

Annual Wage Review 2022-23

Fair Work Commission

ACCI Reply Submission

28 April 2023



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Introduction

1. As highlighted in ACCI's initial submission, this year's Annual Wage Review takes place at an uncertain time for both the global and domestic economy. The Expert Panel ('the Panel') faces a number of complex challenges in determining the outcomes of this Review.
2. With clear signs the economy is slowing and inflationary pressure remaining exceptionally high, the Panel must be wary of the downside risks of an oversized increase in minimum and modern award wages to an increasingly fragile economy.
3. ACCI agrees that the Panel should set minimum and modern award wages at a level that appropriately rewards workers. However, it should not be used as a tool to drive wages growth across the economy.
4. It is important the Panel determines an increase to minimum and modern award wages that is fair and reasonable for both employees and employers and is responsible in terms of the potential to contribute to inflation and risks to the overall economy.
5. ACCI reaffirms its initial position to **support an increase in minimum and modern award wages of up to 4%** (3.5% plus the legislated 0.5% increase in the Superannuation Guarantee) **in 2023-24**. We consider this to be both fair and reasonable in the current economic circumstances.
6. Our position is focused on containing inflation and returning it to middle of Reserve Bank's target range of 2-3% as quickly as possible, as well as providing a reasonable allowance for workers to share the benefits of productivity growth.
7. This submission notes some recent changes in key economic indicators since our initial submission and responds to some of the key issues raised by other stakeholders in their submissions.

Recent Changes in Economic Indicators

8. Over the past month, several new reports have been released which are relevant to the Annual Wage Review.

IMF World Economic Outlook

9. The IMF World Economic Outlook, released on April 11, forecasts global growth to slow from 3.4% in 2020 to 2.8% in 2023, before settling at 3.0% in 2024.¹ This represents a 0.1% decline in the forecasts for both 2023 and 2024 from the previous report released in January 2023. The decline in advanced economies is more pronounced, with real GDP growth expected to slow from 2.7% in 2022 to 1.3% in 2023 and 1.4% in 2024.
10. The IMF notes that tentative signs that the world economy could achieve a soft landing have receded amid stubbornly high inflation and recent financial sector turmoil. Inflationary pressures are proving sticky, despite some moderation over the past six months, forcing central banks to continue to raise interest rates, with flow on implications for economic activity. It is likely that some advanced economies, including the United Kingdom, Germany and Sweden will experience a recession in 2023. Others such as the United States and many other European Union countries are likely to avoid a recession, but remain at risk.
11. This has implications for Australia, with slowing global activity expected to weigh heavily on the domestic economy. The IMF is forecasting a sharp deceleration in Australia, but it expects economic growth to remain positive in 2023 and 2024, with December quarter over December quarter real GDP to fall from 2.7% in 2022 to 1.4% in 2023, then 1.6% in 2024.²

Reserve Bank Board Meeting

12. The slowing in economic activity was also noted in the minutes of the April Reserve Bank Board meeting. The Reserve Bank Board is expecting domestic private final demand to moderate through the year, with sluggish household consumption growth.³ Retail sales have been flat and credit card spending has been subdued over the past six months, while consumer sentiment remains at very low levels. Despite the slowing in growth of consumer spending, the Reserve Bank considers most households well-placed to navigate the challenges associated with high inflation and interest rates, especially if employment growth remains robust. The Reserve Bank Board believe it is possible to bring inflation down while maintaining a healthy economy, but the path is a narrow one.

¹ IMF 2023 World Economic Outlook, April 2023 <https://www.imf.org/en/Publications/WEO/Issues/2023/04/11/world-economic-outlook-april-2023>

² IMF 2023 World Economic Outlook, April 2023 <https://www.imf.org/en/Publications/WEO/Issues/2023/04/11/world-economic-outlook-april-2023>

³ Reserve Bank of Australia 2023 Minutes of the Monetary Policy Meeting, 4 April 2023. <https://www.rba.gov.au/monetary-policy/rba-board-minutes/2023-04-04.html>

13. Further, the Reserve Bank warned larger wage increases in parts of the economy, including the social and public sector industries, which will flow through the economy later in the year, could have some impact on inflation. Yet, overall, it considered wages growth to be consistent with the inflation target, *provided* there was an improvement in productivity growth.

Cost of living and the cost of doing business

14. While the impact of inflation on cost of living for low-income workers is noted by many submissions, it is also important to recognise its effect on the cost of doing business and the ability of businesses to pay substantial increases in wages. Businesses are experiencing escalating cost pressures, as inflation drives up their input costs.
15. However, many have been unable to pass on these increasing costs, instead being forced to reduce their margins. This has implications for the long-term viability of many businesses.
16. The ABS Business Conditions and Sentiment Survey found that over 50% of businesses were unable to pass on costs due the need to retain customers (46%), fixed-price contracts (46%) and advertising arrangements (39%).⁴
17. Businesses finding it most difficult to meet financial commitments were in arts and recreation services (13%), manufacturing (17%) and retail trade (10%), sectors with a high proportion of award-reliant employees.⁵
18. A substantial increase in minimum and modern award wages will add to the cost pressures being faced by businesses, placing further pressure on businesses and pushing them to increase prices, which will add to inflationary pressures.
19. The NAB *Monthly Business Survey*, March 2023, showed business conditions edging lower in that month, a continuation of its slowdown over the past half year. While business confidence improved slightly, it remains exceptionally low, reflecting the fragile and pessimistic mood among businesses.⁶ Business confidence remains negative in the retail, wholesale, financial, business and property services, while it has recovered to become marginally positive in the recreation and personal services sector.

⁴ ABS 2022 Business Conditions and Sentiment, May 2022. <https://www.abs.gov.au/statistics/economy/business-indicators/business-conditions-and-sentiments/may-2022>

⁵ ABS 2022 Business Conditions and Sentiment, June 2022. <https://www.abs.gov.au/statistics/economy/business-indicators/business-conditions-and-sentiments/latest-release>

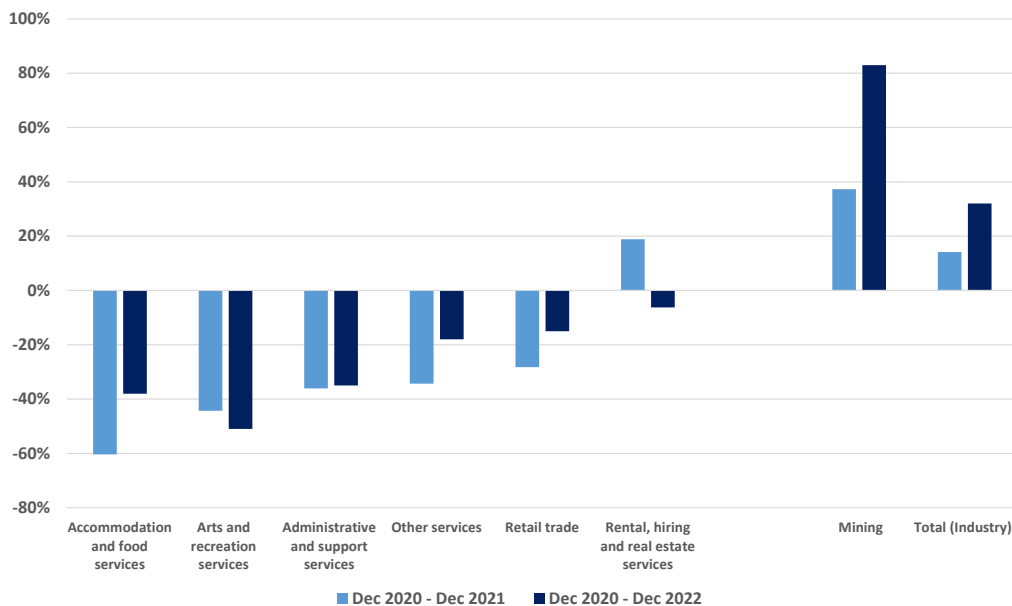
⁶ National Australia Bank 2023, Monthly Business Survey, March 2023. <https://business.nab.com.au/wp-content/uploads/2023/04/NAB-Monthly-Business-Survey-March-2023.pdf>

Responses to Other Parties

Profit Growth

20. In calling for a substantial rise in minimum and award minimum wages of 7% or above, the Australian Council of Trade Unions (ACTU) and the Australian Catholic Council for Employment Relations (ACCER) claim that businesses can afford these high wage increases due to extraordinary profit growth.⁷
21. However, the ACTU and ACCER have been selective in its analysis of profit growth over the past year, observing only quarterly profit growth between December 2021 and December 2022.
22. They fail to recognise that profits in service industries, particularly accommodation and food services, and retail were severely depressed in December quarter 2021, due to the COVID-19 delta lockdowns from June to October, then the COVID-19 omicron disruptions in December 2021 to February 2022. While business conditions in service sectors have bounced back from these severely depressed levels in December 2021, profits at current prices have remain below pre-COVID delta levels. As shown in the chart below, for most service sectors profit growth in December quarter 2022 was substantially below that of December quarter 2020.

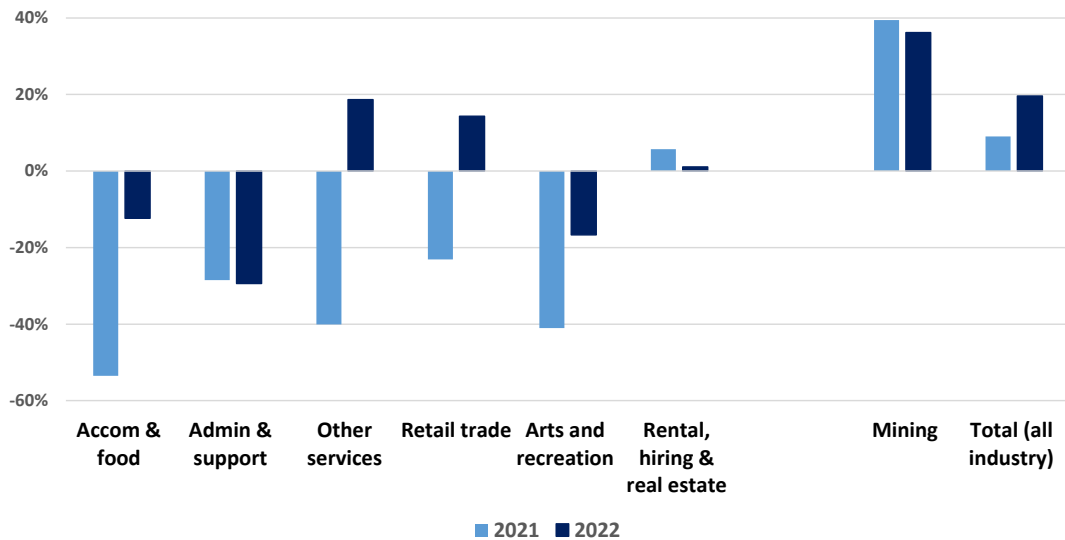
Figure 2: Quarterly Gross Operating Profit growth of sectors with the highest share of award-reliant employees



⁷ ACTU Submission p. 10; ACCER Submission p. 5.

23. Given the high volatility of profits over the COVID-19 period, with steep declines in some quarters due to COVID-19 lockdowns and a recovery in subsequent quarters with the reopening, a more realistic approach is to compare profits on an annual basis. As shown in the ACCI submission, service sectors with a high proportion of award reliant employees, experienced substantial declines in profit growth in both 2021 and 2022.⁸

Figure 3: Annual Gross Operating Profit growth of sectors with the highest share of award-reliant employees



Source: ABS, Business Indicators, December 2022

24. The recent Productivity Commission 5-year Productivity Inquiry Report highlights that labour productivity has slowed considerably, noting that over the decade to 2020 average annual labour productivity growth in Australia was the slowest in 60 years, falling to just 1.1% compared with 1.8% over the 60 years to 2019-20.⁹
25. Impacted by the COVID-19 disruptions, labour productivity has slowed even further to average less than 1% per year over the past three years.
26. In the October 2022 Budget, the government revised down its long-term productivity forecasts from 1.5% to 1.2%, acknowledging labour productivity is slowing and is unlikely to return to its long-term average anytime soon.¹⁰
27. The ACTU submission concedes labour productivity has been weak over the past three years at 0.8%.¹¹ Yet, they then go on to claim that workers have not been sharing the benefits of productivity improvements. What they are reluctant to admit is that, given the very low productivity growth, there has been little productivity benefit to share.

⁸ ACCI Submission p. 11.

⁹ Productivity Commission 2023 Advancing Prosperity: 5-year Productivity Inquiry Report. <https://www.pc.gov.au/inquiries/completed/productivity/report>

¹⁰ The Commonwealth of Australia 2022 Budget 2022-23: Budget Strategy and Outlook – Budget Paper No. 1 <https://budget.gov.au/2022-23-october/content/bp1/index.htm>

¹¹ ACTU Submission p.85

28. ACCER argue the continued *outperformance* of productivity growth at 0.9% annually on average to confirm there are no significant productivity concerns about a major rise in the NMW.¹² However, they fail to accept that productivity growth of less than 1% is exceptionally low and does not support a major rise in the NMW.
29. While ACCI agrees that workers should share in the benefits of productivity gains, it needs to be recognised that labour productivity has been exceptionally low over the past decade and is unlikely to improve in the near-term. In this Annual Wage Review, the Panel must take this into consideration and moderate any wage increase to reflect the projected weak productivity growth expected in the near term.

Disemployment Effects

30. The ACTU argues in their submission that businesses tend to pass on price pressures on to the consumers to protect their profit margins.¹³
31. The research referenced by the ACTU, from the IZA Institute of Labour Economics Research¹⁴, indicates that with the introduction of NMW in Germany, firms did increase prices more frequently and at a high rate to absorb the increase in the wage bill. However, it goes on to explain, firms that increased prices in response to an increase in NMW showed a more muted disemployment response as compared to other firms that reacted less strongly.
32. This is an important qualification, as it suggests that businesses are not passing on costs to protect their profit margins, they are instead passing on the price increase to protect the jobs of their employees.
33. As noted earlier, high inflation over the past year has squeezed the profit margins of Australian businesses, as many businesses have been reluctant or unable to pass on increases in their input costs. However, as their profit margins narrow, many businesses are being forced to raise their prices. Businesses will hold onto their employees where they can, particularly in the current tight labour market, so are more likely to make cuts in other areas of their business to remain viable when conditions are tough. Therefore, in the current environment, businesses are more likely to be raising prices to retain employees than to increase their profit margins.

Low Income Households

34. The ACTU exaggerates the potential for all minimum wage and most employees on modern award wages to be low paid with disposable income below the poverty line.¹⁵
35. ACCER also claims that the poverty gap for minimum wage employees continues to widen.¹⁶

¹² ACCER Submission p.31

¹³ ACTU Submission p. 69.

¹⁴ Link, Sebastian 2022, *The Price and Employment Response of firms to the Introduction of Minimum Wages*. IZA Institute of Labour Economics: Discussion Paper Series.

¹⁵ ACTU Submission p. 141.

¹⁶ ACCER Submission p. 14.

36. However, based on the Table 8.6 of the Statistical Report, only single parents working part-time and single earner couples with and without children are shown to be below the notional poverty line of 60% of median income. For all other household types, household disposable income for workers earning the minimum wage is sufficient to maintain an acceptable standard of living.
37. Also, it is important to note that despite sharply increasing inflation in 2022 and rising interest rates for mortgage holders, household disposable income for all household types listed in Table 8.6 were equal or moderately higher than the previous year.
38. In preparation for the Budget, Finance Minister Katy Gallagher has indicated the government is “seriously considering” extending the single-parent payment.¹⁷ Under the current system, as soon as the child turns eight, the single parent is taken off the single parenting payment and moved onto the jobseeker payment, losing around \$100 per week.
39. As recommended by the Women’s Economic Equality Task Force, consideration is being given to enabling a single parent to access the support until their child turned 16. If included in the Budget, this will raise the household income of single parents, with fewer single parents working part-time falling below the notional poverty line.
40. It must be remembered that there are over 13.8 million employees in Australia, with the wage increase awarded by the Panel applying to 23% of the workforce or over 2.6 million on modern awards and a further 1.5% or around 180,000 on the minimum wage.
41. Previous analysis by ACCI has shown only a very small number of workers, 22% of minimum wage employees or around 40,000 workers, are in the household types below the notional 60% of median wage poverty line.¹⁸
42. Increasing the minimum and modern award wages is a very blunt instrument to raise a very small proportion of low paid workers deemed to be the working poor. It is not appropriate to use the Annual Wage Review to address poverty. As ACCI has previously recommended, this small number of employees are better assisted through the welfare system than through an excessive increase in the minimum wage.

Secure Work

43. ACCI maintains the view expressed in our initial submission that “secure work” is defined as work that is free from fear of joblessness, for which redundancy is the primary relevant cause. This definition is supported by the natural and ordinary meaning of the words. That meaning is not displaced by the intention of the legislature, which, in relation to the phrase “job security” in s 3(a), was to recognise.¹⁹

¹⁷ <https://www.abc.net.au/news/2023-04-24/labor-mp-joins-calls-for-expansion-of-single-parenting-payme/102262302>

¹⁸ ACCI 2022, 2021-22 Annual Wage Review – Reply Submission, May 2022, p. 22.

¹⁹ Explanatory Memorandum, Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 [334].

... the importance of employees and job seekers having the choice to be able to enjoy, to the fullest extent possible, ongoing, stable and secure employment that provides regular and predictable access to beneficial wages and conditions of employment.

44. This explanation is not a definition of the phrase “secure work”. This is evidenced by the use of the word “secure” in the explanation, which would make a purported definition circular. Instead, this explanation supports ACCI’s contended definition of “secure work” and “job security”. Employment that is “ongoing”, “stable”, and “provides regular and predictable access to beneficial wages and conditions of employment” is work that is free from fear of joblessness.

45. With respect to this consideration, the ACTU submitted:²⁰

Similarly, improving access to secure work is relevant to the Panel’s task in setting award minimum wages, as increasing minimum wages will have a positive impact on workers in insecure employment who are disproportionately represented amongst award reliant workers.

46. The task before the Commission is to take into account “the need to improve access to secure work across the economy”.²¹ This consideration is not directed at a need “have a positive impact” on those in “insecure employment” generally; rather, it is directed at making more jobs, more secure (by increasing the security of existing jobs), or otherwise contributing to the creation of more jobs that are secure (by increasing the availability of secure jobs).

47. The degree to which an adjustment to modern award wages can benefit employees in ways that is not relevant to the *security* of their jobs or prospective jobs, is not part of the consideration to “improve access to secure work”. That is plain and obvious on the meaning of the words. The substituted phrase which would be necessary to support the ACTU’s argument would be a need to “improve the conditions of those in insecure work across the economy”. This is not what is required by the consideration in s 134(1)(aa).

48. The ACTU continued:²²

Whilst the increase of award minimum rates cannot change insecure jobs into secure jobs (this could be done through other means, like a review of terms and conditions in awards that impact job security), it will mean that workers who are insecurely employed have greater security generally due to the minimum wage rates being higher, and therefore having comfort that they are better able to meet their financial commitments, for example.

49. As above, this impact on those in insecure work described by the ACTU is not constitutive of the consideration in s 134(1)(aa). The “security” described in this consideration solely pertains to job security, as evidenced by the correlative object recently introduced into the FW Act to “promote job security”.²³ It is not concerned with other forms of security, such as financial security, which is what is being described by the ACTU.

²⁰ ACTU Initial Submission [66].

²¹ FW Act s 134(1)(aa).

²² ACTU Initial Submission [66].

²³ FW Act s 3(a).

50. The ACTU continued:²⁴

An assumption that there is an immutable and unconditional inverse relationship between levels of job security and employment is all but prohibited by the terms of section 3, which identifies the promotion of job security as a means through which an ultimate, overarching objective of “promoting social inclusion for all Australians” is intended to be delivered. The intermediate step in reasoning that increased job security necessarily *reduces* employment is to form a view that there is a fixed relationship between wages fixed by the FWC and employment, which the evidence presented in chapter 3 of this submission finds no support for. The statutory framework thus leaves very little room to argue that fair increases to minimum wages will reduce job security due to disemployment effects, let alone utilise that argument in support of more modest adjustments to minimum wages than those that have previously been determined by the Panel.

51. The ACTU is correct that there is no “immutable and unconditional inverse relationship” between the levels of job security and employment. On the contrary, there is a complementary relationship between the two: the stronger the level of employment there is in the economy, the stronger access there will be to secure work. Accordingly, the Panel should ensure that its decision does not cause disemployment effects, which may arise from significant and unreasonable increases to minimum and modern award wages.

52. The ACTU further submitted that “an assumption that job security necessitates a wage offset is a dated one” and referenced the RBA’s finding that “workers *perceptions* about their job security are related to their wages”. In the RBA’s bulletin, “perceived (or self-assessed) job security” is explicated as “someone’s subjective expectation that they will retain their job”,²⁵ consistent with ACCI’s definition.

53. That aside, the RBA clearly contrasted “perceived (or self-assessed) job security” with “actual (or objective) job security”.²⁶ The Panel is required to take into account the need to “improve access to secure work”,²⁷ not “improve access to work perceived as secure”. These submissions should therefore be disregarded.

54. With respect to the new job security consideration under the modern awards objective, the Australian Government submitted:²⁸

Factors that contribute to improving job security include:

- Certainty about future employment prospects;
- Predictability of hours and days of work;
- Appropriate pay and conditions, without risk of underpayment;
- Access to training and development opportunities;
- Ability to exercise workplace rights without fear of job loss;

²⁴ ACTU Initial Submission [66]-[67].

²⁵ Foster and Guttman, “Perceptions of Job Security in Australia”, RBA Bulletin (March 2018).

²⁶ Foster and Guttman, “Perceptions of Job Security in Australia”, RBA Bulletin (March 2018).

²⁷ FW Act s 134(1)(aa).

²⁸ Australian Government Initial Submission [120]-[121].

- Access to entitlements that allow for rest, recovery, and care (personal and carers leave) and recreation (annual leave) without financial implications;
- Jobs that do not have unfair or discriminatory assumptions about the value of the work; and
- The ability to balance work and other responsibilities, such as caring.

These job characteristics are not specific to full-time, permanent jobs and the relative value of these characteristics will vary dependent on individual preferences and circumstances, including across different stages of work and personal lives.

55. Apart from “[c]ertainty about future employment prospects”, each succeeding bullet point listed by the Australian Government is irrelevant to the consideration about the need to improve access to secure work.
56. There is nothing in the ordinary and natural meaning of the phrase “secure work” which indicates that, in varying modern awards, the Commission must improve the predictability of hours, reduce risks of underpayment, improve access to training, remove unfair assumptions about the value of work, or improve flexibility.
57. These concerns may, to different degrees, fall within other considerations under the modern awards objective. For example, “the need to promote flexible modern work practices”²⁹ may require the Commission to take into account “[t]he ability to balance work and other responsibilities, such as caring”.
58. Nevertheless, these considerations are not pertinent to “the need to improve access to secure work”.³⁰ This is because the ordinary meaning of the phrase “secure work” requires exclusive considerations about *security*, not general qualitative concerns about work. Factors such as “[a]ccess to training”, a lack of “discriminatory assumptions about the value of the work”, and the “[p]redictability of hours and days of work” have no direct bearing on the security of the work.
59. If the Australian Government intended the consideration under s 134(1)(aa) to require the Commission to take into account the need to improve access to work which has predictable hours, access to training, and the other qualities identified in the factors listed above, then it would have included words which possess a natural meaning to that effect in the legislation which its Minister introduced into the Parliament.

Gender Equality

60. The ACTU submitted that, because “women are disproportionately represented among award reliant, low paid and insecurely employed workers”,³¹ the Panel should award a “significant increase” to minimum and modern award wages.³² This was argued on the basis that it would, in accordance with the new gender equality considerations in sections 284(1)(aa) and 134(1)(ab):³³

²⁹ FW Act s 134(1)(d).

³⁰ FW Act s 134(1)(aa).

³¹ ACTU Initial Submission [330].

³² ACTU Initial Submission [78].

³³ ACTU Initial Submission [78].

... help to achieve gender equality and promote job security, address gender pay gaps, eliminate gender-based undervaluation, ensure equal remuneration for work of equal or comparable value and facilitate women's full economic participation.

61. ACCI rejects the notion that these considerations favour a significant increase to minimum and modern award wages. Instead, as argued in ACCI's initial submission,³⁴ the new gender equality considerations favour a more cautious increase to ensure that the "relatively small, but nonetheless beneficial, effect on the gender pay gap"³⁵ of minimum wage increases is not outweighed by the potentially negative impact on women's workforce participation.
62. The ACTU erred in concluding that "NMW and award wage increases therefore provide a *substantial and meaningful* opportunity to reduce the gender pay gap".³⁶ This is directly contrary to the Panel's previous findings, which were that, as noted, "moderate increases in the NMW and modern award wages would be likely to have a relatively small, but nonetheless beneficial, effect on the gender pay gap".³⁷ A "relatively small, but nonetheless beneficial, effect" does not provide a "substantial and meaningful opportunity to reduce the gender pay gap". Accordingly, this consideration should not be at the forefront of the Panel's decision.
63. Moreover, recent ABS data shows strong growth in female employment over the past year, with an increase of 211,200 (up 3.3%).³⁸ All of this growth has been in full-time employment, which increase 234,200 (up 6.6%), while female part-time employment declined 23,000 (down 0.8%). This contributed to the female employment reaching a historic high of 6,626,600 and the participation rate reaching a record level of 62.5%. The female unemployment rate is also exceptionally low at 3.4%, with 230,200 women unemployed.
64. As a result of this tightening in the labour market and the strong growth in female full-time employment, the gender pay gap has fallen over the past year to 13.3% as on Nov 2022. This is the lowest on record compared to a gender gap of 13.8% in November 2021, 15.3% in November 2017 and 17.7% in November 2012.
65. International comparisons indicate that the female participation rate in Australia at 62.5% in March 2023 is well above the Organisation for Economic Co-operation and Development (OECD) average at 53%.³⁹
66. The ACTU further erred in concluding that:⁴⁰

... increases to award wages, particularly those which exceed bargained outcomes, increase the value placed on women workers and the work they perform, thereby contributing to addressing the systemic gender-based undervaluation of female-dominated work and ensuring equal remuneration.

³⁴ ACCI Initial Submission [123]-[131].

³⁵ *Annual Wage Review 2021-22* [2022] FWCFB 3500 [87].

³⁶ ACTU Initial Submission [330] (emphasis added).

³⁷ *Annual Wage Review 2021-22* [2022] FWCFB 3500 [87].

³⁸ ABS 2023 Labour Force, March 2023. <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>

³⁹ OECD. Stat, accessed 26 April 2023. <https://stats.oecd.org/index.aspx?queryid=103872>

⁴⁰ ACTU Initial Submission [330].

67. The gender equality considerations regarding “equal remuneration for work of equal or comparable value” and “gender-based undervaluation of work” are fundamentally about relativities, rather than notional values. In other words, their object is improving the material conditions of female workers relative to the conditions of male workers.
68. This is true even following the recent amendments to the meaning of “equal remuneration for work of equal or comparable value” to expressly exclude requirements for “a comparison with an historically male-dominated occupation or industry”.⁴¹ The purpose of these amendments was not to exclude considerations about whether female-dominated work is undervalued on the basis of gender;⁴² rather, it was simply to remove the requirement for a “male comparator” as a “threshold test” or jurisdictional prerequisite which must be satisfied before making an equal remuneration order.⁴³
69. The Commission’s role in inspecting the “remuneration” of a particular class of employees to determine whether it is “equal” necessarily involves some comparison with the “remuneration” of another class of employees, otherwise the equality or inequality its value cannot be ascertained. Similarly, “undervaluation of work” necessarily involves a comparison between two or more valuations of work as represented by wage rates.
70. Resultingly, “addressing the systemic gender-based undervaluation of female-dominated work and ensuring equal remuneration”⁴⁴ cannot be achieved by applying a uniform increase to modern award wages. Although women are more award-reliant, uniform increases to modern award wages do not alter the relativities between male-dominated and female-dominated industries. The ACTU has not called for differential treatment between the awards in male-dominated and female-dominated industries and the contentions that the proposal for a 7% increase to modern award wages would improve gender-based undervaluation of female-dominated work or equal remuneration should therefore be rejected.
71. The final key argument raised by the ACTU with respect to the gender equality considerations was that “higher wages can also reduce the gender pay gap by improving women’s economic participation in the labour market” because:
- ... higher wages make it easier for women to return to work and take on more hours by making childcare more affordable and making it less likely that women will be the ones to take time out of work to undertake unpaid care. With the Commonwealth Paid Parental Leave scheme paid at the national minimum wage, increasing it can also improve incentives for men to make better use of the scheme and promote shared parenting.

⁴¹ FW Act s 302(3B)(b).

⁴² See especially FW Act s 302(3A)(a)-(b).

⁴³ Revised Explanatory Memorandum, Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 65 [351].

⁴⁴ ACTU Initial Submission [330].

72. It is conceded that higher wages, from which women will disproportionately benefit due to their greater reliance on modern award wages, may provide slight improvements to workforce participation due to the effects outlined by the ACTU. However, these benefits are *slight*, and far more minor than the negative impact on women's workforce participation which can result from the disemployment effects of significant (such as 7%) increases to modern award wages.
73. The Australian Industry Group submission makes a similar point, reasoning that any increase in minimum wages should be moderate, so that does not undermine women's workforce participation.⁴⁵
74. In reaching its decision for the current Review, the Panel must take into account the damaging effects of an excessive increase in the minimum wages on female participation, including displacement of women in the workplace, greater underemployment or a shift to higher levels of casual or non-going forms of employment.
75. Ultimately, the ACTU is wrong to conclude that "the amended object, objectives and equal remuneration principle significantly strengthen the case for a higher increase to the NMW and award minimum wages".⁴⁶
76. Rather, in the context of the annual wage review (noting that these legislative changes are likely to have significant consequences for other functions performed by the Commission, such as work value cases and equal remuneration orders), the amended object, objectives and equal remuneration principle continue to favour a cautious increase to minimum and modern award wages. This is because a cautious increase appropriately balances the "relatively small, but nonetheless beneficial, effect on the gender pay gap"⁴⁷ with the potential disemployment effects that can arise which harm women's workforce participation.
77. The Australian Government made submissions akin to those of the ACTU with respect to the gender equality considerations, arguing that although there are "many complex and inter-related factors that create and sustain the gender pay gap and wage related gender inequality for women", "a fair and meaningful increase to minimum rates of pay can help to further gender equality".⁴⁸ Other parties made similar submissions.⁴⁹ These submissions raise points that have already been addressed herein and in ACCI's initial submission.

Collective Bargaining

78. With respect to "the need to encourage collective bargaining",⁵⁰ the ACTU submitted that the Panel:⁵¹

⁴⁵ Australian Industry Group, p.38

⁴⁶ ACTU Initial Submission [373].

⁴⁷ *Annual Wage Review 2021-22* [2022] FWCFB 3500 [87].

⁴⁸ Australian Government Initial Submission [60].

⁴⁹ See, eg, Victorian Government Initial Submission [48]-[49]; South Australian Government Initial Submission [21]; Queensland Government 21.

⁵⁰ FW Act s 134(1)(b). See also FW Act s 3(f).

⁵¹ ACTU Initial Submission [381].

... should weigh this factor neutrally in the present review, unless it is able to *positively satisfy* itself that an increase to minimum wages will not encourage collective bargaining. Further, it is submitted that the Panel cannot be positively satisfied of this.

79. The ACTU then proceeded to argue that due to the legislative changes which will result from the commencement of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*, “it is less likely that increasing minimum wages will have a negative effect on collective bargaining.”⁵²
80. ACCI rejects this contention. The statutory consideration which the Panel is bound to consider is not concerned necessarily with whether collective bargaining is increasing generally. Rather, it has bearing on specific decisions of the Commission and requires it to take into account whether its determinations assist in the pursuit of the objective of needing to encourage collective bargaining. Even if collective bargaining is encouraged as a consequence of recent legislative changes, a specific decision of the Commission can still have a negative effect on collective bargaining. The Panel is required to take into account that effect when determining increases to minimum and modern award wages.
81. The ACTU asserted that “collective bargaining appears to be increasing following the Panel’s decision last year - in which it awarded a greater increase than previous year”.⁵³
82. However, data from DEWR’s June and September 2022 quarter Trends in Federal Enterprise Bargaining reports does not support this claim.⁵⁴ While the reports show a modest increase in agreements approved, from 942 in June to 1,088 in September quarter 2022, the number of current agreements declined from 11,053 in June to 10,960 in the September quarter.
83. Overall, there has been a steady decline in the number of private sector agreements over the last 5 years. There were 13,933 private sector agreements current covering 1.36 million private sector employees as of 30 June 2017, compared to 10,569 current agreements covering 1.24 million employees as of 30 September 2022.
84. Further, the substantial increase in minimum and modern award wages in 2022-23, which came into effect in the September quarter 2022, does not appear to have driven an increase in the average annualised wage for federal enterprise agreements. The September quarter 2022 average annualised wage increase (AAWI) for federal enterprise agreements was 2.6%, below that of the June quarter 2022 (2.8%) and September quarter 2021 (2.7%).⁵⁵ For the private sector employees, the AAWI remained steady at 2.9%, while the private sector AAWI decreased from 2.4% to 2.3% between June and September quarters 2022.
85. The ACTU further submitted that⁵⁶:

⁵² ACTU Initial Submission [383].

⁵³ ACTU Submission, p.189

⁵⁴ DEWR 2022 Trends in Federal Enterprise Bargaining, June and September quarters 2022. <https://www.dewr.gov.au/enterprise-agreements-data/resources/trends-federal-enterprise-bargaining-september-quarter-2022>

⁵⁵ DEWR 2022 Trends in Federal Enterprise Bargaining, June and September quarters 2022. <https://www.dewr.gov.au/enterprise-agreements-data/resources/trends-federal-enterprise-bargaining-september-quarter-2022>

⁵⁶ ACTU Initial Submission [386].

The strong rate of enterprise bargaining in the second part of 2022 – following the Panel’s most recent decision – suggests that the Panel’s decision had no or little effect in braking enterprise bargaining.

86. The ACTU has not provided any evidence which demonstrates that the Panel’s decision in the Annual Wage Review 2021-22 had no effect on the rate of enterprise bargaining in the second half of 2022. It is equally possible that the Panel’s decision resulted in a rate of enterprise bargaining that was lower than it otherwise would have been if a more cautious increase to modern award wages was determined, as it is that “the Panel’s decision had no or little effect in braking enterprise bargaining”.
87. Ultimately, the ACTU is wrong to conclude that “the Panel should not reduce the quantum of any wage increase it would otherwise determine, on the basis of the need to encourage collective bargaining”.⁵⁷ ACCI reaffirms its position that the requirement to take into account the need to encourage collective bargaining tends in favour of a more cautious approach to increases in the setting of modern award wages.

About ACCI

The Australian Chamber of Commerce and Industry represents hundreds of thousands of businesses in every state and territory and across all industries. Ranging from small and medium enterprises to the largest companies, our network employs millions of people.

ACCI strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

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