Ai GROUP SUBMISSION

Fair Work Commission

Annual Wage Review 2023 - 24
Reply Submission

30 April 2024

Contents

Abbreviations

2024 AWR	Annual Wage Review 2023 – 24
ACTU	Australian Council of Trade Unions
ABS	Australian Bureau of Statistics
Ai Group	Australian Industry Group
AWR	Annual Wage Review
Commission	Fair Work Commission
CPI	Consumer Price Index
DAAI	Direct Aggregation Across Industries
FW Act	*Fair Work Act 2009*
GDP	Gross Domestic Product
GRIA	General Retail Industry Award 2020
Initial Submission	Ai Group Submission to the 2024 AWR, dated 28 March 2024
LCI	Living Cost Index
LIMTO	Low and Middle Income Tax Offset
MAMW	Modern Award Minimum Wages
Manufacturing Award	Manufacturing and Associated Industries and Occupations Award 2020
MYEFO	Mid-Year Economic and Fiscal Outlook
NMW	National Minimum Wage
Panel	Expert Panel
PPI	Producer Price Index
RBA	Reserve Bank of Australia
SCHCDS Award	Social, Community, Home Care and Disability Services Industry Award 2020
SoMP	Statement of Monetary Policy

1. Introduction

On 31 March 2024, Ai Group filed its Initial Submission in the 2024 AWR. In this reply submission, we address new economic data released since the Initial Submission, and various matters raised in the submissions of the ACTU and the Australian Government.

The Panel faces an especially challenging task in this year's AWR. The Australian economy is in a particularly volatile and delicate state, transitioning from the exaggerated conditions of the post-pandemic period to more normal economic settings. Striking the right balance between the needs of employees and employers in such a turbulent context is a difficult but crucial task.

After a period of strong post-pandemic growth, the Australian economy is now weakening, with forecasts suggesting near-term conditions will be some of the poorest in several decades. Inflation has proven surprisingly persistent and is increasingly of domestic rather than imported origin. The labour market is also weakening from its tightest levels in a generation, and there are identifiable pockets of weakness in several industries. National productivity performance remains well below long-term trend.

In this context, the ACTU's claim for a 5% increase in minimum and award wages is reckless. It will exceed business capacity to pay, while exacerbating and extending inflationary pressures. Following the previous two record high decisions which employers have needed to grapple with, and the deteriorating economic conditions they face this year, it is unsustainable to award a third increase of such a large quantum.

Ai Group acknowledges the cost of living pressures currently bearing on lower-paid employees due to persistent and elevated inflation. We note, however, that the Australian Government has undertaken several income support measures to assist with these pressures. These include the reprofiling of the Stage 3 income tax cuts, as well the indexation or discretionary increase of other income support arrangements. These income support measures will work in conjunction with increases to minimum and award wages to protect the real incomes of lower-paid employees.

When current and expected rates of inflation and these income support measures are taken into consideration, Ai Group's proposal of an increase in minimum and award wages of not more than 2.8% will deliver real income gains for lower-paid employees. This outcome is consistent with the principles espoused in the Australian Government's submission.

Ai Group notes that additional forms of income support have been telegraphed for the May Budget, which we will address in the final post-Budget submission.

Given the breadth of material contained in the ACTU Submission, we have addressed only those matters that are of most pertinence to this year's AWR, but this should not be viewed as an acceptance of the veracity of other elements of their material.

The submission also specifically responds to the steps that the ACTU proposes should be taken to address potential gender-based undervaluation in the fixation of certain award rates and the alleged lack of proper recognition of undergraduate qualification in certain modern award rates. This includes, in particular, the ACTU proposal that there should be an interim increase, above any general increase granted in the context of various awards covering various female dominated *'caring'* work. It is not disputed that these issues are of significance and that there is an increased imperative for the Commission to grapple with them as a consequence of recent changes to the statutory regime. Nonetheless, this does not negate the need for such matters to be examined thoroughly through proceedings that enable both a detailed consideration of not only the history of the setting of rates within each relevant award, but also the factual context relating to the nature of work undertaken, the circumstances or characteristics of the relevant industry and broader matters of relevance that either must or should be considered as a product of the minimum wages objective, modern awards objective and broader legislative framework.

It is trite to observe that the impact of a fundamental reassessment of the quantum of relevant award rates is a matter that may have profound impacts upon employees and employers, as well as the broader community and economy. Such matters must be carefully weighed in contemplation of minimum rates variations. This should include the potential for any dis-employment effects to flow from the grant of unsustainable increases, as well as the impact on employers, many of whom may be not-for-profit entities directly or indirectly reliant upon Government funding or subsidy arrangements (such as those in the disability sector or engaged in the provision of early education services). It would not be appropriate or fair for such matters to be determined in the context of the current proceedings, given the manner in which they have unfolded.

2. Recent Economic Data and the ACTU's Characterisation of the Economy

In this section we examine recent economic data, and respond to a number of economic arguments raised in the initial ACTU submission. We argue that the ACTU's submission overstates the health of the economy and downplays the substantial risks to the outlook, the labour market and the impacts of a further large increase in minimum wage rates.

2.1 Recent Australian economic data

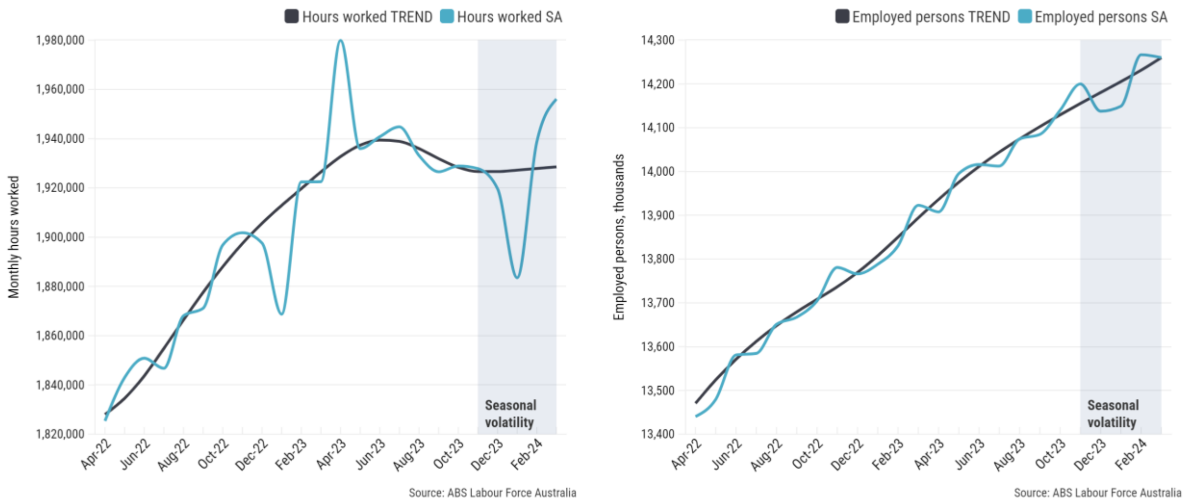
LABOUR FORCE SURVEY MARCH DATA

As noted in our Initial Submission, Australian monthly labour force data has displayed a considerable amount of volatility in the early months of 2024. This is associated with changing patterns of seasonality around the holiday period, warranting the use of trend data to assist in discerning underlying labour market dynamics. Chart 1 below presents the most recent monthly data concerning the two primary indicators of employment: employed persons and hours worked.

March data reveals that the Australian labour market continues to progressively moderate. In trend terms:

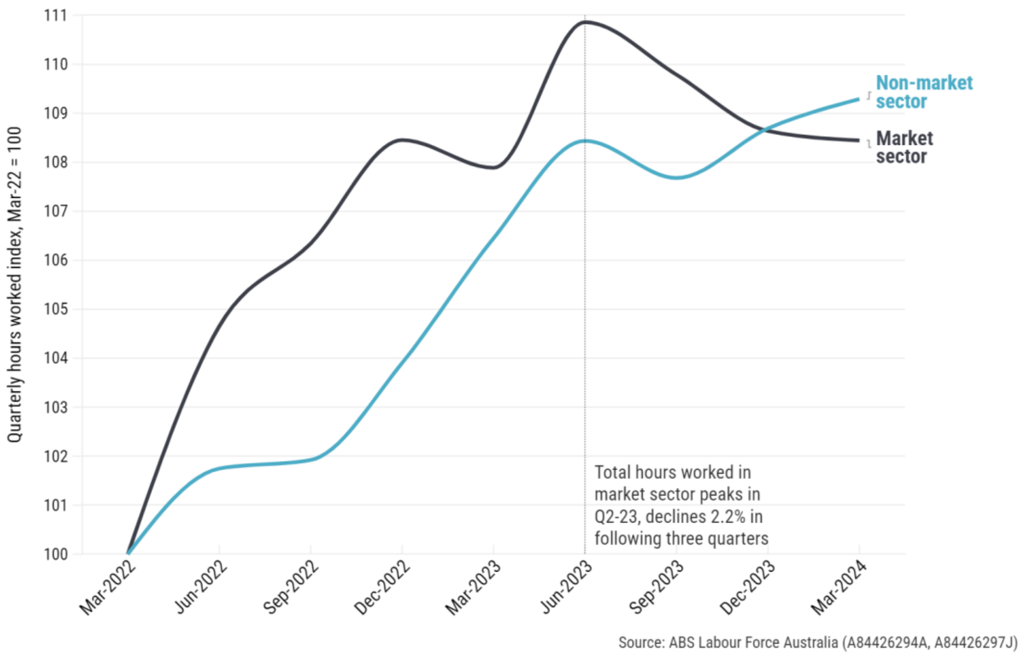
- Monthly hours worked has been effectively flat (+0.1%) in the first quarter of 2024;
- Employed persons has grown very slightly (+0.5%) in the same period; and
- Both hours worked and employed persons have grown at a slower rate than growth in the population (+0.8%).

Chart 1: Monthly employment indicators 2022-2024



However, these aggregates conceal meaningful differences between sectors. When disaggregated to institutional sector, hours worked data reveals that employment generation continues to fall in the market sector. Hours worked in the market sector have fallen by 2.2% since a peak in Q2 2023, offset by an increase in non-market hours of 0.8% over the same period. This indicates that the employment performance of the market sector – those industries which are not connected to government-based sources of demand – continues to deteriorate since a peak in mid-2023.

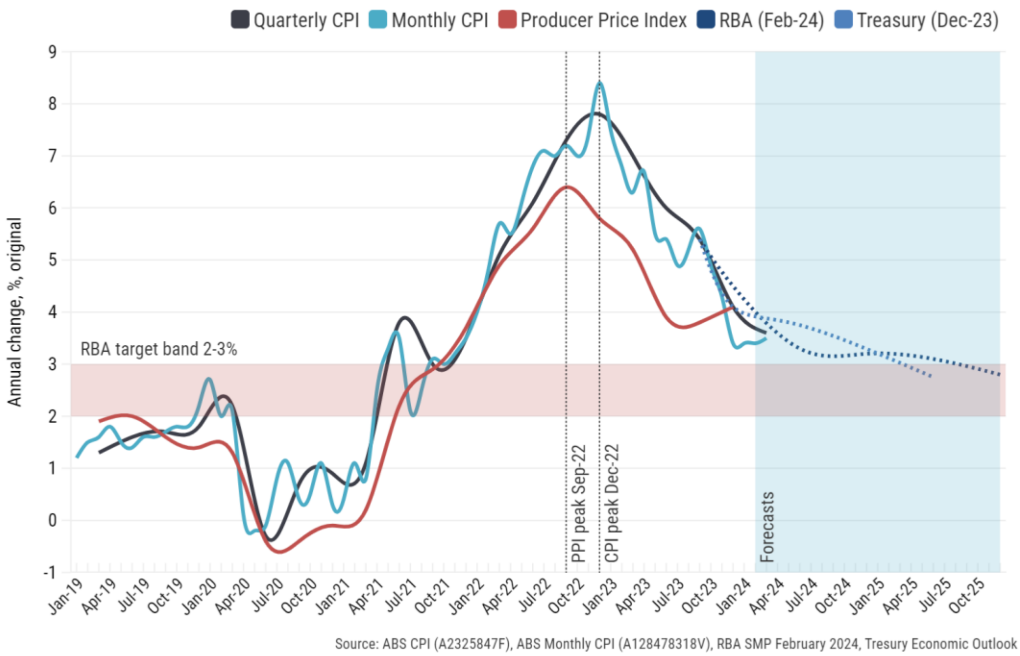
Chart 2: Hours worked in market and non-market sectors, 2022-2024



MARCH QUARTER INFLATION DATA

New inflation data for the March quarter of 2024 reveals the persistence of price pressures in the Australian economy. Headline CPI continued to fall in the quarter, to a 3.6% p.a. annualised growth rate. However, the quarterly growth rate in consumer prices accelerated from 0.6% to 1.0% p.a., revealing that inflationary pressures are far from over. Inflation was principally driven by services and non-tradables; the component categories of inflation that are most exposed to wage pressures.

Chart 3: Australian inflation measures, 2019-2023 and forecasts



2.2 Response to the ACTU

DOMESTIC MACROECONOMIC OUTLOOK

In Ai Group's Initial Submission, we presented evidence that the Australian economy has slowed below its long-run average growth rate in 2023, and that further weakening should be expected across 2024. The Australian Government submission broadly concurs with Ai Group's assessment of the macroeconomic outlook, noting: "While inflation remains the primary challenge in the economy, the balance of risks is shifting from inflation to growth – with global uncertainty, high but moderating inflation and higher interest rates weighing on consumption and economic activity."[1]

By contrast, the ACTU argues "the national economy is in good health, having achieved a soft landing after monetary policy tightening"[2]. It further claims that the economy has "slowed in expected ways" relative to forecasts available during last year's AWR[3].

It is highly premature to conclude that the Australian economy has yet achieved a landing – soft or otherwise – in the transition from a high to normal inflationary environment. Current inflation rates of 3.6% for both consumer (CPI) and 4.3% for producer (PPI) inflation remain well above the target band of 2-3%, and inflation is not forecast to return to the target band until the second half of 2025[4]. The Economist's inflation entrenchment scorecard ranks Australia as currently having the most-entrenched inflation of ten rich countries[5]. CPI remains stubbornly high for some components,

[1] Australian Government submission at [12].
[2] ACTU submission at [5].
[3] ACTU submission at [128] – [146]
[4] Initial Submission, Chart 2.
[5] The Economist, Which country will be last to escape inflation?, 27 March 2024, https://www.economist.com/finance-and-economics/2024/03/27/which-country-will-be-last-to-escape-inflation

particularly non-tradables (5.0%) and services (4.3%) that have declined only marginally since peaks in mid-2023 (Chart 4).

Nor is it guaranteed that any future landing will be soft. Annual GDP growth in the December quarter of 2023 of 1.5% was the lowest reading recorded in 23 years. Forecasts for real GDP growth in calendar year 2024 – which range from between 1.4% to 2.0% - indicate it will be one of the slowest growth years since the early 1990s recession. Notwithstanding Australia's ability to avoid a technical recession, this remains a poor macroeconomic performance and outlook by historical standards.

Additionally, Australia faces a highly uncertain global economic environment. As outlined in the Australian Government submission, near-term global growth will be subdued, inflation in advanced economies is likely to be persistent until 2023, and China's property sector downturn will weigh on global and particularly Australian growth[6]. As the Australian Government concludes, there is significant uncertainty for Australia's economic outlook due to both domestic and international factors[7].

INFLATION

The ACTU argues that high levels of inflation are primarily caused by international events unrelated to wages, claiming that economy-wide prices increases are "due mainly to pandemic-related supply chain disruptions, Russia's invasion of Ukraine, severe weather events disrupting supply chains in Australia, and then opportunistic price gouging by many firms domestically"[8].

This claim is inconsistent with a reasonable interpretation of inflation data, which shows that it is domestic and wages-exposed components that are now making the largest contribution to price increases.

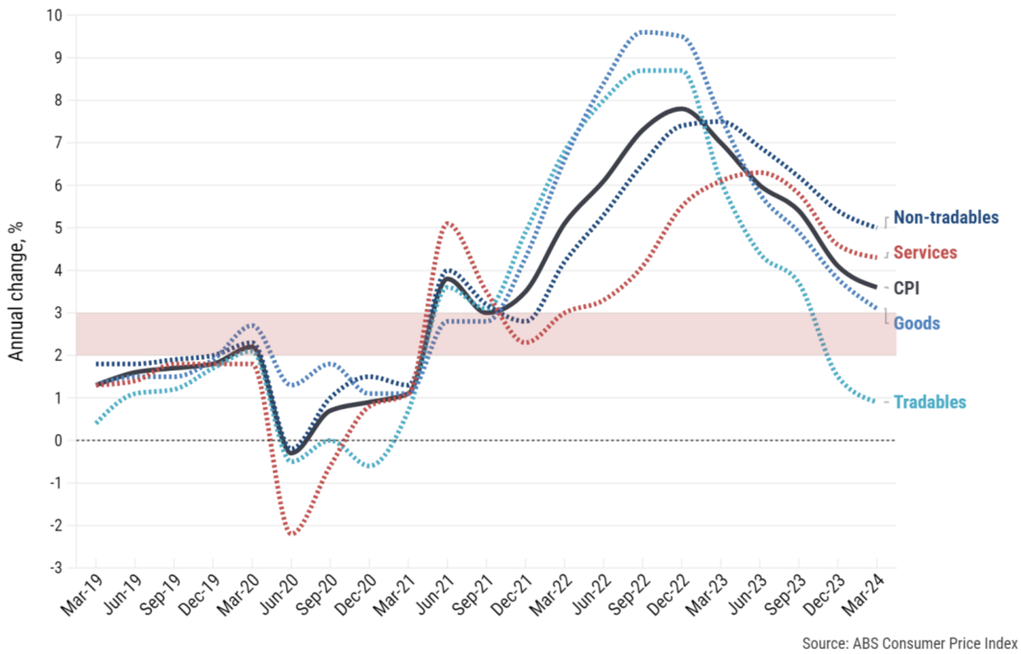
As Chart 4 below shows, inflation for non-tradables has been lower than for tradables throughout 2023, and there remains a very broad spread between the two measures (5.0% vs 0.9% p.a.). Indeed, as tradables inflation has fallen to below the RBA's target band, excessive consumer price inflation has now become a wholly domestically-driven phenomenon. The ACTU's claim that a significant proportion of inflation has been 'imported', through either supply chain and/or international energy market impacts, is plainly incorrect when referring to the period since 2022.

Data for goods and services CPI similarly point to a link between wages and inflation. Inflation for goods, which typically have a small labour cost component, has fallen rapidly from a 9.6% p.a. peak to 3.1% by the first quarter of 2023. By contrast, services inflation remains sticky, having moderated only slightly from 6.3% p.a. to 4.3% p.a. As wages typically account for a larger proportion of the cost of delivering services, it is the category of inflation most closely correlated to wage increases.

[6] Australian Government submission at [27] – [30].
[7] Australian Government submission at [35].
[8] ACTU submission at [12d] and [62].

The ACTU similarly argues that as inflation fell in the two quarters following last year's large increase to the NMW and MAMW, this year's decision is unlikely to carry a negative impact upon inflation[9]. This similarly fails to interpret inflation data properly. The appropriate categories of inflation to link to wage pressures are non-tradables and services inflation, as it is these product categories which are most exposed to wage costs. As Chart 4 shows, inflation for these two categories moderated only slowly in 2023, and they have now become the principal sources of ongoing price pressures.

Chart 4: Components of CPI inflation



The ACTU further claims that "price gouging" by Australian firms has contributed materially to the current period of high inflation[10]. It cites an ACTU report[11], authored by Allan Fels, as the sole source for this claim[12]. The ACTU report itself cites a marginal rise in the non-mining profit share of income since the pandemic, and increases in gross operating profits in some industries, as evidence that higher profits are a principal driver of recent inflation.

Ai Group notes that changes in factor income shares cannot be used to infer the causes of inflation. Any valid attribution of inflation to business profit rates would require an estimate of change in business markups, which the ACTU Submission fails to offer. Indeed, and as the RBA has assessed, high levels of demand can explain both the increased profits and rising inflation seen in the post-pandemic period[13].

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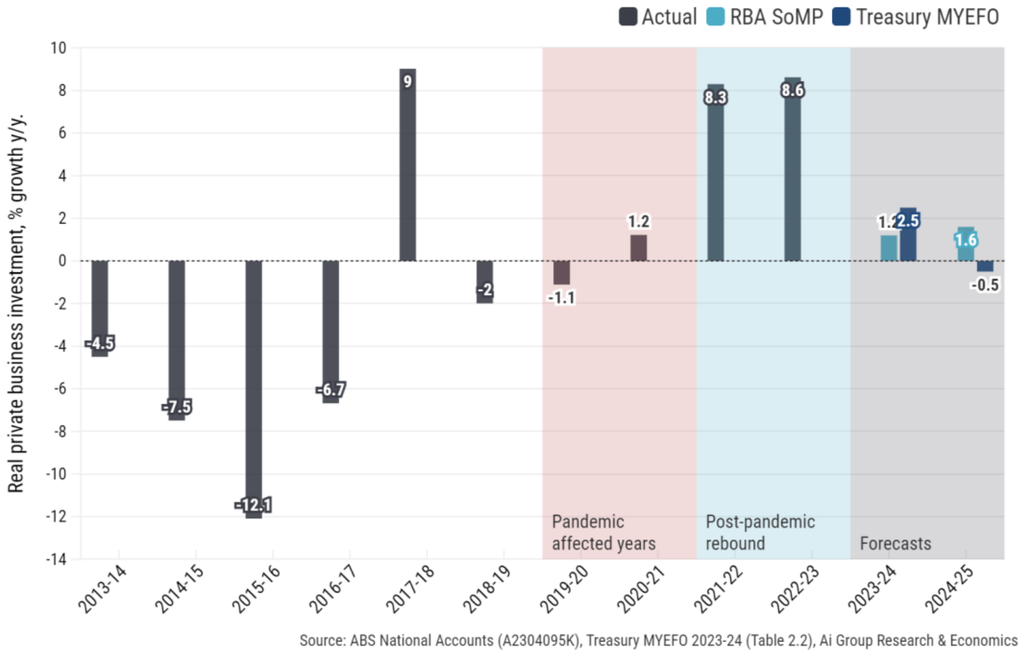
[9] ACTU submission at [6].
[10] ACTU submission at [12d].
[11] Australian Council on Trade Unions, *Inquiry into price gouging and unfair pricing practices*, https://pricegouginginquiry.actu.org.au/
[12] ACTU submission at [26h].
[13] Reserve Bank of Australia, Documents between 7 February and 1 March 2024 that include analysis or briefings about the report by Professor Allan Fels (released on 7 February), RBAFOI-232440, https://www.rba.gov.au/information/foi/disclosure-log/rbafoi-232440.html

BUSINESS INVESTMENT LEVELS

The ACTU argues that business investment has been strong over the last 12 months, and that prospective investment is expected to remain robust in the coming year[14]. However, as Chart 5 below shows, the high rates of private business investment growth in the last two financial years (8.3% and 8.6%) reflects a post-pandemic catchup that greatly exceeds performance over the last decade. Moreover, the most recent official forecasts from both Treasury and the RBA except private business investment growth to slow markedly to far more modest levels. High business investment growth rates in 2022-23 are clearly not indicative of the expected performance in coming years.

Chart 5: Australia's business investment outlook



PRODUCTIVITY MEASUREMENT AND PERFORMANCE ISSUES

The ACTU makes several propositions regarding recent productivity performance in Australia which are not consistent with a reasonable interpretation of available data.

First, the ACTU suggests that the return of productivity measures to near their pre-pandemic levels at the end of 2023 is an indicator of national productivity performance strengthening. Ai Group contends that it is in fact an indicator of weakness.

The ACTU correctly notes that real GDP per hour worked in Q4 2023 was approximately the same (0.2% below) as its level in Q4 2019 prior to the pandemic[15]. However, this data also implies that the economy has delivered *zero growth over four years* in this measure of labour productivity. Zero growth over four years is well-below the 1.2% p.a. growth rate assumed as trend by Treasury[16].

[14] ACTU submission at [41] – [48].
[15] ACTU submission at [12G].
[16] Commonwealth Treasury, 2023-24 Budget, *Budget Paper No. 1*, p. 79, https://budget.gov.au/content/bp1/download/bp1_2023-24_230727.pdf

Contrary to the ACTU's interpretation, and consistent with Ai Group's arguments[17], this data clearly indicates that the Australian economy is underperforming relative to trend on labour productivity.

Second, the ACTU points to stronger productivity data in the latter half of 2023 as indicating a recent improvement in national performance. It argues: "The Panel should be encouraged that productivity grew in the two quarters immediately following the most recent Annual Wage Review decision"[18]. Ai Group contends that productivity data for the third and fourth quarter of 2023 are not a reliable guide as to when and whether the Australian economy will return to trend productivity growth.

As argued in our Initial Submission[19], short-run productivity data is subject to significant volatility due to fluctuations introduced by variations in hours worked and/or capital utilisation. As the ACTU submission acknowledges in multiple instances[20], the increase in labour productivity during the latter quarters of 2023 was not due to increased output, but to an abnormally large reduction in the number of hours worked. This is the exact type of short-run labour market variation that makes quarterly productivity data unreliable as a guide to longer-term performance.

The Commission has in past reviews placed greater weight on productivity changes measured using multi-year cycles rather than annual movements. Consistent with this approach and per the prior considerations, Ai Group submits that annual productivity data should be interpreted with considerable caution, while the quarterly data cited by the ACTU should be considered an unreliable indicator of trend productivity performance.

Third, the ACTU argues that compositional effects – namely, more pronounced shifts into and out of employment in lower productivity service industries during the pandemic – have disrupted the measurement of national productivity aggregates in recent times[21]. They further cite the post-pandemic unwinding of this compositional effect as one the factors which is contributing to the "normalisation of productivity outcomes", the euphemism by which they refer to falling labour productivity, in 2022-23[22].

Ai Group addresses this proposition in our Initial Submission, where we present 'DAAI approach' data from the ABS[23]. DAAI data allows for the decomposition of productivity results as being due to either *direct effects* (i.e. productivity falling within industries) or *hours reallocation effects* (the compositional effect identified by the ACTU). As this data shows, direct effects were responsible for the majority (2.3%) of the 2.7% decline in market sector labour productivity in 2022-23. The hours reallocation effect invoked by the ACTU contributed only a minority (0.4%) of the fall.

[17] Initial Submission at pp. 32-34.
[18] ACTU submission at [12G].
[19] Initial Submission at pp. 32-33.
[20] ACTU submission at [231], [233] at [234].
[21] ACTU submission at [235].
[22] ACTU submission at [238].
[23] Ai Group submission, Table 4 and pp. 34-35.

Thus, while the ACTU is correct in noting a compositional effect is at play in recent productivity measurements, ABS estimates show it is playing only a minor role. The unwinding of this compositional effect is responsible for only a very small proportion of Australia's poor labour productivity performance in 2022-23.

3. The Performance of the Labour Market

THE STRENGTH OF THE AUSTRALIAN LABOUR MARKET

The ACTU claims that that the labour market remains "remarkably resilient", with most major employment indicators near record-lows and below their pre-pandemic levels[24]. It identifies rates of employment growth, unemployment rates, underemployment rate, total and youth participation rates, and vacancy rates that are currently stronger than their long-term averages.

As argued in Ai Group's Initial Submission, the Australian labour market is not *weak*, but is demonstrably *weakening*. Across the course of 2023, indicators for job creation, unemployment, underemployment, hours worked, full-time job creation, youth unemployment and job vacancies have all deteriorated[25]. This data clearly points to a trend of declining labour market performance, a trend which is likely to continue, if not accelerate, as the economy continues to slow across 2024.

For the purposes of the AWR, it is the employment performance of award reliant industries that is most pertinent. In our Initial Submission, Ai Group identified that two award-reliant industries – retail and accommodation & food – were especially vulnerable. Across 2023, these industries have seen material reductions in key indicators of employment, at rates much higher than the all-industry average (Table 1).

Table 1: Employment change in retail and accommodation & food industries, 2023

	Hours worked	Filled jobs	Employed persons	Vacant jobs
Retail	0.3%	-1.3%	-1.4%	-25.2%
Accommodation & food	-5.6%	-2.9%	-3.2%	-30.8%
All industries	2.0%	2.8%	1.9%	-13.4%

Source: ABS Labour Account, seasonally adjusted, data is y/y change to Q4 2023.

INDICATORS OF DISEMPLOYMENT EFFECTS

Additionally, the ACTU claims there is "no evidence for any disemployment effects" from the large increases in minimum and award wages in last's years decision[26]. Ai Group notes that many employment indicators show clear deteriorations in the period immediately following the most recent increase in the NMW and MAMW. If considering employment indicators only for the period between the second and fourth quarters of 2023:

[24] ACTU submission at [17].
[25] Ai Group submission, pp. 18-24.
[26] ACTU submission at [17], [138], [444], [457] and [495].

- The quarterly unemployment rate rose from 3.48% to 3.98%[27]

- The rate of underutilised hours rose from 5.40% to 5.79%[28]

- The number of hours worked fell by 1.0% across all industries[29], and fell in fourteen of nineteen industries

- Net job creation rates fell, and shifted from being predominantly in full-time roles to being wholly in part-time roles[30]

- The number of filled jobs fell by 1.3% in retail, and 3.9% in accommodation & food service[31], both industries with a high proportion of award-reliant employees

- The number of hours worked fell by 1.7% in retail, and 8.0% in accommodation & food service[32]

- Youth unemployment rose from 7.3% to 9.5%[33], a category of employees with a large number of award-reliant employees

This deterioration in employment indicators in the two quarters following the most recent NMW and MAMW increase should be attributed to a diverse array of factors. As documented in Ai Group's Initial Submission, these factors include the slowing economy, the impact of high inflation and interest rates, weak performance in certain industries, alongside the very rapid increases in wage pressures.

However, the ACTU claim that there is "no evidence of disemployment" is demonstrably incorrect, given that employment indicators show a clear decline in the two quarters following the last decision. That these employment reductions are especially pronounced in the two most award-reliant industries (retail and accommodation & food service) and the most award reliant employee category (youth) are suggestive of a link to wage pressures emanating from the last decisions.

Finally, the ACTU cites data which it labels the "unemployment rate" for particular industries[34]. Ai Group notes that industries, by conceptual definition, do not have unemployment rates. An unemployed person does not have a job attachment to any industry. The data the ACTU cites actually refers to the 'industry-of-last-employment' of unemployed persons; a distinct concept. Given that the award-reliant workforce frequently moves between industries – for example, labour flows between retail and accommodation & food – this industry-of-last-employment data is of very limited use in understanding the employment performance of specific award-reliant industries.

[27] ABS Labour Account, series A85389479T and A85389474F.
[28] ABS Labour Account, series A85389562F and A85389563J
[29] ABS Labour Account, series A85389483J
[30] Initial Submission, Chart 9, p. 22.
[31] ABS Labour Account, series A85391027V and A85391247W
[32] ABS Labour Account, series A85391042T and A85391262V
[33] Initial Submission, Chart 10, p. 23
[34] ACTU submission at [447] and Charts 199 and 200.

4. The Impact on Business

BUSINESS FINANCIAL PERFORMANCE AND CAPACITY TO PAY

The ACTU makes a series of interrelated claims about the financial performance of business and business capacity to pay. It claims that profits are variously "robust", "buoyant" and "rapidly increasing", arguing that current growth rates of non-mining profits exceed the average during the pre-pandemic decade[35]. It also claims that, when measured from a 2019 baseline, profits growth has exceeded wages growth for the majority of industries[36], and for unincorporated businesses[37].

These financial performance claims are offered as evidence for the existence of sufficient business capacity to pay the ACTU's 5% claim. Ai Group contends that these arguments fail to properly interpret data on business financial performance, and to defensibly relate it to business capacity to pay considerations, for the reasons that follow.

First, the ACTU's temporal comparisons between current and average pre-COVID profit growth rates fail to account for recent high levels of inflation. Business profitability data is expressed in nominal not real terms. The 6.1% increase in nominal non-mining profits during 2023 is in real terms significantly less due to very high inflation – with both CPI and PPI measuring 4.1% across the year. The ACTU's comparison of nominal data from a high-inflation period to its (lower-inflation) pre-COVID average is an inappropriate apples-to-oranges comparison.

Second, the ACTU's comparison of current to pre-COVID profits growth fails to properly relate *business profitability* (a statistical measure) to *business capacity to pay* (a concept). In terms of capacity to pay, it is irrelevant whether current profits growth is higher or lower than at some historical reference point. Instead, *current* capacity to pay depends on whether *current* profits growth is in a sustainable proportion to *current* growth business income and wages costs.

Ai Group presents data on these current proportions in Table 2 of our Initial Submission[38]. This data shows that in all industries ex-mining, nominal wages growth of 9.5% in 2023 exceeded the rates of growth for gross operating profits (6.1%) and business income (4.8%). The spread is particularly pronounced for several industries; including retail, arts & recreation and other services which are award-reliant, as well as wholesale trade and manufacturing which have sizeable award-reliant employee populations. This data clearly shows that current business capacity to pay is under stress, particularly in some award-reliant industries.

[35] ACTU submission at [49] – [51].
[36] ACTU submission at [53].
[37] ACTU submission at [54].
[38] Initial Submission at p. 29.

Third, the ACTU's comparison to pre-COVID data results in the drawing of incorrect conclusions regarding the financial performance of small business[39]. The ACTU claims that unincorporated businesses have enjoyed strong profits growth when measured against a December 2019 baseline. But as Ai Group's Initial Submission showed, 2023 nominal gross operating profits in unincorporated businesses excluding mining and finance *fell* by 6.6%[40]. Selecting this inappropriate baseline allows the ACTU to claim that unincorporated businesses are enjoying "rapid increases in profits"[41], when in fact their profitability is currently declining.

Fourth, the ACTU cites the profit-to-income ratio (a proxy for business operating margins), which currently sits above its ten-year pre-pandemic average, to suggest there is latent business capacity to pay wage increases[42]. Ai Group argues this claim fails to properly relate data on operating margins to underlying business capacity to pay:

- The gross profit margins data cited by the ACTU excludes the interest costs on debt. As interest rates have risen rapidly in the recent monetary policy cycle, business borrowing costs have similarly risen. This will have impaired business profitability in a way that is obscured by gross profit margins data.

- Whether a certain operating margin implies latent business capacity to pay must be measured *relative to the economic conditions of the time.* An operating margin that is considered healthy during a period of economic growth and low inflation may not be healthy during times when macroeconomic and/or industry conditions are weaker. As documented in our Initial Submission, the latter set of weak and volatile conditions presently pertains in the Australian economy, and especially in several award-reliant industries.

- Whether a certain operating margin implies latent business capacity to pay must also be measured *relative to the wage increase that is being presented*. The ACTU claim of 5% for 2024-25 is significantly higher than average NMW increase (2.96%) over the decade prior to the pandemic. Significantly above-average operating margins would, *ceteris paribus*, be required to sustain the significantly above-average increase in minimum wages being claimed by the ACTU. Yet operating margins are not significantly above long-run average at present.

- The ACTU fails to note that operating margins are in fact declining in several award-reliant industries. Over the year to Q4 2023, the profit-to-income ratio fell by 0.3% in retail (to 5.8%), 1.6% in accommodation & food (to 8.5%), 0.5% in arts & recreation (to 11.1%), and 1.2% in other services (to 15.3%)[43]. It is the financial performance of these award-reliant

[39] For the purpose of financial performance analysis, data on unincorporated businesses are used as a proxy measure for "small business". It is the best proxy measure for small business in the Australian System of National Accounts. However, this proxy measure will exclude any small businesses which are incorporated.
[40] Ai Group submission, Chart 15.
[41] ACTU submission at [54].
[42] ACTU submission at [57].
[43] Ai Group calculations from ABS Business Indicators, Tables 6 and 15.

industries, not all-industry aggregates, that are most relevant for considering business capacity to pay minimum and award wage increases.

5. The Need to Achieve Gender Equality

THE IMPACT OF MINUMUM WAGES ON THE GENDER PAY GAP

The Australian Government argues: "Generally, as women are disproportionately represented in low-paid and award-reliant jobs, increases in the minimum and award wages are likely to contribute to a decrease in the gender pay gap and increase the incentive to enter the workforce or work more hours".[44]

Several other submissions – including ACOSS[45], UWU[46] and the ACTU[47] – also make the argument that increasing minimum wages reduces the gender pay gap.

Ai Group contends that the impact of increases to minimum and award wages on the gender pay gap are likely to be small, because the gender pay gap is mostly driven by factors associated with other more highly-paid employee categories.

Table 4 in Ai Group's Initial Submission calculates the gender pay gap for employee categories by method of setting pay in May 2023. It shows that the gender pay gap is considerably lower for award-reliant employees than other categories of employees; and is negative (i.e. female-favouring) for award-reliant employees when calculated on an average hourly total earnings basis.

This data shows that the overall gender pay gap in Australia predominantly originates from gendered pay differentials exist amongst (higher paid) employees covered by collective agreements or those who have individual arrangements in place. Changes to modern award minimum wages – the employment category with the smallest gender pay gap – are therefore unlikely to make a significant change to the overall gender pay gap in Australia.

The Australian Government similarly suggests that if award wages increase faster than overall market wages it may, *ceteris paribus*, attract more women into award-reliant industries[48]. This could have impacts on the gender pay gap and/or female labour force participation. However, it would only decrease the gender pay gap if women were attracted from forms of employment that had higher gender pay gaps; and would only increase the female participation rate if women were attracted from non-engagement with the labour market.

As no suggestion is offered regarding the types of employment from which women would be attracted, it cannot be argued that an above-market increase in award wages that attracts women into award-covered employment will necessarily reduce the gender pay gap and/or increase participation.

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[44] Australian Government submission at [150].
[45] ACOSS submission, p. 21
[46] United Workers Union submission at [40].
[47] ACTU submission at [371].
[48] Australian Government submission at [151].

ACTU CLAIM FOR INTERIM INCREASES & ASSOCIATED ISSUES

The ACTU has, in its written submission, called upon the Commission to award an interim increase to minimum wages in modern awards that were identified in the Stage 1 Gender Research Report as containing a "high level of gender based occupational segregation".[49] Ai Group strongly opposes this proposal.

We respond to various aspects of the ACTU's submissions in support of its claim as follows.

First, in response to the ACTU's submissions about the gender pay gap[50], we refer to and rely on our Initial Submission at pages 44 – 46 and those set out above.

Second, whilst not directly relevant to the Review, to the extent that the ACTU seeks to argue that there are "stark gendered differences" in award prescribed conditions of work other than pay, "with awards covering male dominated industries having far more favourable conditions that lead to increased earnings and greater job security";[51] we oppose any contention that those differences can be simplistically assumed, *prima facie*, to be a product of the gender-based differences in the composition of the workforces covered by the relevant awards.

Differences in terms and conditions between different awards do not of themselves establish gender-based undervaluation of work. Rather, they more likely reflect the varying operational circumstances of, and challenges facing, employers covered by different awards. Plainly, the operational realities of employers covered by the Manufacturing Award are very different to those of aged and disability care providers covered by the SCHCDS Award. Alternatively, they may reflect differences in the nature of the work or demands placed upon employees.

Far more than merely pointing to differences in terms and conditions is required to establish any gender-based undervaluation of work. For example, it would be necessary to consider the origins of the relevant award terms and the bases upon which they were developed and / or have evolved over time. It also requires an assessment of the relevant factual context of the work.

Third, the ACTU Submission highlights the concern the Commission has previously expressed for determining award-specific variations in an AWR.[52] In particular, as there set out, the Commission has previously noted the distortion of inter-award relativities that can result from the approach now called for by the ACTU.

We acknowledge that there may be circumstances in which an award-specific adjustment to minimum wages is warranted, including on account of reasons associated with gender-based undervaluation. However, taking into account the need to ensure that the minimum safety net applies fairly (to employers, employees and amongst different cohorts of employees)[53] and that it

[49] ACTU submission at [388].
[50] ACTU submission at [371].
[51] ACTU submission at [372].
[52] ACTU submission at [376].
[53] Section 134(1) of the FW Act.

remains stable[54], the Commission should, respectfully, adopt a cautious approach to making any such variation. It ought not reach any conclusions or determinations relating to appropriate variations to rates based on abstract assumptions or broad generalisations.

Moreover, having regard to the potential disruption that such variations may cause to inter-award relativities, it is critical that minimum wages are not varied unless careful and detailed consideration has been given to the many possible consequences that may flow from the proposed variations. This includes whether they may result in labour market distortions in relation to associated parts of the labour force. An obvious example arising from the Aged Care Work Value Case relates to the disability care workforce.

Plainly, in the context of the 2024 AWR, on account of the nature of the process involved, the timeframe within which it must be completed and the extent and nature of the material before the Commission, it will not be feasible for the Panel to properly consider issues of this nature. This tells strongly against the adoption of the process advocated for by the ACTU.

Fourth, critically, as the ACTU submits, a "proper consideration and weighing of the elimination of gender-based undervaluation of work requires a substratum of factual findings upon which to proceed".[55] Naturally, in the absence of any evidence before the Commission in this proceeding, it is not in a position to make any such factual findings.

The ACTU's submission at [389] reveals one of the many pitfalls with proceeding in the absence of a factual matrix about each of the awards in respect of which the Commission is considering increasing wages on the basis of s.134(1)(ab) or s.284(1)(aa). It concedes the following:

> We acknowledge that a potential difficulty with an interim increase in these awards in this Review is that such a step effectively assumes that the hitherto invisible skills are exercised with increasing complexity as one moves from lower to high levels of the classification structure. This may not be a safe assumption in all cases, and we note that the evidence in the Aged Care case suggested that there was a considerable overlap between the most frequently exercised skill at lower and higher skill classifications.[56]

It goes on to assert that this is "not a reason for not taking such steps as may be available in this Review to achieve gender equality, but rather an indication that the steps that might be practicable in this Review for a particular modern award would not address the issue to finality".[57]

Any approach that risks awarding an increase that is higher than what is truly warranted (if at all), based on the value of the work performed, obviously should not be adopted. It would be grossly unfair to employers. The need to ensure a stable system[58] would also be undermined if the Commission ultimately made multiple adjustments to the relevant rates, in order to first increase

[54] Section 134(1)(g) of the FW Act.
[55] ACTU submission at [370].
[56] ACTU submission at [389].
[57] ACTU submission at [390].
[58] Section 134(1)(g) of the FW Act.

them and to then make subsequent downward adjustments, once a proper assessment of the value of the work is made, as suggested by the ACTU.[59]

Moreover, the entire premise of the ACTU's proposed approach rests on its acceptance that in this proceeding, "we are not in a position to measure the disparity between the assumption that the alignment of rates in modern awards with the C10 classification has embedded gender-based undervaluation of work and the reality, with certainty".[60] In that context, the more appropriate course would be to consider these issues wholistically and comprehensively in separate proceedings that are specifically directed to them, in the context of the relevant individual awards. Interested parties should be afforded a reasonable opportunity to advance submissions, evidence and other relevant material.

Fifth, the ACTU seeks to rely on the decision made by the Commission in the Aged Care Work Value Case to award an interim increase of 15%, before it ultimately determined the full extent of the increase to be implemented.[61] Importantly, however, that interim increase was determined after the Commission received extensive evidence concerning various aspects of the value of the work performed by the relevant cohorts of employees. The Commission concluded that, based on that evidence, an increase of at least 15% was warranted.[62] In this proceeding, by contrast, the Commission is not in a position to make any such decision based on factual findings. Rather, it would simply be adopting a notional benchmark and aligning rates to that benchmark.

Sixth, the ACTU Submission virtually ignores the need to also consider the various countervailing considerations that may tell against the grant of the interim increased proposed or, at the very least, would temper the extent of any increase awarded (on an interim or ongoing basis). It also fails to consider that it may be necessary to implement appropriate transitional arrangements relating to its implementation.

Most obviously, the impact on business[63] must be considered and appropriately weighed. This is particularly relevant in the context of employers that are dependent on Government funding and have limited (if any) means to absorb or offset increased employment costs, including employers operating in various sectors covered by the SCHCDS Award (such as those providing disability services, as well as those who provide care to children and young people).

Before concluding that any increase beyond that which is to be awarded in the AWR generally should be implemented, careful and detailed consideration should be given to the potential impact that this would have on employers, as well as any consequential disemployment effects it would cause. So much can be seen from the reasoning adopted by the Commission in the Aged Care Work Value Decision.[64]

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[59] ACTU submission at [390].
[60] ACTU submission at [384].
[61] ACTU submission at [385].
[62] *Aged Care Work Value Case* [2022] FWCFB 200 at [957].
[63] Section 134(1)(f) of the FW Act.
[64] See for example *Aged Care Work Value Case* [2022] FWCFB 200 at [1086] – [1088].

It would be grossly unfair and profoundly inappropriate to proceed to make any upward adjustment to such minimum rates without providing parties with a reasonable opportunity to advance material (including evidentiary material) in this regard. Neither the timeframe within which the 2024 AWR is to be completed, nor the directions issued by the Commission for the filing of material in it, have or will enable this to occur.

In the circumstances, this course of action simply should not be adopted.

Seventh, it is clear that the approach proposed by the ACTU in respect of awards that do not prima facie involve *'caring'* work (such as the GRIA),[65] cannot be undertaken as part of the 2024 AWR but rather, would need to be dealt with in separate proceedings. The same can be said for any "smaller highly feminised occupations, as well as occupations which are fragmented across industries".[66]

Finally, in the ACTU's proposal in respect of undergraduate classifications should not be adopted for the reasons articulated above. An award of an interim increase, in the absence of any evidence that goes to the value of the relevant work performed and / or the impact it would have on employers, would be inappropriate and inconsistent with the modern awards objective. If the issue is to be dealt with, it should be the subject of separate proceedings that facilitate a detailed discussion of the relevant issues.

[65] ACTU submission at [391] – [392].
[66] ACTU submission at [395].

6. Promoting Social Inclusion through Increased Workforce Participation

RESEARCH INTO THE IMPACTS OF MINIMUM WAGE INCREASES ON EMPLOYMENT

In downplaying the risk of disemployment impacts from this year's AWR, the submissions of both the ACTU and the Australian Government understate the likelihood that a more than moderate increase in minimum wages would detract from participation in paid work to the detriment of social inclusion.

The Australian Government argues: "The balance of the literature suggests that moderate increases to the minimum wage tend to have negligible employment impacts. Caution needs to be taken when extrapolating the findings of international research for Australia, given Australia's minimum wage setting environment and award system"[67]

The ACTU similarly argues: "Recent studies on the employment impacts of minimum wage policies have reinforced the broad consensus that … the employment effects of moderate minimum wage increases are negligible, and in some cases can be positive[68]".

Ai Group argues that caution should also be exercised in extrapolating the findings of research conducted in different temporal contexts for the disemployment effects that might be generated in Australia at the present time.

The size of any disemployment effect generated by an increase in minimum wages will be mediated by business capacity to pay *at the time of the increase*. If economic conditions are poor and business capacity to pay is weak, disemployment effects are likely to be larger than for the same minimum wage increase made at a time when economic conditions and business capacity to pay are stronger. Studies on disemployment effects during strong economic conditions should therefore not be extrapolated to periods of weaker conditions, and vice versa.

Ai Group suggests that the weak conditions and outlook currently faced by the Australian economy pose a greater than usual risk of disemployment flowing from a more than moderate increase to the NMW and MAMW.

In Ai Group's Initial Submission, we presented evidence that the Australian economy has slowed below its long-run average growth rate in 2023, and that further weakening should be expected across 2024. The Australian Government's submission broadly concurs with Ai Group's assessment of the macroeconomic outlook, noting: "While inflation remains the primary challenge in the economy, the balance of risks is shifting from inflation to growth – with global uncertainty, high but moderating inflation and higher interest rates weighing on consumption and economic activity."[69]

[67] Australian Government submission at [180].
[68] ACTU submission at [518].
[69] Australian Government submission at [12].

In this macroeconomic context, business capacity to pay will be lower than usual in the coming financial year, and the risk of disemployment effects correspondingly higher. International studies conducted in different macroeconomic conditions do not necessarily provide an effective guide for this year’s decision.

7. Relative Living Standards and the Needs of the Low Paid

INCOME SUPPORT MEASURES AND THE STAGE 3 INCOME TAX REPROFILING

The submissions of the ACTU and the Australian Government do not give appropriate weight to the role of the income tax cuts and income support measures in meeting the needs of the low paid.

The ACTU claims it would be "grossly unfair" for the reprofiling of the Stage 3 income tax cuts to be treated as a moderating factor in the 2024 AWR, based on the suggestion that the withdrawal of the LIMTO was not taken into account in last year's AWR decision [70]. This claim suffers several weaknesses:

- The tax cuts to apply from 1 July 2024 will impact on disposable incomes irrespective of the treatment of the LMITO in last year's decision. As Ai Group's submission demonstrates, the Stage 3 reprofiling has a material impact on the needs of the low paid through its increase in disposable incomes in 2024-25. This is not altered by the fact that the treatment of the LMITO in last year's decision was not explicitly described.

- It would break with well-established practice of taking tax and income support measures into consideration in the AWR. This is a practice which the ACTU notes[71], and cites prior examples of[72], in its submission.

Ai Group notes that nowhere in the Australian Government submission is it suggested that the Panel should not take the Stage 3 reprofiling into account when considering the needs of the low paid. The Australian Government's submission does indicate that these measures were "designed to be in addition to any increase in award and minimum wages granted by the Panel". This is a truistic statement, which simply describes the fact the income support measures will, in their effect, be additional to any minimum wage rise. The Australian Government's submission does not claim, and should not be construed as meaning, that these income support should not be considered in this year's decision.

The ACTU further argues that many award-reliant employees earn under the tax-free threshold and therefore will not benefit from the Stage 3 reprofiling[73]. Ai Group 26ecognizes this, presenting modelling in our initial submission which identifies that the bottom two deciles of award-reliant employees will not receive any income increase for this reason[74].

However, Ai Group also notes that this group of the *lowest* paid employees will have benefited from a range of other income support payments which have been indexed and/or seen discretionary increases (e.g. JobSeeker and Rent Assistance) during the last year. In Ai Group's initial submission,

[70] ACTU submission at [307] – [313].
[71] ACTU submission at [305].
[72] ACTU submission at [312].
[73] ACTU submission at [310].
[74] Initial Submission, Table 5.

we explain how these income support payments will preferentially benefit the lowest paid households, providing additional income support to this sub-group of award employees[75]. The Australian Government's submission similarly puts the case that various income support measures have materially assisted the ability of low-paid employees to meet their needs.

COST OF LIVING CONSIDERATIONS FOR LOWER PAID EMPLOYEES

The Australian Government further argues that low-paid employees have a higher average propensity to consume, and a higher proportion of their spending on non-discretionary items[76]. It also notes that non-discretionary inflation is currently higher than for discretionary goods (4.8% vs 3.0% in Q4 2024)[77]. Read together, these propositions could be construed as an argument that cost of living pressures for low paid employees exceed that of CPI.

A similar argument is advanced by the ACTU, instead citing ABS LCI data for employee households[78].

Ai Group contends these arguments fail to properly distinguish between *individuals* and *households*. The Australian Government relies on a paper by Fisher *et al.* that studies household data, while the ACTU cites ABS LCI for employee households. Using household data fails to account for the dispersed distribution of low paid employees across the households of different income levels. For example, low-paid youth employees or second earners are often members of higher income households, which pushes the individual into a higher income decline in any household-based data.

In other words, the data cited by both the Australian Government and ACTU does not describe *all low-income individuals*, but only that subset *who also belong to low-income households*. There are good reasons to expect cost of living pressures facing low-income individuals in higher-income households will be far less pronounced.

Ai Group further contends that ABS employee household LCI data cannot be used to draw valid inferences facing cost of living pressures for low-income individuals or households. This data is cited by both the Australian Government[79] and ACTU[80], with the Australian Government using it to make an alternate estimate for the real change to the NMW in 2022-23. Yet this data describes all employee households, which is not consistent with the low paid category of employees of relevance to the AWR.

Indeed, and as the Australian Government acknowledges, much of the faster increase in the employee household LCI is due to this group's greater exposure to mortgage costs. Yet only a small minority of households in the bottom income quintile are mortgagees[81], and low income

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[75] Ai Group submission, pp. 41-42.
[76] Australian Government submission at [131] – [132].
[77] Australian Government submission at [133].
[78] ACTU submission at [356].
[79] Australian Government submission at [134] – [135].
[80] ACTU submission at [356].
[81] Beckers *et al.*, Developments in Income and Consumption Across Household Groups, RBA Bulletin January 2024, https://www.rba.gov.au/publications/bulletin/2024/jan/developments-in-income-and-consumption-across-household-groups.html

households are therefore likely to face much lower cost of living pressures than the all-employee household group.

The ABS employee household LCI data cited by both the Australian Government and ACTU therefore overstates cost of living pressures with respect to the low-income individuals, and should not be considered a relevant indicator for the purposes of the AWR.

8. Secure Work

THE IMPACT OF MINIMUM WAGE INCREASES ON CASUAL EMPLOYEES

The Australian Government argues: "Increases in the minimum and award wages provide income boosts for those in less secure forms of employment, such as casual employees, who do not have access to paid leave."[82]

Ai Group contends that the income benefits of an increase in minimum and award wages for those in less secure forms of employment must be balanced against the negative effects of those increases on opportunities for more secure forms of employment.

As documented in Table 7 of Ai Group's Initial Submission, rates of three of the less secure forms of employment – labour hire, fixed-term and casual – have declined during recent years, and are presently at or near their lowest levels in a decade. The recent strong labour market is therefore associated with an improvement in secure forms of work.

However, disproportionately high labour costs may result in employers relying, to a greater extent than otherwise, on casual employment, labour hire arrangements or fixed-term engagements. Employers may be less inclined to commit to engaging permanent ongoing staff when wage pressures are higher, given the myriad of additional entitlements, obligations and inflexibilities associated with such forms of employment.

Higher increases in minimum and award wages are thus likely to have a negative effect on access to secure forms of employment, which must be balanced against any positive income effect for those in less secure forms of employment. Ai Group contends that the Panel should consider and appropriately balance both these countervailing effects when considering the impact of minimum wages on the security of work.

The ACTU argues: "Secure employment has grown at a faster rate than insecure employment during the recent period of significant increases to minimum and award wages occurred. This lends weight to the argument that such increases have not limited people accessing secure work"[83].

Ai Group notes that secure forms of employment have grown faster during a period (2021 to 2023) where the Australian labour market has been very tight by historical standards, and the Australian economy has grown robustly. The fact that large increases in minimum wages during this time have not dented secure employment generation does not rule out the likelihood that it may do so during the coming period of labour market weakening and declining economic growth.

[82] Australian Government submission at [167].
[83] ACTU submission at [19].

9. The Australian Government's Submission

The Australian Government does not offer a numeric proposal for the increase in minimum and award wages this year. However, the central propositions advanced by the Government with respect to the appropriate level of increase are contained in the following paragraphs of its submission:

- *[2] The Australian Government recommends that the Fair Work Commission ensures the real wages of Australia's low-paid workers do not go backwards.*

- *[5] This submission does not suggest that across-the-board, wages should automatically increase with inflation, nor that inflation should be the only consideration in determining wages. However, the current economic environment is challenging, with many households experiencing cost-of-living pressures.*

- *[14] There is also a risk of a decline in real wages for workers on minimum and award wages. If low paid workers shoulder a disproportionate burden of the macroeconomic adjustment needed to lower inflation, this would have a detrimental impact on standards of living. The Government's recommended approach would manage macroeconomic risks while preserving living standards for low paid workers.*

- *[16] The Government's cost-of-living tax cuts will allow workers to keep more of what they earn. These tax cuts will provide meaningful cost-of-living relief in a way that does not add to inflationary pressures and are designed to be in addition to any increase in award and minimum wages granted by the Panel in this review.*

Ai Group agrees that wages should not automatically increase with inflation, nor that inflation should be the only consideration in determining wages. When approaching the question of cost of living considerations, the impact of recent changes to income support – as outlined in both the Australian Government[84] and Ai Group[85] submissions – are clearly pertinent.

As outlined in our Initial Submission, Ai Group argues that these forms of income support must be considered in conjunction with minimum wages when determining the real income of low-income workers. We note the reprofiling of the Stage 3 income tax cuts are particularly significant form of income support, equivalent to a 2.6% increase in pre-tax earnings for the average award employee[86].

Insofar as low-paid employees should "not go backwards", Ai Group argues that these forms of income support are already compensating to some degree for the impacts of high inflation. Minimum and award wages work in conjunction with income support measures; and the former

[84] Australian Government submission, Box 5.1
[85] Initial Submission, section 7.
[86] Initial Submission, Table 5. This also presents the pre-tax earnings equivalents of the Stage 3 income tax reprofiling for award employees by income decile – values range from 10% at the 30th percentile to 3.1% at the 90th percentile.

therefore do not need to increase by the same level as inflation to ensure low-paid employees have higher real incomes.

Current official forecasts of CPI expect it to be 3.75% p.a. (Treasury MYEFO) or 3.3% p.a. (RBA SoMP) at the end of 2023-24. CPI is then forecast to decline to 2.75% (Treasury MYEFO) or 3.1%% (RBA SoMP) by the end of 2024-25. When combined with the impact from income support measures, Ai Group's proposal for a rise in award and minimum wages not exceeding 2.8% will ensure that the nominal income of low paid employees rises by a greater quantum than these inflation forecasts.