Ai GROUP SUBMISSION

Fair Work Commission

Annual Wage Review 2019-2020

Supplementary Submission and Responses to Supplementary Questions on Notice

29 May 2020

About Australian Industry Group

The Australian Industry Group (Ai Group) is a peak national employer association representing and connecting thousands of businesses in a variety of industries and sectors across Australia. Our membership and affiliates include private sector employers large and small from more than 60,000 businesses employing over 1 million staff. Ai Group promotes industry development, jobs growth and stronger Australian communities. Our members have a common interest in creating more competitive businesses and a stronger economic environment. We provide advice, services, networks and advocacy to help members and industries thrive, and the community to prosper.

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1. Introduction

On 16 March 2020, the Australian Industry Group (**Ai Group**) filed its main submission in the *Annual Wage Review 2019-20* and on 4 May 2020 we filed a Reply Submission.

This Supplementary Submission addresses the latest economic data and research, and provides responses to various Supplementary Questions on Notice.

This submission also sets out Ai Group's position on the quantum of any minimum wage increase in this year's Annual Wage Review. The Review is being conducted at a time when the Australian economy has experienced a deep and rapid decline in growth, and a steep rise in unemployment and underemployment, due to the COVID-19 Pandemic. Given the obvious 'exceptional circumstances' that exist at the current time:

1. We submit that the Expert Panel should not award a minimum wage increase in this year's Review.

2. The priority needs to be on assisting businesses to retain as many employees as possible, and encouraging businesses to take on employees over the months ahead during the recovery from the Pandemic.

3. If, despite Ai Group's submissions, the Expert Panel decides to award a minimum wage increase, the increase should not be operative before 1 January 2021.

4. Given the widespread negative impacts of the Pandemic on businesses in all industry sectors, it is not appropriate for the Expert Panel to award a different level of increase to businesses that are, or are not, eligible for the JobKeeper Scheme, or businesses in different sectors.

Ai Group's proposed approach is consistent with the Minimum Wages Objective in section 284 of the *Fair Work Act 2009* (**FW Act**) which requires that the Expert Panel take into account the performance and competitiveness of the national economy, including business viability and employment growth. Given the magnitude of the economic decline that has occurred this year, it is appropriate that the Expert Panel give more weight to these elements of the Minimum Wages Objective than other elements.

2. Latest economic data and research

Ai Group's Reply Submission of 4 May provided an update on economic data. Since 4 May, a large amount of data and research has been published which highlight the major adverse impacts of the COVID-19 Pandemic. The latest data and research demonstrate the sudden and significant deterioration in economic conditions, activity and employment that commenced in late March.

1. ABS data

Relevant data published by the ABS in May 2020 include:

- 1 May, 4940.0, *Household Impacts of COVID-19 Survey*, 14-17 April 2020.
- 4 May, 5676.0.55.003 *Business Indicators, Business Impacts of COVID-19*, April 2020
- 5 May, 6160.0.55.001 *Weekly Payroll Jobs and Wages in Australia,* Week ending 18 April 2020
- 6 May, 6467.0 *Selected Living Cost Indexes, Australia*, March 2020.
- 6 May, 8501.0 *Retail Trade, Australia*, March 2020.
- 11 May, 4940.0 *Household Impacts of COVID-19 Survey*, 1-6 April 2020 (Additional Information).
- 12 May, 3401.0 *Overseas Arrivals and Departures, Australia*, March 2020.
- 13 May, 3401.0.55.004, *Overseas Travel Statistics, Provisional*, April 2020.
- 13 May, 6345.0 *Wage Price Index, Australia*, March 2020.
- 14 May, 6202.0 *Labour Force, Australia*, April 2020.
- 18 May, 4940.0 *Household Impacts of COVID-19 Survey*, 29 April - 4 May 2020.
- 19 May, 6160.0.55.001 *Weekly Payroll Jobs and Wages in Australia*, Week ending 2 May 2020.
- 21 May, 6291.0.55.001 *Labour Force, Australia, Detailed - Electronic Delivery*, April 2020.
- 27 May, 8755.0, *Construction Work Done, Australia, Preliminary*, Mar 2020
- 28 May, 5676.0.55.003 *Business Indicators, Business Impacts of COVID-19*, May 2020.
- 28 May, 5625.0, *Private New Capital Expenditure and Expected Expenditure*, Australia, Mar 2020
- 29 May, 4940.0 *Household Impacts of COVID-19 Survey*, 12-15 May 2020.
- 29 May, 8155.0 *Australian Industry*, 2018-19.
- 29 May, 6306.0.55.001 *Microdata: Employee Earnings and Hours, Australia*.

In addition to the relevant data published by the ABS, the following data and reports were published in May (presented below in alphabetical order).

2. Ai Group (1 May): Performance of Manufacturing Index (Australian PMI®)

The Australian PMI® dropped by 17.9 points to 35.8 points in April. This indicates that Australian manufacturing contracted at its worst pace since April 2009. It is the largest month-to-month fall in this index in the history of the series (seasonally adjusted). Results below 50 points indicate contraction with lower results indicating a faster rate of contraction.

The sharp spike into positive conditions in March was more than completely reversed in April, as the unusual surge in demand for manufactured food and groceries subsided. Manufacturers cited a range of COVID-19 issues in April, with the most prevalent including: no new sales due to shutdowns; major customers cancelling orders; supply chain problems with inter-state freight movements, and delays; and increased prices for raw materials. All activity indices plunged in April, with activity levels now reminiscent of the Global Financial Crisis (GFC) plunge in 2009.

The chemicals sector was the only manufacturing sector to improve in April, with continuing strong demand for pharmaceuticals, cleaning products, hand sanitizer, toiletries and health supplements, much of which is made locally. The food and beverages sector continued to report positive conditions in April due to strong local demand, but at a slower pace than in March as stockpiling subsided.

3. **Australian Industry Group/Housing Industry Association (5 May): Australian Performance of Construction Index** (Australian PCI®)

The Australian PCI® dropped by 16.3 points to 21.6 points in April (seasonally adjusted). This was the lowest result on record for the Australian PCI® and the largest single-month fall since the survey commenced in September 2005. Results below 50 points indicate contraction with lower results indicating a faster rate of contraction.

Activity, new orders, employment and average wages all fell to their lowest levels on record for the Australian PCI® and across all four construction sectors Capacity utilised across the construction industry fell to a 12-year low. Supplier deliveries fell to their lowest since 2012.

Respondents reported deteriorating demand across the board in April. Australian construction has not experienced the enforced shut-downs of many other industries, but economic uncertainty due to the COVID-19 pandemic has resulted in a loss of client confidence, heightened risk aversion, deferred or cancelled orders and lower investment spending. Survey respondents also reported supply chain delays, cost increases and outright shortages of raw materials.

3. **Australian Industry Group (7 May): Australian Performance of Services Index** (Australian PSI®)

The Australian PSI® plunged by 11.6 points to 27.1 points in April 2020 (seasonally adjusted). This was both the largest single monthly fall and the lowest result in the history of the series (commencing in 2003). Australia's services industries continue to struggle through a difficult period of pandemic-related closures and restricted activity. Results below 50 points indicate contraction in the Australian PSI® with lower numbers indicating a stronger pace of decline.

Activity restrictions in response to the COVID-19 pandemic have decimated large segments of Australia's services industries. The Australian PSI® indicated contraction in all sectors in April (trend). This was the first full month of restrictions on commercial activity including closures or limited trading for many businesses in hospitality, retail, transport, recreation, personal services, education and even community services.

Reduced customer demand was evident for most businesses across the sectors included in the PSI. The few businesses that reported positive results for the month included: those which supply personal protective equipment and other hygiene products; ICT businesses which note increased demand for business services; and those which deliver contracts that were already underway and were not affected by COVID-19 restrictions in April.

4. Australian Industry Group (7 May): Australian Performance of Business Index (Australian PBI)

The Australian PBI fell a further 12.6 points to 27.2 points in April (seasonally adjusted). This was the lowest monthly result in the Australian PBI and the largest single-month drop since the series commenced in 2005. Results below 50 points indicate deteriorating business conditions in the month, with lower numbers indicating a faster pace of deterioration.

All four activity indices in the Australian PBI plummeted in March and again in April as COVID-19 restrictions were rolled out nationally. The indices for business activity and employment fell to record lows in April (seasonally adjusted and trend). Looking ahead, the new orders index plunged to a new record low in April (23.1 points, seasonally adjusted), while the supplier deliveries index is at its lowest since 2009 (33.1 points, seasonally adjusted). Capacity utilisation fell to a record low of 67.9% of existing capacity across all business sectors.

5. Ai Group (22 May): "Jobkeeper payments are keeping Australians employed" BLOG

Ai Group has been assisting Australian businesses with JobKeeper since it was announced in March. As of the end of April, several hundred businesses had emailed Ai Group to ask about JobKeeper including:

- 39% needed help to clarify employee eligibility;
- 24% wanted more information about how to apply;
- 18% wanted help with JobKeeper and leave entitlements (including parental leave);
- 15% wanted help with adding JobKeeper to their payroll systems;
- 14% wanted advice on managing internal workplace frictions caused by JobKeeper
- 12% needed advice about the eligibility of their business;
- 10% wanted advice about JobKeeper in the context of stand-down provisions;
- 8% wanted advice about eligibility and management of casual employees;
- 5% wanted advice on paying their staff before JobKeeker eligibility was confirmed.

6. Ai Group (28 May): "Business reports about the COVID-19 pandemic, April"

This report provides a summary of the experiences reported to Ai Group through March and April 2020, grouped into three key themes:

1. What is the impact of COVID-19 on your workplace or business so far?

2. What has been your response?

3. What would help you manage your business response to COVID-19 (e.g. from Ai Group, government, community groups)?

Table 1: What is the impact of COVID-19 on your workplace or business so far?

What is the impact of COVID-19 on your workplace or business so far?	March	April	Total
% of businesses (multiple answers possible for each business)	%	%	%
Reduced demand from customers	45	57	51
Increased workload due to new OH&S procedures (hygiene)	22	11	16
Increased anxiety levels within workforce (due to uncertainty)	18	2	9
Disruptions to supply, inputs, imports, freight	13	5	9
Increased workload due to new OH&S and HR management policy development*	16	2	9
Increased customer demand	9	7	8
Increased costs (hygiene consumables)	3	5	4
Business closed or not operating	5	3	4
Reduced productivity	1	6	3
Cost increases for inputs, freight	1	2	2
Employees on leave due to illness or childcare	1	1	1

*including new capacity to work from home

Table 2: What has been your response so far?

What has been your response?	March	April	Total
% of businesses (multiple answers possible for each business)	%	%	%
Staff work at home / remotely	32	17	24
Reduce staff working hours	8	15	12
Reduce staff numbers	7	9	8
Increased communication	10	4	6
Variation in customer payment terms/payer terms	5	1	3
Reduce costs other than wages	0	3	1
Reduce staff pay	2	1	1
Increased business innovation	2	1	1
Offer services to customers online or delivery	1	2	1
Increased work hours or recruited new additional staff	2	1	1
Offer new or different goods and services to customers	0	1	1
Find new suppliers/customer	0	1	0

Table 3: What would help manage your business response to COVID-19?

What would help you manage your business response to COVID-19?	March	April	Total
% of businesses (multiple answers possible for each business)	%	%	%
Financial assistance	28	28	28
Clear certain instructions and rules	44	8	25
More information	42	6	23
Easing of restrictions/return to normal trading	2	21	12
Assistance with employee management	8	1	4
Improved access to PPE & hygiene products	7	1	3
Assistance with domestic logistics and freight	1	1	1
Future planning/upskilling	0	1	1
Assistance with imports, exports, trade restrictions	0	1	0

7. **AlphaBeta (20 May) analysed Australian retail transactions data** held by Illion and estimated that total retail spending per person was 7% ‘below normal’ pre-crisis spending in the week to 10 May, up from 20% ‘below normal’ on 20 April. AlphaBeta estimates that by 10 May, retail spending per person on essential items had recovered to 4% ‘below normal’ and discretionary retail spending per person had recovered to 10% ‘below normal’ (from 31% ‘below normal’ on 20 April in the worst week of retail spending). AlphaBeta attributes this partial recovery in early May directly to “*the Coronavirus JobSeeker supplement (doubling of unemployment benefit and youth allowance) as well as the first easing of restrictions*.”

8. **ANZ Economics (26 May): ANZ-observed spending with retailers** is recovering in May, with “*non-essential retail growth … converging with elevated grocery spending, as fashion sales almost fully recover and home-related spending remains strong*.”

9. **ANZ-Roy Morgan (26 May): weekly consumer confidence** index lifted to 92.7 points on 24 May. This still indicated ‘net pessimism’ (results under 100 points), but it was an eighth consecutive week of improvement and 42% better than the recent low in March.

10. **CBA-Markit ‘flash’ (preliminary) purchasing managers index** showed business activity in Australian manufacturing and services continued to contract in May, but at a slower pace than in April. Both the ‘flash’ indexes improved in May but remained firmly negative (below 50 points), at 42.8 points for manufacturing and 25.5 for services.

11. **Department of Education, Skills and Employment (DESE, 22 May) is conducting an ongoing survey of businesses to measure the impact of COVID-19,** covering staffing changes, business impacts, actions taken by businesses in response to the pandemic, and future expectations. DESE’s reports from these surveys include:

    - Impacts of COVID-19 on businesses - Staffing expectations update, to 15 May.
    - Impacts of COVID-19 on businesses - Industry staffing expectations, to 8 May.

- Impacts of COVID-19 on Businesses - 8 May.
- Impacts of COVID-19 on Businesses - 1 May.
- Jobs in Demand Employer Survey – Dashboard as at 22 May.

https://lmip.gov.au/default.aspx?LMIP/Gaininsights/COVIDInformation/ResearchandInsights

12. **Housing Industry Association (20 May) forecasts** the total number of dwellings built in Australia will fall by 18.3% p.a. in 2019-20 and another 30.5% in 2020-21, due to the combined effects of "*the shock to the economy from the halting of overseas migration, the absence of student arrivals and uncertainty over the domestic economy*". The HIA expects dwelling starts will almost halve, from over 200,000 in 2018-19 to just 112,000 in 2020-21. The HIA fears that 1 million construction jobs could halve, with up to 500,000 housing construction jobs at risk over the next 2 years.

13. **NAB's monthly business survey** index of business conditions fell to -34 points in April while confidence 'improved' to -46 points from -66 points in April (results below zero indicates pessimism).

14. **RBA (8 May):** ***Statement on Monetary Policy*** provided revised forecasts and detailed analysis of the economy. The RBA's 'baseline scenario' (see table below) includes a recession from Q1 to Q4 of 2020, with GDP falling by up to 8%, the unemployment rate rising to a peak of around 10% and inflation turning negative in Q2 2020. The RBA expects the unemployment rate to stay above 7% until 2022.

15. **RBA (28 May): Governor Philip Lowe** appeared before the Senate Select Committee on Government Responses to COVID-19. He said that some parts of the economy are showing signs of recovery as of mid-May, in the locations and sectors in which restrictions are being eased, however other segments are still slowing down 'as their forward-order books are emptied'. Dr Lowe notes that sectors reliant on local and international travel will face weak activity and limited job recovery until internal and international travel restrictions are lifted. The importance of tourism, hospitality and education to the labour market mean that despite evidence of early improvements in May, the RBA still expects the national unemployment rate to peak at 10%, with total hours worked falling by around 15%.

    Dr Lowe said the importance of the JobKeeper scheme means Australia's economy would hit another "critical point" in September when a raft of stimulus measures stop. At that point, it will be "very important" not to withdraw fiscal stimulus too early:

    > *"The key observation is that the world is very uncertain, and I think it's too early to say what it's going to be, what the economy is going to be like, in four months' time …But if we have not come out of the current trough in economic activity, there will be, and there should be, a debate about how the JobKeeper program transitions into something else, whether it's extended for specific industries, or somehow tapered. … if the economy is not recovered reasonably well by then, as part of that review we should be looking at, perhaps, the extension of that scheme or the modification in some way."*

RESERVE BANK OF AUSTRALIA

Forecast Table – May 2020 – 'Baseline' Scenario

This table provides additional detail on key macroeconomic variables presented in the 'baseline' scenario in the May 2020 *Statement on Monetary Policy*.

Forecast Table – May 2020 – 'Baseline' Scenario[a]

Percentage change over year to quarter shown[b]

	Dec 2019	Jun 2020	Dec 2020	Jun 2021	Dec 2021	Jun 2022
Gross domestic product	2.2	−8	−6	7	6	5
Household consumption	1.2	−15	−9	13	9	5
Dwelling investment	−9.7	−17	−13	2	6	10
Business investment	−1.2	−8	−13	−6	4	8
Public demand	4.7	5	2	0	2	3
Gross national expenditure	1.2	−9	−7	7	7	5
Imports	−1.5	−14	−11	13	13	6
Exports	3.4	−10	−7	14	12	4
Real household disposable income	1.8	−8	−8	6	8	6
Terms of trade	−0.6	−4	−7	−9	−2	−2
Major trading partner (export-weighted) GDP	3.2	−6	0	10	5	4
Unemployment rate (quarterly, %)	5.2	10	9	8½	7½	6½
Employment	2.0	−7	−7	4	6	5
Wage price index	2.2	2	1½	1½	1¾	2
Nominal (non-farm) average earnings per hour	3.1	7¾	−¼	−5¾	2½	4
Trimmed mean inflation	1.6	1½	1¼	1¼	1¼	1½
Consumer price index	1.8	−1	¼	2¾	1¼	1½

(a) The cash rate is assumed to remain at its current level, with other elements of the Bank's monetary stimulus package, including the 0.25 per cent target for the 3-year government bond yield, assumed to remain consistent with current settings. Other technical assumptions include the TWI at 57, A$ at US$0.64 and Brent crude oil price at US$35 per barrel; shaded regions are historical data.
(b) Rounding varies: economic activity variables rounded to the nearest whole number; unemployment rate to the nearest half point; wages and prices variables to the nearest quarter point

Sources: ABS; CEIC Data; Refinitiv; RBA

16. **SEEK (28 May): New job ads** posted on SEEK were up by 39.7% in the fortnight to 24 May compared to April 2020 (and up from 26.8% in the previous two weeks). The biggest occupational groups contributing to job ads growth to 24 May were Trades & Services, Hospitality & Tourism, Healthcare & Medical, Administration and Office Support and Education & Training. All states were showing an increase in job ads, with Tasmania (58.8%), Queensland (55.4%) and SA (51.8%) showing the strongest growth in the fortnight to 24 May.

17. **SEEK (28 May): Additional survey-based research about jobseekers** found that: half of people currently looking for a job say that working conditions is their most important consideration; two thirds said new technologies have enabled them to work from home more effectively; 33% said they work from home more efficiently than in a workplace, but 30% felt less efficient, including many parents. 7% of jobseekers had received upskilling or reskilling opportunities during their downtime.

18. **Westpac-MI consumer confidence index** improved by a record 16.4% to 88.1 points in the first week of May but remained in the 'net pessimistic' range (results below 100 points indicates pessimism). Westpac's economists noted that "*consumers are clearly heartened by Australia's success in containing the Coronavirus which has justified the easing of some of the social restrictions*".

3. Proposed wage outcome in the Annual Wage Review

The Annual Wage Review is being conducted at a time when the Australian economy has experienced a deep and rapid decline in growth, and a steep rise in unemployment and underemployment, due to the COVID-19 Pandemic. Given the obvious 'exceptional circumstances' that exist at the current time:

1. We submit that the Expert Panel should not award a minimum wage increase in this year's Review.

2. The priority needs to be on assisting businesses to retain as many employees as possible, and encouraging businesses to take on employees over the months ahead during the recovery from the Pandemic.

3. If, despite Ai Group's submissions, the Expert Panel decides to award a minimum wage increase, the increase should not be operative before 1 January 2021.

4. Given the widespread negative impacts of the Pandemic on businesses in all industry sectors, it is not appropriate for the Expert Panel to award a different level of increase to businesses that are, or are not, eligible for the JobKeeper Scheme, or businesses in different sectors.

Ai Group's proposed approach is consistent with the Minimum Wages Objective in section 284 of the FW Act which requires that the Expert Panel take into account the performance and competitiveness of the national economy, including business viability and employment growth. Given the magnitude of the economic decline that has occurred this year, it is appropriate that the Expert Panel give more weight to these elements of the Minimum Wages Objective than other elements.

'Exceptional circumstances'

Subsection 285(2) of the FW Act provides that, in the context of an Annual Wage Review, the Commission may make one or more determinations varying modern awards to set, vary or revoke modern award minimum wages. Generally, such determinations are to come into operation by 1 July the next financial year (s.286(1)). However, s.286(2) of the Act enables the Commission to specify a later operative date provided the following conditions are met:

- The Expert Panel is satisfied that there are exceptional circumstances justifying why a variation determination should not come into operation until a later day; and
- The determination is limited just to the particular situation to which the exceptional circumstances relate.

Subsection 287(1) of the Act requires that a National Minimum Wage Order that is made in an Annual Wage Review come into operation on 1 July in the financial year after the conclusion of the Annual Wage Review proceedings. However, s.287(4) enables the Order to provide that adjustments to the National Minimum Wage and Special National Minimum Wages take effect on a specified day later than 1 July if:

- The Commission is satisfied that there are exceptional circumstances justifying the adjustment taking effect on that day; and
- The adjustment is limited just to the particular circumstances to which the exceptional circumstances relate.

The following extract from the *Annual Wage Review 2009-10 Decision* recognises that the tests for determining whether a later operative date for a determination varying modern award minimum wages and a National Minimum Wage Order are similar: (emphasis added)

> *The Panel is required to conduct an annual wage review in each financial year. Any determination made varying minimum wages in modern awards in the review must come into operation on 1 July in the next financial year, unless there are exceptional circumstances. A national minimum wage order must also come into operation on 1 July in the next financial year, <u>subject to the same qualification</u>.* [1]

In the *Annual Wage Review 2013-14 Decision*, the Commission said: "*Exceptional circumstances can and should be considered on their merits as required by the Act".*[2] The delayed operative date that Ai Group is proposing has substantial and obvious merit.

[1] *Annual Wage Review Decision 2009-10*, [5].

[2] *Annual Wage Review Decision 2013-14*, [517].

If, despite Ai Group's submissions that no wage increase should be awarded in the Annual Wage Review, the Expert Panel decides to award a minimum wage increase, the increase should not be operative before 1 January 2021 for any employee. A delay in the operative date until 1 January 2021 for all employees meets the requirements of the Act because:

- ''Exceptional circumstances' exist due to the rapid, major deterioration in economic growth and employment.
- The 'particular circumstances to which the exceptional circumstances relate' are those pertaining to the COVID-19 Pandemic which has adversely impacted upon businesses in every industry sector.

If 'exceptional circumstances' are not held to exist this year, it is hard to see what circumstances would be sufficient to convince the Panel that such circumstances exist. The Commonwealth Parliament included ss.286(2) and 287(4) in the FW Act for use in appropriate circumstances, and this year it is extremely appropriate that these provisions of the Act are utilised.

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

Income support for low-income households

In Ai Group's March 2020 Submission to the Annual Wage Review we anticipated providing information relating to the range of income support payments the Federal Government was providing as part of its response to the COVID-19 crisis. We also anticipated providing an analysis of any relevant changes to income tax and income support arrangements announced in the 2020-21 Budget. While the 2020-21 Budget has not been handed down, we list below the main changes to income support announced by the Federal Government as part of its response to the COVID-19 crisis.

These measures increase income support and living standards for a wide range of households, particularly for low-income households, including low-wage households.

Support for low-wage employees

The JobKeeper Scheme directly benefits many low-income employees of employers that are eligible to receive JobKeeper payments. If an employee is an eligible employee of an eligible employer who elects to participate in the JobKeeper Scheme and the employee is entitled to total payments relating to their employment of less than $1,500 (pre-tax) in any fortnight from 30 March 2020 to 27 September 2020, their employer is obliged to pay them no less than $1,500 (pre-tax) per fortnight.

This has put many low wage employees in the position of receiving more take-home pay than was previously the case and is impacting materially on the living standards of these employees.

Coronavirus Supplement

The Federal Government is providing a Coronavirus Supplement of $550 per fortnight for the six months from 27 April. The Coronavirus Supplement, which is included in the taxable income of recipients is paid to recipients of income support in the following categories:

- JobSeeker Payment;
- Youth Allowance;
- Parenting Payment;
- Austudy;
- ABSTUDY (Living Allowance);
- Farm Household Allowance; and
- Special Benefit.

Many low-wage earners live in households in which a household member is eligible for the Coronavirus Supplement. The Coronavirus Supplement is adding materially to the living standards of these low-wage households.

Additional income support payments

In April 2020, the Federal Government provided a separate payment of $750 to a wide range of income support recipients and concession card holders. An estimated 6.6 million people received the payment. They included recipients of:

- Family Tax Benefit;
- Youth Allowance;
- Austudy;
- ABSTUDY;
- JobSeeker Payment; and
- Sickness Allowance.

The Federal Government has also undertaken to provide a second payment of $750 in the weeks following 13 July 2020 to “around 5 million” people drawn from a similar range of income support recipients and concession card holders but excluding people eligible for the Coronavirus Supplement.

Many low-wage earners are either directly eligible for these payments – particularly Family Tax Benefit – or live in households in which at least one household member is eligible for this additional income support payment.

The provision of these two payments has a material bearing on the living standards of many low wage employees.

Ai Group submits that the range of income support measures put in place by the Federal Government should be taken into account by the Expert Panel in its current considerations about changes to minimum wages.

4. Responses to Supplementary Questions on Notice

Question 1.1

The Fair Work Commission has published a discussion paper titled '*What can and can't be done in the Annual Wage Review 2019-20*'.

All parties are invited to comment on the following questions.

1. **Are any of the observations at [1] – [57] of the discussion paper contested and, if so, on what basis?**
2. **Are any of the observations at [58] ('What the Commission can't do') contested and, if so, on what basis?**
3. **Are any of the observations at [59] ('What the Commission can do') contested and, if so, on what basis?**
4. **As to the mechanism to identify the employers and employees to whom a deferral should apply: (at [59](ii) dot point 4)**

    4.1 Does the Panel have the power to determine a deferred date of operation in respect of employers that have qualified for the JobKeeper Scheme and have notified the Commissioner of Taxation in accordance with s.6(1)(e) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* that they elect to participate in the JobKeeper scheme?

    4.2 What do the parties say about the merit of such a proposal?

    4.3 If it is accepted that such a course is open to the Panel, what deferred date of operation is proposed and in respect of which awards?

    4.4 In the event that the Panel decided to provide a deferred date of operation of any increase granted, in respect of some or all modern awards, on the basis of participation in the JobKeeper Scheme (as set out in 4.1 above), how should such a term be drafted? We particularly invite the Commonwealth to respond to this question. Parties are asked to submit a draft term to give effect to any such proposal.

Question 1.1 – Paragraph 4.1

1. **Are any of the observations at [1] – [57] of the discussion paper contested and, if so, on what basis?**
2. **Are any of the observations at [58] ('What the Commission can't do') contested and, if so, on what basis?**
3. **Are any of the observations at [59] ('What the Commission can do') contested and, if so, on what basis?**

Ai Group has reviewed the Discussion Paper issued by the Commission on 13 May 2020 and the observations contained therein. As the observations made at paragraph [58] (What the Commission can't do) and paragraph [59] (What the Commission can do) are contingent upon those made in paragraphs [1] – [57], Ai Group proposes to deal with these together and provide a response to each observation in turn.

Ai Group does not contest the provisional conclusions reached with regard to:

- The timing of the review and related matters (see paragraph [17]); and
- The capacity for the Commission to delay the effect of variation determinations and National Minimum Wage Order (**NMWO**) adjustments (see paragraph [29]).

However, for the reasons outlined below, Ai Group does not agree with the observations made regarding the Commission's powers pertaining to contingent variations and adjustments.

Contingent variations and adjustments

At paragraphs [38] – [44] of the Discussion Paper, the Commission raises the question as to whether variations and adjustments to modern award minimum wages and the quantum of the NMWO may be contingent upon certain future events. The Commission expresses doubt that such contingent variations would be possible.

Ai Group submits that the Commission may, in the context of the Annual Wage Review proceedings, make determinations varying modern award minimum wages and make a NMWO which contains elements that depend on the occurrence of a future event/s.

The Commission's capacity to 'set, vary or revoke' modern award minimum wages in the context of the Annual Wage Review proceedings is not limited to making determinations and orders which are independent of future events. Ai Group considers that implied within the power to 'set' or 'vary' modern award minimum wages is the ability to set a method of calculating the manner in which such wages are to be determined. Such a calculation may be expressed in such a way as to take into account future economic considerations which are readily accessible, such as CPI adjustments. This is expressed in the note to s.295 of the FW Act as follows (emphasis added):

Note: The means by which the national minimum wage or a special national minimum wage may be expressed include:

(a) a monetary amount per hour; or

(b) a monetary amount for a specified number of hours; or

(c) <u>a method for calculating a monetary amount per hour</u>.

The language in s.285(2)(b) of the FW Act regarding the making of a determination to "**set**, vary or revoke modern award minimum wages" suggests that the manner in which such a determination may be expressed is not broadly distinct from that of a minimum wage order which must '**set** the national minimum wage' (s. 294(1)(a)).

The reference to 'setting' modern award minimum wages or the national minimum wage should not be read as limiting the Expert Panel's powers to determine a figure which is ascertainable at the conclusion of the Annual Wage Review proceedings. A method of calculating a monetary amount involving a formula from which a figure will be ascertainable at a future date satisfies the definition and, contrary to paragraph [41] of the Discussion Paper, may be expressed in a manner which is easy to understand.

Further, the requirement in s.292 to 'publish' varied rates of pay should not be read as hindering the Expert Panel's power to provide for contingent increases. Such an interpretation would be inconsistent with the Commission's longstanding practice of publishing wage rates in enterprise agreements which are commonly expressed as rising on the basis of factors which are not knowable at either the date the Agreement is made or the date of approval. A Full Bench of the Commission found in *The Australian Workers' Union v Oji Foodservice Packaging Solutions (Aus) Pty Ltd* that wage rates in enterprise agreements must be 'published' in accordance with s.601(4)(b) of the FW Act.[3] The Commission regularly publishes enterprise agreements with future rates of pay that are determined on the basis of CPI. A consistent interpretation of the meaning of 'publish' in ss. 292 and 601 would suggest that making a determination varying modern award minimum wages or a NMWO that is contingent on a clear and ascertainable future event would be within the power of the Expert Panel.

At paragraph [44], the Discussion Paper expresses doubt as to the Expert Panel's capacity to issue contingent determinations and adjustments on the basis of practical difficulties in formulating a contingent determination or NMWO adjustment in a manner that "captures all the relevant contingencies constituting the particular situation to which the exceptional circumstances relate and in limiting the determination or adjustment to that particular situation". Ai Group considers that such 'practical difficulties' are no different from those which the Expert Panel is confronted with in making any determination or NMWO adjustment that is to provide rates of pay which are appropriate throughout the financial year.

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[3] *The Australian Workers' Union v Oji Foodservice Packaging Solutions (Aus) Pty Ltd* [2018] FWCFB 7501

The Expert Panel has in past review proceedings acknowledged that speculation as to future circumstances are relevant in undertaking its task. For example, in last year's Decision, the Panel said (emphasis added):[4]

> *[24] In assessing the various economic considerations, <u>we take into account both actual data and forecasts</u>. The actual indicators are the primary consideration because, by their nature, they are more reliable than forecasts. <u>But it is also appropriate to have regard to future projections that cast some light on the circumstances expected to apply during the period when any adjustment will operate</u>. It is not uncommon for actual outcomes to differ from those forecast and those differences form part of our broad assessment and consideration of the actual indicators in subsequent reviews.*

Practical considerations are unavoidable in Annual Wage Review proceedings given the complex array of matters which may be taken into account under ss.284(1) and 134(1). A contingent increase may decrease the burden on the Expert Panel in making an appropriate determination or adjustment on the basis of projections and allow more appropriate orders to be made which avoid unfair outcomes when future economic circumstances are uncertain.

For the above reasons, Ai Group disagrees with the observation made at paragraph [58](iii) of the Discussion Paper that the Commission "probably cannot make a determination varying modern award minimum wages or a national minimum wage order, the effect of which is contingent upon subsequent economic or other developments". Ai Group also disagrees with the assertion that if the legislation did permit this, there are likely to be insurmountable difficulties in formulating such a contingent variation or order with sufficient particularity.

Capacity for the Commission to provide differential outcomes, exemption and deferral claims

As the discussion in paragraphs [45] – [51] outlines, the Commission has observed that it has the discretion to:

- Exempt some employers and employees from modern award minimum wage increases;
- Reduce the amount of modern award minimum wage increases for some employers and employees;
- Exempt some employers and employees from increases to the national minimum wage or a special national minimum wage; and
- Reduce the amount of the increases to the national minimum wage or a special national minimum wage for some employers and employees.

Ai Group agrees with each of these points. However, Ai Group does not agree that the basis upon which the Commission's discretion to determine differential wage increases should be exercised, imports additional thresholds not provided for in the FW Act.

[4] [2019] FWCFB 3500, [24] – [25].

An extract from the *Annual Wage Review 2011-2012 Decision* is reproduced at paragraph [46] of the Discussion Paper. Three broad points were extracted concerning the Australian Industrial Relations Commission's Economic Incapacity Principle:[5]

- The onus is on the party seeking to rely on economic incapacity and a strong case must be made out in order to warrant relief.
- An incapacity claim needs to be supported by oral and/or documentary evidence capable of analysis and evaluation.
- Incapacity claims will only rarely be successful in respect of a whole industry. In a number of cases the diversity of experience in the sectors covered by an award have made it inappropriate to exempt all sectors from an increase.

When the Economic Incapacity Principle was in operation, National Wage Cases were undertaken on the basis of applications brought by union parties. Hearings in the case typically continued for a lengthy period and, after a decision was made, applications to flow on the wage increases to awards (other than the few that were used as the vehicle for the National Wage Case) were dealt with over the months that followed the decision. Accordingly, individual employers that wished to argue that they had an incapacity to pay the increase awarded, had an opportunity to present evidence to the Commission in support of their application at a formal hearing.

The current system is very different. Requiring individual employers to provide evidence during the Annual Wage Review that they have an incapacity to pay a wage increase (of an unknown quantum) would not be appropriate or feasible.

Question 1.1 – Paragraph 4.1

4. As to the mechanism to identify the employers and employees to whom a deferral should apply: (at [59](ii) dot point 4)

4.1 Does the Panel have the power to determine a deferred date of operation in respect of employers that have qualified for the JobKeeper Scheme and have notified the Commissioner of Taxation in accordance with s.6(1)(e) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* that they elect to participate in the JobKeeper scheme?

The Panel has the power to determine a deferred date of operation in respect of employers that have qualified for the JobKeeper Scheme. However, we contend that the granting of a different operative date for an increase in minimum wages in respect of employers that have qualified for the JobKeeper Scheme does not have merit for the reasons outlined below.

[5] [2012] FWAFB 5000, [254].

Question 1.1 – Paragraph 4.2

4.2 What do the parties say about the merit of such a proposal?

Summary

Ai Group's extensive interactions with businesses about the JobKeeper Scheme have led us to the conclusion that a different operative date for an increase in minimum wages in respect of employers that have qualified for the JobKeeper Scheme does not have merit and should not be adopted by the Expert Panel.

Ai Group is a strong supporter of the JobKeeper Scheme. It is providing aggregate support to the economy and to a wide range of businesses and employees at a time of considerable stress for the economy. However, the JobKeeper Scheme was designed and put in place in a very short period of time and without the opportunity for the sort of detailed consideration, consultation and market testing that would normally be undertaken. As a consequence, there are a range of anomalies in the treatment of different employers and employees.

There are three main reasons behind our view that the proposal does not have merit:

- Although it was targeted towards employers that were under significant stress as a result of the COVID-19 crisis, the rules by which significant stress is assessed and the range of other factors that bear on eligibility mean that many employers that are under considerable stress as a result of the COVID-19 crisis are not eligible for JobKeeper. Many of these ineligible employers are experiencing a level of economic stress that is greater than that being experienced by many eligible employers.

  In large part due to the success of the JobKeeper Scheme in alleviating the stress experienced by eligible employers, a range of inequities and competitive disadvantages are being experienced by employers that are not eligible for the Jobkeeper Scheme. Applying lower levels of minimum wages for eligible employers for a period would exacerbate these inequities and competitive disadvantages.

- Many employees of employers that are eligible for JobKeeper Payments are not themselves eligible employees for the purposes of the JobKeeper Scheme. As a result, they may face higher risks of job loss or reduced hours than would have been the case in the absence of the JobKeeper Scheme.

  Ineligible employees of eligible employers would be disadvantaged in relative terms if they did not receive a wage rise that employees of ineligible employers received.

- Applying different minimum wages would impose particular administrative difficulties for organisations in which only some component business units are assessed as eligible for the JobKeeper Scheme. In addition to adding friction to these workplaces and the higher administration costs, this would expose these employers to heightened risks of overpaying or underpaying their employees.

The JobKeeper Scheme

The JobKeeper Scheme was introduced to reduce the loss of jobs during the COVID-19 downturn; to assist employers maintain connections with employees stood down during the downturn; and to provide income support for employees that earn less than $1,500 per fortnight.

If an employer is eligible and they elect to enrol for JobKeeper, they are obliged to pay each eligible employee at least $1,500 per fortnight and they are entitled to receive a payment from the Australian Tax Office (**ATO**) of $1,500 per fortnight for the remainder of the JobKeeper period. This means that in instances when wages earned by eligible employees under their employment arrangement sum to less than $1,500 in a fortnight, employers need to make a top up payment to bring the total paid to such employees to $1,500 per fortnight.

Amounts received from the ATO are included in the taxable income of employers. Amounts received by employees are included in employees' taxable incomes and employers withhold personal income tax in respect of any top up amounts paid to employees.

The period over which the JobKeeper Payments are available relates to wages paid during the 13 fortnights from 30 March to 27 September 2020. Employers can become eligible for JobKeeper in respect of wages paid on 30 March. Eligibility is based on an employer's self-assessment supported by documentation. If initially ineligible, employers can become eligible in respect of wages paid in subsequent periods. Once assessed as eligible, employers can continue to elect to be eligible until the end of the JobKeeper period (i.e. in respect of wages paid by 27 September).

Eligible and Ineligible employers

Reduction of Turnover

Generally, employers can only be eligible if they have experienced, or expect to experience, a reduction in turnover greater than or equal to the relevant threshold for the relevant class of employers. There are three different thresholds:

- For employers that are not-for-profit registered charities, the turnover threshold is 15%;
- For other employers that are not part of a large group (aggregated turnover worldwide in 2019 of more than $1 billion), the turnover threshold is 30%; and
- For employers that are part of a large group, the turnover threshold is 50%.

Employers that do not, or do not expect to, experience a reduction in turnover greater than the relevant threshold are not eligible for JobKeeper.

Turnover is generally defined as the sum of taxable and non-taxable supplies (for GST purposes) although certain adjustments need to be made in specific circumstances. Input taxed supplies are not included in the definition of turnover.

The reduction in turnover is generally assessed by comparing the reduction in a month or quarter in the JobKeeper period with the comparable period a year earlier. In cases where the comparable period a year earlier is not a good comparator, alternative comparator periods can be substituted by the Tax Commissioner. Universities face different turnover test periods.

There are two main reasons the use of thresholds for eligibility for JobKeeper based on reductions in turnover is not a robust means of identifying the level of stress faced by different employers.

The first is that there are different turnover thresholds used to assess eligibility. In Ai Group's liaison with businesses in relation to the JobKeeper scheme, it is clear there are many businesses which do not meet the 50% turnover reduction threshold that are in at least as much stress as that experienced by businesses that face a 30% turnover reduction threshold.

For instance there are many medium-sized Australian businesses that are members of a group of businesses that in 2019 had aggregate turnover of more than $1 billion. These businesses need to have experienced, or expect to experience, a reduction in turnover of at least 50% to be eligible for JobKeeper. If the turnover of the separate business is expected to fall by 45% they are ineligible. Many such businesses compete in industries where other businesses face a 30% threshold.

There is a presumption that, because they are members of a group of business, they have a greater capacity to cope with a reduction in turnover that is more severe than that of their competitors. It is far from clear why, in general, this presumption would be expected to match the facts.

A particular difficulty relates to cases where the Australian business is a member of a multinational organisation. While the more stringent threshold is based on the 2019 aggregate turnover of the whole organisation in 2019, the reduction in turnover upon which eligibility for JobKeeper is based applies only to the change in turnover of the individual Australian business. Even if the worldwide group experiences a reduction in turnover of more than 50% and is therefore in no position to support its Australian business, if the individual Australian business suffered a lesser reduction in its Australian turnover it would be ineligible for JobKeeper.

The table below illustrates the impact of the application of different thresholds on two employers of similar size and with similar cost structures. Employer A faces a 50% turnover reduction threshold and Employer B faces a 30% reduction threshold. Both experience a 40% reduction in turnover.

Table 4: Illustration of impacts of different turnover reduction thresholds

	Employer A	Employer B
Breakeven annual turnover	8,000,000	8,000,000
Profit rate above breakeven turnover	40.00%	40.00%
Turnover in April 2019	833,333	833,333
Annual surplus[1] April 19-March 2020	800,000	800,000
Turnover in April 2020	500,000	500,000
Change in turnover April 20 Vs April 2019	-40%	-40%
Number of employees[2] eligible for JobKeeper	50	50
JobKeeper amount April - Sept 20	0	975,000
Surplus[1] for April 20 - March 21 before JobKeeper	-800,000	-800,000
Surplus[1] for April 20 - March 21 after Jobkeeper	**-800,000**	**175,000**

1. Annual surplus calculations assume uniform monthly sales through the year.
2. For the sake of comparison, the number of employees is the same in both years.

As illustrated, the ineligible employer is in a much more severely stressed position after JobKeeper is taken into account than is the eligible employer.

A second reason the use of thresholds for eligibility for JobKeeper based on reductions in turnover is not a robust means of identifying the level of stress faced by different employers is that different businesses can have vastly different cost structures. This includes different businesses in the same industry.

A business with a higher margin on sales (turnover) will generally have a greater capacity to absorb a given reduction in turnover than a business with a lower margin on sales. Different margins on sales can arise for any number of reasons. One business may be new and highly leveraged whereas it may compete with a mature business that has no or little debt; one may own the premises in which it operates while the other may lease its property; one business may be more capital intensive and another more labour intensive; one may operate in an industry with low barriers to entry and face fewer competitors while another may face fierce competition that pushes margins very low; or one business may be at the frontier of efficiency whereas its competitors are not.

As a consequence of this variety of circumstances, a common turnover reduction threshold does not readily capture the extent of economic stress experienced by different employers. Many employers that are experiencing lower reductions in turnover are under greater stress than other employers that are experiencing higher reductions in turnover.

The table below illustrates the impact of JobKeeper on businesses with different cost structures.

In the illustration, Employer A is more capital intensive than Employer B. Employer A experiences a 20% reduction in turnover and is not eligible for JobKeeper while Employer B faces a 30% reduction in turnover threshold and is eligible for JobKeeper.

Table 5: Illustration of impacts of different cost structures

	Employer A	Employer B
Breakeven annual turnover	8,000,000	6,500,000
Profit rate above breakeven turnover	40%	23%
Turnover in April 2019	833,333	833,333
Annual surplus[1] April 19-March 2020	800,000	805,000
Turnover in April 2020	666,667	583,333
Change in turnover April 20 Vs April 2019	-20%	-30%
Number of employees eligible for JobKeeper	30	50
JobKeeper amount April - Sept 20	0	975,000
Surplus[1] for April 20 - March 21 before JobKeeper	0	115,000
Surplus[1] for April 20 - March 21 after JobKeeper	0	1,090,000

1. Annual surplus calculations assume uniform monthly sales through the year.

Even before considering Employer A's receipt of JobKeeper, it is an example of an employer under somewhat less stress than Employer B despite experiencing a more pronounced reduction in turnover. In this illustration, Employer B's receipt of JobKeeper more than offsets its reduction in turnover while Employer A with a smaller reduction in turnover is unaffected by JobKeeper.

The problems associated with the varying relationship between reduction in turnover and stress is magnified considerably when JobKeeper payments received by eligible employers are considered.

Jobkeeper is designed to alleviate the stress experienced by eligible employers and their employees. Ineligible employers do not benefit from JobKeeper and even if experiencing less stress than a business which becomes eligible, will be relatively worse off after the subsidy received by the eligible business is taken into account. This is shown in the illustration above.

To add insult to injury, many ineligible employers may experience an intensification of stress if they are facing competition from eligible employers. Some instances are presented below.

- An eligible employer, after receipt of JobKeeper, may be able to spend more on sales promotion.
- An eligible employer, after receipt of JobKeeper may be in a position to cut prices.

- Ineligible employers do not have access to the same increased flexibilities in their workplace relations as eligible employers.

- The costs to the eligible employer of employing a part-time eligible employee for extra hours can be very low. For example if an eligible employee earns less than $1,500 a fortnight even after the increase in hours, the extra costs of employment would be limited to the additional superannuation payment that the employer would be obliged to pay (the employer would retain an extra JobKeeper amount equal to the additional wage it pays to the employee). In contrast an ineligible employer would face a level of additional costs unaffected by JobKeeper.

In short, employers' ineligibility for JobKeeper based on reduction in turnover thresholds does not provide a robust basis for identifying a class of employers that would be in a stronger position to sustain higher minimum wages relative to the position of employers who are eligible for JobKeeper.

Other conditions of eligibility

Regardless of reduction in turnover, employers can only be eligible if they are not in the following classes of employers:

- Australian federal, state, territory and local government entities;

- Entities wholly owned by federal, state, territory and local governments or their agencies;

- Foreign government entities;

- Entities wholly owned by foreign local governments or their agencies;

- Entities subject to the Major Bank Levy

- Entities in liquidation or bankruptcy.

Employers excluded from JobKeeper because they fall into the classes listed above are excluded regardless of their level of stress associated with COVID-19.

One example of excluded businesses are airline businesses owned directly by foreign governments or their agencies (which includes sovereign wealth funds). Australian branches of these airlines are not eligible for JobKeeper even though they have typically experienced a significant reduction in turnover and are in considerable economic stress. Moreover, they compete with non-government owned airlines that can be eligible for JobKeeper.

Clearly in these cases the fact that the employer is ineligible for JobKeeper does not point to the level of stress being experienced.

The following chart summarises the issues discussed above. It hypotheses certain patterns of stress before JobKeeper Payments are taken into account and illustrates the broad impacts on the stress experienced by these employers once JobKeeper payments are considered.

While JobKeeper is broadly aimed at employers most in stress, its eligibility criteria mean that many employers experiencing levels of stress that are comparable to that experienced by eligible employers, are nevertheless not eligible for JobKeeper. Further, in alleviating economic stress of eligible employers, for the reasons discussed above ineligible businesses can be disadvantaged in an absolute sense by the impact of competition from employers that are eligible.

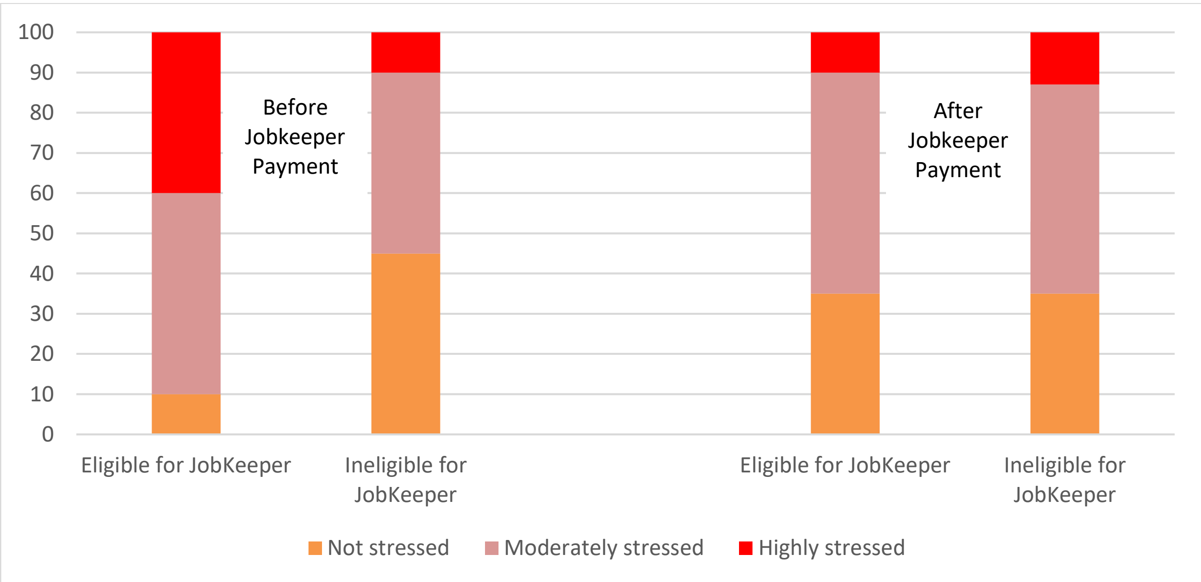
While dealing with hypothetical dimensions for illustrative purposes, the essential points remain:

- Eligibility for JobKeeper does not robustly identify between employers experiencing comparable levels of stress; and

- JobKeeper payments, in alleviating stress only for eligible employers, further undermine the case for using such eligibility to differentiate between the timing of application of any increases in minimum wages.

Chart 1: Illustration of the relationship between economic stress and JobKeeper eligibility and the impact of JobKeeper on the pattern of economic stress

(hypothesised % of businesses in each class)



Employee eligibility

Employers can only receive JobKeeper payments in respect of their eligible employees. Employees are not eligible employees if any of the following apply:

- They were not employed by the employer on 1 March 2020;

- They were under 16 years old on 1 March 2020;

- They were under 18 years old and full-time students who were not financially independent on 1 March 2020 (ineligibility applies from 11 May 2020);

- They were temporary residents (other than holders of 444 Visas) on 1 March 2020;

- They were not residents of Australia for income tax purposes on 1 March 2020;
- They are casual employees who are not "long-term casual employees" (casual employees employed by the employer on a regular and systemic basis for at least 12 months prior to 1 March 2020);
- They are long-term casual employees who are employed in a permanent position by another employer;
- They are in receipt of Parental Leave Pay from Services Australia;
- They are fully incapacitated, not working and receiving workers' compensation payments;
- They are an eligible employee of another employer;
- They do not agree to be nominated by their employer as an eligible employee; and,
- They cease to be employed by the employer.

It is clear from this list that many employees of employers who are eligible for JobKeeper Payments are not themselves eligible employees for the purposes of the JobKeeper Scheme. As a result, they may face higher risks of job loss or reduced hours than would have been the case in the absence of the JobKeeper Scheme. This is because their employers may be competing with employers who are eligible for JobKeeper.

Ineligible employees of eligible employers would be disadvantaged in relative terms if they did not receive a wage rise that employees of ineligible employers did receive.

Different business units

Different business units within a group may be separately assessed for eligibility. For example, if the relevant threshold for a group of businesses is 30%, some of the group's business units may experience a reduction in turnover of less than 30% while others may experience a reduction in turnover of 30% or more. If they can be assessed separately, the latter class of business units within the group would be eligible while the former class would not be eligible.

Applying different minimum wage levels for eligible and ineligible employers would present particular difficulties for employers that had both eligible and ineligible business units within the same group of businesses. In some cases a single employee may be an eligible employee of an eligible business unit and an employee of an ineligible business unit.

In addition to the administrative difficulties, applying a higher level of minimum wages to one group of employees than another group of employees could exacerbate tensions in the workplace already evident as a result of the availability of JobKeeper payments to only one of these groups of employees.

Question 1.1 – Paragraph 4.3

4.3 If it is accepted that such a course is open to the Panel, what deferred date of operation is proposed and in respect of which awards?

Ai Group does not support the proposal and therefore does not propose a particular deferred operative date for employees of employers participating in the JobKeeper Scheme, or particular awards.

Question 1.1 – Paragraph 4.4

4.4 In the event that the Panel decided to provide a deferred date of operation of any increase granted, in respect of some or all modern awards, on the basis of participation in the JobKeeper Scheme (as set out in 4.1 above), how should such a term be drafted? We particularly invite the Commonwealth to respond to this question. Parties are asked to submit a draft term to give effect to any such proposal.

Ai Group does not support the proposal and therefore does not propose a draft term.

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