserve Bank of Australia, Melbourne, 20 July.

[80] ABS, *Australian National Accounts: National Income, Expenditure and Product*, December 2022.

[81] See *Annual Wage Review 2015-16* [2016] FWCFB 3500, 258 IR 201 at [359].

[82] *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 8.2.

[83] Ibid.

[84] Kelvin Yuen and Josh Tomlinson, *A Profile of Employee Characteristics Across Modern Awards* (Fair Work Commission Research Report No 1/2023, March 2023) Table B12

[85] *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 7.4.

[86] *Annual Wage Review 2021-22* [2022] FWCFB 3500, 315 IR 367 at [72].

[87] Ibid at [75].

[88] *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 9.1.

[89] Megan Bedford, Bruce Bradbury and Yuvisthi Naidoo, *Budget Standards for Low-Paid Families* (Fair Work Commission Research Report, March 2023).

[90] Ibid at 2-3.

[91] Australian Government submission, 31 March 2023, Chart 4.1.

[92] See [2023] FWC 716.

[93]*Annual Wage Review 2009-10* [2010] FWAFB 4000, 193 IR 380.

[94] Ibid at [215]-[228].

[95] Ibid at [338]-[339].

[96] [1997] AIRC 1401, Print P1997 (22 April 1997).

[97] Ibid at 77-78.

[98] ABS, *Gender pay gap guide* (Web Page, 21 February 2023)

[99] Australian Government submission, 31 March 2023, Chart 5.1.

[100] Kelvin Yuen and Josh Tomlinson, *A Profile of Employee Characteristics Across Modern Awards* (Fair Work Commission Research Report No 1/2023, March 2023) at 18; *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 7.4.

[101] Kelvin Yuen and Josh Tomlinson, *A Profile of Employee Characteristics Across Modern Awards* (Fair Work Commission Research Report No 1/2023, March 2023) Table B1.

[102] Ibid.

[103] *Annual Wage Review 2015-16* [2016] FWCFB 3500, 258 IR 201.

[104] *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Table 11.2.

[105] [2018] FWCFB 7621, 284 IR 121.

[106] Print H4000 (12 August 1988), 25 IR 170.

[107] Print H8200 (25 May 1989), 27 IR 196.

[108] Print H9100 (7 August 1989), 30 IR 81.

[109] Print H9100 (7 August 1989) at 12, 30 IR 81 at 94.

[110] Print H9100 (7 August 1989) at 13, 30 IR 81 at 94.

[111] *Paid Rates Review Decision* Print Q7661 (20 October 1998).

[112] Print J7400 (16 April 1991), 36 IR 120.

[113] Print H9100 (7 August 1989), 30 IR 81.

[114] [2018] FWCFB 7621, 284 IR 121 at [156].

[115] *Australian Liquor, Hospitality and Miscellaneous Workers Union re Child Care Industry (Australian Capital Territory) Award 1998 and Children's Services (Victoria) Award 1998 – re Wages rates* PR954938 (13 January 2005), [2005] AIRC 28.

[116] Ibid at [155].

[117] [2018] FWCFB 7621, 284 IR 121.

[118] Print J7400 (16 April 1991), 36 IR 120.

[119] Barbara Broadway and Roger Wilkins, '*Probing the Effects of the Australian System of Minimum Wages on the Gender Wage Gap*' (Working Paper No 31/17, Melbourne Institute Applied Economic & Social Research, December 2017).

[120] Ibid at 22.

[121] Ibid at 24.

[122] Ibid at 25-26.

[123] *Royal Commission into Aged Care Quality and Safety* (Final Report, March 2021).

[124] Ibid vol 1 at 124.

[125] Ibid vol 2 at 214.

[126] Ibid vol 1 at 263.

[127] *Aged Care Award 2010; Nurses Award 2020; Social, Community, Home Care and Disability Services Industry Award 2010* [2022] FWCFB 200, 319 IR 127.

[128] Ibid at [922].

[129] [2018] FWCFB 7621, 284 IR 121.

[130] [2022] FWCFB 200, 319 IR 127 at [293].

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131 Ibid at [958]-[960].

132 [2018] FWCFB 7621, 284 IR 121.

133 Ibid at [194]-[198].

134 [2021] FWCFB 2051.

135 Ibid at [562]-[563].

136 Ibid at [563].

137 Ibid at [653]-[657].

138 [2019] FWC 5934.

139 President's statement: Occupational segregation and gender undervaluation (4 November 2022).

140 Roger Wilkins and Federico Zilio, *Prevalence and Persistence of Low-Paid Award-Reliant Employment* (Fair Work Commission Research Report No 1/2020, February 2020) Table 7; *Annual Wage Review 2019-20* [2020] FWCFB 3500, 297 IR 1 at [400].

141 President's statement: Pay equity and the Care and Community Sector – Expert panels (3 February 2023).

142 ABS, *Labour Force, Australia*, April 2023.

143 *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023), Chart 12.1.

144 Ibid, Chart 12.1a

145 *Annual Wage Review 2018-19* [2019] FWCFB 3500, 289 IR 316 at [372].

146 *Annual Wage Review 2020-21* [2021] FWCFB 3500, 307 IR 203 at [160].

147 Ai Group submission, 31 March 2023 at 47.

148 ACCI submission, 31 March 2023 at [141].

149 ABS, *Australian National Accounts: National Income, Expenditure and Product*, December 2022.

150 'Statement on Monetary Policy', *Reserve Bank of Australia* (May 2023), 3.

151 For example, ACTU submission, 31 March 2023 at [300].

152 *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 4.5.

153 ABS, *Consumer Price Index, Australia*, March Quarter 2023.

154 ABS, *Labour Force, Australia*, April 2023.

155 Australian Government (2023), *Budget 2023–24, Budget Paper No. 1*, May, 71; 'Statement on Monetary Policy', *Reserve Bank of Australia* (February 2023), 24.

156 'Minutes of the Monetary Policy Meeting of the Reserve Bank Board', *Reserve Bank of Australia* (2 May 2023).

157 ABS, *Labour Force, Australia*, April 2023.

158 *Statistical Report – Annual Wage Review 2022-23* (Fair Work Commission, 18 May 2023) Chart 2.1.

159 ACTU submission, 31 March 2023 at [1]-[2].

160 Transcript, 17 May 2023 at PNs 23-34.

161 Ibid at PNs 35-36.

162 [2018] FWCFB 7621, 284 IR 121 at [190].

163 Ibid at [192].

164 [2021] FWCFB 2051 at [650]-[651].

165 *Annual Wage Review 2021-22* [2022] FWCFB 3500, 315 IR 367 at [144].

166 We note that the considerations in s 134(1)(da) are not relevant to the subject matter of this Review and accordingly we assign neutral weight to those matters.

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

168 [2022] FWCFB 113.

169 See *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), Sch 9 items 10 and 20, Sch 3 item 12A(5) and Sch 3A item 30D (as inserted by reg 3A.01B of the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* (Cth)).

[170] *Annual Wage Review 2009-10* [2010] FWAFB 4000, 193 IR 380 at [370]-[396].

[171] Alice Dunn and Giles Bray (2010), *Minimum wage transitional instruments under the Fair Work Act 2009 and the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, Research Report 06/2010, Fair Work Australia, June 2010.

[172] [2017] FWCFB 1931 at [81].

[173] ACTU submission, 31 March 2023 at [409]; Ai Group submission, 31 March 2023 at 54.

[174] *Annual Wage Review 2021-22* [2022] FWCFB 3500, 315 IR 367 at [266].

[175] *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) Sch 6 items 5(1)-(5) and 9(4).

[176] Ibid Sch 6A items 5(3), 6 and 10(1).

[177] For example, certain instruments that covered employees who were also covered by the *Social, Community, Home Care and Disability Industry Award 2010* were preserved by the *Award Modernisation – Termination of Modernisable Instruments* decision [2010] FWAFB 9916, 202 IR 150 at [44]. As at the date of this decision, they have not been terminated.

[178] *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) Sch 3 item 9(2).

[179] [2017] FWCFB 1931 at [146].

[180] *Annual Wage Review 2016-17* [2017] FWCFB 3500, 267 IR 241 at [697].

[181] *Fair Work Act 2009* (Cth), s 768BY; *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), Sch 9 item 20.

[182] *Annual Wage Review 2021-22* [2022] FWCFB 3500, 315 IR 367 at [278]-[447] and 115-122. See also *Background Paper on Copied State Awards* (Fair Work Commission Background Paper, 25 May 2022) which was published with a Statement issued by the Expert Panel: [2022] FWCFB 78.

[183] *Annual Wage Review 2021-22* [2022] FWCFB 3500, 315 IR 367 at [446]-[447].

[184] *State Transit Authority Bus Engineering and Maintenance Enterprise (State) Award 2020*; *State Transit Authority Bus Operations Enterprise (State) Award 2021*; and *State Transit Authority Senior and Salaried Officers' Enterprise (State) Award 2021*.

[185] *State Transit Authority Bus Engineering and Maintenance Enterprise (State) Award 2020*.

[186] Busways North West Pty Ltd submission, 17 February 2023 at [59].

[187] *Annual Wage Review 2021-22* [2022] FWCFB 3500, 315 IR 367 at [422].

[188] ACTU reply submissions (copied state awards), 3 March 2023 at [28].

[189] *Annual Wage Review 2021-22* [2022] FWCFB 3500, 315 IR 367 at [330]-[333].

[190] Ibid at [352].

[191] Ibid at [359].

[192] Ibid at [391], [423].

[193] Ibid at [391].

[194] *Fair Work Act 2009* (Cth) s 768AU(2).