



Reply Submission to the Annual Wage Review 2022-23

ACTU Submission, 28 April 2023
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1. DEVELOPMENTS SINCE 31 MARCH

1. Additional information that has become available since we lodged our initial submission remains consistent with the broad characterisation of prevalent conditions and forecasts we offered therein. This includes continued strong labour market performance which is predicted to soften somewhat through the year, and household consumption and real wages falling in response both to high inflation and the monetary policy measures associated with controlling it. These developments have been associated with financial stress among vulnerable groups including the low paid.
2. We remain of the view that our claim of a 7% increase in minimum and award wages is a reasonable one in the light of the additional information available. We set out and discuss the additional information below.

1.1 Labour market conditions

3. The labour market showed continued strong performance in March according to ABS labour force figures, with the unemployment rate remaining at 3.5%, employment growing by 0.2% (or 3% over the year) and the participation rate remaining at 66.7% in seasonally adjusted terms. The growth in employment in March was again led by growth in full time employment, which accounted for 79% of growth. There was a small decline in hours worked in seasonally adjusted terms (-0.2%), described by the ABS as in line with the usual March seasonal pattern and contributed to by public holiday effects in some States.¹ The underemployment rate returned to its January level of 6.2% in March after the low of 5.8% observed in February, thus remaining well below the 5 year average of 8.2% shown in version 4 of the Statistical Report. The unemployment rate for 15-19 year olds (i.e. those who may receive junior rates) decreased from 12.3% to 11.4% in seasonally adjusted terms in March. This is only the 11th time a sub 12% monthly unemployment rate has been recorded for this group since 1978, with 10 of those observations occurring in the last 12 months.

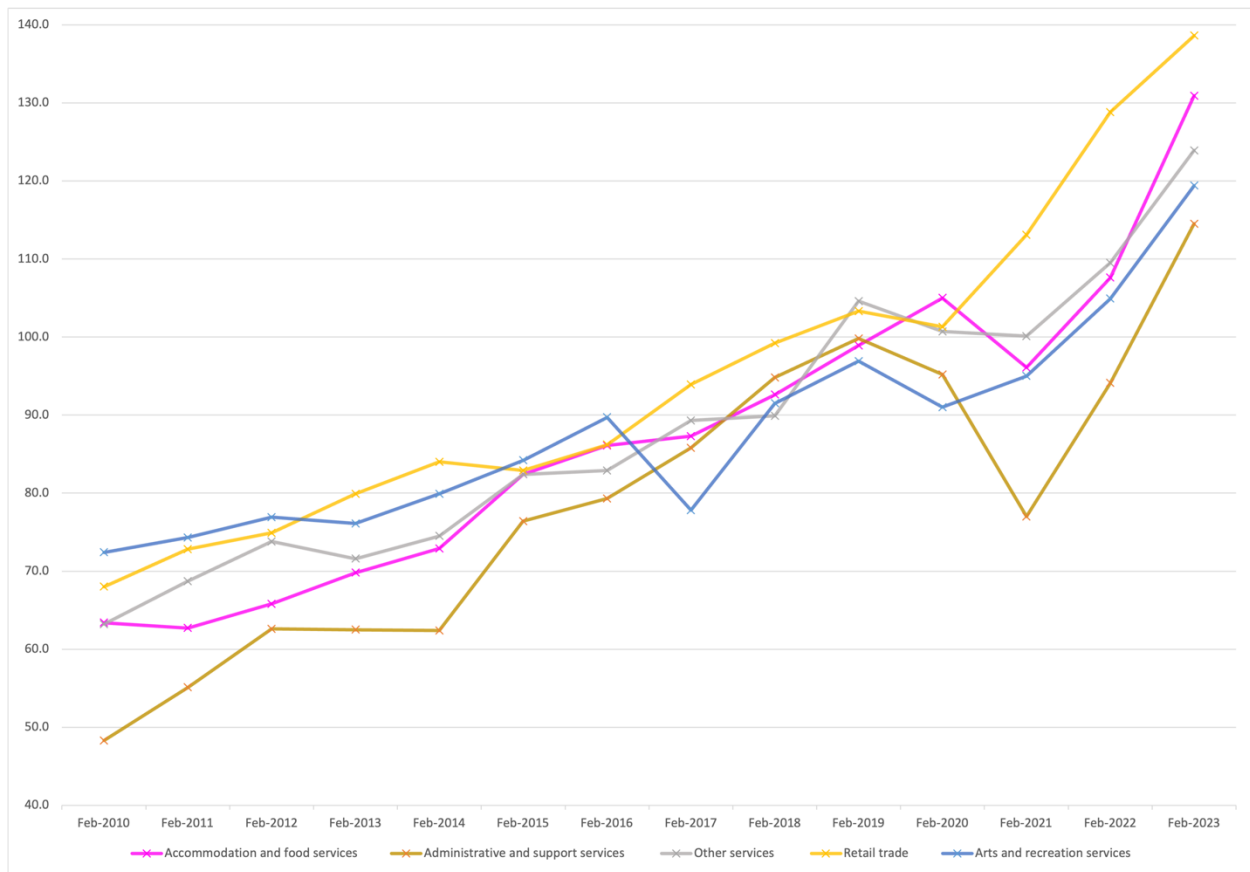
¹ ABS, "[Insights into hours worked, March 2023](#)"

4. The highly volatile, non-seasonally adjusted payroll jobs series from the ABS showed an overall lift in payroll jobs between 11 February and 11 March of 0.6%, with considerable industry variations between 5.8% growth in education and training and a 1.6% decline in financial and insurance services and wholesale trade.
5. In light of the above, we are of the view that labour demand remains strong by medium term standards and there is no indication in the above data of a shift to less favourable conditions than those that have persisted in recent months.

1.2 Business Conditions

6. The ABS has released Monthly Business Turnover Data current to February of 2023, which shows broad-based improvements in turnover across industries. All industries measured showed growth in turnover over the year to February, with some of the more modern award reliant industries leaders in this regard. Small declines in turnover were seen over the month in only four of the measured industries.
7. For context, it is important to appreciate that the Monthly Business Turnover series is presented by ABS as indexes, where July 2019 (pre pandemic) is set to the base year. Because data is available from January 2010, it is possible to compare the movements in the index between February 2022 to February 2023 to longer term movements. We provide this comparison in Figure 1 below for the more modern award reliant industries, save for health & social assistance and rental, hiring & real estate for which data is not available.

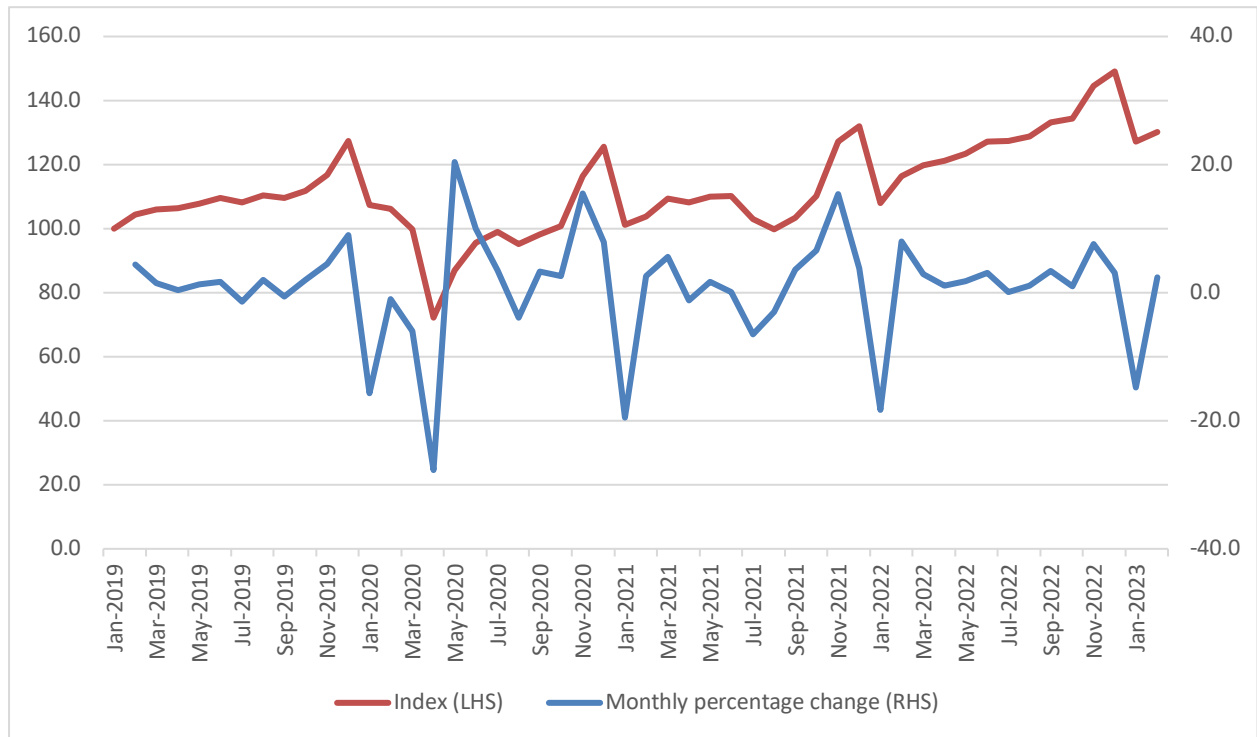
Figure 1: ABS Monthly Business Turnover Indicator, Feb 2010-Feb 2023, selected industries



8. It is striking that the industries shown in Figure 1 show their strongest rises in turnover in the last two years, with all but administrative and support services rising in February 2023 to far above the level of turnover that a simple linear trendline might predict based on pre-pandemic performance. It should be noted that as the indexes are based on monthly business activity statements, it includes only business with a turnover of \$20 million or more plus those smaller business that elect to file their business activity statements monthly (and those who are directed to do so). Monthly lodgement of business activity statements enables businesses to receive prompt refunds where they have paid out more in GST than they have collected.

9. The ABS monthly household spending indicator period similarly illustrates spending growth in the last year relative to the pre-pandemic period at the start of the series (January 2019). Between January and February 2023, household spending grew 2.4%.

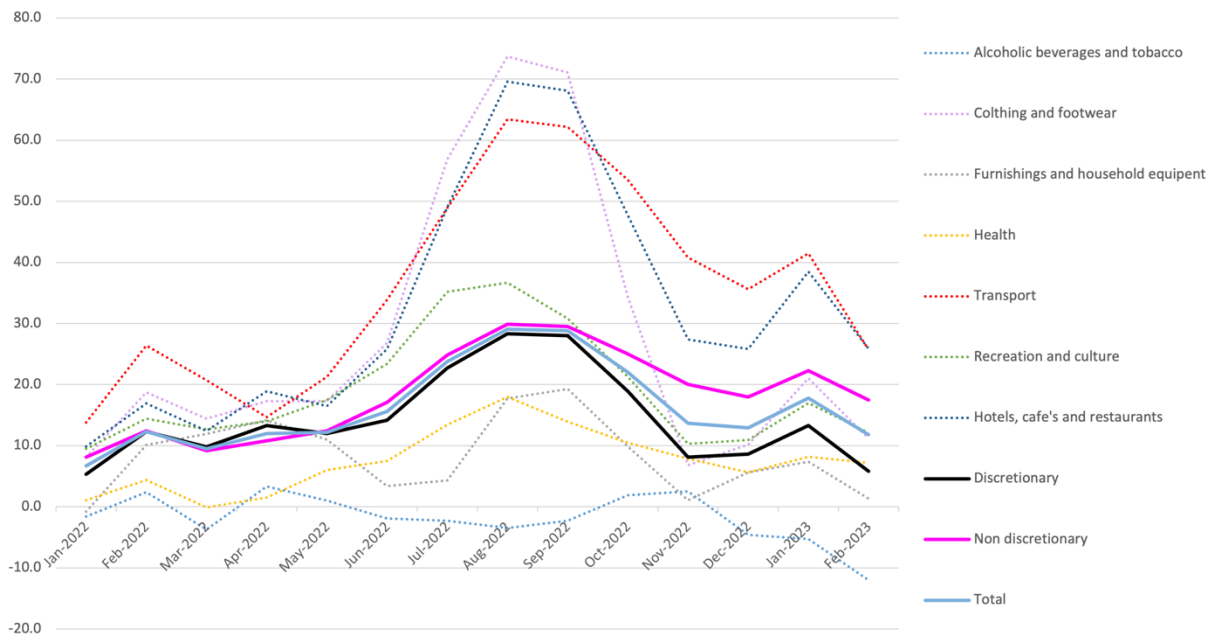
Figure 2: ABS household monthly spending indicator, 2019-2023.



Source: ABS monthly spending indicator, Table 1

- As the series is not seasonally adjusted, year to movements may be more informative of underlying trends. This is shown in Figure 3 below, which reveals that there has been a shift away from discretionary expenditure, likely linked to costs of living concerns. Nonetheless, all spending categories shown with exception of alcoholic beverages & tobacco have seen growth in spending through the year, particularly the highly modern award reliant industries affected by spending on hotels, cafes and restaurants.

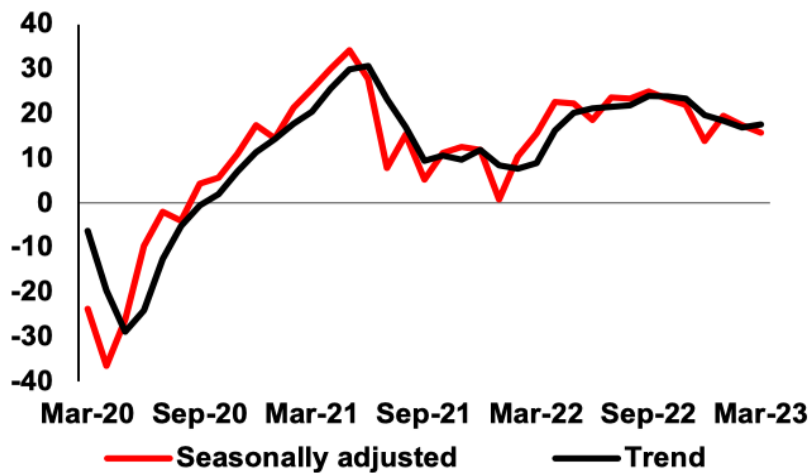
Figure 3: Household spending by category, through the year percentage change



Source: ABS monthly spending indicator, Table 1

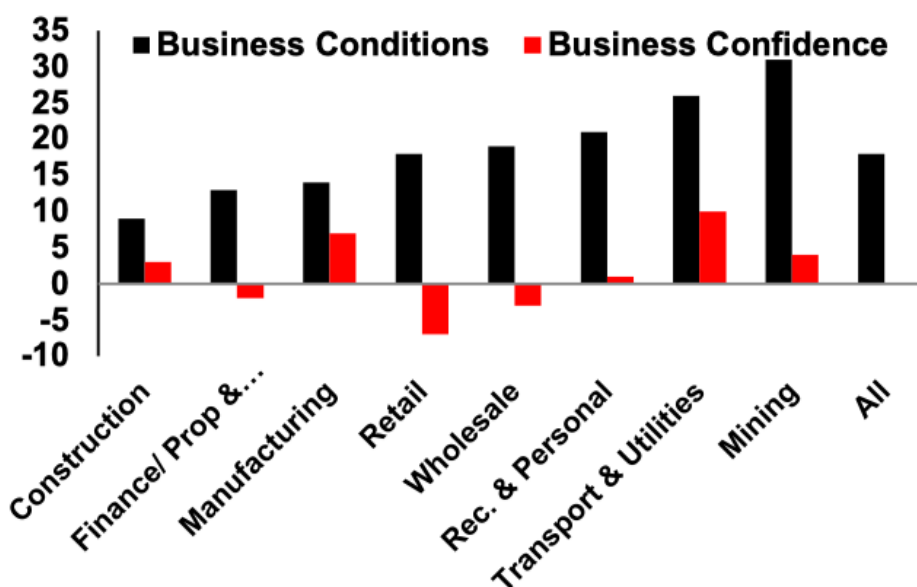
11. NAB released its monthly business survey for March 23 which showed business conditions remaining favourable (Figure 4) and lesser confidence among business than might be expected given the trading conditions actually experienced (Figure 5).

Figure 4: Business conditions (net balance)



Source: Reproduced from NAB Monthly Business Survey (March 2023)

Figure 5: Business conditions, business confidence by industry



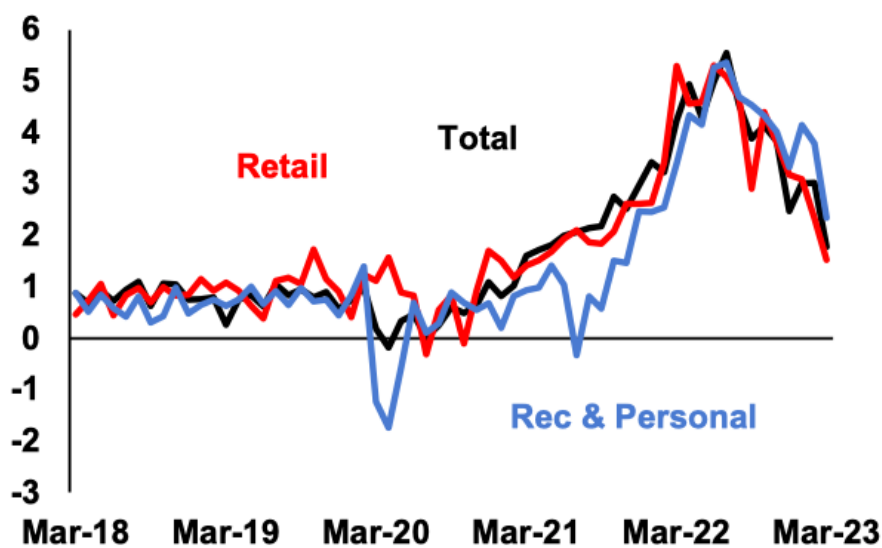
Source: Reproduced from NAB Monthly Business Survey (March 2023)

12. NAB noted that whilst business conditions eased 2pts to +16 index points in March, they remained well above long run averages. NAB’s measures also suggest that growth in input cost pressures peaked in 2022:

“Purchase cost growth, which reflects the cost of materials and other non labour inputs, has show a much steeper decline over recent months, albeit from a higher and more sustained peak in 2022. Overall, purchase cost growth averaged 2.6% across Q1, down from over 5% in 2022 though still above the pre-COVID average of 0.9%. For the retail sector the average was 2.3% in Q1, while for recreation & personal services the average was 3.4%. The moderation in these cost pressures is a positive sign, but the key question remains how quickly these easing pressures will flow through to the prices faced by consumers. This will depend on a range of factors including the strength of demand, which so far has been resilient”

13. The peak referred to is stark in the chart included in the NAB report, reproduced in Figure 6 below. Its is clear that the cost pressures faced at the same time last year and at 1 July 2022 and since were escalating far more rapidly that is currently the case.

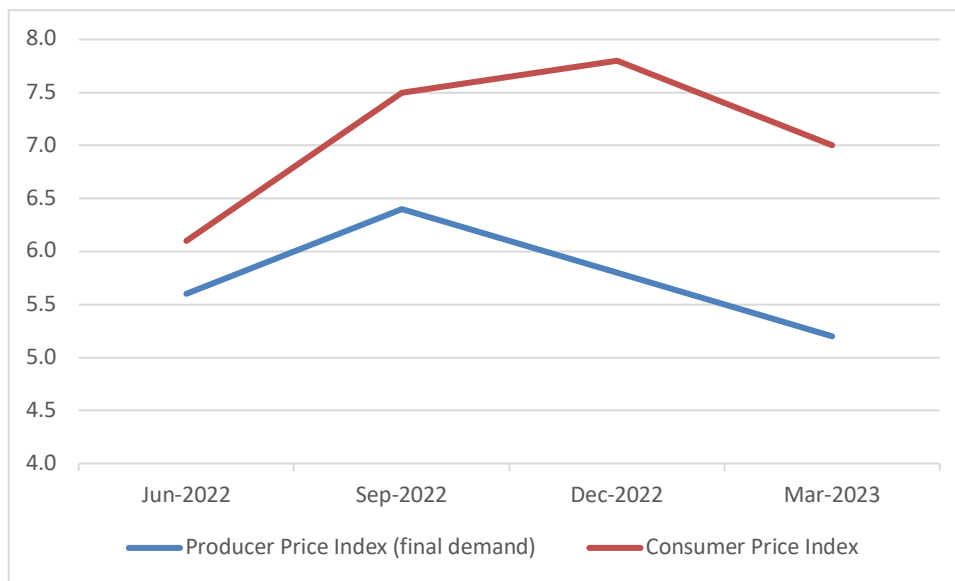
Figure 6: NAB quarterly measure of purchase cost growth, 2018-2023



Source: Reproduced from NAB Monthly Business Survey (March 2023)

14. The ABS Producer Price index for final demand measures the price of products for supply into the Australian economy which are ready for immediate consumption, capital formation or export, valued at basic prices (i.e. exclusive of tax and margins). Figure 7 shows a deceleration in such prices in year-year movements, as might be expected from the movements in input costs in Figure 6. However, it also shows that there is a healthy (to say the least) margin between those basic prices and the prices actually paid by consumers across the economy.

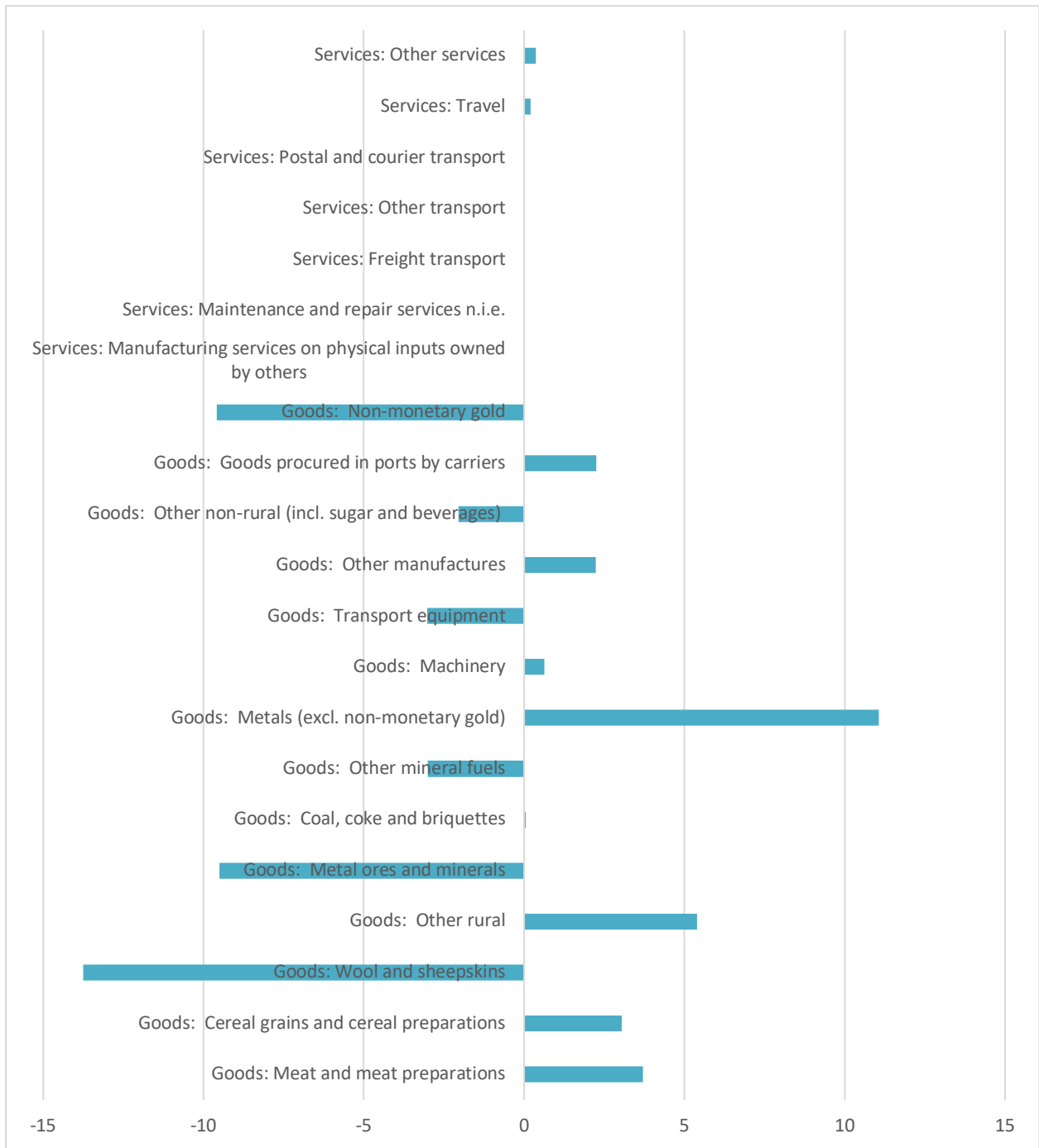
Figure 7: PPI vs CPI, change from corresponding quarter of previous year



Source: ABS CPI, Producer Price Indexes, March 2023 (released April)

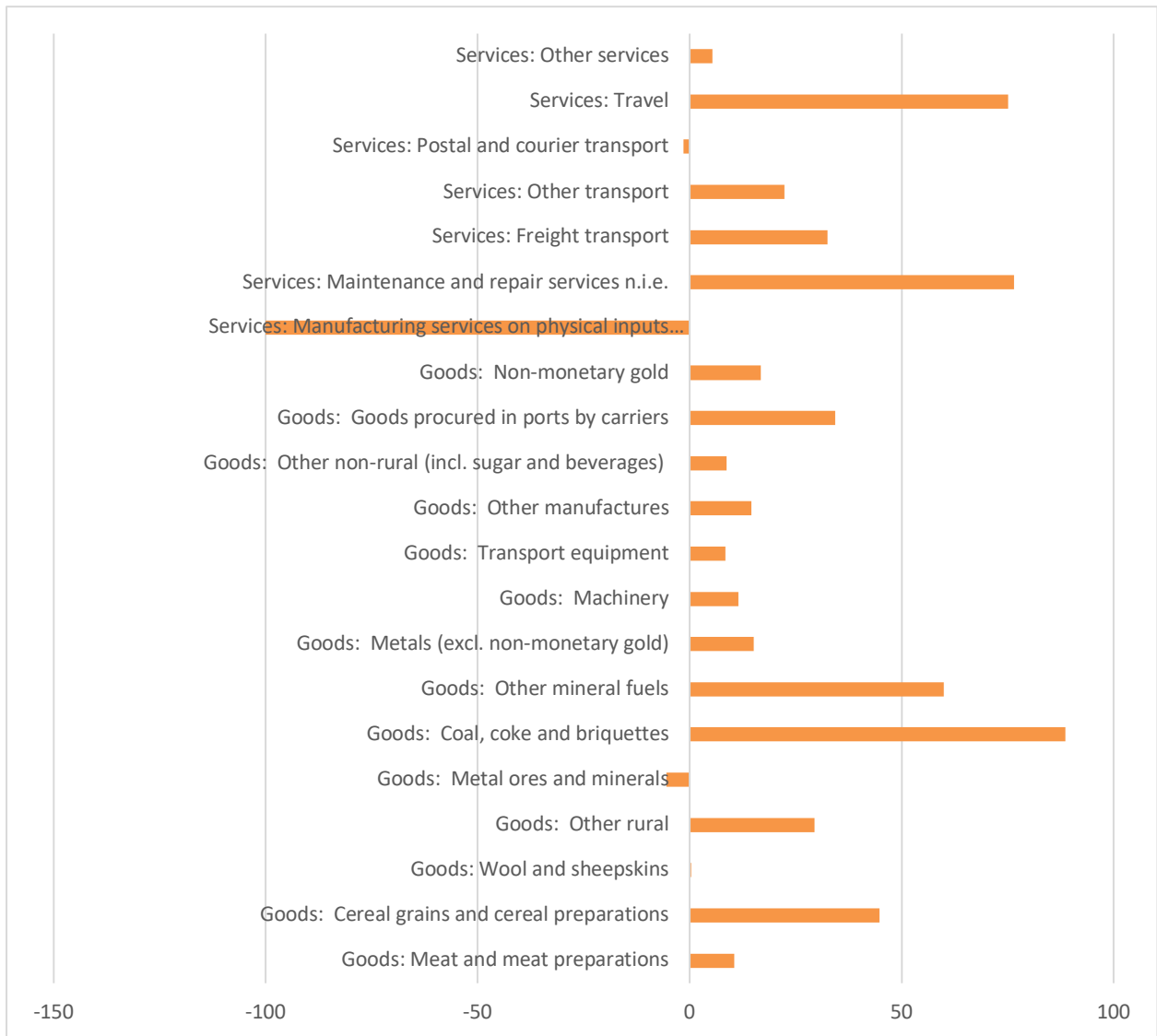
15. The latest release of the ABS International Trade in Goods and Services, relating to February 2023, shows the overall surplus balance on trade rose \$2.6B to \$13.87B as result of both exports and imports diminishing but imports more so. The decline in exports was mainly driven by metal ores and minerals (-9.5%) which as outputs of the mining industry tend to have little direct link to award reliant industries. Conversely, gains over the month were mainly seen in food and manufactured goods where there is some greater award reliance (Figure 8). Over the year to February 2023, growth was more broadly based with a stronger representation of services, while meat and horticultural/agricultural based exports likely involving some award reliance also grew (Figure 9). The year to year growth in passenger transport is excluded from Figure 9 for scaling reasons, as the growth was 1,285%.

Figure 8: Growth in exports, Jan-Feb 23 (%)



Source: ABS, International trade in goods and services. Goods credits from Table 5, Services Credits from Table 10 (both seasonally adjusted).

Figure 9: Growth in exports, year to February 2023 (%)



Source: ABS, International trade in goods and services. Goods credits from Table 5, Services Credits from Table 10 (both seasonally adjusted).

1.3 Household conditions

16. In a further sign that inflation has likely turned a corner, the ABS Consumer Price Index has dropped to 7% for the year to March 23, down from 7.8% in the year to the December 22.² For the March quarter it dropped to 1.4%, down from 1.9% in the previous quarter. The ABS monthly

² ABS Consumer Price Index (March 2023)

indicator also dropped from 6.8% in February down to 6.3% in March. Driving the easing of inflation has been the reduction in price growth for goods, including price falls for furniture, household appliances and clothing and petrol. New dwelling purchases has also come off record highs in September 2022 (20.7%) down to 12.7% in March 2023. However services inflation remains high, along with steep rises in gas and electricity prices of 26.2% and 15.5% respectively.

17. Whilst the turnaround in inflation is reflected in a range of measures, price growth is still very high and broad-based and will be causing significant hardship for low paid employees. This is especially true because price rises for non-discretionary goods and services, which lower paid workers spend a greater share of their income on, continues to outpace price rises for discretionary items, 7.2% to 6.8% respectively. Further, while many indicators are pointing towards inflation continuing to ease over time, the speed and depth of such easing remains uncertain. The RBA Board at its most recent meeting observed a range of new factors counting against reductions in inflation including OPEC cuts to oil production, slower progress in reducing inflation in other countries, expected electricity price rises, and a sharp spike in migration.³ Accordingly, the Panel should treat inflation projections, especially over the medium term, with caution.
18. The ABS has released a new information paper, [new insights into the rental market](#), which contains a detailed examination of changes in rental prices (for private rentals) since the pandemic. The information paper notes that rents are the second largest expenditure class in the CPI and that demand for rents has increased as a result of a change in household size and the return of international migration. Both regional and capital city rents are said to have increased by around 6% in the year to February 2023.
19. Advertised and agreed rents for new tenancies have increased in cost at a far greater pace than CPI rents (for the whole of the market), with the ABS estimating that actual rents paid by new tenants increased by 14 per cent over the year to February 2023, which is 9 percentage points higher than the increase in the monthly CPI indicator rent index. As at February 2023, over 60% of properties with new tenants had rent amounts more than 10% higher than 12 months earlier (Figure 10), compared to only one quarter of properties with existing tenants (Figure 11) –

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

although over 40% of properties with existing tenants experienced rent increases of 5% or more. The ABS paper perhaps gives some validity to the use of rental price indexes as a measure of living costs at time of high job vacancies and mobility in noting that rents paid “provide a leading indication of price developments in the total stock of rental properties” and that rents paid and rents advertised closely track one another (with rents paid currently slightly higher than those advertised). In any event, rises in rents are far from confined to new tenancies, as seen in Figure 12 below.

Figure 10: Rent changes of different sizes - new tenants, annual, share of properties

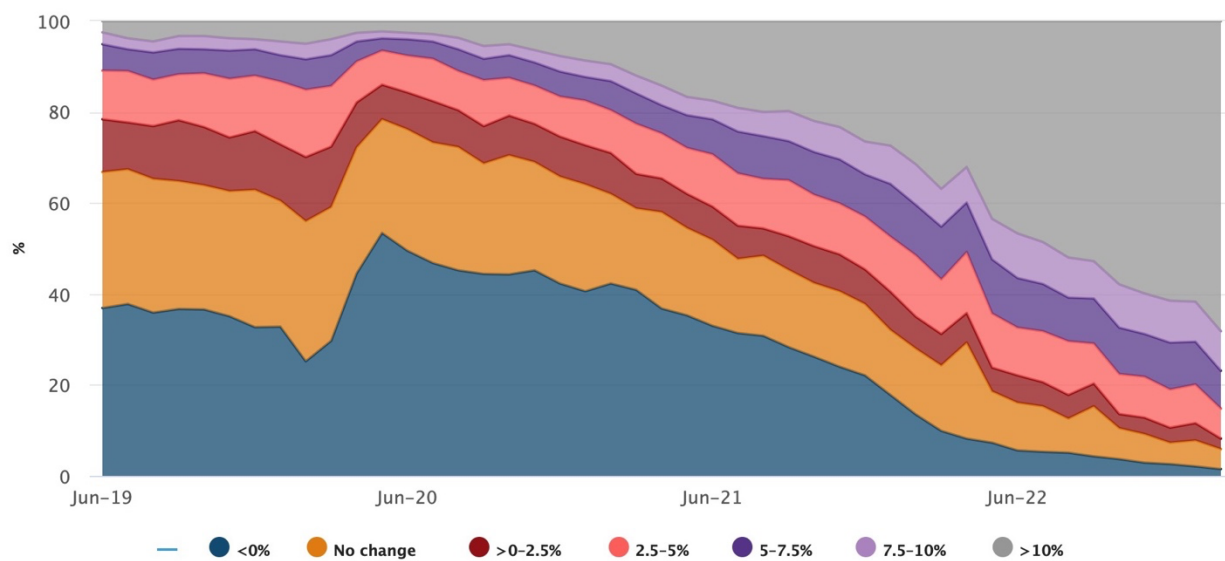


Figure 11: Rent changes of different sizes - existing tenants, annual, share of properties

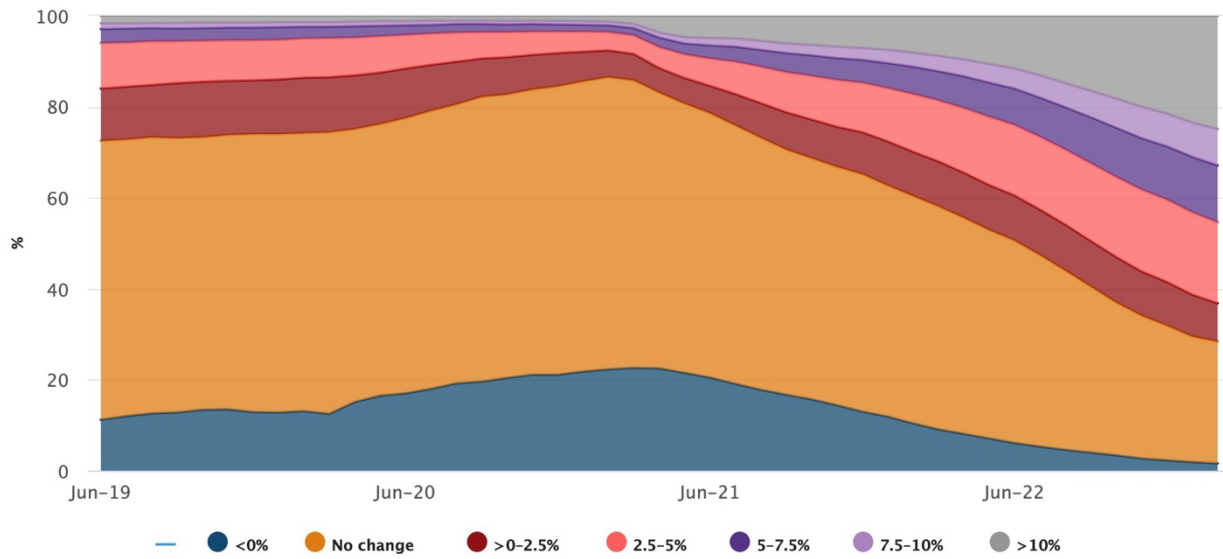
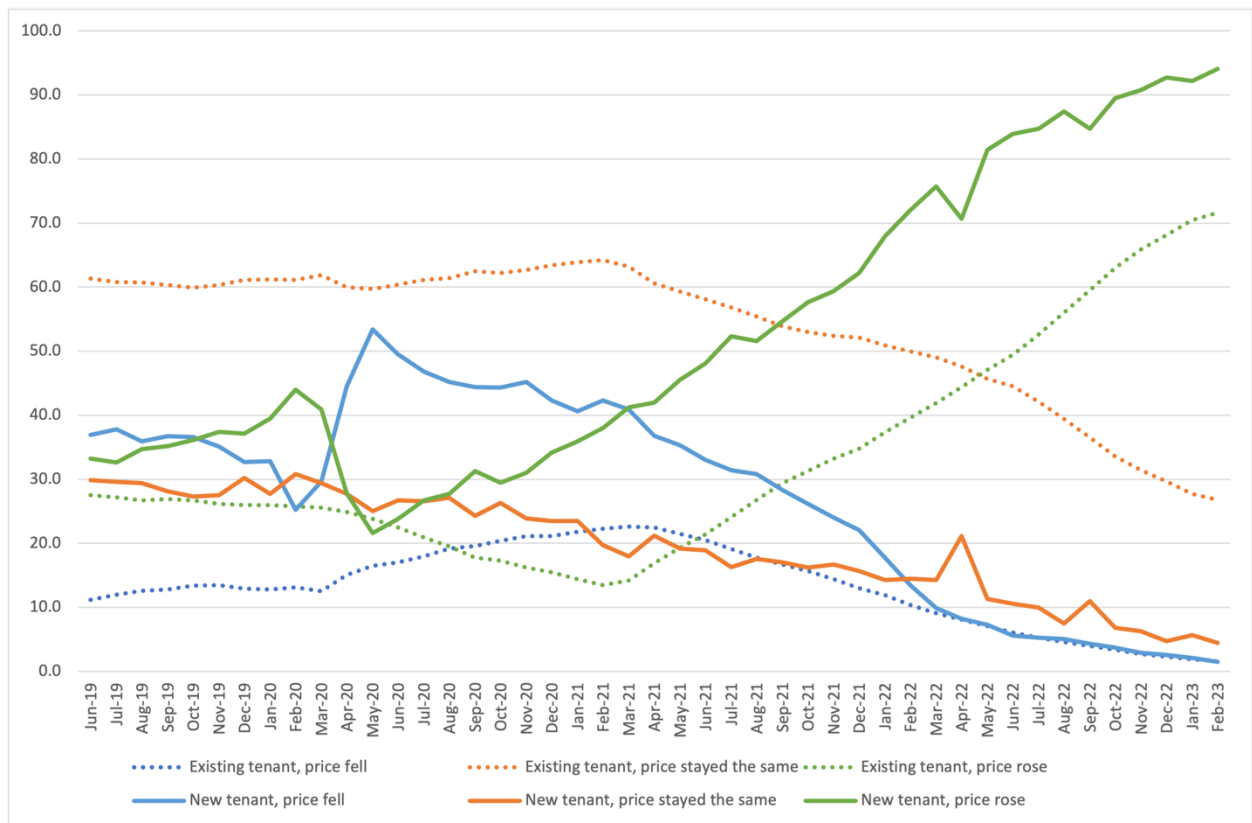


Figure 12: Annual changes, % share of existing tenancies experience price changes, % share of new tenancies experience price changes



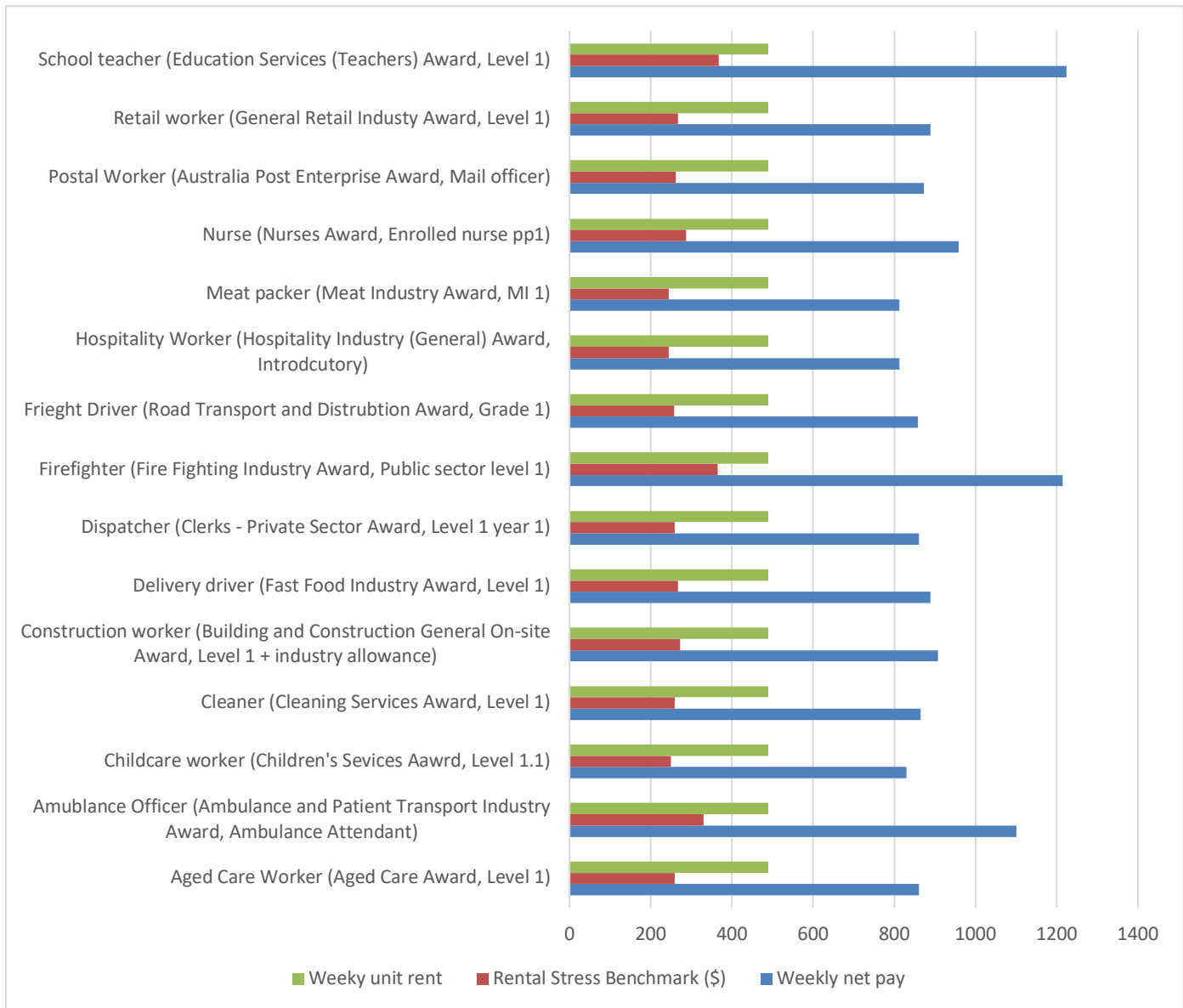
Source Figure 10-Figure 12: ABS "New insights into the rental market".

20. It is important to note that the ABS has observed that rents post the pandemic and in the last 12 months have risen more sharply for the median and 90th percentile (9.7% and 9.5% respectively) than for the 10th percentile, which has risen 6.7%. The ABS however remarks that “While an increase in rents puts pressure on household budgets across the economy, lower income households typically have the most constrained budgets as they spend a greater proportion of their income on essential items and have lower financial buffers. For example, all else equal, a 7 per cent increase in rent for renters in the 10th percentile of the income distribution would reduce the amount of income available for other uses more than a 10 per cent increase in rent would for renters in the 90th percentile of the income distribution.”⁴
21. Further insights into the costs of housing were given by Anglicare in its report for the Everybody’s Home campaign.⁵ The report compares full time adult wages, net of tax, in various modern awards to the costs of advertised rentals for units as tracked by SQM research. The report uses 30% household disposable income benchmark as a measure of rental stress, and finds rental stress in all wage levels surveyed, as seen in Figure 13 below.

⁴ ABS, , [New insights into the rental market](#), 24 April 2023.

⁵ Azzie, M. [“Priced out: An Index of Affordable Rentals for Australia’s Essential Workers”](#), Anglicare Australia, 11 April 2023.

Figure 13: Net income vs average advertised rents for units, March 2023



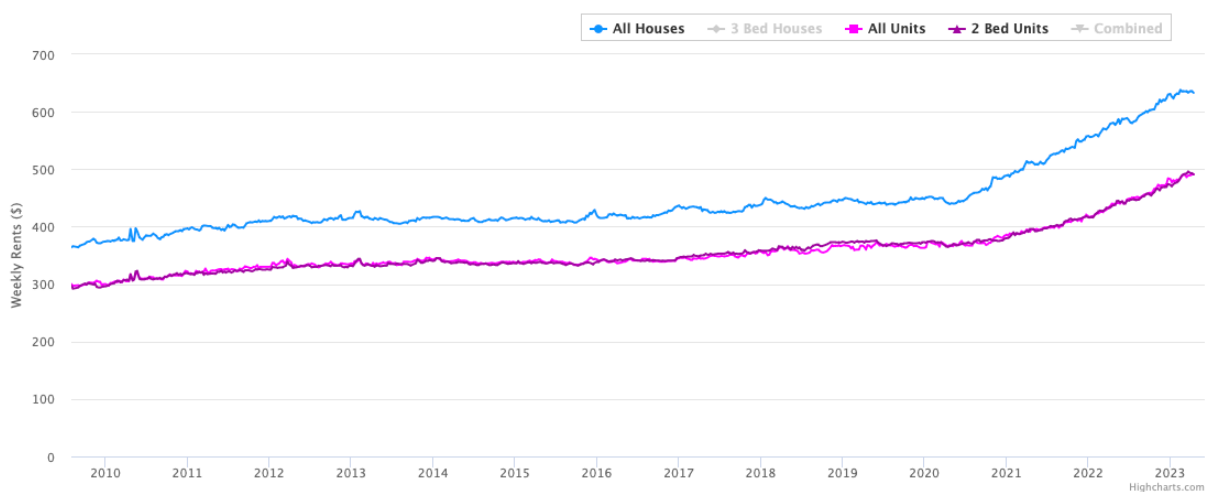
Source: Azzie, M. [“Priced out: An Index of Affordable Rentals for Australia’s Essential Workers”](#), Anglicare Australia, 11 April 2023, Table 1. National average advertised weekly unity rent = \$489.

22. Anglicare estimate that at each wage level, workers would need to have worked 5-6 additional hours per week (or an average of 37 extra days a year) to fund the 31% increase in unit rent process since March 2020.⁶

⁶ Ibid., at 7-8.

23. Whilst the occupational descriptions provided in the Anglicare report might not be highly representative of the wages earned by persons in those occupations, the report nonetheless highlights the rental affordability crisis at numerous modern award wage levels. Further, as Figure 14 below shows, the choice to benchmark against advertised rents for units in the SQM data obscures the greater rise the rental costs of houses in recent years, whereas controlling for the number of bedrooms in unit rentals (so as to reduce the advertised cost of rentals measure) would have made little overall difference.

Figure 14: SQM Research Weekly Rents Tracker, National, 2010-2023



Source: SQM Reserach

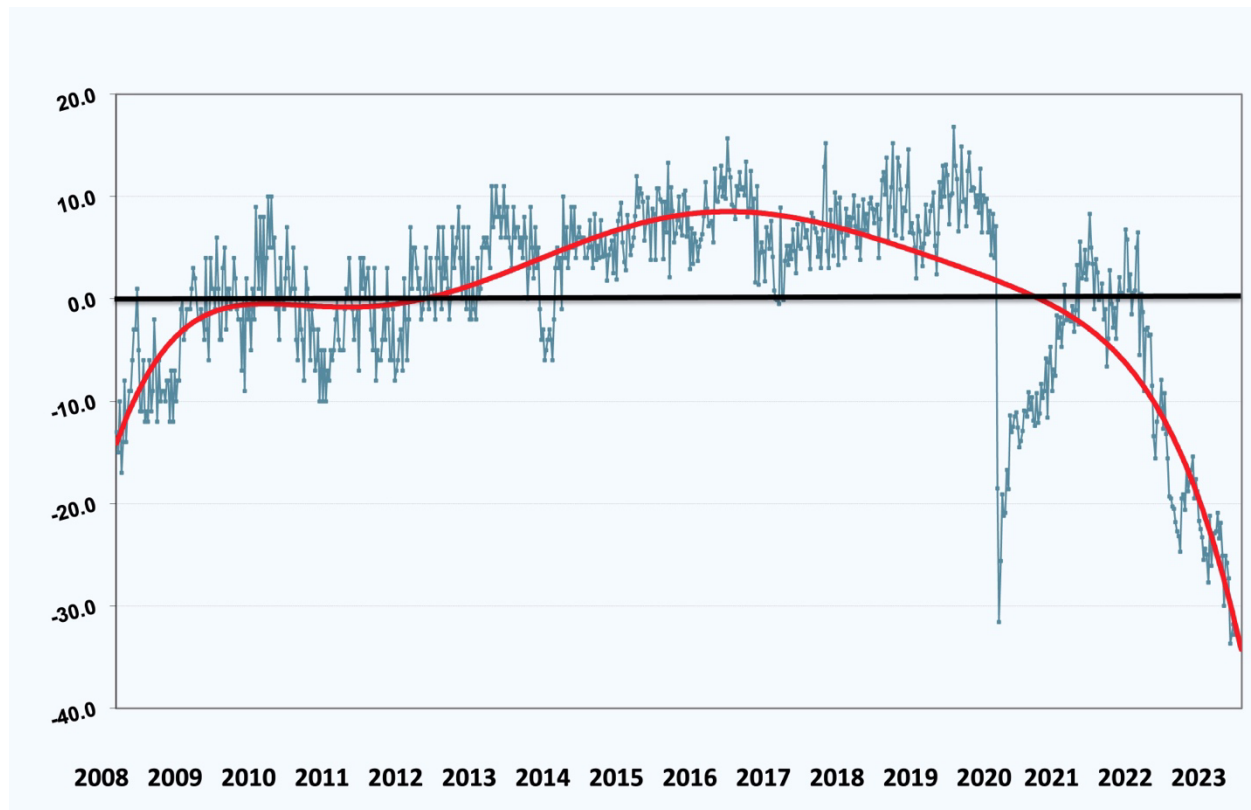
24. In a separate report this month, Anglicare found that only 0.8% of rental properties advertised on realestate.com.au as at 17 March were affordable for a full time minimum wage worker – 345 properties nationally – using the same 30% affordability benchmark. This was down from 1.6% (720 properties) as at March last year.⁷

25. The overall impact of the costs of living can be measured indirectly by consumer confidence measures. Such measures track household perceptions of financial well being relative to an earlier period and their predictions of their future well being, as well perceptions about the state of the economy generally, in order to develop the overall consumer confidence score. In our initial

⁷ Anglicare, [Rental Affordability Snapshot \(14th Edition\)](#), April 2023

submission, we note that then current ANZ-Roy Morgan consumer confidence survey had shown than consumers' assessments of their personal and family financial situation were lower than at any point since the GFC. This situation has persisted, and deteriorated further, as seen in Figure 15 below.

Figure 15: ANZ-Roy Morgan, personal financial situation measure, 2008-2023



Source: ANZ-Roy Morgan Consumer Confidence Data to 12 April 2023. Figure based on responses to the question "Would you say you and your family are better off financially or worse off than you were at this time last year?".

1.4 New forecasts

26. The IMF released its world economic outlook this month, which forecasts global growth to decline to a low point of 2.8% at the end of the financial year before rising to 3% in 2024, marking a 0.1% downgrade on both forecasts compared to those it provided in January. The IMF primarily notes concerns about financial stability which have emerged in association with bank failures in advanced economics as a cause for concern. The IMF is unconvinced of a wage-price spiral and notes that labour markets have held up better than might have been expected in the face of

monetary policy tightening by central banks. It notes that food, energy and commodity price pressures have eased and that underlying and headline inflation are reducing, albeit slowly.

27. The detailed forecasts which the IMF provides for Australia provide some positives and negatives relative to the forecasts in the October budget and the RBA's May Statement on Monetary Policy. Real GDP is predicted to grow by 1.4% over 2022-23 and 1.8% over 2023-24 based on GDP deflators of 2.9% and 2.3% respectively. This is certainly more pessimistic than the Treasury Real GDP forecast of 3.25% in 2022-23, but above the 1.5% expected for 2023/24, which relied on GDP deflators of 4.75% and -2.25% respectively. The IMF also expect that Australia will return to target inflation faster than the Treasury forecasts, with CPI inflation predicted to fall to 4% for 2022/23 (against Treasury's 5.75% and the RBA's 6.75%) and 3% for 2023/24 (against 3.5% forecast by both the RBA and Treasury). The contrasting position provided by the IMF implies that the deterioration in conditions expected for Australia has come a little earlier than first projected, and consequently that the rebound is closer than first thought.

2. REPLY ADDRESSING COMMON MATTERS

28. In this section we respond to particular issues or themes that have been raised by more than party in their initial submissions.

2.1 The inflationary effect of minimum wage increases

29. A number of employer submissions caution against the potential for significant increase in this review to prolong or drive further inflation, including ACCI, Ai Group, the Australian Retailers Association, the Housing Industry Association and the Australian Foodservice Advocacy body. Whilst we are not persuaded that there is a significant risk of this occurring, it would be remiss of us to not point out that the risk of some inflationary impact is not a reason in and of itself to decline to adjust minimum wages. Inflation is certainly a relevant consideration among many, but no one consideration should be decisive⁸ and the RBA's institutional mandate is distinct from the objectives which apply to the Panel.

30. The claim of an inflationary impact from minimum wage increases is difficult to interrogate in the abstract, although we note that the Australian Government express the following view at paragraph 57 of their initial submission:

“Maintaining the relative standard of living of low-paid workers would be consistent with our current expectation that inflation will return to target and unemployment will remain low. The Commission’s decision for minimum wage workers last year did not noticeably drive inflationary pressures. “

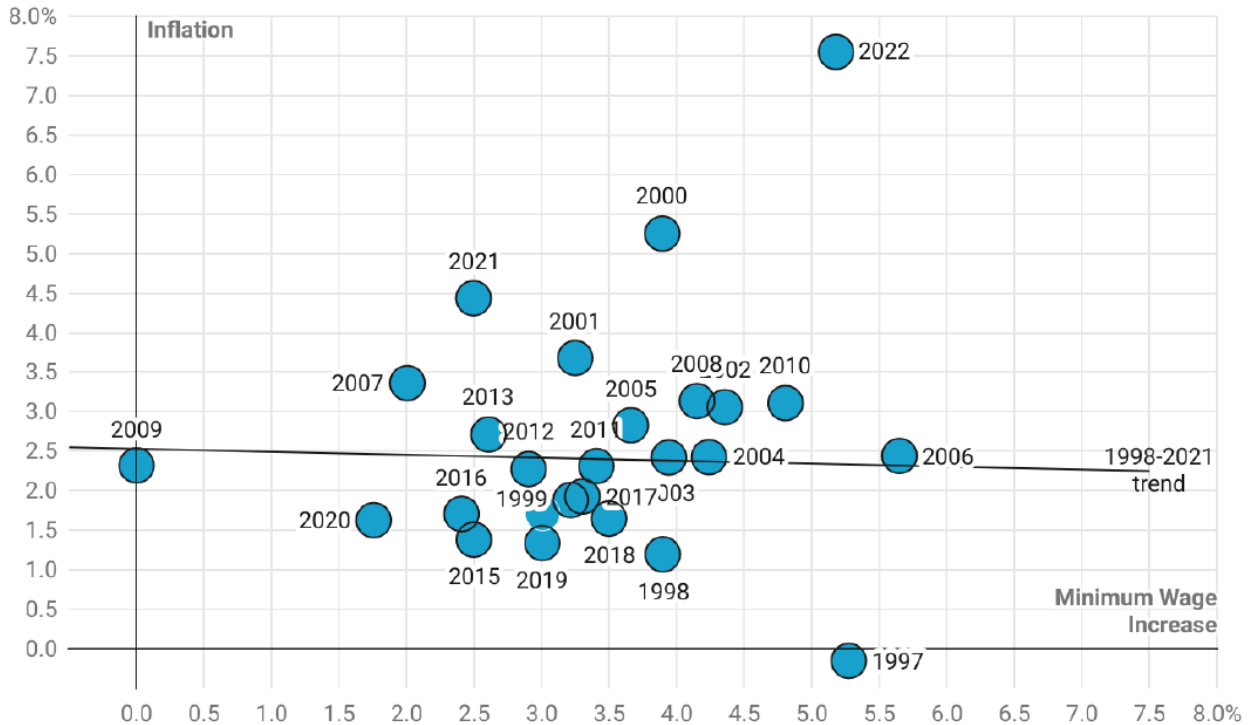
31. Jericho and Stanford examined the relationship between minimum wage increases and inflation in paper released this month.⁹ Noting the recent OECD view that even a sizeable increase in the minimum wage have a limited impact on inflation, Jericho and Stanford examine inflation and minimum wage rises over the 25 years to 2022 and find no statistically significant correlation (Figure 16 below). Rather, their observations suggest that neither a relatively large minimum wage increase, nor a freeze in the minimum wage has had any discernible impact on inflation over that

⁸ [2018] FWCFB 3500 at [26].

⁹ Jericho, G, Stanford, J., “Minimum Wage and Inflation”, Australia Institute Centre for Future Work, April 2023.

period - in which only two of the minimum wage adjustments were below inflation for the previous year.

Figure 16: Minimum wage and inflation, 1997-2022



Source: Jericho & Stanford (2023)

Note: Inflation denotes the average CPI annual growth in the 4 quarters following each minimum wage increase. Date denotes the year in which the minimum wage increase occurred. The trend line is insignificant with an R-squared value of just 0.0015.

32. Jericho and Stanford estimate the potential impact of minimum wage increase on prices assuming a full passthrough (inclusive of higher superannuation contributions), no productivity offsets and no reductions in profit margins (which they note have expanded during and since the pandemic). Their methodology relies on average wages paid to award reliant workers and the prevalence of modern award reliance to predict the impact on total compensation of employees of an adjustment to minimum wages, finding that modern award wages account for approximately 12.5% of the total national wage bill. Accordingly, they reason that each increase in modern award wages of 1% would result in a 0.06% aggregate increase that could be passed through to prices across the economy – with the ACTU’s proposed 7% increase equating to a 0.39%, or around one

twentieth of the inflation that occurred in 2022. Jericho and Stanford predict that the size of this impact would be overwhelmed by larger determinants of near term inflation which have emerged as energy, transportation and supply chain pressures have begun to ease. In our view, this is a negligible price to pay for returning real wages to something resembling their pre-pandemic value.

2.2 Costs to businesses

33. Numerous employer submissions raise concerns about rising input costs, including Ai Group, the Master Grocers Australia, the Australian Retailers Association, the Laundry Association of Australia and the Dry Cleaning Institute of Australia.

34. Input costs do generally rise over time and there have certainly been increases in input costs over the last 2 years which are atypical. However, as is clearly illustrated in Chart 1 of Ai Group's submission and Figure 6 and Figure 7 above, consumer prices have risen more than producer prices and cost pressures at the producer side, and consumer prices continued to increase strongly after the growth in producer prices began to ease. At a macro level, this tends to indicate that consumer prices rose more than was necessary to equal the rising costs of production such that margins have grown somewhat. We recognise that at the firm level experiences will differ, however the maintenance of the safety net does not involve setting it a level that best suits the least competitive businesses.¹⁰

35. This decoupling of consumer prices from business costs is alluded to repeatedly in the RBA's February Statement on Monetary Policy:

“The easing in global goods prices is not yet evident in retail prices here”¹¹

“The easing in global prices pressures already underway is expected to flow through to domestic prices over time”¹²

¹⁰ [2012] FWAFB 5000 at [133]-[134]

¹¹ RBA May 2023 Statement on Monetary Policy at Page 1

¹² RBA May 2023 Statement on Monetary Policy at Page 1

“Firms’ non-labour cost pressures have lessened following a decline in global demand and the gradual normalisation of supply chains. While many contacts expect their energy costs to increase over the year ahead, recent declines in wholesale electricity and gas futures prices mean increases may not be as large as previously expected.”¹³

“Whilst most firms report that the cost of debt has increased in line with the increase in the cash rate, finance remains readily available.”¹⁴

“Many contacts have reported a slowing in the pace of input cost increases, partly due to improved availability of imported goods and lower freight costs following the slowing in global demand. The easing of cost pressures has broadened over recent months, in particular for non-food retailers.”¹⁵

We accept that further significant price rises are expected in the energy sector, with RBA expecting default electricity offers to increase by 20-30% in the September quarter. However, the macro effect of this, in the RBA’s estimation is that energy prices for (for both electricity and gas) would add a mere 0.25% to headline inflation over the 2023/24 financial year.¹⁶ Whilst this indicates a passthrough of costs to consumers, it does not reveal the projected impact on profits, but some indication of this may be garnered by examining what has happened to profits from energy rises that have already occurred.

36. In order to examine whether the very sharp increases in energy prices over the past year have had significant impact on overall profit of more modern award reliant industries, we have examined producer price indexes. Whilst most such indexes measure producer prices at the point of output or final demand, a series of indexes also measure movements in prices of inputs to the manufacturing industry, including energy related inputs. We have assumed for the purpose of the analysis that movements in these energy price related inputs to the manufacturing industry are broadly representative of movements in energy costs facing other industries. In Figure 17 below, we show these energy price indexes (dotted lines, right side axis) alongside gross operating profit to sales ratios of the manufacturing industry (which we assume to be highly energy intensive) and numerous award reliant industries (solid lines, left side axis).

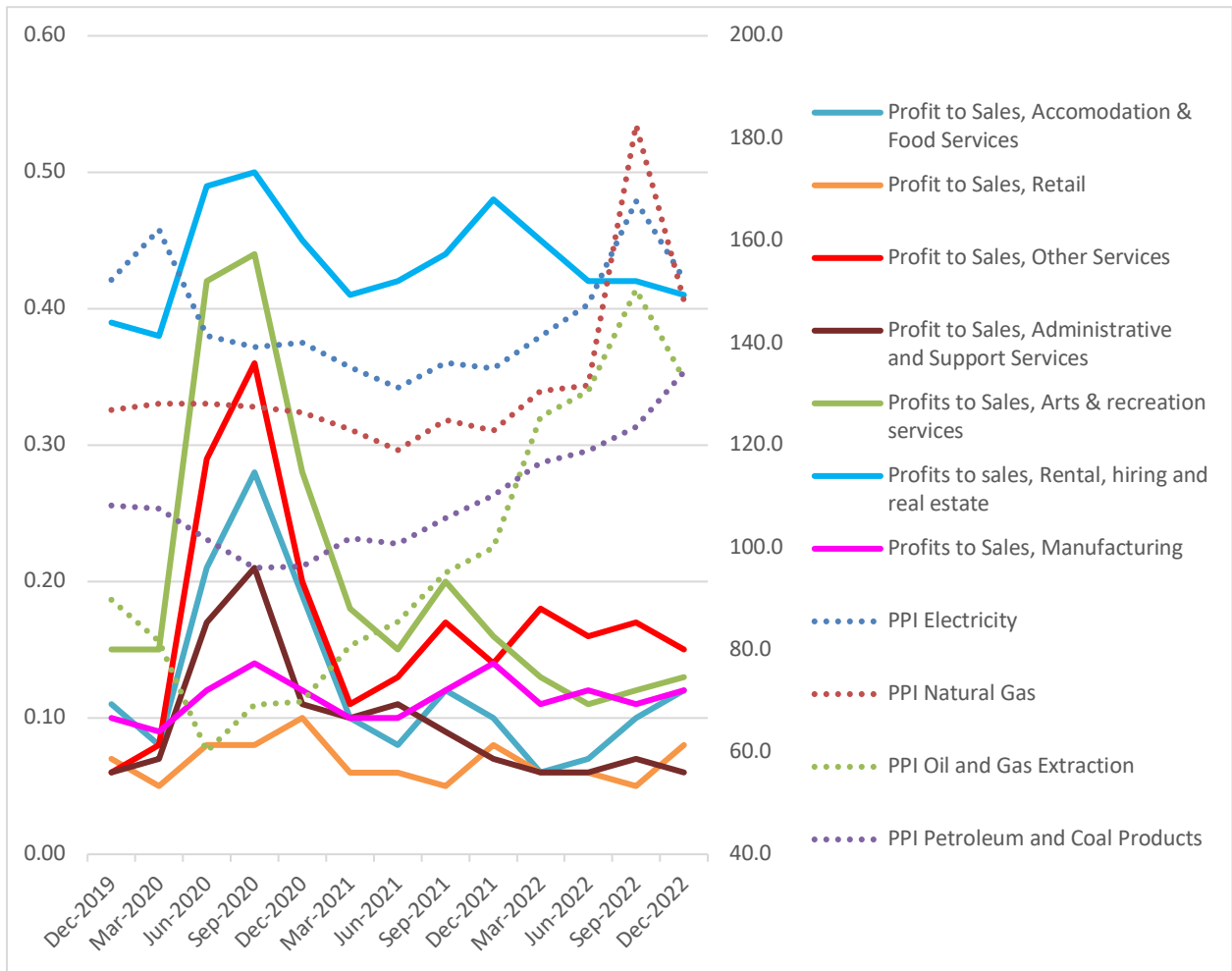
¹³ RBA February 2023 Statement on Monetary Policy at Page 33

¹⁴ RBA February 2023 Statement on Monetary Policy at Page 35

¹⁵ RBA February 2023 Statement on Monetary Policy at Page 37

¹⁶ Minutes of the Monetary Policy Meeting of the Reserve Bank Board, 4 April 2023

Figure 17: Producer price indexes (energy inputs), profit/sales ratios, 2019-2022



Source: ABS Business Indicators, Producer Price Indexes

37. The commencement and unwinding of COVID support payments is the most striking feature in the profit/sales measures in Figure 17 above. There is very little suggestion that the significant escalation in energy prices had strong or lasting impacts on profitability in the industries shown. It is plausible that the energy price shifts had some role in the decline in profitability seen in some industries, however given that the energy intensive manufacturing industry did not fall below its pre-pandemic profit/sales ratio even at the peak of the energy price rise, it is difficult to attribute the movements seen in other industries (all of which, with the exception of arts & recreation services, ended the period with the same or higher profitability than pre-covid) entirely to energy prices. It should be noted that the largest single quarterly energy price hike was in September 2022, where Natural Gas rose 38.7% and Electricity rose 13.7%. This equates to a combined

average of 26.2%, so not far off the 20-30% increase predicted by the RBA in the coming September quarter. The only industries which experienced a decline in their profit/sales ratios in that quarter were manufacturing and retail, and in each case the ratios fell by only .01 before recovering to above their respective pre-covid measures.

2.3 Uneven business performance

38. Some employer interests have identified an unevenness in business profits and performance in support of calls for moderation, including ACCI, Ai Group and the Australian Retailers Association.
39. There is also some clear disagreement between Ai Group and ACCI in relation to profits, with Chart 3 in Ai Group's initial submission showing substantially different profit growth to that shown in Figure 3 of ACCI's In, despite both apparently being produced from the same data series. We suspect that Figure 3 of ACCI's submission is in error.
40. Both our initial submission and that of ACCI acknowledge the volatility in year to year profit growth during and after pandemic. However, by viewing the profit/sales ratio for award reliant industries as seen in Figure 17 above alongside the sales to wages ratios in Figure 40 of our initial submission, it is reasonable to infer that return to more normal conditions had set in by end 2022. Moreover, uneven performance across industries is undoubtedly a feature of such normality, as seen in Table 1 below.

Table 1: Annual Profit Growth, 2012-2022

	Highest profit growth	Lowest profit Growth	No. Industries where profit grew	No. Industries where profit fell
Dec 2011-Dec 2012	209.5% (Financial and Insurance Services)	-35.1% (Administrative and support services)	7	9
Dec 2012 – Dec 2013	44% (Administrative and support services)	-63.5% (Financial and insurance services)	12	4
Dec 2013-Dec 2014	87.9% (Administrative and Support Services)	-27.1% (Other services)	9	7
Dec 2014-Dec 2015	44.5% (Financial and Insurance Services)	-22.1% (Administrative and support services)	8	8
Dec 2015-Dec 2016	80.4% (Other services)	-14.7% (Accommodation and food services)	12	4
Dec 2016-Dec 2017	46.8% (Administrative and Support Services)	-18% (Other Services)	10	6
Dec 2017-Dec 2018	28.9% (Construction)	-24.8% (Financial and Insurance Services)	12	4
Dec 2018-Dec 2019	24.5% (Professional and scientific services)	-44.1 (Financial and Insurance Services)	9	7
Dec 2019-Dec 2020	212% (Other Services)	-17.4% (Transport, postal and warehousing)	14	2
Dec 2020-Dec 2021	135.5% (Financial and Insurance Services)	-44.3% (Arts and recreation services)	8	8
Dec 2021–Dec 2022	57% (Accommodation and food services)	-67.6% (Financial and Insurance Services)	9	7

Source: ABS Business Indicators, ACTU calculations

41. In our submission, the size of the distribution of profit growth is far from unprecedented and the number of industries experiencing growing profits versus those not is unremarkable.

2.4 The international economic outlook

42. There are concerns expressed by some employers, including ACCI, Ai Group, the Australian Retailers Association and the National Farmers Federation about the trajectory of the global economy. Whilst it is correct to note that forecasts for the global economy are relatively weak, particularly for the euro area, it is important to be mindful of the limited direct exposure Australia’s modern award reliant industries to have to the global economy.
43. It is to be noted in this regard that the rebound of the Accommodation and Food Services industry (the most modern award reliant sector) occurred when international tourism numbers were well below their pre-covid levels: Short term overseas visitor arrivals were 927,240 in February 2019, 90,460 in Feb 2022 and 600,710 in Feb 2023¹⁷. Exports for some agricultural and manufacturing outputs, where there is some modern award reliance, were seen to grow over the year to February

¹⁷ ABS Overseas Arrivals and Departures.

2023 and during that month in Figure 8 and Figure 9. Looking ahead, it is significant that Australia’s largest export markets are China, Japan, Korea India and Taiwan.¹⁸ Most of these economies are predicted by the IMF in its most recent world economic outlook to grow more in real terms than other comparable economies over the next two years, suggesting a continued demand for Australia’s exports.

Table 2: Selected IMF regional and country Real GDP forecasts

	Projected Real GDP Growth 2022-2023	Projected Real GDP Growth 2023-2024
Advanced Economies	1.3	1.4
• Japan	1.3	1
• Korea	1.5	2.4
• Taiwan	2.1	2.6
Emerging and Developing Asia	5.3	5.1
• India	5.9	6.3
• China	5.2	4.5

Source: IMF World Economic Outlook (April 2023), Tables A2 and A4.

44. In any event, if there were to be a collapse in export market demand contrary to these forecasts, this in our view would be likely to result in reduced demand for labour in exporting industries irrespective of the level minimum wage increase. This is particularly the case for agricultural and meat processing industries which utilise highly flexible and scalable labour models.

2.4 Minimum wages and women’s workforce participation

45. A view expressed by some employers, including ACCI and the AI Group, is that significant increases to minimum wages will potentially have a negative impact on women’s workforce participation due to disemployment effects. ACCI argues that as women are more award reliant, those disemployment effects will disproportionately impact women’s economic participation, and therefore a more cautious approach should be taken to ensure that the beneficial impact on the gender pay gap of minimum wage increases is not outweighed by the potentially negative impact on women’s workforce participation. We reject these arguments, including for reasons outlined at section 3.4 of our initial submission.

¹⁸ [OECD World](#) Country Profile for Australia

46. Previous Panels have found that the gender pay gap is a relevant consideration in respect of section 284(1)(b) (promoting social inclusion through workforce participation), because it may have effects on female participation in the workforce.¹⁹ This has been interpreted as follows by the Panel:

“We accept that our consideration of ‘social inclusion’ in the context of s.284(1) (b) is limited to increased workforce participation. On that basis, it is obtaining employment that is the focus of s. 284(1)(b). This involves a consideration of the incentives that higher minimum wages can provide to those not in employment to seek paid work, balanced against potential impacts on the demand for low-paid workers hence the supply of low-paid jobs, from large increases in minimum wages.”²⁰

47. Higher wages can improve women’s economic participation in the labour market, because they 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.

48. Increases to the minimum wage will also flow through to paid parental leave (PPL), increasing the income and living standards of women on parental leave commensurate with the quantum of that increase (whether or not those women are otherwise dependent on the NMW or the Award wage system in terms of their non-PPL remuneration). Combined with the legislated changes to the PPL scheme that will allow parents to share PPL flexibly between them from 1 July 2023 (in contrast to the current PPL scheme where fathers or ‘secondary carers’ are only entitled to 2 weeks paid leave at the NMW under the ‘Dad and Partner Pay Entitlement’), an increase in the NMW will also better incentivise more fathers or partners to access parental leave and assist with caring responsibilities. This could make a significant contribution towards gender equality, especially by improving women’s workforce participation given that a key barrier to the take up of PPL by fathers and partners is the low rate of the NMW which is likely to represent a more significant pay cut for men than women.

¹⁹ [2017] FWCFB 3500 at [643]; [2018] FWCFB 3500 at [36].

²⁰ [2013] FWCFB 4000 at [101].

3. REPLY TO PARTICULAR SUBMISSIONS

49. In this section we respond to particular matters in the submission of other parties which we consider warrant closer scrutiny. This section does not constitute a comprehensive statement of all matters in the submissions of other parties with which we disagree, rather it should be assumed that we adhere to the views expressed in our initial submission.

3.1 Australian Chamber of Commerce and Industry

50. ACCI's recommended adjustment to minimum and modern award wages is not in our view suited to contemporary circumstances and adopts an unduly mechanistic approach to the consideration of changes to the superannuation guarantee. At a more detailed level, we take issue with ACCI's discussion of particular considerations relevant to this review.

51. In our view, ACCI expresses a poor or at best inconsistent appreciation of the fact the task of the Panel is to balance all relevant considerations in coming to its decision.²¹ This is evident in its demand that the Panel "not react to what is expected to be a temporary spike in inflation"²² and "not use the minimum wage as means of driving up the living standards of the low paid"²³ and its assertion that "The mere fact that the labour market is generally performing well, aside from the labour shortages which are hampering business, does not justify a willingness to accept some disemployment effects which may result from the annual wage review".²⁴ There is a fundamental tension in these positions in our view, which would require to Panel to ignore some matters it is required to consider while treating others as erecting a objective standard which must be complied with. Putting aside for a moment our position on the likelihood of disemployment effects²⁵, it is no more correct to say that disemployment effects are impermissible than it is to insist that the needs of the low paid must be met without exception.

52. The primacy which ACCI gives to the potential (and in our view, wrongly assessed) risks of disemployment clouds the position it takes on the proper construction of the amended provisions

²¹ [2018] FWCFB 3500 at [25]–[26]

²² At [70]

²³ At [94]

²⁴ At [74]

²⁵ See section 3.4 of our initial submission.

in the objects of the FW Act and the modern awards objective relating to “secure work”. This results in ACCI taking the view that the effect of these new provisions is to require the Panel to be cautious of any potential unemployment effects of increasing wages.²⁶ It is with respect impossible to distinguish this from the effect of the provisions already contained in section 134(1)(b) and 284(1)(c) concerning social inclusion through increased workforce participation, of which the Panel has said:

“We accept that our consideration of ‘social inclusion’ in the context of s.284(1)(b) is limited to increased workforce participation. On that basis, it is obtaining employment that is the focus of s. 284(1)(b). This involves a consideration of the incentives that higher minimum wages can provide to those not in employment to seek paid work, balanced against potential impacts on the demand for low-paid workers hence the supply of low-paid jobs, from large increases in minimum wages.”²⁷

53. If one is to attribute any meaning to the amendments, it cannot sensibly involve a mere repetition of the meaning conveyed by existing provisions- the provisions must be given some work to do. The meaning which ACCI ascribes to the provisions rather ignores the modern contextual approach to statutory interpretation²⁸ and the instruction at section 15AA the *Acts Interpretation Act 1901* to prefer “the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act)”. As discussed at paragraph 30 of our initial submission, ACCI’s construction of the job security provisions is wholly inconsistent with stated object of the FW Act as amended of “promoting social inclusion for all Australians” *through* means including the promotion of job security.

54. ACCI’s resort to an embellishment of a dictionary meaning of the word “secure” is symptomatic of its denial that in the industrial relations context, “insecure work” has an understood meaning which relates to features of particular employment. As the Minister said in his second reading speech introducing the relevant amendments:

“Loopholes which have hindered job security and wage growth have appeared in the Fair Work Act over the past decade.

²⁶ At [122]-[123].

²⁷ [2013] FWCFB 4000 at [101].

²⁸ See *SZTAL v Minister for Immigration and Border Protection* [2017] HCA 34 at [14]

Years ago, job security was simply defined across the economy as the difference between being a casual or a permanent employee. Job insecurity now has many faces. We see it in the gig economy, labour hire, new forms of insecurity for part-time employees, and rolling fixed-term contracts which effectively amount to a permanent probation period for employees. We see it where casual loading has not been a sufficient incentive to promote secure jobs.

All legitimate forms of employment have their place. All will continue to exist. But where there is abuse, we must curtail it. Where loopholes have arisen in legislation, we must close them.”²⁹

55. As noted in the Minister’s speech, some features of secure versus insecure jobs include those that distinguish permanent and non-permanent employment (for example fixed term and casual employment). If one accepts that a necessary feature of casual employment under section 15A of the FW Act is the acceptance of an offer of employment which is “..made on the basis that the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work”, then it is pellucidly clear that this does not offer the “job security” contemplated in the explanatory memorandum’s discussion of the amendments to the objects of the FW Act:

“The reference to promoting job security recognises 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.”³⁰ (emphasis added)

56. Similarly, provisions of the explanatory memorandum concerning amendments relating to fixed term contracts clearly frame secure work by reference to the features of insecure work:

“The amendments in Part 10 would limit the use of fixed term contracts, subject to limited exceptions. While fixed term contracts continue to have a legitimate purpose, their ongoing use for some employees has become another form of insecure work.

Fixed term contracts help businesses to source workers to perform discrete tasks for a fixed period and can be used genuinely for many purposes. However, fixed term contracts exacerbate job insecurity for employees when they are used for the same role over an extended period, or where employees are subject to rolling contract renewals for jobs that would otherwise be ongoing. The amendments would limit fixed term contracts for the same

²⁹ House of Representatives Hansard, 27/10/2022 at page 2176

³⁰ Explanatory Memorandum to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill*, at [337]

role to two consecutive contracts or a maximum duration of two years, while preserving the legitimate use of fixed term contracts in certain circumstances.”³¹ (emphasis added)

57. ACCI’s concern about disemployment effects also prevents it from acknowledging the possibility of any supply-demand equilibrium in its discussion employment at paragraphs 62-66 of its submission. According to ACCI, many industries, including particular award reliant industries, are operating at below capacity due to the inability to find suitable staff. However, it predicts that the expected downturn in consumer spending and economic activity will lead only to unemployment, rather than any more optimum pairing between output and labour supply.
58. We note ACCI’s concerns regarding the Budget Standards report at paragraphs 102-108 and observe that ACCI do not go so far as to suggest the report should not be considered in the review. In our view, it is not to the point that it might have been possible to assume that the adults in the household types modelled by the study were younger, or lived outside Sydney, if the fact is that *some* minimum and award reliant workers are in the 35-40 year age group and do live in Sydney. This is because the wages safety net ought to strive to be a safety net for all who rely on it, even if that means providing a standard above bare adequacy to some. Further, we disagree with the normative judgment expressed at paragraph 107 of ACCI’s submission that low paid employees should not engage in *any* discretionary expenditure (including spending \$3.60 per day on lunch). We also express concern about the impact the complete cessation of discretionary expenditure by low paid workers might have on award reliant industries.

3.2 Ai Group

59. It is common ground between the ACTU and AiG that owing to the many and varied motivations to bargain (or not to), many of which are unrelated to the NMW, it is unlikely that the Panel could ascertain or predict the effect its decision will have on collective bargaining with any level of precision.³²

³¹ Explanatory Memorandum to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill*, at [558]-[559]

³² Ai Group Submission at p47; ACTU Submission at [380]

60. Both, ACTU and AiG agree that recent legislative changes have as their intent, increased levels of collective bargaining and wages growth.³³
61. However, the conclusions drawn by the ACTU and AiG as to the significance of this for the annual wage review are diametrically opposed. Whereas AiG effectively says that the Panel should only depart from moderation if it can be certain that wage rises cannot be secured through other mechanisms introduced in recent legislative change; the ACTU points to the same changes and says they are robust enough to allow the Panel to conclude that its decision is unlikely to put a brake on an increase to collective bargaining – and that therefore moderation is unnecessary.³⁴
62. Moreover, the AiG submission ignores the following:
- a. Collective bargaining has increased following the most recent AWR decision;³⁵
 - b. The relevant statutory framework, and in particular that the question the Panel must grapple with is whether their decision will encourage collective bargaining *and not* whether workers (including low paid workers) might possibly get a pay rise some other way (which, even if true, does not alleviate the Panel’s responsibility to consider matters such as relative living standards and the needs of the low paid etc.).
63. AiG submits that: “Uncertain economic conditions and / or disproportionately high labour costs *may* result in employers relying, to a greater extent, on [insecure work]...[and] *may* be less inclined to commit to engaging permanent ongoing staff...” on the basis of rights and entitlements attaching to that type of work.³⁶ This is, at best, no more than subjective prognostication. AiG offer no basis for their unqualified opinion in fact, evidence or scholarly material. AiG points to no material which indicates that an employer will (though they say may) in future more predominantly engage workers on an insecure (than secure) basis, much less that this would be because of the Panel’s decision. Accordingly, the ACTU submits that the AiG’s conjecture should occupy no space in the Panel’s decision-making.

³³ Ai Group Submission at p48

³⁴ Ai Group Submission at p48

³⁵ See ACTU Submission at [384] – [386]

³⁶ Ai Group Submission at p46

64. Further, even if the AiG's contention that uncertain economic conditions could lead to proportionally greater engagement of insecure labour, this would attribute the cause of such to broader economic factors as opposed to any decision of the Panel. Price-based assessments which factor into the engagement of workers on a secure or insecure basis turn more on individual employer's assessments of the value and return from investing in their staff on a longer term basis.
65. AiG submits that there is "considerable underutilisation" of available labour and that for this reason there is no need to lift rates to encourage additional supply.³⁷ In response to this, we say there is no basis for this submission for the following reasons:
- a. The underutilisation rate has fallen sharply in recent year, not only from the highs experienced during the pandemic, but also from pre-pandemic levels.³⁸
 - b. At any rate, seeking work is driven more so by gainful employment being preferable to the alternative generally than by an assessment of the adequacy of the minimum wage.
66. AI Group submits that FTB indexation should be considered by the Panel.³⁹ However, it must also be noted that whilst indexation of FTB is to occur, the longstanding method of indexation remains unchanged. Moreover, indexation of FTB in line with CPI merely means that a portion of household income will increase in line with cost of living. The effect of this is entirely unwound if wages also do not rise sufficiently to meet increased cost of living pressures.
67. Ai Group submits, for a variety of reasons, that SG increases should be a moderating factor in the review.⁴⁰ The ACTU submission deals comprehensively with this point from paragraph [221]. By way of reply, we say that Ai Group's conjecture as to how workers might approach mortgage repayment as a result of SG increases is entirely speculative and of no real assistance to the Panel.

³⁷ Ai Group Submission at p42

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

³⁹ Ai Group Submission at p34

⁴⁰ AI Group Submission from p32

3.3 Australian Business Industrial & Business NSW

68. The Australian Business Industrial and Business NSW submission (at pp14-15) contends that business confidence in NSW is “firmly negative”. However, the information in their submission indicates that:
- a. Business sentiment is improving overall since mid 2021;
 - b. 78% of businesses anticipate maintaining the same headcount or increasing staff numbers – with the number of businesses intending to increase headcount being about the same as those intending to decrease;
 - c. Wages only rank 4th in terms of significance to business as far as costs of doing business is concerned;
 - d. Businesses are concerned with “higher costs *demand*ed by workers” which suggests that their concern relates to negotiated wage increases rather than the operation of the AWR.
69. By contrast to the information presented by ABI, the Australian Government submission (at [58]) refers to the NAB monthly Business Survey which shows that “businesses continue to report good business conditions” with the index for February being +17 points.

3.4 Australian Retailers Association

70. The Australian Retailers Association (ARA) submits that wages growth should keep pace with the higher costs of living, using the Trimmed Mean Inflation (TMI) rate as a measure of underlying inflation”. It’s only implied argument for doing so is that the TMI removes “volatile inputs from the Consumer Price Index”.⁴¹ It calls for a 3.8% rise, based largely on what the TMI is predicted by the RBA to be in December 2022 and June 2023, and a discount of 0.5% for the increase in the SG.
71. The ACTU does not support the TMI being the only measure of inflation that the Panel should take into account in making its decision, because considered alone, it does not present an accurate picture of the cost of living pressures facing award reliant workers, and the low paid in particular.

⁴¹ Australian Retailers Association (ARA), *Submission, 2022-2023 Annual Wage Review*, 31 March 2023, page 2.

72. Indeed, the ARA do not have an issue with using the CPI in other contexts, claiming that retail wages have grown faster than “CPI” over the five years to November 2022.⁴² Please note, this claim does not appear to be accurate: average weekly earnings measured as total earnings in retail have increase from \$723 in November 2017 to \$820.70 by November 2022 or an increase of 13.5%.⁴³ CPI over the same period grew by 16.7%, leading to a real wage cut for retail workers of 3.2% over the period.
73. In this regard we support the Panel’s previous observations on this issue that:
“Underlying inflation, calculated as the average of the trimmed mean and weighted median, does not necessarily measure the impact of changes in the cost of living face by award-reliant workers, as it is calculated by reducing the impact of irregular or temporary price changes in the CPI.”⁴⁴
74. And accordingly, that:
“The main measures of inflation that we consider are the CPI and underlying inflation. There are two measures of underlying inflation – the trimmed mean and weighted mean.”⁴⁵
75. We further submit that the Panel should also have regard to additional measures of inflation. The ABS Living Cost Index (LCI) for employees was 9.3% for the year to December 2022, showing them facing far higher price pressures than other household types.⁴⁶ Similarly, price increases for non-discretionary items, which low paid workers spend a higher proportion of their income on, continues to growth faster than for discretionary items, as discussed earlier in this submission.
76. The ARA also argues that the relevant measure of TMI should be taken from December 2023 and June 2024. This is inviting the Panel to rely on future projections alone, which have frequently proven to be unreliable, rather than consider the current significant levels of inflation. At the very least, if taking this approach, consideration should also be given to a significant increase in wages to make up for the real wage cuts Award-reliant workers have experienced because of future projections of inflation proving to be inaccurate in the past two review decisions.

⁴² Ibid page 5.

⁴³ Average Weekly Earnings (November 2022).

⁴⁴ See [2021] at 47 and [2020] FWCFB 3500 at [132]

⁴⁵ (at para 125) from last year’s decision.

⁴⁶ ABS Living Cost Index (December 2022).

77. The ARA also presents results of its member survey of 141 respondents.⁴⁷ Given it is a survey largely gauging member opinions, it would have been helpful to present results across time to detect genuine underlying trends. For example, it claims in its recent submission that more than one third of respondents indicated that business costs have increased by more than 10% over the past 12 months. In relative terms this appears to be good news because slightly more respondents (36%) complained of similar pressures in the same ARA survey 12 months earlier.⁴⁸

3.5 National Retail Association

78. The National Retail Association (NRA) puts forward two key arguments in opposing “any significant increase” to minimum and award wages: rising business costs for its members, including supply chain disruptions, and waning consumer demand.⁴⁹

79. On the first point, the NRA offers almost no evidence on the scale or depth of this issue, nor consideration of any change over time, to support this proposition. In contrast the ACTU discussed the health of the retail sector in some detail in our initial submission, including reviewing changes in ABS data on its relative profitability, turnover and net growth in new businesses to show that the industry is in a healthy state. Rather than cover this ground again, we instead summarise the recent work of Jericho and Stanford, who examined the economic health of the retail sector, finding that:

- a. From December 2019 to December 2022, retail industry profits grew 27% while the aggregate wage bill in the retail industry had risen just 15%.⁵⁰
- b. Employment in the retail industry was 5.7% higher in February 2023 than a year earlier, compared to a 3% increase in total employment over the same period.
- c. The ratio of retail industry profits to wages in the December quarter remain well above the pre-pandemic median (See Figure 19 below).
- d. Finally, the retail industry profit margin soared to record levels during the pandemic, and while this has normalised due to declining consumer demand and rising input costs, margins still remain at or above pre-pandemic levels (See Figure 20).

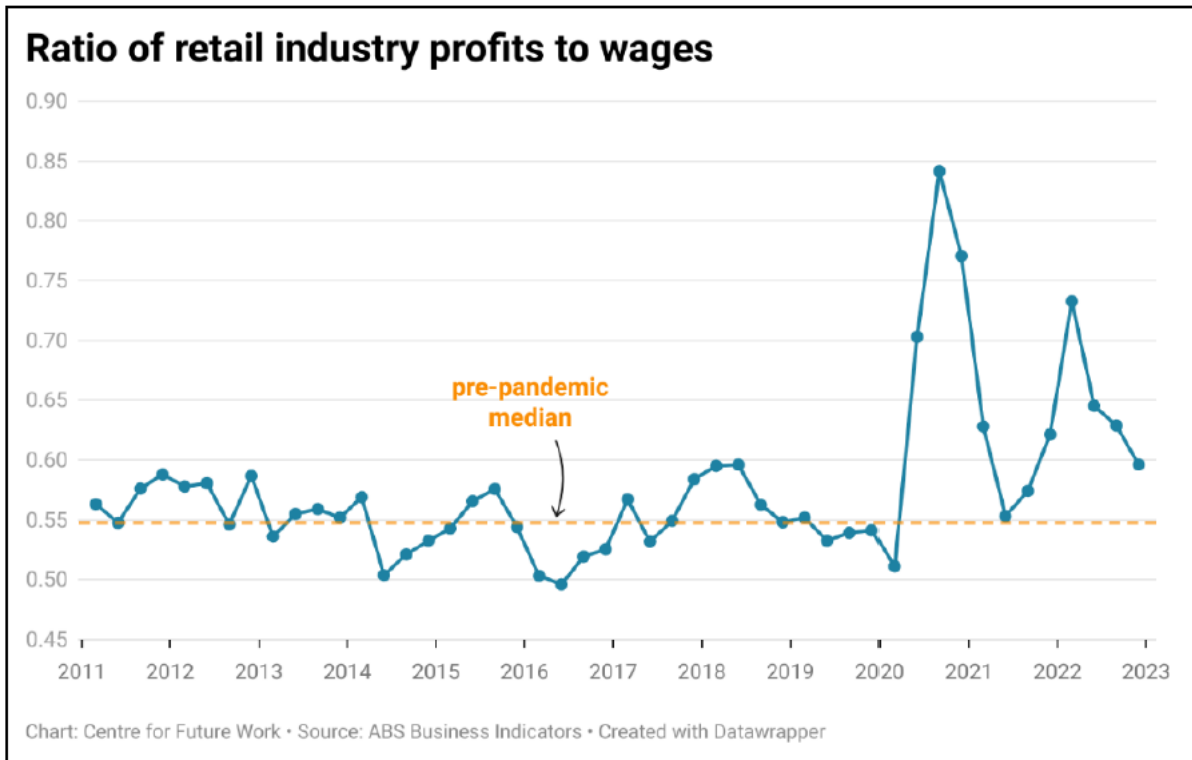
⁴⁷ ARA page 4.

⁴⁸ Australian Retailers Association Submission 2021-22 Annual Wage Review page 4

⁴⁹ National Retail Association, *Annual Wage Review 2022-23 Initial Submission*, April 2023

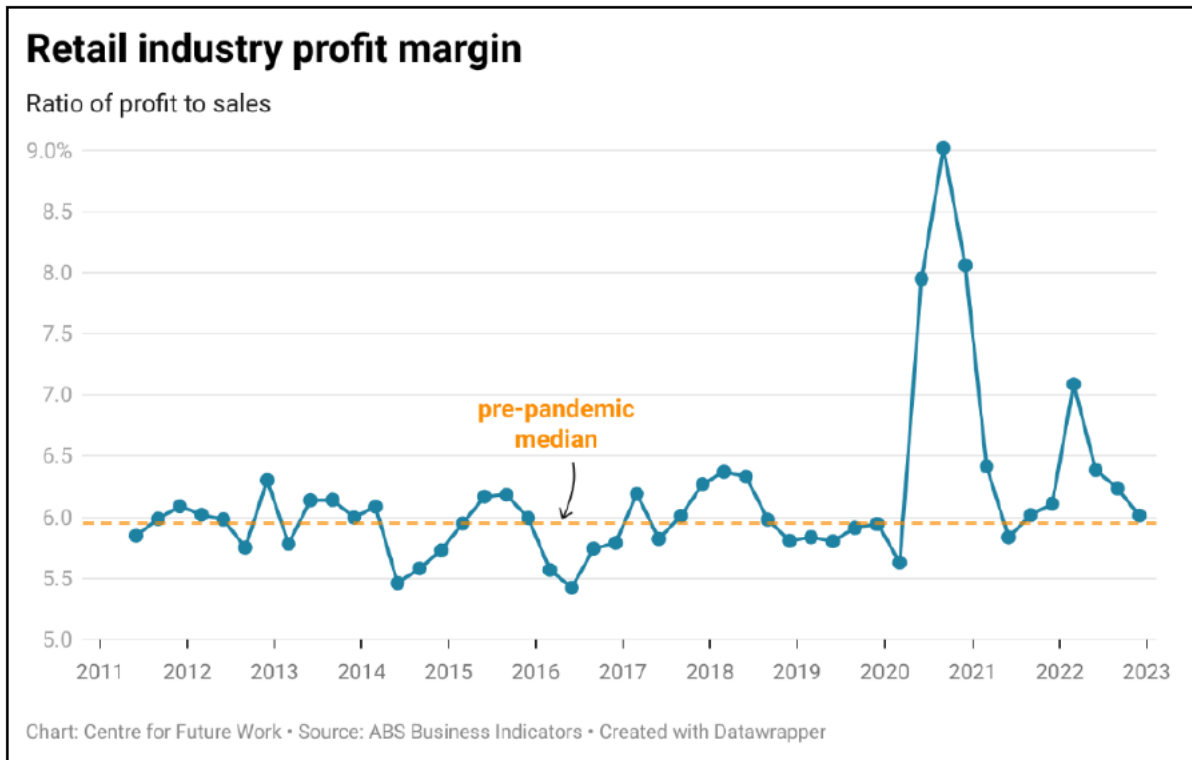
⁵⁰ Jericho and Stanford, *Op.Cit* page 8

Figure 19: Ratio of retail industry profits to wages



Source: ABS Business Indicators. Calculations by Centre for Future Work

Figure 20: Retail industry profit margin



Source: ABS Business Indicators. Calculations by the Centre for Future Work.

80. On the second issue, the ACTU shares this concern with waning consumer demand, and with rising interest rates being one of the drivers of this. The ACTU would also cite the sharp decline in real wages as being the major contributor to this. In contrast, the NRA not only ignores this possible cause but instead claims that the tight labour market has resulted in “increased real wages” over the past 12 months.⁵¹ While wages increased slightly in nominal terms over 2022, they collapsed in real terms by a record 4.5% as measured by the WPI and CPI, as discussed previously. Similarly, the NRA submission also has no consideration of the impact a significant increase in minimum and award wages for nearly 2.6 million workers would have on consumer savings and spending, and how that would flow through to their own members.
81. Finally, the NRA states that the ABS reports that “almost a third of all businesses are having staffing difficulties”. The ABS survey the NRA sources actually says that those businesses “are having

⁵¹ NRA Ibid page 6

difficulty finding suitable staff”, which is a very different finding.⁵² This is just more evidence of a tight labour market, albeit using data now 9 months old, and not surprising given the comparatively low level of wages in retail.⁵³

3.6 Master Grocers Association

82. The Master Grocer’s Association (MGA) relies principally in its submission on a survey of members to argue that the Panel should not award an increase beyond 3.5%. It argues that:

“In accordance with member feedback, MGA TMA is concerned the imposition of additional significant costs on its members, such as by increasing the minimum wages in the GRIA and TIA beyond 3.5%, will likely lead to decreased employment, significant increases in the price of goods (thereby exacerbating inflation) and even business closures.”⁵⁴

This survey also concludes that 62% of respondents reported reducing staffing levels as a consequence of the Commission’s decision in 2022.⁵⁵

83. The ACTU submits that the Panel should give these survey results no weight for the following reasons:

- a. The survey likely suffers from significant selection and motive bias. While the MGA TMA do not explain the survey methodology, it has mostly likely been sent to members to fill in as part of the organisation’s submission to the AWR, as has been the practice in previous years.⁵⁶ This introduces a significant selection bias: those members with a strong interest in opposing wage increases are likely to be more motivated to answer the survey. It also introduces a motive bias: the survey is a chance for members to complain about wage increases, rather than attempt to collect objective data.
- b. Secondly, and relatedly, the questions are likely framed to elicit negative answers about the impact of the previous AWR decision, given the publicly available survey questions from previous years.⁵⁷ For example, in question 2 from the 2018-19 survey, members are

⁵² ABS Business Conditions and Sentiments (June 2022).

⁵³ Average weekly earnings for full time employees in retail are the third lowest of any industry. ABS Average Weekly Earnings (November 2022).

⁵⁴ MGA Submission page 3: <https://www.fwc.gov.au/documents/wage-reviews/2022-23/c20231-sub-mga-tma-310323.pdf>

⁵⁵ MGA Ibid page 5

⁵⁶ MGA Annual Wage Review Survey 2018-19, 24 January 2019, <https://www.mgatma.com.au/ma/industry-news/annual-wage-review-survey-2018-19>

⁵⁷ MGA Annual Wage Review 2018-19 Survey – effect on your business: <https://www.surveymonkey.com/r/S72N9PJ>

invited to select from a list of negative impacts caused by the July 2018 wage increase. A member could not tell that MGA about a positive impact, e.g. they found it easier to attract good staff, in the context of a tight labour market.

- c. Thirdly, the answers are designed to be impressionistic, and therefore do not reflect the actual health of businesses in the MGA TMA's areas of coverage. This is reinforced by contrary evidence from far more credible sources. For example, the claim of members reporting reduced staffing as a consequence of the recent AWR decision, may be true in some individual cases, but is certainly not true in aggregate. According to the ABS, "supermarkets and groceries" increased staff to 310,000 in August 2022, up from 302,300 in August 2021.⁵⁸ Considering the broader ABS category of "Food retailing" staffing numbers jumped up 367,800 in August 2021, to 392,400 in August 2022. That is strong staffing growth of 7%, including the period when the last AWR rise took effect. Similarly, the survey further claims, that the previous Commission decision has "reduced full time opportunities", yet full time employment in food retailing has grown by about 10,000 in the year to August 2022.⁵⁹

3.7 Australian Automotive Dealer Association

84. The submission of the Australian Automotive Dealer Association's submission refers to supply chain delays and rising input costs as difficulties facing franchised new car dealers and servicing outlets. As already noted, supply chain delays generally have eased since their peak and the rise in many input costs appears to have slowed.
85. For automotive dealerships supply chain delays are best regarded as a cashflow issue affecting the time between the taking of a deposit and settlement, rather than a profitability or issue. It is to be noted in this regard that new car sales were 3% higher in 2022 than 2021 (and 2021 was 14.5% up on 2020) and 2023 year to March sales have increased by 2.5%, so the momentum is currently positive.⁶⁰

⁵⁸ ABS Characteristics of Employment (August 2022).

⁵⁹ Ibid.

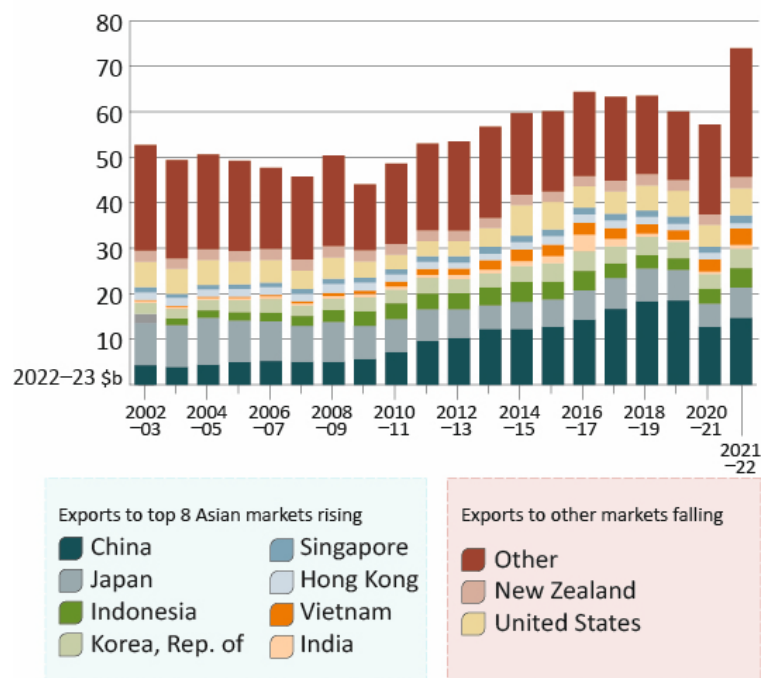
⁶⁰ Federal Chamber of Automotive Industries, "[FCAI releases March 2023 car sales data](#)" (5/4/2023), "[FCAI releases 2022 new car sales data](#)" (5/1/2023), "[FCAI releases VFACTS 2021 new vehicle sales figures](#)" (6/1/2022)

86. As to wages, the Australian Automotive Dealer Association claims that “..labour shortages are contributing to higher recruitment and employment costs for new car dealers and the more competitive labour market has driven up wages for employees in the automotive industry”. If wage increases have been forced by competition, then those wages are necessarily already above the minimums set by the Panel, so there is some buffer against any impact that the Panel’s decision may otherwise have if minimum wages were paid.

3.8 National Farmers Federation

87. The National Farmer’s Federation paints a somewhat bleak outlook for the year ahead. Whilst we agree that global conditions are predicted to be relatively weak, Australia’s major agricultural exports are not discretionary items, so demand for them is likely to be less sensitive to downturns. Furthermore, diverse export markets help to reduce exposure to those downturns. The capacity for the agriculture, fisheries and forestry industry to rapidly adapt its exports in the face of global uncertainty is shown in Figure 18, which shows the real value of exports to particular destinations over a period that includes both the GFC and the onset of COVID.

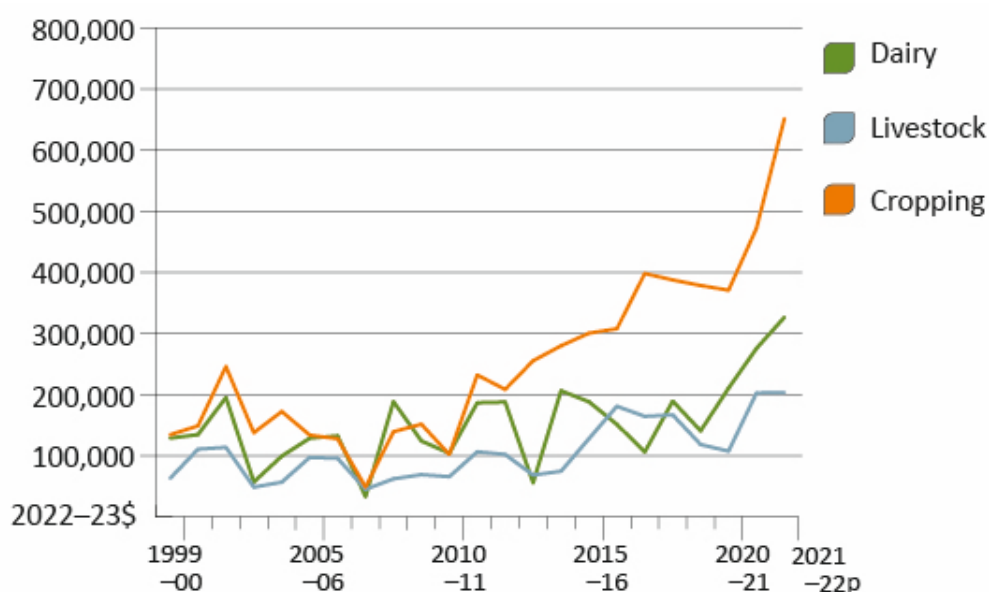
Figure 18: Real value of agricultural, fisheries and forestry exports by destination, 2002–03 to 2021–22



Source: Australian Bureau of Agricultural and Resource Economics and Sciences, “[Snapshot of Australian Agriculture 2023](#)”

88. It should also be appreciated that, as is evident from Figure 18 above, 2022 was a very good year for the sector, to put it mildly. Indeed, provisional estimates of average farm incomes for the 2021-2022 period show rapid rises with the exception of an almost imperceptible decline for livestock farming, as seen in Figure 19 below.

Figure 19: Average cash income per farm, 1999-2000 to 2021-22



Source: Australian Bureau of Agricultural and Resource Economics and Sciences, "[Snapshot of Australian Agriculture 2023](#)"

89. In discussing the movements in farm incomes shown in Figure 19, the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) said:

“Higher cropping farm incomes were mostly driven by increases in receipts for wheat outstripping rises in average expenses for fertiliser and fuel. Livestock farm incomes in 2021–22 were estimated to fall slightly with incomes of the previous year despite higher receipts due to expenses also rising. In the case of dairy farms, higher milk prices, increased milk production and lower feeding costs have contributed to the increase in incomes.”⁶¹

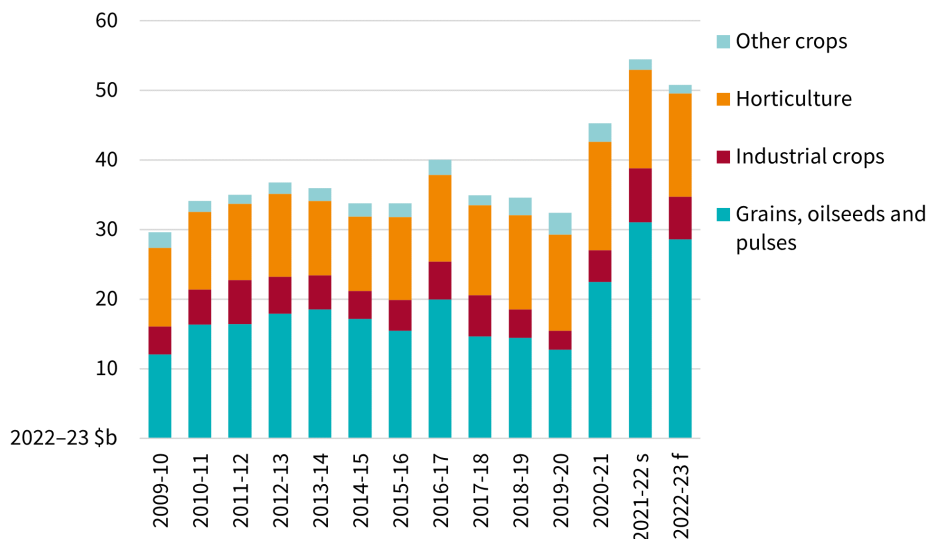
Contrary to the various complaints about rising input costs on pages 10-13 of the NFF’s submission, these costs seem to have at worst led to the levelling of income in the livestock sector. Notably, wage cost pressures did not rate a mention in ABARES’ analysis. This is likely because labour costs are largely transient due the flexible workforce and fluctuating labour demand, as acknowledged on page 10 of the NFF’s submission.

90. With such strong performance in 2021-22, it is to be expected that there would be some decline in the year ahead. However, forecasts for crops remain very positive relative to pre-covid levels,

⁶¹ Australian Bureau of Agricultural and Resource Economics and Sciences, "[Snapshot of Australian Agriculture 2023](#)"

for present year (Figure 20). Canola production is expected to rise to more than double its 10 year average on 2022-23 before contracting by 35% in 2023-24⁶², wheat production is set to break another record in 2022-23 being around double 2019-20 levels in before falling by 11% in the following year⁶³, and production of barley and sorghum is expected to moderate slightly over 2022-2023 but remain at near record levels.⁶⁴

Figure 20: Real value of Australian crop production, 2009-10 to 2022-23



Source: Australian Bureau of Agricultural and Resource Economics and Sciences, [“Agricultural Outlook: Outlook for crops”](#)

91. Outside of crops, ABARES expects:

- a. Beef production to increase by 2% in 2023 and 5% in 2024;⁶⁵
- b. Poultry production to rise 1.7% in both 2023 and 2024⁶⁶
- c. Milk production to fall by 6% in 2023 and remain level in 2024; and⁶⁷
- d. Sheep meat and pork production to rise (growth % unquantified) in 2023 and 2024⁶⁸

⁶² Australian Bureau of Agricultural and Resource Economics and Sciences, [“Agricultural Outlook – Oilseeds”](#)

⁶³ Australian Bureau of Agricultural and Resource Economics and Sciences, [“Agricultural Outlook: Wheat”](#)

⁶⁴ Australian Bureau of Agricultural and Resource Economics and Sciences, [“Agricultural Outlook: Coarse Grains”](#)

⁶⁵ Australian Bureau of Agricultural and Resource Economics and Sciences, [“Agricultural Outlook: Beef and Veal”](#)

⁶⁶ Australian Bureau of Agricultural and Resource Economics and Sciences, [“Agricultural Outlook – Pork and Poultry”](#)

⁶⁷ Australian Bureau of Agricultural and Resource Economics and Sciences, [“Agricultural Outlook – Dairy”](#)

⁶⁸ Australian Bureau of Agricultural and Resource Economics and Sciences, [“Agricultural Outlook – Sheep meat”](#), [“Agricultural Outlook – Pork and Poultry”](#)

92. In our view, the current and expected near term performance of the agricultural sectors is highly favourable and sufficient to absorb a fair and reasonable increase in the minimum wages paid to the workers who serve it.

3.9 South Australian Wine Industry Association

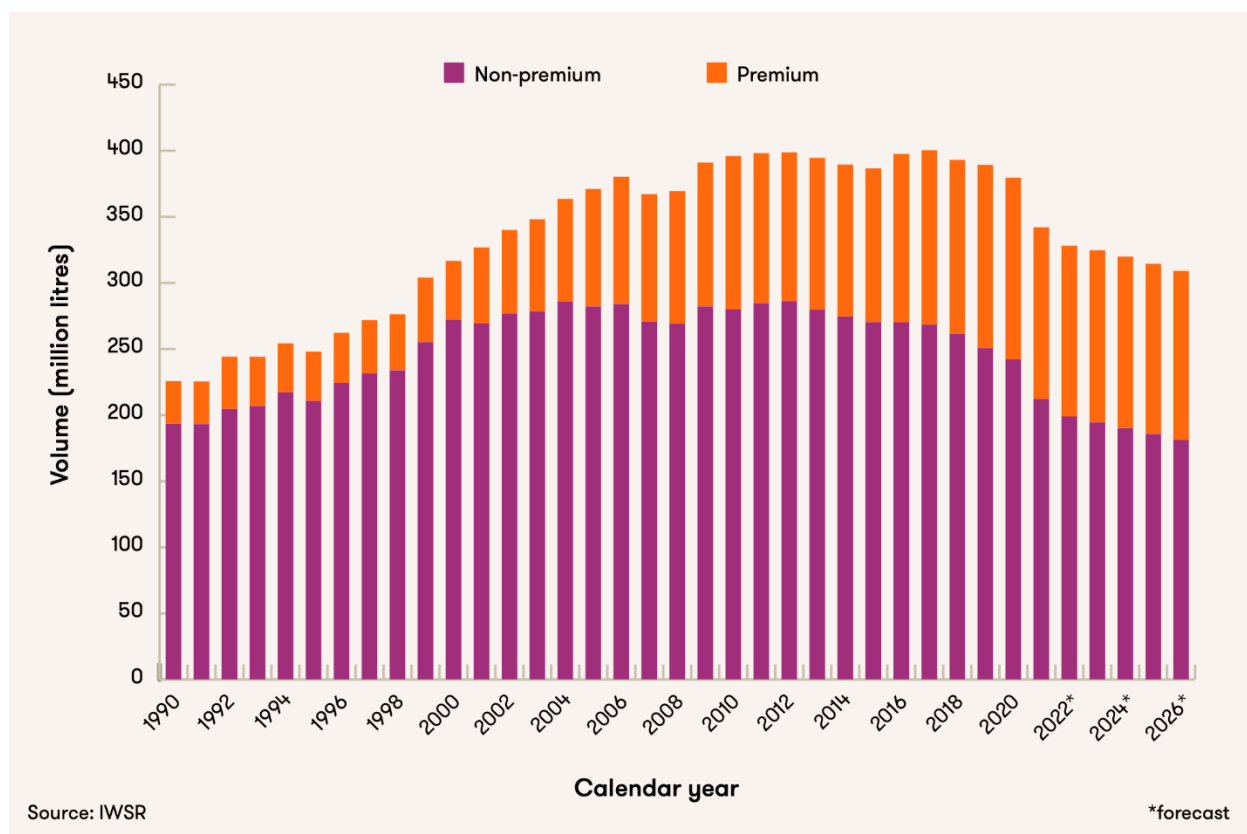
93. The South Australian Wine Industry Association submission notes the difficult conditions the industry has faced and we agree that the loss of export volumes to China has been a significant issue for the industry in recent years. However, the industry is adaptable, with the submission noting that the loss of this market has “caused wine makers to develop broader sales and distribution strategies”, albeit those have not fully matured. The high inventory levels that are noted in the submission presumably provide an offset to the labour costs associated with further production.

94. The submission provides various accounts of members experiences increases in shipping costs “in the last 12 months”, including of up to 600%, however Wine Australia’s Production Sales and Inventory Report of November 2022 states that Shipping costs have “reduced compared with their peak in 2020”, and cites a reduction in container fees of 60% between October 2021 to September 2022.⁶⁹

95. The industry is undoubtedly in transition due to shifts in global markets, however there appears to be some shift in domestic preferences to favour premium Australian wine (\$10+ per bottle) over non premium Australian wines. This is described in Wine Australia’s Production Sales and Inventory Report of November 2022 as set against a decline in consumption of wine overall. While consumption fell 15% between 2017 and 2021, the share of premium wine increased and the volume of premium wine fell only 1% over that period. The stronger preference for premium wine is expected to continue, as seen in Figure 21 below.

⁶⁹ Wine Australia, “[Production Sales and Inventory](#)”, November 2022, at p 21.

Figure 21: Consumption of wine in Australia by price segment



Source: Wine Australia, "[Production Sales and Inventory](#)", November 2022

96. It seems likely that larger producers would have the economies of scale necessary to take sub \$10 per bottles of wine to market. The larger producers are those which the South Australian Wine Industry Association describes in its submission as more likely to be covered by enterprise agreements. If there is some association between premium wine production and award reliance, then the current trend in the domestic market appears to be more favourable to award reliant employers.

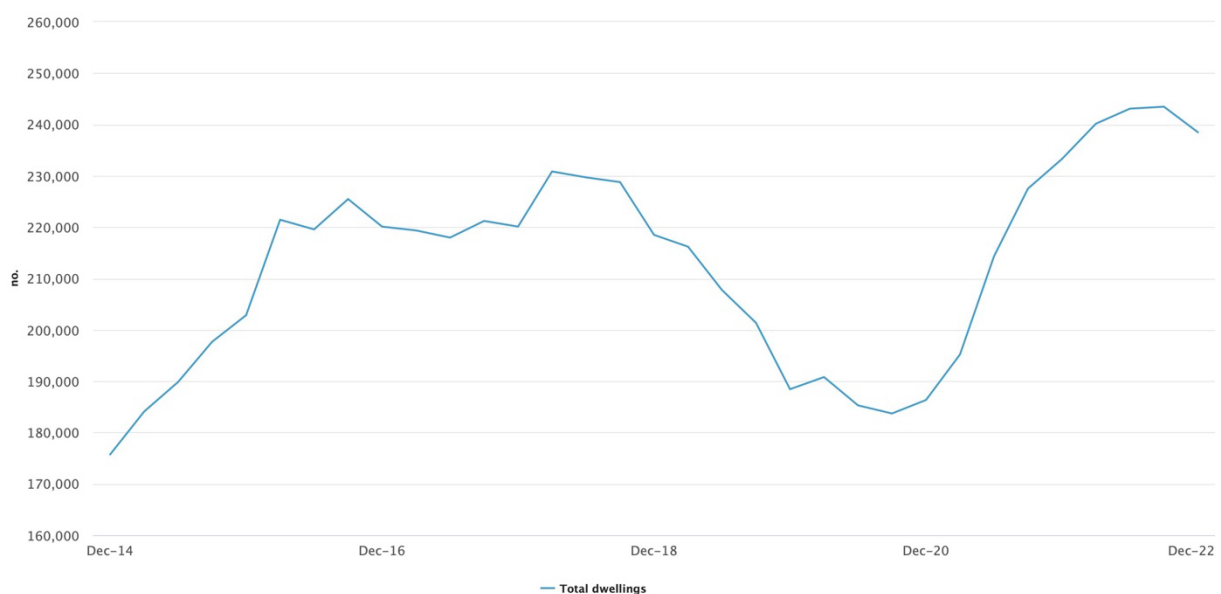
3.10 Housing Institute of Australia

97. The HIA submission includes statements about the likely activity in the home construction industry, which are difficult to reconcile, for example "HIA forecasts suggest the number of homes under construction will remain highly elevated for some time"⁷⁰ and "the pipeline of detached

⁷⁰ At page 8

house construction is expected to be exhausted in the first half of 2023". Recent activity in the construction industry has been distorted by both the very low interest rates available at earlier stages in the pandemic and the funds provided through the Homebuilder program. The latter permitted construction to commence as late as September 2022 for funded contracts signed at the conclusion of the program.⁷¹ September 2022 is the period where dwellings under construction, as measured by the ABS reached its high point, falling by approximately 5,000 in December 2022, as seen in Figure 22. Dwellings under construction would need to fall by around 40,000 to reach the pre-pandemic levels seen in December of 2019.

Figure 22: Dwellings under construction

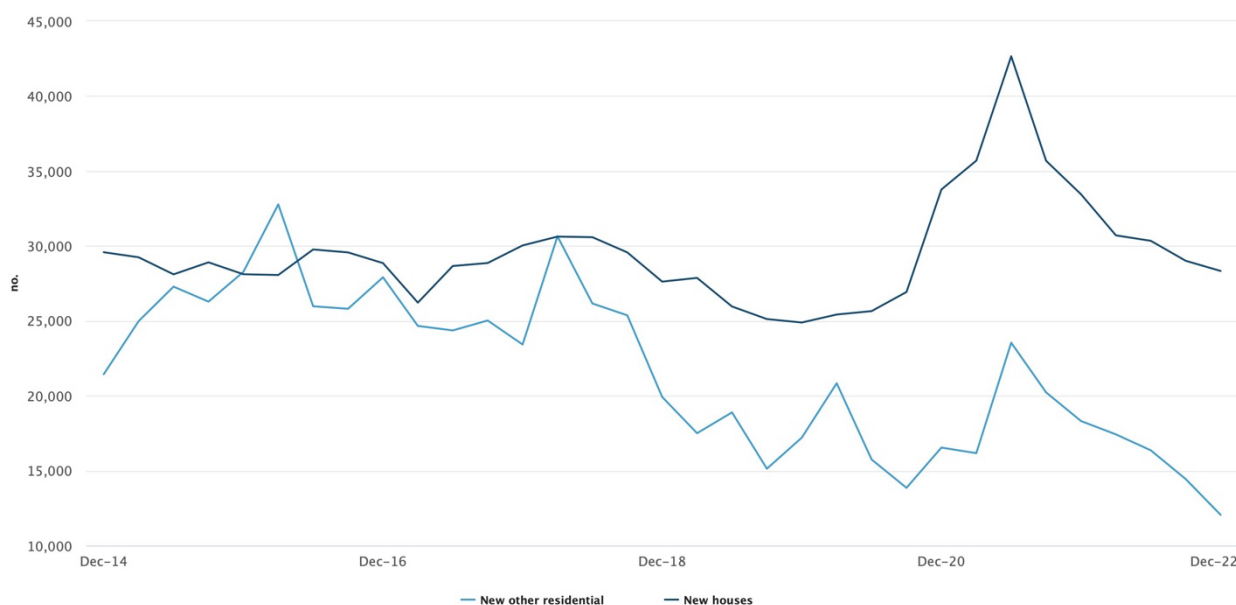


Source: Australian Bureau of Statistics, Building Activity, Australia December 2022

98. The peaks in dwellings under construction occurred 15 months after the peak in the commencements of new dwellings (Figure 23), suggesting that the still elevated levels of new house construction commenced in December 2022 will make a contribution to the pipeline of work through 2023 and likely into 2024.

⁷¹ Australian Government, [Homebuilder fact sheet](#)

Figure 23: Private dwellings commenced



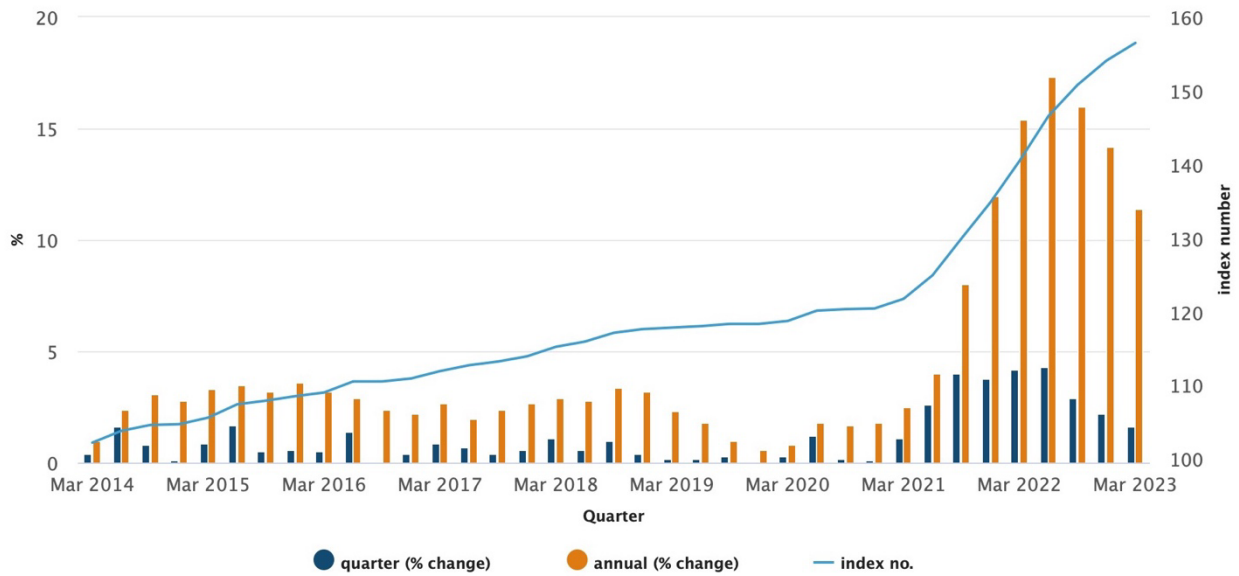
Source: Australian Bureau of Statistics, Building Activity, Australia December 2022

99. Commencements on new other residential dwellings has fallen to low levels relative to the medium term. This category of building includes semi-detached houses, townhouse, flats, units and apartments.⁷² The HIA attribute this slowing of construction of multi-unit homes least in part to delays brought about by supply constraints, and forecast construction of these homes to lift by 13.3%. This lift as supplies become more available would also contribute to the pipeline of work to be performed over the year ahead. We are inclined to agree with the analysis in the QLD Government’s submission that a record amount of work in the pipeline is expected to support dwelling construction in the near term.⁷³
100. Whilst we agree with the HIA that input costs have been a concern in recent times, particularly in association with fixed price building contracts, we note that these rising costs have been moderating along a clear trajectory since the peak in the June quarter of 2022, as seen in below.

⁷² ABS, [Building Activity, Australia methodology](#)

⁷³ At page 10-11

Figure 24: Producer Price Index, Inputs to the house construction industry



Source: Australian Bureau of Statistics, Producer Price Indexes, Australia March 2023

101. We do not comment here on the HIA’s recommendation that loosening lending standards would be a desirable policy reform at the present time.

3.12 Drycleaning Institute of Australia

102. In response to the submission of the Drycleaning Institute of Australia, which is to the effect that there are increased pressures on businesses in that sector, the ACTU responds as follows.

103. Increased costs said to affect the sector do appear to be getting passed on. Based on output producer price indexes published by the ABS, which measure the prices of outputs exclusive of taxes and margins, the price of laundry and drycleaning services rose 6.2% in the June 2022 quarter, 1.5% in the September 2022 quarter and 1.1% in the December quarter for a compounded increase of almost 9% across those three quarters.

104. The Drycleaning Institute’s submission also fails to disclose that there are sources of work beyond suits and shirts and office wear (for which the costs of cleaning would at least in part be tax

deductable by customers). Dry cleaning establishments often provide alternation and repair services as well as serving non-retail clients such as formal hire.

105. Whilst the Drycleaning Institute states at page 3 of its submission that there is a high proportion of small businesses in its industry, it would be wrong to assume that small dry cleaning establishments are necessarily small business, as many are in fact owned by larger businesses (including laundries that operate dry cleaning services). The IBISworld report relied on (and linked) in its submission indicates that the number of laundry and dry cleaning services businesses has increased every year since 2016, and the increase between 2022 and 2023 is larger than the five year average (2.9% v 2.4%). This is not consistent with the portrayal of the industry as declining and slow to recover from the pandemic, presented at pages 3-4 of the Drycleaning Institute's submission.

3.13 Laundry Association Australia

106. In response to the Laundry Association of Australia's submission, we refer to and repeat our submission immediately above (advanced in reply to the Drycleaning Institute of Australia) and respond further to the following points raised by the Laundry Association.

107. The Laundry Association submits that:
- a. Many workers in the sector left employment in the sector in order to secure more lucrative employment elsewhere;
 - b. The Laundry sector pays above-award wages, but despite this there is insufficient supply of staff.

It is submitted that these features of the laundry industry do not offer cause for moderation of the AWR increase this year – moreover they may support a greater increase.

108. That workers are seeking higher paid jobs outside of the laundry sector suggests that work in the laundry sector is undervalued compared to similar work. Accordingly, there is no cause for moderation on account of this factor – if anything, a significant increase in minimum wages may assist in alleviating the staff shortages said to exist by Laundry Australia.

109. In respect of payment of above-award wages, this again should be no cause for moderation. In fact, it suggests and that employers in the sector already have a capacity to pay greater than the prescribe minimum and that any increase to minimum wages will result in no actual cost increase to business associated with staffing costs. We understand that some commercial laundries do in fact pay above award wages by way of collective agreements, some with agreed set pay increases⁷⁴ and some linked to CPI or the decisions of the Panel⁷⁵. There are some significant large business operating in the dry cleaning and laundry sector, such as Specialised Linen Services, Sunfresh Linen, and AlSCO and ownership structures are not always apparent. For example, Specialised Linen Services, which has 8 facilities and approximately 4,000 customers⁷⁶, is owned by the multi billion dollar private equity firm Anchorage Capital partners.
110. The Laundry Association's ultimate position of opposing minimum wage increases "until the Government properly addresses the other costs that face our industry" is of no assistance to the Panel in applying the statutory criteria.

3.14 Government Submissions

111. The submissions of the Federal and State Governments are for the most part descriptive and will be of assistance to the Panel in its deliberations. There are however some particular matters where it is appropriate that we express a difference of opinion.
112. The submission of the QLD Government at pages 3 and 22 urges the Panel to balance the provision of a fair safety net for workers who have not benefited from collective bargaining with not becoming a disincentive for collective bargaining at the enterprise level. In our view, adopting such a position misstates the relevant requirements. The requirement to take into account the need to encourage collective bargaining is expressed in section 134 of the FW Act as one of many relevant considerations to take into account within an overall objective of ensuring that "modern awards, together with the National Employment standards, provide a fair and relevant safety net". The fairness of the safety net is what is to be strived for and the need to encourage collective

⁷⁴ E.g. [ALSCO, Linen Services Australia \(NSW\)](#)

⁷⁵ E.g. [Specialised Linen Services \(Brisbane\)](#), [Princess Laundry Services \(Victoria\)](#), [Ensign Services \(WA\)](#)

⁷⁶ See [Anchorage Capital Partners](#) portfolio description

bargaining is not expressed as a countervailing consideration that permits the Panel to cause the safety net to not be fair. More broadly, the conceptualisation of the need to encourage collective bargaining as a factor which necessitates moderation in the maintenance of the safety net is to assume a causal relationship that has not been established to date and the QLD government offer no evidence to persuade the Panel otherwise. In our view, the proper approach to considering the need to encourage collective bargaining that which is set out in Chapter 8 of our initial submission.

113. The Victorian Government appears to be encouraging the Panel to award differential increases workers depending on employee and industry characteristics, although their ultimate position is not altogether clear. Their views in this regard are expressed variously as follows:

“..the Victorian Government calls on the FWC to consider applying a higher increase to modern award wages for those award reliant workers who are in the lower paid and often female dominated sectors, such as Retail and Hospitality, Accommodation and food services and Health care and social assistance”⁷⁷

“The Victorian Government believes that this new research strongly supports the need to for a substantial increase to the NMW and modern award ages and consider a higher increase for those low paid employees under certain awards, who are predominantly women”⁷⁸

“During this year’s Annual Wage Review, by providing a substantial increase to the NMW and all modern award minimum wages, the FWC has the opportunity to provide a further deserved increase to the wages of aged care workers and other workers in the health care and social assistance sectors – who are primarily women – ahead of the staged and provisional increase of 15 per cent”⁷⁹

114. It is rare for the Panel to provide differential increases in modern award wages, and it is more likely to do so where the relative living standards of the low paid have deteriorated significantly and real wages for the most vulnerable have diminished. That is not the approach we have encouraged the Panel to take this year. However, if the Panel is minded to take that approach this year, we would discourage the Panel from doing so on the basis of industry divisions, as the Victorian Government appears to be encouraging in at least some of the extracts above. Whilst reducing

⁷⁷ At [13] at [107]

⁷⁸ At [43]

⁷⁹ At [67]

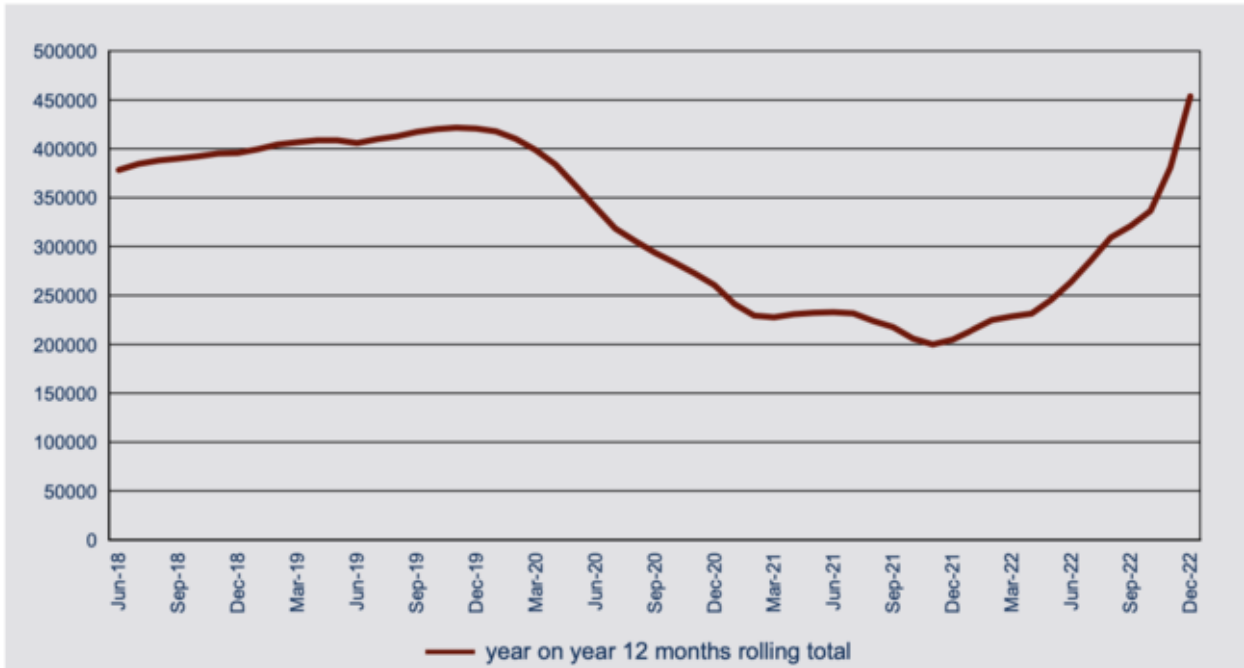
gender pay gaps and addressing gender based undervaluation are clearly relevant and legitimate goals, they can be achieved by an intervention that benefits all low paid workers, because women are more likely to be paid at award rates than men even in the same industries. In our view, an approach which excludes particular modern awards from any higher increase applicable to lower paid classifications exclusively on the basis that they are male dominated (E.g. Meat Industry Award, Storage Services and Wholesale Award, Food, Beverage and Tobacco Manufacturing Award⁸⁰) would be difficult to reconcile with the totality of considerations that the Panel must have regard to in the review.

115. The Victorian government expresses concern at paragraph 70 about worsening worker shortages, particularly in low wage sectors. Whilst we agree there has been a high demand for workers amid high job vacancies, we believe that in the near term capacity constraints are likely to ease owing to the increased supply of international students, who often seek work in these sectors (as acknowledged at paragraph 98 of the Victorian Government submission). Data from the Department of Home Affairs shows a dramatic increase in the number of student visas granted in 2022 particularly in the later months, more than compensating for the decline observed early in the pandemic, as seen in Figure 25 below.

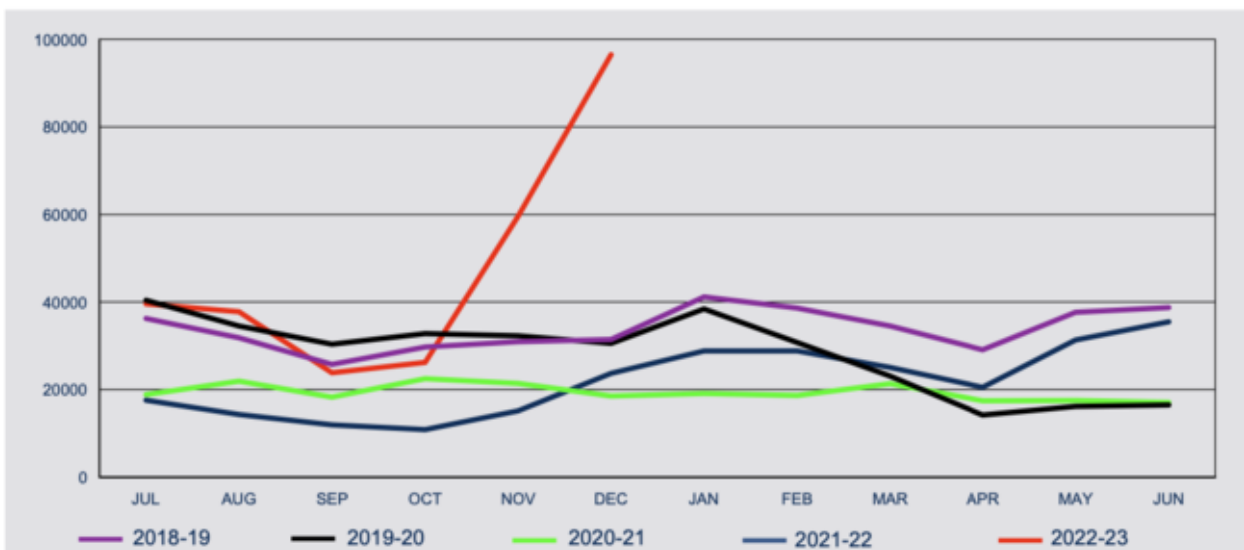
⁸⁰ Yuen, K & Tomlinson, J, "A profile of employee characteristics across modern awards", at Appendix B

Figure 25: Student Visas granted, 2018-2022

2.01 Number of student visa applications granted by month - year on year 12 months rolling total



2.02 Number of student visa applications granted in 2022-23 to 31 December 2022 by month - comparison with previous four financial years



Source: Reproduced from Department of Home Affairs, Report [BR0097](#) on Student Visa and Temporary Graduate Visa Program

- 116. Whilst we share the Victorian Government’s concerns about wages for younger workers at pages 26-27 of its submission and agree that unemployment tends to be high for younger age groups,

we would not describe underutilisation among this group as “elevated”. We regard the current levels of utilisation for young workers as exceptionally good. The underutilisation rate for 15-24 year olds is currently 22.7% (March 2023), compared to 30.7% in February 2020⁸¹ and the most recent ABS volume measure of underutilisation for 15-24 year olds was 12% in February 2023, the lowest on record.⁸²

⁸¹ ABS Labour Force, Table 22

⁸² ABS Labour Force Detailed, Table 23b

4. RESPONSE TO QUESTIONS ON NOTICE

117. This final section of our submission responds to the questions on notice published on 21 April.

4.1 Economic and labour market conditions

118. At paragraph 2 of the question on notice, the Panel asks the ACTU to elaborate on how it should consider adopting an approach to future projections of inflation that reduces, as far as possible, the risk of real wage cuts continuing for award reliant employees. The ACTU welcomes the question, given its centrality both to this review and the two previous reviews, and especially to whether or not the needs of the low paid are being met.

119. Future projections of the economy can provide valuable insights for the Panel, however more consideration could be given to their uncertainty, and their value discounted accordingly where appropriate. In this regard, the Panel has placed significant weight on RBA projections of inflation. Yet, as the recently published independent review into the RBA found:

“The RBA was initially slow to respond to rising inflation in 2022, along with many other central banks. An overemphasis on wages as a driver of persistent inflation, reliance on forecasting and modelling tools that offered limited insights on the supply side of the economy and the way forward guidance and the yield target had been designed and used all contributed.”⁸³

120. Reviewing a range of forecasting from a range of institutions can partly assist in this regard. A deeper dialogue with the RBA on how it intends to improve its forecasting might also assist. However, there will always be significant uncertainty with economic projections. In this regard, the ACTU continues to support this observation of the Panel in its 2012-13 review decision:

“To the extent that the forecast economic indicators do not ultimately reflect the actual performance of the economy, this forms part of our broad assessment and our consideration of the actual indicators in subsequent reviews.”⁸⁴

Two implications flow from this statement. Firstly, that more weight should be given to the actual performance of the economy when the Panel makes its assessment. Secondly, that this assessment should also include reviewing the discrepancy between forecasts the Panel relied on

⁸³ Australian Government, *An RBA fit for the Future: Review of the Reserve Bank of Australia*, (March 2023) page 3

⁸⁴ [2013] FWCFB 4000 at [334].

in previous reviews and what ended up occurring. Applied to the present situation, the ACTU's initial submission provides detail on the significant loss in real wages of minimum and award wage workers given this discrepancy that should be addressed in the current review.

121. Jericho and Stanford also examine the recent real terms wage cuts faced by working reliant on the AWR. They find that to return to the pre-pandemic trend, the minimum wage would need to rise by 11% in nominal terms as a result of this review.⁸⁵ In that light, the ACTU claim for 7% is modest.
122. Our final reflection on how the Panel should handle future projections on inflation, is to recognise that its decision will not have a significant impact on it. The Panel observed last year that, "We accept the need for moderation in order to constrain the inflationary pressures arising from our decision."⁸⁶ Yet, recent evidence shows that there has been no meaningful correlation between AWR decisions and inflation, and that a 7% increase would have an almost negligible impact on prices and should be well covered within the RBA's target range for inflation, as discussed earlier in this reply submission.

4.2 Relative living standards and the needs of the low paid

123. In response to the question put at paragraph 5, information about work status, personal income and industry is included in the Microsoft Excel file "ASKDataAdditionalMaterial.xlsx" filed with this submission. These attributes are not weighted or otherwise controlled for in the research methodology. In Q1 2023, 995 respondents to the ASK Survey were not currently working. The nearest proxy for assessing the proportion of such persons in the labour force is that 64% of the 995 indicated that they were retired, and 34% indicated that they were simply not gainfully employed.
124. The key respondent cohorts which we drew attention to in our earlier submission, from paragraphs [262] –[276] were:
- a. Workers;
 - b. Workers earning less than \$52,000 *per annum*;

⁸⁵ Jericho and Stanford, *Ibid.* page 5

⁸⁶ [2021] at [179]

- c. Casual workers;
- d. Workers in insecure work; and,
- e. Workers in award-reliant industries;

All of whom are, axiomatically, currently employed (in the general sense).

125. For the purposes of the ASK survey, workers in award reliant industries are defined (see “Definitions” on the last page of Appendix A to our initial submission) as: ‘Current workers who are mainly working in 'award reliant' industries, i.e. administration & professional services / community & disability services / entertainment, arts & recreation / health / hospitality, tourism & food services / retail.’
126. In response to the question put at paragraph 7, we have well developed views concerning how the minimum wage ought to be set and the benchmarks or targets that should be considered in maintaining it. Those views have been informed by international developments including those discussed in section 5.4 of our initial submission and their historical and contextual underpinnings, such as:
- a. The Constitution of the International Labor Organization in 1919 calling for the “provision of an adequate living wage”.
 - b. The 1970 ILO Convention on Minimum Wage Fixation referring to minimum wages being set having regard to “the needs of workers and their families, taking into account the general level of wages in the country, the costs of living social security benefits and the relative living standards of other social groups”; and
 - c. The 1961 European Social Charter and the 1989 EU Community Charter of the Fundamental Social Rights of Workers both recognising the rights of workers to remuneration that will provide a “decent standard of living”.
 - d. The ICESCR of 1976, which also recognises the right of workers to “just and favourable working conditions” including remuneration which provides “a decent living for themselves and their families”
127. In our view, the minimum wage in Australia has shifted too far from the basic wage established in the Harvester decision set by reference to the “normal needs of the average employee, regarded as a human being living in a civilised community”, and is out of step with international

developments. Our policy position is that we need to restore Australia’s minimum wage to a living wage to uphold the principle that workers should be fairly recompensed for their labour, earn enough to live with dignity and not live in poverty. Whilst the existing policy framework allows us to achieve incremental steps towards our goal of a living wage, it does not require the national minimum wage to be a living wage. In practice the National Minimum Wage has been drifting further away from benchmarks considered to be a living wage, for example 60 or two-thirds of median earnings. The NMW was 68 percent of median wages in 1987 but today is just 53%.

128. Within the existing policy framework, the Panel is required to “take into account” the national minimum wage that it proposes to set in a Review when making determinations to vary modern award minimum wages.⁸⁷ Outside of a Review, modern award minimum wages can only be adjusted on work value grounds.⁸⁸ The concept of work value, whilst imperfect in its execution as alluded to in paragraphs 8 and 9 of the questions on notice, ensures that there is some rational basis for different wage levels across the award system and implies a decision has been made that each classification in that system has some work value. The C14 classification level in the *Manufacturing Award* and in most others where an identical rate applies, implies nominal work value because it applies almost exclusively to new workers receiving instruction and gaining competency.
129. Conversely, the minimum wage is set without any requirement to assess work value. This is logical in the current policy framework because it is impossible to anticipate with precision what work will be performed by a person receiving that wage, the skill or responsibility involved in performing that work or the conditions under which the work will be performed. All that the Panel has to operate on is an *assumption* that the work has some at least nominal value (or the job would not exist) and the knowledge that the work lies outside the award system (albeit for reasons unknown).
130. In our view, there is a rational basis for aligning the minimum wage to the C14 rate. In this Review, we are seeking an increase to the minimum wage and modern award minimum wages including the C14 rate. Whilst benchmarking the minimum wage to the C13 rate would provide a welcome

⁸⁷ s. 285(3)

⁸⁸ S. 157

lift to the national minimum wage, it would result in a situation where there were modern award reliant workers paid at the level of the national minimum wage or less, despite having had their work value assessed. That is, some workers with assessed work value would receive no premium for that work value compared to those with no assessed work value, and some would also receive lower wages compared to a person with no assessed work value. For this reason, we would consider benchmarking to the minimum wage rate to the C13 rate as not consistent with the existing policy framework unless further steps were taken to eradicate the C14 rate from the modern award system.

4.3 Gender equity

131. In response to the questions put at paragraphs 8-12, the ACTU responds as follows.

4.3.1 Utility and weight

132. We addressed the matters raised in paragraph 8 in Section 2.5 of our initial submission. Our view is that the quoted proposition from the 2017-18 Review is not valid in light of the new ss 284(1)(aa) and 134(1)(ab), which require the Panel to have regard to the need to *achieve* gender equality, including by *eliminating* gender-based undervaluation of work. To the extent that it ever was, we do not think it is now open to the Panel to conclude that this Review has no work to do in relation to gender-based undervaluation, as this would mean that its inclusion in the minimum wages objective would be meaningless – which cannot be what the Parliament intended. Rather, it is a question of how this matter is to be addressed through the Review, and how this Review interacts with other mechanisms and the work that will be undertaken by the new expert panels. This is discussed further in our response to question 9 below.

133. The weight to be given to the new s 284 (1) (aa) is addressed to some extent in Section 2.6 of our initial submission, as well as in our response to question 9 below. It is a relevant consideration that the Panel is required to take into account. In doing so, the Panel must at the very least acknowledge that the more recent amendments frame gender equality as a desirable end in itself, and require the FWC to take proactive steps to identify and at least consider how it could mitigate or eliminate gender-based differentials. At any rate, gender-based undervaluation is simply one

element of s 284(1)(aa) – the remainder of which requires the Panel to consider equal remuneration and addressing gender pay gaps within the rubric of the need to achieve gender equality. In circumstances where the majority of low paid award reliant workers are female, it is inescapable that these are relevant considerations for the Panel in this year's review.

4.3.2 Systemic gender based undervaluation

134. The matters discussed at paragraph 9 were canvassed to an extent in Part 2.7 of our initial submission. As to the specific question put in subparagraph 9(i), we agree that findings from the Aged Care Work Value case, as well as the President's Statement on Occupational segregation and gender undervaluation, indicate that modern awards covering female dominated industries and occupations may have been subject to systemic gender undervaluation.
135. As to the specific question put in subparagraph 9(ii), our view is that these matters are required to be taken into account in the Review pursuant to new ss 134(1)(ab) and 284(1)(aa) which both require the Panel to have regard to the need to achieve gender equality, including by eliminating gender-based undervaluation of work.
136. The question put in subparagraph 9(iii) raises some practical difficulties. Given the majority of low paid award-reliant workers are women, increases to award wages 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. The Review thus provides a significant and meaningful opportunity to address gender-based undervaluation to a degree. The ACTU submits that the new ss 134(1)(ab) and 284(1)(aa) significantly strengthen the case for a higher increase to the NMW and award minimum wages.
137. However, clearly a higher uniform increase will not in and of itself achieve the *elimination* of gender-based undervaluation, which requires a multifaceted response. There is detailed work to be done to address the gender-based undervaluation of work in female dominated industries and sectors. Given ss 134(1)(ab) and 284(1)(aa), arguably that work could be done in the context of this Review, by conducting an assessment of work performed under awards to addresses gender-based undervaluation of work in female dominated sectors and industries, and awarding tailored increases to different industries where undervaluation is apparent – for example, awarding higher

increases in female dominated sectors and awards to address the historical and ongoing gender-based undervaluation of work in those industries.

138. We recognise that there are a few factors weighing against the Panel taking such a comprehensive approach in this Review. These reasons are outlined in our initial submission at paragraphs 81-86, and include the fact this work is likely to be detailed, intensive, and take significant amounts of time and evidence from those with experience in relevant industries and experts (as demonstrated by the approach taken by the FWC in the Aged Care Work Value case); the statutory constraints of the Review make it unlikely that such an exercise could be undertaken for each award or industry; and such an approach may not necessarily be consistent with the role of the new Expert Panels, and may cut across and pre-empt their work and analysis.
139. The ACTU submits on balance that a more comprehensive approach to assessing gender-based undervaluation in different awards and industries should not form a part of this Review. This Review should however build on the identification of awards that may be affected by gender-based undervaluation (and therefore offend the equal remuneration principle) due to their coverage of female dominated industries, undertaken by former Fair Work President Justice Iain Ross in the President's Statement on Occupational segregation and gender undervaluation, which identified 30 awards covering female dominated sectors which could be subject to gender-based undervaluation. A program of work for investigating gender based undervaluation led by the Commission with stakeholder involvement is highly desirable and less likely to lead to complex and protracted proceedings. Such a program of work could be initiated by way of an investigation and report under section 290 of the FW Act and the formation of a representative steering committee in due course as the investigation continues. An Expert Panel or Expert Panel member are among those who could, under section 290(2), be directed to conduct such an inquiry.
140. Further, the ACTU submits that whether a more comprehensive approach should be taken is an open question which should be regularly revisited in future Reviews. It is possible that it could become appropriate in future for a more expansive approach to be taken, depending on the future operation of the new expert panels, and the kind of work they are able to complete within certain timeframes. There may be a role for future Reviews to play, especially if they have the benefit of work and research undertaken by the new expert panels, such as the extent of gender-based

undervaluation in certain industries, and the development of case law on the interpretation of the revised equal remuneration principle. There could also potentially be a role for future Reviews to deal with the consequences flowing from the work of the new expert panels such as possible distortions or changes in relativities across awards. The ACTU submits that this question could be revisited in the 2023- 2024 Review, potentially as a preliminary issue, if the Panel feels it is unable to give these suggestions due consideration at this stage in the proceedings this year.

141. In conclusion, for the purposes of this Review, the ACTU submits that it is possible to address gender-based undervaluation to some extent by significantly increasing the NMW and modern award minimum wage rate. Some progress can be made towards achieving gender equality, and addressing gender pay gaps and gender-based undervaluation, without the Panel needing at this stage to investigate the question of the gender-based undervaluation in particular industries and awards that would necessitate a far more comprehensive analysis.

4.3.4 Addressing gender pay gaps

142. It is well established from previous decisions that the obligation to ensure that the safety net is 'fair and relevant' requires the Panel to consider the issue of gender pay equity, and in particular the gender pay gap, as part of its work in the Review. The Panel has accepted that gender equity and the gender pay gap also arises for consideration in respect of promoting social inclusion through workforce participation, because increases in the minimum and award wages may have beneficial effects on women's participation in the workforce.
143. The Panel has consistently found that because women are disproportionately represented among the low paid and award reliant, an increase in minimum wages is likely to promote gender pay equity and have a beneficial effect on the gender pay gap. The Panel is now required to have regard to the addressing of gender pay gaps as a goal in and of itself (rather than being merely relevant to other considerations), which only serves to strengthen the considerations articulated above.
144. Due to the relatively high number of women workers reliant on minimum wages, national minimum wage and modern award wage increases provide a significant and meaningful opportunity to reduce the gender pay gap to a degree. In response to question put at paragraph 10, our view is that a significant increase will help to address gender pay gaps as referred to in s284(1)(aa).

4.3.5 Measuring gender pay gaps

145. There are a number of measures that are used to measure the gender pay gap, including the most commonly cited measure, the gender pay gap in average weekly ordinary full-time earnings (currently 13.3%). However this measure excludes part-time employees and overtime earnings. The true gender pay gap, factoring in hours worked and all pay earned, is 28.1%. The ACTU used three different measures of the gender pay gap in its submission - Adult average weekly ordinary time earnings; Adult average weekly full time earnings including overtime and bonuses, and Average weekly total earnings. Our response to the question put at paragraph 11 is that it is appropriate to use all three of these measures as they each provide insight into different causes of the gender pay gap (such as gender discrimination and occupational segregation, women being over-represented in part time work, the impact of caring responsibilities, differing opportunities for career progression and promotion) and will therefore indicate progress made in relation to those varying causes. Hourly measures may be more informative of base rate disparities or inequalities or barriers in the offering or acceptance of overtime or work attracting penalties.
146. In addition, gender pay gaps in specific industries should be used to ensure that progress on reducing the gender pay gap is being made across the economy and across all industries, and not just in certain sectors, and will help to identify the sectors where gender pay gaps are the most persistent. Finally, the gap in superannuation balances should also be used as it is a helpful measure of the cumulative impact of all of the various causes of the gender pay inequity, and helps to assess overall progress in closing the gender pay gap.
147. In response the question put at paragraph 12, in our view all of the measures listed above should be used as part of ongoing assessments of the gender pay gap, as well as any measures that are identified in future as being particularly helpful in measuring specific causes of the gender pay gap.

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