

**2020 STATE WAGE ORDER PURSUANT TO SECTION 50A OF THE ACT
THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

CITATION : 2020 WAIRC 00361

CORAM : CHIEF COMMISSIONER P E SCOTT
SENIOR COMMISSIONER S J KENNER
COMMISSIONER T EMMANUEL
COMMISSIONER D J MATTHEWS
COMMISSIONER T B WALKINGTON

HEARD ON THE PAPERS : DATES OF SUBMISSIONS: 5 MAY 2020; 12 MAY 2020;
22 MAY 2020; 2 JUNE 2020; 3 JUNE 2020; 5 JUNE 2020;
9 JUNE 2020; 22 JUNE 2020

DELIVERED : FRIDAY, 26 JUNE 2020

FILE NO. : APPL 1 OF 2020

BETWEEN : COMMISSION'S OWN MOTION
Applicant

AND

(NOT APPLICABLE)
Respondent

CatchWords : State Wage order – Commission’s own motion – COVID-19 pandemic – Effects on economy – Labour market changes – Recession – Cost of living – Effect on particular industries – Deferred increases

Legislation : *Industrial Relations Act 1979* (WA) s 26; s 40B; s 50A
Biosecurity Act 2015 (Cth)
Commonwealth Conciliation and Arbitration Act 1904 (Cth)
Emergency Management Act 2005 (WA)
Fair Work Act 2009 (Cth) s 284
Minimum Conditions of Employment Act 1993 (WA) s 12; s 14

Result : 2020 State Wage order issued

Representation :

Mr B Entrekin on behalf of the Hon. Minister for Industrial Relations
Mr P Moss on behalf of the Chamber of Commerce and Industry of Western Australia Limited
Dr T Dymond on behalf of UnionsWA
Mr C Twomey on behalf of the Western Australian Council of Social Service Inc
Professor A Preston, The University of Western Australia Business School

Case(s) referred to in reasons:

2009 State Wage Case Decision [2009] WAIRC 00375; (2009) 89 WAIG 735

2013 State Wage Case Decision [2013] WAIRC 00347; (2013) 93 WAIG 467

2016 State Wage Case Decision [2016] WAIRC 00358; (2016) 96 WAIG 636

2018 State Wage Case Decision [2018] WAIRC 00363; (2018) 98 WAIG 263

COVID-19 General Order pursuant to Section 50 of the Act [2020] WAIRC 00205, 14 April 2020

COVID-19 JobKeeper General Order pursuant to Section 50 of the Act [2020] WAIRC 00279, 15 May 2020

Fair Work Commission Annual Wage Review [2020] FWCFB 3500

General Order – Part II, Division 3, Restraint on Remuneration (1983) 63 WAIG 257

Reports and texts cited:

Cost of Living 2019 report, Western Australian Council of Social Service Inc

National Agreement for Skills and Workforce Development Review – Interim Report, May 2020, Productivity Commission

State Minimum Wage Review, May 2006, by Professor David Plowman

Supporting Apprentices and Trainees, Department of Education, Skills and Employment

The Impact of Wages and the Likelihood of Employment on the Probability of Completing an Apprenticeship or Traineeship, 2011, National Centre for Vocational Education Research (NCVER)

WA COVID-19 Business Impact Survey: Snapshot, The Chamber of Commerce and Industry of Western Australia Limited

Reasons for Decision

Introduction

- 1 Each year, the Commission is required to set the minimum weekly rates of pay (the SMW) applicable under sections 12 and 14 of the *Minimum Conditions of Employment Act 1993* (WA) (the MCE Act), to adjust rates of wages paid under awards and to set out a statement of principles to be applied when it sets and varies wages, salaries, allowances and other remuneration for employees (*Industrial Relations Act 1979* (WA) (the Act) s 50A(1)).
- 2 To assist the Commission in its decision regarding these matters, the Commission invited submissions from interested persons. Notices inviting those submissions were published on the Commission's website, in the Western Australian Industrial Gazette, *The West Australian* newspaper and *WA Business News*.

The hearing

- 3 This year, because of the COVID-19 pandemic, there was no formal hearing and all submissions and evidence were provided in writing. Written submissions were received from a range of persons and organisations. The Hon. Minister for Industrial Relations made written submissions and called evidence from Mr David Christmas, Director of Economic and Revenue Forecasting Division of the Western Australian Department of Treasury, regarding the state of the Western Australian and national economies. This evidence also included analysis by reference to:
 - (a) the global and national economic conditions;
 - (b) the labour market including employment, unemployment and participation;
 - (c) wages including the Wage Price Index (WPI);
 - (d) inflation; and
 - (e) risks to the economic outlook.
- 4 Submissions were also received from the Chamber of Commerce and Industry of Western Australia Limited (the Chamber), UnionsWA and the Western Australian Council of Social Service Inc (WACOSS). Professor Alison Preston of the Department of Economics, the University of Western Australia, also provided a submission dealing with the Western Australian economy by reference to the labour market.
- 5 We express our appreciation to those who have made submissions in this extended process and to Mr Christmas whose evidence is helpful in our deliberations.

Background to this year's State Wage order

- 6 This year's State Wage Case (SWC) comes at an extraordinary time in history. The terms that have been repeated throughout the submissions and materials referred to us included 'extraordinary', 'unprecedented', 'unchartered waters', 'rapidly evolving circumstances' and 'uncertainty'.

- 7 In early 2020, increasing numbers of infections from COVID-19 were being reported worldwide. The World Health Organisation declared it to be a global pandemic. On 18 March 2020, a human biosecurity emergency was declared by the Governor-General under the *Biosecurity Act 2015* (Cth). It provided powers to the Minister for Health to issue directions to prevent or control a biosecurity outbreak. On 15 March 2020, the Western Australian Minister for Emergency Services declared a state of emergency under the *Emergency Management Act 2005* (WA). On 23 March 2020, the Western Australian Minister for Health declared a public health emergency.
- 8 From that time, new measures have been announced almost daily by the Commonwealth and State governments to attempt to control and restrict the spread of infections within the community. These measures have been both restrictive of human activity and business operations, as well as supportive of businesses, households and employees. Travellers returning to Australia were required to self-isolate, travellers thought to be infected were quarantined and international travel out of Australia was banned. Regional boundaries in Western Australia were closed and people wishing to travel between regions required government approval. Businesses engaged in non-essential activities were required to close. Offices closed and as many people as possible, worked from home. Schools closed. Elective surgery was cancelled as hospitals prepared for the possibility of being inundated with COVID-19 patients. Social distancing requirements were put in place. Sporting activities and entertainment events were cancelled indefinitely. Many of these measures affected the accommodation, food services, tourism, retail, personal services, entertainment and sporting industries, in particular. At the time the measures were put in place, their duration was unknown.
- 9 The support measures included the JobKeeper program by which Commonwealth government funding became available for eligible employers to maintain as many employees in their workforces as possible while they were unable to productively utilise them due to a significant reduction in business activity. The JobKeeper payments are available until 27 September 2020, unless extended. Various programs established by the Commonwealth and State governments aim to inject billions of dollars into the economy and act as a support and a stimulus. Building industry packages are some of the highest value programs.
- 10 The Commission issued two General Orders aimed at assisting employers and employees to preserve employment by adding flexibility in leave arrangements (2020 WAIRC 00205, 14 April 2020) and to deal with JobKeeper payments (2020 WAIRC 00279, 15 May 2020).
- 11 The situation continues to evolve as restrictions are gradually eased and businesses which had previously closed are able to re-open, initially under very strict social distancing conditions, subject to proper hygiene, and progressively to enable more people to gather in closer proximity. However, the state of emergency remains. There is also still concern that there may be further outbreaks or a second wave of infections and that restrictive measures may need to be re-imposed.
- 12 As part of measuring the effects of these changes, particularly on households and businesses, the Australian Bureau of Statistics (ABS) developed new reports. These included the *Household Impacts of COVID-19* survey and the *Business Indicators, Business Impacts of COVID-19* reports.
- 13 The only thing that appears certain at the time this decision is issued is that the impacts of the measures taken to restrict and control the spread of the COVID-19 virus will continue to

adversely affect employees, households, businesses and the economy for at least the next couple of years.

- 14 Section 50A(3) requires the Commission to take into consideration a range of matters. They include ‘the state of the economy of Western Australia and the likely effect of its decision on that economy and, in particular, on the level of employment, inflation and productivity in Western Australia’ (s 50A(3)(b)). The state of the national economy, to the extent that it is relevant, is also to be considered (s 50A(3)(c)), as is ‘to the extent relevant, the capacity of employers as a whole to bear the costs of increased wages, salaries, allowances and other remuneration’ (s 50A(3)(d)).
- 15 In considering those matters, we usually refer to reports, data and analysis available from around December of the previous year through to the latest available, which is usually March quarter data. The types of reports and data include the State Budget and the Commonwealth Budget, both of which are usually issued in the second week of May. This year they will not be issued until October. We also consider the State Mid-Year Financial Projections Statement (Mid-Year Review) which is issued in December. It updates information and projections in the State Budget on matters such as the State Final Demand (SFD) and Gross State Product (GSP). As Mr Christmas notes, the 2019-20 Mid-Year Review has been completely overtaken by the COVID-19 outbreak and the Commonwealth and State governments’ responses to it.
- 16 Data from the ABS such as cost of living changes by reference to the Consumer Price Index (CPI) for the March quarter each year is considered. This measures cost changes year on year and for the quarter from 1 January to 31 March. The Wage Price Index (WPI) reference period is the pay period on or before 21 February 2020. As the ABS noted, this ‘was before the global pandemic was declared and before the impact of government restrictions on business activity and the labour market’ (ABS 6345.0 *Wage Price Index, Australia, March 2020*, (3-4)). The ABS anticipated in its March quarter 2020 reports that the impact of the restrictions and the support measures would not begin to be reflected until the June quarter 2020. That information is not yet available.
- 17 The 2020 State Wage Case – *Economic Conditions and Outlook* was prepared by the Western Australian Department of Treasury and provided to us by Mr Christmas. It is dated 12 May 2020. This statement notes:

The COVID-19 outbreak is likely to affect the economy in a number of ways. Social distancing and related restrictions to control the spread of COVID-19 have had a direct impact on the domestic economy, with sharp declines in consumer and business confidence, weak conditions in the housing market, widespread job losses and some downward revisions to business investment expectations.

Forecasting the economic impact of COVID-19 is challenging because there is no prior experience of this type of shock. The risks to economic growth for the State weigh heavily on the downside. Activity in the State’s domestic economy is likely to be significantly lower than projected at mid-year Review and will continue to contract in the short to mid-term. However, the impact on GSP, which includes net exports, is likely to be smaller than for the domestic economy, given the State’s mining exports have held up well to date.

Current business operating restrictions and weaker demand in various sectors of the domestic economy have led to extensive job losses and firms limiting new hiring decisions. This presents downward risks to the employment growth outlook relative to the Mid-Year Review projections in the near term. Consistent with downside risks to employment and job losses to date, the unemployment rate is likely to be substantially higher, particularly in the short term, than forecast at Mid-year Review.

Population growth is likely to be significantly weaker than previously anticipated at Mid-year Review in the near term, as the closing of the international borders. Net interstate migration and net international migration are expected to lift once interstate and international borders are re-opened, although likely at a slower pace than previously forecast.

- 18 The initial submissions were made on 12 May 2020. At that time, the parties who made submissions to the Commission were not in a position to properly analyse the economic effects on the labour market of the COVID-19 outbreak because of the rapidly changing environment and because the economic and social situation had changed so dramatically in a short period in March. A further opportunity for submissions was provided so that interested persons could address the latest available information provided in the National Accounts data for the March quarter 2020. However, this too is interim data and the situation continues to evolve.
- 19 The Minister said in his submission of 12 May 2020 that '[m]any businesses are operating in uncharted waters and there is a significant degree of uncertainty as to when conditions will return to normal'.
- 20 On 13 May 2020, the NAB Business Survey showed confidence rose 19 index points in April after the Prime Minister started to discuss the possible lifting of COVID-19 restrictions. However, the improvements still left the confidence index at -46 index points in the month, two times below the 1990s recession level (*Australian Financial Review*, 13 May 2020, (5)).
- 21 In his evidence, Mr Christmas also noted that outside of the mining industry, investment is expected to be moderate as restrictions and lower consumer demand weigh heavily on firm profitability. He says that this is particularly the case in industries such as accommodation and food services, real estate, recreation and culture, and tourism. He says '[e]ven once restrictions are lifted, it is likely that this investment will remain subdued for a period thereafter as weaker confidence lingers and as firms take time repairing their balance sheets.'
- 22 Mr Christmas also noted that scheduled wage increases will have an impact on consumer demand but there are many factors that impact consumer confidence and spending. He says that '[c]onfidence and spending in Western Australia are more likely to be influenced by trends in employment and hours worked, and overall economic conditions, than by scheduled wage increases in the short to medium term'.
- 23 Mr Christmas said that policy responses to the coronavirus outbreak and the impact of efforts to contain it continue to evolve. He noted that '[t]his has created heightened uncertainty about the State's economic outlook.'
- 24 The environment is certainly changing rapidly. On 27 May 2020, *The West Australian* newspaper reported that '[t]he re-opening of WA's economy is already having an impact, with the State's year-on-year spending this month leading the nation, ANZ Data says'. It said that retail spending in Western Australia was up 25 per cent year-on-year for the week ending 22 May, stronger than most States apart from New South Wales. However, it noted that WA's '[r]etail spending this month is still at lower levels than the mid-March spike, which was predominantly driven by grocery stockpiling.'
- 25 The Chamber notes that the full extent of the COVID-19 pandemic is yet to be determined, however, it is clear that all Western Australians have been affected. It notes the WA Treasury has identified that at mid-May, 80,000 workers had lost their jobs, unemployment levels were expected to reach 10 per cent and a large proportion of the workforce was under-employed.

- 26 The Minister observes that the impacts of COVID-19 during the June quarter will heavily weigh on activity and the SFD is expected to contract in 2019-20. The SFD showed the strongest growth since 2012-13 driven by business investment, and the contribution from household consumption remained steady. However, household consumption fell by 1.0 per cent in Western Australia in the March quarter, the largest decline since the Global Financial Crisis (GFC) in 2009. Hotels, cafes and restaurants consumption fell by 7.8 per cent in the quarter, the largest decline since September 1996.
- 27 Business investment grew by 7.4 per cent in the March quarter given the growth in private new capital expenditure. However, the National Accounts show that dwelling investment fell by 4.6 per cent in the March quarter. Government consumption fell by 0.1 per cent and government investment increased by 6.8 per cent.
- 28 The *Retail Trade* figures released by the ABS on 4 June 2020 for the month of April 2020 show that retail turnover fell by 17.7 per cent across Australia between March and April 2020 following a rise of 8.5 per cent in March which was said to have been led by panic-induced buying.
- 29 The ABS, the Treasury at both national and State levels, institutions such as the Reserve Bank of Australia (RBA) and government leaders have noted the following impacts of COVID-19 as at mid-May:
- overseas migration is forecast to fall by 85 per cent in 2020-21, representing a \$50 billion loss to national income;
 - thirty per cent of Western Australian businesses applied for the JobKeeper scheme;
 - the four major big banks reported anticipating \$45 billion of bad debts over three years and the Australian Banking Association reported that more than 320,000 homeowners and 170,000 businesses had opted to defer loan repayments;
 - in a speech to the National Press Club on 5 May 2020, the Commonwealth Treasurer, the Hon. Josh Frydenberg reported that the Commonwealth Treasury estimated that the impact of COVID-19 on the Australian economy included that:
 - GDP could fall by 10-12 per cent in the June quarter 2020;
 - the unemployment rate is forecast to reach 10 per cent in the June quarter 2020; and
 - for every week restrictions remain in place, the reduction in economic activity from a combination of reduced workforce participation, productivity and consumption is estimated at \$4 billion.
 - In a Ministerial Statement to the Commonwealth Parliament on 12 May 2020, the Treasurer reported that:
 - Treasury predicted that national government debt would reach \$618 billion, emergency support to households and businesses would total \$55 billion by June 2020 and there would be an underlying cash deficit of \$22.4 billion by the end of March 2020;

- One point four million Australians were receiving the JobSeeker payment;
 - Two million, nine hundred thousand early release of superannuation funds applications had been received by the Australian Taxation Office with an average withdrawal of \$8,000; and
 - Eight hundred and thirty-five thousand businesses employing 5.5 million workers were formally enrolled in the JobKeeper scheme.
- The Western Australian Treasurer, the Hon. Ben Wyatt MLA, reported to State Parliament on 14 May 2020 that '[t]he magnitude of this economic shock means a corresponding deterioration in the State's finances is inevitable'. He reported that whilst revenue from iron ore remained resilient, income streams such as GST, payroll tax, transfer tax, North West Shelf grants and agency revenue collection would remain adversely affected.

On 28 May 2020, Mr Wyatt tabled the *Economic and Fiscal Update* in the State Parliament. This included preliminary Treasury modelling indicating the economic shock from COVID-19 will be significant on the Western Australian economy. Treasury projects that the Western Australian GSP will contract by 5.1 per cent in the June quarter 2020. This will reduce forecast growth to 0.7 per cent in 2019-20, with a 3.1 per cent contraction expected in 2020-21, before returning to growth in 2021-22. While royalty collections have remained relatively stable during the pandemic, significant downturns are forecast for other revenue sources including GST grants, payroll tax, transfer duty, land tax and vehicle licence duty. Revenue is expected over 2019-20 to 2020-21 to be about \$1.8 billion lower than outlined in the 2019-20 Mid-Year Review. The income expenditure to respond to COVID-19 combined with the reduction in revenues in the June quarter is expected to considerably reduce the forecast \$2.6 billion operating surplus in 2019-20.

- The ANZ *Australian Job Advertisement* series reported that in April 2020 there had been a year on year reduction in job advertisements, seasonally adjusted, of 62.2 per cent. This improved marginally in May 2020 to 59.8 per cent.
- The ABS *Household Impacts of COVID-19* survey for the period 14 to 17 April 2020 reported that 12 per cent of people aged 18 years and over experienced a change in their job situation since the end of March. Of these:
 - fifty-one per cent said they had a job but were working less hours by mid-April; and
 - forty-nine per cent said they had some other type of job change, such as working from home, or had a job working no paid hours where they had lost their job by mid-April;
- The ABS – *Business Indicators, Business Impacts of COVID-19* – April 2020 reported that:
 - seventy-two per cent of Australian businesses reported that reduced cash flow is expected to have an adverse impact on business over the next two months;

- reduced demand for goods and services is expected to impact 69 per cent of businesses over the next two months;
 - forty-one per cent anticipated a reduced ability to pay operating expenses; and
 - sixty-one per cent of businesses had registered or intended to register for the JobKeeper payment scheme.
- The Australian National University Centre for Social Research and Methods reported on the initial impacts of COVID-19 (*Hardship, distress and resilience: The initial impacts of COVID-19 in Australia*). This report found that:
 - the employment rate fell from 62 per cent in February 2020 to 58.9 per cent in April 2020. This translates to a drop in employment of about 67,000.
 - average hours declined from 35.1 to 31.1 hours per week between February and April 2020, with the largest declines for women and those born in non-English speaking countries;
 - the combined effect of job loss and reduction in hours worked is a decline of 13.1 per cent in hours worked, or around 56.2 million hours per week.

30 The ABS *Labour Force* survey and the National Accounts data for March quarter 2020 were examined by the BankWest Curtin Economics Centre in its 'BCEC Monthly Labour Market Update – April 2020'. It concluded that, taking account of the JobKeeper wage subsidy, the fall in the participation rate and the reduced hours worked means that instead of an unemployment rate of 6.2 per cent, it is around 9.7 per cent. This is an increase of 4.9 per cent over the month March to April 2020. It noted that:

The 'real' unemployment rate for WA is estimated at 9.8 per cent in April 2020, with the female unemployment rate in WA estimated to be 11.2 per cent (the highest in the country) and the male unemployment rate at 8.7 per cent.

31 The BCEC report noted that the real national unemployment rate amongst young people (15 to 24 year-olds) is estimated to be over 20 per cent. Western Australia has one of the highest youth unemployment rates at 22.5 per cent. The number of under-employed persons grew from 1.2 to 1.8 million people between March and April 2020, lifting the national under-employment rate from 8.8 per cent to 13.7 per cent.

32 The Minister notes that ABS *Labour Force, Australia, Detailed – Electronic Delivery* report for the month of April 2020 showed a deterioration in labour market conditions in Western Australia with:

- Total hours worked declining by 12.1 per cent between March and April 2020, with a 15.1 per cent decline between February and April 2020.
- A total of 188,500 (or 14 per cent of all workers in Western Australia) still employed but worked zero hours in the reference week.
- A further 185,500 (or 14 per cent of all workers in Western Australia) working reduced hours because there was no work, not enough work available, or they were stood down.

- 33 The Minister observed that these figures indicate that a substantial number of employees are working fewer hours than normal or no hours, despite being still employed. The Minister notes that the ABS data indicates that the largest impact has been on young workers, with 14.6 per cent of jobs performed by employees aged under 20 disappearing in the period 14 March to 2 May 2020. However, total wages actually increased for this cohort as the JobKeeper program would have resulted in many casuals and part-time workers receiving higher earnings than normal. The employment prospects for younger workers improved in the week 25 April to 2 May 2020 as restrictions were gradually relaxed and younger people commenced returning to the workforce.
- 34 The Minister also notes the changes in jobs and wages by industry. These indicate that between 14 March and 2 May 2020, accommodation and food services jobs fell by 27.1 per cent; arts and recreation services by 19 per cent; rental, hiring and real estate services by 12.8 per cent; and the retail trade by 6.0 per cent.
- 35 In terms of job advertisements, the Minister notes that internet vacancies for the last quarter fell in Western Australia by 30.1 per cent, equivalent to around 4,500 per month. There was a national decline of 34.7 per cent, or around 50,000 job advertisements per month according to the Internet Vacancy Index. The Minister notes that there is historically a strong correlation between falls in recruitment and a following rise in unemployment. He says that the current falls in job advertising suggest further rises in unemployment in the coming months, though the JobKeeper payments will continue to cushion the impact.
- 36 The Minister notes SEEK reports that new job advertisements posted on its site in April were down by 65.6 per cent year on year and 49.9 per cent month on month. The decline is easing with job advertisement data from the first two weeks of May showing marginal improvement, suggesting the employment market may have turned the corner.
- 37 The ABS reports that the WPI, seasonally adjusted, rose 0.5 per cent in the March quarter 2020 and 2.1 per cent through the year. Western Australia recorded the lowest wage growth (1.8 per cent) for a seventh consecutive quarter.

The latest ABS jobs information

- 38 The latest data regarding jobs was released by the ABS on 16 June 2020, to cover the period between the week ending 14 March 2020 and 30 May 2020 (6160.055.001 – *Weekly Payroll Jobs and Wages in Australia*). In this period, total job losses in Australia were 8.3 per cent. Western Australia's total job losses were 10.7 per cent. In the final week of the reporting period, between 23 May and 30 May, Australia's total gain in employment was 0.4 per cent and Western Australia's was 0.2 per cent.
- 39 Australia-wide, male job losses were 6.3 per cent and female job losses were 8.0 per cent. In the last week of the reporting period, the improvement was 0.4 per cent for both males and females.
- 40 The peak time for job losses was between the week ending 28 March and the week ending 11 April 2020. The bottom of the trough appears to have been reached in the week ending 18 April 2020.
- 41 By industry, the greatest job losses between 14 March and 30 May were in accommodation and food services (-29.1 per cent); arts and recreation services (-26.3 per cent); information, media

and communication (-10.5 per cent); rental, hiring and real estate services (-10.1 per cent); administrative and support services (-10.1 per cent); other services (-9.7 per cent); agriculture, forestry and fishing (-9.5 per cent); retail trades (-6.3 per cent); construction (-5.0 per cent); mining (-5.8 per cent); and wholesale trade (-4.1 per cent). Other named industries lost around 4.7 per cent to 4.1 per cent. Only two industries, electrical, gas, water and waste services and financial and insurance services, gained by 0.4 per cent and 0.5 per cent respectively.

- 42 In the last week of the reporting period, accommodation and food services gained 5.0 per cent; education and training 4.5 per cent and retail trades 3.1 per cent. The remainder of the gains ranged from 0.1 per cent to 3.1 per cent. However, agriculture, forestry and fishing continued to lose jobs (-3.9 per cent) as did arts and recreation services (-2.8 per cent); and information, media and telecommunications (-2.2 per cent). Three other industries lost more jobs, between -0.1 per cent and -0.8 per cent.
- 43 The ABS notes that the previous report covered the period up to and including the week ending 2 May 2020. It says that '[f]or many employers this was prior to JobKeeper supported back payments being made. This release extends data to the week ending 30 May and includes a considerable amount of JobKeeper supported back payments.'
- 44 On 18 June 2020, the ABS released the results of the monthly *Labour Force* survey for May 2020. The data reveals a further loss of employment occurred between April and May, with total employment declining by 227,700 persons across Australia and 30,200 persons in Western Australia. Of the 227,700 jobs lost in Australia between April and May 2020:
- 89,100 were full-time jobs
 - 138,600 were part-time jobs
- 45 In Western Australia, 30,200 jobs were lost between April and May 2020. Part-time employment declined by 32,000, however full-time employment increased by 1,800.
- 46 A summary of the key figures from the *Labour Force* survey was provided by the Minister in the following table:

Table 1 – Labour Force, April-May 2020

	WA		Australia	
	April 2020	May 2020	April 2020	May 2020
Employed (000s)	1,302,200	1,272,000	12,381,80	12,154,100
Employed males	704,800	691,900	6,565,200	6,455,200
Employed females	597,500	580,100	5,816,600	5,698,900
No. of unemployed	84,200	112,200	841,900	927,600
Unemployment rate	6.1%	8.1%	6.4%	7.1%
Labour force	1,386,500	1,384,200	13,223,70	13,081,700
Participation rate	65.1%	65.0%	63.6%	62.9%
Youth unemployment rate	13.1%	16.3%	14.2%	15.3%
Under-employment rate	14.4%	12.1%	13.8%	13.1%
Under-utilisation rate	20.5%	20.2%	20.1%	20.2%

- 47 Based on these figures, the recovery of jobs to anywhere near the pre-14 March 2020 level will be slow and gradual. It may not be a continuous improvement if there is a second wave of infections, and the end of the JobKeeper subsidy will be a very telling time for jobs.

Statements by the Reserve Bank of Australia

- 48 On 7 May 2020, the Reserve Bank of Australia (RBA) issued its *Statement on Monetary Policy*, May 2020. It noted that the spread of COVID-19 has resulted in ‘[a] large and near simultaneous contraction across the global economy’. There is heightened uncertainty about the future with contractions in investment and consumer spending. Output in Australia is expected to contract significantly over the first half of 2020, mostly in the June quarter. A decline in GDP of around 10 per cent from peak to trough is expected.
- 49 The RBA says that there will be a large increase in the unemployment rate, perhaps peaking at around 10 per cent. This increase would have been much larger were it not for the JobKeeper wage subsidy program. Total hours worked are likely to contract by around 20 per cent over the first half of 2020. Financial conditions, more broadly, ‘[r]emain quite fragile’. However, this is consistent with the uncertain economic outlook.
- 50 The RBA says:
- But a full recovery will take time. Many households and businesses have reduced spending in response to declines in income and wealth, and heightened uncertainty. This may take a while to reverse, especially if there are lingering concerns about control of the virus. In addition, some workers who have been laid off will take time to find other employment, especially if their previous jobs were in industries facing lower ongoing demand.
- 51 The RBA predicted that household consumption is expected to contract by around 15 per cent before recovering over the next couple of years. Travel restrictions have induced a sharp decline in tourism-related and education service exports but it is not clear how quickly these will recover. Uncertainty will curtail business investment intentions and mining investment is likely to be weaker than previously expected. The established housing market turnover has been limited and uncertainty about future job prospects and income is likely to dampen demand for housing. Slower population growth is also expected to translate into less demand for new construction.
- 52 One of the themes of the RBA Statement is the uncertainty about the future. This includes uncertainty about the pace of the labour market recovery. It says that much will depend on how well employment relationships can be preserved over the period of restrictions – including through the use of the JobKeeper payment – or restored quickly as activity recovers. It notes that longer run behavioural responses to the pandemic could involve lasting shifts in industrial structures. Achieving a rapid recovery in the face of these shifts will also place a premium on the flexibility and adaptability of the labour market. Unemployment is expected to remain elevated for some time. Inflationary pressures picked up a little in the March quarter, being 2.2 per cent over the year to March with 1.3 per cent in underlying terms. However, oil prices have fallen drastically. There have been production cuts globally. There has been a temporary removal of childcare fees and the year ended headline inflation is expected to turn negative in the June quarter for the first time since the early 1960s.
- 53 The RBA also reported that there will be ongoing spare capacity in the labour market, which is likely to result in a period of slower growth in wages and thus, labour costs. It says that ‘[u]nemployment could turn around 5.0 per cent in a couple of years and the level of GDP could return to a path that is close to that implied in the forecasts published in the 2000 February *Statement of Monetary Policy*’. Alternatively, it says that if the lifting of restrictions is delayed or the restrictions need to be re-imposed, or household and business

confidence remain low, then the outcome will be even more challenging. The unemployment rate would drift down much more gradually, and the level of output would remain around its trough for several years. It described the context as being in extraordinary times and consistent with a broad mandate to promote the economic welfare of the country.

- 54 The Minutes of the Monetary Policy Meeting of the RBA Board held on 2 June 2020 provide a good overall summary of some of the economic considerations at a national level:

Economic activity in Australia had contracted very significantly in late March and April, but more recent data had suggested that it had begun to recover over the course of May.

...

While some categories of discretionary household spending had contracted in March, members noted that the large increase in retail spending was expected to have partly offset this ... Preliminary data indicated that retail sales had since fallen sharply in April. ... household spending had declined sharply in April but had recovered somewhat in May.

The contraction in spending in late March and April had been accompanied by significant job losses, with total hours worked falling by 9 per cent in April. Timelier payroll data suggested that the pace of job losses had slowed towards the end of April. In some of the industries that had been most affected by the restrictions on activity, the number of jobs had stabilised or increased a little, suggesting that the total decline in hours worked may be less than had previously been feared. Nevertheless, members noted that, while this was a welcome development, it still constituted a very significant deterioration. Job losses had continued in other industries, which pointed to the possibility of a more persistent reduction in overall demand than had previously been expected. Information from liaison with firms had highlighted that the pipeline of work was diminishing as firms deferred or cancelled investment and new projects, including in construction and business services. Business conditions in April had remained well below average.

In April, an unusually high proportion of people who had lost their jobs did not actively search for another job, so they had been recorded as having left the labour force and, as a result, the unemployment rate had increased by less than expected to 6.2 per cent. The share of workers recorded as being employed but working zero hours had also increased sharply in April; while some of these workers were likely to have been supported through the JobKeeper program, others would have been stood down without pay and may have become unemployed since then.

While job losses and reduced hours for those still in work had reduced labour income, government support had provided a considerable offset. Households that were already receiving welfare payments had received additional payments, and the JobKeeper program and increased JobSeeker payments had supported incomes for others. In some instances, households had received more income than usual. Lower fuel prices, free childcare and other initiatives, as well as more limited consumption opportunities during the period of restrictions, had also reduced living expenses for many households. The implied increase in household savings had been consistent with the recent large reductions in personal credit and increases in mortgage payments.

Preliminary indicators suggested that business investment was likely to have been flat in the March quarter. Data on capital expenditure intentions had pointed to a substantial and broad-based decline in non-mining investment over the following year or so. Members noted that uncertainty about how the economy would evolve over the remainder of the year had contributed to decisions by businesses to defer investment and was consistent with information from the Bank's liaison program.

...

Some indicators suggested conditions in established housing markets had stabilised in recent weeks, although turnover remained low and housing prices had fallen in some parts of the country. Information from contacts in the Bank's business liaison program had reported that buyer interest in new dwellings had declined significantly over recent months as uncertainty about incomes and the availability of finance had escalated. An increase in the supply of rental properties and the decline in population growth associated with the closure of borders had contributed to a decline in advertised rents. Some existing renters had also received rent reductions. Members noted that these conditions had dampened the outlook for dwelling investment once the current pipeline of work had been completed.

Public demand had grown strongly in the March quarter. Members noted that the Australian Government and state governments had committed to higher spending across a range of programs, including the JobKeeper program; these measures were expected to deliver significant support to the economy (pp 3-4).

...

Business credit had been little changed in April. This followed the sharp increase in lending to large businesses in March, which to a large extent had reflected precautionary demand by businesses that had drawn down their existing lines of credit in the face of economic uncertainty. In a number of cases, businesses had left the funds on deposit at their bank. Members noted that bank lending to small and medium-sized businesses had been little changed, reflecting weak demand for credit and a cautious approach to lending by some banks. Interest rates on outstanding business loans had declined further in April.

Housing loan payments (which include payments into offset accounts) had increased sharply in April, consistent with many borrowers saving for precautionary reasons and the curtailment of opportunities for spending. These effects appeared to be larger than the effects of deferred loan payments and reductions in housing loan interest flowing through to borrowers (p 6).

...

Members recognised that the Australian economy was experiencing the biggest economic contraction since the 1930s. A very large number of people had lost their jobs or were working zero hours, household spending had weakened considerably and some investment was being deferred or had been cancelled. Notwithstanding these developments, it was possible that the downturn would be shallower than earlier expected. The rate of new infections had declined significantly and some restrictions had been eased earlier than had previously been thought likely. However, the outlook remained highly uncertain and the pandemic was likely to have long-lasting effects on the economy (p 7).

Submissions about the Commission's decision

(a) The Minister

- 55 The Minister has not proposed any particular outcome for the State Wage order. He notes the current uncertain and changing economic environment, and that as restrictions are eased, many businesses will benefit. However, many of these businesses that are re-opening are still operating at less than full capacity and are still feeling the effects of the events of the last few months. A number of businesses may take years to fully recover from the significant short-term pain. The easing of restrictions, while a positive development, does not justify a significant wage increase that would be onerous for many small business employers. A more modest outcome would be appropriate in the current environment.

56 The Minister does not support the view of UnionsWA and WACOSS, that a significant increase in the SMW and award rates acts as a means of stimulating the economy. He says that the size of the Western Australian workforce affected by the State Wage order is not sufficient to result in any significant stimulus. Further, he says that governments may act to stimulate the economy through measures adding substantial amounts into the economy. However, the businesses the subject of the State Wage order are not in the same position and do not have the capacity in the current climate to absorb a significant increase in labour costs.

(b) The Chamber

57 The main thrust of the Chamber's submission is on the preservation of jobs and ensuring that Western Australian businesses are in the best position to survive the challenging times. On this basis, the Chamber urges that the Commission maintain the SMW and award rates of pay at their current levels.

58 The Chamber noted that even prior to the COVID-19 changes, there were continuing contractions in the State's situation by early 2020, with SFD having declined by 1.0 per cent over 2018-19 and business investment falling by 7.6 per cent over the same period. It notes that the title of its publication '*Outlook*', January 2020, '*Treading water: Waiting for the next wave*' reflected the circumstances at the time. The Chamber notes the significant changes to the economic climate since March, the number of job losses, the high unemployment and under-employment levels along with the decline in the participation rate. As at 12 May 2020, the RBA expected price deflation in the June quarter and inflation to be very low for the next couple of years.

59 The Chamber refers to the *WA Super – CCIWA Business Confidence Survey* for the March quarter 2020 which shows a sharp decline in business confidence, with 91 per cent of businesses currently affected, or expecting to be affected, by the COVID-19 pandemic. Eighty-six per cent of businesses expect the Western Australian economy to worsen or remain unchanged over the next three months, while 61 per cent were expecting challenging business conditions over the next 12 months. Recent improvements in profit expectations had disintegrated in the March quarter 2020, with 52 per cent of businesses expecting their profits to fall over the next three months. This was said to be a record low in profitability expectations.

60 Seventy-five per cent of employers expected their workforce to contract or remain unchanged over the next three months. This was higher in the retail trade (91 per cent), with 83 per cent in the construction industry and 78 per cent in the manufacturing industry.

61 The Chamber points to the ABS (7 April 2020) *Business Indicators, Business Impacts of COVID-19*, April 2020, showing the extent to which JobKeeper payments had influenced employment decisions varied according to industry. Sixty-seven per cent of employers in the accommodation and food services industry reported that the JobKeeper payments influenced their employment decisions.

62 The Chamber says that where employers are facing a substantial downturn in business conditions and there has been a significant loss of jobs, a fair wage system is one that minimises the potential for further job losses. The best way to promote and support the needs of the low paid is through a wage system that preserves jobs and livelihoods.

- 63 The Chamber says that with inflation expected to move into negative territory before settling at low levels, the living standards of the low paid would not be negatively affected were the SMW and award rates to be maintained at their current level, particularly given the sustained level of real wage growth in minimum wage rates as a result of previous State Wage orders. The Chamber says that in the current environment, preserving jobs is essential to improving the living standards of Western Australian employees and the community more generally and that this would best be done by not increasing the wage costs of employers.
- 64 If the Commission decides to increase the SMW and award rates of wages, the Chamber submits that the effective date of an increase should be deferred to the first pay period commencing on or after 19 October 2020. This would allow employers to:
- factor in the increased wage costs, noting the challenges posed by COVID-19 will result in the State Wage Case Decision being handed down later than normal this year;
 - take into consideration the impact on their businesses of the State and Commonwealth government budgets to be handed down in early October 2020;
 - consider the impact of the cessation of the JobKeeper subsidy on 27 September 2020; and
 - assess the ongoing impact of the COVID-19 pandemic on their business operations.

(c) UnionsWA

- 65 UnionsWA submits that a substantial real increase in the SMW and award wages of 4.0 per cent is necessary. It says this will address the ever-widening gap between the low paid and the rest of the workforce in the State and would have the effect of lifting domestic consumption.
- 66 UnionsWA says that the situation in the Western Australian and Australian economies has been severely impacted by COVID-19, but that the underlying issues requiring a substantial increase to the minimum wage have not disappeared. It notes the comment by economist Tim Harcourt in *‘Once were Worriers – Australia’s Golden Age of Economic Policymaking’* (29 July 2013), that the austerity plan put in place by the Commonwealth and State governments during the Great Depression, including cutting wages, resulted in ‘[t]he slump in Australia (being) longer and deeper than it should have been’. It notes that the ACTU has estimated that if there is no increase in the minimum wage this year, overall wage growth will sink below zero.
- 67 UnionsWA expresses concern at the recent divergence between GSP and SFD, due at least in part, to lower household consumption than prior to the mid-2000s. Even though mining exports continue to provide considerable benefits to the Western Australian and national economies, restoring and maintaining strong levels of domestic consumption is necessary. Domestic consumption comes from the households of Western Australia. Visitor arrivals in Western Australia have declined significantly so they are not able to contribute to domestic demand. UnionsWA says ‘[t]here must be strong wages growth for WA workers in order to lift the economy out of the COVID-19 crisis. The experience of the Great Depression makes clear that wage freezes and cuts will be actively damaging to the WA economy’. It says that

the Commonwealth government's stimulus package in March 2020 recognised the success of stimulus to the economy.

- 68 According to UnionsWA, commentary about the removal of, reduction in or phasing out of the \$1,500 JobKeeper payment emphasises the importance of continuing wages growth to support economic activity.
- 69 UnionsWA says that WACOSS's '*Cost of Living 2019*' report, while having been somewhat overtaken by the implementation of JobSeeker and JobKeeper schemes, still recognises the income gaps at the lower end of earnings and the need for the minimum wage to play its part.
- 70 UnionsWA notes that the ratio of the Western Australian and national minimum wages relative to median full-time earnings appears to have improved with the impact of COVID-19 but it says that this is a temporary situation and still requires a strong regular increase in the minimum wage over the longer term to restore what it says would be a decent relativity of minimum to median wages.
- 71 UnionsWA points out the measures implemented by the State government to assist businesses. These are said to be aimed at enabling businesses to return to a normal situation. UnionsWA says that normal situation should include expected annual minimum wage increases at State and national levels.
- 72 UnionsWA says that it is still too early for the full impact of the pandemic to be understood. It notes the increase in SFD of 0.9 per cent. It also correspondingly notes that the total final consumption expenditure in Western Australia decreased by 0.7 per cent, driven by a 1.0 per cent decrease in household consumption. This reinforces its argument that lifting domestic consumption is necessary and that doing so will assist in improving the economy. This can be done by a substantial increase in the State minimum wage and award rates. UnionsWA also notes the improved national health outcomes than earlier feared and the RBA Governor's statement that the Australian economy has been remarkably resilient. It says that problems with domestic demand and household consumption will not be addressed by a frozen or deferred increase.

(d) Western Australian Council of Social Service Inc (WACOSS)

- 73 WACOSS submits that an increase in the SMW of 4.0 per cent is appropriate and reasonable in the current circumstances. It notes that crises have a disproportionate impact on people with the lowest incomes, whose '[a]ccess to resources, disposable income, choice, power and social connections are all severely limited'.
- 74 It says that increasing the wages of the low paid:
- (1) supports economic recovery and growth by increasing consumption and economic activity; and
 - (2) addresses income inequality which otherwise hinders consumer consumption and reduces economic activity.
- 75 WACOSS says that there is a need to balance the best interests of low-income working households and the need to stimulate the economy, against the viability challenges faced by many employers, particularly small businesses.

- 76 While acknowledging in its submission of 12 May 2020 that it was then too early for there to be certainty about the likely level of unemployment and the comparative strength of the economy, WACOSS submits that the SMW ought to be increased by a meaningful but comparatively conservative amount. The numbers of those at risk of long-term unemployment and the number of households facing financial crisis are being addressed by the Commonwealth and State governments by targeted job creation and employment support activities. WACOSS expects that next year's SWC will be faced with a clearer and stronger picture of economic and employment outcomes.
- 77 WACOSS examined in detail, both in its submission and by reference to its *Cost of Living 2019* report, the issues of household stress for a range of different types of households. It did so by examining the costs of housing, energy and food. The cost of housing makes up nearly half of the average general expenditure of these households, leaving little for quality of life and personal well-being expenditure areas such as recreation, health and education. WACOSS also examined the significant cost differentials for different types of households according to their regional location within Western Australia.
- 78 WACOSS refers to analysis by the South Australian Council of Social Services regarding the distribution of waged poor, low-income waged and income support for households across Australia. Its findings are said to demonstrate that Western Australia has a disproportionate number of waged poor for its population.
- 79 According to WACOSS, low-wage earners are more likely to spend each additional dollar received than higher income earners due to the expenditure on the essentials of life. The expenditure is said to be typically made locally. This provides a crucial increase in economic activity in the community. Increases in the minimum wage will have a more pronounced impact on the confidence of low waged consumers.
- 80 In noting the support provided to businesses by the Commonwealth and State governments in response to the COVID-19 crisis, WACOSS submits that reduced business turnover as a result of COVID-19 restrictions does not justify not providing an increase to the minimum wage. It says that a 4.0 per cent increase in the SMW is necessary to '[s]timulate consumer demand and earnings growth in order to support Western Australia successfully recovering from the impacts of the COVID-19 crisis'.

(e) Professor Preston

- 81 Professor Preston's submission analyses the ABS *Labour Force* data for the Western Australia labour market in 2019-20, taking account of the fact that the data available was for March 2020. She subsequently reviewed the ABS *Weekly Payroll Jobs and Wages in Australia* for the period ended 2 May 2020.
- 82 Professor Preston notes that the numbers of workers displaced by COVID-19 would not show up in the trend data and descriptive analysis originally provided in her submission but nevertheless highlights longer term trends in the Western Australian labour market and points to particular groups of vulnerable workers.
- 83 Professor Preston identifies that Australia's GDP and Western Australia's GSP prior to COVID-19 were both showing signs of the economies softening. Annual growth in GDP between 2018 and 2019 was equal to 1.9 per cent, a rate last seen in 2009 after the GFC. In

WA, economic growth was even softer with annual GSP growth to 2019 equal to only 1.0 per cent. WA's growth, amongst all the States, was the slowest in GSP for that period.

- 84 The bushfires and droughts significantly adversely affected the degree of optimism for the national economic outlook. The RBA meeting in February 2020 noted that the global economic slowdown seemed to be nearing an end and the expectation was that the Australian economy would grow by 2.75 per cent in 2020 and 3.0 per cent in 2021. However, by the 3 March 2020 RBA meeting, the sentiment had changed with the spread of the coronavirus beyond China and the crash in stock markets on 24 February 2020 which saw the Australian dollar fall to its lowest level in years. The RBA Board reduced the cash rate by 25 basis points to 0.5 per cent to support the national economy, and on 18 March 2020, reduced it by a further 25 basis points to 0.25 per cent. The total economic support provided by the RBA and the Federal Government amounted to around \$320 billion or 16 per cent of the GDP. Low wage growth and falling oil prices will result in inflation below 2.0 per cent.
- 85 Professor Preston noted that in Western Australia, prior to the onset of the effects of COVID-19, the unemployment rates for males and females improved compared with March 2019. This improvement was said to be driven by a fall in the male participation rate and by the growth in part-time employment. Nationally, the male unemployment rate was 5.3 per cent and the female unemployment rate 5.0 per cent. Western Australia has a higher participation rate than Australia and a higher employment to population ratio.
- 86 Professor Preston observed that '[w]omen are at particular risk during recessionary periods and ... following the last economic downturn, women in Western Australia were particularly hard hit relative to their counterparts nationally'. The youth labour market demonstrates significant under-utilisation, being a combination of unemployment and under-employment. The job search duration has been rising faster in Western Australia than nationally. At March 2020, the median job search duration was around 20 weeks in Western Australia and 16 weeks nationally. Professor Preston notes that for the long-term unemployed, it was around 112 weeks in Western Australia and nationally. She notes that '[a]t the peak of the mining boom, males in WA earned, on average, 18 per cent more than males nationally while females in WA earned 5.5 per cent more than females nationally. By December 2019, the WA/Australia male wage relativity was equal to 10.1 per cent and the female relativity equal to -0.5 per cent'. There was an unexplained additional gender wage gap of around 6.3 per cent in Western Australia, above the national level of 12.3 per cent.
- 87 Within Western Australia, males employed part-time are at a significant wage disadvantage relative to their counterparts employed full-time. Professor Preston notes that even in the absence of the economic effects of COVID-19, the recent growth in male part-time employment in Western Australia would potentially drive down the overall male mean wage and see a further convergence in the Western Australia gender pay gap. This arises mainly through male losses rather than through female gains.

Issues to be considered

- 88 Section 50A(3) of the Act sets out the issues the Commission is required to take into account when setting the SMW and adjusting award rates of wages. They are:
- (a) the need to —

- (i) ensure that Western Australians have a system of fair wages and conditions of employment; and
 - (ii) meet the needs of the low paid; and
 - (iii) provide fair wage standards in the context of living standards generally prevailing in the community; and
 - (iv) contribute to improved living standards for employees; and
 - (v) protect employees who may be unable to reach an industrial agreement; and
 - (vi) encourage ongoing skills development; and
 - (vii) provide equal remuneration for men and women for work of equal or comparable value;
- and
- (b) the state of the economy of Western Australia and the likely effect of its decision on that economy and, in particular, on the level of employment, inflation and productivity in Western Australia; and
 - (c) to the extent that it is relevant, the state of the national economy; and
 - (d) to the extent that it is relevant, the capacity of employers as a whole to bear the costs of increased wages, salaries, allowances and other remuneration; and
 - (e) for the purposes of subsection (1)(b) and (c), the need to ensure that the Western Australian award framework represents a system of fair wages and conditions of employment; and
 - (f) relevant decisions of other industrial courts and tribunals; and
 - (g) any other matters the Commission considers relevant.

89 In exercising its jurisdiction, the Commission is also required to apply the provisions of s 26(1) of the Act including that it:

- (c) shall have regard for the interests of the persons immediately concerned whether directly affected or not and, where appropriate, for the interests of the community as a whole; and
- (d) shall take into consideration to the extent that it is relevant –
 - (i) the state of the national economy;
 - (ii) the state of the economy of Western Australia;
 - (iii) the capacity of employers as a whole or of an individual employer to pay wages, salaries, allowances or other remuneration and to bear the cost of improved or additional conditions of employment;
 - (iv) the likely effects of its decision on the economies referred to in subparagraphs (i) and (ii) and, in particular, on the level of employment and on inflation;
 - (v) any changes in productivity that have occurred or are likely to occur;
 - (vi) the need to facilitate the efficient organisation and performance of work according to the needs of an industry and enterprises within it, balanced with fairness to the employees in the industry and enterprises;

- (vii) the need to encourage employers, employees and organisations to reach agreements appropriate to the needs of enterprises and the employees in those enterprises.

90 It is clear that a number of the considerations in s 50A(3) overlap with those in s 26(1).

91 We also note the objects of the Act set out in s 6 and that a number of those objects are particularly relevant to the determinations the Commission is required to make. They include:

...

(ac) to promote equal remuneration for men and women for work of equal value; and

(ad) to promote collective bargaining and to establish the primacy of collective agreements over individual agreements; and

...

(af) to facilitate the efficient organisation and performance of work according to the needs of an industry and enterprises within it, balanced with fairness to the employees in the industry and enterprises; and

(ag) to encourage employers, employees and organisations to reach agreements appropriate to the needs of enterprises within industry and the employees in those enterprises; and

...

(ca) to provide a system of fair wages and conditions of employment; and

...

92 The matters the Commission is required to consider fall roughly into two categories, although the components and categories are related and interdependent. No one or group of matters is to take precedence, however each plays its part. In some circumstances, particular considerations may be more pressing or carry greater weight.

93 The first group is the social and equity considerations of:

(a) a system of fair wages and conditions of employment;

(b) the needs of the low paid;

(c) living standards, and

(d) equal remuneration for men and women for work of equal value.

94 The second category is made up of the effects of that decision on economic and labour market considerations including:

(a) the state of the Western Australian and national economies;

(b) the capacity of employers as a whole to bear the cost of any increase;

(c) to encourage employers, employees and organisations to reach enterprise agreements; and

(d) to encourage ongoing skills development.

- 95 The Commission is also required to consider relevant decisions of other industrial courts and tribunals. The decision of the Fair Work Commission's (FWC) Annual Wage Review is the only decision which falls into this category.
- 96 We have set out earlier some of the consequences of the restrictive measures taken to control the spread of COVID-19. Those measures have had an enormous impact on employment, business survival and prosperity. The stimulus measures such as JobKeeper have provided much needed support to employees and employers to enable, as much as possible, jobs to be retained. However, the JobKeeper payments are temporary. The State Government's building package aims to support the building industry and provide employment and is also for a limited time.
- 97 The impact of the COVID-19 measures is said to be more severe than the GFC in 2009 or the recession of the early 1990s, and has been likened to the economic impact of the Great Depression of the 1930s.
- 98 We recognise that the gradual lifting of restrictions is assisting businesses and employment to return to normal, although as has been put to us, thousands of employees have lost their jobs and many more have experienced reduced hours.
- 99 Recession is imminent in Western Australia although the most recent financial data indicates that, without the contribution of the mining industry, Western Australia would already be in recession. The consensus amongst the Commonwealth and State governments and other institutions is that there will not be a quick reversal and that recovery will take a couple of years. Compared with the GFC, the effects of which grew more slowly, the current situation hit quickly, and its effects may be deeper and may last for some time to come. Therefore, one of the priorities of governments has been to maintain, to the extent possible, the employment of employees, for their benefit, their employer's benefit and for the benefit of the economy.
- 100 We note that in previous years we have referred to a range of measures of the economy such as GDP, GSP, unemployment, and business profitability by reference to GDS and GMI. However, given the rapid change between mid-March 2020 and now, and that the situation continues to evolve, these measures, unless updated to take account of this period, are less helpful.

Consideration of fairness and equity

- 101 In spite of this economic upheaval, one of the issues in the State Wage Case is to ensure that Western Australians have a system of fair wages and conditions of employment to meet the needs of the low paid and consider and contribute to living standards and those other matters in s 50A(3)(a) in a way that will support employment. We note that with the easing of restrictions, employers are beginning to re-employ. However, it is important to achieve a balance, to ensure that the imposition of increased wages does not significantly undermine or reverse the growth in jobs, in the context of dramatically reduced jobs and slow economic recovery.
- 102 In the 2016 State Wage Case Decision (2016 WAIRC 00358) we noted the evidence of Professor Barrett in the 2013 State Wage Case, [2013] WAIRC 00347; (2013) 93 WAIG 467 [17] – [19]. We recorded that it had shown:

156 ... where those costs increase beyond the employers' capacity to absorb them, employers will look to ways to reduce their costs. These include, particularly in the case of small business, increasing the number of hours the owners work, generally increasing the capital to labour ratio, reducing staff numbers or hours, and what Professor Barrett described as less diligent compliance with award provisions such as penalty rates and overtime.

103 We also noted the:

158 ... the view of the Productivity Commission in its *2015 Workplace Relations Framework – Inquiry Report*, Volume 1, p 185, that:

Faced with higher wages for lower skilled workers, businesses have an incentive to reduce employment of such workers, and/or to invest in labour displacing capital, hire (or make more intensive use of existing) higher skilled workers, and seek to pass on costs.

159 It also accords with CCIWA's submission, that the adoption of the strategy of passing on the costs to consumers may further impact on employment because 'price rises prompt a shift in demand away from domestically produced labour intensive goods and services' (CCIWA submissions [5.2]).

160 The FWC has published profiles of a number of industries as part of its 2016 Penalty Rates Case. It gathered data from the ABS; its own *Australian Workplace Relations Study* and its *Award Reliance Survey*; the *Household, Income and Labour Dynamics in Australia Survey*; and the *Department of Employment's Workplace Agreements Database*. In each of the Industry Profiles for the retail trade and the accommodation and food services industry, it provided the responses of employers as to how they would manage potential short-term and long-term increases in labour costs if demand for their major products and/or services had not changed. In the retail trade, the most common short-term responses were to 'reduce hours of casual staff', 'more hours worked by proprietors/owners' and 'reduce number of employees via attrition'. The long-term strategies were most commonly to 'reduce workforce/hours' or 'increase profitability/efficiencies' (page 58-59). In the accommodation and food services, in the short-term, the response would be to 'reduce hours of casual staff', 'more hours worked by proprietors/owners' and 'reduce number or length of shifts'. The longer term response would be to 'increase profitability/efficiencies' in award reliant enterprises, and in other enterprises 'reduce workforce/hours' (pages 47-48).

161 The material before us in this case suggests that employers are taking measures to reduce employees' working hours, either by reduced hours or reduced jobs. There is currently a reduction in fulltime employment by 0.9% and an increase in parttime employment of 4.5% in Western Australia.

162 Job vacancies are down significantly, with online vacancies in March 2016 being down 19.3%. Labour availability is at a relatively high level (*CCI Survey of Business Expectations, March Quarter 2016*). WA's unemployment rate is now 6%, the highest for many years.

104 The Chamber referred to its survey of 900 employers, the '*COVID-19 Business Impact Survey: Snapshot*'. Employers reported the measures they were intending to take or had taken to maintain employment. These included significant proportions of employers intending to or had reduced working hours. Seventy-one per cent expected to have to lay off staff. The measures taken by employers to deal with the effects of the restrictions of COVID-19 reflect the

evidence given by Professor Barrett in 2013 and the Productivity Commission's 2015 Report. It cannot be ignored that significant numbers of employees have lost their jobs, and the economy is in the early and tentative stages of recovery and of re-employment. The best way to reinforce and support those tentative steps does not include requiring employers to bear significant increases in wages. To do so may result in more jobs losses and lower rather than improved standards of living.

The cost of living

- 105 The cost of living is relevant in the Commission's consideration of the needs of the low paid, fair wages standards in the context of living standards generally and to consider contributing to improved living standards.
- 106 One of the issues that frequently arises in submissions to the Commission over the years is the appropriateness of the CPI as a measure of inflation and the cost of living. In that context, the Commission invited submissions about whether other measures would be more suitable.
- 107 UnionsWA refers to the '*Household Impacts Survey of COVID-19*', 14 – 17 April 2020 as an example of another measure of cost of living changes. It notes, however, that this does not contain data specific to Western Australia but says that Western Australian households are unlikely to differ too markedly from national households.
- 108 UnionsWA notes that it has previously argued that the CPI inflation is an incomplete measure for the financial needs of workers on low pay and their families. It says that there have been reductions in the costs of automotive fuel and holidays as compared with significant increases in the cost of fruit and vegetable prices. It says that this is another example of how the CPI inflation measure does not fully capture the impacts of living costs on households, particularly households under financial stress.
- 109 It also notes the '*Household Impacts of COVID-19*' ABS data reports on the household finances for various groups. It finds that 12.5 per cent or approximately one in eight households could raise \$500 but not \$2,000 for something important that week. One in 20 could not raise \$500. Eight per cent of Australians aged 18 years and over reported that their household was unable to pay one or more selected bills on time in mid-March to mid-April due to a shortage of money. UnionsWA says that the data demonstrates the need for household incomes to be supported by strong and regular wage increases.
- 110 We also note WACOSS's submission regarding measures of cost of living and that different household types have different cost structures. WACOSS's *Cost of Living 2019* report examined the income and expenditure of five household types during the 2018 –19 financial year in comparison to the two preceding financial years. Low income households are reported as changing their actual expenditure patterns to compensate so that they can balance their weekly budget.
- 111 WACOSS has noted in its '*Cost of Living*' reports that there are higher rates of expenditure than income growth in particular household types, including households on the minimum wage.
- 112 The Minister notes that the CPI is a measure of the rate of price changes in the economy, but not the price level of the basket of goods and services. The Minister points to a number of limitations of the CPI in that it:

- (1) measures the rate of price changes in the economy, but not the price level of a basket of goods and services. It notes, for example, the price index for bread was 103.5 and for milk was 108.2. However, this does not mean that milk is more expensive than bread but rather that the price of milk has increased more than the price of bread from a particular point in time;
- (2) measures price changes for items only in the metropolitan area of Australia's eight capital cities and does not record price changes in regional or remote areas;
- (3) does not take into account the differences in spending patterns between individual households. The composition of households varies, and some households spend a lot more on certain items than others. Examples were given regarding tobacco costs which have a weight of 3.17 in the CPI basket but not every household purchases tobacco;
- (4) ignores price changes that result from variations in the quality of items. An item in the basket of items might vary as new products are introduced and old ones are not replaced;
- (5) is affected by 'substitution bias'. Certain goods become significantly more expensive and consumers may find less expensive alternatives to them. The CPI does not take this into account but instead presents numbers assuming consumers are continuing to buy the same amount of increasingly expensive goods; and
- (6) is not ideally suited to measure changes in a household's cost of living. It measures only pure price changes as opposed to the changes in spending by households required to maintain a given standard of living.

113 The Minister suggests that with the limitations of the CPI, other measures used in conjunction with CPI might assist the Commission to deal with household expenditure as a measure of change in consumption habits. The Minister notes the *Household Financial Consumption Expenditure* (HFCE) index published in the Australian National Accounts, on a quarterly basis, measures the change in households' cost of living. It is a measure of the market value of all goods and services and includes the purchase of dwellings. It includes imputed rent for owner-occupied dwellings and payments and fees to governments to obtain permits and licences. However, the Minister says that generally, the CPI tends to follow the movement of the HFCE, except during the GFC in 2008.

114 Another measure that may be of assistance is price inflation for different household types measured by, for example, the ABS *Analytical Living Costs Indices* (ALCIs). This measure is released on a quarterly basis for the following household types:

- (a) employee households (income from wages and salaries);
- (b) age pension households (aged pension or Veteran Affairs pension);
- (c) other government transfer recipient households (government pension or benefit that is not aged pension or the Veterans Affairs pension); and
- (d) self-funded retiree households (superannuation or property income).

115 The Minister says that the difference between ALCIs and the CPI is that ALCIs reflect changes over time in the purchasing power of the after-tax income of households. It measures the

impact of changes in prices on the out of pocket expenses incurred by the household to gain access to a fixed basket of consumer goods and services. By comparison, the CPI is designed to measure price inflation for the household sector as a whole.

- 116 CPI and ACLIs generally display similar movements, once again except for the period following the GFC in 2008.
- 117 The Commission has tended to take account of the CPI in examining cost of living changes. It is a measure of change over time, in retail prices of a constant basket of goods and services representative of consumption expenditure by resident households in Australian metropolitan areas. It is calculated by the collection of prices for approximately 85,000 items in Australia's eight capital cities, which are grouped into expenditure classes and other groups. Each price change for an item is measured and aggregated to calculate the inflation rate for each expenditure class and group, as well as the entire CPI basket. The ABS updates the weighting of the CPI basket of goods and services on an annual basis by adjusting the weighting of individual items based on household spending patterns. We acknowledge that it is not a perfect measure of cost of living increases. However, it is interesting to note that the CPI tends to follow the movement of the HFCE, and that the CPI and the ALCIs generally display similar movements. The exceptions have been for the periods following the GFC in 2008.
- 118 Therefore, while it is not a perfect measure, the CPI remains relevant for measuring living standards for employees. While it measures only the capital cities' changes in costs, it provides a stable basis for measuring the increases in the cost of living. ACLIs are not available for Perth or Western Australia and so their value in relation to the State Wage Case is limited.
- 119 In the circumstances, the CPI is most likely as good a measure of change in prices for Perth as any other measure and provides a useful guide, but is not the sole consideration in terms of the cost of living.
- 120 In relation to the requirement to contribute to improved living standards for employees, this year's crisis has led to thousands more employees than anticipated at the beginning of the year being unemployed or having their working hours reduced. Others have their employment sustained by the JobKeeper subsidy.
- 121 Therefore, at this time, arguably the best way to contribute to improved living standards is to set a minimum wage and adjust award rates of pay in such a way that enhances job protection and future employment yet recognises that there has been an increase in the cost of living. Wage increases have been and will continue to be modest.
- 122 We note that over the last 10 years, the SMW has increased by 34 per cent compared with increases in the Perth CPI of just over 20 per cent. In this context, it is reasonable to conclude that the increases to the SMW and award rates of wages have indeed contributed to improved living standards. However, we note that while previous years' decisions may have resulted in higher increases than the cost of living, this does not mean that the balance of those increases will have been put aside by those on the lowest pay. We conclude that while some households will pay down debt or increase savings, other low paid employees will spend all of any increase on maintaining a basic standard of living.
- 123 By reference to the ABS *Australian National Accounts: Distribution of household income, consumption and wealth, 2003-04 to 2017-18*, the FWC's 2019-20 decision notes that '[d]ata show that while household consumption and savings rise with income, consumption rises by

less than income, which means that savings increase as income rises. The lowest income quintile spent more than they earned on average and did not achieve any savings.’

- 124 An increase in the minimum wage would assist employees to better meet their needs and maintain, if not improve, living standards for those in low paid work and households where savings are not available. Further, with the increase in the cost of living, unless there is an increase in minimum rates of pay, the low paid whether on the SMW or award-reliant would have their real income fall, albeit by a small amount, and this is likely to result in their living standards falling.
- 125 According to the ABS, the Perth CPI for the March quarter 2020, measured until 31 March 2020, increased by 0.4 per cent, 1.7 per cent in annual average terms and year on year by 2.1 per cent. Nationally, it rose by 0.3 per cent, 1.8 per cent and 2.2 per cent respectively.
- 126 The RBA estimates that the trimmed mean inflation rate nationally was 0.5 per cent over the March quarter and 1.6 per cent on an annual basis in the March quarter (see *Western Australian Economic Notes, Consumer Price Index, March 2020*, Government of Western Australia, Department of Treasury).
- 127 In the context of the current crisis, although it is seen to be easing, meeting the needs of the low paid and providing fair wage standards in the context of living standards and generally improving living standards will also involve some focus on preserving employment for the future.

Protecting employees who are unable to reach an industrial agreement

- 128 We have noted in previous years the very low level of industrial agreement making in the private sector in the State. In fact, but for a couple of areas covering very few employees and employers, there is no bargaining for industrial agreements (see 2018 State Wage Case Decision ([2018] WAIRC 00363; (2018) 98 WAIG 263 at [193]). At [194] we noted:

The trend at the national level and the lack of any real level of agreement-making amongst State system employers and unions confirms the significance of the State Wage order to State system private sector employees.

- 129 We also concluded at [198]:

In light of this material, we conclude that an overwhelming proportion of State system private sector employees receive an increase in their rate of pay only by one of three methods:

- (1) the SMW contained in the MCE Act through the State Wage Case;
- (2) the increase in award rates of pay through the State Wage order; or
- (3) the signalling effect of those increases.

- 130 There has been no change since that conclusion was drawn. Therefore, while the decision in this matter will affect significant numbers of award-free and award-covered employees, and may have a signalling effect on negotiations at an informal level, there is no indication that it will have much effect on formal industrial agreement making.

Encouraging ongoing skills development

- 131 The Minister notes that apprenticeship commencements peaked in 2010 and declined by 38 per cent over the next six years. They stabilised in 2017 but have increased by 600 in the last two years, particularly in the automotive trades, which increased between 2018 and 2019 by up to 12.4 per cent as they did within the utilities, electro-technology and printing areas of up to 45.9 per cent. This is in contrast to apprenticeship commencements in the wholesale, retail and personal services industries which declined by 8.7 per cent.
- 132 The traineeship data indicates that traineeship commencements continued to decline between 2018 and 2019, falling by 7.9 per cent. In the hospitality and tourism sector they declined by 29.7 per cent while the transport and storage sector declined by 33.9 per cent. Traineeship commencements in the finance, property and business services sector rose by 23.7 per cent. The Minister points out that between 2012 and 2019, traineeship commencements in Western Australia have declined by 58.2 per cent. The Minister has drawn no particular conclusions from the decline in apprenticeship and traineeship commencements, merely noting that they have occurred.
- 133 The Chamber notes the subsidy that has been provided to employers to keep apprentices and trainees employed through a new Supporting Apprentices and Trainees wage subsidy (Department of Education, Skills and Employment: *Supporting Apprentices and Trainees*, accessed 26 May 2020). The Chamber says that its experience is that both this subsidy and the JobKeeper payments have been a critical part of employers' decisions to retain their apprentices. The Chamber also notes that the Western Australian Department of Training and Workforce Development has established a register for apprentices and trainees who have been displaced by the economic impact of COVID-19, to assist them in finding a new employer. There are 196 such apprentices and trainees registered. The Chamber submits that if it were not for the government support provided to protect the employment of this group, the number of employees on the list would be much higher. It says there is no basis to support the notion that employers are in a position to increase the pay of apprentices and trainees. The Chamber says that without government assistance, the number of unemployed would be significantly greater than the already high levels being experienced.
- 134 UnionsWA draws attention to the wage subsidy of 50 per cent of an apprentice's or trainee's wages available to eligible employers from 1 January to 30 September 2020. Increases in apprentice and trainee rates are said to be essential to address the disparity between minimum rates and weekly earnings which affect employees' decisions about whether to pursue greater skills development by taking up apprenticeships or traineeships. The Federal Government's compensation to employers with apprentices means there is no reason to not provide a strong increase in wages in 2020.
- 135 We note the Interim Report of the Productivity Commission into the vocational education and training system (*National Agreement for Skills and Workforce Development Review*, May 2020). It recognises some of complexities in the reasons for the decline in apprenticeships and traineeships. These include the increased costs for apprentices and trainees in fees payable to training providers.
- 136 We also recognise the subsidy provided to employers to retain apprentices and trainees, noting that like other support measures provided by Commonwealth and State governments, it is temporary, for the purpose of maintaining those apprentices and trainees during the crisis.

137 The Commission observed in the 2018 SWC Decision (2018 WAIRC 00363 at [256]) that the decline in apprentice and trainee numbers is a complex matter, which has been recognised in the 2011 NCVER research report *'The Impact of Wages and the Likelihood of Employment on the Probability of Completing an Apprenticeship or Traineeship'*. We also noted '[h]owever, the rates of pay need to be a compromise between there being a wage that sustains the apprentice or trainee and one that is affordable for the employer'. This remains the case.

Providing equal remuneration for men and women for work of equal or comparable value

138 Professor Preston noted in her initial submission that the female unemployment rate was lower than that for males, but that the male rate for part-time work had increased. In her subsequent submission dealing with the ABS *Weekly Payroll Jobs and Wages in Australia* for the period ending 2 May 2020, she noted that:

Since the 14 March 2020, the decline in total wages paid has been larger in WA than nationally. Total wages paid to WA males, for example, have fallen by around 10%; nationally the corresponding decline is around 7.5%. The fall in total wages paid to females is much smaller than that experienced by males and likely to reflect the fact that:

- (a) a larger share of women are employed part-time and thus, on average, have lower total earnings than males (i.e. they are coming off a lower base); and
- (b) the JobKeeper payment is a flat amount irrespective of hours worked.

139 While this analysis is not directly related to the issue of equal remuneration for men and women for work of equal or comparable value, it identifies part of the complexity in the analysis of and causes for differences between male and female earnings.

140 WACOSS notes that the Workplace Gender Equality Agency and BankWest Curtin Economics Centre's 2017 report recognised the negative impact on the economy of the gender pay gap as well as its impact at the individual level and says that increases in the SMW and award wages of the level it proposes would benefit both the economy and the individual in respect of the gender pay gap.

141 The Chamber notes that COVID-19 has had an impact on the employment prospects of female employees far greater than it has on male employees:

- (a) the higher unemployment rate of 6.2 per cent for women, compared with 5.4 per cent for men;
- (b) female employees represented more than half of the 62,300 WA jobs lost in the month to April 2020;
- (c) a 3.0 percentage decline in female participation rates from 62.1 per cent in March 2020 to 59.1 per cent in April 2020. The male participation rate fell by 2.5 per cent to 71.4 per cent over the same period; and
- (d) an increase in the under-employment rate by 3.5 per cent in the month from March to April 2020 to 15.1 per cent. This remains higher than the male under-employment rate of 14.1 per cent, noting that males reported a higher monthly increase of 6.0 per cent.

- 142 The Chamber also notes the Commission's previous views that the minimum wage is a blunt instrument to promote gender equity. It says that the gender pay gap may have been affected by the effects of COVID-19 but those effects are yet to be fully seen and that it would not be appropriate to consider this matter during this process and at this time of uncertainty.
- 143 UnionsWA notes that while the gender pay gap has improved slightly each year at a national level, this does not apply to Western Australia, which retains the highest gender pay gap of all States, Territories and the nation.
- 144 UnionsWA refers to a number of aspects of wage inequality according to gender. Female workers in Western Australia are said to be a vulnerable group of employees who are over-represented in the private sector of the State industrial relations system, and they are more likely to be award-reliant. Therefore, increases in award rates are important to them.
- 145 We have noted in previous State Wage Case Decisions that the equal remuneration consideration in s 50A(3)(a)(iii) is much broader than the gender pay gap. In the 2016 State Wage Case ([2016] WAIRC 00358; (2016) 96 WAIG 636 at [203]), we said '[t]he gender pay gap is not the same as, or a proxy for, equal remuneration for work of equal or comparable value'. We have also noted that the gender pay gap is brought about by a complex range of societal and economic considerations. In last year's decision, we introduced a new principle into the Statement of Principles to expressly provide for equal remuneration cases to be considered. We note that in the year since then, no claims have been brought to address this issue.
- 146 The COVID-19 pandemic has had a disproportionately greater impact on the employment prospects of female employees. This appears to correlate with the greater proportion of female employment in the service-based sectors such as hospitality and food services and other service industries.

Pent-up demand

- 147 We have considered whether there will be pent-up demand with the lifting of restrictions and the affect this might have. The Minister notes that:

While a number of indicators of activity have recovered from lows (and in some cases, record lows) immediately following the introduction of restrictions on activity, in most cases, indicators remain well below pre-COVID levels. While there may be pockets of demand that have built up because households have not been able to make certain purchases due to restrictions on activity, household and business confidence remains well below pre-COVID-19 levels, consistent with soft overall conditions.

(Minister's response to the CICS's questions on notice).

- 148 As the Chamber points out, some personal services expenditure such as nail treatments, may be deferred or foregone entirely. The same may apply to restaurant meals. Those working from home will reduce their transport costs for commuting and not simply defer them.
- 149 We conclude that in some areas of the community there may be some pent-up demand which will be satisfied at a later time. However, some expenditure will be foregone entirely as many households save or pay down debt, as reported by the RBA.

Employers' capacity to pay

- 150 The Commission is required to consider 'to the extent that it is relevant, the capacity of employers *as a whole* to bear the costs of increased wages, salaries, allowances and other remunerations' (s 50A(3)(d)). The requirement to consider employers as a whole makes sense in particular for setting the minimum wage because the minimum wage applies across all industries.
- 151 There is provision, though, for the Commission to adjust award rates of wages in a far more targeted way in that s 50A(2) allows individual rates of wages, a series of rates of wages or specialised rates of wages, as well as all rates of wages to be adjusted.
- 152 We take the reference to employers as a whole to mean that the circumstances of individual employers are not able to be considered.
- 153 We have noted earlier the labour market changes; the significant contractions in retail spending after the initial increases; businesses adapting their operations to respond to the significant reduction in consumer spending. In particular, in the accommodation and food services sector, 88 per cent of businesses reported greater than 50 per cent reduction in consumer spending. Twenty-three per cent of retail businesses reported a 30 per cent reduction. Eighteen per cent experienced a 40 per cent reduction and 33 per cent reported more than 50 per cent reduction (Chamber of Commerce and Industry *WA COVID-19 Business Impact Survey: Snapshot*). Employers reported on their intentions to make significant changes to adapt to the circumstances.
- 154 The measures reported included those aimed at retaining employment. However, as noted earlier, 71 per cent reported expecting or already having to lay off staff. The unemployment data from the ABS confirms that employers have dismissed employees or reduced their hours of work.
- 155 The ABS *Business Indicators, Business Impacts of COVID-19*, April 2020 identified that 69 per cent of Australian businesses experienced reduced demand for goods and services. While the anticipated reduced demand for goods and services varied by industry, it was more than 80 per cent in accommodation and food services; manufacturing; arts and recreation services; administration and support services and wholesale trade. It was greater than 60 per cent in construction; retail trade; transport; postal and warehousing; information, media and telecommunications; rental, hiring and real estate services; professional, scientific and technical services; education and training, and other services. Reduced cash flow; reduced access to credit and additional funds; and reduced ability to pay operating expenses were all highly expected at that point.
- 156 The high take up of the JobKeeper subsidy and the reduction in employment and hours of work also indicate that employers are adapting to dramatically changed circumstances.
- 157 Part of the difficulty, to which we referred earlier, is that at this point in the process of the restrictions and the easing of those restrictions, the full picture of the effects of those restrictions is far from complete. It will continue to develop and evolve and will be subject to how quickly all restrictions are removed, consumer and business confidence returns, whether there is a so-called second wave of infections, and many other indicators. At this stage, the Commission can only draw inferences about employers' capacity to pay from the information available, imperfect though it is. We conclude that employers do not have capacity to pay

more than a modest increase without adversely affecting their businesses. That affect is likely to cause more job and business losses.

158 It is reasonable to infer from all of the material before the Commission that employers as a whole will have a reduced capacity to bear the cost of increased wages and some industries are more adversely affected than others. Employers are most likely to have taken whatever measures are available to them by now. However, with the removal of the JobKeeper allowance, this may change and lead to further restricting, closures or job losses.

Productivity

159 As part of its consideration of the state of the Western Australian economy, the Commission is required to consider the likely effect of its decision on productivity in Western Australia.

160 The level of productivity in this State will have been significantly affected by the restrictions imposed by both the Commonwealth and State governments. Different industries will have been affected to different levels. Some employees in essential services may have experienced greater productivity than others. Some industries which have closed down will have had no productivity. The data indicates that some employees, whilst retaining employment, have worked no hours.

161 The dramatic changes and the speed of them has made analysis of trends in data very difficult.

The Fair Work Commission Decision

162 The FWC's Annual Wage Review 2019-20 ([2020] FWCFB 3500) decision issued on 19 June 2020. It observed in detail the different levels of impact of the COVID-19 restrictions and other measures according to industry clusters. It has identified the various groups of modern awards in, for example, the least impacted industries; those employees and employers in essential services who continued to work during the pandemic, and those most affected by the pandemic in terms of job and wage losses. The differences between the sectors were quite marked.

163 The FWC also noted that:

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

164 Those countervailing considerations were the emerging and anticipated indications of recovery, improvements, or at least stabilisation, in the labour market data since late April.

165 The FWC also noted that the labour market was still well below the pre-COVID-19 levels. It recognised the high level of uncertainty of outlook and the likely long-lasting effects on the economy. It recognised '[s]ignificant downside risks in the period ahead.'

- 166 The FWC went on to acknowledge the statutory considerations of a social nature and the interests of the low paid, as well as other requirements which although not identical to those required of this Commission, are very similar.
- 167 The FWC decided ‘[t]o award a substantially lower increase this year than that awarded last year due to the marked change in the economic environment and the tax transfer system and other changes which have taken effect in the current Review period which have benefited low paid households. The increases we have awarded are likely to maintain the real value of wages of National Minimum Wage (NMW) and award-reliant employees’ [139]. It decided to increase the NMW and modern award rates by 1.75 per cent. At the NMW level, this is an increase of \$13 per week. We note that the FWC has reached this conclusion having examined the RBA forecasts for inflation for the past six months and for the coming six-monthly periods between December 2019 and January 2022. It examined the trimmed mean and weighted median for the CPI movements but also examined the Living Cost Index (LCI) from the ABS. In doing so, it set out in the following table:

**Table 1 - Quarterly and annual changes in measures of prices and living costs,
March quarter 2020:**

Indicator	Quarterly (%)	Annual (%)
CPI	0.3	2.2
Trimmed mean	0.5	1.8
Weighted median	0.5	1.7
LCI (employees)	0.1	1.1

Source: ABS, Consumer Price Index, Australia, March 2020, Catalogue No. 6401.0;
ABS, Selected Living Cost Indexes, Australia, Mar 2020, Catalogue No. 6467.0.

- 168 The FWC then went on to examine the timing of wage increases and decided that, firstly, there were not generally exceptional circumstances such as to justify adjustments set by the NMW order taking effect on a day later than 1 July 2020. The order would come into effect on 1 July 2020, but the date of operation of the determinations varying modern awards would vary according to the degree of impact of the pandemic on their industries. The FWC recognised that this methodology is not perfect and has its limitations [166]. Some sectors and businesses within particular industries will be more or less affected than the industries generally.
- 169 Group 1 modern awards, being those covering industries less affected by the pandemic, would have an operative date of 1 July 2020. Group 1 modern awards, which include modern awards applying to ‘frontline’ health workers, teachers and childcare workers and employees engaged in essential services, also included a significant number of low paid female employees. Group 1 modern awards are said to cover about 25 per cent of non-managerial award-reliant employees [162].
- 170 Group 2 modern awards covered employees who were more affected by the pandemic than Group 1, but less than Group 3. Group 2 modern awards cover a broad range of mining, manufacturing, processing, construction and service industries. It covers about 40 per cent of non-managerial award-reliant employees. Group 2 employees would receive their increases from 1 November 2020.
- 171 Group 3 modern awards, those in the sectors most affected by the pandemic, had demonstrated exceptional circumstances warranting the increases applying only from 1 February 2021. It

includes the aviation industry; entertainment and the arts; hospitality, food services and tourism; and general retail. Group 3 makes up over one-third of non-managerial award-reliant employees.

172 The FWC also examined its statutory scheme and concluded that it did not have power to provide a targeted means of dealing with individual businesses' incapacity to pay.

173 Professor Wooden dissented from the majority.

Submissions regarding the FWC decision

(a) The Minister

174 The Minister notes that the impact of the COVID-19 pandemic is very similar in Western Australia to that nationally, with some measures being marginally better in Western Australia and some others marginally worse. The Minister describes the FWC decision as taking a well-considered and balanced approach to complex issues. The Minister supports the Commission adopting a similar staged approach as far as is practicable given the differences between the State and national systems. However, it is more complex in Western Australia given that there are over 200 awards, there is complexity in the scope of awards and the gap in award coverage, as well as the interaction of State awards and the SMW.

175 The Minister points out that the NMW applies only to employees who are not subject to an award or enterprise agreement, but that there is a modern award, the Miscellaneous Award, that applies to most below-managerial level employees who are not covered by a modern award. Unlike the SMW, the NMW is not implied into awards and agreements.

176 The Minister submits that due to the different application of the SMW compared with the NMW, if the Commission adopts a staged approach to increases, then the SMW increase ought to be deferred until 1 February 2021 to coincide with the final phase of award increases.

177 If the Commission decided not to implement a similar staged approach and apply a single operative date, then it is necessary to consider the coverage of the awards and their effect. The majority of private sector State system employees are in Groups 2 or 3 type awards. If a single operative date is to apply, the Minister submits that 1 December 2020 would be an appropriate date.

(b) The Chamber

178 The Chamber submits that the FWC appears to be very optimistic about the economy's prospects for recovery, placing significant weight on the RBA Governor's comments that conditions have been '[p]erhaps fractionally better than the baseline' previously established and that '[i]t is possible that the depth of the downturn will be less than earlier expected'. However, the qualified nature of the RBA Governor's comments still suggest caution is warranted. The FWC had, however, noted the significant downside risks still ahead.

179 The Chamber notes that the Group 3 modern awards, which will implement the 1.75 per cent increase in February 2021, have a close correlation with the awards most relied upon in the State system. It says that while the FWC grouped awards for construction and manufacturing industries in Group 2, the residential construction sector in Western Australia is where most

Western Australia system employees would be operating. This sector has been significantly affected by lower consumer confidence following a period of prolonged decline in activity as a result of low population growth. Consequently, this sector ought to fall within the category of industries most affected by the COVID-19 pandemic and be included within the Group 3 modern awards.

- 180 The Chamber reiterated its submission that the needs of the low paid are better served by having a job that provides suitable hours of work rather than a pay increase. The Chamber notes that the FWC recognised that the ABS *Household Impacts of COVID-19* survey shows that 31.4 per cent of respondents had seen their household finances worsen between mid-March and mid-April 2020. The Chamber says the principal factor contributing to the decline is the reduced levels of employment and hours of work. An increase to the SMW and award rates of pay is likely to make the situation worse.
- 181 Given the significant impact of the COVID-19 pandemic on service-based industries where female employment predominates, an increase in the minimum wage will have a greater adverse impact on female employees.
- 182 As to the level of the increase awarded by the FWC, the Chamber says that the cost of living increase data referred to by the FWC means that the increase of 1.75 per cent is greater than what is necessary to maintain the real value of the SMW and rates of pay. Given the RBA's alternative downside forecasts, of a more protracted period of low inflation and uncertainty, the increase in rates of pay is creating further risk to employment.
- 183 The increase granted brings the NMW to \$6.90 higher than the current SMW. The Chamber says that the Commission is required to take the FWC decision into account but is not bound by it, as evidenced by the sustained difference between the SMW and the NMW. The Chamber submits that the SMW and award rates of pay should be maintained at their current levels. This would provide a fair minimum wage that helps to protect jobs and in doing so, protects the living standards of the low paid.
- 184 As to the timing of any increase, the Chamber says that a staged increase is impracticable in the State system. Also, many employers have employees employed under different awards. Employees in the same business receiving pay increases at different times is likely to result in increased levels of disputation within workplaces.

(c) UnionsWA

- 185 UnionsWA submits that the FWC majority recognised that if there is no increase granted then living standards will not be maintained. The requirement under the Western Australia legislation is to contribute to improve living standards, therefore a real increase is necessary and warranted.
- 186 A percentage increase is also appropriate, according to UnionsWA, to avoid the compression of award relativities, and consequently, to ensure a system of fair wages and conditions of employment.
- 187 It also notes that the FWC accepts that an increase in the NMW will impact aggregate demand in a time of uncertainty. This would also assist the Western Australia economy by increasing consumer confidence.

- 188 UnionsWA notes that the FWC has recognised that business assistance measures ought to be considered in the context of employers' capacity to pay and urges this on the Commission.
- 189 As to delaying the implementation of the NMW and award rates, UnionsWA says the FWC was not acting in accordance with the objects of s 284(1)(c) of the FW Act to take account of the needs of the low paid. This Commission should take account of the issue as it is required by s 50A(3)(iv) and make a decision to contribute to improved conditions for the low paid. On that basis, all minimum and award rate increases should be operative from 1 July 2020.

Conclusions

- 190 In the 2016 State Wage Case Decision, we referred to the report prepared for the Western Australian Industrial Relations Commission: *State Minimum Wage Review, May 2006*, by Professor David Plowman and concluded that '[w]here the State does not experience economic growth, this finding suggests that the effect of the increases in the minimum wage will be greater than in times of growth' ([2016] WAIRC 00358 at [179]).
- 191 We have commented earlier that the current situation is unprecedented and has been compared unfavourably with previous economic crises. One of the few comparators available for the current situation is the 2009 State Wage Case Decision ([2009] WAIRC 00375). It occurred in the midst of the GFC. The Commission noted that the increase to the Perth CPI to the March quarter was 2.2 per cent. The WPI in Perth for the year to December 2008 was 5.7 per cent. The State's unemployment rate was 4.9 per cent in March 2009, the highest since September 2004. The State and national economies had been affected by '[p]robably the worst economic downturn in the global economy since the Second World War [44].'
- 192 The 2009 State Wage Decision also contrasted '[t]he current economic crisis with the circumstances of the economic crisis of 1982–83' [51]. That year, both the Commonwealth and State governments urged a wage freeze (see (1983) 63 WAIG 257)). In 2009, the Commission accepted that '[t]here are employers whose costs structures make them vulnerable to wage increases' [52]. On the basis of those circumstances the Commission increased the SMW by \$12.30 per week, recognising that this was an increase of 2.2 per cent and reflected the increase in the CPI. However, the increase did not take effect until the first pay period on or after 1 October that year when it was considered that employers would have had an opportunity to make necessary adjustments.
- 193 This year's situation is a significant reversal of what was expected less than six months ago. By comparison with 2009, it is much worse. Unemployment and under-employment will continue to be a drain on recovery.
- 194 Small businesses in the industry sectors in the State industrial system, and their employees, ought not to be either disadvantaged or advantaged as compared with their national system competitors, merely because of their corporate status.
- 195 Given that the current circumstances are significantly worse than 2009 in terms of unemployment and other matters affecting employment, this year's decision needs to be proportionate, and take account of the need to preserve existing employment and support future hiring.

196 Western Australia's SMW is currently \$746.90. Until 1 July 2020, the NMW is \$740.80, a difference of \$6.10 per week. For Group 1 modern awards, it will increase from that date by 1.75 per cent or \$13.00 per week, to \$753.80.

Coverage and effect of State Wage order

197 In examining and considering all of the matters necessary, it is particularly important this year to recognise who is affected by the State Wage order. The ABS estimated that in 2018, in Western Australia, 15.0 per cent of the non-managerial employees, or approximately 162,000 employees, are paid entirely in accordance with a State or national award. This was down from 16.4 per cent in 2016 (*Employees Earnings and Hours*, Australia, May 2018, catalogue 6306.0). There are many award-free employees who are subject to the SMW. The *Ministerial Review of the State Industrial Relations System, Final Report, June 2018*, provided a list of examples of employees who are not covered by a State award (pages 273 – 373). They include many whose industries have been most deeply affected by the current restrictions on industry, such as beauty therapists; clerical/administrative/reception employees working in a wide range of businesses in such places as caravan parks, child care centres, gyms, tourist centres; nightclub employees including bar staff, glassies and front door staff.

198 The Minister provided the following table which sets out employee award reliance by industry:

Table 2 - Employment and award reliance by industry, WA and Australia, February 2020

Industry	WA: Proportion of Workforce	Australia: Proportion of Workforce	Australia: Proportion of employees paid by award
Accommodation and food services	7.0%	7.1	44.9%
Administrative and support services	3.0%	3.4	41.3%
Other services	4.5%	4.1	38.1%
Health care and social assistance	11.8%	13.3%	31.7%
Retail trade	10.2%	10.1%	30.1%
Rental, hiring and real estate services	1.4%	1.6	29.4%
Arts and recreation services	1.7%	2.0	22.5%
Manufacturing	6.2%	6.7	20.8%
Construction	8.9%	9.0	16.6%
Wholesale trade	3.0%	3.0	16.1%
Transport, postal and warehousing	5.0%	5.3	12.7%
Public administration and safety	7.0%	6.7	10.9%
Education and training	7.2%	7.8	10.0%
Professional, scientific and technical services	8.1%	8.9	8.0%
Information, media and telecommunications	1.0%	1.7	7.1%
Financial and insurance services	2.0%	3.5	5.2%
Electricity, gas, water and waste services	1.5%	1.2	4.1%
Mining	7.7%	1.9	0.9%
Agriculture, forestry and fishing	2.6%	2.7	N/A [†]
All industries	100.0%	100.0%	22.5%

[†] N/A: Enterprises primarily engaged in agriculture, forestry and fishing are outside the scope of the ABS *Employee, Earnings and Hours* survey from which this data is drawn.

- 199 The exact number of employers and employees affected is difficult to determine. However, as we noted last year, it is significant (see 2019 WAIRC 00290 [17] – [35]). Of course, the scope of coverage is not the whole of those groups, but only those within the State industrial relations system.
- 200 The most frequently accessed award summaries prepared by the Department of Mines, Industry Regulation and Safety’s Wageline service between 1 July 2018 and 30 June 2019 were:

Table 3 – Top 10 most frequently accessed award summaries prepared by Wageline

	Award
1	Restaurant, Tearoom and Catering Workers’ Award
2	Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977
3	Hairdressers Award
4	Building Trades (Construction) Award 1987
5	Clerks (Commercial, Social and Professional Services) Award
6	Metal Trades (General) Award
7	Cleaners and Caretakers Award 1969
8	Electrical Contracting Industry Award
9	Farm Employees’ Award 1985
10	Hotel and Tavern Workers’ Award

- 201 The information produced by Wageline for award-free employees was downloaded more than any individual award summary.
- 202 The top 10 most frequently discussed awards in calls to Wageline were:

Table 4 – Top 10 most frequently discussed awards in calls to Wageline

Rank	Award
1	Building Trades (Construction) Award 1987
2	Restaurant, Tearoom and Catering Workers’ Award
3	Hairdressers Award 1989
4	Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977
5	Metal Trades (General) Award
6	Clerks (Commercial, Social and Professional Services) Award
7	Farm Employees’ Award 1985
8	Transport Workers (General) Award
9	Contract Cleaners Award 1986
10	Cleaners and Caretakers Award 1969

- 203 A significant number of calls also concerned award-free employees.
- 204 These three tables demonstrate that the employers and employees most affected by the State Wage order are likely to be employed in the industries most strongly affected by the restrictions and closures in the early and mid-parts of the state of emergency.
- 205 In contrast with the national system, the State private sector awards the subject of this decision are, of course, limited to non-constitutional corporations and are generally applicable to small businesses. Those businesses are unlikely to be in the industries covered by the FWC’s Group

1 industries. Group 1 type employers in the WA system are public sector employees. The great bulk of health services employees are government or trading corporations. The same applies to the great bulk of teachers and childcare workers. There may be some employers and employees in small sections of the industries covered by Group 2 but they would be a much smaller proportion than in the Fair Work system.

- 206 In coming to a conclusion on this matter, we have taken account of the current circumstances and their effect on employers and employees and on the economy. We are conscious of the level of unemployment and the prospect of reduced inflation. We have considered the capacity of employers as a whole to bear the cost of increases and we have noted the decision of the FWC which is aimed at dealing with particular types of industries according to the level of effect upon them of the COVID-19 pandemic. We have considered the submissions put to us.
- 207 Part of our consideration of the effect of this decision is the current uncertainty and that while restrictions are being lifted, many employers have lost a significant part of their trading year. The effects will last for some time. However, we also note the economic support provided to industry and the public by State and national governments.
- 208 The requirements on us include ensuring that Western Australians have a system of fair wages and conditions of employment. This requires a balance between the interests and needs of industry and those of employees. We also need to take account of the interests of those immediately concerned whether directly or not and, where appropriate, for the interests of the community as a whole. Therefore, we cannot ignore that there are many people unemployed who will seek to enter the workforce and find employment.
- 209 We cannot ignore the needs of the low paid and the need to contribute to improved living standards for employees. We are also required to provide fair wage standards in the context of living standards generally prevailing in the community.
- 210 There is a need to encourage ongoing skills development. Employers are currently receiving assistance to maintain their apprentices and trainees. However, apprentices and trainees need to maintain a reasonable income.
- 211 In all of these circumstances, we conclude that a modest increase in the SMW and award rates of pay of 1.75 per cent is appropriate. This will increase the SMW to \$760.00. It will increase the differences between the NMW and SMW by 20 cents because the SMW was already \$6.10 higher. We recognise that while some employees will spend all of any increase and that might mean a small contribution to consumer demand and consumer confidence, others may use the amount to pay down debt and to save.
- 212 In noting that there is still a high level of uncertainty, we conclude that it is appropriate to delay the increases until the first pay period after 1 January 2021. This will allow time for the effects of the lifting of restrictions to develop and stabilise. There will be further certainty associated with the economic circumstances arising from both the Commonwealth and State Budgets being delivered within that time and there will be decisions made regarding the continuation or otherwise of the JobKeeper and other programs.
- 213 We conclude that this increase and its deferral for six months will assist in balancing the various considerations that we are required to take into account.
- 214 We have decided upon a percentage increase on this occasion as it assists in ensuring that the award framework represents a system of fair wages and conditions of employment to not

further exacerbate the compression of relativities associated with flat rate increases that have occurred over a number years.

Statement of Principles

- 215 The Minister proposed that Principle 5.1, dealing with test case standards, could be deleted. He notes that the principle pre-dates the introduction of statutory minimum conditions of employment, such as the MCE Act and the National Employment Standards. No applications have been made to the Commission under this principle for many years.
- 216 There would be a consequential deletion required if Principle 5.1 is deleted, in Principle 3.1.1, which deals with incorporating test case standards when an award is varied or another award made without the claim being regarded as being above or below minimum award conditions. The Chamber does not object to either of these deletions. UnionsWA has made no submission about them.
- 217 We agree that both of these provisions could be deleted without any adverse consequences. The Commission may still deal with these matters, should they arise, by applying the provisions of the Act and precedent.
- 218 The Minister proposes changes to the wording in Principle 6 – Adjustment of allowances and service increments. He proposes that Principle 6.2 could be deleted if his proposed changes to Principles 6.3 and 6.4 are adopted.
- 219 Principle 6.3 clarifies that allowances which relate to work or conditions which have not changed may be adjusted as a result of the State Wage order. The Minister proposes adding ‘[o]r, if an award contains another method for adjusting such allowances, in accordance with that other method.’ The Minister says that this wording change would clarify that if an award contains another method of adjusting allowances then that is acceptable.
- 220 The Minister also proposes that Principle 6.4 be amended to include the words ‘in the absence of any other prescribed method’ so as to provide that Principle 6.4 is the default method for adjusting existing allowances or service increments to reflect State Wage Increases. However, another method could be established if it were deemed to be appropriate. The Chamber does not object to the amendment of Principle 6 and UnionsWA has made no comment.
- 221 We are of the view that these are sensible variations to Principles 6.3 and 6.4 as they provide for alternative methods to be recognised for the purposes of adjusting existing allowances.
- 222 In respect of Principle 9 – Minimum adult award wage, the Minister suggests that Principle 9.1 be amended to add the words ‘including interim awards’ to clarify that the minimum adult award wage clause is also to be included in interim awards.
- 223 Principle 11, which deals with new awards including interim awards and the extension to existing awards could, according to the Minister, be deleted in its entirety as its provisions are already covered by other principles and precedent.
- 224 We are satisfied that Principle 9 ought to be amended in the way in which the Minister has proposed, and Principle 11 be deleted in its entirety.
- 225 Principle 10 – Making or varying an award or issuing an order which has the effect of varying wages or conditions above or below the award minimum conditions, ought to be amended, according to the Minister, by deleting Principle 10.3. This provides that all claims under this

principle will be referred to the Chief Commissioner for determination as to whether the matter ought to be dealt with by a Commission in Court Session or by a single Commissioner. The Minister says that the Chief Commissioner's powers in relation to referring matters to a Commission in Court Session are already set in the Act and this principle adds nothing to it. Neither the Chamber nor UnionsWA have commented on this change.

- 226 We agree with the Minister that this principle merely reflects the Chief Commissioner's powers contained within s 16(1ab).
- 227 Principle 13 – Duration provides that the statement of principles operates until reviewed under s 50A(1)(d) of the Act. This provision, according to the Minister, could sensibly be moved to Principle 1, which deals with the application of the principles and Principle 13 could then be deleted. This is a sensible approach in terms of the setting out matters associated with the operation of the principles generally in Principle 1.
- 228 Other miscellaneous changes are suggested by the Minister for the purpose of more contemporary language or clarifying provisions. The Chamber concurs that these amendments are intended to reflect more contemporary use of language or the provisions are replicated elsewhere.
- 229 We are satisfied that none of these changes alters the meaning of the principles in question and that their amendment is appropriate.

Award rates in State awards that require attention

- 230 The Minister drew our attention to a number of awards that contain award rates of pay that are below the award or statutory minimum. We agree with the Minister, the Chamber and UnionsWA that the best way to address these is through the award review process under s 40B of the Act. The Commission will bring these matters on of its own motion in July 2020.

Hourly rates for school-based trainees

- 231 The Minister has observed that the State Wage order sets minimum hourly rates including for part-time school-based trainees. It provides for students in Years 11 and 12, but not for those below Year 11. These are students in years below Year 11 who are enrolled in school-based traineeships for whom there is no current minimum wage. As the definition of '*apprentice*' under the Act includes a trainee, the provision for school-based trainees in Year 11 ought to be amended, in that the column in the Schedule to the State Wage order dealing with Year 11 apprentices, to 'Year 11 or below'. The Chamber and UnionsWA consent to this change. We conclude that this is a sensible and equitable proposal and will make the amendment.

Minute of proposed General Order

- 232 A Minute of the proposed General Order now issues. Interested parties are to submit any matters requiring attention, in writing, by no later than 10.00 am on Monday, 29 June 2020.