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2021-22 Annual Wage Review

Reply Submission

May 2022

Australian Chamber of Commerce and Industry

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1. INTRODUCTION

1. As ACCI stressed throughout our initial submission:

   a. Businesses face continuing and new adversities, with these being felt more severely in sectors with a high proportion of award-reliant employees that are most affected by minimum and award wage increases arising from this review.

   b. There are multiple areas of risk and uncertainty, both present and emerging, domestic and geopolitical that are imperative in determining this review.

   c. While aggregate national macroeconomic indicators are generally positive, showing the resilience of the Australian economy, there is a wide diversity of experiences between industry sectors and workplaces, and between employees.

2. These all create a challenge for the Expert Panel in its determination for this review, but particularly the diversity in conditions facing business in awarding what is likely to be a single level of increase in minimum and modern award wages. We submit that this is a particular concern / factor to be navigated in determining the outcome in this review, and that diversity of economic, trading and personal experience is likely to be greater and more wide ranging in 2022 than in previous review years. Distilling this diversity into a single outcome or increase will be particularly difficult for the Panel.

3. ACCI has already submitted that "the unevenness, inconsistency and fragility of the recovery remains problematic". In the intervening weeks, our impression of unevenness, any consistency of experience and adversity has only deteriorated. Businesses in some sectors are doing very well, with some employees experiencing positive outcomes in tightening labour markets. Others are saddled with post-pandemic debt, flaky consumer confidence, and changes in consumer behaviours and demand.

4. The multi-speed performance of the Australian economy is particularly salient for businesses in sectors with a highly award-reliant workforce, who are directly subject to the decisions in these reviews. This not only makes the determination of a single level of increase in minimum and award minimum wages very difficult, but it should be a factor compelling a high degree of caution and moderation in 2022.

5. We described the outlook in our last submission as fragile - and we can only reinforce to the Panel that view. Inflation is presenting significant challenges, raising the operating costs for businesses paying award rates, as well as prices for individual consumers. The risk of new variants of COVID emerging, that may be more infectious and virulent, leading to further economic disruption, remains ever present. War is perpetuating and intensifying in Europe, threatening widespread global economic and trade impacts - impacts that come on top of existing supply chain problems and uncertainty and a lack of confidence, and fear of inflation, throughout the world.

6. There is an overwhelming impression of risks and the unknown, requiring genuine caution and moderation. In response to the changing circumstances, the Reserve Bank has changed its stance on monetary policy. There is an opportunity, and in fact an imperative, for others charged with key economic settings, in this case on minimum and award minimum wages, to heed this experience and be genuinely cautious against contingencies.

7. The last examination of minimum wages took place in a spirit of some optimism of an end to the pandemic and of a substantial return towards sustained recovery. We were not to know that the intervening period would see further variants delaying restart and recovery, massively damaging floods, a land war in Europe, considerable disruption to global supply chains, substantial fluctuations in fuel prices, considerable concerns regarding inflation and down ratings of forecast growth throughout the world. We now know that the optimism and certainty anticipated at the beginning of 2021 was not realised and this miscalculation should not be repeated. A greater measure of caution and scepticism is warranted in our outlook for 2022 and 2023.

1.1 Review Outcome – ACCI Position – Increase Level

8. ACCI had to date not commended a specific position to the Panel precisely due to the uncertainty and risks outlined above, which are material factors compelling caution and moderation in the outcome of this review.

9. It is however appropriate at this stage of the submission process that ACCI does express a view to the Panel about the approach it should take to increasing minimum and award wages in this review; that we advance an outcome which is appropriate to the circumstances of early to mid-2022, what we know, what we can know of what is to come, the known risks and uncertainties, and taking into account the significant diversity of circumstances reported to us by those we represent.

10. Drawing together a single position across our diverse membership, and the diverse experiences of those our member organisations represent, has been difficult, just as the task of the Panel is difficult in 2022. We have sought to do so also taking into account differing economic considerations, and risks to those considerations.

11. **Taking into account the full range of economic considerations, ACCI supports an increase of up to 3% as reasonable in the current review**. This factors in changes in prices, the level of minimum and award wages (including consistent real minimum and award wage increases across more than a decade) and the framework for discharging the Panel's responsibilities under the Fair Work Act.

12. This is the highest level of increase advanced or not opposed by our network under the current statutory framework and reflects changing circumstances relevant to the statutory considerations in 2022, including inflationary circumstances not seen for some time. Some employers advance differing perspectives and positions based on the experiences of their members, and we urge that this also be closely heeded.

13. The Expert Panel has for some time stressed to all those who take part in these reviews that there is no mechanistic or formulaic approach to minimum wage uprating under the Fair Work Act. If this is maintained and all indicators are taken into account, along with the full range of statutory considerations, that should preclude any assumption of a minimum level of increase being determined by the CPI.

14. Any contention that the statute compels real minimum wage increases every year would be to have the Panel adopt precisely the mechanistic or determinative approach which it has consistently refused to do in previous reviews.

15. Instead we understand the Panel balances the range of considerations each time, which is what ACCI has attempted to do in advancing the above position. Our approach provides a substantial minimum and award wage increase whilst also taking into account fragilities for businesses and jobs, the unknowns and risks which pervade in 2022, and increased diversity of experiences and capacities to pay.

16. As set out below:

    a. The second component of ACCI's position (Section 1.3) addresses the dates of increases for awards applying to industries still encountering exceptional circumstances, or alternatively now encountering a changed or fresh set of exceptional circumstances, such that a differing /delayed operative date is justified in 2022. These are the considerations addressed at Part 3 of the June 2021 decision[1], applied to the circumstances in which this review is being undertaken, and are addressed below.

    b. The main body of this submission (Sections 2 to 4) addresses questions on notice, recent economic developments, data and forecasts, and replies to other parties.

    c. There are also some potentially anomalous impacts of any increase for some unique industry circumstances that need to be taken into account, as set out in Section 5.

1.2 Appearance

17. The Review Timetable nominates the due date for this submission as also being the "closing date for expressions of interest in taking part in the final consultations".

18. ACCI can confirm that we will be pleased to be available for the final consultation scheduled for 18 May, and at this stage we are preparing to take part via video conference from Melbourne and Sydney. We would seek to accommodate any alternative arrangements if directed.

1.3 Exceptional Circumstances / Delayed Dates of Effect

19. In the past two reviews, the Panel has determined that delayed modern award wage increases should apply to specific industries that were adversely affected by the economic consequences of the COVID-19 pandemic (as exceptional circumstances). In last year's decision, the Panel responded to ABI's request for guidance on how it intended to proceed with the future re-synchronisation of the modern award clusters that received those delayed increases and stated:

> Absent a case being made out that exceptional circumstances exist in respect of a particular modern award, any variations arising from next year's Review will operate from 1 July 2022.[2]

20. We submit that a strong case can be made out that the exceptional circumstances necessary to justify a delayed determination under s 286(2) exist in respect of particular modern awards and that their respective variation determinations should come into operation no earlier than 1 November 2022.

21. Specifically, there are in 2022 exceptional circumstances that justify delayed variation determinations for the following awards:

[1] [2021] FWCFB 3500, [177] to [303]
[2] [2021] FWCFB 3500 at [303].

a. Those that map onto the aviation and tourism sector (*Air Pilots Award 2020, Aircraft Cabin Crew Award 2020, Airline Operations – Ground Staff Award 2020, Airport Employees Award 2020, Alpine Resorts Award 2020, Marine Tourism and Charter Vessels Award 2020, Wine Industry Award 2020*) (**Aviation and Tourism Awards**).

b. Those that map onto the accommodation and food services sector, excluding the *Fast Food Industry Award 2010* which did not receive a delayed determination in last year's decision (*Hospitality Industry (General) Award 2020, Restaurant Industry Award 2020, Registered and Licensed Clubs Award 2020*) (**Accommodation and Food Services Awards**).

c. Those that map onto the arts and recreation services sector, excluding the *Horse and Greyhound Training Award 2020* which did not receive a delayed determination in last year's decision (*Amusement, Events and Recreation Award 2020, Live Performance Award 2020, Fitness Industry Award 2020, Sporting Organisations Award 2020, Racing Clubs Events Award 2020, Racing Industry Ground Maintenance Award 2020, Travelling Shows Award 2020*) (**Arts and Recreation Awards**).

22. The decision by the Panel in the last review to order delayed variations in respect of the aforementioned modern awards was well-founded and satisfied the relevant statutory criteria, albeit based on what proved to be an overly optimistic economic outlook.

23. It is accepted that 'the mere fact of a deferred date of operation of an increase in last year's Review is not, in and of itself, an exceptional circumstance such as to warrant a deferral in this year's Review'.[3] However, differential treatment is once again appropriate in this review, not because we are facing the same economic situation as when the majority applied a staggered commencement approach last year,[4] but rather because there is the same or proximate degree of exceptionality in the current, 2022-23 economic circumstances that justifies the exercise of discretion under s 286(2) in favour of a delayed operative date.

24. Economic circumstances are not as they were in 2021. Equally, the Panel's forecast presumption in last year's decision that any variations arising in the subsequent review should operate from 1 July 2022,[5] was unavoidably premised without foreknowledge of critical factors which are now at hand. In addition, it was premised on what proved to be an overly optimistic economic outlook, as outlined in Section 1.2 of our initial submission.

25. Those factors and their impact on the specific industries in which modern award wage increases should be delayed, are discussed below. The response to the question posed to ACCI by the Panel in the *Annual Wage Review 2021–22 Questions on notice* seeking evidence of the arguably worse situation currently borne by these industries than at the time of the 2021 decision, is provided in Section 2.1.

26. We further submit that where any other industry contends to the Panel that the circumstances faced by the businesses which they represent also require delayed modern award wage increases, those arguments should be given open consideration by the Panel. Erring on the side of caution remains a sensible and warranted approach in times of uncertainty as experiences after the last increase indicate, and becomes more important if an increase is countenanced greater than the 2020 / 2021 rises.

[3] Ibid at [226].
[4] See ibid at [233].
[5] [2021] FWCFB 3500 at [303].

27. Even if the industries in question were not subject to delayed increases in either of the past reviews, the Panel should take into account relevant evidence that justifies a departure from the general rule of applying modern award wage increases from July 1 that may not have been readily available or apparent to the Panel or other industry associations, such as ACCI, at the time of those reviews. Submissions that argue for new delayed increases for certain sectors or awards should therefore not be simply dismissed because those arguments were not raised or accepted in previous recent reviews.

28. Not only may the evidence that justifies a delayed increase not have been previously available or known, but new adverse circumstances may have arisen since the last review that make such a justification. It is not contested that there is a statutory preference that all variation determinations, if ordered, should operate from 1 July in the following financial year. However, a preference for simultaneity does not mean that after delayed increases have been awarded in one decision, that each successive decision must necessarily continue on a narrowing trajectory towards re-synchronisation. In other words, merely because the Panel determined that different operative dates should apply to wage increases under different groups of modern awards in the 2020 decision and then made the same decision in 2021 but refined the number of modern awards to which the delayed determination applied, does not oblige the Panel to further reduce that number or comprehensively re-synchronise the operate dates in 2022 .

29. Rather, the Panel *can* and *should* specify in its decision that wages in the aforementioned modern awards be increased on 1 November 2022 and wages in any other modern awards also at a later date than 1 July 2022, if raised by relevant organisations, irrespective of whether similar determinations or submissions were made in the last two reviews.

30. In the 2021 decision, the Panel found that there were the requisite exceptional circumstances to justify a delayed wage increase for the Aviation and Tourism Awards and the Accommodation and Food Services Awards because of:

  a. The recommendation in Professor Borland's final report that those industries should be classified as 'industries where the number of jobs and economic activity has not fully recovered or has progressively decreased to now be below the level prior to the onset of COVID-19 by a significant amount (in the case of jobs, 5 to 10 per cent below the level prior to COVID-19)'[6] ("lagging recovery")'.[7]

  b. 'Relevant industry specific data'.[8]

  c. 'The period of time between successive Review increases'.[9]

  d. 'The likelihood that future lockdowns will be of limited duration and localised; comprising of stay-at-home orders localised to particular regions with limited reasons for people to leave their home'.[10]

[6] [2021] FWCFB 3500 at [243].
[7] Ibid at [245].
[8] Ibid at [246].
[9] See ibid.
[10] See ibid.

31. Although Professor Borland's recommendations and research was no doubt pivotal in the Panel's determinations across the board for the timing of modern award wage increases, the Panel's last decision did not accord with his analysis in respect of the Arts and Recreation Services Awards and *Fast Food Industry Award 2010*.[11] Given this, as well as the review not having the benefit of Professor Borland's expert research this year, our submission will not be able to utilise his classifications of industries to justify delayed increases.

32. The possible emergence of future variants of COVID-19 leading to stifling lockdowns on the relevant industries remains real and the ultimate efficacy of the current vaccines is unclear, as discussed at [79]-[82] in our initial submission. Having been the industries that were most adversely affected over the past two years by the present variants, it is reasonable to expect that they would remain the most adversely, immediately and widely affected by any future variants. However, beyond that and the broad risks discussed in our initial submission that should be taken into account for the determination of the overall quantum of the wage increase, it is evidently impossible to seriously speculate about this possibility for the purposes of determining whether specific industries should be subject to delayed modern award wage increases.

33. Instead, we urge the Panel to focus on the critical considerations that demonstrate the existence of exceptional circumstances in 2022, being the industry specific data and the period of time between successive review increases, which were sufficient (in conjunction with the other considerations) to justify delayed increase dates in last year's review.

Aviation and Tourism

34. The circumstances currently faced by the aviation and tourism sector have been explained at length by ACCI Tourism.[12] We encourage the Panel to closely examine that submission, particularly the persisting impact that barriers to international and domestic travel continue to have on the sector.

35. As discussed there, many businesses in the tourism industry are still struggling to remain viable. There is an inevitable lag behind the reopening of borders and the actual return of customers to pre-COVID levels. Businesses in the sector are now required to re-establish their operations after an extensive period of closure.

36. The first graph on page 8 of that submission illustrates how the volume of forward bookings from key markets to Australia remains below 50% of 2019 levels. This impacts not only the airlines and airports, but all tourism operations across the country who depend on international arrivals for viability.

37. Crucially, as noted in that submission, Tourism Research Australia forecast that the domestic visitor economy of each of the states and territories will not return to its pre-pandemic levels until the end of 2023-24. Evidently, this industry remains lagging behind the rest of the economy.

[11] Ibid at [260] and [262].
[12] Australian Chamber – Tourism Annual Wage Review Submission 2021-22 1 April 2022.

38. In addition to those April 1 submissions, the Panel's attention should be drawn to the rising cost of jet fuel. Data from the International Air Transport Association (IATA) shows that the price of jet fuel has more than doubled over the past 12 months.[13] This has and will continue to translate into higher airfare costs, further stagnating international and domestic travel. Many airlines' contracts hedging fuel prices are also likely to expire at or after the conclusion of this Review,[14] which may further exacerbate the issue if prices continue to rise or remain high.

39. Although, as stated, speculation about the possibility of future COVID variants and the efficacy of the current vaccines will not be heavily entertained, it is worth remembering that the aviation and tourism sectors are 'the first to go' when it comes to government responses to pandemic. This occurs even before any domestic lockdowns or public health restrictions are put in place.

40. It is clear, based on the April submission made by ACCI and the relevant data, that the aviation and tourism sector is facing 'exceptional circumstances' that warrant the exercise of discretion under s 286(2) to specify that their modern award variations come into effect on a later date than 1 July 2022. The period of time between successive Review increases played a role in the Panel's decision-making with respect to deferrals in the last review and consequently we urge the Panel to determine that the wages in the Aviation and Tourism Awards should not increase earlier than 1 November 2022.

Accommodation and Food Services

41. The initial submission provided to the Panel by our member, the Restaurant & Catering Industry Association,[15] makes a strong case justifying deferred modern award wage increases, taking effect 12 months after the date within which the previous increase took effect.

42. At [14]-[21], the RCA submission outlines the current circumstances faced by the industry and demonstrates that they are exceptional. Importantly, the industry specific data shows that for hospitality businesses:

    a. Less than a third made up to 5% of their yearly turnover for the 2020-21 financial year.[16]

    b. Wage costs and skill shortages were ranked the two biggest issues of concern.[17]

    c. Significantly inflationary pressure is anticipated over the course of the financial year,[18] which we are now witnessing.

43. Evidently, employment can be significant obstacles to the viability of hospitality businesses facing continuing and changing adverse circumstances. Combined with inflationary pressures (and supply pressures for some fresh produce) that will force increases in menu prices, thereby potentially discouraging consumption, hospitality businesses are facing unique circumstances that warrant a delayed increase in modern award wages.

[13] https://www.iata.org/en/publications/economics/fuel-monitor/
[14] https://www.reuters.com/business/aerospace-defense/qantas-expects-airfares-rise-if-oil-price-remains-high-2022-03-08/
[15] RCA Submission 28 March 2022.
[16] Ibid at [17].
[17] Ibid at [15].
[18] Ibid at [16].

44. The number of COVID-19 cases still remains high across the country, with recent spikes in major cities.[19] While many industries may not be significantly affected, the hospitality industry is uniquely affected due to the close contact between customers and staff which we have seen stifle businesses substantially over the past two years. While hospitalisations may be lower with the current Omicron variant and most public health restrictions now gone, the isolation rules remain in place which can prevent these businesses from being able to keep doors open or be adequately staffed.

45. The Panel should be extremely cautious to not presume that the hospitality sector has recovered merely because of an absence of density limits and the other restrictions which were previously debilitating over the past two years for those businesses. There is no doubt that the exact circumstances that justified a delayed wage increase in previous reviews are not the circumstances currently faced by hospitality businesses. However, circumstances are still exceptional in another manner and justify a further deferral. While previously customers were prevented from visiting these venues due to government restrictions, they are now prevented by personal infection (as well as prevailing concerns about confidence for discretionary spending).

46. The Panel should remain open to considering the strong case that has been made by the industry for a delayed variation determination pertaining to its modern awards.

Arts and Recreation Services

47. The arts and recreation services sector once again faces exceptional circumstances that can justify a delayed increase in modern award wages. As provided on page 29 of the Australian Government's submission,[20] the ABS Labour Force statistics show that employment in the sector has fallen by nearly 20,000 between February 2020 and February 2022. Unlike other industries which are recovering or have in fact grown in employment levels since February 2022, such as financial and insurance services, the arts and recreation sector still faces persisting adversity.

48. This sector, like the accommodation and food services sector, is largely customer facing and therefore has been significantly impacted by the recent spread of the Omicron variant. Its workforce is also heavily award-reliant, with 26.6% of its employees under the relevant awards.[21] Increasing those award wages on July 1 risks compromising the viability and recovery of some businesses.

49. Without purporting to reverse the approach of a strong case needing the made out to justify the delayed determination, there is no evidence to suggest that the arts and recreation sector has fully recovered. The Panel should exercise caution and once again delay increase to the Arts and Recreation Services Awards until 1 November 2022 at the earliest.

[19]
[20] Australian Government Submission 1 April 2022, 29.
[21] ABS *Employee Earnings and Hours*, May 2021

2. QUESTIONS ON NOTICE

2.1 Question to ACCI – What evidence can be provided to show that the current situation for these industries is worse than at the time of the Annual Wage Review 2020-21

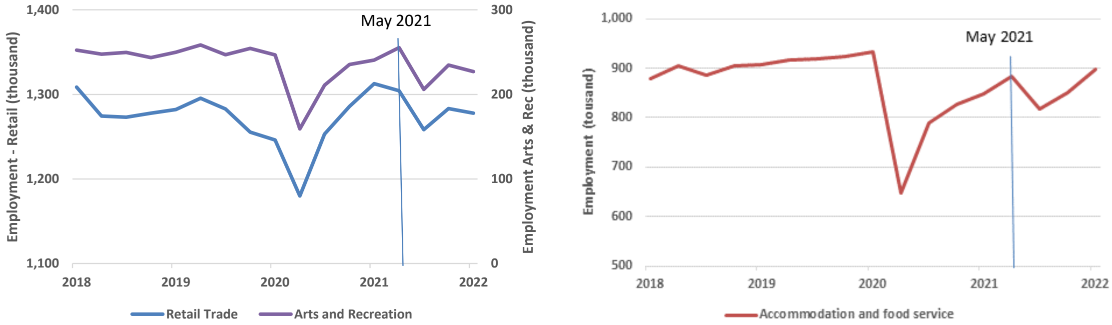
50. As outlined in Section 1.2 of ACCI's initial submission, the Panel was ultimately proven to have been too optimistic about the economic outlook in its 2021 decision. The Panel's assumption that *The Australian economy had recovered to a greater extent and more quickly than anticipated*, did not appreciate the high risk of further COVID outbreaks.

51. The COVID delta outbreak from June to October 2021, which led to extended lockdowns in NSW, Victoria and the ACT, severely impacted economic activity in these states/territories. The greatest damage was caused to customer-facing industries in accommodation and food services, arts and recreation and retail, as well as tourism related businesses in the transport sector. Yet, the effects weren't limited to these sectors, with construction, education and manufacturing also impacted.

52. Just as the economy began recovering from the COVID delta outbreak, it was hit again by the COVID omicron outbreak. Despite state and territory governments choosing not to mandate lockdowns, the COVID omicron outbreak led to a shadow lockdown, which again severely affected these customer-facing, award-wage reliant industries. Soring infection rates and the ripple effect of a large number of close contacts, forced many people to self-isolate, with customer traffic markedly down for café, bars, restaurants, most retail, personal services such as hairdressers, as well as gyms and other recreational activities. In addition, due to a large number of employee absences, many businesses found it difficult to staff their operations, with some forced to close, others to reduce services or operating hours.

53. The scaring of the COVID delta and omicron outbreaks still remains for these sectors. As shown in the charts below, employment in the arts and recreation and retail trade sectors remain 11% and 2% below their May 2021 levels in February 2022. While employment in the accommodation and food services sector was marginally (1.5%) above its May 2021 level in February 2022, it remains 4% below its February 2020 (pre-COVID) level.

Chart 1: Changes in employment since the Panel's previous decision (May 2021)



Source: ABS Labour Force Detailed, March 2022

54. The situation faced by many businesses in the accommodation and food services, arts and recreation and retail sectors, as well as tourism related businesses in the transport sector in May 2022 is worse than it was at the time of the Panel's 2021 decision.

55. Looking back, it could be argued the Panel was over-confident in its 2021 decision in assuming the worst of the impacts of the COVID pandemic were behind us and that the economy would continue the strong trajectory of recovery.

56. Looking forward, a high level of uncertainty remains for these customer-facing service industries, which typically are the most impacted by the COVID disruptions. As we approach winter, very high COVID infection rates remain in the community and there is an elevated risk of a new, potentially more virulent, COVID variants emerging. Geo-political tensions, with the ongoing conflict in the Ukraine and the increasing assertiveness of China in our region, also pose significant risks to our economic stability going forward.

57. Given this, the case for exceptional circumstances for customer-facing service industries remains. More widely, it is critical that the Panel err on the side of caution, rather than confidence, in the 2022 decision.

58. The exceptional circumstances of 2022 justify a continuation of a delay in the introduction of any increase in minimum and award minimum wages for businesses in accommodation and food services, arts and recreation, some retail sectors, as well as tourism related businesses in the transport sector, as outlined in section 1.3. Delaying the introduction of any wage increase to November 2022 will reduce the stress these businesses currently face and give them more time to get back on their feet.

2.2 Question to the Australian Government – The significance of small business to employment

59. Small business (businesses with 1 to 19 employees - including micro businesses [1-4 employees]) represent over 41% of the workforce, or 4.67 million employees in 2019-20.[22] Despite a modest decline in recent years, small business remains the largest employing sector.

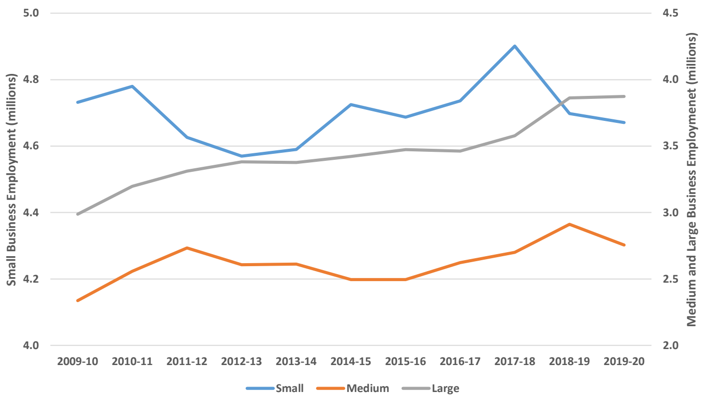
60. The data provided by the ABS in Australian Industry is now dated (2019-20). Over the past two years, there has been strong growth in the number of small businesses. Net business entries grew strongly in 2020-21, up 42,350.[23] While data is not yet available, all indicators are that this growth in net new entries has continued in 2021-22. As the majority of new businesses begin as small businesses, it would be expected that the bulk of these net new business entries are small businesses.

61. Small businesses are also concentrated in key industries most directly subject to labour cost increases arising from these reviews, including the preponderance of small shops, small restaurants, bars and cafés, small tourism operators, etc.

62. The growth in net new business entries coincides with a period of strong growth in employment, so it can be assumed that there has been a marked increase in employment by small businesses over the past two years.

[22] ABS 2021 Australian Industry 2019-20 financial year
[23] ABS 2021 Counts of Australian business, including entries and exits, July 2017 – June 2021

Chart 2: Employment by business size



Source: ABS 2021 Australian Industry 2019-20 financial year

2.3 Question to all parties – relevant announcements from the 2022–23 Budget has been prepared by staff of the Commission

63. As noted in the ACCI Submission ([245] p.46), *the March 2022 Budget included a number of temporary measures in the 2022-23 financial year to ease cost of living pressures, particularly for low-income households. These include:*

    a. *A one-off cost of living tax offset of $420 for the 2021-22 income year, raising the low to middle income tax offset (LMITO) in 2021-22 to $1,500 for individuals and $3,000 for couples*

    b. *A temporary halving of the fuel excise, reducing it by 22.1 cents per litre*

    c. *An increase in the childcare subsidy for low-income families, bringing forward the 30% uplift in the childcare subsidy for parents with multiple children to 95% of childcare costs*.

64. These measures will benefit low-income households, reducing cost pressures and increasing household disposable income.

65. All households listed in Table 8.6 of the Statistical Report receiving the minimum wage will benefit from the $420 increase in the low to middle income tax offset.

66. Similarly, most household types (i.e. those accessing childcare) with 2 or more children will benefit from the 30% uplift in the childcare subsidy for parents with multiple children.

67. The one-off payment of $250 to help households with higher cost of living pressures will also benefit household types receiving the JobSeeker payment, as well many other households in the single earner couple category that have a household member on the eligible recipient list.

68. ACCI is not in a position to quantify the increase in household disposable income associated with these measures, but it would be helpful if the Panel were to revise Table 8.6 in the statistical report to take these factors into account. It is likely that the disposable income of a number of household types will raise above the threshold of 60% of median income when these measures are taken into account.

69. Other measures announced in the Budget to support business investment in training and technology are very welcome. In particular, the Small Business Skills and Training Boost and Extending the BAC and CAC Wage Subsidies will encourage businesses to take-on and train new employees in either an apprenticeship or in technology.

70. The wage subsidies offset some of the cost to a business of taking on an apprentice, as in the first few years of an apprenticeship an experienced tradesman must spend time teaching the apprentice the skills of the profession. It is not until later years of an apprenticeship that the trainee is able to work independently and add value to the business.

71. The Extending the BAC and CAC Wage Subsidies will create more jobs, particularly for younger employees. More importantly, for these younger workers gaining an apprenticeship of certificate, it offers a pathway to higher paid jobs in the future and has the potential to reduce the number (and share) of workers receiving minimum wages and lower the share of award-reliant employees in the workforce.

72. In addition, the Small Business Technology Investment Subsidy will stimulate investment in technology, which is also likely to create new job opportunities for skilled, technology-literate employees.

73. In time, these wage subsidies will also provide more skilled workers to fill the skill shortage being experienced by industries. Yet, given apprenticeships are typically 4 years and other certificate training is typically two or more years, these programs will not immediately provide job ready skilled employees to meet industry needs.

3. NEW ECONOMIC DATA

74. ACCI has already provided detailed discussion of economic considerations in our initial submission. The following section addresses new data released since 1 April 2022.

3.1 IMF World Economic Outlook

75. The IMF World Economic Outlook describes the unfolding Ukraine crisis, highlighting the risks and uncertainty it presents to the global economy.[24]

76. Before the Russian invasion, it was projected that the global recovery would strengthen after the short-lived impact of the COVID omicron variant. The war is now expected to severely set back the global recovery, slowing growth and increasing inflation even further.

77. In addition, in another fresh 2022 development, frequent lockdowns in China, as it strives for a zero-infections COVID-eradication policy, has slowed manufacturing activity and is likely to lead to new bottlenecks in global supply chains.

78. The IMF assessment is that the overall risks to economic prospects have risen sharply, with policy trade-offs becoming more challenging. Since its previous Economic Outlook in January 2022, the IMF has trimmed its global growth forecasts by 0.8% in 2022 and 0.2% in 2023, now projecting global growth of 3.6% in both 2022 and 2023.

79. The conflict in the Ukraine and consequent sanctions, will mainly affect commodity markets, as Russia is a major supplier of oil, gas and metals, and together with the Ukraine, agricultural products, such as wheat and corn. The prices of these commodities have already been driven up sharply and are likely to increase further the longer the conflict continues. Neighbouring regions in Europe, Central Asia, the Middle East and Northern and sub-Saharan Africa are the most affected, but there will be flow-on to the Americas and Asia, making for a genuinely global impact from which Australia will not be immune.

80. With inflation already very high in many economies, the war related supply shortages will amplify the pressures, such that inflation will remain elevated for longer than previously expected – well into 2023. Fiscal response options are limited in many countries where debt is already at extraordinary high levels due to COVID-related spending.

81. IMF highlight the high level of uncertainty of their projections, with the risks mainly on the downside. COVID is still present and continued spread could lead to new, more lethal variants immune from existing vaccines, with further lockdowns and economic disruptions a possibility. Global growth projections could be slowed further by an escalation, expansion, and a more drawn-out Russian-Ukraine conflict. Higher inflation is likely to push central banks to adjust their monetary stances more aggressively, further dampening growth.

82. Australia cannot isolate itself from the global market. As a major commodity exporter, we may benefit to some extent from the higher commodity prices. Yet, a weakening global economy, lower demand for our non-commodity exports and increased supply chain bottlenecks will dampen economic activity in Australia in the year ahead.

[24] IMF 2022 *World Economic Outlook, April 2022*. https://www.imf.org/en/Publications/WEO/Issues/2022/04/19/world-economic-outlook-april-2022.

3.2 Inflation

83. Inflation increased 5.1% in the year to March 2022, with fuel prices and the cost of new dwellings the major contributors.[25] Fuel prices are up 35% over the year, with the invasion of the Ukraine in February leading to an 11% spike in the March quarter. The high fuel prices affect all businesses, through higher freight rates, higher delivery and transport costs. New dwelling costs were up 13.7% over the year, as supply chain constraints led to material shortages and exacerbated delays in construction. There were also notable increases in food prices, with vegetables up 6.6%, fruit up 4.9% and beef up 7.6%.

84. Yet, it remains uncertain whether the current elevated fuel prices and supply chain disruptions, contributing to the inflationary pressures, are ongoing or transitory. There have already been significant fuel price moderations from their peak.

85. The government's decision to half the fuel excise in the March Budget should contribute to an easing of fuel price pressures on inflation in next quarter, and make a difference for consumers. According to the NRMA fuel price tracker, in April fuel prices fell 13.5% in April, returning to its January 2022 level – i.e. prior to Russia's invasion of the Ukraine. Internationally, governments have responded to rising fuel prices, with the US accessing its strategic fuel reserves (1 million barrels per day) in an effort to reduce fuel prices. Europe, Japan and other nations are also expected to join the US in releasing more from their reserves over the next 6 months in an effort to ease pressure on fuel prices.

86. Similarly, supply chain constraints are easing, with the ABS Business Conditions and Sentiment survey showing around one third of businesses reported experiencing supply chain disruptions in February 2022, down from almost a half in January 2022. However, this remains elevated relative to the 30% of businesses responding to this question in April 2021. Sectors with the highest proportion of businesses experiencing supply chain disruptions were retail trade (65%), manufacturing (58%) and wholesale trade (57%). Construction was fourth, with 43% of businesses experiencing supply chain disruptions in February, notably down from 58% in January.

87. Given this uncertainty as to whether this inflationary pressure is ongoing or transitory, ACCI strongly recommends the Panel apply genuine caution in its decision on any increase in minimum and award minimum wages. There is a real risk that a premature or excessive increase in minimum wages will suppress employment growth and slow the economic recovery.

3.3 A higher cash rate and the Reserve Bank outlook

88. Responding to the jump in inflation to 5.1% in the March quarter, the Reserve Bank lifted the cash rate at its 3 May 2022 Board meeting by 0.25 basis points to 0.35% — the first increase in over a decade.[26] This begins the process of normalising the cash rate after an extended period of exceptionally low rates, which means a series of likely increases, as are forecast in various OECD economies.

89. In a speech following the 3 May meeting, Reserve Bank Governor Lowe acknowledged that the main driver of inflation has been global developments, with a series of global supply shocks pushing up prices.[27] He also identified that strong demand in some industries was putting pressure on capacity and highlighted labour and skill shortages in some sectors that were pushing up wages.

[25] ABS 2022 Consumer Price Index, March 2022
[26] https://www.rba.gov.au/media-releases/2022/mr-22-12.html
[27] https://www.rba.gov.au/speeches/2022/sp-gov-2022-05-03.html

90. With tightening margins, businesses in a range of industries are now indicating that they are prepared to pass on cost increases through to customers, including other businesses. This only adds to the cost of doing business and puts further upward pressure on prices.

91. More detail on the RBA's thinking was provided in its *Statement on Monetary Policy* released on 6 May 2022.[28] This shows Australia is following the trend of other advanced economies, with consumer price inflation rising since the middle of 2021. Yet, inflation in Australia remains significantly lower than in many other comparable developed countries.

92. The inflationary pressure is mainly a response to external factors – supply chain bottlenecks, and much higher fuel prices particularly following Russia's invasion of Ukraine. The RBA has revised the outlook for inflation higher, with headline inflation now forecast to peak around 6% later this year, and underlying inflation to hit 4.75%, before moderating to about 3% by the end of the outlook period.

93. The Reserve Bank's GDP outlook remains positive and is little changed from February. Australia's GDP is forecast to grow by 4¼% over 2022, with activity gaining momentum over 2022 after slowing in the March quarter in response to the COVID omicron disruptions. However, growth will moderate to 2% in 2023, returning to pre-COVID levels, *as extraordinary policy support is withdrawn, rising prices weigh on real income and consumption growth slows to more typical rates*.

94. Household consumption forecasts were also little changed and expected to decline from 5.8% in 2022 to about 3% in 2023 and 2024 as *rising prices and higher net interest payments weigh on real income growth, and housing prices moderate.* However, consumption growth could be weaker than forecast if rising interest rates and inflation weigh on asset prices and discretionary spending more than anticipated. This would flow through to economic growth and dampen already modest GDP growth over the forecast period.

95. The labour market is becoming very tight, with the participation rate at a record high of 66.4% unemployment and underemployment at historic lows of 4% and 6.3%, and job vacancies at a record high level above 420,000. In response, the RBA has lowered its forecast for the unemployment rate to 3½% by early 2023 – its lowest level in almost 50 years – and expects it to remain at this level into 2024. *This is anticipated to result in labour costs picking up faster than previously expected*.

96. The RBA is already observing increasing private sector labour costs and expects wages growth to pick up over the forecast period. The RBA's business surveys also indicate businesses are looking beyond wages to attract and retain workers, offering bonuses, allowances, and other non-base wage payments. The RBA now expects wages to grow at 3% by the end of 2023 – six months earlier than it forecast in February – and reach 3.7% by the end of the forecast period to mid-2024. This forecast acceleration of wages growth, driven from the economy, gives lie to suggestions that an inflated outcome is necessary in this review to somehow push or inflate wages growth.

97. The previous forecast peak was 3.25 per cent. Yet, for the time being, the RBA notes the majority of liaison contacts continue to report annual wages growth of 3% or less. This is in part due to the lag associated with multiyear enterprise agreements remaining in-term, but as these expire and are renegotiated (or subject to unregistered over-agreement payments in an accelerating wages market), wages growth is expected to strengthen further.

[28] https://www.rba.gov.au/publications/smp/2022/may/

98. The Reserve Bank indicates that rising labour costs are likely to take over from supply chain constraints and rising fuel prices in the next year, adding concern that inflation could exceed its expectations if workers demand higher wages to compensate for increased living costs. There is also a risk that wage and price pressures could build more strongly than expected, given there is little recent relevant experience of the exceptionally low unemployment rate and high participation rate expected over the forecast period. To keep inflation in check, any increase in real wage must be commensurate with productivity gains.

99. The RBA highlights uncertainties in its outlook from the risks of further supply shocks due to a new COVID variants emerging domestically and abroad, the war in the Ukraine, lockdowns in China and the east-coast flooding. If these factors intensify and persist, they are likely to exacerbate supply chain constraints and cost pressures in the future. While the Australian economy had been resilient in the face of these global and domestic supply shocks to date, they remain a sizable downside risk to the Australian economy in the future, which is germane to the outcome of this matter / the uprating of minimum wages.

3.4 Stagflation

100. In addition to the uncertainties raised by the Reserve Bank, some commentators are raising the prospect of new risks to the global economy from stagflation (the dual threat of stagnant growth and persistent high inflation), particularly for European countries, but also the United States.

101. The double shock of COVID and the Russian invasion of Ukraine, has seen inflation rates surging while economic growth is rapidly deteriorating, particularly in countries with close trade ties to Russia and the Ukraine. In the Euro area, consumer price inflation jumped to 7.4% year-on-year in March and is expected to continue to rise higher in the next few months. In the United States, inflation reached 8.5% in the year to March 2022. As noted earlier, the IMF has trimmed its global economic growth forecast by 0.8% to 3.6% in 2022, while global inflation is now expected to rise to 6.2%, from 3.9% in January's forecasts.

102. Central banks in many countries have moved quickly to tighten monetary policy, increasing interest rates in an effort to reduce inflation, but in increasing borrowing costs they may also depress economic growth. Alternatively, keeping monetary policies loose risks pushing up prices even higher.

103. While the risk of stagflation in Australia is very low, were it to transpire in any of our major trading partners, rising global prices it would put further pressure on inflation in Australia. To keep inflation in check, the Reserve Bank would be forced to respond by raising the cash rate further and faster than current expectations. While Australia's economic growth forecast for 2022 is healthy at 4¼% over 2022, it is expected to step back to 2% in 2023. Further inflation growth and corresponding increases in the cash rate would contribute to slower economic growth than currently forecast in the second half of 2022, with a much greater impact in 2023 when economic growth is already forecast to slow markedly.

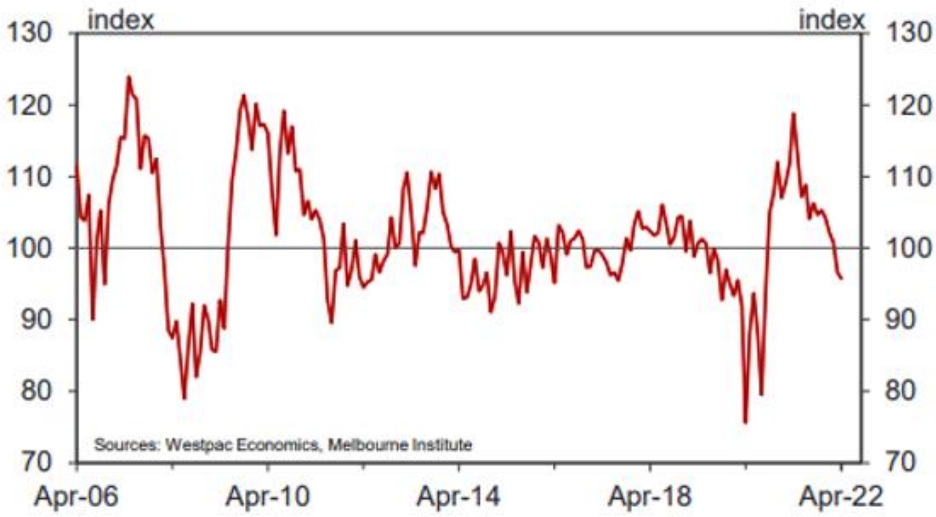
104. The risks of stagflation in our major trading partners and the likely flow on affects to Australia, need to be factors taken into consideration in this review.

3.5 Consumer Sentiment

105. The Westpac-Melbourne Institute Index of Consumer Sentiment continued to fall in April 2022, down 0.9% to 95.8 points.[29] This follows a sharp 4.2% decline in March as concerns around inflation and rising interest rates were compounded by Russia's invasion of the Ukraine. The April 2022 reading is the lowest since September 2020 when pandemic fears were dominating. Overall consumer sentiment has fallen over 15% since April 2021.

106. While declining, the measure did moderate in April, due in part to new measures announced in the March Budget, further strengthening in the labour market and an easing of petrol prices from their recent highs. Some of the 'cost of living' measures in the Budget were relatively well-received, particularly from lower income groups and younger (18-24 year-olds) respondents, due to the one-off tax relief and cost of living payments for pensioners and beneficiaries. The temporary halving in excise duty announced on Budget night saw average pump prices fall 23c to $1.54/litre in early April is also likely to have eased consumer concerns.

Chart 3: Westpac Consumer Sentiment Index



Source: Westpac Bulletin – 13 April 2022

107. Overall, the weak consumer sentiment will flow through to household consumption spending, which can be expected to weaken business conditions and dampen economic activity in the year ahead.

3.6 Business Conditions

108. ABS Business Conditions and Sentiment survey shows businesses are experiencing sharply increasing operating costs, but have limited ability to pass these costs on to customers.[30] Businesses are facing tightening margins and falling profits at a time when they are only just recovering from the setback of the COVID disruptions at the beginning of 2022.

[29] Westpac 2022, Bulletin – Inflation and interest rate concerns continue to weigh on sentiment, 13 April 2022. https://www.westpac.com.au/content/dam/public/wbc/documents/pdf/aw/economics-research/er20220413BullConsumerSentiment.pdf
[30] ABS 2022 Business Conditions and Sentiments, April 2022.

109. Almost three in five businesses faced increased operating costs in the three months to April, with over half of these absorbing the full amount of the increase and a further 42% only able to partially pass on these costs through higher prices.

110. In response to increased operating costs:

a. Two in five businesses made changes to their operations or processes.

b. A further 17% renegotiated payment terms with customers and suppliers.

c. 13% sought a loan to cover their increased operation costs.

d. Of greatest concern, 16% of businesses deferred or cancelled investment plans, which will have implications for productivity, business growth and jobs going forward.

111. Sectors facing the highest cost pressures are also those that have been the most impacted by the COVID delta lockdown and the COVID omicron outbreak. This includes businesses in the accommodation and food services (78% of businesses), manufacturing (73%), retail trade (73%), arts and recreation (64%) and construction (64%), many of which are still to recover from the recent disruptions to their operations.

112. The survey also showed that 18% of businesses face staff shortages. Of these, 84% were unable to find suitable staff, 54% were challenged by the availability of existing staff to work, 37% found it difficult to retain staff and 36% were unable to afford additional staff.

3.7 Labour Market Considerations

113. The labour market remained extremely tight in March 2022, with the ABS Labour Force data, showing a further 17,900 new jobs added and underemployment dropped a further 0.2 points to 6.3%.[31] While an additional 12,100 unemployed found work, the unemployment rate remained stable at a 48 year low of 4% (unemployment actually slipped to 3.954%, but the ABS only publishes to 1 decimal point). The participation rate was also unchanged from its historic high of 66.4%.

114. Hours worked fell 10 million hours in March 2022, due mainly to the heavy rains and flooding in Queensland and NSW. While notable, this decline is far less than the over 300 million hours decline in hours worked in January that can be linked to absences associated with the COVID omicron outbreak.

115. Further pressure on the labour market is expected in the coming months, with ABS Job Vacancy data for February showing job vacancies up a further 27,000 or 6.9% in the three months to February 2022, to reach a record high of 423,000.[32] Overall, job vacancies are up 200,000, almost 86% since February 2020, the beginning of the pandemic. Industries with the highest growth in vacancies over the past two years were accommodation and food services (213%), arts and recreation services (211%). These sectors, hardest hit by the COVID lockdowns and disruptions, appear to be finding it the most difficult to recruit workers or reemploy staff they were forced to let go.

[31] ABS 2022 Labour Force, March 2022.
[32] ABS 2022 Job Vacancies, February 2022

3.8 Superannuation Guarantee / removal of the threshold

116. In addition to the increase in the Superannuation Guarantee (SG) from 10% to 10.5% on 1 July 2022, legislation to abolish the $450 per month minimum threshold for the SG was enacted in March 2022.

117. This will impact most businesses with a highly variable casual workforce in the hospitality and major events industries – particularly festivals, major sporting events, country shows, etc.

118. These businesses, with employees earning less than $450 per month now face a 10.5% increase in the cost of taking on employees plus any increase in the minimum and award minimum wage.

119. These industries experienced some of the harshest COVID restrictions, with many businesses only recently restarting after being mothballed over the past two years.

120. The sharp increase in labour costs for businesses in the hospitality and major events industries furthers the case for the staggering of any increase in award and award minimum wages, to give businesses in these industries more time to absorb the higher cost from the SG.

4. OTHER ISSUES / OTHER SUBMISSIONS

4.1 Employment impacts of increases in the minimum wage

121. The ACTU submission (45 p.39) notes the difficulty in drawing clear conclusions from the diverse and voluminous literature on the employment effects of minimum wage changes, but it argues (40 p.37) that minimum wage increases have important impacts in lifting wages and reducing inequality in lower-wage segments of the labour market.

122. However, we draw the Panel to section 7.2 of the Australian Government submission (P67-72) which provides a detailed assessment of the impacts of minimum wage increases.

123. In their review of the international literature, the Australian Government (255 p69) references a study by Neumark and Shirley (2021)[33] showing that the majority of recent international literature indicates a negative employment effect when minimum wages increase, particularly when the analysis is confined to those workers that are directly affected by minimum wage decisions. These negative impacts can include a reduction in the hiring of new workers rather than directly impacting existing low-wage workers.

124. Further, in assessing other employment impact of wage increases, the Australian Government (266 p71) cites research (Boockmann 2010; Neumark and Wascher 2008; Neumark and Nizalova 2007) showing increases to minimum wages have greater impacts on employment opportunities for youth and may hinder their transition to higher paying jobs.

125. From the Australian Government's detailed analysis, it is clear that increasing the minimum wage does influence the hiring intentions of employees, with younger workers the most affected as it limits their longer-term employment prospects. These are a very important factors for consideration in any uprating of minimum and award minimum wages.

4.2 Economic impact of the COVID delta lockdowns

126. The ACTU dismiss the GDP decline in the September quarter 2021, *at -1.9% being far less severe than the -7% experienced* following the initial lockdowns in the June quarter 2020. Yet, its significance should not be diminished, as it is the second largest economic contraction since 1974.

127. While we are yet to see the full impact of the COVID omicron outbreak on economic activity, its effect will still be substantial — reducing economic activity (GDP growth) at a time when the economy was just regaining momentum.

128. The emergence of COVID delta and omicron underscore the uncertainty in the current recovery. The risks remain exceptionally high that a new lethal and highly infectious variant could emerge at any time, with each new outbreak having substantial impact on economic activity and leading to further economic hardship for many businesses.

129. These risks and the economic consequences of each new outbreak must be a key part of the Panel's deliberations in any decision on an uprating of the minimum and award minimum wages.

[33] Neumark, D and Shirley, P 2021, 'Myth or measurement: What does the new minimum wage research say about minimum wages and job loss in the United States?' NBER Working Paper No. 28388.

4.3 Low-paid work

130. The claim in the ACTU submission (7d p.3) that: *'approximately 24% of employees – 2,659,500 workers as at May 2021 – who are directly reliant on the Panel's decision are distinguished … by their receipt of the lowest wages that can legally be paid by their employers'*, should not be interpreted that all award-reliant employees are low-paid.

131. Only a very small proportion of the 2,659,500 award-reliant workers are low paid. As detailed in the Australian Government submission (Chart 2.1, p13), in addition to the 79,200 employees (1.8% of employees) on individual arrangements that receive the minimum wage, 88,900 award reliant employees (or 3.3%) are paid at the minimum rate – all other award-reliant are paid above the minimum wage rate. In addition, there are 15,900 employees on enterprise agreements that are paid the minimum wage rate.

132. Therefore, in total only 184,000 workers receive the minimum wage, less than 7% of the 2,659,500 award-reliant employees. This is far less than the between *one fifth and one quarter of full-time employees earning less than the low paid benchmark* that the ACTU claims.

133. The median weekly full-time award-reliant wage is $1,204.00 ($62,600 per year) — 60% higher than the NMW rate ($753.80 or $39,200 per year) as at May 2021 and 75.6% of the median weekly full-time wage for all employees ($1,593.00 or $82,836 per year).[34]

134. The ACTU observation here is also tautological - it can be read as saying no more than minimum wage reliant employees receive minimum wages. ACCI is concerned that more employers are not paying above award rates through participation in an active, attractive, productivity generating and mutually rewarding enterprise bargaining system, and is very concerned that the proportion of Australian employees directly in receipt of award wages has grown under a system that nominally places enterprise bargaining at its heart. However, those are discussions for another forum, not for this wage review.

4.4 Casual Employment

135. The ACTU claim (7d p.3) that those in *receipt of the lowest wages that can legally be paid by their employers … are more likely to have working arrangements that offer insecure incomes*.

136. If the workers the ACTU identifies are casual employees , then it must be highlighted that these workers would be in receipt of the casual loading, which would bring their household income well above the 60% median income threshold – advanced by some as a poverty threshold.

137. As the Australian Government submission notes, excluding the 25% loading paid to casuals, about 57% of low-paid workers were casuals (32 p19). If the casual loading is included in the analysis, the hourly rate of casuals is above the low-paid threshold. The Australian Government submission also notes (footnote to Chart 2.1 p.13) that: in May 2021, the median hourly wage was $33.30 after applying the adjustment of 25 per cent for casual loading.

138. Also, as previously highlighted in the ACCI submission the number of casual workers as a share of the total workforce has notably decreased over the past two years.

[34] ABS 2022 Employee Earnings and Hours, May 2021

4.5 The living wage and poverty

139. ACCI restates the point we have made consistently in submissions to previous Annual Wage Reviews that, while there is no consensus on how to measure poverty, absolute poverty is not relevant in Australia. The issue is only that of relative poverty.

140. ACCI have also made the point in many past submissions that the poverty line threshold chosen by the Panel of 60% median earnings is arbitrary and has little foundation. While in previous years we have highlighted the need for research to justify this arbitrary threshold, the work is still to be done.

141. ACCI do not disagree that those in full-time employment should reasonably expect a standard of living that exceeds poverty levels. However, by any reasonable assessment, the minimum wage in Australia already affords those in full-time employment a decent standard of living in excess of poverty.

142. As repeatedly shown over the past decade, Australia maintains a place in the top three real minimum wages of all OECD countries (in US$PPP terms).[35] This should also take into account the very small share of employees (1.7%) receiving the minimum wage relative to other countries, as well as the very complex award system that delivers much higher minimum award wage outcomes to over one fifth of the workforce.

143. Further, it is important that any analysis of the adequacy of the minimum wage is not confused with analysis of the adequacy of the welfare system. Nor should there be an expectation that a reduction in welfare support requires an increase in the minimum wage to compensate for any 'loss'.

144. If 60% of medium income is to be used in determining the adequacy of the minimum wage, then it should be compared only with disposable income single adults. This is the largest share of minimum wage earners and those least likely to receive support through the welfare system. This view is shared by the ACOSS submission (p19) which recommends *the minimum wage should be designed to at least provide a decent living standard, well above poverty levels, for a single adult;* and that *the tax-transfer system should meet the basic costs of raising children in a low-income family*.

145. The Statistical Report Table 8.6 shows single adults on the minimum wage (C14) earn over 10% above the 60% medium income threshold. The Australian Government submission (32 p19) identifies that 54.3% of low paid workers were single adult households or approx. 100,000 minimum wage workers (relative to the total 184,000 minimum wage workers).

146. Table 8.6 of the Statistical Report shows that, with the exception of some single parents working part-time and single earner couples (with and without children), all household types have a disposable income above the arbitrary 60% median income threshold. These household types with an income below the threshold make up only a small proportion of low-paid workers.

147. Using the data from the Australian Government submission (32 p19), with some assumptions to separate part-time from full-time workers and single earner couples from dual earner couples, less than 40,000 employee households (or 22% of the 184,000 minimum wage earner households) have a disposable income less than 60% of median income.[36]

[35] OECD stats, https://stats.oecd.org/Index.aspx?DataSetCode=MIN2AVE
[36] Assumptions:
- two thirds of the 2.2% of workers in single parent households work part-time = 2,700 min wage earner households.

148. ACCI concurs with ACOSS that these 40,000-odd minimum wage earner households are best served by greater support through the welfare system rather than excessive increases in the minimum wage.

4.6 Poverty and Financial Stress

149. The ACTU's claim (7i, p5) that *Low paid workers are also facing absolute poverty and increased financial stress over 2021 and into 2022* does not appear consistent with current conditions.

150. While Government support payments have been wound back, there is no indication that this is leading to increased financial stress. On the contrary, the Government support payment over the past two years have driven up household savings rates to very high levels, which has given many households a financial buffer. Household savings rates, while dropping back from a peak of 19.8% in the September quarter 2021 to 13.6% in the December quarter, remain well above the average in the five years pre-COVID of around 5%.[37]

151. In addition, a record number of people are in work and unemployment is at a 48-year low and underemployment at a 13-year low. Those in work are less likely to face poverty and financial stress, so it would be expected poverty and financial stress would have decreased rather than increased over the past year.

152. The benefits of higher household savings and increasing employment in 2020 were underscored in Table 12.2 of the statistical report, which shows 24% of low-paid employee households experiencing financial stress in 2020, compared to 31.6% in 2019. (ACCI finds it curious that the ACTU (p.128) depicts this 7.6 percentage point (25%) fall in the share of low-paid employee households experiencing financial stress a slight decline.)

153. It is also important to highlight Table 12.2 of the statistical report shows that financial stress of low-paid employees fell markedly across all measures listed in the table between 2019 and 2020 — the only exception being sought assistance from welfare / community organisation. It would be expected that the lower reading across all of these measures would have been maintained in 2021 and into 2022.

4.7 The minimum wage as a stepping-stone to higher paid work

154. The ACCI submission (212-217, p 41) reiterated the important role of the minimum wage as a stepping-stone to higher paid employment, enabling young and inexperienced workers to access the workforce and gain the experience necessary to build a career, observing the research of Wilkins and Zilio.[38]

155. The research was expanded upon in Chapter 7 of the Australian Government submission (229-231 p.63-65), using 2020 HILDA Survey data.

156. The Australian Government submission identifies that low-paid jobs are an important pathway into the workforce, with:

a. 37 per cent of people who entered the workforce did so by taking a low-paid job.

- two thirds of the 17% of couples with children households are single earner couples = 20,900.
- one third of the 26% of couples without children households = 16,000

[37] ABS 2022 Australian National Accounts, national Income, Expenditure and Product, December 2021.

[38] Wilkins R. and Zillio F. (2020), Prevalence and Persistence of Low-Paid Award-Reliant Employment Fair Work Commission Research Report 1/2020,February. p.35

b. 43 per cent of workers aged under 25 years entered the workforce through low-paid work.

c. 42 per cent of those with Year 12 qualifications or below entered the workforce through low-paid work.

157. It is important to highlight the Australian Government found around two-thirds of workers who enter low-paid employment leave within one year (66.3%), with most of these (75.8%) moving to higher paid work, while 84% leave within two years. Only 2.6% of employees entering the workforce through low-paid employment remain in a low-paying job longer than 5 years.

158. The importance of the minimum wage as a pathway into the workforce should not be understated. Nor should the temporary nature of low-paid work.

159. Therefore, in setting the minimum wage, the Panel must be cognisant of the important role of lower paid employment as an entry point for workers to transition to higher paid employment, and its critical role for longer-term living standards and individual life course trajectories. Therefore, the uprating of minimum wages in these reviews should not have effect of making these transitions more difficult or discouraging employers from taking on new workers or offering higher paying work.

4.8 ACCER Submission

160. ACCI will not embark on a line-by-line rebuttal of contentions from ACCER as we may have done in previous years, but we can be very clear that employers dispute both the selection of information, the contentions advanced, the conclusions the ACCER would have the Panel draw, and the increase sought.

161. We offer the following brief comments as indicative of the type of concerns this material raises, and should rise for the Panel. They, and a reading of the ACCER materials, should see the Panel accord the ACCER contribution the same weight and significance in determining the outcome of this review as has applied in previous years.

The statutory construction advanced by ACCER has not found favour with the Panel

162. The ACCER submission once again appears to seek to persuade the Panel that, notwithstanding a decade awarding of real wage increases, often substantially in excess of inflation, and Australia prescribing one of the highest minimum wages in the world, these decisions have proceeded on an erroneous reading of the Fair Work Act, and have delivered significantly deficient increases.

163. ACCER would have the Panel accept that it has missed an overarching obligation regarding the safety net, and erred somehow in focusing on the range of considerations in the legislation. That is not ACCI's understanding.

ACU Report

164. ACCI is not going to engage in detail with the ACCER material in Part 3 of its submission, but we do note that the ACU report quoted seems to be grounded the economy of 2021, not the fast-changing realities Australians confront in 2022. The References from p.38 of the ACU Report, when ABS data is excluded are overwhelmingly from 2020 or 2021, and precede the very rapidly changing realities of 2022 in which this review is being determined.

165. A submission that is stubbornly pre-2022 seems of little relevance to the Panel in the considerations it must discharge in the world we confront in 2022.

Subsidiarity and Balance

166. ACCER appear to have ignored the smallest businesses in Australia, and small businesspeople who earn amounts of money from their businesses comparable to rates of pay in awards, and who often make considerable personal sacrifices to provide jobs and opportunities in their local communities. ACCER appear indifferent to the personal sacrifices small businessowners and their families have made over the past few years, and the likely impact on small businesses of the 6.5% increase in minimum and award minimum wages that it is calling for.

167. Respectfully to ACCER the following is not good enough at [89] "ACCER accepts that:…increasing the NMW will have broader implications".

168. The livelihoods, wellbeing and social engagement of small business people who have been through massive adversity through two years of COVID lockdowns and restrictions, who are now battling a post-COVID reality of uncertainty, high debt, rising prices and knocks to consumer confidence are not mere "broader implications" - they impact people and families and a submission advanced on a moral and values basis, as well as legal and economic basis should pay more heed to them.

Catholic Church Employment

169. At [7] the ACCER submission notes the role of the Catholic Church as a substantial employer.

170. With ACCER advocating for a 6.5% wage increase to be paid by other employers, primarily small businesses, and asserting its inherent affordability and fairness one might expect the Catholic Church to consistently provide comparable level of increases to its own employees, or in fact to have a policy of proactively raising wages for its employees by the level its advocates in these reviews, and doing so without any changes in work practices, efficiencies, or trade-offs.

171. This does not seem to be the case. It was reported in December 2021 that Catholic schools may subject to strike action organised by the IEU in support of a 5% wage claim. It was reported that the IEU was seeking a pay claim of between 5 and 7% against Catholic schools, and it would seem very likely that an offer at 6.5%, consistent with the increase the ACCER seems to believe small employers can sustain in award reliant industries, might settle such a dispute.

172. Surely ACCER has an opportunity to have Catholic Education lead the way and break through state wage caps for teachers, consistent with the level of increase ACCER contends award reliant employers can afford in this matter?

173. To say otherwise would be to signal that ACCER and those it represents believe additional costs and inflation in wages should be borne by small business families extracting wage like amounts from their businesses through effort, sacrifice and toil, and providing jobs in their local communities often at some personal cost to them, but not by large and well-resourced employers such as church institutions.

174. This seems to be an opportunity for the Catholic Church as an employer to step forward in the leadership role it asserts in these matters and apply the level of increase it advances as a moral good and economic necessity to its own employees.

International Obligations

175. At [23] ACCER again try to ground their position and contentions in the International Covenant on Economic, Social and Cultural Rights. As ACCI has quite clearly set out on previous occasions, (a) the minimum wage fixing provisions of the Fair Work Act are based on ILO Convention 131 and not upon any other international instrument, (b) this is not relevant or useful to the Panel in these reviews.

5. COPIED STATE AWARDS

176. At [287] in our 1 April 2022 submission, ACCI proposed that:

> Consistent with the approach adopted in the last decision, the rates in relevant transitional instruments should be increased uniformly with any increase determined for modern award minimum wages. **The same approach should be taken in respect of copied State awards**.[39]

177. On 1 April 2022, initial submissions to this Review from two public transport operators, Transdev Australasia Pty Ltd (**Transdev**) and Keolis Downer Pty Ltd (**Keolis Downer**), were published. On 4 April 2022, another submission from a public transport operator, Transit Systems West Services Pty Ltd and its related entities (**Transit Systems**), was published. On 12 April 2022, the Panel issued a statement notifying parties of its decision to publish a redacted form of a submission made to the Review by Busways North West Pty Ltd (**Busways**).[40]

178. Having now read the four submissions from the Bus Industry, ACCI wishes to amend our 1 April 2022 submission with respect to copied State awards and instead submit the following.

179. The Busways submission comprehensively outlined the statutory context of copied State awards and the evolution of the Panel's approach to considering how minimum wage increases should be applied to those instruments.[41] Initially, in the Annual Wage Review 2012-13 decision, the Panel adopted a multi-tiered approach to applying minimum wage increases to copied State awards that varied based on the recency of state minimum wage increases.[42] Then on 4 January 2018, the Panel released a decision seeking to correct an obvious error in the Annual Wage Review 2016-17 decision in pursuant to s 602 of the Act.[43] The decision relevantly noted that the Panel's provisional view was:

> … AWR adjustments should generally apply to copied State awards, subject to a different outcome being determined in respect of particular copied State awards. In other words, rather than seeking to apply a tiered approach as a decision rule to mitigate 'double dipping' we propose to address any 'double dipping' on a case by case basis. We invite submissions on our *provisional* view in the context of the 2017–18 Review proceedings.[44]

180. On 29 March 2018, the Panel published a question on notice asking if any party took a different view to that expressed by the ACTU regarding its invitation to the Panel to confirm that provisional view expressed in the 4 January 2018 decision.[45] As noted in the Busways submission,[46] in response to that question on notice, ACCI submitted that:

> Where there are concerns regarding 'double dipping' there should be scope for an employer or employer representative to raise this with the Commission.[47]

[39] ACCI 1 April 2022 Submission at [287] (emphasis added).
[40] [2022] FWC 851.
[41] Busways 13 April 2022 Submission at [6]-[42].
[42] Annual Wage Review 2012-13 [2013] FWCFB 4000 at [560].
[43] Annual Wage Review 2016-17 [2018] FWCFB 2.
[44] Ibid at [43].
[45] See Annual Wage Review 2017-18 [2018] FWCFB 3500 at [450].
[46] Busways 13 April 2022 Submission at [37].
[47] ACCI 9 April 2018 Submission to the Annual Wage Review 2017-18 at [37].

181. For the first time since the change in approach was adopted by the Panel, it has received submissions from four different private bus service companies operating transportation services on the approach to be taken with respect to copied State awards: Busways, Transit Systems, Transdev and Keolis Downer (collectively referred to as the **Bus Industry Submissions**).

182. The Bus Industry submissions raise concerns with the application of the Annual Wage Review decision to various copied State awards currently in operation and applying to each of the private bus service companies and their employees. With each urging the Panel to depart from the approach adopted in the 2017-2018 Annual Wage Review decision and applied in subsequent annual wage reviews, namely, to automatically vary copied State awards in line with the Annual Wage Review decisions applying to modern awards

183. ACCI wishes to address the core contention of these submissions collectively.

184. ACCI agrees with the Bus Industry Submissions that the current approach with respect to copied State awards adopted by the Panel since its 2017-2018 Annual Wage Review decision is deficient, risks perverse and damaging outcomes and appears to be contrary to the purpose and intention of the discretion provided to the Panel under the Transitional Act for the following three reasons.

Inconsistent with the general principals of the Annual Wage Review

185. The Panel is required to conduct each Annual Wage Review in accordance with the FW Act and must conduct an 'evaluative exercise' informed by the following considerations: the objectives of the FW Act in section 3; the modern awards objectives in subsection 134(1); and the minimum wages objectives in subsection 284(1) which include establishing and maintaining a safety net of fair minimum wages.

186. The application of wider award wage increases to copied State awards needs to be consistent with providing a 'fair and relevant safety net of terms and conditions'. ACCI strongly agrees with each of the Bus Industry Submissions[48] that there does not appear to be any fairness in such an approach when it can result in some employers, who are operating under copied State awards, facing two wage increases in a year. One under state award determinations and the other through the adoption of the Annual Wage Review to copied State awards. Thus, permitting the leapfrogging or double hit of wage increases for those subject to copied State awards merely as a function of having transferred from a state to the federal system.

187. As Busways explains at paragraph [71] –[72] of its submission, this issue is only compounded by the fact that the rate of pay in many copied state awards are not in practice "minimum wages" of comparable value to modern awards. This means that the differential impact on employers in cases of double dipping is often significantly heightened in the context of copied State awards due to the disparity between State award and modern award rates of pay.

188. This is at the heart of the problem that arises from the current approach to copied State awards which the Bus Industry identifies and brings to the panel seeking relief.[49] ACCI strongly agrees with the Bus Industry that their circumstances should warrant a reconsideration of the approach adopted since the 2017-18 Review decision and an application of the Annual Wage Decision only on a case-by-case basis following submissions from affected parties.

[48] Busways North West Pty Limited, Initial Submission at [75]; Transdev Australasia Pty Ltd, Initial Submission at [5] - [8]; Keolis Downer Pty Ltd, Initial Submission at [6]; and Transit Systems West Services Pty Ltd at [55] – [56].
[49] Transit Systems West Services Pty Ltd, Initial Submission at [38]; Busways North West Pty Limited, Initial Submission at [61] and [75].

189. In addition, in ACCI's view there seems to be a particular unfairness to the approach adopted since 2017-18 in automatically applying increases to copied state awards as it places the entire burden and obligation onto those covered by copied State awards to have to argue the case year by year in order to avoid potentially being subjected a double wage increase hit.

190. This seems particularly unfair and burdensome in circumstances where the practical effect of the approach to date is to require individual employers to have a deep and thorough understanding and awareness of both statutory and case law history, that even Justice Rares in the recent Federal Court decision in *Australian Rail, Tram and Bus Industry Union v Transit Systems West Services Pty Ltd*, acknowledged "*descends into considerable complexity*", and in circumstances where those covered by a copied State award have very little to no control or ability under the FW Act to amend wage increases already predetermined to apply to them under a State award.

Impact on collective bargaining

191. As Busways set out at paragraph [86] of their submission:

> *State awards transfer over to the national system as copied State award with a finite life. They have an operational existence of up to five years, with the objective behind such an arrangement said to encourage parties in the interim period to seek to bargain for an enterprise agreement*.

192. ACCI agrees with Busways that where wages have already leapfrogged equivalent arrangements, any incentive to bargain is completely dissolved as it is likely to render any employer interested in operating under copied State awards significantly less attractive and less economically certain and viable.[50]

193. In addition, as Transit System articulates in its submission, with which ACCI agrees, automatically applying the annual wage review increase to copied State awards would be both unfair and against public interest, as it would go against the bedrock principle that those who enter into a freely consented to bargain, such as the one struck between the RTBU and Transdev when the State Awards were made by consent in the Industrial Relations Commission NSW, should hold to it.[51]

194. If the Commission was to exercise its discretion by no longer applying a uniform approach to copied State awards instead adopting a more nuanced and case specific approach, this would in ACCI's view go some way towards restoring productivity at the enterprise level through collective bargaining where copied State awards are currently in operation.[52]

Nature of copied State awards

195. Finally, as evidenced by four separate bus industry providers making submissions to this year's review, the mechanics of the Panel's approach to copied State awards should be reviewed.

196. In applying a uniform approach to copied State Award, the Panel has unwittingly passed the burden and obligation onto employers to have to apply directly (and individually) to try to avoid being subjected to double dipping of wage increases. As the ACTU recognised in its submission to the FWC provisional view in the context of the 2017-18 Annual Wage Review proceedings, the current approach "*does rely on parties to come forward should they contend for a different outcome*".

[50] Busways North West Pty Limited, Initial Submission at [87]
[51] Transit Systems West Services Pty Ltd, Initial Submission at [63];
[52] Transit Systems West Services Pty Ltd at [63]

197. After assessing each of the Bus Industry submissions, the approach to date appears to have become unfairly burdensome for employers operating under copied State awards, only becoming noticeable at the first sign of serious additional cost risks / substantial unfairness.

198. As observed by Justice Rares in the recent Federal Court decision in *Australian Rail, Tram and Bus Industry Union v Transit Systems West Services Pty Ltd,*[53] the change in approach adopted in the 2017-18 Annual Wage Review to copied State awards had largely gone unnoticed and unimplemented for a significant period of time by both the union and employer parties.

199. It is no longer un-noticed and its impact has now been brought into sharp focus by a practical, real world consideration of its impact by those who are directly subject to the decision. We ask the Panel therefore to consider a change of approach (outlined below).

200. This concern is only further exacerbated by the nature of copied state instruments because they do not operate until there is a termination of the employment of a relevant transferring employee. As a result, the Panel is not in a position to know with certainty how many copied State awards are in operation, how many will be affected by a decision to exercise discretion and how those individual copied State awards subject to its decision will be affected by the uniform application of the Annual Wage Review decision to all copied State awards.[54]

201. This issue is only further heightened by the exclusion of copied State awards from the obligation in section 292 of the FW Act, which requires the FWC to publish the rates of wages in modern awards as so varied by an Annual Wage Review.

202. This inability of the Panel to be able to identify and understand who is affected by its decision should warrant greater discretion in applying the Annual Wage review decision to copied State awards and should in ACCI's view, warrant the FWC amending its currently uniform approach in favour of a far more cautious and risk averse position going forward, as well in respect of each of the Bus Industry Submissions in this year's review.

Conclusion

203. For the reasons set out above, ACCI supports the position in the Bus Industry submissions that the Panel should:

  a. <u>Not</u> automatically apply increases in Annual Wage Review decisions to all copied State awards.

  b. Apply Annual Wage Review increases to copied State awards only on application, considered on a case-by-case basis following submissions from affected parties.

[53] [2021] FCA 1436 at [57]
[54] Annual Wage Review 2016-17 [2018] FWCFB at [10].