# Ai GROUP SUBMISSION

Fair Work Commission

## Annual Wage Review 2021-22

## Initial and Post-Budget Submission

1 April 2022

Ai GROUP

# Contents

# 1. Introduction

The Australian Industry Group (Ai Group) urges the Expert Panel to not to take chances with the fragile recovery from the pandemic and associated recession and instead promote further jobs growth and additional reductions in unemployment and underemployment. While the Australian economy has bounced back at a faster and stronger pace than had been anticipated, there are many hurdles to a complete recovery. The global pandemic is continuing, there are many global and national uncertainties, and the recovery has been extremely uneven to date. A large proportion of businesses are faced with supply chain disruptions, significantly increased input costs, skill and labour shortages and weak productivity growth.

When setting the level of this year's minimum wage increase, the Panel needs to have particular regard to those sectors that are struggling and will be severely impacted by an excessive increase. The two sectors with the largest proportion of low paid award-reliant employees (by far) are Accommodation and food services, and Retail trade. [1] These two sectors have been particularly hard-hit by the pandemic and are still experiencing very challenging conditions. Award-reliant sectors are the most heavily impacted by movements in minimum wages. Minimum wage increases need to be set at a level that employers in all sectors can bear. This necessarily requires that the Panel adopt a cautious approach.

Minimum wage increases are a very blunt instrument. They impose costs on employers that are much higher than the after-tax benefits received by employees from any wage increase granted, both because of the on-costs that result and the tax that is paid by employees on additional pre-tax wages. Also, minimum wage increases cannot be readily targeted to those individuals and households that are in most need of assistance, unlike tax cuts and tax transfer payments.

Ai Group submits that a modest wage increase of **2%** is warranted in this year's Annual Wage Review. This equates to an increase of about **$15.45 per week** in the National Minimum Wage (bringing it to $788.05 per week) and about **$18.00 per week** at the base trade level. When the proposed 2% wage increase is considered alongside the **0.5% Superannuation Guarantee (SG) increase** that is operative from 1 July 2022 and the equivalent of a **1.3% increase** in pre-tax income that an employee on the National Minimum Wage will receive in coming months as a result of the announced increase in the Low and Middle Income Tax Offset, our proposal would result in the equivalent of a **3.8% increase** in pre-tax remuneration for low paid employees.

The Panel should also take into account the removal of the $450 per month threshold for SG eligibility from 1 July 2022. This change will result in an estimated 300,000 employees receiving additional superannuation benefits. A large proportion of these employees work in the food services and retail sectors which are still struggling due to the effects of the pandemic. Consistent with the Panel's decision last year that the removal of the threshold should not be taken into

[1] Wilkins R and Zilio F, *Prevalence and persistence of low-paid award-reliant employment*, Fair Work Commission, Research Report 1/2020, Table 8, p.18.

account until the relevant legislation has been passed, the change should be taken into account and a lower minimum wage increase awarded than would otherwise have been the case.

The increase that we have proposed would still have Australia jostling with Luxembourg as the country with the highest national minimum wage in the world.

The moderate increase in wages proposed by Ai Group will help build on the growth in employment, the increased proportion of the workforce employed in full-time positions and the increased number of hours available to people who are currently underemployed. In the past year, the substantial improvements in these areas have boosted household incomes by well in excess of the rise in wage rates as measured by the Wage Price Index. By promoting further gains in employment and hours worked by handing down a moderate wage rise, the Panel can further boost household incomes by well in excess of the percentage increase in wage rates.

Consistent with longstanding past practice, it is appropriate that the Panel take into account the increase to the SG and changes to both taxation levels and tax transfer payments when determining the quantum of any minimum wage increase in the Annual Wage Review. As the Panel has consistently stated, the effect of taxes and transfers on disposable incomes of the low paid are relevant to the needs of the low paid and their relative living standards.

It is also appropriate for the Panel to implement a delayed operative date for wage increases in relevant awards in the aviation and tourism sector, the accommodation and food services sector, the arts and recreation services sector and the retail trade sector, consistent with the approach in last year's Annual Wage Review decision. 'Exceptional circumstances' still exist in these industries, justifying a delayed operative date.

The ACTU has proposed a minimum wage increase of 5%. Such an increase would wreak substantial economic damage, destroy the jobs of thousands of employees, reverse the recent strong growth in full-time employment and inflict lower hours of work on many part-time employees.

# 2. State of the economy and outlook

Following the steep economic decline in 2020, Australia has experienced a rapid economic recovery to date. However, the outlook for 2022 is fragile.

The Australian community has gone through 2021 facing numerous challenges from the COVID-19 pandemic, including challenges related to restrictions on social activity and subsequent behavioural changes. The economic fallout was addressed by a suite of government support programs, policies, and measures with varying degrees of success with Victoria suffering the most because of the extended lockdowns in Melbourne.

Australia has suffered its first recession since the 1990s. The statistics below provide a summary of the state of the Australian economy:

- **Real GDP** increased by 3.4% in Q4 of 2021.
- **Total employment** is 13,372,000 (increased in February 2022 with 77,400 more employed persons; the fourth consecutive month of increase).
- **Aggregate monthly paid hours worked** increased by 149 million hours from January 2022.
- **Participation rate** was 66.4% in February 2022 (increased by 0.2% from January 2022).
- **Unemployment rate** was 4.0% in February 2022 (compared to 4.2% in January 2022).
- **Underemployment rate** was 6.6% in February 2022 (decreased by 0.1% from January 2022).
- **Underutilisation rate** decreased by 0.3% from January 2022 to 10.6% in February.
- **Youth unemployment rate** was 9.3% in February 2022 (compared to 10.8% in January).
- **Youth underemployment rate** was 14.5% in February 2022 (an increase of 0.6% from January).

For the remainder of 2022, Australia's economic recovery faces significant hurdles including:

- Developments relating to the COVID-19 global pandemic, including the emergence of new potentially more infectious variants.
- The continuing availability, take-up and efficacy of COVID-19 vaccines in combating new variants.
- The need to develop new vaccines if protection from current vaccines wanes against future COVID-19 variants.

- On-going challenges involving international travel and quarantine requirements, particularly relating to individuals travelling from countries using vaccines that are not approved in Australia. This is relevant for international students and other cohorts.

- International trade and geopolitical tensions, including increasing tensions with China and Russia, particularly in light of the Russian invasion of Ukraine.

- The risk of possible secular stagnation with consumer confidence on shaky ground after the pandemic and decreases in long-term spending patterns as a result of learned caution during such global events.

- An underlying reduction in Australia's resident population and a consequent deceleration in potential growth, relative to the growth rates prior to the COVID-19 pandemic; and generally low population growth rates (annual growth rate: 0.3%, with net overseas migration at negative 67,300).

- An underlying structural weakness in non-mining business investment, productivity growth and global competitiveness (including comparatively high labour costs).

## 2.1 Looking back at 2021

The volatility of Australia's economic recovery can be seen by comparing Q3 2021 with the rest of 2021. 2021 started out with the relaxation of COVID-related restrictions across the country. However, the outbreak of the delta variant negatively affected economic activity, with a -1.9% change in GDP in Q3. Similarly, household consumption, deterred by density limits, curfews, and isolation requirements, fell by 4.8%. Domestic final demand fell by 1.7% (Table 1; Charts 1 and 2).

**Table 1: Composition of GDP growth: expenditure and trade, 2021**

| **Real volumes** | **Quarter change, q/q** | | | | **Annual, % y/y** |
|---|---|---|---|---|---|
| ***Inflation adjusted, seasonally adjusted*** | **Q1-2021** | **Q2-2021** | **Q3-2021** | **Q4-2021** | **Dec 20 – Dec 21** |
| Real GDP (expenditure) | 1.9 | 0.8 | -1.9 | 3.4 | 4.2 |
| Real GDP per capita | 2.0 | 0.6 | -1.9 | 3.4 | 4.0 |
| Household consumption | 1.2 | 1.1 | -4.8 | 6.3 | 3.5 |
| General government consumption | -0.0 | 1.2 | 3.8 | 0.1 | 5.1 |
| Total investment | 5.1 | 3.2 | 0.1 | -1.5 | 7.0 |
| Dwelling investment | 6.7 | 0.5 | 0.4 | -2.2 | 5.3 |
| Private Business investment | 5.1 | 1.4 | 0.4 | -0.5 | 6.4 |
| *New building* | -0.7 | 4.0 | 3.6 | 0.3 | 7.3 |
| *New engineering construction* | 1.5 | 3.5 | -4.2 | -1.6 | -1.0 |
| *New machinery and equipment* | 10.1 | 1.4 | -3.0 | -1.5 | 6.5 |
| *Intellectual property investment* | 2.7 | 3.1 | 1.2 | 2.1 | 9.4 |
| Public (government) investment | 1.6 | 7.6 | -1.7 | -2.0 | 5.4 |
| Domestic final demand | 1.8 | 1.6 | -1.7 | 2.9 | 4.6 |
| International trade, volumes and prices | | | | | |
| Exports (volumes) | 0.6 | -3.1 | 1.5 | -1.5 | -2.6 |
| Imports (volumes) | 3.5 | 1.2 | -2.8 | -0.9 | 1.0 |
| Terms of trade (relative prices) | 7.8 | 7.6 | 0.2 | -5.1 | 10.3 |

Source: ABS, *National Accounts,* Dec 2021.

Similarly, output fell in Q3 in Manufacturing, Utilities, Construction, Wholesale Trade, Retail Trade, Food & Accommodation Services, Transport, Real Estate, Professional Services, Administration Services, Health, Arts & Recreation, and Personal Services. The only industries that reported an increase in economic activity in Q3 where Agriculture, Mining, Telecommunications, Finance, and Education – likely as a result of the nature of their work (Table 2 and Chart 4).

### Table 2: Composition of GDP growth: production by major industries, 2021

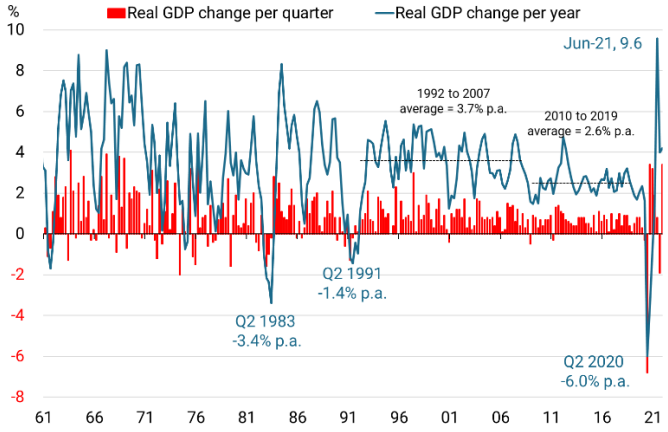
| **Real value-added output volumes** | **Quarter change, q/q** | | | | **Annual, % y/y** | **Share of GDP*, %** |
|---|---|---|---|---|---|---|
| ***Inflation adjusted, seasonally adjusted*** | **Q1-2021** | **Q2-2021** | **Q3-2021** | **Q4-2021** | **Dec 20 – Dec 21** | **Q4-2021** |
| Real GDP (production) | 1.9 | 0.8 | -1.9 | 3.4 | 4.2 | 100 |
| Agriculture, forestry and fishing | 2.0 | 3.8 | 3.4 | 9.0 | 19.4 | 2.9 |
| Mining | -0.1 | -0.6 | 1.6 | -1.0 | -0.1 | 9.5 |
| Manufacturing | 3.0 | 0.9 | -1.2 | 1.8 | 4.5 | 5.6 |
| Utilities | -0.7 | 1.7 | -0.1 | -1.0 | -0.1 | 2.2 |
| Construction | 4.6 | 1.8 | -1.0 | 1.9 | 7.4 | 7.0 |
| Wholesale Trade | 3.2 | 0.8 | -5.5 | 3.5 | 1.8 | 3.8 |
| Retail Trade | -1.0 | 0.8 | -3.4 | 7.4 | 3.5 | 4.3 |
| Food & Accommodation Services | 5.5 | 2.7 | -25.5 | 26.1 | 1.8 | 1.9 |
| Transport, Post & Warehousing | 4.3 | 3.2 | -3.2 | 3.0 | 7.4 | 4.1 |
| IT, Media & Telecommunications | -1.2 | 1.5 | 1.1 | 3.4 | 4.8 | 2.3 |
| Finance & Insurance | 0.5 | 0.7 | 1.2 | 1.1 | 3.6 | 7.6 |
| Rental & Real Estate services | 5.3 | 1.9 | -0.6 | 2.9 | 9.8 | 2.9 |
| Professional services | 1.4 | -0.7 | -0.6 | 5.3 | 5.5 | 7.3 |
| Administrative services | 2.2 | 5.7 | -1.7 | 5.1 | 11.6 | 3.3 |
| Public Administration & Safety | -0.6 | 0.2 | 0.8 | 1.6 | 2.0 | 5.5 |
| Education | 0.3 | 0.3 | 0.4 | 0.4 | 1.4 | 4.7 |
| Health | 1.0 | 2.4 | -2.1 | 5.8 | 7.1 | 7.9 |
| Arts & Recreation | 5.0 | 0.6 | -6.6 | 8.2 | 6.7 | 0.8 |
| Personal & Other Services | 5.9 | 1.7 | -13.6 | 15.4 | 7.4 | 1.7 |

* All industries do not sum to 100% of GDP due to individual seasonal adjustment of industries and other accounting items that are included in total GDP such as 'ownership of dwellings', 'taxes less subsidies' and 'statistical discrepancy'. Source: ABS, *National Accounts,* Dec 2021.

More detailed data from the ABS Business Indicators shows that, in nominal terms, company gross operating profits increased by 2% and wages by 1.9% in the December quarter of 2021 (both seasonally adjusted) (Chart 3). However, these estimates of gross profits include government subsidies paid out relating to the mitigation of the effects of the COVID-related business activity restrictions, and the increases seem to largely skew towards the mining and finance sectors.

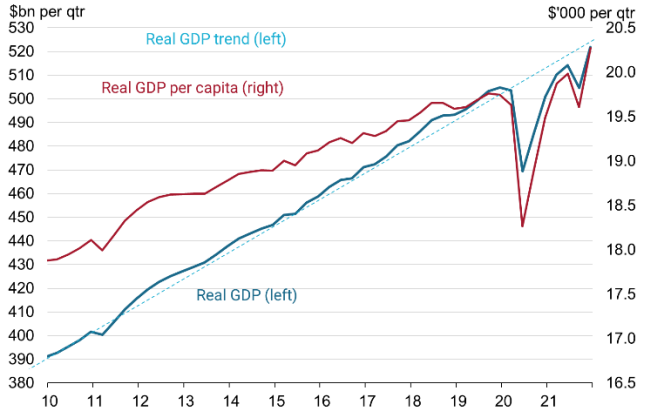
Most sectors are exhibiting signs of economic recovery, as demonstrated by increasing output volumes (Chart 4). Only mining and utilities had a negative change in output between Q3 and Q4 2021. This is likely the result of easing restrictions across borders and business activity. Abrupt changes in some of these economic indicators highlight the volatile situation for the Australian economy.

### Chart 1: Change in real GDP, 1960 to 2021



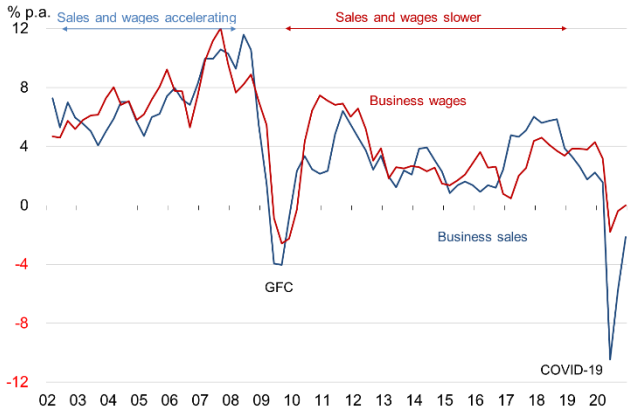

Source: ABS, *National Accounts*, Dec 2021.

### Chart 2: Real GDP and GDP per capita, 2010 to Q4 2021



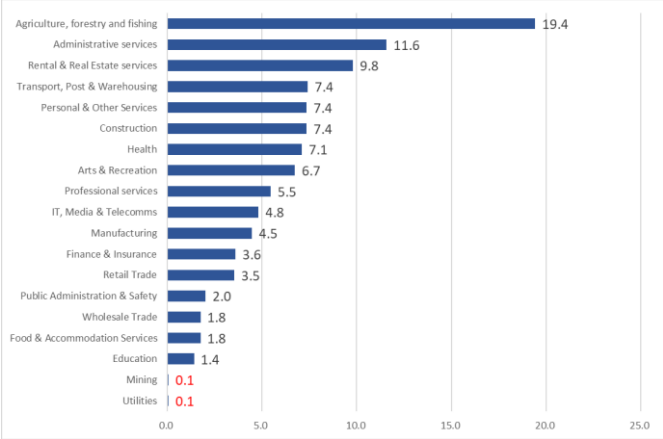

Source: ABS, *National Accounts*, Dec 2021.

### Chart 3: Non-mining business sales and wages*, 2002 to Q4 2021




* nominal aggregate sales and wages by all businesses.
Source: ABS, *Business Indicators*, Q4 2021.

### Chart 4: Change in production volumes by industry, Q4 2020




Source: ABS, *National Accounts*, Dec 2021.

## 2.2 Increased demand supports business recovery in early 2022

As of late February 2022, progress towards a full recovery in local activity has apparently resumed, after a slower Christmas break period. This is evident across a range of monthly activity indicators as of February 2022.

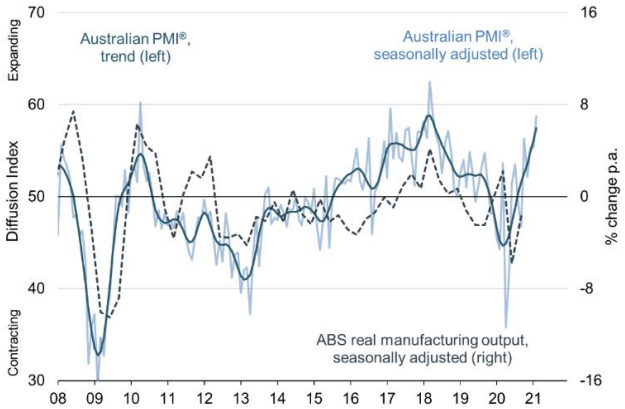
Ai Group's monthly Australian PMI, PSI, and PCI all showed improvement from Q3 2020 onwards. The slump in activity in December 2021 is likely associated with the upsurge in COVID-19 cases relating to the Omicron variant. However, mitigation policies implemented in Australia seem to have allowed local industry to recover. The development is evident across all three surveys (Charts 5 to 10):

- The Australian Industry Group Australian Performance of Manufacturing Index (Australian PMI®) increased by 4.8 points to 53.2 points in February 2022 (seasonally adjusted), indicating expanding conditions, and a stronger pace of recovery. *ABS Labour Account* indicates that an additional 0.9% jobs were filled in Manufacturing up to Q3 2021, and that an additional 5 hours were worked per job in Q3 than Q2 2021.

- The Australian Industry Group and HIA Australian Performance of Construction Index (Australian PCI®) improved by 7.5 points to 53.4 points indicating a recovery in activity across the construction sector after a sharp fall over the summer holiday period (seasonally adjusted). The new wave of Omicron infections partly inhibited activity levels at the start of the new year but the impacts seem to have eased in February.

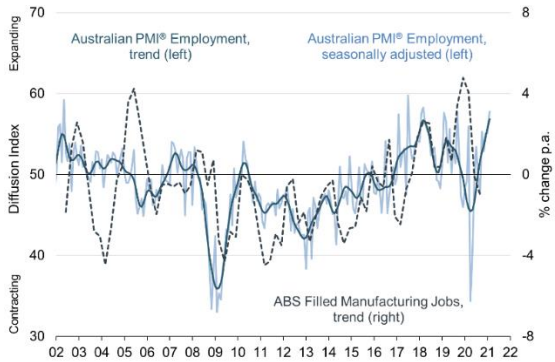
- The Australian Industry Group Performance of Services Index (Australian PSI®) increased by 6.6 points to 56.2 points (seasonally adjusted) over the summer holiday period (December 2021 and January 2022) indicating an improvement in conditions compared to November 2021, likely echoing the effect of the border opening. This is the highest monthly result in the Australian PSI since June 2021.

## Chart 5: Aust. PMI® and ABS real manufacturing output



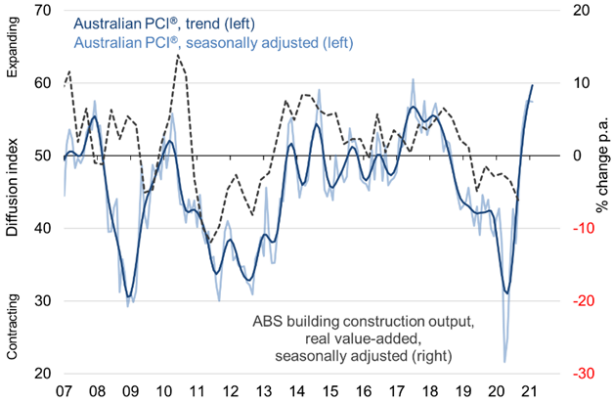

Sources: Ai Group and ABS, *National Accounts*, Dec 2020.

## Chart 6: Aust. PMI® employment index and ABS manufacturing employment



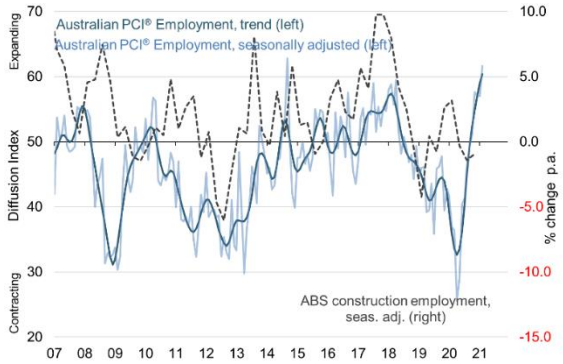

Sources: Ai Group and ABS, *Labour account*, Q3 2020.

## Chart 7: Aust. PCI® and ABS real building industry output



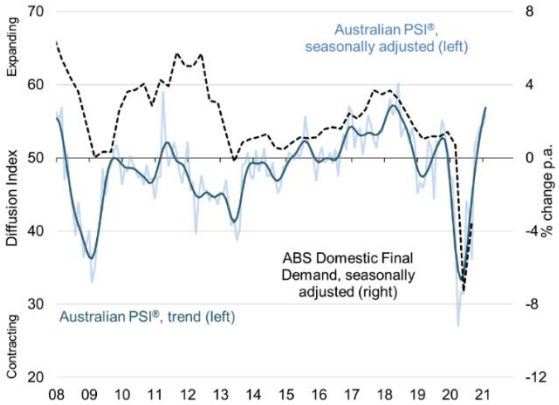

Sources: Ai Group and ABS, *National Accounts*, Dec 2020.

## Chart 8: Aust. PCI® employment index and ABS construction employment



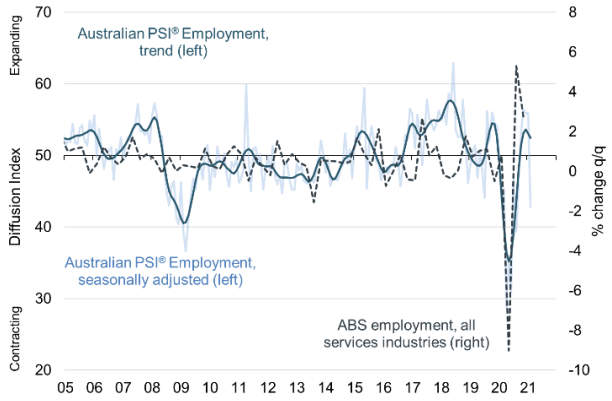

Sources: Ai Group and ABS, *Labour force Ausrtalia, detail,* Nov 2020.

## Chart 9: Aust. PSI® and ABS real domestic final demand




Sources: Ai Group and ABS, *National Accounts*, Dec 2020.

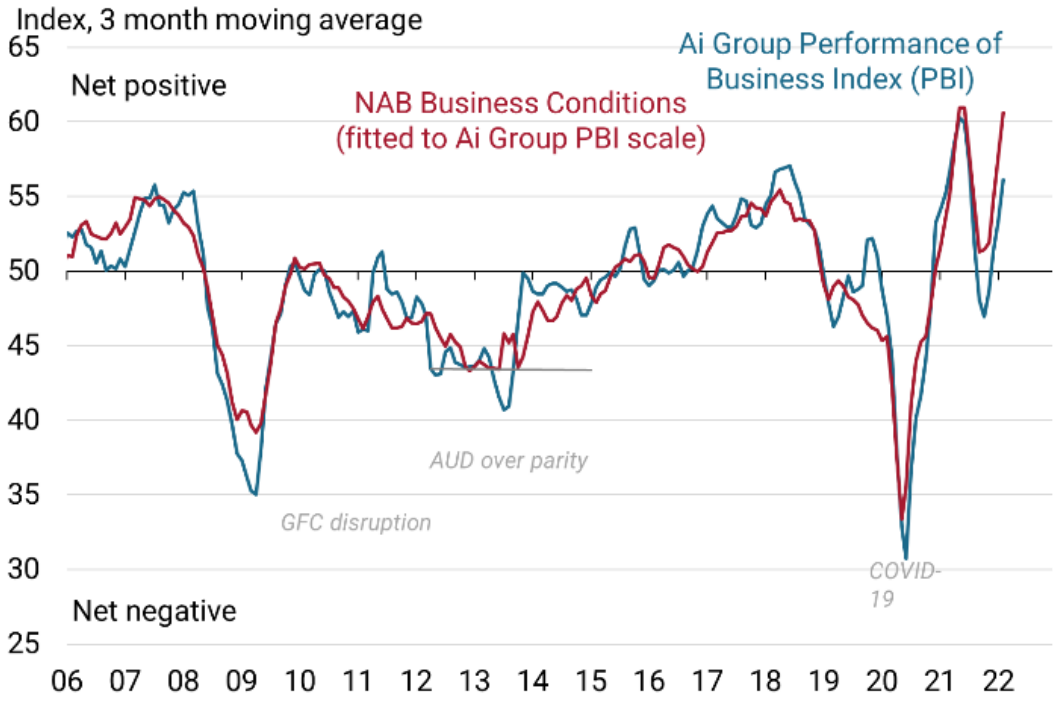
## Chart 10: Aust. PSI® employment index and ABS service industries employment




Sources: Ai Group and ABS, *Labour force Ausrtalia, detail,* Nov 2020.

The NAB Business Survey has reported a similar bounce back after a slump in the summer holiday season. The NAB business conditions index rose to +9 points in February 2022, after falling to +3 points in January 2022 (which was below the long run average). The bounce back is similar to the combined results of Ai Group's Australian PMI, PCI, and PSI (Chart 11). Results indicate rising confidence in all industries except mining (results above zero indicate net optimism in the NAB survey).

**Chart 11: Ai Group PBI* and NAB business conditions index, to Feb 2022**



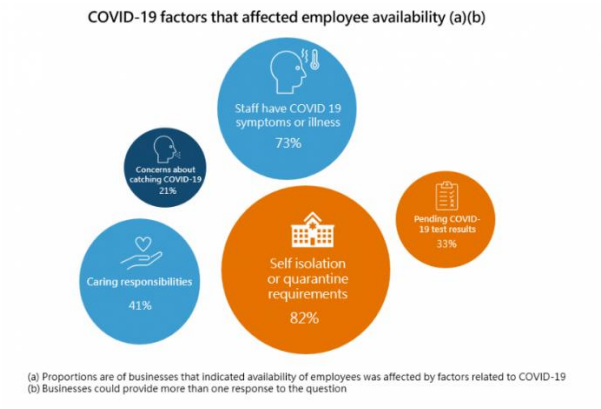

* Ai Group PBI is a weighted composite of the Ai Group Aust PMI, PCI and PSI. Sources: Ai Group and NAB, March 2022.

The effects of COVID-19 seem to have lessened on businesses. However, almost a quarter (22%) of employing businesses reported having unavailable employees due to COVID-related factors. 47% of businesses reported experiencing supply chain disruptions, with small businesses more likely to be affected by the disruptions. Customer facing industries were the most significantly affected by employee unavailability due to COVID-related reasons, with Rental, Hiring, Real Estate, Accommodation, Food Services, Education and Training affected the most. Other significant concerns for businesses were: inability to find suitable staff (69%); uncertainty due to COVID-19 (62%); availability of existing employees to work (53%); affordability of additional staff (44%); international border closures (44%); domestic border closures (33%); and difficulty retaining staff (30%) (Chart 12). The abovementioned supply chain disruptions, employee unavailability, and the uncertainty around future COVID-19 variants (and related potential border closures) highlights the volatility of the Australian economy. Any economic shocks or major disruptions are likely to have a larger effect on the economy compared to pre-pandemic conditions.

The extended COVID-related restrictions in 2021 have worsened business cash in hand positions compared to the usual for this time of the year, with only 39% of businesses reporting that they had enough cash to cover three months or more of business operations. (This is down from 43% in May 2021) (Chart 13). Larger businesses were the most likely to report having six months or more of cash on hand available (38%), compared to 25% of medium and 24% of small businesses. As a result, businesses are in a worse position regarding the availability of cash flow. Any disruptions to

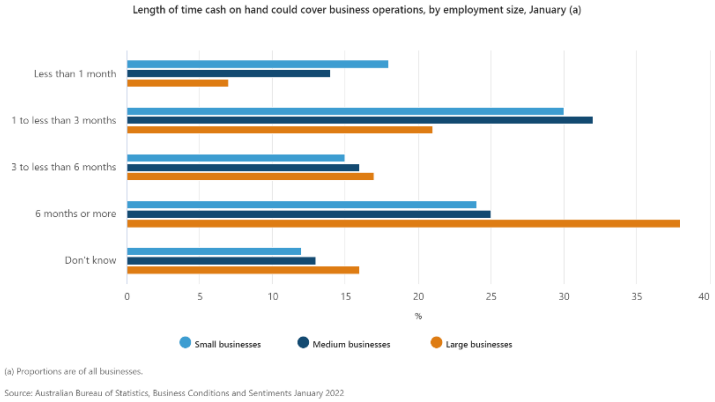
the availability of this limited cash flow is likely to exacerbate business conditions and weaken the spending power of Australian businesses.

### Chart 12: Business impacts of COVID-19 in Feb 2022




* Source: ABS Business Conditions and Sentiment, Feb 2022.

### Chart 13: Length of time that 'cash on hand' can cover operations, Feb 2022




Source: ABS Business Conditions and Sentiment, Feb 2022.

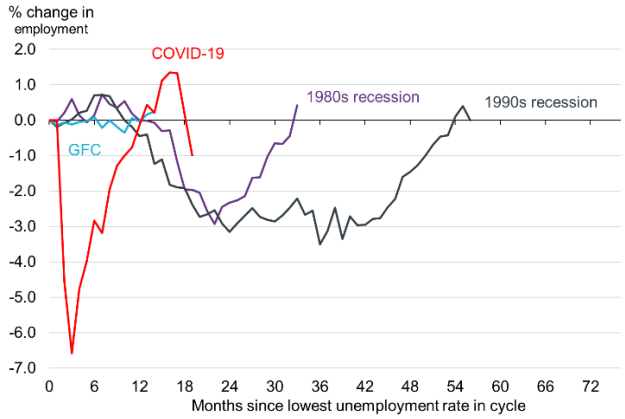
These latest ABS business survey results closely mirror Ai Group research conducted throughout 2021 on the impact of COVID-19 on Australian businesses. Most Australian business leaders expect to face fresh disruptions from the pandemic in 2022. Business leaders also expect to face additional supply chain interruptions, intensified skill shortages in a wide range of occupations, and high wage pressures. Input prices are expected to increase for 79% of businesses and decrease for only 1%, the resulting net balance increase of 78% is 80% greater than the average net balance over the 2013-2020 period.

These potential disruptions are likely to adversely affect the ability of businesses to keep local supply chains functioning and will likely cause economic stress for Australian businesses, and by extension, volatility in the economy.

## 2.3 Short-term risks: will the jobs recovery wobble in 2022?

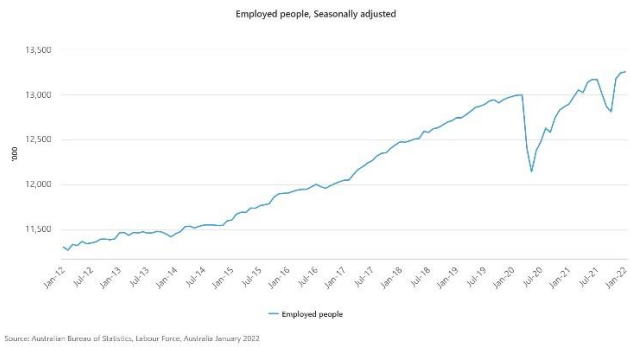
In the labour market, there was considerable disruption due to the Omicron variant. There was an 8.9% increase in hours worked in February 2022 compared to an average increase of 2.8% to the year ending February 2022. The participation rate increased to 66.2% and unemployment fell to 4.0%. Almost 356,000 jobs were lost in the worst period of 2021. The numbers bounced back by January 2022 (Charts 14 and 15).

## Chart 14: Employment change, %




* Source: ABS *Labour force Australia*, Feb 2022.

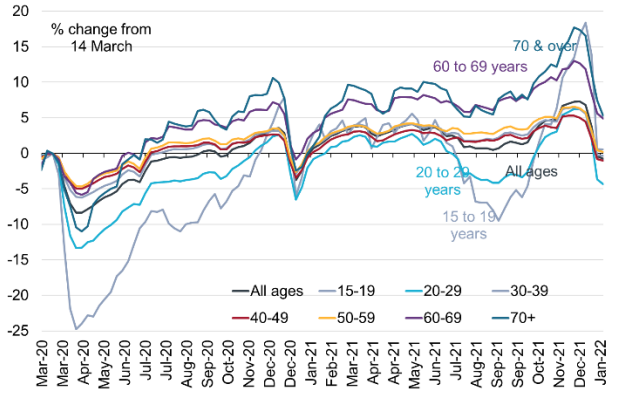
## Chart 15: Employed persons, millions




Source: ABS *Labour force Australia*, Feb 2022.

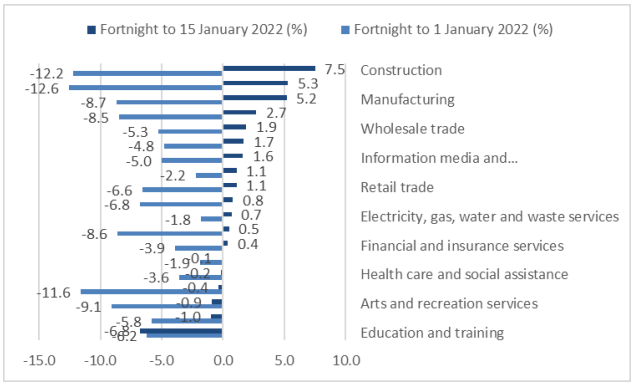
The ABS payroll data (for all employees paid through the ATO 'single touch' system) provides a closer insight into the jobs recovery for employees (as opposed to all workers, regardless of their status in employment). As of the week ending 15 January 2022, the total number of payroll employees increased by 1.0% while the total wages decreased by 0.1% from the preceding week. According to the ABS this was a slower pick up in January compared to last year, reflecting a range of factors such as: employees delaying their return from the holidays, early impacts on businesses and employees from COVID infection-related disruptions and weather events in certain regions. The demographic detail confirms the fall in employment over the holiday period for all age groups (Chart 16) (a fall of 8% in hours worked in January 2022). This was likely a result of the holiday period. As we can see in Chart 17, most industries reported an increase in employment going into the fortnight ending 15th January 2022.

## Chart 16: Payroll jobs by age group, % change, 14 Mar 2020 to 27 Feb 2021




Source: ABS *Weekly Payroll Jobs and Wages*, week ending 15 Jan 2022.

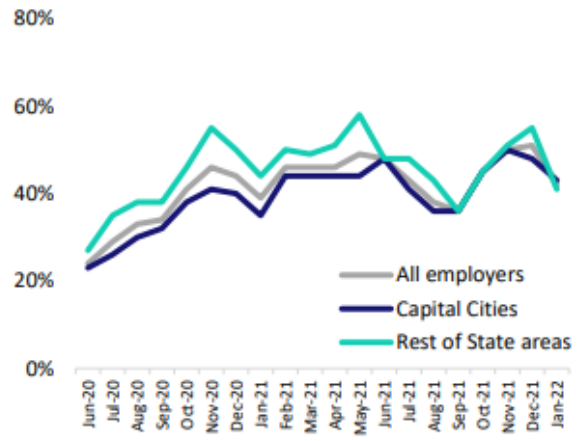
## Chart 17: Payroll jobs by industry, % change, 14 Mar 2020 to 27 Feb 2021




Source: ABS *Weekly Payroll Jobs and Wages*, week ending 15 Jan 2022.

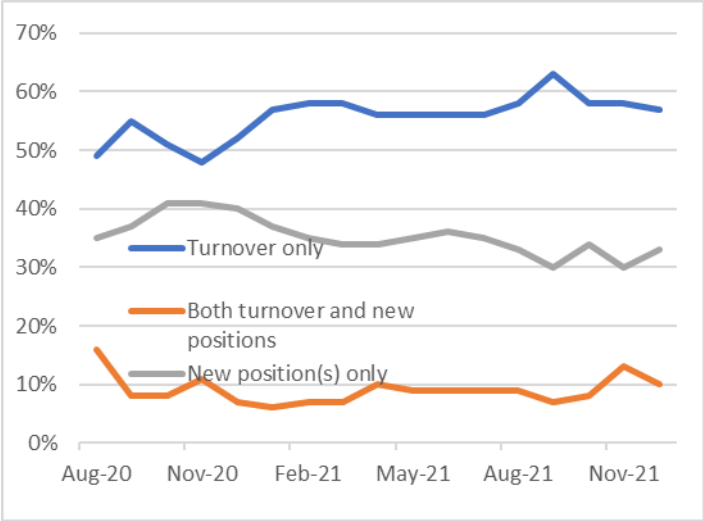
The number of job vacancies advertised has eased and fewer employers are expecting to increase their staff numbers (Chart 18). The recruitment in capital cities was 43% in February 2021, which was higher than the rest of the State areas at 41%. For employers who were hiring, more than half (57%) recruited to replace staff and 33% recruited to fill new positions and replace staff who had left. These proportions have remained largely stable over the previous year (Chart 19). More businesses in hospitality than in other industries were recruiting in Dec 2021 as the industry opened in more locations (Chart 20).

### Chart 18: Recruitment activity by region, % of businesses, June 2020 to Feb 2021



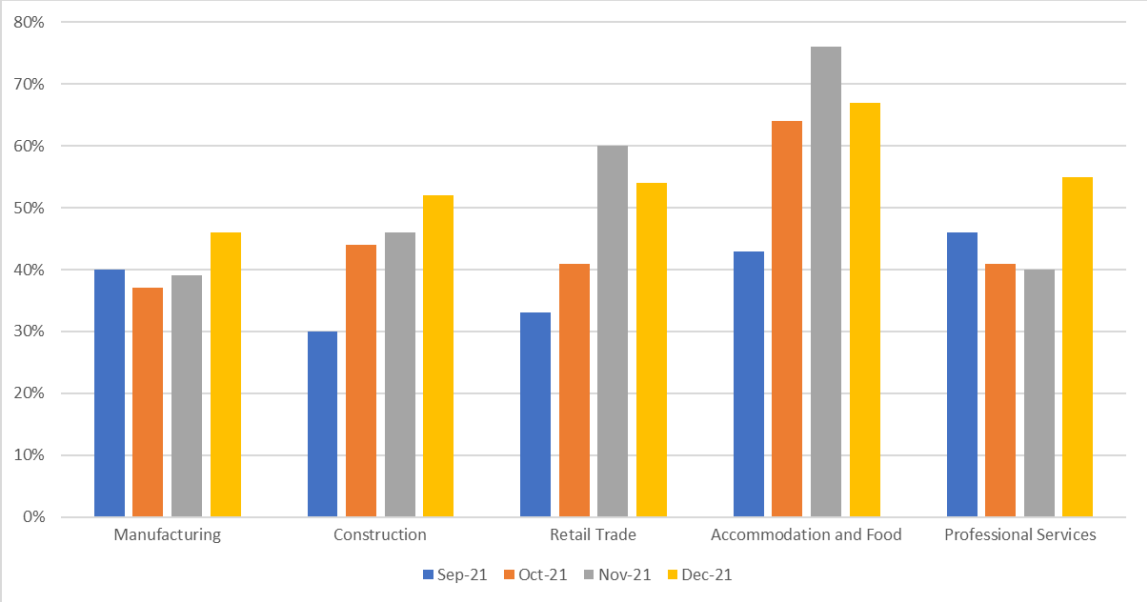

Source: NSC, *recruitment insight report*, Jan 2022.

### Chart 19: Recruitment activity by reason, % of businesses, June 2020 to Feb 2021




Source: NSC, *recruitment insight report*, Jan 2022.

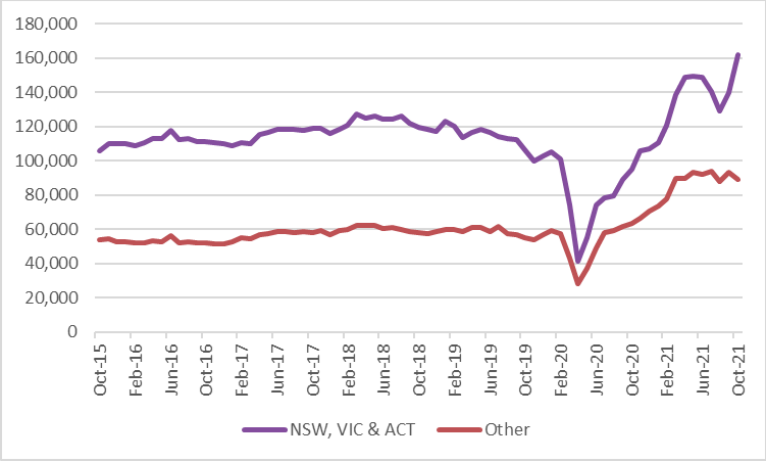
### Chart 20: Recruitment activity by industry, % of businesses, Sep 2021 to Dec 2021




Source: NSC, *recruitment insight report*, Dec 2021.

Jobs and job vacancies for new positions picked up in early 2022, along with a decline in job vacancies due to labour turnover. Most significantly, recruitment increased for professional services, manufacturing, and construction as Australia emerged out of the Omicron related restriction period. The same can also be seen from the number of job advertisements being reported by the National Skills Commission's Internet Vacancy Index (Chart 21).

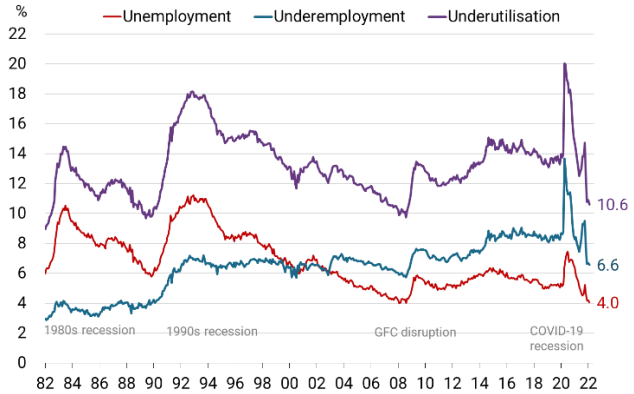
### Chart 21: Internet Vacancy Index




Source: NSC, *Internet Vacancy Index*

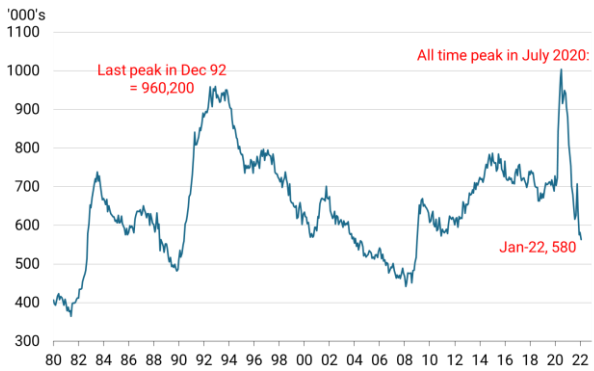
The national unemployment rate fell to 4.0% in February 2022, the lowest since pre-pandemic levels (Chart 22). The national underemployment rate decreased by 0.1% to 6.6%, significantly lower than pandemic levels. The ABS identified 581,800 individuals as unemployed, compared to the pandemic peak unemployment of 1,007,900 in July 2020 (Chart 23).

### Chart 22: Unemployment and underemployment rates, % to Feb 2022




* Source: ABS *Labour force Australia*, March 2022.

### Chart 23: Unemployed people, millions, to Feb 2022




Source: ABS *Labour force Australia*, March 2022.

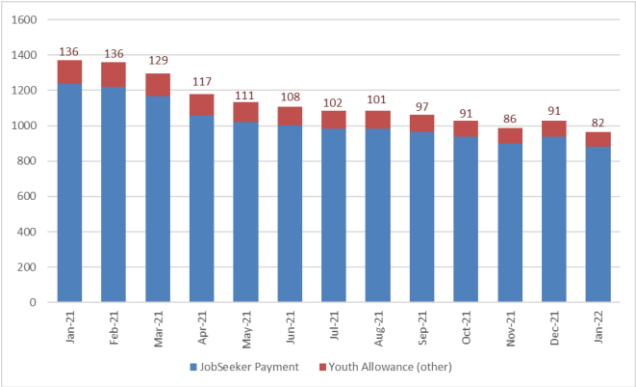
964,882 individuals received JobSeeker or Youth Allowance (other) in January 2022 (Chart 24). This is greater than the ABS estimate of unemployed individuals due to differences in criteria and definition. For example, JobSeeker recipients might be working a low number of hours (and thus be classified as underemployed rather than unemployed in ABS data), or they may be undertaking training or be occupied with caring responsibilities and temporarily unable to seek work. In

January 2022, 710,879 (80% of the total) of JobSeeker recipients had no other income in the month, which indicates they were effectively unemployed in the month.[2] Female JobSeeker recipients were more likely to have earned something in January 2022 (25% of recipients) than males (13.5% of recipients), and thus to potentially be included in the ABS estimates of underemployment rather than unemployment.

Regardless of the formal labour data definitions, this very large number of Jobseeker and Youth allowance recipients signals a much larger pool of underlying spare labour capacity than is indicated by the ABS estimates of unemployment or underemployment alone. JobSeeker/Youth Allowance recipients have reduced from a recent peak of 1.6 million people in May 2020.

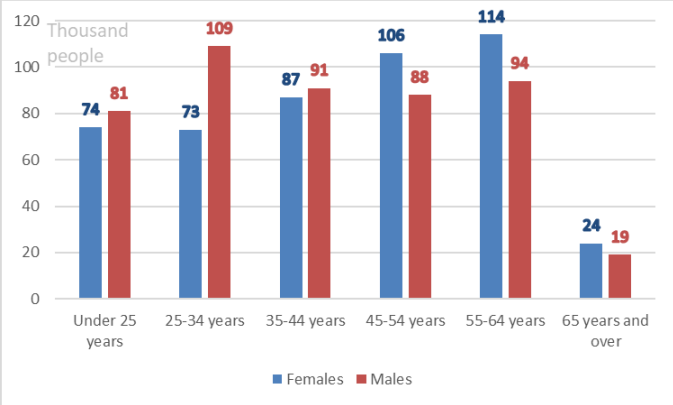
In January 2022, 16% of all JobSeeker and Youth Allowance (other) recipients were under 25 years of age. With another 19% aged 25 to 34 years. For age groups under 45 years, males outnumber females. But among the age groups of 45 years and over, female recipients outnumber males (Chart 25). This likely reflects reduced work options for these groups in industries including hospitality and travel.

### Chart 24: Jobseeker and youth allowance (other) recipients, Jan 2021 to Jan 2022




Source: DSS *Recipients of Newstart, JobSeeker, Bereavement, Sickness and Youth Allowances,* Jan 2022.

### Chart 25: Jobseeker and youth allowance (other) recipients, Jan 2022




Source: DSS *Recipients of Newstart, JobSeeker, Bereavement, Sickness and Youth Allowances,* Jan 2022.

As a comparison to the number of job vacancies that are potentially available, ANZ's monthly job ads report counted 208,522 advertised vacancies in January 2022.[3] This equates to:

- 2.7 unemployed people (ABS estimate for January 2022) per advertised vacancy (up from 4.6 in March 2021),
- 4.6 jobseeker and youth allowance (other) recipients (DSS data for January 2022) per advertised vacancy (which is up from 7.9 in March 2021).

[2] DSS *Recipients of Newstart, JobSeeker, Bereavement, Sickness and Youth Allowances,* Jan 2022.

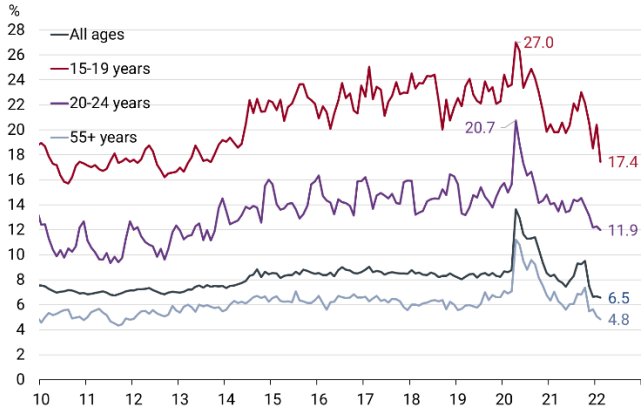
[3] ANZ Research, *ANZ Australian Job Advertisement Series,* 7 Feb 2022.

Underemployment has been relatively high nationally over the past decade, with the underemployment rate tracking higher than the unemployment rate for much of the past two decades (Chart 26). Underemployment has become a big contributor to labour underutilisation and is thought to have an increasing influence on aggregate wage pricing. Australia's underemployment rate decreased by 0.1% to 6.6% in Feb 2022. This is a significant reduction in underemployment from April 2020 (13.8% of the labour force).

Underemployment remains significantly higher for younger than for older workers (as it has for at least the past three decades). 17.4% of 15–19-year-old labour force participants (were underemployed in Feb 2021 versus 6.6% of all people in the labour force (Chart 26). In raw number terms, underemployed 15–19-year-olds hit an all-time peak of 193,989 people in April 2020 before dropping to 170,221 in January 2022 (Chart 27). Underemployment numbers among older age groups spiked sharply higher in 2020 and then dropped rapidly and continue to fall below 2019 levels (Chart 25).

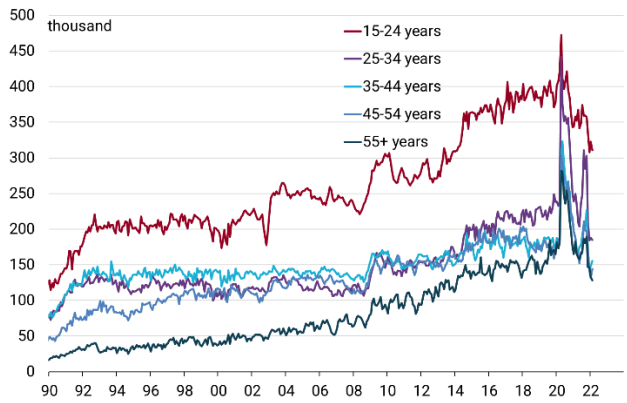
In 2019, youth underemployment (15-24 years) accounted for 34% of all underemployed people on average. A sharp rise in underemployment among older workers in 2020 saw the youth share drop to 25% in mid-2020, before rising to 30% in January and February 2021, and then rising again to 32% in January 2022.

**Chart 26: Underemployment rates, % selected age groups, 1990 to Feb 2022**




Source: ABS *Labour force Australia*, March 2022.

**Chart 27: Underemployed people, selected age groups 1990 to Feb 2022**

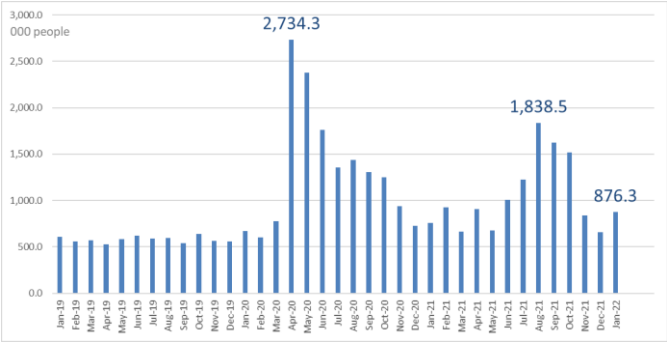



Source: ABS *Labour force Australia*, March 2022.

Recent detail about work hours published by the ABS[4] helps to explain the current composition of underemployment and to identify underemployed workers at high risk of job loss in 2022. The ABS estimates that 876,000 people worker fewer hours for economic and other reasons in January 2022 (6.3% of the total workforce), and 214,000 people who worked zero hours for economic and other reasons. This is 205,600 (30.6%) greater than the number of people who worked fewer hours than usual in January 2020 (Charts 28 and 29).

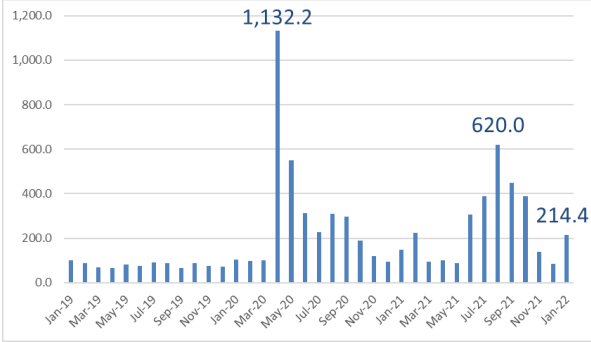
[4] ABS, *Insights into hours worked*, January 2022.

## Chart 28: Employed people working fewer than their usual hours or no hours at all for economic reasons, Jan 19 to Jan 2022




Source: ABS, *Insights into hours worked,* January 2022.

## Chart 29: Employed people working no hours at all for economic reasons, Jan 19 to Jan 2022




Source: ABS, *Insights into hours worked,* January 2022.

Overlapping with these groups of underemployed workers and workers on reduced work hours is the 'casual employee' sub-set. The ABS does not formally identify 'casual employees' in the national labour market data. Instead, the ABS employment status category 'employee without paid leave entitlements' is commonly cited as a proxy for 'casual workers'. In the three months to February 2022, casual employment accounted for around 19% of the total workforce (including self-employed business owners and contractors). The number of people employed as casual workers (employees with no leave entitlements) was 2.3% lower in the three months to February 2022 than prior to the pandemic in February 2020, compared to 4.9% higher for permanent employees.

Casual employment fell by a larger margin than any other employment category in Q2 of 2021, but it also recovered relatively quickly in Q3. This large rapid movement underscores the flexible nature of this form of work but also reflects the industries in which it is most prevalent – retail and hospitality – which were severely affected by COVID-19 restrictions during 2021. As of November 2021, 167,200 casual employees had a job, but did not work any hours in the survey week (6.6% of all casual workforce, down from 13.7% in August). 376,700 worked 1-9 hours (14.9% of all casuals, down from 15.9% in August). This indicates that the number and proportion of casual employees working zero or low hours reduced significantly through mid-2021. By November 2021, this group was larger in number and proportion than one year earlier (145,100 on zero hours and 383,200 on 1-9 hours in Nov 2020). These changes in casual workforce underscore the nature of casual work, whereby it is easier to reduce hours and because many employees were not eligible for JobKeeper (in Q2 2021). However, this is alongside higher participation rates and larger proportions working full-time.

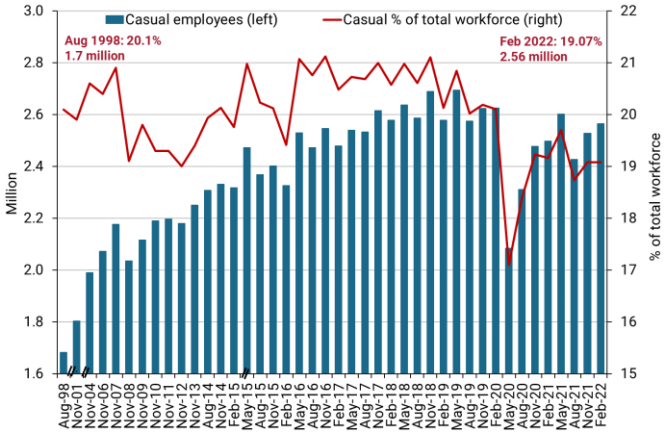
The number of casual employees rose again in the three months to February 2022. This follows a rise in the 3-month period to November 2021 (Charts 30 and 31). In contrast, the number of casuals fell in the preceding 3-month period (related to Delta & associated restrictions in this period.) As also occurred in the initial COVID disruption, casuals really felt the brunt of the labour market disruption.

As a result of the extra impact on casual employees, the fall in the number of casuals in both the initial and Delta waves was accompanied by sharp reductions in the proportions of casual employees in the workforce (to a low of 17% in the depths of the initial wave).

The recovery is a different story. As employment in general has lifted (both in the period from May 2020 to May 2021 and also in the post-Delta period from September 2021), the number of casual employees has risen. The number is yet to reach its pre-COVID peak (February 2020). As the labour market has recovered, non-casual employees have grown by much more than casual employees so the proportion of casuals has not returned to the 20-21% range that was typical pre-COVID but is more like 19.1%.

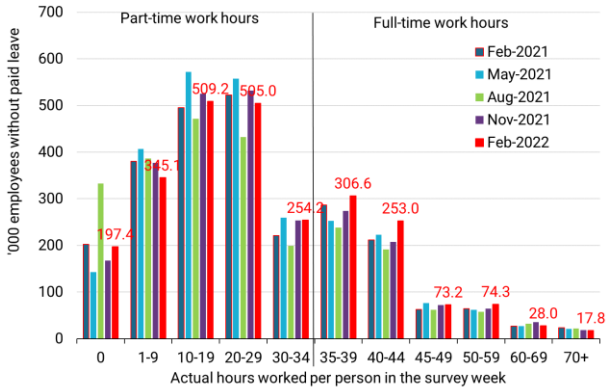
The group of casual employees working zero hours is rather large, around 550,000 people. This group overlaps with (or is a sub-set of) the ABS estimates of underemployed workers and workers who are working fewer than their usual hours, cited above. It is another indicator of the large number of workers – across a range of employment categories – who will be at risk of job loss during 2022, if economic conditions do not improve further.

### Chart 30: 'Casual employees'*, number and share of workforce, 2014 to 2022




* employees without paid leave entitlements. Source: ABS, *Labour force quarterly detail*, Feb 2022.

### Chart 31: 'Casual employees'* weekly work hours, Feb 2021 to Feb 2022



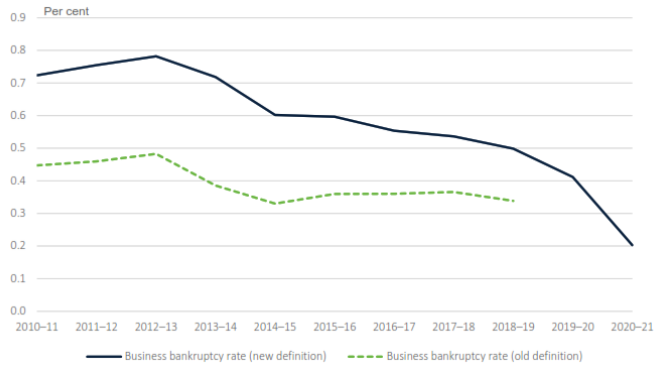

* employees without paid leave entitlements. Source: ABS, *Labour force quarterly detail,* Feb 2022.

These indicators of spare capacity highlight the likely difficulty in overcoming significant hurdles and risks from here. The most significant risk to further jobs growth and unemployment reduction is of course the COVID-19 pandemic itself, which has not yet receded globally, and may continue to disrupt economic activity via further variants. This will likely affect international travel and tourism despite Australia's recent border opening, thus delaying the recovery of key segments of

the economy including tourism, travel and education. The risks may be worsened if states impose local and snap lockdowns and interstate border restrictions.

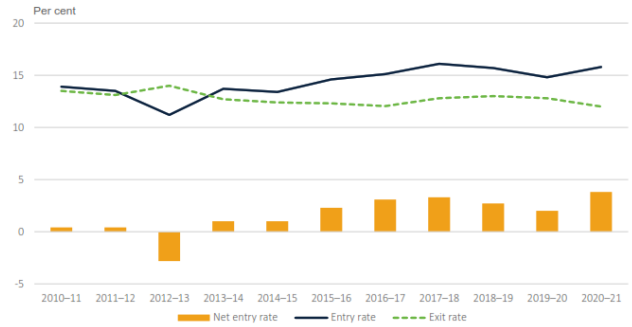
However, there are indicators that show signs of economic recovery. Business bankruptcy rates declined in 2021 from 0.4% in 2020 to 0.2% in 2021 (Chart 32) and there is a positive net business entry rate of 4% in 2021 (compared to 2% in 2020) (Chart 33), indicating restoring confidence in the economy.

## Chart 32: Business Bankruptcy Rates




Source: ABS, *Labour force quarterly detail,* Dec 2021.

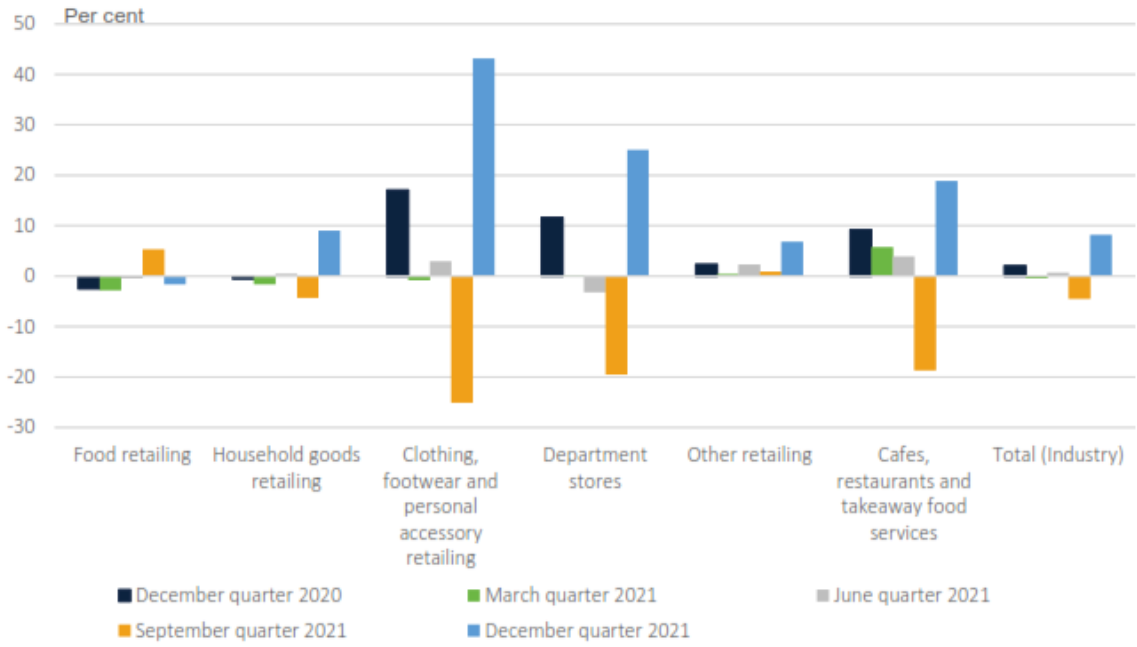
## Chart 33: Business Entry and Exit rates




Source: ABS, *Counts of Australian Businesses, Including Entries and Exits,* various.

Industries that were severely affected by COVID-related restrictions are also showing signs of economic recovery in retail turnover (Chart 34). Particularly, with the lifting of density requirements, clothing, cafes, and department stores' economic activity has bounced back.

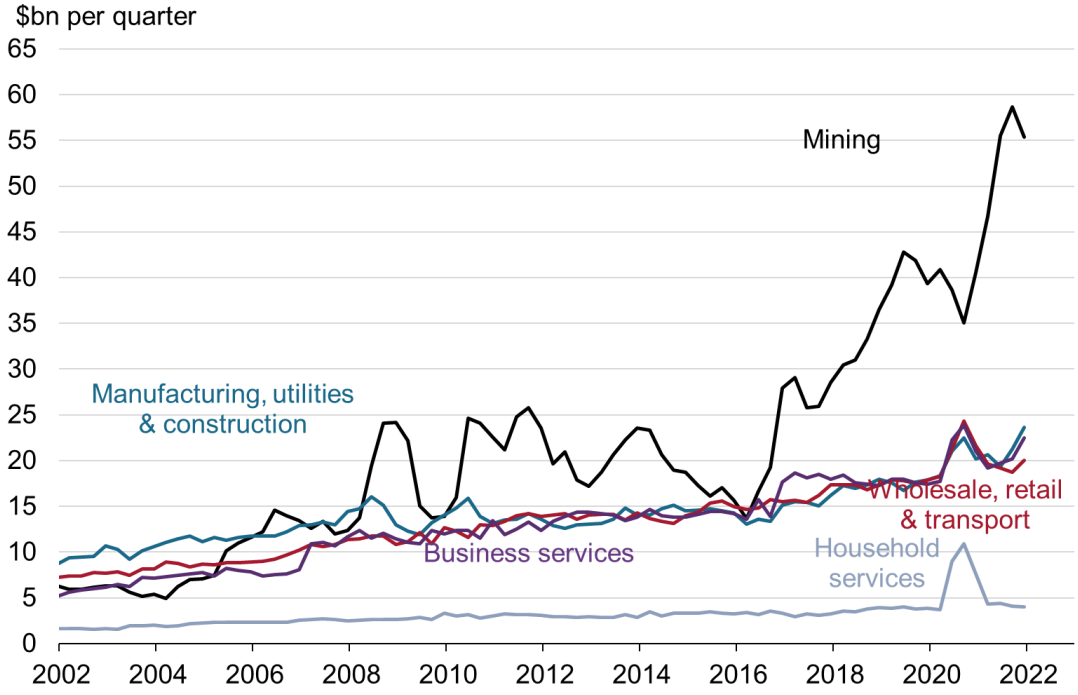
## Chart 34: Change in quarterly retail by industry




Source: ABS, *Retail Trade,* Jan 2022

A closer examination of the gross operating profits reveals that while gross operating profits have increased by 2.0% (seasonally adjusted) over Q4 2021, the growth in 2021 is largely skewed towards finance and marketing businesses (Chart 35). The finance and insurance services sector reporting a 77.3% increase in gross profits.

### Chart 35: Gross profit by sector



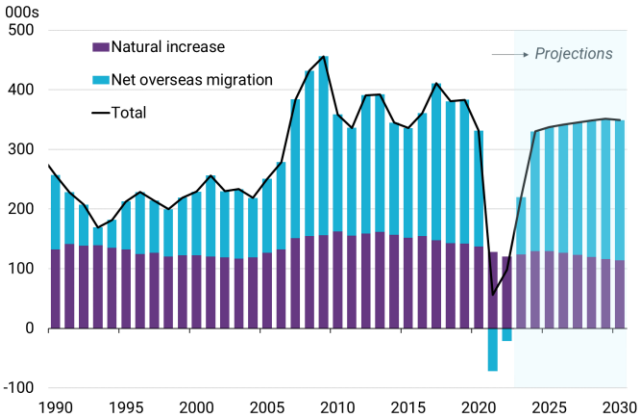

Source: ABS, *Business Indicators,* Dec 2021.

## 2.4 Underlying drivers of real income growth: population, productivity and international competitiveness

Even after previous levels of GDP, jobs and incomes have recovered, Australia's potential growth rate will remain structurally lower than prior to the pandemic. This will be due to permanent losses of population, investment and asset stocks. Unlike some of the immediate disruptions to consumption levels and composition in 2021, these losses will be absolute and not simply deferred, especially if net migration continues to be negative.

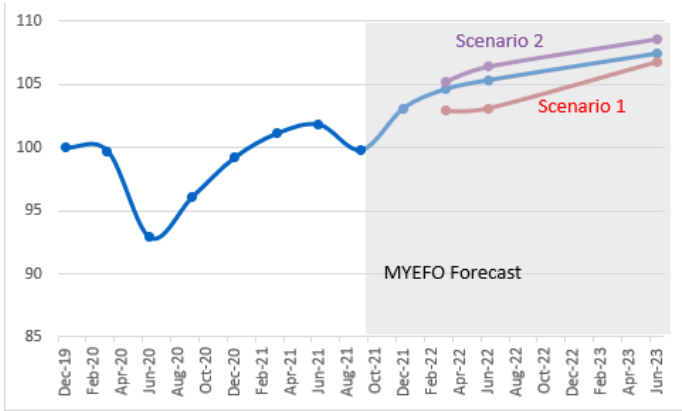
Treasury forecasts are hopeful that net migration will return to positive levels as a result of border reopening. It expects that net migration will go up to 213,000 people in 2022-23 after being negative 44,000 in 2021-22 (originally forecasted to be -22,000). Treasury expects that a growing population will support consumption growth and help Australia's economic growth. However, population numbers are still expected to be lower than pre-COVID peaks (Chart 36). This means that even when GDP recovers from the COVID-related recession, the total level of GDP will be smaller than it would have been without the population (and other) losses caused by the pandemic and recession, and the long-run potential growth that can be achieved will be slower (Chart 37).

## Chart 36: Population Projections




Source: Centre for Population, *National Projections 2020-21 to 2031-32*

## Chart 37: potential GDP size, Treasury projections to 2023




Source: Treasury, MYEFO 2021-22

One of the other key drivers of real income growth – productivity growth – has been unhelpfully weak in Australia and internationally over an extended period. While the impact of COVID-19 on national productivity is difficult to quantify, it is likely that activity and travel restrictions and other necessary health measures will reduce productivity, while they remain in place. Site density limits, travel restrictions, freight delays, cleaning requirements, PPE requirements and physical site modifications all increase business inputs and costs and/or reduce physical outputs. The effects of widespread long-term 'working from home' arrangements on productivity is not clear yet but it is likely to differ widely across different types of work and working arrangements.

Overall, on an hours worked basis, market sector MFP (multifactor productivity) has increased by 0.2% in 2020-21 (Charts 38 and 39):

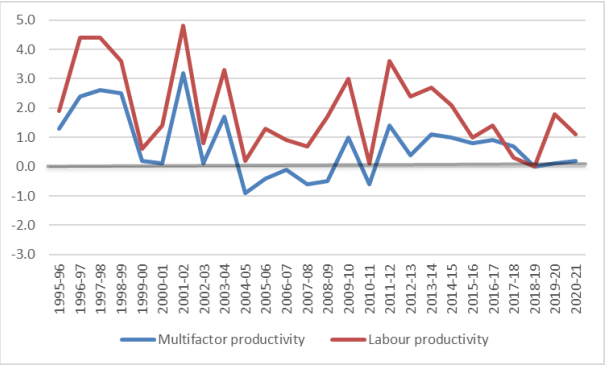
> *"Market sector gross value added (GVA) rebounded after a fall in the previous year, recording 0.6% growth. By comparison, combined labour and capital inputs grew 0.4%, reflecting capital services growth of 1.4% and a fall in hours worked of 0.5%. Market Sector labour productivity grew 1.1% in 2020-21, the result of a rise in GVA and a fall in hours worked.*
>
> *On a quality adjusted labour input (QALI) basis, MFP fell 0.2% and labour productivity only rose 0.4%. The weaker growth on a QALI basis reflects a positive contribution from changes to the composition of labour due to educational attainment and work experience*
>
> *In 2020-21, MFP growth was reported in nine market sector industries, while a fall in MFP was experienced in seven industries. The largest increases in MFP were in Agriculture, forestry and fishing (21.7%) and Wholesale trade (3.1%). The largest MFP falls were in Transport, postal and warehousing (7.8%) and Arts and recreation services (5.4%).*
>
> *MFP rose 21.7%, reversing the falls in MFP in the previous two years. This increase in productivity represents the strongest growth for the division since 2003-04 and the strongest growth of all industries in 2020-21. The MFP growth reflects:*

- *A rise in GVA of 19.9%, reflecting easing drought conditions and more favourable weather. The industry strength was largely driven by the Agriculture subdivision, with Grains and Other Crops recording strong growth due to bumper grain harvests.*

- *Combined inputs fell 1.8%, driven by a fall of 6.1% in hours worked and a marginal increase in capital services (0.1%). The fall in hours worked was due to COVID-19 related border closures restricting the inflow of agricultural workers.*

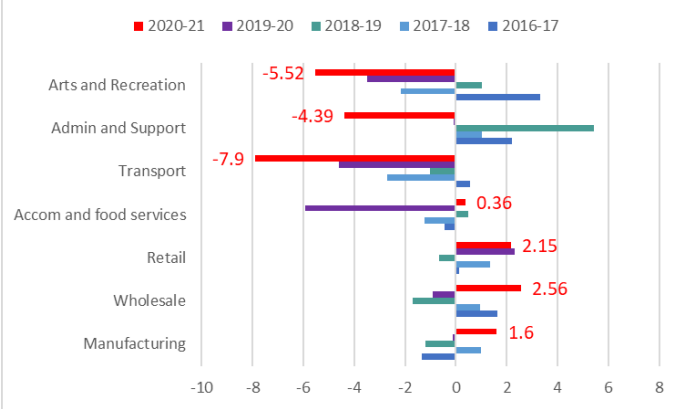
- *Labour productivity recorded a 26.0% growth due to a strong rise in GVA coupled with a fall in hours worked"*[5]

**Chart 38: national productivity growth*, annual % change, 1995 to 2021**




* quality adjusted hours worked basis, Source: Australian Bureau of Statistics, *Estimates of Industry Multifactor Productivity 2020-21 financial year,* Dec 21

**Chart 39: MFP growth*, selected industries annual % change, 2016 to 2021**




* quality adjusted hours worked basis, market sector industries. Source: Australian Bureau of Statistics, *Estimates of Industry Multifactor Productivity 2020-21 financial year,* Dec 21

Australia will inevitably see a reduction in these fluctuations as output and work hours are restored, but the ongoing impact of COVID-19 will likely see aggregate productivity continuing to suffer.

Notwithstanding, the effects of COVID-19, Australia's productivity performance has been problematic over an extended period. In 2020, the Productivity Commission concluded that productivity growth has been weak since around 2012 and that "*strong terms of trade have allowed incomes to outgrow productivity over the past 20 years*".[6] The Australian Treasury echoed similar sentiments in 2017.[7] At the aggregate level, terms of trade and exports are strong determinants of Australian income since 2012. While export earnings add significantly to the aggregate national income, the mining sector accrues most of the income. However, with the end

[5] ABS, *Estimates of Industry Multifactor Productivity*, Dec 2021.

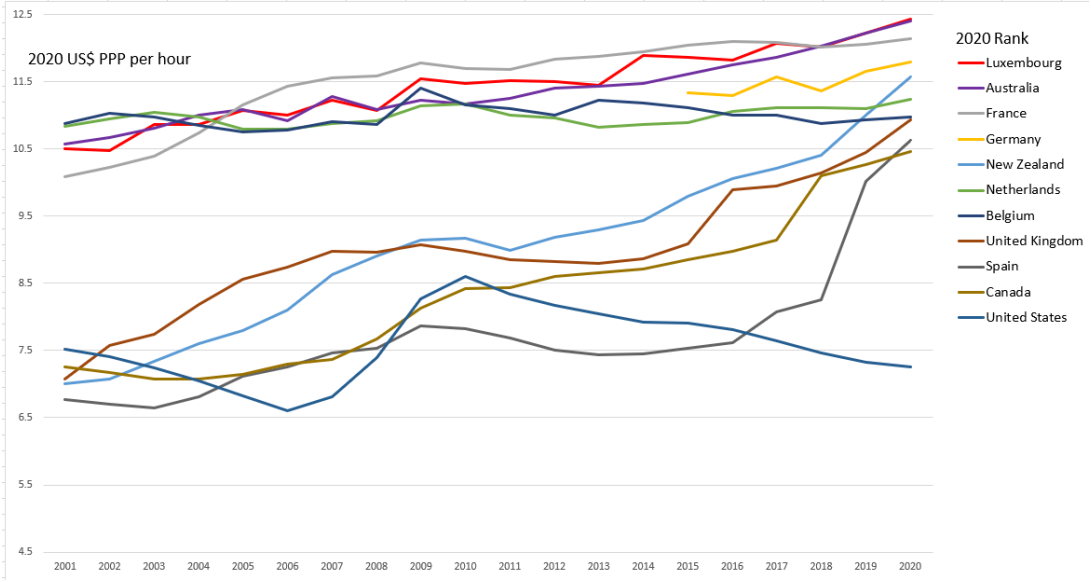
[6] Productivity Commission, *PC Productivity Insights: Recent Productivity Trends,* Feb 2020.

[7] Australian Government Treasury, *Analysis of Wage Growth*, 2017.

of the mining investment boom, Australia has experienced 'subdued investment and, through lower terms of trade, reduced the purchasing power of Australian incomes'.[8]

Australia's international competitiveness (that is, its attractiveness to business and skilled labour) is also relevant to the level, composition and distribution of real activity and incomes. OECD data shows that Luxembourg has overtaken Australia as the country with the highest hourly minimum wage in the world in 2020 (Chart 40), when calculated in constant 2020 US dollars at 'purchasing power parity' (PPP, which adjusts for differences in living costs, inflation rates and exchange rates). This comparison by the OECD only compares per hour wages paid by the employer.

## Chart 40: minimum wages per hour, 2001 to 2020

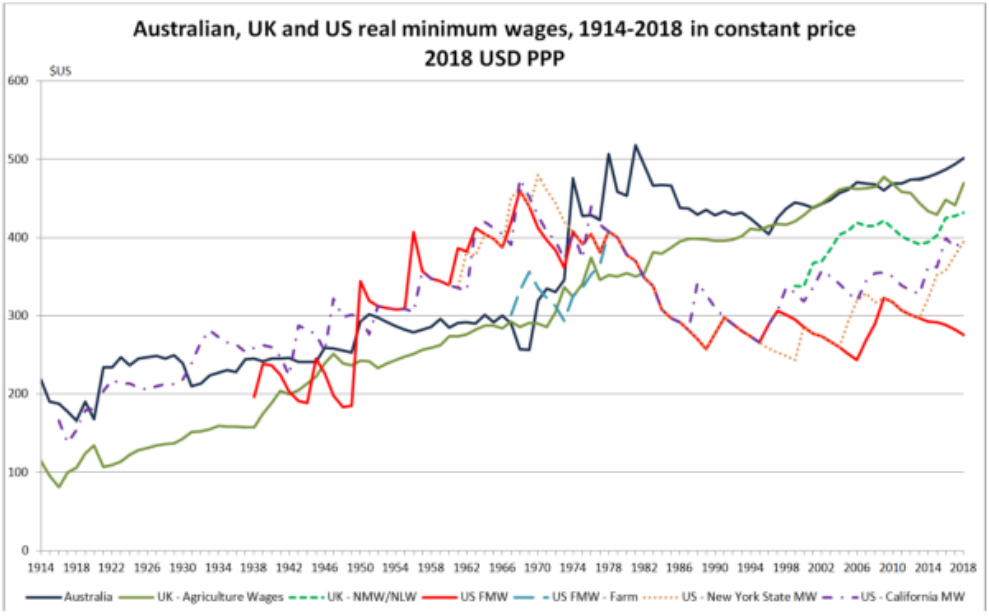



Source: OECD Stat database.

The Australian minimum wage (on a PPP basis) is almost double that of the US on a PPP basis (Chart 41).

[8] Productivity Commission, *PC Productivity Insights: Recent Productivity Trends,* June 2021.

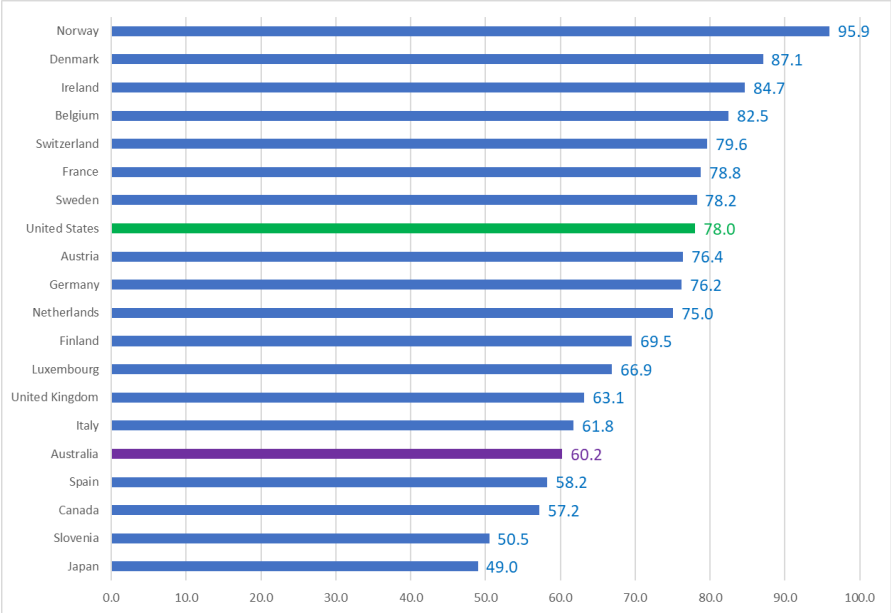
## Chart 41: 100 years of minimum wages in Australia, the United Kingdom and the United States




Source: Deputy President Reg Hamilton and Matt Nichol, *One Hundred Years of Dynamic Minimum Wage Regulation: Lessons from Australia, the United Kingdom and the United States*, Working Paper, May 2020.

However, Australia's high labour costs are not necessarily representative of Australia's productivity performance, for example, the OECD estimates that when measured on the same PPP exchange-rate basis, Australia's labour productivity was 16th highest in 2021 (compared to 15th in 2020), among the OECD countries for which data was available (Chart 42). Labour productivity is defined as the ratio between the volume of output produced per unit of labour input, measured in GNI per hour worked PPP terms.

## Chart 42: Labour productivity

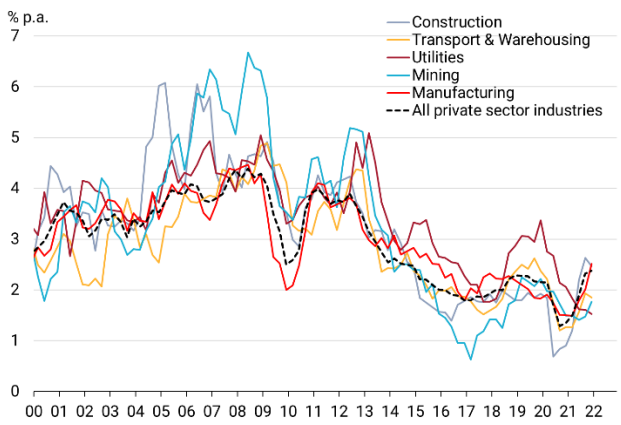



Source: OECD Compendium of Productivity Indicators, Jul 2021

Furthermore, Australia is also due to set-in a further 0.5% increase in employer superannuation contributions. These contributions are a significant cost for employers but are not included in calculations relating to minimum wages or other related income indicators, despite effectively contributing to household income.

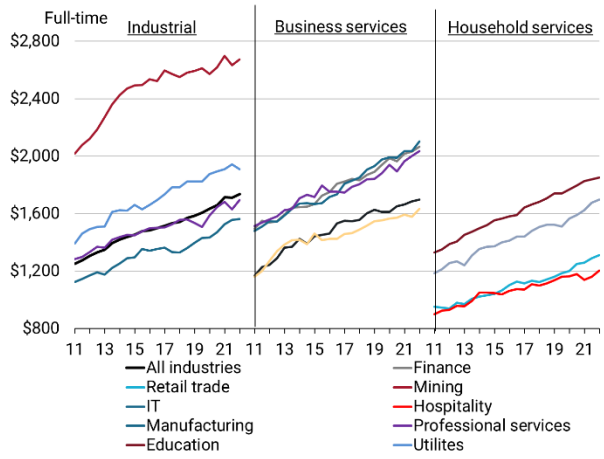
The size of the increase in minimum wages depends in part on an evaluation of the needs of the low paid i.e., on hours worked and wage rates, as both elements determine take-home pay. Therefore, we must consider the Wage Price Index (**WPI**) with the average hours worked. Average weekly ordinary time earnings (**AWOTE**) closely match changes in the WPI (Charts 43 and 44). Average weekly total earnings for adults increased by 2.4% while the All employees average weekly total earnings measure increased by 3.8% in the year to November 2021 (both seasonally adjusted). For males, AWOTE increased by 2.3% and for females by 1.9%. In contrast, for males the All employees average weekly total earnings measure rose by 3.3% and for females by 4.1%. In addition, we must consider changes in part-time and full-time employment (Chart 45). The result is largely driven by increases in female full-time employment but also for males, on average, notwithstanding the January holiday period. The proportion of employed people working full time increased from 67.9% to 68.7% between November 2020 and November 2021. For males, the proportion in full-time employment rose from 80.3% to 80.7% and for females the proportion working full time increased from 54% to 55.4% over the same period (all data seasonally adjusted). This means that there are significant increases in the incomes of the low-paid but they do not necessarily show up in WPI statistics. Present information indicates that the needs of the low paid are being relatively better met because of the increases in hours worked and the proportion of full-time workers.

### Chart 43: Total hourly rate of pay by sector (excluding bonuses)



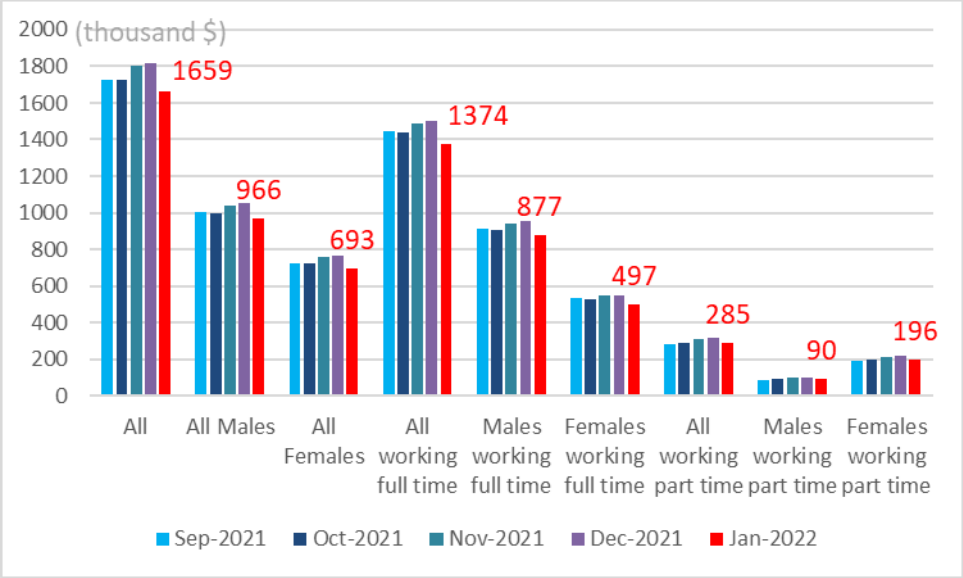

Source: ABS, *Wage Price Index*, Dec 2021

### Chart 44: AWOTE by industry, 2011 to 2021




Source: ABS, *Average Weekly Earnings, Australia,* November 2021.

### Chart 45: Changes in part-time and full-time employment for males and females




Source: ABS, *Australian Labour Force Survey*, Jan 2022

## 2.5 Outlook for average growth in wage rates remain modest

2021 saw unusual movements in inflation, wages, hours worked and other economic indicators as a result of COVID-19 and the temporary support policies introduced in response to it (Chart 46). In particular, freight disruptions and other supply chain disruptions caused unpredictable pricing spikes across a range of goods. Wages growth picked up in the September quarter of 2021 to return to the rates observed in the years leading up to the COVID-19 pandemic. Wages growth was higher in industries which have recently reported labour shortages, especially construction and professional services. As per the Reserve Bank's business liaison program, most firms do not anticipate wages growth beyond 2-3% over the year ahead. [9] Although most businesses have begun to employ strategies to attract and retain workers including but not limited to raising base wages (Chart 46).

On the rapid price increases in certain sectors that are driving up measures of CPI, the RBA said:

> *Prices for new dwelling construction, which make up just under one-tenth of the CPI basket, increased significantly – up by 4.2 per cent in the December quarter. This was driven by further substantial increases in the prices charged by builders (exclusive of government subsidies) in most capital cities. A key driver of the pick-up in these prices has been the strong rise in the cost of raw materials, which increased by 3.8 per cent in the December quarter and 12 per cent over the year (Graph 4.5). Domestic and global supply shortages have particularly affected prices of timber and steel inputs. Price increases also reflect a surge in construction activity in response to policy inducements – residential building*

[9] RBA, *Statement on Monetary Policy*, Feb 2022.

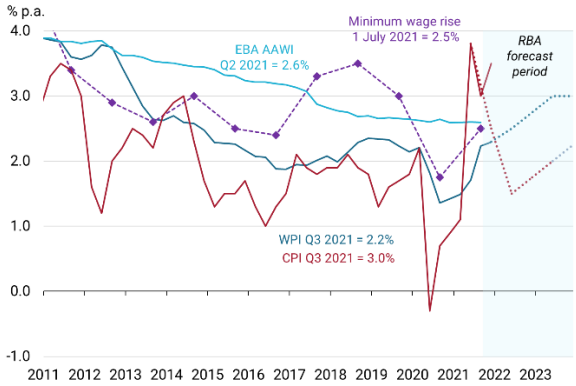
*commencements are at a record level, and capacity utilisation in the construction industry has been high.*

*In addition, new dwelling inflation increased because fewer government grants were paid out in the December quarter than in the September quarter – this accounted for less than one-fifth of the total increase in new dwelling prices. The number of grants paid out is expected to decline over time, which will provide a boost to measured inflation as prices measured in the CPI converge to the prices charged by builders. However, the effect on inflation in a given quarter will vary depending on how many grants are paid out during that period."* [10]

Prices have also increased strongly for consumer durable items, likely as a result of ongoing supply chain disruptions, including disruptions at overseas factories, sustained global demand and very high shipping costs (Chart 49). The prices of consumer durables increased by 1.5% in the December quarter – the strongest since 2009.

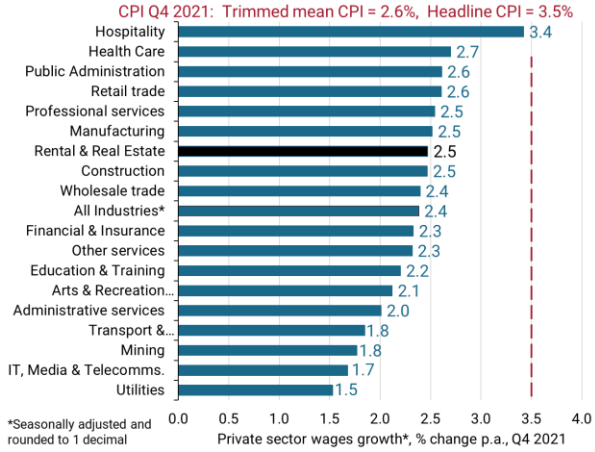
As a result of all these factors, the RBA expects wage growth and inflation to remain under 3.0% (Table 3, Charts 46 and 48). The RBA also reports that many firms have responded to labour shortages by implementing non-base wage rate strategies including but not limited to, flexible work policies, internal training, targeted bonuses, and the relaxation of hiring requirements (work experience). Some of these initiatives by employers to address labour shortages inevitably mean significant costs for employers, however, as such costs are harder to quantify and measure cleanly, these costs are excluded from measures of take-home pay and minimum wages.

**Chart 46: Wage and inflation measures and RBA forecasts, 2008 to 2024**




Sources: ABS, Source: ABS, RBA, Attorney-General's Department

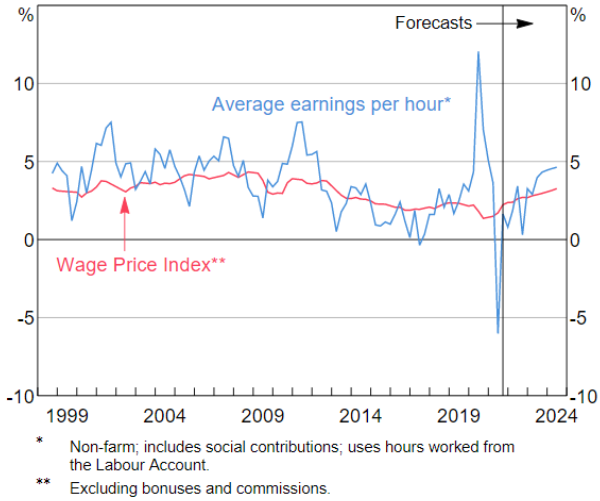
**Chart 47: Wage changes by industry, private sector, Q4 2021**




Source: ABS, *Wage Price Index*, Q4 2021.

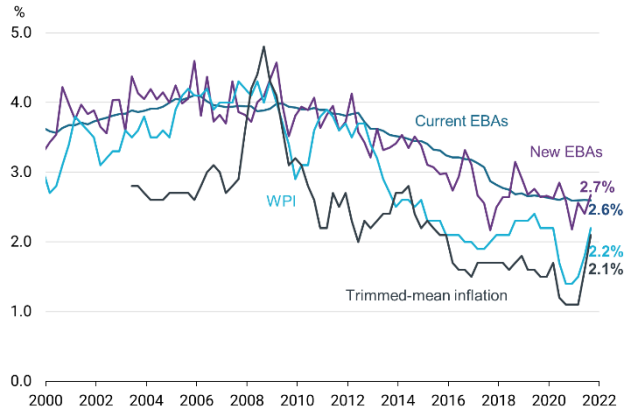
[10] RBA, *Statement on Monetary Policy*, Feb 2022.

## Chart 48: RBA wage price index (WPI) forecast scenarios, to 2024




Sources: RBA Statement on Monetary Policy, Feb 2021.

## Chart 49: Wage and inflation measures, % change p.a.




Source: Attorney-General's Department, *Trends in Federal Enterprise Bargaining Report,* Q3 2021; ABS, *Wage Price Index*, Q3 2021; ABS, *Consumer Price Index*, Q3 2021.

After rapid recovery in the December quarter, the effect of the Omicron variant of COVID-19 is expected to drag on growth in economic activity during early 2022. As numbers of individuals isolating keep increasing, business operations will continue to be disrupted by worker shortages and supply chain issues. However, the effect of the Omicron variant is considerably less severe than previous variants.

RBA forecasts suggest that employment will continue to grow strongly over the remainder of 2022, and then moderate in 2023. Participation in the labour force is expected to be at historically high levels over the forecast period and unemployment is expected to decline around 3%. As firms continue to increase hours worked to respond to growing demand, the hours worked are also expected to increase, meaning that underemployment and labour underutilisation will be at low levels.

Regarding growth in WPI, the RBA said:

> *"Growth in the Wage Price Index (WPI) is anticipated to pick up to close to 2½ per cent by the end of 2021, which is marginally above its pre-pandemic growth rate (Graph 5.8). WPI growth is then forecast to gradually strengthen further as the unemployment rate declines, to be 3¼ per cent by mid-2024; this would be the fastest pace since 2012."*[11]

[11] RBA, *Statement on Monetary Policy*, Feb 2022.

## Table 3: economic growth rates (Q4 2021) and RBA forecasts (as of Feb 2022)

| % change over the year | Dec 2021 | Jun 2022 | Dec 2022 | Jun 2023 | Dec 2023 | Jun 2024 |
|---|---|---|---|---|---|---|
| Gross domestic product (GDP) | 5 | 5 | 4¼ | 2½ | 2 | 2 |
| Household consumption | 4 | 4¼ | 5¼ | 4½ | 3¼ | 2¾ |
| Dwelling investment | 10 | 7¼ | 5¾ | 1¾ | 1½ | 2 |
| Business investment | 8½ | 5½ | 7¼ | 6 | 5¼ | 3¼ |
| Public demand | 7¾ | 9 | 3¾ | −½ | 0 | 1½ |
| Gross national expenditure | 5¾ | 5¼ | 5¼ | 2¾ | 2 | 2¼ |
| Imports | 1¼ | 5¾ | 15¾ | 9 | 5 | 4 |
| Exports | −2½ | 4½ | 9¼ | 7¼ | 4 | 3 |
| Terms of trade | 3 | 3½ | ¾ | 1¼ | 1 | 1 |
| Real household disposable income | 9½ | −14 | −13½ | −9 | −5½ | −3¼ |
| Unemployment rate (quarter average, %) | 4.7 | 4 | 3¾ | 3¾ | 3¾ | 3¾ |
| Employment | 2.1 | 2 | 3½ | 1¾ | 1½ | 1¼ |
| Average wage rates (wage price index) | 2¼ | 2½ | 2¾ | 3 | 3 | 3¼ |
| Trimmed mean inflation (Consumer Price Index) | 2.6 | 3¼ | 2¾ | 2¾ | 2¾ | 2¾ |
| Headline inflation (Consumer Price Index) | 3.5 | 3¾ | 3¼ | 2¾ | 2¾ | 2¾ |

= actual. ▭ = forecast. Sources: ABS, various data; RBA 'baseline scenario' in *Statement on Monetary Policy*, Feb 2022.

The effect of these circumstances on wage growth are rather unpredictable. RBA Governor Lowe recently re-stated that there are uncertainties about the future growth of labour costs, particularly because national unemployment below 4% is unprecedented. This situation is further complicated by the opening of international borders, highlighting concerns around high wage push inflation. He also noted that there is a risk for Australia in an ill-timed manoeuvre:

> *"There are, however, uncertainties about the future growth of labour costs. This is partly because we have no contemporary experience of a national unemployment rate below 4 per cent. The closest experience we have is that in the years leading up to the pandemic some of the larger states had unemployment rates around 4 per cent and wages growth hardly moved. It is also unclear, at this stage, what effect the opening of the international borders will have on the balance between supply and demand in the labour market. There is also the question of how wages respond to the current higher rates of headline inflation. There is a risk if these higher inflation rates are sustained as a result of a sequence of negative supply shocks, that wages growth picks up more quickly than forecast as workers seek compensation for the higher inflation.*
>
> *In this uncertain environment – and with the starting points for wages growth and underlying inflation in Australia – we can take the time to assess the incoming information*

*and review how the uncertainties are resolved. Given the outlook, though, it is plausible that the cash rate will be increased later this year.*

*I recognise that there is a risk to waiting too long, especially in a world with overlapping supply shocks and a high headline inflation rate. But there is also a risk of moving too early. Australia has the opportunity to secure a lower rate of unemployment than has been the case for some decades. Moving too early could put this at risk. There are benefits to the economic welfare of Australia of a period of relatively steady growth in which people get jobs, have training and develop skills. This is one path to sustaining a lower unemployment rate than was thought possible just a short while ago – not as low as was thought possible back in 1963, but lower than was thought possible just five years ago."*[12]

In determining the Annual Wage Review decision, the Expert Panel should take into consideration the unrelenting economic uncertainty in 2022 and the underlying volatility of the economy, the relatively stagnant profit growth (with the majority of the growth skewed towards mining and finance), the increase in the number of hours worked (i.e., the needs of the low paid better met this year compared to last), and the worsening cash positions of businesses.

# 3. Statutory considerations

The Expert Panel is required to conduct each Annual Wage Review in accordance with the *Fair Work Act 2009* (**FW Act**).

In previous Annual Wage Reviews, a number of important observations have been made by the Panel in respect of the manner in which it is to carry out its statutory task, including:

1. The following legislative provisions are particularly relevant: the object of the FW Act in section 3; the modern awards objective in subsection 134(1); and the minimum wages objective in subsection 284(1).

2. The statutory tasks in ss.134 and 284 involve an 'evaluative exercise' which is informed by the considerations in s.134(1)(a)–(h) and s.284(1)(a)–(e) of the Act. However, those matters "*do not necessarily exhaust the matters which the Panel might properly consider to be relevant".*[13]

3. No particular primacy is to be given to any of the specific factors that the Panel must take into account.[14]

4. There are differences in the expression of the economic considerations that the Panel is required to take into account under the modern awards objective and the minimum wages objective. But the underlying intention of the various economic considerations

[12] RBA Governor Lowe, *Recent Economic Developments,* 9 March 2022 (speech and Q&A transcript).

[13] *Annual Wage Review 2018-19 Decision,* [8].

[14] *Annual Wage Review 2016-17 Decision*, [129].

referred to in ss.134 and 284 is that the Panel takes into account the effect of its decisions on national economic prosperity and in so doing gives particular emphasis to the economic indicators specifically mentioned in the relevant statutory provisions.[15]

5. The Panel's task is to consider relevant statutory matters in the context of the prevailing economic and social environment.[16]

6. The relative living standards of employees are affected by the level of wages that they earn, the hours they work, tax-transfer payments and the circumstances of the households in which they live. It is therefore necessary to have regard to a range of measures of the relative living standards of the low paid and the household circumstances in which they live.[17]

7. In determining the award wage increases that would be consistent with the need to provide a 'fair and relevant safety net of terms and conditions'[18] (s.134), fairness is to be assessed from the perspective of both employees and employers, and the term 'relevant' is intended to convey that modern awards should be suited to contemporary circumstances.[19]

8. Even though the 'need to encourage collective bargaining' is not an element of the minimum wages objective, this is an important consideration for the Panel because it is an element of the modern awards objective.[20]

9. While the statutory provisions relating to the Annual Wage Review are properly characterised as 'remedial or beneficial provisions', the extent to which they are to be given 'a fair, large and liberal' interpretation in pursuit of that broad purpose is constrained by the fact that the relevant provisions seek to strike a balance between competing interests.[21]

10. The considerations which the Panel is required to take into account do not generally set a particular standard against which a modern award or the 'safety net of fair minimum wages' can be evaluated; many of them may be characterised as broad social objectives.[22]

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[15] *Annual Wage Review Decision 2017-18*, [10].

[16] *Annual Wage Review 2015-16 Decision*, [4].

[17] *Annual Wage Review 2015-16 Decision*, [397].

[18] s.134 of the FW Act.

[19] *Annual Wage Review 2016-17 Decision*, [123] – [125].

[20] *Annual Wage Review 2015-16 Decision*, [519].

[21] *Annual Wage Review 2016-17 Decision*, [142].

[22] *Annual Wage Review Decision 2017-18*, [15].

11. The range of considerations the Panel is required to take into account calls for the exercise of broad judgment rather than a mechanistic or decision rule approach to wage fixation. It is on this basis that past Review decisions have rejected proposals for the adoption of real wage maintenance; a medium-term target for the NMW; and the variation of modern award minimum wages based on trends in market wages.[23]

12. Broadly speaking, differently constituted Expert Panels should evaluate the evidence and submissions before them in accordance with a consistent and stable interpretation of the legislative framework. Justice requires consistent decision-making unless a difference can be articulated and applied.[24]

13. As part of its decision-making process, the Panel must first form a view about the proposed increase to the NMW and then take that proposal into account in exercising its powers to vary award minimum wages.[25]

14. There is no justification to increase the NMW by a higher rate than modern award minimum wages. To do so would create a significant risk of disemployment effects—thus putting low-paid workers at risk of unemployment and poverty. Nor would it be fair to those on higher modern award minimum wages as it would erode the recognition of their higher skill and relative 'work value.'[26]

15. The Panel has consistently adopted a threshold of two-thirds of median adult full-time ordinary earnings as the benchmark it uses to identify who is 'low paid'.[27]

16. The FW Act requires the Panel to take into account *all* of the relevant statutory considerations. The relative living standards and needs of the low paid are but one of a number of considerations that the Panel must take into account.[28]

17. The statutory considerations that the Panel is required to take into account inform the evaluation of what might constitute 'a fair and relevant minimum safety net of terms and conditions'[29] and 'a safety net of fair minimum wages'.[30][31]

18. The Panel's decision-making process should be as transparent as possible and should disclose the factors which are most relevant in a particular year.[32]

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[23] *Annual Wage Review Decision 2017-18*, [44].

[24] *Annual Wage Review Decision 2017-18* [58].

[25] *Annual Wage Review 2015-16 Decision*, [5].

[26] *Annual Wage Review Decision 2017-18,* [105].

[27] *Annual Wage Review Decision 2020-21,* [137].

[28] *Annual Wage Review 2018-19 Decision*, [11].

[29] FW Act, s.134(1).

[30] FW Act, s.284(1).

[31] *Annual Wage Review Decision 2020-21,* [136].

[32] *Annual Wage Review 2018-19 Decision*, [23].

# 4. The "exceptional circumstances" provisions in the Act

Subsection 287(4) of the FW Act enables a National Minimum Wage Order to provide that adjustments to the National Minimum Wage and Special National Minimum Wages take effect on a specified day later than 1 July if:

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

Similarly, s.286(2) of the Act enables the Commission to specify a later operative date than 1 July for a determination varying minimum wage rates in a modern award if the following conditions are met:

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

In respect of the 'exceptional circumstances' provisions in the Act, in the *Annual Wage Review 2019/20 Decision* the Expert Panel determined that:

- Any determinations varying minimum wages in an award must be made by 1 July.[33]
- A National Minimum Wage Order NMW order must be made by 1 July.[34]
- A determination varying minimum wages must come into operation on or after 1 July and must take effect on or after its date of operation.[35]
- The National Minimum Wage Order must come into operation on 1 July and the elements of it must take effect on or after that date.[36]
- A variation determination and the Minimum Wages Order cannot be 'revisited' once made (other than to remove ambiguity or uncertainty or to correct error).[37]

[33] *Annual Wage Review 2019-20 Decision*, [231].

[34] *Annual Wage Review 2019-20 Decision*, [231].

[35] *Annual Wage Review 2019-20 Decision*, [231].

[36] *Annual Wage Review 2019-20 Decision*, [231].

[37] *Annual Wage Review 2019-20 Decision*, [231].

- The Commission may make multiple variation determinations that operate from 1 July or, to the extent justified by exceptional circumstances, from a later date or various later dates.[38]

- The National Minimum Wage Order must operate from 1 July but, to the extent justified by exceptional circumstances, may provide for the adjustments of its various elements to take effect in relation to some or all employees from a later date or various later dates in the financial year.[39]

- To the extent justified by exceptional circumstances, the wage increases set by a National Minimum Wage Order may be different for different employees.[40]

- The Panel expressed support for the view expressed in submissions of Ai Group and the Australian Government that, to the extent justified by exceptional circumstances, the wage increases set for employees covered by a particular modern award may be different for different employees. However, as no party in the 2019-20 Review advocated differential treatment for some employers and employees in respect of a modern award minimum wage increase, it was not necessary for the Panel to determine the issue.[41]

Although in the 2020-21 Annual Wage Review Decision, the Panel stated that the mere fact of a deferred date of operation of an increase in last year's Review is not, in and of itself, an exceptional circumstance such as to warrant a deferral in the current year's Review, it accepted that "the period of time between successive increases, together with other data, is relevant to an overall assessment of whether exceptional circumstances exist such as to warrant a delayed operative date".[42]

The reasons why 'exceptional circumstances' exist at the present time are discussed in chapter 11 of this submission.

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[38] *Annual Wage Review 2019-20 Decision*, [234].

[39] *Annual Wage Review 2019-20 Decision*, [234].

[40] *Annual Wage Review 2019-20 Decision*, [250].

[41] *Annual Wage Review 2019-20 Decision*, [251] – [258].

[42] *Annual Wage Review 2020-21 Decision*, [226].

# 5. A fair and relevant safety net

The Expert Panel is tasked with determining and maintaining a fair and relevant safety net for employees working in Australia.

An argument that has been put in recent times is that real wages have fallen and that an adjustment in the safety net of minimum wages is required to rectify this.

Clearly fairness in this context should consider not just the rates of wages paid to employees but also changes to employment and hours worked. It is the combination of these that determines individuals' income from wages.

Important insights into this issue are provided by the most recent ABS data on average earnings.[43] The latest release relates to the period ending in November 2021 and key data is set out in Table 4.

### Table 4: Change in Average Weekly Earnings (November 2020 to November 2021)

| | % |
|---|---|
| **Persons** | |
| Full-time adult average weekly ordinary time earnings | 2.1 |
| All employees average weekly total earnings | 3.8 |
| | |
| **Males** | |
| Full-time adult average weekly ordinary time earnings | 2.3 |
| All employees average weekly total earnings | 3.3 |
| | |
| **Females** | |
| Full-time adult average weekly ordinary time earnings | 1.9 |
| All employees average weekly total earnings | 4.1 |

Source: ABS, *Average Weekly Earnings*, Feb 2022.

The large differences between the changes in the full-time adult weekly ordinary time earnings series and the all employees average weekly earnings measure of average earnings in this period stem largely from changes in average hours worked. Because ordinary time hours are constant, or close to constant, the change in the full-time adult weekly ordinary time earnings series is a close measure of changes in average wage rates. This was noted by the ABS in its media release of 24 February 2022.[44]

[43] ABS, *Average Weekly Earnings, Australia*, 24 February 2022.

[44] ABS, Media Release, *Average full-time earnings up 2.1 per cent over 2021*, 24 February 2022.

In contrast, the all employees average weekly earnings measure reflects not just changes in wage rates but also changes in hours worked including changes in overtime hours; changes in average hours worked by part-time employees and changes in the proportions of full-time and part-time employees.

Further insights into the much higher rates of increase in average earnings compared to the changes in wage rates over the period covered by the average earnings data above can be obtained from the ABS data on hours worked and numbers employed.[45] Key data for the period from November 2020 to November 2021 is set out in Table 5 below.

Table 5 shows that the larger change in average earnings relative to the change in wage rates in this period was driven in the main by the much higher growth in full-time jobs than part-time jobs. This shows up in the different growth rates of full-time and part-time hours worked and full-time and part-time employment.

### Table 5: Changes in hours worked and numbers of people employed (November 2020 to November 2021)

| | Monthly hours worked | Number employed |
|---|---|---|
| | % change from November 2020 to November 2021 | |
| **Persons** | | |
| In all jobs | 2.8 | 2.9 |
| Full time | 3.4 | 4.0 |
| Part Time | 0.2 | 0.3 |
| | | |
| **Males** | | |
| In all jobs | 1.7 | 2.1 |
| Full time | 1.8 | 2.7 |
| Part Time | 0.6 | 0.1 |
| | | |
| **Females** | | |
| In all jobs | 4.5 | 3.7 |
| Full time | 6.3 | 6.4 |
| Part Time | 0.0 | 0.5 |

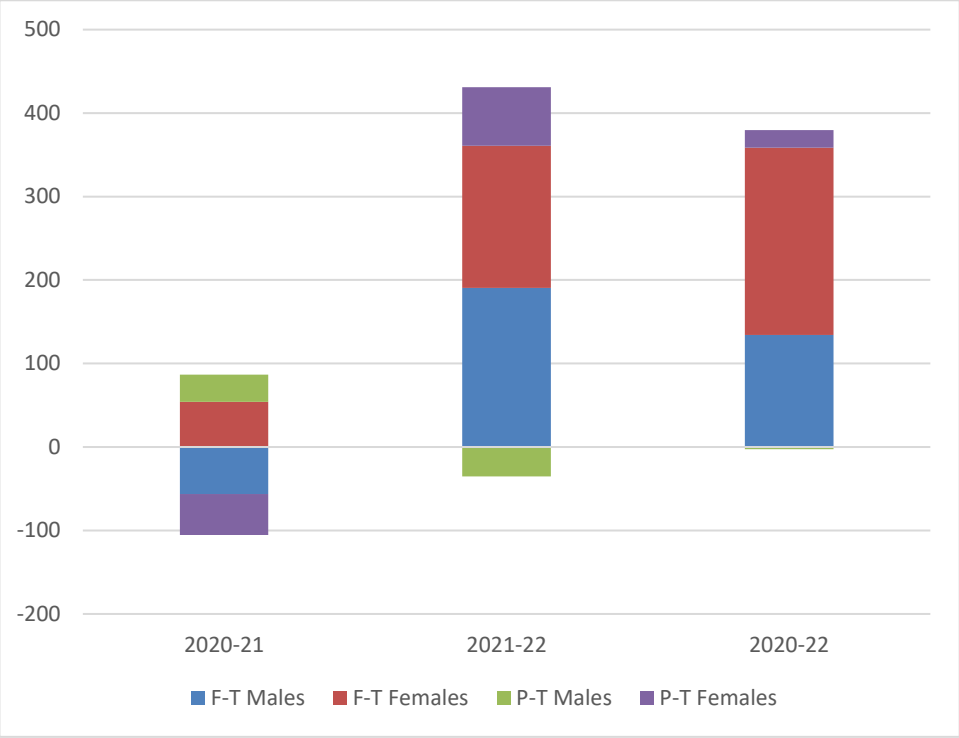
Source: ABS, *Labour Force, Australia*, March 2022.

While the faster growth of full-time employment is evident for both males and females, for females, full-time employment grew much faster than part-time employment in this period. This difference matches the significantly higher growth in average earnings for all female employees compared with the change in average ordinary time earnings for full-time female employees.

[45] ABS, *Labour Force Australia*, March 2022.

The data above only covers the year from November 2020 to November 2021. Further insights into the compositional change in the labour force can be obtained by looking at changes in employment and hours worked from before the COVID-19 pandemic to February 2022 which is the most recent data point. Chart 50 and Chart 51 below look at changes in the number of people employed and changes in hours worked over the course of the years from February 2020 to February 2022. The Charts identify the growth in both full-time and part-time employment by gender.

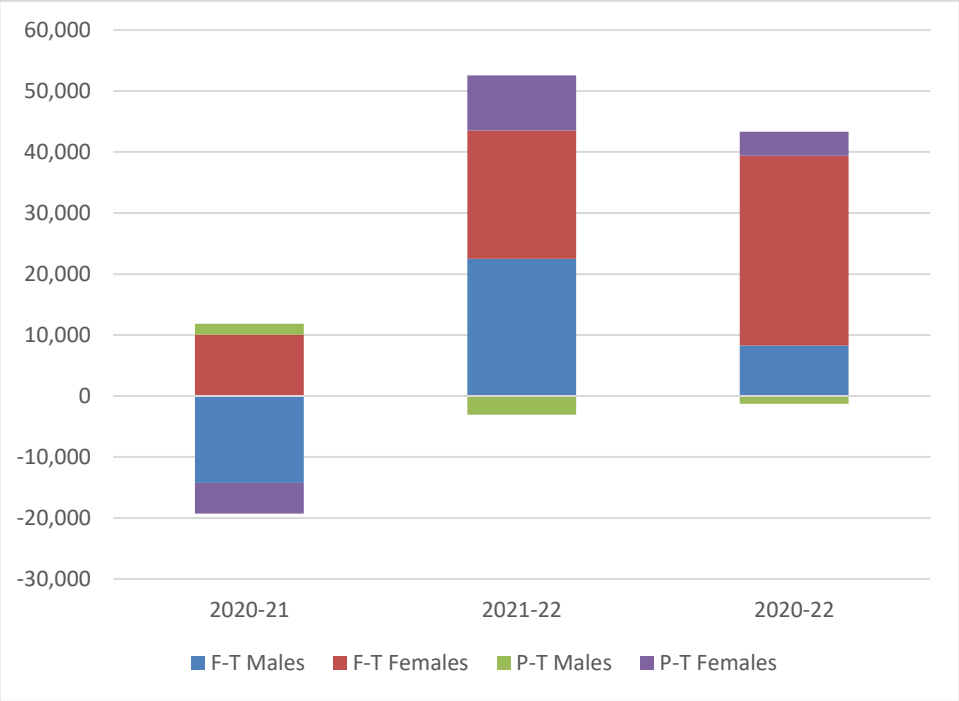
### Chart 50: Composition of Labour Force Growth: Changes in Numbers Employed (000s)




Source: ABS, *Labour Force, Australia*, March 2022.

Note: The changes are from February to February in the relevant years.

**Chart 51: Composition of Labour Force Growth: Changes in Hours Worked (000s)**




Source: ABS, *Labour Force, Australia*, March 2022.

Note: The changes are from February to February in the relevant years.

Broadly the same patterns are evident in both Charts:

- Between the pre-pandemic month of February 2020 and February 2021 there were sharp falls in the number of full-time males employed and the number of hours worked by males in full-time positions. The number of females employed part-time and the number of hours worked by females in part-time positions also fell, although these falls were less than the falls in full-time male employment and hours worked.

- In the same period (February 2020 to February 2021) there were modest rises in full-time female employment and part-time male employment (reflected both in numbers employed and hours worked).

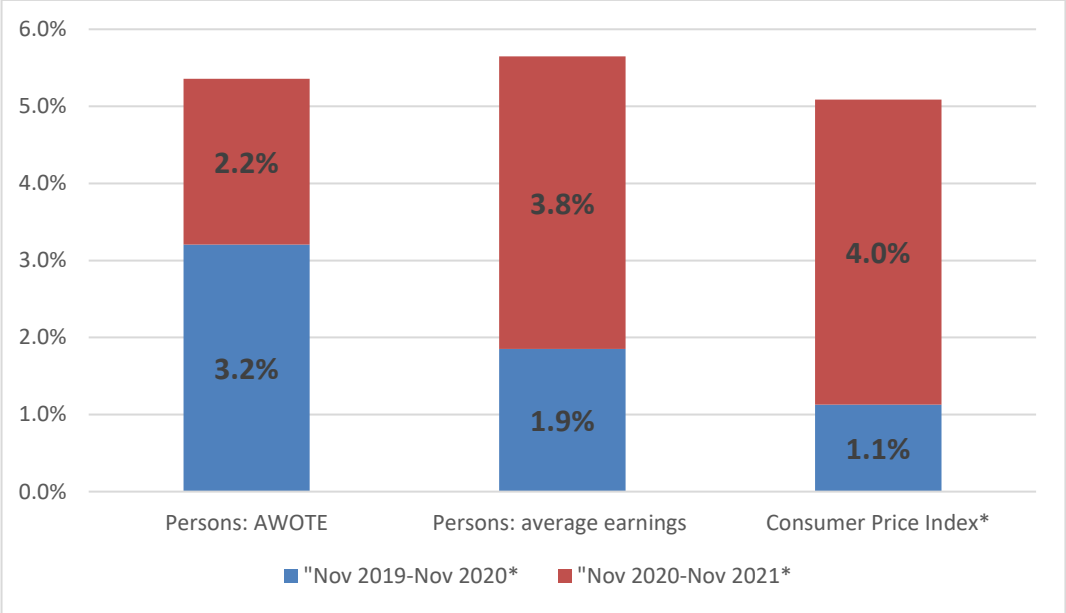
- The following (most recent year) saw very strong growth in full-time employment for both males and females and in part-time employment of females while part-time male employment fell (as reflected both in hours worked and the numbers employed).

- Over the two years combined, the changes saw exceptionally strong growth in full-time female employment and a net gain in male full-time employment. The two years combined saw a smaller net gain in part-time female employment while male full-time employment saw a very small gain in number employed but a small loss in hours worked.

These developments in the labour market have important implications for recent changes in real wages and therefore also for the safety net considerations of the Panel.

Chart 52 compares changes in average earnings for the two years from November 2019 to November 2021 with changes in the Consumer Price Index (CPI) from the December quarter of 2019 to the December quarter of 2021 (which is the closest comparable period for which data is available). (The reversion to the period November to November reflects the latest available of earnings data.)

### Chart 52: Changes in Average Earnings and the Consumer Price Index (Nov 19-Nov 21)




Note: * The change in CPI is between the December quarters of the relevant years.

Chart 52 shows that the combined changes in both average ordinary time earnings and average earnings have exceeded inflation. (It should be noted that the changes in both average earnings series do not include the increase in the Superannuation Guarantee from July 2021.)

Chart 52 also shows that the sharp compositional changes in the labour force in the first year of the pandemic (which saw average earnings rise by less than the AWOTE measure largely due to the relatively large fall in full-time male employment) have been more than reversed by changes in the following year (which as shown above largely reflects the relatively rapid rise in full-time jobs).

The combination of increased wage rates and increased hours worked (due largely to the growth in full-time employment) over the two years considered above has delivered growth in earnings for employees in excess of inflation.

The argument that the safety net of minimum wages needs to be adjusted to correct for a fall in real wages in these years is clearly based on a false premise and completely neglects the impacts of the very sharp changes in employment patterns and in particular the strong growth in full-time employment.

# 6. Relative living standards and the needs of the low paid

The Panel has a long-established practice of taking into account relevant changes to superannuation, taxation and income support arrangements in its consideration of the needs of the low paid.

In this section Ai Group puts forward three changes that are relevant to this year's decision. One, the announced change in the Low and Middle Income Tax Offset (**LMITO**), has not been legislated and depending on the outcome of the federal election, may not be legislated or may not be legislated prior to the 2022 Annual Wage Review decision being handed down. It is, nevertheless included in this submission for the consideration of the Panel and our further submissions will revisit this issue in the light of the latest information. Similarly, we foreshadow that any further relevant policy changes announced during the course of the election may also be put before the Panel at a later opportunity.

***The Superannuation Guarantee***

The Superannuation Guarantee (**SG**) will rise from 10% to 10.5% from 1 July 2022. Consistent with previous decisions, this increase should be taken into account in this year's decision and should be a moderating factor in any increase in modern award minimum wages and the NMW such that any increase is lower than it would otherwise have been. This increase is discussed in more detail in section 10 of this submission.

***The removal of the $450 per month superannuation threshold***

An additional change in superannuation should also be taken into account. This relates to the removal of the $450 per month earnings threshold below which the SG was not required to be paid by employers on behalf of their employees. For many low-wage employees this is a large gain in total remuneration.

To illustrate, for an employee consistently earning $100 a week from their part-time employment, the removal of the threshold will see superannuation contributions of $546.00 over the 2022-23 year. This amounts to a 10.5% increase in remuneration from this job in 2022-23 compared with the previous year because of the removal of the threshold.

While there is a wide range of circumstances to be considered, in relation to any employment on which the SG was not previously paid because of the threshold, total remuneration will rise by 10.5% in 2022-23 compared with the situation prior to the removal of the threshold. Thus, for a person for whom the SG now becomes payable and who consistently works 5 hours a week at the NMW wage of $20.33 per hour, annual remuneration (of $5,285.80) would rise by $555 (10.5%) because of the removal of the threshold. If another person on the same wage rate only worked 5 hours a week every other week, annual remuneration would rise by $277.50 (10.5%).

Many people work in more than one part-time position. If all positions were affected by the removal of the threshold, the increase in total remuneration would be 10.5%. For many, however, remuneration from some positions may be affected by the removal of the threshold and others not affected. To illustrate, if a person worked in two positions: one for 10 hours a week and one for five hours a week and both were paid at the rate of $20.33 an hour, the removal of the threshold would only apply to one third of their combined pre-super remuneration from both positions. The total annual remuneration of such a person would rise by $555 due to the removal of the threshold and by $52.85 because of the increase in the SG on the wage from 10 hour a week position. The combined increase in remuneration due to the superannuation changes applying from 1 July would be 3.83%.

This change is discussed further in section 10 of this submission.

***Increase in the Low and Middle Income Tax Offset***

In the 2022-23 Budget delivered on 29 March 2022, the Government undertook to increase the Low and Middle Income Tax Offset (**LMITO**) in respect of the 2021-22 year. If legislated, an additional $420 would be paid as a tax refund when taxpayers' tax returns are lodged in 2022-23 and would be paid to all taxpayers with taxable incomes below $126,000 in 2021-22. It would be paid in addition to the pre-existing level of LMITO of $1,020 which has previously been taken into account in the Commission's decisions.

From its inception the LMITO was a temporary measure. While it has been continued beyond the original period of its operation, this has not changed its temporary nature. Ai Group submits that, notwithstanding the temporary nature of the proposed higher level of the LMITO to apply in respect of the 2021-22 year, the increase in disposable incomes associated an enacted higher level of the LMITO should be treated in a consistent way in this year's decision.

To assist the Panel's consideration, tables are provided below setting out the magnitudes of the pre-tax equivalent increase in wages that would be required to deliver the same after-tax increase in remuneration due the increase in the SG (Table 6) and the combined change in the SG and LMITO (Table 7) should it become relevant. We have not included in these tables changes relating to the removal of the $450 threshold for the SG.

Table 6 sets out for different current wage levels expressed as a proportion of the current National Minimum Wage (NMW) the additional superannuation after the 15% contributions tax and any additional amount of super paid due to eligibility for the Low Income Superannuation Tax Offset (**LISTO**). The increase in after-tax superannuation contributions is expressed as a percentage of the pre-tax wages. Finally, the pre-tax equivalent increase in wages that would be required to deliver the same post-tax increase in remuneration is presented. This last amount takes into account the marginal tax rate that would apply to such an increase in pre-tax wages. The pre-tax equivalent is presented for comparison with the pre-tax changes in wages that are delivered by the Panel.

### Table 6: Changes due to the increases in the Superannuation Guarantee

| Proportion of NMW | Pre-tax income $ per week | Additional super contribution after contributions tax and LISTO $ per week | % of pre-tax wages | Pre-tax equivalent | |
|---|---|---|---|---|---|
| | | | | $ per week | % |
| 50% | 386.30 | 1.93 | 0.5% | 1.93 | 0.500% |
| 60% | 463.56 | 2.32 | 0.5% | 3.26 | 0.704% |
| 70% | 540.82 | 2.70 | 0.5% | 3.81 | 0.704% |
| 80% | 618.08 | 2.95 | 0.5% | 3.73 | 0.603% |
| 90% | 695.34 | 2.96 | 0.425% | 3.74 | 0.538% |
| 100% | 772.60 | 3.28 | 0.425% | 4.03 | 0.521% |
| 110% | 849.86 | 3.61 | 0.425% | 4.43 | 0.521% |
| 120% | 927.12 | 3.94 | 0.425% | 6.16 | 0.664% |
| 130% | 1,004.38 | 4.27 | 0.425% | 6.67 | 0.664% |
| 140% | 1,081.64 | 4.60 | 0.425% | 7.18 | 0.664% |
| 150% | 1,158.90 | 4.93 | 0.425% | 7.70 | 0.664% |

In Table 7, the calculations presented in Table 6 are combined with similar calculations that take into account the proposed change to the LMITO.

### Table 7: Changes due to Increases in the Superannuation Guarantee and LMITO

| Proportion of NMW | Pre-tax income $ per week | Increase in post- tax income from the higher LMITO $ per week | % of pre-tax wages | Pre-tax equivalent of combined Super and LMITO Increases | |
|---|---|---|---|---|---|
| | | | | $ per week | % |
| 50% | 386.30 | 0.00 | 0.0% | 1.93 | 0.500% |
| 60% | 463.56 | 3.71 | 0.8% | 8.48 | 1.830% |
| 70% | 540.82 | 8.32 | 1.6% | 15.53 | 2.871% |
| 80% | 618.08 | 8.06 | 1.4% | 13.92 | 2.253% |
| 90% | 695.34 | 8.06 | 1.3% | 13.94 | 2.004% |
| 100% | 772.60 | 8.06 | 1.2% | 13.91 | 1.801% |
| 110% | 849.86 | 8.06 | 1.1% | 14.32 | 1.684% |
| 120% | 927.12 | 8.06 | 1.0% | 18.74 | 2.022% |
| 130% | 1,004.38 | 8.06 | 0.9% | 19.26 | 1.917% |
| 140% | 1,081.64 | 8.06 | 0.9% | 19.77 | 1.828% |
| 150% | 1,158.90 | 8.06 | 0.8% | 20.28 | 1.750% |

# 7. Promoting social inclusion through increased workforce participation

The FW Act charges the Fair Work Commission with establishing and maintaining a safety net of minimum wages, which requires consideration of, among other things, the objective of 'promoting social inclusion through increased workforce participation'.

Ai Group recognises the importance of participation in the paid workforce for social inclusion. Participation in the paid workforce can be closely linked to individuals' sense of self-worth and it can signal the contributions people make to the well-being of the broader community. In addition, of course, participation in paid work can provide the financial means by which people can participate in many aspects of social life.

It is sometimes suggested that raising minimum wage rates is a means by which social inclusion can be promoted, because it encourages more people to participate in the workforce (or to lift their participation in the workforce from existing levels). However, such encouragement would only have a positive impact on social inclusion if it led to actual increases in participation in paid work.

While there has been a strong recovery in the labour market, current levels of unemployment and underemployment show there is still considerable underutilisation of the labour available at current wage rates. According to the most recent ABS labour force data[46], in February 2022 there were 1,478, 500 people who were either unemployed and looking for work or underemployed and ready to work more hours than they currently worked. 915,200 of these people were underemployed and 563,300 were unemployed.

With large numbers of people actively seeking work or ready to work more hours at current wage rates, Ai Group submits that there is certainly no need to lift minimum wage rates to encourage additional labour supply.

Further, to the extent to which employers would restrain additional employment and/or reduce current employment if wages were to rise, the balance of risks is that an increase in wage rates will be detrimental to workforce participation and social inclusion (relative to what would be the case in the absence of a wage rise).

[46] ABS, *Labour Force, Australia*, March 2022.

# 8. Encouraging collective bargaining

The Expert Panel must take into account the need to encourage collective bargaining, as set out in s.134(1)(b) of the modern awards objective.

In the fourth quarter of 2010 there were nearly 25,110 current enterprise agreements covering 2.6 million employees. Eleven years later, as at 31 December 2021 (the latest available statistics), there were 10,646 current enterprise agreements covering 1.65 million employees.[47] Clearly, there are major problems with Australia's enterprise bargaining system, and a lack of incentive for employers and employees to collectively bargain.

Enterprise bargaining has an important role to play in delivering wage increases to employees. Given the adverse trend in the incidence of enterprise bargaining, it is appropriate that the Panel give particular weight to the need to encourage collective bargaining.

In past submissions, Ai Group has recommended the Expert Panel set the minimum wage increase generally at a level that is lower than average annualised wage increases in enterprise agreements. Ai Group notes the Panel's comments in the *Annual Wage Review 2018-19 Decision* that this submission pays insufficient regard to the statutory obligation to take into account 'relative living standards'.[48] However, 'relative living standards' are only one of the Panel's considerations.

In the *Annual Wage Review 2020-21 Decision*, the Panel stated:

> *[160] Consistent with the views expressed by the majority in the 2019–20 Review decision, we accept that there has been a decline in current enterprise agreements, but a range of factors impact on the propensity to engage in collective bargaining, many of which are unrelated to increases in the NMW and modern award minimum wages. Given the complexity of factors which may contribute to decision making about whether or not to bargain, we are unable to predict the precise impact of our decision on bargaining.*
>
> *[161] The increases we have determined in this Review may impact on bargaining in different sectors in different ways and we cannot be satisfied that the increase we have determined will encourage collective bargaining. We have taken this into account along with the other statutory considerations in determining the outcome in this Review.*

[47] Attorney General's Department, *Trends in Federal Enterprise Bargaining*: Chart 7 - Current agreements and employee coverage, https://www.ag.gov.au/system/files/2022-03/trends-in-federal-enterprise-bargaining-december-quarter-2021.pdf

[48] *Annual Wage Review 2017-2018 Decision*, [381].

The ILO's Minimum Wage Policy Guide[49] cites international research in support of its advice that: *"if the minimum wage is too high …..there is a risk that minimum wages will "crowd out" collective bargaining – that is, encroach on the domain of collective bargaining and not leave enough space for the latter to develop"*.

Ai Group submits that the Panel should set the minimum wage increase at a lower level than the average annualised enterprise agreement wage increase (currently 2.6%)[50] in order to encourage collective bargaining and to avoid "crowding out" collective bargaining.

# 9. The principle of equal remuneration for work of equal or comparable value

Subsection 284(1) of the FW Act set out the minimum wages objective, which the Expert Panel is required to consider when setting minimum wages. Paragraph (d) of the objective requires the Panel to turn its mind to "*the principle of equal remuneration for work of equal or comparable value"*, a principle which is included within the modern awards objective at s.134(1)(e) of the Act.

Ai Group supports the principle of equal remuneration for work of equal value and the importance of improving gender equality in the workplace. We have been a vocal advocate for realistic, practical and targeted measures to eliminate the causes of gender inequality in the workplace.

In the *Annual Wage Review 2017-2018 Decision*, the Expert Panel acknowledged the applicability of the definition of 'equal remuneration' in s.302(2) of the Act for the purposes of ss.134 and 284 and that hence, the correct approach to the construction of ss.134(1)(e) and 284(1)(d) is to read the definition into the substantive provision. As such, the consideration is to be read: "the principle of equal remuneration for men and women workers for work of equal or comparable value".[51] The Panel also accepted that the expression 'work of equal or comparable value' refers to equality or comparability in 'work value'.[52]

Past Annual Wage Review decisions have reached the following conclusions regarding the principle of equal remuneration for work of equal or comparative value:

- The application of the principle of equal remuneration for work of equal or comparable value is such that it is likely to be of only limited relevance in the context of a Review. Indeed it would only be likely to arise if it were contended that particular modern award minimum wage rates were inconsistent with the principle of equal remuneration for work

[49] International Labor Organisation, Minimum Wage Policy Guide, page 9.

[50] Attorney-General's Department, *Trends in Federal Enterprise Bargaining*: Table 1, https://www.ag.gov.au/system/files/2022-03/trends-in-federal-enterprise-bargaining-december-quarter-2021.pdf

[51] *Annual Wage Review 2017-2018 Decision*, [33].

[52] *Annual Wage Review 2017-2018 Decision*, [34].

of equal or comparable value; or, if the form of a proposed increase enlivened the principle.[53]

- Review proceedings are of limited utility in addressing any systemic gender undervaluation of work. Proceedings under Part 2-7 and applications to vary modern award minimum wages for 'work value reasons' pursuant to ss.156(3) and 157(2) provide more appropriate mechanisms for addressing such issues.[54]

- The broader issue of gender pay equity, in particular the gender pay gap is relevant to the Review as it is an element of the requirement to establish a safety net that is 'fair.'[55]

- The issue of gender pay equity may arise for consideration in respect of s.284(1)(b), because it may have effects on female participation in the workforce.[56]

- The causes of the gender pay gap are complex and influenced by factors such as: differences in the types of jobs performed by men and women; discretionary payments; workplace structures and practices; and the historical undervaluation of female work and female-dominated occupations.[57]

- Moderate increases in the National Minimum Wage and modern award minimum wages would be likely to have a relatively small, but nonetheless beneficial, effect on the gender pay gap.[58]

- The gender pay gap is mostly driven by higher paid workers.[59]

In the *Annual Wage Review 2020-2021 Decision,* the Panel noted that "women are more likely to be in low-paid employment and to be paid at the award rate. Further, higher-paid award-reliant employees are more likely to be female (58.7 per cent) than male (41.3 per cent)".[60]

Research published for the purposes of the *Annual Wage Review 2020-2021* revealed that COVID-19 has had a 'relatively even' impact on the employment of males and females.[61] Although in the earlier stages of the pandemic, decreases in employment were larger for females, in the latter stages, males fared worse. The impact for males and females was reported as being fairly even by December 2020.

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[53] *Annual Wage Review 2017-18 Decision*, [35].

[54] *Annual Wage Review 2017-18 Decision*, [35].

[55] *Annual Wage Review 2017-18 Decision*, [36].

[56] *Annual Wage Review 2017-18 Decision*, [36].

[57] *Annual Wage Review 2017-18 Decision*, [38].

[58] *Annual Wage Review 2017-18 Decision*, [38].

[59] *Annual Wage Review 2018-29 Decision*, [391].

[60] *Annual Wage Review 2020-21 Decision*, [163].

[61] Borland J., 'An assessment of the economic effects of COVID-19 – Version 1 (Research report 1/2021), p 21.

# 10. Increased superannuation liability for employers

The *Superannuation Guarantee (Administration) Act 1992* (Cth), as amended by the *Minerals Resource Rent Tax Repeal and Other Measures Act 2014* (Cth), provides for a 0.5% increase in the Superannuation Guarantee (**SG**) from 1 July 2022.

The legislation also provides for 0.5% increases in 2023, 2024 and 2025, as follows.

| ***Year*** | ***Change (%)*** | ***Superannuation Guarantee (%)*** |
|---|---|---|
| Year starting on 1 July 2022 | 0.5 | 10.5 |
| Year starting on 1 July 2023 | 0.5 | 11 |
| Year starting on 1 July 2024 | 0.5 | 11.5 |
| Year starting on 1 July 2025 | 0.5 | 12 |

## 10.1 On every occasion that the SG has increased, the Commission has taken the increase into account when determining minimum wage increases

There is a long history of the FWC and its predecessors taking into account increases in the SG when making decisions on minimum wages.

In last year's *Annual Wage Review 2020-21 Decision*, the Expert Panel determined to take the 0.5% increase in the SG into account in determining the level of increase in minimum wages. It said (references omitted):[62]

> ***[58]*** *Consistent with the position taken in past Review decisions, we have taken the 0.5 percentage point increase in the SG rate into account in determining the level of increase in minimum wages in this Review, but we have not applied a direct, quantifiable, discount to the minimum wage increase.*
>
> ***[59]*** *The SG rate increase to apply from 1 July 2021 is a moderating factor in considering the adjustment that should be made to minimum wages. As a result, the increase in modern award minimum wages and the NMW we have awarded in this Review is lower than it otherwise would have been in the absence of the SG rate increase.*

[62] *Annual Wage Review 2020-21 Decision*, [58] – [59].

In its *Annual Wage Review 2012-13 Decision*, the Expert Panel agreed with submissions made by Ai Group that it would be consistent with the modern awards objective and the minimum wages objective to have regard to the increase in the SG from 9% to 9.25% which took effect on 1 July 2013. The Panel said:

> ***[355]*** *Ai Group and the NFF submitted that, while currently there is no specific legislative requirement to take into account the increase in the SG rate, this should not prevent the Panel from making it a consideration in its deliberations. Ai Group also argued that the objects of the Act, the modern awards objective and the minimum wages objective, support the view that such increases must be taken into account.*
>
> ***[356]*** *We agree with Ai Group's submission. Consistent with the objects of the Act, the modern awards objective and the minimum wages objective, we have had regard to the SG rate increase which takes effect from 1 July 2013 in our determination of the level of increase in minimum wages.*
>
> ***[357]*** *While the effect of superannuation legislation on employers and employees is not specifically identified in the Act as a matter the Panel must consider, we have had regard to the increase in the SG rate to take effect from 1 July in coming to our decision in this Review. In our view, such an approach is consistent with the objects of the Act, the modern awards objective and the minimum wages objective and, in particular, the legislative requirements that we take into account:*
>
> - *the special circumstances of small and medium-sized businesses (s.3(g));*
> - *the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden (s.134(1)(f)); and*
> - *the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth (s.284(1)(a)).*
>
> ***[358]*** *In addition to the public benefit achieved by supporting retirement incomes through the superannuation system, SG contributions also constitute a deferred benefit to employees and a cost to employers. As we have mentioned, our characterisation of SG contributions distinguishes them from other non-wage labour costs. It follows that we do not accept the premise of the ACTU submission. Not every movement in non-wage labour costs will have a consequential effect on the level of minimum wage increase determined in a review.*
>
> ***[359]*** *While we have taken the 0.25 per cent increase in the SG rate into account in determining the level of increase in minimum wages in the Review, we have not applied a direct, quantifiable, discount to the minimum wage increase, as proposed by Ai Group and the NFF. As we have noted, the AIRC decisions following the introduction of the SGC Acts provide no support for such an approach. Nor does the current legislative framework support such an approach. In reviewing modern award minimum wages and the NMW the Act requires us to have regard to a range of considerations. As we note in Chapter 2, there is a*

*degree of overlap between the matters specified in the modern awards objective, the minimum wages objective and the objects of the Act. To the extent that these matters are of direct relevance to the Review, they may be grouped into three broad categories: economic; social; and collective bargaining. The range of considerations we are required to take into account calls for the exercise of broad judgment, rather than a mechanistic approach to minimum wage fixation.*

***[360]*** *The SG rate increase to apply from 1 July 2013 is a moderating factor in considering the adjustment that should be made to minimum wages. As a result, though it would not be appropriate to quantify its effect, the increase in modern award minimum wages and the NMW we have awarded in this Review is lower than it otherwise would have been in the absence of the SG rate increase.*

In the *Annual Wage Review 2013-14 Decision*, the Expert Panel similarly decided that it would be consistent with the objects of the Act, the modern awards objective and the minimum wages objective to take into account the increase in the SG from 9.25% to 9.5%, which took effect on 1 July 2014. The Panel said:

***[12]*** *The Superannuation Guarantee (Administration) Amendment Act 2012 increases the superannuation guarantee rate (SG rate) from 9 per cent to 12 per cent. The increase is to be phased in, commencing with increases of 0.25 percentage points on 1 July 2013 and 1 July 2014.*

***[13]*** *The Annual Wage Review 2012-13 decision (2012–13 Review decision) concluded that it was consistent with the statutory framework to have regard to the SG rate increase to take effect from 1 July 2013 in its determination of the level of increase in minimum wages. While the Panel took the 0.25 percentage point increase in the SG rate into account in determining the level of increase in minimum wages in the 2012–13 Review, it did not apply a direct, quantifiable, discount to the minimum wage increase. In the 2012–13 Review decision, the Panel said:*

> *"The SG rate increase to apply from 1 July 2013 is a moderating factor in considering the adjustment that should be made to minimum wages. As a result, though it would not be appropriate to quantify its effect, the increase in modern award minimum wages and the NMW we have awarded in this Review is lower than it otherwise would have been in the absence of the SG rate increase."*

***[14]*** *In our view, such an approach is consistent with the objects of the Act, the modern awards objective and the minimum wages objective and, in particular, the legislative requirements that we take into account:*

- *the special circumstances of small and medium-sized businesses (s.3(g));*
- *the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden (s.134(1)(f)); and*

- *the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth (s.284(1)(a)).*

> ***[15]*** *The 0.25 percentage point increase in the SG rate to take effect from 1 July 2014 is the second increase in the SG rate since the contribution rate reached 9 per cent on 1 July 2012. For the reasons given in the 2012–13 Review decision, we have decided to take the scheduled 0.25 percentage point increase in the SG rate into account in our determination of the level of any minimum wage increase.*

The approach of the Panel in the *Annual Wage Review 2012*-13, the *Annual Wage Review 2013-14* and the *Annual Wage Review 2020-21* is consistent with the approach that the Australian Industrial Relations Commission applied when the SG was progressively increased from 3% to 9% between 1992 and 2002. At this time, the *Industrial Relations Act 1988* (s.90A) and the *Workplace Relations Act 1996* (s.90A) expressly required that increases in the SG be taken into account in National Wage Case decisions.

Ai Group submits that the Panel should adopt the same approach in the current Review as it adopted in past decisions except that twice as much weight should be given to this year's increase than that applied in the *Annual Wage Review 2012*-13 and the *Annual Wage Review 2013-14* because the SG increase is twice as large as it was in 2013 and 2014.

This approach will result in a minimum wage increase that is "*lower than it otherwise would have been in the absence of the SG rate increase".*[63]

## 10.2 Removal of the $450 threshold from 1 July 2022

On 23 February 2022, Schedule 1 of the *Treasury Laws Amendment (Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest) Act 2021* (Cth) commenced operation. This Schedule will remove the $450 per month threshold for SG eligibility from 1 July 2022.

The legislative amendments expand the scope of the SG to include employees who earn salary or wages of less than $450 in any calendar month from a single employer. This will significantly increase costs for many firms in heavily award-dependent sectors such as hospitality, restaurants, fast food and retail, because of the large proportion of casuals that they employ – many of which are young people who do not work a large number of hours each month.

In the *Annual Wage Review 2020-21*, the Expert Panel determined not to take into account the planned removal of the threshold because the relevant legislation had not been passed:

> *[61] The Australian Council of Trade Unions (ACTU) acknowledged that removing the threshold 'will likely impose additional costs on some employers while also removing artificial incentives to the distribution of hours of work among casual workers in particular'. However,*

[63] *Annual Wage Review 2012-13 Decision,* [360]; *Annual Wage Review 2013-14 Decision,*[13].

*it submitted that 'it is not appropriate for the Panel to take it into account until the relevant legislation has passed and the costs to award reliant employers can be estimated'. We agree.*

When the *Annual Wage Review 2020-21* was made the legislation had not been introduced into Parliament, let alone passed. The situation is very different this year. The legislation has been passed by Parliament and there is certainty about the operative date. The impacts of the legislation are addressed in some detail in the financial impact statement in the Explanatory Memorandum for the legislation which states: (emphasis added)

> *1.4 The Superannuation Guarantee has wide coverage, however some employees are excluded. The main cohort of excluded employees are persons who earn less than $450 before tax in a calendar month with an individual employer, affecting an estimated 300,000 people, or 3 per cent of employees. These affected employees are mainly young, lower income, part-time workers — around 63 per cent are female.*

Consistent with the Panel's decision last year that the removal of the threshold should not be taken into account until the relevant legislation has been passed, the change should be taken into account in this year's decision and a lower minimum wage increase awarded than would otherwise have been the case.

The removal of the threshold is discussed further in section 6 of this submission.

# 11. Minimum wages for adults

## 11.1 Proposed minimum wage increase

Ai Group submits that a modest wage increase of **2%** is warranted in this year's Annual Wage Review. This equates to an increase of about **$15.45 per week** in the National Minimum Wage (bringing it to $788.05 per week) and about **$18.00 per week** at the base trade level.

When the proposed 2% wage increase is considered alongside the **0.5% Superannuation Guarantee (SG) increase** that is operative from 1 July 2022 and the equivalent of a **1.3% increase** in pre-tax income that an employee on the National Minimum Wage will receive in coming months as a result of the announced increase in the Low and Middle Income Tax Offset, our proposal would result in the equivalent of a **3.8% increase** in pre-tax remuneration for low paid employees.

The reasons why this level of increase is appropriate are identified in sections 1 to 10 of this submission.

## 11.2 Exceptional circumstances and operative dates

We submit that 'exceptional circumstances' exist this year for the purposes of ss.286(2) and 287(4) of the FW Act and, therefore, there can and should be a delayed operative date for any minimum wage increases in awards covering particular industry sectors.

In the *Annual Wage Review 2020-21 Decision*, the Expert Panel concluded that exceptional circumstances existed justifying delayed operational dates for the variation of modern award minimum wages for a specified number of awards.

In respect of the *General Retail Industry Award 2020*, variations took effect on 1 September 2021.

For the following modern awards and modern enterprise awards, the variation determinations came into operation on 1 November 2021:

- *Air Pilots Award 2020*
- *Aircraft Cabin Crew Award 2020*
- *Airline Operations – Ground Staff Award 2020*
- *Airport Employees Award 2020*
- *Airservices Australia Enterprise Award 2016*
- *Alpine Resorts Award 2020*
- *Amusement, Events and Recreation Award 2020*
- *Dry Cleaning and Laundry Industry Award 2020*
- *Fitness Industry Award 2020*
- *Hair and Beauty Industry Award 2010*
- *Hospitality Industry (General) Award 2020*
- *Live Performance Award 2020*
- *Mannequins and Models Award 2020*
- *Marine Tourism and Charter Vessels Award 2020*
- *Nursery Award 2020*
- *Racing Clubs Events Award 2020*
- *Racing Industry Ground Maintenance Award 2020*
- *Registered and Licensed Clubs Award 2020*
- *Restaurant Industry Award 2020*
- *Sporting Organisations Award 2020*

- *Travelling Shows Award 2020*
- *Wine Industry Award 2020*.

The meaning of the expression 'exceptional circumstances' was considered in the *Annual Wage Review 2019-20 Decision*: (emphasis added)

> ***[259]*** *As to what may constitute 'exceptional circumstances' for the purposes of Part 2–6 of the Act and deferral of modern award minimum wage and NMW adjustments in particular, the Discussion paper observed that situations that may give rise to exceptional circumstances clearly are not confined to the natural disasters that have given rise to exemption or deferral claims in previous annual wage reviews. The Discussion paper proposed that:*
>
> > *'Construing the meaning of 'exceptional circumstances' in Part 2-6 may begin from the 'sensible working hypothesis' that it has the same meaning in Part 2-6 as in other parts of the Act. In considering the meaning of 'exceptional circumstances' as it appears in Part 3-1 of the Act, the Commission has found:*
> >
> > > *'the expression "exceptional circumstances" has its ordinary meaning and requires consideration of all the circumstances. <u>To be exceptional, circumstances must be out of the ordinary course, or unusual, or special, or uncommon but need not be unique, or unprecedented, or very rare … Exceptional circumstances can include a single exceptional matter, a combination of exceptional factors or a combination of ordinary factors which, although individually of no particular significance, when taken together are seen as exceptional</u>.'*

The delayed operative dates last year for award wage increases in particular sectors has resulted in the difficult situation whereby employers would be required to pay two wage increases in close succession, unless a further delayed increase is granted. The Panel alluded to this in the *Annual Wage Review 2019-20 Decision*:

> ***[192]*** *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.*

In the *Annual Wage Review Decision 2020-21*, the Panel further elaborated upon how the criteria for exceptional circumstances is to interact with delayed operational dates in a previous annual wage review:

> ***[220]*** *We agree with the ACTU's submission that the context in which the expression 'exceptional circumstances' appears in ss 286 and 287 of the Act is one which clearly requires a factual situation to present itself which can be examined and found to give rise to circumstances that are exceptional and which justify a departure from what is otherwise an*

*immutable rule. We also accept differential operative dates across different award clusters temporarily distorts relativities and may result in employees with similar or comparable levels of skills being entitled to different minimum wages.*

*…*

*[226] … the mere fact of a deferred date of operation of an increase in last year's Review is not, in and of itself, an exceptional circumstance such as to warrant a deferral in this year's Review. It should not be presumed that differential treatment is appropriate for this year's decision merely because differential treatment was afforded by the majority in last year's Review decision. …*

With some exclusions, the awards in respect of which there were delayed operational dates generally align with the aviation and tourism sector, the accommodation and food services sector, the arts and recreation services sector and the retail trade sector, as referred to in the *Annual Wage Review 2020-21 Decision*.[64]

We acknowledge that the mere fact that there were delayed operative dates for the variation determinations for the modern awards referred to above is insufficient for a finding that exceptional circumstances exist justifying a delayed operational date this year. However, we submit that this is one of the factors that should be taken into account in finding that for businesses covered by those awards, an operational date of 1 July 2022 would cause considerable hardship.

With respect to the aviation and tourism sector, such businesses are yet to fully recover from the damage wrought by COVID-19 and the Government measures to contain the spread of the virus.

Data released by the Bureau of Infrastructure and Transport Research Economics (**BITRE**) reveals that domestic air travel has not recovered from the impact of the pandemic and associated restrictions in travel despite improving partly from the situation in 2020. The BITRE website states:[65]

*There were 2.79 million passengers carried on Australian domestic commercial aviation (including charter operations) in January 2022, compared to 1.90 million in January 2021 and 5.35 million in January 2020..*

*…*

*In January 2022, there were 1.29 million domestic passenger movements through regional airports, compared to 1.08 million in January 2021 and 2.05 million in January 2020.*

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[64] *Annual Wage Review 2020-21 Decision,* [248] – [271].

[65] Australian Government – Department of Infrastructure, Transport, Regional Development and Communication, BITRE, 'Domestic aviation activity', < Domestic aviation activity | Bureau of Infrastructure and Transport Research Economics (bitre.gov.au)> (accessed 28 March 2022).

BITRE data relating to international air travel also suggests that despite a recovery from the previous year, the statistics from December 2021 are still well below their pre-COVID levels:[66]

> *International scheduled passenger traffic in in January 2022 was 442 608 compared to 67 472 in January 2021 – an increase of 556.0 per cent. International air services this month have been severely impacted by travel restrictions due to the COVID-19 pandemic. Passenger traffic has decreased 89.3 per cent compared to 4.154 million recorded in January 2020.*
>
> *Passenger traffic for the year ended January 2022 was 1.931 million which is a 63.0 per cent decrease over the figure for the year ended January 2021 (5.216 million). Passenger traffic in the year ended January 2020 was 42.589 million.*
>
> *Total seats made available on international scheduled operations to/from Australia during January 2022 were 959 258 – an increase of 100.2 per cent compared to January 2021. The overall seat utilisation percentage decreased from 83.6 per cent in January 2020 to 14.1 per cent in January 2021. It has increased to 46.2 per cent in January 2022.*

With respect to tourism, ABS data reveals that for visitor arrivals to Australia, January 2022 trips decreased 92.6% when compared with pre-COVID levels in January 2019.[67]

Tourism Research Australia publishes statistics which demonstrate that international tourism continues to be hard hit by the pandemic:[68]

- International visitor spending was $1.3 billion in the year ending September 2021 (down 97.1% from the year ending September 2019);
- International visitor numbers were 155,469 in the year ending September 2021 (down 98.2% from the year ending September 2019);
- International visitor nights were 10.4 million in the year ending September 2021 (down 96.2% from the year ending September 2019).

Similarly Tourism Research data dealing with domestic travel demonstrates that tourism in Australia has not yet recovered:[69]

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[66] Australian Government – Department of Infrastructure, Transport, Regional Development and Communication, BITRE, 'International aviation activity', < International airline activity | Bureau of Infrastructure and Transport Research Economics (bitre.gov.au)> (accessed 28 March 2022).

[67] Australian Bureau of Statistics, 'Overseas Arrivals and Departures, Australia' (January 2022) < https://www.abs.gov.au/statistics/industry/tourism-and-transport/overseas-arrivals-and-departures-australia/latest-release#arrivals-and-departures)> (accessed 28 March 2022).

[68] Tourism Research Australia, 'International Visitor Survey results September 2021', < International Visitor Survey results September 2021 | Tourism Research Australia> (accessed 4 March 2022).

[69] Tourism Research Australia, 'National Visitor Survey monthly snapshot December 2021', https://www.tra.gov.au/Domestic/monthly-snapshot> (accessed 28 March 2022).

- Domestic overnight spend was $5.8 billion in December 2021 (down 8% on December 2019);

- Domestic overnight trips numbered 8.6 million in December 2021 (down 12% on December 2019);

- Nights per trip were 31 million in December 2021 (down 10% on December 2019).

Accommodation and food services has consistently been recognised as one of the worst effected sectors and this sector has been placed in the 'upper cluster' in terms of the impact of COVID-19 justifying a delayed operational date in both the *Annual Wage Review Decision 2019-20* and the *Annual Wage Review Decision 2020-21*.[70] The economic conditions for accommodation and food services remain very difficult:

- Although Gross Value Added (**GVA**) for the sector increased by 26.1% between the September 2021 quarter and the December 2021 quarter, it remains 11.7% below the figures for the pre-COVID-19 period in the December 2019 quarter.[71]

- In the year from 13 February 2021, total payroll jobs in accommodation and food services dropped 10.8%. This was despite the total percentage change in payroll jobs increasing by 1.8% nationally over the same period.[72]

- Seasonally adjusted Company Gross Operating Profits (**CGOP**) dropped by 36.6% for the December quarter 2021 in comparison with the December quarter 2019. Additionally, CGOP fell 11.2% between the September quarter 2021 and the December quarter 2021 whilst seasonally adjusted wages rose by 15.8% over the same period.[73]

- Total income from sales (chain volume measures) decreased by 10.5% between the December quarter 2019 and the December quarter 2021.[74]

- The number of temporary visa holders in Australia in 28 February 2022 was 1,762,326 – far below the 2,408,196 which were in the country on 31 December 2019.[75] This is a significant issue given that Professor Borland's research recognised that accommodation and food

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[70] [2020] FWCFB 3500, [45]; [2021] FWCFB 3500, [298].

[71] Australian Bureau of Statistics, '5206.0 Australian National Accounts: National Income, Expenditure and Product' < https://www.abs.gov.au/statistics/economy/national-accounts/australian-national-accounts-national-income-expenditure-and-product/dec-2021/5206006_Industry_GVA.xlsx> (accessed 7 March 2022).

[72] Australian Bureau of Statistics, 'Weekly Payroll Jobs and Wages in Australia' < Weekly Payroll Jobs and Wages in Australia, Week ending 12 February 2022 | Australian Bureau of Statistics (abs.gov.au) > (accessed 28 March 2022).

[73] Australian Bureau of Statistics, 'Business Indicators, Australia' < Business Indicators, Australia, December 2021 | Australian Bureau of Statistics (abs.gov.au)> (accessed 7 March 2022).

[74] Australian Bureau of Statistics, 'Business Indicators, Australia' (Table 4) < Business Indicators, Australia, December 2021 | Australian Bureau of Statistics (abs.gov.au)> (accessed 8 March 2022).

[75] Department of Home Affairs, 'Temporary visa holders in Australia' (updated 24 February 2022) Temporary visa holders in Australia - Dataset - data.gov.au > (accessed 28 March 2022).

services is a sector where such workers are typically engaged.[76] This should be viewed in light of the significant increase in job vacancies in the sector since the onset of the pandemic (45,800 in November 2021 compared with 14,500 in November 2019).[77]

- The average labour cost per hour worked increased from $26.90 to $29.10 between December 2019 and December 2021. Over the same period, total hours actually worked in the sector (seasonally adjusted) decreased by over 13.7%.[78]

The arts and recreation sector was also placed in the 'upper cluster' in the *Annual Wage Review Decision 2019-20* in terms of impact of COVID-19 and, together with accommodation and food services, the conditions in that sector were considered to justify a delayed increase in the *Annual Wage Review Decision 2020-21*.[79] The exceptional circumstances that justified a delayed operational date for the increase in modern award minimum wages have continued into the period relevant for this year's Annual Wage Review:

- GVA in the December quarter 2021 remained 2.8% below the figures for the (pre-COVID) December quarter 2019.[80]

- In the year from 13 February 2021, total payroll jobs in arts and recreation dropped 0.9%. This was despite the total percentage change in payroll jobs increasing by 1.8% nationally over the same period.[81]

- CGOP dropped by 6.3% for the December quarter 2021 in comparison with the December quarter 2019. Additionally, CGOP fell 2.3% between the September quarter 2021 and the December quarter 2021 whilst seasonally adjusted wages rose by 16.7% over the same period.[82]

- Total income from sales (chain volume measures) decreased by 6.3% between the December quarter 2019 and the December quarter 2021.[83]

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[76] Borland J., 'An assessment of the economic effects of COVID-19 – Version 2. (Research report 1/2021), p 31.

[77] Australian Bureau of Statistics, 'Job Vacancies, Australia' (Table 4) < Job Vacancies, Australia, November 2021 | Australian Bureau of Statistics (abs.gov.au)> (accessed 28 March 2022).

[78] Australian Bureau of Statistics, 'Labour Account Australia' (Table 9) < Labour Account Australia, December 2021 | Australian Bureau of Statistics (abs.gov.au) > (accessed 28 March 2022).

[79] [2020] FWCFB 3500, [180]; Borland J., 'An assessment of the economic effects of COVID-19 - Version 5' (Research report 5/2021), Table 7.

[80] Australian Bureau of Statistics, '5206.0 Australian National Accounts: National Income, Expenditure and Product' < https://www.abs.gov.au/statistics/economy/national-accounts/australian-national-accounts-national-income-expenditure-and-product/dec-2021/5206006_Industry_GVA.xlsx> (accessed 8 March 2022).

[81] Australian Bureau of Statistics, 'Weekly Payroll Jobs and Wages in Australia' < Weekly Payroll Jobs and Wages in Australia, Week ending 12 February 2022 | Australian Bureau of Statistics (abs.gov.au) > (accessed 28 March 2022).

[82] Australian Bureau of Statistics, 'Business Indicators, Australia' < Business Indicators, Australia, December 2021 | Australian Bureau of Statistics (abs.gov.au)> (accessed 8 March 2022).

[83] Australian Bureau of Statistics, 'Business Indicators, Australia' (Table 4) < Business Indicators, Australia, December 2021 | Australian Bureau of Statistics (abs.gov.au)> (accessed 8 March 2022).

- There has been an increase in the ABS's seasonally adjusted job vacancies in the sector since the onset of the pandemic (7,400 in November 2021 compared with 2,800 November 2019).[84]

The retail trade sector awards were also subject to delayed operational dates for the increase in modern award minimum wages in the *Annual Wage Review Decision 2019-20* and, with a number of exceptions, the *Annual Wage Review Decision 2020-21*.[85] Given the continued challenging conditions in the retail trade sector, a delayed operative date continues to be justified for those awards in the context of this year's Annual Wage Review:

- Total income from sales (chain volume measures) decreased by 6.3% between the December quarter 2019 and the December quarter 2021.[86]

- The number of temporary visa holders in Australia in 28 February 2022 was 1,762,326 – far below the 2,408,196 which were in the country on 31 December 2019.[87] This is a significant issue given that Professor Borland's research recognised that the retail sector is a sector where such workers are typically engaged.[88] This should be viewed in light of the significant increase in the number of job vacancies in the sector since the onset of the pandemic (36,000 in November 2021 compared with 24,800 in November 2019).[89]

# 12. Special National Minimum Wage 1 and 2 for award/agreement free employees with disability

In its *Annual Wage Review 2019-20 Decision,* the Commission decided to maintain the approach it had adopted in previous years in respect of setting special minimum wages for award / agreement free employees with disability.[90]

This approach is twofold. For employees whose productivity is not affected, a special national minimum wage is set at the level of the National Minimum Wage (Special National Minimum Wage 1). For employees whose productivity is affected, a special national minimum wage is set in accordance with an assessment under the supported wage system (Special National Minimum Wage 2).

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[84] Australian Bureau of Statistics, 'Job Vacancies, Australia' (Table 4) < Job Vacancies, Australia, November 2021 | Australian Bureau of Statistics (abs.gov.au)> (accessed 28 March 2022).

[85] *Annual Wage Review Decision 2019*-20, [187]; Annual *Wage Review Decision 2020-21*, [280], [294].

[86] Australian Bureau of Statistics, 'Business Indicators, Australia' (Table 4) < Business Indicators, Australia, December 2021 | Australian Bureau of Statistics (abs.gov.au)> (accessed 10 March 2022).

[87] Department of Home Affairs, 'Temporary visa holders in Australia' (updated 24 February 2022) Temporary visa holders in Australia - Dataset - data.gov.au > (accessed 28 March 2022).

[88] Borland J., 'An assessment of the economic effects of COVID-19 – Version 2. (Research report 1/2021), p 31.

[89] Australian Bureau of Statistics, 'Job Vacancies, Australia' (Table 4) < Job Vacancies, Australia, November 2021 | Australian Bureau of Statistics (abs.gov.au)> (accessed 28 March 2022).

[90] *Annual Wage Review Decision 2020-21*, [314].

Ai Group supports the continuation of the existing structures for award / agreement free employees with disability in the *National Minimum Wage Order 2022.*

# 13. Special National Minimum Wage 3 for award / agreement free junior employees

In its *Annual Wage Review 2010-2011* decision, the Expert Panel decided to use the scale in the *Miscellaneous Award 2010* to set the special national minimum wage for award/agreement free junior employees. The Panel has followed this approach in subsequent Annual Wage Review decisions.

This approach remains appropriate for setting rates for award/agreement free junior employees.

# 14. Special National Minimum Wage 4 for award / agreement free apprentices

In its *Annual Wage Review 2013-2014 Decision*, the Expert Panel reached the following conclusions and decision on special national minimum wages for award / agreement free apprentices, consistent with Ai Group's submissions:

> ***[613]*** *We have decided to adopt the provisions of the Miscellaneous Award 2010 as the basis for the special national minimum wages for employees to whom training arrangements apply. The national minimum wage order will incorporate, by reference, the apprentice and NTWS provisions of that award.*
>
> ***[614]*** *We also accept Ai Group's submission that the adult apprentice national minimum wage in the order should now be set in accordance with the Miscellaneous Award 2010 which, since 1 January 2014, has specified a rate for adult apprentices…."*

The Panel adopted this approach in subsequent Annual Wage Reviews. This approach remains appropriate for setting rates for award/agreement free apprentices.

# 15. Special National Minimum Wage 5 for award / agreement free employees to whom a training arrangement applies who are not apprentices

In the *National Minimum Wage Order 2012*, the Expert Panel decided to adopt the minimum wage rates in the National Training Wage Schedule of the *Miscellaneous Award 2010* for the special national minimum wage for award / agreement free employees to whom training arrangements apply, other than apprentices. The Panel adopted the same approach in its subsequent Annual Wage Review decisions.

Ai Group supports the continuation of the above approach in the *National Minimum Wage Order 2022*.

## 16. Transitional instruments

In the *Annual Wage Review 2020-2021 Decision*, the Expert Panel decided to maintain the approach taken by the Panel in previous Annual Wage Reviews, by increasing the rates in relevant transitional instruments consistent with any increase determined for modern award minimum wages. Ai Group supports a continuation of this approach in the current Annual Wage Review.

## 17. Modern award minimum wages for junior employees

Consistent with previous Annual Wage Review decisions, any minimum wage increase resulting from this year's Annual Wage Review should flow through to the minimum award wages of junior employees, through the operation of the relevant award provisions relating to these employees.

## 18. Modern award minimum wages for employees to whom training arrangements apply

Consistent with previous Annual Wage Review decisions, any minimum wage increase resulting from this year's Annual Wage Review should flow through to the minimum award wages of employees to whom training arrangements apply, through the operation of the relevant award provisions relating to these employees.

## 19. Modern award minimum wages for employees with disability

Consistent with previous Annual Wage Review decisions, any minimum wage increase resulting from this year's Annual Wage Review should flow through to the minimum award wages of employees with disability, through the operation of the relevant award provisions relating to these employees.

The minimum weekly payment in the Supported Wage System Schedule in awards should be adjusted to reflect any increase to the disability pension's income free threshold. This is consistent with the Panel's decisions in previous years.

## 20. Piece rates in modern awards

Ai Group supports a flow on of any Review decision to piece rates, consistent with the existing approach within modern awards for the calculation of piece rates.

# 21. Casual loadings in modern awards

Paragraphs 285(2)(a)(i) and 284(3)(b) of the FW Act requires that the Expert Panel review casual loadings in modern awards.

In the *Metal Industry Casual Employment Case*,[91] a Full Bench of the Australian Industrial Relations Commission (**AIRC**) decided to increase the casual loading in the *Metal, Engineering and Associated Industries Award 1998* from 20% to 25%.

After the *Metal Industry Casual Employment Decision* was handed down, the 25% quantum flowed into many other awards. During the Award Modernisation process in 2008-09, the Award Modernisation Full Bench of the AIRC in the *Priority Stage Award Modernisation Decision*[92] relevantly said: (emphasis added)

> ***[49]*** *In 2000 a Full Bench of this Commission considered the level of the casual loading in the Metal, Engineering and Associated Industries Award 1998 (the Metal industry award). The Bench increased the casual loading in the award to 25 per cent. The decision contains full reasons for adopting a loading at that level. The same loading was later adopted by Full Benches in the pastoral industry. It has also been adopted in a number of other awards. Although the decisions in these cases were based on the circumstances of the industries concerned, we consider that the reasoning in that case is generally sound and that the 25 per cent loading is sufficiently common to qualify as a minimum standard.*
>
> ***[50]*** *In all the circumstances we have decided to confirm our earlier indication that we would adopt a standard casual loading of 25 per cent. We make it clear that the loading will compensate for annual leave and there will be no additional payment in that respect. Also, as a general rule, where penalties apply the penalties and the casual loading are both to be calculated on the ordinary time rate."*

The current standard casual loading in modern awards of 25 per cent is already relatively high and should not be increased.

[91] Print T4991, 29 December 2000.

[92] [2008] AIRCFB 1000.

## 22. Casual loading for award / agreement free employees

Paragraph 294(1)(c) of the FW Act requires that the Expert Panel set the casual loading for award / agreement free employees.

The casual loading in the *National Minimum Wage Order 2021* is 25 per cent, and a similar loading should be reflected in the *National Minimum Wage Order 2022*.

## 23. The form of the National Minimum Wage Order

In Ai Group's experience, the form of the *National Minimum Wage Order 2021* did not lead to any difficulties. We suggest that the same model is used for the *National Minimum Wage Order 2022.*

## 24. Request to participate in the final consultations on 18 May 2022

The Timetable for the Annual Wage Review 2021-22 states that parties wishing to participate in the final consultations are requested to express interest by 6 May 2022.

Ai Group hereby advises that it wishes to participate in the final consultations on 18 May 2022.

## ABOUT THE AUSTRALIAN INDUSTRY GROUP

The Australian Industry Group (Ai Group®) is a peak employer organisation representing traditional, innovative and emerging industry sectors. We are a truly national organisation which has been supporting businesses across Australia for nearly 150 years.

Ai Group is genuinely representative of Australian industry. Together with partner organisations we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our members are small and large businesses in sectors including manufacturing, construction, ICT, transport & logistics, engineering, food, labour hire, mining services, the defence industry and civil airlines.

Our vision is for thriving industries and a prosperous community. We offer our membership strong advocacy and an effective voice at all levels of government underpinned by our respected position of policy leadership and political non-partisanship.

With more than 250 staff and networks of relationships that extend beyond borders (domestic and international) we have the resources and the expertise to meet the changing needs of our membership. Our deep experience of industrial relations and workplace law positions Ai Group as a leading industrial advocate.

We listen and we support our members in facing their challenges by remaining at the cutting edge of policy debate and legislative change. We provide solution-driven advice to address business opportunities and risks.

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