

1 April 2021

Fair Work Commission
Annual Wage Review 2021-22
GPO Box 1994
Melbourne VIC 3001

By email: awr@fwc.gov.au

Dear Members of the Expert Panel,

Annual Wage Review 2021-22
Submissions of the National Retail Association Limited, Union of Employers

In accordance with the timetable of the Annual Wage Review 2021-22 the National Retail Association Limited, Union of Employers (**NRA**) makes the **attached** submissions.

Yours sincerely,



Lindsay Carroll
Deputy Chief Executive Officer
M | 0411 318 643
E | l.carroll@nra.net.au
National Retail Association

National Retail Association Limited
Union of Employers
C2021/2 – Annual Wage Review 2021-22
Initial Submissions

April 2022

1. INTRODUCTION

- 1.1. The National Retail Association (**NRA**) submits that national minimum wages and modern award minimum wages should increase by no more than 3% following the Annual Wage Review 2021-22 (**the Review**).
- 1.2. If minimum wages increase by any greater amount, the result will be a negative impact on employment growth and workforce participation within NRA member industries and on the competitiveness of the national economy.
- 1.3. The retail sector has faced unprecedented uncertainty, disruptions, and volatility throughout the pandemic. These challenges have persisted beyond the end of extended Government lockdowns and continue to place considerable downward pressure on workforce participation in NRA member industries.
- 1.4. The NRA's position, being aligned with the pre-pandemic average of annual minimum wage increases, conveys our members' recognition of rising costs of living and inflation and their commitment to share the benefits of economic recovery with workers.
- 1.5. However, minimum wage increases beyond this level would undermine business confidence and prohibit employment growth within retail industries which are themselves relying on promising yet uncertain forecasts of recovery. This would compromise the achievement of the shared goals of recovery and the statutory objects of the Review.

2. LEGISLATIVE FRAMEWORK

- 2.1. Under the *Fair Work Act 2009* (Cth) (**Fair Work Act**), the Fair Work Commission (**the Commission**) must conduct an annual wage review each financial year.¹ For the purposes of the Review, the Commission must be constituted by an Expert Panel (**the Panel**).²
- 2.2. In undertaking the Review, the Panel must review the National Minimum Wage Order and modern award minimum wages.³ The Panel must make a National Minimum Wage Order and may make one or more determinations setting, varying, or revoking modern award minimum wages.⁴
- 2.3. When determining the National Minimum Wage Order and any making any determinations setting, varying, or revoking modern award minimum wages, the Commission must consider the minimum wages objective.⁵ In exercising its powers in relation to modern award minimum wages, the Commission must also consider the modern awards objective.⁶
- 2.4. The minimum wages objective requires the Commission to establish and maintain a safety net of fair minimum wages, taking into account:
 - (a) the performance and competitiveness of the national economy including productivity, business competitiveness and viability, inflation, and employment growth;
 - (b) promoting social inclusion through increased workforce participation;
 - (c) relative living standards and the needs of the low paid;

¹ *Fair Work Act 2009* (Cth) s 285(1) ('Fair Work Act').

² *Fair Work Act*, s 617(1).

³ *Fair Work Act*, s 285(2)(a).

⁴ *Fair Work Act*, s 285(2)(b)-(c).

⁵ *Fair Work Act*, s 284(2).

⁶ *Fair Work Act*, s 134(2).

- (d) the principle of equal remuneration for work of equal or comparable value;
- (e) providing fair minimum wages to junior employees, employees engaged in training arrangements, and those with disabilities.⁷

2.5. The modern awards objective requires the Commission to ensure that modern awards, along with the National Employment standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account, among other things:

- (a) relative living standards and the needs of the low paid;
- ...
- (c) the need to promote social inclusion through increased workforce participation;
- ...
- (e) the principle of equal remuneration for work of equal or comparable value;
- (f) the likely impacts of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden;
- ...
- (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.⁸

2.6. In the absence of any statutory indication, the Panel may determine the weight to be given to each consideration at its discretion.⁹

2.7. In undertaking the Review and exercising its modern award powers, the Commission must also consider the overall objective of the Fair Work Act.¹⁰

2.8. In the ordinary course of events, any determination varying modern award minimum wages and the National Minimum Wage Order made by the Panel following the Review takes effect from 1 July in the next financial year.¹¹

3. INDUSTRIAL CONTEXT

3.1. The legislative framework set out above expressly requires the Panel to consider the wider socio-economic context in which the Review is undertaken. Past Reviews have also affirmed that industry conditions are relevant to this broad economic context, although subject to weighting at the discretion of the Panel.¹²

3.2. While the weight given to them is left to the Panel's discretion, the NRA submits that the matters set out below should be given due consideration and weight given their specific impacts on retail businesses.

⁷ Fair Work Act, s 284(1).

⁸ Fair Work Act, s 134(1).

⁹ *Shop, Distributive and Allied Employees' Association v Australian Industry Group & Ors* [2017] FCAFC 151 at [95]; see also *Bat Advocacy NSW Inc v Minister for Environment Protection, Heritage and the Arts* [2011] FCAFC 59 at [44].

¹⁰ See Fair Work Act, s 3.

¹¹ Fair Work Act ss 286(1), 287(1); see [2021] FWCFB 3500 at [177].

¹² [2020] FWCFB 3500 at [122].

- 3.3. Along with the rest of the Australian economy, the retail sector is beginning to recover from the impacts of the global COVID-19 pandemic. Throughout the pandemic, the retail sector has experienced some of the most difficult business conditions seen anywhere in economy in recent memory.
- 3.4. Across 2020 and 2021, Government restrictions, including the longest lockdowns seen anywhere in the world, have affected every retail business in some way and many in very significant ways. One day is a long time to be closed for business in retail - eight months would previously have been unthinkable.
- 3.5. The state of emergency in relation to COVID-19 remains in force in all States and Territories. Governments currently retain these emergency powers to quickly impose restrictions on business activities and movement and gatherings.
- 3.6. The end of extended lockdowns has not brought an end to the difficulties facing retail. Other restrictions, including quarantine and isolation rules and vaccination and mask mandates, have presented ongoing labour force challenges, often necessitating business closures in now-infamous 'shadow lockdown' situations.
- 3.7. The potential for new variants of concern or seasonal surges lurks behind optimistic sentiments about recovery, threatening continued disruptions to retail trade. The economic data discussed below indicates that retail businesses are particularly vulnerable to the volatility caused by COVID-19 variants and surges.
- 3.8. Quarantine and isolation restrictions have continued to cause supply chain disruptions that have affected the retail sector the most out of any industry. In March 2022, 81% of retail businesses experienced supply chain disruptions, further affecting business confidence in this sector.¹³

NRA member sentiments

- 3.9. To better represent the views NRA members and provide an accurate picture of the current realities for retail 'on the ground', the NRA has conducted a survey of members across all sub-industries of the retail sector.
- 3.10. Participants ranged in size from small 'mum and dad' operations with between one and nineteen employees to some of Australia's largest and most recognisable retail brands with over 200 employees. Of the survey participants, 69.57% were small businesses and a further 18.84% were medium businesses with between 20 and 199 employees.
- 3.11. Business confidence is exceptionally low. When asked whether, in the last six months from October 2021, they have had to implement any significant changes in their staffing arrangements in response to any COVID-19 restrictions, with multiple answers allowed, participants indicated:
 - 64.39% had to implement alternative rostering arrangements;
 - 59.42% had to reduce shifts or hours for casual employees;
 - 57.25% had to reduce trading hours;
 - 28.99% had to implement store closures;
 - 10.14% had to decrease staffing levels through redundancies.
- 3.12. Only 13.4% of participants indicated they had made none of these changes in response to COVID-19 restrictions.

¹³ Australian Bureau of Statistics (2022) *Business Conditions and Sentiments* < <https://www.abs.gov.au/statistics/economy/business-indicators/business-conditions-and-sentiments/latest-release>> accessed 1 April 2022.

3.13. When asked what they saw as being the largest barrier to taking on new employees, with one answer allowed, participants indicated:

- Wage costs - 42.75%
- Labour shortages - 21.01%
- Revenue or cashflow - 17.39%
- Business confidence - 3.62%
- Government policy (unspecified) - 4.35%

3.14. Ongoing pandemic-related challenges, alongside supply chain disruptions, declining consumer confidence and extreme weather events across the country continue to seriously impact retailers. The Panel ought to take these matters into account and exercise a conservative approach to the Review.

4. THE IMPACT ON PROSPECTIVE MINIMUM WAGES

Performance and competitiveness of the national economy

- 4.1. The NRA submits that the continuing uncertainty surrounding the impacts of the COVID-19 pandemic on the national economy merits a cautious approach to any potential increase to minimum wages.
- 4.2. The Australian Economy has steadily recovered from past stagnation due to the COVID-19 Pandemic with a GDP increase of 4.2% from December 2020 to December 2021.¹⁴ However, it must not be forgotten that this period includes further lockdowns due to more serious variants as they appeared throughout the year.
- 4.3. There has been a steady rise in GDP growth during the 2020-21 financial year, with a 1.5% increase in real GDP. The Federal Government estimates that GDP growth for the 2021-22 financial year will be 3.75%.¹⁵ The Reserve Bank of Australia shares this optimism, predicting a 4.5% year-average GDP growth in 2021-22.¹⁶

Performance of retail trade

- 4.4. However, retail turnover has proven to be highly volatile in response to the COVID-19 pandemic. Across 2020 and 2021, 12-month seasonally adjusted retail turnover fluctuated between a high of 24.9% in April 2021 and lows of -3.2% in July 2021.¹⁷

¹⁴ Philip Lowe, *Recent Economic Developments*, AFR Business Summit Sydney - 9 March 2022, <https://www.rba.gov.au/speeches/2022/sp-gov-2022-03-09.html> accessed 28 March 2022

¹⁵ Commonwealth of Australia, *Mid-Year Economic and Fiscal Outlook 2021-22*, Table 1.1, page 2

¹⁶ Reserve Bank of Australia, *Statement on Monetary Policy*, 3 February 2022, Table 5.1, page 60

¹⁷ Australian Bureau of Statistics (2022) *Retail Trade, Australia*

<<https://www.abs.gov.au/statistics/industry/retail-and-wholesale-trade/retail-trade-australia/latest-release#total-retail-turnover>> accessed 1 April 2022.



Source: Australian Bureau of Statistics, Retail Trade, Australia February 2022

Figure 1: Retail Trade – monthly turnover, seasonally adjusted estimate.¹⁸

4.5. Over the longer term, these figures represent unprecedented volatility in retail trade, with yearly retail turnover rarely exceeding 5% and never falling below 0% at any other times in the last decade.



Figure 2: Retail Sales year on year – ABS data (tradingeconomics.com).¹⁹

¹⁸ Ibid.

¹⁹ Trading economics (2022), *Australia Retail Sales YoY* < <https://tradingeconomics.com/australia/retail-sales-annual#:~:text=Retail%20Sales%20YoY%20in%20Australia%20is%20expected%20to%20be%203.90,according%20to%20our%20econometric%20models.>> accessed 1 April 2022.

- 4.6. Economy-wide business confidence has oscillated equally dramatically in response to COVID-19 variants and surges, urging further caution in considering seemingly positive current figures.²⁰

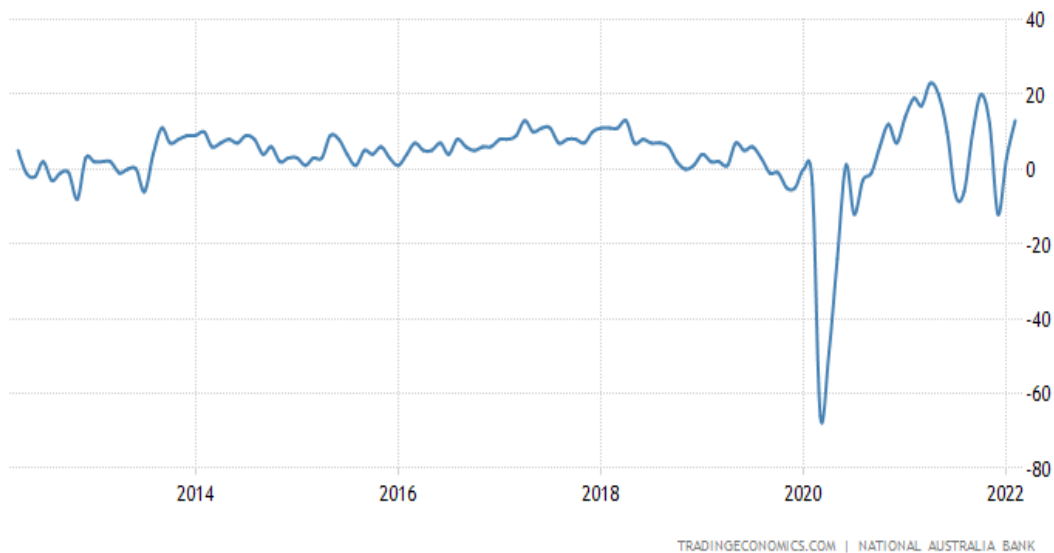


Figure 3: NAB Business Confidence Index (tradingeconomics.com).²¹

- 4.7. The effect of the volatility of retail turnover is exacerbated by the variability in real prices of retail products. The food and non-alcoholic beverages group rose by 1.9% over the year, driven at least in part by ongoing higher domestic demand in response to the easing of COVID-19 restrictions.²² The alcohol and tobacco group saw a similar slight increase over the 12 months to December 2021 of 1.1%.²³ Clothing and footwear fell to -0.3% over the 12 months to December 2021.²⁴
- 4.8. This volatility highlights the vulnerability of small retail businesses to sudden changes in retail trade. While businesses with diverse offerings are better positioned to balance these disparate outcomes, boutique-style retail businesses particularly in the clothing and footwear sector are required to turnover greater volume at lower prices to maintain viability.
- 4.9. Until an end to these extraordinary pandemic conditions and a return to longer-term stability can be identified with greater certainty, the Panel should continue to account for this in the retail sector, and the potential adverse flow-on impacts on the wider Australian economy, in its consideration.
- 4.10. In these circumstances, where the retail sector and the wider Australian economy continue to face the risk of significant changes at short notice, the NRA submits that the panel should exercise caution in considering the extent of any minimum wage increases to give due weight to business survivability and competitiveness of the national economy in the context of the recovery.

²⁰ National Bank of Australia (2022), *Monthly Business Survey: February 2022*

<<https://business.nab.com.au/monthly-business-survey-february-2022-51988/>> accessed 1 April 2022.

²¹ Trading Economics (2022), *Australian Business Confidence* <https://tradingeconomics.com/australia/business-confidence#:~:text=Business%20Confidence%20in%20Australia%20averaged,points%20in%20March%20of%202020> accessed 1 April 2022.

²² Australian Bureau of Statistics (2022) *Consumer Price Index, Australia, December 2021*

<<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/dec-2021>> accessed 28 March 2022.

²³ Ibid

²⁴ Ibid

Other labour costs pressures

- 4.11. Under the *Superannuation Guarantee (Administration) Act 1992* (Cth), the minimum superannuation contributions required to be paid by employers is due to increase from 10% to 10.5% on and from 1 July 2022.²⁵ Total labour costs for employers per ordinary hour of work will therefore increase by a minimum of 0.5% from 1 July 2021, independent of the outcome of the Review.
- 4.12. The Panel has previously accepted that increases to compulsory superannuation contributions by employers are relevant in determining the extent of any minimum wage increase.²⁶ While considering it inappropriate to quantify the impact of increases to superannuation, the Panel has nonetheless acknowledged that increases to superannuation weigh against increases to minimum wages.²⁷
- 4.13. The NRA submits that the Panel should similarly consider the increase to superannuation when determining the extent of any minimum wage increase.

Promoting social inclusion through increased workforce participation

- 4.14. The NRA notes that in February 2022, the unemployment rate dropped to 4% in seasonally adjusted terms, the lowest rate since August 2008. This occurred despite the winding-back of Government wage support for business in 2021.²⁸

Relative living standards and the needs of the low paid

- 4.15. The NRA accepts the Panel's previously accepted benchmark of two-thirds median adult full-time ordinary earnings for the purposes of identifying who is "low paid".²⁹ Based on median weekly full-time earnings of \$1,499.00 per week as at August 2021,³⁰ the benchmark of who is "low paid" is approximately \$989.34 per week.
- 4.16. The NRA accepts that employees engaged pursuant to a modern award will generally fall within the ambit of persons who are "low paid". The NRA further accepts that an increase to minimum wages will assist in ensuring that employees who are low paid will be able to meet their needs.
- 4.17. In seasonally adjusted terms, the Wage Price Index (WPI) rose by 2.3% in the 12 months to December 2021, despite minimal increases of 0.7% in the December quarter and 0.6% in the September quarter.³¹
- 4.18. Median weekly earnings for employees in the retail sector also increased from August 2020 to August 2021, despite there being to mandated increase to minimum wages in this period, rising by 6% from \$750 per week to \$795 per week.³²

²⁵ *Superannuation Guarantee (Administration) Act 1992* (Cth), s 19(2)

²⁶ [2013] FWCFB 4000 at [334] to [360]; [2014] FWCFB 3500 at [273] to [285]

²⁷ [2013] FWCFB 4000 at [360]

²⁸ Australian Bureau of Statistics (2022) [Labour Force, Australia, February 2022](#), ABS Website, accessed 27 March 2022

²⁹ [2021] FWCFB 3500 at [137]

³⁰ Australian Bureau of Statistics (August 2021) 'Table 1a.1: Median weekly earnings for employees by sex, state and full-time or part-time, 2004-2021' [time series spreadsheet], [Employee earnings](#), accessed 26 March 2022

³¹ Australian Bureau of Statistics (2022) [Wage Price Index, Australia, December 2021](#), ABS Website, accessed 28 March 2022

³² Derived from Australian Bureau of Statistics (August 2021) 'Table 3.1: Median weekly earnings for employees by industry, occupation and educational qualification' [time series spreadsheet], [Employee earnings](#), accessed 28 March 2022, and Australian Bureau of Statistics (August 2020) 'Historical data - Table 6.1: Median weekly earnings for employees by industry, occupation and educational qualification' [time series spreadsheet], [Employee earnings](#), accessed 28 March 2021

- 4.19. Median hourly earnings for employees in the retail sector increased by a similar amount, rising by 5.3% from \$26.30 per hour to \$27.70 per hour from August 2020 to August 2021.³³
- 4.20. The NRA submits that the data indicates that a conservative increase to minimum wages will not have significant adverse consequences on low paid workers, or at least not so significant as to outweigh the other statutory considerations.

5. CONCLUSION

- 5.1. The task for the Panel in this Review is to determine whether minimum wages should increase by an amount significantly greater than its previous determinations during the COVID-19 pandemic in reliance on positive short term economic indications of recovery.
- 5.2. The NRA submits that to do so would be to base the determination on the unprovable assumption that the unprecedented uncertainty of the pandemic has ended and the Australian economy is now returning to a semblance of normality.
- 5.3. This would be consistent with current political messaging, with Governments and opposition showing an aversion to mentioning the possibility of renewed COVID-19 restrictions or suggesting anything other than that the economy is recovering faster than expected.
- 5.4. Yet, the NRA submits, it would not be consistent with the evidence of business conditions in reality, at least in the retail sector, which is anything but normal. Retail businesses have continued to experience levels of volatility, coinciding with each new COVID-19 variant or wave, that are practically off the charts compared to pre-pandemic averages.
- 5.5. Qualitative evidence suggests that the significant challenges still faced by retail businesses in relation to COVID-19 restrictions and the wider impacts of the pandemic are limiting labour force participation within these industries in ways that the quantitative economic data does not accurately reflect.
- 5.6. The key element missing from the picture of recovery needed to justify wage increases beyond the NRA's position of 3% is certainty. The NRA submits that any larger increase presents an unjustifiable risk of compromising the objects of the Review should the current optimism for recovery prove premature.

³³ Ibid Table 3.2 and Table 6.2