BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CICS 1 of 2024

BETWEEN

COMMISSION'S OWN MOTION

Applicant

v

(NOT APPLICABLE)

Respondent

2024 STATE WAGE ORDER PURSUANT TO SECTION 50A OF THE ACT
(part heard)

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON THURSDAY, 6 JUNE 2024, AT 2:15 PM
Continued from 22/05/2024

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER S J KENNER
SENIOR COMMISSIONER R COSENTINO
COMMISSIONER T EMMANUEL
COMMISSIONER T B WALKINGTON
COMMISSIONER T KUCERA

MR B ENTREKIN (Principal Labour Relations Advisor, Public Sector Labour Relations) appeared on behalf of the Hon. Minister for Industrial Relations

MR C HARDING (Senior Policy Advisor, Workplace Relations) appeared on behalf of the Chamber of Commerce and Industry WA

MR K SNEDDON (of counsel) and with him MR G HANSEN (Research and Policy Officer) appeared on behalf of UnionsWA

KENNER CC: Afternoon. Be seated. Thank you.

Very well. We are resuming this afternoon to hear from the parties in relation to the Fair Work Commissions' 2023, '24 annual wage review, and also an opportunity for any further submissions if parties with to in relation to the CCI exhibit 1, which is the productivity data, which was provided to us after the conclusion of the hearing on the first day, and also the Minister's exhibits 4 and 5 being the aggregate wages and sales data for the combination of the services and retail industry sectors. So only if you wish to make submissions on that. Entirely up to you all. Otherwise, we might as well kick off with the Fair Work Commission decision.

Mr Entrekin, we'll keep the same order of addresses that we had on the first occasion, so over to you.

ENTREKIN, MR: Thank you. Thank you, Chief Commissioner.

So on 3 June 2024, the expert panel of the Fair Work Commission delivered the annual wage review decision. The expert panel decided to increase all modern award rates of pay and the national minimum wage by 3.75 per cent, effective from the first pay period on or after 1 July, and proportionate increases will flow to juniors, apprentices, trainees and employees with a disability. The Fair Work Commission will also separately hear a number of gender equity matters outside of the annual wage review. Those were deferred to afford interested parties sufficient time to fully consider all of the relevant issues.

In relation to the national minimum wage, the expert panel went to some length to explore exactly who was likely to be national minimum wage reliant. That is both award and agreement free and only receiving rates of pay in line with the national minimum wage. After examining this issue in greater detail, the expert panel concluded that the number of national minimum wage reliant employees is extremely low, and is probably much lower than even the Australian Government's most updated estimate, which was only 0.25 per cent of the national workforce. It's fair to say that they're struggling to identify exactly who's covered by it. Possibly, some social media experts, but they would probably be earning than the national minimum wage.

So the upshot of that is the national minimum wage has very limited practical application in the national industrial relations landscape, notwithstanding its role in the statutory annual wage review scheme. That's perhaps not surprising, given the extensive coverage of occupations and industries in the national award system and the fact the Miscellaneous Award covers most low-paid employees who are not covered by one of the other 120 modern awards. As noted in the Minister's written and oral submissions, the state minimum wage operates differently to the national minimum wage, and because the state minimum wage has greater prevalence in the state system due to it being implied into state awards, and also the fact that there are more award free employees in the state system.

In determining an increase of 3.75 per cent for modern award, the expert panel indicated that a primary consideration has been the cost of living pressures that modern award workers continue to experience. The expert panel noted that modern award wages remain in real terms lower than they were five years ago, despite last year's increase of 5.75 per cent, and that employee households reliant on award wages are undergoing financial stress as a result. So this militated against any further reduction in real wage rates.

However, the expert panel also considered that it was not appropriate to increase award wages by an amount significantly above inflation, principally because labour productivity has been stagnant in recent years and has only recently returned to positive territory.

In reaching its decision, the expert panel once again noted that the characteristics of modern award reliant workers are significantly different to the workforce as a whole. Modern award employees predominantly work part-time, are more likely to be female, and almost half are casual. Compared to the general workforce, they are also much more likely to be low-paid, be paid junior rates and work for small business. The expert panel noted that modern award reliant employees are not spread evenly across the workforce, but are disproportionately covered by a small number of awards.

It therefore gave particular consideration to the circumstances of those industry sectors which are highly modern award reliant, and the expert panel noted that there's four industry sectors that contain the largest proportions of modern award reliant employees, being a combination of food services, health care and social assistance, retail trade and administrative and support services. And together, those sectors accounted for almost two thirds of all modern award - - -

KENNER CC: Pretty similar - - -

ENTREKIN, MR: - - - reliant - - -

KENNER CC: - - - profile - - -

ENTREKIN, MR: - - - employees.

KENNER CC: - - - probably to the state system, that, isn't it?

ENTREKIN, MR: Exactly. In fact, that was my very next point, was that - yes. State award employees do display very similar characteristics and are predominantly concentrated in the same industries, and that's been our finding as well. Just in relation to wages growth and inflation, there's been a lot of discussion recently about the impact of minimum wage increases on wages growth and ultimately inflation, so it's worth touching on just to feel the observations of the expert panel on this issue.

Throughout its decision, the expert panel repeatedly noted that its decision will only ever have a marginal impact on aggregate wages growth. Primarily, because of the part-time and low-paid characteristics of modern award reliant workers, the wages paid to them constitute significantly less than their share of the workforce, and the national wage decision will therefore make only a modest contribution to total wages growth across the economy.

While the annual wage review may also have a signalling effect for some other wage negotiations, its aggregate impact is still limited to an extent, and that borne out by the fact that aggregate wages growth across Australia, as measured by the wage price index, has been considerably lower in recent years than the increases to modern award wages. The Minister notes that all state level - sorry. The Minister notes that at the state level, the impact of the state wage order will have an even smaller impact on aggregate wages growth, given the constitutional coverage of the state system.

The expert panel also noted that available indicators suggest that wages growth has past its peak, along with the WPI, declining in the last two quarters, the Fair Work Commission's own data concerning wage increases and federal agreements has been on a downward trajectory in recent months. Importantly, the expert panel determined that its decision to award a 3.75 per cent increase to minimum rates of pay is consistent with the forecast return of the inflation rate to below three per cent in 2025. In other words, the task of returning inflation to the Reserve Bank's target range does not require employees to suffer a real wage reduction in 2024.

The expert panel reached this conclusion while being fully cognisant of the current economic environment. The Fair Work Commission collates an extensive amount of economic and statistical data to assist with the Annual Wage Review and it oversees a dedicated research program that includes access to qualitative and quantitative information and academic reports.

If a 3.75 per cent increase to minimum rates in the national system is consistent with a return to the inflation rate within RBA’s target range, then a similar increase in the State Wage Case would similarly be consistent with that objective.

Regarding economic growth, the Expert Panel noted that growth has slowed, principally as a result of subdued household spending in response to rising interest rates and the higher cost of living. Since the national decision was issued, the national accounts figures for the March quarter 2024 were released yesterday. And those figures show that real GDP grew by just 0.1 per cent for the quarter and 1.1 per cent in the year to March.

Ironically, Taylor Swift may have helped to keep the economic growth in positive territory with the ABS noting that her sold out concerts along with those of Pink and the staging of the Grand Prix would have made a positive contribution to accommodation, catering and arts and recreation industries.

The Expert Panel noted that the labour market has slightly weakened since last year’s Annual Wage Review but is remaining resilient notwithstanding further tightening in monetary policy and weakened economic growth.

In regard to labour productivity, the Expert Panel specifically noted the disruption to productivity growth caused by the COVID-19 pandemic and its aftermath. As also noted by the Minister and UnionsWA in earlier submissions, labour productivity as measured by GDP per hour worked increased during the pandemic phase as the industry sectors that were most affected by lockdowns and other restrictions on public movement such as hospitality, retail, were those which were typically – those were the industries that typically had lower levels of productivity.

When these sectors shared labour to a disproportionate extent during the pandemic phase, average labour productivity across the economy grew as a consequence. And this effect reversed itself in the recovery phase when the same sectors fully reopened and employment in hours worked grew supported by the resumption of immigration.

Productivity performance was further affected by the extent of the use of inexperienced workers to meet demand in a tight labour market. And this coupled with the fact that employment growth outpaced growth in capital stock meant that capital – sorry less capital was deployed per unit of labour.

The Expert Panel noted there are some signs that the Australian economy is moving past this post-pandemic phase and may be reverting to its long run rate of productivity growth. Labour productivity increased by 1 per cent in the September of 2023 and 0.5 per cent in the December quarter. However, the latest national accounts figures indicate that labour productivity was flat in the March quarter of 2024.

So it remains to be seen whether productivity will recover to a more normal pattern. However, the Expert Panel also noted that the recent strong growth in business investment may yield productivity dividends at some stage in the future.

KENNER CC: Well, I think they expressed the view that's pretty uncertain.

ENTREKIN, MR: It is.

KENNER CC: Given the RBA's analysis of that issue.

ENTREKIN, MR: Yes, yes. So there's a lot of unknowns at this stage. And it's not clear if it is returning to a more normal pattern or not. It's fair to say that over the last couple of years that most developed countries have experienced low productivity growth. And that's been somewhat of a global phenomenon.

KENNER CC: Yes.

ENTREKIN, MR: With regards to the living standards and needs of the low paid, the Expert Panel noted that for low paid workers the cost of living situation they face is likely worse than the headline CPI. The CPI for non-discretionary goods, such as food, automotive fuel, housing and health was 4.2 per cent over the 12 months to March 2024, higher than the headline CPI rate of 3.6 per cent. Similarly, the living cost index for employee households, which the Minister also referenced in earlier submissions and which takes into account mortgage costs was 6.5 per cent in the year to March 2024.

Not surprisingly, the Expert Panel concluded that low paid employees are continuing to experience financial stress and a decline in living standards. In regards to the Australian Chamber of Commerce and Industry's proposal for a uniform wage increase of no more than 2 per cent, the Panel noted this would result in a real wage cut for modern award-reliant employees when they are already subject to financial stress. The ACCI's justification for its position was that all parts of the economy must play the role in order for inflation to return to the RBA's target range of 2 to 3 per cent.

However, the Expert Panel observed that the principal difficulty with this proposition is that it would require modern award-reliant employees, who are, by definition, the lowest paid, to suffer a real wage cut. By contrast, the Expert Panel noted that it is forecast that wages growth in aggregate will exceed inflation over the next 12 months. Because the wages in modern award-reliant employees constitute less than 11 per cent of the national wages bill, the adoption of the ACCI's proposal would have no significant effect on the WPI or as a consequence on lowering the rate of inflation.

They did note, however, that by delivering a 2 per cent increase that would wholly and substantially negate the benefit of the cost of living measures announced in the federal budget which are intended to mitigate financial stress upon households.

The Expert Panel concluded that the ACCI's proposal gave an adequate weight to relative living standards and the needs of the low paid and it would not maintain a safety net of fair minimum wages. It noted that proposals advanced by other employment bodies, most of which involved increases of less than 3 per cent, suffer from the same difficulty.

The Minister notes that these observations are also relevant to the WA CCI's position, which although not quantified, was for a flat dollar increase below the rate of inflation. The Minister notes such a position would require the state award-reliant employees to take a real wage cut over the year, which would similarly give an adequate weight to the requirements to ensure a fair system of wages and conditions of employment meet the needs of the low paid and contribute to improved living standards. And it would also substantially negate the benefit of the cost of living measures announced in the federal and state budgets which are intended to mitigate financial stress.

While the Expert Panel declined against ordering a real wage decline for award-reliant workers, it also noted several moderating factors it took into account in determining the quantum that is awarded. These included the forthcoming increase to the superannuation guarantee contributions rate, the softening of employment and hours worked in retail and hospitality and the recent weak performance in productivity growth.

In regard to the ACTU's proposal for a 5 per cent increase in minimum wages, the Expert Panel noted this position was directed as restoring losses in real wages in recent years and continuing progress towards returning the national minimum wage to be a living wage. However, the Panel did not consider there was a sound basis at this time to award wage increases that are significantly above CPI which remains higher than the RBA's target range.

The Panel noted that future reviews, if conducted in a lower inflationary environment, are more likely to provide an opportunity to make up the loss in real value in modern award wages and return to the path of real growth which prevailed prior to the COVID-19 pandemic. The Panel considered that this opportunity has not yet arisen. And as the position for inflation and productivity remains somewhat uncertain this called for a degree of caution.

So as a result of the Expert Panel's decision, the national minimum wage will increase to $915.90 per week or $24.10 per hour for fulltime employees. Following the review of the C14 classifications in modern awards, the lowest rate of pay applicable to ongoing employment under a national modern award will also be $915.90 per week with rates paid below that amount only allowed for short, introductory or transitional periods. The lowest rate of pay for casual employees in ongoing employment will be $30.13 per hour in the national system.

So what does this mean for the state system? Following the Annual Wage Review, the Minister reiterates the WA Government's position in the State Wage Case including support for a realignment of the state minimum wage from the state C14 rate in the Metal Trades (General) Award to the state C13 rate and a general increase in state award wages consistent with the decision in the annual wage review, which was 3.7 per cent.

If implemented, this would increase the state minimum wage to $916.40 per week, or $24.12 per hour for a fulltime employee working a 38-hour week. For casual employees, the state minimum wage would be $28.94 per hour once the 20 per cent casual loading is included.

The Minister also supports the minimum adult award wage being set at $916.40 per week, noting that in the short term, some pay rates and state awards will be below this amount and would require adjustment through alternative mechanisms after the state wage case.

The Minister notes that as with national modern awards, state award wages are lower in real terms than they were five years ago, notwithstanding the robust increases awarded by the Commission in the last two decisions. If a real wage reduction or an increase of less than 3.75 per cent was determined at this year's state wage decision, the lowest paid state system employees would be significantly disadvantaged compared to their national system counterparts, and the Minister contends this would be undesirable from a fairness and equity perspective.

Before closing, I'll just briefly touch on the productivity data submitted by the CCI on notice.

KENNER CC: Yes. Thank you.

ENTREKIN, MR: And I thank the CCI for providing that.

While the Minister acknowledges that labour productivity has been sluggish in recent times, it's submitted that an increase of between 1.48 and 2.48 per cent in this year's state wage case would be too low, and it would amount to a significant real wage reduction for the lowest paid. The Minister notes the latest national accounts figures were not available to the CCI at the time of submitting the figures, and the latest data indicates that labour productivity was effectively flat across the year to March 2024, which is actually an improvement on the figures for the year to December 2023.

Regardless of those figures, the Minister notes the comments of the expert panel, that its decision to award a 3.75 per cent increase to minimum rates of pay in the national system is consistent with the forecast return of the inflation rate to below three per cent in 2025. If it pleases the Commission, that concludes the Minister's remarks. However, I'm happy to take further questions or provide further comment on any particular issues that arise in today's proceedings.

KENNER CC: Thank you very much indeed, Mr Entrekin.

Mr Harding?

HARDING, MR: Thank you, Chief Commissioner.

May it please the Commission. In Monday, 3 June's decision, the Fair Work Commission handed down a 3.75 per cent increase in the national minimum wage and modern award rates of pay. The Fair Work Commission in their decision highlighted significant concerns they hold with respect to wages moving substantially above the rate of inflation given the current economic conditions. Their decision articulates that a challenge facing Australian businesses and employees with productivity at the same levels - at the same level they are as they were four years ago and inflation continuing to be of significant concern.

These concerns speak directly to the concerns that CCIWA outlines in our original and submissions in reply, that a significant and permanent rise in the state minimum wage and award rates of pay could potentially have a negative impact in the economy.

In my contribution today, I'll touch on several key details relating to the Fair Work Commission's annual wage review.

On inflation, firstly, the Fair Work Commission stated at paragraph 41 that:

> "Inflation remains the most significant challenge faced in the Australian economy" -

- and CCIWA believes this continues to be the case for Western Australia. While headline inflation nationally is 3.6 per cent, in WA it is tracking lower at 3.4 per cent to the year to March. However, it continues to remain among the Reserve Bank's inflation target, as we heard in evidence from Mr Christmas and presented in both CCIWA's submission and the Minister's submission. But - - -

KENNER CC: That's if you take the headline rate, but if you - - -

HARDING, MR: Yes.

KENNER CC: - - - take the - - -

HARDING, MR: The headline.

KENNER CC: - - - the adjusted rate - - -

HARDING, MR: The adjusted rate - - -

KENNER CC: - - - of course - - -

HARDING, MR: - - - without the - - -

KENNER CC: - - - without the electricity subcomponent - - -

HARDING, MR: - - - electricity - - -

KENNER CC: - - - component - - -

HARDING, MR: - - - but under that same argument, you wouldn't then receive the benefit of - you wouldn't be acknowledging the benefit that people would be receiving from the electricity credit, for example.

KENNER CC: Yes. I mean, we've always looked at a figure which smooths out - - -

HARDING, MR: Yes.

KENNER CC: - - - those sorts of adjustments, because of course when that credit comes off, the rate will go up - - -

HARDING, MR: Yes.

KENNER CC: - - - again artificially - - -

HARDING, MR: Yes.

KENNER CC: - - - so that's the reason why there's been a preference to - and Treasury, obviously - WA Treasury has the same view about that with its forecasting.

HARDING, MR: Absolutely. The Fair Work Commission also noted in paragraph 42 that inflation now continues to be domestically based rather than from international impacts. This means that the level of aggregate demand in the economy is now the primary driver of inflation, as opposed to supply shocks. Importantly, the Fair Work Commission is also concerned that inflation remains outside the RBA's target plan. They too accept the concerns held by the RBA on this.

In this environment where managing inflation continues to be one of the key issues, CCIWA submits that the Commission in court must consider to a significant extent how permanent wage increases can drive inflationary pressures. Due to the issue of above target inflation, CCI cautions the need for a substantial permanent wage increase, and emphasises the importance of a flat dollar increase to manage what is hopefully a temporary spike in prices.

Just on economic outlook, the Fair Work Commission made note of the certain subdued economic outlook that is present for the Australian economy. As noted in evidence by Mr Christmas, and outlined in the Minister's submission and ours, WA is facing a similar trajectory. It is important to note that the latest economic national accounts data released yesterday showed WA's economy contracted by one per cent in the March quarter, the largest of all the states.

In paragraph 159, the Fair Work Commission also noted that retail, accommodation and food services sector, the sectors more - most likely to fall within the state's system, have remained flat or fallen respectively on the national level. As raised in CCIWA's submissions, we hold significant concerns about the viability of WA businesses, particularly small and family business in these sectors. The ASIC and Australian Financial Security Authority data paints a very concerning picture with a significant rise in insolvency and administrations.

The Fair Work Commission also references the gross operating surplus and gross mixes income data for the relevant industries likely to be reliant on the national minimum wage. While in the data that was provided by the government - sorry, the Minister, it is positive, this data does not capture the cost of borrowing, which as we know, has seen a sharp increase, and as noted in CCIWA's submission, the RBA's financial stability review suggests that smaller businesses are the ones particularly feeling the effects of the interest rate increases, which is not factored in this data series.

CCIWA holds the position that small businesses continue to be disproportionately impacted by these cost increases, as they generally will have smaller profit margins and less capacity to influence price, including supply pricing, compared to larger competitors. In the case of small businesses, increased wages costs are more likely to be absorbed by reducing working hours or passing on the cost increases to consumers, adding further to cost of living challenges. This benefits no one, nor the employer, the employee, the customers or the economy at large. Fewer working hours will mean less income for employees and poorer customer service and less capacity to grow and innovate.

In terms of wages growth, the Fair Work Commission note that the previous increases -

> - "the increases in previous years have generally been higher than the wage price index, and that this has not resulted in a wage breakout" -

- paragraph 143. While this has not been the case, we still suggest that there is a need for a caution in relation to this due to the fact that there - while it has not occurred at this point in time due to the Commission being the - sorry. Due to the wage being a benchmark for wage negotiations across the economy both in the RBA - sorry. In the Fair Work Commission decision, they state around 20 per cent of people are reliant on modern award. However, we know that there are greater awards - greater enterprise agreements that focus on that, and that would be the same at the state level. On - - -

KENNER CC: There's a signalling effect - - -

HARDING, MR: Yes.

KENNER CC: - - - of the minimum wage increase - - -

HARDING, MR: Yes.

KENNER CC: - - - both federally and state - - -

HARDING, MR: Yes.

KENNER CC: - - - and it has an impact, I think, on the award free sector as well - - -

HARDING, MR: Yes.

KENNER CC: - - - so it may - - -

HARDING, MR: Yes.

KENNER CC: - - - be much smaller, it depends - - -

HARDING, MR: Yes. So I - and I know - - -

KENNER CC: - - - no one really knows the answer though.

HARDING, MR: No, and unfortunately, I don't have that data or any information for that. Sorry. I will now talk about the role of the tax and transfer system as it plays with helping the needs of the low paid. We know that inflation, high prices are an issue, not just for households but for businesses as well, and this is one of the key arguments presented in CCIWA's original submission and submission reply, is that we can use the tax and transfer system to play a role in supporting the needs of the low paid.

In handing down its decision, the Fair Work Commission also recognised this role. For example, they gave consideration to the stage 3 tax cut changes, stating:

> "The real household disposable incomes will increase over the next 12 months because of the stage 3 tax cuts and the budget cost of living measures" -

- at paragraph 157. The Fair Work Commission also considered the considerable cost of living relief provided to the Australians, to temper the pain of the high inflation and explicitly notes the Commonwealth rental assistance increase, which has targeted households more likely to relying on the minimum wage and the award rates of pay, at paragraph 80. As reflected in the Fair Work Commission's decision, the State minimum wage system forms a part of a greater safety net, and the State and Federal cost of living subsidies should be given due consideration by the Commission.

In terms of gender equity, the Fair Work Commission, at paragraph 151, acknowledged that there is a limit to the impact an increase of the national minimum wage can have in terms of helping with gender equality. As noted in our submission, we propose that the Commission continues to hold their position that there are limits of any increase that the State minimum wage can and does have in achieving gender equality, even though we acknowledge that many award-reliant employees tend to be overwhelmingly women.

In relation to superannuation, consistent with the previous decisions, the Fair Work Commission has also taken into consideration the 0.5 per cent increase in the superannuation rate in determining their decision. They have identified that the annual wage review decision is lower than otherwise would have been due to this list superannuation contribution increasing, at paragraph 159. As stated throughout the submissions, we encourage the Commission in Court to take the same approach in line with previous State Wage Case decisions and take the superannuation increase into consideration when determining the State minimum wage. I'll now turn to the issue of productivity. The Fair Work Commission noted the impact of low productivity in (indistinct)2.52.14 the inflationary pressures of large wage increases. In paragraph 150, the Fair Work Commission also raised the issue that:

> "For the past four years, there has been no net growth in labour productivity, and this is a moderating influence in this year's decision."

Importantly, they note that it continues to remain uncertain, and that these items need to be looked over at a longer term. The Commission should take a cautious view, given the issue of productivity, considering that the Fair Work Commission also considers that two quarters of positive growth are now three as a result of the latest ABS national accounts data is not long enough to determine a long-term trend. The Fair Work Commission also acknowledged that they could not give a larger increase, similar to previous years, due to the fact that productivity has not moved.

CCIWA reinforces the need for the Commission in Court to consider the concerns surrounding low productivity to a significant extent when determining this year's State minimum wage. I will now address some of the positions made by other parties in context of the annual wage review. At paragraph 150, the Full Bench said in relation to the ACTU's claim for a five per cent increase to the national minimum wage:

> "We do not consider that there is a sound basis at this time to award wage increases at a significantly above the CPI, which remains higher than the RBA's target range."

In light of this, CCIWA holds the position that the Minister's, UnionsWA and WACOSS proposals should not be considered the appropriate approach going forward. Awarding an increase in line with the UnionsWA and WACOSS proposal would risk significant inflationary pressure within WA. Similarly, the Commission should - should the Commission choose to accept the Minister's proposal, which seeks an alignment with the annual wage review plus, when factoring in the realignment to C13, it would result in a rise of 6.14 per cent. These are well above the current rates of inflation. It is important to reiterate that the Fair Work Commission rejected proposals that are substantially higher than the current rates of CPI.

Instead, given the uncertainty and the low - sorry. Given the uncertainty in the environment, low labour productivity and inflationary pressures, we continue to recommend the Commission adopt a flat dollar increase. To conclude my remarks today, Chief Commissioner and Commissioners, in light of the 2023/24 annual wage review decision, CCIWA believes that it's now even more important than previously that the Commission consider a flat dollar increase to the State minimum wage and award rates of pay. This would, in our view, allow the Commission to satisfy all the key considerations required for the State Wage Case.

A flat-dollar increase to the State minimum wage, we believe, is the most appropriate mechanism to balance the need of the low paid with the inflationary concerns and pressures we face. While we accept and understand the concerns the Commission has raised over time about the relativities in award, we believe that the interests of the low paid have a greater priority than maintaining relativities for this year. And that concludes my submission. If there's any questions about the data, I'm more than happy to answer.

KENNER CC: Thank you.

Thank you very much indeed, Mr Hansen - sorry, Mr Harding.

I was looking at your name, Mr Hansen. I was getting ahead of myself. And if you're wondering what that noise is, it's not something mischievous, it's the wind blowing and the infrastructure on the building. Regrettably, we can't do anything about that.

Now, Mr Hansen, or Mr Sneddon. Who are we going to hear from first?

SNEDDON, MR: Chief Commissioner, just me.

KENNER CC: All right. Thank you very much.

SNEDDON, MR: Look, we rely on our previous written and oral submissions. And in response to the decision handed down by the expert panel of the Fair Work Commission, we would probably make four observations, Chief Commissioner. Number 1, UnionsWA remains of the opinion that the cost-of-living pressures warrant a meaningful increase to award wages and the statutory minimum wage. We note that this was a primary consideration of the Fair Work Commission, and we say succinctly captured at paragraph 8 of their decision. And I'm going to read from that:

> "A primary consideration has been the cost-of-living pressures that modern award-reliant employees, particularly those who are low paid and live in low-income households, continue to experience, notwithstanding that inflation is considerably lower that it was at the time of last year's review. Modern award minimum wages remain in real terms lower than they were five years ago, notwithstanding last year's increase of 5.75 per cent, and employee households reliant on award wages are undergoing financial stress as a result."

We'd note that the stress on low paid workers is compounded by a higher increase in non-discretionary goods, and this is highlighted at paragraph 78 of the Fair Work Commission, and it outstrips that of the headline CPI, and we say impacts the lower-paid worker disproportionately. Of course, the flow-on effect of increased pricing of non-discretionary items has, in the words of the expert panel, led to - and this is at paragraph 146 of the decision:

> "Many workers and many households have seen a deterioration in their disposable incomes in the past couple of years. Inflation has outpaced increases in wages, loan repayments have risen for many homeowners with a mortgage, rents and energy costs have risen sharply, and many workers paid more income tax. That's the reality facing low paid workers."

We'd also point this Commission in Court to the discussion at paras 80 to 83 of the Fair Work Commission's decision, which we say continues to have a relevance for WA's lowest paid workers in the absence of any changes to the C14, C13 classification structure. We're going to restate our concerns, that the gap between award-reliant workers in the state and those in the federal system is not insignificant. We repeat our concerns that should the gap remain, the risk is real that we create a low wage zone within Australia's industrial landscape, and that low wage zone would impact the most vulnerable of workers. We also would note that the gap in casual loading, the five-percent in gap in casual loading which exists between those federal workers and those in the state further disadvantages the lower paid workers in WA.

KENNER CC: I'm actually glad you raised that matter, Mr Sneddon, because we can't do anything about that in these proceedings. That's for the parties to address that issue. For example, an application for a general order to increase the casual loading, or, for example, applications to amend awards to increase the casual loading, none of which had been brought forward. So that's really in your hands.

SNEDDON, MR: Noted, Chief Commissioner.

KENNER CC: All right.

SNEDDON, MR: Noted.

The reality is though that in the absence of that being done, regardless of whose hands it sits within, it impacts on those low paid workers, and that's a fact. The casual loading part of it, particularly, I think my friend has already raised this, but paragraph 3 of the Fair Work Commission decision again highlights and I think the Chief Commissioner's noted that the composition is not different in the state, that the characteristics of the cohort of employees, that is, those on the minimum wage are significantly different to those of the workforce as a whole and they predominantly work part-time hours, the female, almost half of casual and compared to the general workforce, they're disproportionately low paid.

They're paid junior rates employed by small business.

Our second submission, Chief Commissioner, would be that restricting any potential wage increase being considered by this Commission-in-Court, based on a perceived inflation rate or labour cost impact would be misguided. The expert panel of the Fair Work Commission notes at paragraph 36 of their decision that - and in a paragraph titled, "Effect of AWR decisions:"

> "The direct effect of AWR decisions on aggregate national labour costs and wage growth is limited."

More broadly, and responding to submissions tendered by the Australian CCI in that matter, where they proposed that no more than 2 per cent pay rise be awarded to the low paid workers. Again, the expert panel responded and at paragraph 148 of their decision, they say:

> "Because the wages of modern award reliant employees constitute less than 11 per cent of the national wage bill, the adoption of the CCIs proposal would have no significant effect on the WPI, or as a consequence on lowering the rate of inflation further. The effect of the proposal would be to wholly or substantially negate the benefit of the costability measures announced in the budget which are intended to mitigate financial stress upon those households."

Effectively, Chief Commissioner, the argument from the CCI would have resulted in the lowest paid workers being the only ones in Australia having their wages held back in order to fight inflation despite the potential impact on inflation being practically non-existent. The expert panel rejected this approach and so should this Commission-in-Court. To not do so would leave the lowest paid workers in WA as the only group nationally shouldering the perceived burden their wage rise will have on inflation.

If the federal impact of an increase to the minimum wage is to have no significant impact on the WPI or as a consequence on lowering the rate of inflation, then it seems quite clear to UnionsWA that the impact from the far smaller group of workers here in WA is negligible. That's if it exists at all. UnionsWA relies on earlier submissions in relation to observations made by the expert panel relating to productivity. It does still appear likely to us that distortions and productivity measures created by COVID-19 are by no means consistent. WA compared to, say, Victoria, have a very different experience of work during the pandemic. It would be, we say, a mistake to presume that national figures are reflective of local conditions.

That being said, we'll pass some brief observation on yesterday's national accounts which show private sector productivity increasing for the past three consecutive quarters and real unit waiver costs having decreased for two of those quarters consecutively. UnionsWA submits that whilst welcome, stage 3 tax cuts, cost of living measures and increased superannuation are far from the panacea for the lowest paid of our workers. The expert panel of the Fair Work Commission noted at paragraph 79 that stage 3 tax cuts which will take effect from 1 July 2024, will provide some relief in cost of living pressures for modern award reliant workers.

However, low paid workers will not benefit from these tax cuts to the same degree as those earning around median incomes. Further, we note that from a longer term perspective, the tax cuts will most likely - will mostly but not fully reverse the effects of bracket creep over the last 12 years for low income purposes. It's important - and we adopt this logic from the expert panel, that we don't negate the benefits of the cost of living measures by restricting real wage rises. To do so would further disadvantage the low paid workers and would do nothing to help rebalance the disposable portion of household incomes, which is the intention of these measures. We note that an increase to superannuation is positive.

It seems trite to say that it has no tangible impact on a young working family trying to keep their heads above water now that that's the case and we would also note that, yes, the expert panel has considered it a moderated factor, but in a previous decision - in a 2022 decision from the expert panel, they said that's not the same as applying a direct quantifiable discount to the minimum wage increase and we shouldn’t conflate those two terms and not - - -

KENNER CC: Well, it's certainly been our approach as well. I mean, it - that sort of emotion adjustment is a contingent benefit to the worker, but it's a direct cost to the employer. It seems it's a net present cost, but it's a fair benefit for the employee and it's always been seen by this Commission as a relevant factor, but not on a one-for-one basis, of course. It's just a relevant consideration which seems to be the Fair Work Commission's - - -

SNEDDON, MR: I think so.

KENNER CC: - - - view as well.

SNEDDON, MR: I - and the submission we make is that that difference between what might be a moderating factor and that equating a direct reduction which is not the same thing, we say. In conclusion, UnionsWA is going to continue to advocate the State's lowest paid workers should be given a lift to help them battle through a particularly testing time. The risk to the State or indeed the national economy is negligible, we say, but the impact on the lives of workers and their families are quite significant. We are of the opinion that our conclusion is supported by that of the expert panel of the Fair Work Commission. Unless there's any questions of me. Thank you.

KENNER CC: Thank you very much indeed, Mr Sneddon.

Very well. We thank you very much for your submissions in relation to the appeal at Commission decision and also in relation to the additional material. What we will now do is reserve our decision in relation to this year's State Wage order - - -

SNEDDON, MR: Yes.

KENNER CC: - - - and my associate will be in contact with the parties when the decision - we deliver our decision which will be - hopefully will be fairly soon. Thank you very much. We'll adjourn now.

AT 3.08 PM THE MATTER WAS ADJOURNED ACCORDINGLY