



# Summary of Decision

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## Annual Wage Review 2019–20

C2020/1

[2020] FWCFB 3501

### 1. Introduction

[1] The *Fair Work Act 2009* (Cth) (Act) requires the Commission, constituted by an Expert Panel for annual wage reviews (Panel), to conduct and complete a review of the national minimum wage (NMW) and modern award minimum wages in each financial year (the Review). The Panel must make a NMW order and may set, vary or revoke modern award minimum wages. The NMW order applies to award/agreement free employees<sup>1</sup> and modern award minimum wages are the minimum wages contained in modern awards.<sup>2</sup>

[2] This Review is being undertaken during a global pandemic. The outbreak of the coronavirus, COVID-19, and the measures put in place to contain the spread of the virus have led to significant shifts in the way work and society is conducted, with substantial economic consequences. Variations have been made to the Review timetable to allow parties to provide submissions regarding the impacts of the pandemic as they have unfolded and to comment on the most recent available data. Final public consultations took place on 10 June 2020.

[3] The Panel received submissions from the Australian Government, several state governments, bodies that represent the interests of employees and employers, other entities and individuals. These proposals are set out in Appendix 2. The proposals in respect of the adjustment of the modern award minimum wages were sharply polarized.

[4] The ACTU proposed a uniform increase of 4 per cent to the NMW and modern award minimum wages.<sup>3</sup> The Victorian State Government proposed an increase of at least 3 per cent to the NMW and a ‘fair and reasonable increase’ to modern award minimum wages. Other parties also proposed increases, of varying amounts.

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<sup>1</sup> The NMW order sets both the NMW and special NMWs for employees who are juniors, to whom training arrangements apply, or who have disabilities; and applies to award/agreement free employees. The NMW order additionally sets the casual loading for award/agreement free employees. An award/agreement free employee cannot be paid less than the rate of pay specified in the NMW order (see ss 294–299 of the Act). Further, if an enterprise agreement applies to an employee and the employee is not covered by a modern award, then the employee’s base rate of pay under the enterprise agreement must not be less than the rate specified in the NMW order (s.206(3) of the Act).

<sup>2</sup> Including classification rates; wage rates for junior employees, employees to whom training arrangements apply and employees with a disability; casual loadings and piece rates.

<sup>3</sup> ACTU submission, 20 March 2020, at para. 5.

[5] The Australian Chamber of Commerce and Industry (ACCI),<sup>4</sup> Australian Industry Group (Ai Group),<sup>5</sup> National Retail Association (NRA),<sup>6</sup> National Farmers Federation (NFF),<sup>7</sup> Restaurant and Catering Industry Association (R&CA)<sup>8</sup> and Australian Retailers Association (ARA)<sup>9</sup> proposed that there be no increase to the NMW and modern award minimum wages.

[6] The Australian Government and most state governments did not propose a specific quantum increase to the NMW and modern award minimum wages.

[7] The Australian Government urged the Panel to take a cautious approach in light of the continuously emerging and wide-ranging potential impacts of the COVID-19 pandemic and to prioritise keeping Australians in jobs and maintaining the viability of businesses.<sup>10</sup>

[8] A key contextual consideration in relation to the present proceedings is the statutory constraints regarding the conduct of Reviews. In particular, section 285(1) provides that the Panel ‘must conduct and complete an annual wage review in each financial year’ (emphasis added). It follows that 30 June 2020 provides the outer limit for the completion of the 2019–20 Review.

[9] As a practical matter the decision had to be published by 19 June 2020, in order to allow sufficient time for draft variation determinations to be published and for interested parties to submit corrections or other amendments to the draft determinations. Given these constraints the decision has focussed on the specific matters which the Act requires the Panel to take into account.

## 2. The Decision

### 2.1 The majority decision (Justice Ross; Vice President Catanzariti; Deputy President Asbury; Commissioner Hampton, Mr Ferguson and Ms Labine-Romain)

[10] The majority observed that the COVID-19 pandemic ‘casts a large shadow over the current economic environment.’<sup>11</sup>

[11] While predominantly a public health issue, federal and state government-imposed restrictions to contain the spread of the virus, have had a profound economic impact.<sup>12</sup> The restrictions have included travel restrictions (both international and domestic) and social distancing rules. The social and economic consequences of these measures have been unprecedented and have led to business closures and job losses. All but ‘essential workers’ were forced to stop work or modify their work arrangements. These actions have significantly

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<sup>4</sup> ACCI supplementary submission, 29 May 2020, at para. 7.

<sup>5</sup> Ai Group supplementary submission, 29 May 2020 at pp. 3; 11.

<sup>6</sup> NRA submission, 27 March 2020, at pp. 1; 4.

<sup>7</sup> NFF submission, 27 March 2020, at p. 6.

<sup>8</sup> R&CA submission, 19 March 2020 at paras 8–9.

<sup>9</sup> ARA supplementary submission, 29 May 2020 at p. 2.

<sup>10</sup> Australian Government submission, 3 April 2020 at para. 5.

<sup>11</sup> [2020] FWCFB 3500 at [23].

<sup>12</sup> See Fair Work Commission (2020), *Information note—Government responses to COVID-19 pandemic*, 16 June.

reduced domestic activity and resulted in ‘a large and near simultaneous contraction across the global economy.’<sup>13</sup>

**[12]** The restrictions imposed by Federal and State governments; and the range of packages to support households and businesses are detailed in Appendix 1 of the decision.

**[13]** Chapter 1 sets out the reasoning for the decision of the majority, the rates set for the NMW order and the determinations made regarding modern award minimum wages. Chapter 2 deals with the statutory framework and with what the Panel can and can’t do in a Review. Chapters 3–6 deal with the statutory considerations the Panel is required to take into account.

**[14]** Some of the key changes to the economy evident in this Review include:

- gross domestic product (GDP) growth is lower and GDP is expected to fall significantly over 2019–20 before a forecasted strong rebound;
- real net national disposable income (RNNDI) increased by 2.4 per cent over the year to the March quarter 2020 compared with 3.7 per cent over the year to the December quarter 2018;<sup>14</sup>
- the profits share of total factor income increased by 0.4 percentage points, from 28.6 per cent in the December quarter 2018 to 29.0 per in the March quarter 2020;<sup>15</sup>
- labour productivity increased by 1.4 per cent over the year, higher than at the time of the last Review (0.8 per cent);<sup>16</sup>
- the unemployment rate is higher, (7.1 per cent compared to 5.1 per cent in trend terms at the time of the last Review). Hours worked reduced by 9.5 per cent between March and April, which was double the decrease in employment (4.7 per cent). The decline in hours worked slowed in May, with hours worked reducing by 0.7 per cent, while employment fell by 1.8 per cent.<sup>17</sup>;
- the age-adjusted participation rate also declined significantly compared with the time of the last Review;<sup>18</sup>
- headline inflation increased significantly, particularly due to effects from the drought and bushfires, as well as COVID-19. <sup>19</sup> Underlying inflation also increased to a lesser extent (the trimmed mean increased from 1.6 per cent over the year to the March quarter 2019, to 1.8 per cent over the year to the March quarter 2020);<sup>20</sup> and
- wages growth, as measured by the Wage Price Index (WPI), declined slightly.

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<sup>13</sup> RBA (2020), *Statement on Monetary Policy*, May, p. 1.

<sup>14</sup> [2019] FWCFB 3500 at [29].

<sup>15</sup> Statistical report (version 13) 17 June 2020, Chart 3.1.

<sup>16</sup> [2019] FWCFB 3500 at [29].

<sup>17</sup> ABS, *Labour Force, May 2020*, Catalogue No. 6202.0

<sup>18</sup> [2019] FWCFB 3500 at [29].

<sup>19</sup> ABS, ‘Main contributors to change’, *Consumer Price Index, Australia, March 2020*, Catalogue No. 6401.0.

<sup>20</sup> *Ibid.*

[15] The majority noted that the Australian economy is going through a significant downturn and is almost certain to enter a technical recession, upon the release of the June quarter ABS *National Accounts*, the first in almost 30 years. It has been caused by an unprecedented health crisis and the impact of measures to prevent the spread of the COVID-19 virus. There was also some indication of slowing in the economy before the pandemic, as a result of the bushfires experienced in parts of Australia.

[16] The majority decision described the shock to the labour market as ‘unprecedented’. The unemployment rate has increased significantly; the number of hours worked has fallen and the underemployment rate has increased substantially.

[17] The restrictions have been successful at flattening the curve and slowing the spread of COVID-19. New cases are at a significantly lower level than at the peak in late March.

[18] The speed of the economic recovery is dependent on the health outcomes which in turn affects the ability of governments to remove restrictions. The strictest limitations to contain the spread of the virus were imposed from late March, as the number of confirmed cases increased. Some states and territories began easing these restrictions from late April. By mid-May, all states and territories had begun to reduce the limitations on work and social gatherings, although border controls for most states and territories remain.

[19] The COVID-19 pandemic has been compared with different periods of economic downturns,<sup>21</sup> but the causes and potential consequences are very different. This shock is different to the depression of the 1930s and our path to recovery is different. At [36] – [37], the majority noted that:

‘The form and shape of our pathway to recovery is uncertain and heavily contested. However, it is generally accepted that the pathway to recovery is largely dependent on how well the spread of the virus is contained, which will affect the extent to which restrictions can be eased with a consequent impact on business and consumer confidence.

The pace of recovery beyond the June quarter 2020 is especially uncertain.’<sup>22</sup>

[20] The RBA’s *May Statement on Monetary Policy* presents various scenarios, reflecting what it describes as the ‘incredibly uncertain’ outlook.<sup>23</sup> A ‘plausible baseline scenario’ sees restrictions mostly removed by the end of September, apart from international travel. With the spread of the virus ‘limited’, growth is considered ‘to turn around in the September quarter and the recovery would strengthen from there.’<sup>24</sup> Based on these conditions, the RBA expects the unemployment rate to decline substantially from its June 2020 peak of around 10 per cent but to remain above its pre COVID-19 level in 2 years’ time. Underlying inflation is expected to

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<sup>21</sup> For example, ACCI submission, 29 March 2020 at paras 22–24, 32, 35, 71; ACTU submission in reply, 4 May 2020 at para. 15.

<sup>22</sup> [2020] FWCFB 3500 at [36]–[37]; citing RBA (2020), *Statement on Monetary Policy*, May 2020, p. 87.

<sup>23</sup> Senate Select Committee on COVID-19 (2020), *Proof Committee Hansard*, Commonwealth of Australia, 28 May, p. 2.

<sup>24</sup> RBA (2020), *Statement on Monetary Policy*, May, p. 85.

remain below 2 per cent over the next couple of years.<sup>25</sup> The RBA's baseline forecasts are summarised in Table 1.2 of the majority decision.

[21] The majority also note that based on the declining infection rate and earlier easing of restrictions, the RBA Governor has observed that since the baseline forecast scenario was published, conditions have been 'perhaps fractionally better than the baseline' scenario<sup>26</sup> and that 'it is possible that the depth of the downturn will be less than earlier expected'.<sup>27</sup>

[22] The impact of the COVID-19 pandemic has been felt across the economy; but the extent of its impact has not been consistent across all sectors of the economy. While some industries have been substantially affected, other sectors have been affected to a much lesser extent.

### *The adjustment*

[23] ACCI, Ai Group and other employer organisations submitted that there should be no increase to the NMW or to modern award minimum wages. The majority accepted that the economic considerations that the Panel is required to take into account weigh in favour of greater moderation in terms of the outcome of the Review, noting that:

'The very high level of underemployment warrants more weight being given to the potential impact of increasing minimum wages on hiring and re-employment. Further, in a recession, when aggregate demand is weak, the employment effects of increases in minimum wages are likely to be more significant and the capacity of employers to absorb wage increases or to pass them on to consumers in the form of higher prices is more limited. However, there are some countervailing considerations.'<sup>28</sup>

[24] The majority acknowledged that there are some indications that the economy is beginning to recover, but went on to say:

'... we do not wish to overstate the significance of these matters. As noted in the 2 June 2020 Statement by the RBA Governor on the Board's monetary policy decision, "...the outlook, including the nature and speed of the expected recovery, remains highly uncertain and the pandemic is likely to have long lasting effects on the economy".'

In our view there are significant downside risks in the period ahead. These include that the international outlook remains highly uncertain, the future of fiscal support to the domestic economy (including through JobKeeper) is unknown and there is the risk of a second wave of COVID-19 infection and the reimposition of extensive restrictions.<sup>29</sup>

[25] The majority also accepted that the impact of an increase in minimum wages on aggregate demand, albeit modest, is relevant because the Panel is obliged to take into account

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<sup>25</sup> Ibid, pp. 88–89.

<sup>26</sup> Senate Select Committee on COVID-19 (2020), *Proof Committee Hansard*, Commonwealth of Australia, 28 May, p. 2.

<sup>27</sup> Lowe P (2020), *Statement by Philip Lowe, Governor: Monetary Policy Decision*, 2 June.

<sup>28</sup> [2020] FWCFB 3500 at [93].

<sup>29</sup> [2020] FWCFB 3500 at [100]–[101]; citing RBA (2020), *Statement by Phillip Lowe, Governor: Monetary Policy Decision*, 2 June.

the likely impact of any exercise of modern award powers on, relevantly, the performance of the national economy (s.134(1)(h)).

[26] The majority concluded that the economic considerations weigh in favour of greater moderation in terms of the outcome of the Review. The majority go on to observe that the various economic considerations<sup>30</sup> are not the only matters the Panel is required to take into account; other matters include ‘relative living standards and the needs of the low paid’:

‘These statutory considerations we are required to take into account inform the evaluation of what might constitute ‘a *fair* and relevant minimum safety net of terms and conditions’ and ‘a safety net of *fair* minimum wages’. Fairness in this context includes the perspective of employees and employers, and the Act requires the Panel to take into account *all* of the relevant statutory considerations.’<sup>31</sup>

[27] Relative living standards and the needs of the low paid are dealt with in Chapter 4 of the majority decision. The majority’s overall assessment is that:

‘... while the relative living standards of NMW and award-reliant employees have improved over recent years, some low-paid award-reliant employee households have household disposable incomes less than the 60 per cent of median income poverty line. Further, many household types are also likely to have disposable incomes that do not reach the threshold of the relevant MIHL budget.’<sup>32</sup>

[28] At [114] of the decision the majority observed that a decision to grant no increase in this Review would mean that the living standards of low-paid award-reliant employees would fall and that the requirement to take into account relative living standards and the needs of the low paid supports an increase in the NMW and modern award minimum wages.<sup>33</sup>

[29] The majority also observed that gender pay equity favours an increase in minimum wages. Women are more likely to be in low-paid employment and are more likely to be paid at the award rate and higher-paid award-reliant employees are more likely to be female (58.7 per cent) than male (41.3 per cent).<sup>34</sup>

[30] Further, the majority said that in addition to minimum wages, the tax-transfer system also has a significant role to play in alleviating earnings inequality and assisting low-paid workers to meet their needs and that tax-transfer changes and the various economic assistance packages introduced by the Australian Government in response to the COVID-19 pandemic have benefitted low-paid households. These changes were discussed in more detail in Chapter 4. The majority said that:

‘These changes are a moderating factor on our assessment of the appropriate level of the NMW and modern award minimum wages arising from this Review. But, as determined in previous Review decisions, it is not appropriate to apply a direct, quantifiable,

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<sup>30</sup> *Fair Work Act 2009* (Cth) s.284(1)(a) and s.134(1)(d), (f) and (h).

<sup>31</sup> [2020] FWCFB 3500 at [104], citing [2019] FWCFB 3500 at para [10]–[11].

<sup>32</sup> [2020] FWCFB 3500 at [106].

<sup>33</sup> [2020] FWCFB 3500 at [114].

<sup>34</sup> [2020] FWCFB 3500 at [115], citing Wilkins R and Zilio F (2020), *Prevalence and persistence of low paid award-reliant employment*, Fair Work Commission Research Report 1/2020, p. 11, Table 3; p.14, Table 7.

discount to the increase in the NMW and modern award minimum wages we would have awarded in the absence of such changes in the tax-transfer system.’<sup>35</sup>

**[31]** The majority decided that it was appropriate to increase the NMW and to adjust modern award minimum wages. In relation to the quantum of the adjustment the majority said:

‘In our view awarding an increase of the magnitude proposed by the ACTU (and ACBC and the Victorian Government) in the present economic circumstances, would pose a real risk of disemployment and of adversely affecting the employment opportunities of low-skilled and young workers.

We acknowledge that any increase we award which is less than increases in prices and living costs would amount to a real wage cut. Such an outcome would mean that many award-reliant employees, particularly low-paid employees, would be less able to meet their needs. For some households such an outcome would lead to further disadvantage and may place them at greater risk of moving into poverty...

We have decided to award a substantially lower increase this year than that awarded last year due to the marked change in the economic environment and the tax-transfer system and other changes which have taken effect in the current Review period which have benefitted low-paid households. The increases we have awarded are likely to maintain the real value of the wages of NMW and award-reliant employees.’<sup>36</sup>

**[32]** The majority awarded an increase of 1.75 per cent. The NMW will be \$753.80 per week or \$19.84 per hour. The hourly rate has been calculated by dividing the weekly rate by 38, on the basis of the 38-hour week for a full-time employee. This constitutes an increase of \$13.00 per week to the weekly rate or 35 cents per hour to the hourly rate.

**[33]** The proposed NMW and the relevant statutory considerations led the majority to increase modern award minimum wages by 1.75 per cent.

### *The timing of the adjustments*

**[34]** If an increase was awarded then ACCI submitted it should not be operative before 1 January 2021 and Ai Group submitted (in essence) that it should operate after 1 January 2021.<sup>37</sup> ARA did not support an increase to minimum wages, but submitted that if the Panel determined an increase then it should be delayed for retail businesses until 1 February 2021.<sup>38</sup>

**[35]** The ACTU opposed any deferral and contended that the ‘exceptional circumstances’ which would create the bases for the deferral of an increase in any minimum wage contained in a NMW order or a determination to vary modern award minimum wages, had not been made out.<sup>39</sup>

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<sup>35</sup> [2020] FWCFB 3500 at [120], citing [2019] FWCFB 3500 at [242].

<sup>36</sup> [2020] FWCFB 3500 at [130]–[131]; [139].

<sup>37</sup> ACCI supplementary submission, 29 May 2020 at para. 35; Ai Group supplementary submission, 29 May 2020 at p. 3.

<sup>38</sup> ARA response to supplementary questions on notice, 29 May 2020, pp. 1–2. [On p. 2 it says ‘mid-2021’, so we have taken that as what was intended earlier].

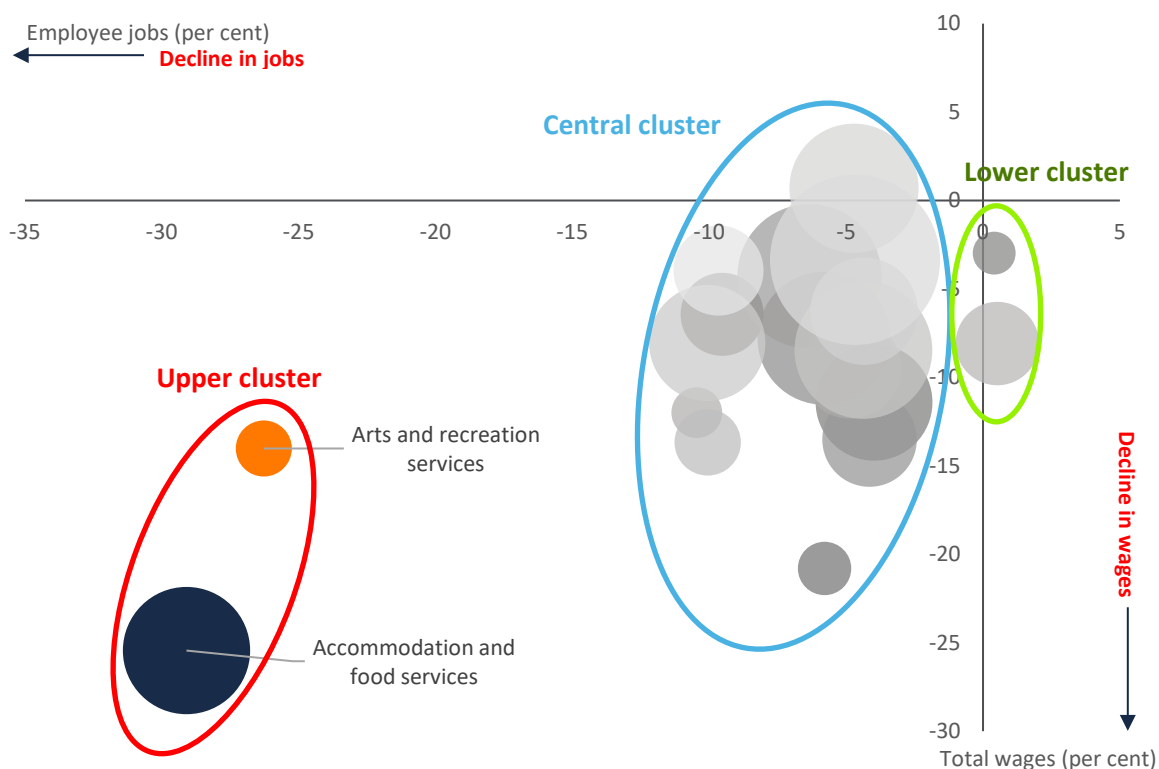
<sup>39</sup> ACTU response to supplementary submission, 5 June 2020, at para. 49.

[36] The majority found that the impact of the COVID-19 pandemic has not been consistent across all sectors of the economy.

[37] Using administrative data from the Australian Taxation Office (ATO) and published by the ABS, Charts 1 and 2 show the percentage changes in the number of payroll jobs and total wages for the 19 industries based on the Australian and New Zealand Standard Industrial Classification (ANZSIC). The size of each circle in the Charts reflects the total number of filled jobs in each industry – using ABS Labour Accounts data from the March quarter 2020.

[38] The decline in jobs is indicated along the horizontal axis. The change in wages is indicated by the vertical axis, though this data is less informative because of the effects of the JobKeeper scheme. The period covered is between 14 March 2020, when the 100<sup>th</sup> case of COVID-19 was confirmed in Australia, and 30 May 2020.

**Chart 1: Change in employee jobs and total wages between 14 March and 30 May 2020, by industry clusters**



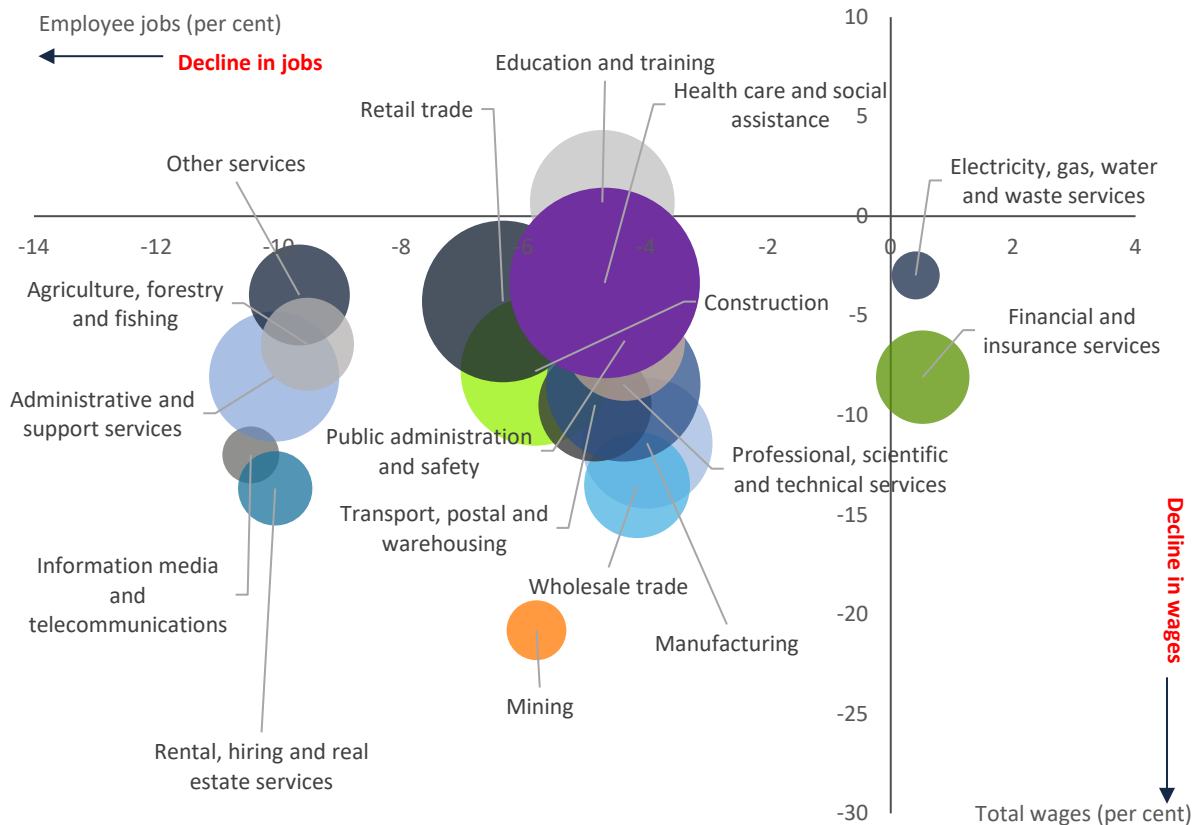
Source: Statistical report (version 13), 17 June 2020, Chart 6.10; ABS, *Weekly Payroll Jobs and Wages in Australia, Week ending 30 May 2020*, Catalogue No. 6160.0.55.001; ABS, *Labour Account Australia, March 2020*, Catalogue No. 6150.0.55.003.

Note: Circle size reflects number of filled jobs (i.e. larger circles represent industries with higher number of filled jobs).

[39] The impact on the industry sectors in the central and lower clusters is shown more clearly in Chart 2.



**Chart 2: Central and lower industry clusters, change in employee jobs and total wages between 14 March and 30 May 2020**



Source: Statistical report (version 13), 17 June 2020, Chart 6.10; ABS, *Weekly Payroll Jobs and Wages in Australia, Week ending 30 May 2020*, Catalogue No. 6160.0.55.001; ABS, *Labour Account Australia, March 2020*, Catalogue No. 6150.0.55.003.

Note: Circle size reflects number of filled jobs (i.e. larger circles represent industries with higher number of filled jobs). Chart excludes Accommodation and food services and Arts and recreation services.

[40] The decline in total jobs fall broadly into 3 industry clusters:

- Upper cluster—where total jobs fell by 29.1 per cent in Accommodation and food services and by 26.3 per cent in Arts and recreation services (a weighted average of -28.6 per cent);
- Central cluster—where job losses range from 10.5 per cent in Information media and telecommunications to 4.0 per cent in Manufacturing (a weighted average of -5.9 per cent); and
- Lower cluster—where the impact on jobs range from an increase of 0.4 per cent in Electricity, gas, water and waste services, to an increase of 0.5 per cent in Finance and insurance services (a weighted average of 0.5 per cent).

[41] The ‘clusters’ identified in Charts 1 and 2 are consistent with other data discussed at [51]–[56] of the majority decision.

[42] As shown in Charts 1 and 2, while some industries have been substantially affected, other sectors have been affected to a much lesser extent. The majority concluded that:

‘In our view these data do not support a general deferral of the type advocated by ACCI and Ai Group. In this regard it is important to note the terms of s.286(2):

“(2) If the FWC is satisfied that there are exceptional circumstances justifying why a variation determination should not come into operation until a later day, the FWC may specify that later day as the day on which it comes into operation. However, the determination must be limited just to the particular situation to which the exceptional circumstances relate.

Note: This may mean that the FWC needs to make more than one determination, if different circumstances apply to different employees.” (emphasis added).

In our view the data showing the differential impact of the pandemic on particular industry sectors and the import of s.286(2) of the Act warrants a more nuanced approach than that advocated by ACCI and Ai Group.’<sup>40</sup>

[43] The majority was not satisfied that there are ‘exceptional circumstances’ such as to justify the adjustments set by a NMW order taking effect on a day later than 1 July 2020. The NMW order will come into operation on 1 July 2020.

[44] The majority then dealt with the date of operation of the determinations varying modern award minimum wages and decided to determine different operative dates for different groups of modern awards, as follows:

<b>Award Group</b>	<b>Operative Date</b>
Group 1 Awards	1 July 2020
Group 2 Awards	1 November 2020
Group 3 Awards	1 February 2021

[45] The awards in each of these groups is set out at Attachment 1.

### ***Group 1***

[46] The modern awards in Group 1 cover industries and sectors less affected by the pandemic and, in addition, includes modern awards applying to frontline health care and social assistance workers, teachers and childcare workers and employees engaged in other essential services, who have continued working throughout the pandemic, to keep the community safe; to protect the vulnerable and those at risk; and to keep the economy functioning. It is estimated that about 25 per cent of non-managerial award reliant employees are covered by the modern awards in Group 1.

[47] The majority noted that some of the modern awards in Group 1 cover significant numbers of low-paid female employees. For example, the *Aged Care Award 2010* covers over

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<sup>40</sup> [2020] FWCFB 3500 at [155] – [156].

240 000 workers,<sup>41</sup> who are predominantly female (around 85 per cent), award reliant and low paid.<sup>42</sup>

[48] The majority also noted that in response to COVID-19 the Australian Government has provided significant financial support to NDIS providers (covered by the *Social, Community, Home Care and Disability Services Industry Award 2010*) and to the Aged Cared Sector (covered by the *Aged Care Award 2010*).

[49] In relation to the aged care sector the Minister for Aged Care and Senior Australians announced a ‘funding boost of \$101.2 million’ on [11 March 2020](#) and additional funding of \$444.6 million was announced on [20 March 2020](#).

[50] The majority was not satisfied that there are exceptional circumstances justifying the variation determinations in respect of these awards coming into operation on a day later than 1 July 2020. The variation determinations in respect of these awards will come into operation on **1 July 2020**.

### *Group 2*

[51] The modern awards in Group 2 cover industry sectors adversely impacted by the pandemic, but not to the same extent as the sectors covered by the Group 3 awards. The majority was satisfied that there are exceptional circumstances justifying the variation determinations in respect of these awards coming into operation on **1 November 2020**. It is estimated that about 40 per cent of non-managerial award reliant employees are covered by the modern awards in Group 2.

### *Group 3*

[52] The modern awards in Group 3 cover the industry sectors which have been most adversely affected by the pandemic; that is:

- Accommodation and food services;
- Arts and recreation services;
- Aviation;
- Retail trade; and
- Tourism.

[53] The majority was satisfied that there are exceptional circumstances justifying the variation determinations in respect of these awards coming into operation on **1 February 2021**. It is estimated that just over one third of non-managerial award reliant employees are covered by the modern awards in Group 3.

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<sup>41</sup> Fair Work Commission (2020), *Information note—Health industry Awards*, Health sector awards – pandemic leave, 9 April.

<sup>42</sup> [2019] FWCFB 5078 at [29].

[54] The categorisation of modern awards into the 3 groupings set out above is based on the data set out in the decision; the restrictions imposed to contain the COVID-19 virus (set out in detail in Appendix 1 of the decision); and the submissions. The majority decision acknowledged the limitations of the data and accepted that the categorisation is imperfect; but on the information available was satisfied that the operative dates determined are justified.

[55] The majority made the following ‘concluding remarks’ (at [188] – [192]):

‘The prevailing economic circumstances and the uncertainty surrounding the pathway out of recession have led us to adopt a cautious approach to both the quantum and the timing of an adjustment to the NMW and modern award minimum wages.

As mentioned earlier, we accept that in relation to the timing of the increase we have awarded, the categorisation of awards into 3 groups is imperfect. There will be some employers covered by the awards in Group 1 who have been substantially impacted by the pandemic; just as there will be employers covered by the awards in Group 3 that have been impacted to a lesser extent than other businesses in that group. The approach we have taken seeks to aggregate the experiences of all employers covered by a particular award. Despite these limitations we are satisfied that the increases and operative dates we have determined are justified, consistent with the statutory framework and strike an appropriate balance between the interests of employers and employees.

We also acknowledge that the provision of an individualised incapacity to pay mechanism would provide a more targeted means of dealing with some of these issues. But, as we explain in Chapter 2, our powers are limited and we cannot provide such a mechanism. The Panel has drawn attention to this deficiency in the statutory framework in numerous past Review decisions. This is an issue for the Parliament.<sup>43</sup>

Finally, we also acknowledge that the different operative dates we have determined for the 3 award clusters may have implications for the timing of any variation in modern award minimum wages in the 2020–21 Review.’<sup>44</sup>

## 2.2 The minority decision (Professor Wooden)

[56] Professor Wooden summarises his decision in the following terms:

‘There is widespread agreement that the Australian economy is now in recession, with most indicators suggesting that this recession will be severe—national output is expected to fall much more sharply than during the recessions of both the early 1980s and early 1990s. Many Australians have already seen a marked reduction in their incomes, and among award-wage workers at least, this has been a direct result of a reduction in hours worked, and in many cases the loss of employment entirely. In my opinion, given the current economic circumstances, the requirement to provide an adequate safety net of fair minimum wages should lead the Fair Work Commission to prioritize growth in jobs

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<sup>43</sup> See [2012] FWAFB 5000 at [34]–[35]; [2013] FWCFB 4000 at [96]–[98]; [2015] FWCFB 3500 at [115]–[116] and [2016] FWCFB 3500 at [139].

<sup>44</sup> [2020] FWCFB 3500 at [188] – [192].

and hours over a wage increase. For this reason, I recommend that award minimum wage rates remain unchanged in 2020–21.

A zero change to the minimum wage will do little damage to workers. It is very unlikely that it is going to tip any additional households into poverty. In contrast, a small increase in award wages will add very little to a worker’s disposable household income, while at the same time reducing the likelihood of existing businesses returning to pre-recession levels of employment and labour utilisation, and of new employing businesses commencing operation. It is this reluctance to expand employment and hours that will be the biggest risk to the incomes of those most disadvantaged in the labour market over the next 12 months.’

### **3. Draft variation determinations**

[57] Draft variation determinations giving effect to the majority decision will be published on 19 June 2020. Interested parties will be required to submit any corrections of amendments by no later than 5pm on Thursday, 25 June 2020.

[2020] FWCFB 3500

- *This statement is not a substitute for the reasons of the Fair Work Commission nor is it to be used in any later consideration of the Commission’s reasons.*

- ENDS

**ATTACHMENT 1****Group 1 Awards: 1 July 2020**

The modern award minimum wages in the awards listed below will be increased by 1.75 per cent from the start of the first full pay period on or after 1 July 2020.

<i>Modern awards</i>	
Aboriginal Community Controlled Health Services Award 2020	MA000115
Aged Care Award 2010	MA000018
Ambulance and Patient Transport Industry Award 2020	MA000098
Banking, Finance and Insurance Award 2020	MA000019
Cemetery Industry Award 2020	MA000070
Children's Services Award 2010	MA000120
Cleaning Services Award 2020	MA000022
Corrections and Detention (Private Sector) Award 2020	MA000110
Educational Services (Schools) General Staff Award 2020	MA000076
Educational Services (Teachers) Award 2010	MA000077
Electrical Power Industry Award 2020	MA000088
Fire Fighting Industry Award 2020	MA000111
Funeral Industry Award 2010	MA000105
Gas Industry Award 2020	MA000061
Health Professionals and Support Services Award 2020	MA000027
Medical Practitioners Award 2020	MA000031
Nurses Award 2010	MA000034
Pharmacy Industry Award 2020	MA000012
Social, Community, Home Care and Disability Services Industry Award 2010	MA000100
State Government Agencies Award 2020	MA000121
Water Industry Award 2020	MA000113
<i>Modern enterprise awards and state reference awards</i>	
Australian Capital Territory Public Sector Enterprise Award 2016	MA000146

<i>Modern awards</i>	
Australian Federal Police Enterprise Award 2016;	MA000142
Christmas Island Administration Award 2016	MA000149
Reserve Bank of Australia Award 2016	MA000140
Northern Territory Public Sector Enterprise Award 2016	MA000151
Nurses and Midwives (Victoria) State Reference Public Sector Award 2015	MA000125
Nurses (ANMF – Victorian Local Government Award) 2015	MA000131
Victorian Government Schools Award 2016	MA000155
Victorian Government Schools – Early Childhood – Award 2016	MA000152
Victorian Local Government (Early Childhood Education Employees) 2016	MA000150
Victorian State Government Agencies Award 2015	MA000134

**Group 2 Awards: 1 November 2020**

The modern award minimum wages in the awards listed below will be increased by 1.75 per cent from the start of the first full pay period on or after 1 November 2020.

<i>Modern awards</i>	
Aluminium Industry Award 2020	MA000060
Animal Care and Veterinary Services Award 2020	MA000118
Aquaculture Industry Award 2020	MA000114
Architects Award 2020	MA000079
Asphalt Industry Award 2020	MA000054
Australian Government Industry Award 2016	MA000153
Black Coal Mining Industry Award 2010	MA000001
Book Industry Award 2020	MA000078
Broadcasting, Recorded Entertainment and Cinemas Award 2010	MA000091
Building and Construction General On-site Award 2010	MA000020
Business Equipment Award 2010	MA000021
Car Parking Award 2020	MA000095
Cement, Lime and Quarrying Award 2020	MA000055
Clerks—Private Sector Award 2010	MA000002
Coal Export Terminals Award 2020	MA000045
Concrete Products Award 2020	MA000056
Contract Call Centres Award 2020	MA000023
Cotton Ginning Award 2020	MA000024
Dredging Industry Award 2020	MA000085
Educational Services (Post-Secondary Education) Award 2020	MA000075
Electrical, Electronic and Communications Contracting Award 2010	MA000025
Food, Beverage and Tobacco Manufacturing Award 2010	MA000073
Gardening and Landscaping Services Award 2020	MA000101
Graphic Arts, Printing and Publishing Award 2010	MA000026
Higher Education Industry-Academic Staff-Award 2020	MA000006



<i>Modern awards</i>	
Higher Education Industry-General Staff-Award 2020	MA000007
Horticulture Award 2010	MA000028
Hydrocarbons Field Geologists Award 2020	MA000064
Hydrocarbons Industry (Upstream) Award 2020	MA000062
Joinery and Building Trades Award 2010	MA000029
Journalists Published Media Award 2010	MA000067
Labour Market Assistance Industry Award 2020	MA000099
Legal Services Award 2020	MA000116
Local Government Industry Award 2020	MA000112
Manufacturing and Associated Industries and Occupations Award 2020	MA000010
Marine Towage Award 2020	MA000050
Maritime Offshore Oil and Gas Award 2020	MA000086
Market and Social Research Award 2020	MA000030
Meat Industry Award 2020	MA000059
Mining Industry Award 2020	MA000011
Miscellaneous Award 2020	MA000104
Mobile Crane Hiring Award 2010	MA000032
Oil Refining and Manufacturing Award 2020	MA000072
Passenger Vehicle Transportation Award 2020	MA000063
Pastoral Award 2010	MA000035
Pest Control Industry Award 2020	MA000097
Pharmaceutical Industry Award 2010	MA000069
Plumbing and Fire Sprinklers Award 2010	MA000036
Port Authorities Award 2020	MA000051
Ports, Harbours and Enclosed Water Vessels Award 2020	MA000052
Poultry Processing Award 2020	MA000074
Premixed Concrete Award 2020	MA000057
Professional Diving Industry (Industrial) Award 2020	MA000108

<b><i>Modern awards</i></b>	
Professional Employees Award 2020	MA000065
Rail Industry Award 2020	MA000015
Real Estate Industry Award 2020	MA000106
Road Transport (Long Distance Operations) Award 2020	MA000039
Road Transport and Distribution Award 2020	MA000038
Salt Industry Award 2010	MA000107
Seafood Processing Award 2020	MA000068
Seagoing Industry Award 2010	MA000122
Security Services Award 2020	MA000016
Silviculture Award 2020	MA000040
Stevedoring Industry Award 2020	MA000053
Storage Services and Wholesale Award 2020	MA000084
Sugar Industry Award 2020	MA000087
Supported Employment Services Award 2020	MA000103
Surveying Award 2020	MA000066
Telecommunications Services Award 2010	MA000041
Textile, Clothing, Footwear and Associated Industries Award 2010	MA000017
Timber Industry Award 2010	MA000071
Transport (Cash in Transit) Award 2020	MA000042
Waste Management Award 2020	MA000043
Wool Storage, Sampling and Testing Award 2010	MA000044
<b><i>Modern enterprise awards and state reference awards</i></b>	
Aboriginal Legal Rights Movement 2016	MA000139
Australia Post Enterprise Award 2015	MA000137
Australian Broadcasting Corporation Enterprise Award 2016	MA000147
Australian Bureau of Statistics (Interviewers) Award 2016	MA000143
Australian Nuclear Science and Technology Organisation (ANSTO) Enterprise Award 2016	MA000144
Australian Public Service Enterprise Award 2015	MA000124

<i>Modern awards</i>	
Chullora Printing Award 2015	MA000127
CSIRO Enterprise Award 2016	MA000148
GrainCorp Country Operations Award 2015	MA000138
Metropolitan Newspapers (South Australia and Tasmania) Printing Award 2015	MA000130
Northern Territory News Award 2015	MA000129
Note Printing Australia Award 2016	MA000156
Optus Award 2015	MA000133
Parliamentary Departments Staff Enterprise Award 2016	MA000145
Printing Industry – Herald & Weekly Times – Production Award 2015	MA000126
Queensland Newspapers Pty Ltd Printing (Murrarie) Award 2015	MA000128
Telstra Award 2015	MA000123
Victorian Local Government Award 2015	MA000132
Victorian Public Service Award 2016	MA000135
Viterra Bulk Handling and Grain Storage, Pulses and Minerals Award 2015	MA000136

**Group 3 Awards: 1 February 2021**

The modern award minimum wages in the awards listed below will be increased by 1.75 per cent from the start of the first full pay period on or after 1 February 2021.

<i>Modern awards</i>	
Air Pilots Award 2020	MA000046
Aircraft Cabin Crew Award 2020	MA000047
Airline Operations-Ground Staff Award 2020	MA000048
Airport Employees Award 2020	MA000049
Alpine Resorts Award 2020	MA000092
Amusement, Events and Recreation Award 2020	MA000080
Commercial Sales Award 2020	MA000083
Dry Cleaning and Laundry Industry Award 2020	MA000096
Fast Food Industry Award 2010	MA000003
Fitness Industry Award 2010	MA000094
General Retail Industry Award 2010	MA000004
Hair and Beauty Industry Award 2010	MA000005
Horse and Greyhound Training Award 2020	MA000008
Hospitality Industry (General) Award 2020	MA000009
Live Performance Award 2010	MA000081
Mannequins and Models Award 2020	MA000117
Marine Tourism and Charter Vessels Award 2020	MA000093
Nursery Award 2020	MA000033
Professional Diving Industry (Recreational) Award 2020	MA000109
Racing Clubs Events Award 2010	MA000013
Racing Industry Ground Maintenance Award 2020	MA000014
Registered and Licensed Clubs Award 2010	MA000058
Restaurant Industry Award 2020	MA000119
Sporting Organisations Award 2020	MA000082
Travelling Shows Award 2020	MA000102

<b><i>Modern awards</i></b>	
Vehicle Repair, Services and Retail Award 2020	MA000089
Wine Industry Award 2010	MA000090
<b><i>Modern enterprise awards and state reference awards</i></b>	
Airservices Australia Award 2016	MA000141