



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

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C2024/1

s.285—Annual wage review

**Annual Wage Review 2023–24 — public consultation
(C2024/1)**

Sydney

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PN1

JUSTICE HATCHER: Good morning. I'll take the appearances. We'll start off with the Australian Government, so it's, from left to right, Ms Wettinger, Mr Cowgill, Ms Redmond and Mr Bullen. Is that right?

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MR COWGILL: Correct.

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JUSTICE HATCHER: The ACTU is Ms Burke, Mr Clarke and Mr Greenwell. Ms Harrison, you appear for the United Workers Union?

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MS HARRISON: Yes, your Honour.

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JUSTICE HATCHER: Mr Massy and Dr Barnes, you appear for ACCER.

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MR MASSY: That is so, your Honour.

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JUSTICE HATCHER: Ms Tinsley and Mr Grist, you appear for ACCI.

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MS TINSLEY: Yes, your Honour.

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JUSTICE HATCHER: And Mr Ferguson and Mr Wilson, you appear for the Ai Group.

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MR FERGUSON: Yes, your Honour.

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JUSTICE HATCHER: All right. So who's starting from the Australian Government?

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MR COWGILL: I will, your Honour.

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JUSTICE HATCHER: Yes, go ahead.

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MR COWGILL: Thank you, your Honour, for the opportunity to participate in today's consultation hearing on behalf of the Australian Government. My name is Matthew Cowgill, chief economist at the Department of Employment and Workplace Relations. Also appearing from the department is Ms Jennifer Wettinger from the employment conditions division, and appearing on behalf of

the Treasury are Ms Ineke Redmond from the macroeconomy branch and Mr Jared Bullen from the labour market policy branch.

PN15

I'll provide a brief introduction to the Australian Government's submission and then Ms Redmond from the Treasury will provide an update on the economic and labour market outlook. The government's submission clearly recommends that the Fair Work Commission ensures that real wages of Australia's low-paid workers do not go backwards.

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JUSTICE HATCHER: So what rate of increase does that submission imply?

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MR COWGILL: Consistent with longstanding practice, the Australian Government's submission does not put a number on what we are seeking from the Commission in this review.

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JUSTICE HATCHER: All right.

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MR COWGILL: As my colleague from Treasury will note and elaborate on, while inflation is moderating, it still remains above the RBA's target band of two to three per cent, and interest rates remain high. Many low-paid workers and their families are particularly affected by cost of living pressures because they don't have savings to draw on to cover the rise in costs. The government does not want low-paid workers to shoulder a disproportionate burden of the macroeconomic adjustment needed to lower inflation. A recommended approach would manage macroeconomic risks while preserving living standards for low-paid workers.

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As outlined in the government's submission, recent amendments to the Fair Work Act have embedded the principles of job security and gender equality in the Commission's decision-making processes. The government believes that action needs to be taken to remove gender-based undervaluation and pay inequities using a systematic approach. This is why the government's Secure Jobs, Better Pay reforms put gender equality at the heart of the workplace relations system.

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The addition of gender equality to the minimum wages and modern awards objective is designed to ensure that equal remuneration eliminating gender-based undervaluation, addressing gender pay gaps and increasing women's economic participation, are considered in wage-related matter, alongside other objectives such as the likely impact on the performance and competitiveness of the economy.

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Award reliant workers, many of whom are low paid, are more likely to be women, more likely to be under 30 years of age and more likely to be employed on a casual basis. The government's submission notes that increases in minimum and award wages are likely to have a beneficial impact on the gender pay gap and will

provide income boosts to those more likely to be in less secure forms of employment. The government welcomes the Commission's research to date on undervaluation, which reaffirms the view that more must be done to address existing gender inequities in the modern awards system.

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JUSTICE HATCHER: What's the Australian Government's position with respect to the ACTU's proposal that in addition to a standard increase for all awards there should be additional increases for targeted female-dominated awards.

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MR COWGILL: I might ask my colleague Ms Wettinger to take that question, thank you, your Honour.

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MS WETTINGER: Thank you, your Honour. So in terms of the ACTU's submission, the government doesn't comment on specific submissions by other parties. What I would say is that we have certainly indicated, as Mr Cowgill has already pointed out, the importance of gender equality and addressing gender inequities within the system. The government has already, you know, made representations in terms of certain industries, such as aged care, early childhood education and care.

PN26

What we would note is that any award increase or any increase for specific sectors would need to be considered in terms of the capacity of both business and government to fund, and alongside the other indicia that the Commission is required to consider, such as job security, productivity, relative living standards, et cetera, and the government would purport that there is time obviously needed to consider. In terms of the government, we do have processes of parliament and appropriation bills, et cetera, that need to be considered alongside those other factors. So, yes, we wouldn't comment on the specifics of the ACTU's submission, but just to reiterate that the government does see addressing gender inequity as very important.

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JUSTICE HATCHER: All right. Thank you.

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MR COWGILL: Thank you, your Honour. I just have a few more words, if that's okay. As I noted, the government welcomes the Commission's research to date. I note that this research includes modern awards covering sectors which receive significant funding from the Australian Government.

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As Ms Wettinger has already alluded to, the government is providing funding to support wage increases of up to 28.5 per cent awarded in the Aged Care Work Value case, and as part of the 2024-25 budget, the government announced it would provide funding towards wage increases for early childhood education and care workers, which supports the government's objective to address gender

undervaluation, as well as a broader ambition of universal access to affordable, quality early childhood education and care.

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The government will consider current macroeconomic conditions, any fiscal implications and practical considerations around how funding support can be implemented when considering the timing of support, as well as the outcomes of any relevant Fair Work Commission processes. The government considers the gender pay equity research to be valuable and considers that gender pay inequity needs to be eliminated from the system. Thank you, your Honour, and I will now hand over to my Treasury colleague.

PN31

MS REDMOND: I'll now address the domestic and economic outlook. My name is Ineke Redmond. I'm the branch head of the macroeconomy branch in Treasury. In terms of the international and domestic outlook, global growth is forecast to remain subdued in the next few years. A further escalation in geopolitical tensions remains a key risk to the inflation and global growth outlook.

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Australia is not immune from global developments. Elevated inflation and higher interest rates have resulted in lower growth over the past year. These factors have put people under pressure and weighed on consumption growth. High interest rates and elevated construction costs have also slowed dwelling investment, and these factors are expected to see real GDP growth of one and three-quarter per cent in 23-24. However, higher wages growth, the forecast moderation in inflation, continuing employment growth and the government's cost of living tax cuts should support real household disposable incomes and a recovery in consumption growth.

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Despite rising interest rates, profitability for most businesses has remained around pre-pandemic levels, and growth in business investment has remained strong in recent quarters. Business investment is responding to the elevated capacity utilisation and forward-looking capital expenditure intentions point to positive though moderating growth.

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The domestic outlook remains uncertain. Household consumption may respond more gradually than anticipated to the real disposable incomes of households recovering, and they may prioritise replenishing their savings or if the unemployment rate rises more than forecast. They're a risk to both the inflation and productivity outlook. While productivity has grown for two consecutive quarters, the expected recovery in both cyclical and long-term productivity remains highly uncertain. Weaker than expected productivity growth and higher than expected nominal wages growth could have implications for the inflation outlook.

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Today, the moderation in the labour market has mainly occurred through a reduction in average hours and the unemployment rate has remained low by

historical standards. However, leading indicators of employment growth, such as job advertisements and vacancies, have declined from record highs in mid 2022. We expect labour market conditions to ease further over 24-25, with the unemployment rate expected to rise to four and a half per cent by June 25. Subdued growth and aggregate demand is expected to be met through an improvement in cyclical productivity and reduced hiring activity, although employment growth is expected to remain positive.

PN36

Nominal wages growth over 23-24 have grown at their fastest rate in 15 years, reflecting recent labour market strength and administrative wage decisions. Nominal wages growth peaked at 4.2 per cent through the year in the December quarter and is now easing. Consistent with subdued economic activity, nominal wage growth is expected to ease to three and a quarter per cent in 24-25. We continue to observe the softening of wages growth under individual agreements, which are more responsive to labour market conditions.

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While there are no signs of a wage price cycle developing and medium term inflation expectations remain well anchored, there are risks to the inflation outlook. Inflation has moderated substantially and is now less than half of its peak in 2022. This has been assisted by a continuing easing of goods inflation.

PN38

The extension of the Energy Bill Relief Fund and further increases in Commonwealth rent assistance are expected to directly reduce headline inflation by half of a percentage point in 24-25. This could see headline inflation returned to the target band by the end of 2024. Positive annual real wage growth returned at the end of 2023, earlier than had previously been expected, real wage growth of half a per cent in March 2024, the highest positive annual real wage growth since the December quarter 2020.

PN39

Improvements in productivity underpin sustainable real wages growth and inflation. On an hours basis, the level of productivity has only recently returned to around a pre-COVID level following a period of significant decline in the level of productivity. On a heads basis, productivity has been declining since December 2021. Measured productivity is inherently volatile. Both nominal wages and inflation would usually reflect trend measures of productivity rather than responding to short-term volatility. Returning to the Treasury's assumed long return trend growth assumption of 1.2 per cent is not assured. I welcome any questions. Thank you.

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JUSTICE HATCHER: Is the rate of wages growth projected in the budget consistent with a return of inflation to RBA's target range by the end of the next financial year?

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MS REDMOND: Yes, it is. It is.

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JUSTICE HATCHER: All right. And that's based on a current rate of, I think, 4.1 per cent but projected to climb to three and a quarter per cent by the end of the next financial year.

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MS REDMOND: That's correct, yes. So we now forecast - we've seen the peak, we believe, in nominal wages growth and it's now set to ease. The composition of that growth is shifting somewhat over time, with a little bit more support from the enterprise agreements, individual agreement softening, and we have seen some catch-up in public wage agreements as well in recent times.

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JUSTICE HATCHER: Thank you. All right. Anything else from the Australian Government?

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MR COWGILL: We'd be pleased to take any further questions that you have, your Honour, but otherwise, no.

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JUSTICE HATCHER: Can I just expand upon your response to the question we asked about the number of persons to whom the national minimum wage might apply?

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MR COWGILL: Yes.

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JUSTICE HATCHER: Speaking for myself, it seems to me that the methodology the Australian Government uses is to infer that people who, on the EEH survey, say they don't pay their employees in accordance with an award or an agreement, that that answer is assumed to be, legally speaking, correct. That is, you assume that because someone says they're not covered by an award, they in fact aren't covered by an award. Is that the way it works?

PN49

MR COWGILL: Thank you, your Honour. In our submission we do provide information about the number of workers that we believe are paid the national minimum wage rate. Chart 4.1 in our submission disaggregates or breaks down that total, we believe, of 96,400 into the different types of industrial instrument that people are paid according to. We'd note that the EEH survey to which you alluded doesn't specifically ask employers whether they are paying their employees according to the national minimum wage order.

PN50

So there isn't a specific question in there, it has to be inferred - whether or not somebody is a national minimum wage worker has to be inferred from the information that employers do provide. The figure that we've provided in our submission does include some employees whose employers say that they are paid

according to an award, also a small number who are on enterprise agreements as well as individual arrangements.

PN51

I'd note further that there are difficulties and data limitations with inferring the number of minimum wage reliant workers from this survey. Part of the difficulty arises because, as I mentioned, there's no specific question about the national minimum wage, but also because the rate of pay that's included in the EEH does include some allowances and penalty rates for ordinary time that make it difficult to identify, if you like, the sort of base rate of pay to which people are entitled.

PN52

I would note further that the government is reviewing its method for estimating the number of national minimum wage reliant workers from the EEH survey, and we'd be pleased to work with Commission staff on further refining our methodologies there for future reviews.

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JUSTICE HATCHER: Because as I think was implied in the question, the piece of research which we published earlier in the year has analysed the group which in last year's - based on the 20-21 EEH data, the Australian Government said were paid in accordance with the national minimum wage itself.

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MR COWGILL: Right.

PN55

JUSTICE HATCHER: What we can glean from the industry and occupational characteristics of those people suggests that they are in fact covered by awards - they're in retail, they're in labouring work, they're in construction, et cetera. That is, it doesn't identify any group which we know or we can guess might not actually be covered by an award.

PN56

MR COWGILL: Yes, your Honour. Given the very small numbers that we're dealing with here - so we estimate 96,400 workers paid the national minimum wage rate, of whom only a subset are classified by the ABS as on individual arrangements. Given the very small numbers involved here, we can't have a high degree of confidence about any further disaggregation or examination of the characteristics of these workers, including the industries and occupations in which they're employed. It may well be the case that many of them are covered by awards, contrary to the information that's in the survey, but that is unfortunately all we have to go on in estimating the number and the characteristics of national minimum wage workers.

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JUSTICE HATCHER: All right. Thank you.

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MR COWGILL: Thank you.

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VICE PRESIDENT ASBURY: If we can't identify any that would not be covered by an award, doesn't that help indicate that there's very few? I mean, we can safely say, on those categories, there's an award that covers employees in those categories.

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MR COWGILL: Certainly the numbers involved are very small. I don't think anybody disagrees with that proposition. The number who are paid that rate, whether they are on an award or a collective agreement or not is very small. If your question is about specifically can we identify any groups of workers who appear to be paid the national minimum wage rate to whom an award does not apply - is that what you're asking?

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VICE PRESIDENT ASBURY: Yes.

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MR COWGILL: I'm afraid I'd need to take that on notice, because I don't have the details to hand on that.

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JUSTICE HATCHER: The practical difficulty is the Act requires priority consideration to be given to the national minimum wage. That is, we have to set that first and then take that into account when we set award wages.

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MR COWGILL: Yes.

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JUSTICE HATCHER: But the starting point is we can't ourselves actually identify anybody to whom the national minimum wage actually applies in reality, which creates a bit of a hypothetical, or makes it a fairly theoretical exercise.

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MR COWGILL: I accept that, your Honour. As we do point out in our submission and in our response to the questions on notice, although it is the case - appears to be the case, based on the information that we have, that only a very small number of workers appear to be award free and paid according to the national minimum wage order, the national minimum wage does, of course, affect a broader range of workers, a larger number of workers, who have their pay set by reference to the national minimum wage, and that's outlined in chart 4.1 of our submission.

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JUSTICE HATCHER: So who are they?

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MR COWGILL: People, for example, who are on a collective agreement where the rate of pay in the agreement is linked to the national minimum wage, or the

pay rise that they receive each year is linked to the national minimum wage. We have some information in our submission about the number of those. Thank you.

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JUSTICE HATCHER: All right. Thank you.

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MR COWGILL: Thank you, your Honour.

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JUSTICE HATCHER: All right. Yes?

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MS REDMOND: If I might just elaborate further on what's actually assumed in our wage forecast, just for the avoidance of - - -

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JUSTICE HATCHER: Sorry, in your what forecast?

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MS REDMOND: Our wage forecast that you asked about earlier, and then any risks around that.

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JUSTICE HATCHER: Yes.

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MS REDMOND: So we have assumed a technical assumption around this decision here today. We've not included any further assumptions around - for the gender pay gap closures or anything else related to this decision today, so to the extent there is further decisions that would sort of come out of this process, that's not included in our forecast, just for the avoidance of doubt.

PN77

JUSTICE HATCHER: Well, that leads me to ask what is the technical assumption?

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MS REDMOND: I expected you would ask that, actually, and I wasn't sure if you thought you had. So it's a 3.5 assumption that we made. It was our anticipation of the March quarter inflation result. That outcome was 3.6 per cent, so we made that as a technical assumption to include in the forecast, which was consistent with the government's position of real wages not going backwards for this cohort of workers.

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JUSTICE HATCHER: Right. Thank you.

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MS REDMOND: Thanks.

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JUSTICE HATCHER: Ms Burke or Mr Clarke, are you next?

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MR CLARKE: Yes. Thank you, your Honour and panel members. I'd like to acknowledge the Gadigal people, the Eora nation, on whose land we meet. I pay my respects. I thought I'd try and address you on, let's call it, the non-gender equity aspects of this. Ms Burke will address you on those aspects which loom large in this year's decision. I just pick up on that discussion before I lose myself.

PN83

On the national minimum wage, the other aspect of relevance to that, of course, is the group who's on the paid parental leave scheme at any particular time. These are people who clearly need a safety net, its preponderant of entitlement. Notwithstanding the additional flexibilities, it's relied upon by women and clearly affects living standards.

PN84

JUSTICE HATCHER: That may be the result, but it's not part of our statutory task to take into account second order effects, is it? We set the national minimum wage. If parliament chooses to link things to the national minimum wage, that's its lookout. That's not part of our statutory task, is it?

PN85

MR CLARKE: Well, I would say that you'd need to take into account the law as it is at the day that you make your decision, and the law as it is at the day you make the decision is that that the paid parental leave scheme is pegged to the national minimum wage and provides a safety net level of income for people who are utilising it, and so there is an adequacy argument associated with that.

PN86

Moving on, broadly speaking, can I say this, that the year in review has been one of diminishing fortunes, and that's true both for the workers that are reliant on the panel's decision and also for businesses that choose to pay their workers at the minimums that the panel sets, but the difference is a relative one.

PN87

Our people started the financial year behind the eight ball. Businesses started from a position of strength, and as the year's gone on, low-paid workers have faced mounting cost of living pressures from an already vulnerable position, whereas businesses by and large drifted back from the post-pandemic surge to conditions that were closer to normal but still favourable on the whole.

PN88

We've endeavoured to show in section 2.3 of our initial submission that non-mining businesses generally, whether they be smaller or larger businesses, were, as at midway through this fiscal year, enjoying profit margins and profit levels that, whilst showing an overall decline from that immediate post-pandemic sugar hit, remained elevated beyond what could be considered normal. Real wages, on the other hand, well below normal.

PN89

We offered a detailed analysis of the most award-reliant industries in section 2.9 of that initial submission that confirmed that generally those observations held true in those award-reliant sectors individually, particularly for smaller businesses. Not only that, but the sector-specific estimates of unemployment, under-employment, job vacancies, also remained favourable, hadn't returned back down to normal either. Now, as you'd know - - -

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JUSTICE HATCHER: Sorry, my reading of the statistics was that the employment situation in at least hospitality and retail is deteriorating much more significantly than for the labour market as a whole.

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MR CLARKE: I'm talking about the - I think, sorry - - -

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JUSTICE HATCHER: I think the sectors are accommodation and food services.

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MR CLARKE: Accommodation and food services and - - -

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JUSTICE HATCHER: And retail trade.

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MR CLARKE: Yes.

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JUSTICE HATCHER: There's been an absolute decline in employment and a significant decline in hours worked.

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MR CLARKE: There has been in more recent quarters a weakness and some negative employment growth, but I'm talking about when you do the sector-specific analysis of the under-employment and unemployment rates for those sectors that the ABS puts - yes, from the labour account you're still seeing levels that are, from the most recent data, better than what could be considered normal. In relation to vacancies, of course, the jobs aren't recorded vacant unless the bosses intend to fill them, and that carries with it the implication that they can afford to fill them. You'd also not be expecting to see the high level of business investment we've been witnessing - and I'm referring to non-mining business investment here - without funds availability.

PN98

We've provided more up-to-date information from the NAB March quarter business survey, section 2.2 of our reply, and showed in aggregate business conditions and capacity utilisation continuing to ease but remaining above average. In addition, the May statement on monetary policy reported from the bank's liaison program that not much had changed on the business conditions front since the end of 2023. So in summary there, easing conditions over the fiscal year, yes, but generally speaking, easing towards normal rather than from normal.

PN99

The picture for households, considerably different. Their version of the profit to income ratio is the household savings ratio, and that's a long way below normal and has been for at least 18 months, and bear in mind that that's a measure that's kind of already crowded out by the preponderance of people who do in fact have anything left at the end of the week. I mentioned already the overall position of real wage growth in award reliant industries. Award reliant workers started the 23-24 year without the low and middle income tax offset refund that they'd enjoyed at some level for the previous four years and facing inflation running at six per cent.

PN100

While the panel's decision last year looked sure to have provided some prospective real wage growth to award reliant workers over the current financial year, the previous two decisions didn't achieve that, and the burden of that legacy in the face of continuing price pressures has real life effects. The statistical report, the measures there, based on the HILDA survey, show that financial stress was building rather than abating after the pandemic. The ANU Centre for Social Research & Methods, I think for August 2023, their paper showed the same thing.

PN101

Melbourne Institute's Taking the Pulse of the Nation survey, we refer to that at figure 169 of our initial submission, and that points to broadening financial stress up to and through 2023 and into 2024, particularly in that 30,000 to 60,000-dollar annual income level, which table 6 of our initial submission indicates is an income range where a large share of award reliant workers sit within.

PN102

By February 2024, our own survey was telling us that 40 per cent or more of workers on incomes under 52,000 - so close enough to C10 - were reporting that costs of housing food and groceries were pushing them into significant financial stress - 40 per cent of people in that bracket. We've provided the data and methodology for that survey with our submission, and that should be sufficient to demonstrate it's a real one, around 3000 respondents. It's stratified to the 2021 census. It's not one of these Mickey Mouse efforts - and I should add that no party has, in their material, suggested that there is a problem with that survey.

PN103

Housing in particular, basic need, and it's a key concern. We've presented modelling in section 4.3.2 of our initial submission which showed that housing costs exceeded the rental affordability threshold for even award reliant workers at the upper end of that 30 to 60K range in all capital cities bar one, and that was back in June 2023, and since then, of course, we've seen in the March quarter CPI the largest increase in rental costs for 15 years in that year to March, notwithstanding the rent assistance coming on board.

PN104

The RBA Bulletin, January this year; I think it's in the research reference list, contains a study of income and consumption across different household groups and confirmed what you already know from other sources and what was, I think, also referred to by Mr Cowgill this morning, that lower income households, who

often are renters, have lower financial buffers to draw on. They tend to spend more on the essential expenditure like rent.

PN105

The RBA's analysis, they did projections based on the last survey's income and housing, but in figure 51 and 52 of our initial submission, we used a national account's distributional data, and all pointed in the same direction. So for these workers, they've got low reserves, so small shifts can make large differences, and the biggest rise in 15 years. Not a small shift.

PN106

If you want to bring that all together, consider this. In the NAB wellbeing survey for the December quarter 2023, it's a survey which showed the highest levels of financial stress since 2016. For low-income workers, one of the top three stresses was being able to raise \$2,000 in an emergency. You will note that the budget standards in a statistical report allow an amount of \$464 per week for rent. If your rental costs in your existing tenancy have gone up to a level that mean you might need to move and you're going to have to find somewhere else, you're going to need to put up a bond. For most places in Australia that's four weeks' rent, pretty close to that \$2,000, yes. And often you need to pay that before you move into the new place and before you've got the old bond back, so how's that going to work?

PN107

That type of quandary might in part explain why the RBA in their statement of monetary policy found that increases in rents paid are still outstripping increases in rents advertised, because people are staying in places they can't afford because they can't afford to move either. It really is the rock and a hard place scenario.

PN108

These costs of living, they're real, they're widespread and they are very distressing to navigate. The employers and Ai Group and ACCI, in particular, who are here today, they've sought to characterise the current inflation situation as one that's driven in large part by wages. We've responded to those positions most recently in section 6.1.1 of last week's submissions. We stand by that commentary, and you've heard more about it this morning from Treasury.

PN109

We'd also point out that whilst market wage growth is often sort of conceived of as this gradually building or dissipating force, gradually - always moving, depending on prevailing conditions. That's not a case for the employees affected by this decision. This decision provides a once annual level shift in minimum wages for those employers who don't provide any wage increases of their own volition. Those employers can't rationally claim that their employees have them constantly over the barrel for wage hikes. There's been no pressure building or no pressure accommodated in the last 10 and a half months or so for the employers affected by this decision.

PN110

At the market level - and you've heard about this this morning - the indications are, and we pointed out again, based on the statement of monetary policy, wage

growth may well have peaked in any event. It's expected to moderate over the year ahead and the forecasts are 3.25 per cent on Treasury's forecast and 3.6 on the RBA's, both of which would provide less than one per cent real wage growth and under-compensate for labour productivity that's been forecast. So to the extent that wages do factor in the inflation equation, we say it's not an issue for these employers affected by this decision and it's waning in relevance elsewhere.

PN111

So what to expect for the year ahead. First off, consumption. Critically important to some of the more award reliant industries like retail and hospitality, it's consumption that's been reasonably flat in recent months. Well, it's turning a corner. You can see that in chart 2.11 in budget paper number 1, which is predicting that the low point on the growth and consumption measure has passed. The estimates are that we're set to resume annual growth of two per cent, according to Treasury, or 2.6, according to the RBA, by the time we're back in this room next year.

PN112

The labour market is also predicted to continue to soften, with the unemployment between 4.3 and 4.5 per cent at the end of the financial year, but I've got to say, and I think you'd agree, that describing an unemployment rate with a four in front of it as the end point in a softening cycle still feels pretty novel. And it's been observed that this is not happening because jobs aren't being created. Employment indeed is expected to grow, it's just that it's not going to be growing fast enough for the level of participation that we're expecting to see, participation remaining, still, at very high levels.

PN113

You can see some tentative signs, I'd argue, on the stabilisation of employment growth in the turning around of the leading indicator of employment which was charted in the most recent release of the statistical report on Thursday. The data underlying the legal indicator suggests that the NAB's forward orders index was a decent pull factor on bringing the leading indicator up, and I'd say that that's possibly consistent with the U shape recovery in consumption that is being modelled by Treasury.

PN114

So for the year ahead, in our submission, it's going to continue to be easier for people to find work than what we're used to, including in some of the demand responsive industries that are typically more award reliant. Some of that spending - some of that spending is indeed going to be aided by the initiatives announced in the budget, but probably more significantly the stage 3 tax reforms.

PN115

I think we've said all we can about the stage 3 tax reforms and what to make of them in light of last year's decision in the written material. The only advance I could make on that is to say that if you were to treat the stage 3 tax changes and the low-medium income tax offset as equivalent benefits and therefore neutral from a net gain point of view, we'd still be doing some award reliant workers a disservice.

PN116

As to the centrepiece cost of living reforms in the budget, well, we welcome them, of course, but we encourage the panel not to treat them as cure-all. Clearly there will be award reliant workers who pay less in energy bills than they otherwise would because of the energy bill rebates, but those \$300 energy rebates, they're not cash. Those extra 82 cents a day aren't magic money that's going to appear between the couch cushions every morning. The most tangible relief that those rebates will bring, and it's important relief, with quality of life relief, maybe in the form of some spending substitution, an opportunity to contribute to some debts, or maybe something as simple as on particularly cold nights it's going to be okay to put the heating on.

PN117

As for the rent assistance, we've explained what the eligibility criteria for that is in our written material. It's quite clearly not a universal benefit but will be of assistance to some people. It's a lesser increase than the increase that was provided last year and we'd urge the panel to take the same approach to it that you took in paragraph 102 of last year's decision. We'd also observe that depending on the other dynamics of the rental market, there's a risk of the rental assistance gradually being absorbed, at least partially, and increasingly, as time goes on, as a transfer to landlords as well as a transfer to tenants alone.

PN118

Finally, to make one brief comment about an issue that appears not to be in dispute in the materials. There is one. In our initial submission we put the position that consistent with the views expressed in paragraph 199 to 202 of last year's decision, the wages in copied state awards should move in line with the general increases, dependent on this review, unless a basis for an exception has been made out. Nobody's quarrelled with that position or sought to make out the basis of an exemption, and so I would ask that that issue be determined in the manner that we've sought.

PN119

Sorry, there was one other issue. Australian Chamber of Commerce and Industry, pages 16 to 17. Pages 16 to 17 of their reply submission expressed the view that the minimum wage is better aligned to C14, and it might be worth clarifying whether in fact they're seriously contending that the national minimum wage should be cut this year, because that position is at odds with the position they've otherwise put in their written material and it's a bit confusing, to be honest. Ms Burke will now address you on the gender equality aspects.

PN120

JUSTICE HATCHER: Just before you sit down, Mr Clarke, you made reference to how productivity will factor into our thinking this year. I think it's been said in a number of decisions now that we don't look at productivity based upon a single set of single-use figures but we look at a cycle or block of four or five years. If we look at it that way, we're stuck with the fact, aren't we, that productivity basically hasn't grown over that period at all?

PN121

MR CLARKE: It's an atypical period, but perhaps - yes, that Mr Greenwell might be able to address you on.

PN122

MR GREENWELL: So I suppose looking at the productivity period, so the level of productivity measured by real GDP per hour worked appears to have flat lined since - I think it's around 2016. I think a large part of that will be driven by the coming off of the boost in productivity from the mining boom. If you disaggregate the contributions of productivity over that period, there is a slow pick-up in the non-mining component of productivity, as in it's contributing a larger amount to total aggregate productivity.

PN123

As we run into COVID, the COVID bubble that the Productivity Commission identifies clearly is something to be looked through, but as we return to normal, and in the most recent quarters, the positive contribution of the non-mining productivity component has returned to around where it was pre-pandemic.

PN124

I think if you couple that with the uptick in business investment, which is, I understand, to be expected to settle at a higher level than it was pre-pandemic, that would suggest that notwithstanding the slow down in productivity prior to the pandemic, since about 2016 we might be in a situation where productivity should be expected to pick up and that non-mining components do most of the heavy lifting, which would support an alignment of wages with inflation outcomes consistent with the RBA's target band.

PN125

JUSTICE HATCHER: That might happen, but the fact is, we've only just had two quarters of productivity growth following a period of significant decline, and speaking for myself, both the RBA and the budget talk about significant uncertainty as to the path of productivity in the future. It seems to me that we're not really in a position to say now that there's going to be a return to the pre-COVID pattern of productivity growth on the basis of two quarters numbers.

PN126

MR GREENWELL: I think it would be fair to say that in most forecasting activities, uncertainty is probably the word of the day. I think our view - or the ACTU's view is broadly in line with that of the RBA governor, who spoke in front of the House of Representatives Economics Committee some time ago. Her view was that she was a productivity optimist. She's a productivity optimist for the reasons that I've identified, the pick-up in investment, the return to pre-pandemic trends in the most recent quarters. I think, notwithstanding any uncertainties, that would be a reasonable view to take based on the available data.

PN127

JUSTICE HATCHER: All right. Thank you. Ms Burke?

PN128

MS BURKE: Thank you, your Honour, members of the Commission, members of the expert panel. I appear for the ACTU on the ACTU's response to the

Commission's indication that issues of gender-based undervaluation of modern award minimum wages can now be dealt with in the annual wage review process or in other Commissioner initiated processes between reviews.

PN129

The ACTU has filed three very detailed written submissions, and in those we've proposed a four-stage process for this critical work. Our proposal comprises, as group 1 adjustments, a targeted, limited and appropriate interim increase of four per cent to modern award minimum wages in certain care work occupations in eight out of the 13 awards identified by the gender research commissioned by the Commission as highly segregated by gender.

PN130

As group 2 adjustments, a targeted, appropriate and limited interim increase of four per cent to certain degree qualified classifications in five out of those 13 awards where those rates are under the C1(a) benchmark in the manufacturing award.

PN131

The identification of at least four awards which are female dominated but don't prima facie involve caring work as priority awards for consultation and conferral, with the goal being to assess whether the C10 benchmark is still appropriate, and if not, to identify a possible replacement benchmark, and, finally, certain special adjustments to remedy some obvious anomalies in two female-dominated awards, being the Legal Services Award and the Aircraft Cabin Crew Award, where those rates are under the C10 benchmark.

PN132

For completeness, our proposal includes that those awards that are the subject of the group 1 and group 2 adjustments should also be part of the priority cohort of awards considered in Commission initiated proceedings to fully assess the extent to which the minimum wages in those awards have been undervalued by reasons of gender, and I'll say a little more about that priority award process at the end of my submission, but the starting point for the consideration of the ACTU's proposal is the words of the statute.

PN133

Both section 284(1)(aa) and 134(1)(ab) - I'll just refer to 284(1)(aa) from hereon, require the Commission to exercise its wage-setting powers in this review by taking into account the need to achieve gender equality, including by eliminating gender-based undervaluation of work. Much has already been said and written about these new words, including by the ACTU, so I only want to emphasise two things.

PN134

First, inherent in the concept of eliminating gender-based undervaluation of work is the recognition that wages have not always been set on a level playing field, and the group 1 and 2 interim adjustments we proposed are not directed to compensating for a significant net addition to work requirements, to use the old language, just for convenience, but instead are intended to start bringing those occupations up to the same starting point as other properly set minimum wages,

and that's why criticisms that the interim increases should not be made because no work value assessment has been undertaken miss the mark.

PN135

Since at least 2015, the Full Bench has confirmed there is no datum point requirement in the statutory definition of work value reasons anymore which would inhibit the Commission from identifying any gender issue which has historically caused any female-dominated occupation or industry to be undervalued.

PN136

Second, the requirement in 284(1)(aa) is to take into account the need to eliminate gender-based undervaluation of work. The verb 'eliminate' is important. It compels action to a set end point. Arguably, the provision is intended to be deployed almost to the point of self-destruction by exercising wage-setting and modern award minimum wage powers in a manner which takes into account that concept. The panel may eliminate gender-based undervaluation of work and even, ultimately, the need for the provision itself.

PN137

Of course, that end point may not be achievable in this review, but I'm emphasising the statutory language to make the point that the Commission is both compelled and empowered to take steps in this review aimed at eliminating gender-based undervaluation of work, and that emphasis is necessary where a number of the employer submissions have urged the Commission to reverse its previous statement that it will take some steps, at least, in this review, but as we've stated in our written submissions, doing nothing is not an option. The introduction of section 284(1)(aa) provides the Commission with the statutory mandate to take steps to rectify what might be described as a socioeconomic structural defect in wage-setting to date.

PN138

I just want to address an additional matter on the statutory framework concerning if and in what circumstances the Commission can engage in differential treatment between awards in the annual wage review. As is clear from section 285(2)(b), there is no question of power. The question is one of appropriateness. The argument against differential treatment is that a safety net of fair minimum wages is embodied by uniformity and consistency of treatment between awards and that differential treatment would distort award relativities and lead to disparate wage outcomes, but cracks are visible in that proposition.

PN139

Viewed in the post Secure Jobs, Better Pay amendments universe and taking into account the gender research reports commissioned by Fair Work Commission and the findings in the Aged Care Stage 1 and 3 decisions, as well as others, it's clear that that proposition proceeds from an assumption that the starting point is the same. The playing field is level. As I've already explained, that assumption is flawed, and further, award relativities have already been affected, properly, we say, by the ERO and the Aged Care Stage 3 decision.

PN140

Finally, returning to the statutory terms, stability and consistency are not proxies for fairness. As the legislative amendments themselves contemplate, the presence of gender-based undervaluation of work has been a stable feature of award minimum wages for several decades at least, but it cannot rationally be described as fair.

PN141

Turning now to the ACTU's four-stage proposal, our proposal represents careful reflection by the ACTU on the various statements of the Commission, the content of the gender research reports and the findings in the aged care decisions. It is provided to assist the Commission in the exercise of the statutory mandate.

PN142

We acknowledge that there are a range of options available to the Commission to address this pervasive problem of gender-based undervaluation of work, and we'd hope that by engaging in the level of detail that we have, the Commission is able to understand the types of issues that may arise. If our proposal can be improved upon, then it should be, but action must be taken.

PN143

Because the proposal's been canvassed in detail in our three written submissions, in preparing for this morning's consultation I turned my mind not to what is already there but to what questions the panel may have, and perhaps ambitiously, I'm going to try and pre-empt some of those.

PN144

First, a clarification. Although we've described the group 1 and 2 adjustments as interim, they should be understood as interim measures, not interim determinations in the sense used in section 589, for example. We've used the term 'interim measures' here in the same way used by the Commission in last year's annual wage review regarding the decision to cease the adjustment between the national minimum wage and the C14 classification, which was described as an interim step in a broader process. So that is the way in which we refer and identify to interim adjustments in terms of the four per cent increase.

PN145

The second point is that the panel can be satisfied that there has been gender-based undervaluation of work in the occupations identified in the stage 1 gender research and so is empowered to make these interim adjustments, and the matters that we rely on to ground that satisfaction are listed in paragraph 84 of our May submissions, which are drawn from matters we identified in the March and April submissions. Relevantly, those matters include findings drawn from the stage 2 gender research.

PN146

Now, Ai Group in its 17 May submissions do not concede that the stage 2 gender research reveals an absence of work value considerations in a wage setting in the relevant occupations because, they say, they have not had time to critically evaluate the report, but that does not seem to have stopped them from criticising the report as providing an insufficient basis on which to make the targeted and appropriate interim adjustments sought by the ACTU. Ai Group cannot have it

both ways. If they haven't taken the opportunity to engage with the stage 2 report for the purposes of evaluating its conclusions, then that must apply for all purposes, including other criticisms about its use.

PN147

Third, as to the group 1 adjustments themselves, they are sought in relation to eight out of the 13 awards identified in the stage 1 gender research as covering highly feminised occupations within feminised industries, and specifically those that we identified as involving care work and therefore appropriate for the application of the SCHADS ERO benchmark. We identified those awards as containing care work by a fairly straightforward process of reviewing coverage, reviewing the classifications, consulting with affiliates, and I note there hasn't been any objection to our characterisation of those awards as involving care work.

PN148

Next, as to the specific figure of four per cent, we consider that figure represents the right balance between meaningful action and preserving room for future upwards adjustments following the completion of the work value analysis that is compelled by the statute and the research. Given that the SCHADS ERO benchmark is 23 per cent above the C10 classification in the manufacturing award, we consider that four per cent meets the comfortably below requirement identified in the Aged Care Stage 1 decision as necessary before an interim increase can be awarded.

PN149

The rationale behind the four per cent itself can perhaps most clearly be seen in that part of our April submissions where we address the children's services awards, where an adjustment of just over four per cent is needed to lift degree qualified rates in that award - sorry, in the children's services employee stream in that award - to the C1(a) benchmark. A four per cent increase to all levels in that stream will maintain the existing relativities between non-degree qualified and degree qualified classifications in that stream, raise the degree qualified rate to just below the existing benchmark and leave room for any subsequent work value analysis. That is probably the most useful example to understand how we came to four per cent.

PN150

Finally, as to the impact of the interim adjustments on internal and external relativities, as to internal relativities, our proposal is designed to preserve those as far as possible and at least within the stream in which the relevant occupation sits. As to external relativities, as I've already stated, relativities between awards are not a proxy for a fair and stable modern awards system, and the Commission has already demonstrated by the aged care decision that relativities between awards cannot have primacy over the proper valuation of work. Of course, the application of the SCHADS ERO benchmark more broadly will create its own cohort for relativities between awards in any event.

PN151

Finally, I just want to say something about the way forward. I identified another point at which all parties agree, in addition to Mr Clarke's point, and that is that all interested parties recognise that action is necessary to address gender-based

undervaluation of work, and all, including the ACTU, propose additional proceedings to address this issue to finality. There are some differences in terms of what those proceedings should look like. Most of those concern form over substance, but I do want to emphasise some guiding principles that the ACTU submits should be applied when thinking about what steps to take beyond this review.

PN152

The first is that the proceedings should be designed to be conducted as efficiently as possible. Many of us, including many of us in this room, have experienced work value cases that are incredibly resource intensive, and for that reason they do effectively exclude smaller organisations from initiating or participating in those cases.

PN153

Another reason for efficiency to be a guiding principle is that much of the base work has already been done insofar as identifying female-dominated occupations, identifying indicia of gender-based undervaluation of work, and, in the stage 2 report, conducting and providing a very comprehensive review of the relevant award histories. Efficiency in this context can be achieved thanks to that work which has already been done, and it is hoped that the Commission's willingness and ability to commission research may be extended to subsequent proceedings where appropriate, bearing in mind the point I just made about the very high resource demands for work value proceedings.

PN154

Efficiency can also be achieved using routine case management principles, such as defining questions for expert evidence in advance, jointly commissioning expert evidence or the use of joint reports and agreeing on uncontroversial facts in advance of any contested hearing, and, as we've suggested in our group 3 measures proposal, the facilitation of conferences between interested parties to enable those outcomes.

PN155

The second guiding principle is that there should be prioritisation of awards that have already been identified as female-dominated occupations and industries. The stage 1 gender research used highly exclusionary criteria to determine those occupations. Most pertinently, it looked at occupations where the female workforce was at least 10,000 and at least 80 per cent female.

PN156

We acknowledge that that was fit for the purpose of that report, but for the purpose of rectifying gender inequality in modern award minimum wages, it will be necessary to look slightly beyond those parameters, and we've made some suggestions about that in paragraphs 395 to 97 of our March submissions. We have also included at least the clerks award and the aircraft cabin crew in our proposed group 3 measures, because those awards, while not necessarily reaching that 10,000, 80 per cent threshold, do indicate very, very high levels of gender segregation.

PN157

And, third, the parameters of the task should include not just qualification matching but the identification of invisible skills because, as the Full Bench observed in the Aged Care Stage 1 decision, mischaracterisation and disregard of invisible skills is at the heart of gendered undervaluation of work and that finding was not specific to aged care and, to that end, it may be appropriate, at least for the care awards in any subsequent proceedings, that that be facilitated by the Care and Community expert panel for pay equity. Other than those comments, the ACTU relies on, as I said, its very detailed written submissions in respect of the proposal.

PN158

JUSTICE HATCHER: Well, can I just raise one matter, Ms Burke, in respect of the interim increases. I think we said in last year's decision something to the effect of whether we considered the next step in these proceedings partly dependent on the timing of the publication of those reports. So the Stage 2 report was only published on 4 April, so that's only now seven weeks ago, so there may be a genuine question as to whether – and, of course, your specific proposals only followed that in the submissions in reply.

PN159

So there may be a genuine question as to whether that constitutes a fair opportunity for persons who want to say something - about, for example in early childhood education care, whether it's caring work of a different nature or raising questions of capacity to pay government funding, et cetera – have had, in that limited time, a proper opportunity to be heard and adduce any evidence that might be relevant to that.

PN160

MS BURKE: Well, as to that, we all got the Stage 2 report at the same time.

PN161

JUSTICE HATCHER: Yes, it's not a criticism of anybody.

PN162

MS BURKE: No.

PN163

JUSTICE HATCHER: It's just a product of when it was published.

PN164

MS BURKE: Well, the proposal that the ACTU has put forward is our best effort to meet the Commission's expressed interest in doing something in this review. As I said, we accept that it may not be the only way and that if our proposal can be improved on then it should be but we wanted to take the opportunity to take seriously the invitation, which included setting out quite a detailed proposal. If, in order for that proposal to be realised, it is necessary for – I think only one party, which is Ai Group, has expressly made some complaints about procedural fairness – then that is so. I'm not going to cross-examine Mr Ferguson about whether there has been sufficient time or not, but certainly the proposal is put forward with the goal of facilitating further discussion and, ideally, resolution but, if not, fairly short resolution after this review.

PN165

JUSTICE HATCHER: Yes, thank you.

PN166

VICE PRESIDENT ASBURY: Thank you very much for your submission, Ms Burke. I just wanted to clarify that you estimate that that four per cent, in addition to the five per cent, would be what the ACTU assumes to be some measure of a standard undervaluation in those Age awards.

PN167

MS BURKE: Yes, that's right. It's a correction.

PN168

VICE PRESIDENT ASBURY: A correction.

PN169

MS BURKE: In addition to the five per cent sought as part of the national minimum wage increase which is serving a different purpose.

PN170

VICE PRESIDENT ASBURY: Thank you.

PN171

JUSTICE HATCHER: I thought your point was it meets the criteria of an interim increase – that is, it would sit comfortably below what, in the estimate, are the proper correction, wouldn't it?

PN172

MS BURKE: Certainly, yes.

PN173

JUSTICE HATCHER: Yes.

PN174

MS BURKE: It is well below what we consider is a proper correction, it's an interim step towards achieving a complete correction.

PN175

JUSTICE HATCHER: Yes, all right. Thank you.

PN176

VICE PRESIDENT ASBURY: Would you see that the other parts of that program operate outside or inside the annual wage review process? So a four per cent is interim.

PN177

MS BURKE: Yes.

PN178

VICE PRESIDENT ASBURY: What would the next step be?

PN179

MS BURKE: Well, the next step is the consultation and determination process I just outlined. Whether that is an extension of this proceeding or a separate proceeding, the ACTU is frankly agnostic about. One feature, however, that we think is important is that it be completed relatively quickly. So, again, without being critical of work value cases which are highly complex exercises, we would not be seeking to replicate a standard work value case. We don't think it's necessary to replicate a standard work value case in terms of it taking years.

PN180

We also don't want to see a kind of version of the four-yearly review of modern awards except in a work value guise. Sorry, that was a little triggering. So, in the sense of it being something that is completed within the next 12 months, we think that is entirely achievable given the work that has already been done and given, frankly, the willingness of all parties to agree that something does need to be done.

PN181

JUSTICE HATCHER: So you referred to two specific awards which have a specific problem. One is the Cabin Crew Award and the other one was the Legal Services Award.

PN182

MS BURKE: Yes.

PN183

JUSTICE HATCHER: So what was the specific issue with the Legal Services Award?

PN184

MS BURKE: The Legal Services – it is set out in detail in our April submissions but – bear with me – there are some very curious anomalies in the classifications and relativities in that award and, particularly for the lawyers in the room, it might bite a little bit to know that, for example, conveyancers tend to be paid more than law graduates and so on. I think probably the most stark example is that level 2 in the legal, clerical, and administrative stream of the Legal Services Award is aligned to C10 but the qualification there is Year 11 and, for example, level 5 in the law graduate stream, which is degree qualified, is very, very substantially the C1(a) rate and also below some of the rates in the legal executives, legal, clerical, and administrative stream. So the special adjustments we proposed is to lift level 5 in the administrative stream to align to C5, to lift level 6 in the law clerks' stream to C3 and to give a four per cent interim increase to level 5 in the law graduates stream to start to lift it to the C2(b) rate.

PN185

JUSTICE HATCHER: So a conveyancer gets level 6 law clerk, is that how it works?

PN186

MS BURKE: Can I take that on notice and just clarify that looking at the submissions? Otherwise I will end up reading them aloud which I don't think is helpful.

PN187

JUSTICE HATCHER: So I think a law clerk requires an associate diploma which would be what a conveyancer usually has and, I suppose, the immediate anomaly is that they're on a higher rate than a degree-qualified law graduate.

PN188

MS BURKE: I think conveyancing actually now requires the equivalent to an AQF 6 in most states.

PN189

JUSTICE HATCHER: Right.

PN190

DEPUTY PRESIDENT O'NEILL: Ms Burke, Vice President anticipated the question that I had but the only other one; when you were identifying various suggestions about how matters can be conducted efficiently, the last one you mentioned was in relation to the invisible skills and I didn't quite pick up on what you were saying. Could you just repeat that or expand that?

PN191

MS BURKE: Yes, certainly. Just that, when conducting an assessment of the extent to which there has been gender-based undervaluation in these awards, it is important, we say, to not simply look at qualifications and whether the qualifications align with the manufacturing awards benchmark, the SCHADS ERO benchmark, or some other benchmark, it is necessary also when conducting that work value exercise to look at invisible skills which, by their definition, have not previously been taken into account when valuing wages and the spotlight tool for example, used in the Aged Care decisions, could be a useful way to facilitate that. But also, we have suggested that consultations between interested parties may help to draw out some of those skills and, optimistically I say, may even reach agreement on what they are if not their value.

PN192

DEPUTY PRESIDENT O'NEILL: So I'm very familiar with the concept of invisible skills and spotlight tool, but I thought there was a particular role that you mentioned that the expert panel might take.

PN193

MS BURKE: I see. Sorry, I misunderstood the question. No, simply that that process may have been most efficiently facilitated by the expert panel given the expertise.

PN194

DEPUTY PRESIDENT O'NEILL: So the undertaking of the examination of the invisible skills in a particular award.

PN195

MS BURKE: And the valuation of them, yes.

PN196

DEPUTY PRESIDENT O'NEILL: Yes, okay. Thanks.

PN197

PROFESSOR BAIRD: If I could just go back to that issue. The four per cent interim increase that you argue for is needed now on the basis, I think you had the phrase, 'socioeconomic structural deficit', in the wage setting of the past. Then do you see that further investigation of those awards would be solely looking at the invisible skills? If the four per cent picks up on structural issues that have never been addressed and then the next stage would be the invisible skills to address. Is that what you're arguing, that those two parts reflect different parts of the valuation of work in those awards?

PN198

MS BURKE: No, the second stage would not be limited in that way, Professor. The four per cent is not intended to reflect simply lifting rates to an existing benchmark. In some cases, particularly with regard to the degree qualified rates, the four per cent is well below what is needed to get even to the C(1)(a) benchmark. So we wouldn't want to foreclose qualifications as well being considered in that second stage.

PN199

PROFESSOR BAIRD: Okay.

PN200

VICE PRESIDENT ASBURY: Do you have any figures or any idea about, with the Flight Attendants Award, the proportion that are award-reliant under that award versus covered by enterprise agreements?

PN201

MS BURKE: I'm just going to ask Mr Clarke about that. The short answer is we don't have the numbers but we do know that the award applies in labour hire settings and also to regional airlines.

PN202

VICE PRESIDENT ASBURY: And there are those contracts with respect to the provision of flight attendants, aren't there, with airlines? So there are contractors that provide some of the labour to airlines.

PN203

MS BURKE: I'm afraid you've exhausted my knowledge.

PN204

JUSTICE HATCHER: That's labour hire you're talking about.

PN205

VICE PRESIDENT ASBURY: Yes. Labour hire kind of things, yes.

PN206

MS BURKE: Yes. President Hatcher, in response to your question about the Legal Services Award, that is all set out from paragraph 248 of our written submissions. It is a curious award.

PN207

JUSTICE HATCHER: Yes. All right, thank you, Ms Burke.

PN208

MS BURKE: Thank you.

PN209

JUSTICE HATCHER: Ms Harrison.

PN210

MS HARRISON: Thank you, your Honour, and members of the Bench. My remarks today are going to be hopefully fairly brief. I'm mindful that I will not repeat the submissions of the ACTU and in particular Mr Clarke and Ms Burke other than to say that the United Workers Union supports those submissions. I will address two matters; I'll very briefly touch upon the case for a substantial increase of the national minimum wage and modern award minimum wages and, secondly, I'll address the case for the Commission to act in relation to the gender-based undervaluation in female dominated industries, particularly noting the United Workers Unions interest in a number of those awards.

PN211

In respect to the amount of the increase in relation to the national minimum wage and modern award wage increases, the United Workers Union continues to support the position put by the ACTU in relation to the five per cent increase to the national minimum wage and also flowing that through to the modern award minimum wages. I don't intend to repeat the detailed submissions that are both outlined in our written submissions but, more importantly, in relation to the ACTU's submissions on this point, noting that it is supported by significant economic modelling as well as an analysis of the documents that are available to the Commission.

PN212

What I would say is that the reality for many Australian workers is that the current minimum wage is insufficient to meet the cost of living. This is supported by the submissions that have both been filed but also that we've heard today from the Commonwealth. Whilst the Australian economy has shown resilience, this resilience hasn't translated to improved living standards for many workers. The cost of living has soared, it's been driven by inflation in central sectors such as housing, healthcare and food, and workers that are on the minimum wage and those that are award reliant are disproportionately affected by these increases and by those cost-of-living struggles.

PN213

Those workers that are on the minimum wage, to the extent that we know that they are, but those that are on the awards are struggling to make ends meet, often working multiple jobs or excessive hours just to cover their basic needs. Our submissions have a number of individual stories from our members in them but they are real stories. Those stories, such as the story of one of our members, Alana, who is a part-time worker in early education care in Queensland, she has less than \$50 to live on at the end of the week and she works under the awards. It is not an isolated case but it is reflective of a systematic issue that is facing many low-wage workers across the country and something that, in these hearings, we

respectfully submit shouldn't be lost sight of is the person at the end of this decision that lives day-to-day on those award wages.

PN214

The financial strain is not just a matter of economic hardship but it also impacts on mental/physical health, family stability and overall wellbeing. The increase, we advocate, is not just to keep pace with inflation, it is about ensuring that wages of the lowest paid workers in our society reflect the true value of their work.

PN215

Now, on the question of gender pay equity, as is outlined in our submissions, as the Commission is aware and as Ms Burke has very detailedly gone through, the Commission has the obligation to take steps to try and rectify the gender-based undervaluation of work within awards. In the Aged Care decisions, there is a recognition of that historical undervaluation of work in female dominated sectors and partly due to that gender-based assumptions that have been present within our award system.

PN216

That is on two basis; that's the historical gender problem as we outlined in our submissions which is the prevention of retrospective reconsideration of work value arising from the operation of the national wage case in 1991 means that gender-based assumptions have been continued to be repeated through both the modern award process and its predecessors, and then the gender-based bias in benchmarking which is the alignment to the C10 Metals Alignment which was also inherently fixed to a male comparator rate historically.

PN217

So we say that the Commission has before it ample evidence in relation to that gender-based undervaluation. We accept that it is a complicated problem. It is not a uniform problem, it is a situation in which there are both skills, those hidden skills, that have been undervalued historically but it is also embedded within our classification structures within the awards as well and that complexity is particularly pertinent in the number of modern awards, some of which are identified in our submissions, that have actually never properly been set as well and that arises in a number of the care industry awards but also more broadly as well.

PN218

There are some awards, such as the Children's Services Award, that we note have had a process of, we say, being properly set at least in accordance with the principles that applied at that point in time, noting that we say – and we say that it's reflected in the Stage 2 report – but that that still suffers from gender-based undervaluation.

PN219

In relation to the Children's Services Award, we have put forward a submission to the Commission that the process in the Children's Services Award is, we would say, slightly less complex than a number of the other care industry awards. We've heard from the Commonwealth today confirming the 2023-24 budget that already has money set aside for an anticipated wage increase based on gender-based

undervaluation in the early childhood education and care sector and we say that any concerns regarding the funding of the children's services sector - or, I should say, the more broader early childhood education and care sector but it is particularly the Children's Services Award – the Commission has before it evidence of an ability of the government or willingness of the government to fund in the next budgetary cycle.

PN220

JUSTICE HATCHER: Ms Harrison, can I just ask you some questions about that?

PN221

MS HARRISON: Yes.

PN222

JUSTICE HATCHER: Firstly, obviously your union is pursuing the supported bargaining track as a means of, obviously, getting further wage increases and also addressing gender equality issues. How do we line up what is going on in that track and what we should be doing in the award space?

PN223

MS HARRISON: Your Honour, that is a good question. In relation to the supported bargaining, the government as a funder has obviously been in attendance at certain numbers of those meetings. Without putting words in the government's mouth in relation to that agreement, it is our understanding that the money that is set aside in the budget is in anticipation of both streams and that they are awaiting the outcome of this decision before further discussions take place in relation to the supported bargaining.

PN224

JUSTICE HATCHER: Right, well I hadn't read it that way but I'll ask them before they leave. But I must say, I read the budget as funding the supported bargaining track but maybe it's more than that and, at this stage, we don't know what the amount of funding will be that is – what you're saying is they're waiting for us but we don't know what's funded so we're sort of in a catch 22 at the moment.

PN225

MS HARRISON: Your Honour, and I can't satisfy the Commission higher than what I've put. It is obviously a question for the Commonwealth in that respect.

PN226

JUSTICE HATCHER: Should it be the case that perhaps we should await the outcome of supported bargaining track before we move in the award space?

PN227

MS HARRISON: Your Honour, it would be our position that the Commission shouldn't and that these processes can run comfortably parallel to each other in that respect.

PN228

JUSTICE HATCHER: It might be that employers might say, well, if the award is going up and that is funded, why should I bother with this bargaining exercise? It might disrupt something which might otherwise have resulted in an agreement.

PN229

MS HARRISON: Your Honour, we would hope that not to be the case but I accept your Honour's proposition. Just in relation to the ACTU's proposal in relation to the next steps, as we've outlined, I won't go into the reasons in relation to the modern award objectives which are in our submissions, but just in relation to the next steps. As I've said, we accept that this exercise is a complex exercise. One of the features of a number of the care awards particularly, which is outlined in our submissions, is that they often have classifications that are not just related to care industry.

PN230

They often have classifications which, in relation to the Social, Community, Home Care – the SCHADS Award – has been subject of error in respect to some elements of it, has been the subject of the aged care work value in relation to other elements of it and then still has other classifications that are likely to have gender-based undervaluation in the context where they were not properly set as well.

PN231

So we accept that process is one that is complicated. We support the ACTU's submissions in terms of trying to truncate any further processes. The work value processes are something that are incredibly resource intensive and, in the context of the number of awards that have the identified gender-based undervaluation, that is an extreme body of work if the same process is adopted.

PN232

We would also urge on the Commission the suggestion in relation to the joint experts and potentially being commissioned by the Fair Work Commission and potentially work in relation to the assessment of spotlight skills and those hidden skills that we would say exist within those other care industries and perhaps also in relation to the non-care sectors as well. We have suggested a slightly, I guess, probably slightly more divided version of the stage 1 that the ACTU has put forward which is to, perhaps within that stage 1, separate out which awards may be complex and which ones may not be complex because the ones that are not complex are likely to be easier to deal with.

PN233

We would say that the Children's Services Award is an example that would be not complex within the scope of the classification and those other elements. There would be comfortably the SCHADS Award that would definitely be in the complex category of that.

PN234

JUSTICE HATCHER: Sorry, it's in the complex category?

PN235

MS HARRISON: Yes.

PN236

JUSTICE HATCHER: Why do you say that?

PN237

MS HARRISON: We would say that in relation to the SCHADS Award because the SCHADS Award has multiple classifications that are both care and non-care so they don't necessarily – there would need to be an identification process in relation to which areas might have gender-based undervaluation. You've then got the situation that the, for example, the home care stream we know from the Aged Care Work Value decision that that classification wasn't properly set. It wasn't properly set in relation to home care workers in aged care but those same issues in relation to the non-benchmarking and non-setting of the classification structure in Schedule E exists in relation to disability home care.

PN238

We've also got the situation in which there are probably questions in relation to Schedule B classifications as well, as well as any others that - - -

PN239

JUSTICE HATCHER: What does Schedule B cover?

PN240

MS HARRISON: Schedule B covers all social, community, disability and probably the majority of workers within the SCHADS Award. If the Commission please, that was all that we wish to make submissions in relation to.

PN241

JUSTICE HATCHER: Thank you. Mr Massy.

PN242

MR MASSY: Thank you. I might just reorganise myself.

PN243

JUSTICE HATCHER: Yes.

PN244

MR MASSY: Thank you, your Honour. For the purposes of today's consultation, I appear with Dr Barnes. I had proposed to address the panel on three matters. The first concerns the expert panel's observations from last year's decision about whether the national minimum wage and the award classifications below the C10 level adequately address the needs of the low-paid and the related question of whether, in light of those observations, the setting of a medium-term target might be of assistance.

PN245

The second topic I propose to make some brief observations about is the extent of the disadvantage suffered by certain household types on the minimum wage and the C13 to C10 classifications and who those workers might be or how they might be identified, and thirdly, I propose to respond very briefly to some of the criticisms of my client's submissions by the Chamber of Commerce.

PN246

Dr Barnes will then make some short submissions on the general economic data and respond to some of the technical criticisms which were made in the Chamber's reply submissions so far as they related to my client's submissions. If it is convenient to the panel, I might come to the first of those topics.

PN247

In last year's decision, the expert panel at paragraphs 105 and 109 observed that the minimum wage and the award classifications below the C10 level did not constitute a living wage for certain household types and the expert panel also noted that the effect of this that the needs of the low-paid had not been adequately considered in the setting of those wages historically.

PN248

JUSTICE HATCHER: One problem of the – leaving aside the national minimum wage, but for award wages below C10 – one problem is that that sort of analysis assumes that somebody is just getting, for ordinary time, the base rate.

PN249

MR MASSY: Yes, your Honour.

PN250

JUSTICE HATCHER: And it doesn't take into account that what they might be receiving in addition under the award, that is industry allowances, other allowances, ordinary time shift loading, ordinary time weekend penalties, et cetera, et cetera. That is the mere fact that we have a base award rate doesn't really say much about what people on those classifications actually earn in reality.

PN251

MR MASSY: Yes, your Honour, that is so and that is what I propose to say next about the utility of either a medium-term target or some articulation, at least, of the notion of a living wage would assist in framing the research and inquiry into some of those matters. Now there was some observations at paragraph 108 and at 173 of the decision about the nature of the move of the national minimum wage from the C14 rate to the C13 rate as being an interim step and that there being a more significant step being needed and being beyond the scope of last year's review.

PN252

In my submission, one reading of those passages might suggest that the setting of a medium-term target would be of utility in that respect. Now, I note that during the 2017 annual review, the expert panel declined to adopt a broader medium-term target in respect of award wages generally. One of the reasons for that was the expert panel's view that, because of the annual publishing of various statistical data, the parties were at liberty to make submissions about the progress or lack thereof that the panel was making in certain measures and it didn't require the panel to adopt a target.

PN253

JUSTICE HATCHER: Well, more fundamentally, I thought the decision said that the panel doesn't have the power to bind future panels and that, therefore, setting a

target actually doesn't serve a purpose because no future panel is going to be bound by it.

PN254

MR MASSY: I think they were related but yes, I would accept that that was one of the principal reasons as well. Now, in terms of the expert panel's observation that the parties were at liberty to, sort of, make submissions year-on-year about progress or lack thereof, the panel will note that that's the course that my client has adopted over the last three reviews. It has identified what it submits is an appropriate target by 2030 in respect of the national minimum wage and confined its submissions to how that can be achieved in the circumstances of each review.

PN255

Now, of course, like the ACTU, my client would, of course, support the adoption of a medium-term target but there are anterior steps before that which would be of assistance irrespective of whether a medium-term target was adopted and one of those would be, in my submission, if the panel was to articulate the characteristics of the living wage described in a number of places earlier in last year's decision that I referred to and the households which might expect to be in receipt of that and by that I mean, in last year's decision, the discussion about a living wage proceeded by reference to the minimum income necessary for healthy living and the budget standards research. That had been updated for the first time in some time prior to last year's review.

PN256

My client's submissions for the last three years have been directed at the 60 per cent poverty line but it would be of assistance, in my submission, if the expert panel was to articulate how a living wage was to be assessed against which measures because that would inform the type of research which was undertaken and it would entitle the parties to make more focussed submissions on whether that was an appropriate standard and how it might be affected.

PN257

JUSTICE HATCHER: Sorry, just taking the national minimum wage, how can we even begin to formulate what a living wage might look like if we can't identify who the thing applies to? That is if we can't identify any household types to which the national minimum wage applies, how can we even begin the task?

PN258

MR MASSY: Well, can I come to that in the second part of the observations, but I accept that that is a challenge that has to be grappled with and there are some deficiencies in the data. The other aspect of the articulation of a living wage is the households which would expect to be entitled to it. I say that because there is some debate in this year's submissions, particularly – I'll come to this in the third part of my submissions – but the Chamber of Commerce suggests that the assessment of the needs of the low-paid should be conducted by reference to a single earner by themselves on the national minimum wage and not a family.

PN259

Now, of course, the notion of a living wage was an unskilled worker, their spouse and three children. Now I accept that times have moved on since then but it

would be of assistance, in my submission, if the expert panel was able to identify those types of households which might expect to be able to receive the living wage and that would enable the parties to address that question in a more focussed way in an ongoing basis.

PN260

Now if I might come to that second topic which your Honour just raised with me. There are two aspects to this; firstly, I wish to highlight very briefly the extent of the disadvantage suffered by various people and Dr Barnes' report clearly outlines the extent of that disadvantage suffered by sole parents with children and couple-parent families at the national minimum wage rate, the C10 rate, and the C12 rates. That disadvantage is measured against the 60 per cent poverty line but figure 2.1 on page 5 of his report shows the gaps between those household types and the 60 per cent poverty line.

PN261

Now table 8.6 of the Commission's statistical report identifies five household types in which there is a person in full-time work receiving either the C10 rate or the national minimum wage where the family household falls below the poverty line. That immediately raises the question that your Honour has asked: who is on the national minimum wage and are there households of this nature? Now can I address the question that your Honour posed to the government representatives earlier.

PN262

As I understand the research commissioned by the Commission into the characteristics of persons on the national minimum wage, it identified three broad cohorts of people who receive the national minimum wage. That was persons who had their wages set by reference to the national minimum wage, people who were on collective agreements but whose wages were set by reference to the national minimum wage, and people who were on awards but were paid a rate equivalent to the national minimum wage and I think that report, sort of, identified about 181,000 people falling within those three cohorts. The award category and the award-free category were about the same size and it was a small number on collective agreements.

PN263

I think the thrust of your Honour's question was, in circumstances where the cohort which was said to be award-free identified as being in various industries which were the subject of a modern award, could the Commission proceed on the basis that the reporting that they were award-free was accurate. In my submission, with respect, that's a valid concern but I don't think it's a safe assumption that just because there is a modern award that applies in the industry that this small number of workers would necessarily fall within one of the classifications in the award.

PN264

We don't have enough data to be able to say whether or not they are performing work which is regulated by the modern award and that is a difficulty which pervades but all we have at the moment is the assertion from the respondents to the surveys that it is not covered by an award.

PN265

JUSTICE HATCHER: It may be that those answers are only revealing award non-compliance.

PN266

MR MASSY: They may be or they may be because the nature of the work falls outside the classifications.

PN267

JUSTICE HATCHER: Well, it appears a proportion of them are in the retail industry. I can't imagine any person working in the retail industry being paid at or around the rate of the national minimum wage who is not covered by the Retail Award.

PN268

MR MASSY: Yes, I accept that.

PN269

JUSTICE HATCHER: I mean, it's not rocket science that, unless someone can point out that gap in that award, I have no reason to believe that there is anybody working in retail at that pay level who are not covered by the award.

PN270

MR MASSY: It's also a question, in those circumstances, whether they might then be captured at the C13 or C12 rates.

PN271

JUSTICE HATCHER: Yes. That's a separate question. I'm only concerned with the actual setting of the national minimum wage for the purposes of these questions.

PN272

MR MASSY: Yes, I understand that and there is just a difficulty with the absence of any granular data as to who these people are and the concern that your Honour expressed, namely that the data is dependent upon the answering of a question of law by the recipients of the survey, is a valid one, with respect. But, in some cases, it might be an assumption that can be made that the responses are indicative of a misunderstanding from the person giving the answers as to whether the award applies but I don't think that's a universal assumption in the case of all of the industries, especially given the small numbers of workers that we are talking about and the fact that they might be performing unusual roles which are not covered by one of the obvious classifications.

PN273

VICE PRESIDENT ASBURY: Mr Massy, when you look at the industry subdivisions and occupations that are identified by employers in that survey, for my part, I can only wonder what employee would be in any of those industries or occupational groups being paid at or around the national minimum wage and not be covered by an award.

PN274

MR MASSY: Yes, your Honour, there is a difficulty with the granularity of the data and the fact that it is dependent upon the assessments from the people giving the answers.

PN275

VICE PRESIDENT ASBURY: There aren't any apparent novel categories or classifications that one can see.

PN276

MR MASSY: Well again, that rather depends on the occupational answers being accurate as well and the industry answers being accurate as well. The difficulty is it requires all of the answers to have been given to have been correctly done or not masking some other difficulty. That's the problem with categorisation of answers given on surveys, that sometimes the way in which it is cut, it may make it appear that they are falling within an award classification but there may be a reason why they're not.

PN277

JUSTICE HATCHER: Yes, well these are all very interesting hypotheticals but I'm wondering if the starting point is there's nobody covered by the national minimum wage unless somebody produces some decent evidence that there is, and if that is the starting point and we don't have that evidence, how can you even proceed upon some sort of budget or household analysis to formulate a living wage?

PN278

MR MASSY: Well, I would have thought that there are a range of employees described in the survey data as falling outside of necessarily those industries where the modern award would expect to capture all of the entry-level roles.

PN279

JUSTICE HATCHER: Say that again?

PN280

MR MASSY: I'm sorry, perhaps that wasn't clear. When one goes through - I'm looking at what is table 4 of the Commission's research report where it describes the employees by industry - falling within that cohort of people who assert that they are reliant on the national minimum wage, there are some categories where - for example, there is professional, scientific, and technical services where there is 11.7 per cent of the employees who are said to be reliant on the national minimum wage. It doesn't necessarily immediately stand out to me that those people would all certainly be covered by an award.

PN281

JUSTICE HATCHER: There's professional people earning \$20 an hour, is there?

PN282

MR MASSY: Well, that's the answers that have been given. We're trying to do the best we can with the data that is available, your Honour. Can I say what we do know from the data which my client has been able to ascertain, which is found at Annexure B to Dr Barnes' report from the Census, is that there are a number of

families which answer the descriptions of the people in either table 8.6 – that is where there is full-time work and a couple-parent family with dependent children or full-time work with a sole parent with children.

PN283

I think there's somewhere in the order of 65,000 households where one adult was working full-time and the other was not working and there was 20,000 households where there was a family with a sole parent where there was full-time work and those households were all below or around the 60 per cent poverty line and that suggests that, whilst we don't know with the granularities as to what instrument sets their pay, they do fall into the descriptions of the types of people identified in table 8.6 and an inference can be drawn from that that they are having their wages set by one of those instruments and, in my submission, that is a powerful consideration when one comes to look at whether or not those households actually exist. There are people in the Census that answer that description.

PN284

The final topic I propose to address before I hand over to Dr Barnes was some of the criticism made by the Chamber of Commerce in its submissions. Dr Barnes will deal with some of the technical criticisms but, at paragraphs 72 and 73, there was a contention to the effect that, when one looked at table 8.6, the only household types which were below the 60 per cent poverty line were single-parent families or couple-parent families where one of the parents was not receiving government benefits and, in my submission, that wrongly analyses it.

PN285

Households where one parent is working full-time and the other is not working should not be excluded simply because they are not receiving a government benefit. There are a variety of reasons why the parent who is not in work might not be entitled to receive government benefits and the most obvious answer is that they're not looking for work because they're performing the work of a full-time parent. Now it is true that the choice for a family for one of the parents not to work and to care for the children on a permanent basis is one which comes with an economic cost, it is another thing, in my submission, to say that that's a choice that should result in the family being impoverished within the statistical definition.

PN286

What we see from table 8.6 is, someone working at the C10 rate on a modern award, if their spouse does not work because they are performing the role of being a full-time parent, the family will fall into the statistical definition of poverty. In my submission, that is not an appropriate outcome. Unless the panel has any other questions, that's all I wish to say.

PN287

PROFESSOR BAIRD: Mr Massy, I have a question. It's really a conceptual one. Could you just explain a bit further how you differentiate between the concept of 'minimum wage' and a 'living wage?'

PN288

MR MASSY: So, historically, wage setting proceeded on the basis that an unskilled worker should receive a wage which was sufficient to keep them, a spouse and three children to a reasonable standard. That is a phrase which has been used in a number of the decisions and it was used last year at paragraphs, I think, 105 and 108 to discuss those households on the national minimum wage rate and, indeed, some of them on the C10 rate which were below what the budget standards identified as a minimum income for healthy life and that was described as not being a living wage in the decision and the point I was attempting to make was that it would be of assistance if the expert panel could articulate in a more contemporary way what it considered the attributes of a living wage were so that that could then be addressed in future years.

PN289

PROFESSOR BAIRD: But legally, we are to determine the minimum wage, not necessarily a living wage.

PN290

MR MASSY: Yes, but that is one of the considerations which has historically been used, and in the statutory context, to take into account, for example, the needs of the low-paid.

PN291

PROFESSOR BAIRD: Yes, okay. Perhaps it's a matter of terminology.

PN292

MR MASSY: Yes, I'm suggesting this is, sort of, an anterior step as one of the bucket of considerations which comes into the overall evaluative exercise that the Commission undertakes when it decides what a fair and reasonable safety net is in the circumstances.

PN293

JUSTICE HATCHER: Thank you. Dr Barnes.

PN294

DR BARNES: Thank you. I'd like to make two general points if I may. Firstly, I'd like just to reiterate some of the general economic context in which this decision is being made and I'd like just to reiterate that the grounds for another, further strong rise in the minimum wage are justified when we consider, first of all, the overall abatement in CPI. That we see the CPI back to approximately the same level it was two-and-a-half years ago. That we don't, as far as I'm aware, see any evidence of inflationary effects from the minimum wage determination last year over the subsequent period.

PN295

Indeed, if we look at the wage prices index, particularly for sectors which are highly low-wage dependent – I'm thinking here particular here retail, trade and accommodation and accommodation and food services – we see a fall in the wages price index for the December quarter of 2023. So I would also like to point out to reiterate that, despite that, we do see a continuation of cost-of-living pressures and penalties on lower-income households, particularly vis-à-vis rent, energy costs and insurance premiums.

PN296

And the final contextual point I'd like to reiterate is that, despite the upward creep in the unemployment rate to 4.1 per cent in most recent seasonally adjusted data, that rate is still considerably lower than even the pre-COVID period. So I think, despite some of the underlying economic pressures that we're seeing, I think the overall economic context remains strong enough to justify a further substantial increase in the minimum wage. That was my first general point.

PN297

My second point is that I would like just to respond to some of the claims made in the Chamber of Commerce's reply submission in addition to the points raised by Mr Massy. So, first of all, I think on page 8 of ACCI's reply submission, they criticised some of the claims made in our original submission vis-à-vis selective reporting of labour productivity data. I would just like to point out here that, yes, it's clear that there was a decline in labour productivity in the 12 months to December 2023 but I would first of all say that's a relatively modest decline of 0.4 per cent, but also, I would argue that there seems to be an underlying assumption here of some relationship between that and minimum wage settings whereas if you look at recent trends in productivity.

PN298

And I would highlight here the Productivity Commission's Australian Productivity Bulletin released a couple of months ago where they look at labour productivity for the previous financial year 2022/2023 and where they argue that falling labour productivity really has – there's no evidence in that particular document which points towards wage costs including minimum wage costs. Indeed, they argue that declining labour productivity in that context is related to an increase in overall hours worked plus a fall in capital/labour ratio – in other words, less capital investment per worker – influencing lower labour productivity. Nothing to do with wage costs I would submit.

PN299

Furthermore, ACCI suggests that we have claimed 'extraordinary' profit growth where nowhere in our submission do we use that word or anything similar to that. And just finally, and most importantly, I would suggest, the claim that their interpretation that the Henderson Poverty Line, the 60 per cent poverty line, is only relevant when we consider single-person households in relation to national minimum wage terminations and that is, they argue, ostensibly because of welfare transfers, which are outside of this remit, and they also cite the ACOSS submission to support that contention.

PN300

I'd just like to point out, first of all, I think that there has been, with respect, some misinterpretation of the ACOSS submission there. It is true that, on page 6 of the ACOSS submission, ACOSS argues:

PN301

Decisions on the level of minimum wages should be informed by benchmark estimates of the cost of attaining a decent, basic living standard for a single adult according to contemporary Australian standards.

PN302

So they do argue that and that would support ACCI's contention if you were to look at that quote in isolation. But if we look at this in a bit more context, so earlier on the same page – so this is page 6 of the ACOSS submission – they argue:

PN303

Adequate minimum wages reduce poverty directly by lifting the incomes of low-paid workers and their families. Furthermore, adequate minimum wages along with family tax benefits reduce child poverty.

PN304

They also claim:

PN305

The combined effects of the minimum wage and family benefits on the extent of poverty among families with children, including reductions in family payments, should also be expressly considered when setting minimum wages.

PN306

And the Chamber of Commerce, the particularly cite page 19 of the ACOSS submission to support their contention for a focus on single-person households not on multi-person households or families but the point that ACOSS make on page 19 is that cuts to the family tax benefit over the last decade have made low-income families more dependent on changes to the national minimum wage and they quote:

PN307

Over the last decade, governments have reduced these payments leaving families with low incomes more reliant on wage increases, especially minimum wage increases.

PN308

That's on page 19. So I would just respectfully submit that it's simply not the case that the poverty line should be considered in this deliberation only with regard to single-person households. Mr Massy has provided some comment on analysis of 2021 Census data which we provided in Appendix B of our submissions, so I won't repeat that, but I'll just add one substantive comment which is that we also do include in Appendix A of our submission calculations of disposable income for low-income households with the inclusion of welfare transfers.

PN309

This goes to the specific point made, I think, in ACCI's objection where, if you look at pages 32 and 33 of our submission – so this is table A5 and table A6 where we look at disposable income outcomes for national minimum wage dependent two-person households with two children – that even after we include Family Tax Benefits A and B plus the Medicare exemption plus rent assistance, that the disposable income for households in that cohort remains below the national poverty line.

PN310

JUSTICE HATCHER: So that's a full-time - - -

PN311

DR BARNES: Yes, with one full-time wage.

PN312

JUSTICE HATCHER: Why would we assume someone in that category only works 38 hours per week?

PN313

DR BARNES: I accept that contention.

PN314

JUSTICE HATCHER: Don't we need to know what they actually earn, not rather simply assume that they get no more than the minimum rate in the award?

PN315

DR BARNES: No, I accept that point, your Honour. I think that goes back to some of Mr Massy's responses about the lack of detailed available data to address precisely that question about number of hours worked but, based on those basic minimums that we have available, we can say that, if we were to assume a 38-hour week, that in that scenario and for that particular cohort, the total household income still falls below the Henderson Poverty Line so I would simply submit that.

PN316

JUSTICE HATCHER: It would only take a couple of tweaks to radically change that picture. I mean, we know that a huge proportion of modern award reliant employees work in the hospitality sector or in retail. That almost certainly means that they're working on hours that attract ordinary time penalty rates. So once you take into account some weekend penalty rates and maybe a couple of hours overtime, it becomes a radically different picture, doesn't it?

PN317

DR BARNES: Yes. I would simply submit that we feel that there are interpretations, that there are people, based on the Census data, who fall into that category and, you know, the Census data that we've provided the analysis we've provided in Appendix B, you know, yes, it doesn't provide the exact outcomes for income that would satisfy making the kind of decision you're talking about but I would simply submit that they provide a strong indication of the scale of the issue that we're talking about. That would be my submission here. So my general point here, in conclusion, your Honour, is that, you know, we feel it would be a mistake to, when looking at the Henderson Poverty Line as a guide in any sense, to focus purely on single-person households and that the problem of working poverty remains an issue for which we can use the poverty gap as an instructive guide for multi-person households with dependents – in other words, families – and not just single-person households.

PN318

JUSTICE HATCHER: All right. Thank you. Ms Tinsley. Sorry, Mr Grist.

PN319

MR GRIST: Sorry, yes. We thank the panel for the opportunity to appear before you today. With me today is Jess Tinsley, ACCI's director of workplace relations. In making the decision for the annual wage review, it is important, panel, to take into consideration the full range of considerations before us and these include the slowing in economic activity over the past year with GDP growth at only 1.5 per cent in calendar 2023.

PN320

I don't have the information and the detail that Treasury have so I can't disagree with some of the information put forward by Treasury but I do note that the Reserve Bank, in projecting their GDP forecasts only a week earlier, indicated that GDP growth would deteriorate to 1.2 per cent in June 2024 before a modest improvement to 1.6 per cent. Business conditions have deteriorated over the past year with business confidence at record lows and recent ACCI surveys, those of our state chamber counterparts, and major banks such as the National Australia Bank, Westpac, all paint a pretty concerning picture.

PN321

There's growing pessimism around general business situation due to persistent cost pressures and disappointing demand and sales performance. Wages growth is emerging as the most significant cost pressure on business and business' margins are being squeezed and profits are expected to decline over the coming year. With this, business investment is forecast to slow quite substantially over the year with the budget forecasting business investment to increase only 1 per cent next year.

PN322

Labour productivity has contracted over the past two years and is still in negative territory. I won't dwell too much on productivity, I think it's been discussed a lot here, other than that productivity is at record lows averaging zero over the past four years and the most important thing is, to be sustainable, any increase in wages must be linked to productivity. Containing inflation must be the priority and inflation needs to return to the middle of the Reserve Bank's target range, 2 to 3 per cent, as quickly as possible. All parts of the economy must play their role in achieving this including administrative wages through this annual wage review.

PN323

JUSTICE HATCHER: Sorry, when you say their role, what is their role? To take a further real wage cut in order to achieve that result, is it?

PN324

MR GRIST: We're not proposing a real wage cut. We're proposing that the wages be focussed on returning inflation to the target range of 2 to 3 per cent.

PN325

JUSTICE HATCHER: Well, you're proposing 2 per cent, aren't you?

PN326

MR GRIST: We're proposing a 2 per cent increase plus the 0.5 per cent increase in the superannuation guarantee which will take you to the middle of the Reserve Bank's target range.

PN327

JUSTICE HATCHER: Well that's a real wage cut, isn't it? I mean, I don't see how you can argue otherwise.

PN328

MR GRIST: I agree, it's potentially a modest decline but - - -

PN329

MR CULLY: Can I follow up with one further question, you seem to take some faith in the RBA's forecasts for GDP for this financial year, you quoted those as being 1.2 per cent, somewhat lower than the budget forecast. The RBA is forecasting a productivity increase of 1.8 per cent for this financial year. So would that mean - - -

PN330

MR GRIST: But that has been revised down from 3.1 per cent.

PN331

MR CULLY: 3.1, correct, that's right.

PN332

MR GRIST: Earlier and, as was the discussion earlier, what's more important is the cycle and in our post-budget submission we did present a chart on using the forecast of the Reserve Bank's productivity growth and productivity growth would only be 0.3 per cent over, I think, it's seven years using the Reserve Bank's forecast. So still very low.

PN333

JUSTICE HATCHER: Just going back, the RBA's inflation forecast for this financial year is, I think, 3.8.

PN334

MR GRIST: Sorry?

PN335

JUSTICE HATCHER: The RBA's inflation forecast for this financial year is 3.8.

PN336

MR GRIST: Correct.

PN337

JUSTICE HATCHER: General wage growth is trundling around 4 per cent and everyone is projecting real wages growth over the next financial year so the only group that is going to make a contribution to the inflation target by taking a real wage cut are low-paid workers. Is that the submission?

PN338

MR GRIST: No, that's not our submission. Our concern is that wages growth has been putting a lot of pressure on inflation and we're concerned that a substantial increase in wages would put further pressure on inflation and our focus is the objective must be to get inflation back to that target range.

PN339

JUSTICE HATCHER: Yes, well what's an amount consistent with that proposition?

PN340

MR GRIST: Well, we are proposing 2 plus 0.5 from the superannuation guarantee.

PN341

JUSTICE HATCHER: All right.

PN342

MR GRIST: Yes. So I suppose I'll just cut to the end. ACCI urges the panel to set a minimum modern award wage that is appropriate for the award's workers but is also set at a level that businesses can afford and encourages them to take on more workers. The minimum wage should not be used to drive wages growth across the economy. The panel must take note that wage pressure has emerged as the primary driver of inflation over the past year and recognise that an oversized increase in minimum and modern award wages will make it very challenging to return inflation to the target range.

PN343

The panel must also take note of the very weak productivity growth in recent years and avoid further decoupling wages growth from genuine productivity improvements. As stated in our submission, for the current review, ACCI considers an increase in minimum and modern award wages of no more than 2 per cent plus the 0.5 per cent increase in the superannuation guarantee to be fair, reasonable, and responsible. Thank you. I'll pass over to my colleague to talk more.

PN344

JUSTICE HATCHER: Ms Tinsley.

PN345

MS TINSLEY: Thank you, your Honour. I'll be very brief. I just wanted to quickly clarify ACCI's position with respect to the additional work around gender-based undervaluation. So, consistent with what Ms Burke said previously, she identified here that there seems to be a large consensus that there is further work that can be undertaken in terms of identifying off the back of the research report that was handed down. Now I note in our written submission, the reason why I thought I'd make oral submissions here is that we're referring here to an application-by-application basis, so that doesn't mean that we're opposed, necessarily, to further work being undertaken by the Commission, noting that the Commission is minded to do that.

PN346

In terms of the way forward, similarly to Ms Burke, we're not don't mind one way or the other how that work is undertaken. We're not necessarily opposed to a truncated process so long as the evidence can be appropriately tested by the appropriate parties, so we note here that the relevant industry association haven't engaged, we haven't been able to consult with our members with the time

provided on this issue and, with respect to the ACTU as well, note that we haven't heard submissions directly from employee associations or organisations as well on the impact for their particular awards so we think that the Commission would be better informed by hearing directly from those relevant associations and employee organisations as well.

PN347

Where we do depart, however, your Honour, is around this issue of an interim increase of four per cent.

PN348

JUSTICE HATCHER: Can I just say something about what you've just said before you turn to that?

PN349

MS TINSLEY: Of course.

PN350

JUSTICE HATCHER: You referred to an application-by-application basis. Another approach – again, leaving aside the interim increases proposition – might be for the Commission to initiate award variation matters of its own motion. That is this is not a situation where we are starting off with a blank slate, we have the two reports and they sort of set out the background of what's on the agenda. Would ACCI have any view about that sort of proposition? Again, with the truncated basis that you referred to.

PN351

MS TINSLEY: Absolutely, your Honour, that was essentially what I was referring to.

PN352

JUSTICE HATCHER: Okay.

PN353

MS TINSLEY: We're not proposing that parties should come forward on an application basis for years-long work value cases and that we would be supportive, in principle, of a process where the Commission is able to undertake something of its own motion using the report and the work that has already been undertaken. Again, I'm not going to make any comments about the substance of the report. Similarly to the Ai Group, we haven't had the time to consider it or to consult with our network on the point. But, again, supportive in principle but truncated process. I think Ms Burke mentioned, sort of, a time period within 12 months. That probably sounds achievable, noting the massive workload, you're probably not liking me saying that with the enormous workload of the Commission at the moment.

PN354

In terms of the interim increase, we would say here that it seems very much putting the cart before the horse. So, in terms of Ms Burke referred to a 4 per cent increase being something that the ACTU would say is well below what the rate of correction is, I'll say here that certainly ACCI and other employer associations

haven't had the time to actually come to a view of whether, on the basis of each award, that any correction rate is needed – although we generally have no view on that either way with respect to each of the awards and, in fact, would not have, if there is a correction rate needed, what that rate would be.

PN355

So we would say that it is very difficult to come up and just be able to say that the interim rate is well below the rate since we haven't done that work at all so we are opposed to a concept of an interim rate and do note that, considering our openness to a truncated process, you know, as long as those rules are around the usual course about evidence and the Commission is able to inform itself directly from parties, we don't think that it's unreasonable not to proceed with an interim rate in the circumstances. If there's no further questions, that's all I have to say.

PN356

JUSTICE HATCHER: Thank you.

PN357

MS TINSLEY: Thank you.

PN358

JUSTICE HATCHER: Mr Ferguson.

PN359

MR FERGUSON: Thank you, your Honour. Look, I will just make some brief opening remarks before handing over to my colleague, Dr Wilson, who is the director of research and economics for the Australian Industry Group. Dr Wilson will provide a very high-level overview of the key aspects in the substance of our submissions and we are, of course, happy to take any questions as we go or at the end from the panel.

PN360

I should note, we have, of course, filed three detailed sets of submissions, we rely on that material, I won't repeat its content, but it must be observed – and I think this is a point that has been effectively been acknowledged by the ACTU – that the panel is called upon this year to undertake the annual wage review in what are, on any reasonable assessment, challenging circumstances for both employers and employees. Now, the Australian Industry Group has proposed a wage increase of 2.8 per cent should be awarded. Now that would strike, in our view, a reasonable balance between employers, employees, and the broader community.

PN361

Now, advancing that position, we've carefully identified a range of significant, moderating factors that must be taken into account by the panel. Dr Wilson will elaborate on these factors but they include the clear weakening of the Australian economy and labour market as well as various government measures that will assist employees with the cost of living including reprofiling of the stage 3 tax cuts. We also point to the impending increase to superannuation obligations that should be taken into account by the panel.

PN362

Now, before turning to Dr Wilson, I will also note that Ai Group's submissions, including in particular both our submissions in reply and the post-budget submissions, incorporate fairly detailed responses to the ACTU calls for additional increases for certain awards. That includes responses to the claim for very large what has been characterised as interim increases for certain awards and what I think could be characterised on gender equity grounds.

PN363

Now these are, undoubtedly, significant issues. The grant of increases of the kind of scale that is being proposed by the ACTU would have profound effects on some of the employers that are covered by those awards and potentially on the broader community. Those sorts of impacts need to be carefully weighed and I'd endorse the submissions that were advanced by the Australian Government that factors, including the capacity of employers to pay, need to be properly considered.

PN364

I'd also add that what is, I think, clear already from these proceedings today: that the uncertainty over the approach that will ultimately be taken by the Federal Government to funding any sort of increase that might be awarded should loom large in the panel's considerations. It certainly looms large as a concern in many affected sectors, particularly those in early education and the disability sector, which are amongst our membership.

PN365

Now we say, ultimately, where we're left is that the panel doesn't have sufficient material before it to enable it to properly, in a justified way, grant the kind of increases that are proposed by the ACTU through these proceedings this year. Now, unless there are any questions at this point, I'll hand over to Dr Wilson.

PN366

JUSTICE HATCHER: Dr Wilson.

PN367

DR WILSON: Thank you, your Honour. I will briefly outline Ai Group's propositions regarding the contemporary economic context of relevance to this year's decision. Now the Australian economy slowed markedly in 2023, dragged by inflationary pressures, tight monetary policy, and the weaker global economy, and while inflation has declined, it is proving stubbornly persistent and is now primarily of domestic rather than imported origin.

PN368

Official forecasts point to slow economic conditions for the next two years with GDP growth, business investment levels and employment generation expected to be weaker than their long-term averages. These weak economic conditions are negatively impacting business. Industry performance weakened in 2023 and is expected to weaken further in 2024.

PN369

We do see pronounced vulnerability that can be identified for some industries, particularly, but not only, retail, as well as for small business as a whole. The cumulative impact of high minimum wage increases granted over the past two years has also dragged on some award-reliant businesses, so business capacity to pay increases in minimum award wages is lower now than in the previous years of strong, post-pandemic growth, particularly so in those areas of identified vulnerability.

PN370

The labour market is also demonstrably slow from its previous position of strength. Key employment indicators have been weakening since about the middle of 2023 and recent data suggests wage growth may have peaked late last year as well. The principal risk facing the labour market today is the extent to which employment generation is sufficient or insufficient to absorb future labour force growth.

PN371

So, when setting the level of this year's minimum wage increase, the panel should have regard to those branches of industry and those cohorts of the labour market that are already showing weakness and thus are at greatest risk of disemployment effects that might follow from an excessive increase. Meanwhile, productivity in Australia has been unhelpfully weak. Labour productivity was negative in the last financial year, declined in those industries, and in aggregate, as we've discussed this morning, has not grown over the four years since the pandemic.

PN372

As productivity improvements are the only durable foundation for real wages growth, recent poor performance should be considered as a factor in setting minimum award wages. Ai Group does acknowledge the pressures currently bearing on low-paid employees in low-income households and our submissions identify, and where it's possible attempt to quantify, several forms of income support including the stage 3 income tax reprofiling and cost of living measures announced before and in the 2024/25 Federal Budget. We note that, in combination, these will make a substantial contribution to low-income household incomes.

PN373

JUSTICE HATCHER: The tax cuts only restore – maybe they don't even do this – they only restore low-income households to the position they were in six, seven, eight, nine, ten years ago, don't they? That is they're a return of bracket creep, they're not a permanent tax cut, as such.

PN374

MR FERGUSON: The description of them as a return of bracket creep, you know, tax brackets are automatically indexed in Australia, that's a massive income tax policy to be set over time by the government of the day. Certainly, the impact on a household, and there's a detailed analysis using EEH data in our initial submissions that is sensitive to the household in question.

PN375

MR CULLY: Can I just make a particular point about the bracket creep point. You can stay within the same tax bracket and your average tax goes up because of the impact of the tax-free threshold.

PN376

MR FERGUSON: The tax-free threshold introduced a significant threshold effect within the deciles. As we said, we attempted to estimate those for income deciles in our first submission. You can see the table there. At an individual level, there will be variation due to household circumstances. It is very complex to model for a real household.

PN377

MR CULLY: Treasury do have a box in the budget which looks at changes in real household disposable income over the past couple of years and that's been negative the past couple of years, in part, because of tax and it's a small positive effect of tax which is contributing towards the increase in real household disposable income next year. So, in a sense, the Judge's point is still valid. It's, in part, a remedy for what has been taken.

PN378

JUSTICE HATCHER: To put it another way, we've never taken into account increased tax caused by bracket creep as a reason to award a higher wage increase in the past so why should we go in the other direction now?

PN379

MR FERGUSON: We have, in our initial submission, attempted to advance on the Treasury analysis which was economy wide for all income earners by providing information for award employees using EEH microdata. That is something that makes a contribution to real household incomes of those households, we would submit that it should be a multi-raising factor that is considered in the way other adjustments like that, say LMITO, have been in previous years as well.

PN380

So, in conclusion, having regard to this complex set of economic circumstances, Ai Group submits that the increase in minimum award wages this year should not exceed 2.8 per cent. This would avoid exceeding business capacity to pay in the deteriorating environment particularly in those industries and those employee cohorts showing weakness and, in practical terms, it will deliver an increase in the real income of most recipient employees when the impact of the stage 3 reprofiling and other income supports are considered.

PN381

So we submit that an increase not exceeding 2.8 per cent therefore strikes a responsible and fair balance at a time when economic conditions are challenging for employers and employees alike. Thank you.

PN382

JUSTICE HATCHER: Yes, so before we finish and before the Australian Government runs away, this issue of the childcare funding in the budget. It was

suggested by the UWU that that was funding for award adjustments as well as the supported bargaining. Is anyone in a position to clarify that point?

PN383

MR COWGILL: Thank you very much, your Honour. I might ask Ms Wettinger to answer that and I'm sure Ms Redmond would like to elaborate on it as well. Thank you.

PN384

MS WETTINGER: Thanks, your Honour. So, in terms of the budget, just to clarify that we did allocate 30 million over two years for IT development and payment services and funding has also been provisioned in the contingency reserve with details to be finalised following this process.

PN385

JUSTICE HATCHER: So, sorry, what is the 30 million for?

PN386

MS WETTINGER: So that's for IT development and payment services.

PN387

JUSTICE HATCHER: What's that?

PN388

MS WETTINGER: So that's separate to this. It's not to do with wages, I think it is fair to say.

PN389

JUSTICE HATCHER: Right.

PN390

MS WETTINGER: And then the second part that I mentioned, in the contingency reserve, is yet to be finalised in terms of, you know, looking at what happens in this process and also, of course, as has been acknowledged, have the supportive bargaining process on foot.

PN391

JUSTICE HATCHER: So the answer to my question is what?

PN392

MS WETTINGER: So the answer to your question is that there isn't a dollar amount but there is amount that the government has, you know, made provisions but it's not an amount that can be disclosed, in the contingency reserve.

PN393

JUSTICE HATCHER: Well, leaving aside the amount, I read the relevant budget passage as saying it's a contingent funding for the supportive bargaining that is occurring, I didn't read it as relating to potential award wage increases. Is my assumption correct or not correct?

PN394

MS WETTINGER: I think it's – I mean, unless Ms Redmond has different – did you want to answer?

PN395

MR BULLEN: So it hasn't stated what process that wage increase will come through and so there's clearly potential interactions between Fair Work Commission processes and the government hasn't judged those so it hasn't said what that will come through but it has made that commitment that it will make a funding commitment towards early childhood workers.

PN396

MS REDMOND: The exact wording is actually plural, 'processes.'

PN397

JUSTICE HATCHER: 'Processes.' You trying to say something, Ms Harrison?

PN398

MS HARRISON: Yes, your Honour, sorry. I just want to clarify – and I'm just mindful of the Commonwealth's submission just then – I wouldn't press my submission in relation to the indication about how the budget might be allocated to early childhood education and care. That is obviously a decision for the government and one that they haven't made.

PN399

JUSTICE HATCHER: All right. We thank all the parties for their submissions. Mr Clarke, did you want to say something or are you just leaping, hungry for lunch?

PN400

MR CLARKE: Look, just briefly, arising out of the discussion with Mr Massy around the minimum wage.

PN401

JUSTICE HATCHER: Yes.

PN402

MR CLARKE: And, you know, the discussion is centred around this idea of what do we do about the minimum wage if we don't know who the people are based on a survey instrument that, when it does boil down to classification levels, has more red flags in relation to relative standard errors than you're likely to see in anything and doesn't actually ask anyone, 'Are you paid according to the national minimum wage order?'

PN403

Now there's no real surprises that there's any uncertainty about that and, in my submission, there's no real surprises that we're uncertain as to who is on the national minimum wage because it is a feature of the design of the system that there will be a fallback which is the national minimum wage. That's expressed in section 163(4) of the Act in terms of what the coverage of the Miscellaneous Award is. It's to cover people who aren't covered by any other modern award and, if you remember back to the award modernisation process – I was still doing the

same job back then – the award modernisation request was put on a basis that the Miscellaneous Award would cover people, essentially, doing the types of work that have traditionally been covered by awards.

PN404

And so, there was always, still, a need for a national minimum wage. It's set out in the Act and it is always on the basis that we don't know exactly who it is that this is going to apply to but we want to have a safety net. We might not know who they are, we might not know all their household circumstances, but - - -

PN405

JUSTICE HATCHER: We don't know any of their circumstances. It's like chasing unicorns, I mean - - -

PN406

MR CLARKE: It is but, put it this way, the EEH doesn't ask, 'Are you paid \$995 dollars a week on your base rate and are you C10?' We don't know that either. There's a lot of unknowns in all of this but it is an intrinsic feature of the design that there will be this minimum wage which is a reference point in relation to work that we don't know what the work value is. So the adequacy considerations in terms of the needs of the low-paid and relative living standards loom very large in setting a base rate that is designed to fill a gap of, look, we don't know exactly who the people are but the system needs to be fair for everyone and I would just encourage the panel to bear that in mind and balance that against any frustration about the inability of the data sources to actually identify who the people are.

PN407

It's an incredibly important part of the system and it's an incredibly important part of our national industrial history and our sense of fairness to have a minimum wage that we recognise is enough to live on.

PN408

JUSTICE HATCHER: All right. We thank everyone for their submissions and we'll now adjourn. We reserve our decision.

ADJOURNED INDEFINITELY

[12.40 PM]